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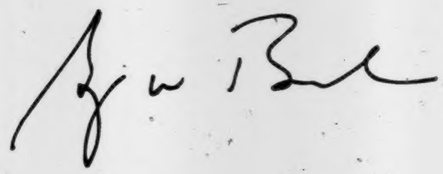
Report to the Congress Regarding Conditions in Burma and U.S. Policy Toward Burma

Memorandum for the Secretary of State

Pursuant to the requirements set forth under the heading "Policy Toward Burma" in section 570(d) of the Fiscal Year 1997 Foreign Operations Appropriations Act, as contained in the Omnibus Consolidated Appropriations Act (Public Law 104–208), a report is required every 6 months following enactment concerning:

(1) progress toward democratization in Burma;
(2) progress on improving the quality of life of the Burmese people, including progress on market reforms, living standards, labor standards, use of forced labor in the tourism industry, and environmental quality; and
(3) progress made in developing a comprehensive, multilateral strategy to bring democracy to and improve human rights practices and the quality of life in Burma, including the development of a dialogue between the State Peace and Development Council and democratic opposition groups in Burma.

You are hereby authorized and directed to transmit the attached report fulfilling these requirements to the appropriate committees of the Congress and to arrange for its publication in the **Federal Register.**



THE WHITE HOUSE,
Washington, March 28, 2003.

Billing code 4710–10–P

Conditions in Burma and U.S. Policy Toward Burma For the Period September 28, 2002—March 27, 2003

Introduction and Summary

Efforts to foster peaceful democratic change in Burma essentially ground to a halt over the past six months. The regime has become more confrontational in its exchanges with the National League for Democracy (NLD), led by Aung San Suu Kyi, and has offered few signs of progress toward their stated commitment to a political transition to democracy and not interest in pursuing political dialogue with the elected opposition. UN Special Envoy Razali continued his mission, the National League for Democracy opened up a significant number of township and divisional party offices, and NLD General Secretary Aung San Suu Kyi was able to continue her travels in Burma, visiting both Shan and Rakhine States. However, the visit to Rakhine State was marred by incidents instigated by government-affiliated organizations and believed to be based on orders from Rangoon; political prisoner releases stopped as of late November, and there were new arrests of political activists. Aung San Suu Kyi was nearly jailed in February on charges arising from a civil lawsuit filed by a relative. Most seriously, the regime has not demonstrated its willingness to begin a real dialogue with the NLD on substantive political issues.

Economic developments were punctuated by the banking crisis that followed the collapse of approximately 20 informal financial institutions, which had taken deposits in return for promises of returns of five percent per month or more. Stimulated by the rampant inflation in recent years, and the repressed financial conditions that had stifled the growth of legitimate financial institutions, these informal financial institutions had grown rapidly for two years, before collapsing in January, sparking a run on the private banks. The banks have coped by restricting withdrawals, calling in loans, and requesting emergency central bank support. Several may nonetheless fail. Only private banks have been affected thus far. All of the government-owned banks and all of the banks in which government corporations participate as joint venture partners have continued to run normally. Inflation has also come down sharply as the asset price inflation fueled by the activities of the informal financial institutions has collapsed.

The Government of Burma (GOB) severely abuses the human rights of its citizens. There is no real freedom of speech, press, assembly, association, or travel. Burmese citizens are not free to change their government. Religious minorities (particularly Christians and Muslims) are discriminated against and any form of proselytizing is discouraged. Security forces also regularly monitor citizens' movements and communications, search homes without warrants, and relocate persons forcibly without just compensation or legal recourse. In June 2002, the Shan Human Rights Foundation (SHRF) accused the Burma Army of using rape systematically as "a weapon of war" in ethnic minority areas along the Thai border. The regime denied those charges and has not agreed with UN Special Rapporteur for Human Rights in Burma Paulo Sergio Pinheiro on the ways and means for an effective, impartial international investigation of these allegations. However, the government did recently intervene and punish both an army officer found guilty of rape and his commanding officers. Forced labor also remained an issue of serious international concern, despite some limited government efforts to control the practice. An International Labor Organization (ILO) Liaison Officer was appointed to Burma in October 2002 and, at the direction of the ILO Governing Body, has attempted to hammer out a "viable program of action" with the government to eliminate forced labor. Thus far, those efforts have not achieved the stated objective.

Burma remains one of the world's largest producers of opium, heroin, and amphetamine-type stimulants. Its overall output of opium and heroin has declined for six straight years; in 2002 Burma produced less than one-quarter of the opium and heroin than it did six years before. At the same time, however, the production of methamphetamines has soared, particularly in the area controlled by the Wa ethnic group. According to some estimates, as many as 400 million to 800 million methamphetamine tablets may be produced in Burma each year, although these estimates are difficult to verify. Burma has joined with China, Thailand, and India in attempting to curb this traffic; as yet, however, there are few signs that this regional effort is succeeding.

U.S. policy goals in Burma include a return to constitutional democracy, restoration of human rights, including fundamental civil and political rights, national reconciliation, implementation of the rule of law, a more effective counternarcotics effort, HIV/AIDS mitigation, combating trafficking in persons, accounting for missing servicemen from World War II, counterterrorism efforts, and regional stability. We continue to encourage talks between Aung San Suu Kyi and the regime in the hope that the regime will live up to its stated commitment to political transition, leading to meaningful democratic change. We also consult regularly, at senior levels, with countries with major interests in Burma and/or major concerns regarding Burma's current deplorable human rights practices.

In coordination with the European Union and other states, the United States has maintained sanctions on Burma. These include an arms embargo, ban on new investment, and other measures. Our goal in applying these sanctions is to encourage a transition to democratic rule and greater respect for human rights. Should there be significant progress towards those goals as a result of dialogue between Aung San Suu Kyi and the military government, then the United States would look seriously at measures to support this process of constructive change. Continued absence of positive change would force the U.S. to look at the possibility of increased sanctions in conjunction with the international community.

Measuring Progress toward Democratization

Efforts to foster peaceful democratic change in Burma have once again ground to a halt over the past six months. While there have been some positive developments, the regime has become more confrontational in its exchanges with the NLD, led by Aung San Suu Kyi, and has offered few signs of progress toward their stated commitment to a political transition to democracy.

UN Special Envoy Razali Ismail continued his mission, visiting Burma for the eighth time in November 2002. On the positive side, the NLD also continued to rebuild itself as a national party, opening up offices throughout Burma. Altogether, the NLD has now reopened about one-quarter of its township and divisional offices (92 offices out of approximately 360). In addition, the Committee to Represent the People's Parliament (CRPP), a group of parties elected to Parliament in 1990, expanded to a total of 18 elected Members of Parliament (MP). In 1998, the opposition's decision to establish the CRPP led to the arrest of many of the MPs by the regime.

Finally, the NLD's General Secretary Aung San Suu Kyi continued her travels, visiting Shan and Rakhine States and opening NLD offices in both states. In Shan State, this travel went relatively smoothly; in Rakhine State in December, however, efforts by the United Solidarity Development Association (a "mass organization" affiliated with the regime) to discourage any large turnout of crowds for Aung San Suu Kyi, turned ugly. In the town of Mrauk Oo Aung San Suu Kyi intervened with local authorities by climbing atop a fire truck to prevent them from dispersing a crowd of 20,000 supporters with water hoses.

Political prisoner releases stopped as of late November, despite continued appeals from the international community (UN Special Envoy Razali and UN Special Rapporteur Pinheiro, as well as the EU, U.S., and others) for the unconditional release of all political prisoners. Approximately 550 political prisoners have been released since October 2000, including 380 NLD

party members. However, another 1,300 "security detainees" still remain in detention, including approximately 110 NLD party members and 17 elected MPs.

There were also new arrests. Approximately 60 political activists, mostly teachers, lawyers, and students, were detained by the government between August 2002 and March 2003 on charges including conspiracy to commit terrorist acts for the simple peaceful expression of political dissent. Due to international pressure, most of these activists were released within days, but one died while in detention (apparently from a lack of medical care), while several were convicted of offences carrying sentences of seven years or more.

In February 2003 Aung San Suu Kyi was involved in a minor civil law suit brought by a relative that appeared to be politically motivated. Aung San Suu Kyi counter-sued. Both were found guilty. She and other NLD leaders characterized the initial suit as being instigated by the regime and politically motivated. She was given a choice of paying a small fine or being jailed for a week. She refused to admit guilt by paying the fine and indicated her willingness to be jailed for a week as a result. The government then issued a "suspension of judgment" decree as several thousand NLD supporters gathered outside the courthouse.

Most seriously, the regime has shown no inclination to engage the democratic opposition in meaningful political dialogue. The government arranged meetings between Aung San Suu Kyi and the Minister of Education and others, but the NLD leader made clear to UN Special Envoy Razali in October that there was "no real dialogue" with the regime. There were also signs of Senior General Than Shwe's frustration with the lack of increased aid or reduced sanctions.

The hamstrung status quo has frustrated a number of concerned countries. Australian Foreign Minister Downer, Japan's Deputy Foreign Minister Tanaka, and the EU Troika visited Burma over the past several months and Japan's Prime Minister Koizumi reportedly weighed in on behalf of reform at ASEAN Summit in Phnom Penh in November; however, no one has yet been able to move the process forward. At the most recent meeting of the U.N. Contact Group on Burma, held in Tokyo in February, there was little consensus on next steps and what new strategies could be effective. Both the EU and the United States are now considering the advisability of increasing sanctions on Burma.

Counternarcotics

The United States judged earlier this year that Burma had "failed demonstrably" to make substantial efforts to cooperate on narcotics matters, primarily due to the failure to stem the production and flow of amphetamine-type stimulants into neighboring countries. At the same time, the USG has sustained a successful program of cooperation between police authorities in Burma and the U.S. Drug Enforcement Administration. Since 1993 the USG and GOB have cooperated on annual opium yield surveys in Burma and with UNODC and other donors on opium reduction and crop substitution programs. In June 2002, the United States pledged an additional $700,000 to support UNODC's Wa Alternative Development Project, which helped reduce opium production in the territories of one of the most notorious former insurgent groups, the United Wa State Army.

While Burma is the world's second largest producer of illicit opium, its overall production in 2002 was only a fraction of its production in the mid-1990s. According to the joint U.S./Burma opium yield survey, opium production in Burma totaled no more than 630 metric tons in 2002, down 26 percent from 2001, and less than one-quarter of the 2,560 metric tons produced in Burma in 1996. Burma's success in reducing the production of opium and heroin, however, has been offset by increasing production of amphetamine-type stimulants, particularly in outlying regions governed

by former insurgents that are not under the effective control of the Rangoon government. According to some estimates, as many as 400 to 800 million methamphetamine tablets may be produced in Burma each year. Due to the mobile, small-scale nature of the methamphetamine production facilities both reliable data and effective law enforcement measures are difficult. Burma does not have a chemical industry, and as far as we know, does not produce any of the precursors for synthetic drugs. This highlights the regional character of this problem and the need for regional cooperation to put an end to drug flows from the region.

There are reliable reports that individual Burmese officials in outlying areas are involved in narcotics production or trafficking or offering protection for these activities. In addition, while the government says it urges former ethnic insurgents to curb narcotics production and trafficking in their self-administered areas along the Chinese border, it has only recently, with the support and assistance of China, begun to crack down hard on some of these groups. Since September 2001, it has begun to enforce pledges from these former insurgent groups to make their self-administered areas opium-free and has pressured groups (including the Wa and the Kokang Chinese) into issuing decrees outlawing narcotics production and trafficking in areas under their control. According to early reports from UNODC's opium surveyors, the cultivation in traditional growing areas has been reduced. However, the Wa have not committed to eliminating narcotics production until 2005. The Burmese junta gauges that any military operation to end production would be extremely costly.

In recent years, Burma continues to improve its cooperation with neighboring states, particularly China. In 2001, Burma signed memoranda of understanding on narcotics control with both China and Thailand. The MOU with China established a framework for joint operations, which in turn led to a series of arrests and renditions of major traffickers in 2001 and 2002, many of whom were captured in the former insurgents' self-administered areas. Over the past two years Burma has returned over 30 Chinese fugitives to China, including principals from one group that China described as "the largest armed drug-trafficking gang in the Golden Triangle." Burma's MOU with Thailand has committed both sides to closer police cooperation on narcotics control and to the establishment of three joint "narcotics suppression coordination stations" at major crossing points on the border. Recent visits by Thai Prime Minister Thaksin and other Thai officials to Rangoon made narcotics cooperation a centerpiece of bilateral relations. In addition, India participated in a January 2003 meeting with China and Burma in Rangoon on precursor control. As a result, India is now exploring the possibility of establishing a 100-mile wide "restricted area" within which any possession of ephedrine, acetic anhydride, or other drug precursors would be criminalized. If adopted by Thailand and China, such action could have a major impact on amphetamine production in areas not under Rangoon's effective control.

Burma is part of every major multilateral narcotics control program in the region. It is a party to the 1961 UN Single Convention, the 1971 UN Convention on Psychotropic Substances, and the 1988 UN Drug Convention. It has also announced that it will shortly adhere to the 1972 Protocol to the 1961 Single Convention. Burma has also supported UNODC's 1993 Memorandum of Understanding that was signed among the six regional states—Burma, China, Thailand, Laos, Vietnam, and Cambodia—to control narcotics production. Finally, as China and Thailand have become more active multilaterally, Burma has joined all trilateral and quadrilateral programs organized by either to coordinate counter-narcotics efforts among the four states of the Golden Triangle (Laos, Burma, China, and Thailand).

Under pressure from the Financial Action Task Force (FATF), the Government of Burma has taken action on money laundering issues. In June 2002 the GOB enacted a new money laundering law that criminalized money laundering in connection with most major offenses, including terrorism and

narcotics trafficking. A Central Control Board chaired by the Minister of Home Affairs was established in July; training for financial investigators was conducted in Rangoon and Mandalay in August and September, and the initial investigations were begun in July 2002. Using the provisions of the law, assets have been frozen and/or seized in several major narcotics-related cases. With assistance from UNODC, the Burmese government is also in the process of drafting a new mutual legal assistance law, which should lay the groundwork for judicial and law enforcement cooperation across borders in the prosecution of money laundering and other cases.

The Quality of Life in Burma

The Economy: Economic developments in Burma were punctuated in February and March 2003 by a banking crisis centered on several major private banks. Undermined by soaring inflation and government restrictions on interest rates, Burma's private banks were shaken to their roots by the collapse of several unofficial financial institutions in January 2003. During February, approximately 40 percent of the banks' deposits were withdrawn, obliging the banks to restrict withdrawals, call in loans, and apply to the Central Bank for emergency assistance. The run has focused on private banks, especially those with Chinese or Chinese-Burmese ownership. Government-owned and joint venture banks with government participation have not been affected, presumably because the public is more confident of government support in those cases. Burmese-owned private banks have also escaped the extreme pressures applied to the Chinese-owned banks, presumably again because depositors are more confident of government support in those cases.

Looking ahead, several private banks may fail within the next several months. Since the private banks hold a majority of bank deposits in Burma, this will have a major impact on their customers' savings and on the payments system throughout Burma. A good portion of the inflation that plagued Burma over the past two years was generated by the uncontrolled credit and investment operations of the informal financial institutions, which have now collapsed. With them gone and the banking system crippled by the current run, inflation should decline, while the kyat, now suddenly in short supply, strengthens. Since the start of the crisis in February, the values of both gold and the dollar have fallen by about 20 percent against the kyat, while general price inflation has moderated. Both trends should continue in the months ahead.

In the energy sector, some good luck has saved the government from the consequences of a string of disastrous public investment decisions. As it turns out, a crash government exploration program has turned up enough natural gas onshore to ensure against a recurrence of the severe load shedding and blackouts that plagued the economy in 2002. Where in January 2002 the nation's peak generating capacity was sufficient to meet only about two-thirds of the nation's peak demand, it now appears that all, or virtually all customers in Rangoon and other major cities are getting electricity on a regular basis. In 2004, several major hydropower projects are due to come on line and, provided that the new-found gas holds out that long, Burma may finally be able to put its long-running energy problems behind it.

In the fiscal budget, the situation continues to be desperate, but not so desperate as thought earlier. There, a failed fiscal concept, in which the GOB attempted to run the entire government on the basis of the profits of the state-owned enterprises, has left the GOB without any basis for long-term planning, as profits have turned to losses in one state-owned enterprise after another. In fact, in Burma's fiscal year 2001/2002, the deficits of the state-owned enterprises actually absorbed all the revenues collected by the government, leaving the government proper (i.e., the army, the navy, the health and education services, and all ministerial operations) to run on the basis of monies borrowed from the Central Bank. This has over the past two years produced a rapid expansion of the money supply, a commensurate increase in inflation and a sharp depreciation in the value of the domestic currency.

The collapse of the informal financial institutions has had a deflationary effect. Previously propped-up asset values have collapsed and relatively high interest rates for savers have also gone away. Thus, the inflation associated with the government's mismanaged fiscal expansion will have less impact.

Human Rights: The Government of Burma severely abuses the human rights of its citizens. Burmese do not have the right to change their government. Nor is there any real freedom of speech, press, assembly, association, or travel. Religious minorities (particularly Christians and Muslims) are discriminated against and any form of proselytizing activity is actively discouraged. Burma was designated a Country of Particular Concern for particularly severe violations religious freedom in 2002. Security forces also regularly monitor citizens' movements and communications, search homes without warrants, and relocate persons forcibly without compensation or legal recourse.

Patterns of abuses are worse in ethnic minority areas. These abuses include censorship, persecution, beatings, disappearances, extrajudicial executions, the curtailing of religious freedom, forced relocations, rapes, and forced labor, including conscription of child soldiers. Several reports by non-governmental organizations have been published this year alleging human rights abuses by the Burmese military on Burmese civilians including rapes of hundreds of women between 1992 and 2001. The regime initially denied these charges but, after conducting investigations, conceded that it had identified five cases (out of the 173 presented by SHRF) whose circumstances approximate those described by SHRF. The international community is calling for an independent investigation by competent officials from outside Burma conducting private interviews with victims in an atmosphere of security and free of reprisals. In March 2003, UN Special Rapporteur for Human Rights Pinheiro visited Burma to discuss the human rights situation there, including prospects for an independent, credible investigation of the rape allegations. However, he cut his visit short when he learned that his supposedly confidential discussions with political prisoners were being monitored by Burmese authorities.

In August 2002, a Burma Army Captain raped a four-year-old girl in a village in Kayah State, and local officials attempted to cover up the crime when villagers first complained to them. However, the government has since taken action. The Captain was brought back to Rangoon in handcuffs, and the Commander and Deputy Commander of the Captain's battalion were relieved of command for their mishandling of the incident. Reportedly, there have been no reprisals against the villagers.

There had been no releases of political prisoners since late November 2002 until shortly before Pinheiro arrived in March, 2003. The regime claimed to have released 45 prisoners on March 16, including "elderly inmates, females either pregnant or with young children, and those incarcerated for disturbing peace and tranquility." Three to four of those released were NLD members. Approximately 550 political prisoners have been released since October 2000, including approximately 380 NLD party members. However another 1,300 "security detainees" (including pro-democracy activists, lawyers, students, teachers, journalists, insurgents, and those accused of aiding insurgents) still remain in prison. Of these, about 110 are NLD members and 17 are elected Members of Parliament. Another 400 prisoners (mainly mothers with young children) were released on humanitarian grounds. U.N. Special Rapporteur Pinheiro and U.N. Special Envoy, along with members of the international community, have consistently and strongly pressed for the unconditional release of all political prisoners. This appeal has thus far not been answered. The United States continues to recognize

the results of the 1990 elections and will continue to push for the full restoration of the civil and political rights of the people of Burma.

Instead of more releases of prisoners, as pledged, arrests of political activists continued in late 2002 and early 2003. Between August 2002 and March 2003, the government detained approximately 60 activists for peaceably promoting democracy and freedom. While most of these activists were released within days of their arrest, there were reports that several were beaten or otherwise abused while in detention. In addition, one detainee died (apparently as a result of a lack of medical attention), while others were convicted and sent to prison for periods of seven years or more. However, the aggregate number of political prisoners and security detainees has decreased by dozens at least in the period covered by this report.

The regime has allowed the United Nations High Commission on Refugees to maintain a presence in northern Rakhine State, providing support and protection services to more than 230,000 Rohingya Muslims who have returned from Bangladesh. After nearly a decade, however, some 22,000 Rohingya refugees still remain in two refugee camps in Bangladesh and another estimated 200,000 Rohingya live illegally in southernmost Bangladesh. In spite of ongoing repatriation efforts, for the last few years repatriations to Burma have not kept up with the camp birthrates and restrictions on movement in Burma have made life exceedingly difficult for this population. There are concerns that members of this disenfranchised population have been recruited by terrorist organizations.

Furthermore, more than 132,000 other Burmese ethnic minority displaced persons live in several refugee camps along the border in Thailand, and an estimated two million Burmese, both ethnic minorities and ethnic Burmans, live illegally in Thailand; many of these are economic migrants rather than political refugees. The tens of thousands of Burmese and ethnic minorities living illegally in the countries surrounding Burma are willing to endure an often perilous existence because they believe it is even more dangerous to return to Burma.

Forced labor also remained an issue of serious concern to the international community, despite some (still relatively ineffective) government efforts to control the practice. In June 2000, the International Labor Conference concluded that the Government of Burma had not taken effective action to deal with the use of forced labor in the country and, for the first time in the history of the International Labor Organization (ILO), it called on all ILO members to review their policies to ensure that those policies did not support forced labor. The ILO Governing Body implemented this decision in November 2000. The United States strongly supported this decision.

Over the past 18 months, the Government of Burma has slowly begun to work with the ILO on procedural measures to address the problem. In September 2001, it allowed an ILO High Level Team to visit Burma to assess the situation. That team concluded that the GOB had made an "obvious, but uneven" effort to curtail the use of forced labor, but that forced labor persisted, particularly in areas where the Burma Army was waging active military campaigns against insurgent forces. The team recommended that the ILO establish a presence in Burma, a step that was finally completed in October 2002 with the opening of an ILO Liaison Office in Rangoon. In August 2002, the ILO began field visits to sites along the Thai/Burmese border that have been identified by Amnesty International and other organizations as "hot spots" for forced labor and Burmese Army abuse of ethnic minorities. The ILO Liaison Officer has also attempted to engage the GOB in discussions to develop a "viable plan of action" to eliminate forced labor as demanded by the ILO Governing Body in November 2002, but so far these efforts have been unsuccessful. While the GOB has made some procedural concessions to ILO demands, the GOB has still not prosecuted any individual for use of forced labor, and there is abundant evidence that the centuries-old tradition of forced labor in Burma continues. As a result, the ILO has continued to press for an effective investigative

body, the appointment of an independent ombudsman to report on violations, and the elimination of forced labor in law and practice. The use of forced labor to build infrastructure for tourist sites appears to be reduced from levels reported in the late 1990's. In recent years, there have been isolated reports of forced labor at tourist sites.

Burma was ranked as a Tier 3 country in the Department's 2002 Trafficking in Persons Report. Since the publication of that report, the GOB has tried to make more transparent that it is taking steps against sexual exploitation trafficking, which most often involves the clandestine movement of Burmese women and children from ethnic minority areas into Thailand. The Myanmar National Committee on Women's Affairs has taken measures to help educate vulnerable populations on the dangers of trafficking by distributing booklets, producing some media programming and organizing community talks. The Ministry of Home Affairs and the Attorney General's office have carried out arrests and prosecutions of traffickers. The effectiveness of these efforts appears to be uneven and difficult to evaluate given the government's overall credibility and the political climate in the country, but this represents what seems to be a genuine engagement of some senior government officials to fighting sex trafficking. The GOB has also allowed some limited but important NGO and international organization activity to assist returning trafficking victims and educate officials, but the government needs to be open to much more of this kind of cooperation. The GOB has concentrated its efforts in fighting sex trafficking, although officials are aware that the international definition of trafficking in persons also encompasses labor exploitation.

The regime did allow a visit by Amnesty International (AI) in February 2003. During the visit, the AI delegation met with government ministers and other officials, as well as with Aung San Suu Kyi and other members of the NLD. AI used their meetings with government officials to discuss the conditions under which political prisoners are held and to call for the immediate release of 19 prisoners on humanitarian grounds.

The Environment: Illegal logging and illicit trade in wildlife and wildlife products are overwhelming efforts at protection. To help deal with both of these issues, the Ministry of Forestry has instituted a program to increase the size of protected areas, but pressures are mounting as agricultural lands expand. Other concerns include threats to reefs and fisheries and overall water resource management.

Development of a Multilateral Strategy

U.S. policy goals in Burma include a return to constitutional democracy, the institution of a rule of law, improved human rights, national reconciliation, counterterrorism efforts, regional stability, HIV/AIDS mitigation, combating trafficking in persons, accounting for missing servicemen from World War II, and more effective counternarcotics efforts. We encourage talks between Aung San Suu Kyi and the military government in the hope that it will lead to meaningful democratic change in Burma. We also consult regularly, at senior levels, with countries with major interests in Burma and/or major concerns regarding Burma's human rights practices.

The United States has co-sponsored annual resolutions at the UN General Assembly and the UN Commission on Human Rights that target Burma. We have also supported the ILO's unprecedented decision on Burma given its failure to deal effectively with its severe and pervasive forced labor problems. Most importantly, we strongly support the mission of the UN Secretary General's Special Representative for Burma, Razali Ismail, whose efforts are key in facilitating the start of any meaningful political dialogue between the regime and the NLD.

In coordination with the European Union and others, the United States has imposed sanctions on Burma. These sanctions include an arms embargo, a ban on all new U.S. investment in Burma, the suspension of all bilateral

aid, the withdrawal of GSP privileges, the denial of OPIC and EXIMBANK programs, visa restrictions on Burma's senior leaders, and a vote against any loan or other utilization of funds to or for Burma by international financial institutions in which the United States has a major interest. We have also maintained our diplomatic representation at the Chargé d'Affaires level since 1990.

Our goal in applying these sanctions is to encourage a transition to democratic rule and greater respect for human rights. Nevertheless, we remain concerned about the growing humanitarian crisis in Burma. In 2002, we initiated a $1 million program to address the growing HIV/AIDS epidemic in Burma by funding only international non-governmental organizations (INGOs) to undertake prevention activities; no assistance is direct to the regime. Discussions with the government continue on allowing INGOs to conduct voluntary HIV testing and counseling, as well as a greater commitment to more effective prevention, treatment, and care programs, including for pregnant mothers and high risk groups. We also use a portion of the funding from the U.S. Burma earmark to develop programs in support of democracy in Burma, as well as democracy, social, educational, and governance-related programs outside Burma. None of these funds are disbursed to or through the Government of Burma. We will also continue to examine the potential for cooperation with Burma on terrorism and narcotics issues. Should there be significant progress in Burma in coming months on political transition, economic reform, and human rights, the United States would look seriously at additional measures that could be applied to support the process of constructive change. Absent progress, we will be forced to consider, in conjunction with the international community, additional sanctions and/or other measures.

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–2 FR]

Dried Prunes Produced in California; Revising the Regulations Concerning Compensation Rates for Handlers' Services Performed Regarding Reserve Prunes Covered Under the California Dried Prune Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the regulations concerning compensation rates for handlers' services performed in connection with reserve prunes covered under Marketing Order No. 993 (order). The order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule will establish a procedure in the administrative rules and regulations which the Committee will follow to compute the level of handler payments for holding reserve prunes during and beyond the crop year of acquisition. These payment rates will reflect current industry costs. The rule also will establish time frames for changing the payment rates, and procedures for informing interested persons of the payment rates and payment procedures. This rule also does not allow for payment of handler services for reserve prunes released through the handler acceptance of diversion certificates if the released prunes have not been stored by the handler.

EFFECTIVE DATE: This final rule becomes effective May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule revises the regulations concerning compensation to handlers for services they perform pertaining to reserve prunes covered under the order. Under the order, handlers are compensated for such costs as inspection, receiving, storing, grading, and fumigation of reserve prunes held for the account of the Committee. In the administrative rules and regulations, the compensation rate has been $25 per ton since the early 1970's. This rule establishes a procedure in the administrative rules and regulations that the Committee will follow to compute the level of handler payments that reflect current industry costs instead of having the compensation rate stated in the rule. The Committee will obtain current industry costs through surveys of dried prune handlers and compute average costs based on the number of handlers participating in the survey. Abnormally high or low results will not be considered in the average. The average may be rounded to the nearest $0.25. USDA will approve the updated compensation rate computed by the Committee. The Committee will announce the compensation rate for handling reserve prunes at the time the Committee reviews the industry statistics during the latter part of June and notify all handlers accordingly. Additional payment for handler services for reserve prunes held beyond the crop year of acquisition will be updated through a stated percentage of the handler compensation rate during the crop year of acquisition. The Committee unanimously recommended this action on November 29, 2001.

The order provides authority for volume regulation designed to promote orderly marketing conditions, to stabilize prices and supplies, and to improve producer returns. When volume regulation is in effect, a certain percentage of the California prune crop may be sold by handlers to any market (salable tonnage) while the remaining percentage must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve prunes are disposed of through various programs authorized under the order, including government purchases. Net

proceeds generated from sales of reserve prunes are distributed to the reserve pool's equity holders, primarily producers.

Definitions

Section 993.21c of the prune marketing order defines salable prunes as prunes which are free to be handled pursuant to any salable percentage established by the USDA pursuant to § 993.54.

Section 993.21d of the order defines reserve prunes as prunes which must be withheld in satisfaction of a reserve obligation arising from the application of a reserve percentage established by the USDA pursuant to § 993.54.

Section 993.54 of the order provides authority for USDA, based on recommendations by the Committee and supporting information supplied by the Committee, or from other available information, to establish salable and reserve percentages for dried prunes received by handlers during a crop year. The crop year begins August 1 and runs through July 31. When salable and reserve percentages are in effect, § 993.57 requires handlers to hold in their possession or under their control, for the account of the Committee, the quantity of prunes necessary to meet their reserve obligation.

Authority To Pay Handlers for Reserve Pool Services

Section 993.59 of the order specifies that handlers be compensated for necessary services performed in connection with reserve prunes including, but not limited to inspection, receiving, storing, grading, and fumigation. The payment is made on the tonnage of reserve prunes held by the handler for the account of the Committee, in accordance with a schedule of payments.

Handler Service Payments and Conditions for Reserve Prunes

Pursuant to § 993.59 of the order, details of the criteria and procedures for compensating prune handlers in connection with reserve prunes are established by regulation after recommendation by the Committee. They may be found in § 993.159 of the administrative rules and regulations. Since the early 1970's, the compensation rate has been $25 per ton. The prune industry has not implemented salable and reserve percentages since 1971; therefore, the compensation rate does not reflect current costs. In recent years, the Committee has considered not implementing a reserve.

The Committee normally meets during the end of June or early July to discuss marketing policy issues and decides whether to recommend implementing a reserve. The Committee met on November 29, 2001, and unanimously recommended revising the rules and regulations pertaining to the compensation rates for handler services in connection with reserve prunes. One change recommended establishes a procedure in the administrative rules and regulations for computing the compensation rates instead of having the rates stated in the rule. To aid in formulating the compensation rates, the Committee will obtain current costs through surveys of dried prune handlers and compute average costs based on the number of handlers participating in the survey. Abnormally high or low results will not be considered in the average. The average may be rounded to the nearest $0.25.

An updated compensation rate for handling reserve prunes during the crop year of acquisition will be computed when the Committee considers its annual marketing policy, but no later than July 20. This date could be extended up to 10 days, if warranted by a late crop. During marketing policy discussions, the Committee reviews, among other things, industry production and marketing statistics for dried prunes here and abroad, pricing information for domestic and foreign produced dried prunes, and handler costs for holding reserve prunes, including, but not limited to inspection, receiving, storing, grading, and fumigating prunes. Any recommended change in compensation rate will be reviewed, and will have to be approved by USDA. Upon approval, the Committee will inform all handlers of the changed compensation rate for the upcoming crop year. The process will be completed by the beginning of the crop year (August 1).

On November 29, 2001, the Committee also recommended that no payment for handler services be made for reserve prunes released by handler acceptance of diversion certificates under §§ 993.62 and 993.162, if the handler has not stored the prunes. For example, a handler may have a reserve obligation of 1,000 tons and received 900 tons worth of diversion certificates. The handler submits the 900 tons of diversion certificates to the Committee and requests that he be relieved of 900 tons of reserve prune obligation, leaving a reserve obligation of 100 tons. In this situation, the Committee will only reimburse the handler for reserve pool costs on the 100 tons.

The Committee intends to pay up to one-half the compensation rate (first payment) as soon as practicable after the majority of the deliveries have been made and funds are available. During normal years, the first payment will occur after the second quarter of the crop year (usually during February) and quarterly payments will be made thereafter, as funds are available. The crop year runs from August 1 through July 31.

The Committee also recommends a number of administrative changes to the rules and regulations. They include: (1) Correcting a reference in § 993.159(a) from § 993.57 to § 993.59; (2) adding a provision in § 993.159(a)(1) stating that in crop years when the Committee recommends a reserve pool, it shall meet by July 20 to review costs for handler services in connection with reserve prunes pursuant to § 993.59, except that the Committee may extend this date by not more than 10 business days if warranted by a late crop; (3) adding weighing and stacking prunes as part of the direct labor costs in § 993.159(a)(2); (4) adding clean-up, health insurance, pension plan contributions, vacation pay, holiday and other paid days off as part of the plant overhead costs in § 993.159(a)(2); and (5) eliminating reference to personal pronouns and replacing them with a descriptive noun so the regulatory text is not gender specific. Paragraphs (a)(1), (2), and (3) of § 993.159 are modified accordingly.

In addition, the Committee recommended that the provisions in § 993.159(c)(2) regarding payments to handlers for services rendered in connection with reserve prunes held beyond the end of the crop year of acquisition also be updated. The regulations currently establish the reimbursement rate for storage and fumigation at $2 per ton for the first quarter of the year beyond the crop year of acquisition. This approximates 10 percent of the current handler compensation rate for the crop year of acquisition. The Committee recommended that handlers be compensated at 10 percent of the yearly rate computed by the Committee and approved by USDA for the crop year of acquisition for the first quarter after the crop year of acquisition, rather than establishing a specific rate. That paragraph also specifies specific amounts per ton for storage and fumigation for the second, third, and fourth quarters after the crop year of acquisition at $1.00, $0.25, and $0.25 per ton, respectively. This equates to 50 percent of the first quarter's amount for the second quarter and 25 percent each for the third and fourth quarters. Rather than maintaining specific rates for the second, third, and fourth quarters, the Committee recommended that the rates be expressed as these percentages in the administrative rules and regulations. Expressing these rates paid to handlers for services rendered beyond the crop year of acquisition as percentages will add flexibility to the regulatory scheme and eliminate the need to revise that part of the regulations when the rates for handler services during the crop year are changed.

The Committee also recommended that it be allowed to determine the rate per ton for bin rental within the industry for the succeeding crop year and to inform handlers in accordance with paragraph (e) of § 993.159. Handlers will be compensated at that rate for use of their bins in storing reserve prunes for the account of the Committee. Paragraphs (c)(1) and (2) of § 993.159 are modified accordingly.

New paragraph (e) of § 993.159 will specify that the Committee shall give reasonable publicity to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider handler payment rates or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each payment rate modification submitted to USDA for review and approval. The Committee shall notify producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and cooperative bargaining association(s) of USDA's action on payment rates and conditions for payment by first class mail and/or by electronic communications.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 9 out of 24 handlers (37.5 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5 percent) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, will be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

Pursuant to § 993.59 of the order, this final rule will allow the Committee to compute and announce the level of payments paid to handlers for services performed in connection with holding reserve prunes for the account of the Committee. Each handler holding reserve prunes for the account of the Committee will complete such services so that the Committee is assured that the prunes are maintained in good condition. The Committee will use the procedure specified in the administrative rules and regulations for computing the payment levels. This flexibility will allow for cost updates in a timely and efficient manner and at less cost to implement. This rule will allow the Committee to survey each of the prune handlers to obtain their costs for each category of expenses for handling reserve prunes listed in § 993.159 of the administrative rules and regulations. These costs will be averaged according to the formula in the rules and regulations. After reviewing and computing these costs, the Committee will submit the compensation rates to USDA for approval. After USDA approves the compensation rates, the payment rates will be publicized as required in paragraph (e) of this section. No payments for handler services will be made for reserve prunes released by handler acceptance of diversion certificates if the handler has not stored the released dried prunes for the account of the Committee.

The Committee also recommended a number of administrative changes to the rules and regulations. They include: (1) Correcting a section reference in § 993.159(a) from § 993.57 to § 993.59; (2) Adding a provision to § 993.159(a)(1) stating that in crop years when the Committee recommends a reserve pool, it shall meet by July 20 to review the costs incurred by handlers in connection with holding reserve prunes for the account of the Committee, except that the Committee may extend this date up to 10 business days if warranted by a late crop; (3) Adding weighing and stacking prunes as part of the direct labor costs in § 993.159(a)(2); (4) Adding clean-up, health insurance, pension plan contributions, vacation pay, holiday and other paid days off as part of the plant overhead costs in § 993.159(a)(2); and (5) Eliminating references to personal pronouns and replacing them with descriptive nouns so the regulatory text is not gender specific. Paragraphs (a)(1), (2), and (3) of § 993.159 are modified accordingly.

In addition, the Committee recommended that the provisions in § 993.159(c)(2) also be updated and be formula based. These provisions regard payments to handlers for services (storage and fumigation) rendered in connection with reserve prunes held beyond the crop year of acquisition. The regulations currently establish the reimbursement rate at $2 per ton for the first quarter of the crop year after acquisition. This approximates 10 percent of the current handler compensation rate for the crop year of acquisition. The Committee recommended that the handler payment rate for the first quarter of the crop year after acquisition be 10 percent of the yearly rate for the crop year of acquisition, rather than establishing a specific payment rate. That paragraph also specifies specific amounts per ton for storage and fumigation for the second, third, and fourth quarters of the crop year following acquisition at $1.00, $0.25, and $0.25 per ton, respectively. This equates to 50 percent of the first quarter's amount for the second quarter and 25 percent each for the third and fourth quarters. Rather than maintaining specific rates for the second, third, and fourth quarters, the Committee recommended that the rates be expressed as these percentages in the administrative rules and regulations. Expressing these rates paid to handlers for services rendered beyond the crop year of acquisition as percentages will add flexibility to the regulatory scheme and eliminate the need to revise that part of the regulations when the rates for

handler services during the crop year are changed.

The Committee also recommended that it be allowed to determine the rate per ton for bin rental within the industry for the succeeding crop year and to inform handlers in accordance with paragraph (e) of § 993.159. Handlers will be compensated at that rate for the use of their bins in storing reserve prunes for the account of the Committee. Paragraphs (c)(1) and (2) of § 993.159 are modified accordingly.

New paragraph (e) of § 993.159 will specify that the Committee give reasonable publicity to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider handler payment rates or any modification thereof, and each such meeting shall be open to them. Similar publicity will be given to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each payment report submitted to USDA for review and approval. The Committee will notify producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and cooperative bargaining association(s) of USDA's action on payment rates and conditions for payment by first class mail and/or by electronic communication.

Regarding the impact of this rule on affected entities, the order provides that handlers shall store reserve prunes for the account of the Committee. Net proceeds from sales of such reserve prunes are distributed back to the reserve pool's equity holders, primarily producers. Handlers are compensated from reserve pool funds for their costs in inspecting, receiving, storing, grading, fumigation, and handling reserve prunes. Currently, handlers are compensated at a rate of $25 per ton for reserve prunes acquired during a particular crop year. The $25 per ton rate has been the compensation rate since the early 1970's. Costs have increased dramatically in the past 30 years. The Committee recommended that a procedure be added to the administrative rules and regulations to allow the Committee to adjust the compensation rate for handling reserve prunes in a timely manner instead of specifying them in the rules and regulations. The industry meets during the end of June or early July to discuss marketing policy issues, including reserve pooling, for the next crop year, which begins August 1. A procedure in the administrative rules and regulations will allow the Committee to update the compensation rate during a particular crop year in a timely, efficient, and less expensive manner. The computed payment rates will be recommended by the Committee and approved administratively by USDA. After USDA approval the payment rates will be publicized as required in § 993.159(e).

This rule will allow the Committee to reimburse handlers their actual costs incurred in holding reserve prunes for the account of the Committee. While this may reduce net proceeds to the equity holders, it shifts the costs to the appropriate entities. There should be no disproportionate impact of this action on small entities. Costs of the reserve pool are taken out of the proceeds of the pool and each equity holder shares in the expenses based on their proportionate share of prunes in the reserve pool.

The Committee discussed other alternatives to this change on November 29, 2001, including doing nothing. However, that will leave reserve pooling as a less viable supply management option due to the outdated schedule of handler payments. Another option discussed was to update the data for a given crop year; however, the survey and formula procedure was considered more viable.

This action will allow the Committee to survey prune handlers to obtain their costs applicable to holding reserve prunes for the account of the Committee. Reporting and recordkeeping burdens are necessary for compliance purposes and for developing statistical data to administer the program. This rule will impose some additional reporting and recordkeeping requirements on both small and large California dried prune handlers. In order to help the Committee formulate the compensation rate for handler services in connection with reserve prunes, current costs will be obtained through a survey voluntarily submitted by dried prune handlers. The average costs will be computed based on the number of handlers participating in the survey. It is estimated that it will take an average of 15 minutes per response to collect this information. If all 24 handlers participate in the survey, the additional burden created is estimated to be 6 hours. However, the Committee believes that the burden to complete a handler compensation survey will be outweighed by obtaining and using updated cost data to determine the handler compensation for handling reserve prunes.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS is seeking approval for the additional burden imposed by the Handler Compensation Survey. Upon OMB approval, the additional burden will be merged into the information collection currently approved under OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders. As noted in the initial regulatory flexibility analysis, the USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's Supply Management Subcommittee meeting on November 28, 2001, and the Committee meeting on November 29, 2001, where this action was deliberated were both public meetings widely publicized throughout the prune industry. All interested persons, both large and small, were invited to attend the subcommittee and Committee meetings and participate in the industry's deliberations.

A proposed rule concerning this action was published in the **Federal Register** on Tuesday, October 15, 2002, (67 FR 63568). Copies of this rule were mailed or sent via facsimile to all Committee members, alternates and dried prune handlers. Finally, the Office of the Federal Register and USDA made the rule available through the Internet. The rule provided a comment period that ended December 16, 2002. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 993.159 is revised to read as follows:

993.159 Payments for services performed with respect to reserve tonnage prunes.

(a) *Payment for crop year of acquisition.* Each handler shall, with respect to reserve prunes held by the handler for the account of the Committee pursuant to § 993.59, be paid at a rate computed by the Committee (natural condition rate) for necessary services rendered by the handler in connection with such prunes so held during all or any part of the crop year in which the prunes were physically received from producers or dehydrators. Each handler holding reserve prunes shall perform such services to assure that the prunes are maintained in good condition. No payment will be made for prunes released by handler acceptance of diversion certificates if the handler has not stored the released prunes. The rate of payment shall be established by the Committee and must be approved by the Secretary. Following such approval, it shall be publicized as required in paragraph (e) of this section.

(1) On or before July 20 of each crop year when the Committee recommends a reserve pool (except the Committee may extend this date by not more than ten business days if warranted by a late crop), the Committee shall hold a meeting to review the costs for necessary services rendered by handlers in connection with reserve prunes.

(2) Such amount shall, together with the additional payments, as provided in this section, be in full payment for the costs incurred in connection with but not be limited to the following services: Inspection, receiving, storing, grading, fumigation, and handling. The costs include, but are not limited to:

(i) Acquisition costs, which include those for salaries, commission, or brokerage fees, transportation and handling between plants and receiving stations, inspection, and other costs, including container expenses, incidental to acquisition or storage;

(ii) Direct labor costs, which include those for weighing, receiving and stacking, grading, preliminary sorting and storing (including that performed by the handler at the receiving station), and loading for shipment or other delivery to the Committee or its designee;

(iii) Plant overhead costs, which include those for supervision, indirect labor, fuel, power and water, taxes and insurance on facilities, depreciation and rent, repairs and maintenance (clean-up, etc.), factory supplies and expense, and employee benefits (payroll taxes, compensation insurance, health insurance, pension plan contributions, vacation pay, holiday and other paid days off, and other such costs).

(3) The Committee shall survey all handlers to obtain their costs for services performed with respect to reserve tonnage prunes. The Committee will compute the average industry cost for holding reserve pool prunes by adding each handlers' cost data, and dividing the composite figure by the number of handlers participating in the survey. In the event that any handler's cost data is too low or too high, the Committee may choose to exclude the high and low data in computing an industry average. The industry average costs may be rounded to the nearest $0.25. The industry average costs computed by the Committee shall be publicized by the Committee pursuant to paragraph (e) of this section.

(b) *Reimbursement for required insurance costs.* Each handler holding reserve prunes for the account of the Committee shall maintain proper insurance thereon, including fire and extended coverage, in valuations (according to grade and/or size) established by, or acceptable to, the Committee for the particular crop year. The Committee shall reimburse the handler for the actual costs of such insurance. Prior to the receipt of reserve prunes at the beginning of each crop year, the handler shall certify to the Committee and the Secretary of Agriculture, on Form PMC 4.5, that such handler has a fire and extended coverage policy fully insuring all reserve prunes received by the handler during such crop year. Such certification shall contain the following information:

(1) The name and address of the handler;

(2) The location(s) where reserve prunes will be held for the account of the Committee and the premium rate per $100 value per annum at each location;

(3) The value per ton at which the reserve prunes are insured; and

(4) The name and address of the insurance underwriter.

(c) *Certain additional payments in connection with the holding of reserve prunes for the account of the Committee.*

(1) Whenever a handler is directed by the Committee to move and dump containers or reserve prunes held by the handler for the account of the Committee for the purpose of causing an inspection to be made of the prunes as provided in § 993.75, but without taking delivery of the prunes at that time, the handler shall be paid for such services at a rate per ton (natural condition weight) determined by the Committee and approved by the Secretary of Agriculture. Such reimbursement rate shall be computed as described in paragraph (a)(3) of this section and publicized as required in paragraph (e) of this section.

(2) Additional payment for reserve tonnage prunes held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding reserve prunes shall complete such services so that the Committee is assured that the prunes are maintained in good condition.

(i) For storage and necessary fumigation, each handler shall be compensated at a per ton rate announced by the Committee in accordance with paragraph (a)(3) of this section:

(A) For all or any part of the first 3 months of the succeeding crop year, the rate per ton shall be 10 percent of the yearly rate established for the crop year of acquisition;

(B) For all or any part of the second 3 months of the succeeding crop year, the rate per ton shall be 50 percent of the rate established for the first 3 months of the succeeding crop year;

(C) For all or any part of the third 3 months of the succeeding crop year, the rate per ton shall be 25 percent of the rate established for the first 3 months of the succeeding crop year;

(D) For all or any part of the fourth 3 months of the succeeding crop year, the rate per ton shall be 25 percent of the rate established for the first 3 months of the succeeding crop year;

(ii) For all or part of the succeeding crop year, the Committee shall determine the per ton rate for bin rental within the industry and announce bin rental rate to the industry pursuant to paragraph (e) of this section.

(iii) For insurance as prescribed in paragraph (b) of this section.

(d) *Certain additional payments in connection with the delivery of reserve prunes to the Committee or its designee.*

(1) Whenever a handler is directed by the Committee to deliver to it or its designee reserve prunes in natural condition, the Committee shall furnish the handler with the containers in which to deliver the prunes, or reimburse the handler, at cost, for any containers which the handler furnishes pursuant to an agreement with the Committee.

(2) Whenever the Committee arranges with a handler for the reserve prunes delivered to it or its designee to be in processed and packaged condition, the Committee shall reimburse the handler

at the agreed rate, determined by the Committee to be reasonable, for the processing, container, and packaging costs.

(e) The Committee shall give reasonable publicity to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each meeting to consider handler payment rates or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and the cooperative bargaining association(s) of each payment rate modification submitted to USDA for review and approval. The Committee shall notify producer and handler members and alternates who serve on the Committee, commercial dehydrators, handlers, and cooperative bargaining association(s) of USDA's action on payment rates and conditions for payment by first class mail and/or by electronic communications.

Dated: April 3, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–8800 Filed 4–9–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–134–AD; Amendment 39–13110; AD 2003–07–14]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas DC–10–30 Airplane

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to a single McDonnell Douglas Model DC–10–30 airplane, that requires repetitive tests for electrical continuity and resistance and repetitive inspections to detect discrepancies of the fuel boost/transfer pump connectors; and corrective actions, if necessary. This action is necessary to prevent arcing of connectors in the fuel boost/transfer pump circuit, which could result in a fire or explosion of the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Effective May 15, 2003.

The incorporation by reference of Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, dated December 7, 2001, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 12, 2002 (67 FR 45053, July 8, 2002).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Philip C. Kush, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5263; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to a single McDonnell Douglas Model DC–10–30 airplane was published in the **Federal Register** on January 3, 2003 (68 FR 320). That action proposed to require repetitive tests for electrical continuity and resistance and repetitive inspections to detect discrepancies of the fuel boost/transfer pump connectors; and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, we may consider additional rulemaking.

Cost Impact

This AD applies to one McDonnell Douglas Model DC–10–30 airplane and that airplane is of U.S. registry. It will take approximately 65 work hours to accomplish the required tests and inspections on that airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on the single U.S. operator is estimated to be $3,900, per test or inspection cycle.

The cost impact figure discussed above is based on assumptions that the operator has not yet accomplished the requirements of this AD action, and that the operator would not accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–07–14 McDonnell Douglas: Amendment 39–13110. Docket 2002–NM–134–AD.

Applicability: Model DC–10–30 airplane, fuselage number 0106, certificated in any category.

Note 1: The requirements of this AD are identical to those in AD 2002–13–10, amendment 39–12798, which applies to Model DC–10–10, –10F, –15, –30, –30F, –30F (KC10A and KDC–10), –40, and –40F airplanes, and Model MD–10–10F and –30F airplanes; as listed in Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 01, dated July 16, 2001; and Model MD–11 and –11F airplanes, as listed in Boeing Alert Service Bulletin MD11–28A112, including Appendix, dated December 11, 2000.

Note 2: Airplane fuel tanks on which the fuel/boost pump and wiring connector have been physically removed and the fuel tank made inoperable are not subject to the requirements of this AD.

Note 3: This AD applies to the airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. If the airplane has been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent arcing of connectors of the fuel boost/transfer pump, which could result in a fire or explosion of the fuel tank, accomplish the following:

Repetitive Tests and Inspections

(a) Within 6 months after the effective date of this AD, do tests (using a digital multimeter and Quadtech 1864 megohm meter or an equivalent megohm meter that meets current and voltage requirements, as specified in the service bulletin) for electrical continuity and resistance and a general visual inspection to detect discrepancies (*e.g.*, damage, arcing, loose parts, wear) of the fuel boost/transfer pump (alternating current pumping unit) by accomplishing all the actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, dated December 7, 2001. Repeat the tests and inspection thereafter every 18 months. Although the service bulletin refers to a reporting requirement using the Appendix of the service bulletin, such reporting is not required.

Note 4: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Actions, If Necessary

(b) If the result of any test required by paragraph (a) of this AD is outside the limits specified in the service bulletin identified in that paragraph, or if any discrepancy is detected during any inspection required by paragraph (a) of this AD, before further flight, accomplish corrective actions (*e.g.*, replacement of connector/wire assembly with serviceable connector/wire assembly, and replacement of the pump with a serviceable fuel boost/transfer pump), as applicable, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, dated December 7, 2001. Although the service bulletin refers to a reporting requirement using the Appendix of the service bulletin, such reporting is not required.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin DC10–28A228, including Appendix, Revision 02, dated December 7, 2001. The incorporation by reference of that document was approved previously by the Director of the Federal Register as of August 12, 2002 (67 FR 45053, July 8, 2002). Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on May 15, 2003.

Issued in Renton, Washington, on April 4, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8740 Filed 4–9–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 135, and 145

[Docket No. FAA–1999–5836]

RIN 2120–AC38

Repair Stations; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date; correction.

SUMMARY: This document makes a correction to the **DATES** section of a final rule published in the **Federal Register** on March 14, 2003 (68 FR 12542). That final rule delayed the effective date of a final rule amending the regulations for aeronautical repair stations.

FOR FURTHER INFORMATION CONTACT: Diana Frohn, telephone (202) 267–7027.

Correction

In FR Doc. 03–6181 published on March 14, 2003, on page 12542, in the first column, correct the **DATES** paragraph to read as follows:

DATES: The effective date of the final rule amending 14 CFR parts 91, 121, 135 and 145 published on August 6, 2001, at 66 FR 41088 is delayed until October 3, 2003, with the following exception: § 145.163 remains effective April 6, 2005.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03–8691 Filed 4–9–03; 8:45 am]

BILLING CODE 4910–13–M

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1305

Land Between The Lakes—Removal of Regulations on Motorized Vehicles

AGENCY: Tennessee Valley Authority.

ACTION: Final rule; removal.

SUMMARY: The Tennessee Valley Authority (TVA) hereby removes obsolete rules regulating the use of motorized vehicles over the Land Between The Lakes. Under the Land Between The Lakes Protection Act of 1998, administrative jurisdiction transferred from TVA to the United States Department of Agriculture—Forest Service (USDA–FS) on October 1, 1999. The USDA–FS currently is in charge of operation, maintenance, and development of this area. Accordingly, this rule would rescind the regulations effective upon publication in the **Federal Register**.

EFFECTIVE DATE: April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Rebecca Chunn Tolene, Office of the General Counsel, Tennessee Valley Authority, 865–632–3045.

SUPPLEMENTARY INFORMATION: Land Between The Lakes ("LBL") is a national recreation area located in western Kentucky and Tennessee established by the Tennessee Valley Authority (TVA) in 1964 and maintained by TVA until 1999. 18 CFR part 1305 contains rules regulating the use of motorized vehicles over LBL including designating the Turkey Bay Off-Road Vehicle Area as the only area to be authorized for use of off-road vehicles. Under the Land Between The Lakes Protection Act of 1998 (16 U.S.C. 460111–61), administrative jurisdiction transferred on October 1, 1999, from TVA to the USDA–FS. Accordingly, this rule rescinds 18 CFR part 1305 effective upon publication in the **Federal Register**.

List of Subjects in 18 CFR Part 1305

Traffic regulations.

■ For reasons set out in the preamble, under the authority of 16 U.S.C. 831–831ee, Chapter XIII of Title 18 of the Code of Federal Regulations is amended as follows:

PART 1305—[REMOVED AND RESERVED]

■ Part 1305 is removed and reserved.

Dated: March 28, 2003.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 03–8801 Filed 4–9–03; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[AL–072–FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Alabama proposed revisions to its rules concerning forms and license applications. Alabama revised its program to improve operational efficiency.

EFFECTIVE DATE: April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290–7282. Internet address: *aabbs@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program
II. Submission of the Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Alabama Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Alabama program on May 20, 1982. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval, in the May 20, 1982, **Federal Register** (47 FR 22030). You can find later actions on the Alabama program at 30 CFR 901.10, 901.15, and 901.16.

II. Submission of the Amendment

By letter dated October 17, 2002 (Administrative Record No. AL–0654), Alabama sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Alabama sent the amendment at its own initiative. Alabama proposed to revise the following provisions of the Alabama Surface Mining Commission (ASMC) rules: 880–X–1B, forms and 880–X–6A–.06, license application requirements.

We announced receipt of the proposed amendment in the January 16, 2003, **Federal Register** (68 FR 2263). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on February 18, 2003. Because no one requested a public hearing or meeting, we did not hold one. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment as described below.

A. ASMC 880–X–1B Forms.

ASMC 880–X–1B lists the forms used in the operations and organization of the Alabama Surface Mining Commission. Alabama proposed to revise its list of forms by deleting some of the existing forms that are no longer used, revising the titles of other existing forms to clarify their use, and adding some new forms.

1. Alabama deleted the following forms:

Form ASMC–3 Request for Inspection & Bond Release.
Form ASMC–17 Permit Application for Underground Mining.
Form ASMC–98 Application for Coal Exploration Permit to Remove More Than 250 Tons of Coal or Disturb More Than One-Half Acre.
Form ASMC–137 Permit Application for Coal Processing Plants.

Alabama uses other existing forms in place of the deleted forms.

2. Alabama changed the existing descriptions of Forms ASMC–6, ASMC–16, ASMC–176, and ASMC–232 to the descriptions shown below:

Form ASMC–6 Application for Coal Mining License/Application for Annual Update of Coal Mining License/Notification of Change in Ownership or Control.
Form ASMC–16 Permit Application for a Surface Coal Mine/Permit Application for an Underground Coal Mine/Permit Application for a Preparation Facility.
Form ASMC–176 Renewal Application for a Surface Coal Mine/Renewal Application for an Underground Coal Mine/Renewal Application for a Preparation Facility.
Form ASMC–232 Transfer Application for a Surface Coal Mine/Transfer Application for an Underground Coal Mine/Transfer Application for a Preparation Facility.

Alabama revised the descriptions of the above forms to clarify their current use.

3. Alabama added the following new forms to its list:

Form ASMC 254 Notice of the Filing of a Renewal Application for Surface Coal Mining Permit (To Agencies).
Form ASMC 255 Notice of the Filing of a Revision Application for Surface Coal Mining Permit (To Agencies).
Form ASMC 256 Notice of the Filing of a Revision Application for Surface Coal Mining Operations (Landowner Notice).
Form ASMC 257 Notice of the Filing of a Renewal Application for Surface Coal Mining Operations (Landowner Notice).
Form ASMC 258 Statement as to Negotiability of Certificate of Deposit and Assignment (Subsidence Impacts).
Form ASMC 259 Surety Bond (Subsidence).

There is no direct Federal regulation counterpart to Alabama's rule at ASMC 880–X–1B. However, we find that the revised list of forms used in the operations and organization of the Alabama Surface Mining Commission is not inconsistent with the requirements of the Federal regulations or SMCRA. Therefore, we are approving the revisions to ASMC 880–X–1B.

B. ASMC 880–X–6A–.06 License Application Requirements

Alabama's rule at ASMC 880–X–6A–.06(g)2 requires an applicant to submit information that demonstrates sufficient financial responsibility to reasonably assure the Alabama Surface Mining Commission of the applicant's financial ability to meet the requirements of the Alabama program. Alabama is proposing to revise one of the information provisions at ASMC 880–X–6A–.06(g)2(ii)(I). This revised provision will allow public accountants to certify and sign current statements of the net worth of applicants applying for licenses to conduct surface coal mining operations. Currently, Alabama only allows certified public accountants to certify and sign these statements. The revised provision reads as follows:

> A current statement in letter form, certified by a certified public accountant or public accountant licensed to do business in the State of Alabama that the applicant has a net worth of not less than $100,000. The statement must not be ambiguous, qualified, or otherwise vague. It must state the Alabama certificate or registration number of, and be signed by the certified public accountant or public accountant.

There is no direct Federal regulation counterpart to Alabama's rule at ASMC 880–X–6A–.06(g)2(ii)(I). However, we find that the revised provision is not inconsistent with the Federal regulation at 30 CFR 778.11, which requires a permit applicant to submit various kinds of applicant, operator, and ownership and control information. Therefore, we are approving the revision to ASMC 880–X–6A–.06(g)2(ii)(I).

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

On October 25, 2002, under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Alabama program (Administrative Record No. AL–0655). We did not receive any comments.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Alabama proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask EPA to concur on the amendment.

On October 25, 2002, under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. AL–0655). EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On October 25, 2002, we requested comments on Alabama's amendment (Administrative Record No. AL–0655), but neither responded to our request.

V. OSM's Decision

Based on the above findings, we approve the amendment Alabama sent us on October 17, 2002.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 901, which codify decisions concerning the Alabama program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this rule effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

The revisions made at the initiative of the State have been reviewed and a determination made that they do not have takings implications. This determination is based on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in ASMC 880–X–1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to ASMC 880–X–6A–.06.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Alabama program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Alabama program has no effect on Federally recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in ASMC 880–X–1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to ASMC 880–X–6A–.06.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in ASMC 880–X–1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to ASMC 880–X–6A–.06.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based on the fact that the deletions, revisions, and additions by the Alabama Surface Mining Commission to the forms listed in ASMC 880–X–1B are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry. The same is true for the revisions to ASMC 880–X–6A–.06.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 26, 2003.

Charles E. Sandberg,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 901 is amended as set forth below:

PART 901—ALABAMA

■ 1. The authority citation for part 901 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 901.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 901.15 Approval of Alabama regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
October 17, 2002	April 10, 2003	ASMC 880–X–1B; 880–X–6A–.06(g)2(ii)(I).

[FR Doc. 03–8806 Filed 4–9–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1, 14 and 17

RIN 2900–AL31

Referrals of Information Regarding Criminal Violations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This final rule amends VA's conduct regulations to provide that VA employees are required to report information about possible criminal activity to appropriate authorities. The VA Police and the VA Office of Inspector General, the department's two law enforcement entities, will receive such information, will investigate those cases within their respective jurisdiction and will refer proper cases for prosecution. In addition, the final rule will clarify and more accurately state the investigative jurisdiction of the Office of Inspector General. The goal of the final rule is to protect the VA, its employees and the veterans it serves, by having information about criminal activity reported and properly investigated as quickly and thoroughly as possible to prevent additional harm and to bring criminal perpetrators to justice.

DATES: *Effective Date:* April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Michael R. Bennett, Attorney Advisor, Office of Inspector General (51A1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 565–8678. (The telephone number is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Some significant, serious criminal matters related to VA programs and operations have not been reported to the VA Office of Inspector General (OIG), or to any law enforcement organization, in a timely manner to permit a thorough, effective criminal investigation. In reviewing these cases, it was discovered that there is no regulation that requires all VA employees to report possible criminal activity to law enforcement organizations. The final rule corrects this flaw by adding new sections to 38 CFR part 1.

Employee's Duty To Report Possible Crimes

The final rule is a reasonable and logical extension of an existing regulatory duty to report wrongdoing already placed on VA (and Federal) employees. 5 CFR 2635.101(b)(1) requires that "[e]mployees shall disclose waste, fraud, abuse and corruption to appropriate authorities." Obviously, this requirement already requires Federal employees to report some criminal behavior to appropriate authorities. Given that there is a legal duty to report certain possibly criminal behavior, there should be an equal duty placed on employees to report even more serious matters that could involve physical harm to other employees, VA patients, veterans or other individuals.

In addition, a duty to report criminal activities exists in VA's Employee Handbook. The Handbook, which is dated February 2002, states on page 30 that, "You, as a VA employee, are responsible for reporting any evidence or information that gives reasonable cause to suspect that a serious irregularity or other criminal violation may have occurred in any activity of VA." The VA Employee Handbook goes on to cite section 7(a) of the Inspector General Act, which authorizes the OIG to "receive and investigate complaints or other information from any employee concerning * * * a violation of law * * *." It is worth noting that the section on "How To Contact the Office of Inspector General" is on the same page as the duty to report serious irregularities and criminal acts.

At least six other Federal agencies (Department of the Interior, Department of Health and Human Services, Small Business Administration, Department of Energy, Department of Health and Human Services/Office of Scientific Investigations, and Federal Aviation Administration) have enacted regulations which require their employees to report information about possible criminal activity. The regulations of the first five agencies listed include references to their respective Offices of Inspector General as an appropriate recipient of such information.

Office of Inspector General Experience in Criminal Investigations

A second reason for the final rule is to make certain that, once reported, the appropriate law enforcement organization quickly and properly investigates serious criminal matters relating to the programs and operations of VA. Independent and objective investigations of criminal matters relating to the programs and operations of VA are a major part of the OIG's statutory responsibilities.

In coordination with the VA police, the OIG intends to ensure that the appropriate entity investigates allegations of criminal conduct. Because the criminal law enforcement authority of VA police is restricted to VA property, their ability to conduct criminal investigations is limited. The OIG is the only VA entity with the authority to conduct criminal investigations off VA premises. The OIG's experience and knowledge of VA, combined with its statutory authority, makes the OIG uniquely qualified to conduct criminal investigations related to VA programs and operations since virtually all serious, complex cases will require some investigative work away from VA premises.

The VA OIG is also well qualified to serve as the point of referral and contact with the United States Attorneys' Offices on serious criminal matters affecting VA. Finally, there is a clear legal basis for the OIG's jurisdiction and statutory authority to conduct such criminal investigations.

Current Regulatory Scheme

At present, the only VA regulations that relate to the referral of criminal allegations are found in 38 CFR 14.560 *et seq.* This section of VA's regulations is a part of the chapter on "Legal Services" and is found under the section heading "Prosecution." Section 14.560(a) imposes upon the Regional Counsels the duty to refer allegations of crimes against the person or property to the U.S. Attorney's Office, the FBI or local law enforcement agencies. Section 14.560(b) provides that "[a]llegations of fraud, corruption or other criminal conduct involving programs and operations of VA will be referred to the Office of Inspector General." The final rule removes the obligation from the Regional Counsels to make referrals to

law enforcement agencies, both for investigation and prosecution, and instead utilizes the VA's own law enforcement entities, the VA police and the OIG, to take the primary role in investigation of criminal behavior and referral to prosecution authorities. 38 CFR 14.560(a), 14.560(b), and 14.563 should be deleted because they all involve criminal matters and referrals to the U.S. Attorneys' Office and are obsolete given the new final rule. In addition, 38 CFR 17.170(c) must be amended by substituting "Office of Inspector General" in the place of "Regional Counsel" in both the first and second sentence of § 17.170(c). Finally, the final rule clarifies and more accurately sets forth the OIG's jurisdiction for criminal investigations.

OIG's Jurisdiction for Criminal Investigations

The existing regulation cited above, and various other VA policy directives, indicate that the jurisdiction of the VA OIG is limited to "fraud, waste and abuse" and does not include crimes against the person or property. In fact, the Inspector General Act of 1978 (IG Act) confers extremely broad jurisdiction on the OIG with respect to investigations. 5 U.S.C. App. 3. The purpose section of the IG Act states that Offices of Inspector General are created so that "independent and objective units within departments and agencies [can conduct] investigations relating to the programs and operations' of the department. *Id.*, § 2(1). Section 4 of the IG Act provides that one of the duties and responsibilities of the IG is to conduct "investigations relating to the programs and operations" of the department in question. Thus, the IG Act authorizes the IG to conduct virtually any investigation so long as it relates to VA's programs and operations.

The IG Act also provides that, in order to assure independence and objectivity, the IG is personally vested with the discretion to determine whether to conduct a particular investigation. Section 6(a)(2) of the IG Act states that the Inspector General "is authorized to make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable."

Perhaps the most significant section of the IG Act, with respect to the IG's investigative authority, is section 7 of the Act. Section 7(a) provides that the IG may investigate complaints from an employee "concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health or safety." A felony is a "violation of law" and can also constitute a "substantial and specific danger to the public health or safety." Therefore, so long as there is some relation to the programs and operations of VA, these violations are clearly within the IG's investigative jurisdiction. Current VA regulations and policies improperly limit and restrict the IG's statutory authority by stating, or implying, incorrectly, that OIG jurisdiction is limited to fraud, waste and abuse. The final rule, in part, corrects the improper limitations placed on the IG by the current regulations.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This final rule would have no consequential effect on State, local, or tribal governments.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Administrative Procedure Act

This document is published without regard to the notice and comment and effective date provisions of 5 U.S.C. 553 since it relates to agency management and personnel.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This final rule would affect only individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

There is no Catalog of Federal Domestic Assistance number for this final rule.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Courts, Government employees, Government property, Penalties, Reporting and recordkeeping requirements, Security measures.

38 CFR Part 14

Administrative practice and procedure, Claims, Courts, Foreign relations, Government employees, Lawyers, Legal services, Organization and functions (government agencies), Reporting and recordkeeping requirements, Surety bonds, Trusts and trustees, Veterans.

38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: February 14, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR parts 1, 14 and 17 are amended as set forth below.

PART 1—GENERAL PROVISIONS

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. An undesignated center heading and §§ 1.200 through 1.205 are added to read as follows:

Referrals of Information Regarding Criminal Violations

§ 1.200 Purpose.

This subpart establishes a duty upon and sets forth the mechanism for VA employees to report information about actual or possible criminal violations to appropriate law enforcement entities.

(Authority: 5 U.S.C. App. 3, 38 U.S.C. 902)

§ 1.201 Employee's duty to report.

All VA employees with knowledge or information about actual or possible violations of criminal law related to VA programs, operations, facilities, contracts, or information technology systems shall immediately report such knowledge or information to their supervisor, any management official, or directly to the Office of Inspector General.

(Authority: 5 U.S.C. App. 3, 38 U.S.C. 902)

§ 1.203 Information to be reported to VA Police.

Information about actual or possible violations of criminal laws related to VA programs, operations, facilities, or involving VA employees, where the violation of criminal law occurs on VA premises, will be reported by VA management officials to the VA police component with responsibility for the VA station or facility in question. If there is no VA police component with jurisdiction over the offense, the information will be reported to Federal, state or local law enforcement officials, as appropriate.

(Authority: 38 U.S.C. 902)

§ 1.204 Information to be reported to the Office of Inspector General.

Criminal matters involving felonies will also be immediately referred to the Office of Inspector General, Office of Investigations. VA management officials with information about possible criminal matters involving felonies will ensure and be responsible for prompt referrals to the OIG. Examples of felonies include but are not limited to, theft of Government property over $1000, false claims, false statements, drug offenses, crimes involving information technology systems and serious crimes against the person, *i.e.*, homicides, armed robbery, rape, aggravated assault and serious physical abuse of a VA patient.

(Authority: 5 U.S.C. App. 3)

§ 1.205 Notification to the Attorney General or United States Attorney's Office.

VA police and/or the OIG, whichever has primary responsibility within VA for investigation of the offense in question, will be responsible for notifying the appropriate United States Attorney's Office, pursuant to 28 U.S.C. 535.

(Authority: 5 U.S.C. App. 3, 38 U.S.C. 902)

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

■ 3. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5902–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

§ 14.560 [Amended]

■ 4. In § 14.560, remove paragraphs (a) and (b); and remove the designation (c) from paragraph (c).

§ 14.563 [Removed]

■ 5. Section 14.563 is removed.

PART 17—MEDICAL

■ 6. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

§ 17.170 [Amended]

■ 7. Section 17.170, paragraph (c), first sentence, remove "appropriate Regional Counsel" and add, in its place, "Office of Inspector General"; and in the second sentence, remove "Regional Counsel" and add, in its place, "Office of Inspector General".

[FR Doc. 03–8723 Filed 4–9–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI–113–7343A; FRL–7486–6]

Approval and Promulgation of State Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to Wisconsin's State Implementation Plan (SIP) for the attainment of the one-hour ozone standard for the Milwaukee-Racine area. This SIP revision, submitted to EPA on December 16, 2002, provides new compliance options for sources subject to the state's rules limiting emissions of nitrogen oxides (NO_X) from large electricity generating units in southeast Wisconsin. Under the revised SIP, sources would have the option of complying with emissions limits on a per unit basis or complying as part of an emissions averaging plan that also includes an emissions cap. In addition, the revision creates a new categorical emissions limit for new integrated gasification combined cycled units.

DATES: This direct final rule is effective on June 9, 2003 without further notice unless EPA receives adverse written comments by May 12, 2003. If we receive adverse comment, EPA will publish a timely withdrawal of this direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should mail written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the state's request is available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Alexis Cain, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7018.

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking Today?
II. What Is EPA's Evaluation of This Program?
III. Administrative Requirements

I. What Action Is EPA Taking Today?

EPA is approving, as part of the Wisconsin ozone SIP, rules that would allow sources to use emissions averaging and an emissions cap as a option for complying with ozone season limits on emissions (NO_X). These limits apply to large electricity generating units in Southeast Wisconsin. EPA approved the rules setting these NO_X emissions limits into Wisconsin's SIP on November 13, 2001 (66 FR 56931). The limits are expressed in mass of allowable emissions per unit of heat input (pounds per million Btu).

Emissions averaging will allow units subject to the NO_X emissions limits of NR 428 of the Wisconsin Administrative Code to create emissions averaging plans in which the compliance of multiple sources would be assessed collectively. Participating sources would need to submit such plans to the Wisconsin Department of Natural Resources (WDNR) at least 90 days prior to the start of the ozone season, and would need to identify the participating units, their owners or operators, applicable emissions limitations, projected heat input and emissions rate, and projected mass emissions for the ozone season. The plan would establish an aggregate ozone season emissions rate limit for participating units through a formula that sums allowable emissions for each unit (based on projected heat input and each source's individual emissions rate), and divides it by the total projected heat input. To provide an environmental benefit from averaging, the formula subtracts 0.01 pounds/mmbtu from each unit's allowable emissions.

Plan Emission Rate = {Sum [Projected Unit Heat Input x (Unit Emission Rate Limit—0.01)]/(Sum of Projected Unit Heat Inputs)

As a result, total emissions under an averaging plan would be lower than they would be if each unit demonstrated compliance on an individual basis. However, individual units would be allowed to exceed emissions rates specified in the NO_X reduction rules, while other units would emit less than

allowed under the rules. Thus, averaging allows companies to minimize the cost of emissions reductions by allocating reductions at the units that can achieve them most inexpensively.

In addition, units participating in an averaging plan are subject to a mass emission limitation, beginning with the 2008 ozone season. This feature of the program "caps" the aggregate ozone season NO_X emissions of participating sources at a level that could not be exceeded regardless of heat input. This level is determined by the participating units' share of actual heat input during the 1995, 1996 and 1997 ozone seasons, multiplied by 15,912 tons, an amount consistent with the state's one-hour ozone attainment demonstration.

Within 60 days of the end of each ozone season, owners or operators of the participating units must submit compliance reports demonstrating compliance with the plan's emission rate and mass emission limit.

II. What Is EPA's Evaluation of This Program?

EPA has determined that this SIP revision will not interfere with reasonable further progress or with attainment or maintenance of the National Ambient Air Quality Standards or any other requirement of the Clean Air Act. Emissions averaging programs are considered a type of economic incentive program. EPA's guidance on such programs is "Improving Air Quality with Economic Incentive Programs," EPA–452/R–01–001, January 2001 (the EIP guidance).

Wisconsin's NO_X averaging program conforms with the EIP guidance, with one notable exception. The EIP guidance indicates that averaging should take place only among units that are under common ownership or control. This provision of the guidance is motivated by the concern that compliance and enforcement difficulties might result from averaging among sources under different ownership or control. Compliance in averaging programs depends not only on the emissions rates of the various sources, but also on the activity level (heat input) of higher-emitting sources relative to lower-emitting sources. Since activity levels are subject to constant change and are difficult to project, it could therefore be difficult for an averaging plan involving units under different ownership or control to ensure that compliance is maintained. It could be particularly difficult to maintain compliance if owners of units projected to have lower emissions rates projected higher activity levels than could actually be maintained.

Wisconsin's NO_X averaging program allows averaging among sources that are not under common ownership or control. Nonetheless, EPA is approving Wisconsin's program, for several reasons. Most important, beginning in 2008, Wisconsin's program includes an enforceable emissions cap in addition to emissions averaging. The cap is set at a level consistent with the one-hour ozone attainment plan for the Milwaukee-Racine area, and ensures that emissions cannot increase beyond levels consistent with attainment, regardless of changes in emissions rates.

In addition, EPA finds that the operation of an averaging program with averaging across ownership will be of minimal risk in the individual case of Wisconsin's program. This program involves a limited number of existing sources, and new sources cannot use emissions averaging. Therefore, the State will receive only a small number of averaging plans, and it will be well able to review such plans ahead of time to ensure that projected activity levels are reasonable. Moreover, the sources that are potential participants in Wisconsin's averaging program all operate at levels close to capacity, and therefore have limited ability to project significant increases in activity levels. Therefore, EPA anticipates no problems resulting of averaging across sources under different ownership; nonetheless, EPA will evaluate as the program operates whether averaging across units under different ownership creates compliance problems or interferes with the achievement of expected reductions.

Other provisions of Wisconsin's program include:

- Excess emission reductions used in an averaging program must be reductions beyond those needed to meet all other state and federal requirements;
- Emissions averaging will create an environmental benefit, since in calculating the aggregate allowable emission rate, the allowable emission rate of each source is reduced by 0.01 pounds per million btu;
- If either the aggregate allowable emission rate or the mass ozone season cap is violated, each unit participating in the averaging plan is considered out of compliance for each day of non-compliance, and is potentially subject to penalties for each day of non-compliance;
- NO_X reductions used in an emissions averaging plan cannot be used for compliance with emissions limits established under the new source review or prevention of significant deterioration program, or with the NO_X reduction requirements of the acid rain program;
- If the mass ozone season cap for an averaging plan is violated, WDNR can require additional emissions reductions from participating units;
- Emissions must be measured using continuous monitoring equipment;
- WDNR will have the opportunity to review emissions averaging plans to determine their completeness prior to the beginning of the ozone season. Averaging plans must be submitted to WDNR 90 days prior to the beginning of the ozone season, and WDNR has 30 days to determine whether additional information is needed;
- The public will be kept informed of potential changes in emissions caused by emissions averaging; operators of units involved in an emissions averaging plan are required to provide public notice at least 60 days prior to the start of the ozone season, and to provide copies of the plan to the public upon request.

In addition to the NO_X averaging and emission cap provisions, EPA is approving a new categorical emission limit for new integrated gasification combined cycle units. WDNR created this limit because these sources will not be able to comply with the limit for natural gas-fired units that would otherwise apply. While this new limit is higher than the natural gas-fired limit, these types of sources will be taking the place of higher emitting coal-fired units and will, therefore, not affect emissions projections made earlier by the WDNR, which included growth of coal-fired units. The approval of this new limit will have no impact on the Wisconsin one-hour ozone attainment demonstration SIP.

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state regulations as meeting federal requirements and imposes no additional requirements beyond those imposed by state regulations. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 9, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen oxides, Reporting and recordkeeping requirements.

Dated: March 6, 2003.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart YY—Wisconsin

■ 2. Section 52.2570 is amended by adding paragraph (c)(108), to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(108) On December 16, 2002, Lloyd L. Eagan, Director, Wisconsin Department of Natural Resources, submitted revised rules to allow use of NO_X emissions averaging for sources subject to NO_X emission limits in the Milwaukee-Racine area. The revised rules also establish a NO_X emissions cap for sources that participate in emissions averaging, consistent with the emissions modeled in Wisconsin's approved one-hour ozone attainment demonstration for the Milwaukee-Racine area. The rule revision also creates a new categorical emissions limit for new integrated gasification combined cycle units.

(i) Incorporation by reference.

(A) NR 428.02(6m) as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 1, 2002.

(B) NR 428.04(2)(g)(3) as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 1, 2002.

(C) NR 428.06 as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 1, 2002.

[FR Doc. 03–8536 Filed 4–9–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7480–9]

Nebraska: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Nebraska has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Nebraska's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on June 9, 2003 unless EPA receives adverse written comment by May 12, 2003. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Lisa V. Haugen, U.S. EPA Region 7, ARTD/RESP, 901 North 5th Street, Kansas City, Kansas 66101. You can view and copy Nebraska's application during normal business hours at the following addresses: Nebraska Department of Environmental Quality, Suite 400, The Atrium, 1200 "N" Street, Lincoln, Nebraska 68509–8922, (402) 471–2186; and EPA Region 7, Library, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7877, Lisa V. Haugen.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen, U.S. EPA Region 7, ARTD/RESP, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7877.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Nebraska's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Nebraska Final authorization to operate its hazardous waste program with the changes described in the authorization application. Nebraska has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Nebraska, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Nebraska subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Nebraska has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses, or reports
- Enforce RCRA requirements and suspend or revoke permits

This action does not impose additional requirements on the regulated community because the regulations for which Nebraska is being authorized by today's action are already effective under state law, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens If EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw only that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. For What Has Nebraska Previously Been Authorized?

Nebraska initially received Final authorization on January 24, 1985, effective February 7, 1985 (50 FR 3345), to implement the RCRA hazardous waste management program. We granted authorization for changes to its program on October 4, 1985, effective December 3, 1988 (53 FR 38950), June 25, 1996, effective August 26, 1996 (61 FR 32699), and June 4, 2002, effective April 22, 2002 (67 FR 38418).

G. What Changes Are We Authorizing With Today's Action?

On July 23, 2002, Nebraska submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to EPA's receipt of written comments that oppose this action, that Nebraska's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Nebraska Final authorization for the following program changes:

Description of Federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous State authority [1]
Toxicity Characteristic Revisions (Toxicity Leaching Procedure)—Checklist 74.	55 FR 11798–11877, March 29, 1990.	Title 128 2–009.07; 2–009.09–.10; 2–016; 3–010.01–.02; 3–011.02–.03; 21–014; 22–011; 22–013 (effective June 18, 2001, with amendments to Chapters 3, 4, 10, 12, 14, 16, 25, and Appendix V, effective April 2002)

Description of Federal requirement (include checklist #, if relevant)	**Federal Register** date and page (and/or RCRA statutory authority)	Analogous State authority [1]
Universal Waste: General Provisions—Checklist 142A; Specific Provisions for Batteries—Checklist 142B; Specific Provisions for Pesticides—Checklist 142C; Specific Provisions for Thermostats—Checklist 142D; Petition Provisions to Add a New Universal Waste.	60 FR 25492–25551, May 11, 1995.	Nebraska Revised Statues §81–1504(15)(b) (2000); Title 128 1–004; 1–053; 1–086; 1–129; 2–001.07; 4–002.04; 6–001; 7–002.03–.04; 7–002.06–.09; 7–011; 8–003; 8–006.03; 9–002–003; 9–007.01; 10–001.03–.05; 12–001.03H; 20–001.06; 21–001; 22–001.01K; Chapter 25 (effective June 18, 2001, with amendments to Chapters 3, 4, 10, 12, 14, 16, 25, and Appendix V, effective April 2002)

H. Where Are the Revised State Rules Different From the Federal Rules?

In this authorization of the State of Nebraska's program revisions for Federal Revision Checklists 71 and 142A–D, there are no provisions that are more stringent or broader in scope. Broader in scope requirements are not part of the authorized program and EPA cannot enforce them.

I. Who Handles Permits After the Authorization Takes Effect?

Nebraska will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Nebraska is not yet authorized.

J. What Is Codification and Is EPA Codifying Nebraska's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart CC for this authorization of Nebraska's program changes until a later date.

K. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and

7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 17, 2003.

Nat Scurry,

Acting Regional Administrator, Region 7.

[FR Doc. 03–8835 Filed 4–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7480–6]

Utah: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Utah has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization and is authorizing the State's changes through this immediate final action. We are publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Utah's changes to their hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on June 9, 2003 unless EPA receives adverse written comment by May 12, 2003. If EPA receives such comment, it will publish a timely withdrawal of this Immediate Final Rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Copies of the Utah program revision applications and the materials which EPA used in evaluating the revisions are available for inspection and copying at the following locations: EPA Region VIII, from 7 a.m. to 4 p.m., 999 18th Street, Suite 300, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139 or Utah Department of Environmental Quality (UDEQ), from 8 a.m. to 5 p.m., 288 North 1460 West, Salt Lake City, Utah 84114–4880, contact: Susan Toronto, phone number: (801) 538–6776. Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139 or electronically to *shurr.kris@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139 or *shurr.kris@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Utah's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Utah Final authorization to operate its hazardous waste program with the changes described in the authorization application. Utah has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian Country, and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Utah, including issuing permits, until Utah is authorized to do so.

C. What Is the Effect of Today's Authorization Decision?

This decision means that a facility in Utah subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Utah has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections; require monitoring, tests, analyses, or reports;
- enforce RCRA requirements; suspend or revoke permits; and,
- take enforcement actions regardless of whether Utah has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Utah is being authorized by today's action are already effective and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change. We are providing an opportunity for the public to comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment, therefore, if you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the Utah hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective and which part is being withdrawn.

F. What Has Utah Previously Been Authorized for?

Utah initially received Final Authorization on October 10, 1984, effective October 24, 1984 (49 FR 39683) to implement its base hazardous waste management program. Utah received authorization for revisions to its program on February 21, 1989 (54 FR 7417), effective March 7, 1989; May 23, 1991 (56 FR 23648) and August 6, 1991 (56 FR 37291), both effective July 22, 1991; May 15, 1992 (57 FR 20770), effective July 14, 1992; February 12, 1993 (58 FR 8232) and May 5, 1993 (58 FR 26689), both effective April 13, 1993; October 14, 1994 (59 FR 52084), effective December 13, 1994; May 20, 1997 (62 FR 27501), effective July 21, 1997; January 13, 1999 (64 FR 02144), effective March 15, 1999; October 16, 2000 (65 FR 61109), effective January 16, 2001, and May 7, 2002 (67 FR 30599), effective July 7, 2002.

G. What Changes Are We Authorizing With Today's Action?

On February 12, 2003, Utah submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Utah's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Utah Final authorization for the following program changes (the Federal Citation followed by the analog from the Utah Administrative Code (R315), revised August 15, 2002): Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production [63 FR 47409, 09/04/98](Checklist 171)/R315–13–1(Utah rules for checklist revised 09/20/2001); HWIR Media [63 FR 65874, 11/30/98](Checklist 175)/R315–1–1(b), R315–2–4(g) through R315–2–4(g)(2)(iii), R315–8–1(g) through R315–8–1(g)(13), R315–8–5.3, and R315–8–6.12(d); Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards [64 FR 25408, 05/11/99](Checklist 179)/R315–2–2(c), R315–2–2(c)(3), R315–2–2(e)(1)(iii), R315–2–4(a)(16), R315–2–4(a)(17) and R315–2–4(a)(17)(v), R315–2–4(b)(7)(iii) and R315–2–4(b)(7)(iii)(A), R315–5–3.34, and R315–13–1; Test Procedures for the Analysis of Oil and Grease and Non-Polar Material [64 FR 26315, 05/14/99](Checklist 180)/R315–1–2(a); Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps [64 FR 36466, 07/06/99](Checklist 181)/R315–1–1(b), R315–2–25(b)–(d), R315–8–1(e)(10)(ii)–(iv), R315–7–8.1(c)(11)(ii)–(iv), R315–13–1, R315–3–1(e)(2)(viii)(B)–(D), R315–16–1.1(a)(2)–(4), R315–16–1.2(a)(1), R315–16–1.2(b)(2) & (3), R315–16–1.3(a), R315–16–1.4(a), R315–16–1.5(a), R315–16–1.5(b) through R315–16–1.5(b)(2), R315–16–1.5(c) through R315–16–1.5(c)(2), R315–16–1.8(a) through R315–16–1.8(a)(2), R315–16–1.8(b), R315–16–1.9(e), R315–16–1.9(f), R315–16–1.9(i), R315–16–1.9(k), R315–16–2.1, R315–16–2.4(d) through R315–16–2.4(d)(2), R315–16–2.5(e), R315–16–3.1, R315–16–3.3(b)(4) & (5), R315–16–3.4(d) through R315–16–3.4(d)(2), R315–16–3.5(e), R315–16–4.1, R315–16–5.1(a), and R315–16–7.1(a); Hazardous Air Pollutant Standards for Combustors [64 FR 52828, 09/30/99](Checklist 182)/R315–1–1(b), R315–2–26, R315–8–15.1(b) through R315–8–15.1(b)(2), R315–8–15.1(c)–(e), R315–8–16, R315–7–22.1(b) through R315–7–22.1(b)(2), R315–7–22.1(c); R315–14–7, R315–50–16, R315–3–2.10, R315–3–2.10(e), R315–3–2.13, R315–3–4.3, R315–3–6.3, and R315–3–6.6; Land Disposal Restrictions Phase IV—Technical Corrections [64 FR 56469, 10/20/99](Checklist 183)/R315–2–10(f), R315–5–3.34(a), and R315–13–1; Accumulation Time for Waste Water Treatment Sludges [65 FR 12378, 03/08/2000](Checklist 184)/R315–5–3.34(a); Organobromine Production Wastes Vacatur [65 FR 14472, 03/17/2000](Checklist 185)/R315–2–10(f), R315–2–11(f), R315–50–9, R315–50–10, and R315–13–1; Petroleum Refining Process Wastes—Clarification [65 FR 36365, 06/08/2000](Checklist 187)/R315–2–10(e) and R315–13–1.

H. Where Are the Revised State Rules Different From the Federal Rules?

Utah did not make any changes that are more stringent or broader-in-scope than the Federal rules in this rulemaking. Utah did not change any previously more stringent or broader-in-scope provisions to be equivalent to the Federal rules.

I. Who Handles Permits After the Authorization Takes Effect?

Utah will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which were issued prior to the effective date of this authorization until Utah has equivalent instruments in place. We will not issue any new permits or new portions of permits for the provisions listed in Item G after the effective date of this authorization. EPA previously suspended issuance of permits for other provisions on the effective date of Utah's Final Authorization for the RCRA base program and each of the revisions listed in Item F. EPA will continue to implement and issue permits for HSWA requirements for which Utah is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Utah?

This program revision does not extend to "Indian Country" as defined in 18 U.S.C. 1151. Indian Country includes lands within the exterior boundaries of the following Indian reservations located within or abutting the State of Utah:

1. Goshute Indian Reservation
2. Navajo Indian Reservation
3. Northwestern Band of Shoshoni Nation of Utah (Washakie) Indian Reservation
4. Paiute Indian Tribe of Utah Indian Reservation
5. Skull Valley Band of Goshute Indians of Utah Indian Reservation
6. Uintah and Ouray Indian Reservation (see below)
7. Ute Mountain Indian Reservation

With respect to the Uintah and Ouray Indian Reservation, Federal courts have determined that certain lands within the exterior boundaries of the Reservation do not constitute Indian Country. This State program revision approval will extend to those lands which the courts have determined are not Indian Country.

In excluding Indian Country from the scope of this program revision, EPA is not making a determination that Utah either has adequate jurisdiction or lacks jurisdiction over sources in Indian Country. Should the Utah choose to seek program authorization within Indian Country, it may do so without prejudice. Before EPA would approve the State's program for any portion of Indian Country, EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice.

K. What Is Codification and Is EPA Codifying Utah's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. Utah's rules, up to and including those revised 2/15/96, have previously been codified through the incorporation-by-reference effective 3/15/99 (66 FR 58964, 11/26/2001) We reserve the amendment of 40 CFR part 272, subpart TT for the codification of Utah's updated program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective June 9, 2003.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by Reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 25, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–8833 Filed 4–9–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Parts 70 and 71

RIN 0920–AA03

Control of Communicable Diseases

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Interim final rule with comment period.

SUMMARY: The Public Health Service Act authorizes the Secretary, in consultation with the Surgeon General, to make and enforce regulations as are necessary to prevent the introduction, transmission or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. The existing regulations are outdated and do not address communicable diseases that currently pose a substantial public health threat.

As of April 2, 2003, the World Health Organization (WHO) has reported 2236 cases and 78 deaths related to outbreaks of a severe form of pneumonia of unknown origin in Hong Kong SAR, Vietnam, Guangdong province in southern China, Canada, Singapore, and Thailand, which appears to have spread rapidly. For this reason, the Director General of the World Health Organization (WHO) issued a global alert about cases of atypical pneumonia and recommended that travelers with atypical pneumonia who may be related to these outbreaks be placed into isolation and assessed by quarantine officials. The Centers for Disease Control and Prevention (CDC) is currently investigating 85 suspected cases of the disease in the United States. This is being issued as an interim final rule because this newly-detected disease is likely spread in person-to-person fashion and may have an adverse public health impact if further introduced into the United States.

DATES: This rule is effective on April 10, 2003. Comments must be submitted by June 9, 2003.

ADDRESSES: Mail written comments to the following address: Jennifer Brooks, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Atlanta, GA 30333; telephone (404) 639–2763. Mail written comments on the proposed information collection requirements to Office of Information and Regulatory Affairs, OMB, New Executive Office Building, 725 17th Street, NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for CDC.

FOR FURTHER INFORMATION CONTACT: James E. Barrow, National Center for Infectious Diseases (E03), Centers for Disease Control and Prevention, 1600 Clifton Road, NE., Atlanta, GA 30333; telephone (404) 498–1604.

SUPPLEMENTARY INFORMATION:

Background and Purpose

This interim final rule, which was reviewed by the Office of Management and Budget in accordance with Executive Order 12866, is being promulgated in accordance with U.S.C. 42 section 264 (section 361 of the PHS Act) which authorizes the Secretary, in consultation with the Surgeon General, to make and enforce regulations as are necessary to prevent the introduction, transmission or spread of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. The quarantine of persons believed to be infected with communicable diseases is a public health prevention measure that has been used effectively to contain the spread of disease. The existing regulations are outdated and do not address communicable diseases that currently pose a substantial public health threat.

The Public Health Service Act gives the Secretary of HHS responsibility for preventing the introduction, transmission, and spread of communicable diseases from foreign countries into the United States and from one State or possession into another within the United States. Under its delegated authority, the CDC Division of Global Migration and Quarantine is empowered to detain, medically examine, or conditionally release individuals suspected of carrying a communicable disease. The list of quarantinable diseases is contained in an Executive Order of the President.

Waiver of Prior Notice and Comment and Waiver of Delay in Effective Date

This rule is being issued on an interim final basis with no prior notice and comment and no delay in effective date. As of April 2, 2003, the WHO has reported 2236 cases and 78 deaths of severe pneumonia-like illness of unknown origin in a growing number of countries. Several countries, including Canada, Hong Kong SAR, and Singapore have instituted maximum health measures, including quarantine, to prevent the further spread of the disease. The CDC is currently investigating 85 suspected cases of the disease in the United States. While no deaths have been reported in the United States, the potentially fatal disease is likely spread in person-to-person fashion and may have an adverse public health impact if further spread. Accordingly, appropriate public health control measures including quarantine need to be available immediately to protect against this threat.

Changes to 42 CFR Parts 70 and 71

Following is a summary of changes to the current regulations:

Sections modified:

70.6 Apprehension and detention of persons with specific diseases.

71.32 Persons, carriers, and things.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Jennifer Brooks at the address listed above.

List of Subjects

42 CFR Part 70

Communicable diseases, Public health, Quarantine, Reporting and recordkeeping requirements, Travel restrictions.

42 CFR Part 71

Airports, Animals, Communicable diseases, Harbors, Imports, Pesticides and pests, Public health, Quarantine, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, we are amending 42 CFR part 70 and Part 71 as follows.

PART 70—INTERSTATE QUARANTINE

■ 1. The authority for part 70 is revised to read as follows:

Authority: Secs. 215 and 311 of Public Health Service (PHS) Act. as amended (42 U.S.C. 216, 243); secs. 361–369, PHS Act, as amended (42 U.S.C. 264–272).

■ 2. Revise Section 70.6 to read as follows:

§ 70.6 Apprehension and detention of persons with specific diseases.

Regulations prescribed in this part authorize the detention, isolation, quarantine, or conditional release of individuals, for the purpose of preventing the introduction, transmission, and spread of the communicable diseases listed in an Executive Order setting out a list of quarantinable communicable diseases, as provided under section 361(b) of the Public Health Service Act. Executive Order 13295, of April 4, 2003, contains the current revised list of quarantinable communicable diseases, and may be obtained at *http://www.cdc.gov*, or at *http://www.archives.gov/federal_register*. If this Order is amended, HHS will enforce that amended order immediately and update this reference.

PART 71—FOREIGN QUARANTINE

■ 1. The authority for part 71 is revised to read as follows:

Authority: Secs. 215 and 311 of Public Health Service (PHS) Act. as amended (42 U.S.C. 216, 243); secs. 361–369, PHS Act, as amended (42 U.S.C. 264–272).

■ 2. Revise Section 71.32 to read as follows:

§ 71.32 Persons, carriers, and things

(a) Whenever the Director has reason to believe that any arriving person is infected with or has been exposed to any of the communicable diseases listed in an Executive Order, as provided under section 361(b) of the Public Health Service Act, he/she may isolate, quarantine, or place the person under surveillance and may order disinfection or disinfestation, fumigation, as he/she considers necessary to prevent the introduction, transmission or spread of the listed communicable diseases. Executive Order 13295, of April 4, 2003, contains the current revised list of quarantinable communicable diseases, and may be obtained at *http://www.cdc.gov* and *http://www.archives.gov/federal_register*. If this Order is amended, HHS will enforce that amended order immediately and update this reference.

(b) Whenever the Director has reason to believe that any arriving carrier or article or thing on board the carrier is or may be infected or contaminated with a communicable disease, he/she may require detention, disinfection, disinfestation, fumigation, or other related measures respecting the carrier or article or thing as he/she considers necessary to prevent the introduction, transmission, or spread of communicable diseases.

Dated: April 4, 2003.
Tommy G. Thompson,
Secretary.
[FR Doc. 03–8736 Filed 4–8–03; 12:42 pm]
BILLING CODE 4160–17–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[ET Docket No. 01–75; FCC 02–298]

Broadcast Auxiliary Service Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: Federal Communications Commission published in the **Federal Register** of March 17, 2003, a document amending rules for Broadcast Auxiliary Services to introduce new technologies and conforming rules for Broadcast Auxiliary Services, Cable Television Relay Service, and Fixed Microwave Services. Inadvertently, the amendatory instruction for § 74.602 specified removing and revising paragraph (a)(2). This document revises the amendatory instruction to specify removing and reserving paragraph (a)(2).

DATES: Effective April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Ted Ryder, Office of Engineering and Technology, (202) 418–2803.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** of March 17, 2003, (68 FR 12743) inadvertently specifying, in the amendatory instruction for § 74.602, removing and revising paragraph (a)(2). This correction revises the amendatory language to specify removing and reserving paragraph (a)(2).

In rule FR Doc. 03–4176 published on March 17, 2003 (68 FR 12743) make the following correction. On page 12768, in the second column, revise the amendatory instruction for § 74.602 to read as follows:

PART 74—[CORRECTED]

§ 74.602 [Corrected]

■ Section 74.602 is amended by revising paragraphs (a) introductory text, the channel boundaries for channel designation B03 in the table of paragraph (a), footnote 2 of the table of paragraph (a), paragraphs (d), (f), (h), and (i) introductory text, and by removing and reserving paragraph (a)(2) to read as follows:

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 03–8578 Filed 4–9–03; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 17, 222 and 226

[Docket No. 030318064–3064–01; I.D. 012903C]

RIN 0648–AQ74

Endangered Fish and Wildlife; Notice of Technical Revision to Right Whale Nomenclature and Taxonomy Under the U.S. Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Final rule.

SUMMARY: NMFS is issuing a final rule concerning the nomenclature and taxonomy of the North Atlantic right whale, North Pacific right whale, and the southern right whale. The first change updates the formerly-used genus *Balaena* to the genus *Eubalaena* to conform to the taxonomy currently accepted by the scientific community and supported by the scientific literature. The second change reflects the genetic distinctiveness now recognized between Pacific and Atlantic right whale populations in the northern hemisphere. Due to recent genetic findings, NMFS is changing the species name of the northern right whale as follows: the North Atlantic right whale, Eubalaena glacialis, and the North Pacific right whale, Eubalaena japonica. These technical changes will not change the listing status of these species under the Endangered Species Act (ESA)(all three remain "endangered").

DATES: Effective on May 12, 2003.

ADDRESSES: Supporting documentation is available for public inspection, by request from NMFS, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226.

FOR FURTHER INFORMATION CONTACT: Aleria Jensen or Gregory Silber at (301) 713–2322.

SUPPLEMENTARY INFORMATION: The right whale was originally described as *Eubalaena glacialis* (Muller, 1776). However, the technical literature on the nomenclature has not been clear over the course of the last three decades. The species was initially listed as *Eubalaena glacialis* by the U.S. Fish and Wildlife Service in the 1973 Edition of Threatened Wildlife of the United States (USFWS, 1973). Subsequently, however, some authorities have put right and bowhead whales in the same genus, *Balaena* (Rice, 1977). In addition, the current List of Endangered and Threatened Wildlife lists the right whale as *Balaena glacialis* (incl. *australis*) (50 CFR 17.11). Despite these differences in listing, the genus *Eubalaena* has been most widely recognized and commonly used in the scientific community as the genus associated with all right whale species. Virtually all related scientific literature and popular literature on marine mammals (see, for example, Cummings, 1985; Hall and Kelson, 1959; Jefferson *et al.*, 1993; Klinowska, 1991) historically use the genus *Eubalaena* to identify right whales as originally named by Muller in 1776.

Eubalaena is also the name accepted by both the International Whaling Commission (IWC) and NMFS. The IWC 2001 report on the world-wide status of right whales uses the genus *Eubalaena* (Best *et al.*, 2001). NMFS has used this nomenclature in its Stock Assessment Reports, the Final Recovery Plan for the Northern Right Whale (NMFS, 1991), and other technical documents dating back to at least 1991. Therefore, this nomenclatorial change would make the List consistent with the generally accepted use by the scientific community, IWC reports, and NMFS technical documents for over a decade. Thus, to recognize the currently accepted genus for right whale species worldwide, the first technical revision in this rule is to correct right whale nomenclature on the list from genus *Balaena* to genus *Eubalaena*.

The second change reflects new evidence from recent genetic studies regarding the taxonomic classification of right whales. Historically, right whales were classified as two distinct species, *Eubalaena glacialis* in the northern hemisphere (Pacific and Atlantic Ocean basins) and *Eubalaena australis* in the southern hemisphere, based on a morphological difference in the orbital region of the skull (Muller, 1954; Rosenbaum *et al.*, 2000). Other interpretations had given North Pacific right whales full species status as *Eubalaena japonica* (Lacepede 1818) or treated the population as a subspecies of *Eubalaena glacialis*. Prior to the current technical revision, North Pacific right whales have been most widely recognized as an intraspecific population of northern right whales (Rice, 1998). The taxonomic structure of

right whales had not been analyzed in a comprehensive manner for the purposes of conservation and systematics until recent genetic studies. The generally accepted analyses by Rosenbaum *et al.* (2000) conclude that the right whale should be regarded as three separate species as follows:

1. The North Atlantic right whale (*Eubalaena glacialis*), historically ranging in the North Atlantic Ocean from latitudes 60° N to 20° N;
2. The North Pacific right whale (*Eubalaena japonica*), historically ranging in the North Pacific Ocean from latitudes 70° N to 20° N; and
3. The southern right whale (*Eubalaena australis*), historically ranging throughout the southern hemisphere's oceans.

Previous genetic studies concluded there was sufficient haplotypic divergence between North Atlantic and South Atlantic right whales to indicate that the northern and southern populations have not interbred for approximately 3–12.5 million years (Malik *et al.*, 2000; Schaeff *et al.*, 1997). Through an analysis of mitochondrial DNA control region sequences isolated from skin tissue biopsy, stranded animals, and historical whaling samples, Rosenbaum *et al.*(2000) supported these conclusions and, in addition, demonstrated a relatively strong historical separation of North Atlantic, North Pacific, and Southern Ocean right whale lineages (*i.e.*, no haplotypes were shared among these three populations). Their findings led to the conclusion that these populations are three distinct evolutionary entities. In addition, the probability of future interbreeding among the three lineages is extremely low considering current distribution. The International Whaling Commission's Scientific Committee formally recognized the three-species classification for right whales at its 2000 meeting in Adelaide, Australia (IWC 2000).

Conservation measures, recovery planning, and Federal consultations have been treated distinctly for each of these species. For over a decade, the treatment of these species as discrete entities has been well-established in agency science and management. Draft recovery plans are currently in review for both North Atlantic and North Pacific right whales, designated in these plans as *Eubalaena glacialis* and *Eubalaena japonica*. Issues of critical habitat have been addressed separately for both species under U.S. management authority.

Refining the taxonomy of these endangered cetaceans is critical to the recovery planning and conservation of these species. Genetic data now provide unequivocal support to distinguish three right whale lineages as separate phylogenetic species. The revised designation of these populations allows for consistent scientific practice and management policies in recovering these populations.

The following NMFS documents will be affected by this technical revision:

1. MMPA Stock Assessment Reports for Alaska currently refer to stocks of right whales in the North Pacific as "Northern Right Whale, *Eubalaena glacialis*". This will be changed in all future Stock Assessment Reports to read "North Pacific Right Whale, *Eubalaena japonica*".

2. All Biological Opinions prepared under section 7 of the ESA will now consider the North Pacific, North Atlantic and southern right whales as separate species for the purposes of establishing baseline information and conducting consultations on Federal actions with the potential to affect the taxa.

3. The "Final Recovery Plan for the Northern Right Whale, *Eubalaena glacialis*" (NMFS, 1991) has been divided, in the process of updating the plan, into two separate draft recovery plans: "Updated Recovery Plan for the North Atlantic right whale, *Eubalaena glacialis*" and "Updated Recovery Plan for the North Pacific right whale, *Eubalaena japonica*." These will become final as separate recovery plans.

These changes result in technical revisions to provisions related to right whales in 50 CFR parts 17, 222, and 226. However, all right whales will remain listed as endangered under the Endangered Species Act and subject to the same protections as existed prior to these changes.

Classification

The Assistant Administrator for Fisheries, NMFS (AA) finds that good cause exists to waive the requirement for prior notice and the opportunity for comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B). Such procedures would be unnecessary, as the taxonomic changes made in this rule are technical and reflect actions already taken in the scientific community. This rule does not change the listing status of right whales under the ESA; therefore, it does not increase the scope of the regulated community nor add any new requirements.

This action is not subject to review under Executive Order 12866. In addition, because a general notice of proposed rulemaking is not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Although this final rule simply makes taxonomic changes relative to a listing determination that NMFS has already made under the ESA and does not change the listing status of right whales under the ESA, NOAA has concluded that ESA listing determinations are exempt from requirements of the National Environmental Policy Act. Therefore, these taxonomic changes relative to a listing determination are also exempt from these requirements. (See NOAA Administrative Order 216–6.)

This final rule does not contain policies with federalism implications under Executive Order 13132.

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List of Subjects in 50 CFR Parts 17, 222 and 226

Endangered and threatened species.

Dated: April 2, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 17, 50 CFR part 222, and 50 CFR part 226 are amended as follows:

50 CFR CHAPTER I

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11, paragraph (h), in the table that contains the list of endangered and threatened wildlife, remove the "Whale, right" entry in between "Whale, humpback" and "Whale, Sei" and add in its place the following three entries to read as follows:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

Species							
Common Name	Scientific Name	Historic Range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Mammals							
Whale, North Atlantic right...	*Eubalaena glacialis*	Oceanic	Entire	E	3	226.203	224.103
Whale, North Pacific right...	*Eubalaena japonica*	do.....	do.....	do.....	do.....	NA	NA
Whale, Southern right...	*Eubalaena australis*	do.....	do.....	do.....	do.....	NA	NA

50 CFR CHAPTER II

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

■ 3. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

■ 4. In § 222.102, the definition for "Right whale" is revised to read as follows:

§ 222.102 Definitions.

* * * * *

Right whale means, as used in § 224.103 of this chapter, any whale that is a member of the western North Atlantic population of the North Atlantic right whale species (*Eubalaena glacialis*).

* * * * *

50 CFR CHAPTER II

PART 226—DESIGNATED CRITICAL HABITAT

Authority: 16 U.S.C. 1533.

■ 5. The authority citation for part 226 continues to read as follows:

■ 6. In § 226.203, the section heading and the introductory text are revised to read as follows:

§ 226.203 Critical Habitat for North Atlantic right whales.

NORTH ATLANTIC RIGHT WHALE (*Eubalaena glacialis*)

* * * * *

[FR Doc. 03–8683 Filed 4–9–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 69

Thursday, April 10, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–15–AD]

RIN 2120–AA64

Airworthiness Directives; Short Brothers and Harland Ltd. Models SC–7 Series 2 and SC–7 Series 3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to all Short Brothers and Harland Ltd. (Shorts) Models SC–7 Series 2 and SC–7 Series 3 airplanes. This proposed AD would require you to repetitively inspect all flight control system rods for corrosion and cracks, replace any cracked rod, and repair corrosion damage or replace any corroded rod depending on the extent of the damage. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this proposed AD are intended to prevent failure of any flight control system rod caused by cracks or corrosion. Such failure could lead to complete failure of the flight control system with consequent loss of control of the airplane.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before May 19, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–15–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–15–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Short Brothers PLC, P.O. Box 241, Airport Road, Belfast BT3 9DZ Northern Ireland; telephone: +44 (0) 28 9045 8444; facsimile: +44 (0) 28 9073 3396. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–15–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Civil Airworthiness Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Models SC–7 Series 2 and SC–7 Series 3 airplanes. The CAA reports 27 flight control rods with corrosion beyond acceptable limits and 15 rods with cracks. This is on a total of 26 different aircraft.

What are the consequences if the condition is not corrected? Cracked or corroded flight control rods, if not detected or corrected, could lead to complete failure of the flight control system with consequent loss of control of the airplane.

Is there service information that applies to this subject? Shorts has issued Service Bulletin Number 27–77, Original Issue 27/FEB/03.

What are the provisions of this service information? This service bulletin includes procedures for:

—Inspecting all flight control rods for cracks or corrosion;

—Correcting corrosion damage that is not beyond the acceptable limits; and

—Replacing any cracked or corroded (past acceptable limits) control rods.

What action did the CAA take? The CAA classified this service bulletin as mandatory in order to ensure the continued airworthiness of these airplanes in the United Kingdom. The CAA classifying a service bulletin as mandatory is the equivalent for airplanes of British registry as an AD is for airplanes of American registry.

Was this in accordance with the bilateral airworthiness agreement? These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the CAA has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What has FAA decided? The FAA has examined the findings of the CAA; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Shorts Models SC–7 Series 2 and SC–7 Series 3 airplanes of the same type design that are on the U.S. registry;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What would this proposed AD require? This proposed AD would require you to repetitively inspect all flight control system rods for corrosion and cracks, replace any cracked rod, and repair corrosion damage or replace any corroded rod depending on the extent of the damage.

The proposed AD would give initial inspection credit to those operators who had previously inspected the flight control rods in accordance with Shorts Service Bulletin 27–74 (any revision level).

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 24 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the initial inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
250 hours × $60 per hour = $15,000	No parts necessary to accomplish inspection.	$15,000 per airplane	$15,000 × 24 airplanes = $360,000

The follow-up inspections would be substantially less than the initial inspection because the flight control rods only have to be removed in the initial inspection. Replacement control rods cost $2,000. We have no way of determining the number of airplanes that may need such repair/replacement.

Compliance Time of This Proposed AD

What would be the compliance time of this proposed AD? The initial inspection compliance time of this proposed AD is "within the next 3 months after the effective date of this AD or within 24 months after the last inspection accomplished in accordance with Shorts Service Bulletin 27–74 (any revision level), whichever occurs later." The repetitive inspection compliance time of the proposed AD is "thereafter at intervals not to exceed 24 months."

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The unsafe condition specified by the proposed AD is caused by corrosion. Corrosion can occur regardless of whether the aircraft is in operation or is in storage. Therefore, to ensure that the unsafe condition specified in the proposed AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of hours TIS.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Short Brothers and Harland Ltd.: Docket No. 2003–CE–15–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models SC–7 Series 2 and SC–7 Series 3 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of any flight control system rod caused by cracks or corrosion. Such failure could lead to complete failure of the flight control system with consequent loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect all flight control system rods for cracks and corrosion damage.	Initially inspect within the next 3 months after the effective date of this AD or within 24 months after the last inspection accomplished in accordance with Shorts Service Bulletin 27–74 (any revision level), whichever occurs later, unless already accomplished. Repetitively inspect thereafter at intervals not to exceed 24 months.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Shorts Service Bulletin Number 27–77, Original Issue 27/FEB/03.
(2) If corrosion is found during any inspection that does not exceed the limits specified in Shorts Service Bulletin 27–77, repair the corrosion damage on the affected flight control rod.	Prior to further flight after the inspection where the damage is found.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Shorts Service Bulletin Number 27–77, Original Issue 27/FEB/03.
(3) If any crack is found or if corrosion damage that exceeds the limits specified in Shorts Service Bulletin 27–77 is found during any inspection required by this AD, replace the affected flight control rod.	Prior to further flight after the inspection where the damage or cracks are found.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Shorts Service Bulletin Number 27–77, Original Issue 27/FEB/03.
(4) Do not install any used flight control rod on any affected airplane unless it has been inspected and found to be corrosion and crack free as specified in this AD. Then repetitively inspect as required in paragraph (d)(1) of this AD.	As of the effective date of this AD	In accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Shorts Service Bulletin Number 27–77, Original Issue 27/FEB/03.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Short Brothers PLC, P.O. Box 241, Airport Road, Belfast BT3 9DZ Northern Ireland; telephone: +44 (0) 28 9045 8444; facsimile: +44 (0) 28 9073 3396. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note: The United Kingdom Civil Airworthiness Authority (CAA) classified Shorts Service Bulletin Number 27–77, Original Issue 27/FEB/03, as mandatory. The CAA classifying a service bulletin as mandatory is the equivalent for airplanes on the British registry as an AD is for airplanes on the U.S. registry.

Issued in Kansas City, Missouri, on April 4, 2003.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8750 Filed 4–9–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AD05

Workshops To Discuss Specific Issues Regarding the Existing Rule—Revision of Gas Royalty Valuation Regulations and Related Topics

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public workshops.

SUMMARY: The Minerals Management Service (MMS) is giving notice of four public workshops to discuss specific issues regarding the existing Federal gas royalty valuation regulations at 30 CFR Part 206 for natural gas produced from Federal leases.

DATES: The public workshop dates are:

Workshop 1—Denver, Colorado, on April 23, 2003, beginning at 8:30 a.m. and ending at 2 p.m., Mountain time.

Workshop 2—Albuquerque, New Mexico, on April 24, 2003, beginning at 8:30 a.m. and ending at 2 p.m., Mountain time.

Workshop 3—Houston, Texas, on April 29, 2003, beginning at 8:30 a.m. and ending at 11 a.m., and continuing at 2 p.m. and ending at 5 p.m. Central time.

Workshop 4—Washington, DC, on May 1, 2003, beginning at 8:30 a.m. and ending at 2 p.m. Eastern time.

ADDRESSES: The workshop locations are:

Workshop 1 will be held at the Minerals Management Service, Denver Federal Center, 6th Avenue and Kipling Street, Building 85, Auditoriums A–D, Denver, Colorado, 80226–0165, telephone number (303) 231–3302.

Workshop 2 will be held at the Double Tree Hotel Albuquerque, 201 Marquette NW, Albuquerque, New Mexico 87102, telephone number (505) 247–7000.

Workshop 3 will be held at the Westin Galleria, 5060 West Alabama, Houston, Texas 77056, telephone number (713) 960–8100.

Workshop 4 will be held at the Main Interior Building, 1849 C Street, NW, Washington, DC 20240 (South Penthouse Room), telephone number, (202) 208–3512.

FOR FURTHER INFORMATION CONTACT: Paul Knueven, Minerals Management Service, Minerals Revenue Management, PO Box 25165, MS 320B2, Denver, Colorado 80225–0165, telephone (303) 231–3316, fax number (303) 231–3781, e-mail *Paul.Knueven@mms.gov*.

SUPPLEMENTARY INFORMATION: MMS continues to evaluate the effectiveness and efficiency of its regulations. While we believe that the Federal gas valuation rule generally is accomplishing its objective, that rule is now 15 years old. With the changes having taken place in the natural gas market over the past 15 years, our experience with the 2000 Indian gas valuation rule, and 5 years of experience with taking royalties in kind, we have identified possible changes to the existing rule on which we seek public comment.

Accordingly, MMS is seeking public comment and recommendations on the following specific issues:

(1) Allowing lessees who sell their production to an affiliate the option (for a 2 year period) of basing the royalty value on either a published index price for gas or their affiliate's arm's-length resale price, (2) using NYMEX prices at the Henry Hub rather than published spot prices for natural gas, (3) adjusting natural gas index prices for location differences between the index pricing point and the lease, (4) revising the specific transportation costs that we identified in MMS's 1998 amendment to the gas transportation allowance regulations, (5) determining the rate of return allowed for calculating actual costs under non-arm's-length transportation agreements, (6) allowing lessees to apply natural gas index prices to wellhead gas volumes to eliminate the current requirement of tracing gas that is processed to remove natural gas liquids, and (7) valuing and reporting natural gas disposed of under joint operating agreements.

In addition to the specific issues identified above, we encourage participants to comment on any other significant issues impacting the value of natural gas for royalty purposes.

The workshops will be open to the public without advance registration. Public attendance may be limited to the space available. We encourage a workshop atmosphere; members of the public are encouraged to participate.

For building security measures, each person may be required to present a picture identification to gain entry to the meetings.

Dated: March 31, 2003.

Lucy Querques Denett,

Associate Director for Minerals, Revenue Management.

[FR Doc. 03–8760 Filed 4–8–03; 12:13 pm]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[TX–043–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are announcing receipt of a proposed amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Texas proposes to add a new rule to its administrative hearing procedures concerning telephonic hearing proceedings. Texas intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Texas program and proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., c.s.t. May 12, 2003. If requested, we will hold a public hearing on the amendment on May 5, 2003. We will accept requests to speak at a hearing until 4 p.m., c.s.t. on April 25, 2003.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Texas program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430, Internet address: *mwolfrom@osmre.gov.*

Surface Mining and Reclamation Division, Railroad Commission of Texas, 1701 North Congress Avenue, Capitol Station, P.O. Box 12967, Austin, Texas 78711–2967, Telephone (512) 463–6900.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet address: *mwolfrom@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Texas Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Texas program effective February 16, 1980. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Texas program in the February 27, 1980, **Federal Register** (45 FR 12998). You can also find later actions concerning the Texas program and program amendments at 30 CFR 943.10, 943.15 and 943.16.

II. Description of the Proposed Amendment

By letter dated February 12, 2003 (Administrative Record No. TX–654), Texas sent us an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*). Texas sent the amendment at its own initiative. Texas is proposing to add Texas Administrative Code (TAC) 1.130 to Title 16, Subchapter G, of the Railroad Commission of Texas' (Commission) General Rules of Practice and Procedure (GRPP). This new rule contains the procedures for conducting all or part of a prehearing conference or hearing by telephone. Below is a summary of the new rule proposed by Texas. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

A. Texas' new rule at 16 TAC 1.130 outlines the method to request a telephonic proceeding, how the proceeding will be conducted, the establishment of the record in such proceedings, and the grounds for a default judgment or a dismissal.

1. Section 1.130(a) allows the hearings examiner, on the timely written motion of a party or on the examiner's own motion, to conduct all or part of a prehearing conference or hearing by telephone. All parties must consent to the telephonic proceeding.

2. Section 1.130(b) requires a written request that is filed at the Commission and served on all parties. The request must include the pertinent telephone number(s), the scope of the telephonic portion of the proceeding, and the identity of any witnesses that may testify telephonically. If expert witnesses will testify, the request must include their qualifications to testify as experts.

3. Section 1.130(c) requires the hearings examiner to ensure that the proceeding is fair and provides due process. In determining if it is feasible to conduct all or part of a proceeding telephonically, the hearings examiner must take into account the following factors: (1) Timeliness of a party's request; (2) receipt of written agreements from all parties to conduct all or part of the proceeding by telephone; (3) demonstrations from the parties on how witnesses will be separated, how coaching of witnesses will be prevented, why observing only a witness's oral demeanor is sufficient, and how the witnesses' and parties' identities will be established; (4) the number of parties and the number of witnesses; (5) the number and type of exhibits; (6) the distance of the parties or witnesses from Austin; (7) the nature of the hearing; and (8) any other pertinent factors which the hearings examiner believes may affect the proceeding.

4. Section 1.130(d) requires the hearings examiner to notify the parties, not less than ten days before the proceeding, of his or her decision to conduct all or part of a proceeding telephonically.

5. Section 1.130(e) requires the parties to file and serve all documentary evidence, other than prefiled written testimony, in advance of the proceeding.

6. Section 1.130(f) specifies that, subject only to the limitation of the physical arrangement, all substantive and procedural rights apply to telephonic proceedings.

7. Section 1.130(g) requires that the time and location of telephonic proceedings be posted. Any person may, by advance request, be present in the room with the hearings examiner.

8. Section 1.130(h) requires the hearings examiner to conduct telephonic proceedings using a speaker telephone. The hearings examiner must make a tape recording of the telephonic proceeding, or arrange to have the proceeding recorded by a court reporter.

9. Section 1.130(i) requires the hearings examiner to initiate the telephonic proceeding, including arranging any necessary conference call. When all parties appearing telephonically are connected, the hearings examiner will affirm the parties' consent to the telephonic proceeding. The hearings examiner will then call the proceeding to order; ask all parties to identify themselves, their locations, and their witnesses; affirm on the record the prior written agreement from all parties consenting to the telephonic appearance or proceeding; and state whether the proceeding is being tape recorded or whether a court reporter is recording the proceeding. The hearings examiner will administer the oath to each witness individually before his or her testimony.

10. Section 1.130(j) provides that if the hearings examiner is prevented from connecting all parties through circumstances that are beyond the control of any party or the examiner, the examiner may postpone, continue, or recess the proceeding, as appropriate, until the earliest possible date and time for the proceeding to be reconvened.

11. Section 1.130(k) provides that if the hearings examiner decides or any party requests not to proceed with the telephonic proceeding at any time, or asserts that the presence of the parties or witnesses in the hearing room is necessary for full disclosure of the facts, the hearings examiner may postpone, continue, or recess the proceedings, as appropriate. The hearings examiner must reschedule the proceedings to the earliest possible date and time. The examiner must state on the record or in writing to all parties the reasons for terminating the telephonic proceeding and state the date, time, and location of the reconvened proceeding.

12. Section 1.130(l) provides that the Commission may consider the following events to constitute a failure to appear and grounds for default or dismissal: (1) Failure to answer the telephone for more than 10 minutes after the scheduled time for the proceeding; (2) failure to free the telephone for the proceeding for more than 10 minutes after the scheduled time for the proceeding; (3) failure to be ready to proceed with the proceeding within 10 minutes of the scheduled time; and (4) a party's intentional disconnection from the conference call.

13. Finally, Section 1.130(m) specifies that in the event of accidental disconnection of one or more parties to the proceeding, the hearings examiner will immediately recess the hearing and attempt to re-establish the connection or connections. If reconnection is achieved within 30 minutes, the hearings examiner may resume the telephonic hearing, or may postpone, continue, or recess the proceedings, as appropriate, until the earliest possible date and time for the proceeding to be reconvened. The examiner must state on the record the date, time, and location of the reconvened proceeding. If reconnection cannot be achieved, then the hearings examiner must recess the telephonic proceeding and reschedule the hearing.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We will not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Tulsa Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Microsoft Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: TX–043–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. on April 25, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the

hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the fact that the telephonic hearing provisions proposed by Texas are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Texas program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Texas program has no effect on Federally recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This determination is based upon the fact that the telephonic hearing provisions proposed by Texas are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local governmental agencies or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the telephonic hearing provisions proposed by Texas are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the telephonic hearing provisions proposed by Texas are administrative and procedural in nature and are not expected to have a substantive effect on the regulated industry.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: February 27, 2003.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 03–8807 Filed 4–9–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA28

Financial Crimes Enforcement Network; Anti-Money Laundering Program Requirements for "Persons Involved in Real Estate Closings and Settlements"

AGENCY: Financial Crimes Enforcement Network ("FinCEN"), Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: FinCEN is in the process of implementing the requirements delegated to it under the USA Patriot Act of 2001, in particular the requirement pursuant to section 352 of the Act that financial institutions establish anti-money laundering programs. The term "financial institution" includes "persons involved in real estate closings and settlements." FinCEN is issuing this advance notice of proposed rulemaking ("ANPRM") to solicit public comments on a wide range of questions pertaining to this requirement, including how to define "persons involved in real estate closings and settlements," the money laundering risks posed by such persons, and whether any such persons should be exempted from this requirement.

DATES: Written comments may be submitted on or before June 9, 2003.

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, DC area may be delayed. Comments submitted by electronic mail may be sent to *regcomments@fincen.treas.gov* with the caption in the body of the text, "ATTN: Section 352—Real estate settlements." Comments may also be submitted by paper mail to FinCEN, PO Box 39, Vienna, VA 22183–0039, "ATTN: Section 352 " Real estate settlements." Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, DC. People wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel, FinCEN, (703) 905–3590; Office of the General Counsel (Treasury), (202) 622–1927; or the Office of the Assistant General Counsel for Banking and Finance (Treasury), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act of 2001 (Pub. L. 107–56) ("the Act"). Title III of the Act, also known as the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001, made a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act ("BSA"), which are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to make it easier to prevent, detect, and prosecute international money laundering and the financing of terrorism.

Section 352(a) of the Act, which became effective on April 24, 2002, amended section 5318(h) of the BSA. As amended, section 5318(h)(1) requires every financial institution including persons involved in real estate settlements and closings under section 5312(a)(1)(U) to establish an anti-money laundering program that includes, at a minimum: (i) The development of internal policies, procedures, and controls; (ii) the designation of a compliance officer; (iii) an ongoing employee training program; and (iv) an independent audit function to test programs. When prescribing minimum standards for anti-money laundering programs, section 352 directs the Secretary of the Treasury to "consider the extent to which the requirements imposed under [section 352 of the Act] are commensurate with the size, location, and activities of the financial institutions to which such regulations apply." The Secretary has delegated the authority to administer the BSA to the Director of FinCEN.

On April 29, 2002, and again on November 6, 2002, FinCEN temporarily exempted certain financial institutions, including persons involved in real estate closings and settlements, from the requirement to establish an anti-money laundering program.[1] The purpose of the temporary exemption was to enable Treasury and FinCEN to study the affected industries and to consider the extent to which anti-money laundering program requirements should be applied to them, taking into account the specific characteristics of the various entities defined as "financial institutions" by the BSA.

A real estate closing or settlement is the process in which the purchase price is paid to the seller and title is transferred to the buyer.[2] The process may be carried out in different ways, depending on a number of factors, including location. In the eastern states, typically the parties meet and exchange documents in what is sometimes referred to as a "New York style" or "table closing." In the western states, the parties may not meet, instead relying on the services on an escrow agent to handle the documents in what is sometimes referred to as a "Western style" or an "escrow closing."[3] The person actually conducting the process may be an attorney, a title insurance company, an escrow company, or another party.

II. Issues for Comment

1. What Are the Money Laundering Risks in Real Estate Closings and Settlements?

The real estate industry could be vulnerable at all stages of the money laundering process by virtue of dealing with high value products.[4] Money launderers have used real estate transactions to attempt to disguise the illegal source of their proceeds. For example, narcotics traffickers have purchased property with monetary instruments that they purchased in structured amounts (that is, multiple purchases each below the BSA reporting thresholds that in aggregate exceeded

[1] *See* 31 CFR 103.170, as codified by interim final rule published at 67 FR 21110 (April 29, 2002, as amended at 67 FR 67547 (November 6, 2002) and corrected at 67 FR 68935 (November 14, 2002).

[2] Whether the process is referred to as a settlement or a closing may vary by jurisdiction. *See, e.g.*, 24 CFR 3500.2 explaining that settlement for purposes of the Real Estate Settlement Procedures Act of 1974 ("RESPA") may also be called a "closing" depending on the jurisdiction.

[3] *See*, 11 Thompson on Real Property, sec. 94.04.

[4] According to a report published by the National Institute of Justice, "real estate transactions offer excellent money laundering opportunities," and, in particular, opportunities to "legitimate and repatriate illegal funds." Barbara Webster and Michael S. McCampbell, National Institute of Justice, International Money Laundering: Research and Investigation Join Forces, September 1996, pages 5 and 6.

the thresholds).[5] Narcotics traffickers have also tried to launder cash proceeds by exchanging them for checks from a real estate company.[6]

In money laundering, the initial or placement stage is the stage at which funds from illegal activity, or funds intended to support illegal activity, are first introduced into the financial system. This could occur, for example, in the real estate industry through the payment for real estate with a large cash down payment.

In the second or layering stage of money laundering, the illicit funds are further disguised and distanced from their illegal source through the use of a series of frequently complex financial transactions. This could occur in the real estate industry when, for instance, multiple pieces of real estate are bought and resold, exchanged, swapped, or syndicated, making it more difficult to trace the true origin of the funds.[7]

The third or integration phase of money laundering occurs when the illegal funds appear to have been derived from a legitimate source. In the context of the real estate industry, this could occur when real estate is sold by a money launderer to a bona fide purchaser and the purchaser, or his or her financial institution, provides the money launderer with a check that the money launderer then has the ability to represent as the proceeds of a legitimate business transaction.

The real estate industry itself has taken steps to identify potential money laundering vulnerabilities. For instance, the American Land Title Association has identified several potential "red flag" situations involving real estate transactions, including:

- Where a prospective buyer is paying for real estate with funds from a high risk country, such as a "non-cooperative country or territory" as designated by the Financial Action Task Force ("FATF") or a country designated by the Secretary as "a primary money laundering concern" pursuant to section 311 of the Act;
- Where the seller requests that the proceeds of a sale of real estate be sent to a high risk country;
- Where a person is seeking to purchase real estate in the name of a nominee and has no apparent legitimate explanation for the use of a nominee;
- Where a person is acting, or appears to be acting, as an agent for an undisclosed party and is reluctant or unwilling to provide information about the party or the reason for the agency relationship;
- Where a person does not appear to be sufficiently knowledgeable about the purpose or use of the real estate being purchased;
- Where the person appears to be buying and selling the same piece of real estate within a short period of time or is buying multiple pieces of real estate for no apparent legitimate purpose;
- Where the prospective purchaser or seller seeks to have the documents reflect something other than the true nature of the transaction; and
- Where the person provides suspicious documentation to verify his or her identity.

FinCEN solicits comment on the experience of the real estate settlement industry with money laundering schemes, the existence of any safeguards in the industry to guard against money laundering, and what additional steps may be necessary to protect the industry from abuse by money launderers, including those who finance terrorist activity.

2. How Should Persons Involved in Real Estate Closings and Settlements Be Defined?

The BSA identifies a person involved in a real estate closing or settlement as a financial institution. The statute includes no definition of the term and FinCEN has not had an occasion to define the term in a regulation. Moreover, the legislative history provides no insight into how Congress intended the term to be defined. Because section 5312(a)(1)(U) uses the phrase "persons *involved* in real estate closings and settlements" (emphasis added), a reasonable interpretation of the section could therefore cover participants other than those who actually conduct the real estate settlement or closing.[8]

The universe of participants in real estate transactions is potentially broad, even in the simplest residential real estate transaction. The typical residential real estate transaction may involve the following participants:

- A real estate broker or brokers,
- One or more attorneys, who represent the purchaser or the seller,
- A bank, mortgage broker, or other financing entity,
- A title insurance company,
- An escrow agent, and
- An appraiser, who may assess the condition and value of the real estate, as well as various inspectors.

Moreover, the participants involved, and the nature of their involvement, could vary with the contemplated use of the real estate, the nature of the rights to be acquired, or how these rights are to be held. Real estate may be acquired for any one or number of purposes, including, without limitation, residential, commercial, portfolio investment, or development purposes. As for the nature of the rights to be acquired, the real estate may be held in fee simple, under a lease agreement or as security for indebtedness. Finally, real estate may be held directly or through various investment vehicles, such as real estate investment trusts, real estate limited partnerships, or entities commonly referred to as "syndicates" of real estate investors.

The guiding principle in defining the phrase "persons involved in real estate closings and settlement" is to include those persons whose services rendered or products offered in connection with a real estate closing or settlement that can be abused by money launderers. Equally as important is identifying those persons who are positioned to identify the purpose and nature of the transaction. Another factor may be the importance of various participants to successful completion of the transaction, which may suggest that they are well positioned to identify suspicious conduct. In addition, professionals may have very different roles, in different transactions, that greatly impact on their exposure to money laundering. At one end of the spectrum may be those professionals involved in structuring a real estate deal (and thus in the best position to observe and prevent their use for money laundering); at the other end, those whose role may be far from the financial aspects, such as property inspectors. Finally, involvement with the actual flow of funds used to purchase the property is a significant factor.

As noted above, attorneys often play a key role in real estate closings and settlements and thus merit consideration along with all the other professionals involved in the closing and settlement process. Section 352 requires that a financial institution take steps to detect and prevent itself from being abused by money launderers, and to comply with existing BSA requirements, such as reporting the receipt of cash or cash equivalents in an amount over $10,000 on Form 8300. This provision does not independently impose any reporting requirements on financial institutions. FinCEN therefore does not believe that application of section 352 requirements to attorneys in connection with activities relating to real estate closings or settlements raises issues of, or poses obligations inconsistent with, the attorney-client privilege.[9] In fact, attorneys already must exercise due diligence when they receive funds from clients where there is an indication that the funds may be tainted, and cannot simply accept funds without the risk that their fees will be subject to forfeiture.[10] When engaging in conduct subject to anti-money laundering regulations, attorneys, like other professionals, should take the basic steps contemplated by section 352 to ensure that their services are not being abused by money launderers.

FinCEN accordingly seeks comment on which participants in the real estate closing or settlement process are in a position where they can effectively identify and guard against money laundering in such transactions. Information and comment may, among other things, address both the extent to which various participants have access to information regarding the nature and purpose of the transactions at issue and the importance of the participants' involvement to successful completion of the transactions. Information and comment should focus on the real estate sector in general and on various transaction types. FinCEN is particularly interested in receiving comments addressing commercial real estate transactions. Comments are welcome from those involved centrally in the real estate settlement process, *i.e.*, those who may act as an agent for all parties and are responsible for reviewing the form and type of payment, as well as being aware of the parties to the real estate transaction, and those who view their involvement as more peripheral.

3. Should Any Persons Involved in Real Estate Closings or Settlements Be Exempted From Coverage Under Section 352?

FinCEN also solicits comments regarding whether there should be an exemption for any category of persons involved in real estate closings and settlements. In this connection, FinCEN anticipates that persons that are already subject to separate anti-money laundering program rules (or that will be subject to separate rules) will not also be subject to the anti-money laundering rules for persons involved in real estate closings and settlements.[11] Comments regarding possible exemptions should be designed to enable FinCEN to evaluate whether the risk of money laundering through a category of persons is sufficiently small that a proposed anti-money laundering program rule could be crafted that would exempt the category while also providing adequate protection for the industry from the risks of money laundering. In addition, FinCEN wishes to make it clear that it does not intend to cover purchasers and sellers of their own real estate, although they, too, are "persons involved in real estate settlements and closings." The question of exemption is specifically directed to real estate professionals, and those who trade in real estate on a commercial basis.

4. How Should the Anti-Money Laundering Program Requirement for Persons Involved in Real Estate Closings and Settlements Be Structured?

In applying section 352 of the Act to persons involved in real estate closings and settlements, FinCEN must consider the extent to which the standards for anti-money laundering programs are commensurate with the size, location, and activities of persons in this industry. FinCEN recognizes that while large businesses are involved in real estate closings and settlements, businesses in this industry may be smaller companies or sole proprietors. FinCEN thus seeks comment on any particular concerns these smaller businesses may have regarding the implementation of an anti-money laundering program.

FinCEN also recognizes that persons involved in real estate closings and settlements may have some programs in place to meet existing legal obligations, such as the requirement to report on Form 8300 the receipt of over $10,000 in currency and certain monetary instruments. These businesses may also have procedures in place to protect them against fraud. FinCEN therefore seeks comment on what types of programs persons involved in real estate closings and settlements have in place to prevent fraud and illegal activities, and the applicability of such programs to the prevention of money laundering.

III. Conclusion

With this ANPRM, FinCEN is seeking input to assist it in determining how to implement the requirements of section 352 with respect to persons involved in real estate closings and settlements. FinCEN welcomes comments on all aspects of a potential regulation and encourages all interested parties to provide their views.

IV. Executive Order 12866

This ANPRM is not a "significant regulatory action" for purposes of Executive Order 12866. It neither establishes nor proposes any regulatory requirements. Instead, it seeks public comment on a wide range of questions concerning the extent to which the anti-money laundering program mandates of section 352 of the USA Patriot Act should apply to persons involved in real estate closings and settlements.

Dated: April 3, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–8688 Filed 4–9–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–007]

RIN 1625–AA09

Drawbridge Operation Regulation; Apalachicola River, River Junction, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a drawbridge operation regulation for the draw of the CSX Railroad swing bridge across the Apalachicola River, mile 105.9, at River Junction (near Chattahoochee), Florida. The regulation will allow for the bridge to be unmanned and remain closed during hours of infrequent traffic with

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[5] *See, e.g., U.S.* v. *High*, 117 F.3d 464 (11th Cir. 1997).

[6] *See U.S.* v. *Leslie*, 103 F.3d 1093 (2d Cir. 1997).

[7] *See U.S.* v. *Nattier*, 127 F.3d 655 (8th Cir. 1997) (embezzler engaged in a number of real estate purchases through real estate firm in an attempt to conceal the source of the funds).

[8] Thus, for example, in a settlement or closing involving residential property, the term could cover participants other than the settlement agent listed on the HUD–1 form, as required by RESPA.

[9] The recent resolution by the American Bar Association opposing the imposition of suspicious activity reporting obligations on attorneys recognizes the distinction between anti-money programs and reporting requirements. *See* Task Force on Gatekeeper Regulation and the Profession, Report to the House of Delegates (available on *www.abanet.org/leadership/recommendations03/104.pdf*) (accepting the concepts of reasonable compliance training and due diligence to minimize risk of lawyers' involvement in illegal money laundering activity).

[10] *See U.S.* v. *Moffitt, Zwerling & Kemler, P.C.*, 83 F.3d 660 (4th Cir. 1996) (firm that "tiptoed" around the most pertinent questions regarding the source of fees received from drug dealer required to forfeit fees shown to be derived from proceeds of narcotics trafficking).

[11] For example, banks already must comply with anti-money laundering rules. *See* 31 CFR 103.120. Similarly, loan and finance companies fall within the definition of a financial institution under the BSA, and are currently being studied by FinCEN for inclusion in the anti-money laundering rules.

an advance notification requirement to open the bridge.

DATES: Comments and related material must reach the Coast Guard on or before June 9, 2003.

ADDRESSES: You may mail comments and related material to Commander (obc), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address above between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying by appointment at the Bridge Administration Branch, Eighth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch, at the address given above or telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–03–007), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a public meeting by writing to the Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The CSX swing bridge across the Apalachicola River, mile 105.9, presently opens on signal for the passage of vessels. The bridge owner has requested to change the operation regulations so that the bridge be required to open on signal only from 8 a.m. until 4 p.m. Monday through Friday. At all other times, the bridge would open on signal if at least four hours advanced notification is given. The request was made based upon a documented decrease in the number of requests for openings in the last three years. In 2000, the bridge opened 63 times for the passage of vessels. In 2001, the bridge opened 38 times for the passage of vessels. In the first five months of 2002, the bridge opened 15 times for the passage of vessels. Information gathered regarding the decrease in vessel movements indicates that the closure of a sand and gravel facility above the bridge and a prolonged drought are the main contributing factors. While water elevations may return to their pre-drought levels, there is presently no evidence that the number of requests for bridge openings will increase in the future due to limited industrial development along the waterway.

Discussion of Proposed Rule

The proposed rule will have no effect on the existing operation of the bridge between 8 a.m. and 4 p.m. Monday through Friday when the bridge will open on signal to accommodate marine traffic. At all other times the bridge will only open if four hours advance notice is provided. This change is proposed to reduce the financial burden on the drawbridge operator of maintaining bridge tenders at times that there is little or no vessel traffic.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Prior to proposing this rule, the Coast Guard analyzed the bridge usage records and determined that requiring four hours notice during off peak periods would have minimal impact on commercial vessel traffic. This proposed rule allows vessels ample opportunity to transit this waterway during normal weekdays and with minimal notification at all other times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would affect the following entities, some of which might be small entities: the owners and operators of vessels requiring a vertical clearance of greater than 17.4 feet above Ordinary High Water and needing to transit the bridge outside of the 8 a.m. to 4 p.m. weekday time frame. The impacts to small entities will not be significant because of the limited number of openings required by these vessels.

This is not considered to have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Eighth Coast Guard District at the address above.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct cost of compliance on them. We have analyzed this proposed rule under Executive Order 13132 and have determined that this proposed rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(e), of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. This action is categorically excluded under paragraph 32(e) as it is for the purpose of promulgating an operation regulation for this drawbridge. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. § 117.258 is added to read as follows:

§ 117.258 Apalachicola River.

The draw of the CSX Railroad bridge, mile 105.9, at River Junction shall open on signal Monday through Friday from 8 a.m. until 4 p.m. At all other times, the bridge will open on signal if at least 4 hours notice is given.

Dated: March 27, 2003.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, , Commander, Eighth Coast Guard District.

[FR Doc. 03–8690 Filed 4–9–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NY57–252, FRL–7480–4]

Approval and Promulgation of Implementation Plans; New York State Implementation Plan Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the New York State Implementation Plan (SIP) for ozone concerning the control of volatile organic compounds. The SIP revision consists of amendments to New York Codes, Rules and Regulations part 226, "Solvent Metal Cleaning," part 235, "Consumer Products" and the adoption of new rule part 239, "Portable Fuel Container Spillage Control." This SIP revision consists of control measures needed to meet the shortfall emissions reduction identified by EPA in New York's 1-hour ozone attainment demonstration SIP. The intended effect of this action is to approve control strategies required by the Clean Air Act which will result in emission reductions that will help achieve attainment of the national ambient air quality standard for ozone.

DATES: Comments must be received on or before May 12, 2003.

ADDRESSES: All comments should be addressed to: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

A copy of the New York submittals are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New York State Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, New York 12233.

FOR FURTHER INFORMATION CONTACT: Kirk J. Wieber, Air Programs Branch,

Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3381.

SUPPLEMENTARY INFORMATION:

I. What Is Required by the Clean Air Act and How Does It Apply to New York?

Section 182 of the Clean Air Act (Act) specifies the required State Implementation Plan (SIP) submissions and requirements for areas classified as nonattainment for ozone and when these submissions and requirements are to be submitted to EPA by the states. The specific requirements vary depending upon the severity of the ozone problem. The New York-Northern New Jersey-Long Island area is classified as a severe ozone nonattainment area. Under section 182, severe ozone nonattainment areas were required to submit demonstrations of how they would attain the 1-hour standard. On December 16, 1999 (64 FR 70364), EPA proposed approval of New York's 1-hour ozone attainment demonstration SIP for the New York-Northern New Jersey-Long Island nonattainment area. In that rulemaking, EPA identified an emission reduction shortfall associated with New York's 1-hour ozone attainment demonstration SIP, and required New York to address the shortfall. In a related matter, the Ozone Transport Commission (OTC) developed control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing these model rules. These model rules were designed for use by states in developing their own regulations to achieve additional emission reductions to close emission shortfalls.

On February 4, 2002 (67 FR 5170), EPA approved New York's 1-hour ozone attainment demonstration SIP. This approval included an enforceable commitment submitted by New York to adopt additional control measures to close the shortfall identified by EPA for attainment of the 1-hour ozone standard.

II. What Was Included in New York's Submittal?

On December 30, 2002, Carl Johnson, Deputy Commissioner, New York State Department of Environmental Conservation (NYSDEC), submitted to EPA a revision to the SIP which included state adopted revisions to two regulations. The two regulations consist of New York Codes, Rules and Regulations (NYCRR), part 235, "Consumer Products" and part 239, "Portable Fuel Container Spillage Control." In addition, on January 17, 2003, Deputy Commissioner Johnson submitted to EPA a revision to the SIP which included state proposed revisions to NYCRR, part 226, "Solvent Metal Cleaning." All of these revisions will provide volatile organic compound (VOC) emission reductions to address, in part, the shortfall identified by EPA. New York used the OTC model rules as guidelines to develop its rules.

A. What Do the Revisions to Part 226, "Solvent Metal Cleaning" Consist of?

Part 226 is intended to establish hardware and operating requirements for vapor cleaning machines used to clean metal parts as well as solvent volatility limits and operating practices for cold cleaners. The revisions to part 226 include clarifications to the general requirements; equipment specifications; and operating requirements, including recordkeeping requirements for cold cleaning degreasers; and exemptions. The revisions to part 226 also include a solvent vapor pressure specification of 1.0 millimeters of mercury at 20 degrees Celsius which becomes mandatory January 1, 2004, unless a process-specific Reasonably Available Control Technology (RACT) demonstration has been approved by the NYSDEC and EPA. The alternate RACT provision is available for situations in which it can be demonstrated that a solvent metal cleaning process cannot be controlled to comply with the requirements of part 226 for reasons of technological and economic infeasibility.

B. What Do the Revisions to Part 235, "Consumer Products" Consist of?

The revisions to part 235 include VOC content limits for 43 separate consumer product categories. Revised part 235 establishes that no person shall sell, supply, offer for sale, or manufacture consumer products on or after January 1, 2005, which contain VOCs in excess of the VOC content limits specified by New York for those products. Part 235 includes specific exemptions, as well as certification and product labeling requirements, recordkeeping and reporting requirements, and test methods and procedures, and provisions for acquiring variances and approvals of innovative products exemptions (IPEs) and alternative compliance plans (ACPs).

The part 235 IPE and ACP provisions provide alternatives to complying with the VOC content limits specified in the Table of Standards in part 235. The State has provided criteria for documentation of emissions and the VOC content limit of the product as well as procedures for submissions to apply for IPEs and ACPs. Part 235 also allows a manufacturer who was granted an IPE or ACP pursuant to the California Air Resource Board (CARB) provisions in sections 94511, 94503.5 and 94540–94555 of title 17 of the California Code of Regulations to apply for and obtain an IPE or ACP in New York State. The IPE or ACP can become effective in New York State for the period of time that the CARB IPE or ACP remains in effect, provided that all the consumer products within the CARB IPE or ACP are regulated by part 235. Any manufacturer seeking such an exemption on this basis must submit to the NYSDEC, a copy of the CARB IPE or ACP decision (*i.e.*, the Executive Order) which includes all conditions established by CARB applicable to the IPE or ACP. For those consumer products that have not been granted an exemption by CARB, the manufacturer may apply to the NYSDEC for an IPE or ACP in accordance with the criteria specified in part 235.

Part 235 also establishes procedures for obtaining a variance. Any person who cannot comply with requirements set forth in part 235, due to extraordinary reasons that are beyond that person's reasonable control, may apply in writing to the NYSDEC for a variance. An application for a variance must specify the grounds upon which the variance is sought, the proposed date(s) by which compliance with the part 235 VOC limits will be achieved and a compliance report reasonably detailing the method(s) by which compliance will be achieved.

C. What Do the Requirements of Part 239, "Portable Fuel Container Spillage Control" Consist of?

Part 239 is intended to reduce refueling emissions from those equipment and engines in the off-road categories that are predominantly refueled with portable fuel containers. Part 239 applies to any person who sells, supplies, offers for sale, or manufactures for sale in New York State portable fuel container(s) or spout(s) or both for use in New York State. Part 239 includes exemptions; administrative requirements which include date coding; compliance certification; labeling; recordkeeping requirements; a manufacturer warranty requirement; and test methods and procedures.

Part 239 establishes performance standards applicable on or after January 1, 2003, which are divided into two sections. One standard specifically addresses spill-proof systems and the other addresses spill-proof spouts for use in portable fuel containers. Included are performance standards for automatic shut off, automatic closure, container openings, fuel flow rates and fill levels. Part 239 also includes a permeation rate for spill-proof systems only.

Part 239 allows the manufacturers of noncompliant products a one year sell-through period. Manufacturers may continue to sell an existing product provided that the products were manufactured before January 1, 2003, and the date of manufacture or a date code representing the date of manufacture is clearly displayed on that product.

Part 239 also establishes IPE provisions which allow for alternatives to complying with the performance standards specified in part 239. As in the case of part 235, if a manufacturer was granted an IPE pursuant to the CARB provisions, the IPE can become effective in New York State for the period of time that the CARB IPE remains in effect. Section 2467.4 of title 13 of the California Code of Regulations, specifies the CARB provisions applicable to portable fuel containers. Any manufacturer seeking such an exemption on this basis must submit to the NYSDEC, a copy of the CARB IPE decision (*i.e.*, the Executive Order), which includes all conditions established by CARB applicable to the IPE. For those portable fuel containers or spouts that have not been granted an exemption by CARB, the manufacturer may apply to the NYSDEC for an IPE in accordance with the criteria specified in part 239.

In addition, part 239 provides procedures for obtaining a variance. Any person who cannot comply with the performance standards set forth in part 239, due to extraordinary reasons that are beyond that person's reasonable control, may apply in writing to the NYSDEC for a variance. An application for a variance must specify the grounds upon which the variance is sought, the proposed date(s) by which compliance with the part 239 VOC limits will be achieved and a compliance report reasonably detailing the method(s) by which compliance will be achieved.

III. What Is EPA's Conclusion?

EPA has evaluated New York's submittal for consistency with the Act, EPA regulations, and EPA policy. EPA has determined that the revisions made to part 226, part 235 and new part 239 of title 6 of the New York Codes, Rules and Regulations, entitled, "Solvent Metal Cleaning", "Consumer Products" and "Portable Fuel Container Spillage Control", respectively, meet the SIP revision requirements of the Act with the following exception. While the provisions related to alternate test methods, variances, innovative products and alternate compliance plans pursuant to part 235, "Consumer Products" or part 239, "Portable Fuel Container Spillage Control" are acceptable, the specific application of those provisions (those that are granted or accepted by NYSDEC) will not be recognized as meeting Federal requirements until they are approved by EPA on a case-by-case basis as a SIP revision. Therefore, EPA is proposing to approve the regulations as part of the New York SIP with the exception that the specific application of provisions associated with alternate test methods, variances, innovative products and alternate compliance plans, must be submitted as SIP revisions.

In addition, the revisions to part 226, "Solvent Metal Cleaning" are being proposed under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrent with the state's procedures for amending its regulations. If the proposed revision is substantially changed in areas other than those identified in this document, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made to part 226 as cited in this document, EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by New York and submitted formally to EPA for incorporation into the SIP. It should be noted, that if for some reason the adoption process by New York for part 226 is delayed, it is likely that EPA will proceed with a final rulemaking action on the revisions to parts 235 and 239 and address the final rulemaking action for part 226 separately.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 31, 2003.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 03–8826 Filed 4–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI–113–7343B; FRL–7466–7]

Approval and Promulgation of State Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to Wisconsin's State Implementation Plan (SIP) for the attainment of the one-hour ozone standard for the Milwaukee-Racine area. This SIP revision, submitted to EPA on December 16, 2002, provides new compliance options for sources subject to the state's rules limiting emissions of nitrogen oxides (NO_X) from large electricity generating units in southeast Wisconsin. Under the revised SIP, sources would have the option of complying with emissions limits on a per unit basis or complying as part of an emissions averaging plan that also includes an emissions cap. In addition, the revision creates a new categorical emissions limit for new integrated gasification combined cycled units.

In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the state's request as a direct final rule without prior proposal, because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approval is set forth in the direct final rule. If EPA receives no written adverse comments, EPA will take no further action on this proposed rule. If EPA receives written adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. In that event, EPA will address all relevant public comments in a subsequent final rule based on this proposed rule. In either event, EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: EPA must receive comments on this action by May 12, 2003.

ADDRESSES: You should mail written comments to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the state's request is available for inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Alexis Cain, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7018.

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking Today?
II. Where Can I Find More Information About this Proposal and Corresponding Direct Final Rule?

I. What Action Is EPA Taking Today?

EPA is proposing to approve, as part of the Wisconsin ozone SIP, rules that would allow sources to use emissions averaging and an emissions cap as a option for complying with ozone season limits on emissions of NO_X. These limits apply to large electricity generating units in southeast Wisconsin; EPA approved the rules setting these NO_X emissions limits into Wisconsin's SIP on November 13, 2001 (66 FR 56931). The limits are expressed in mass of allowable emissions per unit of heat input (pounds per million Btu).

Emissions averaging will allow units subject to the NO_X emissions limits of NR 428 of the Wisconsin Administrative Code to create emissions averaging plans in which the compliance of multiple units would be assessed collectively, based on their aggregate emissions rate. The allowable emissions rate for each unit is reduced by 0.01 pounds per million btu in determining the aggregate allowable emissions rate. Beginning in 2008, sources that participate in an emissions averaging plan must also collectively meet a NO_X emissions cap that is consistent with the one-hour ozone attainment plan for southeast Wisconsin. The use of emissions averaging plans will provide compliance flexibility for NO_X emissions sources, while ensuring that NO_X emissions are no higher than they would have been in the absence of averaging.

II. Where Can I Find More Information About This Proposal and Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules and regulations section of this **Federal Register**.

Authority: 42 U.S.C. 4201 *et seq.*

Dated: March 6, 2003.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 03–8535 Filed 4–9–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7480–8]

Nebraska: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Nebraska has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Nebraska. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we receive written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we receive comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by May 12, 2003.

ADDRESSES: Send written comments to Lisa V. Haugen, U.S. EPA Region 7, ARTD/RESP, 901 North 5th Street, Kansas City, Kansas. You can view and copy Nebraska's application during normal business hours at the following addresses: Nebraska Department of Environmental Quality, Suite 400, The Atrium, 1200 "N" Street, Lincoln, Nebraska, 68509–8922, (402) 471–2186; and EPA Region 7, Library, 901 North 5th Street, Kansas City, Kansas 66101, (913) 551–7877, Lisa V. Haugen.

FOR FURTHER INFORMATION CONTACT: Lisa V. Haugen, (913) 551–7877.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: March 17, 2003.

Nat Scurry,

Acting Regional Administrator, Region 7.

[FR Doc. 03–8836 Filed 4–9–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7480–5]

Utah: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant Final authorization to the hazardous waste program changes submitted by Utah. In the "Rules" section of this **Federal Register**, we are authorizing the State's program changes as an immediate final rule without a prior proposed rule because we believe this action is not controversial. Unless we receive written comments opposing this authorization during the comment period, the immediate final rule will become effective and the Agency will not take further action on this proposal. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. EPA will address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: We must receive your comments by May 12, 2003.

ADDRESSES: Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th St, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139. You can view and copy Utah's application at the following addresses: Utah Department of Environmental Quality (UDEQ), from 8 a.m. to 5 p.m., 288 North 1460 West, Salt Lake City, Utah 84114–4880, contact: Susan Toronto, phone number: (801) 538–6776, and EPA Region VIII, from 8 a.m. to 3 p.m., 999 18th Street, Suite 300, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules" section of this **Federal Register**.

Dated: March 25, 2003.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 03–8834 Filed 4–9–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 03–83; FCC 03–64]

Assessment and Collection of Regulatory Fees for Fiscal Year 2003

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress has required it to collect for fiscal year 2003. Section 9 of the Communications Act of 1934, as amended, provides for the annual assessment and collection of regulatory fees under sections 9(b)(2) and (b)(3), respectively, for annual "Mandatory Adjustments" and "Permitted Amendments" to the Schedule of Regulatory Fees.

DATES: Comments are due on or before April 25, 2003, and reply comments are due on or before May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444 or Rob Fream, Office of Managing Director at (202) 418–0408.

SUPPLEMENTARY INFORMATION:

Adopted: March 24, 2003.

Released: March 26, 2003.

By the Commission:

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I. Introduction

1. In this *Notice of Proposed Rulemaking*, the Commission proposes to collect $269,000,000 in regulatory fees for Fiscal Year (FY) 2003. These fees are mandated by Congress and are collected to recover the regulatory costs associated with the Commission's enforcement, policy and rulemaking, user information, and international activities.[1]

II. Discussion

A. Development of FY 2003 Fees

i. Calculation of Revenue and Fee Requirements

2. Each fiscal year, the Commission proportionally allocates the total amount that must be collected via regulatory fees (Attachment C).[2] For FY 2003, this allocation was done using FY 2002 revenues as a base. From this base, a revenue amount for each fee category was calculated. Each fee category was then adjusted upward by 23 percent to reflect the increase in regulatory fees from FY 2002 to FY 2003. These FY 2003 amounts were then divided by the number of payment units in each fee category to determine the unit fee.[3] In

[1] 47 U.S.C. 159(a).

[2] The costs assigned to each service category are based upon the regulatory activities (enforcement, policy and rulemaking, user information, and international activities) undertaken by the Commission on behalf of units in each service category. It is important to note that the required increase in regulatory fee payments of approximately 23 percent in FY 2003 is reflected in the revenue that is expected to be collected from each service category. Because this expected revenue is adjusted each year by the number of units in a service category, the actual fee itself is sometimes increased by a number other than 23 percent. For example, in industries where the number of units is declining and the expected revenue is increasing, the impact on the fee increase may be greater.

[3] In most instances, the fee amount is a flat fee per licensee or regulatee. However, in some instances the fee amount represents a unit subscriber fee (such as for Cable, Commercial

Continued

instances of small fees, such as licenses that are renewed over a multiyear term, the resulting unit fee was also divided by the term of the license. These unit fees were then rounded in accordance with 47 U.S.C. 159(b)(2).

ii. Additional Adjustments to Payment Units

3. In calculating the FY 2003 regulatory fees proposed in Attachment D, the Commission further adjusted the FY 2002 list of payment units (Attachment B) based upon licensee data bases and industry and trade group projections. Whenever possible, the Commission verified these estimates from multiple sources to ensure accuracy of these estimates.

4. The NPRM also proposes adjusting payment units for FY 2003 by expanding the AM and FM Radio Station Regulatory Fees Grid. Since FY 1998, the Commission has used a grid that divides broadcast station regulatory fees by class of service, population, and type of service (AM/FM).[4] This grid was originally adopted to provide equity and fairness among radio stations with varying signal strengths and market reach. However, in recent years, modifications to radio stations, a trend toward more powerful stations, and increases in the overall general population—resulting in an ever-larger number of stations grouped together in the one million-plus category of the grid—necessitated the need to review this grid.

5. The NPRM is therefore proposing a revised grid (six by seven) that includes a population category of "greater than three million people." In addition, the NPRM is also proposing to change the population threshold amounts to reflect a slightly wider population field. The current and proposed radio station grids follow:

CURRENT RADIO STATION REGULATORY FEE GRID

[Six by Six]

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<=20,000						
20,001–50,000						
50,001–125,000						
125,001–400,000						
400,001–1,000,000						
>1,000,000						

PROPOSED RADIO STATION REGULATORY FEE GRID

[Six by Seven]

Population served	AM class A	AM class B	AM class C	AM class D	FM classes A, B1 & C3	FM classes B, C, C1 & C2
<=25,000						
25,001–75,000						
75,001–150,000						
150,001–500,000						
500,001–1,200,000						
1,200,001–3,000,000						
>3,000,000						

iii. Request for Comment on Possible Service Reclassification

6. In both 2001,[5] and then again in 2002,[6] the Commission denied requests to move the Local Multipoint Distribution Service (LMDS) to a microwave fee category. Thus, at present, LMDS services' regulatory fees are assessed based upon the Multipoint Distribution Service (MDS) category. However, while evaluating these requests it has become clear that product innovation, evolving service offerings, and further technological developments may be creating changes in these services such that reclassification—of some sort—might be appropriate. MDS and LMDS are licensed in different spectrum bands.[7]

Mobile Radio Service (CMRS) Cellular/Mobile and CMRS Messaging), a per unit fee (such as for International Bearer Circuits), or a fee factor per revenue dollar (Interstate Telecommunications Service Provider fee).

[4] *Assessment and Collection of Regulatory Fees for Fiscal Year 1998* (63 FR 35847), paragraph 37, (July 1, 1998).

[5] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001, Report and Order*, 16 FCC Rcd 13525, 13532 (2001).

[6] *See Assessment and Collection of Regulatory Fees for Fiscal Year 2001, Memorandum Opinion and Order*, MD Dkt. No. 01–76, FCC 02–320, paragraphs 1, 6 (rel. Dec. 4, 2002).

[7] The majority of MDS operations is located in the 190 megahertz in the 2500–2690 MHz band. FCC Staff Releases Its Interim Report on Spectrum Study of the 2500–2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems, Public Notice, DA 00–2583, 5 FCC Rcd 22310 (2000). A large deployment of LMDS has occurred in the frequencies at 17.7–20.2 GHz and 27.5–30 GHz (28 GHz band). See Biennial Review 2000 Staff Report Released, Public Notice, FCC 00–346 (Sept. 19, 2000).

MDS is located below 3 GHz while LMDS is in the higher microwave frequencies. Accordingly, we request comment on how LMDS should be categorized for regulatory fee purposes. We note that in a separate proceeding, we have sought comment on possible long-term modification of our regulatory fees for MDS in conjunction with proposed major changes to our MDS rules to facilitate use of the 2500–2690 MHz band for mobile and advanced services.[8]

7. Those who argue for such a reclassification of LMDS for regulatory fee purposes have pointed out other differences between MDS and LMDS, such as individually licensed station hub sites (MDS) versus geographically based licenses (LMDS), differing markets, and different financial/investment requirements. Proponents of moving LMDS to another category also note the differences in the spectrum propagation characteristics of MDS and LMDS—with LMDS having more propagation limitations.

8. Those opposing such a re-classification of LMDS for regulatory fee purposes note that there are many similarities between the services of LMDS and MDS, including that they both provide high speed voice and data services. They also point out that past arguments for making a change have only come forward after the Commission has issued its final annual fee assessments.

9. The Commission's denial of the past requests to move LMDS to a microwave fee category—or any other category—has not been based on rejection or acceptance of either set of arguments, but simply the fact that insufficient evidence has been provided. Thus, the NPRM asks for public comment on how LMDS should be categorized for regulatory fee purposes, including whether an entirely new fee category should be established just for LMDS, in order to build a complete record on whether LMDS is properly classified within its current fee category of "Multipoint Distribution."[9] We also seek comment on whether LMDS should be classified in the same manner as other point-to-point fixed microwave services, or on the basis of other geographically licensed services.

iv. Adjustment of Fee Waiver Policies

10. Section 9 of the Communications Act (47 U.S.C. 159) requires the Commission to assess and collect regulatory fees to cover the costs of certain regulatory activities. The statute also specifies when these fees may be waived.[10] Additionally, Section 8 of the Communications Act (47 U.S.C. 158) requires the Commission to collect application fees to reimburse the United States for amounts appropriated to the Commission (*see* 47 U.S.C. 158(e)). These fees may also be waived.[11] The Commission clarified the general policies applicable to waivers, including those based on financial hardship, in *Implementation of Section 9 of the Communications Act*[12], that "We will grant waivers of the fees on a sufficient showing of financial hardship."[13] We further stated that: "It will be incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public."[14] Additionally, we explained that "Evidence of bankruptcy or receivership is sufficient to establish financial hardship * * *. Thus, we will waive the regulatory fees for licensees whose stations are bankrupt, undergoing Chapter 11 reorganizations or in receivership."[15,16]

11. Although fee waivers will generally be given in cases of financial hardship, we nevertheless note that even under our current policies, in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions. A policy of automatically granting a waiver, in the case of large entities owing millions of dollars in fees, for example, might have significant impact on the Commission's overall ability to collect fees to reimburse the government for its costs as required by law. Therefore, under such circumstances a waiver may well not promote the public interest, as provided in sections 8(d)(2) and 9(d). We therefore emphasize that under the statutory waiver provisions, case-by-case review of fee waiver requests is necessary to determine the public interest, even in bankruptcy cases.

12. We also seek comment on whether we should set a cap on the amount of fees that we will generally waive in circumstances involving bankruptcy or otherwise. Fees owed above this cap would, of course, be subject to the provisions of the Bankruptcy Act (11 U.S.C. 101 *et seq.*) and the disposition of the relevant bankruptcy court. By leaving the ultimate disposition of these large fees to bankruptcy law, rather than waiving them, we believe that we would be giving appropriate weight to our congressionally-mandated obligation to collect regulatory and other fees. Moreover, we believe that we would also be giving due regard to our practice, approved by the courts, of reconciling our regulatory responsibilities with the goals of the Bankruptcy Act.[17] In the case of regulatees alleging financial hardship but not in bankruptcy, we would consider waiver, partial waiver or deferral of fees above the cap on a case-by-case basis. We tentatively propose that the cap be set at either $500,000 or $1 million, reviewed annually. In computing the proposed cap, all of the subsidiaries and other

[8] *See* Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands; Part 1 of the Commission's Rules—Further Competitive Bidding Procedures; Amendment of parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service Amendment of parts 21 and 74 to Engage in Fixed Two-Way Transmissions; Amendment of parts 21 and 74 of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico; WT Docket Nos. 02–68; 03–66; 03–67; MM Docket No. 97–217; *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, FCC 03–56 (released April 2, 2003).

[9] Effective March 25, 2002, the Commission transferred regulatory functions for Instructional Fixed Service, Multipoint Distribution Service, and the Multichannel Multipoint Distribution Service, from the Mass Media Bureau to the Wireless Telecommunications Bureau (*See* 47 CFR section 1.1153). The Commission intends to modify its rules on annual regulatory fees to reflect the fact that these services are now regulated by the Wireless Telecommunications Bureau.

[10] Section 9(d) (47 U.S.C. 159(d)) provides that: "The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest." *See also* 47 CFR section 1.1166 (implementing statutory provision).

[11] Section 8(d)(2) (47 U.S.C. 158(d)(2)) provides that: "The Commission may waive or defer [payment of an application fee] in any specific instance for good cause shown, where such action would promote the public interest." *See also* 47 CFR section 1.1117 (implementing statutory provision).

[12] We held generally that we would waive regulatory fees on a case-by-case basis upon a demonstration of: "'extraordinary and compelling circumstances' outweighing the public interest in recouping the cost of the Commission's regulatory services from a particular regulatee." 9 FCC Rcd at 5344, paragraph 29. *See also* 9 FCC Rcd 5333 (1994), *recon. granted*, 10 FCC Rcd 12759 (1995)

[13] 10 FCC Rcd at 12761, paragraph 13.

[14] *Id.* at 12762, paragraph 13.

[15] *Id.* at 12762, paragraph 14.

[16] *See also Mobilemedia Corp.*, 14 FCC Rcd 8017, 8027 paragraph 40 (1999) (applying this policy to Section 8 application fees).

[17] *See LaRose* v. *FCC*, 494 F.2d 1145 (D.C. Cir. 1974).

entities with an attributable interest in a particular regulatee would be aggregated. We invite comment on the above proposal and on alternative proposals. Commenters should address whether numerical or other caps should be applied to the waiver of Section 8 or Section 9 fees, the appropriate level at which the cap should be set, and how the level of a cap might be adjusted over time.

v. Procedural Changes

13. In an effort to streamline the regulatory fee process, the Commission is undertaking several initiatives that will make the process of collecting fees more efficient. Historically, in addition to providing official notice of regulatory fee assessments in the **Federal Register**, the Commission mails tens of thousands of public notices to licensees and regulatees, informing them of when regulatory fees are due and providing them the information necessary for them to calculate the amount they owe. This mailing process is very costly and inefficient. Because of the wide availability of the Internet, the Commission is proposing to discontinue mailing public notices. Instead, these notices, and all other pertinent information, will be posted on the FCC's Web site (*http://www.fcc.gov/fees*). Hard copies of public notices and other relevant materials will be mailed upon request. Official notice of regulatory fee assessments will continue to be published in the **Federal Register**.

14. Further, the Commission is also undertaking a pilot program to mail postcards specifically stating the amount owed (*i.e.*, to send a "bill" on a postcard) to a select group of media services.[18] The postcards will identify the station call sign, address, facility identification number or other identifier, and amount owed. The regulatee will then have the opportunity to correct any mistakes or, if there are no mistakes, simply submit the amount owed instead of having to calculate the unit's fee based upon information found in Public Notices. If successful, the Commission will consider expanding this method to other service categories.

15. With the exception of the changes noted in the preceding sections, the FY 2003 regulatory fee collection will follow the policies or procedures found in the *FY 2002 Order* (67 FR 46297).

[18] AM and FM Radio Stations, AM and FM Construction Permits, FM Translators/Boosters, VHF and UHF Television Stations, VHF and UHF Television Construction Permits, Satellite Television Stations, Satellite Television Construction Permits, Low Power Television (LPTV) Stations, and LPTV Translators/Boosters.

vi. Future Streamlining of the Regulatory Fee Assessment and Collection Process

16. We are beginning a multi-year effort to review, streamline and modernize our fee assessment and collection processes and procedures. We welcome comments on a broad range of options in this regard. Areas of particular interest include: (1) The process for notifying users about changes in the annual regulatory fee schedule and how it can be improved; (2) the most effective way to disseminate regulatory fee bills, *i.e.* through surface mail, email, or some other mechanism; (3) the fee payment process, including how the agency's electronic payment system can be improved and whether we should make electronic payment mandatory for fees over a certain level; and (4) the timing of fee payments, including whether we should alter the existing fee payment "window" in any way. Commenters should bear in mind that proposed improvements must comport with the provisions of Section 9 of the Communications Act of 1934, as amended (47 U.S.C. 159). We anticipate taking action to implement improvements after the current regulatory fee cycle.

B. Procedures for Payment of Regulatory Fees

i. De minimis Fee Payment Liability

17. As in the past, the Commission is proposing that regulatees whose total regulatory fee liability, including all categories of fees for which payment is due by an entity, amounts to less than $10 will be exempted from fee payment in FY 2003.

ii. Standard Fee Calculations and Payment Dates

18. The time for payment of standard fees will be announced in the *Report and Order* terminating this proceeding and will be published in the **Federal Register** pursuant to authority delegated to the Managing Director. As in the past, the responsibility for payment of fees by service category is as follows:

(a) Media services—the responsibility for the payment of regulatory fees rests with the holder of the permit or license on October 1, 2002. However, in instances where a license or permit is transferred or assigned after October 1, 2002, responsibility for payment rests with the holder of the license or permit at the time payment is due.

(b) Wireline (Common Carrier) and Cable Services (fees are not based on a subscriber, unit, or circuit count)—fees must be paid for any authorization issued on or before October 1, 2002.

(c) Cable Subscriber Services and Commercial Mobile Radio Service (CMRS) cellular, mobile, and messaging services (fees based upon a subscriber, unit or circuit count)—the number of subscribers, units or circuits on December 31, 2002 will be used as the basis from which to calculate the fee payment.[19] For facilities-based common carriers with active international bearer circuits, the fee is based on the circuit count as of December 31, 2002.

19. The Commission strongly recommends that entities submitting more than twenty-five (25) Form 159–C's use the electronic fee filer program when sending in their regulatory fee payment. The Commission will, for the convenience of payers, accept fee payments made in advance of the normal formal window for the payment of regulatory fees.

C. Enforcement

20. As required in 47 U.S.C. 159(c), an additional charge shall be assessed as a penalty for late payment of any regulatory fee. A late payment penalty of 25 percent of the amount of the required regulatory fee will be assessed on the first day following the deadline date for filing of these fees. Failure to pay regulatory fees and/or any late penalty will subject regulatees to sanctions, including the provisions set forth in the Debt Collection Improvement Act of 1996 ("DCIA"). The Commission also assesses administrative processing charges on delinquent debts to recover additional costs incurred in processing and handling the related debt pursuant to the DCIA and section 1.1940(d) of the Commission's rules. These administrative processing charges will be assessed on any delinquent regulatory fee, in addition to the 25 percent late charge penalty. Partial underpayments of regulatory fees are treated in the following manner. The licensee will be given credit for the amount paid, but if it is later determined that the fee paid is incorrect or was submitted after the deadline date, the 25 percent late charge penalty will be assessed on the portion that is

[19] Cable system operators are to compute their subscribers as follows: Number of single family dwellings + number of individual households in multiple dwelling unit (apartments, condominiums, mobile home parks, etc.) paying at the basic subscriber rate + bulk rate customers + courtesy and free service. Note: Bulk-Rate Customers = Total annual bulk-rate charge divided by basic annual subscription rate for individual households. Cable system operators may base their count on "a typical day in the last full week" of December 2002, rather than on a count as of December 31, 2002.

submitted after the filing window. Failure to pay regulatory fees can result in the initiation of a proceeding to revoke any and all authorizations held by the delinquent payer.[20]

III. Procedural Matters

A. Comment Period and Procedures

21. Pursuant to 47 CFR section 1.415, 1.419, interested parties may file comments on or before April 25, 2003, and reply comments on or before May 5, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.[21]

22. Comments filed through the ECFS are sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address.>" A sample form and directions will be sent in reply.

23. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be hand delivered, sent by commercial overnight courier, or mailed through the U.S. Postal Service (please note that the Commission continues to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered paper filings at 236 Massachusetts Avenue, NE., Suite 110, Washington DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene Dortch, Office of the Secretary, Federal Communications Commission.

[20] See 47 CFR 1.1164.

[21] *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

24. Parties who choose to file by paper must also submit their comments on diskette. Two copies of the diskettes must be submitted. One copy is to be sent to Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The other copy is to be sent to Office of Managing Director, Federal Communications Commission, 445 12th Street, SW., 1–C848, Washington, DC 20554. These submissions must be in a Microsoft Windows ™-compatible format on a 3.5" floppy diskette. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number MD Docket No. 03–83), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file.

25. The public may view the documents filed in this proceeding during regular business hours in the FCC Reference Center, Federal Communications Commission, Room CY–A257, 445 12th Street, SW., Washington, DC 20554, and through the Commission's Electronic Comment Filing System (ECFS) *http://www.gullfoss2.fcc.gov/prod/ecfs/comsrch_v2.cgi*. Those seeking materials in alternative formats (computer diskette, large print, audio recording, and Braille) should contact Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or *bmillin@fcc.gov*.

B. Ex Parte Rules

26. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's rules.[22]

C. Initial Regulatory Flexibility Analysis

27. As required by the Regulatory Flexibility Act,[23] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the proposals suggested in this document. The IRFA is set forth as Attachment A. Written public comments are requested with respect to the IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of the NPRM, and must have a separate and distinct heading, designating the comments as responses to the IRFA. The Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

[22] 47 CFR 1.1203 and 1.1206(b).

[23] See 5 U.S.C. 603.

D. Authority and Further Information

28. Authority for this proceeding is contained in sections 4(i) and (j), 8, 9, and 303(r) of the Communications Act of 1934, as amended. It is ordered that this NPRM is adopted.[24] It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

29. Further information about this proceeding may be obtained by contacting the Fees Hotline at (888) 225–5322.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Attachment A

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA),[25] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules in the present *Notice of Proposed Rulemaking, In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2003*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the IRFA provided in paragraph 20. The Commission will send a copy of the *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[26] In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.[27]

I. Need for, and Objectives of, the Proposed Rules

2. This rulemaking proceeding is initiated to obtain comments concerning the Commission's proposed amendment of its Schedule of Regulatory Fees in the amount of $269,000,000, the amount that Congress has required the Commission to recover. The Commission seeks to collect the necessary amount through its proposed Schedule of Regulatory Fees in the most efficient manner possible and without undue public burden.

[24] 47 U.S.C. 154(i)–(j), 159, & 303(r).

[25] 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[26] 5 U.S.C. 603(a).

[27] *Id.*

II. Legal Basis

3. This action, including publication of proposed rules, is authorized under sections (4)(i) and (j), 9, and 303(r) of the Communications Act of 1934, as amended.[28]

III. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[29] The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[30] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[31] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[32] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[33] Nationwide, as of 1992, there were approximately 275,801 small organizations.[34] "Small governmental jurisdiction"[35] generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[36] As of 1992, there were approximately 85,006 governmental entities in the United States.[37] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.[38] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Below, we further describe and estimate the number of small entity licensees and regulatees that may be affected by these rules.

Cable Services or Systems

5. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in revenue annually.[39] This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,788 total cable and other pay television services and 1,423 had less than $11 million in revenue.[40]

6. The Commission has developed its own definition of a small cable system operator for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.[41] Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable system operators at the end of 1995.[42] Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators.

7. The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000."[43] The Commission has determined that there are 67,500,000 subscribers in the United States.[44] Therefore, we estimate that an operator serving fewer than 675,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate.[45] Based on available data, we estimate that the number of cable operators serving 675,000 subscribers or less totals 1,450.[46] We do not request nor collect information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000,[47] and therefore are unable at this time to estimate more accurately the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

8. *Other Pay Services.* Other pay television services are also classified under the North American Industry Classification System (NAICS) codes 51321 and 51322, which includes cable systems operators, closed circuit television services, direct broadcast satellite services (DBS),[48] multipoint distribution systems (MDS),[49] satellite master antenna systems (SMATV), and subscription television services.

Wireline Competition Services and Related Entities

9. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Provider Locator* report, which encompasses data compiled from FCC Form 499–A Telecommunications Reporting Worksheets.[50] According to data in the most recent report, there are 5,679 interstate service providers.[51] These providers include, *inter alia*, incumbent local exchange carriers, competitive access providers (CAPS)/ competitive local exchange carriers (CLECs), local resellers and other local exchange carriers, interexchange carriers, operator service providers, prepaid calling card providers, toll resellers, and other toll carriers.

10. We have included small incumbent local exchange carriers (LECs)[52] in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation."[53] The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope.[54] We have therefore included small incumbent LECs in this IRFA analysis, although we emphasize that this IRFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

11. *Total Number of Telephone Companies Affected.* The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year.[55] This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated."[56] It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by these revised rules.

12. *Wireline Carriers and Service Providers.* The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that there were 2,321 such telephone companies in operation for at least one year at the end of 1992.[57] According to the SBA's definition, a small business telephone company other than a radiotelephone (wireless) company is one employing no more than 1,500 persons.[58] All but 26 of the 2,321 non-radiotelephone (wireless) companies listed by the Census Bureau were reported to have fewer than 1,000 employees. Even if all 26 of the remaining companies had more than 1,500 employees, there would still be 2,295 non-radiotelephone (wireless) companies that might qualify as small entities or small incumbent LECs. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Therefore, we estimate that fewer than 2,295 small telephone communications companies other than radiotelephone (wireless) companies are small entities or small incumbent LECs that may be affected by these revised rules.

13. *Local Exchange Carriers (LECS), Competitive Access Providers (CAPs), Interexchange Carriers (IXCs), Operator Service Providers (OSPs), Payphone Providers, and Resellers.* Neither the Commission nor the SBA has developed a definition for small LECs, competitive access providers (CAPs), interexchange carriers (IXCs), operator service providers (OSPs), payphone providers, or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies.[59] The most reliable source of information that we know regarding the number of these carriers nationwide appears to be the data that we collect annually in connection with the FCC 499–A Telecommunications Reporting Worksheets.[60] According to our most recent data, there are 1,329 incumbent and other LECs, 532 CAPs and competitive local exchange carriers (CLECs), 229 IXCs, 22 OSPs, 936 payphone providers, 32 prepaid calling card providers, 38 other toll carriers, and 710 local and toll resellers.[61] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under the SBA's definition. Therefore, we estimate that there are fewer than 1,329 small entity incumbent and other LECs, 532 CAPs/ CLECs, 229 IXCs, 22 OSPs, 936 payphone providers, and 710 local and toll resellers, 32 prepaid calling card providers, and 38 other toll carriers that may be affected by the revised rules.

International Services

14. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[62] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[63] According to the Census Bureau, there were a total of 848 communications services providers, NEC, in operation in 1992, and a total of 775 had annual receipts of less than $10.0 million.[64] The Census report does not provide more precise data.

15. *International Broadcast Stations.* Commission records show that there are approximately 19 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. However, the Commission estimates that only six international high frequency broadcast stations are subject to regulatory fee payments.

16. *International Public Fixed Radio (Public and Control Stations).* There is one licensee in this service subject to payment of regulatory fees, and the licensee does not constitute a small business under the SBA definition.

17. *Fixed Satellite Transmit/Receive Earth Stations.* There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

18. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are approximately 4,303 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/ Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

19. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 485 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

20. *Mobile Satellite Earth Stations.* There are 21 licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

21. *Radio Determination Satellite Earth Stations.* There are four licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

22. *Space Stations (Geostationary).* There are presently an estimated 75 Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

23. *Space Stations (Non-Geostationary).* There are presently seven Non-Geostationary Space Station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of non-geostationary space stations

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[28] 47 U.S.C. 154(i) and (j), 159, and 303(r).

[29] 5 U.S.C. 603(b)(3).

[30] 5 U.S.C. 601(6).

[31] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[32] Small Business Act, 15 U.S.C. 632 (1996).

[33] 5 U.S.C. 601(4).

[34] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[35] 47 CFR 1.1162.

[36] 5 U.S.C. 601(5).

[37] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[38] *Id.*

[39] 13 CFR 121.201, North American Industry Classification System (NAICS) codes 51321 and 51322.

[40] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 51321 and 51322 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[41] 47 CFR 76.901(e). The Commission developed this definition based on its determination that a small cable system operator is one with annual revenues of $100 million or less. *Implementation of Sections of the 1992 Cable Act: Rate Regulation, Sixth Report and Order and Eleventh Order on Reconsideration*, 10 FCC Rcd 7393 (1995), 60 FR 10534 (Feb. 27, 1995).

[42] Paul Kagan Associates, Inc., *Cable TV Investor*, Feb. 29, 1996 (based on figures for Dec. 30, 1995).

[43] 47 U.S.C. 543(m)(2).

[44] Media Services (Cable Division) estimate.

[45] *Id.* 47 CFR 76.1403(b).

[46] *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, Public Notice, DA–01–0158 (released January 24, 2001).

[47] We do receive such information on a case-by-case basis only if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.1403(b) of the Commission's rules. *See* 47 CFR 76.1403(d).

[48] Direct Broadcast Services (DBS) are discussed with the international services, *infra*.

[49] Multipoint Distribution Services (MDS) are discussed with the mass media services, *infra*.

[50] FCC, Common Carrier Bureau, Industry Analysis Division, *Telecommunications Provider Locator*, Table 1 (November 2001).

[51] FCC, *Telecommunications Provider Locator* at Table 1.

[52] *See* 47 U.S.C 251(h) (defining "incumbent local exchange carrier").

[53] 5 U.S.C. 601(3).

[54] Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket, 96–98, First Report and Order, 11 FCC Rcd 15499, 16144–45 (1996), 61 FR 45476 (Aug. 29, 1996).

[55] U.S. Department of Commerce, Bureau of the Census, *1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size*, at Firm Size 1–123 (1995) (*1992 Census*).

[56] *See generally* 15 U.S.C. 632(a)(1).

[57] *1992 Census, supra*, at Firm Size 1–123.

[58] 13 CFR 121.201, NAICS codes 51331, 51333, and 51334.

[59] 13 CFR 121.201, NAICS codes 51331, 51333, and 51334.

[60] *See Telecommunications Provider Locator* at Table 1.

[61] *Telecommunications Provider Locator* at Table 1. The total for resellers includes both toll resellers and local resellers.

[62] An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

[63] 13 CFR 121.201, NAICS codes 48531, 513322, 51334, and 51339.

[64] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

that would constitute a small business under the SBA definition.

24. *Direct Broadcast Satellites.* Because DBS provides subscription services, DBS falls within the SBA-recognized definition of "Cable and Other Pay Television Services."[65] This definition provides that a small entity is one with $11.0 million or less in annual receipts.[66] Currently, there are nine DBS authorizations, though there are only two DBS companies in operation at this time. We do not request nor collect annual revenue information for DBS services, and are unable to determine the number of DBS operators that would constitute a small business under the SBA definition.

Media Services

25. *Commercial Radio and Television Services.* The proposed rules and policies will apply to television broadcasting licensees and radio broadcasting licensees.[67] The SBA defines a television broadcasting station that has $10.5 million or less in annual receipts as a small business.[68] Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services.[69] Included in this industry are commercial, religious, educational, and other television stations.[70] Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.[71] Separate establishments primarily engaged in producing taped television program materials are classified under another NAICS number.[72] There were 1,509 television stations operating in the nation in 1992.[73] That number has remained fairly constant as indicated by the approximately 1,714 operating television broadcasting stations in the nation as of September 30, 2002.[74] For 1992,[75] the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments.[76] Only commercial stations are subject to regulatory fees.

26. Additionally, the SBA defines a radio broadcasting station that has $5 million or less in annual receipts as a small business.[77] A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public.[78] Included in this industry are commercial, religious, educational, and other radio stations.[79] Radio broadcasting stations, which primarily are engaged in radio broadcasting and which produce radio program materials, are similarly included.[80] However, radio stations which are separate establishments and are primarily engaged in producing radio program material are classified under another NAICS number.[81] The 1992 Census indicates that 96 percent (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992.[82] Official Commission records indicate that a total of 11,334 individual radio stations were operating in 1992.[83] As of September 30, 2002, Commission records indicate that a total of 13,296 radio stations were operating, of which 8,492 were FM stations.[84] Only commercial stations are subject to regulatory fees.

27. The rules may affect an estimated total of 1,714 television stations, approximately 1,320 of which are considered small businesses.[85] The revised rules will also affect an estimated total of 13,296 radio stations, approximately 12,764 of which are small businesses.[86] These estimates may overstate the number of small entities because the revenue figures on which they are based do not include or aggregate revenues from non-television or non-radio affiliated companies. There are also 2,127 low power television stations (LPTV).[87] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA definition.

28. *Auxiliary, Special Broadcast and Other Program Distribution Services.* This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. The applicable definitions of small entities are those, noted previously, under the SBA rules applicable to radio broadcasting stations and television broadcasting stations.[88]

29. The Commission estimates that there are approximately 3,790 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these auxiliary broadcast facilities. We believe that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business ($5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[89]

30. *Multipoint Distribution Service (MDS).* This service has historically provided primarily point-to-multipoint and one-way video services to subscribers.[90] The Commission recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.[91] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[92] The Commission established this small business definition in the context of this particular service and with the approval of the SBA.[93] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[94] Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.[95] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. Some of those 440 small business licensees may be affected by these revised rules.

Wireless and Commercial Mobile Services

31. *Cellular Licensees.* Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.[96] According to the Census Bureau, only twelve radiotelephone (wireless) firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[97] Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,780 cellular licenses; however, a cellular licensee may own several licenses. According to the November 2001 *Telecommunications Provider Locater*, 858 wireless telephony providers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS) services, and SMR telephony carriers, which are placed together in the data.[98] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 858 small wireless service providers that may be affected by these revised rules.

32. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,000 such non-nationwide licensees and four nationwide licensees currently authorized to use the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone (wireless) Communications companies. This definition provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.[99] According to the Census Bureau, only 12 radiotelephone (wireless) firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[100] If this general ratio continues in 2002 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

33. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order*, we adopted criteria for defining small and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[101] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years.[102] The SBA has approved these definitions.[103] To date, three Phase II 220 MHz auctions have been conducted. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three Nationwide (NWA) licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold.[104] Thirty-nine companies claiming small or very small businesses status won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Of the 225 licenses auctioned, 222 were sold.[105] Fourteen companies claiming small or very small business status won 158 licenses. The third auction included four licenses; two EA licenses and two EAG licenses.[106] No company claiming small or very small business status won licenses in the third auction.

34. *700 MHz Guard Band Licenses.* In the *700 MHz Guard Band Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[107] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 104 licenses (two in each of the 52 Major Economic Areas (MEAs)) commenced on September 6, 2000, and closed on September 21, 2000.[108] Of the 104 licenses auctioned, 96 licenses were sold to nine winning bidders. Five of the winning bidders claimed small or very small business status and won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001.[109] All eight of the licenses auctioned were sold to three winning bidders. One of the winning bidders

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[65] 13 CFR 121.201, NAICS codes 51321 and 51322.

[66] *Id.*

[67] While we tentatively believe that the SBA's definition of "small business" greatly overstates the number of radio and television broadcast stations that are small businesses and is not suitable for purposes of determining the impact of the proposals on small television and radio stations, for purposes of this *Report and Order* we utilize the SBA's definition in determining the number of small businesses to which the proposed rules would apply. We reserve the right to adopt, in the future, a more suitable definition of "small business" as applied to radio and television broadcast stations or other entities subject to the proposed rules in this *Report and Order*, and to consider further the issue of the number of small entities that are radio and television broadcasters or other small media entities. *See Report and Order in MM Docket No. 93–48 (Children's Television Programming)*, 11 FCC Rcd 10660, 10737–38 (1996), 61 FR 43981 (Aug. 27, 1996), *citing* 5 U.S.C. 601(3).

[68] 13 CFR 121.201, NAICS code 51312.

[69] Economics and Statistics Administration, Bureau of Census, U.S. Department of Commerce, *1992 Census of Transportation, Communications and Utilities, Establishment and Firm Size, Series UC92–S–1*, Appendix A–9 (1995) (*1992 Census, Series UC92–S–1*).

[70] *Id.*; *see* Executive Office of the President, Office of Management and Budget, *Standard Industrial Classification Manual* (1987), at 283, which describes "Television Broadcasting Stations" (SIC code 4833, now NAICS code 51312) as:

> Establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational and other television stations. Also included here are establishments primarily engaged in television broadcasting and which produce taped television program materials.

[71] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[72] *Id.*, NAICS code 51211 (Motion Picture and Video Tape Production); NAICS 51229 (Theatrical Producers and Miscellaneous Theatrical Services) (producers of live radio and television programs).

[73] FCC News Release No. 31327 (January 13, 1993); *1992 Census, Series UC92–S–1*, at Appendix A–9.

[74] FCC News Release, "Broadcast Station Totals as of September 30, 2002."

[75] A census to determine the estimated number of Communications establishments is performed every five years, in years ending with a "2" or "7." See *1992 Census, Series UC92–S–1*, at III.

[76] The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information.

[77] 13 CFR 121.201, NAICS codes 513111 and 513112.

[78] *1992 Census, Series UC92–S–1*, at Appendix A–9.

[79] *Id.*

[80] *Id.*

[81] *Id.*

[82] The Census Bureau counts radio stations located at the same facility as one establishment. Therefore, each co-located AM/FM combination counts as one establishment.

[83] FCC News Release, No. 31327 (Jan. 13, 1993).

[84] FCC News Release, "Broadcast Station Totals as of September 30, 2002."

[85] We use an estimated figure of 77 percent (from 1992) of TV stations operating at less than $10 million and apply it to the 2003 total of 1,714 TV stations to arrive at 1,320 stations categorized as small businesses.

[86] We use the 96% figure of radio station establishments with less than $5 million revenue from data presented in the year 2003 estimate (*FCC News Release*, September 30, 2002) and apply it to the 13,296 individual station count to arrive at 12,764 individual stations as small businesses.

[87] FCC News Release, "Broadcast Station Totals as of September 30, 2002."

[88] 13 CFR 121.201, NAICS codes 513111 and 513112.

[89] 15 U.S.C. 632.

[90] For purposes of this item, MDS includes single channel Multipoint Distribution Service (MDS), Local Multipoint Distribution Service (LMDS), and the Multichannel Multipoint Distribution Service (MMDS). *See* 66 FR 36177.

[91] *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000).

[92] 47 CFR 21.961 and 1.2110.

[93] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 10 FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

[94] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See id.* At 9608.

[95] 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of Section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of $11 million or less). *See* 13 CFR 121.201.

[96] 13 CFR 121.201, NAICS code 513322.

[97] *1992 Census, Series UC92–S–1*, at Table 5, NAICS code 513322.

[98] *Telecommunications Provider Locater*, Table 1 (November 2001).

[99] 13 CFR 121.201, NAICS code 513322.

[100] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92-S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, NAICS codes 513321, 513322, and 51333.

[101] 220 MHz *Third Report and Order*, 12 FCC Rcd 10943, 11068–70, at paragraphs 291–295 (1997).

[102] Id at paragraph 291.

[103] *See* Letter to D. Phython, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

[104] Phase II 220 MHz Service Auction Closes", Public Notice, 14 FCC Rcd 605 (1998).

[105] "Phase II 220 MHz Service Spectrum Auction Closes", Public Notice, 14 FCC Rcd 11218 (1999).

[106] "Multiple Radio Service Auction Closes", Public Notice, 17 FCC Rcd 1446 (2002).

[107] *See* Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99–168, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

[108] *See generally* Public Notice, "700 MHz Guard Bands Auction Closes," 15 FCC Rcd 18026 (2000).

[109] "700 MHz Guard Bands Auction Closes", Public Notice 16 FCC Rcd 4590 (2001).

claimed status as a small business and won a total of two licenses.

35. *Private and Common Carrier Paging.* We adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[110] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these definitions.[111] An auction of Metropolitan Economic Area (MEA) licenses commenced on February 24, 2000, and closed on March 2, 2000.[112] Of the 985 licenses auctioned, 440 were sold to 57 companies claiming status as a small or very small business. A second auction commenced on October 30, 2001 and closed on December 5, 2001.[113] One hundred, thirty-two entities claiming small or very small business status won a total of 3,724 licenses. At present, there are approximately 4,500 Private-Paging site-specific licenses and 5,100 Common Carrier Paging site-specific licenses. According to the most recent data in the *Telecommunications Provider Locator*, 608 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[114] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 608 small paging carriers that may be affected by these revised rules. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

36. *Broadband Personal Communications Service (PCS).* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[115] For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[116] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by the SBA.[117] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. An auction for C-Block licenses commenced on December 18, 1995 and ended on May 6, 1996.[118] There were 89 winning bidders that won a total of 493 licenses and that claimed status as a small business in the Block C auction. A second C-Block Auction commenced on July 3, 1996 and ended on July 16, 1996.[119] An auction for the D and F Blocks commenced on August 16, 1996 and ended on January 14, 1997.[120] A total of 93 winning bidders that won a total of 598 licenses claimed small or very small business status in the D, E, and F Block auction. A re-auction of 347 C, D, E, and F Block licenses commenced on March 23, 1999 and ended on April 15, 1999.[121] There were 48 winning bidders that won a total of 277 licenses and that claimed status as a small or very small business. An auction of 422 C and F Broadband PCS licenses commenced on December 12, 2000 and ended on January 26, 2001.[122] Of the 35 winning bidders in this auction, 29 claimed status as a small or very small business and won a total of 248 licenses.

37. *Narrowband PCS.* To date, three narrowband PCS auctions have been conducted. Through these auctions, 358 licenses were sold to winning bidders. Twelve entities claiming small or very small business status were the winning bidders for 322 licenses. To ensure meaningful participation of small business entities in the auctions, the Commission adopted a two-tiered definition of small businesses in the *Narrowband PCS Second Report and Order*.[123] A small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A very small business is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. These definitions have been approved by the SBA.[124]

38. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[125] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[126] We will use the SBA's definition applicable to radiotelephone (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons.[127] There are approximately 640 licensees in the Rural Radiotelephone Service, and we estimate that almost all of the licenses that are authorized in the Rural Radio Service qualify as small entities under the SBA's definition.

39. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[128] We will use the SBA's definition applicable to radiotelephone (wireless) companies, *i.e.*, an entity employing no more than 1,500 persons.[129] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of the licenses authorized in the Air-Ground Radiotelephone Service qualify as small entities under the SBA's definition.

40. *Specialized Mobile Radio (SMR).* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" in two tiers (for purposes of auctioning 800 MHz and 900 MHz SMR licenses) as a firm that has average annual gross revenues of either $3 million or $15 million or less in the three preceding calendar years.[130] The SBA has approved this small business size standard for the 800 MHz and 900 MHz SMR services.[131] An auction for 900 MHz SMR licenses commenced on December 5, 1995 and closed on April 15, 1996.[132] Sixty winning bidders that won a total of 263 licenses in the 900 MHz SMR band claimed status as a small business. An auction for 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997 and was completed on December 8,

[110] "Revisions of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems", *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030 (1999).

[111] *Id.*

[112] "929–931 MHz Paging Auction Closes", Public Notice, 15 FCC Rcd 4858 (2000).

[113] "Lower and Upper Band Auction Closes", Public Notice, 16 FCC Rcd 21821 (2001).

[114] *See Telecommunications Provider Locater* at Table 1 (November 2001).

[115] *See* Amendment of Parts 20 and 24 of the Commission's rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, *Report and Order*, FCC 96–278, WT Docket No. 96–59 Section 60 (released June 24, 1996, 61 FR 33859 (July 1, 1996).

[116] *Id.*

[117] *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 9 FCC Rcd 5532, 5581–84 (1994).

[118] "Entrepreneurs" C-Block Auction Closes", Public Notice, DA 96–716 (released on May 8, 1996).

[119] "Entrepreneurs" C-Block Reauction Closes", Public Notice, DA 96–1153 (released on July 17, 1996).

[120] "D, E and F Block Auction Closes, DA 97–81 (released January 15, 1997).

[121] "C, D, E, and F Block Broadband PCS License Auction Closes: Winning Bidders of 302 Licenses Announced", Public Notice, DA 99–757 (released April 20, 1999).

[122] "C and F Block PCS Auction Closes", Public Notice, 16 FCC Rcd 2339 (2001).

[123] In the Matter of Amendment of the Commission's rules to Establish New Personal Communications Services, Narrowband PCS, Docket No. ET 92–100, Docket No. PP 93–253, *Second Report and Order and Second Further Notice of Proposed Rulemaking*, 65 FR 35875 (June 6, 2000).

[124] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

[125] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[126] BETRS is defined in section 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757 and 22.759.

[127] 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

[128] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[129] 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

[130] 47 CFR 90.814(b)(1).

[131] *See* Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (August 10, 1999).

[132] "FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provider 900 MHz SMR in Major Trading Areas", Public Notice, DA 96–586 (released April 15, 1996).

1997.[133] Ten winning bidders that won a total of 38 licenses in the upper 200 channels in the 800 MHz SMR band claimed status as a small business. An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000.[134] Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders that won a total of 108 licenses in the General Category channels in the 800 MHz SMR band claimed status as a small business. A second auction for the 800 MHz General Category channels, for which 23 licenses were sold, was completed on January 17, 2002.[135] One winning bidder that won five licenses claimed status as a small business. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold.[136] Nineteen winning bidders that won a total of 129 licenses claimed status as a small business. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band.

41. *Private Land Mobile Radio (PLMR).* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area.

42. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMRs[137] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the revised rules in this context could potentially impact every small business in the United States.

43. *Amateur Radio Service.* We estimate that 9,800 applicants will apply for vanity call signs in FY 2003. These licensees are presumed to be individuals, and therefore not small entities. All other amateur licensees are exempt from payment of regulatory fees.

44. *Aviation and Marine Radio Service.* Small businesses in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. The applicable definition of small entity is the definition under the SBA rules for radiotelephone (wireless) communications.[138]

45. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations and conclusions in this FRFA, we estimate that there may be at least 712,000 potential licensees which are individuals or are small entities, as that term is defined by the SBA. We estimate that only 10,200 will be subject to FY 2003 regulatory fees.

46. *Fixed Microwave Services.* Microwave services include common carrier,[139] private-operational fixed,[140] and broadcast auxiliary radio services.[141] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies—*i.e.*, an entity with no more than 1,500 persons.[142] We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies.

47. *Public Safety Radio Services.* Public Safety radio services include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.[143] There are a total of approximately 127,540 licensees within these services. Governmental entities[144] as well as private businesses comprise the licensees for these services. As indicated *supra* in paragraph four of this IRFA, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.[145] All licensees in this category are exempt from the payment of regulatory fees.

48. *Personal Radio Services.* Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[146] Since the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition; however, only GMRS licensees are subject to regulatory fees.

49. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal areas of states bordering the Gulf of Mexico.[147] There is presently one licensee in this service that holds 18 licenses. We are unable to estimate at this time whether the licensee would qualify as small under the SBA's definition

[133] "800 MHz SMR Auction Closes", Public Notice, DA 97–2583 (released December 9, 1997).

[134] "800 MHz SMR Specialized Mobile Radio (SMR) Service General Category (851–854 MHz) and Upper Band (861–865 MHz) Auction Closes", Public Notice, DA 00–2037 (released September 9, 2000).

[135] "Multi-Radio Service Auction Closes", Public Notice, DA 02–157 (released January 22, 2002).

[136] "800 MHz SMR Service Lower 80 Channels Auction Closes", Public Notice, DA 00–2752 (released October 23, 2000).

[137] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at paragraph 116.

[138] 13 CFR 121.201, NAICS codes 513321, 513322, and 51333.

[139] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[140] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[141] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. *See* 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[142] 13 CFR 121.201, NAICS codes 513321, 513322, 51333.

[143] With the exception of the special emergency service, these services are governed by Subpart B of part 90 of the Commission's rules, 47 CFR 90.15 through 90.27. The police service includes 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), telegraphy (code) and teletype and facsimile (printed material). The fire radio service includes 22,677 licensees comprised of private volunteer or professional fire companies as well as units under governmental control. The local government service that is presently comprised of 40,512 licensees that are state, county, or municipal entities that use the radio for official purposes not covered by other public safety services. There are 7,325 licensees within the forestry service which is comprised of licensees from state departments of conservation and private forest organizations who set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are licensed to highway maintenance service provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. The 1,460 licensees in the Emergency Medical Radio Service (EMRS) use the 39 channels allocated to this service for emergency medical service communications related to the delivery of emergency medical treatment. 47 CFR 90.15 through 90.27. The 19,478 licensees in the special emergency service include medical services, rescue organizations, veterinarians, handicapped persons, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities. 47 CFR 90.33 through 90.55.

[144] 47 CFR 1.1162.

[145] 5 U.S.C. 601(5).

[146] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by Subpart D, Subpart A, Subpart C, and Subpart B, respectively, of part 95 of the Commission's rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194.

[147] This service is governed by subpart I of part 22 of the Commission's rules. *See* 47 CFR 22.1001 through 22.1037.

for radiotelephone (wireless) communications.

50. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.[148] The FCC auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees affected includes these eight entities.

51. *39 GHz Service.* The Commission defined "small entity" for 39 GHz licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[149] An additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[150] These regulations defining "small entity" in the context of 39 GHz auctions have been approved by the SBA. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

52. *Local Multipoint Distribution Service.* The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[151] An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[152] These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA.[153] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 small business winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules.

53. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 595 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, we defined a small business as an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.[154] In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, we defined a small business as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years.[155] A very small business is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years.[156] We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum. Given the success of small businesses in the previous auction, and the above discussion regarding the prevalence of small businesses in the subscription television services and message communications industries, we assume for purposes of this IRFA that in future auctions, all of the licenses may be awarded to small businesses by these revised rules.

III. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements:

54. With certain exceptions, the Commission's Schedule of Regulatory Fees applies to all Commission licensees and regulatees. Most licensees will be required to count the number of licenses or call signs authorized, complete and submit an FCC Form 159 ("FCC Remittance Advice"), and pay a regulatory fee based on the number of licenses or call signs.[157] Interstate telephone service providers must compute their annual regulatory fee based on their interstate and international end-user revenue using information they already supply to the Commission in compliance with the Form 499–A, Telecommunications Reporting Worksheet, and they must complete and submit the FCC Form 159. Compliance with the fee schedule will require some licensees to tabulate the number of units (*e.g.*, cellular telephones, pagers, cable TV subscribers) they have in service, and complete and submit an FCC Form 159. Licensees ordinarily will keep a list of the number of units they have in service as part of their normal business practices. No additional outside professional skills are required to complete the FCC Form 159, and it can be completed by the employees responsible for an entity's business records.

55. Each licensee must submit the FCC Form 159 to the Commission's lockbox bank after computing the number of units subject to the fee. Licensees may also file electronically to minimize the burden of submitting multiple copies of the FCC Form 159. Applicants who pay small fees in advance and provide fee information as part of their application must use FCC Form 159.

56. Licensees and regulatees are advised that failure to submit the required regulatory fee in a timely manner will subject the licensee or regulatee to a late payment penalty of 25 percent in addition to the required fee.[158] If payment is not received, new or pending applications may be dismissed, and existing authorizations may be subject to rescission.[159] Further, in accordance with the Debt Collection Improvement Act of 1996, federal agencies may bar a person or entity from obtaining a federal loan or loan insurance guarantee if that person or entity fails to pay a delinquent debt owed to any federal agency.[160] Nonpayment of regulatory fees is a debt owed the United States pursuant to 31 U.S.C. 3711 *et seq.*, and the *Debt Collection Improvement Act of 1996*, Public Law 194–134. Appropriate enforcement measures as well as administrative and judicial remedies, may be exercised by the Commission. Debts owed to the Commission may result in a person or entity being denied a federal loan or loan guarantee pending before another federal agency until such obligations are paid.[161]

57. The Commission's rules currently provide for relief in exceptional circumstances. Persons or entities may request a waiver, reduction or deferment of payment of the regulatory fee.[162] However, timely submission of the required regulatory fee must accompany requests for waivers or reductions. This will avoid any late payment penalty if the request is denied. The fee will be refunded if the request is granted. In exceptional and compelling instances (where payment of the regulatory fee along with the waiver or reduction request could result in reduction of service to a community or other financial hardship to the licensee), the Commission will defer payment in response to a request filed with the appropriate supporting documentation.

IV. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

58. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. As described in section IV of this IRFA, *supra*, we have created procedures in which all fee-filing licensees and regulatees use a single form, FCC Form 159, and have described in plain language the general filing requirements. We have sought comment on other alternatives that might simplify our fee procedures or otherwise benefit small entities, while remaining consistent with our statutory responsibilities in this proceeding.

59. *The Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 2002*, Public Law 106–553, requires the Commission to revise its Schedule of Regulatory Fees in order to recover the amount of regulatory fees that Congress, pursuant to section 9(a) of the Communications Act, as amended, has required the Commission to collect for Fiscal Year (FY) 2003.[163] As noted, we seek comment on the proposed methodology for implementing these statutory requirements and any other potential impact of these proposals on small entities.

60. With the use of actual cost accounting data for computation of regulatory fees, we found that some fees which were very small in previous years would have increased dramatically and would have a disproportionate impact on smaller entities. The methodology we are adopting in this *Notice of Proposed Rulemaking* minimizes this impact by limiting the amount of increase and shifting costs to other services which, for the most part, are larger entities.

61. Several categories of licensees and regulatees are exempt from payment of regulatory fees. *See, e.g.*, footnote 157, *supra*.

V. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

62. None.

Attachment B

Sources of Payment Unit Estimates for FY 2003

In order to calculate individual service fees for FY 2003, we adjusted FY 2002 payment units for each service to more accurately reflect expected FY 2003 payment liabilities. We obtained our updated estimates through a variety of means. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections when available. We tried to obtain verification for these estimates from multiple sources and, in all cases, we compared FY 2003 estimates with actual FY 2002 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates because the impact of certain variables could not be estimated exactly. These include an unknown number of waivers and/or exemptions that may occur in FY 2003, as well as the number of actual licensees or station operators that may also fluctuate because of economic, technical or other reasons. Therefore, when we note that our estimated FY 2003 payment units are based on FY 2002 actual payment units, we do not necessarily mean that our FY 2003 projection is *exactly* the same number as in FY 2002. It means that we have either rounded the FY 2003 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, 218–219 MHz,[164] Marine (Ship & Coast), Aviation (Aircraft & Ground), GMRS, Amateur Vanity Call Signs, Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Mobile Services	Based on Wireless Telecommunications Bureau estimates.
CMRS Messaging Services	Based on Wireless Telecommunications Bureau estimates.
AM/FM Radio Stations	Based on estimates from Media Services Bureau estimates and actual FY 2002 payment units.
UHF/VHF Television Stations	Based on Media Services Bureau estimates and actual FY 2002 payment units.
AM/FM/TV Construction Permits	Based on Media Services Bureau estimates and actual FY 2002 payment units.
LPTV, Translators and Boosters	Based on actual FY 2002 payment units.
Auxiliaries	Based on FY 2002 payment units.
MDS/LMDS/MMDS	Based on Wireless Telecommunications Bureau estimates.
Cable Antenna Relay Service (CARS)	Based on Media Services Bureau (previously Cable Services Bureau) estimates.
Cable Television System Subscribers	Based on Media Services Bureau (previously Cable Services Bureau), industry estimates of subscribership, and FY 2002 payment units.
Interstate Telecommunication Service Providers	Based on actual FY 2002 interstate revenues reported on Telecommunications Reporting Worksheet, adjusted for FY 2003 revenue growth/decline for industry as estimated by the Wireline Competition Bureau.
Earth Stations	Based on actual FY 2002 payment estimates.
Space Stations (GSOs & NGSOs)	Based on International Bureau licensee data base estimates.
International Bearer Circuits	Based on International Bureau estimates.
International HF Broadcast Stations, International Public Fixed Radio Service.	Based on International Bureau estimates.

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[148] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

[149] *See* In the Matter of Amendment of the Commission's rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Band, *Report and Order*, 12 FCC Rcd 18600 (1997).

[150] *Id.*

[151] *See* Local Multipoint Distribution Service, *Second Report and Order*, 62 FR 23148, April 29, 1997.

[152] *Id.*

[153] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

[154] Implementation of section 309(j) of the Communications Act—Competitive Bidding, PP WT Docket No. 93–253, *Fourth Report and Order*, 59 FR 24947 (May 13, 1994).

[155] In the Matter of Amendment of Part 95 of the Commission's rules to Provide Regulatory Flexibility in the 218–219 MHz Service, WT Docket No. 98–169, *Report and Order and Memorandum Opinion and Order*, 64 FR 59656 (November 3, 1999).

[156] Amendment of Part 95 of the Commission's rules to Provide Regulatory Flexibility in the 218–219 MHz Service, Report and Order and Memorandum Opinion and Order, 64 FR 59656 (1999).

[157] The following categories are exempt from the Commission's Schedule of Regulatory Fees: Amateur radio licensees (except applicants for vanity call signs) and operators in other non-licensed services (*e.g.*, Personal Radio, part 15, ship and aircraft). Governments and non-profit (exempt under section 501(c) of the Internal Revenue Code) entities are exempt from payment of regulatory fees and need not submit payment. Non-commercial educational broadcast licensees are exempt from regulatory fees as are licensees of auxiliary broadcast services such as low power auxiliary stations, television auxiliary service stations, remote pickup stations and aural broadcast auxiliary stations where such licenses are used in conjunction with commonly owned non-commercial educational stations. Emergency Alert System licenses for auxiliary service facilities are also exempt as are instructional television fixed service licensees. Regulatory fees are automatically waived for the licensee of any translator station that: (1) Is not licensed to, in whole or in part, and does not have common ownership with, the licensee of a commercial broadcast station; (2) does not derive income from advertising; and (3) is dependent on subscriptions or contributions from members of the community served for support. Receive only earth station permittees are exempt from payment of regulatory fees. A regulatee will be relieved of its fee payment requirement if its total fee due, including all categories of fees for which payment is due by the entity, amounts to less than $10.

[158] 47 CFR 1.1164.

[159] 47 CFR 1.1164(c).

[160] Public Law 104–134, 110 Stat. 1321 (1996).

[161] 31 U.S.C. 7701(c)(2)(B).

[162] 47 CFR 1.1166.

[163] 47 U.S.C. 159(a).

Attachment C

Calculation of FY 2003 Revenue Requirements and Pro-Rata Fees

Fee category	FY 2003 payment units	Years	FY 2002 revenue estimate	Pro-rated FY 2003 revenue requirement**	Computed new FY 2003 regulatory fee	Rounded new FY 2003 regulatory fee	Expected FY 2003 revenue
PLMRS (Exclusive Use)	3,300	10	204,239	251,148	8	10	330,000
PLMRS (Shared use)	53,300	10	2,166,927	2,664,616	5	5	2,665,000
Microwave	6,100	10	1,145,732	1,408,877	23	25	1,525,000
218–219 MHz (Formerly IVDS)	5	10	1,245	1,531	31	30	1,500
Marine (Ship)	4,400	10	518,070	637,058	14	15	660,000
GMRS	10,600	5	79,205	97,396	2	5	265,000
Aviation (Aircraft)	3,100	10	134,499	165,390	5	5	155,000
Marine (Coast)	1,000	10	89,666	110,260	11	10	100,000
Aviation (Ground)	1,700	5	99,629	122,511	14	15	127,500
Amateur Vanity Call Signs	9,800	10	130,016	159,877	1.63	1.63	159,877
AM Class A	78	1	159,008	195,528	2,507	2,500	195,000
AM Class B	2,168	1	1,957,308	2,406,853	1,110	1,100	2,384,800
AM Class C	1,004	1	675,633	830,809	827	825	828,300
AM Class D	2,021	1	2,214,699	2,723,360	1,348	1,350	2,728,350
FM Classes A, B1 & C3	3,168	1	4,531,717	5,572,539	1,759	1,750	5,544,000
FM Classes B, C, C1 & C2	3,022	1	5,595,554	6,880,713	2,277	2,275	6,875,050
AM Construction Permits	48	1	17,694	21,758	453	455	21,840
FM Construction Permits	202	1	301,875	371,209	1,838	1,850	373,700
Satellite TV	126	1	102,658	126,235	1,002	1,000	126,000
Satellite TV Construction Permit	5	1	2,092	2,573	515	515	2,575
VHF Markets 1–10	44	1	2,062,516	2,536,224	57,641	57,650	2,536,600
VHF Markets 11–25	60	1	2,108,844	2,593,192	43,220	43,225	2,593,500
VHF Markets 26–50	73	1	1,788,836	2,199,687	30,133	30,125	2,199,125
VHF Markets 51–100	117	1	1,720,690	2,115,889	18,085	18,075	2,114,775
VHF Remaining Markets	209	1	755,062	928,481	4,442	4,450	930,050
VHF Construction Permits	16	1	60,275	74,119	4,632	4,625	74,000
UHF Markets 1–10	95	1	1,236,992	1,521,098	15,845	15,850	1,521,600
UHF Markets 11–25	96	1	1,005,653	1,236,627	12,882	12,875	1,236,000
UHF Markets 26–50	129	1	848,240	1,043,059	8,086	8,075	1,041,675
UHF Markets 51–100	181	1	733,517	901,988	4,983	4,975	900,475
UHF Remaining Markets	190	1	220,628	271,301	1,428	1,425	270,750
UHF Construction Permits	45	1	304,192	374,057	8,312	8,300	373,500
Auxiliaries	25,000	1	239,109	294,027	12	10	250,000
International HF Broadcast	5	1	2,959	3,639	728	730	3,650
LPTV/Translators/Boos-ters	2,993	1	892,674	1,097,699	367	365	1,092,445
CARS	1,450	1	103,614	127,412	88	90	130,500
Cable Systems	67,500,000	1	36,405,378	44,766,781	0.66	0.66	44,766,781
Interstate Telecommunication Service Providers	63,000,000,000	1	101,693,547	125,050,006	0.00198	0.00198	125,050,006
CMRS Mobile Services (Cellular/Public Mobile)	140,000,000	1	29,841,965	36,695,916	0.26	0.26	36,695,916
CMRS Messaging Services	19,700,000	1	1,769,590	2,176,021	0.11	0.11	2,176,021
MDS/MMDS/LMDS	4,586	1	985,329	1,211,635	264	265	1,215,290
Internationa Bearer Circuits	2,600,000	1	5,638,992	6,934,127	2.67	2.67	6,934,127
International Public Fixed	1	1	1,395	1,715	1,715	1,725	1,725
Earth Stations	3,149	1	540,207	664,280	211	210	661,290
Space Stations (Geostationary)	75	1	7,052,426	8,672,192	115,629	115,625	8,671,875
Space Stations (Non-geostationary	7	1	616,902	758,589	108,370	108,375	758,625
Total Estimated Revenue to be Collected	.....	.....	218,757,000	269,000,000	.....	.....	269,268,794
Total Revenue Requirement	.....	.....	.....	269,000,000	.....	.....	269,000,000
Difference	.....	.....	.....	0	.....	.....	268,794

[164] 1.2297 factor applied based on the amount Congress designated for recovery through regulatory fees (Public Law 107–77 and 47 U.S.C. 159(a)(2)).

Attachment D

FY 2003 Schedule of Regulatory Fees (Proposed)

Fee category	Annual regulatory fee (U.S. $'s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	10
Microwave (per license) (47 CFR part 101)	25
218–219 MHz (Formerly Interactive Video Data Service) (per license) (47 CFR part 95)	30
Marine (Ship) (per station) (47 CFR part 80)	15
Marine (Coast) (per license) (47 CFR part 80)	10
General Mobile Radio Service (per license) (47 CFR part 95)	5
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	5
PLMRS (Shared Use) (per license) (47 CFR part 90)	5
Aviation (Aircraft) (per station) (47 CFR part 87)	5
Aviation (Ground) (per license) (47 CFR part 87)	15
Amateur Vanity Call Signs (per call sign) (47 CFR part 97)	1.63
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90)	.26
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.11
Multipoint Distribution Services (MMDS, LMDS & MDS) (per call sign) (47 CFR part 21)	265
AM Radio Construction Permits	455
FM Radio Construction Permits	1,850
TV (47 CFR part 73) VHF Commercial:	
Markets 1–10	57,650
Markets 11–25	43,225
Markets 26–50	30,125
Markets 51–100	18,075
Remaining Markets	4,450
Construction Permits	4,625
TV (47 CFR part 73) UHF Commercial:	
Markets 1–10	15,850
Markets 11–25	12,875
Markets 26–50	8,075
Markets 51–100	4,975
Remaining Markets	1,425
Construction Permits	8,300
Satellite Television Stations (All Markets)	1,000
Construction Permits—Satellite Television Stations	515
Low Power TV, TV/FM Translators & Boosters (47 CFR part 74)	365
Broadcast Auxiliary (47 CFR part 74)	10
CARS (47 CFR part 78)	90
Cable Television Systems (per subscriber) (47 CFR part 76)	.66
Interstate Telecommunication Service Providers (per revenue dollar)	.00198
Earth Stations (47 CFR part 25)	210
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes Direct Broadcast Satellite Service (per operational station) (47 CFR part 100)	115,625
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25)	108,375
International Bearer Circuits (per active 64KB circuit)	2.67
International Public Fixed (per call sign) (47 CFR part 23)	1,725
International (HF) Broadcast (47 CFR part 73)	730

FY 2002 Radio Station Regulatory Fees

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=20,000	500	375	275	325	375	500
20,001 to 50,000	925	725	375	525	725	925
50,001 to 125,000	1,500	975	525	775	975	1,500
125,001 to 400,000	2,250	1,575	800	950	1,575	2,250
400,001 to 1,000,000	3,125	2,525	1,425	1,700	2,525	3,125
>1,000,000	4,975	4,100	2,075	2,625	4,100	4,975

FY 2003 Radio Station Regulatory Fees

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
<=25,000	600	450	325	400	475	625
25,001 to 75,000	1,200	900	475	600	950	1,100
75,001 to 150,000	1,800	1,125	650	1,000	1,300	2,025
150,001 to 500,000	2,700	1,925	975	1,200	2,025	2,650

FY 2003 RADIO STATION REGULATORY FEES—Continued

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C1 & C2
500,001 to 1,200,000	3,900	2,925	1,625	2,000	3,200	3,900
1,200,001 to 3,000,000	6,000	4,500	2,450	3,200	5,225	6,250
>3,000,000	7,200	5,400	3,100	4,000	6,650	8,125

Attachment E

Factors, Measurements and Calculations that Go into Determining Station Signal Contours and Associated Population Coverages

AM Stations

Specific information on each day tower, including field ratio, phasing, spacing and orientation was retrieved, as well as the theoretical pattern RMS figure (mV/m @ 1 km) for the antenna system. The standard, or modified standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in section 73.150 and 73.152 of the Commission's rules.[165] Radiation values were calculated for each of 72 radials around the transmitter site (every 5 degrees of azimuth). Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure M3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the city grade (5 mV/m) contour was predicted for each of the 72 radials. The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

FM Stations

The maximum of the horizontal and vertical HAAT (m) and ERP (kW) was used.

Where the antenna HAMSL was available, it was used in lieu of the overall HAAT figure to calculate specific HAAT figures for each of 72 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the propagation curves specified in section 73.313 of the Commission's rules to predict the distance to the city grade (70 dBuV/m or 3.17 mV/m) contour for each of the 72 radials.[166] The resulting distance to city grade contours were used to form a geographical polygon. Population counting was accomplished by determining which 2000 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted city grade coverage area.

[FR Doc. 03–8574 Filed 4–9–03; 8:45 am]

BILLING CODE 6712–02–P

[165] 47 CFR 73.150 and 73.152.

[166] 47 CFR 73.313.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–816; MB Docket No. 03–77; RM–10660]

Radio Broadcasting Services; Ashland, AL, Atlanta, GA, Coaling, Cordova, Decatur, Dora, Hackleburg, Hobson City, Holly Pond, Midfield, Sylacauga, and Tuscaloosa, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Notice of Proposed Rule Making* requests comments on a petition for rule making filed jointly by Cox Radio, Inc. and its wholly-owned subsidiary CXR Holdings, Inc. Cox proposes to downgrade Station WBHJ(FM), Channel 239C1 to Channel 239C2 and move the station from Tuscaloosa, Alabama, to Midfield, Alabama, as Midfield's first local aural transmission service. To accommodate the foregoing changes, Cox proposes to (a) reallot Channel 238A, Station WFMH–FM, from Holly Pond, Alabama, to Hackleburg, Alabama, as Hackleburg's first local service; (b) replace the local service at Holly Pond by reallotting Channel 245C, Station WRSA(FM), from Decatur, Alabama, to Holly Pond; (c) reallot Channel 237A , Station WFFN(FM), from Cordova, Alabama, to Coaling, Alabama, as Coaling's first local service; (d) and replace the local service at Cordova by reallotting Channel 223A, Station WQOP–FM, from Dora, Alabama, to Cordova. Further, Cox proposes to (e) reallot Channel 238A, Station WASZ(FM), from Ashland, Alabama, to Hobson City, Alabama, as Hobson City's first local FM and second local aural transmission service; (f) replace the sole local operating service at Ashland by reallotting Channel 252A, Station WTRB–FM, from Sylacauga to Ashland; and (g) to accommodate the reallotment of Channel 252A to Ashland, to reclassify Channel 253C, Station WSB–FM, Atlanta, Georgia, to Channel 253C0. The licensee of Station WSB–FM, CXR Holdings, Inc. has agreed to the foregoing reclassification. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Comments must be filed on or before May 12, 2003, and reply comments on or before May 27, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the Joint Petitioners' counsel, as follows: Kevin F. Reed, Esq., Elizabeth A. M. McFadden, Esq., and Nam E. Kim, Esq., Down Lohnes & Albertson, PLLC; 1200 New Hampshire Avenue, NW., Suite 800; Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rule making, MB Docket No. 03–77, adopted March 19, 2003, and released March 21, 2003. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. The coordinates for requested Channel 239C2 at Midfield, Alabama are 33–24–50 NL and 87–01–05 WL, with a site restriction of 11.4 kilometers (7.1 miles) southwest of Midfield. The coordinates for requested Channel 238A at Hackleburg, Alabama, are 34–13–15 NL and 87–45–00 WL, with a site restriction of 9.5 kilometers (5.9 miles) southeast of Hackleburg. The coordinates for requested Channel 245C at Holly Pond are 34–29–23 NL and 86–37–38 WL, with a site restriction of 35.1 kilometers (21.8 miles) north of Holly Pond. The coordinates for requested Channel 237A at Coaling, Alabama, are 33–04–58 NL and 87–27–02 WL, with a site restriction of 13.4 kilometers (8.3 miles) southwest of Coaling. The coordinates for requested Channel 223A at Cordova are 33–38–55 NL and 87–09–19 WL, with a site restriction of 12.4 kilometers (7.7 miles) south of Cordova. The coordinates for requested Channel 238A at Hobson City are 33–29–30 NL and 85–52–55 WL, with a site restriction of 14.8 kilometers (9.2 miles) south of Hobson City. The coordinates for requested Channel 252A at Ashland are 33–15–45 NL and 85–54–00 WL, with a site restriction of 6.1 kilometers (3.8 miles) west of Ashland, Alabama.

Cox's reallotment proposals for Stations WBHJ, WFMH–FM, WRSA, WFFN, WQOP–FM, WASZ, and WTRB–FM comply with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 239C2 at Midfield, the use of Channel 238A at Hackleburg, the use of Channel 245C at Holly Pond, the use of Channel 237A at Coaling, the use of Channel 223A at Cordova, the use of Channel 238A at Hobson City, or the use of Channel 252A at Ashland, or require Cox to demonstrate the availability of additional equivalent class channels for use by other parties.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 238A and adding Channel 252A at Ashland; by adding Coaling, Channel 237A; by removing Channel 237A and adding Channel 223A at Cordova; by removing Channel 245C at Decatur; by removing Dora, Channel 223A; by adding Hackleburg, Channel 238A; by adding Hobson City, Channel 238A; by removing Channel 238A and adding Channel 245C at Holly Pond; by adding Midfield, Channel 239C2; by removing Sylacauga, Channel 252A; and by removing Channel 239C1 at Tuscaloosa.

3. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 253C and adding Channel 253C0 at Atlanta.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–8754 Filed 4–9–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–833, MB Docket No. 03–79, RM–10673]

Radio Broadcasting Services; Ridgecrest, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Dana J. Puopolo proposing the allotment of Channel 252A at Ridgecrest, CA, as that community's third FM commercial service. Channel 252A can be allotted to Ridgecrest, consistent with the minimum distance separation requirements of the Commission's rules, provided there is a site restriction of 12.5 kilometers (7.7 miles) west of the community. The reference coordinates for Channel 252A at Ridgecrest are 35–39–19 North Latitude and 117–48–06 West Longitude.

DATES: Comments must be filed on or before May 12, 2003, and reply comments on or before May 27, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, CA 90405.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rule making, MB Docket No. 03–79, adopted March 19, 2003, and released March 21, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 252A at Ridgecrest.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–8753 Filed 4–9–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–00–7666; Notice 7]

RIN 2137–AD54

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipelines)

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a one-day public meeting to solicit comments on issues raised at a recent meeting of the Technical Pipeline Safety Standards Committee (TPSSC), at a public meeting OPS held on March 14, 2003, and at a public workshop held February 21–22, 2003, which was jointly organized by the Interstate Natural Gas Association of America (INGAA) Foundation and the American Gas Association (AGA). At this meeting we intend to present the issues for comment and to question further those offering comments to assure that we completely understand each issue.

ADDRESSES: The meeting is open to all. There is no cost to attend. This meeting will be held on Friday, April 25, 2003, from 8 a.m. to 4 p.m. at the Marriott at Washington Dulles Airport, 4520 Aviation Drive, Dulles, VA 20166. Tel: 703–471–9500; Web site: *http://www.marriott.com*. You may register electronically for this meeting at: *http://primis.rspa.dot.gov/meetings*. Please make your reservations as soon as possible as hotel rooms are limited. For other details on this meeting contact Juan Carlos at 202–366–1933.

You may submit written comments by mail or delivery to the Dockets Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The dockets facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. You should submit the original and one copy. Anyone who wants confirmation of receipt of their comments must include a stamped, self-addressed postcard. You may also submit comments to the docket electronically. To do so, log on to the Internet Web address *http://dms.dot.gov*. And click on "Help" for instructions on electronic filing of comments. All written comments should identify the docket number RSPA–00–7666; Notice 7.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comments, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Jean Milam at (202) 493–0967 or Jenny Donohue at (202) 366–4046, regarding this document. General information about RSPA/OPS programs may be obtained by accessing RSPA's Internet page at *http://rspa.dot.gov*.

Information on Services for Individuals With Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance, contact Juan Carlos, (202) 366–1933.

SUPPLEMENTARY INFORMATION:

Background

To better prevent pipeline failures that can imperil the health and safety of nearby residents and cause significant damage to their property, RSPA/OPS is promulgating a series of rules to require pipeline operators to develop integrity management programs. These programs are intended to identify the best methods for maintaining the structural soundness of pipelines operating across the United States. The programs operators develop are to include conducting baseline and periodic assessments of certain pipeline segments. RSPA/OPS has completed the integrity management program rules for hazardous liquid operators and is now addressing the requirements for natural gas transmission pipeline operators. RSPA/OPS proposed a rule on integrity management program requirements on January 28, 2003, (68 FR 4278).

The proposed rule has been discussed at a meeting of the Technical Pipeline Safety Standards Committee (TPSSC) on March 27, 2003, at a public meeting OPS held in Washington, DC, on March 14, 2003, and at a workshop jointly organized by the Interstate Natural Gas Association of America (INGAA) Foundation and the American Gas Association (AGA) held in Houston, TX, on February 21–22, 2003. Discussions from the public meeting and the workshop are in the docket. Several issues were raised during these discussions that OPS/RSPA would like to explore further. RSPA/OPS is holding the April public meeting to present the issues for comment and to question further those offering comments to assure that we completely understand each issue.

The preliminary agenda for the April meeting includes the following questions for discussion:

Assessment

Low Stress Pipelines

Should assessment requirements for low-stress pipeline (*i.e.*, operating at less than 30 percent SMYS) allow use of confirmatory direct assessment (CDA) for all assessments (baseline and reassessments)?

Pressure Testing

Should the requirement to pressure test pipelines to verify integrity against material and construction defects be limited to pipeline segments for which information suggests a potential vulnerability to such defects? If so, what information should be relied upon?

Direct Assessment Equivalency

Should the assessment intervals for direct assessment be revised to be the same as those applicable to in-line inspection or pressure testing? Are there opportunities to quickly schedule and assess research demonstrations to provide additional data on which to base judgments about validity?

Plastic Transmission Lines

What assessment requirements should be applicable to plastic transmission pipelines?

Repairs

Dents and Gouges

Should a repair criteria for constraint dents on the bottom of the pipe be different from that allowed for dents located on the top? Should the presence of stress risers, cracking or metal loss affect this decision?

Preventive and Mitigation Measures

Third Party Damage

Should additional third-party damage prevention methods be utilized instead of explicit assessments for third-party damage? What methods should be used in conjunction with other assessment methods to detect delayed third party damage?

Segments Outside HCAs

How can the requirements be clarified for the situations when an operator should look beyond the segment in a high consequence area, when segments outside the HCA are likely to have similar integrity concerns as those found inside an HCA?

Performance Measures

Should we require monthly electronic reporting of performance measures?

Definitions

High Consequence Area—Bifurcation Option

Should a rule allow two options: following the definition of high consequence areas defined by final rule on August 6, 2002; (67 FR 50824) or using potential impact circles along the entire length of the pipeline? Under either option, an operator would calculate the potential impact circles for each segment, but the use of those circles would differ depending on the option. If the operator used the class location component of the high consequence area definition, the operator would treat entire class 3 and 4 areas as high consequence areas and use the potential impact circles to determine population density beyond 660 feet using specified number of buildings intended for human occupancy. Under the potential impact circle option, operators would use the circles to identify areas where the density of buildings intended for human occupancy exceeds a specified number and then focus the integrity assessments, repairs and other protections in these areas.

Requirements for how an operator treats identified sites that are defined in the high consequence area would not change under either option.

Population Threshold

Should the criterion for determining the population density component of a high consequence area be based on 10 or 20 buildings intended for human occupancy within the impact circle?

Impact Radius Safety Margin

Should additional safety margin be applied to the potential impact circle radius calculated using the C–FER equation?

Extrapolation

Should a rule allow an operator to use data regarding the number of buildings within 660 feet of the pipeline (available now to operators because of the existing definition of class locations) to infer (extrapolate) the building density in potential impact circles larger than 660 feet? Should this be limited to an interim period of five years to allow operators to collect additional data on buildings beyond 660 feet?

Issued in Washington, DC, on April 7, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–8814 Filed 4–9–03; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 68, No. 69
Thursday, April 10, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

USDA-Forest Service/Spalding Land Exchange and Special Use Permit Environmental Impact Statement and Lassen National Forest Plan Amendment, Lassen National Forest, Lassen County, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service, Lassen National Forest, wishes to advise the public of availability of a DRAFT Environmental Impact Statement (DEIS) for a proposed land exchange between the Spalding Community Services District (SCDS) and the Lessen National Forest, Lassen County, CA. Approval would include the transfer of approximately 57.21 acres of Federal lands encompassing one 52.50 acre parcel and one 4.71 acres parcel, and also includes a non-significant minor amendment to the "Lassen National Forest Land and Resource Management Plan" (LRMP), and authorization of a special use of National Forest System Lands for water and sewer pipeline corridors, and an access road totaling approximately 2.7 acres. Details on the proposed action, location and areas of environmental concern addressed in the DEIS are provided in the **SUPPLEMENTARY INFORMATION** section.

DATES: Submit comments on or before close of business on May 27, 2003 at the address listed below.

The final EIS is scheduled for completion in June 2003.

ADDRESSES: You may submit comments to the responsible official: Edward C. Cole, Forest Supervisor, Lassen National Forest, 2550 Riverside Drive, Susanville, CA 96130.

To obtain a copy of the DEIS or for further information contact: Lois Charlton, Forest Lands Officer, Lassen National Forest, 2550 Riverside Drive, Susanville, CA 96130. Telephone (530) 257–2151.

SUPPLEMENTARY INFORMATION: Forest Service (lead agency) is proposing an equal value exchange of federal land with the SCSD for one SCSD parcel and third party private lands. If the values are unequal, either party may equalize the values by making a cash payment not to exceed 25 percent of the value of the lands transferred out of Federal ownership. The Forest Service is initiating this action in response to a request by SCSD to acquire lands to accommodate construction and operation of a wastewater collection and treatment facility. The federal lands are from the Lassen National Forest (57.21 acres). Lands the SCSD may potentially exchange include up to eleven parcels listed in order of priority for acquisition (Lassen County Assessor Parcel Numbers 077–303–21; 075–120–14, –15, 075–130–11, 075–080–17; and Plumas County Assessor Parcel Numbers 009–190–006; 010–010–029, –030; and 005–220–018, –019, –020). Acquisition of these parcels would improve access to National Forest System Lands, eliminate one or more in-holdings, and add wetland habitat to the Lassen National Forest. Approval of the land exchange would also include a non-significant minor amendment to the Lassen LRMP, and authorization of a special use of National Forest System Lands for water and sewer pipeline corridors and an access road totaling approximately 2.7 acres. The DEIS analyses the environmental impacts of this proposal as well as the "no action" alternative.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission to the public record by showing how the Freedom of Information (FOIA) permits such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

Reviewers should provide the Forest Service with their comments during the review period of the DEIS. This will enable the Forest Service to analyze and respond to the comments at one time and to use information acquired in the preparation of the final environmental impact statement, thus avoiding undue delay in the decision making process. Reviewers have an obligation to structure their participation in the National Environmental Policy Act process so that it is meaningful and alerts the agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Comments on the DEIS should be specific and should address the adequacy of the statement and the merits of the alternatives discussed (40 CFR 1503.3).

Dated: March 21, 2003.

Edward C. Cole,

Forest Supervisor, Lassen National Forest.

[FR Doc. 03–8804 Filed 4–9–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath National Forest, California, Horse Heli Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to treat vegetation using a variety of silvicultural methods on approximately 1,680 acres of National Forest System lands in the Horse Creek watershed near the towns of Horse Creek and Klamath River, in Siskiyou County, California. Approximately 1.9 miles of classified and 1.6 miles of unclassified roads are proposed for decommissioning. Approximately 1.8 miles of unclassified roads would be added to the transportation system. Activities would likely take place within five years of the decision. An amendment to the Klamath National Forest Land and Resource Management Plan to modify an existing standard and guideline is also part of the proposal.

DATES: Comments concerning the scope of the analysis should be received within 14 days of the publication of this notice in the **Federal Register**. The draft environmental impact statement is expected by May 2003, and the final environmental impact statement is expected by September 2003.

ADDRESSES: Send written comments to Ray Haupt, District Ranger, Scott River Ranger District, 11263 N. Highway 3, Fort Jones, CA 96032.

FOR FURTHER INFORMATION CONTACT: Bill Bailey, Timber Management Officer, at the above address or call (530) 468–5351.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this proposed action is to protect the long-term hydrologic and aquatic health within the Horse Creek watershed and four 7th field subwatersheds (Horse/Middle, Buckhorn, Kohl, and Doggett Creeks). The Horse/Middle, Buckhorn, and Doggett Creek subwatersheds are considered impaired, as described in the Horse Creek Ecosystem Analysis (also known as a Watershed Analysis, November 2002). During the Horse Creek Ecosystem Analysis process, existing conditions were compared to the desired conditions in the Klamath National Forest Land and Resource Management Plan, and a need to reduce both stocking and fuel levels was identified. This would also reduce the risk of catastrophic fire and promote forest stand health and longevity. The need was further documented with a fuels inventory completed in the summer of 2002 that showed abnormally high fuel levels of 33 tons per acre in the project area.

The higher elevations of the project area are comprised of stands of Shasta red fir. These stands are heavily infested with dwarf mistletoe and *Cytospora* (a common and damaging canker in true fir) due to years of fire suppression, drought, and stress from overcrowded stands. Mortality and disease are highly evident. There are many visible dead trees, standing and on the ground, as well as infected trees with dead needles in large portions of the crowns. The lower elevations of the project area are comprised of mixed conifer timber stands. These stands vary in average tree size and stocking levels. Although they are not heavily infested with disease, they are at abnormal risk to wildfire. Fire risk modeling using existing fuel levels indicates that stands within the project area would burn with severe intensity in the event of a wildfire.

Proposed Action

The Scott River District of the Klamath National Forest proposes to treat vegetation on approximately 1,680 acres in the Horse Creek watershed using the following silvicultural prescriptions (acreages are approximate): 699 acres of thinning, 344 acres of group selection, 553 acres of sanitation/salvage, 72 acres of green tree retention, and 12 acres of overstory removal. Tractor, cable, and helicopter logging methods would be used, with helicopter as the predominant method.

Project-generated fuels would be treated through a combination of mastication (reducing vegetative matter to small pieces using machinery) and hand piling/burning. Mastication would occur on areas that are less than 45% slope gradient. Hand piling would occur on steeper slopes and any areas with machine entry exclusions.

All Shasta red fir, white fir, and hemlock stumps would be hand treated with the fungicide Sporax® to reduce the spread of fungus *Heterobasidion annosum (Fomes annosus)*.

Openings created from group selection and green tree retention prescriptions would be planted and baiting for pocket gophers. Baiting application method would consist of probing and/or spooning method of below-ground application of strychnine.

There would be no new system road construction. Approximately 1.9 miles on seven classified road segments are proposed for decommissioning in this project design. Approximately 1.6 miles of eight unclassified roads and road segments are proposed for decommissioning. Approximately 1.8 miles of two existing unclassified roads are proposed for adding to the transportation system.

The areas proposed for treatment are within the General Forest, Retention, Partial Retention, Special Interest Area (Condrey Mountain Blueschist), and Riparian Reserve land allocations in the Klamath National Forest Land and Resource Management Plan. The legal description for the proposal is Township 47 North, Range 9 West, Sections 19, 20, and 30; Township 47 North, Range 10 West, Sections 11–15, 22, 24, and 26; Mount Diablo Meridian. All activities would likely be completed within five years of the decision being made.

Forestwide Standard and Guideline 11–4 of the Klamath National Forest Land and Resource Management Plan would be modified to state: "Perpetuate the sustainable, aesthetically valued landscape character when implementing Forest programs and activities. Achieve Forest Visual Quality Objectives (VQOs) to help conserve that character's existing and potential valued attributes. If the character is seriously threatened due to current ecosystem conditions, individual corrective alterations may be permitted, even if inconsistent with the Forest VQO. When undertaking such corrective actions, the following provisions apply:

(a) Alterations must remain consistent with the Forest VQO in the cumulative sense, thereby meeting the VQO within the affected area's immediate viewshed and/or its linear viewing corridor;

(b) Public scenery interests of the affected area must be fully considered; and

(c) Alterations in excess of the Forest VQO would persist no longer than 10 years after project completion."

Nature of Decision To Be Made

The Forest Service must decide whether it will implement this project, including a project-specific amendment to the Klamath National Forest Land and Resource Management Plan; implement an alternative that meets the purpose and need; or not implement any project at this time.

Responsible Official

Margaret Boland, Forest Supervisor, USDA Forest Service, 1312 Fairlane Road, Yreka, California 96097 is the Responsible Official.

Scoping Process

In October 2001, this project was included in the Klamath National Forest's Fall 2001 Schedule of Proposed Actions, which was posted on the Klamath National Forest's internet website and mailed to interested parties. In January 2003, a scoping letter was sent to potentially affected individuals and anyone who expressed interest in the proposal. This Notice of Intent invites additional public comment on this proposal and initiates the preparation of the environmental impact statement. Due to the extensive scoping effects already conducted, no scoping meeting is planned. The public is encouraged to take part in the planning process and to visit with Forest Service officials at any time during the analysis and prior to the decision.

While public participation in this analysis is welcome at any time, comments received within 14 days of the publication of this notice will be especially useful in the preparation of the draft environmental impact statement. The scoping process will include identifying potential issues, significant issues to be analyzed in depth, alternatives to the proposed action, and potential environmental effects of the proposal and alternatives.

Comment Requested

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: April 4, 2002.

Margaret J. Boland,

Forest Supervisor, Klamath National Forest.

[FR Doc. 03–8755 Filed 4–9–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Del Norte County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Del Norte County Resource Advisory Committee (RAC) will meet on May 6, 2003 in Crescent City, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on May 6, 2003 from 6 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Del Norte County Unified School District Board Room, 301 West Washington Boulevard, Crescent City, California.

FOR FURTHER INFORMATION CONTACT: Laura Chapman, Committee Coordinator, USDA, Six Rivers National Forest, 1330 Bayshore Way, Eureka, CA 95501. Phone: (707) 441–3549. E-mail: *lchapman@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The committee will hear revised public proposals and new proposals from the Six Rivers National Forest. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: April 4, 2003.

S.E. "Lou" Woltering,

Forest Supervisor.

[FR Doc. 03–8749 Filed 4–9–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Rural Business Enterprise Grant Program Preapplications for Technical Assistance for Rural Transportation Systems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the Rural Development mission area, announces the availability of two individual grants: one single $496,750 grant from the passenger transportation funds appropriated for the RBS Rural Business Enterprise Grant (RBEG) program and another single $248,375 grant from the Federally Recognized Native American Tribes funds appropriated for RBS under the RBEG Program for fiscal year (FY) 2003. Each grant is to be competitively awarded to a qualified national organization. These grants are to provide technical assistance for rural transportation.

DATES: The deadline for receipt of preapplications in the Rural Development State Office is May 15, 2003. Preapplications received at a Rural Development State Office after that date would not be considered for FY 2003 funding.

ADDRESSES: For further information, entities wishing to apply for assistance should contact a Rural Development State Office to receive further information and copies of the pre-application package. A list of Rural Development State Offices follows:

District of Columbia

Rural Business-Cooperative Service, USDA
Specialty Lenders Division
1400 Independence Avenue, SW.
STOP 3225, Room 6867
Washington, DC 20250–3225
(202) 720–1400

Alabama

USDA Rural Development State Office
Sterling Center, Suite 601
4121 Carmichael Road
Montgomery, AL 36106–3683
(334) 279–3400

Alaska

USDA Rural Development State Office
800 West Evergreen, Suite 201
Palmer, AK 99645–6539
(907) 761–7705

Arizona

USDA Rural Development State Office
3003 North Central Avenue, Suite 900
Phoenix, AZ 85012–2906
(602) 280–8700

Arkansas

USDA Rural Development State Office
700 West Capitol Avenue, Room 3416
Little Rock, AR 72201–3225
(501) 301–3200

California

USDA Rural Development State Office
430 G Street, Agency 4169
Davis, CA 95616–4169
(530) 792–5800

Colorado

USDA Rural Development State Office
655 Parfet Street, Room E–100
Lakewood, CO 80215
(720) 544–2903

Delaware-Maryland

USDA Rural Development State Office
P.O. Box 400
4607 South DuPont Highway
Camden, DE 19934–9998
(302) 697–4300

Florida/Virgin Islands

USDA Rural Development State Office
P.O. Box 147010
4440 NW. 25th Place
Gainesville, FL 32606
(352) 338–3402

Georgia

USDA Rural Development State Office
Stephens Federal Building
355 E. Hancock Avenue
Athens, GA 30601–2768
(706) 546–2162

Hawaii

USDA Rural Development State Office
Federal Building, Room 311
154 Waianuenue Avenue
Hilo, HI 96720
(808) 933–8380

Idaho

USDA Rural Development State Office
9173 West Barnes Dr., Suite A1
Boise, ID 83709
(208) 378–5600

Illinois

USDA Rural Development State Office
2118 West Park Court, Suite A
Champaign, IL 61821
(217) 403–6202

Indiana

USDA Rural Development State Office
5975 Lakeside Boulevard
Indianapolis, IN 46278
(317) 290–3100

Iowa

USDA Rural Development State Office
Federal Building, Room 873
210 Walnut Street
Des Moines, IA 50309–2196
(515) 284–4663

Kansas

USDA Rural Development State Office
Suite 100
1303 SW First American Place
Topeka, KS 66604
(785) 271–2700

Kentucky

USDA Rural Development State Office
771 Corporate Drive, Suite 200
Lexington, KY 40503
(859) 224–7300

Louisiana

USDA Rural Development State Office
3727 Government Street
Alexandria, LA 71302
(318) 473–7921

Maine

USDA Rural Development State Office
P. O. Box 405
967 Illinois Avenue, Suite 4
Bangor, ME 04402–0405
(207) 990–9106

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office
451 West Street, Suite 2
Amherst, MA 01002–2999
(413) 253–4300

Michigan

USDA Rural Development State Office
3001 Coolidge Road, Suite 200
East Lansing, MI 48823
(517) 324–5100

Minnesota

USDA Rural Development State Office
410 AgriBank Building 375 Jackson Street
St. Paul, MN 55101–1853
(651) 602–7800

Mississippi

USDA Rural Development State Office
Federal Building, Suite 831
100 West Capitol Street
Jackson, MS 39269
(601) 965–4316

Missouri

USDA Rural Development State Office
601 Business Loop 70 West
Parkade Center, Suite 235
Columbia, MO 65203
(573) 876–0976

Montana

USDA Rural Development State Office
P. O. Box 771
900 Technology Blvd., Unit 1, Suite B
Bozeman, MT 59715
(406) 585–2580

Nebraska

USDA Rural Development State Office
Federal Building, Room 152
100 Centennial Mall North
Lincoln, NE 68508
(402) 437–5551

Nevada

USDA Rural Development State Office
1390 South Curry Street
Carson City, NV 89703–9910
(775) 887–1222

New Jersey

USDA Rural Development State Office
Tarnsfield Plaza, Suite 22
790 Woodlane Road
Mt. Holly, NJ 08060
(609) 265–3600

New Mexico

USDA Rural Development State Office
6200 Jefferson Street, NE.
Room 255
Albuquerque, NM 87109
(505) 761–4950

New York

USDA Rural Development State Office
The Galleries of Syracuse 441 South Salina Street, Suite 357
Syracuse, NY 13202–2541
(315) 477–6400

North Carolina

USDA Rural Development State Office
4405 Bland Road, Suite 260
Raleigh, NC 27609
(919) 873–2000

North Dakota

USDA Rural Development State Office
P. O. Box 1737
Federal Building, Room 208
220 East Rosser Avenue
Bismarck, ND 58502–1737
(701) 530–2037

Ohio

USDA Rural Development State Office
Federal Building, Room 507
200 North High Street
Columbus, OH 43215–2418
(614) 255–2500

Oklahoma

USDA Rural Development State Office
SDA, Suite 108
Stillwater, OK 74074–2654
(405) 742–1000

Oregon

USDA Rural Development State Office
101 SW Main Street, Suite 1410
Portland, OR 97204–3222
(503) 414–3300

Pennsylvania

USDA Rural Development State Office
One Credit Union Place, Suite 330
Harrisburg, PA 17110–2996
(717) 237–2299

Puerto Rico

USDA Rural Development State Office
654 Munoz Rivera Avenue
IBM Plaza, Suite 601
Hato Rey, Puerto Rico 00918–6106
(787) 766–5095

South Carolina

USDA Rural Development State Office
Strom Thurmond Federal Building 1835 Assembly Street, Room 1007
Columbia, SC 29201
(803) 765–5163

South Dakota

USDA Rural Development State Office
Federal Building, Room 210

200 4th Street, SW.
Huron, SD 57350
(605) 352–1100

Tennessee

USDA Rural Development State Office
3322 West End Avenue, Suite 300
Nashville, TN 37203–1084
(615) 783–1300

Texas

USDA Rural Development State Office
Federal Building, Suite 102
101 South Main Street
Temple, TX 76501
(254) 742–9700

Utah

USDA Rural Development State Office
Wallace F. Bennett Federal Building 125 South State Street, Room 4311
P. O. Box 11350
Salt Lake City, UT 84147–0350
(801) 524–4321

Vermont/New Hampshire

USDA Rural Development State Office
City Center, 3rd Floor
89 Main Street
Montpelier, VT 05602
(802) 828–6010

Virginia

USDA Rural Development State Office
Culpeper Building, Suite 238
1606 Santa Rosa Road
Richmond, VA 23229–5014
(804) 287–1550

Washington

USDA Rural Development State Office
1835 Black Lake Boulevard, SW.
Suite B
Olympia, WA 98512–5715
(360) 704–7740

West Virginia

USDA Rural Development State Office
Federal Building
75 High Street, Room 320
Morgantown, WV 26505–7500
(304) 284–4860

Wisconsin

USDA Rural Development State Office
4949 Kirschling Court
Stevens Point, WI 54481
(715) 345–7610

Wyoming

USDA Rural Development State Office
Federal Building, Room 1005
100 East B Street
P. O. Box 820
Casper, WY 82602
(307) 261–6300

SUPPLEMENTARY INFORMATION: The passenger transportation portion of the RBEG program is authorized by section 310B(c)(2) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(c)(2)). The RBEG program is administered on behalf of RBS at the State level by the Rural Development State Offices. The primary objective of the program is to improve the economic conditions of rural areas. Assistance provided to rural areas under this program may include on-site technical assistance to local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in rural areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in rural areas.

Awards under the RBEG passenger transportation program are made on a competitive basis using specific selection criteria contained in 7 CFR part 1942, subpart G, and in accordance with section 310B(c)(2) of the CONACT. That subpart also contains the information required to be in the preapplication package. For the $248,375 grant, at least 75 percent of the benefits of the project must be received by members of Federally Recognized Tribes. The project that scores the greatest number of points based on the selection criteria and Administrator's points will be selected for each grant. Preapplications will be tentatively scored by the State Offices and submitted to the National Office for review, final scoring, and selection.

To be considered "national", a qualified organization is required to provide evidence that it operates in multi-State areas. There is not a requirement to use the grant funds in a multi-State area. Under this notice, grants will be made to qualified, private, non-profit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities. Public bodies are not eligible for passenger transportation RBEG grants.

The information collection requirements contained within this Notice have received approval by the Office of Management and Budget (OMB) under OMB Control Number 0570–0022 (7 CFR part 1942, subpart G).

Fiscal Year 2003 Preapplications Submission

Each preapplication received in a Rural Development State Office will be reviewed to determine if this preapplication is consistent with the eligible purposes contained in section 310B(c)(2) of the CONACT. Each selection priority criterion outlined in 7 CFR part 1942, subpart G, section 1942.305(b)(3), must be addressed in the preapplication. Failure to address any of the criteria will result in a zero-point score for that criterion and impact the overall evaluation of the preapplication. Copies of 7 CFR part 1942, subpart G, will be provided to any interested applicant making a request to a Rural Development State Office listed in this notice. All projects to receive technical assistance through these passenger transportation grant funds are to be identified when the preapplications are submitted to the Rural Development State Office. Multiple project preapplications must identify each individual project, indicate the amount of funding requested for each individual project, and address the criteria as stated above for each individual project. For multiple-project preapplications, the average of the individual project scores will be the score for that preapplication.

All eligible preapplications, along with tentative scoring sheets and the Rural Development State Director's recommendation, will be referred to the National Office no later than June 13, 2003, for final scoring and selection for award.

The National Office will score preapplications based on the grant selection criteria and weights contained in 7 CFR part 1942, subpart G and will select a grantee subject to the grantee's satisfactory submission of a formal application and related materials in the manner and time frame established by RBS in accordance with 7 CFR part 1942, subpart G. It is anticipated that the grantees will be selected by July 31, 2003. All applicants will be notified by RBS of the Agency's decision on the awards.

Dated: April 3, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 03–8818 Filed 4–9–03; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Applications for Rural Business Opportunity Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the Rural Development mission area, announces the availability of grants of up to $50,000 per application from the Rural Business Opportunity Grant (RBOG) Program for fiscal year (FY) 2003, to be competitively awarded. For multi-State projects, grant funds of up to $150,000 will be available on a competitive basis.

DATES: The deadline for the receipt of applications in the Rural Development State Office is June 2, 2003. Any applications received at a Rural Development State Office after that date would not be considered for FY 2003 funding.

ADDRESSES: For further information, entities wishing to apply for assistance should contact a Rural Development State Office to receive further information and copies of the application package. Potential applicants located in the District of Columbia must send their applications to the National Office at:

District of Columbia

Rural Business-Cooperative Service, USDA
Specialty Lenders Division
1400 Independence Avenue, SW.,
Room 6867, STOP 3225
Washington, DC 20250–3225
(202) 720–1400

A list of Rural Development State Offices follows:

Alabama

USDA Rural Development State Office
Sterling Center, Suite 601
4121 Carmichael Road
Montgomery, AL 36106–3683
(334) 279–3400

Alaska

USDA Rural Development State Office
800 West Evergreen, Suite 201
Palmer, AK 99645–6539
(907) 761–7705

Arizona

USDA Rural Development State Office
3003 North Central Avenue, Suite 900
Phoenix, AZ 85012–2906
(602) 280–8700

Arkansas

USDA Rural Development State Office
700 West Capitol Avenue, Room 3416
Little Rock, AR 72201–3225
(501) 301–3200

California

USDA Rural Development State Office
430 G Street, Agency 4169
Davis, CA 95616–4169
(530) 792–5800

Colorado

USDA Rural Development State Office
655 Parfet Street, Room E–100
Lakewood, CO 80215
(720) 544–2903

Delaware-Maryland

USDA Rural Development State Office
P. O. Box 400
4607 South DuPont Highway
Camden, DE 19934–9998
(302) 697–4300

Florida/Virgin Islands

USDA Rural Development State Office
P. O. Box 147010
4440 NW. 25th Place
Gainesville, FL 32606
(352) 338–3402

Georgia

USDA Rural Development State Office
Stephens Federal Building
355 E. Hancock Avenue
Athens, GA 30601–2768
(706) 546–2162

Hawaii

USDA Rural Development State Office
Federal Building, Room 311
154 Waianuenue Avenue
Hilo, HI 96720
(808) 933–8380

Idaho

USDA Rural Development State Office
9173 West Barnes Dr., Suite A1
Boise, ID 83709
(208) 378–5600

Illinois

USDA Rural Development State Office
2118 West Park Court, Suite A
Champaign, IL 61821
(217) 403–6202

Indiana

USDA Rural Development State Office
5975 Lakeside Boulevard
Indianapolis, IN 46278
(317) 290–3100

Iowa

USDA Rural Development State Office
Federal Building, Room 873
210 Walnut Street
Des Moines, IA 50309–2196
(515) 284–4663

Kansas

USDA Rural Development State Office
Suite 100
1303 SW First American Place
Topeka, KS 66604
(785) 271–2700

Kentucky

USDA Rural Development State Office
771 Corporate Drive, Suite 200
Lexington, KY 40503
(859) 224–7300

Louisiana

USDA Rural Development State Office
3727 Government Street
Alexandria, LA 71302
(318) 473–7921

Maine

USDA Rural Development State Office
P. O. Box 405
967 Illinois Avenue, Suite 4
Bangor, ME 04402–0405
(207) 990–9106

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office
451 West Street, Suite 2
Amherst, MA 01002–2999
(413) 253–4300

Michigan

USDA Rural Development State Office
3001 Coolidge Road, Suite 200
East Lansing, MI 48823
(517) 324–5100

Minnesota

USDA Rural Development State Office
410 AgriBank Building 375 Jackson Street
St. Paul, MN 55101–1853
(651) 602–7800

Mississippi

USDA Rural Development State Office
Federal Building, Suite 831
100 West Capitol Street
Jackson, MS 39269
(601) 965–4316

Missouri

USDA Rural Development State Office
601 Business Loop 70 West
Parkade Center, Suite 235
Columbia, MO 65203
(573) 876–0976

Montana

USDA Rural Development State Office
P. O. Box 771
900 Technology Blvd., Unit 1, Suite B
Bozeman, MT 59715
(406) 585–2580

Nebraska

USDA Rural Development State Office
Federal Building, Room 152
100 Centennial Mall North
Lincoln, NE 68508
(402) 437–5551

Nevada

USDA Rural Development State Office
1390 South Curry Street
Carson City, NV 89703–9910
(775) 887–1222

New Jersey

USDA Rural Development State Office
Tarnsfield Plaza, Suite 22
790 Woodlane Road
Mt. Holly, NJ 08060
(609) 265–3600

New Mexico

USDA Rural Development State Office
6200 Jefferson Street, NE.
Room 255
Albuquerque, NM 87109
(505) 761–4950

New York

USDA Rural Development State Office
The Galleries of Syracuse
441 South Salina Street, Suite 357
Syracuse, NY 13202–2541
(315) 477–6400

North Carolina

USDA Rural Development State Office
4405 Bland Road, Suite 260
Raleigh, NC 27609
(919) 873–2000

North Dakota

USDA Rural Development State Office
P. O. Box 1737
Federal Building, Room 208
220 East Rosser Avenue
Bismarck, ND 58502–1737
(701) 530–2037

Ohio

USDA Rural Development State Office
Federal Building, Room 507
200 North High Street
Columbus, OH 43215–2418
(614) 255–2500

Oklahoma

USDA Rural Development State Office
100 USDA, Suite 108
Stillwater, OK 74074–2654
(405) 742–1000

Oregon

USDA Rural Development State Office
101 SW Main Street, Suite 1410
Portland, OR 97204–3222
(503) 414–3300

Pennsylvania

USDA Rural Development State Office
One Credit Union Place, Suite 330
Harrisburg, PA 17110–2996
(717) 237–2299

Puerto Rico

USDA Rural Development State Office
654 Munoz Rivera Avenue
IBM Plaza, Suite 601
Hato Rey, Puerto Rico 00918–6106
(787) 766–5095

South Carolina

USDA Rural Development State Office
Strom Thurmond Federal Building
1835 Assembly Street, Room 1007
Columbia, SC 29201
(803) 765–5163

South Dakota

USDA Rural Development State Office
Federal Building, Room 210
200 4th Street, SW.
Huron, SD 57350
(605) 352–1100

Tennessee

USDA Rural Development State Office
3322 West End Avenue, Suite 300
Nashville, TN 37203–1084
(615) 783–1300

Texas

USDA Rural Development State Office
Federal Building, Suite 102
101 South Main Street
Temple, TX 76501
(254) 742–9700

Utah

USDA Rural Development State Office
Wallace F. Bennett Federal Building
125 South State Street, Room 4311
P.O. Box 11350
Salt Lake City, UT 84147–0350
(801) 524–4321

Vermont/New Hampshire

USDA Rural Development State Office
City Center, 3rd Floor
89 Main Street
Montpelier, VT 05602
(802) 828–6010

Virginia

USDA Rural Development State Office
Culpeper Building, Suite 238
1606 Santa Rosa Road
Richmond, VA 23229–5014
(804) 287–1550

Washington

USDA Rural Development State Office
1835 Black Lake Boulevard, SW.
Suite B
Olympia, WA 98512–5715
(360) 704–7740

West Virginia

USDA Rural Development State Office
Federal Building
75 High Street, Room 320
Morgantown, WV 26505–7500
(304) 284–4860

Wisconsin

USDA Rural Development State Office
4949 Kirschling Court
Stevens Point, WI 54481
(715) 345–7610

Wyoming

USDA Rural Development State Office
Federal Building, Room 1005
100 East B Street
P.O. Box 820
Casper, WY 82602
(307) 261–6300

SUPPLEMENTARY INFORMATON: The RBOG program is authorized under section 306 of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926(a)(11)). The Rural Development State Offices administer the RBOG program on behalf of RBS at the State level. The primary objective of the program is to improve the economic conditions of rural areas. Assistance provided to rural areas under this program may include technical assistance for business development and economic development planning. A total of $993,500 of non-earmarked funds is available for the RBOG program for FY 2003. To ensure that a broad range of communities have the opportunity to benefit from the available funds, no grant will exceed $50,000, unless it is a multi-State project where funds may not exceed $150,000. Pursuant to the Consolidated Appropriations Resolution Act for FY 2003 (Pub. L. 108–7), a total of $1,987,000 has been earmarked for Native Americans and Empowerment Zones, Enterprise Communities, and Rural Economic Area Partnerships. There is no project dollar amount limitation on applications for earmarked funds. Awards are made on a competitive basis using specific selection criteria contained in 7 CFR part 4284, subpart G. 7 CFR part 4284, subpart G, also contains the information required to be in the application package. The State Director may assign up to 15 discretionary points to an application, and the Agency Administrator may assign up to 20 additional discretionary points based on geographic distribution of funds, special importance for implementation of a strategic plan in partnership with other organizations, or extraordinary potential for success due to superior project plans or qualifications of the grantee. To ensure the equitable distribution of funds, three projects from each State that score the greatest number of points based on the selection criteria and discretionary points will be considered for funding. Applications will be tentatively scored by the State Offices and submitted to the National Office for final review and selection.

The National Office will review the scores based on the grant selection criteria and weights contained in 7 CFR part 4284, subpart G. All applicants will be notified by RBS of the Agency's decision on the awards.

In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in to this Notice are approved by the Office of Management and Budget (MB) under OMB Control Number 0570–0024.

Dated: April 4, 2003.

John Rosso,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 03–8817 Filed 4–9–03; 8:45 am]

BILLING CODE 3410–XY–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into the cause of chlorine gas release from a rail tank car unloading operation at DPC Enterprises, near Festus, Missouri on April 14, 2002, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 9 a.m. local time on May 1, 2003, at the Holiday Inn Express, 1200 Gannon Drive, Festus, MO 63028.

On the morning of August 14, 2002, 48,000 pounds of chlorine—a toxic gas—was released from a rail tank car unloading operation at DPC Enterprises, near Festus, Missouri. The facility repackages bulk dry liquid chlorine into one-ton containers and 150-pound cylinders for commercial, industrial, and municipal use in the St. Louis metropolitan area. Key issues involved in the investigation concern mechanical integrity, emergency management, and chlorine transfer hose supply.

At the meeting CSB staff will present to the Board the results of their investigation into this incident, including an analysis of the incident together with a discussion of the key findings, root and contributing causes, and draft recommendations.

Recommendations are issued by a vote of the Board and address an identified safety deficiency uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident investigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others.

After the staff presentation, the Board will allow a time for public comment. Following the conclusion of the public comment period, the Board will consider whether to vote to approve the final report and recommendations. When a report and its recommendations are approved, this will begin CSB's process for disseminating the findings and recommendations of the report not only to the recipients of recommendations but also to other public and industry sectors. The CSB believes that this process will ultimately lead to the adoption of recommendations and the growing body of safety knowledge in the industry, which, in turn, should save future lives and property.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202)–261–7600, or visit our Web site at: *http://www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 03–8918 Filed 4–8–03; 11:31 am]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Delaware Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Wednesday, April 10, 2003. The purpose of the conference call is to Develop strategy for update and new edition of the Committee's published report entitled Delaware Citizens Guide to Civil Rights and Supporting Services, and continues planning for a new project proposal based on the Committee's project concept for a series of forums.

This conference call is available to the public through the following call-in number: 1–800–497–7709, contact name: Ed Darden. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Ed Darden of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Tuesday, April 9, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, March 19, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–8757 Filed 4–9–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Cancellation of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission which was to have convened at 1 p.m. and adjourned at 4 p.m. on Friday, April 11, 2003, at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, Hawaii 96814, has been canceled.

The original notice for the meeting was announced in the **Federal Register** on February 11, 2003, FR Doc. 03–3409, vol. 68, page 6876.

Persons desiring additional information should contact Phillip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435).

Dated in Washington, DC, April 4, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–8758 Filed 4–9–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[I.D. 030703B]

Submission for OMB Review; Comment Request

ACTION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

SUPPLEMENTARY INFORMATION: Agency: National Oceanic and Atmospheric Administration.

Title: Large Pelagic Fishing Survey.

Form Number(s): None.

OMB Approval Number: 0648–0380.

Type of Request: Regular submission.

Burden Hours: 5,218.

Number of Respondents: 22,500.

Average Hours Per Response: 2 minutes for a pre-screen phone contact; 8 minutes per telephone survey response; 5 minutes per dockside interview response; 1.5 minutes per interviewer evaluation response; 3 minutes per socio-economic response; 15 minutes per charter clientele response; 1 minute per biological sampling response; 8 minutes per headboat survey response; and 6 minutes for a North Carolina Winter Bluefin Tuna Dockside Survey.

Needs and Uses: The Large Pelagic Fishing Survey consists of dockside and telephone surveys of recreational anglers for large pelagic fish (tunas, sharks, and billfish) in the Atlantic Ocean. The survey provides NMFS with information to monitor catch of bluefin tuna and marlin. Catch monitoring in these fisheries and collection of catch and effort statistics for all pelagic fish is required under the Atlantic Tunas

Convention Act and the Magnuson-Stevens Fishery Conservation and Management Act. The information collected is essential for the U.S. to meet its reporting obligations to the International Commission for the Conservation of Atlantic Tuna.

Affected Public: Individuals or households, business or other for-profit organizations.

Frequency: On occasion, weekly, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 3, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–8820 Filed 4–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Stainless Steel Sheet and Strip in Coils From the Republic of Korea: Extension of Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of Countervailing Duty Administrative Review.

EFFECTIVE DATE: April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Carrie Farley or Darla Brown, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230; telephone: 202–482–0395 or 202–482–2849, respectively.

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend these deadlines to a maximum of 365 days and 180 days, respectively.

Background

On September 20, 2002, the Department published a notice of initiation of administrative review of the countervailing duty order on stainless steel sheet and strip from the Republic of Korea, covering the period January 1, 2001, through December 31, 2001 (*see* 67 FR 60210). The preliminary results are currently due no later than May 5, 2003.

Extension of Preliminary Results of Review

In this administrative review, we are analyzing whether one of the programs we found countervailable in the original investigation has ended. The termination of this program involves the change of ownership of one of the respondent companies. In addition, several new programs are being examined in this review. As a result of these issues, additional information, and possible verification of this information, is required. Due to these considerations, we determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limits for completion of the preliminary results until no later than September 2, 2003.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 27, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–8839 Filed 4–9–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Olympic Coast National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Olympic Coast National Marine Sanctuary (OCNMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): alternates for the Tourism/Chamber of Commerce/Recreation seat and the Marine Business/Ports/Industry seat. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the conservation and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the Council's Charter. Applicants for the alternates' positions will serve terms that expire at the end of the current members' terms.

DATES: Applications are due by April 30, 2003.

ADDRESSES: Application kits may be obtained from Andrew Palmer, OCNMS, 115 East Railroad Ave., Suite 301, Port Angeles, WA 98362. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Andrew Palmer at (360) 457–6622 x15 or *andrew.palmer@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Sanctuary Advisory Council provides NOAA with advice on the management of the Sanctuary. Members provide advice to the Olympic Coast Sanctuary Superintendent on Sanctuary issues. The Council, through its members, also serves as a liaison to the community regarding Sanctuary issues and acts as a conduit, relaying the community's interests, concerns, and management needs to the Sanctuary.

The Sanctuary Advisory Council members represent public interest groups, local industry, commercial and recreational user groups, academia, conservation groups, government agencies, and the general public.

Authority: 16 U.S.C. Section 1431 et seq. (Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program).

Dated: March 27, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–8799 Filed 4–9–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040703F]

Caribbean Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Caribbean Fishery Management Council's (CFMC) Habitat Advisory Panel (HAP), and the Scientific and Statistical Committee (SSC) will hold a meeting.

DATES: The HAP/SSC meeting will be held on April 24–25, 2003.

ADDRESSES: The meeting will be held at the Best Western Pierre Hotel, 105 De Diego Avenue, San Juan, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico 00918–1920, telephone: 787–766–5926.

SUPPLEMENTARY INFORMATION: The HAP, and the SSC will meet to discuss the items contained in the following agenda on the Draft Essential Fish Habitat/ Environmental Impact Statement for the CFMC:

1. Review Methodology (Sect. 2.1)
2. Review revised Human Environment (Sect. 3.3)
3. Fishing impact alternatives
   - -Review list of alternatives (Sect. 2.5)
   - -Discuss rationale (Sect. 2.5)
   - - Discuss consequences (Sect. 4.5)
4. HAPC alternatives
   - - Review list of alternatives (Sect. 2.4)
   - - Discuss rationale (Sect. 2.4)
   - - Discuss consequences (Sect. 4.4)
5. EFH alternatives
   - - Review list of alternatives (Sect. 2.3)
   - - Discuss rationale (Sect. 2.3)
   - - Discuss consequences (Sect. 4.3)
6. Consequences section (Sect. 4)
   - - Missing information (Sect. 4.1)
   - - Cumulative impacts (Sect. 4.6)
7. Affected Environment (Sect. 3)
   - - Previously discussed - additional comments?
8. Other

The HAP/SSC will convene on Thursday, April 24, 2003, from 10 a.m. until 5 p.m., and will continue on Friday, April 25, 2003, from 9 a.m. to 4 p.m.

The meetings are open to the public, and will be conducted in English. Fishers and other interested persons are invited to attend and participate with oral or written statements regarding agenda issues.

Although nonemergency issues not contained in this agenda may come before the Committees for discussion, those issues may not be the subject of formal Committee action during these meetings. Committee action will be restricted to those issues specifically listed in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and/other auxiliary aids, please contact Mr. Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 268 Munoz Rivera Avenue, Suite 1108, San Juan, Puerto Rico, 00918–1920, telephone 787–766–5926, at least 5 days prior to the meeting date.

Dated: April 7, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8823 Filed 4–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040303B]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT), Highly Migratory Species Advisory Subpanel, and Highly Migratory Species Subcommittee of the Science and Statistical Committee will hold a joint work session, which is open to the public.

DATES: The work session will be Tuesday, April 29, 2003 from 9 a.m. until 4 p.m.; and Wednesday, April 30, 2003 from 9 a.m. until business for the day is completed.

ADDRESSES: The work session will be held at the Hubbs-Sea World Research Institute, 2595 Ingraham Street, San Diego, CA 92109; telephone: (619) 226–3870.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Waldeck, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: At this joint meeting, NMFS analysts will present information on potential impacts on sea turtles from high seas longline fishing east of 150° W longitude. Recent information from longline fishing operations east of 150° W longitude has been reviewed by NMFS. Based on their initial review, NMFS is concerned that longline vessels targeting swordfish could have interactions with sea turtles at rates similar to rates in waters west of 150° W longitude. These latter rates were the basis for total turtle take and mortality estimates that resulted in a jeopardy determination and the prohibition of swordfish targeting by Hawaii-based longline vessels. A similar conclusion for West Coast-based fishing under the FMP could result in partial disapproval of the fishery management plan (FMP). Therefore, in March 2003, NMFS requested and the Council agreed to delay submission of the HMS FMP to provide time for NMFS to complete scientific review of the new data and present the results to the Council HMS advisory committees. At the June 2003 Council meeting, the Council will review the new information and, based on the advice of its advisors and the public, could act to modify a motion previously adopted. That is, at the June 2003 Council meeting, the Council could modify the preferred alternative for pelagic longline fisheries outside of the U.S. Exclusive Economic Zone.

Although nonemergency issues not contained in the meeting agenda may be discussed, those issues may not be the

subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: April 3, 2003.

Theophilus R. Brainerd,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8824 Filed 4–9–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to add a record system.

SUMMARY: The Department of the Air Force proposes to add a system of records notice to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on May 12, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force FOIA/Privacy Manager, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne P. Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 522a(r) of the Privacy Act of 1974, as amended, was submitted on April 1, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: April 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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SYSTEM NAME:

Congressional and Key Contacts.

SYSTEM LOCATION:

Office of Legislative Liaison, Office of the Secretary of the Air Force, 1160 Air Force, Pentagon, Washington, DC 20330–1160.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current members of the U.S. Congress and key Congressional staff members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information on members of Congress and key staff members, mailing addresses, committee memberships, contact reports, and related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force.

PURPOSE(S):

To provide information on members of Congress and their staffs before whom Air Force representatives may be testifying or for whom escorts may be provided so that more effective communications can be achieved when providing Air Force information and services to members of Congress and their staffs and to promote the timely delivery of information for Department of Defense related events and materials.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computers and computer output products.

RETRIEVABILITY:

By Congress member's or staff member's last name and committee membership.

SAFEGUARDS:

Records are maintained in password-protected network accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Disposition pending. No records will be destroyed until the National Archives and Records Administration has approved the retention and disposal of the records.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Legislative Liaison, Office of the Secretary of the Air Force, 1160 Air Force Pentagon, Washington, DC 20330–1160.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Legislative Liaison, Office of the Secretary of the Air Force, 1160 Air Force Pentagon, Washington, DC 20330–1160.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information contained in this system of records should address written inquiries to the Chief, Legislative Liaison, Office of the Secretary of the Air Force, 1160 Air Force Pentagon, Washington, DC 20330–1160.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Congress members and key Congressional staff members. Official public records such as the Congressional Record, Congressional Quarterly Weekly Report, official transcripts of unclassified committee hearings, and the Congressional Staff Directory.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–8622 Filed 4–9–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice as is necessary to facilitate high educational standards and cost effective operations. The Board will be discussing the 2005 accreditation process and the quality enhancement plan, the University's Institutional Research program, the status of Academic Chairs, and Camp Lejeune's Education Consortium. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Thursday, May 8, 2003, from 8 a.m. to 4 p.m. and on Friday, May 9, 2003, from 8 a.m. to 11:30 a.m.

ADDRESSES: The meeting will be held at Camp Lejeune's Paradise Point Officer Club, the Division Room, 2615 Seth Williams Boulevard, Marine Corps Base Camp Lejeune, North Carolina 28547–2539.

FOR FURTHER INFORMATION CONTACT: Mary Lanzillotta, Executive Secretary, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, telephone number (703) 784–4037.

Dated: March 31, 2003.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 03–8805 Filed 4–9–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of public forum.

SUMMARY: The National Assessment Governing Board is announcing a public forum on May 1, 2003 to obtain comment on the draft Background Information Framework for the National Assessment of Educational Progress. Public and private parties and organizations are invited to present written and/or oral testimony. The forum will be held at the Washington Court Hotel, 525 New Jersey Avenue NW., Washington, DC from 9 a.m. to 1 p.m.

Background

The framework, subject to approval by the Governing Board, presents a plan to guide the collection and reporting of the noncognitive or background information needed for the fair and accurate presentation of student achievement data, as measured in the surveys of the National Assessment of Educational Progress (NAEP).

The framework will define the purpose and scope of NAEP's non-cognitive questionnaires and describe other sources of background data that NAEP may collect. It will establish criteria for reporting background question results and also create a system for asking various groups of questions to various samples of students at various times.

Under Public Law 107–110, the Governing Board has final authority over all cognitive and non-cognitive questions on the National Assessment. The background information is obtained from student, teacher, and school questionnaires, as well as from school records and other reliable data sources.

The draft framework is available on the Web site of the Governing Board at *http://www.nagb.org*. Other related material on the Governing Board and the National Assessment may be found at this Web site and at *http://www.nces.ed.gov/nationsreportcard*.

The Board is seeking comment from teachers, education researchers, state and local school administrators, assessment specialists, parents of children in elementary and secondary schools, and interested members of the public. Members of the NAGB Ad Hoc Committee on NAEP Background Questions, chaired by John H. Stevens, will conduct the forum to receive testimony and to ask clarifying questions and respond to presentations. Oral presentations should not exceed ten minutes. Testimony will become part of the public record.

All views will be considered by the Ad Hoc Committee in developing its recommendations to the Governing Board and by the full Board when it takes final action on the Background Information Framework, which is anticipated at its meeting of August 1–2, 2003.

To register to present oral testimony on May 1, 2003 at the Washington Court Hotel, please call Tessa Regis, of the NAGB staff, at 202–357–7500 by Tuesday, April 29. Written testimony should be sent by mail, fax or e-mail for receipt in the Board office by May 1. Written materials received by noon on April 30 will be duplicated for distribution at the forum.

Testimony should be sent to: National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002, Attn: Lawrence Feinberg, FAX: (202) 357–6945, E-mail: *larry.feinberg@ed.gov*.

For further information, please contact Lawrence Feinberg at (202) 357–6942.

This document is intended to notify the general public of their opportunity to attend. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than April 25, 2003. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended.

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment objectives, developing appropriate student achievement levels for each grade and subject tested, developing guidelines for reporting and disseminating results, and developing standards and procedures for interstate and national comparisons.

Summaries of the forum, which are informative to the public and consistent with the policy of section 5 U.S.C. 552b(c), will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9 a.m. to 5 p.m. Eastern Standard Time.

Dated: April 4, 2003.

Charles Smith,

Executive Director, National Assessment Governing Board.

[FR Doc. 03–8728 Filed 4–9–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Intent To Prepare an Environmental Impact Statement for the Gilberton Coal-to-Clean Fuels and Power Project, Gilberton, PA

AGENCY: Department of Energy.

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy (DOE) announces its intent to prepare an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) NEPA regulations (40 CFR parts 1500–1508), and the DOE NEPA regulations (10 CFR part 1021), to assess the potential environmental impacts of a proposed project by WMPI PTY, LLC, to design, construct, and operate a demonstration plant near Gilberton, Schuylkill County, Pennsylvania. The proposed Gilberton Coal-to-Clean Fuels and Power Project, selected under the Clean Coal Power Initiative competitive solicitation, would produce electricity, clean hydrocarbon liquids, and steam from coal waste that exists in legacy piles from old mining practices. The proposed project would be the first commercial-scale demonstration of coal waste gasification and Fischer-Tropsch (F–T) synthesis of liquid hydrocarbon fuels in the United States. The proposed project would involve construction and operation of a plant to produce about 5,000 barrels-per-day of ultra-clean liquid hydrocarbon fuels and approximately 41 MW (megawatts) of electricity for the local electrical grid. The quantity of feed material for the plant could be up to approximately 4,700 dry tons-per-day of coal waste from prior and current anthracite mining. An estimated 300 million tons of this coal waste exists throughout Pennsylvania. The EIS will evaluate the proposed project and reasonable alternatives.

The EIS will help DOE decide whether to provide 16 percent (approximately $100 million as a repayable loan) of the total estimated funding of $612 million for the proposed project. The purpose of this Notice of Intent is to inform the public about the proposed project; invite public participation in the EIS process; announce the plans for a public scoping meeting and explain the EIS scoping process; and solicit public comments for consideration in establishing the proposed scope and content of the EIS.

DATES: To ensure that all of the issues related to this proposal are addressed, DOE invites comments on the proposed scope and content of the EIS from all interested parties. Comments must be received by May 19, 2003, to ensure consideration. Late comments will be considered to the extent practicable. In addition to receiving comments in writing and by telephone (*see* **ADDRESSES** below), DOE will conduct a public scoping meeting in which agencies, organizations, and the general public are invited to present oral comments or suggestions with regard to the range of actions, alternatives, and impacts to be considered in the EIS. The scoping meeting will be held at D.H.H. Lengel Middle School, 1541 West Laurel Boulevard, Pottsville, PA, on May 5, 2003, beginning at 7 p.m. (*see* Public Scoping Process). The public is invited to an informal session at this location beginning at 4 p.m. to learn more about the proposed action.

Displays and other forms of information about the proposed agency action and the demonstration plant will be available, and DOE personnel will be present at the informal session to discuss the proposed project and the EIS process.

ADDRESSES: Written comments on the proposed EIS scope and requests to participate in the public scoping meeting should be addressed to the NEPA Document Manager for the Gilberton Coal-to-Clean Fuels and Power Project: Mr. Lloyd Lorenzi, National Energy Technology Laboratory, U.S. Department of Energy, P.O. Box 10940, Pittsburgh, PA 15236–0940.

Individuals who would like to otherwise participate in the public scoping process should contact Mr. Lloyd Lorenzi directly by telephone: 412–386–6159; toll free number: 1–800–276–9851; fax: 412–386–4604; or electronic mail: *lorenzi@netl.doe.gov*.

FOR FURTHER INFORMATION, CONTACT: For information regarding the Gilberton Coal-to-Clean Fuels and Power Project or to receive a copy of the draft EIS for review when it is issued, contact Mr. Lloyd Lorenzi as described above. Those seeking general information on the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119. Telephone: (202) 586–4600. Facsimile: (202) 586–7031, or leave a toll-free message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background and Need for Agency Action

Since the early 1970s, DOE and its predecessor agencies have pursued research and development programs that include long-term, high-risk activities that support the development of innovative concepts for a wide variety of coal technologies through the proof-of-concept stage. However, the availability of a technology at the proof-of-concept stage is not sufficient to ensure continued development and subsequent commercialization. Before any technology can be considered seriously for commercialization, it must be demonstrated. The financial risk associated with technology demonstration is, in general, too high for the private sector to assume in the absence of strong incentives. The Clean Coal Power Initiative (CCPI) was established in 2002 as a government/industry partnership to implement the President's National Energy Policy recommendation to increase investment in clean coal technology. This recommendation addresses a national challenge of ensuring the reliability of electric supply while simultaneously protecting the environment.

The goal of the CCPI program is to accelerate commercial deployment of advanced coal technologies that provide the United States with clean, reliable, and affordable energy. Through cooperative agreements established pursuant to the CCPI program, DOE would accelerate deployment of innovative technologies to meet near-term energy and environmental goals; to reduce technological risk to the business community to an acceptable level; and to provide private sector incentives required for continued activity in innovative research and development directed at providing solutions to long-range energy supply problems.

Proposed Action

The proposed action is for DOE to provide, through a cooperative agreement with WMPI, financial assistance for the proposed Gilberton Coal-to-Clean Fuels and Power Project (hereafter termed the "Gilberton Project"). The Gilberton Project would be designed for long-term commercial operation following completion of an approximately 27-month demonstration period under a 6-year cooperative agreement with DOE, and would cost a total of approximately $612 million; DOE's share would be approximately $100 million (16%) in the form of a repayable loan.

The Gilberton Project would result in design, construction, and operation of a new plant to co-produce approximately 41 MW of electricity for export to the local grid at extremely high environmental performance, about 5,000 barrels-per-day of high quality, ultra-clean liquid hydrocarbon products, and steam near Gilberton, Schuylkill County, Pennsylvania.

The liquid hydrocarbon products would include clean diesel fuel and naphtha. The new plant would use four major technology systems: (1) Gasification technology from Shell, which would be particularly suitable for processing the high ash (40%), low cost, anthracite coal waste that would provide the primary feed to the plant. The gasification process would produce raw synthesis gas consisting primarily of carbon monoxide and hydrogen; (2) raw synthesis gas treatment and cleaning technology systems to remove solid particulate matter and gaseous contaminants to trace concentrations; (3) indirect liquefaction for converting cleaned synthesis gas into synthetic hydrocarbon liquids using Fischer-Tropsch (F-T) technology from SASOL Technology, Ltd., and (4) combustion of cleaned, unconverted synthesis gas in a gas turbine/combined cycle power plant to produce electricity and steam.

The Gilberton Project would be located on an approximately 50-acre site near Gilberton, PA, north of Interstate 81 and east of Pennsylvania State Highway 61, off Morea Road. The site for the Gilberton Project would be adjacent to the eastern boundary of the existing 80 MW Gilberton Power Plant, which has been operating continuously since 1986 using circulating fluidized-bed combustion technology to process anthracite coal waste. Site preparation would require grading, clearing of vegetation, and addition of infrastructure improvements, such as roads, fencing, and drainage. Construction preparations would include installation of concrete piers and foundations for the plant equipment and structures.

The primary feed material for the Gilberton Project would be up to approximately 4,700 dry tons-per-day of anthracite coal waste, which is abundant locally in legacy waste piles from old mining practices. These anthracite tailings, which are potential sources of soil and water contamination, would be reclaimed for the Gilberton Project from the surrounding area, although the plant would also be capable of processing feed containing a blend of anthracite waste with petroleum coke, other coals, or biomass.

Air separation would be used to produce a high purity oxygen stream for the Shell gasification process. The anthracite waste, combined with about 400 tons-per-day of a fluxing agent such as limestone to assist with maintaining ash in a molten form, would be processed through a Shell gasifier to produce a raw synthesis gas that would be cleaned to produce approximately 200 million standard cubic-feet-per-day blend of primarily hydrogen and carbon monoxide. The mineral content of the anthracite waste and the fluxing agent fed to the Shell gasifier would produce about 2,000 tons-per-day of molten slag and 160 tons-per-day of collected dry particulate that could be used as construction materials.

Cleaning of gas from the Shell gasifier would be achieved using a combination of initial quenching to remove any entrained molten slag, filtration to remove dry particulate, scrubbing to remove any residual solid particles and alkali salts, catalytic removal of sulfur compounds, and treatment in a Rectisol unit to remove carbon dioxide. The gas cleaning processes would remove impurities and produce a carbon dioxide stream that could be used for future sequestration if economics permit, although sequestration is not part of the proposed project.

The cleaned synthesis gas would be processed through a low-temperature F-T unit and downstream product treatment units to produce about 5,000 barrels-per-day of ultra-clean diesel fuel and naphtha, which would be virtually free of sulfur, nitrogen, and aromatic compounds and superior in both end-use and environmental properties compared with liquid hydrocarbon products produced from petroleum refining. Operations could be altered to change the distribution of products, including kerosene that would service specialty jet fuel markets, and to produce alcohols and liquefied petroleum gas. The F-T liquid products would be readily marketable to the refining industry. Diesel product from F-T synthesis possesses a high Cetane value and has demonstrated significantly reduced engine emissions of particulate matter, nitrogen oxides, hydrocarbons, and carbon monoxide, while meeting all current fuel specifications and the expected future (2006) Environmental Protection Agency specification for low sulfur fuels. Naphtha product can either be readily upgraded to a high-octane, clean reformulated gasoline or used as an on-board, sulfur-free feed to a reformer to produce hydrogen for fuel-cell-powered vehicle applications.

Unconverted, cleaned synthesis gas from the F-T unit would be combusted in a gas turbine/combined-cycle power plant to produce electricity for the Gilberton Project and for export to the local power grid. High pressure and medium pressure steam produced in the plant would be used to produce additional power using steam turbo-generators. Excess steam from the power plant system would be marketed to local customers. Other potentially marketable byproducts from the plant would include elemental sulfur and a vitrified material resembling coarse sand that could be used in the construction and building industries.

Wastewater, including contaminated runoff from the project site, would be handled using a combination of storm water retention, wastewater treatment, oil recovery, biological treatment and solids removal, and disposal. Water treatments would include equalization, API separator treatment for oil removal and recovery, dissolved air flotation for additional oil removal, and biological treatment.

Construction of the proposed plant would be expected to require approximately 30 months. Plant start-up, system and feedstock testing, and long-term performance and reliability demonstration under the cooperative agreement with DOE would require approximately 27 months, after which the plant could continue in commercial operation.

Successful demonstration of technology in the Gilberton Project would generate opportunities for a broad range of commercial applications, especially in coal producing and consuming regions of the United States. Commercial applications would result in substantial socioeconomic benefits to the coal regions, including direct and indirect job stimulation and the related benefits of enhanced productivity and tax revenues; environmental benefits of abandoned mine land reclamation as coal waste is converted into high value products; and increasing energy independence.

Alternatives

NEPA requires that agencies evaluate the reasonable alternatives to the proposed action in an EIS. The purpose for agency action determines the range of reasonable alternatives.

The Clean Coal Power Initiative (CCPI) was established to help implement the President's National Energy Policy (NEP) recommendation to increase investment in clean coal technology by addressing national challenges of ensuring the reliability of domestic electric and energy supplies while simultaneously protecting the environment. The CCPI program was structured to achieve NEP goals by promoting private sector initiatives to invest in demonstrations of advanced technologies that could be widely deployed commercially to ensure that the United States has clean, reliable, and affordable energy. Private sector investments and deployment of energy

systems in the United States places DOE in a much more limited role than if the Federal government were the owner and operator of the energy systems. In the latter situation, DOE would be responsible for a comprehensive review of reasonable alternatives for siting the system. However, in dealing with applicants under the CCPI solicitation, the scope of alternatives is necessarily more restricted because DOE must focus on alternative ways to accomplish its purpose that reflect both the application before it and the functions that DOE plays in the decisional process. In such cases DOE must give substantial consideration to the applicant's needs in establishing a project's reasonable alternatives.

The range of reasonable options to be considered in the EIS for the proposed Gilberton Project is determined in accordance with the overall NEPA strategy. Because of DOE's limited role of providing cost-shared funding for the proposed Gilberton Project, DOE currently plans to give primary emphasis to the proposed action and the no-action alternative. Under the no-action alternative, DOE would not provide partial funding for the design, construction, and operation of the project.

In the absence of DOE funding, the Gilberton Project probably would not be constructed. Alternatives considered by WMPI, in developing the proposal for the Gilberton Project, including alternative sites and technologies for the proposed project also will be presented in the EIS. DOE will consider other reasonable alternatives that may be suggested during the public scoping period.

Under the proposed action, project activities would include equipment design and fabrication, process engineering, plant permitting and construction, and testing and demonstration of the technology. DOE plans to complete the EIS within 15 months following publication of this Notice of Intent and to subsequently issue a Record of Decision. Upon completing the demonstration effort for DOE, WMPI could continue commercial operation of the plant constructed under the Gilberton Project.

Preliminary Identification of Environmental Issues

The following environmental issues have been tentatively identified for analysis in the EIS. This list, which was developed from analyses of the proposed technology, the scope of the proposed project, and similar projects, and which is presented to facilitate public comment on the planned scope of the EIS, is neither intended to be all-inclusive nor a predetermined set of potential impacts. Additions to or deletions from this list may occur as a result of the public scoping process.

The environmental issues include:

(1) *Atmospheric resources:* Potential air quality impacts resulting from emissions during construction and operation of the proposed Gilberton Project, including odor impacts;

(2) *Water usage:* Potential effects on surface and groundwater resources, including impacts from withdrawals of groundwater and mine pool water from the Susquehanna River and Delaware River watersheds;

(3) *Water quality:* Potential impacts resulting from wastewater treatment and discharge, from water usage, and from reclaiming abandoned anthracite waste;

(4) *Infrastructure and land use, including potential environmental and socioeconomic effects resulting from:* Plant construction; delivery of feed materials; recovery of coal waste and mine pool water; steam and heat distribution; electric power generation and transmission; product hydrocarbon liquids transportation, distribution, and use; measures to prevent soil erosion and degradation; and site restoration;

(5) *Solid Waste:* Pollution prevention and waste management, including, ash, slag, waste water treatment facility sludge;

(6) *Noise:* Potential impacts resulting from construction and operation of the proposed plant and from transportation of feed materials and plant products;

(7) *Construction:* Potential impacts associated with traffic patterns, construction-related emissions, and involvement of floodplains and wetlands;

(8) Safety and health impacts, including construction-related safety, process safety, and management of chemicals and catalysts;

(9) *Ecological:* Potential on-site and off-site impacts to vegetation, terrestrial wildlife, aquatic wildlife, threatened and endangered species, and ecologically sensitive habitats;

(10) Community impacts, including potential impacts from local traffic patterns, socioeconomic impacts on public services and infrastructure, and environmental justice;

(11) Visual impacts associated with plant structures and plant operations;

(12) *Reclamation impacts:* Potential impacts resulting from recovery of coal waste from disposal and reclamation sites;

(13) Cumulative effects that result from the incremental impacts of the proposed project when added to the other past, present, and reasonably foreseeable future projects, including the existing 80 MW Gilberton power plant;

(14) Connected actions, including processing of gasifier slag into aggregate for use in construction applications, use of heat and energy from the plant, and both processing and use of liquid hydrocarbon products;

(15) Compliance with regulatory requirements and environmental permitting; and

(16) Environmental monitoring.

Public Scoping Process

To ensure that all issues related to this proposal are addressed, DOE will conduct an open process to define the scope of the EIS. The public scoping period will end on May 19, 2003. Interested agencies, organizations, and the general public are encouraged to submit comments or suggestions concerning the content of the EIS, issues and impacts to be addressed in the EIS, and alternatives that should be considered. Scoping comments should identify specific issues or topics that the EIS should address in order to assist DOE in identifying significant issues. Written, e-mailed, or faxed comments should be communicated by May 19, 2003 (see **ADDRESSES**).

DOE will conduct a public scoping meeting at D.H.H. Lengel Middle School, 1541 West Laurel Boulevard, in Pottsville, PA, on May 5, 2003, at 7 p.m. In addition, the public is invited to an informal session at this location beginning at 4 p.m., to learn more about the proposed action. Displays and other information about the proposed agency action and the demonstration plant will be available, and DOE personnel will be present to discuss the proposed action and the NEPA process.

The formal scoping meeting will begin on May 5, 2003, at 7 p.m. DOE asks people who wish to speak at this public scoping meeting to contact Mr. Lloyd Lorenzi, either by phone, fax, computer, or in writing (*see* **ADDRESSES** in this notice).

People who do not arrange in advance to speak may register at the meeting (preferably at the beginning of the meeting) and will be provided opportunities to speak following previously scheduled speakers. Speakers who need more than five minutes should indicate the length of time desired in their request. Depending on the number of speakers, DOE may need to limit speakers to five-minutes initially but will provide additional opportunities as time permits. Speakers may also provide written materials to supplement their presentations. Oral and written comments will be given equal consideration.

DOE will begin the meeting with an overview of the proposed Gilberton Project. The meeting will not be conducted as an evidentiary hearing, and speakers will not be cross-examined. However, speakers may be asked questions to help ensure that DOE fully understands their comments or suggestions. A presiding officer will establish the order of speakers and provide any additional procedures necessary to conduct the meeting.

Issued in Washington, DC, on this 4th day of April, 2003.

Beverly A. Cook,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 03–8837 Filed 4–9–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–319–000]

ANR Pipeline Company; Notice of Tariff Filing

April 3, 2003.

Take notice that on March 28, 2002, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fifth Revised Sheet No. 161A.02, with an effective date of April 30, 2003.

ANR states that it is tendering the revised tariff sheet in order to clarify its rights to allow contractual rights of first refusal pursuant to Section 22.2.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8775 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

April 3, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12387–000.

c. Date filed: October 7, 2002.

d. *Applicant:* Dierks Hydro, LLC.

e. *Name and Location of Project:* The Dierks Dam Project would be located on the Saline River in Sevier County, Arkansas. The proposed project would be located on an existing dam administered by the U.S. Corps of Engineers (Corps).

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 91a—825r.

g. *Applicant contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would utilize the Corps' existing Dierks Dam and Reservoir and would consist of: (1) A proposed 200-foot-long, 6-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 2 megawatts, (3) a proposed 5-mile-long, 25-kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 18 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at Dierks Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit

application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8785 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–072]

ANR Pipeline Company; Notice of Negotiated Rate Filing

April 3, 2003.

Take notice that on March 31, 2003, ANR Pipeline Company (ANR) tendered for filing and approval an amendment to a Service Agreement between ANR and CoEnergy Trading Company, which adds additional secondary points at which the negotiated rate shall be charged. ANR requests that the Commission accept and approve the amendment to be effective April 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8795 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–073]

ANR Pipeline Company; Notice of Negotiated Rate Filing

April 3, 2003.

Take notice that on March 31, 2003, ANR Pipeline Company (ANR) tendered for filing and approval amendments to two Service Agreements between ANR and PCS Nitrogen Ohio, L.P. ANR states that these amendments effectuate an increase in the Maximum Daily Quantity under one agreement, and a decrease in the Maximum Daily Quantity under the other agreement. ANR requests that the Commission accept and approve the amendments to be effective April 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8796 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–299–001]

Dominion Cove Point LNG, LP.; Notice of Filing

April 3, 2003.

Take notice that on March 31, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing workpapers supporting the calculation of Cove Point's retention percentages for the annual period beginning May 1,2003.

Cove Point states that the tariff sheet sets forth the restatement and adjustment to its retainage percentages for both the peaking services and transportation services, to go into effect May 1, 2003.

Cove Point states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8774 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–326–000]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

April 3, 2003.

Take notice that on March 31, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets proposed to become effective May 15, 2003:

First Revised Sheet No. 3
Sixth Revised Sheet No. 27
Fourth Revised Sheet No. 34
Second Revised Sheet No. 54
Fifth Revised Sheet No. 55
Seventh Revised Sheet No. 57
Sixth Revised Sheet No. 57A
Second Revised Sheet No. 70
First Revised Sheet No. 71
First Revised Sheet No. 72
Second Revised Sheet No. 141
First Revised Sheet No. 148
Second Revised Sheet No. 149
Second Revised Sheet No. 150
Fourth Revised Sheet No. 153
First Revised Sheet No. 155
First Revised Sheet No. 158
Third Revised Sheet No. 159
Third Revised Sheet No. 160
Fourth Revised Sheet No. 164
Second Revised Sheet No. 166
Third Revised Sheet No. 171
First Revised Sheet No. 176A
Fifth Revised Sheet No. 181
Fourth Revised Sheet No. 182
Fifth Revised Sheet No. 183
Sixth Revised Sheet No. 184
Sixth Revised Sheet No. 185
Fifth Revised Sheet No. 186
Second Revised Sheet No. 190
Second Revised Sheet No. 192

Iroquois asserts that the purpose of this filing is to correct and update minor inconsistencies in the tariff including, various grammatical errors, removal of obsolete language associated with the Pro Forma contracts, update changes to technical terms to reflect new industry technologies, updates to the reference of industry standards boards, time extensions for contract acceptance for ITS and PALS contracts, an updated system map and other non substantive syntax and format revisions.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8782 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–157–011]

Kern River Gas Transmission Company; Notice of Negotiated Rates

April 3, 2003.

Take notice that on March 31, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective April 1, 2003.

Fifth Revised Sheet No. 495.
Second Revised Sheet No. 496.
First Revised Sheet No. 497.

Kern River states that the purpose of this filing is to implement a negotiated rate transaction between Kern River and Sempra Energy Trading Corporation, in accordance with the Commission's

Policy Statement on alternatives to Traditional Cost of Service Ratemaking for Natural Gas Pipelines, and to reference the agreement in Kern River's tariff.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8773 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–320–000]

Kern River Gas Transmission Company; Notice of Report of Gas Compressor Fuel and Lost and Unaccounted-for Gas Factors for 2002

April 3, 2003.

Take notice that on March 31, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing a report supporting its gas compressor fuel and lost and unaccounted-for gas factors for 2002.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8776 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–14–014]

Midwestern Gas Transmission Company; Notice of Negotiated Rates

April 3, 2003.

Take notice that on March 28, 2003, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of Midwestern's FERC Gas Tariff, Third Revised Volume No. 1, Sixth Revised Sheet No. 273, to become effective April 1, 2003.

Midwestern states that it has entered into a Negotiated Rate Agreement with Northern Illinois Gas Company, d/b/a Nicor Gas (Nicor). Contract No. FA0166 provides the following information: (1) The exact legal name of the shipper; (2) the total charges (the negotiated rate and all applicable charges); (3) the receipt and delivery points; (4) the volume of gas to be transported; and (5) the applicable rate schedule for the service. In addition, Midwestern states that it is filing Sheet No. 273 to reflect that the Negotiated Rate contains non-conforming terms.

Midwestern further states that the information set forth in this negotiated rate agreement fully discloses the essential conditions involved in the negotiated rate transaction, including a specification of all consideration. In addition, in accordance with the orders approving Midwestern's negotiated rate option, Midwestern will keep its negotiated rate information in such form that it can be filed, separately identified, and separately totaled as part of and in the format of Statements G, I, and J in Midwestern's future section 4 rate case filings.

Midwestern states that copies of this filing have been sent to all of Midwestern's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8791 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–322–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes In FERC Gas Tariff

April 3, 2003.

Take notice that on March 31, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective April 1, 2003.

Natural states that the purpose of this filing is to revise Natural's Tariff by providing the incremental Storage Expansion 2003 recourse rates under Rate Schedule NSS pursuant to orders issued in Docket No. CP02–391–000.

Natural states that copies of the filing are being mailed to its customers and state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8778 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–080]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

April 3, 2003.

Take notice that on March 31, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets, to be effective April 1, 2003.

Natural states that the purpose of this filing is to implement six (6) new negotiated rate transactions entered into by Natural and various shippers under Natural's Rate Schedule NSS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that these negotiated rate agreements support the expansion of the North Lansing Storage Field as authorized by the Commission in Docket No. CP02–391–000.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8793 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–081]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

April 3, 2003.

Take notice that on March 31, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective April 1, 2003.

Natural states that the purpose of this filing is to implement a new negotiated rate transactions between Natural and Occidental Energy Marketing, Inc. under Rate Schedule FTS pursuant to section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–8794 Filed 4–9–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–363–006]

North Baja Pipeline, LLC; Notice Compliance Filing

April 3, 2003.

Take notice that on March 31, 2003, North Baja Pipeline, LLC (NBP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in Appendix A to the filing, with an effective date of February 28, 2003.

NBP states that the tariff sheets are being filed to comply with the Commission's February 28, 2003, Order Granting Rehearing and Modifying Prior Order in the instant docket.

NBP further states that a copy of this filing has been served on NBP's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 14, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–8786 Filed 4–9–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–048]

Northern Natural Gas Company; Notice of Negotiated Rates

April 3, 2003.

Take notice that on March 31, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, 29 Revised Sheet No. 66 and 25 Revised Sheet No. 66A, proposed to be effective on April 1, 2003.

Northern states that the above sheets are being filed to implement specific negotiated rate transactions with Occidental Energy Marketing, Inc. and WPS Energy Services, Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–8787 Filed 4–9–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–049]

Northern Natural Gas Company; Notice of Negotiated Rates

April 3, 2003.

Take notice that on March 31, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, 30 Revised Sheet No. 66 and 26 Revised Sheet No. 66A, to be effective on April 1, 2003.

Northern states that the above sheets are being filed to implement specific negotiated rate transaction with United Energy Trading, LLC in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–8788 Filed 4–9–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–325–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 2003.

Take notice that on March 31, 2003, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing to become effective May 1, 2003.

Panhandle states that this filing is made in accordance with Section 25.1 (Flow Through of Cash-Out Revenues in Excess of Costs) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, First Revised Volume No. 1.

Panhandle further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–8781 Filed 4–9–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–328–000]

Panhandle Eastern Pipe Line Company; Notice of Annual Report of Flow Through of Penalty Revenues

April 3, 2003.

Take notice that on March 31, 2003, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its Annual Report of Flow Through of Penalty Revenues.

Panhandle states that this filing is made in accordance with section 25.2(c)(i) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, First Revised Volume No. 1.

Panhandle further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 10, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–8784 Filed 4–9–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–327–000]

Pine Needle LNG Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

April 3, 2003.

Take notice that on March 31, 2003, Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Third Revised Tariff Sheet No. 4, with an effective date of May 1, 2003.

Pine Needle states that the instant filing is being submitted pursuant to section 18 and section 19 of the General Terms and Conditions (GT&C) of Pine Needle's FERC Gas Tariff.

Pine Needle states that it is serving copies of the instant filing to its affected customers, interested State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8783 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–324–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Tariff Filing

April 3, 2003.

Take notice that on March 31, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume No.1, Original Sheet No. 0 through Original Sheet No. 514, to become effective April 30, 2003.

Southern Star states that the purpose of this filing is to restate Southern Star's FERC Gas Tariff, Original Volume No. 1 to reflect its name change to Southern Star Central Gas Pipeline, LLC rather than Williams Gas Pipelines Central, Inc. as currently on file with the Commission. Southern Star states that the instant filing reflects the change to Southern Star, the repagination of tariff sheets and minor modifications to the text of various tariff sheets to reflect the repagination. Southern Star also states that the instant filing makes no changes to the Rates, Rate Schedules, General Terms and Conditions or Form of Service Agreements.

Southern Star further states that copies of the transmittal letter and appendices (excluding Appendix C) are being mailed to Southern Star's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8780 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–119]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

April 3, 2003.

Take notice that on March 31, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Negotiated Rate Tariff Filing.

Tennessee requests that the Commission approve a March 17, 2003, negotiated rate arrangement between Tennessee and Kerr McGee Corporation. Tennessee requests that the Commission grant such approval effective May 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8789 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–321–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 2003.

Take notice that on March 31, 2003, Trailblazer Pipeline Company (Trailblazer) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), First Revised Sheet No. 8, to be effective May 1, 2003.

Trailblazer states that the purpose of this filing is to make a periodic adjustment under Section 41 of the General Terms and Conditions of its Tariff which revises the level of the Expansion Fuel Adjustment Percentage in Trailblazer's Tariff.

Trailblazer states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8777 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–058]

TransColorado Gas Transmission Company; Notice of Compliance Filing

April 3, 2003.

Take notice that on March 31, 2003, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 21, First Revised Sheet No. 22 and Second Revised Sheet No. 22A, to be effective April 1, 2003.

TransColorado states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

TransColorado states that the tendered tariff sheets propose to revise TransColorado's Tariff to reflect an amended negotiated-rate contract with ChevronTexaco Natural Gas, a division of Chevron USA, Inc.

TransColorado further states that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8792 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–359–014]

Transcontinental Gas Pipe Line Corporation; Notice of Negotiated Rates

April 3, 2003.

Take notice that on March 31, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing executed service agreements that contain negotiated rates under Transco's Rate Schedule FT between Transco and the following Customers: Cardinal FG Company; Cargill Inc.; Chattahoochee EMC (successor to Oglethorpe Power Corporation under the Precedent Agreement); City of Buford, Georgia; City of Covington, Georgia; City of Elberton, Georgia; City of Lawrenceville, Georgia; City of Madison, Georgia; City of Sugar Hill, Georgia; City of Winder, Georgia; Clinton-Newberry Natural Gas Authority; Exelon Generation Company, LLC; Fort Hill Natural Gas Authority; Progress Ventures (successor to Carolina Power & Light Company under the Precedent Agreement); and Sylacauga Utilities Board.

Transco states that the purpose of the instant filing is to comply with requirements specified in the Commission's Order issued February 14, 2002, "Order Issuing Certificate," which required Transco, among other things, to file 30 to 60 days prior to the commencement of service of the Momentum Expansion Project, the negotiated rate agreements or tariff sheets reflecting the essential elements of its negotiated rate agreements. Transco states that the effective date of these negotiated rate transactions is May 1, 2003, which is the anticipated in-service date of Phase I of the Momentum Expansion Project.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8790 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–323–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

April 3, 2003.

Take notice that on March 31, 2003, Williston Basin Interstate Pipeline Company (Williston Basin or Company), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A to the filing, with a proposed effective date of May 1, 2003.

Williston Basin states that the revised tariff sheets will give Williston Basin

the ability to negotiate rates as provided in the Commission's January 31, 1996 Statement of Policy in Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8779 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER992948–002, et al.]

Baltimore Gas and Electric Company, et al.; Electric Rate and Corporate Filings

April 2, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Baltimore Gas and Electric Company

[Docket No. ER99–2948–002]

Constellation Power Source Generation, Inc.

[Docket No. ER00–2918–002]

Calvert Cliffs Nuclear Power Plant, Inc.

[Docket No. ER00–2917–002]

Constellation Power Source, Inc.

[Docket No. ER00–607–002]

Oleander Power Project, Limited Partnership

[Docket No. ER00–3240–001]

Holland Energy, LLC

[Docket No. ER01–558–001]

University Park Energy, LLC

[Docket No. ER01–557–001]

Wolf Hills Energy, LLC

[Docket No. ER01–559–001]

Big Sandy Peaker Plant, LLC

[Docket No. ER01–560–001]

Handsome Lake Energy, LLC

[Docket No. ER01–556–001]

Nine Mile Point Nuclear Station, LLC

[Docket No. ER01–1654–002]

High Desert Power Project, LLC

[Docket No. ER01–2641–002]

Constellation New Energy, Inc.

[Docket No. ER02–2567–002]

Constellation Power Source Maine, LLC

[Docket No. ER02–699–001]

Power Provider LLC

[Docket No. ER01–1949–002]

Take notice that on March 28, 2003, the above-referenced entities, collectively the "Constellation Entities," submitted for filing with the Federal Energy Regulatory Commission (Commission) a triennial market power update pursuant to the Commission orders granting them market-based rate authorizations.

Comment Date: April 18, 2003.

2. Bayswater Peaking Facility, LLC

[Docket No. ER02–669–001]

Take notice that on March 28, 2003, Bayswater Peaking Facility, LLC (Bayswater), with its principal office at 700 Universe Blvd., Juno Beach, Florida 33408, filed with the Federal Energy Regulatory Commission (the Commission) a Change of Status regarding its Market-based Rate application.

Comment Date: April 18, 2003.

3. Nevada Power Company

[Docket No. ER03–340–001]

Take notice that on March 25, 2003, Nevada Power Company (Nevada Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a Notice of Cancellation of Service Agreement No. 101, Long-Term Firm Point-to-Point Transmission Service between Nevada Power Company and Reliant Energy Services, Inc. Nevada Power has requested an effective date for the cancellation of September 17, 2002.

Nevada Power states that this Notice of Cancellation is filed pursuant to the Commission's February 21, 2003 order in Docket No. ER03–340–000, and appropriate to Service Agreement No. 101 and the termination notice given by Reliant Energy Services, Inc. Nevada Power also states that copies of the filing were served upon Reliant Energy Services, Inc., and the Public Utilities Commission of Nevada.

Comment Date: April 15, 2003.

4. Nevada Power Company

[Docket No. ER03–340–002]

Take notice that on March 25, 2003, Nevada Power Company (Nevada Power) tendered for filing with the Federal Energy Regulatory Commission (Commission) in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a Notice of Cancellation of Service Agreement No. 100, Long-Term Firm Point-to-Point Transmission Service between Nevada Power Company and Pinnacle West Energy Corporation. Nevada Power has requested an effective date for the cancellation of September 17, 2002.

Nevada Power states that this Notice of Cancellation is filed pursuant to the Commission's February 21, 2003 Order in Docket No. ER03–340–000, and appropriate to Service Agreement No. 100 and the termination notice given by Pinnacle West Energy Corporation. Nevada Power also states that copies of the filing were served upon Pinnacle West Energy Corporation and the Public Utilities Commission of Nevada.

Comment Date: April 15, 2003.

5. Midwest Independent Transmission System Operator, Inc.

[Docket Nos. ER03–402–002]

Take notice that on March 28, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's Order in Midwest Independent Transmission System Operator Inc., 102 FERC ¶ 61,210 (2003). The Midwest ISO has requested an effective date of March 1, 2003 consistent with the Commission's Order on compliance.

The Midwest ISO states that it has electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: April 18, 2003.

6. Jamaica Bay Peaking Facility, LLC

[Docket No. ER03–623–001]

Take notice that on March 28, 2003, Jamaica Bay Peaking Facility, LLC (Jamaica Bay) tendered for filing an amendment to its application for authorization to sell wholesale power at market-based rates, and certain ancillary services at market-based rates into the New York market.

Jamaica Bay states that copies of this filing have been served on the New York State Public Service Commission, the Long Island Power Authority, and the Florida Public Service Commission.

Comment Date: April 18, 2003.

7. Entergy Services, Inc.

[Docket No. ER03–667–000]

Take notice that on March 28, 2003, Entergy Services, Inc. (Entergy), on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Termination of the Interconnection and Operating Agreement and Generator Imbalance Agreement between Entergy Arkansas and AES River Mountain L.P.

Comment Date: April 18, 2003.

8. Southwest Power Pool, Inc.

[Docket No. ER03–668–000]

Take notice that on March 28, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing with the Federal Energy Regulatory Commission (Commission) an unexecuted Network Integration Transmission Service Agreement and an unexecuted Network Operating Agreement with Kansas Electric Power Cooperative, Inc. (KEPCO). SPP seeks an effective date of March 1, 2003 for these agreements. SPP states that the parties have agreed to all the terms and conditions for the underlying service, and SPP will submit executed signature pages to the Commission when obtained.

SPP states that KEPCO and Western Resources, the host transmission owner, were served with a copy of this filing.

Comment Date: April 18, 2003.

9. New York State Electric & Gas Corporation

[Docket Nos. ER03–669–000]

Take notice that on March 28, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Interconnection Agreement between NYSEG and Innovative Energy Systems, Inc. (Innovative) that sets forth the terms and conditions governing the interconnection between Innovative's generating facility in Seneca County, New York and NYSEG's transmission system.

NYSEG states that copies of this filing have been served upon Innovative, the New York State Public Service Commission, and the New York Independent System Operator, Inc.

Comment Date: April 18, 2003.

10. New York State Electric & Gas Corporation

[Docket Nos. ER03–670–000]

Take notice that on March 28, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Interconnection Agreement between NYSEG and Seneca Energy II, LLC (Seneca), that sets forth the terms and conditions governing the interconnection between the Seneca 11.2 MW generating plant and appurtenant facilities located in Seneca County, NY (the Plant) and NYSEG's transmission system.

NYSEG states that copies of this filing have been served upon Seneca, the New York State Public Service Commission, and the New York Independent System Operator, Inc.

Comment Date: April 18, 2003.

11. Southwest Power Pool, Inc.

[Docket No. ER03–671–000]

Take notice that on March 28, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point Transmission Service with Western Resources d.b.a. Westar Energy (Western Resources). SPP seeks an effective date of March 1, 2003 for this service agreement.

SPP states that Western Resources was served with a copy of this filing.

Comment Date: April 18, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8763 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–53–000, et al.]

Reliant Energy Bighorn, LLC, et al.; Electric Rate and Corporate Filings

March 31, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Reliant Energy Bighorn, LLC

[Docket No. EG03–53–000]

Take notice that on March 27, 2003, Reliant Energy Bighorn, LLC (Reliant Bighorn) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act (PUHCA).

Comment Date: April 17, 2003.

2. Midwest Independent Transmission

[Docket Nos. ER02–111–007 and ER02–652–004]

Take notice that on March 26, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to Schedule 10 (ISO Cost Recovery Adder) and Schedule 10-A (Alternative Administrative Cost Adder) of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1, pursuant to Order of the Federal Energy Regulatory Commission, Midwest Independent Transmission System Operator Inc., 102 FERC ¶ 61,193.

Pursuant to the Settlement reached in these proceedings, the Midwest ISO requests an effective date of March 1, 2003.

The Midwest ISO has requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: April 16, 2003.

3. American Electric Power Service Corporation

[Docket No. ER02–913–002]

Take notice that on March 27, 2003, the American Electric Power Service Corporation; on behalf of the operating companies of the American Electric Power System (collectively AEP) filed proposed amendments to the Network Integration Transmission Service Agreement originally filed in Docket No. ER02–913–000 on January 30, 2002. AEP states that the proposed amendments are intended to implement a Settlement Agreement also filed by AEP on March 27, 2003.

AEP requests an effective date of January 1, 2002. AEP states that copies of the AEP Companies' filing were served upon the parties to Docket No. ER02–913–000 and State Commissions.

Comment Date: April 17, 2003.

4. Southwestern Electric Power Company

[Docket No. ER02–2313–001]

Take notice that on March 27, 2003, Southwestern Electric Power Company (SWEPCO) submitted for filing, in compliance with the requirements of the Commission's February 25, 2003, Letter Order in Docket No. ER02–2313–000, revised sheets to its First Revised FERC Rate Schedule No. 72.

SWEPCO states that a copy of this filing has been served on each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: April 17, 2003.

5. ISO New England Inc.

[Docket No. ER02–2330–012]

Take notice that on March 25, 2003, ISO New England Inc., (the ISO) tendered an Errata Filing to correct a Compliance Report filed on March 20, 2003. The ISO states that copies of the Errata Filing have been served upon the parties in Docket No. ER02–2330–012.

Comment Date: April 10, 2003.

6. Southern Company Services, Inc.

[Docket No. ER03–379–001]

Take notice that on March 27, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), resubmitted First Revised Service Agreement No. 451 for long-term firm point-to-point transmission service under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff) in compliance with the Commission's Order in this proceeding dated February 25, 2003.

Comment Date: April 17, 2003.

7. Southern California Edison Company

[Docket No. ER03–549–001]

Take notice that on March 27, 2003, Southern California Edison Company (SCE) tendered for filing with the Federal Energy Regulatory Commission (Commission) an amendment to its February 20, 2003 filing by submitting revised tariff sheets to the unexecuted wholesale distribution service agreements of SCE.

Comment Date: April 10, 2003.

8. Jersey Central Power & Light Company

[Docket No. ER03–650–001]

Take notice that on March 27, 2003, Jersey Central Power & Light Company (Jersey Central) tendered for filing an amendment to the Interconnection Agreement between Jersey Central and Atlantic City Electric Company (Atlantic City), which corrects the effective date listed on the agreement.

Jersey Central states that a copy of this filing has been served upon the service list maintained by the Secretary for this proceeding, the New Jersey Board of Public Utilities and Atlantic City.

Comment Date: April 15, 2003.

9. Kansas Gas & Electric Company

[Docket ER03–652–000]

Take notice that on March 27, 2003, Kansas Gas & Electric Company (KGE) (d/b/a Westar Energy) tendered for filing a change in its Federal Power Commission Electric Service Tariff No. 93. KGE states that the change is to reflect the amount of transmission capacity requirements required by Westar Energy, Inc., (WE) under Service Schedule M to FPC Rate Schedule No. 93 for the period from June 1, 2003 through May 31, 2004. KGE requests an effective date of June 1, 2003.

KGE states that notice of the filing has been served upon the Kansas Corporation Commission.

Comment Date: April 17, 2003.

10. LMP Capital, LLC

[Docket No. ER03–653–000]

Take notice that on March 27, 2003, LMP Capital, LLC (LMP Capital) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of LMP Capital's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

LMP Capital intends to engage in wholesale electric power and energy purchases and sales as a marketer. LMP Capital states that it is not in the business of generating or transmitting electric power. LMP Capital states that it is an independent electricity marketer with a sole purpose of buying and selling electricity in the wholesale electricity market.

Comment Date: April 17, 2003.

11. DB Energy Trading LLC

[Docket No. ER03–657–000]

Take notice that on March 27, 2003, DB Energy Trading LLC (DB Energy) tendered for filing an application for an order accepting its rate schedule to permit sales of power and capacity at market-based rates and granting certain waivers and blanket approvals. DB Energy requests waiver of the 60-day prior notice rule and requests that its rate schedule become effective April 1, 2003.

Comment Date: April 17, 2003.

12. Black Rock Group, LLC

[Docket No. ER03–658–000]

Take notice that on March 27, Black Rock Group, LLC (Black Rock) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of Black Rock Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Black Rock states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Black Rock states that it is not in the business of generating or transmitting electric power. Black Rock also states that it is a limited liability company in Nebraska with no current affiliates or subsidiaries.

Comment Date: April 17, 2003.

13. American Electric Power Service Corporation

[Docket No. ER03–659–000]

Take notice that on March 27, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Interconnection and Operation Agreement between Ohio Power Company and Lawrence Energy Center LLC (First Revision to Service Agreement 433). AEPSC states that the agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 31, 2001. AEPSC requests an effective date of May 25, 2003.

AEPSC states that a copy of the filing was served upon Lawrence Energy Center and the Public Utilities Commission of Ohio.

Comment Date: April 17, 2003.

14. American Electric Power Service Corporation

[Docket No. ER03–660–000]

Take notice that on March 27, 2003, the American Electric Power Service Corporation (AEPSC) tendered for filing an executed Interconnection and Operation Agreement between Ohio Power Company and Lawrence Energy Center LLC (First Revision to Service Agreement 516). AEPSC states that the agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 31, 2001. AEP requests an effective date of May 25, 2003.

AEPSC states that a copy of the filing was served upon Lawrence Energy Center and the Public Utilities Commission of Ohio.

Comment Date: April 17, 2003.

15. Indianapolis Power & Light Company

[Docket No. ER03–661–000]

Take notice that on March 27, 2003, Indianapolis Power & Light Company (IPL), tendered for filing with the Federal Energy Regulatory Commission (Commission) the Modification to the Interconnection Agreement, dated December 2, 1968, between IPL and the Southern Indiana Gas & Electric Company (SIGECO) and the restated Interconnection Agreement in conformance with Order No. 614.

IPL requests an effective date for the tendered Modification of sixty (60) days from the date of filing. IPL states that a copy of the filing was served upon SIGECO.

Comment Date: April 17, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8762 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

April 3, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12195–000 .

c. *Date filed:* June 10, 2002, as revised February 4, 2003.

d. *Applicant:* McCloud Hydro, LLC.

e. *Name and Location of Project:* The McCloud Dam Project would be located on an existing dam on the McCloud River in Shasta County, California. The existing dam is owned by Pacific Gas and Electric (PG&E) and the project would be partially located on lands administered by PG&E. The Applicant states that the proposed project would not involve the physical alteration to PG&E's McCloud-Pitt Hydroelectric Project No. 2106.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

g. *Applicant contact:* Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would include: (1) The existing McCloud Reservoir, impounded by an existing 660-foot-long, 240-foot-high earthfill dam, having a surface area of 520 acres and a storage capacity of 35,300 acre-feet at normal maximum water surface elevation 2,680 feet msl, (2) a proposed powerhouse with a total installed capacity of 3.5 megawatts, (3) a proposed 400-foot-long, 4.5-foot-diameter penstock, (4) a proposed 6-mile-long, 15 kv transmission line, and (5) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 23 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the applicant's address in item g above.

l. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36): Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8764 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions To Intervene

April 3, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12387–000.

c. *Date filed:* October 7, 2002.

d. *Applicant:* Dierks Hydro, LLC.

e. *Name and Location of Project:* The Dierks Dam Project would be located on the Saline River in Sevier County, Arkansas. The proposed project would be located on an existing dam administered by the U.S. Corps of Engineers (Corps).

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 91a—825r.

g. *Applicant contact:* Mr. Brent L. Smith, Northwest Power Services, Inc., PO Box 535, Rigby, ID 83442, (208) 745–0834.

h. *FERC Contact:* Tom Papsidero, (202) 502–6002.

i. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

j. *Description of Project:* The proposed project would utilize the Corps' existing Dierks Dam and Reservoir and would consist of: (1) A proposed 200-foot-long, 6-foot-diameter steel penstock, (2) a proposed powerhouse containing one generating unit with an installed capacity of 2 megawatts, (3) a proposed 5-mile-long, 25–kv transmission line, and (4) appurtenant facilities. The project would operate in a run-of-river mode and would have an average annual generation of 18 GWh.

k. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at Dierks Hydro, LLC, 975 South State Highway, Logan, UT 84321, (435) 752–2580.

l. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

m. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

n. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8765 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

April 3, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12441–000.

c. *Date Filed:* February 6, 2003.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi L&D #16 Hydroelectric Project.

f. *Location:* The proposed project would be located on an existing dam owned by the U.S. Army Corps of Engineers (Corps), on the Mississippi River in Rock Island County, Illinois.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the Corps' existing dam would consist of: (1) Seven 9-foot-diameter, 80-foot-long steel penstocks, (2) a powerhouse containing seven generating units with a total installed capacity of 14 MWs, (3) a 14.7–kv transmission line approximately 1.5 miles long, and (4) appurtenant facilities. The project would have an annual generation of 86 GWh.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application, A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8766 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 3, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12446–000.

c. *Date filed:* February 19, 2003.

d. *Applicant:* The Green Power Company of Kentucky.

e. *Name of Project:* Green River Lake Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Green River Lake Dam on the Green River, near the Towns of Campbellsville, Columbia, and Elkhorn, Taylor County, Kentucky.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* David Brown Kinloch, Soft Energy Associates, 414 S.Wenzel Street, Louisville, Kentucky 40204, (502) 589–0975.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

k. *Competing Application:* Project No. 12353–000, *Date Filed:* August 21, 2002, Due Date: February 24, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Green River Lake Dam, and would consist of: (1) Three proposed 63-inch HDPE siphoning penstocks, about 1500 feet in length; (2) twelve proposed 600 mm crossflow turbines placed at the end of the penstocks (four turbines per penstock); (3) a proposed powerhouse containing twelve 350 kW generator units having a total installed capacity of 4.2 MW, and (4) appurtenant facilities. The project would have an estimated annual generation of 18,000 MWh.

m. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h.

n. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and motions to intervene may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8767 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

April 3, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12447–000.

c. *Date Filed:* February 19, 2003.

d. *Applicant:* Fort Dodge Hydroelectric Development Company.

e. *Name of Project:* Fort Dodge Mill Dam Hydro Power Project.

f. *Location:* The proposed project would be located on an existing dam owned by the City of Fort Dodge, on the Des Moines River in Webster County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Mr. Thomas J. Wilkinson, Jr., Fort Dodge Hydroelectric Development Company, 1910 Alliant Tower, 200 1st St. SE., Cedar Rapids, Iowa 52401, (319) 364–0171.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed facility is a run-of-river installation consisting of: (1) A 342-foot-long and 18-foot-high concrete dam, (2) a 230-foot-long overflow spillway with

30-inch flashboards and five 15 foot electrically operated tainter gates with a hydraulic height of 15 feet, (3) an impoundment having a service area of 90 acres and storage capacity of 450 acre-feet and a normal water surface elevation of 990 feet msl, (4) a powerhouse containing two generating units with a total installed capacity of 1,260 MW, (5) a 13.8-kv transmission line approximately 2,400-feet-long, and (6) appurtenant facilities. The project would have an annual generation of 7.5 GWh.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8768 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

April 3, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License—Major Project.

b. *Project No.:* 2174–012.

c. *Date Filed:* March 27, 2003.

d. *Applicant:* Southern California Edison.

e. *Name of Project:* Portal Project.

f. *Location:* On Rancheria Creek in Fresno County, near Big Creek, California. The project affects federal lands in the Sierra National Forest, covering a total of 77.67 acres.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* R. W. Krieger, Vice President, Power Production, Southern California Edison Company, 300 N. Lone Hill Ave., San Dimas, California 91773, (909) 394–8667.

i. *FERC Contact:* Jim Fargo, (202) 502–6095 or *James.Fargo@FERC.gov.*

j. *Deadline for filing additional study requests:* May 27, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project.

Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. After logging into the e-Filing system, select "Comment on Filing" from the Filing Type Selection screen and continue with the filing process."

k. This application is not ready for environmental analysis at this time.

l. The existing Portal Project consists of: (1) A 795-foot-long compacted earth and rock-fill dam; (2) Portal Forebay, with a 325 acre-foot useable storage capacity at elevation 7,185 feet; (3) an open channel spillway at the left abutment of the dam, discharging into Camp 61 Creek; (4) an outlet channel consisting of (a) the Adit 2 tunnel and shaft between Portal Forebay and Ward Tunnel, (b) Ward Tunnel for a distance of about 32,000 feet from Adit 2 to the base of the surge chamber on the tunnel, (c) a rock trap immediately downstream of the surge chamber, and (d) a 1,180-foot-long penstock from the rock trap to where it bifurcates just upstream of the Portal Powerhouse; (5) a 10.8-MW turbine located in the concrete powerhouse; and (6) a 2.5-mile-long 480 kV transmission line.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the California State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

o. *Procedural schedule and final amendments:* The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing.
Notice of NEPA Scoping.
Notice of application is ready for environmental analysis.
Notice of the availability of the NEPA document.
Order issuing the Commission's decision on the application.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8769 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 3, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Recreation Plan.

b. *Project No:* 2496–070.

c. *Date Filed:* February 20, 2003.

d. *Applicant:* Eugene Water and Electric Board (EWEB).

e. *Name of Project:* Leaburg-Walterville Project.

f. *Location:* The project is located on the Mckenzie River in Lane County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a) 825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr Gale Banry, Energy Resource Project Manager, Eugene Water and Electric Board, (541) 484–2411.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Heather Campbell at (202) 502–6182, or e-mail address: *heather.campbell@ferc.gov.*

j. *Deadline for filing comments and or motions:* May 5, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2496–070) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request:* The licensee filed a recreation plan pursuant to article 432 of its license. The plan addresses recreational enhancements at the project, including a boat launch take out facility, trails, day-use facilities and signage.

l. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room 888 First Street, NE., Room 2A, Washington, DC 20426 or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for

filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8770 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

April 3, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Change Project Boundary.

b. *Project No:* 2663–026.

c. *Date Filed:* March 6, 2003.

d. *Applicant:* Minnesota Power, Inc.

e. *Name of Project:* Pillager Hydroelectric Project.

f. *Location:* The project is located on the Crow Wing River in Cass and Morrison County, Minnesota.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Thomas E. Castle, Minnesota Power, Inc., 30 West Superior Street, Duluth, Minnesota 55802–2093, (218) 722–5642, extension 3595.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jake Tung at (202) 502–8757, or e-mail address: *hong.tung@ferc.gov.*

j. *Deadline for filing comments and or motions:* May 5, 2003.

k. *Description of Request:* The licensee proposes: (1) To extend the project boundary from 1199 feet National Geodetic Vertical Datum (NGVD) to 1203.85 feet NGVD; (2) to acquire approximately 75 acres of additional flowage rights to operate and maintain the project; and (3) to remove from the project boundary approximately 315 acres of private property.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8771 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 3, 2003.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Amendment of License.

b. *Project No.:* 4656–016.

c. *Date Filed:* March 18, 2003.

d. *Applicants:* Boise-Kuna Irrigation District, Nampa & Meridian Irrigation District, New York Irrigation District, Wilder Irrigation District, and Big Bend Irrigation District (the Districts).

e. *Name of Project:* Arrowrock Dam.

f. *Location:* At the U.S. Bureau of Reclamation's (Reclamation) existing Arrowrock Dam and Reservoir on the South Fork of the Boise River, in Elmore and Ada Counties, Idaho. Parts of the project would occupy lands managed by Reclamation and the U. S. Corps of Engineers and lands managed by the U.S. Forest Service within the Boise National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Albert P. Barker, Barker Rosholt & Simpson LLP, 205 North 10th Street, Suite 520, Boise, ID 83701, (208) 336–0700.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing motions to intervene, protests, comments:* May 5, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Description of Amendment:* The Districts request, among other things, pursuant to sections 4.200(c) and 4.202(a) of the Commission's regulations and Public Law No. 106–343, that the license be amended to extend the deadline for commencement of construction to March 26, 2005. The Districts also request that the deadline for completion of construction be extended to March 26, 2007.

l. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.fed.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests, and motions to intervene may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link. The Commission strongly encourages electronic filings.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8772 Filed 4–9–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2003–0003, FRL–7479–7]

Agency Information Collection Activities: Continuing Collection; Comment Request; Confidentiality Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Confidentiality Rules, EPA ICR No. 1665.06, OMB Control No. 2020–0003, expiration date September 30, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 9, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Alan D. Margolis, Collection Stategies Division, Office of Information Collection (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–1644; fax number: 202–566–1639; e-mail address: *margolis.alan@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OEI–2003–0003, which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752; FAX (202) 566–1753. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice, and according to the following detailed instructions: submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, OEI Docket, (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Affected entities: Entities potentially affected by this action are those who characterize the information they provide to EPA as CBI.

Title: Confidentiality Rules, OMB Control Number 2020–0003; EPA ICR Number 1665.06, expiring 9/30/2003.

Abstract: EPA administers a number of environmental protection statutes (*e.g.*, the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Resource Conservation and Recovery Act; and the Comprehensive Environmental Response, Compensation, and Liability Act), under which the Agency collects information from thousands of facilities in many economic sectors. In addition, businesses submit information to EPA without the Agency requesting it. The information addresses topics such as toxic chemicals, industrial processes, waste streams, and regulatory compliance. In many cases, businesses that submit information claim it as CBI. EPA established the procedures described in 40 CFR part 2, subparts A and B, to protect the confidentiality of information as well as the rights of the public to obtain access to information under the Freedom of Information Act (FOIA). In accordance with these regulations, when EPA finds it necessary to make a final confidentiality determination (*e.g.*, in response to a FOIA request or in the course of rulemaking or litigation) or an advance confidentiality determination, it notifies the affected business by sending a letter requesting substantiation of the confidentiality claim. This letter provides the affected business with an opportunity to submit comments (*i.e.*, a substantiation). This ICR relates to the collection of information that will assist EPA in determining whether previously submitted information is entitled to confidential treatment.

EPA is proposing to use an updated Request for Substantiation letter ("proposed letter"). The proposed letter consists of two samples to address separate factual situations: Sample Letter A and Sample Letter B. The use of two letters is a clarification of existing EPA procedures. Some of the information requested differs slightly from the current Request for Substantiation letter, concerning the possible voluntary nature of the submission and the issue of substantial competitive harm, and takes into account the vast amount of information now available electronically. Nevertheless, EPA estimates that the overall burden is the same. The proposed letter would apply to any context where a final confidentiality determination is needed, either in response to FOIA requests or in other situations (*e.g.*, where EPA is making information public to support rulemakings), or in the case of an advance confidentiality determination.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

EPA is soliciting comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Current Burden Statement: EPA estimates that in response to the procedures outlined in 40 CFR part 2, subpart B, the Agency would notify 543 businesses annually and provide them with an opportunity to submit comments explaining why previously submitted information should be treated as confidential. Of the 543 businesses, EPA estimates that approximately 443 industries would respond by submitting substantiations. The Agency estimates that it takes industry approximately 14 hours and $464.43 in labor costs to prepare and submit each substantiation; or a total of 6,202 hours at a cost of $205,742.49 in labor for all 443 substantiations. For those 100 businesses that do not submit substantiations, they are still likely to spend approximately 1 hour at a cost of $32.04 in labor to review EPA's notice, examine the information in question, and make a decision not to respond; or a total of 100 hours at a cost of $3,204.00 in labor costs for reviewing and deciding not to respond in 100 cases. The total burden on industry to review and, if desired, respond to 543 EPA substantiation requests is 6,302 hours at a cost of $208,946.49 in labor.

In addition, when EPA utilizes the services of contractors/subcontractors under the authority of 40 CFR part 2, subpart B, all contractor/subcontractor employees who may be given access to confidential information must first sign confidentiality agreements stating that they will honor the terms of the contract/subcontract which requires the protection of CBI. Contractor/subcontractor businesses must maintain a file of all such agreements. EPA estimates that there are about 129 contractor/subcontractor businesses that handle CBI in connection with their work for EPA each year. These 129 contractor/subcontractor businesses together have a total of approximately 658 employees who must sign confidentiality agreements each year. Each employee would need approximately 0.1 hour to review and sign an agreement, at a cost of $3.34 in labor; employees' review and signature of all agreements would require approximately 65.8 hours at a cost of $2,197.72 in labor per year. In addition, each subcontractor/contractor business would need approximately 0.5 hour at a cost of $8.07 in labor per year to maintain a file of employee confidentiality agreements; the 129 contractor/subcontractor businesses together would require a total of 64.5 hours at a labor cost of $1,041.03 to maintain a file of confidentiality agreements. The total burden for signing and maintaining confidentiality agreements would thus be 130.3 hours at a cost of $3,238.75.

The overall burden for handling confidentiality claims—including the substantiation process and the signing and maintaining of confidentiality agreements—would be 6,432.3 hours at a total labor cost of $212,185.24 per year. EPA estimates that no capital costs or operation and maintenance costs would be incurred as a result of this information collection.

EPA is soliciting the following additional information to assist in its assessment of the Agency's burden statement:

1. How many substantiation requests do you receive from EPA per year? How many CBI substantiations do you submit per year in response?

2. What is the average number, type, and level of staff involved in preparing a substantiation of CBI claims?

3. What is the average number of hours per staff type and level required to prepare a substantiation of CBI claims? How does this hour estimate breakdown by the following activities:

a. Read/review EPA's substantiation request.

b. Review information claimed confidential.

c. Prepare substantiation.

4. What is the average wage per hour for each staff type and level involved in preparing substantiations?

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 2, 2003.

Mark Luttner,

Director, Office of Information Collection.

[FR Doc. 03–8827 Filed 4–9–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–638]

ITFS, MDS, and MMDS Pending Legal Matters

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Wireless Telecommunications Bureau (WTB) has released two lists, the first contains legal matters with a filing date prior to March 25, 2002 where the applicant/licensee (or petitioner, if the petitioner is not the applicant or licensee) did not respond to the October Public Notice. Accordingly, any items on the first list are dismissed with prejudice. The second list contains all the current pending legal matters that are in WTB's records in the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS). This Public Notice ensures that the WTB has a complete and accurate listing of all pending legal matters in the ITFS, the MDS, and the MMDS, which will enable the WTB to act on these pending legal matters.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gregory Vadas, Esq., Policy and Rules Branch, at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice*, DA 03–638, released on March 18, 2002. The full text of this document is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Federal Communications Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. On October 18, 2002, the Wireless Telecommunications Bureau (WTB) released a Public Notice (*October Public Notice*) in which it sought to ensure that it had a complete and accurate listing of all pending legal matters in the Instructional Television Fixed Service (ITFS), the Multipoint Distribution Service (MDS), and the Multichannel Multipoint Distribution Service (MMDS). An Appendix (*October Appendix*) containing a list of all of the pending ITFS, MDS, and MMDS cases was attached to the *October Public Notice*. The *October Appendix* indicated the name of the applicant/licensee, the file number/call sign, the pleading type and filing date, the name of the petitioner, if not the applicant, and whether the file was complete. WTB required that all ITFS, MDS, and MMDS licensees, applicants, and other parties with pending pleadings relating to these services review and verify the information contained in the *October Appendix*. For legal matters with a filing date before March 25, 2002, WTB required that licensees, applicants, and other parties with pending pleadings respond in writing by December 17, 2002 if they desired that WTB continue processing these matters.

2. Appendix A to this Public Notice contains a list of those legal matters with a filing date prior to March 25, 2002 where the applicant/licensee (or petitioner, if the petitioner is not the applicant or licensee) did not respond to the *October Public Notice*. In the *October Public Notice*, WTB indicated, "For any legal matter for which written affirmations requesting further processing have not been received, those legal matters will be dismissed with prejudice." Accordingly, *it is ordered*, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and sections 21.28(d) and 73.3568(a)(1) of the Commission's Rules, 47 CFR 21.28 (d), 73.3568(a)(1), the legal matters listed in Appendix A to this Public Notice *are hereby dismissed with prejudice*.

3. WTB also requested petitioners of legal matters pending before the Bureau to review the list of pending matters in the *October Appendix*. If a pending matter was omitted from the *October Appendix*, WTB required petitioners to submit two date-stamped copies of the omitted petition or filing by December 17, 2002 if the petitioner desired to continue prosecuting the filing. After our review of these files, we have determined that the cases listed in Appendix B to this Public Notice are all the valid pending legal matters that are contained in WTB's records.

4. With respect to other requests to add legal matters to its list of pending legal matters, the WTB notes that in many instances, the respondent, but not the petitioner, submitted legal matters. In those cases, we are not adding those matters to our list of pending legal matters because the petitioner did not express interest in prosecuting the matter.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Applicant/licensee	File No./call sign	Petitioner (if not applicant)	Filing date	Pleading type
Alda Gold, Inc	BPMD–9551382		3/28/97	Petition for Reconsideration.
Alda Gold, Inc	BPMD–9551384		3/28/97	Petition for Reconsideration.
Alda Gold, Inc	BPMD–9551386		3/28/97	Petition for Reconsideration.
Alda Gold, Inc	WHJ902		3/28/97	Petition for Reconsideration.
Alda Gold, Inc	WHK656		3/28/97	Petition for Reconsideration.
Alda Gold, Inc	WNTL436		3/28/97	Petition for Reconsideration.
Atlantic MicroSystems, Inc	BMDP960510FG		6/17/96	Petition to Deny.
Bookcliff Christian School	951020TS		6/16/97	Informal Complaint.
Bridgewater College	BPLIF–93123OEX		2/26/96	Petition for Reconsideration.
Burlington College	911008DX	Ascutney Associates, Inc	1/3/92	Petition to Deny.

Applicant/licensee	File No./call sign	Petitioner (if not applicant)	Filing date	Pleading type
Burlington College	920110DE	Ascutney Associates, Inc	4/16/92	Petition to Deny.
Century Microwave Corp	BALMD–20000421AAC	Sprint Corp	4/21/00	Petition to Deny.
Century Microwave Corp	WMH689	Sprint Corp	4/21/00	Petition to Deny.
Champion Industries, Inc	BPMD–9551406		3/28/97	Petition for Reconsideration.
Champion Industries, Inc	WNTK634		3/28/97	Petition for Reconsideration.
Champlain College, Shoreham, Vermont.	BPLIF–911010DS	Champlain College, Shoreham, Vermont.	1/13/92	Petition to Deny.
Creighton Univ	931230DU	ABG Foundation NE Chapter, Inc.	5/31/94	Petition to Deny.
CS Wireless Systems, Inc	9750418	Dallas MDS Partners	3/4/97	Petition to Deny.
CS Wireless Systems, Inc	WHT789	Dallas MDS Partners	3/4/97	Petition to Deny.
Dennis R. Long	BALMD–20011106AAE	Wireless Cable Television of Pennsylvania, Inc and Wireless Telecommunications, Inc.	9/11/95	Petition to Deny.
Dennis R. Long	BALMD–955197	Wireless Cable Television of Pennsylvania, Inc and Wireless Telecommunications, Inc.	9/11/95	Petition to Deny.
Dennis R. Long	WMI836	Wireless Cable Television of Pennsylvania, Inc and Wireless Telecommunications, Inc.	9/11/95	Petition to Deny.
Gould Communications	WNTF307	Sprint Corp	7/21/00	Informal Complaint.
Heartland Wireless Commercial Channels, Inc.	980518LF		6/30/98	Petition to Deny.
Hubbard Trust (San Marcos, CA).	BRMD–9157898		4/2/97	Petition for Clarification.
Hubbard Trust (San Marcos, CA).	WPX85		4/2/97	Petition for Clarification.
Iberville Parish School and LA State Institute Alumni Associates.	931228DI	Louisiana Art	5/31/94	Petition to Deny.
Iberville Parish School and LA State Alumni Associates.	931230HE	Lousiana Art Institute	5/31/94	Petition to Deny.
Ivan Nachman; Blake Twedt; John Dudek (Burlington, VT).	BLMD–9350608	Vermont Wireless	4/14/93	Informal Complaint Cooperative.
Ivan Nachman; Blake Twedt; John Dudek (Burlington, VT).	BLMD–9350609	Vermont Wireless Cooperative.	4/14/93	Informal Complaint.
Ivan Nachman; Blake Twedt; John Dudek (Burlington, VT).	BLMD–9350610	Vermont Wireless Cooperative.	4/14/93	Informal Complaint.
Ivan Nachman; Blake Twedt; John Dudek (Burlington, VT).	WNTH842	Vermont Wireless Cooperative.	4/14/93	Informal Complaint.
Ivan Nachman; Blake Twedt; John Dudek (Burlington, VT).	WNTI675	Vermont Wireless Cooperative.	4/14/93	Informal Complaint.
Ivan Nachman; Blake Twedt; John Dudek (Burlington, VT).	WNTI680	Vermont Wireless Cooperative.	4/14/93	Informal Complaint.
JMP Telecom Systems, Inc	51022–CM–P–92		8/10/95	Petition for Reconsideration.
KNRW Wireless, L.P.	55137–CM–P–90		6/27/95	Petition for Reconsideration.
Libmot Communications	BALMD–20000721AAE		7/21/00	Informal Complaint.
Libmot Communications	WNTG452		7/21/00	Informal Complaint.
Line of Site, Inc; Young Communications; Libmot Communications Partnership; Gould Communications (Omaha, NE).	BLMD–9253087	Ad Hoc Committee of Wireless Development Partners I and Skycable of Omaha, LLC.	9/8/94	Informal Complaint.
Line of Site, Inc; Young Communications; Libmot Communications Partnership; Gould Communications (Omaha, NE).	BLMD–9350403	Ad Hoc Committee of Wireless Development Partners I and Skycable of Omaha, LLC.	9/8/94	Informal Complaint.
Line of Site, Inc; Young Communications; Libmot Communications Partnership; Gould (Omaha, NE).	BLMD–9350428	Ad Hoc Committee of Wireless Development Partners I and Communications Skycable of Omaha, LLC.	9/8/94	Informal Complaint.

Applicant/licensee	File No./call sign	Petitioner (if not applicant)	Filing date	Pleading type
Line of Site, Inc; Young Communications; Libmot Communications Partnership; Gould Communications (Omaha, NE).	BPMD–7705208	Ad Hoc Committee of Wireless Development Partners I and Skycable of Omaha, LLC.	9/8/94	Informal Complaint.
Line of Site, Inc.; Young Communications; Libmot Communications Partnership; Gould Communications (Omaha, NE).	BPMD–8950226	Ad Hoc Committee of Wireless Development Partners I and Skycable of Omaha, LLC.	9/8/94	Informal Complaint.
Line of Site, Inc.; Young Communications; Libmot Communications Partnership; Gould Communications (Omaha, NE).	WHT777	Ad Hoc Committee of Wireless Development Partners I and Skycable of Omaha, LLC.	9/8/94	Informal Complaint.
Line of Site, Inc.; Young Communications; Libmot Communications Partnership; Gould Communications (Omaha, NE).	WLW992	Ad Hoc Committee of Wireless Development Partners I and Skycable of Omaha, LLC.	9/8/94	Informal Complaint.
Line of Site, Inc.; Young Communications; Libmot Communications Partnership; Gould Communications (Omaha, NE).	WNTF307	Ad Hoc Committee of Wireless Development Partners I and Skycable of Omaha, LLC.	9/8/94	Informal Complaint.
Line of Site, Inc.; Young Communications; Libmot Communications Partnership; Gould Communications (Omaha, NE).	WNTF452	Ad Hoc Committee of Wireless Development Partners I and Skycable of Omaha, LLC.	9/8/94	Informal Complaint.
Multi Micro, Inc	BTCMD–20010815AAJ	WinBeam, Inc	11/5/01	Informal Complaint.
Multi Micro, Inc	WMH661	WinBeam, Inc	11/5/01	Informal Complaint.
Multi Micro, Inc	WMI413	WinBeam, Inc	11/5/01	Informal Complaint.
Multi Micro, Inc	WMI970	WinBeam, Inc	11/5/01	Informal Complaint.
Multi Micro, Inc	WMX703	WinBeam, Inc	11/5/01	Informal Complaint.
Multi Micro, Inc	WMX704	WinBeam, Inc	11/5/01	Informal Complaint.
Multi Micro, Inc	WNTJ462	WinBeam, Inc	11/5/01	Informal Complaint.
Multichannel Distribution of America (Myrtle Beach, SC).	BMPMD–9550321		5/6/96	Petition for Reconsideration.
Multichannel Distribution of America (Myrtle Beach, SC).	WLK351		5/6/96	Petition for Reconsideration.
MultiMicro, Inc	BRMD–20010323ABE	WinBeam, Inc	8/30/01	Petition to Deny.
MultiMicro, Inc	BRMD–20010323ABF	WinBeam, Inc	8/30/01	Petition to Deny.
Multi-Micro, Inc., Channels F1–F4 in Parkersburg, WV.	BPMDH–20000818ACZ		4/2/01	Petition to Deny.
Multi-Micro, Inc., Channels F1–F4 in Parkersburg, WV.	BPMDH–20000818ADX		4/2/01	Petition to Deny.
Multi-Micro, Inc., Channels F1–F4 in Parkersburg, WV.	BPMDH–20000818DIK		4/2/01	Petition to Deny.
Myrtle Beach E Partnership (Myrtle Beach, SC).	BPMD–9053281		8/8/94	Petition for Reconsideration.
Northern Rural Cable TV Cooperative, Inc. (Bath/Aberdeen, SD).	BPMD–9212856		9/11/98	Informal Complaint.
Northern Rural Cable TV Cooperative, Inc. (Bath/Aberdeen, SD).	WMY463		9/11/98	Informal Complaint.
Ouachita Academy of Arts and Science Rayville, Louisiana.	BPLIF–920309DA		1/18/95	Petition for Reconsideration.
Ouachita Academy of Arts and Science Rayville, Louisiana.	BPLIF–930219DN		1/18/95	Petition for Reconsideration.
Ouachita Academy of Arts and Science Rayville, Louisiana.	BPLIF–930219DP		1/18/95	Petition for Reconsideration.
Paging Systems, Inc	BMPMD–9551420		11/3/95	Petition to Deny.
Paging Systems, Inc	WNTF895		11/3/95	Petition to Deny.
Richard Levy	52898–CM–P–90		11/23/96	Petition for Reconsideration.
School Board of Dade County, Florida.	BMPLIF–950915HW		11/1/96	Petition to Deny.
Servista General Partnership Inc.	9750738	Paradise Cable	8/8/97	Petition to Deny.

Applicant/licensee	File No./call sign	Petitioner (if not applicant)	Filing date	Pleading type
Senvista General Partnership Inc.	WNTK634	Paradise Cable	8/8/97	Petition to Deny.
Senvista General Partnership Inc. (Bradenton, FL).	BMPMD–9750738	Paradise Cable	7/5/96	Petition for Reconsideration.
Senvista General Partnership Inc. (Bradenton, FL).	BMPMD–9551406	Paradise Cable	7/5/96	Petition for Reconsideration.
Senvista General Partnership Inc. (Bradenton, FL).	WNTK634	Paradise Cable	7/5/96	Petition for Reconsideration.
Tattnall County Board	BPLIF951020T6	Armstrong State College	7/30/98	Petition to Deny.
The School Board of Miami-Dade County, Florida.	BMPLIF–19950915HW		1/31/01	Waiver Request.
The School Board of Miami-Dade County, Florida.	KTB85		1/31/01	Waiver Request.
Tide Microcable II Partnership	53025–CM–P–91		5/26/95	Petition for Reconsideration.
United Management Services-Eugene, Oregon F.	54302–CM–P–90		8/7/95	Petition for Reconsideration.
United/JCL Eureka, CA F Grand Alliance.	54855–CM–P–90		3/2/95	Petition for Reconsideration.
Victor Elementary School District.	BPLIF941201DA		11/1/96	Petition for Relief.
Walter Communications	BALMD–5159695	Wireless Cable Television of Pennsylvania, Inc. and Wireless Telecommunications, Inc..	9/11/95	Petition to Deny.
Walter Communications	WMH648	Wireless Cable Television of Pennsylvania, Inc. and Wireless Telecommunications, Inc..	9/11/95	Petition to Deny.
Wireless One of Augusta, Inc.	BMDP960510OY	Bonnie D. O'Connell	6/17/96	Petition to Deny.
Wireless One of Augusta, Inc	BMDP960510OZ	Bonnie D. O'Connell	6/17/96	Petition to Deny.
WTB, Inc	BALMD–20000927AAA		9/27/01	Waiver Request.
WTB, Inc	BALMD–20010129AEH		9/27/01	Waiver Request.
WTB, Inc	BTA342		9/27/01	Waiver Request.
WTB, Inc	KNSC260		9/27/01	Waiver Request.
WTB, Inc	KNSC303		9/27/01	Waiver Request.
WTB, Inc	KNSD413		9/27/01	Waiver Request.

Applicant/licensee	File No./call sign	Pleading type	Petitioner (if not applicant)	Filing date
ABG Foundation, Nebraska Chapter, Inc.	BPLIF–19920925DE	Petition to Deny	USA Wireless Cable, Inc	12/30/93
AIG Radio Holding Co., Inc. (Bremerton, WA).	BRMD–20010330AGU	Petition for Reconsideration		9/25/01
AIG Radio Holding Co., Inc. (Bremerton, WA).	WMI890	Petition for Reconsideration		9/25/01
Alaska Wireless Cable, Inc.	WPY44	Waiver Request		12/6/02
Albion Community Development Corporation.	BPLIF–951017AB	Petition for Reconsideration		4/16/02
Albion Community Development Corporation.	BALIF–20010214AAD	Petition for Reconsideration		4/18/02
Albion Community Development Corporation.	BALIF–20010214AAE	Petition for Reconsideration		4/18/02
Albion Community Development Corporation.	BALIF–20010214AAF	Petition for Reconsideration		4/18/02
Albion Community Development Corporation.	BALIF–20010214AAG	Petition for Reconsideration		4/18/02
Albion Community Development Corporation.	BALIF–20010214AAH	Petition for Reconsideration		4/18/02
Albion Community Development Corporation.	BALIF–20010214AAI	Petition for Reconsideration		4/18/02
Albion Community Development Corporation.	WLX531	Petition for Reconsideration		4/18/02
Albion/Jackson, Michigan Petitions.	BPLIF–920402DL	Petition to Deny		2/19/93
Albion/Jackson, Michigan Petitions.	BPLIF–920402DM	Petition to Deny		2/19/93
Albion/Jackson, Michigan Petitions.	BPLIF–920717DB	Petition to Deny		2/19/93
Allan Leeds	KNSC404	Petition for Reconsideration		3/15/02
Allan Leeds	20000818BTQ	Petition for Reconsideration		3/15/02
Alliance for Higher Education	50423–CM–P–98	Petition to Deny	Dallas MDS Partners	5/18/98
Alliance for Higher Education	KWU29	Petition to Deny	Dallas MDS Partners	5/18/98
Alliance for Higher Education	KWU30	Petition to Deny	Dallas MDS Partners	5/18/98

Applicant/licensee	File No./call sign	Pleading type	Petitioner (if not applicant)	Filing date
Alma College, Mount Pleasant Baptist Academy, Mount Pleasant Public Schools, & Central Michigan Univ.	WNC270	Waiver Request		6/22/98
Alma College, Mount Pleasant Baptist Academy, Mount Pleasant Public Schools, & Central Michigan Univ.	WNC271	Waiver Request		6/22/98
Alma College, Mount Pleasant Baptist Academy, Mount Pleasant Public Schools, & Central Michigan Univ.	WNC272	Waiver Request		6/22/98
Alma College, Mount Pleasant Baptist Academy, Mount Pleasant Public Schools, & Central Michigan Univ.	WNC273	Waiver Request		6/22/98
Amarillo Independent School District.	BPLIF–19910722DD	Petition to Deny	United States Wireless Cable, Inc.	9/20/91
Amarillo Independent School District.	BPLIF–19910722DE	Informal objection	United States Wireless Cable, Inc.	9/2/92
American Telecasting of Portland.	20000818BHL	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	4/2/01
American Telecasting of Portland.	20000818BHX	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	4/2/01
American Telecasting of Portland.	20000818BID	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	4/2/01
American Telecasting of Portland.	20000818BTC	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	4/2/01
American Telecasting of Portland.	20000818BUC	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	4/2/01
American Telecasting of Portland.	20000818BUJ	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	4/2/01
American Telecasting of Portland.	20000818BVQ	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	4/2/01
American Telecasting of Portland.	20000818BVY	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	4/2/01
American Telecasting of Portland.	20000818BWD	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	4/2/01
American Telecasting of Portland.	WHT647	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	4/2/01
American Telecasting of Portland, Inc.	BPMD–20000104AAG	Petition to Deny		4/2/01
Aquas Buenas, Puerto Rico Settlement.	BMPLIF–19940317DJ	Petition for Relief		5/29/98
Aquas Buenas, Puerto Rico Settlement.	BMPLIF–19950914MD	Petition for Relief		5/29/98
Aquas Buenas, Puerto Rico Settlement.	BPLIF–19941201DB	Petition for Relief		5/29/98
Aquas Buenas, Puerto Rico Settlement.	BPLIF–19950515EZ	Petition for Relief		5/29/98
Aquas Buenas, Puerto Rico Settlement.	BPLIF–19950915EY	Petition for Relief		5/29/98
Armstrong State College	BPLIF951020VB	Petition to Deny	Wireless One, Inc	1/8/97
ASC Communications, Inc	14693–CM–P–83	Petition for Declaratory Ruling		7/25/94
ASC Communications, Inc	WMH541	Petition for Declaratory Ruling		7/25/94
ASC Communications, Inc	BMPMD–9650762	Petition for Relief	Pacific Telesis Enterprises	1/17/96
ASC Communications, Inc	WMH541	Petition for Relief	Pacific Telesis Enterprises	1/17/96
ASC Communications, Inc	19991202AAE	Waiver Request		12/2/99
ASC Communications, Inc	WMH541	Waiver Request		12/2/99
Ball State University	BPLIF–95102OHU	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	9/21/98
Barry University	BPLIF–951020PU	Petition to Deny	School Board of Dade County	11/1/96
Barry University	KTZ22	Petition to Deny	School Board of Dade County	11/1/96

Applicant/licensee	File No./call sign	Pleading type	Petitioner (if not applicant)	Filing date
Bartlesville Public Schools	BPLIF–19951020B8	Petition for Reconsideration		8/7/97
Baypoint TV, Inc	1192–CM–P–83	Petition for Reconsideration		9/10/01
Belwen, Inc. (Wilmington, NC)	BLMD–9450421	Petition for Relief		8/28/96
Belwen, Inc. (Wilmington, NC)	WMI297	Petition for Relief		8/28/96
BOCES Sole Supervisory District Oneida, Herkimer, and Madison Counties.	BPLIF–19931230FU	Petition for Reconsideration	Albion Community Development Corp.	5/25/95
Bonanza Partners, Inc	51067–CM–MP–96	Petition to Deny	American Telecasting Development, Inc.	8/6/96
Bonanza Partners, Inc	WNTM679	Petition to Deny	American Telecasting Development, Inc.	8/6/96
Borough of Point Pleasant Beach.	BPLIF–19951020RN	Petition to Deny	CAI Wireless Systems, Inc	5/6/98
California State University, San Bernardino.	BMPLIF–19951020L6	Petition for Relief		12/31/01
California State University, San Bernardino.	BMPLIF–19951020M5	Petition for Relief		12/31/01
California State University, San Bernardino.	BMPLIF–951020KI	Petition for Relief		12/31/01
California State University, San Bernardino.	BPLIF–19951020LF	Petition for Relief		12/31/01
Carbon Lehigh Intermediate Unit 21.	BPLIF–19951019AI	Petition to Deny	WorldCom Broadband Solutions, Inc.	8/8/97
Caribbean MMDS Partnership	50870–CM–P–97	Petition to Deny	Grand Wireless Company	10/24/97
Caribbean MMDS Partnership	WNTK992	Petition to Deny	Grand Wireless Company	10/24/97
Catholic Diocese of Caguas	BPLIF–951020WN	Petition to Deny	The Catholic Archdiocese of San Juan and WHTV Broadcasting Corp.	7/14/98
Catholic Diocese of Caguas	WLX321	Petition to Deny	The Catholic Archdiocese of San Juan and WHTV Broadcasting Corp.	7/14/98
Central Dakota TV, Inc	BALMD–19990930AAY	Petition for Reconsideration		1/6/03
Central Dakota TV, Inc	BALMD–19990930AAZ	Petition for Reconsideration		1/6/03
Central Dakota TV, Inc	BALMD–19990930ABA	Petition for Reconsideration		1/6/03
Central Dakota TV, Inc	WLW751	Petition for Reconsideration		1/6/03
Central Dakota TV, Inc	WLW752	Petition for Reconsideration		1/6/03
Central Dakota TV, Inc	WNTB718	Petition for Reconsideration		1/6/03
Central Dakota TV, Inc	WNTE464	Petition for Reconsideration		1/6/03
Central Dakota TV, Inc	WNTF478	Petition for Reconsideration		1/6/03
Centre Unified School District #397.	BPLIF–19911213DG	Petition for Reconsideration		12/21/92
Champion Industries, Inc	BMDC–9201294	Application for Review		9/13/01
Champion Industries, Inc	BPMDC–9201297	Application for Review		9/13/01
Champion Industries, Inc	50123–CM–P–92	Petition for Reconsideration		9/20/01
Champlain College	BPLIF–911010DS	Petition to Deny	Satellite Signals of New England, Inc.	1/13/92
Chicago Instructional Technology Foundation, Inc.	BPLIF–951020KF	Petition to Deny	Saint Bede Academy and Heartland Wireless Communications, Inc.	4/15/98
City University, Channels B1–B4, Olympia, WA.	BMAMDIH–20010129ADF	Petition to Deny	KCTS Television, Inc	4/2/01
Clarendon Foundation	BPLIF–19951020NC	Application for Review		8/23/99
Clark County School District	BPIFH–20000818DLB	Petition to Deny	North American Catholic Educational Programming Foundation, Inc.	4/2/01
Clark County School District	WNC851	Petition to Deny	North American Catholic Educational Programming Foundation, Inc.	4/2/01
Clark County School District	BLPLIF–931230HK	Application for Review	North American Catholic Educational Programming Foundation, Inc.	4/17/02
Clearwire Technologies, Inc	BPMDV–20010928AAH	Petition to Deny	Nucentrix Spectrum Resources, Inc.	12/7/01
Clearwire Technologies, Inc	WMI306	Petition to Deny	Nucentrix Spectrum Resources, Inc.	12/7/01
Coleman County Telephone Cooperative, Inc. Santa Anna, TX).	BPIFH–20010420ABJ	Petition to Deny	Central Texas Communications, Inc.	6/25/01
Coleman County Telephone Cooperative, Inc. (Santa Anna, TX).	BRMD–20011113AAC	Petition to Deny	Central Texas Communications, Inc.	12/27/01
Coleman County Telephone Cooperative, Inc. (Santa Anna, TX).	BRMD–20011113AAB	Petition to Deny	Central Texas Communications, Inc.	12/27/01

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Coleman County Telephone Cooperative, Inc (Santa Anna, TX).	WMY236	Petition to Deny	Central Texas Communications, Inc.	12/27/01
Coleman County Telephone Cooperative, Inc. (Santa Anna, TX).	WMY240	Petition to Deny	Central Texas Communications, Inc.	12/27/01
Concord Community School	92071DB	Petition to Deny	Jones Community School	6/13/93
Counterpoint Communications, Inc.	BPLIF–19951020CF	Petition for Reconsideration		9/2/97
Department of Education Archdiocese of New York.	BPIFH–20000818AYB	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	KNZ69	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	KRS81	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIFB–20000818CFI	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPLIF–20000818CJQ	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPLIFH–20000818AYC	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIFH–20000818AZJ	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIFH–20000818AVB	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIFH–20000818AXZ	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIF–20000818CJO	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIFB–20000818BXG	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIFB–20000818BXH	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIFB–20000818CEF	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIFB–20000818CEK	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIFB–20000818CFN	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIFH–20000818BZV	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIFH–20000818CEM	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIFH–20000818CEO	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIFH–20000818COL	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BIFH–20000818CON	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdiocese of New York.	BPIFB–20000818CEY	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education Archdioxese of New York.	BPIFB–20000818CEV	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Department of Education, Archdiocese of New York.	BPIFB2000818AXZ	Petition to Deny	Roman Catholic Diocese of Rockville Centre.	4/2/01
Diocese of Savannah and Savannah College of Art and Design.	BPLIF–951020AN	Application for Review		3/8/99
Diocese of Savannah and Savannah College of Art and Design.	BPLIF–95102OBZ	Application for Review		3/8/99
Eagleview Technologies, Inc	WMH805	Petition to Deny	Bell South Wireless Cable, Inc.	1/30/01
Eagleview Technologies, Inc	WDU502	Application for Review		4/18/02
Eagleview Technologies, Inc	57875–CM–R–91	Application for Review		4/18/02
Eagleview Technologies, Inc. (Jacksonville, FL).	BRMD–20010316ABB	Petition to Deny	Bell South Wireless Cable, Inc.	8/1/01
Educational Television Association of Metropolitan Cleveland.	BPLIF–19951020JJ	Application for Review		5/13/00
Emerson College	BPLIF–960919AB	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	3/14/97

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Emerson College	WHR758	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	3/14/97
Emerson College	BPLIF–951020EI	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	10/9/97
Estate of Wireless Telecommunications, Inc.	B227	Waiver Request		8/31/01
Estate of Wireless Telecommunications, Inc.	B249	Waiver Request		8/31/01
Estate of Wireless Telecommunications, Inc.	KNSE289	Waiver Request		8/31/01
Estate of Wireless Telecommunications, Inc.	BALMD–20010321ABN	Waiver Request		8/31/01
Estate of Wireless Telecommunications, Inc.	KNSE288	Waiver Request		8/31/01
Evans County School System	BMPLIF–980114DP	Petition to Deny	Wireless Cable of Florida, Inc	2/23/98
Evans County School System	WLX698	Petition to Deny	Wireless Cable of Florida, Inc	2/23/98
Florida Atlantic University	BMPLIF–950524DD	Petition to Deny	School Board of Dade County	11/1/96
Florida Atlantic University	WHR901	Petition to Deny	School Board of Dade County	11/1/96
Fresno MMDS Associates	60636–CM–P–91	Application for Review		6/23/00
Gary Golden (Longview, TX)	BRMD–20010530AAA	Petition to Deny	Nucentrix Spectrum Resources, Inc.	8/2/01
Gary Golden (Longview, TX)	BRMD–20010530AAC	Petition to Deny	Nucentrix Spectrum Resources, Inc.	8/2/01
Gary Golden (Longview, TX)	WMH477	Petition to Deny	Nucentrix Spectrum Resources, Inc.	8/2/01
Gary Golden (Longview, TX)	WMI306	Petition to Deny	Nucentrix Spectrum Resources, Inc.	8/2/01
Georgia College—Macon Campus.	BPLIF–951020PT	Petition for Reconsideration		8/19/98
Grand MMDS Alliance New York F/P Partnership.	WMY467	Informal Objection	Trans Video Communications, Inc and CAI Wireless Systems, Inc.	11/14/97
Grand Wireless Company, Inc	BMDP–980721ND	Petition to Deny		10/13/98
Grand Wireless Company, Inc	BMDP–980721NE	Petition to Deny		10/13/98
Grand Wireless Company, Inc	BMDP–980721NF	Petition to Deny		10/13/98
Guadalupe Valley Elec. Coop	BPMD–9051310	Application for Review		7/25/96
Harrisburg, PA Settlement	BPLIF–19951016B1	Petition for Relief		1/2/01
Harrisburg, PA Settlement	BPLIF–19951020GX	Petition for Relief		1/2/01
Heartland Wireless Commercial Channels, Inc.	BMDP980303FW	Petition to Deny	Tex-Star Wireless Communications Gamma.	5/7/98
Heartland Wireless Commercial Channels, Inc.	BMDP980303FX	Petition to Deny	Tex-Star Wireless Communications Gamma.	5/7/98
Heartland Wireless Commercial Channels, Inc.	BMDP980303FY	Petition to Deny	Tex-Star Wireless Communications Gamma.	5/7/98
Heartland Wireless Commercial Channels, Inc.	BMDP970411OM	Petition to Deny	Tex-Star Wireless Communications Alpha and Beta.	5/30/97
Heartland Wireless Commercial Channels, Inc.	BMDP970411ON	Petition to Deny	Tex-Star Wireless Communications Alpha and Beta.	5/30/97
Hispanic Information and Telecommunications Network, Inc.	BPIFH–20010420AEK	Petition to Deny	BCTV, Inc	6/25/01
Hispanic Information and Telecommunications Network, Inc.	WLX690	Petition to Deny	BCTV, Inc	6/25/01
Hispanic Information and Telecommunications Network, Inc (Anderson, IN).	BPLIF–19951016BR	Petition for Reconsideration		12/30/98
Hispanic Information and Telecommunications Network, Inc (Binghamton, NY).	BPLIF–19951020FT	Petition for Reconsideration		10/22/97
Hispanic Information and Telecommunications Network, Inc (Indianapolis, Indiana).	BPLIF–951016BM	Petition for Reconsideration		1/19/99
Hispanic Information and Telecommunications Network, Inc. (Jajuya, PR).	BPLIF–950215DQ	Petition to Deny	The University System of the Ana G. Mendez Educational Foundation.	7/7/95
Hispanic Information and Telecommunications Network, Inc. (Jajuya, PR).	BPLIF–950215DR	Petition to Deny	The University System of the Ana G. Mendez Educational Foundation.	7/7/95

Applicant/licensee	File No./call sign	Pleading type	Petitioner (if not applicant)	Filing date
Hispanic Information and Telecommunications Network, Inc. (Jajuya, PR).	BPLIF–950315DF	Petition to Deny	The University System of the Ana G. Mendez Educational Foundation.	7/7/95
Hispanic Information and Telecommunications Network, Inc. (Jajuya, PR).	BPLIF–950322DY	Petition to Deny	The University System of the Ana G. Mendez Educational Foundation.	7/7/95
Hispanic Information and Telecommunications Network, Inc. (Jajuya, PR).	WLX661	Petition to Deny	The University System of the Ana G. Mendez Educational Foundation.	7/7/95
Hispanic Information and Telecommunications Network, Inc. (Jajuya, PR).	WLX663	Petition to Deny	The University System of the Ana G. Mendez Educational Foundation.	7/7/95
Hispanic Information and Telecommunications Network, Inc. (Luquillo, PR B group).	BPLIF–19959215DS	Petition for Reconsideration		4/17/02
Hispanic Information and Telecommunications Network, Inc. (Portland, OR).	BMPLIF–19980129DE	Application for Review		8/21/98
Hispanic Information and Telecommunications Network, Inc. (Portland, OR).	WLX681	Application for Review		8/21/98
Hispanic Information and Telecommunications Network, Inc. (Portland, OR).	BPIFH–20000818DEB	Petition to Deny	Molalla High School	4/2/01
Hispanic Information and Telecommunications Network, Inc. (Portland, OR).	WLX681	Petition to Deny	Molalla High School	4/2/01
Hispanic Information and Telecommunications Network, Inc. (Santa Fe, New Mexico).	BPLIF–930107DA	Petition for Reconsideration		5/21/97
Hispanic Information and Telecommunications Network, Inc. (Seattle, WA).	BPIF–19950523DT	Petition for Reconsideration		1/23/97
Hispanic Information and Telecommunications Network, Inc. (Seattle, WA).	WLX546	Petition for Reconsideration		1/23/97
Hispanic Information and Telecommunications Network, Inc. (Springfield, MA).	BPIF–19951016AW	Application for Review		11/14/97
Hispanic Information and Telecommunications Network, Inc. (Tiverton, RI).	BPIFH20000818AJO	Petition to Deny	Eastern New England Licensee, Inc.	3/30/01
Hispanic Information and Telecommunications Network, Inc. (Tiverton, RI).	WLX690	Petition to Deny	Eastern New England Licensee, Inc.	3/30/01
Hispanic Information and Telecommunications Network, Inc. (Tiverton, RI).	BPIFH–20000818AJO	Petition to Deny	Northeastern University	4/2/01
Hispanic Information and Telecommunications Network, Inc (Tiverton, RI).	BPIFH–20000818AJO	Petition to Deny	BCTV, Inc	6/25/01
Hispanic Information and Telecommunications Network, Inc. (Trenton, NJ).	BPLIF–19951016AT	Application for Review		11/17/97
Hispanic Information and Telecommunications Network, Inc. (Winston Salem, NC).	BPLIF–19951016BH	Petition for Reconsideration		5/11/98
Hispanic Information and Telecommunications Network, Inc., (Memphis, TN).	BPLIF–950523DV	Application for Review		1/6/97
Hispanic Information and Telecommunications Network, Inc., (Memphis, TN).	WLX557	Application for Review		1/6/97
Hydra Communications	BRMD–9157865	Petition for Reconsideration		4/12/02
Inforum Communications		Waiver Request		10/30/01
Inforum Communications, Inc. and TDI Acquisition Corp. (Sarasota, FL).	BALMD–20010718AAC	Petition to Deny	Paradise Cable, Inc	8/31/01
Inforum Communications, Inc. and TDI Acquisition Corp. (Sarasota, FL).	B408	Petition to Deny	Paradise Cable, Inc	8/31/01

Applicant/licensee	File No./call sign	Pleading type	Petitioner (if not applicant)	Filing date
Inforum Communications, Inc. and TDI Acquisition Corp. (Sarasota, FL).	KNSC300	Petition to Deny	Paradise Cable, Inc	8/31/01
Inforum Communications, Inc. and TDI Acquisition Corp. (Sarasota, FL).	KNSC798	Petition to Deny	Paradise Cable, Inc	8/31/01
Inforum Communications, Inc. and TDI Acquisition Corp. (Sarasota, FL).	WMI303	Petition to Deny	Paradise Cable, Inc	8/31/01
Instructional Telecommunications Foundation, Inc.	BPIFH–20000818AKD	Petition to Deny	Sprint Corp	4/2/01
Instructional Telecommunications Foundation, Inc.	BLNPNIF–20020618AAC	Petition to Deny	WorldCom Broadband Solutions, Inc.; Northwest Communications, Inc.	8/22/02
Instructional Telecommunications Foundation, Inc.	WHR527	Petition to Deny	WorldCom Broadband Solutions, Inc.; Northwest Communications, Inc.	8/22/02
Iowa Rural TV, Inc	WLW851	Waiver Request		12/16/02
Iowa Rural TV, Inc	WMX648	Waiver Request		12/16/02
Iowa Rural TV, Inc	WMX649	Waiver Request		12/16/02
JCL El Dorado AR F Grand Alliance.	54408–CM–P–91	Petition for Reconsideration		5/14/99
JCL El Dorado AR F Grand Alliance.	WMY298	Petition for Reconsideration		5/14/99
John Mester d/b/a Mester's TV.	BPMD–9200312	Application for Review		2/22/00
John Mester d/b/a Mester's TV.	BPMD–9200313	Application for Review		2/22/00
Judith K. Vega	50444–CM–P–92	Petition for Reconsideration		3/1/93
Kannew Broadcast Technologies (Augusta, ME).	BRMD–20010329AGA	Petition to Deny	Pegasus Communications Portfolio Holdings, Inc..	8/2/01
Kannew Broadcast Technologies (Augusta, ME).	WMI878	Petition to Deny	Pegasus Communications Portfolio Holdings, Inc..	8/2/01
Lehigh Valley Mobile Telephone Company.	59659–CM–AL–91	Application for Review		3/20/92
Line of Site, Inc	CIP–92–00221	Application for Review		7/17/00
Line of Site, Inc	CIP–92–00414	Application for Review		7/17/00
Line of Site, Inc	WHT721	Informal objection	Clark County School District	10/16/01
Lois Hubbard	BMAMDIH–20010129ADM	Petition to Deny		3/30/01
Lynchburg MDS, LLC (Lynchburg, VA).	BLMPD–9650880	Waiver Request		8/30/01
Lynchburg MDS, LLC (Lynchburg, VA).	WMI288	Waiver Request		8/30/01
MDS Digital Network, Inc. (Los Angeles, CA).	BRMD–20010330ADO	Petition to Deny	Southern Wireless Video, Inc	8/1/01
MDS Digital Network, Inc. (Los Angeles, CA).	BRMD–20010330AHV	Petition to Deny	Southern Wireless Video, Inc	8/1/01
MDS Digital Network, Inc. (Los Angeles, CA).	BRMD–20010330AHW	Petition to Deny	Southern Wireless Video, Inc	8/1/01
MDS Digital Network, Inc. (Los Angeles, CA).	KF179	Petition to Deny	Southern Wireless Video, Inc	8/1/01
MDS Digital Network, Inc. (Los Angeles, CA).	KFF79	Petition to Deny	Southern Wireless Video, Inc	8/1/01
MDS Digital Network, Inc. (Los Angeles, CA).	WPY40	Petition to Deny	Southern Wireless Video, Inc	8/1/01
Mesa Unified School District #4.	BPLIF–19951020QF	Petition to Deny	Instructional Telecommunications Foundation, Inc.	9/8/97
Michael Reed, Joseph Hemenway, and James Larsen.	53346–CM–P–92	Application for Review		6/12/00
Michael Reed, Joseph Hemenway, and James Larsen.	53347–CM–P–92	Application for Review		6/12/00
Michael Reed, Joseph Hemenway, and James Larsen.	53348–CM–P–92	Application for Review		6/12/00
Michigan Center School District.	920717DA	Informal Objection	Hillside Community College	2/5/92
Microband Corp. of America (Portland, OR).	BRMD–9157851	Informal objection		9/29/99
Microband Corp. of America (Portland, OR).	BRMD–20010402AEM	Informal objection		9/29/99
Microband Corp. of America (Portland, OR).	WPY39	Informal objection		9/29/99

Applicant/licensee	File No./call sign	Pleading type	Petitioner (if not applicant)	Filing date
Microband Corp. of America (Portland, OR).	BRMD–20010402AEM	Petition to Deny		12/20/01
Microband Corp. of America (Portland, OR).	BRMD–9157851	Petition to Deny		12/20/01
Microband Corp. of America (Portland, OR).	WPY39	Petition to Deny		12/20/01
MMDS, Inc	2497–CM–P–83	Application for Review		9/8/93
Morningstar Educational Network.	BPLIF–19951020EI	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	9/5/97
Mount Pleasant Partners (Alpha and Beta).	BPMD–9161246	Application for Review		2/22/00
Mount Pleasant Partners (Alpha and Beta).	BPMD–9161247	Application for Review		2/22/00
MWTV, Inc	WMH652	Petition for Relief	Philip C. Merrill	12/12/97
MWTV, Inc	WLW938	Petition for Reconsideration		9/17/01
MWTV, Inc	BPMD–8310238	Petition for Reconsideration		9/17/01
MWTV, Inc	BMPMD–9253169	Petition for Reconsideration		9/17/01
National Television Co	WHT664	Waiver Request		8/30/02
National Television Co. (Jacksonville, NC).	BEMD–9650559	Petition for Relief	Wireless One of North Carolina, Inc.	8/4/01
National Television Co. (Jacksonville, NC).	WMH601	Petition for Relief	Wireless One of North Carolina, Inc.	8/4/01
NDW, Inc	50803–CM–P–93	Petition for Reconsideration		5/31/96
North American Catholic Educational Programming Foundation, Inc.	BPLIF–19951020LE	Petition for Relief		5/30/00
North American Catholic Educational Programming Foundation, Inc.	BPLIF–19951020RL	Petition for Relief		5/30/00
North American Catholic Educational Programming Foundation, Inc.	BPIFH–20000818DLA	Petition to Deny	Sprint Corp	4/2/01
North American Catholic Educational Programming Foundation, Inc.	BPIFH–20010420AER	Petition to Deny England Licensee, Inc.	Eastern New	4/10/02
North American Catholic Educational Programming Foundation, Inc.	WNC521	Petition to Deny	Eastern New England Licensee, Inc.	4/10/02
Norwich University	BPLIF–911008DD	Petition to Deny	Satellite Signals of New England, Inc.	1/13/92
Nucentrix Spectrum Resources, Inc.	50905–CM–MP–96	Petition for Reconsideration		12/4/00
Nucentrix Spectrum Resources, Inc.	WMX716	Petition for Reconsideration		12/4/00
Nucentrix Spectrum Resources, Inc. (Longview, TX).	BPMD–20010802AAA	Petition to Deny	Gary Golden	9/7/01
Nucentrix Spectrum Resources, Inc. (Longview, TX).	BPMD–20010802AAB	Petition to Deny	Gary Golden	9/7/01
Nucentrix Spectrum Resources, Inc. (Woodward, OK B Group).	51618–CM–MP–96	Petition for Reconsideration		12/4/00
Nucentrix Spectrum Resources, Inc. (Woodward, OK B Group).	WMX712	Petition for Reconsideration		12/4/00
Oklahoma State Regents for Higher Education.	BPLIF–19951020JM	Petition for Reconsideration		8/8/97
Oklahoma Western Telephone Co.	BPMD–9201637	Application for Review		5/21/98
Oregon State University	BMPLIF–19961223FN	Petition for Reconsideration		3/5/98
Oregon State University	WNC718	Petition for Reconsideration		3/5/98
Provo School District	BPLIF–19951020SN	Petition to Deny	Instructional Telecommunications Foundation, Inc.	7/11/97
Raleigh, North Carolina D Group Settlement.	BPLIF–19951020BD	Petition for Relief		6/30/00
Raleigh, North Carolina D Group Settlement.	BPLIF–19951020HD	Petition for Relief		6/30/00
Raleigh, North Carolina G Group Settlement.	BPLIF–19981028DY	Petition for Relief		1/12/99
Reid Institute	BPLIF–19951020HN	Petition to Deny	Instructional Telecommunications Foundation, Inc.	7/11/97

Applicant/licensee	File No./call sign	Pleading type	Petitioner (if not applicant)	Filing date
Richmond Hill Christian Academy.	BPLIF–951020PH	Petition to Deny	The Board of Public Education for the City of Savannah and County of Chatham and Wireless Cable of Florida, Inc.	5/6/98
Robert Walser	50054–CM–P–98	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	5/15/98
Ronald Abboud	WLW992	Petition for Relief	Wireless Entertainment Network, Inc. and Line of Site, Inc.	7/30/92
San Diego MDS Company	57950–CM–R–91	Petition for Reconsideration		7/1/96
San Diego MDS Company	WHT559	Petition for Reconsideration		7/1/96
Satellite Signals of New England, Inc.		Waiver Request		4/26/99
School Board of Dade County, *et al.*	BMPLIF–19930616DV	Informal objection	Wireless Broadcasting Systems of America, Inc.	7/14/95
School Board of Dade County, *et al.*	BMPLIF–19950407DG	Informal objection	Wireless Broadcasting Systems of America, Inc.	7/14/95
School Board of Dade County, *et al.*	BMPLIF–19950515DA	Informal objection	Wireless Broadcasting Systems of America, Inc.	7/14/95
School Board of Dade County, *et al.*	BMPLIF–19950515DL	Informal objection	Wireless Broadcasting Systems of America, Inc.	7/14/95
School Board of Dade County, *et al.*	BMPLIF–19950515DM	Informal objection	Wireless Broadcasting Systems of America, Inc.	7/14/95
School Board of Dade County, *et al.*	BMPLIF–19950707FA	Informal objection	Wireless Broadcasting Systems of America, Inc.	7/14/95
School Board of Dade County, *et al.*	KTB84	Informal objection	Wireless Broadcasting Systems of America, Inc.	7/14/95
School Board of Dade County, *et al.*	WHA956	Informal objection	Wireless Broadcasting Systems of America, Inc.	7/14/95
School Board of Dade County, *et al.*	WHG230	Informal objection	Wireless Broadcasting Systems of America, Inc.	7/14/95
School Board of Dade County, *et al.*	WHR790	Informal objection	Wireless Broadcasting Systems of America, Inc.	7/14/95
School Board of Dade County, *et al.*	WHR866	Informal objection	Wireless Broadcasting Systems of America, Inc.	7/14/95
School Board of Palm Beach County FL.	BALIF–9550758	Waiver Request		5/24/95
School Board of Palm Beach County FL.	KZB30	Waiver Request		5/24/95
Shekinah Network	BPLIF–951018AA	Petition to Deny	Unified School District #273	6/11/98
Shekinah Network	BPIF–19951019BJ	Petition to Deny	CAI Wireless Systems, Inc	12/8/98
Shekinah Network	BPIF–19951020QR	Application for Review		8/23/99
Skagit Valley College	BPLIF–951020XD	Petition to Deny		7/10/97
Southern Wireless Video, Inc	9950144	Petition to Deny	DCT Los Angeles, LLC	2/19/99
Southern Wireless Video, Inc	WPW94	Petition to Deny	DCT Los Angeles, LLC	2/19/99
Southland C–9 School District	BMPLIF–920228DD	Petition for Reconsideration		12/17/02
Stephanie Engstrom	BMAMDIH–20010129ADI	Petition to Deny	Sherry Rullman and American Telecasting of Seattle, Inc.	3/30/01
Technical Trade Institute	9501020SH	Informal Objection	Hispanic Information and Telecommunications Network, Inc.	6/16/97
Tekkom, Inc	50301–CM–P–83	Petition for Reconsideration		1/16/96
Tel-Com Wireless		Waiver Request		4/29/99
Tex-Star Wireless Communications.	BLMD–9350779	Petition for Relief	Heartland Wireless Commercial.	2/25/97
Tex-Star Wireless Communications.	BLMD–9350780	Petition for Relief	Heartland Wireless Commercial Channels, Inc.	2/25/97
Tex-Star Wireless Communications.	BLMD–9450245	Petition for Relief	Heartland Wireless Commercial Channels, Inc.	2/25/97
Tex-Star Wireless Communications.	WMI373	Petition for Relief	Heartland Wireless Commercial Channels, Inc.	2/25/97
Tex-Star Wireless Communications.	WMI377	Petition for Relief	Heartland Wireless Commercial Channels, Inc.	2/25/97
Tex-Star Wireless Communications.	WNTK882	Petition for Relief	Heartland Wireless Commercial Channels, Inc.	2/25/97
Tex-Star Wireless Communications.	BRMD–20010430AAE	Petition to Deny	Heartland Wireless Commercial Channels, Inc.	8/2/01
Tex-Star Wireless Communications.	BRMD–20010430AAF	Petition to Deny	Heartland Wireless Commercial Channels, Inc.	8/2/01
Tex-Star Wireless Communications.	BRMD–20010430AAD	Petition to Deny	Heartland Wireless Commercial Channels, Inc.	8/2/01

Applicant/licensee	File No./call sign	Pleading type	Petitioner (if not applicant)	Filing date
Tex-Star Wireless Communications.	WMI373	Petition to Deny	Heartland Wireless Commercial Channels, Inc.	8/2/01
Tex-Star Wireless Communications.	WMI377	Petition to Deny	Heartland Wireless Commercial Channels, Inc.	8/2/01
Tex-Star Wireless Communications.	WNTK882	Petition to Deny	Heartland Wireless Commercial Channels, Inc.	8/2/01
The School Board of Dade County, Florida.	BMPLIF–950915HW	Petition to Deny		11/1/96
The School Board of Dade County, Florida.	WTB85	Petition to Deny		11/1/96
Trans Video Communications	BPIF20000818CJV	Petition to Deny	Roman Catholic Diocese of Rockville Centre; Grand MMDS Alliance New York F/P Partnership.	4/2/01
Trans Video Communications	KNZ69	Petition to Deny	Roman Catholic Diocese of Rockville Centre; Grand MMDS Alliance New York F/P Partnership.	4/2/01
Trans Video Communications Inc.	BPIFH–20000818BYE	Petition to Deny	Roman Catholic Diocese of Rockville Centre; Grand MMDS Alliance New York F/P Partnership.	4/2/01
Trans Video Communications, Inc.	BMPLIF–19950728ER	Petition to Deny	Grand MMDS Alliance New York F/P Partnership.	9/27/95
Trans Video Communications, Inc.	KNZ70	Petition to Deny	Roman Catholic Diocese of Rockville Centre; Grand MMDS Alliance New York F/P Partnership.	9/27/95
Trans Video Communications, Inc.	BMPIF–19950914MF	Petition to Deny	Grand MMDS Alliance New York F/P Partnership.	1/11/96
Trans Video Communications, Inc.	KVS31	Petition to Deny	Roman Catholic Diocese of Rockville Centre; Grand MMDS Alliance New York F/P Partnership.	1/11/96
Trans Video Communications, Inc.	BMLIF–19870429DF	Petition for Relief	Grand MMDS Alliance New York F/P Partnership.	3/14/96
Trans Video Communications, Inc.	KNZ69	Petition for Relief	Grand MMDS Alliance New York F/P Partnership.	3/14/96
Trans Video Communications, Inc.	BPIFH20000818CGV	Petition to Deny	Roman Catholic Diocese of Rockville Centre; Grand MMDS Alliance New York F/P Partnership.	4/2/01
Trans Video Communications, Inc.	KNZ69	Petition to Deny	Roman Catholic Diocese of Rockville Centre; Grand MMDS Alliance New York F/P Partnership.	4/2/01
Trans Video Communications, Inc.	KNZ70	Petition to Deny	Roman Catholic Diocese of Rockville Centre; Grand MMDS Alliance New York F/P Partnership.	4/2/01
Trans Video Communications, Inc.	KRS81	Petition to Deny	Roman Catholic Diocese of Rockville Centre; Grand MMDS Alliance New York F/P Partnership.	4/2/01
Trans Video Communications, Inc.	KRS82	Petition to Deny	Roman Catholic Diocese of Rockville Centre; Grand MMDS Alliance New York F/P Partnership.	4/2/01
Trans Video Communications, Inc.	KVS31	Petition to Deny	Roman Catholic Diocese of Rockville Centre; Grand MMDS Alliance New York F/P Partnership.	4/2/01
Trans Video Communications, Inc.	KZE20	Petition to Deny	Roman Catholic Diocese of Rockville Centre; Grand MMDS Alliance New York F/P Partnership.	4/2/01
Trans Video Communications, Inc.	WHR691	Petition to Deny	Roman Catholic Diocese of Rockville Centre; Grand MMDS Alliance New York F/P Partnership.	4/2/01
Trocki Hebrew Academy of Atlantic County.	BPLIF–951020BH	Petition to Deny		5/6/98
Trocki Hebrew Academy of Atlantic County.	WHR527	Petition to Deny		5/6/98

Applicant/licensee	File No./call sign	Pleading type	Petitioner (if not applicant)	Filing date
Twiggs County High School ...	WNC324	Petition to Deny	Baldwin County School System.	4/30/98
Twiggs County Middle School	WLX666	Petition to Deny		4/30/98
University of Massachusetts ..	BPLIF–19951020GF	Petition for Reconsideration	Georgia College—Macon Campus and The Information Resource Center.	10/14/97
University of North Carolina Wilmington, et al. (Jacksonville, NC settlement).	BPIF–19951020B9	Petition for Relief		6/30/00
University of North Carolina Wilmington, et al. (Jacksonville, NC settlement).	BPIF–19951020GC	Petition for Relief		6/30/00
University of North Carolina Wilmington, et al. (Jacksonville, NC settlement).	BPIF–19951020IU	Petition for Relief		6/30/00
University of North Carolina Wilmington, et al. (Jacksonville, NC settlement).	BPIF–19951020LO	Petition for Relief		6/30/00
University of North Carolina Wilmington, et al. (Jacksonville, NC settlement).	BPIF–19951020LX	Petition for Relief		6/30/00
University of North Carolina Wilmington, et al. (Jacksonville, NC settlement).	BPIF–19951020MJ	Petition for Relief		6/30/00
University of North Carolina Wilmington, et al. (Jacksonville, NC settlement).	BPIF–19951020ML	Petition for Relief		6/30/00
University of North Carolina Wilmington, et al. (Jacksonville, NC settlement).	BPIF–19951020MN	Petition for Relief		6/30/00
University of North Carolina Wilmington, et al. (Jacksonville, NC settlement).	BPIF–19951020RF	Petition for Relief		6/30/00
University of North Carolina Wilmington, et al. (Jacksonville, NC settlement).	BPIF–19951020RQ	Petition for Relief		6/30/00
University of North Carolina Wilmington, et al. (Jacksonville, NC settlement).	BPIF–19951020SL	Petition for Relief		6/30/00
University of North Carolina Wilmington, et al. (Jacksonville, NC settlement).	BPIF–19951020TX	Petition for Relief		6/30/00
Via/Net Companies	WHJ942	Petition for Relief	Paging Systems, Inc	10/30/97
Via/Net Companies	50904–CM–P–97	Petition for Relief		10/30/97
Views on Learning, Inc	BPLIF–19930122DD	Petition for Relief	Paging Systems, Inc	1/11/99
Views on Learning, Inc	BPLIF–19931230EH	Petition for Relief		1/11/99
Virginia Communications		Waiver Request		10/7/02
Walter Communications, Inc ..	15810–CM–P–83	Petition for Reconsideration		6/4/93
Western New Mexico University.	BMPLIF–951019BL	Petition to Deny	Hispanic Information and Telecommunications Network, Inc.	7/17/97
WYSE Wireless Partnership ..	53037–CM–P–90	Application for Review		7/8/96

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BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 16473N.
Name: Actway Express Inc.
Address: 14261 East Don Julian Road, City of Industry, CA 91746.
Date Revoked: May 3, 2001.
Reason: Failed to maintain a valid bond.

License Number: 16571N.
Name: Arrow Worldwide Logistics, Inc.
Address: 137 Eucalyptus Drive, Suite P, El Segundo, CA 20573.
Date Revoked: March 12, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16644N.
Name: Cargo Management International.
Address: 19113 So. Hamilton Ave, Gardena, CA 90248.
Date Revoked: February 27, 2003.
Reason: Surrendered license voluntarily.

License Number: 3665NF.
Name: Geotrans International, Inc.
Address: 17120 Valley View Ave., La Mirada, CA 90638.
Date Revoked: January 28, 2003.
Reason: Surrendered license voluntarily.

License Number: 2197F.
Name: I.F.T.C., Inc.
Address: 1401 NW 78th Ave., Suite 300, Miami, FL 33126.
Date Revoked: March 14, 2003.
Reason: Failed to maintain a valid bond.

License Number: 11296N.
Name: Master Air Cargo, Inc.
Address: 1840 NW 95th Ave., Miami, FL 33172.
Date Revoked: March 27, 2003.
Reason: Failed to maintain a valid bond.

License Number: 2006F.
Name: Kenehan International Services, Inc.
Address: 6020 S. Spencer Street, Suite A1, Las Vegas, NV 89119.
Date Revoked: March 10, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4448NF.
Name: Pum Yang Express U.S.A., Inc.
Address: 425 Victoria Terrace, Ridgefield, NJ 07657.
Date Revoked: January 6, 2003.
Reason: Surrendered license voluntarily.

License Number: 17768NF.
Name: United Shipping Services, Inc.
Address: 2121 W. Mission Road, #307, Alhambra, CA 91803.
Date Revoked: March 1, 2003.
Reason: Surrendered license voluntarily.

License Number: 156NF.
Name: W.M. Stone & Company, Incorporated.
Address: 838 Granby Street, Norfolk, VA 23510.
Date Revoked: March 24, 2003.
Reason: Surrendered license voluntarily.

Dated: April 14, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–8696 Filed 4–9–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/Address	Date reissued
15893N	Altamar Shipping Services, Inc., 1701 N. 20th Street, Tampa, FL 33605	February 7, 2003.
13290N	Argosy Transport, Inc., 5572 Lutford Circle, Westminister, CA 92683	March 5, 2003.
14519N	Classic Cargo International, Inc., 6414A S. Howell Avenue, Oak Creek, WI 53154	February 23, 2003.
15696N	ENC, Inc. 15606 Broadway Center, Gardena, CA 90248	February 7, 2003.
14169N	Expedited Transportation Services, Inc., 2169 W. Park Court, Suite 0, Stone Mountain, GA 30087	February 17, 2003.
17080N	General Cargo & Logistics, 2700 W. 182nd Street, Suite 100, Torrance, CA 90504	February 23, 2002.
11950N	Intermodal Logistics Systems, 19401 S. Main Street, Unit #102, Gardena, CA 90248	February 14, 2003.
3779F	L & E International Services, Inc., 380 W. 78th Road, Hialeah, FL 33014	October 26, 2002.
4185F	Southern Winds International, 1780 Wipple Road, Suite 206, Union City, Ca 96587	February 26, 2003.
15255N	Triways Shipping Lines, Inc., 11938 S. La Cienega Blvd., Hawthorne, CA 90250	February 6, 2003.
4642F	Varko International, Corp., 7700 NW 73rd Court, Medley, FL 33166	February 7, 2003.
2813F	Vital International Freight Services, Inc., 5200 W. Century Blvd., Susite 290, Los Angles, CA 90045	March 1, 2003.
2674F	World Express Cargo, Inc., 12612 Executive Drive, #700, Stafford, TX 77477	December 8, 2002.

Dated: April 4, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–8695 Filed 4–9–03; 8:45 am]
BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

Office of Management Services; Revision of a Standard Form by the Department of the Treasury

AGENCY: Office of Management Services, GSA.

ACTION: Notice.

SUMMARY: The Department of the Treasury revised part D of the SF 329, Administrative Wage Garnishment to:

a. Collect additional information on the employer; and

b. Authorize form for local reproduction.

You can obtain the updated camera copy in two ways:

On the Internet. Address: *http://www.gsa.gov/forms;* or

From Form-CAP, Attn.: Barbara Williams, (202) 501–0581

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581 for availability of the form and Lois Holland, Department of the Treasury, (202) 622–1563 for any other information.

DATES: Effective April 10, 2003.

Dated: April 1, 2003.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer, General Services Administration.

[FR Doc. 03–8841 Filed 4–9–03; 8:45 am]
BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–38–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: National Survey of State Endoscopic Capacity—New—National Center for Chronic Disease

Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC). CDC proposes to conduct a study to provide a state-level assessment of the current capacity to conduct colorectal cancer (CRC) screening and follow-up examinations for average risk persons aged 50 and older. CDC has already conducted the "National Survey of Endoscopic Capacity (SECAP)". The tasks involved in this national capacity assessment included creating a list of all health care providers who own and use endoscopes for CRC screening and diagnostic follow-up; developing and administering a survey instrument to health care providers across the country who own lower GI endoscopes; and developing a tool to assess the number of people currently unscreened. The data from the SECAP study will be analyzed at the national and regional level. In response to state requests, CDC would like to assist states in assessing the state-level capacity to provide colorectal cancer (CRC) screening and follow-up examinations to appropriate persons.

The proposed study will be conducted through the implementation of a survey which will be mailed to a random sample of providers known to possess flexible sigmoidoscopes and colonoscopes in three states. The sampling frame includes all types of physician specialists and health care providers who own lower endoscopic equipment and may be screening for CRC. The survey will provide information on the types of health care providers who are performing CRC screening and follow-up examinations, the equipment currently being used for screening and follow-up examinations, and current reimbursement rates for these tests. The results of the analysis will be used to (1) identify state-level deficits in the medical infrastructure, (2) guide the development of state-level training initiatives and educational programs for health care providers, and (3) provide critical baseline information for state policy makers for the planning of state-level initiatives to increase colorectal cancer screening. CDC is currently in the process of selecting participating states through a competitive process. The annualized estimated burden is 688 hours.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden per response (in hours)
Screening Call:			
Year 1 (3 states)	969	1	5/60
Year 2 (6 states)	1,940	1	5/60
Year 3 (6 states)	1,940	1	5/60
Annualized screening calls	*1,616		
Mail Survey:			
Year 1 (3 states)	797	1	25/60
Year 2 (6 states)	1,595	1	25/60
Year 3 (6 states)	1,595	1	25/60
Annualized mail survey	*1,329		

*Average number of respondents per year.

Dated: April 4, 2003.

Tom Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–8747 Filed 4–9–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–57]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210. CDC is requesting an emergency clearance for this data collection with a two week public comment period. CDC is requesting OMB approval of this package 7 days after the end of the public comment period.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda M. Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 14 days of this notice.

Proposed Project: Severe Acute Respiratory Syndrome (SARS) Outbreak Investigation—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). The purpose of this project is to respond to an outbreak of unknown etiology in the United States and abroad. Since late February 2003, CDC has been supporting the World Health Organization (WHO) in the investigation of a multicountry outbreak of atypical pneumonia of unknown etiology. The illness is being referred to as severe acute respiratory syndrome (SARS). By March 2003, cases of SARS were reported in the U.S. among travelers with a travel history to one or more of the three provinces in Asia where the SARS outbreak was first reported.

In order to investigate this outbreak in the U.S., several collections of information are required. Currently, CDC is collecting this information under an Epidemic Aid (epi-aid) which will expire in 30 days. To preserve continuity in the surveillance information collected by public health investigators, CDC is requesting a 6-month emergency clearance on the current surveillance forms. The information collected includes contact information for travelers on a flight with a person or persons suspected of having SARS, health care work exposures, and

case report forms. There is no cost to the respondent.

Form	Respondent	Number of respondents	Number of responses/ respondent	Avg. burden/response (in hrs)	Total burden hours
International SARS case reports	Caseworker	500	1	30/60	250
SARS contact information	Airline passengers.	3,000	1	5/60	250
SARS retrospective exposure form	Quarantine inspector.	1,000	1	5/60	83
SARS screening form	Health care workers.	330	1	10/60	55
Health care worker exposure form	Health care workers.	500	1	20/60	167
Unprotected HCW form	Health care workers.	500	1	20/60	167
SARS case Report intake form	Health care workers/ epidemiologists.	750	1	1	750
Total					1,722

Dated: April 4, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–8748 Filed 4–9–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03022]

Chronic Disease Prevention and Health Promotion Programs; Notice of Availability of Funds; Amendment

A notice announcing the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Chronic Disease Prevention and Health Promotion Programs published in the **Federal Register** on January 23, 2003, Volume 68, Number 15, pages 3326–3359. The notice is amended as follows: On page 3326, in the third column, the first paragraph should read: Applications will be due on April 14, 2003. On page 3355, in the second column, Section H., paragraph three should read: The application must be received by 4 p.m. Eastern Time April 14, 2003.

Dated: April 4, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–8751 Filed 4–9–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03048]

Cooperative Agreement for Collaborating Centers for Public Health Law; Notice of Availability of Funds

Application Deadline: June 9, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 311 of the Public Health Service Act, [42 U.S.C. sections 241, 242, and 243], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement for Collaborating Centers for Public Health Law. This program addresses the "Healthy People 2010" focus area Public Health Infrastructure.

The purpose of this program is to establish two or more centers for public health preparedness in public health law ("centers") to improve the contribution that law makes to the health of the public and to the performance of the public health system. The highest priority will be on the contribution law makes to preventing, preparing for, and responding to terrorism, outbreaks of infectious disease, and other major public health threats and emergencies.

Measurable outcomes of the program will be in alignment with the following performance goal for the CDC Public Health Practice Program Office (PHPPO): Prepare state and local health systems, departments and laboratories to respond to current and emerging public health threats.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, public health and healthcare organizations, community-based organizations, faith-based organizations, and other public and private nonprofit organizations, state and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. CDC specifically encourages applications from consortia that include accredited schools of public health or medicine, accredited schools of law, and organizations that serve the legal and/or law enforcement communities.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal

Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $500,000 is available in FY 2003 to fund approximately two or more awards. It is expected that the average award will be approximately $165,000 ranging from $100,000 to $250,000. It is expected that the awards will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

Specific goals of the centers will be to:

1. Provide law-related information to public health practitioners, policy makers, and the legal community in at least two ways: (a) by conducting analyses of public health legal issues; and, separately, (b) by improving the quality, accessibility, and utility of information relevant to public health practitioners and maintained in standardized, electronic databases.

2. Improve the competencies of public health practitioners, public policy makers, the legal community, and others to apply law as an effective tool for public health.

3. Foster partnerships between the public health practice community and the legal community (including health attorneys, law enforcement agencies, the judiciary, legal education and training institutions; legal professional associations; and related organizations) to improve their contribution to applying law as an effective tool for public health.

CDC anticipates making awards to two or more centers. The centers will not necessarily conduct the same type of activities. An eligible applicant may apply to conduct activities that address goal 1, goal 2, goal 3, or any combination thereof. However, an applicant that proposes to conduct activities in more than one goal area must submit a separate application for each goal area. For example, if an applicant chooses to apply to conduct activities in both goal area 1 and goal area 2, the applicant must submit one application for each goal area. Each such application will be evaluated separately. CDC reserves the right to make an award to an applicant for activity in one goal area, but not in another.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

With respect to goal 1, recipient activities will be to:

a. Conduct analyses of public health legal issues (see guidance in the Content section of this announcement).

b. Implement the information improvement plan submitted in your application to improve the quality, accessibility, and utility for public health practitioners of information relevant to public health and maintained in standardized, electronic, databases (see guidance in the Content section of this announcement); and revise that plan as needed thereafter.

c. Assist other organizations to conduct activities like those identified in (a) and (b) above.

d. Evaluate the impact of the activities annually.

With respect to goal 2, recipient activities will be to:

a. Review existing statements of core competencies in public health law for public health practitioners, public policy makers, the legal community, and others whose actions affect the health of the public, and assess the need for revision of those statements.

b. Assess the extent to which the groups listed above possess those core competencies.

c. Develop a plan (no later than December 31, 2003) for a self-sustaining program of training, education, and continuing education suitable for implementation at multiple jurisdictional levels to improve the achievement of public health law-related competencies by the current and future public health workforce, the legal community, and others whose actions affect the health of the public; revise that plan as needed thereafter.

d. Develop curricula, courses, and materials, (beginning no later than March 31, 2004) and disseminate training, education, and continuing education consistent with that plan.

e. Assist other organizations in developing and disseminating such training, education and continuing education consistent with that plan.

f. Evaluate the impact of the recipient's activities annually.

With respect to goal 3, recipient activities will be to:

a. Identify organizations in the legal community currently or potentially active in improving the contribution law makes to the health of the public; for this purpose the "legal community" includes health attorneys, law enforcement agencies, the judiciary, legal education and training institutions, legal professional associations, and related organizations.

b. Assess the capacity of those organizations to make such contributions and identify gaps between their existing and needed capacities.

c. Develop (by December 31, 2003) a plan to assist those organizations in improving their capacity; and revise that plan as needed thereafter.

d. Assist those organizations to improve their capacity through consultation, technical assistance, training, and other activities.

e. Evaluate the impact of the activities annually.

2. CDC Activities

a. Provide scientific, technical, and legal assistance.

b. In goal area 1, Provide technical assistance in identifying public health legal issues for analysis, in implementing the plan for improving information, and in developing approaches to assisting other organizations.

In goal area 2, Provide technical assistance in identifying existing statements of competencies, in setting priorities for a plan for a program to improve achievement of competencies, in setting priorities for training materials, and in developing approaches to assisting other organizations.

In goal area 3, Provide technical assistance in identifying organizations in the legal community suitable for partnerships, in developing methods for assessing their capacity, in setting priorities for assisting them, and in developing approaches to improving their capacity.

c. Collaborate in identifying constituencies to be served and in establishing goals, priorities, strategies, timelines, and training materials.

d. Identify and establish partnerships between the grantees and other organizations.

e. Collaborate in the evaluation of the effectiveness of the collaborative activities supported under this cooperative agreement.

F. Content

Letter of Intent (LOI)

A LOI is required for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than two pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. Your letter of intent will be used to estimate the potential reviewer workload and to avoid conflicts of interest during the review. Your letter of intent must include the following information: name, address, telephone number, and E-mail address of the Principal Investigator, the identities of other key personnel and participating institutions, and a narrative description of the proposed project.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your PHS 398 (OMB Number 0925–0001) application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, single-spaced, printed on one side, with one-inch margins, and 12-point unreduced font.

The narrative should consist of, at a minimum, the following sections: Background and Need; Goals and Objectives; Project Management and Staffing; Methods and Plan of Operation; Collaboration Plan; Evaluation Plan; and Requested Budget.

In addition, the narrative contained in applications for activities that address goal 1 must include the following information:

a. A description of the public health legal issues the applicant tentatively proposes to analyze, reasons for selecting those issues, and a description of ways public health practitioners, policy makers, and the legal community would apply the results of those analyses.

b. A detailed plan for activities the recipient would conduct to improve the quality, accessibility, and utility for public health practitioners of information relevant to public health and maintained in standardized, electronic databases. (This is the "information improvement plan" referred to in the Program Requirements section of this announcement.) This type of information consists, in part, of information stemming from scholarly legal research and analysis and review, as well as information maintained in compilations of statutory and regulatory law and of judicial rulings. This body of information currently is largely inaccessible to public health practitioners. The information improvement plan will identify the types and sources of such information the recipient will include in these activities, the methods the recipient will use to improve the quality, accessibility, and utility of that information, the resources the recipient will use to conduct these activities, and a calendar showing when improved information would be made available to public health practitioners.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before May 12, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the original and two copies of PHS 398 (OMB Number 0925–0001) (Errata Instruction Sheet for PHS 398 attached). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*.

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Applications can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time June 9, 2003.

Submit the application to:

Technical Information Management-PA#03048, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Letter of Intent

The required Letter of Intent will not be evaluated or scored.

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the goals stated in the Program Requirements section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

A review group appointed by CDC will evaluate each application against the following criteria:

1. Collaboration Plan (25 points)

a. The extent to which the applicant presents documented evidence of past or current experience and collaboration, or capacity to collaborate, with partners active in public health practice and public health law, the legal community, and other relevant entities.

b. The extent to which the applicant proposes relevant and feasible collaborations with other organizations in conducting the Recipient Activities and methods for fostering collaboration among such organizations.

c. The extent to which the application includes signed agreements specifying the roles and responsibilities of each organization that will collaborate with the applicant.

2. Project Management and Staffing (20 points)

a. The extent to which the project staff is clearly identified, possesses appropriate skills and knowledge, and has clearly described roles.

b. The extent to which the application provides details regarding the level of effort and allocation of time for each staff position.

c. The extent to which the applicant possesses management and other

systems to assure successful and responsible program implementation.

d. The applicant's experience in the management of resources and production of successful outcomes.

3. Methods and Plan of Operation (20 points)

a. The soundness of the methods the applicant proposes to use to conduct each of the Recipient Activities.

b. The specificity, relevance, and feasibility of the plan of action the applicant proposes to take to develop and conduct each of the Recipient Activities.

4. Goals and Objectives (15 points)

a. The extent to which the application addresses the center goals listed in the Program Requirements section of this announcement.

b. The extent to which the application specifies objectives, activities, work projects, and timelines, which are supportive of the goals, measurable, and feasible.

5. Background and Need (10 points)

The extent to which the applicant clearly describes the need for, and benefits of, the proposed center, including delineation of target audiences and benefits that they would realize from the center's activities.

6. Evaluation Plan (10 points)

The extent to which the applicant provides a detailed description of the methods to be used to evaluate program effectiveness, including identification of the variables to be evaluated, identification of the person(s) or organization(s) that will conduct evaluations, and specification of the time line for evaluations.

7. Budget (Not scored)

The extent to which the budget is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, and consistent with the intended use of the cooperative agreement funds.

8. Human Subjects

Does the application adequately address the requirements of title 45 CFR part 46 for the protection of human subjects: Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current budget period activities and objectives.

b. Current budget period financial progress.

c. New budget period program proposed activities and objectives.

d. Detailed line-item budget and justification.

e. Additional requested information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of this announcement as posted on the CDC Web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–15 Proof of Non-Profit Status

J. Where to Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact:

Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For Business management and budget assistance, contact:

Merlin J. Williams, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number 770–488–2765, E-mail address *MWilliams2@cdc.gov*.

For program technical assistance, contact:

Anthony D. Moulton, Ph.D., Public Health Law Program, Public Health Program Practice Office, Centers for Disease Control and Prevention, 4770 Buford Hwy. (K–39), Atlanta, Georgia 30341–3724, Phone 770–488–2405/ Fax 770–488–2553, E-mail: *ADM6@CDC.GOV*.

Dated: April 4, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–8746 Filed 4–9–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Centers for Disease Control and Prevention: Meetings

Name: Regional Meetings on CDC's Directly Funded Community Based HIV Prevention Program.

Times and Dates: 9 a.m. to 5 p.m., April 14, 2003. 9 a.m. to 5 p.m., April 15, 2003. 9 a.m. to 5 p.m., April 16, 2003.

Place: Westin Chicago River North, 320 North Dearborn, Chicago, Illinois 60610, phone (312) 329–7024, fax (312) 329–7045, Internet address *http://www.westinrivernorth.com*.

Times and Dates: 9 a.m. to 5 p.m., April 23, 2003. 9 a.m. to 5 p.m., April 24, 2003. 9 a.m. to 5 p.m., April 25, 2003.

Place: Hyatt Fisherman's Wharf, 555 North Point Street, San Francisco, California 94133, phone (415) 563–1234, fax (415) 563–2218, Internet address *http://www.fishermanswharf.hyatt.com*.

Times and Dates: 9 a.m. to 5 p.m., May 5, 2003. 9 a.m. to 5 p.m., May 6, 2003. 9 a.m. to 5 p.m., May 7, 2003.

Place: Millenium Hotel, 145 West 44th Street, New York, New York 10036, phone (212) 768–4400, fax (212) 789–7698, Internet address *http://www.milleniumhotels.com*.

Times and Dates: 9 a.m. to 5 p.m., May 20, 2003. 9 a.m. to 5 p.m., May 21, 2003. 9 a.m. to 5 p.m., May 22, 2003.

Place: Wyndham Miami Beach Resort, 4833 Collins Avenue, Miami Beach, Florida 33140, phone (305) 532–3600, fax (305) 534–7409, Internet address *http://www.wyndham.com/hotels/MIAMIB/main.wnt*.

Status: Open to the public, but limited by the space available. The meeting rooms accommodate approximately 75 people. Registration is free, but required. Forms can be obtained by e-mailing *cboconsultation@cdc.gov*. Additional information on meeting location is to be determined. For exact location and all meeting materials please visit our Web site at: *http://www.cdc.gov/hiv/cboconsultation.html*.

Purpose: To bring representatives from state and local government, community based prevention programs, community planning group members and community members together to review the current Directly Funded Community Based HIV Prevention Program, capacity building needs and recommend strategies on how to address the future funding for this program.

Matters to be Discussed: Agenda items include plenary presentations, interactive small group breakout sessions, and discussion groups in which participants will learn new information and work together to provide individual recommendations on the future structure and funding for the community based program.

CONTACT PERSON FOR MORE INFORMATION: Sam Martinez, National Center for HIV, STD, and TB Prevention, Division of HIV/AIDS Prevention, 1600 Clifton Rd., NE., M/S E–58, Atlanta, GA 30333, telephone (404) 639–5219, *smartinez@cdc.gov*.

The Director, Management and Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 3, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–8745 Filed 4–9–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Science and Program Review Subcommittee (SPRS) and the Advisory Committee for Injury Prevention and Control (ACIPC): Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee and committee meetings.

Name: Science and Program Review Subcommittee to ACIPC.

Time and Date: 9 a.m.-11:15 a.m., April 30, 2003.

Place: The Westin Peachtree Plaza, 210 Peachtree Street, NW., Atlanta, Georgia 30303–1745.

Status: Open to the public, limited only by the space available.

Purpose: The Subcommittee provides advice on the needs, structure, progress and performance of the National Center for Injury Prevention and Control (NCIPC) programs. The Subcommittee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Subcommittee also advises on priorities for research to be supported by contracts, grants, and cooperative agreements, and provides concept review of program proposals and announcements.

Matters to be Discussed: Agenda items of the Subcommittee oversight meeting include status of fiscal year (FY) 2003 request for applications (RFAs), early notification and marketing of RFAs, status of FY 2003 Injury Control Research Center (ICRC) RFAs, evaluating the ICRC program, mental health and terrorism, and dissemination research experience with FY 2002 RFA and future steps.

Name: Advisory Committee for Injury Prevention and Control.

Time and Dates: 1:30 p.m.-5:40 p.m., April 30, 2003. 8:15 a.m.-3 p.m., May 1, 2003.

Place: The Westin Peachtree Plaza, 210 Peachtree Street, NW., Atlanta, Georgia 30303–1745.

Status: Open to the public, limited only by the space available.

Purpose: The Committee advises and makes recommendations to the Secretary, Health and Human Services, the Director, CDC, and the Director, NCIPC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control. The Committee provides advice on the appropriate balance of intramural and extramural research, and also provides guidance on the needs, structure, progress and performance of intramural programs, and on extramural scientific program matters. The Committee provides second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The Committee also recommends areas of research to be supported by contracts and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: Agenda items include reports from the Science and Program Review Subcommittee, the Subcommittee on Intimate Partner Violence and Sexual Assault (formerly known as the Family and Intimate Violence Prevention Subcommittee), and the Working Group on Injury Control and Infrastructure Enhancement; an update from the Director, NCIPC; introduction to the National Violent Data Reporting System (NVDRS); implementation and progress of NVDRS; using data on violent deaths to make a difference; how NVDRS fits into building state injury programs; introduction to suicide prevention; a history of CDC's suicide prevention efforts; national strategy for suicide prevention; presentations by several Federal agencies on their suicide prevention activities; CDC's suicide prevention activities; an update on NCIPC terrorism preparedness and response activities; and terrorism and mental health.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Ms. Louise Galaska, Executive

Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE., M/S K02, Atlanta, Georgia 30341–3724, telephone 770/488–4694.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 3, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–8744 Filed 4–9–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Infectious Diseases: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates: 9 a.m.–5 p.m., May 1, 2003. 8:30 a.m.–3:30 p.m., May 2, 2003.

Place: CDC, Auditorium B, Building 1, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Secretary, the Assistant Secretary for Health, Director, CDC, and Director, NCID, in the following areas: program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters to be Discussed: Agenda items will include:

1. *Opening Session:* NCID Update
   a. Severe Acute Respiratory Syndrome
   b. Methicillin-Resistant Staphylococcus Aureus
   c. Malaria
2. Bioterrorism Update
3. Institute of Medicine Emerging Infections Report
4. Global Health Activities
5. Emerging Infectious Diseases Journal
6. Updates
   a. Pneumococcal Disease
   c. Hepatitis
7. Infections and Chronic Diseases
8. Board meets with Director, CDC
9. Discussions and Recommendations

Other agenda items include announcements/introductions; follow-up on actions recommended by the Board in December 2002; consideration of future directions, goals, and recommendations.

Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Tony Johnson, Office of the Director, NCID, CDC, Mailstop E–51, 1600 Clifton Road, NE., Atlanta, Georgia 30333, e-mail *tjohnson3@cdc.gov;* telephone 404/498–3249.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 3, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–8737 Filed 4–9–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Meeting Notice

The National Institute for Occupational Safety and Health (NIOSH) at the Centers for Disease Control and Prevention announces the following meeting:

Name: Continue Conceptual Discussions for Escape Respirator Standards Development Efforts Used for Respiratory Protection Against Chemical, Biological, Radiological, and Nuclear (CBRN) Agents.

Time and Date: 9 a.m.—5 p.m., April 29, 2003.

Place: Radisson Hotel Pittsburgh Green Tree, 101 Radisson Drive, Pittsburgh, Pennsylvania.

Status: This meeting is hosted by NIOSH and will be open to the public, limited only by the space available. The meeting room will accommodate approximately 175 people. Interested parties should make hotel reservations directly with the Radisson Hotel Pittsburgh Green Tree (412–922–8400 or 800–333–3333) before the cut off date of April 21, 2003, referencing the NIOSH/NPPTL Public Meeting. Interested parties should confirm their attendance to this meeting by completing a registration form and forwarding it by e-mail (*confserv@netl.doe.gov*) or fax (304–285–4459) to the Event Management Office. A registration form may be obtained from the NIOSH Homepage (*http://www.cdc.gov/niosh*) by selecting "Conferences," and then the event.

Requests to make presentations at the public meeting should be mailed to the NIOSH Docket Officer, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513–533–8285, E-mail *niocindocket@cdc.gov.* All requests to present should contain the name, address, telephone number, relevant business affiliations of the presenter, a brief summary of the presentation, and the approximate time requested for the presentation. Oral presentations should be limited to 15 minutes.

After reviewing the requests for presentations, NIOSH will notify each presenter of the approximate time that their presentation is scheduled to begin. If a participant is not present when his or her presentation is scheduled to begin, the remaining participants will be heard in order. At the conclusion of the meeting, an attempt will be made to allow presentations by any scheduled participants who missed their assigned times. Attendees who wish to speak but did not submit a request for the opportunity to make a presentation may be given this opportunity at the conclusion of the meeting, at the discretion of the presiding officer. Comments on the topics presented in this notice and at the meeting should be mailed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone 513–533–8303, Fax 513–533–8285. Comments may also be submitted by e-mail to *niocindocket@cdc.gov.* E-mail attachments should be formatted as WordPerfect 6/7/8/9 or Microsoft Word. Comments should be submitted to NIOSH no later than May 30, 2003, and should reference docket number, NIOSH–002, in the subject heading.

Purpose: NIOSH will continue conceptual discussions of standards and testing processes for an Escape Respirator standard suitable for respiratory protection against CBRN Agents and review ongoing research to identify simulata materials for use as CBRN test surrogates for respirator research. NIOSH, along with the U.S. Army Soldier and Biological Chemical Command (SBCCOM) and the National Institute for Standards and Technology (NIST), will present information to attendees concerning the concept development for the Escape Respirator CBRN standard. Participants will be given an opportunity to ask questions and to present individual comments for consideration. Interested participants may obtain the latest copy of the Escape Respirator CBRN concept paper, as well as earlier versions of the concept papers used during the standard development effort, from the NIOSH contact identified below, or from the NIOSH National Personal Protective Technology Laboratory (NPPTL) Web site, address: *http://www.cdc.gov/niosh/npptl.* The April 15, 2003, concept paper will be used as the basis for discussion at the public meeting, as well as forming the basis for the new Escape Respirator CBRN statement of standard.

Recent acts of terrorism have created an urgent awareness of domestic security and preparedness issues. Municipal, state, and federal responder groups, particularly those in locations considered potential targets, have been developing and modifying response and consequence management plans. Since the World Trade Center and anthrax incidents, most emergency response agencies have operated with a heightened appreciation of the potential scope and sustained resource requirements for coping with such events. The Federal Interagency Board for Equipment Standardization and Interoperability (IAB) has worked to identify personal protective equipment that is already available on the market for responders' use. The IAB has identified the development of standards or guidelines for respiratory protection equipment as a top priority. NIOSH, NIST, National Fire Protection Association, and the Occupational Safety and Health Administration have entered into a Memorandum of Understanding defining each agency's or organization's role in developing, establishing, and enforcing standards or guidelines for responders' respiratory protective devices. NIST has initiated Interagency Agreements with NIOSH and SBCCOM to aid in the development of appropriate protection standards or guidelines. NIOSH has the lead in developing standards or guidelines to test, evaluate, and approve respirators.

NIOSH, SBCCOM, and NIST have hosted public meetings on April 17 and 18, 2001; June 18 and 19, 2002; and October 16 and 17, 2002, presenting their progress in assessing respiratory protection needs of responders to CBRN incidents. The methods or models for developing hazard and exposure estimates, and the status of evaluating test methods and performance standards that may be applicable in future CBRN respirator standards or guidelines, were discussed at these meetings.

Contact for Additional Information: Event Management, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26507, Telephone 304–285–4750, Fax 304–285–4459, E-mail *confserv@netl.doe.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 3, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–8738 Filed 4–9–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (BSC, NIOSH).

Time and Date: 9 a.m.–2:45 p.m., April 30, 2003.

Place: The Washington Court, 525 New Jersey Avenue, NW., Washington, DC 20001–1527, telephone 202/879–7918, fax 202/879–7918.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The BSC, NIOSH, is charged with providing advice to the Director, NIOSH, on NIOSH research programs. Specifically, the Board provides guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings, and disseminating results.

Matters to be Discussed: Agenda items include a report from the Director of NIOSH; Report on NIOSH International Activities; update on the National Exposure at Work Survey; briefing on Outreach and Information for Small Businesses; update on NIOSH Occupational Asthma Research; closing remarks.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Roger Rosa, Ph.D., Executive Secretary, BSC, NIOSH, Centers for Disease Control and Prevention, 200 Independence Avenue, SW., Room 715H,Washington, DC 20201, telephone: 202/205–7856, fax: 202/260–4464, e-mail: *rrosa@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 3, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–8752 Filed 4–9–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0135]

Agency Emergency Processing Under OMB Review; Guidance: Establishing and Maintaining a List of U.S. Dairy Product Manufacturers With Interest in Exporting to Chile

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). FDA is preparing a guidance document intended to notify the public of procedures being implemented by the agency to assist U.S. firms that wish to export dairy products to Chile. FDA is taking this action in response to trade discussions with Chile that have been adjunct to the negotiations of the United States-Chile Free Trade Agreement. FDA is requesting this emergency processing under the PRA because a normal clearance is likely to impede completion of the United States-Chile Free Trade Agreement.

DATES: Fax or electronically mail written comments on the collection of information by May 12, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to sshapiro@omb.eop.gov or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX 202–395–6974. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA is preparing a guidance document intended to notify the public of procedures being implemented by the agency to assist U.S. firms that wish to export dairy products to Chile. FDA is taking this action in response to trade

discussions with Chile that have been adjunct to the negotiations of the United States-Chile Free Trade Agreement. As a result of those discussions, Chile has recognized FDA as the competent food safety authority in the United States to identify U.S. dairy product manufacturers eligible to export to Chile and has concluded that it will not conduct individual inspections of U.S. firms identified by FDA as eligible to export to Chile. Therefore, FDA intends to establish and maintain a list, which will be posted on the Internet and given to Chile, identifying U.S. firms that have expressed interest to FDA in exporting dairy products to Chile, are subject to FDA jurisdiction, and are not the subject of a pending judicial enforcement action (i.e., an injunction or seizure) or an unresolved warning letter.

FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j)) and 5 CFR 1320.13. This information is needed immediately because it will take time to establish a list of U.S. firms that wish to export dairy products to Chile. Immediate collection of the information will reduce the length of delay before any U.S. firm can actually export their dairy products to Chile without submitting to prior individual inspections from Chile. The use of normal clearance procedures would prolong the time needed to provide guidance on the process for firms to seek inclusion on the referenced list. Delay in resolution of this agricultural trade issue is likely to impede completion of the United States-Chile Free Trade Agreement.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance: Establishing and Maintaining a List of U.S. Dairy Product Manufacturers With Interest in Exporting to Chile

Section 701(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(h)) authorizes the Secretary of Health and Human Services (the Secretary) to develop guidance documents with public participation presenting the views of the Secretary on matters under the jurisdiction of FDA.

At a later date, FDA will announce the availability of a final guidance entitled "Establishing and Maintaining a List of U.S. Dairy Product Manufacturers With Interest in Exporting to Chile." The guidance will provide voluntary recommendations on the process for firms that wish to export dairy products to Chile. Under this guidance, FDA recommends that U.S firms that want to be placed on the list send information to FDA (i.e., name and address of the firm and the manufacturing plant, name and telephone number of contact person, list of products presently shipped and expected to be shipped in the next 3 years, identities of agencies that inspect the plant and date of last inspection, plant number and copy of last inspection notice and, if other than an FDA inspection, copy of last inspection report).

The burden estimates presented below considered the number of U.S. firms that FDA believes produce dairy products and which will be interested in exporting to Chile, which is estimated to total 50. After the first year, FDA believes that approximately five new firms each year will be interested in exporting dairy products to Chile, and thus, being placed on the list.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency of per Response	Total Annual Responses	Hours per Response	Total Hours
50[2]	1	50	1.5	75
5[3]	1	5	1.5	7.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] First year burden.
[3] Recurring burden.

The estimate of the number of firms that will seek to be on the list is based on FDA's current knowledge of the number of U.S. firms that produce dairy products and that will be interested in exporting to Chile. The estimate of the number of hours that it will take a firm to gather the information needed to be placed on the list is based on FDA's experience with firms submitting similar requests. FDA believes that the information to be submitted will be readily available to the firms. We estimate that for the first year a firm will require 1.5 hours to read the **Federal Register**, gather the information needed, and prepare a communication to FDA that contains the information and requests that the firm be placed on the list.

Dated: April 7, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–8901 Filed 4–8–03; 11:52 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03F–0128]

Alcide Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alcide Corp. has filed a petition proposing that the food additive regulations be amended to expand the permitted use concentration and to expand the pH range for acidified sodium chlorite solutions as an antimicrobial agent in water and ice intended for use on seafood (fresh or saltwater).

DATES: Submit written or electronic comments on the petitioner's environmental assessment by May 12, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Mical E. Honigfort, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–0714.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3A4743) has been filed by Alcide Corp., 8561 154th Ave. NE., Redmond, WA 98052–3557. The petition proposes to amend the food additive regulations in § 173.325 *Acidified sodium chlorite solutions* (21 CFR 173.325) to expand the permitted use concentration and to expand the pH range for acidified sodium chlorite solutions as an antimicrobial agent in water and ice intended for use on seafood (fresh or saltwater).

The potential environmental impact of this petition is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before, May 12, 2003, submit to the Dockets Management Branch (address above) written or electronic comments. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two hard copies of any written comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required, and this petition results in a regulation, the notice of availability of the agency's Finding of No Significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: March 14, 2003.

Alan M. Rulis,

Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 03–8694 Filed 4–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

9th Annual FDA Science Forum—"FDA Science: Protecting America's Health"

ACTION: Notice of meeting.

The Food and Drug Administration (FDA), Office of Science is announcing the following meeting entitled "9th Annual FDA Science Forum—FDA Science: Protecting America's Health." The Science Forum is FDA's key scientific meeting that seeks to communicate and promote scientific issues relating to scientific development and associated regulatory concerns. Open to the public, the 2003 Forum is designed to bring FDA scientists together with representatives from industry, academia, government agencies, consumer and patient advocacy groups, and international constituents to explore emerging public health issues and to learn and share knowledge and ideas of the science-based mission of the agency.

Date and Time: The Science Forum will be held on Thursday and Friday, April 24 and 25, 2003. On April 24, 2003, registration will be from 7:30 a.m. to 4:30 p.m. and the meeting from 8:30 a.m. to 6:30 p.m. On April 25, 2003, registration will be from 7 a.m. to 1 p.m. and the meeting from 8 a.m. to 5:30 p.m.

Location: New Washington Convention Center, Mount Vernon Square, Washington, DC 20001.

Contact: Susan Bond, FDA, Office of Science (HF–33), 5600 Fishers Lane, Rockville, MD 20857, 301–827–6687, e-mail: *sbond@oc.fda.gov.*

Registration: Complete detailed program, and exhibitor information are available at *www.dcscienceforum.org.* (FDA has verified the Web site address, but is not responsible for subsequest changes to the Web site after this document publishes in the **Federal Register**.) Due to limited seating, interested parties are encouraged to register early. If you need special accommodations due to a disability, please contact *dmentch@oc.fda.gov* or 301–827–3038.

SUPPLEMENTARY INFORMATION: The Science Forum will focus on three plenary tracks with corresponding break-out sessions in the areas of:

- Risk management & risk assessment
- Novel science initiatives at FDA
- FDA's mission post- 9/11/01 and beyond

A poster session featuring all areas of FDA regulatory science will be presented to provide an opportunity for interested scientists to engage in information exchange with FDA scientists.

An exhibition of scientific products, services, and professional societies sponsored by Williamsburg BioProcessing Foundation will be held during the entire event. Interested exhibitors should contact: *clsokker@wilbio.com.* (FDA has verified the Web site address but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) An FDA Job Fair will be held as part of this exhibition.

This event is co-sponsored by the FDA Office of Science & Health Coordination, Williamsburg BioProcessing Foundation, AOAC International, California Separation Science Society, and the FDA Chapter of Sigma Xi, The Scientific Research Society.

Dated: April 4, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–8759 Filed 4–9–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Office of Dietary Supplements: Notice of Opportunity for Public Comment and Public Meeting

Background

The Office Dietary Supplements (ODS) was established in the Office of the Director, NIH, in 1995 as a major provision of the Dietary Supplement Health and Education Act of 1994 (DSHEA). A key early activity was the

development of a Strategic Plan to define the mission of ODS and to set out goals for its programs. It was prepared with considerable input from NIH Institutes and Centers, other Federal agencies, consumers, and other interested parties.

The Strategic Plan was intended to guide ODS activities and programs for 5 years and it has served this purpose. Since its publication in 1998, there have been increases in the ODS budget each year, and this meant both considerable progress and expanded programs beyond those contemplated in the original Plan. Therefore it is appropriate to re-visit the original Plan this year and to develop an updated ODS Strategic Plan for 2004–2009.

The Office of Dietary Supplements is re-examining its 1998 Strategic Plan and desires public comment on the progress of its programs and on future needs and opportunities for research activities. As a part of this effort, we are holding a meeting for interested parties. The major focus of the meeting is to solicit views and suggestions on the future directions and programs of the ODS.

We have prepared a background paper that summarizes progress in key areas of ODS activity identified in the 1998 Strategic Plan and solicits comments and suggestions on future ODS activities. The background paper and related information are available on the ODS Web site at *http://ods.od.nih.gov*. In addition, the background paper is available from the Office of the address listed below. We are disseminating the background paper for comment by all interested parties. Comments, suggestions, and views should be forwarded to the address listed below or sent to <*ODSplan.od.nih.gov.*>

In addition, the ODS will hold an open public meeting on May 8 and 9, 2003 at the time and address listed below to hear additional comments and suggestions on needs and opportunities for possible inclusion in the 2004–2009 ODS Strategic Plan. Information about the meeting, including the tentative agenda, is available on ODS Web site *http://ods.nih.gov*. There is no registration fee.

We may use all written comments received by 5 p.m. EST, on June 27, 2003 from this request as well as those received at the meeting in the preparation of a revised Strategic Plan for 2004–2009. We will complete the strategic planning process the end of calendar year 2003. We will publish and disseminate the revised ODS Strategic Plan as the "roadmap" for programs of the Office of Dietary Supplements in 2004–2009.

The overall purpose of this strategic planning effort is to identify both new opportunities and emerging needs for possible incorporation in the programmatic efforts of the Office. To address this purpose, guidance is being requested from all interested parties on these important issues:

- Is there a need or opportunity for additional overarching goals for ODS? As a corollary, are there reasons or justification for modifying the priorities for allocation of resources to the five original goals?
- Is there a need or opportunity to re-examine the original 33 objectives individually in order to address the following issues:

(a) Are there objectives where current knowledge, opportunities, or needs that suggest expanded efforts or changes in priority for study are appropriate? If so, documentation and justification should be provided.

(b) Are there additional aspects of specific topics that should be added? If so, documentation and justification should be provided.

(c) Beyond the original 33 objectives, are there newly identified needs and opportunities that suggest additional objectives for increased emphasis in ODS programs in the future? If so, documentation and justification should be provided.

- An additional purpose of this current strategic planning effort is to seek comments and suggestions about the various approaches that ODS has utilized in addressing the goals of its 1998 Strategic Plan?

(a) Among the approaches used by ODS, should there be greater emphasis on certain ones in regard to research support, communication and information dissemination, database development, and training and career development?

(c) Are there other methods and techniques that ODS should consider in implementing its goals and objectives in the future?

Meeting Title: Office of Dietary Supplements Public Meeting.

Date: May 8 and 9, 2003.

Time: May 8—8 a.m.–5 p.m.; May 9—8 a.m.–12 noon.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Kenneth D. Fisher, Ph.D., Office of Dietary Supplements, 6100 Executive Boulevard, Room 3B01, Bethesda, MD 20892–7517, Phone: (301) 435–2920, Fax: (301) 480–1845, E-mail: *ODSplan@od.nih.gov*.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral comment should indicate this when registering on the ODS Web site at *http://ods.nih.gov* no later than April 25, 2003.

Oral comments will be limited to three minutes. Individuals who register to speak will be assigned in the order in which they registered. Due to time constraints, only one representative from each organization will be allotted time for oral presentation. We may limit the number of speakers and the time allotted depending on the number of registrants. All requests to register should include the name, address, telephone number, and business or professional affiliation of the interested party. If time permits, we will allow any person attending the meeting who has not registered to speak in advance of the meeting to make a brief oral statement during the time set aside for public comment, and at the chairperson's discretion.

We encourage individuals unable to attend the meeting and all interested parties to send written comments to the Office of Dietary Supplements by mail, fax, or electronically. When mailing or faxing written comments provide, if possible, an electronic version on diskette.

Persons needing special assistance, such as sign language interpretation or other special accommodations at the meeting should indicate this when registering or contact the Office of Dietary Supplements at the address or telephone number listed no later than April 25, 2003.

Dated: April 2, 2003.

Paul M. Coates,

Director, Office of Dietary Supplements, Office of the Director, National Institutes of Health.

[FR Doc. 03–8720 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NHLBI.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Heart, Lung, and Blood Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NHLBI.

Date: June 5, 2003.

Time: 7:45 a.m. to 5:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Elizabeth G Nabel, MD, Scientific Director for Clinical Research, National Heart, Lung, and Blood Institute, Division of Intramural Research, Building 10, Room 8C103, MSC 1754, Bethesda, MD 20892, 301/496–1518.

Information is also available on the Institute's/Center's Home page: *www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 2, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8716 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel,

Date: May 1, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Pier 5 Hotel, 711 Eastern Avenue, Baltimore, MD 21202.

Contact Person: Valerie L. Prenger, PhD, Review Branch, Room 7194, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, (301) 435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 2, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8715 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense Partnerships: Vaccines, Adjuvants, Therapeutics, Diagnostics, and Resources.

Date: April 28–30, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Hagit S. David, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2117, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, (301) 496–2550, *hdavid@mercury.niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Responses to Biodefense Vaccines.

Date: April 29, 2003.

Time: 4 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20871, (Telephone Conference Call).

Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 2156, Bethesda, MD 20892–7616, (301) 402–4598, *clapham@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 2, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8697 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6); Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, DMID Clinical Trials Management.

Date: May 12–13, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Robert C. Goldman, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, DHHS, Room 3124, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–8424, *rg159w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 2, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8698 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Health Services Research Review Subcommittee, AA–2 Review Meeting.

Date: June 12, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Elsie Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, (301) 443–9787, *etaylor@niaaa.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Clinical and Treatment Subcommittee, AA–3 Review Meeting.

Date: June 26–27, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott's Harbor Beach Resort & Spa, 3030 Holiday Drive, Fort Lauderdale, FL 33316.

Contact Person: Elsie Taylor, Ms, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, (301) 443–9787, *etaylor@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol National Research Center Grants, National Institutes of Health, HHS)

Dated: April 1, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8699 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5. U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Training Grant.

Date: April 8, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Arthur L. Zachary, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8700 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Large-Scale Collaborative Project Awards.

Date: April 28, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Arthur L. Zachary, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8701 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set for in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Neurodevelopmental Consequences of Pain & Inflammation.

Date: April 22, 2003.

Time: 1 PM TO 2 PM.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd, 6100 Executive Blvd, 5B01, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8702 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of R13 Application.

Date: April 29, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, 411, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeffrey I Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 435–5337.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Small Business Initiative for Alcohol Proteomics—RFA—AA03–003.

Date: April 30, 2003.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Room 409, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eugene G. Hayunga, PhD, Chief, Scientific Review Branch, OSA, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Wilco Building, Suite 409, 6000 Executive Boulevard, MSC 7003, Bethesda, MD 20892–7003, (301) 443–2860, *ehayunga@mail.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, Review of R25—Alcohol Education Project Grant Applications.

Date: May 9, 2003.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, 411, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jeffrey I Toward, PhD, Chief, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Boulevard, Suite 409, Bethesda, MD 20892–7003, (301) 435–5337.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1 GG (11)—Review of Fellowship Applications.

Date: May 20, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Randolph Room, Rockville, MD 20852.

Contact Person: Karen P. Peterson, PhD, Scientific Review Administrator, Extramural Project Review Branch, National Institute of Alcohol Abuse, and Alcoholism, National Institutes of Health, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 451–3883, *kp177z@nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group, Biomedical Research Review Subcommittee.

Date: June 6, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Extramural Project Review Branch, Office of Scientific Affairs, National Institute of Alcohol Abuse, and Alcoholism,6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 443–2926, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8703 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, Chronic Stress and Its Relation to Drug Abuse and Addiction.

Date: 22–23, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Rita Liu, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1388.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: April 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8704 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Allergy Immunology and Transplantation Subcommittee.

Date: May 29, 2003.

Closed: 8:30 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: 1:00 pm to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Microbiology and Infectious Diseases Subcommittee.

Date: May 29, 2003.

Closed: 8:30 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Open: 1 pm to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council Acquired Immunodeficiency Syndrome Subcommittee.

Date: May 29, 2003.

Closed: 8:30 am to 10:30 am.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room C1/C2, Bethesda, MD 20892.

Open: 1:00 pm to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: May 29, 2003.

Open: 10:30 am to 11:40 am.

Agenda: Reports from the NIAID Director and the Director of the Vaccine Research Center.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room E1/E2, Bethesda, MD 20892.

Closed: 11:40 am. to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville MD 20892–7610, 301–496–7291.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.niaid.nih.gov/facts/facts.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8705 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: May 29, 2003.

Time: 1 a.m. to 5 p.m.

Agenda: The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps and/or obstacles to progress.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7601, 301–435–3732.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 03, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8706 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Network for Large-Scale Sequencing of Microbial Genomes.

Date: May 1–2, 2003.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Alec Ritchie, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700 B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–435–1614, *aritchie@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 2, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8707 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 20, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Prenatal Programming of Reproductive Health and Disease.

Date: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 1, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8708 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C. as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Maternal Microchimerism: A Cause of Type 1 Diabetes Mellitus?

Date: April 17, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Hameed Khasn, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 1, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8709 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel in Anesthesiology.

Date: April 24, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Rebecca H. Johnson, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892, 301–594–2771, *johnsonrh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biology Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 1, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8710 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Stem Cell Engraftment and Differentiation.

Date: April 22, 2003.

Time: 8:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: John F. Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, K18'S

Date: April 22, 2003.

Time: 12:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: John F. Connaughton, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Calcium Metabolism.

Date: April 25, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: NIDDK Review Branch, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, *federn@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Pediatric Diabetes.

Date: April 28, 2003.

Time: 2 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 748, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, *federn@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, PTHrP Action.

Date: April 28, 2003.

Time: 2:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 748, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, *federn@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Hepatoxicity Clinical Research Network.

Date: May 4–5, 2003.

Time: 7 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 748, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, *federn@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 2, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8711 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Review of Core Center Grants.

Date: May 14, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Melissa Stick, Ph.D. MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalog of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: April 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8712 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Esophageal Varices.

Date: April 28, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799, *ls38z@nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Podocyte Biology Disease.

Date: May 9, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Maxine A. Lesniak, PHM, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 3, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8713 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Treatment of Diabetic Nephropathy.

Date: April 8, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 751, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, P01 Group 3: Type 1 Diabetes.

Date: April 23, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator,

Review Branch, DEA, NIDDK, Room 754, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799, *ls38z@nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, a Multi-Center Therapy Trial for Acute Liver Failure.

Date: April 23, 2003.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carolyn Miles, PhD., Scientific Review Administrator Review Branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892 (301) 594–7791 *milesc@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Developing GBM.

Date: April 28, 2003.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.

Contact Person: Maxine A. Lesniak, PHM, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707, Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Biomarker Trial for Immunosuppressants.

Date: May 1, 2003.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carolyn Miles, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791, *milesc@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.837, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 2, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8714 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Renal Transport and Function.

Date: April 28, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–6600, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research For the Prevention and Control of Diabetes.

Date: May 6, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–6600, (301) 594–8898, *barnardm@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, T32 Review.

Date: May 6, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–6600, (301) 594–8894, *matsumotod@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 02, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8717 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDDK.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Diabetes and Digestive and Kidney Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDDK.

Date: May 14, 2003.

Open: 8:30 am to 8:45 am.

Agenda: Introductions and Overview.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Closed: 8:45 am to adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 5, Room 127, Bethesda, MD 20892.

Contact Person: Marvin C Gershengorn, MD, Scientific Director, Division of Intramural Research, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 9000 Rockville Pike, Bldg. 10, Rm. 9N222., Bethesda, MD 20892, (301) 496–4129.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93,849, Kidney Disease, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April, 2, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8718 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Understanding Mentor-Child Relationships.

Date: April 4, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 435–1258, *micklinm@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Carcadian Rhythms.

Date: April 4, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Anxiety and Stress.

Date: April 7, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Synaptic Plasticity.

Date: April 7, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Factors in Pseudomonas Virulence.

Date: April 8, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Pneumococcal Polysaccharide Vaccine Factors.

Date: April 9, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reactivated Coxiella Burnetii Application.

Date: April 11, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Regulation of Hepatocyte Gene Expression.

Date: April 11, 2003.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oral Biology and Medicine SBIR/STTR Special Emphasis Panel.

Date: April 14, 2003.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: J. Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781, *th88q@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, AARR 4 Reviewer Conflict.

Date: April 14, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108 MSC 7852, Bethesda, MD 20892, (301) 435–1168.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skin Cancer Prevention.

Date: April 14, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda. MD 20892, (Telephone Conference Call).

Contact Person: Lee S. Mann, PhD, JD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Transsynaptic Labelling.

Date: April 14, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Sleep Mechanisms.

Date: April 15, 2003.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Drug Addiction.

Date: April 16, 2003.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology: Lymphocyte Development.

Date: April 17, 2003.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7812, Bethesda, MD 20892, (301) 435–3565.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Transcription in Diabetes.

Date: April 17, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anshumali Chaudhari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Transmission of Prion Disease.

Date: April 17, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7808, Bethesda, MD 20892, (301) 435–1146.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Breast Cancer Studies.

Date: April 17, 2003.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Transcriptional Immunology.

Date: April 18, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, Department of Health and Human Services, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, 301–435–3566, *cooperc@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN 2 (04) Neuroendocrinology, Neuroimmunology, and Behavior.

Date: April 21, 2003.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, *richard.marcus@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oral Biology.

Date: April 21, 2003.

Time: 2:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Leukemia Studies.

Date: April 21, 2003.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804, (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome/Fibromyalgia Syndrome SBIR/STTP Review Panel.

Date: April 21, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781, *th88q@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome/Fibromyalgia Syndrome.

Date: April 22, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1446, MSC 7816, Bethesda, MD 20892, 301/435–1781, *th88q@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Plasticity and Cell Proliferation.

Date: April 22, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Trials.

Date: April 23, 2003.

Time: 9:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hypoxia.

Date: April 23, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Molecular Pharmacology.

Date: April 24, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Epidemiology of Aging.

Date: April 24, 2003.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *hardyan@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Anthrax.

Date: April 25, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7808, Bethesda, MD 20892, 301–435–1050, *freund@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 2, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8719 Filed 4–9–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Aviation Security Advisory Committee Meeting

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aviation Security Advisory Committee (ASAC).

DATES: The meeting will take place on April 30, 2003, from 9 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Dan Mullarkey, Office of Transportation Security Policy, TSA Headquarters (West Tower, Floor 11), 400 Seventh St. SW., Washington, DC, 20590; telephone 571–227–2635, e-mail *dan.mullarkey@tsa.dot.gov.*

SUPPLEMENTARY INFORMATION: This meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The agenda for the meeting will include a discussion of cargo security and general aviation initiatives. In addition, cargo working groups will be formed. This meeting, from 9 a.m. to 12:30 p.m., is open to the public but attendance is limited to space available.

The newly formed cargo working groups will hold follow-on meetings on April 30, 2003, and all day on May 1, 2003. These working group meetings will be closed to the public.

Members of the public must make advance arrangements to present oral statements at the open ASAC meeting. Written statements may be presented to the committee by providing copies of them to the Chair prior to or at the meeting. Anyone in need of assistance or a reasonable accommodation for the meeting, should contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Arlington, Virginia, on April 4, 2003.

Tom Blank,

Assistant Administrator for Transportation Security Policy.

[FR Doc. 03–8813 Filed 4–9–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–03]

Notice of Proposed Information Collection for Public Comment on A Survey of Users of Products From the Office of Policy Development and Research

AGENCY: Office of the Assistant Secretary for Public Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410–6000.

FOR FURTHER INFORMATION CONTACT: Barbara Haley, 202–708–5537, ext. 5708 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. This Notice also lists the following information:

Title of Proposal: Survey of Users of Products from the Office of Policy Development and Research (PD&R).

Description of the need for the , information and proposed use: Each year PD&R produces and facilitates the dissemination of approximately 60 publications through its distribution clearinghouse HUD USER. In 1978 PD&R established HUD USER as an information source for housing and community development researchers and policymakers. In the last calendar year, over 4,000,000 housing research publications were downloaded from the HUD USER Web site and on average 70,000 unique visitors stop by the site each month. Over the past few years, over 80,000 individuals have placed orders for HUD USER research products.

In order to evaluate the impact of its current programs and to measure its dissemination efforts, PD&R will study the opinions of stakeholders and people who request PD&R products regarding the extent to which PD&R research makes a difference and contributes to the development of best practices.

Agency Form Numbers: None.

Members of the Affected Public: Users of products from the Office of Policy Development and Research.

Estimation of the total number of house needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Information will be collected by a one-time telephone survey of 75 individuals who are users of products from the Office of Policy Development and Research. The survey will take approximately 30 minutes to complete. This means a total of 37.5 hours of response time annually for the information collection.

Status of the Proposed Information Collection: Pending OMB approval.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 03, 2003.

Christopher D. Lord,

Deputy Assistant Secretary for Policy Development.

[FR Doc. 03–8693 Filed 4–9–03; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt.

SUMMARY: The following applicant has applied for a permit to conduct certain activities with an endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*):

PRT—TE069518

Applicant: University of Maine, Orono, Maine

DATES: Written data or comments on this application must be received at the address given below by May 12, 2003.

ADDRESSES: Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035. Attention: Diane Lynch, Regional Endangered Species Permits Coordinator, telephone: (413) 253–8628; facsimile: (413) 253–8482.

FOR FURTHER INFORMATION CONTACT: Diane Lynch, telephone: (413) 253–8628; facsimile (413) 253–8482.

SUPPLEMENTARY INFORMATION: You are invited to comment on the application from the University of Maine, PRT–TE069510. This application requests authorization to take (harass, in the form of stress, and kill) Gulf of Maine, distinct population segment, Atlantic salmon (Salmo salar) stocks, for scientific purposes. DPS stocks for this study include stock from the: Denny's, Machias, East Machias, Pleasant, Sheepscot, and Narraguagus Rivers. No wild fish will be used in this study only stocks currently propagated at the Craig Brook National Fish Hatchery.

Dated: March 28, 2003.

Richard O. Bennett,

Acting Regional Director.

[FR Doc. 03–8743 Filed 4–9–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Draft Wild and Scenic River Eligibility Report for the Westfield River, MA

AGENCY: National Park Service, Interior.

ACTION: Publication of draft report for public comment.

SUMMARY: The National Park Service is publishing for public review and comment a draft study report on designating additional miles to the Westfield River, Massachusetts, National Wild and Scenic River. The National Park Service has found that the Westfield River, Massachusetts (Upper East Branch and Tributaries: Drowned Land Brook; Center Brook; Windsor Jambs Brook—Towns of Savoy and Windsor; Headwater Tributaries of the West Branch: Shaker Mill Brook; Depot Brook; Savery Brook; Watson Brook; Center Pond Brook—Towns of Becket and Washington; Lower Middle Branch, East Branch and Main Stem—Town of Huntington) is eligible for the national system and is recommending that this section of the river be designated.

DATES: Submit comments on or before May 27, 2003.

ADDRESSES: Copies of the draft report are available for public inspection at: National Park Service, Boston Support Office, 15 State Street, Boston, MA 02109; National Park Service, 1201 Eye Street, NW., Washington, DC 20240–0001. Hours of availability are between 8:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. Additional copies for review are located in the Huntington, Savoy, Washington, and Windsor Town Halls; during normal hours of operation. Copies of the draft report may be obtained from Jamie Fosburgh, National Park Service, Boston Support Office, 15 State Street, Boston, MA, 617–223–5191. The full draft report may be viewed at *http://www.nps.gov/rivers.*

Comments should be directed to the National Park Service, Boston Support Office, attention Jamie Fosburgh at the address above.

FOR FURTHER INFORMATION CONTACT: Jamie Fosburgh, National Park Service, Boston Support Office, 15 State Street, Boston, MA, 617–223–5191.

SUPPLEMENTARY INFORMATION: On April 26, 2002, Acting Governor Jane Swift of the Commonwealth of Massachusetts petitioned the Secretary of the Interior to extend the Westfield River's Wild and Scenic designation to include additional segments of the river and its headwaters (34.8 miles) under the National Wild and Scenic Rivers Act. The sections of river under consideration includes the Upper East Branch and Tributaries: Drowned Land Brook; Center Brook; Windsor Jambs Brook in the Towns of Savoy and Windsor; the Headwater Tributaries of the West Branch: Shaker Mill Brook; Depot Brook; Savery Brook; Watson Brook; Center Pond Brook in the Towns of Becket and Washington; and the Lower Middle Branch, East Branch and Main Stem in the Town of Huntington. Under section 2(a)(ii) of the National Wild and Scenic Rivers Act (Pub. L. 90–542, as amended), the Secretary has the authority to add a river to the National System at the request of a state, provided the state has met certain prior conditions and the river meets eligibility criteria, based upon an evaluation of natural and cultural resources.

These conditions are:

(1) The river must have been designated as a component of a states wild or scenic rivers system by, or pursuant to, an act of the legislature of that state.

(2) Management of the river must be administered by an agency or political subdivision of the state, except for those lands administered by an agency of the Federal government.

(3) The river meets National Wild and Scenic River eligibility criteria, that is, that the river is free-flowing and possesses one or more outstanding resources of significance to the region or nation.

(4) There must be effective mechanisms and regulations in place—local, state or federal—to provide for the long-term protection of those resources for which the river was deemed eligible.

Upon the request of a state governor to the Secretary of the Interior, the National Park Service, acting for the Secretary, undertakes an evaluation of the state's request.

As a result of the evaluation, the National Park Service has concluded that all requirements were fully met for the designation extension for the Westfield River.

The National Park Service recommends that the following segments of the Westfield River be classified as:

Wild: Shaker Mill Brook, approximately 2.6 miles from Brooker Hill Road in Becket to its headwaters.

Scenic: Upper East Branch, 6.6 miles from the Windsor/Cummington town line to its confluence; Upper East Branch Tributaries—Drowned Land Brook, 1.5 miles; Center Brook, 2.5 miles; and Windsor Jambs Brook, 1.3 miles; and Headwater Tributaries of the West Branch—Shaker Mill Brook, approximately 1.2 miles from Brooker Hill Road in Becket to its confluence; Depot Brook, 4.5 miles; Savery Brook, 2.9 miles; Watson Brook, 1.9 miles; Center Pond Brook, 1.6 miles from Center Pond to its confluence; and

Recreational: Lower Middle Branch, East Branch, and Main Stem, 3.2 miles in the Town of Huntington and the Upper East Branch, 5.0 miles from its confluence with Sykes Brook to its confluence with the West Branch.

Dated: February 6, 2003.

Fran P. Mainella,

Director, National Park Service.

[FR Doc. 03–8499 Filed 4–9–03; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–452]

Steel-Consuming Industries: Competitive Conditions With Respect to Steel Safeguard Measures

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: April 4, 2003.

SUMMARY: Following receipt of a request on March 18, 2003, from the Committee on Ways and Means (Committee), U.S. House of Representatives, the Commission instituted investigation No. 332–452, Steel-Consuming Industries: Competitive Conditions with Respect to Steel Safeguard Measures, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

On March 5, 2003, the Commission instituted an investigation under section 204(a) of the Trade Act of 1974 (Inv. No. TA–204–9) in order to prepare a report on the results of its monitoring of developments relating to the domestic steel industry since the President imposed tariffs and tariff-rate quotas on imports of certain steel products (68 FR 12380, March 14, 2003). In its letter, the Committee on Ways and Means requests that the Commission provide its report in this section 332 investigation and its monitoring report in the section 204(a) investigation in a single document. In a March 27, 2003 letter to the Commission, the Office of the United States Trade Representative (USTR) referenced the format requested by the Committee and informed the Commission that USTR has no objection to receiving the section 204(a)(2) report and the section 332(g) report in a single document. Accordingly, the Commission will transmit to the President and the Congress these two separate reports in the requested format.

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from James Fetzer, Project Leader (202–708–5403; *jfetzer@usitc.gov*), Office of Economics; Karl Tsuji, Deputy Project Leader (202–205–3434; *tsuji@usitc.gov*), Office of Industries; or Catherine DeFilippo, Chief, Applied Economics Division (202–205–3253; *cdefilippo@usitc.gov*), Office of Economics, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091; *wgearhart@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

As requested by the Committee, the Commission will investigate the current competitive conditions facing the steel-consuming industries in the United States, with respect to tariffs and tariff-rate quotas imposed by the President on March 5, 2002, and with respect to foreign competitors not subject to such measures. As requested, the Commission will conduct its analysis along sectoral lines in order to assess the impact on differing segments of the U.S. manufacturing sector; and also examine the data as related to steel products on which the President imposed steel safeguard measures. To the extent possible, the investigation will address the effects of the safeguard measures on steel consuming industries and on industries that rely on steel imports such as the ports, including the following:

(1) Changes in employment, wages, profitability, sales, productivity, and capital investment of steel-consuming industries;

(2) An examination of the reported effects of the safeguard remedies on factors such as steel prices paid by consuming industries, steel shortages/availability, the ability of steel consumers to obtain required products or quality specifications, lead times and delivery times, contract abrogation, sourcing of finished parts from overseas by customers of steel consumers, and the relocation or shift of U.S. downstream production to foreign plants or facilities;

(3) The impact of international competitive factors, such as relative differences in steel costs to foreign steel-consuming industries, on steel consumers' exports and imports of steel-containing products;

(4) An examination of any shifts in steel-consuming patterns in the United States, *i.e.*, how much steel was purchased from domestic steel producers by U.S. steel-consuming industries before the safeguard action, and how has this sourcing changed following the implementation of the safeguard measures; and

(5) A discussion of the likely impact on employment, profitability, capital investment, and international competitiveness of steel-consuming industries of (i) continuation of the safeguard measures for the period September 2003–March 2005 and (ii) termination of the safeguard measures effective September 20, 2003.

In addition, as requested, the Commission will provide an analysis of the potential economy-wide effects of these safeguard measures (*e.g.*, on costs borne by steel consumers, tariff revenues entering the U.S. Treasury, income to steel producers, and the net effect on the U.S. economy) using appropriate simulation models.

The Committee asked that the Commission furnish its report by September 20, 2003, along with the Commission's section 204 steel monitoring report in a single document. The Committee also requested that the Commission make its report available to the public, consistent with procedures set forth in section 332(g) of the Tariff Act of 1930 concerning the release of confidential business information.

Public Hearing

A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on June 19, 2003, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. All persons have the right to appear by counsel or in person, to present information, and to be heard. Persons wishing to appear at the public hearing should file a letter with the Secretary, United States International Trade Commission, 500 E St., SW, Washington, DC 20436, not later than the close of business (5:15 p.m.) on June 2, 2003. In addition, persons appearing should file prehearing briefs (original and 14 copies) with the Secretary by the close of business on June 4, 2003. Posthearing briefs should be filed with the Secretary by the close of business on June 27, 2003. In the event that no requests to appear at the hearing are received by the close of business on June 2, 2003, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1816) after June 4, 2003 to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to appearing at the public hearing, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on June 27, 2003. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. The Commission intends to publish only a public report in this investigation. Accordingly, any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules, as amended, 67 FR 68036 (Nov. 8, 2002). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

By order of the Commission.

Issued: April 4, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–8727 Filed 4–9–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Extension of a currently approved collection; Certification of compliance with eligibility requirements of grants to reduce crimes against women.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 20, page 4797 on January 30, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 12, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

Overview of this information collection:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Certification of Compliance with Eligibility Requirements of Grants to Reduce Crimes against Women.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: none. Office on Violence Against Women, Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Institutions of Higher Education. Other: None. The grants to Reduce Violent Crimes Against Women on Campus Program was authorized through section 826 of the Higher Education Amendments of 1998 to make funds available to institutions of higher education to combat domestic violence, dating violence, sexual assault and stalking crimes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 125 respondents will complete the application in approximately 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this application is 62 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: April 4, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–8687 Filed 4–9–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,947]

BASF Corporation, Vitamin Division, a Subsidiary of BASFIN Corporation, Including Leased Workers of Adecco, Wyandotte, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 9, 2002, applicable to workers of BASF Corporation, Vitamin Division, a subsidiary of BASFIN Corporation, Wyandotte, Michigan. The notice was published in the **Federal Register** on May 17, 2002 (67 FR 35141).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State shows that leased workers of Adecco were employed at BASF Corporation, Vitamin Division, a subsidiary of BASFIN Corporation to produce vitamin E, vitamin A and food blends/mixes at the Wyandotte, Michigan location of the subject firm.

Based on these findings, the Department is amending the certification to include leased workers of Adecco who were working at BASF Corporation, Vitamin Division, a subsidiary of BASFIN Corporation, Wyandotte, Michigan.

The intent of the Department's certification is to include all workers of BASF Corporation, Vitamin Division, a subsidiary of BASFIN Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–40,947 is hereby issued as follows:

All workers of BASF Corporation, Vitamin Division, a subsidiary of BASFIN Corporation, Wyandotte, Michigan, and leased workers of Adecco producing of vitamin E, vitamin A and food blends/mixes at BASF Corporation, Vitamin Division, a subsidiary of BASFIN Corporation, Wyandotte, Michigan, who became totally or partially separated from employment on or after January 14, 2001, through May 9, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 27th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8846 Filed 4–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,916]

Emess Design Group, LLC, Ellwood City, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 2, 2002, applicable to workers of Emess Design Group, LLC, located in Ellwood City, Pennsylvania. The notice was published in the **Federal Register** on December 23, 2002 (67 FR 78256).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers produce lamps and lamp products. Information provided by company shows that on April 12, 2002, Emess Design Group, LLC, purchased the assets of another company.

Since the Emess Design Group, LLC did not exist prior to April 12, 2002, the Department is changing the impact date from July 15, 2001 to April 12, 2002.

The amended notice applicable to TA–W–41,916 is hereby issued as follows:

All workers of Emess Design Group, LLC, Ellwood City, Pennsylvania, who became totally or partially separated from employment on or after April 12, 2002 through December 2, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 14th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8848 Filed 4–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,122]

FCI USA, Inc., Communications, Data, and Consumer Division (CDC), Fiber Optics Group, a Member of the Areva Group, Etters, PA; Notice of Revised Determination on Reconsideration

On February 19, 2003, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice will soon be published in the **Federal Register**.

The Department initially terminated the investigation on behalf of workers of FCI USA, Inc., Communications, Data, and Consumer Division (CDC), Fiber Optics Group, a member of the Areva Group, Etters, Pennsylvania because the Department had recently issued negative determinations applicable to the petitioning group of workers on September 20, 2002 (TA–W–41,571).

On reconsideration, the Department conducted a survey of the major customers of the subject firm regarding their purchases of electrical and fiber optic connectors during the relevant period. The survey revealed that a major customer increased their imports, while decreasing their purchases from the subject firm during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with electrical and fiber optic connectors, contributed importantly to the declines in sales or production and to the total or partial separation of workers of FCI USA, Inc., Communications, Data, and Consumer Division (CDC), Fiber Optics Group, a member of the Areva Group, Etters, Pennsylvania. In accordance with the provisions of the Act, I make the following certification:

All workers of FCI USA, Inc., Communications, Data, and Consumer Division (CDC), Fiber Optics Group, a member of the Areva Group, Etters, Pennsylvania, engaged in the production of electrical and fiber optic connectors, who became totally or partially separated from employment on or after November 14, 2001 through two years from date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 26th day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8852 Filed 4–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–42,310]

Inteplast Group Ltd., Integrated Bagging Systems, Lolita, TX; Notice of Revised Determination on Reconsideration

By application of February 21, 2003, petitioners requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on February 13, 2003, based on the finding that imports of plastic bags did not contribute importantly to worker separations at the Lolita plant. The denial notice was published in the **Federal Register** on March 10, 2003 (68 FR 11409).

To support the request for reconsideration, the petitioner supplied additional information to supplement that which was gathered during the initial investigation. Upon further review and contact with the company, it was revealed that sales and production did decline in the relevant period. As a result of this finding, a customer survey which was conducted in the original investigation became relevant to establishing import impact. Results from this survey revealed that a major declining customer increased their imports of plastic bags while decreasing their purchases from the subject firm in the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Inteplast Group, LTD., Integrated Bagging Systems, Lolita, Texas, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Inteplast Group, LTD., Integrated Bagging Systems, Lolita, Texas, who became totally or partially separated from employment on or after October 7, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 26th day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8850 Filed 4–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–38,928]

Motorola, Inc. Personal Communications Sector, Harvard, IL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 13, 2001, applicable to workers of Motorola, Inc., Personal Communications Sector, Harvard, Illinois. The notice was published in the **Federal Register** on May 2, 2001 (66 FR 22006).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of cellular phones.

New company information shows that worker separations will continue to occur at the Harvard, Illinois location of the subject firm after the current certification expires April 13, 2003. The workers will remain at the Harvard, Illinois location until August 15, 2003 to decommission equipment and to physically close the property.

Accordingly, the Department is amending the certification to extent the expiration date to August 15, 2003.

The intent of the Department's certification is to include all workers of Motorola, Inc., Personal Communication Sector, Harvard, Illinois who were adversely affected by increased imports.

The amended notice applicable to TA–W–38,928 is hereby issued as follows:

All workers of Motorola, Inc., Personnel Communications Sector, Harvard, Illinois who became totally or partially separated from employment on or after February 14, 2000, through August 15, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 17th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8844 Filed 4–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,036 and TA–W–50,036A]

Nortel Networks, Department #2446, Research Triangle Park, NC and Including an Employee of Nortel Networks, Department #2446, Located in New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 17, 2003, applicable to workers of Nortel Networks, Department #2446, Research Triangle Park, North Carolina. The notice was published in the **Federal Register** on February 6, 2003 (68 FR 6212).

At the request of the petitioner, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred involving an employee of Department #2446, Research Triangle Park, North Carolina facility of Nortel Networks located in New York. This employee provided verification testing and turnup for the production of fiber optic backbone telecommunications network at Department #2446, Research Triangle Park, North Carolina location of the subject firm.

Based on these findings, the Department is amending this certification to include an employee of the Research Triangle Park, North Carolina facility of Nortel Networks, Department #2446 located in New York.

The intent of the Department's certification is to include all workers of Nortel Networks, Department #2446 who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,036 is hereby issued as follows:

All workers of Nortel Networks, Department #2446, Research Triangle Park, North Carolina (TA–W–50,036), including an employee of Nortel Networks, Department #2446, Research Triangle Park, North Carolina, located in New York (TA–W–50,036A), who became totally or partially separated from employment on or after November 5, 2001, through January 17, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 21st day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8851 Filed 4–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,380]

Spinnaker Coating Maine Incorporated, Westbrook, ME; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) remanded to the Labor Department for further investigation of the negative determination in *Former Employees of Spinnaker Coating, Maine Inc.* v. *U.S. Secretary of Labor* (Court No. 02–00203).

The Department's initial denial of the petition for employees of Spinnaker Coating Maine, Inc., Incorporated, Westbrook, Maine was issued on August 23, 2001 and published in the **Federal Register** on September 11, 2001 (66 FR 47242). The denial was based on the fact that criterion (3) of the Group Eligibility Requirements of Section 222 of the Trade Act of 1974, as amended, was not met. Imports did not contribute importantly to worker separations at the subject firm.

On administrative reconsideration, the Department issued a "Notice of Negative Determination Regarding Application for Reconsideration," on December 26, 2001 for the employees of Spinnaker Coating Maine, Inc., Incorporated, Westbrook, Maine. The notice was published in the **Federal Register** on January 31, 2002 (66 FR 4756 and 4757). The Department further concluded that imports did not contribute importantly to worker separations at the subject firm.

On remand, the Department examined the results of a survey response conducted during the initial investigation, with additional clarification from the customer during reconsideration. The survey showed

that the customer stopped buying thermal transfer paper from the subject firm prior to the relevant period. During the same time period, the customer increased their imports purchases of thermal transfer paper from another domestic source, while decreasing their purchases of Electronic Data Processing (EDP) paper from the subject firm.

Since the two products EDP and thermal transfer paper appeared to be two different types of paper, the Department did not consider the increased imports as impacting the subject plant. On remand, the Department contacted a company official and followed up with an industry expert at the United States International Trade Commission. Both indicated that the two products were directly competitive with each other. Therefore on further review of that survey response, the customer increased their purchases of imported thermal transfer paper, a product "like or directly competitive" with EDP during the relevant period. The customer simultaneously reduced their purchases of EDP, while increasing their imports of thermal transfer paper during the relevant period.

Conclusion

After careful review of the additional facts obtained on remand, I conclude that there were increased imports of articles like or directly competitive with those produced by the subject firm that contributed importantly to the worker separations and sales or production declines at the subject facility. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Spinnaker Coating Maine Incorporated, Westbrook, Maine who became totally or partially separated from employment on or after June 4, 2000, through two years from the issuance of this revised determination, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8845 Filed 4–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,967]

Trego Industries, Inc., Red Oak, TX; Notice of Revised Determination on Reconsideration

By letter postmarked November 13, 2002, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on October 11, 2002, based on the finding that imports of commercial door products did not contribute importantly to worker separations at the Red Oak plant. The denial notice was published in the **Federal Register** on November 5, 2002 (67 FR 67421).

To support the request for reconsideration, the petitioner supplied additional information to supplement that which was gathered during the initial investigation. Upon further review and contact with the major declining customer, it was revealed that this customer increased its imports of like or directly competitive products in the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Trego Industries, Inc., Red Oak, Texas, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Trego Industries, Inc., Red Oak, Texas, who became totally or partially separated from employment on or after August 2, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 18th day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8849 Filed 4–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,225]

Unitek Electronics, Inc., Portland, OR; Notice of Revised Determination on Reopening

On March 24, 2003, the Department on its own motion reviewed the initial determination for workers and former workers of the subject firm engaged in the production of solid-state motor speed controls.

The initial investigation resulted in a negative determination issued on January 29, 2003 because imports did not contribute importantly to the worker separations. The notice was published in the **Federal Register** on February 24, 2003 (68 FR 8619).

New information submitted to the Department by the company and additional information supplied by a primary customer of the subject firm revealed that the customer has increased purchases of imported solid-state motor speed controls while reducing purchases from the subject firm.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with solid-state motor speed controls produced by the subject firm contributed importantly to the decline in sales and to the total or partial separation of workers of the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Unitek Electronics, Inc., Portland, Oregon, who became totally or partially separated from employment on or after November 29, 2001 through two years from the date of this certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 27th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8853 Filed 4–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,195]

Wellman Thermal Systems, Inc., Shelbyville, IN; Notice of Revised Determination on Reconsideration

By letter of August 14, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on July 11, 2002, based on the finding that imports of electrical process heaters and controls did not contribute importantly to worker separations at the Shelbyville, Indiana plant. The denial notice was published in the **Federal Register** on July 29, 2002 (67 FR 49038).

To support the request for reconsideration, the company attempted to provide information to illustrate that foreign competition impacted the subject workers. On further clarification from the company it was discovered that a competitor purchased certain assets of Wellman's industrial grade electrical process business and inventory. The company indicated that the foreign company was attempting to penetrate the U.S. marketplace. As a result of the asset sale, workers engaged in the production of electrical process heaters and controls at the subject firm were impacted.

The Department contacted the foreign company for further clarification. The company indicated that they did purchase the assets from Wellman and inventory from the subject firm. The foreign company indicated that shortly after the asset purchase they increased their U.S. imports of products "like and directly" competitive with what the subject plant produced during the relevant period. The products were also simultaneously imported to some of the subject firm's domestic customers.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Wellman Thermal Systems, Inc., Shelbyville, Indiana contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Wellman Thermal Systems, Inc., Shelbyville, Indiana, engaged in the production of electrical process heaters and controls, who became totally or partially separated from employment on or after March 13, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 18th day of March 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8847 Filed 4–9–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension of data collection using the ETA Form 9023, Trade Adjustment Assistance (TAA)/North American Free Trade Agreement Transitional Adjustment Assistance (NAFTA–TAA) Program Financial Status Report/ Request for Funds (1205–0275, expires 4/31/2003). Efforts are currently underway to transition financial reporting on the TAA and NAFTA–TAA programs to the Standard Form 269. This transition will make financial reporting uniform across all ETA programs. It should be noted that the ETA–9023 will continue to be used by States to request supplemental funding for both the TAA and NAFTA–TAA programs.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before June 9, 2003.

ADDRESSEE: Edward A. Tomchick, Director, Division of Trade Adjustment Assistance, Room C–5311, 200 Constitution Ave., NW., Washington, DC 20210. Phone (202) 693–3577 (this is not a toll-free number), fax (202) 693–3584, e-mail *etomchick@doleta.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Trade Adjustment Assistance Reform Act of 2002 consolidated the Trade Adjustment Assistance (TAA) and North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA–TAA) programs into one program for trade affected workers. However; earlier amendments to the Trade Act of 1974, contained in the Omnibus Trade and Competitiveness Act (OTCA) of 1988 (Pub. L. 100–418) and Title 5 of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) of 1993 made some significant changes and additions to the way worker adjustment assistance programs for trade-affected workers are funded and administered. These changes made enrollment in training an entitlement for workers adversely affected by imports (TAA program) or by imports from Canada or Mexico (NAFTA–TAA program). The TAA and NAFTA–TAA trade programs provide monies for trade readjustment allowances, job search allowances, job relocation allowances and training. In order for workers to receive trade readjustment allowances for the maximum amount of time permitted, they must be enrolled in a training program approved by the Secretary of Labor (section 423 of OTCA) for the TAA program and (section 250 of the NAFTA Implementation Act) for the NAFTA–TAA program. Although training becomes an entitlement under both programs if certain regulatory criteria are met, the OTCA imposed a training cap in section 236 of the TAA program and under subchapter D for the NAFTA–TAA program. Under the Trade Adjustment Assistance Reform Act of 2002, the statutory cap for training dollars is $220 million. The purpose of the collection of this information on the form ETA–9023 is to be able to monitor

expenditures for training and related activities for both programs to ensure that the statutory ceiling is not exceeded. Tracking of expenditures for the NAFTA–TAA program will occur until all funds have been expended or the State submits a final report—at which time the NAFTA–TAA program will be phased out in accordance with the Trade Adjustment Assistance Reform Act of 2002. Additionally, the Secretary of Labor is responsible for ensuring that resources are equitably distributed to the States. This form enables the ETA to evaluate a State's need for resources and to distribute resources among States as necessary.

II. Review Focus

The Department of Labor is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and

* Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The ETA–9023 has been successfully utilized by the ETA and the States with only minor modifications since Fiscal Year 1989. The **Federal Register** Notice requests an extension of the ETA–9023 for both the reformed TAA program and the NAFTA–TAA program—the latter only until monies for it expire. Overall, States have done a commendable job in completing the form with relatively minor problems or questions raised by the States on the form. The ETA–9023 has been extremely important to the ETA over the last several years because the entire funding available, under the statutory cap for the Trade program for training was allocated to the States. The ETA–9023 report was critical in allowing ETA to be able to distribute resources equitably among States so the maximum number of eligible participants seeking training could obtain it.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Trade Adjustment Assistance/NAFTA Financial Status Report/Request for Funds.

OMB Number: 1205–0275.

Agency Number: ETA–9023.

Affected Public: State Governments, State Workforce Agencies.

Cite/Reference	Total respondents/responses	Frequency	Total responses	Average time per response (hours)	Total requested burden
TAA Reporting	50	5	250	2	500
NAFTA Reporting	50	5	250	2	500
Totals			500		1,000

The total costs is $26.00 x 100 hours = $26,000. Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 4, 2003.

Shirley Smith,

Administrator, Employment and Training Administration.

[FR Doc. 03–8842 Filed 4–9–03; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–039]

NASA Advisory Council, Pioneer Revolutionary Technology Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aerospace Technology Advisory Committee (ATAC), Pioneer Revolutionary Technology Subcommittee (PRTS).

DATES: Tuesday, May 20, 2003, 8 a.m. to 5 p.m.; and Wednesday, May 21, 2003, 8 a.m. to 5 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 258, Conference Room 221, Moffett Field, California 94035–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aerospace Technology, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4729.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Quality Review Process
—General Description of Program
—Actions from ATAC and NASA's Response
—In-Depth Description of Computing, Information, and Communications Technology
—In-Depth Description of Engineering for Complex Systems
—General Description of Enabling Concepts and Technology

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign Nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Pat A. Elson via e-mail at *pelson@mail.arc.nasa.gov* or by telephone at (650) 604–4498. Attendees will be escorted at all times.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–8819 Filed 4–9–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services; Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

AGENCY: Institute of Museum and Library Services; National Foundation on the Arts and the Humanities.

ACTION: Notice of proposed guidance.

SUMMARY: The Institute of Museum and Library Services (IMLS) publishes for public comment proposed policy guidance on Title VI's prohibition against national origin discrimination as it affects limited English proficient persons.

DATES: Comments must be submitted on or before May 12, 2003. IMLS will review all comments and will determine what modifications, if any, to this policy guidance are necessary.

ADDRESSES: Interested persons should submit written comments to Office of the General Counsel, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Suite 802, Washington, DC 20506. Comments may also be submitted to facsimile at 202–606–1077 or by e-mail at *nweiss@imls.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Weiss at the above address or by telephone at 202–606–5414; TDD: 202–606–8636. Arrangements to receive the policy in an alternative format may be made by contacting the named individual.

SUPPLEMENTARY INFORMATION: Under IMLS regulations implementing Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. (Title VI), recipients of federal financial assistance from the IMLS ("recipients") have a responsibility to ensure meaningful access by persons with limited English proficiency (LEP) to their programs and activities. See 45 CFR 1170. Executive Order 13166, reprinted at 65 FR 50121 (August 16, 2000), directs each Federal agency that extends assistance subject to the requirements of Title VI to publish, after review and approval by the Department of Justice, guidance for its recipients clarifying that obligation. The Executive Order also directs that all such guidance be consistent with the compliance standards and framework detailed in DOJ Policy Guidance entitled "Enforcement of Title VI of the Civil Rights Act of 1964—National Origin Discrimination Against Persons with Limited English Proficiency." See 65 FR 50123 (August 16, 2000).

On March 14, 2002, the Office of Management and Budget (OMB) issued a Report To Congress titled "Assessment of the Total Benefits and Costs of Implementing Executive Order No. 13166: Improving Access to Services for Persons with Limited English Proficiency." Among other things, the Report recommended the adoption of uniform guidance across all federal agencies, with flexibility to permit tailoring to each agency's specific recipients. Consistent with this OMB recommendation, the Department of Justice (DOJ) published LEP Guidance for DOJ recipients which was drafted and organized to also function as a model for similar guidance by other Federal grant agencies. See 67 FR 41455 (June 18, 2002). The proposed guidance is based upon and incorporates the legal analysis and compliance standards of the model June 18, 2002, DOJ LEP Guidance for Recipients.

It has been determined that the guidance does not constitute a regulation subject to the rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553. It has also been determined that this guidance is not subject to the requirements of Executive Order 12866.

The text of the complete proposed guidance document appears below.

Nancy E. Weiss, General Counsel, Institute of Museum and Library Services.

I. Introduction

Most individuals living in the United States read, write, speak and understand English. There are many individuals, however, for whom English is not their primary language. For instance, based on the 2000 census, over 26 million individuals speak Spanish and almost 7 million individuals speak an Asian or Pacific Island language at home. If these individuals have a limited ability to read, write, speak, or understand English, they are limited English proficient, or "LEP."

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d, et seq. and its implementing regulations provide that no person shall be subjected to discrimination on the basis of race, color, or national origin under any program or activity that receives federal financial assistance. Language for LEP individuals can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by federally funded programs and activities.

In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally assisted programs and activities may violate the prohibition under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d and Title VI regulations against national origin discrimination.

The purpose of this policy guidance is to clarify the responsibilities of recipients of federal financial assistance from the Institute of Museum and Library Services (IMLS), and assist them in fulfilling their responsibilities to limited English proficient (LEP) persons pursuant to Title VI of the Civil Rights Act of 1964 and the IMLS implementing regulations. The policy guidance reiterates IMLS's longstanding position that, in order to avoid discrimination against LEP persons on the grounds of national origin, recipients must take reasonable steps to ensure that such persons have meaningful access to the programs, services, and information those recipients provide.

This policy guidance is modeled on and incorporates the legal analysis and compliance standards and framework set out in Section I through Section VIII of Department of Justice (DOJ) Policy Guidance titled "Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons," published at 67 FR 41455, 41457–41465 (June 18, 2002) (DOJ Recipient LEP Guidance). To the extent additional clarification is desired on the obligation under Title VI to ensure meaningful access by LEP persons and how recipients can satisfy that obligation, a recipient should consult the more detailed discussion of the applicable compliance standards and relevant factors set out in DOJ Recipient LEP Guidance. The DOJ Guidance may be viewed and downloaded at *http://www.usdoj.gov/crt/cor/lep/DOJFinLEPFRJun182002.htm* or at *http://www.lep.gov.* In addition, IMLS recipients also receiving federal financial assistance from other federal agencies, such as the National Endowment for the Humanities, should review those agencies' guidance documents at *http://www.lep.gov* for a

more focused explanation of how they can comply with their Title VI and regulatory obligations in the context of similar federally assisted programs or activities.

Many commentators have noted that some have interpreted the case of *Alexander* v. *Sandoval*, 532 U.S. 275 (2001), as impliedly striking down the regulations promulgated under Title VI that form the basis for the part of Executive Order 13166 that applies to federally assisted programs and activities. The IMLS and the Department of Justice have taken the position that this is not the case, and will continue to do so. Accordingly, we will strive to ensure that federally assisted programs and activities work in a way that is effective for all eligible beneficiaries, including those with limited English proficiency.

II. Purpose and Application

This policy guidance provides a legal framework to assist recipients in developing appropriate and reasonable language assistance measures designed to address the needs of LEP individuals. The IMLS Title VI implementing regulations prohibit both intentional discrimination and policies and practices that appear neutral but have a discriminatory effect. Thus, a recipient entity's policies or practices regarding the provision of benefits and services to LEP persons need not be intentional to be discriminatory, but may constitute a violation of Title VI if they have an adverse effect on the ability of national origin minorities to meaningfully access programs and services.

Recipient entities have considerable flexibility in determining how to comply with their legal obligation in the LEP setting and are not required to use the suggested methods and options that follow. However, recipient entities must establish and implement policies and procedures for providing language assistance sufficient to fulfill their Title VI responsibilities and provide LEP persons with meaningful access to services.

III. Policy Guidance

1. Who Is Covered

All entities that receive Federal financial assistance from IMLS, either directly or indirectly, through a grant, cooperative agreement, contract or subcontract, are covered by this policy guidance. Title VI applies to all Federal financial assistance, which includes but is not limited to awards and loans of Federal funds, awards or donations of Federal property, details of Federal personnel, or any agreement, arrangement or other contract that has as one of its purposes the provision of assistance.

Title VI prohibits discrimination in any program or activity that receives Federal financial assistance. In most cases, when a recipient receives Federal financial assistance for a particular program or activity, all operations of the recipient are covered by Title VI, not just the part of the program that uses the Federal assistance. Thus, all parts of the recipient's operations would be covered by Title VI, even if the Federal assistance were used only by one part.

Finally, some recipients operate in jurisdictions in which English has been declared the official language. Nonetheless, these recipients continue to be subject to federal non-discrimination requirements, including those applicable to the provision of federally assisted services to persons with limited English proficiency.

2. Basic Requirement: All Recipients Must Take Reasonable Steps To Provide Meaningful Access to LEP Persons

Title VI and the IMLS implementing regulations require that recipients take reasonable steps to ensure meaningful access to the information, programs, and services they provide. Recipients of federal assistance have considerable flexibility in determining precisely how to fulfill this obligation.

It is also important to emphasize that museums and libraries are in the business of maintaining, sharing, and dissemination vast amounts of information and items, most of which are created or generated by third parties. In large measure, the common service provided by these recipients is *access* to information, whether maintained on-site or elsewhere, not the generation of the sources information itself. This distinction is critical in properly applying Title VI to museums, libraries, and similar programs. For example, in the context of library services, recipients initially should focus on their procedures or services that directly impact access in three areas. First, applications for library or membership cards, instructions on card usage, and dissemination of information on where and how source material is maintained and indexed, should be available in appropriate languages other than English. Second, recipients should, consistent with the four factor analysis, determine what reasonable steps could be taken to enhance the value of their collections or services to LEP persons, including, for example, accessing language-appropriate books through inter-library loans, direct acquisitions, and/or on-line materials. Third, to the extent a recipient provides services beyond access to books, art, or cultural collections to include the generation of information about those collections, research aids, or community educational outreach such as reading or discovery programs, these additional or enhanced services should be separately evaluated under the four-factor analysis. A similar distinction can be employed with respect to a museum's exhibits versus a museum's procedures for meaningful access to those exhibits.

What constitute reasonable steps to ensure meaningful access in the context of federally-assisted programs and activities in the area of museums and library services will be contingent upon a balancing of four factors: (1) The number and proportion of eligible LEP constituents; (2) the frequency of LEP individuals' contact with the program; (3) the nature and importance of the program; and (4) the resources available, including costs. Each of these factors is summarized below. In addition, recipients should consult Section V of the June 18, 2002 DOJ LEP Guidance for Recipients, 67 FR 41459–41460 or *http://www.lep.gov*, for additional detail on the nature, scope, and application of these factors.

(1) Number or Proportion of LEP Individuals

The appropriateness of any action will depend on the size and proportion of the LEP population that the recipient serves and the prevalence of particular languages. Programs that serve a few or even one LEP person are still subject to the Title VI obligation to take reasonable steps to provide meaningful opportunities for access. The first factor in determining the reasonableness of a recipient's efforts in the number or proportion of people who will be effectively excluded form meaningful access to the benefits or services if efforts are not made to remove language barriers. The steps that are reasonable for a recipient who serves one LEP person a year may be different than those expected from a recipient that serves several LEP persons each day.

(2) Frequency of Contact With the Program

Frequency of contact between the program or activity and LEP individuals is another factor to be weighed. If LEP individuals must access the recipient's program or activity on a daily basis, a recipient has greater duties than if such contact is unpredictable and infrequent. Recipients should take into account local or regional conditions when determining frequency of contact with the program, and should have the flexibility to tailor their services to those needs.

(3) Nature and Importance of the Program

The importance of the recipient's program to beneficiaries will affect the determination of what reasonable steps are required. More affirmative steps must be taken in programs where the denial or delay of access may have serious, or even life or death implications than in programs that are not crucial to one's day-to-day existence, economic livelihood, safety, or education. For example, the obligations, of a federally assisted school or hospital differ from those of a federally assisted museum or library. This factor implies that the obligation to provide translation services will be highest in programs providing education, job training, medical/health services, social welfare services, and similar services. As a general matter, it is less likely that museums and libraries receiving assistance from the IMLS will provide services having a similar immediate and direct impact on a person's life or livelihood. Thus, in large measure, it is the first factor (number or proportion of LEP individuals) that will have the greatest impact in determining the initial need for language assistance services.

In assessing the effect on individuals of failure to provide language services, recipients must consider the importance of the benefit to individuals both immediately and in the long-term. Another aspect of this factor is the nature of the program itself. Some museum content may be extremely accessible regardless of language. In these instances, little translation might be required.

(4) Resources Available

IMLS is aware that its recipients may experience difficulties with resource allocation. Many of the organizations' overall budgets, and awards involved are quite small. The resources available to a recipient of federal assistance may have an impact on the nature of the steps that recipient must take to ensure meaningful access. For example, a small recipient with limited resources may not have to take the same steps as a larger recipient to provide LEP assistance in programs that have a limited number of eligible LEP individuals, where contact is infrequent, where the total cost of providing language services is relatively high, and/or where the program is not providing an important service or benefit from, for instance, a health, education, economic, or safety perspective. Translation and interpretation costs are appropriately included in award budget requests.

This four-factor analysis necessarily implicates the "mix"of LEP services required. The correct mix should be based on what is both necessary and reasonable in light of the four-factor analysis. Even those award recipients who serve very few LEP persons on an infrequent basis should use a balancing analysis to determine whether the importance of the services(s) provided and minimal costs make language assistance measures reasonable even in the case of limited and infrequent interactions with LEP persons. Recipients have substantial flexibility in determining the appropriate mix.

IV. Strategies for Ensuring Meaningful Access

Museums and libraries have a long history of interacting with people with varying language backgrounds and capabilities within the communities where they are located. The agency's goal is to continue to encourage these efforts and share practices so that other museums and libraries can benefit from other institutions' experiences.

The following are examples of language assistance strategies that are potentially useful for all recipients. These strategies incorporate a variety of options and methods for providing meaningful access to LEP beneficiaries and provide examples of how recipients should take each of the four factors discussed above into account when developing an LEP strategy. Not every option is necessary or appropriate for every recipient with respect to all of its programs and activities. Indeed, a language assistance plan need not be intricate; it may be as simple as being prepared to use a commercially available "language line" to obtain immediate interpreting services and/or having bilingual staff members available who are fluent in the most common non-English languages spoken in the area. Recipients should exercise the flexibility afforded under this Guidance to select those language assistance measures which have the greatest potential to address, at appropriate levels and in reasonable manners, the specific language needs of the LEP populations they serve.

Finally, the examples below are not intended to suggest that if services to LEP populations aren't legally required under Title VI and Title VI regulations, they should not be undertaken. Part of the way in which libraries and museums build communities is by cutting across barriers like language. A small investment in outreach to a linguistically diverse community may well result in a rich cultural exchange that benefits not only the LEP population, but also the library or museum and the community as a whole.

Examples

- Identification of the languages that are likely to be encountered in, and the number of LEP persons that are likely to be affected by, the program. This information may be gathered through review of census and constituent data as well as data from school systems and community agencies and organizations;
- Posting signs in public areas in several language, informing the public of its right to free interpreter services and inviting members of the public to identify themselves as persons needing language assistance;
- Use of "I speak" cards for public-contact personnel so that the public can easily identify staff language abilities;
- Employment of staff, bilingual in appropriate languages, in public contact positions;
- Contracts with interpreting services that can provide competent interpreters in a wide variety of languages in a timely manner;
- Formal arrangements with community groups for competent and timely interpreter services by community volunteers;
- An arrangement with a telephone language interpreter line for on-demand service;
- Translations of application forms, instructional, informational and other key documents into appropriate non-English languages and provide oral interpreter assistance with documents for those persons whose language does not exist in written form;
- Procedures for effective telephone communication between staff and LEP persons, including instructions for English-speaking employees to obtain assistance from bilingual staff or interpreters when initiating or receiving calls to or from LEP persons;
- Notice to and training of all staff, particularly public contact staff, with respect to the recipient's Title VI obligation to provide language assistance to LEP persons, and on the language assistance policies and the procedures to be followed in securing such assistance in a timely manner;
- Insertion of notices, in appropriate languages, about access to free interpreters and other language assistance, in brochures, pamphlets, manuals, and other materials disseminated to the public and to staff; and
- Notice to and consultation with community organizations that represent LEP language groups, regarding

problems and solutions, including standards and procedures for using their members as interpreters.

In identifying language assistance measures, recipients should avoid relying on an LEP person's family members, friends, or other informal interpreters to provide meaningful access to important programs and activities. However, where LEP persons so desire, they should be permitted to use, at their own expense, an interpreter of their own choosing (whether a professional interpreter, family member, or friend) in place of or as a supplement to the free language services expressly offered by the recipient. But where a balancing of the four factors indicate that recipient-provided language assistance is warranted, the recipient should take care to ensure that the LEP person's choice is voluntary, that the LEP person is aware of the possible problems if the preferred interpreter is a minor child, and that the LEP person knows that a competent interpreter could be provided by the recipient at no cost.

The use of family and friends as interpreters may be an appropriate option where proper application of the four factors would lead to a conclusion that recipient-provided language assistance is not necessary. An example of this might be a bookstore or cafeteria associated with a library or archive. There, the importance and nature of the activity may be relatively low and unlikely to implicate issues of confidentiality, conflict of interest, or the need for technical accuracy. In addition, the resources needed and costs of providing language services may be high. In such a setting, an LEP person's use of family, friends, or other informal ad hoc interpreters may be appropriate.

As noted throughout this guidance. IMLS award recipients have a great deal of flexibility in addressing the needs of their constituents with limited English skills. That flexibility does not diminish, and should not be used to minimize, the obligation that those needs be addressed. IMLS recipients should apply the four factors outlined above to the various kinds of contacts that they have with the public to assess language needs and decide what reasonable steps they should take to ensure meaningful access for LEP persons. By balancing the number or proportion of people with limited English skills served, the frequency of their contact with the program, the importance and nature of the program, and the resources available, IMLS awardees' Title VI obligations in many cases will be satisfied by making available oral language assistance or commissioning translations on an as-requested and as-needed basis. There are many circumstances where, after an application and balancing of the four factors noted above, Title VI would not require translation. For example, Title VI does not require a library to translate its collections, but it does require the implementation of appropriate language assistance measures to permit an otherwise eligible LEP person to apply for a library card and potentially to access appropriate-language materials through inter-library loans or other reasonable methods. The IMLS views this policy guidance as providing sufficient flexibility to allow the IMLS to continue to fund language-dependent programs in both English and other languages without requiring translation that would be inconsistent with the nature of the program. Recipients should consult Section VI of the June 18, 2002 DOJ LEP Guidance for Recipients, 67 FR at 41461–41464 or *http://www.lep.gov*, for additional clarification on the standards applicable to assessing interpreter and translator competence, and for determining when translations of documents vital to accessing program benefits should be undertaken.

The key to ensuring meaningful access for people with limited English skills is effective communication. A library or museum can ensure effective communication by developing and implementing a comprehensive language assistance program that includes policies and procedures for identifying and assessing the language needs of its LEP constituents. Such a program should also provide for a range of oral language assistance options, notice to LEP persons of the right to language assistance, periodic training of staff, monitoring of the program and, in certain circumstances, the translation of written materials.

Each recipient should, based on its own volume and frequency of contact with LEP clients and its own available resources, adopt a procedure for the resolution of complaints regarding the provision of language assistance and for notifying the public of their right to and how to file a complaint under Title VI. State recipients, who will frequently serve large numbers of LEP individuals, may consider appointing a senior level employee to coordinate the language assistance program and to ensure that there is regular monitoring of the program.

V. Compliance and Enforcement

Executive order 13166 requires that each federal department or agency extending federal financial assistance subject to Title VI issue separate guidance implementing uniform Title VI compliance standards with respect to LEP persons. Where recipients of federal financial assistance from IMLS also receive assistance from one or more other federal departments or agencies, there is no obligation to conduct and document separate but identical analyses and language assistance plans for IMLS. IMLS, in discharging its compliance and enforcement obligations under Title VI, looks to analyses performed and plans developed in response to similar detailed LEP guidance issued by other federal agencies. Recipients may rely upon guidance issued by those agencies.

IMLS's regulations implementing Title VI contain compliance and enforcement provisions to ensure that a recipient's policies and practices overcome barriers resulting from language differences that would deny LEP persons an equal opportunity to participate in and access to programs, services and benefits offered by IMLS. *See* 45 CFR part 1110. The agency will ensure that its recipient entities fulfill their responsibilities to LEP persons through the procedures provided for the Title VI regulations.

The Title VI regulations provide that IMLS will investigate (or contact its State recipient of funds to investigate, if appropriate) whenever it receives a complaint, report or other information that alleges or indicates possible noncompliance with Title VI. If the investigation results in a finding of compliance, IMLS will inform the recipient in writing of this determination, including the basis for the determination. If the investigation results in a finding of noncompliance, IMLS must inform the recipient of the noncompliance through a Letter of Findings that sets out the areas of noncompliance and the steps that must be taken to correct the noncompliance, and must attempt to secure voluntary compliance through informal means. If the matter cannot bed resolved informally, the IMLS will secure compliance through (a) the suspension of termination of Federal assistance after the recipient has been given an opportunity for an administrative hearing, (b) referral to the Department of Justice for injunctive relief or other enforcement proceedings, or (c) any other means authorized by federal, state, or local law.

Under the Title VI regulations, the IMLS has a legal obligation to seek voluntary compliance in resolving cases and cannot seek the termination of funds until it has engaged in voluntary compliance efforts and has determined that compliance cannot be secured voluntarily. IMLS will engage in voluntary compliance efforts and will provide technical assistance to recipients at all stages of its investigation. During these efforts to secure voluntary compliance, IMLS will propose reasonable timetables for achieving compliance and will consult with and assist recipients in exploring cost effective ways of coming into compliance.

In determining a recipient's compliance with Title VI, the IMLS's primary concern is to ensure that the recipient's policies and procedures overcome barriers resulting from language differences that would deny LEP persons a meaningful opportunity to participate in and access programs, services, and benefits. A recipient's appropriate use of the methods and options discussed in this policy guidance will be reviewed by the IMLS as evidence of a recipient's willingness to comply voluntarily with its Title VI obligations. If implementation of one or more of these options would be so financially burdensome as to defeat the legitimate objectives of a recipient/covered entity's program, or if there are equally effective alternatives for ensuring that LEP persons have meaningful access to programs and services (such as timely effective oral interpretation of vital documents), IMLS will not find the recipient/covered entity in noncompliance.

If you have any questions related to this policy, please contact the IMLS Office of the General Counsel.

Nancy E. Weiss,

General Counsel.

[FR Doc. 03–8803 Filed 4–9–03; 8:45 am]

BILLING CODE 7036–01–M

RAILROAD RETIREMENT BOARD

Notice of Public Meeting; Sunshine Act

Notice is hereby given that the Railroad Retirement Board will hold a meeting on April 16, 2003, 9 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

(1) Employer Status Determination—Rail Temps, Inc.

(2) Employer Status Determination—Southern Gulf Railway Company.

(3) Occupational Disability Task Force Report.

(4) Management Information Report—Strategic Initiatives Related to the President's Management Agenda.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: April 7, 2003.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 03–8890 Filed 4–8–03; 9:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form S–11; OMB Control No. 3235–0067; SEC File No. 270–064.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form S–11 is the registration statement form used to register securities issued in real estate investment trusts by issuers whose business is primarily that of acquiring and holding investment interest in real estate under the Securities Act of 1933. The information filed with the Commission permits verifications of compliance with securities law requirements and assures public availability. Approximately 150 issuers file Form S–11 annually and it takes approximately 473 hours per response for a total burden of 283,800 hours. It is estimated that 25% of the total burden hours (70,950 reporting burden hours) is prepared by the company.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information collection information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: April 3, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8809 Filed 4–9–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27665]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 4, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 28, 2003 to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 29, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Grid Group plc, et al. (70–9849)

National Grid Group plc ("National Grid"), National Grid Holdings One plc

("Holdings One"), National Grid (US) Investments ("US Investments"), all at 15 Marylebone Road, London, NW15JD, United Kingdom, National Grid (Ireland) 1 Limited ("Ireland 1"), and National Grid (Ireland) 2 Limited ("Ireland 2" and collectively, "Applicants"), both at 6 Avenue Pasteur L 2310, Luxembourg, all registered holding companies, have filed a post-effective amendment under section 5(d) of the Act to a previously filed application.

By order dated March 15, 2000, the Commission authorized Holdings One (formerly known as National Grid) to acquire all of the issued and outstanding common stock of the New England Electric System ("NEES"), a registered holding company. *See National Grid Group plc, et al*, Holding Co. Act Release No. 27154 (March 15, 2000) ("NEES Order"). Holdings One acquired NEES through several intermediate registered holding companies, including: U.S. Investments, Ireland 1, and Ireland 2. This corporate structure was designed to hold the National Grid's United States assets in a tax-efficient manner. To maintain tax efficiency, the Commission also authorized Holdings One to make non-material changes to its corporate structure.[1] *See* NEES Order.

By order dated January 16, 2002, the Commission authorized Holdings One and National Grid (formerly known as New National Grid Group plc) to acquire Niagara Mohawk Holdings, Inc. ("NiMo"). *See National Grid Group plc, et al*, Holding Co. Act Release No. 27490 (January 16, 2002) ("NiMo Order"). In the NiMo Order, the Commission also authorized Holdings One to become a direct subsidiary of National Grid and the direct parent of National Grid Holdings, Ltd., a foreign utility company ("FUCO") within the meaning of section 33 of the Act. In the application underlying the NiMo Order, it was represented that Holdings One would deregister, as proposed by the application, and claim FUCO status.

Prior to the acquisition of NiMo, under the authority granted by the NEES Order, Holdings One restructured its intermediate registered holding company subsidiaries. Specifically, U.S. Investments, Ireland 1, and Ireland 2 (collectively, "Former Intermediate Holding Companies") were removed as intermediate holding companies.[2] They are now direct or indirect subsidiaries of National Grid Holdings Limited.[3]

Applicants state that, as a result of the transactions described above, Holdings One and the Former Intermediate Holding Companies no longer, directly or indirectly, own, control, or hold the power to vote ten percent or more of the outstanding voting securities of any public-utility company or holding company. Correspondingly, Applicants request that the Commission declare that Holdings One and the Former Intermediate Holding Companies are no longer public-utility holding companies.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8810 Filed 4–9–03; 8:45 am]

BILLING CODE 8010–01–P

[1] In the application underlying the NEES Order, it is stated that to maintain an efficient post-acquisition structure would require their quick response to changes in such areas as tax law and accounting rules and that it might be necessary to revise various organizational details of the intermediate registered holding companies.

[2] National Grid (US) Investments 4, National Grid U.S. Partner 1 Limited, National Grid U.S. Partner 2 Limited, and National Grid Holdings Inc. were added as new intermediate holding companies. National Grid (US) Holdings Limited and National Grid General Partnership were not changed in the restructuring, and remain intermediate registered holding companies.

[3] Specifically, U.S. Investments and Ireland 1 are direct subsidiaries of National Grid Holdings Limited; Ireland 2 is a direct subsidiary of Ireland 1.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC –25991; File No. 812–12880]

The Prudential Insurance Company of America, et al.; Notice of Application

April 4, 2003.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an order pursuant to section 11(a) of the Investment Company Act of 1940 (the "Act") approving the terms of certain offers of exchange, and for an order under section 6(c) of the Act granting exemptions from the provisions of sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and rule 22c–1 thereunder to permit the recapture of certain bonus credits.

SUMMARY OF APPLICATION: Applicants seek an order approving the terms of a proposed offer of exchange of the "Discovery Plus", "Variable Investment Plan" and "Qualified Variable Investment Plan" individual variable annuity contracts (the "Old Contracts") for a version of the Strategic Partners Annuity One individual variable annuity (the "New Contracts") to be offered by Pruco Life Insurance Company and Pruco Life Insurance Company of New Jersey. Applicants also seek an order approving the terms of a proposed exchange program under their Strategic Partners FlexElite variable annuity contract. In addition, Applicants seek an order to permit the recapture of any bonus credits granted with respect to purchase payments under the New Contracts (a) if the New Contract is cancelled during the applicable free-look period or (b) for credits granted within one year prior to death where the death benefit is equal to contract value.

Applicants: The Prudential Insurance Company of America ("Prudential Life"), the Prudential Individual Variable Contract Account and the Prudential Qualified Individual Variable Contract Account (each such Account, the "Old Prudential Account"); Pruco Life Insurance Company ("Pruco Life"); Pruco Life Flexible Premium Variable Annuity Account (the "New Pruco Life Account"); Pruco Life Insurance Company of New Jersey ("PLNJ," and collectively with Pruco Life and Prudential Life, the "Insurance Companies"); Pruco Life of New Jersey Flexible Premium Variable Annuity Account (the "New PLNJ Account," and collectively with the Old Pruco Life Accounts and the New Pruco Life Account, the "Accounts"); and Prudential Investment Management Services LLC ("PIMS," and collectively with the Insurance Companies and the Accounts, "Applicants").

Filing Date: The application was filed on September 9, 2002, and amended and restated on April 3, 2003.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 29, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: The Prudential Insurance Company of America, 213 Washington Street, Newark, NJ 07102.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or William J. Kotapish, Assistant Director, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Prudential Life is a stock life insurance company founded in 1875 under the laws of New Jersey. It is licensed to sell life insurance and annuities in the District of Columbia, Guam, the U.S. Virgin Islands and in all states. Pruco Life is a stock life insurance company organized in 1971 under the laws of the State of Arizona and is licensed to sell life insurance and annuities in the District of Columbia, Guam, and in all states except New York. PLNJ is a stock life insurance company organized in 1982 under the Laws of the State of New Jersey and is licensed to sell life insurance and annuities in the states of New Jersey and New York. PLNJ is a wholly-owned subsidiary of Pruco Life, which is a wholly-owned subsidiary of Prudential Life. PIMS is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. PIMS is the principal underwriter for the Old Contracts and the New Contracts and for certain other of Prudential Life's variable insurance products, including the Strategic Partners FlexElite variable annuity. PIMS is an affiliate of Prudential Life.

2. Each Old Prudential Account was established on October 12, 1982, in accordance with authorization by the Board of Directors of Prudential Life and registered under the Act as a unit investment trust (File Nos. 811–03622 and 811–03625). The Prudential Individual Variable Contract Account is the separate account through which Prudential Life issues the Discovery Plus individual variable annuity contracts ("Discovery Plus Contracts") and the Variable Investment Plan Contracts. The Prudential Qualified Individual Variable Contract Account is the separate account through which Prudential Life issues the Qualified Variable Investment Plan Contracts (collectively with the Variable Investment Plan Contracts, the "VIP Contracts").

3. The New Pruco Life Account was established on June 16, 1995, in accordance with authorization by the Board of Directors of Pruco Life and registered under the Act as a unit investment trust (File No. 811–07325). It is the separate account in which Pruco Life will set aside and invest assets attributable to the New Contracts.

4. The New PLNJ Account was established on May 20, 1996, in accordance with authorization by the Board of Directors of PLNJ and registered under the Act as a unit investment trust (File No. 811–07975). It is the separate account in which PLNJ will set aside and invest assets attributable to PLNJ's version of the New Contracts.

The Exchange Offer

5. The Exchange Offer proposed by the Applicants will be made only to owners of the Old Contracts whose current account value equals or exceeds $ 20,000, whose Old Contract is no longer subject to a withdrawal charge, and who are aged 80 or younger on the date of the exchange.

6. The New Contracts will be registered with the SEC and will be offered as individual tax-deferred flexible premium variable annuity contracts. They will permit contract values to be accumulated on a variable, fixed, or combination of variable and fixed basis. They require a minimum initial premium payment of $20,000. Subsequent purchase payments generally must be at least $500.

7. On the day the exchange is effected (the "Exchange Date") eligible owners would receive a bonus based on the contract value of each Old Contract surrendered in exchange for an enhanced New Contract (the "New Credit"). The New Credit would be equal to 1.5%, 2%, 2.5%, or 3%, depending on the amount exchanged and the age of the owner. Specifically, the New Credit percentage is 2% for purchase payments less than $250,000, 2.5% for purchase payments of $250,000 or more (but less than $1 million), and 3% with respect to a purchase payment of $1 million or more if the contract owner is age 80 or younger (for jointly-owned contracts, if the older owner is 80 or younger). The New Credit percentage is 1.5% for contract owners aged 81 or older (for jointly-owned contracts, if the older owner is 81 or older), regardless of the amount of the purchase payment. Under the New Contracts, the New Credit will vest upon the expiration of the free look period (except for New Credits applied within 12 months of death where the death benefit amount is equal to contract value). Specifically, if a New Credit is applied to a purchase payment within one year of death and the death benefit amount is equal to contract value, then any Credit attributable to that purchase payment will be recaptured in calculating the death benefit.

8. The New Contracts will provide for a base death benefit equal to the greater of (a) contract value or (b) total purchase payments (less withdrawals). The guaranteed minimum death benefit option ("GMDB") guarantees that the death benefit will be no lower than a certain "protected value" equal to the "step-up value" or the "roll-up value" or the greater of the "step-up value" or the "roll-up value". The step-up value equals the highest value of the contract on any contract anniversary date (on each contract anniversary, the new step-up value becomes the higher of the previous step-up value and the current contract value). Between anniversary dates, the step-up value is only increased by additional purchase payments and reduced proportionally by withdrawals. The roll-up value equals the total of all invested purchase payments compounded daily at an effective annual rate of 5.0%. The New Contract will offer a minimum of three annuity payment options, including annuity payments for a fixed period, life income annuity option, and an interest payment settlement option.

9. Contract values under the New Contracts may be invested in several different investment company portfolios ("Underlying Funds"). New Underlying Funds may be added in the future. All but one of the Underlying Funds are portfolios of The Prudential Series Fund ("Series Fund Portfolios"). The other Underlying Fund is a portfolio of Janus Aspen Series. In addition, contract values under the New Contracts may be allocated to certain companion fixed options and market value adjustment options.

10. Contract values may be transferred among the subaccounts funding the New Contracts without charge for the first twelve such transfers per contract year. After the twelfth, a charge of up to $30 for each additional transfer will be imposed. New Contract owners may enroll in a dollar-cost averaging transfer program (the "DCA Program"). Contract owners who enroll under the DCA Program may then systematically transfer either a fixed dollar amount or a percentage out of any variable investment option and into any other variable investment option. The New Contracts also will offer an auto-rebalancing feature. The contract owner may choose an allocation among the

variable investment options, and on a periodic basis (monthly, quarterly, semi-annually, or annually) automatic transfers occur to return the contract to the chosen allocation. In addition to the DCA Program, the New Contract will offer a dollar cost averaging fixed rate option (the "DCA Fixed Rate Option"). Purchase payments allocated to the DCA Fixed Rate Option will be allocated to the insurer's general account, and will earn interest at prevailing rates. Those purchase payments will be transferred, in either six or twelve monthly installments, to the variable investment options selected by the contract owner.

11. Contract values under the New Contracts may be accessed at any time prior to the annuity commencement date by means of partial surrenders or full surrender. The New Contracts will permit withdrawal of up to 10% of purchase payments per contract year without charge. This annual withdrawal amount, which is not subject to the contingent deferred sales charge ("CDSC"), is also referred to herein as the "charge-free-amount". Earnings (the contract value in excess of purchase payments) are also not subject to the CDSC when withdrawn. No CDSC is imposed on amounts withdrawn to meet minimum distribution requirements. Purchase payments are deemed to be withdrawn before any earnings. The CDSC under the New Contracts will be as follows:

Contract anniversaries since purchase payment	Withdrawal charge (percent)
0	8
1	8
2	6
3	6
4	7
5	6
6	5
7 or more	0

12. Some versions of the New Contracts may offer lower withdrawal charges. In no event, however, will the withdrawal charge after a given number of contract anniversaries exceed the charge shown in the above schedules.

13. Other charges under the New Contract will include the following: (a) Asset-based insurance and administrative charges of 1.20%, 1.45%, and 1.55% for the base death benefit, Roll-up or Step-up guaranteed minimum death benefit, and greater of Roll-up or Step-up guaranteed minimum death benefit, respectively; (b) where the guaranteed minimum income benefit feature ("GMIB") has been elected, a charge at an annual rate of 0.45% of the Roll-Up value, which is deducted proportionally from the net assets of each sub-account on each contract anniversary and pro-rata upon partial withdrawals (when the remaining contract value is less than the amount of the charge), annuitization, the contract owner's election to discontinue the feature, and surrender of the contract; (c) where the Earnings Appreciator supplemental death benefit feature has been elected, a charge at an annual rate of 0.30% of the contract value which is deducted from the contract value on the contract anniversary and upon annuitization, death of the sole or last surviving owner prior to annuitization, surrender of the contract, and partial withdrawal if the contract value remaining is insufficient to cover the then applicable charge; (d) in those jurisdictions in which premium taxes are assessed, a charge to cover these taxes, either when the contract is issued or when annuity payments begin; and (e) for each transfer among subaccounts after the twelfth in a single contract year, a charge up to $30 assessed pro rata from the subaccounts involved in the transfer; and (f) a charge equal to .25% of contract value for the optional Income Appreciator benefit that pays a benefit designed to help the owner defray the taxes that will be owed on annuity payments.

14. The Discovery Plus Contract is offered pursuant to a registration statement under the Securities Act of 1933 ("1933 Act") (File No. 33–25434), and permits contract values to be accumulated on a variable, fixed or combination variable and fixed basis. The Discovery Plus Contract requires a minimum initial premium payment of $10,000, and each subsequent premium payment must be at least $1000. Contract values of the Discovery Plus Contracts currently may be allocated to 13 subaccounts, each of which corresponds to a portfolio of the Prudential Series Fund, Inc. Contract values may also be accumulated on a guaranteed basis by allocation to Prudential Life's general account.

15. Contract values may be transferred among the Discovery Plus subaccounts without charge for the first four such transfers per contract year. The contract owner does not have a contractual right to more than four transfers a year, although Prudential Life currently permits such excess transfers. The Discovery Plus Contract offers a DCA Program similar to the one available under the New Contracts. Unlike the New Contracts, however, the Discovery Plus Contract's DCA Program permits transfers to come only out of the Money Market Portfolio.

16. The Discovery Plus Contract provides a bonus credit of 1% of each purchase payment during the first three contract years, up to a maximum credit of $ 1,000 per contract year. Prudential Life has the contractual discretion to grant the 1% bonus for purchase payments made after the third contract year, and currently does so. The credit does not vest at all until the end of the surrender charge period, at which point the entire credit vests. Applicants represent that each owner of a Discovery Plus Contract to whom an Exchange Offer is extended will be fully vested in his/her bonus amounts. Any withdrawal or surrender during the surrender charge period results the in recapture of any credit corresponding to the amount withdrawn. Contract values under the Discovery Plus Contracts may be accessed at any time prior to the annuity commencement date by means of partial surrenders or full surrender. The Discovery Plus Contract permits a charge-free withdrawal of all earnings and up to 10% of the contract value each contract year less any prior withdrawals of purchase payments ("net premium payments").

17. The Discovery Plus Contract provides for a death benefit equal to the greater of (a) the contract value and (b) net premium payments. In addition, the death benefit is subject to a one-time step-up on the sixth contract anniversary, at which time the minimum death benefit is guaranteed to be the greater of (a) the contract value on the sixth contract anniversary, increased by any additional premium payments and reduced by any withdrawals, (b) the contract value, and (c) net premium payments. The Discovery Plus Contract offers the same annuity options available under the New Contracts.

18. The Discovery Plus Contracts assess a CDSC against partial or full surrenders in excess of the free withdrawal amount. The length of time from receipt of a premium payment to the time of surrender determines the percentage of the CDSC. During the first five contract years after each premium payment, a CDSC will be assessed against the surrender of premium payments. The CDSC is a percentage of the amount surrendered (not to exceed the aggregate amount of the premium payments made) and equals:

Contract anniversaries since purchase payment	Withdrawal charge (percent)
0–2	7
3	6
4	5
5	4
6 or more	0

Prudential Life deducts an M&E charge and an administration fee from contract value at an aggregate annual rate equal to 1.20% of amounts invested in the contract's variable investment options. A charge for administrative expenses relating to the maintenance of the Discovery Plus Contract is deducted annually on each contract anniversary and upon surrender from the contract value. This maintenance fee is $30, and is waived on contracts with a $10,000 contract value or greater on the contract anniversary or full surrender. Charges for the Underlying Funds of the Discovery Plus Contracts (as of December 31, 2002) ranged on an annual basis from 0.37% to 0.82% of average daily net assets.

19. The VIP Contracts are individual, flexible premium variable annuity contracts that allow the contract owner to allocate purchase payments to 13 portfolios of The Prudential Series Fund, Inc., to the Prudential Variable Contract Real Property Account and to a fixed interest-rate option. These contracts are registered under the 1933 Act on Form N–4 (File No. 2–80897). The Qualified Variable Investment Plan Contracts ("QVIP Contracts") are also registered under the 1933 Act on Form N–4 (File No. 2–81318) and generally have the same features as the VIP contracts, except that they are sold only to certain retirement arrangements. Except as indicated, the discussion herein concerning the VIP Contracts applies equally to the Qualified Variable Investment Plan Contracts, and references to the VIP contracts encompass both VIP and QVIP Contracts. The total expenses of the Prudential Series Fund portfolios available under the VIP contracts (as of December 31, 2002) ranged from 0.37% to 0.82% annually.

20. The VIP Contracts also offer a DCA Program, under which the contract owner can systematically transfer amounts from the money market sub-account into any other variable investment option. During the first three years of the contract, Prudential Life adds an additional 1% bonus to each purchase payment made by an owner. This 1% bonus vests over a period of eight contract anniversaries. Prudential Life has the contractual discretion to grant the 1% bonus for purchase payments made after the third contract year, and currently does so. Applicants represent that each owner of a VIP Contract to whom an exchange offer is extended will be fully vested in his/her bonus amounts. The VIP Contract offers several annuity and settlement options, including life annuity with 10 years certain and an interest payment option. If the annuitant under a VIP Contract dies, the beneficiary will receive the total value of the contract, or, depending on the age of the annuitant, the total amount invested in the contract (reduced proportionately by withdrawals), whichever is greater.

21. Each day, Prudential Life deducts a mortality and expense risk charge under the VIP contracts equal, on an annual basis, to 1.20% of the daily value of the contract invested in the variable investment options. During the accumulation phase, Prudential Life deducts an annual contract fee of $30 if the contract value is less than $10,000 on the contract anniversary date. Each contract year, the contract owner can withdraw earnings, plus up to 10% of the owner's total contract value without paying a withdrawal charge. With respect to contracts issued in states that impose a premium tax, Prudential Life makes a deduction from the contract value to pay some or all of these taxes. There is a CDSC under the VIP Contracts according to the following schedule:

Contract anniversaries since purchase payment	Withdrawal charge (percent)
0	8
1	7
2	6
3	5
4	4
5	3
6	2
7	1
8	0

22. Prudential proposes to offer eligible owners of Old Contracts the opportunity to exchange their Old Contracts for New Contracts by means of the Exchange Offer. To be eligible for the Exchange Offer, Old Contract owners must not be subject to a CDSC on their contract, have a minimum contract value of $ 20,000, and not be older than 80 on the date of the exchange. Only Old Contracts held in IRAs and outside any tax-qualified arrangement will be eligible for the Exchange Offer. Pruco Life and PLNJ, as applicable will provide from their general accounts a Credit to each owner of an Old Contract who accepts the offer (equal to either 1.5%, 2%, 2.5%, or 3% as discussed above). The Exchange Offer will provide that, upon acceptance of the offer, a New Contract will be issued with a contract value equal to the contract value of the Old Contract surrendered in the exchange, increased by the amount of the applicable Credit. Any such Credit will be recaptured if the New Contract is surrendered during the free look period or if the Credit was granted within 12 months prior to death and the death benefit amount is equal to the contract value.

23. After an initial notification of the Exchange Offer to Old Contract owners and contacts made by Prudential's registered representatives, the Exchange Offer will be made by providing eligible owners of Old Contracts who express an interest in learning the details of the offer a prospectus for the New Contracts, accompanied by a letter explaining the offer and a piece of sales literature that compares the applicable contracts. The offering letter will advise owners of an Old Contract that the Exchange Offer is specifically designed for those contract owners who intend to continue to hold their contracts as long-term investment vehicles. The letter will state that the offer is not intended for all contract owners, and that it is especially not appropriate for any contract owner who anticipated surrendering all or a significant part (*i.e.*, more than 10% of purchase payments on an annual basis) of his or her contract before seven years have elapsed. In this regard, the letter will encourage contract owners to carefully evaluate their personal financial situation when deciding whether to accept or reject the Exchange Offer. In addition, the offering letter will explain how an owner of an Old Contract contemplating an exchange may want to decline the offer to avoid the applicable CDSC on the New Contract if more than the annual "free withdrawal amount" is surrendered. In this regard, the offering letter will state in clear plain English that if the New Contract is surrendered during the initial CDSC period, a contract owner may be worse off than if he or she had rejected the Exchange Offer, because the amount of the CDSC will exceed the amount of the New Credits granted.

24. The contract value of an Old Contract ("Exchange Value") together with the New Credit and any additional premium payments submitted with an internal Exchange Application Form for the New Contract will be applied to the New Contract as of the Exchange Date. Because only Old Contract owners who are no longer subject to a CDSC charge will be eligible for the Exchange Offer, no CDSC will be deducted upon the surrender of an Old Contract in connection with an exchange. If a contract owner surrenders his New Contract prior to the completion of the

CDSC period, Prudential will apply the applicable CDSC according to the seven-year schedule detailed above. If a contract owner exercises his or her right to cancel the New Contract, the New Credit will be returned to Prudential and the Old Contract will be reinstated with contract values that reflect the investment experience while the New Contract was held, or such other value as is required by state law. After expiration of the New Contract's right to cancel period, withdrawals will be governed by the terms of the New Contract for purposes of calculating any CDSC. The Exchange Date will be the issue date of the New Contract for purposes of determining contract years and anniversaries after the Exchange Date.

25. To accept the Exchange Offer, an owner of an Old Contract must complete an Internal Exchange Application Form. Contract values will be allocated to the New Contract investment options selected by the owner. Contract values may subsequently be reallocated under the New Contract pursuant to contract owner instructions. Payments submitted with the Internal Exchange Application Form will be assumed to be payments under the New Contract as of the date of issue of the New Contract.

26. No adverse tax consequences generally will be incurred by those Old Contract owners who accept the Exchange Offer. The exchanges will constitute tax-free exchanges pursuant to Section 1035 of the Internal Revenue Code (for nonqualified annuities) or tax-free transfers (in connection with Old Contracts held under IRAs). Prudential designed the terms of the Exchange Offer (particularly the New Credit) in response to similar offers currently being made by its competitors as a means to maintain the existing Old Contract business.

27. The following chart summarizes the salient features of the Old Contracts and the New Contracts.

Features	New contract	Discovery plus	VIP
A. Investment Options:			
1. Number of underlying funds	27	13	13.
2. Fixed rate option (and MVA option)	Yes	Yes	Yes.
3. Dollar cost averaging fixed rate option	Yes	N/A	N/A.
4. Dollar cost averaging feature	Yes	Yes	Yes.
5. Asset allocation program	Yes	N/A	N/A.
6. Auto-rebalancing	Yes	N/A	N/A.
7. Number of Free Transfers	12	4	4.
B. Death Benefit:			
1. Base death benefit (greater of total purchase payments less withdrawals or contract value),	Yes	Yes	Yes.
2. Step-up or roll-up GMDB	Yes	N/A	N/A.
3. Greater of Step-up or Roll-up GMDB	Yes	N/A	N/A.
4. Earnings Appreciator supplemental death benefit	Yes	N/A	N/A.
C. Annuity Options:			
1. Annuity payments for a fixed period	Yes	Yes	Yes.
2. Life income annuity option.	Yes	Yes	Yes.
3. Interest payment option	Yes	Yes	Yes.
4. Other annuity options.	Yes	Yes	Yes.
5. Automated withdrawals	Yes	Yes	Yes.
D. Guaranteed Minimum Income Benefit	Yes	N/A	N/A.
E. Spousal Continuance Benefit	Yes	N/A	N/A.
F. Credit Amount/Bonus	Up to 3%	1%	1%.
G. Fees and Charges:			
1. Maximum transfer fee	$30.00	N/A	N/A.
2. Contract maintenance charge	$0.00	$30.00	$30.00.
3. Base Death Benefit; or	1.20%	1.20%	1.20%.
GMDB—Roll-up or Step-up; or	1.45%	N/A	N/A.
GMDB greater of Roll-up and Step-up	1.55%	N/A	N/A.
4. Earnings appreciator charge	.30%	N/A	N/A.
5. Income Appreciator charge	.25%	N/A	N/A.
6. GMIB charge	.45%	N/A	N/A.
7. Underlying fund charge range (after Expense reimbursement)	.37%–1.30%	.37%–.82%	.37%–.82%.

28. Applicants submit that the Exchange Offer is meant to encourage existing Old Contract owners who might otherwise surrender their contracts in exchange for a competitor's product offering a similar bonus to remain with Prudential instead. If imposing the New Contract's CDSC on the New Contract is not permitted, Applicants believe some contract owners might exchange their New Contracts with the intent to take advantage of the New Credit and then surrender the New Contract without a CDSC. Without the CDSC, Prudential would have no assurance that a contract owner who accepted the Exchange Offer would persist for long enough for the New Credit and any payments to registered representatives to be recouped through standard fees from the ongoing operation of the New Contracts. Old Contract owners will be informed in the offering letter that Prudential reserve the right to terminate the Exchange Offer at any time, and will be referred to a toll-free telephone number to call for information concerning the current status of the Exchange Offer.

The FlexElite Exchange Program

29. In addition to seeking an order under section 11(a) with respect to the Exchange Offer described above, PLIC, PLNJ, the New PLIC Account, the New PLNJ Account, and PIMS also seek Commission approval of an exchange offer to be made with respect to each of PLIC's and PLNJ's Strategic Partners FlexElite variable annuity contract (such exchange offer is referred to hereinafter as the "FlexElite Exchange Program"). PLIC currently offers a Strategic Partners FlexElite variable annuity contract through the New PLIC Account. (File No. 333–75702). PLIC's Strategic Partners FlexElite variable annuity has a withdrawal charge, equal to 7% of the amount withdrawn (in excess of the permitted free withdrawal amount), that applies in each of the first three years of the contract. No withdrawal charge applies after the third contract year, unless the contract owner makes the credit election described below. Before each contract's third contract anniversary, PLIC will offer the owner of such contract the opportunity to receive a credit equal to 1% of the contract value as of the third contract anniversary (the "1% Credit"). If the owner chooses to receive the 1% Credit, PLIC will re-impose the three-year, 7% surrender charge schedule discussed above. PLIC also will offer the 1% Credit before the sixth anniversary of the contract, and will re-impose the three-year, 7% surrender charge schedule on any contract owner who accepts that offer. It is the offer of the 1% Credit before the third and sixth contract anniversaries, coupled with the re-imposition of the three-year, 7% surrender charge schedule, that arguably causes the FlexElite Exchange Program to need an exemption from section 11(a) of the Act. However, apart from the re-imposition of the surrender charge schedule on contract owners who accept the 1% Credit, a contract owner will experience no change in contract features as a consequence of accepting the 1% Credit.

30. PLNJ has filed with the Commission a Form N–4 registration statement to register its version of the Strategic Partners FlexElite variable annuity (File No. 333–99275). The 1% Credit, surrender charges, and re-imposition of surrender charge provisions of the PLNJ version are substantially similar in all material respects to those under the PLIC version of Strategic Partners FlexElite. PLNJ's version of Strategic Partners FlexElite otherwise is substantially similar in all material respects to the PLIC version.

31. PLIC and PLNJ seek Commission approval of the FlexElite Exchange Program under section 11(a) of the Act. To the extent described below, Applicants would adhere to the conditions set forth below with respect to the Exchange Offer. By adhering to those conditions, Applicants believe that contract owners will be fully apprised of the fact that the economic benefits of accepting the 1% Credit would be negated if the owner surrenders his/her contract during the ensuing three-year surrender charge period. Specifically, Applicants represent that they will adhere to the offering letter requirements set forth in condition 1 below, except that (a) they will not contrast an old contract with a new contract because no new contract will be issued and (b) they will not reserve any right to terminate the FlexElite Exchange Program. Applicants also will adhere to the terms of condition 2 below. Applicants will adhere to the terms of condition 3 below, except as respects the reference in that condition to the contract number of the old and new contracts (*i.e.*, there is only a single security, having a single 1933 Act registration number, involved). Finally, Applicants will comply with condition 4 below, in that the offering letter will disclose in concise, plain English the one feature of the exchange that could be less favorable than not accepting the exchange offer (*i.e.*, the possible imposition of a surrender charge).

Applicants' Conditions

If the requested order is granted, Applicants consent to the following conditions:

1. The offering letter will contain concise plain English statements that (a) the Exchange Offer is suitable only for contract owners who expect to hold their contracts as long term investments, and (b) if the New Contract is surrendered during the initial CDSC period, a contract owner may be worse off than if he or she had rejected the Exchange Offer, because the amount of the CDSC will exceed the amount of the New Credit, and (c) disclose each aspect of the New Contract that will be less favorable than the Old Contracts, and (d) Applicants reserve the right to terminate the Exchange Offer at any time, and contract owners can call a toll-free telephone number for information concerning the current status of the Exchange Offer.

2. Prudential will provide a means of confirming that a contract owner choosing to make an exchange was told the statements in the offering letter (stated in Condition No. 1). Prudential will send the offering letter directly to eligible contract owners. A contract owner choosing to exchange will then complete and sign an internal exchange form, which will prominently restate in concise plain English the statements required in condition No. 1, and return it to Prudential. If the internal exchange form is more than two pages in length, Prudential will use a separate document to obtain contract owner acknowledgement of the statements required in condition No. 1.

3. Prudential will maintain the following separately identifiable records in an easily accessible place, for the time periods specified below in this condition No. 3, for review by the Commission upon request (a) records showing the level of exchange activity and how it relates to the total number of contract owners eligible to exchange (quarterly as a percentage of the number eligible), (b) copies of any form of offering letter and other written materials or scripts for presentations by representatives regarding the Exchange Offer (if Prudential prepared or approved the materials), including the date(s) used; (c) records showing information about each exchange transaction that occurs, including the name of the contract owner, Old and New Contract number(s), Credit paid, registered representative's name, CRD number, firm affiliation, branch office address and telephone number, and name of the registered representative's broker-dealer, commission paid, internal exchange form (and separate document, if any, used to obtain contract owner acknowledgement of the statements required in condition No. 1) showing the name, date of birth, address and telephone number of the contract owner, and date internal exchange form (or separate document) was signed, amount of contract value exchanged, and persistency information relating to the New Contract (date surrendered and CDSC paid), and (d) logs showing any contract owner complaints about the exchange, state insurance department inquiries about the exchange, or litigation, arbitration or other proceedings regarding any exchange. The following information will be included on the log's date of complaint or commencement of proceedings, name, address of the person making the complaint or commencing the proceeding, nature of the complaint or proceeding, and persons named or involved in the complaint or proceeding.

Records specified in conditions No. 3(a) and (d) will be retained for six years from creation of the record. Records specified in condition No. 3(b) will be retained for six years after the date of last use, and records specified in condition No. 3(c) will be retained for two years from the end of the initial CDSC period of the New Contract.

4. The offering letter will disclose in concise plain English each aspect of the New Contracts that will be less favorable than the Old Contracts.

Applicants' Legal Analysis

1. Section 11(a) of the Act makes it unlawful for any registered open-end company, or any principal underwriter for such a company, to make or cause to be made an offer to the holder of a security of such company, or any other

open-end investment company, to exchange his security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities, unless the terms of the offer have first been submitted to and approved by the Commission or are in accordance with Commission rules adopted under section 11. Section 11(c) of the Act, in pertinent part, requires, in effect, that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company be approved by the Commission or satisfy applicable rules adopted under section 11, regardless of the basis of the exchange. Each Account is registered under the Act as a unit investment trust. Accordingly, the proposed Exchange Offer constitutes an offer of exchange of two securities, each of which is offered by a registered unit investment trust. Thus, unless the terms of the Exchange Offer are consistent with those permitted by Commission rule, Applicants may make the proposed Exchange Offer only after the Commission has approved the terms of the offer by an order pursuant to section 11(a) of the Act.

2. As noted by the Commission when proposing rule 11a–3 under the Act, the purpose of section 11 of the Act is to prevent "switching". "Switching is a term of art that refers to the practice of inducing security holders of one Investment Company to exchange their securities for those of a different investment company "solely for the purpose of exacting additional selling charges." That type of practice was found by Congress to be widespread in the 1930's prior to adoption of the Act.

3. Rule 11a–2 adopted in 1983 under section 11 of the Act, by its express terms provides blanket Commission approval of certain types of offers of exchange of one variable annuity contract for another or of one variable life insurance contract for another. Variable annuity exchanges are permitted by rule 11a–2, provided that the only variance from a relative net asset value exchange is an administrative fee disclosed in the offering account's registration statement and a sales load or sales load differential calculated according to method prescribed in the rule. No exchange is permitted under rule 11a–2 that involves a security acquired or exchanged that has both a front-end and a deferred sales load. Adoption of rule 11a–3, which takes a similar approach to that of rule 11a–2, represents the most recent Commission action under section 11 of the Act. As with rule 11a–2, the focus of rule 11a–3 is primarily on sales or administrative charges that would be incurred by investors for effecting exchanges.

The Exchange Offer

4. Applicants submit that the terms of the proposed Exchange Offer do not represent the abuses against which section 11 was intended to protect. The Exchange Offer was not created "solely for the purpose" of exacting additional sales charges. Rather, the Exchange Offer was designed to allow Prudential to compete on a level playing field with its competitors who are making bonus offers to its current Old Contract owners. No additional sales load or other fee will be imposed at the time of exercise of the Exchange Offer. In stark contrast with the 9–10% front-end commissions deducted in the "switching" exchanges that led to the adoption of section 11, each contract owner accepting the Exchange Offer will be provided with a New Credit, funded from Pruco Life's or PLNJ's general account. The effect of this Credit is to add the New Credit to the Old Contract value at the time of exchange to the New Contract value. An owner of an Old Contract who intends to continue to hold the contract as a long-term retirement planning vehicle will be significantly advantaged by the Exchange Offer because this New Credit will automatically be added to his or her contract value upon receipt of an enhanced New Contract. No sales charge will ever be paid on the amounts rolled over in the exchange unless the New Contract is surrendered before expiration of the New Contract's CDSC period.

5. Given the terms of the exchange, Applicants are precluded from relying on rule 11a–2. Accordingly, section 11(a) requires that Applicants submit the terms of the offer to the Commission for approval. Although section 11 does not prescribe specific standards for Commission approval of exchange offers, Applicants believe that the Exchange Offer presents less potential for the type of abuses that led to the adoption of section 11 than in connection with exchanges that would be permitted under rule 11a–2.

6. Applicant submit that the Exchange Offer is available to all eligible Old Contract owners on an entirely voluntary basis. While the Exchange Offer would not be in the interests of all contract owners (*i.e.*, those contract owners who anticipate a need to access a significant portion of their contract's value—more than 10% of net premium payments on an annual basis—sometime before the expiration of the initial CDSC period), the determination of whether to accept or reject the Exchange Offer will be made by each contract owner. Applicants state that the terms of the proposed Exchange Offer are similar to offers currently being made to Old Contract owners by Prudential's competitors, which are permissible pursuant to a no-action letter issued to *Alexander Hamilton Funds*, SEC No-Action Letter (pub. avail. July 20, 1994). Accordingly, an offer such as the Exchange Offer would be permitted to be made by Prudential to owners of competitor's contracts under section 11(a) because the Accounts would be permitted to rely on the Alexander Hamilton letter. In fact, competitors can and do make such offers. The relief sought here would do no more than permit Prudential to offer its longstanding clients an enhanced contract and bonus similar to those they may be offered by Prudential's competitors.

7. Applicants represent that the description of the proposed Exchange Offer in letters to owners of Old Contracts and in the New Contracts' prospectus will provide full disclosure of the material differences in the applicable contracts. Assuming no premature surrender, the New Contracts should be no more expensive than the Old Contracts for contract owners unless they affirmatively choose to add additional features. In each case, existing contract owners would be offered a better contract and a Credit under terms that would be on an equal footing with similar offers made daily by Prudential's competitors.

8. Far from being a way to extract additional charges from investors, as contemplated by the prohibitions of section 11, Applicants state that the proposed Exchange Offer would provide an immediate and enduring economic benefit to investors. The New Credit would be applied immediately and the fact that asset-based charges would not be increased by the Exchange Offer, and that no contract maintenance charge would apply, also would contribute significantly to this enduring economic benefit. To the extent that a contract owner ultimately did not benefit from accepting the offer, it would most likely be as a result of his or her own subsequent decision to surrender the New Contract during the new CDSC period. The Exchange Offer will provide much more explicit disclosure about the inadvisability of accepting the Exchange Offer if the owner may require access to a significant portion of the amount invested in the contract during the CDSC period than would be the case with competitors' offers that pose the identical risk. The disclosure provided in the offering materials will give owners of Old Contracts sufficient information to determine which contract will be best for them.

The Flexelite Exchange Program

9. Applicants submit that the legal rationale supporting the FlexElite Exchange Program is comparable to that posited for the Exchange Offer. The FlexElite Exchange Program was not designed "solely for the purpose" of exacting additional sales charges. Rather, that Program is designed to allow investors who do not anticipate making a withdrawal within the succeeding three years to receive a 1% addition to their contract value. As required by the conditions set forth above, Applicants will give investors ample notice of the fact that acceptance of the 1% Credit carries with it the reimposition of the three year surrender charge. Applicants anticipate that through that notice, investors who envision needing to make a significant withdrawal within the succeeding three years will be steered away from accepting the 1% Credit. On the other hand, investors who accept the 1% Credit and make no withdrawals during the succeeding three year period will receive an immediate monetary benefit in the form of the Credit, but will avoid any withdrawal charge.

10. According to the Applicants, approval of the FlexElite Exchange Program also is warranted because it will promote competition in the variable annuity marketplace. The promotion of competition is a relevant consideration in evaluating whether the terms of an exchange offer are consistent with the protection of investors. Applicants state that several of their competitors currently offer variable annuity products featuring a "persistency bonus" coupled with a reimposition of the withdrawal charge. By granting the requested relief, the Commission will permit Applicants to offer and operate the Strategic Partners FlexElite contract as described herein—adding that product to the menu of such variable annuities already available in the marketplace.

11. Applicants submit that the Exchange Offer does not present any duplication of sales loads or administrative fees to those Contract owners who intend to hold their Contracts as long-term retirement vehicles. Similarly, the FlexElite Exchange Program will entail no reassessment of surrender charges on a contract owner who accepts the 1% Credit, so long as the owner holds the contract longer than the three-year surrender charge period. Applicants also submit that the Exchange Offer and FlexElite Exchange Program are consistent with the protections provided by section 11 of the Act, do not involve any of the switching abuses that led to the adoption of section 11, and assure an immediate and enduring economic benefit to persisting Contract owners. Furthermore, permitting Contract owners to evaluate the relative merits of the Old and New Contracts under the Exchange Offer and to select the one that best suits their circumstances and preferences fosters competition and is consistent with the public interest and the protection of investors. Accordingly, approval of the terms of the Exchange Offer and the FlexElite Exchange Program is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Recapture of Credit Under the New Contracts

12. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to section 6(c) of the Act, grant the exemptions requested below with respect to the New Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protections of investors and the purposes fairly intended by the policy and provisions of the Act.

13. Applicants seek exemption pursuant to section 6(c) from sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and rule 22c–1 thereunder to the extent necessary to permit Pruco Life and PLNJ to recapture all or the unvested portion of certain Credits in the following instances: (a) The contract is canceled under the free look provision; or (b) death occurs within one year of a purchase payment where the death benefit amount is equal to contract value. Applicants represent that it is not administratively feasible to track the Credit amount in the subaccounts after the Credit is applied. Accordingly, the asset-based charges applicable to the subaccounts will be assessed against the entire amounts held in the respective subaccounts, including the Credit amount, during the period when the owner's interest in the credit is not completely vested. As a result, during such periods, the aggregate asset-based charges assessed against an owner's contract value will be higher than those that would be charged if the owner's contract value did not include the Credit. Applicants note, however, that any earnings attributable to Credit amounts vest immediately and are not subject to recapture.

14. Section 27 of the Act provides that such section does not apply to any registered separate account funding variable insurance contracts, or the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is a redeemable security.

15. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Applicants submit that the recapture of the credit amount in the circumstances set forth in this Application would not deprive an owner of his or her proportionate share of the issuer's current net assets. With respect to Credit recaptures upon exercise of the free-look privilege, it would be unfair to allow an owner exercising that privilege to retain a Credit amount under a contract that has been returned for a refund after a period of only a few days. If Pruco Life and PLNJ could not recapture the Credit, individuals could purchase a contract with no intention of retaining it, and simply return it for a quick profit. Furthermore, the recapture of Credits relating to purchase payments made within one year prior to death or after death is designed to provide Pruco Life and PLNJ with a measure of protection against "anti-selection". The risk here is that, rather than holding the New Contract for a number of years, an owner will exchange an existing contract for a New Contract shortly before death, thereby leaving Pruco Life and PLNJ less time to recover the cost of the Credits applied, to their financial detriment. Again, the amounts recaptured equal the Credits provided by Pruco Life and PLNJ from their own general account assets and any gain would remain as part of the New Contract's value when annuity payments begin. For the foregoing

reasons, Applicants submit that the provisions for recapture of any Credits under the New Contracts does not violate section 2(a)(32) and 27 (i)(2)(A) of the Act.

16. Section 22(c) of the Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, their redeemable securities to accomplish the same purposes as contemplated by section 22(c). Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

17. Applicants state that Pruco Life's and PLNJ's recapture of the Credit might arguably be viewed as resulting in the redemption of redeemable securities for a price other than the one based on the current net asset value of the Accounts. Applicants contend, however, that the recapture of the Credit does not violate section 22(c) and rule 22c–1.

Conclusion

For the reasons summarized above, Applicants submit that the Exchange Offer and the FlexElite Exchange Program are consistent with the protections provided by section 11 of the Act and that their approval is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants further submit that their request for exemptions from sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and rule 22c–1 thereunder meet the standards set out in section 6(c) of the Act. Applicants submit that the requested order should therefore be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8729 Filed 4–9–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25993; File No. 812–12913]

National Life Insurance Company, et al.; Notice of Application

April 4, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the "Act") approving certain substitutions of securities.

APPLICANTS: National Life Insurance Company ("NLIC"), National Variable Annuity Account II ("Annuity Account"), and National Variable Life Insurance Account ("Life Account").

FILING DATE: The application was filed on December 19, 2002, and amended and restated on April 3, 2003.

SUMMARY OF APPLICATION: Applicants request an order to permit NLIC to substitute securities issued by two series of the Sentinel Variable Products Trust ("SVPT") to support variable annuity contracts or variable life insurance contracts (collectively, the "Contracts") issued by NLIC, for securities issued by two series of the Market Street Fund ("MSF"), and currently held by either the Annuity Account or the Life Account (each, an "Account," together, the "Accounts").

HEARING OR NOTIFICATION OF HEARING: An order granting the amended and restated application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 29, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o D. Russell Morgan, Esq., Assistant General Counsel, National Life Insurance Company, National Life Drive, Montpelier, Vermont 05604. Copy to David S. Goldstein, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Ellen J. Sazzman, Senior Counsel, or Lorna J. MacLeod, Branch Chief, Office of Investment Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. MSF has eleven investment portfolios, two of which are the subject of this application (each, a Portfolio). SVPT currently has five investment portfolios, but is adding two more that are the subject of this application (each, a Fund).

2. NLIC was a mutual life insurance company originally chartered by the State of Vermont in 1848. It is now a stock life insurance company, all of the outstanding stock of which is indirectly owned by National Life Holding Company, a mutual insurance holding company, established under Vermont law in 1999. All owners of NLIC contracts, including the Contracts, are voting members of National Life Holding Company. NLIC is authorized to transact life insurance and annuity business in Vermont and in 50 other jurisdictions. For purposes of the Act, NLIC is the depositor and sponsor of the Annuity Account and the Life Account as those terms have been interpreted by the Commission with respect to variable life insurance and variable annuity separate accounts.

3. NLIC established the Annuity Account on November 1, 1996, and the Life Account on February 1, 1985, as segregated investment accounts under Vermont law. Under Vermont law, the assets of each Account attributable to the Contracts through which interests in that Account are issued are owned by NLIC but are held separately from all other assets of NLIC for the benefit of the owners of, and the persons entitled to payment under, those Contracts. Consequently, such assets in each Account equal to the reserves and other liabilities with respect to such Account are not chargeable with liabilities arising out of any other business that NLIC may conduct. Income, gains and losses, realized or unrealized, from assets allocated to each Account are credited to or charged against that Account without regard to the other income, gains or losses of NLIC. Each Account is a "separate account" as defined by Rule 0–1(e) under the Act, and is registered with the Commission as a unit investment trust.

4. The Annuity Account is divided into twenty-eight subaccounts. Each subaccount invests exclusively in a corresponding investment portfolio of one of twelve series-type management investment companies. The assets of the Annuity Account support variable annuity contracts, and interests in the Account offered through such contracts have been registered under the Securities Act of 1933 (the "1933 Act").

5. The Life Account is divided into eighty-six subaccounts. Each subaccount invests exclusively in shares representing an interest in a corresponding investment portfolio of one of fourteen series-type management investment companies. The assets of the Life Account support variable life insurance contracts, and interests in this Account offered through such contracts have been registered under the 1933 Act.

6. *Market Street Fund.* MSF was originally incorporated in Maryland on March 21, 1985, but reorganized into a Delaware business trust on January 26, 2001. MSF is registered under the Act as an open-end diversified management investment company. MSF is a series investment company as defined by Rule 18f–2 under the Act and currently comprises eleven investment portfolios. MSF issues a separate series of shares of beneficial interest in connection with each portfolio and has registered these shares under the 1933 Act. Gartmore Mutual Fund Capital Trust ("Gartmore"), serves as investment adviser to the MSF Balanced and Bond Portfolios, and selects their subadvisers. The subadviser to the MSF Balanced Portfolio is currently Fred Alger Management, Inc., and the subadviser to the Bond Portfolio is currently Western Asset Management Company.

7. The investment objective of the MSF Bond Portfolio is to seek a high level of current income consistent with prudent investment risk. This Portfolio invests in a diversified portfolio of fixed-income securities of U.S. and foreign issuers. The Portfolio's subadviser uses active fixed-income management techniques by focusing on four key areas: (1) Sector and sub-sector allocation, (2) issue selection, (3) duration, and (4) term structure.

8. The investment objective of the MSF Balanced Portfolio is to realize as high a level of long-term total rate of return as is consistent with prudent investment risk. The MSF Balanced Portfolio's equity portion is invested primarily in equity securities, such as common or preferred stocks, which are listed on U.S. exchanges or traded in the over-the-counter markets. The Portfolio's subadviser uses a growth-oriented strategy. Growth-oriented investments involve seeking securities of issuers with above-average recent earnings growth rates and what the subadviser views as a reasonable likelihood of maintaining these rates in the foreseeable future. The subadviser focuses on stocks of companies with growth potential and fixed-income securities, with emphasis on income-producing securities that appear to have some potential for capital appreciation. Normally, the Portfolio invests in common stocks and fixed-income securities that include commercial paper and bonds rated within the four highest rating categories by an established rating agency or if not rated, that are determined by the subadviser to be of comparable quality. Ordinarily, at least 25% of the Portfolio's net assets are invested in fixed-income securities.

9. *Sentinel Variable Products Trust.* SVPT was organized as a business trust in Delaware on March 14, 2000, and is currently registered under the Act as an open-end diversified management investment company. SVPT is a series investment company as defined by Rule 18f–2 under the Act and currently comprises five investment portfolios. It plans to create two new Funds to receive the assets of the MSF Balanced Portfolio and MSF Bond Portfolio in the substitution. SVPT will issue a separate series of shares of beneficial interest in connection with each Fund and will register these shares under the 1933 Act. NL Capital Management, Inc. ("NLCM") will serve as investment adviser to each of the Funds. NLCM is affiliated with NLIC.

10. The investment objective of the SVPT Bond Fund is to seek high current income while seeking to control risk, by investing mainly in investment grade bonds. The Fund will invest exclusively in fixed-income securities. At least 80% of the Fund's assets will normally be invested in the following types of bonds: (1) corporate bonds which at the time of purchase are rated within the four highest rating categories of Moody's, Standard & Poor's, or any other nationally recognized statistical rating organization, (2) debt securities issued or guaranteed by the U.S. government, its agencies or instrumentalities, including mortgage-backed securities, (3) debt securities (payable in U.S. dollars) issued or guaranteed by Canadian governmental entities, and (4) debt obligations of domestic banks or bank holding companies, even though not rated by Moody's or Standard & Poor's, that NLCM believes have investment qualities comparable to investment grade corporate securities. The remainder of the Fund's assets may be invested in other fixed-income securities, such as straight or convertible debt securities and straight or convertible preferred stocks. The Fund will invest no more than 20% of its total assets in lower quality bonds.

11. The investment objective of the SVPT Balanced Fund is to seek a combination of growth of capital and current income, with relatively low risk and relatively low fluctuations in value. It will seek this goal by investing in common stocks similar to those in the SVPT Common Stock Fund. NLCM tries to select stocks of leading companies that are financially strong and are selling at attractive prices in relation to their values and in investment grade bonds similar to those in the SVPT Bond Fund, with at least 25% of its total assets in bonds. When determining this percentage, convertible bonds and/or preferred stocks will be considered common stocks, unless these securities are held primarily for income. NLCM will divide the Fund's investments among stocks and bonds based on whether it believes stocks or bonds offer a better value at the time.

12. The Contracts are flexible premium variable life insurance Contracts and individual flexible premium deferred variable annuity Contracts. The Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a fixed basis. Under each of the Contracts, NLIC reserves the right to substitute shares of one Fund or Portfolio for shares of another, including a fund or portfolio of a different investment company.

13. Under all of the variable life insurance Contracts, a Contract owner may make unlimited transfers of accumulated value in a contract year between and among the subaccounts of the Life Account and NLIC's general account. Currently there is no charge for transfers, however, NLIC reserves the right to assess a $25 charge for each transfer in excess of twelve in any Contract year. Under the variable annuity Contracts, a Contract owner may make unlimited transfers of Contract value between and among the subaccounts of the Annuity Account and NLIC's general account. Currently there is no charge for transfers, however, NLIC reserves the right to assess a $25 charge for each transfer in excess of twelve in any Contract year.

14. NLIC, on its behalf and on behalf of the Accounts, proposes to substitute shares of the SVPT Bond Fund for shares of the MSF Bond Portfolio, and shares of the SVPT Balanced Fund for shares of the MSF Balanced Portfolio. NLIC believes that by making the proposed substitutions in each of the Accounts, they can better serve the interests of owners of the Contracts.

15. During 2000, NLIC and the Accounts applied for and received an order approving a number of substitutions of SVPT Funds for MSF Portfolios. At the time of that application, Sentinel Advisors Company ("SAC") served as the investment manager and adviser to a number of the MSF Portfolios, including the Bond and Balanced Portfolios. SAC is a general partnership which at that time was owned and controlled by affiliates of NLIC, Provident Mutual Life Insurance Company ("PMLIC"), and The Penn Mutual Life Insurance Company ("Penn Mutual"). NLIC's affiliate controls the managing general partner and is entitled to a majority of the profits earned by SAC. NLIC, PMLIC, and Penn Mutual are not affiliated persons of each other. Effective June 30, 2002, NLCM (affiliated with NLIC) purchased all the stock of PMLIC's affiliates which owned PMLIC's interests in SAC, and as a result, NLIC's affiliates are now entitled to more than 90% of the profits of SAC. SAC's officers and investment personnel are all employees of NLCM, and they are the same officers and investment personnel who provide investment management services to the SVPT Funds. SAC, like NLCM, is located at NLIC's premises, in Montpelier, Vermont.

16. With the substitutions applied for in the previous order, PMLIC and NLIC intended to end their joint use of MSF as an investment vehicle for both companies' variable life insurance and variable annuity contracts (including the Contracts). NLIC originally intended to substitute independently managed funds for the MSF Bond and Balanced (then Managed) Portfolios, at the time of the substitutions effected in late 2000. However, the available independently managed funds did not meet the conditions that the SEC would impose on the substitutions and SVPT did not have the Bond or Balanced Funds to receive the Accounts' assets in the MSF Bond and Balanced Portfolios. NLIC chose to proceed with the substitutions that the SEC would approve at the time and the Accounts have continued to invest in the MSF Bond and Balanced Portfolios.

17. After the initial substitutions, SAC stepped down as investment adviser to all of the MSF Portfolios of which it had been the investment adviser. Market Street Investment Management Company ("MSIM") became the investment manager to the MSF Portfolios, and selected subadvisers to manage the assets on a day-to-day basis, including Western Asset Management Company for the Bond Portfolio and Fred Alger Management, Inc., for the Balanced Portfolio. New investment advisory contracts were approved by the shareholders, and management fees and overall expense ratios rose significantly.

18. In addition, effective September 30, 2002, PMLIC was acquired by Nationwide Financial Services, Inc. ("Nationwide"), in a sponsored demutualization transaction. PMLIC's name changed to Nationwide Life Insurance Company of America ("NLICA") as part of this transaction. Also, effective October 1, 2002, Gartmore, an affiliate of Nationwide Financial, replaced MSIM as the MSF investment adviser. NLICA, under Nationwide's control, has proposed another reorganization of MSF, under which the MSF Balanced and Bond Portfolios would be acquired by series of the GVIT Trust, another series investment company offering shares to variable insurance product separate accounts, for which Gartmore also serves as investment adviser. Specifically, the MSF Balanced Portfolio would be acquired by the J.P. Morgan GVIT Balanced Fund, a series of the GVIT Trust, and the MSF Bond Portfolio would be acquired by the Gartmore GVIT Government Bond Fund. As a result of this proposed reorganization, the subadviser to the MSF Balanced Portfolio would be J.P. Morgan Investment Management, Inc. and Gartmore would directly manage the MSF Bond Portfolio.

19. NLIC continues to desire to end the joint use of the remaining MSF Portfolios by separate accounts of both companies. NLIC continues to believe that the manner of accomplishing this separation which would involve the least confusion and disruption to owners of the Contracts would be for it to substitute shares of new SVPT Funds for those of the MSF Bond and Balanced Portfolios held by the Accounts. This would avoid the possibility that MSF may propose future changes which NLIC and NLICA could not support. Such a disagreement could create unnecessary expense and confusion for owners of both the Contracts and NLICA contracts, and could result in one or more material irreconcilable conflicts between the interests of Contract owners and owners of other NLICA contracts. NLIC had no role in the selection of the current subadvisers to the MSF Balanced and Bond Portfolios, no role in the planning for the reorganization now proposed by NLICA, and does not anticipate that it would have any role in future decisions to continue to engage or to replace such subadvisers.

20. The majority of the assets in the MSF Bond and Balanced Portfolios belong to owners of variable annuity and variable life insurance contracts issued by NLICA and its affiliates and only relatively small portions of each consist of assets beneficially owned by owners of the Contracts.

Portfolios	Approximate percent represented by NLIC contracts	Approximate percent represented by contracts issued by NLICA or its affiliates
MSF Bond	24.5	75.5
MSF Balanced ..	16.1	83.9

21. NLIC believes that many of the owners of the Contracts who invested in the MSF Bond and Balanced Portfolios did so at the time these Portfolios were managed by SAC, and that most would prefer to invest in funds or portfolios selected by NLIC and over which NLIC has some influence.

22. Projected expense levels for the SVPT Bond and Balanced Funds are the same as those currently experienced by the MSF Bond and Balanced Portfolios because each will be capped by NLIC for two years at levels equal to the percentage expense levels experienced by its corresponding MSF Portfolio for the 2002 fiscal year. Likewise, the management fee rates (including breakpoints) of the SVPT Bond and Balanced Funds are the same as that of their corresponding MSF Portfolios. In addition, for those Contract owners who were Contract owners on the date of the proposed substitutions, NLIC will not increase Account or other asset-based expenses under the Contracts for a period of 24 months following the date of the proposed substitutions.

23. NLIC notes that the equity portion of the SVPT Balanced Fund would be managed in a different style from that currently employed by the MSF Balanced Portfolio, utilizing a more value-oriented style similar to that employed by Sentinel Balanced Fund, as contrasted with the more growth-oriented style employed by Fred Alger Management. It expects that the fixed-income portion of the SVPT Balanced Fund would be comparable to the fixed-income portion of the MSF Balanced Portfolio, as currently managed. However, if the Portfolio is acquired by J.P. Morgan GVIT Balanced Fund, the investment style for the equity portion of the Portfolio will change anyway, and furthermore, the fixed-income portion of the Portfolio would have greater flexibility to invest in lower quality debt instruments and emerging market securities. NLIC also notes that it already has available to the Accounts three equity portfolios managed by Fred Alger Management, the Alger American Growth Portfolio, the Alger American Leveraged AllCap Portfolio, and the Alger American Small Capitalization Portfolio. As a result, any Contract owners who wish to invest a portion of their Contract value using Alger's equity investment style would be able to participate by allocating assets to one of these investment choices.

24. NLIC expects that the SVPT Bond Fund would be similar in investment style and categories of investments to the MSF Bond Portfolio as currently operated, and certainly similar to the MSF Bond Portfolio as managed by SAC prior to 2001. In contrast, if the proposed reorganization occurs, the Gartmore GVIT Government Bond Fund will be limited to investments in U.S. government and agency bonds, bills, and notes, while the SVPT Bond Fund would, like the current MSF Bond Portfolio, be able to invest in investment grade corporate issuers.

25. As the two new SVPT Portfolios will initially be relatively small in size (the SVPT Bond Fund is expected to initially have net assets of approximately $19 million, and the SVPT Balanced Fund is expected to initially have net assets of approximately $12 million), NLIC does not anticipate earning material profits from the management of these assets in the first few years after the proposed substitutions. Rather, its motivation is to complete the termination of the joint use of the MSF Portfolios which it initially sought in 2000, and to regain a level of control over its Contract owner assets which it lost as its joint venture with PMLIC ended.

26. In light of the significant beneficial ownership position of NLICA (and affiliate) contract owners, Contract owners and future NLIC contract owners cannot expect to command a majority voting position in either of the MSF Bond or Balanced Portfolios in the event that they, as a group, desire that a Portfolio move in a direction different from that generally desired by owners of NLICA (or its affiliates") contracts. In addition, unless the growth in the number of Contracts or the assets supporting them increases at a much greater rate than those of similar contracts issued by PMLIC and its affiliates, owners of Contracts have no prospects of ever gaining a position capable of influencing the future direction of these Portfolios.

27. NLIC also notes that it has had no prior business relationship with Nationwide, which now controls NLICA and the investment advisor to MSF. NLIC has never selected a Nationwide-controlled entity to provide investment advisory services to its Contract owners, and while it has no particular problem with Nationwide, NLIC feels that it should not be forced into a position of offering investment portfolios managed by Nationwide-affiliated entities simply because Nationwide has acquired PMLIC.

28. The following charts show the approximate year-end size (in net assets), expense ratio (ratio of operating expenses as a percentage of average net assets), and annual total returns for each of the past three years for each of the Funds and Portfolios involved in the proposed substitutions.

SVPT bond fund	Anticipated net assets after substitution (in millions)	Anticipated expense ratio after substitution (percent)	Total return
	$19	0.67	N/A

MSF bond portfolio	Net assets at year-end (in millions)	Expense ratio (percent)	Total return (percent)
2000	$39.0	0.52	3.68
2001	53.4	0.67	7.40
2002	67.0	0.67	9.09

SVPT balanced fund	Anticipated net assets after substitution (in millions)	Anticipated expense ratio after substitution	Total return
	$12	0.79	N/A

MSF balanced portfolio	Net assets at year-end (in millions)	Expense ratio (percent)	Total return (percent)
2000	$71.5	0.57	8.75
2001	69.0	0.82	(7.02)
2002	58.4	0.79	(10.26)

29. The following charts show the approximate annual management fees, other expenses and total expenses of each of the Funds or Portfolios involved in the proposed substitutions both before and after any reimbursement or fee waivers. The management fees and expenses shown for the MSF Bond and Balanced Portfolios are for the last complete fiscal year, 2002.

Fund	In percent		Revenue sharing percentage
	Before reimbursement or fee waiver	After reimbursement or fee waiver	
MSF Bond	0.40	0.40	N/A
	0.29	0.27	
	0.69	0.67	
SVPT Bond	0.40	0.40	N/A
	0.29	0.27	
	0.69	0.67	
MSF Balanced	0.55	0.55	N/A
	0.27	0.24	
	0.82	0.79	
SVPT Balanced	0.55	0.55	N/A
	0.32	0.24	
	0.87	0.79	

30. By disclosure added to supplements to the various May 1, 2002 prospectuses for the Contracts and the Accounts, all owners of the Contracts have been notified of NLIC's intention to take the necessary actions, including seeking the order requested by this application, to substitute shares of the SVPT Bond and Balanced Funds for the MSF Bond and Balanced Portfolios as described herein.

31. The additional prospectus disclosure (and any subsequent supplements) about the proposed substitutions will advise Contract owners that from the date of the supplement until the date of the proposed substitution, owners are permitted to make one transfer of all amounts under a Contract invested in either of the affected subaccounts to another subaccount available under a Contract other than one of the other affected subaccounts without that transfer counting as a "free" transfer permitted under a Contact. The prospectus disclosure also informs (and any subsequent supplements will inform) Contract owners that NLIC will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The supplements will also advise Contract owners that if the proposed substitutions are carried out, then each Contract owner affected by a substitution will be sent a written notice (described below) informing them of the fact and details of the substitutions.

32. The proposed substitutions will take place at relative net asset value with no change in the amount of any Contract owner's account value or death benefit or in the dollar value of his or her investment in any of the Accounts. Contract owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or NLIC's obligations under the Contracts be altered in any way. All applicable expenses incurred in connection with the proposed substitutions, including brokerage commissions, legal, accounting and other fees and expenses, will be paid by NLIC. In addition, the proposed substitutions will not impose any tax liability on Contract owners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing Contract owners to be greater after the proposed substitutions than before the proposed substitutions.

33. The proposed substitutions will not, of course, be treated as a transfer of Contract value or an exchange of annuity units for the purpose of assessing transfer charges or for determining the number of remaining "free" transfers or exchanges in a Contract year. NLIC will not exercise any right it may have under the Contracts to impose restrictions on or charges for Contract value transfers or annuity unit exchanges under the Contracts for a period of at least 30 days following the substitutions. One exception to this is that NLIC may impose restrictions on transfers to prevent or limit "market timing" activities by Contract owners or agents of Contract owners.

34. NLIC will permit Contract owners to make one transfer of Contract value (or annuity unit exchange) out of the MSF Bond Portfolio subaccount to another subaccount, and out of the MSF Balanced Portfolio subaccount to another subaccount, without the transfer (or exchange) being treated as one of a limited number of transfers (or exchanges) permitted without a transfer charge. Likewise, for at least 30 days following the proposed substitutions, NLIC will permit Contract owners affected by the substitutions to make one transfer of Contract value (or annuity unit exchange) out of the SVPT Bond Portfolio subaccount to another subaccount, and out of the SVPT Balanced Portfolio subaccount to another subaccount, without the transfer (or exchange) being treated as one of a limited number of transfers (or exchanges) permitted without a transfer charge. All Contract owners, even those who are "market timers," may avail themselves of the "free" transfer privilege both before and after the proposed substitutions.

35. To the extent that the annualized expenses of the SVPT Bond and Balanced Portfolios exceeds, for each fiscal period (such period being less than 90 days) during the twenty-four months following the substitutions, the 2002 net expense level of the MSF Bond and Balanced Portfolios, NLIC will, for each Contract outstanding on the date of the proposed substitutions, make a corresponding reduction in separate account (or subaccount) expenses on the last day of such fiscal period, such that the amount of the SVPT Balanced and Bond Portfolios' net expenses, together with those of the corresponding separate account (or subaccount) will, on an annualized basis, be no greater than the sum of the net expenses of the MSF Balanced and Bond Portfolios' and the expenses of the separate account (or subaccount) for the 2002 fiscal year. In addition, for twenty-four months following the substitutions, NLIC will not increase asset-based fees or charges for Contracts outstanding on the day of the proposed substitutions.

36. In addition to the prospectus disclosure (and supplements) distributed to owners of Contracts, within five days after the proposed substitutions, any Contract owners who were affected by the substitution will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all accumulation or contract value under a Contract invested in any one of the affected subaccounts on the date of the notice to another subaccount available under their Contract without that transfer counting as one of a limited number transfers permitted in a Contract year free of charge. The notice will also reiterate the fact that NLIC will not exercise any rights reserved by it under any of the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states, Contract owners who are affected by the substitutions may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by NLIC during the 60 days following the proposed substitutions. Current prospectuses for the new Funds will precede or accompany the notices.

37. NLIC also is seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

Applicants' Legal Analysis

1. The proposed substitutions appear to involve substitutions of securities within the meaning of section 26(c) of the Act.

2. Applicants state that the Contracts expressly reserve for NLIC the right, subject to compliance with applicable law, to substitute shares of one Portfolio or Fund held by a subaccount of an Account for another. The prospectuses for the Contracts and the Accounts contain appropriate disclosure of this right.

3. Applicants state that NLIC reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contract owners. The prospectuses for the Contracts and Accounts contain appropriate disclosure of this right.

4. In the case of the proposed substitutions, the MSF Portfolios would be replaced by funds with substantially similar investment objectives, and management would return to the investment management team which managed the MSF Portfolios prior to the reorganization in late 2000 (in the case of many of the Contract owners, the management team that was in place at the time they made the decision to allocate Contract value to the MSF Portfolios). The substitutions would also prevent Contract owners from being affected by any additional reorganization of MSF as it adapts to Nationwide's acquisition of PMLIC.

5. In addition to the foregoing, Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

6. Applicants anticipate that Contract owners will be at least as well off with the proposed array of subaccounts offered after the proposed substitutions as they have been with the array of subaccounts offered prior to the substitutions. The proposed substitutions retain for Contract owners the investment flexibility which is a central feature of the Contracts. If the proposed substitutions are carried out, all Contract owners will be permitted to allocate purchase payments and transfer accumulated values and contract values between and among the same number of subaccounts as they could before the proposed substitutions.

7. Applicants argue that each of the proposed substitutions is not the type of substitution which Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment and transfer accumulation and contract values into other subaccounts. Moreover, the Contracts will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. The proposed substitutions, therefore, will not result in the type of costly forced redemption which Section 26(c) was designed to prevent.

8. In addition, Applicants argue that the proposed substitutions are unlike the type of substitution which Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select the specific type of insurance coverage offered by NLIC under their Contract as well as numerous other rights and privileges set forth in the Contract. Therefore, Applicants contend that Contract owners may also have considered NLIC's size, financial condition, type and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed substitutions.

9. Applicants submit that, for all the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8811 Filed 4–9–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47628; File No. SR–CBOE–00–55]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 Thereto by the Chicago Board Options Exchange, Incorporated to Establish Rules for a Screen-Based Trading System Known as CBOE*direct*

April 3, 2003.

On November 9, 2000, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] a proposal to establish rules for a screen-based trading system known as CBOE*direct*. Subsequently, CBOE submitted three amendments to the proposed rule change.[3] On May 8,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Angelo Evangelou, Legal Divisiorl, CBOE, to Nancy Sanow, Division of Market Regulation, Commission, dated October 25, 2001 ("Amendment No. 1"); April 1, 2002 ("Amendment No. 2"); and April 18, 2002 ("Amendment No. 3"). Amendment No. 1 superceded the original submission in its entirety and made substantial changes to the proposed rule

Continued

2002, the Commission published the amended proposal in the **Federal Register**.[4] The Commission received no comments on the proposal. On March 14, 2003, CBOE submitted a fourth amendment to the proposal.[5] This notice and order solicits comment on Amendment No. 4 and approves the proposal, as amended, on an accelerated basis.[6]

I. Description of the Proposal

The Exchange proposed rules governing CBOE*direct*, a screen-based trading system ("SBT System") that allows market participants to trade options in a wholly electronic environment. CBOE*direct* will supplement the Exchange's floor-based open outcry auction market. Many of CBOE's existing rules also will apply to GBOE*direct;* CBOE provided a list of these rules as Appendix A to the proposed rule change.[7] CBOE also has proposed a number of new rules that would govern the SBT System.

The Exchange commenced operating CBOE*direct* as a pilot trading system in October 2001 pursuant to rule 19b–5 under the Act[8] and currently is used to trade three classes of index options during an early morning session. CBOE*direct* is designed, however, to handle a full range of products that currently trade on CBOE's floor.

A. Overview of CBOEdirect

Any CBOE member that chooses to participate on the SBT System must apply with the Exchange to act as an SBT market maker, SBT broker, or proprietary trader (collectively, "SBT traders").[9] An SBT trader may connect to CBOE*direct* from any place in the United States where it has a workstation and communication link to the Exchange.[10] Orders may be submitted through the current wire order facility (used to send orders to the Exchange's open-outcry auction market), an SBT workstation, or a computer-to-computer link using a new application program interface ("API"). Any SBT trader may submit an order to CBOE*direct;* only an SBT market maker may enter quotes.[11] The SBT System provides SBT traders with the means to electronically hit a bid or take an offer, resulting in either a full or partial execution of the existing bid or offer.[12]

A concept central to the operation of CBOE*direct* is the "legal width market." A legal width market would exist in an option series if the best bid and the best ask available on the SBT System were within a prescribed width.

These widths are as follows:

Bid range	Maximum allowable quote spread
Less than $2.00	$0.25
$2.00–$5.00	0.40
$5.01–$10.00	0.50
$10.01–$20.00	0.80
$20.01–higher	1.00

A legal width market on CBOE*direct* may be established by an unrelated bid and offer. *See* CBOE rule 44.4(b). The appropriate Market Performance Committee may widen the legal width market for one or more option series for a period of time not to exceed the remainder of the existing expiration cycle. *See* CBOE rule 44.4(e). If the committee were to modify the legal width market, an information circular would be issued to provide notice of such modification. *See id.*

The legal width market feature is designed to prevent executions from occurring at unfair or unreasonable prices. For example, a market order for a particular option series would execute immediately only if a legal width market existed in that series at the moment the order was entered. If a legal width market in that series did not exist when the market order was entered, the SBT System would generate a request for quote ("RFQ")[13][14] in an effort to establish a legal width market.

CBOE*direct* would send the RFQ to: (1) SBT market makers who are logged on to the SBT system and who hold an appointment in the subject option class; and (2) any non-appointed SBT market maker who is quoting in that class at the time of the RFQ. The market makers' responses (*i.e.*, quotes) would be submitted to the SBT book and displayed as they arrived. If the responses were not sufficient to establish a legal width market, the System would continue to hold the market order, repeat the RFQ cycle, and send an alert message to the Help Desk, which then could solicit quotes from the SBT market makers.[15] The Help Desk would have the authority to send a Special RFQ to the SBT market makers that would require a response.[16] However, assuming that the RFQ responses created a legal width market, the order being held by the System would execute in a manner described in section I.H.1. below.

When the SBT System eventually is so enabled, CBOE*direct* would similarly protect a marketable limit order for an options series for which a legal width market did not exist at the time of order entry by running the RFQ cycle before attempting to execute the limit order. Presently, however, a limit order would execute immediately if the limit order were marketable on the SBT book, even if a legal width market did not exist. A fuller description of limit order processing is contained in section I.H.2. below.

CBOE anticipates that, during regular trading hour ("RTH") sessions,[17] multiple SBT market makers would continuously quote actively traded products, while less actively traded products would be quoted through the RFQ process.[18] The Exchange indicated, however, that when the SBT System is used during an extended trading hour ("ETH") session, most products likely would be quoted through RFQs.[19]

B. Market Participants

1. Market Makers

An SBT market maker is a CBOE member who is either an SBT standard market maker, an SBT designated primary market maker ("DPM"), or an SBT lead market maker ("LMM"). An applicant for registration as an SBT market maker must file an application with the Exchange's Membership Department; the Exchange's Membership Committee may approve or disapprove the applicant's registration as an SBT market maker.[20] A registered SBT market maker may apply for an appointment in one or more classes of option contracts traded on CBOE*direct*. The appropriate Market Performance Committee may arrange two or more classes of options into groupings and make appointments to those groupings rather than to individual classes. The appropriate Market Performance Committee may suspend or terminate any appointment of an SBT market maker or make additional appointments whenever, in the Committee's judgment, the interests of a fair and orderly market would best be served by such action.[21]

With respect to each class of options for which it holds an appointment, an SBT market maker has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for its own account when there exists or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for a particular option contract, or a temporary distortion of the price relationships between option contracts of the same class. An SBT market maker is expected to perform the following activities in the course of maintaining a fair and orderly market:

• Competing with other SBT market makers to improve markets in all series of options class in which the SBT market maker holds an appointment;

• Making markets which, absent changed market conditions, will be honored for the number of contracts entered into the SBT System in all series of options classes in which the SBT market maker holds an appointment; and

• Updating market quotations in response to changed market conditions in all series of options classes in which the SBT market maker holds an appointment.[22]

In addition, at least 75% of an SBT market maker's total contract volume on CBOE*direct* must be in options classes in which it holds an appointment.[23]

Furthermore, SBT market makers are required to respond to a certain percentage of RFQs that they receive. The appropriate Market Performance Committee has the authority to determine the percentage of RFQs to which an SBT standard market maker would be required to respond, which percentage may not be less than 75%,[24] and may vary the RFQ response rate on a series-by-series basis.[25] SBT DPMs and LMMs are subject to higher requirements and must respond to 98% of the RFQs that they receive.[26] An SBT market maker would be credited for an RFQ response only if: (1) The SBT market maker responds to the RFQ with a two-sided market within a number of seconds designated by the appropriate Market Performance Committee; (2) the quote width is equal to or narrower than a legal width market; [27] (3) the quote size is at least equal to the minimum size specified by the appropriate Market Performance Committee and in any case is at least five contracts; and (4) the SBT market maker provides a continuous market for 30 seconds, or the quote is filled before the 30-second period expires.[28] The SBT market maker could change its quote during this period but could not cancel it to receive credit for the response.[29]

On CBOE*direct*, a market maker may also be a designated primary market maker ("DPM") or a lead market maker ("LMM"). The Exchange's SBT DPM Committee may assign an SBT DPM to a particular option class.[30] Different members could be assigned to be the SBT DPM for the same option class during different trading sessions.[31] If the SBT DPM Committee does not appoint an SBT DPM in a given class, the appropriate Market Performance Committee could appoint one or more SBT LMMs.[32] If more than one SBT LMM is appointed, they would function as the SBT LMM on a rotating basis in accordance with a schedule set by the appropriate Market Performance Committee.[33] SBT LMMs would have responsibilities similar to SBT DPMs.[34]

The obligations of SBT DPMs and LMMs are greater than those of SBT standard market makers.[35] SBT DPMs and LMMs are obligated, for example, to provide opening quotes for all series in their allocated classes.[36] The appropriate Market Performance Committee also could require that an SBT DPM or LMM provide continuous quotations in some or all of the series of its appointed classes.[37] Furthermore, SBT DPMs and LMMs are required to handle public customer orders that are not executed on the System due to the fact that there is a better quote on another exchange, and to accord priority to such public customer orders over their own principal transactions (unless the customer who placed the order has consented to not being accorded such priority).[38]

2. Brokers

An SBT broker is an individual (either a member or a nominee of a member organization) who is registered with the Exchange for the purpose of accepting and executing on CBOE*direct* orders

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text and the accompanying narrative. In Amendment No. 2, CBOE revised the proposed trade nullification rule for CBOE*direct*. In Amendment No. 3, CBOE further modified the proposed trade nullification rule.

[4] *See* Securities Exchange Act Release No. 45829 (April 25, 2002), 67 FR 31002 ("Notice").

[5] *See* letter from Angelo Evangelou, Legal Division, CBOE, to Nancy Sanow, Division of Market Regulation, Commission, dated March 13, 2003 ("Amendment No. 4"). For the matters addressed in Amendment No. 4, *see infra* section III.

[6] In addition, CBOE submitted a letter to the Division of Market Regulation requesting interpretive guidance under section 11(a) of the Act, 15 U.S.C. 78k(a), and rule 11a2–2(T) thereunder, 17 CFR 240.11a2–2(T). *See* letter from Angelo Evangelou, Legal Division, CBOE, to Catherine McGuire, Division of Market Regulation, Commission, dated March 28, 2003. In response to CBOE's request, staff of the Division of Market Regulation provided interpretive guidance under section 11(a) of the Act. *See* letter from Paula R. Jenson, Division of Market Regulation, Commission, to Angelo Evangelou, Legal Division, CBOE, dated March 31, 2003.

[7] *See* notice, *supra* note 4, 67 FR at 31016–22 (listing the existing Exchange rules in chapters I through XXVII that would apply to CBOE*direct* and indicating those rules that would be supplemented by the CBOE*direct* rules). In Amendment No. 4, CBOE made several revisions to Appendix A.

[8] 17 CFR 240.19b–5. Rule 19b–5 provides that a self-regulatory organization ("SRO") may operate a pilot trading system without obtaining prior Commission approval for the rules governing such system, provided that the SRO files a Form PILOT with the Commission and meets the other criteria set forth in rule 19b–5. On September 7, 2001, CBOE filed with the Commission a Form PILOT with respect to CBOE*direct*. An SRO may commence operation of a pilot trading system no sooner than 20 days after filing its Form PILOT. See 17 CFR 240.19b–5(e)(1). CBOE commenced operation of the SBT System on October 26, 2001. Rule 19b–5 requires an SRO, within two years of commencing operations of the pilot trading system, to file a proposed rule change pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2), to obtain permanent authority to operate that system. *See* 17 CFR 240.19b–5(f)(1). The proposed rule change that is the subject of this Order was submitted pursuant to that requirement.

[9] *See* CBOE rule 41.2.

[10] *See* CBOE rule 41.3.

[11] Other SBT traders would be prohibited from entering limit orders in the same options series, for the account or accounts of the same or related beneficial owners, in such a manner that the order provider or the beneficial owner(s) effectively would be operating as a market maker by holding itself out as willing to buy and sell option contracts on a regular or continuous basis. *See* CBOE rule 43.6(c).

[12] *See* notice, *supra* note 4, 67 FR at 31037–38.

[13][14] See CBOE rule 40.1(m).

[15] *See* CBOE rule 43.7(b).

[16] *See id.*: CBOE rule 40.1(n).

[17] *See* CBOE rule 40.1(*l*) (definition of "regular trading hour session").

[18] *See* notice, *supra* note 4, 67 FR at 31038.

[19] In addition, the appropriate SBT Trading Committee may determine to limit the kinds of orders that may be traded during an ETH session, even if such order types may be traded during an RTH session. *See* CBOE rule 43.2(b). CBOE has represented that it would distribute an information circular indicating any committee determination to limit the order types that may be traded during an ETH session. Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Elizabeth King, Division of Market Regulation, Commission, on June 21, 2002 ("June 21 conversation").

[20] *See* CBOE rule 44.2(a).

[21] *See* CBOE rule 44.3(a).

[22] *See* CBOE rule 44.4(a)(1). In Amendment No. 4, the Exchange clarified SBT market makers' obligations by incorporating into CBOE rule 44.4(a)(1) the provisions of its existing CBOE rule 8.7 (setting forth market makers' obligations on the Exchange floor), modified to take into account differences between making markets on a physical floor and on an electronic platform.

[23] *See* CBOE rule 44.4(a)(2).

[24] *See* CBOE rule 44.4(b). The response rate would be computed as the number of times the SBT market maker made a credited response, divided by the number of RFQs to which the market maker was obligated to respond. *See* notice, *supra* note 4, 67 FR at 31039. In addition, the appropriate Market Performance Committee could, depending on the liquidity in any of the underlying markets during an ETH session, determine not to impose an RFQ response requirement, or impose an RFQ response rate lesser than the one applicable during regular trading hours. *See* CBOE rule 44.4(d).

[25] *See* CBOE rule 44.4(e).

[26] *See* CBOE rules 44.4, Interpretation .01(a)(4) and 44.14(a)(4).

[27] *See supra* note 13.

[28] *See* CBOE rule 44.4(b).

[29] *See id.*

[30] *See* CBOE rule 44.12.

[31] *See* CBOE rule 44.16.

[32] *See* CBOE rule 44.3, Interpretation .01.

[33] *See id.*

[34] *See* CBOE rule 44.4, Interpretation .01(a).

[35] *See* CBOE rule 41.1(a)(2).

[36] *See* CBOE rules 44.4, Interpretation .01(a)(2) and 44.14(a)(2).

[37] *See id.*

[38] *See* CBOE rules 44.14(b)(6) and 44.4, Interpretation .01(a)(6).

received from members, registered broker-dealers, or public customers. As with brokers operating in the Exchange's open-outcry auction market, an SBT broker would not be permitted to accept an order from any source other than a member or a registered broker-dealer, unless he or she were approved to transact business with the public in accordance with CBOE rule 9.1.[39]

SBT brokers would have the same obligations as brokers on the Exchange's auction market to use due diligence in the representation of orders for which they act as agent. SBT brokers may use an SBT workstation or an API to enter, cancel, cancel/replace, and maintain orders; hit bids and take offers; submit RFQs; and enter cross notifications and proposed cross orders.

3. Proprietary Traders

A proprietary trader is a CBOE member who enters orders as principal for a non-market-maker proprietary account.[40] A proprietary trader may use an SBT workstation or an API to enter, cancel, cancel/replace, and maintain orders; hit bids and take offers; and submit RFQs.

4. Clearing Firm Brokers

A clearing firm broker is an individual who represents the clearing firm of a particular SBT market maker and has the authority to take certain actions with respect to that market maker's use of the SBT System.[41] A clearing firm broker may request the CBOE Help Desk to force the logout of an SBT trader when, for example, that trader has financial difficulty. In addition, the forced logout of an SBT trader could be necessary if technical difficulties prevented the trader from logging off on his or her own.

C. Priority

The proposed CBOE*direct* rules do not prescribe a single allocation methodology. Instead, the rules give the appropriate SBT Trading Committee authority to apply various allocation priorities. CBOE has represented that it would issue a regulatory circular specifying the allocation rules that would govern each option class.[42]

There would be two basic types of trade allocation methodologies:

• *Price-Time Priority.* Under this method, resting orders in the SBT book would be prioritized according to price and time. If two or more orders were at the best price, priority among these orders would be afforded in the sequence in which they were received by the System.[43]

• *Pro Rata Priority.*[44] Under this method, resting orders in the SBT book would be prioritized according to price. If there were two or more orders at the best price, trades would be allocated proportionally according to their size.[45] The executable quantity would be allocated to the nearest whole number, with fractions one-half or greater rounded up and fractions less than one-half rounded down.[46]

In addition to these allocation methodologies, the appropriate SBT Trading Committee could determine to overlay, on a class-by-class basis and in any order, any or all of the following additional market participant priorities ("priority overlays"):[47]

1. *Public Customer.* If this were the only priority overlay in effect, the highest bid and lowest offer would have priority, except that a public customer order would have priority over a non-public customer order at the same price. If other priority overlays were also in effect, priority would be established in the sequence designated by the appropriate SBT Trading Committee. In either case, if there were two or more public customer orders for the same option series at the same price, priority would be afforded to these orders in the sequence in which they had been received by the System, even if the *pro rata* allocation method were the designated allocation method. For purposes of this provision, a "public customer order" is an order for an account in which no CBOE member, non-member participant in a joint venture with a member, or non-member broker-dealer (including a foreign broker-dealer) has an interest.[48]

2. *Market Turner.* The "market turner" is the SBT trader who is the first to enter an order or quote at a better price than the previous best book price, and the order or quote was continuously in the market until it traded.[49] If market turner priority were the only priority overlay in effect, the market turner would have priority at the highest bid or lowest offer that it had established. If other priority overlays were also in effect, priority would be established in the sequence designated by the appropriate SBT Trading Committee. In either case, market turner priority at a given price would remain with the order once it had been earned. For example, if the market moved in the same direction as the marker turner had moved the market, and then the market moved back to the market turner's original price, the market turner would retain priority at the original price.

3. *Trade Participation Right.* SBT DPMs and LMMs may be granted a trade participation right to trade against up to 40% of an incoming order,[50] even though the order and/or quote of the SBT DPM or LMM do not have the highest priority. If other priority overlays were also in effect, priority would be established in the sequence designated by the appropriate SBT Trading Committee. All of the following conditions would apply to the SBT DPM or LMM trade participation right:

• The order and/or quote of the SBT DPM or LMM must be at the best price.[51]

• An SBT DPM or LMM may not be allocated a total quantity greater than the quantity than it was quoting at that price.[52]

• If pro rata priority is in effect and the SBT DPM's or LMM's allocation of an order pursuant to its trade participation right is greater than its percentage share of the quotes/orders at the best price at the time that the trade participation right is granted, the SBT DPM or LMM may not receive any further allocation of that order.[53]

• If the trade participation right priority overlay and the market turner priority overlay are both in effect and the SBT DPM or LMM were the market turner, market turner priority would not apply.[54]

[39] *See* CBOE rules 41.1(a)(5) and 45.1.

[40] *See* CBOE rule 41.1(a)(6).

[41] *See* CBOE rule 45.11.

[42] *See* notice, *supra* note 4, 67 FR at 31026.

[43] *See* CBOE rule 43.1(a)(1). For examples of how the price-time allocation method would operate, *see* notice, *supra* note 4, 67 FR at 31027–28.

[44] In Amendment No. 4, CBOE changed the name of this allocation methodology from "combined price-time and size priority" to "*pro rata* priority."

[45] *See* CBOE rule 43.1(a)(2). For examples of how this allocation method would operate, *see* notice, *supra* note 4, 67 FR at 31028–31.

[46] If there were two SBT traders that were both entitled to an additional one-half contract and there were only one contract remaining to be distributed, the additional contract would be distributed to the SBT trader whose quote or order had time priority. *See* CBOE rule 43.1(a)(2).

[47] *See* CBOE rule 43.1(b).

[48] *See* CBOE rule 43.1(b)(1).

[49] *See* CBOE rule 40.1(i).

[50] *See* CBOE rules 43.1(b); 44.4, Interpretation .01(b); and 44.15. However, the participation of an SBT DPM or LMM in an order may exceed 40%, depending on the allocation rules in effect. *See id.* Assume, for example, that price-time priority is in effect. An SBT DPM or LMM could receive up to 40% of an incoming order due to its trade participation right, then receive an additional portion of the incoming order if it has an order or quote on the SBT book that has the highest time priority at the best price. If *pro rata* priority were in effect, an SBT DPM or LMM could receive up to 40% of an incoming order due to its trade participation right, then receive an additional portion of the incoming order if its percentage of the total volume being quoted at the best price exceeds 40%.

[51] *See* CBOE rule 43.1(b)(3)(A).

[52] *See* CBOE rule 43.1(b)(3)(B).

[53] *See id.*

[54] *See* CBOE rule 43.1(b)(3)(C).

• If price-time priority were in effect and the SBT DPM or LMM had a quote and one or more orders at the same price, any contacts executed as part of the SBT DPM/LMM's trade participation right would trade with the highest priority quote/order(s) of the SBT DPM or LMM.[55]

• The trade participation right may not be in effect unless the public customer priority overlay is in effect in a priority sequence ahead of the trade participation right.[56] Thus, public customer orders at the best price would be executed before an SBT DPM or LMM trades by virtue of any trade participation right.

• If other priority overlays are in effect and designated as higher priorities than the SBT DPM or LMM trade participation right, the participation right would apply only to any remaining balance of an order after all higher priorities were satisfied.[57]

D. States of Trading

1. Pre-Opening

The pre-opening state would last for some period of time (as determined by the appropriate SBT Committee) before the opening of the underlying security.[58] During this state, CBOE*direct* would accept quotes and orders but no trading would take place.[59] The System would disseminate information about resting orders in the SBT book that remained from the prior business day and any orders and quotes sent before the opening.[60] After the primary market for the underlying security disseminates the opening trade or the opening quote for the underlying security, the System would send a notice to SBT market makers with an appointment in that class who then may submit their opening quotes.[61] The SBT DPM or LMM for that option class would be required to submit opening quotes.[62]

2. Opening

The SBT System would begin the opening procedure at a randomly selected time within a number of seconds after receiving the underlying security's opening price.[63] For some time after the notice of the underlying security's opening price is sent, the System would calculate and provide the expected opening price ("EOP") based on the current resting orders and quotes during an EOP period.[64] The length of the EOP period would be established by the appropriate SBT Trading Committee and would be no less than five seconds and no more than one minute.[65] After the EOP period, the System would enter a lock interval during which quotes and orders could be submitted but would not be included in the opening trade. The lock interval would be a period of time not to exceed four seconds. At this time, the SBT System would establish the opening price, which would be the "market clearing" price that would leave bids and offers that could not trade with each other.

The System would process the series of a class in random order.[66] The series of a class may not open all at the same time. The System would not open a series if: (1) There were no legal width market; (2) the opening price were not within a range determined by the appropriate SBT Trading Committee (*e.g.*, the upper boundary of the acceptable range may be 125% of the highest quote offer and the lower boundary may be 75% of the lowest quote bid);[67] or (3) the opening trade would leave a market order imbalance.[68] If a series does not open, the System would commence the RFQ process in an effort to alleviate the conditions that caused the series not to open.[69]

As the opening price is determined by series, the System would change the product state of the series to "trading" and disseminate to OPRA and the SBT participants the opening quote and the opening trade price, if any.[70]

3. Trading

During this state, the series would trade freely. All order types and quotes would be accepted, except for opening-only contingency orders.[71]

4. Trading Halts

CBOE will use the same criteria to halt trading on CBOE*direct* that they use to halt trading on CBOE's floor.[72] In addition, the SBT System may be programmed (as determined by the appropriate SBT Trading Committee) to automatically halt trading with respect to an equity option if a trading halt has been declared for the underlying security in the primary market.[73] However, when the System is operated during an ETH session, there may not be a primary market trading the underlying security. In such cases, the appropriate SBT Trading Committee would determine in advance whether to have the System automatically halt trading with respect to the options if there is no primary market for the underlying security in the ETH session and if trading in the underlying security has been halted in another market trading the underlying security during an ETH session.[74] Whenever trading has been halted, trading may be resumed whenever two trading officials determine that a fair and orderly market may be maintained.[75]

5. Closed

CBOE*direct* would change the state to "closed" at a pre-determined time depending on the closing time of the

[55] *See* CBOE rule 43.1(b)(3)(D).

[56] *See* CBOE rule 43.1(b)(3)(E).

[57] *See* CBOE rule 43.1(b)(3)(F).

[58] *See* CBOE rule 42.3(a). CBOE has represented that it would distribute an information circular indicating the pre-opening period of time that it establishes. June 21 conversation.

[59] *See* CBOE rule 42.2(a). However, spread orders and contingency orders (except for opening-only orders) would not participate in the opening or in the determination of the opening price. *See* CBOE rule 42.3(a). CBOE has represented that it would distribute an information circular indicating the pre-opening period of time that is established by the Exchange. June 21 conversation.

[60] *See id.* CBOE could determine to disseminate this information for free to any SBT trader interested in trading the product. Alternately, CBOE could determine to impose a fee for such information. In the latter case, the fee proposal would have to be filed with the Commission pursuant to section 19(b) of the Act, 15 U.S.C. 78s(b). Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Nancy Sanow and Michael Gaw, Division of Market Regulation, Commission, on October 23, 2002 ("October 23 conversation").

[61] *See* CBOE rule 42.3(a).

[62] *See id.* SBT standard market makers generally would not be required to provide opening quotes, except in the circumstances described in proposed CBOE rule 42.3(b).

[63] *See* CBOE rule 42.3(a). In the case of trading during an ETH session, the System could open the class without having received the underlying security's opening price. *See id.*

[64] *See* CBOE rule 42.3(c).

[65] *See id.* CBOE has represented that it would distribute an information circular indicating the period that is established by the Committee. June 21 conversation.

[66] *See* CBOE rule 42.3(d).

[67] CBOE has stated that this provision is designed to prevent orders that rest on the SBT book between sessions from being executed at a price far from the prevailing quote at the opening of the next session. Telephone call between Angelo Evangelou, Legal Division, CBOE, and Michael Gaw, Division of Market Regulation, Commission, on December 9, 2002. CBOE has represented that it would publicize the range set by the committee in an information circular. *Id.*

[68] *See* CBOE rule 42.3(f).

[69] *See* CBOE rule 42.3(g). The RFQ generated by the SBT System in this case would include size. The RFQs generated by the System in market and limit order processing also would include size. October 23 conversation.

[70] *See* CBOE rule 42.3(e).

[71] *See* CBOE rule 42.2(c).

[72] Specifically, CBOE rules 6.3, 6.3B, or 24.7 will apply to trading on CBOE*direct*. *See* Appendix A. Originally, CBOE proposed that new, different provisions would govern trading halts on the SBT System. In Amendment No. 4, CBOE deleted most of these proposed provisions and instead proposed to apply existing CBOE rule 24.7 to trading halts on CBOE*direct*.

[73] *See* CBOE rule 43.4(b). The System would send status alerts to OPRA for a product that is halted. *See* notice, *supra* note 4, 67 FR at 31025.

[74] *See* CBOE rule 43.4(b).

[75] *See id.*

underlying security. Trading would cease but the System would continue to accept certain order types (such as market orders, which would be held by the System for participation in the opening of the next SBT session).[76] At some designated time, as determined by the Exchange, the System would stop accepting orders and would enter into end-of-session procedures as described in CBOE rule 42.4.[77]

6. Fast Markets and Non-Firm Markets

A fast market may be declared in one or more option classes. A fast market may be declared by the System automatically if the System loses an underlying security feed.[78] A fast market also may be declared by two trading officials whenever, in their judgment, an influx of orders or other conditions or circumstances would impair the operation of a fair and orderly market. In determining whether to declare a fast market, the trading officials may consider, among other things, impending news, increases in trading volume that threaten the capacity of the System, and the loss of an underlying security feed.[79] Regular trading conditions may be resumed when two trading officials believe that such action is warranted or, if the System had made the fast market declaration, if the underlying security feed has been restored.[80]

CBOE may designate the market in an option to be "non-firm" if two trading officials determine that the level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately reflects the current state of the market on CBOE*direct*. If a market is declared non-firm, the Exchange would provide notice that its quotations are not firm by appending an appropriate indicator to such quotations, and two trading officials would have the authority to direct that one or more trading rotations be employed or to take such other actions as are deemed necessary in the interest of maintaining a fair and orderly market. The Exchange would monitor the activity or conditions that caused the declaration of a non-firm market, and two trading officials would be required to review the condition of such market at least every 30 minutes. Regular trading procedures would be resumed by the Exchange when two trading officials determined that the conditions supporting a non-firm market declaration no longer existed. The Exchange would provide notice that its quotations were once again firm by removing the indicator from its quotations. However, if the conditions supporting a non-firm market declaration could not be managed utilizing the prescribed procedures, two trading officials would halt trading in the class or classes so affected.[81]

There is a significant difference between a "non-firm" market and a fast market: Only in a non-firm market would responsible brokers and dealers be relieved of their obligations under the Exchange's firm quote rule, as applicable to CBOE*direct*,[82] and the Commission's firm quote rule.[83] In a fast market that is not also a non-firm market, the firm quote obligations would continue to apply.

E. Firm Quote Obligations on CBOE*direct*

Each responsible broker or dealer, as defined in rule 11Ac1–1 under the Act,[84] must communicate to the Exchange its bids and offers in accordance with rule 11Ac1–1, and a bid or offer submitted by a responsible broker or dealer must be firm pursuant to rule 11Ac1–1 for the number of contracts specified in such bid or offer, subject to certain exceptions.[85] A responsible broker or dealer would be relieved of its firm quote obligations under rule 11Ac1–1 and Exchange rules if any of the following conditions existed:[86]

- The level of trading activities or the existence of unusual market conditions is such that the Exchange is incapable of collecting, processing, and making available to quotation vendors the data for the option in a manner that accurately reflects the current state of the market on the Exchange and, as a result, the market in the option is declared to be "non-firm" pursuant to CBOE rule 43.14(b);
- A system malfunction or other circumstance impairs the Exchange's ability to disseminate or update market quotes in a timely and accurate manner;
- A trading rotation is in progress; or
- Any of the circumstances set forth in paragraph (c)(3) of rule 11Ac1–1[87] exists.

Within 30 seconds of receipt of an order to buy or sell an option series in an amount greater than the size associated with the responsible broker's or dealer's bid or offer, that portion of the order equal to the size associated with the responsible broker's or dealer's bid or offer will be executed, and the bid or offer price will be revised.[88]

F. Trade Nullification

The SBT System rules provide for the ability to nullify a trade through a negotiated or mandated trade nullification procedure.

1. Negotiated Trade Nullification

A CBOE*direct* trade could be nullified if both parties to the transaction agreed to the nullification.[89] Negotiation could be conducted through the SBT System's messaging facility that would allow a party to exchange messages with its contraparty of a particular trade. The System would preserve the anonymity of the parties, although one party could voluntarily disclose its identity to the other party. When both parties to a trade have agreed to a trade nullification, one party must contact the Help Desk. The Help Desk then would confirm the agreement and promptly nullify the trade, notify the parties involved, disseminate cancellation information in prescribed OPRA format, and re-establish orders and their priorities in the SBT book on a best-efforts basis.

2. Mandated Trade Nullification

An SBT trader may have a trade nullified by two trading officials if a documented request is made within five minutes of execution (or 15 minutes if the request is on behalf of a public customer) and one of five following conditions is met:

- The trade resulted from a verifiable disruption or malfunction of an Exchange execution, dissemination, or communication system that caused a quote/order to trade in excess of its disseminated size (*e.g.*, a quote/order that is frozen, because of an Exchange system error, and traded repeatedly);[90]
- The trade resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented an SBT trader from updating or canceling a quote/order for which the SBT trader is responsible, where there is Exchange documentation providing that the SBT trader sought to update or cancel the quote/order;[91]
- The trade resulted from an erroneous print disseminated by the underlying market that is later canceled or corrected by that underlying market, where the erroneous print resulted in a trade higher or lower than the average trade in the underlying security during the two-minute time period before and after the erroneous print by an amount at least five times greater than the average quote width for the underlying security during the time period encompassing two minutes before and after the erroneous print;[92]
- The trade resulted from an erroneous quote in the primary market for the underlying security that has a spread of at least $1.00 and at least five times greater than the average quote width for the underlying security during the time period encompassing two minutes before and after the dissemination of such quote;[93] or
- The execution price of the trade is higher or lower than the theoretical price for the series by an amount equal to at least two times the maximum bid/ask spread allowed for the option under proposed CBOE rule 44.4, so long as such amount is $0.50 or more (or $0.25 or more for options priced under $3.00).[94]

Upon nullification, the Help Desk promptly would notify the parties, disseminate cancellation information in prescribed OPRA format, and re-establish orders and their respective priorities on the SBT book on a best-efforts basis.[95]

Any determinations made under the trade nullification rule could be appealed pursuant to chapter 19 of the Exchange's rules.[96]

*G. How Trades Are Executed on CBOE*direct*

1. Market Orders

a. Market Order Processing

Non broker-dealer market orders to buy or sell options on CBOE*direct* will not be automatically executed by the System at prices inferior to the best bid or offer on another national securities exchange, as those best prices are identified by the System.[97] In addition, the SBT System would protect a market order for a given option series by executing it against the best bid or offer only if there were a legal width market in that series.[98] The System would match market orders against orders at the best price in the SBT book and against the other orders behind the best price at varying prices until the order is fully executed or a legal width market no longer exists.[99] CBOE expects that there would be a legal width market for most series at most times—at least during an RTH session—and thus that most market orders on CBOE*direct* would execute immediately.[100]

If there is no legal width market when the order is entered—or if the market order is not executed in full because a legal width market no longer exists—the System would hold the order (or any remaining portion thereof) in queue, send an RFQ,[101] and inform the originator of the market order about the order's status.[102] In this case, the RFQ would include the market order quantity but not whether the order was a buy or a sell.[103] RFQ responses would be sent to the SBT book.[104] The System then would execute the market order if:

- During the RFQ response time, the best quote becomes a certain prescribed percentage (as set by the appropriate SBT Trading Committee) of a legal width market;[105]
- The System receives a limit order on the same side of the market as the market order that could match the best bid or offer and at least one legal width quote has been received;[106] or
- A certain prescribed percentage of the SBT market makers currently providing quotes in the class (the percentage to be set by the appropriate SBT Trading Committee) respond to the RFQ with legal width markets.[107]

If the market order could be executed under any of the three conditions above and there is a market order on the opposite side, the System would execute the market orders with each other.[108]

If none of the three conditions noted above were satisfied but a legal width market existed at the end of the RFQ period, the market order would execute against the booked order with the highest priority.[109] However, if the System were holding a market order and the RFQ process did not yield a legal width market, the Exchange's Help Desk could solicit quotes and require a response from SBT market makers.[110]

b. Market Order Price

If a market order is executed before the RFQ process is completed under any of the three conditions set forth above, it would trade at the price of the highest priority contraside quote or order in the SBT book. However, if a market order could be executed pursuant to any of the three conditions and there were one or more market orders on the opposite side, the System would execute the market orders against each other at a price determined as follows:[111]

- At the middle of the best bid/offer in the SBT book, if the middle price is a price that may be entered on the System; or
- If the middle price is not a price that could be entered on the System, at the next such price that is closer to the last trade price for the series.

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[76] *See* CBOE rule 42.2(e).

[77] *See id.* CBOE has represented that it would issue an information circular regarding the designated time that the SBT System would stop accepting orders and enter into end-of-session procedures. December 5 conversation.

[78] *See* CBOE rule 43.4(a)(1).

[79] *See* CBOE rule 43.4(a)(2).

[80] *See* CBOE rule 43.4(a)(1)–(2).

[81] *See* CBOE rule 43.14(b).

[82] CBOE rule 43.14(a).

[83] 17 CFR 240.11Ac1–1.

[84] 17 CFR 240.11Ac1–1.

[85] *See* CBOE rule 43.14(a). The Commission notes that an SBT market maker is permitted to display a single quote and one or more orders at the same time. All orders and quotes of a responsible broker or dealer that are displayed on CBOE*direct* will be subject to the Commission's Firm Quote rule.

[86] *See* CBOE rule 43.14(c)(1).

[87] 17 CFR 240.11Ac1–1(c)(3)

[88] *See* CBOE rule 43.14(c)(2).

[89] *See* CBOE rule 43.5(a).

[90] *See* CBOE rule 43.5(b)(1). For example, assume that an SBT market maker enters a quote of 4.00–4.30, 20x20. Another SBT trader hits the market maker's bid at 4.00 for the full size of 20 contracts. Also assume that the SBT System fails to remove the market maker's bid from the SBT book, even though it has been taken out completely. A second SBT trader sees the "frozen" bid for 20 at 4.00 and also trades against it. In this case, the second trade could be nullified under CBOE rule 43.5(b)(1). Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Nancy Sanow, Division of Market Regulation, Commission, on February 20, 2003 ("February 20 conversation").

[91] *See* CBOE rule 43.5(b)(2).

[92] *See* CBOE rule 43.5(b)(3).

[93] *See* CBOE rule 43.5(b)(4).

[94] *See* CBOE rule 43.5(b)(5). The theoretical price of an option would be defined as the last bid/offer price, just prior to the trade, from the exchange providing the most volume in the option or, if there are no quotes for comparison, the theoretical price would be determined by two trading officials. *See id.*

[95] *See* CBOE rule 43.5(b).

[96] *See id.*

[97] *See* CBOE rule 43.7.

[98] *See* CBOE rule 43.7(a)(1).

[99] *See* id.

[100] *See* notice, *supra* note 4, 67 FR at 31033 n.26.

[101] The RFQ would be sent to any SBT market maker who held an appointment in that option class and to any non-appointed SBT market maker who is quoting in that option class at the time the RFQ is sent. *See* CBOE rule 40.1(m).

[102] *See* CBOE rule 43.7(a)(2).

[103] *See* CBOE rule 43.7(a)(3). The only instance that an RFQ would disclose whether the intended transaction is a buy or a sell is if the SBT System generated an RFQ to remedy an order imbalance. October 23 conversation.

[104] *See* CBOE rule 43.7(a)(3). Also, market orders generally have execution priority over limit orders. However, a limit order may be executed ahead of the market order if, during the pendency of an RFQ, an order is entered on the other side of the market that satisfies the order's limit price. *See* CBOE rule 43.1(g).

[105] *See* CBOE rule 43.7(a)(3)(A). CBOE has represented that it would issue an information circular regarding the designated percentage that would trigger this provision. December 5 conversation. The market order would trade with the best-priced quote or order on the SBT book.

[106] *See* CBOE rule 43.7(a)(3)(B). The market order would trade with the best priced quote or order on the SBT book. However, if no legal width market existed at the time the limit order were received, the incoming limit order would execute ahead of the market order. *See id.*; CBOE rule 43.1(g).

[107] *See* CBOE rule 43.7(a)(3)(C).

[108] *See* CBOE rule 43.7(a)(4).

[109] Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Michael Gaw, Division of Market Regulation, Commission, on September 25, 2002.

[110] *See* CBOE rule 43.7(b).

[111] *See* CBOE rule 43.7(a)(4).

If one or more incoming RFQ responses could execute against a market order as well as any limit orders that were already on the SBT book at a particular price and the incoming responses are of large enough quantity to fill all of the older limit orders, all of those orders would be filled at the price of the older limit orders.[112] If the responses could execute against a market order and one or more older limit orders, but the responses are not of large enough quantity to fill all of the older limit orders, the market order would be filled at the minimum price interval ahead of the older limit orders.[113]

c. Market Orders During Trading Halts

If trading were halted in a series while a market order for an option in that series were on hold waiting for RFQ responses, CBOE*direct* would operate as follows:

- If the market order were a good-'til-canceled order, the System would hold and execute it at the next opening (whether on the same day or the next day).
- If the market order were a day order, the System would execute it at re-opening if trading resumed on the same day.
- If trading did not resume on the same day, the System would purge the market order as part of the end-of-day procedures.[114]

2. Limit Order Processing

Non-broker-dealer marketable limit orders to buy or sell options on CBOE*direct* will not be automatically executed by the System at prices inferior to the best bid or offer on another national securities exchange, as those best prices are identified in the System.[115] Broker-dealer limit orders, non-broker-dealer limit orders that are not marketable, and limit orders in options that are not traded on another national securities exchange will be processed as follows.

As presently configured, CBOE*direct* will process limit orders by matching them against the best prices available in the SBT book under the priority rules set forth in CBOE rule 43.1. If no booked order matched the incoming limit order, the limit order would be held in the SBT book and could trade against later-submitted orders.[116]

In the future, CBOE*direct* will be enabled to provide additional protection for limit orders by allowing a limit order to be executed only if there is a legal width market in that series.[117] If a legal width market did not exist but the limit order could otherwise execute against the best bid or offer, the System would put the order in queue and send an RFQ.[118] The RFQ would include the order quantity but not whether the order was a buy or sell. Quote responses would be exposed in the SBT book as they were received. The System would execute the limit order if:

- During the RFQ response time, the best quote becomes a certain prescribed percentage (*e.g.*, 75%, as set by the appropriate SBT Trading Committee[119] of a legal width market;[120]
- The System receives a market or limit order (independent of the RFQ responses) on the opposite side that would match the original limit order, and a legal width market exists;[121]
- A certain prescribed percentage of the SBT market makers that currently are receiving RFQs (the percentage to be set by the appropriate SBT Trading Committee[122]) respond to the RFQ, or when the RFQ period expires and there is at least one quote response.[123]

If a limit order for a certain series were queued, subsequent limit orders for the same series and side would be queued behind the first order to ensure that they were processed in time sequence.[124] Subsequent market orders for the same series and side also would be queued.[125] If a legal width market remained upon completion of the limit order processing, the market order would be executed against orders resting in the SBT book.[126] If a legal width market did not exist, market order processing would begin in accordance with market order processing rules, discussed above.[127]

3. Contingency Orders

CBOE*direct* currently can handle all-or-none, fill-or-kill, immediate-or-cancel, stop, and stop limit orders. The System is not yet ready to process opening-only, minimum volume, and market-on-close orders,[128] although such orders are contemplated by the proposed CBOE*direct* rules, once the System is enabled to handle them.[129] Contingency orders (except for opening-only orders) would not participate in the opening trade or in the determination of the opening price.[130]

A contingency order (except for an immediate-or-cancel order or a stop limit order the stop price of which has been hit) would be placed last in priority order, regardless of when it was entered into the SBT System.[131] If customer priority were afforded to a particular option class, a public customer contingency order would have priority over a non-public-customer contingency order but would be behind all other orders.[132]

4. Spread Orders

Once the SBT System has been so enabled and the Commission has approved the necessary rules, SBT traders would have the ability to enter spread orders, the legs of which are options of the same underlying security.[133] However, spread orders may not be entered on the System at this time.

H. Facilitation and Solicitation of Orders by SBT Brokers

On the SBT System, an SBT broker would not be permitted to execute as principal an order that it represents as agent unless the agency order were first exposed on the System for at least 30 seconds, or the broker utilizes the applicable crossing procedure described below.[134] In addition, an SBT broker would be required to expose on the System an order that it represented as agent for at least 30 seconds before such order could be executed in whole or in part by orders solicited from members or non-member broker-dealers to transact with such order.[135] Described below are an interim crossing procedure and a permanent crossing procedure, which would replace the interim procedure at some time in the future.[136]

[112] *See* CBOE rule 43.7(a)(3)(B)(ii)(aa).
[113] *See* CBOE rule 43.7(a)(3)(B)(ii)(bb).
[114] *See* CBOE rule 43.7(d).
[115] *See* CBOE rule 43.8.
[116] *See id.*
[117] *See* CBOE rule 43.8A(a).
[118] *See* CBOE rule 43.8A(b). The SBT trader that submitted the limit order could override the RFQ and enter the limit order into the SBT book. *See id.*
[119] CBOE has represented that it would announce the percentage set by the committee in an information circular. December 5 conversation.
[120] *See* CBOE rule 43.8A(d)(1). The original limit order then would trade with the best priced quote or order on the SBT book. *See id.*
[121] *See* CBOE rule 43.8A(d)(2). The original limit order then would trade with the incoming market or limit order. *See id.*
[122] CBOE has represented that it would announce the prescribed percentage that would trigger this provision in an information circular. December 5 conversation.
[123] *See* CBOE rule 43.8A(d)(3). The original order then would trade with the best priced quote or order on the SBT book. *See id.*
[124] *See* CBOE rule 43.8A(e).
[125] *See id.*
[126] *See id.*
[127] *See id.*
[128] *See* Amendment No. 4.
[129] *See* CBOE rule 43.9.
[130] *See* CBOE rule 42.3(a).
[131] *See* CBOE rules 43.1(c) and 43.9.
[132] *See* CBOE rule 43.1(c).
[133] *See* CBOE rule 43.6(a).
[134] *See* CBOE rule 43.12(a).
[135] *See* CBOE rule 43.12(b).
[136] *See* CBOE rules 43.12A and 43.12B. CBOE rule 43.12C(a) provides that it would be a violation of CBOE rules 43.12, 43.12A, and 43.12B for an SBT broker to be a party to any arrangement designed to circumvent CBOE rule 43.12A or rule 43.12B by providing an opportunity for a customer, member, or non-member broker-dealer to execute against agency orders handled by the SBT broker immediately upon their entry into the System.
[137] *See* CBOE rule 43.12B(a).
[138] *See id.* CBOE has represented that it would announce the length of the response period set by the committee in an information circular. December 5 conversation.
[139] CBOE has represented that it would announce the length of the exposure period set by the committee in an information circular. December 5 conversation.
[140] *See* proposed CBOE rule 43.12B(b).
[141] *See* CBOE rule 43.12B(c).
[142] *See* CBOE rule 43.12A(a)(1).
[143] CBOE has represented that it would issue an information circular to publicize the time period established by the appropriate SBT Trading Committee. June 21 conversation.
[144] *See* CBOE rule 43.12A(a)(2).
[145] CBOE has represented that it would issue an information circular to publicize the time period established by the appropriate SBT Trading Committee. June 21 conversation.
[146] *See* CBOE rule 43.12A(a)(3).
[147] *See id.*
[148] *See id.*
[149] *See* CBOE rule 43.12A(a)(4). An SBT DPM or LMM would not be entitled to receive its participation right because a crossing transaction would occur at a price between the best bid and offer previously established. *See* CBOE rule 44.15(b).
[150] *See* CBOE rule 43.12A(a)(5).
[151] *See* CBOE rule 43.12A(a)(6).
[152] *See* CBOE rule 43.12A(a)(7).
[153] *See* CBOE rule 43.12A, Interpretation .01.
[154] *See id.*
[155] However, an SBT market maker would receive credit for an RFQ response only by submitting a quote and not two unrelated orders. Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Nancy Sanow and Michael Gaw, Division of Market Regulation, Commission, on September 30, 2002.
[156] *See* notice, *supra* note 4, 67 FR at 31039.

1. Interim Crossing Procedure

Under CBOE*direct*'s interim crossing procedure, an SBT broker that wishes to cross two original orders of at least 50 contracts or to facilitate an original order of at least 50 contracts must first send an RFQ with the size of the orders to be crossed.[137] The RFQ response period will be established by the SBT Trading Committee and will not be less than ten seconds.[138]

Within a time period after the RFQ response period has expired (such time period to be established by the SBT Trading Committee and not to exceed ten seconds[139], the SBT broker must expose one of the orders to the SBT book.[140] If the exposed order is not completely taken out by other SBT traders by the end of the exposure period, the SBT broker could enter the opposite order to cross the balance of the exposed order.[141]

2. Permanent Crossing Mechanism

In the future, CBOE*direct* will provide for a participation right for SBT brokers who wish to cross orders. As with the interim procedure, an SBT broker first would have to submit an RFQ for a size equal to the quantity to be crossed.[142] The SBT market makers receiving the RFQ would have a response period for a length of time (such time period to be established by the SBT Trading Committee, but no less than ten seconds[143] to enter orders or quotes that matched or improved upon the existing quotations on the System.[144] Within a time period after the RFQ response period expires (such time period to be established by the SBT Trading Committee and which may be no longer than 20 seconds[145]), the SBT broker would enter the terms of the proposed cross transaction.[146] The required terms would include the terms of the original order and the proposed facilitation order (or two original orders), a proposed crossing price, the quantity of the original order that the SBT broker would be willing to facilitate (in the case of a facilitation cross), and a designation of which order (in the case of a cross of two customer orders) is to be exposed to the market after the SBT broker received the guaranteed crossing percentage.[147] The customer order would be the exposed order in a facilitation cross.[148]

At the time the cross transaction is entered or the System:

- A legal width market would have to exist for the particular series to be crossed; and
- The proposed cross price would have to be between the best bid and offer displayed by the System.[149]

After accepting the cross transaction, the System would immediately cross 40% of the two orders. The System would expose in the SBT book the contracts remaining in the designated order for a period of ten seconds. The order's price and the remaining quantity would be disclosed but there would be no indication that the order was part of an impending cross. The System would place the opposite order on hold as a shadow order that would not be visible except to the submitter.[150] As long as the exposed order is the highest priority order at the best price, other SBT traders could trade against it during the ten-second exposure period.[151]

If, at the end of the ten-second exposure period the order has not yet been fully traded, and the exposed order is at the best price and has the highest priority, the System would execute the remainder of the order against the shadow order.[152] If, however, the exposed order is not the highest priority order at the market, the System automatically would cancel the remainder of the exposed order and the shadow order and send the SBT broker a message that the crossing transaction is completed. If the exposed order has a quantity remaining after the crossing transaction is completed and is the highest priority order at the market, it would remain in the SBT book.

3. Interpretation Relating to Crossing Procedure

The availability of the crossing mechanism would not alter a member's best execution duty to obtain the best price for its customer. Moreover, CBOE proposes to make it explicit in its rules that it would be a violation of an Exchange member's duty of best execution to its customer if it were to cancel or withhold a customer order to avoid execution of the order a better price.[153] Accordingly, if a member were to cancel or withhold a customer order when there was a superior price available on the System, and subsequently enter the order at an inferior price after the better price were no longer available without attempting to obtain that better price for its customer, there would be a presumption that the member did so to avoid execution of the customer order in whole or in part at the better price.[154]

I. Additional System Functionality

1. Entry and Maintenance of Orders and Quotes

All SBT traders, including SBT market makers, may enter orders into the System for any option class. However, only SBT market makers may enter quotes. An SBT market maker may have only a single quote for any particular option series but may enter multiple orders in the same series, regardless of whether it has a quote in that series displayed on the System. However, the SBT System would distinguish between an SBT market maker's quotes and orders and credit only the quotes towards the market maker's quoting obligations.[155]

An SBT market maker may enter a quote in one of two ways: manually or through an autoquote facility.[156] Unlike in the open-outcry system, the Exchange will not provide an autoquote facility to SBT market makers. However, SBT market makers may use their proprietary autoquote systems to submit quotes through the API.

Depending on how a quote or order is modified, the quote or order could change priority position as follows: [157]

- If the price is changed, the changed side would lose priority position and would be placed behind all orders of the same type at the same price.
- If quantity of one side is changed, the unchanged side would retain its priority position.
- If the quantity of one side is decreased, that side would retain its priority position.
- If the quantity of one side is increased, that side would lose its priority position and would be placed behind all orders of the same type at the same price.

2. Time in Force of Orders/Quotes

The appropriate SBT Trading Committee would have the authority to determine which order types may be accepted at the various product states and session states.[158] Once the System is so enabled, customers would be able to specify that their day orders or good-'til-canceled orders are to be transferred between one CBOE trading session and the next, and they could determine to have their orders represented only during ETH sessions, only during RTH sessions, or carry over from one session to the next.[159]

3. Automatic Quote Regeneration

CBOE*direct* eventually will allow an SBT market maker to regenerate its quote where the bid or offer to be regenerated is a defined number of ticks worse than the bid or offer that had been hit.[160] The market maker would pre-set the System with the number of ticks worse by which its quote would regenerate.[161]

If an SBT market maker has the System regenerate its quote and the regenerated quote could immediately execute against the same incoming order that traded against the original quote, that portion of the regenerated quote equal to the original size executed against the market maker's original bid or offer would take priority over all other interest at the regenerated price, with respect to the balance of the incoming order, except in one circumstance. That circumstance would be if public customer priority was applicable to that option class and there were a public customer order at the same price as the regenerated bid or offer. The portion of a regenerated quote that is not executed would be placed in a priority position consistent with the time that the quote was regenerated.[162]

In Amendment No. 4, CBOE provided the following example to demonstrate the operation of the quote regeneration function:

Assume that price-time priority is in effect, with the public customer priority overlaid. The System receives a market order to sell 50 contracts ("Incoming Order"). The best bid is MM A's $3 bid for 20 contracts. The Incoming Order exhausts the $3 bid. The next best bid is $2.90 for 100 contracts consisting of MM B for 70 contracts, Customer A for 5 contracts, and MM A's regenerated quote for 25 contracts (its pre-determined regeneration size). The remaining 30 contracts of the Incoming Order would be filled as follows: 5 to the Customer, 20 to MM A, and 5 to MM B. After the Incoming Order is filled, the best bid would be 2.90 for 70 contracts with the following priority: MM B for 65 contracts and MM A for 5 contracts.

4. Quote Risk Monitor Function

CBOE indicated that SBT market makers are exposed to certain risks not present in an open-outcry trading environment: an SBT market maker could have a large number of its quotes hit by a set of incoming orders within a few seconds. Thus, the SBT market maker could find itself taking on a large position before it had an opportunity to assess this position and possibly change its quotes.[163] CBOE*direct*'s quote risk monitor feature is intended to permit an SBT market maker to manage its risk by automatically deleting the market maker's quotes in a class when the System determines that trades against the market maker's quotes have reached a defined number of contracts within a defined period of time. An SBT market maker may configure the System to set these limits with respect to its own quotes. In determining whether to delete quotes pursuant to this feature, the System would consider only trades against the SBT market maker's resting quotes, not trades that the SBT market maker itself initiates by hitting a bid or taking an offer.[164]

5. Managing Message Traffic

The Exchange may set limits on the quote traffic that is sent to the SBT System to prevent the System from becoming overloaded. However, CBOE has noted that, to the extent that the Exchange allows for varying quote traffic limits by SBT traders, such limits shall be objectively determined and submitted to the Commission for approval pursuant to section 19(b) of the Exchange Act.[165]

In addition, the Exchange may limit the number of SBT market makers that may access the SBT System through an API (or the number of messages sent by market makers accessing the System through an API) to protect the integrity of the System.[166] Furthermore, the Exchange may impose restrictions on the use of a computer connected through an API if it believed that such restrictions were necessary to ensure the proper performance of the System.[167] CBOE has represented that these limitations would be solely for the purpose of protecting the integrity of the System and would not be used in a discriminatory or arbitrary fashion.[168]

CBOE has represented that it does not intend to allocate bandwidth to each SBT trader, and that the System would not programmatically limit the number of messages that an SBT trader may send.[169] To minimize the potential of a particular SBT trader to burden the System unnecessarily, CBOE has stated that it wishes to be able to: (1) specify the number of quotes over a certain time period that may be sent free by an SBT trader, or (2) impose a fee per message for sending a number that is clearly above the free number and for producing a ratio of quotes to trades over a certain time period that is higher than what would be considered a reasonable ratio.[170]

J. Intermarket Price Protection

Non-broker-dealer market and marketable limit orders would not be automatically executed on CBOE*direct* at prices inferior to the best bid or offer on another national securities exchange, as those best prices are identified in the System.[171] If there is a better quote on another exchange, the SBT DPM or LMM would be required to handle the order manually.[172] CBOE represented its view that the SBT DPM or SBT LMM handling public customer orders under these circumstances would be acting as agent for such orders.[173] Accordingly, the SBT DPM or LMM would be required to accord priority to such public customer order over its own orders as principal, unless the customer who placed the order has consented to not being accorded such priority.[174] Finally, to comply with its obligations under the Options Linkage Plan, CBOE rules 6.80 through 6.85 [175] would apply to trading on the SBT System.

K. Trade Reporting and Data Dissemination

1. Executed Orders

The System would send executed orders to the Exchange's Trade Match System as matched trades. The System would send fill reports for executed orders to the SBT workstations for display to SBT traders.[176]

2. Internal Dissemination of Quote and Best Bid/Offer

Any subscriber to CBOE*direct* would be able to view the System's best bid and offer for any options series traded on the System.[177] The System would send quote/order information—*i.e.*, series, price, and size—to the SBT workstations that are trading a given class.

3. Dissemination of Quotes to OPRA

The series and price of an option would be disseminated for each quote; the size of the quote also would be disseminated. Every change to CBOE*direct*'s best bid or ask would generate a quote report to OPRA and/or some other network that has been approved by the Commission.[178] Changes in best quote and size due to all-or-none or fill-or-kill contingency orders would not result in a message to OPRA to update the CBOE*direct* quote.[179]

4. Last Sale Information

CBOE*direct* would internally disseminate last sale information—including series, price, and size—to subscribers that have indicated interest in a given class.[180] All SBT market makers assigned to a given class would be provided this information, but other individuals and firms could subscribe to this information as well.[181] CBOE*direct* also would disseminate last sale information externally to OPRA and/or another distribution network to the extent permitted by agreement or by rule.

5. Booked Order Dissemination

When an SBT trader requests information for an option class, the System would provide the information that presents the SBT book's best bids and asks and the aggregate size for each series of the class requested.[182] CBOE could add or delete categories of disseminated information as it deemed appropriate.[183] Although CBOE believes that such information generally would be available, it may determine not to provide such information if the System were nearing its message capacity and degradation of the System could result. CBOE may charge fees for such information; different fees may be charged to different categories of SBT traders.[184]

II. Amendment No. 4

The foregoing discussion incorporated revisions proposed in Amendment No. 4 to the proposed rule change. Specifically, in Amendment No. 4, CBOE:

- Revised the definitions of "fill-or-kill" and "immediate-or-cancel" orders to clarify that such orders must be filled immediately upon receipt or canceled;
- Clarified the definitions of "RFQ" and "Special RFQ" and explained why RFQs would be sent only to SBT market makers;
- Added a provision that SBT DPMs and LMMs will not receive any trade participation right until public customers' orders at the best price have been executed, and clarified that an SBT DPM's or LMM's trade participation right will apply only to the portion of an order remaining after all higher priorities are satisfied;
- Substantially revised the trade nullification procedures to include specific objective criteria as to when a trade may be broken;
- Specified that non-broker dealer market orders and marketable limit orders will not be automatically executed at prices inferior to the best bid or offer on another exchange, as those best prices are identified in the System;
- Added provisions requiring SBT brokers to expose orders that they represent as agent for at least 30 seconds or, if appropriate, to use the crossing mechanism;
- Revised the crossing procedures to require orders to be for at least 50 contracts to be eligible for the crossing mechanism, to establish minimum time periods for which such proposed crosses must be exposed, and to specify that cross transactions may be effected only in increments equal to or greater than the Exchange's minimum quoting increments;
- Added an interpretation regarding a member's duty of best execution, prohibited circumvention of the rules on crossing orders, and represented that CBOE will surveil for violations of the crossing rules;
- Added a rule relating to responsible brokers' and dealers' firm quotation obligations in CBOE*direct* and eliminated the application of CBOE rule 8.51, the firm quote requirements of trading crowds on the floor, to SBT market makers;
- Revised the obligations of SBT standard market makers and SBT DPMs and LMMs, including adding requirements relating to RFQ response rates;
- Eliminated the special rules relating to the processing of spread orders;
- Deleted a rule relating to the Exchange's position that information sent over the SBT System is the Exchange's proprietary information;
- Represented that CBOE rule 4.18 requires SBT market makers to maintain information barriers with any affiliates that may act as a specialist or market

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[157] *See* CBOE rule 43.1(f).

[158] *See* CBOE rule 43.3(a). At the discretion of the appropriate SBT Trading Committee, and once the System is so enabled, any of the following order types may be accommodated on CBOE*direct*: market orders, limit orders, cancel orders, cancel replace orders, day orders, good-for-session orders, good-'til-canceled orders, and contingency orders. *See* CBOE rule 43.2(a). *See also supra* notes 128 to 129 and accompanying text. CBOE has represented that it would issue an information circular regarding the types of orders that will be accommodated on CBOE*direct*. February 20 conversation.

[159] *See* CBOE rule 43.3(b).

[160] *See* CBOE rule 44.5(b). The Exchange would determine the number of ticks below the original price at which the quote may be regenerated and publicize this determination in an information circular. December 5 conversation.

[161] *See id.*

[162] *See* CBOE rule 43.1(e).

[163] *See* Notice, *supra* note 4, 67 FR at 31040.

[164] *See* CBOE rule 44.5(c).

[165] *See* CBOE rule 44.5(d).

[166] *See* CBOE rule 44.6.

[167] *See* id.

[168] *See* notice, *supra* note 4, 67 FR at 31040–41.

[169] *See* notice, *supra* note 4, 67 FR at 31040.

[170] *See id.* Any proposal to charge such a fee would have filed with the Commission pursuant to section 19(b) of the Act, 15 U.S.C. 78s(b). *See infra* note to and accompanying text.

[171] *See* CBOE rules 43.7 and 43.8. The System would have access to the OPRA quote stream and be programmed not to automatically execute a trade in an options series if the System identifies a better price for that series in another market that participates in the OPRA plan. Telephone conversation between Angelo Evangelou, CBOE, and Michael Gaw, Division of Market Regulation, Commission, on August 16, 2002. Current CBOE rules would not permit another exchange's quotes to be excluded from the best prices identified by the System. Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Elizabeth King, Division of Market Regulation, Commission, on February 21, 2003.

[172] *See* CBOE rules 44.4, Interpretation .01(a)(6) and 44.14(b)(6).

[173] *See* Amendment No. 4. The Commission notes that the Exchange committed to file in the near future a proposed rule change under section 19(b) of the Act to expressly state that the SBT DPM and LMM act as agent when handling customer orders manually.

[174] *See id.*

[175] *See* Securities Exchange Act Release No. 47294 (January 31, 2003), 68 FR 6527 (February 7, 2003) (approving SR-CBOE–2002–61).

[176] *See* notice, *supra* note 4, 67 FR at 31026.

[177] *See* CBOE rule 46.1(a).

[178] The Commission notes that the OPRA plan does not presently permit an options exchange to disseminate quotes to another network without also disseminating such quotes to OPRA.

[179] *See* notice, *supra* note 4, 67 FR at 31041.

[180] *See* CBOE rule 46.1(b).

[181] *See id.*

[182] *See* CBOE rule 46.1(c).

[183] *See id.* For example, CBOE could determine to provide book depth to a certain number of levels, but later determine to reduce the number of levels provided as circumstances warranted. Telephone conversation between Angelo Evangelou and Andy Lowenthal, CBOE, and Nancy Sanow and Michael Gaw, Division of Market Regulation, Commission, on November 7, 2002.

[184] Any proposal to charge such a fee would have to filed with the Commission pursuant to section 19(b) of the Act, 15 U.S.C. 78s(b).

maker in any security underlying the options for this the CBOE member acts as an SBT market maker;

• Represented that CBOE believes that, when an SBT DPM or LMM is required to handle customer orders under rules 44.14(b)(6) or 44.4.01(a)(6), the DPM or LMM is acting as an agent with respect to those public customer orders;

• Explained the priority accorded to regenerated quotes;

• Clarified that trading officials will use the same criteria to halt trading on the SBT System as is used for CBOE's trading floor;

• Revised Appendix A, which sets forth the existing CBOE rules that also will apply to CBOE*direct*, by including, among others, CBOE rule 3.22, Temporary Access; CBOE rule 4.19, Prohibition Against Harassment, and the rules in section E to chapter VI, Intermarket Linkage; and

• Made other minor, technical changes to the proposed CBOE*direct* rules and to certain existing CBOE rules to accommodate the establishment of the SBT System.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[185] In particular, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[186] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade; to facilitate transactions in securities; to remove impediments to and perfect the mechanisms of a free and open market and a national market system; and, in general, to protect investors and the public interest. Although the Commission did not receive any comments on the proposed rule change, it believes that several aspects of the proposed rules governing CBOE*direct* merit greater discussion.

A. RFQs and Market Maker Quoting Obligations

For each options series traded on CBOE's floor today, a single quotation is disseminated that reflects the aggregate trading interest of one or more customers and/or crowd participants, including the DPM and market makers. DPMs generally are required to make continuous markets in the option classes for which they serve as DPM. By contrast, the CBOE*direct* rules do not require SBT DPMs and LMMs to make continuous markets.[187] Therefore, it is possible that, at a particular point in time, CBOE will not have a disseminated market for a particular option. Instead, the current market for a particular product may be available only through the RFQ process. The Commission believes that CBOE*direct*'s reliance on RFQs as a means of price discovery when the orders and quotes on the SBT book are not sufficient to satisfy trading demand is consistent with the Act.

CBOE's rules require SBT market makers to fulfill certain requirements as market makers. Specifically, SBT market makers, among other things, are required to have at least 75% of their total contract volume on the SBT System in options classes to which they are appointed. In addition, SBT standard market makers are required to respond to at least 75% of the RFQs that they receive, and SBT DPMs and LMMs are required to respond to at least 98% of the RFQs that they receive. Moreover, RFQ responses must meet certain parameters for them to count toward the SBT market maker's quote response obligations.[188]

Market makers receive certain benefits for carrying out their duties. For example, a lender may extend credit to a broker-dealer without regard to the restrictions in Regulation T if the credit is to be used to finance the broker-dealer's activities as a specialist or market maker on a national securities exchange.[189] The Commission believes that an SBT market maker must have an affirmative obligation to hold itself out as willing to buy and sell options for its own account on a regular or continuous basis to justify this favorable treatment. In this regard, the Commission believes that CBOE's rules impose such affirmative obligations on SBT market makers.

B. Trade Participation Right for SBT DPMs and LMMs

The CBOE*direct* rules allow the Exchange to award SBT DPMs and LMMs a participation right of up to 40% of the portion of an order remaining after orders and quotes of other market participants with higher priority have been satisfied, provided that the DPM or LMM has a quote or order at the best price. The Commission continues to believe that it is consistent with the Act to guarantee a DPM or LMM the right to trade ahead of other market makers, even when the DPM or LMM has not otherwise established priority. These guarantees are intended to provide an incentive for market makers to assume the extra responsibilities assigned to DPMs and LMMs, such as the obligation to provide opening quotes in assigned classes, to respond to a greater percentage of RFQs than SBT standard market makers, and to handle public customer orders when there is a better price on another market.

The Commission recognizes that a large guaranteed participation right will erode the incentive of other market makers to make competitive markets. Thus, the Commission must weigh whether a proposed participation right adequately balances the aim of rewarding the specialist or primary market maker with the aim of leaving a sizeable enough portion of the incoming order for the other market makers quoting at the same price.[190] The Commission has previously taken the position that a trade participation right that does not exceed 40%, including any guaranteed percentage of the trade to be accorded to any other trade participant, is not inconsistent with the Act.[191]

Finally, CBOE proposed that public customer orders at the best price be filled before an SBT DPM or LMM receives its trade participation right.[192] Although, as discussed below, the Commission does not believe that customers who may electronically generate orders must be accorded priority over market makers who are not acting as agent with respect to these customers, the Commission does believe it is appropriate for customer orders to have priority over a specialist's trade participation right.

C. Priority and Trade Allocation Methodology

The Commission considers each of the priority and trade allocation rules (*i.e.*, price-time priority or pro rata priority) proposed for CBOE*direct* to be consistent with the Act. In addition, the Commission believes that each of the priority overlays (*i.e.*, public customer, marker turner, and SBT DPM and LMM trade participation right) is consistent with the Act. In making its determination that these priority rules are consistent with the Act, the Commission considered it critical that an SBT DPM or LMM cannot receive its trade participation right before any public customer orders at the same price are executed in full.

The SBT Trading Committee has the ability, but is not required, to grant customers the highest priority at a particular price level. Currently, in the rules governing trades on CBOE's floor, customer orders displayed on the limit order book are given priority over broker-dealer orders and market maker quotes.[193] This is essential under CBOE's rules because the DPM is the agent for orders resting in the limit order book and, therefore, consistent with general agency law principles, CBOE's rules accord priority to those resting limit orders. In contrast, an SBT market maker is not required to act as agent with respect to a limit order entered into CBOE *direct*.[194] Moreover, the CBOE's rules do not prohibit customers from electronically generating orders for entry into the CBOE*direct* book as they do for orders eligible for the Exchange's Retail Automatic Execution System.[195] The Commission, therefore, believes that it is consistent with the Act for the CBOE*direct* rules not to provide in all approaches that public customer orders have priority over market maker quotes and orders.

D. Obligations Under the Linkage Plan

SBT DPMs and LMMs will be required to handle public customer orders when there is a better quote on another exchange. In addition, to comply with its obligations under the Options Linkage Plan,[196] CBOE rules 6.80 through 6.85 will apply to the SBT System.[197] It appears that these provisions satisfy CBOE's obligations under the Options Linkage Plan.

E. Internalization and Crossing Transactions

As the Commission has noted,[198] with multiple trading of options, individual options markets are under significant pressure to attract or retain business. One approach to increasing business on an exchange is to allow members a preference in trading with customer orders that they bring to the exchange. These preferences can have the effect of reducing intramarket price competition when a right to receive a portion of the trade is guaranteed to a member based on its status as an order provider rather than to reward market makers for providing the best quotes. If exchange rules do not provide a fair opportunity for market participants to compete for orders based on price, there is a disincentive to provide competitive quotes on the exchange and thus price competition may suffer. Eventually, if execution guarantees to particular exchange members become too great, the number of competitive market makers could diminish, thereby impeding intramarket price competition. As a result, the prices available on a market could deteriorate—ultimately harming investors.

The CBOE*direct* rules include an interim crossing procedure, which does not provide for any guarantee to the SBT broker facilitating the order, and a regular crossing procedure, which will provide for a guarantee to the SBT broker facilitating the order. The eligible order size for using either crossing procedure is 50 contracts. The crossing procedures require the SBT broker to initiate the process by submitting an RFQ with size to SBT market makers who are registered in that class. Both the interim and regular crossing procedures set forth minimum time periods that these SBT market makers are given to respond to the RFQ. The RFQ will be anonymous; no SBT trader will be able to learn the identity of the SBT broker who is crossing the order. The Commission believes that this anonymity is an important difference between CBOE*direct* and floor-based auction markets. The automated, non-personal nature of the SBT System provides no opportunity for agreements between the facilitating firm and the trading crowd whereby, for example, the trading crowd agrees not to break up a firm's proposed facilitations in exchange for the firm's agreement to bring order flow to the exchange.

In the regular crossing procedure, an SBT broker seeking to facilitate an order is guaranteed a participation right if, at the end of the RFQ response period, the broker improves the price that the customer would receive by entering a proposed cross at a price between the best bid and offer. The participation right of the SBT broker seeking to internalize the order when using the regular crossing procedure would be set at 40%.[199] The remaining 60% of the order would be entered on the SBT book as a limit order at the proposed crossing price. All participants in the SBT System would be able to trade with this limit order at the proposed price or at an improved price. The Commission believes that the time periods required by the regular CBOE*direct* crossing procedure would afford SBT market makers an adequate amount of time in which to respond to the RFQ during the initial response period and for all participants in CBOE*direct* to compete for 60% of the order during the exposure period that followed. In the interim crossing procedure, the exposure period would give CBOE*direct* participants an opportunity to compete for 100% of the order before the SBT broker could participate.

In addition, with respect to orders that do not qualify for, or for which the SBT broker has chosen not to use, the interim or regular crossing procedures, an SBT broker would have to expose such orders on the System for at least 30 seconds before executing any part of the order as principal. Similarly, orders

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[185] In approving the proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[186] 15 U.S.C. 78f(b)(5).

[187] *See* CBOE rules 44.4, Interpretation .01(a)(4) and 44.14(a)(4). The appropriate Market Performance Committee may, but is not required to, require an SBT DPM or LMM to provide continuous quotes in some or all of its appointed option series. *See id.*

[188] *See supra* notes 27 to 29 and accompanying text.

[189] *See* 12 CFR 221.5(c)(6).

[190] *See* Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778, 48787–90 (August 9, 2000) ("Phlx 80/20 Proposal") (Commission requested comment on whether the proposal by the Philadelphia Stock Exchange to establish an 80% specialist guarantee would be consistent with the Act).

[191] *See, e.g.*, Securities Exchange Act Release No. 45936 (May 15, 2002), 67 FR 36279, 36280 (May 23, 2002); Securities Exchange Act Release No. 42835 (May 26, 2000), 65 FR 35683, 35685–66 (June 5, 2000); Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388, 11398 (March 2, 2000); Phlx 80/20 Proposal, 67 FR at 48787–88.

[192] *See* CBOE rule 43.1(b)(3)(E).

[193] *See* CBOE rule 6.45(a)(i) and (b). *See also* CBOE rule 6.74(d)(ii) (giving public customer orders represented in the trading crowd priority over other participants in the context of crossing transactions).

[194] The SBT DPM or LMM, however, would act as agent when handling an order when there is a better price on another market.

[195] *See* CBOE rule 6.8A(a). CBOE has confirmed in its cover letter to Amendment No. 4 that CBOE rule 6.8A does not apply to CBOE*direct*.

[196] Because of concerns about the increasing likelihood of intermarket trade-throughs of customer orders in the options markets following the widespread expansion of multiple trading, the Commission in October 1999 ordered the options exchanges to work together to file a national market system plan for linking the options markets ("Options Linkage Plan"). *See* Securities Exchange Act Release No. 42029 (October 19, 1999), 64 FR 57674 (October 26, 1999). The Commission approved an initial Options Linkage Plan in July 2000. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 46023 (August 4, 2000). The Commission subsequently approved amendments to that plan in May 2002 that set forth phase one of the plan's implementation, providing for automatic execution of orders routed to from one options exchange to another, and phase two, to implement all other linkage functionality. *See* Securities Exchange Act Release No. 46001 (May 30, 2002), 67 FR 38687 (June 5, 2002). Implementation of phase one began on January 31, 2003, and implementation of phase two must occur no later than April 30, 2003. *See id.*, 67 FR at 38688.

[197] *See* Securities Exchange Act Release No. 47294 (January 31, 2003), 68 FR 6527 (February 7, 2003) (adopting rules for CBOE relating to the Options Linkage Plan).

[198] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388, 11395 (March 2, 2000) (Order approving registration of International Securities Exchange LLC as a national securities exchange) ("ISE Order").

[199] *See* CBOE Rule 43.12(a)(5). The Commission notes that in this context the SBT DPM or LMM would not be entitled to a trade participation right because the crossing transaction must occur at an improved price, which by its terms must be a better price than the previously established bid or offer of the SBT DPM or LMM.

must be exposed on the System for at least 30 seconds before they may be executed by orders solicited from members and non-member broker-dealers. These rules ensure that the crossing procedures and the limitations on facilitation described above are not circumvented.

The CBOE*direct* rules also would prevent an SBT broker from being party to any arrangement designed to circumvent the proposed crossing rules by providing an opportunity for another party to execute against an agency order immediately after the broker had entered the order in the SBT System.[200] The Commission believes that the prohibition on such arrangements is important, because an SBT broker and a third party could otherwise use CBOE*direct* to execute their orders with each other, without exposing these orders to other trading interest. The Commission believes that this prohibition should prove helpful in curbing a firm's ability to internalize order flow.[201]

Finally, the proposed rules also include an interpretation stating that a violation of a member's duty of best execution would be presumed if the member were to cancel or withhold a facilitation order to avoid execution of the order at a better price.[202] Use of the crossing mechanism would not modify a member's best execution duty to its customer. The Commission believes that this interpretation is important to ensure that SBT brokers who propose to facilitate orders as principal fulfill their duty of best execution. In the Commission's view, withholding or withdrawing an order to be facilitated—that could benefit from price improvement available from other market participants—simply to avoid executing the order at the superior price would be a violation of the broker's best execution duty.[203]

As a national securities exchange, CBOE is required to enforce its members' compliance with their best execution obligations. The Commission notes that when a SBT broker enters a facilitation transaction into the crossing mechanism and then cancels the remainder of the customer order after the 40% of the order is executed, this could indicate—depending on the circumstances—that the broker originally overstated the size of the customer order and, with the 40% execution, effectively internalized 100% of the customer order. This situation would not be consistent with the SBT system's crossing rules. CBOE has committed to surveil for instances when a SBT broker immediately cancels the crossing transaction once 40% of the order is executed. The Commission notes that if, after receiving the responses to an RFQ, the SBT broker elects not to enter the transaction into the crossing mechanism because he or she is unwilling to facilitate the customer order at the requisite price between the best bid and offer displayed by the System, depending on the circumstances, the SBT broker may have a best execution obligation to enter the customer order into the System to execute against the appropriate best response to the RFQ.

The Commission finds that the rules proposed by CBOE relating to crossing and internalization of orders on the SBT System are consistent with the Act. The Commission believes that these rules will promote intramarket price competition by providing SBT traders with a reasonable opportunity to compete for a significant percentage of the incoming order and, therefore, will protect investors and the public interest.

F. Simultaneous Trading of the Same Security on CBOEdirect and the Exchange Floor

CBOE has not proposed any rules that would govern order handling and order priority if the same option were traded simultaneously on CBOE*direct* and on CBOE's floor-based market. Accordingly, the Commission is not approving the use of CBOE*direct* to trade any security during a trading session in which such security is trading on CBOE's floor-based market.[204] The Commission believes that trading the same option classes on the floor and on the SBT System at the same time raises several issues under the Act that CBOE must address—by filing one or more proposed rule changes pursuant to section 19(b) of the Exchange Act[205]—before the Commission could approve concurrent trading of the same option classes.

G. Trade Nullification Procedures and the Firm Quote Rule

The rules governing CBOE*direct* provide for the ability of one or both parties to a transaction to nullify the trade. Both parties to the trade can agree to have a trade nullified and, in that case, the CBOE*direct* rules prescribe that certain procedures be followed for negotiated trade nullification.

The rules also provide for a procedure whereby an SBT trader may request two trading officials to nullify a trade. Specifically, a trade may be nullified by one party to the transaction if a documented request is made within five minutes or, in the case of a public customer order, within 15 minutes of execution, and one of the following conditions is satisfied: (1) There is a verifiable disruption or malfunction in Exchange systems that cause a quote/order to trade in excess of its disseminated size or that prevent an SBT trader from updating or canceling its quote/order; (2) the trade resulted from an erroneous print in the underlying security that resulted in a trade higher or lower than the average trade in the underlying security by a specified factor; (3) the trade resulted from an erroneous quote in the primary market for the underlying when certain other conditions are met; or (4) the execution price of the trade is higher or lower than the theoretical price for the series by a specified factor. A party to the trade that disagrees with the trade nullification can appeal the determination under Chapter XIX of the Exchange's rules.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price or other terms of the executed trade are such that they are "clearly erroneous," suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, abrogating a trade should occur under specific and objective circumstances only. The trade nullification rule for CBOE*direct* contains specific and objective criteria with respect to the circumstances when a trade can be nullified, which helps to ensure that the rule would be applied in a fair and non-discriminatory manner. In addition, the conditions under which a trade can be nullified indicate that the error would be "clearly erroneous," *i.e.*, the terms of the trade clearly were outside of the norm for other trades that were executed within a proximate time frame. In addition, the CBOE*direct* rule on trade nullification contains clear procedures on how the trade would be nullified and provides a time frame within which a request to nullify a trade must be made. Finally, the trade nullification rule specifies the procedures to be followed for an appeal by a party who disagrees with the result.

In light of the foregoing, the Commission believes that the trade nullification rule for CBOE*direct* is appropriate.

H. Integrated Market Making and Side-by-Side Market Making

Under the Commodity Futures Modernization Act of 2000,[206] futures contracts on single securities and narrow-based security indexes may now be traded under the joint jurisdiction of the Securities and Exchange Commission and the Commodity Futures Trading Commission. The Commission understands that SBT traders who may make markets in options on CBOE*direct* also may make markets in security futures that are based on the same underlying security or may have an affiliate that engages in such trading. In addition, SBT traders who effect transactions in a particular option may be affiliated with market makers or specialists who trade the underlying security (*i.e.*, "integrated market making"). The Exchange has indicated that CBOE Rule 4.18, which governs the use of material, non-public information, would apply to members trading on CBOE*direct*. The Exchange represented that this rule would require a SBT market maker to maintain information barriers—that are reasonably designed to prevent the misuse of material, non-public information by such member—with any affiliates that may act as a specialist or market maker in any security underlying the options for which the CBOE member acts as a SBT market maker. The Commission believes that the requirement that there be an information barrier between the SBT market maker and its affiliates with respect to transactions in the option and the underlying security serve to reduce the opportunity for unfair trading advantages or misuse of material, non-public information.

I. Managing Message Traffic

CBOE has indicated that it may, in the future, be necessary to set limits on the message traffic on the SBT System to prevent it from becoming overloaded. For example, CBOE has stated that it may have to limit the number of SBT market makers that may access the SBT System through an API, or limit the number of messages sent by market makers accessing the System through an API, to protect the integrity of the System.[207] Furthermore, CBOE has indicated that it may have to impose restrictions on the use of a computer connected through an API if it believed that such restrictions were necessary to ensure the proper performance of the System.[208] In addition, CBOE has stated that it wishes to be able to: (1) Specify the number of quotes over a certain time period that may be sent free by an SBT trader, or (2) impose a fee per message for sending a number that is clearly above the free number and for producing a ratio of quotes to trades over a certain time period that is higher than what would be considered a reasonable ratio.[209] Finally, CBOE has indicated that it intends to charge fees for RFQs that exceed a certain ratio of requests-to-trades.[210]

Trading options in an electronic environment presents greater capacity burdens than does the electronic trading of equity securities. For every equity security, there potentially exists dozens of overlying options, each series having a different expiration date or strike price. The continuous quoting of options, therefore, generates far more message traffic than the continuous quoting of equity securities. The Commission acknowledges that an electronic options exchange has a legitimate interest in ensuring that the amount of message traffic passing through the facilities of that exchange does not become so great as to compromise system performance. However, the Commission expects CBOE to file with the Commission, in accordance with the procedural requirements of section 19(b) of the Act[211] and the substantive requirements of section 6(b) of the Act,[212] any proposal to throttle message traffic. The Commission notes in particular that any such proposal by the Exchange must not permit unfair discrimination between CBOE*direct* participants.[213] Section 6(b) also requires that any dues, fees, or other charges imposed by a national securities exchange must be fair and reasonable and allocated equitably.[214]

J. Accelerated Approval

Pursuant to section 19(b)(2) of the Act,[215] the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving the proposal, as amended by Amendment No. 4, prior to the 30th day after publishing notice of the amended proposal in the **Federal Register**. Many of the revisions made to the proposal in CBOE's Amendment No. 4 are modeled on existing CBOE floor rules or the rules of the ISE. The Commission previously approved these CBOE rules and ISE rules and therefore believes that accelerating such rules for CBOE*direct* is appropriate because these revisions do not raise new regulatory issues. Other revisions, although not based on existing ISE or CBOE rules, were not material to the overall proposal. The Commission believes that no purpose would be served by delaying approval of the proposal until those additional revisions had been published for comment, particularly in light of the fact that no comments were received in response to the notice. Therefore, the Commission finds that good cause exists to accelerate approval of the amended proposal.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether the amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–00–55 and should be submitted by May 1, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[216] that the proposed rule change (SR–CBOE–00–55), as amended, is approved on an accelerated basis.

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[200] *See* CBOE rule 43.12C(a).

[201] The Commission previously approved a similar provision as part of the ISE's rules. *See* ISE rule 400, Supplementary Material; ISE Order, 65 FR at 11400.

[202] *See* CBOE rule 43.12A, Interpretation .01.

[203] *See* ISE Order, 65 FR at 11398 (discussing a similar provision in the ISE rules).

[204] In Amendment No. 4, the Exchange eliminated the text of its proposed rule 43.10 regarding the trading of spread orders on CBOE*direct*.

[205] 15 U.S.C. 78s(b).

[206] Pub. L. No. 106–554, Appendix E, 114 Stat. 2763.

[207] *See* CBOE rule 44.6.

[208] *See id.*

[209] *See* notice, *supra* note 4, 67 FR at 31040.

[210] *See* notice, *supra* note 4, 67 FR at 31039.

[211] 15 U.S.C. 78s(b).

[212] 15 U.S.C. 78f(b).

[213] *See* 15 U.S.C. 78f(b)(5).

[214] *See* 15 U.S.C. 78f(b)(4).

[215] 15 U.S.C. 78s(b)(2).

[216] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[217]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8730 Filed 4–9–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47623; File No. SR–NASD–2003–65]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Pilot Period for the Regulatory Fee and the Trading Activity Fee

April 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The NASD filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to extend the pilot period for the Trading Activity Fee ("TAF") through April 15, 2003. The TAF (as originally proposed in SR–NASD–2002–98) is in effect, and is set to expire on April 1, 2003.[6] The NASD is requesting the Commission approve SR–NASD–2002–148, granting permanent approval of the TAF, before the expiration of the TAF pilot on April 15, 2003.[7] If the Commission does not approve SR–NASD–2002–148 before the expiration of the TAF pilot on April 15, 2003, the trading fee component of the member regulatory pricing structure will revert to Section 8 of Schedule A to the NASD By-Laws, as amended.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 24, 2002, the NASD filed SR–NASD–2002–98, which proposed a new member regulatory pricing structure, including the TAF, to replace the existing trading fee contained in section 8 of Schedule A to the NASD By-Laws.[8] SR–NASD–2002–98 is currently in effect. Assessments under the TAF were effective as of October 1, 2002, payable January 15, 2003.[9] On October 18, 2002, the NASD established a sunset provision whereby the TAF established by SR–NASD–2002–98 would cease to exist after December 31, 2002.[10] Upon expiration of SR–NASD–2002–98, the member regulatory pricing structure was to revert to Section 8 of Schedule A to the NASD By-Laws, as amended.

On December 24, 2002, the NASD extended the TAF pilot through March 1, 2003. On February 28, 2002, the NASD again extended the TAF pilot through April 1, 2003. With the instant proposed rule change, the NASD is extending the TAF pilot through April 15, 2003, to allow the Commission additional time to review issues presented by the proposal to make the TAF permanent (SR–NASD–2002–148). The NASD requests that the Commission approve SR–NASD–2002–148 before the expiration of the TAF pilot on April 15, 2003.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the Act, including section 15A(b)(5),[11] which requires, among other things, that the NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on this proposed rule change were neither solicited nor received. Written comments, however, have been solicited by publication in the **Federal Register** of SR–NASD–2002–98, SR–NASD–2002–147, SR–NASD–2002–148, SR–NASD–2002–182, and SR–NASD–2003–26.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b-4(f)(6) thereunder.[13]

[217] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Commission waived the five-day pre-filing notice requirement. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii). The NASD also asked the Commission to waive the 30-day operative delay.

[6] *See* Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (SR–NASD–2002–98). *See also* Securities Exchange Act Release Nos. 47112 (December 31, 2002), 68 FR 824 (January 7, 2003) (SR–NASD–2002–182) and 47436 (March 4, 2003), 68 FR 11422 (March 10, 2003) (SR–NASD–2003–26).

[7] *See* Securities Exchange Act Release No. 46817 (November 12, 2002), 67 FR 69785 (November 19, 2002)(SR–NASD–2002–148).

[8] Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (SR–NASD–2002–98). *See also* Securities Exchange Act Release No. 46417 (August 23, 2002), 67 FR 55893 (August 30, 2002) (SR–NASD–2002–99). The NASD also published three *Notices to Members* describing the proposed changes and addressing interpretive questions posed by NASD members. *See Notices to Members 02–41* (July 2002), *02–63* (September 2002), and *02–75* (November 2002).

[9] Member firms were required to pay the TAF in accordance with the pilot program (for the first quarter starting October 1, 2002) by no later than January 15, 2003, and thereafter, on a monthly basis.

[10] At the same time, the NASD filed a new proposed rule change (SR–NASD–2002–148), substantially similar to SR–NASD–2002–98, but filed under section 19(b)(1) of the Act, to allow for additional comment.

[11] 15 U.S.C. 78o–3(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The NASD has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the TAF pilot to operate without interruption through April 15, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–65 and should be submitted by May 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8732 Filed 4–9–03; 8:45 am]

BILLING CODE 8010–01–P

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47631; File No. SR–NASD–2003–64]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend for an Additional Six-Month Period a Pilot Rule To Require Industry Parties in Arbitration To Waive Application of Contested California Arbitrator Disclosure Standards, Upon the Request of Customers and Associated Persons With Claims of Statutory Employment Discrimination

April 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change pursuant to Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to extend the pilot rule in IM–10100, paragraphs (f) and (g), to require industry parties in arbitration to waive application of contested California arbitrator disclosure standards, upon the request of customers (and, in industry cases, upon the request of associated persons with claims of statutory employment discrimination), for a six-month pilot period.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change extends for an additional six months a pilot rule that was approved by the Commission for a six-month period ending March 30, 2003.[4] NASD's statement of purpose is contained in the Commission's Approval Order. In that Approval Order, at footnote 9, the Commission stated:

> If the outcome of the lawsuit is that the California Standards do not apply to NASD arbitration, waivers would no longer be necessary. Cases in which arbitrators were appointed pursuant to waivers would continue to their conclusion. If the lawsuit has not concluded at the expiration of the six-month pilot period, NASD may request an extension.

The litigation discussed in the Approval Order has not concluded, and NASD now is a party to additional litigation relating to application of the California Standards. Accordingly, NASD is now requesting an extension of the pilot for an additional six months (or until the pending litigation has resolved the question of whether or not the California Standards apply to NASD arbitration). NASD requests that the pilot be extended for six months beginning on March 31, 2003.

In addition, NASD has made one change to its model waiver agreement. In light of questions raised by practitioners, the first sentence of the waiver agreement has been amended to delete reference to federal or state laws other than the California Standards. NASD proposes to begin using the amended waiver agreement upon the operative date of the pilot extension for all cases in which none of the parties has yet signed the prior NASD waiver agreement. This change will not affect any parties that already have signed the prior NASD waiver agreement, or any cases in which some of the parties have signed the prior NASD waiver agreement. If any party in an ongoing case has signed the prior NASD waiver agreement, then all other parties will use the same agreement.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Exchange Act Release No. 46562 (September 26, 2002), 67 FR 62085 (October 3, 2002).

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[5] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that expediting the appointment of arbitrators under the waiver, at the request of customers (and, in industry cases, associated persons with claims of statutory employment discrimination), will allow those parties to exercise their contractual rights to proceed in arbitration in California, notwithstanding the confusion caused by the disputed California Standards.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b–4(f)(6)(iii) under the Act,[8] the proposal may not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the self-regulatory organization must file notice of its intent to file the proposed rule change at least five business days beforehand. NASD has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the five-day pre-filing provision and the 30-day operative delay is consistent with the protection of investors and the public interest.[9] Waiving the pre-filing requirement and accelerating the operative date will merely extend a pilot program that is designed to provide investors with a mechanism to resolve disputes with broker—dealers. During the period of this extension, the Commission and NASD will continue to monitor the status of the previously discussed litigation. For these reasons, the Commission designates that the proposed rule change as effective and operative immediately.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–64 and should be submitted by May 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8733 Filed 4–9–03; 8:45 am]

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[5] 15 U.S.C. 78o–3(b)(6).
[6] 15 U.S.C. 78s(b)(3)(A).
[7] 17 CFR 240.19b–4(f)(6).
[8] 17 CFR 240.19b–4(f)(6)(iii).
[9] For purposes of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47634; File No. SR–NASD–2003–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Pilot Period for Nasdaq PostData and the Associated Fees Assessed under NASD Rule 7010(s)

April 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to extend through September 30, 2003, the pilot period for Nasdaq PostData and the associated fees assessed under NASD rule 7010(s). Nasdaq is making no substantive changes to the pilot program, other than to extend its operation through September 30, 2003. The text of the proposed rule change is available at Nasdaq and at the Commission.

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(f)(6). The Commission waived the five-day pre-filing notice requirement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 11, 2002, the Commission approved, as a 12-month pilot, the creation of Nasdaq PostData, a voluntary trading data distribution facility, accessible to NASD members, buy-side institutions, and market data vendors through the NasdaqTrader.com Web site.[5] On January 17, 2003, Nasdaq extended that pilot through February 28, 2003.[6] On March 14, 2003, Nasdaq reestablished the pilot, and extended its operation through March 31, 2003.[7] Nasdaq now proposes to extend the pilot through September 30, 2003. Nasdaq proposes no other changes to the pilot at this time.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(5)[8] and 15A(b)(6)[9] of the Act. Section 15A(b)(5) requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by a national securities association. Section 15A(b)(6) requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Nasdaq believes that this program involves a reasonable fee assessed only to users and other persons utilizing the system and will provide useful information to all direct and indirect subscribers on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[10] and rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has asked the Commission to waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the pilot to operate without interruption through September 30, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–60 and should be submitted by May 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8808 Filed 4–9–03; 8:45 am]

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[5] *See* Securities Exchange Act Release No. 45270 (January 11, 2002), 67 FR 2712 (January 18, 2002) (SR–NASD–99–12).
[6] *See* Securities Exchange Act Release No. 47210 (January 17, 2003), 68 FR 3912 (January 27, 2003) (SR–NASD–2003–02).
[7] *See* Securities Exchange Act Release No. 47503 (March 14, 2003), 68 FR 13745 (March 20, 2003) (SR–NASD–2003–35) (Proposal to reestablish pilot retroactive to March 1, 2003, and extend its operation through March 31, 2003).
[8] 15 U.S.C. 78o–3(b)(5).
[9] 15 U.S.C. 78o–3(b)(6).
[10] 15 U.S.C. 78s(b)(3)(A).
[11] 17 CFR 240.19b–4(f)(6).
[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).
[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47629; File No. SR–OCC–2002–21]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Delivery Dates

April 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 28, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends OCC's rule 902, which obligates a delivering clearing member to deliver the underlying security or securities against payment of the aggregate purchase price on the designated delivery date.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change modifies rule 902, which obligates a delivering clearing member to deliver the underlying security or securities against payment of the aggregate purchase price on the "delivery date."[3] The delivery date is the third business day following (1) the day on which an exercise notice is accepted by OCC (in the case of options) or (2) the maturity date (in the case of security futures). A different delivery date, however, may be designated by OCC for property that is deliverable following a contract adjustment or by the Board of Directors if such action is required in the public interest or to meet unusual conditions. The proposed rule change allows OCC's Board to delegate its authority to set a different delivery date to OCC's Chairman, Management Vice Chairman, or President or delegate of such officer.

The need to set a different delivery date will generally result from unexpected events such as trading suspensions or delistings that cause NSCC to temporarily remove the underlying security from its CNS System.[4] Delivery and payment obligations that cannot be settled through NSCC must be settled on a broker-to-broker basis under OCC's rules. Delaying settlement in these instances allows for more time to gather and validate necessary relevant information (*e.g.*, if and when NSCC will again make the underlying security CNS-eligible). Convening an emergency meeting of the Board on the same day that OCC learns of a suspension or delisting is very difficult if not impossible. Granting the designated individuals the authority to delay settlement would provide OCC with greater flexibility in responding to these and other unexpected or unusual events.

OCC believes that the proposed rule change is consistent with section 17A of the Act because it would provide OCC with greater flexibility to respond to unusual conditions in order to ensure the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–OCC–2002–21. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of FICC. All submissions should refer to the File No. SR–OCC–2002–21 and should be submitted by May 1, 2003.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F).[5] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that the proposed rule change is consistent with this requirement because it will improve OCC's ability to deal with unexpected events which effects the delivery and payment obligations of the underlying securities resulting from the exercise and assignment of option contracts. As a result, the proposed rule change should assist OCC in meeting its obligations to provide for the prompt and accurate clearance and settlement of securities transactions.

OCC has requested that the Commission approve this rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the 30th day after publication of notice because such approval would immediately give OCC the flexibility it needs to delay the delivery date to address unusual conditions.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2002–21) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8734 Filed 4–9–03; 8:45 am]

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[2] The Commission has modified parts of these statements.

[3] The delivery date is also referred to in OCC's rules as the "exercise settlement date." OCC rule 101E.(4).

[4] Settlement of exercised and assigned or matured contracts requiring the physical delivery of the underlying security generally occurs at NSCC pursuant to arrangements between NSCC and OCC. OCC rule 913.

[5] 15 U.S.C. 78q–1(b)(3)(I).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47630; File No. SR–Phlx–2003–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Net Capital Calculation for Broker-Dealer Accounts

April 3, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and rule 19b–4[2] thereunder, notice is hereby given that on March 19, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx rule 722(c)(5) ("Broker-Dealer Accounts") to clarify that the haircut requirements of Exchange Act rule 15c3–1[3] must be considered in computing the net capital of a broker-dealer that is extending margin to another broker-dealer and to harmonize it with other exchanges' rules.[4]

Below is the text of the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].

Rule 722. Margin Accounts[5]

* * * * *

5. Broker-Dealer Accounts. A member organization may carry the proprietary account of another broker-dealer, which is registered with the Securities and Exchange Commission, upon a margin basis which is satisfactory to both parties, provided the requirements of Regulation T of the Board of Governors of the Federal Reserve System are adhered to and the account is not carried in a deficit equity condition. The amount of any deficiency between the equity maintained in the account and the [margin required by the other provisions of this rule] *haircut requirements calculated pursuant to rule 15c3–1 of the Exchange Act*, shall be deducted in computing the Net Capital of the member organization under *rule 15c3–1 of the Exchange Act and* rule 703.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Phlx rule 722(c)(5) ("Broker-Dealer Accounts"), to clarify that the haircut requirements of Exchange Act rule 15c3–1[6] must be considered in computing the net capital of a broker-dealer extending margin to another broker-dealer. As amended, Phlx rule 722(c)(5) would be substantially similar to CBOE rule 12.3(g).

Currently, Phlx rule 722 sets forth the rules governing the margin that must be maintained in margin accounts of customers of Phlx members, whether such customers are members themselves, partners of members, member firms, member corporations or stockholders therein, or non-members. Phlx rule 722(c) sets forth certain exceptions to the general margin requirements. Phlx rule 722(c)(5) provides that an Exchange member may carry the proprietary account of another broker-dealer registered with the Commission, on a margin basis that is satisfactory to both parties ("broker-to-broker margin"); provided however, that the parties adhere to Regulation T of the Board of Governors of the Federal Reserve System,[7] and the account is not carried in a deficit condition.

Phlx rule 722(c)(5) further provides that the amount of any deficiency between the equity maintained in the account and the "margin required by the other provisions of" Phlx rule 722 shall be deducted in computing the net capital of the Phlx member carrying the account of another registered broker-dealer. The Phlx believes that this language does not accurately reflect that the haircut requirements specified in Exchange Act rule 15c3–1[8] must also be considered in computing such Phlx member's net capital.

Accordingly, the Phlx proposes to delete the phrase "margin required by the other provisions of," and clarify in its rule that the haircut requirements calculated pursuant to Exchange Act rule 15c3–1 will be used to calculate the net capital of a Phlx member carrying the margin account of a registered broker-dealer customer. The Phlx notes that the CBOE and NYSE each has adopted a similar change to its margin rules.

2. Statutory Basis

The Phlx believes that the proposed rule change harmonizes the margin treatment between Phlx's rule and analogous CBOE and NYSE rules. As such, the Phlx believes that its proposal is consistent with section 6(b) of the Act[9] in general, and furthers the objectives of section 6(b)(5) of the Act[10] in particular, in that it is designed to perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change does not impose any burden on competition that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.15c3–1.

[4] *See* Securities Exchange Act Release No. 46716 (October 24, 2002), 67 FR 66434 (October 31, 2002) (SR–CBOE–2002–59) (relating to margin requirements for broker-dealer accounts). The Phlx notes that Chicago Board Options Exchange ("CBOE") rule 12.3(g) is substantially similar to New York Stock Exchange, Inc. ("NYSE") rule 431(e)(6)(A). *See* Securities Exchange Act Release No. 42453 (February 24, 2000), 65 FR 11620 (March 3, 2000) (SR–NYSE–1997–27) (order approving a proposed rule change affecting the margin calculation for broker-dealer accounts).

[5] The phrase, "Rule 722. Margin Accounts", reflects the correction of a typographical error from the rule text that Phlx submitted with the proposed rule change. Telephone conversation between Mark I. Salvacion, Director and Counsel, Phlx, and Tim Fox, Attorney, Division of Market Regulation, Commission on April 3, 2003.

[6] 17 CFR 240.15c3–1.

[7] 12 CFR 220.1 *et seq.*

[8] 17 CFR 240.15c3–1.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Phlx has designated the foregoing proposed rule change as effecting a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[11] Accordingly, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[12] and rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–14 and should be submitted by May 1, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8731 Filed 4–9–03; 8:45 am]

BILLING CODE 8010–01–P

[11] As required under Securities Exchange Act rule 19b–4(f)(6)(iii), the Phlx provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing date or such shorter period as designated by the Commission. *See* Prefiling Notice of Proposed Rule Change (SR–Phlx–2003–14), dated March 11, 2003.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4332]

Bureau of Educational and Cultural Affairs Request for Grant Proposals for a Project To Support Training in Public Administration and Public Policy Development in Montenegro

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for a project to support training in public administration and public policy development in Montenegro. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to train faculty, students, administrators, public officials, and other practitioners in this field. Applicants are encouraged to propose creative strategies to target the training needs of current and future public administrators and policy-makers in Montenegro within the general guidelines provided in this document. Applicants are also invited to propose one or more partner institution(s) in Montenegro with which to cooperate in project implementation, and should explain why each institutional partner is appropriate to the objectives of the project.

Program Information

Overview: The project will support training in public administration and public policy development for current and future public administrators and policy-makers in Montenegro. One grant will be awarded in an amount not to exceed approximately $270,000 for a period of up to three years to support this training effort through exchanges of faculty, students, non-government organization representatives, public administrators, or public officials. Activities may include any appropriate combination of teaching, consultation, study, distance education, and outreach.

The fundamental objective of the project is to provide participants in Montenegro with skills in public administration and public policy development with an emphasis on practical training for local government administration. The project should provide program participants from Montenegro with the necessary tools to strengthen Montenegro's managerial capacity and its decision-making processes, especially at the local level.

Applicants may propose to pursue this objective in ways that reflect their own institutional strengths as well as the interests, needs, and capacities of the institutional partner(s) in Montenegro. For example, applicants may propose to develop a curriculum in public administration and public policy development and to design and organize in-service training workshops for currently employed administrators and officials based on the curriculum and related training materials. Applicants may also propose to develop curriculum, materials, and training for students preparing for careers as public servants and administrators or as policy analysts and policy developers. Other project designs and emphases may also be proposed. Applicants are invited to propose appropriate topics based on consultations with their counterparts in Montenegro and their knowledge of local needs. Topics of potential interest include decentralization, resource allocation strategies, anti-corruption practices, transparency in government, financial management and control, budgeting and accounting, procurement, organizational development, local government management, taxation, and strategic planning.

U.S. Institution and Participant Eligibility

In the United States, participation in the program is open to accredited colleges and universities as well as other organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c). Applications from consortia or other combinations of U.S. colleges and universities are eligible. The lead U.S. organization in the consortium of other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners.

Participants who are traveling under the Bureau's grant funds may include teachers, researchers, public administration practitioners, public officials, advanced students who are teaching or research assistants, and educational administrators.

Foreign Institutional and Participant Eligibility

The applicant is invited to propose a university or one or more other not-for-profit entities in Montenegro that are willing to serve as the institutional partner for this project. Secondary foreign partners may include relevant governmental and non-governmental organizations, as well as non-profit service, educational, or professional organizations concerned with issues in public administration training. The program must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

If the proposed project would occur within the context of a previous or ongoing project, the proposal should explain how the request for Bureau funding would build on the current or prior relationship or complement previous and concurrent projects, which must be listed and described with details about the amounts and sources of external support. Previous projects should be described in the proposal, and the results of the evaluation of previous cooperative efforts should be summarized.

Budget Guidelines

The Bureau anticipates awarding one grant not to exceed approximately $270,000 under this grant competition. Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000 in Bureau funding; therefore, organizations that can not demonstrate at least four years experience in conducting international exchanges are ineligible to apply under this competition.

Applicants must submit a comprehensive budget for the entire project. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Funds will be awarded for a period up to three years to defray the costs of exchanges, to provide educational materials, to increase library holdings, to develop workshops for public managers and to improve Internet connections. Administrative costs should be reasonable and should be kept to the lowest possible level without jeopardizing the effectiveness of project administration and oversight. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/U–03–19.

FOR FURTHER INFORMATION CONTACT: Contact the Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs, Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349, SA–44; U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, phone (202) 260–6797, fax: (202) 401–1433, e-mail: *murbina@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Maria Urbina on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, May 30, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 8 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U 03–19, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs Section at the US Embassy in Belgrade and to the Branch Public Affairs Section in Podgorica for their review, with the goal of reducing the time it takes to include these comments in the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of

forms, record-keeping, reporting and other requirements.

The Grantee organization will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 401–9810. FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the public diplomacy section of the U.S. Embassy in Belgrade including the branch office in Podgorica. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for an assistance grant award resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

(1) Broad and Enduring Significance of Project Objectives

Project objectives should have significant and ongoing results for the participating institutions and for the surrounding communities by providing a deepened understanding of critical issues in public administration in Montenegro. Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

(2) Creativity and Feasibility of Strategy To Achieve Project Objectives

Strategies to achieve project objectives should be feasible and relevant to the transition process in the public sector of Montenegro and should be realistic within the projected budget and timeframe. A detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. The agenda and plan should be consistent with project objectives.

(3) Institutional Commitment to Cooperation

The proposed project should demonstrate significant understanding of the institutional and training needs and capacities of the partner institutions in Montenegro together with a strong commitment of the partner institutions, during and after the period of grant activity, to cooperate with one another in the mutual pursuit of institutional objectives.

(4) Project Impact

The proposed project should demonstrate significant potential long-term impact on public administration practices in Montenegro.

(5) Support of Diversity

Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in project objectives for all institutional partners. Issues resulting from differences of race, ethnicity, gender, religion, geography, socio-economic status, or physical challenge should be addressed during project implementation. In addition, project participants and administrators should reflect the diversity within the societies which they represent (*see* the section of this document on "Diversity, Freedom and Democracy Guidelines"). Proposals should also discuss how the various institutional partners approach diversity issues in their respective communities or societies.

(6) Project Evaluation

Proposals should include a plan and methodology to evaluate the degree to which project objectives have been addressed, both while the project is underway and at its conclusion. The final project evaluation should include an external evaluation component and should provide observations about the project's influence within the participating institutions as well as the surrounding communities.

(7) Cost-effectiveness

Administrative and program costs should be reasonable and appropriate with cost sharing provided by all participating institutions within the context of their respective capacities. We view cost sharing as a reflection of institutional commitment to the project.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation. The funding authority for the program cited above is provided through the Support for East European Democracies (SEED) Act of 1989.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 3, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–8840 Filed 4–9–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

In the Matter of the Commuter Air Carrier Authority of Samoa Aviation, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2003–4–6), Docket OST–2003–14871.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order that (1) finds that Samoa Aviation, Inc., has failed to demonstrate that it continues to meet the Department's fitness standards, and (2) revokes the company's commuter air carrier authority.

DATES: Persons wishing to file objections should do so no later than April 18, 2003.

ADDRESSES: Objections and answers to objections should be filed in Docket and addressed to the Department of Transportation Dockets (M–30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Delores King, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

Dated: April 4, 2003.

Read C. Van De Water,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 03–8812 Filed 4–9–03; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Highway Administration

Amendment to Supplemental Draft Environmental Impact Statement for the South Corridor Portion of the South/North Transit Corridor Project in the Portland, OR Metropolitan Area (Affects the Downtown Portland Segment Only)

AGENCY: Federal Transit Administration (FTA) and Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent (NOI) to prepare an Amended Supplemental Draft Environmental Impact Statement.

SUMMARY: The FTA and the FHWA, in cooperation with Portland Metro and Tri-County Metropolitan Transportation District of Oregon (TriMet), (hereinafter "agencies") published a Supplemental Draft Environmental Impact Statement (hereinafter "SDEIS") in accordance with the National Environmental Policy Act (hereinafter "NEPA") in December 2002 for transit improvements in the South/North Transit Corridor (hereinafter the "South Corridor Project") of the Portland, Oregon metropolitan region. The North Corridor Interstate MAX FEIS was published and the project is under construction. Conditions have changed since the South/North DEIS and the South Corridor Project SDEIS were published. The agencies now intend to prepare an amendment to that SDEIS for transit improvements in the downtown Portland segment only.

The purpose of this new Notice of Intent is to re-notify interested parties of the intent to prepare an Amendment to the SDEIS (hereinafter referred to as "ASDEIS") and invite participation in the study. This study will focus on the impacts of adding the downtown Portland Transit Mall LRT alignment to the I–205 Light Rail Transit Project, a part of the South Corridor Project. The I–205 Light Rail Transit Project proposes to implement a major high capacity transit improvement in the South Corridor part of the South/North Corridor, that maintains livability in the metropolitan region, supports land use goals, optimizes the transportation system, is environmentally sensitive, reflects community values and is fiscally responsive. Three transit alternatives (described below) will be evaluated in the ASDEIS.

Meeting Dates: Agency Coordination Meeting: an agency coordination meeting will be held on April 22 at 1 pm, at the Portland Building Room C, 1120 SW Fifth Avenue, Portland, Oregon. *Public Information Meeting:* a public information meeting will be held on April 22 from 4 to 7 pm at the Portland Building Room C, 1120 SW Fifth Avenue, Portland, Oregon. The Portland Building is accessible to persons with disabilities. Any individual with a disability who requires special assistance, such as a sign language interpreter, should contact Kristin Hull at (503) 797–1864, at least 48-hours in advance of the meeting in order for Metro to make necessary arrangements.

FOR FURTHER INFORMATION CONTACT: *Agency Coordination meeting:* contact Sharon Kelly, Metro EIS Manager at (503) 797–1753 or (e-mail) *KellyS@Metro.dst.or.us*, Rebecca Reyes-Alicea, FTA Community Planner at (206) 220–4464 or (e-mail) *rebecca.reyes-alicea@fta.dot.gov*, Elton Chang, FHWA Environmental Engineer at (503) 587–4710 or *elton.chang@fhwa.dot.gov*. *Public Information meeting:* contact Kristin Hull, Metro Public Involvement Coordinator at (503) 797–1864 or (e-mail) *Hull@Metro.dst.or.us*. *Written Comments* should be sent to Sharon Kelly, South Corridor Project, Metro, 600 NE Grand Avenue, Portland, OR 97232. Additional information on the South Corridor Project can also be found on the Metro Web site at: *http://www.metro-region.org*.

SUPPLEMENTARY INFORMATION:

I. Notice of Intent

This new NOI to prepare an ASDEIS is being published at this time to re-notice interested parties due to the changes that have occurred since the initial NOI (October 1993), publication of the South/North DEIS (February 1998), publication of the North Corridor Interstate MAX Light Rail Project FEIS (October 1999), and publication of the South Corridor Project SDEIS (December 2002). The project proponents are re-examining the downtown Portland Mall Alignment in the downtown Portland segment of the South Corridor. The FHWA and the FTA are Federal Co-Lead agencies. Because the study is primarily a transit study, FTA regulations and guidance will be used for the analysis and preparation of the ASDEIS.

II. Study Area

The South Corridor generally encompasses the southeast quadrant of the Portland, Oregon metropolitan area, including downtown Portland, Southeast Portland neighborhoods, the City of Milwaukie, the City of Gladstone, the City of Oregon City and urban unincorporated Clackamas County (east of the Willamette River). The focus of this supplemental study will be in the downtown Portland area.

III. Alternatives

Three Alternatives will be evaluated in the SDEIS. The *No-Build Alternative* will provide the basis for comparison of the build alternative. The No-Build Alternative includes the existing transportation system plus multi-modal transportation improvements that would be constructed under the Regional Transportation Plan Financially Constrained Transportation Network. The *I–205 Light Rail Alternative with the Cross Mall* includes 6.5 miles of new light rail transit connecting to the existing light rail system at Gateway and extending south along I–205 to the Clackamas Town Center area and then continuing into downtown Portland using the existing Eastside MAX line called the Cross Mall. The *I–205 Light Rail Alternative with the Portland Mall* includes 6.5 miles of new light rail transit connecting to the existing light rail system at Gateway and extending

south along I–205 to the Clackamas Town Center area and, in the north, includes a section continuing into downtown Portland using the Portland Mall Alignment. There is a terminus option at SW Main Street and design option of using Island Stations with this alternative.

IV. Probable Effects

FTA, FHWA, Metro and TriMet will evaluate all significant transportation, environmental, social and economic impacts of the alternatives. Primary issues include: support of state, regional and local land use and transportation plans and policies, cost effective expansion of the transit system, preservation of capacity enhancement options of I–205, neighborhood impacts and environmental sensitivity. The impacts will be evaluated for both the construction period and for the long-term period of operation. Measures to mitigate any significant impact will be developed.

Issued on: March 31, 2003.

Richard Krochalis,

Regional Administrator, Region X, Federal Transit Administration.

Elton Chang,

Environmental Engineer, Oregon Division, Federal Highway Administration.

[FR Doc. 03–8692 Filed 4–9–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–03–14448: Notice 3]

Pipeline Safety: Qualification of Pipeline Personnel

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) will conduct a public meeting to discuss progress in implementing the operator qualification (OQ) rule for gas and hazardous liquid pipelines. OPS will continue to develop the protocols and supplementary guidance materials, and provide continued opportunities for public comment. A record of previous public meetings on Qualification of Pipeline Personnel that were held in San Antonio, TX; Houston, TX; and Phoenix, AZ, are available in this docket (RSPA–03–14448).

DATES: The public meeting will be held on Wednesday, April 23, 2003, beginning at 8:30 a.m., ending at 4 p.m.

ADDRESSES: The public meeting will be held at the Double Tree Hotel Atlanta-Buckhead, 3342 Peachtree Road, Atlanta, GA 30326 (telephone: 404/231–1234, fax: 404/231–5236, Web: *http://www.doubletreebuckhead.com*. The deadline for making a hotel reservation is April 11, 2003, (refer to the U.S Department of Transportation (DOT) (Operation Qualification Group block for government rates).

This meeting is free and open to the public. You may register electronically for this meeting at: *http://primis.rspa.dot.gov/meetings*. The program will continue to address the 13 issues generated by the first public meeting held in January 2003, and will be open for technical input. Discussion will include protocols and explanation of changes, supplementary guidance, definitions of terms, and development of a national consensus standard. Persons wishing to make a presentation or statement at the meeting should notify Janice Morgan, (202) 366–2392, no later than April 14, 2003.

Although we encourage persons wishing to comment on operator qualification and inspection protocols to participate in the public meeting, written comments will be accepted. You may submit written comments on operator qualification and inspection issues by mail or delivery to the Dockets Facility, DOT, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays. You should submit the original and one copy. Anyone who wants confirmation of receipt of their comments must include a stamped, self-addressed postcard. You may also submit comments to the docket electronically. To do so, log on to the Internet Web address at *http://dms.dot.gov* and select "Help" for instructions on electronic filing of comments. All written comments should identify the Docket Number RSPA–03–14448; Notice 3.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comments (or signing the comments, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 9477–78), or you may visit http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: You may contact Richard Sanders at (405) 954–7214 or (405) 954–7219, regarding the agenda of this public meeting. General information about OPS programs may be obtained by accessing OPS's Internet home page at *http://ops.dot.gov*.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance, contact Janice Morgan at (202) 366–2392.

SUPPLEMENTARY INFORMATION: The operator qualification rule at 49 CFR 192.801 (for gas pipelines) and at 49 CFR 195.501 (for hazardous liquid pipelines) requires every pipeline operator to have and follow a written qualification program that includes provisions to identify covered tasks and to ensure that all persons performing these tasks are qualified. By October 28, 2002, all gas and hazardous liquid pipeline operators should have completed the qualification of all individuals performing covered tasks on pipeline facilities.

On April 23, 2003, OPS will conduct a public meeting to continue discussions on the progress in implementing the operator qualification rule for gas and hazardous liquid pipelines. The meeting will focus on development of the 13 OQ issues identified at previous public meetings on February 25, 2003, in Houston, TX, and March 25, 2003, in Mesa, AZ, and are as follows:

1. Scope of Operator Qualification.
2. Evaluation of Knowledge, Skills, and Physical Ability.
3. Re-evaluation Intervals.
4. Maintenance versus New Construction.
5. Treatment of Emergency Response.
6. Additional Covered Tasks.
7. Extent of Documentation.
8. Abnormal Operating Conditions.
9. Treatment of Training.
10. Criteria for Small Operators.
11. Direction of Observation of Non-qualified People.
12. Noteworthy Practices.
13. Persons Contributing to an Incident or Accident.

All persons attending the meeting will have an opportunity to comment on operator qualification compliance issues and to question the expert panel on the new operator qualification compliance protocols.

Issued in Washington, DC on April 7, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–8815 Filed 4–9–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF VETERANS AFFAIRS

Adjustments in Rates for Disability Compensation and Dependency and Indemnity Compensation

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by the Veterans' Compensation Cost-of-Living Adjustment Act of 2002, Pub. L. 107–247, the Department of Veterans Affairs (VA) is hereby giving notice of adjustments in certain benefit rates. These adjustments affect the disability compensation and dependency and indemnity compensation (DIC) programs.

DATES: These adjustments are effective December 1, 2002, the date provided by Pub. L. 107–247.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Compensation and Pension Service (212B), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–7218.

SUPPLEMENTARY INFORMATION: Section 2 of Pub. L. 107–247 provides for an increase in each of the rates in sections 1114, 1115(1), 1162, 1311, 1313(a), and 1314 of title 38, United States Code. VA is required to increase these benefit rates by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act are increased effective December 1, 2002. In computing increased rates in the cited title 38 sections, fractions of a dollar are rounded down to the nearest dollar. The increased rates are required to be published in the **Federal Register**.

The Social Security Administration has announced a 1.4 percent cost-of-living increase in Social Security benefits effective December 1, 2002. Therefore, applying the same percentage increase, the following rates for VA compensation and DIC programs will be effective December 1, 2002:

DISABILITY COMPENSATION (38 U.S.C. 1114)

Affected statute (evaluation)	Monthly rate
38 U.S.C. 1114(a) (10%)	$104
38 U.S.C. 1114(b) (20%)	$201
38 U.S.C. 1114(c) (30%)	$310
38 U.S.C. 1114(d) (40%)	$445
38 U.S.C. 1114(e) (50%)	$633
38 U.S.C. 1114(f) (60%)	$801
38 U.S.C. 1114(g) (70%)	$1,008
38 U.S.C. 1114(h) (80%)	$1,171
38 U.S.C. 1114(i) (90%)	$1,317
38 U.S.C. 1114(j) (100%)	$2,193
38 U.S.C. 1114(k)	$81; $2,728; $81; $3,827
38 U.S.C. 1114(l)	$2,728
38 U.S.C. 1114(m)	$3,010
38 U.S.C. 1114(n)	$3,425
38 U.S.C. 1114(o)	$3,827
38 U.S.C. 1114(p)	$3,827
38 U.S.C. 1114(r)	$1,643; $2,446
38 U.S.C. 1114(s)	$2,455

ADDITIONAL COMPENSATION FOR DEPENDENTS (38 U.S.C. 1115(1))

Affected statute	Monthly rate
38 U.S.C. 1115(1)(A)	$125
38 U.S.C. 1115(1)(B)	$215; 64
38 U.S.C. 1115(1)(C)	$85; 64
38 U.S.C. 1115(1)(D)	$101
38 U.S.C. 1115(1)(E)	$237
38 U.S.C. 1115(1)(F)	$198

Clothing Allowance (38 U.S.C. 1162)

$588 per year 1.

DIC TO A SURVIVING SPOUSE (38 U.S.C. 1311)

Affected statute	Monthly rate
38 U.S.C. 1311(a)(1)	$948
38 U.S.C. 1311(a)(2)	204
38 U.S.C. 1311(b)	237
38 U.S.C. 1311(c)	237
38 U.S.C. 1311(d)	113

DIC TO A SURVIVING SPOUSE (38 U.S.C. 1311(A)(3))

Pay grade	Monthly rate
E–1	$948
E–2	948
E–3	948
E–4	948
E–5	948
E–6	948
E–7	960
E–8	1,035
E–9\1\	1,080
W–1	1,001
W–2	1,042
W–3	1,072
W–4	1,134
O–1	1,001
O–2	1,035
O–3	1,107
O–4	1,171
O–5	1,289
O–6	1,453
O–7	1,570
O–8	1,722
O–9	1,843
O–10\2\	2,021

[1] If the veteran served as Sergeant Major of the Army, Senior Enlisted Advisor of the Navy, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Master Chief Petty Officer of the Coast Guard, the surviving spouse's monthly rate is $1,165.

[2] If the veteran served as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, the surviving spouse's monthly rate is $2,168.

DIC TO CHILDREN (38 U.S.C. 1313(A))

Affected statute	Monthly rate
38 U.S.C. 1313(a)(1)	$402
38 U.S.C. 1313(a)(2)	$578
38 U.S.C. 1313(a)(3)	$752
38 U.S.C. 1313(a)(4)	$752; $145

SUPPLEMENTAL DIC TO CHILDREN (38 U.S.C. 1314)

Affected statute	Monthly rate
38 U.S.C. 1314(a)	$237
38 U.S.C. 1314(b)	402
38 U.S.C. 1314(c)	201

Dated: April 2, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–8724 Filed 4–9–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

President's Task Force To Improve Health Care Delivery for Our Nation's Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is scheduled for Thursday, April 24, 2003, beginning at 9 a.m. and adjourning at 5 p.m. The meeting will be held in the Jefferson Ballroom of the Radisson Hotel Old Town, 901 North Fairfax Street, Alexandria, VA. The meeting is open to the general public.

The purpose of the President's Task Force to Improve Health Care Delivery for Our Nation's Veterans is to:

(a) Identify ways to improve benefits and services for Department of Veterans Affairs (VA) beneficiaries and Department of Defense (DoD) military retirees who are also eligible for benefits from VA, through better coordination of the activities of the two departments;

(b) Identify opportunities to remove barriers that impede VA and DoD coordination, including budgeting processes, timely billing, cost accounting, information technology, and reimbursement; and

(c) Identify opportunities through partnership between VA and DoD, to maximize the use of resources and infrastructure, including buildings, information technology and data sharing systems, procurement of supplies, equipment and services.

The morning and afternoon sessions of the April 24, meeting will focus on consideration and approval of the Task Force's final report for submission to the President. It is expected that this will be the final meeting of the Task Force.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties can provide written comments to Mr. Dan Amon, Communications Director, President's Task Force to Improve Health Care Delivery for Our Nation's Veterans, 1401 Wilson Boulevard, 4th Floor, Arlington, Virginia, 22209.

Dated: April 2, 2003.

By Direction of the Secretary:

R. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–8725 Filed 4–9–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Medical Center, Minneapolis, MN

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent of designate.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) is designating 0.5 acres of underutilized space at the Department of Veterans Affairs Medical Center, Minneapolis, Minnesota, for an enhanced-use leasing development. The Department intends to enter into a 35-year lease of real property with a selected lessee/developer who will finance, design, develop, maintain and manage a Federal Credit Union, at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Vanessa Chambers, Capital Asset Management and Planning Service (182C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 565–6554.

SUPPLEMENTARY INFORMATION: 38 U.S.C. Section 8161 *et seq.* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: April 2, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–8726 Filed 4–9–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 69

Thursday, April 10, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 2003–B1]

eTravel Initiative

Correction

In the issue of Thursday, April 3, 2003, on page 16351, in the second column, in the correction of notice document 03–6662, in paragraph 5., in the fourth line, "If" should read, "It".

[FR Doc. C3–6662 Filed 4–9–03; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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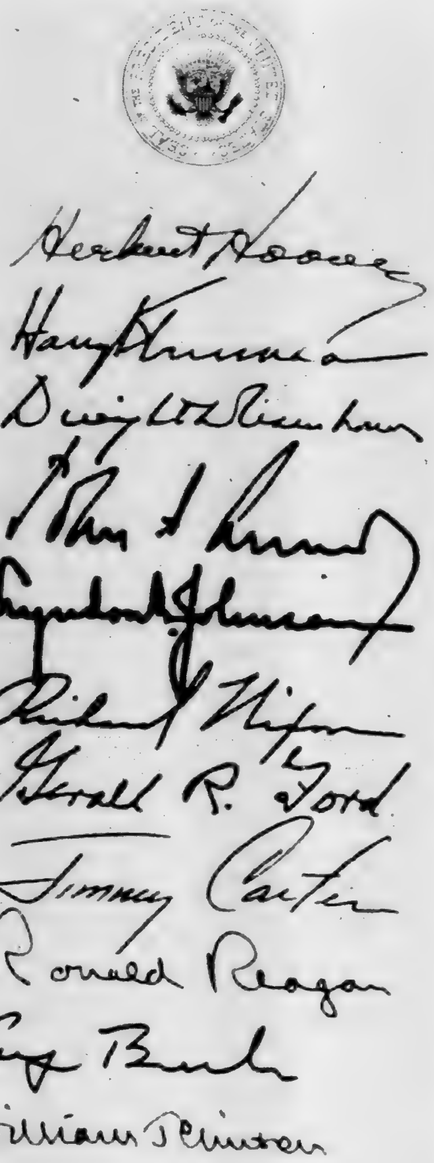
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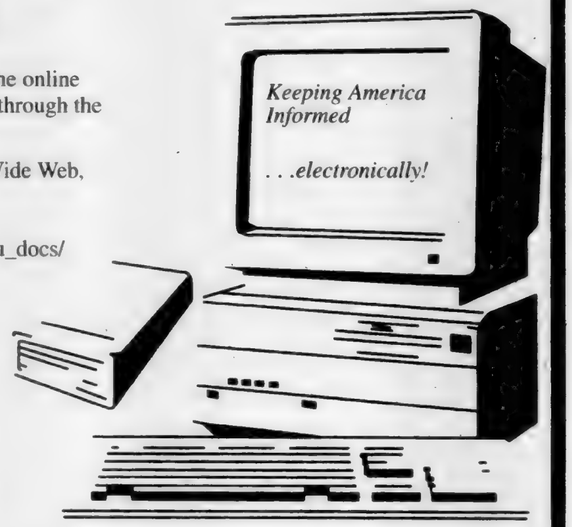
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Vol. 68, No. 70
Friday, April 11, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–48–AD; Amendment 39–13107; AD 2003–07–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Models BR700–710A1–10 and BR700–710A2–20 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH) models BR700–710A1–10 turbofan engines with fan disc part numbers (P/Ns) BRR18803, BRR19248, or BRR20791 installed, and BR700–710A2–20 turbofan engines with fan discs P/Ns BRR19248 or BRR20791 installed. That AD currently requires initial and repetitive inspections of these fan discs for cracks, and if necessary replacement with serviceable parts. This amendment requires the same inspections but with longer intervals between repetitive inspections under certain conditions, and requires removal of any dry film lubricant coating from the front face of the fan disc for visual inspections. This amendment is prompted by reevaluation by RRD of results from a fleet-wide inspection campaign, reevaluation of existing repetitive inspection interval requirements, and by a revised service bulletin (SB) that introduces improved inspection procedures. The actions specified by this AD are intended to detect cracks in the fan disc, that could result in an uncontained engine failure and damage to the airplane.

DATES: Effective April 28, 2003. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of April 28, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 10, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–48–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 DAHLEWITZ, Germany, telephone: International Access Code 011, Country Code 49, 33 7086–2935, fax: International Access Code 011, Country Code 49, 33 7086–3276. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: 781–238–7176, fax: 781–238–7199.

SUPPLEMENTARY INFORMATION: On March 1, 2001, the FAA issued AD 2001–05–06, Amendment 39–12142 (66 FR 14826, March 14, 2001), to require initial and repetitive inspections of fan discs for cracks, and if necessary replacement with serviceable parts. The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on Rolls-Royce Deutschland Ltd & Co KG models BR700–710A1–10 turbofan engines with fan disc P/Ns BRR18803, BRR19248, or BRR20791 installed, and BR700–710A2–20 turbofan engines with fan discs P/Ns BRR19248 or BRR20791 installed. The LBA received several reports of cracks in fan discs, in the dovetail area. RRD determined that these cracks were caused by high-cycle fatigue, and that time predictions and cycle predictions for crack initiation could not be accurately determined. Investigation by RRD has been ongoing. That condition, if not corrected, could result in an uncontained engine failure and damage to the airplane.

Since that AD was issued, RRD has reevaluated results from a fleet-wide inspection campaign, has reevaluated the existing repetitive inspection interval requirements, and has issued SB No. SB–BR700–72–900229, Revision 5, dated January 8, 2003.

Manufacturer's Service Information

RRD has issued SB No. SB–BR700–72–900229, Revision 5, dated January 8, 2003, that specifies procedures for removing any dry film lubricant coating from the front face of the fan disc to improve visual inspections, and initial and repetitive inspections for cracks in fan discs. The LBA classified this service bulletin as mandatory and issued AD 2000–348, Revision 5, dated March 6, 2003, in order to ensure the airworthiness of these RRD models BR700–710A1–10 turbofan engines and BR700–710A2–20 turbofan engines in Germany.

Differences Between This AD and the Manufacturer's Service Information

Although the visual inspection requirements of RRD SB No. SB–BR700–72–900229, Revision 5, dated January 8, 2003, do not specifically define the pass or fail criteria for fan discs, this AD specifically instructs the rejection of fan discs that have visual cracks. FAA communication with RRD has confirmed that the intent of the service bulletin is to require the owner or operator to default to appropriate maintenance manuals for pass or fail criteria. A subsequent review of the maintenance manuals by the FAA has confirmed that no cracks are allowed in the fan discs.

Bilateral Airworthiness Agreement

This engine model is manufactured in Germany and is type certificated for

operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination of an Unsafe Condition and Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other RRD models BR700–710A1–10 turbofan engines and BR700–710A2–20 turbofan engines of the same type design, this AD requires for fan discs listed in this AD, removal of any dry film lubricant coating from the fan disc front face to improve visual inspections and initial and repetitive inspections for cracks. The actions must be done in accordance with the service bulletin described previously.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Immediate Adoption of This AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–48–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–12142 (66 FR 14826, March 14, 2001) and by adding a new airworthiness directive, Amendment 39–13107, to read as follows:

2003–07–11 Rolls-Royce Deutschland Ltd & Co KG: Amendment 39–13107. Docket No. 2000–NE–48–AD. Supersedes AD 2001–05–06, Amendment 39–12142.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH) models BR700–710A1–10 turbofan engines with fan disc part numbers (P/Ns) BRR18803, BRR19248, or BRR20791 installed, and BR700–710A2–20 turbofan engines with fan discs P/Ns BRR19248 or BRR20791 installed. These engines are installed on, but not limited to Bombardier Inc. BD–700–1A10, and Gulfstream Aerospace Corp. G–V series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required as indicated, unless already done.

To detect cracks in the fan disc that could result in an uncontained engine failure and damage to the airplane, do the following:

Initial Inspection

Engines With Fan Discs P/Ns BRR18803 and BRR19248 Installed

(a) For BR700–710A1–10 engines with fan discs, P/Ns BRR18803 and BRR19248 installed, and BR700–710A2–20 engines with fan discs, P/N BRR19248 installed, do the following:

(1) If the last fan disc inspection was a visual inspection performed using RRD SB No. SB–BR700–900229, Revision 3, dated July 12, 2001, Revision 4, dated December 20, 2001, or Revision 5, dated January 8, 2003, visually or ultrasonically inspect fan disc within 25 flight cycles-since-last inspection (CSLI), in accordance with paragraphs A through F of the applicable Part 1 or Part 2 of the Accomplishment Instructions of RRD SB No. SB–BR700–900229, Revision 5, dated January 8, 2003.

(2) If the last fan disc inspection was an ultrasonic inspection performed using RRD SB No. SB–BR700–900229, Revision 3, dated July 12, 2001, Revision 4, dated December 20, 2001, or Revision 5, dated January 8, 2003, visually or ultrasonically inspect fan disc within 75 CSLI, in accordance with paragraphs A through F of the applicable Part 1 or Part 2 of the Accomplishment Instructions of RRD SB No. SB–BR700–900229, Revision 5, dated January 8, 2003.

(3) For engines that have not yet been inspected, visually or ultrasonically inspect fan disc within 25 flight cycles after the effective date of this AD, in accordance with paragraphs A through F of the applicable Part 1 or Part 2 of the Accomplishment Instructions of RRD SB No. SB–BR700–900229, Revision 5, dated January 8, 2003.

(4) If any cracks are found, remove disc from service and replace with a serviceable disc.

Engines With Fan Discs P/N BRR20791 Installed

(b) For BR700–710A1–10 engines with serial numbers (SNs) 11452 and lower, and BR700–710A2–20 engines with SNs 12352 and lower, with fan discs P/N BRR20791 installed, do the following:

(1) If the last fan disc inspection was a visual inspection performed using RRD SB No. SB–BR700–900229, Revision 3, dated July 12, 2001, Revision 4, dated December 20, 2001, or Revision 5, dated January 8, 2003, visually or ultrasonically inspect fan disc within 25 CSLI, in accordance with paragraphs A through F of the applicable Part 1 or Part 2 of the Accomplishment Instructions of RRD SB No. SB–BR700–900229, Revision 5, dated January 8, 2003.

(2) If the last fan disc inspection was an ultrasonic inspection performed using RRD SB No. SB–BR700–900229, Revision 3, dated July 12, 2001, Revision 4, dated December 20, 2001, or Revision 5, dated January 8, 2003, visually or ultrasonically inspect fan disc within 75 CSLI, in accordance with paragraphs A through F of the applicable Part 1 or Part 2 of the Accomplishment Instructions of RRD SB No. SB–BR700–900229, Revision 5, dated January 8, 2003.

(3) For engines that have not yet been inspected, visually or ultrasonically inspect fan disc within 25 flight cycles after the effective date of this AD, in accordance with paragraphs A through F of the applicable Part 1 or Part 2 of the Accomplishment Instructions of RRD SB No. SB–BR700–900229, Revision 5, dated January 8, 2003.

(4) If any cracks are found, remove disc from service and replace with a serviceable disc.

Repetitive Inspections

(d) Except for engines listed in paragraph (e) of this AD, perform repetitive inspections using the criteria in paragraphs (a) through (b)(4), and (f) of this AD.

(e) For BR700–710A1–10 engines with SNs 11453 and higher, and BR700–710A2–20 engines with SNs 12353 and higher with fan discs P/N BRR20791 installed, perform repetitive inspections using the criteria in paragraphs (c) through (c)(3), and (f) of this AD.

(f) For all discs, perform a visual and ultrasonic inspection before accumulating 500 CSN, in accordance with paragraphs A through F of the applicable Part 1 or Part 2 of the Accomplishment Instructions of RRD SB No. SB–BR700–900229, Revision 5, dated January 8, 2003.

(g) Thereafter, for all discs, perform a visual and an ultrasonic inspection before accumulating 500 cycles-since-the last visual and ultrasonic inspections.

Inspection Reporting Requirements

(g) Report defects in accordance with the applicable Part 1 or Part 2 of RRD SB No. SB–BR700–900229, Revision 5, dated January 8, 2003. Reporting requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 2120–0056.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(j) The inspection must be done in accordance with Rolls-Royce Deutschland Ltd & Co KG Service Bulletin No. SB–BR700–72–900229, Revision 5, dated January 8, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 DAHLEWITZ, Germany, telephone: International Access Code 011, Country Code 49, 33 7086–2935, fax: International Access Code 011, Country Code 49, 33 7086–3276. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in LBA AD 2000–348, Revision 5, dated March 6, 2003.

Effective Date

(k) This amendment becomes effective on April 28, 2003.

Issued in Burlington, Massachusetts, on April 1, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–8327 Filed 4–10–03; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14348; Airspace Docket No. 03–ACE–5]

Establishment of Class E Surface Area Airspace; and Modification of Class D Airspace; Topeka, Forbes Field, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document establishes a Class E surface area at Topeka, Forbes Field, KS for those times when the air traffic control tower (ATCT) is closed. It also modifies the Class D airspace at Topeka, Forbes Field, KS.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

On Monday, February 10, 2003, the FAA proposed to amend 14 CFR part 71 to establish a Class E surface area and to modify Class D airspace at Topeka, Forbes Field, KS (68 FR 6677). The proposal was to establish a Class E surface area at Topeka, Forbes Field, KS for those times when the air traffic

control tower (ATCT) is closed. It also proposed to modify the Class D airspace and its legal description by incorporating the revised Topeka, Forbes Field, KS airport reference point. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Class E airspace areas designated as surface areas are published in paragraph 6002 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. Class D airspace areas are published in paragraph 5000 of the same FAA Order. The Class E and Class D airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes a Class E surface area at Topeka, Forbes Field, KS to provide adequate controlled airspace for aircraft executing instrument flight procedures. It also modifies the legal description of Class D airspace at Topeka, Forbes Field, KS. The areas will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002, Class E Airspace Designated as Surface Areas.

* * * * *

ACE KS E2 Topeka, Forbes Field, KS

Topeka, Forbes Field, KS
(Lat. 38°57'03" N., long. 95°39'49" W.)

Within a 4.6-mile radius of Forbes Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 5000 Class D Airspace.

* * * * *

ACE KS D Topeka, Forbes Field, KS

Topeka, Forbes Field, KS
(Lat. 38°57'03" N., long. 95°39'49" W.)

This airspace extending upward from the surface to and including 3,600 feet MSL within a 4.6-mile radius of Forbes Field. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Kansas City, MO, on March 28, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–8568 Filed 4–10–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30362; Amdt. No. 441]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169. (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and

contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on April 1, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC, May 15, 2003.

■ 1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

PART 95—[AMENDED]

■ 2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS

[Amendment 441 Effective Date, May 15, 2003]

From	To	MEA
Color Routes		
§ 95.10 Amber Federal Airway 1 Is Amended To Read in Part		
Hinchinbrook, AK NDB	Campbell Lake, AK NDB	#*9,000
*8,000—MOCA		
#GPS MEA 8000		
Color Routes		
§ 95.6 Blue Federal Airway 28 Is Amended To Read in Part		
Nichols, AK NDB	Sitka, AK NDB	#*6,900
*6,000—MOCA		
#GPS MEA 6000		
§ 95.6001 Victor Routes—U.S.		
§ 95.6026 VOR Federal Airway 26 Is Amended To Read in Part		
Grand Junction, CO VORTAC	Raymn, CO FIX	
	NE BND	11,000
	SW BND	10,000
§ 95.6113 VOR Federal Airways 113 Is Amended To Read in Part		
Boise, ID VORTAC	Salmon, ID VOR/DME	16,500
§ 95.6194 VOR Federal Airway 194 Is Amended To Read in Part		
McComb, MS VORTAC	Mizze, MS FIX	*3,000
*2,000—MOCA		
Pauld, MS FIX	Meridian, MS VORTAC	2,100
§ 95.6263 VOR Federal Airway 263 Is Amended To Read in Part		
Hugo, CO VORTAC	*Lime, CO FIX	9,000
*9,000—MRA		
§ 95.6311 VOR Federal Airway 311 Is Amended To Read in Part		
Tokee, AK FIX	Flips, AK FIX	##*9,000
*6,000—MOCA		
#MEA is established with a gap in Navigaton signal Coverage		
#GPS MEA 6000		
§ 95.6317 VOR Federal Airway 317 Is Amended To Read in Part		
Gesti, AK FIX	Level Island, AK VOR/DME	#*7,000
*5,000—MOCA		
#GPS MEA 5000		
Level Island, AK VOR/DME	Hoods, AK FIX	*9,000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 441 Effective Date, May 15, 2003]

From	To	MEA
*5,900—MOCA		
Hoods, AK FIX	Sisters Island, AK VORTAC	*7,000
*5,000—MOCA		
Sisters Island, AK VORTAC	Csper, AK FIX	#*7,000
*5,000—MOCA		
#GPS MEA 5000		
Csper, AK FIX	*Hapit, AK FIX	#**15,000
*15,000—MRA		
**4,400—MOCA		
#GPS MEA 8000		
§ 95.6319 VOR Federal Airway 319 Is Amended To Read in Part		
Yakutat, AK VORTAC	Malas, AK FIX	2,600
Malas, AK FIX	Katat, AK FIX	##*10,000
*5,000—MOCA		
#MEA is established with a gap in Navigation signal coverage		
#GPS MEA 9000		
Katat, AK FIX	Casel, AK FIX	#*7,000
*5,000—MOCA		
*GPS MEA 5000		
Casel, AK FIX	EYAKS, AK FIX	*5,000
*2,600—MOCA		
Johnstone Point, AK VORTAC	Peppi, AK FIX	5,000
Wiler, AK FIX	*Anchorage, AK VOR/DME	#**10,000
*5,000—MCA Anchorage VOR/DME		
**7,000—MOCA		
#GPS MEA 7000		
§ 95.6320 VOR Federal Airway 320 Is Amended To Read in Part		
Nelli, AK FIX	Nowell, AK FIX	*10,000
*6,500—moca		
Nowell, AK FIX	Hoper, AK FIX	#*10,000
*8,500—MOCA		
#GPS MEA 8,500		
Hoper, AK FIX	Anchorage, AK VOR/DME	#7,000
*6,000—MOCA		
#GPS MEA 6,000		
§ 95.6428 VOR Federal Airway 428 Is Amended To Read in Part		
Biorka Island, AK VORTAC	Sisters Island, AK VORTAC	#*7,000
*6,000—MOCA		
#GPS MEA 6000		
Sisters Island, AK VORTAC	Haines, AK NDB	##*10,000
*8,500—MOCA		
#GPS MEA 8500		
#MEA is established with a gap in Navigation signal coverage		
Haines, AK NDB	Whitehorse, CA VOR/DME	#*10,000
*9,500—MOCA		
#GPS MEA 9500		
§ 95.6430 VOR Federal Airway 430 Is Amended To Read in Part		
Havre, MT VOR/DME	Glasgow, MT VOR/DME	*6,500
*5,500—MOCA		
Glasgow, MT VOR/DME	Williston, ND VORTAC	*6,000
*5,000—MOCA		
§ 95.6431 VOR Federal Airway 431 Is Amended To Read in Part		
Sisters Island, AK VORTAC	*Lyric, AK FIX	#**8,000
*8,000—MRA		
**5,800—MOCA		
#GPS MEA 5800		
§ 95.6440 VOR Federal Airway 440 Is Amended To Read in Part		
Sandspit, CA VORTAC	Mocha, AK FIX	###*8,000

REVISIONS TO IFR ALTITUDES & CHANGEOVER POINTS—Continued

[Amendment 441 Effective Date, May 15, 2003]

From	To	MEA
*4,600—MOCA		
#For that Airspace over U.S. Territory		
#MEA is established with a gap in Navigation signal coverage		
#GPS MEA 4600		
Mocha, AK FIX	Latch, AK FIX	##*12,000
*4,000—MOCA		
#MEA is established with a gap in Navigation signal coverage		
#GPS MEA 8000		
Salis, AK FIX	*Hapit, AK FIX	##*9,000
*15,000—MRA		
**2,000—MOCA		
#MEA is established with a gap in Navigation signal coverage		
#GPS MEA 8000		
Hapit, AK FIX	Centa, AK FIX	##*9,000
*2,000—MOCA		
#MEA is established with a gap in Navigation signal coverage		
#GPS MEA 8000		
Centa, AK FIX	Yakutat, AK VORTAC	#*3,000
*2,000—MOCA		
#GPS MEA 2000		
Oculi, AK FIX	Middleton Island, AK VOR/DME	#*8,000
*2,000—MOCA		
#GPS MEA 7000		
Middleton Island, AK VOR/DME	Hoper, AK FIX	#*10,000
*8,500—MOCA		
#GPS MEA 8500		
Hoper, AK FIX	Anchorage, AK VOR/DME	#*7,000
*6,000—MOCA		
#GPS MEA 6000		
§ 95.6473 VOR Federal Airway 473 Is Amended To Read in Part		
Level Island, AK VOR/DME	Flips, AK FIX	#*7,000
*6,000—MOCA		
#GPS MEA 6000		
§ 95.6543 VOR Federal Airway 543 Is Amended To Read in Part		
Pauld, MS FIX	Meridian, MS VORTAC	2,100

[FR Doc. 03–8562 Filed 4–11–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–02–018]

RIN 1625–AA00

Security Zone: Protection of Tank Ships, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule: Notice of enforcement of tank ship security zone.

SUMMARY: The Captain of the Port Puget Sound will begin enforcing the tank ship security zones established by 33 CFR 165.1313 on April 15, 2003. These security zones will be enforced until further notice.

DATES: 33 CFR 165.1313 will be enforced commencing April 15, 2003.

FOR FURTHER INFORMATION CONTACT: Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134 at (206) 217–6200 or (800) 688–6664 to obtain information concerning enforcement of this rule.

SUPPLEMENTARY INFORMATION: On March 31, 2003, the Coast Guard published a final rule (68 FR 15372) establishing regulations, in 33 CFR 165.1313, for the security of tank ships in the navigable waters of Puget Sound and adjacent waters, Washington. This security zone provides for the regulation of vessel traffic in the vicinity of tank ships and excludes persons and vessels from the immediate vicinity of all tank ships. Entry into this zone is prohibited unless authorized by the Captain of the Port or his designee. The Captain of the Port Puget Sound will begin enforcing the tank ship security zones established by 33 CFR 165.1313 on April 15, 2003. The Captain of the Port may be assisted by other Federal, State, or local agencies in enforcing this security zone.

Dated: April 2, 2003.

Danny Ellis,

Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 03–8943 Filed 4–8–03; 3:22 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–02–016]

RIN 1625–AA00 [Formerly 2115–AA97]

Regulated Navigation Area; Olympic View Resource Area EPA Superfund Cleanup Site, Commencement Bay, Tacoma WA

AGENCY: Coast Guard, DHS.

ACTION: Final Rule.

SUMMARY: The Coast Guard is establishing a permanent regulated navigation area (RNA) on a portion of Commencement Bay, Tacoma, Washington. This RNA will preserve the integrity of a clean sediment cap placed over the contaminated seabed as part of the remediation process at the Olympic View Resource Area Environmental Protection Agency (USEPA) Superfund Site. It is being established at the request of the USEPA and the Washington State Department of Natural Resources and prohibits activities that would disturb the seabed, such as anchoring, dredging, spudding, laying cable, or other disturbances of the bottom. This rule will not affect transit or navigation of the area.

DATE: This rule is effective May 12, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD13–02–016 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST1 Craig. R. Petersen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, at (206) 217–6232.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 2, 2002, we published a notice of proposed rulemaking (NPRM) entitled Regulated Navigation Area; Olympic View EPA Superfund Cleanup Site, Commencement Bay, Tacoma, WA, in the **Federal Register** (67 FR 71513). We received two phone calls commenting on the proposal. No public hearing was requested, and none held.

Background and Purpose

The Olympic View Resource Area Superfund Site is located between the eastern boundary of the Thea Foss Waterway and the western boundary of the Middle Waterway of Commencement Bay, Washington. The site includes property owned and or leased by the now closed Puget Sound Plywood Company, contaminated sediments in Commencement Bay, and other upland sources of contamination. The site is approximately 12.4 acres in size and includes 10.6 acres of intertidal and shallow subtidal marine aquatic land. An area of 2.2 acres of marine sediments is contaminated within the site.

Part of the remediation process for this site consists of covering the contaminated sediments with a layer of clean medium to coarse-grained sand approximately one-meter (3-feet) thick or greater. This cap is used to isolate contaminants and limit their vertical migration and release into the water column. The cap will also limit the potential for marine organisms to reach the contaminated sediment.

This Regulated Navigation Area (RNA) is a permanent regulation restricting activities such as anchoring, dredging, spudding, laying cable or other activities, which would disturb the sediment cap covering the contaminated seabed. The rule does not affect normal transit or navigation of the area. The Olympic View Resource Area is located offshore of the peninsula between the Thea Foss and Middle Waterways in Commencement Bay, Tacoma, Washington. The sediment cap includes approximately 480 feet of shoreline extending approximately 420 feet into the bay. This area is relatively unprotected and is rarely utilized as an anchorage.

Discussion of Comments and Changes

The Coast Guard received two phone calls commenting on the notice of proposed rulemaking (NPRM). The following paragraphs contain a discussion of comments received and an explanation of changes, if any, to the proposed regulations.

Comment: Two phone comments were received stating that the longitude on the last set of coordinates described in the NPRM as 47°15′46.74493″ North, 122°26′09.27617″ West appeared incorrect and did not make sense.

Response: These comments were investigated and found to be correct. The correct longitude on the last set of coordinates should be 122°26′02.50574″ West. Accordingly, the last set of coordinates listed in paragraph (a) of the final rule has been corrected and reads 47°15′46.74493″ North, 122°26′02.50574″ West. The size of the RNA did not appreciably change due to this correction.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This finding is based on the fact that the regulated area established by the rule would encompass a small area that should not impact commercial or recreational traffic. The Olympic View Resource Area does not appear to have any viable industrial or commercial use. Moreover, any land or water use on the site that would be at odds with the RNA would likely be restricted through the site's designation by the City of Tacoma as a Natural Resource Damage Assessment (NRDA) settlement site, pursuant to a Consent Decree between the City of Tacoma and the Natural Resource Trustees. Furthermore, on May 24, 2000, the State Commissioner of Public Lands established the project area as part of an environmental reserve under RCW 79.68.060. This designation removes the site from potential development or commercial leasing. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to anchor, dredge, spud, lay cable or disturb the seabed in any fashion when this rule is in effect. The RNA will not have a significant economic impact due to its small area. Because the impacts of this rule are expected to be so minimal, the Coast Guard certifies under 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601–612) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. No assistance was requested by small entities.

Small business may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This particular regulated navigation area is established for the purpose of preserving the remediation efforts at a USEPA Superfund Site. The rule itself will not cause nor introduce any environmental impacts and will be transparent in all regards except for prohibiting activities which could disturb the seabed within the established boundaries of the RNA. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

The USEPA has determined that there will be no significant environmental impact arising from the creation of this RNA designed to protect the sediment cap. The actual placement of the cap at the Olympic View Resource Area site was determined by the USEPA to provide an environmental benefit to the area by allowing organisms to colonize the clean sediments of the cap ("Action Memorandum for a Non-time-critical Removal Action at the Olympic View Resource Area within the Commencement Bay Nearshore/ Tideflats Superfund Site, Tacoma, Pierce County, Washington"—July 16, 2001). The USEPA's authority to place the cap is expressed in this publicly available document, and additional information is available at the Marine Safety Office at the address under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Section 165.1311 is added to read as follows:

§ 165.1311 Olympic View Resource Area, Tacoma, WA.

(a) *Regulated area.* A regulated navigation area is established on that portion of Commencement Bay bounded by a line beginning at: 47°15′40.19753″ N, 122°26′09.27617″ W; thence to 47°15′42.21070″ N, 122°26′10.65290″ W; thence to 47°15′41.84696″ N, 122°26′11.80062″ W; thence to 47°15′45.57725″ N, 122°26′14.35173″ W; thence to 47°15′53.06020″ N, 122°26′06.61366″ W; thence to

47°15′46.74493″ N, 122°26′02.50574″ W; thence returning along the shoreline to the point of origin. [Datum NAD 1983].

(b) *Regulations.* All vessels and persons are prohibited from anchoring, dredging, laying cable, dragging, seining, bottom fishing, conducting salvage operations, or any other activity which could potentially disturb the seabed in the designated area. Vessels may otherwise transit or navigate within this area without reservation.

(c) *Waiver.* The Captain of the Port, Puget Sound, upon advice from the United States Environmental Protection Agency (USEPA) Project Manager and the Washington State Department of Natural Resources, may, upon written request, authorize a waiver from this section if it is determined that the proposed operation supports USEPA remedial objectives, or can be performed in a manner that ensures the integrity of the sediment cap. A written request must describe the intended operation, state the need, and describe the proposed precautionary measures. Requests shall be submitted in triplicate, to facilitate review by USEPA, Coast Guard, and Washington State Agencies. USEPA managed remedial design, remedial action, habitat mitigation, or monitoring activities associated with the Olympic View Resource Area Superfund Site are excluded from the waiver requirement. USEPA is required, however, to alert the Coast Guard in advance concerning any of the above-mentioned activities that may, or will, take place in the Regulated Area.

Dated: March 27, 2003.

Erroll Brown,

Rear Admiral, U.S. Coast Guard, 13th District Commander.

[FR Doc. 03–8944 Filed 4–10–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–014]

RIN 1625–AA00

Security Zone; Waters Adjacent to San Onofre, San Diego County, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the waters adjacent to the San Onofre Nuclear Generating Station in San Diego County, CA. This action is necessary to ensure public safety and prevent sabotage or terrorist acts against the public and commercial structures and individuals near or in this structure. This security zone will prohibit all persons and vessels from entering, transiting through or anchoring within the security zone unless authorized by the Captain of the Port (COTP), or his designated representative. This security zone will not affect recreational activities within the surf zone or the beach.

DATES: This rule is effective from 12:01 a.m. (PST) on March 21, 2003 to 11:59 p.m. (PDT) on May 21, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket COTP San Diego 03–014, and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Dr., San Diego, CA 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On February 6, 2002, we published a temporary final rule for waters adjacent to the San Onofre Nuclear Generating Station entitled "Security Zone; Waters adjacent to San Onofre, San Diego County, California" in the **Federal Register** (67 FR 5480) under Sec. 165.T11–048. It has been in effect since October 25, 2001 and was set to expire at 3:59 p.m. PDT on June 21, 2002. It has since been extended and is now set to expire at 11:59 p.m. PDT March 21, 2003.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Due to the terrorist attacks on September 11, 2001 and the warnings given by national security and intelligence officials, there is an increased risk that further subversive or terrorist activity may be launched against the United States. A heightened level of security has been established concerning all vessels operating in the waters adjacent to the San Onofre Nuclear Generating Station area. This security zone is needed to protect the United States and more specifically the personnel and property of the San Onofre Nuclear Generating Station. The original TFR was urgently required to prevent possible terrorist strikes against the United States and more specifically the people, waterways, and properties near the San Onofre Nuclear Generating Station. It was anticipated that we would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, propose regulations responsive to existing conditions. We have determined the need for continued security regulations exists.

The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to San Onofre Nuclear Generating Station. Immediate action is required to accomplish these objectives and necessary to continue safeguarding these vessels and the surrounding area. Any delay in the effective date of this rule is impractical and contrary to the public interest.

For the reasons stated in the paragraphs above under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On September 11, 2001, terrorists launched attacks on civilian and military targets within the United States killing large numbers of people and damaging properties of national significance. Vessels operating near the San Onofre Nuclear Generating Station present possible platforms from which individuals may gain unauthorized access to this installation, or launch terrorist attacks upon the waterfront structures and adjacent population centers.

In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard has established a temporary security zone in the navigable waters of the United States adjacent to the San Onofre Nuclear Generating Station. This temporary security zone is necessary to provide for the safety and security of the United States of America and the people, ports, waterways and properties within the San Onofre Nuclear Generating Station area.

As of today, the need for this security zone still exists. The effective period of this temporary final rule will extend through 11:59 p.m. PST March 21, 2003.

Discussion of Rule

This regulation extends the current security zone that prohibits all vessel traffic from entering, transiting or anchoring within a one nautical mile radius of San Onofre Nuclear Generating Station that is centered at the following coordinate: 33° 22′ 30″ N, 117° 33′ 50″ W. This security zone will not affect recreational activities within the surf zone or the beach.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended The Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. 33 U.S.C. 1226. The terrorist acts against the United States on September 11, 2001, have increased the need for safety and security measures on U.S. ports and waterways. In response to these terrorist acts, and in order to prevent similar occurrences, the Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to the San Onofre Nuclear Generating Station. This temporary security zone is necessary to provide for the safety and security of the United States of America and the people, ports, waterways and properties within the San Onofre Nuclear Generating Station area.

This temporary security zone, prohibiting all vessel traffic from entering, transiting or anchoring within the above-described area, is necessary for the security and protection of the San Onofre Nuclear Generating Station. This zone will be enforced by Coast Guard patrol craft or any patrol craft and resources enlisted by the COTP.

Persons and vessels are prohibited from entering into this security zone unless authorized by the Captain of the Port or his designated representative. Each person and vessel in a security zone shall obey any direction or order of the COTP. The COTP may remove any person, vessel, article, or thing from a security zone. No person may board, or take or place any article or thing on board, any vessel in a security zone without the permission of the COTP.

Any violation of the security zone described herein is punishable by, among other things, criminal penalties (imprisonment for not more than 12 years and a fine of not more than $250,000), in rem liability against the offending vessel, and license sanctions.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Due to the recent terrorist actions against the United States the implementation of this security zone is necessary for the protection of the United States and its people. Because these security zones are established in an area near the San Onofre Nuclear Generating Station that is seldom used, the Coast Guard expects the economic impact of this rule to be so minimal that full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" includes small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

This security zone will not have a significant impact on a substantial number of small entities because the portion of the security zone that affects the San Onofre Nuclear Generating Station area is infrequently transited. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offers to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Rick Sorrell, Marine Safety Office San Diego, at (619) 683–6495.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule and have determined that this rule does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes,

or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security Measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Revise § 165.T11–048 to read as follows:

§ 165.T11–048 Security Zone; Waters adjacent to San Onofre, San Diego County, CA.

(a) *Location.* This security zone will encompass the waters within a one nautical mile seaward arc off San Onofre Nuclear Generating Station that is centered at the following coordinate: latitude 33°22.186′ N, longitude 117°33.607′ W. This security zone will not affect recreational activities within the surf zone or the beach.

(b) *Effective Dates.* This security zone will be in effect from 12:01 a.m. (PST) on March 21, 2003 to 11:59 p.m. (PDT) on May 21, 2003.

(c) *Waivers.* The COTP may waive any of the requirements of this rule for any person, vessel or class of vessel upon finding that circumstances are such that application of the security zone is unnecessary for national or port security.

(1) The following categories of persons are automatically exempt from requirement to depart the security zone but must comply with the provisions set forth below to operate in the security zone:

(i) Recreational surfers;

(ii) Hikers on the beach;

(iii) Swimmers.

(2) Reports to the COTP and requests for waivers required by this section must be made by telephone or radio call to the following numbers or on the following channels: Marine Safety Office San Diego at (619) 683–6495 or VHF–FM channel 16.

(3) COTP reserves the authority to revoke any waivers granted in order to provide for the safety and security of boaters, the San Onofre Nuclear Generating Station or its personnel.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: March 21, 2003.

Stephen P. Metruck,

Commander, Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–8945 Filed 4–10–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[WV059–6027a; FRL–7479–9]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, State of West Virginia; Control of Emissions From Commercial and Industrial Solid Waste Incinerator Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves the commercial and industrial solid waste incinerator 111(d)/129 plan (the "plan") submitted to EPA on November 29, 2001 by the West Virginia Department of Environmental Protection, Division of Air Quality (DAQ). The plan was submitted to fulfill requirements of the Clean Air Act (CAA). The DAQ plan establishes emission limits, monitoring, operating, and recordkeeping requirements for commercial and industrial solid waste incinerator (CISWI) units for which construction commenced on or before November 30, 1999.

DATES: This final rule is effective on June 10, 2003 without further notice, unless EPA receives adverse written comment by May 12, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Sections 111(d) and 129 of the CAA requires states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type, and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria have been issued, and which is not included on a list published under section 108(a) or section 112(b)(1)(A) of the CAA, but emissions of which are subject to a standard of performance for new stationary sources. However, section 129 of the CAA, also requires EPA to promulgate EG for CISWI units that emit a mixture of air pollutants. These pollutants include organics (dioxins/furans), carbon monoxide, metals (cadmium, lead, mercury), acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides) and particulate matter (including opacity). On December 1, 2000 (65 FR 75338), EPA promulgated CISWI unit new source performance standards and EG, 40 CFR part 60, subparts CCCC and DDDD, respectively. The designated facility to which the EG apply is each existing CISWI unit, as defined in subpart DDDD, that commenced construction on or before November 30, 1999.

Section 111(d) of the CAA requires that "designated" pollutants, regulated under standards of performance for new stationary sources by section 111(b) of the CAA, must also be controlled at existing sources in the same source category to a level stipulated in an EG document. Section 129 of the CAA specifically addresses solid waste combustion and emissions controls based on what is commonly referred to as "maximum achievable control technology" (MACT). Section 129 requires EPA to promulgate a MACT based emission guidelines document for CISWI units, and then requires states to develop plans that implement the EG requirements. The CISWI EG under 40 CFR part 60, subpart DDDD, establish emission and operating requirements under the authority of the CAA, sections 111(d) and 129. These requirements must be incorporated into a State plan that is "at least as protective" as the EG, and is Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State plans are codified in 40 CFR part 60, subpart B.

II. Review of West Virginia's CISWI Plan

EPA has reviewed the West Virginia CISWI plan in the context of the requirements of 40 CFR part 60, and subparts B and DDDD. A summary of the review is provided below.

A. Identification of Enforceable State Mechanism(s) for Implementing the EG

On September 25, 2002, the DAQ submitted to EPA a copy of the plan's enforceable mechanism, regulation 45CSR18, "To Prevent and Control Emissions from Commercial and Industrial Solid Waste Incinerator Units." The regulation, which became effective on May 1, 2002, contains a compliance schedule that is not considered expeditious by EPA. As a result, the DAQ amended its plan to include a State Consent Order (CO) with a revised compliance schedule, which is applicable to the only known affected facility, E.I. Du Pont de Nemours and Company, Washington Works ("DuPont"), located in Wood County, West Virginia.

A second state regulation, 45CSR6, effective July 1, 2001, establishes the air pollution control requirements for air curtain incinerator (ACI) units. 45CSR6, section 4.8, stipulates the air pollution control requirements for both new and existing units. Affected facilities constructed on or before November 30, 1999 are subject to the same requirements as new units under 40 CFR part 60, subpart CCCC. The DAQ has made a conscious decision to subject these sources, if any, to the same standards as new sources. However, the DAQ is not aware of any affected ACI units.

B. Demonstration of Legal Authority

The DAQ states that it has sufficient statutory and regulatory authority to implement and enforce the plan. This is discussed in section VII of the plan narrative, a November 29, 2001 letter from DAQ Counsel, and the January 22, 2003 plan amendment. The DAQ cites the following references for legal authority: W.Va. Code section 22–5–1 *et seq.*, applicable state CISWI air quality regulations WV CSR18, and WV CSR6, section 4.8. The DAQ has the required legal authority based on EPA's review of the submitted legal opinions, statutes, and rules. This includes the West Virginia CISWI regulations and the Dupont Consent Order; each of which is considered as being at least as protective as the applicable Federal requirements for existing CISWI units.

C. Inventory of CISWI Units in West Virginia Affected by the EG

As noted above, there is only one known affected facility, Dupont, located in Wood County, West Virginia. There is no known affected ACI unit in West Virginia.

D. Inventory of Emissions From CISWI Units in West Virginia

The submitted plan contains an estimate of emissions from the Dupont facility. Emissions estimates are provided for organics (dioxins/furans), acid gases (hydrogen chloride, sulphur dioxide, and nitrogen oxides), and metals (cadmium, lead, mercury).

E. Emission Limitations for CISWI Units

The state CISWI regulations include emission limitation requirements that are at least as protective as those in the EG, subpart DDDD.

F. Compliance Schedules

The state CISWI regulation, 45 CSR18, which became effective on May 1, 2002, contains a compliance schedule, as noted above, that is not considered expeditious by EPA. As a result, the DAQ amended its plan to include the Dupont Consent Order, which includes a revised compliance schedule that requires final compliance on or before September 30, 2003. EPA believes the revised compliance schedule is an expeditious one. This determination is based on a review of air pollution control retrofit case studies of smaller hospital/medical infectious waste incinerator units, which are similar in size and design to CISWI units. The retrofit case studies are referenced in EPA's November 25, 2002 proposed Federal plan (67 FR 70640) for CISWI units. See the proposed Federal plan preamble, section IV. F, "How Did EPA Determine the Compliance Schedule?" The Dupont Consent Order was executed on January 17 and 23, 2003, by DAQ and Dupont representatives, respectively. If an unknown individual CISWI unit is discovered after EPA approval of this plan, the unit will be subject to the Federal plan.

G. Testing, Monitoring, Recordkeeping, and Reporting Requirements

The state CISWI regulations include the applicable source compliance testing, monitoring, recordkeeping, and reporting requirements of the EG.

H. A Record of the Public Hearing on the State Plan

Public hearings were held in Charleston, West Virginia, on November 8, 2001 for the original plan, and then again on January 6, 2003 for the amended plan. The DAQ provided evidence of complying with the public notice and other hearing requirements of subpart B.

I. Provision for Annual State Progress Reports to EPA

The DAQ will submit to EPA on an annual basis a report which details the progress in the enforcement of the plan. The first progress report will be submitted to EPA within one year after approval of the state plan.

III. Final Action

EPA is approving the West Virginia CISWI plan for controlling designated pollutants under sections 111(d) and 129 of the CAA. Therefore, EPA is amending 40 CFR part 62 to reflect this action. This approval is based on the rationale discussed above and in further detail in the technical support document (TSD) associated with this action.

There are a number of plan elements which are not relevant or germane to this plan approval action. Accordingly, EPA is taking no action on the following plan elements:

(1) The provisions of 45CSR6 that regulate incinerators other than affected ACI units;

(2) The compliance date provisions codified at 45CSR18, section 7.1; and

(3) The Dupont Consent Order, Section I, Findings of Facts, paragraphs 4 and 6, relating to greenhouse gas emissions, and state permit requirements not required under subpart DDDD. These three elements are not part of the EPA approved West Virginia CISWI plan.

As provided by 40 CFR 60.28(c), any revisions to the West Virginia plan, or the associated Dupont Consent Order, will not be considered part of the applicable plan until submitted by the DAQ in accordance with 40 CFR 60.28(a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action simply approves a pre-existing Federal requirement for state air pollution control agencies and existing CISWI units that are subject to the provisions of 40 CFR part 60, subparts B and DDDD, respectively. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective June 10, 2003 without further notice unless the Agency receives relevant adverse comments by May 12, 2003. If EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d)/129 plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a 111(d)/129 plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d)/129 plan submission, to use VCS in place of a 111(d)/129 plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, approving the West Virginia CISWI plan, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Dated: March 31, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR part 62, subpart XX, is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

■ 2. An undesignated center heading and sections 62.12155, 62.12156, and 62.12157 are added to subpart XX, to read as follows:

Emissions From Existing Commercial Industrial Solid Waste Incinerators (CISWI) Units—Section 111(d)/129 Plans

§ 62.12155 Identification of plan.

Section 111(d)/129 CISWI plan submitted on November 29, 2001, amended September 25, 2002, and January 22, 2003.

§ 62.12156 Identification of sources.

The plan applies to the Dupont CISWI unit located in Wood County, West Virginia.

§ 62.12157 Effective date.

The effective date of the plan is June 10, 2003.

[FR Doc. 03–8829 Filed 4–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 89

[AMS–FRL–7482–1]

Control of Emissions From New Nonroad Diesel Engines: Amendments to the Nonroad Engine Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is issuing a direct final rule revising the definition of nonroad engines to include all diesel-powered engines used in agricultural operations in the State of California that are certified by the engine maker to meet the applicable nonroad emission standards. Our rule will consider such engines as nonroad engines without regard to whether these engines are portable or transportable or how long these engines remain in one fixed location at a farm.

DATES: This direct final rule is effective on May 14, 2003, without further notice, unless we receive adverse comments by May 12, 2003, or receive a request for a public hearing by April 28, 2003. Should we receive any adverse comments on this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments: All comments and materials relevant to today's action should be submitted to Public Docket No. OAR–2003–0046 at the following address: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Docket: Materials relevant to this rulemaking are contained in Public Docket Number OAR–2003–0046 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1742, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Robert Larson, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Transportation and Regional Programs Division, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214–4277, fax (734) 214–4956, e-mail *larson.robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

Entities potentially impacted by this change in regulation are farming interests in the State of California and those interests that manufacture or put into commerce new, compression-ignition nonroad engines, including:

Category	NAICS codes	Examples of potentially regulated entities
Manufacturing	333618	Manufacturers of new nonroad diesel engines.
Agriculture, Forestry, Fishing, Hunting	111XXX	Farms with crop production.
Agriculture, Forestry, Fishing, Hunting	112XXX	Farms with animal production.
Manufacturing	333111	Farm machinery and equipment.

B. How Can I Get Copies of This Document?

1. *Docket.* EPA has established an official public docket for this action under Air Docket ID No. OAR–2003–0046. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/edocket/* to submit or view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search" and key in the appropriate docket identification number.

EPA is publishing this rule without a prior proposal. However, if we receive adverse comment on this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating that this rule is being withdrawn due to adverse comment. In the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if adverse comments are filed. This rule will be effective on

May 14, 2003, without further notice unless we receive adverse comment by May 12, 2003, or receive a request for a public hearing by April 28, 2003. We may address all adverse comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period.

II. Summary of Rule

The change to the definition of nonroad engine is intended to encourage agricultural operations in the State of California to reduce emission from their existing stationary diesel-powered [1] engines by replacing them with engines certified to the emission standards for nonroad engines, thereby greatly reducing NO_X emissions from these engines. The rule does not require the replacement of existing engines with certified engines. However, as explained below, EPA believes that owners of engines will choose to replace them voluntarily.

The Clean Air Act divides internal combustion engines into three categories: Stationary internal combustion engines, engines used in highway motor vehicles, and nonroad engines. The last category includes virtually all mobile engines that are not used in motor vehicles. Nonroad engines are considered mobile sources under the Act and are regulated by EPA under section 213 of the Act. However, the boundaries between these three categories of engines is not well delineated in the Act, so EPA promulgated a rule defining "nonroad engine," exercising its authority to clarify these boundaries (59 FR 31306, June 17, 1994). *See* 40 CFR 89.2. The current definition of nonroad engine requires that the engine meet one of several criteria primarily based on how it is used. For example, the engine is defined as a nonroad engine if it is used to propel a piece of mobile equipment such as a bulldozer or farm tractor or if it is used in equipment that is propelled while performing its function such as a lawn mower. In addition, the engine is considered a nonroad engine if it is used in a piece of equipment that is portable or transportable. Such equipment could include a pump mounted on a trailer or on a set of skids for the purpose of moving the equipment from one location to another for operation in multiple locations. However, such an engine would not be considered a nonroad engine if the engine or the equipment in which it is located is actually used in one fixed location for more than 12 consecutive months. If an engine is located in one place and operated more than 12 consecutive months or otherwise does not meet the definition of nonroad engine (for example, if it is permanently attached to one location), the engine is not considered a nonroad engine and is not subject to EPA's emission standards for nonroad engines. Instead, it is generally considered stationary and is subject to regulation under Titles I and V of the Clean Air Act.

In the case of agricultural pump engines used in the State of California, EPA estimates that approximately half of these fall under the definition of nonroad engines due to their portability while the rest are considered stationary. Other than portability, both sets of engines perform basically the same set of functions and operate similarly. Thus, a farming operation could have engines of the same horsepower and even the same manufacturer performing the same basic function of powering a pump, but one would be considered a mobile source nonroad engine subject to the requirements established under Title II of the Clean Air Act while its counterpart is treated as stationary and subject to the provisions of Titles I and V of the Clean Air Act.

In California, stationary agricultural pump engines have historically not been required to reduce their emission levels.[2] In contrast, nonroad engines have emission standards in place which have substantially improved their emission performance. Thus, using the example case from the previous paragraph, an agricultural operation could have two pump engines identical in function except the one considered a nonroad engine could have significantly better emission performance than its counterpart stationary pump engine. Clearly, from an emission performance standpoint, it would be preferable to have both engines meeting the lower emission levels of the nonroad engine.

Due to the substantial number of agricultural pump engines in use in California, particularly concentrated in the major agricultural areas such as the San Joaquin Valley, and due to the fact that the portion of these engines installed in stationary pumps have not been previously controlled (except perhaps by voluntary action of the owner [3]), we believe it would be environmentally beneficial to encourage agricultural operations to replace relatively high emitting stationary pump engines with engines meeting the nonroad emission standards. The State of California has in fact acted since 1999 to reduce the emissions from these stationary engines by replacing these stationary engines through its Carl Moyer program which has provided funding for the purchase of new engines certified to meet the emission standards applicable to new nonroad engines.

EPA is changing the definition of nonroad engine to include diesel engines used in agricultural operations in the State of California that are certified by the engine manufacturer to meet the nonroad emission standards for that engine, where the engine is part of an engine family that contains engines that otherwise meet the definition of nonroad engine. Such engines will no longer be stationary internal combustion engines. Thus, farmers would not include the emissions from such nonroad engines when they determine whether their agricultural operation is a major source for purposes of Title V permitting or other requirements. We believe that this change will encourage the use of engines certified to nonroad standards, which will result in a reduction in emissions from uncontrolled levels. We believe that farmers will prefer to obtain new engines regulated as nonroad engines, rather than to continue using engines that will be regulated under stationary source permitting requirements including Title V and New Source Review (NSR). Regulations promulgated under Title II focus primarily on compliance by manufacturers rather than users, whereas Title V and NSR focuses compliance requirements on users.

Of course, replacing current engines with new nonroad engines comes at some cost. However, the State of California through its Carl Moyer program has been providing funds to help farmers replace existing engines with newer cleaner engines. Additionally, the U.S. Department of Agriculture, through programs administered by its Natural Resources Conservation Services (NCRS) anticipates making some funding available under the Environmental Quality Incentives Program (EQIP) to the extent practicable for replacement of existing agricultural engines with engines meeting the requirements of our nonroad regulations.

[1] In this preamble, references to diesel-powered engines or diesel engines denotes engines operating over what is commonly referred to as the diesel engine cycle, also known as the compression ignition cycle. It is not limited to engines running on diesel fuel. For example, engines fueled with diesel fuel, compressed natural gas (CNG), or other fuel, may be diesel-powered engines.

[2] California state law presently exempts these engines from all New Source Review and Title V permitting requirements as well as any local operating permit requirements. As a result of this exemption, EPA recently proposed to find that the California State Implementation Plan is substantially inadequate. 68 FR 7327 (February 13, 2003)

[3] Some pieces of stationary agricultural equipment use engines that are certified to nonroad engine standards, or that are identical to certified engines. Internal combustion engines can be manufactured for many uses, and some engines manufactured to meet the nonroad engine standards may end up in stationary equipment. Farmers may choose to purchase such equipment.

What Is EPA Doing?

We are revising the definition of nonroad engines to include certain diesel engines that are used in agricultural operations in California that would otherwise not meet the current definition of nonroad engine. As a result, a diesel engine used in agricultural operations in California that does not meet the current definition, *e.g.* because it is used in a stationary application, would still be considered a nonroad engine if it is part of an engine family certified by the engine maker to the applicable nonroad engines standards, and at least some of the engines in that engine family meet the current definition of nonroad engine.

Internal combustion engines are often manufactured for use in many different applications. Engines that are part of an engine family that has been certified by EPA to meet applicable nonroad engine standards may get used in either portable or stationary applications. Under the current definition, only the engines used in mobile applications meet the definition of nonroad engine and those used in stationary applications do not. Under this revision, an engine in that certified engine family that is used in agricultural operations in California would continue to meet the definition of nonroad irrespective of its use as long as some engines in the engine family are used in portable applications.

This rule change does not require farmers in California to replace existing engines with new engines certified to the nonroad standards. However, for farmers who have already made this replacement or who do so in the future, their engines will be treated by EPA as nonroad engines, subject to the mobile source requirements established under Title II of the Clean Air Act, rather than as stationary engines subject to the stationary source requirements of Title I and V of the Clean Air Act. Those engines that are not replaced will continue to be regarded as stationary sources subject to those requirements.

Why Is EPA Making This Change?

As discussed below, EPA believes that allowing diesel agricultural engines in California to be classified as nonroad engines if they are certified to those standards will result in more emission reductions than would otherwise occur if such engines remained subject to the stationary source requirements and that these reductions will occur more quickly than if these engines continue to be regulated as stationary sources.

Engines used in stationary applications on farms in California have previously not been regulated under the stationary source requirements of the Clean Air Act, including Title V requirements. Effective November 14, 2002, such engines became subject to the Title V permit program pursuant to EPA's regulations at 40 CFR part 71.[4] Title V, however, does not require subject sources to reduce emissions from the source's operation. The main goal of Title V is to improve a source's compliance with all Clean Air Act requirements to which it is subject. New Source Review requirements of the Clean Air Act requires emission controls be evaluated and possibly installed for new major sources or existing major sources which perform a significant modification. While New Source Review and other requirements under Title I or Title V (*e.g.*, Reasonably Available Control Technology requirements for major sources of NO_X required under Title I) may lead to emission reduction for some engines in the future, it is unclear to what extent agricultural engines in California would be required to reduce emissions as a result of such requirements. Finally, even assuming potential future emission controls for some of these engines that could result from stationary source requirements, it is not expected that such controls would result in greater total emission reductions compared to what would result from using engines meeting the applicable nonroad emission standards.

In contrast, regulations for diesel nonroad engines establish federal emission standards for these engines and a pre-production certification procedure to ensure compliance with the standards, and include various other compliance and enforcement measures. These standards require substantial control of emissions and are generally designed to "achieve the greatest degree of emission reduction achievable through the application of [available] technology * * *, giving appropriate consideration to * * * cost * * * noise, energy and safety factors." See Clean Air Act section 213(a)(3). These regulations have been in effect beginning with the 1996 model year. The so called "Tier 2" version of these regulations is currently being phased in and will result in a further improvement in emission performance. More stringent "Tier 3" standards will be phased in beginning with the 2006 model year. Additionally, EPA is developing another set of more stringent nonroad emission standards which we anticipate will very substantially improve the emission performance of new nonroad engines in the future. This sequence of increasingly more stringent emission regulations for these new nonroad diesel engines will assure that the nonroad requirements result in the maximum feasible emission controls we can anticipate for at least the next decade or so. If engines meeting these nonroad standards are extensively used in agricultural applications, maximum feasible emission reductions should result. This regulatory amendment is intended to encourage the widespread use of such nonroad engines for all agricultural pump applications in the State of California.

[4] **Federal Register** 63551 (October 15, 2002)

What Is Current Emission Performance of These Stationary Engines?

We estimate that approximately 3,700 stationary diesel engines are used in agricultural applications in California, primarily for powering irrigation pumps such as those used for crop irrigation and for tending livestock. Some of these are quite old, dating as far back as 1960. However, between 1999 and 2001 approximately 1,500 engines were replaced through a state financed program known as the Carl Moyer program. Under the Carl Moyer program, existing stationary diesel engines were replaced with new engines of similar power and performance that were also certified to meet the nonroad emission standards. It is estimated that this program reduced oxides of nitrogen (NO_X) emissions statewide in California by over 1,750 tons per year. The remaining approximately 2,200 stationary engines are estimated to have average emission levels approximately 8.76 g/bhp-hr, which is about twice as much as the emissions of a nonroad engine manufactured to current (*i.e.*, Tier 2) nonroad standards (4.8 to 4.9 g/hphr NO_X + HMHC for engines between 100–750 hr). Current nonroad standards also require emissions of particulate matter (PM) to be approximately 40 percent lower than Tier 1 levels.

What Is the Impact of These Stationary Source Emissions on Air Quality?

Currently, agricultural stationary source diesel engines represent one of the most significant sources of NO_X emissions from agricultural activities in California. Particularly in major farming areas such as the San Joaquin Valley, NO_X emissions from stationary diesel engines represent approximately 5% of

the total NO_X emissions inventory, thus contributing to the ozone and PM–10 non-attainment status of the area. These engines also emit particulate matter directly.

Thus, replacing these relatively dirty stationary diesel engines with much cleaner currently available diesel engines will help air quality immediately. The anticipated future standards which are expected to further reduce emissions from nonroad engines will also mean that new agricultural engines in California should have even better emission performance in the future, providing more emission benefits as farmers replace their engines in later years.

What Would Happen if This Change Were not Made?

Under Title V, farms need to assess their inventories of emissions. If the total of these emissions exceeds a certain level (called the major source threshold), they would be subject to the permitting requirements of Titles I and V of the CAA. One of these permitting requirements is the NSR program. NSR requires major stationary sources that desire to construct for the first time or to modify their facility to get a NSR permit (also called a preconstruction permit) and meet emission control requirements. The other permitting requirement is EPA's operating permits program. This requires major stationary sources to get an operating permit, but does not require emission control. Thus, farm engines classified as stationary sources and operated on a farm which has collective emissions great enough to trigger the major source threshold would be subject to both these permitting programs. Under today's action, stationary farm engines that meet the nonroad certification requirement would not be subject to these two permitting programs. They also would not be subject to other potential state or local requirements directed specifically at stationary sources (*e.g.*, NO_X RACT programs under Title I), but could be subject to other state or local requirements directed at nonroad engines (*e.g.*, state nonroad engine emission standards or use restrictions).

What Do We Expect Will Happen as a Result of This Change?

As noted above, stationary engines in agricultural applications have in the past not been required to control their emissions under either federal regulations or under any State of California regulation or program aimed at improving air quality. In most cases, diesel engines represent the predominant source of NO_X emissions on the farm. Even after taking into account the engines that were already replaced under the Carl Moyer program, we estimate that around 2,200 uncontrolled stationary diesel agricultural engines remain in use in California. We estimate that replacing these over the next two years with engines meeting the existing Tier 2 and Tier 3 nonroad emission standards would result in a reduction of up to 4,400 tons of NO_X annually from agricultural operations. Particularly in areas with intensive levels of farming, such reductions would be significant. We estimate replacing the current stationary diesel engines with new nonroad engines would reduce NO_X emission for all current agricultural diesel engines, both stationary and nonroad, by about 20 percent. It would also represent a significant reduction in direct PM emissions from such engines.

This regulatory change will specify that stationary diesel engines used in agricultural applications in California be treated as nonroad sources if they otherwise meet the applicable nonroad emission requirements and are part of an engine family that includes engines that otherwise meet the nonroad engine definition. As a voluntary program, not all farming operations may choose to switch their stationary diesel engines to compliant nonroad engines. However, under Title V, agricultural operations have to inventory their sources of stationary emissions and estimate the combined level of annual emissions from these sources. For ozone nonattainment areas, operations which exceed an annual air emissions threshold for a pollutant (50 tons per year for areas designated as having "serious" air pollution, 25 tons per year for areas designated as having "severe" air pollution and 10 tons per year for areas designated as having "extreme" air pollution) are designated as "major" sources of air pollution and have to annually report these emissions. For PM–10 nonattainment areas, the thresholds are 100 tons for operations in moderate nonattainment areas and 70 tons for areas in serious nonattainment. Additionally, operations designated as "major" stationary sources must meet the NSR and NO_X RACT requirements discussed below. For a significant number of agricultural operations, switching from their existing stationary source diesel engines to new nonroad certified engines will remove these engines from the stationary source category, reducing farms' stationary source emissions enough so that they will no longer be considered major sources of NO_X emissions, thus avoiding the obligations noted above. For those remaining agricultural operations which would still exceed the "major" source threshold even after switching to nonroad certified engines, these operations may choose to make this switch anyway as this will reduce some of the reporting and other procedural obligations under any potential future stationary source control programs. Finally, we anticipate that some of the cost of the new engines may be subsidized by the USDA, consistent with eligibility requirements under the EQIP or perhaps via continued funding under the State of California's Carl Moyer program. For these reasons, we believe that it is likely that all agricultural pump engines currently used in operations which would otherwise exceed the threshold for major source designation and subject to regulation under Title V will be converted to new nonroad certified engines. In addition, as this regulation will encourage the manufacture of agricultural equipment containing engines meeting the nonroad engine standards, it is also likely that this approach will result in greater use of lower-emitting agricultural engines even in locations that do not exceed major source thresholds.

As noted above, this is a voluntary program so the agricultural operation has the opportunity to choose to take advantage of this regulation change or not. No adverse impact on agricultural operations is anticipated under this rule.

While this rule would exclude a set of sources in California from certain provisions of Title I and V, we would expect a lesser degree of emission control from these engines if this regulation change were not being adopted. The State or localities may choose not to require controls for many engines, particularly those that are not located in major sources. Those engines not on farms designated "major" sources may not be controlled, and it is not clear that even engines that are controlled would be controlled to the same level of emissions as nonroad certified engines. Since the nonroad rules are generally aimed at achieving the greatest emission control available, it would be unlikely stationary source controls would result in any greater control.

NSR requirements, which apply only to new or modified sources, would require Lowest Achievable Emissions Rate (LAER)[5] in nonattainment areas or

[5] LAER is defined as the most stringent emission limitation derived from either of the following: (1) The most stringent emission limitation contained in the implementation plan of any State for such class or category of source; or (2) the most stringent emission limitation achieved in practice by such class or category of source. CAA Section 171(3)

Best Achievable Control Technology (BACT)[6] in attainment areas. For internal combustion engines similar to the diesel agricultural engines affected by this rule, no single industry-wide technology has been generally determined to be LAER or BACT, but some recent local decisions regarding LAER and BACT in California indicate that diesel engines have not generally had to meet NO_X emission standards more stringent than current Title II standards.

In addition, the Clean Air Act requires Reasonably Available Control Technology (RACT) for major NO_X stationary sources in most ozone nonattainment areas.[7] We have defined RACT as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. 44 FR 53762 (September 17, 1979). RACT may require technology that has been applied to similar, but not necessarily identical, source categories. 57 FR 55620 (November 25, 1992). There has been no source category-wide RACT determination for these engines, but we believe it is unlikely that RACT requirements for these engines would be more stringent, and in some cases they may be less stringent, than the applicable nonroad engine standards.

Finally, any emission reductions under the stationary source provisions would likely occur later than anticipated via this rule change. While NSR and other Title I requirements may at some point in the near future begin to be applied to agricultural sources, implementation of such requirements would have to allow for the lead time needed to take regulatory and/or legislative action to promulgate such regulations and the lead time needed to implement such regulations.

There are some restrictions on state and local ability to regulate nonroad engines. *See* Clean Air Act section 209(e). States and local jurisdictions may not promulgate their own emission standards for nonroad engines. However, the State of California may promulgate and enforce standards for all nonroad agricultural engines, except new engines under 175 horsepower, if the state receives authorization from EPA to do so. Though California must make certain showings to receive this authorization, the Clean Air Act provides considerable deference to California to promulgate its own standards. Even for engines below 175 horsepower, California can receive authorization to promulgate standards for such engines if they are not standards affecting new (*i.e.*, "showroom new") engines.

In addition, states and localities may promulgate use restrictions for such engines, such as time-of-use restrictions and fuel restrictions. These requirements, as well as the state standards discussed in the paragraph above, may be enacted by state and local entities to help areas meet the attainment requirements under the Act by achieving even greater NO_X and PM reductions.

Why Are Only Agricultural Engines in the State of California Covered by This Rule Change?

This rule represents a small deviation from the general manner in which EPA has delineated the boundary between nonroad engines and stationary internal combustion engines. EPA has in the past based the definition on whether the engine will be used in a mobile or stationary manner, not on other characteristics such as engine size or the type of work, or industrial category of work, in which the engine was engaged. EPA believes that the particular circumstances of these California agricultural engines make it appropriate for EPA to use a somewhat different approach in this targeted rule.[8] First, the engines being reclassified in this rule are doing work that is indistinguishable from work done by engines already classified as nonroad engines—in fact, as noted above agricultural operations often have a combination of nonroad and stationary engines performing the same function, such as pumping water for crop irrigation or livestock watering. Moreover, the certified engines that would be defined as nonroad engines by this regulatory change are engines that are part of engine families that have been certified for use and are used in other mobile applications. Therefore, many of the certified engines affected by this rule are in fact indistinguishable from other certified nonroad engines.

More importantly, the unique circumstances in California make this revision appropriate for these engines. As noted above, unlike other stationary sources that are already subject to stationary source emission controls, farm engines have not historically been subject to stationary source emission control regulations. The approach we use in this rule basically allows a farm to voluntarily reduce emissions from its engines in a manner that will result in definite emission reductions that are likely greater and more rapid than would be achieved under the previous approach. This rule will thus not disturb existing regulatory programs in a way that a broader rule would.

This revision is particularly appropriate for California. California is uniquely positioned as the only state that may promulgate its own standards for nonroad engines under section 209(b). Other states may only promulgate standards identical to any California chooses to adopt. Since California is in a unique position to continue promulgating standards, regulating these engines as nonroad engines, it can implement effective emission control programs for these engines. Also, given the particular air quality concerns and the need for reductions of NO_X in California as well as the opportunity to significantly reduce emissions from agricultural pump engines (the opportunity benefitted by the potential funding through the Carl Moyer program and the U.S. Department of Agriculture), farms in California are uniquely situated to take advantage of this regulatory provision.

This rule is in many ways an extension of the policy behind California's existing Carl Moyer program to provide new certified engines to these farmers. That program provided funding for farmers that purchased engines meeting nonroad standards, whereas this revision provides regulatory changes that encourage the use of

[6] The BACT requirement is defined as: "An emissions limitation (including a visible emission standard) based on the maximum degree of reduction for each pollutant subject to regulation under the Clean Air Act which would be emitted from any proposed major stationary source or major modification which the Administrator, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results." 40 CFR 52.21(b)(12)

[7] There are similar RACM requirements in PM–10 nonattainment areas.

[8] The use of targeted rules of limited scope, especially in the context of a voluntary program, is similar to other projects in which EPA has engaged.

certified engines. EPA believes that this action is similar in many ways to programs EPA has implemented and continues to consider, under which EPA offers flexibility in its regulations, etc., in site-specific situations to encourage companies, communities, and other project sponsors to develop "cleaner, cheaper and smarter" alternatives to the current system. *See* 62 FR 19872 (April 23, 1997), for example.

It is not clear that this approach would be appropriate in other circumstances, given the different historical and environmental contexts and different types of engines used. Moreover, there is the potential that a broader use of this approach could possibly lead to exploitation of mobile source certification as a way to avoid stationary source controls, or might otherwise disrupt the proper functioning of the federal, state and local programs to control stationary source emissions. Given the potentially significant reductions that this program will facilitate, the general lack of reductions previously required under the existing regulatory approach, the voluntary nature of this approach, available funding and the limited scope of this approach, EPA believes that this rule is appropriate and justified.

What Are the Statutory Provisions Underlying This Rule Change?

The Clean Air Act's statutory provisions are relatively ambiguous regarding the specific boundaries between nonroad engines and stationary internal combustion engines. Section 216(10) states that a nonroad engine is "an internal combustion engine * * * that is not used in a motor vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 111 or section 202." Section 111(a)(3) states that "stationary source means any building, structure, facility or installation which emits or may emit any air pollutant. Nothing in Title II of this Act relating to nonroad engines shall be construed to apply to stationary internal combustion engines."

EPA's prior rulemaking that clarified the delineation between nonroad and stationary engine focused on the use and application of the engine, and did so on an engine by engine basis. This targeted revision also focuses on the application and use of engines, but in a broader manner. Under this approach, EPA looks at the engine family as a group, not engine by engine. Where the engine family contains engines that are, under the previous definition, nonroad engines, EPA will allow other specific engines that are essentially identical to be considered nonroad engines. We believe this approach is reasonable in these circumstances for the reasons delineated above.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

—Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a "significant regulatory action."

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities, in particular because this rule change does not mandate that farms replace any existing engine.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that this rule does not contain a federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. This action has the net effect of revising certain provisions of the Tier 2 rule. Therefore, the requirements of the UMRA do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or we consults with state and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule revises certain provisions of earlier rules that adopted national standards to control emissions from nonroad diesel engines. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not uniquely affect the communities of American Indian tribal governments. Furthermore, today's rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Executive Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

No new technical standards are established in today's rule.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 27, 2003.

IV. Statutory Provisions and Legal Authority

Statutory authority for today's final rule is found in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, section 213 of the Act, 42 U.S.C. 7547. This rule is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d). This rule will affect not only persons in California but also the manufacturers outside the State who manufacture engines and equipment for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability. Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United

States Court of Appeals for the District of Columbia Circuit.

List of Subjects in 40 CFR Part 89

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: April 7, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons set forth in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 89—CONTROL OF EMISSIONS FROM NEW AND IN-USE NONROAD COMPRESSION—IGNITION ENGINES

■ 1. The authority for part 89 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7523, 7524, 7527, 7541, 7542, 7543, 7545, 7547, 7549, 7550 and 7601(a).

Subpart A—[Amended]

■ 2. Section 89.2 is amended by adding paragraph (1)(iv) to the definition for "nonroad engine" to read as follows:

§ 89.2 Definitions.

* * * * *

Nonroad engine means:

(1) * * *

(iv) That is a compression-ignition engine included in an engine family certified to meet applicable nonroad emission requirements of this part if: the engine is used in agricultural operations in the growing of crops or raising of fowl or animals in the State of California; and any other engines in the certified engine family otherwise meet the definition of nonroad engine.

* * * * *

[FR Doc. 03–8955 Filed 4–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7478–5]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Tennessee has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize Tennessee's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on June 10, 2003 unless EPA recieves adverse written comment by May 12, 2003. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar M. Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; (404) 562–8440. We must receive your comments by May 12, 2003. You can view and copy Tennessee's application from 8 a.m. to 4:30 p.m. at the following addresses: Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535, Phone Number: (615) 532–0850; and EPA Region, Region 4, Library, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; (404) 562–8190.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Gleaton, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104; (404) 562–8500.

SUPPLEMENTARY INFORMATION:

A. Why are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Tennessee's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Tennessee Final authorization to operate its hazardous waste program with the changes described in the authorization application. Tennessee has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Tennessee, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Tennessee subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Tennessee has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits
- Take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which Tennessee is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Tennessee Previously Been Authorized For?

Tennessee initially received Final authorization on January 22, 1985, effective February 5, 1985 (50 FR 2820), to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on October 26, 2000, effective December 26, 2000 (65 FR 64161), September 15, 1999, effective November 1, 1999 (64 FR 49998), January 30, 1998, effective March 31, 1998 (63 FR 45870), on May 23, 1996, effective July 22, 1996 (61 FR 25796), on August 24, 1995, effective October 23, 1995 (60 FR 43979), on May 8, 1995, effective July 7, 1995 (60 FR 22524), on June 1, 1992, effective July 31, 1992 (57 FR 23063), and on June 12, 1987, effective August 11, 1987 (52 FR 22443).

Description of Federal requirement	Federal Register date and page	Analogous State authority [1]
174—Post Closure Permit Requirement and Closure Process.	63 FR 56710, 10/22/98	Tennessee Code Annotated (TCA) 68–211–106(a)(1) & (2); 68–211–107(a); 68–211–1001 *et seq;* 68–212–106(a)(1); 68–212–107(a), (d)(1), (3), & (6); Tennessee Revised Code (TRC) 1200–1–11–.02(1)(e)10, .02(1)(f)1(iii)(IV)I–III, .11(2)(a)9, .11(3)(c)4, .11(3)(c)4(i)–(iv), .11(5)(f)8, .11(5)(f)8(i)–(iv), .11(6)(e)7, .11(6)(e)7(i)–(iv), .11(7)(e)7, .11(7)(e)7(i)(iv).

[1] The Tennessee provisions are from the Tennessee Administrative Regulations, effective July 19, 1999.

G. What Changes Are We Authorizing With Today's Action?

On March 23, 2001, Tennessee submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Tennessee's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Tennessee Final authorization for the following program change:

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements that are more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

Tennessee will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Tennessee is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Tennessee?

Tennessee is not authorized to carry out its hazardous waste program in Indian country within the State. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. What Is Codification and Is EPA Codifying Tennessee's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart RR for this authorization of Tennessee's program changes until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by

Executive Order 13175 (65 FR 67249, November 6, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA section 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective June 10, 2003.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 03–8664 Filed 4–10–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 040703C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pollock total allowable catch (TAC) specified for the West Yakutat District of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 7, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the pollock TAC specified for the West Yakutat District of the GOA is 1,078 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the pollock TAC specified for the West Yakutat District of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 1,058 mt, and is setting aside the remaining 20 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by section 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 7, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8930 Filed 4–8–03; 4:57 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 70
Friday, April 11, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 2

[Docket No. 97–033–1]

Animal Welfare; Medical Records

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Animal Welfare Act regulations to require that research facilities, dealers, and exhibitors maintain medical records as part of their program of adequate veterinary care. We believe research facilities, dealers, and exhibitors should maintain medical records as a means of communication concerning the care being provided to animals and to ensure that animals receive adequate veterinary care. In addition, these records would provide a basis for the Animal and Plant Health Inspection Service to better assess the veterinary care programs of research facilities, dealers, and exhibitors.

DATES: We will consider all comments that we receive on or before June 10, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 97–033–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 97–033–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 97–033–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Jerry DePoyster, Senior Veterinary Medical Officer, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1231; (301) 734–7586.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, housing, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. The Secretary of Agriculture has delegated the responsibility of enforcing the Act to the Administrator of the Animal and Plant Health Inspection Service (APHIS). The regulations established under the Act are contained in title 9 of the Code of Federal Regulations (9 CFR), chapter I, subchapter A, parts 1, 2, and 3. Subparts C and D of 9 CFR part 2 (§§ 2.30 through 2.40, referred to below as the regulations) require, among other things, that each research facility, dealer, and exhibitor have an attending veterinarian and maintain a program of adequate veterinary care.

Currently, § 2.33(b), regarding research facilities, and § 2.40(b), regarding dealers and exhibitors, describe the elements that must be included in a program of adequate veterinary care. These elements include: (1) The availability of appropriate facilities, personnel, equipment, and services; (2) the use of appropriate methods to prevent, control, diagnose, and treat diseases and injuries and the availability of emergency, weekend, and holiday care; (3) daily observation of all animals for health assessment; (4) guidance to principal investigators and other personnel involved in the care and use of animals regarding handling, immobilization, anesthesia, analgesia, tranquilization, and euthanasia; and (5) adequate pre- and post-procedural care according to current established veterinary medical and nursing procedures. Sections 2.33(b)(3) and 2.40(b)(3) further provide that a mechanism of direct and frequent communication is required so that timely and accurate information on problems of animal health, behavior, and well-being is conveyed to the attending veterinarian.

While maintenance of medical records is implied through our requirements for adequate veterinary care, the regulations do not specifically stipulate the maintenance of medical records as one of the elements in a program of adequate veterinary care. Medical records are an essential part of any program of adequate veterinary care. Adequate veterinary care can only be provided to animals if an accurate medical history is maintained on the animals to provide communication among all personnel involved in providing care. In addition, medical records provide a basis for APHIS inspectors to assess a veterinary care program and ensure that animals receive adequate veterinary care.

Therefore, we propose to add new §§ 2.33(b)(6) and 2.40(b)(6) to the regulations to include the maintenance of legible medical records as an additional element of the program of adequate veterinary care required by the regulations. To ensure that medical records include, at a minimum, information such as the vaccination history, surgical history, and any known drug sensitivities of the animals, we would specify that each medical record must include: (1) The identity of the animal (with the exception that routine husbandry, such as vaccinations, preventive medical procedures, or treatments, performed on all animals in a group (or herd) may be kept on a single record); (2) the date, description of the problem, pertinent history, observations, examination findings, test results, and plan for treatment and care with a tentative diagnosis and a prognosis, when appropriate; (3) the type and chronology of treatment procedures performed, the context of the problem to which the treatment procedures pertain, and the identification of the medication used, the date given, dosage, route of administration, frequency, and duration of treatment; (4) the names of all vaccines administered and the dates of vaccination; and (5) the dates and results of all screening, routine, or other required or recommended tests.

Amending the regulations to specifically include requirements for maintaining medical records would necessitate changes to the provisions of the regulations regarding recordkeeping requirements for research facilities, dealers, and exhibitors. Section 2.35 pertains to the recordkeeping requirements for research facilities, and paragraph (f) of that section stipulates that records and reports must be maintained for at least 3 years. We would amend the recordkeeping requirements for research facilities in § 2.35(f) to require that medical records be kept for 1 year after the disposition of the animals and that one copy of those records be provided to subsequent owners of the animals or to any person to whom the animals are consigned. The retention period for all other records and reports would continue to be 3 years.

We would amend § 2.75, regarding recordkeeping by dealers and exhibitors, by adding a new paragraph (b)(4) requiring that one copy of the medical records be provided to subsequent owners of the animals or to any other person to whom the animals are consigned. Because § 2.80 currently contains a requirement that dealers and exhibitors, among others, retain records for 1 year after the disposition of the animals, we would not need to provide a specific retention period for medical records.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the Animal Welfare Act regulations to require that research facilities, dealers, and exhibitors maintain medical records as part of their program of adequate veterinary care. Currently, the maintenance of medical records is not specifically listed as one of the elements of a program of adequate veterinary care. However, we believe that requiring research facilities, dealers, and exhibitors to maintain medical records would help ensure that animals receive adequate veterinary care. In addition, these records would provide a basis for APHIS to better assess the veterinary care programs of research facilities, dealers, and exhibitors.

In fiscal year 2000, there were 8,773 facilities of all sizes licensed or registered under the Act, including 4,612 dealers; 2,508 exhibitors; and 1,265 research facilities. Most research facilities are large relative to other regulated entities, and the average number of animals per research facility in fiscal year 2000 was 1,027.[1] This rule would affect those facilities that provide veterinary care.

In 1997, there were 10,045 U.S. farms in North American Industry Classification System (NAICS) category 11299 (All Other Animal Production, which includes dog and cat breeders/dealers), and the average annual sales per farm for that year was $105,624, well below the U.S. Small Business Administration's (SBA) small entity threshold of $750,000. In addition, in 1997, there were 4,607 U.S. firms in NAICS 541710 (Research and Development in the Physical, Engineering, and Life Sciences, which includes research facilities) that operated for the full year, and 99 percent of those firms had fewer than 500 employees, which is the SBA's small entity threshold for firms in NAICS 541710. In 1997, there were 498 firms in NAICS 711190 (Other Performing Arts Companies, which includes circus exhibitors) that operated for the full year, and 99 percent of those firms had less than $5 million in sales that year, which is the SBA's small entity threshold for firms in NAICS 711190.

APHIS does not anticipate a great increase in burden to regulated entities. Almost all research facilities and more than 75 percent of other regulated facilities already comply with these proposed minimum standards for medical records. However, there may be a few entities that would need to improve the recordkeeping already in place, thus increasing their burden at least temporarily. We anticipate that the costs associated with any increase in burden would be minimal and would be limited primarily to the salary costs for the employee or employees responsible for assembling the documentation necessary to establish a medical record that contains the information described in this proposed rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 97–033–1. Please send a copy of your comments to: (1) Docket No. 97–033–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule would amend the Animal Welfare Act regulations by requiring research facilities, dealers, and exhibitors to maintain medical records as part of their program of adequate veterinary care. We would require medical records to include: (1) The identity of the animal (with the exception that routine husbandry, such as vaccinations, preventive medical procedures, or treatments, performed on all animals in a group (or herd) may be

[1] *See* APHIS'' Animal Welfare Enforcement Report for Fiscal Year 2000, available on the Internet at *http://www.aphis.usda.gov/ac/publications.html*. The average of 1,027 animals per research facility is based on 1,265 total facilities (1,231 active facilities and 34 inactive facilities).

kept on a single record); (2) the date, description of the problem, pertinent history, observations, examination findings, test results, and plan for treatment and care with a tentative diagnosis and a prognosis, when appropriate; (3) the type and chronology of treatment procedures performed, the context of the problem to which the treatment procedures pertain, and the identification of the medication used, the date given, dosage, route of administration, frequency, and duration of treatment; (4) the names of all vaccines administered and the dates of vaccination; and (5) the dates and results of all screening, routine, or other required or recommended tests.

In addition, we would amend the regulations regarding recordkeeping requirements for research facilities, dealers, and exhibitors. Specifically, we would amend the recordkeeping requirements for research facilities in § 2.35(f) to require that medical records be kept for 1 year after the disposition of the animals and that one copy of those records be provided to subsequent owners of the animals or to any person to whom the animals are consigned. We would amend § 2.75, regarding recordkeeping by dealers and exhibitors, by adding a new paragraph (b)(4) requiring that one copy of the medical records be provided to subsequent owners of the animals or to any other person to whom the animals are consigned.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.083 hours per response.

Respondents: Research facilities, dealers, and exhibitors.

Estimated annual number of respondents: 8,000.

Estimated annual number of responses per respondent: 691,975.

Estimated annual number of responses: 5,535,800.

Estimated total annual burden on respondents: 459,605 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

Accordingly, we propose to amend 9 CFR part 2 as follows:

PART 2—REGULATIONS

1. The authority citation for part 2 would continue to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

2. In § 2.33, paragraph (b) would be amended as follows:

a. In paragraph (b)(4), by removing the word "and" immediately after the semicolon.

b. In paragraph (b)(5), by removing the period and adding the word "; and" in its place.

c. By adding new paragraph (b)(6) to read as set forth below.

§ 2.33 Attending veterinarian and adequate veterinary care.

* * * * *

(b) * * *

(6) The maintenance of medical records is a required component of adequate veterinary care. They serve as a basis for reviewing the medical history and planning veterinary care and provide a mechanism of communication for matters of animal health, behavior, and well-being. Medical records document the animal's illness, veterinary care, and treatment and serve as a basis for review, study, and evaluation of veterinary care rendered by the facility. Medical records must be legible and include at least the following information:

(i) The identity of the individual animal; *Provided, however,* That routine husbandry, such as vaccinations, preventive medical procedures, or treatments, performed on all animals in a group (or herd) may be kept on a single record;

(ii) The date, description of the problem, pertinent history, observations, examination findings, test results, and plan for treatment and care with a tentative diagnosis and a prognosis, when appropriate;

(iii) The type and chronology of treatment procedures performed, the context of the problem to which the treatment procedures pertain, and the identification of the medication used, the date given, dosage, route of administration, frequency, and duration of treatment;

(iv) The names of all vaccines administered and the dates of vaccination; and

(v) The dates and results of all screening, routine, or other required or recommended tests.

3. In § 2.35, paragraph (f), the first sentence would be removed and two new sentences would be added in its place to read as follows:

§ 2.35 Recordkeeping requirements.

* * * * *

(f) The medical records required under § 2.33(b)(6) shall be kept for at least 1 year after the disposition of the animal, and a copy shall be given to the subsequent owner of the animal or to any person to whom the animal is consigned. All other records and reports shall be maintained for at least 3 years. * * *

4. In § 2.40, paragraph (b) would be amended as follows:

a. In paragraph (b)(4), by removing the word "and" immediately after the semicolon.

b. In paragraph (b)(5), by removing the period and adding the word "; and" in its place.

c. By adding new paragraph (b)(6) to read as set forth below.

§ 2.40 Attending veterinarian and adequate veterinary care (dealers and exhibitors).

* * * * *

(b) * * *

(6) The maintenance of medical records is a required component of adequate veterinary care. They serve as a basis for reviewing the medical history and planning veterinary care and provide a mechanism of communication for matters of animal health, behavior, and well-being. Medical records document the animal's illness, veterinary care, and treatment and serve as a basis for review, study, and evaluation of veterinary care rendered by the facility. Medical records must be legible and include at least the following information:

(i) The identity of the individual animal; *Provided, however,* That routine husbandry, such as vaccinations, preventive medical procedures, or treatments, performed on all animals in a group (or herd), may be kept on a single record;

(ii) The date, description of the problem, pertinent history, observations, examination findings, test results, and plan for treatment and care with a tentative diagnosis and a prognosis, when appropriate;

(iii) The type and chronology of treatment procedures performed, the context of the problem to which the treatment procedures pertain, and the identification of the medication used, the date given, dosage, route of administration, frequency, and duration of treatment;

(iv) The names of all vaccines administered and the dates of vaccination; and

(v) The dates and results of all screening, routine, or other required or recommended tests.

5. In § 2.75, a new paragraph (b)(4) would be added to read as follows:

§ 2.75 Records: Dealers and exhibitors.

* * * * *

(b) * * *

(4) One copy of the medical records containing the information required by § 2.40(b)(6) shall be provided to the subsequent owner of the animal or to any person to whom the animal is consigned.

Done in Washington, DC, this 7th day of April 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–8928 Filed 4–10–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–401–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes. This proposal would require installing brackets and ramps under floor panels between frames 23C and 23D, and installing wire bundles on the ramps. This action is necessary to prevent chafing damage to the electrical wire cables, which could lead to an electrical short circuit and potential for a fire under the floor panels. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 12, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–401–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address; *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–401–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–401–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–401–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR72 series

airplanes. The DGAC advises of an incident in which loss of a blue hydraulic circuit occurred during landing. The circuit failure was found to be the result of an electrical short circuit between the electrical power supply cables for the blue hydraulic pump and the steering hydraulic pipe, located under certain floor panels. There was evidence of a fire in the vicinity due to the electrical short circuit. The apparent cause of these failures was a specific quality problem during cable installation on the production line. Improper routing of electrical cables in the subject area, if not corrected, could result in chafing damage to the electrical wire cables, which could lead to an electrical short circuit and potential for a fire under the floor panels.

Explanation of Relevant Service Information

Aerospatiale has issued Avions de Transport Regional Service Bulletin ATR72–92–1006, dated September 28, 2001, which describes procedures for installing, under floor panels between frames 23C and 23D, brackets and ramps that correctly route the wire bundles, which have the power supply cables for the blue hydraulic pump, and installing wire bundles on the ramps so that the cables pass the steering hydraulic pipe without chafing. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2001–505–059(B), dated October 17, 2001, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 65 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,844 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $143,260, or $2,204 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 2001–NM–401–AD.

Applicability: Model ATR72 series airplanes, certificated in any category; except those airplanes on which modification 5297 has been accomplished in production, or on which Avions de Transport Regional (ATR) Service Bulletin ATR72–92–1006, dated September 28, 2001, has been accomplished in service.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing damage to the electrical wire cables, which could lead to an electrical short circuit and consequent fire under the floor panels, accomplish the following:

Installation

(a) Within 12 months after the effective date of this AD, perform the actions specified in paragraphs (a)(1) and (a)(2) of this AD per the Accomplishment Instructions of ATR Service Bulletin ATR72–92–1006, dated September 28, 2001.

(1) Install brackets and ramps under floor panels between frames 23C and 23D.

(2) Install wire bundles on the ramps.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2001–505–059(B), dated October 17, 2001.

Issued in Renton, Washington, on April 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8891 Filed 4–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–16–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, and A321 series airplanes equipped with certain cockpit lateral fixed windows manufactured by PPG Aerospace. This proposal would require a detailed inspection of the cockpit lateral fixed windows to detect moisture ingression and delamination, and follow-on/corrective actions as applicable. This proposed AD also provides for an optional terminating action for the repetitive inspections. This action is necessary to prevent moisture ingression and delamination of the cockpit lateral fixed windows, which could result in the loss of the outer glass ply, and consequent damage to the airplane and injury to people or damage to property on the ground. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 12, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–16–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–16–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–16–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes equipped with certain cockpit lateral fixed windows manufactured by PPG Aerospace. The DGAC advises that an operator reported partial separation of the outer glass ply of the right-hand cockpit lateral fixed window. This window had been previously identified as having delamination in the lower forward corner. Investigation revealed that a process used in the manufacturing of these windows was deficient, resulting in moisture ingress and delamination of the outer glass ply. This condition, if not corrected, could result in loss of the outer glass ply, and consequent damage to the airplane and injury to people or damage to property on the ground.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–56–1009, Revision 01, including Appendix 01 and Reporting Sheet, dated July 4, 2002. This service bulletin describes procedures for a detailed inspection of cockpit lateral fixed windows manufactured by PPG Aerospace having part number (P/N) NP–165313–1 or NP–165313–2, and having a serial number (S/N) below 95001H0001 (PPG Aerospace manufacturing date before January 1, 1995), to detect moisture ingression evidenced by urethane degradation or delamination. For windows having no

moisture ingression, the service bulletin describes procedures for either follow-on repetitive inspections of those windows to detect moisture ingression; or replacement of those windows with windows having P/N NP–165313–1 or NP–165313–2, and S/N 95001H0001 or above (PPG Aerospace manufacturing date January 1, 1995, or after), or with windows having P/N NP–165313–3 or NP–165313–4. For windows having urethane degradation, the service bulletin describes procedures for replacement of those windows with windows having a certain P/N and S/N. For windows having delamination, the service bulletin describes procedures for measuring the length of the delamination, and either performing follow-on repetitive inspections or replacing the windows with windows having a certain P/N and S/N, depending on the length of the delamination. Accomplishment of the replacement described in the service bulletin would eliminate the need for repetitive inspections.

The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2001–632(B), dated December 26, 2001, in order to assure the continued airworthiness of these airplanes in France.

The Airbus service bulletin references PPG Aerospace Service Bulletin NP–165313–56–001, dated May 15, 2001, as an additional source of service information for accomplishing the actions described previously.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type designs registered in the United States, the proposed AD would require accomplishment of the actions specified in the Airbus service bulletin described previously. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Operators should note that, to be consistent with the findings of the DGAC, we have determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of the optional terminating replacement, provided that no moisture ingression or delamination is found during the inspections. In making this determination, we consider that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect moisture ingression and delamination before they represent a hazard to the airplane.

Difference Between Service Information and Proposed Rule

Operators should note that, although Airbus Service Bulletin A320–56–1009, Revision 01, recommends that, in Appendix 01, operators submit inspection findings to Airbus, this AD does not include such a reporting requirement.

Cost Impact

The FAA estimates that 36 Model A319, A320, and A321 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed detailed inspection to identify moisture ingression of certain identified cockpit lateral fixed windows, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the detailed inspection proposed by this AD on U.S. operators is estimated to be $4,320, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to accomplish the optional terminating replacement that would be provided by this AD action, we estimate that it would take approximately 4 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the optional terminating replacement would be $240 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2002–NM–16–AD.

Applicability: Model A319, A320, and A321 series airplanes, certificated in any category; equipped with PPG Aerospace cockpit lateral fixed windows having part number (P/N) NP–165313–1 or NP–165313–2, and having a serial number (S/N) below 95001H0001 (PPG Aerospace manufacturing date before January 1, 1995).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent moisture ingression and delamination of the cockpit lateral fixed windows, which could result in the loss of the outer glass ply, and consequent damage to the airplane and injury to people or damage to property on the ground, accomplish the following:

Repetitive Inspections and Replacement, if Necessary

(a) Within 500 flight hours after the effective date of this AD, perform a detailed inspection to detect urethane degradation or delamination of the outer glass ply; per the Accomplishment Instructions of Airbus Service Bulletin A320–56–1009, Revision 01, excluding Appendix 01 and Reporting Sheet, dated July 4, 2002.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no urethane degradation or delamination is found: Accomplish the actions specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 500 flight hours, until the replacement specified in paragraph (a)(1)(ii) of this AD has been accomplished; or

(ii) Within 500 flight hours after the inspection required by paragraph (a) of this AD: Replace the cockpit lateral fixed windows with new windows having P/N NP–165313–1 or NP–165313–2, and S/N 95001H0001 or above (PPG Aerospace manufacturing date January 1, 1995, or after); or with new windows having P/N NP–165313–3 or NP–165313–4, per the Accomplishment Instructions of the service bulletin. Accomplishment of the replacement terminates the requirements of this AD.

(2) If any urethane degradation is found: Within 50 flight hours after the inspection required by paragraph (a) of this AD, accomplish the replacement specified in paragraph (a)(1)(ii) of this AD.

(3) If any delamination is found: Before further flight, measure the length of the delamination per the Accomplishment Instructions of the service bulletin.

(i) If the length of the delamination is less than or equal to 1.0 inch (25.4 millimeters (mm)): Accomplish the actions specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(ii) If the length of the delamination is greater than 1.0 inch (25.4 mm): Within 50 flight hours after the inspection required by paragraph (a) of this AD, accomplish the actions specified in paragraph (a)(1)(ii) of this AD.

Note 3: The Airbus service bulletin references PPG Aerospace Service Bulletin NP–165313–56–001, dated May 15, 2001, as an additional source of service information for accomplishing the applicable actions required by this AD.

Actions Accomplished per Previous Issue of Service Bulletin

(b) Actions accomplished before the effective date of this AD per Airbus Service Bulletin A320–56–1009, dated August 30, 2001, are considered acceptable for compliance with the actions required by this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in French airworthiness directive 2001–632(B), dated December 26, 2001.

Issued in Renton, Washington, on April 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8893 Filed 4–10–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–126485–01]

RIN 1545–BA06

Statutory Mergers and Consolidations; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of location of public hearing.

SUMMARY: This document changes the location of the public hearing on proposed regulations relating to statutory mergers and consolidations under section 368 of the Internal Revenue Code.

DATES: The public hearing will be held on Wednesday, May 21, 2003, beginning at 10 a.m.

ADDRESSES: The public hearing originally scheduled in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC, is changed to the auditorium, room 7218, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing contact Guy R. Traynor of the Regulations Unit, Associate Chief Counsel, (Procedure and Administration) at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on January 24, 2003 (68 FR 3477), announced that a public hearing on proposed regulations relating to statutory mergers and consolidations under section 368 of the Internal Revenue Code would be held on Wednesday, May 21, 2003, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

The location of the public hearing has changed. The hearing is scheduled for Wednesday, May 21, 2003, beginning at 10 a.m. in the auditorium, room 7218, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of controlled access restrictions, attendees are not admitted beyond the lobby of the Internal Revenue Building until 9:30 a.m. The IRS will prepare an agenda showing the scheduling of the speakers after the

outlines are received from the persons testifying and make copies available free of charge at the hearing.

Cynthia E. Grigsby,
Chief, Regulations Unit, Associate Chief Counsel (Procedure & Administration).

[FR Doc. 03–8963 Filed 4–10–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 73

[Notice No. 5]

RIN 1512–AC84

Electronic Signatures; Electronic Submission of Forms (2000R–458P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend its regulations to permit industry members to use electronic technology to reduce the need for and storage of paper documents. In order to accomplish our goals, we are proposing to allow you to use electronic, rather than handwritten, signatures to sign certain forms, and to submit certain forms to TTB electronically through a TTB-approved electronic document receiving system.

DATES: If you wish to comment on this proposal, we must receive your written comments on or before May 12, 2003.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, PO Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 5);
- (202) 927–8525 (facsimile);
- *nprm@ttb.gov* (e-mail);
- *http://www.ttb.gov* (online). A comment form is available with the online version of this notice posted on our Internet Web site.

You may view copies of the proposed regulations and any comments received on this notice by appointment at the ATF Reference Library, 650 Massachusetts Avenue, NW., Washington, DC 20226; phone (202) 927–8210.

See the Public Participation section of this notice for specific instructions and requirements.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue NW., Washington, DC 20226; phone (301) 290–1460 or e-mail *LMGesser@ttb.gov*.

SUPPLEMENTARY INFORMATION:

What Would These Proposed Regulations Do?

This proposal would amend the regulations to allow you to:

- Use electronic signatures to sign certain forms you submit to us instead of using traditional handwritten signatures; and
- Submit certain forms to TTB electronically through an electronic document receiving system that we approve.

Why Does TTB Want To Allow You To Submit Certain Forms Electronically?

We believe that by giving you the option to submit certain forms electronically, instead of requiring paper documents, we can:

- Reduce the costs associated with submitting and maintaining large volumes of paper documents;
- Improve the quality and accessibility of data;
- Allow for the faster review and approval of a variety of documents; and
- Allow for a variety of our documents to be available around the clock.

What Is TTB's Authority To Propose These Regulations?

Our authority to propose these regulations comes from:

(1) *Government Paperwork Elimination Act (GPEA).* GPEA was signed into law on October 21, 1998. GPEA directs federal agencies to provide for the optional use and acceptance of electronic documents and signatures, and electronic recordkeeping, where practical, by October 2003. (See §§ 1702–1710 of Pub. L. 105–277.)

(2) *Internal Revenue Code of 1986 (26 U.S.C.).* The Internal Revenue Code of 1986 authorizes the Secretary of the Treasury to, by regulation, encourage electronic filing, address what constitutes a timely filed electronic document, and develop procedures for the acceptance of signatures in digital or other electronic form. (*See* 26 U.S.C. 6011, 6061, and 7502.)

(3) *Electronic Signatures in Global and National Commerce Act of 2000 (E–SIGN).* E–SIGN provides that no contract, signature, or record relating to a transaction shall be denied legal effect *solely* because it is in electronic form, nor may a document be denied legal effect *solely* because an electronic signature or record was used in its formation. E–SIGN applies to documents that are created in a commercial, consumer, or business transaction. It does not cover transactions that are uniquely governmental such as a compliance report. (*See* Pub. L. 106–229.)

(4) *Office of Management and Budget Circular A–130.* OMB's Circular A–130 requires agencies to employ electronic information collection techniques where such means will reduce the burden on the public, increase efficiency, reduce costs, and help provide better service. (*See* Circular A–130, Para. 8.a.1(k).)

How Does TTB Plan on Implementing Electronic Filing?

We are proposing to create a new part 73 in title 27 CFR, chapter I, entitled Electronic Signatures; Electronic Submission of Forms." This proposed part 73 will explain our overall policy regarding electronic signatures and the electronic submission of certain forms to TTB.

Electronic Signatures

Once we publish the final rule, we will recognize electronic signatures executed to certain electronic forms as the full equivalent of, and having the same legal effect as, traditional handwritten signatures executed on paper. We will notify you, by publishing a general notice in the **Federal Register** and on our Web site (*http://www.ttb.gov*), when you may use electronic signatures to execute certain electronic forms. The general notice will provide you with specific instructions about how to submit and what technology will be acceptable to TTB.

Electronic Submission of Forms to TTB

We are in the process of developing the means to allow you to submit forms electronically. This is a lengthy process; we will need to develop the hardware and software components to accept each different type of form. Once we are able to accept a certain form, we will announce in the **Federal Register** and on our Web site that you may register to submit that form electronically. The announcement will provide you with instructions on how to register.

Will I Still Have To Maintain Paper Copies?

If the regulations require you to maintain certain documents in paper format, you must continue to maintain those documents in paper format even if you submit them to us electronically. Nothing in this proposed part alters any other regulatory or statutory requirement that records be maintained in paper format. This part does provide that TTB may publish a general notice in the **Federal Register** authorizing you to maintain certain documents electronically instead of in paper form.

Regulatory Analyses and Notices

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35; and its implementing regulations, 5 CFR part 1320, do not apply to this rule because there are no new reporting or recordkeeping requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, provides that whenever a Federal agency proposes regulations that may have a significant economic impact on a substantial number of small entities, the agency must prepare a regulatory flexibility analysis. Today's proposal is not subject to the Act because the electronic submission of forms to TTB and the use of electronic signatures are voluntary. This proposal, if finalized, will only apply to those people who seek our approval to transmit certain forms electronically to us. These proposed regulations would reduce the burden on all affected entities, including small businesses. We have submitted a copy of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f).

Executive Order 12866

This regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this rule is not subject to the analysis required by this Executive Order.

Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires Federal agencies to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." We certify that this proposed rule does not have federalism implications. This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would not require States to accept electronic reports. The effect of this rule would be to provide additional regulatory flexibility to States because States could choose to accept electronic data that would also satisfy our reporting requirements.

Public Participation

Who May Comment on This Notice?

We request comments from all interested parties. In addition, we specifically request comments on the clarity of this proposed rule and how it may be made easier to understand. We will carefully consider any comments we receive on or before the closing date. We will give comments received after that date the same consideration if it is practical to do so. We regard all comments as originals.

How Do I Send Comments?

You may submit comments in any of four ways.

- *By mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—
  (1) Be on 8½ x 11-inch paper;
  (2) Contain a legible, written signature; and
  (3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.
- *By e-mail:* You may e-mail comments to *nprm@ttb.gov*. Comments transmitted by electronic-mail must—
  (1) Contain your e-mail address;
  (2) Reference this notice number on the subject line; and
  (3) Be legible when printed on 8½ x 11-inch paper.
- *Online:* We provide a comment form with the online copy of this proposed rule on the TTB Internet Web site at *http://www.ttb.gov/alcohol/rules/index.htm*. On this Web page, select "Send comments via e-mail" under this notice number.

Can I Review Comments Received?

You may inspect copies of the proposed regulations and any written comments by appointment at the ATF Reference Library, 650 Massachusetts Avenue, NW., Washington, DC 20226. You may also obtain copies at 20 cents per page. You may call (202) 927–8210 if you want to schedule an appointment or to request copies of comments.

For your convenience, we will post comments received in response to this notice on the TTB Web site. All comments posted on our Web site will show the names of commenters, but not street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in our reference library. To access online copies of the comments on this rulemaking, visit *http://www.ttb.gov/alcohol/rules/index.htm* and select "View Comments" under this notice number.

Will TTB Keep My Comments Confidential?

We do not recognize any submitted material as confidential. We will disclose all information on comments and commenters. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

Can I Request a Public Hearing?

Yes; you may write to the Administrator within the 30-day comment period to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Lisa M. Gesser, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 73

Electronic signatures, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set out in the preamble, we propose to amend chapter I of title 27 of the Code of Federal Regulations by adding a new part 73 to read as follows:

PART 73—ELECTRONIC SIGNATURES; ELECTRONIC SUBMISSION OF FORMS

Subpart A—General Provisions

Sec.

Scope

73.1 What does this part do?

Definitions

73.3 What terms must I know to understand this part?

Subpart B—Electronic Signatures

73.10 What does subpart B cover?
73.11 What are the required components and controls for acceptable electronic signatures?
73.12 What security controls must I use for identification codes/passwords?

Subpart C—Electronic Filing of Documents With TTB

73.30 What does subpart C cover?
73.31 Can I submit forms electronically to TTB?
73.32 May I electronically sign forms I submit electronically to TTB?
73.33 Am I legally bound by a form I sign electronically?

73.34 When is an electronically submitted form considered timely filed?
73.35 Do I need to keep paper copies of forms I submit to TTB electronically?

Authority: 26 U.S.C. 6011, 6061, 7502; 15 U.S.C. 7001, 7004.

Subpart A—General Provisions

Scope

§ 73.1 What does this part do?

(a) This part provides the conditions under which we will allow you to:

(1) Use electronic signatures or digital signatures executed to electronic forms instead of traditional handwritten signatures executed on paper forms.

(2) Electronically submit certain forms to TTB.

(b) This part does not require you to submit forms to us electronically.

Definitions

§ 73.3 What terms must I know to understand this part?

You need to know the following terms to understand this part:

27 CFR. Title 27 of the Code of Federal Regulations, chapter I.

Biometrics. A method of verifying an individual's identity based on measurement of the individual's physical feature(s) or repeatable action(s) where those features and/or actions are both unique to that individual and measurable.

Digital signature. An electronic signature based upon cryptographic methods of originator authentication, computed by using a set of rules and a set of parameters such that the identity of the signer and the integrity of the data can be verified. A signer creates a digital signature by using public-key encryption to transform a message digest of an electronic message. If a recipient of the digital signature has an electronic message, message digest function, and the signer's public key, the recipient can verify:

(1) Whether the transformation was accomplished with the private key that corresponds to the signer's public key; and

(2) Whether the electronic message has been altered since the transformation was made.

Electronic document receiving system. Any set of apparatus, procedures, software, records, or documentation used to receive documents communicated to it via a telecommunications network.

Electronic signature. A computer data compilation of any symbol or series of symbols executed, adopted, or authorized by an individual to be the legally binding equivalent of the individual's handwritten signature, and that:

(1) Identifies and authenticates a particular person as the source of the electronic message; and

(2) Indicates such person's approval of the information contained in the electronic message.

Form(s). The term form(s), when used in this part, includes all documents required by 27 CFR, chapter I, to be submitted to TTB.

Handwritten signature. The scripted name or legal mark of an individual handwritten by that individual and executed or adopted with the present intention to authenticate a writing in a permanent form. The act of signing with a writing or marking instrument such as a pen or stylus is preserved. The scripted name or legal mark, while conventionally applied to paper, may also be applied to other materials or devices that capture the name or mark.

Paper format. A paper document.

TTB. Refers to the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury.

You and I. "You" and "I" refer to the organization or person who must maintain records or submit documents to TTB to satisfy the requirements of 27 CFR, chapter I.

Subpart B—Electronic Signatures

§ 73.10 What does subpart B cover?

This subpart provides the conditions under which TTB will allow you to use electronic signatures executed to electronic forms instead of traditional handwritten signatures executed on paper forms. Where electronic signatures and their associated electronic forms meet the requirements of this part, TTB will consider the electronic signatures to be the equivalent of full handwritten signatures, initials, and other general signings this chapter requires.

§ 73.11 What are the required components and controls for acceptable electronic signatures?

(a) *Electronic signatures not based on biometrics.* If you use electronic signatures that are not based upon biometrics you must:

(1) Employ at least two distinct identification components such as an identification code and a password.

(2) Use both identification components when executing an electronic signature to an electronic document.

(3) Ensure that the electronic signature can only be used by the authorized user.

(b) *Electronic signatures based on biometrics.* If you use electronic signatures based upon biometrics, they must be designed to ensure that they cannot be used by anyone other than their genuine owners.

§ 73.12 What security controls must I use for identification codes/passwords?

If you use electronic signatures based upon use of identification codes in combination with passwords, you must employ controls to ensure their security and integrity. Such controls must include:

(a) Maintaining the uniqueness of each combined identification code and password, such that no two individuals have the same combination of identification code and password.

(b) Ensuring that identification code and password issuances are periodically checked, recalled, or revised (*e.g.*, to cover such events as password aging).

(c) Following loss management procedures to electronically de-authorize lost, stolen, missing, or otherwise potentially compromised tokens, cards, or other devices that bear or generate identification code or password information, and to issue temporary or permanent replacements using suitable, rigorous controls.

(d) Use of transaction safeguards to prevent unauthorized use of passwords and/or identification codes, and to detect and report in an immediate and urgent manner any attempts at their unauthorized use to the system security unit, and, as appropriate, to organizational management.

(e) Initial and periodic testing of devices, such as tokens or cards, that bear or generate identification code or password information to ensure that they function properly and have not been altered in any unauthorized manner.

Subpart C—Electronic Filing of Documents with TTB

§ 73.30 What does subpart C cover?

This subpart provides the conditions under which we will allow you to satisfy certain reporting requirements of this chapter by submitting forms to us electronically.

§ 73.31 Can I submit forms electronically to TTB?

Yes; you may submit an electronic form, instead of a paper form, to satisfy any reporting requirement in this chapter, only if:

(a) We have published a notice in the **Federal Register** and on our Web site (*http://www.ttb.gov*) announcing that we are prepared to receive a particular form electronically.

(b) You have registered to do so pursuant to the instructions in a notice published in the **Federal Register** and on our Web site as stated above.

(c) You submit the electronic form to an electronic document receiving system that we have designated for the receipt of that specific form.

(d) The electronic form bears valid electronic signatures, as provided in subpart B of this part, to the same extent that the paper submission for which it substitutes would bear handwritten signatures.

§ 73.32 May I electronically sign forms I submit electronically to TTB?

You may electronically sign the electronic form you submit to us if:

(a) You have registered with TTB to do so and have certified, prior to the time of such use, that the electronic signatures or digital signatures in your system are intended to be the legally binding equivalent of traditional handwritten signatures;

(b) The electronic or digital signature meets the standards of this part and is authorized by TTB in accordance with this part; and

(c) The electronic or digital signature is sufficiently trustworthy and reliable that the signing party may not repudiate the signature.

§ 73.33 Am I legally bound by a form I sign electronically?

Yes; by electronically signing a form you submit to us, you are agreeing to be legally bound to the same extent as if you applied a traditional handwritten signature on a paper document submitted to satisfy the same reporting requirement. Persons using electronic signatures shall, upon TTB's request, provide additional certification or testimony that a specific electronic signature is the legally binding equivalent of the signer's handwritten signature.

§ 73.34 When is an electronically submitted form considered timely filed?

If you submit a form to our electronic document receiving system, your report will be considered filed on the date of the electronic postmark given by that system.

§ 73.35 Do I need to keep paper copies of forms I submit to TTB electronically?

Nothing in this part alters any other regulatory or statutory requirement that records be maintained in paper format. If the regulations in this chapter require you to keep paper copies of certain forms, you must continue to do so unless TTB otherwise authorizes you to maintain electronic copies of these documents through a general notice in the **Federal Register** or through a variance.

Signed: February 13, 2003.

Arthur J. Libertucci,

Administrator.

Approved: March 11, 2003.

Timothy E. Skud,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 03–8816 Filed 4–10–03; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[WV059–6027b; FRL–7480–1]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants; State of West Virginia; Control of Emissions from Existing Commercial/Industrial Incineration (CISWI) Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the commercial and industrial solid waste incinerator 111(d)/129 plan (the "plan") submitted by the West Virginia Department of Environmental Protection, Division of Air Quality (DAQ). The plan was submitted to EPA by the DAQ on November 29, 2001, and amended on September 25, 2002, and January 22, 2003. In the Final Rules section of this **Federal Register**, EPA is approving the State of West Virginia's CISWI plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipate no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 12, 2003.

ADDRESSES: Written comments should be mailed to Walter Wilkie, Deputy Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at *topsale.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: March 31, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–8830 Filed 4–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 89

[AMS–FRL–7481–9]

Control of Emissions From New Nonroad Diesel Engines: Amendments to the Nonroad Engine Definition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rule.

SUMMARY: EPA is proposing to revise the definition of nonroad engines to include all diesel-powered engines used in agricultural operations in the State of California that are certified by the engine maker to meet the applicable nonroad emission standards. Under this proposed rule, such engines would be considered nonroad engines without regard to whether these engines are portable or transportable or how long these engines remain in one fixed location at a farm.

In the "Rules and Regulations" section of this **Federal Register**, we are making this amendment as a direct final rule without prior proposal.

We have explained our reasons for this amendment in the preamble to the

direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and its changes will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: If we do not receive a request for a public hearing, written comments are due May 12, 2003. Request for a public hearing must be received by April 28, 2003. If we do receive a request for a public hearing, it will be held on May 12, 2003, starting at 10 a.m. In that case, the public comment period will close on June 10, 2003.

ADDRESSES: Comments may be submitted by mail by sending two copies of your comments to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR–2003–0046. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I of the **SUPPLEMENTARY INFORMATION** section.

Hearing: If we do receive a request for a public hearing, it will be held at the EPA's Region IX offices, 75 Hawthorne Street, San Francisco, California.

FOR FURTHER INFORMATION CONTACT: Robert Larson, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Transportation and Regional Programs Division, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone (734) 214–4277, fax (734) 214–4956, e-mail *larson.robert@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Regulated Entities

Entities potentially impacted by this change in regulation are farming interests in the State of California and those interests that manufacture or put into commerce new, compression-ignition nonroad engines, including:

Category	NAICS codes	Examples of potentially regulated entities
Manufacturing	333618	Manufacturers of new nonroad diesel engines.
Agriculture, Forestry, Fishing, Hunting	111XXX	Farms with crop production.
Agriculture, Forestry, Fishing, Hunting	112XXX	Farms with animal production.
Manufacturing	333111	Farm machinery and equipment.

B. How Can I Get Copies of This Document?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OAR–2003–0046. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. This Docket Facility is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1742.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.C. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2003–0046. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov* Attention Air Docket ID No. OAR–2003–0046. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.A.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send two copies of your comments to: Air Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OAR–2003–0046.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Air Docket ID No. OAR–2003–0046. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.

4. By Facsimile. Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2003–0046.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Attention: Robert Larson, U.S. EPA, National Vehicle and Fuel Emissions Laboratory, Transportation and Regional Programs Division, 2000 Traverwood Drive, Ann Arbor, MI 48105, Docket ID No. OAR–2003–0046. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Summary of Proposal

EPA is proposing to revise the definition of nonroad engines to include all diesel-powered engines used in agricultural operations in the State of California that are certified by the engine maker to meet the applicable nonroad emission standards. Under this proposed rule, such engines will be considered as nonroad engines without regard to whether these engines are portable or transportable or how long these engines remain in one fixed location at a farm.

However, in the "Rules and Regulations" section of today's **Federal Register**, we are promulgating these revisions as a direct final rule without a prior proposal. We have explained our reasons for this action. This proposal incorporates by reference all the reasoning, explanation and regulatory text from the direct final rule. For further information, including the regulatory text for this proposal, please refer to the direct final rule that is located in the "Rules and Regulations" section of this **Federal Register** publication. The direct final rule will be effective on May 14, 2003, without further notice unless we receive adverse comment by May 12, 2003, or receive a request for a public hearing by April 28,

2003. If we receive no adverse comment, we will take no further action on this proposed rule. If we receive adverse comment on this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating that this rule change is being withdrawn due to adverse comment. We will address all adverse comment in a subsequent final rule based upon this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

—Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
—Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
—Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
—Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this proposed rule is not a "significant regulatory action."

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and implementing regulations, 5 CFR part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

C. Regulatory Flexibility Act

EPA certifies that it is not necessary to prepare a regulatory flexibility analysis in connection with this action. This proposed rule will not have a significant economic impact on a substantial number of small entities, in particular because this rule change does not mandate that farms replace any existing engine.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates for State, local, or tribal governments as defined by the provisions of title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that this rule does not contain a Federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. This action has the net effect of revising certain provisions of the Tier 2 rule. Therefore, the requirements of the UMRA do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.*, the rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and federally protected interests within the Agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule revises certain provisions of earlier rules that adopted national standards to control emissions from nonroad diesel engines. The requirements of the rule will be enforced by the Federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (59 FR 22951, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This proposed rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not uniquely affect the communities of American Indian tribal governments. Furthermore, today's rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Executive Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

No new technical standards are established in today's rule.

IV. Statutory Provisions and Legal Authority

Statutory authority for today's proposed rule is found in the Clean Air Act, 42 U.S.C. 7401 *et seq.*, in particular, section 213 of the Act, 42 U.S.C. 7547. This rule is being promulgated under the administrative and procedural provisions of Clean Air Act section 307(d), 42 U.S.C. 7607(d).

List of Subjects in 40 CFR Part 89

Environmental protection, Administrative practice and procedure, Motor vehicle pollution.

Dated: April 7, 2003.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–8956 Filed 4–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7478–6]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Tennessee has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Tennessee. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by May 12, 2003.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303–8960; (404) 562–8440. You can examine copies of the materials submitted by Tennessee during normal business hours at the following locations: EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960; Phone number: (404) 562–8190, or the Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535, Phone number: (615) 532–0850.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Gleaton, RCRA Services Section, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303–8960; (404) 562–8500.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the

"Rules and Regulations" section of this Federal Register.

J.I. Palmer Jr.,
Regional Administrator, Region 4.
[FR Doc. 03–8665 Filed 4–10–03; 8:45 am]
BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 68, No. 70
Friday, April 11, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Approval of a New Information Collection—County Committee Elections

AGENCY: Farm Service Agency.
ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) to request approval of an information collection used to support of FSA County Committee elections.

DATES: Comments on this notice must be received on or before June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kenneth Nagel, Agricultural Program Specialist, Office of Deputy Administrator for Field Operations, Farm Service Agency, USDA, STOP 0542, 1400 Independence Ave., SW., Washington, DC 20250; telephone (202) 720–7890.

SUPPLEMENTARY INFORMATION:

Title: Nomination Form for FSA County Committee Election.

OMB Control Number: 0560–NEW.

Type of Request: Approval of a New Information Collection.

Abstract: This information collected under the Office of Management and Budget (OMB) Number 0560–NEW is needed to enable FSA to receive nominations from eligible voters for the County Committee. The County Committee, subject to the general direction and supervision of the State Committee, and other personnel, shall be generally responsible for carrying out in the county the price support program, conservation programs, disaster assistance programs, commodities programs, environmental programs, and any other programs or functions assigned by the Secretary, or a designee of the Secretary.

Estimate of Annual Burden: Public reporting burden for this information collection is estimated to average 10 minutes per response.

Respondents: Any individuals with farming interest in the Local Administrative Area (LAA). (eligible voter)

Estimated Number of Respondents: 2,100,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 350.

Topics for comment include but are not limited to the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Kenneth Nagel, Agricultural Program Specialist, Office of Deputy Administrator for Field Operations, Farm Service Agency, USDA, STOP 0542, 1400 Independence Ave., SW., Washington, DC 20250; telephone (202) 720–7890. Copies of the information collection may be obtained from Kenneth Nagel at the above address.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

Signed at Washington, DC, April 4, 2003.

James R. Little,
Administrator, Farm Service Agency.
[FR Doc. 03–8866 Filed 4–10–03; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.
ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) to request an extension and revision for the Highly Erodible Land Conservation and Wetland Conservation certification requirements. This information is collected in support of the conservation provisions of Title XII of the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 and the Federal Agriculture, Improvement and Reform Act of 1996 (the Statute).

DATES: Comments on this notice must be received on or before June 10, 2003 to be assured consideration.

Additional Information or Comments: Contact Sharon Biastock, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517; telephone (202) 720–6336.

SUPPLEMENTARY INFORMATION:

Title: Highly Erodible Land Conservation and Wetland Conservation Certification.

OMB Control Number: 0560–0185.

Expiration Date: March 31, 2003.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Rules governing those requirements under Title XII of the Food Security Act of 1985, as amended by the Food, Agriculture, Conservation, and Trade Act of 1990 and the Federal Agriculture, Improvement and Reform Act of 1996 relating to highly erodible lands and wetlands are codified in 7 CFR part 12. In order to ensure that persons who request benefits subject to conservation restrictions get the necessary technical assistance and are informed regarding the compliance requirements on their land, information is collected with regard to their intended activities on their land which could affect their eligibility for

requested USDA benefits. Once technical determinations are made, producers are required to certify that they will comply with the conservation requirements on their land to maintain their eligibility for certain programs. Persons may request that certain activities be exempt according to provisions of the Statute. Information is collected from those who seek these exemptions for the purpose of evaluating whether the exempted conditions will be met.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .16 hours (10 minutes) per response.

Respondents: Individual producers.

Estimated Number of Respondents: 250,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 40,000.

Proposed topics for comment include: (a) Whether the collection information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of the information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Sharon Biastock, Agricultural Program Specialist, Production, Emergencies, and Compliance Division, USDA, FSA, STOP 0517, 1400 Independence Avenue, SW., Washington, DC 20250–0517, telephone (202) 720–6336.

Signed at Washington, DC, on April 4, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–8867 Filed 4–10–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, April 21, 2003. The meeting will include routine business and discussion, review, and recommendation of submitted project proposals.

DATES: The meeting will be held April 21, 2003 from 4 p.m. until 8 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: April 4, 2003.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 03–8889 Filed 4–10–03; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be received on or before: May 11, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Custodial Service
Federal Building #2, Food Court
Federal Building #2, Five Star Expresso Coffee Bar
Pentagon Building, Au Bon Pair
Pentagon Building, B.C Cafe
Pentagon Building, Common area restrooms
Pentagon Building, Corridor 1 Food Court
Pentagon Building, Corridor 10 Food Court
Pentagon Building, Corridor 9/10 Apex, Five Star Expresso Coffee Bar
Pentagon Building, Grease and Garbage Room
Pentagon Building, Loading dock, 1st Floor, Wedge 1
Pentagon Building, Pentagon Dining Room and Kitchen
Pentagon Building, Production Kitchen
Pentagon Building, Wedge 1 Food Court
Pentagon Building, Common area stairs and corridors, 1st Floor, 2nd Floor, 3rd Floor Washington, DC
NPA: The Chimes, Inc., Baltimore, Maryland
Contract Activity: Navy Exchange Service Command, NEXCOM, Virginia Beach, Virginia
Service Type/Location: Grounds Maintenance USDA, Forest Service Office, Beaverhead-Deerlodge National Forest, Butte, Montana
NPA: BSW, Inc., Butte, Montana
Contract Activity: USDA-US Forest Service, Butte, Montana
Service Type/Location: Installation Support Services, Fort Hood, Texas
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, Texas
Contract Activity: III Corps and Fort Hood Contracting Command, Fort Hood, Texas
Service Type/Location: Janitorial/Custodial Armed Forces Reserve Center, Yakima, Washington
NPA: Yakima Specialties, Inc., Yakima, Washington
Contract Activity: Naval Facilities Engineering Command—Everett, Everett, Washington
Service Type/Location: Janitorial/Custodial U.S. Geological Survey, Klamath Field Office, Klamath Falls, Oregon
NPA: Klamath County Mental Health, Klamath Falls, Oregon
Contract Activity: U.S. Geological Survey, Sacramento, California
Service Type/Location: Operation of Masking/Taping Service Tobyhanna Army Depot, Tobyhanna, Pennsylvania
NPA: Burnley Workshop of the Poconos, Stroudsburg, Pennsylvania
Contract Activity: Tobyhanna Army Depot, Tobyhanna, Pennsylvania

G. John Heyer,

General Counsel.

[FR Doc. 03–8931 Filed 4–10–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: May 11, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 23, November 1, December 6, December 20, December 27, 2002, January 24, January 31, and February 7, 2003 the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 54629, 66607, 72640, 77962, 79045, 68 FR 3508, 4985, and 6403) of proposed additions to the procurement list.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.
2. The action will result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the procurement list.

Accordingly, the following products and services are added to the procurement list:

Products

Product/NSN: MOLLE II Carrier Sleep System
8465–01–465–2124
8465–01–465–7508
NPA: Alabama Industries for the Blind, Talladega, Alabama
NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania
Product/NSN: Windsock
8345–00–NSH–0001
NPA: Development Workshop, Inc., Idaho Falls, Idaho
Contract Activity: BLM National Interagency Fire Center, Boise, Idaho

Services

Service Type/Location: Facilities Maintenance, Mississippi Air National Guard, ANG CRTC/LGC, Gulfport, Mississippi
NPA: Mississippi Goodworks, Inc., Gulfport, Mississippi
Contract Activity: Mississippi ANG, Combat Readiness Training Center, Gulfport, Mississippi
Service Type/Location: Housekeeping Services, Veterans Affairs Medical Center, Clarksburg, West Virginia
NPA: Job Squad, Inc., Clarksburg, West Virginia
Contract Activity: Department of Veterans Affairs, Coatesville, Pennsylvania
Service Type/Location: Janitorial/Custodial, DuPage Air Traffic Control Tower, West Chicago, Illinois
NPA: Jewish Vocational Service and Employment Center, Chicago, Illinois
Contract Activity: Federal Aviation Administration, Des Plaines, Illinois
Service Type/Location: Janitorial/Custodial, U.S. Army Reserve Center, Marion, Illinois
NPA: Franklin-Williamson Human Services, Inc., West Frankfort, Illinois
Contract Activity: Headquarters, 88th Regional Support Command, Fort Snelling, Minnesota
Service Type/Location: Janitorial/Custodial, U.S. Geological Survey, Great Lakes Science Center, Ann Arbor, Michigan
NPA: Work Skills Corporation, Brighton, Michigan
Contract Activity: U.S. Geological Survey, Reston Virginia
Service Type/Location: Printer Toner Cartridge & Ribbons Management, Veterans Affairs Medical Center, Danville, Illinois
NPA: Thresholds Rehabilitation Inc., Chicago, Illinois
Contract Activity: Veterans Affairs Medical Center, Danville, Illinois

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

G. John Heyer,

General Counsel.

[FR Doc. 03–8932 Filed 4–10–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Addition and Deletions; Correction

In the document appearing on page 12339, FR Doc 03–6168, in the issue of March 14, 2003, in the third column the Committee published a deletion to the Procurement List for Janitorial/Custodial, U.S. Courthouse and Customhouse, Toledo, Ohio. This deletion is cancelled. The building was identified as no longer being a Federal building. We have since been advised that information was incorrect. The building will remain on the Procurement List with continuing service provided by a Nonprofit Agency.

G. John Heyer,

General Counsel.

[FR Doc. 03–8933 Filed 4–10–03; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

BIS Program Evaluation

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing

effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 10, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Dove, BIS ICB Liaison, (202) 482–5211, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

This form is used by BIS seminar instructors at seminar programs throughout the year. Seminar participants are asked to fill out the evaluation form during the program and turn it in at the end of the program. The responses to these questions provide useful and practical information that BIS can use to determine that it is providing a quality program and gives BIS information useful to making recommended improvements. It also shows attendees that BIS cares about their training experience and values their viewpoint. The gathering of performance measures is also essential in meeting the agency's responsibilities specified in the Government Performance and Results Act (GPRA).

II. Method of Collection

Survey

III. Data

OMB Number: 0694–0125.
Form Number: None.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 3,900.
Estimated Time Per Response: 10 minutes per response.
Estimated Total Annual Burden Hours: 650.
Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 7, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–8865 Filed 4–10–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-412–803]

Industrial Nitrocellulose from the United Kingdom: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

EFFECTIVE DATE: April 11, 2003.

FOR FURTHER INFORMATION CONTACT: Michele Mire or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4711 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 1, 2002, the Department of Commerce (the Department) published a notice of opportunity to request an administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom covering the period July 1, 2001 through June 30, 2002 (67 FR 44172, 44173).

On August 19, 2002, pursuant to requests by petitioner, Green Tree Chemical Technologies, Inc. (Green Tree), and respondent, Imperial Chemical Industries PLC (ICI), the Department initiated an administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom for the period July 1, 2001 through June 30, 2002 (67 FR 55000, August 27, 2002). On October 1, 2002, Green Tree withdrew its request for an administrative review. On March 20, 2003, ICI withdrew its request for an administrative review.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that a party that requests an administrative review may withdraw the request within 90 days after the date of publication of the notice of initiation of the requested administrative review. Section 351.213(d)(1) also provides that the Department may extend the 90-day time limit for parties to withdraw their requests that the Department conduct administrative reviews. On October 1, 2002, and March 20, 2003, Green Tree and ICI, respectively, submitted letters withdrawing their requests that the Department conduct an administrative review of the period July 1, 2001 through June 30, 2002. Although ICI withdrew its request for the review after the 90-day period had expired, the Department is rescinding the administrative review of the antidumping duty order on industrial nitrocellulose from the United Kingdom for the period July 1, 2001 through June 30, 2002, because both parties who requested administrative reviews have withdrawn their requests, and it is otherwise reasonable to rescind the review. This action is consistent with the Department's practice. *See e.g., Frozen Concentrated Orange Juice From Brazil; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 40913 (June 14, 2002) where, pursuant to a request filed after the 90-day deadline, the Department rescinded the review with respect to one respondent because the review of that respondent had not progressed beyond a point where it would have been unreasonable to grant the request for rescission.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: March 28, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–8938 Filed 4–10–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031703A]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Seismic Testing in the Northern Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (LDEO) for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting calibration measurements of its seismic array in the northern Gulf of Mexico (GOM). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a small take authorization to LDEO to incidentally take, by harassment, small numbers of several species of cetaceans for a short period of time within the next 12 months.

DATES: Comments and information must be received no later than My 12, 2003.

ADDRESSES: Comments on the application should be addressed to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application, and/or the Environmental Assessment (EA), which contain the list of references used in this document, may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA ((16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 18(A), the MMPA defines "harassment" as:

any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns,including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

(B) The term "Level A harassment" means harassment described in subparagraph (A)(i).

(C) The term "Level B harassment" means harassment described in subparagraph (A)(ii).

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On February 24, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting calibration measurements of its seismic array in the northern GOM. The LDEO plans to measure sound levels from each of the airgun arrays that will be used during their seismic survey programs during future studies. These measurements will be made in shallow, shelf slope, and deep waters in the GOM during late May and/or June 2003, but may be rescheduled. The purpose of these measurements is to verify estimates of sound fields around the airgun arrays that have been made using LDEO acoustical models. Verification of the output from these models is needed to confirm the distances from the airguns (safety radii) within which mitigation may be necessary to avoid exposing marine mammals to airgun sounds at received levels exceeding established limits, e.g. the 180 and 190 dB re 1 µPa (rms) limits set for cetaceans and pinnipeds, respectively. The measurements will also verify the distances at which the sounds diminish below other lower levels that may be assumed to characterize the zone where disturbance is possible or likely.

The data to be collected during this project can be used to develop a better understanding of the impact of man-made acoustic sources on marine mammals. There is a paucity of calibrated data on levels of man-made sounds in relation to the differing responses of marine mammals to these sources. The planned project will obtain the first calibrated measurements of the *R/V Maurice Ewing's* (Ewing) acoustic sources across a broad range of frequencies from 1 Hz to 25 kHz, and for various configurations of the Ewing's airgun array. Calibration experiments will be conducted in the shallow, shelf slope, and deep water of the GOM to quantify the differences in sound attenuation in relation to water depth. Once calibration measurements have been made, they will be used to model the full propagation field of the Ewing in varying geographical settings. This modeling will provide data needed to help minimize any potential risk to marine mammals during future seismic surveys.

Description of Activity

The proposed seismic sound measurements will involve one vessel, the *Ewing*. It will deploy and retrieve a spar buoy that will record received airgun sounds, and it will tow the airgun arrays whose sounds will be measured at various distances from the buoy. The *Ewing* will deploy two different airgun arrays in each of the three water depths where measurement will be made. One array will be a 20–

gun array and the other will be a 20–gun array (with varying numbers of those 20 guns active at any one time). While towing each of the arrays and firing the guns at 20–sec intervals, the *Ewing* will approach the spar buoy from 10 km (5.4 nm) away, pass the spar buoy about 100 m (54 nm) to the side of it, and continue until it is 10 km (5.4 nm) past the spar buoy. Sounds will be recorded at the spar buoy and telemetered to the *Ewing*. The Ewing will be self-contained, and the crew of the vessel will live aboard

During the GOM cruise, water depths in the study area will range from <100 to >2000 m (<330 >6500 ft). Airgun operations will be conducted along a total of about 132 km (71.3 nm) of trackline. This includes 66 km (35.6 nm) of trackline for each of the 2–Generator-Injector (GI) guns and the 20–gun array. About one third of the survey effort will be in water <100 m (328.1 ft), one third will be in water 100–2,000 m (328.1–6,561.7 ft), and one third will be in water >2,000 m (>6,561.7 ft). These linear figures represent the planned surveys. There may be additional operations associated with equipment testing and repeat coverage of any calibration run where initial data quality is sub-standard. To allow for these possible additional operations, the estimates of marine mammals that may be taken includes an allowance for an additional 44 km (23.7 nm) of airgun operations or 110 km (59.4 nm) for each of the 2–GI and 20–gun configurations (220 km (118.8 nm) of total trackline).

About one-half of the airgun operations in each water depth category will be conducted with the 2–gun array and the other half will be with varying proportions of the 20–airgun array. During operations with the larger array, the number of airguns active will vary from 6 to 20. The five configurations to be tested (2, 6, 10, 12 and 20 airguns) will include all of the airgun configurations that are anticipated to be used during LDEO's subsequent 2003 cruises.

The procedures to be used during the airgun calibration surveys will be similar to those used during previous seismic surveys by LDEO, e.g., in the equatorial Pacific Ocean (Carbotte *et al.*, 1998, 2000). The proposed program will use conventional seismic methodology with a towed airgun array as the energy source and a LDEO spar buoy as the receiver system. At one of the locations, a moored US Navy/University of New Orleans EARS (Environmental Acoustic Recording System) buoy will also record received sound levels as an independent calibration of the data that are received by the LDEO spar buoy.

The energy for the airgun array is compressed air supplied by compressors on board the source vessel. The specific configuration of the airgun array will be varied to represent all of the different arrays that will be used during 2003 and the most common arrays that will be used in future years. In addition, a multi-beam bathymetric sonar will be operated from the source vessel for part of the calibration survey. A lower-energy sub-bottom profiler will also be operated for part of this cruise. Detailed specifications on the acoustic instrumentation planned for this calibration study can be found in LDEO's application.

Description of Habitat and Marine Mammals Affected by the Activity

A total of 28 cetacean species and one species of sirenian (West Indian manatee) are known to occur in the GOM. These species are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), Sowerby's beaked whale (*Mesoplodon bidens*), Gervais' beaked whale (*Mesoplodon europaeus*), Blainville's beaked whale (*Mesoplodon densirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), Atlantic spotted dolphin (*Stenella frontalis*), spinner dolphin (*Stenella longirostris*), Clymene dolphin (*Stenella clymene*), striped dolphin (*Stenella coeruleoalba*), Fraser's dolphin (*Lagenodelphis hosei*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and the blue whale (*Balaenoptera musculus*). Another 3 species (long-beaked common dolphin (*Delphinus capensis*), short-beaked common dolphin (*Delphinus delphis*), and long-finned pilot whale (*Globicephala melas*)) could potentially occur in the GOM.

In the northern GOM, cetaceans are concentrated along the continental slope near cyclonic eddy and confluence areas of cyclonic-anticyclonic eddy pairs, due to nutrient-rich water which is thought to increase zooplankton stocks and thus prey abundance in those areas (Davis *et al.*, 2002). The narrow continental shelf south of the Mississippi River delta appears to be an important habitat for some cetacean species (Baumgartner *et al.*, 2001; Davis *et al.*, 2002). Low salinity, nutrient-rich waters may occur over the continental slope near the mouth of the Mississippi River or be entrained within the confluence areas and transported beyond the continental slope, creating a deep-water environment with increased productivity (Davis *et al.*, 2002). The rate of primary productivity and the standing stocks of chlorophyll and plankton are higher in this area as compared with other regions in the oceanic Gulf (Dagg *et al.*, 1988; Ortner *et al.*, 1989; Muller-Karger *et al.*, 1991). This increased productivity may explain the presence of a breeding population of endangered sperm whales within 100 km (54 nm) of the Mississippi River delta (Davis *et al.*, 2002). The southwestern Florida continental shelf may be another region of high productivity, and an important habitat for several cetacean species (Baumgartner *et al.*, 2001).

Several species of cetaceans are also widespread outside the previously described areas, on the continental shelf and/or along the shelf break. These include bottlenose dolphins, Atlantic spotted dolphins, and Bryde's whales (Davis *et al.*, 2002). Thus, cetaceans in the GOM seem to be partitioned by their habitat preferences, which are likely based on prey distribution (Baumgartner *et al.*, 2001).

Detailed descriptions of the marine mammal species are provided in the LDEO application and EA (both documents are available upon request (see **ADDRESSES**)). Please refer to those documents for additional information. Additional information on these species can also be found in Waring *et al.* (2001, 2002). These latter reports are available at the following location: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*

Potential Effects on Marine Mammals

As outlined in several previous NMFS documents, the effects of noise on marine mammals are highly variable and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable

relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence (as are vehicle launches), and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might (in turn) have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Characteristics of Airgun Pulses

Airguns were first developed by the offshore seismic industry as a replacement to the use of explosives to obtain necessary acoustic signals (Richardson *et al.*, 1995). Airguns function by venting high-pressure air into the water. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by oscillation of the resulting air bubble. The sizes, arrangement and firing times of the individual airguns in an array are designed and synchronized to suppress the pressure oscillations subsequent to the first cycle. The resulting downward-directed pulse has a duration of only 10 to 20 ms, with only one strong positive and one strong negative peak pressure (Caldwell and Dragoset, 2000). Most energy emitted from airguns is at relatively low frequencies. For example, typical high-energy airgun arrays emit most energy at 10–120 Hz. However, the pulses contain some energy up to 500–1000 Hz and above (Goold and Fish, 1998). The pulsed sounds associated with seismic exploration have higher peak levels than other industrial sounds to which whales and other marine mammals are routinely exposed.

The peak-to-peak (P-P) source levels of the 2–20–gun arrays to be studied in the planned project range from 236 to 262 dB re 1 μPascal at 1 m. These are the nominal source levels applicable to downward propagation. The effective source level for horizontal propagation is lower than the nominal source level, at least for the 6- to 20–gun arrays.

Several factors may reduce the effects of sounds on marine mammals. First, airgun arrays produce intermittent sounds, involving emission of a strong sound pulse for a small fraction of a second followed by several seconds of near silence. In contrast, some other acoustic sources produce sounds with lower peak levels, but their sounds are continuous or discontinuous but continuing for much longer durations than seismic pulses. Second, airgun arrays are designed to transmit strong sounds downward through the seafloor, and the amount of sound transmitted in near-horizontal directions is considerably reduced. Nonetheless, they also emit sounds that travel horizontally toward non-target areas. Finally an airgun array is a distributed source, not a point source. The nominal source level is an estimate of the sound that would be measured from a theoretical point source emitting the same total energy as the airgun array. That figure is useful in calculating the expected received levels in the far field (i.e., at moderate and long distances). Because the airgun array is not a single point source, there is no one location within the near field (or anywhere else) where the received level is as high as the nominal source level.

The strengths of airgun pulses can be measured in different ways, and it is important to know which method is being used when interpreting quoted source or received levels. Geophysicists usually quote P-P levels, in bar-meters or dB re 1 μPa-m. The peak (= zero-to-peak) level for the same pulse is typically about 6 dB less. In the biological literature, levels of received airgun pulses are often described based on the "average" or "root-mean-square" (rms) level over the duration of the pulse. The rms value for a given pulse is typically about 10 dB lower than the peak level, and 16 dB lower than the P-P value (Greene, 1997; McCauley *et al.*, 1998, 2000a). A fourth measure that is sometimes used is the energy level, in dB re 1 μPa^2. Because the pulses are <1 sec in duration, the numerical value of the energy is lower than the rms pressure level (but the units are different). Because the level of a given pulse will differ substantially depending on which of these measures is being applied, it is important to be aware which measure is in use when interpreting any quoted pulse level. In the past, NMFS has commonly referenced the rms levels when discussing levels of pulsed sounds that might "harass" marine mammals.

Seismic sound received at any given point will arrive via a direct path, indirect paths that include reflection from the sea surface and bottom, and often indirect paths including segments through the bottom sediments. Sounds propagating via indirect paths travel longer distances and often arrive later than sounds arriving via a direct path. (However, sound travel in the bottom may travel faster than that in the water and, thus, may arrive earlier than the direct arrival despite traveling a greater distance.) These variations in travel time have the effect of lengthening the duration of the received pulse. At the source, seismic pulses are about 10 to 20 ms in duration. In comparison, the pulse duration as received at long horizontal distances can be much greater. For example, for one airgun array operating in the Beaufort Sea, pulse duration was about 300 ms at a distance of 8 km (4.3 nm), 500 ms at 20 km (10.8 nm), and 850 ms at 73 km (39.4 nm) (Greene and Richardson, 1988).

Another important aspect of sound propagation is that received levels of low-frequency underwater sounds diminish close to the surface because of pressure-release and interference phenomena that occur at and near the surface (Urick, 1983; Richardson *et al.*, 1995). Paired measurements of received airgun sounds at depths of 3 m (9.8 ft) vs. 9 or 18 m (29.5 or 59 ft) have shown that received levels are typically several decibels lower at 3 m (9.8. ft)(Greene and Richardson, 1988). For a marine mammal whose auditory organs are within 0.5 or 1 m (1.6 or 3.3 ft) of the surface, the received level of the predominant low-frequency

components of the airgun pulses would be further reduced.

Pulses of underwater sound from open-water seismic exploration are often detected 50 to 100 km (30 to 54 nm) from the source location, even during operations in nearshore waters (Greene and Richardson, 1988; Burgess and Greene, 1999). At those distances, the received levels on an approximate rms basis are low (below 120 dB re 1 mPa). However, faint seismic pulses are sometimes detectable at even greater ranges (e.g., Bowles *et al.*, 1994; Fox *et al.*, 2002). Considerably higher levels can occur at distances out to several kilometers from an operating airgun array.

The distances at which seismic pulses from the Ewing's airguns are expected to diminish to various received levels of 190, 180, 170 dB and 160 dB re 1 mPa, on an rms basis) are as follows:

Airgun Array	RMS Radii (m/ft)			
	190 dB	180 dB	170 dB	160 dB
2 GI airguns*	15/49	50/164	155/508	520/1706
6 airguns**	50/164	220/722	700/2296	2700/8858
10 airguns**	250/820	830/2723	2330/7644	6500/21325
12 airguns**	300/984	880/2887	2680/8793	7250/23786
20 airguns**	400/1312	950/3117	3420/11220	9000/29527

* Airgun depth 6 m (20 ft)
**airgun depth 7.5 m (24.6 ft)

The primary objective of LDEO's planned study is to verify or improve these estimated distances. Additional details concerning the expected levels at various distances and angles relative to each of these airgun arrays can be found in the LDEO application.

Effects of Seismic Surveys on Marine Mammals

The LDEO application provides the following information on what is known about the effects on marine mammals of the types of seismic operations planned by LDEO. The types of effects considered here are (1) masking, (2) disturbance, and (3) potential hearing impairment and other physical effects. Additional discussion on species specific effects can be found in the LDEO application.

Masking

Masking effects on marine mammal calls and other natural sounds are expected to be limited. Seismic sounds are short pulses occurring for less than 1 sec every 20 or 60–90 sec in this project. Sounds from the multi-beam sonar are very short pulses, occurring for 1–10 msec once every 1 to 15 sec, depending on water depth. (During operations in deep water, the duration of each pulse from the multi-beam sonar as received at any one location would actually be only 1/5th or at most 2/5th of 1–10 msec, given the segmented nature of the pulses.) Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (e.g., Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a recent study reports that sperm whales continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses plus the fact that sounds important to them are predominantly at much higher frequencies than are airgun sounds.

Most of the energy in the sound pulses emitted by airgun arrays is at low frequencies, with strongest spectrum levels below 200 Hz and considerably lower spectrum levels above 1000 Hz. These frequencies are mainly used by mysticetes, but not by odontocetes or pinnipeds. An industrial sound source will reduce the effective communication or echolocation distance only if its frequency is close to that of the cetacean signal. If little or no overlap occurs between the industrial noise and the frequencies used, as in the case of many marine mammals vs. airgun sounds, communication and echolocation are not expected to be disrupted. Furthermore, the discontinuous nature of seismic pulses makes significant masking effects unlikely, even for mysticetes.

A few cetaceans are known to increase the source levels of their calls in the presence of elevated sound levels, or possibly to shift their peak frequencies in response to strong sound signals (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1999; Terhune, 1999; reviewed in Richardson *et al.*, 1995). These studies involved exposure to other types of anthropogenic sounds, not seismic pulses, and it is not known whether these types of responses ever occur upon exposure to seismic sounds. If so, these adaptations, along with directional hearing and preadaptation to tolerate some masking by natural sounds (Richardson *et al.*, 1995), would all reduce the importance of masking.

Disturbance by Seismic Surveys

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous dramatic changes in activities, and displacement. Disturbance is the primary concern for this project. However, there are difficulties in defining which marine mammals should be counted as "taken by harassment". For many species and situations, scientists do not have detailed information about their reactions to noise, including reactions to seismic (and sonar) pulses. Behavioral reactions of marine mammals to sound are difficult to predict. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the impacts of the change may not be significant to the individual let alone the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on the animals could be significant. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, scientists often resort to estimating how many mammals were present within a particular distance of industrial activities, or exposed to a particular level of industrial sound. This likely overestimates the numbers of marine mammals that are affected in some biologically important manner.

The sound criteria used to estimate how many marine mammals might be disturbed to some biologically important degree by a seismic program are based on behavioral observations during studies of several species (humpback, gray and bowhead whales; ringed seals). However, information is lacking for many other species. These potential impacts are discussed further in the LDEO application.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds. The minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely detectable temporary threshold shift (TTS). The level associated with the onset of TTS is considered to be a level below which there is no danger of damage and current NMFS policy regarding exposure of marine mammals to high-level sounds is that cetaceans and pinnipeds should not be exposed to impulsive sounds exceeding 180 and 190 dB re 1 micro Pa (rms), respectively.

Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the airgun array (and multi-beam sonar) and to avoid exposing them to sound pulses that might cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area with ongoing seismic operations. In these cases, the avoidance responses of the animals themselves will reduce or avoid the possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that might (in theory) occur include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

TTS

TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). When an animal experiences TTS, its hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. The magnitude of TTS depends on the level and duration of noise exposure, among other considerations (Richardson *et al.*, 1995). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Only a few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

The predicted 180– and 190–dB distances for the airgun arrays operated by LDEO during this activity were summarized previously in this document. These sound levels are not considered to be the levels at or above which TTS would occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS, one cannot be certain that there will be no injurious effects, auditory or otherwise, to marine mammals. It has been shown that most whales tend to avoid ships and associated seismic operations. Thus, whales will likely not be exposed to such high levels of airgun sounds. Any whales close to the trackline could move away before the sounds become sufficiently strong for there to be any potential for hearing impairment. Therefore, there is little potential for whales being close enough to an array to experience TTS. In addition, ramping up airgun arrays, which has become standard operational protocol for many seismic operators, including LDEO, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array.

Permanent Threshold Shift (PTS)

When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, and in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges. Physical damage to a mammal's hearing apparatus can occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times (time required for sound pulse to reach peak pressure from the baseline pressure). Such damage can result in a permanent decrease in functional sensitivity of the hearing system at some or all frequencies.

Single or occasional occurrences of mild TTS do not cause permanent auditory damage in terrestrial mammals, and presumably do not do so in marine mammals. However, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). In terrestrial mammals, the received sound level from a single sound exposure must be far above the TTS threshold for any risk of permanent hearing damage (Kryter, 1994; Richardson *et al.*, 1995). Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals.

Some factors that contribute to onset of PTS are as follows:

(1) exposure to single very intense noises, (2) repetitive exposure to intense sounds that individually cause TTS but not PTS, and (3) recurrent ear infections or (in captive animals) exposure to certain drugs.

Cavanagh (2000) has reviewed the thresholds used to define TTS and PTS. Based on his review and SACLANT (1998), it is reasonable to assume that PTS might occur at a received sound level 20 dB or more above that which induces mild TTS. However, for PTS to occur at a received level only 20 dB above the TTS threshold, it is probable that the animal would have to be exposed to the strong sound for an extended period.

Sound impulse duration, peak amplitude, rise time, and number of pulses are the main factors thought to determine the onset and extent of PTS. Based on existing data, Ketten (1994) has noted that the criteria for differentiating the sound pressure levels that result in PTS (or TTS) are location and species-specific. PTS effects may also be influenced strongly by the health of the receiver's ear.

Given that marine mammals are unlikely to be exposed to received levels of seismic pulses that could cause TTS, it is highly unlikely that they would sustain permanent hearing impairment. If we assume that the TTS threshold for exposure to a series of seismic pulses may be on the order of 220 dB re 1 μPa (P-P) in odontocetes, then the PTS threshold might be about 240 dB re 1 μPa (P-P). In the units used by geophysicists, this is 10 bar-m. Such levels are found only in the immediate vicinity of the largest airguns (Richardson *et al.*, 1995; Caldwell and Dragoset, 2000). It is very unlikely that an odontocete would remain within a few meters of a large airgun for sufficiently long to incur PTS. The TTS (and thus PTS) thresholds of baleen whales and pinnipeds may be lower, and thus may extend to a somewhat greater distance. However, baleen whales generally avoid the immediate area around operating seismic vessels, so it is unlikely that a baleen whale could incur PTS from exposure to airgun pulses and pinnipeds are not found in the GOM. Therefore, although it is unlikely that the planned seismic surveys could cause PTS in any marine mammals, caution is warranted given the limited knowledge about noise-induced hearing damage in marine mammals, particularly baleen whales.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten *et al.*, 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times, and there is no evidence that they can cause serious injury, death, or stranding. However, the association of mass strandings of beaked whales with naval exercises and, in a recent case, an LDEO seismic survey has raised the possibility that beaked whales may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

In March 2000, several beaked whales that had been exposed to repeated pulses from high intensity, mid-frequency military sonars stranded and died in the Providence Channel of the Bahamas Islands, and were subsequently found to have incurred cranial and ear damage (NOAA and USN, 2001). Based on post-mortem analyses, it was concluded that an acoustic event caused hemorrhages in and near the auditory region of some beaked whales. These hemorrhages occurred before death. They would not necessarily have caused death or permanent hearing damage, but could have compromised hearing and navigational ability (NOAA and USN, 2001). The researchers concluded that acoustic exposure caused this damage and triggered stranding, which resulted in overheating, cardiovascular collapse, and physiological shock that ultimately led to the death of the stranded beaked whales. During the event, five naval vessels used their AN/SQS–53C or –56 hull-mounted active sonars for a period of 16 hours. The sonars produced narrow (<100 Hz) bandwidth signals at center frequencies of 2.6 and 3.3 kHz (–53C), and 6.8 to 8.2 kHz (–56). The respective source levels were usually 235 and 223 dB re 1 μ Pa, but the –53C briefly operated at an unstated but substantially higher source level. The unusual bathymetry and constricted channel where the strandings occurred were conducive to channeling sound. This, and the extended operations by multiple sonars, apparently prevented escape of the animals to the open sea. In addition to the strandings, there are reports that beaked whales were no longer present in the Providence Channel region after the event, suggesting that other beaked whales either abandoned the area or (perhaps) died at sea (Balcomb and Claridge, 2001).

Other strandings of beaked whales associated with operation of military sonars have also been reported (e.g., Simmonds and Lopez-Jurado, 1991; Frantzis, 1998). In these cases, it was not determined whether there were noise-induced injuries to the ears or other organs. Another stranding of beaked whales (15 whales) happened on 24–25 September 2002 in the Canary Islands, where naval maneuvers were taking place.

It is important to note that seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by the types of airgun arrays used to profile sub-sea geological structures are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time (though the center frequency may change over time). Because seismic and sonar sounds have considerably different characteristics and duty cycles, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to hearing damage and, indirectly, mortality suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In addition to the sonar-related strandings, there was a recent (September, 2002) stranding of two Cuvier's beaked whales in the Gulf of California (Mexico) when a seismic survey by the National Science Foundation (NSF)/LDEO vessel Ewing was underway in the general area (Malakoff, 2002). The airgun array in use during that project was the *Ewing*'s 20–gun 8490–in^3 array. This might be a first indication that seismic surveys can have effects, at least on beaked whales, similar to the suspected effects of naval sonars. However, the evidence linking the Gulf of California strandings to the seismic surveys is inconclusive, and to this date is not based on any physical evidence (Hogarth, 2002; Yoder, 2002). The ship was also operating its multi-beam bathymetric sonar at the same time but, as discussed later in this document, this sonar had much less potential than these naval sonars to affect beaked whales. Although the link between the Gulf of California strandings and the seismic (plus multi-beam sonar) survey is inconclusive, this plus the various incidents involving beaked whale strandings associated with naval exercises suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales.

Non-auditory Physiological Effects

As mentioned previously, possible types of non-auditory physiological effects or injuries that might occur in marine mammals exposed to strong underwater sound might, in theory, include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. There is no proof that any of these effects occur in marine mammals exposed to sound from airgun arrays. However, there have been no direct studies of the potential for airgun pulses to elicit any of these effects. If any such effects do occur, they would probably be limited to unusual situations when animals might be exposed at close range for unusually long periods.

Long-term exposure to anthropogenic noise may have the potential to cause physiological stress that could affect the health of individual animals or their reproductive potential, which could theoretically cause effects at the population level (Gisner (ed.), 1999). However, there is essentially no information about the occurrence of noise-induced stress in marine mammals. Also, it is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. This is particularly so in the case of broad-scale seismic surveys of the type planned by LDEO, where the tracklines are generally not as closely spaced as in many 3–dimensional industry surveys, or the brief acoustic measurement program planned for the northern GOM.

Gas-filled structures in marine animals have an inherent fundamental resonance frequency. If stimulated at this frequency, the ensuing resonance could cause damage to the animal. Diving marine mammals are not subject to the bends or air embolism because, unlike a human SCUBA diver, they only breath air at sea level pressure and have protective adaptations against getting the bends. There may be a possibility that high sound levels could cause bubble formation in the blood of diving mammals that in turn could cause an air embolism, tissue separation, and high, localized pressure in nervous tissue (Gisner (ed.), 1999; Houser *et al.*, 2001).

A recent workshop (Gentry (ed.), 2002) was held to discuss whether the stranding of beaked whales in the Bahamas in 2000 might have been related to air cavity resonance or bubble formation in tissues caused by exposure to noise from naval sonar. A panel of experts concluded that resonance in air-filled structures was not likely to have caused this stranding. Among other reasons, the air spaces in marine mammals are too large to be susceptible to resonant frequencies emitted by mid- or low-frequency sonar; lung tissue damage has not been observed in any mass, multi-species stranding of beaked whales; and the duration of sonar pings is likely too short to induce vibrations that could damage tissues (Gentry (ed.), 2002). Opinions were less conclusive about the possible role of gas (nitrogen) bubble formation/growth in the Bahamas stranding of beaked whales. Workshop participants did not rule out the possibility that bubble formation/growth played a role in the stranding and participants acknowledged that more research is needed in this area. The only available information on acoustically mediated bubble growth in marine mammals is modeling that assumes prolonged exposure to sound.

In summary, little is known about the potential for seismic survey sounds to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to situations where the marine mammal is located at a short distance from the sound source. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are unlikely to incur auditory impairment or other physical effects.

Possible Effects of Mid-Frequency Sonar Signals

A multi-beam bathymetric sonar (Atlas Hydrosweep DS–2, 15.5–kHz) will be operated from the source vessel at some time during the calibration study. Sounds from the multi-beam sonar are very short pulses, occurring for 1–10 msec once every 1 to 15 sec, depending on water depth. Most of the energy in the sound pulses emitted by this multi-beam sonar is at high frequencies, centered at 15.5 kHz. The beam is narrow (2.67°) in fore-aft extent, and wide (140°) in the cross-track extent. Each ping consists of five successive transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the five segments, i.e. for 1/5th or at most 2/5th of the 1–10 msec.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans (1) generally are more powerful than the Atlas Hydrosweep, (2) have a longer pulse duration, and (3) are directed close to horizontally (vs. downward for the Hydrosweep). The area of possible influence of the Hydrosweep is much smaller (a narrow band below the source vessel). Marine mammals that encounter the Hydrosweep at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only limited amounts of pulse energy because of the short pulses.

Masking by Mid-Frequency Sonar Signals

There is little chance that marine mammal communications will be masked appreciably by the multi-beam sonar signals given the low duty cycle of the sonar and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the sonar signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses Resulting from Mid-Frequency Sonar Signals

Marine mammal behavioral reactions to military and other sonars appear to vary by species and circumstance. Sperm whales reacted to military sonar, apparently from a submarine, by dispersing from social aggregations, moving away from the sound source, remaining relatively silent and becoming difficult to approach (Watkins *et al.*, 1985). Other early and generally limited observations were summarized in Richardson *et al.* (1995). More recently, Rendell and Gordon (1999) recorded vocal behavior of pilot whales during periods of active naval sonar transmission. The sonar signal was made up of several components each lasting 0.17 sec and sweeping up from 4 to 5 kHz. The pilot whales were significantly more vocal while the pulse trios were being emitted than during the intervening quiet periods, but did not leave the area even after several hours of exposure to the sonar.

Reactions of beaked whales near the Bahamas to mid-frequency naval sonars were summarized earlier. Following extended exposure to pulses from a variety of ships, some individuals beached themselves, and others may have abandoned the area (Balcomb and Claridge, 2001; NOAA and USN, 2001). Pulse durations from these sonars were much longer than those of the LDEO multi-beam sonar, and a given mammal would probably receive many pulses. All of these observations are of limited relevance to the present situation because exposures to multi-beam pulses are expected to be brief as the vessel passes by, and the individual pulses will be very short.

Captive bottlenose dolphins and a beluga whale exhibited changes in behavior when exposed to 1–sec pulsed sounds at frequencies similar to those that will be emitted by the multi-beam sonar used by LDEO (Ridgway *et al.*, 1997; Schlundt *et al.*, 2000), and to shorter broadband pulsed signals (Finneran *et al.*, 2000, 2002). Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure or to avoid the location of the exposure site during subsequent tests (Schlundt *et al.*, 2000; Finneran *et al.*, 2002). Dolphins exposed to 1–sec intense tones exhibited short-term changes in behavior above received sound levels of 178 to 193 dB re 1 μPa rms and belugas did so at received levels of 180 to 196 dB and above. Received levels necessary to elicit such reactions to shorter pulses were higher (Finneran *et al.*, 2000, 2002). Test animals sometimes vocalized after exposure to pulsed, mid-frequency sound from a watergun (Finneran *et al.*, 2002). In some instances, animals exhibited aggressive behavior toward the test apparatus (Ridgway *et al.*, 1997; Schlundt *et al.*, 2000). The relevance of these data to free-ranging odontocetes is uncertain. In the wild, cetaceans sometimes avoid sound sources well before they are exposed to the levels listed above, and reactions in the wild may be more subtle than those described by Ridgway *et al.* (1997) and Schlundt *et al.*(2000).

In summary, cetacean behavioral reactions to military and other sonars appear to vary by species and circumstance. While there may be a link between naval sonar use and changes in cetacean vocalization rates and movements, it is unclear what impact these behavioral changes (which are likely to be short-term) might have on the animals. Therefore, as mentioned previously, because simple momentary behavioral reactions that are within normal behavioral patterns for that species are not considered to be a taking, the very brief exposure of cetaceans to signals from the Hydrosweep is unlikely to result in a "take" by harassment.

Hearing Impairment and Other Physical Effects

Given recent stranding events that have been associated with the operation of naval sonar, there is much concern that sonar noise can cause serious impacts to marine mammals (for discussion see Effects of Seismic Surveys on Marine Mammals). It is worth noting that the multi-beam sonar

proposed for use by LDEO is quite different than sonars used for navy operations. Pulse duration of the multi-beam sonar is very short relative to the naval sonars. Also, at any given location, an individual marine mammal would be in the beam of the multi-beam sonar for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth. (Navy sonars often use near-horizontally-directed sound.) These factors would all reduce the sound energy received from the multi-beam sonar rather drastically relative to that from the sonars used by the Navy.

Possible Effects of the Sub-bottom Profiler Signals

A sub-bottom profiler will be operated from the source vessel at some times during the planned study. Sounds from the sub-bottom profiler are very short pulses, occurring for 1, 2 or 4 msec once every second. Most of the energy in the sound pulses emitted by this multi-beam sonar is at mid frequencies, centered at 3.5 kHz. The beamwidth is approximately 300 and is directed downward.

Sound levels have not been measured for the sub-bottom profiler used by the *Ewing*, but Burgess and Lawson (2000) measured the sounds propagating more or less horizontally from a similar unit with similar source output (205 dB re 1 µPa-m source level). The 160 and 180 dB re 1 µPa (rms) radii, in the horizontal direction, were estimated to be near 20 m (65.6 ft) and 8 m (26.2 ft) from the source, as measured in 13 m (42.6 ft) water depth. The corresponding distances for an animal in the beam below the transducer would be greater, on the order of 180 m (590.5 ft) and 18 m (59 ft) (assuming spherical spreading).

The sub-bottom profiler on the *Ewing* has a maximum source level of 204 dB re 1 µPa-m. Thus the received level should be expected to decrease to 160 and 180 dB about 160 and 16 m (525 and 52.5 ft) below the transducer, respectively (again assuming spherical spreading). Corresponding distances in the horizontal plane would be lower, given the directionality of this source (30° beamwidth) and the measurements of Burgess and Lawson (2000).

Masking by Sub-bottom Profiler Signals

There is little chance that marine mammal communications will be masked appreciably by the sub-bottom profiler signals given its relatively low power output, the low duty cycle and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the sonar signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses by Sub-bottom Profiler Signals

Marine mammal behavioral reactions to pulsed sound sources are discussed above and responses to the sub-bottom profiler are likely to be similar to those of other pulsed sources at the same received levels. However, the pulsed signals from the sub-bottom profiler are much weaker than those from the airgun array and the multi-beam, so behavioral responses are not expected unless marine mammals were very close to the source, e.g. with about 160 m (525 ft) below the vessel, or a lesser distance to the side. Thus, the very brief exposure of cetaceans to small numbers of signals from the sub-bottom profiler would not result in Level B harassment.

Hearing Impairment and Other Physical Effects

Source levels of the sub-bottom profiler are much lower than airguns and the multi-beam. Sound levels from a sub-bottom profiler similar to the one on the *Ewing* were estimated to decrease to 180 dB re 1 µPa (rms) at 8 m (26.2 ft) horizontally from the source (Burgess and Lawson, 2000), and about 18 m (59 ft) downward from the source. Thus few, if any, marine mammals are likely to approach close enough to the sub-bottom profiler to be exposed to pulse levels that might cause hearing impairment or other physical injuries.

Furthermore, the sub-bottom profiler is usually operated simultaneously with other higher-power acoustic sources. Many marine mammals will move away in response to the approaching higher-power sources before the mammals would be close enough to be affected by the less intense sounds from the sub-bottom profiler. In the event that mammals do not avoid the approaching vessel and its various sound sources, mitigation measures that would be applied to minimize effects of the higher-power sources would further reduce or eliminate any minor effects of the sub-bottom profiler.

Estimates of Take by Harassment

As described previously in this document and in the LDEO application, animals subjected to sound levels greater than 160 dB may alter their behavior or distribution, and, therefore, might be considered to be taken by harassment. However, the 160–dB criterion, used by NMFS as an indicator of where Level B harassment may result from impulse sounds, is based on studies of baleen whales. Odontocete hearing at low frequencies is relatively insensitive, and the dolphins generally appear to be more tolerant of strong sounds than are most baleen whales. For that reason, it has been suggested that for purposes of estimating incidental harassment of odontocetes, a 170–dB criterion might be appropriate.

All anticipated takes would be Level B harassment takes involving temporary changes in behavior. The mitigation measures to be applied by LDEO will minimize the possibility of injurious takes during the planned acoustic calibration project in the northern GOM. The estimate of the number of marine mammals that might be taken by harassment is based on a consideration of the number of marine mammals that might be disturbed by operations with the specific airgun arrays planned for each of the calibration runs past the spar buoy. LDEO's initial estimates of the numbers that might be disturbed assume that, on average, cetaceans exposed to airgun sounds with received levels ≤160 dB re 1 µPa (rms) might be sufficiently disturbed to be "taken by harassment." The best estimate also includes an allowance for four extra source-vessel transits past the spar buoy in order to obtain the required calibration data and, therefore, is an overestimate if the calibrations measurements require only six transits. The best estimates take account of data on marine mammal abundance from previous surveys in that area.

The anticipated radii of influence of the multi-beam sonar and the sub-bottom profiler are much less than that for the airgun array (see previous discussion). It is assumed that any marine mammal close enough to be affected by the multi-beam sonar or the sub-bottom profiler would already be affected by the airguns. Therefore, no additional takings by harassment would occur for animals that might be affected by the multi-beam sonar or the sub-bottom profiler.

Estimates of Take by Harassment for the GOM

Extensive aircraft- and ship-based surveys have been conducted for marine mammals in the GOM, including the area where the calibration study will be conducted (Davis *et al.*, 2000, 2002; Wursig *et al.*, 2000; Baumgartner *et al.*, 2001). However, oceanographic and other conditions strongly influence the distribution and numbers of marine mammals present in an area (Davis *et al.*, 2002). Thus, for some species the densities derived from recent surveys may not be representative of the densities that will be encountered during the proposed acoustical calibration study. Table 3 in the LGEO application gives the densities for each species or species group of marine mammals in LDEO's proposed study area based on the 1996/97 GulfCet II surveys (Davis *et al.*, 2000). The densities from the GulfCet studies had been corrected by the original authors for detectability bias but not for availability bias. Therefore, in Table 3, LDEO has adjusted the originally reported densities and population estimates to account for availability bias. Based on those densities, the numbers of each species that might be taken by harassment and the requested level of take by harassment are shown in that table.

Dolphins account for 94 percent of the "best estimate" (i.e., 486 of 520 animals). There is no general agreement regarding any alternative "take" criterion for dolphins exposed to airgun pulses. However, if only those dolphins exposed to ≥170 dB re 1 µPa (rms) were affected sufficiently to be considered "taken by harassment", then the best estimate for dolphins would be 183 rather than 486. This is based on the predicted 170 dB radii around the 2 GI gun and 20–airgun arrays (155 m (508 ft) and 3,420 m (11, 220 ft), respectively). This number of 183 animals is considered by LDEO to be a more realistic "best estimate" of the number of dolphins that may be disturbed (i.e., Level B harassment). This number is about 0.1 percent of the estimated GOM population of dolphins (approx. 165,715). Therefore, the total number of dolphins likely to react behaviorally is considerably lower than the estimated 486 animals.

Of the 520 marine mammals that might be exposed to airgun sounds with received levels >160 dB re 1 µPa (rms), an estimated two would be sperm whales. Two sperm whales represent 0.4 percent of the estimated GOM population of about 530 sperm whales.

Mitigation

The directional nature of the alternative airgun arrays to be used in this project (especially the larger arrays) is an important mitigating factor. This directionality will result in reduced sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level.

For the proposed airgun calibration work in the GOM in 2003, LDEO at times will use 2 GI-guns with total volume 210 in^3, and at other times will use a 20–gun array with 6–20 active guns and total volume 1350–8600 in^3. Individual airguns will range in size from 80 to 850 in^3. The airguns comprising these arrays will be spread out horizontally, so that the energy from the array will be directed mostly downward.

The sound pressure fields have been modeled in relation to distance and direction from each of the five array configurations and are shown in Figs. 7–11 in LDEO's application. The radii around the arrays where the received level would be 180 dB re 1 µPa (rms), the shutdown criterion applicable to cetaceans, were estimated as 50 m (164 ft), 220 m (722 ft), 830 m (2,723 ft), 880 m (2,887 ft) and 950 m (3,117 ft) for the 2-, 6-, 10-, 12-, and 20–gun arrays, respectively.

Vessel-based observers will watch for marine mammals in the vicinity of the arrays. Until such time as the sound pressure fields estimated by the model have been confirmed by measurements of actual sound pressure levels, LDEO proposes to use 1.5 times the 180 dB isopleth. One of the main purposes of the measurements that will be made during the GOM project is to verify or refine these safety radii. The current plan is to measure sounds produced by the 6-, 10-, 12- and 20–gun arrays during the same transit past the spar buoy, operating these four combinations of airguns in a repeating sequence. The safety radius for the 20–gun array (x1.5) will be used whenever the sequence including (at times) 20 active guns is in progress. Sounds from the 2 GI guns will be measured during separate transits past the spar buoy. During the GOM cruise, the proposed safety radii for cetaceans are 75 m (246 ft) and 1,425 m (4,675 ft), respectively, for the 2 GI-guns and 20–gun array. LDEO proposes to shut down the airguns if marine mammals are detected within the proposed safety radii.

Also, LDEO proposes to use a ramp-up (soft-start) procedure when commencing operations. Ramp-up will begin with the smallest gun in the array that is being used (80 in3 for all subsets of the 20–gun array). Guns will be added in a sequence such that the source level of the array will increase at a rate no greater than 6 dB per 5–minutes.

Marine Mammal Mitigation Monitoring

Vessel-based observers will monitor marine mammals near the source vessel starting 30 minutes before all airgun operations. Airguns will be operated only during daylight; they will not be operated or started up during nighttime. Airgun operations will be suspended when marine mammals are observed within, or about to enter, designated safety zones where there is a possibility of significant effects on hearing or other physical effects. Vessel-based observers will watch for marine mammals near the seismic vessel during daylight periods with shooting, and for at least 30 minutes prior to the planned start of airgun operations.

Two observers will monitor marine mammals near the *Ewing* during all airgun operations in the GOM. The *Ewing* is a suitable platform for marine mammal observations. The observer's eye level will be approximately 11 m (36 ft) above sea level when stationed on the bridge, allowing for good visibility within a 21° arc for each observer. In addition to visual observations, a towed hydrophone array will be used to detect and locate marine mammals. This will increase the likelihood of detecting and identifying any marine mammals that are present during airgun operations. The proposed monitoring plan is summarized later in this document.

Proposed Safety Radii

Received sound levels have been modeled for the 2-, 6-, 10-, 12-, and 20–airgun arrays and are depicted in Figures 7–11 of the LDEO application. Based on the modeling, estimates of the 190-, 180-, 170-, and 160–dB re 1 µPa (rms) distances (safety radii) for these arrays are shown in Table 1 in the application and previously in this document. Acoustic measurements in shallow (<100 m/328 ft), mid-depths (100–2000 m/328–6,562 ft), but probably about 1000 m (3,281 ft)), and deep (>2000 m) water will be taken during the proposed cruise, in order to check the modeled received sound levels during operation of these airgun arrays in a wide variety of water depths. Because the safety radii will not be confirmed before the cruise, conservative safety radii will be used during the proposed GOM surveys. Conservative radii will be established at 1.5 times the distances calculated for the 2 GI-guns and the 20 airgun array. Thus, during the GOM cruise the proposed conservative safety radii for cetaceans are 75 m (246 ft) and 1,425 m (4,675 ft) for the 2 GI guns and 20–gun arrays, respectively.

Airgun operations will be suspended immediately when cetaceans are detected within or about to enter the appropriate 180–dB (rms) radius. This 180 dB criterion is consistent with guidelines listed for cetaceans by NMFS (2000) and other guidance by NMFS.

Mitigation During Operations

The following mitigation measures, as well as marine mammal monitoring, will be adopted during the GOM

acoustic verification program, provided that doing so will not compromise operational safety requirements:

Course alteration

If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, alternative ship tracks will be plotted against anticipated mammal locations. If practical, the vessel's course and/or speed will be changed in a manner that avoids approaching within the safety radius while also minimizing the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safey radius, further mitigative actions will be taken (i.e., either further course alterations or shutdown of the airguns).

Shutdown procedures

Vessel-based observers using visual aids and acoutical arrays will monitor marine mammals near the seismic vessel for 30 minutes prior to start up and during all airgun operations. No airguns will be operated during periods of darkness. Airgun operations will be suspended immediately when marine mammals are observed or otherwise detected within, or about to enter, designated safety zones where there is a possibility of physical effects, including effects on hearing (based on the 180 dB criterion specified by NMFS). The shutdown procedure should be accomplished within several seconds (or a "one shot" period) of the determination that a marine mammal is within or about to enter the safety zone. Airgun operations will not resume until the marine mammal is outside the safety radius. Once the safety zone is clear of marine mammals, the observers will advise that seismic surveys can re-commence. The "ramp-up" procedure will then be followed.

Ramp-up procedure

A "ramp-up" procedure will be followed when the airgun arrays begin operating after a specified-duration period without airgun operations. Under normal operational conditions (vessel speed 4–5 knots), a ramp-up would be required after a "no shooting" period lasting 2 minutes or longer. At 4 knots, the source vessel would travel 247 m (810 ft) during a 2–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water, it is proposed that a ramp-up would be required after a "no shooting" period lasting 3 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 277 m (909 ft) in 3 minutes. These guidelines would require modification if the normal shot interval were more than 2 or 3 min, respectively, but that is not expected to occur during the GOM project.

Ramp-up will begin with the smallest gun in the array that is being used (80 in3). Guns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–minute period over a total duration of approximately 18–20 min (10–12 gun arrays).

Avoidance of Cetacean Concentrations

The *Ewing* will be involved in separately-permitted studies of sperm whales during the late May and June period when the proposed acoustical measurements will be obtained. Thus the scientists in charge of this program will have first-hand knowledge of the locations of concentrations of sperm whales and other cetaceans. The proposed acoustical measurements therefore will be able to avoid operating near known concentrations of marine mammals.

Monitoring and Reporting

Vessel-based Visual Monitoring

As mentioned under Mitigation, two observers dedicated to marine mammal observations will be stationed aboard LDEO's seismic survey vessel during the acoustical measurement program in the GOM. It is proposed that two marine mammal observers aboard the seismic vessel will search for and observe marine mammals whenever airgun operations are in progress. Airgun operations will be restricted to periods with good visibility during daylight hours. Two observers will be on duty for at least 30 minutes prior to the start of airgun operations and during ramp-up procedures. The observers will watch for marine mammals from the highest practical vantage point on the vessel, which is the bridge. The observer(s) will systematically scan the area around the vessel with 7X50 Fujinon reticle binoculars or with the naked eye. "Bigeye" (25 X 150) binoculars will be available during this cruise to assist with species identification of marine mammals that are sighted. Laser rangefinding binoculars (Bushnell Lytespeed 800 laser rangefinder with 4X optics or equivalent) will be available to assist with distance estimation. If a marine mammal is detected well outside the safety radius, the vessel may be maneuvered to avoid having the mammal come within the safety radius. When mammals are detected within or about to enter the designated safety radii, the airguns will be shut down immediately. The observer(s) will continue to maintain watch to determine when the animal is outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius.

The vessel-based monitoring will provide data required to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions, and thus to estimate the numbers of mammals potentially taken by harassment. It will also provide the information needed in order to shut down the airguns at times when mammals are present in or near the safety zone. When a mammal sighting is made, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; (2) Time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare (The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.) All mammal observations and airgun shutdowns will be recorded in a standardized format.

At least two experienced marine mammal observers (with at least one previous year of marine mammal observation experience) will be on duty aboard the seismic vessel.

Prior to the start of the project, the primary observers will participate in a 1–day meeting and training or refresher course on the specific marine mammal monitoring procedures required for this project.

Two observers will be on duty in shifts of duration no longer than 4 hours. Use of two simultaneous observers will increase the proportion of the marine mammals present near the source vessel that are detected. Bridge personnel additional to the dedicated marine mammal observers will also assist in detecting marine mammals and implementing mitigation requirements, and before the start of the seismic survey will be given instruction in how to do so. The results from the vessel-based observations will provide (1) the basis for real-time mitigation (airgun shutdown); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Vessel-based Passive Acoustic Monitoring

A towed hydrophone array will be deployed during the airgun measurements in the GOM. The acoustical array will be monitored during airgun operations to detect, locate and identify marine mammals near the Ewing, insofar as this is possible via passive acoustic methods. The acoustical array will provide additional ability to detect, locate and identify marine mammals over and above that provided by visual observations. The acoustical data will be integrated, in real time, with the visual observations to ensure that marine mammals do not enter the 180–dB safety radius.

Acoustical Measurements of Airgun Sounds

The acoustic measurement program is designed to document the received levels of the airgun sounds, relative to distance, during operation of each standard configuration of airgun array deployed from the *Ewing*. In particular, these data will be used to verify or refine present estimates of the safety radii. Those radii are used to determine when the airguns need to be shut down to prevent exposure of cetaceans to received levels ≥180 dB. Sound measurements will be made and reported as discussed previously in this document. LDEO will use the standard methods that have been used and reported during other recent studies of seismic and marine mammals (Greene *et al.*, 1997; McCauley *et al.*, 1998, 2000a,b).

Reporting

A report will be submitted to NMFS within 90 days after the end of the acoustic measurement program in the GOM. The report will describe the operations that were conducted, the marine mammals that were detected near the operations, and at least some of the results of the acoustical measurements to verify the safety radii. (Data from the LDEO spar buoy are expected to be available quickly, but it is uncertain how quickly the EARS data will be available given the nature of the EARS buoys.) The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks with the possible exception of the backup EARS data. The 90–day report will summarize the dates and locations of seismic operations, sound measurement data, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA.

National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the GOM calibration study. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of conducting a short-term calibration study of the seismic airgun array onboard the Ewing in the northern GOM in 2003, will result, at worst, in a temporary modification in behavior by certain species of marine mammals. While behavioral modifications may be made by these species as a result of seismic survey activities, this behavioral change is expected to result in no more than a negligible impact on the affected species.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document.

Proposed Authorization

NMFS proposes to issue an IHA to LDEO for conducting a calibration study of the seismic airgun arrays onboard the Ewing in the northern GOM provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: April 7, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–8935 Filed 4–10–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040403A]

Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT); Spring Species Working Group Workshop

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Advisory Committee to the U.S. Section to ICCAT announces its spring meeting with its Species Working Group Technical Advisors, April 30–May 1, 2003.

DATES: The open sessions of the Committee meeting will be held on April 30, 2003, from 9:30 a.m. to 12:30 p.m., and on May 1, 2003, from 10:30 a.m. to 1:30 p.m. Closed sessions will be held on April 30, 2003, from 1:45 p.m. to approximately 6 p.m., and on May 1, 2003, from 8:30 a.m. to 10:30 a.m.

ADDRESSES: The meeting will be held at the Hilton Hotel Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kim Blankenbeker at (301) 713–2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in two open sessions to receive and discuss information on (1) the 2002 ICCAT meeting results and U.S. implementation of ICCAT decisions; (2) 2003 ICCAT and NMFS research and monitoring activities; (3) 2003 Commission activities; (4) results of the Committee's Species Working Group deliberations; and (5) Advisory Committee operational issues. The public will have access to the open sessions of the meeting, but there will be no opportunity for public comment.

The Advisory Committee will go into executive session during the afternoon of April 30, 2003, to discuss sensitive information relating to (1) post ICCAT 2002 discussions and negotiations, including upcoming ICCAT working group meetings on trade and on monitoring and compliance; (2) the Atlantic Tunas Convention Act required consultation on the identification of countries that are diminishing the effectiveness of ICCAT; and (3) other matters relating to the international management of ICCAT species. In addition, the Committee will meet in its Species Working Groups for a portion of the afternoon of April 30 and part of the morning of May 1, 2003. These sessions are not open to the public, but the results of the deliberations of the Species Working Groups will be reported to the full Advisory Committee during the Committee's afternoon open session on May 1.

Special Accommodations

The meeting location is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kim Blankenbeker at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: April 8, 2003.

Richard W. Surdi,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–8934 Filed 4–10–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF THE DEFENSE

Office of the Secretary

Notice of Intent To Prepare a Programmatic Environmental Impact Statement for the Ballistic Missile Defense System

AGENCY: Missile Defense Agency, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Missile Defense Agency (MDA) is publishing this notice to announce its intent to prepare a Programmatic Environmental Impact Statement (PEIS) in accordance with the National Environmental Policy Act of 1969 and the Council on Environmental Quality implementing regulations. This PEIS will assess environmental issues associated with the proposed action, foreseeable future actions, and their reasonable alternatives, including the no action alternative, and as appropriate, cumulative effects. This PEIS will support decisions to meet the fundamental objectives of the MDA's mission to test, develop, transfer to deployment, and to plan for decommissioning activities for a Ballistic Missile Defense System to defend the forces and territories of the United States (U.S.), its Allies, and friends against all classes of ballistic missile threats, in all phases of flight.

Scoping: Public scoping meetings will be conducted as a part of the PEIS process to ensure opportunity for all interested government and private organizations, and the general public to identify their issues of concern they believe should be addressed in the content of the PEIS. Schedule and location for the public scoping meetings are:

- April 30, 2003, 6 p.m., Doubletree Hotel, 300 Army Navy Dr., Arlington, VA.
- May 06, 2003, 6 p.m., Sheraton Grand Hotel, 1230 J. St., Sacramento, CA.
- May 08, 2003, 6 p.m., Sheraton Hotel, 401 E. 6th Ave., Anchorage, AK.
- May 13, 2003, 6 p.m., Doubletree Hotel, 1956 Ala Moana Blvd., Honolulu, HI

For those that cannot attend the public scoping meetings, written comments via the U.S. mail, or e-mail are encouraged. Comments should clearly identify and describe the specific issue(s) or topics that the PEIS should address. Comments are welcomed anytime throughout the PEIS process. Formal opportunities for comment and participation include: (1) Public scoping meetings; (2) anytime during the process via mail, telephone, fax, or e-mail; (3) during review, public hearings, and comment on the Draft PEIS; and, (4) review of the Final PEIS. Interested parties may also request to be included on the mailing list for public distribution of the PEIS.

To ensure sufficient time to consider issues identified during the public scoping meeting period, comments should be submitted to one of the addresses listed below no later than June 12, 2003. Additional information regarding the development of the BMDS PEIS is available on the public participation Web site *http://www.acq.osd.mil/bmdo.*

ADDRESSES: Written comments, statements, and/or questions regarding scoping issues should be addressed to: MDA BMDS PEIS, c/o ICF Consulting, 9300 Lee Highway, Fairfax, VA 22031, Phone (Toll Free) 1–877–MDA–PEIS (1–877–632–7347), Fax (Toll Free) 1–877–851–5451, E-mail *bmds.peis@mda.osd.mil*, Web site *http://www.acq.osd.mil/bmdo.*

Dated: April 7, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–8897 Filed 4–10–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of Defense Medical Examination Review Board, Department of Defense.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of Defense Medical Examination Review Board announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Considerations will be given to all comments received by June 10, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of Defense Medical Examination Review Board (DoDMERB), 8034 Edgerton Drive, Suite 132, USAF Academy, CO 80840–2200, Attention: CMSgt Jaime P. Bouchard.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call DoDMERB at (719) 333–7896.

Title, Associated Form, and OMB Number: DoDMERB Report of Medical Examination, DD Forms 2351, 2369, 2370, 2372, 2374, 2378, 2379, 2380, 2381, 2382, 2480, 2489, 2492, and 2632.

Needs and Uses: The information collection requirement is necessary to determine the medical qualification of applicants to the five Service academies, the four-year Reserve Officer Training Corps College Scholarship Program, Uniformed Services University of the Health Sciences, and the Army, Navy, and Air Force Scholarship and Non-Scholarship Programs. The collection of medical history of each applicant is to determine if applicants meet medical standards outlined in Department of Defense Directive 6130.3, Physical Standards for Appointment, Enlistment and Induction, dated 2 May 1994.

Affected Public: Individuals applying for entrance into one of the programs described above.

Annual Burden Hours: 45,000.

Number of Respondents: 45,000.

Responses per Respondent: 1.

Average Burden per Response: 60 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are individuals who are interested in applying to attend one of the five Service academies, the four-year Reserve Officer Training Corps Scholarship Program, Uniformed Services University of the Health Sciences, or Army, Navy, and Air Force Scholarship and Non-Scholarship Programs.

The completed forms are processed through medical reviewers representing their respective services to determine a medical qualification status. Associated forms may or may not be required depending on the medical information contained in the medical examination. If the medical examination and associated forms, if necessary, are not accomplished, individuals reviewing the medical examination cannot be readily assured of the medical qualifications of the individual. Without this process the individual applying to any of these programs could not have a medical qualification determination. It is essential that individuals have a medical qualification determination to ensure compliance with the physical standards established for each respective military service program.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–8872 Filed 4–10–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: United States Air Force (USAF) Museum System; Department of Defense.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the United States Air Force Museum System announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Considerations will be given to all comments received by June 10, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the United States Air Force Museum, 1100 Spaatz Street, Wright-Patterson AFB, OH 45433–7192, Attn: Ms. Bonnie Holtmann, Volunteer Services Administrator.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Volunteer Services Office at (937) 255–8099, extension 313.

Title, Associated Form, and OMB Number: United States Air Force Museum System Volunteer Application/Registration, Air Force Form (AF) 3569, September 1997, OMB Number 0701–0127.

Needs and Uses: The information collection requirement is necessary to provide: (a) the general public an instrument to interface with the United States Air Force Museum System Volunteer Program; (b) the United States Air Force Museum System the means with which to select respondents pursuant to the United States Air Force Museum System Volunteer Program. The primary uses of the information collection include the evaluation and placement of respondents within the United States Air Force Museum System Volunteer Program.

Affected Public: General population civilian, active and retired military individuals.

Annual Burden Hours: 68.

Number of Respondents: 271 per annum.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: One time only.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are individuals expressing an interest in participating in the United States Air Force Museum System Volunteer Program authorized by 10 U.S.C. 81, section 1588 and regulated by Air Force Instruction 84–103. Air Force Instruction 84–103, paragraph 3.5.3 requires the use of Air Force Form 3569. Air Force Form 3569 provides the most expedient means to secure basic personal information (*i.e.*, name, telephone number, address and experience pursuant to the United States Air Force Museum System Volunteer Program requirements) and is used solely by the United States Air Force Museum System Volunteer Program to recruit, evaluate and make work assignment decisions. Air Force Form 3569 is the only instrument that exists which facilitates this purpose. The United States Air Force Museum Volunteer Program is an integral function in the operation of the United States Air Force Museum System. Volunteers provide valuable time, incalculable talent, skill and knowledge of United States Air Force aviation history so that all visitors to the many United States Air Force Museum System facilities throughout the United States may enjoy the important contribution of United States Air Force historical heritage.

The completed forms are processed through medical reviewers representing their respective services to determine a medical qualification status. Associated forms may or may not be required depending on the medical information contained in the medical examination. If the medical examination and associated forms, if necessary, are not

accomplished, individuals reviewing the medical examination cannot be readily assured of the medical qualifications of the individual. Without this process the individual applying to any of these programs could not have a medical qualification determination. It is essential that individual's have a medical qualification determination to ensure compliance with the physical standards established for each respective military service program.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–8873 Filed 4–10–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Notice of Availability of a Draft Environmental Impact Statement; Mercury Management

AGENCY: Defense National Stockpile Center, DLA, DoD.

ACTION: Notice of availability of a Draft Mercury Management Environmental Impact Statement.

SUMMARY: The Defense Logistics Agency (DLA) announces the availability of its Draft Mercury Management Environmental Impact Statement (Draft EIS). This announcement is pursuant to the Council on Environmental Quality's regulations (40 CFR parts 1500–1508) and the Defense Logistic Agency's (DLA) regulations (DLAR 1000.22) that implement the National Environmental Policy Act (NEPA).

The Defense National Stockpile Center (DNSC) inventory of elemental mercury (approximately 4,436 metric tons) is currently stored in enclosed warehouses at four sites in the United States: Near New Haven, IN; in Oak Ridge, TN; in Hillsborough, NJ; and near Warren, OH. Because the mercury has been declared in excess of national defense needs, DNSC must decide on a strategy for the long-term management of this excess commodity. The Draft EIS analyzes three alternatives for managing the National Defense Stockpile inventory of excess mercury: (1) No-action, *i.e.*, leave the mercury at the existing storage locations, (2) consolidated storage of the mercury stockpile at one site, and (3) sale of the stockpile. DNSC's preferred alternative is (2) consolidated storage. The Draft EIS evaluates a range of locations that would be acceptable consolidation sites.

Public comments are invited and encouraged concerning the analysis of environmental and socioeconomic issues, as well as the management alternatives considered in the Draft EIS.

DATES: Public meetings are scheduled to be held as follows: May 20, 2003 in New Haven, IN; May 22 in Niles, OH; June 10 in Hawthorne, NV; June 12 in Tooele, UT; June 17 in Hillsborough, NJ; June 24 in Washington, DC; and July 1 in Oak Ridge, TN. The times and locations of the meetings are provided in the **SUPPLEMENTARY INFORMATION** section of this announcement. The comment period ends on July 18, 2003. Comments on the Draft EIS must be postmarked, e-mailed, or otherwise submitted no later than this date.

ADDRESSES: Paper copies and computer disks (CD) of the Draft EIS (about 450 pages) and Executive Summary are available by writing to: Attention: Project Manager, Mercury Management EIS; DNSC–E; Defense National Stockpile Center, 8725 John J. Kingman Road, Suite 3229, Fort Belvoir, VA 22060–6223, or calling toll free at 1–888–306–6682. Electronic versions of the Executive Summary and the Draft EIS are found on the internet at *www.mercuryeis.com*. Copies of the Draft EIS may also be reviewed at locations listed in the **SUPPLEMENTARY INFORMATION** section. Written comments on the Draft EIS should be sent to the above address, faxed to 1–888–306–8818, or posted to the Mercury Management EIS website at *www.mercuryeis.com*. Comments may be dictated by calling toll free at 1–888–306–6682.

FOR FURTHER INFORMATION: Requests for information can be made by: Leaving a voice message at 1–888–306–6682; faxing a message to 1–888–306–8818; e-mailing a request to *information@mercuryeis.com;* or accessing the Mercury Management EIS website at *www.mercuryeis.com*.

SUPPLEMENTARY INFORMATION: The Defense National Stockpile Center (DNSC) is responsible for the disposition of stockpiled materials declared in excess of national defense needs. The United States Congress has determined that the U.S. Department of Defense no longer needs to maintain a stockpile of mercury because of the increased use of mercury substitutes and because of increases in the nation's secondary mercury production through recovery and recycling. The DNSC excess mercury was offered for sale in open competitions until 1994 when concerns over mercury accumulation in the global environment prompted DNSC to suspend sales. The DNSC inventory of mercury (approximately 4,436 metric tons) is stored in enclosed warehouses at four sites in the United States: New Haven, IN (557 metric tons); Oak Ridge, TN (699 metric tons); Hillsborough, NJ (2,617 metric tons); and Warren, OH (564 metric tons).

As custodian of the mercury, DNSC must decide on a strategy for long-term management of this material. In compliance with NEPA and DLA Regulation 1000.22, "Environmental Considerations in DLA Actions in the United States," DNSC has prepared the Draft EIS to evaluate the environmental impacts of a range of reasonable alternatives for long-term management (*i.e.*, 40 years) of the excess mercury. The alternatives are: (1) No action, *i.e.*, maintaining storage at the four existing sites; (2) consolidation and storage at one of the three current DNSC mercury storage sites or at one of three other candidate locations; and (3) sale of the mercury inventory. The agency's preferred alternative is (2) consolidated storage. The Draft EIS evaluates a range of locations that would be acceptable consolidation sites. If a site other than those evaluated is selected, further environmental analysis would be required.

The Draft EIS also describes the potential environmental, human health, and socioeconomic impacts of these alternatives, together with cost considerations. Several treatment technologies were considered as possible alternatives for mercury management. Based on the immaturity of bulk mercury treatment technologies and the lack of a U.S. Environmental Protection Agency (EPA) approved path forward, bulk treatment and disposal of elemental mercury is not considered viable at this time and is not evaluated in detail in the Draft EIS.

The Department of Energy (DOE) and Environmental Protection Agency (EPA) are cooperating agencies in the preparation of this Draft EIS. DOE is recognized because of their special expertise and because some of the DNSC excess mercury is stored at their Y–12 National Security Complex in Oak Ridge, Tennessee. EPA is recognized because of their special expertise in the areas of mercury fate and effects in the environment, mercury stabilization and disposal technologies, and the regulation of hazardous material.

This Draft EIS is being distributed for public review and copies are also available at the following locations:

Allen County Public Library, 435 Ann Street, New Haven, Indiana 46774.
Bridgewater Branch Library, N. Bridge Street and Vogt Drive, Bridgewater, New Jersey 08807.
Fairfax County Public Library, 12000 Government Center Parkway, Suite 324, Fairfax, VA 22035.
Ford Memorial Library, 7169 North Main Street, Ovid, New York 14521.
Hillsborough Public Library, 379 South Branch Road, Hillsborough, New Jersey 08844.
Martin Luther King Jr. Library, 901 G Street NW., Washington, DC 20001.
Mineral County Public Library, P.O. Box 1390, Hawthorne, Nevada 89415.
Oak Ridge Public Library, 1401 Oak Ridge Turnpike, Oak Ridge, TN 37830.
Raritan Valley Community College, Evelyn S. Field Library, North Branch, Route 28 and Lamington Road, Somerville, New Jersey 08876.
Seneca Army Depot, 5786 State Route 96, Building 123, Romulus, NY 14541.
Somerville Public Library, 35 West End Avenue, Somerville, New Jersey 08876.
Tooele City Public Library, 128 West Vine Street, Tooele, Utah 84074.
Warren-Trumbull County Public Library, 444 Mahoning Avenue, NW., Warren, Ohio 44483.
Waterloo Library and Historical Society, 31 East Williams Street, Waterloo, New York 13165.
West End Branch Library, 1101 24th and L Street, NW., Washington, DC 20037.

DNSC invites Federal agencies, state, local and tribal governments, and the general public to comment on the environmental and socioeconomic issues and the management alternatives addressed in the Draft EIS. The public comment period began with the publication of the EPA Notice of Availability in the **Federal Register** on April 11, 2003, and will continue until July 18, 2003. DNSC will consider all comments received or postmarked by the end of the comment period when preparing the Final Mercury Management EIS. Comments received after that date will be considered to the extent practicable. As part of the public review process, DNSC has scheduled public meetings at the following locations:

May 20, 2003, 6 to 9 p.m.
Park Hill Learning Center, 1000 Prospect Avenue, New Haven, Indiana.
May 22, 2003, 6 to 9 p.m.
McMenamy's Multipurpose Complex, 325 Youngstown-Warren Road, Niles, Ohio.
June 10, 2003, 6 to 9 p.m.
Hawthorne Convention Center, 932 E Street, Hawthorne, Nevada.
June 12, 2003, 6 to 9 p.m.
Tooele High School, 240 West 1st South, Tooele, Utah.
June 17, 2003, 6 to 9 p.m.
Hillsborough High School, 466 Raider Boulevard, Hillsborough, New Jersey.
June 24, 2003, 1 to 4 p.m.
Hall of States, 444 North Capitol Street, NW., Washington, DC.
July 1, 2003, 6 to 9 p.m.
Garden Plaza Hotel, 215 S. Illinois Avenue, Oak Ridge, Tennessee.

The registration desk and exhibit area at the meeting will open at 6 p.m. (1 p.m. for the Washington, DC meeting). DNSC staff will be available to explain exhibits, provide information materials, and answer questions. At 7 p.m. (2 p.m. for the Washington, DC meeting), DNSC will provide a short presentation on the EIS process and the Mercury Management EIS. Following the DNSC presentation, elected or appointed officials, organizations, and individuals will be invited to offer comments. Comments will be recorded for the record. Speakers will be allotted five minutes each. The meetings will be managed by a facilitator who will help keep the focus on obtaining public input on the content of the Draft EIS. At 8:30 p.m. (3:30 p.m. for the Washington, DC meeting), the public comment portion of the meeting will conclude and the exhibit area will reopen. DNSC staff will be available to explain exhibits, provide information materials, and answer questions. The meeting will end at 9 p.m. (4 p.m. for the Washington, DC meeting).

Requests to speak at the meetings may be made by writing to the Mercury Management EIS project manager (*see* **ADDRESSES**, above), by calling the toll free phone number (888–306–6682) by 4 p.m. EST the day before the meeting, or in person at the meeting. If you phone in to pre-register, please leave your name, the organization you represent, and the location of the meeting you plan to attend. Speakers will be heard on a first-come, first-served basis as time permits. Speakers do not have to pre-register, but pre-registered speakers will be ensured an opportunity to speak. Comments will be transcribed by a court reporter and will become a part of the meeting record. Speakers are encouraged to provide written versions of their spoken comments. The facilitator and DNSC staff may ask questions to clarify the speaker's comments.

Written comments will be accepted at the meetings and comment forms will be provided for this purpose. For those who prefer to dictate comments before or after the formal comment portion of the meeting, a court reporter will be available in the exhibit area until the meeting closes.

All meeting facilities are handicapped accessible. A hearing impaired sign language interpreter will be provided at all meetings. Persons who have other special requirements should contact the Project Manager in advance so that arrangements may be made to accommodate their needs.

Input from the public meetings along with comments received by other means (*i.e.*, mail, phone, fax, email, and website) will be used by DNSC in preparing the Final Mercury Management EIS. Written and spoken comments will be given equal weight. The Final Mercury Management EIS will be distributed to information repositories, mailed out upon request, and can be viewed at *www.mercuryeis.com*.

Issued in Fort Belvoir, VA, on this 7th day of April 2003.

Cornel A. Holder,

Administrator, Defense National Stockpile Center.

[FR Doc. 03–8507 Filed 4–10–03; 8:45 am]

BILLING CODE 3620–01–U

DEPARTMENT OF EDUCATION

Meeting of the Presidents Board of Advisors on Tribal Colleges and Universities

AGENCY: President's Board of Advisors on Tribal Colleges and Universities, U.S. Department of Education

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the President's Board of Advisors on Tribal Colleges and Universities (the Board) and is intended to notify the general public of their opportunity to attend. This notice also describes the functions of the Board. Notice of the Board's meetings is required under section 10(a)(2) of the Federal Advisory Committee Act and by the Board's charter.

Agenda: The purpose of the meeting will be to formalize committee assignments, discuss the draft strategic plan, and to continue discussions on the Federal agencies' Three-Year Plans.

Date and Time: April 30, 2003—9 a.m. to 4 p.m. and May 1, 2003—9 a.m. to 2 p.m.

Location: Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Betty Thompson, Interim Executive Director, President's Board of Advisors on Tribal Colleges and Universities, U.S. Department of Education, Suite 408, 555 New Jersey Avenue, NW., Washington, DC 20208. Telephone: (202) 219–0704. Fax: (202) 208–2174.

SUPPLEMENTARY INFORMATION: The Board is established by Executive Order 13270, dated July 3, 2002, to provide advice regarding the progress made by Federal agencies toward fulfilling the purposes and objectives of the order. The Board also provides recommendations to the President, through the Secretary of Education, on ways the Federal government can help tribal colleges: (1) Use long-term development, endowment building and planning to strengthen institutional viability; (2) improve financial management and security, obtain private sector funding support, and expand and complement Federal education initiatives; (3) develop institutional capacity through the use of new and emerging technologies offered by both the Federal and private sectors; (4) enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and (5) help implement the No Child Left Behind Act of 2001 and meet other high standards of educational achievement.

The general public is welcome to attend the April 30–May 1, 2003, meeting. However, space is limited and is available on a first-come, first-serve basis. Individuals who need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, materials in alternative format) should notify Betty Thompson at (202) 219–0704 no later than April 15, 2003. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

A summary of the activities of the meeting and other related materials that are informative to the public will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the White House Initiative on Tribal Colleges and Universities, United States Department of Education, Suite 408, 555 New Jersey Avenue, NW., Washington, DC 20208.

Rod Paige,

Secretary, U.S. Department of Education.

[FR Doc. 03–8895 Filed 4–10–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice of computer matching between the U.S. Department of Education and the U.S. Postal Service.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988 and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, a notice is hereby given of the computer matching program between the U.S. Department of Education (ED) and the U.S. Postal Service (USPS). The following notice represents the approval of a new computer matching agreement by the ED and USPS Data Integrity Boards to implement the matching program on the effective date as indicated in paragraph E of this notice.

In accordance with the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988, the Office of Management and Budget (OMB) Final Guidelines on the Conduct of Matching Programs (see 54 FR 25818, June 19, 1989), and OMB Circular A–130, the following information is provided:

A. Participating Agencies

The USPS is the recipient agency and will perform the computer match with debtor records provided by ED, the source agency in this matching program.

B. Purposes of the Matching Program

This matching program will compare USPS payroll and ED delinquent debtor files for the purposes of identifying postal employees who may owe delinquent debts to the Federal Government under programs administered by ED. The pay of an employee identified and verified as a delinquent debtor may be offset under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) when voluntary payment is not made.

C. Legal Authorities Authorizing Operation of the Match

This matching program will be undertaken under the authority of the Debt Collection Act of 1982 (Pub. L. 97–365) as amended, which authorizes federal agencies to offset a federal employee's salary as a means of satisfying delinquent debts owed to the United States.

D. Categories of Individuals Involved and Identification of Records Used

The following systems of records, maintained by the participant agencies under the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), will be used to disclose records for this matching program:

1. USPS' "Finance Records—Payroll System, USPS 050–020," containing records for approximately 800,000 employees. (Disclosure will be made pursuant to routine use No. 24 of USPS 050–020, which last appeared in the **Federal Register** at 57 FR 57515 on December 4, 1992.)

2. ED's "Title IV Program Files" (18–11–05), containing debt records for approximately 4,600,000 borrowers. (A notice of this system was last published in the **Federal Register** at 64 FR 30163 on June 4, 1999.)

E. Beginning and Ending Dates of the Matching Program

The matching program will become effective 40 days after a copy of the agreement, as approved by the Data Integrity Board of each agency, is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months after the effective date. The agreement may be extended for one additional year beyond that period, if within 90 days prior to the actual expiration date of the matching agreement, the Data Integrity Boards of both the USPS and ED find that the computer matching program will be conducted without change and each party certifies that the matching program has been conducted in compliance with the matching agreement.

F. Address for Receipt of Comments and Inquiries

If you wish to comment on this matching program or obtain additional information about the program including a copy of the computer matching agreement between ED and USPS, contact John R. Adams, U.S. Department of Education, 830 First Street NE Room 41B3, Washington, DC 20202–5320. Telephone: (202) 377–3211. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the Internet at the following site: *http:///www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Authority: (5 U.S.C. 5514(a); 5 U.S.C. 552a).

Dated: April 7, 2003.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 03–8929 Filed 4–10–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–587–000, FERC Form No. 587]

Proposed Information Collection and Request for Comments

April 4, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before June 4, 2003.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, ED–30, 888 First Street, NE., Washington, DC 20426. Comments on the proposed collection of information may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–587–000.

Documents filed electronically via the Internet can be prepared in a variety of formats including WordPerfect, MS Word, Portable Document Format, Rich Text Format of ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of documents. User assistance for electronic filings is available at 202–502–8258 or by E-mail to *efiling@ferc.gov*. Comments should not be submitted to this E-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov* or Anumzziatta Purchiaroni at (202) 502–6191, by fax (202) 219–2732, *anumzziatta.purchiaroni@ferc.gov.*

SUPPLEMENTARY INFORMATION: The Commission is reinstating its form "Land Description" (FERC Form No.587), which is used to collect information required by the statutory provisions of section 24 of the Federal Power Act (FPA), (16 U.S.C.818). Applicants proposing hydropower projects, or changes to existing projects located on lands owned by the United States are required to provide a description of the U.S. lands affected to the Commission and Secretary of Interior. FERC Form No. 587 consolidates the information required, and identifies hydropower project boundary maps associated with lands of the United States. The Commission verifies the accuracy of the information supplied and coordinates with the Bureau Land of Management State Offices (BLM) so the U.S. lands can be reserved as hydropower sites and withdrawn from other uses. FERC Form No. 587 was formerly approved by the Office of Management and Budget (OMB), and requires re-authorization.

Action: The Commission is requesting reinstatement and a three-year approval of the former collection of information. In addition, the Commission is revising the format of FERC Form No. 587.

Burden Statement: Public reporting burden for this collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
250	1	1	250

The estimated total cost to respondents is $14,067.00. (Hours divided by 2,080 hours per year per employee times $117,041.00 per year per average employee = $ 14,067.00.) The cost per respondent is $56.27.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or

overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

Magalie R.Salas,

Secretary.

[FR Doc. 03–8978 Filed 4–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–070]

ANR Pipeline Company; Notice of Negotiated Rate Filing

April 4, 2003.

Take notice that on March 24, 2003, ANR Pipeline Company (ANR) tendered for filing amendments to twenty negotiated rate service agreements with Madison Gas and Electric Company in compliance with the Commission's June 25, 2002, letter order in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 11, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8985 Filed 4–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11810–000]

Augusta Canal Hydro Power Project; Notice of Convening Conference

April 4, 2003.

Pursuant to rule 601 of the Commission's Rules of Practice and Procedure, 18 CFR 385.601, the Dispute Resolution Service will convene a conference on Monday and Tuesday, April 14th and 15th, 2003, to primarily discuss agency comments on the draft license application and other issues as required by the consultative part of the Commission's licensing requirements for the City of Augusta. The meeting will discuss how alternative dispute resolution processes and procedures may assist the participants in resolving disputes arising in the above-docketed proceeding. The conference will be held at Savannah Rapids Pavilion which is located at the terminus of Evans to Locks Rd. in Columbia County, GA, at the site of the Augusta Diversion Dam, beginning at 9 a.m. on April 14 and ending at approximately 4 p.m. on April 15.

Interested parties are invited to inform Mr. Shapiro, identified below, prior to April 10, 2003, of other issues and concerns that need to be addressed and to *see* about scheduling these into the process.

Mr. Steven A. Shapiro, acting for the Dispute Resolution Service, will convene the conference. He will be available to communicate in private with any participant prior to the conference. If a participant has any questions regarding the conference, please call Mr. Shapiro at 202/502–8894 or e-mail to *Steven.Shapiro@ferc.gov*. Parties may also communicate with Richard Miles, the Director of the Commission's Dispute Resolution Service at 1–877–FERC–ADR (337–2237) or 202/502–8702 and his e-mail address is *Richard.Miles@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8979 Filed 4–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–082]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

April 4, 2003.

Take notice that on April 1, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction:

PAL Service Agreement No. 75377 between Columbia Gulf Transmission Company and Petrocom Energy Group, dated March 25, 2003.

Columbia Gulf states that service is to commence May 1, 2003, and end May 31, 2003, under the agreement.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8982 Filed 4–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–485–003]

Enbridge Pipelines (KPC); Notice of Compliance Filing

April 4, 2003.

Take notice that on April 1, 2003, Enbridge Pipelines (KPC) (KPC) tendered for filing revised tariff sheets which are to be included in its FERC Gas Tariff, First Revised Volume No. 1, as shown on Appendix A to the filing, to be made effective on either November 9, 2002, or December 1, 2002.

KPC states that the purpose of the filing is to comply with the Commission's Order issued on March 18, 2003, wherein the Commission accepted KPC's tariff sheets filed on October 10, 2002, subject to refiling those sheets to reflect the allocation of cost associated with the Transok lease payments, exclusively to Zone 1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8986 Filed 4–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–082]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

April 4, 2003.

Take notice that on April 1, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets, to be effective April 1, 2003.

Natural states that the purpose of this filing is to implement an amendment to two (2) existing negotiated rate transactions entered into by Natural and Dynegy Marketing and Trade under Natural's Rate Schedule FTS pursuant to section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8983 Filed 4–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–083]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

April 4, 2003.

Take notice that on April 1, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 26H, to be effective April 1, 2003.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction entered into by Natural and The Peoples Gas Light and Coke Company under Natural's Rate Schedule FTS pursuant to section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online

Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8984 Filed 4–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–025]

Questar Pipeline Company; Notice of Negotiated Rates

April 4, 2003.

Take notice that on April 1, 2003, Questar Pipeline Company (Questar) tendered a tariff filing to implement negotiated-rate contracts for BP Energy Company and Dominion Exploration & Production, Inc., as well as a correction to a contract termination date under an existing negotiated-rate contract with Dominion, as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.* Questar states that the Commission approved its request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar indicates that it submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 issued January 31, 1996.

Questar states that a copy of this filing has been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8987 Filed 4–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket Nos. RP00–468–009, RP01–25–008, and RP03–175–003]

Texas Eastern Transmission, LP; Notice of Supplemental Compliance Filing

April 4, 2003.

Take notice that on April 1, 2003, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets listed in Appendix A, attached to the filing, reflecting an effective date of July 1, 2003.

Texas Eastern states that the purpose of this filing is to supplement its March 25, 2003, tariff filing in compliance with the Commission's February 24, 2003, Order on Rehearing and Compliance Filings in Texas Eastern's Order No. 637 proceeding.

Texas Eastern states that copies of this filing have been mailed to all affected customers and interested state commissions, as well as to all parties on the service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8981 Filed 4–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–388–003]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

April 4, 2003.

Take notice that on March 31, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 40P, Original Sheet No. 40P.01, Original Sheet No. 40P.02, Original Sheet No. 40P.03 and Original Sheet No. 40Q, with an effective date of May 1, 2003.

Transco states that the purpose of the instant filing is to set forth under Rate Schedule FT the incremental recourse rates for Phase I of the Momentum firm transportation service anticipated to commence May 1, 2003.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before April 25, 2003. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8976 Filed 4–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–54–000, et al.]

Ingenco Wholesale Power, L.L.C., et al.; Electric Rate and Corporate Filings

April 4, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Ingenco Wholesale Power, L.L.C.

[Docket No. EG03–54–000]

Take notice that on March 31, 2003, Ingenco Wholesale Power, L.L.C. (Ingenco Wholesale) tendered for filing with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Ingenco Wholesale, a Virginia limited liability company, states that it is a wholly-owned subsidiary of Industrial Power Generating Corporation, a Virginia corporation.

Ingenco Wholesale states that it was formed for the purpose of owning Ingenco—Mountain View, a 12 MW electric generating facility located in Mountain View, Pennsylvania. Ingenco Wholesale states it will also hold an interest in other electric generation facilities currently under development and sell the output of those facilities, as well as a number of facilities that are current qualifying facilities, as is detailed in its application.

Comment Date: April 25, 2003.

2. Green Mountain Energy Company

[Docket No. ER02–1600–002]

Take notice that on March 31, 2003, Green Mountain Energy Company (GMEC) filed a newly revised tariff sheet to meet the format requirements pursuant to FERC Order 614.

Comment Date: April 21, 2003.

3. Duke Energy South Bay, LLC

[Docket No. ER03–117–001]

Take notice that on March 31, 2003, Duke Energy South Bay, LLC (Duke South Bay) submitted for filing an unexecuted Reliability Must Run Agreement with the California Independent System Operator (CAISO), which is designated as Rate Schedule FERC No. 2. Duke South Bay states that the filing is in compliance with the Commission's January 30, 2003, order in this docket, wherein the Commission ordered Duke South Bay to re-file its entire Rate Schedule in Compliance with Order No. 614.

Comment Date: April 21, 2003.

4. New York Independent System Operator, Inc.

[Docket No. ER03–238–003]

Take notice that on March 31, 2003, the New York Independent System Operator, Inc. (NYISO) submitted the compliance filing required by the Commission's January 30, 2003, order in the above-captioned proceeding.

The NYISO states it has served a copy of this filing to all parties listed on the official service list maintained by the Secretary of the Commission in Docket No. ER03–238–000.

Comment Date: April 21, 2003.

5. Pacific Gas and Electric Company

[Docket No. ER03–358–002]

Take notice that on March 31, 2003, Pacific Gas and Electric Company (PG&E) submitted a refund report in response to and in compliance with FERC's February 27, 2003, "Order Accepting and Suspending Interconnection Agreements for Filing, Subject to Refund, and Establishing Hearing and Settlement Judge Procedures."

PG&E states that copies of this filing have been served upon Calpine Corporation, the California Independent System operator Corporation, and the California Public Utilities Commission.

Comment Date: April 21, 2003.

6. Consumers Energy Company

[Docket No. ER03–388–001]

Take notice that on March 31, 2003, Consumers Energy Company (Consumers) tendered for filing changes to Sheet No. 23 of its First Revised Rate Schedule No. 116, pursuant to a February 27, 2002, deficiency letter in Docket No. ER03–388–000.

Consumers states that copies of the filing were served upon those on the official service list.

Comment Date: April 21, 2003.

7. PPL Wallingford Energy LLC and PPL EnergyPlus, LLC

[Docket No. ER03–421–001]

Take notice that on March 31, 2003, PPL Wallingford Energy LLC and PPL EnergyPlus, LLC tendered for filing an amendment to their January 16, 2003, filing of a Reliability Must Run Cost of Service Agreement with ISO New England, Inc. The amendment responds to the February 28, 2003, letter issued in Docket No. ER03–421–000.

Comment Date: April 21, 2003.

8. Wisconsin Electric Power Company

[Docket No. ER03–543–001]

Take notice that on March 31, 2003, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing rate designation sheets canceling First Revised Service Agreement No. 25 with Badger Power Marketing Authority of Wisconsin, Inc. in compliance with the Federal Energy Regulatory Commission's Order dated March 19, 2003, in Docket No. ER03–543–000.

Comment Date: April 21, 2003.

9. American Transmission Systems, Incorporated

[Docket No.ER03–672–000]

Take notice that on March 31, 2003, American Transmission Systems, Incorporated (ATSI) submitted for filing Third Revised Service Agreement No.214 for Network Service under its Open Access Transmission Tariff to American Municipal Power-Ohio, Inc. ATSI states that the purpose of the revised Service Agreement is to add delivery points for Huron, a new municipal electric system, and Grafton, to update certain network load and resource data. An effective date of April 1, 2003, is requested for the Service Agreement.

ATSI states that copies of this filing were served on the representatives of the City of Huron, Village of Grafton, American Municipal Power-Ohio, Inc., and the Public Utilities Commission of Ohio.

Comment Date: April 21, 2003.

10. New England Power Pool

[Docket No. ER03–673–000]

Take notice that on March 31, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to (1) permit NEPOOL to expand its membership to include DC Energy, LLC (DC); and (2) to terminate the memberships of Allegheny Supply Company, LLC (Allegheny), PSI Energy, Inc. (PSI), and the Robert E. McLaughlin Trust (Trust). The Participants Committee requests the following effective dates: March 1, 2003, for the termination of Allegheny, and PSI; March 31, 2003, for the termination of the Trust; and April 1, 2003, for commencement of participation in NEPOOL by DC.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: April 21, 2003.

11. Quest Energy, LLC

[Docket No. ER03–674–000]

Take notice that on March 31, 2003, WPS Resources Corporation (WPSR), on behalf of Quest Energy, LLC (Quest), submitted an amendment to its February 14, 2003 notice of change in status under Quest's market-based rate authority.

Comment Date: April 21, 2003.

12. Wisconsin River Power Company

[Docket No. ER03–675–000]

Take notice that on March 31, 2003, Wisconsin River Power Company (WRPCo or the Company) tendered for filing revised rate schedule sheets (Revised Sheets) in Original Rate Schedule FERC No. 3 (Rate Schedule) by and among WRPCo and Wisconsin Public Service Corporation (WPS) and Wisconsin Power and Light Company (WP&L). WRPCo states that the Revised Sheets amend the term of the Rate Schedule.

The Company requests that the Commission waive its notice of filing requirements to allow the Revised Sheets to become effective as of April 1, 2003, the day after filing.

WRPCo states that copies of the filing were served upon WPS, WP&L, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment Date: April 21, 2003.

13. Westar Energy, Inc., Kansas Gas and Electric Company

[Docket No. ER03–676–000]

Take notice that on March 31, 2003, Westar Energy, Inc. (WE), submitted for filing Revised Pages 34–42 (Exhibits B, C and D) to WE's Electric Power, Transmission, and Service Contract with the Kansas Electric Power Cooperative (KEPCo). WE also submitted, on behalf of its wholly owned subsidiary Kansas Gas and Electric Company, d/b/a Westar Energy (KGE), Revised Pages 31–36 (Exhibits B, and C) to KGE's Electric Power, Transmission, and Service Contract with KEPCo. WE states that these revisions are part of WE's and KGE's annual exhibits filed with the Federal Energy Regulatory Commission. The revised pages are proposed to be effective June 1, 2003.

WE states that copies of the filing were served upon KEPCo and the Kansas Corporation Commission.

Comment Date: April 21, 2003.

14. Southern California Edison Company

[Docket No. ER03–677–000]

Take notice that on March 31, 2003, Southern California Edison Company (SCE) tendered for filing revisions to the Amended and Restated District-Edison 1987 Service and Interchange Agreement (Agreement) between SCE and The Metropolitan Water District of Southern California (District), Rate Schedule FERC No. 443. SCE states that the revisions to the Agreement are being filed to implement the Fourth Amendment to the District-Edison 1987 Service and Interchange Agreement (Amendment No. 4). SCE also states that Amendment No. 4 sets forth mutually agreed-upon terms relating to exchange energy and the pricing provisions for such exchange energy delivered after September 30, 2001, for the long-term.

SCE request the Commission to assign an effective date of October 1, 2001, to the revised Agreement. SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and the District.

Comment Date: April 21, 2003.

15. New England Power Company

[Docket No. ER03–678–000]

Take notice that on March 31, 2003, New England Power Company (NEP) submitted for filing:

(i) A Third Revised Service Agreement No. 20 between NEP and its affiliate, Massachusetts Electric Company (MECO), under NEP's FERC Electric Tariff, Original Volume No. 1; and

(ii) Notices of Cancellation for NEP Rate Schedules Nos. 15 and 58.

NEP states that copies of this filing have been served on MECO and regulators in the state of Massachusetts.

Comment Date: April 21, 2003.

16. Mid-Continent Area Power Pool

[Docket No. ER03–679–000]

Take notice that on March 31, 2003, the Mid-Continent Area Power Pool (MAPP) tendered for filing amendments to the Power and Energy Market Rate Tariff of the Restated Agreement.

Comment Date: April 21, 2003.

17. Avista Corporation

[Docket No. ER03–680–000]

Take notice that on March 31, 2003, Avista Corporation (Avista) tendered for filing with the Federal Energy Regulatory Commission (Commission), an Original Service Agreement No. 299, which Avista states is a Master Confirmation Agreement between Avista and Southern California Edison Company under the Western Systems Power Pool Agreement (hereinafter Master Confirmation).

Avista respectfully requests that the Commission accept the Master Confirmation for filing and grant all waivers necessary to allow the Master Confirmation to become effective March 1, 2003, or, alternatively, a determination by the Commission that the Master Confirmation need not be filed with, nor reported to, the Commission. SCE is the sole party affected by the Master Confirmation and the waiver, if granted, will not affect any other rate or charge to any other customer.

Avista states that copies of the filing were served upon Southern California Edison Company and Michael Small, General Counsel to the Western Systems Power Pool, Inc.

Comment Date: April 21, 2003.

18. Entergy Services, Inc., and Entergy Power, Inc.

[Docket No. ER03–681–000]

Take notice that on March 31, 2003, 2003, Entergy Services, Inc. (ESI), on behalf of the Entergy Louisiana, Inc. (ELI), and Entergy Power, Inc. (EPI), an affiliated marketer, filed under section 205 of the Federal Power Act for approval of a power purchase agreement between ELI and EPI. ESI and EPI seek an effective date of June 1, 2003.

ESI states that copies of this filing were served on the affected state utility commissions.

Comment Date: April 21, 2003.

19. Entergy Services, Inc., and Entergy Power, Inc.

[Docket No. ER03–682–000]

.Take notice that on March 31, 2003, Entergy Services, Inc. (ESI), on behalf of Entergy New Orleans, Inc. (ENO), and Entergy Power, Inc. (EPI), an affiliated marketer, filed under section 205 of the Federal Power Act for approval of a power purchase agreement between the ENO and EPI. ESI and EPI seek an effective date of June 1, 2003. In addition, ESI also filed for approval two additional purchase power agreements, between ENO and, respectively, Entergy Gulf States, Inc. and Entergy Arkansas, Inc. ESI also seeks an effective date of June 1, 2003, for these power purchase agreements.

ESI states that copies of this filing were served on the affected state utility commissions.

Comment Date: April 21, 2003.

20. California Independent System Operator Corporation

[Docket No. ER03–683–000]

Take notice that on March 31, 2003, the California Independent System Operator Corporation (ISO), tendered for filing with the Commission Amendment No. 50 to the ISO Tariff. ISO states that the purpose of Amendment No. 50 is to modify the Tariff to provide for a means to improve management of Intra-Zonal Congestion until the ISO implements Locational Marginal Pricing (LMP) or some other long-term comprehensive solution, and to allow the ISO to share Generator Outage information with entities operating transmission and distribution systems affected by the Outage.

The ISO states that this filing has been served on the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff. The ISO is requesting that Amendment No. 50 be made effective May 30, 2003.

Comment Date: April 21, 2003.

21. Wisconsin Power & Light Company

[Docket No.ER03–684–000]

Take notice that on March 31, 2003, Wisconsin Power & Light Company (WPL) tendered for filing with the Commission new rates to be charged under its wholesale Rate Schedules W–2A and W–4A to reflect the current cost of service incurred by WPL and its subsidiary South Beloit Water, Gas and Electric Company. WPL has asked that new rates become effective on July 8, 2003.

WPL states that a copy of this filing has been served upon the Public Service Commission of Wisconsin and the WPL wholesale electric customers affected by this filing.

Comment Date: April 21, 2003.

22. Michigan Electric Transmission Company, LLC

[Docket No. ER03–688–000]

Take notice that on March 31, 2003, Michigan Electric Transmission Company, LLC (METC) submitted a proposed amendment to the "Project I Transmission Ownership and Operating Agreement Between Consumers Power Company, and Michigan South Central Power Agency," dated November 20, 1980. METC states that it proposes to amend the Operating Agreement to add new Article 20, to allow for the reimbursement to METC for certain regional transmission organization or independent transmission provider costs assessed to METC associated with the load of Michigan South Central Power Agency. METC requests an effective date of April 1, 2003, for the proposed amendment.

Comment Date: April 21, 2003.

23. Riverview Energy Center, LLC

[Docket No. ES03–28–000]

Take notice that on March 26, 2003, Riverview Energy Center, LLC (Riverview) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to assume long-term obligations in an amount not to exceed $300 million and $68.5 million pursuant to a lease agreement with its parent company, Calpine California Equipment Finance Company, LLC.

Riverview also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: April 18, 2003.

24. Upper Peninsula Power Company

[Docket No. ES03–29–000]

Take notice that on March 31, 2003, Upper Peninsula Power Company (Upper Peninsula) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue long-term, unsecured debt in an amount not to exceed $15 million at any time.

Upper Peninsula also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: April 25, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–8977 Filed 4–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2001–000 and RM01–8–000]

Revised Public Utility Filing Requirements Electric Quarterly Reports; Notice Providing Further Details on Electric Quarterly Reports Workshop

April 4, 2003.

On March 24, 2003, the Commission issued a "Notice of Electric Quarterly Reports Workshop" to announce, and an Errata Notice to clarify, that a workshop will be held at 9:30 a.m. on Friday, April 11, 2003, at FERC Headquarters, 888 First St., NE., Washington, DC. This notice provides further registration details and the workshop agenda (attachment).

The workshop will consist of EQR software demonstrations as well as discussion with participants. For those unable to attend in person, the workshop will be available at no cost to participants via a combination of telephone conference call and simultaneous online demonstrations

accessible from your desktop PC. To register to attend the online version of the workshop, please e-mail *eqrworkshop@ferc.gov*, and include your name, your company name, and a contact telephone number. A response to your e-mail will be sent with further information and instructions for accessing the workshop from your computer. No registration is required for those parties attending the workshop in person.

The Commission is interested in soliciting questions and or comments regarding the EQR Submission and Dissemination Systems in advance of, as well as during, the workshop. Please e-mail any questions or comments that you would like to have considered and discussed at the workshop to *eqrworkshop@ferc.gov*.

In addition, interested parties may file comments under the above-captioned Docket Numbers by April 28, 2003. Filings will be available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the Federal Energy Regulatory Record Information System (FERRIS) data base. To access the filings, enter the docket number, excluding the last three digits, in the docket number field. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

For additional information, please contact Barbara Bourque of FERC's Office of Market Oversight & Investigations at (202) 502–8338 or by e-mail, *barbara.bourque@ferc.gov*.

Magalie R. Salas,
Secretary.

Electric Quarterly Reports Workshop Agenda

Friday, April 11, 2003

I. Welcome to Participants
  A. Live and Web participants (Live sign-in)
  B. User's Group formation
II. FERC Issues with Data
  A. Revised 4th Quarter 2002 submissions due April 11, 2003
  1. Truncated currency totals
  2. DUNS numbers
  3. Product Name—Bookouts
  B. Product Names list expansion?
  C. Participant comments and questions
III. Submission System Changes/ Updates
  A. Demonstration
  1. Error detection
  2. Reports/printing capabilities
  B. Participant comments and questions
IV. Dissemination System Changes/ Updates
  A. Submission System download
  B. Spreadsheet download—demo
  C. Database download
  D. Queries—demo
  E. Participant comments and questions
V. Compliance
  A. Review of submissions
  B. Letters to companies in non-compliance status with Order 2001
  C. Participant comments and questions

[FR Doc. 03–8980 Filed 4–10–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03–7–000]

Natural Gas Price Formation; Notice of Agenda for the April 24, 2003, Staff Technical Conference

April 4, 2003.

As announced on March 14, the Federal Energy Regulatory Commission (FERC) will hold a technical conference on Thursday, April 24, 2003, to be held at FERC headquarters, 888 First Street, NW., Washington, DC, in the Commission Meeting Room (Room 2C). The purpose is to discuss issues related to the adequacy of natural gas price information. Issues of concern: Include ways to fix deficiencies in the manner price data are currently collected; how to increase reliability; and what alternative models might produce reliable natural gas price discovery.

We plan to hear from those who currently report transactions, receive and publish price information, use the published data reports, and those with constructive suggestions for overcoming impediments and inconsistencies. Parties with specific alternative models for achieving the goals are invited. We request that anyone with a specific proposal file it in this docket number for all to access. (Instructions on filing electronically can be found at *http://www.ferc.gov/documents/makeanelectronicfiling/doorbell.htm*.)

The one-day meeting will begin at 8:30 a.m. and conclude about 5 p.m. All interested parties are invited to attend. There is neither pre-registration nor a registration fee to attend. Attached is the Agenda for the day.

As mentioned in the March 14th notice, the Capitol Connection will broadcast this conference. Capitol Connection offers coverage of all open and special Commission meetings held at the Commission's headquarters live over the Internet, as well as via telephone and satellite. For a fee, you can receive these meetings in your office, at home, or anywhere in the world. To find out more about Capitol Connection's live Internet, phone bridge, or satellite coverage, contact David Reininger or Julia Morelli at (703) 993–3100, or visit *www.capitolconnection.org*. Capitol Connection also offers FERC open meetings through its Washington, DC-area television service.

The conference will be transcribed. Those interested in obtaining transcripts of the conference should contact Ace Federal Reporters at (202) 347–3700 or (800) 336 6646. Transcripts will be made available to view electronically under this docket number seven working days after the conference. Anyone interested in purchasing videotapes of the meeting should call VISCOM at (703) 715–7999.

For additional information, please contact Saida Shaalan of the Office of Market Oversight & Investigations at 202–502–8278 or by e-mail, *Saida.Shaalan@ferc.gov*.

Magalie R. Salas,
Secretary.

Conference Agenda

Natural Gas Price Formation; Agenda for the Staff Technical Conference on April 24, 2003

[Docket No. AD03–7–000]

• William Hederman, Director, Office of Market Oversight & Investigations—Welcoming remarks 8:30—8:45 a.m.

• Stephen Harvey, Deputy Director, Market Oversight & Assessment.

How do we arrive at good, reliable natural gas prices?

What are the different models for natural gas price reporting?

What should be the minimum standards for price information collected for use by the Commission in tariffs and orders?

• Panel 1—Private Sector Price Reporting Systems 8:45—10:45 a.m.

—Larry Foster, Platt's News Service
—Ellen Beswick or Mark Curran, Intelligence Press
—Andrew Ware, Energy Intelligence Group
—Michael Smith, Executive Director, Committee of Chief Risk Officers (CCRO)
—Chuck Vice, Senior Vice President and Chief Operating Officer, IntercontinentalExchange (ICE)
—Robert Levin, Senior Vice President, NYMEX
—Break 10:45—11 a.m.

• Panel 2—Governmental or Third Party Models 11 a.m.—12 p.m.

—Craig Pirrong, Bauer College of Business, University of Houston
—Obie O'Brien, Director of Government & Regulatory Affairs, Apache Corporation
—Representative from Energy Information Administration
—Representative from National Association of Securities Dealers

• Lunch 12—1:30 p.m.

• Panel 3—Industry Responses to the Morning's Discussion 1:30—3 p.m.

—Gerald Ballinger, President, Public Energy Authority of Kentucky (representing APGA)
—Arthur Corbin, President, Coalition for Energy Market Integrity and Transparency (EMIT)(Also, President & General Manager of the Municipal Gas Authority of Georgia)
—Al Musur, Director, Energy and Utility Programs for Abott Labs (also,Chair of the Industrial Energy Consumers of America (IECA)
—Thomas Skains, Chair of American Gas Association's (AGA) Board Task Force on Gas Price Index Reform (Also President & CEO, Piedmont Natural Gas)
—Representative from Natural Gas Supply Association
—Representative from INGAA

• Break 3—3:15 p.m.

• Panel 4—Financial Houses' and Other's Responses to the Morning's Discussion 3:15—4:30 p.m.

—Laurie Ferber, Managing Director, U.S. Power Trading, Goldman Sachs
—Randall Dodd, Derivatives Study Center
—Representative from Fitch Ratings
—Representative from SILCAP, LLC

Close 4:30 p.m.

[FR Doc. 03–8975 Filed 4–10–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7481–5]

Science Advisory Board; Request for Nominations for Experts for a Panel on Multimedia, Multipathway, and Multireceptor Risk Assessment (3MRA) Modeling System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency Science Advisory Board (SAB) is announcing the formation of a new panel regarding the Multimedia, Multipathway, and Multireceptor Risk Assessment (3MRA) Modeling System and soliciting nominations for membership on this panel.

DATES: Nominations should be submitted no later than May 2, 2003.

ADDRESSES: Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB Web site. The form can be found at *http://www.epa.gov/sab/sab_panel_form.htm*. To be considered, all nominations must include the information required on that form. Anyone who is unable to submit nominations via this form may contact Ms. Kathleen White, Designated Federal Officer (DFO), as indicated below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Ms. Kathleen White, (DFO), U.S. EPA Science Advisory Board (1400A), by telephone/voice mail at (202) 564–4559, by fax at (202) 501–0582; or via e-mail at *white.kathleen@epa.gov*.

SUPPLEMENTARY INFORMATION:

1. *Summary:* The Environmental Protection Agency (EPA) Science Advisory Board (SAB) is announcing the formation of a new Panel to review the technical validity of the Multimedia, Multipathway, and Multireceptor Risk Assessment (3MRA) Modeling System for setting national risk-based regulations on the waste program. The SAB is soliciting nominations to establish the members of the new Panel.

This Panel is being formed to provide advice to the Agency, as part of the EPA SAB's mission, established by 42 U.S.C. 4365, to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA decision making. The Board is a chartered Federal Advisory Committee, which reports directly to the Administrator.

2. *Background:* There have been substantial efforts by Federal and State organizations and the private sector to develop risk assessment tools that include the evaluation of contaminants in different media and the integration of exposures across pathways to help establish an integrated risk-based assessment.

In December 1995, EPA's Office of Solid Waste proposed to amend existing regulations for disposal of listed hazardous wastes under the Resource Conservation and Recovery Act (RCRA). The December 1995 proposal (60 FR 6634, December 21, 1995) outlined the Hazardous Waste Identification Rule (HWIR) that was designed to establish constituent-specific exit levels for low risk solid wastes that are currently captured in the RCRA subtitle C hazardous waste system. Under this proposal, waste generators of listed wastes that could meet the new concentration-based criteria defined by the HWIR methodology would no longer be subject to the hazardous waste management system specified under subtitle C of RCRA. This would have established a risk-based "floor" for low risk hazardous wastes that would encourage pollution prevention, waste minimization, and the development of innovative waste treatment technologies.

In May and June of 1995, EPA's Science Advisory Board (SAB) reviewed the proposed HWIR methodology for calculating exit concentrations and in May 1996 published its findings in Review of a Methodology for Establishing Human Health and Ecologically Based Exit Criteria for the Hazardous Waste Identification Rule (HWIR) (EPA–SAB–EC–96–002), available at *http://www.epa.gov/sab/pdf/ec96002.pdf*. In addition to this review, EPA's Office of Research and Development (ORD), and numerous industrial and environmental stakeholders, also reviewed the proposed methodology. While the SAB concluded that the methodology "lacks the scientific defensibility for its intended regulatory use," the SAB also made the following recommendations that, when addressed, should provide an adequate scientific basis for establishing a risk-based methodology applicable at the national level for the waste program:

(a) Develop a true multi-pathway risk assessment in which a receptor receives a contaminant from a source via all pathways concurrently, is exposed to the contaminant via different routes, and accounts for the dose corresponding to each route in an integrated way;

(b) Maintain mass balance;

(c) Conduct substantial validation of the methodology and its elements, against actual data derived from either the laboratory or field, prior to implementation of the model;

(d) Conduct a systematic examination of parameters to ensure a consistent and uniform application of the proposed approach, and further, the full suite of uncertainties to be addressed for the final methodology;

(e) Discard the proposed screening procedure for selecting the initial subset of chemicals for ecological analysis and instead require that a minimum data set

be satisfied before ecologically based exit criteria are calculated;

(f) Seek the substantive participation, input, and peer review by Agency scientists and outside peer review groups as necessary, to evaluate the individual components of the methodology in much greater detail; and,

(g) Reorganize and rewrite the documentation for both clarity and ease of use.

As a result of the methodology reviews, the Office of Solid Waste (OSW) collaborated with the Office of Research and Development (ORD) to develop and document a sound science foundation, supporting data for an assessment, and related software technology for an integrated, multimedia modeling system (entitled 3MRA) following the recommendations of the SAB and other reviewers. This effort was initiated with the peer review of an integrated research and development plan (ORD/OSW Integrated Research and Development Plan for the Hazardous Waste Identification Rule (HWIR), 1998 available at: *http://www.epa.gov/epaoswer/hazwaste/id/hwirwste/risk.htm*), that describes the assessment methodology, the technical bases for the integrated multimedia modeling system, and quality controls to be followed during the developmental process. The Multimedia, Multipathway, and Multireceptor Risk Assessment (3MRA) modeling system represents a collection of science-based models and databases that have been integrated into a software infrastructure that is based on the FRAMES (Framework for Risk Analysis in Multimedia Environmental Systems) concept, which provides a computer-based environment for linking environmental models and databases and managing the large amounts of information within the system, including the visualization of outputs. This integrated multimedia modeling system provides national-level estimates of human and ecological risks resulting from long-term (chronic) chemical release from land-based waste management units. Over 45 experts participated in the peer review process of the underlying science within the 3MRA modeling system.

The EPA plans to use the modeling system to help inform managers on a variety of decisions in the waste program, such as setting concentration-based exit criteria for wastes in the hazardous waste management regulations, or deciding whether technology-based standards are protective of human health and the environment.

3. Proposed Charge to the Panel: The EPA is asking the SAB to focus its review in the following four areas: assessment methodology, 3MRA modeling system, modeling system evaluation, and modeling system documentation. Charge questions related to those areas are identified in the relevant section below.

Assessment Methodology

The 3MRA assessment methodology presents a strategy for estimating national distributions of human and ecological risks resulting from long-term (chronic) chemical release from land-based waste management units. The national distribution is constructed by performing "site-based" assessments at a statistically significant number of randomly sampled hazardous waste site locations across the U.S. In the assessment methodology, a pollutant is released from a waste management unit to the various media (air, water, soil) according to its chemical properties and characteristics of the unit. The pollutant is transported through the media and exchanged between media via system linkages. Receptors are exposed concurrently to the pollutant via multiple pathways/routes resulting in an integrated dose.

The methodology describes a tiered approach for populating data files for each site evaluation. The approach is referred to as "site-based" because the assignment of data values for the site being simulated occurs according to a tiered protocol. Data values are filled first with data at a site level; when site data are not available, a statistically sampled value from a geographically relevant regional distribution of values are used; and lacking a representative regional distribution for the variable, a value from a national distribution is assigned.

The 3MRA methodology was designed specifically to include Monte Carlo simulation methods to address both uncertainty and variability in the risk outputs. Statistical distributions for many modeling parameters were developed and upon implementation provide a statistical measure of variability and uncertainty, *i.e.*, the range and distribution of potential exposures and risks occurring at a site. When applied to the sites in a national assessment, the result is a statistical measure of variability and uncertainty, and national distributions of risks. The sites currently in the database are randomly selected from sites across the United States to represent the national variability in waste management scenarios and locations. The methodology for selecting the sites allows for measures of protection to be calculated at the site level and aggregated over all the sites to develop the national distribution of risks.

Charge Question 1: While the EPA had the assessment methodology peer reviewed prior to the development of the 3MRA modeling system, does the SAB have any additional comments about the methodology as implemented?

3MRA Modeling System

To implement the 3MRA methodology, the EPA chose to develop a comprehensive software-based modeling system, which facilitates the consistent use of sound-science models through a framework that controls model sequencing, facilitates data exchange, and provides data analysis and results visualization tools. Following modern Object Oriented software design and development principles and honoring the use of legacy models (*i.e.*, fate and transport models that have a long history of use at the EPA), the EPA has constructed a modern modeling system that facilitates the consistent and reproducible application of the 3MRA modules and databases to problems requiring a national-scale assessment of site-based risks. The 3MRA modeling system is underpinned by a software infrastructure named FRAMES. FRAMES provides a computer-based environment for linking and applying environmental models and managing the large amounts of information within the system.

The 3MRA modeling system consists of: (a) 17 science-based modules that estimate chemical fate, transport, exposure, and risk; (b) 7 system processors that select data for model execution; manage information transfer within the system; "roll-up" site-based results into distributions of risk at the national level; and provide a visualization of the system outputs; and (c) multiple databases that (currently) contain the data for waste managements sites across the country as well as regional and national distributions of data values, (d) a software infrastructure (framework) based on FRAMES.

The 3MRA system was designed to provide flexibility in producing distributions of hazards or risks at sites that may manage exempted waste because the final regulatory decision framework for defining chemical-specific exit levels has not been formulated. The system is designed to allow the evaluation of human health impacts to the general population or selected subpopulations and the impact of varying the measures of protection at different probability levels. The system has similar capabilities with respect to evaluating the impacts on ecological systems.

Charge Question 2a: Does the 3MRA modeling system provide a tool for performing national risk assessments that facilitates consistent use of the science and provides a mechanism for reproducing results?

Charge Question 2b: Does the 3MRA modeling system provide decision-makers sufficient flexibility for understanding the impacts on potential chemical exemption levels by allowing varying measures of protection based on the number of receptors and/or number of sites protected, types of human and ecological receptors, and distance?

Charge Question 2c: Does the 3MRA modeling system provide appropriate information for setting national risk-based regulations for the waste program?

Modeling System Evaluation

In response to the SAB recommendation that substantial evaluation of the modeling system is essential to building confidence in the system, the EPA focused significant efforts to ensure the scientific integrity of the 3MRA system and its results during system development and post-development. The EPA designed and implemented rigorous quality assurance and quality control procedures for software development, data collection, verification testing, and peer review on the scientific components of the system.

The EPA implemented specific steps to build a level of confidence in the system to ensure that the system will present a reasonable estimate of nationwide risk for a national-level assessment.

First, the overall technical approach and each science-based module included in 3MRA have been peer reviewed. Teams of peer reviewers (at least three per module) provided critical feedback about the science-based modules. All told, over 45 independent experts reviewed the science modules to ensure that the theoretical concepts describing the processes within release, fate, transport, uptake, exposure, and risk components were adequate representations of the processes to be evaluated.

Second, all software components and databases underwent a series of tests to verify that the software and data were performing properly. At the heart of this protocol is the requirement that each component of the modeling system include a designed and peer reviewed test plan that is executed by both the model developer and a completely independent modeler (*i.e.*, someone who did not participate in the original model development). These procedures, test plans, test packages, and test results are fully documented and available to the public.

Third, a comprehensive data collection approach was developed to parameterize the modeling system in accordance with the site-based approach described in the assessment methodology. This data collection plan described the general collection methodology for the major types of data (for example, facility location, land use, soil characteristics, receptor locations), including quality assurance and quality control procedures and references for data sources. Fourth, the 3MRA modeling system has undergone a comparison analysis with EPA's Total Risk Integrated Methodology (TRIM) that is currently under development. The objective of the model comparison effort was to increase confidence that the 3MRA modeling system produces estimates consistent with other multi-media models.

While complete validation of a modeling approach would be the ultimate proof for a multimedia system like the 3MRA, the EPA did not find a multimedia data set to compare with the system's predictive outputs. In addition, the model comparison study was conducted using an actual industrial site where environmental monitoring data for mercury representing the relationship between contaminant source and environmental concentrations were available (albeit an incomplete set of observational data). Finally, a formal program focusing on sensitivity and uncertainty analysis for high-order modeling systems has been initiated at ORD. The early focus of this program is the investigation of parameter sensitivities and system uncertainties within the 3MRA modeling system. A supercomputer has been configured to allow exhaustive experimentation with the 3MRA system in Monte Carlo mode. Initial results of these efforts have been documented.

Charge Question 3a: Is the software development and verification testing approach implemented for the 3MRA modeling system sufficient to ensure confidence that the modeling results reflect the modeling system design?

Charge Question 3b: Given the thorough evaluations that EPA has implemented using the available data resources and technologies, while also recognizing the real world limitations that apply to validating the 3MRA modeling system, have we reasonably demonstrated through methodology design, peer review, quality control, sensitivity analyses, and model comparison, that the 3MRA modeling system will produce scientifically sound results of high utility and acceptance with respect to multimedia regulatory applications?

3MRA Modeling System Documentation

In response to significant comments regarding the lack of clarity and transparency associated with documentation of the earlier modeling system the EPA has devoted significant time and resources to correcting this limitation. The 3MRA represents a comprehensive risk assessment capability and as such integrates the science from all contributing disciplines. Documentation is necessarily voluminous. In preparing the current documentation our intent is to provide different levels of presentation depending on the intended audience. The EPA has prepared a significant number of reports and documents at various levels of technical complexity that describe the 3MRA modeling system and the related HWIR application.

The review documents consist of a four volume set of documents, providing a comprehensive overview of the 3MRA modeling system. These documents are intended to be the primary means by which the general public would become familiar with the 3MRA system and are also intended to provide the level of information necessary for a risk assessor to make an informed decision regarding the applicability of the 3MRA modeling system to specific risk assessment problems.

Charge Question 4: Has the EPA made substantive progress, relative to 1995, in designing and preparing documentation for the 3MRA modeling system? Does the SAB have additional suggestions for improving the presentation of the comprehensive set of materials related to this modeling system?

4. Development Plan Document Available: For the purpose of enough understanding about the 3MRA modeling system to nominate candidates, the reader may find the ORD/OSW Integrated Research and Development Plan for the Hazardous Waste Identification Rule (HWIR), 1998 helpful. This document introduces the policy and technical issues shaping the development of the 3MRA modeling system. This document is available at: *http://www.epa.gov/epaoswer/hazwaste/id/hwirwste/risk.htm.*

5. SAB Request for Nominations: Any interested person or organization may nominate qualified individuals for Membership on the Subcommittee.

Individuals should have expertise in one or more of the following areas:
(a) Integrated Software Technology for Multimedia Modeling
(b) Sensitivity and Uncertainty Analyses for Higher Order Environmental Models
(c) Quality Assurance and Model Evaluation
(d) Integrated Multimedia Fate and Transport Modeling—air focus
(e) Integrated Multimedia Fate and Transport Modeling—surface water focus
(f) Integrated Multimedia Fate and Transport Modeling—groundwater focus
(g) Integrated Multimedia Fate and Transport Modeling—food chain focus
(h) Integrated Modeling for Human and Ecological Risk Assessments
(i) National Probabilistic Risk Assessment using Monte Carlo-based Methods
(j) Properties of Chemicals and Environmental Media
(k) Nation-wide Risk Assessments
(l) Human toxicology
(m) Ecological toxicology
(n) Risk Communication
(o) Familiarity with hazardous waste regulations and remediation technologies.

6. *Process and Deadline for Submitting Nominations:* Any interested person or organization may nominate qualified individuals to add expertise in the above areas for the Panel. Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the EPA Science Advisory Board provided on the SAB Web site. The form can be found at *http://www.epa.gov/sab/sab_panel_form.htm*. To be considered, all nominations must include the information required on that form.

Anyone who is unable to submit nominations using this form may contact Ms. Kathleen White at the mailing address in the section above entitled, **FOR FURTHER INFORMATION CONTACT.** Nominations should be submitted in time to arrive no later than May 2, 2003. Any questions concerning either this process or any other aspects of the notice should be directed to Ms. White.

The EPA Science Advisory Board will acknowledge receipt of the nomination and inform nominators of the panel selected. From the nominees identified by respondents to this **Federal Register** notice (termed the "Widecast"), SAB Staff will develop a smaller subset (known as the "Short List") for more detailed consideration. Criteria used by the SAB Staff in developing this Short List are given at the end of the following paragraph. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab*, and will include, for each candidate, the nominee's name and their biosketch. Public comments will be accepted for 21 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff should consider in evaluating candidates for Panel.

For the EPA SAB, a balanced review panel (*i.e.*, committee, subcommittee, or panel) is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the Short List candidates will be considered in the selection of the panel, along with information provided by candidates and information gathered by EPA SAB Staff independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating an individual subcommittee member include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Short List candidates will also be required to fill-out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form, which is submitted by EPA SAB Members and Consultants, allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The blank form may be viewed and downloaded from the following URL address: (*http://www.epa.gov/sab/pdf/epaform3110-48.pdf*). Subcommittee members will likely be asked to attend two public face-to-face meetings and several public conference call meetings over the anticipated course of the review. The face-to-face meetings are likely to be in the July, August, September timeframe.

Dated: April 4, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–8951 Filed 4–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6639–3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 04, 2003 (68 FR 16511).

Final EISs

ERP No. F–FHW–E40791–SC James E. Clyburn Connector Project, Construction of a Two-Lane Rural Roadway Northeast of Orangeburg and Southwest of Sumter, Funding and US Army COE Section 404 Permit Issuance, Calhoun, Sumter and Claredon Counties, SC.

Summary: EPA appreciates the responses to our comments regarding the draft EIS. However, EPA still has environmental concerns regarding wetland and agricultural land impacts, traffic noise and the adequacy of mitigation for these impacts.

ERP No. F–FHW–K40251–CA Butte 70/149/99/191 Highway Improvement Project, Update State Route 149 to Four-Lane Expressway from 70 North of Oroville to Route 99 South of Chico, Funding, Right-of-Way Acquisition, and U.S. Army Section 404 Permit Issuance, Butte County, CA.

Summary: EPA has continuing environmental concerns regarding the potential cumulative impacts to vernal pools and the listed species they support. EPA recommends that FHWA prepare a more thorough cumulative impacts analysis in the future for transportation projects in the Sacramento-Chico corridor.

ERP No. F–FTA–K54026–NV Las Vegas Resort Corridor Transportation Improvements, Funding, City of Las Vegas, Clark County, NV.

Summary: EPA found that the final EIS sufficiently discussed the environmental impacts of the proposed project and incorporated all of EPA's previous recommendations. Consequently, EPA lacks objections to the proposed project.

ERP No. F–MMS–L02028–AK Beaufort Sea Planning Area Multiple Sale 186, 195 and 202 Oil and Gas Lease Sales, Alaska Outer Continental Shelf, Offshore Marine Environment, Beaufort Sea Coastal Plain, and the North Slope Borough of Alaska.

Summary: EPA continues to have environmental objections due to potential impacts to subsistence resources used by environmental justice and Tribal communities. Subsequent EISs addressing oil and gas exploration and development will need to significantly add information and protective measures if these activities affect areas containing subsistence resources.

Amended Notices: EPR No. D–AFS–K65248–CA Rating EC2 North Fork Fire Salvage Project, Harvest Salvage, Merchantable Timber Volume Sale and Sierra National Forest Land and Resource Management Plan, Implementation, Bass Lake Ranger District, Madera County, CA.

Summary: EPA expressed environmental concerns with potential adverse impacts to water quality given the only action alternative does not address consistency with EPA approved water quality standards. EPA also expressed concerns that the DEIS fully evaluated just one action alternative.

Revision of FR Notice Published on 3/28/2003: Correction of ERP Summary Paragraph.

ERP No. D–BIA–k60034–CA Rating EC2 Jamul Indian Village (Tribe) 101 Acre Fee-to-Trust Transfer and Casino Project, Implementation, San Diego County, CA.

Summary: EPA expressed environmental concerns regarding the project's potential impacts to ground water from effluent disposal and how Best Management Practices and mitigation would ensure compliance with EPA approved water quality standards.

Revision of FR Notice Published on 03/28/2003: Correction of ERP Summary Paragraph.

Dated: April 8, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–8948 Filed 4–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6639–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 *or http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements

Filed March 31, 2003 Through April 4, 2003 Pursuant to 40 CFR 1506.9.

EIS No. 030148, Final EIS, BLM, NV, Toquop Energy Project, Toquop Land Disposal Amendment to the Caliente Management Framework Plan (MFP), Construction of a 1,100-megawatt (MW) Natural Gas-Fired Water-Cooled Electric Power Generating Plant and Associated Features on Public Lands, Right-of-Way Grant, Lincoln, Clark and Washoe Counties, NV, Wait Period Ends: May 12, 2003, Contact: Dan Netcher (775) 289–1872.

This document is available on the Internet at: *http://www.fs.fed.us/r4/caribou/*.

EIS No. 030149, Draft Supplement, BLM, NV, Millennium Expansion Project, Construct a New Facilities and Expand Existing Gold Mining Operations, Glamis Marigold Mine, Plan-of-Operations, Winnemucca, Humboldt County, NV, Comment Period Ends: June 5, 2003, Contact: Jeff Johnson, (775) 623–1500.

EIS No. 030150, Draft EIS, AFS, WI, Programmatic EIS—Cheguamegon-Nicolet National Forests Revised Land and Resource Management Plan, Implementation, Ashland, Bayfield, Florence, Forest, Langlade, Oconto, Oneida, Price, Sawyer, Taylor and Vilas Counties, CA, Comment Period Ends: July 11, 2003, Contact: Sally Hess-Samuelson, (715) 362–1384.

This document is available on the Internet at: *http://www.lc.usbr.gov/lcrivops/html*.

EIS No. 030151, Draft EIS, AFS, ID, Upper and Lower East Fork Cattle and Horse Allotment Management Plans, To Update the Allotment Plans to Allow Permitted Livestock Grazing, National Forest System Lands Sawthooth and Challis National Forests, Custer County, ID, Comment Period Ends: May 30, 2003, Contact: Carol Brown, (208) 727–5000.

EIS No. 030152, Final EIS, NPS, VA, Jamestown Project, Improvements at the Jamestown unit of Colonial National Park and the Jamestown National Historic Site, Implementation, James City County, VA, Wait Period Ends: May 12, 2003, Contact: Alec Gould, (757) 898–2404.

EIS No. 030153, Final EIS, AFS, ID, Caribou National Forest Land and Resource Management Plan, Implementation Revised Forest Plan, Bannock, Bear Lake, Bingham, Bonneville, Caribou, Franklin, Oneida and Power Counties, Cache and Rich Counties, UT, Lincoln County, WY, Wait Period Ends: May 12, 2003, Contact: Jerry B. Reese, (208) 557–5761.

This document is available on the Internet at: *http://www.fs.fed.us/r4/caribou/*.

EIS No. 030154, Draft EIS, FHW, UT, Southern Corridor, Extending from I–15 at Reference Post 2 in St. George to UT–9 near Hurricane, Endangered Species Act Review Section 7, Right-of-Way and U.S. Army Corps Section 404 Permits, St. George, Washington and Hurricane, Washington County, UT, Comment Period Ends: May 30, 2003, Contact: Gregory Punske, (801) 963–0182.

EIS No. 030155, Final EIS, FRC, OR, North Umpqua Hydroelectric Project (FERC Project 1927), New License Issuance for the existing 185.5-megawatt (MW) Facility, North Umpqua River, Douglas County, OR, Wait Period Ends: May 12, 2003, Contact: John Smith, (202) 502–8972.

EIS No. 030156, Draft EIS, DOD, NV, TN, NJ, OH, IN, NY, UT, Mercury Management Project, Select and Implement a Long-Term (*i.e.*, 40 Years) Management of the Defense Stockpile of Elemental Mercury, Hawthorne, NV; New Haven, IN; Oak Ridge, TN; Romulus, NY; Somerville, NJ; Tooele, UT; and Warren, OH, Comment Period Ends: July 10, 2003, Contact: Dennis Lynch, (703) 767–7609.

This document is available on the Internet at: *http://(www.mercuryeis.com)*.

EIS No. 030157, Draft Supplement, AFS, CA, WA, OR, Northern Spotted Owl Project, Updated information to Amend Selected Portions of the Aquatic Conservation Strategy, (Part of the Northwest Forest Plan), Protect and Restore Watersheds, CA, WA and OR, Comment Period Ends: July 10, 2003, Contact: Joyce Casey, (503) 326–2430.

This document is available on the Internet at: *http://www.reo.gov/acs/*.

EIS No. 030158, Draft EIS, UAF, CA, Los Angeles Air Force Base Land Conveyance, Construction and Development Project, Transfer Portions of Private Developer in

Exchange for Construction of New Seismically Stable Facilities, Cities of El Sequndo and Hawthorne, Los Angeles County, CA, Comment Period Ends: May 27, 2003, Contact: Jason Taylor, (310) 363–0142.

This document is available on the Internet at: *http://www.pirniewest.com/LAAFB.*

EIS No. 030159, Final EIS, AFS, CA, North Fork Fire Salvage Project, Harvest Salvage, Merchantable Timber Volume Sale and Sierra National Forest Land and Resource Management Plan, Implementation, Bass Lake Ranger District, Madera County, CA, Wait Period Ends: May 12, 2003, Contact: Michael Price, (559) 877–2218.

EIS No. 030160, Final Supplement, AFS, UT, Griffin Springs Resource Management Project, New Information concerning the Life History and Analysis of Endangered, Threatened, Candidate, Sensitive and Management Indicator Species, Dixie National Forest, Escalante Range District, Garfield County, UT, Wait Period Ends: May 12, 2003, Contact: David M. Keefe, (435) 826–5400.

EIS No. 030161, Draft Supplement, FTA, NY, Second Avenue Subway Project, Improve Transit Access to Manhattan's East Side and Reduce Excess Crowds on the Lexington Avenue Subway, Metropolitan Transportation Authority (MTC) New York City Transit (NYCT), New York, NY, Comment Period Ends: June 10, 2003, Contact: Irwin B. Kessman, (212) 668–2177.

EIS No. 030162, Revised Draft EIS, DOE, Hanford Site Solid (Radioactive and Hazardous) Waste Program, New Information on Waste Management Alternatives, Waste Management Practices Enhancement for Low-Level Radioactive Waste, Mixed Low-Level Radioactive Waste and Transuranic Waste, Richard, Benton County, WA, Comment Period Ends: May 27, 2003, Contact: Michael S. Collins, (800) 426–4914.

Amended Notices

EIS No. 030114, Draft EIS, NPS, AK, Glacier Bay National Park and Preserve Vessel Quotas and Operating Requirements for Cruise Ships and Tour, Charter, and Private Vessels, Implementation, AK, Comment Period Ends: May 14, 2003, Contact: Nancy Swanton, (907) 257–2651.

Revision of FR Notice Published on 3/31/2003: CEQ Comment Period Ending 5/20/2003 has been Corrected to 5/14/2003.

EIS No. 030121, Draft EIS, COE, CA, East Cliff Drive Bluff Protection and Parkway Project, Evaluate Alternatives for Coastal Bluff Erosion Protection, City of Santa Cruz, Santa Cruz County, CA, Comment Period End: May 12, 2003, Contact: Sarah Cameron, (415) 977–8538.

Revision of FR Notice Published on 3/28/2003: EIS No. 0230121 has been Corrected to 030121.

Dated: April 8, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–8949 Filed 4–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7482–4]

Science Advisory Board; Notification of Public Advisory Committee Meeting Environmental Engineering Committee (EEC) Conference Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB), Environmental Engineering Committee (EEC) is announcing a planning teleconference meeting to discuss several proposed self-initiated projects for Fiscal Year 2004.

DATES: The conference call meeting will take place on Wednesday, April 30, 2003 from 11:30 p.m. to 1:30 p.m. Eastern Standard Time. Participation will be by teleconference only.

ADDRESSES: Members of the public who wish to obtain the call-in number and access code to participate must contact Ms. Sandra Friedman, EPA Science Advisory Board Staff Office; telephone/voice mail at (202) 564–2526 or via e-mail at *friedman.sandra@epa.gov* in order to register.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information about this conference call meeting should contact Ms. Kathleen White, Designated Federal Officer, by telephone/voice mail at (202) 564–4559 or via e-mail at *white.kathleen@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA Web site at *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: 1. *Summary:* The U.S. Environmental Protection Agency (EPA or Agency) Science Advisory Board (SAB) is providing this notification of an upcoming teleconference call meeting of the Environmental Engineering Committee (EEC) .

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. This committee of the SAB will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB policies and procedures.

During the public conference call meeting, to take place at the date and time noted above, the EEC will discuss its proposals for self-initiated projects to be considered by the SAB in FY 2004. Self-initiated projects are scientific and technical projects proposed outside of the normal mechanism of Agency-requested consultations, advisories, and peer reviews. Such projects are intended to address critical needs for anticipatory or cross-cutting scientific and technical advice. All SAB self-initiated projects will be evaluated by the SAB's Executive Committee (EC) during its July 16–17, 2003 public meeting.

2. *Availability of Meeting Materials:* A copy of the draft agenda for the meeting that is the subject of this notice will be posted on the SAB Web site (*http://www.epa.gov/sab*) (under the AGENDAs subheading) approximately 10 days before the conference call meeting. Other materials that may be available, such as draft proposals for SAB self-initiated projects to be considered at the EEC conference call meeting will also be posted on the SAB Web site in this time-frame, linked to the calendar entry for this meeting (http://www.epa.gov/sab/mtgcal.htm.)

3. *Providing Oral or Written Comments at SAB Meetings:* It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted below in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution. Should comment be provided at the meeting and not in advance of the meeting, they should be in-hand to the DFO up to and immediately following the meeting.

4. Meeting Access—Participation in this meeting is by teleconference only. Individuals requiring special accommodation to access this teleconference meeting, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 7, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–8957 Filed 4–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7482–5]

Science Advisory Board, Environmental Health Committee; Notification of an Upcoming Meeting and Final List of Panel Members for the Review of the Supplemental Guidance for Assessing Cancer Susceptibility From Early-life Exposure to Carcinogens (SGACS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB), a Federal Advisory Committee, announces: (a) An upcoming meeting (b) and final list of panel members for the Review of the Supplemental Guidance for Assessing Cancer Susceptibility from Early-life Exposure to Carcinogens (SGACS).

DATES: The face-to-face meeting will take place May 12, 2003 from 1 PM to 5 PM, and May 13 and 14, 2003 from 9 to 5 PM (all times noted are Eastern Daylight Time).

ADDRESS: The meeting will take place at the Sheraton Crystal City, 1800 Jefferson-Davis Hwy, Arlington, VA 22202

FOR FURTHER INFORMATION CONTACT: For general information about the meeting, please contact Dr. Suhair Shallal, Designated Federal Officer, by telephone/voice mail at (202) 564–4566, by fax at (202) 501–0582; or via e-mail at *shallal.suhair@epa.gov.* General information concerning the EPA Science Advisory Board can be found on the EPA SAB Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION: 1. *Notification of Public Meeting:* The U.S. Environmental Protection Agency (EPA) Science Advisory Board (SAB) is providing notification of an upcoming meeting and announcing the final membership of the SCAGS panel.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Supplemental Guidance for Assessing Cancer Susceptibility (SGACS) panel of the US EPA Science Advisory Board (SAB) will meet to review the EPA's Office of Research and Development draft document entitled "Supplemental Guidance for Assessing Cancer Susceptibility From Early-Life Exposure to Carcinogens". This document provides a possible approach for assessing cancer susceptibility from early-life exposure to carcinogens.

The purpose of this meeting is to allow contemporaneous public access to the SGACS review panel's deliberations concerning the above-mentioned draft document. The meeting is open to the public; however, seating is limited and available on a first come basis. The meeting will be held at the times and dates and place specified above. A copy of the draft agenda for the meeting will be posted on the SAB Web site (*http://www.epa.gov/sab*) (under the AGENDAS subheading) approximately 10 days before the meeting.

For more information regarding the background on this advising activity, please refer to the **Federal Register**, 68 FR 10240, published on March 4, 2003 or the SAB Web site at *http://www.epa.gov/sab/panels/sgacs.html.*

The panel will be charged with responding to the following questions concerning the document to be reviewed.

(a) The Agency seeks the Science Advisory Board's review of the soundness of the Agency's position that the existing scientific information and data support the conclusion that there is greater susceptibility for the development of tumors as a result of exposures in early lifestages as compared with adults to chemicals acting through a mutagenic mode of action. Are there any key studies that the Agency has overlooked in reaching this conclusion?

(b) For chemicals acting through non-mutagenic modes of action, the Agency concludes that a range of approaches needs to be developed over time for addressing cancer risks from childhood exposures. Please comment on the Agency's conclusion that the scientific knowledge and data are insufficient at this time to develop generic guidance on how to address these chemicals and a case-by-case approach is more suitable. Is the SAB aware of any additional data for chemicals acting through non-mutagenic modes of action relevant to possible early lifestage sensitivity?

(c) Assuming that it is appropriate to conclude that there is differential lifestage susceptibility to chemicals acting through a mutagenic mode of action, the Agency's guidance uses a default approach that adjusts cancer slope factors (typically from conventional animal bioassays and/or epidemiologic studies of adult exposure) to address the impact of early-lifestage exposure. Please comment on the appropriateness of this approach.

(d) When considering differential susceptibility, the Agency's guidance separates the potential susceptible period into two age groups, 0–2 years and 2–15 years. These groupings were based on biological considerations rather than exposure considerations. The first grouping, 0–2 years of age, is meant to encompass a period of rapid development and the second grouping, 2–15 years of age, was selected to represent middle adolescence approximately following the period of rapid developmental changes during puberty. Please comment on the appropriateness of these age groupings with respect to susceptible lifestages given the current knowledge.

(e) The Guidance provides a quantitative approach to account for the greater susceptibility of early-life exposure to chemicals that act through a mutagenic mode of action. An

adjustment factor of 10 is applied to the cancer slope factor (derived from animal or epidemiology studies) for exposures before 2 years of age, a factor of 3 is applied for ages between 2 and 15 years, and no adjustment after the age of 15. Please comment on the appropriateness of these adjustment factors based on the analysis of available data.

(f) The Agency recognizes that consideration of children's risk is a rapidly developing area and, therefore, the Agency intends to issue future guidance that will further refine the present guidance and possibly address other modes of action as data become available. The Agency welcomes the SAB's recommendations on other modes of action that may be most fruitful to assess in similar future analyses.

(g) The analysis presented in the current Guidance relies on neonatal and early-life exposure studies. Can the SAB recommend how to best incorporate data from transplacental or in utero exposure studies into future analyses?

(h) The Agency welcomes the SAB's recommendations on critical data needs that will facilitate the development of future guidance addressing differential lifestage susceptibility.

Availability of Review Materials: Documents that are the subject of SAB reviews or consultations are normally available from the originating EPA office and are not available from the SAB Office. The materials for this review are available from the Office of Research and Development's National Center for Environmental Assessment, Risk Assessment Forum Web site, located at: *http://cfpub.epa.gov/ncea/raf/index.cfm*. For questions and information concerning the materials, please contact Dr. William P. Wood, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; tel. (202) 564–3361, or e-mail: *risk.forum@epa.gov*.

Providing Oral or Written Comments at SAB Meetings—It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated) and no more than one hour total. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the DFO at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the DFO at the address/contact information noted in the opening of this notice in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution. Should comment be provided at the meeting and not in advance of the meeting, they should be in-hand to the DFO up to and immediately following the meeting. The SAB allows a grace period of 48 hours after adjournment of the public meeting to provide written comments supporting any verbal comments stated at the public meeting to be made a part of the public record.

2. *Meeting Access:* Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Ms. Sandra Friedman (*friedman.sandra@epa.gov*) or by telephone/voice mail at (202) 564–2526 at least five business days prior to the meeting date so that appropriate arrangements can be made.

3. *Final List of panel members:* The SAB Staff Office will post the names and biosketches for members of the review Panel on the SAB Web site at: *http://www.epa.gov/sab/panels/sgacsrp.html* along with the "Panel Selection" document that outlines the issues that were considered in selecting this panel at least 10 days prior to the first meeting, a teleconference scheduled for April 24, 2003 as previously announced in the **Federal Register** on March 4, 2003 (refer to 68 FR 10240).

Dated: April 7, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board.

[FR Doc. 03–8958 Filed 4–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7481–6]

Office of Research and Development; Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Board of Scientific Counselors for the U.S. EPA has convened a Communications *ad hoc* subcommittee to examine how effectively EPA Office of Research and Development (ORD) funded research results are currently communicated, both within and beyond the agency, and how they might be more effectively communicated. The immediate goal of the subcommittee effort is to help EPA/ORD more effectively disseminate ORD's research products, to explain their significance, and to assist others inside and outside the agency in applying them. To this end, on May 15, 2003, the BOSC meeting will include two sessions devoted to communication of research results. The morning session will include presentations from ORD labs and centers of a handful of their best practices in this regard. The afternoon session will include presentations of best practices from a small sample of other organizations and agencies. Both sessions will include discussions of related communications issues, including (but not limited to) defining communication goals, audience identification, criteria for evaluating efforts to communicate research results, and factors that affect their success.

DATES: On Thursday, May 15, the meeting will begin at 8 a.m. and recess at 5:30 p.m. and on Friday, May 16, 2003, the meeting will reconvene at 8:30 a.m. and will adjourn at approximately 3:30 p.m. All times noted are eastern time.

ADDRESSES: The Meeting will be held at the Lowe's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Anyone desiring a draft BOSC agenda may fax their request to Shirley R Hamilton (202) 565–2444. The meeting is open to the public. Any member of the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Research (MC 8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–6853.

Dated: April 4, 2003.

John C. Puzak,

Acting Director, National Center for Environmental Research.

[FR Doc. 03–8952 Filed 4–10–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0107; FRL–7300–2]

Experimental Use Permit; Receipt of Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 75015–EUP–G from Nutra-Park Inc. requesting an experimental use permit (EUP) for the NPI 100 10EC growth regulator. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket ID number OPP–2003–0107, must be received on or before May 12, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8810; e-mail address: frazer.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are interested in biochemical pesticides or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0107. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the

close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0107. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0107. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0107.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0107. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Nutra-Park Inc., 3230 Deming Way, Suite 125, Middleton, WI 53525, has applied for an EUP for field testing of a new end-use product of the biochemical pesticide lysophosphatidylethanolamine (LPE). This active ingredient has been given an exemption from the requirement for a tolerance (40 CFR 180.1199) and the registrant wishes to continue testing it in a new formulation to evaluate its use as a growth regulator to enhance ripening and shelf-life of various food commodities. Testing of 2,244 gallons of NPI 100 10EC containing 224.40 gallons of LPE will occur in nine states: Arizona, California, Florida, Georgia, Massachusetts, Oregon, South Carolina, Washington, and Wisconsin. Total acreage is 5,100.

III. What Action is the Agency Taking?

Following the review of the Nutra-Park Inc. application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The Agency's authority for taking this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 2, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–8825 Filed 4–10–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 1, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 12, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0454.

Title: Regulation of International Accounting Rates.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 20 respondents; 760 responses (20 carriers will file information for 38 routes annually).

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion, annual and one-time reporting requirement.

Total Annual Burden: 760 hours.

Total Annual Cost: $7,000.

Needs and Uses: The Commission implemented rules to make it easier for U.S. carriers engaged in international telecommunications services to negotiate lower accounting rates. Reductions and changes are subject to the International Settlements Policy approach. The Commission uses the information as a method to monitor the international accounting rates to insure that the public interest is being served and also to enforce Commission policies and rules. The information enables the agency to preclude one-way bypass and safeguard of its international policy.

OMB Control No.: 3060–0859.

Title: Suggested Guidelines for Petitions for Ruling Under Section 253 of the Communications Act.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 80.

Estimated Time Per Response: 63–125 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 6,280 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 253 of the Communications Act of 1934, as amended, 47 U.S.C. 253, requires the Commission, with certain important exceptions, to preempt the enforcement of any state or local statute or regulation, or other state or local legal requirement (to the extent necessary) that prohibits or has the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service. The Commission's consideration of preemption begins with the filing of a petition by an aggrieved party. The petition is placed on public notice and commented on by others. The Commission's decision is based on the public record, generally composed of the petition and comments. The Commission has considered a number of preemption items since the passage of the Telecommunication Act of 1996, and believes it in the public interest to inform the public of the information necessary to support its full consideration of the issues likely to be involved in preemption actions.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–8855 Filed 4–10–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested

April 1, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 10, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0157.

Title: Section 73.99, Presunrise Service Authorization (PSRA) and Postsunset Service Authorization (PSSA).

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 200.

Estimated time per response: 0.25 hours.

Total annual burden: 50.

Total annual costs: $10,000.

Needs and Uses: 47 CFR section 73.99(e) requires the licensee of an AM broadcast station intending to operate with a presunrise or postsunset service authorization to submit by letter the licensee's name, call letters, location, the intended service, and a description of the method whereby any necessary power reduction will be achieved. Upon submission of this information, operation may begin without further authority. The FCC staff uses the letter to maintain complete technical information about the station to ensure that the licensee is in full compliance with the Commission's rules and will not cause interference to other stations.

OMB Number: 3060–0342.

Title: Section 74.1284, Rebroadcasts.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 100.

Estimated time per response: 1 hour.

Total annual burden: 100 hours.

Total annual costs: $0.

Needs and Uses: 47 CFR section 74.1284 requires that the licensee of an FM translator station obtain prior consent from the primary FM broadcast station or other FM translator before rebroadcasting their programs. In addition, the licensee must notify the Commission of the call letters of each station rebroadcast and certify that written consent has been received from the licensee of that station whose programs are retransmitted. The FCC staff uses the data to update records and to assure compliance with FCC rules and regulations.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–8856 Filed 4–10–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 28, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Commerce Bancorp Rabbi Trust, Berkeley, Illinois; to increase ownership of Commerce Bancorp, Inc., Berkeley, Illinois, and thereby indirectly acquire control of National Bank of Commerce, Berkeley, Illinois.

Board of Governors of the Federal Reserve System, April 7, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8869 Filed 4–10–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 7, 2003.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. Woori Finance Holdings, Co., Ltd., Seoul, Korea; to become a bank holding company and retain its interest in Woori America Bank, New York, New York. Comments on this application must be received by April 18, 2003.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. FCB Financial Services, Inc., Marion, Arkansas; to become a bank holding company by acquiring 100 percent of First Community Bank of Eastern Arkansas, Marion, Arkansas.

Board of Governors of the Federal Reserve System, April 7, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–8868 Filed 4–10–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. R–1128]

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 03–05]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47638; File No. S7–32–02]

Interagency Paper on Sound Practices To Strengthen the Resilience of the U.S. Financial System

AGENCIES: Board of Governors of the Federal Reserve System; Office of the Comptroller of the Currency; and Securities and Exchange Commission.

ACTION: Issuance of interagency paper.

SUMMARY: The Federal Reserve Board (Board), the Office of the Comptroller of the Currency (OCC) and the Securities and Exchange Commission (SEC) are publishing an Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System. The Federal Reserve Bank of New York also participated in drafting the paper. The paper identifies three new business continuity objectives that have special importance in the post-September 11 risk environment for all financial firms. The paper also identifies four sound practices to ensure the resilience of the U.S. financial system, which focus on minimizing the immediate systemic effects of a wide-scale disruption on critical financial markets. The agencies expect organizations that fall within the scope of this paper to adopt the sound practices within the specified implementation timeframes, as described in more detail in the paper.

FOR FURTHER INFORMATION CONTACT: *Board:* Jeffrey Marquardt, Associate Director, Division of Reserve Bank Operations and Payment Systems (202) 452–2360; or Angela Desmond, Assistant Director, Division of Banking Supervision and Regulation (202) 452–3497.

OCC: Ralph Sharpe, Deputy Comptroller for Bank Technology (202) 874–4572; or Aida Plaza Carter, Director, Bank Information Technology Operations (202) 874–4740.

SEC: Robert Colby, Deputy Director, Division of Market Regulation (202) 942–0094; David Shillman, Counsel to the Director, Division of Market Regulation (202) 942–0072; or Peter Chepucavage, Attorney Fellow, Division of Market Regulation (202) 942–0163.

SUPPLEMENTARY INFORMATION: On September 5, 2002, the Board of Governors of the Federal Reserve System, Office of the Comptroller of the Currency, and the Securities and Exchange Commission published for comment a Draft Interagency White Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System.[1] The draft white paper emphasized the criticality of protecting the financial system from serious new risks posed in the post-September 11 environment and described a series of sound practices that were identified by industry participants during a series of interviews and meetings with the agencies. Approximately 90 comment letters were submitted to one or more of the agencies by clearing and settlement system operators; banking organizations; investment banking firms; industry associations; technology companies; Federal, State and local officials; and other interested parties and are summarized below. After reviewing the comments and continuing their dialogue with interested persons, the agencies are issuing this revised final interagency paper.

The sound practices identified in the paper are intended to supplement the agencies' respective policies and other guidance on business continuity planning by financial institutions. The sound practices focus on establishing robust back-up facilities for those back-office activities necessary to recover clearance and settlement activities for the wholesale financial system in times of serious disruption and therefore do not address issues relating to trading operations or to retail financial services. The agencies are not recommending that firms move their primary offices, primary operating sites, or primary data centers out of metropolitan locations. The agencies expect organizations that fall within the scope of this paper to adopt the sound practices within the specified implementation timeframes, as described in more detail in the paper.

Summary of Comments

The commenters generally support the agencies' efforts to improve the resilience of the financial markets and agree with the goals outlined in the draft white paper. Most commenters agree with the sound practices in principle, but propose a number of modifications and clarifying changes to the document. In general, the commenters prefer that the agencies retain a "sound practices paper format" rather than adopt a regulatory approach that could be susceptible to a "one size fits all" application. They also ask that the agencies coordinate supervisory expectations with each other and with other regulatory authorities as necessary to assure a consistent approach.

There was broad consensus with the goal of ensuring that key organizations in critical financial markets are able to recover clearing and settlement activities in the event of a wide-scale disruption as rapidly as possible. Commenters agree with the definitions of critical financial markets and critical activities, but ask that the agencies make clear that the sound practices apply to back-office operations and not to trading activities or retail products. They also believe that the description of core clearing and settlement organizations is sufficient. Commenters ask for additional guidance to assist in identifying firms that play significant roles in critical financial markets and generally agree that a market share benchmark should be established; a few commenters recommend adopting a dollar volume benchmark. A few commenters suggest that benchmarks should vary by market based on the amount of concentration of key participants in the critical financial markets. Some commenters note the importance of firms being able to self-determine whether they fall into a particular category for a critical financial market, while others ask that the agencies contact organizations that appear to meet the definition for core clearing and settlement organizations or firms that play significant roles in critical markets. Several commenters acknowledge that the sound practices would effectively raise market expectations with respect to the resilience of all financial firms.

A number of commenters state that the description of a wide-scale, regional disruption should include parameters for a range of probable events (*e.g.*, power disruption, natural disaster) and include the expected duration of the outage (*e.g.*, 5, 10, or 30 days). Other commenters note that such specification is unnecessary.

The commenters agree that a within-the-business-day recovery and resumption objective for core clearing and settlement organizations is appropriate and acknowledge that a two-hour recovery time objective is an achievable goal, although somewhat aggressive for some because of the volume and complexity of transaction data involved. There is general consensus that the end-of-business-day recovery objective is achievable for firms that play significant roles in critical markets, although many state that this is possible only if firms are able

[1] 67 FR 56835, September 5, 2002.

to utilize synchronous data storage technologies, which can limit the extent of geographic separation between primary and back-up sites. A number of commenters note that a recovery time objective of four hours is unrealistic unless core clearing and settlement organizations and the telecommunications infrastructure are operating. [2] Some commenters suggest that recovery and resumption time objectives should vary by type of market. Other commenters note that further guidance on the definitions of an "event" and "end-of-business day" is needed to help ensure meaningful recovery and resumption time objectives.

A number of commenters support the concept of establishing back-up sites for operations and data centers that do not rely on the same infrastructure and other risk elements as primary sites and note that such diversification of risk is a long-standing principle of business continuity planning for financial firms. Most commenters oppose establishing any minimum distance requirement between primary and back-up facilities, citing the need for sufficient flexibility to manage costs effectively and allow for technological improvements. A few commenters believe that establishing minimum separation is appropriate and achievable. A number of commenters express concern that out-of-region back-up sites, including those of third-party service providers, often are geographically concentrated, creating additional risk in the event of a targeted attack or wide-scale disruption affecting those areas. Some commenters ask for additional guidance on how to address various infrastructure components, such as water supply sources. A few commenters indicate that they are exploring overseas locations as part of their recovery and resumption solutions and ask for some assurances that domestic and foreign financial authorities will permit such arrangements.

Commenters note that firms should be permitted to address critical staffing needs sufficient to recover from a wide-scale disruption, but should not be required to maintain a separate redundant staff at their back-up locations, which would be costly and inefficient. Others advocate maintaining a back-up site with staff able to perform critical clearing and settlement activities routinely (through two or more active production sites) or on an emergency basis (*e.g.*, through cross-training staff). Commenters state that permitting firms to adopt a risk-based approach to planning geographically dispersed back-up arrangements would allow institutions to focus on those scenarios that pose the greatest threat and manage labor needs more effectively.

Most commenters agree that routine use or testing of back-up facilities is necessary and beneficial to ensure financial system viability. They also suggest that testing should be "end-to-end" involving telecommunication firms, third-party service providers, and securities exchanges.

A majority of commenters state that plans to meet sound practices could be developed within a year after the agencies issue their final views. There is general consensus that sound practices can be implemented over a relatively short (two to three year) time period, if the agencies provide sufficient flexibility to accommodate the unique risk profile and planning and investment cycles of each institution. Commenters note that extending implementation schedules would help to mitigate the costs of building greater resilience into business continuity arrangements, although there was also recognition that the post-September 11 risk environment requires that achievement of the sound practices needs to be accomplished within a reasonably short time frame by peer firms. Some commenters warn that strict application of the sound practices or establishment of minimum distance and staffing requirements could require firms to bear excessive costs with the result that some might exit particular markets, leading to further concentration, decreased liquidity, and higher overall costs for participants in those markets. Several commenters expressed concern that the sound practices might result in significant employment losses and other negative impacts on the economy and tax base of the New York City metropolitan area. Virtually all commenters state that the core clearing and settlement organizations should establish more aggressive implementation timetables than other firms. Commenters also recognize that firms should set implementation benchmarks in their plans to assess progress. Some commenters assert that the incremental cost of achieving the sound practices should be subsidized, all or in part, by the government.

The agencies have incorporated many of the suggestions that were made by the commenters. The revised paper is more succinct, and generally provides more flexibility to firms in managing geographic diversity of back-up facilities, staffing arrangements, and cost-benefit considerations. It also provides more specificity as to the scope of application of the sound practices as well as the implementation guidelines. No specific mileage requirements or technology solutions are mandated. Accordingly, the agencies are issuing this final version of the interagency paper on sound practices to strengthen the resilience of the U.S. financial system.

Interagency Paper on Sound Practices To Strengthen the Resilience of the U.S. Financial System

Introduction and Background

The Federal Reserve, the Office of the Comptroller of the Currency, and the Securities and Exchange Commission (the agencies) are issuing this *Interagency Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System* to advise financial institutions on steps necessary to protect the financial system in light of the new risks posed by the post-September 11 environment. The sound practices build upon long-standing principles of business continuity planning and reflect actions identified by industry members that will strengthen the overall resilience of the U.S. financial system in the event of a wide-scale disruption.

The agencies have identified broad industry consensus on three business continuity objectives that have special importance after September 11 for all financial firms. The agencies also have identified sound practices that focus on minimizing the immediate systemic effects of a wide-scale disruption on critical financial markets. The sound practices focus on the appropriate back-up capacity necessary for recovery and resumption of clearance and settlement activities for material open transactions in wholesale financial markets. They do not address the recovery or resumption of trading operations or retail financial services. The agencies are not recommending that firms move their primary offices, primary operating sites, or primary data centers out of metropolitan locations, and understand that there are important business and

[2] Many commenters state that the recovery of financial systems can only be achieved if the telecommunications infrastructure is up and running across the nation. Firms identify a number of industry efforts to explore common infrastructure issues and possible solutions to ensure diversity of circuit routing and other reliability issues. Commenters raising this issue ask the agencies to continue to raise the issue of telecommunications infrastructure resilience with federal and state agencies, including the Federal Communications Commission, the National Security Telecommunications Advisory Committee and the Department of Homeland Security. The agencies are taking numerous actions to help direct attention to improving the resilience of the telecommunications infrastructure.

internal control reasons for financial firms to maintain processing sites near financial markets and their own headquarters. The agencies also recognize that achieving the sound practices could be a multi-year endeavor for some firms and that it is not necessary or appropriate to prescribe any specific technology solution or limit a firm's flexibility to implement the sound practices in a manner that reflects its own risk profile. The sound practices discussed in this paper supplement the agencies' respective policies and other guidance on business continuity planning.

Post-September 11 Business Continuity Objectives

During discussions about the lessons learned from September 11, industry participants and others agreed that three business continuity objectives have special importance for all financial firms and the U.S. financial system as a whole:

- Rapid recovery and timely resumption of critical operations following a wide-scale disruption;
- Rapid recovery and timely resumption of critical operations following the loss or inaccessibility of staff in at least one major operating location; and
- A high level of confidence, through ongoing use or robust testing, that critical internal and external continuity arrangements are effective and compatible.

The events of September 11 underscored the fact that the financial system operates as a network of interrelated markets and participants. The ability of an individual participant to function can have wide-ranging effects beyond its immediate counterparties. Because of the interdependent nature of the U.S. financial markets, all financial firms have a role in improving the overall resilience of the financial system. It therefore is appropriate for all financial firms to review their business continuity plans and incorporate these three broad business continuity objectives to the fullest extent practicable. In striking an appropriate balance between the new set of risks posed in the post-September 11 environment and the costs involved in planning for wide-scale disruptions, financial firms should incorporate these new and continuing risks into their assessment of their unique characteristics and risk profiles. Firms also should continue to improve upon short-term measures that have been instituted since September 11 and develop longer-term business recovery plans where gaps are identified.

Definitions

The resilience of the U.S. financial system in the event of a "wide-scale disruption" rests on the rapid "recovery" and "resumption" of the "clearing and settlement activities" that support "critical financial markets." Some organizations, namely "core clearing and settlement organizations" and "firms that play a significant role in critical financial markets," present a type of "systemic risk" to the U.S. financial system should they be unable to recover or, in some instances, resume clearing and settlement activities that support those markets. These terms and organizations are defined below.

Wide-Scale Disruption. A wide-scale disruption is an event that causes a severe disruption or destruction of transportation, telecommunications, power, or other critical infrastructure components across a metropolitan or other geographic area and the adjacent communities that are economically integrated with it; or that results in a wide-scale evacuation or inaccessibility of the population within normal commuting range of the disruption's origin.

Systemic Risk. Systemic risk includes the risk that the failure of one participant in a transfer system or financial market to meet its required obligations will cause other participants to be unable to meet their obligations when due, causing significant liquidity or credit problems or threatening the stability of financial markets.[3] Given the complex interdependencies of markets and among participants, thorough preparations by key market participants will reduce the potential that a sudden disruption experienced by one or a few firms will cascade into market-wide liquidity dislocations, solvency problems, and severe operational inefficiencies.[4]

Critical Financial Markets. Critical financial markets provide the means for banks, securities firms, and other financial institutions to adjust their cash and securities positions and those of their customers in order to manage liquidity, market, and other risks to their organizations. Critical financial markets also provide support for the provision of a wide range of financial services to businesses and consumers in the United States. Certain markets, such as the federal funds and government securities markets, also support the implementation of monetary policy. For purposes of this paper, "critical financial markets" are defined as the markets for:

- Federal funds, foreign exchange, and commercial paper;
- U.S. Government and agency securities;
- Corporate debt and equity securities.

Core Clearing and Settlement Organizations. Core clearing and settlement organizations consist of two groups of organizations that provide clearing and settlement services for critical financial markets or act as large-value payment system operators and present systemic risk should they be unable to perform. The first group consists of market utilities (government-sponsored services or industry-owned organizations) whose primary purpose is to clear and settle transactions for critical markets or transfer large-value wholesale payments. The second group of core clearing and settlement organizations consists of those private-sector firms that provide clearing and settlement services that are integral to a critical market (*i.e.*, their aggregate market share is significant enough to present systemic risk in the event of their sudden failure to carry on those activities because there are no viable immediate substitutes).

Firms that Play Significant Roles in Critical Financial Markets. Firms that play significant roles in critical financial markets are those that participate (on behalf of themselves or their customers) with sufficient market share in one or more critical financial markets such that their failure to settle their own or their customers' material pending transactions by the end of the business day could present systemic risk. While there are different ways to gauge the significance of such firms in critical markets, as a guideline, the agencies consider a firm significant in a particular critical market if it consistently clears or settles at least five percent of the value of transactions in that critical market.

Recovery and Resumption of Clearing and Settlement Activities. The rapid recovery and resumption of critical financial markets, and the avoidance of potential systemic risk, requires the rapid recovery of clearing and settlement activities for the purpose of completing material pending transactions on their scheduled settlement dates. These clearing and settlement activities include:

[3] The use of the term "systemic risk" in this paper is based on the international definition of systemic risk in payments and settlement systems contained in "A glossary of terms in payment and settlement systems," Committee on Payment and Settlement Systems, Bank for International Settlements (2001).

[4] Under adverse market conditions or in the event of credit concerns about institutions, liquidity dislocations of the type experienced immediately after September 11 could be seriously compounded.

(a) Completing pending large-value payments;
(b) Clearing and settling material pending transactions;[5]
(c) Meeting material end-of-day funding and collateral obligations necessary to ensure the performance of items (a) and (b) above;
(d) Managing material open firm and customer risk positions, as appropriate and necessary to ensure the performance of items (a) through (c) above;
(e) Communicating firm and customer positions and reconciling the day's records, and safeguarding firm and customer assets as necessary to ensure the performance of items (a) through (d) above; and
(f) Carrying out all support and related functions that are integral to performing the above critical activities.

For purposes of this paper, the terms recovery (or recover) refers to the restoration of clearing and settlement activities after a wide-scale disruption;[6] resumption (or resume) refers to the capacity to accept and process new transactions and payments after a wide-scale disruption.

Sound Practices

The agencies have identified four broad sound practices for core clearing and settlement organizations and firms that play significant roles in critical financial markets. The sound practices are based on long-standing principles of business continuity planning in which critical activities are identified, a business impact analysis is conducted, and plans are developed, implemented, and tested. Adoption of the sound practices will help protect the financial system from the risks of a wide-scale disruption and reduce the potential that key market participants will present systemic risk to one or more critical markets because primary and back-up processing facilities and staffs are located within the same geographic region.

1. *Identify clearing and settlement activities in support of critical financial markets.* An organization should identify all clearing and settlement activities in each critical financial market in which it is a core clearing and settlement organization or plays a significant role. This assessment should include identification of activities or systems that support or are integrally related to the performance of clearing and settlement activities in those markets.

2. *Determine appropriate recovery and resumption objectives for clearing and settlement activities in support of critical markets.* For purposes of the sound practices, a recovery-time objective is the amount of time in which a firm aims to recover clearing and settlement activities after a wide-scale disruption with the overall goal of completing material pending transactions on the scheduled settlement date. Recovery-time objectives for clearing and settlement activities should be relatively consistent across critical financial markets. This promotes the compatibility of recovery plans and helps ensure that core clearing and settlement organizations and firms that play significant roles in critical financial markets will be able to participate in the financial system in times of wide-scale disruptions. Recovery-time objectives provide concrete goals to plan for and test against. They should not be regarded as hard and fast deadlines that must be met in every emergency situation. Indeed, the agencies recognize that various external factors surrounding a disruption such as time of day, scope of disruption, and status of critical infrastructure—particularly telecommunications—can affect actual recovery times.[7] Furthermore, recovery time objectives might not be achievable following a late-day disruption without an extension of normal business hours.

Market participants agree that core clearing and settlement organizations must meet more aggressive recovery-time objectives than firms that play significant roles in critical financial markets. This is because core clearing and settlement organizations are necessary to the completion of most transactions in critical markets; accordingly, they must recover and resume their critical functions in order for other market participants to process pending transactions and complete large-value payments. It also is reasonable to assume that there will be firms that play significant roles and other market participants in locations not affected by a particular disruption that will need to clear and settle pending transactions in critical markets. Therefore, core clearing and settlement organizations should plan both to *recover and resume* their processing and other activities that support critical markets. In light of the large volume and value of transactions/payments that are cleared and settled on a daily basis, failure to complete the clearing and settlement of pending transactions within the business day could create systemic liquidity dislocations, as well as exacerbate credit and market risk for critical markets. Therefore, core clearing and settlement organizations should develop the capacity to recover and resume clearing and settlement activities *within the business day on which the disruption occurs* with the overall goal of achieving recovery and resumption within two hours after an event.[8] Core clearing and settlement organizations also should develop plans for communicating with participants during a disruption to facilitate their rapid recovery.

The ability of firms that play significant roles in critical financial markets to recover clearing and settlement activities depends on the timing of the recovery of core clearing and settlement organizations for those markets. For planning purposes, firms should assume that core clearing and settlement organizations will recover and resume clearance and settlement activities within the business day of the disruption. Accordingly, firms that play significant roles in critical financial markets should plan to recover clearing and settlement activities for those markets as soon as possible after the core clearing and settlement organizations have recovered and resumed their operations and *within the business day on which a disruption occurs.* In some markets, such as wholesale payments, the banking industry has had long-established recovery benchmarks of four hours and the largest participants in the wholesale payments market have actively discussed the need for a two-hour recovery standard by such organizations. Firms that play significant roles in the other critical financial markets should strive to achieve a four-hour recovery time capability for clearing and settlement activities in order to ensure that they will be able to meet a within the business day recovery target.[9]

3. *Maintain sufficient geographically dispersed resources to meet recovery and resumption objectives.* Recovery of clearing and settlement activities within target times during a wide-scale disruption generally requires an appropriate level of geographic diversity between primary and back-up sites for back-office operations and data centers. The agencies do not believe it is necessary or appropriate to prescribe specific mileage requirements for geographically dispersed back-up sites. It is important for firms to retain flexibility in considering various approaches to establishing back-up arrangements that could be effective given a firm's particular risk profile. However, long-standing principles of business continuity planning suggest that back-up arrangements should be as far away from the primary site as necessary to avoid being subject to the same set of risks as the primary location. Back-up sites should not rely on the same infrastructure components (*e.g.*, transportation, telecommunications, water supply, and electric power) used by the primary site. Moreover, the operation of such sites should not be impaired by a wide-scale evacuation at or the inaccessibility of staff that service the primary site. The effectiveness of back-up arrangements in recovering from a wide-scale disruption should be confirmed through testing.

Core clearing and settlement organizations have the highest responsibility to develop resources that permit the recovery and resumption of clearing and settlement activities within the business day. Accordingly, these organizations should establish back-up facilities a significant distance away from their primary sites. Core clearing and settlement organizations that use synchronous back-up facilities or whose back-up sites depend primarily on the same labor pool as the primary site should address the risk that a wide-scale disruption could impact either or both of the sites and their labor pool. Such organizations should establish even more distant back-up arrangements that can recover and resume critical operations within the business day on which the disruption occurs.

Firms that play significant roles in critical financial markets should maintain sufficient geographically dispersed resources, including staff, equipment and data to recover clearing and settlement activities within the business day on which a disruption occurs. Firms may consider the costs and benefits of a variety of approaches that ensure rapid recovery from a wide-scale disruption.[10] However, if a back-up site relies largely on staff from the primary site, it is critical for the firm to determine how staffing needs at the back-up site would be met if a disruption results in loss or inaccessibility of staff at the primary site. Moreover, firms that use synchronous back-up facilities or whose back-up sites depend primarily on the same labor pool as the primary site should address the risk that a wide-scale disruption could impact either or both of the sites and their labor pools. As part of their ongoing planning process, firms with such back-up arrangements should strive to develop even more distant data back-up and operational resources that prove sufficient to recover clearing and settlement activities within the business day on which the disruption occurs. The business continuity planning process should take into consideration improvements in technology and business processes supporting back-up arrangements and the need to ensure greater resilience in the event of a wide-scale disruption. Interim steps a firm may take should be compatible with the objective of establishing even more distant back-up arrangements. The agencies expect that, as technology and business processes supporting back-up arrangements continue to improve and become increasingly cost effective, firms will take advantage of these developments to increase the geographic diversification of their back-up sites.

4. *Routinely use or test recovery and resumption arrangements.* One of the lessons learned from September 11 is that testing of business recovery arrangements should be expanded. It is critical for firms to test back-up facilities with the primary and back-up facilities of markets, core clearing and settlement organizations, and third-party service providers to ensure connectivity, capacity, and the integrity of data transmission. It also is important to test back-up arrangements with major counterparties and customers, as appropriate. Such testing ensures that recovery objectives are achievable and that staff and necessary external parties are sufficiently informed.

Core clearing and settlement organizations should periodically test recovery and resumption plans at all of their back-up sites. Test scenarios should include wide-scale disruptions that affect the accessibility of key staff; demonstrate the ability to recover and resume within the business day; and aim for a two-hour recovery time. Core clearing and settlement organizations should require participants to test connectivity between their primary and back-up sites and those of the core clearing and settlement organizations. They also may wish to consider organizing a broader industry stress test to ensure that recovery systems are consistently robust across critical market participants.

Firms that play significant roles in critical financial markets should routinely use or test their individual internal recovery and resumption arrangements for connectivity, functionality, and volume capacity. Firms that establish back-up sites within the current perimeter of synchronous back-up technology or that rely primarily on staff at the primary site should confirm that their plans would be effective if a wide-scale disaster affects both sites. Firms also are encouraged to take advantage of testing opportunities offered by markets, core clearing and settlement organizations and third-party service providers to ensure connectivity, capacity and the integrity of data transmission. Firms are encouraged to continue to work cooperatively with their core clearing and settlement organizations and trade associations to design and schedule appropriate industry tests to ensure the compatibility of individual recovery and resumption strategies across critical markets.

[5] Transactions in government securities include the purchase and sale of U.S. government bills, notes, bonds and agency securities (including mortgage-backed securities issued by Government Sponsored Enterprises), as well as repurchase and reverse repurchase agreements and triparty repurchase agreements involving U.S. government and agency securities.

[6] The goal of business recovery plans is the recovery of a particular activity or function and not the recovery of a disabled facility or system.

[7] A number of firms have expressed concerns about the resilience of telecommunications and other critical infrastructure, and the current limitations on an individual firm's ability to obtain verifiable redundancy of service from such carriers. Firms that establish geographically dispersed facilities can achieve additional diversity in their telecommunications and other infrastructure services, which will provide additional resilience in ensuring recovery of critical operations. A number of financial firms are sponsoring industry-wide efforts to explore common infrastructure issues and approaches.

[8] This includes recovery of clearance and settlement activities that would normally be performed by core clearing and settlement organizations and significant firms within a particular market's business hours on the day of the disruption. These activities include inputting material transaction data or payment instructions, and performing all steps necessary to clear and complete material transactions on their regular value or settlement dates.

[9] As markets and clearance and settlement systems move toward longer operating hours, there may be less flexibility to extend processing hours. This underscores the importance of achieving recovery time objectives within the business day's normal processing periods to the fullest extent possible. It also underscores the importance of ensuring that internal processes can be performed in the event that business hours are extended beyond midnight.

[10] Examples of such arrangements range from maintaining a fully operational geographically dispersed back-up facility for data and operations to utilizing outsourced facilities in which equipment, software, and data are stored for staff to activate. Firms are addressing critical staffing issues in various ways, such as cross training, utilizing staff at underused systems to share or shift loads, rotating employees off-site, and establishing work shifts. A number of firms use outsourced back-up solutions for recovering clearing and settlement activities and data storage. However, numerous commenters expressed concern about the small number of recovery facilities, their lack of geographic diversity and the cost of ensuring availability of facilities during a wide-scale disruption. Firms that use outsourced back-up solutions should take into consideration any heightened risks that could affect access to those facilities during a wide-scale disruption.

Implementation of Sound Practices

Cost-Benefit Considerations. The agencies recognize the importance of cost-effective business continuity planning. The costs associated with implementing the sound practices can vary substantially depending on the extent to which incremental improvements may be needed to address the risks of a wide-scale disruption. Some firms that play significant roles in critical markets may find that they need to implement only relatively minor improvements to their back-up arrangements. Other firms may find it necessary to adopt a more robust technology or upgrade software applications in order to achieve recovery objectives identified by the sound practices. To mitigate the costs of these enhancements, firms may wish to integrate them into the strategic planning process (*e.g.*, coordinate with planned enhancements to facilities, information system components and architecture, and business processes).

Firms should recognize that adoption of the sound practices will help to reassure their counterparties and customers that they can rapidly regain their ability to clear and settle transactions in critical markets. Similarly, firms participating in the financial system would enjoy greater assurance that critical market participants will be able to withstand a wide-scale disruption and meet their payment and settlement obligations, thereby minimizing the potential for cascading fails and resulting systemic risk. Firms report that market forces clearly recognize the interdependent nature of the financial system, and customers and counterparties increasingly expect firms to demonstrate their ability to continue operations should a wide-scale disruption occur.

Implementation by core clearing and settlement organizations. Core clearing and settlement organizations should continue their accelerated efforts to develop, approve, and implement plans that substantially achieve the sound practices by the end of 2004. Plans should provide for back-up facilities that are well outside of the current synchronous range that can meet within-the-business-day recovery targets. On a case-by-case basis, core clearing and settlement organizations can be given additional time to complete implementation of back-up facilities that are well outside the current synchronous range, so long as they take concrete, near-term steps that result in substantially improved resilience by the end of 2004. The amount of flexibility will be measured against factors such as board of directors and senior management's commitment to approved budgets, and adherence to aggressive timetables and interim milestones. Plans should include measurable milestones to assess progress in achieving the sound practices.

Implementation by firms that play significant roles in critical markets. Firms that play significant roles in critical financial markets should develop, approve and implement plans that call for substantial achievement of the sound practices as soon as practicable, but generally within three years of publication of this paper.[11] In some cases, a firm may find it in necessary to provide for a longer implementation period in light of its respective risk profile, level of resilience, and unique business circumstances. All plans should incorporate interim milestones against which progress can be measured and should provide for ongoing consideration of the costs and benefits of achieving greater geographic diversification of back-up facilities.

Role of Senior Management and Boards of Directors. The agencies believe, and industry participants confirm, that incorporation of the post-September 11 business continuity objectives and sound practices discussed in this paper raises numerous short- and long-term strategic issues that require continuing leadership and involvement by the most senior levels of management. These issues must be considered in light of a firm's dependencies on other market participants and the need to achieve a consistent level of resilience across firms. Boards of directors should review business continuity strategies to ensure that plans are consistent with the firm's overall business objectives, risk management strategies, and financial resources. Decisions about overall business continuity objectives should not be left to the discretion of individual business units.

Conclusion

After September 11, financial industry participants initiated a significant review of lessons learned with a view towards strengthening their business continuity plans. The agencies believe that it is important for financial firms to improve recovery capabilities to address the continuing, serious risks to the U.S. financial system posed by the post-September 11 environment. Financial industry participants have demonstrated a keen commitment to ensuring the continued viability of the U.S. financial system by strengthening their own business continuity plans to address the risk of a wide-scale disruption. Over the past year, significant short- and longer-term improvements have been made to business recovery plans. Financial industry participants recognize the importance of continuing senior management involvement in achieving the sound practices discussed in this paper. Firms also are participating in industry initiatives aimed at improving private-sector coordination and ensuring that business recovery plans are compatible and that an appropriate level of robustness is achieved among peers.

The agencies recognize that achievement of the sound practices could be a multi-year endeavor for some organizations and that it is not necessary or appropriate to prescribe any specific technology solution for implementing the sound practices. The agencies urge all financial system participants to continue efforts over the long term to ensure that critical U.S. financial markets have appropriately robust recovery capabilities and can respond to a wide-scale disruption by adopting the sound practices to the fullest extent practicable. Finally, the agencies encourage financial firms that are not deemed to be a core clearing and settlement organization or a firm that plays a significant role in critical markets to review and consider implementation of the sound practices, particularly if a firm's transactions levels approach those deemed to be significant.

By order of the Board of Governors of the Federal Reserve System, April 7, 2003.

Jennifer J. Johnson,

Secretary of the Board.

Dated: April 7, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

By the Securities and Exchange Commission.

Dated: April 7, 2003.

Margaret H. McFarland,

Deputy Secretary.

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[11] The agencies will contact each firm that appears to meet the market share thresholds and, if they conclude that the firm plays a significant role in one or more critical markets, will review the firm's plans for implementing the sound practices. The agencies also will monitor implementation of those plans.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects: Title: Implementation of the Head Start National Reporting System on Child Outcomes.

OMB No.: New collection.

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (DHHS) is requesting comments on plans to implement the Head Start National Reporting System on Child Outcomes. This implementation is being conducted to collect child outcomes information that will be used to enhance Head Start program quality and accountability.

The Head Start National Reporting System (HSNRS) has three major goals. First, the HSNRS will provide teachers and local programs with additional information regarding child progress by reporting on how children are doing at the beginning and end of the program in a limited number of areas. Second, the HSNRS will create a new national system of data on child outcomes from every local Head Start agency for use in planning targeted training and technical assistance services to strengthen program effectiveness. Third, the HSNRS child outcomes information will be used within Head Start Bureau monitoring of local Head Start agencies, to strengthen program accountability for outcomes.

This effort will ensure that every Head Start program will assess in a consistent fashion the progress made by every child in a limited set of early literacy, language, and numeracy skills. All Head Start children who are 4 years old or older will be administered a direct child assessment twice a year, the data analyzed, and the findings reported to the Head Start Bureau, ACF Regional Offices and local Head Start agencies. The HSNRS assessment is designed to create aggregate data on the progress of groups of children at the center and program levels. It is not designed to report on the school readiness of individual Head Start children.

Respondents: Head Start children and Head Start staff.

Annual Burden Estimates: Estimated Response Burden for Respondents to the Full National Implementation of the Head Start National Reporting System on Child Outcomes.

ESTIMATED ANNUAL RESPONSE BURDEN FOR RESPONDENTS TO IMPLEMENT THE HEAD START NATIONAL REPORTING SYSTEM ON CHILD OUTCOMES

Respondents and activities	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Children: Complete Direct Assessments	500,000	2	1/3	333,333
Head Start Staff: Administer Direct Assessments	36,000	17×2	1/3	408,000
Head Start Staff: Enter Child Demographic Information	36,000	17	1/30	20,400
Head Start Staff: Enter Teacher Background Information	36,000	1	1/60	600
Head Start Staff: Participating in Summer Training	3,000	1	24	72,000
Head Start Staff: Training Local Assessors for the Direct Child Assessment	3,000	1	20	60,000
Head Start Staff: Receiving Training for the Direct Child Assesssments	36,000	1	8	288,000
Head Start Local Training Staff: Fall Implementation Evaluation Form	3,000	2	1/12	500
Head Start Local Program Staff: Focus Groups	600	2	1	1,200
Head Start Local Program Staff: Interview	180	2	1	360
Spring Refresher Training (Home Study): Trainers	3,000	1	8	24,000
Spring Refresher Training (Home Study): Assessors	36,000	1	4	144,000
Totals Annualized				1,352,393

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Head Start Bureau, 330 C Street, SW., Room 2010, Switzer Building, Washington, DC 20447, Attn: Tom Schultz, by e-mail to *tschultz@acf.dhhs.gov,* or by telephone at 202–205–8323. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 8, 2003.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 03–9086 Filed 4–10–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management

and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Design for the Evaluation of the Maternal and Child Health Bureau, Bright Futures for Women's Health and Wellness Initiative and Preliminary Evaluation of Initial Products—New

The HRSA Office of Women's Health (OWH) is developing the Bright Futures for Women's Health and Wellness (BFWHW) Initiative to help expand the scope of women's preventive health activities, particularly related to nutrition and physical activity. A pilot test of the BFWHW health promotion tools and materials will be conducted in order to improve the effectiveness of the tools themselves, and to gather feedback on productive strategies for disseminating the tools for appropriate use to training providers and community organizations. Thus, the empirical findings from this pilot test will help shape the final BFWHW tool development. This data collection effort will ensure that the HRSA OWH develops targeted and effective tools for translating health prevention recommendations into nutrition and physical activity messages.

Toward this end, data will be collected from women patients, providers, and representatives of community organizations. Women patients ages 18 and over of various racial and ethnic backgrounds will complete questionnaires at three health centers in different geographic areas of the country. The health care providers at these same sites will also be asked to complete a brief questionnaire. Telephone interviews will be completed with representatives from community organizations located in the service areas of these health centers. The data collection period is estimated to last three weeks.

The estimated response burden is as follows:

Questionnaire	Number of respondents	Responses per respondent	Total responses	Minutes per response	Total burden hours
Woman Patient	2,400	1	2,400	.5	200
Provider	18	1	18	5	1.5
Administrator	3	1	3	45	8.25
Total	2,421		2,421		203.75

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 7, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–8902 Filed 4–10–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds

AGENCY: Health Resources and Services Administration (HRSA).

ACTION: Extension of time for application deadline.

SUMMARY: This notice extends the time that applications will be accepted for fiscal year 2003 for the National Health Service Corps (NHSC) Loan Repayment Program. An August 9, 2002 **Federal Register** notice (67 FR 52049) announced that applications must be postmarked no later than March 28, 2003. The deadline for applications has been extended to April 18, 2003. Applications must be mailed to Division of National Health Service Corps, NHSC Loan Repayment Program, c/o I.Q. Solutions, 11300 Rockville Pike, Suite 801, Rockville, MD 20852, postmarked no later than April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Kay Cook, National Health Service Corps, Bureau of Health Professions, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 594–4400 (*kcook@hrsa.gov*)

Dated: April 8, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–8972 Filed 4–8–03; 4:07 pm]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request: Electroencephalogram (EEG) and Event-Related Potential (ERP) Intermediate Phenotypes for Alcoholism in a Low Prevalance American Indian Tribe

Summary: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below.

This proposed information collection was previously published in the **Federal Register** on October 16, 2002, page 63934 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Electroencephalogram (EEG) and Event-Related Potential (ERP) intermediate phenotypes for alcoholism in a low prevalance American Indian tribe. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* An extensive data set has already been collected by the Laboratory of Neurogenetics, NIAAA, on 294 members of a Southeastern American Indian tribe. We propose to re-contact these individuals to collect additional information. Approximately 100 of the original participants were originally selected as a representative sample of the population. The remaining 194 individuals are family members of alcoholic probands from the population sample. We propose the expand the study to collect (a) measures of intermediate phenotypes for alcoholism and (b) survey-based selected personality characteristics from the same tribal members, Intermediate phenotypes are biological traits that may be influenced by variation at fewer genes and may mediate different aspects of the disease. The intermediate phenotype measurements that we will collect include resting EEG phenotypes (log voltae alpha (LVA) and beta spectral power), ERPs and heart rate variability (HRV). LVA has been found to be more abundant in alcoholics with co-morbid anxiety disorders. Increased beta power has been associated with increased risk of relapse. P300 ERP amplitude is reduced in alcoholics and their alcohol-naïve children. HRV is a potential intermediate phenotype for alcoholism and major depression. We also propose to administer the Temperament and Character Inventory, a standard, survey-based measure of harm avoidance, novelty seeking, reward dependence, and persistence. The use of such intermediate phenotypes and personality measures is likely to increase our ability to find vulnerability genes for alcoholism. We will use these EEG and EKG intermediate phenotypes and personality dimensions in (1) candidate gene analyses and (2) linkage analyses, utilizing the existing DNA, in order to determine the genes that increase an individuals's risk for alcoholism and anxiety disorders.

The re-recruitment of the original study participants will start in spring 2003. The study is expected to run for 6 months. *Frequency of response:* Once per respondent. *Affected Public:* Individuals. *Type of Respondents:* Adults members of the Southeastern American Indian tribe who were participants in the original study.

The annual reporting burden is as follows: *Estimated Number of Respondents:* It is estimated, after a survey by tribal members, that we will be able to re-recruit approximately 280 of the 294 original participants. *Estimated Number of Responses per Respondent:* One response per respondent. *Average Burden Hours per Response:* Three hours per individual, for a total respondent burden of 840 hours. *Estimated Total Annual Burden Hours Requested:* 840 hours. There are no Costs to Respondents to report. There are no Capital Costs to report. There are no Operating or Maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways, to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Mary-Anne Enoch M.D., NIH/NIAAA/DICBR/LNG, 12420 Parklawn Drive, Park 5 Building, Room 451, MSC 8110, Bethesda, MD 20892–8110, or e-mail your request to: *maenoch@niaaa.nih.gov*. Dr. Enoch can be contacted by telephone at 301–496–2727.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: February 14, 2003.

Stephen Long,

Executive Officer, NIAAA.

[FR Doc. 03–8862 Filed 4–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clear unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Early Clinical Trials of Imaging Agents.

Date: May 2, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892. (301) 496–7576. *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8858 Filed 4–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ndme of Committee: National Cancer Institute Special Emphasis Panel, Spores in Skin Cancer.

Date: May 15–16, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select, 8120 Wisconsin Avenue, Bethesda, MD 20892.

Contact Person: Brian Wojcik, Phd, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Cancer Institute, 6116 Executive Boulevard, Room 8019, Bethesda, MD 20892, 301/402–2785.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8859 Filed 4–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis panel, Review of NIH–ES–03–02 Contract Proposals.

Date: May 7, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, PO Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel. Review of NIH–ES–03–09 Contract Proposals.

Date: May 29, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709.

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, PO Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8860 Filed 4–10–03; 8:45 am]

BILLING CODE 4140–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumor Immunology.

Date: April 15, 2003.

Time: 11 a.m. to 12:01 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892. (301) 435–1152. *edwardss@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN Bioengineering Meeting.

Date: April 18, 2003.

Time: 8 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892. (301) 435–1251. *bannerc@drg.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunological Effects and Detection of Anthrax.

Date: April 23, 2003.

Time: 5 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Samuel C. Edwards, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7812, Bethesda, MD 20892. (301) 435–1152. *edwardss@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VISB (02) M Vision Disabilities Study Section.

Date: April 28, 2003.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Christine Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892. (301) 435–1713. *melchioc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Therapy.

Date: April 30, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892. (301) 435–1718. *perkinsp@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306, 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893 National Institutes of Health, HHS)

Dated: April 4, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–8861 Filed 4–10–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Mandatory Guidelines for Federal Workplace Drug Testing Programs (0930–0158, revision)—SAMHSA is requesting renewal of OMB approval for the Federal Drug Testing Custody and Control Form for Federal agency and Federally regulated drug testing programs which must comply with the HHS Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29908) dated June 9, 1994, and for the information provided by laboratories for the National Laboratory Certification Program (NLCP).

The Federal Drug Testing Custody and Control Form is used by all Federal agencies and employers regulated by the Department of Transportation to document the collection and chain of custody of urine specimens at the collection site, for laboratories to report results, and for Medical Review Officers to make a determination. The Federal Drug Testing Custody and Control Form approved by OMB three years ago is being submitted for OMB approval without any revision.

Prior to an inspection, a laboratory is required to submit specific information regarding its laboratory procedures. A major change in the submitted information requires a laboratory to provide specific information on its specimen validity testing procedures. Since all certified laboratories are expected to have the capability to conduct specimen validity tests on regulated specimens, collecting this information prior to an inspection allows the inspectors to thoroughly review and understand the laboratory's specimen validity testing procedures before arriving at the laboratory.

The NLCP application form is being revised compared to the previous form. The major change in the NLCP application form includes, where appropriate in each section, a request for specific information on the applicant laboratory's ability to conduct specimen validity testing (*i.e.*, determining if a specimen is adulterated or substituted). Since all certified laboratories are expected to have the capability to conduct specimen validity tests on regulated specimens, it is necessary to ensure that each applicant laboratory has the same capability before being certified.

The annual total burden estimates for the Federal Drug Testing Custody and Control Form, the NLCP application, the NLCP inspection checklist, and NLCP recordkeeping requirements are shown in the following table.

Form/respondent	Burden/ response (hours)	Number of responses	Total annual burden (hours)
Custody and Control Form:			
Donor	.08	7,096,000	567,680
Collector	.07	7,096,000	496,720
Laboratory	.05	7,096,000	354,800
Medical Review Officer	.05	7,096,000	354,800
Laboratory Application	3.00	3	9
Laboratory Inspection Checklist	3.00	110	330
Laboratory Recordkeeping	250.00	55	13,750
Total			1,788,089

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 4, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–8888 Filed 4–10–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of a Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in April 2003.

The SAMHSA National Advisory Council meeting will be open and will include a report by the SAMHSA Administrator on policy and program issues, discussions on SAMHSA's Center for Substance Abuse Prevention, Center for Substance Abuse Treatment, and Center for Mental Health Services policy issues, program developments and new program initiatives, a discussion on FY 2003 appropriation issues, a Budget Update, and a update on improvements in SAMHSA. There will also be presentations on SAMHSA's data collection projects and on SAMHSA's science to services initiative.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed

as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained either by accessing the SAMHSA Council Web site, *http://www.samhsa.gov/council/council* or by communicating with the contact whose name and telephone number is listed below.

Committee Name: SAMHSA National Advisory Council.

Date/Time: Thursday, April 24, 2003, 9 a.m. to 5:30 p.m. (open); Friday, April 25, 2003, 9 a.m. to 12:30 p.m. (open).

Place: Embassy Suites Hotel, Chevy Chase Room, 4300 Military Road, NW., Washington, DC 20015.

Contact: Toian Vaughn, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 12C–05, Rockville, MD 20857. Telephone: (301) 443–7016; FAX: (301) 443–7590 and e-mail: *TVaughn@samhsa.gov*.

Dated: April 4, 2003.

Toian Vaughn,

Committee Management Officer, SAMHSA.

[FR Doc. 03–8854 Filed 2–10–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1422–DR]

Arizona; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Arizona, (FEMA–1422–DR), dated June 25, 2002, and related determinations.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Arizona is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 25, 2002:

Navajo County for emergency protective measures (Category B) under the Public Assistance program (already designated for Public Assistance Categories A, Debris Removal; C, Roads and Bridges; E, Buildings and Equipment; F, Utilities and Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8879 Filed 4–10–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1454–DR]

Kentucky; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1454–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003: Anderson, Clay, Elliot, Estil, Knox, Lawrence, Magoffin, Mason, Menifee, Morgan, Nicholas, Powell, Rowan, and Woodford Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8881 Filed 4–10–03; 8:45 am]

BILLING CODE 6718–02–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1454–DR]

Kentucky; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–1454–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003: Casey County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8882 Filed 4–10–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3184–EM]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3184–EM), dated March 27, 2003, and related determinations.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 27, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of New York, resulting from the record/near record snow on February 17–18, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Peter Martinasco, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared emergency:

The counties of Albany, Broome, Chenango, Columbia, Delaware, Dutchess, Greene, Nassau, Orange, Putnam, Rockland, Schenectady, Schoharie, Suffolk, Sullivan, Ulster and Westchester Counties, and New York City for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8877 Filed 4–10–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1457–DR]

North Carolina; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1457–DR), dated March 27, 2003, and related determinations.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 27, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of North Carolina, resulting from an ice storm on February 27–28, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Michael Bolch, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

Alamance, Caswell, Forsyth, Granville, Guilford, Orange, Person, Rockingham, and Stokes Counties for Public Assistance.

All counties in the State of North Carolina and the Eastern Band of the Cherokee Indians are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance

Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8886 Filed 4–10–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1453–DR]

Ohio; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio, (FEMA–1453–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 1, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003:

Gallia and Meigs Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8880 Filed 4–10–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3182–EM]

Rhode Island; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Rhode Island (FEMA–3182–EM), dated March 27, 2003, and related determinations.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 27, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of Rhode Island, resulting from record/near record snow on February 17–18, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Rhode Island.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under Title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 48 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Rhode Island to have been affected adversely by this declared emergency:

Providence and Washington Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8876 Filed 4–10–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1458–DR]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1458–DR), dated March 27, 2003, and related determinations.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 27, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia, resulting from a severe winter storm, record/near record snowfall, heavy rain, flooding, and mudslides on February 15–28, 2003, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas, emergency assistance (emergency protective measures Category B under the Public Assistance program) for a period of 48 hours in the designated areas, and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justo Hernandez, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Virginia to have been affected adversely by this declared major disaster:

Buchanan, Dickenson, Montgomery, Russell, Tazewell, and Wise Counties and the cities of Norton, Roanoke and Salem for Individual Assistance.

Arlington, Clarke, Fairfax, Fauquier, Frederick, Highland, Loudoun, Orange, and Rappahannock Counties and the cities of Alexandria, Fairfax, Falls Church, and Winchester for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

All counties within the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8887 Filed 4–10–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1455–DR]

West Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia, (FEMA–1455–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003:

Calhoun, Greenbrier, Mason, McDowell, Mercer, Nicholas, Raleigh, Upshur, Webster, and Wyoming Counties for Individual Assistance (already designated for Public Assistance).

Fayette County for Individual Assistance.

Boone, Summers, Tyler, and Wetzel Counties for Public Assistance.

Kanawha County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8883 Filed 4–10–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1455–DR]

West Virginia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of West Virginia (FEMA–1455–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: March 27, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003: All counties in the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8884 Filed 4–10–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1455–DR]

West Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia, (FEMA–1455–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: March 28, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective March 28, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–8885 Filed 4–10–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Federal Radiological Preparedness Coordinating Committee Meeting

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Federal Radiological Preparedness Coordinating Committee (FRPCC) advises the public that the FRPCC will meet on April 23, 2003, in Washington, DC.

DATES: The meeting will be held on April 23, 2003, at 9 a.m.

ADDRESSES: The meeting will be held at FEMA's Lobby Conference Center, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Pat Tenorio, FEMA, 500 C Street, SW., Washington, DC 20472, telephone (202) 646–2870; fax (202) 646–4321; or e-mail *pat.tenorio@fema.gov*.

SUPPLEMENTARY INFORMATION: The role and functions of the FRPCC are described in 44 CFR 351.10(a) and 351.11(a). The Agenda for the upcoming FRPCC meeting is expected to include: (1) Introductions, (2) Federal agencies' updates, (3) reports from FRPCC subcommittees, (4) old and new business, and (5) business from the floor.

The meeting is open to the public, subject to the availability of space. Reasonable provision will be made, if time permits, for oral statements from the public of not more than five minutes in length. Any member of the public who wishes to make an oral statement at the April 23, 2003, FRPCC meeting should request time, in writing, from W. Craig Conklin, FRPCC Chair, FEMA, 500 C Street, SW., Washington, DC 20472. The request should be received at least five business days before the meeting. Any member of the public who wishes to file a written statement with the FRPCC should mail the statement to: Federal Radiological Preparedness Coordinating Committee, c/o Pat Tenorio, FEMA, 500 C Street, SW., Washington, DC 20472.

W. Craig Conklin,

Director, Technological Services Division, Office of National Preparedness, Federal Emergency Management Agency, Chair, Federal Radiological Preparedness Coordinating Committee.

[FR Doc. 03–8878 Filed 4–10–03; 8:45 am]

BILLING CODE 6718–06–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–15]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234, TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this notice according to the following categories: Suitable/available suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expression of interest as soon as possible. For complete details concerning the processing of application, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Marsha Pruitt, Department of Agriculture, Reporters Building, 300 7th Street, SW., Room 310B, Washington, DC 20250; (202) 720–4335; *Energy:* Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of the Property Disposal, 18th and F Streets, NW., Washington, DC 20450; (202) 501–0052; *Interior:* Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; *Navy:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: April 3, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM, FEDERAL REGISTER REPORT FOR 4/11/03

Suitable/Available Properties

Buildings (by State)

Iowa

Fed. Bldg./Bldg. 87
6921 Chaffee Road
Ft. Des Moines Co: Polk IA 50315–
Landholding Agency: GSA
Property Number: 54200310022
Status: Surplus
Comment: 8375 sq. ft., presence of asbestos, most recent use—storage
GSA Number: 7–G–IA–501

Post Office/Fed. Bldg.
101 Parkside
West Branch Co: Cedar IA 52358–
Landholding Agency: GSA
Property Number: 54200310023
Status: Surplus
Comment: 9500 sq. ft.
GAS Number: 7–G–IA–505

New Jersey

Warren Property
Jenks Hill Road
Harding Co: Morris NJ 07960–
Landholding Agency: Interior
Property Number: 61200310019
Status: Unutilized
Comment: 4066 sq. ft., needs major rehab, presence of asbestos/lead paint, off-site use only

Pennsylvania

Marienville Ranger Ofc.
Rte 66
Marienville Co: PA 16239–
Landholding Agency: Agriculture
Property Number: 15200310001
Status: Excess
Comment: 1792 sq. ft., presence of asbestos, most recent use—office, considerable relocation costs, off-site use only

Texas

Tract 104–47
San Antonio Missions
8902 Graaf Road
San Antonio Co: Bexar TX 78223–
Landholding Agency: Interior
Property Number: 61200310003
Status: Unutilized
Comment: 1379 sq. ft., Historic District, off-site use only

Virginia

Bldg. 1443 & Adj. Bldg.
NSS Norfolk Naval Shipyard
Portsmouth Co: VA 23704–
Landholding Agency: Navy
Property Number: 77200310060
Status: Excess
Comment: approx. 400 sq. ft. each, most recent use—storage, off-site use only

Unsuitable Properties

Buildings (by State)

California

Bldg. 6255
National Park
Yosemite Co: Tuolumne CA
Landholding Agency: Interior
Property Number: 61200310004
Status: Unutilized
Reason: Extensive deterioration

Residence #811
Cascades
Yosemite Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 61200310005
Status: Unutilized
Reason: Extensive deterioration

Residence #812
Cascades
Yosemite Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 61200310006
Status: Unutilized
Reason: Extensive deterioration

Residence #813
Cascades
Yosemite Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 61200310007
Status: Unutilized
Reason; Extensive deterioration

Residence #814
Cascades
Yosemite Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 61200310008
Status: Unutilized
Reason; Extensive deterioration

Residence #815
Cascades
Yosemite Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 61200310009
Status: Unutilized
Reason; Extensive deterioration

Residence #816
Cascades
Yosemite Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 61200310010
Status: Unutilized
Reason: Extensive deterioration

Residence #817
Cascades
Yosemite Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 61200310011
Status: Unutilized
Reason: Extensive deterioration

Residence #818
Cascades
Yosemite Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 61200310012
Status: Unutilized
Reason: Extensive deterioration

Residence #819
Cascades
Yosemite Co: Mariposa CA 95318–

Landholding Agency: Interior
Property Number: 61200310013
Status: Unutilized
Reason: Extensive deterioration

Residence #820
Cascades
Yosemite Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 61200310014
Status: Unutilized
Reason: Extensive deterioration

Residence #821
Cascades
Yosemite Co: Mariposa CA 95318–
Landholding Agency: Interior
Property Number: 61200310015
Status: Unutilized
Reason: Extensive deterioration

Colorado

Boker/Tract 01–138
20632 Trail Ridge
Grand Lake Co: Grand CO 80447–
Landholding Agency: Interior
Property Number: 61200310016
Status: Unutilized
Reason: Extensive deterioration

Boker/Tract 01–138
20633 Trail Ridge
Grand Lake Co: Grand CO 80447–
Landholding Agency: Interior
Property Number: 61200310017
Status: Unutilized
Reason: Extensive deterioration

Florida

Bldg. 292
Naval Air Facility
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77200310058
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1481
Naval Air Station
Milton Co: FL 32570–6001
Landholding Agency: Navy
Property Number 77200310059
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, secured area, extensive deterioration

Louisiana

Mamolo Property,
National Park,
Marrero Co: Jefferson LA 70072–
Landholding Agency: Interior.
Property Number: 61200310018.
Status: Excess.
Reason: Extensive deterioration.

New Mexico

Trailer #S–8,
Chaco Culture NHP,
Nageezi Co: San Juan NM 87037–
Landholding Agency: Interior.
Property Number: 61200310020.
Status: Unutilized.
Reason: Extensive deterioration.

Texas

5 Bldgs.
Pantex Plant.
Amarillo Co: Carson TX 79120–
Location: 12–091, 15–023, 15–023A, 16–006, FS–008
Landholding Agency: Energy
Property Number: 41200310021
Status: unutilized.
Reasons: Within 2000 ft. of flammable or explosive material, secured Area.

Tract No. 112–15
Big Thicket Nat'l Preserve
Livingston Co: Polk TX 77351–
Landholding Agency: Interior
Property Number: 61200310021
Status: Unutilized
Reason: Extensive deterioration

[FR Doc. 03–8548 Filed 4–10–03; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–040–03–5101–ER–F336; N–74943]

Notice of Availability of the Proposed Toquop Land Disposal Amendment to the Caliente Management Framework Plan and Final Environmental Impact Statement for the Toquop Energy Project

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the proposed Toquop Land Disposal Amendment to the Caliente Management Framework Plan (MFP) and Final Environmental Impact Statement (FEIS) for the Toquop Energy Project.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, an FEIS has been prepared by the Bureau of Land Management (BLM), Ely Field Office, for the Toquop Energy Project. The FEIS was prepared to evaluate the effects of amending the Caliente Management Framework Plan to identify specific sections of land as available for disposal through sale or exchange, effects of an exchange of 640 acres in the Toquop area for 640 acres in the Pah Rah area, and to analyze the impacts of issuing a right-of-way for the construction and operation of a natural gas fired electric power generating plant and associated facilities on public land currently administered by the Ely and Las Vegas Field Offices of the BLM.

DATES: The Proposed Toquop Land Disposal Amendment to the Caliente Management Framework Plan and Final Environmental Impact Statement for the Toquop Energy Project is available for a 30-day protest period starting from the date the Environmental Protection Agency (EPA) publishes its NOA in the **Federal Register**. Copies of the FEIS will be mailed to individuals, agencies, or companies who previously requested copies. Instructions for filing protests are contained in the Final Environmental Impact Statement document cover sheet just inside the front cover, and are included below under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Public reading copies of the FEIS will be available for reading at public libraries: Caliente Branch Library; Clark County Library; Las Vegas Public Library; Lincoln County Library; Mesquite Library; North Las Vegas Library; Panaca High School Library; University of Nevada-Las Vegas; James R. Dickinson Library Documents Department; University of Nevada-Reno; Getchell Library Government Publication Dept.; Washoe County Library; White Pine County Library. A limited number of copies of the document will be available at the following BLM offices: BLM Nevada State Office, Las Vegas Field Office, Caliente Field Station, and Ely Field Office.

FOR FURTHER INFORMATION CONTACT: Gene A. Kolkman, Field Manager, Bureau of Land Management, Ely Field Office, 702 N. Industrial Way, Ely, Nevada 89301–9408; telephone (775) 289–1800.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency published the notice of availability of the Draft EIS (DEIS) on May 31, 2002. The public comment period on the DEIS ended August 29, 2002. The FEIS addresses alternatives to resolve the following major issues: ground water resources, air quality, economic benefits, and desert tortoise habitat.

This proposed Toquop Land Disposal Amendment to the Caliente MFP and FEIS for the Toquop Energy Project evaluates the environmental effects that would result from issuance of a right-of-way for the construction of the proposed Toquop Energy electric power generating plant. This 1,100-megawatt (MW) natural gas-fired and water-cooled power plant and associated features would be located on public lands in Lincoln County and Clark County, southern Nevada, that are presently managed by the Ely and Las Vegas Field Offices of the U.S. Bureau of Land Management (BLM). The power plant site for the proposed action is approximately 50 miles south-southeast of Caliente, Nevada, and 12 miles northwest of Mesquite, Nevada. An alternative power plant site located in the Tule Desert approximately 12 miles north-northwest of the Toquop Wash plant site and an alternative air-cooled plant located at the Toquop Wash plant site are evaluated. This document also evaluates the effects of amending the Caliente MFP, which would identify specific sections of land as available for disposal. This action would be needed to dispose of 640 acres in the Toquop area through sale or exchange. This document also evaluates the effects of an exchange of 640 acres in the Toquop area for 640 acres of private land located in the Pah Rah Range in Washoe County in northwestern Nevada. Federal actions addressed in the accompanying document are the BLM's issuance of rights-of-way needed to construct and operate the Toquop Energy Project and an amendment of the Caliente MFP to identify specific public lands as available for disposal through sale or facilitation of a land exchange as it relates to the proposed project. This Final EIS satisfies the National Environmental Policy Act, which mandates that federal agencies analyze the environmental consequences of major undertakings. The agency preferred alternative is the selected alternative for the proposed plan and Final EIS. The preferred alternative includes a proposed Toquop Land Disposal Amendment to the Caliente MFP, water-cooled power plant, western utility alignment ROW, wellfield ROW, and access road ROW, southern power plant site ROW, Toquop land disposal (southern parcel) through exchange. In addition to the proposed action, three other alternatives were developed for the Toquop Land Disposal Amendment to the Caliente MFP and Toquop Energy Project. The document contains a summary of the decisions and resulting impacts, an overview of the planning process and planning issues, the Proposed Plan Amendment, comment letters and responses and verbal comments received during public review of the Draft Plan Amendment and Toquop Energy Project, and responses to the substantive issues raised during the review.

The proposed Toquop Land Disposal Amendment to the Caliente Management Framework Plan may be protested by any person who participated in the planning process, and who has an interest which is or may be, adversely affected by the approval of the proposed plan amendment. A protest may raise only those issues which were submitted for the record during the planning process (*see* 43 Code of Federal Regulations 1610.5–2). The protest shall contain the following information:

- The name, mailing address, telephone number, and interest of the person filing the protest.
- A statement of the issue or issues being protested.
- A statement of the part or parts of the document being protested.
- A copy of all documents addressing the issue or issues previously submitted during the planning process by the protesting party, or an indication of the date the issue or issues were discussed for the record.
- A concise statement explaining precisely why the Bureau of Land Management, Nevada State Directors's decision is wrong.

Upon resolution of any protests, an Approved Plan Amendment and Record of Decision will be issued for the plan amendment. The Approved Plan Amendment/Record of Decision will be mailed to all individuals who participated in this planning process and all other interested public upon their request.

Mailing address for filing a protest:

Regular Mail

Director (210), Attn: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail

U.S. Department of the Interior, Director, Bureau of Land Management, Protest Coordinator (WO–210), 1620 "L" Street, NW., Rm 1075, Washington, DC 20036.

Dated: February 14, 2003.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 03–8798 Filed 4–10–03; 8:45 am]
BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period May 1, 2003, through October 31, 2003. The List of Restricted Joint Bidders published October 31, 2002, in the **Federal Register** at 67 FR 66416 covered the period November 1, 2002, through April 30, 2003.

Group I. Exxon Mobil Company

ExxonMobil Exploration Corporation.

Group II. Shell Oil Company

SWEPILP.
Shell Frontier Oil and Gas Inc.
Shell Consolidated Energy Resources Inc.
Shell Land and Energy Company.
Shell Onshore Ventures Inc.
Shell Offshore Properties and Capital II, Inc.
Shell Rocky Mountain Production LLC.
Shell Gulf of Mexico Inc.

Group III. BP America Production Company

Amoco Production Company.
BP Exploration and Production Inc.
BP Exploration (Alaska) Inc.

Group IV. TotalFinaElf E&P USA, Inc.

Group V. ChevronTexaco Corporation

Chevron U.S.A. Inc.
Texaco Exploration and Production Inc.
Texaco Production Inc.

Dated: March 21, 2003.

Johnnie Burton,

Director, Minerals Management Service.

[FR Doc. 03–8923 Filed 4–10–03; 8:45 am]
BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Delaware Water Gap National Recreation Area Citizen Advisory Commission Meeting

AGENCY: National Park Service; Interior.

ACTION: Notice of meeting; correction.

SUMMARY: The National Park Service published a document in the **Federal Register** of December 3, 2002, concerning public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. The dates, time and location for two of those meetings have been changed (one meeting has already been held as scheduled).

Correction

In the **Federal Register** of December 3, 2002, volume 67, page 71985, concerning public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commisison, the dates, time and location of two of the meetings have been changed:

SUMMARY: This notice announces public meetings of the Delaware Water Gap National Recreation Area Citizen Advisory Commission. Notice of these

meetings is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Correction

Meeting Date and Time: Thursday, April 24, 2003 at 6 p.m.,

Address: Walpack Valley Environmental Education Center, Walpack, New Jersey 07881.

The agenda for this meeting will consist of Commission reports which typically include natural resources, recreation, and historic structures. The Superintendent will provide reports on park issues and items of interest brought forth by the Commission and the public. The agenda is set up to invite the public to bring issues of interest before the Commission.

Meeting Date and Time: Thursday, April 24, 2003 immediately following previous meeting,

Address: Walpack Valley Environmental Education Center, Walpack, New Jersey 07881.

The agenda for this meeting will consist of the annual Commission meeting and election of officers for 2003–2004.

SUPPLEMENTARY INFORMATION: The Delaware Water Gap National Recreation Area Citizen Advisory Commission was established by Pub. L. 100–573 to advise the Secretary of the Interior and the United States Congress on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

FOR FURTHER INFORMATION, CONTACT: Superintendent, Delaware Water Gap National Recreation Area, Bushkill, PA 18324, (570) 588–2418.

Dated: January 14, 2003.

William G. Laitner,

Superintendent.

[FR Doc. 03–8937 Filed 4–10–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OJP(BJS)–1370]

2003 Sample Survey of Law Enforcement Agencies

AGENCY: Bureau of Justice Statistics, Office of Justice Programs, Justice.

ACTION: Notice of solicitation.

SUMMARY: The purpose of this notice is to announce a public solicitation to obtain a data collection agent for the 2003 Sample Survey of Law Enforcement Agencies.

DATES: Proposals must be received at the Bureau of Justice Statistics (BJS) on or before 5 p.m. EST, May 12, 2003 or be postmarked on or before May 12, 2003.

ADDRESSES: Proposals should be sent to Application Coordinator, Bureau of Justice Statistics, 810 Seventh Street, NW., Washington, DC 20531; T: (202) 616–3497. Due to recent interruptions in mail service, it is recommended that applicants fax (202) 616–1351), e-mail (*hickmanm@ojp.usdoj.gov*), use a professional delivery service (*e.g.*, FedEx, UPS, etc.), or personally deliver applications, to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: Matthew Hickman, Statistician, Bureau of Justice Statistics, 810 Seventh Street, NW., Washington, DC 20531; Phone (202) 353–1631 (This is not a toll free number); Email: *hickmanm@ojp.usdoj.gov*.

Authority: 42 U.S.C. 3732.

SUPPLEMENTARY INFORMATION:

Program Goals

The purpose of this award is to provide funding to administer the 2003 Sample Survey of Law Enforcement Agencies (SSLEA). This data collection is part of the Law Enforcement Management and Administrative Statistics (LEMAS) program, a recurring survey series that collects information from a nationally representative sample of law enforcement agencies. The survey will obtain information about law enforcement personnel, equipment, policies and programs, operations, terrorism/mass disaster response, computers and information systems, and other topics. The initial survey instrument and respondent list will be provided by the Bureau of Justice Statistics (BJS). It is anticipated that approximately 2,000 respondents will answer a 4-page questionnaire, and an additional 1,000 respondents will answer an 8-page questionnaire.

BJS anticipates making one award for a 12-month period under this solicitation.

Background

The LEMAS program is currently the most systematic and comprehensive source of national data on law enforcement personnel, expenditures and pay, operations, equipment, computers and information systems, and policies and procedures. Findings from the LEMAS program are designed to provide a broad picture of the current state of law enforcement in America, as well as to document both existing and emerging trends. Previous LEMAS surveys have been conducted in 1987, 1990, 1993, 1997, 1999, and 2000. Datasets and reports for these prior collections are available on the BJS Web site at *http://www.ojp.usdoj.gov/bjs*. Recently released reports from the latest survey are available from the BJS Web site, Local Police Departments, 2000, at *http://www.ojp.usdoj.gov/bjs/abstract/lpd00.htm*, and Sheriffs' Offices, 2000, at *http://www.ojp.usdoj.gov/bjs/abstract/so00.htm*.

The 2003 survey will add to the existing series by including questions related to terrorism/mass disaster response, and other current topic areas. This will provide important information for the development and expansion of law enforcement activity, and the information will be useful for policy-makers engaged in research, planning, and budgeting.

Eligibility Requirements

Both profit-making and nonprofit organizations may apply for funds. Consistent with OJP fiscal requirements, however, no fees may be charged against the project by profit-making organizations.

Scope of Work

The objective of this project is to complete data collection for the 2003 Sample Survey of Law Enforcement Agencies. This includes extensive follow-up, data verification, coding and data entry, and delivery of a final data set and documentation. The initial survey instrument and respondent list will be provided by BJS. Specifically, the recipient of funds will:

1. Develop a detailed timetable for each task in the project. Data collection should begin within three months of the project start and be completed within twelve months. After the BJS project manager has agreed to the timetable, all work must be completed as scheduled.

2. Conduct a pre-test of the survey instrument in a minimum of five sites to assure that survey items are perceived by respondents as intended and can be provided in a timely manner. This task will be performed with participation of BJS staff.

3. Mail surveys to respondents and provide extensive follow-up to respondents that require help, clarification, or encouragement to complete the survey. This may involve multiple follow-up telephone calls, re-mailing or re-faxing surveys, e-mail correspondence, and site visits where necessary.

4. Develop an Internet-based or other electronic transmission option for responding to the survey.

5. Implement and maintain an automated system to provide ongoing status of each survey respondent, complete documentation, and an inventory of follow-up communication and procedures for each case. This automated tracking system should remain current and be accessible to the BJS project monitor at all times.

6. Identify techniques necessary to achieve a 90 percent or greater survey response rate. Response rates for previous LEMAS surveys have ranged from 92.6 percent to 97.8 percent.

7. Identify techniques necessary to achieve a 90 percent or greater survey item response rate. The data collection agent will have routine contact with the agencies and must be knowledgeable about the content of the instrument.

8. Deliver to BJS electronic versions of the survey data, and documentation on diskette and in ASCII file format. Survey documentation should include, but is not limited to, a comprehensive codebook detailing variable positions, data coding, variable and value labels, any recoding implemented during the data cleaning process, and copies of all program code used to generate data or published statistics. All data generated by this project belongs to BJS. Publication, presentation, or dissemination of the data in any form, prior to official release by BJS, is prohibited. All data and documentation from this survey will be accessible through the BJS website, and the data will be archived at the Inter-University Consortium for Political and Social Research (ICPSR).

Award Procedures and Evaluation Criteria

Proposals should describe the plan and implementation strategies outlined in the Scope of Work. Information on staffing levels and qualifications should be included for each task, as well as descriptions of experience relevant to the project. Resumes of the proposed project director and key staff should be enclosed with the proposal.

Applications will be reviewed competitively with the final award decision made by the Director of BJS. The applicant will be evaluated on the basis of:

1. Demonstrated knowledge of applied survey research, including survey construction, interview techniques, data collection, data coding, entry and verification, and the production of public use data files. This includes availability of an adequate computing environment, knowledge of standard social science data processing software, and demonstrated ability to produce SPSS readable data files for analysis and report production.

2. Demonstrated ability and experience in collecting data from law enforcement agencies or similar entities.

3. Demonstrated fiscal, management, staff, and organizational capacity to provide sound management for this project. Applicant should include detailed staff resources and other costs by project tasks.

Application and Award Process

An original and two (2) copies of the full proposal must be submitted including:

- Standard Form 424, Application for Federal Assistance.
- OJP Form 7150/1, Budget Detail Worksheet.
- OJP Form 4000/3, Program Narrative and Assurances.
- OJP Form 4061/6, Certification regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; Drug Free Workplace requirements.
- OJP Form 7120–1, Accounting System and Financial Capability Questionnaire (to be submitted by applicants who have not previously received Federal Funds from the Office of Justice Programs).

These forms can be obtained online from *http://www.ojp.usdoj.gov/forms.htm*.

In addition, fund recipients are required to comply with regulations designed to protect human subjects and ensure confidentiality of data. In accordance with 28 CFR part 22, a Privacy Certificate must be submitted to BJS. Furthermore, a Screening Sheet for Protection of Human Subjects must be completed prior to the award being issued. Questions regarding Protection of Human Subjects and/or Privacy Certificate requirements can be directed to the Human Subjects Protection Officer (HSPO) at (202) 616–3282 (This is not a toll free number).

Proposals must include a project description and detailed budget. The project narrative should describe activities as discussed in the Scope of Work and address the evaluation criteria. The project narrative should contain a detailed timeline for project activities, a description of the survey methodology to be used, including defined geographic boundaries, data collection method, data entry, and data documentation procedures. The detailed budget must provide detailed costs, including salaries of staff involved in the project and the portion of those salaries to be paid from the award, fringe benefits paid to each staff person, travel costs, supplies required for the project, sub-contractual agreements, and other allowable costs. The grant will be made for a period of 12 months.

Dated: April 4, 2003.

Lawrence A. Greenfeld,

Director, Bureau of Justice Statistics.

[FR Doc. 03–8900 Filed 4–10–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 7, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 or E-Mail: *King.Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: Extension of a currently approved collection.

Title: Title XII Advances and Voluntary Repayments.
OMB Number: 1205–0199.
Affected Public: State, local, or tribal government.
Type of Response: Reporting.
Frequency: On occasion.
Number of Respondents: 8.
Annual Responses: 80.
Average Time per Response: 1 hour.
Total Annual Burden Hours: 80.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: Section 1202(a) of the Social Security Act provides that the Governor of any State may at any time request that funds be transferred from the account of such State to the Federal Unemployment Account in repayment of part or all of the balance of advances made to such State under section 1201. This ICR seeks approval to continue the process of requesting and repaying advances through correspondence from Governors to the Secretary of Labor.

Darrin A. King,
Acting Departmental Clearance Officer.
[FR Doc. 03–8904 Filed 4–10–03; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary of Labor

Notice of Meeting: President's Council on the 21st Century Workforce and the Committees on Skills Gap, Demographics and Workplace Issues

AGENCY: Office of the Secretary of Labor.
ACTION: Notice of meeting of the President's Council on the 21st Century Workforce and meeting of Committees.

SUMMARY: Pursuant to Executive Order 13218, the Secretary of Labor will hold a meeting of the President's Council on the 21st Century Workforce, hereafter (The Council). This is the third meeting of the Council and its Committees on the Skills Gap, Changing Demographics, and Workplace Issues. The Council and Committees will provide information and advice to the President, through the Secretary of Labor and the Office of the 21st Century Workforce, on issues guided by Executive Order 13218.

Date, Time & Location: The Council and the Committees will meet on April 29, 2003, from 8:30 a.m. to approximately 2 p.m. The location of the meeting will be the Secretary's Conference Room, U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue, NW., Washington DC 20210.

FOR FURTHER INFORMATION CONTACT: Melanie Baker, Staff Assistant, Office of the 21st Century Workforce, U.S. Department of Labor, Room S–2235, 200 Constitution Avenue, NW., Washington, DC 20210. The contact telephone number is (202) 693–6490.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. The agenda for this meeting includes:

- Welcome and remarks by U.S. Secretary of Labor Elaine L. Chao;
- Welcome and remarks by the Director of the Office of the 21st Century Workforce;
- Briefing by Department of Labor (DOL) Officials;
- Committee meeting on the Skills Gap, Changing Demographics and Workplace Issues.

An official record of the meeting will be available for public inspection in the Office of the 21st Century Workforce. All inquiries should be addressed to the Office of the 21st Century Workforce at the address and telephone number provided above.

Individuals needing special accommodations for the Council or Committee meeting should contact Melanie Baker at 202–693–6490 before April 21, 2003.

Interested parties may submit written data, views or comments, preferably 20 copies, to Melanie Baker at the address listed above. The Office of the 21st Century Workforce will forward submissions received prior to the meeting to the appropriate Council or Committees and will include each submission in the record of the meeting.

Signed in Washington DC on April 7, 2003.
Shelley S. Hymes,
Director, Office of the 21st Century Workforce.
[FR Doc. 03–8906 Filed 4–10–03; 8:45 am]
BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March and April 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–41,765; Regal Plastics, LLC, Roseville, MI

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.B) (No sales or production decline and (a)(2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–51,313; Fishing Vessel (F/V) Nanesse, Skagway, AK
TA–W–51,107; Halex/Scott Fetzer Co., Bedford Heights, OH

The investigation revealed that criteria (b)(3) has not been met. The workers' firm (or subdivision) is not an supplier or downstream producer to a firm (or subdivision) for trade-affected companies.

TA–W–51,080; H and L Tool Co., Erie, PA

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,836; Fishing Vessel (F/V) The Fox, Metlakatla, AK
TA–W–50,429; Universal Electronics, Inc., Menomonee Falls, WI
TA–W–50,496; U.S. Manufacturing Corp., Fraser, MI
TA–W–50,810; Deltech Polymers Corp., Troy, OH
TA–W–50,784; Sara Lee Hosiery, Rockingham, NC
TA–W–51,084; Gilinsky Logging, Inc., Rogue River, OR
TA–W–51,132; 4-C's Fisheries, Kodiak, AK
TA–W–50,511; Johns Manville, Parkersburg Plant, Vienna, WV
TA–W–50,549; Sweetheart Cup Co., Lafayette Div., Lafayette, GA
TA–W–50,657; Hewlett Packard Co., Supply Chain Div., Swedesboro, NJ
TA–W–50,926; Hartford Compressors, Inc., West Hartford, CT
TA–W–51,303; Pryor Fish Camp, Kodiak, AK

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–50,874; Ocwem Federal Bank, West Palm Beach, FL
TA–W–51,216; Lexmark International, Inc., Orlando, FL
TA–W–51,200; Synopsys, Inc., Hillsboro, OR
TA–W–51,109; Worldcom Payroll Services, LLC, Hunt Valley, MD
TA–W–50,740; Argus Services, Inc., Libby, MT
TA–W–51,053; Eastman Kodak Co., Oakdale, MN
TA–W–50,952; Trinity Industries, Inc., McKees Rocks, PA
TA–W–50,880; Savane International Corp., Santa Teresa, NM
TA–W–51,281; First Source Furniture Group LLC, Corporate Support Center, Nashville, TN
TA–W–50,915; Techbooks, York, PA
TA–W–51,140; Verizon Communications, Verizon Data Services, Temple Terrace, FL
TA–W–51,077; Advanced Technology Services, Inc., Mt. Clemens, MI

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment declines) has been met.

TA–W–51,302; Fishing Vessel (F/V) Chasina Bay, Ketchikan, AK
TA–W–50,753; Fishing Vessel (F/V) Lynn & Michelle, Monokotak, AK
TA–W–51,312; Fishing Vessel (F/V) Travis G, Manokotak, AK
TA–W–51,102; Pozzi Windows, Div of Jeld-Wen, Inc., Bend OR
TA–W–51,134; Vanity Fair, Jeans Wear Div., Windsor, NC
TA–W–51,308; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T60318C, Manokotak, AK

The investigation revealed that criterion (a)(2)(A) (I.B) (sales or production, or both did not decline) and (a)(2)(A) (II.B) (no shift in production to a foreign country) have not been met.

TA–W–50,838; Fishing Vessel (F/V) Windy Sea, Kodiak, AK
TA–W–51,234; HP Pelzer, Thompson, GA

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a)(2)(B) (No shift in production to a foreign country) have not been met.

TA–W–50,945; Chem-Fab Corp., Hot Springs, AR

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–42,180; Hy-Lift, LLC, Muskegon, MI: September 17, 2001.
TA–W–42,360; Precision Twist Drill Co., Rhinelander, WI: September 16, 2001.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–50,727; United Defense, LP, Ground Systems Div., York, PA: January 28, 2002 TA–W–50,854; Reitz Tool, Inc.; Cochranton, PA: February 10, 2002.
TA–W–50,158; Stewart Apparel, Inc., Greensboro, GA: March 6, 2002.
TA–W–50,732 &A; Oneida Limited, Silversmiths Div., Sherrill, NY and Headquarters, Oneida, NY: December 10, 2001.
TA–W–50,197; Williamsport Wirerope Works, Inc., Williamsport, PA: November 22, 2001
TA–W–50,808; Thomson Industries, Inc., Port Washington, NY: December 31, 2001.
TA–W–50,820; Lapp Insulator Co. LLC, Substation Div., Leroy, NY: November 7, 2001.
TA–W–50,845; Vishay Dale Electronics, Inc., Standard Products Dept., Norfolk, NE: February 7, 2002.
TA–W–050,968; Manitowoc Cranes, a Div, of Manitowoc Co., Inc., Manitowoc, WI: February 21, 2002.
TA–W–51,070; New World Pasta Co., Louisville, KY: February 27, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–51,090; Liberty West, Wilsonville, OR: March 6, 2002.
TA–W–50,575; ITT Industries, Inc., Fluid Handling Systems, Rochester, NY: January 7, 2002.
TA–W–51,306; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T59828F, Manokotak, AK: March 21, 2002.
TA–W–50,305; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T64733Q, Manokotak, AK: March 21, 2002.
TA–W–50,946; Sara Lee Intimate Apparel, Statesville, NC: February 11, 2002.
TA–W–50,912; Kroehler Furniture Manufacturing Co., Inc., Sewing Div., Conover, NC: February 5, 2002.
TA–W–51,146; Garan, Inc., Church Point, LA: March 12, 2002.
TA–W–50,739; Canron Construction Corp., Canron East, Conklin, NY: January 29, 2002.
TA–W–50,939; J-Sports, Inc., Caryville, TN: February 14, 2002.
TA–W–50,954; Eaton Corp., Fluid Power Group, Global Hose Div., including leased workers of Holland Employment Agency, Norwood, NC: February 13, 2002.
TA–W–50,972; Ontario Die International of Tennessee, Lebanon, TN: February 11, 2002.
TA–W–51,088; Farley's and Sathers Candy Co., Inc., Brooklyn, NY: February 26, 2002.
TA–W–51,178; My Room, Inc., Lawrenceville, VA: March 12, 2002.
TA–W–51,249; OSRAM SYLVANIA Products, Inc., Bangor, ME: March 20, 2002
TA–W–51,063; Ingersoll-Rand Security and Safety, including leased workers of Adecco, Inc., Security, CO: February 10, 2002.
TA–W–50,558; PCC Olofsson, a Div. of Precision Castparts Corp., Lansing, MI: January 9, 2002.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchaper D, chapter 2, title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of March and April 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

None.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

None.

Affirmative Determinations NAFTA–TAA

None.

I hereby certify that the aforementioned determinations were issued during the month of March and April 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 4, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8915 Filed 4–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,598]

Blandin Paper Co. Including Temporary Workers of Search Resources, Grand Rapids, MN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 13, 2003, applicable to workers of Blandin Paper Company, Grand Rapids, Minnesota. The notice was published in the **Federal Register** on March 10, 2003 (68 FR 11410).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that temporary workers of Search Resources were employed at Blandin Paper Company to produce coated magazine paper at the Grand Rapids, Minnesota location of the subject firm.

Based on these findings, the Department is amending this certification to include temporary workers of Search Resources, Grand Rapids, Minnesota employed at Blandin Paper Company, Grand Rapids, Minnesota.

The intent of the Department's certification is to include all workers of Blandin Paper who were adversely affected by the shift in production to Canada and Finland.

The amended notice applicable to TA–W–50,598 is hereby issued as follows:

All workers of Blandin Paper, Grand Rapids, Minnesota including temporary workers of Search Resources, Grand Rapids, Minnesota engaged in employment related to the production of coated magazine paper at Blandin Paper Company, Grand Rapids, Minnesota, who became totally or partially separated from employment on or after January 17, 2002, through February 13, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 26th day of March 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8916 Filed 4–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,017]

Blue Bird Corp., Blue Bird Body Co., Blue Bird Midwest Division, Including Temporary Workers of Temp Associates, CSI Employment Services, Successful Futures, CSI LTD., Inc., Mt. Pleasant, IA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 3, 2002, applicable to workers of Blue Bird Corporation, Blue Bird Body Company, Blue Bird Midwest Division, Mt. Pleasant, Iowa. The notice was published in the **Federal Register** on December 23, 2002 (67 FR 78256).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the State and the company shows that temporary workers of Temp Associates, CSI Employment Services, Successful Futures and CSI Ltd., Inc. were employed at Blue Bird Corporation, Blue Bird Body Company, Blue Bird Midwest Division to produce school buses at the Mt. Pleasant, Iowa location of the subject firm.

Based on these findings, the Department is amending this certification to include temporary workers of Temp Associates, CSI Employment Services, Successful Futures and CSI Ltd., Inc., Mt. Pleasant, Iowa working at Blue Bird Corporation, Blue Bird Body Company, Blue Bird Midwest Division, Mt. Pleasant, Iowa.

The intent of the Department's certification is to include all workers of Blue Bird Corporation, Blue Bird Body Company, Blue Bird Midwest Division who were adversely affected by the shift in production to Canada.

The amended notice applicable to TA–W–50,017 is hereby issued as follows:

All workers of Blue Bird Corporation, Blue Bird Body Company, Blue Bird Midwest Division, Mt. Pleasant, Iowa, including temporary workers of Temp Associates, CSI Employment Services, Successful Futures and CSI Ltd., Inc., engaged in employment related to the production of school buses at Blue Bird Body Company, Blue Bird Midwest Division, Mt. Pleasant, Iowa, who became totally or partially separated from employment on or after November 5, 2001, through December 3, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 17th day of March 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8917 Filed 4–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,746]

CSI Employment Services, Mt. Pleasant, IA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 30, 2003, in response to a worker petition filed on behalf of workers of CSI Employment Services, Mt. Pleasant, Iowa.

The Department has amended an active certification for workers of Blue Bird Corporation, Blue Bird Body Company, Blue Bird Midwest Division, Mt. Pleasant, Iowa (TA–W–50,017), to include the workers of CSI Employment Services, engaged in employment related to the production of school buses at the Mt. Pleasant, Iowa plant.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8913 Filed 4–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,257]

Mason Shoe Manufacturing Co., Chippewa Falls, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 21, 2003 in response to a petition filed by the United Food and Commercial Workers, Local 268 on behalf of workers at Mason Shoe Manufacturing Company, Chippewa, Wisconsin.

The petitioning group of workers is covered by an active certification (TA–W–41,017) which remains in effect until March 20, 2004. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 25th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8914 Filed 4–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,961]

CSI Ltd, Inc., Burlington, IA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 24, 2003, in response to a worker petition filed by a company official on behalf of workers at CSI Ltd. Inc., Burlington, Iowa.

The Department has amended an active certification for workers of Blue Bird Corporation, Blue Bird Body Company, Blue Bird Midwest Division, Mt. Pleasant, Iowa (TA–W–50,017), to include the workers of CSI, Ltd., Inc., engaged in employment related to the production of school buses at the Mt. Pleasant, Iowa plant.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8910 Filed 4–10–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 21, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 21, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 25th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED BETWEEN 03/17/2003 AND 03/25/2003

TA–W	Subject firm (petitions)	Location	Date of institution	Date of petition
51,170	Siemens Energy and Automation (Comp)	Miami, FL	03/17/2003	03/14/2003
51,171	SAP America, Inc. (Wkrs)	Newtown Square, PA	03/17/2003	03/07/2003
51,172	Tabuchi Electric Company (TN)	Cordova, TN	03/17/2003	03/14/2003
51,173	Ericssion, Inc. (Wkrs)	Brea, CA	03/17/2003	01/06/2003
51,174	Mann Edge Tool Company (Comp)	Lewistown, PA	03/17/2003	03/17/2003

APPENDIX.—PETITIONS INSTITUTED BETWEEN 03/17/2003 AND 03/25/2003—Continued

TA–W	Subject firm (petitions)	Location	Date of institution	Date of petition
51,175	Jamestown Precision Tooling, Inc. (Comp)	Jamestown, NY	03/17/2003	02/05/2003
51,176	Remy Logistics (Comp)	Anderson, IN	03/17/2003	03/11/2003
51,177	Kelly Services (Wkrs)	Newtown Square, PA	03/17/2003	03/07/2003
51,178	My Room, Inc. (Comp)	Lawrenceville, VA	03/17/2003	03/12/2003
51,179	Standard Corporation (Comp)	Duncan, SC	03/17/2003	03/14/2003
51,180	General Electric (Wkrs)	Corpus Christi, TX	03/17/2003	03/10/2003
51,181	Elliott Ebara Group (Wkrs)	Jeannette, PA	03/17/2003	02/28/2003
51,182	Ball Container (AR)	Blytheville, AR	03/17/2003	03/14/2003
51,183	Columbia Falls Aluminum Co. (Comp)	Columbia Falls, MT	03/17/2003	03/13/2003
51,184	ABN Amro Bank (Wkrs)	Miami, FL	03/17/2003	03/14/2003
51,185	Fishing Vessel North Runner (Comp)	Homer, AK	03/17/2003	03/13/2003
51,186	State of Alaska Commerical Fisheries (Comp)	Togiak, AK	03/17/2003	01/23/2003
51,187	Thermal-Arc, Inc. (Wkrs)	Troy, OH	03/18/2003	03/07/2003
51,188	Thunderbird Mining Company	Eveleth, MN	03/18/2003	03/17/2003
51,189	Nokia (Comp)	Santa Rosa, CA	03/18/2003	03/11/2003
51,190	Zurn Industries, Inc. (Wkrs)	Erie, PA	03/18/2003	03/13/2003
51,191	Getronics (Wkrs)	Billerica, MA	03/18/2003	03/03/2003
51,192	U.S. Textile Corporation (Wkrs)	Newland, NC	03/18/2003	03/12/2003
51,193	Journey Bottling, LLC (CA)	Santa Rosa, CA	03/18/2003	03/06/2003
51,194	Weyerhaeuser Company (Comp)	Plymouth, NC	03/18/2003	03/07/2003
51,195	Caraustar (Comp)	Rittman, OH	03/18/2003	03/14/2003
51,196	Siemens Energy and Automation, Inc. (IUECWA)	Norwood, OH	03/18/2003	01/13/2003
51,197	Boeing Company (The) (Comp)	Pueblo, CO	03/18/2003	03/17/2003
51,198	Oregon Log Homes (OR)	Sisters, OR	03/18/2003	03/17/2003
51,199	Dura Automotive Systems (NFIU)	Stockton, IL	03/18/2003	03/10/2003
51,200	Synopsys, Inc. (OR)	Hillsboro, OR	03/18/2003	03/11/2003
51,201	First International Computer of TX (Wkrs)	Austin, TX	03/18/2003	03/12/2003
51,202	Spectrum Control (Wkrs)	Wesson, MS	03/18/2003	03/03/2003
51,203	Arrow Electronics (Wkrs)	Foothill Ranch, CA	03/18/2003	03/03/2003
51,204	Corbin Ltd. (Wkrs)	Ashland, NY	03/18/2003	03/01/2003
51,205	Phoenix Gold (Wkrs)	Portland, OR	03/18/2003	03/11/2003
51,206	Hosokawa Micron International, Inc. (CA)	Santa Rosa, CA	03/18/2003	03/10/2003
51,207	General Electric (Wkrs)	Mebane, NC	03/18/2003	03/07/2003
51,208	Stanley Works (IAMAW)	Farmington, CT	03/19/2003	03/10/2003
51,209	WellChoice, Inc. (Wkrs)	New York, NY	03/19/2003	03/10/2003
51,210	Intel Corporation (Wkrs)	Santa Clara, CA	03/19/2003	03/07/2003
51,211	CommScope, Inc. (Wkrs)	Claremont, NC	03/19/2003	02/12/2003
51,212	Siemens VDO Automotive (Wkrs)	Cheshire, CT	03/19/2003	03/14/2003
51,213	MKS Instruments (CO)	Colorado Spring, CO	03/19/2003	03/07/2003
51,214	Millward Brown (Wkrs)	Racine, WI	03/19/2003	03/12/2003
51,215	Hydromatic Pump (Wkrs)	Ashland, OH	03/19/2003	03/05/2003
51,216	Lexmark International, Inc. (Comp)	Orlando, FL	03/19/2003	03/18/2003
51,217	Universal Instrument Corporation (NY)	Binghamton, NY	03/19/2003	03/10/2003
51,218	Oregon Screw Machine Products (Comp)	Portland, OR	03/19/2003	03/10/2003
51,219	Gemini Gas Compressors (Wkrs)	Corpus Christi, TX	03/19/2003	03/10/2003
51,220	Wellington Leisure Products (Comp)	Crivitz, WI	03/19/2003	03/18/2003
51,221	Industrial Clutch (IAMAW)	Waukesha, WI	03/19/2003	03/17/2003
51,222	Parker Seals (IAMAW)	Waukesha, WI	03/19/2003	03/17/2003
51,223	PPG (Wkrs)	Shelby, NC	03/19/2003	03/17/2003
51,224	Olin Brass (USWA)	Indianapolis, IN	03/19/2003	03/14/2003
51,225	Crompton Corporation (Comp)	Naugatuck, CT	03/19/2003	03/13/2003
51,226	Haworth, Inc. (MI)	Holland, MI	03/19/2003	03/13/2003
51,227	Corning Cable Systems, LLC (Wkrs)	Hickory, NC	03/19/2003	03/18/2003
51,228	M.E.L., Inc. (Comp)	Winchester, MN	03/19/2003	02/26/2003
51,229	Uniloy Milacron (Comp)	Manchester, MI	03/19/2003	03/11/2003
51,230	Viasystems (OR)	Beaverton, OR	03/19/2003	03/17/2003
51,231	Micron Technology Virginia (Wkrs)	Manassas, VA	03/19/2003	03/10/2003
51,232	Lees Curtain Company (Wkrs)	Thayer, MO	03/19/2003	03/05/2003
51,233	Universal Stainless and Alloy Products (USW)	Bridgeville, PA	03/19/2003	03/17/2003
51,234	HP Pelzer (Wkrs)	Thomson, GA	03/19/2003	03/06/2003
51,235	F/V Halo Wawa (Comp)	Ketchikan, AK	03/19/2003	03/12/2003
51,236	KC Fisheries, Inc. (Comp)	Kodiak, AK	03/19/2003	02/12/2003
51,237	F/V Sea Pride (Comp)	Everett, WA	03/19/2003	03/15/2003
51,238	Brian Couch (Comp)	Kodiak, AK	03/19/2003	03/13/2003
51,239	F/V Pamela Dawn (Comp)	Kodiak, AK	03/19/2003	03/07/2003
51,240	P.Q. Controls (ME)	Dover-Foxcroft, ME	03/20/2003	03/13/2003
51,241	Bethlehem Steel Corp. (MD)	Baltimore, MD	03/20/2003	03/19/2003
51,242	PolyOne Corporation (Comp)	Yerington, NV	03/20/2003	03/14/2003
51,243	Alcatel, USA (Wkrs)	Plano, TX	03/20/2003	03/19/2003
51,244	Teletech Holdings (Wkrs)	Duluth, GA	03/20/2003	03/17/2003
51,245	National Refractories and Minerals Corp. (USW)	Mexico, MO	03/20/2003	03/16/2003

APPENDIX.—PETITIONS INSTITUTED BETWEEN 03/17/2003 AND 03/25/2003—Continued

TA–W	Subject firm (petitions)	Location	Date of institution	Date of petition
51,246	Cold Metal Products, Inc. (Wkrs)	Campbell, OH	03/20/2003	03/10/2003
51,247	Agilent Technologies (Wkrs)	Rohnert Park, CA	03/21/2003	03/13/2003
51,248	Agilent Technologies (Wkrs)	Rohnert Park, CA	03/21/2003	03/12/2003
51,249	OSRAM Sylvania Products, Inc. (Comp)	Bangor, ME	03/21/2003	03/20/2003
51,250	Shugart Corporation (Comp)	Tucson, AZ	03/21/2003	03/20/2003
51,251	Western Geco (Wkrs)	Houston, TX	03/21/2003	03/19/2003
51,252	Filtex, Inc. (Comp)	Guntersville, AL	03/21/2003	03/21/2003
51,253	Delta Woodside Industries (Comp)	Maiden, NC	03/21/2003	03/20/2003
51,254	Napco, Inc. (Comp)	Butler, PA	03/21/2003	03/20/2003
51,255	Icy Waters US (Wkrs)	Oakville, WA	03/21/2003	03/19/2003
51,256	Westinghouse Electric Company (Wkrs)	Blairsville, PA	03/21/2003	03/20/2003
51,257	Mason Shoe Manufacturing Company (UFCW)	Chippewa Falls, WI	03/21/2003	03/02/2003
51,258	Riley Golf (CA)	Monterey, CA	03/21/2003	03/11/2003
51,259	TTM Technologies (Wkrs)	Redmond, WA	03/21/2003	03/20/2003
51,260	L.L. Bean (Wkrs)	Brunswick, ME	03/21/2003	03/07/2003
51,261	Fishing Vessel (F/V) Lonny A. (Comp)	Ekwok, AK	03/21/2003	03/19/2003
51,262	Spang and Company (Comp)	Canton, NC	03/21/2003	03/20/2003
51,263	Caterpillar, Inc. (IAMAW)	Joliet, IL	03/21/2003	03/06/2003
51,264	Multek, Inc. (Wkrs)	Irvine, CA	03/21/2003	03/13/2003
51,265	Galt Alloys, Inc. (Comp)	Canton, OH	03/21/2003	03/12/2003
51,266	GE Plastics (Wkrs)	Pittsfield, MA	03/21/2003	03/13/2003
51,267	Gemco, Inc. (Comp)	Estill, SC	03/21/2003	03/17/2003
51,268	Hamilton Beach/Proctor-Silex Inc. (Comp)	El Paso, TX	03/21/2003	03/12/2003
51,269	Hamilton Beach/Proctor-Silex Inc. (Comp)	Washington, NC	03/21/2003	03/13/2003
51,270	American United Life (Wkrs)	Avon, CT	03/21/2003	03/13/2003
51,271	James Moore and Son (Wkrs)	Brownsville, TN	03/21/2003	03/13/2003
51,272	Erasteel, Inc. (Wkrs)	McKeesport, PA	03/24/2003	03/21/2003
51,273	Sonoco Products Co. (Wkrs)	Denison, TX	03/24/2003	03/07/2003
51,274	RFD Publications, LLC (Comp)	Wilsonville, OR	03/24/2003	03/19/2003
51,275	Jon Van Ravenswaay (Comp)	Dillingham, AK	03/24/2003	03/21/2003
51,276	Radio Frequency Systems, Inc. (Wkrs)	Corvallis, OR	03/24/2003	02/15/2003
51,277	Houlton International Corporation (Comp)	Houlton, ME	03/24/2003	01/30/2003
51,278	Stanley Furniture Company (Comp)	Lexington, NC	03/24/2003	03/24/2003
51,279	Siemens Measurement Systems (Wkrs)	Spring House, PA	03/24/2003	03/21/2003
51,280	Emerson Appliance Controls (Wkrs)	Frankfort, IN	03/24/2003	03/12/2003
51,281	First Source Furniture Group (Comp)	Nashville, TN	03/24/2003	03/20/2003
51,282	Gateway Country Store (Wkrs)	Asheville, NC	03/24/2003	03/22/2003
51,283	Western Insulfoam (Wkrs)	The Dallas, OR	03/24/2003	03/21/2003
51,284	ADC Telecommunications (Wkrs)	Chickamauga, GA	03/24/2003	03/20/2003
51,285	Honeywell International (Comp)	Albuquerque, NM	03/24/2003	03/10/2003
51,286	Celestica Corporation (IBEW)	Oklahoma City, OK	03/24/2003	03/24/2003
51,287	Vision Teq (FL)	Ft. Lauderdale, FL	03/24/2003	03/24/2003
51,288	Kyocera Tycom Corporation (Wkrs)	Arden Hills, MN	03/24/2003	03/13/2003
51,289	Sun Hill Industries, Inc. (Wkrs)	Schenectady, NY	03/25/2003	03/18/2003
51,290	Glassco, Inc. (Comp)	Altoona, AL	03/25/2003	03/24/2003
51,291	U.S. Cotton, LLC (Comp)	Valley Park, MO	03/25/2003	03/24/2003
51,292	Hamilton Sundstrand (Comp)	Denver, CO	03/25/2003	03/24/2003
51,293	4 B's Restaurant (Comp)	Libby, MT	03/25/2003	03/21/2003
51,294	Acra-Line Products (Wkrs)	Tipton, IN	03/25/2003	03/24/2003
51,295	Evening Vision Dresses, Ltd. (Wkrs)	New York, NY	03/25/2003	03/20/2003
51,296	Federal Mogul (Comp)	Hampton, VA	03/25/2003	03/19/2003
51,297	Bulk Handling Systems (OR)	Eugene, OR	03/25/2003	03/19/2003
51,298	Faultless Caster (Comp)	Evansville, IN	03/25/2003	03/17/2003
51,299	Ametek (Comp)	Grand Junction, CO	03/25/2003	03/12/2003
51,300	Fujitsu Ten Corp. of America (Comp)	Rushville, IN	03/25/2003	03/21/2003
51,301	Edgcomb Metals (USWA)	Roseville, MI	03/25/2003	03/20/2003
51,302	Fishing Vessel Chasina Bay (Comp)	Ketchikan, AK	03/25/2003	03/19/2003
51,303	Pryor Fish Camp (Comp)	Kodiak, AK	03/25/2003	03/21/2003
51,304	Bristol Bay (Comp)	Manokotak, AK	03/25/2003	03/21/2003
51,305	Alaska Commercial Fisheries (Comp)	Manokotak, AK	03/25/2003	03/21/2003
51,306	Alaska Commerical Fisheries (Comp)	Manokotak, AK	03/25/2003	03/21/2003
51,307	Bristol Bay (Comp)	Manokotak, AK	03/25/2003	03/21/2003
51,308	F/V Miss Alatuss' (Comp)	Manokotak, AK	03/25/2003	03/21/2003
51,309	Peter Nanalook (Comp)	Manokotak, AK	03/25/2003	03/21/2003
51,310	Fishing Vessel Lynn & Michelle (Comp)	Monokotak, AK	03/25/2003	03/21/2003
51,311	F/V Gabriel (Comp)	Manokotak, AK	03/25/2003	03/21/2003
51,312	F/V Travis G (Comp)	Manokotak, AK	03/25/2003	03/21/2003
51,313	F/V Nanesse (Comop)	Skagway, AK	03/25/2003	03/24/2003

[FR Doc. 03–8903 Filed 4–10–03; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,325]

Successful Futures, Mt. Pleasant, IA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on December 12, 2002, in response to a worker petition filed by Iowa Workforce Development Center on behalf of workers at Successful Futures, Mt. Pleasant, Iowa.

The Department has amended an active certification for workers of Blue Bird Corporation, Blue Bird Body Company, Blue Bird Midwest Division, Mt. Pleasant, Iowa (TA–W–50,017), to include the workers of Successful Futures, engaged in employment related to the production of school buses at the Mt. Pleasant, Iowa plant.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8909 Filed 4–10–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,747]

Temp Associates, Mt. Pleasant, IA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on January 30, 2003, in response to a worker petition filed by Iowa Workforce Development Center on behalf of workers at CSI Employment Services, Mt. Pleasant, Iowa

The Department has amended an active certification for workers of Blue Bird Corporation, Blue Bird Body Company, Blue Bird Midwest Division, Mt. Pleasant, Iowa (TA–W–50,017), to include the workers of Temp Associates, engaged in employment related to the production of school buses at the Mt. Pleasant, Iowa plant.

Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 17th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8911 Filed 4–10–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,391 and TA–W–41,391A]

Victor Forstmann, Inc., Dublin, GA; and Victor Forstmann, Inc., New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on July 1, 2002, applicable to workers of Victor Forstmann, Inc, Dublin, Georgia. The notice was published in the **Federal Register** on July 18, 2002 (67 FR 47400).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of woolen and worsted fabrics.

The company reports that worker separations occurred at the New York, New York location of the subject firm. The New York, New York workers provide sales, designing and marketing function services for the subject firm's production facility in Dublin, Georgia.

Based on these findings, the Department is amending the certification to include workers of Victor Forstmann, Inc., New York, New York.

The intent of the Department's certification is to include all workers of Victor Forstmann, Inc. who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,391 is hereby issued as follows:

All workers of Victor Forstmann, Inc., Dublin Georgia (TA–W–41,391) and Victor Forstmann, Inc., New York, New York (TA–W–41,391A) who became totally or partially separated from employment on or after March 22, 2001, through July 1, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 17th day of March, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–8912 Filed 4–10–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–7641]

Nutramax Oral Care, Florence, MA; Notice of Revised Determination on Reconsideration

By application of February 7, 2003, a petitioner requested administrative reconsideration of the Department's denial regarding eligibility to apply for North American Free Trade Agreement-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notice was issued on January 13, 2003 and published in the **Federal Register** on February 6, 2003 (67 FR 6212).

Workers were engaged in employment related to the production of dental floss and toothbrushes. The workers were denied NAFTA–TAA on the basis that there was no shift in production to Mexico or Canada, nor did imports from Canada or Mexico contribute importantly to workers' separations.

To support the request for reconsideration, the petitioners supplied additional information to supplement that which was gathered during the initial investigation. Upon further review and contact with the company, it was revealed that the company shifted a portion of production to Canada, contributing to layoffs at the subject firm.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that there was a shift in production from the workers' firm to Canada of articles that are like or directly competitive with those produced by the subject firm:

All workers of Nutramax Oral Care, Florence, Massachusetts, who became totally or partially separated from employment on or after September 25, 2001, through two years from the date of certification, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–8908 Filed 4–10–03; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and Federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modification issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ020002 (Mar. 1, 2002)
NJ020003 (Mar. 1, 2002)

Volume II

Maryland
MD020001 (Mar. 1, 2002)
MD020009 (Mar. 1, 2002)
MD020011 (Mar. 1, 2002)
MD020021 (Mar. 1, 2002)
MD020030 (Mar. 1, 2002)
MD020035 (Mar. 1, 2002)
MD020037 (Mar. 1, 2002)
MD020047 (Mar. 1, 2002)
MD020050 (Mar. 1, 2002)
MD020053 (Mar. 1, 2002)
MD020054 (Mar. 1, 2002)
MD020058 (Mar. 1, 2002)
Pennsylvania
PA020005 (Mar. 1, 2002)
PA020006 (Mar. 1, 2002)
PA020007 (Mar. 1, 2002)
PA020024 (Mar. 1, 2002)
PA020025 (Mar. 1, 2002)
PA020026 (Mar. 1, 2002)
PA020030 (Mar. 1, 2002)
PA020031 (Mar. 1, 2002)
West Virginia
WV020001 (Mar. 1, 2002)
WV020002 (Mar. 1, 2002)
WV020003 (Mar. 1, 2002)
WV020006 (Mar. 1, 2002)
WV020010 (Mar. 1, 2002)

Volume III

Alabama
AL020004 (Mar. 1, 2002)
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AL020017 (Mar. 1, 2002)
AL020033 (Mar. 1, 2002)
AL020034 (Mar. 1, 2002)
AL020052 (Mar. 1, 2002)
Mississippi
MS020001 (Mar. 1, 2002)
MS020003 (Mar. 1, 2002)

Volume IV

Illinois
IL020001 (Mar. 1, 2002)
IL020002 (Mar. 1, 2002)
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IL020006 (Mar. 1, 2002)
IL020007 (Mar. 1, 2002)
IL020008 (Mar. 1, 2002)
IL020012 (Mar. 1, 2002)
IL020013 (Mar. 1, 2002)
IL020014 (Mar. 1, 2002)
IL020015 (Mar. 1, 2002)
IL020016 (Mar. 1, 2002)
IL020031 (Mar. 1, 2002)
IL020036 (Mar. 1, 2002)
IL020049 (Mar. 1, 2002)
IL020067 (Mar. 1, 2002)

Volume V

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AR020003 (Mar. 1, 2002)
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LA020005 (Mar. 1, 2002)
LA020009 (Mar. 1, 2002)
LA020012 (Mar. 1, 2002)
LA020013 (Mar. 1, 2002)
LA020014 (Mar. 1, 2002)
LA020016 (Mar. 1, 2002)
LA020017 (Mar. 1, 2002)
LA020018 (Mar. 1, 2002)
LA020045 (Mar. 1, 2002)
LA020052 (Mar. 1, 2002)
LA020054 (Mar. 1, 2002)

Volume VI

North Dakota
ND020010 (Mar. 1, 2002)
ND020011 (Mar. 1, 2002)
South Dakota

SD020002 (Mar. 1, 2002)
Utah
UT020003 (Mar. 1, 2002)
UT020004 (Mar. 1, 2002)
UT020005 (Mar. 1, 2002)
UT020006 (Mar. 1, 2002)
UT020007 (Mar. 1, 2002)
UT020008 (Mar. 1, 2002)
UT020010 (Mar. 1, 2002)
UT020011 (Mar. 1, 2002)
UT020013 (Mar. 1, 2002)
UT020015 (Mar. 1, 2002)
UT020020 (Mar. 1, 2002)
UT020023 (Mar. 1, 2002)
UT020028 (Mar. 1, 2002)
UT020030 (Mar. 1, 2002)
UT020033 (Mar. 1, 2002)
UT020034 (Mar. 1, 2002)

Volume VII

Nevada
NV020002 (Mar. 1, 2002)
NV020003 (Mar. 1, 2002)

General Wage Determination Publication

General Wage Determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov* of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed in Washington, DC, this 3rd day of April 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–8545 Filed 4–10–03; 8:45 am]

BILLING CODE 4510–27–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2001–8 CARP CD 98–99]

Distribution of 1998 and 1999 Cable Royalty Fund

AGENCY: Copyright Office, Library of Congress.

ACTION: Initiation of arbitration and announcement of schedule.

SUMMARY: The Copyright Office of the Library of Congress is announcing the initiation of and schedule for the 180-day arbitration period for the Phase I distribution of royalties collected under the cable statutory license of the Copyright Act for the 1998 and 1999 calendar years.

EFFECTIVE DATE: April 11, 2003.

ADDRESSES: All hearings and meetings for the proceeding to distribute section 111 royalties shall take place in the James Madison Memorial Building, Room LM–414, First and Independence Avenues, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Susan N. Grimes, CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION

Background

This notice fulfills the requirement of 37 CFR 251.72 and 17 U.S.C. 111(d)(4)(B). Section 251.72 of the CARP rules provides that:

> If the Librarian determines that a controversy exists among claimants to either cable, satellite carrier, or digital audio recording devices and media royalties, the Librarian shall publish in the **Federal Register** a declaration of controversy along with a notice of initiation of an arbitration proceeding. Such notice shall, to the extent feasible, describe the nature, general structure and schedule of the proceeding. 37 CFR 251.72.

Each year cable systems submit royalties to the Copyright Office for the retransmission to their subscribers of over-the-air broadcast signals. These royalties are, in turn, distributed in one of two ways to copyright owners whose works were included in a retransmission of an over-the-air broadcast signal and who timely filed a claim for royalties with the Copyright Office. The copyright owners may either negotiate the terms of a settlement as to the division of the royalty funds, or the Librarian of Congress may convene a Copyright Arbitration Royalty Panel (CARP) to determine the distribution of the royalty fees that remain in controversy. 17 U.S.C. 111(d)(4)(B).

On September 6, 2000, the Library of Congress published a notice in the **Federal Register** seeking comment as to the existence of controversies for the distribution of the 1998 cable royalties. 65 FR 54077 (September 6, 2000). The parties to the distribution reported both Phase I and Phase II controversies and filed their Notices of Intent to Participate. On October 2, 2001, the Library published a Notice in the **Federal Register** seeking comments as to the existence of controversies for the distribution of 1999 cable royalties. 66 FR 50219 (October 2, 2001). The parties to this distribution reported Phase I and Phase II controversies as well and filed their Notices of Intent to Participate. By Order dated February 20, 2002, the Library consolidated the distribution of the 1998 and 1999 cable royalties into a single proceeding before a single CARP. Order in Docket No. 2001–8 CARP CD 98–99 (February 20, 2002).

Of the eight parties that filed Notices of Intent to Participate in this consolidated Phase I distribution proceeding, two parties, National Public Radio and the Devotional Claimants Group, have settled. The parties that remain are the Joint Sports Claimants, the Music Claimants, the Program Suppliers, the Canadian Claimants, the National Association of Broadcasters on behalf of commercial broadcasters, and the Public Television Claimants on behalf of noncommercial broadcasters. These parties have filed their written direct cases setting forth their requested distribution percentages, and the Library has conducted discovery on the written direct cases under 37 CFR 251.45. The cases are now ready for proceeding before a CARP under chapter 8 of the Copyright Act.

Selection of Arbitrators

In accordance with § 251.6 of the CARP rules, the arbitrators have been selected for this proceeding. They are:
The Honorable Michael Wolf
(Chairperson)
The Honorable Jeffrey Gulin
The Honorable Michael Young

Initiation of the Proceeding

Pursuant to § 251.72 of the CARP rules, the Librarian is formally announcing the existence of a Phase I controversy as to the distribution of the 1998 and 1999 cable royalty funds. Any Phase II controversies will be resolved in a separate CARP proceeding.

This Phase I proceeding commences on April 24, 2003, and runs for a period of 180 days. The arbitrators shall file their written report with the Librarian on or before October 21, 2003, in accordance with § 251.53 of the CARP rules.

Schedule for the Proceeding

Section 251.11(b) of the CARP rules provides that:

> At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the **Federal Register** at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and if so, which ones, and the name and telephone number of the person to contact for further information.

This notice fulfills the requirements of the rule.

The following is the schedule of the proceeding:

Opening Statements: April 24, 2003.
Presentation of the Direct Cases: April 24–June 11, 2003.

Witnesses for the Joint Sports Claimants:

April 24–25, 28–30, May 1, 2003: Paul Tagliabue, James Trautman, Robert Crandall, Thomas Hazlett, Michael Eagan, Judith Allan, Allan Selig, June Travis.

Witnesses for the National Association of Broadcasters:

May 6–9, 2003: Richard Ducey, Mark Fratrik, Marcellus Alexander, Jr., Laurence DeFranco, Gregory Rosston.

Witnesses for Public Television Claimants:

May 13–15, 2003: John Wilson, John Fuller, Leland Johnson.

Witnesses for Music Claimants:

May 16, 19–21, 2003: Seth Saltzman, W.G. "Snuffy" Walden, Jeffrey Lyons, Frank Krupit, Peter Boyle.

Witnesses for Canadian Claimants:

May 22–23, 28, 2003: Janice de Freitas, Andrea Wood, Lucy Medeiros, David Bennett, Debra Ringold.

Witnesses for Program Suppliers:

June 2–5, 9–11, 2003: Jack Valenti, Babe Winkelman, Marsha Kessler, Howard Green, Carl Carey, Jonda Martin, Paul Lindstrom, Paul Donato, Arthur Gruen, Robert Thompson.

Filing of Written Rebuttal Testimony: June 20, 2003.
Hearings on Discovery Disputes: July 2, 2003.
Presentation of Rebuttal Cases: July 7–19, 2003 (includes Saturdays).
Filing of Proposed Findings of Fact and Conclusions of Law: August 22, 2003.
Filing of Replies to Proposed Findings of Fact and Conclusions of Law: September 12, 2003.
Oral Argument: TBA.
Close of 180-day period: October 21, 2003.

Hearings will begin at 10 a.m. on April 24, 2003. Thereafter, all hearings will begin at 9 a.m. At this time, none of the parties have moved for closed hearings. Further refinements to the schedule will be announced in open meetings and issued as orders to the parties in the proceeding. All changes will be noted in the docket file of the proceeding and are open to public inspection.

Dated: April 7, 2003.

David O. Carson,

General Counsel.

[FR Doc. 03–8936 Filed 4–10–03; 8:45 am]

BILLING CODE 1410–33–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–040)]

Aerospace Safety Advisory Panel (ASAP); Meeting

AGENCY: National Aeronautics and Space Administration, (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Friday, April 11, 2003, 1 p.m. to 2 p.m. Eastern Time.

ADDRESSES: National Aeronautics and Space Administration Headquarters, 300 E Street, SW., Room 5H46A, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Leonard B. Sirota, Executive Director, Aerospace Safety Advisory Panel, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0914.

SUPPLEMENTARY INFORMATION: This meeting will be conducted via telecon with Panel members and consultants. This meeting will be open to the public up to the seating capacity of the room (45). The Aerospace Safety Advisory Panel is performing an evaluation of the safety of operating the International Space Station with only two crewmembers instead of the standard three while the Space Shuttle is non-operational. The reason for the short notification is that the evaluation must be completed in a timely manner to allow the National Aeronautics and Space Administration and its Russian partners two weeks to take any needed actions prior to the scheduled Soyuz launch on April 26, 2003.

The agenda for the meeting is as follows: To discuss the safety of operating the International Space Station with only two crewmembers instead of the standard three while the Space Shuttle is non-operational.

It is imperative that the meeting be held on this date to accommodate the scheduled Soyuz launch on April 26, 2003. Visitors will be requested to sign a visitor's register and asked to comply with NASA security requirements, including the presentation of a valid picture ID before receiving an access badge. Foreign Nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; Green card/via information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); and title/position of visitor. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Susan Burch via e-mail at *susan.m.burch@nasa.gov* or by telephone at (202) 358–0914.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–8857 Filed 4–10–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight

Committee will convene Wednesday, May 7, 2002 from 9 a.m. to 12 p.m. The meeting will be held at 701 South Court House Road, Arlington, VA in the NCS conference room on the 2nd floor.

—TSP Program Update
—TSP Revalidation Procedures
—TSP Provisioning Philosphy

Anyone interested in attending or presenting additional information to the Committee, please contact Deborah Bea, Office of Priority Telecommunications, (703) 607–4933.

Nick Andre,

Alternate Certifying Officer, National Communications System.

[FR Doc. 03–8870 Filed 4–10–03; 8:45 am]

BILLING CODE 5001–08–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 68 FR 5937, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Teresa R. Pierce, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *tpierce@nsf.gov*. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7555.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title: Request for Proposals.
OMB Control Number: 3145–0080.
Proposed Project: The Federal Acquisition Regulations (FAR) Subpart 15.2—"Solicitation and Receipt of Proposals and Information" prescribes policies and procedures for preparing and issuing Requests for Proposals. The FAR System has been developed in accordance with the requirement of the Office of Federal Procurement Policy Act of 1974, as amended. The NSF Act of 1950, as amended, 42 U.S.C. 1870, Sec. II, states that NSF has the authority to:

(c) Enter into contracts or other arrangements, or modifications thereof, for the carrying on, by organizations or individuals in the United States and foreign countries, including other government agencies of the United States and of foreign countries, of such scientific or engineering activities as the Foundation deems necessary to carry out the purposes of this Act, and, at the request of the Secretary of Defense, specific scientific or engineering activities in connection with matters relating to international cooperation or national security, and, when deemed appropriate by the Foundation, such contracts or other arrangements or modifications thereof, may be entered into without legal consideration, without performance or other bonds and without regard to section 5 of title 41, U.S.C.

Use of the Information: Request for Proposals (RFP) is used to competitively solicit proposals in response to NSF need for services. Impact will be on those individuals or organizations who elect to submit proposals in response to the RFP. Information gathered will be evaluated in light of NSF procurement requirements to determine who will be awarded a contract.

Estimate of burden: The Foundation estimates that, on average, 558 hours per respondent will be required to complete the RFP.

Respondents: Individuals; business or other for-profit; not-for-profit institutions; Federal government; state, local, or tribal governments.

Estimated Number of Responses: 75.
Estimated Total Annual Burden on Respondents: 41,850 hours.

Dated: April 8, 2003.

Teresa R. Pierce,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 03–8960 Filed 4–10–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–05337]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Byproduct Material License No. 29–07694–01, BASF Corporation, West Windsor, NJ

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to BASF Corporation for Byproduct Material License No. 29–07694–01, to authorize release of its facility in West Windsor, New Jersey, for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's West Windsor, New Jersey facility for unrestricted use. BASF Corporation (previously American Cyanamid Company) was authorized by NRC from September 25, 1961 to use radioactive materials for research and development purposes at the site. On October 31, 2001, BASF Corporation submitted a Facility Release Plan although one was not required. On March 8, 2002, the NRC issued amendment 40 to License No. 29–07694–01 which authorizes BASF to proceed with the decontamination and decommissioning as discussed in this plan. On September 20, 2002, BASF Corporation requested release for unrestricted use of the buildings at Quakerbridge and Clarksville Roads, West Windsor, New Jersey as authorized by the NRC License No. 29–07694–01, and termination of the license. BASF Corporation has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated BASF Corporation's request and the results of the surveys. The NRC staff has concluded that the completed action complies with 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accesion No. ML030930120). Any questions with respect to this action should be referred to Kathy Modes, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5251, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania this 3rd day of April, 2003.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–8898 Filed 4–10–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–12908]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Byproduct Material License No. 31–17528–01, Radiac Research Corporation, Brooklyn, NY

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Radiac Research Corporation's (Licensee or Radiac) for Byproduct Material License No. 31–17528–01, to authorize an increase in possession limits of byproduct and source material for its facility in Brooklyn, New York. The NRC staff has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed licensing action.

II. EA Summary

The purpose of the proposed action is to renew Radiac's Byproduct Materials License No. 31–17528–01 and authorize the increased possession limits the Licensee has requested. The Licensee currently transports prepackaged radioactive waste from its clients' facilities to various disposal sites, and wants to include transport of properly packaged devices containing licensed material, such as irradiators, 'EXIT' signs, etc., back to vendors of the devices, other licensees or to disposal sites as an additional service. Such devices may contain up to several thousand curies of licensed material in sealed form. The Licensee needs these increased possession limits in order to supply a competitive service to clients. The Licensee will not store packages containing such devices at its facilities in Brooklyn, New York, because the contents of the packages may exceed the possession limits authorized by its State of New York license. Instead, the Licensee will transfer such packages from the client's facility directly to another licensee or a disposal site.

Radiac's NRC License currently authorizes it to transport radioactive waste that may contain as much as 50 curies of byproduct and source material and as much as 700 grams of special nuclear material. The Licensee initially requested to renew its license based on the procedures and statements contained in its license application dated November 21, 1989. Since there have been changes in regulatory requirements and NRC policy since that date, on May 20, 2002, the NRC requested that the Licensee submit a new application in accordance with current NRC policy and incorporating current regulatory requirements. The Licensee submitted a revised application dated July 31, 2002. That application included a request for an increase in authorized possession limit for byproduct and source material from 50 curies to 1500 curies, and authorization to possess an additional 5000 curies of hydrogen 3 (tritium) and to transport prepacked licensed material from one licensee to another.

III. Finding of No Significant Impact

NRC has prepared the EA (summarized above) in support of the Licensee's application for renewal of its NRC License and the change in possession limits and authorized activities. The increase in risk to the public and workers, and environment from the renewal and increase in possession limits is small and expected doses from routine operations, as well as potential accidents, are well below regulatory limits. Additionally, the increase in the number of shipments will be small. Therefore, NRC has concluded that the environmental impacts from the proposed amendment and renewal are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS Accession Number of the EA is ML030940154; the specific documents used in reviewing the action are described in the EA. Questions regarding this action should be directed to Dr. Sattar Lodhi, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5364, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania, this 4th day of April, 2003.

For the Nuclear Regulatory Commission.

John D. Kinneman,

Chief, Nuclear Materials Safety Branch 2, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–8899 Filed 4–10–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction of Act of 1995 (44 U.S.C. chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Survivor Questionnaire.

(2) *Form(s) submitted:* RL–94–F.

(3) *OMB Number:* 3220–0032.

(4) *Expiration date of current OMB clearance:* 6/30/2003.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 8,000.

(8) *Total annual responses:* 8,000.

(9) *Total annual reporting hours:* 1,391.

(10) *Collection description:* Under section 6 of the Railroad Retirement Act, benefits are payable to the survivors or the estates of deceased railroad employees. The collection obtains information about the survivors if any, the payment of burial expenses and administration of estate when unknown to the Railroad Retirement Board. The information is used to determine whether and to whom benefits are payable.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–8871 Filed 4–10–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25994; File No. 812–12815]

Principal Life Insurance Company, et al., Notice of Application

April 7, 2003.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to section 26(c) of the Investment Company Act of 1940 (the "Act") approving the substitution of securities and an order of exemption pursuant to section 17(b) of the Act.

APPLICANTS: Principal Life Insurance Company ("Principal Life"), Principal Life Insurance Company Variable Life Separate Account (the "Separate Account").

SUMMARY OF APPLICATION: Applicants seek an order to permit, under the specific circumstances identified in the application, the substitution of shares of the Bond Account of Principal Variable Contracts Fund, Inc. ("Bond Account") for shares of the High Yield Account of Principal Variable Contracts Fund, Inc. ("High Yield Account"). The shares are currently held by the Separate Account which is a unit investment trust under the Act. Applicants also request an order exempting the proposed substitution from the provisions of section 17(a) of the Act.

FILING DATE: The Application was filed on May 8, 2002, and amended on December 19, 2002, and March 24, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 on April 29, 2003 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549. Applicants, c/o John W. Blouch, Esq., Jones & Blouch L.L.P., 1025 Thomas Jefferson Street, NW., Washington, DC 20007–0805; copy to Michael D. Roughton, Esq., Principal Financial Group, Inc., 711 High Street, Des Moines, Iowa 50392–0200.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Principal Life is a stock life insurance company organized under the laws of Iowa in 1879. It is authorized to transact life insurance and annuity business in all of the United States and the District of Columbia.

2. The Separate Account was established in 1987 by Principal Life as a separate account under Iowa law for the purpose of funding variable life contracts issued by Principal Life. The only contract affected by this application is a flexible premium variable life insurance policy called "Flex Variable Life" (File No. 33–13481) (the "Contract"). The Separate Account is registered as a unit investment trust under the Act.

3. Purchase payments for the Contract are allocated to one or more subaccounts ("Divisions") of the Separate Account. The Contracts permit allocations of accumulation value to the available Divisions. Each Division invests in shares of an underlying mutual fund ("Underlying Fund"). There currently are 40 Divisions available under the Contract, 23 of which invest in Principal Variable Contracts Fund, Inc. ("Principal Fund"), an open-end management investment company registered under the Act (File Nos. 811–01944 and 002–35570). The only Divisions affected by this application are the High Yield Division which invests solely in the High Yield Account and the Bond Division which invests solely in the Bond Account. The High Yield Account and the Bond Account are referred to collectively as the "Funds."

4. The Contract permits transfers of accumulation value from one Division to another. No sales charge applies to a transfer of accumulation value among the Divisions. Under the Contract, four free transfers are permitted each year, and $25 is charged for each subsequent transfer.

5. Applicants propose a substitution of shares of the Bond Account for shares of the High Yield Account held by the High Yield Division.

6. The High Yield Account is managed by Principal Management Corporation ("PMC"), an indirect, wholly-owned subsidiary of Principal Financial Group, Inc. The High Yield Account's investment objective is to seek high current income primarily by purchasing high yielding, lower or non-rated, fixed income securities which are believed not to involve undue risk to income or principal. Capital growth is a secondary objective when consistent with the objective of high current income. The expense ratio of the High Yield Account for 2002 was 0.66%. The High Yield Account has no 12b–1 plan. The total return of the High Yield Account was 1.90% for the year ended December 31, 2002. The average annual total return for the five-year period ended December 31, 2002, was −0.12% and for the ten-year period ended December 31, 2002 was 6.51%.

7. The Bond Account is managed by PMC. The Bond Account's investment objective is to seek as high a level of income as is consistent with the preservation of capital and prudent investment risk by investing primarily in intermediate maturity fixed-income or debt securities rated BBB or higher by Standard & Poor's Rating Service or Baa or higher by Moody's Investor's Service, Inc. The expense ratio of the Bond Account for 2002 was 0.49%. The Bond Account has no 12b–1 plan. The total return of the Bond Account for the year ended December 31, 2002, was 9.26%. The average annual total return for the five-year period ended December 31, 2002, was 6.04%, and for the ten-year period ended December 31, 2002 was 7.23%. There are no fee waiver or expense reimbursement provisions with respect to either Fund.

8. Applicants believe that the substitution will better serve the interests of contractowners because it will eliminate an investment option under the Contract that has never been able to attract significant contractowner interest, will provide contractowners with an investment in an account that has similar, although not identical, investment objectives and policies, a lower expense ratio and superior historical performance, and should benefit contractowners by providing economies of scale that result from investing in a much larger account. Applicants represent that the substitution will take place at the relative net asset values determined on the date of the substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder. Applicants represent that there will be no financial impact to any contractowner.

9. Applicants agree that, to the extent that the annualized expenses of the Bond Account exceed, for each fiscal quarter during the two-year period following the Substitution, the 2002 net expense level of the High Yield Account, Principal Life will, for each Contract outstanding on the date of the Substitution, make a reduction in (or reimbursement of) the Bond Division expenses on the last day of each such fiscal period, such that the sum of the net expenses of the Bond Account and the net expenses of the Bond Division will, on an annualized basis, be no greater than the sum of the net expenses of the High Yield Account and the net expenses of the High Yield Division for the 2002 fiscal year. In addition, for the two-year period following the Substitution, Principal Life will not increase asset-based fees or charges under the Contract.

10. The substitution will be effected by having the High Yield Division redeem its shares of the High Yield Account for cash at the net asset value calculated on the date of the substitution and purchase shares of the Bond Account for cash at net asset value on the same date. In the alternative, the substitution may be effected by having a partial "in-kind" redemption with the High Yield Division receiving from the High Yield Account securities that are eligible investments for the Bond Account and that have a value equal to the net asset value of the shares of the High Yield Account being redeemed and then contributing these securities to the Bond Account in exchange for shares of the Bond Account having a net asset value equal to the value of the securities contributed (the "In-Kind Transaction"). In connection with the completion of the substitution, Principal Life will withdraw its seed money from the High Yield Account and terminate the High Yield Account. In addition, Principal Life will combine the High Yield Division with the Bond Division.

11. Applicants represent that the proposed substitution was described in a supplement to the prospectus for the Contract ("Sticker") filed with the Commission on August 16, 2002, and mailed to contractowners. The Sticker gave contractowners notice of the substitution, described the reasons for engaging in the substitution and informed the contractowners that no amounts may be transferred to the High Yield Division on or after May 31, 2003. In addition, the Sticker informed affected contractowners that they will have an opportunity to reallocate accumulation value, prior to the substitution, from the High Yield Division, or for 60 days after the substitution, from the Bond Division to another Division available under the Contract, without the imposition of any transfer-charge or limitation and without counting the transfer as one of the four annual free transfers (the "Free Transfer Right"). Contractowners may elect to reallocate accumulation value to the Fidelity VIP High Yield Division ("Fidelity High Income Division") that invests solely in an Underlying Fund that, like the High Yield Account, emphasizes investment in lower-quality debt securities.

12. Each contractowner has been provided a prospectus for the Bond Account. Within five days after the substitution, Principal Life will send to contractowners written confirmation that the substitution has occurred.

13. Applicants represent that Principal Life will pay all expenses and transaction costs of the substitution. Affected contractowners will not incur any fees or charges as a result of the substitution, nor will their rights or the obligations of Principal Life under the Contract be altered in any way. The proposed substitution will not cause the fees and charges under the Contract currently being paid by contractowners to be greater after the substitution than before the substitution. The proposed substitution will not have a tax impact on contractowners.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 26(c) of the Act approving the substitution. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants assert that the purposes, terms and conditions of the substitution are consistent with the principles and purposes of section 26(c) and do not entail any of the abuses that section 26(c) is designed to prevent. Substitution is an appropriate solution to the small size and higher relative expense of the High Yield Account. Applicants believe that the Bond Account will better serve contractowner interests because of its larger size, lower expenses and better historical performance. Moreover, Principal Life has reserved the right to effect substitutions in the Contract and disclosed this reserved right in the prospectus for the Contract.

3. Applicants represent that the substitution will not result in the type of costly, forced redemption that section 26(c) was intended to guard against and, for the following reasons, is consistent with the protection of investors and the purposes fairly intended by the Act:

(a) The proposed substitution permits contractowners continuity of investment objectives and expectations. Both the Bond Account and the High Yield Account seek a high level of income through investing in fixed-income securities. Although the Bond Account and the High Yield Account differ significantly in the credit quality of the securities in which each principally invests, there is substantial overlap in the range of the credit qualities of the

securities in which each may invest, and the Bond Account, with its emphasis on investment grade securities, will afford shareholders of the High Yield Account an opportunity for continued, if reduced, investment exposure to high yield securities.

(b) The contract owners will have ample opportunity to consider their investment options because they will be given notice prior to the substitution and will have an opportunity to reallocate accumulation value among other available Divisions without the imposition of any transfer charge or limitation as a result of the Free Transfer Right. Contractowners who wish to maintain a higher investment exposure to high yield securities than is possible through the Bond Division may elect to reallocate accumulation value to the Fidelity High Income Division available under the Contract.

(c) The costs of the substitution will be borne by Principal Life and will not be borne by the Funds or the contractowners.

(d) The substitution will be at net asset values of the respective shares, without the imposition of any transfer or similar charge and with no change in the amount of any contractowner's accumulation value under the Contract.

(e) The substitution will not cause the fees and charges under the Contract currently being paid by contractowners to be greater after the substitution than before the substitution.

(f) Within five days after the substitution, Principal Life will send to contractowners written confirmation that the substitution has occurred.

(g) The substitution will in no way alter the insurance benefits to contractowners or the contractual obligations of Principal Life.

(h) The substitution will in no way alter the tax benefits to contractowners.

(i) To the extent that the annualized expenses of the Bond Account exceed, for each fiscal quarter during the two-year period following the substitution, the 2002 net expense level of the High Yield Account, Principal Life will, for each Contract outstanding on the date of the substitution, make a reduction in (or reimbursement of) the Bond Division expenses on the last day of each such fiscal period, such that the sum of the net expenses of the Bond Account and the net expenses of the Bond Division will, on an annualized basis, be no greater than the sum of the net expenses of the High Yield Account and the net expenses of the High Yield Division for the 2002 fiscal year. In addition, for the two-year period following the substitution, Principal Life will not increase asset-based fees or charges under the Contract.

4. Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, knowingly to sell any security or other property to such registered company or to purchase from such registered company any security or other property. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include in pertinent part "(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with such other person; * * * (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof."

5. Each of the Funds was sponsored by Principal Life. Principal Life may be deemed an affiliated person of an affiliated person of each of the Funds because it is under common control with PMC, which serves as the investment adviser to the Funds. Moreover, Principal Life is the owner of all the outstanding shares of the Bond Account and all of the outstanding shares of the High Yield Account. As a result of these relationships, the Funds might be deemed to be under common control and, therefore, affiliated persons of each other for purposes of the prohibitions set forth in section 17(a) of the Act. Thus, absent exemptive relief, consummation of the substitution using the In-Kind Transaction could result in a violation of section 17(a) because the transaction would involve the purchase from and sale of securities to an investment company by an affiliated person, or an affiliated person of an affiliated person, of that investment company.

6. Section 17(b) of the Act provides that the Commission may exempt any transaction from the prohibitions of section 17(a) if the evidence establishes that:

(a) The terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned;

(b) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in the registration statements and reports filed under the Act; and

(c) The proposed transaction is consistent with the general purposes of the Act.

7. Applicants assert that the terms of the proposed In-Kind Transaction are reasonable and fair and do not involve any overreaching on the part of any person concerned. The substitution will be accomplished on the basis of the relative net asset values of each of the Funds and, therefore, will have no economic impact on the interest of any contractowner.

8. Applicants assert that the substitution is consistent with the investment objective of each of the Funds in that both Funds seek a high level of income through investing if fixed-income securities. Although the funds differ significantly in the credit quality of the securities in which each principally invests, there is substantial overlap in the range of the credit qualities of the securities in which each may invest, and the Bond Account, with its emphasis on investment grade securities, will nonetheless afford contractowners with an interest in the High Yield Division an opportunity for continued, if reduced, investment exposure to high yield securities. In addition, contractowners with an opportunity to transfer their interest, without charge, to any other Division, including the Fidelity High Income Division.

9. Applicants assert that the substitution is consistent with the general purposes of the Act. Section 1(b)(2) of the Act declares that the public interest and interest of investors are adversely affected when investment companies are organized and managed in the interest of affiliated persons, rather than in the interest of the company's security holders. The substitution does not result in any of the self-dealing abuses that the Act was designed to prevent. Principal Life will pay all expenses incurred in connection with the substitution. The substitution will be effected by Principal Life in accordance with the terms of the Contract. The substitution will eliminate a small fund that has never been able to attract significant investor interest, will provide contractowners with an interest in that fund with an interest in a fund that has similar, although not identical, investment objectives and policies as well as a lower expense ratio and superior historical performance, and should benefit the shareholders of both Funds by providing economies of scale that result from combining the assets and operations of the two Funds.

10. Applicants request an order of the Commission pursuant to Section 26(c) of the Act approving the substitution and an order of exemption pursuant to section 17(b) of the Act in connection with aspects of the substitution that may be deemed to be prohibited by section 17(a), as described above. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, Applicants believe that the requested order meets the standards set forth in section 26(c) and should, therefore, be granted. Section 17(b) of the Act provides that the Commission may grant an order exempting transactions prohibited by section 17(a) of the Act upon application subject to certain conditions. Applicants represent that the proposed In-Kind Transaction meets all of the requirements of section 17(b) of the Act and that an exemption should be granted, to the extent necessary, from the provisions of section 17(a).

Conclusion

Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants submit that, for the reasons stated in the Application, their exemptive requests meet the standards set out in section 6(c) and that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8921 Filed 4–10–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25995; File No. 812–12840]

Principal Life Insurance Company, et al., Notice of Application

April 7, 2003.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order pursuant to section 26(b) of the Investment Company Act of 1940 (the "Act") approving the substitution of securities and an order of exemption pursuant to section 17(b) of the Act.

APPLICANTS: Principal Life Insurance Company ("Principal Life"), Principal Life Insurance Company Variable Life VL Separate Account (the "VL Separate Account"), and Principal Life Insurance Company Separate Account B ("Separate Account B").

SUMMARY: Applicants seek an order to permit, under the specific circumstances identified in the application, the substitution of shares of the SmallCap Account of Principal Variable Contracts Fund, Inc, ("SmallCap Account") for shares of the MicroCap Account of Principal Variable Contracts Fund, Inc. ("MicroCap Account"). Applicants also request an order exempting the proposed substitution from the provisions of section 17(a) of the Act.

DATES: The Application was filed on May 8, 2002, and amended on December 19, 2002, and March 24, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 on April 29, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o John W. Blouch, Esq., Jones & Blouch L.L.P., 1025 Thomas Jefferson Street, NW., Washington, DC 20007–0805; copy to Michael D. Roughton, Esq., Principal Financial Group, Inc., 711 High Street, Des Moines, Iowa 50392–0200.

FOR FURTHER INFORMATION CONTACT: Rebecca A. Marquigny, Senior Counsel, or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Principal Life is a stock life insurance company organized under the laws of Iowa in 1879. It is authorized to transact life insurance and annuity business in all of the United States and the District of Columbia.

2. The VL Separate Account was established in 1987 by Principal Life as a separate account under Iowa law for the purpose of funding variable life contracts issued by Principal Life (File No. 811–05118). Separate Account B was established in 1970 by Principal Life as a separate account under Iowa law for the purpose of funding variable annuity contracts issued by Principal Life (File No. 811–02091). The only contracts affected by this application are: (a) Four flexible premium variable life insurance policies called "Flex Variable Life" (File No. 033–13481) ("FVL Contract"), "Prinflex Life" (File No. 333–00101) ("Prinflex Contract"), "Survivorship Variable Universal Life" (File No. 333–71521) ("Survivorship Contract"), and "Principal Variable Universal Life Accumulator" (File No. 333–65690) ("Accumulator Contract"); (b) an individual deferred annuity contract called "Flexible Variable Annuity" (File No. 33–74232) ("FVA Contract"); and (c) a group variable annuity contract called "Premier Variable Annuity Contract" (File No. 333–63401) ("Premier Contract," collectively with FVL Contract, Prinflex Contract, Survivorship Contract, Accumulator Contract and FVA Contract, the "Contracts").

3. Purchase payments for FVL, Prinflex, Survivorship and Accumulator Contracts are allocated to one or more subaccounts ("Divisions") of VL Separate Account. Purchase payments for FVA and Premier Contracts are allocated to one or more Divisions of Separate Account B. The Contracts permit allocations of accumulation value to the available Divisions. Each Division invests in shares of an underlying mutual fund ("Underlying Fund"). There currently are 40 Divisions available under the FVL

Contract, 23 of which invest in Principal Variable Contracts Fund, Inc. ("Principal Fund"), an open-end management investment company registered under the Act (File Nos. 811–01944 and 002–35570). There currently are 47 Divisions available under the Accumulator and Prinflex Contracts, 25 of which invest in Principal Fund. There currently are 39 Divisions available under the Survivorship Contract, 25 of which invest in Principal Fund. There currently are 41 Divisions available under the FBA Contract, 26 of which invest in Principal Fund. There currently are 25 Divisions available under the Premier Contract, all of which invest in Principal Fund. The only Divisions affected by this application are the MicroCap Divisions of VL Separate Account and Separate Account B which invest solely in the MicroCap Account and the SmallCap Division of those two Separate Accounts which invest solely in the SmallCap Account. MicroCap Account and SmallCap Account are referred to collectively as the "Funds."

4. The Contracts permit transfers of accumulated value from one Division to another. The total amount transferred each time must be at least $250 under the FVL Contract or $100 under the FVA, Survivorship, Accumulator, or Prinflex Contracts, unless a lesser amount constitutes the Contract's entire accumulated value in a Division. Transfers between Divisions under the Premier Contract are not subject to a minimum amount or any charge. A transaction charge of $25 is imposed on each transfer of accumulated value among Divisions under the FVL Contract exceeding four per policy year. A transaction charge of $30 is imposed on each transfer of accumulated value among Divisions under the FVA Contract exceeding twelve per policy year. No transaction charge applies to transfers under the Prinflex, Accumulator or Survivorship Contracts.

5. Applicants propose a substitution of shares of the SmallCap Account for shares of the MicroCap Account held by the MicroCap Divisions of VL Separate Account and Separate Account B.

6. Principal Management Corporation ("PMC"), a registered investment adviser under the Investment Advisers Act of 1940, as amended ("Advisers Act"), and an indirect, wholly-owned subsidiary of Principal Financial Group, Inc., serves as the investment adviser for the Funds. Pursuant to sub-advisory agreements, the MicroCap Account is managed by Goldman Sachs Asset Management ("GSAM"), a registered investment adviser under the Advisers Act, and the SmallCap Account is managed by Invista Capital Management, LLC ("Invista"), a registered investment adviser under the Advisers Act. Invista is an indirect, wholly-owned subsidiary of Principal Life.

7. The MicroCap Account's investment objective is to seek long term growth of capital primarily by investing in value and growth oriented companies with small market capitalizations. Under normal market conditions, the MicroCap Account invests at least 80% of its net assets plus any borrowings for investment purposes (measured at the time of purchase) in a broadly diversified portfolio of equity securities in microcap U.S. issuers (including foreign issuers that are traded in the United States). These microcap issuers will generally have market capitalizations of less than $1 billion at the time of investment. The expense ratio of the MicroCap Account for 2002 was 1.25%. The MicroCap Account has no 12b–1 plan. The total return of the MicroCap Account was −16.89% for the year ended December 31, 2002, and the average annual total return for the life of the Account through December 31, 2002, was −5.54%.

8. The SmallCap Account's investment objective is to seek long term growth of capital by investing primarily in equity securities of both growth and value oriented companies with comparatively smaller market capitalizations. Under normal market conditions, the SmallCap Account invests at least 80% of its assets in common stocks of companies with small market capitalizations (those with market capitalizations similar to companies in the Russell 2000 Index) at the time of purchase. The expense ratio of the SmallCap Account for 2002 was 0.97%. The SmallCap Account has no 12b–1 plan. The total return of the SmallCap Account for the year ended December 31, 2002, was −27.33%, and the average annual total return for the life of the Account through December 31, 2002, was −5.95%. There are no fee waiver or expense reimbursement provisions with respect to either Fund.

9. Applicants believe that the substitution will better serve the interests of contractowners because it will eliminate an investment option under the Contracts that has never been able to attract significant contractowner interest and will provide contractowners with an investment in an account that has similar, although not identical, investment objectives and policies as well as a lower expense ratio. Applicants also believe that the substitution should benefit contractowners by providing economies of scale that result from investing in a much larger account. Applicants represent that the substitution will take place at the relative net asset values determined on the date of the substitution in accordance with section 22(c) of the Act and rule 22c–1 thereunder. Applicants represent that there will be no financial impact to any contractowner. The substitution will be effected by having the MicroCap Divisions redeem their shares of the MicroCap Account for cash at the net asset value calculated on the date of the substitution and purchase shares of the SmallCap Account for cash at net asset value on the same date. In the alternative, the substitution may be effected by having a partial "in-kind" redemption with the MicroCap Divisions receiving from the MicroCap Account securities that are eligible investments for the SmallCap Account and that have a value equal to the net asset value of the shares of the MicroCap Account being redeemed and then contributing these securities to the SmallCap Account in exchange for shares of the SmallCap Account having a net asset value equal to the value of the securities contributed (the "In-Kind Transaction"). In connection with the completion of the substitution, Principal Life will withdraw its seed money from the MicroCap Account and terminate the MicroCap Account. In addition, Principal Life will combine the MicroCap Division with the SmallCap Division.

10. Applicants represent that the proposed substitution was described in supplements to the prospectuses for the Contracts ("Stickers") which were filed with the Commission on August 16, 2002, and mailed to contractowners. The Stickers gave contractowners notice of the substitution, described the reasons for engaging in the substitution, and informed contractowners that no amounts may be transferred to the MicroCap Division on or after May 31, 2003. In addition, the Stickers informed affected contractowners that they will have an opportunity to reallocate accumulation value, prior to the substitution, from the MicroCap Division, or for 60 days after the substitution, from the SmallCap Division to another Division available under the Contracts, without the imposition of any transfer charge or limitation and without counting the transfer as one of the annual free transfers (the "Free Transfer Right").

11. Each contractowner has been provided a prospectus for the SmallCap Account. Within five days after the substitution, Principal Life will send to contractowners written confirmation that the substitution has occurred. The confirmation will be accompanied by a notice describing the Free Transfer Right.

12. Applicants represent that Principal Life will pay all expenses and transaction costs of the substitution. Affected contractowners will not incur any fees or charges as a result of the substitution, nor will their rights or the obligations of Principal Life under the Contracts be altered in any way. The proposed substitution will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the substitution than before the substitution. The proposed substitution will not have a tax impact on contractowners.

Applicants' Legal Analysis

1. Applicants request an order pursuant to section 26(c) of the Act approving the substitution. Section 26(c) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants assert that the purposes, terms and conditions of the substitution are consistent with the principles and purposes of section 26(c) and do not entail any of the abuses that section 26(c) is designed to prevent. Substitution is an appropriate solution to the small size and higher relative expense of the MicroCap Account. Applicants believe that the SmallCap Account will better serve contractowner interests because of its larger size and lower expenses. Moreover, Principal Life has reserved the right to effect substitutions in the Contracts and disclosed this reserved right in the prospectus for the Contracts.

3. Applicants represent that the substitution will not result in the type of costly, forced redemption that section 26(c) was intended to guard against and, for the following reasons, is consistent with the protection of investors and the purposes fairly intended by the Act:

(a) The proposed substitution permits contractowners continuity of investment objectives and expectations. Both the SmallCap Account and the MicroCap Account seek long term growth of capital primarily by investing in value and growth oriented companies. Although the SmallCap Account and the MicroCap Account differ primarily in the market capitalization of the companies in which they invest, with the SmallCap Account investing primarily in companies with small market capitalizations ranging approximately from $150 million to $1.4 billion, and the MicroCap Account investing primarily in companies with market capitalizations under $1 billion, there is substantial overlap in the securities in which each may invest. The SmallCap Account, with its emphasis on investing in companies with small market capitalizations, will afford shareholders of the MicroCap Account an opportunity for continued investment exposure to companies with smaller market capitalizations.

(b) The contract owners will have ample opportunity to consider their investment options because they will be given notice prior to the substitution and will have an opportunity to reallocate accumulation value among other available Divisions without the imposition of any transfer charge or limitation as a result of the Free Transfer Right.

(c) The costs of the substitution will be borne by Principal Life and will not be borne by the Funds or the contract owners.

(d) The substitution will be at net asset values of the respective shares, without the imposition of any transfer or similar charge and with no change in the amount of any contract owner's accumulation value under the Contracts.

(e) The substitution will not cause the fees and charges under the Contracts currently being paid by contract owners to be greater after the substitution than before the substitution.

(f) Within five days after the substitution, Principal Life will send to contract owners written confirmation that the substitution has occurred.

(g) The substitution will in no way alter the insurance benefits to contract owners or the contractual obligations of Principal Life.

(h) The substitution will in no way alter the tax benefits to contract owners.

(i) To the extent that the annualized expenses of the SmallCap Account exceed, for each fiscal quarter during the two-year period following the substitution, the 2002 net expense level of the MicroCap Account, Principal Life will, for each Contract outstanding on the date of the substitution, make a reduction in (or reimbursement of) the SmallCap Division expenses on the last day of each such fiscal period, such that the sum of the net expenses of the SmallCap Account and the net expenses of the SmallCap Division will, on an annualized basis, be no greater than the sum of the net expenses of the MicroCap Account and the net expenses of the MicroCap Division for the 2002 fiscal year. In addition, for the two-year period following the substitution, Principal Life will not increase asset-based fees or charges under the Contracts.

4. Section 17(a) of the Act provides, in pertinent part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, knowingly to sell any security or other property to such registered company or to purchase from such registered company any security or other property. Section 2(a)(3) of the Act defines the term "affiliated person" of another person to include in pertinent part "(A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with such other person; * * * (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof."

5. Each of the Funds was sponsored by Principal Life. Principal Life may be deemed an affiliated person of an affiliated person of each of the Funds because it is under common control with Principal Management Corporation, which serves as the investment adviser to the Funds. Moreover, Principal Life is the owner of all the outstanding shares of the SmallCap Account and all of the outstanding shares of the MicroCap Account. As a result of these relationships, the Funds might be deemed to be under common control and, therefore, affiliated persons of each other for purposes of the prohibitions set forth in section 17(a) of the Act. Thus, absent exemptive relief, consummation of the substitution using the In-Kind Transaction could result in a violation of section 17(a) because the transaction would involve the purchase from and sale of securities to an investment company by an affiliated person, or an affiliated person of an affiliated person, of that investment company.

6. Section 17(b) of the Act provides that the Commission may exempt any transaction from the prohibitions of section 17(a) if the evidence establishes that:

(a) The terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned;

(b) The proposed transaction is consistent with the policy of each registered investment company concerned, as recited in the registration statements and reports filed under the Act; and

(c) The proposed transaction is consistent with the general purposes of the Act.

7. Applicants represent that the terms of the proposed In-Kind Transaction are reasonable and fair and do not involve any overreaching on the part of any person concerned. The substitution will be accomplished on the basis of the relative net asset values of each of the Funds and, therefore, will have no economic impact on the interest of any contract owner.

8. Applicants represent that the substitution is consistent with the investment objective of each of the Funds in that both Funds seek long term growth of capital by investing primarily in value and growth oriented companies. Although the SmallCap Account and the MicroCap Account differ primarily in the market capitalization of the companies they invest in, with the SmallCap Account investing primarily in companies with small market capitalizations, ranging approximately from $150 million to $1.4 billion, and the MicroCap Account investing primarily in companies with market capitalizations under $1 billion, there is substantial overlap in the securities in which each may invest, and the SmallCap Account, with its emphasis on investing in companies with small market capitalizations, will afford shareholders of the MicroCap Account an opportunity for continued investment exposure to companies with smaller market capitalizations. In addition, contract owners with an interest in the MicroCap Division will have the opportunity to transfer their interest, without charge, to any other Division.

9. Applicants represent that the substitution is consistent with the general purposes of the Act. Section 1(b)(2) of the Act declares that the public interest and interest of investors are adversely affected when investment companies are organized and managed in the interest of affiliated persons, rather than in the interest of the company's security holders. The substitution does not result in any of the self-dealing abuses that the Act was designed to prevent. Principal Life will pay all expenses incurred in connection with the substitution. The substitution will be effected by Principal Life in accordance with the terms of the Contracts. The substitution will eliminate a small fund that has never been able to attract significant investor interest, will provide contract owners with an interest in that fund with an interest in a fund that has similar, although not identical, investment objectives and policies as well as a lower expense ratio, and should benefit the shareholders of both Funds by providing economies of scale that result from combining the assets and operations of the two Funds.

10. Applicants request an order of the Commission pursuant to section 26(c) of the Act approving the substitution and an order of exemption pursuant to section 17(b) of the Act in connection with aspects of the substitution that may be deemed to be prohibited by section 17(a), as described above. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, Applicants believe that the requested order meets the standards set forth in section 26(c) and should, therefore, be granted. Section 17(b) of the Act provides that the Commission may grant an order exempting transactions prohibited by section 17(a) of the Act upon application subject to certain conditions. Applicants represent that the proposed In-Kind Transaction meets all of the requirements of section 17(b) of the Act and that an exemption should be granted, to the extent necessary, from the provisions of section 17(a).

Conclusion

Section 6(c) of the Act, in pertinent part, provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, security or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act, or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants submit that, for the reasons stated in the Application, their exemptive requests meet the standards set out in section 6(c) and that an order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8922 Filed 4–10–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of April 14, 2003:

A Closed Meeting will be held on Tuesday, April 15, 2003 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (5), (7), (8), (9)(B) and (10) and 17 CFR 200.402(a) (5), (7), (8), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, April 15, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Regulatory matter regarding a financial institution;

Institution and settlement of injunctive actions; and

Formal Orders of Investigation;

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: April 8, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–8996 Filed 4–8–03; 4:08 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47637; File No. SR–NASD–2003–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify the Display Charge Associated With the Use of the Nasdaq Workstation II Service by NASD Members

April 7, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the display charge paid by NASD members for use of the Nasdaq Workstation II ("NWII") Service.[3] Nasdaq proposes to implement the proposed rule change on April 1, 2003.

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

* * * * *

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

(a)–(e) No change

(f) Nasdaq Workstation ™ Service

(1) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq Workstation II Service:

Service Charge—[$1,875/month per service delivery platform (*"SDP"*) from December 1, 2000 through February 28, 2001] $2,035/month per *service delivery platform* ("SDP") [beginning March 1, 2001]

Display Charge—$525/month per [presentation device ("PD")] *logon for the first 150 logons $200/month for each additional logon*

Additional Circuit/SDP Charge—[$3,075 per month from December 1, 2000 through February 28, 2001, and] $3,235/month [beginning March 1, 2001]*

Maintenance—$55/[SDP or] *presentation device* ("PD") logon *or SDP*/month

A subscriber that accesses Nasdaq Workstation II Service via an application programming interface ("API") shall be assessed the Service Charge for each of the subscriber's SDPs and shall be assessed the Display Charge for each of the subscriber's [API linkages] *logons*, including *logons of* an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit/SDP Charge.

(2) No change.

* A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight [PDs and/or API servers] *logons* on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP(s) (*i.e.*, the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its *logons* [PDs and/or API servers], assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing eighteen SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming an eighteen-to-one ratio.

(g)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NWII service allows market participants to access The Nasdaq Stock Market and other Nasdaq facilities through Nasdaq's Enterprise Wide Network II ("EWN II"). To use the NWII service, each subscriber location has at least one service delivery platform ("SDP") that connects to the EWN II by a dedicated T1 circuit pair. The subscriber then connects the workstations used by its employees to the SDP. Thus, the SDP functions as the gateway from the subscriber's workstations to the EWN II.

Different subscribers use different types of workstations. A subscriber may use either an "NWII presentation device" (a workstation and associated software provided by Nasdaq) or its own workstation and software (often referred to as an "application programming interface" device, or an "NWII substitute"), and many subscribers use both options. Each workstation, however, is associated with a particular "logon,"[4] the code that a user enters to identify himself or herself as an authorized NWII user and thereby gain access to the NWII service. Nasdaq currently assesses a "display charge" of $525 per month for each logon.[5]

Nasdaq represents that, as part of an ongoing effort to reduce costs incurred by Nasdaq's market participants to use its systems and services, Nasdaq is proposing to modify the display charge to reflect the economies of scale realized when providing subscribers with a large number of logons. Specifically, Nasdaq asserts that if a subscriber has more than 150 logons, the per logon average cost to provide NWII service to that subscriber will decrease over a substantial range of additional logons. Moreover, Nasdaq represents that the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 21, 2003, Nasdaq also submitted a proposed rule change to modify this charge for non-members. *See* File No. SR–NASD–2003–48.

[4] Nasdaq represents that the term "logon" as used throughout the proposed rule change refers to a logon ID (or logon identifier) and not a logon event. Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq, and Frank N. Genco, Attorney, Division of Market Regulation ("Division"), Commission, on March 28, 2003.

[5] Nasdaq notes that NASD Rule 7010(f)(1), as in effect prior to the amendments made by this proposed rule change, uses a variety of terms to refer to the concept reflected in the term "logon." As a part of this proposed rule change, Nasdaq is clarifying the rule by using the term "logon" throughout, and is also removing language describing fees in effect prior to March 1, 2001.

average costs associated with subscriber support also decrease as the number of logons increases. Accordingly, Nasdaq believes that it is reasonable to offer a discount on additional logons to subscribers with more than 150 logons, to reflect the lower average costs associated with providing this volume of logons.[6] A subscriber will pay the current display charge of $525 per month per logon for its first 150 logons, and a reduced charge of $200 per month for each additional logon.[7] Nasdaq believes that this reduction will also make it more economical for subscribers to install systems with redundancy, which will enable them to remain fully operational even if they experience equipment failures or an unexpected increase in demand.

In determining the number of logons used by a particular subscriber, Nasdaq will permit a particular corporate entity to aggregate its logons with those used by its wholly owned subsidiaries, parent corporations of which it is a wholly owned subsidiary, or affiliated corporations that are wholly owned by a common parent. A subscriber that wishes to aggregate its logons with those of its affiliates in this manner will be required to provide supporting information about its corporate structure to Nasdaq.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] in general, and section 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[6] Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq, and Hong-Anh Tran, Special Counsel, Division, Commission, on April 1, 2003.

[7] Nasdaq represents that a change to its Tools Plus SDP pricing is not warranted at this time. *See also* Securities Exchange Act Release No. 46973 (December 9, 2002), 67 FR 77305 (December 17, 2002) (File No. SR–NASD–2002–164).

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(2) of Rule 19b–4 [11] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of March 21, 2003, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–47 and should be submitted by May 2, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8919 Filed 4–10–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] *See* 15 U.S.C. 78(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47644; File No. SR–NSCC–2003–04]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to NSCC's Insurance Processing Service

April 7, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 14, 2003, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of an enhancement to NSCC's Insurance Processing Service ("IPS") that will provide information about insurance products to distributors of those products. The enhancement will allow Insurance Carrier Members and Data Services Only Members of NSCC to populate a series of databases maintained by NSCC (known collectively as the "Product Repository") with information related to insurance products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule filing is to create an enhancement to IPS that will provide information about insurance products to distributors of those products. Insurance Carrier Members and Data Services Only Members of NSCC will populate the Product Repository databases with information related to insurance products, and Members and Data Services Only Members may access the Product Repository to obtain information about insurance products.

The Product Repository will be a series of databases maintained by IPS that will contain information relating to insurance products. Initially, the product repository will contain information relating to annuities and thereafter to life insurance and other long term care products. With respect to each contract of a particular Insurance Carrier Member or Data Services Only Member, the Product Repository databases will be populated only by that Insurance Carrier Member or Data Services Only Member.

The Insurance Carrier Member or Data Services Only Member that populates the relevant database for a particular contract will be responsible for the contents and for any necessary updates. Such Insurance Carrier Member or Data Services Only Member will specify any limitation with respect to access to such data. As with other IPS services, NSCC will not be responsible for the completeness or accuracy of any of the information contained in the databases, or for any errors, omissions, or delays which may occur relating to the databases in the absence of gross negligence on NSCC's part.

There will be no money settlement associated with the Product Repository.

NSCC believes that the proposed rule change is consistent with the provisions of the Act and the rules and regulations thereunder because it will provide information that may facilitate the prompt and accurate processing of transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of section 17A(b)(3)(F).[3] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with this requirement because while providing a useful service to its Insurance Processing Service, NSCC is not responsible for the completeness or accurateness of the information of the database or in the absence of NSCC's gross negligence for any errors, omissions, or delays relating to the database. As a result, NSCC's ability to safeguard securities and funds which are in its custody or control or for which it is responsible will not be affected by the offering of the Product Repository databases.

NSCC has requested that the Commission approve this rule change prior to the thirtieth day after the date of publication of notice of the filing because the Product Repository will be available to NSCC's members beginning on April 7, 2003. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice because by so approving NSCC will be able to implement the enhancements in accordance with its systems implementation schedule.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR–NSCC–2003–04. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–2003–04 and should be submitted by May 2, 2003.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–2003–04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8920 Filed 4–10–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/Department of Labor (DOL))—Match Number 1003

AGENCY: Social Security Administration (SSA).

ACTION: Notice of the renewal of an existing computer matching program which is scheduled to expire on May 16, 2003.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces the renewal of an existing computer matching program that SSA is currently conducting with DOL.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The renewal of the matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 965–8582 or writing to the Associate Commissioner for Income Security Programs, 760 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Income Security Programs as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal agencies;

(3) Publish notice of the computer matching program in the **Federal Register**;

(4) Furnish detailed reports about matching programs to Congress and OMB;

(5) Notify applicants and beneficiaries that their records are subject to matching; and

(6) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: April 4, 2003.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) With the Department of Labor (DOL)

A. Participating Agencies

SSA and DOL.

B. Purpose of the Matching Program

The purpose of this matching program is to establish the conditions, safeguards and procedures for DOL's disclosure of Part C Black Lung (BL) benefit data to SSA. SSA will use the match results to verify that recipients of Part C BL benefits are receiving the correct amount of Social Security disability benefits, as required by the Social Security Act (the Act).

C. Authority for Conducting the Matching Program

Section 224(h)(1) of the Act (42 U.S.C. 424a(h)(1)).

D. Categories of Records and Individuals Covered by the Matching Program

DOL will provide SSA with an electronic or magnetic tape file extracted from the Office of Workers' Compensation Programs' BL Benefits Payments File. The extracted file will contain information about all live miners, under age 65, entitled to Part C BL benefits. Each record on the DOL file will be matched with SSA's Master Beneficiary Record (SSA/OEEAS 60–0090), to identify individuals potentially subject to benefit reductions due to their receipt of Part C BL benefits, under section 224 of the Act (42 U.S.C. 424a).

E. Inclusive Dates of the Matching Program

The matching program will become effective upon signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of the matching program is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 03–8907 Filed 4–10–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4335]

Culturally Significant Objects Imported for Exhibition Determinations: "Kazimir Malevich: Suprematism"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), and Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, I hereby determine that the objects to be included in the exhibition, "Kazimir Malevich: Suprematism," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Solomon R. Guggenheim Museum, New York, New York, from on or about May 22, 2003, to on or about September 7, 2003, the Menil Collection, Houston, Texas, from on or about October 2, 2003, to on or about January 11, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: April 4, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–9049 Filed 4–10–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending April 4, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–14869.
Date Filed: April 3, 2003.
Parties: Members of the International Air Transport Association.
Subject: PTC12 NMS–AFR 0161 dated 14 March 2002 (Mail Vote 279), Mid Atlantic-Africa Resolutions r1–r10, PTC12 NMS–AFR 0162 dated 14 March 2003 (Mail Vote 280), South Atlantic-Africa Resolutions r11–r23, Minutes—PTC12 NMS–AFR 0163 dated 21 March 2003, Tables—PTC12 NMS–AFR Fares 0079 dated 21 March 2003, PTC12 NMS–AFR Fares 0080 dated 21 March 2003, Intended effective date: 1 May 2003.

Docket Number: OST–2003–14870.
Date Filed: April 3, 2003.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 510 dated 4 April 2003, Mail Vote 290—Resolution 010d, TC2 Within Europe Special Passenger Amending Resolution, from Poland to Europe, Intended effective date: 11 April 2003.

Dorothy Y. Beard,

Chief, Docket Operations & Media Management, Federal Register Liaison.

[FR Doc. 03–8950 Filed 4–10–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Draft Environmental Impact Statement for the Green Line Corridor Transit Project; Baltimore, MD

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The Federal Transit Administration (FTA) and the Maryland Transit Administration (MTA) are issuing this notice to advise agencies and the public that, in accordance with the National Environmental Policy Act, the FTA and the MTA will prepare a Draft Environmental Impact Statement (DEIS) to assess the impacts of potential transit alternatives in the Green Line Corridor. This corridor extends from Johns Hopkins Medical Center north to Morgan State University. The Green Line Corridor Transit Project would serve older dense city neighborhoods in northeast Baltimore and would provide convenient and efficient access between Johns Hopkins Medical Center, the proposed East Baltimore Biotechnology Park, Morgan State University, and the Baltimore City Central Business District, as well as improved connectivity with other transit services in Baltimore and support economic development. The 23-member Advisory Committee to MTA that developed the Baltimore Region Rail System Plan identified growing traffic congestion in the Baltimore region, the need for improved access to jobs, improving air quality and the desire to keep the Baltimore region competitive as important concerns for the Baltimore Region. The Green Line Corridor Transit Project was identified as a priority project for addressing these issues. The project is also included in the Baltimore Region Constrained Long-Range Plan.

The purpose of the Green Line DEIS is to examine the engineering feasibility, potential benefits, costs, and social, cultural, economic, built and natural environmental impacts of feasible alternatives in the corridor to improve transit mobility in the Baltimore metropolitan area. The DEIS will examine and evaluate rail, bus rapid transit (BRT), transportation systems management/transportation demand management (TSM/TDM), and no-build alternatives. Tunnel, surface and/or aerial alignment options will be considered for rail and BRT alternatives.

Scoping Meetings: Public scoping meetings for the Green Line Corridor Transit Project DEIS will be held at times and locations to be held on:

June 12—Dunbar High School, 1400 Orleans Street—3:30 p.m.–8 p.m.
June 14—Good Samaritan Hospital, 5601 Loch Raven Boulevard—10 a.m.–2 p.m.

Additional meeting dates, times and locations will be announced on the project Web site accessed through *http://www.mtamaryland.com*, and will be published in the following newspapers:

The Baltimore Sun
The Afro-American
The Baltimore Times
The Morgan University Spokesman
The Johns Hopkins Gazette
The Northeast Booster

Scoping material will be available at the meetings and may also be obtained in advance of the meetings by contacting Mr. Lorenzo Bryant, Project Manager, at the address below. Scoping material will also be made available on the project Web site accessed through *http://www.mtamaryland.com*. Oral and written comments may be given at the scoping meetings; a stenographer will be available to record all comments. Information will be made available in both English and Spanish.

ADDRESSES: Written comments on the project scope should be sent by August 1, 2003 to Mr. Lorenzo Bryant, Attn: Green Line, Maryland Transit Administration, William Donald Schaefer Tower, 6 St. Paul Street, Baltimore, MD 21202–1614, or via e-mail to *railplan@mdot.state.md.us*. Mr. Bryant may also be reached by calling (410) 767–3754.

FOR FURTHER INFORMATION CONTACT: If you wish to be placed on the mailing list to receive further information as the study develops, contact Mr. Lorenzo Bryant, Project Manager, or Mr. Jamie Kendrick, Project Outreach Manager, at the above address or *railplan@mdot.state.md.us*. For further information you may also contact Ms. Gail McFadden-Roberts, AICP, Community Planner, Office of Planning and Program Development, Federal Transit Administration, Region III, phone: (215) 656–7100, fax: (215) 656–7260.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and MTA invite all interested individuals and organizations, and federal, state, and local agencies to provide comments on the scope of the study. During the scoping process, comments should focus on identifying specific social, cultural, economic, or natural environmental issues to be evaluated and suggest alternatives, which may be less costly or have less environmental impacts, while achieving similar transportation objectives. The objectives of the Green Line Corridor Transit Project are to: connect northeastern Baltimore to Johns Hopkins Medical Center, downtown Baltimore, the major growth area of Owings Mills; serve Morgan State University; provide convenient service to existing neighborhoods; provide connections to

Baltimore's existing Metro, Light Rail and MARC lines; provide access to the proposed East Baltimore Biotechnology Park; support Smart Growth by serving established city neighborhoods; improve transportation accessibility to existing employment centers in downtown Baltimore; and provide a viable transit alternative to single occupancy vehicle (SOV) travel in the Baltimore region, which is a non-attainment area under the Clean Air Act. Comments should focus on the issues and alternatives for analysis and not on a preference for a particular alternative.

Following public scoping meetings, public outreach activities will include meetings with Local Working Groups established for the study and comprised of community leaders; public meetings and hearings; distribution of a study newsletter; project website and electronic mail newsletters; and other outreach methods and forums. The purpose of the public outreach activities during the scoping process is to inform the public of the proposed study process and to solicit input from the community on the proposed study. Every effort will be made to ensure that the widest possible range of public participants have the opportunity to attend general public meetings held by MTA to solicit input on the Green Line Corridor Transit Project DEIS. Attendance will be sought through mailings, notices, advertisements, press releases and other outreach efforts.

II. Description of Primary Study Area and Transportation Needs

The Green Line study area extends approximately 4 miles in a northeast direction within Baltimore City. The study area begins at the existing terminus of the Baltimore Metro line at Johns Hopkins Medical Center and extends north and east to Morgan State University campus. The southern portion of the study area consists primarily of dense residential and institutional land use, while the northern portion consists primarily of lower-density residential areas and institutional use.

The Green Line Corridor Transit Project would provide a connection between communities in northeast Baltimore City and western Baltimore County and would provide convenient and efficient access to major employment centers in downtown and northeast Baltimore at Johns Hopkins Medical Center, the proposed East Baltimore Biotechnology Park and Morgan State University. It would support the redevelopment and revitalization efforts in east and northeast Baltimore. The purpose of the Green Line Corridor Project DEIS is to examine in further detail potential solutions for addressing mobility issues in the Baltimore region. The focus of the DEIS will be to identify a preferred alternative to improve mobility within the region while being sensitive to the socioeconomic, cultural and natural environmental considerations on a local and regional basis.

The following existing and forecasted reasons dictate the need for a transportation investment in the Baltimore Metropolitan region:

- Growth and development in the region continue at high rates. Smart Growth principles require that the region's economic centers such as Baltimore need to be stimulated, remain vibrant and continue to grow into the future; the Green Line extension would support regional economic centers by providing convenient access to these areas.
- Increased travel demand is causing traffic congestion, unsafe roadway conditions and longer travel delays; the Green Line would provide transportation alternatives to those who currently drive, and would help free road space for those who are auto-dependent, making roadways safer and less prone to delays.
- Many residents in the region lack convenient and accessible transit service to job opportunities; the Green Line will provide fast efficient transit service to these areas and provide residents with enhanced opportunities for employment and mobility through increased connectivity with existing transit services.
- Air quality is a serious problem in the Baltimore region; the Green Line Corridor Transit Project can help the region meet federal health standards for clean air by reducing single occupancy vehicle use.

III. Alternatives

The alternatives proposed for evaluation include: a no-build alternative, which includes the current network plus all ongoing, programmed, and committed projects listed in the Transportation Improvement Program (TIP for the years 2002–2006); a TSM/TDM alternative, which would include improving existing transit services such as additional bus service and routes; BRT alternatives; and rail alternatives. The no-build alternative will provide a basis for comparison with the TSM/TDM and build alternatives.

Each build alternative will explore the construction of new transportation infrastructure, such as tracks, stations, and maintenance yards. Tunnel, surface and/or aerial options will be developed for each of the build alternative alignments. Multi-modal alternatives will also be explored.

IV. Probable Effects

The FTA and MTA will evaluate all potential changes to the social, cultural, economic, built and natural environment, including land acquisition and displacements; land use, zoning, economic development; parklands; community disruption; aesthetics; historical and archaeological resources; traffic and parking; air quality; noise and vibration; water quality; wetlands; environmentally sensitive areas; endangered species; energy requirements and potential for conservation; hazardous waste; environmental justice; safety and security; and secondary and cumulative impacts. Key areas of environmental concern include areas of potential new construction (e.g. structures, new transit stations, new track, etc.). Impacts will be evaluated for both the short-term construction period and for the long-term period of operation associated with each alternative. Measures to avoid, minimize and mitigate any significant adverse impacts will be identified.

V. Federal Transit Administration (FTA) Procedures

The Green Line Corridor Transit Project DEIS will be prepared in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (as amended) and as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500 " 1508) and Federal Transit Administration (FTA) regulations (23 CFR part 771), and the FTA Statewide Planning/Metropolitan Planning regulations (23 CFR part 450). These studies will also comply with the requirements of the National Historic Preservation Act of 1966, as amended, section 4(f) of the 1966 U.S. Department of Transportation Act, the 1990 Clean Air Act Amendments, the Executive Order 12898 on Environmental Justice, and other applicable rules, regulations, and guidance documents. In addition, MTA will seek section 5309 New Starts funding for the project, and will be subject to the FTA New Starts regulation (49 CFR part 611). New Starts regulation requires the submission of certain specific information to FTA to support a request to initiate preliminary engineering, which is normally done in conjunction with the NEPA process.

Upon completion, the DEIS will be available for both public and agency review and comment. Public hearings will be held within the study area. Based on the DEIS and the public and agency comments received, a locally preferred alternative will be selected that will be further detailed in the Final EIS.

Issued on: April 8, 2003.

Herman C. Shipman,

Acting Regional Administrator, Federal Transit Administration TRO III.

[FR Doc. 03–8939 Filed 4–10–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Draft Environmental Impact Statement for the Red Line Corridor Transit Project; Baltimore, MD

AGENCIES: Federal Transit Administration (FTA), U.S Department of Transportation.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: The Federal Transit Administration (FTA) and the Maryland Transit Administration (MTA) are issuing this notice to advise agencies and the public that, in accordance with the National Environmental Policy Act, the FTA and the MTA will prepare a Draft Environmental Impact Statement (DEIS) to assess the impacts of potential transit alternatives in the Red Line Corridor. This corridor extends from the Social Security complex in Baltimore County through the Baltimore City Central Business District (CBD) to Patterson Park in Baltimore, MD. The Red Line Corridor Transit Project would connect eastern and western communities of Baltimore City and Baltimore County, providing the first east-west fixed rail or bus rapid transit connection in Baltimore, and would provide convenient and efficient access to major employment centers in downtown and in Woodlawn. Growing traffic congestion in the Baltimore region has been identified, particularly in the western quadrant of Baltimore City and Baltimore County and there is an intent to improve access to jobs and improve air quality. Significant development and revitalization efforts are also underway in the corridor that will require additional transportation access.

A 23-member Advisory Committee to MTA developed the Baltimore Region Rail System Plan and identified a transit project in the Red Line Corridor as a priority project for implementation. The Advisory Committee recommended "that the MTA immediately begin environmental analysis, planning and design studies" for the project, based on an assessment that this project will best provide an east-west link to jobs, tourism sites and the University of Maryland in the central business district; provide a link to the employment center with 20,000 jobs in the Social Security/Woodlawn area; provide improved transit service to East and West Baltimore communities; and provide connectivity to the existing bus, MARC commuter and Metro rail lines in Baltimore. The project is also included in the Baltimore Region Constrained Long-Range Transportation Plan.

The purpose of the Red Line Corridor Transit Project DEIS is to examine the engineering feasibility, potential benefits, costs, and social, cultural, economic, built and natural environmental impacts of feasible alternatives in the corridor that will improve transit mobility in the Baltimore metropolitan area. The DEIS will examine and evaluate rail, bus rapid transit (BRT), transportation systems management and transportation demand management (TSM/TDM) strategies, and a no-build alternative. Tunnel, surface and/or aerial construction options will be considered for rail and BRT alternatives.

Scoping Meetings: Public scoping meetings for the Red Line Corridor Transit Project DEIS will be held on:

June 5—Rosemont Tower, 740 Poplar Grove Street—4 p.m.–8 p.m.

June 7—Woodlawn Community Center, 2120 Gwynn Oak Avenue—10 a.m.–2 p.m.

Additional meeting dates, times and locations will be announced on the project web-site accessed through *http://www.mtamaryland.com*, and these details will be published in the following newspapers:

The Daily Record
The Baltimore Sun
The Catonsville Times
The Baltimore Times
The Afro-American
Howard County Times
East Baltimore Guide
El Tiempo
El Mesejeros
Baltimore Business Journal

Scoping material will be available at the meetings and may also be obtained in advance of the meetings by contacting Mr. Lorenzo Bryant, Project Manager, at the address below. Scoping material will also be made available on the project web-site accessed through *http://www.mtamaryland.com*. Oral and written comments may be given at the scoping meetings or comments may be sent to the address below. A stenographer will be available at the meetings to record comments. Information will be made available in both English and Spanish.

ADDRESSES: Written comments on the project scope should be sent by August 1, 2003 to Mr. Lorenzo Bryant, Attn: Red Line, Maryland Transit Administration, William Donald Schaefer Tower, 6 St. Paul Street, Baltimore, MD 21202–1614, or via e-mail to *railplan@mdot.state.md.us*. Mr. Bryant may also be reached by calling (410) 767–3754.

FOR FURTHER INFORMATION CONTACT: If you wish to be placed on the mailing list to receive further information as the study develops, contact Mr. Lorenzo Bryant, Project Manager, or Mr. Jamie Kendrick, Public Outreach Manager, at the above address or *railplan@mdot.state.md.us*. For further information you may also contact Ms. Gail McFadden-Roberts, AICP, Community Planner, Office of Planning and Program Development, Federal Transit Administration, Region III, phone: (215) 656–7100, fax: (215) 656–7260.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and MTA invite all interested individuals and organizations, and Federal, State, and local agencies to provide comments on the scope of the study. During the scoping process, comments should focus on identifying specific social, cultural, economic, or natural environmental issues to be evaluated and suggest alternatives, which may be less costly or have less environmental impacts, while achieving the similar transportation objectives. The objectives of the Red Line Corridor Transit Project are: to provide the first east-west transit connection in the Baltimore region; to connect communities in eastern and western Baltimore City and County with Baltimore's existing bus, Metro, Light Rail and MARC lines; to provide more efficient travel times for people on one of the most heavily traveled corridors in the region and which is presently subject to increasing traffic congestion; to improve transportation accessibility to existing employment centers in downtown Baltimore and Woodlawn as well as emerging redevelopment areas in Inner Harbor East, Canton, West Baltimore, and at University Center; and to provide a viable transit alternative to single occupancy vehicle (SOV) travel in the Baltimore region, which is a non-attainment area under the Clear Air Act. Comments should focus on the issues

and alternatives for analysis and not on a preference for a particular alternative.

Following the public scoping process, public outreach activities will include: meetings with Local Working Groups established for the study and comprised of community leaders; public meetings and hearings; distribution of a study newsletter; project Web site and electronic mail newsletters; and use of other outreach methods and forums. The purpose of the public outreach activities during the Scoping process is to inform the public of the proposed study process and to solicit input from the community on the proposed study. Every effort will be made to ensure that the widest possible range of public participants have the opportunity to attend general public meetings held by MTA to solicit input on the Red Line Corridor Transit Project DEIS. Attendance will be sought through mailings, notices, advertisements, press releases, and other outreach activities.

II. Description of Primary Study Area and Transportation Needs

The Red Line Corridor Transit Project area extends approximately 10.5 miles in an east-west direction within Baltimore City and Baltimore County. The western-most terminus of the study area is located at the Center of Medical/Medicaid Services approximately 2 miles west of I–695 (Baltimore Beltway) near the Social Security Complex in Baltimore County and extends east through the Baltimore City Central Business District (CBD), ending at its eastern-most terminus near Patterson Park. Much of the study area is intensely developed. The western portion of the study area consists primarily of residential land use while the CBD consists primarily of commercial and office space with scattered high-density residential development. The eastern portion of the study area consists of commercial land use and residential development.

The Red Line Corridor Transit Project would provide a connection for eastern and western communities of Baltimore City and Baltimore County and would provide convenient and efficient access to major employment centers in downtown and in Woodlawn, thus supporting redevelopment and neighborhood revitalization efforts in Baltimore City and Baltimore County. The purpose of the Red Line Corridor Transit Project DEIS is to examine in further detail potential solutions for addressing mobility issues in the Baltimore region. The focus of the DEIS will be to identify a preferred alternative to improve mobility in the region while being sensitive to the socio-economic, cultural and natural environmental considerations on a local and regional basis.

The following existing and expected future conditions dictate the need for a transit investment in the Baltimore Metropolitan region:

- While growth and development in the region continue at high rates, mobility and access for commuters to transit options within the region has not grown to the same extent; the Red Line transit project would help to improve current travel and access conditions and anticipate future demands;
- Increased travel is causing congestion and the Red Line transit project would give travelers a real choice in how to get from place to place in the region while helping to free road space for those who chose to drive or who must drive;
- Delay affects all transit users, but the time required to complete commutes by bus or rail continue to increase substantially; the Red Line would give the region a needed east-west transit link that would offer new ridership and provide connectivity with existing bus, heavy rail and light rail service, which would enhance the service and ridership of existing facilities;
- The Baltimore Region is struggling to meet federal health standards for air pollution. New development oriented to a new transit system can help the region meet both its air quality and its economic development goals; and
- Many residents in the region lack transit service and any nearby bus service is often inconvenient, limited and slow due to traffic congestion. The Red Line transit project would provide a feasible mode of transport for commuters while improving the efficiency and effectiveness of the current transit services.

III. Alternatives

The alternatives proposed for evaluation include: a no-build alternative, which includes the current network plus all ongoing and committed projects listed in the Transportation Improvement Program (TIP for the years 2002–2006); a TSM/TDM alternative, which would include improving existing transit services such as additional bus service and routes; and build alternatives which include rail and BRT. The no-build alternative will provide a basis for comparison with the TSM/TDM and build alternatives.

Each build alternative will explore the construction of new transportation infrastructure such as tracks, stations, and maintenance yards. Tunnel, surface and/or aerial options will be developed for each of the build alternative alignments. Multi-modal alternatives will also be explored.

IV. Probable Effects

The FTA and MTA will evaluate all potential changes to the social, cultural, economic, built and natural environment, including land acquisition and displacements; land use, zoning, economic development; parklands; community disruption; aesthetics; historical and archaeological resources; traffic and parking; air quality; noise and vibration; water quality; wetlands; environmentally sensitive areas; endangered species; energy requirements and potential for conservation; hazardous waste; environmental justice; safety and security; and secondary and cumulative impacts. Key areas of environmental concern include areas of potential new construction (*e.g.* structures, new transit stations, new track, etc.). Impacts will be evaluated for both the short-term construction period and for the long-term period of operation associated with each alternative. Measures to avoid, minimize and mitigate any significant adverse impacts will be identified.

V. FTA Procedures

The Red Line Corridor Transit Project DEIS will be prepared in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (as amended) and as implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508) and Federal Transit Administration (FTA) regulations (23 CFR part 771), and the FTA Statewide Planning/Metropolitan Planning regulations (23 CFR part 450). These studies will also comply with the requirements of the National Historic Preservation Act of 1966, as amended, section 4(f) of the 1966 U.S. Department of Transportation Act, the 1990 Clean Air Act Amendments, the Executive Order 12898 on Environmental Justice, and other applicable rules, regulations, and guidance documents. In addition, if MTA seeks section 5309 New Starts funding for the project, MTA will be subject to the FTA New Starts regulation (49 CFR part 611). New Starts regulation requires the submission of certain specific information to FTA to support a request to initiate preliminary engineering, which is normally done in conjunction with the NEPA process.

Upon completion, the DEIS will be available for both public and agency review and comment. Public hearings will be held within the study area. Based on the DEIS and the public and agency comments received, a locally preferred alternative will be selected that will be further detailed in the Final EIS.

Issued on: April 8, 2003.

Herman C. Shipman,

Acting Regional Administrator, Federal Transit Administration, TRO III.

[FR Doc. 03–8940 Filed 4–10–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–14880]

Initial Decision That Certain NexL Sports Products Motorcycle Helmets Fail To Comply With Federal Motor Vehicle Safety Standard 218; Public Proceeding Scheduled To Hear Arguments and To Determine Adequacy of Remedy by NexL Sports Products

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of public meeting.

SUMMARY: NHTSA will hold a public meeting, beginning at 10 a.m. on May 14, 2003 regarding its Initial Decision that NexL Sports Products (NexL) "Beanie DOT Motorcycle Helmets" (model 02) fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 218, *Motorcycle Helmets*. At the same time, NHTSA will conduct a hearing to determine if NexL's remedy for the noncompliance of its model 01 helmets with FMVSS No. 218 was adequate.

FOR FURTHER INFORMATION CONTACT: Andrew J. DiMarsico, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–5263. NHTSA's Initial Decision, and the information on which it is based, is available at NHTSA's Technical Information Services, Room 5111, 400 Seventh Street, SW., Washington, DC 20590;Telephone: 202–366–2588. When visiting Technical Information Services or contacting it via the telephone, refer to Investigation File CI–218–020612.

SUPPLEMENTARY INFORMATION: Pursuant to 49 U.S.C. 30118(a), NHTSA's Associate Administrator for Enforcement made an Initial Decision that NexL model 02 motorcycle helmets do not comply with the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 218, *Motorcycle Helmets*, 49 CFR 571.218. These requirements include: Impact attenuation tests, penetration tests, retention system tests and labeling.

In an impact attenuation test pursuant to S7.1 of 49 CFR 571.218, a guided free fall anvil impacts the helmet at specified locations. The height and speed of the guided free fall anvil are set forth in the Standard. To pass, all of the following requirements must be met: (a) Peak accelerations must not exceed 400g; (b) accelerations in excess of 200g must not exceed a cumulative duration of 2.0 milliseconds; and (c) accelerations in excess of 150g must not exceed a cumulative duration of 4.0 milliseconds.

In a penetration test pursuant to S7.2, a guided free fall test striker impacts the outer surface of the complete helmet. To pass, the metal striker must not come into contact with the surface of the specified test headform inside the helmet.

A retention system test, in accordance with S7.3, addresses the retention system of a helmet on a DOT headform by adding specified force to the retention system. The retention system or its components cannot separate or the test device move more than 1 inch (2.5 cm) when measured between preliminary and test load positions.

For labeling purposes, S5.6.1 requires that each helmet be permanently and legibly labeled with the manufacturer's identification and a label that the helmet meets all applicable FMVSS. The label must also include specific language that is set forth in S5.6.

In 2000, NexL began manufacturing and selling model 01 motorcycle helmets. NHTSA's Office of Vehicle Safety Compliance (OVSC) tested several model 01 helmets on May 18, 2001. Those tests indicated numerous apparent failures to comply with several requirements of FMVSS No. 218. NexL subsequently advised NHTSA in a Noncompliance Information Report, dated March 8, 2002, of its decision that the model 01 helmets did not comply with FMVSS No. 218. NexL therefore conducted a recall campaign (NHTSA No. 02E–008) in which its designated remedy for the noncompliance was to replace each model 01 helmet with a NexL model 02 helmet.

The model 02 motorcycle helmet is a redesigned version of the recalled model 01 helmet. In addition to being NexL's designated remedy for the earlier noncompliance, model 02 helmets have been sold to the public.

As part of its annual compliance testing program, OVSC conducted compliance tests of NexL model 02 helmets at two independent test laboratories. On June 12, 2002, Head Protection Research Laboratory (HPR) located in Paramount, California tested four NexL model 02 helmets to the performance requirements of FMVSS No. 218. Subsequently, on July 29, 2002, SGS U.S. Testing Company, Inc. (UST), located in Fairfield, New Jersey, tested four other NexL model 02 helmets. Again, on February 28, 2003, HPR conducted more tests on NexL model 02 helmets. Each series of test results indicated failures of NexL's model 02 helmets to comply with many of the requirements set forth in FMVSS No. 218.

Following initial test failures, OVSC opened an investigation into the compliance of the model 02 helmets with FMVSS No. 218 (CI–218–020612). As part of that investigation, OVSC sent an Information Request (IR) letter to NexL in which it requested information concerning the number of model 02 helmets manufactured by NexL, all tests performed by NexL to support its certification that the model 02 helmets met all applicable FMVSS, consumer complaints, and any engineering analysis regarding the test failures identified by OVSC. NexL responded to that IR on September 4, 2002. Among other things, NexL asserted that the results of tests conducted by Sacramento Test Laboratory (STL), dated August 23, 2002, demonstrated that the model 02 helmets comply with FMVSS No. 218. However, contrary to NexL's assertion, the STL tests also indicate numerous failures to meet the performance requirements of the standard.

OVSC's Report of Investigation, which contains a full description of the compliance investigation, is attached as an Appendix to this notice. The complete public file for the investigation is available at Technical Information Services, Room 5111, 400 Seventh Street, SW., Washington, DC 20590; Telephone: 202–366–2588.

Based upon all of the available information, NHTSA's Associate Administrator for Enforcement has made an Initial Decision, pursuant to 49 U.S.C. 30118(a) and 49 CFR 554.10, that NexL model 02 motorcycle helmets fail to comply with FMVSS No. 218. Pursuant to 49 U.S.C. 30118(b)(1) and 49 CFR 554.10(b), NHTSA will conduct a public meeting, beginning at 10 a.m. on May 14, 2003 in Room 6332, Department of Transportation Building, 400 Seventh Street, SW., Washington, DC, at which time the manufacturer and all other interested persons will be afforded an opportunity to present information, views, and arguments on the issues of whether NexL's model 02 helmets covered by NHTSA's Initial

Decision fail to comply with FMVSS No. 218.

In addition, in view of the fact that the model 02 helmet was the remedy designated by NexL to address the noncompliance of its model 01 helmet in Recall 02E–008, there is reason to believe that this remedy is inadequate to assure compliance with FMVSS No. 218, as required by 49 U.S.C. 30120(c). Therefore, in accordance with 49 U.S.C. 30120(e) and 49 CFR 557.6 and 557.7, NHTSA will conduct a public hearing to decide whether that remedy was adequate and whether to order NexL to provide a different remedy. Because of the similarity of the subject matter, this hearing will be combined with the public meeting on the Initial Decision.

Interested persons are invited to participate in this proceeding through written and/or oral presentations. Persons wishing to make oral presentations must notify Tilda Proctor, National Highway Safety Administration, Room 5321, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4759, or by fax at (202) 366–8065, before the close of business on May 7, 2003. The notifications should specify the amount of time that the presentation is expected to last. The agency will prepare a schedule of presentations. Depending upon the number of persons who wish to make oral presentations, and the anticipated length of those presentations, the agency may add an additional day or days to the meeting/hearing and may limit the length of oral presentations.

Persons who wish to file written comments should submit them to the same address, preferably no later than the beginning of the meeting/hearing on May 14, 2003. However, the agency will accept written submissions until May 28, 2003.

Authority: 49 U.S.C. 30118(a), (b), and 49 U.S.C. 30120(c), (e); delegations of authority at 49 CFR 1.50(a) and 49 CFR 501.8.

Issued on: April 7, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–8941 Filed 4–10–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34177 (Sub–No. 1)]

Iowa, Chicago & Eastern Railroad Corporation—Trackage Rights Exemption—Commuter Rail Division of Regional Transportation Authority of Northeast Illinois and Soo Line Railroad Company

Soo Line Railroad Company, d/b/a Canadian Pacific Railway (CPR), will agree to grant overhead trackage rights[1] to Iowa, Chicago & Eastern Railroad Corporation (IC&E)[2] over: (1) A line of railroad owned by Metra, between milepost 40.3, near Pingree Grove, IL, and the connection with Belt Railway Company of Chicago (BRC) at milepost 6.6, at Cragin Junction, Chicago, IL, a distance of approximately 33.7 miles;[3] and (2) certain CPR-owned connecting track at Tower B–12 in Franklin Park, IL, as necessary to connect and interchange with the Indiana Harbor Belt Railroad Company at that location.

The transaction was scheduled to be consummated on April 1, 2003, the effective date of the exemption.

The purpose of the trackage rights is to allow IC&E to effectively and efficiently interchange traffic in the Chicago terminal on a permanent basis.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34177 (Sub-No. 1), must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Thomas J. Litwiler, Fletcher & Sippel LLC, Two Prudential Plaza, Suite 3125, 180 North Stetson Avenue, Chicago, IL 60601–6721.

Board decisions and notices are available on our website at *http://www.stb.dot.gov*.

Decided: April 4, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–8843 Filed 4–10–03; 8:45 am]

BILLING CODE 4915–00–P

[1] On March 25, 2003, IC&E concurrently filed a motion for a protective order pursuant to 49 CFR 1104.14(b) for a draft Trackage Rights Agreement between IC&E and CPR. The draft Trackage Rights Agreement was submitted under seal, as Exhibit 2 to the notice of exemption. By decision served on April 4, 2003, the Board granted IC&E's motion for a protective order.

In its motion, IC&E explains that, pursuant to a separate contract between CPR and the Commuter Rail Division of the Regional Transportation Authority of Northeast Illinois, d/b/a Metra (Metra), CPR has certain rights to admit a third party to use of the subject line owned by Metra. IC&E states that CPR is admitting it to the Metra line as such a third-party user, and that the trackage rights agreement is solely between CPR and IC&E. IC&E advises that CPR's admittance of IC&E to the Metra line is with the consent of Metra.

[2] IC&E is a Class II rail carrier operating approximately 1400 miles of trackage in the states of Iowa, Illinois, Kansas, Missouri, Minnesota, and Wisconsin. IC&E began rail operations on July 30, 2002, after acquiring the rail lines of I&M Rail Link, LLC. *See Iowa, Chicago & Eastern Railroad Corporation—Acquisition and Operation Exemption—Lines of I&M Rail Link, LLC*, STB Finance Docket No. 34177 (STB served June 12, 2002, July 22, 2002, and Jan. 21, 2003).

[3] The proposed Metra trackage rights permit IC&E to connect and interchange with BRC at Cragin Junction (including the use of CPR's Galewood Yard at Cragin Junction in connection with movements to and from BRC), CPR at Bensenville Yard in Bensenville, IL, and Elgin, Joliet & Eastern Railway Company at Spaulding, IL.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 3, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 12, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0817.

Regulation Project Number: EE–28–78 Final.

Type of Review: Extension.

Title: Inspection of Applications for Tax Exemption and Applications for

Determination Letters for Pension and Other Plans.

Description: Internal Revenue Code (IRC) section 6104 requires applications for tax exempt status, annual reports of private foundations, and certain portions of returns to be open for public inspection. Some information may be withheld from disclosure. IRS needs the information to comply with requests for public inspection of the above-named documents.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 42,370.

Estimated Burden Hours per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,538 hours.

OMB Number: 1545–1809.

Form Number: IRS Form 8882.

Type of Review: Extension.

Title: Credit for Employer-Provided Child Care Facilities and Services.

Description: Qualified employers use Form 8882 to request a credit for employer-provided child care facilities and services. Section 45F provides credit based on costs incurred by an employer in providing child care facilities and resource and referral services. The credit is 25 percent of the qualified child care expenditures plus 10 percent of the qualified child care resource and referral expenditures for the tax year, up to a maximum credit of $150,000 per tax year.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000,000.

Estimated Burden Hours per Respondent/Recordkeeper:

Recordkeeping—8 hr., 7 min.

Learning about the law or the form—42 min.

Preparing and sending the form to the IRS—51 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 9,680,000 hours.

OMB Number: 1545–1810.

Form Number: IRS Form 8881.

Type of Review: Extension.

Title: Credit for Small Employer Pension Plan Startup Costs.

Description: Qualified small employers use Form 8881 to request a credit for start up costs related to eligible retirement plans. Form 8881 implements section 45E, which provides a credit based on costs incurred by an employer in establishing or administering an eligible employer plan or for the retirement-related education of employees with respect to the plan. The credit is 50 percent of the qualified costs for the tax year, up to a maximum credit of $500 for the first tax year and each of the two subsequent tax years.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 100,000.

Estimated Burden Hours per Respondent/Recordkeeper:

Recordkeeping—7 hr., 39 min.

Learning about the law or the form—53 min.

Preparing and sending the form to the IRS—1 hr., 3 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 960,000 hours.

OMB Number: 1545–1815.

Form Number: IRS Form 5498–ESA.

Type of Review: Extension.

Title: Coverdell ESA Contribution Information.

Description: Form 5498–ESA is used by trustees and issuers of Coverdell Education Savings accounts to report contributions made to these accounts to beneficiaries.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 10,000.

Estimated Burden Hours per Respondent/Recordkeeper: 7 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 18,000 hours.

OMB Number: 1545–1822.

Revenue Procedure Number: Revenue Procedure 2003–11.

Type of Review: Extension.

Title: Offshore Voluntary Compliance Initiative.

Description: Revenue Procedure 2003–11 describes the Offshore Voluntary Compliance Initiative, which is directed at taxpayers that have under-reported their tax liability through financial arrangements outside the United States that rely on the use of credit, debit, or charge cards (offshore credit cards) or foreign banks, financial institutions, corporations, partnerships, trusts, or other entities (offshore financial arrangements). Taxpayers that participate in the initiative and provide the information and material that their participation requires can avoid certain penalties.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours per Respondent: 50 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 100,000 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports, Management Officer.

[FR Doc. 03–8863 Filed 4–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 3, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pubic Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 12, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1233.

Regulation Project Number: IA–14–91 Final.

Type of Review: Extension.

Title: Adjusted Current Earnings.

Description: This regulation affects business and other for-profit institutions. This information is required by the IRS to ensure the proper application of section 1.56(g)–1 of the regulation. It will be used to verify that taxpayers have properly elected the benefits of section 1.56(g)–1® of the regulation.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 1 hour.

Estimated Total Reporting/Recordkeeping Burden: 1,000 hours.

OMB Number: 1545–1380.

Regulation Project Number: IA–17–90 Final.

Type of Review: Extension.

Title: Reporting Requirements for Recipients of Points Paid on Residential Mortgages.

Description: To encourage compliance with the tax laws relating to the mortgage interest deduction, the regulations require the reporting on Form 1098 of points paid on residential mortgages. Only businesses that receive mortgage interest in the course of a trade or business are affected by this requirement.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 37,644.

Estimated Burden Hours per Respondent/Recordkeeper: 7 hours, 31 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 283,056 hours.

OMB Number: 1545–1431.

Regulation Project Number: IA–74–93 Final.

Type of Review: Extension.

Title: Substantiation Requirement for Certain Contributions.

Description: These regulations provide that, for purposes of substantiation for certain charitable contributions, consideration does not include de minimis goods or services. It also provides guidance on how taxpayers may satisfy the substantiation requirement for contributions of $250 or more.

Respondents: Business or other for-profit, Individuals or households, not-for-profit institutions.

Estimated Number of Respondents: 16,000.

Estimated Burden Hours per Respondent: 3 hours, 13 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 51,500 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–8864 Filed 4–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Debt Management Advisory Committee Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 2, 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on April 29, 2003, of the following debt management advisory committee:

The Bond Market Association, Treasury Borrowing Advisory Committee.

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the Committee discuss particular issues, and a working session. Following the working session, the Committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9 a.m. eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 2, 10(d) and Pub. L. 103–202, 202(c)(1)(B) (31 U.S.C. 3121 note).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 2, 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with discussions of the issues presented to the Committee by the Secretary and recommendations of the Committee to the Secretary, pursuant to Pub. L. 103–202, 202(c)(1)(B). Thus, this information is exempt from disclosure under that provision and 5 U.S.C. 552b(c)(3)(B). In addition, the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 2, 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b. The Designated Federal Officer or other responsible agency official who may be contacted for additional information is Tim Bitsberger, Deputy Assistant Secretary, Federal Finance, at 202–622–2245.

Dated: April 7, 2003.

Brian C. Roseboro,

Assistant Secretary, Financial Markets.

[FR Doc. 03–8875 Filed 4–10–03; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–130477–00; REG–130481–00]

Proposed Collection; Comment Request for Required Distributions From Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulations, REG–130477–00; REG–130481–00 (TD 8987), Required Distributions From Retirement Plans (§ 1.403(b)–3).

DATES: Written comments should be received on or before June 10, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Required Distributions From Retirement Plans.

OMB Number: 1545–0996.

Regulation Number: REG–130477–00; REG–130481–00.

Abstract: This regulations relates to the required minimum distributions from qualified plans, individual retirement plans, deferred compensation plans under section 457, and section 403(b) annuity contracts, custodial accounts, and retirement income accounts.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local, or tribal governments.

Estimated Number of Respondents: 8,400.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 8,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 7, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–8961 Filed 4–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for IRS Taxpayer Service Benchmark Survey, Focus Group and Telephone Interview

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning IRS Taxpayer Advocate Service Benchmark Survey, Focus Group and Telephone Interview.

DATES: Written comments should be received on or before June 10, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of information collection should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: IRS Taxpayer Advocate Benchmark Survey, Focus Group and Telephone Interview.

OMB Number: To be assigned later.

Abstract: In September 2002, the Taxpayer Advocate Service (TAS) completed an extensive one-year research program that identified its target audience far more definitively. The research program showed that the actual target was much broader and included a wide mix of different life circumstances—ranging from Affluent Families and Empty Nesters at the higher end of the income scale, to the Stable Middle Class in the center, to Surviving Spouses, Struggling Young Families, and Unmarried Poor at the lower end of the income scale. The research also showed that Small Business Owners are an important element of the target audience, while Non-English speaking Taxpayers are not as important as had been believed (with the latter segment being no more prevalent in the TAS target audience than in the Total Taxpayer audience). TAS is planning communications to the Underserveds, with a focus on four key segments of the Underserved audience—Surviving Spouses, Struggling Young Families, Unmarried Poor, and Small Business Owners. It is necessary to conduct a marketing research effort to guide development of new communications and track their impact, while continuing the tracking of the target audience that is a part of the overall research strategy of TAS.

Current Actions: This is a new collection of information.

Type of Review: New OMB Approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,180.

Estimated Time Per Respondent: 5 hrs., 26 min.

Estimated Total Annual Burden Hours: 6,422.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to

minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 7, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–8962 Filed 4–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 7018 and 7018–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 7018, Employer's Order Blank for Forms, and Form 7018–A, Employer's Order Blank for 2003 Forms.

DATES: Written comments should be received on or before June 10, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 7018, Employer's Order Blank for Forms, and Form 7018–A, Employer's Order Blank for 2003 Forms.

OMB Number: 1545–1059.

Form Number: Forms 7018 and 7018–A.

Abstract: Forms 7018 and 7018–A allow taxpayers who must file information returns a systematic way to order information tax forms materials.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,668,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 83,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 7, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–8964 Filed 4–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2003–33

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2003–33, Section 9100 Relief for 338 Election.

DATES: Written comments should be received on or before June 10, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Section 9100 Relief for 338 Elections.

OMB Number: 1545–1820.

Revenue Procedure Number: Revenue Procedure 2003–33.

Abstract: Revenue Procedure 2003–33 provides qualifying taxpayers with an extension of time pursuant to § 301.9100–3 of the Procedure and Administration Regulations to file an election described in § 338(a) or § 338(h)(10) of the Internal Revenue Code to treat the purchase of the stock of a corporation as an asset acquisition.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 60.

Estimated Average Time Per Respondent: 5 hours.

Estimated Total Annual Reporting Burden: 300 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 7, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–8965 Filed 4–10–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 5712 and 5712–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5712, Election To Be Treated as a Possessions Corporation Under Section 936, and Form 5712–A, Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5).

DATES: Written comments should be received on or before June 10, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Election To Be Treated as a Possessions Corporation Under Section 936 (Form 5712), and Election and Verification of the Cost Sharing or Profit Split Method Under Section 936(h)(5) (Form 5712–A).

OMB Number: 1545–0215. Form Number: Forms 5712 and 5712–A.

Abstract: Domestic corporations may elect to be treated as possessions corporations on Form 5712. This election allows the corporation to take a tax credit. Possession corporations may elect on Form 5712–A to share their taxable income with their affiliates under Internal Revenue Code section 936(h)(5). These forms are used by the IRS to ascertain if corporations are entitled to the credit and if they may share their taxable income with their affiliates.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,600.

Estimated Time Per Respondent: 7 hrs., 47 min.

Estimated Total Annual Burden Hours: 20,234.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 7, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–8966 Filed 4–10–03; 8:45 am]

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Federal Register

Friday,
April 11, 2003

Part II

Department of Labor

Management of U.S. Department of Labor Web Sites; Notice

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 2–2003]

Management of U.S. Department of Labor Web Sites

1. *Purpose.* To establish policy and assign responsibilities for the management of Department of Labor (DOL) Internet and Intranet Web sites, and the content published on these Web sites.

2. *Authority and Relationship to Other Orders.*

a. *Authority.* This Order is issued pursuant to 29 U.S.C. 551 *et seq.*; 5 U.S.C. 301; sections 5122–5127 of the Clinger-Cohen Act (40 U.S.C. 11312–17); and the E-Government Act of 2002 (Pub. L. 107–347).

b. *Relationship to Other Orders.*

(1) This Order does not affect the authorities and responsibilities assigned by any other Secretary's Order, unless otherwise expressly so provided in this or another Order.

(2) This Order repeals Secretary's Order 2–2000, U.S. Department of Labor Internet Services.

(3) This Order amends Paragraph 4(a)(10) of Secretary's Order 2–2002, to the extent of any inconsistencies.

(4) This Order amends Secretary's Order 37–65, to assign responsibilities to Office of Public Affairs for certain Web site functions.

3. *Background.* The Department receives more than 550 million visits a year on its various Web sites and relies on its public Web sites to provide services to individuals, businesses, organizations, and other government entities. DOL also relies heavily on intranets to communicate internally with the Department's employees. The management of our Internet and Intranet Web sites will become more critical as the Department implements its e-government strategy and improves the electronic delivery of products and services to our internal and external customers. This Order is designed to ensure that the Department communicates its policies and programs more effectively and efficiently via our Internet and Intranet Web sites.

4. *Statement of Policy.* The Department's ability to communicate and conduct business will continue to require the effective use and management of the Department's Web sites. To maximize the potential of our Web sites, while meeting customer expectations, the Department will employ common Web management standards and approaches for all DOL Internet and Intranet Web sites. To achieve these objectives, the Department will:

a. Establish a Web Site Management Group that effectively leverages the programmatic content, legal, policy and information technology expertise throughout the Department;

b. Ensure that the Department's Web sites present a common, unified message to the public and Departmental employees, while reflecting the Department's purpose and mission;

c. Apply Web information technology standards across all DOL Web sites in accordance with the Federal and Departmental Enterprise Architectures;

d. Ensure appropriately secure and confidential exchange of information via the Department's Web sites;

e. Ensure appropriate review and approval of information prior to publication on Departmental Web sites;

f. Ensure that Web site content is timely, accurate, and complete and managed in compliance with legislative and administrative mandates, including the Federal Records Act, Privacy Act, and Rehabilitation Act;

g. Ensure that e-correspondence coming in via DOL Internet Web sites is tracked and answered in a timely fashion and preserved in accordance with the Federal Records Act to protect the legal rights of, and minimize the legal risks to, the Department;

h. Ensure that all records of business transacted on DOL Web sites are managed in accordance with the Federal Records Act, Privacy Act, and other applicable legislative and administrative mandates and guidance;

i. Ensure that Agency Heads are accountable for compliance with all Federal and Departmental mandates, policies, and legislative requirements; and

j. Ensure that the Department conducts privacy impact assessments as required by the E-Government Act.

5. *Definitions.*

a. "*Information Technology*" refers to any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information by the executive agency. It also refers to computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

b. "*Intranet Web sites*" refers to Departmental and Agency Web sites that provide general access for communicating to DOL employees.

c. "*Internet Web sites*" refers to Departmental and Agency Web sites that are available to the general public.

d. "*Departmental Web Site Information Technology Standards*" refers to the policies, processes, and procedures, defined by the Office of the Chief Information Officer (OCIO), to meet architectural, interoperability, and security goals that are within the guidelines of the Federal and Department Enterprise Architectures. Such guidance will establish Department-wide baselines and targets for managing and operating DOL Internet Web sites and Intranet Web sites, and related information technologies.

6. *Delegation of Authority and Assignment of Responsibilities.*

a. *The Assistant Secretary for Public Affairs* (ASPA) is delegated authority and assigned responsibility for management of DOL Web sites as outlined below:

(1) Appointing a DOL Web Sites Director to manage the Department's Internet Web sites and Intranet Web sites, including the DOL.GOV and Labornet Web sites;

(2) Maintaining and operating the DOL.GOV and Labornet Web sites in accordance with DOL policies and procedures, including Departmental Web Site Information Technology Standards and design requirements;

(3) Coordinating with the Office of the Assistant Secretary for Policy (OASP), Office of the Assistant Secretary for Administration and Management (OASAM), OCIO, and the Office of the Solicitor (SOL) in the development of policy, procedure and guidelines to ensure that DOL Internet Web site content and services are accurate, timely, and regularly updated; and aligned with the Department's mission and Secretarial goals;

(2) Coordinating with DOL agencies, OASP, OASAM, OCIO, and SOL, to ensure that all information published on DOL Internet Web sites, all e-correspondence coming into Web sites as well as responses, and all Federal Records Act, Privacy Act and other applicable legislative and administrative mandates and guidance to protect the legal rights of, and minimize the legal risks to, the Department;

(5) Ensuring a common look and feel, navigation, and branding for all appropriate DOL Internet Web sites and Intranet Web sites by developing DOL design requirements;

(6) Establishing and chairing a Web Site Management Group comprising designated Agency Internet Coordinators and designated policy-level representatives from OPA, OCIO, OASP and SOL, and other agencies or offices as appropriate for the purpose of implementing DOL-wide Internet and Intranet Web site policies consistent with other applicable Departmental review processes; and

(7) Consistent with other applicable Departmental review processes, approving or disapproving, after consultations with the Web Site Management Group, the creation of all new Internet Web sites and Intranet Web sites, including new individual agency Internet Web Sites and Intranet Web sites.

b. *The Assistant Secretary for Policy (ASP)* is delegated authority and assigned responsibility for:

(1) Establishing, managing, and overseeing, in coordination with DOL agencies, OPA, OASAM, SOL and other relevant offices, the Departmental Internet Web site content clearance process and the Departmental Internet Web site content clearance requirements, which shall provide for:

(a) Appropriate and timely approval or disapproval of content for policy consistency, prior to publication on all Departmental Internet Web sites; and

(b) Appropriate coordination with SOL to ensure compliance with legislative and administrative mandates, including the Federal Records Act, Privacy Act, and Section 508 of the Rehabilitation Act.

(2) In coordination with DOL Agencies, OPA, OASAM, and SOL, establishing appropriate Department-wide policy for designing, developing, and overseeing implementation of an electronic correspondence tracking and reporting process to manage responses to electronic correspondence received via Internet Web sites. The process shall ensure that all information published on the Internet Web sites, all e-correspondence coming into the Internet Web sites as well as responses, and all records of business transacted in whole or in part via the Web sites are managed in accordance with the Federal Records Act, Privacy Act and other applicable legislative and administrative mandates and guidance to protect the legal rights of, and minimize the legal risks to, the Department.

(3) Participating as a Vice-Chair of the Web Site Management Group.

c. *The Chief Information Officer (CIO)* is delegated authority and assigned responsibility for:

(1) In consultation with SOL as appropriate, supporting, consistent with Secretary's Order 1–2000, all information technology aspects of DOL Internet Web sites and Intranet Web sites pursuant to the Clinger-Cohen Act, E-Government Act, Paperwork Reduction Act, Section 508 of the Rehabilitation Act, Federal Information Security Management Act (FISMA) and other applicable statutory and administrative mandates;

(2) In consultation with SOL as appropriate, set Departmental Web Site Information Technology Standards and technical policy for all Departmental Web sites, including standards to ensure compliance with the technical requirements of legislative and administrative mandates, such as Section 508 of the Rehabilitation Act;

(5) Ensuring information technology resources are in alignment with the Department's capital planning and investment management program, in accordance with CIO statutory responsibilities, under the Clinger-Cohen Act, and E-Government Act.

(6) Participating as a Vice-Chair of the Web Site Management Group; and

(7)Coordinating and consulting, as appropriate, with other DOL agencies in fulfilling the above responsibilities.

d. *The Assistant Secretary for Administration and Management* (ASAM) is delegated authority and assigned responsibility for:

(1) Ensuring, through the Department's budget review process, that agencies have appropriate plans and budgetary commitment to support the continuing development, implementation, operation, and expansion of DOL Web services.

(2) Providing operational and maintenance support to OPA for the hardware and operating system used to run Internet Information Services, Internet Web sites, and Labornet, including network connectivity and backups.

(3) In coordination with OASP, OPA, OCIO and SOL, ensuring that information published on Internet Web sites, e-correspondence coming in via Internet Web sites, and records of business transacted in whole or in part via Internet Web sites are managed in accordance with the Federal Records Act, Privacy Act and other applicable legislative and administrative mandates and guidance to protect the legal rights of, and minimize the legal risks to, the Department.

e. *The Solicitor of Labor (SOL)* is delegated authority and assigned responsibility for:

(1) Providing legal advice and counsel to the DOL agencies and offices on all matters arising in the administration of this Order;

(2) Reviewing all Internet content for legal issues, in accordance with Departmental and Agency Web site content clearance processes and requirements; and

(3) Participating as a Vice-Chair of the Web Site Management Group.

f. *DOL Agency Heads* are delegated authority and assigned responsibility for developing, implementing, operating, and expanding their respective agency Internet services in accordance with this Order and DOL policy and standards. These responsibilities include the following:

(1) Designating an agency Web site Coordinator at the policy level to serve as point of contact on any Internet Web site-related issue, and to serve as a member of the Web Site Management Group;

(2) Ensuring compliance with all Federal and Departmental mandates, policies, and legislative requirements, including the Federal Records Act, Privacy Act, and Section 508 of the Rehabilitation Act, Clinger-Cohen Act, and E-Government Act;

(3) Overseeing and ensuring appropriate clearance of all Agency Internet Web site content for publication prior to providing the content to OPA;

(4) Supporting and implementing Departmental Web Site Information Technology Standards and initiatives;

(5) Developing, implementing and maintaining Agency Internet Web site content clearance processes, in consultation with SOL and OASP, which comport with Departmental review and clearance requirements;

(6) Producing appropriate plans and budgets to support their Internet and Intranet Web sites in compliance with the Department's Capital Planning and Investment Control guidelines and the Enterprise Architecture;

(7) Providing the resources and training necessary to develop, implement, operate, and expand individual agency Web site services;

(8) Developing, implementing and maintaining Agency Internet and Intranet Web site design processes, which shall comport with the Departmental Internet and Intranet Web site design requirements and be properly integrated with general Department and agency design processes, as evidenced by review and approval by OPA and SOL;

(9) Developing, implementing and maintaining Agency Internet Web site information technology practices, which shall accord, at a minimum, with the Departmental Internet Web Site Information Technology Standards, and be properly integrated with the Federal and Departmental Enterprise Architectures;

(10) Ensuring that all information published on agency Web sites, all e-correspondence coming into the Web sites as well as responses, and all

records of business transacted in whole or in part via DOL's Internet Web sites are managed in accordance with Federal Records Act, Privacy Act and other applicable legislative and administrative mandates and guidance;

(11) Ensuring quality control and full compliance with all Departmental Internet and Intranet policies and processes;

(12) Obtaining approval from OPA for all new Internet and Intranet Web sites before making the sites available to the public or employees;

(13) Ensuring that all grandfathered Internet Web site content is cleared consistent with the requirements of this Order; and

(14) Ensuring agency compliance with the Departmental Internet Web site content clearance process and requirements consistent with the requirements of this Order.

7. *Effective Date.* This Order is effective immediately.

8. *Reservation of Authority:*

a. The submission of reports and recommendations to the President and Congress concerning the administration of statutory or administrative provisions is reserved to the Secretary of Labor.

b. This Secretary's Order does not affect the authorities or responsibilities of the Office of Inspector General under the Inspector General Act of 1978, as amended, or under Secretary's Order 2–90 (January 31, 1990).

c. The Secretary retains all authorities delegated herein.

9. *Redelegations and Transfers of Authority:*

a. All of the authorities delegated herein may be redelegated.

b. The Assistant Secretary for Public Affairs may transfer authorities set forth in paragraph 6a to other agency heads, as appropriate.

10. *Grandfather Clause:*

a. Existing Departmental and Agency Web site design requirements shall continue in effect until the new requirements authorized under this Order are established.

b. Existing Departmental and Agency Web site information technology shall continue in effect until the new standards authorized under this Order are established.

c. OPA shall ensure that all grandfathered Web sites comport with the Departmental Web Site design requirements authorized under this Order.

d. OCIO shall ensure that all grandfathered Web sites interoperate with the Departmental Web Site Information Technology Standards authorized under this Order.

e. The grandfather clause expires when new requirements and standards become effective.

Dated: April 4, 2003.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03–8905 Filed 4–10–03; 8:45 am]

BILLING CODE 4510–23–P



Federal Register

Friday,
April 11, 2003

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Within the Territory and Airspace of Iraq; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2003–14766; SFAR 77]

Prohibition Against Certain Flights Within the Territory and Airspace of Iraq

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; technical amendment.

SUMMARY: This amendment corrects language in Special Federal Aviation Regulation (SFAR) No. 77, prohibition against certain flights within the territory and airspace of Iraq, to correspond to standard procedures used for permitted operations under the Federal Aviation Administration's authority for all similar SFAR's. This final rule informs the public of this minor change.

DATES: This action is effective April 8, 2003, and shall remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT: David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–3732 or 267–8166.

SUPPLEMENTARY INFORMATION:

Availability of This Action

You can get an electronic copy of this final rule through the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://www.dms.dot.gov/search*);

(2) Visiting the Office of Rulemaking's web page at *http://www.faa.gov/avr/armhome.htm*; or

(3) Accessing the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You may also obtain a paper copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave, SW., Washington, DC 20591, or by calling (202) 267–9680. You must identify the docket number (28691) of this action.

Background

SFAR 77 was issued October 16, 1996, as a safety precaution for flights over the territory of Iraq. The FAA now anticipates that when hostilities are ended, humanitarian efforts may be needed to assist the people of Iraq. In order to facilitate these humanitarian efforts, the FAA standardizes the language traditionally used for permitted operations over restricted flight areas.

The FAA amends SFAR 77 to eliminate a technical inaccuracy in the current SFAR, namely that another agency could allow persons covered by paragraph 1 to operate into Iraq without prior FAA approval. Because the FAA is responsible for the safety of U.S. air carriers, U.S. commercial operators, U.S. registered aircraft, and airmen relying on U.S. issued airman certificates, the FAA must be the final decisionmaker as to whether it is appropriate to waive the applicability of this SFAR in certain situations.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Afghanistan.

The Amendment

■ For the reasons set forth above, the Federal Aviation Administration amends 14 CFR Part 91 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531; Articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

■ 2. Revise Section 3 of Special Federal Aviation Regulation (SFAR) No. 77 to read as follows:

SPECIAL FEDERAL AVIATION REGULATION NO. 77—PROHIBITION AGAINST CERTAIN FLIGHTS WITHIN THE TERRITORY AND AIRSPACE OF IRAQ

* * * * *

3. *Permitted operations.* This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations within the territory and airspace of Iraq when such operations are authorized either by another agency of the United States Government with the approval of the FAA or by an exemption issued by the Administrator.

* * * * *

Issued in Washington, DC, on April 7, 2003.

Marion C. Blakey,

Administrator.

[FR Doc. 03–8947 Filed 4–8–03; 4:07 pm]

BILLING CODE 4910–13–P

Federal Register

Friday,
April 11, 2003

Part IV

The President

Proclamation 7660—National Former Prisoner of War Recognition Day, 2003

Proclamation 7661—National D.A.R.E. Day, 2003

Federal Register
Vol. 68, No. 70
Friday, April 11, 2003

Presidential Documents

Title 3—

The President

Proclamation 7660 of April 8, 2003

National Former Prisoner of War Recognition Day, 2003

By the President of the United States of America

A Proclamation

America's former prisoners of war (POWs) are national heroes whose service to our country will never be forgotten. These brave men and women who fought for America and endured cruelties and deprivation as prisoners of war helped to protect our Nation, liberated millions of people from the threats of tyranny and terror, and advanced the cause of freedom worldwide.

This year, our Nation commemorates the 50th anniversary of the signing of the armistice to end armed conflict in the Korean War. We remember Operation Little Switch, conducted April through May 1953, that freed 149 American POWs, and Operation Big Switch, conducted August through September 1953, which returned 3,597 Americans to our country. Finally, Operation Glory, conducted July through November 1954, was responsible for the return of the remains of 2,944 Americans from North Korea. During this observance, we also recognize and honor the more than 8,100 Americans still unaccounted for from the Korean War.

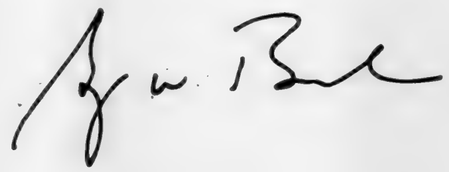
This year also marks the 30th anniversary of Operation Homecoming, in which 591 American POWs from Vietnam were returned. We also recognize and honor those Americans still unaccounted for from the Vietnam War.

All of these individuals are to be honored for their strength of character and for the difficulties they and their families endured. From World War II, the Korean War, and Vietnam, to the 1991 Gulf War, Operation Iraqi Freedom, and other conflicts, our service men and women have sacrificed much to secure freedom, defend the ideals of our Nation, and free the oppressed. By answering the call of duty and risking their lives to protect others, these proud patriots continue to inspire us today as we work with our allies to extend peace, liberty, and opportunity to people around the world.

As we honor our former POWs, we are reminded of our current POWs, captured in Operation Iraqi Freedom. We will work to secure their freedom, and we pray for their speedy and safe return. These brave men and women in uniform follow in the footsteps of these former POWs who placed country above self to advance peace in a troubled world.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 9, 2003, as National Former Prisoner of War Recognition Day. I call upon all the people of the United States to join me in remembering former American prisoners of war by honoring the memory of their sacrifices and in praying for the safe return of our POWs. I also call upon Federal, State, and local government officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–9156
Filed 4–10–03; 11:02 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7661 of April 9, 2003

National D.A.R.E. Day, 2003

By the President of the United States of America

A Proclamation

Drugs destroy the hopes, dreams, and the health of our children, and we must continue to work to reduce drug use among America's young people. Today we honor Drug Abuse Resistance Education (D.A.R.E.), the most widely recognized substance abuse and violence prevention curriculum in America. As we celebrate the 20th anniversary of this important program, we recognize D.A.R.E.'s proud record of helping millions of young people lead productive, drug-free, and violence-free lives, and reaffirm our commitment to end illegal drug use among our youth.

D.A.R.E. was founded in 1983 by the Los Angeles Police Department (LAPD), which faced an overwhelming drug use problem among juveniles and saw the need for a program to educate children and young adults about the destructive realities of substance abuse. Teaming with the Los Angeles Unified School District, the LAPD sent specially trained police officers into classrooms to teach middle school students how to resist peer pressure and make positive decisions. Since that beginning 20 years ago, D.A.R.E. has grown to reach 36 million students in more than 300,000 classrooms in the United States and around the world. Today, D.A.R.E. programs are taught in 80 percent of our Nation's school districts.

D.A.R.E.'s in-school curriculum focuses on giving children practical skills to avoid becoming involved in drugs, gangs, and violence. D.A.R.E. officers serve as supportive role models and encourage young people to develop healthy self-esteem. D.A.R.E. also helps young people in the critical after-school hours through D.A.R.E. P.L.U.S. (Play and Learn Under Supervision), a follow-up program that serves as a safe and fun alternative to the local streets. D.A.R.E. P.L.U.S. is designed to encourage middle school students to start taking responsibility for their actions and to engage in activities other than drug use.

One of the core principles of my National Drug Control Strategy is to stop drug use before it starts, and D.A.R.E. and D.A.R.E. P.L.U.S. play an important role in my community-based approach. Through these programs, parents, educators, law enforcement officials, and other caring citizens are joining together in a collaborative fight against illegal drugs. However, we have more to do to reduce illegal drug use among America's youth. The most effective way to reduce the supply of drugs is to reduce the demand, and I am confident that we can help accomplish this goal through a focus on effective, family-centered education and prevention.

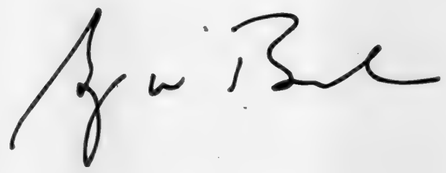
Toward this end, I have proposed the creation of a Parents Drug Corps to educate and train parents to lead the effort in preventing drug use among children and teens. In addition, I have asked the Congress to support millions of parents and concerned citizens in communities nationwide by doubling funding for the Drug-Free Communities Support Program. These new efforts will complement our ongoing work to surround our most vulnerable children with caring adults who can offer support, guidance, and encouragement.

As we honor the dedicated individuals whose extraordinary efforts make D.A.R.E. work, we resolve to continue to help young people avoid the

dangers of drug use and violence. By helping to ensure that all our children are educated and supported by positive and caring role models, we contribute to a promising future that offers hope and opportunity for all.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 10, 2003, as National D.A.R.E. Day. I call upon all the people of the United States, particularly our youth, parents, and educators, to observe this day by joining the fight against drugs in our communities. I also encourage our citizens to express appreciation for the law enforcement officers, volunteers, and others who work to help young people avoid the dangers of drug use.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–9172
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H.R. 395/P.L. 108–10

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108th Congress

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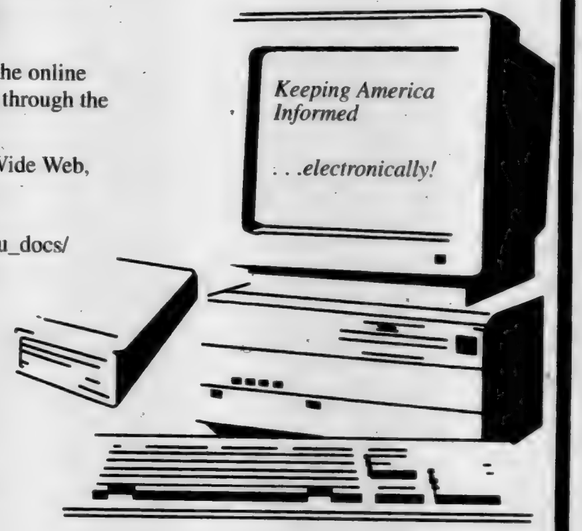
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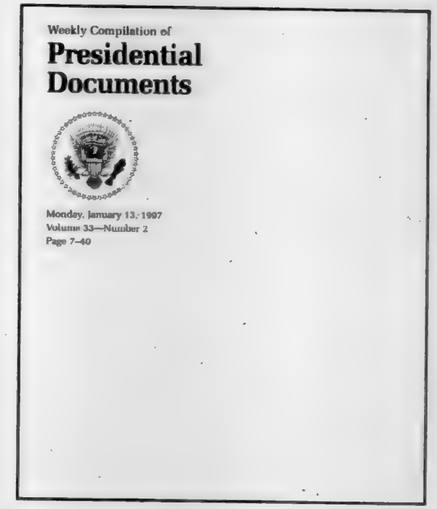
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

5 CFR Chapter LXVII

RIN 3137–AA15

Supplemental Standards of Ethical Conduct for Employees of the Institute of Museum and Library Services

AGENCY: Institute of Museum and Library Services (IMLS).

ACTION: Interim final rule, with request for comments.

SUMMARY: The Institute of Museum and Library Services, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for officers and employees of IMLS that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The supplemental regulations require IMLS employees to obtain prior written approval to engage in certain outside employment or related activities.

EFFECTIVE DATE: These regulations take effect on April 14, 2003. Comments are invited and must be received on or before May 14, 2003.

ADDRESSES: Send comments by mail to Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Suite 802, Washington, DC 20506, or by e-mail to *regulations@imls.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone (202) 606–5414; e-mail *nweiss@imls.gov*. Individuals who use a telecommunications device for the deaf (TDD) may contact IMLS' TDD terminal at (202) 606–8636.

SUPPLEMENTARY INFORMATION:

1. Background

On August 7, 1992, OGE published in the **Federal Register** new Standards of Ethical Conduct for Employees of the Executive branch (the "Standards") (57 FR 35006–35067). The Standards, as corrected and amended, are codified at 5 CFR part 2635 and generally became effective February 3, 1993. Those regulations established uniform standards of ethical conduct that apply to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.150 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. With OGE's concurrence, IMLS has determined that the following supplemental regulations contained in a new chapter LXVII, consisting of part 7701, of 5 CFR as set forth in this interim rule are necessary to implement IMLS's ethics program successfully, in light to of IMLS' programs and operations.

II. Analysis of the Regulations

Section 7701.101 General

Section 7701.101 explains that the regulations contained in this interim rule will apply to all IMLS employees and are supplemental to the executive branchwide standards. Employees of IMLS are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the executive branch financial disclosure and financial interests regulations at 5 CFR parts 2634 and 2640, and the executive branch employees responsibilities and conduct regulations at 5 CFR part 735.

Section 7701.102 Prior-Approval for Outside Employment

Under 5 CFR 2635.803, an agency that determines if is necessary or desirable for the purpose of administering its ethics program may, by supplemental regulation with OGE's concurrence and co-signature, require its employees to obtain written approval before engaging in outside employment. IMLS has determined that it is necessary to the administration of its ethics program to institute the requirement that employment that may pose the most potential for employees to violate applicable conflict laws and regulations.

Therefore, subsection 7701.102(a) requires prior approval of outside employment when the outside employment involves a prohibited source. In identifying a "prohibited source" for purposes of this prior approval requirement, IMLS will apply the definition of that term found in the Standards at 5 CFR 2635.203(d). Thus, an employee would have to obtain approval before engaging in outside employment with any person (including an organization more than half of whose members are persons) seeking official action by IMLS; doing business or seeking to do business with IMLS; conducting activities regulated by IMLS; or having interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Section 7701.102(a) also requires written requests for approval to be submitted to the employee's immediate supervisor and his or her Designated Agency Ethics Officials and specifies the information to be included in the employee's request. Section 7701.102(b) states the standard to be used in approving or denying requests for approval of outside employment. The basis of denial, if any, must be found in applicable statutes or Federal regulations, including the executive branchwide Standards and this part.

Section 7701.102(c) defines outside employment as including any form of compensated or uncompensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes writing done under arrangement with another person for production or publication of the written product.

III. Matters of Regulatory Procedure

Waiver of Proposed Rulemaking

As Director of IMLS, I have found good cause pursuant to 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to this interim rule. The reason for this determination is that this rulemaking is related to IMLS' organization, procedure and practice. Nonetheless, this is an interim rulemaking with provision for a 30-day public comment period. IMLS will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as

final with the concurrence and co-signature of the Office of Government Ethics.

Regulatory Flexibility Act

As Director of IMLS, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects IMLS employees.

Paperwork Reduction Act

As Director of IMLS, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

Executive Order 12866

In promulgating this interim rule, IMLS has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This rule has not been reviewed by the Office of Management and Budget under that Executive Order, since it deals with agency organization, management, and personnel matters and is not in any event deemed "significant" thereunder.

Executive Order 12988

As Director of IMLS, I have reviewed this interim rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

IMLS has determined that this rulemaking is a nonrule under the Congressional Review Act (5 U.S.C. chapter 8), since it deals with agency management, organization and personnel matters.

List of Subjects in 5 CFR Part 7701

Conflict of interests, Standards of conduct, Government employees.

Dated: March 7, 2003.

Robert S. Martin,

Director, Institute of Museum and Library Services.

Approved: March 26, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

■ For the reasons set forth in the preamble, the Institute of Museum and Library Services, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations, by adding a new chapter LXVII, consisting of part 7701, to read as follows:

CHAPTER LXVII—INSTITUTE OF MUSEUM AND LIBRARY SERVICES

PART 7701—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE INSTITUTE OF MUSEUM AND LIBRARY SERVICES

Sec.

7701.101 Purpose.
7701.102 Prior approval for outside employment.

Authority: 5 U.S.C. 7301, 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

§ 7701.101 Purpose.

In accordance with 5 CFR 2635.105, the regulations of this part apply to employees of the Institute of Museum and Library Services (IMLS) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the regulations in 5 CFR part 2635 and this part, employees of IMLS are subject to the executive branch employee responsibilities and conduct regulations at 5 CFR part 735, the executive branch financial disclosure regulations at 5 CFR part 2634, and the executive branch financial interests regulations at 5 CFR part 2640.

§ 7701.102 Prior approval for outside employment.

(a) Before engaging in any outside employment with a prohibited source within the meaning of 5 CFR 2635.203(d), whether or not for compensation, an employee other than a special Government employee must obtain written approval from his or her immediate supervisor and the Designated Agency Ethics Official. The request for approval shall include the following:

(1) The name of the person, group, or organization for which the work is to be performed, the type of work to be performed, and the proposed hours of work and approximate dates of employment;

(2) A brief description of the employee's official IMLS duties and a brief description of the employee's discipline or inherent area of expertise based on experience of educational background;

(3) The employee's certification that the outside employment will not depend on information obtained as a result of the employee's official Government position and that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment; and

(4) Responses to the following:

(i) Whether the proposed outside employment will pertain to a matter to which the employee is presently assigned or has been assigned within the last year;

(ii) Whether the proposed outside employment pertains to an ongoing or announced agency policy or program;

(iii) Whether the sponsor of the proposed outside employment has any interests before IMLS that may be substantially affected by the performance or nonperformance of the employee's duties;

(iv) Whether the employee intends to refer to his or her official IMLS position during the proposed outside employment and if so, the text of any disclaimers that he or she will use;

(v) Whether the employee will receive any payment or compensation for the proposed outside employment; and

(vi) Whether the proposed outside employment will involve teaching a course which is part of the established curriculum of an accredited institution of higher education, secondary school, elementary school, or an education or training program sponsored by a Federal, State or local government entity.

(b) Approval shall be granted only upon determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 and this part.

(c) Outside employment means any form of compensated or uncompensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services such as acting as an officer, director, employee, trustee, agent, attorney, consultant, contractor, general partner, teacher or speaker. It includes writing when done under an arrangement with another person for

production or publication of the written product.

[FR Doc. 03–8989 Filed 4–11–03; 8:45 am]
BILLING CODE 7036–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–05–AD; Amendment 39–13116; AD 2003–08–05]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters that requires inspecting the ASU No. 2 printed circuit board (PCB) to determine if the resistor R8 is installed, and if it is not installed, replacing the PCB with an airworthy PCB with that resistor installed. This amendment is prompted by the discovery of a PCB without a critical resistor that polarizes the voltage regulator that regulates electrical power to a critical warning light, a critical caution light, and the main rotor revolutions per minute (RPM) signal to the vehicle engine management display (VEMD). The actions specified by this AD are intended to prevent the malfunction of the two critical lights and the rotor RPM signal to the VEMD, failure of these components to timely alert the pilot to the associated malfunctions, further helicopter damage because of these malfunctions, and subsequent loss of control of the helicopter.

DATES: Effective May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for Eurocopter Model AS350B3 helicopters was published in the **Federal Register** on January 21, 2003 (68 FR 2714). That action proposed to require, within 15 hours time-in-service (TIS), inspecting the ASU No. 2 PCB on helicopters with serial numbers 3062 and earlier to determine if the resistor R8 is installed, and if it is not installed, replacing the PCB with an airworthy PCB with resistor R8 installed within 50 hours TIS.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS350B3 helicopters. The DGAC advises that the absence of a resistor R8 on the ASU No. 2 boards can lead to a malfunction of the electric circuits supplying the "BATT. TEMP." red warning light, the "ENGINE CHIP" amber caution light, and the rotor RPM signal output to the VEMD.

Eurocopter has issued Service Bulletin No. 77.00.07, dated March 27, 2000, which specifies checking to determine if the resistor R8 is installed on the PCB within 25 hours time-in-service (TIS) and, if a resistor R8 is not installed, replacing the PCB with one that has a resistor R8 installed within 50 hours TIS. The DGAC classified this service bulletin as mandatory and issued AD No. 2001–319–083(A), dated July 25, 2001, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

The FAA estimates that 30 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost $1,200. The manufacturer states in its service bulletin that PCB's will be replaced free of charge. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $37,800, if a PCB is replaced in the entire fleet and there is no free replacement by the manufacturer.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–08–05 Eurocopter France: Amendment 39–13116. Docket No. 2002–SW–05–AD.

Applicability: Model AS350B3 helicopters, serial numbers (S/N) 3062 and earlier, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent malfunction of the electrical circuits controlling the "BATT. TEMP." red warning light, the "ENGINE CHIP" amber caution and the rotor revolutions-per-minute (RPM) signal output to the vehicle engine management display (VEMD), accomplish the following:

(a) Within 15 hours time-in-service (TIS), inspect the ASU No. 2 printed circuit board (PCB), part number SE 03022, to determine if resistor R8 is installed.

(b) If the resistor R8 is not installed, within 50 hours TIS, replace the PCB with an airworthy PCB that has a resistor R8 installed.

Note 2: Eurocopter Service Bulletin No. 77.00.07, dated March 27, 2000, pertains to the subject of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on May 19, 2003.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2001–319–083(A), dated July 25, 2001.

Issued in Fort Worth, Texas, on April 8, 2003.

Michele M. Owsley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–9012 Filed 4–11–03; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33–8128A; 34–46464A; FR–63A; File No. S7–08–02]

RIN 3235–AI33

Acceleration of Periodic Report Filing Dates and Disclosure Concerning Web Site Access to Reports; Correction

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; technical amendments.

SUMMARY: This document contains corrections to final rules which were published in the **Federal Register** on Monday, September 16, 2002 (67 FR 58480). The rules relate to the acceleration of the filing of quarterly and annual reports under the Securities Exchange Act of 1934 by certain accelerated filers.

EFFECTIVE DATE: April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Minton, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0312.

SUPPLEMENTARY INFORMATION:

I. Background

On September 5, 2002, the Commission adopted,[1] among other things, changes to rules 3–01[2] and 3–12[3] of Regulation S–X[4] under the Securities Act of 1933 (the "Securities Act").[5] These rules relate to the timeliness of financial information in Commission filings, such as Securities Act registration statements and proxy statements and information statements under section 14[6] of the Securities Exchange Act of 1934 (the "Exchange Act").[7] The changes were made to conform the timeliness requirements for these filings made by accelerated filers to changes adopted to the deadlines for Forms 10–K[8] and 10–Q[9] for accelerated filers, as defined in Exchange Act rule 12b–2.[10] The new deadlines will be phased-in over three years.

After we adopted the amendments to rules 3–01 and 3–12 of Regulation S–X, questions arose regarding the appropriate phase-in period for an accelerated filer required to update interim financial information in registration statements filed or that become effective 134 days after the end of the filer's fiscal year. This is the period after audited financial statements for the most recently completed fiscal year are already required to be filed on Form 10–K and on or after the date most registrants are required to have filed interim financial statements for the first quarter on Form 10–Q. Concerns arose that the phase-in periods in the conforming amendments to rules 3–01 and 3–12 of Regulation S–X do not match the phase-in periods described in the adopting release.

Accordingly, the amendments set forth in this document clarify that the phase-in periods applicable to accelerated filers who need to update interim information in accordance with amended rules 3–01 and 3–12 of Regulation S–X match the phase-in periods for filing quarterly information on Form 10–Q. The corrections clarify that updated interim information is required within 130 days after the end of the registrant's fiscal year for fiscal years ending on or after December 15, 2003 and before December 15, 2004, and within 125 days after the end of the registrant's fiscal year for fiscal years ending on or after December 15, 2004. The changes are technical corrections to clarify the rules as described in the original adopting release, and do not alter the phase-in periods for these requirements as described in the original adopting release.

II. Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Text of Amendments

List of Subjects in 17 CFR Part 210

Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, the Commission amends Title 17, chapter II of the Code of Federal Regulations as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 1. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77aa(25), 77aa(26), 78j–1, 78l, 78m, 78n, 78o(d), 78u–5, 78w(a), 78ll(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), unless otherwise noted.

■ 2. Section 210.3–01 is amended by revising paragraphs (e)(1) and (i)(2) to read as follows:

§ 210.3–01 Consolidatedbalance sheets.

* * * * *

(e) * * *

(1) For accelerated filers (as defined in § 240.12b–2 of this chapter):

(i) 135 days for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(ii) 130 days for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(iii) 125 days for fiscal years ending on or after December 15, 2004; and

* * * * *

(i) * * *

(2) For purposes of paragraph (e) of this section, the number of days shall be:

(i) For accelerated filers (as defined in § 240.12b–2 of this chapter):

(A) 134 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(B) 129 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(C) 124 days subsequent to the end of the registrant's most recent fiscal year for fiscal years ending on or after December 15, 2004; and

(ii) 134 days subsequent to the end of the registrant's most recent fiscal year for all other registrants.

■ 3. Section 210.3–12 is amended by revising paragraph (g)(1) to read as follows:

§ 210.3–12 Age of financial statements at effective date of registration statement or at mailing date of proxy statement.

* * * * *

(g)(1) For purposes of paragraph (a) of this section, the number of days shall be:

(i) For accelerated filers (as defined in § 240.12b–2 of this chapter):

(A) 135 days for fiscal years ending on or after December 15, 2002 and before December 15, 2003;

(B) 130 days for fiscal years ending on or after December 15, 2003 and before December 15, 2004; and

(C) 125 days for fiscal years ending on or after December 15, 2004; and

(ii) 135 days for all other registrants.

* * * * *

Dated: April 8, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8998 Filed 4–11–03; 8:45 am]

BILLING CODE 8010–01–P

[1] *See* Release No. 33–8128 (Sept. 5, 2002) [67 FR 58480].

[2] 17 CFR 210.3–01.

[3] 17 CFR 210.3–12.

[4] 17 CFR 210.1–01 *et seq.*

[5] 15 U.S.C. 77a *et seq.*

[6] 15 U.S.C. 78n

[7] 15 U.S.C. 78a *et seq.*

[8] 17 CFR 249.310.

[9] 17 CFR 308a.

[10] 17 CFR 240.12b–2.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 341

[Docket No. 76N–052G]

RIN 0910–AA01

Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use; Final Monograph for Combination Drug Products; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of December 23, 2002 (67 FR 78158). The document issued a final monograph that established conditions under which over-the-counter (OTC) cold, cough, allergy, bronchodilator, and antiasthmatic (cough-cold) combination drug products are generally recognized as safe and effective and not misbranded as part of its ongoing review of OTC drug products.

DATES: The regulation is effective December 23, 2004.

FOR FURTHER INFORMATION CONTACT: Cazemiro R. Martin or Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–32158 appearing on page 78158 in the **Federal Register** of Monday, December 23, 2002, the following corrections are made:

§ 341.40 [Corrected]

1. On page 78168, in the second column, in Part 341 *Cold, Cough, Allergy, Bronchodilator, and Antiasthmatic Drug Products for Over-the-Counter Human Use*, under the authority citation, in amendment 2, "Section 341.40 is added to subpart C to read as follows:" is corrected to read "Section 341.40 is added to subpart B to read as follows:"

§ 341.70 [Corrected]

2. On page 78170, in the second column, in § 341.70 *Labeling of OTC drug products containing ingredients that are used for treating concurrent symptoms (in either a single-ingredient or combination drug product)*, in paragraph (b), "Repeat every hour as needed or as directed by a doctor." is corrected to read "Repeat every 2 hours as needed or as directed by a doctor."

Dated: April 8, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9067 Filed 4–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for seven approved new animal drug applications (NADAs) for clopidol Type A medicated articles and combination drug medicated chicken and turkey feeds from Aventis Animal Nutrition, Inc., to Merial Ltd.

DATES: This rule is effective April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Aventis Animal Nutrition, Inc., 3480 Preston Ridge Rd., suite 650, Alpharetta, GA 30005–8891, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 34–393, 40–264, 41–541, 44–016, 46–209, 49–934, and 99–150 for clopidol Type A medicated articles and certain combination clearances for use in medicated feeds for chickens and turkeys to Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640. Accordingly, the agency is amending the regulations in § 558.175 (21 CFR 558.175) to reflect the transfer of ownership. Section 558.175 is also being changed to a table format.

Following the change of sponsor of these NADAs, Aventis Animal Nutrition, Inc., is no longer the sponsor of any approved applications. Therefore, 21 CFR 510.600(c) is being amended to remove the entries for this sponsor.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 558 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Aventis Animal Nutrition, Inc." and in the table in paragraph (c)(2) by removing the entry for "011526".

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 4. Section 558.175 is revised to read as follows:

§ 558.175 Clopidol.

(a) *Specifications.* Type A medicated article containing 25 percent clopidol.

(b) *Approvals.* See No. 050604 in § 510.600(c) of this chapter.

(c) [Reserved]

■ (d) *Conditions of use.* It is used as follows:

Clopidol in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
(1) 113.5		Broiler chickens and replacement chickens intended for use as caged layers: As an aid in the prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati.*	Do not feed to chickens over 16 weeks of age.	050604
(2) 113.5	Bacitracin methylene disalicylate 4 to 50	Broiler chickens: As in paragraph (d)(1) of this section; for increased rate of weight gain.	Feed continuously as the sole ration from the time chicks are placed in floor pens until slaughter. Do not feed to chickens over 16 weeks of age; bacitracin methylene disalicylate as provided by No. 046573 in § 510.600(c) of this chapter.	050604
(3) 113.5	Bacitracin 4 to 25 plus roxarsone 45.4	Broiler chickens: As in paragraph (d)(1) of this section; for growth promotion, feed efficiency; improved pigmentation, and increased rate of weight gain.	Do not feed to chickens over 16 weeks of age; withdraw 5 days before slaughter; as sole source of organic arsenic; as bacitracin methylene disalicylate or bacitracin zinc provided by No. 046573 in § 510.600(c) of this chapter.	046573 050604
(4) 113.5	Bacitracin zinc 5 to 25	Broiler chickens: As in paragraph (d)(1) of this section; for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration; bacitracin zinc as provided by No. 046573 in § 510.600(c) of this chapter.	046573 050604
(5) 113.5	Chlortetracycline 100 to 200	Broiler and replacement chickens: As in paragraph (d)(1) of this section; for control of infectious synovitis caused by *Mycoplasma synoviae* susceptible to chlortetracycline.	Feed continuously as sole ration from the time chicks are placed in floor pens for 7 to 14 days.	050604
(6) 113.5	Lincomycin 2 to 4	Broiler chickens: As in paragraph (d)(1) of this section; for increased rate of weight gain and improved feed efficiency.	Do not feed to chickens over 16 weeks of age; as lincomycin hydrochloride monohydrate.	000009
(7) 113.5	Roxarsone 45.4	Broiler and replacement chickens intended for use as caged layers: As in paragraph (d)(1) of this section; for growth promotion, feed efficiency; and improved pigmentation.	Do not feed to chickens over 16 weeks of age; withdraw 5 days before slaughter; as sole source of organic arsenic.	050604
(8) 227		Broiler and replacement chickens intended for use as caged layers: As in paragraph (d)(1) of this section.	Feed continuously as the sole ration; feed up to 16 weeks of age if intended for use as caged layers; withdraw 5 days before slaughter if given at the level of 0.025 percent in feed or reduce level to 0.0125 percent 5 days before slaughter.	050604
(9) 113.5 or 227		Turkeys: As an aid in the prevention of leucocytozoonosis caused by *Leucocytozoon smithi.*	For turkeys grown for meat purposes only; feed continuously as the sole ration at 0.0125 or 0.025 percent clopidol depending on management practices, degree of exposure, and amount of feed eaten; withdraw 5 days before slaughter.	050604

Dated: March 25, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–9028 Filed 4–11–03; 8:45 am]

BILLING CO DE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FL–094–200316a; FRL–7481–8]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants: Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the sections 111(d)/129 plan submitted by the Florida Department of Environmental Protection (FDEP) for the State of Florida on November 29, 2001, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incineration (CISWI) units that commenced construction on or before November 30, 1999.

DATES: This direct final rule is effective June 13, 2003 without further notice, unless EPA receives adverse comments by May 14, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Joydeb Majumder, EPA Region 4, Air Toxics and Management Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–3104. Copies of materials submitted to EPA may be examined during normal business hours at the above listed Region 4 location. Anyone interested in examining this document should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder at (404) 562–9121 or Heidi LeSane at (404) 562–9035.

SUPPLEMENTARY INFORMATION:

I. Background

On December 1, 2000, pursuant to sections 111 and 129 of the Clean Air Act (Act), EPA promulgated new source performance standards (NSPS) applicable to new CISWIs and EG applicable to existing CISWIs. The NSPS and EG are codified at 40 CFR part 60, subparts CCCC and DDDD, respectively. Subparts CCCC and DDDD regulate the following: Particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead, cadmium, mercury, and dioxins and dibenzofurans.

Section 129(b)(2) of the Act requires States to submit to EPA for approval State Plans that implement and enforce the EG. State Plans must be at least as protective as the EG, and become Federally enforceable upon approval by EPA. The procedures for adoption and submittal of State Plans are codified in 40 CFR part 60, subpart B. EPA originally promulgated the subpart B provisions on November 17, 1975. EPA amended subpart B on December 19, 1995, to allow the subparts developed under section 129 to include specifications that supersede the general provisions in subpart B regarding the schedule for submittal of State Plans, the stringency of the emission limitations, and the compliance schedules.

This action approves the State Plan submitted by FDEP for the State of Florida to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

II. Discussion

FDEP submitted to EPA on November 29, 2001, the following in their 111(d)/129 State Plan for implementing and enforcing the EG for existing CISWIs under their direct jurisdiction in the State of Florida: Public Participation-Demonstration that the Public Had Adequate Notice and Opportunity to Submit Written Comments and Attend the Public Hearing; Legal Authority; Emission Limits and Standards; Compliance Schedule; Inventory of CISWI Plants/Units; CISWI Emissions Inventory; Source Surveillance, Compliance Assurance and Enforcement Procedures; Submittal of Progress Reports to EPA; and applicable State of Florida statutes and rules of the FDEP.

The approval of the Florida State Plan is based on finding that: (1) FDEP provided adequate public notice of public hearings for the EG for CISWIs, and (2) FDEP also demonstrated legal authority to adopt emission standards and compliance schedules; enforceable applicable laws, regulations, standards, and compliance schedules; the ability to seek injunctive relief; obtain information necessary to determine compliance; require record keeping; conduct inspections and tests; require the use of monitors; require emission reports of owners and operators; and make emission data publicly available.

FDEP cites the following references for the legal authority: The Florida Statues (F.S.), sections 403.031 definitions, 403.061 powers and duties, 403.0872 Title V air operating permits, and 403.8055 authority to adopt federal

standards by reference. Subsections 403.061(6), (7), (8), and (13), F.S., gives the authority for obtaining information, requiring record keeping, and using monitors. Most importantly, subsection 403.061(35), F.S., gives FDEP the authority to exercise the duties, powers, and responsibilities required of the state under the Act. The sections of Florida Statues that give authority for compliance and enforcement are 403.121 judicial and administrative remedies, 403.131 injunctive relief, 403.141 civil remedies, and 403.161 civil and criminal penalties. Finally, section 119.07, F.S., is the authority for making the information available to the public.

An enforcement mechanism is a legal instrument by which the FDEP can enforce a set of standards and conditions. The FDEP has adopted 40 CFR 60, subpart DDDD, into Chapter 62–204 of the Florida Administrative Code, thereby making it an enforceable rule. Therefore, FDEP's mechanism for enforcing the standards and conditions of 40 CFR 60, subpart DDDD, is Rule 62.204.800(8)(f), F.A.C. On the basis of these statutes and rules of the State of Florida, the State Plan is approved as being at least as protective as the Federal requirements for existing CISWI units.

FDEP adopted by reference, all emission standards and limitations applicable to existing CISWI units. These standards and limitation have been approved as being at least as protective as the Federal requirements contained in subpart DDDD for existing CISWI units.

FDEP submitted the compliance schedule for CISWIs under their jurisdiction in the State of Florida. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

FDEP submitted an emissions inventory of all designated pollutants for CISWI units under their jurisdiction in the State of Florida. This portion of the Plan has been reviewed and approved as meeting the Federal requirements for existing CISWI units.

FDEP includes its legal authority to require owners and operators of designated facilities to maintain records and report to their Agency the nature and amount of emissions and any other information that may be necessary to enable their Agency to judge the compliance status of the facilities in Appendix B of the State Plan. In Appendix B, FDEP also submits its legal authority to provide for periodic inspection and testing and provisions for making reports of CISWI emissions data, correlated with emission standards that apply, available to the general public.

The State Plan outlines the authority to meet the requirements of monitoring, record keeping, reporting, and compliance assurance. This portion of the Plan has been reviewed and approved as being at least as protective as Federal requirements for existing CISWI units.

As stated in the Plan, FDEP will provide progress reports of plan implementation updates to the EPA on an annual basis. These progress reports will include the required items pursuant to 40 CFR part 60, subpart B. This portion of the plan has reviewed and approved as meeting the Federal requirement for State Plan reporting.

This action approves the State Plan submitted by FDEP for the State of Florida to implement and enforce subpart DDDD, as it applies to existing CISWI units only.

III. Final Action

This action approves the State Plan submitted by FDEP for the State of Florida to implement and enforce subpart DDDD, as it applies to existing CISWI units only. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the State Implementation Plan (SIP) revision should adverse comments be filed. This rule will be effective June 13, 2003 without further notice unless the Agency receives adverse comments by May 14, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 13, 2003, and no further action will be taken on the proposed rule.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**.

This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 13, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Nitrogen dioxide, Particulate matter, Sulfur oxides.

Dated: March 24, 2003.

A. Stanely Meiburg,

Acting, Regional Administrator, Region 4.

■ Chapter I, title 40 of the Code of Federal Regulation is amended as follows:

PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart K—Florida

■ 2. Subpart K is amended by adding an undesignated center heading and § 62.2380 to read as follows:

Air Emissions From Commercial and Industrial Solid Waste Incineration (CISWI) Units—Section 111(d)/129 Plan

§ 62.2380 Identification of sources.

The Plan applies to existing Commercial and Industrial Solid Waste Incineration Units that Commenced Construction On or Before November 30, 1999.

[FR Doc. 03–8953 Filed 4–11–03; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 68, No. 71
Monday, April 14, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 02–109–2]

Importation of Beef From Uruguay

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed Rule; Notice of reopening and extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule to amend the regulations governing the importation of certain animals, meat, and other animal products into the United States to allow, under certain conditions, the importation of fresh (chilled or frozen) beef from Uruguay. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before April 25, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–109–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–109–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–109–1" on the subject line.

You may read any comments that we receive on Docket No. 02–109–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street andIndependence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Hatim Gubara, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2003, we published in the **Federal Register** (68 FR 6673–6677, Docket No. 02–109–1) a proposal to amend the regulations governing the importation of certain animals, meat, and other animal products into the United States to allow, under certain conditions, the importation of fresh (chilled or frozen) beef from Uruguay. Based on the evidence in a recent risk evaluation, we believe that fresh (chilled or frozen) beef from Uruguay can be safely imported from Uruguay provided certain conditions are met.

Comments on the proposed rule were required to be received on or before April 11, 2003. We are reopening and extending the comment period for Docket No. 02–109–1 for an additional 14 days ending April 25, 2003. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 9th day of April 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–9022 Filed 4–11–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 709

[Docket No. CN–03–RM–01]

RIN 1992–AA33

Office of Counterintelligence; Polygraph Examination Regulations

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and opportunity for public comment.

SUMMARY: The Department of Energy (DOE or Department) publishes a notice of proposed rulemaking to begin a proceeding to consider whether to retain or modify its current Polygraph Examination Regulations. DOE is undertaking this action, among other reasons, to satisfy the directive of section 3152 of the National Defense Authorization Act for Fiscal Year 2002 that following issuance of the National Academy of Sciences' Polygraph Review (NAS Polygraph Review), DOE is to prescribe regulations for a new counterintelligence polygraph program, whose Congressionally-specified purpose is "* * * to minimize the potential for release or disclosure of classified data, materials, or information."

DATES: Written comments (10 copies) are due June 13, 2003.

ADDRESSES: You may choose to address written comments to U.S. Department of Energy, Office of Counterintelligence (CN–1), Docket No. CN–03–RM–01, 1000 Independence Avenue. SW., Washington, DC 20585. Alternatively, you may e-mail your comments to: *poly@hq.doe.gov*. You may review or copy the public comments DOE has received in Docket No. CN–03–RM–01 and any other docket material DOE makes available at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585. This notice of proposed rulemaking and supporting documentation is available on DOE's internet home page at the following address: *http://www.energy.gov*.

FOR FURTHER INFORMATION CONTACT: Douglas Hinckley, U.S. Department of Energy, Office of Counterintelligence, CN–1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5901; or Lise Howe, U.S. Department of Energy, Office of General Counsel, GC–73, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2906.

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 3152(a) of the National Defense Authorization Act for Fiscal Year 2002 (NDAA for FY 2002), DOE is obligated to prescribe regulations for a new counterintelligence polygraph program the stated purpose of which is "* * * to minimize the potential for release or disclosure of classified data, materials, or information" (42 U.S.C. 7383h–1(a).) Section 3152(b) requires DOE to "* * * take into account the results of the Polygraph Review," which is defined by section 3152(e) to mean "* * * the review of the Committee to Review the Scientific Evidence on the Polygraph of the National Academy of Sciences" (42 U.S.C. 7383h–1(b), (e)).

Upon promulgation of final regulations under section 3152, and "effective 30 days after the Secretary submits to the congressional defense committees the Secretary's certification that the final rule * * * has been fully implemented, * * *" section 3154 of the National Defense Authorization Act for Fiscal Year 2000 (NDAA for FY 2000) (42 U.S.C. 7383h), would be repealed by operation of law. (42 U.S.C. 7383h–1(c).) The repeal of section 3154 would eliminate the existing authority which underlies DOE's counterintelligence polygraph regulations, which are codified at 10 CFR part 709, but would not preclude the retention of some or all of those regulations through this rulemaking pursuant to the later-enacted section 3152 of the NDAA for FY 2002.

In Part II of this **SUPPLEMENTARY INFORMATION,** DOE reviews background information useful in understanding the existing statutory and regulatory provisions applicable to DOE's current counterintelligence polygraph examination program. In Part III of this Supplementary Information, DOE discusses its preliminary views with regard to the relevant factual and policy issues, including DOE's evaluation of the NAS Polygraph Review which is entitled "The Polygraph and Lie Detection." That discussion explains why the Secretary of Energy has approved today's preliminary proposal to retain the regulations in 10 CFR part 709 as a balanced approach for the carefully circumscribed use of polygraph examinations as a tool that appears in current circumstances well-suited to accomplish the Congressionally-specified purpose "* * * to minimize the potential for release or disclosure of classified data, materials, or information" (42 U.S.C. 7383h–1).

DOE invites interested members of the public to provide their views on the issues in this rulemaking by filing written comments. With an open mind, DOE intends carefully to evaluate the public comments received in response to this notice of proposed rulemaking. DOE will then consider whether to issue a supplemental notice of proposed rulemaking with additional policy options for public comment and whether it is necessary and timely to hold a public hearing to provide an opportunity for presentation of oral comments.

II. Background

Consistent with section 3154 of the NDAA for FY 2000, DOE published a notice of final rulemaking establishing 10 CFR part 709 on December 17, 1999 (64 FR 70975). The provisions of 10 CFR part 709 list the types of employees and positions that are subject to polygraph examinations. Under 10 CFR 709.4, the polygraph program applies to all DOE employees and contractor employees, applicants for employment, and other individuals assigned or detailed to positions in eight categories which are discussed in detail in part III of this Supplementary Information. Employees may request exculpatory polygraph examinations to deal with unresolved counterintelligence or personnel security issues. Part 709 also describes the polygraph examination protocols DOE uses, the policies for safeguarding the privacy rights of employees, and the requirements that apply to ensure well qualified and well trained polygraph examiners.

After DOE promulgated 10 CFR part 709, Congress amended section 3154 of the NDAA for FY 2000 by section 3135 in the National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398). Section 3135 amended the earlier definition of "covered persons" contained in section 3154 to include assignees, detailees and applicants. The definition of "high risk program" was revised to include programs using information known as Sensitive Compartmented Information, SAP, PSAP, PAP, and any other program or position category specified in section 709.4(a) of Title 10, Code of Federal Regulations. Section 3135 amended section 3154(f) to add the terms "terrorism" after "sabotage" and "deliberate damage to or malicious misuse of a United States Government information or defense system" to the statutory definition of the scope of a counterintelligence polygraph examination. Section 3135 also amended section 3154 by adding language that limited the Secretary's authority to waive the examination requirement.

III. DOE's Proposal To Implement Section 3152(a) of the NDAA for FY 2002

The focal point for analysis of the factual information and policy considerations relevant to this rulemaking is the Congressionally stated purpose of the counterintelligence polygraph regulations which is "* * * to minimize the potential for release or disclosure of classified data, material, or information" (42 U.S.C. 7383h–1(a)). Given the nature of this directive—as a statement of the purpose of the program, not as a standard that the program must meet—DOE does not construe this directive as a mandate mechanistically to construct a program that takes all steps to protect classified data, materials, or information, no matter what the countervailing considerations. Construing the directive in that fashion could lead to absurd results, potentially requiring DOE to expend so much of its resources on polygraphs and associated provisions that the program would significantly detract from DOE's ability to accomplish its national security mission. At the same time, however, DOE does believe that the directive signals a Congressional hierarchy in the weighing of various considerations, pursuant to which DOE must take potential jeopardy of classified data, materials, or information very seriously in considering the potential consequences that may flow from how it constructs its program. DOE has evaluated the question whether to retain or modify the list of positions currently set forth in its regulations as subject to polygraph examinations over a five-year period against this Congressionally-stated purpose so construed.

As noted above, that list is set forth at 10 CFR 709.4. It includes: "(1) Positions that DOE has determined include counterintelligence activities or access to counterintelligence sources and methods; (2) positions that DOE has determined include intelligence activities or access to intelligence sources and methods; (3) positions requiring access to information that is protected within a non-intelligence special access program (SAP) designated by the Secretary of Energy; (4) positions that are subject to the Personnel Security Assurance Program (PSAP); (5) positions that are subject to the Personnel Assurance program (PAP); (6) positions that DOE has determined have a need-to-know or access to information specifically designated by the Secretary

regarding the design and operation of nuclear weapons and associated use control features; (7) positions within the Office of Independent Oversight and Performance Assurance, or any successor thereto, involved in inspection and assessment of safeguards and security functions, including cyber security, of the Department; (8) positions within the Office of Security and Emergency Operations, or any successor thereto * * *" This list reflects, but is not restricted to, the positions listed in section 3154 of the NDAA for FY 2000. Consistent with section 3152 of the NDAA for FY 2002, DOE proposes to retain these eight position categories because in each category there are individuals who possess or have routine access to classified data, material, or information that would likely be targeted for acquisition by foreign powers. DOE has not reached a firm conclusion that all the position categories on the list should be retained, or that all should be retained in their current form, but it believes that a sufficient basis for their retention exists that it is not prepared to propose the modification or removal of any at this time. DOE accordingly particularly invites comment on the question whether the list, or any of the position categories on the list, is overinclusive or underinclusive, and if so, how and on what basis the list, or any of the position categories on the list, should be modified.

The list of position categories in 10 CFR 709.4(a) also includes two categories of individuals who volunteer for polygraph examinations. There is a category of applicants for employment who opt for the Accelerated Access Authorization Program (AAAP) (10 CFR 709.4(a)(9)). These applicants choose to be polygraphed in order to obtain expedited interim "Q" clearances pending completion of field investigations. There is also a category composed of incumbent employees who volunteer for so-called exculpatory polygraph examinations to resolve questions that have arisen in the context of counterintelligence investigations or personnel security issues (10 CFR 709.4(a)(10).

The NAS Polygraph Review examined the scientific evidence with regard to the validity of polygraph examinations used for the screening of applicants for employment and incumbent employees, as well as for specific-event investigations (which include what DOE calls "exculpatory polygraph examinations"). The NAS pointed out that the available scientific evidence is generally of low quality and consisted of 57 studies of which 53 are specific-event investigations and four are flawed studies of employee screening. While noting that the available empirical research has not established the underlying factors that produce the physiological responses observed during polygraph examinations, and that generalizing from such responses in research settings to real world settings is hazardous, the NAS nevertheless concluded that "* * * specific-incident polygraph tests discriminate lying from truth telling at rates well above chance, though well below perfection * * *" (NAS Polygraph Review at p. 3). DOE is inclined to accept this conclusion with regard to exculpatory polygraph examinations under 10 CFR 709.4(a)(10), but given the limitations of the tool, DOE does not treat the results of such examinations as conclusive as to truthfulness or mendacity. Accordingly, DOE may follow up an exculpatory polygraph result with additional investigative activities if DOE considers that action appropriate. DOE does not now contemplate any change in this policy.

With regard to polygraph examinations for employee screening under 10 CFR part 709, the NAS takes a significantly different view. Against the background of what it acknowledges is very sparse evidence, the NAS is dubious about both the *validity* and the *advisability* of such examinations.

Validity. According to the NAS, the proportion of the employee population at DOE that poses a major national security threat (presumably including threats to classified information) is extremely low. In the NAS's view, screening in a population with a very low rate of target transgressions will necessarily yield, as a function of how sensitively the polygraph test is set, either a large number of false positives or a large of false negatives (NAS Polygraph Review at 4, 2–4 through 2–7, 2–20 though 2–21, and 7–2 through 7–4). On that basis, the NAS concludes that polygraph examinations are too inaccurate to be used for employee screening. (NAS Polygraph Review, p.4.)

In reaching its negative conclusion, the NAS acknowledged that a screening polygraph, even if set to reduce the number of false positives, will identify true positives who are being deceptive. Accordingly, DOE does not believe that the issues that the NAS has raised about the polygraph's accuracy are sufficient to warrant a decision by DOE to abandon it as a screening tool. Doing so would mean that DOE would be giving up a tool that, while far from perfect, will help identify some individuals who should not be given access to classified data, materials, or information. DOE does not believe wholesale abandonment of a tool that has some admitted value for that purpose can be squared with Congress's overall direction to implement a polygraph program whose purpose is "* * * to minimize the potential for release or disclosure of classified data, materials, or information."

Advisability. The NAS's main conclusion is that lack of evidence of validity and accuracy justifies not using polygraph examinations for screening purposes. In arriving at this conclusion, the NAS also took into account the expense associated with invalid polygraph results, the potential loss of competent or highly skilled individuals due to false positives or the fear of such a test result, and claims of adverse impact on civil liberties. The NAS also acknowledged but considered less significant the deterrent effect that the prospect of being polygraphed could have on employment applicants who are national security risks. In short, what NAS conducted was a cost-benefit analysis that (given the nature of the costs and benefits) inevitably rested in no small part on value judgments made by the NAS. There is nothing inappropriate about this approach in light of the NAS's mission and charge.

DOE, however, has a significantly different mission—one that is intimately involved in science, but directed to a particular end—the national security of the United States; therefore, not surprisingly, section 3152 gave the Department a particular charge for its polygraph program. That charge was not to devise a program based on the NAS's or the Department's own weighing of costs and benefits based on its own value judgments. Rather, Congress directed DOE to develop a polygraph program focused on minimizing the risk of release or disclosure of classified information. That amounts to a Congressional specification that the most important cost about which DOE should be concerned is the risk of release or disclosure of classified information. DOE believes that Congress's judgment in that regard was reasonable. Given that DOE's classified information consists in significant measure of information regarding nuclear weapons of mass destruction, the consequences of compromise of that information can be profoundly significant. Those consequences make it sensible for Congress to conclude that DOE's priority should be on deterrence and detection of potential security risks with a secondary priority of mitigating the consequences of false positives and false negatives. Moreover, whatever may be the importance of other considerations, DOE believes that at this time, when the United States is engaged in hostilities precisely in order to address the potentially disastrous consequences that may flow from weapons of mass destruction falling into the wrong hands, it is under a particular obligation to make sure that no action that it takes be susceptible to misinterpretation as a relaxation of controls over information concerning these kinds of weapons. For all these reasons, while fully respecting the questions the NAS has raised about the use of polygraphs as a screening tool, DOE does not believe it can endorse the NAS's conclusion that the tool should be laid down.

Perhaps in recognition that its main conclusion was less tenable in the context of Federal agencies with national security missions established by law, the NAS went on to conclude in the alternative that if polygraph screening is to be used at all, it should only be used as a trigger for follow-up detailed investigations and not as a sole basis for personnel action (NAS Polygraph Review, p. 5). This alternative conclusion appears to DOE to be much more compatible with the priority DOE is statutorily invited to place on minimizing the potential for release or disclosure of classified information. It is also consistent with the way DOE currently uses screening polygraphs.

Under DOE's current regulations, neither DOE nor its contractors may take an adverse personnel action against an individual solely on the basis of a polygraph result indicating deception (10 CFR 709.25). If, after an initial polygraph examination, there are remaining unresolved issues, DOE must advise the individual and provide an opportunity for the individual to undergo an additional polygraph examination. If the additional polygraph examination is not sufficient to resolve the matter, DOE must undertake a comprehensive investigation using the polygraph examination as an investigative lead (10 CFR 709.15(b)). In DOE's view, this regulatory scheme is consistent both with the NAS's alternative conclusion and with the statutory priority on minimizing release or disclosure of classified information. Therefore, pursuant to section 3152 of the NDAA for FY 2002, DOE today proposes on a preliminary basis to retain the regulatory provisions in part 709. DOE invites public comment on its evaluation of the NAS Polygraph Review with regard to employee screening and on its assessment that the existing provisions of part 709 are consistent with the NAS's alternative conclusion

IV. Regulatory Review

A. National Environmental Policy Act

The proposed rule would retain the existing procedures for counterintelligence evaluations to include polygraph examinations and therefore will have no impact on the environment. DOE has determined that this rule is covered under the Categorical Exclusion in DOE's National Environmental Policy Act regulations in paragraph A.5 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemakings amending an existing regulation that does not change the environmental effect of the regulations being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires preparation of an initial regulatory flexibility analysis for every rule that must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rulemaking will not directly regulate small businesses or small governmental entities. It will apply principally to individuals who are employees of, or applicants for employment by, some of DOE's prime contractors, which are large businesses. There may be some affected small businesses that are subcontractors, but the rule will not impose unallowable costs. Accordingly, DOE certifies that the proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

DOE has determined that this proposed rule does not contain any new or amended record-keeping, reporting or application requirements, or any other type of information collection requirements that require the approval of the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* The OMB has defined the term "information" to exclude certifications, consents, and acknowledgments that entail only minimal burden [5 CFR 1320.3(h)(1)].

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531 *et seq.*, requires a Federal agency to perform a detailed assessment of the costs and benefits of any rule imposing a Federal mandate with costs to state, local, or tribal governments, or to the private sector of $100 million or more. The proposed rule does not impose a Federal mandate requiring preparation of an assessment under the Unfunded Mandates Reform Act of 1995.

E. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act of 1999, (Pub. L. No. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well being. This proposed rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

F. Executive Order 12866

Executive Order 12866, 58 FR 51735 (October 4, 1993) provides for a review by the Office of Information and Regulatory Affairs in the Office of Management and Budget of a "significant regulatory action," which is defined as an action that may have an effect on the economy of $100 million or more or adversely affect the economy, competition, jobs, productivity, environment, public health or safety, or state, local or tribal governments. DOE has concluded that this proposed rule (10 CFR Part 709) is not a significant regulatory action. Accordingly, this rulemaking has not been reviewed by the Office of Information and Regulatory Affairs.

G. Executive Order 12988

Section 3(a) of Executive Order 12988, 61 FR 4729 (February 7, 1996) imposes on executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses

other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of Executive Order 12988.

H. Executive Order 13084

Under Executive Order 13084, 63 FR 27655 (May 19, 1998), DOE may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. This proposed rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

I. Executive Order 13132

Executive Order 13132, 64 FR 43255 (August 10, 1999), requires agencies to develop an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have "federalism implications." Policies that have federalism implications are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations (65 FR 13735). DOE has examined this proposed rule and determined that it would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. No further action is required by the Executive Order.

J. Review Under Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use), 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory action under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. This rulemaking, although significant, will not have such an effect. Consequently, DOE has concluded that there is no need for a Statement of Energy Effects.

K. Treasury and General Government Appropriations Act, 1999

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, *note*) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issues by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2001), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this notice of proposed rulemaking under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

V. Opportunity for Public Comment

Interested members of the public are invited to participate in this proceeding by submitting data, views, or comments on this proposed rule. Ten copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. Comments should be identified on the outside of the envelope and on the comments themselves with the designation "Polygraph Examination Regulation, Docket No. CN–03–RM–01." If anyone wishing to provide written comments is unable to provide ten copies, alternative arrangements can be made in advance with the DOE. All comments received on or before the date specified at the beginning of this notice, and other relevant information before final action is taken on the proposed rule, will be considered.

All submitted comments will be available for public inspection as part of the administrative record on file for this rulemaking in the DOE Freedom of Information Reading Room at the address indicated in the **ADDRESSES** section of this notice. Pursuant to the provisions of 10 CFR 1004.11, anyone submitting information or data that he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document, as well as two copies, if possible, from which the information has been deleted. The DOE will make its determination as to the confidentiality of the information and treat it accordingly.

List of Subjects in 10 CFR Part 709

Lie detector tests, Privacy.

Issued in Washington, DC on April 8, 2003.

Stephen W. Dillard,

Director, Office of Counterintelligence.

For the reasons stated in the preamble, DOE hereby proposes to amend 10 CFR part 709 to read as follows:

PART 709—POLYGRAPH EXAMINATION REGULATIONS

1. The authority citation for 10 CFR part 709 is revised to read as follows:

Authority: 42 U.S.C. 2011, *et seq.*, 7101, *et seq.*, 7383h–1.

* * * * *

[FR Doc. 03–9009 Filed 4–11–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 5

[Docket No. 03–06]

RIN 1557–AC13

Electronic Filings

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is issuing this interim rule, with a request for comments, to amend our rules, policies and procedures for corporate activities. The interim rule expressly provides that the OCC may permit national banks to make any class of licensing filings electronically. Its purpose is to facilitate the expansion of the OCC's e-Corp program. The e-Corp program, which began as a pilot project to enable participating national banks to make certain types of licensing filings electronically, has been made available to all national banks through the OCC's National BankNet web site. The rule furthers the OCC's objectives of reducing regulatory burden for national banks and improving the agency's efficiency in processing filings through increased use of electronic technology. The interim rule also amends part 5 to clarify the circumstances under which we may adopt filing procedures different from those otherwise required by part 5.

DATES: *Effective Date:* This rule is effective April 14, 2003.

Comment Date: Comments must be received by June 13, 2003.

ADDRESSES: You should direct comments to the Public Information Room, Office of the Comptroller of the Currency, Mailstop 1–5, Attention: Docket No. 03–06, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington, DC, area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: Jean Campbell, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Darrell Sheets, Licensing Data Manager, Licensing, Policy and Systems Division, (202) 874–5060, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Background and Description of the Rule

1. Electronic Filing

The OCC's ongoing objectives include minimizing regulatory burden for the national banks we supervise, consistent with safety and soundness, and achieving greater efficiency in the agency's regulatory processes. National banks' preparation of required licensing applications and filings and the OCC's processing of those submissions are activities where substantial efficiencies, including cost savings, can be achieved through increased use of electronic technology. Moreover, the Government Paperwork Elimination Act (GPEA)[1] requires that Federal agencies consider providing the public with the option of automated transactional processes that use and accept electronic filings and signatures, when practicable. The requirements of GPEA apply to all interactions with the Federal government that involve the electronic submission, maintenance, or disclosure of information.[2] This includes transactions " such as the electronic filings that are the subject of this notice—that involve Federal information collections covered by the Paperwork Reduction Act (PRA).[3]

To further the objectives we have described and to facilitate compliance with GPEA, the OCC designed Web-based corporate applications and made them available to a limited number of national banks through a pilot program called e-Corp. National banks that participated in the pilot used e-Corp to submit electronically certain licensing filings to the OCC using electronic signatures. Ten national banks participated in the pilot program. Authorized users from those national banks accessed e-Corp's electronic forms through the OCC's National BankNet Web site (BankNet).[4] Four applications were available: establishment of a branch, relocation of a branch, relocation of a main office within a 30-mile radius (within current city, town or village limits), and relocation of a main office within a 30-mile radius (outside current city, town or village limits). Three more e-Corp electronic filings are currently under development: notices of branch closing, change of corporate title, and change of address.

In March 2003 the OCC made e-Corp available to all national banks through BankNet. The four corporate filings described above are available for electronic submission. In the near future we also expect to add to e-Corp additional classes of corporate filings, such as the three currently under development, as we gain experience with electronic filing. In recognition of the fact that national banks rely on technology to varying extents, electronic filing will be voluntary. Any bank that wishes to continue filing paper-based applications may do so.

The interim rule facilitates the expansion of e-Corp by revising § 5.2, which generally describes our filing rules. As revised, § 5.2 expressly provides that the OCC may permit national banks to make any class of filings available for electronic submission. The rule refers national banks to the Comptroller's Licensing Manual (Manual) to find information about the filings that are available for electronic submission. The Manual also specifies the procedures that apply to national banks making electronic filings. In light of rapid changes in technology and our plan to expand the electronic filing system over time, we believe it is preferable to provide detailed information on electronic filings in the more flexible format of the Manual, rather than in the text of the regulation. The Manual is available on the OCC's Internet website.[5] The Manual is updated on a continuous basis and will be updated as necessary when electronic filing of additional types of applications or notices is available to national banks. We plan to publish notices on BankNet and the OCC's homepage whenever an additional class of applications is added to e-Corp.

2. Exceptions to Licensing Procedures

Section 5.2(b) of our rules provides that, after giving appropriate notice to the applicant and, at the OCC's discretion, to others, the OCC may adopt materially different procedures for a particular filing, or a class of filings, in exceptional circumstances, such as natural disasters or unusual transactions. The wording of this provision could be misleading if the reference to natural disasters were interpreted, contrary to its intended meaning, as establishing the standard for determining what is an exceptional circumstance rather than as merely illustrative of one type of situation where use of filing procedures otherwise prescribed by part 5 is warranted. Accordingly, the interim rule deletes the phrase "such as natural disasters." As revised, the standard in § 5.2(b) simply permits the OCC to adopt materially different procedures in exceptional circumstances or for unusual transactions. The notice requirement in the current rule is unchanged.

3. Comptroller's Licensing Manual

The Comptroller's Corporate Manual formerly contained guidance on how applicants and other filers could comply with our rules. On July 17, 2002, the OCC replaced the Comptroller's Corporate Manual with the Comptroller's Licensing Manual and made the Manual available on our homepage. As we have described, the Manual contains information on corporate applications, such as charter and merger applications, and other policies and procedures on corporate changes sought by national banks. The interim rule substitutes the new name of the Manual, provides the OCC's Internet address, and substitutes a new address to use to submit a request for a printed version of the Manual.

4. Notice and Comment; Effective Date

Under the Administrative Procedure Act (APA), the requirement that an

[1] 44 U.S.C. 3504 note.

[2] *See* OMB Memorandum M–00–10, "OMB Procedures and Guidance; Implementation of the Government Paperwork Elimination Act," 65 FR 25508, May 2, 2000 (OMB Guidance).

[3] 44 U.S.C. 3501 *et seq.*

[4] BankNet is a secure, extranet website that allows the OCC to deliver data-based services via the Internet to the national banks we supervise.

[5] *See www.occ.treas.gov/corpapps/corpapplic.htm.* This is the web address for the OCC's homepage, which contains information available to the general public. Printed copies of the Manual are available for a fee from the OCC's Communications Division.

agency provide public notice and an opportunity for comment does not apply to "rules of agency organization, procedure, or practice."[6] This exemption applies to a rule that does not itself affect the substantive rights of those affected, even though the rule "may alter the manner in which the parties present themselves or their viewpoints to the agency." *JEM Broadcasting Co., Inc.* v. *FCC*, 22 F.3d 320, 326–27 (D.C. Cir. 1994).

The interim rule has no effect on the substantive rights of national banks subject to application or filing requirements. The electronic filing amendments pertain only to the form in which a bank may make a submission to the OCC. Moreover, electronic filing is permissive, not mandatory. Similarly, the amendment to the "exceptional circumstances" provision only clarifies the types of circumstances that may warrant the use of special procedures. The requirement that the OCC provide notice to an applicant in such a case is unchanged. For these reasons, we conclude that this interim rule is not subject to the notice and comment requirements of the APA.

The interim rule is effective immediately upon publication in the **Federal Register**. An agency may dispense with the delayed effective date requirement of the APA for "good cause."[7] As we have described, we expect that the interim rule, which imposes no new requirements, will help produce efficiencies for national banks by enabling them to save time and money in the preparation and processing of certain required filings. For these reasons, we conclude that there is good cause to dispense with the 30-day delayed effective date prescribed by the APA.

Finally, subject to certain exceptions, 12 U.S.C. 4802(b)(1) provides that new regulations and amendments to regulations prescribed by a Federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. The interim rule imposes no additional reporting, disclosure, or other new requirements on insured depository institutions. For this reason, section 4802(b)(1) does not apply to this rulemaking.

[6] 5 U.S.C. 553(b)(A).

[7] *Id.* at 553(d)(3).

Comment Solicitation

Although notice and comment are not required, we are nonetheless interested in receiving any comments that may improve this rule before it is adopted in final form. We therefore request comment on all aspects of this interim rule.

Community Bank Comment Request

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

Solicitation of Comments on Use of Plain Language

The OCC also requests comment on whether the interim rule is written clearly and is easy to understand. On June 1, 1998, the President issued a memorandum directing each agency in the Executive branch to write its rules in plain language. This directive applies to all new proposed and final rulemaking documents issued on or after January 1, 1999. In addition, Pub. L. 106–102 requires each Federal agency to use plain language in all proposed and final rules published after January 1, 2000. The OCC invites comments on how to make this rule clearer. For example, you may wish to discuss:

(1) Whether we have organized the material to suit your needs;

(2) Whether the requirements of the rule are clear; or

(3) Whether there is something else we could do to make the rule easier to understand.

Regulatory Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).[8] Because the OCC has determined for good cause that the APA does not require public notice and comment on this final rule, we are not publishing a general notice of proposed rulemaking. Thus, the Regulatory Flexibility Act does not apply to this interim rule.

[8] *See id.* at 553(d).

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–04 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the interim rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

Executive Order 12866

The OCC has determined that this rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

List of Subjects in Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, part 5 of chapter I of the Code of Federal Regulations is revised to read as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24a, 24(Seventh), 93a, and 3101 *et seq.*

2. In § 5.2, paragraphs (b) and (c) are revised and a new paragraph (d) is added to read as follows:

§ 5.2 Rules of general applicability.

* * * * *

(b) *Exceptions.* The OCC may adopt materially different procedures for a particular filing, or class of filings, in exceptional circumstances or for unusual transactions, after providing notice of the change to the applicant and to any other party that the OCC determines should receive notice.

(c) *Additional information.* The "Comptroller's Licensing Manual" (Manual) provides additional guidance, including policies, procedures, and sample forms. The Manual is available on the OCC's Internet Web page at *http://www.occ.treas.gov*. Printed copies are available for a fee from Publications, Communications Division, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219–0001.

(d) *Electronic filing.* The OCC may permit electronic filing for any class of filings. The Manual identifies filings that may be made electronically and describes the procedures that the OCC requires in those cases.

Dated: April 3, 2003

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–8995 Filed 4–11–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–39–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600, B4–600R, and F4–600R (Collectively Called A300–600) Series Airplanes; and Model A310 Series Airplanes; Equipped With Pratt & Whitney JT9D–7R4 or 4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300–600 and A310 series airplanes, that currently requires deactivating both thrust reversers and revising the airplane flight manual (AFM) to ensure safe and appropriate performance during certain takeoff conditions. This action would require installing modifications that will add an independent third line of defense on the thrust reversers, which would enhance their redundancy and terminate the requirements of the existing AD. The actions specified by the proposed AD are intended to prevent in-flight deployment of the thrust reversers, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–39–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–39–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–39–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–39–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 15, 1998, the FAA issued AD 98–25–51, amendment 39–10952 (63 FR 70637, December 22, 1998), applicable to certain Airbus Model A300–600 and A310 series airplanes. That AD requires deactivating both thrust reversers and revising the airplane flight manual (AFM) to ensure safe and appropriate performance during certain takeoff conditions. That action was prompted by a report indicating that the thrust reverser of engine number 1 on an Airbus Model A300–600 series airplane deployed during climb. The requirements of that AD are intended to prevent in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since AD 98–25–51 was issued, Airbus issued service information that provides instructions for reactivating the thrust reversers through the implementation of a program that involves parts replacement and repetitive inspections of the thrust reversers. The FAA approved this program as an alternative method of compliance (AMOC) with the requirements of AD 98–25–51, allowing for reactivation of the thrust reversers and removal of the AFM limitations.

The actions required by AD 98–25–51 and the reactivation program are considered "interim action." Since issuance of that AD and the AMOC, the manufacturer has developed a modification to address the unsafe

condition, and the FAA has determined that further rulemaking action is necessary; this proposed AD follows from that determination.

Explanation of Relevant Service Information

Airbus has issued the following service bulletins:

Airbus service bulletin—	For Airbus model—	Equipped with model—
A300–78–6017, dated August 6, 2001	A300 B4–620 airplanes	PWJT9D–7R4 series engines.
A300–78–6018, dated July 17, 2001	A300 B4–622R airplanes	PW4000 series engines.
A300–78–6020, dated August 10, 2001	A300 B4–622 airplanes	PW4000 series engines.
A310–78–2018, dated June 1, 2001	A310–222 and –322 series airplanes	PWJT9D–7R4 series engines.
A310–78–2019, dated May 2, 2001	A310–324 and –325 series airplanes	PW4000 series engines.
A310–78–2020, dated June 1, 2001	A310–221 and –222 series airplanes	PWJT9D–7R4 series engines.

These service bulletins describe procedures for installing modifications that will add an independent third line of defense on the thrust reverser system and consequently enhance its redundancy. The actions are intended to preclude a single/dual thrust reverser deployment due to failure of the first two lines of defense, or failure of mechanical retention means. The modifications comprise five parts:

- Retrofit of the new electrical circuit between the avionics compartment and the forward cargo compartment at frame (FR) 38.2.
- Retrofit of the new electrical circuit between the forward cargo compartment at FR 38.2 and the wing/pylon interfaces.

sbull Retrofit of the new electrical circuit in the engine pylons.

- Retrofit of the new electrical circuit in the avionics compartment.
- Installation of the synchronous shaft lock system and connection to the new electrical circuit.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive 2001–523(B), dated October 31, 2001, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 98–25–51 to continue to require deactivating both thrust reversers and revising the airplane flight manual (AFM) to ensure that safe and appropriate performance is achieved during certain takeoff conditions. (The AMOC described previously allows for re-activation of the thrust reversers and removal of the AFM limitations.) The proposed AD would also require installing modifications involving retrofit of a new electrical circuit at four locations and installation of the synchronous shaft lock system and connection to the new electrical circuit. The modifications would terminate the requirements of the existing AD, as well as the associated AMOC, which allows re-activation of the thrust reversers. The modifications would be required to be accomplished in accordance with the applicable service bulletins described previously.

Cost Impact

There are approximately 38 airplanes of U.S. registry that would be affected by this proposed AD. The FAA provides the following cost estimates for the actions specified in this proposed AD:

Cost Estimates

Action	Model/series	Work hours	Hourly labor rate	Parts cost	Cost per airplane
Actions currently required by AD 98–25–51					
Thrust reverser deactivation	All	2	$60	$0	$120
AFM revision	All	1	60	0	60
Proposed modification, per Service Bulletin					
A310–78–2018	A310–222 and –322	1,433	60	16,234	102,214
A310–78–2019	A310–324 and –325	1,395	60	15,061	98,761
A310–78–2020	A310–221 and –222	1,267	60	14,848	90,868
A300–78–6017	A300 B4–620	817	60	13,810	62,830
A300–78–6018	A300 B4–622R	1,198	60	15,141	87,021
A300–78–6020	A300 B4–622	817	60	10,760	59,780

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time for planning, gaining access and closing up, or performing other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10952 (63 FR 70637, December 22, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–39–AD. Supersedes AD 98–25–51, Amendment 39–10952.

Applicability: The following airplanes; certificated in any category:

TABLE 1.—APPLICABILITY

Model—	Equipped with—	Except those modified in accordance with Airbus service bulletin—	Or modified in accordance with Airbus production modification—
A300 B4–620	PWJT9D–7R4 series engines	A300–78–6017, dated August 6, 2001.	12261, 12264, and 12265.
A300 B4–622	PW4000 series engines	A300–78–6020, dated August 10, 2001.	12262, 12263, 12265, and 12377; or 12262, 12263, and 12266.
A300 B4–622R	PW4000 series engines	A300–78–6018, dated July 17, 2001.	12262, 12263, 12265, and 12377; or 12262, 12263, and 12266.
A310–221	PWJT9D–7R4 series engines	A310–78–2020, dated June 1, 2001.	12261, 12264, and 12265.
A310–222	PWJT9D–7R4 series engines	A310–78–2020 or A310–78–2018, both dated June 1, 2001.	12261, 12264, and 12265.
Airbus Model A310–324 and –325	PW4000 series engines	A310–78–2019, dated May 2, 2001.	12262, 12263, 12265, and 12377; or 12262, 12263, and 12266.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent in-flight deployment of a thrust reverser, which could result in reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 98–25–51

(a) Within the next 4 flight cycles after December 28, 1998 (the effective date of AD 98–25–51, amendment 39–10952), deactivate both thrust reversers in accordance with Airbus All Operators Telex (AOT) 78–08, dated November 30, 1998.

(b) Within the next 4 flight cycles after December 28, 1998, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following:

"The takeoff performance on wet and contaminated runways with thrust reversers deactivated shall be determined in accordance with Airbus Flight Operations Telex (FOT) 999.0124/98, dated November 30, 1998, as follows:

For takeoff on wet runways, use performance data in accordance with paragraph 4.1 of the FOT.

For takeoff on contaminated runways, use performance data in accordance with paragraph 4.2 of the FOT.

(NOTE: This supersedes any relief provided by the Master Minimum Equipment List (MMEL).)

Note 2: The "FCOM" referenced in Airbus Flight Operations Telex (FOT) 999.0124/98, dated November 30, 1998, is Airbus Industrie Flight Crew Operating Manual (FCOM), Revision 27 for Airbus Model A310 series airplanes and Revision 22 for A300–600 series airplanes. (The revision number is indicated on the List of Effective Pages (LEP) of the FCOM.)

New Requirements of This AD

Modification

(c) Within 1 year after the effective date of this AD, install modifications related to an independent third line of defense on the thrust reversers, in accordance with the applicable service bulletin listed in Table 2 of this AD. The modifications involve retrofit of a new electrical circuit at four locations and installation of the synchronous shaft lock system and connection to the new electrical circuit. After the modifications have been

installed, the thrust reversers may be reactivated, and the AFM limitation specified by paragraph (b) of this AD may be removed from the AFM. Table 2 follows:

TABLE 2.—SERVICE INFORMATION FOR MODIFICATION

For Airbus model—	Equipped with model—	Install the modification in accordance with Airbus service bulletin—
A300 B4–620 airplanes	PWJT9D–7R4 series engines	A300–78–6017, dated August 6, 2001.
A300 B4–622 airplanes	PW4000 series engines	A300–78–6020, dated August 10, 2001.
A300 B4–622R airplanes	PW4000 series engines	A300–78–6018, dated July 17, 2001.
A310–221 series airplanes	PWJT9D–7R4 series engines	A310–78–2020, dated June 1, 2001.
A310–222 series airplanes	PWJT9D–7R4 series engines	A310–78–2020 or A310–78–2018, both dated June 1, 2001.
A310–322 series airplanes	PWJT9D–7R4 series engines	A310–78–2018, dated June 1, 2001.
Airbus Model A310–324 and –325 series airplanes.	PW4000 series engines	A310–78–2019, dated May 2, 2001.

Alternative Methods of Compliance

(d)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–25–51, amendment 39–10952, are approved as alternative methods of compliance with the requirements of paragraphs (a) and (b) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–523(B), dated October 31, 2001.

Issued in Renton, Washington, on April 8, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9015 Filed 4–11–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 111

[Docket No. 96N–0417]

Dietary Supplements; Current Good Manufacturing Practice Regulations; Public Meetings; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of public meetings; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 28, 2003 (68 FR 15117). The notice announced two public meetings to discuss the proposed rule entitled "Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements." The document was published with an inadvertent error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT:

For the east coast meeting: Kenneth Taylor, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1439, FAX: 301–436–2639, or e-mail: *Kenneth.Taylor@cfsan.fda.gov.*

For the west coast meeting: Janet McDonald, FDA/San Francisco District, 1431 Harbor Bay Pkwy., Alameda, CA 94502–7070, 510–337–6845, FAX: 510–337–6708, or e-mail: *Janet.McDonald@fda.gov.*

SUPPLEMENTARY INFORMATION: In the FR Doc. 03–7377, appearing on page 15117 in the **Federal Register** of Friday, March 28, 2003, the following correction is made:

1. On page 15117, in the first column, under "DATES," the first sentence is corrected to read "The public meetings will be held on the east coast on Tuesday, April 29, 2003, from 9 a.m. to 12 noon and 1:30 p.m. to 5 p.m. and on the west coast on Tuesday, May 6, 2003, from 9 a.m. to 12 noon and 1:30 p.m. to 5 p.m."

Dated: April 8, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9066 Filed 4–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–098–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

SUMMARY: We are announcing receipt of a proposed amendment to the West Virginia regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The program amendment consists of changes to the Code of West Virginia (W. Va. Code) as contained in House Bills 2881 and 2882, changes to the Coal Related Dam Safety Rules at Code of State Regulations (CSR) 38–4, and changes to the Surface Coal Mining and Reclamation Regulations at CSR 38–2 as contained in House Bill 2603. The amendment concerns a variety of topics including bond release, dam safety, permit application requirements, drainage and sediment control systems, fish and wildlife considerations, revegetation, performance standards, inspection and enforcement, coal refuse, and performance standards applicable to remining operations. The amendment is intended to improve the effectiveness of the West Virginia program and to render the West Virginia program no less effective than the Federal regulations.

DATES: We will accept written comments on this amendment until 4 p.m. (local time), on May 14, 2003. If requested, we will hold a public hearing on the amendment on May 9, 2003. We will accept requests to speak at a hearing until 4 p.m. (local time), on April 29, 2003.

ADDRESSES: You should mail or hand-deliver written comments and requests to speak at the hearing to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0510. Copies of Enrolled House Bills 2603, 2881, and 2882 and summaries of changes to the State's Coal Related Dam Safety Rules and the Surface Mining Reclamation Rules will be posted at the Department's Internet page: *http://www.state.wv.us.*

In addition, you may review copies of the proposed amendment during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, PO Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 323 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office, Telephone: (304) 347–7158. Internet: *chfo@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, " * * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * * ; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated March 18, 2003, the West Virginia Department of Environmental Protection (WVDEP) sent us a proposed amendment to its program (Administrative Record Number WV–1352) under SMCRA (30 U.S.C. 1201 *et seq.*). West Virginia sent the amendment in response to the required program amendments at 30 CFR 948.16(nnn), (ooo), and (qqqq) and to include the changes made at its own initiative.

The program amendment consists of changes to the W. Va. Code as contained in House Bills 2881 and 2882, and changes to the Coal Related Dam Safety Rule at CSR 38–4 and to the Surface Coal Mining and Reclamation Regulations at CSR 38–2 as contained in House Bill 2603. The amendment concerns a variety of topics including bond release, dam safety, permit application requirements, drainage and sediment control systems, fish and wildlife considerations, revegetation, performance standards, inspection and enforcement; coal refuse, and performance standards applicable to remining operations. The amendment is intended to improve the effectiveness of the West Virginia program and to render the West Virginia program no less effective than the Federal regulations.

A. The provisions of the W. Va. Code that West Virginia proposes to revise as contained in House Bills 2881 and 2882 are:

W. Va. Code 22–3–23, concerning release of bond or deposits, is amended by changing the term "director" to "secretary" in numerous locations.

W. Va. Code 22–3–23(c)(1)(C), concerning bond release for all operations except those with an approved variance from approximate original contour (AOC), is amended by adding the following language to the end of the last sentence: "where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter." As amended, the sentence reads as follows:

Provided, however, that the release may be made where the quality of the untreated post mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.

W. Va. Code 22–3–23(c)(2)(C), concerning bond release for operations with an approved variance from AOC, is amended by adding the following language to the end of the last sentence: "where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter." As amended, the sentence reads as follows:

Provided, however, that the release may be made where the quality of the untreated post mining water discharged is better than or equal to the premining water quality discharged from the mining site where expressly authorized by legislative rule promulgated pursuant to section three, article one of this chapter.

W. Va. Code 22–3–23(c)(2)(C), concerning bond release, is amended by deleting the reference to subdivision 3 and requiring compliance with the bond release scheduling requirements of subdivisions 1 and 2 of this subsection.

W. Va. Code 22B–1–7, concerning appeals to boards, is amended by changing the term "director" to "secretary" in several locations.

W. Va. Code 22B–1–7(d), concerning appeals to boards, is amended by adding a proviso that unjust hardship shall not be grounds for granting a stay or suspension of an order, permit or

official action for an order issued pursuant to W. Va. Code 22–3.

W. Va. Code 22B–1–7(h), concerning appeals to boards, is amended by deleting the reference to article 3 in regard to appeals to the environmental quality board.

B. The provisions of the Code of State Regulations that West Virginia proposes to revise as contained in House Bill 2603 are:

Surface Mining Reclamation Regulations at CSR 38–2

CSR 38–2 is amended by updating the name of the U.S. Department of Agriculture, Natural Resources Conservation Service (formerly Soil Conservation Service) in several locations, *i.e.*, subsections 3.2.c, 3.20, 10.2.a.4, 10.3.a.1, 10.4.c.1, 10.6.b.2, 10.6.b.7.A, 10.6.b.7.B, and 10.6.b.8.

CSR 38–2–3.7.d, concerning disposal of excess spoil, is new and adds a requirement for a survey of the watershed identifying all man made structures and residents in proximity to the disposal area to determine potential storm runoff impacts. At least 30 days prior to any beginning of placement of material, the accuracy of the survey shall be field verified. Any changes shall be documented and brought to the attention of the Secretary to determine if there is a need to revise the permit.

CSR 38–2–3.22.f.5.A, A.1 and A.2, concerning the requirement to restore, protect, or replace water supply of present water users, is new and adds that the hydrologic reclamation plan shall contain a description of the measures to be taken to replace water supplies that are contaminated, diminished, or interrupted. The plan shall include an identification of the water replacement, which includes quantity and quality descriptions including discharge rates, or usage and depth to water; and documentation that the development of identified water replacement is feasible and that the financial resources necessary to replace the affected water supply are available.

CSR 38–2–3.31.a, concerning Federal, State, county, municipal, or other local government-financed highway or other construction exemption, is amended by adding a provision that may allow funding at less than 50 percent to qualify if the construction is undertaken as an approved government reclamation contract.

CSR 38–2–5.4.b.4, concerning sediment control, is amended by adding language to provide that all sediment control systems for valley fills, including durable rock fills, shall be designed for the entire disturbed acreage and shall include a schedule indicating timing and sequence of construction over the life of the fill.

CSR 38–2–5.4.b.11, concerning the control of water discharge, is amended by adding language to provide that the location of discharge points and the volume to be released shall not cause a net increase in peak runoff from the proposed permit area when compared to premining conditions and shall be compatible with the post-mining configuration and adequately address watershed transfer.

CSR 38–2–5.6 is a new provision concerning storm water runoff and requires each permit application to contain a storm water runoff analysis consistent with subsections 5.6.a through 5.6.d.1.e. The new language provides as follows:

5.6.a. Each application for a permit shall contain a storm water runoff analysis which includes the following:

5.6.a.1. An analysis showing the changes in storm runoff caused by the proposed operations(s) using standard engineering and hydrologic practices and assumptions.

5.6.a.2. The analysis will evaluate pre-mining, worst case during mining, and post-mining (Phase III standards) conditions. The storm used for the analysis will be the largest required design storm for any sediment control or other water retention structure proposed in the application. The analysis must take into account all allowable operational clearing and grubbing activities. The applicant will establish evaluation points on a case-by-case basis depending on site specific conditions including, but not limited to, type of operation and proximity of man-made structures.

5.6.a.3. The worst case during mining and post-mining evaluations must show no net increase in peak runoff compared to the pre-mining evaluation.

5.6.b. Each application for a permit shall contain a runoff-monitoring plan which shall include, but is not limited to, the installation and maintenance of rain gauges. The plan shall be specific to local conditions. All operations must record daily precipitation and report monitoring results on a monthly basis and any one (1) year, twenty-four (24) storm event or greater must be reported to the Secretary within twenty-four (24) hours and shall include the results of a permit wide drainage system inspection.

5.6.c. Each application for a permit shall contain a sediment retention plan to minimize downstream sediment deposition within the watershed resulting from precipitation events. Sediment retention plans may include, but are not limited to decant ponds, secondary control structures, increased frequency for cleaning out sediment control structures, or other methods approved by the Secretary.

5.6.d. After the first day of January two thousand four, all active mining operations must be consistent with the requirements of this subdivision. The permittee must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval within the schedule described in 5.6.d.1. Full compliance [compliance] with the permit revision shall be accomplished within 180 days from the date of Secretary approval. Active mining operations for the purpose of this subsection exclude permits that have obtained at least a Phase I release and are vegetated. Provided, however, permits or portions of permits that meet at least Phase I standards and are vegetated will be considered on a case by case basis.

5.6.d.1. Schedule of Submittal

5.6.d.1.a. Within 180 days from the first day of January two thousand four all active mining operations with permitted acreage greater than 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.b. Within 360 days from the first day of January two thousand four all active mining operations with permitted acreage between 200 and 400 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.c. Within 540 days from the first day of January two thousand four all active mining operations with permitted acreage between 100 and less than 200 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.d. Within 720 days from the first day of January two thousand four all active mining operations with permitted acreage between 50 and less than 100 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval.

5.6.d.1.e. Within 900 days from the first day of January two thousand four all active mining operations with permitted acreage less than 50 acres must demonstrate in writing that the operation is in compliance or a revision shall be prepared and submitted to the Secretary for approval. Provided, however, an exemption may be considered on a case-by-case basis. Futhermore, haulroads, loadouts, and ventilation facilities are excluded from this requirement.

CSR 38–2–8.2.e, concerning fish and wildlife considerations, is amended by adding language to provide that in constructing a windrow, timber shall not be placed in a manner or location to block natural drainways.

CSR 38–2–9.1.a, concerning revegetation, is amended by adding language to provide that reforestation opportunities must be maximized for all areas not directly associated with the primary approved postmining land use and requiring revegetation plans for those areas to be reforested to include a map, a planting schedule and stocking rates.

CSR 38–2–9.3.d, concerning standards for evaluating vegetative cover, is amended by deleting the words "from the Handbook," so that sampling techniques will no longer be taken from the State's revegetation handbook.

CSR 38–2–9.3.f, concerning standards for evaluating vegetative cover and productivity, is amended by deleting the words "in the Handbook," and replacing those words with the words "by the Secretary." The effect of the change is that vegetation ground cover and productivity levels will be set by the Secretary of the WVDEP, rather than as provided in the State's revegetation handbook.

CSR 38–2–14.5.h, concerning hydrologic balance, is amended by adding a proviso that the requirement for replacement of an affected water supply that is needed for the land use in existence at the time of contamination, diminution or interruption or where the affected water supply is necessary to achieve the post-mining land use shall not be waived.

CSR 38–2–14.14.g.1, concerning durable rock fills, is amended by adding language to provide that fills proposed after January 1, 2004, may only be approved with the design, construction, and use of a single lift fill if they include an erosion protection zone or a durable rock fill designed to be reclaimed from the tow [toe] upward.

CSR 38–2–14.14.g.2 is new and adds additional design specifications and requirements for single lift fills with an erosion protection zone at subsections 14.14.g.2.A through 14.14.g.2.B.3. The new language provides as follows:

14.14.g.2.A. Erosion Protection Zone. The erosion protection zone is a designed structure constructed to provide energy dissipation to minimize erosion vulnerability and may extend beyond the designed toe of the fill.

14.14.g.2.A.1. The effective length of the erosion protection zone shall be at least one half the height of the fill measured to the target fill elevation or fill design elevation as defined in the approximate original contour procedures and shall be designed to provide a continuous underdrain extension from the fill through and beneath the erosion protection zone.

14.14.g.2.A.2. The height of the erosion protection zone shall be sufficient to accommodate designed flow from the underdrain of the fill and shall comply with 14.14.e.1. of this rule.

14.14.g.2.A.3. The erosion protection zone shall be constructed of durable rock as defined in 14.14.g.1. originating from a permit area and shall be of sufficient gradation to satisfy the underdrain function of the fill.

14.14.g.2.A.4. The outer slope or face of the erosion protection zone shall be no steeper than two (2) horizontal or [to] one (1) vertical (2:1). The top of the erosion protection zone shall slope toward the fill at a three (3) to five (5) percent grade and slope laterally from the center toward the sides at one (1) percent grade to discharge channels capable of passing the peak runoff of a one-hundred (100) year, twenty-four (24) hour precipitation event.

14.14.g.2.A.5. Prior to commencement of single lift construction of the durable rock fill, the erosion protection zone must be seeded and certified by a registered professional engineer as a critical phase of fill construction. The erosion protection zone shall be maintained until completion of reclamation of the fill.

14.14.g.2.A.6. Unless otherwise approved in the reclamation plan, the erosion protection zone shall be removed and the area upon which it was located shall be regraded and revegetated in accordance with the reclamation plan.

14.14.g.2.B. Single Lift Construction Requirements.

14.14.g.2.B.1. Excess spoil disposal shall commence at the head of the hollow and proceed downstream to the final toe. Unless required for construction of the underdrain, there shall be no material placed in the fill from the sides of the valley more than 300 feet ahead of the advancing toe. Exceptions from side placement of material limits may be approved by the Secretary if requested and the applicant can demonstrate through sound engineering that it is necessary to facilitate access to isolated coal seams, the head of the hollow or otherwise facilitates fill stability, erosion, or drainage control.

14.14.g.2.B.2. During construction, the fill shall be designed and maintained in such a manner as to prevent water from discharging over the face of the fill.

14.14.g.2.B.2.(a). The top of the fill shall be configured to prevent water from discharging over the face of the fill and to direct water to the sides of the fill.

14.14.g.2.B.2.(b). Water discharging along the edges of the fill shall be conveyed in such a manner to minimize erosion along the edges of the fill.

14.14.g.2.B.3. Reclamation of the fill shall be initiated from the top of the fill and progress to the toe with concurrent construction of terraces and permanent drainage.

CSR 38–2–14.14.g.3 is new and adds design specifications and requirements at 14.14.g.3.A through 14.14.g.3.B for durable rock fills designed to be reclaimed from the toe upward. The new language provides as follows:

14.14.g.3.A. Transportation of Material to toe of fill. The method of transporting material to the toe of the fill shall be specified in the application and shall include a plan for inclement weather dumping. The means of transporting material to the toe may be by any method authorized by the Act and this rule and is not limited to the use of roads.

14.14.g.3.A.1. Constructed roads shall be graded and sloped in such a manner that water does not discharge over the face. Sumps shall be constructed along the road in switchback areas and shall be located at least 15 feet from the outslope.

14.14.g.3.A.2. The constructed road shall be in compliance with all applicable State and Federal safety requirements. The design criteria to comply with all applicable State and Federal safety requirements shall be included in the permit.

14.14.g.3.B. Once the necessary volume of material has been transported to the toe of the fill, face construction and installation of terraces and permanent drainage shall commence. The face construction and reclamation of the fill shall be from the bottom up with progressive construction of terraces and permanent drainage in dumping increments not to exceed 100 feet.

CSR 38–2–14.15.a.2, concerning contemporaneous reclamation standards, is amended by adding language to provide that the mining and reclamation plan shall contain information on how mining and reclamation operations will be coordinated so as to minimize surface water runoff, and comply with the storm water runoff plan.

CSR 38–2–14.15.c, concerning reclaimed area, is amended by adding the words "and seeding has occurred" to the definition of reclaimed acreage that is applicable to this subsection. As amended, the definition of reclaimed area provides that for purposes of this subsection, reclaimed acreage shall be that portion of the permit area which has at a minimum been fully regraded and stabilized in accordance with the reclamation plan, meets Phase I standards, and seeding has occurred.

CSR 38–2–14.15.g, concerning contemporaneous reclamation variance—permit applications, is amended by adding language to require a demonstration that the variance being sought will comply with CSR 38–2–5.6 concerning the new storm water runoff provisions.

CSR 38–2–17.1, concerning Small Operator Assistance Program, is amended by adding that the Secretary of WVDEP shall establish a formula for allocating funds to provide services for eligible small operators if available funds are less than those required to provide the services pursuant to CSR 38–2–17.

CSR 38–2–20.6.a, concerning civil penalty assessments, is amended by deleting all language concerning an "assessment officer," and adding language concerning the Secretary of WVDEP. The new language provides that the Secretary shall not determine the proposed penalty assessment until such time as an inspection of the violation has been conducted and the findings of that inspection are submitted to the Secretary in writing.

CSR 38–2–20.6.c, concerning notice of civil penalty assessment, is amended by deleting two sentences that provide that the "Secretary shall also give notice including any worksheet, in person or by certified mail, to the operator of any penalty adjustment as a result of an informal conference within thirty (30) days following the date of the conference. The reasons for reassessment shall be documented in the file by the assessment officer." Also, the following sentence is added immediately before the existing last sentence: "The reasons for reassessment shall be documented in the file by the Secretary."

CSR 38–2–20.6.d, concerning notice of informal assessment conference, is amended by adding language to provide that the Secretary shall arrange for a conference to review the proposed assessment or reassessment, upon written request if received within 15 days from the date the proposed assessment or reassessment is received. Language is also added to provide that the operator shall forward the amount of proposed penalty assessment to the Secretary for placement in an interest bearing escrow account, and that the Secretary shall assign an assessment officer to hold the assessment conference.

CSR 38–2–20.6.e, concerning informal conference, is amended by adding language to provide that the assessment officer shall give notice including any worksheet, in person or by certified mail, to the operator of any penalty adjustment as a result of an informal conference within 30 days following the date of the conference. The reasons for the assessment officer's action shall be documented in the file.

CSR 38–2–20.6.f is new and adds the requirement that an increase or reduction of a proposed civil penalty of more than 25 percent and more than $500.00 shall not be final and binding until approved by the Secretary.

CSR 38–2–20.6.j, concerning escrow, is amended by adding the phrase "an informal conference or" immediately before the words "judicial review of a proposed assessment." In addition, the words "continue to" are deleted immediately before the words "be held in escrow." The new language provides that if a person requests an informal conference or judicial review of a proposed assessment, the proposed penalty assessment shall be held in escrow until completion of the judicial review.

CSR 38–2–22.4.g.3.A, concerning coal refuse, impoundments designed without discharge structures, is amended by deleting the second sentence and adding three sentences in its place. The new language requires that a system shall be designed to dewater the impoundment of the probable maximum storm in 10 days by pumping or other means. The new language requires the requirements of the Coal Related Dam Safety Rule at CSR 38–4–25.14, concerning removal of storm water from impoundments, shall be met. For existing structures exceeding the minimum 2 PMP volume requirement, the dewatering system shall be installed when the containment volume is reduced to 2 PMPs.

CSR 38–2–22.4.i.6 is new and concerns the use of corrugated metal pipes in spillways. This provision provides that corrugated metal pipes shall not be used in new or unconstructed refuse impoundments or slurry cells. If an existing corrugated metal pipe has developed leaks or otherwise deteriorated so as to cause the pipe to not function properly and such deterioration constitutes a hazard to the proper operation of the impoundment, the Secretary will require the corrugated metal pipe to be either repaired or replaced.

CSR 38–2–24.2.a, concerning remining operations—revegetation, is amended by deleting the words "in the Handbook" at the end of the last sentence, and replacing those words with the words "by the Secretary." The new revision provides that the determination of premining [remining] ground cover success and productivity shall be made using sampling techniques described by the Secretary.

CSR 38–2–24.3, concerning remining operations—water quality, is amended by adding the following language at the end of the last sentence: "or a coal remining operation as defined in 40 CFR Part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR 434 as amended." The new revision provides that a coal remining operation which began after February 4, 1987, and on a site which was mined prior to August 3, 1977, may qualify for the water quality exemptions set forth in subsection (p), section 301 of the Federal Clean Water Act, as amended or a coal remining operation as defined in 40 CFR Part 434 as amended may qualify for the water quality exemptions set forth in 40 CFR Part 434 as amended.

CSR 38–2–24.4, concerning remining operations—requirements to release bonds, is amended by adding the following language at the end of the first sentence: "and the terms and conditions set forth in the NPDES [National Pollutant Discharge Elimination System] Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR Part 434 as amended." The new revision provides that bond release for remining operations shall be in accordance with all of the requirements set forth in subsection 12.2 of this rule and the terms and conditions set forth in the NPDES Permit in accordance with subsection (p), section 301 of the Federal Clean Water Act, as amended or 40 CFR Part 434 as amended.

Coal Related Dam Safety Rules at CSR 38–4

CSR 38–4–3.4.c, concerning hazard evaluation, is amended by deleting the existing heading and renaming the provision "Assessment of Hazards and Consequences of Failure." In addition, the following language is added as an introductory paragraph:

All new applications and expansions to existing impoundments must submit a complete Assessment of Hazards and Consequences of Failure (AHCF) in narrative form, certified by a Registered Professional Engineer (RPE), that addresses potential risks and impacts resulting from failure that could occur from the construction and/or operation of the facility and addresses the following:

CSR 38–4–7.1.f.3.A, concerning Class C impoundments designed without discharge structures, is amended by deleting the existing second sentence and replacing that sentence with the following three sentences. "A system shall be designed to dewater the impoundment of the probable maximum storm in ten (10) days by pumping or by other means. The requirements of 25.14 shall also be met. For existing structures exceeding the minimum 2 PMP volume requirements, the dewatering system shall be installed when the containment volume is reduced to 2 PMPs."

CSR 38–4–7.1.n is new and concerns use of corrugated metal pipes for spillways. The new language provides as follows:

Corrugated metal pipes, whether coated or uncoated, shall not be used in new or unconstructed refuse impoundments or slurry cells. If an existing corrugated metal pipe has developed leaks or otherwise deteriorated so as to cause the pipe to not function properly and such deterioration constitutes a hazard to the proper operation of the impoundment, the Secretary will require the corrugated metal pipe to be either repaired or replaced. Provided, however, sediment control or other water retention structures used for the treatment of effluent and designated as Class A Dams under 3.4.b of this rule are exempt from this prohibition.

CSR 38–4–8.1, concerning subsidence evaluation of the site and the dam and its storage area, is amended by revising the phrase "that coal pillars and floor are strong" to read "that the coal pillars, roofs and floor are strong." The last two existing sentences are deleted, and the new last sentence is amended by adding, at the end, the words "or are otherwise capable of preventing significant subsidence impacts, in accordance with 8.2 and 8.3 of this rule." The effect of this change is to add this requirement as an alternative condition for allowing dams to be constructed over underground workings.

CSR 38–4–8.2.a, concerning basin, is new and provides as follows:

There shall be no underground mining in a safety zone that extends horizontally 200 feet from the high water mark of an impoundment and vertically to a depth that provides for a minimum thickness of 100 feet of solid strata between the bottom of the pool and any mining. The presence of any mine workings within this safety zone is prohibited unless the potential subsidence effects are mitigated by injection grouting or otherwise filling the mine related voids completely. Alternately, such risk can be mitigated by providing constructed barriers, grouting or other means to establish equivalent protection that will comply with the safety zone dimensions. Coal extraction of 80 percent or more is prohibited unless at a depth greater than 60 times the coal extraction thickness or at a depth where the maximum tensile strain at original ground is less than 5.0 mm/m (0.5%), whichever is greater. The Secretary may impose other limitations as specified by BM IC 8741, barrier analysis, other pertinent analysis or due to conditions such as fracturing, which may require a larger safety zone or further limitations in coal extraction.

CSR 38–4–8.2.b, concerning embankment, is new and provides as follows:

There shall be no mining in a safety zone under the structural embankment measured outward 200 feet in all directions, downward 350 feet and then outward at a dip of 65° from the horizontal, unless acceptable pillar stability and/or strain effects are confirmed by a design evaluation to be certified by an RPE. Also, the related AHCF must clearly demonstrate that the facility will have a low risk of impact to the public and the environment. Existing mine workings within this safety zone having the potential to cause significant subsidence impacts are prohibited unless those effects are mitigated by grouting, filling the mine related voids or providing comparable protection. Additional underground mining may be subsequently approved in the embankment safety zone only if a design evaluation, certified by an RPE, demonstrates that no significant impacts from subsidence can result.

CSR 38–4–8.2.c, concerning existing impoundments, is new and provides as follows:

Existing impoundments that currently have mining within the safety zones must be evaluated in accordance with this section and 3.4.c. of this rule. Remedial measures shall be implemented as necessary to eliminate or reduce the potential impact on the public and/or the environment. Remedial measures may include, but are not limited to, constructed barriers, grouting of underground works and back stowing of mines.

CSR 38–4–8.3, concerning safety factors applicable to new, revised, and existing impoundment facilities, is new and provides as follows:

A detailed engineering design evaluation of the embankment and impoundment basin areas shall be conducted to assure protection of the environment and public. The engineering design analysis shall demonstrate that appropriate safety factors exist. Major design considerations of this engineering analysis are embankment stability, pillar design, outcrop barrier design, and any other design aspects as necessary to manage risk. The adequacy of calculated safety factors should be determined by applying appropriate regulatory standards. For design applications where regulatory standards do not exist, the AHCF should be the basis used to derive acceptable safety factors.

CSR 38–4–25.14 concerning removal of storm water in the impoundment is new and provides as follows:

Storm water in the impoundment shall be removed as specified in the design requirements. In addition, the slurry impoundment pool shall be maintained at the lowest practical pool level based upon the design requirements and the AHCF. The mechanical storm dewatering system shall be installed as designed and maintained properly with the system being tested monthly.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the West Virginia program.

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. We may not consider or respond to your comments when developing the final rule if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Charleston Field Office may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII, Word file avoiding the use of special characters and any form of encryption. Please also include Attn: SATS NO. WV–098–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field office at (304) 347–7158.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from

individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. (local time), on April 29, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary, pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. The basis for this determination is our decision on a State regulatory program and does not involve a Federal regulation involving Indian lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the analysis performed under various laws and executive orders for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 28, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 03–9033 Filed 4–11–03; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FL–094–200316b; FRL–7481–7]

Approval and Promulgation of State Plan for Designated Facilities and Pollutants: Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the section 111(d)/129 State Plan submitted by the Florida Department of Environmental Protection (FDEP) for the State of Florida on November 29, 2001, for implementing and enforcing the Emissions Guidelines (EG) applicable to existing Commercial and Industrial Solid Waste Incinerators. The Plan was submitted by FDEP to satisfy Federal Clean Air Act requirements. In the Final Rules Section of this **Federal Register**, the EPA is approving the Florida State Plan revision as a direct final rule without prior proposal because the Agency views this revision as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 14, 2003.

ADDRESSES: All comments should be addressed to: Joydeb Majumder, EPA Region 4, Air Toxics and Management Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Copies of documents relative to this action are available for inspection during normal business hours at the above listed Region 4 location. Anyone interested in examining this document should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Joydeb Majumder at (404) 562–9121 or Sean Lakeman at (404) 562–9043.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: March 24, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–8954 Filed 4–11–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 032803F]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Scoping Process

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS) and notice of re-initiation of scoping process; request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intent to prepare an amendment to the Fishery Management Plan (FMP) for Atlantic Herring (*Clupea harengus*) and to prepare an SEIS to analyze the impacts of any proposed management measures. The Council is also formally re-initiating a public process to determine the scope of alternatives to be addressed in the amendment and SEIS. The purpose of this notification is to alert the interested public of the re-commencement of the scoping process and to provide for public participation in compliance with environmental documentation requirements.

DATES: The Council will discuss and take scoping comments at public meetings in April and May 2003. For specific dates and times of the scoping meetings, see **SUPPLEMENTARY INFORMATION.** Written scoping comments must be received on or before 5 pm., local time, June 2, 2003.

ADDRESSES: The Council will take scoping comments at public meetings in Maine, Massachusetts, and New Jersey. For specific locations, see **SUPPLEMENTARY INFORMATION.** Written comments and requests for copies of the scoping document and other information should be directed to Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950, telephone (978) 465–0492. The scoping document is accessible electronically via the Internet at *http://www.nefmc.org*. Comments may also be sent via facsimile (fax) to (978) 465–3116. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Atlantic herring fishery is managed as one stock complex along the east coast from Maine to Cape Hatteras, NC, although evidence suggests that separate spawning components exist within the stock complex. The Council and the Atlantic States Marine Fisheries Commission (ASMFC or Commission) adopted management measures for the herring fishery in state and Federal waters in 1999, and NMFS approved most of the management measures contained in the Federal Herring FMP on October 27, 1999. The Federal Atlantic Herring FMP became effective on January 10, 2001.

The state and Federal management plans contain similar management measures.The state and Federal management plans for herring establish total allowable catches (TACs) levels in each of four management areas. In state waters, there are spawning area restrictions and requirements for vessels to take specified days out of the fishery (under the Commission plan). Both plans include limits on the size of vessels that can take, catch, or harvest herring. Each plan includes administrative elements such as

requirements for vessel, dealer, and processor permits and reporting requirements. A control date of September 16, 1999, was established for the Atlantic herring fishery in Federal waters (64 FR 50266, September 16, 1999).

Additional measures for the Federal Herring FMP are being considered for two reasons: (1) a new stock assessment for herring is available; and (2) the Council made a commitment to consider limited or controlled access in the herring fishery shortly after developing the Herring FMP.

In February 2003, the Transboundary Resource Assessment Committee (TRAC), composed of both U.S. and Canadian scientists, met in St. Andrew's, New Brunswick, to undertake a joint peer review of the status of the transboundary herring resource and to provide collective guidance for fisheries managers to consider. The TRAC assessment will be used in considering possible adjustments to the FMP, which may include changes to the herring overfishing definition and its associated reference points, revisions to the estimates of maximum sustainable yield (MSY) and optimum yield (OY) for the herring fishery, adjustments to management areas, and/or adjustments to area-specific TAC calculations. The Herring Plan Development Team (PDT) will review the TRAC information and provide technical guidance on these and other issues as the development of this amendment proceeds.

While the overall TAC for herring is more than twice recent landing levels, the TAC in the inshore Gulf of Maine (Area 1A) represents more than 60 percent of the total landings and has triggered a closure of the herring fishery in this area every year. Some fishermen believe that harvesting capacity in this area should be restricted to avoid problems that result from excess fishing capacity. One of these problems is a "race to fish" as increasing numbers of vessels try to catch the TAC before the others. Besides generating inefficiencies, the available TAC in this area will likely continue to be taken before the fishing year is over. This can disrupt the supply of herring for various markets and affect stability in the fishery.

Management of a number of fisheries in the Northeast Region is complicated by excess fishing capacity which makes it difficult to reduce fishing mortality to levels necessary for stock rebuilding. In order to avoid the problems experienced in these fisheries, there is interest in developing a limited access system for the herring fishery to possibly address existing capacity problems in Area 1A and avoid such problems in other areas as the fishery continues to develop.

In July 1999, the Council made a formal commitment to develop a limited or controlled access program for the herring fishery. Scoping meetings were conducted in early 2000, and comments were sought on limited/controlled access in the herring fishery, particularly in Area 1A. At that time, concern about excess capacity was focused on Area 1A, as Areas 2 and 3 (southern New England and Georges Bank) could support increased fishing effort and additional capacity in the fishery. However, some new markets have emerged, additional harvesting and processing capacity has developed, and catches from Areas 2 and 3 have increased somewhat, suggesting that capacity concerns in these areas may be different than they were in 2000. For this reason, the Council may consider a limited access program for all herring management areas.

This amendment may address one or more of the following issues:

1. According to the best available scientific information, overfishing is not occurring on the herring resource at this time, but may occur in the future if effort and capacity are not monitored and controlled in a proactive manner.

2. Allocation issues have arisen since the establishment of the TACs in the herring fishery, and these issues should be examined and minimized to the extent practicable (examples include the race to fish and gear conflicts resulting from the TACs).

3. Interactions of herring with other species and other fisheries are becoming increasingly important, especially as all stocks in the Northeast Region continue to increase. These interactions and their associated impacts should be examined so that negative impacts can be minimized where possible and appropriate.

Measures Under Consideration

At this time, the Council is seeking comments on a wide range of management measures it is considering to address a range of issues. The measures under consideration include, but are not limited to, the following:

Limited Access

One or more kinds of permits may be issued to vessels fishing in one or more of the management areas. Qualification criteria for limited access permits could take many different forms. For example, qualification criteria could be based on catch levels over a particular period of time, possession of another permit, future performance in the fishery, or any combination of these standards.

If the Council does develop a limited access program in this amendment, it may develop separate qualifying criteria for the directed herring fishery and the incidental catch herring fishery. The Council also may consider a quota-based limited access program for participants in the herring fishery. Under such a program, TACs for herring could be specifically allocated to a limited number of individuals or entities. This allows the individuals or entities to be responsible for controlling their own capacity and harvesting their share of the resource in a way that maximizes their economic benefits and the overall benefits to the fishery. Some examples of quota-based programs that may be considered include Individual Fishing Quotas (IFQs), group quota shares, and community quota shares.

In addition to establishing some kind of limited access program, the Council will consider the "no action alternative;" that is, to allow the herring fishery to remain an open-access fishery. Consideration of the no action alternative is a legal requirement and is based on the fact that domestic catches are currently less than one-half the overall TAC. New markets and additional harvesting capacity to fully utilize the herring resource are currently being examined for the herring fishery. In addition, an open access system provides the most flexibility to fishermen to move into the herring fishery as an alternative to other fisheries.

Other Effort Controls

A limited access program by itself may or may not address potential capacity problems in the herring fishery, especially in Area 1A. For this reason, the Council is considering and seeking comments on other types of effort controls for the fishery, if necessary. These include, but are not limited to, the following:

1. *Vessel Upgrade Restrictions*—Restrictions on the overall size and capacity of herring vessels is already included in the FMP. However, additional restrictions on the ability of herring vessels to upgrade (increase their size and/or horsepower) may be an effective tool for controlling existing capacity in the fishery.

2. *Trip Limits*—Trip limits may slow down the race to fish and prevent early closure of the fishery, especially in Area 1A. For the herring fishery, it would be important to consider the high-volume nature of the directed fishery and the need to minimize regulatory discarding.

3. *Days at Sea (DAS) for the Herring Fishery*—Limits on the number of days that vessels can fish for herring is another way to control effort in the fishery.

4. *Days Out of the Herring Fishery*—Requirements for vessels to take days out of the herring fishery were included in the Herring FMP, but were not approved by NMFS for several reasons. The Commission implemented days out of the fishery in state waters through the Interstate FMP for herring and has found it to be an effective tool to slow the race to fish. For this reason, the Council may re-consider a program for days out of the Federal fishery. Such a program may be based on no-fishing days or no-landing days (as is currently in the Comission plan).

Management Area Boundaries

The recently-completed TRAC Assessment of the herring resource recommends, among other things, consideration of some adjustments to the existing management area boundaries for the herring fishery. The Council will consider these recommendations as well as other comments received during the scoping period regarding adjustments to existing herring management area boundaries.

Other Measures and Adjustments Under Consideration

Because of the new TRAC Assessment and other management issues that have emerged over the past 3 years, the Council may consider additional measures for development in this amendment.

1. *Transboundary Nature of the Resource and Interactions with Canadian Herring Fisheries*—The Council is seeking comments on more effective ways to address the transboundary nature of this resource. Specifically, the Council is seeking comments on interactions between U.S. herring management and the New Brunswick weir fishery, the southwest Nova Scotia herring fishery, and the Canadian fishery for herring on Georges Bank.

2. *Seine-only and/or Trawl-only Areas*—To reduce gear conflicts associated with the TACs and the race to fish, the Council may consider establishing areas for fishing with purse seines and/or midwater trawls only.

3. *Clarification of the Definition of Midwater Trawl*—The Council may consider revising the regulatory definition of a midwater trawl to improve enforcement and clarify perceptions about the gear intended to be fished.

4. *Spawning Area Restrictions*—Spawning area restrictions were included in the Herring FMP, but were not approved by NMFS for several reasons. The Commission implemented spawning area restrictions through the Interstate FMP for herring. The Council is seeking comment on whether or not these restrictions should be re-considered in this amendment.

5. *Improved Coordination with Mackerel Management*— Mackerel is managed through the Mid-Atlantic Fishery Management Council's Squid/Mackerel/Butterfish FMP. The Council recognizes the overlap between the herring and mackerel fisheries and the need to better coordinate the management of these resources. The Council is seeking comments on how to better coordinate herring and mackerel management.

6. *Bycatch and Bycatch Monitoring*—The Council is seeking comments on measures to minimize bycatch and to better monitor the nature of bycatch in the herring fishery. This includes consideration of requirements for observer coverage in the fishery.

Scoping Process

All persons affected by or otherwise interested in herring management are invited to participate in determining the scope and significance of issues to be analyzed by submitting written comments (see **ADDRESSES**) or by attending one of the scoping hearings. Scoping consists of the range of actions, alternatives, and impacts to be considered. Alternatives include the following: not amending the management plan (taking no action), developing an amendment that contains management measures such as those discussed in this notice, or other reasonable courses of action. Impacts may be direct, individual, or cumulative.

This scoping process will also identify and eliminate from detailed analysis issues that are not significant. When, after the scoping process is completed, the Council proceeds with the development of an amendment to the Herring FMP, the Council will prepare an SEIS to analyze the impacts of a range of alternatives under consideration. The Council will hold public hearings to receive comments on the draft amendment and on the analysis of its impacts presented in the SEIS.

Scoping Hearing Schedule

The Council will discuss and take scoping comments at public meetings as follows:

1. Monday, April 28, 2003, 7 p.m., Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048. Telephone (508) 339–2200.

2. Tuesday, April 29, 2003, 7 p.m., Kings Grant Hotel, Trask Road, Route 128, Exit 21N, Danvers, MA 01923. Telephone (978) 774–6800.

3. Tuesday, May 6, 2003, 7 p.m., Samoset Resort and Conference Center, 220 Warrenton Street, Rockport, ME 04856. Telephone (207) 594–2511.

4. Monday, May 12, 2003, 7 p.m., Clarion Hotel and Conference Center, 6821 Black Horse Pike, Egg Harbor Township/Atlantic City West, NJ 08234. Telephone (609) 272–0200/(800) 782–9237.

Special Accommodations

The meetings are accessible to people with physical disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to this meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 9, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9059 Filed 4–11–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 71
Monday, April 14, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting Notice

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Friday, May 9, 2003. The meeting will be held in Room M–09 at the Old Post Office Building, 1100 Pennsylvania Avenue, NW., Washington, DC, beginning at 9 a.m.

The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, and Transportation; the Administrators of the Environmental Protection Agency and General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome
II. Presentation of Chairman's Awards for Federal Achievement in Historic Preservation
III. Report of the Executive Committee
  A. FY 2004 ACHP Appropriations
  B. Legislative Issues
  1. ACHP Reauthorization Legislation
  2. Surface Transportation Reauthorization Legislation
  3. Historic Preservation Tax Incentives
  C. Revision of ACHP Strategic Plan
IV. Preserve America Program Development
  A. Presidential Awards
  B. Preserve America Communities
V. Preserve America Executive Order Implementation
  A. Interagency Assistance Efforts
  B. Guidelines for Federal Agency Reports
VI. Report of the Preservation Initiatives Committee
  A. Federal Heritage Tourism Summit II
  B. ACHP Donations Strategy
VII. Report of the Federal Agency Programs Committee
  A. Army Alternate Procedures—Amendment and Implementation Report
  B. Program Comment for Dudded Areas
  C. Section 106 Cases
VIII. Report of the Communications, Education, and Outreach Committee
  A. Publicity for Preserve America and Executive Order
  B. Dissemination of ACHP Publications
IX. Chairman's Report
  A. Meeting with Tribal Representatives
  B. Reissue of Federal Stewardship Report
X. Executive Director's Report
XI. New Business
XII. Adjourn

Note: The meetings of the ACHP are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., Room 809, Washington, DC, 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: April 9, 2003.

John M. Fowler,

Executive Director.

[FR Doc. 03–9038 Filed 4–11–03; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Basin Creek Fuels Reduction Project, Beaverhead-Deerlodge National Forest, Silver Bow, County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA, Forest Service, Beaverhead-Deerlodge National Forest, will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of proposed vegetation treatments in the Basin Creek watershed south of Butte, Montana.

The project area is located in the southern half of the Basin Creek watershed within the Highland Mountains in southwestern Montana (Township 2 North, Range 7 West sections 29, 31, 32; Township 1 North, Range 7 West, sections 5–8, 17–20; Township 1 North, Range 8 West, sections 1–4, 9–12, 13–16, 21–24; and Township 2 North, Range 8 West, section 23).

The Beaverhead-Deerlodge National Forest is proposing to treat forested areas in the Basin Creek Project Area to reduce the likelihood of high intensity rapidly spreading fire to reduce risks to fire fighter and public safety, private property, and water quality in the Basin Creek Municipal Watershed. The proposed action will reduce high levels of wildland fuels in two main areas of concern, a 3,900-acre area southwest of the Roosevelt Drive subdivision and a 9,000-acre area in the Basin Creek Municipal watershed. Treatments would include up to 1,500 acres of slashing, burning, and timber harvest in the area below the Roosevelt Drive subdivision. No permanent road construction is proposed in this area; however, there may be some need for temporary roads. Close coordination with the local homeowners will occur in the specific design of treatments.

A large portion (5,700 acres) of the municipal watershed is in an inventorized roadless area. Fire simulation models are being used to determine where treatments would be the most effective in slowing fire while minimizing the number of acres needing to be treated. Modeling has not been completed at this time, therefore, no estimate of number of acres is known at this time. No permanent or temporary road construction is proposed within the inventorized roadless area.

Reconstruction of the Herman Gulch Road is being considered to improve the route for firefighter and public access during emergency situations and address soil erosion issues.

No treatments would be proposed within INFISH defined riparian habitat conservation areas. No treatment within old-growth forest is planned.

Alternatives: This EIS will evaluate alternative methods to meet the designated Purpose and Need for the action:

1. Minimize the risks to water quality in the event of wildland fire in the Basin Creek Municipal Watershed.
2. Reduce the potential of damage to public and private property and structures within the project area from wildland fire.
3. Modify vegetative conditions to increase firefighter and public safety.

At least one alternative will exclude any treatments within the inventorized roadless area. As required by NEPA, a "no action" alternative will be analyzed as a baseline for gauging the potential impacts of action alternatives. Forest Plan Visual Quality Objectives for the project area are fairly restrictive. Proposed treatments may require a Forest Plan amendment.

Public Involvement: The public will be invited to comment on the Draft EIS during a public open house, field trip, and in writing to the Beaverhead-Deerlodge National Forest. The location and time of the open house and time of the site field visit will be announced in the local news media, as dates are determined. The public may contact the Forest to have their name added to a project mailing list.

DATES: Initial comments concerning the scope of the analysis should be received in writing no later than 30 days from the publication of this notice of intent.

ADDRESSES: The responsible official is Dale Bosworth, Chief of the Forest Service. Please send written comments to Thomas K. Reilly, Forest Supervisor, 420 Barrett Street, Dillon, MT 59725. Comments may also be electronically submitted to *r1_b-d_comments@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Steve Egeline, Acting Butte District Ranger, Beaverhead-Deerlodge National Forest, 1820 Meadowlark Lane, Butte, MT 59701, or phone (406) 494–0219.

SUPPLEMENTARY INFORMATION: Public participation is important to this analysis. Part of the goal of public involvement is to identify additional issues and to refine general issues. Scoping notices were mailed to the public on March 29, 2002 and February 11, 2003.

People may visit with Forest Service officials at any time during the analysis and prior to the decision. Two periods are specifically designated for comments on the analysis: (1) during the scoping process, and (2) during the draft EIS period.

During the scoping process, the Forest Service seeks additional information and comments from individuals or organizations that may be interested in or affected by the proposed action, and federal, state, and local agencies. The Forest Service invites written comments and suggestions on this action, particularly in terms of issues and alternative development.

The draft EIS is anticipated to be available for review in June 2003. The final EIS planned for completion in December 2003.

The Environmental Protection Agency will publish the notice of availability of the draft Environmental Impact Statement in the **Federal Register.** The Forest will also publish a legal notice of its availability in the Montana Standard Newspaper, Butte, Montana. A 45-day comment period on the draft EIS will begin the day after the legal notice is published.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The responsible official will make the decision on this proposal after considering comments and responses, environmental consequences discussed in the final EIS, applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in a Record of Decision.

Dated: April 7, 2003.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. 03–9010 Filed 4–11–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lower Big Creek, Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA—Forest Service will prepare an Environmental Impact Statement to disclose the environmental effects of timber harvest, prescribed burning, and road management in the Lower Big Creek Decision Area on the Rexford Ranger District of the Kootenai National Forest. The Decision Area is located approximately 15 miles southwest of Eureka, Montana.

DATES: Written comments and suggestions should be postmarked or received within 30 days following publication of this notice.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to Glen M. McNitt, District Ranger, Rexford Ranger District, 1299 U.S. Highway 93 N, Eureka, MT 59917.

FOR FURTHER INFORMATION CONTACT: Chris Fox, Interdisciplinary Team Leader, Rexford Ranger District, Phone: (406) 296–2536.

SUPPLEMENTARY INFORMATION: The Decision Area contains approximately 64,000 acres of land within the Kootenai National Forest. Proposed activities within the Decision Area include all or portions of the following areas: T34–35N, R29–30W, PMM, Lincoln County, Montana.

All proposed activities are outside the boundaries of any roadless area or any areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposals, with the exception of approximately 840 acres of underburning-only in the Big Creek Inventoried Roadless Area.

Purpose and Need: The purpose and need for the project is to: (1) Reduce fuel accumulations to decrease the likelihood that fires would become large stand-replacing wildfires; (2) Restore characteristic vegetation patterns (patch sizes and stand structure) on the landscape; (3) Provide a transportation system that increases security for grizzly bears, reduces impacts to aquatic resources, improves riparian wildlife habitat, and insures economical and safe access; and (4) Respond to the social and economic needs of the public.

Proposed Activities: The Forest Service proposes to use regeneration harvest on approximately 2,650 acres, shelterwood-commercial thin harvest on approximately 350 acres, commercial thinning on approximately 560 acres, and roadside salvage and post and pole harvest on approximately 75 acres.

The Proposed Action would result in nineteen openings over 40 acres, ranging from 98 to 530 acres. A 60-day public review period, and approval by the Regional Forester for exceeding the 40 acre limitation for regeneration harvest, would be required prior to the signing of the Record of Decision. This 60-day period is initiated with this Notice of Intent.

The Proposed Action includes approximately 3,625 acres of prescribed burning in association with timber harvest, and approximately 1,100 acres of prescribed burning without timber harvest.

The Proposed Action also includes maintenance activities on portions of approximately 109 miles of road to meet Best Management Practices; decommissioning approximately 25 miles of closed roads; placing 14 miles of roads (which are currently restricted year-long to motor vehicles) in storage; and reconstructing approximately 1.7 miles of existing road.

The Proposed Action includes precommercial thinning of sapling-sized trees on approximately 300 acres within managed plantations and natural stands that have regenerated after wildfire. Precommercial thinning would not occur in lynx habitat.

Forest Plan Amendments: The Proposed Action includes two project-specific Forest Plan amendments necessary to meet the project's objectives:

An amendment to allow harvest in 15 units adjacent to existing openings in Management Area (MA) 12 (Big Game Summer Range). The amendment would be needed to suspend Wildlife and Fish Standard #7 and Timber Standard #2 for this area. These standards state that movement corridors and adjacent hiding cover be retained. The resulting opening sizes more closely correlate to natural disturbance patterns. Snags and down woody material would be left to provide wildlife habitat and maintain soil productivity.

An amendment to allow MA 12 open road density to be managed at 1.18 miles/square mile during project implementation. The amendment would needed to suspend Facilities Standard #3, which states that open road density should be maintained at 0.75 miles/square mile. The open road density would return to 0.74 following project completion.

Range of Alternatives: The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed activities will be implemented. Additional alternatives will be considered to achieve the project's purpose and need for action, and to respond to specific resource issues and public concerns.

Public Involvement and Scoping: In November 2002, efforts were made to involve the public in considering management opportunities within the Decision Area. A scoping package was mailed for public review on November 5, 2002. A field trip was held on November 15, 2002; an open house was held on November 21, 2002. Comments received prior to this notice will be included in the documentation for the EIS.

Estimated Dates for Filing: While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS (DEIS). The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by May 2003. At that time EPA will publish a Notice of Availability (NOA) of the DEIS in the **Federal Register**. The comment period on the DEIS will be 45 days from the date the EPA publishes the NOA in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS (FEIS) is scheduled to be completed by August 2003. In the FEIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the DEIS, and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations: The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS' must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803, F.2d 1016, 1022 9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this Proposed Action participate by the close DEIS 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the FEIS.

To be most helpful, comments on the DEIS should be as specific as possible, and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations (40 CFR 1503.3) for implementing the procedural provisions of the National Environmental Policy Act.

Responsible Official: As the Forest Supervisor of the Kootenai National Forest, 1101 U.S. Highway 2 West, Libby, MT 59923, I am the Responsible Official. As the Responsible Official, I will decide if the proposed project will be implemented. I will document the decision and reasons for the decision in the Record of Decision. I have delegated the responsibility for preparing the DEIS and FEIS to Glen M. McNitt, District Ranger, Rexford Ranger District.

Dated: April 3, 2003.

Bob Castaneda,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 03–8988 Filed 4–11–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will meet on May 5, 2003 in Weaverville, California. The purpose of the meeting is to discuss the selection of Title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on May 5, 2003 from 6:30 to 8:30 p.m.

ADDRESSES: The meeting will be held at the Trinity County Office of Education Conference Room, 201 Memorial Drive, Weaverville, California.

FOR FURTHER INFORMATION CONTACT: Ann Garland, Designated Federal Official, USDA, Six Rivers National Forest, PO Box 68, Willow Creek, CA 95573. Phone: (530) 629–2118. Email: *agarland@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The committee will discuss proposed fuels reduction, watershed restoration, and public project. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the committee at that time.

Dated: April 7, 2003.

S.E. 'Lou' Woltering,

Forest Servisor.

[FR Doc. 03–9016 Filed 4–11–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Reinstatement of an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval for reinstatement of an information collection, the Farm and Ranch Irrigation Survey.

DATES: Comments on this notice must be received by June 18, 2003, to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS Information Collection Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue, SW., Washington, DC 20250–2024 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Carol House, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Farm and Ranch Irrigation Survey.

OMB Control Number: 0535—0234.

Type of Request: Intent to Seek Approval to Reinstate an Information Collection.

Abstract: The Farm and Ranch Irrigation Survey is conducted every 5 years as authorized by the Census of Agriculture Act of 1997 (Pub. L. No. 105–113). The 2003 Farm and Ranch Irrigation Survey will use a probability sample from farms that reported irrigation on the 2002 Census of Agriculture. This irrigation survey will provide a comprehensive inventory of farm irrigation practices with detailed data relating to acres irrigated by category of land use, acres and yields of irrigated and non-irrigated crops, quantity of water applied, and method of application to selected crops. Also included will be 2003 expenditures for maintenance and repair of irrigation equipment and facilities; purchase of energy for on-farm pumping of irrigation water; investment in irrigation equipment, facilities, and land improvement; and cost of water received from off-farm water supplies. Irrigation data are used by the farmers, their representatives, government agencies, and many other groups concerned with the irrigation industry. This survey will provide the only source of dependable, comparable irrigation data by State. The National Agricultural Statistics Service will use the information collected only for statistical purposes and will publish the data only as tabulated totals.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Farms.

Estimated Number of Respondents: 25,000.

Estimated Total Annual Burden on Respondents: 12,500 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS Information Collection Clearance Officer, at (202) 720–5778.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed in Washington, DC, March 24, 2003.

Carol House,

Associate Administrator.

[FR Doc. 03–9039 Filed 4–11–03; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021203A]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys in the Hess Deep, Eastern Equatorial Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received an application from the Lamont-Doherty Earth Observatory (LDEO) for an Incidental Harassment Authorization (IHA) to take small numbers of marine

mammals, by harassment, incidental to conducting oceanographic surveys in the Hess Deep in international waters of the Eastern Equatorial Pacific Ocean. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue a small take authorization to LDEO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within the next year.

DATES: Comments and information must be received no later than May 14, 2003.

ADDRESSES: Comments on the application should be addressed to Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application, Environmental Assessment (EA) and/or a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128,

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.
>
> (B) The term "Level A harassment" means harassment described in subparagraph (A)(i).
>
> (C) The term "Level B harassment" means harassment described in subparagraph (A)(ii).

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 29, 2003, NMFS received an application from LDEO for the taking, by harassment of several species of marine mammals incidental to conducting a seismic survey program in the Hess Deep portion of the Eastern Equatorial Pacific Ocean about 600 nautical miles (nm)(690 land miles; 1111.2 km) west of the Galapagos Islands during March and April 2003, but rescheduled for July, 2003. The purpose of this survey is to obtain information on movements of the earth's plates and on formations associated with those movements. More specifically, the Hess Deep survey will obtain information on the geologic nature of boundaries of the earth's crust at fast-spreading and intermediate-spreading ridges at the boundaries of tectonic plates. Past studies have mapped these areas using manned submersibles and remotely piloted vehicles, but they have not provided a link between geologic and seismic structure. This study will provide the seismic data to assess the geologic nature of the previously mapped areas.

Description of the Activity

The seismic survey will involve a single vessel, the *R/V Maurice Ewing*, which will deploy and retrieve the Ocean Bottom Seismometers (OBSs) and conduct the seismic work. The Maurice Ewing will deploy an array of airguns as an energy source, plus a 6–km (3.2–nm) towed streamer containing hydrophones to receive the returning acoustic signals.

All planned geophysical data acquisition activities will be conducted by LDEO scientists, with the participation of scientists from the University of Texas at Austin, TX. Water depths in the Hess Deep survey area will range from approximately 2,000 to 3,400 m (6,560 to 11,150 ft). A total of 912 km (492 nm) of MCS (Multi Channel Seismic) surveys using a 10–gun array and 189 km (102 nm) of OBS surveys using a 12–gun array are planned to be conducted. These line-kilometer figures represent the planned production surveys. There will be additional operations associated with equipment testing, startup, line changes, and repeat coverage of any areas where initial data quality is sub-standard.

The procedures to be used for the 2003 seismic survey will be similar to those used during previous seismic surveys by LDEO, e.g., in the equatorial Pacific Ocean (Carbotte *et al.*, 1998, 2000). The proposed program will use conventional seismic methodology with a towed airgun array as the energy source and a towed streamer containing hydrophones as the receiver system, sometimes in combination with OBS receivers placed on the bottom. The energy to the airgun array is compressed air supplied by compressors on board the source vessel. The specific configuration of the airgun array will differ between the OBS and MCS surveys, as described later in this document. In addition, a multi-beam bathymetric sonar will be operated from the source vessel at most times during the Hess Deep survey. A lower-energy sub-bottom profiler, which is routinely operated at the same time as the multi-beam sonar during other projects, will not be operated during this cruise.

The *R/V Maurice Ewing* will be used as the source vessel. It will tow the airgun array (either 10 or 12 guns) and a streamer containing hydrophones along predetermined lines. The vessel will travel at 4–5 knots (7.4–9.3 km/hr), and seismic pulses will be emitted at intervals of 60–90 seconds (OBS lines) and approximately 20 seconds (all other lines). The 20–sec spacing corresponds to a shot interval of about 50 m (164 ft). The 60–90 sec spacing along OBS lines is to minimize previous shot noise during OBS data acquisition, and the exact spacing will depend on water depth. The 10–gun array will be used during MSC surveys and the 12–gun array will be used during OBS surveys. The airguns will be widely spaced in an approximate rectangle with dimensions 35 m (114.9 ft)(across track) by 9 m (29.5 ft)(along track). Individual airguns range in size from 80 to 850 in3, with total volumes of the arrays being 3005 and 3721 in3 for the 10– and 12–gun arrays, respectively.

The 10–airgun array will have a peak sound source level of 248 dB re 1 μPa or 255 dB peak-to-peak (P-P). The 12–airgun array will have a peak sound source level of 250 dB re 1 μPa or 257 dB P-P. These are the nominal source levels for the sound directed downward, and represent the theoretical source level close to a single point source emitting the same sound as that emitted by the array of 10 or 12 sources. Because the actual source is a distributed sound source (10 or 12 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level. Also, because of the downward directional nature of the sound from these airgun arrays, the effective source level for sound propagating in near-horizontal directions will be substantially lower.

Along selected lines, OBSs will be positioned by the *R/V Maurice Ewing* prior to the time when it begins airgun operations in that area. After OBS lines are shot, the R/V Maurice Ewing will retrieve the OBSs, download the data, and refurbish the units.

Along with the airgun operations, one additional acoustical data acquisition activity will occur throughout most of the cruise. The ocean floor will be mapped with an Atlas Hydrosweep DS–2 multi-beam 15.5–kHz bathymetric sonar. The Atlas Hydrosweep is mounted in the hull of the *R/V Maurice Ewing*, and it operates in three modes, depending on the water depth. The first mode is when water depth is <400 m (1312.3 ft). The source output is 210 dB re 1 μPa-m rms and a single 1–millisec pulse or "ping" per second is transmitted, with a beamwidth of 2.67 degrees fore-aft and 90 degrees in beamwidth. The beamwidth is measured to the 3 dB point, as is usually quoted for sonars. The other two modes are deep-water modes: The Omni mode is identical to the shallow-water mode except that the source output is 220 dB rms. The Omni mode is normally used only during start up. The Rotational Directional Transmission (RDT) mode is normally used during deep-water operation and has a 237 dB rms source output. In the RDT mode, each "ping" consists of five successive transmissions, each ensonifying a beam that extends 2.67 degrees fore-aft and approximately 30 degrees in the cross-track direction. The five successive transmissions (segments) sweep from port to starboard with minor overlap, spanning an overall cross-track angular extent of about 140 degrees, with tiny (<1 millisec) gaps between the pulses for successive 30–degree segments. The total duration of the "ping", including all 5 successive segments, varies with water depth but is 1 millisec in water depths >500 m (1640.4 ft) and 10 millisec in the deepest water. Additional information on the airgun array and Atlas Hydrosweep specifications is contained in the application, which is available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Eastern Equatorial Pacific Ocean and its associated marine mammals can be found in a number of documents referenced in the LDEO application and is not repeated here. Approximately 27 species of cetaceans and possibly two species of pinnipeds may inhabit the area of the Hess Deep. These species are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), Longman's beaked whale (*Indopacetus pacificus*), pygmy beaked whale (*Mesoplodon peruvianus*), Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*), Blainville's beaked whale (*Mesoplodon densirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), spinner dolphin (Stenella longirostris), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), Fraser's dolphin (*Lagenodelphis hosei*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and the blue whale (*Balaenoptera musculus*), Galapagos fur seal (*Arctocephalus galapagoensis*) and Galapagos sea lion (*Zalophus wollebaeki*). Additional information on most of these species is contained in Caretta *et al.* (2001, 2002) which is available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.*

Potential Effects on Marine Mammals

As outlined in several previous NMFS documents, the effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson *et al.*, 1995):

(1) The noise may be too weak to be heard at the location of the animal (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the marine mammal; these can range from temporary alert responses to active avoidance reactions such as vacating an area at least until the noise event ceases;

(4) Upon repeated exposure, a marine mammal may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence (as are vehicle launches), and associated with situations that a marine mammal perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might (in turn) have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Characteristics of Airgun Pulses

Airguns function by venting high-pressure air into the water. The pressure signature of an individual airgun consists of a sharp rise and then fall in pressure, followed by several positive and negative pressure excursions caused by oscillation of the resulting air bubble. The sizes, arrangement and firing times of the individual airguns in an array are designed and synchronized to suppress the pressure oscillations subsequent to the first cycle. The resulting downward-directed pulse has a duration of only 10 to 20 ms, with only one strong positive and one strong negative peak pressure (Caldwell and Dragoset, 2000). Most energy emitted from airguns is at relatively low frequencies. For example, typical high-energy airgun arrays emit most energy at 10–120 Hz. However, the pulses contain some energy up to 500–1000 Hz and above (Goold and Fish, 1998). The pulsed sounds associated with seismic exploration have higher peak levels than other industrial sounds to which whales and other marine mammals are routinely exposed. The P-P source levels of the 20–gun array (not proposed to be used for the Hess Deep work), and the 12–gun array and 10–gun arrays (that will be used for the Hess Deep), are 262, 257, and 255 dB re 1 μPa-m, respectively. These are the nominal source levels applicable to downward propagation. (The effective source level for horizontal propagation is lower.) The only sources with higher or comparable effective source levels are explosions and high-power sonars operating near maximum power.

Several important mitigating factors need to be kept in mind. (1) Airgun arrays produce intermittenf sounds, involving emission of a strong sound pulse for a small fraction of a second followed by several seconds of near silence. In contrast, some other acoustic sources produce sounds with lower peak levels, but their sounds are continuous or discontinuous but continuing for much longer durations than seismic pulses. (2) Airgun arrays are designed to transmit strong sounds downward through the seafloor, and the amount of sound transmitted in near-horizontal directions is considerably reduced. Nonetheless, they also emit sounds that travel horizontally toward non-target areas. (3) An airgun array is a distributed source, not a point source. The nominal source level is an estimate of the sound that would be measured from a theoretical point source emitting the same total energy as the airgun array. That figure is useful in calculating the expected received levels in the far field (i.e., at moderate and long distances). Because the airgun array is not a single point source, there is no one location within the near field (or anywhere else) where the received level is as high as the nominal source level.

The strengths of airgun pulses can be measured in different ways, and it is important to know which method is being used when interpreting quoted source or received levels. Geophysicists usually quote P-P levels, in bar-meters or dB re 1 μPa-m. The peak (= zero-to-peak) level for the same pulse is typically about 6 dB less. In the biological literature, levels of received airgun pulses are often described based on the "average" or "root-mean-square" (rms) level over the duration of the pulse. The rms value for a given pulse is typically about 10 dB lower than the peak level, and 16 dB lower than the P-P value (Greene, 1997; McCauley *et al.*, 1998, 2000a). A fourth measure that is sometimes used is the energy level, in dB re 1 μPa^2s. Because the pulses are >1 sec in duration, the numerical value of the energy is lower than the rms pressure level (but the units are different). Because the level of a given pulse will differ substantially depending on which of these measures is being applied, it is important to be aware which measure is in use when interpreting any quoted pulse level. In the past, NMFS has commonly referenced the rms levels when discussing levels of pulsed sounds that might "harass" marine mammals.

Seismic sound received at any given point will arrive via a direct path, indirect paths that include reflection from the sea surface and bottom, and often indirect paths including segments through the bottom sediments. Sounds propagating via indirect paths travel longer distances and often arrive later than sounds arriving via a direct path. (However, sound travel in the bottom may travel faster than that in the water, and thus may arrive earlier than the direct arrival despite traveling a greater distance.) These variations in travel time have the effect of lengthening the duration of the received pulse. At the source, seismic pulses are about 10 to 20 ms in duration. In comparison, the pulse duration as received at long horizontal distances can be much greater. For example, for one airgun array operating in the Beaufort Sea, pulse duration was about 300 ms at a distance of 8 km (4.3 nm), 500 ms at 20 km (10.8 nm), and 850 ms at 73 km (39.4 nm) (Greene and Richardson, 1988).

Another important aspect of sound propagation is that received levels of low-frequency underwater sounds diminish close to the surface because of pressure-release and interference phenomena that occur at and near the surface (Urick, 1983; Richardson *et al.*, 1995). Paired measurements of received airgun sounds at depths of 3 m (9.8 ft) vs. 9 or 18 m (29.5 or 59 ft) have shown that received levels are typically several decibels lower at 3 m (9.8. ft)(Greene and Richardson, 1988). For a mammal whose auditory organs are within 1/2 or 1 m (1.6 or 3.3 ft) of the surface, the received level of the predominant low-frequency components of the airgun pulses would be further reduced.

Pulses of underwater sound from open-water seismic exploration are often detected 50 to 100 km (30 to 54 nm) from the source location, even during operations in nearshore waters (Greene and Richardson, 1988; Burgess and Greene, 1999). At those distances, the received levels on an approximate rms basis are low (below 120 dB re 1 mPa). However, faint seismic pulses are sometimes detectable at even greater ranges (e.g., Bowles *et al.*, 1994; Fox *et al.*, 2002). Considerably higher levels can occur at distances out to several kms from an operating airgun array. With 12–gun and 10–gun arrays, the distances at which seismic pulses are expected to diminish to received levels of 190, 180, 170 dB and 160 dB re 1 μPa, on an rms basis) are as follows:

Airgun Array	RMS Radii (m/ft)			
	190 dB	180 dB	170 dB	160 dB
12 airguns	300/984	880/2887	2680/8793	7250/23786
10 airguns	250/820	830/2723	2330/7644	6500/21325

Additional information can be found in the LDEO application.

Effects of Seismic Surveys on Marine Mammals

The LDEO application provides the following information on what is known about the effects, on marine mammals, of the types of seismic operations planned by LDEO. The types of effects considered here are (1) masking, (2) disturbance, and (3) potential hearing impairment and other physical effects. Additional discussion on species specific effects can be found in the LDEO application.

Masking

Masking effects on marine mammal calls and other natural sounds are expected to be limited. Seismic sounds are short pulses occurring for less than 1 sec every 20 or 60–90 sec in this project. Sounds from the multibeam sonar are very short pulses, occurring for 1–10 msec once every 1 to 15 sec, depending on water depth. (During operations in deep water, the duration of each pulse from the multibeam sonar as received at any one location would actually be only $1/5^{th}$ or at most $2/5^{th}$ of 1–10 msec, given the segmented nature of the pulses.) Some whales are known to continue calling in the presence of seismic pulses. Their calls can be heard between the seismic pulses (e.g., Richardson *et al.*, 1986; McDonald *et al.*, 1995; Greene *et al.*, 1999). Although there has been one report that sperm whales cease calling when exposed to pulses from a very distant seismic ship (Bowles *et al.*, 1994), a recent study reports that sperm whales continued calling in the presence of seismic pulses (Madsen *et al.*, 2002). Masking effects of seismic pulses are expected to be negligible in the case of the smaller odontocete cetaceans, given the intermittent nature of seismic pulses plus the fact that sounds important to them are predominantly at much higher frequencies than are airgun sounds.

Most of the energy in the sound pulses emitted by airgun arrays is at low frequencies, with strongest spectrum levels below 200 Hz and considerably lower spectrum levels above 1000 Hz. These frequencies are mainly used by mysticetes, but not by odontocetes or pinnipeds. An industrial sound source will reduce the effective communication or echolocation distance only if its frequency is close to that of the cetacean signal. If little or no overlap occurs between the industrial noise and the frequencies used, as in the case of many marine mammals vs. airgun sounds, communication and echolocation are not expected to be disrupted. Furthermore, the discontinuous nature of seismic pulses makes significant masking effects unlikely even for mysticetes.

A few cetaceans are known to increase the source levels of their calls in the presence of elevated sound levels, or possibly to shift their peak frequencies in response to strong sound signals (Dahlheim, 1987; Au, 1993; Lesage *et al.*, 1999; Terhune, 1999; reviewed in Richardson *et al.*, 1995:233*ff*, 364*ff*). These studies involved exposure to other types of anthropogenic sounds, not seismic pulses, and it is not known whether these types of responses ever occur upon exposure to seismic sounds. If so, these adaptations, along with directional hearing and preadaptation to tolerate some masking by natural sounds (Richardson *et al.*, 1995), would all reduce the importance of masking.

Disturbance by Seismic Surveys

Disturbance includes a variety of effects, including subtle changes in behavior, more conspicuous dramatic changes in activities, and displacement. Disturbance is the primary concern for this project. Based on previous determinations by NMFS regarding minor behavioral response by marine mammals, LDEO presumes here that simple exposure to sound, or brief reactions that do not disrupt behavioral patterns in a potentially significant manner, do not constitute Level B harassment or "taking". By potentially significant, LDEO means "in a manner that might have deleterious effects to the well-being of individual marine mammals or their populations."

However, there are difficulties in defining which marine mammals should be counted as "taken by harassment". For many species and situations, scientists do not have detailed information about their reactions to noise, including reactions to seismic (and sonar) pulses. Behavioral reactions of marine mammals to sound are difficult to predict. Reactions to sound, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors. If a marine mammal does react to an underwater sound by changing its behavior or moving a small distance, the impacts of the change may not be significant to the individual let alone the stock or the species as a whole. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on the animals could be significant. Given the many uncertainties in predicting the quantity and types of impacts of noise on marine mammals, scientists often resort to estimating how many mammals were present within a particular distance of industrial activities, or exposed to a particular level of industrial sound. This likely overestimates the numbers of marine mammals that are affected in some biologically important manner. The sound criteria used to estimate how many marine mammals might be disturbed to some biologically-important degree by a seismic program are based on behavioral observations during studies of several species. However, information is lacking for many other species. This is discussed further in the LDEO application.

Hearing Impairment and Other Physical Effects

Temporary or permanent hearing impairment is a possibility when marine mammals are exposed to very strong sounds. The minimum sound level necessary to cause permanent hearing impairment is higher, by a variable and generally unknown amount, than the level that induces barely-detectable temporary threshold shift (TTS). The level associated with the onset of TTS is often considered to be a level below which there is no danger of damage. Current NMFS policy regarding exposure of marine mammals to high-level sounds is that cetaceans and pinnipeds should not be exposed to impulsive sounds exceeding 180 and 190 dB re 1 micro Pa (rms), respectively.

Several aspects of the planned monitoring and mitigation measures for this project are designed to detect marine mammals occurring near the airgun array (and multi-beam sonar), and to avoid exposing them to sound pulses that might cause hearing impairment. In addition, many cetaceans are likely to show some avoidance of the area with ongoing seismic operations. In these cases, the avoidance responses of the animals themselves will reduce or avoid the possibility of hearing impairment.

Non-auditory physical effects may also occur in marine mammals exposed to strong underwater pulsed sound. Possible types of non-auditory physiological effects or injuries that might (in theory) occur include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. It is possible that some marine mammal species (i.e., beaked whales) may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

TTS

TTS is the mildest form of hearing impairment that can occur during exposure to a strong sound (Kryter, 1985). When an animal experiences TTS, its hearing threshold rises and a sound must be stronger in order to be heard. TTS can last from minutes or hours to (in cases of strong TTS) days. The magnitude of TTS depends on the level and duration of noise exposure, among other considerations (Richardson *et al.*, 1995). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity recovers rapidly after exposure to the noise ends. Only a few data on sound levels and durations necessary to elicit mild TTS have been obtained for marine mammals.

Currently, NMFS believes that, whenever possible to avoid Level A harassment, cetaceans should not be exposed to pulsed underwater noise at received levels exceeding 180 dB re 1 μPa (rms). The corresponding limit for pinnipeds has been set at 190 dB. The predicted 180- and 190–dB distances for the airgun arrays operated by LDEO during this activity were summarized previously in this document. These sound levels are not considered to be the levels at or above which TTS might occur. Rather, they are the received levels above which, in the view of a panel of bioacoustics specialists convened by NMFS, one cannot be certain that there will be no injurious effects, auditory or otherwise, to marine mammals. It has been shown that most whales tend to avoid ships and associated seismic operations. Thus, whales will likely not be exposed to such high levels of airgun sounds. Any whales close to the trackline could move away before the sounds become sufficiently strong for there to be any potential for hearing impairment. Therefore, there is little potential for whales being close enough to an array to experience TTS. In addition, ramping up airgun arrays, which has become standard operational protocol for many seismic operators including LDEO, should allow cetaceans to move away from the seismic source and to avoid being exposed to the full acoustic output of the airgun array.

Permanent Threshold Shift (PTS)

When PTS occurs, there is physical damage to the sound receptors in the ear. In some cases, there can be total or partial deafness, while in other cases, the animal has an impaired ability to hear sounds in specific frequency ranges. Physical damage to a mammal's hearing apparatus can occur if it is exposed to sound impulses that have very high peak pressures, especially if they have very short rise times (time required for sound pulse to reach peak pressure from the baseline pressure). Such damage can result in a permanent decrease in functional sensitivity of the hearing system at some or all frequencies.

Single or occasional occurrences of mild TTS do not cause permanent auditory damage in terrestrial mammals, and presumably do not do so in marine mammals. However, very prolonged exposure to sound strong enough to elicit TTS, or shorter-term exposure to sound levels well above the TTS threshold, can cause PTS, at least in terrestrial mammals (Kryter, 1985). In terrestrial mammals, the received sound level from a single sound exposure must be far above the TTS threshold for any risk of permanent hearing damage (Kryter, 1994; Richardson *et al.*, 1995). Relationships between TTS and PTS thresholds have not been studied in marine mammals but are assumed to be similar to those in humans and other terrestrial mammals.

Some factors that contribute to onset of PTS are as follows:

(1) exposure to single very intense noises, (2) repetitive exposure to intense sounds that individually cause TTS but not PTS, and (3) recurrent ear infections or (in captive animals) exposure to certain drugs.

Cavanagh (2000) has reviewed the thresholds used to define TTS and PTS. Based on his review and SACLANT (1998), it is reasonable to assume that PTS might occur at a received sound level 20 dB or more above that which induces mild TTS. However, for PTS to occur at a received level only 20 dB above the TTS threshold, it is probable that the animal would have to be exposed to the strong sound for an extended period.

Sound impulse duration, peak amplitude, rise time, and number of pulses are the main factors thought to determine the onset and extent of PTS. Based on existing data, Ketten (1994) has noted that the criteria for differentiating the sound pressure levels that result in PTS (or TTS) are location and species-specific. PTS effects may also be influenced strongly by the health of the receiver's ear.

Given that marine mammals are unlikely to be exposed to received levels of seismic pulses that could cause TTS, it is highly unlikely that they would sustain permanent hearing impairment. If we assume that the TTS threshold for exposure to a series of seismic pulses may be on the order of 220 dB re 1 μPa (P-P) in odontocetes, then the PTS threshold might be about 240 dB re 1 μPa (P-P). In the units used by geophysicists, this is 10 bar-m. Such levels are found only in the immediate vicinity of the largest airguns (Richardson *et al.*, 1995:137; Caldwell and Dragoset, 2000). It is very unlikely that an odontocete would remain within a few meters of a large airgun for sufficiently long to incur PTS. The TTS (and thus PTS) thresholds of baleen whales and pinnipeds may be lower, and thus may extend to a somewhat greater distance. However, baleen whales generally avoid the immediate area around operating seismic vessels, so it is unlikely that a baleen whale could incur PTS from exposure to airgun pulses. Some pinnipeds do not show strong avoidance of operating airguns. However, pinnipeds are expected to be (at most) uncommon in the Hess Deep survey area. Although it is unlikely that the planned seismic surveys could cause PTS in any marine mammals, caution is warranted given the limited knowledge about noise-induced hearing damage in marine mammals, particularly baleen whales.

Strandings and Mortality

Marine mammals close to underwater detonations of high explosives can be killed or severely injured, and the auditory organs are especially susceptible to injury (Ketten et al., 1993; Ketten, 1995). Airgun pulses are less energetic and have slower rise times, and there is no evidence that they can cause serious injury, death, or stranding. However, the association of mass strandings of beaked whales with naval exercises and, in a recent case, an LDEO seismic survey has raised the possibility that beaked whales may be especially susceptible to injury and/or stranding when exposed to strong pulsed sounds.

In March 2000, several beaked whales that had been exposed to repeated pulses from high intensity, mid-frequency military sonars stranded and died in the Providence Channels of the Bahamas Islands, and were subsequently found to have incurred cranial and ear damage (NOAA and USN, 2001). Based on post-mortem analyses, it was concluded that an acoustic event caused hemorrhages in and near the auditory region of some beaked whales. These hemorrhages occurred before death. They would not necessarily have caused death or permanent hearing damage, but could have compromised hearing and navigational ability (NOAA and USN, 2001). The researchers concluded that acoustic exposure caused this damage and triggered stranding, which resulted in overheating, cardiovascular collapse, and physiological shock that ultimately led to the death of the stranded beaked whales. During the event, five naval vessels used their AN/SQS–53C or –56 hull-mounted active sonars for a period of 16 h. The sonars produced narrow (<100 Hz) bandwidth signals at center frequencies of 2.6 and 3.3 kHz (–53C), and 6.8 to 8.2 kHz (-56). The respective source levels were usually 235 and 223 dB re 1 μ Pa, but the -53C briefly operated at an unstated but substantially higher source level. The unusual bathymetry and constricted channel where the strandings occurred were conducive to channeling sound. This, and the extended operations by multiple sonars, apparently prevented escape of the animals to the open sea. In addition to the strandings, there are reports that beaked whales were no longer present in the Providence Channel region after the event, suggesting that other beaked whales either abandoned the area or (perhaps) died at sea (Balcomb and Claridge, 2001).

Other strandings of beaked whales associated with operation of military sonars have also been reported (*e.g.*, Simmonds and Lopez-Jurado, 1991; Frantzis, 1998). In these cases, it was not determined whether there were noise-induced injuries to the ears or other organs. Another stranding of beaked whales (15 whales) happened on 24–25 September 2002 in the Canary Islands, where naval maneuvers were taking place.

It is important to note that seismic pulses and mid-frequency sonar pulses are quite different. Sounds produced by the types of airgun arrays used to profile sub-sea geological structures are broadband with most of the energy below 1 kHz. Typical military mid-frequency sonars operate at frequencies of 2 to 10 kHz, generally with a relatively narrow bandwidth at any one time (though the center frequency may change over time). Because seismic and sonar sounds have considerably different characteristics and duty cycles, it is not appropriate to assume that there is a direct connection between the effects of military sonar and seismic surveys on marine mammals. However, evidence that sonar pulses can, in special circumstances, lead to hearing damage and, indirectly, mortality suggests that caution is warranted when dealing with exposure of marine mammals to any high-intensity pulsed sound.

In addition to the sonar-related strandings, there was a recent (September 2002) stranding of two Cuvier's beaked whales in the Gulf of California (Mexico) when a seismic survey by the National Science Foundation/LDEO vessel *R/V Maurice Ewing* was underway in the general area (Malakoff, 2002). The airgun array in use during that project was the *Ewing's* 20–gun 8490–in^3 array. This might be a first indication that seismic surveys can have effects, at least on beaked whales, similar to the suspected effects of naval sonars. However, the evidence linking the Gulf of California strandings to the seismic surveys is inconclusive, and to this date is not based on any physical evidence (Hogarth, 2002; Yoder, 2002). The ship was also operating its multi-beam bathymetric sonar at the same time but, as discussed later in this document, this sonar had much less potential than these naval sonars to affect beaked whales. Although the link between the Gulf of California strandings and the seismic (plus multi-beam sonar) survey is inconclusive, this plus the various incidents involving beaked whale strandings associated with naval exercises suggests a need for caution in conducting seismic surveys in areas occupied by beaked whales.

Non-auditory Physiological Effects

Possible types of non-auditory physiological effects or injuries that might occur in marine mammals exposed to strong underwater sound might, in theory, include stress, neurological effects, bubble formation, resonance effects, and other types of organ or tissue damage. There is no proof that any of these effects occur in marine mammals exposed to sound from airgun arrays. However, there have been no direct studies of the potential for airgun pulses to elicit any of these effects. If any such effects do occur, they would probably be limited to unusual situations when animals mightbe exposed at close range for unusually long periods.

Long-term exposure to anthropogenic noise may have the potential to cause physiological stress that could affect the health of individual animals or their reproductive potential, which could theoretically cause effects at the population level (Gisner (ed.), 1999). However, there is essentially no information about the occurrence of noise-induced stress in marine mammals. Also, it is doubtful that any single marine mammal would be exposed to strong seismic sounds for sufficiently long that significant physiological stress would develop. This is particularly so in the case of broad-scale seismic surveys of the type planned by LDEO (see Fig. 1 in LDEO (2003)), where the tracklines are generally not as closely spaced as in many 3–dimensional industry surveys.

Gas-filled structures in marine animals have an inherent fundamental resonance frequency. If stimulated at this frequency, the ensuing resonance could cause damage to the animal. Diving marine mammals are not subject to the bends or air embolism because, unlike a human SCUBA diver, they only breath air at sea level pressure and have protective adaptations against getting the bends. There may be a possibility that high sound levels could cause bubble formation in the blood of diving mammals that in turn could cause an air embolism, tissue separation, and high, localized pressure in nervous tissue (Gisner (ed.), 1999; Houser *et al.*, 2001).

A recent workshop (Gentry (ed.), 2002) was held to discuss whether the stranding of beaked whales in the Bahamas in 2000 might have been related to air cavity resonance or bubble formation in tissues caused by exposure to noise from naval sonar. A panel of experts concluded that resonance in air-filled structures was not likely to have caused this stranding. Among other reasons, the air spaces in marine mammals are too large to be susceptible to resonant frequencies emitted by mid- or low-frequency sonar; lung tissue damage has not been observed in any mass, multi-species stranding of beaked whales; and the duration of sonar pings is likely too short to induce vibrations that could damage tissues (Gentry (ed.), 2002). Opinions were less conclusive about the possible role of gas (nitrogen) bubble formation/growth in the Bahamas stranding of beaked whales. Workshop participants did not rule out the possibility that bubble formation/growth played a role in the stranding and participants acknowledged that more research is needed in this area. The only available information on acoustically-mediated bubble growth in marine mammals is modeling that assumes prolonged exposure to sound.

In summary, little is known about the potential for seismic survey sounds to cause auditory impairment or other physical effects in marine mammals. Available data suggest that such effects, if they occur at all, would be limited to situations where the marine mm where the marine mammal is located at a short distance from the sound source. However, the available data do not allow for meaningful quantitative predictions of the numbers (if any) of marine mammals that might be affected in these ways. Marine mammals that show behavioral avoidance of seismic vessels, including most baleen whales, some odontocetes, and some pinnipeds, are unlikely to incur auditory impairment or other physical effects.

Possible Effects of Mid-Frequency Sonar Signals

A multi-beam bathymetric sonar (Atlas Hydrosweep DS–2, 15.5–kHz) will be operated from the source vessel at most times during the Hess Deep survey. Sounds from the multibeam sonar are very short pulses, occurring for 1–10 msec once every 1 to 15 sec, depending on water depth. Most of the energy in the sound pulses emitted by this multi-beam sonar is at high frequencies, centered at 15.5 kHz. The beam is narrow (2.67°) in fore-aft extent, and wide (140°) in the cross-track extent. Each ping consists of five successive transmissions (segments) at different cross-track angles. Any given mammal at depth near the trackline would be in the main beam for only one or two of the five segments, i.e. for 1/5th or at most 2/5th of the 1– 10 msec.

Navy sonars that have been linked to avoidance reactions and stranding of cetaceans (1) generally are more powerful than the Atlas Hydrosweep, (2) have a longer pulse duration, and (3) are directed close to horizontally (vs. downward for the Hydrosweep). The area of possible influence of the Hydrosweep is much smaller (a narrow band below the source vessel). Marine mammals that encounter the Hydrosweep at close range are unlikely to be subjected to repeated pulses because of the narrow fore-aft width of the beam, and will receive only limited amounts of pulse energy because of the short pulses.

Masking by Mid-Frequency Sonar Signals

There is little chance that marine mammal communications will be masked appreciably by the multibeam sonar signals given the low duty cycle of the sonar and the brief period when an individual mammal is likely to be within its beam. Furthermore, in the case of baleen whales, the sonar signals do not overlap with the predominant frequencies in the calls, which would avoid significant masking.

Behavioral Responses Resulting from Mid-Frequency Sonar Signals

Marine mammal behavioral reactions to military and other sonars appear to vary by species and circumstance. Sperm whales reacted to military sonar, apparently from a submarine, by dispersing from social aggregations, moving away from the sound source, remaining relatively silent and becoming difficult to approach (Watkins *et al.*, 1985). Other early and generally limited observations were summarized in Richardson *et al.* (1995, p. 301*ff*).

More recently, Rendell and Gordon (1999) recorded vocal behavior of pilot whales during periods of active naval sonar transmission. The sonar signal was made up of several components each lasting 0.17 sec and sweeping up from 4 to 5 kHz. The pilot whales were significantly more vocal while the pulse trios were being emitted than during the intervening quiet periods, but did not leave the area even after several hours of exposure to the sonar.

Reactions of beaked whales near the Bahamas to mid-frequency naval sonars were summarized earlier. Following extended exposure to pulses from a variety of ships, some individuals beached themselves, and others may have abandoned the area (Balcomb and Claridge, 2001; NOAA and USN, 2001). Pulse durations from these sonars were much longer than those of the LDEO multi-beam sonar, and a given mammal would probably receive many pulses. All of these observations are of limited relevance to the present situation because exposures to multi-beam pulses are expected to be brief as the vessel passes by, and the individual pulses will be very short.

Captive bottlenose dolphins and a white whale exhibited changes in behavior when exposed to 1 sec pulsed sounds at frequencies similar to those that will be emitted by the multi-beam sonar used by LDEO (Ridgway *et al.*, 1997; Schlundt et al., 2000), and to shorter broadband pulsed signals (Finneran *et al.*, 2000, 2002). Behavioral changes typically involved what appeared to be deliberate attempts to avoid the sound exposure or to avoid the location of the exposure site during subsequent tests (Schlundt *et al.*, 2000; Finneran *et al.*, 2002). Dolphins exposed to 1–sec intense tones exhibited short-term changes in behavior above received sound levels of 178 to 193 dB re 1 μPa rms and belugas did so at received levels of 180 to 196 dB and above. Received levels necessary to elicit such reactions to shorter pulses were higher (Finneran *et al.*, 2000, 2002). Test animals sometimes vocalized after exposure to pulsed, mid-frequency sound from a watergun (Finneran *et al.*, 2002). In some instances, animals exhibited aggressive behavior toward the test apparatus (Ridgway et al., 1997; Schlundt et al., 2000). The relevance of these data to free-ranging odontocetes is uncertain. In the wild, cetaceans sometimes avoid sound sources well before they are exposed to the levels listed above, and reactions in the wild may be more subtle than those described by Ridgway *et al.* (1997) and Schlundt *et al.*(2000).

LDEO is not aware of any data on the reactions of pinnipeds to sonar sounds, although it is likely the pinniped species can detect these sounds given their hearing abilities (Kastak and Schusterman, 1995, 1998, 1999; see also a review in Richardson *et al.*, 1995). Some harp seals (*Pagophilus groenlandicus*) seemed to alter their swimming patterns (exhibited avoidance) when they were exposed to the beam of an echosounder, nominally operating at 200 kHz (Terhune, 1976); that frequency is above the range of effective hearing of seals. However, there was significant energy at lower frequencies that would be audible to a harp seal (Richardson et al., 1995). The behavior of ringed (*Phoca hispida*) and Weddell (*Leptonychotes weddelli*) seals fitted with acoustic pingers, transmitting at 60 to 69 kHz, did not seem to be affected by the sounds from these devices. Mate (1993) described expériments where aperiodic 12–17 kHz sound pulses of varying duration were effective, at source levels of 187 dB, in reducing harbor seal abundance near fish hatcheries (although a few older seals may have habituated and foraged nearby with modified techniques such that they were not seen as frequently). For California sea lions, the same system produced a dramatic initial startle response but was otherwise ineffective. Mate (1993) noted that many marine mammals will react to moving sound sources even if strong stationary sources are tolerated. Mate also noted that, by not using swept frequencies, this experimental acoustic source lost the illusion of motion that would have been simulated by Doppler-like frequency sweeps.

In summary, cetacean behavioral reactions to military and other sonars appear to vary by species and circumstance. While there may be a link between naval sonar use and changes in cetacean vocalization rates and movements, it is unclear what impact these behavioral changes (which are likely to be short-term) might have on the animals. Data on the reactions of pinnipeds to sonar sounds are lacking, but the few reports available on their reactions to other pulsed sounds suggest that they too would exhibit either no, or short-term, behavioral responses. Therefore, as mentioned previously, because simple momentary behavioral reactions that are within normal behavioral patterns for that species are not considered to be a taking, the very brief exposure of cetaceans to signals from the Hydrosweep is unlikely to result in a "take" by harassment.

Hearing Impairment and Other Physical Effects

Given recent stranding events that have been associated with the operation of naval sonar, there is much concern that sonar noise can cause serious impacts to marine mammals (for discussion see Effects of Seismic Surveys). It is worth noting that the multi-beam sonar proposed for use by LDEO is quite different than sonars used for navy operations. Pulse duration of the multi-beam sonar is very short relative to the naval sonars. Also, at any given location, an individual marine mammal would be in the beam of the multi-beam sonar for much less time given the generally downward orientation of the beam and its narrow fore-aft beamwidth. (Navy sonars often use near-horizontally-directed sound.) These factors would all reduce the sound energy received from the multi-beam sonar rather drastically relative to that from the sonars used by the Navy.

Estimates of Take by Harassment for the Hess Deep Cruise

As described previously in this document and in the LDEO application, animals subjected to sound levels above 160 dB may alter their behavior or distribution, and therefore might be considered to be taken by Level B harassment. However, the 160 dB criterion is based on studies of baleen whales. Odontocete hearing at low frequencies is relatively insensitive, and the dolphins generally appear to be more tolerant of strong sounds than are most baleen whales. For that reason, it has been suggested that for purposes of estimating incidental harassment of odontocetes, a 170 dB criterion might be appropriate.

Based on summer marine mammal survey data collected by NMFS and density calculations by Ferguson and Barlow (2001), LDEO used their average marine mammal density to compute a "best estimate" of the number of marine mammals that may be exposed to seismic sounds ≥160 dB re 1μPa (rms). The average densities were then multiplied by the proposed survey effort (912 and 189 km for the 10–gun and 12–gun array, respectively) and twice the 160 dB radius from the source vessel (the 160 dB radius was 6.5 and 7.25 km for the 10–gun and 12–gun array, respectively) to estimate the "best estimate" of the numbers of animals that might be exposed to sound levels ≥160 dB re 1μPa (rms) during the proposed seismic survey program. Separate estimates were made for the 10–gun and 12–gun arrays because the 160 dB radius was different for the two arrays (see Tables 5 and 6 in LDEO (2003)). Based on this method, the "best estimate" of the number of marine mammals that would be exposed to ≥160 dB (rms) and thus potentially taken by Level B harassment during the proposed survey is 8,901, including animals taken by both the 10–gun and 12–gun arrays. Of these, 12 animals would be endangered species, sperm whales (11) and a single blue whale. The species composition of cetaceans within the species groups shown in Tables 5 and 6 in LDEO (2003) is expected to be roughly in proportion to the densities shown for each species in Table 3 in LDEO (2003). Based on those densities, the numbers of each species that might be taken by Level B harassment are shown in Table 7 in LDEO (2003).

Dolphins would account for 96 percent of the overall estimate for potential taking by harassment (i.e., 8,532 of 8,901). While there is no agreement regarding any alternative "take" criterion for dolphins exposed to airgun pulses, if only those dolphins exposed to 170 dB re 1 μPa (rms) were affected sufficiently to be considered taken by Level B harassment, then the best estimate for dolphins would be 3,076 rather than 8,532. This is based on the predicted 170–dB radius around the 10– and 12–airgun arrays (2,330 and 2,680 m (7,644 and 7,742 ft), respectively), and is considered to be a more realistic estimate of the number of dolphins that may be disturbed. Therefore, the total number of animals likely to react behaviorally is considerably lower than the 8,901 that LDEO has estimated in Tables 5 and 6 (LDEO, 2003).

Conclusions—Effects on Cetaceans

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6 to 8 km and occasionally as far as 20–30 km from the source vessel. Some bowhead whales avoided waters within 30 km of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes, and even for bowheads may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment." In the cases of mysticetes, these reactions are expected to involve small numbers of individual cetaceans because few mysticetes occur in the areas where seismic surveys are proposed. LDEO's "best estimate" is that 10 Bryde's whales, or 0.1 percent of the estimated Eastern Equatorial Bryde's whale population, will be exposed to sound levels ≤160 dB re 1 μPa (rms) and potentially affected, and 1 blue whale, or 0.1 percent of the "endangered" ETP blue whale population, would receive >160 dB. Therefore, these potential takings by Level B harassment will have a negligible impact on their populations.

Larger numbers of odontocetes may be affected by the proposed activities, but the population sizes of the main species are large and the numbers potentially affected are small (<0.1 percent) relative to the population sizes. The total number of odontocetes that might be exposed to ≥160 dB re 1 μPa (rms) in the Hess Deep area is estimated as 8,890. Of these, 8,532 are delphinids, and of these about 3,076 might be exposed to ≥170 dB. These figures are <0.1 percent of the Eastern Equatorial populations of these combined species, and the 3,076 value (based on the >170 dB criterion) is believed to be a more accurate estimate of the number that could potentially be harassed under Level B.

The many cases of apparent tolerance by cetaceans of seismic exploration, vessel traffic, and some other human activities show that co-existence is possible. Mitigation measures such as controlled speed, look-outs, non-pursuit, ramp-ups, avoidance of start-ups during periods of darkness when possible, and shut-down when within defined ranges (See Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

Conclusions—Effects on Pinnipeds

Very few if any pinnipeds are expected to be encountered in the Hess Deep area. Thus a maximum of 20 pinnipeds in the Hess Deep area may be affected by the proposed seismic surveys. If pinnipeds are encountered, the proposed seismic activities would have, at most, a short-termed effect on their behavior and no long-term impacts on individual seals or their populations.

Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment.

Mitigation

For the proposed seismic operations in the Hess Deep, a 12–gun array with a total volume of 3721 in3 and a 10–gun array of 3005 in^3 will be used. The airguns comprising these arrays will be spread out horizontally, so that the energy from the array will be directed mostly downward. Modeled results for the 10– and 12–gun arrays indicate received levels to the 180 dB re 1 µPa (rms) isopleth (the criterion applicable to cetaceans) were 830 and 880 m (2,723 and 2,887 ft), respectively. The radii around the 10– and 12–gun arrays where the received level would be 190 dB re 1 µPa (rms) isopleth (lines of equal pressure), the criterion (applicable to pinnipeds), were estimated as 250 and 300 m (820 and 984 ft), respectively. Vessel-based observers will monitor marine mammals in the vicinity of the arrays. A calibration study planned for late May and/or June 2003 in the Gulf of Mexico is expected to determine the actual radii corresponding to each sound level. If the modeled radii have not been verified by the time of the Hess Deep surveys, LDEO proposes to use 1.5 times the 180– (cetaceans) and 190– (pinnipeds) dB radii predicted by the model as the safety radii until the radii have been verified. Thus, during the Hess Deep cruise the proposed safety radii for cetaceans are 1,245 and 1,320 m (4,085 and 4,331 ft), respectively, for the 10– and 12–gun arrays, and the proposed safety radii for pinnipeds are 375 and 450 m (1,230 and 1,476 ft), respectively. LDEO proposes to shut down the seismic source if marine mammals are observed within the proposed safety radii.

Also, LDEO proposes to use a ramp-up procedure when commencing operations. Ramp-up will begin with the smallest gun in the array that is being used (80 in^3 for the 10– and 12–gun arrays), and guns will be added in a sequence such that the source level of the array will increase at a rate no greater than 6 dB per 5–minutes.

Operational Mitigation

The directional nature of the two alternative airgun arrays to be used in this project is an important mitigating factor, resulting in reduced sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Also, the use of the 10– or 12–gun array of 3,005 or 3,721 in3 rather than the largest airgun array that the LDEO's source vessel can deploy (20 airguns totaling almost 8600 in3) is another significant mitigation measure.

Marine Mammal Monitoring

Vessel-based observers will monitor marine mammals near the seismic source vessel during all daylight airgun operations and during any nighttime startups of the airguns. Airgun operations will be suspended when marine mammals are observed within, or about to enter, designated safety zones where there is a possibility of significant effects on hearing or other physical effects. Vessel-based observers will watch for marine mammals near the seismic vessel during daylight periods with shooting, and for at least 30 minutes prior to the planned start of airgun operations. Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals during this period and will call for the airguns to be shut down if marine mammals are observed in or about to enter the safety radii. If the airguns are started up at night, two marine mammal observers will monitor marine mammals near the source vessel for 30 minutes prior to start up using night vision devices as described later (see Monitoring and Reporting).

Two observers will be stationed on the *R/V Maurice Ewing* during seismic operations in the Hess Deep area. The *R/V Maurice Ewing* is a suitable platform for marine mammal observations. The observer's eye level will be approximately 11 m (36 ft) above sea level when stationed on the bridge, allowing for good visibility within a 210° arc for each observer. The proposed monitoring plan is summarized later in this document.

Proposed Safety Radii

Received sound levels have been modeled for the 10–, 12–, and 20–air gun arrays (but the 20–gun array will not be used during the Hess Deep Project). Based on the modeling, estimates of the 190, 180, 170, and 160 dB re 1 µPa (rms) distances (safety radii) for these arrays have been provided previously in this document. Acoustic measurements in shallow and deep water will be taken, in order to check the modeled received sound levels from these arrays. This verification is expected to occur in June 2003 in the Gulf of Mexico. If verification of the safety radii does not occur before the start of the proposed program, then conservative safety radii will be used during the proposed Hess Deep seismic surveys. Conservative radii will be 1.5 times the distances indicated for the 10- and 12–airgun arrays to be used in the Hess Deep area. Thus, during the Hess Deep cruise the proposed conservative safety radii for cetaceans are 1,245 and 1,320 m (4,085 and 4,331 ft), for the 10– and 12–gun arrays, respectively, and the proposed conservative safety radii for pinnipeds are 375 and 450 m (1,230 and 1,476 ft), respectively.

Airgun operations will be suspended immediately when cetaceans are seen within or about to enter the appropriate 180–dB (rms) radius, or if pinnipeds are seen within or about to enter the 190–dB (rms) radius. These 190 and 180 dB criteria are consistent with guidelines listed for pinnipeds and cetaceans by NMFS (2000) and other guidance by NMFS.

Mitigation During Operations

The following mitigation measures, as well as marine mammal monitoring, will be adopted during the Hess Deep seismic survey program and the acoustic verification program, provided that doing so will not compromise operational safety requirements:

(1) Course alteration; (2) Shut-down procedures; and (3) Ramp-up procedures.

Course Alteration

If a marine mammal is detected outside the safety radius and, based on its position and the relative motion, is likely to enter the safety radius, alternative ship tracks will be plotted against anticipated mammal locations. The vessel's direct course and/or speed will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safey radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

Shutdown Procedures

Vessel-based observers will monitor marine mammals near the seismic vessel during daylight and for 30 minutes prior to start up during darkness throughout the program. Airgun operations will be suspended immediately when marine mammals are observed within, or about to enter, designated safety zones where there is a possibility of physical effects, including effects on hearing (based on the 180 and 190 dB criteria specified by NMFS). The shutdown procedure should be accomplished within several seconds or one shot period of the determination that a marine mammal is within or about to enter the safety zone. Airgun operations will not resume until the marine mammal is outside the safety radius. Once the safety zone is clear of marine mammals, the observer will advise that seismic surveys can re-commence. The "ramp-up" procedure will then be followed.

Ramp-up Procedure

A "ramp-up" procedure will be followed when the airgun arrays begin operating after a specified-duration period without airgun operations. Under normal operational conditions (vessel speed 4–5 knots), a ramp-up would be required after a "no shooting" period lasting 2 minutes or longer. At 4 knots, the source vessel would travel 247 m (810 ft) during a 2–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water (not a factor in Hess Deep), it is proposed that a ramp-up would be required after a "no shooting" period lasting 3 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 277 m (909 ft) in 3 minutes. These guidelines would require modification if the normal shot interval were more than 2 or 3 min, respectively, but that is not expected to occur during the Hess Deep project.

Ramp-up will begin with the smallest gun in the array that is being used (80 in^3 for the 10– and 12–gun arrays). Guns will be added in a sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–minute period over a total duration of approximately 18–20 min (10–12 gun arrays).

Monitoring and Reporting

LDEO proposes to conduct marine mammal monitoring of its 2003 seismic program in the Hess Deep and acoustical verification of safety radii, in order to satisfy the anticipated requirements of the IHA.

Vessel-based Visual Monitoring

Two observers dedicated to marine mammal observations will be stationed aboard LDEO's seismic survey vessel for the seismic survey in the Hess Deep area. It is proposed that one or both marine mammal observers aboard the seismic vessel will search for and observe marine mammals whenever seismic operations are in progress during daylight hours. When feasible, two observers will be on duty for at least 30 minutes prior to the start of seismic shooting and during ramp-up procedures. The 30–minute observation period is only required prior to commencing seismic operations following an extended shut down period.

If ramp-up procedures must be performed at night, two observers will be on duty 30 minutes prior to the start of seismic shooting and during the subsequent ramp-up procedures. Otherwise, no observers will be on duty during seismic operations at night. However, LDEO bridge personnel (port and starboard seamen and one mate) will assist in marine mammal observations whenever possible, and especially during operations at night, when designated marine mammal observers will not normally be on duty. A marine mammal observer will be on "standby" at night, in case bridge personnel see a marine mammal. An image-intensifier night-vision device (NVD) will be available for use at night, although past experience has shown that NVDs are of limited value for this purpose.

The observer(s) will watch for marine mammals from the bridge, the highest practical vantage point on the vessel. The observer's eye level will be approximately 11 m (36 ft) above see level when stationed on the bridge, allowing for good visibility within a 210° arc. The observer(s) will systematically scan the area around the vessel with 7 X 50 Fujinon reticle binoculars or with the naked eye during the daytime. At night, night vision equipment will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent), if required. Laser rangefinding binoculars (Bushnell Lytespeed 800 laser rangefinder with 4 optics or equivalent) will be available to assist with distance estimation. If a marine mammal is seen well outside the safety radius, the vessel may be maneuvered to avoid having the mammal come within the safety radius (see Mitigation). When mammals are detected within or about to enter the designated safety radii, the airguns will be shut down immediately. The observer(s) will continue to maintain watch to determine when the animal is outside the safety radius. Airgun operations will not resume until the animal is outside the safety radius.

The vessel-based monitoring will provide data required to estimate the numbers of marine mammals exposed to various received sound levels, to document any apparent disturbance reactions, and thus to estimate the numbers of mammals potentially taken by Level B harassment. It will also provide the information needed in order to shut down the airguns at times when mammals are present in or near the safety zone. When a mammal sighting is made, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; and (2) Time, location, heading, speed, activity of the vessel (shooting or not), sea state, visibility, cloud cover, and sun glare. The data listed under (2) will also be recorded at the start and end of each observation watch and during a watch, whenever there is a change in one or more of the variables.

All mammal observations and airgun shutdowns will be recorded in a standardized format. Data will be entered into a custom database using a laptop computer when observers are off-duty. The accuracy of the data entry will be verified by computerized validity data checks as the data are entered and by subsequent manual checking of the database. These procedures will allow initial summaries of data to be prepared during and shortly after the field program, and will facilitate transfer of the data to statistical, graphical or other programs for further processing and archiving.

At least one experienced marine mammal observer will be on duty aboard the seismic vessel. During seismic operations in the Hess Deep area, two observers, including one qualified contract biologist and one observer appointed by LDEO, will be based aboard the vessel. Observers appointed by LDEO will complete a one-day training/refresher course on marine mammal monitoring procedures, given by a contract employee experienced in vessel-based seismic monitoring projects.

Observers will be on duty in shifts of duration no longer than 4 hours. The second observer will also be on watch part of the time, including the 30 minute periods preceding startup of the airguns and during ramp ups. Use of two simultaneous observers will increase the proportion of the marine mammals present near the source vessel that are detected. Bridge personnel additional to the dedicated marine mammal observers will also assist in detecting marine mammals and implementing mitigation requirements, and before the start of the seismic survey will be given instruction in how to do so.

Results from the vessel-based observations will provide (1) The basis for real-time mitigation (airgun shutdown); (2) Information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) Data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) Information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) Data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

Acoustical Measurements

The acoustic measurement program is designed to verify the safety radii that will be used to determine when the air guns will be shut down to prevent marine mammals from being exposed to seismic sounds 180 (cetaceans) or 190 dB re 1µPa (rms) (pinnipeds)(see Mitigation). It will also provide the specific acoustic data needed to document the seismic sounds to which marine mammals are exposed at various distances from the seismic source, as necessary to improve the estimates of potential take by harassment and to interpret the observations of marine mammal distribution, behavior, and headings. It appears most likely that acoustical measurements will be conducted in the Gulf of Mexico during June when LDEO's vessel will be in that area for other purposes. Acoustic studies will obtain data on characteristics of the seismic survey sounds as a function of distance in deep and shallow water.

Additional details about the methods, timing and location of the acoustical verification study are provided in the LDEO application; additional information on monitoring will be provided by LDEO in an addendum to its application as plans for this effort become more specific. That addendum will address the marine mammals that might be exposed to airgun sounds during the verification study.

A report will be submitted to NMFS within 90 days after the end of the seismic program in the Hess Deep area. The end of the Hess Deep program is predicted to occur on or about July 28, 2003. The report will cover the seismic surveys in the Hess Deep area and will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The 90–day report will summarize the dates and locations of seismic operations, sound measurement data, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential "take" of marine mammals by harassment or in other ways.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA.

National Environmental Policy Act (NEPA)

The NSF has prepared an EA for the Hess Deep survey. NMFS is reviewing this EA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of an IHA. A copy of the NSF EA for this activity is available upon request (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of conducting a seismic survey program in the Hess Deep portion of the Eastern Equatorial Pacific Ocean will result, at worst, in a temporary modification in behavior by certain species of marine mammals. While behavioral modifications may be made by these species as a result of seismic survey activities, this behavioral change is expected to result in no more than a negligible impact on the affected species.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document.

Proposed Authorization

NMFS proposes to issue an IHA to LDEO for conducting a seismic survey program in the Hess Deep portion of the Eastern Equatorial Pacific Ocean, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: April 7, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–9057 Filed 4–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032502D]

Notice of Availability of Final Stock Assessment Reports

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of completion and availability of final marine mammal stock assessment reports; response to comments.

SUMMARY: NMFS has incorporated public comments into revisions of marine mammal stock assessment reports (SARs). The 2002 final SARs are now complete and available to the public.

ADDRESSES: Send requests for printed copies of reports to: Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center (F/AKC), NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115–0070, e-mail Robyn.Angliss@noaa.gov.

Copies of the Atlantic and Gulf of Mexico Regional SARs may be requested from Janeen Quintal, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543, e-mail Janeen.Quintal@noaa.gov or Steven Swartz, Southeast Fisheries Science Center, 75 Virginia Beach Dr., Miami, FL 33149, e-mail Steven.Swartz@noaa.gov.

Copies of the Pacific Regional SARs may be requested from Cathy Campbell, Southwest Regional Office (F/SWO3), NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213, e-mail Cathy.E.Campbell@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Tom Eagle, Office of Protected Resources, 301–713–2322, e-mail Tom.Eagle@noaa.gov; Robyn Angliss 206–526–4032, regarding Alaska regional stock assessments; Janeen Quintal, 508–495–2252, regarding Northwest Atlantic regional stock assessments; Steven Swartz, 305–361–4487, regarding Mid-Atlantic and Gulf of Mexico regional stock assessments; or Cathy Campbell, 562–980–4020, regarding Pacific regional stock assessments.

SUPPLEMENTARY INFORMATION:

Electronic Access

All stock assessment reports and the guidelines for preparing them are available via the Internet at *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*.

Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals that occurs in waters under the jurisdiction of the United States. These reports must, among other things, contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available and at least once every 3 years for non-strategic stocks. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined.

Draft 2002 SARs were made available for a 90–day public review and comment period on April 19, 2002 (67 FR 19417). Prior to their release for public review and comment, NMFS subjected the draft reports to internal technical review and to scientific review by regional Scientific Review Groups (SRGs) established under the MMPA. Following the close of the comment period, NMFS revised the reports as needed to prepare final 2002 SARs. Printed copies may be obtained by request (see **ADDRESSES**).

The FWS updated the most recent versions of the SARs for polar bears, sea otters, walrus, and manatees and they were appended to NMFS' final 2002 SARs. These reports were included so that interested constituents would have reports for all regional stocks in a single document.

Comments and Responses

NMFS received two letters, one from the National Wildlife Federation and the other from the Marine Mammal Commission (MMC) which contained comments on the draft 2002 SARs. The comments and responses below are separated according to the regional scope of the comments. Many of the comments on specific SARs addressed minor editorial points for clarification. Most of these comments were included into the final reports or will be included in future reports and are not included in the following segment of this document.

Comments on National Issues

Comment 1: Combining species groups is inconsistent with Sections 117 and 3(11) of the MMPA. Also, species with lower abundance, slower growth rates, and higher interaction (mortality and serious injury) rates may be more vulnerable to fisheries and other human activities, and the risk to those species may be increased when analyses are conducted on species groups.

Response: NMFS concurs that some populations or species may be more vulnerable to human-caused mortality than others; however, NMFS disagrees that stock assessment reports describing groups of populations or stocks are necessarily inconsistent with the MMPA. The MMPA states that stock assessment reports must be based upon the best scientific information available. In many cases, the best available information is limited to species groups. For example, in its initial SARs, NMFS reported on each species of beaked whale in a separate report, and most reports indicated that the species-specific abundance and mortality estimates used in management decisions were unknown. Thus, the species-specific reports were not informative. As a result, NMFS, in consultation with the SRGs, prepared subsequent reports for beaked whales and some other stocks as grouped reports. The information in these grouped reports must be interpreted with caution to avoid the conservation issues identified in this comment. When the methodologies to obtain data supporting stock-specific reports are available and sufficient data are collected, NMFS will use these methods to collect and analyze the appropriate information to prepare separate reports on each stock of beaked whale and other marine mammals where grouped data are used.

Comment 2: Requiring confirmation of human-caused effects to assess serious injuries and mortalities is contrary to the precautionary approach and incorporates several sources of negative bias; thus, it may not represent the best scientific information available. NMFS should report all injuries that could be serious and provide the rationale for discounting them in mortality estimates. An alternative approach, which was recommended in NMFS's 1997 workshop on differentiating serious and non-serious injuries would be to prorate cases where seriousness could not be determined using data from cases where such determination could be made. These approaches would provide a more realistic view of the uncertainty associated with the potential effects of fishing and other human activities.

Response: NMFS realizes that requiring evidence that human factors were, indeed, related to deaths of marine mammals could result in an underestimate of such mortality and may not be the most precautionary assessment of human-caused mortality. Most cases where we require such confirmation are those mortalities identified from stranded carcasses. These stranding records provide only minimum estimates of mortality, and the value of such data is related more to illustrating where quantitative data are needed rather than as substitutes for more reliable estimates. NMFS will continue using the summary approach in the SARs to realize the benefit of short documents that describe the status of each stock of marine mammal. Longer-more detailed discussion of this summary information will be contained in supporting reports and data, and this supporting information will continue to be cited in the reference section of each report.

Comment 3: The SARs are inconsistent in their use of observer data. For example, an observed mortality of one humpback whale as a result of a fishery interaction in the Pacific was not used as a basis for extrapolation because observer coverage was less than one percent; however, observer coverage of less than one percent is extrapolated for several Atlantic fisheries that appear to take large numbers of marine mammals. Also, the use of estimates based upon low levels of observer coverage and the use of a 5–year average fail to inspire confidence in the resulting estimates and are not sufficiently reliable to assess the efficacy of take reduction measures.

Response: In the case of the Central North Pacific stock of Humpback whales, the observed take was not used

because it was more than 5 years old, not because only one mortality was observed. If the single observed take had been no more than 5 years old, the observed take would have been extrapolated to a mortality estimate. Thus, beth reports are consistent with existing guidelines.

Uncertainty in mortality estimates due to low levels of observer coverage does, indeed, make it difficult to assess the efficacy of take reduction measures. However, low levels of observer coverage are primarily a result of budget limitations. NMFS considers monitoring in fisheries with an existing take reduction plan or in fisheries for which take reduction plans are being developed as its highest priorities. These priorities are consistent with priorities for observer coverage provided in the MMPA. NMFS gives priority to monitoring incidental takes and development and implementation of take reduction plans for commercial fisheries that have incidental mortality and serious injury of strategic stocks of marine mammals. Unfortunately, due to insufficient funding, NMFS will continue to have some fisheries for which incidental mortality estimates are highly uncertain due to low levels of observer coverage.

Comment 4: The Atlantic and Gulf of Mexico SAR does not adhere to the requirements of the MMPA regarding inclusion of descriptive data on fisheries that interact with marine mammals.

Response: The individual Atlantic and Gulf of Mexico SARs contain summary data for fisheries that interact with marine mammals. In addition a new table (Appendix I) has been added to the 2002 report, which provides the required information in summary form. Presenting the fishery descriptions in a single table avoids unnecessary duplication in the descriptions of fisheries where the same fishery interacts with several stocks of marine mammals.

Comment 5: Data standards need to be established to set the level of observer coverage for each fishery, particularly Atlantic trawl fisheries. The development and implementation of data standards should provide assurance that the effect of fisheries and other human activities are being assessed reliably.

Response: NMFS concurs that the level of observer coverage in Atlantic trawl fisheries has been insufficient to obtain reliable bycatch estimates. However, using data standards to set observer levels is not likely to alleviate this problem because observer coverage is limited by available funding.

Alaska Regional SARs

Comment 6: The SAR for the western stock of Steller sea lions includes fishery-specific mean annual mortality levels that are more than a decade old. The report should either explain why such data are considered reliable indicators of current take levels or remove the data from the table.

Response: NMFS agrees that some estimates of fishery-specific incidental mortality are quite old. Removing the data from the table would result in an apparent decrease in take level, which could lead the reader to conclude that mortalities have not occurred incidental to these fisheries. Thus, because these take levels constitute the best available information on the level of incidental mortality in these fisheries, the data will be retained in the table.

Comment 7: It is not clear why harbor seal stock structure designations in Alaska have not yet been changed. The genetics studies that are providing the basis for the revision were initiated 4 to 5 years ago, and the studies have since provided the best available scientific information upon which to base a revision of stocks. NMFS has been fully informed of the results and should have anticipated the possibility that they would indicate a more complex stock structure than was recognized in the past. The need for a stock-specific management program seems clear based on significant harbor seal declines in a number of locations in Alaska.

Response: NMFS is evaluating the stock structure of harbor seals in Alaska through a process that includes discussions with the Alaska Native Harbor Seal Commission under a co-management agreement. NMFS and the Harbor Seal Commission have discussed the available scientific information, and the next steps include compiling and incorporating Alaska Natives' knowledge into a recommended population structure.

Comment 8: The SAR for the eastern Chukchi Sea stock of beluga whales includes an estimate of 3,710 whales which is now based on data that are more than 8 years old. This estimate should be treated as outdated unless evidence can be provided that it is still a valid estimate.

Response: NMFS agrees that the estimate of 3,710 obtained from surveys conducted in 1989–91 would generally be considered outdated. However, the maximum count from surveys in 1998 (1,172 animals) is very similar to the maximum count during the summers of 1989–91 (- 1,200 animals). In addition, both counts are similar to those conducted in the summer of 1979. These counts indicate that no major changes in abundance have occurred; thus, the use of the older estimate is consistent with SAR guidelines. The SAR for this stock will next be reviewed in 2004; at that time, NMFS will revisit whether using this information for abundance is still appropriate.

Comment 9: The SAR for the Chukchi Sea stock of beluga whales does not provide sufficient information to distinguish between two alternative hypotheses: (1) There have been no takes of beluga whales as a result of gillnet and personal-use fisheries and (2) there have been takes but they have not been reported. The conclusion drawn is consistent with the first hypothesis, but the basis for distinguishing between these hypotheses is not clear and should be explained.

Response: The only data available to distinguish between these two hypotheses are contained in injury reports. No injuries (including mortalities) have been reported; therefore, the best available data support the hypothesis that no mortality incidental to the personal-use fisheries has occurred. Most beluga whales taken in personal-use fisheries are used for subsistence purposes and are reported as subsistence takes through the Alaska Beluga Whale Committee; thus, the estimate of total human-caused mortality is not significantly affected.

Comment 10: The SAR for the Cook Inlet stock of beluga whales indicates that there were no indications that the large stranding events from 1996–1999 resulted from human interactions. However, the information provided in the SAR does not indicate the nature and extent of efforts to determine the cause, so the reader cannot distinguish between (1) the events were unrelated to human activities and (2) the events were related to human activities but the relationship was not evaluated or detected. Essentially, it is not clear that the causes of the stranding events could be determined, and if this is the case, the SAR should state as much.

Response: The exact cause of the stranding cannot be determined. Stranding records and a knowledge of the dynamics of Cook Inlet (e.g., tidal changes) indicate that human factors were not responsible for the mass strandings.

Comment 11: The SAR for the Cook Inlet stock of beluga includes a statement in the section entitled "Habitat Concerns" that there is no indication that municipal, commercial, and industrial activities have had a quantifiable adverse impact on the beluga whale population. The absence of evidence in support of a particular hypothesis is not necessarily evidence that the hypothesis is false if a rigorous, powerful investigation has not been conducted.

Response: Specific investigations have not been carried out to determine whether municipal, commercial, and industrial activities have had a quantifiable adverse impact on the bowhead whale population. However, a review of the available information indicated that the observed population decline could be explained solely by subsistence harvest levels. Further, a review of available information on Cook Inlet beluga whales and their habitat did not provide any indication that activities other than the harvest were resulting in population-level effects.

Comment 12: The SAR for eastern North Pacific northern resident killer whale states that a population increases at the maximum growth rate only when the population is at extremely low levels; thus, the estimate of 2.92 percent is not a reliable estimate of Rmax. While this statement may be generally true, or at least is consistent with density-dependence theory, it is not necessarily always the case, particularly for K-selected species in fluctuating environments (e.g., where life history or vital rates are limited by biological rather than ecological factors). In these cases, growth rates could approximate Rmax at intermediate population levels.

Response: NMFS agrees that population growth rates could approximate Rmax at intermediate population levels. However, the generalized logistic model is the best available scientific information in this case. Under the logistic model, Rmax occurs only when population levels are low.

Comment 13: The AT1 group of transient killer whales is a discrete unit and should be a stock separate from the North Pacific transient killer whale stock.

Response: This comment was subsequently attached to a petition submitted to NMFS pursuant to section 115 of the MMPA requesting that the AT1 group of killer whales be recognized as a separate stock and designated as depleted. NMFS is currently evaluating the petition and will respond as required by the MMPA. If stock structure of transient killer whales in Alaska is modified as a result of this evaluation, NMFS will modify the SARs accordingly.

Comment 14: The range of observer coverage is not provided in Table 22 of the Gulf of Alaska harbor porpoise SAR. Although there is almost no observer coverage for gillnet fisheries that take harbor porpoise, the level of coverage should be provided.

Response: The SARs for harbor porpoise were not updated in 2002. These SARs will be updated in 2003 and information on the range of observer coverage will be provided at that time.

Comment 15: It is not clear how estimated mortality rates were calculated from observed mortality rates in the SARs for Dall's porpoise. For example, observed mortality in 1990 was 6, and at the 74 percent coverage, the estimated mortality should have been 8.

Response: The estimated mortality rates cannot be calculated directly by multiplying the observer coverage by the observed mortality for the Bering Sea/Aleutian Islands groundfish trawl fishery. The overall estimated mortality rates, which are provided in the SAR, were calculated by multiplying the observer coverage in each fishery management zone by the observed mortality rates in each zone and summing the estimated mortality levels per zone. The level of observer coverage reflected in the table is the average over all the zones. Thus, if the observer coverage in one area is very high, the estimated mortality level will be only slightly higher than the observed mortality level, as was the case in 1990.

Comment 16: The population size and minimum population abundance estimates for the central North Pacific humpback whale are both based on data from 1991–1993 and are, therefore, out of date.

Response: In 2002, NMFS convened a small workshop to begin the development of a new estimate for a portion of this stock, and preliminary information will be available to include in the draft SAR for 2003. Because the estimate based on the 1991–1993 information is the best available for this stock, it will be retained until a new estimate is available.

Comment 17: The SAR for the North Pacific right whale states that there are no known habitat issues for this stock and also indicates that the NMFS has been petitioned to designate critical habitat for this species. These two statements seem inconsistent. More importantly, a concern leading to the petition seems to have been ignored. The only recent observations of right whales have occurred in an area where much commercial fishing occurs. If whales are disturbed by fishing activities, their use of potentially important habitat may be precluded by the presence of fishing vessels and fishing operations that generate extensive noise.

Response: There is not necessarily an inconsistency simply because the SAR states no habitat concerns concurrently with NMFS receiving a petition to designate critical habitat. Although petitioners expressed a concern that commercial fishing vessels may disturb whales by generating excessive noise, preliminary results of studies conducted on North Atlantic right whales indicate the whales have not changed their distribution or behavior in response to vessel noise. It is premature to list vessel disturbance as a "concern" in the SAR until the impacts of vessel noise on behavior or distribution is better understood.

Atlantic Regional SARs

Comment 18: The section of the Western North Atlantic right whale SAR related to net productivity rates states that no population growth rate can be used because the population is in decline.

Response: NMFS changed the PBR of this stock of right whales to 0.0 in the 2000 revision of the SARs. At that time, it was estimated that the stock was not likely to recover to its Optimum Sustainable Population levels if there was any recurring human-caused mortality. Because the population remains small and critically endangered, NMFS continues to hold that position. Therefore, whether or not there is a value that could be reported for the maximum net productivity rate, NMFS maintains that the PBR for the stock is 0.0 and that this estimate is consistent with the definition of PBR.

Comment 19: The population estimate for the Western North Atlantic stock of blue whales is at least 15 years old, therefore, cannot be assumed to be a reliable, current estimate.

Response: NMFS agrees, and a blue whale PBR has not been calculated in the final report.

Comment 20: SARs should not be limited to records of mortality and serious injury that occur only in the U.S. Exclusive Economic Zone (EEZ). Similar to other species reports, all human caused mortality of Western North Atlantic blue whales should be included in the report.

Response: NMFS does not have mortality data on Western North Atlantic blue whales outside U.S. waters and is not aware of incidents of human-caused deaths or serious injury on this population.

Comment 21: The "Fishery Interaction" section of the SAR for common dolphins (Western North Atlantic stock) describes a pelagic longline fishery, but the level of take is not provided in the text or in Table 2.

Response: Although 16 common dolphins were killed incidental to the pelagic longline fishery between 1990–2000, no animals were killed or seriously injured during the 5–year period (1996–2000). Therefore, the data were not included in Table 2.

Pacific Regional SARs

Comment 22: For Hawaiian monk seals, the pattern of residuals in the graph showing mean number of non-pups by year suggests that the fitted model may be too linear, and other models should be investigated to provide a better fit. The title for the Y-axis overlaps the units of measurement and is difficult to read.

Response: NMFS is currently investigating other analyses to interpret the data more precisely. However, the slope of the current model provides an average rate of population decline during the entire period covered in the graph.

Comment 23: Data for population size of Hawaiian Monk Seals in 2001 are available, and it would be useful to include them in the discussion and the graph.

Response: Although the data for 2001 are currently available, the estimates resulting from these data were not completed and reviewed prior to completion of the 2002 draft SARs. The new estimates will be included in future drafts for public review and comment.

Comment 24: In the fourth paragraph in the Hawaiian monk seal section and in the section on Other Mortality, references to biotoxins (e.g., ciguatoxins) have been removed. Although mortality due to biotoxins has not been confirmed, it has long been a matter of concern stemming largely from (1) the 1978 mass mortality of seals at Laysan Island, which may have resulted from ciguatoxins, and (2) observations that monk seals consumed fish that were discarded during bottomfish operations because those fish are known to contain potentially high levels of biotoxins (i.e., were not considered fit for human consumption). The lack of confirmation that biotoxins do, in fact, cause mortality could indicate they do not, but it could also indicate that methods for detection or monitoring of such mortality are inadequate. In view of the fact that the potential threat posed to monk seals by biotoxins cannot be reliably characterized and concerns about such threats appear to be justified on the basis of the existing information on monk seals (as well as information on biotoxin effects on other marine mammal species), this potential source of mortality should be described in the report.

Response: The role of biotoxins, such as ciguatoxin, in mortality of monk seals remains speculative. Any number of other factors could also be hypothesized to cause mortality to monk seals, but are not listed because they are not confirmed. As relevant information becomes available, NMFS will include a summary of this information in the SARs, including the effects of biotoxins on monk seals.

Comment 25: In the Fisheries Information section, there was confusion over the total number of sets and hooks fished in Hawaiian waters.

Response: Two sets of values were presented: one for Hawaii-based vessels and another for vessels landing on the U.S. west coast (excluding Alaska and Hawaii). The reported value of 20.2 million hooks fished in 2000 refers to Hawaiian-based vessels, which corresponds to approximately 12,000 fishing trips, or 1,700 hooks per set. The cited value of 285 sets in year 2000 refers to boats landing on the continental U.S. west coast. Information on the number of Hawaiian-based sets will be clarified in the final stock assessment.

Comment 26: The commenter noted that the abundance of false killer whales in regions yet unsurveyed is unknown, nor has their presence been established in the Northwestern Hawaiian Islands. The commenter also suggested that it might be more accurate to state that current estimates are negatively biased, with the extent of the potential bias being unknown.

Response: The abundance of Hawaiian false killer whales outside of previously surveyed areas is unknown, but their presence has been documented through longline fishery interactions. Given even a low density of animals outside previously surveyed areas and the large expanse of the study area, new population estimates are likely to exceed the currently published estimate by an unknown amount. Thus the current aerial survey estimate represents an underestimate, owing to a lack of survey coverage throughout the stock's range. Current abundance estimates are also negatively-biased because correction factors for the proportion of animals missed by the survey aircraft due to diving (availability bias) and poor searching conditions (perception bias) are not available. A research cruise conducted in summer and autumn 2002 in the Hawaiian EEZ is expected to provide reliable estimates of abundance of false killer whales throughout the Hawaiian EEZ. Revised abundances estimates for Hawaiian cetaceans are expected to appear in the 2004 SARs, which will be reviewed by the Pacific SRG in late summer and fall of 2003 prior to public review and comment.

Comment 27: In Table 1 of the Fisheries Information section for harbor porpoise (Oregon/Washington coastal stock), estimates of mean annual take have not been included even though estimated mortality levels are included and, in most cases, are not zero. Although the observed mortality was recorded during experiments with pingers, it is not clear why the resulting take levels are not carried over into the final column.

Response: The mean annual take is included in Table 1 and is calculated as the average of the most recent 5 years of mortality estimates. The mean annual take of 9 (CV=0.62) harbor porpoise, calculated for the northern Washington marine set gillnet fishery in 1996–2000, includes mortality estimates for two of the years (1996 and 1997) in which acoustic alarm experiments were conducted in this fishery.

Dated: April 7, 2003.

Laurie K. Allen,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–9058 Filed 4–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040903A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a joint public meeting via conference call of the Reef Fish Advisory Panel (AP) and Reef Fish Scientific and Statistical Committee (SSC).

DATES: The meeting will be via conference call on April 28, 2003 beginning at 10 a.m. EDT.

ADDRESSES: Listening stations will be available at the following locations:

1. NMFS Southeast Regional Office, 9721 Executive Center Drive, North, St. Petersburg, FL 33702, Contact: Larry Kelley at 727–570–5301;

2. NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL, Contact: Gary Fitzhugh at 850–234–6541, extension 214.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP and Reef Fish SSC will be convened to review and comment on a proposed Amendment 21 to the Reef Fish Fishery Management Plan (FMP) to extend the time period for the Madison/Swanson and Steamboat Lumps marine reserves beyond their June 16, 2004 expiration date.

The Madison/Swanson and Steamboat Lumps marine reserves were implemented on June 19, 2000 with a 4–year sunset provision. The Madison/Swanson site is approximately 115 square nautical miles in size and is located about 40 nautical miles southwest of Apalachicola City, FL. Steamboat Lumps is approximately 104 square nautical miles in size and is located about 95 nautical miles west of Tarpon Springs, FL. Within each area, fishing is prohibited for all species except for highly migratory species, i.e., tunas, marlin, oceanic sharks, sailfishes, and swordfish. These marine reserves were created primarily to protect a portion of the gag spawning aggregations and to protect a portion of the offshore population of male gag. The areas are also suitable habitat and provide protection for many other species, such as scamp, red grouper, warsaw grouper, speckled hind, red snapper, red porgy, and others. If action is not taken to continue the reserves, they will cease to exist after June 16, 2004.

A copy of the agenda can be obtained by contacting the Council (see addresses above).

Although non-emergency issues not contained in the agenda may come before the AP/SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency.

The listening stations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 21, 2003.

Dated: April 9, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9061 Filed 4–11–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032803D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for an EFP to conduct experimental fishing; request for comments.

SUMMARY: The Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that an EFP application submitted by the Mount Desert Oceanarium (MDO) of Southwest Harbor, ME, contains all of the required information and warrants further consideration. The EFP would allow one fishing vessel to fish for, retain, and land small numbers of regulated multispecies, monkfish, spiny dogfish, and several unmanaged species for the purpose of public display. NMFS has made a preliminary determination that the activities authorized under this EFP would be consistent with the goals and objectives of the Fishery Management Plans (FMPs) for the managed species. However, further review and consultation may be necessary before a final determination is made to issue the EFP. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this notification must be received at the appropriate address or fax number (see **ADDRESSES**) on or before April 29, 2003.

ADDRESSES: Comments should be sent to Patricia Kurkul, Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930. Mark on the outside of the envelope "Comments on MDO Exempted Fishing Permit Application."

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail Paul.H.Jones@noaa.gov.

SUPPLEMENTARY INFORMATION: The MDO of Southwest Harbor, ME, submitted an application for an EFP on February 14, 2003, to collect several species of fish for public display. The target species would include winter flounder (blackbacks), witch flounder (dabs), yellowtail flounder, American plaice (grey sole), Atlantic halibut, monkfish, eel pouts, sculpins, sea ravens, Atlantic cod, wolfish, spiny dogfish, little skate, barndoor skate, and various species of the Phyla Arthropoda (not including lobsters) and Echinodermata.

A single chartered vessel would use a shrimp trawl with 2–inch (5.08–cm) mesh to collect marine fish with approximately 2–tows per day over a 2–day period from May 12, 2003, through May 20, 2003, and over a 2–day period from June 23, 2003, through June 30, 2003. Tow lengths would be between 10 minutes to 1 hour. The specimens would be cared for in chilled and aerated seawater while on board the fishing vessel and would be transferred live to tanks the day they are caught. The fish would be brought to shore, maintained in tanks for public display for a period of time not to exceed 5 months, and would be returned to the sea in October 2003.

Collection would be made using a 2–inch (5.08–cm) mesh shrimp net within the Small Mesh Northern Shrimp Fishery Exemption Area (Area) off Maine. Since the shrimp fishery would be closed at the time of collection, an exemption from the Northeast multispecies minimum mesh regulation of 6–inch (15.24–cm) diamond/6.5–inch (16.51–cm) square mesh at 50 CFR 648.80(a)(2) for vessels operating in the Area would be required. If the target species cannot be found in the Area, an exemption from the Northeast multispecies minimum mesh regulation of 6–inch (15.24–cm) diamond/6.5–inch (16.51–cm) square mesh at 50 CFR 648.80(a)(2) would be required to allow collection farther east and southeast in portions of the Gulf of Maine/Georges Bank Regulated Mesh Area.

In addition, the applicant has requested exemptions from monkfish and multispecies days-at-sea requirements at 50 CFR 648.92 and 648.82. The target species would include winter flounder (blackbacks), witch flounder (dabs), yellowtail flounder, American plaice (grey sole), Atlantic halibut, monkfish, eel pouts, sculpins, sea ravens, Atlantic cod, wolfish, spiny dogfish, little skate,

barndoor skate, and various species of the Phyla Arthropoda (not including lobsters) and Echinodermata.

The applicant would retain a maximum of six fish per species, juveniles and adults combined with the exception of Atlantic halibut. The applicant would only be permitted to retain a total of one Atlantic halibut with a minimum length of 36 inches (91.44 cm). The applicant has requested exemption from minimum fish sizes and possession limits at 50 CFR 648.83, 648.86, 648.89, 648.93, 648.94 (multispecies and monkfish fisheries); 648.103; 648.105 (summer flounder fishery); 648.124, 648.125 (scup fishery); and 648.143, 648.145 (black sea bass fishery).

Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 8, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9060 Filed 4–11–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Request under the African Growth and Opportunity Act (AGOA)

April 10, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a request for a determination that certain light- and medium-weight dyed warp pile cotton velvet, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner.

SUMMARY: On April 8, 2003, the Chairman of CITA received a petition from Crystal Apparel Limited of Hong Kong and Sinotex Mauritius Limited in Mauritius alleging that certain light- and medium-weight dyed warp pile cotton velvet for use in men's and boys' jackets and pants and women's and girls' jackets, dresses, skirts, pants, and shorts cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that such apparel articles of such fabrics be eligible for preferential treatment under the AGOA. CITA hereby solicits public comments on this request, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by April 29, 2003, to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, D.C. 20230.

EFFECTIVE DATE: April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 112(b)(5)(B) of the AGOA, Section 1 of Executive Order No. 13191 of January 17, 2001.

Background

The AGOA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States or a beneficiary country. The AGOA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country, if it has been determined that such fabric or yarns cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures in the Federal Register that it will follow in considering requests. (66 FR 13502).

On April 8, 2003, the Chairman of CITA received a petition from Crystal Apparel Limited of Hong Kong and Sinotex Mauritius Limited in Mauritius alleging that certain light- and medium-weight dyed warp pile cotton velvet, classified in subheading 5801.25.00 of the Harmonized System of the United States, with the following specifications, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the AGOA for certain jackets, dresses, skirts, pants and shorts, that are cut and sewn in one or more beneficiary sub-Saharan African countries from such fabrics:

1. Name: light-weight dyed warp pile velvet
   HTS subheading: 5801.25.00
   Fiber Composition: 100 percent combed cotton
   Yarn: 230 g/m2 to 260 g/m2
   Construction:
   Woven Fabric - 96 x 98
   Warp - 42/2 ply + 42/2 ply
   Weft - 32 single yarn

   Woven Fabric - 96 x 102
   Warp - 42/2 ply + 60/2 ply
   Weft - 32 single yarn

2. Name: medium-weight dyed warp pile velvet
   HTS subheading: 5801.25.00
   Fiber Composition: 97 to 98 percent cotton, up to 3 percent spandex yarn
   Yarn: 280 g/m2 to 330 g/m2
   Construction:
   Woven Fabric - 110 x 84
   Warp - 42/2 ply + 50/2 ply
   Weft - 30 single yarn + 40 denier spandex

   Woven Fabric - 126 x 84
   Warp - 42/2 ply + 50/2 ply
   Weft - 30 single yarn + 40 denier spandex

CITA is soliciting public comments regarding this request, particularly with respect to whether such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other products that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabrics for the purposes of the intended use. Comments must be received no later than April 29, 2003. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that such fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn or fabric stating that it produces the fabrics that are the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure for the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230.

Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–9204 Filed 4–10–03; 3:18 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 14, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 8, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: National Assessment of Educational Progress: Foreign Language Assessment, Field Test 2003 and Full Scale 2004.

Frequency: One-time.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 16,064.

Burden Hours: 5,623.

Abstract: The National Assessment of Educational Progress Foreign Language Assessment will assess the current status of the foreign language skills of high school seniors in the U.S. as well as collecting information about foreign language programs, instructional practices, and attitudes towards learning foreign languages.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2222. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at (703) 620–3655 or via her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–8999 Filed 4–11–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by April 14, 2003. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before June 13, 2003.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Lauren_Wittenberg@omb.eop.gov.* .

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and

proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: April 9, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Preparing Tomorrow's Teachers to Use Technology.

Abstract: Capacity Building and Catalyst grants will be awarded for two years to prepare future teachers to use modern learning technologies. These grants will address critical issues in the integration of technology into the classroom curriculum. These issues include (1) access to modern educational tools; (2) support in the preparation of well-qualified, technology proficient teachers; (3) and bridging the digital equity to ensure access to modern learning technology and qualified teachers for all students

Additional Information: Congress surprised this program with substantial funding during their staff reengineering. This information collection needs to reach the public soon in order to avoid staff conflicts within the schools.

Frequency: Annually.

Affected Public: Not-for-profit institutions; businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs

Reporting and Recordkeeping Hour Burden:

Responses: 450.

Burden Hours: 18,000.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2253. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Joseph Schubart at (202) 708–9266 or via his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–9121 Filed 4–11–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–074]

ANR Pipeline Company; Notice of Negotiated Rate Filing

April 7, 2003.

Take notice that on April 1, 2003, ANR Pipeline Company (ANR), tendered for filing and approval a Service Agreement between ANR and Dynegy Marketing and Trade pursuant to ANR's Rate Schedule FTS–3 (the Agreement). ANR requests that the Commission accept and approve the Agreement to be effective on April 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9102 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–329–000]

ANR Pipeline Company; Notice of Tariff Filing

April 3, 2003.

Take notice that on March 31, 2003, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of May 1, 2003:

Ninth Revised Sheet No. 10
Fifth Revised Sheet No. 46
Third Revised Sheet No. 47
Second Revised Sheet No. 48
Fifth Revised Sheet No. 49
First Revised Sheet No. 49A
Second Revised Sheet No. 50
Fourth Revised Sheet No. 51
Third Revised Sheet No. 80
Fifth Revised Sheet No. 84
Sixth Revised Sheet No. 85
Fifth Revised Sheet No. 91
First Revised Sheet No. 96
Second Revised Sheet No. 101A
Original Sheet No. 101B

ANR states that the revised tariff sheets are being filed in order to provide more flexibility to its current firm storage service, by primarily modifying the time frame within which storage service can be sold. ANR also proposes to adopt a time line defining under which circumstances ANR must consider requests and accept or reject requests for any service at maximum rates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9102 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–332–000]

CenterPoint Energy Gas Transmission Company; Notice of Filing

April 7, 2003.

Take notice that on April 1, 2003, CenterPoint Energy Gas Transmission Company (CEGT) submitted its Annual Revenue Crediting Filing pursuant to its FERC Gas Tariff, Sixth Revised Volume No. 1, section 5.7(c)(ii)(2)B (Imbalance Cash Out), section 23.2(b)(iv) (IT, SBS and PHS Revenue Crediting) and section 23.5 (IT Revenue Credit).

CEGT states that its filing addresses the period from February 1, 2002, through January 31, 2003. CEGT states that the IT and FT Cash Balancing Revenue Credits and the IT Revenue Credit for the period reflected in this filing are zero. CEGT further states that since CEGT's current tariff sheets already reflect zero Cash Balancing and IT Revenue Credits, no tariff revisions are necessary.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9259 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–74–000]

Dominion Cove Point LNG, LP; Notice of Application

April 7, 2003.

Take notice that on March 28, 2003, Dominion Cove Point LNG, LP (Dominion Cove Point), 120 Tredegar Street, Richmond, Virginia 23219, filed with the Federal Energy Regulatory Commission (Commission) in Docket No. CP03–74–000, an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Comission's regulations for authorization to construct, install, own, operate, and maintain two new compressor stations, Loudoun Station and Pleasant Valley Station (Cove Point East Project), to be located in Loudoun and Fairfax Counties, Virginia, respectively, as more fully described in the application. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Specifically, Dominion Cove Point requests authorization to construct the Loudoun Station, consisting of two 4,735 horsepower (hp) gas-fired compressor units and one 2,370 hp gas-fired compressor unit, and the Pleasant Valley Station, consisting of one 4,750 hp electric driven compressor unit and one 2,750 hp electric driven compressor unit, as well as appurtenant facilities at both stations. Dominion Cove Point states that both proposed new compressor stations will be constructed on land owned by Dominion Cove Point, and estimates the total cost of the project to be approximately $43.5 million. Dominion Cove Point proposes to price the new service incrementally and to establish an electric tracker applicable to customers of the proposed project.

Dominion Cove Point explains that, as part of an uncontested settlement approved by the Commission on February 27, 2003, Dominion Cove Point was required to file an application, on or before March 31, 2003, for certificate authority to construct facilities necessary to create firm transportation capacity from west to east on its system. By this application, Dominion Cove Point proposes to create such west to east transportation service. Dominion Cove Point states that it has entered into precedent agreements with two shippers for all 445,000 Dth/d of the project's incremental capacity.

Dominion Cove Point requests that the Commission issue a final order by September 30, 2003.

Any questions regarding this application should be directed to Mr. Sean R. Sleigh, Certificates Manager, Dominion Cove Point LNG, LP, 120 Tredegar Street, Richmond, Virginia 23219, or call (304)627–3462 or FAX (304)627–3305.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of

all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: April 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9091 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–485–004]

Enbridge Pipelines (KPC); Notice of Compliance Filing

April 7, 2003.

Take notice that on April 2, 2003, Enbridge Pipelines (KPC) (KPC) tendered for filing revised tariff sheets listed on Appendix A which are to be included in its FERC gas Tariff, First Revised Volume No. 1. KPC requests that these tariff sheets be made effective April 1, 2003.

KPC states that the purpose of the filing is to comply with the Commission's Order on Rehearing issued on March 19, 2003, wherein the Commission ordered KPC to reduce its cost of long-term debt from 8.64% to 8.45%.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9103 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–75–000]

Freeport LNG Development, L.P.; Notice of Application

April 7, 2003.

Take notice that on March 28, 2003, Freeport LNG Development, L.P., (Freeport LNG), 1200 Smith Street, Suite 600, Houston, Texas 77002, filed an application pursuant to section 3 of the Natural Gas Act (NGA) and parts 153 and 380 of the Commission's regulations for authorization to site, construct and operate a liquefied natural gas (LNG) receiving terminal and associated facilities in the Freeport, Texas area as a place of entry for the importation of LNG, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

Freeport LNG states that it proposes to construct the Freeport LNG Terminal in response to the growing demand for natural gas in Texas intrastate markets. Freeport LNG explains that the Freeport LNG Terminal will be comprised of an LNG receiving facility (including docking facilities and associated piping appurtenances); an LNG storage and vaporization facility (including two LNG storage tanks, vaporization units and associated piping and control equipment; and 9.38 miles of 36-inch diameter send out pipeline as well as metering facilities and associated appurtenances.

Freeport LNG states that the Freeport LNG Terminal will be located on Quintana Island, southeast of Freeport, Brazoria County, Texas. Freeport LNG avers that the Freeport LNG Terminal will not be used to provide jurisdictional interstate transportation service. Freeport LNG states that the facilities will instead be used to engage in commerce between the State of Texas and foreign nations. Freeport LNG maintains that since it does not intend to use the proposed facilities to import LNG on its own behalf, but rather, to provide terminal services to third parties, shippers utilizing the Freeport LNG facilities will be required to obtain authorization from the Department of Energy/Office of Fossil Energy for the import of natural gas.

Freeport LNG states that LNG will be transported through a send out pipeline from Quintana Island to the Stratton Ridge meter station, which will serve as the terminus of the Freeport LNG Termination. Freeport LNG states that interconnection facilities will be constructed between the Stratton Ridge meter station and certain intrastate systems with facilities in close proximity to the Stratton Ridge meter station in order to connect the report LNG terminal with Texas markets. Freeport LNG states that the interconnection facilities will be constructed by the respective intrastate pipelines. In addition, Freeport LNG states that the Freeport LNG Terminal is anticipated to be completed and placed in service in time to meet natural gas demand during the 2006–2007 winter heating season.

Any questions regarding this application should be directed to Lisa M Tonery, King & Spalding LLP, 1185 Avenue of the Americas, New York, New York 10036–4003, at (212) 556–2100, fax (212) 556–2222.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding. with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying the section 3 authorization will be issued.

Comment Date: April 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9092 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–115–000]

Neptune Regional Transmission System, LLC, Complainant v. Reliant Energy New Jersey Holdings, LLC, and Reliant Resources, Inc., Respondents; Notice of Complaint

April 8, 2003.

Take notice that on April 4, 2003, Neptune Regional Transmission System, LLC (NeptuneRTS(TM)) tendered for filing a Complaint pursuant to Sections 201, 202, 203, 210, and 306 of the Federal Power Act against Reliant Energy New Jersey Holdings, LLC and Reliant Resources, Inc. (Reliant). The Complaint asks the Commission to grant the request of NeptuneRTST for fast track processing and seeks an order directing Reliant to execute, within 7 days of the Order, certain agreements relating to access to jurisdictional transmission assets located on property owned by Reliant. The complaint alleges that Reliant is exercising its control over easements to preclude competitors from accessing the transmission system. Among other things, the complaint raises the issue of what entity has jurisdiction to order access to Reliant's property.

NeptuneRTS(TM) states that copies of the filing were served upon Reliant; FirstEnergy Corp.; Pennsylvania-Jersey-Maryland Interconnection, LLC; Consolidated Edison Company of New

York, Inc.; the New Jersey Board of Public Utilities; the New Jersey Department of Environmental Protection; and the New York Department of Public Service.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link.

Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: April 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9106 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–037]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

April 7, 2003.

Take notice that on April 1, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A., Sixth Revised Sheet No. 15, Second Revised Sheet No. 18, Third Revised Sheet No. 19, Second Revised Sheet No. 20, and Original Sheet No. 2, with an effective date of April 1, 2003.

GTN states that these sheets are being filed to reflect the implementation of three Negotiated Rate Agreements and the removal of three Negotiated Rate Agreements that have expired.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9104 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–305–000]

Quonset Point Cogen, L.P.; Notice of Issuance of Order

April 7, 2003.

Quonset Point Cogen, L.P. (Quonset) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for the sale of capacity and energy at market-based rates. Quonset also requested waiver of various Commission regulations. In particular, Quonset requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Quonset.

On April 2, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Quonset should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 2, 2003.

Absent a request to be heard in opposition by the deadline above, Quonset are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Quonset, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Quonset's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9094 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–116–000]

Reliant Energy Mid-Atlantic Power Holdings, LLC, Complainant, v. PJM Interconnection, L.L.C., Respondent; Notice of Complaint

April 7, 2003.

Take notice that on April 2, 2003, Reliant Energy Mid-Atlantic

Power Holdings, LLC (Reliant) tendered for filing a complaint pursuant to section 206 of the Federal Power Act against PJM Interconnection, L.L.C. (PJM) complaining that the price caps on certain of its generation facilities in the PJM operating area subject to chronic transmission constraints were not just and reasonable and requesting approval of a Formula Price Cap Mitigation Proposal (Proposal) applicable to those facilities. Reliant requested that the proposal be accepted by May 30, 2003.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: April 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9093 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PA02–2–000, EL00–95–048, EL00–98–042, and EL01–10–007]

Fact Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange Puget Sound Energy, Inc., et al., Complainant, v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement, Respondent (Not Consolidated); Notice Regarding Public Accessibility of Data and Further Requests for Comments

April 7, 2003.

On March 5, 2003, the Commission issued a notice that it intended to release to the public information collected in its investigation into manipulation of energy prices in the West, and sought, by March 12, 2003, comments from those companies and individuals who submitted information during the course of the investigation. Eighteen companies or organizations, as well as the United States Attorney for the Southern District of Texas, filed comments or otherwise responded. Enron Corporation was not among those respondents. On March 21, 2003, the Commission issued an order addressing the comments and responses to its March 12, 2003, notice, and further announced that it would release the information, except as noted in the order, in no less than five days after issuance of the order. One exception to the release was personal personnel information that was raised by three of the commenters. In this regard, the Commission asked that companies or individuals provide specifics by March 24, 2003, so that such information could be excluded from the public release. One company provided such details. Thereafter, on March 26, 2003, the Commission released the remaining information. 102 FERC ¶ 61,311.

Subsequent to the release of the information, on March 28, 2003, the Commission received the first of several motions from Enron asking that certain parts of the released information be removed from public access. These motions in particular attempted to identify Enron employees' personal information, including social security numbers. The Commission also received calls on its Enforcement Hotline from Enron employees who were concerned about their personal information being available on the internet. Finally, the Commission was contacted by a consulting firm which had given Enron information with security implications, which Enron in turn had given the Commission's staff during the investigation. As quickly as possible, the Commission staff accommodated the requests involving personal and security related information.

On April 4, 2003, the Commission was notified that Enron had filed a petition for writ of mandamus and an emergency motion to stay the March 21, 2003, order in the United States Court of Appeals for the Fifth Circuit. Enron states that it seeks only one thing: that all Enron e-mails posted on the Commission's Web site be removed for a period of 10 days, or for such longer period as the Court may deem appropriate, so that certain information could be removed from the e-mails.

The Commission hereby gives notice that it will remove temporarily, until April 24, 2003, Enron emails from the agency's web site. During that time, the Commission will consider any requests that certain personal information or information with security implications be permanently removed from public accessibility. With respect to claims regarding supposed trade secrets, the Commission has already considered and denied requests that such information should be removed.

The Commission stresses that all comments filed in response to this notice must be detailed and specific, and should provide sufficient information that the documents can be readily located. Generalized comments or concerns will not be considered sufficient grounds for removal of information from public accessability. All comments must be filed by April 17, 2003.

Comments due: April 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9096 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–324–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Tariff Filing

April 3, 2003.

Take notice that on March 31, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing as part of its FERC Gas Tariff, Original Volume No.1, Original Sheet No. 0 through Original Sheet No. 514, to become effective April 30, 2003.

Southern Star states that the purpose of this filing is to restate Southern Star's FERC Gas Tariff, Original Volume No. 1 to reflect its name change to Southern Star Central Gas Pipeline, LLC rather than Williams Gas Pipelines Central, Inc. as currently on file with the Commission. Southern Star states that the instant filing reflects the change to Southern Star, the repagination of tariff sheets and minor modifications to the text of various tariff sheets to reflect the repagination. Southern Star also states that the instant filing makes no changes to the Rates, Rate Schedules, General Terms and Conditions or Form of Service Agreements.

Southern Star further states that copies of the transmittal letter and appendices (excluding Appendix C) are being mailed to Southern Star's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9098 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–120]

Tennessee Gas Pipeline Company; Notice of Negotiated Rates

April 7, 2003.

Take notice that on March 31, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing: (1) A Gas Transportation Agreement between Tennessee and BP Energy Company (BP), dated January 1, 2003; (2) a Firm Transportation Negotiated Rate Letter Agreement between Tennessee and BP, dated January 8, 2003; (3) a Gas Transportation Agreement between Tennessee and Consolidated Edison Energy, Inc. (CON ED), dated September 5, 2002; and (4) a Firm Transportation Negotiated Rate Letter Agreement between Tennessee and CON ED, dated February 11, 2003. The filed agreements represent negotiated rate arrangements between Tennessee and BP, and Tennessee and CON ED, for which Tennessee is requesting Commission approval, effective May 1, 2003. In addition, Tennessee states that the negotiated rate arrangements are being filed in compliance the Commission's "Order Issuing the Certificates and Approving Abandonments" issued on June 28, 2002, in Docket Nos. CP02–46 and CP02–47. Dominion Transmission, Inc., *et al.*, 99 FERC • 61,367 (2002).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9101 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–72–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 8, 2003.

Take notice that on March 27, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed in Docket No. CP03–72–000, an application, in abbreviated form, pursuant to Section 7(b) of the Natural Gas Act, as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving abandonment of certain firm sales service provided to Virginia Natural Gas, Inc. (VNG) under Transco's Rate Schedule FS, as more fully set forth in the application which is on file with the Commission and open to public inspection.

In such application, Transco states that it entered into a firm sales agreement with United Cities Gas Company, South Carolina Division, on August 1, 1991, under which Transco sells gas to VNG, successor to United Cities Gas Company, under Rate Schedule FS, with Buyer's Daily Sales Entitlement amount listed on Exhibit "A" to the agreement (FS Agreement).

In accordance with Paragraph 1 of Article IV of the FS Agreement, Transco delivers gas to VNG at various upstream points of delivery. Transco acts as agent for Piedmont for the purpose of arranging for the transportation of gas purchased from the points of delivery to the points of redelivery identified in the FS Agreement.

In the instant application, Transco seeks authorization to abandon the FS Agreement to VNG, effective April 1, 2004, pursuant to Piedmont's election to terminate its FS Agreement.

Transco states that the Primary Term of the FS Agreement ended on March 31, 2001. By letter dated March 6, 2002, VNG provided Transco with a two-year notice to terminate the subject FS Agreement as of April 1, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9105 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–331–000]

Vector Pipeline L.P.; Notice of Proposed Withdrawal of Tariff Sheets

April 7, 2003.

Take notice that on April 1, 2003, Vector Pipeline L.P. (Vector), gave notice of the withdrawal of Original Sheet Nos. 173 and 174 of its FERC Gas Tariff, Volume No. 1 and the substitution therefore of place holder tariff sheets. These tariff sheets summarize negotiated rate transactions that have terminated. Vector requests an effective date of April 1, 2003, for the withdrawal. Vector further requests a waiver of the 30-day notice period so that the proposed place holder tariff sheets can go into effect on April 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9099 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2407–060]

Alabama Power Company; Notice of Availability of Environmental Assessment

April 7, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application filed June 8, 2001, requesting the Commission's authorization to amend the project license. An environmental assessment (EA) is available for public review. The EA analyzes the environmental impacts of approving Alabama Power Company's (licensee for the Yates/Thurlow Project, FERC No. 2407) request to amend the project license to increase the generation capacity and hydraulic capacity to the as-built capacities.

A copy of the EA is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Anyone may file comments on the EA. The public, Federal and State resource agencies are encouraged to provide comments. All written comments must be filed within 45 days of the issuance date of this notice shown above. Send an original and eight copies of all comments marked with the docket number P–2407–060 to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. If you have any questions regarding this notice, please contact Sean Murphy at telephone: (202) 502–6145 or email: *sean.murphy@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 03–9095 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–13–000]

Northwest Pipeline Corporation; Notice of Availability of the Environmental Assessment for the Proposed Clackamas River Project

April 7, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed to be abandoned by Northwest Pipeline Corporation (Northwest) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff

concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of:

- Abandoning in place a 5,850-foot-long segment of pipeline on the north side of Clackamas River;
- Abandoning by removal a 370-foot-long segment of pipeline in the Clackamas River. No disturbance of Northwest's parallel 20-inch-diameter loop is required;
- Abandoning in place a 1,267-foot-long segment of pipeline on the south side of the Clackamas River; and
- Constructing and operating a temporary pig launching facility within the existing fenced-in yard of the Southeast Portland Meter Station and a temporary pig receiving facility just north of the Oregon City Compressor Station.

The purpose of the proposed project is to remove a hazard (an exposed pipeline) from the Clackamas River.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Branch 2, PJ11.2;
- Reference Docket No. CP03–013–000; and
- Mail your comments so that they will be received in Washington, DC on or before May 5, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. The Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to rule 214 of the Commission's rules of practice and procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202)5 02–8659. The FERRIS link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9090 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

April 7, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket number	Date filed	Presenter or requester
Prohibited:		
CP02–396–000	4–4–03	Retha Warren
2. CP02–396–000	4–4–03	Retha Warren
Exempt:		
1. Project No. 5018–004	4–3–03	Shannon Dunn/Stephen Kulik
2. Project No. 5018–004	4–3–03	Shannon Dunn/Scott Ryan

Magalie R. Salas,

Secretary.

[FR Doc. 03–9097 Filed 4–11–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7482–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Drinking Water Regulations Compliance and Cost Retrospective Survey

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Environmental Protection Agency (EPA) is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Drinking Water Regulations Compliance and Cost Retrospective Survey (EPA ICR No. 2101.01). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described as follows.

DATES: Comments must be submitted on or before June 13, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send comments to Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW–2002–0051. Follow the detailed instructions as provided in section I.C. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: John Bennett of the EPA Office of Ground Water and Drinking Water at (202) 564–4690, or by facsimile: (202) 564–3760, or e-mail: *bennett.johnb@epa.gov*. For general information, contact the Safe Drinking Water Hotline, (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal Holidays, from 9 a.m. to 5:30 p.m.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are a public water system. Public water systems are those systems that provide piped water for human consumption to at least 15 service connections or serve an average of at least 25 people for at least 60 days each year. Therefore, respondents will be both traditional water systems as well as water suppliers that do not supply water as their primary business. Potentially affected categories and entities may include, but are not limited to:

Type of business	NAICS code
Investor-Owned Water Systems	22131
Publicly Owned Water Systems	92411

This table lists the types of entities that EPA is now aware of that could potentially be affected. Other types of entities not listed in this table could also be affected. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of the ICR Supporting Statement and Other Related Information?

1. *Docket.* EPA has established an official public docket for this ICR under Docket ID No. OW–2002–0051. The official public docket consists of the documents specifically referenced in the ICR, any public comments received, and other information related to this ICR. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the

copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below. EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Docket at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OW–2002–0051. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *OW–Docket@epa.gov,* Attention Docket ID No. OW–2002–0051. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send an original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. OW–2002–0051.

3. *By Hand Delivery or Courier.* Deliver your comments to: Water Docket, Environmental Protection Agency, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2002–0051. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.B.1.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Information Collection Activity or ICR Does This Action Apply to?

EPA is seeking comments on the following ICR:

Title: Drinking Water Regulations Compliance and Cost Retrospective Survey (EPA ICR No. 2101.01).

Abstract: The Safe Drinking Water Act (SDWA) (1412(b)) requires EPA to analyze the costs related to the promulgation of drinking water regulations. Since the reauthorization of SDWA in 1996, EPA has proposed and promulgated national primary drinking water regulations for several contaminants. Each of these final and proposed rules has a supporting "Economic Analysis," which includes an analysis of compliance costs. The cost analysis includes capital and operations and maintenance (O&M) costs for treatment and other compliance measures taken by systems with Maximum Contaminant Level (MCL) violations or from systems that are subject to treatment technique requirements, as well as costs related to start-up, training and monitoring for all regulated systems.

Key to the accurate estimation of costs is an understanding of the compliance decision process of Public Water Systems (PWS). In this survey, EPA's Office of Ground Water and Drinking Water (OGWDW) plans to collect information from PWSs on their compliance decisions and associated costs for a set of rulemakings. A compliance decision is a decision made in direct response to the implementation of a drinking water regulation to come into compliance with the regulation. Examples of compliance decisions include installing a new treatment technology; modifying an existing treatment technology; using a non-treatment approach; and, finding a new water source. EPA plans to collect information on which compliance alternatives were considered, and which were chosen from that set of alternatives, along with information on associated capital, operating and maintenance, and add-on costs. Responses are voluntary and will not be considered confidential. EPA plans to use the results of the survey to update its cost estimation process for future rulemakings.

The survey will target systems in two categories: systems which have had violations of one or more chosen rulemakings and systems which have not had violations (but have made compliance decisions to prevent a violation). An initial short survey will be used to identify a sample of systems that have made compliance decisions in response to the representative rulemakings without actually having been out of compliance. The full survey (including a pilot study phase) will be sent to these systems, as well as to a sample of systems that have recorded violations. We estimate that the initial survey (known as a screener survey, since it will identify respondents appropriate for the full survey) will provide data from 1,875 respondents indicating whether or not they made some type of compliance decision associated with the representative rulemakings. We estimate that the full survey (including a pilot study phase), sent to systems with and without recorded violations, will provide data from 718 respondents.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, via the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

III. What Are EPA's Burden and Cost Estimates for This ICR?

The following is a summary of the burden and cost estimates associated with this proposed information collection effort. Burden and cost estimates are taken from the ICR, which provides a detailed explanation of the burden estimates summarized in this notice. EPA anticipates that the only entities affected by this information request will be public water systems. The total number of estimated potential respondents is 1,875 for the screener survey and 718 for the full survey. Respondents to the screener survey will only have to respond to that survey once. Respondents to the full survey will only have to respond to the full survey once. Some respondents, however, will have to respond to both the screener survey and the full survey. EPA estimates that 1,567 respondents will respond once to the screener survey, 410 respondents will respond once to the full survey, and 308 respondents will respond once to both the screener survey and the full survey.

The annual public burden for this collection of information is estimated to average 0.25 hours per screener survey response; 1 hour per full survey response for small public water systems; 2 hours per full survey response for medium public water systems; and 3 hours per full survey response for large public water systems. The estimated total annual respondent burden for screener survey respondents is 469 hours with a current annual cost of $10,742; the estimated total annual respondent burden for full survey respondents is 1,304 hours with a current annual cost of $34,204. Total estimated annual respondent burden associated with the complete information collection effort is 1,773 hours with a current annual cost of $44,946.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 21, 2003.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 03–9046 Filed 4–11–03; 8:45 am]

BILLING CODE 8560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL –7482–8]

Science Advisory Board, Clean Air Scientific Advisory Committee, Notification of Public Advisory Committee Meeting; Teleconference Consultation on Risk Analysis Plans for Coarse Particulate Matter ($PM_{10-2.5}$) and PM_{10}

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA), Science Advisory Board (SAB), announces the conduct of a publically-accessible teleconference of the Clean Air Scientific Advisory Committee (CASAC) Particulate Matter (PM) Review Panel to review the Agency's risk analysis plans for coarse-fraction $PM_{10-2.5}$ and PM_{10}.

DATES: The conference call meeting will take place on Thursday, May 1, 2003, from 10 a.m. to 12 p.m. eastern time. Participation will be by teleconference only.

ADDRESSES: Members of the public who wish to obtain the call-in number and access code to participate must contact Ms. Delores Darden, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2282, via e-mail at: *darden.delores@epa.gov;* or at mailing address: EPA Science Advisory Board, U.S. Environmental Protection Agency (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC, 20460 (FedEx/Courier Zip Code: 20004), in order to register.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information about this conference call should contact Mr. Fred Butterfield, Designated Federal Officer (DFO), EPA Science Advisory Board Staff; at telephone/voice mail: (202) 564–4561; or via e-mail at: *butterfield.fred@epa.gov.* General information concerning the CASAC or the EPA Science Advisory Board can be found on the EPA Web site at: *http://www.epa.gov/sab.*

SUPPLEMENTARY INFORMATION:

1. Summary. The Clean Air Scientific Advisory Committee was established by 42 U.S.C. 7409 in part to provide advice, information and recommendations on the scientific and technical aspects of issues related to the criteria for national ambient air quality standards (NAAQS). The CASAC Particulate Matter Review Panel will report to the Administrator of EPA through the CASAC, which is

administratively located under the EPA Science Advisory Board. The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. Both the CASAC and the SAB are Federal advisory committees chartered under the Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.). The CASAC Particulate Matter Review Panel will comply with the provisions of FACA and all appropriate SAB procedural policies.

On April 9, 2003, EPA's Office of Air Quality Planning and Standards (OAQPS) will make available for public review and comment a draft memorandum, "Preliminary Recommended Methodology for PM_{10} and $PM_{10-2.5}$ Risk Analyses in Light of Reanalyzed Study Results" (hereafter, draft Risk Analysis Methodology for PM_{10} and $PM_{10-2.5}$). This document outlines the overall scope proposed for the quantitative risk assessments for PM_{10} and coarse-fraction PM ($PM_{10-2.5}$) that will be conducted as part of the periodic review of the NAAQS for PM, pursuant to sections 108 and 109 of the Clean Air Act (CAA).

2. Background. On January 28, 2002 (67 FR 3897), OAQPS made available for public and CASAC review a draft document, "Proposed Methodology for Particulate Matter Risk Analyses for Selected Urban Areas" (hereafter, draft PM Risk Analysis Methodology), that describes EPA's plans and approach for conducting PM health risk analyses primarily for fine particles ($PM_{2.5}$). The PM risk analyses will be performed to assist in the preparation of the OAQPS PM Staff Paper, the purpose of which is to evaluate the policy implications of the key scientific and technical information contained in the Agency's PM Air Quality Criteria Document (AQCD) and identify critical elements that EPA staff believe should be considered in reviewing the PM NAAQS. The Staff Paper is intended to "bridge the gap" between the scientific review contained in the AQCD and the public health and welfare policy judgments required of the Administrator in reviewing the NAAQS. On February 27, 2002, the CASAC PM Review Panel met via public teleconference to provide advice to EPA on the proposed methodology; and, on May 23, 2002, the CASAC issued an Advisory providing its advice to the EPA Administrator entitled, "Review of the Agency's Draft Proposed Methodology for Particulate Matter Risk Analysis for Selected Urban Areas; an Advisory by the Clean Air Scientific Advisory Committee (EPA–SAB–CASAC–ADV–02–002), located on the EPA Science Advisory Board Web site at: *http://www.epa.gov/sab/pdf/casacadv02002.pdf.*

In response to the advice provided in the May 2002 CASAC Advisory, OAQPS has proposed to expand the scope of the PM health risk analyses to include risk analyses for PM_{10}. The charge to the CASAC PM Panel during their consultation on May 1, 2003, is to provide feedback on the scope and approach proposed by EPA for the PM_{10} and $PM_{10-2.5}$ components of the risk analyses. EPA is making available the draft Risk Analysis Methodology for PM_{10} and $PM_{10-2.5}$ to facilitate discussion and review of the proposed approach by the CASAC and general public. This draft document takes into consideration the availability of reanalyses using alternative statistical approaches for some PM health effect studies identified by EPA as being of high priority for policy considerations (*see* the following URL: *http://www.epa.gov/ncea/partmatt.htm*, for more information). This document outlines the overall scope proposed for the quantitative risk assessments for PM_{10} and $PM_{10-2.5}$ including health endpoints to be analyzed, health studies that serve as the source of concentration-response functions, and cities to be examined.

Following the May 1, 2003, CASAC Particulate Matter Review Panel teleconference to review the draft Risk Analysis Methodology for PM_{10} and $PM_{10-2.5}$, EPA will prepare a technical report describing the risk analysis methodology in greater detail and including preliminary risk estimates taking into account public and CASAC comments. The methodology and preliminary estimates will be summarized in the next draft of the OAQPS PM Staff Paper, which will be released for public and CASAC review later this year.

Any questions concerning the draft Risk Analysis Methodology for PM_{10} and $PM_{10-2.5}$ should be directed to Mr. Harvey Richmond, OAQPS's Health and Ecosystems Effects Group, at telephone/voice mail: (919) 541–5271; or via e-mail at: *richmond.harvey@epa.gov.*

3. Availability of Additional Meeting Materials. A copy of the draft memorandum, "Preliminary Recommended Methodology for PM_{10} and $PM_{10-2.5}$ Risk Analyses in Light of Reanalyzed Study Results" will be available through EPA's Technology Transfer Network (TTN) Web site under the technical area for National Ambient Air Quality Standards, under the heading of "Particulate Matter—Technical Documents" at the following URL address: *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_cr_td.html* after April 9, 2003. In addition, the draft agenda for the teleconference that is the subject of this notice will be posted on the EPA Science Advisory Board Web Site at: *http://www.epa.gov/sab* (under the "Agendas" subheading) approximately 10 days before the publically-accessible teleconference.

4. Providing Oral or Written Comments at SAB Meetings. It is the policy of the EPA Science Advisory Board (SAB) to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of 10 minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than 15 minutes total. Interested parties should contact the CASAC DFO, Mr. Fred Butterfield, at the telephone number or e-mail address provided above, at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers may attend the meeting and provide comment up to the meeting time. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Written comments should be supplied to Ms. Delores Darden, EPA Science Advisory Board Staff, at the e-mail address or mailing address provided above, or via fax at: (202) 501–0582, in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution. Any written comments supplied at the meeting should be provided to the DFO up to or immediately following the meeting. The SAB allows a grace period of 48 hours after adjournment of the public meeting to provide written comments supporting any verbal comments stated at the public meeting to be made a part of the public record.

5. Meeting Access. Individuals requiring special accommodation to access this teleconference should contact Ms. Delores Darden, EPA Science Advisory Board Staff, at the telephone or e-mail address provided above, at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 7, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–9040 Filed 4–11–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7483–1]

Notice of Extension of Public Comment Period on the Draft Final Guidelines for Carcinogen Risk Assessment and the Draft Supplemental Guidance for Assessing Cancer Susceptibility From Early-Life Exposure to Carcinogens

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of extension of public comment period.

SUMMARY: This notice extends the comment period for the Draft Final Guidelines for Carcinogen Risk Assessment and the draft Supplemental Guidance for Assessing Cancer Susceptibility from Early-Life Exposure to Carcinogens. The availability of these documents was originally announced in the **Federal Register** on March 3, 2003 (68 FR 10012).

DATES: Comments must be received by Monday, June 2, 2003.

ADDRESSES: The documents are available via the Internet from *www.epa.gov/ncea/raf/cancer2003.htm.* Instructions for submitting comments are provided at this website and in the March 3, 2003 **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Dr. William P. Wood, Risk Assessment Forum (mail code 8601D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone 202–564–3361, or send electronic mail inquiries to *risk.forum@epa.gov.*

SUPPLEMENTARY INFORMATION: In the March 3, 2003 **Federal Register** (68 FR 10012), EPA announced the availability of, and opportunity to comment on, the Draft Final Guidelines for Carcinogen Risk Assessment (February 2003, NCEA–F–0644A) and the draft Supplemental Guidance for Assessing Cancer Susceptibility from Early-Life Exposure to Carcinogens (EPA/630/R–03/003). The comment period was scheduled to close on May 1, 2003. This notice extends the comment period until June 2, 2003. EPA will consider all comments received by this date in completing final Guidelines and supplemental guidance.

As announced in the **Federal Register** on April 11, 2003, a panel of EPA's Science Advisory Board (SAB) will meet to review the draft Supplemental Guidance on May 12 to 14, 2003. EPA will provide all public comments on the draft Supplemental Guidance that EPA has received by May 1, 2003 to the SAB review panel prior to its meeting. Comments received by EPA by June 2, 2003 but after May 1, 2003 will also be forwarded to the SAB for consideration by the review panel in completing its report. Comments may also be submitted directly to the SAB in the manner described in the **Federal Register** notice announcing the SAB meeting. It is the policy of the SAB to accept written comments and accommodate oral public comments wherever possible at its public meetings.

Dated: April 8, 2003.

Paul Gilman,

Assistant Administrator for Research and Development.

[FR Doc. 03–9048 Filed 4–11–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 4, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 13, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0208.

Title: Section 73.1870, Chief Operators.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; Not-for-profit institutions.

Number of Respondents: 14,500.

Estimated Time per Response: 26 hours.

Frequency of Response: Recordkeeping; Third party disclosure.

Total Annual Burden: 379,407.

Total Annual Costs: $0.00.

Needs and Uses: 47 CFR 73.1870 requires that the licensee of an AM, FM, or TV broadcast station designate a chief operator of the station. Section 73.1870(b)(3) requires that this designation must be in writing and posted with the station license. Section 73.1230 requires that all licensees post station licenses "at the place the licensee considers the principal control point of the transmitter" generally at the transmitter site. Agreements with chief operators serving on a contract basis must be in writing with a copy kept in

the station files. Section 73.1870(c)(3) requires that the chief operator, or personnel delegated and supervised by the chief operator, review the station records at least once each week to determine if required entries are being made correctly, and verify that the station has been operated in accordance with FCC rules and the station authorization. Upon completion of the review, the chief operator must date and sign the log, initiate corrective action, which may be necessary, and advise the station licensee of any condition, which is repetitive. The posting of the designation of the chief operator is used by interested parties to readily identify the chief operator. The review of the station records is used by the chief operator, and FCC staff in investigations, to assure that the station is operating in accordance with its station authorization and the FCC rules and regulations.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–8969 Filed 4–11–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[No. 2003–N–4]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) is announcing the Federal Home Loan Bank (Bank) members it has selected for the 2002–03 fifth quarter review cycle under the Finance Board's community support requirements regulation. This notice also prescribes the deadline by which Bank members selected for review must submit Community Support Statements to the Finance Board.

DATES: Bank members selected for the 2002–03 fifth quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board on or before May 26, 2003.

ADDRESSES: Bank members selected for the 2002–03 fifth quarter review cycle under the Finance Board's community support requirements regulation must submit completed Community Support Statements to the Finance Board either by regular mail at the Federal Housing Finance Board, Office of Supervision, Community Investment and Affordable Housing, 1777 F Street, NW., Washington, DC 20006, or by electronic mail at *fitzgeralde@fhfb.gov*.

FOR FURTHER INFORMATION CONTACT: Emma J. Fitzgerald, Program Analyst, Office of Supervision, Community Investment and Affordable Housing, by telephone at 202/408–2874, by electronic mail at *fitzgeralde@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Selection for Community Support Review

Section 10(g)(1) of the Federal Home Loan Bank Act (Bank Act) requires the Finance Board to promulgate regulations establishing standards of community investment or service Bank members must meet in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(1). The regulations promulgated by the Finance Board must take into account factors such as the Bank member's performance under the Community Reinvestment Act of 1977 (CRA), 12 U.S.C. 2901 *et seq.*, and record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(2). Pursuant to section 10(g) of the Bank Act, the Finance Board has promulgated a community support requirements regulation that establishes standards a Bank member must meet in order to maintain access to long-term advances, and review criteria the Finance Board must apply in evaluating a member's community support performance. *See* 12 CFR part 944. The regulation includes standards and criteria for the two statutory factors—CRA performance and record of lending to first-time homebuyers. 12 CFR 944.3. Only members subject to the CRA must meet the CRA standard. 12 CFR 944.3(b). All members, including those not subject to CRA, must meet the first-time homebuyer standard. 12 CFR 944.3(c).

Under the rule, the Finance Board selects approximately one-eighth of the members in each Bank district for community support review each calendar quarter. 12 CFR 944.2(a). The Finance Board will not review an institution's community support performance until it has been a Bank member for at least one year. Selection for review is not, nor should it be construed as, any indication of either the financial condition or the community support performance of the member.

Each Bank member selected for review must complete a Community Support Statement and submit it to the Finance Board by the May 26, 2003 deadline prescribed in this notice. 12 CFR 944.2(b)(1)(ii) and (c). On or before April 28, 2003, each Bank will notify the members in its district that have been selected for the 2002–03 fifth quarter community support review cycle that they must complete and submit to the Finance Board by the deadline a Community Support Statement. 12 CFR 944.2(b)(2)(i). The member's Bank will provide a blank Community Support Statement Form, which also is available on the Finance Board's web site: *http://www.fhfb.gov*. Upon request, the member's Bank also will provide assistance in completing the Community Support Statement.

The Finance Board has selected the following members for the 2002–03 fifth quarter community support review cycle:

Federal Home Loan Bank of Boston—District 1

People's Bank, Bridgeport, Connecticut
Farmington Savings Bank, Farmington, Connecticut
Savings Bank of Manchester, Manchester, Connecticut
Liberty Bank, Middletown, Connecticut
Naugatuck Savings Bank, Naugatuck, Connecticut
The Citizens National Bank, Putnam, Connecticut
Simsbury Bank and Trust Company, Simsbury, Connecticut
Windsor Federal Savings & Loan, Windsor, Connecticut
Windsor Locks Community Bank, FSL, Windsor Locks, Connecticut
United Kingfield Bank, Bangor, Maine
Ocean Communities Federal Credit Union, Biddeford, Maine
St. Joseph's Credit Union, Biddeford, Maine
The First National Bank of Damariscotta, Damariscotta, Maine
Gardiner Savings Institution FSB, Gardiner, Maine
Machias Savings Bank, Machias, Maine
Katahdin Federal Credit Union, Millinocket, Maine
St. Croix Federal Credit Union, Woodland, Maine
Tremont Credit Union, Boston, Massachusetts
University Credit Union, Boston, Massachusetts
Brockton Credit Union, Brockton, Massachusetts
Broadway National Bank, Chelsea, Massachusetts
Dedham Co-operative Bank, Dedham, Massachusetts
Everett Credit Union, Everett, Massachusetts
Worker's Credit Union, Fitchburg, Massachusetts
Framingham Co-operative Bank, Framingham, Massachusetts
The Benjamin Franklin Savings Bank, Franklin, Massachusetts
Dean Cooperative Bank, Franklin, Massachusetts
Greenfield Savings Bank, Greenfield, Massachusetts
UMassFive College Federal Credit Union, Hadley, Massachusetts
Hanscom Federal Credit Union, Hanscom AFB, Massachusetts
Economy Co-operative Bank, Merrimac, Massachusetts
Mayflower Cooperative Bank, Middleborough, Massachusetts
Millbury Federal Credit Union, Millbury, Massachusetts
Compass Bank for Savings, New Bedford, Massachusetts
First Citizens' Federal Credit Union, New Bedford, Massachusetts
North Shore Bank, A Co-Operative Bank, Peabody, Massachusetts
Berkshire Bank, Pittsfield, Massachusetts
The Pittsfield Cooperative Bank, Pittsfield, Massachusetts
Sharon Co-operative Bank, Sharon, Massachusetts
Slade's Ferry Trust Company, Somerset, Massachusetts
Central Cooperative Bank, Somerville, Massachusetts
Savers Co-operative Bank, Southbridge, Massachusetts
Southbridge Savings Bank, Southbridge, Massachusetts
Stoneham Co-operative Bank, Stoneham, Massachusetts
The Martha's Vineyard Co-operative Bank, Vineyard Haven, Massachusetts
Ware Co-operative Bank, Ware, Massachusetts
United Cooperative Bank, West Springfield, Massachusetts
Westfield Savings Bank, Westfield, Massachusetts
Winthrop Federal Credit Union, Winthrop, Massachusetts
Flagship Bank and Trust Company, Worcester, Massachusetts
Connecticut River Bank N.A. Charleston, New Hampshire
Claremont Savings, Claremont, New Hampshire
Triangle Credit Union, Nashua, New Hampshire
Sugar River Savings Bank, Newport, New Hampshire
Lake Sunapee Bank, Newport, New Hampshire
Piscataqua Savings Bank, Portsmouth, New Hampshire
Service Credit Union, Portsmouth, New Hampshire
The Washington Trust Company, Westerly, Rhode Island
The Bank of Bennington, Bennington, Vermont
Factory Point National Bank, Manchester Center, Vermont
Heritage Family Credit Union, Rutland, Vermont
Passumpsic Savings Bank, St. Johnsbury, Vermont

Federal Home Loan Bank of New York—District 2

Ocwen Federal Bank FSB, West Palm Beach, Florida
American Savings Bank of NJ, Bloomfield, New Jersey
Clifton Savings Bank, S.L.A., Clifton, New Jersey
Sussex Bank, Franklin, New Jersey
First Hope Bank, a national banking association, Hope, New Jersey
Magyar Savings Bank, New Brunswick, New Jersey
Lusitania Savings Bank, fsb, Newark, New Jersey
Roebling Bank, Roebling, New Jersey
Penn Federal Savings Bank, West Orange, New Jersey
Monroe Savings Bank, S.L.A., Williamstown, New Jersey
Franklin Savings Bank, Woodstown, New Jersey
BSB Bank & Trust Company, Binghamton, New York
Ponce De Leon Federal Bank, Bronx, New York
Atlantic Liberty Savings, Brooklyn, New York
Community Capital Bank, Brooklyn, New York
The Bank of Castile, Castile, New York
Fulton Savings Bank, Fulton, New York
Astoria Federal Savings & Loan Association, Lake Success, New York
Pittsford Federal Credit Union, Mendon, New York
First Federal Savings of Middletown, Middletown, New York
Amalgamated Bank, New York, New York
United Orient Bank, New York, New York
Northfield Savings Bank, Staten Island, New York
Empire Federal Credit Union, Syracuse, New York
Wallkill Valley FS&LA, Wallkill, New York
The Bank & Trust of Puerto Rico, San Juan, Puerto Rico

Federal Home Loan Bank of Pittsburgh—District 3

Citicorp Trust Bank, FSB, Newark, Delaware
Wilmington Savings Fund Society, FSB, Wilmington, Delaware
C & G Savings Bank, Altoona, Pennsylvania
Ambler Savings & Loan Association, Ambler, Pennsylvania
First Star Savings Bank, Bethlehem, Pennsylvania
First FS&LA of Bucks County, Bristol, Pennsylvania
Alliance Bank, Broomall, Pennsylvania
Sharon Savings Bank, Darby, Pennsylvania
ESB Bank, Ellwood City, Pennsylvania
County Savings Association, Essington, Pennsylvania
Stonebridge Bank, Exton, Pennsylvania
Bank of Hanover and Trust Company, Hanover, Pennsylvania
Fox Chase Bank, Hatboro, Pennsylvania
Hatboro Federal Savings, Hatboro, Pennsylvania
First Federal Bank, Hazleton, Pennsylvania
William Penn Savings and Loan Association, Levittown, Pennsylvania
Willow Grove Bank, Maple Glen, Pennsylvania
First Keystone Federal Savings Bank, Media, Pennsylvania
Morton Savings Bank, Morton, Pennsylvania
Nesquehoning Savings Bank, Nesquehoning, Pennsylvania
Third Federal Bank, Newtown, Pennsylvania
Malvern Federal Savings Bank, Paoli, Pennsylvania
First Savings Bank of Perkasie, Perkasie, Pennsylvania
Asian Bank, Philadelphia, Pennsylvania
Pennsylvania Business Bank, Philadelphia, Pennsylvania
Second FS&LA of Philadelphia, Philadelphia, Pennsylvania
Washington Savings Association, Philadelphia, Pennsylvania
Bell FS&LA of Bellevue, Pittsburgh, Pennsylvania
Great American Federal, Pittsburgh, Pennsylvania
National City Bank of Pennsylvania, Pittsburgh, Pennsylvania
Progressive Home FS&LA, Pittsburgh, Pennsylvania
Patriot Bank, Pottstown, Pennsylvania
The Quakertown National Bank, Quakertown, Pennsylvania
Mercer County State Bank, Sandy Lake, Pennsylvania
North Penn Savings & Loan Association, Scranton, Pennsylvania
Penn Security Bank, & Trust Company, Scranton, Pennsylvania
Slovenian S&LA of Canonsburg, Strabane, Pennsylvania
First National Bank of West Chester, West Chester, Pennsylvania
First Heritage Bank, Wilkes-Barre, Pennsylvania
WNB Bank, Williamsport, Pennsylvania
First Century Bank, Bluefield, West Virginia
Pioneer Community Bank, Iaeger, West Virginia
Bank of Mount Hope, Inc., Mount Hope, West Virginia

Community Bank of Parkersburg, Parkersburg, West Virginia
First National Bank, Spencer, West Virginia
Pleasants County Bank, St. Marys, West Virginia
Poca Valley Bank, Walton, West Virginia

Federal Home Loan Bank of Atlanta—District 4

Covington County Bank, Andalusia, Alabama
United Bank, Atmore, Alabama
AmSouth Bank, Birmingham, Alabama
Bank of Alabama, Birmingham, Alabama
New South Federal Savings Bank, Birmingham, Alabama
Community Bank, Blountsville, Alabama
BankTrust, Brewton, Alabama
Cullman Savings Bank, Cullman, Alabama
Peoples Bank of North Alabama, Cullman, Alabama
First American Bank, Decatur, Alabama
The Citizens Bank, Enterprise, Alabama
Commerce South Bank, Eufala, Alabama
EvaBank, Eva, Alabama
First Gulf Bank, Gulf Shores, Alabama
Merchants Bank, Jackson, Alabama
Farmers & Merchants Bank, Lafayette, Alabama
Southwest Bank of Alabama, Inc., McIntosh, Alabama
Bank Trust, Mobile, Alabama
Community Spirit Bank, Red Bay, Alabama
Valley State Bank, Russellville, Alabama
The Peoples Bank and Trust Company, Selma, Alabama
Sweet Water State Bank, Sweet Water, Alabama
First Federal of the South, Sylacauga, Alabama
First Citizens Bank, Talladega, Alabama
The First National Bank of Talladega, Talladega, Alabama
First United Security Bank, Thomasville, Alabama
City First Bank of D.C., N.A., Washington, D. C.
Citrus and Chemical Bank, Bartow, Florida
Mackinàc Savings Bank, FSB, Boynton Beach, Florida
First FSB of the Glades, Clewiston, Florida
First Bank of Clewiston, Clewiston, Florida
First National Bank of Crestview, Crestview, Florida
Regent Bank, Davie, Florida
Dunnellon State Bank, Dunnellon, Florida
Landmark Bank, N.A., Ft. Lauderdale, Florida
Premier Community Bank of South Florida, Ft. Lauderdale, Florida
Old Florida Bank, Fort Myers, Florida
First City Bank of Florida, Fort Walton Beach, Florida
Desjardins Federal Savings Bank, Hallandale, Florida
First National Bank of South Florida, Homestead, Florida
Florida Community Bank, Immokalee, Florida
The Bank of Inverness, Inverness, Florida
Educational Community Credit Union, Jacksonville, Florida
First Guaranty Bank and Trust Company, Jacksonville, Florida
Monticello Bank, Jacksonville, Florida
Publix Employees FCU, Lakeland, Florida
First FSB of Lake County, Leesburg, Florida
First Federal Savings Bank, Live Oak, Florida
Commercial Bank of Florida, Miami, Florida
Eastern National Bank, Miami, Florida
Helm Bank, Miami, Florida
Tropical Financial Credit Union, Miami, Florida
Pelican National Bank, Naples, Florida
American National Bank, Oakland Park, Florida
CNL Bank, Orlando, Florida
First Community Bank of Palm Beach County, Pahokee, Florida
Peoples First Community Bank, Panama City, Florida
Century Bank, a Federal Savings Bank, Sarasota, Florida
Highlands Independent Bank, Sebring, Florida
Eastern Financial Florida Credit Union, South Florida, Florida
Raymond James Bank, FSB, St. Petersburg, Florida
United Southern Bank, Umatilla, Florida
Marine Bank and Trust, Vero Beach, Florida
Sterling Bank, F.S.B., West Palm Beach, Florida
Montgomery County Bank, Ailey, Georgia
Chattahoochee National Bank, Alpharetta, Georgia
First Colony Bank, Alpharetta, Georgia
Citizens Trust Bank, Atlanta, Georgia
First Bank of Georgia, Augusta, Georgia
United Community Bank, Blairsville, Georgia
First National Bank of Georgia, Buchanan, Georgia
Bank of Chickamauga, Chickamauga, Georgia
Peoples Community Bank of Colquitt, Colquitt, Georgia
Peoples Community Bank, Colquitt, Georgia
First Bank of Dalton, Dalton, Georgia
Bank of Dudley, Dudley, Georgia
The Peoples Bank, Eatonton, Georgia
Pinnacle Bank, N.A., Elberton, Georgia
Gainesville Bank and Trust, Gainesville, Georgia
First Citizens Bank, Glennville, Georgia
South Georgia Bank, Glennville, Georgia
SunMark Community Bank, Hawkinsville, Georgia
Community Trust Bank, Hiram, Georgia
Northeast Georgia Bank, Lavonia, Georgia
Peoples Bank, Lithonia, Georgia
The Community Bank, Loganville, Georgia
Rivoli Bank & Trust, Macon, Georgia
First Security National Bank, Norcross, Georgia
Family Bank, Pelham, Georgia
The Citizens National Bank of Quitman, Quitman, Georgia
Wilcox County State Bank, Rochelle, Georgia
Citizens First Bank, Rome, Georgia
Farmers and Merchants Community Bank, Senoia, Georgia
Quantum National Bank, Suwanee, Georgia
Bank of Thomas County, Thomasville, Georgia
Citizens Bank & Trust, Trenton, Georgia
Farmers and Merchants Bank, Washington, Georgia
First Piedmont Bank, Winder, Georgia
Bay-Vanguard Federal Savings Bank, Baltimore, Maryland
Hull Federal Savings Bank, Baltimore, Maryland
Ideal Federal Savings Bank, Baltimore, Maryland
State Employees Credit Union, Baltimore, Maryland
Susquehanna Bank, Baltimore, Maryland
Vigilant Federal Savings Bank, Baltimore, Maryland
F&M Bank—Allegiance, Bethesda, Maryland
TMB Federal Credit Union, Cabin John, Maryland
Cecil Federal Bank, Elkton, Maryland
The Back and Middle River FS&L, Essex, Maryland
County National Bank, Glen Burnie, Maryland
North Arundel FSB, FSB, Pasadena, Maryland
Provident State Bank of Preston, Preston, Maryland
IR Federal Credit Union, Riverdale, Maryland
Randolph Bank & Trust Company, Asheboro, North Carolina
First Commerce Bank, Charlotte, North Carolina
First Union Direct Bank, N.A., Charlotte, North Carolina
Rowan Savings Bank, SSB, China Grove, North Carolina
Mechanics and Farmers Bank, Durham, North Carolina

Gateway Bank & Trust Company, Elizabeth City, North Carolina
Macon Bank, Franklin, North Carolina
First Gaston Bank of North Carolina, Gastonia, North Carolina
Carolina Bank, Greensboro, North Carolina
MountainBank, Hendersonville, North Carolina
Hertford Savings Bank, SSB, Hertford, North Carolina
The Little Bank, Kinston, North Carolina
Industrial Federal Savings Bank, Lexington, North Carolina
Lexington State Bank, Lexington, North Carolina
Liberty Savings and Loan Association, Liberty, North Carolina
First Savings and Loan Association, Mebane, North Carolina
American Community Bank, Monroe, North Carolina
Mount Gilead S&LA, Mount Gilead, North Carolina
State Employees' Credit Union, Raleigh, North Carolina
Taylorsville Savings Bank, SSB, Taylorsville, North Carolina
Anson Bank & Trust Company, Wadesboro, North Carolina
Waccamaw Bank, Whiteville, North Carolina
Cooperative Bank for Svgs, Inc., SSB, Wilmington, North Carolina
Loyal American Life Insurance Company, Cincinnati, Ohio
People's Community Bank of S.C., Aiken, South Carolina
Home Federal Savings and Loan Assn, Bamberg, South Carolina
Florence National Bank, Florence, South Carolina
GrandSouth Bank, Fountain Inn, South Carolina
Bank of Greeleyville, Greeleyville, South Carolina
County Bank, Greenwood, South Carolina
Greer State Bank, Greer, South Carolina
First National Bank of South Carolina, Holly Hill, South Carolina
Kingstree FS&LA, Kingstree, South Carolina
The Bank of Clarendon, Manning, South Carolina
Southcoast Community Bank, Mt. Pleasant, South Carolina
Anderson Brothers Bank, Mullins, South Carolina
Pickens Savings & Loan Association, Pickens, South Carolina
Bank of Travelers Rest, Travelers Rest, South Carolina
Napus Federal Credit Union, Alexandria, Virginia
The Blue Grass Valley Bank, Blue Grass, Virginia
The Bank of Southside Virginia, Carson, Virginia
Second Bank & Trust, Culpeper, Virginia
Apple Federal Credit Union, Fairfax, Virginia
Chesapeake Bank, Kilmarnock, Virginia
Imperial Savings and Loan Association, Martinsville, Virginia
Navy Federal Credit Union, Merrifield, Virginia
Bank of the Commonwealth, Norfolk, Virginia
Lee Bank and Trust Company, Pennington Gap, Virginia
First , Virginia Bank—Colonial, Richmond, Virginia
The Marathon Bank, Winchester, Virginia

Federal Home Loan Bank of Cincinnati—District 5

Farmers Bank & Trust Company, Bardstown, Kentucky
Wilson & Muir Bank and Trust Company, Bardstown, Kentucky
Bank of Cadiz and Trust Company, Cadiz, Kentucky
Bank of Columbia, Columbia, Kentucky
First Federal Savings Bank, Cynthiana, Kentucky
The Harrison Deposit Bank and Trust Company, Cynthiana, Kentucky
Kentucky National Bank, Elizabethtown, Kentucky
Farmers Bank, Hardinsburg, Kentucky
Hancock Bank and Trust Company, Hawesville, Kentucky
Peoples Bank & Trust Company of Hazard, Hazard, Kentucky
Heritage Bank, Hopkinsville, Kentucky
Planters Bank, Inc., Hopkinsville, Kentucky
Bank of Jamestown, Jamestown, Kentucky
THE BANK—Oldham County, Inc., LaGrange, Kentucky
Leitchfield Deposit Bank and Trust Company, Leitchfield, Kentucky
Central Bank & Trust Company, Inc., Lexington, Kentucky
L&N Federal Credit Union, Louisville, Kentucky
River City Bank, Louisville, Kentucky
Farmers Bank & Trust Company of Marion, Kentucky, Marion, Kentucky
Monticello Banking Company, Monticello, Kentucky
Pioneer Bank, Munfordville, Kentucky
South Central Bank of Daviess County, Inc., Owensboro, Kentucky
The Salt Lick Deposit Bank, Owingsville, Kentucky
Blue Grass Federal Savings and Loan Association, Paris, Kentucky
First Commonwealth Bank of Prestonsburg, Inc., Prestonsburg, Kentucky
Fort Knox National Bank, Radcliff, Kentucky
Belpre Savings Bank, Belpre, Ohio
The Farmers Citizens Bank, Bucyrus, Ohio
Eagle Savings Bank, Cincinnati, Ohio
The Mercantile Savings Bank, Cincinnati, Ohio
Union Savings Bank, Cincinnati, Ohio
The Winton Savings and Loan Company, Cincinnati, Ohio
Conneaut Savings Bank, Conneaut, Ohio
The Commercial Bank, Delphos, Ohio
The Fort Jennings State Bank, Fort Jennings, Ohio
The Hamler State Bank, Hamler, Ohio
Morgan Bank, N.A., Hudson, Ohio
The Fahey Banking Company of Marion, Marion, Ohio
Citizens National Bank of McConnelsville, McConnelsville, Ohio
Great Lakes Bank, Mentor, Ohio
The American Savings Bank, Middletown, Ohio
First National Bank of New Holland, New Holland, Ohio
The Farmers State Bank, New Washington, Ohio
First National Bank, Orrville, Ohio
The Republic Banking Company, Republic, Ohio
Chippewa Valley Bank, Rittman, Ohio
Mutual Federal Savings Bank, Sidney, Ohio
The Security National Bank and Trust Company, Springfield, Ohio
Central Federal Savings and Loan Association of Wellsville, Wellsville, Ohio
The Peoples Savings and Loan Company, West Liberty, Ohio
The Union Banking Company, West Mansfield, Ohio
Farmers State Bank, West Salem, Ohio
First Community Bank, Whitehall, Ohio
The Wilmington Savings Bank, Wilmington, Ohio
The Wayne Savings Community Bank, Wooster, Ohio
Brighton Bank, Brighton, Tennessee
Cumberland Bank, Carthage, Tennessee
Highland Federal Savings and Loan Association Of Crossville, Crossville, Tennessee
Security Federal Bank, Elizabethton, Tennessee
The Lauderdale County Bank, Halls, Tennessee
Carroll Bank & Trust, Huntingdon, Tennessee
First National Bank, Manchester, Tennessee
The Coffee County Bank, Manchester, Tennessee
The Home Bank of Tennessee, Maryville, Tennessee
Memphis Area Teachers' Credit Union, Memphis, Tennessee
The Bank of Moscow, Moscow, Tennessee
Johnson County Bank, Mountain City, Tennessee

Bank of Murfreesboro, Murfreesboro, Tennessee
Home Banking Company, Selmer, Tennessee

Federal Home Loan Bank of Indianapolis—District 6

Bedford Federal Savings Bank, Bedford, Indiana
Franklin County National Bank, Brookville, Indiana
Union Federal Savings & Loan Association, Crawfordsville, Indiana
Decatur Bank and Trust Company, Decatur, Indiana
United Fidelity Bank, Evansville, Indiana
Fowler State Bank, Fowler, Indiana
First Federal Savings Bank, Huntington, Indiana
Campbell & Fetter Bank, Kendallville, Indiana
United Community Bank, Lawrenceburg, Indiana
River Valley Financial Bank, Madison, Indiana
Fidelity FSB, Marion, Indiana
State Bank of Markle, Markle, Indiana
First State Bank of Middlebury, Middlebury, Indiana
Citizens Financial Services, FSB, Munster, Indiana
Regional Federal Savings Bank, New Albany, Indiana
Community Bank of Southern Indiana, New Albany, Indiana
Ameriana Bank and Trust, New Castle, Indiana
AmericanTrust FSB, Peru, Indiana
Mid-Southern Savings Bank, FSB, Salem, Indiana
Spencer County Bank, Santa Claus, Indiana
Jackson County Bank, Seymour, Indiana
Shelby County Bank, Shelbyville, Indiana
Sobieski Bank, South Bend, Indiana
Security Federal Bank, FSB, St. John, Indiana
Terre Haute Savings Bank, Terre Haute, Indiana
Frances Slocum Bank, Wabash, Indiana
Homestead Savings Bank, FSB, Albion, Michigan
Ann Arbor Commerce Bank, Ann Arbor, Michigan
Charlevoix State Bank, Charlevoix, Michigan
Dearborn Federal Savings Bank, Dearborn, Michigan
Financial Health Credit Union, East Lansing, Michigan
Firstbank-Lakeview, Lakeview, Michigan
State Employees Credit Union, Lansing, Michigan
Independent Bank South Michigan, Leslie, Michigan
State Savings Bank, Manistique, Michigan
Mason State Bank, Mason, Michigan
Community Federal Credit Union, Plymouth, Michigan
Team One Credit Union, Saginaw, Michigan
Sidney State Bank, Sidney, Michigan
Standard Federal Bank National Association, Troy, Michigan
Flagstar Bank, Troy, Michigan
Research Federal Credit Union, Warren, Michigan
1st Bank, West Branch, Michigan

Federal Home Loan Bank of Chicago—District 7

Oxford Bank and Trust, Addison, Illinois
Bank of Bellwood, Bellwood, Illinois
Heartland Bank & Trust Company, Bloomington, Illinois
Peoples Bank of Kankakee County, Bourbonnais, Illinois
Bridgeview Bank and Trust, Bridgeview, Illinois
Southe Pointe Bank, Carbondale, Illinois
United Community Bank, Chatham, Illinois
Amalgamated Bank of Chicago, Chicago, Illinois
Austin Bank of Chicago, Chicago, Illinois
Builders Bank, Chicago, Illinois
Burling Bank, Chicago, Illinois
Community Bank of Lawndale, Chicago, Illinois
First Savings Bank of Hegewisch, Chicago, Illinois
Foster Bank, Chicago, Illinois
State Bank of Countryside, Countryside, Illinois
First Savings Bank, Danville, Illinois
Clover Leaf Bank, Edwardsville, Illinois
Effingham State Bank, Effingham, Illinois
Illinois Community Bank, Effingham, Illinois
Washington Savings Bank, Effingham, Illinois
Elgin Financial Savings Bank, Elgin, Illinois
First American Bank, Elk Grove Village, Illinois
Forest Park National Bank & Trust Company, Forest Park, Illinois
Harris Bank Frankfort, Frankfort, Illinois
Union Savings Bank, Freeport, Illinois
Central Bank Illinois, Geneseo, Illinois
Bank of Gibson City, Gibson City, Illinois
Northside Community Bank, Gurnee, Illinois
UnionBank/Northwest, Hanover, Illinois
Parkway Bank & Trust Company, Harwood Heights, Illinois
North Central Bank, Hennepin, Illinois
State Bank of Herscher, Herscher, Illinois
First State Bank of Heyworth, Heyworth, Illinois
The Farmers State Bank and Trust Company, Jacksonville, Illinois
First FS&LA of Kewanee, Kewanee, Illinois
Logan County Bank, Lincoln, Illinois
Twin Oaks Savings Bank, Marseilles, Illinois
Citizens Community Bank, Mascoutah, Illinois
Okaw Building and Loan, s.b., Mattoon, Illinois
Middletown State Bank, Middleton, Illinois
Blackhawk State Bank, Milan, Illinois
Parish Bank and Trust Company, Momence, Illinois
First State Bank of Monticello, Monticello, Illinois
BankPlus, Morton, Illinois
George Washington Savings Bank, Oak Lawn, Illinois
The First National Bank of Ogden, Ogden, Illinois
The First National Bank of Okawville, Okawville, Illinois
First National Bank in Olney, Olney, Illinois
The Edgar County Bank & Trust Company, Paris, Illinois
First FS&LA of Pekin, Pekin, Illinois
First National Bank in Pinckneyville, Pinckneyville, Illinois
State Street Bank & Trust Company, Quincy, Illinois
Mercantile Trust and Savings Bank, Quincy, Illinois
North County Savings Bank, Red Bud, Illinois
First Crawford State Bank, Robinson, Illinois
American Bank and Trust Company, Rock Island, Illinois
Stillman BancCorp, N.A., Rockford, Illinois
First Savanna Savings Bank, Savanna, Illinois
First State Bank of Shannon-Polo, Shannon, Illinois
Security Bank, sb, Springfield, Illinois
UmbrellaBank, FSB, Summit, Illinois
The National Bank & Trust Company of Sycamore, Sycamore, Illinois
Alpha Community Bank, Toluca, Illinois
Villa Park Trust & Savings Bank, Villa Park, Illinois
Citizens First State Bank, Walnut, Illinois
The Hill Dodge Banking Company, Warsaw, Illinois
State Bank of Waterloo, Waterloo, Illinois
Cardunal Savings Bank, FSB, West Dundee, Illinois
First American Credit Union, Beloit, Wisconsin
Jackson County Bank, Black River Falls, Wisconsin
State Bank of Cross Plains, Cross Plains, Wisconsin

State Financial Bank, National Association, Hales Corners, Wisconsin
AM Community Credit Union, Kenosha, Wisconsin
Time Federal Savings Bank, Medford, Wisconsin
M&I Marshall & Ilsley Bank, Milwaukee, Wisconsin
Marine Bank, Pewaukee, Wisconsin
Community Bank Spring Green & Plain, Spring Green, Wisconsin
Tomahawk Community Bank SSB, Tomahawk, Wisconsin

Federal Home Loan Bank of Des Moines—District 8

Peoples Trust & Savings Bank, Adel, Iowa
Security State Bank, Anamosa, Iowa
State Savings Bank, Baxter, Iowa
Farmers Trust and Savings Bank, Buffalo Center, Iowa
Linn Area Credit Union, Cedar Rapids, Iowa
United Security Savings Bank, F.S.B., Cedar Rapids, Iowa
Citizens State Bank, Clarinda, Iowa
Clear Lake Bank & Trust Company, Clera Lake, Iowa
Gateway State Bank, Clinton, Iowa
Cresco Union Savings Bank, Cresco, Iowa
Denver Savings Bank, Denver, Iowa
DeWitt Bank & Trust Company, DeWitt, Iowa
Premier Bank, Dubuque, Iowa
Liberty Trust and Savings Bank, Durant, Iowa
Farmers Trust & Savings Bank, Earling, Iowa
Hardin County Savings Bank, Eldora, Iowa
Peoples State Bank, Elkader, Iowa
Bank Plus Estherville, Iowa
NorthStar Bank, Estherville, Iowa
Fort Madison Bank & Trust Company, Fort Madison, Iowa
Security Savings Bank, Gowrie, Iowa
Midstates Bank, NA, Harlan, Iowa
Hills Bank and Trust Company, Hills, Iowa
First State Bank, Huxley, Iowa
First State Bank, Ida Grove, Iowa
Peoples Savings Bank, Indianola, Iowa
Iowa Falls State Bank, Iowa Falls, Iowa
Kerndt Brothers Savings Bank, Lansing, Iowa
Libertyville Savings Bank, Libertyville, Iowa
First State Bank, Lynnville, Iowa
First National Bank, Manning, Iowa
Valley Bank & Trust, Mapleton, Iowa
Maquoketa State Bank, Maquoketa, Iowa
Maynard Savings Bank, Maynard, Iowa
Union State Bank, Monona, Iowa
Citizens State Bank, Monticello, Iowa
Wayland State Bank, Mount Pleasant, Iowa
Mount Vernon Bank, and Trust Company, Mount Vernon, Iowa
Community Bank, Muscatine, Iowa
Horizon Federal Savings Bank, Oskaloosa, Iowa
First National Bank Midwest, Oskaloosa, Iowa
Pella State Bank, Pella, Iowa
First State Bank, Riceville, Iowa
Peoples Bank, Rock Valley, Iowa
Union State Bank, Rockwell City, Iowa
Rolfe State Bank, Rolfe, Iowa
Security State Bank, Sheldon, Iowa
First Community Bank, Sidney, Iowa
St. Ansgar State Bank, St. Ansgar, Iowa
Victor State Bank, Victor, Iowa
Washington State Bank, Washington, Iowa
Citizens State Bank, Waukon, Iowa
Iowa State Bank, West Bend, Iowa
GuideOne Life Insurance Company, West Des Moines, Iowa
GuideOne Mutual Insurance Company, West Des Moines, Iowa
GuideOne Specialty Insurance Company, West Des Moines, Iowa
Wilton Savings Bank, Wilton, Iowa
Sterling State Bank, Austin, Minnesota
White Rock Bank, Cannon Falls, Minnesota
Currie State Bank, Currie, Minnesota
State Bank of Danvers, Danvers, Minnesota
State Bank of Delano, Delano, Minnesota
Voyager Bank, Eden Prairie, Minnesota
Inter Savings Bank, fsb, Edina, Minnesota
Stearns Bank Evansville, NA, Evansville, Minnesota
1st United Bank, Faribault, Minnesota
Border State Bank of Greenbush, Greenbush, Minnesota
Citizens State Bank of Hayfield, Hayfield, Minnesota
Farmers State Bank of Hoffman, Hoffman, Minnesota
Fortress Bank National Association, Houston, Minnesota
Security State Bank of Howard Lake, Howard Lake, Minnesota
Key Community Bank, Inver Grove Heights, Minnesota
First Security Bank—Lake Benton, Lake Benton, Minnesota
Lake City Federal Savings and Loan Association, Lake City, Minnesota
Lake Area Bank, Lindstrom, Minnesota
Wells Fargo, MN N.A., Minneapolis, Minnesota
Bayside Bank, Minnetonka, Minnesota
First National Bank of Moose Lake, Moose Lake, Minnesota
United Prairie Bank, Mountain Lake, Minnesota
American Bank of the North, Nashwauk, Minnesota
State Bank of New Prague, New Prague, Minnesota
ProGrowth Bank, Nicollet, Minnesota
Midwest Bank NA, Parkers Prairie, Minnesota
First National Bank of Pine City, Pine City, Minnesota
Premier Bank Rochester, Rochester, Minnesota
Citizens State Bank of Roseau, Roseau, Minnesota
Bremer Bank, N.A., St. Cloud, Minnesota
St. James Federal Savings and Loan Association, St. James, Minnesota
Liberty State Bank, St. Paul, Minnesota
Nicollet County Bank of Saint Peter, St. Peter, Minnesota
Farmers State Bank of Trimont, Trimont, Minnesota
The First National Bank of Walker, Walker, Minnesota
Roundbank, Waseca, Minnesota
Community Bank Winsted, Winsted, Minnesota
First Independent Bank of Wood Lake, Wood Lake, Minnesota
Citizens Bank of Amsterdam, Amsterdam, Missouri
Bank of Jacomo, Blue Springs, Missouri
Community State Bank of Bowling Green, Bowling Green, Missouri
Pony Express Bank, Braymer, Missouri
Mississippi County Savings & Loan Association,Charleston, Missouri
CSB Bank, Claycomo, Missouri
Citizens Union State Bank and Trust, Clinton, Missouri
First National Bank & Trust, Columbia, Missouri
Meramec Valley Bank, Ellisville, Missouri
New Era Bank, Fredericktown, Missouri
Bank Star One, Fulton, Missouri
America Loan and Savings Association, Hannibal, Missouri
The Central Trust Bank, Jefferson City, Missouri
Macon-Atlanta State Bank, Macon, Missouri
Regional Missouri Bank, Marceline, Missouri
Nodaway Valley Bank, Maryville, Missouri
Independent Farmers Bank, Maysville, Missouri
Heritage State Bank, Nevada, Missouri
Southwest Community Bank, Ozark, Missouri
Palmyra State Bank, Palmyra, Missouri
Farley State Bank, Parkville, Missouri
Perry State Bank, Perry, Missouri
Citizens Community Bank, Pilot Grove, Missouri
Farmers Bank of Portageville, Portageville, Missouri
Pulaski Bank, Saint Louis, Missouri
Bank of Salem, Salem, Missouri
The Merchants & Farmers Bank of Salisbury, Salisbury, Missouri
Community Bank of Pettis County, Sedalia, Missouri

Empire Bank, Springfield, Missouri
Liberty Bank, Springfield, Missouri
Signature Bank, Springfield, Missouri
Bank Star of the Bootheel, Steele, Missouri
The Tipton Latham Bank, N.A., Tipton, Missouri
Bank of Washington, Washington, Missouri
West Plains Savings and Loan Association, West Plains, Missouri
First and Farmers Bank, Portland, North Dakota
First International Bank & Trust, Watford City, North Dakota
Wells Fargo South Dakota, Sioux Falls, South Dakota

Federal Home Loan Bank of Dallas—District 9

Southbank, A Federal Savings Bank, Huntsville, Alabama
Community Bank, Cabot, Arkansas
Farmers Bank and Trust Company, Clarksville, Arkansas
First State Bank, Conway, Arkansas
Bank of Eureka Springs, Eureka Springs, Arkansas
McIlroy Bank & Trust, Fayetteville, Arkansas
First National Bank of Fort Smith, Arkansas, Fort Smith, Arkansas
Peoples Bank of Imboden, Imboden, Arkansas
Bank of Lake Village, Lake Village, Arkansas
Bank of the Ozarks, Little Rock, Arkansas
First State Bank, Lonoke, Arkansas
Union Bank of Mena, Mena, Arkansas
First Bank of Montgomery County, Mount Ida, Arkansas
Newport Federal Savings Bank, Newport, Arkansas
First State Bank, Parkin, Arkansas
First Arkansas Valley Bank, Russellville, Arkansas
Bank of Salem, Salem, Arkansas
First Security Bank, Searcy, Arkansas
Simmons First Bank of Searcy, Searcy, Arkansas
Springdale Bank & Trust, Springdale, Arkansas
The Bank of Yellville, Yellville, Arkansas
Fidelity Bank & Trust Company, Baton Rouge, Louisiana
Globe Homestead FSA, Metairie, Louisiana
State-Investors Bank, Metairie, Louisiana
Home Federal Savings and Loan Association, Shreveport, Louisiana
Citizens Bank and Trust Company of Vivian, LA, Inc., Vivian, Louisiana
Cleveland Community Bank, s.s.b., Cleveland, Mississippi
First Federal Bank for Savings, Columbia, Mississippi
Citizens Bank & Trust Company, Louisville, Mississippi
Quitman Tri-County Federal Credit Union, Marks, Mississippi
Community First National Bank, Las Cruces, New Mexico
Pioneer Bank, Roswell, New Mexico
First National Bank of Santa Fe, Santa Fe, New Mexico
Liberty Bank, SSB, Austin, Texas
International Bank of Commerce, Brownsville, Texas
First American Bank Texas, SSB, Bryan, Texas
American Bank, NA, Corpus Christi, Texas
Bluebonnet Savings Bank FSB, Dallas, Texas
Guaranty Bank, Dallas, Texas
State Bank and Trust Company, Dallas, Dallas, Texas
The Bank & Trust, Del Rio, Texas
Western Bank and Trust, Duncanville, Texas
Bank of the West, El Paso, Texas
Government Employees Credit Union, El Paso, Texas
OmniBank, N.A., Houston, Texas
Houston Savings Bank, fsb, Houston, Texas
New Era Life Insurance Company, Houston, Texas
Southwest Bank of Texas, N.A., Houston, Texas
The First National Bank of Hughes Springs, Hughes Springs, Texas
Village Bank and Trust Company, Inc., Lakeway, Texas
International Bank of Commerce, Laredo, Texas
First State Bank, Moulton, Texas
Liberty Bank, North Richland Hills, Texas
Interstate Bank, ssb, Perryton, Texas
Cypress Bank, FSB, Pittsburg, Texas
Community Credit Union, Plano, Texas
First National Bank in Quanah, Quanah, Texas
Benchmark Bank, Quinlan, Texas
Peoples State Bank, Rocksprings, Texas
Crockett National Bank, San Angelo, Texas
Texas State Bank, San Angelo, Texas
Frost National Bank, San Antonio, Texas
State Bank & Trust of Seguin, Texas, Seguin, Texas
Cedar Creek Bank, Seven Points, Texas
Citizens Bank, Slaton, Texas
Texas National Bank, Tomball, Texas
First National Bank of Olney, Trinity, Texas
Southside Bank, Tyler, Texas
First Victoria National, Victoria, Texas
TexasBank, Weatherford, Texas
International Bank of Commerce, Zapata, Texas

Federal Home Loan Bank of Topeka—District 10

Gateway Credit Union, Aurora, Colorado
FirstBank of Avon, Avon, Colorado
Canon National Bank, Canon City, Colorado
Ent Federal Credit Union, Colorado Springs, Colorado
First State Bank, Colorado Springs, Colorado Springs, Colorado
Peoples National Bank Colorado, Colorado Springs, Colorado
Citizens State Bank, Cortez, Colorado
Guaranty Bank and Trust Company, Denver, Colorado
The State Bank, Rocky Ford, Colorado
FirstBank of Vail, Vail, Colorado
Community State Bank, Coffeyville, Kansas
Conway Bank, NA, Conway Springs, Kansas
The City State Bank, Fort Scott, Kansas
The Liberty Savings Association, FSA, Fort Scott, Kansas
First FS&LA, Independence, Kansas
First National Bank, Independence, Kansas
MidAmerican Bank & Trust Company, na, Leavenworth, Kansas
Kansas State Bank of Manhattan, Manhattan, Kansas
Stockgrowers State Bank, Maple Hill, Kansas
Citizens State Bank of Marysville, Marysville, Kansas
First Bank of Medicine Lodge, Medicine Lodge, Kansas
Montezuma State Bank, Montezuma, Kansas
Kansas State Bank, Overbrook, Kansas
1st Financial Bank, Overland Park, Kansas
First National Bank in Pratt, Pratt, Kansas
Rose Hill Bank, Rose Hill, Kansas
The Bennington State Bank, Salina, Kansas
First National Bank of Scott City, Scott City, Kansas
Security State Bank, Scott City, Kansas
Centera Bank, Sublette, Kansas
First Federal Savings & Loan Association of WaKeeney, WaKeeney, Kansas
First National Bank of Wamego, Wamego, Kansas
Kaw Valley State Bank, Wamego, Kansas
Fidelity Bank, Wichita, Kansas
First National Bank and Trust of Fullerton, Fullerton, Nebraska
Geneva State Bank, Geneva, Nebraska
Equitable Federal Savings Bank of Grand Island, Grand Island, Nebraska
Home FS&LA of Grand Island, Nebraska, Grand Island, Nebraska
Harvard State Bank, Harvard, Nebraska
Hershey State Bank, Hershey, Nebraska
Nebraska National Bank, Kearney, Nebraska
Platte Valley State Bank and Trust Company, Kearney, Nebraska

Bank of Keystone, Keystone, Nebraska
Home FS&LA of Nebraska, Lexington, Nebraska
Lincoln Federal Savings Bank of Nebraska, Lincoln, Nebraska
Security Federal Savings, Lincoln, Nebraska
Sherman County Bank, Loup City, Nebraska
First National Bank Northeast, Lyons, Nebraska
The Bank of Madison, Madison, Nebraska
Madison County Bank, Madison, Nebraska
BankFirst, Norfolk, Nebraska
First National Bank, North Platte, North Platte, Nebraska
Nebraskaland National Bank, North Platte, Nebraska
Pender State Bank, Pender, Nebraska
Midwest Bank, N.A., Pierce, Nebraska
The Ravenna Bank, Ravenna, Nebraska
Sidney Federal Savings & Loan Association, Sidney, Nebraska
Dakota County State Bank, South Sioux City, Nebraska
Springfield State Bank, Springfield, Nebraska
Bank of St. Edward, St. Edward, Nebraska
Tecumseh Building and Loan Association, Tecumseh, Nebraska
First National Bank Utica NE, Utica, Nebraska
Farmers State Bank, Wallace, Nebraska
Saline State Bank, Wilber, Nebraska
Citizens National Bank of Wisner, Wisner, Nebraska
66 Federal Credit Union, Bartlesville, Oklahoma
Bank of Cordell, Cordell, Oklahoma
Bank of Hydro, Hydro, Oklahoma
Armstrong Bank, Muskogee, Oklahoma
Citizens State Bank, Okemah, Oklahoma
First Enterprise Bank, Oklahoma City, Oklahoma
Union Bank, NA, Oklahoma City, Oklahoma
The First National Bank of Texhoma, Texhoma, Oklahoma
Community Bank & Trust Company, Tulsa, Oklahoma
Energy One Federal Credit Union, Tulsa, Oklahoma
Grand Lake Bank, Tulsa, Oklahoma
First Bank & Trust Company, Wagoner, Oklahoma
Weleetka State Bank, Weleetka, Oklahoma
Canadian State Bank, Yukon, Oklahoma

Federal Home Loan Bank of San Francisco—District 11

BankUSA, fsb, Phoenix, Arizona
Fremont Investment & Loan, Anaheim, California
Vista Federal Credit Union, Burbank, California
La Jolla Bank, F.S.B., Escondido, California
Eastern International Bank, Los Angeles, California
Chevron Federal Credit Union, Oakland, California
Wescom Credit Union, Pasadena, California
Summit State Bank, Rohnert Park, California
California Bank and Trust, San Diego, California
San Diego County Credit Union, San Diego, California
United Commercial Bank, San Francisco, California
Patelco Credit Union, San Francisco, California
Luther Burbank Savings, Santa Rosa, California
Community Banks of Tracy, Tracy, California
Yolo Community Bank, Woodland, California
Redding Bank of Commerce, Yuba City, California

Federal Home Loan Bank of Seattle—District 12

Wells Fargo, Anchorage, Alaska
First Bank, Ketchikan, Alaska
Central Pacific Bank, Honolulu, Hawaii
Territorial Savings and Loan Assn, Honolulu, Hawaii
Farmers and Merchants State Bank, Boise, Idaho
Home FS&LA of Nampa, Nampa, Idaho
Valley Bank of Helena, Helena, Montana
American Bank of Montana, Livington, Montana
LibertyBank, Eugene, Oregon
NW Community Credit Union, Eugene, Oregon
Chetco Federal Credit Union, Harbor, Oregon
West Coast Bank, Lake Oswego, Oregon
Premier West Bank, Medford, Oregon
McKay Dee Hospital Credit Union, Ogden, Utah
Centennial Bank, Ogden, Utah
American Investment Bank, Salt Lake City, Utah
Mountain America Credit Union, Salt Lake City, Utah
Zions First National Bank, Salt Lake City, Utah
Kitsap Community FCU, Bremerton, Washington
State Bank of Concrete, Concrete, Washington
Washington State Bank NA, Federal Way, Washington
Issaquah Bank, Issaquah, Washington
First Community Bank of Washington, Lacey, Washington
Spokane Teachers Credit Union, Liberty Lake, Washington
Cowlitz Bank, Longview, Washington
Heritage Savings Bank, Olympia, Washington
United Savings and Loan Bank, Seattle, Washington
Viking Community Bank, Seattle, Washington
Wheatland Bank, Spokane, Washington
Sound Banking Company, Tacoma, Washington
TAPCO Credit Union, Tacoma, Washington
Banner Bank, Walla Walla, Washington
Security First Bank, Cheyenne, Wyoming
Cowboy State Bank, Ranchester, Wyoming
First State Bank of Thermopolis, Thermopolis, Wyoming

II. Public Comments

To encourage the submission of public comments on the community support performance of Bank members, on or before April 28, 2003, each Bank will notify its Advisory Council and nonprofit housing developers, community groups, and other interested parties in its district of the members selected for community support review in the 2002–03 fifth quarter review cycle. 12 CFR 944.2(b)(2)(ii). In reviewing a member for community support compliance, the Finance Board will consider any public comments it has received concerning the member. 12 CFR 944.2(d). To ensure consideration by the Finance Board, comments concerning the community support performance of members selected for the 2002–03 fifth quarter review cycle must be delivered to the Finance Board on or before the May 26, 2003 deadline for submission of Community Support Statements.

Dated: April 7, 2003.

Arnold Intrater,

General Counsel.

[FR Doc. 03–9020 Filed 4–11–03; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 8, 2003.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Central Financial Corporation, Hutchinson, Kansas; to acquire up to 7.45 percent of the voting shares of Royal Palm Bank of Florida, Naples, Florida.

Board of Governors of the Federal Reserve System, April 8, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–9000 Filed 4–11–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Public Review and Comment on Research Protocol: Alcohol, Sleep, and Circadian Rhythms in Young Humans, Study 2—Effects of Evening Ingestion of Alcohol on Sleep, Circadian Phase, and Performance as a Function of Parental History of Alcohol Abuse/Dependence

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office for Human Research Protections.

ACTION: Notice.

SUMMARY: The Office for Human Research Protections (OHRP), Office of Public Health and Science, HHS is soliciting public review and comment on a proposed research protocol entitled "Effects of Evening Ingestion of Alcohol on Sleep, Circadian Phase, and Performance as a Function of Parental History of Alcohol Abuse/Dependence." The proposed research would be supported by a grant awarded by the National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism. Public review and comment are solicited regarding the proposed research protocol pursuant to the requirements of HHS regulations at 45 CFR 46.407.

DATES: To be considered, written or electronic comments on the proposed research must be received on or before 4:30 p.m. May 29, 2003.

ADDRESSES: Submit written comments to: Ms. Kelley Booher, Division of Policy, Planning, and Special Projects, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, The Tower Building, Rockville, MD 20852, telephone number (301) 402–5942 (not a toll-free number). Comments also may be sent via facsimile at (301) 402–0527 or by e-mail to: *407panel01@osophs.dhhs.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Leslie K. Ball, Office for Human Research Protections, The Tower Building, 1101 Wootton Parkway, Suite 200, Rockville, MD 20852; telephone (301) 496–7005; fax (301) 402–0527; e-mail *LBall@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: All studies conducted or supported by HHS which are not otherwise exempt and which propose to involve children as subjects require institutional review board (IRB) review in accordance with the provisions of HHS regulations for the protection of human subjects at 45 CFR part 46, subpart D. Pursuant to HHS regulations at 45 CFR 46.407, if an IRB reviewing a protocol to be conducted or supported by HHS does not believe that the proposed research involving children as subjects meets the requirements of HHS regulations at 45 CFR 46.404, 46.405, or 46.406, the research may proceed only if the following conditions are met: (a) the IRB finds and documents that the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; and (b) the Secretary, after consultation with a panel of experts in pertinent disciplines (for example: science, medicine, education, ethics, law) and following opportunity for public review and comment, determines either: (1) that the research in fact satisfies the conditions of 45 CFR 46.404, 46.405, or 46.406, or (2) that the following conditions are met: (i) the research presents a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children; (ii) the research will be conducted in accordance with sound ethical principles; and (iii) adequate provisions are made for soliciting the assent of children and the permission of their parents or guardians, as set forth in 45 CFR 46.408.

HHS received a request from the Lifespan Office of Research Administration, Rhode Island Hospital, to review a protocol entitled "Effects of Evening Ingestion of Alcohol on Sleep, Circadian Phase, and Performance as a Function of Parental History of Alcohol Abuse/Dependence" pursuant to the provisions of HHS regulations at 45 CFR 46.407. This research protocol proposes to study the effects of a small or moderate evening dose of alcohol on sleep, waking performance, and circadian phase in a total of 64 adolescents (15 to 16 years of age) and young adults (21 to 22 years of age), and examine how the effects may differ between individuals who have a parent with a history of alcohol dependence and those who do not. The research protocol is proposed to take place at E.P. Bradley Hospital, an affiliate of Lifespan, the parent corporation of Rhode Island Hospital, and was reviewed by the Rhode Island Hospital IRB. The Rhode Island Hospital IRB is the IRB of record for E.P. Bradley Hospital.

After reviewing this research proposal, the Rhode Island Hospital IRB determined that this study involving children as research subjects could not be approved under HHS regulations at 45 CFR 46.404, 46.405, or 46.406, but was suitable for review under 45 CFR 46.407. The Rhode Island Hospital IRB found that the research presented a reasonable opportunity to further the understanding, prevention or alleviation of a serious problem affecting the health or welfare of children. Experts in relevant disciplines have reviewed this protocol and each have provided recommendations to the Secretary. Public review and comment are hereby solicited pursuant to the requirements of 45 CFR 46.407. The Secretary will consider the experts' recommendations and the public comments in making a final determination regarding whether HHS may support this research.

In particular, comments are solicited on the following questions: (1) What are the potential benefits of the research, if any, to the subjects and to children in general; (2) what are the types and degrees of risk that this research presents to the subjects; (3) are the risks to the subjects reasonable in relation to the anticipated benefits, if any, to the subjects, and the importance of the knowledge that may reasonably be expected to result; and (4) does the research present a reasonable opportunity to further the understanding, prevention, or alleviation of a serious problem affecting the health or welfare of children?

All written comments concerning this matter should be submitted to Ms. Kelley Booher, Division of Policy, Planning, and Special Projects, Office for Human Research Protections, 1101 Wootton Parkway, Suite 200, The Tower Building, Rockville, MD 20852, telephone number (301) 402–5942 (not a toll-free number). Comments also may be sent via facsimile at (301) 402–2071 or by e-mail to: *407panel01@osophs.dhhs.gov.*

Materials available for review on the OHRP web page (available at: *http://ohrp.osophs.dhhs.gov/panels/407-01pnl/pindex.htm*) include: relevant sections of the grant application; sample consent, parental permission and assent documents; the Rhode Island Hospital IRB's deliberations on the protocol; an explanation of Rhode Island Hospital's Pediatric Risk Categories; and OHRP's January 13, 2003, letter to the principal investigator, Dr. Mary Carskadon, explaining why review pursuant to 46.407 is restricted to Study 2. A paper copy of the information referenced here is available upon request.

Dated: April 7, 2003.

Richard H. Carmona,

Surgeon General and Acting Assistant, Secretary for Health.

[FR Doc. 03–9051 Filed 4–11–03; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–58]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Importation and Shipping of Etiologic Agents (42 CFR 71.54 and part 72) OMB Control No. 0920–0199—Extension—Office of the Director (OD), Centers for Disease Control and Prevention (CDC).

The importation of etiological agents, hosts, and vectors of human disease are regulated by 42 CFR 71.54 and requires that the importation of such materials must be accompanied by a permit issued by the CDC. Interstate shipment of etiologic agents are regulated by 42 CFR part 72. This regulation establishes minimal packaging requirements for all viable micro-organisms, illustrates the appropriate shipping label, and provides reporting instructions regarding damaged packages and failure to receive a shipment. This request is for the information collection requirements contained in 42 CFR 71.54, 72.3(e), 72.3(f), and 72.4 which relate to the importation and interstate shipment of etiologic agents. Respondents include laboratory facilities such as those operated by government agencies, universities, research institutions, and commercial entities. The only cost to respondents is their time to complete the application for permit to import form and report problems with shipment of etiologic agents.

CFR section	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)	Total burden hours
72.54 Application Permit	2,000	1	20/60	666
72.3(e) Damaged Package	50	1	6/60	5
72.3(f) Shipping Requirement	200	10	12/60	400
72.4 Failure to Receive	20	1	12/60	4
Total	2,270			1,075

Dated: April 7, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–9018 Filed 4–11–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–03–59]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Possession, Use, and Transfer of Select Agents and Toxins (OMB Control No. 0920–0576)—Extension—Office of the Director (OD), Centers for Disease Control and Prevention (CDC).

The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188) specifies that the Secretary of Health and Human Services shall provide for the establishment and enforcement of standards and procedures governing the possession, use, and transfer of select biological agents and toxins. The Act specifies that facilities that possess, use, and transfer select agents register with the Secretary. The Secretary has designated CDC as the agency responsible for collecting this information.

CDC is requesting continued OMB approval to collect this information through the use of five separate forms. These forms are: (1) Application for Registration; (2) Facility Notification Form; (3) Request for Exemption; (4) Transfer of Select Agent form; and (5) Clinical and Diagnostic Laboratory Reporting Form.

The Application for Registration will be used by facilities to register with CDC. The Application for Registration requests facility information, a list of select agents in use, possession, or for transfer by the facility, characterization of the select agent, and laboratory information. Estimated average time to complete this form is 3 hours, 45 minutes for an entity with one principal investigator working with one select agent. CDC estimates that entities will need an additional 45 minutes for each additional investigator or select agent. This is an increase of 1 hour, 45 minutes over the previous form due to new reporting requirements for security and identification of those individuals the entity has designated to have a legitimate need to handle or use such agents.

Facilities may amend their registration if any changes occur in the information submitted to the Secretary. To apply for an amendment to a certificate of registration, an entity must obtain the relevant portion of the application package and submit the information requested in the package to CDC. Estimated time to amend a registration package is 60 minutes.

The Facility Notification Form must be completed by facilities whenever there is release of a select agent or theft or loss of a select agent. This is a new form. Estimated average time to complete this form is 60 minutes.

The Request for Exemption form will be used by facilities that are using select agents in investigational new drug testing or in cases of public health emergency. This is a new form. Estimated average time to complete this form is 70 minutes.

The Transfer of Select Agent Form will be used by facilities requesting transfer of a select agent to their facilities and by the facility transferring the agent. This is a modification of an existing form approved under OMB Control No. 0920–0199. Estimated average time to complete this form is 1 hour, 45 minutes. This is an increase of 75 minutes due to procedural changes.

The Clinical and Diagnostic Laboratory Exemption Report will be used by clinical and diagnostic laboratories to notify the Secretary that select agents identified as the result of diagnosis or proficiency testing have been properly disposed of. This is a new form. Estimated average time to complete this form is 60 minutes.

In addition to the standardized forms, this regulation also outlines situations in which an entity must notify or make a request of the Secretary in writing and CDC is requesting OMB approval to collect this information. The regulation states that an entity must notify the Secretary in writing at least five business days before destroying all select agent or toxin covered by a certificate of registration. The estimated time to gather the information and submit this notification is 30 minutes.

An entity may also apply to the Secretary for an expedited review of an individual by the Attorney General. To apply for this expedited review, an entity must submit a request in writing to the Secretary establishing the need for such action. The estimated time to gather the information and submit this request is 30 minutes. Entities should be aware that CDC is not developing standardized forms to use in these situations. Rather, the entity should provide the information as requested in the appropriate section of the regulation.

As part of the safety requirements of this regulation, the Responsible Official is required to conduct regular inspections (at least annually) of the laboratory where select agents and toxins are stored. The results of these inspections must be documented. CDC estimates that, on the average, such documentation will take 1 hour.

Also, as part of the safety requirements of this regulation, the entity is required to record the identity of the individual trained, the date of training, and the means used to verify that the employee understood the training. Estimated time for this documentation is 2 hours per principal investigator.

An entity or an individual may request administrative review of a decision denying or revoking either a certification of registration or approval based on a security risk assessment. This request must be in writing within 30 calendar days after the adverse decision. This request should include a statement of the factual basis for the review. CDC estimates the time to prepare and submit such a request is 4 hours.

Finally, an entity must implement a system to ensure that certain records and databases are accurate and that the authenticity of records may be verified. The time to implement such a system is estimated to average 4 hours.

The cost to respondents is their time to complete the forms and comply with the reporting and recordkeeping components of the Act plus a one-time purchase of a file cabinet (estimated cost $400) to maintain records.

CFR reference	Data collection	Number of respondents	Responses per respondent	Avg burden per response (in hrs.)	Total annual burden (in hrs.)
73.7(b)	Registration application	1,000	1	3.75	6,262
73.7(e)	Amendment to registration application	1,000	2	1	2,000
73.17 (a)(e).	Notification form	10	1	1	10

CFR reference	Data collection	Number of respondents	Responses per respondent	Avg burden per response (in hrs.)	Total annual burden (in hrs.)
73.6 (c–e)	Request for exemption	17	1	70/60	20
73.14	Transfer of select agent	1,000	5	1.75	8,750
73.6 (a)(2)	Clinical and diagnostic laboratory exemption report.	1,000	4	1	4,000
73.7(i)	Notification of inactivation	6	1	30/60	3
73.8(g)	Request expedited review	6	1	30/60	3
73.10(b)	Documentation of self-inspection	1,000	1	1	1,000
73.13(f)	Documentation of training	1,000	1	2	8,700
73.18	Administrative review	14	1	4	56
73.15(d)	Ensure secure recordkeeping system	1,000	1	30/60	4,000
Total		1,000			34,804

Dated: April 7, 2003.

Thomas Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–9019 Filed 4–11–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 78N–0377 and 98P–1041; DESI 7661]

Certain Estrogen-Androgen Combination Drugs; Drugs for Human Use; Drug Efficacy Study Implementation; Amendment and Opportunity for Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending a previous **Federal Register** notice to reclassify certain estrogen-androgen combination drugs as lacking substantial evidence of effectiveness for the treatment of moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone. The agency is taking this action because for this indication there is not substantial evidence of the contribution of each component to the effectiveness of these combination drugs. FDA is offering an opportunity for a hearing to persons affected by this action.

DATES: Requests for hearings are due on or before May 14, 2003. Data in support of hearing requests are due June 13, 2003.

ADDRESSES: Communications in response to this notice should be identified with the reference number DESI 7661 and directed to the attention of the appropriate office named below. A request for hearing, supporting data, and other comments should be identified with Docket No. 76N–0377 and submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A request for an opinion on the applicability of this notice to a specific drug product should be directed to the Division of New Drugs and Labeling Compliance (HFD–310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of September 8, 1972 (37 FR 18225), FDA announced its evaluation of the various indications claimed for the following combination drugs that contain an estrogen and an androgen:

1. Halodrin Tablets (NDA 11–267), containing fluoxymesterone and ethinyl estradiol;

2. Tylosterone Injection (NDA 8–099), containing diethylstilbestrol and methyltestosterone;

3. Tylosterone Tablets (NDA 7–661), containing diethylstilbestrol and methyltestosterone;

4. Tace with Androgen Capsules (NDA 10–597), containing chlorotrianisene and methyltestosterone;

5. Deladumone Injection and Deladumone OB Injection (NDA 9–545), containing testosterone enanthate and estradiol valerate.

As announced in that 1972 notice, FDA found these drugs to be safe and effective for the "prevention of postpartum breast engorgement and "for the menopausal syndrome in those patients not improved by estrogen alone."

In the **Federal Register** of December 17, 1998 (63 FR 69631), FDA withdrew approval of estrogen-containing drugs insofar as they are indicated for postpartum breast engorgement because estrogens have not been shown to be safe for this use. That **Federal Register** notice included, among others, four of the five NDAs listed above. (NDA 11–267 was not included because the drug product covered by that application, Halodrin Tablets, was not labeled for use for postpartum breast engorgement.) Given this December 17, 1998 notice, the following discussion relates only to the second indication found safe and effective in the 1972 notice, i.e., "for the menopausal syndrome in patients not improved by estrogen alone."

In the **Federal Register** of September 29, 1976 (41 FR 43112), the agency announced that the menopausal indication for combination drugs containing an estrogen and an androgen was revised to read as follows:

> Moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone. (There is no evidence that estrogens are effective for nervous symptoms or depression which might occur during menopause, and they should not be used to treat these conditions.) 41 FR 43112 at 43113. (emphasis in original)

This action was taken as one part of a large agency undertaking with respect to the labeling (patient-directed as well as physician-directed) for all estrogen-containing drug products. The following documents were also published in the **Federal Register** of September 29, 1976: (1) 41 FR 43110 (DESI 2238; Certain Preparations for Vaginal Use); (2) 41 FR 43114 (DESI 1543; Certain Estrogen-Containing Drugs for Oral or Parenteral Use); (3) 41 FR 43117 (DESI 740, 1543, 2238, and 7661; Physician Labeling and Patient Labeling for Estrogens for General Use); and (4) 41 FR 43108 (a proposed rule that would require certain patient-directed labeling for estrogens for general use).

The five applications listed below were approved on the basis of the 1976 notice, and their approvals are withdrawn in a notice published elsewhere in today's issue of the **Federal Register**:

1. NDA 17–968 and ANDA 85–603 (testosterone cypionate 50 milligrams/milliliter (mg/mL) and estradiol cypionate 2 mg/mL injection).
2. ANDA 85–860 and ANDA 86–423 (testosterone enanthate 180 mg/mL and estradiol valerate 8 mg/mL injection).
3. ANDA 85–865 (testosterone enanthate 90 mg/mL and estradiol valerate 4 mg/mL injection).

In 1981, the Center for Drug Evaluation and Research (CDER) (then the Bureau of Drugs) determined in response to requests from the sponsors that the effectiveness finding of the 1976 DESI 7661 **Federal Register** notice could be applied to two combination drug products that were not listed in the 1976 notice, but were being marketed at the time: (1) Conjugated estrogens and methyltestosterone and (2) esterified estrogens and methyltestosterone. Based on this finding, FDA filed (i.e., accepted for review) abbreviated new drug applications (ANDAs) for these drug products. Wyeth-Ayerst submitted ANDA 85–515 for a drug product containing 0.625 mg conjugated estrogens and 5 mg methyltestosterone, and ANDA 87–824 for a drug product containing 1.25 mg conjugated estrogens and 10 mg methyltestosterone. Reid-Provident Laboratories (subsequently acquired by Solvay Pharmaceuticals, Inc.) submitted ANDA 87–212 for a drug product containing 0.625 mg esterified estrogens and 1.25 mg methyltestosterone (Estratest H.S.), and ANDA 87–597 for a drug product containing 1.25 mg esterified estrogens and 2.5 mg methyltestosterone (Estratest).

In 1996, FDA withdrew Wyeth-Ayerst's two pending applications under 21 CFR 314.65 because the applications had been inactive for many years and Wyeth-Ayerst had stopped marketing the products. Solvay continues to market Estratest and Estratest H.S. The ANDAs for the Estratest products have not been approved and are still pending.

FDA has withdrawn approval of all five new drug applications (NDAs) named in the 1972 and 1976 notices. The agency withdrew approval of NDA 10–597 (Tace with Androgen Capsules containing chlorotrianisene and methyltestosterone) and NDA 11–267 (Halodrin Tablets containing fluoxymesterone and ethinyl estradiol) in **Federal Register** notices of June 25, 1993 (58 FR 34466), and March 2, 1994 (59 FR 9989), respectively. The agency withdrew approval of NDA 7–661 (Tylosterone Tablets) and NDA 8–099 (Tylosterone Injection), both containing diethylstilbestrol and methyltestosterone, and NDA 9–545 (Deladumone OB Injection and Deladumone Injection, each containing testosterone enanthate and estradiol valerate) in a notice published in the **Federal Register** of October 29, 1998 (63 FR 58053).

In response to the notice of October 29, 1998, on November 24, 1998, Solvay Pharmaceuticals submitted a citizen petition (Docket No. 98P–1041) requesting that FDA determine that the products covered by the three applications withdrawn in the October 21, 1998, notice were not withdrawn for reasons of safety or effectiveness. As FDA is doing for the five estrogen-androgen combination products whose approvals are being withdrawn in a notice published elsewhere in today's issue of the **Federal Register**, the agency is deferring to the outcome of this proceeding to amend the 1976 notice the determination of whether the products covered by the three applications named in Solvay's petition were withdrawn for reasons of safety or effectiveness. If the proceeding to amend the 1976 notice determines that there is substantial evidence of effectiveness of the estrogen-androgen combination products for the treatment of moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone, then the products covered by the three applications named in Solvay's petition, as well as the five products referred to in a notice published elsewhere in today's issue of the **Federal Register**, will be regarded as not withdrawn for reasons of effectiveness.

As mentioned previously, there are two pending ANDAs for Solvay's Estratest and Estratest H.S., originally filed in 1981. However, as described in detail below, FDA no longer believes that estrogen-androgen combination drug products are effective for the treatment of moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone. FDA, therefore, has initiated this proceeding to amend the DESI finding of effectiveness for these products. This proceeding is limited to a determination of whether there is substantial evidence of the effectiveness of estrogen-androgen combination drug products for the treatment of moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone. The use of these combination drug products for any other use, including but not limited to the treatment of other menopausal symptoms, will not be considered in this proceeding. The effectiveness of estrogen-androgen combination products for indications not covered by this proceeding should be addressed through the new drug application process.

II. The Safety and Effectiveness of Estrogen-Androgen Combination Drug Products for the Treatment of Vasomotor Symptoms Associated With Menopause in Patients Not Improved by Estrogen Alone

The agency took a renewed interest in estrogen-androgen combination drug products when concerns were raised about the effect of androgens in lowering high-density lipoproteins (Refs.

1 and 2). It is believed that oral androgens can reverse the favorable impact of estrogen on lipoproteins (Ref. 3). Other safety concerns were virilization (Refs. 4 and 5) and possible liver toxicity (Refs. 6, 7, and 8).

FDA concluded that the negative effects androgens may have on lipid profile may be offset by a potential positive effect on bone mineral density (Refs. 1, 9, and 10).

With respect to virilization (i.e., hirsutism, acne, deepening of the voice, alopecia, and clitoromegaly), FDA observed that the incidence varied widely in clinical studies and appeared to be dose and duration dependent. In a 2–year trial of 33 women treated with methyltestosterone 2.5 mg and esterified estrogen 1.25 mg daily, 36 percent reported a hair disorder and 30 percent reported acne (Ref. 1). In the same 2–year trial of 33 women treated with esterified estrogen 1.25 mg daily, 3 percent reported a hair disorder and 6 percent reported acne (Ref. 1). In another trial at 24 months, 10 of the 154 women treated with methyltestosterone and esterified estrogens and 3 of the 157 women treated with esterified estrogens reported hirsutism (Ref. 9).

FDA does not believe there is a serious risk for possible liver toxicity at the relatively low doses of androgen administered in standard oral estrogen-androgen combination therapies (Refs. 11, 12, and 13).

An agency review of the literature regarding safety concerns led to scrutiny of the labeled indication, that is, moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone.

Estrogen-alone drug products are approved for the treatment of moderate to severe vasomotor symptoms associated with the menopause. Vasomotor symptoms associated with the menopause are, simply put, "hot flushes." A hot flush is a sudden feeling of heat, usually on the face, neck, shoulders, and chest. Hot flushes have been described as "recurrent, transient periods of flushing, sweating, and a sensation of heat, often accompanied by palpitation, feeling of anxiety, and sometimes followed by chills" (Ref. 14). When hot flushes occur at night, they are often called night sweats.

The indication for estrogen-androgen combination drug products is limited to that subset of women with "moderate to severe vasomotor symptoms associated with the menopause" that are "*not improved by estrogen alone*" (emphasis added). The precise wording of the indication quite narrowly defines the intended population. Thus, to be found effective for this narrow indication, there would need to be reliable evidence that estrogen-androgen combination products are effective in treating the population of menopausal women whose vasomotor symptoms are not relieved by estrogen alone.

FDA believes that substantial evidence is lacking that the addition of an androgen can improve the effectiveness of estrogen alone in the treatment of vasomotor symptoms (i.e., hot flushes). An early randomized, placebo-controlled, five-arm, two-period crossover clinical trial by Sherwin and Gelfand (Ref. 15) compared the effects on surgically menopausal women of immediate postoperative parenteral administration of estrogen alone (n=11), androgen alone (n=10), estrogen and androgen in combination (n=12), and placebo (n=10) to hysterectomy controls (n=10) and found that the androgen alone, estrogen-androgen combination, and control hysterectomy groups had lower (i.e., lower frequency and severity) menopausal somatic symptoms scores than the estrogen alone and placebo groups. The menopausal somatic symptoms score evaluated a constellation of symptoms including hot flushes, cold sweats, weight gain, rheumatic pains, cold hands and feet, breast pains, headaches, numbness and tingling, and skin crawls. A single-center, double-blind randomized, 6–month study by Hickok, Toomey, and Speroff (Ref. 2) compared the effects of treating surgically menopausal women with esterified estrogens alone (n=13) or in combination with methyltestosterone (n=18) on a similar constellation of menopausal symptoms, but found no statistically significant difference between the two treatments. The 15 menopausal symptoms evaluated were hot flushes, cold sweats, vaginal dryness, cold hands and feet, breast pain or tenderness, numbness and tingling, skin crawls, edema, increased facial or body hair, voice deepening, acne, trouble sleeping, pounding of the heart, dizzy spells, and pressure or tightness in the head or body. A 2–year, multicenter, double-blind, randomized, parallel group study (Ref. 9) comparing the effects of 2 doses of conjugated equine estrogen and 2 doses of esterified estrogen plus methyltestosterone in a total of 311 surgically menopausal women found no differences among the groups in relief of hot flashes, sweats, and vaginal dryness.

Clinical studies that evaluated the effect of estrogen-androgen combination therapy specifically on hot flushes found that the combination does not reduce the frequency of vasomotor symptoms more than estrogen alone. Watts et al. (Ref. 1) compared treatment with esterified estrogens alone and treatment with esterified estrogens and methyltestosterone in a 2–year, multicenter, double-blind, randomized, parallel group study conducted in 66 surgically menopausal women. The authors found no significant difference in the mean reduction from baseline in the number of hot flushes between the two groups. Sarrel et al. (Ref. 17) found no meaningful differences in relief from hot flushes when 20 postmenopausal women were treated for 8 weeks with esterified estrogens or an esterified estrogens-androgen combination in a single-center, double-blind, randomized, parallel group study. Burger (Ref. 18) administered subcutaneous implants of estradiol and testosterone to 17 menopausal women who complained that symptoms persisted, particularly loss of libido, despite treatment with conjugated equine estrogens. There was no statistically significant change from baseline in hot flushes after treatment. Myers et al. (Ref. 19) conducted a 10–week, double-blind, placebo controlled, parallel group study in 40 naturally menopausal women comparing 4 treatments: Conjugated estrogens alone; conjugated estrogens and medroxyprogesterone, conjugated estrogens and androgen, and placebo. The study found that the estrogen and estrogen/medroxyprogesterone groups had significantly fewer hot flashes than the estrogen/androgen or placebo groups. The authors concluded: "This result is consistent with other studies showing no effect of androgen alone on hot flashes" (Ref. 19, p. 1129).

Other authors affirm the conclusion that estrogen-androgen combination drug products are not superior to estrogen in reducing vasomotor symptoms (Refs. 3, 20 through 23). Rosenberg summarized the evidence concerning the alleviation of vasomotor symptoms as follows: "Studies suggest that estrogen is primarily responsible for reductions in vasomotor symptoms and that the addition of androgen neither improves nor detracts from this beneficial effect" (Ref. 24, p. 400).

III. FDA's Conclusions Concerning the Safety and Effectiveness of Estrogen-Androgen Combination Drug Products

For the reasons discussed previously, FDA no longer regards combination drug products containing estrogen(s) and androgen(s) as having been shown to be effective for the treatment of moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone. The agency has closely examined the data and information that formed the basis for the 1976 finding that such combinations were effective for this indication, as well as the subsequent literature, and has determined that there is a lack of substantial evidence that this combination is effective for "moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone."

IV. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Watts, N. B. et al., "Comparison of Oral Estrogens and Estrogens Plus Androgen on Bone Mineral Density, Menopausal Symptoms, and Lipid-Lipoprotein Profiles in Surgical Menopause," *Obstetrics & Gynecology*, 85:529–537, 1995.

2. Hickok, L. R., C. Toomey, and L. Speroff, "A Comparison of Esterified Estrogens With and Without Methyltestosterone: Effects on Endometrial Histology and Serum Lipoproteins in Postmenopausal Women," *Obstetrics & Gynecology*, 82:919–924, 1993.

3. Kaunitz, A. M., "The Role of Androgens in Menopausal Hormonal Replacement," *Endocrinology and Metabolism Clinics of North America*, 26(2):391–397, 1997.

4. ACOG Committee on Gynecologic Practice, "Committee Opinion: Androgen Treatment of Decreased Libido," *2002 Compendium of Selected Publications*, American College of Obstetricians and Gynecologists, Washington, DC, pp. 5–6, 2002.

5. Gelfand, M. M., and B. Wiita, "Androgen and Estrogen-Androgen Hormone

Replacement Therapy: A Review of the Safety Literature, 1941 to 1996," *Clinical Therapeutics*, 19(3):383–399, 1997.

6. Westaby, D. et al, "Liver Damage from Long-Term Methyltestosterone," *Lancet*, 2:262–263, 1977.

7. Turani, H. et al., "Hepatic Lesions in Patients on Anabolic Androgenic Therapy," *Israel Journal of Medical Sciences*, 19:332–337, 1983.

8. Lucey, M. R., and R. H. Moseley, "Severe Cholestasis Associated With Methyltestosterone: A Case Report," *American Journal of Gastroenterology*, 82:461–462, 1987.

9. Barrett-Connor, E. et al, "A Two-Year, Double-Blind Comparison of Estrogen-Androgen and Conjugated Estrogens in Surgically Menopausal Women," *Journal of Reproductive Medicine*, 44:1012–1020, 1999.

10. Raisz, L. G. et al, "Comparison of the Effects of Estrogen Alone and Estrogen Plus Androgen on Biochemical Markers of Bone Formation and Resorption in Postmenopausal Women," *Journal of Clinical Endocrinology and Metabolism*, 81:37–43, 1996.

11. Gitlin, N., P. Korner, and H. Yang, "Liver Function in Postmenopausal Women on Estrogen-Androgen Hormone Replacement Therapy: A Meta-Analysis of Eight Clinical Trials," *Menopause*, 6(3):216–224, 1999.

12. Ettinger, B., "Letter: Estrogen-Androgen Hepatotoxicity," *American Journal of Obstetrics and Gynecology*, 178(3):627–628, 1998.

13. Phillips, E., and C. Bauman, "Safety Surveillance of Esterified Estrogens-Methyltestosterone (ESTRATEST and ESTRATEST HS) Replacement Therapy in the United States," *Clinical Therapeutics*, 19(5):1070–1084, 1997.

14. Kronenberg, F., "Hot Flashes: Epidemiology and Physiology," *Annals of the New York Academy of Sciences*, 592:52–86, 1990.

15. Sherwin, B., and M. Gelfand, "Differential Symptom Response to Parenteral Estrogen and/or Androgen Administration in the Surgical Menopause," *American Journal of Obstetrics and Gynecology*, 151(2):153–160, 1985.

16. Barrett-Connor, E., "Efficacy and Safety of Estrogen/Androgen Therapy," *Journal of Reproductive Medicine*, 43(8–Suppl.):746–752, 1998.

17. Sarrel, P. et al., "Estrogen and Estrogen-Androgen Replacement in Postmenopausal Women Dissatisfied with Estrogen-Only Therapy," *Journal of Reproductive Medicine*, 43(10):847–856, 1998.

18. Burger, H. et al., "The Management of Persistent Menopausal Symptoms with Oestradiol-Testosterone Implants: Clinical, Lipid and Hormonal Results," Maturitas, 6:351–358, 1984.

19. Myers, L. S. et al., "Effects of Estrogen, Androgen and Progestin on Sexual Psychophysiology and Behavior in Postmenopausal Women," *Journal of Clinical Endocrinology and Metabolism*, 70(4):1124–1131, 1990.

20. Greenblatt, R. B. et al., "Evaluation of an Estrogen, Androgen, Estrogen-Androgen Combination, and a Placebo in the Treatment of the Menopause," *Journal of Clinical Endocrinology and Metabolism*, 10:1547–1558, 1950.

21. McNagny, S. E., "Prescribing Hormone Replacement Therapy for Menopausal Symptoms," *Annals of Internal Medicine*, 131(8):605–616, 1999.

22. Barlow, D. H. et al., "Long-Term Hormone Implant Therapy—Hormonal and Clinical Effects," *Obstetrics & Gynecology*, 67:321–325, 1986.

23. Rymer, J., and E. Morris, "Menopausal Symptoms," *Clinical Evidence*, 5: 1308–1310, June 2001.

24. Rosenberg, M. J., T. D. N. King, and M. C. Timmons, "Estrogen-Androgen for Hormone Replacement: A Review," *Journal of Reproductive Medicine*, 42(7):394–404, 1997.

V. Amendment

Based on the findings discussed in section II of this document, FDA is amending the **Federal Register** notice of September 29, 1976 (41 FR 43112), to reclassify estrogen-androgen combination drugs as lacking substantial evidence of effectiveness for moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone.

Drug products covered by this notice (i.e., estrogen-androgen combination drugs) are regarded as new drugs (section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) 21 U.S.C. 321(p)). An approved NDA is required for marketing.

VI. Notice of Opportunity for a Hearing

Any manufacturer or distributor of a drug product affected by this notice is hereby offered an opportunity for a hearing to show why estrogen-androgen combination drugs should not be reclassified as lacking substantial evidence of effectiveness for moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone.

This notice applies to the particular estrogen-androgen combination drugs named in this notice and to any identical, related, or similar drug product under § 310.6 (21 CFR 310.6), whether or not it is the subject of an approved NDA or ANDA. Estrogen-androgen combination drugs subject to this notice include, but are not limited to, the following combination drugs: fluoxymesterone and ethinyl estradiol; diethylstilbestrol and methyltestosterone; chlorotrianisene and methyltestosterone; testosterone enanthate and estradiol valerate; testosterone cypionate and estradiol cypionate; and esterified estrogens and methyltestosterone.

It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of New Drugs and Labeling Compliance (see **ADDRESSES**).

A request for a hearing may not rest upon mere allegations or denials but must set forth specific facts showing that a genuine and substantial issue of fact requires a hearing, together with a well-organized and full factual analysis of the clinical and other investigational data that the objector is prepared to prove in a hearing. Any data submitted in response to this notice must be previously unsubmitted and include data from adequate and well-controlled clinical investigations as described in 21 CFR 314.126.

This notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in § 310.6), e.g., any contention that any such drug product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act or because it is exempt from part or all of the new drug provisions of the act under the exemption for drug products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c)of the Drug Amendments of 1962, or for any other reason. With respect to the issue of effectiveness, however, this notice is limited to whether there is substantial evidence of the effectiveness of estrogen-androgen combination drug products for the treatment of moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone. The use of these drug products for any indication other than for the treatment of moderate to severe vasomotor symptoms associated with the menopause in those patients not improved by estrogen alone will not be considered in this proceeding.

Any person subject to this notice who decides to seek a hearing shall file: (1) On or before May 14, 2003, a written notice of appearance and request for hearing, and (2) on or before June 13, 2003, the data, information, and analyses relied on to demonstrate that there is a genuine issue of material fact to justify a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, a notice of appearance and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 (21 CFR 314.200) and in 21 CFR part 12.

The failure of any person subject to this notice to file a timely written notice of appearance and request for hearing, as required by § 314.200, constitutes an election by that person not to use the opportunity for a hearing concerning the action proposed and a waiver of any contentions concerning the legal status of that person's drug product(s). Any new drug product marketed without an approved new drug application is subject to regulatory action at any time, but any person subject to this notice who files a timely written notice of appearance and request for hearing and who remains a party to this proceeding will not be subject to regulatory action for matters covered by this notice until the conclusion of this proceeding. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact to justify a hearing, or if a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 21 U.S.C. 352, 355) and under authority delegated to the Director of the Center for Drug Evaluation and Research (21 CFR 5.100).

Dated: April 4, 2003.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 03–9065 Filed 4–10–03; 8:45 am]

BILLING CODE 4150–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 98N–0718 and 76N–0377]

Pharmacia & Upjohn et al.; Withdrawal of Approval of One New Drug Application and Four Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of one new drug application (NDA) and four abbreviated new drug applications (ANDAs). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

EFFECTIVE DATE: May 14, 2003.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their requests, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 17–968	Depo-Testadiol (testosterone cypionate and estradiol cypionate) Injection, 50 milligrams/milliliter (mg/mL) and 2 mg/mL.	Pharmacia & Upjohn Co., 7000 Portage Rd., Kalamazoo, MI 49001–0199.
ANDA 85–603	Testosterone Cypionate-Estradiol Cypionate Injection.	Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043–4706.
ANDA 85–860	Testosterone Enanthate and Estradiol Valerate Injection, 180 mg/mL and 8 mg/mL.	Do.
ANDA 85–865	Testosterone Enanthate and Estradiol Valerate Injection, 90 mg/mL and 4 mg/mL.	Do.
ANDA 86–423	Ditate-DS (testosterone enanthate and estradiol valerate) Injection, 180 mg/mL and 8 mg/mL.	Savage Laboratories, 60 Baylis Rd., Melville, NY 11747.

The applications listed in the table in this document, all estrogen-androgen combination products, were submitted following a finding by the FDA published in the **Federal Register** of September 29, 1976 (41 FR 43112). Elsewhere in today's issue of the **Federal Register**, FDA is initiating a proceeding in which it proposes to amend the 1976 notice. That proceeding will determine if there is substantial evidence of effectiveness of the estrogen-androgen combination products specifically named in the notice proposing to amend the 1976 notice, as well as of any products that are identical, related, or similar (including but not limited to the five products listed in this notice). The agency, therefore, is deferring until the outcome of that proceeding the determination, under § 314.161 (21 CFR 314.161), of whether the five products listed in this notice were withdrawn for reasons of safety or effectiveness.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.105), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective May 14, 2003.

Dated: April 4, 2003.
Janet Woodcock,
Director, Center for Drug Evaluation and Research.
[FR Doc. 03–9064 Filed 4–10–03; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 13 and 14, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Tara P. Turner, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *TurnerT@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 13, 2003, the committee will discuss new drug applications (NDA) 21–567 and 21–568, REYATAZ (atazanavir sulfate) capsules and powder for oral use, Bristol-Myers Squibb Co., proposed for the treatment of human immunodeficiency virus (HIV) infection in combination with other antiretroviral agents. On May 14, 2003, the committee will discuss supplemental new drug application (SNDA) 20–550/S–019, VALTREX (valacyclovir hydrochloride) caplets, GlaxoSmithKline, proposed for reduction of the risk of transmission of genital herpes with the use of suppressive therapy.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 6, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on May 13, 2003, and between approximately 11 a.m. and 12 noon on May 14, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 6, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Tara Turner at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 7, 2003.
Linda Arey Skladany,
Associate Commissioner for External Relations.
[FR Doc. 03–9031 Filed 4–11–03; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Peripheral and Central Nervous System Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 16, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD, 301–652–2000.

Contact Person: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e–mail: *SomersK@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12543. Please call the Information Line for up to date information on this meeting.

Agenda: The committee will discuss supplemental new drug application (sNDA) 20–690, supplement SE1–020, ARICEPTR (donepezil hydrochloride tablets), Eisai Medical Research Inc., indicated for the treatment of vascular dementia. The background material will become available no later than the day before the meeting and will be posted under the Peripheral and Central Nervous System Drugs Advisory Committee docket site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*. (Click on the year 2003 and scroll down to the Peripheral and Central Nervous System Drugs Advisory Committee meetings.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 9, 2003. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 9, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Karen Templeton-Somers at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 7, 2003.
Linda Arey Skladany,
Associate Commissioner for External Relations.
[FR Doc. 03–9032 Filed 4–11–03; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 21 and 22, 2003, from 8:30 a.m. to 5 p.m.

Location: Marriott Washingtonian Center, Ballrooms A, B, C, and D, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Kathleen Reedy, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *REEDYK@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 21, 2003, the subcommittee will discuss: (1) The mission of the subcommittee; and (2) direction of the Pharmaceutical Current Good Manufacturing Practices (CGMPs) for the 21st Century: A Risk-Based Approach. On May 22, 2003, the subcommittee will discuss: (1) The regulatory approaches regarding aseptic manufacturing; and (2) process analytical technologies and transition from the Advisory Committee for Pharmaceutical Science—Process Analytical Technologies Subcommittee to Manufacturing Subcommittee.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by May 13, 2003. Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 13, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kathleen Reedy at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 7, 2003.
Linda Arey Skladany,
Associate Commissioner for External Relations.
[FR Doc. 03–9029 Filed 4–11–03; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0134]

Team Biologics Program Effectiveness; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public meeting: Team Biologics Program Effectiveness. The Center for Biologics Evaluation and Research and the Office of Regulatory Affairs, FDA, are sponsoring an open public meeting to solicit views and comments in an effort to measure the effectiveness of the Team Biologics Program as it relates to the inspections of manufacturers of vaccines, allergenics, fractionated plasma products, licensed in vitro diagnostics, and therapeutic products. The goal of the public meeting is to give stakeholders the opportunity to provide input on how they think the agency should measure the effectiveness of the Team Biologics Program. We will use the information obtained to identify criteria to prospectively evaluate the Team Biologics Program.

DATES: The public meeting will be held on Wednesday, May 21, 2003, from 8 a.m. to 12 noon.

Submit requests via fax or e-mail by May 1, 2003, to make an oral presentation. Submit a copy of all presentation materials by May 15, 2003. If you are not making an oral presentation, submit registration information by May 12, 2003.

Submit written or electronic comments by June 10, 2003.

ADDRESSES: The public meeting will be held at the Parklawn Bldg., conference room D, 5600 Fishers Lane, Rockville, MD 20857.

Submit requests to make an oral presentation, registration information, and any presentation material to Melanie Whelan (*see* **FOR FURTHER INFORMATION CONTACT**). The requested registration information is listed in section II of this document.

Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Melanie N. Whelan, Center for Biologics Evaluation and Research (HFM–43), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–2000, FAX 301–827–3079, or e-mail: *Whelan@cber.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Scope of Public Meeting

FDA is seeking input on ways to evaluate the Team Biologics Program. The Team Biologics Program, established in 1997, is a partnership between FDA's Center for Biologics Evaluation and Research and the Office of Regulatory Affairs, which uses the diverse skills and knowledge of both organizations to focus resources on inspectional and compliance issues in the biologics area. Comments are sought at this public meeting about specific methods, tools, criteria, and metrics that could be used in this effort. In presentations we ask that you

specifically address criteria that FDA may consider in assessing the following areas:

1. Industry compliance with applicable laws and regulations,
2. The consistency of our inspection and compliance activities,
3. The effects of our inspection and compliance activities on product quality, and
4. The impact of our approach on public health.

II. Registration and Requests for Oral Presentations

You must preregister by May 1, 2003, if you would like to make an oral presentation. Please send your name, title, affiliation, street address, e-mail address, and telephone and fax numbers, along with a short description of the topics you wish to address, to Melanie Whelan. Due to the time constraints of this meeting, only 15 oral presentation requests can be accepted, and each presentation will be limited to 10 minutes. Each person who submits a request will receive a response by May 6, 2003, stating whether they have been included in the program. Please submit a copy of all presentation materials to Melanie Whelan by May 15, 2003.

We encourage early registration because seating is limited to the first 100 registrants. Registration closes on Monday, May 12, 2003. Please send your name and affiliation to Melanie Whelan. You will receive confirmation of your registration. There is no registration fee.

If you need special accommodations due to a disability, please contact Melanie Whelan at least 7 days in advance.

III. Request for Comments

The agency has established a docket to receive any ideas regarding the Team Biologics Program. Regardless of attendance at the public meeting, interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments. Submit a single copy of electronic comments or two copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Transcripts

Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The transcript of the public meeting will be available for review at the Dockets Management Branch and on the Internet at *http://www.fda.gov/ohrms/dockets*. The transcript will also be placed on the Internet at *http://www.fda.gov/cber/minutes/workshop-min.htm*.

Dated: April 8, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9063 Filed 4–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 8, 2003, from 1:30 p.m. to 4 p.m.

Location: Food and Drug Administration, 29 Lincoln Dr., bldg. 29B, conference room A, Bethesda, MD. This meeting will be held by a telephone conference call. The public is welcome to attend the open session of the meeting at the specified location.

Contact Person: Jody G. Sachs or Denise H. Royster, Food and Drug Administration, Center for Biologics Evaluation and Research (HFM–71), 301 827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will review and discuss the intramural research programs of the Laboratory of Mycobacterial Diseases & Cellular Immunology and the Laboratory of Method Development, in the Office of Vaccines Research and Review.

Procedure: On May 8, 2003, from 1:30 p.m. to 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 25, 2003. Oral presentations from the public will be scheduled between approximately 2:30 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 25, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On May 8, 2003, from 3:30 p.m. to 4 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The meeting will be closed to discuss personal information concerning individuals associated with the intramural laboratory research programs.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jody G. Sachs or Denise H. Royster at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 7, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–9030 Filed 4–11–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Poison Control Program; Poison Control Centers Stabilization and Enhancement Grant Program, Financial Stabilization Supplemental Grants (PCCFS); Availability of Funds in the HRSA Preview; Withdrawal (CFDA Number 93.253)

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: In the **Federal Register** notice of Friday, August 9, 2002, in Part VI "Availability of Funds Announced in the HRSA Preview" of FR Doc. 02–20021, on page 52087, the grant category beginning in the first column under the heading "Poison Control Centers Stabilization and Enhancement Grant Program, Financial Stabilization Supplemental Grants (PCCFS), CFDA Number 93.253," is withdrawn from competition due to the discovery of unanticipated complex issues that are not resolvable within a timeframe which would permit the awarding of these grants during fiscal year 2003.

FOR FURTHER INFORMATON: Carol A. Delany, Division of Children, Adolescent and Family Health, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–38, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone, (301) 443–5848.

Dated: April 7, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–8973 Filed 4–11–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Federal Grant Use by the Ohio Department of Natural Resources

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information to conduct a 30-day comment period to solicit public response for a National Environmental Policy Act (NEPA) decision on approval of two federal grant proposal renewals. The action to be evaluated is the continuation of two grants funded under the comprehensive management plan (CMP) option and the cumulative effects of activities that are funded under the grants. The grants are awarded to the Ohio Department of Natural Resources (ODNR), Division of Wildlife (DOW).

The Service's categorical exclusion [516 DM 6, Appendix 1, Section 1.4.E(1)] applies to this action; however, the Service is seeking public comments in this instance in order to determine whether any exceptions to the categorical exclusion (516 DM 2, Appendix 2) may apply, especially for controversial environmental effects (2.3) or cumulative effects (2.5), thereby necessitating the development of an Environmental Assessment (EA). Primary focus for this review is to address statewide cumulative and secondary effects of activities conducted by the ODNR, DOW that are funded under Federal Aid in Wildlife Restoration Act (WR) Grant Number W–134–P and Federal Aid in Sport Fish Restoration Act (SFR) Grant Number F–69–P and administered by the Region 3 Federal Aid Division of the U.S. Fish and Wildlife Service. A secondary focus is to address the processes used by the ODNR, DOW to select and complete those activities. Each individual project, or group of projects, will continue to receive site specific NEPA review when it is submitted for funding. Therefore the scope of this review is broad and directed at impacts that may not be detected with individual projects along with consideration of the overall planning system utilized by Ohio. Comments on site specific projects are not within the scope of this review although comments regarding the affects of types of projects would be appropriate.

DATES: Written comments should be received on or before May 14, 2003.

Public Involvement: The public is invited to participate in the comment process. Locations for supporting reference information are provided under **SUPPLEMENTARY INFORMATION.** Written comments should be received within 30 days from the date of publication of this Notice of Intent. All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations [40 CFR 1506.6(f)]. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

ADDRESSES: Comments should be addressed to: Michael Vanderford or Jon Parker, U.S. Fish and Wildlife Service, Division of Federal Aid, 1 Federal Drive, Fort Snelling, MN 55111–4056. Electronic mail comments may also be submitted within the comment period to: *ohdnrgrants@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Jon Parker (Wildlife Restoration, Wildlife Conservation and Restoration) or Michael Vanderford (Sport Fish Restoration). U.S. Fish And Wildlife Service, Federal Aid Division, 1 Federal Drive, Fort Snelling, MN 5511; telephone: 612/713–5130.

SUPPLEMENTARY INFORMATION: These grants are subject to the requirements of the Sport Fish and Wildlife Restoration Acts, federal regulations (50 CFR part 80 and 43 CFR part 12) and the Service's Federal Aid Handbook. Administration of these grants uses a management system identified in the Grant Proposal consistent with a plan for fish, wildlife and habitat. This plan provides program direction in Ohio and types of activities that may constitute projects subject to an annual application for funds process. The comprehensive management system is described in the Grant Proposal which includes a description of the ODNR, DOW *strategic planning* process, its *operational planning* process and its control/evaluation process. Copies of the Grant Proposals for fish management and wildlife management are available at: *http://midwest.fws.gov/NEPA*. Hard copies of the supporting Strategic Plan, Tactical Plans, and the Comprehensive Management System (CMS) Handbook and addendum are available for review at: Ohio Division of Wildlife, Department of Natural Resources, Public Lobby Reception Desk, Building G, 1840 Belcher Drive, Columbus, Ohio (near Morse Road and Cleveland Avenue). It would be helpful if persons wishing to review these documents would contact Verdie Abel at 614/265–7020 ahead of time.

The Service may choose to analyze the impacts of the two federal grants separately because their intended purposes are different. The Service is using this notification as it considers approving continuation of the CMP option for the next six years. The intent of the notice is to obtain suggestions and additional information from other agencies and the public on the scope of

issues to be considered. Comments and participation in this comment process are solicited.

The ODNR, DOW has utilized SFR and WR funds since Congress enacted the programs in 1950 and 1937, respectively. This will be the third year that DOW will use Wildlife Conservation and Restoration (WCR) funds which Congress approved for a one-year period during the federal fiscal year beginning October 1, 2000. The public is requested to inform the Service of concerns regarding the ODNR, DOW management systems, their administration of the comprehensive management system grants in Ohio and the cumulative effects of activities funded under these federal grants.

The ODNR, DOW has administered its SFR and WR grant programs using the CMP option for the past 11 years. ODNR, DOW began administering the WCR grant program using the CMP option July 1, 2001. During the past 11 years, the ODNR, DOW conducted numerous public information and input processes, as well as Service review regarding its programs, including: The development and periodic revision of a Strategic Plan; development of tactical plans for fish, wildlife and habitat for Ohio; use of biennial work planning processes; program and management reviews; financial audits and periodic field reviews conducted jointly by ODNR, DOW and Service staff regarding implementation of the CMP.

Some projects that will be subject to NEPA review as part of the annual grant process will be conducted on lands that may be eligible for listing on the National Register of Historic Places. The National Historic Preservation Act and other laws require these properties and resources be identified and considered in project planning. The public is requested to inform the FWS of concerns about archeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns.

Authority: 42 U.S.C. 4321–4347.

TJ Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, MN.

[FR Doc. 03–8994 Filed 4–11–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Class III Gaming Procedures and Tribal Revenue Allocation Plans: Submission to OMB

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) is submitting two information collection requests for review and renewal by the Office of Information and Regulatory Affairs, OMB. The two collections are: Class III Gaming Procedures, 1076–0149, and Tribal Revenue Allocation Plans, 1076–0152.

DATES: Submit your comments and suggestions on or before May 14, 2003 to be assured of consideration.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, 725 17th Street NW, Washington, DC 20503. Send a copy of your comments to: George Skibine, Bureau of Indian Affairs, Office of Indian Gaming Management, Mail Stop 4543–MIB, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting George Skibine at 202–219–4066 or facsimile number 202–273–3153.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. We did not receive any comments during the request for comments period published December 13, 2002 (67 FR 76753). The Bureau of Indian Affairs, Office of Indian Gaming Management is proceeding with requesting an information collection clearance from OMB. Each request contains (1) type of review, (2) title, (3) summary of the collection, (4) respondents, (5) frequency of collection, (6) reporting and record keeping requirements. OMB has 60 days to act on this information request, but may act after 30 days of review; therefore, your comments will receive the greatest consideration the closer they are to the 30 day minimum review period.

Please note that we will not sponsor nor conduct, and you need not respond to, a request for information unless we display the OMB control number and the expiration date.

Class III Gaming Procedures

Type of review: Extension of a currently approved collection.

Title: Class III Gaming Procedures 25 CFR 291.

Summary: The collection of information will ensure that the provisions of IGRA, the relevant provisions of State laws, Federal law and the trust obligations of the United States are met when Federally recognized tribes submit Class III procedures for review and approval by the Secretary of the Interior. Sections 291.4, 291.10, 291.12 and 291.15 of 25 CFR part 291 Class III Gaming Procedures, specifies the information collection requirement. An Indian tribe must ask the Secretary to issue Class III gaming procedures. The information to be collected includes: name of Tribe and State; tribal documents, State documents, regulatory schemes, the proposed procedures and other documents deemed necessary. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0149). All information is collected when the tribe makes a request for Class III gaming procedures. Annual reporting and record keeping burden for this collection of information is estimated to occur one time on an annual basis. The estimated number of annual requests is 12 tribes seeking Class III gaming procedures. The estimated time to review instructions and complete each application is 320 hours. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 3,840 hours.

Frequency of Collection: Annually.

Description of Respondents: Federally recognized tribes.

Total Respondents: 12.

Response Hours per Application: 320.

Total Annual Burden Hours: 3,840.

Tribal Revenue Allocation Plans

Type of review: Extension of a currently approved collection.

Title: Tribal Revenue Allocation Plans 25 CFR 290.

Summary: In order for Indian tribes to distribute net gaming revenues in the form of per capita payments, information is needed by the BIA to ensure that Tribal Revenue Allocation Plans include assurances that certain statutory requirements are met, a breakdown of the specific uses to which net gaming revenues will be allocated, eligibility requirements for participation, tax liability notification and the assurance of the protection and preservation of the per capita share of minors and legal incompetents. Sections 290.12, 290.17, 290.24 and 290.26 of 25 CFR part 290, Tribal Revenue Allocation Plans, specifies the information collection requirement. An Indian tribe must ask the Secretary to approve a Tribal Revenue Allocation Plan. The information to be collected includes: name of Tribe, tribal documents, the allocation plan and other documents deemed necessary. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0152). All information is collected when the tribe submits a Tribal Revenue Allocation Plan. Annual reporting and record keeping burden for this collection of information is estimated to average between 75–100 hours for approximately 20 respondents, including the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 1,500–2,000 hours. We are using the higher estimate for purposes of estimating the public burden.

Frequency of Collection: Annually.

Description of Respondents: Federally recognized tribes.

Total Respondents: 20.

Total Annual Responses: 100.

Total Annual Burden Hours: 2,000 hours.

Request for Comments

The Bureau of Indian Affairs solicits comments in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) Evaluate the bureau's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond.

Dated: April 4, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–9068 Filed 4–11–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–03–1120–PG–24–1A]

Notice of Resource Advisory Council Meeting and Field Tour

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) meeting.

SUMMARY: The purpose of this notice is to announce a Resource Advisory Council Meeting and field tour scheduled for May 1–2, 2003, Price, Utah.

The Bureau of Land Management's (BLM) Utah Statewide Resource Advisory Council (RAC) will be meeting at the Holiday Inn (located at 838 Westwood Blvd) on May 1, 2003, 9:30 a.m., for a field tour of the northern portion of the San Rafael Swell. Issues to be discussed will be Easter weekend status (camping, law enforcement, etc); tour of the Buckhorn Wash (partnership with Emery County, OHV route designation plan, and WSAs); and a tour of the Wedge Overlook (wildlife and T/E species).

On May 2, from 8 a.m. until 2:30 p.m., the Council will meet in the conference room at the Holiday Inn in Price. There will be reports from the RAC subgroups, a discussion on wild and scenic rivers, and an overview of the grazing regulations and policy changes.

A public comment period is scheduled from 2 p.m.–2:30 p.m. where members of the public may address the Council. Written comments may be mailed to the Bureau of Land Management at the address listed below.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

FOR FURTHER INFORMATION CONTACT: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah, 84111; phone (801) 539–4195.

Dated: April 4, 2003.

Linda Colville,

Acting State Director.

[FR Doc. 03–9062 Filed 4–11–03; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–989 (Final)]

Ball Bearings From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from China of certain ball bearings and parts thereof, provided for in subheadings 3926.90.45, 4016.93.00, 4016.93.10, 4016.93.50, 6909.19.50, 8431.20.00, 8431.39.00, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.25, 8482.99.35, 8482.99.65, 8483.20.40, 8483.20.80, 8483.30.40, 8483.30.80, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.70.60, 8708.93.30, 8708.93.60, 8708.93.75, 8708.99.06, 8708.99.31, 8708.99.40, 8708.99.49, 8708.99.58, 8708.99.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, and 8803.90.90 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective February 13, 2002, following receipt of a petition filed with the Commission and Commerce by the American Bearing Manufacturers Association, Washington, DC. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of ball bearings from China were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 23, 2002 (67 FR 65142), as amended on December 2,

[1] The record is defined in sec. 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

2002 (67 FR 71588). The hearing was held in Washington, DC, on March 6, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on April 21, 2003. The views of the Commission are contained in USITC Publication 3593 (April 2003), entitled Ball Bearings from China: Investigation No. 731–TA–989 (Final).

By order of the Commission.

Issued: April 7, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–8967 Filed 4–11–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–491]

In the Matter of: Certain Display Controllers and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on March 10, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Genesis Microchip (Delaware) Inc. of Alviso, California. A letter supplementing the complaint was filed on March 28, 2003. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain display controllers and products containing same by reason of infringement of claims 13 and 15 of U.S. Patent No. 6,078,361, claims 19–22 of U.S. Patent No. 5,953,074, and claims 1 and 9 of U.S. Patent No. 6,177,922. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, at the conclusion of the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2002).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on April 7, 2003, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain display controllers or products containing same by reason of infringement of claims 13 or 15 of U.S. Patent No. 6,078,361, claims 19, 20, 21, or 22 of U.S. Patent No. 5,953,074, or claims 1 or 9 of U.S. Patent No. 6,177,922, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Genesis Microchip (Delaware) Inc., 2150 Gold Street, Alviso, California 94002.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Media Reality Technologies, Inc., 107 Min Chuan East Road, Section 2, Taipei, Taiwan.

Media Reality Technologies, Inc., 767 North Mary Avenue, Sunnyvale, California 94086.

Trumpion Microelectronics, Inc., 11F, No. 17 Cheng-Teh Rd. Sec.1, Taipei City, Taiwan.

(c) Anne Goalwin, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Delbert R. Terrill, Jr. is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.

Issued: April 8, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–8970 Filed 4–11–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1014 and 1017 (Final)]

Polyvinyl Alcohol From China and Korea

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigations Nos. 731-TA–1014 and 1017 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China and Korea of polyvinyl alcohol, provided for in subheading 3905.30.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of these investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: March 20, 2003.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of polyvinyl alcohol from China and Korea are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on September 5, 2002, by Celanese Chemicals, Ltd. of Dallas, TX and E.I. du Pont de Nemours & Co. of Wilmington, DE.

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on April 24, 2003, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on May 8, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before May 1, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on May 5, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is May 1, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is May 15, 2003; witness testimony must be filed

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as all polyvinyl alcohol ("PVA") hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of these investigations:

(1) PVA in fiber form.

(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before May 15, 2003. On May 30, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before June 3, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. In addition, parties may submit comments concerning the Department of Commerce's final determinations on China and Korea only, on or before August 19, 2003. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: April 7, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–8968 Filed 4–11–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), Justice.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board (APB). The CJIS APB is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI's CJIS Division, and thereafter, make appropriate recommendations to the FBI Director. The programs administered by the FBI CJIS Division are: the Integrated Automated Fingerprint Identification System, the Interstate Identification Index, Law Enforcement Online, National Crime Information Center, the National Instant Criminal Background Check System, the National Incident-Based Reporting System, and Uniform Crime Reporting.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the FBI's CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Roy G. Weise at (304) 625–2730, at least 24 hours prior to the start of the session.

The notification should contain the requester's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed no more than 15 minutes to present a topic.

DATES: The APB will meet in open session from 9 a.m. until 5 p.m., on June 4–5, 2003.

ADDRESSES: The meeting will take place at the Renaissance Cleveland Hotel, 24 Public Square, Cleveland, Ohio, telephone (216) 696–5600.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Margery E. Broadwater, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone (304) 625–2446, facsimile (304) 625–5090.

Dated: April 2, 2003.

Roy G. Weise,

Designated Federal Employee, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 03–9045 Filed 4–11–03; 8:45 am]

BILLING CODE 4410–02–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–041)]

NASA Advisory Council, Biological and Physical Research Advisory Committee, Commercial Advisory Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee, Commercial Advisory Subcommittee (CAS).

DATES: Monday, April 28, 2003, 9 a.m. to 5 p.m.

ADDRESSES: NASA Ames Research Center, Moffet Field, California, the CEE Conference Room 261, Building 213, in the Systems Engineering Division.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Livingston, Code US, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0697.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Advance notice of attendance to the Executive Secretary is requested. The agenda for the meeting will include the following topics:

—Introduction/Remarks
—Report from the Space Station Utilization Advisory Subcommittee
—Knowledge Mapping Activities
—Decision Rules
—Status of International Space Station Research Institute
—Legislative Issues/Research Re-planning Activities
—Commercial Participating in OBPR Strategic Road Mapping
—Committee Discussion
—Wrap-Up/Recommendations

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: Full name; gender; date/place of birth; citizenship; visa/greencard information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Shirley Berthold via e-mail at *sberthold@mail.arc.nasa.gov* or by telephone at (650) 604–1654. Attendees will be escorted at all times.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–8991 Filed 4–11–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 29, 2003. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Agriculture, Animal and Plant Health Inspection Service (N1–463–03–1, 4 items, 4 temporary items). User fee records, including forms and background documents. Also included are electronic copies of records created using electronic mail and word processing that are associated with all record series in the Fiscal Affairs category of the agency's records disposition schedule.

2. Department of the Air Force, Agency-wide (N1–AFU–03–4, 2 items, 2 temporary items). Duplicate copies of time and attendance sheets pertaining to Air Reserve Technicians. Also included are electronic copies of records created using electronic mail and word processing.

3. Department of the Air Force, Agency-wide (N1–AFU–03–5, 2 items, 2 temporary items). Biographical records on personnel used in public affairs programs. Records include information concerning individual service members such as name, current rank, marital status, and local address. Also included are electronic copies of records created using electronic mail and word processing.

4. Department of Defense, Defense Finance and Accounting Service (N1–507–02–1, 93 items, 93 temporary items). Records relating to payroll and other financial transactions, safety and hazardous materials, security, personnel, property, planning, publications and forms, Congressional inquiries, audiovisual activities, and various administrative matters. Included are such records as employee pay records, central procurement accounting system records, government purchase card records, safety program planning records, accident reports, records of fire prevention inspections, hazardous material management and training records, industrial hygiene and occupational health surveys, pollution prevention plans and data, reports on security investigations of personnel, audiovisual productions not relating to the agency's mission, and case files

pertaining to coordination of Department of Defense issuances. Also included are electronic copies of documents created using electronic mail and word processing.

5. Department of Defense, National Imagery and Mapping Agency (N1–537–03–9, 16 items, 16 temporary items). Records relating to the production of nautical charts and publications. Records pertain to such matters as the measurement and description of the physical features and attributes of bodies of water and their adjoining coastal areas and the preparation and evaluation of maritime safety information. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

6. Department of Defense, National Imagery and Mapping Agency (N1–537–03–13, 11 items, 9 temporary items). Records relating to the general management and evolution of geospatial policy and arrangements, including such matters as classification decisions and security policy regarding the disclosure and release of geospatial data and products. Also included are electronic copies of records created using electronic mail and word processing. Records proposed for permanent retention include recordkeeping copies of files pertaining to international and interagency arrangements and to geospatial policy. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

7. Department of Defense, National Imagery and Mapping Agency (N1–537–03–14, 19 items, 19 temporary items). Distribution and storage files pertaining to maps, charts, and other cartographic products produced by the agency. Records relate to such subjects as inspections of stored items, stock levels, and requisitions. Also included are electronic copies of records created using electronic mail and word processing. This schedule authorizes the agency to apply the proposed disposition instructions to any recordkeeping medium.

8. Department of Health and Human Services, Food and Drug Administration (N1–88–03–3, 3 items, 3 temporary items). Case files relating to seizures and prosecutions involving agency-approved products. Included are such records as copies of labels, promotional materials, seizure and analytical reports, notices of hearings, and additional prosecution records. Also included are electronic copies of records created using electronic mail and word processing.

9. Department of Homeland Security, Directorate of Border and Transportation Security (N1–563–03–1, 5 items, 2 temporary items). Inputs and outputs of an electronic system relating to immigration enforcement activities. The complete master file and a public use version are proposed for permanent retention along with the related system documentation.

10. Department of Justice, Justice Management Division (N1–60–03–2, 5 items, 4 temporary items). Input reports submitted by agency components and other supporting documentation created in connection with producing the agency's annual Performance and Accountability Report, which includes such materials as consolidated financial statements and the annual performance report required by the Government Performance and Results Act. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of the report are proposed for permanent retention.

11. Department of Justice, Drug Enforcement Administration (N1–170–03–4, 3 items, 3 temporary items. Records relating to the content and management of the agency's Web site, including electronic copies of records created using electronic mail and word processing.

12. Department of Labor, Officer of the Solicitor (N1–174–02–02, 62 items, 57 temporary items). Records relating to litigation, advice and opinions, and office administration. Included are such records as legal advice and opinion files and legislative case files lacking historical significance, copies of rulemaking records, recommendations to file appeals or amicus briefs, Freedom of Information Act reports, and electronic systems used to track office software and resource allocation for cases. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of such records as significant advice and opinion files, significant litigation case files, directives, and speeches and congressional testimony.

13. Department of Transportation, Research and Special Programs Administration (N1–467–01–2, 20 items, 14 temporary items). Records of the Office of the Associate Administrator for Innovation, Research and Education, including such records as grant files, copies of publications, and web site records. Also included are electronic copies of records created using word processing and electronic mail. Recordkeeping copies of research reports from institutions receiving grants, committee records, and publications are proposed for permanent retention.

14. Small Business Administration, Office of Business Development (N1–309–03–04, 12 items, 10 temporary items). Inputs, outputs, and back up files of an electronic records system used for monitoring the status of small businesses owned by economically and socially disadvantaged individuals. Also included are electronic copies of documents created using electronic mail and word processing. Master files and system documentation are proposed as permanent.

Dated: April 7, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 03–8974 Filed 4–11–03; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Geosciences (1755).

Dates: April 30–May 2, 2003.

Time: Noon–5:30 p.m. Wednesday, April 30, 2003, 8:30 a.m.–5:30 p.m. Thursday, May 1, 2003, 8:30 a.m.–noon Friday, May 2, 3003.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 375, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Thomas Spence, Directorate for Geosciences, National Science Foundation, Suite 705, 4201 Wilson Boulevard, Arlington, Virginia 22230, Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda:

Day 1: Education and Diversity Subcommittee Meeting; Directorate activities and plans.

Day 2: Division Subcommittee Meetings; Directorate initiatives. Cross-directorate programs;

Day 3: Observational activities; Communications.

Dated: April 8, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–8990 Filed 4–11–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 30–35594–CivP (EA 02–072), ASLBP No. 03–811–02–CivP]

Advanced Medical Imaging and Nuclear Services; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the FR, 37 FR 28,710 (1972), and §§ 2.205, 2.700, 2.702, 2.714, 2.714a, 2.717, 2.721, and 2.772(j) of the Commission's regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding:

Advanced Medical Imaging and Nuclear Services, Easton, Pennsylvania; Order Imposing Civil Monetary Penalty.

This Board is being established pursuant to the request of Advanced Medical Imaging and Nuclear Services, for a hearing regarding an order issued by the NRC staff, dated February 19, 2003, entitled "Order Imposing Civil Monetary Penalty" (68 FR 10,040 (Mar. 3, 2003)).

The Board is comprised of the following administrative judges:

Thomas S. Moore, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents and other materials shall be filed with the Panel Judges in accordance with 10 CFR 2.701.

Issued at Rockville, Maryland, this 8th day of April 2003.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–9025 Filed 4–11–03; 8:45 am]

BILLING CODE 7590–01–U

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of an Information Collection: SF 2817

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget (OMB) a request for review of an information collection. SF 2817, Life Insurance Election, is used by Federal employees and assignees (those who have acquired control of an employee/annuitant's coverage through an assignment or "transfer" of the ownership of the life insurance). Clearance of this form for use by active Federal employees is not required according to the Paperwork Reduction Act (Pub. L. 98–615). The Public Burden Statement meets the requirements of 5 CFR 1320.8(b)(3). Therefore, only the use of this form by assignees, *i.e.*, members of the public, is subject to the Paperwork Reduction Act.

Approximately 100 forms are completed annually by assignees. Each form takes approximately 15 minutes to complete. The annual estimated burden is 25 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before May 14, 2003.

ADDRESSES: Send or deliver comments to—

Christopher N. Meuchner, Program Planning & Evaluation Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3425, Washington, DC 20415–3660

and

Stuart Shapiro, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cyrus S. Benson, Team Leader, Desktop Publishing and Printing Team, Center for Retirement and Insurance Services, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–9023 Filed 4–11–03; 8:45 am]

BILLING CODE 6325–50–U

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection:

Employer's Deemed Service Month Questionnaire; OMB 3220–0156.

Section 3(i) of the Railroad Retirement Act (RRA), as amended by Pub. L. 98–76, provides that the Railroad Retirement Board (RRB), under certain circumstances, may deem additional months of service in cases where an employee does not actually work in every month of the year, provided the employee satisfies certain eligibility requirements, including the existence of an employment relation between the employee and his or her employer. The procedures pertaining to the deeming of additional months of service are found in the RRB's regulations at 20 CFR part 210, Creditable Railroad Service.

The RRB utilizes Form GL–99, Employers Deemed Service Month Questionnaire, to obtain service and compensation information from railroad employers needed to determine if an employee can be credited with additional deemed months of railroad service. Completion is mandatory. One response is required for each RRB inquiry.

The RRB proposes minor non-burden impacting changes to Form GL–99. The completion time for Form GL–99 is

estimated at 2 minutes per response. The RRB estimates that approximately 4,000 responses are received annually.

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa.

Clearance Officer.

[FR Doc. 03–8993 Filed 4–11–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47643; File No. SR–Amex–2000–49]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the American Stock Exchange LLC to Permanently Approve Its Pilot Program Relating to Facilitation Cross Transactions

April 7, 2003

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to revise and permanently approve its pilot program relating to facilitation cross transactions. On August 29, 2000, October 15, 2002, and January 29, 2003, respectively, the Amex filed Amendment Nos. 1, 2, and 3 to the proposed rule change.[3] On March 18, 2003, the Amex filed Amendment No. 4 to the proposed rule change, in which the Exchange replaced the original proposal and previous amendments with a proposal to permanently adopt the pilot program in its present form, and added a clarification concerning specialist participation in facilitation transactions.[4] The proposed rule change, as amended by Amendment No. 4, is described in Items I and II below, which Items have been prepared by the Exchange. On April 1, 2003, the Amex filed Amendment No. 5 to the proposed rule change, requesting that the Commission accelerate approval of the proposal.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and is granting accelerated approval of the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Claire P. McGrath, Vice President and Special Counsel, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 28, 2000, and letters from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated October 14, 2002, and January 28, 2003.

[4] See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated March 17, 2003. The proposed rule change, as originally filed, and Amendment Nos. 1, 2, and 3 contained significant proposed revisions to the pilot program that the Exchange in Amendment No. 4 determined to delete.

[5] See letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Elizabeth King, Associate Director, Division, Commission, dated March 31, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to permanently approve its pilot program relating to facilitation cross transactions, with an added clarification concerning specialist participation in such transactions. The text of the proposed rule change is set forth below. Additions are italicized; deletions are in brackets.

* * * * *

Rule 950—Rules of General Applicability

(a)–(c) No change.

(d) The provisions of Rule 126, with the exception of subparagraphs (a) and (b) thereof, shall apply to Exchange options transactions and the following additional commentary shall also apply.

* * * Commentary

.01 No change.

.02 A member who holds both an order for a public customer of a member organization and a facilitation order may cross such orders if:

(a)–(c) No change.

(d)(1) notwithstanding paragraph (c) above, a member firm seeking to facilitate its own public customer's equity option order for the eligible order size will be permitted to participate in the firm's proprietary account as the contra-side of that order to the extent of the percentages set forth below:

(i) 20% of the order if the order is traded at the best bid or offer given by the trading crowd in response to a floor broker's request for a market; or

(ii) 40% of the order if the member firm improves the market that was provided by the trading crowd in response to a floor broker's request and the order is traded at that best bid or offer.

If, however, a public customer order on the specialist's book or represented in the trading crowd has priority over the facilitation order, the member firm may participate in only those contracts remaining after the public customer's order has been filled.

(2) No change.

(3) if a facilitation transaction pursuant to this subparagraph (d) occurs at the specialist's bid or offer, [then] *the specialist shall be allocated the greater of either (i) 20% of the executed contracts if the facilitating member firm, pursuant to subparagraph (d)(1)(i), has participated to the extent of 20% of the executed contracts; or (ii) a share of the executed contracts that have been divided equally among the specialist and other participants to the trade. T*[t]he specialist's participation allocation [pursuant to trading floor practices,] shall only apply to the number of contracts remaining after all public customer orders and the member firm's facilitation order have been satisfied. However, the total number of contracts guaranteed to be allocated to the member firm and the specialist in the aggregate shall not exceed 40% of the facilitation transaction. If the facilitation transaction occurs at a price at which the specialist is not on parity, the specialist is entitled to no guaranteed participation allocation.

(4) No change.

.03–.07 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to permanently approve its pilot program relating to facilitation cross transactions, with an added clarification concerning specialist participation in such transactions. The pilot program was initially approved by the Commission on June 2, 2000, was most recently extended on January 10, 2003, and is due to expire on April 7, 2003.[6]

Commentary .02(d) to Amex Rule 950(d) established a pilot program to allow facilitation cross transactions in equity options.[7] The pilot program entitles a floor broker, under certain conditions, to cross a specified percentage of a customer order with an order for the member firm's proprietary account before specialists and/or registered options traders in the crowd can participate in the transaction. The provision generally applies to orders of 400 contracts or more. However, the Exchange is permitted to establish smaller eligible order sizes, on a class-by-class basis, provided that the eligible order size is not for fewer than 50 contracts.

The amount of the guaranteed participation percentage depends upon a comparison of the original market quoted by the trading crowd in response to a request from the floor broker and the price at which the orders are traded. If the order is traded at the best bid or offer provided by the trading crowd in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 20% of the order. If the order is traded at a price that improves the market provided by the trading crowd (*i.e.*, at a price between the best bid and offer) in response to the floor broker's initial request for a market, then the floor broker is entitled to cross 40% of the order. In addition, the facilitating member firm may only participate in the executed contracts after public customer orders on the specialist's book or represented by a floor broker in the crowd have been filled.

In addition to its proposal to adopt the pilot program permanently, the Exchange proposes to revise subparagraph (d)(3) of Commentary .02 to Amex Rule 950(d) to clarify the participation of the specialist in executed contracts allocated after all public customer orders and the member firm's facilitation order have been satisfied.[8] Subparagraph (d)(3) would provide that the specialist shall be allocated the greater of either: (i) 20% of the executed contracts if the facilitating member firm, pursuant to the subparagraph (d)(1)(i) of Commentary .02, has participated to the extent of 20% of the executed contracts; or (ii) a share of the executed contracts that have been divided equally among the specialist and other participants to the trade.

[6] See Securities Exchange Act Release Nos. 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000); 43229 (August 30, 2000), 65 FR 54572 (September 8, 2000); 44019 (February 26, 2001), 66 FR 13819 (March 7, 2001); 44538 (July 11, 2001), 66 FR 37507 (July 18, 2001); 44924 (October 11, 2001), 66 FR 53456 (October 22, 2001); 45241 (January 7, 2002), 67 FR 1524 (January 11, 2002); 45703 (April 8, 2002), 67 FR 18272 (April 15, 2002); 46176 (July 9, 2002), 67 FR 47007 (July 17, 2002); 46630 (October 9, 2002), 67 FR 64425 (October 18, 2002); and 47163 (January 10, 2003), 68 FR 2378 (January 16, 2003).

[7] Facilitation cross transactions occur when a floor broker representing the order of a public customer of a member firm crosses that order with a contra side order from the firm's proprietary account.

[8] In addition to the clarification provided by the proposed rule change, subparagraph (d)(3) would continue to include the general statement that if the facilitation transaction occurred at the specialist's bid or offer, the total number of contracts guaranteed to the member firm and the specialist in the aggregate could not exceed 40% of the facilitation transaction. If the facilitation transaction occurred at a price at which the specialist was not on parity, the specialist would be entitled to no guaranteed participation allocation.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2000–49 and should be submitted by May 5, 2003.

IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In its approval of the pilot program,[12] the Commission detailed its reasons for finding the program's substantive features consistent with the Act, and, in particular, the requirements of Sections 6(b)(5) and 6(b)(8) of the Act.[13] The Commission has previously approved rules on other exchanges that establish substantially similar programs on a permanent basis,[14] and the establishment of the pilot as a permanent program on the Amex raises no new regulatory issues for consideration by the Commission.

The Commission notes that, in approving member firms participation rights and other guaranteed participations in the past, it has found that rules entitling a market participant(s) to up to 40% of an order are not inconsistent with the statutory standards of competition and free and open markets.[15] The Commission has raised concerns, on the other hand, about participation guarantees that "lock up" a larger percentage of an order, and thereby reduce the number of

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] See *supra*, note 6.

[13] 15 U.S.C. 78f(b)(5) and (b)(8).

[14] See, *e.g.*, Securities Exchange Act Release Nos. 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000), and 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

[15] See, *e.g.*, Securities Exchange Act Release Nos. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000); 42894 (June 2, 2000), 65 FR 36850 (June 12, 2000); 42835 (May 26, 2000), 65 FR 35683 (June 5, 2000); 42848 (May 26, 2000), 65 FR 36206 (June 7, 2000).

contracts for which the trading crowd can compete.[16] The Amex facilitation program guarantees an allocation of no more than 40% of an order to a member firm seeking to facilitate an order. Moreover, the Amex rule includes a provision that limits the number of contracts to be allocated to the facilitating firm and the specialist in the aggregate to no more than 40% of the order. The rule for which the Amex seeks permanent approval is consistent with the Commission's position with respect to participation guarantees.

The language that the Amex proposes to add to the rule would clarify that, if the facilitating firm has participated in the 20% of the contracts to which it is entitled when the order is traded at the best bid or offer provided by the trading crowd in response to the floor broker's initial request for a market, the specialist would be allocated either the greater of 20% of the executed contracts or a share of the executed contracts that have been divided equally among the specialist and other participants in the trade. This provision is consistent with the Commission's position regarding participation guarantees and comports with the Commission's understanding of how the Amex rule was to be applied when the Commission approved the rule on a pilot basis.

As noted above, the Exchange has requested that the Commission grant accelerated approval to the proposed rule change. The Exchange states that the pilot program has been in effect for almost three years without incident and that substantially similar rules are in place at the Chicago Board Options Exchange, the Pacific Exchange, and the International Securities Exchange.[17] The Exchange adds that accelerated approval would obviate the need to extend the pilot program beyond its current expiration date of April 7, 2003.

The Commission finds good cause, consistent with Sections 6(b) and 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**. The proposal raises no new regulatory issue and will make permanent a pilot program that comports with the facilitation cross rules of other exchanges.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–Amex–2000–49), as amended, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–8997 Filed 4–11–03; 8:45 am]

BILLING CODE 8010–01–P

[16] *See, e.g.*, Securities Exchange Act Release No. 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000).

[17] *See* Amendment No. 5.

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47648; File No. SR–NASD–2003–53]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Nasdaq Test Facility Pricing Under Rule 7050 for NASD Members

April 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify Nasdaq Test Facility pricing under Rule 7050 for NASD members.[5] Nasdaq will implement the proposed rule change on April 1, 2003. The text of the proposed rule change is below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

7050. Other Services

(a) No change.

(b) No change.

(c) No change.

(d) Nasdaq Testing Facility [(NTF)]

(1) Subscribers that conduct tests of their computer-to-computer interface (CTCI), NWII application programming interface (API), or market data vendor feeds through the Nasdaq Testing Facility (NTF) [of The Nasdaq Stock Market, Inc. (Nasdaq)] shall pay the following charges:

$285/hour—For *an Active Connection for* CTCI/NWII API testing [between 9 a.m. and 5 p.m. E.T. on business days] *during the normal operating hours of the NTF;*

$75/hour—For an Idle Connection for CTCI/NWII API testing during the normal operating hours of the NTF, unless such an Idle Connection is over a dedicated circuit;

No charge—For an Idle Connection for CTCI/NWII API testing if such an Idle Connection is over a dedicated circuit during the normal operating hours of the NTF;

$333/hour—For CTCI/NWII API testing (*for both Active and Idle Connections*) at all [other] times *other than the normal operating hours of the NTF* [on business days, or on weekends and holidays].

(2)*(A) An "Active Connection" commences when the user begins to send and/or receive a transaction to and from the NTF and continues until the earlier of disconnection or the commencement of an Idle Connection.*

(B) An "Idle Connection" commences after a Period of Inactivity and continues until the earlier of disconnection or the commencement of an Active Connection. If a Period of Inactivity occurs immediately after subscriber's connection to the NTF is established and is then immediately followed by an Idle Connection, then such Period of Inactivity shall also be deemed a part of the Idle Connection.

(C) A "Period of Inactivity" is an uninterrupted period of time of specified length when the connection is open but the NTF is not receiving from or sending to subscriber any transactions. The length of the Period of Inactivity shall be such period of time between 5 minutes and 10 minutes in length as Nasdaq may specify from time to time by giving notice to users of the NTF.

(3) The foregoing hourly fees shall not apply to market data vendor feed testing, or testing occasioned by:

(A) new or enhanced services and/or software provided by Nasdaq[.] *or*

(B) modifications to software and/or services initiated by Nasdaq in response to a contingency[.]; *or*

(C) testing by a subscriber of a Nasdaq service that the subscriber has not used previously, except if more than 30 days have elapsed since the subscriber commenced the testing of such Nasdaq service.

([3]*4*) Subscribers that conduct CTCI/API or market data vendor feed tests using a dedicated circuit shall pay a monthly fee, in addition to any applicable hourly fee described in section (d)(1) above, in accordance with the following schedule:

Service	Description	[Proposed] price
NTF Market Data	Test Market Data Vendor Feeds over a 56kb dedicated circuit	$1,100/circuit/month.
NTF NWII API	NWII API service to an onsite test SDP over a 56kb dedicated circuit.	$1,100/circuit/month.
NTF CTCI	CTCI service over a 56kb dedicated circuit	$1,100/circuit/month.
NTF Test Suite	NWII API service and CTCI service over two 56kb circuits (128 kb).	$1,800/2 circuits/month.
NTF Circuit Installation	Installation of any service option including SDP configuration	$700/circuit/installation.

([4]*5*) New NTF subscribers that sign a one-year agreement for dedicated testing service shall be eligible to receive 90-calendar days free dedicated testing service.

([5]*6*) "New NTF subscribers" are subscribers that

(A) have never had dedicated testing service; or

(B) have not had dedicated testing service within the last 6 calendar months.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change seeks to make certain modifications to the pricing of testing services provided through the Nasdaq Test Facility ("NTF"). The objectives of the pricing changes are to reduce barriers to entry for new Nasdaq subscribers and to address feedback from subscribers regarding current test fees. In some instances, the current charges are not cost efficient for subscribers, and as a consequence, firms may choose not to test through NTF or elect not to connect to Nasdaq's systems at all. The proposed rule change seeks to encourage subscribers to make greater use of Nasdaq services.

The proposed rule distinguishes between active and idle connections to the NTF. An active connection is in effect while transactions are actually being transmitted and for a brief period of inactivity thereafter. The existing hourly rate ($285 per hour) remains unchanged with respect to the times when the connection is active during the NTF's normal operating hours. However, if no transactions are being transmitted over an open connection, then, after a certain period of inactivity, that connection would be deemed idle and a newly established lower rate ($75 per hour) will apply. Initially, the period during which a connection needs to remain inactive before it will be deemed idle will be 10 minutes. However, Nasdaq reserves the right to adjust this time within a range of 5 to 10 minutes by giving notice of the change to NTF subscribers. The idle connection rate will not apply outside of NTF's normal operating hours, when the existing rate ($333 per hour) remains unchanged for both active and idle connections.

The proposed rule also eliminates idle connection charges during the NTF's normal operating hours for NTF subscribers with dedicated circuit connections and waives hourly charges during the times over an initial 30-day period when a subscriber is using NTF to test a Nasdaq service that the subscriber has not used previously.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[6] including section 15A(b)(5) of the Act,[7] which requires that the rules of the NASD provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. By adopting a pricing structure that is responsive to subscriber needs and market demands, the proposed rule supports efficient use of existing systems and ensures that the charges associated with such use are allocated equitably.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become immediately effective pursuant to section 19(b)(3)(A)(ii) of the Act,[8] and subparagraph (f)(2) of Rule 19b–4 thereunder,[9] in that it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Nasdaq is also submitting a proposed rule change to establish an identical fee for non-members. *See* SR–NASD–2003–54.

[6] 15 U.S.C. 78o–3.

[7] 15 U.S.C. 78o–3(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–53 and should be submitted by May 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9036 Filed 4–11–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47645; File No. SR–NASD–2003–58]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the National Association of Securities Dealers, Inc. Eliminating Certain Eligibility Requirements for Participating in the Primex Auction System as a Primex Auction System Market Maker

April 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4[2] thereunder, notice is hereby given that on March 27, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing this proposed rule change in order to eliminate the requirement that Primex Auction System Market Makers ("PAMMs") submit a minimum percentage of certain orders to the Primex Auction System ("Primex" or "System") in order to retain their status as PAMMs.

The text of the proposed rule change appears below. Proposed new language is underlined; proposed deletions are in brackets.

5010. NASDAQ Application of the Primex Auction System

5011. Definitions

For purposes of this Rule Series, unless the context requires otherwise:

* * * * *

(a) ["Mandatory Eligible Order" means a public customer order, as more fully defined in rule 5020, that a Primex Auction Market Maker must submit to the System for exposure in order for the Primex Auction Market Maker to maintain its status as such, subject to any exclusions or minimum permissible amount provided therein.] *Reserved.*

* * * * *

5020. Market Maker Participation[3]

(a) No Changes.

(b) With respect to each security in which a Participant is registered as a Primex Auction Market Maker, the Participant shall:

(1) if the security is a Nasdaq-listed security, be registered as a Nasdaq market maker (1) if the security is a Nasdaq-listed security, be registered as a Nasdaq market maker in such security (or become so registered), and at all times comply with all applicable NASD rules and interpretations relating to Nasdaq market makers, including the requirement to enter and maintain two-sided quotations in Nasdaq for such security, subject to the excused withdrawal procedures set forth in Rule 4619;

(2) if the security is an ITS/CAES eligible security, be registered as an ITS/CAES Market Maker (or become so registered) in such security, and at all times comply with all applicable NASD rules and interpretations relating to ITS/CAES Market Makers, including the requirement to enter and maintain two-sided quotations in CQS for such security, subject to the excused withdrawal procedures set forth in Rule 6350; *and*

[(3) submit to the Application a minimum of 80%* of the number of its Mandatory Eligible Orders (including customer orders of another broker-dealer that has directed such orders to the Participant) as soon as practicable upon receipt by the Participant, for the purpose of exposing such orders to the Primex Crowd. Mandatory Eligible Orders do not include:

(A) Any customer order that is greater than 1099 shares at origination, except that nothing in these rules prohibits a Participant from submitting orders of greater size at any time;

(B) Any customer order that, when initially received by the Participant, is a Fixed Price Order with a specified price that is not eligible for acceptance by the Application because it is priced outside the NBBO and is not otherwise marketable pursuant to Rule 5013(a)(2), regardless of whether or not the order becomes eligible for acceptance and exposure at a subsequent point in time;

(C) Any customer order placed by a customer who authorizes the Participant to not expose the order, either at the time the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders;

(D) Any customer order that is an odd lot order (*e.g.*, less than 100 shares);

(E) Any customer order to be executed outside of the hours of operation of the Application; or

(F) Any other order that would not fall within the definition of the term "covered order" as defined in Exchange Act Rule 11Ac1–5(a)(8).]

(*3*[4]) not attach a condition for Minimum Relative Price Improvement to any order submitted to the Application solely for its own principal account and not involving a customer order.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Presently, NASD Rule 5020(b)(3) requires PAMMS to submit 80% of their Mandatory Eligible Orders to Primex in order to retain their status as PAMMs ("Percentage Test").[4] Members registered as PAMMs can utilize certain matching features and are eligible for fee sharing, which are features not available to members that do not participate as PAMMs (*i.e.*, Crowd Participants).[5]

The purpose of the Percentage Test was to achieve a mix of trading interest that would result in retail orders being exposed to other market participants that would compete for the orders by providing price improvement. Ultimately, the Percentage Test was a balance between continuing to provide PAMMs flexibility in how they execute their customer orders and the desire to provide a cross section of orders that would generate crowd participation and competition for orders. However, members have indicated that the Percentage Test complicates their order handling decisions, creating a disincentive to participating in Primex. Therefore, Nasdaq is proposing to eliminate the Percentage Test and allow members to participate as PAMMs irrespective of the number of orders they submit to the System.

The proposal to eliminate the Percentage Test does not modify any other aspect of Primex. For example, PAMMs must continue to comply with the other requirements of NASD Rule 5020 that govern PAMM eligibility, and PAMMs will continue to have the right to use the matching features and to participate in the fee sharing arrangements that are not available to Crowd Participants.

2. Statutory Basis

Nasdaq believes the proposed rule change is consistent with section 15A(b)(6) of the Act,[6] which requires that NASD's rules be designed, among other things, to remove impediments to and perfect the mechanism of a free and open market and national market system, and, in general, protect investors and the public interest. Nasdaq believes the proposal to eliminate the Percentage Test is consistent with NASD's obligations under section 15A(b)(6) of the Act because it will remove an impediment to using Primex, which should result in greater participation in the System and increased liquidity and opportunities for price improvement.

When originally implemented, Nasdaq believed the requirement would promote liquidity by ensuring a cross section of order flow from each PAMM, which in turn would encourage non-market makers to participate in Primex and offer opportunities for price improvement. Nasdaq represents that promoting liquidity and price improvement opportunities are consistent with the protection of investors. However, instead of fostering liquidity, members have indicated the requirement is a disincentive to using Primex. Members desire flexibility in making order routing decisions and the rule complicates these decisions. Therefore, Nasdaq staff is proposing to eliminate the Percentage Test, which will eliminate an impediment to using Primex. As a result, Nasdaq expects that more members will participate in Primex, which should increase liquidity and opportunities for price improvement.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has been designated by NASD as effecting a change in an existing order-entry or trading system of NASD that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not have the effect of limiting the access to or availability of the system. The proposed rule change has therefore become effective pursuant to section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(5)[8] thereunder. The Nasdaq believes that the proposal to eliminate the Percentage Test complies with the requirements of Rule 19b–4(f)(5) under the Act because it effects a change in Primex, an existing trading system. In addition, the proposal does not modify how Primex operates. Therefore, it does not significantly affect the protection of investors or the public interest. Instead, the proposal eliminates a requirement that is viewed as an impediment to using Primex. In this regard, the proposal does not have the effect of limiting the access or availability of the System, but instead should promote access to it, which should increase participation in the System and promote competition for orders exposed in the System.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The rule text provided herein includes corrections of typographical errors from the rule text that Nasdaq submitted in Exhibit 1 of the proposed rule change. Telephone conversation between Peter R. Geraghty, Associate Vice President and Associate General Counsel, Office of General Counsel, Nasdaq, and Tim Fox, Attorney, Division of Market Regulation, Commission on April 7, 2003.

* The 80% test will be applied on a quarterly basis, and will be phased in as follows: For the calendar quarters commencing on October 1, 2001; January 1, 2002; April 1, 2002; July 1, 2002; and October 1, 2002; any participant may register in any eligible security as a Primex Auction Market Maker and maintain that status during such calendar quarters without regard to the percentage of its orders it submits to the System for such security during that time, provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.

Beginning with the calendar quarter that commences on January 1, 2003, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until March 30, 2003 only if it submitted at least 50% of its Mandatory Eligible Orders during the calendar quarter that commences on October 1, 2002 (or during such portion of the calendar quarter that commences on October 1, 2002 in which the participant was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules. A participant that is newly registering as a Primex Auction Market Maker for a particular security any time after the start of the calendar quarter that commences on January 1, 2003 may maintain its status as such until the end of the calendar quarter in which it registered without regard to the percentage of its orders it submits to the System for such security during that time.

Beginning with the calendar quarter that commences on April 1, 2003, and each calendar quarter thereafter, a participant previously registered as a Primex Auction Market Maker for a particular security may maintain its status as such until the end of that calendar quarter only if it submitted at least 80& of its Mandatory Eligible Orders during the previous calendar quarter (or during the portion of such previous calendar quarter in which it was so registered if the participant registered in mid quarter), provided it also satisfies all other requirements of a Primex Auction Market Maker pursuant to these rules.]

[4] The term "Mandatory Eligible Order" is defined in NASD Rule 5011(l).

[5] PAMMS can enter Clean Cross orders and use the Two Cent Match, 50% Match, and Block Facilitation Match features. These features are described in NASD Rule 5014. In addition, pursuant to NASD Rule 7010(r)(1), a PAMM can share in the Primex fees charged to members when the PAMMs order interacts with crowd interest in Primex.

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(5).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–58 and should be submitted by May 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9037 Filed 4–11–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47646; File No. SR–Phlx–2003–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Equal Firm Quotation Size and AUTO–X Guarantees for Customer and Broker-Dealer Orders

April 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 20, 2003, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The proposed rule change has been filed by the Phlx as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act.[3] On April 7, 2003, the Phlx filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to implement an options program to be firm for, and to automatically execute eligible orders against, the Exchange's disseminated size for both customer and broker-dealer orders. Specifically, the Exchange proposes to amend Exchange Rule 1082, Firm Quotations, to provide that all Phlx options quotations would be firm for all incoming customer and broker-dealer orders for their full disseminated size.

The Exchange further proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X),[5] to provide automatic executions for eligible customer and off-floor broker-dealer orders up to the Exchange's disseminated size, subject to a maximum guaranteed AUTO–X size of 250 contracts. Options on the Nasdaq-100 Index Tracking Stock ("QQQ"℠)[6] would continue to have a maximum guaranteed AUTO–X size of 2,000 contracts in the first two near term expiration months, and 1,000 contracts for all other expiration months.[7]

Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

Firm Quotations

Rule 1082. (a) No change.

(b) Except as provided in paragraph (c) of this Rule, all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer *and broker-dealer* orders at the disseminated price in an amount up to the disseminated size. Responsible brokers or dealers bidding (or offering) at the disseminated price shall be collectively required to execute orders presented to them at such price up to the disseminated size in accordance with Rule 1015, or, if the responsible broker or dealer is representing (as agent) a limit order, such responsible broker or dealer shall be responsible (as agent) up to the size of such limit order, but may be responsible as principal for all or a portion of the excess of the disseminated size over the size of such limit order to the extent provided in Rule 1015.

(c) No change.

(d) [In accordance with paragraph (d)(1)(ii) of the SEC Quote Rule, the quotation size for a disseminated price with respect to an order for the account of a broker or dealer ("broker-dealer order") shall be one (1) contract ("quotation size"), and all quotations made available by the Exchange and displayed by quotation vendors shall be firm for broker-dealer orders at the disseminated price in an amount up to the quotation size. The quotation size for broker-dealer orders provided in this paragraph (d) shall be periodically published by the Exchange. Responsible brokers or dealers bidding (or offering) at the disseminated price shall be collectively required to execute broker-dealer orders at such price up to the quotation size. (e)] If responsible brokers or dealers receive an order to buy or sell a listed option at the disseminated price in an amount greater than the disseminated size [(for customer orders) or the quotation size (for broker-dealer orders)], such responsible broker or dealer shall, within thirty (30) seconds of receipt of the order, (i) execute the entire order at the disseminated price (or better), or (ii) execute that portion of the order equal to the disseminated size [(in the case of a customer order) or the quotation size (in the case of a broker-dealer order)] at the disseminated price (or better), and revise its bid or offer.

Commentary:

.01. For purposes of this Rule 1082, the term "broker-dealer orders" includes orders for the account(s) of market makers on another exchange and Registered Options Traders ("ROTs") on the Exchange.

* * * * *

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(b) No change.

(c) AUTO–X.—AUTO–X is a feature of AUTOM that automatically executes eligible market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO–X automatically executes eligible orders using the Exchange disseminated quotation (except if executed pursuant to the NBBO Feature in sub-paragraph (i) below) and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged, such as pursuant to sub-paragraph (iv) below. An order may also be executed partially by AUTO–X and partially manually.

The Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option or series provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Securities and Exchange Commission pursuant to Section 19(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder. Any such restriction on the use of AUTO–X approved by the Options Committee will be clearly communicated to Exchange membership and AUTOM users through an electronic message sent via AUTOM and through an Exchange information circular. Such restriction would not take effect until after such communication has been made.

Currently, the Exchange's maximum allowable AUTO–X guarantee is 250 contracts. With respect to options on the Nasdaq-100 Index Tracking Stock ("QQQ")℠, orders of up to 2,000 contracts in the first two (2) near term expiration months, and 1,000 contracts for all other expiration months, are eligible for AUTO–X.

For each option, there shall be a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size. Such minimum and maximum sizes may be for a different number of contracts for customer orders than for broker-dealer orders], as determined by the specialist and subject to the approval of the Options Committee.

The Exchange shall provide automatic executions for eligible *customer and broker-dealer* orders up to the Exchange's disseminated size as defined in Exchange Rule 1082, subject to a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size (up to a size of 250 contracts).

- If the Exchange's disseminated size is greater than the minimum guaranteed AUTO–X size, and less than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to Exchange's disseminated size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.
- If the Exchange's disseminated size is less than the minimum guaranteed AUTO–X size for that option, inbound eligible orders shall be automatically executed up to such minimum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.
- If the Exchange's disseminated size is greater than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to such maximum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist.

The minimum and maximum guaranteed AUTO–X size applicable to each option shall be posted on the Exchange's web site.

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(i)–(v) No change.

(d)–(j) No change.

Commentary

01–.04 No change.

.05 Off-floor broker-dealer limit orders delivered through AUTOM must be represented on the Exchange Floor by a floor member. Off-floor broker-dealer orders delivered via AUTOM shall be for a minimum size of one (1) contract. Off-floor broker-dealer limit orders are subject to the following other provisions:

(i)–(iii) No Change

(iv) [(a) The minimum guaranteed AUTO–X size shall be at least 10 contracts for off-floor broker-dealer limit orders in the 120 most actively traded equity options (the "Top 120 Options"). A Top 120 Option is defined as one of the 120 most actively traded equity options in terms of the total number of contracts that were traded nationally for a specified month based on volume reflected by The Options Clearing Corporation ("OCC").

(b) With respect to all other options, off-floor broker-dealer limit orders may be eligible for automatic execution via AUTO–X on an issue-by-issue basis, subject to the approval of the Options Committee.

(c) The AUTO–X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO–X guarantee for public customer orders, subject to the approval of the Options Committee. (v)] Off-floor broker-dealer AUTO–X eligible limit orders may be eligible for the Exchange's National Best Bid or Offer ("NBBO") Step-Up Feature on an issue-by-issue basis, subject to the approval of the Options Committee.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx, to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation, Commission, dated April 4, 2003 ("Amendment No. 1"). In Amendment No. 1, Phlx deleted certain proposed language stating that "(t)he minimum guaranteed AUTO–X size is 1 contract, and the current maximum AUTO–X size is 250 contracts, except for QQQ options"; retained current language that the minimum and maximum guaranteed AUTO–X sizes for each option will be posted in the Phlx's website; and retained current language that there be a minimum guaranteed AUTO–X size and maximum guaranteed AUTO–X size, as determined by the specialist and subject to approval of the Options Committee.

[5] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[6] The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of Nasdaq and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the Index) is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[7] *See* Securities Exchange Act Release No. 46531 (September 23, 2002), 67 FR 61370 (September 30, 2002) (SR–Phlx–2002–47).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to require that all Phlx quotations would be firm for all incoming customer and broker-dealer orders for their full disseminated size, thus eliminating any distinction between customer orders and broker-dealer orders respecting firm quotation size. The Phlx also proposes to provide that all Phlx guaranteed AUTO–X sizes would be the same for both customer and broker-dealer orders.

a. Firm Quotation Size

Currently, Exchange Rule 1082(b) requires that all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer orders at the disseminated price in an amount up to the disseminated size. Exchange Rule 1082(d) sets forth a different "quotation size" of one contract applicable to broker-dealer orders, which is distinguished from the "disseminated size" for which responsible brokers or dealers are firm for customer orders.[8] The Exchange proposes to amend Exchange Rule 1082(b) to require that all quotations made available by the Exchange and displayed by quotation vendors shall be firm for customer orders and broker-dealer orders at the disseminated price in an amount up to the disseminated size, thus eliminating any distinction between customer orders and broker-dealer orders with respect to the size for which Exchange option quotations are firm.

The Exchange would also delete any references to "quotation size" and "broker-dealer" from Exchange Rule 1082(e). This would be to require all quotations made available by the Exchange and displayed by quotation vendors to be firm at the disseminated price in an amount up to the disseminated size for both customers and broker-dealers. The Phlx represents that the purpose of this provision is to provide both customers and broker-dealers with full access to the entire disseminated size of the Exchange's quotations. Thus, the Exchange proposes to eliminate any distinction between the size for which its quotes are firm, whether for customers or broker-dealers, including market makers on other exchanges and Registered Options Traders ("ROTs").

b. Automatic Executions at the Disseminated Size for Eligible Customer and Broker-Dealer Orders

In November 2002, the Commission approved an Exchange proposal to provide automatic executions for eligible orders at the Exchange's disseminated size, subject to a minimum and maximum eligible size range to be determined by the specialist and subject to approval of the Options Committee, on an issue-by-issue basis.[9] The Exchange now proposes to amend Exchange Rule 1080(c) by deleting the provision that such minimum and maximum sizes may be for a different number of contracts for customer orders than for broker-dealer orders. Corresponding sections of the Commentary to Exchange Rule 1080 concerning AUTO–X eligibility and different guaranteed AUTO–X sizes for customers and broker-dealers would also be deleted. This would result in automatic executions for both eligible customer orders and eligible broker-dealer orders at the Exchange's disseminated size.

The Exchange proposes to eliminate the distinction among customer orders and broker-dealer orders respecting AUTO–X guarantees. In order to ensure that customer and broker-dealer orders receive the same AUTO–X size guarantee, the Phlx proposes to delete the current provisions in Exchange Rule 1080, Commentary .05 requiring a minimum guaranteed AUTO–X size of ten contracts for off-floor broker-dealer orders in Top 120 options. Additionally, the current Commentary includes a provision that, with respect to all other options, off-floor broker-dealer limit orders may be eligible for automatic execution via AUTO–X on an issue-by-issue basis, subject to the approval of the Options Committee. The Exchange proposes to delete this provision in order to enable all eligible broker-dealer orders to be treated the same as eligible customer orders with respect to the Exchange's guaranteed AUTO–X size.

Finally, the Exchange proposes to delete from the Commentary the provision that the AUTO–X guarantee for off-floor broker-dealer limit orders may be for a different number of contracts, on an issue-by-issue basis, than the AUTO–X guarantee for public customer orders, subject to the approval of the Options Committee.

c. Conclusion

The Exchange believes that this proposed "one size fits all" approach, as set forth in subsections a. and b. above, should enable the Exchange to compete for broker-dealer orders by ensuring that there would be no distinction between broker-dealer and customer orders with respect to: (i) the size for which the Exchange is firm at its disseminated price; and (ii) the Exchange's guaranteed AUTO–X size. Furthermore, the Exchange believes that the proposal should enhance the transparency of its markets and result in a larger number of orders automatically executed.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by requiring Exchange specialists and ROTs to be firm for up to the Exchange's disseminated size for all orders, and providing automatic executions at the same guaranteed size for all eligible orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[12] of the Act and Rule 19b–4(f)(6)[13] thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx seeks to have the proposed rule change become operative immediately upon filing so that the Exchange may remain competitive with other exchanges with similar rules in effect.

The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative date and make the proposed rule change operative immediately upon filing, in order to allow the Phlx to compete for broker-dealer orders by removing any distinction between broker-dealer and customer orders with respect to the size for which the Exchange is firm at its disseminated price and the Exchange's guaranteed AUTO–X size.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–18 and should be submitted by May 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9034 Filed 4–11–03; 8:45 am]

BILLING CODE 8010–01–P

[8] Rule 11Ac1–1(d)(1)(ii) under the Act provides that an exchange or association may establish by rule and periodically publish a quotation size, which shall not be for less than one contract, for which responsible brokers or dealers who are members of such exchange or association are obligated under paragraph (c)(2) of this section to execute an order to buy or sell a listed option for the account of a broker or dealer that is in an amount different from the quotation size for which it is obligated to execute an order for the account of a customer. 17 CFR 240.11Ac1–1(d)(1)(ii).

[9] *See* Securities Exchange Act Release No. 46886 (November 22, 2002), 67 FR 72015 (December 3, 2002) (SR–Phlx–2002–39).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47647; File No. SR–Phlx–2003–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Adopt a License Fee for Transactions in DIAMONDS® Exchange Traded Funds

April 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 28, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Summary of Equity Charges to adopt a license fee of $0.00025 per share per trade side for sides greater than 500 shares, with no maximum fee per trade side charged to Non-PACE Customers[3] and Electronic Communications Networks ("ECNs"),[4] and a license fee of $0.0005 per share per trade side, with no maximum fee per trade side charged to specialists for transactions on the Phlx in the DIAMONDS® Exchange Traded Funds ("DIAMONDS").[5] The Exchange also proposes to make minor, technical changes to its equity fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] PACE is the acronym for the Exchange's Automated Communication and Execution System, which is the Exchange's order routing, delivery, execution and reporting system for its equity trading floor. *See* Exchange Rules 229 and 229A.

[4] ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

[5] Dow Jones®, "The Dow℠," "Dow 30℠," "Dow Jones Industrial Average℠," "Dow Jones Industrials℠," "DJIA℠," "DIAMONDS®" and "The Market's Measure®" are trademarks of Dow Jones & Company, Inc. ("Dow Jones") and have been licensed for use for certain purposes by the Philadelphia Stock Exchange, Inc., pursuant to a License Agreement with Dow Jones. The DIAMONDS Trust, based on the DJIA, is not sponsored, endorsed, sold or promoted by Dow Jones, and Dow Jones makes no representation regarding the advisability of investing in the DIAMONDS Trust.

[6] These charges may include equity transaction charges, an equity floor brokerage assessment, an equity floor brokerage transaction fee, an off-Exchange trade information fee, an SEC fee, a remote information access fee, an Electronic Communications Network fee, an outbound Inter-Market Trading System ("ITS") fee and a net inbound ITS credit. Additionally, the PACE Specialist charge does not apply because specialists are not eligible for further PACE volume discounts. *See* Securities Exchange Act No. 44259 (May 4, 2001), 66 FR 23962 (May 10, 2001) (SR–Phlx–2001–41).

[7] The license fees will not be eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

schedule to make corresponding references to the proposed fees. All other equity charges currently assessed by the Phlx will be imposed where applicable.[6]

The Exchange proposes to implement this fee as of April 1, 2003, the date that it began trading in the DIAMONDS.[7]

Text of the proposed rule change is set forth below. New text is in italics. Deleted text is in brackets.

Summary of Equity Charges (p 1/3)*

EQUITY TRANSACTION CHARGE I

[Based on total shares per transaction with the exception of specialist trades and PACE trades.[1]]

Monthly transaction value	Rate per share
First 500 shares	$0.00
Next 2,000 shares	0.0075
Next 7,500 shares	0.005
Remaining shares	0.004
$50 maximum fee per trade side.	

License Fee

SPDRs, Standard & Poor's Depositary Receipts**

Customer Non-PACE and Electronic Communications Network E ("ECN") License Fee:
$0.00025 per share per trade side for sides greater than 500 shares
No maximum fee per trade side
Specialist License Fee:
$0.00035 per share per trade side
No maximum fee per trade side

*DIAMONDS® Exchange Traded Funds***

Customer Non-PACE and Electronic Communications Network E ("ECN") License Fee:
$0.00025 per share per trade side for sides greater than 500 shares
No maximum fee per trade side
Specialist License Fee:
$0.0005 per share per trade side
No maximum fee per trade side

See Appendix A for additional fees.
I denotes fee eligible for monthly credit of up to $1,000.
* Not applicable to transactions in Nasdaq-100 Index Tracking Stock℠ (see page 4 for fees).

Summary of Equity Charges (p 2/3)*

PACE Specialist Charge [2] I
$.20 per PHLX Specialist Trade against PACE Executions (Not applicable to PACE trades on the opening)
Equity Floor Brokerage Assessment I
$250 monthly charge [3]
Equity Floor Brokerage Transaction Fee I
$.05 per 100 shares or fraction thereof, for floor broker executing transactions for their own member firms.
SEC Fee
The amount shall be determined by Section 31 of the Securities Exchange Act of 1934.
Off-Exchange Trade Information Fee I
$.10 per DOT trade
Remote Information Access Fee I
$300.00 per month
Electronic Communications Network E ("ECN") Fee
$2,500.00 per month (in lieu of equity transaction charges)
Outbound ITS Fee I (also applicable to transactions in Nasdaq-100 Index Tracking Stock℠) [4]

For PACE orders sent over ITS with the customer information attached:

500 shares or less	$0.60 per 100 shares.
501 to 4,999 shares	0.30 per 100 shares.

Summary of Equity Charges (p 3/3)

Net Inbound ITS Credit (also applicable to transactions in Nasdaq-100 Index Tracking Stock ℠) [5]
$0.30 per 100 shares on the excess, if any, of the number of inbound ITS shares executed over the number of outbound ITS shares sent and executed on a monthly basis.
See Appendix A for additional fees.
I denotes fee eligible for monthly credit of up to $1,000.
* Not applicable to transactions in Nasdaq-100 Index Tracking Stock℠ (see next page for fees).
E ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: Any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.
Any fees, credits, discounts and other charges in the Exchange's fee schedule which are based upon an equity specialist's specialist activity apply to competing specialists.
** "Standard & Poor's,®" "S&®","S&P 500®", "Standard & Poor's 500®", and "500" are trademarks of The McGraw-Hill Companies, Inc., and have been licensed for use by the Philadelphia Stock Exchange, Inc., in connection with the listing and trading of SPDRs, on the Phlx. These products are not sponsored, sold or endorsed by S&P, a division of The McGraw-Hill Companies, Inc., and S&P makes no representation regarding the advisability of investing SPDRs.
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[1] However, this charge applies where an order, after being delivered to the Exchange by the PACE system is executed by the specialist by way of an outbound commitment, when such outbound ITS commitment reflects the PACE order's clearing information, but does not apply where a PACE trade was executed against an inbound ITS commitment.
[2] This charge does not apply to transactions in Nasdaq-100 Index Tracking Stock℠ [and] SPDRs *and DIAMONDS®*.
[3] Applies to each member who derives at least 80% of gross income generated from Phlx floor based activities from his/her floor brokerage business conducted on the Exchange. Floor brokerage business conducted on the Exchange includes orders that are received on the Phlx, even if those orders are executed on an exchange other than the Phlx. The 5% floor brokerage assessment is waived until Dec. 31, 2003 and is scheduled to be reinstated Jan. 1, 2004.
[4] This fee will only apply when the specialist sends an order received over PACE to ITS and receives an execution, if the specialist used the PACE customer's clearing information on the outbound ITS commitment.
[5] This credit will include all inbound and outbound ITS executions, including both PACE and non-PACE and both proprietary and customer commitments.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a license fee that will apply to trading DIAMONDS on the Exchange. The Exchange recently determined to begin trading DIAMONDS. The license fees should help off-set licensing fees incurred by the Exchange associated with the trading of these products on the Exchange.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members. The Exchange believes that charging members that trade these products a licensing fee is an equitable means of recovering a portion of the licensing fees incurred by the Exchange.[10]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [11] and Rule 19b–4(f)(2) thereunder.[12] At any

[6] These charges may include equity transaction charges, an equity floor brokerage assessment, an equity floor brokerage transaction fee, an off-Exchange trade information fee, an SEC fee, a remote information access fee, an Electronic Communications Network fee, an outbound Inter-Market Trading System ("ITS") fee and a net inbound ITS credit. Additionally, the PACE Specialist charge does not apply because specialists are not eligible for further PACE volume discounts. *See* Securities Exchange Act No. 44259 (May 4, 2001), 66 FR 23962 (May 10, 2001) (SR–Phlx–2001–41).

[7] The license fees will not be eligible for the

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] With regard to the distinction between Customer PACE and Non-PACE license fees, the Exchange states that it is consistent with its current practice to not impose customer charges for equity transactions delivered through PACE, but to impose customer charges for Non-PACE executions. *See, e.g.*, Securities Exchange Act Release Nos. 47385 (February 20, 2003), 68 FR 10295 (March 4, 2003) (SR–Phlx–2003–06); 44381 (June 1, 2001), 66 FR 31264 (June 11, 2001) (SR–Phlx–2001–57); and 43776 (December 28, 2000), 66 FR 1166 (January 5, 2001) (SR–Phlx–2000–103). Also, consistent with its current practice, the Exchange charges customer transaction fees and specialist transaction fees at different rates. *See, e.g.*, Securities Exchange Act

Continued

[3] PACE is the acronym for the Exchange's Automated Communication and Execution System, which is the Exchange's order routing, delivery, execution and reporting system for its equity trading floor. *See* Exchange Rules 229 and 229A.

[4] ECNs shall mean any electronic system that widely disseminates to third parties orders entered therein by an Exchange market maker or over-the-counter ("OTC") market maker, and permits such orders to be executed against in whole or in part; except that the term ECN shall not include: any system that crosses multiple orders at one or more specified times at a specified price set by the ECN, algorithm, or by any derivative pricing mechanism and does not allow orders to be crossed or executed against directly by participants outside of such times; or, any system operated by or on behalf of an OTC market-maker or exchange market-maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2003–20 and should be submitted by May 5, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9035 Filed 4–11–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3483]

State of West Virginia; Amendment # 2

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective April 4, 2003, the above numbered declaration is hereby amended to include Braxton, Harrison, Lewis, Logan, Monroe and Putnam Counties in the State of West Virginia as disaster areas due to damages caused by a severe winter storm, record snow, heavy rains, flooding and landslides occurring on February 16, 2003, and continuing through March 28, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Doddridge, Marion, Taylor and Wetzel in the State of West Virginia; and Craig County in the Commonwealth of Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary county have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is May 13, 2003, and for economic injury the deadline is December 15, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: April 7, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–9056 Filed 4–11–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Office of Visa Services

[Public Notice 4333]

60-Day Notice of Proposed Information Collection: Form DS–3052, Nonimmigrant V Visa Application; OMB Control Number 1405–0128

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Department of State (CA/VO).

Title of Information Collection: Nonimmigrant V Visa Application.

Frequency: Once per respondent.

Form Number: DS–3052.

Respondents: Nonimmigrant visa applicants applying for a V visa.

Estimated Number of Respondents: 100,000 per year.

Average Hours Per Response: 1 hour.

Total Estimated Burden: 100,000 hours per year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

For Additional Information: Public comments, or requests for additional information regarding the collection listed in this notice should be directed to Brendan Mullarkey of the Office of Visa Services, U.S. Department of State, 2401 E St., NW., RM L–703, Washington, DC 20520, who may be reached at 202–663–1163.

Dated: March 24, 2003.

Janice L. Jacobs,

Deputy Assistant Secretary of State for Visa Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–9053 Filed 4–11–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Office of Recruitment, Examinations and Employment (HR/REE)

[Public Notice 4334]

60-Day Notice of Proposed Information Collection: Form DS–1998, Department of State Registration Form; OMB Control Number 1405–0008

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. The process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Continuation of a currently approved collection.

Originating Office: Bureau of Human Resources (HR/REE).

Title of Information Collection: Registration for the Foreign Service Written Examination.

Frequency: Annually.

Form Number: DS–1998.

Respondents: Registrants for the Foreign Service Officer Written Examination.

Estimated Number of Respondents: 27,585 per year.

Average Hours Per Response: 20 minutes.

Total Estimated Burden: 9,195 hrs.

Public Comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Beatrice E. Smotherman, Bureau Of Human Resources, Examination Division, Foreign Service Written Examination, U.S. Department of State, Washington, DC 20522, who may be reached at (202) 261–8883.

Dated: February 28, 2003.

Ruben Torres,

Executive Director, Bureau of Human Resourses, Department of State.

[FR Doc. 03–9054 Filed 4–11–03; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice 4336]

Bureau of Democracy, Human Rights and Labor Request for Grant Proposals: Human Rights and Democratization Initiatives in the Middle East and North Africa

SUMMARY: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor (DRL) announces an open competition for one or more assistance awards. Organizations may submit grant proposals that address programs and activities that foster democracy, human rights, press freedoms, women's political development and the rule of law in countries with a significant Muslim population in the Middle East and North Africa, and where such programs and activities would be important to United States efforts to respond to, deter, or prevent acts of international terrorism.

Awards are contingent upon the availability of funds. Funding may be available at a level of up to $4,000,000 under the Economic Support Funds through the Bureau's Human Rights and Democracy Fund (HRDF) for projects that address Bureau objectives in predominantly Muslim countries in this region. The Bureau anticipates awarding between 4–10 grants in amounts of $250,000–$1,000,000.

Background: The Human Rights and Democracy Fund (HRDF) supports innovative, cutting-edge programs which uphold democratic principles, support and strengthen democratic institutions, promote human rights, and build civil society in countries and regions of the world that are geo-strategically important to the U.S. HRDF funds projects that have an immediate impact but that have potential for continued funding beyond HRDF resources. HRDF projects must not duplicate or simply add to efforts by other entities.

Additional Information

Proposed programs must address at least one of the following specific themes and priority countries. Regional programs that include priority countries are also welcome:

(1) Support to civil society, with emphasis on political actors and advocacy groups that involve women: Egypt, Jordan, Bahrain, Algeria, Oman, Saudi Arabia, Qatar, Iran.

(2) Access to information through freedom of the press, freedom of speech, and enhanced public awareness of human rights and democracy issues: Saudi Arabia, Egypt, Jordan, Morocco, Tunisia.

(3) Elections: strengthening institutional capacity, training political parties, NGOs and newly elected officials, raising civic awareness: Qatar, Oman, Bahrain, Jordan, Morocco.

(4) Rule of law with emphasis on civil liberties, governmental accountability, and administration of justice: Egypt, Jordan, Morocco, Tunisia.

Project Criteria

- Project implementation should begin no earlier than late summer 2003.
- Projects should not exceed two years in duration. Shorter projects with more immediate outcomes may receive preference.
- Projects must take place in-country or in a third country. U.S.-based or exchange projects are discouraged.
- Projects that have a strong academic or research focus will not be highly considered. DRL will not fund health, technology, environmental, or scientific projects unless they have an explicit democracy, human rights, or rule of law component. Conferences likewise will not be highly considered.
- Projects should include a follow-on plan that extends beyond the grant period ensuring that Bureau-supported programs are not isolated events.

In order to avoid the duplication of activities and programs, proposals should also indicate knowledge of similar projects being conducted in the region and how the submitted proposal will complement them.

Applicant/Organization Criteria

Organizations applying for a grant should meet the following criteria:

- Be a U.S. public or private non-profit organization meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).
- Have demonstrated experience administering successful projects in the region in which it is proposing to administer a project.
- Have existing, or the capacity to develop, active partnerships with in-country organization(s).

Note: Organizations are welcome to submit more than one proposal, but should know that DRL wishes to reach out to as many different organizations as possible with its limited funds.

Budget Guidelines

Please refer to the Proposal Submission Instructions for complete budget guidelines and formatting instructions.

Deadline for Proposals

All proposals must be received at the Bureau of Democracy, Human Rights and Labor by 5 p.m. Eastern Standard Time (EST) on Wednesday, May 14, 2003. Please refer to the PSI for specific delivery instructions.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the PSI. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for

advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements.

Final technical authority for assistance awards resides with the Office of Acquisition Management's Grants Officer.

Review Criteria

Eligible applications will be competitively reviewed according to the criteria stated below. Fuller explanation of these criteria are included in the PSI. These criteria are not rank ordered and all carry equal weight in the proposal evaluation: quality of the program idea; program planning and ability to achieve program objectives; multiplier effect/impact; institution's record/ability/capacity; cost-effectiveness.

FOR FURTHER INFORMATION, CONTACT: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor, DRL/PHD. Please specify Sondra Govatski (202)–647–9734 on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download A Solicitation Package Via Internet

The Solicitation Package includes this RFP plus the Proposal Submission Instructions (PSI) which contains detailed award criteria, specific budget instructions, and standard guidelines for proposal preparation. The entire RFP and PSI may be downloaded from the Bureau's Web site at *http://www.state.gov/g/drl/*.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative.

Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 7, 2003.

Lorne W. Craner,

Assistant Secretary for Democracy, Human Rights and Labor, Department of State.

[FR Doc. 03–9055 Filed 4–11–03; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice 4302]

Advisory Commission on Public Diplomacy Notice of Meeting

The Department of State announces a meeting of the U.S. Advisory Commission on Public Diplomacy on Tuesday, April 29, 2003, in Room 600, 301 4th St., SW., Washington, DC from 9 a.m. to 11 a.m.

The Commission, reauthorized pursuant to Pub. L. 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will have a retrospective discussion about the viewpoints Commissioners developed on public diplomacy during their terms in office.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees.

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current Commission members include Harold Pachios of Maine, who is the chairman; Charles Dolan of Virginia, who is the vice chairman; Lewis Manilow of Illinois; Penne Korth Peacock of Washington, DC and Maria Elena Torano of Florida.

For more information or to attend the meeting, please contact Matt Lauer at (202) 619–4457.

Dated: April 9, 2003.

Matthew Lauer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 03–9052 Filed 4–11–03; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34327]

Richard J. Corman—Continuance in Control Exemption—R.J. Corman Railroad Company/Central Kentucky Lines

Richard J. Corman (Corman), a noncarrier individual, has filed a verified notice of exemption to continue in control of R.J. Corman Railroad Company/Central Kentucky Lines (RJCC), upon RJCC's becoming a Class III rail carrier.

Corman reported that the parties intended to consummate the transaction on or soon after March 28, 2003, the effective date of the exemption (7 days after the exemption was filed).

This transaction is related to two simultaneously filed notices of exemption: STB Finance Docket No. 34325, *R.J. Corman Equipment Company, LLC-Acquisition Exemption-Line of Lexington & Ohio Railroad Co., Inc.*, wherein R.J. Corman Equipment Company, LLC (RJCE) seeks to acquire approximately 14.9 miles of rail line from the Lexington & Ohio Railroad Co., Inc.; and STB Finance Docket No. 34326, *R.J. Corman Railroad Company/Central Kentucky Lines-Lease and Operation Exemption—Line of R. J. Corman Equipment Company, LLC*, wherein R.J. Corman Railroad Company/Central Kentucky Lines seeks to lease and operate the rail line being acquired by RJCE in STB Finance Docket No. 34325.

Corman controls through stock ownership eight Class III rail carriers: R.J. Corman Railroad Company/Pennsylvania Lines, Inc., operating in Pennsylvania; R.J. Corman Railroad Company/Memphis Line, operating in Tennessee and Kentucky; R.J. Corman Railroad Company/Western Ohio Line, operating in Ohio; R.J. Corman Railroad Company/Cleveland Line operating in Ohio; R.J. Corman Railroad Company/Bardstown Line, operating in Kentucky; R.J. Corman Railroad Company/Allentown Lines, Inc., operating in Pennsylvania and New York; Clearfield and Mahoning Railway Company, operating in Pennsylvania; and R.J. Corman Equipment Company, LLC, a nonoperating common carrier which owns and leases track in Kentucky and Ohio.

Corman states that the rail line to be leased and operated by RJCC will not connect with the rail lines of any existing rail carrier in the Corman corporate family, this control transaction is not part of a series of anticipated transactions that would result in such a connection, and this control transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval of requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings referring to STB Finance Docket No. 34327, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Edward J. Fishman, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue—2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 4, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–8925 Filed 4–11–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34325]

R.J. Corman Equipment Company, LLC—Acquisition Exemption—Line of Lexington & Ohio Railroad Co., Inc.

R.J. Corman Equipment Company, LLC (RJCE), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire approximately 14.9 miles of rail line from the Lexington & Ohio Railroad Co., Inc. located between approximately milepost 23.9 LL in Lexington, KY, and approximately milepost 9.0 LL in Versailles, KY, in Fayette and Woodford Counties, KY. RJCE certifies that its projected revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier.

RJCE reported that the parties intended to consummate the transaction on or soon after March 28, 2003, the effective of the exemption (7 days after the exemption was filed).

This transaction is related to a simultaneously filed verified notice of exemption in STB Finance Docket No. 34326, *R.J. Corman Railroad Company/Central Kentucky Lines—Lease and Operation Exemption—Line of R.J. Corman Equipment Company, LLC*, wherein R.J. Corman Railroad Company/Central Kentucky Lines seeks to lease and operate the line being acquired by RJCE here.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34325, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Edward J. Fishman, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue—2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 4, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–8924 Filed 4–11–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34326]

R.J. Corman Railroad Company/Central Kentucky Lines—Lease and Operation Exemption—Line of R.J. Corman Equipment Company, LLC

R.J. Corman Railroad Company/Central Kentucky Lines (RJCC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease and operate approximately 14.9 miles of rail line from R.J. Corman Equipment Company, LLC (RJCE) between approximately milepost 23.9 LL in Lexington, KY, and approximately 9.0 LL in Versailles, KY, in Fayette and Woodford Counties, KY. RJCC certifies that the projected revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier.

RJCC reported that the parties intended to consummate the transaction on or soon after March 28, 2003, the effective date of the exemption (7 days after the exemption was filed).

This transaction is related to two simultaneously filed notices of exemption: STB Finance Docket No. 34325, *R.J. Corman Equipment, LLC—Acquisition Exemption—Line of Lexington & Ohio Railroad Co., Inc.*, wherein RJCE seeks to acquire the same 14.9 miles of rail line involved in the instant notice from Lexington & Ohio Railroad Co., Inc.; and STB Finance Docket No. 34327, *R.J. Corman—Continuance in Control Exemption—R.J. Corman Railroad Company/Central Kentucky Lines*, wherein Richard J. Corman seeks to continue in control of RJCC upon RJCC's becoming a Class III rail carrier pursuant to this notice.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34326, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Edward J. Fishman, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue—2nd Floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 4, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–8927 Filed 4–11–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department

of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: April 3, 2003.

Barbara Angus,

International Tax Counsel (Tax Policy).

[FR Doc. 03–8992 Filed 4–11–03; 8:45 am]

BILLING CODE 4810–25–M

Corrections

Federal Register
Vol. 68, No. 71
Monday, April 14, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Action Affecting Export Privileges; Yaudat Mustafa Talyi, a.k.a. Joseph Talyi, and International Business Services, Ltd. and Top Oil Tools, Ltd.

Correction

In notice document 03–7858 beginning on page 15982 in the issue of Wednesday, April 2, 2003, make the following correction:

On page 15982, in the second column, in the fifth line, "800" should read, "888".

[FR Doc. C3–7858 Filed 4–11–03; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 171

RIN 3150–AH14

Revision of Fee Schedules; Fee Recovery for FY 2003

Correction

In proposed rule document 03–7814 beginning on page 16374 in the issue of Thursday, April 3, 2003, make the following correction:

§ 171.16 [Corrected]

On page 16389, in § 171.16, in the second table, in the second column, in the fourth entry, "1,957,00" should read, "1,957,000".

[FR Doc. C3–7814 Filed 4–11–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14644; Airspace Docket No. 03–AGL–01]

Proposed Modification of Class E Airspace; Kenton, OH; Proposed Rescission of Class E Airspace; Bellefontaine, OH

Correction

In proposed rule document 03–7663 beginning on page 15388 in the issue of Monday, March 31, 2003, make the following correction:

§71.1 [Corrected]

On page 15389, in the third column, in §71.1, under the heading **AGL OH E5 Kenton, OH [Revised]**, in the fifth line, "long. 83° 57′W.," should read "83°30′57″W.,".

[FR Doc. C3–7663 Filed 4–11–03; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Monday,
April 14, 2003

Part II

Environmental Protection Agency

40 CFR Part 60
Standards of Performance for Stationary Gas Turbines; Direct Final Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OAR–2002–0053, FRL–7476–5]

RIN 2060–AK35

Standards of Performance for Stationary Gas Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; amendments.

SUMMARY: This action promulgates amendments to several sections of the standards of performance for stationary gas turbines. The amendments will codify several alternative testing and monitoring procedures that have routinely been approved by EPA. The amendments will also reflect changes in nitrogen oxides (NO_X) emission control technologies and turbine design since the standards were originally promulgated.

DATES: The direct final rule will be effective May 29, 2003, unless we receive adverse comments by May 14, 2003. If such comments are received, then EPA will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn due to adverse comment. Any distinct amendment, paragraph or section of the direct final rule for which we do not receive adverse comment will become effective on the date set above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of the direct final rule. The incorporation by reference of certain publications in the direct final rule is approved by the Director of the Office of the Federal Register as of May 29, 2003.

ADDRESSES: Comments. By U.S. Postal Service, send comments (in duplicate, if possible) to: EPA Docket Center (6102T), Attention Docket Number OAR–2002–0053, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate, if possible) to: Air and Radiation Docket, Attention Docket Number OAR–2002–0053, U.S. EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. We request that a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagan, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5340; facsimile number (919) 541–5450; electronic mail address *pagan.jaime@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially regulated by this action are those that own and operate stationary gas turbines, and are the same as the existing rule in 40 CFR part 60, subpart GG. Regulated categories and entities include:

Category	NAICS	SIC	Examples of regulated entities
Any industry using a stationary combustion turbine as defined in the direct final rule.	2211	4911	Electric services.
	486210	4922	Natural gas transmission.
	211111	1311	Crude petroleum and natural gas.
	211112	1321	Natural gas liquids.
	221	4931	Electric and other services, combined.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 60.330 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. EPA has established an official public docket for this action under Docket ID No. OAR–2002–0053. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, Room B108, 1301 Constitution Ave., NW., Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744. The telephone number for the Air Docket is (202) 566–1742.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility located above. Once in the system, select search, then key in the appropriate docket identification number.

Comments. We are publishing the direct final rule without prior proposal because we view this as a noncontroversial amendment and do not anticipate adverse comments. However, in the proposed rules section of this **Federal Register**, we are publishing a separate document that will serve as the proposal in the event that adverse comments are filed. If we receive any adverse comments on a specific element of the direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public which amendments will become effective and which amendments are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the proposed rule. Any of the distinct amendments in this direct final rule for which we do not receive adverse comment will become effective on the date set out above. We will not institute a second comment period on the direct final rule. Any parties interested in commenting must do so at this time.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of the direct final rule is also available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the promulgated direct final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. Discussion of Revisions
  A. Continuous Monitoring Options
  B. Optional Fuel-Bound Nitrogen Allowance
  C. Frequency of Fuel Nitrogen and Sulfur Content Sampling
  D. Steam Injection
  E. Test Methods for Sulfur Content and Nitrogen Content of Fuel
  F. Performance Testing
  G. Measurement after Duct Burner
  H. Option to Not Use International Organization for Standardization (ISO) Correction
  I. Accuracy of Continuous Monitoring System (CMS) for Fuel Consumption and the Water or Steam to Fuel Ratio
  J. Deviations, Excess Emissions, and Monitor Downtime
  K. Other Clarifications
III. Environmental and Economic Impacts
IV. Statutory and Executive Order Reviews
  A. Executive Order 12866: Regulatory Planning and Review
  B. Paperwork Reduction Act
  C. Regulatory Flexibility Act
  D. Unfunded Mandates Reform Act
  E. Executive Order 13132: Federalism
  F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
  H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  I. National Technology Transfer Advancement Act
  J. Congressional Review Act

I. Background

Under section 111 of the CAA, 42 U.S.C. 7411, the EPA promulgated standards of performance for stationary gas turbines (40 CFR part 60, subpart GG). The standards were originally promulgated on September 10, 1979 (44 FR 52798). Since that time, many changes in the design of the NO_X emission controls used for and the composition of the fuels fired in gas turbines have occurred. Additional test methods have also been developed to measure emissions from gas turbines and the sulfur content of gaseous fuels. As a result of these changes, we have had many requests for case-by-case approvals of alternative testing and monitoring procedures for subpart GG. We are promulgating the amendments to subpart GG to codify the alternatives that have been routinely approved. Additionally, we are attempting to harmonize, where appropriate, the provisions of subpart GG with the monitoring provisions of 40 CFR part 75, the continuous emission monitoring requirements of the acid rain program under title IV of the CAA, since many existing and new gas turbines are subject to both regulations.

II. Discussion of Revisions

A. Continuous Monitoring Options

Under the original provisions of subpart GG, any affected unit with a water injection system was required to install and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water to fuel being fired in the turbine. These operating parameters demonstrate that a turbine continues to operate under the same performance conditions as those documented during the initial and any subsequent compliance tests, thus providing reasonable assurance of compliance with the NO_X standard. We are revising the regulation to allow the use of NO_X continuous emission monitoring systems (CEMS) to demonstrate compliance, as detailed in the following paragraphs.

Owners or operators of turbines that commenced construction, reconstruction, or modification after October 3, 1977, but before May 29, 2003, and that use water or steam injection to control NO_X emissions can continue to use the NO_X monitoring system which is currently being used, or may elect to use a NO_X CEMS. The CEMS must be installed, operated, and maintained according to the appropriate performance specification requirements in 40 CFR part 60, appendix B. Alternatively, sources may choose to use data from a NO_X CEMS that is certified according to the requirements of 40 CFR part 75. Any owners or operators of turbines constructed, reconstructed, or modified in this time period that do not use water or steam injection and that have received EPA approval of an alternative monitoring strategy can continue to follow the conditions of the petition approval.

For new turbines constructed after the effective date of the direct final rule and using water or steam injection for NO_X control, owners/operators can elect to use either the existing requirements for continuous water or steam to fuel ratio monitoring or may elect to use a CEMS to monitor NO_X. The CEMS must be installed, operated, and maintained according to Performance Specifications (PS) 2 and 3 of 40 CFR part 60, appendix B. Alternatively, sources may choose to use data from a NO_X CEMS that is certified according to the requirements of 40 CFR part 75, appendix A.

Owners or operators of new turbines that commence construction after the effective date of the direct final rule and do not use water or steam injection to control NO_X emissions can use a NO_X CEMS as an alternative to continuously monitoring fuel consumption and water or steam to fuel ratio, provided the CEMS is installed, operated, and maintained according to PS 2 and 3 of 40 CFR part 60, appendix B and 40 CFR 60.13 or the requirements of 40 CFT part 75, appendix A. An acceptable alternative to installation of a NO_X CEMS is continuous parameter monitoring. If this option is chosen, owners or operators of uncontrolled diffusion flame turbines must continuously monitor at least four parameters indicative of the unit's NO_X formation characteristics. For lean premix turbines, continuous monitoring of parameters that indicate whether the turbine is operating in the lean premixed combustion mode is required. Examples of these parameters may include percentage of full load, turbine exhaust temperature, combustion reference temperature, compressor discharge pressure, fuel and air valve positions, dynamic pressure pulsations, internal guide vane position, and flame detection or flame scanner conditions. Definitions for diffusion flame turbine and lean premix turbine have been added to the definitions section of the final rule. Parameters that indicate proper operation of the emission control device must be monitored for turbines that use selective catalytic reduction. In all cases, the acceptable values and ranges for the parameters must be established during the initial performance test for the turbine and recorded in a parameter monitoring plan, to be kept on-site.

If the option to use a NO_X CEMS is chosen, we have specified the minimum data requirements. For full operating hours, each monitor must complete at least one cycle of operation (including sampling, analyzing, and data recording) for each 15-minute quadrant of the hour. For partial unit operating hours, one valid data point must be obtained for each quadrant of the hour for which the unit is operating. Two valid data points are required for hours in which required quality assurance and maintenance activities are performed on the CEMS. This data must be reduced to hourly averages for purposes of identifying excess emissions. The data

acquisition and handling system must record the hourly NO_X emissions as well as the International Organization for Standardization (ISO) standard conditions (if applicable).

In lieu of recording the ISO standard conditions, a worst case ISO correction factor can be calculated using historical ambient data. For the purpose of this calculation, substitute the maximum humidity of ambient air (H_o), minimum ambient temperature (T_a), and minimum combustor inlet absolute pressure (P_o) into the ISO correction equation. By using worst case parameters in this equation, the owner/operator can ensure compliance in all situations without having to continuously monitor temperature, humidity and pressure. Several case-by-case determinations performed by EPA have accepted this methodology as an alternative to continuous monitoring of atmospheric conditions.

No data generated using the data substitution methodology in 40 CFR part 75 may be used. Instead, these periods of missing data are identified and summarized in the excess emissions and monitoring report required in 40 CFR 60.13. For turbines using NO_X CEMS, we have defined excess emissions as any unit operating hour during which the 4-hour rolling average NO_X concentration exceeds the applicable emission limit.

The averaging time selected for combustion turbine NO_X CEMS to define the periods of excess emissions is a period of 4 hours averaged each hour. The 4-hour period is representative of the overall elapsed time in a typical EPA Method 20 of 40 CFR part 60, appendix A, source test. This period has been found adequate to represent the performance of combustion turbine NO_X emissions and NO_X emission control systems. The 4-hour period is a relatively short averaging time compared to 24-hour and monthly averaging times used for other types of combustion devices to account for the NO_X emissions variability, particularly in solid fuels. Combustion turbines typically use natural gas or No. 2 distillate oil, which have a relatively uniform fuel nitrogen content, therefore, a relatively short averaging time such as 4 hours is appropriate. An averaging time of 1 hour was also considered but was rejected since 4 hours more closely represent the typical duration of a combustion turbine stack test and includes the ability to account for a small amount of nitrogen variability.

A 1-hour period was selected as the recurring (rolling) period for which the 4-hour averages are calculated since it is already required to be reported under 40 CFR part 75 and is convenient and appropriate to use.

We are allowing the use of NO_X CEMS as an alternative to continuously monitoring fuel consumption and water or steam to fuel ratio because the majority of new turbines do not rely on water injection for NO_X control. Therefore, for those turbines, the monitoring originally required by subpart GG is not appropriate. The use of a NO_X CEMS will show compliance with the NO_X standard of subpart GG over all operating ranges. Additionally, many of the units affected by subpart GG are already required to install and certify CEMS for NO_X under other requirements, such as the acid rain monitoring regulation in 40 CFR part 75, or through conditions in various permit requirements. To reduce the burden on these units, we are allowing the use of CEMS units that are certified according to the requirements of 40 CFR part 75. The 40 CFR part 75 testing procedures to certify the CEMS are nearly identical to those in 40 CFR part 60, and 40 CFR part 75 has rigorous quality assurance and quality control standards. We, therefore, believe it is appropriate to allow the use of 40 CFR part 75 CEMS data for subpart GG compliance demonstration. A definition of unit operating hour, which includes the concepts of "full" and "partial" operating hours, is needed to clarify how to validate an hour when using CEMS and for the purpose of defining excess emissions, deviations, and periods of monitor downtime.

B. Optional Fuel-Bound Nitrogen Allowance

The NO_X emission standard in 40 CFR 60.332 includes a NO_X emission allowance for fuel-bound nitrogen. The use of this allowance for fuel-bound nitrogen will be optional upon promulgation of the direct final rule. Owners or operators will be able to choose to accept a value of zero for the NO_X emission allowance. The NO_X emission limitations in many State permits are much more stringent than those of subpart GG. Many turbines are required by their permits to be fired only with pipeline quality natural gas, which is almost free of fuel-bound nitrogen. Therefore, these facilities are not likely to use the fuel-bound nitrogen credit.

C. Frequency of Fuel Nitrogen and Sulfur Content Sampling

Several revisions to the sampling frequency requirements for fuel nitrogen content and fuel sulfur content are being made.

1. Nitrogen Content for Turbines That Do Not Claim the Allowance for Fuel Bound Nitrogen

We are amending subpart GG so that sources are required to monitor the nitrogen content of the fuel being fired in the turbine only if they claim the allowance for fuel bound nitrogen. For sources that do not seek to use the fuel-bound nitrogen credit, the sampling requirements to determine the daily fuel nitrogen concentrations are not required.

2. Nitrogen and Sulfur Content for Turbines Firing Fuel Oil

The sampling frequency for determining the nitrogen and sulfur content of fuel oil has been revised. Previously for bulk storage fuels, sampling and analysis was required each time new fuel was added. The requirement to sample the nitrogen and sulfur content of the fuel each time fuel is transferred to the storage tank from any other source can be burdensome for a facility if there are one or more large bulk storage tanks which are filled by tanker trucks or isolated from the turbines during the filling process. If the fuel is not fed to the turbines during the filling process, no environmental benefit is gained by sampling every time oil is added from a tanker truck. Similarly, no environmental benefit is gained by sampling a tank which remains isolated from feeding turbines until it is filled. It is less burdensome to allow a tank to be filled completely, regardless of how many tanker trucks it takes, and then drawing a sample of the combined fuel. In the end, this mixture of fuel is what will be fed to the turbines. Thus, we are eliminating the requirement to sample each time new fuel is added and are allowing the use of any of the four sampling options from 40 CFR part 75, appendix D. The four options are as follows: daily sampling, flow proportional sampling, sampling from a unit's storage tank, or sampling each delivery.

3. Sulfur Content for Turbines Firing Natural Gas

A definition for natural gas has been added to the definitions section. It is consistent with the latest definition in 40 CFR part 72. Owners and operators of turbines that are combusting natural gas are now provided with alternatives to demonstrate that the fuel meets the sulfur content requirement. We believe that sulfur sampling is unnecessary for fuels that qualify as natural gas. As defined in the direct final rule, natural gas contains 20.0 grains or less of total sulfur per 100 standard cubic feet, which equates to about 0.06 weight percent sulfur or 600 parts per million by weight (ppmw). When natural gas is combusted, there is no possibility of exceeding the subpart GG sulfur limit of 0.8 weight percent.

4. Sulfur and Nitrogen Content for Turbines Firing Gaseous Fuels Other Than Natural Gas

Units that fire a gaseous fuel that is supplied without intermediate bulk storage, but is not natural gas, must determine and record the sulfur content and (if applicable) nitrogen content once per day. Alternatively, these units may follow one of two custom sulfur sampling schedules outlined in the direct final rule, or they may develop a custom schedule that is approved by the Administrator. One custom schedule requires daily sampling for 30 consecutive unit operating days. Provided the data indicate compliance, the frequency can then be reduced according to specific criteria. Unit operating day is now defined in 40 CFR 60.331.

Units may also follow a custom schedule based on the 720-hour sulfur sampling demonstration described in 40 CFR part 75, appendix D. Under both schedules, if the margin of compliance is large, the sampling frequency can eventually be reduced to annually. We are codifying these two custom schedules that have routinely been approved under the subpart GG provision that allows sources to develop custom schedules for fuel sampling that must be approved by the Administrator.

D. Steam Injection

Sources that are using water injection currently can monitor the ratio of water to fuel, as well as fuel consumption, to demonstrate compliance with the NO_X standard. We are allowing sources that are using steam injection to monitor the ratio of steam to fuel and fuel consumption to demonstrate compliance. Steam injection is another method of NO_X control, and water and steam injection are the wet methods usually used. Steam injection monitoring is an acceptable type of parametric emission monitoring method.

E. Test Methods for Sulfur Content and Nitrogen Content of Fuel

When subpart GG was originally promulgated, no test methods were specified for monitoring the nitrogen content of the fuel. We are specifying American Society of Testing and Materials (ASTM) D2597–94(1999), ASTM D6366–99, ASTM D4629–02, or ASTM D5762–02 as acceptable methods for liquid fuels. As the National Technology Transfer and Advancement Act requires, we have identified these voluntary consensus standards and are citing them for use. We are not adding any methods for determining the fuel-bound nitrogen content of the fuel being fired for gaseous fuels because none were identified. We do not expect any source owner to use a gaseous fuel with sufficient fuel bound nitrogen present to claim a credit. Any source owner proposing credit for fuel bound nitrogen in a gaseous fuel will have to document an acceptable method. We have amended subpart GG to allow the use of most of the methods specified in sections 2.2.5 and 2.3.3.1.2 of 40 CFR part 75, appendix D to determine the total sulfur content of gaseous fuel. The alternative methods for total sulfur provide more flexibility and harmonize with the requirements in 40 CFR part 75. The method ASTM D3031–81 has been deleted from the final rule because it was discontinued by the ASTM in 1990 with no replacement. If the total sulfur content of the fuel being fired in the turbine is less than 0.4 weight percent, we are adding a provision that the following methods may be used to measure the sulfur content of the fuel: ASTM D4084–82 or 94, D5504–01, D6228–98, or the Gas Processors Association Method 2377–86. This provision is consistent with the provision in 40 CFR 60.13(j)(1) allowing alternatives to reference method tests to determine relative accuracy of CEMS for sources with emission rates demonstrated to be less than 50 percent of the applicable standard.

F. Performance Testing

To measure the NO_X and diluent concentration during the performance test, we are adding EPA Method 7E of 40 CFR part 60, appendix A used in conjunction with EPA Method 3 or 3A of 40 CFR part 60, appendix A as an acceptable alternative to EPA Method 20. In addition, we are adding ASTM D6522–00 as another alternative to EPA Method 20. If ASTM D6522–00 or EPA Methods 7E and 3 or 3A are used, sampling must be conducted at a minimum of three traverse points, due to concerns about potential stratification of pollutant concentrations in the turbine stack.

Subpart GG previously required the NO_X initial compliance testing to be conducted at four different loads across the unit's operating range. This testing was required because of the difficulty in predicting which operating load will represent worst case conditions when monitoring operational data. Testing, therefore, was done across the operating range to determine the water to fuel ratio and fuel consumption needed to maintain NO_X compliance across the unit's normal operating range. One of the tests was required to be conducted at 100 percent of peak load. We are revising the final rule to allow one test point at 90 to 100 percent of peak load. Due to conditions that are beyond the control of the turbine operator, such as ambient conditions, it is often not possible for a turbine to be operated at 100 percent of the manufacturer's design capacity. Therefore, the requirement to test at 100 percent of peak load has been made more flexible.

Another change is that the initial performance test can be performed at 90 to 100 percent of peak load only, instead of at four different loads, if the owner or operator chooses to use the NO_X CEMS monitoring option. The NO_X CEMS will provide realtime data on NO_X emissions for any given time of operation. This data provides credible evidence which can be used to determine the unit's compliance status on a continuous basis following the initial test. The availability of this continuous information through the use of NO_X CEMS after the initial performance testing justifies testing at a single load for the initial compliance testing. We are also clarifying how data collected during a relative accuracy test audit (RATA) of the NO_X CEMS may be used to demonstrate compliance with the performance tests required by 40 CFR 60.8. The RATA consists of a minimum of nine 21-minute runs using EPA reference test methods, for a total of 189 minutes or just over 3 hours. This amount of sampling accompanied by sampling at multiple traverse points during a RATA provides enough representative emissions data to determine the unit's compliance status.

Finally, a statement has been added to clarify that if the turbine combusts both oil and gas, separate performance testing is required for each type of fuel combusted by the turbine, except for emergency fuel. We believe that this is appropriate due to the fact that NO_X emissions vary by fuel type.

G. Measurement After Duct Burner

For sources that are combined cycle turbine systems using supplemental heat, we have added an option that the turbine NO_X emissions may be measured after the duct burner rather than directly after the turbine. No additional NO_X allowance is given. A definition for duct burner has also been added to the definitions section of the final rule. For combined cycle units, there are several concerns with testing and monitoring NO_X at the turbine

outlet. For example, it is questionable whether the turbine outlet location is suitable for installation of CEMS. Moreover, due to the high temperature and pressure of the turbine exhaust at that location, it may be difficult to conduct an EPA Method 20 performance test at the turbine outlet of a combined cycle unit. In addition, any combined cycle units that are subject to NO_X CEMS requirements for 40 CFR part 75 or subparts Da and Db of 40 CFR part 60 will most likely have installed the CEMS after the duct burner, on the heat recovery steam generator (HRSG) stack. Another reason to allow measurement of NO_X emissions after the duct burner is that add-on NO_X control systems such as selective catalytic reduction (SCR) are generally located after the duct burner; turbine NO_X performance testing should be conducted after the NO_X control device and would, therefore, include emissions from the duct burner.

H. Option To Not Use International Organization for Standardization (ISO) Correction

We have added an option to not use the ISO correction equation for the following units: lean premix combustor turbines, units used in association with heat recovery steam generators equipped with duct burners, and units with add-on emission controls. This option was added based on discussions with the Gas Turbine Association (GTA). The GTA indicated in letters to EPA on April 16, 2002, and May 30, 2002, that the ISO correction equation was not necessary for these units. These letters can be found in the docket.

I. Accuracy of Continuous Monitoring System (CMS) for Fuel Consumption and the Water or Steam to Fuel Ratio

The requirement that the CMS for the fuel consumption and water or steam to fuel ratio for the turbine be accurate to within 5 percent has been removed. The numerical value of water to fuel ratio that serves as a surrogate for the acceptable NO_X concentration is established at each facility. This is accomplished by simultaneously measuring the NO_X concentration and using a CMS to monitor the water or steam to fuel ratio that achieves that NO_X level at various turbine loads at the specific facility during a performance test. This calibration serves to assure that if the water or steam to fuel ratio is maintained above this surrogate value using the same CMS, then acceptable NO_X concentration levels are attained even if the actual numerical value is not correct. Hence, the requirement to be accurate within plus or minus 5 percent is not necessary.

J. Deviations, Excess Emissions, and Monitor Downtime

The excess emission reporting provisions under 40 CFR 60.334 have been revised to include definitions of deviations, excess emissions, and monitor downtime periods for the various emissions and parameter monitoring requirements. To be consistent with other 40 CFR part 60 rules, we are including provisions for deviations, which are associated with parametric monitoring. A deviation indicates the possibility that an excess emission has occurred. Periods of monitor downtime were not previously defined, so we have added definitions for those periods. New provisions have been added for CEMS and parametric monitoring for certain units; therefore, it is necessary to define the excess emissions, deviations, and monitor downtime for turbines using these new monitoring options.

K. Other Clarifications

Several other minor clarifications have been made to the final rule. They are as follows: (1) Indicated that the sulfur content standard in 40 CFR 60.333(b) of 0.8 percent by weight is equivalent to 8000 ppmw; (2) clarified the NO_X standard in 40 CFR 60.332(a)(1) to indicate that it is an emission concentration and should be ISO corrected (if required); and (3) clarified the NO_X emission concentration equation in 40 CFR 60.335(b)(1) to indicate it is a concentration instead of a rate and that it is on a dry basis.

III. Environmental and Economic Impacts

We believe that the amendments will not have any significant economic or environmental impacts. The changes have been made primarily to codify routine testing and monitoring alternatives that have previously been approved by us. We are not introducing any new emission limitations, control requirements, or monitoring requirements. We are attempting to reduce the testing, monitoring, and reporting burden by harmonizing with the requirements of 40 CFR part 75, since many gas turbines are subject to it as well as subpart GG.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that the amendments do not constitute a "significant regulatory action" because they do not meet any of the above criteria. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The revisions contain no changes to the information collection requirements of the current New Source Performance Standards (NSPS) that would increase the burden to sources, and the currently approved OMB information collection requests are still in force for the amended rule. Some changes in the final rule, such as allowing the use of CEMS to measure NO_X emissions, are provided as an option to sources, and should reduce burden to those sources who already have a CEMS in place for other regulatory reasons, such as the Acid Rain requirements in 40 CFR part 75. Other changes, such as the allowance of parametric monitoring in place of water to fuel ratio monitoring, do not result in additional recordkeeping and reporting requirements beyond those already required.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the direct final rule on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kW-hr per year of electricity usage, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that small entities in six NAICS codes may be affected by the direct final rule, and the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR part 121).

After considering the economic impacts of the direct final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. This certification is based primarily upon the estimated cost savings to turbine owners and operators as a result of the revisions to 40 CFR part 60, subpart GG that are presented earlier in this preamble. These cost savings will be experienced by turbines owned and operated by small entities as well as large ones. Using the existing combustion turbines inventory as a measure of which industries may install new turbines in the future, presuming the existing mix of combustion turbines currently is a good approximation of the mix of turbines that will be installed and affected by the direct final rule up to 2007, 2.5 percent of new turbines overall will likely be owned and operated by small entities. Of these entities, a majority of these are owned and operated by small communities.

For more information on the results of the analysis of small entity impacts, please refer to the economic impact analysis in the docket.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the direct final rule amendments contain no Federal mandates that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, the amendments are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the amendments contain no regulatory requirements that might significantly or uniquely affect small governments because they contain no requirements that apply to such governments or impose obligations upon them. Therefore, the direct final rule amendments are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's action codifies alternative testing and monitoring procedures that have routinely been approved by EPA. There are minimal, if any, impacts associated with this action. Thus, Executive Order 13132 does not apply to the direct final rule amendments.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal

implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. We do not know of any stationary gas turbines owned or operated by Indian tribal governments. However, if there are any, the effect of the direct final rule on communities of tribal governments would not be unique or disproportionate to the effect on other communities. Thus, Executive Order 13175 does not apply to the direct final rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The direct final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

The direct final rule is not subject to Executive Order 13211, "Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use" because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law No. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The direct final rule involves technical standards. The EPA cites the following standards in the direct final rule: EPA Methods 3, 3A, 7E, and 20 of 40 CFR part 60, appendix A; PS 2 and 3 of 40 CFR part 60, appendix B.

In addition, the direct final rule cites the following voluntary consensus standards: ASTM D129–00 (incorporated by reference (IBR) in 40 CFR part 60, section 17), ASTM D1072–80 or –90 (Reapproved 1999) (IBR in 40 CFR part 60, section 17), ASTM D1266–98 (IBR in 40 CFR part 60, section 17), ASTM D1552–01 (IBR in 40 CFR part 60, section 17), ASTM D2597–94 (Reapproved 1999), ASTM D2622–98 (IBR in 40 CFR part 60, section 17), ASTM D3246–81 or –92 or –96 (IBR in 40 CFR part 60, section 17), ASTM D4084–82 or –94 (IBR in 40 CFR part 60, section 17), ASTM D4294–02, ASTM D4468–85 (Reapproved 2000), ASTM D4629–02, ASTM D5453–00, ASTM D5504–01, ASTM D5762–02, ASTM D6228–98, ASTM D6366–99, ASTM D6522–00, ASTM D6667–01; and Gas Processors Association Standard 2377–86.

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to the EPA methods. No applicable voluntary consensus standards were identified for EPA PS 3. The search and review results have been documented and are placed in the docket (OAR–2002–0053) for the direct final rule.

One voluntary consensus standard was found acceptable as an alternative to EPA test methods for the purposes of the direct final rule. The voluntary consensus standard ASTM D6522–00, "Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers and Process Heaters Using Portable Analyzers' was identified as an acceptable alternative to EPA Methods 3A, 7E, and 20 for identifying nitrogen oxide and oxygen concentration for the direct final rule when the fuel is natural gas.

In addition to the voluntary consensus standards EPA uses in the direct final rule, the search for emissions measurement procedures identified six other voluntary consensus standards. The EPA determined that these six standards identified for measuring emissions subject to emission standards were impractical alternatives to EPA test methods for the purposes of the direct final rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination for the six methods are in the docket.

Section 60.335 to 40 CFR part 60, subpart GG, lists the EPA testing methods included in the final rule. Under 40 CFR 63.7(f) and 63.8(f), a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the direct final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the direct final rule in the **Federal Register**. The direct final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 27, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended to read as follows:

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart A—[AMENDED]

■ 2. Section 60.17 is amended by:
■ a. Removing and reserving paragraph (a)(38);
■ b. Revising paragraph (a) introductory text;
■ c. Revising paragraph (a)(8);
■ d. Revising paragraph (a)(15);
■ e. Revising paragraph (a)(18);
■ f. Revising paragraph (a)(20);
■ g. Revising paragraph (a)(33);
■ h. Revising paragraph (a)(43);
■ i. Revising paragraph (a)(50);
■ j. Adding paragraphs (a)(65) through (a)(75); and
■ k. Adding paragraph (m).

The revisions and additions read as follows:

§ 60.17 Incorporation by Reference.

* * * * *

(a) The following materials are available for purchase from at least one of the following addresses: American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, Post Office Box C700, West Conshohocken, PA 19428–2959; or ProQuest, 300 North Zeeb Road, Ann Arbor, MI 48106.

* * * * *

(8) ASTM D129–64, 78, 95, 00, Standard Test Method for Sulfur in Petroleum Products (General Bomb Method), IBR approved for Appendix A: Method 19, 12.5.2.2.3; §§ 60.106(j)(2) and 60.335(b)(10)(i).

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(15) ASTM D1072–80, 90 (Reapproved 1994), Standard Test Method for Total Sulfur in Fuel Gases, IBR approved for § 60.335(b)(10)(ii).

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(18) ASTM D1266–87, 91, 98, Standard Test Method for Sulfur in Petroleum Products (Lamp Method), IBR approved for §§ 60.106(j)(2) and 60.335(b)(10)(i).

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(20) ASTM D1552–83, 95, 01, Standard Test Method for Sulfur in Petroleum Products (High-Temperature Method), IBR approved for Appendix A: Method 19, Section 12.5.2.2.3; §§ 60.106(j)(2) and 60.335(b)(10)(i).

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(33) ASTM D2622–87, 94, 98, Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry," IBR approved for §§ 60.106(j)(2) and 60.335(b)(10)(i).

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(43) ASTM D3246–81, 92, 96, Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry, IBR approved for § 60.335(b)(10)(ii).

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(50) ASTM D4084–82, 94, Standard Test Method for Analysis of Hydrogen Sulfide in Gaseous Fuels (Lead Acetate Reaction Rate Method), IBR approved for § 60.334(h)(1).

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(65) ASTM D2597–94 (Reapproved 1999), Standard Test Method for Analysis of Demethanized Hydrocarbon Liquid Mixtures Containing Nitrogen and Carbon Dioxide by Gas Chromatography, IBR approved for § 60.335(b)(9)(i).

(66) ASTM D4294–02, Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectrometry, IBR approved for § 60.335(b)(10)(i).

(67) ASTM D4468–85 (Reapproved 2000), Standard Test Method for Total Sulfur in Gaseous Fuels by Hydrogenolysis and Rateometric Colorimetry, IBR approved for § 60.335(b)(10)(ii).

(68) ASTM D4629–02, Standard Test Method for Trace Nitrogen in Liquid Petroleum Hydrocarbons by Syringe/Inlet Oxidative Combustion and Chemiluminescence Detection, IBR approved for § 60.335(b)(9)(i).

(69) ASTM D5453–00, Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence, IBR approved for § 60.335(b)(10)(i).

(70) ASTM D5504–01, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Chemiluminescence, IBR approved for § 60.334(h)(1).

(71) ASTM D5762–02, Standard Test Method for Nitrogen in Petroleum and Petroleum Products by Boat-Inlet Chemiluminescence, IBR approved for § 60.335(b)(9)(i).

(72) ASTM D6228–98, Standard Test Method for Determination of Sulfur Compounds in Natural Gas and Gaseous Fuels by Gas Chromatography and Flame Photometric Detection, IBR approved for § 60.334(h)(1).

(73) ASTM D6366–99, Standard Test Method for Total Trace Nitrogen and Its Derivatives in Liquid Aromatic Hydrocarbons by Oxidative Combustion and Electrochemical Detection, IBR approved for § 60.335(b)(9)(i).

(74) ASTM D6522–00, Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers, IBR approved for § 60.335(a).

(75) ASTM D6667–01, Standard Test Method for Determination of Total Volatile Sulfur in Gaseous Hydrocarbons and Liquefied Petroleum Gases by Ultraviolet Fluorescence, IBR approved for § 60.335(b)(10)(ii).

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(m) This material is available for purchase from at least one of the following addresses: The Gas Processors Association, 6526 East 60th Street, Tulsa, OK, 74145; or Information Handling Services, 15 Inverness Way East, P.O. Box 1154, Englewood, CO 80150–1154. You may inspect a copy at EPA's Air and Radiation Docket and Information Center, Room B108, 1301 Constitution Ave., NW., Washington, DC 20460.

(1) Gas Processors Association Method 2377–86, Test for Hydrogen Sulfide and Carbon Dioxide in Natural Gas Using Length of Stain Tubes, IBR approved for § 60.334(h)(1).

(2) [Reserved]

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Subpart GG—[AMENDED]

■ 3. Section 60.331 is amended by adding paragraphs (s) through (aa) to read as follows:

§ 60.331 Definitions.

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(s) *Unit operating hour* means a clock hour during which any fuel is combusted in the affected unit. If the unit combusts fuel for the entire clock hour, it is considered to be a full unit operating hour. If the unit combusts fuel for only part of the clock hour, it is considered to be a partial unit operating hour.

(t) *Deviation* means a unit operating hour during which the recorded value of a particular monitored parameter is outside the acceptable range specified in the parameter monitoring plan for the affected unit.

(u) *Excess emissions* means a specified averaging period over which either (1) the NO_x emissions are higher

than the applicable emission limit in § 60.332; or (2) the total sulfur content of the fuel being combusted in the affected facility exceeds the limit specified in § 60.333.

(v) *Natural gas* means a naturally occurring fluid mixture of hydrocarbons (*e.g.*, methane, ethane, or propane) produced in geological formations beneath the Earth's surface that maintains a gaseous state at standard atmospheric temperature and pressure under ordinary conditions. Natural gas contains 20.0 grains or less of total sulfur per 100 standard cubic feet. Additionally, natural gas must either be composed of at least 70 percent methane by volume or have a gross calorific value between 950 and 1100 Btu per standard cubic foot. Natural gas does not include the following gaseous fuels: Landfill gas, digester gas, refinery gas, sour gas, blast furnace gas, coal-derived gas, producer gas, coke oven gas, or any gaseous fuel produced in a process which might result in highly variable sulfur content or heating value.

(w) *Duct burner* means a device that combusts fuel and that is placed in the exhaust duct from another source, such as a stationary gas turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases enter a heat recovery steam generating unit.

(x) *Lean premix stationary combustion turbine* means any stationary combustion turbine where the air and fuel are thoroughly mixed to form a lean mixture before delivery to the combustor.

(y) *Diffusion flame stationary combustion turbine* means any stationary combustion turbine where fuel and air are injected at the combustor and are mixed only by diffusion prior to ignition.

(z) *Unit operating day* means a 24-hour period between 12 midnight and the following midnight during which any fuel is combusted at any time in the unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

■ 4. Section 60.332 is amended by:
■ a. Revising the terms to the equations in paragraphs (a)(1) through (3);
■ b. Redesignating paragraph (a)(3) as (a)(4); and
■ c. Adding a new paragraph (a)(3).

The revisions and additions read as follows:

§ 60.332 Standard for nitrogen oxides.

(a) * * *
(1) * * *

where:

STD = allowable ISO corrected (if required as given in 60.335(b)(1)) NO_X emission concentration (percent by volume at 15 percent oxygen and on a dry basis),

Y = manufacturer's rated heat rate at manufacturer's rated load (kilojoules per watt hour) or, actual measured heat rate based on lower heating value of fuel as measured at actual peak load for the facility. The value of Y shall not exceed 14.4 kilojoules per watt hour, and

F = NO_X emission allowance for fuel-bound nitrogen as defined in paragraph (a)(4) of this section.

(2) * * *

where:

STD = allowable ISO corrected (if required as given in 60.335(b)(1)) NO_X emission concentration (percent by volume at 15 percent oxygen and on a dry basis),

Y = manufacturer's rated heat rate at manufacturer's rated load (kilojoules per watt hour) or, actual measured heat rate based on lower heating value of fuel as measured at actual peak load for the facility. The value of Y shall not exceed 14.4 kilojoules per watt hour, and

F = NO_X emission allowance for fuel-bound nitrogen as defined in paragraph (a)(4) of this section.

(3) The use of F in § 60.332(a)(1) and (2) is optional. That is, the owner or operator may choose to apply a NO_X allowance for fuel-bound nitrogen and determine the appropriate F-value in accordance with § 60.332(a)(4) or may accept an F-value of zero.

(4) If the owner or operator elects to apply a NO_X emission allowance for fuel-bound nitrogen, F shall be defined according to the nitrogen content of the fuel during the most recent performance test required under § 60.8 as follows:

Fuel-bound nitrogen (percent by weight)	F (NO_X percent by volume)
N≤0.015	0
0.015<N≤0.1	0.04(N)
0.1<N≤0.25	0.004+0.0067(N–0.1)
N>0.25	0.005

where:

N = the nitrogen content of the fuel (percent by weight).

or:

Manufacturers may develop and submit to EPA custom fuel-bound nitrogen allowances for each gas turbine model they manufacture. These fuel-bound nitrogen allowances shall be substantiated with data and must be approved for use by the Administrator before the initial performance test required by § 60.8. Notices of approval of custom fuel-bound nitrogen allowances will be published in the **Federal Register**.

* * * * *

■ 5. Section 60.333 is amended by revising paragraph (b) to read as follows:

§ 60.333 Standard for sulfur dioxide.

* * * * *

(b) No owner or operator subject to the provisions of this subpart shall burn in any stationary gas turbine any fuel which contains total sulfur in excess of 0.8 percent by weight (8000 ppmw).

■ 6. Section 60.334 is amended by:
■ a. Revising paragraphs (a) and (b);
■ b. Redesignating paragraph (c) as paragraph (j);
■ c. Adding a new paragraph (c);
■ d. Adding paragraphs (d) through (i);
■ e. Revising newly designated paragraphs (j) introductory text, (j)(1) and (j)(2); and
■ f. Adding paragraph (j)(5).

The revisions and additions read as follows:

§ 60.334 Monitoring of operations.

(a) Except as provided in paragraph (b) of this section, the owner or operator of any stationary gas turbine subject to the provisions of this subpart and using water or steam injection to control NO_X emissions shall install, certify and operate a continuous monitoring system to monitor and record the fuel consumption and the ratio of water or steam to fuel being fired in the turbine.

(b) The owner or operator of any stationary gas turbine that commenced construction, reconstruction or modification after October 3, 1977, but before May 29, 2003, and which uses water or steam injection to control NO_X emissions may, as an alternative to operating the continuous monitoring system described in paragraph (a) of this section, install, certify, maintain, operate, and quality-assure a continuous emission monitoring system (CEMS) consisting of NO_X and O_2 monitors. If this option is chosen, the CEMS shall be installed, certified, maintained, operated and quality-assured as follows:

(1) Each CEMS must be installed and certified according to PS 2 and 3 (for diluent) of 40 CFR part 60, appendix B or in accordance with the requirements of appendix A to part 75 of this chapter. The relative accuracy test audit (RATA) of the NO_X and O_2 monitors may be performed individually or on a combined basis, *i.e.*, the relative accuracy tests of the CEMS may be performed either:

(i) On a ppm basis (for NO_X) and a percent O_2 basis for oxygen; or

(ii) On a ppm at 15 percent O_2 basis.

(2) As specified in § 60.13(e)(2), during each full unit operating hour, each monitor must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each 15-minute quadrant of the hour, to validate the hour. For partial unit operating hours, at least one valid data point must be obtained for each quadrant of the hour in which the unit operates. For unit operating hours in which required quality assurance and maintenance activities are performed on the CEMS, a minimum of two valid data points (one in each of two quadrants) are required to validate the hour.

(3) For purposes of identifying excess emissions, CEMS data must be reduced to hourly averages as specified in § 60.13(h).

(i) For each unit operating hour in which a valid hourly average, as described in paragraph (b)(2) of this section, is obtained for both NO_X and O_2, the data acquisition and handling system must calculate and record the hourly NO_X emissions in the units of the applicable NO_X emission standard under § 60.332(a), *i.e.*, percent NO_X by volume, dry basis, corrected to 15 percent O_2 and International Organization for Standardization (ISO) standard conditions (if required as given in § 60.335(b)(1)).

(ii) A worst case ISO correction factor may be calculated and applied using historical ambient data. For the purpose of this calculation, substitute the maximum humidity of ambient air (H_o), minimum ambient temperature (T_o), and minimum combustor inlet absolute pressure (P_o) into the ISO correction equation.

(iii) The missing data substitution methodology provided for at 40 CFR Part 75, subpart D may not be used for purposes of identifying excess emissions. Instead periods of missing CEMS data are to be reported as monitor downtime in the excess emissions and monitoring performance report required in § 60.7(c).

(4) Data from the CEMS shall be quality-assured, either in accordance with § 60.13, or in accordance with appendix B to part 75 of this chapter (or, if applicable, § 75.74(c)(2) and (3) of this chapter).

(c) For any new turbine that commenced construction, reconstruction or modification after October 3, 1977, but before May 29, 2003, and which does not use steam or water injection to control NO_X emissions, the owner or operator may, for purposes of determining excess emissions, use a CEMS that meets the requirements of paragraph (b) of this section. Also, if the owner or operator has previously submitted and received EPA approval of a petition for an alternative procedure of continuously monitoring compliance with the applicable NO_X emission limit under § 60.332, that approved procedure may continue to be used, even if it deviates from paragraph (a) of this section.

(d) The owner or operator of any new turbine constructed after May 29, 2003, and which uses water or steam injection to control NO_X emissions may elect to use either the requirements in paragraph (a) of this section for continuous water or steam to fuel ratio monitoring or may use a NO_X CEMS installed, certified, operated, maintained, and quality-assured as described in paragraph (b) of this section.

(e) The owner or operator of any new turbine that commences construction after May 29, 2003, and which does not use water or steam injection to control NO_X emissions may elect to use a NO_X CEMS installed, certified, operated, maintained, and quality-assured as described in paragraph (b) of this section. An acceptable alternative to installing a CEMS is described in paragraph (f) of this section.

(f) The owner or operator of a new turbine who elects not to install a CEMS under paragraph (e) of this section, may instead perform continuous parameter monitoring as follows:

(1) For a diffusion flame turbine without add-on selective catalytic reduction controls (SCR), the owner or operator shall define at least four parameters indicative of the unit's NO_X formation characteristics and shall monitor these parameters continuously.

(2) For any lean premix stationary combustion turbine, the owner or operator shall continuously monitor the appropriate parameters to determine whether the unit is operating in the lean premixed (low-NO_X) combustion mode. The parameters described in § 75.19(c)(1)(iv)(H)(2) of this chapter are acceptable for this purpose.

(3) For any turbine that uses SCR to reduce NO_X emissions, the owner or operator shall continuously monitor appropriate parameters to verify the proper operation of the emission controls.

(g) The steam or water to fuel ratio or other parameters that are continuously monitored as described in paragraphs (a), (d) or (f) of this section shall be monitored during the performance test required under § 60.8, to establish acceptable values and ranges. The owner or operator shall develop and keep on-site a parameter monitoring plan which explains the procedures used to document proper operation of the NO_X emission controls. The plan shall include the parameter(s) monitored and the acceptable range(s) of the parameter(s) as well as the basis for designating the parameter(s) and acceptable range(s).

(h) The owner or operator of any stationary gas turbine subject to the provisions of this subpart:

(1) Shall monitor the total sulfur content of the fuel being fired in the turbine, except as provided in paragraph (h)(3) of this section. The sulfur content of the fuel must be determined using total sulfur methods described in § 60.335(b)(10). Alternatively, if the total sulfur content of the gaseous fuel during the most recent performance test was less than 0.4 weight percent (4000 ppmw), ASTM D4084–82, 94, D5504–01, D6228–98, or Gas Processors Association Standard 2377–86 (all of which are incorporated by reference-see § 60.17), which measure the major sulfur compounds may be used; and

(2) Shall monitor the nitrogen content of the fuel combusted in the turbine, if the owner or operator claims an allowance for fuel bound nitrogen (*i.e.*, if an F-value greater than zero is being or will be used by the owner or operator to calculate STD in § 60.332). The nitrogen content of the fuel shall be determined using methods described in § 60.335(b)(9) or an approved alternative.

(3) Notwithstanding the provisions of paragraph (h)(1) of this section, the owner or operator may elect not to monitor the total sulfur content of the gaseous fuel combusted in the turbine, if the gaseous fuel is demonstrated to meet the definition of natural gas in § 60.331(v), regardless of whether an existing custom schedule approved by the administrator for subpart GG requires such monitoring. The owner or operator shall use one of the following sources of information to make the required demonstration:

(i) The gas quality characteristics in a current, valid purchase contract, tariff sheet or transportation contract for the gaseous fuel, specifying that the maximum total sulfur content of the fuel is 20.0 grains/100 scf or less; or

(ii) Representative fuel sampling data which show that the sulfur content of the gaseous fuel does not exceed 20 grains/100 scf. At a minimum, the amount of fuel sampling data specified in section 2.3.1.4 or 2.3.2.4 of appendix D to part 75 of this chapter is required.

(4) For any new turbine that commenced construction, reconstruction or modification after October 3, 1977, but before May 29, 2003, and for which a custom fuel monitoring schedule has previously

been approved, the owner or operator may, without submitting a special petition to the Administrator, continue monitoring on this schedule.

(i) The frequency of determining the sulfur and nitrogen content of the fuel shall be as follows:

(1) *Fuel oil.* For fuel oil, use one of the total sulfur sampling options and the associated sampling frequency described in sections 2.2.3, 2.2.4.1, 2.2.4.2, and 2.2.4.3 of appendix D to part 75 of this chapter (*i.e.*, flow proportional sampling, daily sampling, sampling from the unit's storage tank after each addition of fuel to the tank, or sampling each delivery prior to combining it with fuel oil already in the intended storage tank). If an emission allowance is being claimed for fuel-bound nitrogen, the nitrogen content of the oil shall be determined and recorded once per unit operating day.

(2) *Gaseous fuel.* Any applicable nitrogen content value of the gaseous fuel shall be determined and recorded once per unit operating day. For owners and operators that elect not to demonstrate sulfur content using options in paragraph (h)(3) of this section, and for which the fuel is supplied without intermediate bulk storage, the sulfur content value of the gaseous fuel shall be determined and recorded once per unit operating day.

(3) *Custom schedules.* Notwithstanding the requirements of paragraph (i)(2) of this section, operators or fuel vendors may develop custom schedules for determination of the total sulfur content of gaseous fuels, based on the design and operation of the affected facility and the characteristics of the fuel supply. Except as provided in paragraphs (i)(3)(i) and (i)(3)(ii) of this section, custom schedules shall be substantiated with data and shall be approved by the Administrator before they can be used to comply with the standard in § 60.333.

(i) The two custom sulfur monitoring schedules set forth in subparagraphs (A) through (D) of this paragraph, (i)(3)(i), and in paragraph (i)(3)(ii) of this section are acceptable, without prior Administrative approval:

(A) The owner or operator shall obtain daily total sulfur content measurements for 30 consecutive unit operating days, using the applicable methods specified in this subpart. Based on the results of the 30 daily samples, the required frequency for subsequent monitoring of the fuel's total sulfur content shall be as specified in paragraph (i)(3)(i)(B), (C), or (D) of this section, as applicable.

(B) If none of the 30 daily measurements of the fuel's total sulfur content exceeds 0.4 weight percent (4000 ppmw), subsequent sulfur content monitoring may be performed at 12 month intervals. If any of the samples taken at 12-month intervals has a total sulfur content between 0.4 and 0.8 weight percent (4000 and 8000 ppmw), follow the procedures in paragraph (i)(3)(i)(C) of this section. If any measurement exceeds 0.8 weight percent (8000 ppmw), follow the procedures in paragraph (i)(3)(i)(D) of this section.

(C) If at least one of the 30 daily measurements of the fuel's total sulfur content is between 0.4 and 0.8 weight percent (4000 and 8000 ppmw), but none exceeds 0.8 weight percent (8000 ppmw), then:

(*1*) Collect and analyze a sample every 30 days for three months. If any sulfur content measurement exceeds 0.8 weight percent (8000 ppmw), follow the procedures in paragraph (i)(3)(i)(D) of this section. Otherwise, follow the procedures in paragraph (i)(3)(i)(C)(*2*) of this section.

(*2*) Begin monitoring at 6-month intervals for 12 months. If any sulfur content measurement exceeds 0.8 weight percent (8000 ppmw), follow the procedures in paragraph (i)(3)(i)(D) of this section. Otherwise, follow the procedures in paragraph (i)(3)(i)(C)(*3*) of this section.

(*3*) Begin monitoring at 12-month intervals. If any sulfur content measurement exceeds 0.8 weight percent (8000 ppmw), follow the procedures in paragraph (i)(3)(i)(D) of this section. Otherwise, continue to monitor at this frequency.

(D) If a sulfur content measurement exceeds 0.8 weight percent (8000 ppmw), immediately begin daily monitoring according to paragraph (i)(3)(i)(A) of this section. Daily monitoring shall continue until 30 consecutive daily samples, each having a sulfur content no greater than 0.8 weight percent (8000 ppmw), are obtained. At that point, the applicable procedures of paragraph (i)(3)(i)(B) or (C) of this section shall be followed.

(ii) The owner or operator may use the data collected from the 720-hour sulfur sampling demonstration described in section 2.3.6 of appendix D to part 75 of this chapter to determine a custom sulfur sampling schedule, as follows:

(A) If the maximum fuel sulfur content obtained from the 720 hourly samples does not exceed 20 grains/100 scf (*i.e.*, the maximum total sulfur content of natural gas as defined in § 60.331(v)), no additional monitoring of the sulfur content of the gas is required, for the purposes of this subpart.

(B) If the maximum fuel sulfur content obtained from any of the 720 hourly samples exceeds 20 grains/100 scf, but none of the sulfur content values (when converted to weight percent sulfur) exceeds 0.4 weight percent (4000 ppmw), then the minimum required sampling frequency shall be one sample at 12 month intervals.

(C) If any sample result exceeds 0.4 weight percent sulfur (4000 ppmw), but none exceeds 0.8 weight percent sulfur (8000 ppmw), follow the provisions of paragraph (i)(3)(i)(C) of this section.

(D) If the sulfur content of any of the 720 hourly samples exceeds 0.8 weight percent (8000 ppmw), follow the provisions of paragraph (i)(3)(i)(D) of this section.

(j) For each affected unit required to continuously monitor parameters or emissions, or to periodically determine the fuel sulfur content or fuel nitrogen content under this subpart, the owner or operator shall submit reports of excess emissions (or deviations, as applicable) and monitor downtime, in accordance with § 60.7(c). For the purpose of reports required under § 60.7(c), periods of excess emissions (or deviations) and monitor downtime that shall be reported are defined as follows:

(1) Nitrogen oxides.

(i) For turbines using water or steam to fuel ratio monitoring:

(A) A deviation shall be any unit operating hour for which the average steam or water to fuel ratio, as measured by the continuous monitoring system, falls below the acceptable steam or water to fuel ratio needed to demonstrate compliance with § 60.332, as established during the performance test required in § 60.8. Any unit operating hour in which no water or steam is injected into the turbine shall also be considered a deviation.

(B) A period of monitor downtime shall be any unit operating hour in which water or steam is injected into the turbine, but the essential parametric data needed to determine the steam or water to fuel ratio are unavailable or invalid.

(C) Each report shall include the average steam or water to fuel ratio, average fuel consumption, ambient conditions (temperature, pressure, and humidity), gas turbine load, and (if applicable) the nitrogen content of the fuel during each deviation.

(ii) If the owner or operator elects to take an emission allowance for fuel bound nitrogen, then deviations and periods of monitor downtime are as described in paragraphs (j)(1)(ii)(A) and (B) of this section.

(A) A deviation shall be the period of time during which the fuel-bound nitrogen (N) is greater than the value

measured during the performance test required in § 60.8 and used to determine the allowance. The deviation begins on the date and hour of the sample which shows that N is greater than the performance test value, and ends with the date and hour of a subsequent sample which shows a fuel nitrogen content less than or equal to the performance test value.

(B) A period of monitor downtime begins when a required sample is not taken by its due date. A period of monitor downtime also begins on the date and hour that a required sample is taken, if invalid results are obtained. The period of monitor downtime ends on the date and hour of the next valid sample.

(iii) For turbines using NO_X and O_2 CEMS:

(A) An hour of excess emissions shall be any unit operating hour in which the 4-hour rolling average NO_X concentration exceeds the applicable emission limit in § 60.332(a)(1) or (2). For the purposes of this subpart, a "4-hour rolling average NO_X concentration" is the arithmetic average of the quality-assured average NO_X concentration measured by the CEMS for a given hour (corrected to 15 percent O_2 and, if required under § 60.335(b)(1), to ISO standard conditions) and the three quality-assured unit operating hour average NO_X concentrations immediately preceding that unit operating hour.

(B) A period of monitor downtime shall be any unit operating hour in which sufficient data are not obtained to validate the hour, for either NO_X concentration or percent O_2 (or both).

(C) Each report shall include the ambient conditions (temperature, pressure, and humidity) at the time of the excess emission period and (if the owner or operator has claimed an emission allowance for fuel bound nitrogen) the nitrogen content of the fuel during the period of excess emissions.

(iv) For turbines required under paragraph (f) of this section to monitor combustion parameters or parameters that document proper operation of the NO_X emission controls:

(A) A deviation shall be a 4-hour rolling unit operating hour average in which any monitored parameter does not achieve the target value or is outside the acceptable range defined in the parameter monitoring plan for the unit.

(B) A period of monitor downtime shall be a unit operating hour in which any of the required parametric data are either not recorded or are invalid.

(2) Sulfur dioxide. If the owner or operator is required to monitor the sulfur content of the fuel under paragraph (h) of this section:

(i) For samples of gaseous fuel and for oil samples obtained using daily sampling, flow proportional sampling, or sampling from the unit's storage tank, an excess emission period shall begin on the date and hour of any sample for which the sulfur content of the fuel being fired in the gas turbine exceeds 0.8 weight percent. The excess emission period ends on the date and hour that a subsequent sample is taken that demonstrates compliance with the sulfur limit.

(ii) If the option to sample each delivery of fuel oil has been selected, the owner or operator shall immediately switch to one of the other oil sampling options (*i.e.*, daily sampling, flow proportional sampling, or sampling from the unit's storage tank) if the sulfur content of a delivery exceeds 0.8 weight percent. The owner or operator shall continue to use one of the other sampling options until all of the oil from the delivery has been combusted, and shall evaluate excess emissions according to paragraph (j)(2)(i) of this section. When all of the fuel from the delivery has been burned, the owner or operator may resume using the as-delivered sampling option.

(iii) A period of monitor downtime begins when a required sample is not taken by its due date. A period of monitor downtime also begins on the date and hour of a required sample, if invalid results are obtained. The period of monitor downtime ends on the date and hour of the next valid sample.

* * * * *

(5) All reports required under § 60.7 (c) shall be postmarked by the 30th day following the end of each calendar quarter.

■ 7. Section 60.335 is amended by:

■ a. Removing paragraphs (a), (d) and (e);

■ b. Redesignating paragraphs (b) and (c) as paragraphs (a) and (b), respectively;

■ c. Revising the new paragraphs (a) and (b);

■ d. Redesignating paragraph (f) as paragraph (c); and

■ e. Revising the new paragraph (c)(1).

The revisions and additions read as follows:

§ 60.335 Test methods and procedures.

(a) The owner or operator shall conduct the performance tests required in § 60.8, using either EPA Method 20, ASTM D6522–00 (incorporated by reference, *see* § 60.17), or EPA Method 7E and either EPA Method 3 or 3A in appendix A to this part, to determine NO_X and diluent concentration, except as provided in § 60.8(b). If ASTM D6522–00 (incorporated by reference, *see* § 60.17) or EPA Methods 7E and 3A (or 3) are used, the owner or operator shall perform a stratification test for NO_X and diluent pursuant to the procedures specified in section 6.5.6.1(a) through (e) appendix A to part 75 of this chapter. Once the stratification sampling is completed, the owner or operator shall analyze the data using the procedures in section 6.5.6.3(a) and (c) to determine if subsequent RATA testing will occur along a short (0.4, 1.2 and 2.0 meters from the stack or duct wall) or long (16.7, 50.0, and 83.3 percent of the way across the stack or duct) reference measurement line. The short or long reference method measurement line, as determined above, will serve in lieu of the sampling points usually required by EPA Method 20. In no case shall the RATA be based on fewer than three sample points as specified in section 8.1.3.2 of PS 2 in appendix B to this part. Other acceptable alternative reference methods and procedures are given in paragraph (c) of this section.

(b) The owner or operator shall determine compliance with the applicable nitrogen oxides emission limitation in § 60.332 and shall meet the performance test requirements of § 60.8 as follows:

(1) For each run of the performance test, the nitrogen oxides emission concentration (NO_{XO}) obtained using EPA Method 20, ASTM D6522–00 (incorporated by reference, *see* § 60.17), or EPA Method 7E shall be corrected to ISO standard conditions using the following equation. Notwithstanding this requirement, use of the correction equation is optional for: lean premix stationary combustion turbines; units used in association with heat recovery steam generators (HRSG) equipped with duct burners; and units equipped with add-on emission control devices:

$$NO_X = (NO_{XO})\,(P_r/P_o)^{0.5}\,e^{19(Ho-0.00633)}\,(288°K/T_a)^{1.53}$$

where:

NO_X = emission concentration of NO_X at 15 percent O_2 and ISO standard ambient conditions, ppm by volume, dry basis,

NO_{XO} = observed NO_X concentration, ppm by volume, dry basis, at 15 percent O_2, corrected using either EPA Method 20 or Method 3 or 3A data,

P_r = reference combustor inlet absolute pressure at 101.3 kilopascals ambient pressure, mm Hg,

P_o = observed combustor inlet absolute pressure at test, mm Hg,

H_o = observed humidity of ambient air, g H_2O/g air,

e = transcendental constant, 2.718, and T_a = ambient temperature, °K.

(2) The 3-run performance test required by § 60.8 must be performed within ±5 percent at 30, 50, 75, and 90-to-100 percent of peak load or at four evenly-spaced load points in the normal operating range of the gas turbine, including the minimum point in the operating range and 90-to-100 percent of peak load. If the turbine combusts both oil and gas as primary or backup fuels, separate performance testing is required for each fuel. Notwithstanding these requirements, performance testing is not required for any emergency fuel (as defined in § 60.331).

(3) For a combined cycle turbine system with supplemental heat (duct burner), the owner or operator may elect to measure the turbine NO_X emissions after the duct burner rather than directly after the turbine. If the owner or operator elects to use this alternative sampling location, the applicable NO_X emission limit in § 60.332 for the combustion turbine must still be met.

(4) If water or steam injection is used to control NO_X with no additional post-combustion NO_X control and the owner or operator chooses to monitor the steam or water to fuel ratio in accordance with § 60.334(a), then that monitoring system must be operated concurrently with each EPA Method 20, ASTM D6522–00 (incorporated by reference, *see* § 60.17), or EPA Method 7E run and shall be used to determine the fuel consumption and the steam or water to fuel ratio necessary to comply with the applicable § 60.332 NO_X emission limit.

(5) If the owner operator elects to claim an emission allowance for fuel bound nitrogen as described in § 60.332, then concurrently with each reference method run, a representative sample of the fuel used shall be collected and analyzed, following the applicable procedures described in § 60.335 (b)(9). These data shall be used to determine the maximum fuel nitrogen content for which the established water (or steam) to fuel ratio will be valid.

(6) If the owner or operator elects to install a CEMS, the performance evaluation of the CEMS may either be conducted separately (as described in paragraph (b)(7) of this section) or as part of the initial performance test of the affected unit.

(7) If the owner or operator elects to install and certify a NO_X CEMS under § 60.334(e), then the initial performance test required under § 60.8 may be done in the following alternative manner:

(i) Perform a minimum of 9 reference method runs, with a minimum time per run of 21 minutes, at a single load level, between 90 and 100 percent of peak load.

(ii) Use the test data both to demonstrate compliance with the applicable NO_X emission limit under § 60.332 and to provide the required reference method data for the RATA of the CEMS described under § 60.334(b).

(iii) The requirement to test at three additional load levels is waived.

(8) If the owner or operator is required under § 60.334(f) to monitor combustion parameters or parameters indicative of proper operation of NO_X emission controls, the appropriate parameters shall be continuously monitored and recorded during each run of the initial performance test, to establish acceptable operating ranges, for purposes of the parameter monitoring plan for the affected unit, as specified in § 60.334(g).

(9) To determine the fuel bound nitrogen content of fuel being fired (if an emission allowance is claimed for fuel bound nitrogen), the owner or operator may use equipment and procedures meeting the requirements of:

(i) For liquid fuels, ASTM D2597–94 (Reapproved 1999), D6366–99, D4629–02, D5762–02 (all of which are incorporated by reference, see § 60.17); or

(ii) For gaseous fuels, shall use analytical methods and procedures that are accurate to within 5 percent of the instrument range and are approved by the Administrator.

(10) If the owner or operator is required under § 60.334(i)(1) or (3) to periodically determine the sulfur content of the fuel combusted in the turbine, a minimum of three fuel samples shall be collected during the performance test. Analyze the samples for the total sulfur content of the fuel using:

(i) For liquid fuels, ASTM D129–00, D2622–98, D4294–02, D1266–98, D5453–00 or D1552–01 (all of which are incorporated by reference, see § 60.17); or

(ii) For gaseous fuels, ASTM D1072–80, 90 (Reapproved 1994); D3246–81, 92, 96; D4468–85 (Reapproved 2000); or D6667–01 (all of which are incorporated by reference, see § 60.17). The applicable ranges of some ASTM methods mentioned above are not adequate to measure the levels of sulfur in some fuel gases. Dilution of samples before analysis (with verification of the dilution ratio) may be used, subject to the prior approval of the Administrator.

(11) The fuel analyses required under paragraphs (b)(9) and (b)(10) of this section may be performed by the owner or operator, a service contractor retained by the owner or operator, the fuel vendor, or any other qualified agency.

(c) * * *

(1) Instead of using the equation in paragraph (b)(1) of this section, manufacturers may develop ambient condition correction factors to adjust the nitrogen oxides emission level measured by the performance test as provided in § 60.8 to ISO standard day conditions.

(2) [Reserved]

[FR Doc. 03–8150 Filed 4–11–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[OAR–2002–0053, FRL–7476–6]

RIN 2060–AK35

Standards of Performance for Stationary Gas Turbines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; amendments.

SUMMARY: This action proposes amendments to several sections of the standards of performance for stationary gas turbines in 40 CFR part 60, subpart GG. The proposed amendments would codify several alternative testing and monitoring procedures that have routinely been approved by EPA. The proposed amendments would also reflect changes in nitrogen oxides (NO_X) emission control technologies and turbine design since the standards were originally promulgated.

In the rules and regulations section of this **Federal Register**, we are taking direct final action on the proposed amendments because we view this action as noncontroversial, and we anticipate no adverse comments. We have explained our reasons for the amendments in the preamble to the direct final rule.

If we receive no adverse comments, we will take no further action on the proposed amendments. If we receive adverse comments, we will withdraw only those provisions on which we received adverse comments and they will not take effect. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or all of the direct final rule amendments in the rules and regulations section of this **Federal Register** are withdrawn, all comments pertaining to those provisions will be addressed in a subsequent final action based on the proposed amendments. We will not institute a second comment period on the subsequent final action. Any parties interested in commenting must do so at this time.

DATES: *Comments.* Submit comments on or before May 14, 2003, or 30 days after the date of a public hearing, if one is held.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by April 24, 2003. A public hearing will be held on May 14, 2003.

Incorporation by Reference. The incorporation by reference of certain publications in the proposed rule amendments will be approved by the Director of the Office of the Federal Register as of April 14, 2003.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket ID No. OAR–2002–0053, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102T), Attention Docket ID No. OAR–2002–0053, Room B–108, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. We request a separate copy of each public comment be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be held at the New EPA Facility Complex in Research Triangle Park, North Carolina beginning at 10 a.m.

Docket. Docket ID No. OAR–2002–0053 contains supporting information used in developing the proposed amendments. The docket is located at the U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460, Room B–108, and may be inspected from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagán, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5340; facsimile number (919) 541–5450; electronic mail address *pagan.jaime@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* Entities potentially regulated by this action are those that own and operate stationary gas turbines, and are the same as the existing rule in 40 CFR part 60, subpart GG. Regulated categories and entities include:

Category	NAICS	SIC	Examples of regulated entities
Any industry using a stationary combustion turbine as defined in the direct final rule.	2211	4911	Electric services.
	486210	4922	Natural gas transmission.
	211111	1311	Crude petroleum and natural gas.
	211112	1321	Natural gas liquids.
	221	4931	Electric and other services, combined.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 60.330 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult the contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0053. The official public docket is the collection of materials that is available for public viewing at the U.S. EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744. The telephone number for the Air Docket is (202) 566–1742.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or review public comments, access the index of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA dockets. Information claimed as confidential business information (CBI) and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed paper form in

the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments submitted after the close of the comment period will be marked "late." The EPA is not required to consider these late comments.

Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket* and follow the online instructions for submitting comments. Once in the system, select "search" and then key in Docket ID No. OAR–2002–0053. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *air-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2002–0053. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket.

You may submit comments on a disk or CD ROM that you mail to the mailing address identified in this document. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

By Mail. Send your comments (in duplicate, if possible) to: EPA Docket Center (6102T), Attention Docket ID No. OAR–2002–0053, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

By Hand Delivery or Courier. Deliver your comments (in duplicate, if possible) to: Air and Radiation Docket, Attention Docket ID No. OAR–2002–0053, U.S. EPA, 1301 Constitution Avenue, NW., Room B–108, Washington, DC 20460. Such deliveries are only accepted during the Docket Center's normal hours of operation as identified in this document. We request that a separate copy also be sent to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

By Facsimile. Fax your comments to: (202) 566–1741, Attention Docket ID No. OAR–2002–0053.

CBI. Do not submit information that you consider to be CBI through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: OAQPS Document Control Officer (C404–02), Attention: Mr. Jaime Pagan, U.S. EPA, 109 TW Alexander Drive, Research Triangle Park, NC 27711, Attention Docket ID No. OAR–2002–0053. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Kelly Hayes, Combustion Group, Emission Standards Division (C439–01), Research Triangle Park, NC 27711, telephone number (919) 541–5578, at least two days in advance of the potential date of the public hearing. Persons interested in attending the public hearing must also call Ms. Hayes to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposal will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of this action will be posted on the TTN's policy and guidance page for newly proposed rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Direct Final Rule. A direct final rule to this proposal is published in the rules and regulations section of this **Federal Register**. If we receive any adverse comment pertaining to one or more distinct amendments in the proposal, we will publish a timely notice in the **Federal Register** informing the public which amendments will become effective and which amendments are being withdrawn due to adverse comment. We will address all public comments concerning any withdrawn amendments in a subsequent final rule. If no adverse comments are received, no further action will be taken on the proposal and the direct final rule will become effective as provided in that action.

The regulatory text for the proposal is identical to that for the direct final rule published in the rules and regulations section of this **Federal Register**. For further supplemental information, the detailed rationale for the proposal, and the regulatory revisions, see the information provided in the direct final rule published in a separate part of this **Federal Register**.

I. Background

Under section 111 of the Clean Air Act (CAA), the EPA promulgated standards of performance for stationary gas turbines (40 CFR part 60, subpart GG). These standards were originally promulgated on September 10, 1979 (44 FR 52798). Since that time, many changes in the design of, the NO_X emission controls used for, and the composition of the fuels fired in gas turbines have occurred. Additional test methods have also been developed to measure emissions from gas turbines and for sampling the sulfur content of gaseous fuels. As a result of these changes, we have had many requests for case-by-case approvals of alternative testing and monitoring procedures for subpart GG. We are proposing these amendments to subpart GG to codify the alternatives that have been routinely approved. Additionally, we are attempting to harmonize the provisions of subpart GG with the monitoring provisions of 40 CFR part 75, since many new gas turbines are subject to both regulations.

II. Statutory and Executive Order Reviews

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed rule amendments on small entities, small entity is defined as: (1) A small business whose parent company has fewer than 100 or 1,000 employees, or fewer than 4 billion kW-hr per year of electricity usage, depending on the size definition for the affected North American Industry Classification System (NAICS) code; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. It should be noted that small entities in 6 NAICS codes may be affected by the proposed rule amendments, and the small business definition applied to each industry by NAICS code is that listed in the Small Business Administration (SBA) size standards (13 CFR part 121).

After considering the economic impacts of today's proposed rule amendments on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. This certification is based primarily upon the estimated cost savings to turbine owners and operators as a result of the proposed revisions to 40 CFR part 60, subpart GG that are presented in the direct final rule amendments published in a separate part of this **Federal Register**. These cost savings will be experienced by turbines owned and operated by small entities as well as large ones. Using the existing combustion turbines inventory as a measure of which industries may install new turbines in the future, presuming the existing mix of combustion turbines currently is a good approximation of the mix of turbines that will be installed and affected by the proposed amendments up to 2007, 2.5 percent of new turbines overall will likely be owned and operated by small entities. Of these entities, a majority of these are owned and operated by small communities.

For more information on the results of the analysis of small entity impacts, please refer to the economic impact analysis in the docket. We continue to be interested in the potential impacts of the proposed rule amendments on small entities and welcome comments on issues related to such impacts.

For information regarding other administrative requirements for this action, please see the direct final rule action that is located in the rules and regulations section of this **Federal Register** publication.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 27, 2003.

Christine Todd Whitman,

Administrator.

[FR Doc. 03–8151 Filed 4–11–03; 8:45 am]

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Federal Register

Monday,
April 14, 2003

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2002–0085; FRL–7462–3]

RIN 2060–AH55

National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for coke ovens. The final standards establish emission limitations and work practice requirements for control of hazardous air pollutants (HAP) from pushing, quenching, and battery stacks at new and existing coke oven batteries. The HAP emitted from pushing, quenching, and battery stacks include coke oven emissions, as well as polycyclic organic matter (POM) and volatile organic compounds (VOC) such as benzene and toluene. Exposure to these substances has been demonstrated to cause chronic and acute health effects. These final standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting application of the maximum achievable control technology (MACT). The EPA previously promulgated emission standards addressing emissions from coke oven charging, topside leaks, and door leaks.

EFFECTIVE DATE: April 14, 2003.

ADDRESSES: *Docket.* The official public docket is the collection of materials used in developing the final rule and is available for public viewing at the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lula Melton, Metals Group (C439–02), Emission Standards Division, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–2910, electronic mail (e-mail) address, *melton.lula@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS*	Example of regulated entities
Industry	331111, 324199	Coke plants and integrated iron and steel mills.
Federal government		Not affected.
State/local/tribal government		Not affected.

*North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.7281 of the final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0085. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Docket Access. You may access the final rule electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled "Docket." Once in the system, select "search," then key in the appropriate docket identification number.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. This action constitutes final administrative action on the proposed NESHAP for coke oven pushing, quenching, and battery stacks (66 FR 35326, July 3, 2001). Under CAA section 307(b)(1), judicial review of the final rule is achievable only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 13, 2003. Under CAA section 307(b)(2), the requirements that are the subject of this document may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What Is the Source of Authority for NESHAP?
B. What Criteria Are Used in the Development of NESHAP?
C. How Did We Develop the Final Rule?
II. Summary of the Final Rule
A. What Are the Affected Sources and Emission Points?
B. What Are the Requirements for Pushing?
C. What Are the Requirements for Soaking?
D. What Are the Requirements for Quenching?
E. What Are the Requirements for Battery Stacks?
F. What Are the Operation and Maintenance (O&M) Requirements?
G. What Are the Notification, Recordkeeping, and Reporting Requirements?
H. What Are the Compliance Deadlines?
III. Summary of Responses to Major Comments
A. Why Did We Select a Work Practice Standard for Fugitive Pushing Emissions?
B. What Changes Did We Make to the Work Practice Standard for Fugitive Pushing Emissions?
C. What Changes Did We Make to the Requirements for Pushing Emission Control Devices (PECD)?
D. What Changes Did We Make to the Requirements for Quenching?
E. What Were the Major Comments on the Proposed Standard for Battery Stacks?
F. What Changes Did We Make to the Requirements for Soaking?
G. What Changes Did We Make to the O&M Requirements?
H. Why Did We Change the Compliance Dates for Existing Sources?
IV. Summary of Environmental, Energy, and Economic Impacts
A. What Are the Air Emission Reduction Impacts?
B. What Are the Cost Impacts?
C. What Are the Economic Impacts?
D. What Are the Non-Air Health, Environmental and Energy Impacts?
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Analysis
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

A. What Is the Source of Authority for NESHAP?

Section 112 of the CAA requires the EPA to establish technology-based regulations for all categories and subcategories of major and area sources emitting one or more of the HAP listed in section 112(b). Major sources are those that emit or have the potential to emit at least 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAP. We previously listed the category of major sources covered by today's final rule, "Coke Ovens: Pushing, Quenching, and Battery Stacks," on July 16, 1992 (57 FR 31576). This action is a rulemaking under section 307(d) of the CAA.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (for which we have emissions information) in the category or subcategory or by the best-performing 5 sources (for which we have or could reasonably obtain emissions information) for categories or subcategories with fewer than 30 sources.

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, non-air quality health and environmental impacts, and energy impacts.

C. How Did We Develop the Final Rule?

We proposed the NESHAP for the Coke Ovens: Pushing, Quenching, and Battery Stacks source category on July 3, 2001 (66 FR 35326). We provided a 90-day comment period for the proposed rule. We received a total of 18 comment letters. A copy of each of these comment letters is available in the docket for this rulemaking (Docket No. OAR–2002–0085).

The final rule reflects full consideration of all the comments we received. Major public comments on the proposed rule along with our responses to these comments are summarized in this document. A detailed response to all comments is included in the Background Information Document (BID) for the promulgated standards (Docket No. OAR–2002–0085).

Since publication of the proposal, six coke plants with 12 batteries have permanently closed. The plants have closed primarily because of the distressed economic condition of the iron and steel industry, and none of the closures are due to the cost of installing emission control systems. The requirements in the final rule take into account the levels of control that have been demonstrated as achievable, including in some cases levels achieved by batteries that are no longer operating. We believe it is appropriate to consider all of the data collected and relied upon for the proposed rule. These data reflect the level of performance of batteries operating concurrently with this rulemaking effort, and provide useful and relevant information about the emission limits that such sources can achieve.

II. Summary of the Final Rule

A. What Are the Affected Sources and Emission Points?

The affected source is each new or existing coke oven battery at a plant that is a major source of HAP emissions. A new affected source is one constructed or reconstructed after July 3, 2001. An existing affected source is one constructed or reconstructed on or before July 3, 2001. The final rule covers fugitive pushing emissions, emissions from control devices applied to pushing emissions, and emissions from quenching, soaking, and battery stacks.

B. What Are the Requirements for Pushing?

1. By-Product Coke Oven Batteries With Vertical Flues

We proposed two options for controlling fugitive pushing emissions—numerical opacity limits (Option 1) and a work practice standard (Option 2). Based on comments received on the proposed rule and further consideration of the proposed options, we are promulgating a work practice standard.

Under the work practice standard, owners or operators must observe and record the opacity from four consecutive pushes each operating day. If the average opacity of the six highest 15-second consecutive readings for any individual push is more than 30 percent for a short battery or 35 percent for a tall battery, the owner or operator must take corrective action and/or increase coking time to fix the problem within a specified time frame. To demonstrate the corrective action and/or increased coking time was successful, the owner or operator must observe two additional daytime pushes for the oven after completing the corrective action. If the corrective action is not successful, the owner or operator must take additional corrective action. If the second attempt to fix the problem is not successful, the failure must be reported as a deviation, and the owner or operator must again take corrective action or increase the coking time. Each subsequent failure to

fix the problem on the same oven must also be reported as a deviation. We have included provisions to qualify an oven for decreased coking time after it is placed on increased coking time, which requires a demonstration that the opacity is 30 percent or less for a short battery or 35 percent or less for a tall battery when the oven is operated on the decreased coking time. If an oven fails to qualify for decreased coking time, it must be returned to the previously established increased coking time, or the owner or operator may implement some other corrective action or increased coking time. If the facility implements some other corrective action or increased coking time, it must confirm that the selected action was successful. If an individual oven fails to qualify for a decreased coking time in two or more consecutive attempts, the failure on the second and any subsequent attempts must be reported as a deviation.

The final rule requires that observers taking opacity readings to comply with the work practice standard for pushing must be certified according to Method 9 in 40 CFR part 60, appendix A. Opacity observations begin with the first detectable movement of the coke mass. The plant owner or operator must identify each oven that cannot be read using Method 9 due to obstructions, interferences, or sun angle and must propose alternative procedures to observe these ovens.

To demonstrate initial compliance, the plant owner or operator must certify, as part of the notification of compliance status, that the plant will meet each of the requirements in the work practice standard. Records of all observations and calculations are needed to document continuous compliance. Additional records are required in each instance where pushing emissions from an oven exceed 30 percent opacity for a short battery or 35 percent opacity for a tall battery.

2. By-Product Coke Oven Batteries With Horizontal Flues

Plant owners or operators must prepare and implement a written plan to prevent incomplete coking. The plan must establish minimum flue temperatures at different coking times and a lowest acceptable minimum flue temperature. The minimum temperatures must be established based on a study conducted by the plant that establishes minimum flue temperatures at different minimum coking times and an absolute minimum flue temperature. The plan must be submitted to the Administrator for approval. The authority to approve the work practice plan is retained by the Administrator and is not delegated to the State, local, or tribal agency.

In implementing the plan, owners or operators must measure and record the temperature of all flues on two ovens per day within the 2 hours before the scheduled push time. If the measured temperature is below the minimum established for an oven's coking time, the coking time must be increased by the amount specified in the plant's written plan. If the flue temperature measurement is below the lowest acceptable minimum temperature, the oven must be removed from service for repairs. If a flue temperature is below the lowest acceptable minimum after return to service, the owner or operator must report the event as a deviation.

No performance test is required to demonstrate initial compliance with the work practice standards. The plant owner or operator must certify, as part of the notification of compliance status, that the plant has submitted the written plan to prevent incomplete coking and the supporting study to the Administrator for review and approval, and that the plant will meet each of the requirements in the work practice standard beginning no later than the first day that compliance is required according to § 63.7283 of the final rule. If the plan is disapproved, the owner or operator must revise the plan as directed by the Administrator and re-submit it for approval. If an original or re-submitted plan has not been approved by the applicable compliance date, the owner or operator must operate in accordance with the last plan submitted to the Administrator.

Plant owners or operators must demonstrate continuous compliance by: (1) Measuring and recording flue temperatures for two ovens a day and for all ovens in each battery at least once a month, and (2) recording the time each oven is charged and pushed and the net coking time. Plant owners or operators must keep additional records to show that the correct procedures were followed if any measured flue temperature is below the minimum flue temperature or the lowest acceptable minimum temperature.

3. Non-Recovery Coke Oven Batteries

The final work practice standards require plant owners or operators to visually inspect each oven prior to pushing by opening the door damper and observing the bed of coke. The oven cannot be pushed unless the visual inspection confirms that there is no smoke in the open space above the coke bed, and that there is an unobstructed view of the door on the opposite side of the oven. Plant owners or operators must demonstrate initial compliance by certifying in their initial notification of compliance status that they will follow the work practice standards. Plant owners or operators must demonstrate continuous compliance by maintaining records of each visual inspection.

4. Emission Control Devices

We are establishing emission limits for particulate matter (PM) as a measure of control device performance. Plant owners or operators that currently use capture and control equipment must continue to use such equipment and must meet the applicable PM emission limits. The limits differ in form and numerical value depending on the type of capture system used (cokeside shed or moveable hood) and whether the control device is stationary (land-based) or mobile. Where a cokeside shed is used as the capture system, the PM limit is 0.01 grain per dry standard cubic foot (gr/dscf). If a moveable hood vented to a stationary control device is used to capture emissions, the PM emission limit is 0.02 pound per ton (lb/ton) of coke pushed. For mobile scrubber cars that do not capture emissions during travel, the emission limits are 0.03 lb/ton of coke for short batteries and 0.01 lb/ton of coke for tall batteries. For mobile scrubber cars that capture emissions during travel, the limit is 0.04 lb/ton of coke.

We have also established operating limits for control devices and capture systems applied to pushing emissions. If a venturi scrubber is used, the daily average pressure drop and scrubber water flow rate must remain at or above the minimum level established during the initial performance test. The final rule provides two options for a capture system applied to pushing emissions: (1) Maintain the daily average fan motor amperes at or above the minimum level established during the initial performance test, or (2) maintain the daily average volumetric flow rate at the inlet of the control device at or above the minimum level established during the initial performance test.

The final rule requires a performance test for each control device to demonstrate it meets the emission limit. The concentration of PM is to be measured using EPA Method 5 or 5D in 40 CFR part 60, appendix A. The testing requirements also include procedures for establishing operating limits for venturi scrubbers and capture systems and for revising the limits, if needed, after the performance test. To demonstrate continuous compliance with the applicable emission limit, plant owners or operators must conduct

performance tests for each control device at least twice during each term of their title V operating permit (at midterm and renewal).

If a baghouse is applied to pushing emissions, plant owners or operators must monitor the relative change in PM loading using a bag leak detection system and make inspections at specified intervals. The basic inspection requirements include daily, weekly, monthly, or quarterly inspections of specified parameters or mechanisms with monitoring of bag cleaning cycles. Each bag leak detection system must be capable of detecting PM at concentrations of 10 milligrams per actual cubic meter or less and provide an output of relative PM loading, and be installed and operated according to EPA guidance.[1] If the system does not work based on the triboelectric effect, it must be installed and operated consistent with the manufacturer's written specifications and recommendations. In addition, the bag leak detection system must be equipped with an alarm system that will alert operators if PM is detected above a preset level. The proposed requirement that a bag leak detection system must not sound for more than 5 percent of the time in a semiannual period has been deleted from the final rule.

To demonstrate continuous compliance, the final rule requires plant owners or operators to maintain records of corrective actions taken in response to bag leak detection system alarms. They must also keep records documenting conformance with the inspection and maintenance requirements.

If a venturi scrubber is applied to pushing emissions, plant owners or operators must monitor the daily average pressure drop and scrubber water flow rate using continuous parameter monitoring systems (CPMS). The CPMS must measure and record the pressure drop and scrubber water flow rate at least once per push and determine and record the daily average of the readings. To demonstrate continuous compliance with the operating limits, plant owners or operators must maintain the daily average pressure drop and scrubber water flow rate at levels no lower than those established during the performance test. Valid monitoring data must be available for all pushes.

Section 63.7331 of the rule establishes requirements for the installation, operation, and maintenance of continuous monitoring systems. The final rule requires owners or operators to prepare a site-specific monitoring plan for CPMS that addresses installation, performance, operation and maintenance, quality assurance, and recordkeeping and reporting procedures. These requirements replace the more detailed performance specifications contained in the proposed rule.

For a capture system applied to pushing emissions, plant owners or operators are required to check the fan motor amperes or the volumetric flow rate at least once each 8-hour period to verify the daily average is at or above the level established during the initial performance test and to record the results of each check.

C. What Are the Requirements for Soaking?

The final rule contains a work practice standard to address emissions that occur during soaking, which is the period prior to pushing when an oven is dampered off the collecting main and vented to the atmosphere through an open standpipe to relieve oven pressure. Plant owners or operators must prepare and implement a plan to mitigate potential soaking emissions. Each plan must include measures and procedures to train topside workers to identify the cause of soaking emissions and to take corrective measures to reduce or eliminate such emissions.

If soaking emissions are caused by leaks from the collecting main, actions must be taken to eliminate the emissions, such as reseating the damper, cleaning the flushing liquor piping, applying aspiration, putting the oven back on the collecting main, or igniting the emissions. If soaking emissions are not caused by leaks from the collecting main, a designated responsible party must be notified, who must then determine whether the cause of emissions is incomplete coking. If so, the oven must either be put back on the collecting main until coking is complete, or the emissions must be ignited.

To demonstrate initial compliance, the plant owner or operator must certify, as part of the notification of compliance status, that the plant has submitted the written plan for soaking to their permitting authority for review and approval, and that each of the requirements in the work practice standard will be met beginning no later than the first day that compliance is required according to § 63.7283 of the final rule. To demonstrate continuous compliance, plant owners or operators must keep records documenting conformance with these requirements.

D. What Are the Requirements for Quenching?

The equipment and work practice standards for quenching apply to all coke oven batteries. Each quench tower must be equipped with baffles such that no more than 5 percent of the cross sectional area of the tower may be uncovered or open to the sky. Baffles must be cleaned each day that the quench tower is used except when the highest measured ambient temperature during the day is below 30 degrees Fahrenheit. Each quench tower must be inspected at least monthly for damaged or missing baffles and blockage. If the monthly inspection reveals any damaged or missing baffles, plant owners or operators must initiate repairs within 30 days and complete repairs as soon as practicable.

The final rule also limits the total dissolved solids (TDS) content of water used for quenching to 1,100 milligrams per liter (mg/L). The final rule includes an alternative to the TDS limit that achieves an equivalent level of HAP control. The plant owner or operator may establish a site-specific constituent limit for the HAP that are characteristic of coke oven emissions (benzene, benzo(a)pyrene, and naphthalene). The constituent limit is based on analyses of at least nine samples of the quench water for TDS, benzene, benzo(a)pyrene, and naphthalene. The HAP limit is the highest sum of the concentrations of the HAP in any single sample that meets the TDS limit of 1,100 mg/L. We also replaced the definition of "clean water" with a definition of "acceptable makeup water," which includes surface water from a river, lake, or stream; water meeting drinking water standards; storm water runoff and production area clean up water except for water from the by-product recovery plant area; process wastewater treated to meet effluent limitations guidelines; any of these types of water that have been used only for non-contact cooling or in water seals; or water from scrubbers used to control pushing emissions.

To demonstrate initial compliance, the plant owner or operator must certify, as part of the notification of compliance status, that the equipment standard has been met, and that the work practice requirements regarding baffle repair and cleaning will be met beginning no later than the first day that compliance is required according to § 63.7283 of the final rule. The owner or operator must also conduct an initial performance test to demonstrate that the TDS content of quench water does not exceed 1,100 mg/

[1] "Fabric Filter Bag Leak Detection Guidance," EPA 454/R–98–015, September 1997, available on the TTN at *http://www.epa.gov/ttnemc01/cem/tribo.pdf*

L or that the concentration of benzene, benzo(a)pyrene, and naphthalene does not exceed the site-specific constituent limit. To demonstrate continuous compliance, plant owners or operators are required to maintain baffles in each quench tower to meet the rule requirements, test quench water for TDS at least weekly or at least monthly for benzene, benzo(a)pyrene, and naphthalene, and keep records documenting conformance with the work practice requirements regarding baffle repair and cleaning.

Backup quench stations at existing coke oven batteries that are used for less than 5 percent of the quenches in a 12-month calendar period are not subject to the baffle requirements for quench towers. However, backup quench stations at new batteries are subject to the requirements for baffles.

E. What Are the Requirements for Battery Stacks?

The final rule requires plant owners or operators to monitor the opacity of emissions from each battery stack using a continuous opacity monitoring system (COMS) and to meet specified opacity limits at all times. The opacity limits are a daily average of 15 percent for a by-product coke oven battery on a normal coking cycle and a daily average of 20 percent for a by-product coke oven battery on a batterywide extended coking cycle. A battery is on batterywide extended coking if the average coking time for all ovens in a battery is increased by 25 percent or more over the manufacturer's specified design rate.

Initial compliance must be demonstrated through a performance test using a COMS. The opacity of emissions from each battery stack must be monitored for 24 hours and the daily average determined. A performance evaluation is also required to show that the COMS meets Performance Specification (PS) 1 in appendix B to 40 CFR part 60. To demonstrate continuous compliance, plant owners or operators must monitor opacity using the COMS and determine and record the 24-hour average opacity.

F. What Are the Operation and Maintenance (O&M) Requirements?

All plant owners or operators are required to prepare and implement a written startup, shutdown, and malfunction plan according to the O&M requirements in 40 CFR 63.6(e). Operation and maintenance plans are also required for each by-product coke oven battery and for capture systems and control devices applied to pushing emissions.

The plan for general O&M of each by-product coke oven battery must address procedures (and frequency of measurements, where appropriate) for underfiring gas parameters, flue and cross-wall temperatures, preventing ovens from being pushed before they are fully coked, preventing overcharging and undercharging of ovens, and inspecting flues, burners, and nozzles.

The O&M plan for capture systems and control devices applied to pushing emissions must describe procedures for monthly inspections of capture systems, preventative maintenance requirements for control devices, and corrective action requirements for baghouses. In the event of a bag leak detection system alarm, the plan must include specific requirements for initiating corrective action to determine the cause of the problem within 1 hour, initiating corrective action to fix the problem within 1 working day, and completing all corrective actions needed to fix the problem as soon as practicable.

To demonstrate initial compliance, plant owners or operators must certify in their notification of compliance status that they have prepared the plan according to the rule requirements and that the plant will operate according to the plan beginning no later than the first day that compliance is required under § 63.7283 of the final rule. To demonstrate continuous compliance, plant owners or operators must adhere to the requirements in the plan and keep records documenting conformance with these requirements.

G. What Are the Notification, Recordkeeping, and Reporting Requirements?

The notification, recordkeeping, and reporting requirements rely on the NESHAP General Provisions in 40 CFR part 63, subpart A. Table 1 of the final rule (subpart CCCCC) shows each of the requirements in the General Provisions (§§ 63.2 through 63.15) and whether they apply.

The final rule requires the owner or operator to submit each initial notification in the NESHAP General Provisions that applies to them. An initial notification of applicability with general information about the plant must be submitted within 120 days of April 14, 2003 (or for a new affected source, 120 days after becoming subject to the rule). A notification of performance tests must be provided at least 60 calendar days before each test. A notification of compliance status must be submitted within 60 calendar days of the compliance demonstration if a performance test is required or within 30 calendar days if no performance test is required. For the work practice standard for pushing for a by-product coke oven battery with horizontal flues, plant owners or operators must provide prior written notification of the date the study of flue temperatures will be initiated. Other notification requirements that may apply are shown in Table 1 of the final rule (subpart CCCCC).

The final rule requires plant owners or operators to maintain the records required by the NESHAP General Provisions that are needed to document compliance, such as performance test results; copies of startup, shutdown, and malfunction plans and associated corrective action records; monitoring data; and inspection records. All records must be kept for a total of 5 years, with the records from the most recent 2 years kept onsite. The final rule also requires that the current O&M plans be kept onsite and available for inspection upon request for the life of the affected source or until the affected source is no longer subject to the rule requirements.

We revised the reporting requirement for battery stacks from monthly to quarterly in response to comments. For other affected sources, semiannual reports are required for any deviation from an emission limitation (including an operating limit), work practice standard, or O&M requirement. Each report is due no later than 30 days after the end of the reporting period. If no deviation occurred and no continuous monitoring systems were out of control, only a summary report is required. If a deviation did occur, more detailed information is required.

An immediate report is required if there were actions taken during a startup, shutdown, or malfunction that were not consistent with the startup, shutdown, and malfunction plan. Deviations that occur during a period of startup, shutdown, or malfunction are not violations if the owner or operator demonstrates to the permitting authority that the source was operating in accordance with the startup, shutdown, and malfunction plan.

H. What Are the Compliance Deadlines?

We revised the compliance date for an existing affected source from 2 years to 3 years after April 14, 2003. New or reconstructed sources that startup on or before April 14, 2003. New or reconstructed sources that startup after April 14, 2003 must comply upon initial startup.

III. Summary of Responses to Major Comments

A. Why Did We Select a Work Practice Standard for Fugitive Pushing Emissions?

We proposed an opacity standard for fugitive pushing emissions as one potential option for controlling sources in the category. Because we were uncertain about the feasibility of an opacity standard for this emission point, we also proposed a work practice standard. We refer to the opacity standard as Option 1 and the work practice standard as Option 2. Both options would require observing four consecutive pushes per day and determining the average opacity of each push. The opacity limits proposed were 20 percent for short batteries and 25 percent for tall batteries based on the average of four pushes. We proposed a work practice standard that would be triggered if the average opacity of any single push exceeded 30 percent for short batteries and 35 percent for tall batteries.

Comment: Four commenters stated a preference for a work practice standard. Two commenters said that EPA has not and cannot adequately subcategorize batteries to account for the range in performance achievable by batteries implementing a state-of-the-art O&M program for the minimization of green pushes. The commenters stated there are not enough data to set standards for each subcategory reflecting the performance of the top sources over time and under the worst foreseeable conditions. Therefore, the opacity standard (Option 1) must be rejected.

One commenter prefers an opacity standard over a work practice standard because he believes a work practice standard could cause several problems: (1) It would not allow them to effectively manage their long-term wall and end flue replacement program; (2) the constant change from taking ovens out of service and putting them back into service would result in damage to the battery; and (3) many of the actions required by the work practice standard would disrupt the heating system, damage refractory, and increase emissions in other areas of the battery.

Three commenters urged EPA to combine the opacity standard with the work practice standard. One commenter noted that the opacity standard does not require that an oven be repaired, and the work practice standard may not be sufficient to keep a problem oven from continuing to operate. Two commenters prefer a combination because it would more closely approach their existing State standards. Another commenter prefers the opacity standard but would support combining it with the work practice standard if it improved compliance.

Response: The insight provided by several commenters and further consideration of the two options we proposed lead us to conclude that a work practice standard that requires owners or operators to take appropriate corrective action and to confirm that they have successfully addressed problem ovens is the most effective approach to control fugitive pushing emissions. A work practice standard is appropriate because pushing emissions are fugitive in nature and are not emitted through a conveyance designed to capture and control HAP. Moreover, there is no practicable measurement methodology to determine the mass emission rate of HAP in these fugitive emissions. Section 112(h) of the CAA explicitly permits a work practice standard in lieu of an emission standard when emissions cannot be emitted through a conveyance.

We concluded an opacity limit as proposed would not be appropriate because coke oven batteries cannot entirely avoid green pushes. While facilities can significantly reduce the frequency of green pushes by carefully monitoring emissions and responding quickly to diagnose and repair problem ovens, they cannot eliminate them altogether. (For example, a flue may become plugged unexpectedly during coking.) Any steps that we might take to allow for the periodic exceedance of an emission limit (such as averaging across several pushes) would undermine the purpose of the standard by allowing malfunctioning ovens to continue operating without diagnosis or repair. Therefore, the most meaningful approach is to establish a work practice standard that requires coke oven facilities to identify and successfully remedy problems that result in increased emissions. Accordingly, considering the nature of the pushing operation, it is appropriate for EPA to establish a work practice standard that uses opacity observations to identify problem ovens (those which produce green pushes) and requires corrective action to diagnose and correct the problem.

There was a fundamental flaw in the opacity standard as proposed in that it would not ensure that an oven producing green pushes is repaired. If the four-push average exceeds the opacity standard, one or more of the ovens may have serious problems that require immediate attention to prevent subsequent green pushes. However, these problem ovens would not have to be observed again for 90 days, and during that 90-day period, many green pushes could occur.

Additionally, an opacity standard based on the average of four pushes does not reliably indicate when a green push has or has not occurred. We analyzed data from two batteries that had frequent green pushes to compare the effectiveness of the opacity standard and work practice standard in identifying green pushes. We found cases where the four-push average had one oven with a green push (an opacity of more than 30 percent), but the proposed opacity standard was not exceeded because the other pushes had low opacity. We also found cases where the 20 percent opacity standard was marginally exceeded, but none of the pushes were green (*i.e.*, all four pushes were less than 30 percent).

In contrast, the work practice standard is triggered by opacity observations of individual ovens. When a green push occurs, the problem oven is identified. This oven is then placed on a remedial track that requires appropriate repairs in a reasonable period of time. Consequently, the work practice standard will not allow green pushes to occur unabated.

Several commenters urged us to combine the performance standard (an opacity limit) with the work practice standard. While we are not adopting a specific performance standard in the form of a hard and fast opacity limit, and we do not believe that such a standard would provide a feasible mechanism for identifying and remediating individual problem ovens, we do recognize the benefits of having a mechanism to prevent ongoing failure to repair problem ovens.

Therefore, we have revised the work practice standard to ensure that ovens are properly repaired. As proposed, the work practice standard could have allowed individual problem ovens to continue to operate, while cycling through corrective actions without ever being properly repaired. Consequently, we revised the work practice standard to require an owner or operator to report a deviation after two consecutive unsuccessful attempts at corrective action and/or increased coking time and after two consecutive unsuccessful attempts to decrease coking time on the same oven. In addition, subsequent consecutive failures to repair or remediate the same oven must be reported as deviations. There is adequate time provided to correct any problems during the two attempts—20 days or more. An owner or operator may also remove an oven from service for as long as necessary to conduct repairs.

This approach accurately reflects the performance of the best-controlled facilities in the category that already implement oven diagnosis and repair programs to successfully identify and remedy problems that lead to increased emissions. Most of the best-controlled batteries will seldom have an oven that enters the oven-directed program, and our data show that none have had the types of continuing problems that would result in a deviation under the final rule.

We believe that the work practice standard can be coordinated with a long-term repair program. The batteries upon which the MACT floor is based have a long-term repair program to address major repairs. This long-term program includes procedures for minimizing impacts on adjacent ovens and preventing excess emissions when ovens must be removed from service. In addition, these batteries have effective procedures for identifying problem ovens and making short-term repairs. There is no legitimate reason why this type of approach cannot be implemented at other coke oven batteries.

B. What Changes Did We Make to the Work Practice Standard for Fugitive Pushing Emissions?

Comment: Four commenters requested revisions to the work practice standard. They requested that the final rule require that all pushes be read exactly according to EPA Method 9 (40 CFR part 60, appendix A). They suggested that Method 9 observations begin with the first detectable movement of the coke mass because this would ensure that observations are made through the entire pushing sequence and would be consistent with how the data were generated for the proposed rule. They also requested that we not require "independent certified observers" because all Method 9 certified observers are qualified and should be treated the same.

The commenters asked that we allow the observation of more than four pushes per day so that every oven can be observed at least once every 3 months. In addition, the commenters asked that we clarify that the pushing schedule can be changed for operational reasons, but not "solely" for the purpose of changing the sequence of observations. They suggested we add a definition for "increased coking time" to prevent confusion with "batterywide extended coking time," which is a term used only in the provisions for battery stacks.

Response: We agree with some of these suggested revisions and do not agree with others. We do not agree that all ovens must be read exactly as required by Method 9 (40 CFR part 60, appendix A) because we are aware that the view of opacity from some ovens may be obstructed within the sector required by the method. In this situation, the observer may need to find an alternative position to make opacity observations. We added a provision to the final rule requiring plant owners or operators to identify ovens that cannot be observed according to Method 9 and develop alternative procedures to determine if green pushes are occurring on those ovens. The alternative procedures must be submitted to the permitting authority for review and approval. Facilities must operate according to these procedures beginning no later than the applicable compliance date. Based on the information we received, there are only a few ovens that fall into this category.

We have written the final rule to state that Method 9 observations should begin with the first detectable movement of the coke mass. In addition, we agree that any Method 9 certified observer is qualified to make Method 9 opacity observations and have changed the provision to reflect this. We also agree that more than four ovens may be observed each day because doing so provides more scrutiny of performance and greater assurance that every oven can be observed at least once every 90 days.

With respect to the comment on changing pushing schedules, we do not believe that the precise language that the commenter suggests is appropriate (specifically the word "solely" would create an extraordinarily difficult burden of proof for purposes of enforcement). However, we do agree with the general idea underlying the commenter's recommendation, and we have written the final rule to acknowledge that there may be legitimate operational reasons for changing the pushing schedule. If an oven's pushing schedule is changed and that oven was previously scheduled to be one of the four consecutive ovens to be observed, the operator must keep records to document the legitimate operational reason for changing the schedule. We have added a definition for "increased coking time" to prevent confusion with "batterywide extended coking time," which is a term used only in the provisions for battery stacks.

Comment: Several commenters said that the rule should not mandate that an oven be taken out of service if corrective actions are unsuccessful. In addition, commenters requested that after taking corrective actions or extending the coking time, we allow two coking cycles before requiring the facility to demonstrate that the action was successful. They believe it is necessary to observe only one push rather than two to show the action was successful. Finally, the commenters asked that we drop the requirement to obtain the permitting authority's permission to return an oven to service and instead change this to a notification requirement.

Response: We added a provision that requires plant owners or operators to report a deviation after two unsuccessful attempts at repair, and with this requirement, we believe that it is not necessary to require that an oven be removed from service. Our goal at proposal was to require that an oven be removed from service for repair to avoid endless cycling of unsuccessful repairs. This is accomplished in the final rule by requiring that the owner or operator repair the problem oven, and by requiring the owner or operator to bring any two or more consecutive failures to repair the same oven to the attention of the permitting authority by reporting the failure(s) as a deviation.

Based on the comments requesting more time to fix problem ovens before they are removed from service, we investigated the time that might reasonably be required to take corrective action and to demonstrate that it was successful. We discovered that there can be some situations in which it would be difficult to obtain valid opacity observations within the time period in the proposed rule. For example, the opportunity to make opacity observations according to the prescribed procedures depends on coking time, number of daylight hours, sun angle, and other factors. In some cases, it may take several days to meet the criteria in the opacity procedures for a specific oven, especially during the winter months for ovens with 22 to 26 hour coking times. Consequently, we have written the final rule to require that the opacity observations to demonstrate that corrective action and/or increased coking time was successful be made on the first two pushes that can be observed according to the procedures for opacity observations after the allowed number of days. We decreased the time period to complete corrective action or increase coking time because the time period no longer includes the demonstrative observations. We have written the final rule to allow either 10 days or the number of days determined using an equation, whichever is greater. Depending on coking time, the time period allows batteries 10 to about 20 days to diagnose the problem,

implement corrective action or increased coking time, and stabilize oven temperatures. After that period, the next two pushes that can be observed according to the procedures must be observed to evaluate the success of corrective action. Days during which the oven is removed from service do not count in the allowed number of days. We also revised the standard to allow two attempts at repair in case the problem is not initially diagnosed properly or in case a second independent problem develops.

We do not agree that two coking cycles are always necessary to stabilize an oven after corrective actions are taken. We believe there is one case in which two coking cycles are needed to allow the oven temperature to stabilize—when an oven that was placed on increased coking time has been repaired and the owner or operator attempts to qualify for decreased coking time. We have written the final rule to reflect this. There is adequate time within the allowed number of days following corrective action or increased coking time to allow the oven temperatures to stabilize. Adequate time is also provided for ovens removed from service because the time during which the oven is not operating is not counted in the allowed number of days. Relative to the comment that only one observation is needed to demonstrate the problem has been corrected, we continue to believe that two pushes should be observed rather than one to provide assurance that the repair was successful.

We agree that it is not necessary for a permitting authority to approve returning an oven to service, and the permitting authority may not be able to act within a time frame that is consistent with the legitimate needs of the operator. In addition, this requirement places a burden on the permitting authority that they may not want and may not have the resources or expertise to implement.

Comment: Three commenters stated that batteries with horizontal flues would be subject to significantly less stringent standards than batteries with vertical flues. They requested that these batteries be subject to the same pushing requirements as by-product batteries with vertical flues.

Response: As stated in the proposal preamble, unlike vertical flue batteries which include 25 to 37 individual flues along each oven wall, the horizontal flue system of the Semet Solvay design includes only five horizontal flues which convey the combustion gases from top to bottom in serpentine fashion. Because the hot combustion products flow from one flue to the next, the heat control of each upper flue materially affects the heating conditions in the next flue down. Each flue in the horizontal design affects a larger percentage of the total coke mass than for the vertical flue design. Consequently, the occurrence of a heating or combustion problem in any of the single horizontal flues could have a significant adverse effect on the degree and uniformity of coking across the entire length of the coke bed. Therefore, since these differences in design and operation affect pushing emissions, we developed a separate subcategory for batteries with horizontal flues. There are two batteries with this design, and the work practice standard is based on the procedures used by these batteries to prevent green pushes. We have received no technical information that indicates this subcategorization was inappropriate.

However, after we reviewed the proposed work practice standard, we concluded a revision was needed to ensure that a source would not be permitted to operate its ovens below the lowest acceptable minimum flue temperature. The source is required to evaluate coking time, coking temperature, and factors associated with incomplete coking to develop minimum flue temperatures and coking times. The source must then submit to the Administrator (or delegated authority) for review and approval a written plan that establishes minimum flue temperatures for different coking times, and that establishes the lowest acceptable minimum flue temperature for oven operation. The plan must also include appropriate operation and maintenance procedures to ensure compliance upon plan implementation.

C. What Changes Did We Make to the Requirements for Pushing Emission Control Devices (PECD)?

Comment: Two commenters stated that there is no legal basis for setting MACT standards for PECD given EPA's conclusion at proposal that PECD are not part of the MACT floor for pushing. One commenter also stated that EPA has no legal authority to set operating limits for PECD because they are simply a surrogate for the underlying emission limits. In addition, PECD should not be regulated because the emissions do not contain HAP. The commenter said the limits and monitoring are not necessary and are duplicative of other existing requirements, including State implementation plans, title V permits, and the compliance assurance monitoring program.

Response: We believe emission limits for PECD are appropriate and warranted. As we explained in the preamble to the proposed rule, there are several reasons we do not believe it is appropriate to include PECD as a component of the MACT floor for pushing. However, we also indicated at proposal that operation of these controls does have some HAP reduction benefits (although we are unable to specifically quantify these benefits in terms of either HAP or PM), and there is little doubt that these devices help to reduce HAP emissions, including POM and trace metals. Thus, while minimizing the frequency of green pushes is the basis for the MACT floor, and achieving this objective will significantly decrease the emission benefits of the add-on control devices, these devices will continue to reduce HAP emissions to some degree on a continuing basis. The EPA has reasonably concluded that it is important to ensure that the benefits related to the operation of these controls are maintained, and the appropriate way to accomplish this is to require that coke plants operate existing PECD at all times in a manner consistent with good air pollution control practices. Accordingly, today's requirements establish emission limitations for existing control devices that reflect the performance of well-operated PECD. The costs associated with the PECD requirements include those for periodic Method 5 testing, parametric monitoring (such as bag leak detection systems), and monthly inspections of capture and control systems. These costs are only $4,600 per year for a typical coke plant, which is a minimal cost relative to the overall costs of the final rule (less than 0.5 percent). While we are not able to quantify the HAP emission reductions associated with operation of PECD or with the PECD requirements in the final rule, we believe the requirements preserving these existing benefits of PECD's and ensuring proper operation of control devices is warranted. For example, bag leak detection systems and monthly inspections will ensure that corrective actions are taken promptly when the systems are not operating properly, and these actions will reduce excess emissions that might have occurred in the absence of the continuous monitoring.

We do not believe that the limits will duplicate existing State requirements because the limits are generally equivalent to or more stringent than those currently required by State agencies or contained in existing operating permits. By establishing these limits in national standards, we will

ensure that emissions from PECD do not increase in the future if existing State limits are relaxed or if operating permits are modified.

Comment: One commenter stated that the proposed emission limits are based on very limited data and that the limits are not achievable. In support of this claim, the commenter submitted statistical analyses that indicate that their "statistically-derived values" are much higher than the proposed limits and should be used in lieu of the proposed values. Several commenters submitted additional test data for EPA to consider and asked for higher limits.

Response: We reviewed the additional test data submitted by the commenters. These new data include additional tests on mobile scrubber cars used on short batteries and baghouses applied to cokeside sheds. We also reexamined our approach for selecting appropriate emission limits. We believe that it is not necessary to use statistical analyses to account for variability because these control devices operate uniformly over time, and the data indicate there is little variability when the device is operating properly. In addition, we have data for most of the affected control devices, including multiple tests for some units. We believe the large database inherently accounts for variability and choosing the highest three-run average means that 100 percent of the test results are below the limit. However, to account for inherent variability in the performance of the control devices (to more accurately reflect the actual performance of existing controls over time), we established the limits in the final rule by rounding the highest test results to two decimal places.

The two additional tests for mobile scrubber cars used on short batteries include one result slightly below the proposed limit and another slightly higher than the proposed limit. The tests were conducted using approved methods and appear to be representative of normal operation. In addition, the results expanded the database for this subcategory from three tests to five tests. The averages for the five tests ranged from 0.012 to 0.025 lb/ton of coke. We rounded 0.025 lb/ton to 0.03 lb/ton and established this value as the limit for mobile scrubber cars for short batteries.

We also reviewed additional test data for three batteries equipped with a cokeside shed and baghouse, including three tests conducted on a 6-meter battery at one plant and four tests conducted on two 4-meter batteries designated Batteries 1 and 4 at a second plant. The proposed limit for existing cokeside sheds and baghouses was 0.004 gr/dscf. With the additional data, we now have results for ten tests at five batteries with cokeside sheds and baghouses. All three tests on the 6-meter battery are below the proposed limit of 0.004 gr/dscf with values of 0.0009, 0.0024, and 0.0013 gr/dscf.

The additional data for the two 4-meter batteries plus one test result which we previously had gives us a total of five tests for that plant, four tests for Battery 1 and one test for Battery 4. The company acknowledged that a 1984 test which averaged 0.02 gr/dscf was performed under unrepresentative conditions because of operational problems with the baghouse during the test. We examined the other test reports for Battery 1 and found that a test conducted in 1984 averaged 0.004 gr/dscf, a 1988 test averaged 0.0036 gr/dscf, and a 1998 test averaged 0.01 gr/dscf. The test reports indicate that sampling was performed under representative conditions. Consequently, we revised the emission limit for batteries with cokeside sheds to 0.01 gr/dscf to reflect the level that has been demonstrated as achievable.

No additional data were submitted for two types of capture and control systems: mobile scrubber cars on tall batteries and mobile scrubber cars that capture during travel. We chose as limits the highest three-run average for each of these systems—0.01 lb/ton for mobile scrubber cars on tall batteries and 0.04 lb/ton for mobile scrubber cars that capture during travel. We believe the data show that these limits are achievable because they have been achieved at several different batteries over time.

Comment: One commenter requested that the 5 percent operating limit for bag leak detection system alarms be deleted. The commenter argued that the 5 percent of the operating time limit on alarms is arbitrary. In addition, the commenter stated that EPA had not demonstrated that a bag leak detection system is workable for pushing emissions given the intermittent operation of PECD (*e.g.*, 1 to 2 minutes during a push, which occurs every 15 to 20 minutes).

Response: We reexamined the proposed operating limit of 5 percent for bag leak detection systems and concluded it was not applicable for PECD. The proposed limit was adopted from other rules and was not based on data associated with baghouses applied to pushing emissions. We do not believe we can establish an appropriate limit in this application because of the intermittent operation of baghouses. For most systems, the device operates only during the push, which is 1 to 2 minutes every 10 to 15 minutes. In addition, we have no information on the effect of the initial surge when full evacuation is applied at the beginning of the push. Thus, given that emissions from PECD are not the major focus of today's final rule and are not included as part of the MACT floor calculation, we believe it is appropriate to delete the 5 percent operating limit for bag leak detection systems. However, we are requiring that corrective actions be initiated within 1 hour of an alarm.

D. What Changes Did We Make to the Requirements for Quenching?

Comment: One commenter stated that the definition of "clean water" needs to be clarified because it would be difficult or impossible for plant owners or operators to prove that some sources of water meet the definition. As proposed, "clean water" is defined to mean surface water from a river, lake, or stream; water meeting drinking water standards; water that has been used for non-contact cooling; or process wastewater that has been treated to remove organic compounds and/or dissolved solids. The commenter recommended that the definition be revised to state that any water can be used except untreated process wastewater from the by-product plant. Another commenter agreed and further stated that plant owners or operators should be allowed to use any source of makeup water that has been used historically and previously deemed acceptable by EPA. One commenter requested that the definition include water that is used in seals on standpipes; otherwise, the plant owner or operator would have to draw an additional 200,000 gallons per day from Lake Michigan and treat the same amount of water before discharge. Another commenter requested that storm water and wash down water associated with non-recovery plants be added. The commenter stated that this water does not pick up toxic chemicals at non-recovery plants, and using this water for quenching eliminates discharge to the watershed and reduces the amount of water drawn from the water supply.

Other commenters requested that the proposed definition of "clean water" be tightened by developing minimum quality standards for quench water. Two commenters suggested that "clean water" be defined as meeting Federal safe drinking water standards. Two other commenters asked that EPA establish a limit for TDS because the solids contain metals. Commenters also noted that the definition includes process water that has been treated to remove organic compounds and/or dissolved solids. They stated that removal of both solids and organics should be required, and EPA must establish appropriate levels of treatment. If an appropriate level of treatment cannot be defined, then all process wastewater should be prohibited for quenching coke. One commenter suggested that return water from the quench tower and all process wastewater be prohibited, whether treated or not. This commenter further stated that if EPA chooses to allow treated process water, then daily sampling and analysis must be required to ensure the treatment process is removing the contaminants.

Response: We agree that altering the definition of "clean water" is necessary to clarify what types of water can be used as makeup water. We also agree that it is appropriate to establish TDS limits to control quench water quality. Our intent at proposal was that untreated process wastewater, whether contaminated with solids, organic compounds, or both, should not be used for quenching. These contaminants have been shown to increase HAP emissions from quenching, and most plants have abandoned the practice of disposing of untreated wastewater in the quenching process.

Process wastewater must be treated to remove solids and organics, as necessary, before it can be used for quenching. This can be ensured by requiring that process wastewater be treated to meet effluent limitation guidelines. It was not our intent to prohibit the use of non-contact process water, cooling water, or other miscellaneous sources of water that would not contribute to additional emissions from pushing. For example, the water used to seal standpipe caps and storm water are not process wastewater. To address the above concerns, we have replaced the term "clean water" in the proposed rule with the term "acceptable makeup water," which is defined in the final rule to mean surface water from a river, lake, or stream; water meeting drinking water standards; storm water runoff and production area cleanup water except for water from the by-product recovery plant area; process wastewater treated to meet effluent limitations guidelines; any of these types of water that has been used only for non-contact cooling or in water seals; or water from scrubbers used to control pushing emissions. We believe this change accommodates most if not all of the concerns stated in the comments.

Water used for quenching is usually taken from a sump near the base of the quench tower and consists of recycled water and makeup water. Recycled water is the runoff from quenching that is returned from the quench tower to the sump. Makeup water is from some other source, such as a river or lake, and is added to replenish the water lost by evaporation during quenching. Dissolved solids in the quench water contribute to HAP and PM emissions during quenching. We reviewed data from tests at quench towers and found that HAP emissions increase as the TDS level in the quench water increases. Several States have established TDS limits for the quench water to ensure that high levels of solids are not present to contribute to emissions from the quench tower. We agree with commenters who requested that TDS limits be established in the final rule and that the quench water be sampled periodically. We reviewed the available data on TDS levels in quench water. However, we have only limited data, much of the data included the use of by-product plant wastewater which is no longer used for quenching, and we could not validate the procedures that were used for sampling and analysis by the various plants. In addition, we have only one data point for reporting plants, which does not reflect the variability in TDS levels over time.

We also reviewed existing State and local TDS requirements and found that most of the existing limits are in the range of 800 to 1,500 mg/L. We evaluated the five most stringent State limits (12 percent of 36 quench towers) applied to quench towers at coke plants that were operating during the development of the proposed rule. Two quench towers (one in Michigan and one in Ohio) are subject to a limit of 800 mg/L, two others in Illinois are subject to a limit of 1,200 mg/L, and one in Illinois is subject to a limit of 1,500 mg/L. We chose the mean value of 1,100 mg/L as the MACT floor. We chose the mean value rather than the median value (1,200 mg/L) because we usually use the median value when that value is associated with a specific source and the operation of a particular emission control technology. In this case, the mean value is more appropriate because the State limits are not directly related to the level of control achieved by a particular control technology.

We also evaluated the test method used by the plants that comprise the MACT floor and determined that all of these plants measure TDS by drying the filterable residue at 103 to 105° C. (There is an alternative TDS method that specifies drying at 180° C.) Our data indicate that the lower drying temperature is more appropriate for coke plant quench water because the higher temperature evaporates some organic PM and results in an inaccurate measure of TDS. This organic PM contributes to the total TDS and emissions at the normal temperatures of the quench water before it is used for quenching. Consequently, we specify that TDS must be determined by drying the filterable residue at 103 to 105° C.

We believe the existing limits are a reasonable proxy for TDS levels that can be achieved, and they account for the normal variability in TDS levels. For example, the available data indicate that TDS concentrations in clean makeup water are usually less than 600 mg/L. We reviewed data for several plants and concluded that TDS in quench water is about twice that in makeup water. Therefore, we believe a level of 1,100 mg/L TDS or less is indicative of acceptable quench water. Consequently, we are establishing this level in the final rule as the maximum TDS allowed in quench water. We are also requiring weekly sampling of the quench water to ensure that water quality is maintained.

Although a TDS limit is a proven historical method for limiting emissions from quenching, we believe that plant owners or operators can achieve equivalent levels of HAP control by limiting the HAP in quench water. To provide additional flexibility, we included in the final rule an alternative to develop a site-specific limit for the quench water for the HAP that are indicators of coke oven emissions—benzene, benzo(a)pyrene, and naphthalene. To qualify for the alternative, a plant owner or operator must sample and analyze at least nine quench water samples for TDS, benzene, benzo(a)pyrene, and naphthalene. The alternative HAP limit is the highest sum of the concentrations of the HAP in any single sample that meets the TDS limit of 1,100 mg/L.

Comment: Two commenters noted that baffles control PM and that EPA had not explained why PM is a suitable surrogate for HAP emissions from quenching. One commenter said that the requirement for 95 percent coverage of quench towers by baffles is unclear and that coverage cannot be measured. Another commenter stated that the 95 percent coverage requirement is too lenient and will allow the release of significant emissions. The commenter noted that two layer baffles which cause two changes in flow direction have been installed and successfully used at coke plants in Allegheny County, Pennsylvania.

Several commenters stated that it is difficult or impossible to wash and repair baffles in cold and inclement weather because water lines freeze and

severe weather makes the process dangerous. One commenter said the company does not allow work on the quench tower during freezing weather due to safety concerns. One commenter recommended that baffles be cleaned daily or as often as weather conditions allow and that repair of damaged or missing baffles be initiated within 30 days and completed as soon as practicable. Materials needed for repair are not always available in a short time frame. Three commenters said that their experience indicates that monthly cleaning of baffles is adequate and added that additional cleaning should be performed if the upward flow of the steam plume is obstructed. These commenters also noted that it may not be possible to complete repairs to damaged baffles prior to the next scheduled monthly inspection and suggested that a requirement to initiate repairs prior to the next inspection is more appropriate.

Two commenters noted that some plants have backup quench stations that are used when the primary quench tower is unavailable because of maintenance or malfunction. These backup stations are used only a small amount of the time, and they are not designed to capture quenching emissions (*i.e.*, they have no stacks or baffles). Both commenters requested that EPA clarify that backup quench stations are not subject to the requirements for baffles.

Response: We agree with the comment that baffles reduce PM emissions. In addition, we believe that baffles also reduce the emission of HAP metal compounds contained in the particles of grit released, as well as semivolatile and VOC such as polycyclic aromatic hydrocarbons (PAH) and benzene, when green coke is quenched. Semivolatile organic compounds evolve from green coke and condense to form fine PM or condense on other particles during the quenching process. Consequently, baffles reduce emissions of both metal and organic HAP.

To clarify the provision for 95 percent coverage, we revised the coverage requirement to read that no more than 5 percent of the cross sectional area of the quench tower can be exposed to the sky when viewed from below. We understand there are several different designs and configurations used for baffles. However, there are many different factors that affect emissions from quench towers. For example, it is likely that the design of the quench tower affects the level of emission control and may also affect the choice of baffle type and configuration. Consequently, we do not believe it is appropriate to prescribe in the final rule the use of a particular baffle type or design and have provided the flexibility for the owner or operator to make this determination. However, all types of baffles must have adequate coverage to provide effective emission control for quench towers.

We believe requirements for daily cleaning, monthly inspection, and prompt repair of damaged baffles are reasonable and necessary to ensure that they are well maintained. These practices are common at many coke plants, and the frequencies are based on industry responses to a nationwide survey. However, we agree that repairing baffles during inclement weather conditions is a personnel safety issue. We also agree that there may be operational problems when baffles are washed during freezing weather. Consequently, we revised the requirement to wash baffles daily to allow daily washing to be suspended when the highest measured ambient temperature throughout the day is less than 30 degrees Fahrenheit. We understand that the time needed for repair can vary depending on the extent of repair needed and the availability of materials. Therefore, we have written the final rule to require that the repair of damaged or missing baffles be initiated within 30 days and that the repairs be completed as soon as practicable.

We gathered information on the use of backup quench stations by surveying coke plants. A total of nine coke plants among the 12 responding to the survey have 13 backup quench stations. Only one of these 13 backup quench stations is equipped with baffles, and the stations are typically used less than 5 percent of the time. Based on the information we received, we conclude that MACT for backup quench stations at existing coke oven batteries does not include the installation of baffles. We have specified in the final rule our subcategorization of backup quench stations, and we have defined this subcategory as those quench stations that are used for less than 5 percent of quenches for any coke oven battery in any 12-month period. However, the best-controlled similar source has baffles in the backup quench station. Consequently, the requirements for installing, inspecting, cleaning, and repairing baffles applies to backup quench stations at new batteries.

In addition, the TDS limit applies to backup quench stations because the existing State limits we used to determine the MACT floor apply to quench water, whether it is used in regular quench towers or backup quench stations. There is no reason to permit the use of higher TDS levels for quenching merely because a backup quench station is used.

E. What Were the Major Comments on the Proposed Standard for Battery Stacks?

Comment: One commenter stated that EPA has not adequately subcategorized batteries in developing the MACT for battery stacks, and that the EPA should have distinguished among short and tall batteries, pulse-fired batteries, batteries using preheated coal, batteries of older design, and foundry coke batteries that are consistently operated at longer coking times. The commenter also stated that each battery is unique with respect to the factors that affect battery stack emissions. Consequently, the O&M program required to control these emissions differs from battery to battery. The factors affecting emissions include the age and condition of the battery's refractory, the condition of the stack canal, the battery design, sealing carbon, coal properties and coke specifications, and the design and efficiency of the by-product recovery plant.

Response: We disagree with the commenter that we have not subcategorized batteries adequately in establishing performance standards for battery stacks. Our current database shows that the proposed opacity limits have been achieved on a continuing basis by numerous batteries with a variety of physical and operational differences. We do not believe that more subcategories are needed beyond those in the proposed rule.

At proposal, we had months of COMS data demonstrating that the limits for by-product batteries had been achieved by ten of the 46 by-product batteries. After proposal, we obtained data for six additional batteries that also achieve the proposed limits. In total, we have 13 months of data for each of five batteries, 18 months of data for each of eight batteries, and 12, 50, and 65 months of data for each of three batteries. Our database now covers 35 percent of all by-product batteries, spanning all types and ages and covering all seasons of the year. Among the 16 batteries demonstrated to have achieved the proposed MACT opacity limits are short and tall batteries, furnace and foundry coke batteries, and batteries with gun flue and under jet underfiring systems. Also included are batteries that use pulse firing, preheated coal, and underfiring gas with and without desulfurization. They range in age from 8 to 46 years.

We examined the data to determine if subcategories are needed for different battery designs as mentioned by the commenter. We could find no difference in performance levels achieved by short vs. tall batteries, under jet vs. gun flue, furnace vs. foundry coke, or the other factors mentioned by the commenter. We found a difference in performance when batteries are placed on extended coking, which reduces sealing carbon on the oven walls. Consequently, we developed a separate emission limit for batteries on extended coking. We also acknowledge that batteries operating routinely on coking cycles that are longer than that for which they are designed could qualify as extended coking. To accommodate this, we have revised the definition for "batterywide extended coking" to mean increasing the average coking time for all ovens in a battery by 25 percent or more over the manufacturer's design rate.

Comment: One commenter stated that EPA must develop a work practice standard for battery stacks because it is not feasible to set performance standards. The commenter noted that EPA uses three approaches to determine MACT floors (emissions data, existing emission limits from State regulations or operating permits, or technology). We used the technology approach for battery stacks. The commenter believes that the use of a technology approach for battery stacks is inappropriate because the technology is not an air pollution control device but is good O&M. The commenter further states that good O&M results in widely varying degrees of emission control. Good O&M is not a "technology" for the purposes of applying the technology approach because, unlike an add-on control device, good O&M cannot be associated with specific emission control levels at different batteries. The only way to establish a floor for battery stacks is to use actual emissions data. However, EPA does not have enough emissions data to subcategorize batteries adequately or to characterize performance over time and under the worst foreseeable operating conditions.

The commenter provided details for a suggested work practice program for battery stacks. The program would be implemented when a daily average opacity trigger is exceeded. The commenter suggests that the values EPA proposed for the emission limits (15 percent for normal coking time and 20 percent for extended coking time) be used as the triggers. The work practice program would include requirements for worker training as well as procedures for controlling oven to flue leakage, including diagnostic procedures for identifying problem ovens and a list of corrective actions.

Response: The EPA established the MACT floor for battery stacks by identifying the level of performance consistently achieved by the best-performing units. Because units in this category currently do not use add-on control devices to reduce stack emissions, we looked at other measures employed by existing facilities in order to identify the best-performing units. Specifically, we looked at equipment, work practices, and operational factors that reduce emissions at existing facilities. We identified good systematic operation and maintenance, along with operation of COMS to monitor stack opacity, as the most important factors affecting the level of emissions from coke oven battery stacks. In fact, we determined that all of the best-performing batteries employ measures that have the same basic features, including COMS monitoring to identify problems, ongoing systematic maintenance of oven walls, and procedures for prompt and efficient repair of damaged ovens. We also identified, based on the large amount of available COMS data, the level of performance that units employing such measures are consistently achieving. Therefore, this approach identifies what is being done at existing facilities to reduce coke oven emissions from battery stacks and correlates those control activities to a specific level of performance. Because a sufficient number of units in the category are employing these control strategies and achieving the identified emissions limitation, this limit is MACT for existing sources.[2] Contrary to the commenter's assertion, there is no basis to conclude that any existing battery, with appropriate repairs, monitoring and maintenance, would be unable to achieve a similar level of control. Therefore, it was reasonable here for EPA to use this approach to identify the best units and to establish emission limits based on the performance of those units.

Because the opacity data used to establish the emissions limits are, in fact, representative of what a well operated coke oven battery can achieve (with comprehensive O&M, continuous monitoring, and an efficient repair program), it is not only reasonable but required that EPA establish such a limit. Because these emissions are emitted through a stack, can be measured, and could be captured and controlled with the application of available emission control technologies, it would not be appropriate for EPA to establish a work practice standard in lieu of an emissions standard. Thus, the CAA requires us to develop an emission standard in this case because a work practice standard is allowed in lieu of an emission standard only if it is not feasible to prescribe or enforce an emission standard.

The primary factor affecting battery stack emissions is the condition of oven walls. Batteries that are well maintained can achieve the MACT limits. When the walls are allowed to deteriorate and cracks occur, coke oven emissions escape through the cracks into the underfiring system and lead to high stack opacity. Another important factor in meeting the proposed limit is using COMS for diagnostic purposes. When an opacity spike occurs, the last oven charged can be identified and corrective actions can be made to repair the oven. High stack opacity may on occasion be caused by combustion problems, which also result in HAP emissions. However, these are easily remedied by proper adjustment and operation of the underfiring system.

We identified batteries with good O&M practices, and we collected opacity data from their COMS to characterize the level of control they have achieved. As discussed earlier, these batteries are representative of the types currently operating, and aside from the effect of extended coking, we found no basis to develop additional subcategories. The opacity limits identified as MACT have been achieved by these different types of batteries by using good O&M procedures. The performance level associated with the floor has been demonstrated as achievable and is representative of the performance of the top performing sources.

We agree that a good work practice program is essential to maintain control of battery stack emissions and that we derived the emission limits based on the best-controlled batteries which have such programs. However, a work practice standard alone would not ensure that battery stacks are well maintained on a continuing basis. In contrast, a performance standard will ensure that battery stack emissions are well controlled and allows plant owners or operators the flexibility to implement a site-specific program appropriate for their operation. In addition, we are obligated under the CAA to set

[2] While, in the proposal, we described this as a "technology approach" and referred to good O&M as the "MACT technology," these were merely short hand references for EPA's detailed analysis of the measures employed by best facilities to achieve the greatest degree of emissions reductions. In fact, the emission limit for battery stacks is based on the level of performance that the best existing sources consistently achieve, as demonstrated by actual emission test data (in the form of COMS readings).

numerical emission limitations unless it is infeasible, and we must prescribe requirements for continuous monitoring whenever possible. Moreover, we have battery stack emissions data for 16 batteries that cover many months of operation.

Comment: Two commenters claimed that EPA arbitrarily and improperly excluded critical COMS data. Specifically, 3 years of data were excluded for Battery 1 at Bethlehem Steel, Burns Harbor, and all of the data for U.S. Steel Gary Works were excluded. The commenter said that EPA excluded the Burns Harbor data because end flue repairs were suspended in 1994, but noted that twice as many end flue repairs were made in 1993 and after 1994 than in previous years. The commenter said that EPA excluded the Gary Works data because they do not represent periods of good systematic O&M. The commenter further stated that the data for two tall batteries at Gary Works should be included because they represent the battery's performance prior to a $150 million program of end flue and through wall repair. There is no basis for excluding these data, and EPA must account for all operating periods (other than startups, shutdowns, and malfunctions) to accurately reflect a source's performance under the most adverse operating conditions over time. The commenter provided details on periods of startup, shut down, and malfunction events that occurred during 31 days of the 2 years of data for Gary Works. The commenter concluded that EPA must include all of the data for Battery 1 at Burns Harbor and the data for Gary Works (except for the 31 days they identified) in the MACT floor analysis. Another commenter asked that all of the data supplied for Battery 1 at Burns Harbor be included in the analysis because it represents consistent operating practices over the period.

Response: We strongly disagree that our exclusion of certain COMS data was inappropriate. The data that we did not use were not generated at a facility while it was implementing an effective O&M program. We explained that the data for Battery 1 at Burns Harbor collected in the early 1990's do not represent proper MACT level O&M because repairs were decreased to maintain production while adjacent Battery 2 was being rebuilt. The data clearly show that abandoning repairs increased opacity, which averaged 8.1 percent prior to 1996 and 4.8 percent afterwards. It is also apparent that the earlier data show high opacity spikes (daily averages of 35 to 40 percent) that are indicative of damaged oven walls and clearly show that good O&M practices were not in place. By definition, good O&M means that the opacity spikes identified by the COMS would have been investigated, problems diagnosed, and repairs made. When repairs were resumed and better O&M procedures were followed, the daily average opacity was consistently maintained below 15 percent for subsequent months. We have 50 consecutive months of data for Battery 1 showing that it achieves the MACT emission limit on a continuing basis. In addition, these are the most recent data which indicate that the battery has improved with age rather than deteriorated with age. It is obvious that the measures taken in the early 1990s to maintain oven walls were not the same as those taken in subsequent years, and this has been confirmed by company data that show no end flue repairs in 1994.

A similar situation exists at U.S. Steel Gary Works. We obtained documentation from the company that shows that batteries were not employing good O&M during high opacity events. Equipment malfunction or untimely repair was the cause of most exceedances during that time period. However, subsequent events confirm that oven repairs and good systematic O&M resulted in batteries achieving the emission limit. After a $150 million program of end flue and through wall repairs, the four batteries at Gary Works have improved performance significantly and can meet the battery stack limit. We have COMS data for 13 recent months that show the four batteries have achieved the MACT level of control. Moreover, these batteries also show improved performance rather than deterioration as they age.

Comment: One commenter stated that EPA's emission estimates for battery stacks are based on a flawed correlation between opacity and HAP. The commenter said that no correlation exists because high opacity can be caused by situations that do not indicate the presence of HAP, such as poor or incomplete combustion and the presence of sulfates. The commenter noted that the data from two EPA tests (ABC Coke and Bethlehem Steel, Burns Harbor) show no correlation between opacity and PAH, extractable organics, or metal HAP. The commenter concluded that EPA has not met its burden of demonstrating that opacity is a reasonable surrogate for HAP emissions.

Response: It is well established that opacity is directly correlated with the concentration of particles in emissions. Our tests have shown that the particles emitted during coke oven pushing contain HAP compounds, including POM and metals. Higher opacities mean a higher concentration of particles and therefore higher concentrations of HAP. The correlation of opacity and HAP is also supported by the common industry practice of using COMS to detect leaks in oven walls. Coke oven gas escapes from ovens with cracked or damaged walls and results in increased battery stack opacity. These coke oven emissions that are detected with the COMS are a listed HAP.

The two batteries that we tested had very low opacities (2 to 5 percent), and it is not possible to develop a clear correlation over such a narrow range. The emissions from these well-controlled batteries are not representative of batteries that have high opacity emissions from their battery stacks.

Infrequently, higher opacity occurs because of combustion problems which result in the formation of products of incomplete combustion that also contain HAP. For example, such emissions contain a variety of PAH such as benzo(a)pyrene. All the available data related to poor performing batteries, including the available emissions data and the historical use of COMS to detect coke oven emissions, indicate that coke oven emissions can be appropriately identified by looking at opacity. Therefore, limiting opacity is an appropriate mechanism for limiting such emissions from coke oven battery stacks.

Comment: Two commenters stated that COMS should be used for diagnostic purposes only and not as an enforcement tool. One commenter cited an industry survey that identified 26 COMS used on 27 batteries and stated that they are used as a diagnostic tool. Most of these COMS are no longer commercially available and cannot meet EPA's PS 1 requirements. Consequently, it is inappropriate to use data generated by these COMS to set standards or to demonstrate compliance with an opacity limit. Another commenter also stated that the COMS do not meet PS 1 requirements and added that EPA should not base emission limits on data that were collected by methods less stringent than those that will be used to determine compliance. One commenter noted that there are demonstrated inaccuracies that make COMS unreliable at opacity levels below 10 percent. This is important because battery stack opacity is below 5 percent most of the time at virtually all batteries, so a large number of unreliable data points would be averaged with fewer reliable data points to calculate the daily average opacity. Another commenter stated that COMS readings are inaccurate and that only opacity data generated by Method 9 observations should be used to determine compliance.

Response: We proposed a performance standard for battery stacks in the form of an opacity limit. The COMS have been well established as the preferred method to show continuous compliance with an opacity limit. The data we collected from the U.S. Steel batteries at Clairton and the more recent data from the new COMS installed at U.S. Steel Gary Works were from devices that meet PS 1 requirements.

Moreover, while we agree that COMS are subject to greater imprecision at low opacity, this imprecision is inherent in the data we used to develop the opacity limits; therefore, these limits already account for this imprecision. Additionally, the limits have been shown to be achievable by numerous batteries over time. Consequently, we believe that COMS are an appropriate tool for enforcement of the standard that was based on data collected by COMS.

We do agree with the commenter that COMS should also be used for diagnostic purposes. A COMS is an important part of good systematic O&M that we identified as the MACT floor technology. The COMS will provide information on problem ovens in need of repair, and diagnostic procedures coupled with corrective action will provide good control of HAP emissions from battery stacks.

We do not believe observations by Method 9 should be used to determine compliance. A COMS provides data in a more timely manner, monitors emissions continuously, and is the only reasonable way to collect enough data to determine a daily average opacity.

F. What Changes Did We Make to the Requirements for Soaking?

Comment: Several commenters requested that we remove the soaking work practice and recordkeeping requirements from the final rule. They claim that soaking emissions cannot be considered as part of the rule because they were addressed in the 1993 negotiated coke ovens: Charging, topside, and door leaks NESHAP (40 CFR part 63, subpart L), which addressed charging emissions and emissions from leaking topside port lids, offtake systems, and doors. The commenters state that the 1993 coke ovens: charging, topside, and door leaks NESHAP allow up to three ovens to be dampered off the main and not counted when determining daily compliance with the offtake system(s) standard, and as a result, are specifically addressed in the previous negotiated coke ovens: charging, topside, and door leaks NESHAP. Two commenters expressed support for the proposed soaking standards.

Response: Soaking emissions were not specifically addressed in the regulatory negotiations for the coke ovens: charging, topside, and door leaks NESHAP. The emissions points that were negotiated include charging, topside port lid leaks, offtake system(s) leaks, door leaks, and bypass or bleeder stacks. For offtake systems, the coke ovens: charging, topside, and door leaks NESHAP limit the percent allowed to leak during the coking cycle. The only discussion regarding soaking is a clarification in the test method about whether open standpipes on ovens dampered off the main would be counted as offtake leaks. There was no discussion of the voluminous emissions that can occur when the standpipes are opened on an oven containing green coke and the emissions do not ignite. We believe soaking emissions are part of the pushing operation because they occur when the oven is taken off the collecting main in preparation for pushing. These emissions should be addressed by the MACT standards because they have not been addressed previously by EPA, they are a source of coke oven emissions (a listed HAP), and reasonable control measures are available to reduce emissions.

Comment: Two commenters requested an alternative work practice requirement for soaking emissions instead of the proposed requirement that the emissions be ignited. Because soaking emissions are often not readily ignitable, several commenters noted the potential danger involved in the proposed requirement to ignite open standpipes since the flame is often invisible and igniting the emissions could cause serious injury if the person igniting the flame doesn't see it or is standing downwind from the standpipe.

Several commenters stated that the proposed requirement carries an enormous administrative burden associated with the tracking, recording, and documenting the lighting off of standpipes. One commenter said that any benefits associated with the proposed soaking requirements are far outweighed by the administrative costs.

Response: After the close of the comment period, we visited several coke plants specifically to observe and discuss soaking emissions. We determined visible emissions from soaking stem from two causes: leaks from the collecting main (*i.e.*, the standpipe is not completely sealed from the main) and incomplete coking ("green" coke). The cause of emissions can be determined by introducing a small amount of aspirating steam/liquor into the standpipe. If this stops the emissions, the cause of emissions is a leak from the collecting main. Corrective actions from collecting main leaks include reseating the damper dish, cleaning the flushing liquor distribution piping, or leaving the aspirating steam or liquor cracked on. If introducing aspirating steam/liquor does not stop the emissions, the cause is incomplete coking. Further investigation (for example, by opening charging lids and observing the coke mass) will determine if the entire charge or only a small portion is undercoked. Emissions from incomplete coking (*e.g.*, from a cold spot) can be ignited by partially or fully removing the oven lid nearest the standpipe, cracking open and then closing an adjacent standpipe cap, partially opening the opposite aspirating steam valve for a short time on a dual main battery, or manually igniting emissions.

In light of our increased understanding of soaking emissions and their causes and remedies, we have replaced the proposed requirements for soaking with a more comprehensive work practice requirement. If there are visible emissions from a standpipe during soaking, plant personnel must immediately investigate the cause and take corrective action. Work practices are triggered by visible emissions from standpipes that do not ignite automatically. These work practices include eliminating soaking emissions that result from leaks from the collecting main and either igniting the emissions or continuing coking if they are caused by incomplete coking.

We understand that there are times when igniting standpipes can be dangerous. If flames are invisible (*i.e.*, there are no visible emissions from the standpipe), there is no need to attempt ignition. If there are visible emissions that do not automatically ignite, several things can be done to encourage self-ignition, such as partially or fully removing the oven lid nearest the standpipe, cracking open and then closing an adjacent standpipe cap, or partially opening the opposite aspirating steam valve for a short time on a dual main battery. We know of at least one plant with three batteries that require their workers to manually ignite emissions when they do not ignite automatically. Devices are available to ignite these emissions safely and at a reasonable distance from the open standpipe. The work practice standard requires owners or operators to train workers in the procedures to reduce

soaking emissions, and each plant should address all aspects of safety. We do not believe that the revised standard jeopardizes the safety of plant workers.

We agree with the commenters that the proposed standard would have imposed unnecessary administrative burdens related to soaking emissions. Accordingly, we have eliminated the requirement to document the ignition of soaking emissions every time an oven is dampered off the main. Instead, plant owners or operators must prepare and operate at all times according to a written work practice plan for soaking.

G. What Changes Did We Make to the O&M Requirements?

Comment: Several commenters suggested changes to the general batterywide O&M plan. One comment was to delete the requirement to measure or compute the air:fuel ratio. They noted that the air:fuel ratio is not normally measured, and it would be impractical to do so given that it would require flow measurements of every oven's air box and gas orifice to calculate the air:fuel ratio. Another commenter asked that the requirement for procedures to prevent pushing an oven out of sequence be deleted. The commenter argued that any oven placed on extended coking would of necessity be pushed out of sequence. Another comment was to delete the requirement for procedures to prevent undercharging an oven because it has no effect on emissions. In addition, procedures for measuring the volume of coal are not appropriate because many plants calculate coal volume rather than measure it.

Response: We agree that it may be impractical to measure air:fuel ratio since it is a calculated value at most plants. Different parameters may be monitored at different plants to ensure the underfiring system is operating properly. Consequently, we have written the final rule to require that the O&M plan include the frequency and method of recording underfiring gas parameters. We are also clarifying the pushing an oven out of sequence requirement. Our intent is to prevent an oven from being pushed ahead of schedule before it is fully coked. We have added language to the final rule that clarifies this intent. Relative to undercharging an oven, we disagree with the commenter that undercharging does not produce emissions. Our research and discussions with coke plant operators indicate that undercharging an oven can produce excess carbon on oven walls, which can result in pushing difficulties and excess pushing emissions. Consequently, we are retaining the requirements for procedures to prevent both undercharging and overcharging ovens in the work plan. We understand that not all plant owners or operators measure the volume of coal; some calculate the volume from weight and bulk density. We have written the language in the final rule to require procedures for determining coal volume rather than the measurement of coal volume.

H. Why Did We Change the Compliance Dates for Existing Sources?

Comment: Several commenters said 3 years should be allowed to achieve compliance. They note that we provided no rationale for providing for only 2 years to comply and should give the full 3 years allowed under the CAA. Two years may not provide enough time because of the substantial work that must be done at many plants, and it may be difficult to raise the necessary capital to make the batteries compliant.

Response: The CAA requires that compliance occur as expeditiously as practicable, but no later than 3 years after the effective date of the standard. (*See* CAA section 112(i)(3).) We agree with the commenters that many batteries will require extensive repairs in order to comply with the final rule. As a result, we have written the final rule to provide the 3 years allowed under the CAA. We estimate that 23 batteries will need major repairs (oven patching, endflues, and through walls) with capital costs of $2.4 million to $9.3 million per battery. In light of the cost and time required to complete necessary repairs at many facilities, we believe that a period of 3 years is necessary in order to allow sufficient time for all existing facilities to meet the requirements of today's final rule.

IV. Summary of Environmental, Energy, and Economic Impacts

A. What Are the Air Emission Reduction Impacts?

Accurate emission estimates are difficult to make, especially for fugitive pushing emissions. When green pushes occur, most of the organic HAP escape the capture system and are unmeasurable. Our estimate for pushing emissions is based on our best estimates of the capture efficiency and frequency of green pushes. For battery stacks, we have opacity and emissions data for the best-controlled batteries. We had to extrapolate the test data to account for higher emissions from batteries with higher battery stack opacities.

At the proposal stage, we estimated that coke oven emissions, measured as methylene chloride extractable organic compounds from pushing, quenching, and battery stacks, would be reduced to approximately 500 tpy from a baseline level of about 1,000 tpy. However, six coke plants have permanently closed since proposal. Our current best estimate is that baseline emissions of 680 tpy will be reduced to 390 tpy. The final rule will also significantly reduce emissions of other HAP, such as metals, benzene, toluene, and other volatile compounds that are not included with the extractable organics. However, we do not have a reliable means of estimating the overall reductions of these other HAP emissions. Today's final rule will also reduce emissions of PM.

B. What Are the Cost Impacts?

As with the emission estimates, there is some uncertainty in the cost estimates. However, we obtained data from the best-controlled plants for their emission controls, oven repairs, and work practices. After proposal, we collected additional information on the extent of repairs needed and their costs. We then applied these costs to those batteries that we project would be impacted by the rule and developed revised cost estimates. We estimate that 23 batteries may require major repairs and could incur aggregate capital costs of $2.4 to $9.3 million to rebuild ovens to meet the final standards for pushing and battery stacks. Relative to add-on air pollution controls, we believe that three batteries will have to install baffles in their quench towers to control quenching emissions. We do not believe that any plant will need to upgrade or install new control devices to meet the final PECD standard.

Monitoring is also an important component of MACT and the cost estimate. Approximately 20 batteries will need to install COMS on their battery stacks. In addition, 44 batteries are expected to incur the cost of visible emissions observers for daily observation of pushing emissions, and 18 bag leak detection systems must be installed. The cost of control and monitoring associated with the above measures is expected to result in nationwide capital costs of about $90 million and total annualized cost of $20 million per year.

C. What Are the Economic Impacts?

We conducted a detailed assessment of the economic impacts associated with the final rule. We expect the compliance costs associated with the final rule to increase the price of coke, steel mill products, and iron castings and to reduce their domestic production and consumption. We project the market price of furnace coke to increase by almost 3 percent, while the market price for foundry coke should remain unchanged. We expect domestic production of furnace coke to decline by 348,000 tons, or 3.9 percent. For foundry coke, we expect domestic production to remain unchanged.

In terms of industry impacts, we project the integrated steel producers to experience a slight decrease in operating profits, which reflects increased costs of furnace coke inputs and associated reductions in revenues from producing their final products. Our analysis indicates that one of the captive batteries may stop supplying furnace coke to the open market but will continue to satisfy internal coke requirements for integrated steel production. Through the market impacts described above, the final rule will produce impacts within the merchant segment. We project merchant plants producing furnace coke as a whole to experience profit increases in response to the final rule. We also project other merchant plants producing foundry coke and some integrated steel plants to lose profits. Furthermore, the economic impact analysis indicates that two of the 13 merchant batteries producing furnace coke are at risk of closure, while none of the foundry coke producing batteries are at risk of closure. For more information, consult the economic impact analysis supporting the final rule.

D. What Are the Non-Air Environmental and Energy Impacts?

The technology associated with MACT relies primarily on pollution prevention techniques in the form of work practices and diagnostic procedures to prevent green pushes and leakage through oven walls. Consequently, there are no significant non-air environmental and energy impacts.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(C) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(M) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(R) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is a "significant regulatory action" because it may raise novel legal or policy issues. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 1995.02), and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. The information requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to NESHAP. These recordkeeping and reporting requirements are specifically authorized by section 112 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The final rule requires maintenance inspections of control devices, two types of written plans (in addition to the startup, shutdown, and malfunction plan required by the NESHAP General Provisions), and a special study of flue temperatures for by-product coke oven batteries with horizontal flues (with notification of the date the study is to be initiated). Quarterly reports of any deviations from the applicable limits for battery stacks are required, with semiannual reports for other affected sources. The recordkeeping requirements require only the specific information needed to determine compliance.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after April 14, 2003, is estimated to total 2,200 labor hours per year at a total annual cost of $131,000. This estimate includes one-time performance tests and reports, preparation and submission of O&M plans, and a special study of flue temperatures; one-time purchase and installation of continuous monitoring systems; one-time preparation of a standard operating procedures manual for baghouses; one-time preparation of a startup, shutdown, and malfunction plan, notifications, and recordkeeping. Total capital/startup costs associated with the monitoring requirements over the 3-year period of the ICR is estimated at $32,000 per year, with operation and maintenance costs of $51,000 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the final rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's final rule on small entities,

small entity is defined as: (1) A small business according to the U.S. Small Business Administration size standards for NAICS codes 331111 and 324199 ranging from 500 to 1,000 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that three of the 14 companies within this source category are small businesses. Small businesses represent 21 percent of the companies within the source category and are expected to incur 19 percent of the total industry compliance costs of $20.2 million. The average total annual compliance cost is projected to be $1.3 million per small company, while the average for large companies is projected to be $1.5 million per company. Under the final rule, the mean annual compliance cost, as a share of sales, for small businesses is 2 percent, and the median is 1.8 percent, with a range of 0.3 to 5 percent. We estimate that two of the three small businesses may experience an impact greater than 1 percent of sales, and one small businesses will experience an impact greater than 3 percent of sales.

We performed an economic impact analysis to estimate the changes in product price and production quantities for the firms affected by the final rule. Although this industry is characterized by average profit margins of close to 4 percent, our analysis indicates that none of the coke manufacturing plants owned by small businesses are at risk of closure because of today's final rule. In fact, the one plant manufacturing furnace coke is projected to experience an increase in profits because of market feedbacks related to higher costs incurred by competitors, while the plants manufacturing foundry coke are projected to experience a decline in profits of slightly less than 5 percent.

In summary, the economic impact analysis supports our conclusion that a regulatory flexibility analysis is not necessary because, while a few small firms may experience initial impacts greater than 1 percent of sales, no significant impacts on their viability to continue operations and remain profitable are indicated. See Docket OAR–2002–0085 for more information on the economic analysis.

Although the final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the final rule on small entities. We have made site visits to these plants and discussed potential impacts and opportunities for emissions reductions with company representatives. Company representatives have also attended meetings held with industry trade associations to discuss the rule development, and we have included provisions in the final rule that address their concerns.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandate (under the regulatory provisions of the UMRA) for State, local, or tribal governments. The EPA has determined that the final rule does not contain a Federal mandate that may result in estimated costs of $100 million or more for State, local, and tribal governments, in the aggregate, or to the private sector in any 1 year. Thus, the final rule is not subject to the requirements of sections 202 and 205 of the UMRA. The EPA has also determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities are owned or operated by State governments. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 9, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

The final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. No tribal governments own or operate coke oven batteries. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on control technology and not health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that the final rule is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rule involves technical standards. The final rule requires plants to use EPA Methods 1, 2, 2F, 2G, 3, 3A, 3B, 4, 5, 5D, and 9 in 40 CFR part 60, appendix A, and PS 1 in 40 CFR part 60, appendix B. Consistent with the NTTAA, we conducted searches to identify voluntary consensus standards in addition to these EPA methods.

One voluntary consensus standard was identified as applicable to PS 1. The standard, ASTM D6216 (1998), Standard Practice for Opacity Monitor Manufacturers to Certify Conformance with Design and Performance Specifications, has been incorporated by reference into PS 1 (65 FR 48920, August 10, 2000).

Our search for emissions monitoring procedures identified 16 other voluntary consensus standards. We determined that 13 of these standards identified for measuring emissions of HAP or surrogates would not be practical due to lack of equivalency, detail, or quality assurance/quality control requirements. The three remaining consensus standards identified in the search are under development or under EPA review. Therefore, the final rule does not require these voluntary consensus standards. *See* Docket OAR–2002–0085 for more detailed information on the search and review results.

Section 63.7322 of the final rule lists the EPA test methods that coke plants are required to use when conducting a performance test. Most of these methods have been used by States and the industry for more than 10 years. Nevertheless, 40 CFR 63.7(e) and (f) allow any State or source to apply to EPA for permission to use an alternative method in place of any of the EPA test methods or performance specifications required by a rule.

J. Congressional Review Act

The Congressional Review Act, 5.U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. The final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Part 63 is amended by adding subpart CCCCC to read as follows:

Sec.

Subpart CCCCC—National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

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63.7281 Am I subject to this subpart?
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Table 1 to Subpart CCCCC of Part 63—Applicability of General Provisions to Subpart CCCCC

What This Subpart Covers

§ 63.7280 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for pushing, soaking, quenching, and battery stacks at coke oven batteries. This subpart also establishes requirements to demonstrate initial and continuous compliance with all applicable emission limitations, work practice standards, and operation and maintenance requirements in this subpart.

§ 63.7281 Am I subject to this subpart?

You are subject to this subpart if you own or operate a coke oven battery at a coke plant that is (or is part of) a major source of hazardous air pollutant (HAP) emissions. A major source of HAP is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

§ 63.7282 What parts of my plant does this subpart cover?

(a) This subpart applies to each new or existing affected source at your coke plant. The affected source is each coke oven battery.

(b) This subpart covers emissions from pushing, soaking, quenching, and battery stacks from each affected source.

(c) An affected source at your coke plant is existing if you commenced construction or reconstruction of the affected source before July 3, 2001.

(d) An affected source at your coke plant is new if you commenced construction or reconstruction of the affected source on or after July 3, 2001. An affected source is reconstructed if it meets the definition of "reconstruction" in § 63.2.

§ 63.7283 When do I have to comply with this subpart?

(a) If you have an existing affected source, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you no later than April 14, 2006.

(b) If you have a new affected source and its initial startup date is on or before April 14, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you by April 14, 2006.

(c) If you have a new affected source and its initial startup date is after April 14, 2003, you must comply with each emission limitation, work practice standard, and operation and maintenance requirement in this subpart that applies to you upon initial startup.

(d) You must meet the notification and schedule requirements in § 63.7340. Several of these notifications must be submitted before the compliance date for your affected source.

Emission Limitations and Work Practice Standards

§ 63.7290 What emission limitations must I meet for capture systems and control devices applied to pushing emissions?

(a) You must not discharge to the atmosphere emissions of particulate matter from a control device applied to pushing emissions from a new or existing coke oven battery that exceed the applicable limit in paragraphs (a)(1) through (4) of this section:

(1) 0.01 grain per dry standard cubic foot (gr/dscf) if a cokeside shed is used to capture emissions;

(2) 0.02 pound per ton (lb/ton) of coke if a moveable hood vented to a stationary control device is used to capture emissions;

(3) If a mobile scrubber car that does not capture emissions during travel is used:

(i) 0.03 lb/ton of coke for a control device applied to pushing emissions from a short battery, or

(ii) 0.01 lb/ton of coke for a control device applied to pushing emissions from a tall battery; and

(4) 0.04 lb/ton of coke if a mobile scrubber car that captures emissions during travel is used.

(b) You must meet each operating limit in paragraphs (b)(1) through (3) of this section that applies to you for a new or existing coke oven battery.

(1) For each venturi scrubber applied to pushing emissions, you must maintain the daily average pressure drop and scrubber water flow rate at or above the minimum levels established during the initial performance test.

(2) For each hot water scrubber applied to pushing emissions, you must maintain the daily average water pressure and water temperature at or above the minimum levels established during the initial performance test.

(3) For each capture system applied to pushing emissions, you must:

(i) Maintain the daily average fan motor amperes at or above the minimum level established during the initial performance test; or

(ii) Maintain the daily average volumetric flow rate at the inlet of the control device at or above the minimum level established during the initial performance test.

§ 63.7291 What work practice standards must I meet for fugitive pushing emissions if I have a by-product coke oven battery with vertical flues?

(a) You must meet each requirement in paragraphs (a)(1) through (7) of this section for each new or existing by-product coke oven battery with vertical flues.

(1) Observe and record the opacity of fugitive pushing emissions from each oven at least once every 90 days. If an oven cannot be observed during a 90-day period due to circumstances that were not reasonably avoidable, you must observe the opacity of the first push of that oven following the close of the 90-day period that is capable of being observed in accordance with the procedures in § 63.7334(a), and you must document why the oven was not observed within a 90-day period. All opacity observations of fugitive pushing emissions for batteries with vertical flues must be made using the procedures in § 63.7334(a).

(2) If two or more batteries are served by the same pushing equipment and total no more than 90 ovens, the batteries as a unit can be considered a single battery.

(3) Observe and record the opacity of fugitive pushing emissions for at least four consecutive pushes per battery each day. Exclude any push during which the observer's view is obstructed or obscured by interferences and observe the next available push to complete the set of four pushes. If necessary due to circumstances that were not reasonably avoidable, you may observe fewer than four consecutive pushes in a day; however, you must observe and record as many consecutive pushes as possible and document why four consecutive pushes could not be observed. You may observe and record one or more non-consecutive pushes in addition to any consecutive pushes observed in a day.

(4) Do not alter the pushing schedule to change the sequence of consecutive pushes to be observed on any day. Keep records indicating the legitimate operational reason for any change in your pushing schedule which results in a change in the sequence of consecutive pushes observed on any day.

(5) If the average opacity for any individual push exceeds 30 percent opacity for any short battery or 35 percent opacity for any tall battery, you must take corrective action and/or increase coking time for that oven. You must complete corrective action or increase coking time within either 10 calendar days or the number of days determined using Equation 1 of this section, whichever is greater:

$$X = 0.55 * Y \qquad \text{(Eq. 1)}$$

Where:

X = Number of calendar days allowed to complete corrective action or increase coking time; and

Y = Current coking time for the oven, hours.

For the purpose of determining the number of calendar days allowed under Equation 1 of this section, day one is the first day following the day you observed an opacity in excess of 30 percent for any short battery or 35 percent for any tall battery. Any fraction produced by Equation 1 of this section must be counted as a whole day. Days during which the oven is removed from service are not included in the number of days allowed to complete corrective action.

(6)(i) You must demonstrate that the corrective action and/or increased coking time was successful. After a period of time no longer than the number of days allowed in paragraph (a)(5) of this section, observe and record the opacity of the first two pushes for the oven capable of being observed using the procedures in § 63.7334(a). The corrective action and/or increased coking time was successful if the average opacity for each of the two pushes is 30 percent or less for a short battery or 35 percent or less for a tall battery. If the corrective action and/or increased coking time was successful, you may return the oven to the 90-day reading rotation described in paragraph (a)(1) of this section. If the average opacity of either push exceeds 30 percent for a short battery or 35 percent for a tall battery, the corrective action and/or increased coking time was unsuccessful, and you must complete additional corrective action and/or increase coking time for that oven within the number of days allowed in paragraph (a)(5) of this section.

(ii) After implementing any additional corrective action and/or increased coking time required under paragraph (a)(6)(i) or (a)(7)(ii) of this section, you must demonstrate that corrective action and/or increased coking time was successful. After a period of time no longer than the number of days allowed in paragraph (a)(5) of this section, you must observe and record the opacity of the first two pushes for the oven capable of being observed using the procedures in § 63.7334(a). The corrective action and/or increased coking time was successful if the average opacity for each of the two pushes is 30 percent or less for a short battery or 35 percent or less for a tall battery. If the corrective action and/or increased coking time was successful, you may return the oven to the 90-day reading rotation described in paragraph (a)(1) of this section. If the average opacity of either push exceeds 30 percent for a short battery or 35 percent for a tall battery, the corrective action and/or increased coking time was unsuccessful, and you must follow the procedures in paragraph (a)(6)(iii) of this section.

(iii) If the corrective action and/or increased coking time was unsuccessful as described in paragraph (a)(6)(ii) of this section, you must repeat the procedures in paragraph (a)(6)(ii) of this section until the corrective action and/or increased coking time is successful. You must report to the permitting authority as a deviation each unsuccessful attempt at corrective action and/or increased coking time under paragraph (a)(6)(ii) of this section.

(7)(i) If at any time you place an oven on increased coking time as a result of fugitive pushing emissions that exceed 30 percent for a short battery or 35 percent for a tall battery, you must keep the oven on the increased coking time until the oven qualifies for decreased coking time using the procedures in paragraph (a)(7)(ii) or (a)(7)(iii) of this section.

(ii) To qualify for a decreased coking time for an oven placed on increased coking time in accordance with paragraph (a)(5) or (6) of this section, you must operate the oven on the decreased coking time. After no more than two coking cycles on the decreased coking time, you must observe and record the opacity of the first two pushes that are capable of being observed using the procedures in § 63.7334(a). If the average opacity for each of the two pushes is 30 percent or less for a short battery or 35 percent or less for a tall battery, you may keep the oven on the decreased coking time and return the oven to the 90-day reading rotation described in paragraph (a)(1) of this section. If the average opacity of either push exceeds 30 percent for a short battery or 35 percent for a tall battery, the attempt to qualify for a decreased coking time was unsuccessful. You must then return the oven to the previously established increased coking time, or implement other corrective action(s) and/or increased coking time. If you implement other corrective action and/or a coking time that is shorter than the previously established increased coking time, you must follow the procedures in paragraph (a)(6)(ii) of this section to confirm that the corrective action(s) and/or increased coking time was successful.

(iii) If the attempt to qualify for decreased coking time was unsuccessful as described in paragraph (a)(7)(ii) of this section, you may again attempt to qualify for decreased coking time for the oven. To do this, you must operate the oven on the decreased coking time. After no more than two coking cycles on

the decreased coking time, you must observe and record the opacity of the first two pushes that are capable of being observed using the procedures in § 63.7334(a). If the average opacity for each of the two pushes is 30 percent or less for a short battery or 35 percent or less for a tall battery, you may keep the oven on the decreased coking time and return the oven to the 90-day reading rotation described in paragraph (a)(1) of this section. If the average opacity of either push exceeds 30 percent for a short battery or 35 percent for a tall battery, the attempt to qualify for a decreased coking time was unsuccessful. You must then return the oven to the previously established increased coking time, or implement other corrective action(s) and/or increased coking time. If you implement other corrective action and/or a coking time that is shorter than the previously established increased coking time, you must follow the procedures in paragraph (a)(6)(ii) of this section to confirm that the corrective action(s) and/or increased coking time was successful.

(iv) You must report to the permitting authority as a deviation the second and any subsequent consecutive unsuccessful attempts on the same oven to qualify for decreased coking time as described in paragraph (a)(7)(iii) of this section.

(b) As provided in § 63.6(g), you may request to use an alternative to the work practice standards in paragraph (a) of this section.

§ 63.7292 What work practice standards must I meet for fugitive pushing emissions if I have a by-product coke oven battery with horizontal flues?

(a) You must comply with each of the requirements in paragraphs (a)(1) through (4) of this section.

(1) Prepare and operate by a written plan that will eliminate or minimize incomplete coking for each by-product coke oven battery with horizontal flues. You must submit the plan and supporting documentation to the Administrator (or delegated authority) for approval no later than 90 days after completing all observations and measurements required for the study in paragraph (a)(3) of this section or April 14, 2004, whichever is earlier. You must begin operating by the plan requirements by the compliance date that is specified in § 63.7283. The written plan must identify minimum flue temperatures for different coking times and a battery-wide minimum acceptable flue temperature for any oven at any coking time.

(2) Submit the written plan and supporting documentation to the Administrator (or delegated authority) for review and approval. Include all data collected during the study described in paragraph (a)(3) of this section. If the Administrator (or delegated authority) disapproves the plan, you must revise the plan as directed by the Administrator (or delegated authority) and submit the amended plan for approval. The Administrator (or delegated authority) may require you to collect and submit additional data. You must operate according to your submitted plan (or submitted amended plan, if any) until the Administrator (or delegated authority) approves your plan.

(3) You must base your written plan on a study that you conduct that meets each of the requirements listed in paragraphs (a)(3)(i) through (x) of this section.

(i) Initiate the study by July 14, 2003. Notify the Administrator (or delegated authority) at least 7 days prior to initiating the study according to the requirements in § 63.7340(f).

(ii) Conduct the study under representative operating conditions, including but not limited to the range of moisture content and volatile matter in the coal that is charged.

(iii) Include every oven in the study and observe at least two pushes from each oven.

(iv) For each push observed, measure and record the temperature of every flue within 2 hours before the scheduled pushing time. Document the oven number, date, and time the oven was charged and pushed, and calculate the net coking time.

(v) For each push observed, document the factors to be used to identify pushes that are incompletely coked. These factors must include (but are not limited to): average opacity during the push, average opacity during travel to the quench tower, average of six highest consecutive observations during both push and travel, highest single opacity reading, color of the emissions (especially noting any yellow or brown emissions), presence of excessive smoke during travel to the quench tower, percent volatile matter in the coke, percent volatile matter and percent moisture in the coal that is charged, and the date the oven was last rebuilt or completely relined. Additional documentation may be provided in the form of pictures or videotape of emissions during the push and travel. All opacity observations must be conducted in accordance with the procedures in § 63.7334(a)(3) through (7).

(vi) Inspect the inside walls of the oven after each observed push for cool spots as indicated by a flue that is darker than others (the oven walls should be red hot) and record the results.

(vii) For each push observed, note where incomplete coking occurs if possible (*e.g.*, coke side end, pusher side end, top, or center of the coke mass). For any push with incomplete coking, investigate and document the probable cause.

(viii) Use the documented factors in paragraph (a)(3)(v) of this section to identify pushes that were completely coked and those that were not completely coked. Provide a rationale for the determination based on the documentation of factors observed during the study.

(ix) Use only the flue temperature and coking time data for pushes that were completely coked to identify minimum flue temperatures for various coking times. Submit the criteria used to determine complete coking, as well as a table of coking times and corresponding temperatures for complete coking as part of your plan.

(x) Determine the battery-wide minimum acceptable flue temperature for any oven. This temperature will be equal to the lowest temperature that provided complete coking as determined in paragraph (a)(3)(ix) of this section.

(4) You must operate according to the coking times and temperatures in your approved plan and the requirements in paragraphs (a)(4)(i) through (viii) of this section.

(i) Measure and record the percent volatile matter in the coal that is charged.

(ii) Measure and record the temperature of all flues on two ovens per day within 2 hours before the scheduled pushing time for each oven. Measure and record the temperature of all flues on each oven at least once each month.

(iii) For each oven observed in accordance with paragraph (a)(4)(ii) of this section, record the time each oven is charged and pushed and calculate and record the net coking time. If any measured flue temperature for an oven is below the minimum flue temperature for an oven's scheduled coking time as established in the written plan, increase the coking time for the oven to the coking time in the written plan for the observed flue temperature before pushing the oven.

(iv) If you increased the coking time for any oven in accordance with paragraph (a)(4)(iii) of this section, you must investigate the cause of the low flue temperature and take corrective action to fix the problem. You must continue to measure and record the temperature of all flues for the oven within 2 hours before each scheduled pushing time until the measurements meet the minimum temperature requirements for the increased coking time for two consecutive pushes. If any measured flue temperature for an oven on increased coking time falls below the minimum flue temperature for the increased coking time, as established in the written plan, you must increase the coking time for the oven to the coking time specified in the written plan for the observed flue temperature before pushing the oven. The oven must continue to operate at this coking time (or at a longer coking time if the temperature falls below the minimum allowed for the increased coking time) until the problem has been corrected, and you have confirmed that the corrective action was successful as required by paragraph (a)(4)(v) of this section.

(v) Once the heating problem has been corrected, the oven may be returned to the battery's normal coking schedule. You must then measure and record the flue temperatures for the oven within 2 hours before the scheduled pushing time for the next two consecutive pushes. If any flue temperature measurement is below the minimum flue temperature for that coking time established in the written plan, repeat the procedures in paragraphs (a)(4)(iii) and (iv) of this section.

(vi) If any flue temperature measurement is below the battery-wide minimum acceptable temperature for complete coking established in the written plan for any oven at any coking time, you must remove the oven from service for repairs.

(vii) For an oven that has been repaired and returned to service after being removed from service in accordance with paragraph (a)(4)(vi) of this section, you must measure and record the temperatures of all flues for the oven within 2 hours before the first scheduled pushing time. If any flue temperature measurement is below the minimum flue temperature for the scheduled coking time, as established in the written plan, you must repeat the procedures described in paragraphs (a)(4)(iii) and (iv) of this section.

(viii) For an oven that has been repaired and returned to service after removal from service in accordance with paragraph (a)(4)(vi) of this section, you must report as a deviation to the permitting authority any flue temperature measurement made during the initial coking cycle after return to service that is below the lowest acceptable minimum flue temperature.

(b) As provided in § 63.6(g), you may request to use an alternative to the work practice standards in paragraph (a) of this section.

§ 63.7293 What work practice standards must I meet for fugitive pushing emissions if I have a non-recovery coke oven battery?

(a) You must meet the requirements in paragraphs (a)(1) and (2) of this section for each new and existing non-recovery coke oven battery.

(1) You must visually inspect each oven prior to pushing by opening the door damper and observing the bed of coke.

(2) Do not push the oven unless the visual inspection indicates that there is no smoke in the open space above the coke bed and that there is an unobstructed view of the door on the opposite side of the oven.

(b) As provided in § 63.6(g), you may request to use an alternative to the work practice standard in paragraph (a) of this section.

§ 63.7294 What work practice standard must I meet for soaking?

(a) For each new and existing by-product coke oven battery, you must prepare and operate at all times according to a written work practice plan for soaking. Each plan must include measures and procedures to:

(1) Train topside workers to identify soaking emissions that require corrective actions.

(2) Damper the oven off the collecting main prior to opening the standpipe cap.

(3) Determine the cause of soaking emissions that do not ignite automatically, including emissions that result from raw coke oven gas leaking from the collecting main through the damper, and emissions that result from incomplete coking.

(4) If soaking emissions are caused by leaks from the collecting main, take corrective actions to eliminate the soaking emissions. Corrective actions may include, but are not limited to, reseating the damper, cleaning the flushing liquor piping, using aspiration, putting the oven back on the collecting main, or igniting the emissions.

(5) If soaking emissions are not caused by leaks from the collecting main, notify a designated responsible party. The responsible party must determine whether the soaking emissions are due to incomplete coking. If incomplete coking is the cause of the soaking emissions, you must put the oven back on the collecting main until it is completely coked or you must ignite the emissions.

(b) As provided in § 63.6(g), you may request to use an alternative to the work practice standard in paragraph (a) of this section.

§ 63.7295 What requirements must I meet for quenching?

(a) You must meet the requirements in paragraphs (a)(1) and (2) of this section for each quench tower and backup quench station at a new or existing coke oven battery.

(1) For the quenching of hot coke, you must meet the requirements in paragraph (a)(1)(i) or (ii) of this section.

(i) The concentration of total dissolved solids (TDS) in the water used for quenching must not exceed 1,100 milligrams per liter (mg/L); or

(ii) The sum of the concentrations of benzene, benzo(a)pyrene, and naphthalene in the water used for quenching must not exceed the applicable site-specific limit approved by the permitting authority.

(2) You must use acceptable makeup water, as defined in § 63.7352, as makeup water for quenching.

(b) For each quench tower at a new or existing coke oven battery and each backup quench station at a new coke oven battery, you must meet each of the requirements in paragraphs (b)(1) through (4) of this section.

(1) You must equip each quench tower with baffles such that no more than 5 percent of the cross sectional area of the tower may be uncovered or open to the sky.

(2) You must wash the baffles in each quench tower once each day that the tower is used to quench coke, except as specified in paragraphs (b)(2)(i) and (ii) of this section.

(i) You are not required to wash the baffles in a quench tower if the highest measured ambient temperature remains less than 30 degrees Fahrenheit throughout that day (24-hour period). If the measured ambient temperature rises to 30 degrees Fahrenheit or more during the day, you must resume daily washing according to the schedule in your operation and maintenance plan.

(ii) You must continuously record the ambient temperature on days that the baffles were not washed.

(3) You must inspect each quench tower monthly for damaged or missing baffles and blockage.

(4) You must initiate repair or replacement of damaged or missing baffles within 30 days and complete as soon as practicable.

(c) As provided in § 63.6(g), you may request to use an alternative to the work practice standards in paragraph (b) of this section.

§ 63.7296 What emission limitations must I meet for battery stacks?

You must not discharge to the atmosphere any emissions from any battery stack at a new or existing by-product coke oven battery that exhibit an opacity greater than the applicable limit in paragraphs (a) and (b) of this section.

(a) Daily average of 15 percent opacity for a battery on a normal coking cycle.

(b) Daily average of 20 percent opacity for a battery on batterywide extended coking.

Operation and Maintenance Requirements

§ 63.7300 What are my operation and maintenance requirements?

(a) As required by § 63.6(e)(1)(i), you must always operate and maintain your affected source, including air pollution control and monitoring equipment, in a manner consistent with good air pollution control practices for minimizing emissions at least to the levels required by this subpart.

(b) You must prepare and operate at all times according to a written operation and maintenance plan for the general operation and maintenance of new or existing by-product coke oven batteries. Each plan must address, at a minimum, the elements listed in paragraphs (b)(1) through (6) of this section.

(1) Frequency and method of recording underfiring gas parameters.

(2) Frequency and method of recording battery operating temperature, including measurement of individual flue and cross-wall temperatures.

(3) Procedures to prevent pushing an oven before it is fully coked.

(4) Procedures to prevent overcharging and undercharging of ovens, including measurement of coal moisture, coal bulk density, and procedures for determining volume of coal charged.

(5) Frequency and procedures for inspecting flues, burners, and nozzles.

(6) Schedule and procedures for the daily washing of baffles.

(c) You must prepare and operate at all times according to a written operation and maintenance plan for each capture system and control device applied to pushing emissions from a new or existing coke oven battery. Each plan must address at a minimum the elements in paragraphs (c)(1) through (3) of this section.

(1) Monthly inspections of the equipment that are important to the performance of the total capture system (*e.g.*, pressure sensors, dampers, and damper switches). This inspection must include observations of the physical appearance of the equipment (*e.g.*, presence of holes in ductwork or hoods, flow constrictions caused by dents or accumulated dust in ductwork, and fan erosion). The operation and maintenance plan must also include requirements to repair any defect or deficiency in the capture system before the next scheduled inspection.

(2) Preventative maintenance for each control device, including a preventative maintenance schedule that is consistent with the manufacturer's instructions for routine and long-term maintenance.

(3) Corrective action for all baghouses applied to pushing emissions. In the event a bag leak detection system alarm is triggered, you must initiate corrective action to determine the cause of the alarm within 1 hour of the alarm, initiate corrective action to correct the cause of the problem within 24 hours of the alarm, and complete the corrective action as soon as practicable. Actions may include, but are not limited to:

(i) Inspecting the baghouse for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in emissions.

(ii) Sealing off defective bags or filter media.

(iii) Replacing defective bags or filter media or otherwise repairing the control device.

(iv) Sealing off a defective baghouse compartment.

(v) Cleaning the bag leak detection system probe, or otherwise repairing the bag leak detection system.

(vi) Shutting down the process producing the particulate emissions.

General Compliance Requirements

§ 63.7310 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations, work practice standards, and operation and maintenance requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction as defined in § 63.2.

(b) During the period between the compliance date specified for your affected source in § 63.7283 and the date upon which continuous monitoring systems have been installed and certified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

Initial Compliance Requirements

§ 63.7320 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) As required in § 63.7(a)(2), you must conduct a performance test to demonstrate compliance with each limit in § 63.7290(a) for emissions of particulate matter from a control device applied to pushing emissions that applies to you within 180 calendar days after the compliance date that is specified in § 63.7283.

(b) You must conduct performance tests to demonstrate compliance with the TDS limit or constituent limit for quench water in § 63.7295(a)(1) and each opacity limit in § 63.7297(a) for a by-product coke oven battery stack by the compliance date that is specified in § 63.7283.

(c) For each work practice standard and operation and maintenance requirement that applies to you, you must demonstrate initial compliance within 30 calendar days after the compliance date that is specified in § 63.7283.

(d) If you commenced construction or reconstruction between July 3, 2001 and April 14, 2003, you must demonstrate initial compliance with either the proposed emission limit or the promulgated emission limit no later than October 14, 2003, or no later than 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

(e) If you commenced construction or reconstruction between July 3, 2001 and April 14, 2003, and you chose to comply with the proposed emission limit when demonstrating initial compliance, you must conduct a second performance test to demonstrate compliance with the promulgated emission limit by October 11, 2006, or after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.7321 When must I conduct subsequent performance tests?

For each control device subject to an emission limit for particulate matter in § 63.7290(a), you must conduct subsequent performance tests no less frequently than twice (at mid-term and renewal) during each term of your title V operating permit.

§ 63.7322 What test methods and other procedures must I use to demonstrate initial compliance with the emission limits for particulate matter?

(a) You must conduct each performance test that applies to your affected source according to the requirements in paragraph (b) of this section.

(b) To determine compliance with the emission limit for particulate matter from a control device applied to pushing emissions where a cokeside shed is the capture system, follow the test methods and procedures in paragraphs (b)(1) and (2) of this section. To determine compliance with a process-weighted mass rate of particulate matter (lb/ton of coke) from a control device applied to pushing emissions where a cokeside shed is not used, follow the test methods and procedures in paragraphs (b)(1) through (4) of this section.

(1) Determine the concentration of particulate matter according to the following test methods in appendix A to 40 CFR part 60.

(i) Method 1 to select sampling port locations and the number of traverse points. Sampling sites must be located at the outlet of the control device and prior to any releases to the atmosphere.

(ii) Method 2, 2F, or 2G to determine the volumetric flow rate of the stack gas.

(iii) Method 3, 3A, or 3B to determine the dry molecular weight of the stack gas.

(iv) Method 4 to determine the moisture content of the stack gas.

(v) Method 5 or 5D, as applicable, to determine the concentration of front half particulate matter in the stack gas.

(2) During each particulate matter test run, sample only during periods of actual pushing when the capture system fan and control device are engaged. Collect a minimum sample volume of 30 cubic feet of gas during each test run. Three valid test runs are needed to comprise a performance test. Each run must start at the beginning of a push and finish at the end of a push (*i.e.*, sample for an integral number of pushes).

(3) Determine the total combined weight in tons of coke pushed during the duration of each test run according to the procedures in your source test plan for calculating coke yield from the quantity of coal charged to an individual oven.

(4) Compute the process-weighted mass emissions (E_p) for each test run using Equation 1 of this section as follows:

$$E_p = \frac{C \times Q \times T}{P \times K} \qquad \text{(Eq. 1)}$$

Where:

E_p = Process weighted mass emissions of particulate matter, lb/ton;

C = Concentration of particulate matter, gr/dscf;

Q = Volumetric flow rate of stack gas, dscf/hr;

T = Total time during a run that a sample is withdrawn from the stack during pushing, hr;

P = Total amount of coke pushed during the test run, tons; and

K = Conversion factor, 7,000 gr/lb.

§ 63.7323 What procedures must I use to establish operating limits?

(a) For a venturi scrubber applied to pushing emissions from a coke oven battery, you must establish site-specific operating limits for pressure drop and scrubber water flow rate according to the procedures in paragraphs (a)(1) and (2) of this section.

(1) Using the continuous parameter monitoring systems (CPMS) required in § 63.7330(b), measure and record the pressure drop and scrubber water flow rate for each particulate matter test run during periods of pushing. A minimum of one pressure drop measurement and one scrubber water flow rate measurement must be obtained for each push.

(2) Compute and record the average pressure drop and scrubber water flow rate for each test run. Your operating limits are the lowest average pressure drop and scrubber water flow rate values recorded during any of the three runs that meet the applicable emission limit.

(b) For a hot water scrubber applied to pushing emissions from a coke oven battery, you must establish site-specific operating limits for water pressure and water temperature according to the procedures in paragraphs (b)(1) and (2) of this section.

(1) Using the CPMS required in § 63.7330(c), measure and record the hot water pressure and temperature for each particulate matter test run during periods of pushing. A minimum of one pressure measurement and one temperature measurement must be made just prior to each push by monitoring the hot water holding tank on the mobile scrubber car.

(2) Compute and record the average water pressure and temperature for each test run. Your operating limits are the lowest pressure and temperature values recorded during any of the three runs that meet the applicable emission limit.

(c) For a capture system applied to pushing emissions from a coke oven battery, you must establish a site-specific operating limit for the fan motor amperes or volumetric flow rate according to the procedures in paragraph (c)(1) or (2) of this section.

(1) If you elect the operating limit in § 63.7290(b)(3)(i) for fan motor amperes, measure and record the fan motor amperes during each push sampled for each particulate matter test run. Your operating limit is the lowest fan motor amperes recorded during any of the three runs that meet the emission limit.

(2) If you elect the operating limit in § 63.7290(b)(3)(ii) for volumetric flow rate, measure and record the total volumetric flow rate at the inlet of the control device during each push sampled for each particulate matter test run. Your operating limit is the lowest volumetric flow rate recorded during any of the three runs that meet the emission limit.

(d) You may change the operating limit for a scrubber or capture system if you meet the requirements in paragraphs (d)(1) through (3) of this section.

(1) Submit a written notification to the Administrator of your request to conduct a new performance test to revise the operating limit.

(2) Conduct a performance test to demonstrate that emissions of particulate matter from the control device do not exceed the applicable limit in § 63.7290(a).

(3) Establish revised operating limits according to the applicable procedures in paragraph (a) through (c) of this section.

§ 63.7324 What procedures must I use to demonstrate initial compliance with the opacity limits?

(a) You must conduct each performance test that applies to your affected source according to the requirements in paragraph (b) of this section.

(b) To determine compliance with the daily average opacity limit for stacks of 15 percent for a by-product coke oven battery on a normal coking cycle or 20 percent for a by-product coke oven battery on batterywide extended coking, follow the test methods and procedures in paragraphs (b)(1) through (3) of this section.

(1) Using the continuous opacity monitoring system (COMS) required in § 63.7330(e), measure and record the opacity of emissions from each battery stack for a 24-hour period.

(2) Reduce the monitoring data to hourly averages as specified in § 63.8(g)(2).

(3) Compute and record the 24-hour (daily) average of the COMS data.

§ 63.7325 What test methods and other procedures must I use to demonstrate initial compliance with the TDS or constituent limits for quench water?

(a) If you elect the TDS limit for quench water in § 63.7295(a)(1)(i), you must conduct each performance test that applies to your affected source according to the conditions in paragraphs (a)(1) and (2) of this section.

(1) Take the quench water sample from a location that provides a representative sample of the quench water as applied to the coke (*e.g.*, from the header that feeds water to the quench tower reservoirs). Conduct sampling under normal and representative operating conditions.

(2) Determine the TDS concentration of the sample using Method 160.1 in 40 CFR part 136.3 (see "residue—filterable"), except that you must dry the total filterable residue at 103 to 105 °C (degrees Centigrade) instead of 180 °C.

(b) If at any time you elect to meet the alternative requirements for quench water in § 63.7295(a)(1)(ii), you must establish a site-specific constituent limit according to the procedures in paragraphs (b)(1) through (4) of this section.

(1) Take a minimum of nine quench water samples from a location that provides a representative sample of the quench water as applied to the coke (*e.g.*, from the header that feeds water to the quench tower reservoirs). Conduct sampling under normal and representative operating conditions.

(2) For each sample, determine the TDS concentration according to the requirements in paragraph (a)(2) of this section and the concentration of benzene, benzo(a)pyrene, and naphthalene using the applicable methods in 40 CFR part 136 or an approved alternative method.

(3) Determine and record the highest sum of the concentrations of benzene, benzo(a)pyrene, and naphthalene in any sample that has a TDS concentration less than or equal to the TDS limit of 1,100 mg/L. This concentration is the site-specific constituent limit.

(4) Submit the site-specific limit, sampling results, and all supporting data and calculations to your permitting authority for review and approval.

(c) If you elect the constituent limit for quench water in § 63.7295(a)(1)(ii), you must conduct each performance test that applies to your affected source according to the conditions in paragraphs (c)(1) and (2) of this section.

(1) Take a quench water sample from a location that provides a representative sample of the quench water as applied to the coke (*e.g.*, from the header that feeds water to the quench tower reservoirs). Conduct sampling under normal and representative operating conditions.

(2) Determine the sum of the concentration of benzene, benzo(a)pyrene, and naphthalene in the sample using the applicable methods in 40 CFR part 136 or an approved alternative method.

§ 63.7326 How do I demonstrate initial compliance with the emission limitations that apply to me?

(a) For each coke oven battery subject to the emission limit for particulate matter from a control device applied to pushing emissions, you have demonstrated initial compliance if you meet the requirements in paragraphs (a)(1) through (4) of this section that apply to you.

(1) The concentration of particulate matter, measured in accordance with the performance test procedures in § 63.7322(b)(1) and (2), did not exceed 0.01 gr/dscf for a control device where a cokeside shed is used to capture pushing emissions or the process-weighted mass rate of particulate matter (lb/ton of coke), measured in accordance with the performance test procedures in § 63.7322(b)(1) through (4), did not exceed:

(i) 0.02 lb/ton of coke if a moveable hood vented to a stationary control device is used to capture emissions;

(ii) If a mobile scrubber car that does not capture emissions during travel is used, 0.03 lb/ton of coke from a control device applied to pushing emissions from a short coke oven battery or 0.01 lb/ton of coke from a control device applied to pushing emissions from a tall coke oven battery; and

(iii) 0.04 lb/ton of coke if a mobile scrubber car that captures emissions during travel is used.

(2) For each venturi scrubber applied to pushing emissions, you have established appropriate site-specific operating limits and have a record of the pressure drop and scrubber water flow rate measured during the performance test in accordance with § 63.7323(a).

(3) For each hot water scrubber applied to pushing emissions, you have established appropriate site-specific operating limits and have a record of the water pressure and temperature measured during the performance test in accordance with § 63.7323(b).

(4) For each capture system applied to pushing emissions, you have established an appropriate site-specific operating limit, and:

(i) If you elect the operating limit in § 63.7290(b)(3)(i) for fan motor amperes, you have a record of the fan motor amperes during the performance test in accordance with § 63.7323(c)(1); or

(ii) If you elect the operating limit in § 63.7290(b)(3)(ii) for volumetric flow rate, you have a record of the total volumetric flow rate at the inlet of the control device measured during the performance test in accordance with § 63.7323(c)(2).

(b) For each new or existing by-product coke oven battery subject to the opacity limit for stacks in § 63.7296(a), you have demonstrated initial compliance if the daily average opacity, as measured according to the performance test procedures in § 63.7324(b), is no more than 15 percent for a battery on a normal coking cycle or 20 percent for a battery on batterywide extended coking.

(c) For each new or existing by-product coke oven battery subject to the TDS limit or constituent limits for quench water in § 63.7295(a)(1),

(1) You have demonstrated initial compliance with the TDS limit in § 63.7295(a)(1)(i) if the TDS concentration, as measured according to the performance test procedures in § 63.7325(a), does not exceed 1,100 mg/L.

(2) You have demonstrated initial compliance with the constituent limit in § 63.7295(a)(1)(ii) if:

(i) You have established a site-specific constituent limit according to the procedures in § 63.7325(b); and

(ii) The sum of the constituent concentrations, as measured according to the performance test procedures in § 63.7325(c), is less than or equal to the site-specific limit.

(d) For each by-product coke oven battery stack subject to an opacity limit in § 63.7296(a) and each by-product coke oven battery subject to the requirements for quench water in § 63.7295(a)(1), you must submit a notification of compliance status containing the results of the COMS performance test for battery stacks and the quench water performance test (TDS or constituent limit) according to § 63.7340(e)(1). For each particulate matter emission limitation that applies to you, you must submit a notification of compliance status containing the results of the performance test according to § 63.7340(e)(2).

§ 63.7327 How do I demonstrate initial compliance with the work practice standards that apply to me?

(a) For each by-product coke oven battery with vertical flues subject to the work practice standards for fugitive pushing emissions in § 63.7291(a), you have demonstrated initial compliance if you certify in your notification of compliance status that you will meet each of the work practice requirements beginning no later than the compliance date that is specified in § 63.7283.

(b) For each by-product coke oven battery with horizontal flues subject to the work practice standards for fugitive pushing emissions in § 63.7292(a), you have demonstrated initial compliance if you have met the requirements of paragraphs (b)(1) and (2) of this section:

(1) You have prepared and submitted a written plan and supporting documentation establishing appropriate minimum flue temperatures for different coking times and the lowest acceptable temperature to the Administrator (or delegated authority) for review and approval; and

(2) You certify in your notification of compliance status that you will meet each of the work practice requirements beginning no later than the compliance date that is specified in § 63.7283.

(c) For each non-recovery coke oven battery subject to the work practice standards for fugitive pushing emissions in § 63.7293(a), you have demonstrated initial compliance if you certify in your notification of compliance status that you will meet each of the work practice requirements beginning no later than the compliance date that is specified in § 63.7283.

(d) For each by-product coke oven battery subject to the work practice standards for soaking in § 63.7294, you have demonstrated initial compliance if you have met the requirements of paragraphs (d)(1) and (2) of this section:

(1) You have prepared and submitted a written work practice plan in accordance with § 63.7294(a); and

(2) You certify in your notification of compliance status that you will meet each of the work practice requirements beginning no later than the compliance date that is specified in § 63.7283.

(e) For each coke oven battery, you have demonstrated initial compliance with the work practice standards for quenching in § 63.7295(b) if you certify in your notification of compliance status that you have met the requirements of paragraphs (e)(1) and (2) of this section:

(1) You have installed the required equipment in each quench tower; and

(2) You will meet each of the work practice requirements beginning no later than the compliance date that is specified in § 63.7283.

(f) For each work practice standard that applies to you, you must submit a notification of compliance status according to the requirements in § 63.7340(e)(1).

§ 63.7328 How do I demonstrate initial compliance with the operation and maintenance requirements that apply to me?

You have demonstrated initial compliance if you certify in your notification of compliance status that you have met the requirements of paragraphs (a) through (d) of this section:

(a) You have prepared the operation and maintenance plans according to the requirements in § 63.7300(b) and (c);

(b) You will operate each by-product coke oven battery and each capture system and control device applied to pushing emissions from a coke oven battery according to the procedures in the plans beginning no later than the compliance date that is specified in § 63.7283;

(c) You have prepared a site-specific monitoring plan according to the requirements in § 63.7331(b); and

(d) You submit a notification of compliance status according to the requirements in § 63.7340(e).

Continuous Compliance Requirements

§ 63.7330 What are my monitoring requirements?

(a) For each baghouse applied to pushing emissions from a coke oven battery, you must at all times monitor the relative change in particulate matter loadings using a bag leak detection system according to the requirements in § 63.7331(a) and conduct inspections at their specified frequency according to the requirements in paragraphs (a)(1) through (8) of this section:

(1) Monitor the pressure drop across each baghouse cell each day to ensure pressure drop is within the normal operating range identified in the manual;

(2) Confirm that dust is being removed from hoppers through weekly visual inspections or equivalent means of ensuring the proper functioning of removal mechanisms;

(3) Check the compressed air supply for pulse-jet baghouses each day;

(4) Monitor cleaning cycles to ensure proper operation using an appropriate methodology;

(5) Check bag cleaning mechanisms for proper functioning through monthly visual inspection or equivalent means;

(6) Make monthly visual checks of bag tension on reverse air and shaker-type baghouses to ensure that bags are not kinked (kneed or bent) or laying on their sides. You do not have to make this check for shaker-type baghouses using self-tensioning (spring-loaded) devices;

(7) Confirm the physical integrity of the baghouse through quarterly visual inspections of the baghouse interior for air leaks; and

(8) Inspect fans for wear, material buildup, and corrosion through quarterly visual inspections, vibration detectors, or equivalent means.

(b) For each venturi scrubber applied to pushing emissions, you must at all times monitor the pressure drop and water flow rate using a CPMS according to the requirements in § 63.7331(e).

(c) For each hot water scrubber applied to pushing emissions, you must at all times monitor the water pressure and temperature using a CPMS according to the requirements in § 63.7331(f).

(d) For each capture system applied to pushing emissions, you must at all times monitor the fan motor amperes according to the requirements in § 63.7331(g) or the volumetric flow rate according to the requirements in § 63.7331(h).

(e) For each by-product coke oven battery, you must monitor at all times the opacity of emissions exiting each stack using a COMS according to the requirements in § 63.7331(i).

§ 63.7331 What are the installation, operation, and maintenance requirements for my monitors?

(a) For each baghouse applied to pushing emissions, you must install, operate, and maintain each bag leak detection system according to the requirements in paragraphs (a)(1) through (7) of this section.

(1) The system must be certified by the manufacturer to be capable of detecting emissions of particulate matter at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less;

(2) The system must provide output of relative changes in particulate matter loadings;

(3) The system must be equipped with an alarm that will sound when an increase in relative particulate loadings is detected over a preset level. The alarm must be located such that it can be heard by the appropriate plant personnel;

(4) Each system that works based on the triboelectric effect must be installed, operated, and maintained in a manner consistent with the guidance document, "Fabric Filter Bag Leak Detection Guidance" (EPA–454/R–98–015, September 1997). You may install, operate, and maintain other types of bag leak detection systems in a manner consistent with the manufacturer's written specifications and recommendations;

(5) To make the initial adjustment of the system, establish the baseline output by adjusting the sensitivity (range) and the averaging period of the device. Then, establish the alarm set points and the alarm delay time;

(6) Following the initial adjustment, do not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time, except as detailed in your operation and maintenance plan. Do not increase the sensitivity by more than 100 percent or decrease the sensitivity by more than 50 percent over a 365-day period unless a responsible

official certifies, in writing, that the baghouse has been inspected and found to be in good operating condition; and

(7) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(b) For each CPMS required in § 63.7330, you must develop and make available for inspection upon request by the permitting authority a site-specific monitoring plan that addresses the requirements in paragraphs (b)(1) through (6) of this section.

(1) Installation of the CPMS sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the parametric signal analyzer, and the data collection and reduction system;

(3) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations);

(4) Ongoing operation and maintenance procedures in accordance with the general requirements of §§ 63.8(c)(1), (3), (4)(ii), (7), and (8);

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(6) Ongoing recordkeeping and reporting procedures in accordance the general requirements of §§ 63.10(c), (e)(1), and (e)(2)(i).

(c) You must conduct a performance evaluation of each CPMS in accordance with your site-specific monitoring plan.

(d) You must operate and maintain the CPMS in continuous operation according to the site-specific monitoring plan.

(e) For each venturi scrubber applied to pushing emissions, you must install, operate, and maintain CPMS to measure and record the pressure drop across the scrubber and scrubber water flow rate during each push according to the requirements in paragraphs (b) through (d) of this section except as specified in paragraphs (e)(1) through (3) of this section.

(1) Each CPMS must complete a measurement at least once per push;

(2) Each CPMS must produce valid data for all pushes; and

(3) Each CPMS must determine and record the daily (24-hour) average of all recorded readings.

(f) For each hot water scrubber applied to pushing emissions, you must install, operate, and maintain CPMS to measure and record the water pressure and temperature during each push according to the requirements in paragraphs (b) through (d) of this section, except as specified in paragraphs (e)(1) through (3) of this section.

(g) If you elect the operating limit in § 63.7290(b)(3)(i) for a capture system applied to pushing emissions, you must install, operate, and maintain a device to measure the fan motor amperes.

(h) If you elect the operating limit in § 63.7290(b)(3)(ii) for a capture system applied to pushing emissions, you must install, operate, and maintain a device to measure the total volumetric flow rate at the inlet of the control device.

(i) For each by-product coke oven battery, you must install, operate, and maintain a COMS to measure and record the opacity of emissions exiting each stack according to the requirements in paragraphs (i)(1) through (5) of this section.

(1) You must install, operate, and maintain each COMS according to the requirements in § 63.8(e) and Performance Specification 1 in 40 CFR part 60, appendix B. Identify periods the COMS is out-of-control, including any periods that the COMS fails to pass a daily calibration drift assessment, quarterly performance audit, or annual zero alignment audit.

(2) You must conduct a performance evaluation of each COMS according to the requirements in § 63.8 and Performance Specification 1 in appendix B to 40 CFR part 60;

(3) You must develop and implement a quality control program for operating and maintaining each COMS according to the requirements in § 63.8(d). At minimum, the quality control program must include a daily calibration drift assessment, quarterly performance audit, and an annual zero alignment audit of each COMS;

(4) Each COMS must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period. You must reduce the COMS data as specified in § 63.8(g)(2).

(5) You must determine and record the hourly and daily (24-hour) average opacity according to the procedures in § 63.7324(b) using all the 6-minute averages collected for periods during which the COMS is not out-of-control.

§ 63.7332 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times the affected source is operating.

(b) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, or in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitor to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

§ 63.7333 How do I demonstrate continuous compliance with the emission limitations that apply to me?

(a) For each control device applied to pushing emissions and subject to the emission limit in § 63.7290(a), you must demonstrate continuous compliance by meeting the requirements in paragraphs (a)(1) and (2) of this section:

(1) Maintaining emissions of particulate matter at or below the applicable limits in paragraphs § 63.7290(a)(1) through (4); and

(2) Conducting subsequent performance tests to demonstrate continuous compliance no less frequently than twice during each term of your title V operating permit (at mid-term and renewal).

(b) For each venturi scrubber applied to pushing emissions and subject to the operating limits in § 63.7290(b)(1), you must demonstrate continuous compliance by meeting the requirements in paragraphs (b)(1) through (3) of this section.

(1) Maintaining the daily average pressure drop and scrubber water flow rate at levels no lower than those established during the initial or subsequent performance test.

(2) Operating and maintaining each CPMS according to § 63.7331(b) and recording all information needed to document conformance with these requirements.

(3) Collecting and reducing monitoring data for pressure drop and scrubber water flow rate according to § 63.7331(e)(1) through (3).

(c) For each hot water scrubber applied to pushing emissions and subject to the operating limits in § 63.7290(b)(2), you must demonstrate continuous compliance by meeting the requirements in paragraphs (c)(1) through (3) of this section.

(1) Maintaining the daily average water pressure and temperature at levels no lower than those established during the initial or subsequent performance test.

(2) Operating and maintaining each CPMS according to § 63.7331(b) and recording all information needed to document conformance with these requirements.

(3) Collecting and reducing monitoring data for water pressure and temperature according to § 63.7331(f).

(d) For each capture system applied to pushing emissions and subject to the operating limit in § 63.7290(b)(3), you must demonstrate continuous compliance by meeting the requirements in paragraph (d)(1) or (2) of this section:

(1) If you elect the operating limit for fan motor amperes in § 63.7290(b)(3)(i):

(i) Maintaining the daily average fan motor amperes at or above the minimum level established during the initial or subsequent performance test; and

(ii) Checking the fan motor amperes at least every 8 hours to verify the daily average is at or above the minimum level established during the initial or subsequent performance test and recording the results of each check.

(2) If you elect the operating limit for volumetric flow rate in § 63.7290(b)(3)(ii):

(i) Maintaining the daily average volumetric flow rate at the inlet of the control device at or above the minimum level established during the initial or subsequent performance test; and

(ii) Checking the volumetric flow rate at least every 8 hours to verify the daily average is at or above the minimum level established during the initial or subsequent performance test and recording the results of each check.

(e) Beginning on the first day compliance is required under § 63.7283, you must demonstrate continuous compliance for each by-product coke oven battery subject to the opacity limit for stacks in § 63.7296(a) by meeting the requirements in paragraphs (e)(1) and (2) of this section:

(1) Maintaining the daily average opacity at or below 15 percent for a battery on a normal coking cycle or 20 percent for a battery on batterywide extended coking; and

(2) Operating and maintaining a COMS and collecting and reducing the COMS data according to § 63.7331(i).

(f) Beginning on the first day compliance is required under § 63.7283, you must demonstrate continuous compliance with the TDS limit for quenching in § 63.7295(a)(1)(i) by meeting the requirements in paragraphs (f)(1) and (2) of this section:

(1) Maintaining the TDS content of the water used to quench hot coke at 1,100 mg/L or less; and

(2) Determining the TDS content of the quench water at least weekly according to the requirements in § 63.7325(a) and recording the sample results.

(g) Beginning on the first day compliance is required under § 63.7283, you must demonstrate continuous compliance with the constituent limit for quenching in § 63.7295(a)(1)(ii) by meeting the requirements in paragraphs (g)(1) and (2) of this section:

(1) Maintaining the sum of the concentrations of benzene, benzo(a)pyrene, and naphthalene in the water used to quench hot coke at levels less than or equal to the site-specific limit approved by the permitting authority; and

(2) Determining the sum of the constituent concentrations at least monthly according to the requirements in § 63.7325(c) and recording the sample results.

§ 63.7334 How do I demonstrate continuous compliance with the work practice standards that apply to me?

(a) For each by-product coke oven battery with vertical flues subject to the work practice standards for fugitive pushing emissions in § 63.7291(a), you must demonstrate continuous compliance according to the requirements of paragraphs (a)(1) through (8) of this section:

(1) Observe and record the opacity of fugitive emissions for four consecutive pushes per operating day, except you may make fewer or non-consecutive observations as permitted by § 63.7291(a)(3). Maintain records of the pushing schedule for each oven and records indicating the legitimate operational reason for any change in the pushing schedule according to § 63.7291(a)(4).

(2) Observe and record the opacity of fugitive emissions from each oven in a battery at least once every 90 days. If an oven cannot be observed during a 90-day period, observe and record the opacity of the first push of that oven following the close of the 90-day period that can be read in accordance with the procedures in paragraphs (a)(1) through (8) of this section.

(3) Make all observations and calculations for opacity observations of fugitive pushing emissions in accordance with Method 9 in appendix A to 40 CFR part 60 using a Method 9 certified observer unless you have an approved alternative procedure under paragraph (a)(7) of this section.

(4) Record pushing opacity observations at 15-second intervals as required in section 2.4 of Method 9 (appendix A to 40 CFR part 60). The requirement in section 2.4 of Method 9 for a minimum of 24 observations does not apply, and the data reduction requirements in section 2.5 of Method 9 do not apply. The requirement in § 63.6(h)(5)(ii)(B) for obtaining at least 3 hours of observations (thirty 6-minute averages) to demonstrate initial compliance does not apply.

(5) If fewer than six but at least four 15-second observations can be made, use the average of the total number of observations to calculate average opacity for the push. Missing one or more observations during the push (*e.g.*, as the quench car passes behind a building) does not invalidate the observations before or after the interference for that push. However, a minimum of four 15-second readings must be made for a valid observation.

(6) Begin observations for a push at the first detectable movement of the coke mass. End observations of a push when the quench car enters the quench tower.

(i) For a battery without a cokeside shed, observe fugitive pushing emissions from a position at least 10 meters from the quench car that provides an unobstructed view and avoids interferences from the topside of the battery. This may require the observer to be positioned at an angle to the quench car rather than perpendicular to it. Typical interferences to avoid include emissions from open standpipes and charging. Observe the opacity of emissions above the battery top with the sky as the background where possible. Record the oven number of any push not observed because of obstructions or interferences.

(ii) For a battery with a cokeside shed, the observer must be in a position that provides an unobstructed view and avoids interferences from the topside of the battery. Typical interferences to avoid include emissions from open standpipes and charging. Observations must include any fugitive emissions that escape from the top of the shed, from the ends of the shed, or from the area where the shed is joined to the battery. If the observer does not have a clear view to identify when a push starts or ends, a second person can be positioned to signal the start or end of the push and notify the observer when to start or end the observations. Radio communications with other plant personnel (*e.g.*, pushing ram operator or quench car operator) may also serve to notify the observer of the start or end of a push. Record the oven number of any push

not observed because of obstructions or interferences.

(iii) You may reposition after the push to observe emissions during travel if necessary.

(7) If it is infeasible to implement the procedures in paragraphs (a)(1) through (6) of this section for an oven due to physical obstructions, nighttime pushes, or other reasons, you may apply to your permitting authority for permission to use an alternative procedure. The application must provide a detailed explanation of why it is infeasible to use the procedures in paragraphs (a)(1) through (6) of this section, identify the oven and battery numbers, and describe the alternative procedure. An alternative procedure must identify whether the coke in that oven is not completely coked, either before, during, or after an oven is pushed.

(8) For each oven observed that exceeds an opacity of 30 percent for any short battery or 35 percent for any tall battery, you must take corrective action and/or increase the coking time in accordance with § 63.7291(a). Maintain records documenting conformance with the requirements in § 63.7291(a).

(b) For each by-product coke oven battery with horizontal flues subject to the work practice standards for fugitive pushing emissions in § 63.7292(a), you must demonstrate continuous compliance by having met the requirements of paragraphs (b)(1) through (3) of this section:

(1) Measuring and recording the temperature of all flues on two ovens per day within 2 hours before the oven's scheduled pushing time and ensuring that the temperature of each oven is measured and recorded at least once every month;

(2) Recording the time each oven is charged and pushed and calculating and recording the net coking time for each oven; and

(3) Increasing the coking time for each oven that falls below the minimum flue temperature trigger established for that oven's coking time in the written plan required in § 63.7292(a)(1), assigning the oven to the oven-directed program, and recording all relevant information according to the requirements in § 63.7292(a)(4) including, but not limited to, daily pushing schedules, diagnostic procedures, corrective actions, and oven repairs.

(c) For each non-recovery coke oven battery subject to the work practice standards in § 63.7293(a), you must demonstrate continuous compliance by maintaining records that document each visual inspection of an oven prior to pushing and that the oven was not pushed unless there was no smoke in the open space above the coke bed and there was an unobstructed view of the door on the opposite side of the oven.

(d) For each by-product coke oven battery subject to the work practice standard for soaking in § 63.7294(a), you must demonstrate continuous compliance by maintaining records that document conformance with requirements in § 63.7294(a)(1) through (5).

(e) For each coke oven battery subject to the work practice standard for quenching in § 63.7295(b), you must demonstrate continuous compliance according to the requirements of paragraphs (e)(1) through (3) of this section:

(1) Maintaining baffles in each quench tower such that no more than 5 percent of the cross-sectional area of the tower is uncovered or open to the sky as required in § 63.7295(b)(1);

(2) Maintaining records that document conformance with the washing, inspection, and repair requirements in § 63.7295(b)(2), including records of the ambient temperature on any day that the baffles were not washed; and

(3) Maintaining records of the source of makeup water to document conformance with the requirement for acceptable makeup water in § 63.7295(a)(2).

§ 63.7335 How do I demonstrate continuous compliance with the operation and maintenance requirements that apply to me?

(a) For each by-product coke oven battery, you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.7300(b) by adhering at all times to the plan requirements and recording all information needed to document conformance.

(b) For each coke oven battery with a capture system or control device applied to pushing emissions, you must demonstrate continuous compliance with the operation and maintenance requirements in § 63.7300(c) by meeting the requirements of paragraphs (b)(1) through (3) of this section:

(1) Making monthly inspections of capture systems according to § 63.7300(c)(1) and recording all information needed to document conformance with these requirements;

(2) Performing preventative maintenance for each control device according to § 63.7300(c)(2) and recording all information needed to document conformance with these requirements; and

(3) Initiating and completing corrective action for a bag leak detection system alarm according to § 63.7300(c)(3) and recording all information needed to document conformance with these requirements. This includes records of the times the bag leak detection system alarm sounds, and for each valid alarm, the time you initiated corrective action, the corrective action(s) taken, and the date on which corrective action is completed.

(c) To demonstrate continuous compliance with the operation and maintenance requirements for a baghouse applied to pushing emissions from a coke oven battery in § 63.7331(a), you must inspect and maintain each baghouse according to the requirements in § 63.7331(a)(1) through (8) and record all information needed to document conformance with these requirements. If you increase or decrease the sensitivity of the bag leak detection system beyond the limits specified in § 63.7331(a)(6), you must include a copy of the required written certification by a responsible official in the next semiannual compliance report.

(d) You must maintain a current copy of the operation and maintenance plans required in § 63.7300(b) and (c) onsite and available for inspection upon request. You must keep the plans for the life of the affected source or until the affected source is no longer subject to the requirements of this subpart.

§ 63.7336 What other requirements must I meet to demonstrate continuous compliance?

(a) *Deviations.* You must report each instance in which you did not meet each emission limitation in this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. You must also report each instance in which you did not meet each work practice standard or operation and maintenance requirement in this subpart that applies to you. These instances are deviations from the emission limitations (including operating limits), work practice standards, and operation and maintenance requirements in this subpart. These deviations must be reported according to the requirements in § 63.7341.

(b) *Startup, shutdowns, and malfunctions.* During periods of startup, shutdown, and malfunction, you must operate in accordance with your startup, shutdown, and malfunction plan.

(1) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan.

(2) The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notification, Reports, and Records

§ 63.7340 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.6(h)(4) and (5), 63.7(b) and (c), 63.8(e) and (f)(4), and 63.9(b) through (h) that apply to you by the specified dates.

(b) As specified in § 63.9(b)(2), if you startup your affected source before April 14, 2003, you must submit your initial notification no later than August 12, 2003.

(c) As specified in § 63.9(b)(3), if you startup your new affected source on or after April 14, 2003, you must submit your initial notification no later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, opacity observation, or other initial compliance demonstration, you must submit a notification of compliance status according to § 63.9(h)(2)(ii).

(1) For each initial compliance demonstration that does not include a performance test, you must submit the notification of compliance status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration that does include a performance test, you must submit the notification of compliance status, including the performance test results, before the close of business on the 60th calendar day following completion of the performance test according to § 63.10(d)(2).

(f) For each by-product coke oven battery with horizontal flues, you must notify the Administrator (or delegated authority) of the date on which the study of flue temperatures required by § 63.7292(a)(3) will be initiated. You must submit this notification no later than 7 days prior to the date you initiate the study.

§ 63.7341 What reports must I submit and when?

(a) *Compliance report due dates.* Unless the Administrator has approved a different schedule, you must submit quarterly compliance reports for battery stacks and semiannual compliance reports for all other affected sources to your permitting authority according to the requirements in paragraphs (a)(1) through (4) of this section.

(1) The first quarterly compliance report for battery stacks must cover the period beginning on the compliance date that is specified for your affected source in § 63.7283 and ending on the last date of the third calendar month. Each subsequent compliance report must cover the next calendar quarter.

(2) The first semiannual compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7283 and ending on June 30 or December 31, whichever date comes first after the compliance date that is specified for your affected source. Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(3) All quarterly compliance reports for battery stacks must be postmarked or delivered no later than one calendar month following the end of the quarterly reporting period. All semiannual compliance reports must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(4) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (3) of this section.

(b) *Quarterly compliance report contents.* Each quarterly report must provide information on compliance with the emission limitations for battery stacks in § 63.7296. The reports must include the information in paragraphs (c)(1) through (3), and as applicable, paragraphs (c)(4) through (8) of this section.

(c) *Semiannual compliance report contents.* Each compliance report must provide information on compliance with the emission limitations, work practice standards, and operation and maintenance requirements for all affected sources except battery stacks. The reports must include the information in paragraphs (c)(1) through (3) of this section, and as applicable, paragraphs (c)(4) through (8) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with the official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there were no deviations from the continuous compliance requirements in § 63.7333(e) for battery stacks, a statement that there were no deviations from the emission limitations during the reporting period. If there were no deviations from the continuous compliance requirements in §§ 63.7333 through 63.7335 that apply to you (for all affected sources other than battery stacks), a statement that there were no deviations from the emission limitations, work practice standards, or operation and maintenance requirements during the reporting period.

(6) If there were no periods during which a continuous monitoring system (including COMS, continuous emission monitoring system (CEMS), or CPMS) was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which a continuous monitoring system was out-of-control during the reporting period.

(7) For each deviation from an emission limitation in this subpart (including quench water limits) and for each deviation from the requirements for work practice standards in this subpart that occurs at an affected source where you are not using a continuous monitoring system (including a COMS, CEMS, or CPMS) to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(4) and (7)(i) and (ii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if

applicable) as applicable and the corrective action taken.

(8) For each deviation from an emission limitation occurring at an affected source where you are using a continuous monitoring system (including COMS, CEMS, or CPMS) to comply with the emission limitation in this subpart, you must include the information in paragraphs (c)(4) and (8)(i) through (xii) of this section. This includes periods of startup, shutdown, and malfunction.

(i) The date and time that each malfunction started and stopped.

(ii) The date and time that each continuous monitoring system (including COMS, CEMS, or CPMS) was inoperative, except for zero (low-level) and high-level checks.

(iii) The date, time, and duration that each continuous monitoring system (including COMS, CEMS, or CPMS) was out-of-control, including the information in § 63.8(c)(8).

(iv) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(v) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(vi) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(vii) A summary of the total duration of continuous monitoring system downtime during the reporting period and the total duration of continuous monitoring system downtime as a percent of the total source operating time during the reporting period.

(viii) An identification of each HAP that was monitored at the affected source.

(ix) A brief description of the process units.

(x) A brief description of the continuous monitoring system.

(xi) The date of the latest continuous monitoring system certification or audit.

(xii) A description of any changes in continuous monitoring systems, processes, or controls since the last reporting period.

(d) *Immediate startup, shutdown, and malfunction report.* If you had a startup, shutdown, or malfunction during the semiannual reporting period that was not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown, and malfunction report according to the requirements in § 63.10(d)(5)(ii).

(e) *Part 70 monitoring report.* If you have obtained a title V operating permit for an affected source pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report for an affected source along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all the required information concerning deviations from any emission limitation or work practice standard in this subpart, submission of the compliance report satisfies any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report does not otherwise affect any obligation you may have to report deviations from permit requirements to your permitting authority.

§ 63.7342 What records must I keep?

(a) You must keep the records specified in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any initial notification or notification of compliance status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, performance evaluations, and opacity observations as required in § 63.10(b)(2)(viii).

(b) For each COMS or CEMS, you must keep the records specified in paragraphs (b)(1) through (4) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Monitoring data for COMS during a performance evaluation as required in § 63.6(h)(7)(i) and (ii).

(3) Previous (that is, superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) You must keep the records in § 63.6(h)(6) for visual observations.

(d) You must keep the records required in §§ 63.7333 through 63.7335 to show continuous compliance with each emission limitation, work practice standard, and operation and maintenance requirement that applies to you.

§ 63.7343 In what form and how long must I keep my records?

(a) You must keep your records in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.7350 What parts of the General Provisions apply to me?

Table 1 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.7351 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the United States Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under subpart E of this part, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities in paragraphs (c)(1) through (6) of this section will not be delegated to State, local, or tribal agencies.

(1) Approval of alternatives to work practice standards for fugitive pushing emissions in § 63.7291(a) for a by-product coke oven battery with vertical flues, fugitive pushing emissions in § 63.7292(a) for a by-product coke oven battery with horizontal flues, fugitive pushing emissions in § 63.7293 for a non-recovery coke oven battery, soaking for a by-product coke oven battery in § 63.7294(a), and quenching for a coke oven battery in § 63.7295(b) under § 63.6(g).

(2) Approval of alternative opacity emission limitations for a by-product coke oven battery under § 63.6(h)(9).

(3) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90, except for alternative procedures in § 63.7334(a)(7).

(4) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(5) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

(6) Approval of the work practice plan for by-product coke oven batteries with horizontal flues submitted under § 63.7292(a)(1).

§ 63.7352 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA), in § 63.2, and in this section as follows:

Acceptable makeup water means surface water from a river, lake, or stream; water meeting drinking water standards; storm water runoff and production area clean up water except for water from the by-product recovery plant area; process wastewater treated to meet effluent limitations guidelines in 40 CFR part 420; water from any of these sources that has been used only for non-contact cooling or in water seals; or water from scrubbers used to control pushing emissions.

Backup quench station means a quenching device that is used for less than 5 percent of the quenches from any single coke oven battery in the 12-month period from July 1 to June 30.

Baffles means an apparatus comprised of obstructions for checking or deflecting the flow of gases. Baffles are installed in a quench tower to remove droplets of water and particles from the rising vapors by providing a point of impact. Baffles may be installed either inside or on top of quench towers and are typically constructed of treated wood, steel, or plastic.

Battery stack means the stack that is the point of discharge to the atmosphere of the combustion gases from a battery's underfiring system.

Batterywide extended coking means increasing the average coking time for all ovens in the coke oven battery by 25 percent or more over the manufacturer's specified design rate.

By-product coke oven battery means a group of ovens connected by common walls, where coal undergoes destructive distillation under positive pressure to produce coke and coke oven gas from which by-products are recovered.

By-product recovery plant area means that area of the coke plant where process units subject to subpart L in part 61 are located.

Coke oven battery means a group of ovens connected by common walls, where coal undergoes destructive distillation to produce coke. A coke oven battery includes by-product and non-recovery processes.

Coke plant means a facility that produces coke from coal in either a by-product coke oven battery or a non-recovery coke oven battery.

Cokeside shed means a structure used to capture pushing emissions that encloses the cokeside of the battery and ventilates the emissions to a control device.

Coking time means the time interval that starts when an oven is charged with coal and ends when the oven is pushed.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (including operating limits) or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit, opacity limit, or operating limit.

Four consecutive pushes means four pushes observed successively.

Fugitive pushing emissions means emissions from pushing that are not collected by a capture system.

Horizontal flue means a type of coke oven heating system used on Semet-Solvay batteries where the heating flues run horizontally from one end of the oven to the other end, and the flues are not shared with adjacent ovens.

Hot water scrubber means a mobile scrubber used to control pushing emissions through the creation of an induced draft formed by the expansion of pressurized hot water through a nozzle.

Increased coking time means increasing the charge-to-push time for an individual oven.

Non-recovery coke oven battery means a group of ovens connected by common walls and operated as a unit, where coal undergoes destructive distillation under negative pressure to produce coke, and which is designed for the combustion of the coke oven gas from which by-products are not recovered.

Oven means a chamber in the coke oven battery in which coal undergoes destructive distillation to produce coke.

Pushing means the process of removing the coke from the oven. Pushing begins with the first detectable movement of the coke mass and ends when the quench car enters the quench tower.

Quenching means the wet process of cooling (wet quenching) the hot incandescent coke by direct contact with water that begins when the quench car enters the quench tower and ends when the quench car exits the quench tower.

Quench tower means the structure in which hot incandescent coke in the quench car is deluged or quenched with water.

Remove from service means that an oven is not charged with coal and is not used for coking. When removed from service, the oven may remain at the operating temperature or it may be cooled down for repairs.

Responsible official means responsible official as defined in § 63.2.

Short battery means a by-product coke oven battery with ovens less than five meters in height.

Soaking means that period in the coking cycle that starts when an oven is dampered off the collecting main and vented to the atmosphere through an open standpipe prior to pushing and ends when the coke begins to be pushed from the oven.

Soaking emissions means the discharge from an open standpipe during soaking of visible emissions due to either incomplete coking or leakage into the standpipe from the collecting main.

Standpipe means an apparatus on the oven that provides a passage for gases from an oven to the atmosphere when the oven is dampered off the collecting main and the standpipe cap is opened. This includes mini-standpipes that are not connected to the collecting main.

Tall battery means a by-product coke oven battery with ovens five meters or more in height.

Vertical flue means a type of coke oven heating system in which the heating flues run vertically from the bottom to the top of the oven, and flues are shared between adjacent ovens.

Work practice standard means any design, equipment, work practice, or operational standard, or combination

thereof, that is promulgated pursuant to section 112(h) of the CAA.

As required in § 63.7350, you must comply with each applicable requirement of the NESHAP General Provisions (40 CFR part 63, subpart A) as shown in the following table:

TABLES TO SUBPART CCCCC OF PART 63

[Table 1 to Subpart CCCCC of Part 63. Applicability of General Provisions to Subpart CCCCC]

Citation	Subject	Applies to Subpart CCCCC?	Explanation
§ 63.1	Applicability	Yes.	
§ 63.2	Definitions	Yes.	
§ 63.3	Units and Abbreviations	Yes.	
§ 63.4	Prohibited Activities	Yes.	
§ 63.5	Construction/Reconstruction	Yes.	
§ 63.6(a), (b), (c), (d), (e), (f), (g), (h)(2)–(8).	Compliance with Standards and Maintenance Requirements.	Yes.	
§ 63.6(h)(9)	Adjustment to an Opacity Emission Standard	Yes.	
§ 63.7(a)(3), (b), (c)–(h).	Performance Testing Requirements	Yes.	
§ 63.7(a)(1)–(2)	Applicability and Performance Test Dates	No	Subpart CCCCC specifies applicability and dates.
§ 63.8(a)(1)–(3), (b), (c)(1)–(3), (c)(4)(i)–(ii), (c)(5)–(8), (d), (e), (f)(1)–(5), (g)(1)–(4).	Monitoring Requirements	Yes	CMS requirements in § 63.8(c)(4) (i)–(ii), (c)(5), and (c)(6) apply only to COMS for battery stacks.
§ 63.8(a)(4)	Additional Monitoring Requirements for Control Devices in § 63.11.	No	Flares are not a control device for Subpart CCCCC affected sources.
§ 63.8(c)(4)	Continuous Monitoring System (CMS) Requirements.	No	Subpart CCCCC specifies requirements for operation of CMS.
§ 63.8(e)(4)–(5)	Performance Evaluations	Yes	Except COMS performance evaluation must be conducted before the compliance date.
§ 63.8(f)(6)	RATA Alternative	No	Subpart CCCCC does not require CEMS.
§ 63.8(g)(5)	Data Reduction	No	Subpart CCCCC specifies data that can't be used in computing averages for COMS.
§ 63.9	Notification Requirements	Yes	Additional notifications for CMS in § 63.9(g) apply only to COMS for battery stacks.
§ 63.10(a), (b)(1)–(b)(2)(xiii), (b)(2)(xiv), (b)(3), (c)(1)–(6), (c)(9)–(15), (d), (e)(1)–(2), (e)(4), (f).	Recordkeeping and Reporting Requirements	Yes.	Additional records for CMS in § 63.10(c)(1)–(6), (9)–(15), and reports in § 63.10(d)(1)–(2) apply only to COMS for battery stacks.
§ 63.10(b)(2) (xi)–(xii).	CMS Records for RATA Alternative	No	Subpart CCCCC doesn't require CEMS.
§ 63.10(c)(7)–(8)	Records of Excess Emissions and Parameter Monitoring Exceedances for CMS.	No	Subpart CCCCC specifies record requirements.
§ 63.10(e)(3)	Excess Emission Reports	No	Subpart CCCCC specifies reporting requirements.
§ 63.11	Control Device Requirements	No	Subpart CCCCC does not require flares.
§ 63.12	State Authority and Delegations.	Yes.	
§§ 63.13–63.15	Addresses, Incorporation by Reference, Availability of Information.	Yes.	

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Part IV

Department of Health and Human Services

Announcement of Availability of Funds for Family Planning Male Reproductive Health Research Grants; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Availability of Funds for Family Planning Male Reproductive Health Research Grants

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, Office of Population Affairs.

ACTION: Notice.

Authority: Section 1004 of the Public Health Service (PHS) Act.

SUMMARY: The Office of Population Affairs (OPA) requests applications for grants for research in certain behavioral and program implementation fields related to family planning. These grants are for community-based research projects to investigate best—practice approaches to providing family planning and related health information, education and clinical services targeting males.

DATES: To receive consideration, applications must be received by the Office of Public Health and Science (OPHS) Grants Management Office no later than June 13, 2003.

ADDRESSES: Application kits may be requested from, and applications submitted to: OPHS Grants Management Office, 1101 Wooton Parkway, 5th Floor, Rockville, MD 20852. Application kits are also available online at the Office of Population Affairs Web site at http://opa.osophs.dhhs.gov or may be requested by fax at (301) 594–0019 or (301) 594–5980.

SUPPLEMENTARY INFORMATION: Title X of the Public Health Service Act, 42 U.S.C. 300, *et seq.*, authorizes programs related to family planning. Section 1004 of the Act, as amended, authorizes the Secretary of Health and Human Services to award grants to entities to conduct research in the behavioral and program implementation fields related to family planning. Implementing regulations can be found at 42 CFR part 52. Section 1008 of the Act, as amended, stipulates that none of the funds appropriated under this title shall be used in programs where abortion is a method of family planning.

CFDA: A description of the Title X Family Planning Research Program can be found at OMB Catalog of Federal Domestic Assistance 93.974. A description of Title X Family Planning Services Program can be found at OMB Catalog of Federal Domestic Assistance 93.217.

I. Funding Opportunity Description

This announcement seeks proposals from public and private non-profit entities to undertake research in the fields of family planning and reproductive health services and education for males. Funds available under this announcement are for community-based research projects to investigate best-practice approaches to providing family planning and related health information, education, and clinical services targeting males.

These projects are intended to evaluate different programmatic approaches and venues to reach males in need of such information and services, based on the use of recognized theory and logic-based models for program planning, implementation and evaluation.

Background

The family planning program authorized by Section 1001 of Title X is required by law to provide family planning services, including information, education and counseling, to all persons desiring such services. One subgroup of the population that continues to be under-represented is males. Over the past 30 years, males annually have comprised only two to four percent of clients served by the Title X family planning clinical service delivery system. This emphasizes the fact that simply offering clinical services will not result in males using those services.

Adult men of all ages do have reproductive health concerns; however, these concerns may not readily translate into contact with the health care system. During adolescence and young adulthood, sexual and reproductive health issues and behaviors have a great influence on males' lives. Accurate information, skills and support should be available to encourage delay of sexual debut until after adolescence and preferably until marriage. For sexually active young males, this time of life may bring with it such health concerns as STDs, HIV/AIDS, unintended pregnancy and the emotional stress of interpersonal and intimate relationships.

Among middle-aged and older males, health concerns around sexual and reproductive behavior continue, though the nature of these concerns may differ from that of younger males. Even when men visit a health care provider, they are more reluctant than women to bring problems of a reproductive or sexual nature to their clinician's attention. Given the different attitudes and expectations that men and women have toward health care, it would seem that involving men in their own care requires a different approach from that which has been successful with women.

Studies have shown that men are most receptive to health messages in locations and environments with which they are familiar, and as part of programs that they voluntarily pursue. Programs that deliver family planning and related health messages as part of other community-based services or activities have the potential to be successful and need greater emphasis and exploration. Experience with male projects has shown that health promotion and prevention services provided through community settings, complement available clinical health services.

The recent interest in encouraging male involvement in family planning and reproductive health is driven by the current epidemic of STDs, including HIV/AIDS, and high rates of unintended pregnancies, as well as by shifts in public health policies. Fighting the fatherless epidemic, promoting responsible fatherhood, and supporting healthy marriages are major concerns for the nations' lawmakers. Similarly, the recognition of health, educational, and psychosocial consequences of early sexual activity has led to an increased focus on extra-marital abstinence. Involving males in family planning and reproductive health issues is one way to encourage and support "future orientation" in terms of establishing core values, long term goals, and relationships, including marriage and family.

In the mid-1990s, the Office of Family Planning (OFP), Office of Population Affairs (OPA) funded community-based organizations to investigate and develop effective approaches to providing family planning/reproductive health information and services to males. In addition, these projects explored strategies to involve males in building community support for pregnancy prevention and contraception. These research projects showed that males do want and need reproductive health information and services, and will seek services from community-based entities that they know and trust. In addition, these projects showed that community-based organizations (CBOs), and faith-based organizations (FBOs), as a subset of community-based organizations, can effectively augment the clinical service delivery system. Project experience indicated that CBOs and the clinical delivery system function best as partners in the delivery of reproductive health services to males by focusing on health promotion and disease prevention services, and by contributing their outreach capabilities to raise awareness and encourage males to address their own health care needs. Key factors in the success of this complementary arrangement between CBOs and the clinical service delivery system are that CBOs integrate health-related services as part of their mission and activities, and that clinical providers reinforce the validity of CBOs as partners in the delivery of health promotion and disease prevention services.

Preliminary evaluation results from the research grants awarded in the mid-1990s suggests that participants in the OFP-funded male programs exhibited increased knowledge about family planning, reproductive health, and male responsibility related to their own health and the health of their partners and families compared with their knowledge prior to participation. Some areas where these programs were implemented have shown a marked reduction in teen pregnancy among the target population. In addition, preliminary assessment suggests that CBOs have the capability and commitment to improve program effectiveness and cost efficiency.

For over five years, national policy leaders and constituents have encouraged OFP to explore ways to involve CBOs in the provision of family planning and reproductive health services for males. The community-based family planning/reproductive health research programs for males have received strong community support. They have filled a gap in the service delivery system. Continued research efforts to refine models of service delivery, to test replicability of such models, and to address cost efficiency issues related to delivering male family planning and related health services will contribute to successful programs in CBOs, including FBOs.

Purposes of the Grant

The purpose of this grant is to expand the research base on program utility, replicability and cost-effectiveness of family planning and related health programs serving males. Continued scientific evaluation of the extent to which these programs and approaches produce their intended effect is crucial. Grants to be made under this announcement will build upon what was learned as a result of the last cycle of OFP-funded male research projects, and will focus on utility, replicability, and cost-effectiveness. In addition to conducting an evaluation of their individual projects, successful applicants must be prepared to participate in a cross-site evaluation, to be conducted by an independent entity, to assess program efficiency and effectiveness across all projects funded under this announcement.

In order to expand the research base on program utility, replicability and cost-effectiveness of family planning and related health programs serving males, OPA is soliciting applications for projects that focus on one or more of the following areas as they relate to males:

1. Testing of existing curricula or models for providing information and education to males regarding male development and reproductive health, relationships, responsibility, extra-marital abstinence, marriage and family formation, fatherhood, contraceptive services and STD prevention;

2. Modifying and testing existing curricula or models for providing male family planning/reproductive health information, education and/or clinical services to different, identified categories (*e.g.*, different age groups, geography, race/ethnicity, *etc.*);

3. Testing of innovative approaches for providing family planning/reproductive health counseling and services to males.

Please note that *no* grant funds may be used for curriculum development. Existing curricula, or adaptations of existing curricula, which have been evaluated and found to be successful, should be used.

Applicants should familiarize themselves with *Healthy People 2010*—Chapter 11, "Health Communication" and the document "Community-Based Sexual and Reproductive Health Promotion and Education Programs for Males: Components that Work." Copies of both of these documents are included in the application kit.

Cost per Participant

In investigating best practice approaches to providing family planning and reproductive health information, education and clinical services to males, the cost per participant depends upon the type of service provided. For example, the cost per participant for information and education programs is almost always less than the participant cost for clinical services. However, the lower cost per participant of providing information and education programs may be offset by a larger number of persons reached. In general, the cost of providing information and education programs is related to whether or not there is direct contact with participants, the number of participants in a session, the time spent during the session, the number of sessions, and the qualifications of the person(s) providing services. General guidelines for what education components should cost can be derived from the intensity level of provider-client interactions. Intensity level is a function of both the quality and quantity of contact time with individual clients, ranging from dissemination of information and educational materials with little or no contact with individuals; to less intense group meetings, used mainly for information exchange; to more intense interactions, such as those used to bring about behavior change.

Depending upon the services proposed, cost per participant served should range from approximately $50 to $300. Programs emphasizing materials (*e.g.*, brochure distribution, intermittent presentations, local media campaigns, *etc.*) will be funded at the lower range, and will be based largely on the cost of materials dissemination or media campaign development and implementation. Costs should emphasize staffing and materials as they relate to the purpose of this announcement and proposed program.

Services involving direct person to person contact, such as delivery of health information and education in a structured series of small group sessions will generally be funded at the middle of the funding range. Cost emphasis should be on staffing, facility, materials, etc. as they relate to the purpose of this announcement and the proposed program.

Applicants proposing to provide individual treatment and/or functional support may incur higher costs. Budget requests should emphasize staff, facilities, materials, equipment, etc. to provide individual counseling or treatment, in addition to family planning/reproductive health information and education. These projects will be funded in the upper range. A minimal number of these higher cost projects will be funded.

The overall cost of the project will be determined by the type(s) of services provided. It is expected that the majority of projects will be of moderate intensity and funded in the mid-range.

II. Award Information

OPA intends to make available approximately $2.5 million to support an estimated 10–15 community-based research grants. Awards will range from $100,000 to $250,000 per year. Grants will be funded in annual increments (budget periods) and may be approved for a project period of up to five years. A match of non-Federal funds will not be required. Funding for all budget periods beyond the first year of the grant

is contingent upon the availability of funds, satisfactory progress on the project, and adequate stewardship of federal funds.

III. Eligibility Information

Any public or private nonprofit entity located in a State (which includes one of the 50 United States, the District of Columbia, Commonwealth of Puerto Rico, U.S. Virgin Islands, Commonwealth of the Northern Mariana Islands, American Samoa, Guam, Republic of Palau, Federated States of Micronesia, and the Republic of the Marshall Islands) is eligible to apply for a grant under this announcement. Faith-based organizations are eligible to apply for these family planning male reproductive health research grants.

Organizations that are experienced in providing a variety of services to males, such as social, educational, faith-based, vocational, and legal services (*e.g.*, tutoring, mentoring, job skills training), and have the capability of expanding program activities to include development, provision and evaluation of family planning/reproductive health related information, education and clinical services, are encouraged to apply for a grant under this announcement.

IV. Application and Submission Information

Applications must be submitted on the Form OPHS–1 (Revised 6/01) and in the manner prescribed in the application kit. Application kits are available from the OPHS Grants Management Office at the address previously listed, on the OPA Web site at *http://opa.osophs.dhhs.gov*, or may be requested by fax at 301–594–0019 or 301–594–5980. Applicants are required to submit an original application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies. Applications should be limited to 50 double-spaced pages, not including appendices. Appendices may include curriculum vitae and other evidence of organizational capabilities.

Applications must include a one-page abstract of the proposed project. The abstract will be used to provide reviewers with an overview of the application, and will form the basis for the application summary in grants management documents. It is the practice of the Office of Population Affairs to maintain a summary of funded grants, and to post this information on the OPA Web site. The abstract will be used as the basis for this posting and for other requests for summary information regarding funded grants.

To receive consideration, applications must be received by the OPHS Grants Management Office by the deadline listed in the "Dates" section of this announcement. Applications will be considered as meeting the deadline if they are postmarked on or before the deadline date and are received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Hand-delivered applications must be received in the OPHS Grants Management Office not later than 4:30 p.m. on the application due date. Applications that do not meet the deadline will not be accepted for review, and will be returned. Applications sent via facsimile or by electronic mail will not be accepted for review.

A copy of the legislation governing this program and additional information which may be helpful will be included as part of the application kit. Applicants should use the legislation and other information included in this announcement to guide them in developing their applications.

Review Under Executive Order 12372

Applicants under this announcement are not subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Program Requirements/Application Content

This notice seeks applications for the implementation and evaluation of community-based projects to investigate best-practice approaches to providing family planning and related health information, education and clinical services targeting males. Successful applications will focus on program utility, replicability and cost-effectiveness, and will include the following:

(1) An epidemiologic description of the target community.

(2) Evidence that the applicant organization has experience and success in providing a variety of services to males in the target community.

(3) A clear description of the target audience. Description should include whether the target audience includes individuals, groups, or the community as a whole.

(4) Evidence that the applicant organization has the capacity to deliver male reproductive health information, education (including abstinence education), and/or clinical services, that are appropriate to culture, age, and language of the target audience.

(5) Evidence that the proposed plan was developed using an integrated system, such as a logic model, for planning, monitoring and evaluation of program activities.

(6) Evidence that the proposed program activities are consistent with the requirements of Title X. Use of Title X funds is prohibited in programs where abortion is a method of family planning.

(7) A description of the type, length, and location of all program activities and specific program services.

(8) A theoretical rationale for the chosen program approach, as well as evidence of its effectiveness.

(9) Submission of goal statement(s) and related outcome objectives that are specific, measurable, achievable, realistic and time-framed (S.M.A.R.T.).

(10) A plan to evaluate individual program activities, the program as a whole, and its impact on the target audience.

(11) An assurance of willingness and ability to participate in a cross-site evaluation, to be conducted by an independent entity.

(12) A detailed budget and budget justification for year one of the project which is reasonable, adequate, and cost efficient, and which includes staffing requirements that are derived from proposed activities. Budget projections for each of the continuing years should be included.

(13) Evidence of formal agreements for referral services (*e.g.*, age appropriate clinical services, if not provided by the applicant), and collaborative agreements with other service providers in the community, where appropriate.

Program Evaluation

All projects are required to have an evaluation plan, consistent with the scope of the proposed project and funding level, that conforms to the program's stated goals and objectives. The plan should include both a process evaluation to track the implementation of program activities and an outcome evaluation to measure changes in knowledge, skills, and behavior that can be attributed to the program. (Applicants are encouraged to utilize an integrated planning, monitoring and evaluation system, such as a logic model, for program development and implementation. Additional information on logic models is included in the application kit.) There should be substantial evidence that the project will add to the body of knowledge with regard to provision of quality male family planning and reproductive health information, education and services for males. Program funds may be used to support evaluation activities.

In addition to conducting an evaluation of their individual projects, successful applicants must be prepared to participate in a cross-site evaluation, to be supported by the OPA and conducted by an independent entity, to assess program efficiency and effectiveness across all projects funded under this announcement.

V. Application Review Information

Eligible grant applications will be reviewed by a multi-disciplinary panel of independent reviewers and assessed according to the following criteria:

(1) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods and reflecting a practical and technically sound approach to assessing the project's achievement of program objectives, as well as the intent and ability to participate in a cross-cutting evaluation of all projects funded under this announcement (25 points);

(2) The capability of the applicant to provide family planning and reproductive health information, education and/or clinical services to males, as evidenced by the applicant's past and present history of providing a variety of services to males, such as social, health, recreational, educational, and/or vocational services (20 points);

(3) The applicant's presentation of the proposed project, including a clear description of need for the project; a theoretical rationale for the approach to be used, as well as its demonstrated effectiveness; measurable goals and objectives; methods for achieving objectives; and statement of expected results (20 points);

(4) The feasibility of the proposed project and likelihood that the results will contribute to the body of knowledge regarding the delivery of acceptable, culturally competent, cost effective family planning and reproductive health information, education, and clinical services to males (15 points);

(5) The administrative and management capability of the applicant, including competency of the proposed staff in relation to the type of research proposed, the project period, and the adequacy of the applicant's resources for the project (10 points); and

(6) The capacity of the applicant to make rapid and effective use of grant assistance, including evidence of ability to modify program activities if indicated (10 points).

Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs. In making these decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which grants approved for funding will provide an appropriate geographic distribution of resources, and will take into consideration:

(1) The scientific merit and significance of the proposed project, including the model to be used;

(2) The population(s) to be served;

(3) The usefulness for policymakers and service providers of the proposed project and the likelihood of its producing meaningful results and information that will contribute to the body of knowledge regarding male family planning and reproductive health information, education and services for males; and

(4) The reasonableness of the estimated cost to the government considering the anticipated results.

Awards will be made only to those organizations or agencies which have demonstrated the capability of providing the proposed services, and which have met all applicable requirements. However, efforts will be made to distribute awards across the ten PHS Regions.

VI. Award Administration Information

OPA does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter regarding the outcome of their applications. The official document notifying an applicant that an application has been approved and granted funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding, if any, to be contributed by the grantee to project costs.

VII. Agency Contacts

For assistance on administrative and budgetary requirements, Karen Campbell, OPHS Grants Management Office, (301) 594–0758;

For assistance with questions regarding program requirements, Susan B. Moskosky, Office of Family Planning/Office of Population Affairs, (301) 594–4008.

Dated: April 7, 2003.

Alma L. Golden,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 03–9050 Filed 4–11–03; 8:45 am]

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Federal Register

Monday,
April 14, 2003

Part V

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2590

Mental Health Parity; Interim Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2590

RIN 1210–AA62

Mental Health Parity

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Interim final amendment to regulation.

SUMMARY: This document contains an interim final amendment to modify the sunset date of interim final regulations under the Mental Health Parity Act (MHPA) to be consistent with legislation passed during the 107th Congress.

DATES: Effective date. The interim final amendment is effective December 2, 2002. Applicability dates. The requirements of the interim final amendment apply to group health plans and health insurance issuers offering health insurance coverage in connection with a group health plan beginning December 2, 2002. The MHPA interim final amendment extends the sunset date from December 31, 2002 to December 31, 2003. Pursuant to the extended sunset date, MHPA requirements apply to benefits for services furnished before December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Connor, Employee Benefits Security Administration, Department of Labor, at (202) 693–8335. Customer Service Information: Individuals interested in obtaining additional information on the Mental Health Parity Act and other health care laws may request copies of Department of Labor publications concerning changes in health care law by calling the EBSA Toll-Free Hotline at 1–866–444–3272. Information on the Mental Health Parity Act and other health care laws is also available on the Department of Labor's Web site (*http://www.dol.gov/ebsa*).

SUPPLEMENTARY INFORMATION:

A. Background

The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (Pub. L. 104–204, 110 Stat. 2944). MHPA amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act (PHS Act) to provide for parity in the application of annual and lifetime dollar limits on mental health benefits with dollar limits on medical/surgical benefits. Provisions implementing MHPA were later added to the Internal Revenue Code of 1986 (Code) under the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat. 1080).

The provisions of MHPA are set forth in Part 7 of Subtitle B of Title I of ERISA, Chapter 100 of Subtitle K of the Code, and Title XXVII of the PHS Act.[1] The Secretaries of Labor, the Treasury, and Health and Human Services share jurisdiction over the MHPA provisions. These provisions are substantially similar, except as follows:

- The MHPA provisions in ERISA generally apply to all group health plans other than governmental plans, church plans, and certain other plans. These provisions also apply to health insurance issuers that offer health insurance coverage in connection with such group health plans. Generally, the Secretary of Labor enforces the MHPA provisions in ERISA, except that no enforcement action may be taken by the Secretary against issuers. However, individuals may generally pursue actions against issuers under ERISA and, in some circumstances, under State law.
- The MHPA provisions in the Code generally apply to all group health plans other than governmental plans, but they do not apply to health insurance issuers. A taxpayer that fails to comply with these provisions may be subject to an excise tax under section 4980D of the Code.
- The MHPA provisions in the PHS Act generally apply to health insurance issuers that offer health insurance coverage in connection with group health plans and to certain State and local governmental plans. States, in the first instance, enforce the PHS Act with respect to issuers. Only if a State does not substantially enforce any provisions under its insurance laws will the Department of Health and Human Services enforce the provisions, through the imposition of civil money penalties. Moreover, no enforcement action may be taken by the Secretary of Health and Human Services against any group health plan except certain State and local governmental plans.

B. Overview of MHPA

The MHPA provisions are set forth in section 712 of ERISA, section 9812 of the Code, and section 2705 of the PHS Act. MHPA applies to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits. MHPA's original text included a sunset provision specifying that MHPA's provisions applied to benefits for services furnished before September 30, 2001. On December 22, 1997 the Departments of Labor, the Treasury, and Health and Human Services issued interim final regulations under MHPA in the **Federal Register** (62 FR 66931). The interim final regulations included this statutory sunset date.

On January 10, 2002, President Bush signed H.R. 3061 (Pub. L. 107–116, 115 Stat. 2177), the 2002 Appropriations Act for the Departments of Labor, Health and Human Services, and Education.[2] This legislation extended MHPA's original sunset date under ERISA, the Code, and the PHS Act, so that MHPA's provisions would apply to benefits for services furnished before December 31, 2002.

On March 9, 2002, President Bush signed H.R. 3090, the Job Creation and Worker Assistance Act of 2002 (Pub. L. 107–147, 116 Stat. 21), that included an amendment to section 9812 of the Code (the mental health parity provisions). This legislation further extends MHPA's original sunset date under the Code to December 31, 2003. The Joint Committee on Taxation's technical explanation of H.R. 3090 (JCT Report) states that the January 10th amendment to MHPA restored the excise tax retroactively to September 30, 2001. Under H.R. 3090, the excise tax provision of MHPA is amended to apply to benefits for such services furnished on or after January 10, 2002 and before January 1, 2004. As indicated by the JCT Report, H.R. 3061 restored the MHPA provisions retroactively to September 30, 2001.

On September 27, 2002, the Department of Labor issued an interim final amendment for mental health parity in the **Federal Register** (67 FR 60859). The interim final amendment included the new statutory sunset date under H.R. 3061, so that MHPA's provisions would apply to benefits for services furnished before December 31, 2002. The Department made the effective date of this interim final amendment to the regulations September 30, 2001.

[1] Part 7 of Subtitle B of Title I of ERISA, Chapter 100 of Subtitle K of the Code, and Title XXVII of the PHS Act were added by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Pub. L. 104–191.

[2] During the 107th Congress, legislation was passed by the Senate to substantively amend and expand the provisions of MHPA already in place. This legislation was offered as an amendment to the provisions of H.R. 3061. The Conference Report accompanying the underlying provisions of H.R. 3061 states that instead of the amendment proposed by the Senate, the amendment to MHPA contained in H.R. 3061 extends the original sunset date of MHPA, so that MHPA's provisions apply to benefits for services furnished before December 31, 2002. H.R. Rep. 107–342, at 170 (2001).

On December 2, 2002, President Bush signed H.R. 5716, the Mental Health Parity Reauthorization Act of 2002 (Pub. L. 107–313, 116 Stat. 2457), an amendment to section 712 of ERISA and section 2705 of the PHS Act (the mental health parity provisions). This legislation further extends MHPA's original sunset date under ERISA and the PHS Act to December 31, 2003. Like MHPA, this amendment to MHPA applies to a group health plan (or health insurance coverage offered by issuers in connection with a group health plan) that provides both medical/surgical benefits and mental health benefits.[3] As a result of this statutory amendment, and to assist employers, plan sponsors, health insurance issuers, and workers, the Department of Labor has developed this amendment of the interim final regulations, in consultation with the Departments of the Treasury and Health and Human Services, conforming the regulatory sunset date to the new statutory sunset date. The Department is also making conforming changes extending the duration of the increased cost exemption to be consistent with the new sunset date. Since the extension of this sunset date is not discretionary, this amendment to the MHPA regulations is promulgated on an interim final basis pursuant to section 734 of ERISA. This interim final amendment is also promulgated pursuant to section 553(d)(3) of the Administrative. Procedure Act, allowing for regulations to become effective immediately for good cause.

C. Executive Order 12866

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is not a "significant regulatory action" within the meaning of the Executive Order. This action is an amendment to the interim final regulations and merely extends the regulatory sunset date to conform to the new statutory sunset date added by H.R. 5716.

D. Paperwork Reduction Act

The information collection provisions of MHPA incorporated in the Department's interim final rules are currently approved under OMB control numbers 1210–0105 (Notice to Participants and Beneficiaries and Federal Government of Electing One Percent Increased Cost Exemption), and 1210–0106 (Calculation and Disclosure of Documentation of Eligibility for Exemption). These information collection requests are approved through November 30, 2004 and October 31, 2004, respectively. Because no substantive or material change is made to the approved information collection provisions in connection with this interim final amendment, no submission for continuing OMB approval is required or made at this time.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*). Because this amendment to the interim final regulations is being published on an interim final basis, without prior notice and a period for comment, the Regulatory Flexibility Act does not apply.

F. Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), as well as Executive Order 12875, this interim final amendment does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and does not include mandates that may impose an annual expenditure of $100 million or more on the private sector.

G. Congressional Review Act

This interim final amendment is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) (SBREFA), and has been transmitted to Congress and the Comptroller General for review. This amendment to the interim final regulations is not a major rule, as that term is defined by 5 U.S.C. 804.

H. Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This interim final amendment does not have federalism implications as it only conforms the regulatory sunset date to the new statutory sunset date added by H.R. 5716.

List of Subjects in 29 CFR Part 2590

Employee benefit plans, Employee Retirement Income Security Act, Health care, Health insurance, Medical child support, Reporting and recordkeeping requirements.

Employee Benefits Security Administration

■ 29 CFR part 2590 is amended as follows:

PART 2590—RULES AND REGULATIONS FOR HEALTH INSURANCE PORTABILITY AND RENEWABILITY FOR GROUP HEALTH PLANS

■ 1. The authority citation for part 2590 is revised to read as follows:

Authority: 29 U.S.C. 1027, 1059, 1135, 1169, 1181–1183, 1185, 1185a, 1185b, 1191, 1191a, 1191b, and 1191c, sec. 101 (g) Pub. L. 104–191, 101 Stat. 1936; sec. 401(b) Pub. L. 105–200, 112 Stat. 645; Secretary of Labor's Order No. 1–2003, 68 FR 5373, (Feb. 3, 2003).

2590.712 [Amended]

■ 2. Amend § 2590.712 (f)(1), (g)(2), and (i) by removing the date "December 31, 2002" and adding in its place the date "December 31, 2003."

[3] The parity requirements under MHPA, the interim regulations, and the amendment to the interim regulations do not apply to any group health plan (or health insurance coverage offered in connection with a group health plan) for any plan year of a small employer. The term "small employer" is defined as an employer who employed an average of at least 2 but not more than 50 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

Signed at Washington, DC this 9th day of April, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–9024 Filed 4–11–03; 8:45 am]

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Federal Register

Monday,
April 14, 2003

Part VI

Environmental Protection Agency

40 CFR Part 261

Project XL Site-Specific Rulemaking for the IBM Semiconductor Manufacturing Facility in Hopewell Junction, New York; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[FRL–7480–7]

RIN 2090–AA29

Project XL Site-Specific Rulemaking for the IBM Semiconductor Manufacturing Facility in Hopewell Junction, NY

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposal; request for comment.

SUMMARY: The Environmental Protection Agency is publishing this site-specific proposal, which supplements the previously published proposed rule for this pilot project under the Project eXcellence and Leadership Program (Project XL). This supplemental proposal is being issued in light of new data received by EPA concerning the cadmium levels in the wastewater treatment sludge that is the focus of this site-specific rulemaking. In particular, this rulemaking effort will allow for the implementation of a pilot project under Project XL that will provide site-specific regulatory flexibility under the Resource Conservation and Recovery Act (RCRA), as amended, for the International Business Machines Corporation (IBM) East Fishkill semiconductor manufacturing facility in Hopewell Junction, New York. The principal objective of this pilot project is to determine whether the wastewater treatment sludge resulting from the treatment of wastewaters from electroplating operations (and therefore meeting the listing description for F006 Hazardous Waste) at IBM's East Fishkill facility may be used as an ingredient in the manufacture of cement in an environmentally sound manner without RCRA regulatory controls.

DATES: Public Comments: Comments on this supplemental proposal must be received on or before May 14, 2003. All comments should be submitted in writing or electronically according to the directions below in the **SUPPLEMENTARY INFORMATION** section.

Public Hearing: Commenters may request a public hearing on or before April 28, 2003, and should specify the basis for the request. If EPA determines there is sufficient reason to hold a public hearing, it will do so by May 5, 2003, during the last week of the public comment period. Requests for a public hearing should be submitted according to the information below in the **ADDRESSES** section. If a public hearing is scheduled, the date, time, and location will be available through a **Federal Register** document or by contacting Mr. Sam Kerns at the U.S. EPA Region 2 office (*see* **FOR FURTHER INFORMATION CONTACT** section, below).

ADDRESSES: Comments may be submitted electronically, by mail, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

Request for a Hearing: Requests for a hearing should be mailed to the Environmental Protection Agency, EPA Docket Center (EPA/DC), RCRA Docket (5305T), 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please send an original and two copies of all comments, and refer to Docket Number F–2002–IB3P–FFFFF. A copy should also be sent to Mr. Sam Kerns at the U.S. EPA Region 2 office. Mr. Kerns may be contacted at the following address: U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007–1866, (212) 637–4139.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Kerns, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007–1866. Mr. Kerns can be reached at (212) 637–4139 (or *kerns.sam@epa.gov*). Further information on today's action may also be obtained on the world wide web at *http://www.epa.gov/projectxl/*.

SUPPLEMENTARY INFORMATION:

Outline of Today's Supplemental Proposal

The information presented in this preamble is organized as follows:

I. General Information
A. How Can I get Copies of This Document and other Related Information?
B. How and To Whom Do I Submit Comments?
C. How Should I Submit CBI to the Agency?
D. What Should I Consider as I Prepare My Comments for EPA?
II. Authority
III. Background
A. How does this Supplemental Proposal relate to the original proposal published on June 6, 2001 (66 FR 30349)?
B. Brief Summary of the June 6, 2001 Proposed Rule
IV. Discussion of Certain Comments Received on the June 6, 2001 Proposed Rule
A. Shenandoah Road Superfund Site Stakeholders
B. Environmental Technology Council
V. Discussion of the Change From the June 6, 2001 Proposed Rule
VI. Statutory and Executive Order Reviews
A. Executive Order 12866
B. Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996
C. Paperwork Reduction Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132
F. Executive Order 13175
G. Executive Order 13045
H. Executive Order 13211
I. National Technology Transfer and Advancement Act of 1995
J. Executive Order 12898
VII. RCRA & Hazardous and Solid Waste Amendments of 1984
A. Applicability of Rules in Authorized States
B. Effect on New York

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

I. Docket. EPA has established an official public docket for this action under Docket ID No. F–2002–IB3P–FFFFF. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the RCRA Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the RCRA Docket is (202) 566–0270. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

II. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket. Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in I.B.2 and I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

I. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

I. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. F–2002–IB3P–FFFFF. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

II. E-mail. Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov*, Attention Docket ID No. F–2002–IB3P–FFFFF. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

III. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in I.B. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

II. By Mail. Send 2 copies of your comments to the RCRA Docket, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. F–2001–IB3P–FFFFF.

III. By Hand Delivery or Courier. Deliver your comments to: Environmental Protection Agency, EPA Docket Center, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. F–2002–IB3P–FFFFF. Such deliveries are only accepted during the Docket's normal hours of operation as identified in A.1.

IV. By Facsimile. Fax your comments to: 202–566–0272, Attention Docket ID. No. F–2001–IB3P–FFFFF.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the following address: Environmental Protection Agency, EPA Docket Center (EPA/DC), RCRA Docket, 1301 Constitution Avenue, NW., Washington, DC 20004, Attention Docket ID No. F–2001–IB3P–FFFFF. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be

included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

I. Explain your views as clearly as possible.
II. Describe any assumptions that you used.
III. Provide any technical information and/or data you used that support your views.
IV. If you estimate potential burden or costs, explain how you arrived at your estimate.
V. Provide specific examples to illustrate your concerns.
VI. Offer alternatives.
VII. Make sure to submit your comments by the comment period deadline identified.
VIII. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Authority

EPA is publishing this proposed regulation under the authority of sections 2002, 3001, 3002, 3003, 3006, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6912, 6921, 6922, 6923, 6926, 6930, 6937, 6938, and 6974).

III. Background

A. How Does This Supplemental Proposal Relate to the Original Proposal Published on June 6, 2001 (66 FR 30349)?

This pilot project assesses the appropriateness of excluding from the RCRA regulatory definition of solid waste the wastewater treatment sludge (designated as F006 Hazardous Waste) generated by one of the two fluoride/heavy metal wastewater treatment plants (the plant designated as B/690 West Complex by IBM) on the IBM East Fishkill facility when the sludge is being used as an ingredient in the manufacture of cement. Information will be obtained and used to evaluate this recycling process and determine whether similar sludges should also be excluded from RCRA regulatory controls when recycled in the same manner. However, additional data will likely be necessary before EPA would be in a position to evaluate this practice at the national level.

Today's supplemental proposal amends the original proposal published on June 6, 2001 (66 FR 30349). As with the original proposed rule, this supplemental proposal is not intended to apply to any other hazardous wastes generated and/or managed at the IBM facility, unless the wastewater treatment sludge (also designated as F006 Hazardous Waste) generated by the other wastewater treatment plant (the B/386 East Complex) at the facility becomes eligible once a Final Project Agreement (or addendum to the current Final Project Agreement) is signed allowing for the additional sludge to be included in this project. The proposed rule does not apply to any wastewater treatment sludges generated at other facilities.

The duration of this pilot project is five years—that is, the site-specific conditional exclusion includes a "sunset provision" which will automatically terminate the exclusion five years from the effective date of the final rulemaking. Towards the end of the term of this XL project, EPA, the New York State Department of Environmental Conservation (NYSDEC), and IBM will evaluate the success of the pilot project. If the project is determined to be successful, EPA may consider expanding the scope of the exclusion to the national level (by rulemaking). However, EPA does not expect that this XL project alone can generate all the data that would be necessary on the wide variety of other F006 wastestreams that could potentially be used to make cement to proceed with a national rulemaking.

Today's supplemental proposal, and the original proposed rulemaking will not in any way affect the provisions or applicability of any other existing or future regulations.

EPA is soliciting comments on today's supplemental proposal. EPA will publish responses to comments, and comments to the original proposal in a subsequent **Federal Register** document. Subject to comments received on the proposal, EPA will either promulgate the proposed rule (as supplemented with today's proposal) as a final rule, modify the proposal as necessary to address comments and promulgate the modified proposal as a final rule, or decide to not go final with the rule. If significant changes to the rule are necessary based on comments received, EPA will re-propose the rule to allow for further public notice and comment. The XL project will enter the implementation phase only after a final rule is promulgated by EPA, and NYSDEC has undertaken appropriate action to allow the project to be implemented.

The terms of the overall XL project are contained in a Final Project Agreement (FPA) which was the subject of a Notice of Availability published in the **Federal Register** on September 1, 2000 (65 FR 53298) and which was signed by EPA, NYSDEC and IBM on September 29, 2000. The Final Project Agreement (FPA) is available to the public at the EPA Docket in Washington, DC, in the U.S. EPA Region 2 library, at the IBM East Fishkill facility, and on the world wide web at *http://www.epa.gov/projectxl/*.

For a more complete and detailed discussion of Project XL, the development of the Final Project Agreement (FPA), and the pilot project for which this supplemental proposal is intended, the reader is referred to the original proposal (June 6, 2001, 66 FR 30349). The summary of the proposed rule provided below is not intended to be comprehensive, but only includes those aspects of the proposed rule most relevant to this supplemental proposal.

B. Brief Summary of the June 6, 2001 Proposed Rule

On June 6, 2001, EPA published a proposed rule (66 FR 30349) to amend the RCRA regulatory definition of solid waste to provide a site-specific conditional exclusion for the F006 electroplating sludge generated by the IBM East Fishkill facility located in Hopewell Junction, New York. This rulemaking effort was undertaken to allow for the implementation of a pilot project under Project XL to determine whether the electroplating sludge could be recycled in an environmentally sound manner as an ingredient in the production of cement without RCRA regulatory oversight. (Note that the legitimate recycling of this sludge as an ingredient in cement is currently regulated under Subtitle C of RCRA because the cement is likely to be used on the land—that is, "used in a manner constituting disposal," a form of recycling that is analogous to land disposal. Because the current regulatory framework would subject this sludge to RCRA regulatory requirements, this recycling scenario would likely not be undertaken and implemented without the site-specific exclusion.)

EPA's (and NYSDEC's) decision to proceed with this pilot project was based in large part on the determination that the use of the sludge as an ingredient in cement is legitimate recycling. In other words, the electroplating sludge in question was determined, based on a comparative analysis of the constituents in both the sludge and the raw materials that the sludge would be replacing, to be a legitimate substitute for the analogous raw materials that would otherwise be used in the production of cement. *See* the June 6, 2001 proposal (66 FR at 30352–30354) for a more detailed discussion of the Agency's basis for defining this activity as legitimate recycling. Having determined the legitimacy of this activity, the proposed site-specific exclusion was conditioned on the sludge remaining consistent with the analogous raw materials, which was accomplished by setting a set of threshold levels for the hazardous constituents contained in the sludge. (Note that the site-specific conditional exclusion also imposes certain other conditions on IBM to be eligible for the exclusion.)

IV. Discussion of Certain Comments Received on the June 6, 2001 Proposed Rule

On June 6, 2001, EPA requested comments on the proposed rule for the IBM East Fishkill Project XL (*see* 66 FR 30349). While the Agency will appropriately address the comments received in the final rule (assuming the rule is finalized), EPA is taking this opportunity to address certain fundamental misconceptions concerning this XL pilot project that are common to many of the comments received on the original proposal. In addition, the Agency would like to address certain comments that question the overall "legitimacy" of using this F006 sludge as an ingredient in cement.

A. Shenandoah Road Superfund Site Stakeholders

Comments were submitted by concerned citizens living in a community near the IBM East Fishkill facility who are also involved as stakeholders in the cleanup of the Shenandoah Road Groundwater Contamination Superfund Site, a remediation activity for which the IBM East Fishkill facility was identified as a Potentially Responsible Party (PRP). The Agency is taking this opportunity to address some of the concerns expressed by these citizens. The sludge involved in this XL project was not disposed of at the Superfund site, and the production lines and wastewater treatment systems involved in generating the sludge are not associated with operations which resulted in the groundwater contamination that is the focus of the Superfund remedial activities. Further, the sludge does not contain tetrachloroethene (PCE) or other volatile organic constituents (VOCs), but rather is primarily composed of calcium and fluoride, and includes certain inorganic constituents of concern (*i.e.*, heavy metals) at low levels.

Also, it is worth noting that while the facility may have been involved in past operations that resulted in environmental damages, this in and of itself does not preclude the facility (or any facility) from developing and proposing a pilot project that meets the Project XL criteria.

In addition, several of the commenters requested a public meeting on this XL project and the proposed rule and an extension to the comment period. This request was declined by EPA because the substantive concerns expressed in the comments were primarily based upon a perceived connection between this XL pilot project and the contamination/remediation activities at the Shenandoah Road Superfund Site. Since public meetings concerning the Superfund site were being held, EPA concluded that they provided a more appropriate forum to raise such concerns.

To address any concerns that may have been somewhat related to IBM's XL project, EPA held an Availability Session (an informal forum in which the pilot project could be discussed with interested individuals) in conjunction with one of the Superfund public meetings as an effective first step in addressing those concerns. A fact sheet for the project was updated to respond to comments received before the Superfund public meeting that was scheduled for June 13, 2001, a week following publication of the proposed rule. (Most of the comments received from the residents of the Shenandoah Road area had been received before this meeting.) EPA's project manager for this XL project attended the June 13, 2001 Superfund public meeting, hosted the Availability Session, discussed this XL project with interested persons, and distributed copies of the fact sheet. Comments that were received during and immediately after the Availability Session were subsequently addressed by letter or e-mail. Therefore, although neither a public meeting nor an extension of the comment period was granted specific to this XL project or proposed rule, the Agency took steps to address the concerns raised.

B. Environmental Technology Council

The Environmental Technology Council (ETC) is a national trade association representing the commercial hazardous waste management industry and has historically been an active stakeholder in rulemakings involving RCRA jurisdiction. While ETC commented on several aspects of the proposal which will be addressed in the final rule (assuming the rule is finalized), several comments related to "legitimate recycling" and "dilution" exhibited a significant misunderstanding that the Agency wishes to address in today's notice.

To begin, ETC asserts that the recycling of IBM's sludge as an ingredient in cement is a sham, rather than legitimate recycling. In other words, ETC claims that the use of the calcium-rich sludge as an ingredient in cement is nothing more than treatment and/or disposal of the sludge in the guise of recycling. While ETC provides support for this assertion by addressing the various "legitimacy criteria" as the Agency did in the proposal (*see* 66 FR at 30353), one aspect of ETC's discussion requires clarification from EPA in this supplemental proposal. ETC contends that the sludge contains significantly higher levels of hazardous constituents than the analogous raw materials the sludge would replace. The Agency disagrees with ETC and notes that ETC cites historical analytical data on the sludge rather than the more recent analyses of the sludge to support this claim. Further, ETC fails to acknowledge the threshold levels proposed as a mechanism to ensure that the sludge excluded from RCRA regulation would remain comparable to the analogous raw materials. ETC's claim to the contrary notwithstanding, the sludge that will be recycled pursuant to the proposed conditional exclusion will, in effect, legitimately substitute for the analogous raw materials that would otherwise be used. This is one of the indicators the Agency considered in determining that the use of the sludge as an ingredient in the production of cement is legitimate recycling.

As for ETC's position that this recycling scenario is simply dilution, the Agency acknowledges that the 1:200 ratio of sludge to normal raw materials might, in and of itself, lead one to assume that impermissible dilution is occurring. Indeed, the Agency stated as much in the preamble to the proposed rule (*see* 66 FR at 30354); however, as EPA also discussed, upon further evaluation, one can see that the ratio is merely a function of the relatively small volume of electroplating sludge generated by the IBM facility and the relatively large volume of raw materials typically processed by a cement

manufacturer. It is not, as ETC asserts, an attempt to simply dispose of the sludge by diluting it into a much larger volume of raw materials. In making this claim, ETC ignores the fact that the sludge does indeed contribute a very integral part of the ingredient mixture necessary to produce cement (*i.e.*, calcium). Furthermore, as stated earlier, the concentrations of hazardous constituents in the sludge and in the analogous raw materials are comparable. Therefore, to the extent that there is any "dilution" of the hazardous constituents in the sludge, the Agency believes it would be nominal, incidental, and consistent with the processing that the normal raw materials undergo in the production of cement (*i.e.*, similar to the "dilution" that occurs when only normal raw materials are used). Finally, the Agency notes that ETC acknowledges in their comments that the Toxicity Characteristic Leaching Procedure (TCLP) data provided in support of this rulemaking indicate that the sludge would meet the applicable Land Disposal Restrictions treatment standards as generated, without requiring further treatment. Given that the sludge already meets the treatment standards that would apply if it was disposed of in a Subtitle C permitted hazardous waste landfill, "dilution" as an impermissible substitute for the appropriate treatment of the hazardous constituents is a moot point (*see* 40 CFR 268.3).

V. Discussion of the Change From the June 6, 2001 Proposed Rule

Since the June 6, 2001 proposal, IBM continued to sample and analyze the sludge that is the focus of this pilot project. In the course of this sampling and analysis effort, IBM discovered that the concentration of cadmium in the sludge had increased to 1.5182 ppm. IBM then conducted a thorough inventory of the materials and equipment used in the production processes and determined that cadmium is not used[1]. In the June 6, 2001 proposal, the Agency discussed IBM's assumption that the cadmium detected in the wastewater treatment sludge is present as a contaminant in the lime used in the wastewater treatment process (*see* Footnote 4, 66 FR 30354). This appears to be the case.

Upon learning that in some instances the sludge would not meet the threshold level that the Agency had originally proposed for cadmium (*i.e.*, 0.88 mg/kg) for the sludge to be conditionally excluded from the definition of solid waste, IBM informed EPA; EPA then requested that IBM provide a detailed analysis of the lime used in the wastewater treatment process (which IBM received from the distributor of the lime). This analysis showed that the lime being used by IBM at the time contained 2.0 ppm cadmium. The Agency believes that, because the lime makes up such a high proportion of the sludge (typically more than 90%, according to IBM), the cadmium levels in the sludge are consistent with what would be expected given the cadmium levels in the lime.

In considering how to proceed, one option was to keep the proposed threshold level of cadmium in the wastewater treatment sludge and disallow any sludge not meeting this level from being conditionally excluded from the definition of solid waste under the pilot project. Under this approach, if the Agency finalizes the site-specific exclusion, and did so as originally proposed, IBM could begin to use the sludge as an ingredient in cement once the sludge met the proposed conditions of the exclusion. However, this approach seems inappropriate, especially considering that the lime containing 2.0 ppm cadmium could itself be used as an ingredient in cement outside of RCRA jurisdiction (the lime is a commercial product, not a solid waste). Put another way, the Agency believes it would be inappropriate to disallow the sludge (which is primarily lime) from being used as an ingredient because of a contaminant in the lime. Therefore this was not considered a viable option.

An alternative option is to re-propose a more realistic threshold level for cadmium, based on the potential presence of cadmium in the lime used in wastewater treatment. The Agency notes that the slightly higher concentration of cadmium in the sludge (as well as the proposed change to the cadmium threshold level to reflect that concentration) has no effect on the Agency's determination that the sludge is analogous to the raw materials that would otherwise be used as ingredients in the production of cement. And, as discussed briefly in the proposal (*see* 66 FR 30354, June 6, 2001), a certain amount of variability in the constituent concentrations in the normal raw materials used to produce cement is typical, if not expected. In proposing the original cadmium threshold of 0.88 mg/kg, the Agency assumed that this would account for such variability. Obviously, this was not the case. Therefore, the Agency has determined that it is more appropriate to re-propose a cadmium threshold level that more accurately reflects the potential variability of cadmium concentrations in lime, and its attendant impact on the cadmium concentrations in the sludge generated using the lime.

In defining a cadmium threshold that would be more appropriate and reflect the natural variability in raw materials normally used as ingredients in cement, the Agency learned that the lime IBM uses for treating the electroplating wastewaters is held to a maximum concentration of 2.0 ppm, which is the standard for cadmium concentrations in lime used for conditioning (or treating) drinking water.[2] Assuming that the lime used to generate the sludge will not exceed 2.0 ppm cadmium, the sludge should also not exceed this level. Therefore, the Agency is today proposing that the threshold level for cadmium be set at 2.0 mg/kg (rather than the previously proposed level of 0.88 mg/kg). The Agency believes that this threshold level more accurately reflects the upper limit of the concentration of cadmium naturally occurring in the specific lime used to generate the electroplating sludge.

Finally, the Agency notes that while it is publishing the entire text of the regulatory language that was proposed in the June 6, 2001 **Federal Register** document to provide context for the proposed change in this supplemental proposal, the Agency is only soliciting comment on the revised cadmium threshold level.

[1] Note that, as mentioned in the original proposed rule (*see* Footnote 4, 66 FR at 30354, June 6, 2001), during the development of this XL project, IBM had previously conducted a review of the materials used in the facility's production processes and determined that cadmium is not used at the facility.

[2] In considering a more appropriate cadmium threshold level, the Agency contacted the National Lime Association (NLA) for generic information regarding the variability of metal concentrations naturally occurring in lime on a national basis. Such comprehensive information was not readily available. However, in considering whether the Agency should characterize the constituent concentrations of cadmium in lime on a national basis (a somewhat daunting task), EPA learned that such a characterization may not be necessary to develop a threshold level that appropriately reflects the cadmium concentrations in the lime the IBM East Fishkill facility uses. Rather, as the Agency learned from the NLA, the lime products provided by IBM's distributor are ANSI–60 (UL) certified as water treatment chemicals. This means that these products (including the lime used in IBM's wastewater treatment system) meet the applicable concentration criteria for heavy metals, including cadmium (which is 2 ppm), as long as the products are used per specifications. In other words, the specific lime used by this specific IBM facility is certified to have no more than 2 ppm cadmium. Given that this is a site-specific rulemaking, EPA considers this 2 ppm cadmium concentration to be a more appropriate threshold level for this specific site than a threshold level reflecting the cadmium concentrations developed on a national basis.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735), the Agency must determine whether this regulatory action is "significant" and therefore subject to formal review by the Office of Management and Budget (OMB) and to the requirements of the Executive Order, which include assessing the costs and benefits anticipated as a result of this regulatory action. The Order defines "significant regulatory" action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because this rule affects only one facility, it is not a rule of general applicability and therefore not subject to OMB review and Executive Order 12866. In addition, OMB has agreed that review of site-specific rules under Project XL is not necessary.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities because it only affects the IBM facility in Hopewell Junction, NY and which does not fit the definition of small entity.

C. Paperwork Reduction Act

This action applies only to one facility, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this rule is applicable only to one facility in New York. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

E. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Today's proposal, which supplements the earlier proposal, does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's supplemental proposal will only affect one facility, providing regulatory flexibility applicable to this specific site. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications." "Policies that have Tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal

government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." Today's proposal, which supplements the earlier proposal, does not have Tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. EPA is currently unaware of any Indian tribes located in the vicinity of the facility. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045

Executive Order 13045, entitled "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potential effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children because this action raises the threshold level of cadmium to the concentration that naturally occurs in lime used to generate electroplating sludge. The public is invited to submit or identify peer-reviewed studies and data, of which the Agency may not be aware, that assessed results of early life exposure to cadmium that occurs naturally in raw materials that are used in cement production.

H. Executive Order 13211

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It will not result in increased energy prices, increased cost of energy distribution, or an increased dependence on foreign supplies of energy.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA," Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's proposal, which supplements the earlier proposal, does not establish technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (February 11, 1994), is designed to address the environmental and human health conditions of minority and low-income populations. EPA is committed to addressing environmental justice concerns and has assumed a leadership role in environmental justice initiatives to enhance environmental quality for all citizens of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, income, or net worth bears disproportionately high and adverse human health and environmental impacts as a result of EPA's policies, programs, and activities. In response to Executive Order 12898, EPA's Office of Solid Waste and Emergency Response (OSWER) formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.3–17). To address this goal, EPA conducted a qualitative analysis of the environmental justice issues under the national proposed rule. Potential environmental justice impacts are identified consistent with the EPA's Environmental Justice Strategy and the OSWER Environmental Justice Action Agenda.

Today's proposal, which supplements an earlier proposal, applies to one facility in New York. Overall, no disproportional impacts to minority or low income communities are expected.

VII. RCRA & Hazardous and Solid Waste Amendments of 1984

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program for hazardous waste within the State. (*See* 40 CFR part 271 for the standards and requirements for authorization.) States with final authorization administer their own hazardous waste programs in lieu of the Federal program. Following authorization, EPA retains enforcement authority under sections 3008, 7003 and 3013 of RCRA.

After authorization, Federal rules written under RCRA (non-HSWA), no longer apply in the authorized State except for those issued pursuant to the Hazardous and Solid Waste Act Amendments of 1984 (HSWA). New Federal requirements imposed by those rules do not take effect in an authorized State until the State adopts the requirements as State law.

In contrast, under section 3006(g) of RCRA, new requirements and prohibitions imposed by HSWA take effect in authorized States at the same time they take effect in nonauthorized States. EPA is directed to carry out HSWA requirements and prohibitions in authorized States until the State is granted authorization to do so.

B. Effect on New York Authorization

The proposed rule, which today's notice supplements, if finalized, will be promulgated pursuant to non-HSWA authority, rather than HSWA. New York has received authority to administer most of the RCRA program; thus, authorized provisions of the State's hazardous waste program are administered in lieu of the Federal program. New York has received authority to administer the regulations that define solid wastes. As a result, if the proposed rule to modify the existing regulations to provide a site-specific exclusion for IBM's wastewater treatment sludge is finalized, it would not be effective in New York until the State adopts the modification. It is EPA's understanding that subsequent to the promulgation of the final rule, New York intends to propose rules or other legal mechanisms to provide the exclusion. EPA may not enforce these requirements until it approves the State requirements as a revision to the authorized State program.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

Dated: April 4, 2003.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 261 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.4 is amended by adding paragraph (a)(22) to read as follows:

§ 261.4 Exclusions.

* * * * *

(a) * * *

(22) Dewatered wastewater treatment sludges generated by the International Business Machines Corporation (IBM) East Fishkill facility in Hopewell Junction, New York, provided that:

(i) The sludge is recycled as an ingredient in the manufacture of cement meeting appropriate product specifications by a cement manufacturing facility.

(ii) The sludge is not stored on the land, and protective measures are taken to ensure against wind dispersal and precipitation run-off.

(iii) The sludge is not accumulated speculatively, as defined in § 261.1(c)(8).

(iv) A representative sample of the sludge undergoes constituent analysis by IBM (using the methods specified in 40 CFR part 264, appendix IX) demonstrating that the sludge contains constituents at no greater concentrations than the thresholds presented below. Sludges generated by different wastewater treatment systems must be analyzed separately (commingling of the sludges is permissible after sampling). This sampling and analysis must be conducted every three months for an initial 12-month period, which can include the immediate period prior to the effective date of this exclusion. After the initial 12-month reporting period (*i.e.*, four sampling/analysis events), sampling and analysis must be conducted every six months for the duration of the project. Additionally, after any change in either the manufacturing process or the wastewater treatment process that could affect the chemical composition of the wastewater treatment sludge, sampling and analysis must be conducted. In addition to the constituents for which threshold levels are established, IBM must analyze and report the concentration levels of mercury and beryllium. The threshold concentrations are as follows:

Arsenic 3.0 mg/kg
Cadmium 2.0 mg/kg
Chromium (total) 22.9 mg/kg
Cyanide (amenable) 0.815 mg/kg
Cyanide (total) 0.815 mg/kg
Lead 18.8 mg/kg
Nickel 10.4 mg/kg
Silver 2.1 mg/kg

(v) An accounting is made of the volumes of sludge that are recycled, with an assessment of how much less analogous raw materials are used to produce the same volume of cement product, or how much more cement is produced attributable to the volume of sludge that is processed. IBM must acquire this information from the cement manufacturing facility.

(vi) IBM documents each shipment of the sludge, including where the sludge was sent, the date of the shipment, the date that the shipment was received and the volume of each shipment.

(vii) IBM provides EPA and NYSDEC with semi-annual reports detailing all of the information in paragraphs (a)(22)(i)–(vi) of this section for the duration of the project.

(viii) Should any of the conditions of paragraphs (a)(22)(i)–(vii) of this section not be met, the exclusion provided in this provision will not be applicable and the wastewater treatment sludge will be subject to the applicable RCRA Subtitle C regulations until the conditions are once again met.

(ix) The provisions of this section shall expire on [DATE FIVE YEARS FROM EFFECTIVE DATE OF FINAL RULE].

* * * * *

[FR Doc. 03–9047 Filed 4–11–03; 8:45 am]

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Federal Register

Monday,
April 14, 2003

Part VII

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0080; FRL–7461–1]

RIN 2060–AH42

National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at flexible polyurethane foam fabrication facilities. The EPA has identified flexible polyurethane foam fabrication facilities as major sources of hazardous air pollutants (HAP) emissions. These standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all such major sources to meet HAP emission standards that reflect the application of maximum achievable control technology (MACT). The primary HAP that will be controlled with this action include hydrochloric acid (HCl), 2,4-toluene diisocyanate (TDI), and hydrogen cyanide (HCN). This action will also preclude the use of methylene chloride. Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, eye, and mucous membranes, effects on the central nervous system, and cancer. We do not have the type of current detailed data on each of the facilities and the people living around the facilities covered by today's final rule for this source category that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and the potential for resultant health effects. Therefore, we do not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, and today's final rule reduces emissions, subsequent exposures will be reduced. This final rule will reduce HAP emissions by 6.5 tons per year (tpy) from each new or reconstructed affected source performing flame lamination.

EFFECTIVE DATE: April 14, 2003.

ADDRESSES: *Docket.* We have established an official public docket for this action under Docket ID No. OAR–2002–0080 or A–2000–43; available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning analyses performed in developing this rule, contact Ms. Maria Noell, Organic Chemicals Group, Emission Standards Division (C504–04), U.S. EPA, Research Triangle Park, North Carolina, 27711; telephone number (919) 541–5607; fax number (919) 541–0942; electronic mail address: *noell.maria@epa.gov*.

SUPPLEMENTARY INFORMATION:

Docket. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Docket Access. You may access the final rule electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled "Docket." Once in the system, select "search," then key in the appropriate docket identification number.

Judicial Review. Under CAA section 307(b), judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before June 13, 2003. Only those objections to the NESHAP which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2)of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC[a]	NAICS[b]	Regulated entities
Industry	3086	32615	Fabricators of flexible polyurethane foam.

[a] Standard Industrial Classification.
[b] North American Information Classification System

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.8782 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult your State or local agency (or EPA Regional Office) described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of this final rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg*.

Outline. The information in this preamble is organized as follows:

I. Introduction and Background
A. What is the source of authority for development of NESHAP?
B. What criteria are used in the development of NESHAP?
C. How did the public participate in developing the rule?
D. Description of Source Category
II. Summary of Changes Since Proposal
III. Summary of the Final Rule
A. What are the affected sources?
B. What are the emissions limitations and compliance dates?
C. What are the testing, initial compliance, and continuous compliance requirements?
D. What are the notification, recordkeeping, and reporting requirements?
IV. Summary of Major Comments and Responses
A. What sources are subject to the rule?
B. What issues were raised regarding adhesive-use sources?
C. What issues were raised regarding flame lamination sources?
V. What are the environmental, cost, and economic impacts of the final rule?
VI. Statutory and Executive Order Reviews
A. Executive Order 12866—Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act of 1995
E. Executive Order 13132—Federalism
F. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act of 1995
J. Congressional Review Act

I. Introduction and Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The category of major sources covered by today's final rule was listed on July 16, 1992 (57 FR 31576). Major source under section 112 means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, 10 tpy or more of any one HAP or 25 tpy or more of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The minimum control level allowed for NESHAP, which we refer to as the "MACT floor," is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that standards are set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on consideration of the cost of achieving the emission reductions, any non-air quality health and environmental impacts, and energy requirements.

C. How Did the Public Participate in Developing the Rule?

Prior to proposal, we met with industry representatives and State regulatory authorities several times to discuss the data and information used to develop the proposed standards. In addition, these and other potential stakeholders, including equipment vendors and environmental groups, had opportunity to comment on the proposed standards.

The proposed rule was published in the **Federal Register** on August 8, 2001 (66 FR 41718). The preamble to the proposed rule discussed the availability of technical support documents, which described in detail the information gathered during the standards development process. Public comments were solicited at proposal, including a specific request for comments with regard to the potential existence of non-slitter adhesive use by major sources.

We received eight public comment letters on the proposed rule. The commenters represent the following affiliations: foam fabricators (2 companies), industrial trade associations (5), and one private research group. In the post-proposal period, we talked with commenters and other stakeholders to clarify comments and to assist in our analysis of the comments. Records of these contacts are found in Docket OAR–2000–0080 or Docket A–2000–43. All of the comments have been carefully considered, and, where appropriate, changes have been made for the final rule.

D. Description of Source Category

Today's NESHAP apply to the Flexible Polyurethane Foam Fabrication Operations source category. This source category includes operations engaged in cutting, gluing, and/or laminating pieces of flexible polyurethane foam. This includes fabrication operations that are located at foam production plants, as well as those that are located off-site from foam production plants.

We have identified two subcategories under the Flexible Polyurethane Foam Fabrication Operations source category. These subcategories are loop slitter HAP-based adhesive use and flame lamination.

Loop Slitter Adhesive Use: A loop slitter is a large machine used to create thin sheets of foam from the large blocks of foam or "buns" created at a foam production plant. In order to comply with Occupational Health and Safety Administration (OSHA) regulations, loop slitters have converted from a reliance on methylene chloride-based adhesives to other non-HAP alternatives since the mid-1990's. As a result of the OSHA regulations, we believe that the foam fabrication industry has effectively discontinued the use of methylene chloride-based adhesives on loop slitters. Consequently, our estimate of current nationwide HAP emissions from loop slitter adhesive use prior to the development of the NESHAP (referred to as "baseline emissions") is zero.

Flame Lamination: In the flame lamination process, foam is scorched to adhere it to various substrates. This process releases particulates and HAP. We have identified HCN, TDI, and HCl as HAP emitted as a result of flame lamination. Specific HAP released are dependent on the contents of the foam being laminated at a given time. With the exception of HCl, these HAP are generally released in very small amounts.

II. Summary of Changes Since Proposal

In response to comments received on the proposed NESHAP and further analysis, we made two significant changes for the final rule, and a small number of other changes for editorial purposes and clarification.

The proposed rule included an emission limit for loop slitters of zero HAP emissions. Information subsequently supplied by commenters and industry contacts demonstrated that the widely used n-propyl bromide adhesives originally believed to be non-HAP actually contain small amounts of HAP.

In accordance with the definition of "HAP-based" in the Flexible Polyurethane Foam Production NESHAP (40 CFR part 63, subpart III), we have changed the definition of "HAP-based adhesive" to contain 5 percent (by weight) or more of HAP. We also changed the emission limit accordingly.

At post proposal, it came to our attention that the test methods specified for measurement of HCN emissions from process, storage tank, and transfer vents (EPA Methods 18, 25, and 25A) have not been validated for measurement of HCN. Test methods that have been used for measurement of HCN include the EPA Conditional Test Method CTM–033 "Draft Method for Sampling and Analysis of Hydrogen Cyanide Emissions for Stationary Sources" and California Air Resources Board Method 426 (*http://www.epa.gov/ttn/emc/ctm.html*) modified to use ion chromatography for sample analysis. However, neither of these methods have been fully validated at this time. Consequently, the final rule has been written to require that the data from any test method used to measure HCN emissions from flame lamination sources must be validated using EPA Method 301.

Another change made for the final rule was the addition of a definition for "research and development process" to clarify the provision in § 63.8782(d)(2) that such processes are not subject to the rule, and a change to § 63.8786(e) so that collection of compliance data prior to the compliance date is no longer required.

We proposed to exclude non-slitters from the source category based on our findings that there were no non-slitters using HAP-based adhesives located on the site of a major source, and solicited comment and supporting information regarding that issue. We received no comment or supporting information contrary to our findings, therefore, we are excluding the non-slitter adhesive use from the source category definition. Additional changes were insignificant and editorial in nature.

III. Summary of Final Rule

A. What Are the Affected Sources?

The final rule defines two affected sources (units or collections of units to which a given standard or limit applies) corresponding to the two subcategories, loop slitter adhesive use and flame lamination. The loop slitter adhesive use affected source is the collection of loop slitters and associated adhesive application equipment used to apply HAP-based adhesives to bond foam to foam at a flexible polyurethane foam fabrication plant site. Loop slitter affected sources, located at plant sites that are major sources of HAP, that are using HAP-based adhesives on or after April 14, 2003, are subject to the NESHAP, including the applicable emission limit and reporting and recordkeeping requirements. However, loop slitter affected sources that have eliminated use of HAP-based adhesives by April 14, 2003, are not subject to the NESHAP. The flame lamination affected source is the collection of all flame laminators and associated rollers at a flexible polyurethane foam fabrication plant site associated with the flame lamination of foam to any substrate.

B. What Are the Emission Limitations and Compliance Dates?

If you own or operate an existing, new, or reconstructed loop slitter adhesive use affected source, the final rule prohibits you from using any HAP-based adhesives. We are defining HAP-based adhesives as adhesives containing 5 percent (by weight) or greater of HAP, where the concentration of HAP may be determined using EPA Method 311 (Analysis of Hazardous Air Pollutant Compounds in Paints and Coatings by Direct Injection Into a Gas Chromatograph) or other approved information. Existing affected sources must be in compliance by April 14, 2004. New or reconstructed sources must be in compliance by the date of startup of the affected source, or by April 14, 2003, whichever is later.

If you own or operate an existing flame lamination affected source, you are not required to meet any emission limitation; you are only subject to a requirement to submit an initial notification within 120 days after April 14, 2003. If you own or operate a new or reconstructed flame lamination affected source, the NESHAP requires that you reduce HAP emissions from the affected source by 90 percent. Your new or reconstructed flame lamination affected source must be in compliance with the emission limit upon startup or by April 14, 2003, whichever is later.

C. What Are the Testing, Initial Compliance, and Continuous Compliance Requirements?

If you own or operate a flexible polyurethane foam fabrication loop slitter adhesive use or flame lamination affected source, you must comply with the testing, initial compliance, and continuous compliance requirements in the following paragraphs.

Loop Slitter Adhesive Use

If you own or operate a loop slitter affected source, you must demonstrate initial and continuous compliance by certifying that no HAP-based adhesives are or will be used. You must submit this initial certification within 60 days of the compliance date. The certification must be accompanied by documentation stating what the facility will use for adhesives, along with supporting information to document the HAP content of adhesives used at the facility, such as Method 311 results or other approved information. Thereafter, on a yearly basis, you must recertify compliance, including HAP content information on any new adhesives used at the source.

The final rule allows you to use methods other than Method 311, including an approved alternative method or any other reasonable means to determine the HAP content of adhesives. Other reasonable means include a material safety data sheet (MSDS), a certified product data sheet (CPDS), or a manufacturer's hazardous air pollutant data sheet. However, if the results of an analysis by EPA Method 311 are different from the HAP content determined by another means, the EPA Method 311 results will govern compliance determinations. You are not required to test the materials used, but the Administrator may require a test using EPA Method 311 (or an approved alternative method) to confirm the reported HAP content.

Flame Lamination

If you own or operate a new or reconstructed flame lamination affected source, the final rule requires that you demonstrate initial compliance by conducting a performance test within 180 days after the compliance date that demonstrates that HAP emissions are being reduced by 90 percent. In order to demonstrate continuous compliance with this emissions limit, you must continuously monitor control device parameters. Specifically for venturi scrubbers, which we believe will be the control device of choice in most situations, you are required to continuously monitor the pH of the scrubber effluent, the scrubber liquid flow rate, and the pressure drop across the venturi. You must demonstrate continuous compliance by these monitored parameters staying within the operating limits. Operating limits must be established for each parameter based on monitoring conducted during the initial performance test and reported in your facility's Notification of Compliance Status Report.

D. What Are the Notification, Recordkeeping, and Reporting Requirements?

If you own or operate foam fabrication operations at major sources, you must submit several notifications and reports, which are listed and then briefly described in this section. First, you must submit an initial notification. In addition, if you own or operate a flexible polyurethane loop slitter adhesive use affected source or a new or reconstructed flame lamination affected source, you must also submit the following notification and reports:

- Notification of Intent to Conduct a Performance Test (new or reconstructed flame laminators only);
- Notification of Compliance Status reports;
- Periodic Compliance reports; and
- Startup, Shutdown, and Malfunction reports (new or reconstructed flame laminators only).

For the Initial Notification, you must notify us that your facility is subject to the Flexible Polyurethane Foam Fabrication Operations NESHAP, and provide specified basic information about your facility. You must submit this notification within 120 days after April 14, 2003, for existing affected sources. If you own or operate a new or reconstructed affected source, you are required to submit the application for construction or reconstruction required by § 63.9(b)(iii) of the 40 CFR part 63, subpart A, in lieu of the Initial Notification.

For the Notification of Intent report, for each new or reconstructed flame lamination affected source that you own or operate, you must notify us in writing of the intent to conduct a performance test at least 60 days before the performance test is scheduled to begin. You must submit the Notification of Compliance Status report within 60 days of completion of the performance test. As part of the Notification of Compliance Status, you must include a certified notification of compliance that states the compliance status of the facility, along with supporting information (*e.g.*, performance test results and operating parameter values and ranges).

If you own or operate a source complying with the standards for loop slitter adhesive use, you must submit the Notification of Compliance Status within 60 days of the compliance date. In the Notification of Compliance Status, you must list each adhesive used at the affected source, the manufacturer or supplier of each, and the individual HAP content (percent by mass) of each adhesive that is used.

If you own or operate a facility that is subject to control requirements under these NESHAP, you must submit a Periodic Compliance report, which reports continued compliance with the flame lamination new source emission limit semiannually, and continued compliance with the loop slitter adhesive use HAP-based usage limit annually.

Finally, for the Startup, Shutdown, and Malfunction report, if you own or operate a new or reconstructed flame lamination affected source, you must report any startup, shutdown, or malfunction during the reporting period which does not meet the emission limitations set out in 40 CFR 63.8790 and is not in the facility's startup, shutdown, and malfunction plan.

If you own or operate a flame lamination or loop slitter adhesive use source, you must maintain records of reported information and other information necessary to document compliance (*e.g.*, records related to malfunction, records that show continuous compliance with emission limits) for 5 years.

IV. Summary of Major Comments and Responses

This section includes discussion of significant comments on the proposed rule. For a complete summary of all the comments received on the proposed rule and our responses to them, refer to the "Background Information Document for Promulgation of National Emissions Standards for Hazardous Air Pollutant (NESHAP): Flexible Polyurethane Foam Fabrication" (hereafter called the "response to comments document") in Docket OAR–2002–0080 or A–2000–43. The docket also contains the actual comment letters and supporting documentation developed for the final rule.

A. What Sources Are Subject to the Rule?

Comment: We received one comment requesting that we regulate area sources in the flexible polyurethane foam fabrication industry. The commenter asserted that there are a large number of area sources in this source category and cited examples of other source categories for which both area and major sources are regulated.

Response: According to section 112(c)(3) of the CAA, the Administrator must list area source categories separately from major source categories, and only if the Administrator finds that a category of area sources "* * * presents a threat of adverse effects to human health or the environment (by such sources individually or in the aggregate) warranting regulation under this section." We have listed flexible foam fabrication operations as an area source category for further scrutiny and will address the emissions from area sources in this source category in a separate action (64 FR 38721, July 19, 1999).

B. What Issues Were Raised Regarding Adhesive-Use Sources?

Comment: The proposed rule included a provision that loop slitters could use no HAP-based adhesives, with HAP-based adhesives defined as "an adhesive containing detectable HAP, according to EPA Method 311 or another approved alternative." The data for existing loop slitters that were available to us during the development of the proposed rule indicated that 22 of 30 facilities use no HAP-based adhesives. Several commenters asserted that the adhesives commonly used by the industry on their loop slitters do contain small amounts of HAP. A survey conducted by one of the commenters indicated that 11 of the 20 loop slitter facilities surveyed use an n-propyl bromide adhesive which contains 0.32 to 1.0 percent 1,2-Epoxybutane by weight.

Response: The information supplied by commenters and industry contacts demonstrates that the widely-used n-propyl bromide adhesives, originally believed to be non-HAP, actually contain trace amounts of HAP, which we believe are present mostly as impurities. In accordance with the definition of "HAP-based" in the Flexible Polyurethane Foam Production NESHAP (40 CFR part 63, subpart III), we have written the definition of "HAP-based adhesive" in the final rule to contain 5 percent (by weight) or more of HAP.

Comment: Several commenters recommended that we set a numerical, technology-based emission limitation for loop slitters, rather than banning the use of HAP-based adhesives. The commenters explained that a numerical or technology-based MACT standard would allow industry to lower their emissions using control technologies that are currently available or being developed.

Response: Our determination that the MACT floor for loop slitter adhesive use is no HAP-based adhesives makes the use of a numerical or technology-based emission limitation inappropriate. Although it may be possible to greatly reduce HAP emissions through use of technology, we believe that elimination of the use of HAP-based adhesives in loop slitter operations is required by section 112(d)(3) of the CAA because of the number of facilities using no HAP-based adhesives in their loop slitter operations. Accordingly, no changes were made for the final rule with regard to this issue.

Comment: Comments were received encouraging us to regulate non-slitter adhesive use applications in order to control emissions of methylene chloride. The commenter asserted that many major source facilities are still using methylene chloride-based adhesives in non-loop slitter applications.

Response: In the preamble to the proposed rule, we specifically requested comments on this issue. We stated that if comments demonstrated that "there are non-sliter adhesive sources using HAP-based adhesives that are located on the site of a major source, we would retain them in the source category and treat them as a third subcategory." Based on available information, we found no non-slitters on sites of major sources. Thus, there is no basis to retain non-slitter adhesive use sources in this category. We have listed flexible foam fabrication operations as an area source category for further scrutiny and will address the emissions from area sources under section 112(k) of the CAA.

Comment: Several comments were received expressing concerns regarding the adhesives being used as alternatives to HAP-based adhesives, for both loop slitter and non-slitter adhesive applications. Some commenters mentioned that n-propyl bromide has been the subject of a number of "substantial risk" notifications under the Toxic Substances Control Act and is also the subject of toxicity testing under the National Toxicology Program, and urged us to consider regulating n-propyl bromide emissions.

Response: We are aware of this situation, but have no authority under section 112 to regulate n-propyl bromide since it is not currently listed as a HAP.

Comment: Another commenter asked us to investigate and identify the secondary air impacts of HAP or volatile organic compounds (VOC) from the use of the adhesives being used as alternatives to methylene chloride. If they emit VOC, the commenter recommended that we regulate those emissions so as not to exacerbate local efforts to comply with other air pollution regulations.

Response: The NESHAP for foam fabrication operations protects air quality and promotes the public health by reducing emissions of some of the HAP listed in section 112(b)(1) of the CAA. The mandate for the NESHAP program does not extend to control of VOC (unless they are HAP). Additionally, VOC emissions are addressed elsewhere in the CAA, both in section 110 which addresses State implementation plans for States with ozone nonattainment areas under the national ambient air quality standards; and in section 111, which includes new source performance standards. Moreover, the current record does not indicate that there are any significant secondary air impacts (*i.e.*, increased emissions of other HAP or VOC) from the use of alternatives to methylene chloride. Thus, the Agency finds that the investigation requested by the commenter is unwarranted. We believe that the reporting requirements that were proposed for loop slitter facilities are adequate, and they remain unchanged for the final rule.

C. What Issues Were Raised Regarding Flame Lamination Sources?

Comment: One commenter asserted that the proposed MACT for existing flame lamination sources (no additional control) is not the maximum degree of HAP reduction that could be achieved and requested that MACT for these sources be based on "the performance of the best two facilities," excluding consideration of uncontrolled sources.

Response: We are required to calculate the MACT floor for existing sources based on the central tendency of the emission limitation achieved by the best performing five major sources for a subcategory with less than 30 major sources (such as flame lamination). Evaluation of only the two best performing sources, as requested by the commenter, is not consistent with this statutory requirement.

The data for existing flame lamination sources that were available during the development of the proposed rule indicated that two of the top five major sources control HAP emissions using a scrubber and three do not control HAP emissions. We chose not to use the mean as the measure of central tendency because it would result in a MACT floor that does not represent the performance of an actual control device. In this case, using the median or the mode resulted in the same MACT floor (no additional control).

In addition to controls, we also investigated the possibility that materials substitution or work practice standards could represent the MACT floor.

The flame lamination of any foam generates HAP emissions, most notably HCN and TDI. These compounds are present in the foam as a result of the polyurethane foam manufacturing process, which is regulated under separate MACT standards. Changing the use of these compounds would change the inherent properties of the foam and, thus, we rejected this raw material substitution as a potential MACT floor control strategy.

In addition, the flame lamination of foams containing chlorinated fire retardants also results in emission of the HAP HCl. The frequency of use of chlorinated fire retardant foams varies considerably from one facility to another, and may also vary over time at any single facility. Although some facilities do not use fire retardant foams at all, most use them some of the time. The fire retardancy is a necessary characteristic of the foam where the customer requires fire retardancy as a product specification, *e.g.*, foam in automobiles and bedding.

The top two facilities on our list stated that they laminated fire retardant foam approximately 30 percent of the time for the years the data were gathered. As product mix and customer demands change, the percent of fire retardant foam flame laminated at a facility can vary considerably. Because there is no clear subdivision of the industry between facilities that use fire retardant foams and those that do not, we deemed any further subdivision of the industry because of this issue to be unreasonable.

Although there may be non-chlorinated fire retardant foams available to flame laminators, they are not currently in use by any of the lowest-emitting five flame lamination facilities. Thus, we determined that product substitution does not represent the MACT floor for the flame lamination subcategory.

We also considered the possibility that the MACT floor might be represented by work practices. The nature of the flame lamination process does not lend itself to any typical work practices used to minimize HAP emissions. There are no emissions related to transport and storage of raw materials, or to cleaning of the equipment, and there is no HAP-containing waste. In fact, the HAP emissions are created during the process by the physical act of scorching the foam. The scorching makes the foam sticky so it will adhere to the other substrate, but also releases HAP. Because there are no emission-reducing work practice standards in use at flame lamination facilities we did not find that the MACT floor may be represented by any work practice standards.

We considered more stringent "above-the-floor" options for MACT, including 90 percent reduction of HCl and HCN, 95 percent reduction of HCN and TDI, and banning the flame lamination of chlorinated fire retardant foam. We rejected the first two options as unreasonably costly with respect to the incremental emission reduction that would be achieved ($9,700 per ton for the first option and $70,300 per ton for the second option). We rejected the third option as technically infeasible because no alternative fire retardant has been identified that would be adequate and appropriate for all flame lamination applications in which fire retardant foam is required. Discussions with industry suggest that alternative materials could present product quality issues and result in products that do not meet product specifications. We have received no further data or information which would lead to the selection of a different MACT for existing flame lamination sources. Therefore, we have not changed the emission limitation for existing flame lamination sources.

V. What Are the Environmental, Cost, and Economic Impacts of the Final Rule?

We estimate that current HAP emissions from loop slitter adhesive users are essentially zero because of changes in adhesive composition as a result of the OSHA permissible exposure limit (PEL) for methylene chloride. Therefore, we do not expect any decreases from this subcategory resulting from the NESHAP. Costs should be minimal as well, as most sources will already be maintaining the necessary records in order to comply with OSHA regulations regarding availability of MSDS.

We estimated baseline emissions for flame laminators from data obtained from individual facilities, as well as from State agencies to which facilities reported their annual emissions. Where reported emissions were not available, we calculated emission estimates using a HAP emission factor, the laminator's operating schedule, the number of flame lamination lines, and the percent of the operating time that fire retardant foam is laminated (used only when calculating HCl emissions).

Our estimates of nationwide baseline emissions from all existing facilities in the flame lamination subcategory are 58.8 tpy HCl, 10.3 tpy HCN, and 3.0 tpy TDI, for a total of 72.1 tpy HAP. We have not promulgated any emissions limitations for existing flame lamination sources; therefore, we do not expect any emissions reductions from the baseline. However, the NESHAP should result in a 90 percent reduction in HCl and HCN emissions from any new or reconstructed major sources. We calculate that a typical flame lamination operation emits 7.3 tpy of combined HCl and HCN, which would be reduced by 90 percent, for a total HAP emission reduction of 6.5 tpy from each new or reconstructed affected source. In addition, particulate matter emissions from flame lamination would also be reduced by any scrubber used to reduce the HAP emissions.

Based on our analysis, we calculate that 64,700 gallons per year of wastewater will be generated by a new or reconstructed flame lamination source. Our estimate of the annual cost to treat this wastewater is less than $250 per year. We do not expect that there will be any significant adverse non-air health, environmental, or energy impacts associated with the NESHAP for flexible polyurethane foam fabrication operations.

There will be no capital costs for loop slitter adhesive users and existing flame laminators because the final rule states that these sources are only subject to reporting and recordkeeping costs. We estimate that up to three new flame laminators may be built in the next 3 years, but only one of these would be a major source subject to the NESHAP. That source would face capital costs of approximately $65,000 associated with installation of a control device (*e.g.*, scrubber) and monitoring equipment. We estimate that the average annualized cost for that source would be approximately $63,000 per year, including annualized capital costs for a control device and monitoring equipment; labor costs associated with monitoring, reporting, and recordkeeping requirements; and the operation and maintenance of the required control equipment.

In summary, we do not expect any emissions reductions from existing foam fabrication sources, and we estimate HAP emission reductions of 6.5 tpy from the single new flame lamination source we assume will be constructed during the three years following the promulgation of this rule. The total annualized cost of the final rule has been estimated at $64,000, including $63,000 annually for the single new flame lamination facility subject to the provisions of the final rule, and additional one-time labor costs for existing facilities to read the rule. Given that only one source will need to install new controls as a result of the rule, and cost of control is a very small portion of industry revenues, we consider the economic impacts associated with the final rule to be minimal.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2027.02), and a copy may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *"auby.susan@epa.gov,"* or by calling (202) 566–1672. A copy may also be downloaded from the internet at *http://www.epa.gov/icr.* The information requirements are not effective until OMB approves them.

The information requirements are based on notifications, records, and reports required by the General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized under section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

According to the ICR, the total 3-year monitoring, reporting, and recordkeeping burden for this collection is 3,634 labor hours, and the annual average burden is 1,211 labor hours. The total annualized cost of monitoring, reporting, and recordkeeping is approximately $54,124. The labor cost over the 3-year period is $154,399 or $51,466 per year. The annualized capital cost for monitoring equipment is $997. Annual operation and maintenance costs are $4,982 over 3 years, averaging $1,661 per year. This estimate includes a one-time plan for demonstrating compliance, annual compliance certificate reports, notifications, and recordkeeping.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB control number(s) for the information collection requirements in the final rule will be listed in an amendment to 40 CFR part 9 or 48 CFR chapter 15 in a subsequent **Federal Register** document after OMB approves the ICR.

C. Regulatory Flexibility Analysis

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) a small business according to the Small Business Administration (SBA) size standards by NAICS code (a maximum of 500 employees for the polyurethane foam fabrication industry); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that one of approximately 48 affected sources is a small entity, and that the impact will consist primarily of recordkeeping and reporting requirements.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative with other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The total annualized cost of the final rule has been estimated at $64,000. This figure includes the $63,000 annually for the single new flame lamination facility subject to the provisions of the final rule, and additional labor costs for existing facilities. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132. The standards apply only to flexible polyurethane foam fabricators and do not pre-exempt States from adopting more stringent standards or otherwise regulate State or local governments. Thus, Executive Order 13132 does not apply to the final rule.

Although section 6 of Executive Order 13132 does not apply to the final rule, EPA did consult with State and local officials in developing the final rule. No concerns were raised by these officials during this consultation.

F. Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This is because no tribal governments own or operate a flexible polyurethane foam fabrication facility. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that we considered.

The final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211—Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the Office of Management and Budget (OMB), with explanations when an agency does not use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. The EPA cites in the final rule the EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 4, 26A, 311, and any method to measure hydrogen cyanide from flame lamination sources (validated with EPA Method 301). Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 311, and a method to measure hydrogen cyanide. The search and review results have been documented and are placed in the docket (OAR–2002–0080 or A–2000–43) for the final rule.

Five voluntary consensus standards: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are incorporated by reference in EPA Method 311.

The search for emission measurement procedures identified seven voluntary consensus standards potentially applicable to the final rule. The EPA determined that five of these seven standards were impractical alternatives to EPA test methods for the purposes of this rulemaking. Therefore, EPA will not adopt these standards today. The reasons for this determination for the five methods are in the docket.

The following two voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this rulemaking because they are under development by a voluntary consensus body: ASME/BSR MFC 13M; "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2.

Sections 63.8800 and 63.8802 and Table 3 to subpart MMMMM list the EPA testing methods included in the final rule. Under 40 CFR 63.7(f) and 63.8(f), a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on April 14, 2003.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure,

Air pollution control, Hazardous substances, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: February 28, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Part 63 is amended by adding subpart MMMMM to read as follows:

Sec.

Subpart MMMMM—National Emission Standards for Hazardous Air Pollutants: Flexible Polyurethane Foam Fabrication Operations

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Table 2 to Subpart MMMMM of Part 63—Operating Limits for New or Reconstructed Flame Lamination Affected Sources
Table 3 to Subpart MMMMM of Part 63—Performance Test Requirements for New or Reconstructed Flame Lamination Affected Sources
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Table 6 to Subpart MMMMM of Part 63—Requirements for Reports
Table 7 to Subpart MMMMM of Part 63—Applicability of General Provisions to Subpart MMMMM

What This Subpart Covers

§ 63.8780 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) emitted from flexible polyurethane foam fabrication operations. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards.

§ 63.8782 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a flexible polyurethane foam fabrication plant site that operates a flame lamination affected source, as defined at § 63.8784(b)(2), and that is located at, or is part of a major emission source of hazardous air pollutants (HAP) or that operates a loop slitter affected source, as defined at § 63.8784(b)(1), that meets the criteria in paragraphs (a)(1) and (2) of this section.

(1) The loop slitter affected source uses one or more HAP-based adhesives at any time on or after April 14, 2003.

(2) The loop slitter affected source is located at or is part of a major source of HAP.

(b) A flexible polyurethane foam fabrication plant site is a plant site where pieces of flexible polyurethane foam are bonded together or to other substrates using HAP-based adhesives or flame lamination.

(c) A major source of HAP is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year.

(d) This subpart does not apply to the following processes in paragraphs (d)(1) and (2) of this section:

(1) Processes that produce flexible polyurethane or rebond foam as defined in subpart III of this part.

(2) A research and development facility, as defined in section 112(c)(7) of the Clean Air Act (CAA).

§ 63.8784 What parts of my plant does this subpart cover?

(a) This subpart applies to each existing, new, or reconstructed affected source at facilities engaged in flexible polyurethane foam fabrication.

(b) The affected sources are defined in this section in paragraphs (b)(1) and (2) of this section.

(1) The loop slitter adhesive use affected source is the collection of all loop slitters and associated adhesive application equipment used to apply HAP-based adhesives to bond foam to foam at a flexible polyurethane foam fabrication plant site.

(2) The flame lamination affected source is the collection of all flame lamination lines associated with the flame lamination of foam to any substrate at a flexible polyurethane foam fabrication plant site.

(c)(1) A new affected source is one that commences construction after August 8, 2001 and meets the applicability criteria of § 63.8782 at the time construction commences.

(2) If you add one or more flame lamination lines at a plant site where flame lamination lines already exist, the added line(s) shall be a new affected source and meet new source requirements if the added line(s) has the potential to emit 10 tons per year or more of any HAP or 25 tons or more per year of any combination of HAP.

(d) A reconstructed affected source is one that commences reconstruction after August 8, 2001 and meets the criteria for reconstruction as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.8786 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If you start up your new or reconstructed affected source before April 14, 2003, then you must comply with the emission standards for new or reconstructed sources in this subpart no later than April 14, 2003.

(2) If you start up your new or reconstructed affected source on or after April 14, 2003, then you must comply with the emission standards for new or reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing loop slitter affected source, you must comply with the emission standards for existing sources no later than 1 year after April 14, 2003.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP and an affected source subject to this subpart, the provisions in paragraphs (c)(1) and (2) of this section apply.

(1) A new affected source as specified at § 63.8784(c) or a reconstructed affected source as specified at § 63.8784(d) must be in compliance with this subpart upon startup.

(2) An existing affected source as specified at § 63.8784(e) must be in compliance with this subpart no later than 1 year after the date on which the area source became a major source.

(d) You must meet the notification requirements in § 63.8816 according to the schedule in § 63.8816 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission standards in this subpart.

(e) If you have a loop slitter affected source, you must have data on hand beginning on the compliance date specified in paragraph (b) of this section as necessary to demonstrate that your adhesives are not HAP-based. The types of data necessary are described in §§ 63.8802 and 63.8810.

Emission Limitations

§ 63.8790 What emission limitations must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

General Compliance Requirements

§ 63.8794 What are my general requirements for complying with this subpart?

(a) For each loop slitter adhesive use affected source, you must be in compliance with the requirements in this subpart at all times.

(b) For each new or reconstructed flame lamination affected source, you must be in compliance with the requirements in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(c) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(d) During the period between the compliance date specified for your new or reconstructed flame lamination affected source in § 63.8786, and the date upon which continuous compliance monitoring systems have been installed and verified and any applicable operating limits have been set, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(e) For each new or reconstructed flame lamination affected source, you must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

(f) For each monitoring system required in this section for new or reconstructed flame lamination sources, you must develop and submit for approval a site-specific monitoring plan that addresses the requirements in paragraphs (f)(1) through (3) of this section.

(1) Installation of the continuous monitoring system (CMS) sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device);

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(3) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(g) In your site-specific monitoring plan, you must also address the ongoing procedures specified in paragraphs (g)(1) through (3) of this section.

(1) Ongoing operation and maintenance procedures in accordance with the general requirements of §§ 63.8(c)(1), (3), (4)(ii), (7), and (8), and 63.8804;

(2) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(3) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

Testing and Initial Compliance Requirements

§ 63.8798 By what date must I conduct performance tests or other initial compliance demonstrations?

(a) For each loop slitter affected source, you must conduct the initial compliance demonstration by the compliance date that is specified for your source in § 63.8786.

(b) For each new or reconstructed flame lamination affected source, you must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.8786 and according to the provisions in § 63.7(a)(2).

§ 63.8800 What performance tests and other procedures must I use to demonstrate compliance with the emission limit for flame lamination?

(a) You must conduct each performance test in Table 3 to this subpart that applies to you.

(b) Each performance test must be conducted according to the requirements in § 63.7(e)(1) and under the specific conditions in Table 3 to this subpart.

(c) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(d) You must conduct at least three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(e) You must determine the percent reduction of HAP emissions during the performance test according to paragraphs (e)(1) through (3) of this section.

(1) If you use chlorinated fire retardant foams, determine the percent reduction of HCl to represent HAP emissions from the source. If you do not use chlorinated fire retardant foams, determine the percent reduction of HCN to represent HAP emissions from the source.

(2) Calculate the concentration of HAP at the control device inlet and at the control device outlet using the procedures in the specified test method.

(3) Compare the calculated HAP concentration at the control device inlet to the calculated HAP concentration at the control device outlet to determine the percent reduction over the period of the performance test, using Equation 1 of this section:

$$R = \frac{\sum_{i=1}^{n} E_{inlet,\,i} - \sum_{i=1}^{n} E_{outlet,\,i}}{\sum_{i=1}^{n} E_{inlet,\,i}} (100) \quad \text{[Eq. 1]}$$

Where:

R=Efficiency of control device, percent.

$E_{inlet,i}$=HAP concentration of control device inlet stream for test run i, mg/dscm.

$E_{outlet,i}$=HAP concentration of control device outlet stream for test run i, mg/dscm.

n=Number of runs conducted for the performance test.

(f) You must also meet the requirements in paragraphs (f)(1) and (2) of this section.

(1) Conduct the performance tests using foams that are representative of foams typically used at your flame lamination affected source. If you use foams containing chlorinated fire retardants, you must conduct the performance tests using these foams.

(2) Establish all applicable operating limits that correspond to the control system efficiency as described in Table 3 to this subpart.

§ 63.8802 What methods must I use to demonstrate compliance with the emission limitation for loop slitter adhesive use?

(a) *Determine the HAP content for each material used.* To determine the HAP content for each material used in your foam fabrication operations, you must use one of the options in paragraphs (a)(1) through (3) of this section. If you use the option in paragraph (a)(3) of this section, you are subject to the provisions of paragraph (a)(4) of this section.

(1) *Method 311 (appendix A to 40 CFR part 63).* You may use Method 311 for determining the mass fraction of HAP. Use the procedures specified in paragraphs (a)(1)(i) and (ii) of this section when determining HAP content by Method 311.

(i) Include in the HAP total each HAP that is measured to be present at 0.1 percent by mass or more for Occupational Safety and Health Administration (OSHA)-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is measured to be 0.5 percent of the material by mass, you do not need to include it in the HAP total. Express the mass fraction of each HAP you measure as a value truncated to four places after the decimal point (for example, 0.1234).

(ii) Calculate the total HAP content in the test material by adding up the individual HAP contents and truncating the result to three places after the decimal point (for example, 0.123).

(2) *Alternative method.* You may use an alternative test method for determining mass fraction of HAP if you obtain prior approval by the Administrator. You must follow the procedure in § 63.7(f) to submit an alternative test method for approval.

(3) *Information from the supplier or manufacturer of the material.* You may rely on information other than that generated by the test methods specified in paragraphs (a)(1) and (2) of this section to determine the mass fraction of HAP according to paragraphs (a)(3)(i) and (ii) of this section. This information may include, but is not limited to, a material safety data sheet (MSDS), a certified product data sheet (CPDS), or a manufacturer's hazardous air pollutant data sheet.

(i) Include in the HAP total each HAP that is present at 0.1 percent by mass or more for OSHA-defined carcinogens as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other compounds. For example, if toluene (not an OSHA carcinogen) is 0.5 percent of the material by mass, you do not have to include it in the HAP total.

(ii) If the HAP content is provided by the material supplier or manufacturer as a range, then you must use the upper limit of the range for determining compliance.

(4) *Verification of supplier or manufacturer information.* Although you are not required to perform testing to verify the information obtained according to paragraph (a)(3) of this section, the Administrator may require a separate measurement of the total HAP content using the methods specified in paragraph (a)(1) or (2) of this section. If this measurement exceeds the total HAP content provided by the material supplier or manufacturer, then you must use the measured HAP content to determine compliance.

(b) [Reserved]

§ 63.8806 How do I demonstrate initial compliance with the emission limitations?

(a) You must demonstrate initial compliance with each emission limit that applies to you according to Table 4 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.8800 and Table 3 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.8816(e) through (h).

Continuous Compliance Requirements

§ 63.8810 How do I monitor and collect data to demonstrate continuous compliance?

(a) If you own or operate a loop slitter adhesive use affected source, you must meet the requirements in paragraphs (a)(1) and (2) of this section.

(1) Maintain a list of each adhesive and the manufacturer or supplier of each.

(2) Maintain a record of EPA Method 311 (appendix A to 40 CFR part 63), approved alternative method, or other reasonable means of HAP content determinations indicating the mass percent of each HAP for each adhesive.

(b) If you own or operate a new or reconstructed flame lamination affected source, you must meet the requirements in paragraphs (b)(1) through (3) of this section if you use a scrubber, or paragraph (b)(4) of this section if you use any other control device.

(1) Keep records of the daily average scrubber inlet liquid flow rate.

(2) Keep records of the daily average scrubber effluent pH.

(3) If you use a venturi scrubber, keep records of daily average pressure drop across the venturi.

(4) Keep records of operating parameter values for each operating parameter that applies to you.

(c) If you own or operate a new or reconstructed flame lamination affected source, you must meet the requirements in paragraphs (c)(1) through (4) of this section.

(1) Except for periods of monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating. This includes periods of startup, shutdown, and malfunction when the affected source is operating. A monitoring malfunction includes, but is not limited to, any sudden, infrequent, not reasonably preventable failure of the monitoring device to provide valid data. Monitoring failures that are caused by poor maintenance or careless operation are not malfunctions.

(2) In data average calculations and calculations used to report emission or operating levels, you may not use data recorded during monitoring malfunctions, associated repairs, or recorded during required quality assurance or control activities. Nor may such data be used in fulfilling any applicable minimum data availability requirement. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

(3) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

(4) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

§ 63.8812 How do I demonstrate continuous compliance with the emission limitations?

(a) You must demonstrate continuous compliance with each emission limit and operating limit in Tables 1 and 2 to this subpart that applies to you according to the methods specified in Table 5 to this subpart.

(b) You must report each instance in which you did not meet each emission limit and each operating limit in Tables 1 and 2 to this subpart that apply to you. For new or reconstructed flame lamination affected sources, this includes periods of startup, shutdown, and malfunction. These instances are deviations from the operating limits in this subpart. These deviations must be reported according to the requirements in § 63.8818.

(c) For each new or reconstructed flame lamination affected source, you must operate in accordance with the startup, shutdown, and malfunction plan during periods of startup, shutdown, and malfunction.

(d) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur at a new or reconstructed flame lamination affected source during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur at a new or reconstructed flame lamination affected source during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

(e) You also must meet the following requirements if you are complying with the adhesive use ban for loop slitter adhesive use described in § 63.8790(a).

(1) If, after you submit the Notification of Compliance Status, you use an adhesive for which you have not previously verified percent HAP mass using the methods in § 63.8802, you must verify that each adhesive used in the affected source meets the emission limit using any of the methods in § 63.8802.

(2) You must update the list of all the adhesives used at the affected source.

(3) With the compliance report for the reporting period during which you used the new adhesive, you must submit the updated list of all adhesives and a statement certifying that, as purchased, each adhesive used at the affected source during the reporting period met the emission limit in Table 1 to this subpart.

Notification, Reports, and Records

§ 63.8816 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f), and 63.9(b) through (h) that apply to you.

(b) If you own or operate an existing loop slitter or flame lamination affected source, submit an initial notification no later than 120 days after April 14, 2003.

(c) If you own or operate a new or reconstructed loop slitter or flame lamination affected source, submit the application for construction or reconstruction required by § 63.9(b)(1)(iii) in lieu of the initial notification.

(d) If you own or operate a new or reconstructed flame lamination affected source, submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you own or operate a loop slitter affected source, submit a Notification of Compliance Status according to § 63.9(h)(2)(ii) within 60 days of the compliance date specified in § 63.8786.

(f) If you own or operate a new or reconstructed flame lamination affected source, submit a Notification of Compliance Status according to § 63.9(h)(2)(ii) that includes the results of the performance test conducted according to the requirements in Table 3 to this subpart. You must submit the notification before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(g) For each new or reconstructed flame lamination affected source, the Notification of Compliance Status must also include the information in paragraphs (g)(1) and (2) that applies to you.

(1) The operating parameter value averaged over the full period of the performance test (for example, average pH).

(2) The operating parameter range within which HAP emissions are reduced to the level corresponding to meeting the applicable emission limits in Table 1 to this subpart.

(h) For each loop slitter adhesive use affected source, the Notification of Compliance Status must also include the information listed in paragraphs (h)(1) and (2) of this section.

(1) A list of each adhesive used at the affected source, its HAP content (percent by mass), and the manufacturer or supplier of each.

(2) A statement certifying that each adhesive that was used at the affected source during the reporting period met the emission limit in Table 1 to this subpart.

§ 63.8818 What reports must I submit and when?

(a) You must submit each report in Table 6 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each compliance report for new or reconstructed flame lamination affected sources semiannually according to paragraphs (b)(1) through (4) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8786 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.8786.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.8786.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(c) For each loop slitter adhesive use affected source, you may submit annual compliance reports in place of semiannual reports.

(d) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(e) The compliance report must contain the information in paragraphs (e)(1) through (5) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy

and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If there are no deviations from any emission limitations (emission limit or operating limit) that applies to you, a statement that there were no deviations from the emission limitations during the reporting period.

(5) For each deviation from an emission limitation that occurs, the compliance report must contain the information specified in paragraphs (e)(5)(i) through (iii) of this section.

(i) The total operating time of each affected source during the reporting period.

(ii) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(iii) Information on the number, duration, and cause for continuous parameter monitoring system (CPMS) downtime incidents, if applicable, other than downtime associated with zero and span and other daily calibration checks.

(f) The compliance report for a new or reconstructed flame lamination affected source must also contain the following information in paragraphs (f)(1) through (3) of this section.

(1) If you had a startup, shutdown or malfunction at your new or reconstructed flame lamination affected source during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(2) If there were no periods during which the CPMS was out-of-control in accordance with the monitoring plan, a statement that there were no periods during which the CPMS was out-of-control during the reporting period.

(3) If there were periods during which the CPMS was out-of-control in accordance with the monitoring plan, the date, time, and duration of each out-of-control period.

(g) The compliance report for a loop slitter adhesive use affected source must also contain the following information in paragraphs (g)(1) and (2) of this section.

(1) For each annual reporting period during which you use an adhesive that was not included in the list submitted with the Notification of Compliance Status in § 63.8816(h) (1), an updated list of all adhesives used at the affected source.

(2) A statement certifying that each adhesive that was used at the affected source during the reporting period met the emission limit in Table 1 to this subpart.

(h) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 6 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit) in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

(i) For each startup, shutdown, or malfunction during the reporting period where the source does not meet the emission limitations set out in § 63.8790 that occurs at a new or reconstructed flame lamination affected source and that is not consistent with your startup, shutdown, and malfunction plan, you must submit an immediate startup, shutdown and malfunction report.

(1) An initial report containing a description of the actions taken for the event must be submitted by fax or telephone within 2 working days after starting actions inconsistent with the plan.

(2) A followup report containing the information listed in § 63.10(d)(5)(ii) must be submitted within 7 working days after the end of the event unless you have made alternative reporting arrangements with the permitting authority.

§ 63.8820 What records must I keep?

(a) You must keep a copy of each notification and report that you submit to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(b) For each new or reconstructed flame lamination affected source, you must also keep the following records specified in paragraphs (b)(1) through (4) of this section.

(1) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(2) Records of performance tests, as required in § 63.10(b)(2)(viii).

(3) Records of operating parameter values.

(4) Records of the date and time that each deviation started and stopped and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(c) For each loop slitter adhesive use affected source, you must keep the following records specified in paragraphs (c)(1) and (2) of this section.

(1) A list of each adhesive and the manufacturer or supplier of each.

(2) A record of EPA Method 311 (appendix A to 40 CFR part 63), approved alternative method, or other reasonable means of determining the mass percent of total HAP for each adhesive used at the affected source.

§ 63.8822 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.8826 What parts of the General Provisions apply to me?

Table 7 to this subpart shows which sections of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.8828 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities in paragraphs (c)(1) through (4) that cannot be delegated to State, local, or tribal agencies are as follows:

(1) Approval of alternatives to requirements in §§ 63.8780, 63.8782, 63.8784, 63.8786, and 63.8790.

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.8830 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, and in this section as follows:

Adhesive means any chemical substance that is applied for the purpose of bonding foam to foam, foam to fabric, or foam to any other substrate, other than by mechanical means. Products used on humans and animals, adhesive tape, contact paper, or any other product with an adhesive incorporated onto it in an inert substrate shall not be considered adhesives under this subpart.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation (including any operating limit); or

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (including any operating limit) in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit or operating limit.

Flame lamination means the process of bonding flexible foam to one or more layers of material by heating the foam surface with an open flame.

Flame lamination line means the flame laminator and associated rollers.

HAP-based adhesive means an adhesive containing 5 percent (by weight) or more of HAP, according to EPA Method 311 (appendix A to 40 CFR part 63) or another approved alternative.

Loop slitter means a machine used to create thin sheets of foam from the large blocks of foam or "buns" created at a slabstock flexible polyurethane foam production plant.

Research and development process means a laboratory or pilot plant operation whose primary purpose is to conduct research and development into new processes and products where the operations are under the close supervision of technically trained personnel, and which is not engaged in the manufacture of products for commercial sale, except in a *de minimis* manner.

Responsible official means responsible official as defined in 40 CFR 70.2.

Tables to Subpart MMMMM of Part 63

TABLE 1 TO SUBPART MMMMM OF PART 63.—EMISSION LIMITS

[As stated in § 63.8790(a), you must comply with the emission limits in the following table:]

For . . .	You must . . .
1. Each existing, new, or reconstructed loop slitter adhesive use affected source.	Not use any HAP-based adhesives.
2. Each new or reconstructed flame lamination affected source	Reduce HAP emissions by 90 percent.
3. Each existing flame lamination affected sources	There are no emission limits for existing flame lamination sources. However, you must submit an initial notification per § 63.8816(b).

TABLE 2 TO SUBPART MMMMM OF PART 63.—OPERATING LIMITS FOR NEW OR RECONSTRUCTED FLAME LAMINATION AFFECTED SOURCES

[As stated in § 63.8790(b), you must comply with the operating limits in the following table:]

For each . . .	You must . . .
1. Scrubber	a. Maintain the daily average scrubber inlet liquid flow rate above the minimum value established during the performance test. b. Maintain the daily average scrubber effluent pH within the operating range value established during the performance test. c. If you use a venturi scrubber, maintain the daily average pressure drop across the venturi within the operating range value established during the performance test.
2. Other type of control device to which flame lamination emissions are ducted	Maintain your operating parameter(s) within the ranges established during the performance test and according to your monitoring plan.

TABLE 3 TO SUBPART MMMMM OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR NEW OR RECONSTRUCTED FLAME LAMINATION AFFECTED SOURCES

[As stated in § 63.8800, you must comply with the requirements for performance tests for new or reconstructed flame lamination affected sources in the following table using the requirements in rows 1 through 5 of the table if you are measuring HCl and using a scrubber, row 6 if you are measuring HCN and using a scrubber, and row 7 if you are using any other control device:]

For each new or reconstructed flame lamination affected source, you must . . .	Using . . .	According to the following requirements . . .
1. Select sampling port's location and the number of traverse ports.	Method 1 or 1A in appendix A to part 60 of this chapter.	Sampling sites must be located at the inlet and outlet of the scrubber and prior to any releases to the atmosphere.
2. Determine velocity	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to part 60 of this chapter.	
3. Determine gas molecular weight	Not applicable	Assume a molecular weight of 29 (after moisture correction) for calculation purposes.
4. Measure moisture content of the stack gas.	Method 4 in appendix A to part 60 of this chapter.	
5. Measure HCl concentration if you use chlorinated fire retardants in the laminated foam.	a. Method 26A in appendix A to part 60 of this chapter.	i. Measure total HCl emissions and determine the reduction efficiency of the control device using Method 26A. ii. Collect scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for venturi scrubbers) every 15 minutes during the entire duration of each 1-hour test run, and determine the average scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for Venturi scrubbers) over the period of the performance test by computing the average of all of the 15-minute readings.
6. Measure HCN concentration if you do not use chlorinated fire retardants in the laminated foam.	a. A method approved by the Administrator.	i. Conduct the performance test according to the site-specific test plan submitted according to § 63.7(c)(2)(i). Measure total HCN emissions and determine the reduction efficiency of the control device. Any performance test which measures HCN concentrations must be submitted for the administrator's approval prior to testing. You must use EPA Method 301 (40 CFR part 63, Appendix A) to validate your method. ii. Collect scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for venturi scrubbers) every 15 minutes during the entire duration of each 1-hour test run, and determine the average scrubber liquid flow rate, scrubber effluent pH, and pressure drop (pressure drop data only required for venturi scrubbers) over the period of the performance test by computing the average of all of the 15-minute readings.
7. Determine control device efficiency and establish operating parameter limits with which you will demonstrate continuous compliance with the emission limit that applies to the source if you use any control device other than a scrubber.	a. EPA-approved methods and data from the continuous parameter monitoring system.	i. Conduct the performance test according to the site-specific test plan submitted according to § 63.7(c)(2)(i). ii. Collect operating parameter data as specified in the site-specific test plan.

TABLE 4 TO SUBPART MMMMM OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

[As stated in § 63.8806, you must comply with the requirements to demonstrate initial compliance with the applicable emission limits in the following table:]

For . . .	For the following emission limit . . .	You have demonstrated initial compliance if . . .
1. Each new, reconstructed, or existing loop slitter adhesive use affected source.	Eliminate use of HAP-based adhesives	You do not use HAP-based adhesives.
2. Each new or reconstructed flame lamination affected source using a scrubber.	Reduce HAP emissions by 90 percent	The average HAP emissions, measured over the period of the performance test(s), are reduced by 90 percent.
3, Each new or reconstructed flame lamination affected source using any other control device emissions by.	Reduce HAP emissions by 90 percent	The average HAP emissions, measured over the period of the performance test(s), are reduced by 90 percent.

TABLE 5 TO SUBPART MMMMM OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS AND OPERATING LIMITS

[As stated in § 63.8812(a), you must comply with the requirements to demonstrate continuous compliance with the applicable emission limits or operating limits in the following table:]

For . . .	For the following emission limits or operating limits . . .	You must demonstrate continuous compliance by . . .
1. Each new, reconstructed, or existing loop slitter affected source.	Eliminate use of HAP-based adhesives	Not using HAP-based adhesives.
2. Each new or reconstructed flame lamination affected source using a scrubber.	a. Maintain the daily average scrubber inlet liquid flow rate above the minimum value established during the performance. b. Maintain the daily average scrubber effluent pH within the operating range established during the performance test. c. Maintain the daily average pressure drop across the venturi within the operating range established during the performance test. If you use another type of scrubber (*e.g.*, packed bed or spray tower scrubber), monitoring pressure drop is not required.	i. Collecting the scrubber inlet liquid flow rate and effluent pH monitoring data according to § 63.8804(a) through (c). ii. Reducing the data to 1-hour and daily block averages according to the requirements in § 63.8804(a). iii. Maintaining each daily average scrubber inlet liquid flow rate above the minimum value established during the performance test. iv. Maintaining the daily average scrubber effluent pH within the operating range established during the performance test. v. If you use a venturi scrubber, maintaining the daily average pressure drop across the venturi within the operating range established during the performance test.
3. Each new or reconstructed flame lamination affected source using any other control device.	a. Maintain the daily average operating parameters above the minimum value established during the performance test, or within the range established during the performance test, as applicable.	i. Collected the operating parameter data according to the site-specific test plan. ii. Reducing the data to one-hour averages according to the requirements in § 63.8804(a). iii. Maintaining the daily average during the rate above the minimum value established during the performance test, or within the range established during the performance test, as applicable.

TABLE 6 TO SUBPART MMMMM OF PART 63.—REQUIREMENTS FOR REPORTS

[As stated in § 63.8818(a), you must submit a compliance report that includes the information in § 63.8818(e) through (g) as well as the information in the following table. Rows 1 and 3 of the following table apply to loop slitter affected sources. Rows 1 through 5 apply to flame lamination affected sources. You must also submit startup, shutdown, and malfunction reports according to the requirements in the following table if you own or operate a new or reconstructed flame lamination affected source:]

If . . .	Then you must submit a report or statement that . . .
1. There are no deviations from any emission limitations that apply to you.	There were no deviations from the emission limitations during the reporting period.
2. There were no periods during which the operating parameter monitoring systems were out-of-control in accordance with the monitoring plan.	There were no periods during which the CPMS were out-of-control during the reporting period.
3. There was a deviation from any emission limitation during the reporting period.	Contains the information in § 63.8818(e)(5).
4. There were periods during which the operating parameter monitoring systems were out-of-control in information in accordance with the monitoring plan.	Contains the information in § 63.8818(f)(3).
5. There was a startup, shutdown, or malfunction where the source did not meet the emission limitations set out in § 63.8790 at a new or reconstructed flame lamination affected source during the reporting period that is not consistent with your startup, shutdown, and malfunction plan..	Contains the information in § 63.8818(i).

TABLE 7 TO SUBPART MMMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM

[As stated in § 63.8826, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Requirement	Applies to subpart MMMMM	Explanation
§ 63.1	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are found in § 63.8830.

TABLE 7 TO SUBPART MMMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM—Continued

[As stated in § 63.8826, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Requirement	Applies to subpart MMMMM	Explanation
§ 63.3	Units and abbreviations	Yes.	
§ 63.4	Prohibited activities; compliance date; circumvention, severability.	Yes.	
§ 63.5	Construction/reconstruction applicability; applications; approvals.	Yes.	
§ 63.6(a)	Compliance with standards and maintenance requirements-applicability.	Yes.	
§ 63.6(b)(1)–(4)	Compliance dates for new or reconstructed sources.	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(b)(5)	Notification if commenced construction or reconstruction after proposal.	Yes.	
§ 63.6(b)(6)	[Reserved]	Yes.	
§ 63.6(b)(7)	Compliance dates for new or reconstructed area sources that become major.	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(c)(1)–(2)	Compliance dates for existing sources	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(c)(3)–(4)	[Reserved]	Yes.	
§ 63.6(c)(5)	Compliance dates for existing area sources that become major.	Yes	§ 63.8786 specifies compliance dates.
§ 63.6(d)	[Reserved]	Yes.	
§ 63.6(e)(1)	Operation and maintenance requirements.	Yes.	
§ 63.6(e)(2)	[Reserved]	Yes.	
§ 63.6(e)(3)	Startup, shutdown, and malfunction plans.	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.6(f)(1)	Compliance except during SSM	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.6(f)(2)–(3)	Methods for determining compliance	Yes.	
§ 63.6(g)	Use of an alternative nonopacity emission standard.	Yes.	
§ 63.6(h)	Compliance with opacity/visible emission standards.	No	Subpart MMMMM does not specify opacity or visible emission standards.
§ 63.6(i)	Extension of compliance with emission standards.	Yes.	
§ 63.6(j)	Presidential compliance exemption	Yes.	
§ 63.7(a)(1)–(2)	Performance test dates	Yes	Except for loop slitter affected sources as specified in in § 63.8798(a).
§ 63.7(a)(3)	Administrator's section 114 authority to require a performance test.	Yes.	
§ 63.7(b)	Notification of performance test and rescheduling.	Yes.	
§ 63.7(c)	Quality assurance program and site-specific test plans.	Yes.	
§ 63.7(d)	Performance testing facilities	Yes.	
§ 63.7(e)(1)	Conditions for conducting performance tests.	Yes.	
§ 63.7(f)	Use of an alternative test method	Yes.	
§ 63.7(g)	Performance test data analysis, recordkeeping, and reporting.	Yes.	
§ 63.7(h)	Waiver of performance tests	Yes.	
§ 63.8(a)(1)–(2)	Applicability of monitoring requirements	Yes	Unless otherwise specified, all of § 63.8 applies only to new or reconstructed flame lamination sources. Additional monitoring requirements for these sources are found in §§ 63.8794(f) and (g) and 63.8804.
§ 63.8(a)(3)	[Reserved]	Yes.	
§ 63.8(a)(4)	Monitoring with flares	No	Subpart MMMMM does not refer directly or indirectly to § 63.11.
§ 63.8(b)	Conduct of monitoring and procedures when there are multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1)–(3)	Continuous monitoring system (CMS) operation and maintenance.	Yes	Applies as modified by § 63.8794(f) and (g).
§ 63.8(c)(4)	Continuous monitoring system requirements during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	Yes	Applies as modified by § 63.8794(g).

TABLE 7 TO SUBPART MMMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM—Continued

[As stated in § 63.8826, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Requirement	Applies to subpart MMMMM	Explanation
§ 63.8(c)(5)	Continuous opacity monitoring system (COMS) minimum procedures.	No	Subpart MMMMM does not have opacity or visible emission standards.
§ 63.8(c)(6)	Zero and high level calibration checks	Yes	Applies as modified by § 63.8794(f).
§ 63.8(c)(7)–(8)	Out-of-control periods, including reporting.	Yes.	
§ 63.8(d)–(e)	Quality control program and CMS performance evaluation.	No	Applies as modified by § 63.8794(f) and (g).
§ 63.8(f)(1)–(5)	Use of an alternative monitoring method	Yes.	
§ 63.8(f)(6)	Alternative to relative accuracy test	No	Only applies to sources that use continuous emissions monitoring systems (CEMS).
§ 63.8(g)	Data reduction	Yes	Applies as modified by § 63.8794(g).
§ 63.9(a)	Notification requirements—applicability	Yes.	
§ 63.9(b)	Initial notifications	Yes	Except § 63.8816(c) requires new or reconstructed affected sources to submit the application for construction or reconstruction required by § 63.9(b)(1)(iii) in lieu of the initial notification.
§ 63.9(c)	Request for compliance extension	Yes.	
§ 63.9(d)	Notification that a new source is subject to special compliance requirements.	Yes.	
§ 63.9(e)	Notification of performance test	Yes.	
§ 63.9(f)	Notification of visible emissions/opacity test.	No	Subpart MMMMM does not have opacity or visible emission standards.
§ 63.9(g)(1)	Additional CMS notifications—date of CMS performance evaluation.	Yes.	
§ 63.9(g)(2)	Use of COMS data	No	Subpart MMMMM does not require the use of COMS.
§ 63.9(g)(3)	Alternative to relative accuracy testing	No	Applies only to sources with CEMS.
§ 63.9(h)	Notification of compliance status	Yes.	
§ 63.9(i)	Adjustment of submittal deadlines	Yes.	
§ 63.9(j)	Change in previous information	Yes.	
§ 63.10(a)	Recordkeeping/reporting applicability	Yes.	
§ 63.10(b)(1)	General recordkeeping requirements	Yes	§§ 63.8820 and 63.8822 specify additional recordkeeping requirements.
§ 63.10(b)(2)(i)–(xi)	Records related to startup, shutdown, and malfunction periods and CMS.	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.10(b)(2)(xii)	Records when under waiver	Yes.	
§ 63.10(b)(2)(xiii)	Records when using alternative to relative accuracy test.	No	Applies only to sources with CEMS.
§ 63.10(b)(2)(xiv)	All documentation supporting initial notification and notification of compliance status.	Yes	
§ 63.10(b)(3)	Recordkeeping requirements for applicability determinations.	Yes.	
§ 63.10(c)	Additional recordkeeping requirements for sources with CMS.	Yes	Applies as modified by § 63.8794(g).
§ 63.10(d)(1)	General reporting requirements	Yes	§ 63.8818 specifies additional reporting requirements.
§ 63.10(d)(2)	Performance test results	Yes	
§ 63.10(d)(3)	Opacity or visible emissions observations.	No	Subpart MMMMM does not specify opacity or visible emission standards.
§ 63.10(d)(4)	Progress reports for sources with compliance extensions.	Yes.	
§ 63.10(d)(5)	Startup, shutdown, and malfunction reports.	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.10(e)(1)	Additional CMS reports—general	Yes	Applies as modified by § 63.8794(g).
§ 63.10(e)(2)(i)	Results of CMS performance evaluations.	Yes	Applies as modified by § 63.8794(g).
§ 63.10(e)(2)	Results of continuous opacity monitoring systems performance evaluations.	No	Subpart MMMMM does require the use of COMS.
§ 63.10(e)(3)	Excess emissions/CMS performance reports.	Yes	Only applies to new or reconstructed flame lamination affected sources.
§ 63.10(e)(4)	Continuous opacity monitoring system data reports.	No	Subpart MMMMM does not require the use of COMS.
§ 63.10(f)	Recordkeeping/reporting waiver	Yes	

TABLE 7 TO SUBPART MMMMM OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART MMMMM—Continued

[As stated in §63.8826, you must comply with the applicable General Provisions requirements according to the following table:]

Citation	Requirement	Applies to subpart MMMMM	Explanation
§63.11	Control device requirements—applicability.	No	Facilities subject to subpart MMMMM do not use flares as control devices.
§63.12	State authority and delegations	Yes	§63.8828 lists those sections of subparts MMMMM and A that are not delegated.
§63.13	Addresses	Yes.	
§63.14	Incorporation by reference	Yes	Subpart MMMMM does not incorporate any material by reference.
§63.15	Availability of information/confidentiality.	Yes.	

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 395/P.L. 108–10
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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is how available for sale at the Government Printing Office.

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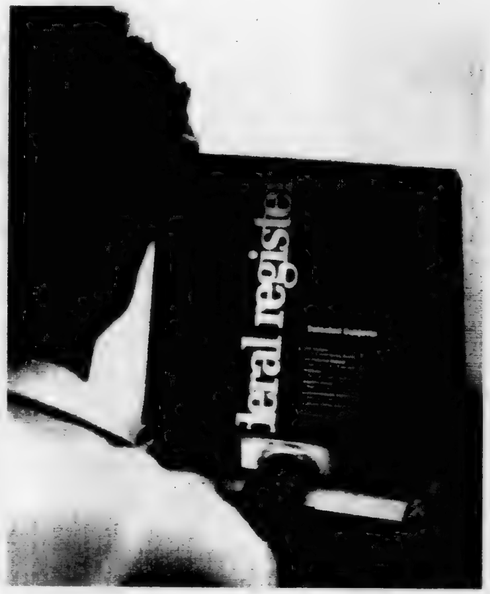
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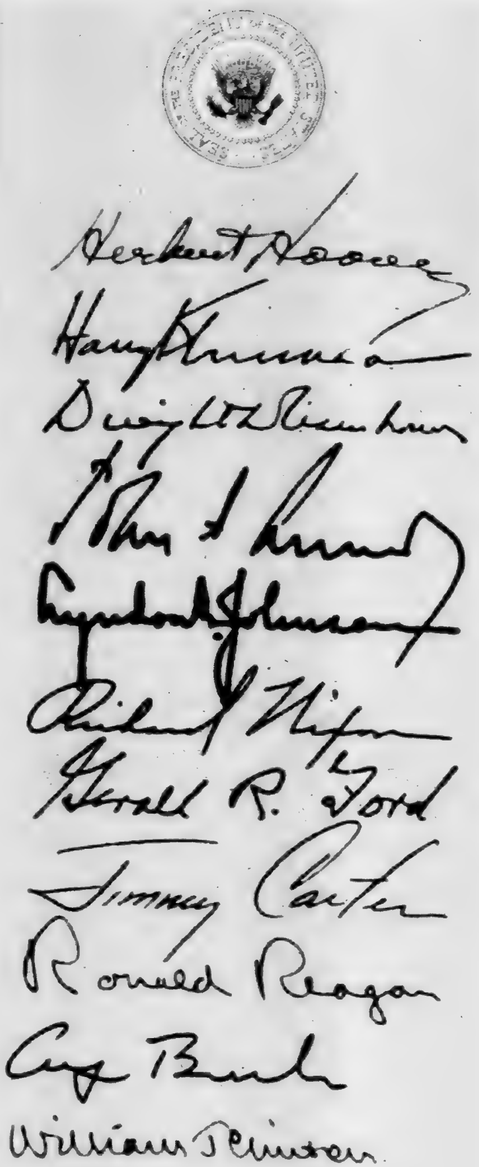
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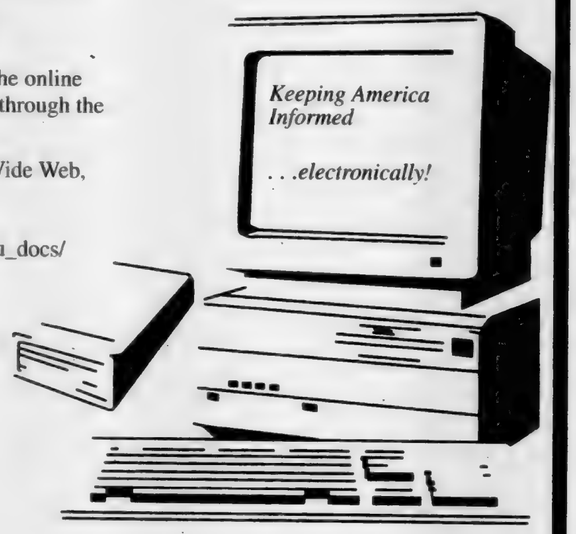
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Presidential Documents

Title 3—

The President

Proclamation 7662 of April 10, 2003

Education and Sharing Day, U.S.A., 2003

By the President of the United States of America

A Proclamation

As a Nation, we must work to ensure that all our children have the opportunity to reach their full potential and achieve their dreams. On Education and Sharing Day, U.S.A., 2003, we renew our commitment to providing quality education and to teaching our children the values that prepare them for lives as good neighbors and citizens.

Education has always been one of our Nation's top priorities. We place great reliance and confidence in our public education system, recognizing that it is one of the most important institutions of our free society. By helping our young citizens learn and develop skills, education has spurred our progress and prosperity, driven our Nation's economy, and enriched our culture.

Over the last 2 years, my Administration has taken significant action to transform public education in America. In one of the most comprehensive reforms ever passed, the No Child Left Behind Act of 2001 strengthened our school systems and affirmed our fundamental belief in the promise of every child. By raising expectations and insisting on results, we can make a difference in the lives of all our children.

As part of our commitment to our children's future, we must also teach young Americans to live lives of integrity and purpose, and to realize the importance of loving others and contributing to their communities. These values are first learned within the family, but all of our citizens, and especially our teachers, can support parents in the character education of our children. By guiding young people to understand universal values such as tolerance, honesty, commitment to family, service to others, and respect for the dignity of every life, our schools and communities can help our Nation fulfill its great potential.

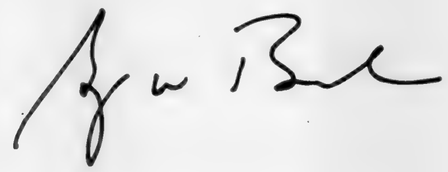
For the past 19 years, on the anniversary of his birth, we have recognized the contributions of the Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe who was instrumental in establishing numerous educational, social, and rehabilitative institutions. The Rebbe believed that education is critical in cultivating the moral character of students. He lived what he said: "A single good deed on your part could transform the world."

Today in the United States, there is a growing momentum of acts of kindness. Across our country, millions of Americans are helping to reinforce a culture of service, citizenship, and responsibility, and are applying the compassion of America to our biggest problems and deepest wounds. To build on these successes, we must instill these values in our next generation of leaders. Amidst a world of challenges, we can equip our children to carry our Nation into a future of promise and possibility for all.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 13, 2003, as Education and Sharing Day, U.S.A. I call upon all Americans to invest in our Nation's future by helping our children understand the importance

of character and provide them the knowledge and values necessary to succeed.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 268

[Docket No. R–1096]

Rules Regarding Equal Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) has adopted a final rule that amends its "Rules Regarding Equal Opportunity," which establishes programs and procedures to promote equal opportunity for Board employees. This rule was published on January 25, 2001, in the **Federal Register** as an immediately effective interim rule with opportunity for public comment. The Board received one public comment on this rule. The Board is now adopting the interim rule as a final rule with substantive changes to sections in the rule that address the Rehabilitation Act. These substantive changes are being made because after the Board adopted its interim rule, the Equal Employment Opportunity Commission (Commission), after public comment, adopted changes to the provisions in its parallel regulation entitled "Federal Sector Equal Employment Opportunity," 29 CFR part 1614, that address the Rehabilitation Act. The substantive changes to the Board's final rule, which incorporates changes to the Commission's regulation on the Rehabilitation Act, also respond to the comment that the Board received on its rule.

DATES: This final rule is effective immediately and applies to all Board equal employment opportunity (EEO) complaints pending at any stage of the administrative process as of April 15, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Assistant General Counsel (202–452–3920), or Alicia S. Foster, Counsel (202–452–5289), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf ("TDD") only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: On January 2, 2001, the Board approved the revision of the Board's "Rules Regarding Equal Opportunity" as an immediately effective interim rule with opportunity for comment. The rule was published in the **Federal Register** on January 25, 2001 (66 FR 7703). The interim rule revised the Board's existing regulation entitled "Rules on Equal Opportunity," 12 CFR part 268, to incorporate the November 1999 changes made by the Equal Employment Opportunity Commission (Commission) to its parallel regulation entitled "Federal Sector Equal Employment Opportunity," 29 CFR part 1614, governing equal employment opportunity in the federal government generally. As explained in the preamble to the interim rule, this amendment is consistent with the Board's past practice as the Board's rule is modeled after and, in most respects, is identical to the Commission's regulation. The interim rule also made additional changes to the Board's regulation to bring it into closer conformance with the Commission's regulation. In a few instances, the interim rule continued distinctions between the Board's rule and the Commission's rule that reflect the Board's statutorily mandated independence.

One comment was received. The commentator, the Commission, suggested that rather than adopt a separate regulation governing the processing of complaints of discrimination, the Board should adopt the Commission's Government-wide complaint processing procedures. As the Board has pointed out in prior amendments to part 268, however, the Board believes that based on the specific provisions of the Federal Reserve Act and established precedent, the adoption of part 268 is necessary to authorize and ensure the Board's compliance with important national laws and policies prohibiting discrimination in employment on the basis of race, color, religion, sex, national origin, age, disability, or retaliation.

The Commission also questioned five provisions in the Board's rule that differ from the corresponding provisions in the Commission's rule on employee EEO complaints. Three of the provisions retain authority for the Board as to a decision issued by the Commission on employee complaints of discrimination. The Commission expressed concerns that it is not clear how these provisions relate to the Commission's rule or to the sections in the interim rule that set forth the time periods for a complainant to file a civil action. The other two provisions regard the overall relationship between the Commission and the Board and address how the Board will provide EEO program information to the Commission. Except as discussed below, the Board adopts the interim rule as a final rule.

As an initial matter, it should be noted that all of the provisions that the Commission points to as differing from its regulation are updated provisions rather than new provisions. Similar provisions were contained in the Board's rule on equal opportunity prior to the adoption of the interim rule on January 25, 2001. While the Board recognizes that the provisions in question retain authority that is not found in the Commission's regulation, the Board believes the retention of authority is necessary to comply with its statutorily mandated independence while also complying with the laws prohibiting discrimination in employment. The provisions at issue are based on the Board's traditional view of its authority under the Federal Reserve Act, which provides that the "employment, compensation, leave, and expenses" of Board employees is governed solely by that Act. Section 10(4).[1] The provisions address areas that the Board believes affect its independence and thus the distinctions are appropriate. As explained in the preamble to the interim rule, however, the Board has minimized, to the greatest extent possible, distinctions between its rule and the Commission's rule. Accordingly, with the few exceptions noted by the Commission, the Board's interim rule closely conforms to the Commission's rule. The Board will continue to work with the Commission

[1] 12 U.S.C. 244.

to ensure that the Board's rule is effectively implemented consistent with the laws and policies enforced by the Commission. Accordingly, the Board believes that no changes to these provisions in the interim rule are appropriate.

The Commission also commented on a provision in the Board's interim regulation implementing the Rehabilitation Act (29 U.S.C. 791), which prohibits discrimination against individuals with disabilities by the federal government. The particular provision at issue addresses alcoholism, 12 CFR 268.203(h)(3). The Commission questioned whether section 268.203(h)(3) was consistent with current law. Before the Board could address the Commission's concerns, however, the Commission adopted changes to the parallel provision in the Commission's rule. On May 21, 2002, the Commission published a final rule revising the sections in its rule regarding the Rehabilitation Act. (67 FR 35732). The Commission's rule provides that the federal government shall be a model employer of individuals with disabilities. The rule also provides that in determining whether the Rehabilitation Act, as amended, has been violated in a complaint alleging nonaffirmative action employment discrimination, the standards under Titles I and V of the Americans with Disabilities Act of 1990, insofar as they cover employment in the private sector, shall be applied. The rules also provide that these standards are set forth in the Commission's ADA regulation at 29 CFR part 1630. The Board has determined that it would be appropriate to revise its Rehabilitation Act rules consistent with the Commission's May 21, 2002, final rule. By making these changes, the Board is addressing the Commission's concern with the provision on alcoholism in the interim rule as that provision will be deleted.

In order to incorporate the Commission's May 21, 2002, final rule, section 268.102, paragraph (9) of the interim rule, which relates to the obligations of the Board's EEO program with respect to employees with physical or mental limitations, has also been deleted in the final rule. This provision corresponds to a provision in the Commission's prior regulation, which the Commission deleted.[2] In addition, the present language in section 268.203 has been replaced with the corresponding language from the Commission's final rule, which provides that the government shall be a model employer of individuals with disabilities and applies the ADA standards (Title I and V) to determine whether a violation of section 501 of the Rehabilitation Act has occurred. The Board's final rule also incorporates the reference to the Commission's ADA regulation. Thus, as these changes to the Board's rules are made in response to the comment received on the interim rule and are consistent with those made by the Commission in its May 21, 2002, final rule, additional comment would not serve the public interest as the Commission's rule was adopted only after public comment. As described above, the changes to the Rehabilitation Act provisions in the Board's corresponding rule incorporate existing Commission procedures which were adopted after public notice and comment. Further, as the Commission's changes to the Rehabilitation Act provisions are effective as of June 20, 2002, to ensure that EEO complaints by Board employees are handled consistently with the procedures of the Commission, it is important that the Board adopt corresponding changes without additional delay.

Finally, the Commission suggested that the Board apply the interim rule retroactively to cover employee complaints of discrimination pending on November 9, 1999, the effective date of the Commission's revised rule, which prompted the Board's revision of its corresponding rule. The Board does not believe that any further action in this regard is necessary, however, because the interim rule was effective immediately upon publication of the interim rule and applied to all pending cases as of January 25, 2001. Thus, to the extent an EEO complaint was in the administrative process on that date, it was processed under procedures similar to those adopted by the Commission. It appears that, for the most part, the administrative processing at the Board of complaints pending as of January 2001 has been completed, so that retroactive application at this time would have little effect.

Accordingly, with the exception of the substantive changes discussed above, the Board is now adopting the interim rule on equal employment opportunity as a final rule. No other substantive changes have been made to the interim rule. The final rule makes editorial changes to certain other parts of the Board's interim regulation, namely, the provision on employment of noncitizens and the subpart prohibiting discrimination in Board programs and activities on the basis of disability, which are not administered by the Commission.

Pursuant to the Administrative Procedures Act (APA), 5 U.S.C. 553(d)(3), the Board has determined that it is unnecessary and would be impracticable to defer the effective date of this final rule for 30 days. The final rule, like the interim rule, which was effective immediately on publication, in substance is applying the Commission's existing regulation, which was revised twice and in both instances adopted only after notice and public comment. Thus, the Board's rule will not cause unfait prejudice as the standards that are being applied in the final rule in virtually all respects are not new and are already in effect under the interim rule. The one major substantive change to the interim rule by the final rule conforms the Rehabilitation Act provisions covering Board employee to those governing Federal employers generally.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601, *et seq.*), the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule governs the Board's dealings with its employees, applicants for employment, and others affected in a like manner.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires each federal banking agency to use plain language in all proposed and final rules published after January 1, 2000. Because the Board has determined that this final rule, similar to the interim rule, should conform to the greatest possible with the parallel regulation of the Equal Employment Opportunity Commission, the Board's ability to specifically address the plain language requirement was limited.

[2] The Board's final rule, similar to the Commission's changes to its regulation, renumbers the remaining paragraphs. Further, the citation to section 268.203(a)(6) in section 268.702(e)(3) of Subpart H, which prohibits discrimination in Board programs and activities on the basis of disability and which is a matter not administered by the Commission, has been changed to section 268.203 as the prior citation is no longer valid.

List of Subjects in 12 CFR part 268

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Federal buildings and facilities, Federal Reserve System, Government employees, Individuals with disabilities, Religious discrimination, Sex discrimination, Wages.

■ For the reasons set out in the preamble, the Board revises 12 CFR part 268 to read:

PART 268—RULES REGARDING EQUAL OPPORTUNITY

Subpart A—General Provisions and Administration

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268.710 Compliance procedures.

Authority: 12 U.S.C. 244 and 248(i), (k) and (1).

Subpart A—General Provisions and Administration

§ 268.1 Authority, purpose and scope.

(a) *Authority.* The regulations in this part (12 CFR part 268) are issued by the Board of Governors of the Federal Reserve System (Board) under the authority of sections 10(4) and 11(i), (k), and (l) of the Federal Reserve Act (partially codified in 12 U.S.C. 244 and 248(i), (k) and (1)).

(b) *Purpose and scope.* This part sets forth the Board's policy, program and procedures for providing equal opportunity to Board employees and applicants for employment without regard to race, color, religion, sex, national origin, age, or physical or mental disability. It also sets forth the Board's policy, program and procedures for prohibiting discrimination on the basis of physical or mental disability in programs and activities conducted by the Board. It also specifies the circumstances under which the Board will hire or decline to hire persons who are not citizens of the United States, consistent with the Board's operational needs and applicable law.

§ 268.2 Definitions.

The definitions contained in this section shall have the following meanings throughout this part unless otherwise stated.

(a) *Commission or EEOC* means the Equal Employment Opportunity Commission.

(b) *Title VII* means Title VII of the Civil Rights Act (42 U.S.C. 2000e *et seq.*).

Subpart B—Board Program To Promote Equal Opportunity

§ 268.101 General policy for equal opportunity.

(a) It is the policy of the Board to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, age or disability, and to promote the full realization of equal opportunity in employment through a continuing affirmative program.

(b) No person shall be subject to retaliation for opposing any practice made unlawful by Title VII of the Civil Rights Act (title VII) (42 U.S.C. 2000e *et seq.*), the Age Discrimination in Employment Act (ADEA) (29 U.S.C. 621 *et seq.*), the Equal Pay Act (29 U.S.C. 206(d)), or the Rehabilitation Act (29 U.S.C. 791 *et seq.*) or for participating in any stage of administrative or judicial proceedings under those statutes.

§ 268.102 Board program for equal employment opportunity.

(a) The Board shall maintain a continuing affirmative program to promote equal opportunity and to identify and eliminate discriminatory practices and policies. In support of this program, the Board shall:

(1) Provide sufficient resources to its equal opportunity program to ensure efficient and successful operation;

(2) Provide for the prompt, fair and impartial processing of complaints in accordance with this part and the instructions contained in the Commission's Management Directives;

(3) Conduct a continuing campaign to eradicate every form of prejudice or discrimination from the Board's personnel policies, practices and working conditions;

(4) Communicate the Board's equal employment opportunity policy and program and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, age or disability, and solicit their recruitment assistance on a continuing basis;

(5) Review, evaluate and control managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal opportunity, and provide orientation, training and advice to managers and supervisors to assure their understanding and implementation of the equal

employment opportunity policy and program;

(6) Take appropriate disciplinary action against employees who engage in discriminatory practices;

(7) Make reasonable accommodation to the religious needs of employees and applicants for employment when those accommodations can be made without undue hardship on the business of the Board;

(8) Make reasonable accommodation to the known physical or mental limitations of qualified applicants and employees with a disability unless the accommodation would impose an undue hardship on the operations of the Board's program;

(9) Provide recognition to employees, supervisors, managers and units demonstrating superior accomplishment in equal employment opportunity;

(10) Establish a system for periodically evaluating the effectiveness of the Board's overall equal employment opportunity effort;

(11) Provide the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs and other training measures so that they may perform at their highest potential and advance in accordance with their abilities;

(12) Inform its employees and recognized labor organizations of the Board's affirmative equal opportunity policy and program and enlist their cooperation; and

(13) Participate at the community level with other employers, with schools and universities and with other public and private groups in cooperative action to improve employment opportunities and community conditions that affect employability.

(b) In order to implement its program, the Board shall:

(1) Develop the plans, procedures and regulations necessary to carry out its program;

(2) Establish or make available an alternative dispute resolution program. Such program must be available for both the precomplaint process and the formal complaint process.

(3) Appraise its personnel operations at regular intervals to assure their conformity with the Board's program, this part 268 and the instructions contained in the Commission's management directives;

(4) Designate a Director for Equal Employment Opportunity (EEO Programs Director), EEO Officer(s), and such Special Emphasis Program Managers/Coordinators (*e.g.*, People with Disabilities Program, Federal Women's Program and Hispanic Employment Program), clerical and administrative support as may be necessary to carry out the functions described in this part in all organizational units of the Board and at all Board installations. The EEO Programs Director shall be under the immediate supervision of the Chairman.

(5) Make written materials available to all employees and applicants informing them of the variety of equal employment opportunity programs and administrative and judicial remedial procedures available to them and prominently post such written materials in all personnel and EEO offices and throughout the workplace;

(6) Ensure that full cooperation is provided by all Board employees to EEO Counselors and Board EEO personnel in the processing and resolution of pre-complaint matters and complaints within the Board and that full cooperation is provided to the Commission in the course of appeals, including, granting the Commission routine access to personnel records of the Board when required in connection with an investigation;

(7) Publicize to all employees and post at all times the names, business telephone numbers and business addresses of the EEO Counselors (unless the counseling function is centralized, in which case only the telephone number and address need be publicized and posted), a notice of the time limits and necessity of contacting a Counselor before filing a complaint and the telephone numbers and addresses of the EEO Programs Director, EEO Officer(s) and the Special Emphasis Program Managers/Coordinators.

(c) The EEO Programs Director shall be responsible for:

(1) Advising the Board of Governors with respect to the preparation of national and regional equal employment opportunity plans, procedures, regulations, reports and other matters pertaining to the policy in § 268.101 and the Board's program;

(2) Evaluating from time to time the sufficiency of the total Board program for equal employment opportunity and reporting to the Board of Governors with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial, supervisory or other employees who have failed in their responsibilities;

(3) When authorized by the Board of Governors, making changes in programs and procedures designed to eliminate discriminatory practices and to improve the Board's program for equal employment opportunity;

(4) Providing for counseling of aggrieved individuals and for the receipt and processing of individual and class complaints of discrimination; and

(5) Assuring that individual complaints are fairly and thoroughly investigated and that final action is taken in a timely manner in accordance with this part.

(d) Directives, instructions, forms and other Commission materials referenced in this part may be obtained in accordance with the provisions of 29 CFR 1610.7.

§ 268.103 Complaints of discrimination covered by this part.

(a) Individual and class complaints of employment discrimination and retaliation prohibited by title VII (discrimination on the basis of race, color, religion, sex and national origin), the ADEA (discrimination on the basis of age when the aggrieved person is at least 40 years of age), the Rehabilitation Act (discrimination on the basis of disability), or the Equal Pay Act (sex-based wage discrimination) shall be processed in accordance with this part. Complaints alleging retaliation prohibited by these statutes are considered to be complaints of discrimination for purposes of this part.

(b) This part applies to all Board employees and applicants for employment at the Board, and to all employment policies or practices affecting Board employees or applicants for employment.

(c) This part does not apply to Equal Pay Act complaints of employees whose services are performed within a foreign country or certain United States territories as provided in 29 U.S.C. 213(f).

§ 268.104 Pre-complaint processing.

(a) Aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age or disability must consult a Counselor prior to filing a complaint in order to try to informally resolve the matter.

(1) An aggrieved person must initiate contact with a Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the effective date of the action.

(2) The Board or the Commission shall extend the 45-day time limit in paragraph (a)(1) of this section when the individual shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting the counselor within the time limits, or for other reasons considered sufficient by the Board or the Commission.

(b)(1) At the initial counseling session, Counselors must advise individuals in writing of their rights and responsibilities, including the right to request a hearing or an immediate final decision after an investigation by the Board in accordance with § 268.107(f), election rights pursuant to § 268.302, the right to file a notice of intent to sue pursuant to § 268.201(a) and a lawsuit under the ADEA instead of an administrative complaint of age discrimination under this part, the duty to mitigate damages, administrative and court time frames, and that only the claims raised in precomplaint counseling (or issues or claims like or related to issues or claims raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with the Board. Counselors must advise individuals of their duty to keep the Board and the Commission informed of their current address and to serve copies of appeal papers on the Board. The notice required by paragraphs (d) or (e) of this section shall include a notice of the right to file a class complaint. If the aggrieved person informs the Counselor that he or she wishes to file a class complaint, the Counselor shall explain the class complaint procedures and the responsibilities of a class agent.

(2) Counselors shall advise aggrieved persons that, where the Board agrees to offer ADR in the particular case, they may choose between participation in the alternative dispute resolution program and the counseling activities provided for in paragraph (c) of this section.

(c) Counselors shall conduct counseling activities in accordance with instructions contained in Commission Management Directives. When advised that a complaint has been filed by an aggrieved person, the Counselor shall submit a written report within 15 days to the EEO Programs Director and the aggrieved person concerning the issues discussed and actions taken during counseling.

(d) Unless the aggrieved person agrees to a longer counseling period under paragraph (e) of this section, or the aggrieved person chooses an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the Counselor shall conduct the final interview with the aggrieved person within 30 days of the date the aggrieved person contacted the Board's EEO Programs Office to request counseling. If the matter has not been resolved, the aggrieved person shall be informed in writing by the Counselor, not later than the thirtieth day after contacting the Counselor, of the right to file a discrimination complaint with the Board. This notice shall inform the complainant of the right to file a discrimination complaint within 15 days of receipt of the notice, of the appropriate official with whom to file a complaint and of the complainant's duty to assure that the EEO Programs Director is informed immediately if the complainant retains counsel or a representative.

(e) Prior to the end of the 30-day period, the aggrieved person may agree in writing with the Board to postpone the final interview and extend the counseling period for an additional period of no more than 60 days. If the matter has not been resolved before the conclusion of the agreed extension, the notice described in paragraph (d) of this section shall be issued.

(f) Where the aggrieved person chooses to participate in an alternative dispute resolution procedure in accordance with paragraph (b)(2) of this section, the pre-complaint processing period shall be 90 days. If the claim has not been resolved before the 90th day, the notice described in paragraph (d) of this section shall be issued.

(g) The Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint. The Counselor shall not reveal the identity of an aggrieved person who consulted the Counselor, except when authorized to do so by the aggrieved person, or until the Board has received a discrimination complaint under this part from that person involving the same matter.

§ 268.105 Individual complaints.

(a) A complaint must be filed with the agency that allegedly discriminated against the complainant.

(b) A complaint must be filed within 15 days of receipt of the notice required by § 268.104 (d), (e) or (f).

(c) A complaint must contain a signed statement from the person claiming to be aggrieved or that person's attorney. This statement must be sufficiently precise to identify the aggrieved individual and the Board and to describe generally the action(s) or practice(s) that form the basis of the complaint. The complaint must also contain a telephone number and address where the complainant or the representative can be contacted.

(d) A complainant may amend a complaint at any time prior to the conclusion of the investigation to include issues or claims like or related to those raised in the complaint. After requesting a hearing, a complainant may file a motion with the administrative judge to amend a complaint to include issues or claims like or related to those raised in the complaint.

(e) The Board shall acknowledge receipt of a complaint or an amendment to a complaint in writing and inform the complainant of the date on which the complaint or amendment was filed. The Board shall advise the complainant in the acknowledgment of the EEOC office and its address where a request for a hearing shall be sent. Such acknowledgment shall also advise the complainant that:

(1) The complainant has the right to appeal the final action on or dismissal of a complaint; and

(2) The Board is required to conduct an impartial and appropriate investigation of the complaint within 180 days of the filing of the complaint unless the parties agree in writing to extend the time period. When a complaint has been amended, the Board shall complete its investigation within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint.

§ 268.106 Dismissals of complaints.

(a) Prior to a request for a hearing in a case, the Board shall dismiss an entire complaint:

(1) That fails to state a claim under § 268.103 or § 268.105(a), or states the same claim that is pending before or has been decided by the Board or the Commission;

(2) That fails to comply with the applicable time limits contained in §§ 268.104, 268.105 and 268.204(c), unless the Board extends the time limits in accordance with § 268.604(c), or that raises a matter that has not been brought to the attention of a Counselor and is not like or related to a matter that has been brought to the attention of a Counselor;

(3) That is the basis of a pending civil action in a United States District Court in which the complainant is a party provided that at least 180 days have passed since the filing of the administrative complaint, or that was the basis of a civil action decided by a United States District Court in which the complainant was a party;

(4) Where a complainant has raised the matter in an appeal to the Merit Systems Protection Board and § 268.302 indicates that the complainant has elected to pursue the non-EEO process;

(5) That is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory;

(6) Where the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 15 days to a notice of proposed dismissal sent to his or her last known address;

(7) Where the Board has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 days of its receipt or the complainant's response does not address the Board's request, provided that the request included a notice of the proposed dismissal. Instead of dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available;

(8) That alleges dissatisfaction with the processing of a previously filed complaint; or

(9) Where the Board, strictly applying the criteria set forth in Commission decisions, finds that the complaint is part of a clear pattern of misuse of the EEO process for a purpose other than the prevention and elimination of employment discrimination. A clear pattern of misuse of the EEO process requires:

(i) Evidence of multiple complaint filings; and

(ii) Allegations that are similar or identical, lack specificity or involve matters previously resolved; or

(iii) Evidence of circumventing other administrative processes, retaliating against the Board's in-house administrative processes or overburdening the EEO complaint system.

(b) Where the Board believes that some but not all of the claims in a complaint should be dismissed for the reasons contained in paragraphs (a)(1) through (9) of this section, the Board shall notify the complainant in writing of its determination, the rationale for that determination and that those claims will not be investigated, and shall place a copy of the notice in the investigative file. A determination under this paragraph is reviewable by an administrative judge if a hearing is requested on the remainder of the complaint, but is not appealable until final action is taken on the remainder of the complaint.

§ 268.107 Investigation of complaints.

(a) The investigation of complaints filed against the Board shall be conducted by the Board.

(b) In accordance with instructions contained in Commission Management Directives, the Board shall develop an impartial and appropriate factual record upon which to make findings on the claims raised by the written complaint. An appropriate factual record is one that allows a reasonable fact finder to draw conclusions as to whether discrimination occurred. The Board may use an exchange of letters or memoranda, interrogatories, investigations, fact-finding conferences or any other fact-finding methods that efficiently and thoroughly address the matters at issue. The Board may incorporate alternative dispute resolution techniques into its investigative efforts in order to promote early resolution of complaints.

(c) The procedures in paragraphs (c)(1) through (3) of this section apply to the investigation of complaints:

(1) The complainant, the Board, and any employee of the Board shall produce such documentary and testimonial evidence as the investigator deems necessary.

(2) Investigators are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When the complainant, or the Board or its employees fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits or the attendance of witness(es), the investigator may note in the investigative record that the decisionmaker should, or the Commission on appeal may, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as it deems appropriate.

(d) Any investigation will be conducted by investigators with appropriate security clearances.

(e)(1) The Board shall complete its investigation within 180 days of the date of filing of an individual complaint or within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal pursuant to § 268.106. By written agreement within those time periods, the complainant and the Board may voluntarily extend the time period for not more than an additional 90 days. The Board may unilaterally extend the time period or any period of extension for not more than 30 days where it must sanitize a complaint file that may contain information classified pursuant to Executive Order No. 12356, or successor orders, as secret in the interest of national defense or foreign policy, provided the Board notifies the complainant of the extension.

(2) Confidential supervisory information, as defined in 12 CFR 261.2(c), and other confidential information of the Board may be included in the investigative file by the investigator, the EEO Programs Director, or another appropriate officer of the Board, where such information is relevant to the complaint. Neither the complainant nor the complainant's personal representative may make further disclosure of such information, however, except in compliance with the Board's Rules Regarding Availability of Information, 12 CFR part 261, and where applicable, the Board's Rules Regarding Access to Personal Information under the Privacy Act of 1974, 12 CFR part 261a.

(f) Within 180 days from the filing of the complaint, or where a complaint was amended, within the earlier of 180 days after the last amendment to the complaint or 360 days after the filing of the original complaint, within the time period contained in an order from the Office of Federal Operations on an appeal from a dismissal, or within any period of extension provided for in paragraph (e) of this section, the Board shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days of receipt of the investigative file, the complainant has the right to request a hearing and decision from an administrative judge or may request an immediate final decision pursuant to § 268.109(b) from the Board.

(g) Where the complainant has received the notice required in paragraph (f) of this section or at any time after 180 days have elapsed from the filing of the complaint, the complainant may request a hearing by submitting a written request for a hearing directly to the EEOC office indicated in the Board's

acknowledgment letter. The complainant shall send a copy of the request for a hearing to the Board's EEO Programs Office. Within 15 days of receipt of the request for a hearing, the Board's EEO Programs Office shall provide a copy of the complaint file to EEOC and, if not previously provided, to the complainant.

§ 268.108 Hearings.

(a) When a complainant requests a hearing, the Commission shall appoint an administrative judge to conduct a hearing in accordance with this section. Upon appointment, the administrative judge shall assume full responsibility for the adjudication of the complaint, including overseeing the development of the record. Any hearing will be conducted by an administrative judge or hearing examiner with appropriate security clearances.

(b) *Dismissals.* Administrative judges may dismiss complaints pursuant to § 268.106, on their own initiative, after notice to the parties, or upon the Board's motion to dismiss a complaint.

(c) *Offer of resolution.* (1) Any time after the filing of the written complaint but not later than the date an administrative judge is appointed to conduct a hearing, the Board may make an offer of resolution to a complainant who is represented by an attorney.

(2) Any time after the parties have received notice that an administrative judge has been appointed to conduct a hearing, but not later than 30 days prior to the hearing, the Board may make an offer of resolution to the complainant, whether represented by an attorney or not.

(3) The offer of resolution shall be in writing and shall include a notice explaining the possible consequences of failing to accept the offer. The Board's offer, to be effective, must include attorney's fees and costs and must specify any non-monetary relief. With regard to monetary relief, the Board may make a lump sum offer covering all forms of monetary liability, or it may itemize the amounts and types of monetary relief being offered. The complainant shall have 30 days from receipt of the offer of resolution to accept it. If the complainant fails to accept an offer of resolution and the relief awarded in the administrative judge's decision, the Board's final decision, or the Commission's decision on appeal is not more favorable than the offer, then, except where the interest of justice would not be served, the complainant shall not receive payment from the Board of attorney's fees or costs incurred after the expiration of the 30-day acceptance period. An acceptance of an offer must be in writing and will be timely if postmarked or received within the 30-day period. Where a complainant fails to accept an offer of resolution, the Board may make other offers of resolution and either party may seek to negotiate a settlement of the complaint at any time.

(d) *Discovery.* The administrative judge shall notify the parties of the right to seek discovery prior to the hearing and may issue such discovery orders as are appropriate. Unless the parties agree in writing concerning the methods and scope of discovery, the party seeking discovery shall request authorization from the administrative judge prior to commencing discovery. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint, but the administrative judge may limit the quantity and timing of discovery. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(e) *Conduct of hearing.* The Board shall provide for the attendance at a hearing of all employees approved as witnesses by an administrative judge. Attendance at hearings will be limited to persons determined by the administrative judge to have direct knowledge relating to the complaint. Hearings are part of the investigative process and are thus closed to the public. The administrative judge shall have the power to regulate the conduct of a hearing, limit the number of witnesses where testimony would be repetitious, and exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. The administrative judge shall receive into evidence information or documents relevant to the complaint. Rules of evidence shall not be applied strictly, but the administrative judge shall exclude irrelevant or repetitious evidence. The administrative judge or the Commission may refer to the Disciplinary Committee of the appropriate Bar Association any attorney or, upon reasonable notice and an opportunity to be heard, suspend or disqualify from representing complainants or agencies in EEOC hearings any representative who refuses to follow the orders of an administrative judge, or who otherwise engages in improper conduct.

(f) *Procedures.* (1) The complainant, the Board and any employee of the Board shall produce such documentary and testimonial evidence as the administrative judge deems necessary. The administrative judge shall serve all orders to produce evidence on both parties.

(2) Administrative judges are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When the complainant, or the Board, or its employees fail without good cause shown to respond fully and in timely fashion to an order of an administrative judge, or requests for the investigative file, for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the administrative judge shall, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as appropriate.

(g) *Decisions without hearing.* (1) If a party believes that some or all material facts are not in genuine dispute and there is no genuine issue as to credibility, the party may, at least 15 days prior to the date of the hearing or at such earlier time as required by the administrative judge, file a statement with the administrative judge prior to the hearing setting forth the fact or facts and referring to the parts of the record relied on to support the statement. The statement must demonstrate that there is no genuine issue as to any such material fact. The party shall serve the statement on the opposing party.

(2) The opposing party may file an opposition within 15 days of receipt of the statement in paragraph (g)(1) of this section. The opposition may refer to the record in the case to rebut the statement that a fact is not in dispute or may file an affidavit stating that the party cannot, for reasons stated, present facts to oppose the request. After considering the submissions, the administrative judge may order that discovery be permitted on the fact or facts involved, limit the hearing to the issues remaining in dispute, issue a decision without a

hearing or make such other ruling as is appropriate.

(3) If the administrative judge determines upon his or her own initiative that some or all facts are not in genuine dispute, he or she may, after giving notice to the parties and providing them an opportunity to respond in writing within 15 calendar days, issue an order limiting the scope of the hearing or issue a decision without holding a hearing.

(h) *Record of hearing.* The hearing shall be recorded and the Board shall arrange and pay for verbatim transcripts. All documents submitted to, and accepted by, the administrative judge at the hearing shall be made part of the record of the hearing. If the Board submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, the administrative judge shall make the document available to the Board's representative for reproduction.

(i) *Decisions by administrative judges.* Unless the administrative judge makes a written determination that good cause exists for extending the time for issuing a decision, an administrative judge shall issue a decision on the complaint, and shall order appropriate remedies and relief where discrimination is found, within 180 days of receipt by the administrative judge of the complaint file from the Board. The administrative judge shall send copies of the hearing record, including the transcript, and the decision to the parties. If the Board does not issue a final order within 40 days of receipt of the administrative judge's decision in accordance with § 268.109(a), then the decision of the administrative judge shall become the final action of the Board.

§ 268.109 Final action by the Board.

(a) *Final action by the Board following a decision by an administrative judge.* When an EEOC administrative judge has issued a decision under §§ 268.108(b), (g), or (i), the Board shall take final action on the complaint by issuing a final order within 40 days of receipt of the hearing file and the administrative judge's decision. The final order shall notify the complainant whether or not the Board will fully implement the decision of the administrative judge and shall contain notice of the complainant's right to appeal to the Equal Employment Opportunity Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. If the final order does not fully implement the decision of the administrative judge, then the Board shall simultaneously file an appeal in accordance with § 268.403 and append a copy of its appeal to the final order. A copy of EEOC Form 573 shall be attached to the final order.

(b) *Final action by the Board in all other circumstances.* When the Board dismisses an entire complaint under § 268.106, receives a request for an immediate final decision or does not receive a reply to the notice issued under § 268.107(f), the Board shall take final action by issuing a final decision. The final decision shall consist of findings by the Board on the merits of each issue in the complaint, or, as appropriate, the rationale for dismissing any claims in the complaint and, when discrimination is found, appropriate remedies and relief in accordance with subpart F of this part. The Board shall issue the final decision within 60 days of receiving notification that a complainant has requested an immediate decision from the Board, or within 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a decision. The final action shall contain notice of the right to appeal the final action to the Equal Employment Opportunity Commission, the right to file a civil action in federal district court, the name of the proper defendant in any such lawsuit and the applicable time limits for appeals and lawsuits. A copy of EEOC Form 573 shall be attached to the final action. The Board may issue a final decision within 30 days after receiving a decision of the Commission pursuant to § 268.405(c) of this part.

Subpart C—Provisions Applicable to Particular Complaints

§ 268.201 Age Discrimination in Employment Act.

(a) As an alternative to filing a complaint under this part, an aggrieved individual may file a civil action in a United States district court under the ADEA against the Chairman of the Board of Governors after giving the Commission not less than 30 days' notice of the intent to file such an action. Such notice must be filed in writing with EEOC, at PO Box 19848, Washington, DC 20036, or by personal delivery or facsimile within 180 days of the occurrence of the alleged unlawful practice.

(b) The Commission may exempt a position from the provisions of the ADEA if the Commission establishes a maximum age requirement for the position on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position.

(c) When an individual has filed an administrative complaint alleging age discrimination that is not a mixed case, administrative remedies will be considered to be exhausted for purposes of filing a civil action:

(1) 180 days after the filing of an individual complaint if the Board has not taken final action and the individual has not filed an appeal or 180 days after the filing of a class complaint if the Board has not issued a final decision;

(2) After final action on an individual or class complaint if the individual has not filed an appeal; or

(3) After the issuance of a final decision by the Commission on an appeal or 180 days after the filing of an appeal, if the Commission has not issued a final decision.

§ 268.202 Equal Pay Act.

Complaints alleging violations of the Equal Pay Act shall be processed under this part.

§ 268.203 Rehabilitation Act.

(a) *Model employer.* The Board shall be a model employer of individuals with disabilities. The Board shall give full consideration to the hiring, placement, and advancement of qualified individuals with disabilities.

(b) *ADA standards.* The standards used to determine whether section 501 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 791), has been violated in a complaint alleging nonaffirmative action employment discrimination under this part shall be the standards applied under Titles I and V (sections 501 through 504 and 510) of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101, 12111, 12201), as such sections relate to employment. These standards are set forth in the Commission's ADA regulation at 29 CFR part 1630.

§ 268.204 Class complaints.

(a) *Definitions*—(1) *Class* is a group of Board employees, former employees or applicants for employment who, it is alleged, have been or are being adversely affected by a Board personnel management policy or practice that discriminates against the group on the basis of their race, color, religion, sex, national origin, age or disability.

(2) *Class complaint* is a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

(i) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(ii) There are questions of fact common to the class;

(iii) The claims of the agent of the class are typical of the claims of the class;

(iv) The agent of the class, or, if represented, the representative, will fairly and adequately protect the interests of the class.

(3) An *agent of the class* is a class member who acts for the class during the processing of the class complaint.

(b) *Pre-complaint processing.* An employee or applicant who wishes to file a class complaint must seek counseling and be counseled in accordance with § 268.104. A complainant may move for class certification at any reasonable point in the process when it becomes apparent that there are class implications to the claim raised in an individual complaint. If a complainant moves for class certification after completing the counseling process contained in § 268.104, no additional counseling is required. The administrative judge shall deny class certification when the complainant has unduly delayed in moving for certification.

(c) *Filing and presentation of a class complaint.* (1) A class complaint must be signed by the agent or representative and must identify the policy or practice adversely affecting the class as well as the specific action or matter affecting the class agent.

(2) The complaint must be filed with the Board not later than 15 days after the agent's receipt of the notice of right to file a class complaint.

(3) The complaint shall be processed promptly; the parties shall cooperate and shall proceed at all times without undue delay.

(d) *Acceptance or dismissal.* (1) Within 30 days of the Board's receipt of a complaint, the Board shall: Designate an agency representative who shall not be one of the individuals referenced in § 268.102(b)(4), and forward the complaint, along with a copy of the Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the complaint, to the Commission. The Commission shall assign the complaint to an administrative judge or complaints examiner with a proper security clearance when necessary. The administrative judge may require the complainant or the Board to submit additional information relevant to the complaint.

(2) The administrative judge may dismiss the complaint, or any portion, for any of the reasons listed in § 268.106 or because it does not meet the prerequisites of a class complaint under § 268.204(a)(2).

(3) If an allegation is not included in the Counselor's report, the administrative judge shall afford the agent 15 days to state whether the matter was discussed with the Counselor and, if not, explain why it was not discussed. If the explanation is not satisfactory, the administrative judge shall dismiss the allegation. If the explanation is satisfactory, the administrative judge shall refer the allegation to the Board for further counseling of the agent. After counseling, the allegation shall be consolidated with the class complaint.

(4) If an allegation lacks specificity and detail, the administrative judge shall afford the agent 15 days to provide specific and detailed information. The administrative judge shall dismiss the complaint if the agent fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the administrative judge shall advise the agent how to proceed on an individual or class basis concerning these allegations.

(5) The administrative judge shall extend the time limits for filing a complaint and for consulting with a Counselor in accordance with the time limit extension provisions contained in §§ 268.104(a)(2) and 268.604.

(6) When appropriate, the administrative judge may decide that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section then shall be construed and applied accordingly.

(7) The administrative judge shall transmit his or her decision to accept or dismiss a complaint to the Board and the agent. The Board shall take final action by issuing a final order within 40 days of receipt of the hearing record and administrative judge's decision. The final order shall notify the agent whether or not the Board will implement the decision of the administrative judge. If the final order does not implement the decision of the administrative judge, the Board shall simultaneously appeal the administrative judge's decision in accordance with § 268.403 and append a copy of the appeal to the final order. A dismissal of a class complaint shall inform the agent either that the complaint is being filed on that date as an individual complaint of discrimination and will be processed under subpart B or that the complaint is also dismissed as an individual complaint in accordance with § 268.106. In addition, it shall inform the agent of the right to appeal the dismissal of the class complaint to the Equal Employment Opportunity Commission or to file a civil action and shall include EEOC Form 573, Notice of Appeal/Petition.

(e) *Notification.* (1) Within 15 days of receiving notice that the administrative judge has accepted a class complaint or a reasonable time frame specified by the administrative judge, the Board shall use reasonable means, such as delivery, mailing to last known address or distribution, to notify all class members of the acceptance of the class complaint.

(2) Such notice shall contain:

(i) An identification of the Board as the named agency, its location, and the date of acceptance of the complaint;

(ii) A description of the issues accepted as part of the class complaint;

(iii) An explanation of the binding nature of the final decision or resolution of the class complaint on class members; and

(iv) The name, address and telephone number of the class representative.

(f) Obtaining evidence concerning the complaint. (1) The administrative judge shall notify the agent and the Board's representative of the time period that will be allowed both parties to prepare their cases. This time period will include at least 60 days and may be extended by the administrative judge upon the request of either party. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, or privileged.

(2) If mutual cooperation fails, either party may request the administrative judge to rule on a request to develop evidence. If a party fails without good cause shown to respond fully and in timely fashion to a request made or approved by the administrative judge for documents, records, comparative data, statistics or affidavits, and the information is solely in the control of one party, such failure may, in appropriate circumstances, cause the administrative judge:

(i) To draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(ii) To consider the matters to which the requested information pertains to be

established in favor of the opposing party;

(iii) To exclude other evidence offered by the party failing to produce the requested information;

(iv) To recommend that a decision be entered in favor of the opposing party; or

(v) To take such other actions as the administrative judge deems appropriate.

(3) During the period for development of evidence, the administrative judge may, in his or her discretion, direct that an investigation of facts relevant to the class complaint or any portion be conducted by an agency certified by the Commission.

(4) Both parties shall furnish to the administrative judge copies of all materials that they wish to be examined and such other material as may be requested.

(g) *Opportunity for resolution of the complaint.* (1) The administrative judge shall furnish the agent and the Board's representative a copy of all materials obtained concerning the complaint and provide opportunity for the agent to discuss the materials with the Board's representative and attempt resolution of the complaint.

(2) The complaint may be resolved by agreement of the Board and the agent at any time pursuant to the notice and approval procedure contained in paragraph (g)(4) of this section.

(3) If the complaint is resolved, the terms of the resolution shall be reduced to writing and signed by the agent and the Board.

(4) Notice of the resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and to the administrative judge. It shall state the relief, if any, to be granted by the Board and the name and address of the EEOC administrative judge assigned to the case. It shall state that within 30 days of the date of the notice of resolution, any member of the class may petition the administrative judge to vacate the resolution because it benefits only the class agent, or is otherwise not fair, adequate and reasonable to the class as a whole. The administrative judge shall review the notice of resolution and consider any petitions to vacate filed. If the administrative judge finds that the proposed resolution is not fair, adequate and reasonable to the class as a whole, the administrative judge shall issue a decision vacating the agreement and may replace the original class agent with a petitioner or some other class member who is eligible to be the class agent during further processing of the class complaint. The decision shall inform the former class agent or the petitioner of the right to appeal the decision to the Equal Employment Opportunity Commission and include EEOC Form 573, Notice of Appeal/Petition. If the administrative judge finds that the resolution is fair, adequate and reasonable to the class as a whole, the resolution shall bind all members of the class.

(h) *Hearing.* On expiration of the period allowed for preparation of the case, the administrative judge shall set a date for hearing. The hearing shall be conducted in accordance with 12 CFR 268.108(a) through (f).

(i) *Report of findings and recommendations.* (1) The administrative judge shall transmit to the Board a report of findings and recommendations on the complaint, including a recommended decision, systemic relief for the class and any individual relief, where appropriate, with regard to the personnel action or matter that gave rise to the complaint.

(2) If the administrative judge finds no class relief appropriate, he or she shall determine if a finding of individual discrimination is warranted and, if so, shall recommend appropriate relief.

(3) The administrative judge shall notify the agent of the date on which the report of findings and recommendations was forwarded to the Board.

(j) *Board decision.* (1) Within 60 days of receipt of the report of findings and recommendations issued under § 268.204(i), the Board shall issue a final decision, which shall accept, reject, or modify the findings and recommendations of the administrative judge.

(2) The final decision of the Board shall be in writing and shall be transmitted to the agent by certified mail, return receipt requested, along with a copy of the report of findings and recommendations of the administrative judge.

(3) When the Board's final decision is to reject or modify the findings and recommendations of the administrative judge, the decision shall contain specific reasons for the Board's action.

(4) If the Board has not issued a final decision within 60 days of its receipt of the administrative judge's report of findings and recommendations, those findings and recommendations shall become the final decision. The Board shall transmit the final decision to the agent within five days of the expiration of the 60-day period.

(5) The final decision of the Board shall require any relief authorized by law and determined to be necessary or desirable to resolve the issue of discrimination.

(6) The final decision on a class complaint shall, subject to subpart E of this part, be binding on all members of the class and the Board.

(7) The final decision shall inform the agent of the right to appeal or to file a civil action in accordance with subpart E of this part and of the applicable time limits.

(k) *Notification of decision.* The Board shall notify class members of the final decision and relief awarded, if any, through the same media employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the Board within 10 days of the transmittal of its final decision to the agent.

(l) *Relief for individual class members.* (1) When discrimination is found, the Board must eliminate or modify the employment policy or practice out of which the complaint arose and provide individual relief, including an award of attorney's fees and costs, to the agent in accordance with § 268.501.

(2) When class-wide discrimination is not found, but it is found that the class agent is a victim of discrimination, § 268.501 shall apply. The Board shall also, within 60 days of the issuance of the final decision finding no class-wide discrimination, issue the acknowledgment of receipt of an individual complaint as required by § 268.105(d) and process in accordance with the provisions of subpart B of this part, each individual complaint that was subsumed into the class complaint.

(3) When discrimination is found in the final decision and a class member believes that he or she is entitled to individual relief, the class member may file a written claim with the Board or the Board's EEO Programs Director within 30 days of receipt of notification by the Board of its final decision. Administrative judges shall retain jurisdiction over the complaint in order to resolve any disputed claims by class members. The claim must include a specific, detailed showing that the claimant is a class member who was affected by the discriminatory policy or practice, and that this discriminatory action took place within the period of time for which the Board found class-wide discrimination in its final decision. Where a finding of discrimination against a class has been made, there shall be a presumption of discrimination as to each member of the class. The Board must show by clear and convincing evidence that any class member is not entitled to relief. The administrative judge may hold a hearing or otherwise supplement the record on a claim filed by a class member. The Board or the Commission may find class-wide discrimination and order remedial action for any policy or practice in existence within 45 days of the agent's initial contact with the Counselor. Relief otherwise consistent with this Part may be ordered for the time the policy or practice was in effect. The Board shall issue a final decision on each such claim within 90 days of filing. Such decision must include a notice of the right to file an appeal or a civil action in accordance with subpart E of this part and the applicable time limits.

§ 268.205 Employment of noncitizens.

(a) *Definitions.* The definitions contained in this paragraph (a) shall apply only to this section.

(1) *Intending citizen* means a citizen or national of the United States, or a noncitizen who:

(i) Is a protected individual as defined in 8 U.S.C. 1324b(a)(3); and

(ii) Has evidenced an intention to become a United States citizen.

(2) *Noncitizen* means any person who is not a citizen of the United States.

(3) *Sensitive information* means:

(i)(A) Information that is classified for national security purposes under Executive Order No. 12356 (3 CFR, 1982 Comp., p. 166), including any amendments or superseding orders that the President of the United States may issue from time to time;

(B) Information that consists of confidential supervisory information of the Board, as defined in 12 CFR 261.2(c); or

(C) Information the disclosure or premature disclosure of which to unauthorized persons may be reasonably likely to impair the formulation or implementation of monetary policy, or cause unnecessary or unwarranted disturbances in securities or other financial markets, such that access to such information must be limited to persons who are loyal to the United States.

(ii) For purposes of paragraph (a)(3)(i)(C) of this section, information may not be deemed sensitive information merely because it would be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) but sensitive information must be information the unauthorized disclosure or premature disclosure of which may be reasonably likely to impair important functions or operations of the Board.

(4) *Sensitive position* means any position of employment in which the employee will be required to have access to sensitive information.

(b) *Prohibitions*—(1) *Unauthorized aliens.* The Board shall not hire any person unless that person is able to satisfy the requirements of Section 101 of the Immigration Reform and Control Act of 1986.

(2) *Employment in sensitive positions.* The Board shall not hire any person to a sensitive position unless such person is a citizen of the United States or, if a noncitizen, is an intending citizen.

(3) *Preference.* Consistent with the Immigration Reform and Control Act of 1986, and other applicable law, applicants for employment at the Board who are citizens of the United States shall be preferred over equally qualified applicants who are not United States citizens.

(c) *Exception.* The prohibition of paragraph (b)(2) of this section does not apply to hiring for positions for which a security clearance is required under Executive Order No. 10450, including any subsequent amendments or superseding orders that the President of the United States may issue from time to time, where the noncitizen either has or can obtain the necessary security clearance. Any offer of employment authorized by this paragraph (c) shall be contingent upon receipt of the required security clearance in the manner prescribed by law.

(d) *Applicability.* This section applies to employment in all positions at the Board and to employment by Federal Reserve Banks of examiners who must be appointed, or selected and approved by the Board pursuant to 12 U.S.C. 325, 326, 338, or 625.

Subpart D—Related Processes

§ 268.301 Negotiated grievance procedure.

When an employee of the Board, which is not an agency subject to 5 U.S.C. 7121(d), is covered by a negotiated grievance procedure, allegations of discrimination shall be processed as complaints under this part, except that the time limits for processing the complaint contained in § 268.105 and for appeal to the Commission contained in § 268.402 may be held in abeyance during processing of a grievance covering the same matter as the complaint if the Board notifies the complainant in writing that the complaint will be held in abeyance pursuant to this section.

§ 268.302 Mixed case complaints.

A *mixed case complaint* is a complaint of employment discrimination filed with the Board based on race, color, religion, sex, national origin, age or disability related to or stemming from an action that can be appealed to the Merit System Protection Board (MSPB). The complaint may contain only an allegation of employment discrimination or it may contain additional allegations that the MSPB has jurisdiction to address. A *mixed case appeal* is an appeal filed with the MSPB that alleges that an appealable Board action was effected, in whole or in part, because of discrimination on the basis of race, color, religion, sex, national origin, disability or age. Only a Board employee who is a preference eligible employee as defined by the Veterans Preference Act can file a mixed case complaint with the Board or a mixed case appeal with the MSPB. A mixed case complaint or mixed case appeal may only be filed for action(s) over which the MSPB has jurisdiction. The Board will apply sections 1614.302 to 1614.310 of 29 CFR to the processing of a mixed case complaint or mixed case appeal.

Subpart E—Appeals to the Equal Employment Opportunity Commission

§ 268.401 Appeals to the Equal Employment Opportunity Commission.

(a) A complainant may appeal the Board's final action or dismissal of a complaint.

(b) The Board may appeal as provided in § 268.109(a).

(c) A class agent or the Board may appeal an administrative judge's decision accepting or dismissing all or part of a class complaint; a class agent may appeal a final decision on a class complaint; a class member may appeal a final decision on a claim for individual relief under a class complaint; and a class member, a class agent or the Board may appeal a final decision on a petition pursuant to § 268.204(g)(4).

(d) A complainant, agent of the class or individual class claimant may appeal to the Commission the Board's alleged noncompliance with a settlement agreement or final decision in accordance with § 268.504.

§ 268.402 Time for appeals to the Equal Employment Opportunity Commission.

(a) Appeals described in § 268.401(a) and (c) must be filed within 30 days of receipt of the dismissal, final action or decision. Appeals described in § 268.401(b) must be filed within 40 days of receipt of the hearing file and decision. Where a complainant has notified the Board's EEO Programs Director of alleged noncompliance with a settlement agreement in accordance

with § 268.504, the complainant may file an appeal 35 days after service of the allegations of noncompliance, but no later than 30 days after receipt of the Board's determination.

(b) If the complainant is represented by an attorney of record, then the 30-day time period provided in paragraph (a) of this section within which to appeal shall be calculated from the receipt of the required document by the attorney. In all other instances, the time within which to appeal shall be calculated from the receipt of the required document by the complainant.

§ 268.403 How to appeal.

(a) The complainant, the Board, agent or individual class claimant (hereinafter appellant) must file an appeal with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, at PO Box 19848, Washington, DC 20036, or by personal delivery or facsimile. The appellant should use EEOC Form 573, Notice of Appeal/Petition, and should indicate what is being appealed.

(b) The appellant shall furnish a copy of the appeal to the opposing party at the same time it is filed with the Commission. In or attached to the appeal to the Commission, the appellant must certify the date and method by which service was made on the opposing party.

(c) If an appellant does not file an appeal within the time limits of this subpart, the appeal shall be dismissed by the Commission as untimely.

(d) Any statement or brief on behalf of a complainant in support of the appeal must be submitted to the Office of Federal Operations within 30 days of filing the notice of appeal. Any statement or brief on behalf of the Board in support of its appeal must be submitted to the Office of Federal Operations within 20 days filing the notice of appeal. The Office of Federal Operations will accept statements or briefs in support of an appeal by facsimile transmittal, provided they are no more than 10 pages long.

(e) The Board must submit the complaint file to the Office of Federal Operations within 30 days of initial notification that the complainant has filed an appeal or within 30 days of submission of an appeal by the Board.

(f) Any statement or brief in opposition to an appeal must be submitted to the Commission and served on the opposing party within 30 days of receipt of the statement or brief supporting the appeal, or, if no statement or brief supporting the appeal is filed, within 60 days of receipt of the appeal. The Office of Federal Operations will accept statements or briefs in opposition to an appeal by facsimile provided they are no more than 10 pages long.

§ 268.404 Appellate Procedure.

(a) On behalf of the Commission, the Office of Federal Operations shall review the complaint file and all written statements and briefs from either party. The Commission may supplement the record by an exchange of letters or memoranda, investigation, remand to the Board or other procedures.

(b) If the Office of Federal Operations requests information from one or both of the parties to supplement the record, each party providing information shall send a copy of the information to the other party.

(c) When either party to an appeal fails without good cause shown to comply with the requirements of this section or to respond fully and in timely fashion to requests for information, the Office of Federal Operations shall, in appropriate circumstances:

(1) Draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(2) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(3) Issue a decision fully or partially in favor of the opposing party; or

(4) Take such other actions as appropriate.

§ 268.405 Decisions on appeals.

(a) The Office of Federal Operations, on behalf of the Commission, shall issue a written decision setting forth its reasons for the decision. The Commission shall dismiss appeals in accordance with §§ 268.106, 268.403(c) and 268.408. The decision on an appeal from the Board's final action shall be based on a de novo review, except that the review of the factual findings in a decision by an administrative judge issued pursuant to § 268.108(i) shall be based on a substantial evidence standard of review. If the decision contains a finding of discrimination, appropriate remedy(ies) shall be included and, where appropriate, the entitlement to interest, attorney's fees or costs shall be indicated. The decision shall reflect the date of its issuance, inform the complainant of his or her civil action rights, and be transmitted to the complainant and the Board by first class mail.

(b) A decision issued under paragraph (a) of this section is final, subject to paragraph (c) of this section, within the meaning of § 268.406 unless the Commission reconsiders the case. A party may request reconsideration within 30 days of receipt of a decision of the Commission, which the Commission in its discretion may grant, if the party demonstrates that:

(1) The appellate decision involved a clearly erroneous interpretation of material fact or law; or

(2) The decision will have a substantial impact on the policies, practices or operations of the Board.

(c) The Board, within 30 days of receiving the decision of the Commission, shall issue a final decision based upon that decision.

§ 268.406 Civil action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act.

A complainant who has filed an individual complaint, an agent who has filed a class complaint or a claimant who has filed a claim for individual relief pursuant to a class complaint is authorized under title VII, the ADEA and the Rehabilitation Act to file a civil action in an appropriate United States District Court:

(a) Within 90 days of receipt of the final action on an individual or class complaint if no appeal has been filed;

(b) After 180 days from the date of filing an individual or class complaint if an appeal has not been filed and final action has not been taken;

(c) Within 90 days of receipt of the Commission's final decision on an appeal; or

(d) After 180 days from the date of filing an appeal with the Commission if there has been no final decision by the Commission.

§ 268.407 Civil action: Equal Pay Act.

A complainant is authorized under section 16(b) of the Fair Labor Standards Act (29 U.S.C. 216(b)) to file a civil action in a court of competent jurisdiction within two years or, if the violation is willful, three years of the date of the alleged violation of the Equal Pay Act regardless of whether he or she pursued any administrative complaint processing. Recovery of back wages is limited to two years prior to the date of filing suit, or to three years if the violation is deemed willful; liquidated damages in an equal amount may also be awarded. The filing of a complaint or appeal under this part shall not toll the time for filing a civil action.

§ 268.408 Effect of filing a civil action.

Filing a civil action under §§ 268.406 or 268.407 shall terminate Commission processing of the appeal. If private suit is filed subsequent to the filing of an

appeal, the parties are requested to notify the Commission in writing.

Subpart F—Remedies and Enforcement

§ 268.501 Remedies and relief.

(a) When the Board, or the Commission, in an individual case of discrimination, finds that an applicant or an employee has been discriminated against, the Board shall provide full relief which shall include the following elements in appropriate circumstances:

(1) Notification to all employees of the Board in the affected facility of their right to be free of unlawful discrimination and assurance that the particular types of discrimination found will not recur;

(2) Commitment that corrective, curative or preventive action will be taken, or measures adopted, to ensure that violations of the law similar to those found unlawful will not recur;

(3) An unconditional offer to each identified victim of discrimination of placement in the position the person would have occupied but for the discrimination suffered by that person, or a substantially equivalent position;

(4) Payment to each identified victim of discrimination on a make whole basis for any loss of earnings the person may have suffered as a result of the discrimination; and

(5) Commitment that the Board shall cease from engaging in the specific unlawful employment practice found in the case.

(b) *Relief for an applicant.* (1)(i) When the Board, or the Commission, finds that an applicant for employment has been discriminated against, the Board shall offer the applicant the position that the applicant would have occupied absent discrimination or, if justified by the circumstances, a substantially equivalent position unless clear and convincing evidence indicates that the applicant would not have been selected even absent the discrimination. The offer shall be made in writing. The individual shall have 15 days from receipt of the offer within which to accept or decline the offer. Failure to accept the offer within the 15-day period will be considered a declination of the offer, unless the individual can show that circumstances beyond his or her control prevented a response within the time limit.

(ii) If the offer is accepted, appointment shall be retroactive to the date the applicant would have been hired. Back pay, computed in the manner prescribed in 5 CFR 550.805, shall be awarded from the date the individual would have entered on duty until the date the individual actually enters on duty unless clear and convincing evidence indicates that the applicant would not have been selected even absent discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. The individual shall be deemed to have performed service for the Board during this period for all purposes except for meeting service requirements for completion of a required probationary or trial period.

(iii) If the offer of employment is declined, the Board shall award the individual a sum equal to the back pay he or she would have received, computed in the manner prescribed in 5 CFR 550.805, from the date he or she would have been appointed until the date the offer was declined, subject to the limitation of paragraph (b)(3) of this section. Interest on back pay shall be included in the back pay computation. The Board shall inform the applicant, in its offer of employment, of the right to this award in the event the offer is declined.

(2) When the Board, or the Commission, finds that discrimination existed at the time the applicant was considered for employment but also finds by clear and convincing evidence that the applicant would not have been hired even absent discrimination, the Board shall nevertheless take all steps necessary to eliminate the discriminatory practice and ensure it does not recur.

(3) Back pay under this paragraph (b) for complaints under title VII or the Rehabilitation Act may not extend from a date earlier than two years prior to the date on which the complaint was initially filed by the applicant.

(c) *Relief for an employee.* When the Board, or the Commission, finds that an employee of the Board was discriminated against, the Board shall provide relief, which shall include, but need not be limited to, one or more of the following actions:

(1) Nondiscriminatory placement, with back pay computed in the manner prescribed in 5 CFR 550.805, unless clear and convincing evidence contained in the record demonstrates that the personnel action would have been taken even absent the discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. The back pay liability under title VII or the Rehabilitation Act is limited to two years prior to the date the discrimination complaint was filed.

(2) If clear and convincing evidence indicates that, although discrimination existed at the time the personnel action was taken, the personnel action would have been taken even absent discrimination, the Board shall nevertheless eliminate any discriminatory practice and ensure it does not recur.

(3) Cancellation of an unwarranted personnel action and restoration of the employee.

(4) Expunction from the Board's records of any adverse materials relating to the discriminatory employment practice.

(5) Full opportunity to participate in the employee benefit denied (*e.g.*, training, preferential work assignments, overtime scheduling).

(d) The Board has the burden of proving by a preponderance of the evidence that the complainant has failed to mitigate his or her damages.

(e) *Attorney's fees or costs*—(1) *Awards of attorney's fees or costs.* The provisions of this paragraph relating to the award of attorney's fees or costs shall apply to allegations of discrimination prohibited by title VII and the Rehabilitation Act. In a decision or final action, the Board, administrative judge, or Commission may award the applicant or employee or reasonable attorney's fees (including expert witness fees) and other costs incurred in the processing of the complaint.

(i) A finding of discrimination raises a presumption of entitlement to an award of attorney's fees.

(ii) Any award of attorney's fees or costs shall be paid by the Board.

(iii) Attorney's fees are allowable only for the services of members of the Bar and law clerks, paralegals or law students under the supervision of members of the Bar, except that no award is allowable for the services of any employee of the Federal Government.

(iv) Attorney's fees shall be paid for services performed by an attorney after the filing of a written complaint, provided that the attorney provides reasonable notice of representation to the Board, administrative judge or Commission, except that fees are allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. The Board is not required to pay attorney's fees for services performed during the pre-complaint process, except that fees are allowable when the Commission affirms on appeal an administrative judge's decision finding discrimination after the Board takes final action by not implementing an administrative judge's decision. Written submissions to the

Board that are signed by the representative shall be deemed to constitute notice of representation.

(2) *Amount of awards.* (i) When the Board, administrative judge or the Commission determines an entitlement to attorney's fees or costs, the complainant's attorney shall submit a verified statement of attorney's fees (including expert witness fees) and other costs, as appropriate, to the Board or administrative judge within 30 days of receipt of the decision and shall submit a copy of the statement to the Board. A statement of attorney's fees and costs shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. The Board may respond to a statement of attorney's fees and costs within 30 days of its receipt. The verified statement, accompanying affidavit and any Board response shall be made a part of the complaint file.

(ii)(A) The Board or administrative judge shall issue a decision determining the amount of attorney's fees or costs due within 60 days of receipt of the statement and affidavit. The decision shall include a notice of right to appeal to the EEOC along with EEOC Form 573, Notice of Appeal/Petition and shall include the specific reasons for determining the amount of the award.

(B) The amount of attorney's fees shall be calculated using the following standards: The starting point shall be the number of hours reasonably expended multiplied by a reasonable hourly rate. There is a strong presumption that this amount represents the reasonable fee. In limited circumstances, this amount may be reduced or increased in consideration of the degree of success, quality of representation, and long delay caused by the Board.

(C) The costs that may be awarded are those authorized by 28 U.S.C. 1920 to include: Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case; fees and disbursements for printing and witnesses; and fees for exemplification and copies necessarily obtained for use in the case.

(iii) Witness fees shall be awarded in accordance with the provisions of 28 U.S.C. 1821, except that no award shall be made for a Federal employee who is in a duty status when made available as a witness.

§ 268.502 Compliance with final Commission decisions.

(a) Relief ordered in a final Commission decision, if accepted pursuant to § 268.405(c) as a final decision, or not acted upon the Board within the time periods of § 268.405(c), is mandatory and binding on the Board except as provided in this section. Failure to implement ordered relief shall be subject to judicial enforcement as specified in § 268.503(f).

(b) Notwithstanding paragraph (a) of this section, when the Board requests reconsideration and the case involves removal, separation, or a suspension continuing beyond the date of the request for reconsideration, and when the decision orders retroactive restoration, the Board shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified by the Commission, pending the outcome of the Board's request for reconsideration.

(1) Service under the temporary or conditional restoration provisions of this paragraph (b) shall be credited toward the completion of a probationary or trial period or the completion of the service requirement for career tenure, if the Commission upholds its decision after reconsideration.

(2) When the Board requests reconsideration, it may delay the payment of any amounts ordered to be paid to the complainant until after the request for reconsideration is resolved. If the Board delays payment of any amount pending the outcome of the request to reconsider and the resolution of the request requires the Board to make the payment, then the Board shall pay interest from the date of the original appellate decision until payment is made.

(3) The Board shall notify the Commission and the employee in writing at the same time it requests reconsideration that the relief it provides is temporary or conditional and, if applicable, that it will delay the payment of any amounts owed but will pay interest as specified in paragraph (b)(2) of this section. Failure of the Board to provide notification will result in the dismissal of the Board's request.

(c) When no request for reconsideration is filed or when a request for reconsideration is denied, the Board shall provide the relief ordered and there is no further right to delay implementation of the ordered relief. The relief shall be provided in full not later than 60 days after receipt of the final decision unless otherwise ordered in the decision.

§ 268.503 Enforcement of final EEOC decisions.

(a) *Petition for enforcement.* A complainant may petition the Commission for enforcement of a decision issued under the Commission's appellate jurisdiction. The petition shall be submitted to the Office of Federal Operations. The petition shall specifically set forth the reasons that lead the complainant to believe that the Board is not complying with the decision.

(b) *Compliance.* On behalf of the Commission, the Office of Federal Operations shall take all necessary action to ascertain whether the Board is implementing the decision of the Commission. If the Board is found not to be in compliance with the decision, efforts shall be undertaken to obtain compliance.

(c) *Clarification.* On behalf of the Commission, the Office of Federal Operations may, on its own motion or in response to a petition for enforcement or in connection with a timely request for reconsideration, issue a clarification of a prior decision. A clarification cannot change the result of a prior decision or enlarge or diminish the relief ordered but may further explain the meaning or intent of the prior decision.

(d) *Referral to the Commission.* Where the Director, Office of Federal Operations, is unable to obtain satisfactory compliance with the final decision, the Director shall submit appropriate findings and recommendations for enforcement to the Commission, or, as directed by the Commission, refer the matter to another appropriate agency.

(e) *Commission notice to show cause.* The Commission may issue a notice to the Chairman of the Board to show cause why there is noncompliance. Such notice may request the Chairman of the Board or a representative to appear before the Commission or to respond to the notice in writing with adequate evidence of compliance or with compelling reasons for noncompliance.

(f) *Notification to complainant of completion of administrative efforts.* Where the Commission has determined that the Board is not complying with a prior decision, or where the Board has failed or refused to submit any required report of compliance, the Commission shall notify the complainant the right to file a civil action for enforcement of the decision pursuant to title VII, the ADEA, the Equal Pay Act or the Rehabilitation Act and to seek judicial review of the Board's refusal to implement the ordered relief pursuant to the Administrative Procedures Act, 5 U.S.C. 701 *et seq.*, and the mandamus statute, 28 U.S.C. 1361, or to commence *de novo* proceedings pursuant to the appropriate statutes.

§ 268.504 Compliance with settlement agreements and final actions.

(a) Any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties. Final action that has not been the subject of an appeal or a civil action shall be binding on the Board. If the complainant believes that the Board has failed to comply with the terms of a settlement agreement or decision, the complainant shall notify the Board's EEO Programs Director, in writing, of the alleged noncompliance within 30 days of when the complainant knew or should have known of the alleged noncompliance. The complainant may request that the terms of the settlement agreement be specifically implemented or, alternatively, that the complaint be reinstated for further processing from the point processing ceased.

(b) The Board shall resolve the matter and respond to the complainant, in writing. If the Board has not responded to the complainant, in writing, or if the complainant is not satisfied with the Board's attempt to resolve the matter, the complainant may appeal to the Commission for a determination as to whether the Board has complied with the terms of the settlement agreement or decision. The complainant may file such an appeal 35 days after he or she has served the Board with the allegations of noncompliance, but must file an appeal within 30 days of his or her receipt of the Board's determination. The complainant must serve a copy of the appeal on the Board and the Board may submit a response to the Commission within 30 days of receiving notice of the appeal.

(c) Prior to rendering its determination, the Commission may request that the parties submit whatever additional information or documentation it deems necessary or may direct that an investigation or hearing on the matter be conducted. If the Commission determines that the Board is not in compliance and the noncompliance is not attributable to acts or conduct of the complainant, it may order such compliance or it may order that the complaint be reinstated for further processing from the point processing ceased. Allegations that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints under §§ 268.105 or 268.204, as appropriate, rather than under this section.

§ 268.505 Interim relief.

(a)(1) When the Board appeals and the case involves removal, separation, or suspension continuing beyond the date of the appeal, and when the administrative judge orders retroactive restoration, the Board shall comply with the decision to the extent of the temporary or conditional restoration of the employee to duty status in the position specified in the decision, pending the outcome of the Board appeal. The employee may decline the offer of interim relief.

(2) Service under the temporary or conditional restoration provisions of paragraph (a)(1) of this section shall be credited toward the completion of a probationary or trial period, eligibility for a within-grade increase, or the completion of the service requirement for career tenure, if the Commission upholds the decision on appeal. Such service shall not be credited toward the completion of any applicable probationary or trial period or the completion of the service requirement for career tenure if the Commission reverses the decision on appeal.

(3) When the Board appeals, it may delay the payment of any amount, other than prospective pay and benefits, ordered to be paid to the complainant until after the appeal is resolved. If the Board delays payment of any amount pending the outcome of the appeal and the resolution of the appeal requires the Board to make the payment, then the Board shall pay interest from the date of the original decision until payment is made.

(4) The Board shall notify the Commission and the employee in writing at the same time it appeals that the relief it provides is temporary or conditional and, if applicable, that it will delay the payment of any amounts owed but will pay interest as specified in paragraph (b)(2) of this section. Failure of the Board to provide notification will result in the dismissal of the Board's appeal.

(5) The Board may, by notice to the complainant, decline to return the complainant to his or her place of employment if it determines that the return or presence of the complainant will be unduly disruptive to the work environment. However, prospective pay and benefits must be provided. The determination not to return the complainant to his or her place of employment is not reviewable. A grant of interim relief does not insulate a complainant from subsequent disciplinary or adverse action.

(b) If the Board files an appeal and has not provided required interim relief, the complainant may request dismissal of the Board's appeal. Any such request must be filed with the Office of Federal Operations within 25 days of the date of service of the Board's appeal. A copy of the request must be served on the Board at the same time it is filed with EEOC. The Board may respond with evidence and argument to the complainant's request to dismiss within 15 days of the date of service of the request.

Subpart G—Matters of General Applicability

§ 268.601 EEO group statistics.

(a) The Board shall establish a system to collect and maintain accurate employment information on the race, national origin, sex and disability(ies) of its employees.

(b) Data on race, national origin and sex shall be collected by voluntary self-identification. If an employee does not voluntarily provide the requested information, the Board shall advise the employee of the importance of the data and of the Board's obligation to report it. If the employee still refuses to provide the information, the Board must make a visual identification and inform the employee of the data it will be reporting. If the Board believes that information provided by an employee is inaccurate, the Board shall advise the employee about the solely statistical purpose for which the data is being collected, the need for accuracy, the Board's recognition of the sensitivity of the information and the existence of procedures to prevent its unauthorized disclosure. If, thereafter, the employee declines to change the apparently inaccurate self identification, the Board must accept it.

(c) Subject to applicable law, the information collected under paragraph (b) of this section shall be disclosed only in the form of gross statistics. The Board shall not collect or maintain any information on the race, national origin or sex of individual employees except in accordance with applicable law and when an automated data processing system is used in accordance with standards and requirements prescribed by the Commission to insure individual privacy and the separation of that information from personnel records.

(d) The Board's system is subject to the following controls:

(1) Only those categories of race and national origin prescribed by the Commission may be used;

(2) Only the specific procedures for the collection and maintenance of data that are prescribed or approved by the Commission may be used.

(e) The Board may use the data only in studies and analyses which contribute affirmatively to achieving the objectives of the Board's equal employment opportunity program. The Board shall not establish a quota for the

employment of persons on the basis of race, color, religion, sex, or national origin.

(f) Data on disabilities shall also be collected by voluntary self-identification. If an employee does not voluntarily provide the requested information, the Board shall advise the employee of the importance of the data and of the Board's obligation to report it. If an employee who has been appointed pursuant to a special Board program for hiring individuals with a disability still refuses to provide the requested information, the Board must identify the employee's disability based upon the records supporting the appointment. If any other employee still refuses to provide the requested information or provides information that the Board believes to be inaccurate, the Board should report the employee's disability status as unknown.

(g) The Board shall report to the Commission on employment by race, national origin, sex and disability in the form and at such times as the Board and Commission shall agree.

§ 268.602 Reports to the Commission.

(a) The Board shall report to the Commission information concerning pre-complaint counseling and the status, processing, and disposition of complaints under this part at such times and in such manner as the Board and Commission shall agree.

(b) The Board shall advise the Commission whenever it is served with a Federal court complaint based upon a complaint that is pending on appeal at the Commission.

(c) The Board shall submit annually for the review and approval of the Commission written equal employment opportunity plans of action. Plans shall be submitted in the format prescribed by the Commission and shall include, but not be limited to:

(1) Provision for the establishment of training and education programs designed to provide maximum opportunity for employees to advance so as to perform at their highest potential;

(2) Description of the qualifications, in terms of training and experience relating to equal employment opportunity, of the principal and operating officials concerned with administration of the Board's equal employment opportunity program; and

(3) Description of the allocation of personnel and resources proposed by the Board to carry out its equal employment opportunity program.

§ 268.603 Voluntary settlement attempts.

The Board shall make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in, and throughout, the administrative processing of complaints, including the pre-complaint counseling stage. Any settlement reached shall be in writing and signed by both parties and shall identify the claims resolved.

§ 268.604 Filing and computation of time.

(a) All time periods in this part that are stated in terms of days are calendar days unless otherwise stated.

(b) A document shall be deemed timely if it is received or postmarked before the expiration of the applicable filing period, or, in the absence of a legible postmark, if it is received by mail within five days of the expiration of the applicable filing period.

(c) The time limits in this part are subject to waiver, estoppel and equitable tolling.

(d) The first day counted shall be the day after the event from which the time period begins to run and the last day of the period shall be included, unless it falls on a Saturday, Sunday or Federal holiday, in which case the period shall be extended to include the next business day.

§ 268.605 Representation and official time.

(a) At any stage in the processing of a complaint, including the counseling stage under § 268.104, the complainant shall have the right to be accompanied, represented, and advised by a representative of complainant's choice.

(b) If the complainant is an employee of the Board, he or she shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to Board and EEOC requests for information. If the complainant is an employee of the Board and he designates another employee of the Board as his or her representative, the representative shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and respond to Board and EEOC requests for information. The Board is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. The complainant and the representative, if employed by the Board and otherwise in a pay status, shall be on official time, regardless of their tour of duty, when their presence is authorized or required by the Board or the Commission during the investigation, informal adjustment, or hearing on the complaint.

(c) In cases where the representation of a complainant or the Board would conflict with the official or collateral duties of the representative, the Commission or the Board may, after giving the representative an opportunity to respond, disqualify the representative.

(d) Unless the complainant states otherwise in writing, after the Board has received written notice of the name, address and telephone number of a representative for the complainant, all official correspondence shall be with the representative with copies to the complainant. When the complainant designates an attorney as representative, service of all official correspondence shall be made on the attorney and the complainant, but time frames for receipt of material shall be computed from the time of receipt by the attorney. The complainant must serve all official correspondence on the designated representative of the Board.

(e) The complainant shall at all times be responsible for proceeding with the complaint whether or not he or she has designated a representative.

(f) Witnesses who are Board employees shall be in a duty status when their presence is authorized or required by Commission or Board officials in connection with a complaint.

§ 268.606 Joint processing and consolidation of complaints.

Complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination or relating to the same matter may be consolidated by the Board or the Commission for joint processing after appropriate notification to the parties. Two or more complaints of discrimination filed by the same complainant shall be consolidated by the Board for joint processing after appropriate notification to the complainant. When a complaint has been consolidated with one or more earlier filed complaints, the Board shall complete its investigation within the earlier of 180 days after the filing of the last complaint or 360 days after the filing of the original complaint, except that the complainant may request a hearing from an administrative judge on the consolidated complaints any time after 180 days from the date of the first filed complaint. Administrative judges or the Commission may, in their discretion, consolidate two or more complaints of discrimination filed by the same complainant.

§ 268.607 Delegation of authority.

The Board of Governors may delegate authority under this part, to one or more designees.

Subpart H—Prohibition Against Discrimination in Board Programs and Activities Because of Physical or Mental Disability

§ 268.701 Purpose and application.

(a) *Purpose.* The purpose of this subpart H is to prohibit discrimination on the basis of a disability in programs or activities conducted by the Board.

(b) *Application.* (1) This subpart H applies to all programs and activities conducted by the Board. Such programs and activities include:

(i) Holding open meetings of the Board or other meetings or public hearings at the Board's office in Washington, DC;

(ii) Responding to inquiries, filing complaints, or applying for employment at the Board's office;

(iii) Making available the Board's library facilities; and

(iv) Any other lawful interaction with the Board or its staff in any official matter with people who are not employees of the Board.

(2) This subpart H does not apply to Federal Reserve Banks or to financial institutions or other companies supervised or regulated by the Board.

§ 268.702 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Auxiliary aids* means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Board. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, telecommunications devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

(b) *Complete complaint* means a written statement that contains the complainant's name and address and describes the Board's alleged discriminatory action in sufficient detail to inform the Board of the nature and date of the alleged violation. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(c) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

(d) *Person with a disability* means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) Physical or mental impairment includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one of more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Board as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (d)(1) of this section but is treated by Board as having such an impairment.

(e) *Qualified person with a disability* means—

(1) With respect to any Board program or activity under which a person is required to perform services or to achieve a level of accomplishment, a person with a disability who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Board can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, a person with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

(3) Qualified individual with a disability is defined for purposes of employment in § 268.203 of this part, which is made applicable to this subpart by § 268.705.

§ 268.703 Notice.

The Board shall make available to employees, applicants for employment, participants, beneficiaries, and other interested persons information regarding the provisions of this subpart and its applicability to the programs and activities conducted by the Board, and make this information available to them in such manner as the Board finds necessary to apprise such persons of the protections against discrimination assured them by this subpart.

§ 268.704 General prohibitions against discrimination.

(a) No qualified individual with a disability shall, on the basis of a disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity conducted by the Board.

(b)(1) The Board, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of a disability:

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that provided to others;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with a disability or to any class of individuals with a disability than is provided to others unless such action is necessary to provide qualified individuals with a disability with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Board may not deny a qualified individual with a disability the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Board may not, directly or through contractual or other arrangements, utilize criteria or methods of administration, the purpose or effect of which would:

(i) Subject qualified individuals with a disability to discrimination on the basis of a disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with a disability.

(4) The Board may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with a disability from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Board; or

(ii) Defeat or substantially impair the accomplishment of the objectives or a program or activity with respect to individuals with a disability.

(5) The Board, in the selection of procurement contractors, may not use criteria that subject qualified individuals with a disability to discrimination on the basis of a disability.

(6) The Board may not administer a licensing or certification program in a manner that subjects qualified individuals with a disability to discrimination on the basis of a disability, nor may the Board establish requirements for the programs and activities of licensees or certified entities that subject qualified individuals with a disability to discrimination on the basis of a disability. However, the programs and activities of entities that are licensed or certified by the Board are not, themselves, covered by this subpart.

(c) The exclusion of individuals who do not have a disability from the benefits of a program limited by Federal statute or Board order to individuals with a disability or the exclusion of a specific class of individuals with a disability from a program limited by Federal statute or Board order to a different class of individuals with a disability is not prohibited by this subpart.

(d) The Board shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with a disability.

§ 268.705 Employment.

No qualified individual with a disability shall, on the basis of a disability, be subjected to discrimination in employment under any program or activity conducted by the Board. The definitions, requirements and procedures of § 268.203 of this part shall apply to discrimination in employment in federally conducted programs or activities.

§ 268.706 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 268.707 of this subpart, no qualified individual with a disability shall, because the Board's facilities are inaccessible to or unusable by individuals with a disability, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Board.

§ 268.707 Program accessibility: Existing facilities.

(a) *General.* The Board shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with a disability. This paragraph (a) does not:

(1) Necessarily require the Board to make each of its existing facilities accessible to and usable by individuals with a disability; or

(2) Require the Board to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board has the burden of proving that compliance with this paragraph (a) would result in such alterations or burdens. The decision that compliance would result in such alterations or burdens shall be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with a disability receive the benefits and services of the program or activity.

(b) *Methods.* The Board may comply with the requirements of this subpart H through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to individuals with a disability, home visits, delivery of service at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with a disability. The Board is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. In choosing among available methods for meeting the requirements of this section, the Board shall give priority to those methods that offer programs and activities to qualified individuals with a disability in the most integrated setting appropriate.

(c) *Time period for compliance.* The Board shall comply with any obligations established under this section as expeditiously as possible.

§ 268.708 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Board shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with a disability.

§ 268.709 Communications.

(a) The Board shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Board shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Board.

(i) In determining what type of auxiliary aid is necessary, the Board shall give primary consideration to the requests of the individual with a disability.

(ii) The Board need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Board communicates with employees and others by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The Board shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Board shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Board to take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board has the burden of proving that compliance with section 268.709 would result in such alterations or burdens. The determination that compliance would result in such alteration or burdens must be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with a disability receive the benefits and services of the program or activity.

§ 268.710 Compliance procedures.

(a) *Applicability.* Except as provided in paragraph (b) of this section, this section, rather than subpart B and § 268.203 of this part, applies to all allegations of discrimination on the basis of a disability in programs or activities conducted by the Board.

(b) *Employment complaints.* The Board shall process complaints alleging discrimination in employment on the basis of a disability in accordance with subparts A through G of this part.

(c) *Responsible official.* The EEO Programs Director shall be responsible for coordinating implementation of this section.

(d) *Filing the complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this subpart may, personally or by his or her authorized representative, file a complaint of discrimination with the EEO Programs Director.

(2) *Confidentiality.* The EEO Programs Director shall not reveal the identity of any person submitting a complaint, except when authorized to do so in writing by the complainant, and except to the extent necessary to carry out the purposes of this subpart , including the conduct of any investigation, hearing, or proceeding under this subpart.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination. The EEO Programs Director may extend this time limit for good cause shown. For the purpose of determining when a complaint is timely filed under this paragraph (d), a complaint mailed to the Board shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the Board.

(4) *How to file.* Complaints may be delivered or mailed to the Administrative Governor, the Staff Director for Management, the EEO Programs Director, the Federal Women's Program Manager, the Hispanic Employment Program Coordinator, or the People with Disabilities Program Coordinator. Complaints should be sent to the EEO Programs Director, Board of Governors of the Federal Reserve System, 20th and C Street NW., Washington, DC 20551. If any Board official other than the EEO Programs Director receives a complaint, he or she shall forward the complaint to the EEO Programs Director.

(e) *Acceptance of complaint.* (1) The EEO Programs Director shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which the Board has jurisdiction. The EEO Programs Director shall notify the complainant of receipt and acceptance of the complaint.

(2) If the EEO Programs Director receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the EEO Programs Director shall dismiss the complaint without prejudice.

(3) If the EEO Programs Director receives a complaint over which the Board does not have jurisdiction, the EEO Programs Director shall notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) *Investigation/conciliation.* (1) Within 180 days of the receipt of a complete complaint, the EEO Programs Director shall complete the investigation of the complaint, attempt informal resolution of the complaint, and if no informal resolution is achieved, the EEO Programs Director shall forward the investigative report to the Staff Director for Management.

(2) The EEO Programs Director may request Board employees to cooperate in the investigation and attempted resolution of complaints. Employees who are requested by the EEO Programs Director to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) The EEO Programs Director shall furnish the complainant with a copy of the investigative report promptly after completion of the investigation and provide the complainant with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made a part of the complaint file, with a copy of the agreement provided to the complainant. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant has agreed.

(g) *Letter of findings.* (1) If an informal resolution of the complaint is not reached, the EEO Programs Director shall transmit the complaint file to the Staff Director for Management. The Staff Director for Management shall, within 180 days of the receipt of the complete complaint by the EEO Programs Director, notify the complainant of the results of the investigation in a letter sent by certified mail, return receipt requested, containing:

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found;

(iii) A notice of right of the complainant to appeal the letter of findings under paragraph (k) of this section; and

(iv) A notice of right of the complainant to request a hearing.

(2) If the complainant does not file a notice of appeal or does not request a hearing within the times prescribed in paragraph (h)(1) and (j)(1) of this section, the EEO Programs Director shall certify that the letter of findings under this paragraph (g) is the final decision of the Board at the expiration of those times.

(h) *Filing an appeal.* (1) Notice of appeal, with or without a request for hearing, shall be filed by the complainant with the EEO Programs Director within 30 days of receipt from the Staff Director for Management of the letter of findings required by paragraph (g) of this section.

(2) If the complainant does not request a hearing, the EEO Programs Director shall notify the Board of Governors of the appeal by the complainant and that a decision must be made under paragraph (k) of this section.

(i) *Acceptance of appeal.* The EEO Programs Director shall accept and process any timely appeal. A complainant may appeal to the Administrative Governor from a decision by the EEO Programs Director that an appeal is untimely. This appeal shall be filed within 15 calendar days of receipt of the decision from the EEO Programs Director.

(j) *Hearing.* (1) Notice of a request for a hearing, with or without a request for an appeal, shall be filed by the complainant with the EEO Programs Director within 30 days of receipt from the Staff Director for Management of the letter of findings required by paragraph (g) of this section. Upon a timely request for a hearing, the EEO Programs Director shall request that the Board of Governors, or its designee, appoint an administrative law judge to conduct the hearing. The administrative law judge shall issue a notice to the complainant and the Board specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 calendar days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date.

(2) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557. The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary actions to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to:

(i) Arrange and change the dates, times, and places of hearings and prehearing conferences and to issue notice thereof;

(ii) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(iii) Require parties to state their positions in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(iv) Examine witnesses and direct witnesses to testify;

(v) Receive, rule on, exclude, or limit evidence;

(vi) Rule on procedural items pending before him or her; and

(vii) Take any action permitted to the administrative law judge as authorized by this subpart G or by the provisions of the Administrative Procedures Act (5 U.S.C. 554–557).

(3) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph (j), but rules or principles designed to assure production of credible evidence and to subject testimony to cross-examination shall be applied by the administrative law judge wherever reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(4) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(i) Employees of the Board shall, upon the request of the administrative law judge, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(ii) Employees of other Federal agencies called to testify at a hearing, at the request of the administrative law judge and with the approval of the employing agency, shall be on official duty status during any absence from normal duties caused by their testimony, and shall not receive witness fees.

(iii) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(iv) The administrative law judge may require the Board to pay travel expenses necessary for the complainant to attend the hearing.

(v) The Board shall pay the required expenses and charges for the administrative law judge and court reporter.

(vi) All other expenses shall be paid by the parties incurring them.

(5) The administrative law judge shall submit in writing recommended findings of fact, conclusions of law, and remedies to the complainant and the EEO Programs Director within 30 days, after the receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcripts are made. This time limit may be extended with the permission of the EEO Programs Director.

(6) Within15 calendar days after receipt of the recommended decision of the administrative law judge, the complainant may file exceptions to the recommended decision with the EEO Programs Director. On behalf of the Board, the EEO Programs Director may, within 15 calendar days after receipt of the recommended decision of the administrative law judge, take exception to the recommended decision of the administrative law judge and shall notify the complainant in writing of the Board's exception. Thereafter, the complainant shall have 10 calendar days to file reply exceptions with the EEO Programs Director. The EEO Programs Director shall retain copies of the exceptions and replies to the Board's exception for consideration by the Board. After the expiration of the time to reply, the recommended decision shall be ripe for a decision under paragraph (k) of this section.

(k) *Decision.* (1) The EEO Programs Director shall notify the Board of Governors when a complaint is ripe for decision under this paragraph (k). At the request of any member of the Board of Governors made within 3 business days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor, or the Staff Director for Management if he or she is delegated the authority to do so, shall make the decision on the complaint. The decision shall be made based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days of the receipt by the EEO Programs Director of the notice of appeal and investigative record pursuant to paragraph (h)(1) of this section or 60 days following the end of the period for filing reply exceptions set forth in paragraph (j)(6) of this section, whichever is applicable. If the decision-maker under this paragraph (k) determines that additional information is needed from any party, the decision-maker shall request the information and provide the other party or parties an opportunity to respond to that information. The decision-maker shall have 60 days from receipt of the additional information to render the decision on the appeal. The decision-maker shall transmit the decision by letter to all parties. The decision shall set forth the findings, any remedial actions required, and the reasons for the decision. If the decision is based on a hearing record, the decision-maker shall consider the recommended decision of the administrative law judge and render a final decision based on the entire record. The decision-maker may also remand the hearing record to the administrative law judge for a fuller development of the record.

(2) The Board shall take any action required under the terms of the decision promptly. The decision-maker may require periodic compliance reports specifying:

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final Board decision has not been taken; and

(iii) The steps being taken to ensure full compliance.

(3) The decision-maker may retain responsibility for resolving disputes that arise between parties over interpretation of the final Board decision, or for specific adjudicatory decisions arising out of implementation.

By order of the Board of Governors of the Federal Reserve System, April 9, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–9111 Filed 4–14–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–06–AD; Amendment 39–13112; AD 2003–08–01]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd. & Co KG, Model Tay 650–15 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain serial numbers (SNs) of Rolls-Royce Deutschland Ltd. & Co KG (RRD) Model Tay 650–15 turbofan engines. This action requires initial and repetitive visual inspections of low pressure (LP) turbine stage 2 rotor discs and LP turbine stage 3 rotor discs on certain SNs of engines, for corrosion. This AD is prompted by reports of excessive corrosion found during disc inspection. The actions specified in this AD are intended to prevent uncontained LP turbine stage 2 rotor disc or LP turbine stage 3 rotor disc failure due to excessive corrosion, and damage to the airplane.

DATES: Effective May 20, 2003.

We must receive any comments on this AD by June 16, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–06–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*

You may get the service information referenced in this AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany, telephone +49 (0) 33–7086–1768; fax +49 (0) 33–7086–3356.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on certain SNs of RRD Model Tay 650–15 turbofan engines. The LBA advises that the LP turbine stage 2 rotor discs and LP turbine stage 3 rotor discs of seventeen Tay 650–15 turbofan engines have been found to have excessive corrosion. RRD has determined that this excessive corrosion is the result of the specific environment in which these engines operate. This AD requires initial and repetitive visual inspections for corrosion of low pressure (LP) turbine stage 2 rotor discs and LP turbine stage 3 rotor discs on certain SNs of engines. Because disc deterioration may already have begun, repetitive inspections are also required if any affected disc is removed from the corrosive environment and put in service in a noncorrosive environment. The actions specified in this AD are intended to prevent uncontained LP turbine stage 2 rotor disc or LP turbine stage 3 rotor disc failure due to excessive corrosion, and damage to the airplane.

Relevant Service Information

The LBA issued AD 2002–287, dated October 17, 2002, in order to assure the airworthiness of these RRD Model Tay 650–15 turbofan engines in Germany.

FAA's Determination and Requirements of This AD

Although none of these affected disc SNs are used on any airplanes that are registered in the United States, the possibility exists that these disc SNs could be installed into engines used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other RRD Tay 650–15 turbofan engines of the same type design, this AD is being issued to prevent uncontained LP turbine stage 2 rotor disc or LP turbine stage 3 rotor disc failure due to excessive corrosion, and damage to the airplane. For engine SNs 17251, 17255, 17256, 17273, 17275, 17280, 17281, 17282, 17300, 17301, 17327, 17332, 17365, 17393, 17437, 17563, and 17618, this AD requires initial and repetitive visual inspections of LP turbine stage 2 rotor discs and LP turbine stage 3 rotor discs for corrosion.

Bilateral Airworthiness Agreement

This engine model is manufactured in Germany, and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29)

and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Immediate Adoption of This AD

Since none of these affected engine SNs are used on any airplanes that are registered in the United States, notice and opportunity for prior public comment are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–06–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.plainlanguage.gov.*

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–06–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Federal Aviation Administration (FAA), Airworthiness Directive (AD) 2003–08–01, Docket No. 2003–NE–06, Amendment 39–13112, Rolls-Royce Deutschland Ltd. & Co KG, Subject: Initial and Repetitive Visual Inspections of Low Pressure (LP) Turbine Stage 2 Rotor Discs and LP Turbine Stage 3 Rotor Discs

Effective Date

(a) This AD becomes effective May 20, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD is applicable to Rolls-Royce Deutschland Ltd. & Co KG (RRD) Model Tay 650–15 turbofan engines with low pressure (LP) turbine stage 2 rotor discs, part number (P/N) JR32319, and LP turbine stage 3 rotor discs, P/N JR32320A, that have a serial number (SN) listed in Table 1 of this AD. These engines are installed on, but not limited to Fokker F.28 Mark 0100 airplanes. Table 1 follows:

TABLE 1.—DISC SNS

Last known engine SN	LP turbine stage 2 rotor disc, part No. JR32319, SNs	LP turbine stage 3 rotor disc, part No. JR32320A, SNs
17251	EETM1355	DETM1853/A
17255	DETM19039	DETM19007
17256	SETM11283	SETM15065
17273	PETM718	DETM14896/A
17275	DETM17343	DETM17546
17280	EETM1808	SETM14410
17281	DETM19036	DETM18999
17282	EETM2163	DETM3703/A
17300	SETM12109	SETM11379
17301	DETM18772	DETM18348
17327	EETM2510	DETM15404/A
17332	SETM20088	SETM21297
17365	SETM15166	SETM15188
17393	DETM17083	DETM16860
17437	EETM19304	DETM19008
17563	EETM4414	DETM15583/A
17618	EETM5010	DETM9588/A

Unsafe Condition

(d) This AD was prompted by reports of excessive corrosion found during LP turbine stage 2 rotor disc and LP turbine stage 3 rotor disc inspection. The actions specified in this AD are intended to prevent uncontained LP turbine stage 2 rotor disc or LP turbine stage 3 rotor disc failure due to excessive corrosion, and damage to the airplane.

Compliance

(e) Compliance with this AD is required as indicated, unless already done.

Visual Inspections

(f) Perform an initial visual inspection of the LP turbine stage 2 rotor disc and LP turbine stage 3 rotor disc for corrosion within 11,700 cycles-in-service (CIS) after the effective date of this AD. Information on performing visual inspections can be found in RRD engine manual task 72–52–23–200–000 and task 72–52–24–200–000 respectively.

Discs That Fail Inspection

(g) Before further flight, do the following for discs that fail inspection:

(1) Replace any LP turbine stage 2 rotor discs and LP turbine stage 3 rotor discs found with corrosion pits beyond repairable limits. Information on repairable limits may be found in RRD Engine Manual Task 72–52–23–200–000 and Task 72–52–24–200–000 respectively.

(2) Repair any LP turbine stage 2 rotor discs and LP turbine stage 3 rotor discs found with corrosion pits within repairable limits. Information on repairable limits may be found in RRD Engine Manual Task 72–52–23–200–000 and Task 72–52–24–200–000 respectively.

Repetitive Visual Inspections

(h) Perform repetitive visual inspections of the LP turbine stage 2 rotor disc and LP turbine stage 3 rotor disc for corrosion within every 11,700 cycles-since-last inspection. Information on performing visual inspections can be found in RRD Engine Manual Task 72–52–23–200–000 and Task 72–52–24–200–000 respectively.

(i) Disposition discs that fail inspection as specified in paragraph (g) of this AD.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD in accordance with 14 CFR 39.19.

Material Incorporated by Reference

(k) None.

Related Information

(l) LBA airworthiness directive 2002–287, dated October 17, 2002, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on April 7, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–9017 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–343–AD; Amendment 39–13108; AD 2003–07–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, that requires inspection of landing gear parts and/or their records to see that parts have serial numbers and that each part's number of flight cycles has been tracked; assignment of serial numbers and flight cycle use numbers if necessary; and removal of individual landing gear components from service when they reach their life limit. This amendment also requires adding landing gear parts to the lists of safe-life components, and assigning life limits to landing gear parts already in service. The actions specified by this AD are intended to prevent failure of landing gear parts, which could lead to landing gear collapse. This action is intended to address the identified unsafe condition.

DATES: Effective May 20, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Suzanne Lucier, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6438; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on September 25, 2002 (67 FR 60196). That action proposed to require inspection of landing gear parts and/or their records to see that parts have serial numbers and that each part's number of flight cycles has been tracked; assignment of serial numbers and flight cycle use numbers if necessary; and removal of individual landing gear components from service when they reach their life limit. That action also proposed to add landing gear parts to the lists of safe-life components, and assign life limits to landing gear parts already in service.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received. One commenter did not propose any changes, but asked for clarification of the meaning of certain sections in the supplemental NPRM. The FAA will provide this clarification directly to the commenter.

Request To Allow Disposition of Life-Limited Parts

One commenter states that the serialization/tracking requirements specified in the supplemental NPRM are more restrictive than the requirements of section 43.10 of the Federal Aviation Regulations (14 CFR 43.10), which govern the use of all life-limited parts. The commenter reiterates paragraph (c) of that regulation, and notes that six acceptable methods are listed for deterring the installation of a part after it has reached its life limit. The commenter adds that it currently uses two of those six methods (record keeping system and mutilation) to control all life-limited parts. The commenter also adds that it scraps/mutilates many of the less expensive life-limited components at the end of every overhaul cycle, and/or when the component is removed from service in the line maintenance environment. Then only new parts are used during line replacements and gear assemblies, with documentation in place to identify all parts that are handled by this method. The commenter asks that the FAA consider revising paragraphs (a), (b), (c), (d), and (e) of the supplemental NPRM to be consistent with the existing guidance in the specified regulation, as it provides adequate assurance of airworthiness.

We do not agree with the commenter that the serialization/tracking requirements specified in the supplemental NPRM are more restrictive than those of the specified regulation. The requirements in paragraph (d) of this final rule do not specify the process the operators must use in order to remove the part from service. This final rule establishes the life limits for aircraft parts not previously tracked, whereas the regulation mandates the disposition of parts after they have reached their life limit.

Explanation of Change to Final Rule

An internal review of the supplemental NPRM and the referenced service information indicates a difference between the two documents. Paragraph (b)(1) of the supplemental NPRM titled, "Assignment of Serial Numbers and Flight Cycles," requires assigning a serial number to each part per a method approved by the Manager, Seattle Aircraft Certification Office, FAA. However, in Part 1.B. of the Accomplishment Instructions of Boeing Service Bulletin 737–32–1322, Revision

1, dated September 27, 2001, an acceptable method is defined for assigning serial numbers. Therefore, we have changed paragraph (b)(1) in this final rule to include the procedures in the service bulletin as an additional source for assigning serial numbers.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 3,132 Model 737–100, –200, –200C, –300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,099 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $65,940, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–07–12 Boeing: Amendment 39–13108. Docket 2000–NM–343–AD.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes; certificated in any category; line numbers 1 through 3132 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of landing gear parts, which could lead to landing gear collapse, accomplish the following:

Inspection of Parts and/or Records

(a) Within 10 years from the effective date of this AD, examine records and/or landing gear parts per Boeing Service Bulletin 737–32–1322, Revision 1, excluding Evaluation Form, dated September 27, 2001, to determine whether parts have serial numbers and whether the number of flight cycles for each part has been tracked. If landing gear parts have serial numbers, as listed in the service bulletin, and the number of flight cycles has been tracked, no further action is necessary for paragraphs (a), (b), or (c) of this AD.

Assignment of Serial Numbers and Flight Cycles

(b) If any part examined, as mandated in paragraph (a) of this AD, does not have a serial number, within 10 years from the effective date of this AD, do the actions required by paragraphs (b)(1) and (b)(2) of this AD.

(1) Assign a serial number to each part per Part 1.B. of the Accomplishment Instructions of Boeing Service Bulletin 737–32–1322, Revision 1, excluding Evaluation Form, dated September 27, 2001; or per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(2) Mark the serial number on each part per Boeing Service Bulletin 737–32–1322, Revision 1, excluding Evaluation Form, dated September 27, 2001.

(c) If flight cycles for any part examined, as mandated in paragraph (a) of this AD, have not been tracked, within 10 years from the effective date of this AD, assign a number of lifetime flight cycles to that part per Part 2.B. of the Accomplishment Instructions of Boeing Service Bulletin 737–32–1322, Revision 1, excluding Evaluation Form, dated September 27, 2001.

Removal From Service at Life Limit

(d) When any landing gear part has reached its life-limit number of flight cycles, as described in Part 2.B. of the Accomplishment Instructions of Boeing Service Bulletin 737–32–1322, Revision 1, excluding Evaluation Form, dated September 27, 2001, before further flight, remove that part from service and replace it with a landing gear part having a serial number and a lifetime flight cycle number per the service bulletin.

Parts Installation

(e) As of the effective date of this AD, no person shall install on any airplane a life-limited landing gear part unless it has been assigned a serial number and a lifetime flight cycle number per the requirements of this AD.

(f) As of the effective date of this AD, no person shall install on any airplane a life-limited landing gear part that has reached its life limit of flight cycles, per Boeing Service Bulletin 737–32–1322, Revision 1, excluding Evaluation Form, dated September 27, 2001.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) Unless otherwise provided in this AD, the actions shall be done in accordance with Boeing Service Bulletin 737–32–1322, Revision 1, excluding Evaluation Form, dated September 27, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(j) This amendment becomes effective on May 20, 2003.

Issued in Renton, Washington, on April 4, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8739 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–329–AD; Amendment 39–13109; AD 2003–07–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200CB, and –200PF Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, that currently requires repetitive inspections for excessive wear of the internal and external splines of the torque tube couplings of the trailing edge flaps, and replacement of the couplings, if necessary. That AD also provides an optional modification that, if installed, constitutes terminating action for the inspection requirements. This amendment expands the applicability of the existing AD and requires new inspections of the torque tube assemblies and certain gearbox assemblies and universal joints in the drive system for the inboard trailing edge flaps, and follow-on actions if necessary. For certain airplanes, this amendment also adds a new optional modification, which, if installed, terminates certain inspections. The actions specified by this AD are intended to prevent separations in the drive system for the inboard trailing edge flaps, which could cause a flap skew condition that could result in damage to the flaps or fuselage, and consequent reduced controllability of the airplane.

DATES: Effective May 20, 2003.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of May 20, 2003.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 23, 1992 (57 FR 54298, November 18, 1992).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 92–25–01, amendment 39–8416 (57 FR 54298, November 18, 1992), which is applicable to certain Boeing Model 757 series airplanes, was published in the **Federal Register** on May 29, 2002 (67 FR 37357). The action proposed to continue to require repetitive inspections for excessive wear of the internal and external splines of the torque tube couplings of the trailing edge flaps, and replacement of the couplings, if necessary. The action proposed to expand the applicability of the existing AD and require new inspections of the torque tube assemblies and certain gearbox assemblies and universal joints (U-joints) in the drive system for the inboard trailing edge flaps, and follow-on actions if necessary. For certain airplanes, the action also proposed to require a previously optional modification and/or a new modification, which would terminate certain inspections.

Explanation of New Relevant Service Information

Since the issuance of the proposed AD, the FAA has reviewed and approved Boeing Service Bulletin 757–27A0125, Revision 2, dated July 25, 2002. The proposed AD refers to Revision 1 of that service bulletin, dated December 2, 1999, as the appropriate source of service information for the proposed inspections and corrective actions. Boeing issued Revision 2 of the service bulletin primarily to reduce the effectivity due to the installation of a flap-skew detection system on airplanes with line numbers 981 and subsequent. Boeing also made certain editorial changes in Revision 2 of the service bulletin. Since there are no changes in Revision 2 of the service bulletin that affect the actions required by this AD, we have revised paragraphs (b), (c), (d), and (e) of this AD to refer to Revision 2 of the service bulletin instead of Revision 1. The new paragraph (h) of this AD gives credit for inspections accomplished before the effective date of this AD per Revision 1 of the service bulletin.

Explanation of Changes to Proposed AD

Because the language in Note 5 of the proposed AD is regulatory in nature, the provisions of that note have been included in paragraph (h) of this AD. Subsequent paragraphs and notes have been reidentified accordingly.

Also, for clarification, we have revised service bulletin references in the body of this AD to specify that the appropriate source for instructions is the Accomplishment Instructions of the service bulletin.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter concurs with the proposed AD.

Request To Remove Terminating Action

Two commenters request that we remove paragraphs (f) and (g) of the proposed AD. Those paragraphs would require replacing the numbers 3 and 6 and numbers 4 and 5 torque tube assemblies. Both commenters state that these replacements would be costly and burdensome to operators of the affected airplanes. One of the commenters, the airplane manufacturer, presents data that show that there have been no reported cases of trailing edge flap skew since the release of the original issue of Boeing Alert Service Bulletin 757–27A0125 on July 17, 1997. The commenter states that these data show that the proposed inspections are adequate to ensure the safety of the airplane fleet.

We partially concur with the commenters' request. We agree that it is not necessary to mandate replacement of the torque tube assemblies at this time. We consider three criteria for those situations where repetitive inspections may be permitted to continue indefinitely, even though a positive fix to the problem exists: (1) The area is easily accessible, (2) the damage is easily detectable, and (3) the consequences of the damage are not likely to be catastrophic. In consideration of the excessive wear that may occur on torque tube assemblies numbers 3 and 6 and numbers 4 and 5, we have determined that the circumstances meet these three criteria warranting the ability of owners and operators, at their option, to perform continual repetitive inspections.

However, we find that some operators may wish to replace and upgrade the affected torque tube assemblies in lieu of continuing to inspect indefinitely. Thus, we have determined that it is appropriate to leave the replacement of the torque tube assemblies as one option for compliance with this AD. Therefore, we have retained paragraphs (f) and (g) of the proposed AD in this final rule, but we have removed the required compliance times from those paragraphs. In addition, we have revised the Cost Impact section of the preamble of this AD to show the terminating modifications as optional.

Request To Revise Compliance Times for Initial Inspections

Two commenters request that we extend the compliance time for certain initial inspections that would be required by the proposed AD. One commenter requests that we revise the initial compliance time for paragraphs (c) and (e) of the proposed AD from the latest of 3,000 total flight cycles, 24 months after the airplane's date of manufacture, and 18 months after the effective date of the AD, to the later of 24 months and a certain flight-cycle limit (*e.g.*, 3,000 flight cycles) after the effective date of the AD. The second commenter requests that we revise the initial compliance time to not less than 24 months after the effective date of the AD. (This commenter does not specify to which paragraphs its request is intended to apply.) The second commenter states that its data do not support the proposed inspection timetable with respect to total flight cycles or calendar time since date of manufacture. It contends that wear is a function of cycles and should be free of calendar restriction. Both commenters are seeking an extension of the compliance time so that it will coincide with their approved "C"-check interval.

We concur with the commenters' request. The original intent of the 18-month compliance option in paragraphs (b)(2), (c), and (e) of the proposed AD was that it would coincide with "C"-check intervals for the majority of operators. This did not take into consideration that certain freighter configurations of Model 757–200 series airplanes have a "C"-check interval of 24 months. Thus, we have revised paragraphs (b)(2), (c), and (e) of this AD to require accomplishment of the initial inspections associated with those paragraphs prior to the accumulation of 3,000 total flight cycles, or within 24 months after the effective date of this AD, whichever is later.

Request To Revise Repetitive Inspection Interval

One commenter requests that we revise the repetitive interval for the inspections of the gearbox assemblies and U-joints specified in paragraph (e) of the proposed AD. The proposed AD specifies that these inspections must be performed every 3,000 flight cycles or 24 months, whichever is first. The commenter requests that we revise the interval to 3,000 flight cycles or 18 months, whichever comes first, to coincide with its "C"-check interval of the earliest of 6,000 flight hours, 3,000 flight cycles, and 18 months. The commenter presents data that show that Model 757 series airplanes typically reach the 18-month limit before they reach the 3,000-flight-cycle limit.

We partially concur with the commenter's request. We do not agree that it is necessary to reduce the intervals to meet the commenter's intent. Unless a "minimum" inspection interval is specified, operators are always permitted to perform actions earlier than the compliance time specified in an AD. In this case, it is at the operator's discretion to inspect its affected airplanes at the earlier of 18 months or 3,000 flight cycles, if that interval more closely fits the operator's maintenance schedule.

However, for clarification, we find that a change in terminology may be helpful. Therefore, we have revised paragraphs (b), (c), and (e) of this AD to state that repetitive inspections must be accomplished "at intervals not to exceed 3,000 flight cycles or 24 months, whichever comes first."

Request To Clarify Applicability of Inspection Requirement

One commenter points out that one airplane, line number (L/N) 412, was omitted from paragraph (c) of the proposed AD. The commenter states that paragraph (c) should be corrected to identify "airplanes with L/Ns 1 through 580 inclusive, which are identified as Groups 1 and 2 airplanes" in the service bulletin.

We concur. While L/N 412 is included in Groups 1 and 2 in the service bulletin, that L/N was inadvertently omitted from paragraph (c) of the proposed AD. Our intention was for our AD to align with the referenced service bulletin; no differences were noted in the preamble of the proposed AD. Therefore, we have revised paragraph (c) of this AD to include L/N 412. Because the airplane with L/N 412 is not a U.S.-registered airplane, there is no economic impact on the U.S. fleet and, thus, we find that making this change will not increase the scope of the AD or the economic burden associated with the AD.

Request To Give Credit for Previously Accomplished Inspections

One commenter requests that credit be given for inspections accomplished before the effective date of the AD per Revision 1 of the service bulletin. The commenter states that the compliance time for the first inspection should then be 3,000 flight cycles or 24 months from the most recent inspection.

We concur but find that no change is necessary to meet the commenter's intent. We give credit for actions accomplished before the effective date of an AD by means of the phrase "*Compliance:* Required as indicated, unless accomplished previously," which appears in every AD. As the commenter states, the next inspection must be done within 3,000 flight cycles or 24 months after the most recent inspection, whichever is first. No change is necessary in this regard. (Since we have revised this final rule to refer to Revision 2 of the service bulletin, credit for inspections per Revision 1 of the service bulletin is given in paragraph (h) of this AD.)

Request To Clarify Definition of Wear

One commenter requests that we more clearly define excessive wear of the torque tube assemblies, as it pertains to the requirement for measurements in paragraph (d) of the proposed AD. The commenter states that normal, worn, and excessively worn areas are subject to interpretation, and different individuals could interpret wear differently.

We note that paragraph (d) of the proposed AD would require measurements "if any wear is found during any inspection required by paragraph (b) or (c) of this AD. * * *." If wear is found during an inspection per paragraph (b) or (c) of this AD, the follow-on measurement required by paragraph (d) of this AD should provide adequate guidance as to the necessary course of action. However, we find that it may be helpful to provide examples of some types of wear that may be found. Therefore, paragraphs (b), (c), and (d) of this AD have been revised to include examples of wear that may be found.

Request To Revise Compliance Threshold for Paragraph (e) of Proposed AD

One commenter expresses concern over the inspections that would be required by paragraph (e) of the proposed AD and the requirement to replace the gearbox assembly and drive shaft assembly with new components if certain measurements are outside the limits specified in the service bulletin. The commenter is concerned about the potential cost of replacement parts, which it states may be as high as $108,000. A second commenter, the Air Transport Association of America, on behalf of its members, requests that these costs be specified in the AD. The first commenter is also concerned about the availability of necessary parts within the compliance time specified in the proposed AD, and it requests that we revise the initial compliance time to correspond with spares availability. The commenter also requests that we allow repetitive inspections of the gearbox assemblies and U-joints, as allowed for the torque tubes elsewhere in the proposed AD, so that the gearboxes or drive shaft assemblies do not have to be replaced before further flight if the measurements are outside the specified limits.

We do not concur. The compliance times specified in this final rule represent an acceptable interval of time wherein affected airplanes may be allowed to operate without jeopardizing safety. Further, we find that allowing repetitive inspections in lieu of requiring replacement of discrepant parts with new parts would not ensure that the unsafe condition is addressed in a timely manner. The measurement criteria identified in paragraphs (e)(1) and (e)(2) of this AD represent the maximum wear limits for the gearboxes and U-joints. To allow continued use of these components, even with repetitive inspections, would greatly increase the potential for a trailing edge flap skew. With regard to the commenter's concern about parts availability, we have reviewed available data and find that an adequate supply of parts should be available. We have made no change to this final rule in this regard.

We also do not concur with the other commenter's request that we include the cost associated with replacing the gearboxes or U-joints in the AD. The economic analysis included in AD actions is limited only to the cost of actions actually required by the rule. It does not consider the costs of "on-condition" actions, such as replacing a part if a discrepancy is detected during a required inspection. Such "on-condition" actions would be required to be accomplished—regardless of AD direction—to correct an unsafe condition identified in an airplane and to ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations.

Request To Revise Repetitive Interval for Paragraph (e) of Proposed AD

One commenter requests that we increase the repetitive interval for the inspections of the gearbox assemblies and U-joints that would be required by paragraph (e) of the proposed AD. The proposed AD states a repetitive interval of 3,000 flight cycles or 24 months, whichever is first; the commenter requests an interval of 4,500 flight cycles or 48 months, whichever is later. To justify its request, the commenter presents data from three airplanes in its fleet. These data show that no discrepancies were found on two of the airplanes, and only minor wear of one torque tube was found on the third. The commenter also contends that calendar time is not useful for gauging wear, as wear is a function of flight cycles.

We do not concur. Three airplanes do not constitute an adequate statistical sample size to determine that extension of the repetitive interval would provide an acceptable level of safety. While in general the number of flight cycles is a large contributor to wear on components, the intent of this AD is to protect against all types of wear. This includes wear accelerated by corrosion, which is a function of calendar time. We have made no change to the final rule in this regard.

Explanation of Additional Change to Proposed AD

We have added paragraph (i)(2) to this final rule to give credit for accomplishment of certain alternative methods of compliance that were approved previously in accordance with AD 92–25–01, amendment 39–8416.

Also, throughout this final rule, we have changed the citation for Boeing Service Bulletin 757–27–0107, dated June 16, 1994, to exclude the Evaluation Form. The form is intended to be completed by operators and submitted to the airplane manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 979 Model 757–200, –200CB, and –200PF series airplanes of the affected design in the worldwide fleet.

In AD 92–25–01, we estimated that approximately 279 U.S.-registered airplanes would be subject to the inspections in that AD. For these airplanes, the currently required inspections take approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $33,480, or $120 per airplane, per inspection cycle.

We estimate that approximately 283 U.S.-registered airplanes (Group 1 of Boeing Service Bulletin 757–27A0125, Revision 2) will be subject to the required inspection of torque tube assemblies 3 and 6. This inspection will take approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this new inspection

required for U.S. operators of Group 1 airplanes is estimated to be $33,960, or $120 per airplane, per inspection cycle.

We estimate that approximately 376 U.S.-registered airplanes (Groups 1 and 2 of Boeing Service Bulletin 757–27A0125, Revision 2) will be subject to the required inspection of torque tube assemblies 4 and 5. This inspection will take approximately 2 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these new inspections required for U.S. operators of Groups 1 and 2 airplanes is estimated to be $45,120, or $120 per airplane, per inspection cycle.

We estimate that 643 U.S.-registered airplanes (Groups 1, 2, and 3 of Boeing Service Bulletin 757–27A0125, Revision 2) will be subject to the new required inspections of the gear box assemblies and U-joints of the drive shaft assembly. These inspections will take approximately 4 work hours per airplane, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these new inspections required for U.S. operators is estimated to be $154,320, or $240 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to accomplish the modification that involves replacement of torque tube assemblies 3 and 6, this modification will take approximately 5 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,550. Based on these figures, the cost impact of this optional modification is estimated to be $4,850 per airplane.

Should an operator elect to accomplish the modification that involves replacement of torque tube assemblies 4 and 5, this modification will take approximately 5 work hours per airplane, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,550. Based on these figures, the cost impact of this optional modification is estimated to be $4,850 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–8416 (57 FR 54298, November 18, 1992), and by adding a new airworthiness directive (AD), amendment 39–13109, to read as follows:

2003–07–13 Boeing: Amendment 39–13109. Docket 2001-NM–329–AD. Supersedes AD 92–25–01, Amendment 39–8416.

Applicability: Model 757–200, –200CB, and –200PF series airplanes; line numbers (L/Ns) 1 through 979 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separations in the drive system for the inboard trailing edge flaps, which could cause a flap skew condition that could result in damage to the flaps or fuselage, and consequent reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 92–25–01

Repetitive Visual Inspections and Corrective Actions

(a) For airplanes with L/Ns 1 through 411 inclusive and 413 through 432 inclusive: Prior to the accumulation of 2,000 total flight cycles, or within the next 200 flight cycles after April 30, 1990 (the effective date of AD 90–08–16, amendment 39–6574), whichever occurs later, and thereafter at intervals not to exceed 2,000 flight cycles, perform a general visual inspection of the torque tube 3 and 6 coupling splines, in accordance with Boeing Service Letter 757–SL–27–52–B, dated April 30, 1990.

Note 2: Operators who have conducted inspections of the torque tube coupling splines prior to December 23, 1992 (the effective date of AD 92–25–01, amendment 39–8416), in accordance with Boeing Service Letter 757–SL–27–52, dated January 31, 1990, or Boeing Service Letter 757–SL–27–52–A, dated March 21, 1990, are considered to be in compliance with paragraph (a) of this AD.

(1) If the measurement over the pin, as detailed in the service letter, is less than 1.8605 inches but equal to or greater than 1.8533 inches, repeat the inspection within 1,000 flight cycles, until the requirements of paragraph (c) or (f) of this AD have been accomplished.

(2) If the measurement over the pin, as detailed in the service letter, is less than 1.8533 inches, replace the coupling before further flight, in accordance with the service letter.

New Requirements of This AD

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

New Repetitive Inspections: Torque Tubes 3 and 6

Note 4: If the requirements of paragraph (f) of this AD have been accomplished before the effective date of this AD, inspection per paragraph (b) of this AD is not required.

(b) For airplanes with L/Ns 1 through 411 inclusive and 413 through 432 inclusive, which are identified as Group 1 airplanes in Boeing Service Bulletin 757–27A0125, Revision 2, dated July 25, 2002: Do a general visual inspection for excessive wear of torque tube assemblies 3 and 6, per the Accomplishment Instructions of the service bulletin. Wear may include, but is not limited to, corrosion or axial or radial freeplay relative to adjacent torque tubes or gearbox. Do the initial inspection at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable. If no wear is found, repeat the inspection at intervals not to exceed 3,000 flight cycles or 24 months, whichever comes first, until paragraph (f) of this AD has been accomplished. Doing paragraph (b) of this AD terminates the requirements of paragraph (a) of this AD for torque tube assemblies 3 and 6.

(1) For airplanes on which the inspection in paragraph (a) of this AD has been done prior to the effective date of this AD: Inspect within 3,000 flight cycles after the most recent inspection done prior to the effective date of this AD per paragraph (a) of this AD, or within 24 months after the effective date of this AD, whichever is first.

(2) For airplanes on which the inspection in paragraph (a) of this AD has not been done prior to the effective date of this AD: Inspect prior to the accumulation of 3,000 total flight cycles, or within 24 months after the effective date of this AD, whichever is later.

New Repetitive Inspections: Torque Tubes 4 and 5

Note 5: If the requirements of paragraph (g) of this AD have been accomplished before the effective date of this AD, inspection per paragraph (c) of this AD is not required.

(c) For airplanes with L/Ns 1 through 580 inclusive, which are identified as Groups 1 and 2 airplanes in Boeing Service Bulletin 757–27A0125, Revision 2, dated July 25, 2002: Prior to the accumulation of 3,000 total flight cycles, or within 24 months after the effective date of this AD, whichever is later, do a general visual inspection for excessive wear of torque tube assemblies 4 and 5, per the Accomplishment Instructions of the service bulletin. Wear may include, but is not limited to, corrosion or axial or radial freeplay relative to adjacent torque tubes or gearbox. If no wear is found, repeat the inspection at intervals not to exceed 3,000 flight cycles or 24 months, whichever comes first, until paragraph (g) of this AD has been accomplished.

Corrective Actions: Torque Tubes 3, 4, 5, and 6

(d) If any wear (including, but not limited to, corrosion or axial or radial freeplay relative to adjacent torque tubes or gearbox) is found during any inspection required by paragraph (b) or (c) of this AD: Before further flight, measure the distance of the measurement over pins, per the Accomplishment Instructions of Boeing Service Bulletin 757–27A0125, Revision 2, dated July 25, 2002.

(1) If the distance is 1.8337 inches or more, repeat the general visual inspection required by paragraph (b) or (c) of this AD at the applicable interval specified in Table 1 of Figure 7 of the service bulletin, until the actions in paragraphs (f) (for torque tube assemblies 3 and 6) and (g) (for torque tube assemblies 4 and 5) have been done.

(2) If the distance is less than 1.8337 inches, do the actions in paragraphs (d)(2)(i) and (d)(2)(ii) of this AD, per the Accomplishment Instructions of the service bulletin.

(i) Before further flight, measure the distance of the outside diameter, as shown in Table 1 of Figure 7 of the service bulletin.

(ii) Replace the affected torque tube assembly with a new torque tube assembly at the applicable time specified in Table 1 of Figure 7 of the service bulletin.

New Repetitive Inspections: Gearbox Assemblies and Universal Joints

(e) For airplanes with L/Ns 1 through 979 inclusive: Prior to the accumulation of 3,000 total flight cycles, or within 24 months after the effective date of this AD, whichever is later, perform an inspection to measure the axial movement of the angle and tee gearbox assemblies and the distance between the upper and lower yokes of the universal joints (U-joints) of the drive shaft assemblies, per the Accomplishment Instructions of Boeing Service Bulletin 757–27A0125, Revision 2, dated July 25, 2002. Repeat these measurements at intervals not to exceed 3,000 flight cycles or 24 months, whichever comes first, and do paragraphs (e)(1) and (e)(2) of this AD, as applicable.

(1) If any measurement of the axial movement of the gearbox assembly is more than 0.015 inch, as specified in the service bulletin: Before further flight, replace the gearbox assembly with a new gearbox assembly, per the Accomplishment Instructions of the service bulletin.

(2) If the distance between the upper and lower yokes of the U-joints is more than 0.020 inch, as specified in Steps 3 and 6 of Figure 6 of the service bulletin: Before further flight, replace the drive shaft assembly with a new drive shaft assembly, per the Accomplishment Instructions of the service bulletin.

Optional Terminating Action

(f) For airplanes with L/Ns 1 through 411 inclusive and 413 through 432 inclusive: Replacing torque tube assemblies number 3 and 6 with new, improved torque tube assemblies, and installing a sealant plug in the shafts of four gearboxes, per the Accomplishment Instructions of Boeing Service Bulletin 757–27–0099, dated March 12, 1992, terminates the inspections required by paragraphs (a) and (b) of this AD.

(g) For airplanes with L/Ns 1 through 580 inclusive: Replacing torque tube assemblies number 4 and 5 with new, improved torque tube assemblies, and changing the related angle and tee gearbox assemblies, per the Accomplishment Instructions of Boeing Service Bulletin 757–27–0107, dated June 16, 1994, excluding Evaluation Form, terminates the inspections required by paragraph (c) of this AD. The changes for the related tee and angle gearbox assemblies are shown in Figures 6 and 7, respectively, of the service bulletin.

Note 6: No terminating action has been identified for the inspections specified in paragraph (e) of this AD.

Credit for Actions Accomplished Previously

(h) Inspections, measurements, and replacements done prior to the effective date of this AD per Boeing Alert Service Bulletin 757–27A0125, dated July 17, 1997; or Revision 1, dated December 2, 1999; are considered acceptable for compliance with the corresponding requirements of paragraphs (b), (c), (d), and (e) of this AD.

Alternative Methods of Compliance

(i)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 92–25–01, amendment 39–8416, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(k) The inspections and corrective actions shall be done in accordance with Boeing Service Letter 757–SL–27–52–B, dated April 30, 1990; and Boeing Service Bulletin 757–27A0125, Revision 2, dated July 25, 2002; as applicable. The modifications, if accomplished, shall be done in accordance with Boeing Service Bulletin 757–27–0099, dated March 12, 1992; and Boeing Service Bulletin 757–27–0107, dated June 16, 1994, excluding Evaluation Form; as applicable.

(1) The incorporation by reference of Boeing Service Bulletin 757–27A0125, Revision 2, dated July 25, 2002; and Boeing Service Bulletin 757–27–0107, dated June 16, 1994, excluding Evaluation Form; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service Letter 757–SL–27–52–B, dated April 30, 1990; and Boeing Service Bulletin 757–27–0099, dated March 12, 1992; was approved previously by the Director of the Federal Register as of December 23, 1992 (57 FR 54298, November 18, 1992).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(l) This amendment becomes effective on May 20, 2003.

Issued in Renton, Washington, on April 4, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8742 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–386–AD; Amendment 39–13113; AD 2003–08–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–90–30 airplanes. This action requires a one-time inspection for chafing or damage of the cable assemblies and follow-on modification of the cable assemblies of the powered seats located in the first-class cabin. This action is necessary to prevent chafing and damage of the cable assemblies due to contact between the cable and the metal retaining clip on the seat leg, which could result in electrical arcing and consequent smoke and/or fire in the cabin. This action is intended to address the identified unsafe condition.

DATES: Effective April 30, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 30, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 16, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–386–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–386–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: George Mabuni, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5341; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: Boeing production personnel reported that, while securing a first-class powered seat to the floor during routine maintenance, the seat-to-seat power cable assembly shorted and arced causing a small fire under the seat. Investigation revealed that the tie-wrapped cable assembly had migrated and was contacting the metal retaining clip on the powered seat leg. This condition, if not corrected, could result in chafing and damage of the cable assemblies, consequent electrical arcing, and smoke and/or fire in the cabin.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin MD90–25A056, Revision 01, dated April 30, 2002, which describes procedures for a one-time visual inspection for chafing or damage of the cable assemblies and follow-on modification of the cable assemblies of the powered seats located in the first-class cabin between fuselage stations Y=273.500 and Y=465.000. The modification includes fabrication of identification bands for the left and right side seat plug cables, and accomplishment of one of the following conditions:

Condition 1—If no chafing or damage is found, install cable assemblies and mating identification bands; install protective sleeving and wrap; install and route seat cable assemblies using improved methods; and coil and stow the ground wire;

Condition 2—If any chafing or damage is found that is within the limits specified in Chapter 20 of the Standard Wiring Practices Manual (SWPM), repair the damaged cable assemblies and do a continuity check; install cable assemblies and mating identification bands; install protective sleeving and wrap; install and route seat cable assemblies using improved methods; and coil and stow the ground wire; or

Condition 3—If any chafing or damage is found that is outside the limits specified in Chapter 20 of the SWPM, replace the damaged wires or cable assemblies with new components, and do a continuity check; install cable assemblies and mating identification bands; install protective sleeving and wrap; install and route seat cable assemblies using improved methods; and coil and stow the ground wire.

The procedures for inspection and modification described above are for Group 1 airplanes. The procedures for Group 2 airplanes are the same, except there is no coiling and stowing of the ground wire.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design that may be registered in the United States at some time in the future, this AD is being issued to prevent chafing and damage of the cable assemblies due to contact between the cable and the metal retaining clip on the seat leg, which could result in electrical arcing and consequent smoke and/or fire in the cabin. This AD requires a one-time inspection for chafing or damage of the cable assemblies and follow-on modification of the cable assemblies of the powered seats located in the first-class cabin between fuselage stations Y=273.500 and Y=465.000, per the service bulletin described previously.

Cost Impact

None of the Model MD–90–30 airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 7 work hours to accomplish the required modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $420 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–386–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–08–02 McDonnell Douglas: Amendment 39–13113. Docket 2001–NM–386–AD.

Applicability: Model MD–90–30 airplanes, as listed in Boeing Alert Service Bulletin MD90–25A056, Revision 01, dated April 30, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and damage of the cable assemblies of the powered seats located in the first-class cabin, which could result in electrical arcing and consequent smoke and/or fire in the cabin, accomplish the following:

One-Time Inspection/Follow-on Modification

(a) Within 6 months after the effective date of this AD: Do a one-time general visual inspection for chafing and damage of the cable assemblies of the powered seats located in the first-class cabin between fuselage stations Y=273.500 and Y=465.000, per Boeing Alert Service Bulletin MD90–25A056, Revision 01, dated April 30, 2002. Before further flight, do the applicable follow-on modification specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no chafing or damage is found, modify the cable assemblies (includes

installing cable assemblies and mating identification bands; installing protective sleeving and wrap; installing and routing of seat cable assemblies using improved methods; and coiling and stowing the ground wire if applicable) per Condition 1 of the service bulletin.

(2) If any chafing or damage is found that is within the limits specified in Chapter 20 of the Standard Wiring Practices Manual (SWPM), modify the cable assemblies (includes repairing the damaged cable assemblies and doing a continuity check; installing cable assemblies and mating identification bands; installing protective sleeving and wrap; installing and routing of seat cable assemblies using improved methods; and coiling and stowing the ground wire if applicable) per Condition 2 of the service bulletin.

(3) If any chafing or damage is found that is outside the limits specified in Chapter 20 of the SWPM, modify the cable assemblies (includes replacing the damaged wires or cable assemblies with new components, and doing a continuity check; installing cable assemblies and mating identification bands; installing protective sleeving and wrap; installing and routing of seat cable assemblies using improved methods; and coiling and stowing the ground wire if applicable) per Condition 3 of the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin MD90–25A056, Revision 01, dated April 30, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on April 30, 2003.

Issued in Renton, Washington, on April 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8892 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14845; Airspace Docket No. 03–ACE–30]

Modification of Class E Airspace; Shenandoah, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: An examination of controlled airspace for Shenandoah, IA revealed discrepancies in the Shenandoah Municipal Airport, IA airport reference point and in the location of the Shenandoah, IA nondirectional radio beacon (NDB), both used in the legal description for the Shenandoah, IA Class E airspace. This action corrects the discrepancies by modifying the Shenandoah, IA Class E airspace and by incorporating the current Shenandoah Municipal Airport, IA airport reference point and the current location of the Shenandoah NDB in the Class E airspace legal description.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14845/ Airspace Docket No. 03–ACE–30, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Shenandoah, IA. It incorporates the current airport reference point for Shenandoah Municipal Airport, IA and the current location of the Shenandoah NDB. It brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14845/Airspace Docket No. 03–ACE–30." The postcard will be date/time stamped and returned to the commentor.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Shenandoah, IA

Shenandoah Municipal Airport, IA
(Lat. 40°45′06″ N., long. 95°24′49″ W.)
Shenandoah NDB
(Lat. 40°45′06″ N., long. 95°24′27″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Shenandoah Municipal Airport and within 2.6 miles each side of the 140° bearing from the Shenandoah NDB extending from the 6.4-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on April 4, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–9181 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–ACE–12]

Establishment of Class E Airspace; Moundridge, KS; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule that was published in the **Federal Register** on Wednesday, March 5, 2003, (68 FR 10369). The final rule established Class E airspace at Moundridge, KS.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–5130, published on Wednesday, March 5, 2003, (68 FR 10369), established Class E airspace at Moundridge, KS. The Class E airspace was defined with reference to Moundridge Municipal Airport, KS. The published coordinates of Moundridge Municipal Airport, KS were incorrect.

■ Accordingly, pursuant to the authority delegated to me, the Class E airspace at Moundridge, KS, as published in the **Federal Register** on Wednesday, March 5, 2003 (68 FR 10369), is corrected as follows:

§71.1 [Corrected]

On page 10370, Column 1, second paragraph, third line change "(Lat. 38°12′25″ N., Long. 97°30′11″ W.)" to read "(Lat. 38°12′33″ N., Long. 97°30′10″ W.)."

Issued in Kansas City, MO, on March 31, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–9180 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14843; Airspace Docket No. 03–ACE–28]

Modification of Class E Airspace; Rock Rapids, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action revises Class E airspace at Rock Rapids, IA. The Rock Rapids Nondirectional Radio Beacon (NDB) that served Rock Rapids Municipal Airport, Rock Rapids, IA has been decommissioned and standard instrument approach procedures (SIAPs) that utilized the NDB have been cancelled. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) that accommodated the NDB SIAPs is no longer needed.

The intended effect of this rule is to provide appropriate controlled Class E airspace for aircraft operating under Instrument Flight Rule (IFR) at Rock Rapids, IA, delete the Rock Rapids NDB and coordinates from the legal

description of Class E airspace at Rock Rapids, IA, and comply with the criteria of FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, August 7, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 30, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14843/ Airspace Docket No. 03–ACD–28, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Rock Rapids, IA. The Rock Rapids NDB has been decommissioned and the NDB SIAPs that served Rock Rapids Municipal Airport, Rock Rapids, IA has been cancelled. Controlled airspace extending upward from 700 feet AGL that accommodated these SIAPs is no longer needed. The amendment to Class E airspace at Rock Rapids, IA provides controlled airspace at and above 700 feet AGL to contain SIAPs, other than the NDB SIAPs, at Rock Rapids Municipal Airport. The additional Class E airspace necessary for the NDB SIAPs is revoked. The Rock Rapids NDB and coordinates, and reference to these, are deleted from the legal description of Rock Rapids, IA Class E airspace. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14843/Airspace Docket No. 03–ACE–28" The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.09K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Rock Rapids, IA

Rock Rapids Municipal Airport, IA
(Lat 43°27′08″ N., long 96°10′47″ W.)

That airspace extending upward from 700 feet above the surface within a 6.2-mile radius of Rock Rapids Municipal Airport.

* * * * *

Issued in Kansas City, MO, on April 4, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–9179 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14844; Airspace Docket No. 03–ACE–29]

Modification of Class E Airspace; New Madrid, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace at New Madrid, MO. The New Madrid Nondirectional Radio Beacon (NDB) that served County Memorial Airport, New Madrid, MO has been decommissioned and the standard instrument approach procedure (SIAP) that utilized the NDB has been cancelled. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) that accommodated the NDB SIAP is no longer needed. This action also increase the radius of the existing controlled airspace at New Madrid, MO to meet requirements of FAA Order 7400.2E.

The intended effect of this rule is not to provide appropriate controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) at New Madrid, MO, delete the New Madrid NDB and coordinates from the legal description of Class E airspace at New Madrid, MO, and comply with the criteria of FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 20, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14844/ Airspace Docket No. 03–AC–29, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at New Madrid, MO. The New Madrid NDB has been decommissioned and the NDB SIAPs that served County Memorial Airport, New Madrid, MO have been cancelled. Confrolled airspace extending upward from 700 feet AGL that accommodated these SIAPs is no longer needed. The amendment to Class E airspace at New Madrid, MO provides controlled airspace at and above 700 feet AGL to contain SIAPs, other than the NDB SIAPs, at County Memorial Airport. The additional Class E airspace necessary for the NDB SIAPs is revoked. The New Madrid NDB and coordinates, and reference to these, are deleted from the legal description of New Madrid, MO Class E airspace. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14844/Airspace Docket No. 03–ACE–29" The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS C, CLASS B, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 New Madrid, MO

New Madrid, County Memorial Airport, MO
(Lat. 36°32′07″ N., long 89°35′59″ W.)
Malden VORTAC
(Lat. 36°33′17″ N., long 89°54′41″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of County Memorial Airport and within 1.8 miles each side of the 094° radial of the Malden VORTAC extending from the 6.3-mile radius to 7 miles east of the VORTAC.

* * * * *

Issued in Kansas City, MO, on April 3, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–9178 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2001–ASW–13]

Establishment of Class E Airspace; Angel Fire Airport, Angel Fire, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Angel Fire Airport, Angel Fire, NM. The development of an area navigation (RNAV) global positioning system (GPS) standard instrument approach procedure (SIAP), to Angel Fire Airport, Angel Fire, NM, has made this rule necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Angel Fire Airport, Angel Fire, NM.

EFFECTIVE DATE: 0901 UTC, May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5597.

SUPPLEMENTARY INFORMATION:

History

On August 29, 2001, a proposal to amend 14 CFR Part 71 to establish Class E airspace at Angel Fire Airport, Angel Fire, NM, was published in the **Federal Register** (66 FR 45660). The proposal was to establish Class E airspace at Angel Fire Airport, Angel Fire, NM. The development of a RNAV GPS SIAP to Angel Fire Airport, Angel Fire, NM, has made this rule necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Angel Fire Airport, Angel Fire, NM.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed, with the exception of minor editorial changes.

The coordinates for this airspace docket are based on North American Datum 83. Designated Class E airspace areas are published in paragraph 6005 of FAA Order 7400.9K, dated August 31, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR Part 71 establishes airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Angel Fire Airport and within 2 miles either side of the 005° bearing from the airport extending from the 7.5-mile radius to 11.1 miles north of the airport.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air):

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 31, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW NM E5 Angel Fire Airport, Angel Fire, NM [New]

Angel Fire Airport, NM
(Lat. 36°25′21″ N., long. 105°17′21″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Angel Fire Airport and within 2 miles either side of the 005° bearing from the airport extending from the 7.5-mile radius to 11.1 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on April 7, 2003.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 03–9177 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF JUSTICE

28 CFR Part 50

[Docket No. CIV 105; AG Order No. 2667–2003]

RIN 1105–AA82

Minimum Qualifications for Annuity Brokers in Connection With Structured Settlements Entered Into by the United States

AGENCY: Department of Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule sets forth the "minimum qualifications" an individual annuity broker must meet to be included on the list of annuity brokers established by the Department of Justice and transmitted to all United States Attorneys that will identify brokers who may provide services in connection with structured settlements entered by the United States. It also sets forth procedures to apply for inclusion on the list. Structured settlements allow the Department to resolve litigation by purchasing an annuity policy or making a series of payments rather than by paying a lump sum.

DATES: *Effective date:* This interim rule is effective April 15, 2003.

Comment date: Written comments must be submitted on or before July 14, 2003.

Declaration submission date: To be considered for inclusion on the initial list to be transmitted to all United States Attorneys, annuity brokers must submit the Declaration specified in this rule to the Department of Justice's Torts Branch at the address provided below by no later than April 24, 2003. Submissions received after April 24, 2003, will be considered for inclusion in any updates of the list. The list will be revised periodically, but not more often than twice every calendar year, beginning with calendar year 2004.

ADDRESSES: Comments on the interim rule should be submitted by telefax to 202–514–8071. Telefaxes should be limited to 15 pages. Comments may also be mailed to Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue NW., Washington, DC 20530. Comments received are public records. The name and address of the commenter should be included with all submissions. Comments will also be available for public inspection at a reading room in Washington, DC. Arrangements to visit the reading room must be made in advance by calling 202–514–4552.

All requests for inclusion on the list of annuity brokers should be addressed to Roger D. Einerson, Assistant Director, Torts Branch, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Zwick, Director, Office of Management Programs, Civil Division, U.S. Department of Justice, Main Building, Room 3140, 950 Pennsylvania Avenue NW., Washington, DC 20530; telephone 202–514–4552.

SUPPLEMENTARY INFORMATION: This rule implements section 11015(a) of Public Law 107–273, the 21st Century Department of Justice Appropriations Authorization Act, which was enacted on November 2, 2002. Section 11015(a) provides: "Not later than 6 months after the date of enactment of this Act, the Attorney General shall establish a list of annuity brokers who meet minimum qualifications for providing annuity brokerage services in connection with structured settlements entered by the United States. This list shall be updated upon request by any annuity broker that meets the minimum qualifications for inclusion on the list. The Attorney General shall transmit such list, and any updates to such list, to all United States Attorneys." The rule sets forth the minimum qualifications for an annuity broker to be included on the list and the procedures to be followed by individual annuity brokers who desire to be listed.

To be considered for inclusion on the initial list to be transmitted to all United States Attorneys, annuity brokers must submit the Declaration set forth on the Civil Division Web site (*http://www.usdoj.gov/civil/home.html*) to the Department of Justice's Torts Branch at the address provided below by no later than April 24, 2003. (A copy of the Declaration is also included as an appendix to this rule, but will not be included in the Code of Federal Regulations, as it may be revised later. The most current version of the Declaration will be available for download on the Civil Division's Web site.) Submissions received after April 24, 2003, will be considered for inclusion in the next update of the list. The list will be revised periodically, but not more often than twice every calendar year, beginning with calendar year 2004.

An annuity broker submitting a Declaration is declaring under penalty of perjury that the information on the Declaration is true, correct, accurate, and complete. Among other things, the broker must declare: "I have had substantial experience in each of the past three years in providing structured settlement brokerage services to or on behalf of defendants or their counsel." This provision serves two purposes. First, it ensures that the broker has significant, relevant experience. Second, it militates against potential conflicts between the interests of listed brokers and the interests of the United States as a defendant. The remaining requirements set forth in the Declaration are self-explanatory. In determining whether an annuity broker meets the minimum qualifications for inclusion on the list, the Department of Justice will rely solely and exclusively on the Declaration submitted by the annuity broker. The Department of Justice will neither verify the information submitted to the Department prior to the listing of an annuity broker, nor vouch for its accuracy for purposes of establishing or updating the list.

Initial declarations should be mailed to the United States Department of Justice, Civil Division, Torts Branch, FTCA Staff, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044. Brokers should refer to the Civil Division's Web site (*http://www.usdoj.gov/civil/home.html*) to determine the current mailing address at the time they submit subsequent Declarations.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review" section 1(b), The Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under section 3(f), Definitions, and accordingly this rule has been reviewed by the Office of Management and Budget.

The Department has also assessed both the costs and benefits of this rule as required by section 1(b)(6) and has made a reasoned determination that the benefits of this regulation justify its costs. The costs considered in this connection included the costs of submission of declarations required if an annuity broker desires to make services available to United States

Attorneys in connection with structured settlements entered by the United States. Costs considered also included the cost of establishing and maintaining a list of brokers and transmitting the lists, including updated lists, to United States Attorneys. The benefits of the rule clearly outweigh the costs because the costs are the lowest costs feasible to comply with the requirement that a list be established as required pursuant to section 11015(a) of Public Law 107–273.

Executive Order 13132

This rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The information collection requirement contained in this interim rule was approved by the Office of Management and Budget on March 24, 2003 under 5 CFR 1320.13. The information collection requirement contained in this rule will be used by brokers to certify they meet the minimum qualifications to be listed as an annuity broker pursuant to section 11015(a) of Public Law 107–273. The estimated total number of respondents is 400 and the amount of time estimated for an average respondent to respond is one hour for a total public burden of 400 hours per year.

The emergency approval is only valid for 180 days. Comments and suggestions concerning the Declaration that is the Appendix to this interim rule are encouraged and will be accepted until 60 days after the rule is published.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), certifies that this rule will not have a significant economic impact on a substantial number of small entities. The cost of completing the declaration that this rule requires will be minimal, and the Department does not believe that there will be a significant economic impact on any brokers who do not qualify by meeting the minimum qualifications set forth in this rule and in the declaration because any such brokers would not provide brokerage services to United States Attorneys to a significant extent at the present time. The listing of a broker might have a marginal economic impact on the broker to the extent that the broker is not currently soliciting use of brokerage services on the part of United States Attorneys. That impact is not expected to be significant for purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Administrative Procedure Act, 5 U.S.C. 553

This rule provides that brokers desiring to be included on a list of annuity brokers who meet minimum qualifications shall submit a specified declaration.

The Department has determined that taking the time to draft and publish a proposed rule for notice and comment before this rule took effect would have been impracticable in light of the short time between the enactment of the statute and the deadline for implementation, and also would have been contrary to the public interest, which strongly favors prompt implementation of the statute. Accordingly, the Department has determined that there is "good cause" for exempting this rule from the provision of the Administrative Procedure Act that requires a notice of proposed rulemaking and the opportunity for public comment. 5 U.S.C. 553(b)(B). For the same reasons, the Department also finds "good cause" for exempting this rule from the provision of the Administrative Procedure Act providing for a delayed effective date. 5 U.S.C. 553(d). Delaying the opportunity for brokers to seek to be included in the list would be contrary to the public interest.

List of Subjects in 28 CFR Part 50

Administrative practice and procedure, Annuities, and Brokers.

■ Accordingly, for the reasons set forth in the preamble, part 50 of chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 50—[AMENDED]

■ 1. The authority citation for part 50 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 1921 *et seq.*, 1973c; and Public Law 107–273, 116 Stat. 1758, 1824.

■ 2. A new § 50.24 is added to read as follows:

§ 50.24 Annuity broker minimum qualifications.

(a) *Minimum standards.* The Civil Division, United States Department of Justice, shall establish a list of annuity brokers who meet minimum qualifications for providing annuity brokerage services in connection with structured settlements entered by the United States. Those qualifications are as follows:

(1) The broker must have a current license issued by at least one State, the District of Columbia, or a Territory of the United States as a life insurance agent, producer, or broker;

(2) The broker must have a current license or appointment issued by at least one life insurance company to sell its structured settlement annuity contracts or to act as a structured settlement consultant or broker for the company;

(3) The broker must be currently covered by an Errors and Omissions insurance policy, or an equivalent form of insurance;

(4) The broker must never have had a license to be a life insurance agent, producer, or broker revoked, rescinded, or suspended for any reason or for any period of time;

(5) The broker must not have been convicted of a felony; and

(6) The broker must have had substantial experience in each of the past three years in providing structured settlement brokerage services to or on behalf of defendants or their counsel.

(b) *Procedures for inclusion on the list.*

(1) An annuity broker who desires to be included on the list must submit a "Declaration" that he or she has reviewed the list of minimum qualifications set forth in paragraph (a) of this section and that he or she meets those minimum qualifications. A sample of the Declaration for annuity brokers to submit is available from the Civil Division's Web site (*http://www.usdoj.gov/civil/home.html*) or by written request to the address in this section. These minimum qualifications must be continually met for a broker who has been included on the list to remain included when the list is updated thereafter. The Declaration must be executed under penalty of perjury in a manner specified in 28 U.S.C. 1746.

(2) Each broker must submit a new Declaration annually to be included on updated lists. For a broker to be included on the initial list to be established by May 1, 2003, the Torts Branch, Civil Division, must receive the broker's Declaration no later than April 24, 2003. If the broker wishes to be included on updated lists, the Torts Branch must receive a new Declaration from the broker between January 1 and April 10 of each successive calendar year. After the Declaration is completed and signed, the original must be mailed to the United States Department of Justice, Civil Division, FTCA Staff, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044. The Department of Justice will not accept a photocopy or facsimile of the Declaration.

(3) A Declaration will not be accepted by the Department of Justice unless it is complete and has been signed by the individual annuity broker requesting inclusion on the list. A Declaration that is incomplete or has been altered, amended, or changed in any respect from the Declaration at the Civil Division's Web site will not be accepted by the Department of Justice. Such a Declaration will be returned to the annuity broker who submitted it, and the Department of Justice will take no further action on the request for inclusion on the list until the defect in the Declaration has been cured by the annuity broker.

(4) The Department of Justice will retain a complete Declaration signed and filed by an annuity broker requesting to be on the list. Because this rule does not require the submission of any additional information, the Department retains discretion to dispose of additional information or documentation provided by an annuity broker.

(5) The Department of Justice will not accept a Declaration submitted by an annuity company or by someone on behalf of another individual or group of individuals. Each individual annuity broker who desires to be included on the list must submit his or her own Declaration.

(6) An annuity broker whose name appears on the list incorrectly may submit a written request that his or her name be corrected. An annuity broker whose name appears on the list may submit a written request that his or her name be removed from the list.

(7) To the extent practicable, a name correction or deletion will appear on the next revision of the list immediately after receipt of the written request for a name correction or deletion. A written request for a name correction or deletion must be mailed to the United States Department of Justice, Civil Division, FTCA Staff, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044. Facsimiles will not be accepted.

(8) The list of annuity brokers established pursuant to this section will be updated periodically, but not more often than twice every calendar year, beginning in calendar year 2004.

(c) *Disclaimers.*

(1) The inclusion of an annuity broker on the list signifies only that the individual declared under penalty of perjury that he or she meets the minimum qualifications required by the Attorney General for providing annuity brokerage services in connection with structured settlements entered into by the United States. Because the decision to include an individual annuity broker on the list is based solely and exclusively on the Declaration submitted by the annuity broker, the appearance of an annuity broker's name on the list does not signify that the annuity broker actually meets those minimum qualifications or is otherwise competent to provide structured settlement brokerage services to the United States. No preferential consideration will be given to an annuity broker appearing on the list except to the extent that United States Attorneys utilize the list pursuant to section 11015(b) of Public Law 107–273.

(2) By submitting a Declaration to the Department of Justice, the individual annuity broker agrees that the Declaration and the list each may be made public in its entirety, and the annuity broker expressly consents to such release and disclosure of the Declaration and list.

Dated: April 8, 2003.

John Ashcroft,

Attorney General.

Appendix

Declaration

[This Appendix will not appear in the Code of Federal Regulations]

I, _____, have carefully reviewed the Department of Justice regulation contained in 28 CFR 50.24 and published in the **Federal Register** on April 15, 2003, and I understand the minimum qualifications set forth in 28 CFR 50.24. I declare that I meet the minimum qualifications for inclusion on the Department of Justice's list of annuity brokers. Specifically, I declare each of the following to be true, accurate, correct, and complete as of the date this Declaration is signed:

a. I am currently licensed by at least one State, the District of Columbia, or a Territory of the United States as a life insurance agent, producer, or broker;

b. I am currently licensed or appointed by at least one life insurance company to sell its structured settlement annuity contracts or to act as a structured settlement consultant or broker;

c. I am currently covered by an Errors and Omissions insurance policy, or an equivalent form of insurance;

d. I have never had a license to be a life insurance agent, producer, or broker revoked, rescinded, or suspended for any reason or for any period of time;

e. I have never been convicted of a felony; and

f. I have had substantial experience in each of the past three years in providing structured settlement brokerage services to or on behalf of defendants or their counsel.

By submitting this Declaration to the Department of Justice, I am agreeing that this Declaration and the list of brokers each may be made public in its entirety, and I expressly consent to the release and disclosure of the Declaration and the list.

I declare under penalty of perjury that the foregoing is true, accurate, complete, and correct. 28 U.S.C. 1746.

Executed on this _____ day of _____, 2 _____.

_____

(Signature of Individual Broker Making Declaration)

_____

(Print Full Name of Individual Broker Making Declaration)

_____

(Street or Post Office Box)

_____

(City, State, and Zip Code)

After completing and signing this Declaration, mail the Declaration to the United States Department of Justice, Civil Division, FTCA Staff, Post Office Box 888, Benjamin Franklin Station, Washington, DC 20044.

[FR Doc. 03–9021 Filed 4–14–03; 8:45 am]

BILLING CODE 4410–12–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in May 2003. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during May 2003, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during May 2003, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during May 2003.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 4.90 percent for the first 20 years following the valuation date and 5.25 percent thereafter. These interest assumptions are unchanged from those in effect for April 2003.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for April 2003.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during May 2003, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

■ In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 115, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
115	5–1–03	6–1–03	3.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 115, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
115	5–1–03	6–1–03	3.50	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

■ 4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

■ 5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used To Value Benefits

* * * * *

For valuation dates occurring in the month—	The value of i_t are—					
	i_1	for t =	i_2	for t =	i_3	for t =
May 2003	.0490	1–20	.0525	>20	N/A	N/A

Issued in Washington, DC, on this 10th day of April 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–9192 Filed 4–14–03; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–03–013]

Drawbridge Operation Regulations; Bayou LaLoutre, Ycloskey, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Ycloskey Vertical Lift Span Highway Bridge across Bayou LaLoutre, mile 22.9, at Ycloskey, St. Bernard Parish, LA. This deviation allows the bridge to remain closed to navigation from May 6, 2003, through May 8, 2003. The deviation is necessary to conduct scheduled maintenance to the drawbridge.

DATES: This deviation is effective from 9 a.m. on May 6, 2003, through 3 p.m. on May 8, 2003.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 501 Magazine Street, New Orleans, Louisiana 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Kay Wade, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Louisiana Department of Transportation and Development has requested a temporary deviation in order to repair two clutches and damaged electrical circuits of the vertical lift span bridge across Bayou LaLoutre at mile 22.9 at Ycloskey, St. Bernard Parish, Louisiana. This maintenance is essential for the continued safe operation of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 9 a.m. on Tuesday, May 6, 2003, through 3 p.m. on Thursday, May 8, 2003.

The vertical lift span bridge has a vertical clearance of 2.5 feet above mean high water, elevation 3.0 feet Mean Sea Level and 4.5 feet above mean low water, elevation 1.0 Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists mostly of fishing, shrimp and trawl boats. This three day closure will not have a significant effect on these vessels. This closure has been scheduled so as to have the least impact on navigation by scheduling the work in the middle of the week for recreational boaters and outside the trawling season for commercial fishermen. The bridge normally opens to pass navigation an average of 700 times per month during the trawling off-season. In accordance with 33 CFR 117.5, the draw of the bridge opens on signal. The bridge will not be able to open for emergencies during the closure period. No alternate routes are available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: April 4, 2003.

Marcus Redford,

Bridge Administrator.

[FR Doc. 03–9082 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 03–013]

RIN 1625–AA00

Security Zone: Coronado Bay Bridge, San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security zones 25 yards in the U.S. navigable waters around all piers, abutments, fenders and pilings of the Coronado Bay Bridge.

These temporary security zones are needed for national security reasons to protect the public ports from potential subversive actions. Persons and vessels are prohibited from entering into, transiting through, loitering, or anchoring within this security zone unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 12:01 a.m. (P.S.T.) on March 22, 2003, until 11:59 p.m. (P.D.T.) on June 22, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (COTP San Diego 03–013) and are available for inspection or copying at Marine Safety Office San Diego, 2716 North Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai, USCG, c/o U.S. Coast Guard Captain of the Port, telephone (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), for the reasons set forth below, the Coast Guard finds that good cause exists for not publishing an NPRM. Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because the threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered by the September, 11, 2001 attacks, and that such disturbances continue to endanger the international relations of the United States. *See also* Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Moreover, the Secretary of the Department of Homeland Security and the Attorney General recently elevated the Threat Level to Orange-High Condition. A High Condition is declared when there is a high risk of terrorist attacks. As a result, many agencies, like the Coast Guard, that will be a part of the new Department of Homeland Security on March 1, are taking additional steps to increase their protective measures. Under High Condition, among other things, federal agencies are to consider the following protective measures: Coordinate necessary security efforts with Federal, State, and local law enforcement agencies, National Guard or other security and armed forces; and restrict access to a threatened facility to essential personnel only. As a result, a heightened level of security has been established around the Coronado Bridge. Additionally, the measures contemplated by this rule are intended to prevent future terrorist attacks against individuals on or near the Coronado Bridge. Any delay in the effective date of this TFR is impractical and contrary to the public interest.

Background and Purpose

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the war with Iraq have made it prudent to U.S. ports to be on higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide. In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against the Coronado Bridge would have on the public interest, the Coast Guard is establishing security zones around the Coronado Bridge. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these bridges. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on these bridges would have on the public the transportation system and surrounding areas and communities, security zones are prudent for these structures.

Discussion of Rule

In this temporary rule, the Coast Guard is establishing fixed security zones extending from the surface to the sea floor, 25 yards in the waters around all piers, abutments, fenders and pilings of the Coronado Bridge, San Diego Bay, California. Entry into these security zones is prohibited, unless doing so is necessary for safe navigation, or to conduct official business such as scheduled maintenance or retrofit operations. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and *in rem* liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years.

Coast Guard personnel will enforce this regulation and the Captain of the Port may be assisted by other Federal, State, or local agencies in the patrol and enforcement of the regulation. This regulation is issued under the authority of 33 U.S.C. 1226 in addition to the authority contained in 33 U.S.C. 1231.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to the zones, the effect of this regulation will not be significant because: (i) The zones will encompass only a small portion of the waterway; (ii) vessels will be able to pass safely around the zones; and (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The sizes of the zones are the minimum necessary to provide adequate protection for the bridges, vessels operating in the vicinity, their crews and passengers, adjoining areas and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the southern San Diego Bay and Chula Vista ports and pleasure craft engaged in recreational activities and sightseeing.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The security zones will not have a significant economic impact on a substantial number of small entities for several reasons: Small vessel traffic can pass safely around the security zones and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because we are establishing a security zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add new § 165.T11–032 to read as follows:

§ 165.T11–032 Security Zone: Coronado Bay Bridge, San Diego, CA.

(a) *Location.* All waters extending from the surface to the sea floor, 25 yards around all piers, abutments,

fenders and pilings of the Coronado Bay Bridge on the navigable waters of San Diego Bay. This security zone will not restrict the main navigational channel and vessels will not be restricted from transiting through the channel.

(b) *Effective Period.* This section is effective from 12:01 a.m. (PST) on March 22, 2003 until 11:59 p.m. (PDT) on June 22, 2003. If the Coast Guard terminates enforcement of this security zone prior to the scheduled termination of this section, the Captain of the Port will announce that fact via Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, loitering, or anchoring within this security zone by all persons and vessels is prohibited, unless authorized by the Captain of the Port, or his designated representative. Mariners are advised that the security zones will not restrict the main navigational channel and transit through the channel is not prohibited. Mariners requesting permission to transit through the security zone may request authorization to do so from Captain of the Port or his designated representative. The Coast Guard can be contacted on San Diego Bay via VHF–FM channel 16.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

Dated: March 21, 2003.

Stephen P. Metruck,

Commander, Coast Guard, Captain of the Port, San Diego.

[FR Doc. 03–8946 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7482–3]

Texas: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Texas has applied for Final authorization of its revisions to its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization, and is authorizing the State's revisions through this immediate final action. The EPA is publishing this rule to authorize the revisions without a prior proposal because it believes this action is not controversial and does not expect adverse comments. Unless the EPA receives adverse comments which oppose this authorization during the comment period, the decision to authorize the State of Texas' revisions to their hazardous waste program will take effect. If adverse comments are received, the EPA will publish a document in the **Federal Register** either: withdrawing this immediate final decision; or a notice containing a response to comments and which either affirms that the immediate final decision takes effect or reverses the decision.

DATES: This immediate final rule is effective on June 16, 2003, unless EPA receives adverse written comment by May 15, 2003. Should the EPA receive such comments, it will publish a timely document either: withdrawing the immediate final publication or affirming the publication and responding to comments.

ADDRESSES: Written comments, referring to Docket Number TX–01–02, should be sent to Alima Patterson Region 6 Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 1145 Ross Avenue, Dallas Texas 75202–2733. Copies of the State of Texas program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Texas Commission on Environmental Quality (TCEQ), 12100 Park S. Circle, Austin TX 78753–3087, (512) 239–1121 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 CFR parts 124, 260–266, 268, 270, 273, and 279.

B. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Texas subject to RCRA will now have to comply with the authorized State requirements (in RCRA Clusters VII through X listed in this document) instead of the equivalent federal requirements in order to comply with RCRA. Texas has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Do inspections, and require monitoring, tests, analyses or reports; (2) enforce RCRA requirements and suspend or revoke permits; and (3) take enforcement actions after notice to, and consultation with the State . This action does not impose additional requirements on the regulated community because the regulations for which Texas is being authorized by today's action are already effective, and are not changed by today's action.

C. What Has The State Of Texas Previously Been Authorized For?

Texas received final authorization to implement its Hazardous Waste Management Program on December 12, 1984, effective December 26, 1984 (49 FR 48300). This authorization was clarified in a notice published in the FR on March 26, 1985 (50 FR 11858). Texas received final authorization for revisions to its program in notices published in the **Federal Register** on January 31, 1986, effective October 4, 1985 (51 FR 3952); on December 18, 1986, effective February 17, 1987 (51 FR 45320). EPA authorized the following revisions: March 1, 1990, effective March 15, 1990 (55 FR 7318); on May 24, 1990, effective July 23, 1990 (55 FR 21383); on August 22, 1991, effective October 21, 1991 (56 FR 41626); on October 5, 1992, effective December 4, 1992 (57 FR 45719); on April 11, 1994, effective June 27, 1994, (59 FR 16987); on April 12, 1994, effective June 27, 1994 (59 FR 17273); September 12, 1997, effective November 26, 1997 (62 FR 47947); and on August 18, 1999, effective October 18, 1999 (64 FR 44836) and July 13, 2000, effective September 11, 2000 (65 FR 43246). EPA incorporated by reference the State of Texas Base Program and additional program revisions in RCRA Clusters III and IV into the CFR on September 14, 1999 (64 FR 49673); effective November 15, 1999.

On March 28, 2002, Texas submitted a final complete program revision application, seeking authorization of its program revision in accordance with 40 CFR 271.21. In 1991, Texas Senate Bill 2 created the Texas Natural Resource Conservation Commission (TNRCC) which combined the functions of the former Texas Water Commission and the former Texas Air Control Board. The transfer of functions to the TNRCC from the two agencies became effective on September 1, 1993. House Bill 2912, Article 18, of the 77th Texas Legislature, 2001, changed the name of the TNRCC to the Texas Commission on Environmental Quality (TCEQ) and directed the TNRCC to adopt a timetable for phasing in the change of the agency's name. The TNRCC decided to make the change of the agency's name to the TCEQ effective September 1, 2002. The change of name became effective September 1, 2002, and the legislative history of the name change is documented in the Attorney General Statement. The TCEQ may perform any act authorized by law either as the TNRCC or as the TCEQ. *Id.* Therefore, references to the TCEQ are references to TNRCC and to its successor, the TCEQ. For further legislative history on the name-change (See, Act of June 15, 2001, 77th Leg. R. S., Ch 965, section 18.01, 2001 Tex. Gen. Laws 1985).

The TCEQ has primary responsibility for administration of laws and regulations concerning hazardous waste, under the Texas Solid Waste Disposal Act (codified in Chapter 361 of the Texas Health & Safety Code). The TCEQ is authorized to administer the RCRA program. However, the Railroad Commission (RRC) has jurisdiction over the discharge, storage, handing, transportation, reclamation, or disposal of waste materials (both hazardous and non hazardous) that result from the activities associated with the exploration, development, or production of oil or gas or geothermal resources and other activities regulated by the RRC. See, Tex. Water Code Ann. section 26.131 and Ch. 27 (Vernon 2000). A list of activities that generate wastes that are subject to the jurisdiction of the RRC is found at 16 Tex. Admin. Code section 3.8(a)(30) and at 30 Tex. Admin. Code section 335.1. Such wastes are termed "oil and gas wastes." The TCEQ has responsibility to administer the RCRA program, however, hazardous waste generated at natural gas or natural gas liquids processing plants or reservoir pressure maintenance or repressurizing plants are subject to the jurisdiction of the TCEQ until the RRC is authorized by EPA to administer those waste under RCRA. When the RRC is authorized by EPA to administer the RCRA program for these wastes, jurisdiction over such hazardous waste will transfer from the TCEQ to the RRC. The EPA has designated the TCEQ as the lead agency to coordinate RCRA activities between the two agencies. The EPA is responsible for the regulation of any hazardous waste for which TCEQ has not been previously authorized.

Further clarification of the jurisdiction between the TCEQ and the RRC can be found in a separate document. This document, a Memorandum of Understanding (MOU), became effective on May 31, 1998. The MOU clarified the jurisdictional boundaries between the agencies for the management and regulation of waste associated with exploration, development, production and refining of oil and gas. The MOU has been adopted by rule, which is an adoption by reference of the RRC's rule, and describes the division of responsibilities as well as the procedures for coordination between the two agencies. See, TCEQ's rule 30 Tex. Admin. Code section 7.117 and RRC's rule at 16 Tex. Admin. Code section 3.30.

The TCEQ has the rules necessary to implement EPA's RCRA Clusters VII through X revisions to the Federal Hazardous Waste Program promulgated from July 1, 1995, to June 30, 2000. The TCEQ authority to incorporate Federal rules by reference can be found at Texas Government Code Annotated section 311.027 (Vernon 1998) and adoption of the hazardous waste rules in general are pursuant to the following statutory provisions: (1) Tex. Water Code Ann. section 5.103 (Vernon 2000), effective September 1995, as amended, (TCEQ's authority to adopt any rules necessary to carry out its powers and duties); (2) Tex. Health & Safety Code Ann. section 361.024 (Vernon 2001), effective September 1, 1995, as amended (authority to adopt rules necessary to "establish minimum standards of operation for the management and control of solid waste"); and (3) Tex. Health & Safety Code Ann. section 361.078 (Vernon 2001), effective September 1, 1989 (specifically recognizing TCEQ's authority to adopt hazardous waste rules and to issue and enforce permits to the extent necessary to receive and maintain RCRA authorization). The TCEQ partially adopted the Hazardous Remediation Waste Management Requirements (HWIR-Media). The following are the federal rules: 40 CFR 260.10, 261.4(g) through 261.4(g)(2)(ii), 264.1(j)(3)(i) through 264.1(j)(3), 264.554 through 264.554(m), 265.1(b), 268.2(c), 268.50(g) and 270.42 Appendix I because the HWIR-Media rule is an optional rule, States can partially adopt the rule if the State has in place other mechanism to address those hazardous waste. The TCEQ did not adopt 40 CFR 270.11(d)(1)–(3), 270.68, 270.73(a), 270.79, 270.80(a)–(f), 270.85(a)–(c), 270.95, 270.100, 270.105, 270.110 introduction through 270.110(i), 270.115, 270.120, 270.125, 270.130(a)–(b), 270.135 introduction through 270.135(c), 270.140 introduction through 270.140(c), 270.145(a) introduction through 270.145(d)(3), 270.150(a)–(g), 270.155(a) introduction through 270.155(b), 270.160 introduction through 270.160(c), 270.165, 270.170, 270.175(a) introduction through 270.175(c), 270.180(a)–(b), 270.185, 270.190(a)–(d), 270.195, 270.200, 270.205, 270.210 introduction through 270.210(b), 270.215(a), 270.215(a)–(d), 270.220(a)–(b), 270.225, and 270.230(a) through 270.230(e)(2). However, the TCEQ has a Office of Remediation which is responsible for the cleanup of releases of hazardous waste and pollutants so that threats to human health and the environment are controlled or eliminated. The TCEQ rules which address the Remedial Action Plan requirement of the HWIR-media rule are covered in the Texas Risk Reduction Program rules at 30 Tex. Admin. Code Ch. 350 and 30 Tex. Admin. Code section 350.75.

D. What Changes Are We Authorizing With Today's Action?

The State of Texas applied for final approval of its revision to its complete program in accordance with 40 CFR 271.21. Texas' revisions consist of regulations which specifically govern Federal Hazardous Waste promulgated from July 1, 1995, to June 30, 2000 (RCRA Clusters VII through X). Texas requirements are included in a chart with this document. The EPA is now making an immediate final decision, subject to receipt of written comments that oppose this action, that Texas' Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Texas final authorization for the following program revisions:

Federal citation	State analog
1. Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs; [61 FR 34252] July 01, 1996. (Checklist 153).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.78(f)(3)(A)–G and (g)(3)(A)–(G), effective October 19, 1998.
2. Hazardous Waste Treatment; Storage and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments and Containers; [61 FR 59931] November 25, 1996; [59 FR 62896] December 6, 1994; [60 FR 26828] May 19, 1995; [60 FR 50426] September 29, 1995; [60 FR 56952] November 13, 1995; [61 FR 4903]; [61 FR 28508] June 5, 1996]. (Checklists 154, 154.1, 154.2, 154.3, 154.4, 154.5, and 154.6).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.061 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2002), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.31, effective November 15, 2001, as amended; section 335.24(e), and, effective April 4, 1999, as amended, section 335.69(f)(2), 335.69(a)(1)(A)–(B), effective November 15, 2001, as amended; section 335.152(a)(1), 335.152(a)(4), 335.152(a)(7)–(9), 335.152(a)(16)–(19), effective November 18, 2001; 335.111(a), effective November 15, 2001; 335.112(a)(1), 335.112(a)(4), 335.112(a)(8)–(10), 335.112(a)(19)–(21), 335.112(a)(24), effective November 18, 2001; 305.122(a), effective November 15, 2001, as amended and 305.50(a)(A), effective November 18, 2001, as amended.
3. Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance, [62 FR 1992] January 14, 1997. (Checklist 155).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.341(c), effective April 30, 2000.
4. Military Munitions Rule; Hazardous Waste Identification and Management Explosives Emergencies; Manifest Exemptions for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties, [62 FR 6622] February 12, 1997. (Checklist 156).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated section 361.061 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1, and 335.61, effective April 12, 2001, as amended; section 335.10(h), effective May 20, 1999, 335.91(f), and (g), 335.41(d)(2), effective April 12, 2001, as amended, 335.271, 335.272, effective April 12, 2001, as amended, 335.271, 335.272, effective April 12; 2001, as amended; 335.152(a)(4), 335.152(a)(20), 335.112(a)(4), 335.112(a)(22), effective November 18, 2001, as amended and 305.69(j) effective April 12, 2001, as amended.
5. Land disposal Restrictions—Phase IV: Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions, [62 FR 25998] May 12, 1997. (Checklist 157).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 30 Texas Administrative Code section 335.1 (definition of solid waste), effective May 30, 2001, as amended; 335.17(a)(9)–(12), and 335.24(c)(2), effective April 4, 1999. The State law is more stringent than the Federal rule because the State does not have provisions equivalent to 40 CFR 268.(a)(10) regarding tolling agreements. State law has no provision equivalent to 40 CFR 268.44(a), under which EPA may assure a variance from an applicable treatment standard.

Federal citation	State analog
6. Hazardous Waste Management System; Testing and Monitoring Activities, [62 FR 32452] June 13, 1997. (Checklist 158).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.31, effective October 19, 1998; section 335.132(a)(17)–(18), 335.152(a)(22)(E), 335.112(a)(19)–(20), effective April 12, 2001; 335.221(a)(15), 335.221(17)–(18), effective April 4, 1999 and 335.221(a), effective April 4, 1999.
7. Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions, [62 FR 32974] June 17, 1997. (Checklist 159).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.003 (Vernon 2001), effective September 1, 1991, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, section 335.431(c)(1), effective April 20, 2000.
8. Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, [62 FR 37694] July 14, 1997. (Checklist 160).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.431(c), effective April 30, 2000.
9. Second Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes From Carbamate Production, [62 FR 45568] August 28, 1997. (Checklist 161).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated section 361:078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.431, effective April 30, 2000.
10. Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Clarification and Technical Amendments, [62 FR 64636] December 8, 1997. (Checklist 163).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.152(a)(1), 335.152(a)(4), 335.152(a)(17)–(19); 335.112(a)(1), 335.112(a)(4), 335.112(a)(19)–(21), 335.112(a)(24), effective November 18, 2001, as amended; 305.50(4)(A), effective March 21, 2000.
11. Kraft Mill Steam Stripper Condensate Exclusion, [63 FR 18504] April 15, 1998. (Checklist 164).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of solid waste)(A)(iv), effective November 15, 2001.
12. Recycled Used Oil Management Standards; Technical Correction and Clarification, [63 FR 24963] May 6, 1998. (Checklist 166).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated Chapter 371, effective September 1, 1991, as amended; 30 Texas Administrative Code section 3355.78(j), effective October 19, 1998; section 335.24(c)(4)(A)–(C), effective April 14, 1999; section section 324.1, 324.3, 324.6, 324.11–14, effective August 8, 1999.

Federal citation	State analog
13. Land Disposal Restrictions Phase IV–Treatment Standards for Metal Wastes and Mineral Processing Wastes, [63 FR 28556] May 26, 1998. (Checklist 167 A).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1,
14. Land Disposal Phase IV—Hazardous Soils Treatment Standards and Exclusions, [63 FR 28556] May 26, 1998. (Checklist 167 B).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.69(f)(4)(C), effective March 18, 2001; section 335.431(c), effective November 15, 2001. State law has no provision equivalent to 40 CFR 268.44(a), under which EPA may assure a variance from an applicable treatment standard.
15. Land disposal Restrictions Phase IV—Corrections, [63 FR 28556] May 26, 1998. (Checklist 167 C).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.431(c), effective November 15, 2001 and section 335.431, effective April 30, 2000, as amended. State law has no provision equivalent to 40 CFR 268.44(a), under which EPA may assure a variance from an applicable treatment standard.
16. Mineral Processing Secondary Material Exclusion, [63 FR 28556] May 26, 1998. (Checklist 167 D).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1,
17. Bevil Exclusion Revision and Clarification, [63 FR 28556] May 26, 1998. (Checklist 167 E).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of solid waste) (A)(iv), effective May 30, 2001 as amended; 335.1 (definition of hazardous waste, effective January 26, 1994, as amended.
18. Exclusion of Recycled Wood Preserving Wastewater, [63 FR 28556] May 26, 1998. (Checklist 167 F).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1989, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of solid waste) (A)(iv), effective May 30, 2001 as amended; 335.1 (definition of a hazardous waste, effective January 26, 1994, as amended.
19. Hazardous Waste Combustors Revised Standards [63 FR 33782] June 19, 1998. (Checklist 168).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of solid waste) (A)(iv), effective May 30, 2001; section 305.69(i), 305.69(k), effective April 12, 2001; 305.51(a)(8), effective December 5,

Federal citation	State analog
20. Petroleum Refining Process, [63 FR 42110] August 6, 1998; [63 FR 54356] October 9, 1998. (Checklist 169 & 169.1).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of hazardous waste) effective January 26, 1994, as amended, 335.1(129)(A)(iv) (definition of a solid waste), effective May 30, 2001, as amended; 335.431, effective April 30, 2000, as amended.
21. Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Administrative Stay, [63 FR 46332] August 31, 1998. (Checklist 170).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.431, effective April 30, 2000 as amended.
22. Emergency Revision of Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Waste from Carbamate Production, [63 FR 47409] September 4, 1998. (Checklist 171).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.431, effective April 30, 2000, as amended.
23. Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags, [63 FR 48124] September 9, 1998. (Checklist 172).	Texas Water Code Annotated section 5.103 (Vernon 2000), 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.431, effective November 15, 2001, as amended.
24. Land Disposal Restrictions—Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088), [63 FR 51254] September 24, 1998. (Checklist 173).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as, amended; 30 Texas Administrative Code section 335.431(c), effective November 15, 2001.
25. Hazardous Remediation Waste Management Requirements (HWIR-Media), [63 FR 65874] November 30, 1998. (Checklist 175).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Heath & Safety Code Annotated section 361.078 (Vernon 2001) effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; section 335.1 (definition of staging pile), and 335.111(a), effective November 15, 2001; 335.431, effective November 15, 2001; and 335.152(a)(14), effective November 18, 2001.
26. Universal Waste Rule—Technical Amendments, [63 FR 71225] December 24, 1998. (Checklist 176).	Texas Waste Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001),
27. Organic Air Emission Standards: Clarification and Technical Amendments [64 FR 3382, January 21, 1999. (Checklist 177).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.69(a)(1)(A)–(B) effective March 18, 2001; 335.152(a)(17), (19) and (21), effective November 18, 2002.

Federal citation	State analog
28. Petroleum Refining Process Wastes—Leachate Exemption, [64 FR 6806] February 11, 1999. (Checklist 178).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended.
29. Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards, [64 FR 25408] May 11, 1999. (Checklist 179).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; section 335.1 (definition of solid waste), effective May 30, 2001; section 335.431(c), effective November 15, 2001.
30. Guideline for Establishing Test Procedures for the Analysis of Oil and Grease and Non-Polar Material Under the Clean Water Act and Resource Conservation and Recovery Act, [64 FR 26315] June 14, 1999. (Checklist 180).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Taxes Administrative Code section 335.31, effective November 15, 2001.
31. Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps, [64 FR 36466] July 6, 1999. (Checklist 181).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of universal waste), effective May 30, 2001; section 335.2(1), effective April 30, 2000; section 335.41(j), effective April 12, 2001; section 335.151(b), effective February 22, 1994; section 335.261(a)–(b), effective April 30, 2000; and section 335.431(b)(3), effective November 15, 2001.
32. NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, Miscellaneous Units, and Secondary Lead Smelters; Clarification of BIF Requirements Technical Correction to Fast-track Rule (MACT Rule), [64 FR 52827] September 30, 1999; [64 FR 63209] November 19, 1999. (Checklist 182 & 182.1).	Texas Water Code Annotated section 51.03 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 200), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (129)(A)(iv) (Definition of solid waste), effective November 15, 2001, 335.152(a)(13), 335.112(a)(14), effective November 18, 2001; section 305.50(4)(A), section 305.69(i), effective November 15, 2001; section 335.1 (definitions), 335.221(a), 335.221(a)(1), 305.50(4)(A), 305.571(b), and 335.222(a)(c), effective November 15, 2001.
33. Land Disposal Restrictions Phase IV—Technical Corrections, [64 FR 56469] October 20, 1999. (Checklist 183).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of a hazardous waste), effective January 26, 1994, as amended; section 335.431(c) effective November 15, 2001.
34. Waste Water Treatment Sludges from Metal Finishing Industry; 180-day Accumulation time. [65 FR 12378] March 8, 2000. (Checklist 184).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.69(j)–(l) effective March 18, 2001.

Federal citation	State analog
35. Organobromine Production Waste, [65 FR 14472] March 17, 2000. (Checklist 185).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (definition of a — —
36. Organobromine Production Waste and Petroleum Refining Process Waste; Technical Correction, [65 FR 36365 June 8, 2000. (Checklist 187).	Texas Water Code Annotated section 5.103 (Vernon 2000), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.017 (Vernon 2001) effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.024 (Vernon 2001), effective September 1, 1995, as amended; Texas Health & Safety Code Annotated section 361.078 (Vernon 2001), effective September 1, 1989, as amended; 30 Texas Administrative Code section 335.1 (Definition of a hazardous waste), effective January 26, 1994, as amended; section 335.431(c) effective November 15, 2001.

E. What Is the Relationship Between the Resource Conservation and Recovery Act and the Hazardous Waste Combustor MACT? How Does This Affect Delegation of This Standard to Texas Commission on Environmental Quality's Authorization?

In this authorization document, the State of Texas is also seeking authorization for the Post-Closure Permit Requirement and Closure Process, (Checklist 174). On September 30, 1999, the EPA finalized the National Emission Standards for Hazardous Air Pollutants (NESHAP) for three categories waste combustors (HWCs): Incinerators, cement kilns and lightweight aggregate kilns (64 FR 52828). The EPA promulgated this rule under joint authority of the Clean Air Act (CAA) and (RCRA). Before this rule went into effect, the air emissions from these three types of HWCs were primarily regulated under the authority of RCRA (*see* 40 CFR parts 264, 265, 266, and 270). However, with the release of the final HWC NESHAP (*see* 40 CFR part 63 subpart EEE), the air emissions from these sources are now regulated under RCRA and the CAA. Even though both statutes give the EPA the authority to regulate these emissions, the EPA has determined that having emissions standards and permitting requirements in both sets of implementing regulations would be duplicative. For this reason, using the authority provided by section 1006(b) of RCRA, the EPA deferred the RCRA requirements for HWC emission controls to the CAA requirements of 40 CFR part 63 subpart EEE.

Therefore, with today's authorization of the State of Texas for the RCRA provisions of the September 30, 1999, HWC NESHAP rule, the RCRA waste management standards for air emissions from these units will no longer apply after the facility has demonstrated compliance with 40 CFR part 63 subpart EEE. One notable exception concerns section 3005(c)(3) of RCRA, which requires that each RCRA permit contain the terms and conditions necessary to protect human health and the environment. Under this provision of RCRA, if a regulatory authority determines that more stringent conditions than the HWC NESHAP are necessary to protect human health and environment for a particular facility, then the regulatory authority may impose those conditions in the facility's RCRA permit. (*See* the HWC MACT rule preamble discussion on the interrelationship of the MACT rule with the RCRA Omnibus provision and site specific risk assessment at 64 FR 52828, pages 52839–52843, September 30, 1999, and RCRA Site-Specific Risk Assessment Policy for Hazardous Waste Combustion Facilities dated June, 2000, for more information.

E. What Decisions Has the EPA Made?

The EPA concludes that Texas' application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, the EPA grants Texas final authorization to operate its hazardous waste program with the changes described in the authorization application. Texas has the responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Texas, including issuing permits, until the State is granted authorization to do so.

F. How Do the Revised State Rules Differ From the Federal Rules?

The EPA considers the following state requirement to be more stringent than the federal: The state law is more stringent than the federal rule because the State does not have provisions equivalent to 40 CFR 268.(a)(10) regarding tolling agreements. State law has no provision equivalent to 40 CFR 268.44(a), under which EPA may approve a variance from an applicable treatment standard. In this authorization, there are no broader in scope provisions. The EPA cannot enforce broader in scope requirements.

G. Who Handles Permits After This Authorization Takes Effect?

The State will issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. Upon authorization of the State program, EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal facilities for which the State is receiving authorization. EPA will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which Texas is not yet authorized.

H. Why Wasn't There a Proposed Rule Before Today's Notice?

The EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial and does not expect comments that oppose this action. The EPA is providing an opportunity for public comment in the proposed rules section of today's **Federal Register**, where we are publishing a separate document that proposes to authorize the State changes. If EPA receives comments which oppose this authorization, that document will serve as a proposal to authorize the changes.

I. Where Do I Send My Comments and When Are They Due?

You should send written comments to Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Please refer to Docket Number TX–01–02. We must receive your comments by May 15, 2003. You may not have an opportunity to comment again. If you want to comment on this action. You must do so at this time.

J. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments which oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. The EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. EPA will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

K. When Will This Approval Take Effect?

Unless EPA receives comments that oppose this action, this final authorization approval will become effective without further notice on June 16, 2003.

L. Where Can I Review the State's Applications?

You can view and copy the State of Texas' application from 8:30 a.m. to 4 p.m., Monday through Friday at the following addresses: Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin TX 78753–3087, (512) 239–1121 and EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

M. How Does Today's Action Affect Indian Country in Texas?

Texas is not authorized to carry out its Hazardous Waste Program in Indian country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian country.

N. What Is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized Hazardous Waste Program into the CFR. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, subpart SS for this codification of Texas' program changes until a later date.

Statutory and Executive Order Reviews

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore, this action is not subject to review by OMB. This rule incorporated by reference Texas' authorized hazardous waste management regulations, and imposes no additional requirements beyond those imposed by State law. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Incorporation by reference will not impose any new burdens on small entities. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which EPA already approves under 40 CFR part 271, and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255 (1999)), because it merely incorporates by reference existing State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also does not have Tribal implications within the meaning of Executive Order 13175 (65 FR 67249(2000)).

This action also is not subject to Executive Order 13045 (62 FR 19885 (1997)), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This action is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply Distribution or Use" (66 FR 28344 (2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for incorporation by reference as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State incorporation by reference application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. The final rule does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective on June 16, 2003.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 27, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 03–9044 Filed 4–14–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1062, MB Docket No. 02–375, RM–10605]

Digital Television Broadcast Service; Jackson, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Two Ocean Broadcasting Company, substitutes DTV channel 4 for DTV channel 14 at Jackson, Wyoming. *See* 67 FR 78215, December 23, 2002. DTV channel 4 can be allotted to Jackson, Wyoming, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 43–20–42 N and 110–45–10 W. with a power of 1, HAAT of 300 meters and with a DTV service population of 21 thousand. With this action, this proceeding is terminated.

DATES: Effective May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–375, adopted April 2, 2003, and released April 11, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 3.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Wyoming, is amended by removing DTV channel 14 and adding DTV channel 4 at Jackson.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–9162 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1053, MM Docket No. 00–246, RM–9859]

Digital Television Broadcast Service; Great Falls, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KRTV Communications, Inc., substitutes DTV channel 7 for DTV channel 44 at Great Falls, Montana. *See* 65 FR 79048, December 18, 2000. DTV channel 7 can be allotted to Great Falls, Montana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 47–32–09 N. and 111–17–02 W. with a power of 160, HAAT of 180 meters and with a DTV service population of 91 thousand. Since the community of Great Falls is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian was obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 00–246, adopted March 31, 2003, and released April 9, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Montana, is amended by removing DTV channel 44 and adding DTV channel 7 at Great Falls.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–9161 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1077; MB Docket No. 02–365; RM–10451]

Radio Broadcasting Services; Laramie, WY and Timnath, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed by Laramie Mountain Broadcasting, L.L.C., licensee of Station KIMX, Laramie, Wyoming, this document

reallots Channel 288C2 from Laramie, Wyoming, to Timnath, Colorado, as that community's first local aural transmission service. Prior to submission of its rule making request, petitioner's authorization for Station KIMX(FM) was amended by grant of a one-step application to specify operation on Channel 288C2 at Laramie, Wyoming, instead of Channel 288C3. The FM Table of Allotments has not been amended previously to reflect the higher class substitution at Laramie. Additionally, the authorization for Station KIMX(FM) is modified, as requested. *See* 68 FR 1586 (2003), January 13, 2003. Coordinates used for Channel 288C2 at Timnath, Colorado, are 40–44–31 NL and 105–14–25 WL, representing a transmitter site 31.9 kilometers (19.8 miles) northwest of the community. The specified site location is within the protected areas of the Table Mountain Radio Receiving Zone, Boulder County, Colorado, and requires compliance with section 73.1030(b) of the Commission's rules. With this action, this docketed proceeding is terminated.

DATES: Effective May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Media Bureau (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order; MB Docket No. 02–365, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualtex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Timnath, Channel 288C2.

■ 3. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 288C3 at Laramie.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9167 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1076; MM Docket No. 01–62, RM–10053, RM–10109, RM–10110, RM–10111, RM–10112, RM–10113, RM–10114, RM–10116]

Radio Broadcasting Services; Ardmore, AL, New Hope, AL, Pulaski, TN and Scottsboro, AL

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: This document denies a Petition for Reconsideration and Joint Request for Approval of Option Agreement filed by STG Media, LLC and Pulaski Broadcasting, Inc. directed to the *Report and Order* in this proceeding which allotted Channel 278A to New Hope, Alabama. In doing so, it denied a proposed substitution of Channel 252C1 for Channel 252A at Pulaski, Tennessee, reallotment of Channel 252C1 to Ardmore, Alabama, and modification the license of Station WKSR to specify operation on Channel 252C1 at Ardmore. *See* 67 FR 59213, September 20, 2002. STG Media was the proponent for the Channel 278A allotment at New Hope, and Pulaski Broadcasting is the licensee of Station WKSR, Pulaski, Tennessee. In the Petition for Reconsideration, STG Media withdraws its interest in the Channel 278A allotment at New Hope, contingent upon approval of the Option Agreement by which STG Media would acquire Station WKSR and that Station WKSR be licensed as a Class C1 facility licensed to Ardmore. In denying the Petition for Reconsideration, the Commission determined that the Option Agreement was inconsistent with Section 1.420(j) of the Rules. With this action, the proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order* in MM Docket No. 01–62, adopted April, 2 2003, and released April 4, 2003. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202)863–2898, or via e-mail *qualixint@aol.com*.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9163 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 573, 577, 579

[Docket No. NHTSA 2001–8677; Notice 4]

RIN 2127–AI92

Reporting of Information and Documents About Potential Defects; Defect and Noncompliance Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; partial response to petitions for reconsideration.

SUMMARY: This document responds to some of the issues raised by petitions for reconsideration of some of the provisions of the final rule published on July 10, 2002, that implemented the early warning reporting provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act. Under this rule, motor vehicle and motor vehicle equipment manufacturers will be required to report information and to submit documents about customer satisfaction campaigns and other activities and events that may assist NHTSA to promptly identify defects related to motor vehicle safety. The issues responded to in this document primarily relate to field reports, one-time historical reports, and multiple "substantially similar" platforms.

This document also clarifies several other provisions of the final rule. The agency's response to petitions for reconsideration of other provisions of the final rule will appear in a future notice.

DATES: Effective Date: The effective date of the amendments made by this final rule is May 15, 2003. Applicability Dates: Various provisions of this final rule are applicable on the dates stated in the regulatory text. *See* 49 CFR 579.28. Petitions for Reconsideration: Petitions for reconsideration of amendments made by this final rule must be received not later than May 30, 2003.

ADDRESSES: Petitions for reconsideration of any amendments made by this final rule should refer to the docket and notice number set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. *See* section VI "Privacy Act Statement" for electronic access and filing addresses.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Taylor Vinson, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION:

I. Background

On July 10, 2002, NHTSA published a final rule implementing the early warning reporting (EWR) provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, established by 49 U.S.C. 30166(m) (67 FR 45822). The reader is referred to that document, and the prior Notice of Proposed Rulemaking (NPRM) (66 FR 66190) for further information.

Petitions for reconsideration of the EWR rule were filed on or before August 26, 2002, by the Alliance of Automobile Manufacturers (the Alliance), General Motors Corporation (GM), the National Association of Trailer Manufacturers (NATM), the National Truck Equipment Association (NTEA), the Recreational Vehicle Industry Association (RVIA), and the Juvenile Products Manufacturers Association (JPMA).

GM and NATM filed untimely supplemental comments on October 15, 2002, and a petition for rulemaking was filed by the National Trailer Dealers Association (NTDA) on November 1, 2002, relating to the threshold for full reporting. On November 23, 2002, NATM filed a petition for rulemaking to delay the initial reporting date under the rule, as did NTEA and RVIA jointly, on December 5, 2002. Additional untimely comments were filed by Public Citizen on November 26, 2002, and Stephen E. Selander on November 27, 2002. To the extent appropriate, given their untimeliness, we will address the late-filed comments in a future notice.

On October 10, 2002, the Alliance wrote to NHTSA requesting that certain issues it had raised in its petition be treated on a prioritized basis. It separated its issues into three groups and explained that "Generally, those issues given a priority '1' rating are those that require resolution to allow Alliance members to effectively plan and efficiently execute actions needed to develop compliant reporting systems." These issues concerned field reports, in-plant inspection records and other documents, one-time historical reports, and multiple "substantially similar" platforms. After reviewing the Alliance's comments and letter of October 10, the agency has concluded that granting this request may aid in an orderly implementation of the final rule and is issuing this notice addressing the Alliance's priority "1" issues.

We will address the Alliance's priority "2" and "3" issues in the future. We will also address other issues that were timely raised by the other petitioners for reconsideration.

II. Petitions Regarding Field Reports

The final rule defined "field report" as a "communication * * * regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment * * * regardless of whether verified or assessed to be lacking in merit. * * *." It excluded "a document contained in a litigation file that was created after the date of the filing of a civil complaint that relates to the specific vehicle, component, or system at issue in the litigation." This reflected an attempt both to recognize the work product exclusion under the rules of evidence and to address it in a simplified manner based on the existence of a litigation file. We thought that this approach would have appeal because overall it would provide approximately the same coverage as a rule strictly based on the work product case law and would not require document by document review. The Alliance, however, asserted that this exclusion is too narrow and should be broadened to state that the definition "does not include documents that were prepared in anticipation of litigation." Similarly, GM commented that "documents prepared at the request of counsel, whether outside counsel or in-house attorneys, are also privileged if the work was done in anticipation of a lawsuit being filed." It asked the agency "to reconsider its decision to use the filing of a civil complaint as a litmus test for determining whether or not a document is privileged." As GM recognized in a comment, the vast majority of field reports do not have any work product or privilege issues associated with them.

There is no need for this notice to provide a detailed discussion of the work product doctrine, given the facts that only a small minority of field reports would be considered work product and that the doctrine is well established under Federal law. We refer the reader generally to Edna Selan Epstein, *The Attorney—Client Privilege and the Work Product Doctrine* (3d Ed. 1997), published by the American Bar Association. In short, the work product exclusion applies to (1) documents in the broad sense of the word, (2) prepared in anticipation of litigation, where there is a reasonable prospect of litigation, and not for some other purpose such as a business practice, and (3) prepared or requested by an attorney or an agent for an attorney.

The Alliance's proposed modification to the definition of field report presents several problems. First, it does not expressly recognize that two mutually exclusive options have been considered: (1) A simplified approach based on the existence of a litigation file, as published on July 10, 2002, and (2) an approach based on the work product case law, which was advanced by the petitions for reconsideration. We will, as suggested by the petitions, adopt the latter approach in lieu of the simplified approach. Second, the Alliance's recommended exclusion is too broad, since it does not include some required elements of the work product doctrine. For example, more is required to meet the criteria for the exclusion than that a document has been created in anticipation of litigation.

Finally, we wish to underscore that the document truly must have been prepared "in anticipation of litigation." The Alliance's comment indicates that, in its opinion, counsel may anticipate litigation "after a claim is made, but prior to the filing of a lawsuit, or after the filing of a "notice" that a "claim" might be asserted." GM suggested that the work product exclusion cover reports prepared in anticipation of litigation after a claim has been filed and, although it would be less frequent, before a claim has been filed. In practice, reports prepared after a claim has been filed ordinarily would be more likely to be covered by the work product exclusion than reports prepared after a "notice" was received by a manufacturer. Under the early warning rule, § 579.4(c), "claim" includes a

demand in the absence of a lawsuit and a complaint initiating a lawsuit. The definition of "notice" refers to "a document * * * that does not include a demand for relief." We expect that many notices would not satisfy the requirements for the work product exclusion.

Accordingly, we have granted the petitions for reconsideration on this issue, and are amending the definition of "field report" to delete the final phrase "but does not include a document contained in a litigation file that was created after the date of the filing of a civil complaint that relates to the specific vehicle component, or system at issue in the litigation." In its place we are adding the phrase "but does not include a document covered by the attorney-client privilege or the work product exclusion." We are adding a separate definition of "work product" as meaning "a document in the broad sense of the word, prepared in anticipation of litigation where there is a reasonable prospect of litigation and not for some other purpose such as a business practice, and prepared or requested by an attorney or an agent for an attorney."

GM commented that, were we to exclude field reports prepared in anticipation of litigation, its burden of preparing the one-time historical report would be substantially lessened. The agency's amendment, therefore, will lessen the burden on all manufacturers who must prepare the historical report (see discussion in Section IV below on historical reports).

Further exclusions were also requested. GM and the Alliance asked the agency to clarify that field reports do not include "data concerning vehicles that are still within a manufacturer's direct control" and, consistent with defect notification requirements (§ 573.3(a)), only include reports on "vehicles and equipment that have been transported beyond the direct control of the manufacturer." The commenters feared that "field report" could be interpreted to include "quality data from assembly plants."

We have considered these comments. We agree that the use of an existing regulatory phrase, "beyond the direct control of the manufacturer," would be consistent with what we intended in requiring reports on field reports. By adding the words "with respect to a vehicle or equipment that has been transported beyond the direct control of the manufacturer," we clarify that quality data from assembly plants or port inspections would not be considered field reports.

Under the EWR rule, manufacturers of more than 500 motor vehicles per year must provide NHTSA with numbers of all field reports and copies of some field reports. The term "field report" is defined to include "a communication * * * by an entity that owns or operates a fleet." "Fleet," in turn, is defined as "more than ten motor vehicles of the same make, model, and model year." The Alliance asserted that "it is usually not obvious on the face of a written complaint from a customer or other person making the complaint whether that customer owns ten or more vehicles of the same make, model, and model year," because manufacturers do not know on any systematic basis how many vehicles a customer owns, with the possible exception of large fleets, such as rental car firms. In its view, it would be burdensome "to require each manufacturer to check the ownership status of each customer who makes a written complaint * * * to determine whether that customer owns ten or more motor vehicles of the same make/model/year."

We understand the Alliance's point, and want to clarify that manufacturers are obliged to provide fleet report information only for those fleets known to it. This is consistent with the TREAD Act's provision (49 U.S.C. 30166(m)(4)(B)) that a manufacturer does not have to maintain or submit records regarding information not in its possession. Accordingly we are amending the definition of "field report" to include written reports from "an entity known to the manufacturer as owning or operating a fleet."

The Alliance asked for confirmation that NHTSA will not consider any internal company correspondence about the subject of a field report, subsequent to the filing of the report, to be itself a reportable field report. The "field" is any location where a vehicle or equipment beyond the direct control of a manufacturer is located. Thus, we do not view the field as encompassing the company itself or its internal correspondence about a field report after it has been filed. However, our definition of "field report" would cover any further communication from the field in response to inquiries from the company for clarifications, further data, and the like on a field report that has been filed.

In light of the discussion above, we are redefining field report as follows:

Field report means a communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, with respect to a vehicle or equipment that has been transferred beyond the direct control of the manufacturer, a dealer, an authorized service facility of such manufacturer, or an entity known to the manufacturer as owning or operating a fleet, to a manufacturer, regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced for sale by that manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include a document covered by the attorney-client privilege or the work product exclusion.

III. Petitions Regarding One-Time Historical Reporting

Section 579.28(c) requires that certain manufacturers file separate reports providing information on the numbers of warranty claims or warranty adjustments and the number of field reports that they received in each calendar quarter from April 1, 2000, to March 31, 2003, for vehicles manufactured in model years 1994 through 2003, and for child restraint systems and tires manufactured after April 1, 1998, classified by the affected system or component, *e.g.*, electrical system, seat belts. The final rule defines "warranty claim" to include a claim paid by a manufacturer pursuant to good will. "Good will," in turn, is defined as "the repair or replacement of a motor vehicle or item of motor vehicle equipment, including labor paid for by the manufacturer, at least in part, when the repair or replacement is not covered under warranty, or under a safety recall reported to NHTSA under part 573 of this chapter."

The Alliance sought reconsideration of "the requirement to count and categorize historic field reports into the reporting categories established in the final rule," as well as "goodwill" claims outside the warranty system. Even though the final rule does not require submission of hard copies of field reports for the one-time historical reporting, the Alliance asserted that the burden to review and categorize historic field reports nevertheless remains substantial, "and falls disproportionately on those Alliance members whose field reports are not already coded or retained in a text-searchable format." The Alliance also asserted that requiring manufacturers to search through historic files "to locate any 'goodwill' claims that were paid outside the warranty system or settlements of 'breach of warranty' claims/lawsuits" would provide only a minimal benefit to the agency. The Alliance did not question the inclusion of these claims once reporting has begun. According to its comment, "goodwill" claims handled outside the warranty system are, by definition, not in the already-coded warranty base, nor are settled claims for breach of warranty.

Based on the cost estimates submitted by the Alliance in response to the NPRM, the agency estimated the burden upon industry that one-time historical reporting of field reports might create. That burden was not very significant, compared to the burden that would have existed under the NPRM proposal regarding historical reporting. After the issuance of the final rule, the Alliance and GM now claim that the burden estimate that they previously submitted is substantially less than their real costs. Each argued that the effort required to extract the information is too high for the value of the reports rendered because the information will be obsolete in a short while. We disagree with that argument. We explained in the preamble to the July 10, 2002, final rule why we need to receive historic information. *See* 67 FR 45863. In short, we need historic information to be able to recognize changes in trends of experience with potential problems. We note that no commenter provided any specific information on the data, data systems, or categorization issues it may have or the numbers of these that would create the allegedly undue burden.

On the other hand, we agree to the Alliance's request that we exclude from historic reporting warranty claims that were not memorialized in a manufacturer's warranty system. Accordingly we are amending § 579.28(c) to require only reporting of warranty claims that are recorded in a manufacturer's warranty system. This will apply not only to warranty claims of motor vehicle manufacturers but also to warranty claims of child restraint systems, and warranty adjustments of tire manufacturers.

JPMA expressed a concern about the potential burden that the one-time historical reporting requirement of § 579.28(c) might cause its six members. In the context of this concern, we want to correct an inadvertent mistake in the final rule with respect to the historical reporting requirements applicable to child restraint system manufacturers. Based on JPMA's statement in its response to the NPRM that child restraint system manufacturers combine their warranty claim data and consumer complaint data in a single database that would be difficult to segregate, in the final rule we granted JPMA's request that manufacturers of child restraint systems be allowed to report these two categories of data together. *See* § 579.25(c) and 67 FR at 45850–51. As we made clear in the preamble to the final rule, the purpose of requiring one-time reporting of historical data was to allow the agency to compare current data with past data to identify any unusual or unexpected data points that might indicate the existence of a safety problem. Unfortunately, the language of § 579.28(c) did not reflect the fact that child restraint system manufacturers would prospectively be combining consumer complaint data with warranty data. (Similarly, as pointed out by RMA in its petition, that section did not reflect the fact that tire manufacturers will not be submitting field report data in their forthcoming quarterly reports, so there is no need to require them to submit historical data on field reports.) Therefore, we are revising § 579.28(c) to apply appropriate historical data reporting requirements for vehicle, child restraint system, and tire manufacturers, respectively.

JPMA asserted that NHTSA had greatly underestimated the total industry time (2,540 hours) and expense ($117,531) to comply with § 579.28(c) as originally adopted. It estimated that its members alone would spend over 38,500 hours and $2 million to comply. The reason for this, according to JPMA, is that the industry's records are not automated to the degree that would permit easy preparation of this one-time report. In part, this is due to the fact that, as discussed above, customer complaints and warranty claims are ordinarily not differentiated and are maintained in the same database.

We believe that it is important to have historical information with respect to child restraint systems to permit us to identify potential safety problems. Historical field report data would not, in itself, allow a sufficient comparison. Therefore, to allow us to compare similar data over time, and to relieve the burden asserted by JPMA, we are amending sec. 579.28(c) to require child restraint system manufacturers to provide historical reports on the numbers of warranty claims "and consumer complaints (added together)."

IV. Petitions Regarding Multiple "Substantially Similar" Platforms

The Alliance sought clarification on how it should handle the reporting of a foreign fatality in a vehicle that has more than one "substantially similar" platform in the United States. The Alliance asserted, "It would seem redundant and confusing to report the single fatality on each of the quarterly reports of all of the "substantially similar" U.S. platforms." It suggested that a manufacturer "should be permitted to choose one of the "substantially similar" platforms and report the foreign fatality on that platform's quarterly report."

We are rejecting this request. In their review of information to decide whether to open a defect investigation about a particular problem in a specific make/model of vehicles in the United States, the agency's screeners need to be aware of relevant information about the make/model. If a manufacturer could choose to report a relevant foreign fatality in its submission for only one U.S. model, the screeners would not be aware of that fatality when considering a different model. Moreover, the Alliance has not shown that this is a real problem and that if it does arise, that it is likely to occur with any significant frequency. We believe that a foreign fatality involving a foreign vehicle that has more than one substantially-similar U.S. platform will occur only infrequently, as there has been no showing that the number of multiple substantially similar platforms is other than small.

V. Miscellaneous Amendments; Clarifications

Following publication of the rule, we received a number of telephone calls asking questions about the meaning of various provisions. In some cases, this has prompted our consideration of whether some clarifications are needed.

We had a telephone call from a manufacturer of ambulances and buses asking for a clarification of its reporting duties. The manufacturer's annual ambulance production consisted of fewer than 500 units that are defined as light vehicles and more than 500 that are defined as medium-heavy vehicles (its bus production also exceeded 500 units). Section 579.27(a), providing limited reporting if annual vehicle production is fewer than 500 vehicles, "applies to all manufacturers of motor vehicles that are not required to file a report pursuant to §§ 579.21 through 579.24 of this part." Because the manufacturer is required to file reports on its medium-heavy ambulances and buses pursuant to § 579.22, it questioned whether it was eligible to report on its light duty ambulances under § 579.27(a), or whether reporting for these vehicles should be included with reporting for the medium-heavy ambulances under § 579.22. We intend that § 579.27 apply to any vehicle category for which production is fewer than 500 units and we informed the manufacturer that it will file reports under § 579.27 for its light vehicle ambulances (however, its information on medium-heavy ambulances would be reported cumulatively with its information on buses). In view of the manufacturer's uncertainty, we are

amending § 579.27(a) to state that it "applies to all manufacturers of vehicles with respect to vehicles that are not covered by reports on light vehicles, medium-heavy vehicles and buses, motorcycles, or trailers submitted pursuant to §§ 579.21 through 579.24 of this part."

Another manufacturer, also in a telephone call, raised the question of whether the reporting obligations encompassed vehicles that it leased or only those vehicles that it "manufactured for sale, offered for sale, imported, or sold in the United States." We intended to cover all vehicles that the manufacturer produced which are operated on the public roads in the United States; *i.e.*, which have been introduced into interstate commerce, even if these are for lease or the manufacturer's own use. Accordingly, we are amending the introductory sentence of each of §§ 579.21–579.26 to remove the phrase quoted above and to replace it with the phrase that appears in 49 U.S.C. 30112(a): "manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States."

The definition of "seats" includes a reference to "S9 of 209." There is no paragraph S9 in Federal Motor Vehicle Safety Standard No. 209, and we are removing the erroneous reference to S9 from the definition of "seats."

We note that the TREAD Act reimbursement final rule adopted a definition of "rear-facing infant seat" that differs from the one we adopted in the early warning final rule. See our full discussion of this issue at 67 FR 64056, October 17, 2002. In that discussion, we announced that we would adopt the reimbursement rule definition when we responded to petitions for reconsideration of the EWR rule, and we are amending the definition of "rear-facing infant seat" accordingly. We also note that the definition of "minimal specificity" refers to "a child seat," rather than to the defined term "child restraint system" used elsewhere in the regulation. We are amending the definition of "minimal specificity" to replace "child seat" with "child restraint system."

Washington attorney Jim Pitts called our attention to the fact that there is no definition of "model year" for tires, yet § 579.26 requires tire manufacturers to provide information on tire model years. He found confusing the requirement that information be provided for "the four calendar years prior to the earliest model year in the reporting period * * *." The definition of "model year" provides that "For equipment, it means the year that the item was produced." However, as Mr. Pitts pointed out, the definition of "equipment" in the EWR final rule does not include tires. Accordingly, we are amending the definition of "model year" to clarify that "For equipment and tires, [model year] means the year that the item was produced." As for the phrase that Mr. Pitts found confusing, we are amending § 579.26 to require information to be provided for "the four calendar years prior to the reporting period."

Section 579.5(d) requires each monthly submission of documents pertaining to notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications to be accompanied by a document identifying each communication in the submission by name or subject matter and date. The Alliance objected to this requirement as unduly burdensome. It commented that NHTSA has not required such a cover letter for these documents in the past and that the agency has not demonstrated a need to impose this new obligation. We have reviewed the past submissions of these and similar documents, and have concluded that we do not need the cover document to achieve our goals under the EWR rule. Accordingly, we are amending § 579.5(c) to remove the second sentence, which contains this requirement.

The amendments published on July 10, 2002, were effective on August 9, 2002, with early warning reporting to begin in 2003. Section 579.5(b) requires manufacturers to furnish NHTSA with a copy of certain documents relevant to early warning reporting, *e.g.*, communications relating to customer satisfaction campaigns, consumer advisories, recalls, or other safety activity involving the repair or replacement of motor vehicle or motor vehicle equipment. Section 579.5(d) requires information furnished under § 579.5(a) (former § 573.8) and § 579.5(b) to be submitted within five working days after the end of the month in which it was issued. Washington attorney, Carey Fleming, noted in a phone call that this requirement is inconsistent with NHTSA's preamble statement that documents furnished under § 579.5(b) "will be due within 5 working days after the end of each month beginning with April 2003" (p. 45864). Mr. Fleming is correct, and we are amending § 579.5(d) in accordance with our preamble statement to clarify that a document covered under § 579.5(b) and issued before April 1, 2003, need not be submitted. The first submittals under subsection (b) will be documents issued during April 2003 which will be due not later than May 7, 2003 (*i.e.*, the fifth working day after April 30).

Finally, Mark Schildkraut of New York City reminded us in a phone call that, in amending part 573 to redesignate § 573.5 through 573.7 as §§ 573.6 through 573.8, we forgot to make corresponding amendments to references to these sections in § 573.3(b), (c), (d), (e), and (f). We are correcting this oversight in this notice, as well as making conforming amendments to 49 CFR 577.5(a) and 577.10(a).

VI. Privacy Act Statement

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov*.

VII. Rulemaking Analyses

Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking has been determined to be significant by the Office of Management and Budget under E.O. 12866 because of Congressional interest. For the same reason, this action has also been determined to be significant under DOT's regulatory policies and procedures. A detailed discussion of impacts can be found in the Final Regulatory Evaluation (FRE) that the agency has prepared for the rulemaking completed in July 2002 and filed in the docket. The changes made by this final rule on reconsideration are relatively minor and will reduce the burdens on manufacturers. This action does not impose requirements on the design or production of motor vehicles or motor vehicle equipment; it only requires reporting of information in the possession of the manufacturer.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. Business entities are defined as small by standard industry classification for the purposes of receiving Small Business Administration (SBA) assistance. One of the criteria for determining size, as stated in 13 CFR 121.201, is the number of employees in the firm; another criteria is annual receipts. For establishments primarily engaged in manufacturing or assembling automobiles, light and heavy duty trucks, buses, motor homes, new tires, or motor vehicle body manufacturing, the firm must have less than 1,000 employees to be classified as a small business. For establishments manufacturing many of the safety systems for which reporting will be required, steering, suspension, brakes, engines and power trains, or electrical system, or other motor vehicle parts not mentioned specifically in this paragraph, the firm must have less than 750 employees to be classified as a small business. For establishments manufacturing truck trailers, motorcycles, child restraints, lighting, motor vehicle seating and interior trim packages, alterers and second-stage manufacturers, or re-tread tires the firm must have less than 500 employees to be classified as a small business. The changes made in this final rule on reconsideration are relatively minor and will reduce burdens on at least some small manufacturers.

Based on the best information available to us at this time, I certify that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of "regulatory policies that have federalism implications." The Executive Order defines this phrase to include regulations "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This final rule regulates the manufacturers of motor vehicles and motor vehicle equipment and will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Civil Justice Reform

This final rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act

The final rule requires manufacturers of motor vehicles and motor vehicle equipment to report information and data to NHTSA periodically. While we have not adopted a standardized form for reporting information, we will be requiring manufacturers to submit information utilizing specified templates. The provisions of this rule, including document retention provisions, are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. To obtain a three-year clearance for information collection, we published a Paperwork Reduction Act notice on June 25, 2002 (67 FR 42843), pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). We received clearance from OMB on December 20, 2002, which will expire on December 31, 2005. The clearance number is 2127–0616. The amendments made by this final rule on reconsideration are relatively minor, and should not affect paperwork burdens in a quantifiable way.

Data Quality Act

Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Pub. L. 106–554, section 515, codified at 44 U.S.C. 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the "quality," "objectivity," "utility," and "integrity" of information that Federal agencies disseminate to the public. The Act also required agencies to develop their own conforming data quality guidelines, based upon the OMB model. OMB issued final guidelines implementing the Data Quality Act (67 FR 8452, Feb. 22, 2002). On October 1, 2002, the Department of Transportation promulgated its own final information quality guidelines that take into account the unique programs and information products of DOT agencies (67 FR 61719). The DOT guidelines were reviewed and approved by OMB prior to promulgation.

NHTSA made information quality a primary focus well before passage of the Data Quality Act, and has made implementation of the new law a priority. NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines, and plans to review and update these procedures as appropriate.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). Adjusting this amount by the implicit gross domestic product price deflator for the year 2000 results in $109 million (106.99/98.11 = 1.09). The assessment may be included in conjunction with other assessments.

These amendments to the final rule (67 FR 45822 at 45872–45883) are not estimated to result in expenditures by State, local or tribal governments of more than $109 million annually. It is

not estimated to result in the expenditure by motor vehicle and motor vehicle equipment manufacturers, child restraint system manufacturers, and tire manufacturers of more than $109 million annually.

List of Subjects

49 CFR Part 573

Motor vehicle equipment, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 577

Motor vehicle equipment, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR chapter V is amended as follows:

PART 573—DEFECT AND NONCOMPLIANCE RESPONSIBILITY AND REPORTS

■ 1. The authority citation for part 573 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

■ 2. Sections 573.3(b), (c), (d), and (e) are amended by revising the phrase "§§ 573.5 and 573.6" to read "§§ 573.6 and 573.7."

■ 3. Section 573.3(f) is amended by revising the references to "§ 573.5" and § 573.6" respectively to read "§ 573.6" and "§ 573.7" respectively.

PART 577—DEFECT AND NONCOMPLIANCE NOTIFICATION

■ 4. The authority citation for part 577 continues to read as follows:

Authority: 49 U.S.C. 30102–103, 30112, 30117–121, 30166–167; delegation of authority at 49 CFR 1.50.

§ 577.5 [Amended]

■ 5. Section 577.5(a) is amended by revising the reference to "§ 573.5(c)(9)" to read "§ 573.6(c)(9)."

§ 577.10 [Amended]

■ 6. Section 577.10(a) is amended by revising the reference to "§ 573.6" to read "§ 573.7."

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 7. The authority citation for part 579 continues to read as follows:

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Subpart A—General

■ 8. Section 579.4(c) is amended by revising the definitions of "field report, paragraph (2) of "minimal specificity," the second sentence of "model year," "rear-facing infant seat," "seats," and adding the definition of "work product," to read as follows:

§ 579.4 Terminology.

* * * * *

(c) Other terms. * * *

* * * * *

Field report means a communication in writing, including communications in electronic form, from an employee or representative of a manufacturer of motor vehicles or motor vehicle equipment, with respect to a vehicle or equipment that has been transported beyond the direct control of the manufacturer, a dealer, an authorized service facility of such manufacturer, or an entity known to the manufacturer as owning or operating a fleet, to a manufacturer, regarding the failure, malfunction, lack of durability, or other performance problem of a motor vehicle or motor vehicle equipment, or any part thereof, produced for sale by that manufacturer, regardless of whether verified or assessed to be lacking in merit, but does not include a document covered by the attorney'client privilege or the work product exclusion.

* * * * *

Minimal specificity means:

* * * * *

(2) For a child restraint system, the manufacturer and the model (either the model name or model number), * * *

* * * * *

Model year * * * For equipment and tires, it means the year that the item was produced.

* * * * *

Rear-facing infant seat means a child restraint system that is designed to position a child to face only in the direction opposite to the normal direction of travel of the motor vehicle.

Seats means all components of a motor vehicle that are subject to FMVSS Nos. 202, 207, and 209, including all electrical and electronic components within the seat that are related to seat positioning, heating, and cooling. This term also includes all associated switches, control units, connective elements (such as wiring harnesses, hoses, piping, etc.), and mounting elements (such as brackets, fasteners, etc.).

* * * * *

Work product means a document in the broad sense of the word, prepared in anticipation of litigation where there is a reasonable prospect of litigation and not for some other purpose such as a business practice, and prepared or requested by an attorney or an agent for an attorney.

■ 9. Section 579.5(d) is revised to read as follows:

§ 579.5 Notices, bulletins, customer satisfaction campaigns, consumer advisories, and other communications.

* * * * *

(d) Each copy shall be in readable form and shall be submitted not later than five working days after the end of the month in which it is issued. However, a document described in paragraph (b) of this section and issued before April 1, 2003, need not be submitted.

Subpart C—Reporting of Early Warning Information

■ 10. The first sentence of the introductory text of § 579.21 is revised to read as follows:

§ 579.21 Reporting requirements for manufacturers of 500 or more light vehicles annually.

For each reporting period, a manufacturer whose aggregate number of light vehicles manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during each of the prior two calendar years is 500 or more shall submit the information described in this section. * * *

■ 11. The first sentence of the introductory text of § 579.22 is revised to read as follows:

§ 579.22 Reporting requirements for manufacturers of 500 or more medium-heavy vehicles and buses annually.

For each reporting period, a manufacturer whose aggregate number of medium-heavy vehicles and buses manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. * * *

■ 12. The first sentence of the introductory text of § 579.23 is revised to read as follows:

§ 579.23 Reporting requirements for manufacturers of 500 or more motorcycles annually.

For each reporting period, a manufacturer whose aggregate number of motorcycles manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. * * *

■ 13. The first sentence of the introductory text of § 579.24 is revised to read as follows:

§ 579.24 Reporting requirements for manufacturers of 500 or more trailers annually.

For each reporting period, a manufacturer whose aggregate number of trailers manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported into the United States, during the calendar year of the reporting period or during either of the prior two calendar years is 500 or more shall submit the information described in this section. * * *

■ 14. The first sentence of the introductory text of § 579.25 is revised to read as follows:

§ 579.25 Reporting requirements for manufacturers of child restraint systems.

For each reporting period, a manufacturer who has manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported child restraint systems into the United States, shall submit the information described in this section. * * *

■ 15. The first and second sentences of the introductory text of § 579.26 are revised to read as follows:

§ 579.26 Reporting requirements for manufacturers of tires.

For each reporting period, a manufacturer (including a brand name owner) who has manufactured for sale, sold, offered for sale, introduced or delivered for introduction in interstate commerce, or imported tires in the United States shall submit the information described in this section. For paragraphs (a) and (c) of this section, the manufacturer shall submit information separately with respect to each tire line, size, SKU, plant where manufactured, and model year of tire manufactured during the reporting period and the four calendar years prior to the reporting period, including tire lines no longer in production. * * *

■ 16. Section 579.27(a) is revised to read as follows:

§ 579.27 Reporting requirements for manufacturers with respect to vehicles not otherwise covered by this subpart, for manufacturers of original equipment, and for manufacturers of replacement equipment other than child restraint systems and tires.

(a) *Applicability.* This section applies to all manufacturers of vehicles with respect to vehicles that are not covered by reports on light vehicles, medium-heavy vehicles and buses, motorcycles, or trailers submitted pursuant to §§ 579.21 through 579.24 of this part, to all manufacturers of original equipment, to all manufacturers of replacement equipment other than manufacturers of tires and child restraint systems, and to registered importers registered under 49 U.S.C. 30141(c).

* * * * *

■ 17. Section 579.28(c) is revised to read as follows:

§ 579.28 Due date of reports and other miscellaneous provisions.

* * * * *

(c) *One-time reporting of historical information.* No later than September 30, 2003:

(i) Each manufacturer of vehicles covered by §§ 579.21 through 579.24 of this part shall file separate reports providing information on the numbers of warranty claims recorded in the manufacturer's warranty system, and field reports, that it received in each calendar quarter from April 1, 2000, to March 31, 2003, for vehicles manufactured in model years 1994 through 2003 (including any vehicle designated as a 2004 model);

(ii) Each manufacturer of child restraint systems covered by § 579.25 of this part shall file separate reports covering the numbers of warranty claims recorded in the manufacturer's warranty system and consumer complaints (added together), and field reports, that it received in each calendar quarter from April 1, 2000, to March 31, 2003, for child restraint systems manufactured from April l, 1998 to March 31, 2003, and

(iii) Each manufacturer of tires covered by § 579.26 of this part shall file separate reports covering the numbers of warranty adjustments recorded in the manufacturer's warranty adjustment system for tires that it received in each calendar quarter from April 1, 2000, to March 31, 2003, for tires manufactured from April 1, 1998 to March 31, 2003.

(2) Each report filed under paragraph (c)(1) of this section shall include production data, as specified in paragraph (a) of 579.21 through 579.26 of this part and shall identify the alleged system or component covered by warranty claim, warranty adjustment, or field report as specified in paragraph (c) of 579.21 through 579.26 of this part.

* * * * *

Issued on: April 10, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–9199 Filed 4–10–03; 3:12 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030407078–3078–01; I.D. 040103A]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces that lobster trap/pot and anchored gillnet fishermen are requested to remove on a voluntary basis their gear from an area totaling approximately 1,810 square nautical miles (nm^2) (3,354 km^2), east and southeast of Cape Cod, MA for 15 days and anchored gillnet fishermen are asked to remove their gear voluntarily from the Sliver Area of the Great South Channel Critical Habitat. These fishermen are also asked not to set additional gear during this period. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours April 10, 2003, through 2400 hours April 25, 2003.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessment (EA), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328; or Kristy Long,

NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.nmfs.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of four species of whales (right, fin, humpback, and minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap and anchored gillnet gear for a 15–day period, and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density within that area is equal to or greater than 0.04 right whales per nm^2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On March 23, 2003, NMFS Aerial Survey Team reported a sighting of 42 right whales in the proximity of 41° 41′ N lat. and 69° 48′ W long. This position lies east of Cape Cod, MA. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

Because the Seasonal Area Management (SAM) West zone, Cape Cod Bay Critical Habitat, and Great South Channel Critical Habitat overlap the DAM zone, these areas are excluded from the DAM zone. Thus, the DAM zone triggered on March 23, 2003, is divided into two sections: the Northeastern DAM and the Southern DAM.

NMFS has reviewed the factors and management options noted above relative to the DAM zone under consideration. NMFS requests the voluntary removal of lobster trap/pot and anchored gillnet gear and asks lobster trap/pot and anchored gillnet fishermen not to set any new gear in this area during the 15–day restricted period. NMFS requests voluntary restrictions within the DAM zone and Sliver Area because of the minimal amount of fishing gear in these waters during this time of year, and based on what we know about right whale migration, the animals should be moving into other protected areas such as the SAM zone and the Great South Channel Critical Habitat.

The DAM zone is bound by the following coordinates:

Northeastern DAM zone
41°14′N, 69°24′W (NW Corner)
41°48.5′N, 69°24′W
41°56.5′N, 69°04′W
41°14′N, 69°04′W

Southern DAM zone
41°33′N, 70°32′W (NW Corner)
41°24.5′N, 70°32′W and east along the coast to
41°21.5′N, 70°32′W
41°08′N, 70°32′W
41°08′N, 69°13′W
41°40′N, 69°45′W
41°45′N, 69°33′W
41°45′N, 69°56′W and returning to
41°33′N, 70°32′W along the coast

In addition, NMFS is requesting the voluntary removal of all gillnet gear from the Sliver Area of the Great South Channel Critical Habitat during the 15–day restricted period and asks anchored gillnet fishermen not to set any new gear in this area during the 15–day restricted period. The Sliver Area is bound by the following coordinates:
41°02.2′N, 69°02′W
41°43.5′N, 69°36.3′W
41°40′N, 69°45′W
41°00′N, 69°05′W

The voluntary restrictions will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator for Fisheries (AA) has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EA prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rule implementing the DAM program. A copy of the federalism Summary Impact Statement for that final rule is available upon request (**ADDRESSES**).

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3).

Dated: April 9, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9222 Filed 4–10–03; 3:34 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600 and 679

[Docket No. 020801186–3073–02; I.D. 053102D]

RIN 0648–AQ09

Pacific Halibut Fisheries; Subsistence Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to authorize and manage a subsistence fishery for Pacific halibut in waters in and off Alaska. This action is necessary to allow qualified persons to practice the long-term customary and traditional harvest of Pacific halibut for food in a non-commercial manner. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act).

DATES: Effective on May 15, 2003.

ADDRESSES: Copies of the environmental assessment/regulatory impact review (EA/RIR) prepared for this action are available from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall, or NMFS, Alaska Region, 709 West 9th Street, Room 453, Juneau, AK 99801, or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at 907–586–7228. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC. 20503 (Attention: NOAA Desk Officer). Comments may also be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7172 or jay.ginter@noaa.gov.

SUPPLEMENTARY INFORMATION:

Management of the fisheries for Pacific halibut (Hippoglossus stenolepis, hereafter halibut) in waters in and off Alaska is based on an international agreement between Canada and the United States. This agreement, titled the "Convention between United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea" (Convention), was signed at Ottawa, Canada on March 2, 1953, and amended by the "Protocol Amending the Convention," signed at Washington, D.C., March 29, 1979. This Convention, administered by the International Pacific Halibut Commission (IPHC), is given effect in the United States by the Halibut Act (16 U.S.C. 773c(c)). Generally, fishery management regulations governing the halibut fisheries are developed by the IPHC and recommended to the U.S. Secretary of State. When approved, these regulations are published by NMFS in the **Federal Register** as annual management measures. The annual management measures for 2003 were published March 7, 2003 (68 FR 10989).

Section 773(c) of the Halibut Act also provides for the North Pacific Fishery Management Council (Council) to develop halibut fishery regulations, including limited access regulations, in its geographic area of concern that would apply to nationals or vessels of the U.S. Such action by the Council is limited only to those regulations that are in addition to, and not in conflict with, IPHC regulations, and must be approved and implemented by the U.S. Secretary of Commerce (Secretary). Any allocation of halibut fishing privileges must be fair and equitable and consistent with other applicable Federal law. This is the authority under which the Council acted in October 2000, to adopt a subsistence halibut policy.

The Council does not have a "fishery management plan" (FMP) for the halibut fishery. Hence, halibut fishery management regulations developed by the Council do not follow the FMP amendment procedures set out in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Instead, a regulatory amendment process is followed. This process requires submission of the Council recommendation to the Secretary as a draft proposed rule for publication in the **Federal Register** along with supporting analyses as required by other applicable law.

The Council's recommended subsistence halibut policy was submitted for Secretarial review on May 30, 2002, and a proposed rule to implement the recommended policy was published in the **Federal Register** on August 26, 2002 (67 FR 54767). Comments on the proposed rule were invited through September 25, 2002. Fourteen letters were received that included 43 separate comments, which are summarized and responded to below.

The historical context of the Council's subsistence recommendation in October 2000, is summarized in the preamble to the proposed rule (on page 54768) and not repeated here. In April 2002, the Council adopted modifications to its original (i.e., October 2000) subsistence recommendation. These modifications will be the subject of a subsequent regulatory action. They were not included in the proposed rule published August 26, 2002 (67 FR 54767) and are not included in this final rule action.

The principal elements of the subsistence halibut rule are fully described and explained in the preamble to the proposed rule and for brevity are not repeated here. In brief, these elements include: (a) definition of "subsistence" and "subsistence halibut," (b) specification of who is eligible to conduct fishing for subsistence halibut, (c) description of non-subsistence areas in which subsistence halibut fishing is not allowed, (d) definition of legal gear for harvesting subsistence halibut, (e) daily harvest limit of subsistence halibut, (f) annual monetary limit on customary trade of subsistence halibut, and (g) provisions for monitoring subsistence halibut harvests.

In addition, this action restructures certain halibut fishery regulations as described in the preamble to the proposed rule to better distinguish rules affecting IPHC regulatory Area 2C from those affecting the other IPHC areas off Alaska. This final rule is substantively the same as the August 26, 2002 proposed rule (67 FR 54767), except that certain technical changes have been made in response to comments received on the proposed rule. These changes are explained below in the response to the comments and in changes from the proposed rule.

Response to Comments

The Alaska Region, NMFS received 14 letters of comment from various

agencies, Alaska Native organizations, and individuals that contained 43 separate comments. The following summarizes and responds to these comments.

Comment 1: The State of Alaska Department of Fish and Game (ADF&G) strongly urges the harvest survey design to record harvest of all species from ADF&G groundfish statistical areas. This information (more detailed than harvest data based on IPHC areas) will be critical in the development of the future local area management plans and will provide management biologists with more specific information of the removals on a spatial scale each year when making in-season management decisions on commercial, sport, personal use, and State subsistence groundfish fisheries.

Response: The subsistence halibut harvest survey instrument was developed concurrently with the proposed rule to comply with the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104–13). Under the PRA, NMFS is obligated to minimize paperwork requirements and ensure that the affected public is not overly burdened with requests for information. The Federal Office of Management and Budget (OMB) oversees agency compliance with the PRA and must review and authorize each collection of information. Hence, NMFS must carefully balance its need for information from persons affected by its rules with the relative burden on the affected public of reporting that information.

The design of the subsistence halibut harvest survey instrument was guided by this balance. The survey is designed to be as unintrusive as possible to foster the cooperation of subsistence fishers and to capture the basic information needed of how much halibut was harvested, how much lingcod and rockfish was harvested incidental to subsistence halibut, generally where was it harvested, and whether it was caught in sport fishing or subsistence fishing. Collecting this much information from most of the registered subsistence fishers will vastly improve existing estimates of subsistence halibut harvest. Requesting more information and in finer detail throughout the State of Alaska could be viewed as being an excessive reporting burden. For example, NMFS would have to consider why the data on the geographic distribution of subsistence harvests of halibut should be more detailed than the geographic distribution data from sport fishing harvests of halibut, especially in light of the fact that subsistence harvests are estimated to be less than one tenth of the sport harvests.

NMFS agrees, however, that future management questions may arise in which data on the specific locality of subsistence halibut harvests are important. To this end, NMFS intends to work closely with the ADF&G Subsistence Division, affected tribes, and community groups to refine information on the location and species composition of subsistence halibut harvests. The survey instrument may be refined for this purpose in the future. In anticipation of refinements to the survey instrument, the OMB has authorized this survey for one year as a pilot information collection program. Renewal of OMB authority to conduct the subsistence halibut harvest survey under the PRA will depend on a review of the conduct of the survey and the quality of the data produced during the first year. Efforts to refine the data collected by the survey are likely best focused in certain parts of IPHC Areas 2C and 3A where subsistence, commercial, and sport halibut harvests will be higher relative to more western areas.

Comment 2: The harvest assessment survey design should include the number of lingcod and rockfish retained and released as well as separating rockfish by assemblage, such as "pelagic species" and "other" (demersal and slope) species.

Response: Based on the experience of ADF&G Subsistence Division personnel, the vast majority of the lingcod and rockfish caught incidental to subsistence halibut will be retained. This harvest of lingcod and rockfish while subsistence fishing for halibut would be reported in the annual subsistence halibut survey. Requesting more detailed information from subsistence fishers about the species composition of their incidental rockfish harvest raises the same PRA question of balance discussed above.

Comment 3: The definitions of "commercial fishing," "customary trade," and "subsistence halibut" do not sufficiently distinguish between sale and barter for commercial or subsistence purposes. It is not clear when the exchange of halibut for money is a commercial exchange or a subsistence exchange.

Response: The distinction between commercial fishing for halibut and subsistence fishing for halibut should be clear. Halibut harvested in commercial fishing are intended to enter commerce. The harvest, landing, and distribution of these fish must comply with relevant IPHC, State, and Federal fishing and reporting requirements. Halibut harvested in subsistence fishing are intended for the sustenance of the fisher, his family and community in accordance with cultural traditions of Alaska Natives and rural lifestyles. To preserve this distinction, this rule requires that subsistence halibut must not enter commerce and must not be intermixed with commercial fish, except under limited conditions in Areas 4D and 4E.

The definitions of "commercial fishing" and "subsistence halibut" were derived from the IPHC definition of "commercial fishing" which "means fishing [other than customary and traditional fishing] the resulting catch of which is sold or bartered, or is intended to be sold or bartered"(67 FR 12885, March 20, 2002). "Subsistence," on the other hand, is defined in this rule to be "...the non-commercial, long-term, customary and traditional use of halibut." Subsistence halibut, however, may be used in customary trade because customary trade is a customary and traditional use of halibut. Customary trade may include bartering and limited exchanges of money, but this does not mean that any bartering or exchange of money necessarily implies a commercial transaction. Exchanging halibut for items of significant value or for sale or marketing purposes likely constitute a significant commercial enterprise. Such halibut would not be used in a customary and traditional manner and therefore would not be confused with subsistence halibut.

Comment 4: The proposed legal gear limit of "set and hand-held gear of not more than 30 hooks" does not specify whether this limit applies per person or per vessel.

Response: NMFS understands that the Council's original policy intent was for the hook limit to apply to each person engaged in subsistence halibut fishing. Although this was implied in the preamble to the proposed rule (67 FR 54767, August 26, 2002), NMFS agrees that the proposed rule language did not explicitly state whether the hook limit was to apply per person or per vessel. Therefore, NMFS changed the final rule to make this personal hook limit explicit.

Comment 5: The marking of buoys used in the subsistence halibut fishery should include a large "S" in addition to the fisher's name and address to designate that the gear is being used for Federal subsistence halibut fishing rather than a State commercial fishery.

Response: NMFS agrees that requiring an additional "S" character on the markings of setline marker buoys would serve a justifiable purpose of distinguishing subsistence gear from commercial gear and has incorporated this requirement in the final rule.

Comment 6: Although the need for a subsistence halibut harvest in Alaska is recognized, the proposed rule should be changed. Without an annual limit on the harvest of each individual, a daily limit of 20 halibut per day, per person is unquestionably excessive. The subsistence halibut rules should include an annual individual harvest limit.

Response: The 20–halibut-per-day catch limit is not considered excessive in light of its purpose, which is to provide a reasonable daily catch limit for a subsistence fisher to supply food for his family and community. Proxy fishing is not provided for in this rule. Therefore, the daily catch limit should be sufficient to allow the fisher to supply fish to persons other than himself. Moreover, subsistence fishers typically do not harvest more fish than they actually need and will use. The customary and traditional practice of subsistence fishing does not include wasting fish.

Nevertheless, subsistence use of halibut may conflict with other uses of the resource, particularly in more populated areas of Alaska. In response to this concern, the Council studied various alternative approaches and in April 2002, adopted a recommendation to NMFS to revise the 20–halibut-per-day catch limit in certain parts of IPHC regulatory areas 2C and 3A. This and other recommendations made by the Council at that time are under review and proposed implementing rules will be published in the **Federal Register** for public comment.

Comment 7: The definition of "customary trade" wrongly suggests that the sale of any fish could be something other than a commercial activity and that $400 worth of halibut is not significant. Allowing the sale of subsistence halibut should be eliminated.

Response: NMFS disagrees. Customary trade is a customary and traditional use of halibut and should be an integral part of any subsistence policy. The Council recommended and NMFS approved this customary trade policy and the $400–per-year monetary limit because it was considered an insignificant amount. The Council determined and NMFS agrees that the $400 limit would allow a subsistence fisher to be reimbursed for the cost of his or her fuel or other incidental expenses incurred while subsistence fishing for halibut. Such customary trade can occur without subsistence halibut being deemed as entering commerce.

Comment 8: Subsistence halibut should be required to be marked or identified in some manner, and mandatory logs or reports of fishing locations, quantities harvested and amounts of gear used should be required.

Response: The overall harvest of subsistence halibut and certain species taken incidental to subsistence halibut fishing will be estimated under this rule based on surveys of subsistence fishers. NMFS disagrees, however, that the estimation of subsistence harvests needs to be any more precise or the reporting requirements any more robust than those used for estimating the sport harvest of halibut which is estimated to be substantially larger than subsistence harvests.

Comment 9: These liberal subsistence rules will be unenforceable and will not prevent subsistence halibut from entering commercial venues. These rules could apply to the most remote and isolated rural areas without much risk of abuse, but in larger communities with road and airline connections, enforcement will be much more difficult if not impossible. In Sitka, for example, where a cash economy and subsistence harvest are blended in a population of many thousands, the individual harvest limit of 20 fish per day could result in hundreds of thousands of pounds being bartered for goods and services anywhere because the rule does not limit customary trade to the rural community where the fish are caught. This presents a potential to reduce or eliminate the volume of halibut available to commercial IFQ fishers.

Response: Enforcement of the subsistence rules in larger rural communities, such as Sitka, may be more challenging than in smaller rural communities. NMFS intends to cooperate with Alaska Native tribes and community organizations in publicizing subsistence halibut rules, and some Alaska Native tribes already have indicated their intent for their members to fully comply with the subsistence rules. Non-compliance likely would result in the Council recommending and NMFS approving more restrictive subsistence rules. NMFS further intends to monitor subsistence harvests in cooperation with State of Alaska, tribal and community agencies to provide reasonable estimates of fishing mortality from this fishery for conservation and management purposes. Although it is possible in theory for the subsistence fishery to preempt the commercial fishery, it is highly unlikely. Subsistence halibut harvests overall are expected to be about one percent or less of the total catch of halibut, substantially less than the sport halibut harvest and virtually insignificant compared to the commercial halibut harvest and other sources of halibut fishing mortality.

Comment 10: Subsistence fishers need to be able to set out 50 hooks overnight about four times a year, and need to trade or get money for about 200 pounds of fish four times a year.

Response: The Council considered alternative hook limits ranging from 2 to 60 hooks (see final EA/RIR/FRFA). Based on an analysis of the potential impacts of the alternative hook limits and public testimony, the Council recommended a 30–hook limit as a reasonable balance of the interests of subsistence and commercial fishers. Although some subsistence fishers may prefer no hook limit, most appear to find the 30–hook limit to be acceptable.

The rule specifies no limit on customary trade in terms of pounds of halibut that may be traded per year. The only specified limit on customary trade is on the amount of money that may be received by a subsistence fisher for subsistence halibut in a year. Subsistence halibut could be exchanged for goods other than money. In developing this policy, the Council chose not to recommend a non-monetary limit on the value of goods or services that may be exchanged in customary trade for subsistence halibut. The Council was clear, however, that it did not intend for items of significant value (*e.g.*, a new car or truck) to be traded for subsistence halibut, although it did not specify the meaning of "significant value." Trading subsistence halibut for items of significant value would suggest a commercial enterprise, which is prohibited. Hence, 200 pounds of subsistence halibut could be exchanged in customary trade each year providing that any monetary payment for this fish does not exceed $400.

Comment 11: A recent survey conducted by the Yakutat Tlingit Tribe and Division of Subsistence (ADF&G) indicates halibut is the top subsistence species for the community of Yakutat.

Response: NMFS notes this indication of the importance of subsistence halibut in the community of Yakutat, Alaska.

Comment 12: There needs to be a valid subsistence halibut registration certificate to allow fishing for subsistence halibut. It is not clear, however, whether the requirement to "hold" a certificate means that a subsistence fisher must have the certificate in possession during fishing or to simply obtain a certificate prior to fishing.

Response: The proposed rule (67 FR 54767, August 26, 2002) at section

300.65(h) requires a subsistence halibut fisher to "...possess a valid subsistence halibut registration certificate in his or her name issued by NMFS before he or she begins subsistence fishing for halibut...." Also in the proposed rule at section 300.66(e), subsistence halibut fishing would be unlawful unless the fisher "...is qualified...and possesses a valid subsistence halibut registration certificate...." NMFS agrees, however, that the term "possess" in this language does not indicate clearly if a subsistence fisher would be required to carry his or her registration certificate while conducting subsistence halibut fishing. Therefore, this rule clarifies the meaning of "possess" by requiring a registration certificate to be made available for inspection by an authorized officer during a subsistence halibut fishing trip.

Comment 13: A multi-year registration would minimize paperwork for the affected fishers, however, it is not clear what would be the basis for determining that a fisher had ceased his subsistence fishing activity. Apparently, ceasing to fish is presumed when a fisher does not re-register for the certificate.

Response: A person eligible to do subsistence halibut fishing but who does not intend to do so presumably would not apply for a subsistence halibut registration certificate (SHARC). Also, a person who has a valid SHARC may fish for subsistence halibut one year but not in succeeding years in which the multi-year SHARC remains valid. The rate of such unused SHARCs in any year could be estimated from responses to the subsistence halibut harvest survey.

Comment 14: The conduct of the harvest survey is critical to obtaining an accurate estimate of subsistence harvest. No details of the harvest survey methodology are provided but its design must be statistically sound with validation procedures to produce a precise and unbiased estimate.

Response: NMFS agrees, and initially intends to contract with the Subsistence Division of the Alaska Department of Fish and Game to carry out the harvest survey. This work will be conducted by social scientists who are experienced in researching the subsistence use of fish and game throughout the State of Alaska. The survey instrument was designed to be simple to understand and easy to respond to, which should foster the cooperation of subsistence fishers. Also, the survey is designed to contact virtually all of those persons who have been issued SHARCs and actually harvested subsistence halibut.

Comment 15: Subsistence harvest estimates will be produced from a post-season survey of registered fishers which will be based on their memory of what they caught. Another approach could be the use of a catch record card (CRC). The CRC could be attached to the registration form, and catches would be recorded on it by the fisher. Each fisher would mail in his or her completed CRC following each subsistence season. Follow-up contact still would be made to determine the harvests of non-responders. The advantages of an annual CRC include: (1) initial harvest estimates are made without agency action based on returned CRC, (2) better harvest estimates are likely as fishers would be recording their harvests shortly after making them rather than several months later based on memory for the survey, (3) the CRC could be used as an independent check on a mail or phone survey of a random sample of registrants, and (4) the subsistence fishing community will be more precisely known each year as the annual registration and CRCs are applied for and distributed. A multi-year registration certificate could involve distributing multiple CRCs so that a CRC could be returned each year.

Response: The suggested CRC method for estimating subsistence harvests is a reasonable alternative to the survey methodology that NMFS intends to use, at least initially, but the CRC method would be slightly more complex and burdensome for the subsistence fisher. This burden may be justified in the future, based on experience with the survey method, but for now is deemed unnecessary. In response to the purported advantages: (1) agency action nevertheless would be required to record and calculate the data reported on the CRCs, (2) the CRC method may produce a marginal increase in the precision and accuracy of the subsistence halibut harvest estimates, but surveying registered fishers is the same methodology used to estimate sport halibut harvests in Alaska and it is not clear why the subsistence halibut fishery should be subjected to a more robust estimation procedure than the sport halibut fishery when the latter will likely harvest several times as many halibut as the former, (3) conducting a mail survey in parallel with a CRC requirement would substantially increase the reporting burden on affected fishers (see also response to comment 1), and (4) the SHARC system serves the same purpose, i.e. to distinguish the group of persons who intend to fish for subsistence halibut from the universe of those eligible to do so.

Comment 16: Language in the proposed regulatory text (at sec. 300.65(g)(3)) would prevent subsistence halibut fishing in the IPHC closed area in the Bering Sea. The closed area applies only to commercial fishing. Sport fishing is allowed in this area and subsistence fishing also would be acceptable.

Response: NMFS agrees that neither the Council nor the IPHC ever indicated that subsistence halibut fishing should be prohibited in the area of the Bering Sea adjacent to and south of IPHC Area 4E which is closed to commercial halibut fishing by the IPHC regulations (section 10 of the annual management measures at 67 FR 12885, March 20, 2002). The proposed rule included this unintended restriction because the closed area is not part of any of the IPHC regulatory areas defined in section 6 of the annual management measures. The regulatory text in this action, therefore, is changed to allow subsistence halibut fishing in the closed area.

Comment 17: The catch sharing plan described in the proposed regulatory text (at section 300.63) is for the 2001 fishery. In 2002, regulations provided for an incidental catch of halibut during the sablefish fishery north of Point Chehalis, WA.

Response: NMFS agrees that proposed regulatory text at section 300.63(b) pertaining to the Area 2A Catch Sharing Plan should be exactly as it existed in section 300.63(a) before this rule. The restructuring of section 300.63 was discussed in the preamble to the proposed rule (67 FR 54767, August 26, 2002). This restructuring is intended to have no effect on existing regulations implementing the Area 2A Catch Sharing Plan.

Comment 18: The proposed monitoring plan would identify harvest at the level of IPHC regulatory areas, which would not provide the level of resolution needed to develop a Local Area Management Plan (LAMP). Data collection for subsistence harvests would be more useful at a higher level of resolution, *e.g.*, groundfish statistical area.

Response: NMFS disagrees that subsistence harvest data should be reported geographically at the level of the ADF&G groundfish statistical areas for the same reasons presented in response to comment 1. NMFS agrees, however, that management questions may arise that will require more detailed information as to the locality of subsistence harvests than is provided at the level of IPHC regulatory areas.

Therefore, NMFS may refine the survey instrument to serve this purpose.

Comment 19: Subsistence harvesters should be required to possess a registration certificate while conducting subsistence fishing to provide enforcement staff with a means to directly verify the eligibility of a fisher on the water.

Response: NMFS agrees that the term "possess," as used in the proposed rule at sections 300.65(h) and section 300.66(e), did not clearly indicate if a subsistence fisher would be required to have his or her registration certificate physically present while conducting subsistence halibut fishing. Therefore, this rule clarifies the meaning of "possess" by requiring a registration certificate to be made available for inspection by an authorized officer during a subsistence halibut fishing trip (see response to comment 12).

Comment 20: Allowing subsistence halibut in a commercial buying or processing plant presents an unacceptable risk of subsistence fish getting into the commercial market. Subsistence halibut should not be allowed on the premises of commercial fish buyers, with the exception of the existing practice of landing small halibut with Area 4D and Area 4E CDQ fish and landed within a port in those areas.

Response: The risk of subsistence halibut getting into the commercial market also was a concern of the Council's in developing its subsistence policy. As discussed in the preamble to the proposed rule, the Council recommended prohibiting customary trade of subsistence halibut on the premises of commercial fish buying operations. The preamble discussion of this issue noted three exceptions to this prohibition. One was the exception noted in the comment. Another was an exception for a commercial fish buyer who is eligible to harvest subsistence halibut. And the third was an exception for using commercial fish processing facilities to process subsistence products. A related Council recommendation was to prohibit subsistence halibut that was exchanged in customary trade from entering commerce at any point. That is, subsistence halibut given away or bartered by the fisher who caught it, could not be subsequently sold or otherwise enter the commerce market. Due to the significance of this risk, NMFS specifically requested comments on how best to give effect to the intention of preventing movement of subsistence halibut into the commercial sector.

Neither of these prohibitions were explicitly stated in the proposed rule prohibitions. Language in proposed section 300.66(j), however, was designed to incorporate both of the Council's recommended prohibitions by stating that it would be unlawful to "retain or possess subsistence halibut for commercial purposes, cause subsistence halibut to be sold, bartered or otherwise enter commerce or solicit exchange of subsistence halibut for commercial purposes". The exception for Area 4D and Area 4E fishers to land small halibut with harvests of CDQ halibut is included in the prohibitions section 300.66(h). This regulatory language likely will be sufficient to enforce against the movement of subsistence halibut into commerce without complicated exception language.

Comment 21: The proposed subsistence program is significantly more permissive than is currently allowed under existing regulations. Hence, the rule would allow subsistence harvesters to significantly increase their fishing power which will likely lead to greater subsistence harvests than occur at present. This underscores the need for effective monitoring programs and more comprehensive reporting than is presented in the proposed rule.

Response: Previously, without the provisions of this rule, subsistence halibut harvesting fishing could occur legally only under authority of IPHC sport fishing regulations which allow a daily catch limit per person of two halibut (annual management measures section 24(2), published at 67 FR 10989, March 7, 2003). Alternatively, subsistence halibut may have been taken illegally or taken as commercial harvest. In any case, information about subsistence halibut harvests was likely biased because subsistence fish may have been double counted as subsistence and sport halibut harvest, counted as commercial harvest or not reported at all because it was harvested illegally. Hence, the presumption that subsistence harvests of halibut will be significantly increased under this rule because it allows fishers to harvest up to 20 fish per day instead of two fish per day is not necessarily correct.

The subsistence fishery is expected to be self limiting because subsistence fishers typically harvest no more than they need to satisfy food needs. To harvest more than that simply because they can would be wasteful of the resource, their time and effort. Allowing subsistence fishers to harvest more fish in a day than they would be able to legally under current sport fishing rules will allow subsistence fishers to be more efficient, spending fewer days fishing to satisfy food needs, and will foster compliance with fishery management regulations. Although it is true that legal subsistence fishing power will be enhanced by this rule, NMFS does not assume that this enhancement will automatically lead to significantly larger subsistence harvests. The subsistence harvest of halibut is expected to be roughly one percent of the total take of halibut by all sources of fishing mortality, substantially less than the sport harvest of halibut. Of course, effective monitoring of this harvest, like any authorized harvest of halibut, is important. The monitoring system that NMFS intends to implement will be sufficiently comprehensive to monitor the relative magnitude of this fishery, and will likely produce far more reliable information about the total subsistence harvest of halibut in Alaska than is currently available.

Comment 22: Commercial fishing for halibut will be harmed by the subsistence rules. If only 10 percent of the people eligible to do subsistence fishing for halibut take their daily quota of 20 fish twice a year, then about 15 million pounds of halibut will be taken by subsistence fishers. The 30–hook limit will likely take between one-third and one-half of the IPHC Area 2C commercial catch limit. Please consider reducing the hook limit to eight and reconsider the rules if the subsistence harvest exceeds a given percentage of the commercial catch limit.

Response: The purpose of this action is to authorize a fishery for the customary and traditional use of halibut. Although in certain localized parts of the IPHC regulatory areas, subsistence fishing for halibut may compete with commercial and sport fishing for halibut, this action is not intended to constitute a large-scale allocation of the halibut resource away from either the commercial or sport fisheries to the subsistence fishery. Such an allocation is not likely because subsistence fishers are not likely to harvest all of the halibut permitted under these rules. The subsistence halibut fishery is expected to be limited more by the amount of halibut that can be used in a customary and traditional manner than by the catch and hook limits imposed by this rule.

Of course, the subsistence halibut harvest also will not likely be evenly distributed, and some areas may experience higher subsistence harvest rates than others. These areas are likely to be near the larger communities in IPHC Areas 2C and 3A. In response to these concerns, the Council, in April 2002, adopted recommendations to

reduce the harvest and hook limits in certain parts of these areas. These and other recommendations made by the Council at that time are under review and proposed implementing rules will be published in the **Federal Register** for public comment.

Comment 23: The commercial fishing fleet has not been adequately informed and represented in forming the proposed subsistence rules.

Response: The Council took up the issue of subsistence halibut initially in December 1996, and at 3 of its 5 meetings in 1997. In June 1997, the Council deferred action out of deference to the State of Alaska which was attempting to resolve subsistence issues generally with State legislation. After State action on subsistence did not occur, the Council revisited the halibut subsistence issue in October 1999, and scheduled further discussions and public comment on the alternatives under consideration throughout 2000. The Council addressed subsistence halibut at 4 of its 5 meetings in 2000, reviewing and revising alternatives for analysis and receiving public testimony at all meetings. In total, the Council discussed subsistence at 9 of its meetings. All of these meetings were advertised and open to the public. Many of the 11 voting Council members represent commercial interests in fisheries. In addition, the Council takes advice from its Halibut Subsistence Committee and Advisory Panel, which include members with commercial interests in fisheries, and comments directly from the public. Hence, members of the commercial fishing fleet, as any other member of the affected public, have had ample opportunity to involve themselves and influence the development of the subsistence policy implemented by this action.

Comment 24: Ninilchik should be listed as a rural community in section 300.65(f)(1). The Federal Subsistence Board has found Ninilchik to be a rural area and eligible for subsistence uses. With a 2002 census of about 772 persons, Ninilchik is much smaller than other communities that are listed as rural and would have minimal impact on the halibut resource.

Response: Ninilchik, Alaska is located on the Kenai Peninsula within the Anchorage-Matsu-Kenai non-rural or non-subsistence area as defined by the Alaska Joint Board of Fisheries and Game. In developing criteria for this and the other non-rural areas, the Council considered criteria established by the Federal Subsistence Board but instead chose to model its criteria on those used by the State for determining non-subsistence areas and rural areas in which a subsistence lifestyle may be practiced. Further, the Council specifically named the communities outside of the non-rural areas that it considered rural and to have a customary and traditional use of halibut. Ninilchik was not named as such a community, however, Ninilchik Village was named as one of the Alaska Native tribal entities with customary and traditional uses of halibut. This means that members of the Ninilchik Village Tribe may conduct subsistence fishing outside of any of the non-subsistence areas, but non-Native residents of Ninilchik may not participate in this fishery.

The Council recognized in recommending this action that some rural communities not explicitly named in its initial list may seek a finding of customary and traditional use of halibut and thereby secure subsistence eligibility for its non-Native residents. The Council specifically stated that such communities may petition the Council for such eligibility after it receives a finding of customary and traditional use of halibut from the appropriate State or Federal bodies. Hence, if the Federal Subsistence Board has made such a finding, then Ninilchik should proceed with petitioning the Council for inclusion as a rural community with a customary and traditional use of halibut. If the Council agrees with the petition and recommends such inclusion, NMFS will review the recommendation and publish a proposed rule to change the list of rural communities contained in this action.

Comment 25: As a life-long subsistence fisher, the commentator favors the proposed subsistence rules as written.

Response: NMFS notes this support.

Comment 26: What is customary trade? Customary means what Native people have done throughout their history. Customary is traditional and traditional means traditional ways of the Alaska Native Indian, and does not include (non-Native) rural communities. Tradition means since the beginning; rural is less than a century. Rural is not customary. Whenever something is done to benefit Alaska Natives, it either gets loaded up with stipulations or gets offered to non-Natives as well. Non-Alaska Natives have no subsistence rights because Alaska is not their ancestral land.

Response: Customary trade is defined in this rule as "the non-commercial exchange of subsistence halibut for money or anything other than items of significant value." The term describes the customary and traditional use of halibut in barter for other foods or items necessary for the sustenance of the fisher, his family and community. For example, subsistence halibut may be traded for moose meat, wild berries, fish roe, or other food items collected by other people who have a subsistence lifestyle. This practice represents a natural tendency toward efficiency in organizing human work. Those persons who are particularly talented at catching fish typically would supply the fish for their family and community while others particularly talented at hunting game, for example, would supply the meat. This sharing is not limited to foods but could extend to other goods and services also. When this subsistence economy combines with a cash economy as it does today, this traditional sharing of natural resources may involve a monetary payment to reimburse the harvester's expenses in return for subsistence food or services. For example, a subsistence fisher may receive a nominal payment for his vessel's fuel cost in return for the fish provided.

An important distinction between this type of subsistence bartering and commercial trading is that subsistence bartering does not necessarily increase the overall wealth of the individuals involved but provides for the long-term sustenance of both the harvester and person(s) receiving fish through barter. Commercial trading, however, assumes that at least one of the participating parties enjoys an increase in wealth or profit as a result of the trade, otherwise the trading would not occur or continue. Hence, commercial trading is motivated by profit seeking and wealth accumulation, while customary trade is motivated by a long-term need for basic survival.

Alaska Natives are recognized as having developed customary trade as an essential part of their subsistence lifestyle probably thousands of years before the first non-Natives started to populate what is now the State of Alaska. Of course, in these early years, all of this area was what would be considered now as rural, and many non-Alaska Natives adopted the subsistence lifestyle also as a means of survival. Hence, the conditions that cause or lead to a subsistence lifestyle are based as much on living in a rural setting with relatively few or limited commercial sources for food as they are based in Alaska Native culture. For this reason, the Council determined that persons who live in rural communities with customary and traditional uses of halibut should be equally eligible to harvest subsistence halibut with persons who are members of Federally recognized Alaska Native tribes that have customary and traditional uses of halibut. NMFS has agreed with this Council policy. Other persons, Native and non-Native, will not be granted this subsistence fishing privilege.

The conditions and constraints on subsistence halibut fishing imposed by this rule are relatively modest compared to the total population of persons eligible for a subsistence halibut fishing privilege. They are designed to be unintrusive and reasonably balanced with other uses of fishery resources while providing recognition of a fishery and use of halibut that historically extends back in time long before the present.

Comment 27: The limit of $400 per year on customary trade is too limiting. Non-Natives do not live on $400 per year.

Response: The purpose of the monetary limit on customary trade is to allow subsistence fishers to be nominally reimbursed for their expenses in supplying subsistence halibut to their community without that reimbursement being considered a commercial transaction. The Council recommended and NMFS approved the $400 limit on cash exchanges in customary trade of subsistence halibut as a reasonable balance between no cash exchanges being allowed and higher limits that suggest significant economic value to, and possibly commercial enterprise in, subsistence halibut. Neither Alaska Natives nor non-Natives are expected to be able to make a living in an economic sense by harvesting subsistence halibut. Anyone intending to make a living by fishing for halibut may do so by entering the commercial IFQ fishery (or the CDQ fishery in the Bering Sea) for halibut.

Comment 28: The commercial IFQ fishers are not constrained by hook and daily bag limits so why should subsistence fishers have 30–hook and 20–fish per day limits. Commercial halibut fishers are allowed a percentage of sablefish bycatch. Subsistence halibut fishers also should be allowed to retain a percentage of sablefish as this species has been a part of the Native diet and customary trade throughout history.

Response: Commercial IFQ fishers are constrained by fishing gear and harvest restrictions. A basic tenant of the IFQ rules is that an IFQ fisher must not harvest more halibut than is specified on his or her IFQ permit. Although IFQ fishers may not be constrained by a daily harvest limit, they are constrained by the total amount of halibut they may harvest in a year. Likewise, commercial halibut fishers must not retain other species of fish that are taken incidental to halibut unless they have a permit and authority to do so. For sablefish, this would be sablefish IFQ. Similarly, subsistence halibut fishers may retain species caught incidental to halibut to the extent they are authorized to do so by State of Alaska and other Federal agencies that manage the subsistence harvests of other species.

Comment 29: In response to the NMFS request for comment on how best to prevent movement of subsistence halibut into the commercial sector (67 FR 54770), NMFS should consult with affected tribal governments and users. NMFS is commended for engaging in meaningful tribal consultation on development of the proposed rule and this consultation should be continued.

Response: NMFS notes this support and reiterates its intent to continue consultation with Alaska Native tribal representatives on subsistence halibut management issues pursuant to guidance and requirements under Executive Order (E.O.) 13175 and other applicable law.

Comment 30: Mandatory registration is not necessary, particularly in remote areas (i.e., IPHC Areas 3B, 4A, 4B, 4C, 4D, and 4E), either to identify eligible tribal subsistence users or for gathering harvest information. A tribal identification card would suffice to prove eligibility. Cooperative agreements between NMFS and tribes for harvest information is the best way to collect harvest data. If registration is necessary in some areas, the regulations appear to provide an avenue to minimize this burden on tribal subsistence users through cooperative agreements with tribes. NMFS should extend the time for re-registration to well beyond 4 years.

Response: The principal purpose of the registration system is to provide a basis for collecting information on participation and harvest in the subsistence halibut fishery. A secondary purpose is to distinguish between persons who are eligible and persons who are not eligible to harvest subsistence halibut. Although most persons in remote areas likely will be eligible, for data collection purposes, these subsistence fishers should be in the registration system along with those from less remote areas.

NMFS considered the option of relying on tribal identification cards to demonstrate the eligibility of subsistence halibut fishers who are members of Federally recognized Alaska Native tribes with customary and traditional use of halibut. Other non-Native residents of the specified rural communities who also would be eligible to harvest subsistence halibut would not necessarily have tribal identification cards. Therefore, a single SHARC that would be used by all eligible fishers would be more efficient for distinguishing eligible from non-eligible persons. NMFS intends to cooperate with tribal and other entities to distribute information and forms that will facilitate registration. As explained in the preamble to the proposed rule, NMFS will determine the eligibility of each applicant for a SHARC. The reason for limiting the duration of a registration is to keep the list of registered individuals limited to those who actually intend to harvest subsistence halibut and to maintain current contact and address information. Although an Alaska Native tribal member may be eligible to fish for subsistence halibut throughout his or her life, he or she may choose not to participate in the fishery during various periods of his or her life. For example, the very young and the very old may not be personally involved in harvesting subsistence halibut. In that event, a lapsed registration would indicate no participation in the fishery and therefore no need to participate in the subsistence halibut harvest survey. An eligible individual's lapsed registration could be renewed at any time thereby indicating that the individual should be included in the survey. Longer periods of registration validity would produce a larger universe of registered persons who are no longer actual participants in the fishery.

Comment 31: Although a voluntary reporting system and authority to enter into cooperative agreements with affected tribes is good, it is not clear why the harvest survey would require information about the subsistence fisher's identity. Due to a long history of government suppression of tribal subsistence practices, some tribal subsistence fishers may resist complying with surveys that require such personal identification. For example, a community harvester may be reluctant to disclose his full harvest if he expects that doing so will, by comparison with sport harvesters, bring negative attention to his practice of supplying subsistence food for his community. Tribes could provide NMFS and the IPHC with complete and accurate harvest information without identifying the particular tribal members who did the harvesting. NMFS should modify the regulations to allow for, but not require, identification of individual harvesters in the harvest survey.

Response: Personal identification information is needed on the survey form to prevent confusion of harvest

information supplied by persons with the same or similar names. It prevents double counting or not counting some harvest data. NMFS is sensitive to the need for confidentiality of personal identification data and data about the volume and location of subsistence harvests. Existing State and Federal confidentiality laws and regulations effectively prevent revealing harvest data, whether supplied by individual commercial, sport, or subsistence fishers. Published reports of subsistence harvest data will contain only aggregated information which will not indicate the harvests of any particular fisher. Nevertheless, NMFS intends to continue consultation with Alaska Native tribal representatives to resolve any questions of confidentiality.

Comment 32: Figure 1 of the proposed rule mistakenly portrays the Sitka Sound LAMP area as a "non-subsistence area." This is not consistent with the Council's action or the description of the four non-rural areas in the proposed regulatory text.

Response: This inadvertent error in Figure 1 is corrected in this rule.

Comment 33: In the proposed regulatory text at section 300.65(g)(3) (67 FR 54776), the phrase "in any Commission regulatory area" could be interpreted to mean that subsistence halibut fishing would be prohibited from that part of Bristol Bay that is not included within an IPHC area.

Response: NMFS agrees that this phrase (used in several places in the proposed rule) unintentionally would have prevented subsistence halibut fishing in the closed area. This error is corrected in this rule (see also response to comment 16).

Comment 34: Although most Native subsistence halibut users support fully the collection of harvest information necessary to the health and conservation of halibut stocks, modification to the proposed rules is necessary to lessen the burden on tribal harvesters and result in better information. Cooperative agreements with the affected tribes that maximize their participation in registering and collecting harvest information is essential to the success of this program.

Response: NMFS has made every effort to minimize the reporting burden of information collected on the harvest survey forms, as is required by the PRA (see also response to comment 1). Further, NMFS agrees that cooperation with the Alaska Native tribes affected by this rule is essential to assure high quality information from the subsistence halibut harvest survey. Tribal entities could, for example, assist with this effort by cooperating on the registration process and providing corroborating information that could verify or contest preliminary survey data. NMFS intends to continue consulting with Alaska Native tribal representatives with a view toward enhancing the quality of subsistence harvest data.

Comment 35: Thirty hooks per skate and 20 halibut per day is a reasonable limit for subsistence halibut harvest. The latest Council action on subsistence, however, would seriously restrict subsistence halibut harvest in the Sitka LAMP area. This action has caused concern among Sitka Natives.

Response: The latest Council action on subsistence was taken in April 2002, which will be addressed in a separate proposed rule and considered by NMFS separately from this rule.

Comment 36: No significant difference in harvest numbers will occur when subsistence halibut harvest is legalized in Sitka Sound. The Sitka Tribe proposes to collect data and assist with administering of the subsistence halibut permit system.

Response: NMFS notes this forecast of subsistence halibut harvest and welcomes the cooperation of the Sitka Tribe.

Comment 37: NMFS has made significant effort to consult with Native tribes in the development of the subsistence halibut proposed rule. Although subsistence halibut fishing will be open to all rural residents, it is important to recognize the unique relationship that tribal governments have with the Federal government. The subsistence rules should include a section on meaningful tribal consultation and reiterate the commitment of NMFS to continue consulting and working cooperatively with Alaska tribes on regulatory and other issues related to the subsistence halibut fishery. Establishing cooperative agreements with the affected tribes for harvest data collection, issuing permits, monitoring and research of subsistence halibut stocks and generally including tribes in the management and decision-making process will strengthen the overall management effort.

Response: NMFS agrees that cooperating with the affected Alaska Native tribes will foster trust between the agency and subsistence fishers and generally assure the success of the subsistence halibut program. In developing its subsistence policy, the Council specifically recommended cooperative agreements with tribal, State and Federal governments for harvest monitoring and general oversight of issues affecting subsistence halibut fishing. NMFS intends to follow the Council's guidance. As already noted, the agency consulted with Alaska Native tribes in the development of the proposed rule. NMFS also has implemented contracts with the Rural Alaska Community Action Program (RurALCAP) for purposes of consulting with Alaska Native representatives and with the Subsistence Division of ADF&G for subsistence harvest survey and estimation. As this program is launched, NMFS likely will need the cooperation of the affected tribal entities to distribute information about registration, reporting harvest information, and general compliance with the rules which may be best achieved through ongoing consultation with the affected tribes.

Comment 38: Although registration of subsistence halibut fishers could be a valuable management tool it should not be mandatory. A tribal identification card issued to each member of a tribe authorized to conduct subsistence fishing should be considered adequate documentation of eligibility. Cooperative agreements with the tribes would allow them to provide harvest data and to identify eligible subsistence fishers who are not members of the tribe.

Response: NMFS discussed this question at length among its divisions that would be involved in implementing the subsistence rules and with other agencies. Ultimately, the agency decided that a mandatory registration system was preferred primarily so that information on participation and harvest could be collected in a uniform and comparable manner. As discussed in the preamble to the proposed rule, the primary objective of the mandatory registration system is to provide a basis for surveying the harvest of subsistence halibut. NMFS has no intention of using the registration system as a means to prevent otherwise eligible persons from fishing for subsistence halibut. A secondary purpose of the registration system is to distinguish between persons who are eligible to fish for subsistence halibut and those who are not eligible to do so.

Comment 39: Requiring a subsistence fisher's identity, date of birth, etc., as part of the harvest survey is not necessary and could be counter productive. Based on tribal experience in conducting subsistence harvest surveys, collecting accurate data is enhanced by not requesting personal information. Alternatively, the affected tribes could provide NMFS and the IPHC with full and accurate harvest information without identifying a tribal member that harvested fish or linking him or her to a particular amount of fish harvested. The research design and survey instrument for collecting traditional subsistence harvest data should be left up to each individual tribe.

Response: NMFS has made every effort to minimize the amount of information collected on the harvest survey forms, as is required by the PRA (see response to comment 1). Identifying information about the subsistence fisher is required only to the extent necessary to prevent confusing the harvests of persons with the same or similar names. The data collected on subsistence halibut harvests will be aggregated for purposes of reporting to the public. Existing State and Federal confidentiality standards will be strictly complied with to prevent the harvests of individual fishers from becoming generally available. Commercial halibut and sport halibut harvest data are held to the same standards of confidentiality. NMFS is hopeful that further cooperation with affected fishers and explanation of the survey design and data handling techniques will demonstrate that the risk of a confidentiality breach by a cooperating State or Federal agency is low. The relative accuracy and comparability of subsistence halibut harvest estimates will be increased to the extent that the same survey methods are used comprehensively. Relying on a variety of survey instruments and methodologies, such as may happen if each tribe developed its own harvest estimation technique, would prevent comparison of subsistence halibut harvest rates among different areas.

Comment 40: The creation of a new subsistence halibut fishery would create another special user group with unequal rights to harvest resources that belong to all Alaskans. The fishery should be open to all Alaskans, without regards to racial origin or place of residence.

Response: The halibut resource is, in fact, open to all persons in some respect, and this action does not limit existing public access to the resource. For example, anyone with a State sport fishing license, may sport fish for halibut and retain two fish per day. Any U.S. citizen may participate in the commercial halibut IFQ fishery off Alaska if he or she meets the criteria and receives an IFQ allocation. Likewise, the subsistence fishing authority provided by this action may be enjoyed by anyone who is or becomes a resident in one of the rural communities with customary and traditional uses of halibut listed in this rule. The other group of persons eligible to conduct subsistence halibut fishing are members of Federally recognized Alaska Native tribes with customary and traditional uses of halibut. Participation in the subsistence halibut fishery as a member of this group may not be possible to anyone except by chance of birth or adoption, but this is not a new user group of the halibut resource. The ancestors of this group have used this resource, among others, for sustenance for thousands of years before the first non-Alaska Natives appeared in Alaska and began to do likewise. Although this action provides for a special subsistence harvesting privilege for certain individuals and not for others, it does not create a new user group and will likely not significantly affect the harvesting privileges of other users of the resource. Essentially, this action formally recognizes the long term practice of using the halibut resource for subsistence purposes as being as equally valid a use as are the commercial and sport uses.

Comment 41: NMFS is commended for proposing these rules to apply in Alaska. The Alaska National Interest Lands Conservation Act recognizes subsistence, but discriminates against Natives based on where they live and not the lifestyles they lead. The subsistence rules are a step in the right direction.

Response: NMFS notes this support.

Comment 42: The number of hooks allowed to be used by a subsistence fisher should be increased if that person is proxy fishing.

Response: This rule is silent on proxy fishing, a formal mechanism to allow fishing on behalf of another person. The Council purposely avoided issues pertaining to proxy fishing by providing for relatively liberal hook and harvest limits. In developing this policy, the Council understood that a subsistence halibut fisher would likely share his harvest with others and, therefore, proxy fishing was not deemed to be necessary.

Comment 43: The Alaska Department of Fish and Game should not play any part in the enforcement of these rules because ADF&G enforcement has demonstrated minimal sensitivity to people living in a rural setting.

Response: These rules, like other halibut fishery management rules, may be enforced by any authorized officer. The term "authorized officer" is defined, with respect to fishing off Alaska, to mean "...any State, Federal, or Provincial officer authorized to enforce these regulations including but not limited to, the National Marine Fisheries Service,...Alaska Division of Fish and Wildlife Protection,...[and the] United States Coast Guard..." (67 FR 12885, March 20, 2002).

Changes From the Proposed Rule

NMFS invited public comment on the proposed rule implementing the subsistence halibut program from August 26, 2002, through September 25, 2002 (67 FR 54767, August 26, 2002). The 43 comments received are summarized and responded to above. Several of these comments made technical suggestions or pointed out errors in the proposed rule with which NMFS agrees. Hence, NMFS has changed regulatory text in this action from what was published in the proposed rule. All of these changes are of a technical nature that correct errors in the proposed rule, improve the effectiveness of the rules, or improve their parity with the Council's intent and regulations developed by the IPHC. None of these make substantive changes to the subsistence halibut management program described in the preamble to the proposed rule. These changes are identified and explained as follows.

1. The proposed rule text in several places described the general area in which subsistence halibut fishing would occur in waters in and off Alaska. Although the context in each instance varied, the implication of phrases like "Commission regulatory area" or the naming of regulatory areas was that subsistence halibut fishing could occur only in Commission regulatory areas in waters in and off Alaska and nowhere else in waters in and off Alaska. The proposed rule failed to recognize that an area closed to commercial halibut fishing in the Bering Sea is defined by IPHC regulations to be outside of any of the Commission regulatory areas that are in waters in and off Alaska (see annual management measures at sections 6 and 10 (68 FR 10989, March 7, 2003)).

Any implication that subsistence halibut fishing also should not occur in the closed area was wrong and unintentional. The Council never indicated that intent, and the IPHC regulations make clear that the closed area applies only to commercial halibut fishing. This error was pointed out in comments 16 and 33. The error was found in the proposed rule text in: the definitions of "sport fishing" and "subsistence" at § 300.61, the heading at § 300.65, § 300.65(g)(3), § 300.65(g)(4), § 300.65(g)(4)(iii), and § 300.65(h). In this rule, with one exception, the phrase "Commission regulatory area" was removed from these places. The exception is at § 300.65(g)(4)(iii) where the phrase "or the Bering Sea closed area" is added to maintain the intended context.

2. The proposed regulatory restructuring at § 300.63 erred by including obsolete text in paragraph (b). The purpose of this restructuring, detailed more completely in the preamble of the proposed rule, is to better distinguish halibut fishery management measures that are applicable to IPHC Area 2A from those that are applicable to waters in and off Alaska. Until now, these management measures, all of which were developed by either the Pacific Fishery Management Council or the North Pacific Fishery Management Council under authority of the Halibut Act and approved by NMFS, have been implemented primarily by regulations at § 300.63. The addition of these subsistence rules would make this section structurally too cumbersome. This action will distinguish Area 2A management measures from those applicable to waters in and off Alaska by moving the "Alaska" provisions formerly in § 300.63 to a revised § 300.65 and a new § 300.66 (prohibitions).

This restructuring is intended to have no effect on the Area 2A management measures. To avoid confusion in the amendatory text of each instruction in the proposed rule, the full text of each paragraph in § 300.63 was reiterated in the proposed rule. Unfortunately, some of that text was obsolete by the time the proposed rule was published. If that mistake were repeated in this final rule, it would unintentionally undermine the halibut fishery management program in Area 2A. Hence, to avoid that mistake, this final rule does not attempt to republish existing regulatory text in § 300.63 pertaining to Area 2A because it may be changed again before this final rule becomes effective. Only revised text in the introductory paragraph (which is redesignated as paragraph (a)) is published in this final rule and unrevised text in former paragraph (a) or redesignated paragraph (b) is indicated by 3 stars.

3. Comment 32 indicated that Figure 1 mistakenly depicts Sitka Sound as a non-rural area in which subsistence fishing would be prohibited. Based on the description of the four non-subsistence areas in the preamble to the proposed rule and the proposed rule text, Figure 1 in the proposed rule is clearly wrong. This was caused by a technical error in transferring graphic data files for publication and was not meant to add a new non-subsistence area not otherwise described and explained. This technical mistake is corrected in this action by publishing Figure 1 as originally intended. Figure 1 is not substantially different from the previously existing Figure 1 in § 300.65 and its purpose is to depict the boundaries of the Sitka Sound LAMP. It is republished in this rule as part of the restructuring of regulatory text described in the preamble to the proposed rule in which the text description of the Sitka Sound LAMP is moved from § 300.63(d) to § 300.65(d).

A separate but related change in the proposed rule is made to correct an inadvertent error in the text description of the Sitka Sound LAMP. Due to a drafting oversight in the proposed rule text at § 300.65(d)(1)(i)(C), Cape Edgecumbe was incorrectly described at 57° 59' 54" N. latitude, 135° 51' 27" W. longitude. Although this was the coordinate originally published in the LAMP implementing rule, it was later corrected to be 56° 59' 54" N. latitude, 135° 51' 27" W. longitude (66 FR 36208, July 11, 2001). Hence, this rule makes a technical change to include the correct coordinate for Cape Edgecumbe.

4. The limitation on using more than 30 hooks on fishing gear to harvest subsistence halibut applies to each authorized subsistence halibut fisher. This limitation was clear in the Council's recommendation and was clear in the preamble to the proposed rule. The regulatory text published in the proposed rule, however, was not clear. This lack of specificity and potential ambiguity in the proposed regulatory text was pointed out in comment 4. Hence, the regulatory text at § 300.65(g)(1)(i) is changed from the proposed rule to clarify that the hook limitation applies to each person eligible to conduct subsistence halibut fishing under this rule.

5. A minor technical change was suggested in comment 5 to require setline gear used for subsistence halibut fishing to be identified as such by including an "S" on the buoys marking the gear. This labeling requirement is in addition to the name and address of the fisher. This additional marking requirement is intended to help distinguish subsistence halibut fishing gear from commercial halibut fishing gear, to which a hook limit does not apply.

6. Another technical change in the harvest survey instrument, based on recommendations in comments 1 and 18, would provide a finer level of geographic specificity than the IPHC regulatory area. This specificity is desirable to be able to respond to potential grounds preemption and allocation questions that may arise in the future. Hence, NMFS changed the regulatory text at § 300.65(h)(4) from what was published in the proposed rule to include the local water body where subsistence halibut harvests were made in the harvest survey. A local water body would be, for example, Sitka Sound (in Area 2A), Kachemak Bay (in Area 3A), or Beaver Inlet (in Area 4A).

7. The proposed rule at §§ 300.65(h) and 300.66(e) indicates that a subsistence halibut fisher must possess a valid SHARC before he or she begins subsistence halibut fishing. The term "possess" was meant to indicate that a subsistence halibut fisher must have the SHARC physically with him or her while fishing. Comments 12 and 19 note, however, that this meaning is not necessarily clear. Hence, NMFS changed text from the proposed rule at § 300.66(e) to clarify the original intent of being able to document authority to conduct subsistence halibut fishing while fishing for subsistence halibut. This clarification is made by requiring a valid SHARC to be available for inspection by an authorized officer.

Making this clarifying change in this rule is consistent with the rationale for the registration system given in the preamble to the proposed rule. Although the primary purpose for requiring the registration of subsistence halibut fishers is to provide the basis for collecting subsistence halibut harvest data, an important secondary purpose is to be able to distinguish between those persons who are eligible to fish for subsistence halibut and those who are not eligible. Although possession of a registration certificate on a vessel conducting subsistence halibut fishing is not necessary for the first purpose, it is necessary for the second purpose.

8. The proposed rule preamble (67 FR 54770, column 2, last paragraph) described the SHARC as being valid for either 2 or 4 years depending on a person's basis for being eligible for a SHARC as a resident of a specified rural community or member of a specified Alaska Native tribe, respectively. The preamble also described the rational for a multi-year SHARC and reason for having different expiration periods. Due to a drafting oversight, however, the regulatory text of the proposed rule failed to specifically provide for denominating SHARCs with dates of eligibility. Therefore, this action corrects that oversight with language at section 300.65(h)(3) that allows NMFS to specify on the certificate the period of time during which the SHARC will be valid. This new regulatory text also clarifies that persons eligible to harvest subsistence halibut may renew their SHARCs that are expired or will soon (within 3 months) expire by following the specified registration procedures. This change is consistent with the explanation and rationale of the subsistence halibut registration system given in the preamble to the proposed rule and as contemplated in the response to comments 13 and 30 above.

9. Section 300.65(g)(1) describes the type of gear to be used for subsistence halibut fishing. The proposed rule contained a typographical error using the word "jigging" to describe jig gear. Because this section lists gear types and not activities, the word "jigging" in the proposed rule is changed to "jig" in the final rule. This correction does not substantively change the requirements of this paragraph, only corrects a grammatical error.

10. Section 300.65(h)(2) describes the registration process for subsistence halibut fishing. The proposed rule stated that a person may submit an application to a cooperative Alaska Native tribal government or other entity designated by NMFS or directly to NMFS. Only NMFS has the authority to register participants in the subsistence fishery. Application may be submitted to a cooperative Alaska Native tribal government or other entity designated by NMFS which may forward the applications to NMFS for registration. The text in § 300.65(h)(2) is corrected in the final rule to indicate that the cooperative Alaska Native tribal government or other entity designated by NMFS will forward the applications to NMFS. This correction will ensure that participants understand that the application must ultimately arrive at NMFS to complete the registration process. This correction does not substantively change the requirements of this section, only clarifies the area of responsibility in the registration process.

11. Section 300.66 is changed from the proposed rule in the final rule by adding paragraph (j) that prohibits the filleting, mutilating, or disfiguring of subsistence halibut. This prohibition is consistent with prohibitions already in place for commercially and sport caught halibut and is necessary to allow the counting of subsistence halibut to determine compliance with the bag limits at 50 CFR 300.65(g)(2). The fish can not be counted if they are filleted, mutilated, or disfigured. Therefore, compliance with the bag limits are enforceable only with this prohibition.

12. Section 300.65(g)(3)(iii) is changed from the proposed rule by substituting the word "excludes" for the word "includes." This change makes this paragraph of the regulatory text consistent with Figure 4. This paragraph describes the Anchorage/Matsu/Kenai non-subsistence area in Cook Inlet which is depicted in Figure 4. The description of this non-subsistence area is based on the existing definition in the Alaska Administrative Code at 5 AAC 01.555(b), May 14, 1993. In the State regulation, the Tyonek Subdistrict is excluded from the Anchorage/Matsu/Kenai non-subsistence area as it is correctly depicted in Figure 4. The text of the proposed rule at section 300.65(g)(3)(iii), however, indicated that the Tyonek Subdistrict would be included in the Anchorage/Matsu/Kenai non-subsistence area, although this text was not explicitly labeled as the Tyonek Subdistrict. Changing "included" in the proposed rule to "excluded" in this final rule corrects the inconsistence between the regulatory text and Figure 4. The regulatory text that specifies the Tyonek Subdistrict is further labeled as such by adding "Tyonek Subdistrict" in parentheses to further clarify the regulatory text with Figure 4.

This change from the proposed rule will have no practical effect because halibut are not typically found within the Tyonek Subdistrict due to the high silt content of the water in that part of Cook Inlet. Hence, Tyonek is not a community with customary and traditional uses of halibut and is not listed in section 300.65(f)(1).

13. The proposed rule at 300.65(f)(2) identified persons eligible to harvest subsistence halibut if he or she is a member of an Alaska Native tribe as identified in the table. The proposed rule contained a typographical error in Halibut Regulatory Area 4E, identifying "Nuna Iqua" under the Sheldon Point Tribal Headquarters to describe "Nunam Iqua". Similarly, the Organized Tribal Entity for that Headquarters was identified as "Native Village of Sheldon's Point", instead of "Native Village of Sheldon Point". These errors are corrected in this final rule. This correction does not substantively change the requirements of this paragraph, only corrects a typographical error.

14. Section 600.725 describes the authorized gear types to be used for the Pacific halibut fishery. The proposed rule contained a typographical error using the word "jigging" to describe jig gear under paragraph C. Because this section lists authorized gear types, and not activities, the word "jigging" in the proposed rule is changed to "jig" in the final rule. This correction does not substantively change the requirements of this paragraph, only corrects a grammatical error.

Classification

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648–0460. These requirements and their associated burden estimates per response are: 10 minutes for Subsistence halibut registration; 30 minutes for Subsistence halibut harvest report/survey; and 15 minutes for Subsistence halibut gear marking. These response times include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

This rule has been determined to be not significant for purposes of E.O. 12866.

In developing this rule, NMFS consulted with Alaska Native tribes, as defined in this rule, pursuant to E.O. 13175. This consultation was conducted through direct mailings to the affected tribes, meetings with the Alaska Native Subsistence Halibut Working Group organized by the Rural Alaska Community Action Program to represent all Native subsistence halibut users, and public meetings of the Council and its advisory bodies including the Halibut Subsistence Committee.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No regulatory flexibility analysis (RFA) was prepared. No comments or new information were received during the comment period that caused us to reevaluate the basis for the original determination, or to prepare a RFA.

List of Subjects

50 CFR Part 300

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 600

Fisheries, Fishing.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 2, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 300, 600, and 679 are amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS, SUBPART E PACIFIC HALIBUT FISHERIES

■ 1. The authority citation for 50 CFR part 300, Subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.61 new definitions for "Alaska Native tribe," "Commission," "Commission regulatory area," "Customary trade," "Rural," "Rural resident," "Subsistence," and "Subsistence halibut," are added in alphabetical order, and existing definitions for "Commercial fishing," "IFQ halibut," and "Sport fishing" are revised to read as follows:

§ 300.61 Definitions.

* * * * *

Alaska Native tribe means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a Federally recognized Alaska Native tribe that has customary and traditional use of halibut and that is listed in § 300.65(f)(2) of this part.

* * * * *

Commercial fishing means fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing.

Commission means the International Pacific Halibut Commission.

Commission regulatory area means an area defined by the Commission for purposes of the Convention identified in 50 CFR 300.60 and prescribed in the annual management measures published pursuant to 50 CFR 300.62.

Customary trade means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, the non-commercial exchange of subsistence halibut for anything other than items of significant value.

* * * * *

IFQ halibut means any halibut that is harvested with setline or other hook and line gear while commercial fishing in any IFQ regulatory area defined at § 679.2 of this title.

* * * * *

Rural means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a community or area of Alaska in which the non-commercial, customary and traditional use of fish and game for personal or family consumption is a principal characteristic of the economy or area and in which there is a long-term, customary and traditional use of halibut, and that is listed in § 300.65(f)(1).

Rural resident means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a person domiciled in a rural community listed in the table in § 300.65(f)(1) of this part and who has maintained a domicile in a rural community listed in the table in § 300.65(f)(1) for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another state, territory, or country.

Sport fishing means:

(1) In regulatory area 2A, all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing; and

(2) In waters in and off Alaska, all fishing other than commercial fishing and subsistence fishing.

* * * * *

Subsistence means, with respect to waters in and off Alaska, the non-commercial, long-term, customary and traditional use of halibut.

Subsistence halibut means halibut caught by a rural resident or a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade.

* * * * *

■ 3. In § 300.63, the section heading is revised; paragraphs (b), (c), (d), and (e) are removed; paragraph (a) introductory text is revised to read as follows; and paragraphs (a)(1) through (a)(5) are redesignated as paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5):

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

(a) A catch sharing plan (CSP) may be developed by the Pacific Fishery Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Northwest Region, NMFS.

* * * * *

■ 4. Section 300.65 is redesignated as § 300.66 and revised and a new § 300.65 is added to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

(a) A catch sharing plan (CSP) may be developed by the North Pacific Fishery Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Alaska Region, NMFS.

(b) The catch sharing plan for Commission regulatory area 4 allocates the annual TAC among area 4 subareas and will be implemented by the Commission in annual management measures published pursuant to 50 CFR 300.62.

(c) A person authorized to conduct subsistence fishing under paragraph (f) of this section may retain subsistence halibut that are taken with setline gear in Commission regulatory areas 4D or 4E and that are smaller than the size limit specified in the annual management measures published pursuant to 50 CFR 300.62, provided that:

(1) The total annual halibut harvest of that person is landed in regulatory areas 4D or 4E; and

(2) No person may sell such halibut outside the limits prescribed for customary and traditional exchange of subsistence halibut prescribed at 50 CFR 300.66.

(d) The Local Area Management Plan (LAMP) for Sitka Sound provides guidelines for participation in the halibut fishery in Sitka Sound.

(1) For purposes of this section, Sitka Sound means (See Figure 1 to subpart E):

(i) With respect to paragraph (d)(2) of this section, that part of the Commission regulatory area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20′30″ N. lat., 135°45′10″ W. long. to Chichagof Island at 57°22′03″ N. lat., 135°43′00″ W. long., and

(B) By a line from Chichagof Island at 57°22′35″ N. lat., 135°41′18″ W. long. to Baranof Island at 57°22′17″ N. lat., 135°40′57″ W. long.; and

(C) That is enclosed on the south and west by a line from Cape Edgecumbe at 56°59′54″ N. lat., 135°51′27″ W. long. to Vasilief Rock at 56°48′56″ N. lat., 135°32′30″ W. long., and

(D) To the green day marker in Dorothy Narrows at 56°49′17″ N. lat., 135°22′45″ W. long. to Baranof Island at 56°49′17″ N. lat., 135°22′36″ W. long.

(ii) With respect to paragraphs (d)(3) and (d)(4) of this section, that part of the Commission regulatory area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20′30″ N. lat., 135°45′10″ W. long. to Chichagof Island at 57°22′03″ N. lat., 135°43′00″ W. long., and

(B) A line from Chichagof Island at 57°22′35″ N. lat., 135°41′18″ W. long. to Baranof Island at 57°22′17″ N. lat., 135°40′57″ W. lat.; and

(C) That is enclosed on the south and west by a line from Sitka Point at 56°59′23″ N. lat., 135°49′34″ W. long., to Hanus Point at 56°51′55″ N. lat., 135°30′30″ W. long.,

(D) To the green day marker in Dorothy Narrows at 56°49′17″ N. lat., 135°22′45″ W. long. to Baranof Island at 56°49′17″ N. lat., 135°22′36″ W. long.

(2) A person using a vessel greater than 35 ft (10.7 m) in overall length, as defined at 50 CFR 300.61, is prohibited from fishing for IFQ halibut with setline gear, as defined at 50 CFR 300.61, within Sitka Sound as defined in paragraph (d)(1)(i) of this section.

(3) A person using a vessel less than or equal to 35 ft (10.7 m) in overall length, as defined at 50 CFR 300.61:

(i) Is prohibited from fishing for IFQ halibut with setline gear within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31; and

(ii) Is prohibited, during the remainder of the designated IFQ season, from retaining more than 2,000 lb (0.91 mt) of IFQ halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, per IFQ fishing trip, as defined in 50 CFR 300.61.

(4) No charter vessel, as defined at 50 CFR 300.61, shall engage in sport fishing, as defined at 50 CFR 300.61(b), for halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(i) No charter vessel shall retain halibut caught while engaged in sport fishing, as defined at 50 CFR 300.61(b), for other species, within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(ii) Notwithstanding paragraphs (d)(4) and (d)(4)(i) of this section, halibut harvested outside Sitka Sound, as defined in (d)(1)(ii) of this section, may be retained onboard a charter vessel engaged in sport fishing, as defined in 50 CFR 300.61(b), for other species within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(e) Sitka Pinnacles Marine Reserve. (1) For purposes of this paragraph (e), the Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm off Cape Edgecumbe, defined by straight lines connecting the following points in a counterclockwise manner:

56°55.5′N lat., 135°54.0′W long;
56°57.0′N lat., 135°54.0′W long;
56°57.0′N lat., 135°57.0′W long;
56°55.5′N lat., 135°57.0′W long.

(2) No person shall engage in commercial, sport or subsistence fishing, as defined at § 300.61, for halibut within the Sitka Pinnacles Marine Reserve.

(3) No person shall anchor a vessel within the Sitka Pinnacles Marine Reserve if halibut is on board.

(f) *Subsistence fishing in and off Alaska.* No person shall engage in subsistence fishing for halibut unless that person meets the requirements in paragraphs (f)(1) or (f)(2) of this section.

(1) A person is eligible to harvest subsistence halibut if he or she is a rural resident of a community with customary and traditional uses of halibut listed in the following table:

HALIBUT REGULATORY AREA 2C

Rural Community	Organized Entity
Angoon	Municipality
Coffman Cove	Municipality
Craig	Municipality
Edna Bay	Census Designated Place
Elfin Cove	Census Designated Place
Gustavus	Census Designated Place
Haines	Municipality
Hollis	Census Designated Place
Hoonah	Municipality
Hydaburg	Municipality
Hyder	Census Designated Place
Kake	Municipality
Kasaan	Municipality
Klawock	Municipality
Klukwan	Census Designated Place
Metlakatla	Census Designated Place
Meyers Chuck	Census Designated Place
Pelican	Municipality
Petersburg	Municipality
Point Baker	Census Designated Place
Port Alexander	Municipality
Port Protection	Census Designated Place
Saxman	Municipality
Sitka	Municipality
Skagway	Municipality
Tenakee Springs	Municipality
Thorne Bay	Municipality
Whale Pass	Census Designated Place
Wrangell	Municipality

HALIBUT REGULATORY AREA 3A

Rural Community	Organized Entity
Akhiok	Municipality
Chenega Bay	Census Designated Place
Cordova	Municipality
Karluk	Census Designated Place
Kodiak City	Municipality
Larsen Bay	Municipality
Nanwalek	Census Designated Place
Old Harbor	Municipality
Ouzinkie	Municipality
Port Graham	Census Designated Place
Port Lions	Municipality
Seldovia	Muhicipality
Tatitlek	Census Designated Place
Yakutat	Municipality

HALIBUT REGULATORY AREA 3B

Rural Community	Organized Entity
Chignik Bay	Municipality
Chignik Lagoon	Census Designated Place
Chignik Lake	Census Designated Place
Cold Bay	Municipality
False Pass	Municipality
Ivanof Bay	Census Designated Place
King Cove	Municipality
Nelson Lagoon	Census Designated Place
Perryville	Census Designated Place
Sand Point	Municipality

HALIBUT REGULATORY AREA 4A

Rural Community	Organized Entity
Akutan	Municipality
Nikolski	Census Designated Place
Unalaska	Municipality

HALIBUT REGULATORY AREA 4B

Rural Community	Organized Entity
Adak	Census Designated Place
Atka	Municipality

HALIBUT REGULATORY AREA 4C

Rural Community	Organized Entity
St. George	Municipality
St. Paul	Municipality

HALIBUT REGULATORY AREA 4D

Rural Community	Organized Entity
Gambell	Municipality
Savoonga	Municipality

HALIBUT REGULATORY AREA 4D—Continued

Rural Community	Organized Entity
Diomede (Inalik)	Municipality

HALIBUT REGULATORY AREA 4E

Rural Community	Organized Entity
Alakanuk	Municipality
Aleknegik	Municipality
Bethel	Municipality
Brevig Mission	Municipality
Chefornak	Municipality
Chevak	Municipality
Clark's Point	Municipality
Council	Census Designated Place
Dillingham	Municipality
Eek	Municipality
Egegik	Municipality
Elim	Municipality
Emmonak	Municipality
Golovin	Municipality
Goodnews Bay	Municipality
Hooper Bay	Municipality
King Salmon	Census Designated Place
Kipnuk	Census Designated Place
Kongiganak	Census Designated Place
Kotlik	Municipality
Koyuk	Municipality
Kwigillingok	Census Designated Place
Levelock	Census Designated Place
Manokotak	Municipality
Mekoryak	Municipality
Naknek	Census Designated Place
Napakiak	Municipality
Napaskiak	Municipality
Newtok	Census Designated Place
Nightmute	Municipality
Nome	Municipality
Oscarville	Census Designated Place
Pilot Point	Municipality
Platinum	Municipality
Port Heiden	Municipality
Quinhagak	Municipality
Scammon Bay	Municipality
Shaktoolik	Municipality
Sheldon Point (Nunam Iqua).	Municipality
Shishmaref	Municipality
Solomon	Census Designated Place
South Naknek	Census Designated Place
St. Michael	Municipality
Stebbins	Municipality
Teller	Municipality
Togiak	Municipality
Toksook Bay	Municipality
Tuntutuliak	Census Designated Place
Tununak	Census Designated Place

HALIBUT REGULATORY AREA 4E—Continued

Rural Community	Organized Entity
Twin Hills	Census Designated Place
Ugashik	Census Designated Place
Unalakleet	Municipality
Wales	Municipality
White Mountain	Municipality

(2) A person is eligible to harvest subsistence halibut if he or she is a member of an Alaska Native tribe with customary and traditional uses of halibut listed in the following table:

HALIBUT REGULATORY AREA 2C

Place with Tribal Headquarters	Organized Tribal Entity
Angoon	Angoon Community Association
Craig	Craig Community Association
Haines	Chilkoot Indian Association
Hoonah	Hoonah Indian Association
Hydaburg	Hydaburg Cooperative Association
Juneau	Aukquan Traditional Council Central Council Tlingit and Haida Indian Tribes Douglas Indian Association
Kake	Organized Village of Kake
Kasaan	Organized Village of Kasaan
Ketchikan	Ketchikan Indian Corporation
Klawock	Klawock Cooperative Association
Klukwan	Chilkat Indian Village
Metlakatla	Metlakatla Indian Community, Annette Island Reserve
Petersburg	Petersburg Indian Association
Saxman	Organized Village of Saxman
Sitka	Sitka Tribe of Alaska
Skagway	Skagway Village
Wrangell	Wrangell Cooperative Association

HALIBUT REGULATORY AREA 3A

Place with Tribal Headquarters	Organized Tribal Entity
Akhiok	Native Village of Akhiok
Chenega Bay	Native Village of Chanega
Cordova	Native Village of Eyak
Karluk	Native Village of Karluk
Kenai-Soldotna	Kenaitze Indian Tribe Village of Salamatoff
Kodiak City	Lesnoi Village (Woody Island) Native Village of Afognak Shoonaq' Tribe of Kodiak
Larsen Bay	Native Village of Larsen Bay
Nanwalek	Native Village of Nanwalek
Ninilchik	Ninilchik Village
Old Harbor	Village of Old Harbor
Ouzinkie	Native Village of Ouzinkie
Port Graham	Native Village of Port Graham
Port Lions	Native Village of Port Lions
Seldovia	Seldovia Village Tribe
Tatitlek	Native Village of Tatitlek
Yakutat	Yakutat Tlingit Tribe

HALIBUT REGULATORY AREA 3B

Place with Tribal Headquarters	Organized Tribal Entity
Chignik Bay	Native Village of Chignik
Chignik Lagoon	Native Village of Chignik Lagoon
Chignik Lake	Chignik Lake Village
False Pass	Native Village of False Pass
Ivanof Bay	Ivanoff Bay Village
King Cove	Agdaagux Tribe of King Cove Native Village of Belkofski
Nelson Lagoon	Native Village of Nelson Lagoon
Perryville	Native Village of Perryville
Sand Point	Pauloff Harbor Village Native Village of Unga Qagan Toyagungin Tribe of Sand Point Village

HALIBUT REGULATORY AREA 4A

Place with Tribal Headquarters	Organized Tribal Entity
Akutan	Native Village of Akutan
Nikolski	Native Village of Nikolski
Unalaska	Qawalingin Tribe of Unalaska

HALIBUT REGULATORY AREA 4B

Place with Tribal Headquarters	Organized Tribal Entity
Atka	Native Village of Atka

HALIBUT REGULATORY AREA 4C

Place with Tribal Headquarters	Organized Tribal Entity
St. George St. Paul	Pribilof Islands Aleut Communities of St. Paul Island and St. George Island

HALIBUT REGULATORY AREA 4D

Place with Tribal Headquarters	Organized Tribal Entity
Gambell	Native Village of Gambell
Savoonga	Native Village of Savoonga
Diomede (Inalik)	Native Village of Diomede (Inalik)

HALIBUT REGULATORY AREA 4E

Place with Tribal Headquarters	Organized Tribal Entity
Alakanuk	Village of Alakanuk
Aleknagik	Native Village of Aleknagik
Bethel	Orutsararmuit Native Village
Brevig Mission	Native Village of Brevig Mission
Chefornak	Village of Chefornak
Chevak	Chevak Native Village
Clark's Point	Village of Clark's Point
Council	Native Village of Council
Dillingham	Native Village of Dillingham Native Village of Ekuk Native Village of Kanakanak
Eek	Native Village of Eek
Egegik	Egegik Village Village of Kanatak
Elim	Native Village of Elim
Emmonak	Chuloonawick Native Village Emmonak Village
Golovin	Chinik Eskimo Community
Goodnews Bay	Native Village of Goodnews Bay
Hooper Bay	Native Village of Hooper Bay Native Village of Pairmiut
King Salmon	King Salmon Tribal Council
Kipnuk	Native Village of Kipnuk
Kongiganak	Native Village of Kongiganak
Kotlik	Native Village of Hamilton Village of Bill Moore's Slough Village of Kotlik
Koyuk	Native Village of Koyuk
Kwigillingok	Native Village of Kwigillingok
Levelock	Levelock Village
Manokotak	Manokotak Village
Mekoryak	Native Village of Mekoryak
Naknek	Naknek Native Village
Napakiak	Native Village of Napakiak
Napaskiak	Native Village of Napaskiak
Newtok	Newtok Village
Nightmute	Native Village of Nightmute Umkumiute Native Village
Nome	King Island Native Community Nome Eskimo Community
Oscarville	Oscarville Traditional Village
Pilot Point	Native Village of Pilot Point
Platinum	Platinum Traditional Village
Port Heiden	Native Village of Port Heiden
Quinhagak	Native Village of Kwinhagak
Scammon Bay	Native Village of Scammon Bay
Shaktoolik	Native Village of Shaktoolik
Sheldon Point (Nuna Iqua).	Native Village of Sheldon's Point
Shishmaref	Native Village of Shishmaref
Solomon	Village of Solomon
South Naknek	South Naknek Village
St. Michael	Native Village of Saint Michael
Stebbins	Stebbins Community Association
Teller	Native Village of Mary's Igloo Native Village of Teller
Togiak	Traditional Village of Togiak
Toksook Bay	Native Village of Toksook Bay
Tuntutuliak	Native Village of Tuntutuliak
Tununak	Native Village of Tununak
Twin Hills	Twin Hills Village
Ugashik	Ugashik Village
Unalakleet	Native Village of Unalakleet
Wales	Native Village of Wales
White Mountain	Native Village of White Mountain

(g) *Limitations on subsistence fishing.* Subsistence fishing for halibut may be conducted only by persons who qualify for such fishing pursuant to paragraph (f) of this section and who hold a valid subsistence halibut registration certificate in that person's name issued by NMFS pursuant to paragraph (h) of this section, provided that such fishing is consistent with the following limitations.

(1) Subsistence fishing is limited to setline gear and hand-held gear, including longline, handline, rod and reel, spear, jig and hand-troll gear.

(i) Subsistence fishing gear must not have more than 30 hooks per person registered in accordance with paragraph (h) of this section and on board the vessel from which gear is being set or retrieved.

(ii) All setline gear marker buoys carried on board or used by any vessel regulated under this section shall be marked with the following: first initial, last name, and address (street, city, and state), followed by the letter "S" to indicate that it is used to harvest subsistence halibut.

(iii) Markings on setline marker buoys shall be in characters at least 4 inches (10.16 cm) in height and 0.5 inch (1.27 cm) in width in a contrasting color visible above the water line and shall be maintained so the markings are clearly visible.

(2) The daily retention of subsistence halibut in rural areas is limited to no more than 20 fish per person eligible to conduct subsistence fishing for halibut under paragraph (g) of this section,

except that no daily retention limit applies in Areas 4C, 4D, and 4E.

(3) Subsistence fishing may be conducted in any waters in and off Alaska except for the following four non-rural areas defined as follows:

(i) *Ketchikan non-subsistence marine waters area in Commission regulatory area 2C* (see Figure 2 to subpart E) is defined as those waters between a line from Caamano Point at 55° 29.90' N. lat., 131° 58.25' W. long. to Point Higgins at 55° 27.42' N. lat., 131° 50.00' W. long. and a point at 55° 11.78' N. lat., 131° 05.13' W. long., located on Point Sykes to a point at 55° 12.22' N. lat., 131° 05.70' W. long., located one-half mile northwest of Point Sykes to Point Alava at 55° 11.54' N. lat., 131° 11.00' W. long. and within one mile of the mainland and the Gravina and Revillagigedo Island shorelines, including within one mile of the Cleveland Peninsula shoreline and east of the longitude of Niblack Point at 132° 07.23' W. long., and north of the latitude of the southernmost tip of Mary Island at 55° 02.66' N. lat.;

(ii) *Juneau non-subsistence marine waters area in Commission regulatory area 2C* (see Figure 3 to subpart E) is defined as those waters of Stephens Passage and contiguous waters north of the latitude of Midway Island Light (57° 50.21' N. lat.), including the waters of Taku Inlet, Port Snettisham, Saginaw Channel, and Favorite Channel, and those waters of Lynn Canal and contiguous waters south of the latitude of the northernmost entrance of Berners Bay (58° 43.07' N. lat.), including the waters of Berners Bay and Echo Cove, and those waters of Chatham Strait and contiguous waters north of the latitude of Point Marsden (58° 03.42' N. lat.), and east of a line from Point Couverden at 58° 11.38' N. lat., 135° 03.40' W. long., to Point Augusta at 58° 02.38' N. lat., 134° 57.11' W. long.;

(iii) *Anchorage-Matsu-Kenai non-subsistence marine waters area in Commission regulatory area 3A* (see Figure 4 to subpart E) is defined as all waters of Alaska enclosed by a line extending east from Cape Douglas (58° 51.10' N. lat.), and a line extending south from Cape Fairfield (148° 50.25' W. long.) except those waters north of Point Bede which are west of a line from the eastern most point of Jakolof Bay (151° 32.00' W. long.) north the western most point of Hesketh Island (59° 30.04' N. lat., 151° 31.09' W. long.) including Jakolof Bay and south of a line west from Hesketh Island (59° 30.04' N. lat. extending to the boundary of the territorial sea); the waters south of Point Bede which are west of the eastern most point of Rocky Bay (from the mainland along 151° 18.41' W. long. to the intersection with the territorial sea); but excludes those waters within mean lower low tide from a point one mile south of the southern edge of the Chuitna River (61° 05.00' N. lat., 151° 01.00' W. long.) south to the easternmost tip of Granite Point (61° 01.00' N. lat., 151° 23.00' W. long.) (Tyonek subdistrict, as defined in Alaska Administrative Code, 5 AAC 01.555(b), May 14, 1993); and

(iv) *Valdez non-subsistence marine waters area Commission regulatory area 3A* (see Figure 5 to subpart E) is defined as the waters of Port Valdez and Valdez Arm located north of 61° 02.24' N. lat., and east of 146° 43.80' W. long.

(4) Waters in and off Alaska that are not specifically identified as non-rural in paragraph (g)(3) of this section are rural for purposes of subsistence fishing for halibut. Subsistence fishing may be conducted in any rural area by any person with a valid subsistence halibut registration certificate in his or her name issued by NMFS under paragraph (h) of this section, except that:

(i) A person who is not a rural resident but who is a member of an Alaska Native tribe that is located in a rural area and that is listed in the table in paragraph (f)(2) of this section is limited to conducting subsistence fishing for halibut only in his or her area of tribal membership.

(ii) A person who is a resident outside the State of Alaska but who is a member of an Alaska Native tribe that is located in a rural area and that is listed in the table in paragraph (f)(2) of this section is limited to conducting subsistence fishing for halibut only in his or her area of tribal membership.

(iii) For purposes of this paragraph, "area of tribal membership" means rural areas of the Commission regulatory area or the Bering Sea closed area in which the Alaska Native tribal headquarters is located.

(h) *Subsistence registration.* A person must register as a subsistence halibut fisher and possess a valid subsistence halibut registration certificate in his or her name issued by NMFS before he or she begins subsistence fishing for halibut in waters in and off Alaska.

(1) A subsistence halibut registration certificate will be issued to any person who registers according to paragraph (h)(2) of this section and who is qualified to conduct subsistence fishing for halibut according to paragraph (f) of this section. The Alaska Region, NMFS, may enter into cooperative agreements with Alaska Native tribal governments or their representative organizations for purposes of identifying persons qualified to conduct subsistence fishing for halibut according to paragraph (f) of this section.

(2) *Registration.* To register as a subsistence halibut fisher, a person may request a cooperating Alaska Native tribal government or other entity designated by NMFS to submit an application on his or her behalf to the Alaska Region, NMFS. Alternatively, a person may apply by submitting a completed application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, PO Box 21668, Juneau, AK 99802–1668. The following information is required to be submitted with the application:

(i) For a Rural Resident Registration, the person must submit his or her full name, date of birth, mailing address (number and street, city and state, zip code), community of residence (the rural community or residence from 50 CFR 300.65(f)(1) that qualifies the fisher as eligible to fish for subsistence halibut), daytime telephone number, certification that he or she is a "rural resident" as that term is defined at § 300.61, and signature and date of signature.

(ii) For an Alaska Native Tribal Registration, the person must submit his or her full name, date of birth, mailing address (number and street, city and state, zip code), Alaska Native tribe (the name of the Alaska Native Tribe from 50 CFR 300.65(f)(2) that qualifies the fisher as eligible to fish for subsistence halibut), daytime telephone number, certification that he or she is a member of an "Alaska Native tribe" as that term is defined at § 300.61, and signature and date of signature.

(3) *Expiration of registration.* Each subsistence halibut registration certificate will be valid only for the period of time specified on the certificate. A person eligible to harvest subsistence halibut under paragraph (f) of this section may renew his or her registration certificate that is expired or will expire within 3 months by following the procedures described in paragraph (h)(2) of this section. A subsistence halibut registration certificate will expire:

(i) 2 years from the date of its issuance to a person eligible to harvest subsistence halibut under paragraph (f)(1) of this section, and

(ii) 4 years from the date of its issuance to a person eligible to harvest subsistence halibut under paragraph (f)(2) of this section.

(4) The Administrator, Alaska Region, NMFS, or an authorized representative, may conduct periodic surveys of persons who hold valid subsistence halibut registration certificates to estimate the annual harvest of subsistence halibut and related catch and effort information. For purposes of this paragraph, an authorized representative of NMFS may include employees of, or contract workers for, the State of Alaska or a Federal agency or an Alaska Native tribal government representative as may be prescribed by cooperative agreement with NMFS. Responding to a subsistence halibut harvest survey will be voluntary and may include providing information on:

(i) The subsistence fisher's identity including his or her full name, date of birth, mailing address (number and street; city and state, zip code), community of residence, daytime phone number, and tribal identity (if appropriate);

(ii) The subsistence halibut harvest, including whether the participant fished for subsistence halibut during the year and, if so, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks usually used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of ling cod and rockfish caught while subsistence fishing for halibut; and

(iii) Any sport halibut harvest, including whether the participant sport fished for halibut during the year and the number and weight (in pounds) of halibut harvested while sport fishing.

§ 300.66 Prohibitions.

■ In addition to the general prohibitions specified in 50 CFR 300.4, it is unlawful for any person to do any of the following:

(a) Fish for halibut except in accordance with the annual management measures published pursuant to 50 CFR 300.62.

(b) Fish for halibut except in accordance with the catch sharing plans and domestic management measures implemented under 50 CFR 300.63 and 50 CFR 300.65.

(c) Fish for halibut in Sitka Sound in violation of the Sitka Sound LAMP implemented under 50 CFR 300.65(d).

(d) Fish for halibut or anchor a vessel with halibut on board within the Sitka Pinnacles Marine Reserve defined at 50 CFR 300.65(e).

(e) Fish for subsistence halibut in and off Alaska unless the person is qualified to do so under 50 CFR 300.65(f), has in his or her possession a valid subsistence halibut registration certificate pursuant to 50 CFR 300.65(h), and makes this certificate available for inspection by an authorized officer on request.

(f) Fish for subsistence halibut in and off Alaska with gear other than that described at 50 CFR 300.65(g)(1) and retain more halibut than specified at 50 CFR 300.65(g)(2).

(g) Fish for subsistence halibut in and off Alaska in a non-rural area specified at 50 CFR 300.65(g)(3).

(h) Retain, on board the harvesting vessel, halibut harvested from subsistence fishing with halibut harvested from commercial fishing or from sport fishing, as defined at 50 CFR 300.61(b), except that persons who land their total annual harvest of halibut in Commission regulatory area 4D or 4E may retain, with harvests of CDQ halibut, halibut harvested in Commission regulatory areas 4D or 4E that are smaller than the size limit specified in the annual management measures published pursuant to 50 CFR 300.62.

(i) Retain subsistence halibut that were harvested using a charter vessel.

(j) Retain or possess subsistence halibut for commercial purposes, cause subsistence halibut to be sold, bartered or otherwise enter commerce or solicit exchange of subsistence halibut for commercial purposes, except that a person who qualified to conduct subsistence fishing for halibut under 50 CFR 300.65(f), and who holds a subsistence halibut registration certificate in the person's name under 50 CFR 300.65(h) may engage in the customary trade of subsistence halibut through monetary exchange of no more than $400 per year.

(k) Fillet, mutilate, or otherwise disfigure subsistence halibut in any manner that prevents the determination of the number of fish caught, possessed, or landed.

■ 5. Figure 1 to subpart E is revised; Figure 2 through 5 to subpart E are added to read as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 is amended to read as follows:

Authority: 5 U.S.C 561, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, table VII in paragraph (v) is revised to read as follows:

§ 600.725 General Prohibitions.

* * * * * * *

(v) * * *

VII. North Pacific Fishery Management Council

Fishery	Allowable gear types
1. Alaska Scallop Fishery (FMP).	Dredge.
2. Bering Sea (BS) and Aleutian Islands (AI) King and Tanner Crab Fishery (FMP):	
Pot fishery	Pot.
3. BS and AI King and Tanner Crab Fishery (Non-FMP):	
Recreational fishery	Pot.
4. BS and AI Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line, and handline fishery.	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. BS and AI pot and trap fishery.	D. Pot, trap.
5. BS and AI Groundfish Recreational Fishery (Non-FMP)..	Handline, rod and reel, hook and line, pot, trap.
6. Gulf of Alaska (GOA) Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line and handline fishery.	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. GOA pot and trap fishery.	D. Pot, trap.
E. Recreational fishery	E. Handline, rod and reel, hook and line, pot, trap.
7. Pacific Halibut Fishery (Non-FMP):	
A. Commercial (IFQ and CDQ).	A. Hook and line.
B. Recreational	B. Single line with no more than 2 hooks attached or spear.
C. Subsistence	C. Setline gear and hand held gear of not more than 30 hooks, including longline, handline, rod and reel, spear, jig, and hand-troll gear.
8. Alaska High Seas Salmon Hook and Line Fishery:	
(FMP)	Hook and line.
9. Alaska Salmon Fishery (Non-FMP):	
A. Hook-and-line fishery	A. Hook and line.
B. Gillnet fishery	B. Gillnet.
C. Purse seine fishery.	C. Purse seine.
D. Recreational fishery	D. Handline, rod and reel, hook and line.
10. Finfish Purse Seine Fishery (Non-FMP)..	Purse seine.

VII. NORTH PACIFIC FISHERY MANAGEMENT COUNCIL—Continued

Fishery	Allowable gear types
11. Octopus/Squid Longline Fishery (Non-FMP)..	Longline.
12. Finfish Handline and Hook-and-line Fishery (Non-FMP).	Handline, hook and line.
13. Recreational Fishery (Non-FMP).	Handline, rod and reel, hook line.
14. Commercial Fishery (Non-FMP).	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.

* * * * *

PART 679— FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209 Pub. L. 106–554.

■ 2. In § 679.2, the definitions for "commercial fishing" and "IFQ halibut" are revised as follows:

§ 679.2 Definitions.

* * * * *

Commercial fishing means:

(1) For purposes of the High Seas Salmon Fishery, fishing for fish for sale or barter; and

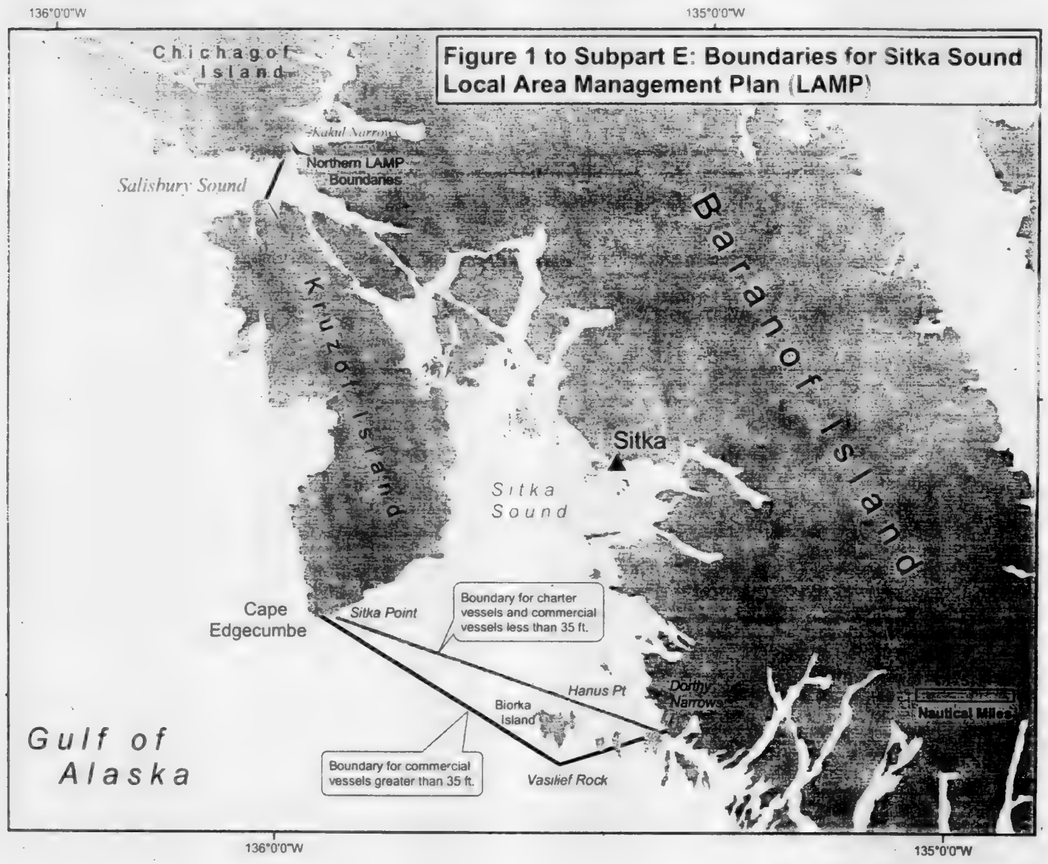
(2) For purposes of the Pacific halibut fishery, fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing for halibut, as defined at 50 CFR 300.61.

* * * * *

IFQ halibut means any halibut that is harvested with setline or other hook and line gear while commercial fishing in any IFQ regulatory area defined in this section.

* * * * *

BILLING CODE 3510–22–S



VII. North Pacific Fishery Management Council—Continued	
Fishery	Allowable gear types
11. Octopus/Squid Longline Fishery (Non-FMP)..	Longline.
12. Finfish Handline and Hook-and-line Fishery (Non-FMP).	Handline, hook and line.
13. Recreational Fishery (Non-FMP).	Handline, rod and reel, hook line.
14. Commercial Fishery (Non-FMP).	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.

* * * * *

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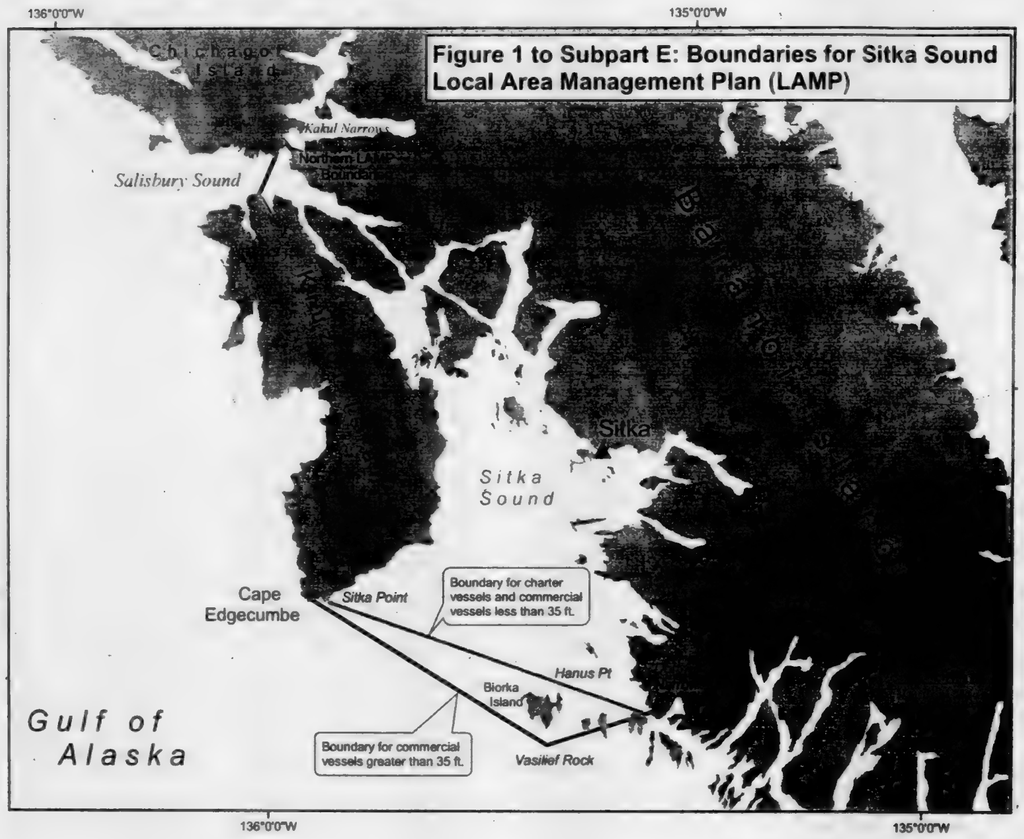
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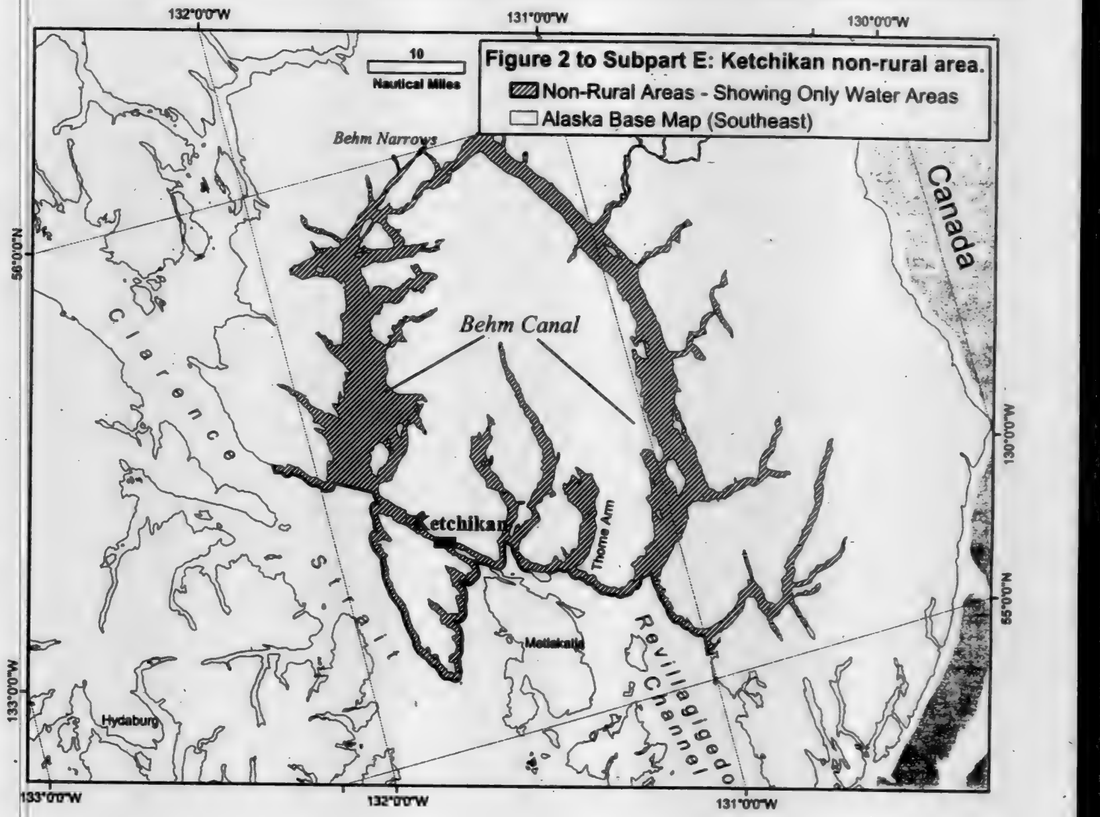
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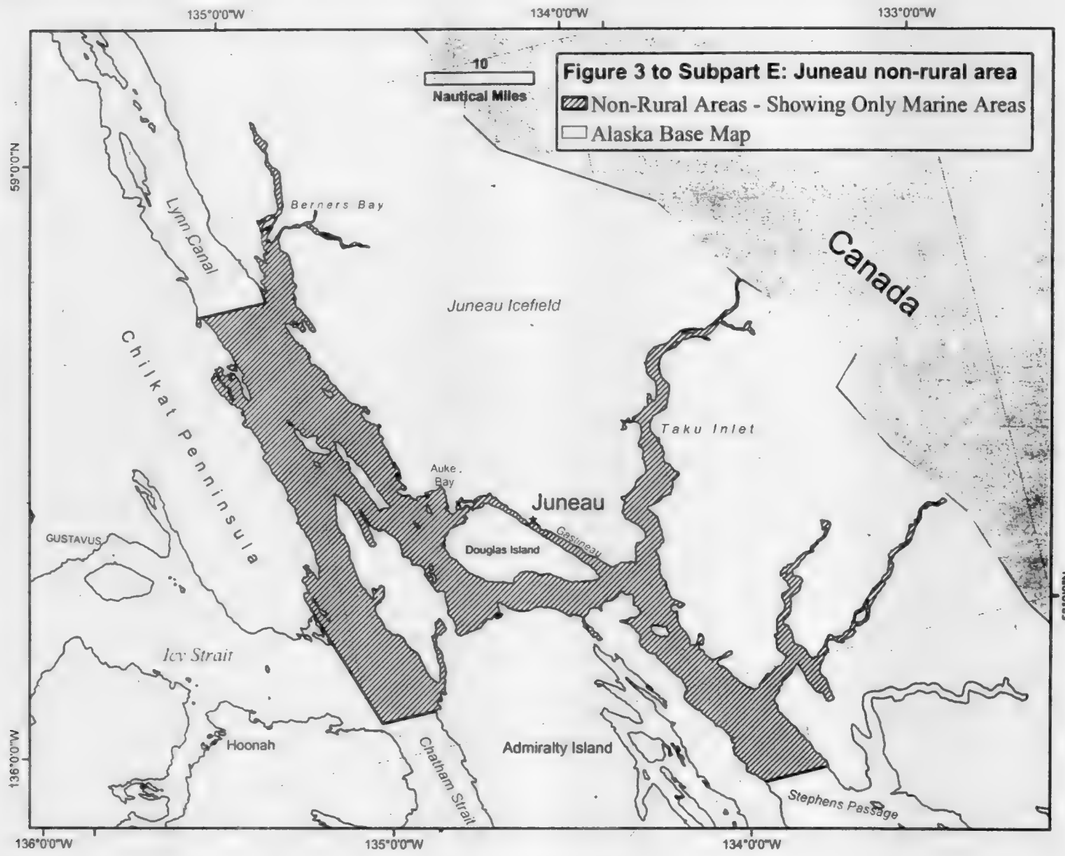
IFQ halibut means any halibut that is harvested with setline or other hook and line gear while commercial fishing in any IFQ regulatory area defined in this section.

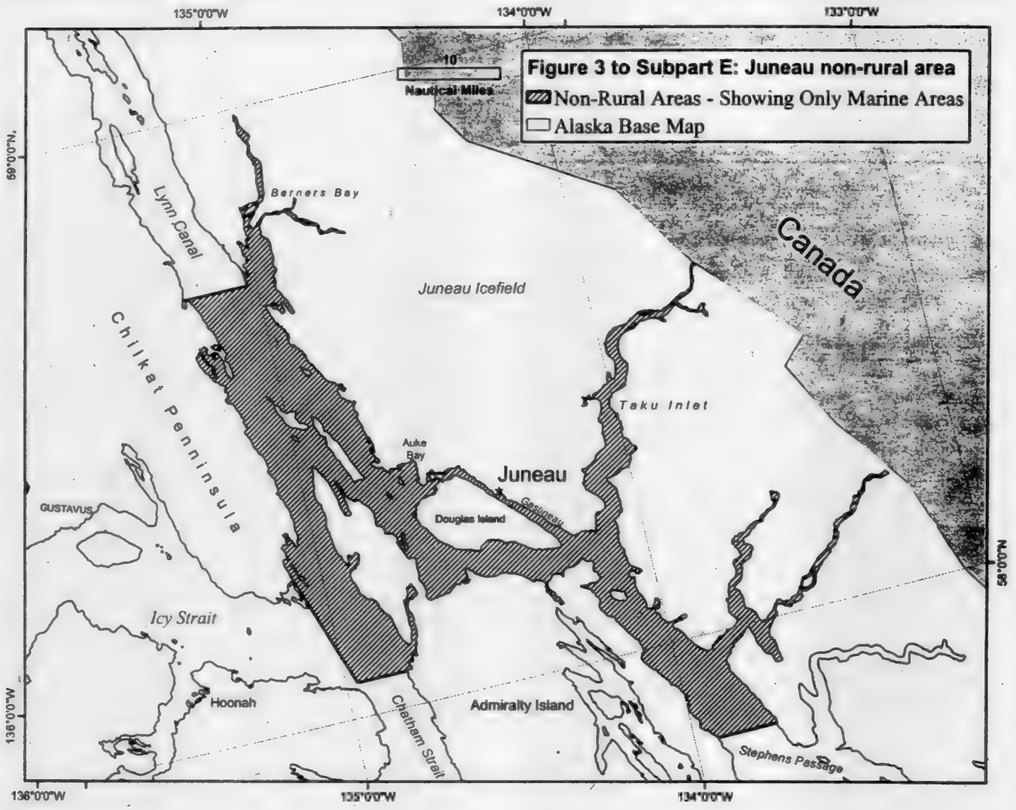
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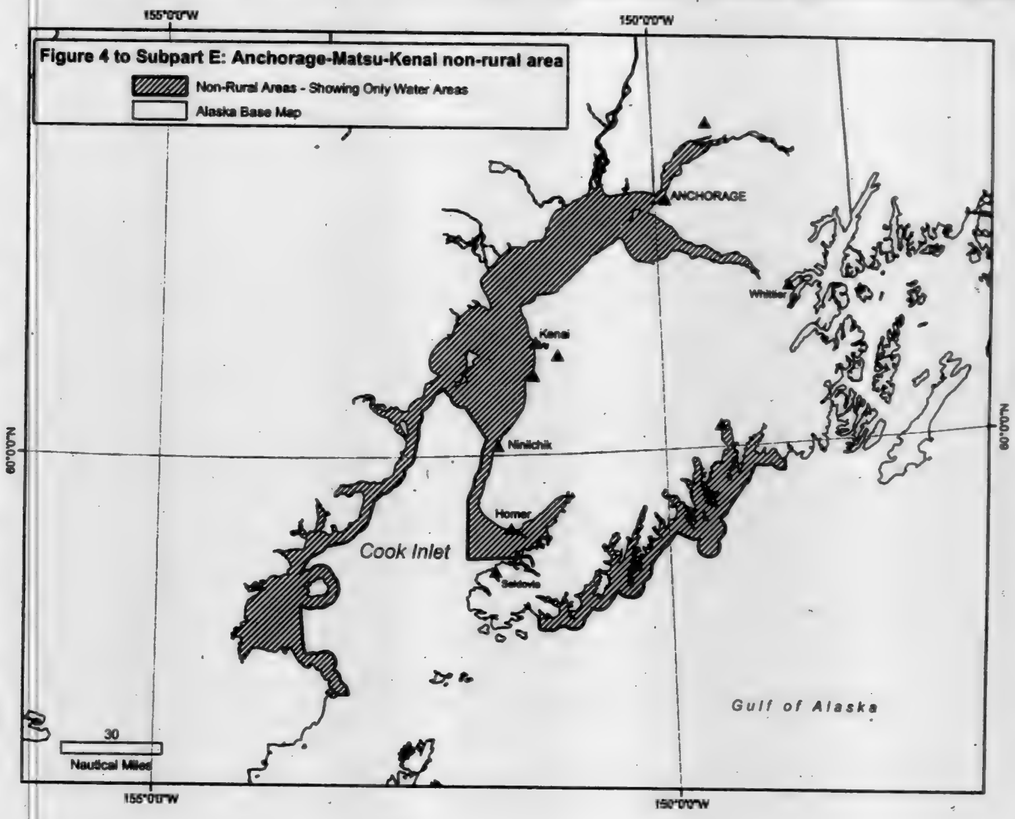
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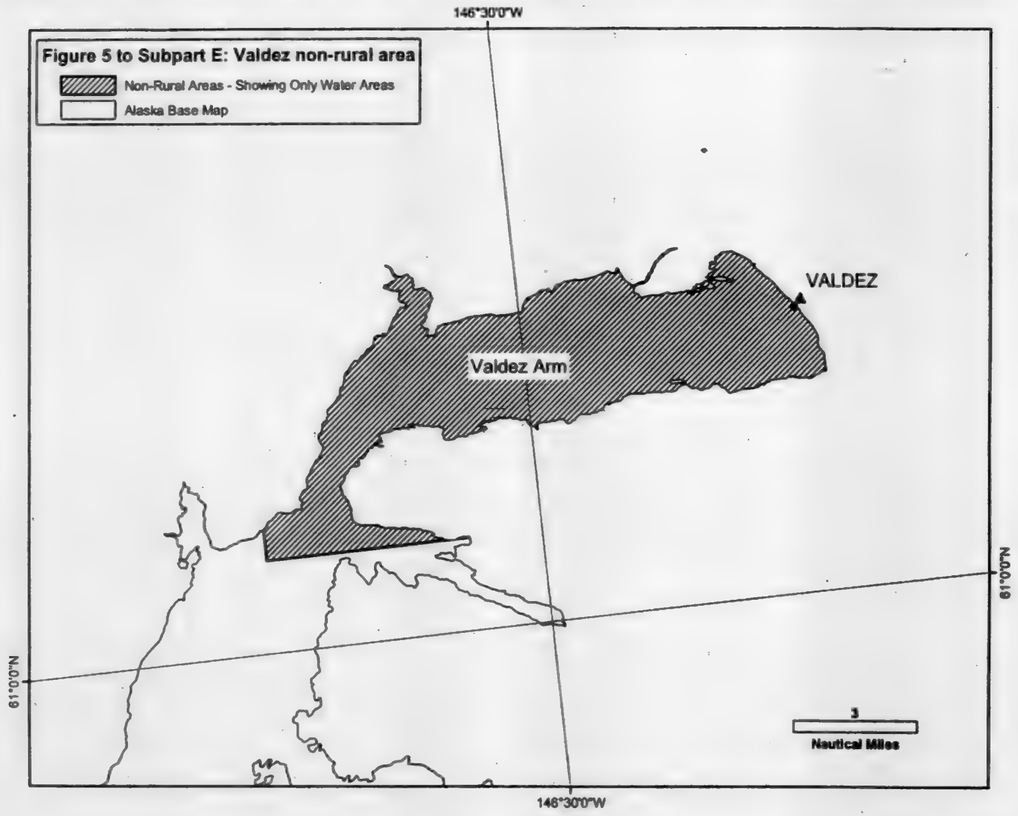





135°0'0"W
134°0'0"W
133°0'0"W
10
Nautical Miles
Figure 3 to Subpart E: Juneau non-rural area
Non-Rural Areas - Showing Only Marine Areas
Alaska Base Map
59°0'0"N
58°0'0"N
136°0'0"W
Berners Bay
Lynn Canal
Juneau Icefield
Canada
Chilkat Penninsula
Taku Inlet
Auke Bay
Juneau
Douglas Island
GUSTAVUS
Icy Strait
Hoonah
Chatham Strait
Admiralty Island
Stephens Passage
136°0'0"W
135°0'0"W
134°0'0"W


Figure 3 to Subpart E: Juneau non-rural area
Non-Rural Areas - Showing Only Marine Areas
Alaska Base Map
10
Nautical Miles
135°0'0"W
134°0'0"W
133°0'0"W
59°0'0"N.
58°0'0"N.
136°0'0"W
Lynn Canal
Berners Bay
Juneau Icefield
Canada
Chilkat Peninsula
Taku Inlet
Auke Bay
Juneau
Douglas Island
GUSTAVUS
Icy Strait
Hoonah
Chatham Strait
Admiralty Island
Stephens Passage


Figure 4 to Subpart E: Anchorage-Matsu-Kenai non-rural area
Non-Rural Areas - Showing Only Water Areas
Alaska Base Map
155°0'0"W
150°0'0"W
60°0'0"N
ANCHORAGE
Whittier
Kenai
Nikilichik
Homer
Seldovia
Cook Inlet
Gulf of Alaska
30
Nautical Miles



[FR Doc. 03–8822 Filed 4–14–03; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atomospheric Administration

50 CFR Part 660

[Docket No. 021209300–3048–02; I.D. 112502C]

Magnuson-Stevens Act Provisions; Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published on March 7, 2003, for the Pacific Coast groundfish fishery.

DATES: Effective April 15, 2003.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen or Jamie Goen (NMFS, Northwest Region), 206–526–6140.

SUPPLEMENTARY INFORMATION: The specifications and management measures for the 2003 fishing year (January 1 - December 31, 2003) were initially published in the **Federal Register** as an emergency rule for January 1 - February 28, 2003 (68 FR 908, January 7, 2003), and as a proposed rule for March 1 - December 31, 2003 (68 FR 936, January 7, 2003). The emergency rule was amended at 68 FR 4719, January 30, 2003, and the final rule for March 1 - December 31, 2003, was published in the **Federal Register** on March 7, 2003 (68 FR 11182).

Management measures for the Pacific Coast groundfish fishery, effective March 1 - December 31, 2003 (68 FR 11182, March 7, 2003), contained remnant sablefish size limit language and typographical and transposing errors in the boundary coordinates for the Rockfish Conservation Areas (RCA) that require correction. Coordinates for the following lines are corrected in this document: the 60–fm (110–m) depth contour used between 40°10′ N. lat. and 34°27′ N. lat. as an eastern boundary for the trawl RCA in March through October; the 75–fm (137–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA in the months of July and August; and the 100–fm (183–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA and as a western boundary for the non-trawl RCA. In addition, this correction removes language referring to size limits and size limit conversions for sablefish. The 2003 management measures do not include a size limit for sablefish.

Therefore, references to sablefish size limits in paragraph titles and the conversion factor for headed versus whole sablefish are not necessary and are confusing to the reader. This correction removes those references.

Corrections

In the rule FR Doc. 035166, in the issue of Friday, March 7, 2003 (68 FR 11182) make the following corrections:

1. On page 11202, in column 2, section IV. under A. General Definitions and Provisions, paragraph (6)(d) is corrected to read as follows:

* * * * *

(6) * * *

(d) *Sablefish weight limit conversions.* The following conversion applies to both the limited entry and open access fisheries when trip limits are effective for those fisheries. For headed and gutted (eviscerated) sablefish, the conversion factor established by the State where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The conversion factor currently is 1.6 in Washington, Oregon, and California. However, the State conversion factors may differ; fishers should contact fishery enforcement officials in the State where the fish will be landed to determine that State's official conversion factor.)

* * * * *

2. On page 11207, in column 1, section IV. under A. General Definitions and Provisions, paragraph (19)(e)(ii) is corrected to read as follows:

* * * * *

(18) 48°05.91′ N. lat., 125°08.30′ W. long.;

(19) 48°07.00′ N. lat., 125°09.80′ W. long.;

(20) 48°06.93′ N. lat., 125°11.48′ W. long.;

(21) 48°04.98′ N. lat., 125°10.02′ W. long.;

* * * * *

3. On page 11208, in column 2, section IV. under A. General Definitions and Provisions, paragraph (19)(e)(iii) is corrected to read as follows:

* * * * *

(64) 47°08.50′ N. lat., 124°57.74′ W. long.;

(65) 47°01.92′ N. lat., 124°54.95′ W. long.;

* * * * *

4. On page 11212, in column 3, section IV. under A. General Definitions and Provisions, paragraph (19)(e)(vii) is corrected to read as follows:

* * * * *

(21) 37°07.58′ N. lat., 122°37.64′ W. long.;

* * * * *

(23) 36°48.20′ N. lat., 122°03.32′ W. long.;

* * * * *

5. On page 11222, in column 1, section IV. under B. Limited Entry Fishery, paragraphs (2)(a) and (b) are corrected to read as follows:

* * * * *

(2) * * *

(a) Trawl trip limits. * * *

(b) Nontrawl (fixed gear) trip limits. * * *

* * * * *

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 4, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–8821 Filed 4–14–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 72
Tuesday, April 15, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–62–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This proposal would require inspection of the drive trunnion pins for the main landing gear (MLG) doors to determine the part number of the pins, and corrective action if necessary. This action is necessary to prevent failure of the MLG and consequent reduced controllability of the airplane during takeoff or landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by May 15, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–62–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175, fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–62–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–62–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. The CAA advises that mandatory BAE Systems (Operations) Limited Service Bulletin J41–32–017 (Modification JM41253) addressed in British airworthiness directive 002–02–94, introduced new, crashworthy drive trunnion pins for the main landing gear (MLG) doors. Some pre-modification pins were modified to the post-modification standard and installed on MLG units, which were installed on airplanes in production. However, at overhaul, some MLGs were found to have pins identified with pre-modification part numbers; those pins may not have been modified. This condition, if not corrected, could result in failure of the MLG and consequent reduced controllability of the airplane during takeoff or landing.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin J41–32–080, dated January 24, 2002, which describes procedures for inspecting the drive trunnion pins for the MLG doors to determine if the part number (P/N) of the pins is correct. The service bulletin also describes procedures for replacing any pin having the incorrect or no P/N with a new, improved pin. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 007–01–2002 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $6,840, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2002–NM–62–AD.

Applicability: All Model Jetstream 4101 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) and consequent reduced controllability of the airplane during takeoff or landing, accomplish the following:

Inspection, and Replacement if Necessary

(a) Within 60 days after the effective date of this AD, perform a general visual inspection of the drive trunnion pins for the MLG doors to determine the part number (P/N) of the pins, per "Part 1—Inspection" of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–080, dated January 24, 2002.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If P/N AIR135154 is found on both pins: No further action is required by this paragraph.

(2) If any pin having P/N AIR134402 is found, or if any pin having no P/N is found: Within 90 days after accomplishing the inspection, replace the pin having P/N AIR134402 or the pin having no P/N, with a new, improved pin, per "Part 2—Rectification" of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in British airworthiness directive 007–01–2002.

Issued in Renton, Washington, on April 9, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9137 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–376–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Series Airplanes Equipped With Rolls Royce RB211 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines, that would have superseded an existing AD that currently requires modification of the nacelle strut and wing structure. The proposed AD would have added a one-time inspection of the middle gusset of the inboard side load fitting for proper alignment, and a one-time inspection of certain fastener holes in the lower spar fitting of the nacelle strut and wing structure for cracking, and corrective actions, if necessary. For certain airplanes, the proposed AD would have required installation of new fasteners. This new action revises the proposed rule by reducing a certain compliance time and adding new inspections. The actions specified by this new proposed AD are intended to prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut. These actions are intended to address the identified unsafe condition.

DATES: Comments must be received by May 12, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–376–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–376–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dennis Stremick, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6450; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–376–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–376–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on January 4, 2002 (67 FR 547). That NPRM proposed to supersede AD 99–24–07, amendment 39–11431 (64 FR 66370, November 26, 1999), which is applicable to certain Boeing Model 757 series airplanes equipped with Rolls Royce RB211 engines. That NPRM would have continued to require modification of the nacelle strut and wing structure. That NPRM would also have added a one-time inspection of the middle gusset of the inboard side load fitting for proper alignment, and a one-time inspection of certain fastener holes in the lower spar fitting of the nacelle strut and wing structure for cracking, and corrective actions, if necessary. For certain airplanes, that NPRM would have required installation of new fasteners. Fatigue cracking in primary strut structure could result in reduced structural integrity of the strut.

Actions Since Issuance of Previous Proposal

Since the issuance of that NPRM, the FAA has reviewed and approved Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002, including Evaluation Form. The procedures in this service bulletin are similar to those in Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999, which was referenced as the appropriate source of service information for the actions required by the original NPRM. However, Revision 2 reduces the compliance time for the detailed inspection of the middle gusset for airplanes that have not yet accumulated 50,000 total flight cycles. The new compliance time for the inspection is before the accumulation of 50,000 total flight cycles or within 15,000 flight cycles after doing the modification required by AD 99–24–07, whichever is earlier.

Comments

Due consideration has been given to the comments received in response to the NPRM. One commenter has no technical objection to the NPRM, but does not agree that the proposed inspections are necessary to ensure the continued airworthiness of the engine strut. Another commenter does not own or operate the affected airplanes.

Request To Change Paragraph (b)

One commenter, the manufacturer, states that there are airplanes in service that are many years away from the compliance threshold for the inspections specified in paragraph (b) of the NPRM. The commenter adds that those airplanes will not receive timely inspections of the lower spar fitting/aft bulkhead fasteners within the compliance time of 15,000 total flight cycles or 6 months after the effective date of the AD, whichever is later, as specified in paragraph (b). The commenter asks that paragraph (b) be changed to reduce the compliance time for those airplanes in order to ensure that the inspections are done in a timely manner.

We agree with the commenter. The manufacturer has provided data which show that the compliance time specified in Revision 1 of the service bulletin is not adequate to preclude an unsafe condition of loose or missing fasteners in the aft bulkhead of the lower spar fitting before the airplane reaches 50,000 total flight cycles. Also, we have approved Revision 2 of the referenced service bulletin, as stated above, in which the manufacturer recommends reducing the compliance time for airplanes that have not yet accumulated 50,000 total flight cycles. We have added a detailed inspection for loose or missing fasteners, and reduced the compliance time for the inspection specified in Revision 2 of the service bulletin (before the accumulation of 50,000 total flight cycles or within 15,000 flight cycles after doing the modification, whichever is first) to specify the compliance time as "before the accumulation of 15,000 total flight cycles or within 6 months after the effective date of the AD, whichever is first."

Request To Delete the Word "Midchord"

One commenter asks that all references to the word "midchord" be deleted from the NPRM. The commenter notes that the midchord is not part of the inspection area specified in the referenced service bulletin.

We agree with the commenter and have removed all references to the word "midchord" from the supplemental NRPM.

Request To Clarify Service Information

One commenter states that Revision 1 of the referenced service bulletin was added to paragraph (a), "Restatement of Requirements of AD 99–24–07," of the original NPRM as an additional source of service information for doing the modification required by that paragraph. The commenter notes that Revision 1 was not specified in the original requirements of AD 99–24–07. However, the commenter does not ask for any change to the NPRM.

We agree that Revision 1 of the service bulletin was not in the original requirements of AD 99–24–07. The paragraph titled "Actions Since Issuance of Previous Rule," in the preamble of the NPRM, provides an explanation of the reason Revision 1 was added: It describes new procedures for an examination of the middle gusset of the inboard side load fitting to determine if the angle between the middle gusset and the outboard face of the lug is out of alignment. If the angle is out of alignment, the corrective action involves machining the middle gusset to the specified angle. For operators that already did the modification, the original issue of the service bulletin is carried over from AD 99–24–07 into paragraph (a) of the supplemental NPRM.

Request To Change Paragraph (b)(2)(ii)

One commenter states that the actions proposed by paragraph (b)(2)(ii) of the NPRM are to be accomplished even if a repair has been installed, due to cracking found per the inspection proposed by paragraph (b)(2) of the NPRM. The commenter notes that this may lead operators to alter repairs previously approved by the Manager of the Seattle Aircraft Certification Office (ACO), per paragraph (b)(2)(i) of the NPRM. The commenter adds that this would require operators to obtain approvals for alternative methods of compliance per paragraph (c)(1) of the NPRM. The commenter states that this may cause redundant work and would consume valuable resources at both the airline and the FAA. The commenter asks that paragraph (b)(2)(ii) of the NPRM be separated into two paragraphs, one for repaired holes and one for holes with no cracking.

We do not agree with the commenter. If a repair was done per a previous approval by the Manager of the Seattle ACO, paragraph (b)(2)(ii) of this AD (now added to paragraph (e) of the supplemental NPRM) must still be done. The actions specified in Revision 2 of the service bulletin increase the diameter of the fastener holes specified in Revision 1 of the service bulletin, therefore, we do not agree to further change paragraph (e) of this supplemental NPRM.

Explanation of Changes Made to NPRM

We have changed the service bulletin citation throughout this supplemental NPRM to exclude the Evaluation Form. The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.

We have changed all references to "detailed visual inspection" in the NPRM to "detailed inspection" in this supplemental NPRM.

In addition, although Revision 2 of the service bulletin specifies an inspection of only 14 aft bulkhead fasteners, paragraph (b) of this supplemental NPRM requires inspection of all 20 aft bulkhead fasteners. Further, the service bulletin specifies an inspection of only 2 fasteners of the lower spar fitting located in Panel 7 at Location 37, but this supplemental NPRM requires inspection of all 8 fasteners, as clarified in Notes 2 and 4.

Revision 2 also specifies that operators can use tools of their own design as alternatives to Boeing-supplied tools when doing the actions specified in the service bulletin. Paragraph (a) of this supplemental NPRM prohibits the use of such tools, except those specified in Figures 3 and 5 of the Accomplishment Instructions of Revision 2 of the service bulletin.

Conclusion

Since these changes expand the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 394 airplanes of the affected design in the worldwide fleet. The FAA estimates that 176 airplanes of U.S. registry would be affected by this proposed AD.

The modification that is currently required by AD 99–24–07 takes approximately 1,049 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. This work hour figure includes the time it

will take to remove and reinstall the struts from the airplane as well as the time required to gain and close access to the adjacent wing structure. Based on these figures, the cost impact of the currently required modification on U.S. operators is estimated to be $11,077,440, or $62,940 per airplane.

This cost impact figure does not reflect the cost of the terminating actions described in the service bulletins listed in paragraph I.C., Table I, "Strut Improvement Bulletins," on page 6 of Boeing Service Bulletin 757–54–0035, that are required to be accomplished prior to, or concurrently with, the modification of the nacelle strut and wing structure. Since some operators may have accomplished certain modifications on some or all of the airplanes in the fleet, while other operators may not have accomplished any of the modifications on any of the airplanes in the fleet, the FAA is unable to provide a reasonable estimate of the cost of accomplishing the terminating actions described in the service bulletins listed in Table I of the service bulletin.

It would take approximately 1 work hour per airplane to accomplish the new detailed inspection of the middle gusset, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD is estimated to be $10,560, or $60 per airplane.

It would take approximately 8 work hours per airplane to accomplish the new fastener removal and eddy current inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the removal and inspection proposed by this AD is estimated to be $84,480, or $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11431 (64 FR 66370, November 26, 1999), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2000–NM–376–AD. Supersedes AD 99–24–07, Amendment 39–11431.

Applicability: Model 757 series airplanes equipped with Rolls Royce engines, line numbers 1 through 735 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut, accomplish the following:

Restatement of Requirements of AD 99–24–07

Modification

(a) Modify the nacelle strut and wing structure according to Boeing Service Bulletin 757–54–0035, dated July 17, 1997; or Revision 1, dated April 15, 1999; at the later of the times specified in paragraph (a)(1) or (a)(2) of this AD. All of the terminating actions described in the service bulletins and listed in paragraph I.C., Table I, "Strut Improvement Bulletins," on page 6 of Boeing Service Bulletin 757–54–0035, and on page 7 of Revision 1 of the service bulletin, as applicable, must be accomplished according to those service bulletins prior to, or concurrently with, the accomplishment of the modification of the nacelle strut and wing structure required by this paragraph. After the effective date of this AD, use only Revision 1 of the service bulletin.

(1) Prior to the accumulation of 37,500 total flight cycles, or prior to 20 years since the date of manufacture of the airplane, whichever occurs first.

(2) Within 3,000 flight cycles after January 3, 2000 (the effective date of AD 99–24–07, amendment 39–11431).

New Requirements of This AD

Inspections/Corrective Actions

(b) For airplanes on which the modification required by paragraph (a) of this AD has not been done according to Boeing Service Bulletin 757–54–0035, dated July 17, 1997: Before the accumulation of 15,000 total flight cycles, or within 6 months after the effective date of this AD, whichever is later, do a detailed inspection of the 20 aft bulkhead fasteners of the lower spar fitting for loose or missing fasteners, according to a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Before further flight, replace any loose or missing fasteners with new fasteners according to Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999; or Revision 2, dated June 13, 2002, excluding Evaluation Form. Repeat the inspection after that at least every 6 months.

Note 2: The 20 aft bulkhead fasteners are located in Panel 7 at Locations 36, 37, and 41. The number of fasteners at Location 37 has increased from 2 to 8 fasteners. Figure 30 of Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002, illustrates the location of the fasteners.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(c) For airplanes on which the modification required by paragraph (a) of this AD has been done according to Boeing Service Bulletin 757–54–0035, dated July 17, 1997: Within 15,000 flight cycles after doing the modification required by paragraph (a) of this AD, or within 3 years after the effective date of this AD, whichever is later; do a one-time detailed inspection of the middle gusset of the inboard side load fitting for proper alignment, according to Part II of the Accomplishment Instructions of Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999; or Revision 2, dated June 13, 2002, excluding Evaluation Form. If the gusset is not aligned properly, before further flight, machine the gusset to the specified angle according to the service bulletin.

(d) Before further flight after doing paragraph (c) of this AD, do the actions required by paragraphs (d)(1) and (d)(2) of this AD.

(1) Remove the aft bulkhead fasteners of the lower spar fitting and do a one-time eddy current inspection of those fastener holes for cracking, according to Part V of the Accomplishment Instructions of Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999; or Revision 2, dated June 13, 2002, excluding Evaluation Form.

(2) Do a detailed inspection of the 8 fasteners of the lower spar fitting for loose or missing fasteners, according to a method approved by the Manager, Seattle ACO. Before further flight, replace any loose or missing fasteners with new fasteners according to Boeing Service Bulletin 757–54–0035, Revision 1, dated April 15, 1999; or Revision 2, dated June 13, 2002, excluding Evaluation Form.

Note 4: The 8 fasteners are located in Panel 7 at Location 37. The number of fasteners at Location 37 has increased from 2 to 8 fasteners. Figure 30 of Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002, excluding Evaluation Form, illustrates the location of the fasteners.

(e) If any cracking is found during any inspection required by this AD: Before further flight, repair according to a method approved by the Manager, Seattle ACO; or according to data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(f) If no cracking is found during any inspection required by this AD, or after repair of cracking as required by paragraph (e) of this AD, before further flight, increase the diameter of the fastener holes and install new fasteners according to Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002, excluding Evaluation Form.

(g) Except as identified in Figures 3 and 5 of the Accomplishment Instructions of Boeing Service Bulletin 757–54–0035, Revision 2, dated June 13, 2002, excluding Evaluation Form, the actions must be done using Boeing-supplied tools.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–24–07, amendment 39–11431, are approved as alternative methods of compliance with paragraph (a) of this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 9, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9138 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–1407; Airspace Docket No. 03–ASO–3]

Proposed Establishment of Class E2 Airspace, Proposed Amendment of Class E5 Airspace; Waycross, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E2 airspace and amend Class E5 airspace at Waycross, GA. The Ware County Airport Authority has requested Class E2 surface area airspace at Waycross-Ware County Airport to provide airport operations within controlled airspace. Jacksonville Air Route Traffic Control Center (ARTCC) would provide air traffic services at the airport and a federally commissioned automated weather observing system is in operation. In order to conduct these operations, Class E2 surface area must be established. This action would establish Class E2 surface area airspace within a 4.1-radius of the airport.

As a result of an evaluation, it has been determined a modification should be made to the Waycross, GA, Class E5 airspace area to contain the Nondirectional Radio Beacon (NDB) Runway (RWY) 18 Standard Instrument Approach Procedure (SIAP) to Waycross-Ware County Airport. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP. Additionally, the 7-mile radius of the Waycross-Ware County Airport would be reduced to a 6.6-mile radius.

DATES: Comments must be received on or before May 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Departmental of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14707/ Airspace Docket No. 03–ASO–3, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both

docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14707/Airspace Docket No. 03–ASO–3." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation regulations (14 CFR Part 71) to establish Class E2 airspace and amend Class E5 airspace at Waycross, GA. Class E airspace designations for airspace areas designated as surface areas and airspace areas extending uupward from 700 feet or more above the surface of the earth are published in Paragraphs 6002 and 6005 respectively, of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(d); 40103, 40113, 40120, E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6002 Class E Airspace Designated as Surface Areas

* * * * *

ASO GA E2 Waycross [NEW]

Waycross—Ware County Airport, GA
(Lat. 31°14′58″ long. 82°23′43″.)
Waycross VORTAC
(Lat. 31°16′10″ long. 82°33′23″.)

Within a 4.1-mile radius of the Waycross—Ware County Airport, within 1.2 miles each side of the 099° radial from the Waycross VORTAC, extending from the 4.1-mile radius to 4.7 miles west of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO GA E5 Waycross [Revised]

Waycross—Ware County Airport, GA
(Lat. 31°14′58″ long. 82°23′44″.)
WIKET NDB
(Lat. 31°19′28″ long. 82°23′58″.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Waycross—Ware County Airport, and within 4 miles west and 8 miles east of the 003° bearing from the WIKET NDB extending from the 6.6-mile radius to 16 miles north of the WIKET NDB; excluding that airspace within the Alma, GA, Class E airspace area.

* * * * *

Issued in College Park, Georgia on March 31, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–9081 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

POSTAL SERVICE

39 CFR Part 111

Delivery Confirmation and Signature Confirmation Services With First-Class Mail and Package Services Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the *Domestic Mail Manual* (DMM) to clarify when it is permissible to use Delivery Confirmation service and Signature Confirmation service, particularly the limitation of these services to parcel-shaped mail for First-Class Mail and Package Services mail.

DATES: Submit comments on or before May 15, 2003.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, ATTN: Neil Berger, U.S. Postal Service, 1735 N. Lynn Street, Room 3025, Arlington, VA 22209–6038. Written comments may be submitted via fax to 703–292–4058. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC 20260–1540.

FOR FURTHER INFORMATION CONTACT: Neil Berger at (703) 292–3645.

SUPPLEMENTARY INFORMATION: Prior to the implementation of Docket No. R2001–1 on June 30, 2002, customers and shippers wanting to mail lightweight parcels weighing 13 ounces or less and receive Delivery Confirmation or Signature Confirmation service could not choose First-Class Mail, even though the parcels otherwise would qualify for First-Class Mail based on their weight.

The Postal Service proposed in its Docket No. R2001–1 Request to extend Delivery Confirmation and Signature Confirmation to First-Class Mail parcels as a way of providing all parcel customers and shippers the opportunity to benefit from Delivery Confirmation and Signature Confirmation services without affecting their choice of subclass. The Postal Service believed that this change would increase not only the customer value of those special services but also the customer value of First-Class Mail as an effective class of mail for sending and receiving lightweight merchandise in parcels.

The extension of the two special services to First-Class Mail parcels was implemented on June 30, 2002. 67 FR 18684–18771 (April 16, 2002). This extension provided parcel customers with Delivery Confirmation and Signature Confirmation options afforded other parcel shippers using Priority Mail, Standard Mail, or Package Services. With a wide range of classes of mail and subclasses now eligible for these two services, shippers now have greater flexibility in determining which class to use for their parcels in order to meet particular customer requirements.

Another change resulting from proposals in Docket No. R2001–1 was the restriction of Delivery Confirmation and Signature Confirmation to parcels within the Package Services class of mail, which comprises the four subclasses of Parcel Post (including Parcel Select), Bound Printed Matter, Media Mail, and Library Mail. See 67 FR 18694–95. This restriction reflects operational concerns about the way the various processing categories of mail are sorted, distributed, and delivered, and the ability to provide Delivery Confirmation and Signature Confirmation services consistently. Before that change, all Package Services mail was eligible to use Delivery Confirmation and Signature Confirmation services, even though the two services could not be effectively provided to flat-size mail.

Both the First-Class Mail and Package Services changes addressed operational difficulties in isolating letter-size and flat-size mail for purposes of Delivery Confirmation and Signature Confirmation scanning, as well as the goal of offering Delivery Confirmation and Signature Confirmation to all parcel-shaped mail. The restriction of the two special services to parcels within Package Services and First-Class Mail is in line with the need for the Postal Service to identify Delivery Confirmation and Signature Confirmation mailpieces for proper scanning by the delivery employee. Unlike letter-size mail and flat-size mail, Priority Mail (regardless of shape) and parcels of all other classes are held out at the delivery units and handled separately by clerks and carriers. This is not the case for letter-size and flat-size mail, which is generally processed on automated equipment and receives minimal manual handling, especially for firms that receive large quantities of mail daily.

For Delivery Confirmation, Signature Confirmation, and nearly all special services requiring accountability at the time of delivery such as a customer signature, parcels predominate. For the two conspicuous exceptions, Certified Mail and Registered Mail, the letter-size or flat-size mailpieces are designed and handled so that they are separated from other letter-size and flat-size mail before the point of handling in delivery operations. On the other hand, Delivery Confirmation and Signature Confirmation rely on manual separation of parcel mail and recognition of the special services on that mail by the postal employee at the delivery unit for proper handling.

In order to implement the Docket No. R2001–1 limitation of Delivery Confirmation and Signature Confirmation services to "parcel-shaped" mail, for all subclasses but Priority Mail, and to restrict Delivery Confirmation and Signature Confirmation to shapes that are readily identified for scanning, the Postal Service defined the term "parcel" in the *Domestic Mail Manual* (DMM) (sections C100.5.0 and C700.1.0h), with regard to using either of those two special services with First-Class Mail and Package Services mail, as follows:

a. Has an address side with enough surface area to fit the delivery address, return address, postage, markings and endorsements, and special service label; and,

b. Is in a box or, if not in a box, is more than ¾ inch thick at its thickest point.

Proposed Changes

This current definition of "parcel" has created some uncertainty, particularly within First-Class Mail with the definition of a box. The Postal Service therefore proposes a revision to this DMM language to clarify the definition of a "parcel." The proposal uses, with some additions, the current mail processing category definitions in DMM C050 for machinable parcel, irregular parcel (a nonmachinable parcel), and outside parcel (a nonmachinable parcel). An outside parcel can consist of such items as automobile tires and partially wrapped nursery trees that are generally not placed entirely in a sack or other mailing container.

Until now, these parcel categories have been used only in conjunction with mail preparation standards for Standard Mail and Package Services mail and for the application of the nonmachinable surcharge to certain Parcel Post pieces. As presented in this proposed rule, the current definitions of a parcel are modified solely for the purposes of using Delivery Confirmation and Signature Confirmation services, including removing the 6-ounce minimum weight limit for so-called "machinable" parcels sent as First-Class Mail, and adding a rigidity requirement for machinable parcels measuring no more than ¾ inch thick. This proposal does not modify any of the criteria in DMM C050 as they currently apply to the definition of Standard Mail and Package Services parcel mail preparation.

By using the existing standards and readily known parcel definitions, the Postal Service would more clearly define what constitutes a parcel for purposes of Delivery Confirmation and Signature Confirmation services, and their use would reduce the subjectivity of determining what distinguishes a "box" from a "flat" or a "letter." At the same time, while ensuring, by the use of current parcel definitions in the DMM, that letter-size mail and flat-size mail are not construed as a parcel, the proposed revision would also ensure that shippers would benefit from a wide range of dimensions for various types of parcels. For example, a machinable parcel can measure as little as 6 inches long and 3 inches high if it is more than ¼ inch thick. On the other hand, a Parcel Post outside parcel (nonmachinable) can weigh as much as 70 pounds and measure up to 130 inches in combined length and girth.

For the reasons above, the Postal Service proposes revising and clarifying the definition of a First-Class Mail parcel and a Package Services parcel solely for the purposes of using Delivery Confirmation or Signature Confirmation with either of those two mail classes. The proposed language adopts the current definitions in DMM C050 for the

parcel mail processing category, and specifies some additional requirements to ensure that the services are available only for parcels if First-Class Mail or Package Services are used. For example, for machinable parcels measuring ¾ inch thick or less, only packaging that would maintain its parcel shape and integrity throughout processing and handling would be permitted.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Domestic Mail Manual*, incorporated in the *Code of Federal Regulations*. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201'3219, 3403'3406, 3621, 3626, 5001.

2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual

* * * * *

C Characteristics and Content

* * * * *

[Amend C100 by removing current 5.0 and by redesignating current 6.0 as 5.0:]

C100 First-Class Mail

* * * * *

C700 Package Services

[Amend 1.0 by revising heading and by removing 1.0h.]

1.0 DIMENSIONS

* * * * *

S Special Services

* * * * *

S900 Special Postal Services

S910 Security and Accountability

* * * * *

S918 Delivery Confirmation

1.0 BASIC INFORMATION

* * * * *

[Revise 1.2 to read as follows:]

1.2 Eligible Matter

Delivery Confirmation service is available for First-Class Mail parcels defined in C050 as machinable, irregular, or outside parcels, with no minimum weight for such parcels; for all Priority Mail pieces; for Standard Mail pieces subject to the residual shape surcharge (electronic option only); and for Package Services parcels defined in C050 as machinable, irregular, and outside parcels. For the purposes of using Delivery Confirmation service with First-Class Mail and Package Services, a parcel must meet these additional requirements:

a. The surface area of the address side of the parcel must be large enough to contain completely and legibly the delivery address, return address, postage, and any applicable markings, endorsements, and special service labels.

b. Except as provided in 1.2c for machinable parcels, the parcel must be greater than ¾ inch thick at its thickest point.

c. If the mailpiece is a machinable parcel under DMM C050 and no greater than ¾ inch thick, the contents must be prepared in a strong and rigid fiberboard or similar container or in a container that becomes rigid after the contents are enclosed and the container secured. The parcel must be able to maintain its shape, integrity, and rigidity throughout processing and handling without collapsing into a letter-size or flat-size piece.

[Revise 1.3 to read as follows:]

1.3 Ineligible Matter

Delivery Confirmation service is not available for the following:

a. Express Mail and Periodicals pieces.

b. First-Class Mail letter-size and flat-size pieces.

c. Standard Mail pieces not subject to the residual shape surcharge and all Enhanced Carrier Route Standard Mail pieces.

d. Package Services flat-size pieces.

e. Mail paid with precanceled stamps.

f. Mail addressed to APO/FPO destinations.

g. Mail addressed to any U.S. territory, possession, or Freely Associated State listed in G011, with the exception of Puerto Rico and the U.S. Virgin Islands.

* * * * *

S919 Signature Confirmation

1.0 BASIC INFORMATION

* * * * *

[Revise 1.2 to read as follows:]

1.2 Eligible Matter

Signature Confirmation service is available for First-Class Mail parcels defined in C050 as machinable, irregular, or outside parcels, with no minimum weight for such parcels; for all Priority Mail pieces; and for Package Services parcels defined in C050 as machinable, irregular, and outside parcels. For the purposes of using Signature Confirmation service with First-Class Mail and Package Services, a parcel must meet these additional requirements:

a. The surface area of the address side of the parcel must be large enough to contain completely and legibly the delivery address, return address, postage, and any applicable markings, endorsements, and special service labels.

b. Except as provided in 1.2c for machinable parcels, the parcel must be greater than ¾ inch thick at its thickest point.

c. If the mailpiece is a machinable parcel under DMM C050 and no greater than ¾ inch thick, the contents must be prepared in a strong and rigid fiberboard or similar container or in a container that becomes rigid after the contents are enclosed and the container secured. The parcel must be able to maintain its shape, integrity, and rigidity throughout processing and handling without collapsing into a letter-size or flat-size piece.

[Revise 1.3 to read as follows:]

1.3 Ineligible Matter

Signature Confirmation service is not available for the following:

a. Express Mail, Periodicals, and Standard Mail.

b. First-Class Mail letter-size and flat-size pieces.

c. Package Services flat-size pieces.

d. Mail paid with precanceled stamps.

e. Mail addressed to APO/FPO destinations.

f. Mail addressed to any U.S. territory, possession, or Freely Associated State listed in G011, with the exception of Puerto Rico and the U.S. Virgin Islands.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect the changes will be published if this proposed rule is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 03–9194 Filed 4–14–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 275–0378d; FRL–7483–3]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and San Joaquin Valley Unified Air Pollution Control District; Proposed Rule; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects preamble errors in the March 24, 2003 notice of proposed rulemaking pertaining to revisions of local gasoline tank vapor recovery rules in the Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and San Joaquin Valley Unified Air Pollution Control District portions of the California State Implementation Plan.

FOR FURTHER INFORMATION CONTACT: Al Petersen, EPA Region IX, (415) 947–4118.

SUPPLEMENTARY INFORMATION: On March 24, 2003 (68 FR 14174), EPA proposed revisions to local gasoline tank vapor recovery rules in the Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and San Joaquin Valley Unified Air Pollution Control District portions of the California State Implementation Plan. The notice of proposed rulemaking accurately identified the rules being revised in the **SUPPLEMENTARY INFORMATION** portion of the notice, but incorrectly referenced Imperial County and Monterey County Air Pollution Control Districts in the title and summary of the rule.

The correct title for the March 24, 2003 notice should read, "Revisions to the California State Implementation Plan, Bay Area Air Quality Management District, Sacramento Metropolitan Air Quality Management District, and San Joaquin Valley Unified Air Pollution Control District."

The Summary section should read:

SUMMARY: EPA is proposing to approve revisions to Bay Area Air Quality Management District (BAAQMD), Sacramento Metropolitan Air Quality Management District (SMAQMD), and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). The BAAQMD revision concerns the emission of volatile organic compounds (VOCs) from the transfer of gasoline to stationary storage tanks and motor vehicle fuel tanks. The SMAQMD and SJVUAPCD revisions concern the emission of VOCs from the transfer of gasoline to motor vehicle fuel tanks. We are proposing approval of local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

Today's notice does not otherwise change the remaining portions of the March 24, 2003 notice of proposed rulemaking.

Dated: April 3, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–9208 Filed 4–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7482–2]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA (also, "the Agency" in this preamble) is proposing to grant final authorization to the hazardous waste program revisions submitted by the State of Texas Natural Resource Conservation Commission for its hazardous waste program revisions, specifically, revisions needed to meet the Resource Conservation and Recovery Act Clusters VII through X, which contain Federal rules promulgated between July 1, 1995 to June 30, 2000. In the "Rules and Regulations' section of this **Federal Register** (FR), EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before May 15, 2003.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Texas during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444 ; or Texas Natural Resource Conservation Commission, 12100 Park S. Circle, Austin TX 78753–3087, phone (512) 239–1121.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: March 27, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 03–9043 Filed 4–14–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1013; MB Docket No. 03–87, RM–10686]

Radio Broadcasting Services; Dilley and Pearsall, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Pearsall RadioWorks, Ltd proposing the reallotment of Channel 237A from Pearsall to Dilley, Texas, and the modification of Station WVWG–FM's license accordingly. Petitioner also requests the allotment of Channel 227A at Pearsall as a replacement service. Channel 237A can be reallotted to Dilley in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.7 kilometers (1.7 miles) east at petitioner's requested site. Additionally,

Channel 227A can be allotted to Pearsall with a site restriction of 1.7 kilometers (1.1 miles) west at petitioner's requested site. The coordinates for Channel 237A at Dilley are 28–39–55 North Latitude and 99–08–35 West Longitude; and the coordinates for Channel 227A at Pearsall 28–53–13 North Latitude and 99–06–40 West Longitude. Since Dilley and Pearsall are located within 320 kilometers (199 miles) of the U.S.-Mexican government, concurrence of the Mexican government has been requested. In accordance with section 1.420(i) of the Commission's rules, we will not accept competing expressions of interest for the use of Channel 237A at Dilley, Texas.

DATES: Comments must be filed on or before May 27, 2003, reply comments on or before June 10, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harry C. Martin, Esq., Fletcher, Heald & Hildreth, P.L.C,1300 North 17th Street, 11th Floor, Arlington, Virginia 22209 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rulemaking, MB Docket No. 03–87, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex, International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 237A at Dilley; by removing Channel 237A; and by adding Channel 227A at Pearsall.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9170 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1015; MB Docket No. 03–86; RM–10685]

Radio Broadcasting Services; George West, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Charles Crawford requesting the allotment of Channel 250A at George West, Texas. The coordinates for Channel 250A at George West are 28–14–07 and 98–09–43. There is a site restriction 12 kilometers (7.4 miles) southwest of the community. Since George West is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for the allotment of Channel 250A at George West.

DATES: Comments must be filed on or before May 27, 2003, and reply comments on or before June 10, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rulemaking, MB Docket No. 03–86, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 250A at George West.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9169 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–968; MB Docket No. 03–88; RM–10464]

Radio Broadcasting Services; Sonora, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Linda Crawford requesting the allotment of Channel 237C3 at Sonora, Texas. The coordinates for Channel 237C3 at Sonora are 30–36–35 and 100–43–09. There is a site restriction 8.7 kilometers (5.4 miles) northwest of the community. Since Sonora is located within 320 kilometers of the U.S.-Mexican border, concurrence of the Mexican Government will be requested for the allotment of Channel 237C3 at Sonora.

DATES: Comments must be filed on or before May 27, 2003, and reply comments on or before June 10, 2003.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Linda Crawford, 3500 Maple Avenue, No. 1320, Dallas, Texas 75219.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's notice of proposed rulemaking, MB Docket No. 03–88, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 237C3 at Sonora.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9168 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1081, MB Docket No. 03–95, RM–10652

Radio Broadcasting Services; Clarendon, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Maurice Salsa proposing the allotment of Channel 237A at Clarendon, Texas, as that community's second local service. Channel 237A can be allotted to Clarendon, consistent with the minimum distance separation requirements of the Commission's rules, provided there is a site restriction of 13.8 kilometers (8.6 miles) southeast of the community. The site restriction will prevent a short-spacing to the license site of Station KFLP–FM, Channel 237A, Floydada, Texas. The reference coordinates for Channel 237A at Clarendon are 34–52–47 North Latitude and 100–45–15 West Longitude.

DATES: Comments must be filed on or before May 27, 2003, and reply comments on or before June 10, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Maurice Salsa, 5615 Evergreen Valley Drive, Kingwood, Texas 77345.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's notice of proposed rulemaking, MB Docket No. 03–95, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a notice of proposed rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 237A at Clarendon.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9166 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–967, MB Docket No. 03–89, RM–10689]

Radio Broadcasting Services; Okeechobee, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by George Kalman proposing the allotment of Channel 291A at Okeechobee, Florida, as the community's first FM commercial service. The coordinates for Channel 291A at Okeechobee, Florida, are 27–20–30 NL and 80–54–08 WL. There is a site restriction 13 kilometers (8.1 miles) northwest of the community.

DATES: Comments must be filed on or before May 27, 2003, and reply comments on or before June 10, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: George S. Kalman, 100 Ocean Trail Way, Apt. 909, Jupiter, Florida 33477.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–89, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1.The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Okeechobee, Channel 291A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9165 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1082; MB Docket No. 03–91, RM–10693]

Radio Broadcasting Services; Wofford Heights, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Dana J. Puopolo proposing the allotment of Channel 251A at Wofford Heights, California, as the community's first local aural transmission service. Channel 251A can be allotted to Wofford Heights in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.8 kilometers (7.9 miles) west to avoid short-spacings to the licensed sites of Station KRXV–FM, Channel 251B, Yermo, California, and Station KDFO–FM, Channel 253B1, Delano, California. The coordinates for Channel 251A at Wofford Heights are 35–42–28 North Latitude and 118–35–42 West Longitude.

DATES: Comments must be filed on or before May 27, 2003, and reply comments on or before June 10, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20054.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–91, adopted April 2, 2003, and released April 4, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Wofford Heights, Channel 251A.

Federal Communications Commission:

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–9164 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–03–14452; Notice 01]

RIN 2127–AJ00

Preliminary Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of preliminary theft data; request for comments.

SUMMARY: This document requests comments on data about passenger motor vehicle thefts that occurred in calendar year (CY) 2001 including theft rates for existing passenger motor vehicle lines manufactured in model year (MY) 2001. The theft data preliminarily indicate that the vehicle theft rate for CY/MY 2001 vehicles (3.26 thefts per thousand vehicles) increased by 12.8 percent from the theft rate for CY/MY 2000 vehicles (2.89 thefts per thousand vehicles).

Publication of these data fulfills NHTSA's statutory obligation to periodically obtain accurate and timely theft data, and publish the information for review and comment.

DATES: Comments must be submitted on or before June 16, 2003.

ADDRESSES: All comments should refer to the docket number and notice number cited in the heading of this document and be submitted, preferably with two copies to: U.S. Department of Transportation, Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Docket hours are from 10 am to 5 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of Planning and Consumer Standards, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: NHTSA administers a program for reducing motor vehicle theft. The central feature of this program is the Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541. The standard specifies performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high-theft lines of passenger motor vehicles.

The agency is required by 49 U.S.C. 33104(b)(4) to periodically obtain, from the most reliable source, accurate and timely theft data, and publish the data for review and comment. To fulfill the § 33104(b)(4) mandate, this document reports the preliminary theft data for CY 2001, the most recent calendar year for which data are available.

In calculating the 2001 theft rates, NHTSA followed the same procedures it used in calculating the MY 2000 theft rates. (For 2000 theft data calculations, see 67 FR 53756, August 19, 2002). As in all previous reports, NHTSA's data were based on information provided to the agency by the National Crime Information Center (NCIC) of the Federal Bureau of Investigation. The NCIC is a governmental system that receives vehicle theft information from nearly 23,000 criminal justice agencies and other law enforcement authorities throughout the United States. The NCIC data also include reported thefts of self-insured and uninsured vehicles, not all of which are reported to other data sources.

The 2001 theft rate for each vehicle line was calculated by dividing the number of reported thefts of MY 2001 vehicles of that line stolen during calendar year 2001, by the total number of vehicles in that line manufactured for MY 2001, as reported by manufacturers to the Environmental Protection Agency.

The preliminary 2001 theft data show an increase in the vehicle theft rate when compared to the theft rate experienced in CY/MY 2000. The preliminary theft rate for MY 2001 passenger vehicles stolen in calendar year 2001 increased to 3.26 thefts per thousand vehicles produced, an increase of 12.8 percent from the rate of 2.89 thefts per thousand vehicles experienced by MY 2000 vehicles in CY 2000. For MY 2001 vehicles, out of a total of 217 vehicle lines, 68 lines had a theft rate higher than 3.5826 per thousand vehicles, the established median theft rate for MYs 1990/1991. (See 59 FR 12400, March 16, 1994). Of the 68 vehicle lines with a theft rate higher than 3.5826, 56 are passenger car lines, 12 are multipurpose passenger vehicle lines, and none are light-duty truck lines.

In Table I, NHTSA has tentatively ranked each of the MY 2001 vehicle lines in descending order of theft rate. Public comment is sought on the accuracy of the data, including the data for the production volumes of individual vehicle lines.

Comments must not exceed 15 pages in length (49 CFR part 553.21). Attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to Dockets. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for this document will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments on this document will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available for inspection in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Authority: 49 U.S.C. 33101, 33102 and 33104; delegation of authority at 49 CFR 1.50.

PRELIMINARY REPORT OF THEFT RATES FOR 2001 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2001

	Manufacturer	Make/model (line)	Thefts 2001	Production (Mfr's) 2001	2001 Theft rate (per 1000 vehicles produced)
1	DAIMLERCHRYSLER	CHRYSLER TOWN & COUNTRY MPV	248	10,792	22.9800
2	DAIMLERCHRYSLER	DODGE INTREPID	1,442	113,333	12.7236
3	GENERAL MOTORS	CHEVROLET METRO	199	15,999	12.4383
4	HONDA	ACURA INTEGRA	148	14,092	10.5024
5	DAIMLERCHRYSLER	PLYMOUTH NEON	400	38,651	10.3490
6	DAIMLERCHRYSLER	DODGE NEON	1,047	101,410	10.3244
7	DAIMLERCHRYSLER	DODGE STRATUS	1,115	109,015	10.2280
8	MITSUBISHI	MIRAGE	447	48,393	9.2369
9	SUZUKI	ESTEEM	152	18,713	8.1227
10	DAIMLERCHRYSLER	CHRYSLER LHS	86	11,413	7.5353
11	GENERAL MOTORS	PONTIAC FIREBIRD/TRANS AM/FORMULA.	149	20,084	7.4188
12	MITSUBISHI	GALANT	729	102,990	7.0784
13	GENERAL MOTORS	CHEVROLET CAMARO	193	28,278	6.8251
14	MITSUBISHI	MONTERO	258	38,599	6.6841
15	GENERAL MOTORS	PONTIAC GRAND AM	1,192	182,220	6.5415
16	GENERAL MOTORS	BUICK REGAL	340	52,492	6.4772
17	MITSUBISHI	MONTERO SPORT	402	64,115	6.2700
18	JAGUAR	S–TYPE	126	20,102	6.2680
19	FORD MOTOR CO	FORD ESCORT	536	87,019	6.1596
20	FORD MOTOR CO	LINCOLN LS	256	41,817	6.1219
21	DAIMLERCHRYSLER	CHRYSLER 300M	228	37,284	6.1152
22	GENERAL MOTORS	PONTIAC SUNFIRE	445	73,808	6.0292
23	HONDA	ACURA NSX	1	167	5.9880
24	MITSUBISHI	DIAMANTE	77	13,667	5.6340
25	FORD MOTOR CO	FORD MUSTANG	869	155,039	5.6050
26	DAIMLERCHRYSLER	CHRYSLER SEBRING	407	73,543	5.5342
27	KIA MOTORS	OPTIMA	134	24,754	5.4133
28	DAIMLERCHRYSLER	CHRYSLER CONCORDE	147	28,030	5.2444
29	GENERAL MOTORS	CHEVROLET CAVALIER	1,136	217,438	5.2245
30	SUZUKI	VITARA/GRAND	281	53,810	5.2221
31	TOYOTA	COROLLA	1,201	230,246	5.2162
32	NISSAN	ALTIMA	706	137,253	5.1438
33	GENERAL MOTORS	CHEVROLET MALIBU	956	186,788	5.1181
34	DAIMLERCHRYSLER	CHRYSLER SEBRING CONVERTIBLE	200	39,668	5.0418
35	TOYOTA	LEXUS IS	155	30,959	5.0066
36	GENERAL MOTORS	CHEVROLET LUMINA	213	42,803	4.9763
37	GENERAL MOTORS	OLDSMOBILE ALERO	548	112,455	4.8731
38	GENERAL MOTORS	CADILLAC DEVILLE	428	87,909	4.8687
39	ISUZU	TROOPER	91	18,818	4.8358
40	KIA MOTORS	RIO	276	57,340	4.8134
41	MITSUBISHI	ECLIPSE	380	79,034	4.8081
42	MAZDA	MILLENIA	85	17,969	4.7304
43	GENERAL MOTORS	CHEVROLET MONTE CARLO	324	68,518	4.7287
44	AUDI	S4/QUATTRO	72	15,301	4.7056
45	TOYOTA	4RUNNER	373	83,052	4.4912
46	GENERAL MOTORS	GMC JIMMY S15/T15	209	46,905	4.4558
47	DAIMLERCHRYSLER	CHRYSLER NEON[1]	3	682	4.3988
48	NISSAN	MAXIMA	447	102,260	4.3712
49	HYUNDAI	SONATA	204	46,989	4.3414
50	ROLLS-ROYCE	BENTLEY ARNAGE	2	466	4.2918
51	GENERAL MOTORS	OLDSMOBILE INTRIGUE	168	39,491	4.2541
52	JAGUAR	XK8	19	4,501	4.2213
53	GENERAL MOTORS	CHEVROLET PRIZM	209	50,141	4.1682
54	DAIMLERCHRYSLER	JEEP CHEROKEE/GRAND	1,376	338,673	4.0629
55	HONDA	PRELUDE	46	11,329	4.0604
56	GENERAL MOTORS	OLDSMOBILE BRAVADA	44	10,935	4.0238
57	GENERAL MOTORS	PONTIAC BONNEVILLE	175	43,842	3.9916
58	KIA MOTORS	SEPHIA/SPECTRA	296	74,516	3.9723
59	GENERAL MOTORS	PONTIAC GRAND PRIX	466	117,647	3.9610
60	MERCEDES–BENZ	129 (SL–CLASS)	16	4,080	3.9216
61	ISUZU	RODEO	242	62,963	3.8435
62	GENERAL MOTORS	CHEVROLET BLAZER S10/T10	629	163,771	3.8407
63	GENERAL MOTORS	CHEVROLET CORVETTE	124	33,204	3.7345
64	KIA MOTORS	SPORTAGE	215	57,927	3.7116
65	FORD MOTOR CO	LINCOLN TOWN CAR	255	68,832	3.7047
66	FORD MOTOR CO	MERCURY SABLE	364	98,867	3.6817
67	DAEWOO	LEGANZA	73	20,112	3.6297

PRELIMINARY REPORT OF THEFT RATES FOR 2001 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2001—Continued

	Manufacturer	Make/model (line)	Thefts 2001	Production (Mfr's) 2001	2001 Theft rate (per 1000 vehicles produced)
68	FORD MOTOR CO	FORD FOCUS	954	267,470	3.6041
69	TOYOTA	CELICA	126	35,540	3.5453
70	FORD MOTOR CO	FORD TAURUS	1,238	351,813	3.5189
71	TOYOTA	LEXUS GS	105	29,858	3.5166
72	GENERAL MOTORS	CADILLAC SEVILLE	88	25,157	3.4980
73	MERCEDES–BENZ	215 (CL–CLASS)	11	3,162	3.4788
74	SUZUKI	SWIFT	15	4,375	3.4286
75	MAZDA	626	173	51,355	3.3687
76	BMW	Z8	3	895	3.3520
77	HYUNDAI	ACCENT	256	77,491	3.3036
78	NISSAN	INFINITI Q45	6	1,846	3.2503
79	DAEWOO	LANOS	69	21,626	3.1906
80	TOYOTA	CAMRY	1,123	353,219	3.1793
81	GENERAL MOTORS	CHEVROLET IMPALA	597	188,248	3.1713
82	NISSAN	SENTRA	335	106,549	3.1441
83	FORD MOTOR CO	MERCURY MOUNTAINEER	45	14,439	3.1166
84	TOYOTA	LEXUS LX	31	9,967	3.1103
85	DAIMLERCHRYSLER	CHRYSLER PROWLER	5	1,632	3.0637
86	FORD MOTOR CO	FORD EXPLORER	1,050	344,002	3.0523
87	DAIMLERCHRYSLER	DODGE CARAVAN/GRAND	649	218,302	2.9729
88	JAGUAR	XJ8	17	5,960	2.8523
89	HYUNDAI	TIBURON	64	22,713	2.8178
90	GENERAL MOTORS	OLDSMOBILE AURORA	140	50,034	2.7981
91	GENERAL MOTORS	SATURN LS	222	79,562	2.7903
92	NISSAN	FRONTIER PICKUP	286	102,545	2.7890
93	MERCEDES–BENZ	220 (S–CLASS)	85	31,977	2.6582
94	FORD MOTOR CO	FORD RANGER PICKUP	708	266,960	2.6521
95	BMW	3	307	117,873	2.6045
96	DAEWOO	NUBIRA	35	13,450	2.6022
97	VOLVO	C70	14	5,462	2.5632
98	NISSAN	INFINITI G20	18	7,087	2.5399
99	JAGUAR	XKR	4	1,588	2.5189
100	DAIMLERCHRYSLER	JEEP WRANGLER	163	66,366	2.4561
101	HONDA	ACURA 3.2 CL	94	38,679	2.4303
102	GENERAL MOTORS	CHEVROLET ASTRO VAN	104	42,909	2.4237
103	GENERAL MOTORS	BUICK PARK AVENUE	68	36,407	2.4171
104	JAGUAR	XJR	3	1,256	2.3885
105	HYUNDAI	SANTA FE	121	51,088	2.3685
106	TOYOTA	LEXUS LS	75	31,738	2.3631
107	HYUNDAI	XG	47	19,894	2.3625
108	GENERAL MOTORS	BUICK LESABRE	327	140,202	2.3323
109	HONDA	S2000	23	9,945	2.3127
110	MAZDA	PROTEGE	110	47,754	2.3035
111	HONDA	PASSPORT	39	16,999	2.2943
112	MERCEDES–BENZ	208 (CLK–CLASS)	34	14,940	2.2758
113	GENERAL MOTORS	GMC SAFARI VAN	33	14,549	2.2682
114	GENERAL MOTORS	BUICK CENTURY	285	126,295	2.2566
115	FORD MOTOR CO	MERCURY COUGAR	58	25,810	2.2472
116	AUDI	TT/QUATTRO	47	21,022	2.2358
117	BMW	7	57	25,548	2.2311
118	DAIMLERCHRYSLER	PLYMOUTH PROWLER	3	1,353	2.2173
119	VOLVO	S40	69	31,145	2.2154
120	JAGUAR	VANDEN PLAS	8	3,617	2.2118
121	GENERAL MOTORS	CHEVROLET S10/T10 PICKUP	354	166,708	2.1235
122	FORD MOTOR CO	FORD F150 PICKUP	293	138,481	2.1158
123	HONDA	ACURA 3.5 RL	7	3,312	2.1135
124	VOLVO	S80	53	25,203	2.1029
125	SUBARU	IMPREZA	19	9,205	2.0641
126	TOYOTA	TACOMA PICKUP	330	160,232	2.0596
127	FORD MOTOR CO	MERCURY GRAND MARQUIS	215	104,890	2.0498
128	HYUNDAI	ELANTRA	217	106,418	2.0391
129	GENERAL MOTORS	GMC SONOMA PICKUP	86	42,536	2.0218
130	GENERAL MOTORS	SATURN SC	94	46,557	2.0190
131	TOYOTA	TUNDRA PICKUP	38	19,191	1.9801
132	TOYOTA	RAV4	172	87,108	1.9746
133	GENERAL MOTORS	SATURN SL	214	108,946	1.9643
134	TOYOTA	ECHO	103	52,694	1.9547
135	NISSAN	PATHFINDER	172	89,536	1.9146

PRELIMINARY REPORT OF THEFT RATES FOR 2001 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2001—Continued

	Manufacturer	Make/model (line)	Thefts 2001	Production (Mfr's) 2001	2001 Theft rate (per 1000 vehicles produced)
136	BMW	5	76	40,591	1.8723
137	PORSCHE	911	20	10,931	1.8297
138	VOLKSWAGEN	JETTA	281	153,706	1.8282
139	NISSAN	INFINITI I30	70	39,505	1.7719
140	HONDA	CIVIC	603	341,401	1.7663
141	NISSAN	XTERRA	170	96,255	1.7661
142	HONDA	ACCORD	665	379,508	1.7523
143	VOLKSWAGEN	GOLF/GTI	56	32,736	1.7107
144	VOLVO	V40	7	4,109	1.7036
145	SAAB	9–5	39	23,016	1.6945
146	MERCEDES–BENZ	ML	68	40,257	1.6891
147	MAZDA	B–SERIES PICKUP	46	27,490	1.6733
148	AUDI	A4/QUATTRO	58	35,023	1.6561
149	NISSAN	INFINITI QX4	59	36,778	1.6042
150	DAIMLERCHRYSLER	CHRYSLER PT CRUISER	279	176,326	1.5823
151	GENERAL MOTORS	CADILLAC CATERA	18	11,568	1.5560
152	GENERAL MOTORS	PONTIAC AZTEK	63	41,111	1.5324
153	TOYOTA	LEXUS ES	54	35,282	1.5305
154	FORD MOTOR CO	FORD WINDSTAR VAN	275	179,687	1.5304
155	VOLVO	V70	25	16,408	1.5236
156	GENERAL MOTORS	SATURN SW	[illegible]	3,973	1.5102
157	FORD MOTOR CO	LINCOLN CONTINENTAL	32	21,341	1.4995
158	ISUZU	VEHICROSS	2	1,347	1.4848
159	AUDI	A6/QUATTRO	39	26,592	1.4666
160	PORSCHE	BOXSTER	19	12,979	1.4639
161	DAIMLERCHRYSLER	DODGE DAKOTA PICKUP	230	158,303	1.4529
162	TOYOTA	MR2 SPYDER	10	6,950	1.4388
163	FORD MOTOR CO	FORD ESCAPE	214	151,295	1.4145
164	GENERAL MOTORS	PONTIAC MONTANA VAN	71	50,437	1.4077
165	TOYOTA	LEXUS RX	121	86,206	1.4036
166	MERCEDES–BENZ	170 (SLK–CLASS)	22	16,294	1.3502
167	MERCEDES–BENZ	210 (E–CLASS)	67	49,628	1.3500
168	HONDA	ACURA 3.2 TL	45	34,860	1.3196
169	GENERAL MOTORS	CHEVROLET VENTURE VAN	110	85,346	1.2889
170	AUDI	S8/QUATTRO	1	814	1.2285
171	DAIMLERCHRYSLER	DODGE VIPER	2	1,643	1.2173
172	NISSAN	QUEST VAN	37	31,402	1.1783
173	TOYOTA	SIENNA VAN	99	85,794	1.1539
174	VOLKSWAGEN	NEW BEETLE	83	72,350	1.1472
175	MERCEDES–BENZ	203 (C–CLASS)	36	32,931	1.0932
176	VOLKSWAGEN	PASSAT	90	82,870	1.0860
177	VOLKSWAGEN	CABRIO	16	15,479	1.0337
178	TOYOTA	AVALON	79	77,925	1.0138
179	GENERAL MOTORS	CHEVROLET TRACKER	108	108,204	0.9981
180	GENERAL MOTORS	OLDSMOBILE SILHOUETTE VAN	36	36,278	0.9923
181	FORD MOTOR CO	MERCURY VILLAGER VAN	18	18,169	0.9907
182	VOLVO	S60	32	33,335	0.9600
183	SAAB	9–3	20	20,920	0.9560
184	VOLVO	XC	25	27,082	0.9231
185	AUDI	A8/QUATTRO/L	2	2,177	0.9187
186	HONDA	CR–V	99	117,003	0.8461
187	VOLKSWAGEN	EUROVAN/CAMPER	3	3,652	0.8215
188	BMW	M/Z3	15	18,627	0.8053
189	GENERAL MOTORS	CADILLAC ELDORADO	8	10,289	0.7775
190	MAZDA	TRIBUTE	42	55,827	0.7523
191	TOYOTA	HIGHLANDER	52	69,706	0.7460
192	SUBARU	LEGACY/OUTBACK	73	98,623	0.7402
193	HONDA	ACURA MDX	30	41,081	0.7303
194	MAZDA	MX–5 MIATA	12	18,040	0.6652
195	MAZDA	MPV	23	36,356	0.6326
196	SUBARU	FORESTER	37	63,015	0.5872
197	FORD MOTOR CO	FORD LTD/CROWN VICTORIA	50	89,572	0.5582
198	GENERAL MOTORS	SATURN LW	5	9,223	0.5421
199	DAIMLERCHRYSLER	CHRYSLER VOYAGER	78	169,370	0.4605
200	TOYOTA	PRIUS	7	15,773	0.4438
201	AUDI	ALLROAD/QUATTRO	3	6,840	0.4386
202	HONDA	ODYSSEY MINIVAN	54	123,522	0.4372
203	QUANTUM TECH.	CAVALIER	1	2,417	0.4137

PRELIMINARY REPORT OF THEFT RATES FOR 2001 MODEL YEAR PASSENGER MOTOR VEHICLES STOLEN IN CALENDAR YEAR 2001—Continued

	Manufacturer	Make/model (line)	Thefts 2001	Production (Mfr's) 2001	2001 Theft rate (per 1000 vehicles produced)
204	HONDA	INSIGHT	1	3,426	0.2919
205	ASTON-MARTIN	DB–7/VANTAGE/COUPE/VOLANTE	0	348	0.0000
206	ROLLS-ROYCE	BENTLEY AZURE	0	100	0.0000
207	ROLLS-ROYCE	BENTLEY CONTINENTAL R	0	22	0.0000
208	ROLLS-ROYCE	BENTLEY CONTINENTAL T	0	5	0.0000
209	GENERAL MOTORS	CADILLAC FUNERAL COACH/HEARSE	0	2,203	0.0000
210	FERRARI	360	0	723	0.0000
211	FERRARI	456	0	64	0.0000
212	FERRARI	550	0	290	0.0000
213	LAMBORGHINI	DB132/144 DIABLO	0	150	0.0000
214	ROLLS-ROYCE	CORNICHE	0	45	0.0000
215	ROLLS-ROYCE	PARK WARD	0	28	0.0000
216	ROLLS-ROYCE	SILVER SERAPH	0	51	0.0000
217	MITSUBISHI	NATIVA[2]	0	1,653	0.0000

[1] This vehicle was manufactured under the Chrysler nameplate for sale in a U.S. Territory only (Guam, American Samoa, Puerto Rico) and the Virgin Islands (St. Thomas and St. Croix).
[2] This vehicle was manufactured for sale only in Puerto Rico and represents the U.S. version of the Montero Sport line.

Stephen R. Kratzke,
Associate Administrator for Rulemaking.
[FR Doc. 03–9186 Filed 4–14–03; 8:45 am]
BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 020424095–2095–01; I.D. 032801B]

RIN 0648–AP25

Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Reopening proposed rule public comment period.

SUMMARY: This document reopens for 15 days the public comment period for a proposed rule establishing a fishing capacity reduction program for the crab species managed under the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan. The reopening's intent is to seek additional public comment about, and clarification of, issues in previous public comments about the proposed rule.

DATES: Comments will be accepted until April 30, 2003.

ADDRESSES: Mail or fax written comments to Michael L. Grable. The mailing address is: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3282. The fax number is (301) 713–1306. NMFS will not accept e-mail or internet comments.

If a comment involves any aspect of the collection of information requirements, send the comment both to Michael L. Grable and to the National Oceanic and Atmospheric Administration Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Anyone who wants the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis for this proposed rule may obtain it from Michael L. Grable.

Anyone who wants to contact the Restricted Access Management Program (which issues crab species fishing licenses) may do so at this address: Restricted Access Management Program, National Marine Fisheries Service, P.O. Box 21668, Juneau AK 99802–1668. The fax number is (907) 586–7354.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, (301) 713–2390.

SUPPLEMENTARY INFORMATION:

I. Proposed Rule Background

General

NMFS published the proposed rule in the **Federal Register** (67 FR 76329) on December 12, 2002. The rule proposed a fishing capacity reduction program (program) for the crab species (crab) managed under the Bering Sea/Aleutian Islands King and Tanner Crab Fishery Management Plan.

The rule proposed to reduce crab fishing capacity by paying bidders whose bids the program accepts to surrender their crab fishing interests for revocation or restriction. A loan, repaid by post-reduction crab landing fees, would finance 100% of program cost.

On December 30, 2002, NMFS corrected (67 FR 79550) the proposed rule and, on January 28, 2003, responded to public comment by extending (68 FR 4161) the proposed rule's comment period until February 27, 2003.

NMFS is reopening the comment period for 15 days to seek additional public comment about, and clarification of, issues in previous public comments about the proposed rule.

Reduction Vessel and Reduction Vessel Fishing History

The rule proposed to require each program bidder's reduction fishing interest to include the bidder's:

(1) Crab reduction permit,
(2) Reduction vessel fishing history,
(3) Non-crab reduction permit, and
(4) Reduction vessel fishing privilege.

Proposed rule § 600.1018(a) defines the first two of these bid elements as follows:

(1) "Crab reduction permit" means a non-interim crab license [under the license limitation program] endorsed for one or more reduction endorsement fisheries, regardless of whether it is also endorsed for the Norton Sound fishery, and

(2) "Reduction vessel fishing history" means, for each bid, the reduction vessel's complete history of documented

harvest upon any part of which NMFS based issuance of the bidder's crab reduction permit and non-crab reduction permit.

The rule proposed the following basic requirements (which are here paraphrased) for the four bid elements:

(1) Proposed rule § 600.1018(h)(2) requires the reduction vessel in each bid to be the same vessel whose crab fishing history during the general qualification period (GQP), endorsement qualification period (EQP), and recent participation period (RPP) gave rise to the crab license which the bidder includes in its bid as its crab reduction permit.

(2) Proposed rule § 600.1018(h)(3) defines the reduction vessel fishing privilege in each bid as the reduction vessel's fisheries trade endorsement, its qualification for ever being placed under foreign registry or operational authority, and its worldwide fishing privileges of every kind,

(3) Proposed rule § 600.1018(h)(4) requires the crab reduction permit in each bid to be the crab license which NMFS issued on the basis of the GQP, EQP, and RPP crab fishing history of the bidder's reduction vessel. The crab reduction permit must be non-interim and include at least one area/species endorsement for any one or more reduction endorsement fisheries, and

(4) Proposed rule § 600.1018(h)(6) requires the reduction vessel fishing history in each bid to be the whole of the fishing history of the reduction vessel upon any part of which NMFS based issuance of the crab reduction permit and the non-crab reduction permit which the bidder includes in its bid.

For vessels which were lost or destroyed before the RPP, there are proposed rule exceptions to the requirements in (1), (3), and (4) immediately above. Nevertheless, bids involving these lost or destroyed vessels still require extant reduction vessels.

The proposed rule used these definitions and requirements as a means of matching, for program reduction purposes, each crab license with the crab vessel whose fishing history gave rise to the crab license. NMFS believed it was necessary for the proposed rule to do this because:

(1) Crab licences, crab vessels, and the vessels' crab fishing histories are all independently transferable,

(2) Crab harvests are identified by crab vessels rather than by crab licenses,

(3) Crab license and crab vessel transfers are a matter of public record, but crab fishing history transfers are not,

(4) Crab vessels were not designated on crab licenses until 2002, and

(5) There was an inference in the regulations implementing Amendment 10 to the crab fishery management plan (Amendment 10) that crab fishing histories must have been completely earned on one vessel.

Although the proposed rule's approach would apparently have worked well for almost all potential program bidders, the public comments suggest that it would be problem for a few.

Fishing History Years for Bid Scoring and Reduction Loan Allocation Purposes

The program's statutory authority requires scoring bids in a reverse auction by dividing each bid price by the total value of crab landed from 1990 through 1999, under each crab reduction permit, in "the most recent five-year period" in each of seven area/species endorsement fisheries.

The statute also requires using these data, in a different calculation, to allocate the reduction loan among the six reduction endorsement fisheries whose post-reduction fees will repay the loan.

The proposed rule's § 600.1018(a) definition of the term "bid crab" defines "the most recent five-year period" as "the most recent 5 calendar years in which each reduction endorsement fishery was for any length of time open for directed crab fishing during a 10–calendar-year period beginning on January 1, 1990, and ending on December 31,1999."

Although the proposed rule's approach would apparently have worked well for most potential program bidders, the public comments suggest it would be a problem for some.

II. Public Comments About The Proposed Rule

Reduction Vessel and Crab Fishing History for Reduction Purposes

The pertinent public comments assert (1) that the fishing history of a particular vessel functionally transfers from the vessel at the time that its fishing history gives rise to issuance of a crab license and (2) that the fishing history thereafter becomes the history of the license rather than the history of the vessel. This assertion includes not only that vessel's crab fishing history during the vessel moratorium period (VMP), GQP, EQP, and RPP, but also all the vessel's predecessor fishing history.

Accordingly, the program would no longer need to require a bid's reduction vessel to be the same vessel whose crab fishing history during the GQP, EQP, and RPP gave rise to the bid's crab reduction permit. Pre-license fishing history would no longer be a reduction-vessel determinant because that history would have transferred from the vessel which earned that history to the crab license to whose issuance that history gave rise. A program bidder's reduction vessel could be, for example, the crab vessel designated, at the time of bidding, on the bid's crab reduction permit. In most bids, this would probably be the vessel whose fishing history did, in fact, give rise to the bid's crab reduction permit; but a reduction vessel other than the vessel which did so would also be acceptable.

Additionally, each bid's pre-license crab fishing history for reduction purposes would be the fishing history of the vessel or vessels which gave rise to issuance of, and was consequently transferred (as the comments assert) to, the crab license corresponding to the bid's crab reduction permit.

Public comments also assert that, under appropriate circumstances involving lost or destroyed vessels, a reduction vessel would not need to be extant at the time of program bidding.

Fishing History Years for Bid Scoring and Reduction Loan Allocation Purposes

Instead of the years involved in these calculations being (as the rule proposed) the most recent 5 years in which each area/species endorsement fishery was open for directed fishing, the pertinent public comments assert that these years should be the most recent 5–year period in which each program bidder landed, under a crab reduction permit, crab in each area/species endorsement fishery.

III. Discussion and Questions

Reduction Vessel and Crab Fishing History for Reduction Purposes

Crab fishing history is an important program factor. Crab fishing history is the basis upon which the program must score bids and allocate repayment of the reduction loan between the six reduction endorsement fisheries. For this purpose, however, only crab fishing history during the period from January 1, 1990, through December 31, 1999, is relevant. The program's authorizing statute does not allow considering crab fishing history during any other period. Moreover, crab fishing history has been the past qualification basis for crab licenses and may potentially be the future qualification basis for other forms of crab harvesting privileges, including harvesting allocations.

If an identifiable vessel's pre-license crab fishing history does, as the pertinent public comments assert, transfer to the crab license to whose issuance that fishing history gave rise, then:

(1) The issued crab license acquires the vessel's pre-license crab fishing history,

(2) The vessel loses its pre-license crab fishing history,

(3) The vessel thereafter transfers without its pre-license crab fishing history, and

(4) The vessel's subsequent fishing history is its post-license fishing history.

The January 1, 1990, beginning of the crab fishing history period for program bid scoring and reduction loan allocation purposes is not earlier than the January 1, 1988, beginning of the VMP. However, the December 31, 1999, ending of the bid scoring and reduction loan allocation period is later than the ending of the RPP.

If the reduction vessel in each program bid were to be the vessel designated, at the time of bidding, on the bid's crab reduction permit, there would be two possibilities:

(1) The bid's reduction vessel could be the same as the vessel whose pre-license crab fishing history transferred to the bid's crab reduction permit. In this possibility, both the pre-license and the post-license history required for bid scoring and loan allocation purposes would be that of the bid's reduction vessel, and

(2) The bid's reduction vessel could be a vessel other than the vessel whose pre-license crab fishing history transferred to the bid's crab reduction permit. In this possibility, the pre-license history required for bid scoring and loan allocation purposes would have been earned by a vessel other than the bid's reduction vessel. Presumably, however, the post-license history required for this purpose would be the reduction vessel's remaining fishing history, which had not previously transferred to some other crab license (even though that vessel may not have been designated on the crab license corresponding to the bid's crab reduction permit until more than a year after NMFS issued that crab license).

Accordingly, to assist NMFS in considering the pertinent public comments, NMFS solicits the public's response to the following questions:

(1) Does the crab fishing history of a particular vessel always functionally transfer from the vessel at the time the history gives rise to issuance of a crab license?

(2) Does the crab fishing history, thereafter, become the history of the crab license to which the history gave rise rather than the history of the vessel which earned the history?

(3) Should the pre-license portion of the crab fishing history for reduction purposes always be the pre-license history of the vessel whose history gave rise to issuance of the crab license corresponding to the bid's crab reduction permit?

(4) What should be the ending point of this pre-license crab fishing history? The end of the RPP? The date on which a post-RPP crab license was issued? Some other date specified in the crab fishery management plan regulations? Some other date corresponding to some other point?

(5) What should be the beginning point of this pre-license crab fishing history? The point at which the vessel which earned this history first existed? Some other date corresponding to some other point?

(6) Should the post-license portion of crab fishing history for reduction purposes always be the post-license history of the bid's reduction vessel (e.g., the vessel designated, at the time of bidding, on the bid's crab reduction permit)? If not, what else should it be and why?

(7) What are the specific instances in which persons would have combined the pre-license crab fishing history of different vessels to give rise to issuance of the crab license corresponding to a bid's crab reduction permit? In each such specific instance, what should be the specific beginning and ending points which determine how much of each different vessel's pre-license crab fishing history gave rise to issuance of the crab license and, consequently, transferred from each of these vessels to the crab license?

(8) If program regulations adopted, for reduction purposes, the pertinent public comments' approach to reduction vessels and crab fishing histories, would this create any corollary problems? If so, what would they be and how should they best be resolved?

(9) If program regulations adopted the pertinent public comments' approach, are the required data for implementing the program still determinable and readily available under that approach?

(10) Overall, which approach in this regard would accomplish the most good for the most potential program bidders--the approach which the rule proposed or the approach which pertinent public comments have suggested? Why?

(11) Would it be appropriate to use both these approaches-- the first approach for some vessels and the second approach for other vessels or should only one of the two approaches be used? Why?

Moreover, what specific circumstances involving lost or destroyed vessels would be appropriate, in each conceivable instance, for not requiring a reduction vessel to be extant at the time of program bidding?

Fishing History Years for Bid Scoring and Reduction Loan Allocation Purposes

Overall, which of the approaches would accomplish the most good for the most potential program bidders? Why?

NMFS believes additional public comment about these matters will facilitate a rule which best fulfills the program's statutory objective.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 9, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Affairs, National Marine Fisheries Service.

[FR Doc. 03–9232 Filed 4–14–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I. D. 031903E]

Fisheries of the Exclusive Economic Zone off Alaska; Application for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an application for an exempted fishing permit.

SUMMARY: This notice announces receipt of an application for an exempted fishing permit (EFP) from Mr. John Gauvin and Mr. Brent Paine. If granted, this permit would be used to test salmon excluder devices in the Bering Sea pollock trawl fishery. It is intended to promote the objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) by testing methods of reducing salmon bycatch in the Bering Sea pollock trawl fishery.

ADDRESSES: Copies of the EFP application are available by writing to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P. O. Box 21668, Juneau, AK 99802, Attn: Lori Durall.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the domestic groundfish fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI) under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679. The FMP and the implementing regulations at §§ 679.6 and 600.745(b) authorize issuance of EFPs to allow fishing that would otherwise be prohibited. Procedures for issuing EFPs are contained in the implementing regulations. The information gathered through this EFP may lead to future rulemakings.

NMFS received an application for an EFP from Mr. John Gauvin and Mr. Brent Paine. The purpose of the EFP is to test the effectiveness of salmon excluder devices for pollock trawls. The goal is to develop a device for pollock trawls that reduces salmon bycatch without significantly lowering catch rates of pollock.

The EFP is necessary to allow the applicants to demonstrate whether such a device could be developed to reduce salmon bycatch. The taking of salmon during the experiment is crucial for determining the effectiveness of the device. Salmon taken during the experiment will not be counted toward the Chinook and Chum bycatch limits under § 679.21(e)(1)(vii) and (viii). The potential exists that the amount of pollock trawl salmon bycatch by the industry during the EFP period would approach or exceed the salmon bycatch limits. The additional salmon taken during the experiment would create an additional burden on the pollock trawl industry and may lead to closures of the salmon savings areas, if the EFP salmon is counted toward the salmon bycatch limits. Approximately 200 Chum salmon and 30 Chinook salmon are required to support the experiment, well below the BSAI annual limits of 33,000 chinook salmon and 42,000 chum salmon.

The applicants have also requested an exemption from closures of the Chinook Salmon Savings Area and the Chum Salmon Savings Area (§ 679.21(e)(7)(vii) and (viii)). The experiment must be conducted in areas of salmon concentration to ensure a sufficient sample size. The salmon savings areas are areas of known concentration of salmon and provide an ideal location for conducting the experiment and ensuring that the vessel encounters concentrations of salmon.

Groundfish taken under the EFP also would not be applied to the total allowable catch (TAC) limit specified in the annual harvest specifications (§ 679.20), but the amount taken is expected to result in total groundfish harvests well below the acceptable biological catch (ABC) amounts for the BSAI. A total of approximately 2,270 metric tons (mt) of Bering Sea pollock would be taken in the fall of 2003 and the spring of 2004 and would not be included in the harvest applied against the Bering Sea pollock TAC of approximately 1.5 mt. The Bering Sea pollock ABC is 2.33 million mt, well above the combined TAC and the additional harvest anticipated from the experiment.

These levels of harvest and manner of harvest are not expected to have a significant impact on the marine environment, but the potential effects on the marine environment will be further analyzed during review of the application.

In accordance with § 679.6, NMFS has determined that the proposal warrants further consideration and has initiated consultation with the Council by forwarding the application to the Council. The Council will consider the EFP application during its April 3–8, 2003, meeting which will be held at the Hilton Hotel, Anchorage, Alaska. The applicants have been invited to appear in support of the application, if the applicants desire. Interested persons may comment on the application at the Council meeting during public testimony.

A copy of the application is available for review from NMFS (see **ADDRESSES**).

Based on the results of this EFP, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 9, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 03–9231 Filed 4–14–03; 8:45 am]

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Notices

Federal Register
Vol. 68, No. 72
Tuesday, April 15, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 9, 2003

The Department of Agriculture has submitted the following information collection requirements(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Cooperative State Research, Education, and Extension Service

Title: CSREES Proposal Review Process.

OMB Control Number: 0524–NEW.

Summary of Collection: This information collection is authorized under 7 CFR Section 3015.158, which governs competition in the awarding of discretionary grants and cooperative agreements. These regulations set forward the standard that proposals are to be evaluated objectively by independent reviewers in accordance with written criteria set forth by the awarding agency. The Cooperative State Research, Education, and Extension Service (CSREES) will collect information using the "Proposal Review Sheet" or the "Reviewer Worksheet".

Need and Use of the Information: CSREES will collect information to ensure that proposals are of high quality and are consistent with the goals and requirements of the funding program. CSREES uses the results of the proposal evaluation to determine whether a proposal should be declined or recommended for award. If the information is not collected, it would be difficult for a review panel and CSREES staff to determine which projects warrant funding.

Description of Respondent: Not-for-profit institutions; Business or other for-profit; Individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 4,520.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 113,000.

National Agricultural Statistics Service

Title: Vegetable Survey.

OMB Control Number: 0535–0037.

Summary of Collection: The primary function of the National Agricultural Statistics (NASS) is to prepare and issue current official state and national estimates of crop and livestock production. Vegetable estimates are an integral part of this function. The vegetable program is complex in that some crops are processing only, some are fresh market only, and others are dual crops (both processing and fresh market). Vegetable processors are surveyed the first week of April for their intended acreage of vegetables for processing and the first week of July for acreage contracted. The fresh market vegetable program consists of weekly estimates during the growing season for tomatoes in Florida. NASS will collect information using surveys.

Need and Use of the Information: NASS will collect information to estimate acreage planted and harvested, production, price, and utilization for the varies crops. The estimates provided vital statistics for growers, processors, and marketers to use in making production and marketing decisions.

Description of Respondents: Farms; Business or other for-profit Dept.

Number of Respondents: 31,391.

Frequency of Responses: Reporting: Annually; Other (seasonally).

Total Burden Hours: 5,021.

Foreign Agricultural Service

Title: Foreign Market Development Cooperator Program and the Market Access Program.

OMB Control Number: 0551–0026.

Summary of Collection: The authority for the Foreign Market Development Cooperator Program and the Market Access Program (MAP) is contained in Title VII and section 203 of the Agricultural Trade Act of 1978, U.S.C. 5721, *et. seq.* The primary objective of the Foreign Market Development Cooperator Program and the Market Access Program is to encourage and aid in the creation, maintenance and expansion of commercial export markets for U.S. agricultural products through cost-share assistance to eligible trade organizations. Personnel of the Foreign Agricultural Service (FAS) administer the programs. Prior to initiating program activities, each Cooperator or MAP participant must submit a detailed application to FAS.

Need and Use of the Information: FAS will collect information to manage, plan, evaluate, and account for government resources. Without the submission of information, the programs could not be implemented.

Description of Respondents: Not-for-profit institutions; State, Local, or Tribal government.

Number of Respondents: 71.

Frequency of Responses: Recordkeeping; Reporting: Annually.

Total Burden Hours: 91,070.

Risk Management Agency

Title: New Crop Insurance Programs (pilot and private crop insurance policies).

OMB Control Number: 0563–0057.

Summary of Collection: The Federal Corp Insurance Act (ACT), as amended in 1994, 1996, 1998, and 2000 expanded the role of the crop insurance program to be the principal tool for risk management by producers of farm products, provided for independent review of crop insurance products, and gave contracting authority for the development of new products. The expansion mission of the Risk Management Agency (RMA) is to meet the obligation of mandatory program development and to expand the current program to provide risk management products to the greatest number of people covering the greatest dollar value of commodities. RMA prepares the crop insurance policy provisions, underwriting guidelines, actuarial documents, and loss adjustment standards. Producers are required to report specific data when applying for crop insurance. The information supplied must be accurate and complete so insurance companies and Federal Crop Insurance corporation (FCIC) can determine liability, subsidy premium, and the amount of indemnity and is necessary for administering the crop insurance program. The FCIC is the only Federal agency that administers crop insurance.

Need and Use of the Information: RMA will collect information indicating the crop, type, variety, and practice that will be insured in the state and county along with the premium rates and crop price elections that will be available. The information is used to determine liability and premium. The information collected will be used Federal Agencies, RMA, crop insurance companies reinsured by FCIC, and other agencies that require such information in the performance of their duties. If the information collected is not submitted by the specified dates, the producer may not have insurance coverage.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 14,496.

Frequency of Responses: Recordkeeping; Reporting: Weekly; Monthly; Semi-Annually; Annually.

Total Burden Hours: 13,113.

Rural Utilities Service

Title: 7 CFR 1730, Review Rating Summary.

OMB Control Number: 0572–0025.

Summary of Collection: The Rural Utilities Service (RUS) manages loan programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended. An important part of safeguarding loan security is to see that RUS financed facilities are being responsible used, adequately operated, and adequately maintained. Future needs have to be anticipated to ensure that facilities will continue to produce revenue and that loans will be repaid as required by the RUS mortgage. Regular periodic operations and maintenance (O&M) review can identify and correct inadequate O&M practices before they cause extensive harm to the system. Inadequate O&M practices can result in public safety hazards, increased power outages for consumers, added expense for emergency maintenance, and premature aging of the borrower's systems, which could increase the loan security risk to RUS. RUS will collect information using form 300 Review Rate Summary.

Need and Use of the Information: RUS will collect information to identity items that may be in need of additional attention; to plan corrective actions when needed; to budget funds and manpower for needed work; and to initiate ongoing programs as necessary to avoid or minimize the need for "catch-up" programs.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 229.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 916.

Rural Utilities Service

Title: RUS Specification for Quality Control and Inspection of Timber Products.

OMB Control Number: 0572–0036.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA). It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. Loan programs are managed in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended.

Need and Use of the Information: RUS will use the information in verifying acceptability of poles and crossarms purchased by RUS borrowers. Each year, RUS borrowers are required to submit an Annual Summary of Purchases that provides a list of plants from which it obtained poles or crossarms during the preceding calendar year and Treaters must provide notification that they will treat poles for the upcoming year. Test reports are needed so that the purchaser, the inspectors, and RUS will be able to spot-check the general accuracy of the tests.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 700.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 40,763.

Rural Utility Service

Title: 7 CFR 1773, Policy on Audits of RUS Borrowers.

OMB Control Number: 0572–0095.

Summary of Collection: Under the authority of the Rural Electrification Act of 1936 (ACT), as amended 7 U.S.C. 901 *et seq.*, the Administrator is authorized and empowered to make loans under certain specified circumstances for the purpose of furnishing and improving telephone service in rural areas. RUS, in representing the Federal Government as Mortgagee, relies on the information provided by the borrowers in their financial statements to make lending decisions as to borrowers' credit worthiness and to assure that loan funds are approved, advanced and disbursed for proper Act purposes. Borrowers are required to furnish a full and complete report of their financial condition, operations and cash flows, in form and substance satisfactory to RUS.

Need and Use of the Information: RUS will collect information to evaluate borrowers' financial performance, determine whether current loans are at financial risk, and determine the credit worthiness of future losses. If information were not collected, it would delay RUS' analysis of the borrowers' financial strength, thereby adversely impacting current lending decisions.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1,500.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,677.

Rural Housing Service

Title: Form RD 410–8, Application Reference Letter (A Request for Credit Reference).

OMB Control Number: 0575–0091.

Summary of Collection; Form RD 410–8, Applicant Reference Letter, provides credit information and is used by Rural Housing Service (RHS) to obtain information about an applicant's credit history that might not appear on a credit report. It can be used to document an ability to handle credit effectively for applicants who have not used sources of credit that appear on a credit report. The form provides RHS with relevant information about the applicant's creditworthiness and is used to make better decisions.

Need and use of the Information: RHS will collect information to supplement or verify other debts when a credit report is limited and unavailable to determine the applicant's eligibility and creditworthiness for RHS loans and grants.

Description of Respondents: Business or other for-profit.

Number of Respondents: 10,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,000.

Animal and Plant Health Inspection Service

Title: 9 CFR 160–162, Veterinary Accreditation Program.

OMB Control Number: 0579–0032.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134c, 134f, and 134g. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as brucellosis and tuberculosis, as well as to take action to prevent and to manage exotic diseases such as foot-and-mouth and rinderpest. Diseases prevention is the most effective method for maintaining a healthy animal population and enhancing the Animal and Plant Health Inspection Service's (APHIS) ability to complete in exporting animals and animal products. Because APHIS does not have sufficient numbers of Federal personnel to perform all of the disease prevention work that must be done, APHIS relies heavily on assistance from veterinarians in the private sector. Regulations governing the Veterinary Accreditation Program are found in Title 9 of the Code of Federal Regulations, parts 160, 161, and 162. Operating this important program requires APHIS to engage in a number of information collection activities in the form of applications for veterinary accreditation, veterinary accreditation orientation and training, paperwork associated with tasks performed by our accredited veterinarians (such as completing certificates, applying and removing official seals, and completing test reports); reviewing applications for veterinary accreditation and re-accreditation, recordkeeping, and updating information on accredited veterinarians. APHIS will collect information using several forms.

Need and Use of the Information: APHIS will collect information to determine that a veterinarian has met the requirements for being accredited, or for obtaining re-accreditation. APHIS will also collect information to ensure that accredited veterinarians are knowledgeable of current Federal and State animal health regulations, objectives and programs and are competent in their application. If information is not collected it would significantly destroy APHIS' ability to operate the Veterinary Accreditation Program.

Description of Respondents: Business or other for-profit; State, Local and Tribal Government.

Number of Respondents: 88,244.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 63,031.

Agricultural Marketing Service

Title: Fruit and Vegetable Market News Reports.

OMB Control Number: 0581–0006.

Summary of Collection: Section 203(g) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621) directs and authorizes the collection of information and disseminating of marketing information including adequate outlook information on a market-area basis for the purpose of anticipating and meeting consumer requirements, aiding in the maintenance of farm income and bring about balance between production and utilization of agriculture products. Market News provides all interested segments of the market chain with market information tends to equalize the competitive position of all market participants. The fruit and vegetable industries, through their organizations, or government agencies present formal requests that the Department of Agriculture issue daily, weekly, semi-monthly, or monthly market news reports on various aspects of the industry.

Needs and Use of the Information: AMS will collect information for the production of Market News reports that are then available to the industry and other interested parties in various formats. Information is provided on a voluntary basis and is gathered through confidential telephone and face-to-face interviews by market reporters.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 18,347.

Frequency of Response: Reporting; Weekly; Monthly.

Total Burden Hours: 120,964.

Food and Nutrition Service

Title: Food Stamp Employment and Training (E & T) Program Activity Report.

OMB Control Number: 0584–0339.

Summary of Collection: The Balanced Budget Act of 1997 (Pub. L. 105–33), enacted on August 5, 1997, modified the Employment and Training (E&T) Program so that States' efforts are now focused on a particular segment of the food stamp population—able-bodied adults without dependents (ABAWDs). Section 6(d) of the Foot Stamp Act of 1977 and 7 CFR 273.7 require as a condition of eligibility each food stamp household members not exempt shall be registered for employment by the State agency at the time of application and once every twelve months thereafter. This requirement pertains to non-exempt food stamp household member age 16 to 60. Each State agency must screen each work registrant to determine whether to refer the individual to its E&T Program. States' E&T Programs are federally funded through an annual E&T grant. Both the Food Stamp Act and regulations require States to file quarterly reports about their E&T Programs so that the Food and Nutrition Service (FNS) can monitor their performance.

Need and Use of the Information: FNS will collect quarterly reports about their E&T programs so that the Department can monitor State performance to ensure that the program is being efficiently and economically operated. Without the information FNS would be unable to make adjustments or allocate exemptions in accordance with the statute.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 53.

Frequency of Response: Reporting; Quarterly; Annually.

Total Burden Hours: 29,455.

Forest Service

Title: Baseline and Trend Information on Wilderness Use and Users.

OMB Control Number: 0596–0108.

Summary of Collection: The Wilderness Act (Pub. L. 88–577) directs that wilderness be managed to preserve natural conditions and to provide outstanding opportunities for solitude or a primitive and unconfined type of recreation. To meet these management goals, managers must adapt their programs to changes in the amount and type of use and resultant conditions. It is also important for managers to be aware of likely visitor response to proposed management actions and their preferences for resource conditions. Very little is known about trends in the characteristics, activities and preferences of visitors to wilderness and other wildlands. The Forest Service (FS) will collect information using mail back survey forms, face-to-face and on-site

interviews to establish usage baselines and monitor trends in some areas for critical use and user characteristics for representatives Forest Service wilderness area.

Need and Use of the Information: FS will collect information from visitors to find out how many times they visit, when they plan their next visit, or if they plan to visit at all. Visitors will be asked, when visiting, if they come in groups, and if so, the size of those groups and how long they stay when visiting. Also, visitors will be asked do they use equipment such as stoves, wood for fires and do they have preferences for social conditions? If the information is not collected FS will have no basis for making management decisions and establishing policy for guiding wilderness management in general.

Description of Respondents: Individuals or households.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 416.

Rural Development

Title: Rural Empowerment Zones and Enterprise Communities (Ongoing Reporting Requirements).

OMB Control Number: 0570–0027.

Summary of Collection: The Community Renewal Tax Relief Act of 2000 extends the duration for all Empowerment Zone through December 2009. The Rural Empowerment Zones and Enterprise Communities program (EZ/EC) provides economically depressed rural areas and communities with opportunities for growth and revitalization. USDA has designated 120 Champion communities from the EZ/EC applicant communities that have agreed to implement their strategic plans in accordance with the principles of the program and report regularly on their progress.

Need and Use of the Information: Periodic reviews provide the basis for USDA to continue or revoke a designation during the life of the federal program. These reports provide progress on each project that the designee has specified in their implementation plans. A warning letter may be sent to recipients who have been regarded as noncompliance or have made insufficient progress in implementing the strategic plan.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 178.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,762.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–9174 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Establishment of the Advisory Committee on Biotechnology and 21st Century Agriculture and Notice of Appointment of Committee Members

AGENCY: Office of the Under Secretary, Research, Education, and Economics, USDA.

ACTION: Notice of establishment of the Advisory Committee on Biotechnology and 21st Century Agriculture and notice of appointment of committee members.

SUMMARY: The Office of the Under Secretary, Research, Education, and Economics of the Department of Agriculture, in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, announces the establishment of and appointment of members to the Advisory Committee on Biotechnology and 21st Century Agriculture ("AC21").

ADDRESSES: The public may send written comments to Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Telephone: (202) 720–3817, Fax: (202) 690–4265, or e-mail *mschechtman@ars.usda.gov*.

SUPPLEMENTARY INFORMATION: The Department of Agriculture is establishing a new committee, the Advisory Committee on Biotechnology and 21st Century Agriculture. The purpose of this new committee is to examine the long-term impacts of biotechnology on the U.S. food and agriculture system and USDA, and provide guidance to USDA on pressing individual issues, identified by the Office of the Secretary, related to the application of biotechnology in agriculture. The committee is necessary and in the public interest.

The Committee will report to the Secretary through an annual report and other means as necessary and appropriate.

The Committee will meet in Washington, DC, up to four (4) times per year. Eighteen members were appointed from nominations of more than 100 well-qualified individuals, representing the biotechnology industry, the farming community, the seed industry, food manufacturers, commodity processors and shippers, environmental and consumer groups, along with academic researchers as well as experts on bioethics and legal issues. Equal opportunity practices were followed in appointing committee members. To assure that recommendations of the advisory committee take into account the needs of diverse groups served by the Department, membership includes, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The following appointments to the Advisory Committee on Biotechnology and 21st Century Agriculture have been made:

Patricia A. Layton, Professor, Department of Forest Resources, Clemson University, in Clemson, South Carolina will serve as Chair of the AC21;

Daryl D. Buss, Dean, School of Veterinary Medicine, University of Wisconsin in Madison, Wisconsin;

Leon C. Corzine, Farmer, and Chairman, Biotechnology Working Group, National Corn Growers Association, in Assumption, Illinois;

Carole Cramer, Professor, Virginia Tech, and Chief Scientific Officer, CropTech Corporation, in Blacksburg, Virginia;

Richard T. Crowder, Chief Executive Officer, American Seed Trade Association, in Alexandria, Virginia;

Michael D. Dykes, Vice President, Government Affairs, Monsanto Company, in Washington, DC;

Juan C. Enriquez-Cabot, Director, Life Sciences Project, Harvard Business School, in Boston, Massachusetts;

Randal W. Giroux, Staff Scientist, Cargill, Inc., in Wayzata, Minnesota;

Duane Grant, Farmer and Member, National Association of Wheat Growers and U.S. Wheat Inc. Biotechnology Committee, in Rupert, Idaho;

David A. Hoisington, Director, Applied Biotechnology Center and Bioinformatics, International Maize and Wheat Improvement Center (CIMMYT), in Mexico City, Mexico;

Gregory A. Jaffe, Co-Director, Biotechnology Project, Center for Science in the Public Interest, in Washington, DC;

David C. Magnus, Assistant Professor, Center for Bioethics, University of Pennsylvania, in Philadelphia, Pennsylvania;

Terry L. Medley, Vice President, Global Regulatory Affairs, DuPont Agriculture and Nutrition, in Wilmington, Delaware;

Margaret G. Mellon, Director, Food and Environment Program, Union of Concerned Scientists, in Washington, DC;

Ronald D. Olson, Vice President, Grain Operations, General Mills, in Minneapolis, Minnesota;

Jerome B. Slocum, Farmer and General Manager, North Mississippi Grain Company, in Coldwater, Mississippi;

Keith C. Triebwasser, Manager, Product Safety and Regulatory Affairs, The Procter and Gamble Company, in Cincinnati, Ohio;

Lisa W. Zannoni, Head, Global Regulatory Affairs and Government Relations, BASF Plant Science, in Mount Olive, New Jersey.

Committee members will initially serve one-or two-year terms, and may be reappointed to serve up to six consecutive years. In the event of a vacancy, the Secretary will appoint a new member as appropriate and subject to the provisions of the Federal Advisory Committee Act. The duties of the Committee are solely advisory.

Committee members will serve without pay. Reimbursement of travel expenses and per diem costs shall be made to Committee members who would be unable to attend Committee meetings without such reimbursement.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 03–9173 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–007–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the importation of animals and poultry, animal and poultry products, and animal germ plasm.

DATES: We will consider all comments that we receive on or before June 16, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–007–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–007–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–007–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding the importation of animals and poultry, animal and poultry products, and animal germplasm, contact Dr. Gary Colgrove, Director, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS" Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Animals and Poultry, Animal and Poultry Products, Certain Animal Embryos, Semen, and Zoological Animals.

OMB Number: 0579–0040.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture is responsible for, among other things, preventing the introduction of exotic animal diseases into the United States and for rapidly identifying, containing, and eradicating such diseases when feasible. In connection with this mission, APHIS collects pertinent information from those individuals who import animals or poultry, animal or poultry products, or animal germplasm into the United States.

This information includes data such as the origins of the animals or animal products to be imported, the health status of the animals or the processing methods used to produce animal products to be imported, and whether the animals or animal products were temporarily offloaded in another country during their transit to the United States. We need this information to help ensure that these imports do not introduce exotic animal diseases into the United States.

We use a variety of information collection procedures, devices, and forms including, but not limited to: Health certificates, import permits, ear tags, leg bands, specimen submission forms, inspection reports, cooperative and trust fund agreements, and certification statements.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.0369992 hours per response.

Respondents: Entities that import animals or poultry, animal or poultry products, and animal embryos, germplasm, and semen.

Estimated annual number of respondents: 169,806.

Estimated annual number of responses per respondent: 9.618176.

Estimated annual number of responses: 1,633,224.

Estimated total annual burden on respondents: 60,428 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 10th day of April 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–9175 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Crupina Vegetation Management, Okanogan and Wenatchee National Forests, Chelan Ranger District, Washington

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On October 17, 2002, the USDA, Forest Service, Okanogan and Wenatchee National Forests, published a Notice of Intent (in **Federal Register**, 67 FR 64082) to prepare an environmental impact statement (EIS) for Crupina Vegetation Management. The current Forest Service vegetation management strategy would be more accurately reflected if this project EIS were titled "Crupina Integrated Weed Management Project". Therefore, this EIS is revised. Other environmental analyses activities related to past wildfires have delayed the release dates for this EIS. The revised release date for the draft EIS will be July 2003 and the final December 2003.

FOR FURTHER INFORMATION CONTACT: Jim Archambeault, Crupina Project Team Leader, Okanogan-Wenatchee National Forests; phone: (509) 997–9738 or Mallory Lenz, Wildlife Biologist, Chelan Ranger District, phone (509) 682–2576.

April 9, 2003.

Michael C. Ash,

Deputy Regional Forester, Pacific Northwest Region.

[FR Doc. 03–9140 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) approval of minutes, (3) public comment, (4) brochure for Glenn/Colusa, (5) historical library, (6) report on reimbursement of search & rescue, (7) update on absent members, (8) how to solicit projects, (9) report on Fire Safe Council, (10) general discussion, (11) next agenda.

DATES: The meeting will be held on April 28, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by April 25, 2003 will have the opportunity to address the committee at those sessions.

Dated: April 9, 2003.

James F. Giachino,

Designated Federal Official.

[FR Doc. 03–9127 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The North Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet on Thursday, May 1, 2003, at the Economic Development Association of Skagit County, 204 West Montgomery Street, Mt. Vernon, WA. The meeting will begin at 9 a.m. and last until approximately 3 p.m.

The purpose of the meeting will be to review, evaluate and, if time allows, recommend funding of proposed Title II projects for 2004 under the Secure Rural Schools and Community Self-Determination Act.

All North Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The North Mt. Baker-Snoqualmie Resource Advisory Committee advises Whatcom and Skagit Counties on projects, reviews project proposals, and makes recommendations to the appropriate USDA official for projects to be funded by Title II dollars. The North Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Jon Vanderheyden, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 201).

Dated: April 9, 2003.

James Chu,

Acting Designated Federal Official.

[FR Doc. 03–9129 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of the program for Rural Housing Loans.

DATES: Comments on this notice must be received by June 16, 2003 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Robert E. Keyes, Senior Loan Specialist, Single Family Housing Guaranteed Loan Division, Rural Housing Service, Stop 0784, 1400 Independence Ave., SW., Washington, DC 20250–0784; Telephone: (202) 720–1452; E-mail: *robert.keyes@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Rural Housing Loans.

OMB Number: 0575–0078.

Expiration Date of Approval: September 30, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) is authorized under Section 517 (d) of Title V of the Housing Act of 1949, as amended, to issue loan guarantees for the acquisition of new or existing dwellings and related facilities to provide decent, safe, and sanitary living conditions and other structures in rural areas by eligible recipients.

The Act also authorizes the Secretary to pay the holder of a guaranteed loan the difference between the rate of interest paid by the borrower and the market rate of interest.

The purpose of the program is to assist low and moderate income individuals and families acquire or construct a single family residence in a rural area with loans made by private lenders. Eligibility for this program includes low and moderate income families or persons whose income does not exceed 115 percent of the median income for the area, as determined by the Secretary.

The Guaranteed Rural Housing (GRH) program was authorized under the Cranston-Gonzalez National Affordable Housing Act, and the Agency issued a final rule implementing the GRH program on April 17, 1991, before departmental reorganization. The program began as a pilot program in 20 States on May 17, 1991. In 1992, the GRH program was offered on a nationwide basis. During the implementation process, the Agency looked for ways to improve the program and make it more user friendly.

The Agency recognized the need to make its program even more compatible with the existing structure of the mortgage lending community. On May 22, 1995, the Agency published a final rule incorporating the needed changes to encourage greater participation by lenders and the secondary market for mortgage loans.

The information requested by the Agency includes borrower financial information such as household income, assets and liabilities, and monthly expenses. All information collected is vital for the Agency to determine if borrowers qualify for and assure they receive all assistance for which they are eligible. Information requested on lenders is required to ensure lenders are eligible to participate in the GRH program. Lender requirements are in compliance with OMB Circular A–129.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .48 hours per response.

Respondents: Individuals or households and business or other for-profits.

Estimated Number of Respondents: 37,456.

Estimated Number of Responses per Respondent: 6.7.

Estimated Number of Responses: 250,756.

Estimated Total Annual Burden on Respondents: 120,442 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Team Leader, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility;

(b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Team Leader, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 24, 2003.

James E. Selmon III,

Acting Administrator, Rural Housing Service.

[FR Doc. 03–9203 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Decennial Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2, Section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Decennial Census Advisory Committee. The Committee will address issues related to the 2010 reengineered decennial census, including the American Community Survey and other related decennial programs. Last-minute changes to the schedule are possible, which could prevent advance notification.

DATES: May 8–9, 2003. On May 8, the meeting will begin at approximately 8:30 a.m. and end at approximately 5:15 p.m. On May 9, the meeting will begin at approximately 8:30 a.m. and end at approximately 12 noon.

ADDRESSES: The meeting will be held at the Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia 20191.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone (301) 763–2070, TTY (301) 457–2540.

SUPPLEMENTARY INFORMATION: The Decennial Census Advisory Committee is composed of a Chair, Vice-Chair, and up to 40 member organizations, all appointed by the Secretary of Commerce. The Committee considers the goals of the decennial census and users' needs for information provided by the decennial census. The Committee provides an outside-user perspective about how research and design plans for the 2010 reengineered decennial census and the development of the American Community Survey and other related programs will realize those goals and satisfy those needs. The members of the Advisory Committee will draw on their experience with Census 2000 planning and operational processes, results of research studies, test censuses, and results of the Census 2000 evaluation program to provide input on the design and related operations of the 2010 reengineered decennial census, the American Community Survey, and other related programs.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer, named above, at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer as soon as known and preferably two weeks prior to the meeting.

Dated: April 4, 2003.

Kathleen B. Cooper,

Under Secretary for Economic Affairs, Economics and Statistics Administration,

[FR Doc. 03–9187 Filed 4–14–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 17–2003]

Foreign-Trade Zone 193—Pinellas County, FL, Expansion of Manufacturing Authority-Subzone 193A, Cardinal Health 409, Inc. (Gelatin Capsules/Pharmaceutical Products); Pinellas County, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Pinellas County Board of County Commissioners, grantee of FTZ 193, requesting to expand the scope of manufacturing authority under zone procedures within Subzone 193A, at the Cardinal Health 409, Inc. (formerly R.P. Scherer Corporation) facilities in the St. Petersburg/Clearwater area (Pinellas County), Florida. It was formally filed on March 27, 2003.

Subzone 193A was approved by the Board in 2000 at 4 sites (42.1 acres) in the St. Petersburg/Clearwater area (Pinellas County), with authority granted for the manufacture of soft gelatin capsules and certain pharmaceutical products (Board Order 1117, 65 FR 54196, 9/7/2000).

Subzone 193A (754 employees) is currently requesting to expand the scope of authority for manufacturing activity conducted under FTZ procedures to include the manufacture of a new anti-AIDS drug, using foreign and domestic ingredients. The foreign ingredient is classified under HTSUS 2935.00.4800 and has a 7.4% duty rate. The finished product is classified under HTSUS 3004.70.9010 and is duty-free. Cardinal will be finishing and encapsulating the finished drug under contract for a pharmaceutical company, which would then use the drug in clinical trials.

Zone procedures would exempt Cardinal from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials, and to choose the duty rate that applies to finished products (duty-free) instead of the rate otherwise applicable to the foreign input material (7.4%). The application indicates that the savings from zone procedures would help improve Cardinal's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is May 30, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to April 30, 2003).

A copy of the request will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above.

Dated: April 8, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–9205 Filed 4–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 18–2003]

Foreign-Trade Zone 29—Louisville, KY, Area Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the Louisville and Jefferson County Riverport Authority, grantee of Foreign-Trade Zone 29, Louisville, Kentucky, requesting authority to expand its zone at sites within the Owensboro, Kentucky-Evansville, Indiana, Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 4, 2003.

FTZ 29 currently serves businesses in the Louisville Customs port of entry area. The proposed change would expand the FTZ 29 plan to also serve businesses in the Kentucky portion of the Owensboro-Evansville Customs port of entry, which currently has no existing zone sites.

FTZ 29 was approved on May 26, 1977 (Board Order 118, 42 FR 29323, 6/8/77) and expanded on January 31, 1989 (Board Order 429, 54 F.R. 5992, 2/7/89); December 15, 1997 (Board Order 941, 62 FR 67044, 12/23/97); July 17, 1998 (Board Order 995, 63 FR 40878, 7/31/98); December 11, 2000 (Board Order 1133, 65 FR 79802, 12/20/00); and, January 15, 2002 (Board Order 1204, 67 FR 4391, 1/30/02). The zone project currently consists of the following sites in the Louisville, Kentucky, area: *Site 1* (1,674 acres)—1,668 acres within the Riverport Industrial complex and 6 acres at 3401 Jewell Avenue, Louisville; *Site 2* (593 acres)—located at the junction of Gene Snyder Freeway and La Grange Road, eastern Jefferson County; *Site 3* (142 acres)—United States Navy Ordnance facility, 5403 Southside Drive, Louisville; *Site 4* (2,311 acres)—consisting of the Louisville International Airport and three other airport-related parcels; *Site 5* (70 acres)—Marathon Ashland Petroleum LLC Tank Farm and pipelines, 4510 Algonquin Parkway along the Ohio River, Louisville; and *Site 6* (316 acres)—Cedar Grove Business Park, Highway 480, near Interstate 65, Bullitt County.

The applicant is now requesting authority to expand the general-purpose zone to include two new sites in Henderson and Owensboro, Kentucky: *Proposed Site 7* (273 acres)—Henderson County Riverport Authority facilities, 6200 Riverport Road, Henderson; and, *Proposed Site 8* (182 acres)—Owensboro Riverport Authority facilities, 2300 Harbor Road, Owensboro. Proposed Site 7 is owned by the Henderson County Riverport Authority and the Abbott Family Farm. Proposed Site 8 is owned by the Owensboro Riverport Authority. No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099—14th St. NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is June 16, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 30, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce, Export Assistance Center, Gene Snyder Courthouse Building, 601 West Broadway, Room 634B, Louisville, Kentucky 40402.

Dated: April 8 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–9206 Filed 4–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: The Director of the National Institute of Standards and Technology announces that the National Construction Safety Team Federal Advisory Committee will meet on April 29–30, 2003.

DATES: The meeting will convene April 29, 2003, at 9 a.m. and will adjourn at noon on April 30, 2003. Members of the public wishing to attend the meeting must notify Steve Cauffman by c.o.b. Friday, April 25, 2003, per instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephen Cauffman, National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, MS 8610, Gaithersburg, Maryland 20899–8610, telephone number (301) 975–6051, fax (301) 975–6122, or via e-mail at *stephen.cauffman@nist.gov*.

SUPPLEMENTARY INFORMATION: In accordance with the requirements of the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Construction Safety Team (NCST) Advisory Committee (Committee), National Institute of Standards and Technology (NIST), will meet Tuesday, April 29, 2003, from 9 a.m. to 5 p.m. and Wednesday, April 30, 2003, from 8:30 a.m. to noon at NIST headquarters in Gaithersburg, Maryland.

The Committee was established pursuant to section 11 of the National Construction Safety Team Act (15 U.S.C. 7310). The Committee is composed of eight members appointed by the Director of NIST who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting teams established under the NCST Act. Two additional members may be appointed at a later date. The Committee will advise the Director of NIST on carrying out investigations of building failures conducted under the authorities of the NCST Act that became law in October 2002 and will review the procedures developed to implement the NCST Act and reports issued under section 8 of the NCST Act.

The purpose of this meeting is to brief the Committee on the objectives and duties of the Committee as well as to provide an update on the two major investigations that NIST is currently conducting under the Act. The agenda will include briefings and discussions on the National Construction Safety Team Act, the World Trade Center Investigation, the Rhode Island Nightclub Fire Investigation, and National Construction Safety Team implementation.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs, the WTC Investigation, the Rhode Island Nightclub Investigation, and NCST Implementation are invited to request a place on the agenda. Approximately one hour will be reserved for public comments, and speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be 5 minutes each. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the NCST Advisory Committee. Questions from the public will not be considered during this period.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on April 10, 2003, that portions of the meeting of the National Construction Safety Team Advisory Committee that involve discussions regarding the proprietary information and trade secrets of third parties, data and documents that may also be used in criinal cases or lawsuits, matters the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action , and data collection status and the issuance of subpoenas may be closed in accordance with 5 U.S.C. 552b(c)(4), (5), (9)(B), and (10), respectively. The closed portion of the meeting is scheduled to begin at 8:30 a.m. and to end at noon on April 30, 2003. All other portions of the meeting will be open to the public. The agenda may change to accommodate Committee business. The final agenda will be posted on the Web site *(http://www.ncstadvcom.gov)*.

All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register by c.o.b. Friday, April 25, 2003, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Stephen Cauffman, and he will provide you with instructions for admittance. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Mr. Cauffman's e-mail address is *stephen.cauffman@nist.gov* and his phone number is (301) 975–6051.

Dated: April 11, 2003.
Karen H. Brown,
Deputy Director.
[FR Doc. 03–9346 Filed 4–11–03; 2:36 p.m.]
BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. U.S. Patent No. 5,400,422 entitled "Technique to Prepare High-Reflectance Optical Fiber Bragg Gratings with Single Exposure In-Line or Fiber Draw Tower", Navy Case No. 74,431.

ADDRESSES: Requests for copies of the patent cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404)
Dated: April 8, 2003.
R.E. Vincent II,
Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.
[FR Doc. 03–9130 Filed 4–14–03; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention; Available for Licensing

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Navy Case No. 84,612 entitled "Tunable, ELINT Receiver".

ADDRESSES: Requests for information about the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)
Dated: April 8, 2003.
R.E. Vincent II,
Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.
[FR Doc. 03–9132 Filed 4–14–03; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Second Sight, LLC

AGENCY: Department of the Navy, DOD.
ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Second Sight, LLC, a revocable, nonassignable, exclusive license to practice in the United States and certain foreign countries, the Government-owned inventions described below:

U.S. Patent No. 5,264,722 (Navy Case No. 74,224) issued November 23, 1993, entitled "Nanochannel Glass Matrix Used in Making Mesoscopic Structures"; U.S. Patent No. 6,185,961 (Navy Case No. 78,923) issued February 13, 2001, entitled "Nanopost Arrays and Process for Making Same"; U.S. Patent No. 6,393,327 (Navy Case No. 82,449) issued May 21, 2002, entitled "Microelectronic Stimulator Array"; U.S. Patent Application Serial No. 10/061,413 (Navy Case No. 83,682; divisional of U.S. Patent No. 6,393,327) filed February 4, 2002, entitled "Microelectronic Stimulator Array"; U.S. Patent Application Serial No. 10/123,406 (Navy Case No. 83,839; divisional of U.S. Patent No. 6,393,327) filed April 17, 2002, entitled "A Permanent Retinal Implant Device"; and Navy Case No. 83,713 disclosed February 22, 2002, entitled "Fabrication of Microelectrode Array Having High Aspect Ratio Microwires". The proposed field of use may be limited to retinal implants for improved vision.

DATES: Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than April 30, 2003.

ADDRESSES: Written objections are to be filed with the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D. Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW., Washington, DC 20375–5320, telephone (202) 767–7230. Due to U.S. Postal delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(Authority: 35 U.S.C. 207, 37 CFR part 404.)
Dated: April 8, 2003.
R.E. Vincent II,
Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.
[FR Doc. 03–9131 Filed 4–14–03; 8:45 am]
BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 15, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Acting Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 9, 2003.
John D. Tressler,
Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Revision.
Title: Indian Education Discretionary Grant Applications.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 100.
Burden Hours: 5,840.
Abstract: Application for funding for Indian Education discretionary programs of Demonstration Grants for Indian Children and Professional Development. The information is used to determine applicant eligibility and amount of awards for projects selected for funding.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2198. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at (703) 620–3655 or via her e-mail address *Katrina Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–9122 Filed 4–14–03; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory

Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).
ACTION: Notice of availability of a financial assistance solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–03NT41779 entitled Underground Gas Storage Technology Consortium. The DOE Gas Storage Program supports the Strategic Center for Natural Gas' 2020 Vision of the U.S. public enjoying benefits (affordable supply, reliable delivery, and environmental protection) from increased use of natural gas. A solicitation for this program is included in the current NETL procurement plan for release in FY 2003. The general purpose of the Natural Gas Storage Program is to develop advanced technologies to enhance operational flexibility and deliverability of the nation's gas storage system, and provide a cost-effective, safe, and reliable supply of natural gas to meet demand in new and expanded market regions.

The purpose of this solicitation is to select an organization qualified to establish, solicit membership, and operate an Underground Gas Storage Technology Consortium that will foster broad industry interest and support for the development of cost-effective technologies to increase both the deliverability and injectability of the natural gas storage system, including conventional underground depleted oil and gas reservoirs, aquifer storage reservoirs, and salt cavern storage. Storage wells/fields often suffer a decline in productivity after several years of production and injection cycling. Current revitalization techniques usually provide only limited, temporary delivery restoration. Research supported by the consortium will focus on technologies to limit and remediate the progressive damage caused by the repeated injection and withdrawal of gas in existing and future facilities, as well as innovative reservoir development and management techniques that can maximize performance. It is anticipated that the Underground Gas Storage Technology Consortium will be gas storage industry driven and will emphasize the creation of a balanced research portfolio of practical solutions, short-term projects, and basic research to improve the performance of the Nation's gas storage infrastructure.

DATES: The solicitation will be available on the "Industry Interactive Procurement System" (IIPS) Web page located at *http://e-center.doe.gov* on or about April 4, 2003. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Peter E. Grandillo, Contract Specialist, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, 626 Cochrans Mill Road, Pittsburgh, PA 15236–0940, E-mail Address: *Peter.Grandillo@NETL.DOE.GOV,* Telephone Number: (412) 386–4997.

SUPPLEMENTARY INFORMATION: DOE/NETL intends to select for award a single applicant to establish an Underground Gas Storage Technology Consortium to conduct deliverability enhancement and innovative reservoir development and management research. DOE anticipates that there will be broad participation from industry, academia, small business, and research and development organizations in the consortium.

The agreement to establish and operate the consortium is expected to last 4½ years. The first budget period will be 18 months to allow creation of the consortium structure, solicit membership and establish an executive panel of industry experts, refine a technical approach for deliverability enhancement and reservoir management research, and select and award the first round of research projects. The initial

18-month budget period will be followed by 3 one-year budget periods. Depending on the structure and membership requirements for the consortium, special provisions may have to be made for smaller companies and academia participants. The executive panel of experts established from the membership of the consortium and DOE shall rate and prioritize potential projects. This panel must be impartial and must rotate membership on a predetermined schedule. Some panel members can be from academia, however, the makeup of the panel should be such that industry is the driver.

DOE will maintain final authority in consortium project selection. No more than 10% of DOE funding provided to the consortium may be used for operating the consortium. However, any monetary requirements for membership will be maintained by the applicant for consortium operations. The consortium should select projects on an annual basis and no project should last more than two years without competing for additional funds.

A cost-sharing cooperative agreement award is anticipated that will include substantial involvement between the DOE and the Recipient, including involvement in the technical and business management aspects of the consortium, and sharing of the responsibility for the technical direction of the consortium. The DOE will participate in establishing and approving a work plan, which will identify essential and significant milestones necessary for effective implementation of the deliverability enhancement and reservoir management goals of the consortium. This work plan will be used to determine whether or not to proceed with subsequent budget periods.

This particular program is covered by section 3001 and 3002 of the Energy Policy Act (EPAct), 42 U.S.C. 13542 for financial assistance awards. The proposed calculation of the anticipated cost-sharing as a percentage of award value for projects funded through the Gas Storage Consortium is 30%. It is anticipated that $3,000,000 in federal funding will be available. However, not all of the necessary funds are currently available for this solicitation. The Government's obligation under any cooperative agreement awarded is contingent upon the availability of future appropriations.

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS; no hard (paper) copies of the solicitation and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA, on April 4, 2003.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 03–9202 Filed 4–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy, (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Thursday, May 1, 2003, 6 p.m. to 9:30 p.m.

ADDRESSES: Jefferson County Airport, Terminal Building, Mount Evans Room, 11755 Airport Way, Broomfield, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Presentation and update on draft Long-Term Stewardship Strategy for Rocky Flats.
2. Follow-up discussion on Building 776 demolition strategy and revision to Decommissioning Operations Plan.
3. Draft letter of recommendation regarding deer organ testing.
4. Discussion about future of the Board and its Wildlife Refuge Technical Review Group.
5. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the Office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303)420–7855. Hours of operations for the Public Reading Room are 8:30 a.m. to 4:30 p.m., Monday—Friday, except Federal holidays. Minutes will also be made available by writing or calling Deborah French at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC, on April 10, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–9200 Filed 4–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq*).

DATES: Comments must be filed by May 15, 2003. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Bryon Allen, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX (202–395–7285) or e-mail (*BAllen@omb.eop.gov*) is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–3087. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (*i.e.*, the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (*i.e.*, new, revision, extension, or reinstatement); (5) response obligation (*i.e.*, mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. EIA–871 A/I, "Commercial Building Energy Consumption Survey"
2. Energy Information Administration
3. OMB Number 1905–0145
4. Reinstatement, with change, of a previously approved collection for which approval has expired.
5. Voluntary (buildings) Mandatory (energy suppliers)
6. The EIA–871 A/I is used to collect data on energy consumption by commercial buildings and the characteristics of these buildings. The surveys fulfill planning, analyses and decision-making needs of DOE, other Federal agencies, State governments, and the private sector. Respondents are owners/managers of selected commercial buildings and their energy suppliers.
7. Business or other for-profit.
8. 2,666 hours (1.27 hours per response × .33 response per year × 6300 respondents).

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) (44 U.S.C. 3501 *et seq.*).

Issued in Washington, DC, April 9, 2003.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 03–9201 Filed 4–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1259–001, et al.]

Louisiana Generating LLC, et al.; Electric Rate and Corporate Filings

April 7, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Louisiana Generating LLC

[Docket No. ER00–1259–001]

Take notice that on April 1, 2003, Louisiana Generating LLC tendered for filing its triennial review in compliance with the Commission's Order in AmerGen Vermont LLC, Docket No. ER00–1030–000, 90 ¶ 61,307.

Comment Date: April 22, 2003.

2. Wisconsin Power & Light Company

[Docket No. ER02–977–002]

Take notice that on April 1, 2003, Wisconsin Power & Light Company tendered for filing a Refund Report in response to the Commission's Order dated January 16, 2003 in Docket No. ER02–977–000.

Wisconsin Power & Light Company states that a copy of this filing has been served upon the service list, including designated representatives of all affected customers, and the Public Service Commission of Wisconsin.

Comment Date: April 22, 2003.

3. ISO New England Inc.

[Docket No. ER02–2153–003]

Take notice that on April 1, 2003, ISO New England Inc. (ISO) submitted a compliance report in this proceeding.

ISO states that copies of said filing have been served upon all parties to this proceeding and the New England utility regulatory agencies, and electronically upon the New England Power Pool participants.

Comment Date: April 22, 2003.

4. Cleco Power LLC

[Docket No. ER03–685–000]

Take notice that on April 1, 2003, Cleco Power LLC tendered for filing a First Revised Service Agreement No. 66, under FERC Electric Tariff Original Volume No. 1. Cleco Power LLC states that the revisions reflect an assignment of customer obligations from Cleco Midstream Resources LLC to Columbian Chemicals Company as provided for in Section 12.2 of the Original Service Agreement No. 66, under FERC Electric Tariff Original Volume No. 1.

Comment Date: April 22, 2003.

5. Duquesne Light Company

[Docket No. ER03–686–000]

Take notice that on April 1, 2003, Duquesne Light Company (DLC) filed a Service Agreement with Rainbow Energy Marketing Corporation under DLC's Open Access Transmission Tariff (Tariff). DLC states that the Service Agreement adds Rainbow Energy Marketing Corporation as a customer under the Tariff. DLC requests an effective date of April 1, 2003 for the Service Agreement.

Comment Date: April 22, 2003.

6. PacifiCorp

[Docket No. ER03–687–000]

Take notice that on April 1, 2003, PacifiCorp, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Long Term Service Agreement No. 37 under PacifiCorp's FERC Electric Tariff Third Revised Volume Number 12 as amended by letter agreement dated March 7, 2003.

PacificCorp states that copies of this filing were supplied to the Public Utility Commission of Oregon, Washington Utilities and Transportation Commission, Wyoming Public Service Commission, Bonneville Power Administration and Eugene Water & Electric Board.

Comment Date: April 22, 2003.

7. WPS Canada Generation, Inc.

[Docket No. ER03–689–000]

Take notice that on April 1, 2003, WPS Canada Generation, Inc. (WPS Canada), filed rate schedules for its Reactive Supply and Voltage Control from Generation Sources Services (Reactive Power Service) in order to obtain compensation for the Reactive Power Service that it provides to Maine Public Service Company (MPS) and the Northern Maine Independent System Administrator, Inc. to maintain the reliability of the MPS transmission system.

WPS Canada states that copies of the filing were served upon Maine Public Service Company, the Northern Maine Independent System Administrator, Inc., the Houlton Water Company, Eastern Maine Electric Cooperative, and Van Buren Light and Power District.

Comment Date: April 22, 2003.

8. Minnesota Power

[Docket No. ER03–691–000]

Take notice that on April 1, 2003, Minnesota Power tendered for filing an executed letter agreement dated February 26, 2003 amending and updating the pricing terms and conditions of the Network Integration Transmission Service Agreement between Minnesota Power and Great River Energy (GRE) under Minnesota Power's open access transmission tariff (OATT), Service Agreement No. 65 Transmission under FERC Electric Tariff, First Revised Volume No. 6, effective March 1, 2003.

Comment Date: April 22, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9233 Filed 4–14–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0013; FRL–7300–5]

Request for Contractor Access to TSCA Confidential Business Information; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C 3501 *et seq.*) EPA is seeking public comment on the following Information Collection Request (ICR): Request for Contractor Access to TSCA Confidential Business Information (EPA ICR No. 1250.07, OMB Control No. 2070–0075). This ICR involves a collection activity that is currently approved and scheduled to expire on February 29, 2004. The information collection involves company and individual employee information provided by EPA contractor companies for those employees needing Toxic Substances Control Act (TSCA) confidential business information (CBI) clearance in order to perform their duties. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2003–0013, must be received on or before June 16, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Sandra Wilkins, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8952; fax number: (202) 564–8955; e-mail address: *wilkins.sandra@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a company under contract to EPA to provide certain services, and your employees must have access to TSCA CBI in the performance of their duties. Potentially affected entities may include, but are not limited to:

- Information services (NAICS 514), e.g., Information search services.
- Administrative and support services (NAICS 561), *e.g.*, Office administrative services.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0013. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2003–0013. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0013. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0013. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket

or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: Request for Contractor Access to TSCA Confidential Business Information.

ICR numbers: EPA ICR No. 1250.07, OMB Control No. 2070–0075.

ICR status: This ICR is currently scheduled to expire on February 29, 2004. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: Certain employees of companies working under contract to EPA require access to CBI collected under the authority of TSCA in order to perform their official duties. The Office of Pollution Prevention and Toxics (OPPT), which is responsible for maintaining the security of TSCA CBI, requires that all individuals desiring access to TSCA CBI obtain and annually renew official clearance to TSCA CBI. As part of the process for obtaining TSCA CBI clearance, OPPT requires certain information about the contracting company and about each contractor employee requesting TSCA CBI clearance. This includes primarily the name, Social Security number and EPA identification badge number of the employee, the type of TSCA CBI clearance requested and the justification for such clearance, and the signature of the employee to an agreement with respect to access to and use of TSCA CBI.

Responses to the collection of information are voluntary, but failure to provide the requested information will prevent a contractor employee from obtaining clearance to TSCA CBI. EPA will observe strict confidentiality precautions with respect to the information collected on individual employees, based on the Privacy Act of 1974, as outlined in the ICR and in the collection instrument.

III. What Are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 1.6 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 19.

Estimated total number of potential respondents: Unknown.

Frequency of response: One time only per individual employee needing TSCA CBI clearance.

Estimated total/average number of responses for each respondent: 14.

Estimated total annual burden hours: 428 hours.

Estimated total annual burden costs: $15,736.

IV. Are There Changes in the Estimates From the Last Approval?

There is a decrease of 247 hours (from 675 hours to 428 hours) in the total estimated respondent burden compared with that identified in the ICR most recently approved by OMB. This change results from a lesser number of contractor companies with employees needing TSCA CBI clearance.

V. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: April 1, 2003.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–9211 Filed 4–14–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7483–2]

Compliance Assistance Centers; Request for Suggestions on Candidates for Compliance Assistance Center Development in FY 2004

AGENCY: Environmental Protection Agency.

ACTION: Solicitation for suggestions.

SUMMARY: In partnership with industry, academic institutions, environmental groups, and other agencies, the Environmental Protection Agency (EPA) supports thirteen Compliance Assistance Centers (Centers) to help small- and medium-size businesses and local governments better understand and comply with environmental regulations. These Centers provide easy to understand compliance information targeted to specific sectors, geographic and environmental topics: agriculture; automotive service and repair; automotive recycling, chemical manufacturers; construction; federal facilities; local governments, metal finishing; paints and coatings; printed wiring board manufacturers; printers; transportation; and the U.S. / Mexican border environmental issues. All Centers can be accessed at *http://www.assistancecneters.net.*

EPA would like to expand the Center program to support other sectors, geographical areas or topical issues.

To support new Center development, EPA has funded the National Center for Manufacturing Sciences (NCMS) to develop, operate and maintain the Compliance Assistance Center Platform (Platform) from which new Centers can be "launched." The Platform includes a suite of comprehensive web-based tools necessary to create a full-featured Center. States, industry, and compliance assistance providers can work with NCMS to establish Centers that will help the regulated community better understand and more efficiently comply with environmental requirements. The Centers for the construction sector, automotive recycling sector and U.S. / Mexican border environmental issues have been developed in partnership with NCMS and the Platform. Visit *http://www.envcap.org* to access Platform resources.

EPA is exploring new sector, geographical, or topical candidates for Center development in FY 2004. Center candidates will be evaluated initially against the following criteria: impact on health and the environment; patterns of noncompliance; assessment that compliance assistance is an appropriate "tool" to use; predominately involves or affects small businesses; the problem or issue is prevalent nationally; impact of new environmental regulations; subject to multiple environmental statutes/ regulations; and not currently supported by an existing compliance assistance program. Once these threshold criteria have been met, an additional criteria will be applied: willingness of a sector or third-party organization to partner with EPA.

EPA invites feedback from interested parties on candidates for Center development. The above criteria should be considered in your evaluation of sector, geographic, or topical candidates. EPA anticipates selecting the sectors, topics or geographic areas for which new Centers will be developed in July, 2003. Pursuant to EPA's Grants Competition Policy that went into effect October 1, 2002, EPA will compete any assistance agreement that will be provided to support new Center development in FY 2004.

Interested parties should communicate their suggestions regarding new sectors, geographical areas or topical issues for Center development to EPA by letter or e-mail to the contact listed below.

DATES: Contact by May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Tracy Back, Team Leader, Compliance Assistance Centers, US, EPA (mail code 2224A), 1200 Pennsylvania Ave., NW., Washington, DC 20460, E-mail: *back.tracy@epa.gov.* Telephone: 202–564–7076, Fax: 202–564–0009.

Dated: April 3, 2003.

Lisa C. Lund,

Acting Director, Office of Compliance.

[FR Doc. 03–9209 Filed 4–14–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2604]

Petition for Reconsideration of Action in Rulemaking Proceeding

April 9, 2003.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by April 30, 2003. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of the Telecommunications Relay Services and the Americans with Disabilities Act of 1990 (CC Docket No. 90–571).

Number of Petitions Filed: 1.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–9118 Filed 4–14–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Securities of Insured Nonmember Banks, (2) Fair Housing Lending

Monitoring System, (3) Public Disclosure by Banks; and (4) Procedures for Monitoring Bank Protection Act Compliance.

DATES: Comments must be submitted on or before June 16, 2003.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Consumer and Compliance Unit), (202) 898–7453, Legal Division, Room MB–3109, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [Internet address: *comments@fdic.gov*].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Securities of Insured Nonmember Banks.
OMB Number: 3064–0030.
Form Number: F–7, F–8, and F–8A.
Frequency of Response: Annually.
Affected Public: Officers, directors and shareholders from FDIC-supervised banks.
Estimated Number of Respondents: 1,755.
Number of Responses per Respondent: 1.35.
Estimated Time per Response: 0.62 hours.
Total Annual Burden: 1,470 hours.
General Description of Collection: The information is collected from FDIC-supervised banks and from officers, directors and shareholders subject to the securities registration requirements of the Securities Exchange Act of 1934, as amended. The information is considered necessary for actual and potential investors making investment decisions concerning securities issued by reporting banks.

2. *Title:* Fair Housing Lending Monitoring System.
OMB Number: 3064–0046.
Frequency of Response: Annually.
Affected Public: Insured state nonmember banks.
Estimated Number of Respondents: 2,000.
Estimated Annual Number of Loan Applications: 1,000,000.
Estimated Time per Response: 5 minutes.
Total Annual Burden: 83,333 hours.
General Description of Collection: In order to permit the FDIC to detect discrimination in residential mortgage lending, certain insured state nonmember banks are required by FDIC regulation 12 CFR 338 to maintain various data on home loan applicants.

3. *Title:* Public Disclosure by Banks.
OMB Number: 3064–0090.
Frequency of Response: Annually.
Affected Public: All financial institutions.
Estimated Number of Respondents: 5,500.
Estimated Time per Response: 0.5 hours.
Total Annual Burden: 2,750 hours.
General Description of Collection: 12 CFR 350 requires a bank to notify the general public, and in some instances, shareholders, that disclosure statements are available upon request. Required disclosures consist of financial reports for the current and preceding year which can be copied directly from the year-end Call Report.

4. *Title:* Procedures for Monitoring Bank Protection Act Compliance.
OMB Number: 3064–0095.
Frequency of Response: Annually.
Affected Public: All financial institutions.
Estimated Number of Respondents: 5,500.
Estimated Time per Response: ½ hour.
Total Annual Burden: 2,750 hours.
General Description of Collection: The collection requires insured state nonmember banks to comply with the Bank Protection Act and to review bank security programs.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 9th day of April, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–9207 Filed 4–14–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011642–006.
Title: East Coast United States/East Coast South America Vessel Sharing Agreement.
Parties: A.P. Moller-Maersk Sealand, Alianca Navegacao e Logistica Ltda, Companhia Libra de Navegacao, Compania Sud-Americana de Vapores, S.A., Hamburg-Südamerikanische Dampfschifffahrtsgesellschaft KG, Oceanica AGW Com. e Rep. Ltda, P&O Nedlloyd B.V., P&O Nedlloyd Limited, Safmarine Container Lines NV.
Synopsis: The amendment provides for an additional vessel string and revises the space allocations under the agreement. The parties requested expedited review.

Agreement No.: 011814–001.
Title: CAT/King Ocean Space Charter Agreement.
Parties: King Ocean Services Limited, King Ocean Service de Venezuela, S.A., Hamburg-Südamerikanische Dampfschifffahrtsgesellschaft KG d/b/a Crowley American Transport.
Synopsis: The amendment adds the Dominican Republic to the geographic scope of the agreement and allows Hamburg-Süd to sub-charter space to Maersk Sealand under a separate agreement.

Agreement No.: 011841–001.

Title: Lykes/Libra Slot Charter Agreement.
Parties: Companhia Libra de Navegacao, Lykes Lines Limited, LLC.
Synopsis: The subject agreement modification deletes from Article 5.1(a)(ii) the restrictions on the use of space by Libra to move cargo to/from ports in the Dominican Republic and Venezuela. Consequently, these countries are being added to the geographic scope. The modification also clarifies that the agreement is intended to cover the trade between the U.S. and Mexico. The parties request expedited review.

Agreement No.: 011849.
Title: CAT/Maersk Sealand Space Charter Agreement.
Parties: Hamburg-Süd d/b/a Crowley American Transport, A.P. Moller Maersk Sealand.
Synopsis: The agreement authorizes Hamburg-Süd to charter space to Maersk Sealand in the trade between Atlantic Coast ports of Florida and ports in Aruba, Bonaire, Curacao, the Dominican Republic, Colombia, and Venezuela.

Agreement No.: 201101–003.
Title: Tampa/Tampa Bay Wharfage Incentive Terminal Agreement.
Parties: Tampa Port Authority, Tampa Bay International Terminals.
Synopsis: This amendment revises the wharfage incentives provided under the agreement.

By Order of the Federal Maritime Commission.

Dated: April 10, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–9214 Filed 4–14–03; 8:45 am]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0228]

Office of Civil Rights; Nondiscrimination in Federal Financial Assistance Programs

AGENCY: Office of Civil Rights, GSA.

ACTION: Notice of reinstatement and request for public comments of OMB clearance number 3090–0228.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve an information collection regarding nondiscrimination in Federal financial assistance programs. A request for public comments was published at 67 FR 78806, December 26, 2002. No comments were received. This information is needed to facilitate nondiscrimination in GSA's Federal Financial Assistance Programs, consistent with Federal civil rights laws and regulations that apply to recipients of Federal financial assistance.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: May 15, 2003.

FOR FURTHER INFORMATION CONTACT: K. Evelyn Britton, Office of Civil Rights, (202) 501–4347.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Ms. Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Number 3090–0228.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration (GSA) has mission responsibilities related to monitoring and enforcing compliance with Federal civil rights laws and regulations that apply to Federal Financial Assistance programs administered by GSA. Specifically, those laws provide that no person on the ground of race, color, national origin, disability, sex or age shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program in connection with which Federal financial assistance is extended under laws administered in whole or in part by GSA. These mission responsibilities generate the requirement to request and obtain certain data from recipients of Federal surplus property for the purpose of determining compliance, such as the number of individuals, based on race and ethnic origin, of the recipient's eligible and actual serviced population; race and national origin of those denied participation in the recipient's program(s); non-English languages encountered by the recipient's program(s) and how the recipient is addressing meaningful access for individuals that are Limited English Proficient; whether there has been complaints or lawsuits filed against the recipient based on prohibited discrimination and whether there has been any findings; and whether the recipient's facilities are accessible to qualified individuals with disabilities.

B. Annual Reporting Burden

Respondents: 500.
Responses Per Respondent: 1.
Total Responses: 500.
Hours Per Response: 2.
Total Burden Hours: 1000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory and Federal Assistance Publications Division (MVA), 1800 F Street, NW., Room 4035, Washington, DC, 20405, telephone (202) 208–7312, or by faxing your request to (202) 501–4067. Please cite OMB Control No. 3090–0228, Nondiscrimination in Federal Financial Assistance Programs, in all correspondence.

Dated: April 7, 2003.

Michael W. Carleton,

Chief Information Officer.

[FR Doc. 03–9107 Filed 4–14–03; 8:45 am]

BILLING CODE 6820–34–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; Republication of a System of Records Notice

AGENCY: General Services Administration.

ACTION: Notice of an updated system of records subject to the Privacy Act of 1974.

SUMMARY: The General Services Administration (GSA) is updating and republishing a notice for the existing system of records, Personnel Information Resources System (PIRS), GSA/PPFM–8, which is being renamed the Comprehensive Human Resources Integrated System (CHRIS) and updated to reflect organizational and address changes and upgraded automated processes. The revisions are minor in nature and do not meet the criteria of the Office of Management and Budget (OMB) for a revised system of records requiring an advance period for public comment as described in OMB Circular A–130, Appendix 1.

DATES: The notice is effective April 15, 2003.

FOR FURTHER INFORMATION CONTACT: The GSA Privacy Act Officer. *Telephone:* (202) 501–1452. Address: Office of the Chief People Officer (C), General Services Administration, 1800 F Street NW., Washington DC 20405.

Dated: April 2, 2003.

Daniel K. Cooper,

Director, Information, Management Division.

GSA/PPFM–8

SYSTEM NAME:

Comprehensive Human Resources Integrated System (CHRIS).

SYSTEM LOCATION:

The record system is located on a web-based application used by GSA Services and Staff Offices, commissions, and small agencies serviced by GSA, at the addresses below:

- GSA Central Office, 1800 F Street NW, Washington DC 20405.
- National Capital Region, 7th & D Streets SW, Washington, DC 20407.
- New England Region, 10 Causeway Street, Boston MA 02222.
- Northeast and Caribbean Region, 26 Federal Plaza, New York NY 10278.
- Mid-Atlantic Region, 20 N. Eighth Street, Philadelphia PA 19107.
- Southeast Sunbelt Region, 401 West Peachtree Street, Atlanta GA 30365.
- Great Lakes Region, 230 South Dearborn Street, Chicago IL 60604.
- The Heartland Region, 1500 East Bannister Road, Kansas City MO 64131.
- Greater Southwest Region, 819 Taylor Street, Fort Worth TX 76102.
- Pacific Rim Region, 450 Golden Gate Avenue, San Francisco CA 95102.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees of GSA and of commissions, committees, and small agencies serviced by GSA, including persons in intern, youth employment, and work-study programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains personnel records. The records include information collected by operating officials and personnel officials administering programs for or about employees. The system has data needed to update the Central Personnel Data File (CPDF) at the Office of Personnel Management (OPM) and to process and document personnel actions. It may include, but is not limited to, the data maintained in each employee's Official Personnel Folder, including:

a. Employee's name, Social Security Number, date of birth, gender, work schedule, type of appointment, education, veteran's preference, military service, and race or national origin.

b. Employee's service computation date for leave, date probationary period began, and date of performance rating.

c. Pay data such as pay plan, occupational series, grade, step, salary, and organizational location.

d. Performance rating and types and amounts of awards.

e. Position description number, special employment program, and target occupational series and grade.

AUTHORITY FOR MAINTAINING THE SYSTEM:

5 U.S.C., pt. III, is the authority for maintaining personnel information. Authorities for recording Social Security Numbers are E.O. 9397, 26 CFR 31.6011(b)2, and 26 CFR 31.6109–1.

PURPOSE(S):

To maintain a computer-based information system supporting the day-to-day operating needs of human resources operations and management. The system is designed to meet information and statistical needs of all types of Government organizations and provides a number of outputs.

For the Office of the Chief People Officer, the system produces personnel actions, organization rosters, retention registers, retirement calculations, reports of Federal civilian employment, employee master record printouts, length-of-service lists, award lists, etc. It also provides reports for monitoring personnel actions to determine the impact of GSA policies and practices on minorities, women, and disabled persons and analyzing their status in the work force; and for establishing affirmative action goals and timetables.

The system also provides management data for administrative and staff offices.

ROUTINE USES OF THE RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The information in the system is used by GSA associates in the performance of their official duties as authorized by law and regulation and for the following routine uses:

a. To disclose information to the Office of Personnel Management (OPM) for the Central Personnel Data File (CPDF).

b. To disclose information to sources outside GSA including other agencies and persons for employees seeking employment elsewhere; and for documenting adverse actions, conducting counseling sessions, and preparing biographical sketches on employees for release to other agencies and persons.

c. To disclose information in the personnel file to GSA's Office of the Chief People Officer.

d. To disclose information to agency staff and administrative offices who may restructure the data for management purposes.

e. To disclose information to a Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or carrying out a statute, rule, regulation, or order, where GSA becomes aware of a violation or potential violation of civil or criminal law or regulation.

f. To disclose information to a requesting Federal agency in connection with hiring or retaining an employee, issuing a security clearance, reporting an employee investigation, clarifying a job, letting a contract, or issuing a license, grant, or other benefit by the requesting agency where the information is needed for a decision.

g. To disclose information to a congressional office in response to a request from the person who is the subject of the record.

h. To disclose information to the Office of Management and Budget for reviewing private relief legislation during the clearance process.

i. To disclose information to OPM under the agency's responsibility for evaluating Federal personnel management.

j. To disclose information under the routine uses listed in the OPM record system OPM/GOVT–1. When official personnel records in the custody of GSA are covered in a system of records published by OPM as Governmentwide records, they are considered part of that system. Other official personnel records covered by notices published by GSA are considered separate systems of records and may be transferred to OPM under official personnel programs and activities as a routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, REVIEWING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer records are stored in a secure server and accessed over the web using encryption software. Paper records, when created, are kept in file folders and cabinets in secure rooms.

RETRIEVABILITY:

Records are retrieved by name or by Social Security Number.

SAFEGUARDS:

Computer records are protected by a password system. Paper output is stored in locked metal containprs or in secured rooms when not in use. Information is released to authorized officials based on their need to know.

RETENTION AND DISPOSAL:

Records are disposed of by shredding or burning as scheduled in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2).

SYSTEM MANAGER(S) AND ADDRESS:

CHRIS Program Manager (CID), Office of the Chief Information Officer, Office of the Chief People Officer, General Services Administration, 1800 F Street NW., Washington DC 20405.

NOTIFICATION PROCEDURE:

Address inquiries to: Director of Human Resources (CP), Office of the Chief People Officer, General Services Administration, 1800 F Street NW., Washington DC 20405; or, for regional personnel records, to the regional Human Resources Officer at the addresses listed above under System Location.

RECORDS ACCESS PROCEDURES:

Address requests to view or copy a record to one of the officials listed in the notification procedure above. For written requests, provide full name, Social Security Number, address, telephone number, and approximate date and place of employment.

CONTESTING RECORD PROCEDURES:

Rules for contesting the content of a record and appealing a decision are contained in 41 CFR 105–64.

RECORD SOURCE CATEGORIES:

The sources for the system information are the individuals themselves, other employees, supervisors, management officials, officials of other agencies, and record systems GSA/HRO–37, OPM/GOVT–1, and EEOC/GOVT–1.

[FR Doc. 03–9141 Filed 4–14–03; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–NEW–SCHIP]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary, Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection.

Title of Information Collection: Survey of SCHIP State Administrators.

Form/OMB No.: OS–0990–NEW–SCHIP.

Use: The Survey of SCHIP Administrators will provide information about the broader context in which state programs operate, including the political and social context, policy discussions, lessons learned, and key issues facing the program in the next one or two years. This survey will complement our case studies of 10 states.

Frequency: One Time.

Affected Public: State, Local or Tribal Governments.

Annual Number of Respondents: 56.

Total Annual Responses: 56.

Average Burden Per Response: 59 minutes.

Total Annual Hours: 3,320.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, or E-mail your request, including your address, phone number, OS document identifier, to *John.Burke@hhs.gov*, or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, *Attention:* Allison Eydt (OMB #0990–NEW–SCHIP), New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 7, 2003.

John P. Burke III,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary, Department of Health and Human Services.

[FR Doc. 03–9113 Filed 4–14–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–0238]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Patient Follow-up Survey for the Multi-Site Evaluation of the Welfare-to-Work Grant Program.

Form/OMB No.: OS–0990–0238.

Use: This data collection will support the Office of the Assistant Secretary for Planning and Evaluation in its efforts to further document the status of Welfare-to-Work formula and competitive grantees and provide information on implementation issues as part of the Congressionally mandated evaluation of the Welfare-to-Work grants program.

Frequency: On occasion.

Affected Public: Individuals, State, Local or Tribal Governments, Non-profit Insitutions.

Annual Number of Respondents: 4,164.

Total Annual Responses: 4,164.

Average Burden Per Response: 27 minutes.

Total Annual Hours: 1,879.

2. *Type of Information Collection Request:* New Collection.

Title of Information Collection: National Community Centers of Excellence (CCOE) in Women's Health Evaluation: Survey for CCOE Center Directors, Program Coordinators, and Patients.

Form/OMB No.: OS–0990–OWH–NEW.

Use: This survey will assess the ability of community-based organizations to provide comprehensive, integrated, holistic care to underserved women employing a network of community partners and to assess patient satisfaction with the care received. Results will be used to determine if the CCOE program will be continued and if so, with what modifications. The effort employs four collection instruments, which include; (1) CCOE Center Director and Program Coordinator Survey, (2) CCOE Community Partner Survey, (3) CCOE Patient Survey, and (4) CCOE Site Visit. The numbers referenced below are in aggregate. See the associated supporting statement for individualized burden calculations.

Frequency: One-time.

Affected Public: Individuals and households, Businesses or other for-profit, not-for-profit institutions.

Annual Number of Respondents: 6,210.

Total Annual Responses: 6,210.

Average Burden per Response: 17 minutes.

Total Annual Hours: 1,711.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OS document identifier, to *John.Burke@hhs.gov*, or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address: Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: John Burke (0990–0238), Room 531–H, 200 Independence Avenue, SW., Washington DC 20201.

Dated: April 7, 2003.

John P. Burke III,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 03–9114 Filed 4–14–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

Date: May 22–23, 2003 (Open from 8 a.m. to 8:15 a.m. on May 22 and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room, TBD, Rockville, Maryland 20852.

2. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: June 5–6, 2003 (Open from 8 a.m. to 8:15 a.m. on June 5 and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room, TBD, Rockville, Maryland 20852.

3. *Name of Subcommittee:* Health Systems Research.

Date: June 12–13, 2003 (Open from 8 a.m. to 8:15 a.m. on June 12 and closed for remainder of the meeting).

Place: Doubletree Hotel 1750 Rockville Pike, Conference Room, TDB, Rockville, Maryland 20852.

4. *Name of Subcommittee:* Health Research Dissemination and Implementation.

Date: June 16–17, 2003 (Open from 8 a.m. to 8:15 a.m. on June 16 and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room, TBD, Rockville, Maryland 20852.

5. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: June 19–20, 2003 (Open from 8 a.m. to 8:15 a.m. on June 19 and closed for remainder of the meeting).

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room, TBD, Rockville, Maryland 20852.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1846.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: April 3, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–9112 Filed 4–14–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The Advisory Committee to the Director, National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director, NCEH.

Times and Dates: 1:30 p.m.–5 p.m., May 8, 2003.

8:30 a.m.–3:30 p.m., May 9, 2003.

Place: Centers for Disease Control and Prevention, Chamblee Campus, 4770 Buford Highway NE., Building 102, Room 2201, Atlanta, GA 30341. In the interest of security, CDC has instituted stringent procedures for entrance onto the Chamblee Campus by non government employees. Persons without government identification will need to show a photo ID, sign in with Security, and be escorted to Building 102.

Status: Open to the public for observation, limited only by the space available. The meeting room accommodates approximately 70 people.

Purpose: The Secretary, and by delegation, the Director of the Centers for Disease Control and Prevention, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to (1) conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research,

investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and other impairments; (2) assist states and their political subdivisions in the prevention of infectious diseases and other preventable conditions and in the promotion of health and well being; and (3) train state and local personnel in health work.

Matters to be Discussed: The agenda items for the meeting will include, but are not limited to, an update and discussions on Healthy People 2010 and presentations from NCEH regarding current activities. Agenda items are tentative and subject to change.

For Further Information Contact: Individuals interested in attending the meeting should contact Kent Taylor, designated federal official, CDC, 4770 Buford Highway NE., MS F–29, Atlanta, Georgia 30341–3724; telephone 770–488–7020, fax 770–488–7024; e-mail: *ktaylor@cdc.gov*. The deadline for notification of attendance is May 1, 2003.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 8, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–9133 Filed 4–14–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Board on Radiation and Worker Health (ABRWH).

Time and Date: 3 p.m.–5 p.m., May 1, 2003.

Place: Teleconference call will originate at the Centers for Disease Control and Prevention, National Institute for Occupational Safety and Health (NIOSH), Atlanta, Georgia. Please see "Supplementary Information" for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by ports available.

Background: The Advisory Board on Radiation and Worker

Health ("the Board") was established under the Energy Employees Occupational Illness Compensation Program Act of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a Final Rule, providing advice on methods of dose reconstruction which have also been promulgated as a Final Rule, evaluating the scientific validity and quality of dose reconstructions conducted by NIOSH for qualified cancer claimants, and providing advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001, and in November 2001, the President completed the appointment of members to the Board to ensure a balanced representation on the Board. The initial tasks of the Board have been to review and provide advice on the proposed, interim, and final rules of HHS.

Purpose: This board is charged with a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: Agenda for this meeting will focus on the continuation of discussion regarding the Special Exposure Cohort Notice of Proposed Rule Making finalization of recommendations.

Agenda items are subject to change as priorities dictate.

Supplementary Information: This conference call is scheduled for 3 p.m. Eastern Time. To access the teleconference you must dial 1–800–713–1971. To be automatically connected to the call, you will need to provide the operator with the participant code 373956 and you will be connected to the call.

Contact Person For More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 8, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–9135 Filed 4–14–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health: Meeting

The National Institute for Occupational Safety and Health: (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Priorities, strategies and methods for long-term health monitoring of World Trade Center exposed rescue, recovery and restoration workers and volunteers.

Time and Date: 9:30 a.m.–4:30 p.m., May 2, 2003.

Place: New York Academy of Medicine, 1216 Fifth Avenue (corner of 103rd St.), NY, NY 10029, (212) 822–7200. Directions are available at *http://www.nyam.org/directions.shtml*.

Status: Open to the public, limited only by space available. Seating will be limited to approximately 75 people. Due to limited conference space, notification of intent to attend the meeting must be made with Ms. Lou Bagley at (513) 841–4336 or e-mail *lbagley@cdc.gov*. Requests to attend will be accommodated on a first come basis.

Purpose: To request public assistance in identifying the needs, issues, and priorities for providing long-term medical monitoring to emergency response personnel who responded to the September 11, 2001, terrorist attacks at the World Trade Center, and personnel who participated in the recovery and restoration efforts at the World Trade Center site or at the Staten Island Landfill.

Public Law 108–7 directs the Federal Emergency Management Agency (FEMA), now part of Emergency Preparedness and Response Directorate, Department of Homeland Security, to make available $90 million from funds appropriated to FEMA in Public Law 107–117 to administer baseline and follow-up screening, clinical examinations, long-term health monitoring and analysis for emergency services, rescue and recovery personnel who responded to the terrorist attacks in New York City. For such services, Public Law 108–7 further directs FEMA to make available not less than $25 million from this amount for current and retired New York City firefighters. FEMA will be providing the $90 million in appropriated funds to NIOSH to oversee the development and funding of this long-term medical monitoring program. NIOSH now is requesting input from the public in determining priorities for use of these funds.

Contact Persons for Additional Information: Sherry Baron, MD, MPH, NIOSH, CDC, 4676 Columbia Parkway, M/S R10, Cincinnati, OH 45226–1998, telephone (513) 458–7159, fax (513) 458–7105, e-mail *SBaron@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 8, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–9134 Filed 4–14–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10087, CMS–2384, CMS–10006]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Evaluation of the Illinois and Wisconsin State Pharmacy Assistance Waivers; *Form No.:* CMS–10087 (OMB# 0938–NEW); *Use:* CMS has implemented the Pharmacy Plus Initiative to grant waivers to states to provide pharmacy benefits to low-income elders with incomes too high to qualify for Medicaid. This study will evaluate the Pharmacy Plus programs initiated in the states of Illinois and Wisconsin using a variety of methods including a descriptive program evaluation, survey of participants, analyses of drug utilization and costs as well as the cost impact to the Medicare and Medicaid programs; *Frequency:* Other: one-time only; *Affected Public:* Individuals or Households; *Number of Respondents:* 2,200; *Total Annual Responses:* 2,200; *Total Annual Hours:* 550.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Third Party Premium Billing Request; *Form No.:* CMS–2384; *Use:* The Third Party Premium Billing Request is used as an authorization to designate that a family member or other interested party receive the Medicare Premium Bill and pay it on behalf of a Medicare beneficiary. *Frequency:* On occasion; *Affected Public:* Individuals or households; *Number of Respondents:* 15,000; *Total Annual Hours:* 6,250.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* TWWIIA Demonstration to Maintain Independence; *Form No.:* CMS–10006 (OMB# 0938–0799); *Use:* Section 204 of the Ticket to Work and Work Incentives Act provides for the establishment of grants for states that develop and implement demonstration programs designed to support working people with physical or mental impairments that without medical assistance will result in disability. State agencies will be applying for these grants; *Frequency:* Annually; *Affected Public:* State, Local, or Tribal government; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 5,600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room: C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 3, 2003.

Dawn Willinghan,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–9115 Filed 4–14–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–289]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Medicare Lifestyle Modification Program Demonstration and Addendum; *Form No.:* CMS–R–0289 (OMB# 0938–0777); *Use:* This demonstration will focus on Medicare sponsored, lifestyle modification programs designed to reverse, reduce, or ameliorate the progression of cardiovascular disease (CAD) of Medicare beneficiaries at risk for invasive treatment procedures. This demonstration will test the feasibility and cost effectiveness of providing payment for cardiovascular lifestyle modification program services to Medicare beneficiaries.; *Frequency:* On occasion, Weekly, Monthly, Quarterly; *Affected Public:* Individuals or Households, and Not-for-profit institutions; *Number of Respondents:* 44; *Total Annual Responses:* 17,996; *Total Annual Hours:* 2,999.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 3, 2003.

Dawn Willinghan,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–9116 Filed 4–14–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to State Developmental Disabilities Councils and Protection and Advocacy Formula Grant Programs for Fiscal Year 2004

AGENCY: Administration on Developmental Disabilities (ADD), Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of fiscal year 2004 federal allotments to state developmental disabilities councils and protection and advocacy formula grant programs.

SUMMARY: This notice sets forth Fiscal Year (FY) 2004 individual allotments and percentages of the total appropriation to States administering the State Developmental Disabilities Councils and Protection and Advocacy programs, pursuant to section 122 and section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The allotment amounts are based on the FY 2004 President's Budget request and are contingent on congressional appropriations for FY 2004. If the Congress enacts a different appropriation amount in FY 2004 or if a revised state allocation formula is adopted by the Congress, these allotments will be adjusted accordingly. The State allotments are available on the ADD homepage on the Internet: *http://www.acf.hhs.gov/programs/add/*.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Wade, Grants Fiscal Management Specialist, Office of Grants Management, Administration for Children and Families, telephone (202) 401–5798.

SUPPLEMENTARY INFORMATION: Section 122(a)(2) of the Act requires that adjustments in the amounts of State allotments shall be made not more often than annually and that States must be notified no less than six (6) months before the beginning of the fiscal year in which such adjustment is to take effect. The Catalog of Federal Domestic Assistance (CFDA) number is 93.630. In relation to the State Developmental Disabilities Council allotments, the descriptions of service needs were reviewed in the State plans and are consistent with the results obtained from the data elements and projected formula amounts for each State (Section 122(a)(5)).

The Administration on Developmental Disabilities has updated the following data elements for issuance of Fiscal Year 2004 allotments for both of the Developmental Disabilities formula grant programs.

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program are from Table 5.J10 of the "Annual Statistical Supplement, 2001, to the Social Security Bulletin" issued by the Social Security Administration;

B. State data on Average Per Capita Income are from Table B—Per Capita Personal Income, 1999–2001 of the "Survey of Current Business," October, 2002, issued by the Bureau of Economic Analysis, U.S. Department of Commerce. The most recent comparable data for the Territories were obtained from the Department of Commerce September 2002; and

C. State data on Total Population is based on "State Population Estimates: July 1, 2001" issued December 2002 by the Bureau of the Census, U.S. Department of Commerce. The Working Population (ages 18–64) is based on 2000 Census from the "Estimate of Resident Population of the U.S. by Selected Age Groups and Sex," issued by the Bureau of the Census. Total population estimates for the Territories are also based on 2000 Census data issued by the Bureau of Census. The Territories working population was issued in the Bureau of Census report, "General Characteristics Report: 1980," which is the most recent data available from the Bureau.

TABLE 1.—FY 2004 ALLOTMENTS ADMINISTRATION ON DEVELOPMENTAL DISABILITIES.

	Developmental disabilities councils	Percentage of total appropriation
Total	$69,800,000	100.000000
Alabama	1,269,365	1.818574
Alaska	450,000	.644699
Arizona	1,164,570	1.668438
Arkansas	785,444	1.125278
California	6,453,984	9.246401
Colorado	764,825	1.095738
Connecticut	631,308	0.904453
Delaware	450,000	.644699
District of Columbia	450,000	.644699
Florida	3,514,537	5.035153
Georgia	1,885,776	2.701685
Hawaii	450,000	.644699
Idaho	450,000	.644699
Illinois	2,598,821	3.723239
Indiana	1,472,042	2.108943
Iowa	729,871	1.045660
Kansas	604,303	.865764
Kentucky	1,170,815	1.677385
Louisiana	1,309,806	1.876513
Maine	463,067	.663420
Maryland	1,008,412	1.444716
Massachusetts	1,259,134	1.803917
Michigan	2,405,577	3.446385
Minnesota	1,016,504	1.456309
Mississippi	918,258	1.315556
Missouri	1,346,924	1.929691
Montana	450,000	.644699
Nebraska	450,000	.644699
Nevada	462,394	.662456
New Hampshire	450,000	.644699
New Jersey	1,547,765	2.217428
New Mexico	506.975	.726325
New York	3,962,119	5.676388
North Carolina	1,972,944	2.826567
North Dakota	450,000	.644699
Ohio	2,768,220	3.965931
Oklahoma	883,007	1.265053
Oregon	749,553	1.073858
Pennsylvania	2,924.521	4.189858
Rhode Island	450,000	.644699
South Carolina	1,110,474	1.590937
South Dakota	450,000	.644699
Tennessee	1,475,993	2.114603
Texas	4,516,842	6.471120
Utah	570,329	.817090

TABLE 1.—FY 2004 ALLOTMENTS ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Developmental disabilities councils	Percentage of total appropriation
Vermont	450,000	.644699
Virginia	1,496,132	2.143456
Washington	1,146,785	1.642958
West Virginia	646,191	.925775
Wisconsin	1,271,345	1.821411
Wyoming	450,000	.644699
American Samoa	234,348	.335742
Guam	234,348	.335742
Northern Mariana Islands	234,348	.335742
Puerto Rico	2,227,676	3.191513
Virgin Islands	234,348	.335742

TABLE 2.—FY 2004 ALLOTMENTS ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Protection & advocacy	Percentage of total appropriation
Total	[1] $34,300,000	100.000000
Alabama	565,733	1.649367
Alaska	345,429	1.007082
Arizona	525,992	1.533504
Arkansas	350,108	1.020723
California	2,877,721	8.389849
Colorado	378,623	1.103857
Connecticut	351,616	1.025120
Delaware	345,429	1.007082
District of Columbia	345,429	1.007082
Florida	1,566,984	4.568466
Georgia	840,683	2.450971
Hawaii	345,429	1.007082
Idaho	345,429	1.007082
Illinois	1,158,316	3.377015
Indiana	656,144	1.912956
Iowa	345,429	1.007082
Kansas	345,429	1.007082
Kentucky	521,777	1.521216
Louisiana	583,728	1.701831
Maine	345,429	1.007082
Maryland	449,533	1.310592
Massachusetts	561,046	1.635703
Michigan	1,072,003	3.125373
Minnesota	453,090	1.320962
Mississippi	409,250	1.193149
Missouri	600,365	1.750335
Montana	345,429	1.007082
Nebraska	345,429	1.007082
Nevada	345,429	1.007082
New Hampshire	345,429	1.007082
New Jersey	688,825	2.011152
New Mexico	345,429	1.007082
New York	1,765,521	5.147292
North Carolina	879,455	2.564009
North Dakota	345,429	1.007082
Ohio	1,233,704	3.596805
Oklahoma	393,667	1.147717
Oregon	357,565	1.042464
Pennsylvania	1,303,250	3.799563
Rhode Island	345,429	1.007082
South Carolina	494,963	1.443041
South Dakota	345,429	1.007082

TABLE 2.—FY 2004 ALLOTMENTS ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Protection & advocacy	Percentage of total appropriation
Tennessee	657,837	1.917892
Texas	2,014,073	5.871933
Utah	345,429	1.007082
Vermont	345,429	1.007082
Virginia	666,903	1.944324
Washington	511,307	1.490691
West Virginia	362,280	1.056210
Wisconsin	566,640	1.652012
Wyoming	345,429	1.007082
American Samoa	184,802	.538781
Guam	184,802	.538781
Northern Mariana Islands	184,802	.538781
Puerto Rico	993,137	2.895443
Virgin Islands	184,802	.538781
DNA People Services[2]	Legal 184,802	.538781

[1] In accordance with Public Law 106–402, Section 142(a)(6)(A), $700,000 has been withheld to fund technical assistance. The statute provides for spending up to two percent (2%) of the amount appropriated under Section 142 for this purpose. Unused funds will be reallotted in accordance with Section 122(e) of the Act.

[2] American Indian Consortiums are eligible to receive an allotment under Section 142(a)(6)(B) of the Act.

Dated: April 9, 2003.

Patricia A. Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 03–9155 Filed 4–14–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 02–03]

Family Violence Prevention and Services Program

AGENCY: Office of Community Services (OCS), Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Notice of the availability of funding to States, Native American tribes, and tribal organizations for Family Violence Prevention and Services.

SUMMARY: This announcement governs the proposed award of formula grants under the Family Violence Prevention and Services Act to States (including Territories and Insular Areas) and Native American tribes and tribal organizations. The purpose of these grants is to assist States and tribes in establishing, maintaining, and expanding programs and projects to prevent domestic violence and to provide immediate shelter and related assistance for victims of domestic violence and their dependents.

This announcement sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in fiscal year (FY) 2003.

Closing Dates and Applications

The closing time and date for receipt of applications is 4:30 p.m. (eastern time zone) on May 15, 2003.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the Office of Community Services, Administration for Children and Families (ACF), Attention: James W. Gray, Ph.D., 5th Floor, West Wing, 370 L'Enfant Promenade, SW., Washington, DC 20447.

ADDRESSES: Applications should be sent to the Department of Health and Human Services, Office of Community Services, Administration for Children and Families, Attention: James W. Gray, Ph.D., 5th Floor, West Wing, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: William D. Riley (202) 401–5529, James W. Gray (202) 401–5705, or Sunni L. Knight (202) 401–5319, Joseph Lonergan, Director, Division of Mandatory Grants.

Part I. Background Information: Reducing Family and Intimate Violence Through Coordinated Prevention and Services Strategies

The Importance of Coordination of Services

Family and intimate violence has serious and far-reaching consequences for individuals, families, and communities. Estimates from the Department of Justice National Crime Victimization Survey (NCVS) indicate that, in 1998, about 1 million violent crimes were committed against persons by their current or former spouses, boyfriends, or girlfriends. Such crimes termed intimate partner violence are committed primarily against women. It is important to note that, regardless of the demographic characteristics considered, women experienced intimate partner violence at higher rates than men between 1993 and 1998 (Bureau of Justice Statistics 2000).

The impact of family and intimate violence includes physical injury and death of primary or secondary victims, psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes, in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

It is estimated that between 12 percent and 35 percent of women visiting emergency rooms with injuries are there because of battering. Estimates of the number of women who are homeless because of battering range from 27 percent to 41 percent to 63 percent of all homeless women. The significant correlation between domestic violence and child abuse, and the use of welfare by battered women as an "economic escape route" also suggest the need to coordinate domestic violence intervention activities with those addressing child abuse and the welfare program under the Temporary Assistance for Needy Families (TANF) program at the State and local levels.

When programs that seek to address these issues operate independently of each other, a fragmented, and consequently less effective, service delivery and prevention system may result. Coordination and collaboration among the police, prosecutors, the courts, victim services providers, child welfare and family preservation services, faith and community-based organizations, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. It is essential that all interested parties be involved in the design and improvement of intervention and prevention activities.

To help bring about a more effective response to the problem of domestic violence, the Department of Health and Human Services urges State and Native American tribes receiving funds under this grant announcement to coordinate activities funded under this grant with other new and existing resources for the prevention of family and intimate violence and related issues.

Part II. General Programmatic and Funding Information

A. Background

Title III of the Child Abuse Amendments of 1984 (Pub. L. 98–457, 42 U.S.C. 10401 *et seq.*) is entitled the "Family Violence Prevention and Services Act" (the Act). The Act was first implemented in FY 1986, reauthorized and amended in 1992 by Pub. L. 102–295, in 1994 by Pub. L. 103–322, the Violent Crime Control and Law Enforcement Act, and in 1996 by Pub. L. 104–235, the Child Abuse Prevention and Treatment Act (CAPTA) of 1996. The Act was most recently amended by the "Victims of Trafficking and Violence Protection Act" (Pub. L. 106–386, October 28, 2000).

The purpose of this legislation is to assist States, Native American tribes, and tribal organizations in supporting the establishment, maintenance, and expansion of programs and projects to prevent incidents of domestic violence and to provide immediate shelter and related assistance for victims of domestic violence and their dependents.

During FY 2002, 200 grants were awarded to States and Native American tribes. The Department also awarded 53 family violence prevention grants to nonprofit State domestic violence coalitions.

Additionally, the Department supports the National Resource Center (NRC) for Domestic Violence and four Special Issue Resource Centers (SIRCs). The SIRCs are the Battered Women's Justice Project, the Resource Center on Child Custody and Protection, Sacred Circle Resource Center for the Elimination of Domestic Violence Against Native Women and the Health Resource Center on Domestic Violence. The purpose of the NRC and the SIRCs is to provide resource information, training, and technical assistance to Federal, State, and Native American agencies, local domestic violence prevention programs, and other professionals who provide services to victims of domestic violence.

In February 1996, the Department funded the national domestic violence hotline to ensure that every woman has access to information and emergency assistance wherever and whenever she needs it. The national domestic violence hotline is a 24-hour, toll-free service, which provides crisis assistance, counseling, and local shelter referrals to women across the country. Hotline counselors are also available for non-English speaking persons and for people who are hearing-impaired. The hotline number is 1–800–799-SAFE; the TDD number for the hearing impaired is 1–800–787–3224. As of June 30, 2002 the National Domestic Violence Hotline has answered more than 700,000 calls.

B. Funds Available

Of the total appropriation for the Family Violence Prevention and Services program for FY 2003, the Department of Health and Human Services will allocate 70 percent to the designated State agencies administering Family Violence Prevention and Services programs (section 310 (a)) of the Act. The Department will allocate 10 percent to the tribes and tribal organizations for the establishment and operation of shelters, safe houses, and the provision of related services (section 310 (a)) of the Act. Additionally, we will allocate 10 percent to the State Domestic Violence Coalitions to continue their work within the domestic violence community by providing technical assistance and training, advocacy services with other local domestic violence programs, and to encourage appropriate responses to domestic violence within the States.

Five percent of our FY 2003 appropriation will be available to continue the support for the National Resource Center and the four Special Issue Resource Centers. The remaining five percent of the FY 2003 family violence prevention and services funding will be used to support demonstration programs in the areas of training and technical assistance, collaborative projects with advocacy organizations and service providers, data collection efforts, public education activities, and research and other demonstration activities at the national level.

C. State Allocations

Family Violence grants to the States, the District of Columbia, and the Commonwealth of Puerto Rico are based on a population formula. Each State shall be allotted a base grant of $600,000. The remaining balance of FVPSA funds are to be distributed according to the State population ratio (this ratio reflects the States population to the total populations of all States).

For the purpose of computing allotments, the statute provides that Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands will each receive grants of not less than one-eighth of one percent of the amounts appropriated.

D. Native American Tribal Allocations

Of the funds available for FY 2003, the Department of Health and Human Services will allocate ten percent for grants to Native American Tribes. Native American Tribes and Tribal Organizations are eligible for funding under this program if they meet the definition of such entities as found in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450 b, and are able to demonstrate their capacity to carry out a family violence prevention and services program.

Any Native American tribe that believes it meets the above eligibility criteria and should be included in the list of eligible tribes should provide

supportive documentation in its application and a request for inclusion (*see* Native American Tribal Application Requirements in part V).

In computing Native American tribal allocations, we will use the latest available population figures from the Census Bureau. Where Census Bureau data are unavailable, we will use figures from the Bureau Indian Affairs Indian Population and Labor Force Report.

Because section 304 of the Act specifies a minimum base amount for State allocations, we have set a base amount for Native American tribal allocations. Since FY 1986, we have found in practice that the establishment of a base amount has facilitated our efforts to make a fair and equitable distribution of limited grant funds.

Native American tribes and tribal organizations that meet application requirements are awarded base grants in amounts determined by the following chart:

Category number	Tribal population	Will receive a base amount of—
1	1–1,500	$2,000
2	1,501–3,000	3,500
3	3,001–4,000	4,500
4	4,001–5,000	5,500
5	5,001–6,000	6,500
6	6,001–7,000	7,500
7	7,001–8,000	8,500
8	8,001–9,000	9,500
9	9,001–10,000	10,500
10	10,001–12,000	13,000
11	12.001–14,000	15,000
12	14,001–16,000	17,000
13	16,001–18,000	19,000
14	18,001–20,000	21,000
15	20,001–22,000	23,000
16	22,001–24,000	25,000
17	24,001–26,000	27,000
18	26,001–28,000	29,000
19	28,001–30,000	31,000
20	30,001–32,000	33,000
21	32,001–34,000	35,000
22	34,001–36,000	37,000
23	36,001–38,000	39,000
24	38,001–40,000	41,000
25	40,001–42,000	43,000
26	42,001–44,000	45,000
27	44,001–46,000	47,000
28	46,001–48,000	49,000
29	48,001–50,000	51,000
30	50,001–100,000.	125,000
31	100,001–150,000.	175,000
32	150,001 and over.	225,000

Once the base amounts have been distributed to the tribes that have applied for family violence funding, the ratio of the tribe's population to the total population of all the applicant tribes is then considered in allocating the remainder of the funds. By distributing a proportional amount plus a base amount to the tribes we have accounted for the variance in actual population and scope of the family violence programs. As in previous years, tribes are encouraged to apply as consortia for the family violence funding.

Part III. General Grant Requirements Applicable to States and Native American Tribes

A. Definitions

States and Native American tribes should use the following definitions in carrying out their programs. These definitions are found in section 309 of the Family Violence Prevention and Services Act (the Act).

(1) *Family Violence:* Any act or threatened act of violence, including any forceful detention of an individual, which (a) results or threatens to result in physical injury and (b) is committed by a person against another individual (including an elderly person) to whom such person is or was related by blood or marriage or otherwise legally related or with whom such person is or was lawfully residing.

(2) *Shelter:* The provision of temporary refuge and related assistance in compliance with applicable State law and regulation governing the provision, on a regular basis, which includes shelter, safe homes, meals, and related assistance to victims of family violence and their dependents.

(3) *Related assistance:* The provision of direct assistance to victims of family violence and their dependents for the purpose of preventing further violence, helping such victims to gain access to civil and criminal courts and other community services, facilitating the efforts of such victims to make decisions concerning their lives in the interest of safety, and assisting such victims in healing from the effects of the violence. Related assistance includes:

(a) Services such as outreach and prevention services for victims and their children, employment training, parenting and other educational services for victims and their children, preventive health services within domestic violence programs (including nutrition, disease prevention, exercise, and prevention of substance abuse), domestic violence prevention programs for school age children, family violence public awareness campaigns, and violence prevention counseling services to abusers; prevention services such as education on family cohesion, marital stability, and conflict resolution; and valuing individual choices made within the context of personal spirituality, to include faith-based belief systems, and or tribal traditions.

(b) Counseling with respect to family violence, counseling or other supportive services by peers individually or in groups, and referral to community social services;

(c) Transportation, technical assistance with respect to obtaining financial assistance under Federal and State programs, and referrals for appropriate health-care services (including alcohol and drug abuse treatment), but does not include reimbursement for any health-care services;

(d) Legal advocacy to provide victims with information and assistance through the civil and criminal courts, and legal assistance; or

(e) Children's counseling and support services, and child care services for children who are victims of family violence or the dependents of such victims.

B. Expenditure Periods

The family violence prevention funds under the Act may be used for obligations on and after October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year. This means that FY 2003 funds may be used for obligations through September 30, 2004. Recipients must liquidate all obligations incurred under the award by September 30, 2005.

The family violence prevention funds allotted to Native American tribes and tribal organizations may be used on or after July 1 of each fiscal year for which they are granted, and will be available through June 30 of the following fiscal year. This means that FY 2003 funds may be used for obligations through June 30, 2004. Recipients must liquidate all obligations incurred under the award by June 30, 2005.

C. Reporting Requirements: Content Requirements of the State and Tribal Performance Report

Section 303(a)(4) requires that States file a performance report with the Department describing the activities carried out, and including an assessment of the effectiveness of those activities in achieving the purposes of the grant. A section of this performance report must be completed by each grantee or subgrantee that performed the direct services contemplated in the State's application certifying performance of such services. State grantees should compile performance reports into a comprehensive report for submission.

The Performance Report should include the following data elements as well as narrative examples of success stories about the services that were provided to victims and their dependents. Please note that section 303 (a) (4) of the Family Violence Prevention and Services Act (FVPS) also requires that the federal director of the FVPSA program suspend funding for an approved application if an applicant fails to submit an annual Performance Report. The Performance Report should include the following data elements:

1. *Funding*—The total amount of the FVPSA grant funds awarded; the percentage of funding used for shelters, and the percentage of funding used for related services and assistance.

2. *Shelters*—The total number of shelters and shelter programs (safe homes/motels, etc.) assisted by FVPSA program funding.

- The number of women sheltered.
- The number of shelters and safe houses in the State.
- The number of young children sheltered (birth–12 years of age).
- The number of teenagers and young adults (13–21 years of age).
- The number of men.
- The number of the elderly.
- The average length of stay.
- The number of women, children, teens, and others referred to other shelters.

3. *Types of individuals served including special populations.* Record information by numbers and percentages against the total population served. Individuals and special populations served should include:

- Racial identification.
- Cultural classification.
- Language (other than English).
- Women of color.
- And other special needs populations.

4. *Related services and assistance.* List the types of related services and assistance provided to victims and their family members by indicating the number of women, children, and men that have received services. Services and assistance may include but are not limited to the following:

- Individual counseling,
- Group counseling,
- Marital Counseling,
- Crisis intervention/hotline,
- Information and referral,
- Batterers support services,
- Legal advocacy services,
- Transportation,
- Services to teenagers,
- Child care,
- Training and technical assistance,
- Housing advocacy,
- Other innovative program activities.

5. *Volunteers*—List the total number of volunteers and hours worked.

6. *Identified Abuse*—Indicate the number of women, children, and men who were identified as victims of physical, sexual, and emotional abuse.

7. *Service referrals*—List the number of women, children, and men referred for the following services: (**Note:** If the individual was identified as a batterer please indicate).

- Alcohol abuse,
- Drug abuse,
- Batterer intervention services,
- Abuse as a child,
- Witnessed abuse,
- Emergency medical intervention,
- Law enforcement intervention.

8. The performance report should include narratives of success stories about services provided and the positive impact on the lives of children and families. Examples may include the following:

- An explanation of the activities carried out including an assessment of the major activities supported by the family violence funds, what particular priorities within the State, tribe, or tribal organization were addressed, and what special emphases were placed on these activities;
- A description of the specific services and facilities that your agency funded, contracted with, or otherwise used in the implementation of your program (*e.g.*, shelters, safehouses, related assistance, programs for batterers);
- An assessment of the effectiveness of the direct service activities contemplated in the application;
- A description of how the needs of under-served populations, including populations under-served because of ethnic, racial, cultural, language diversity, or geographic isolation were addressed, and
- A description and assessment of the prevention activities supported during the program year, *e.g.*, community education events, and public awareness efforts.

Performance reports for the States are due on an annual basis on December 29. Performance reports for tribes and tribal organizations are due on an annual basis on September 28 of each year.

D. Reporting Requirements: Deadlines for Program and Financial Reports

All State grantees are reminded that the annual Program Reports and annual Financial Status Reports (Standard Form 269) are due 90 days after the end of each Federal fiscal year, *i.e.*, reports are due on December 28 of each year.

All tribal program reports and annual financial status reports are due 90 days after the end of the expenditure period, *i.e.*, September 29 of each year.

Part IV. Application Requirements for States

A. Eligibility: States

"States" as defined in section 309(6) of the Act are eligible to apply for funds. The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands.

In the past, Guam, the Virgin Islands and the Commonwealth of the Northern Mariana Islands have applied for funds as a part of their consolidated grant under the Social Services Block grant (the Republic of Palau has applied for funds through the Community Services Block Grant). These jurisdictions need not submit an application under this Program Announcement if they choose to have their allotment included as part of a consolidated grant application.

B. Approval/Disapproval of a State's Application

The Secretary will approve any application that meets the requirements of the Act and this announcement and will not disapprove any such application except after reasonable notice of the Secretary's intention to disapprove has been provided to the applicant and after a six-month period providing an opportunity for the applicant to correct any deficiencies.

The notice of intention to disapprove will be provided to the applicant within 45 days of the date of the application.

C. Content of the State Application

The State's application must be signed by the Chief Executive of the State or the Chief Program Official designated as responsible for the administration of the Act.

All applications must contain the following information or documents:

(1) The name of the State agency, the name of the Chief Program Official designated as responsible for the administration of funds under this Act, and the name of a contact person if different from the Chief Program Official (section 303)(a)(2)(D)).

(2) A plan describing in detail how the needs of underserved populations will be met, including populations underserved because of ethnic, racial, cultural, language diversity, or geographic isolation (section 303(a)(2)(C)).

(a) Identification of the underserved populations that are being targeted for outreach and services.

(b) In meeting the needs of the underserved population, describe the domestic violence training that will be provided to the individuals who will do the outreach and intervention to these populations; and

(c) Describe the public information component of the State's outreach program; describe the elements of your program that are used to explain domestic violence, the most effective and safe ways to seek help and identify available resources, etc.

(3) Provide a complete description of the process and procedures used to involve State domestic violence coalitions and other knowledgeable individuals and interested organizations, including faith and community-based organizations, to assure an equitable distribution of grants and grant funds within the State and between rural and urban areas in the State (sections 303(a)(2)(C)) and 311(a)(5)).

(4) Provide a complete description of the process and procedures implemented that allow for the participation of the State domestic violence coalition in planning and monitoring the distribution of grant funds and determining whether a grantee is in compliance with (section 303(a)(2)(A), 303(a)(3) and 311(a)(5)).

(5) Provide a copy of the procedures developed and implemented that assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under the Act. Include procedures that ensure that individual client records cannot be identified when providing statistical data on program services and activities (section 303(a)(2)(E)).

(6) Include a description of how the State plans to use the grant funds, a description of the target population, the number of shelters to be funded, the services the State will provide, and the expected results from the use of the grant funds (section 303(a)(4)).

(7) Provide a copy of the law or procedures that the State has implemented for the eviction of an abusive spouse from a shared household (section 303)(a)(2)(F)).

All applications must contain the following assurances:

(a) That grant funds under the Act will be distributed to local public agencies and nonprofit private organizations (including religious and charitable organizations and voluntary associations) for programs and projects within the State to prevent incidents of family violence and to provide immediate shelter and related assistance for victims of family violence and their dependents in order to prevent future violent incidents (section 303(a)(2)(A)).

(b) That not less than 70 percent of the funds distributed shall be used for immediate shelter and related assistance to the victims of family violence and their dependents and not less than 25 percent of the funds distributed shall be used to provide related assistance (section 303(f)).

(c) That not more than 5 percent of the funds will be used for State administrative costs (section 303(a)(2)(B)(i)).

(d) That in distributing the funds, the States will give special emphasis to the support of faith and community-based projects of demonstrated effectiveness carried out by non-profit private organizations, particularly those projects the primary purpose of which is to operate shelters for victims of family violence and their dependents and those which provide counseling, advocacy, and self-help services to victims and their children (section 303(a)(2)(B)(ii)).

(e) That grants funded by the States will meet the matching requirements in section 303(e), *i.e.*, not less than 20 percent of the total funds provided for a project under this title with respect to an existing program, and with respect to an entity intending to operate a new program under this title, not less than 35 percent. The local share will be cash or in kind; and the local share will not include any Federal funds provided under any authority other than this title (section 303(e)).

(f) That grant funds made available under this program by the State will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(c)).

(g) That no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out the Act (section 303(d)).

(h) That the address or location of any shelter-facility assisted under the Act will not be made public, except with the written authorization of the person or persons responsible for the operation of such shelter (section 303(a)(2)(E)).

(i) That programs or activities funded in whole or in part under the Act will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(j) That funds made available under the FVPSA will be used to supplement and not supplant other Federal, State, and local public funds expended to provide services and activities that promote the purposes of the FVPSA.

(k) That States will comply with the applicable Departmental record-keeping and reporting requirements and general requirements for the administration of grants under 45 CFR part 92.

Part V. Application Requirements for Native American Tribes

A. Eligibility: Native American Tribes

As described above, Native American tribes and tribal organizations are eligible for funding under this program if they meet the definition of such entities as found in subsections (b) and (c) of section 4 of the Indian Self-Determination and Education Assistance Act and are able to demonstrate their capacity to carry out a family violence prevention and services program.

A list of currently eligible Native American tribes is found at Appendix B of this document. Any Native American tribe that believes it meets the eligibility criteria and should be included in the list of eligible tribes should provide supportive documentation and a request for inclusion in its application (*see* Application Content Requirements below).

As in previous years, Native American tribes may apply singularly or as a consortium. In addition, a non-profit private organization, approved by a Native American tribe for the operation of a domestic violence shelter or program on a reservation is eligible for funding.

B. Approval/Disapproval of a Native American Tribes Application

The Secretary will approve any application that meets the requirements of the Act and this Announcement, and will not disapprove an application unless the Native American tribe or tribal organization has been given reasonable notice of the Department's intention to disapprove and an opportunity to correct any deficiencies (section 303(B)(2)).

C. Native American Tribe Application Content Requirements

The application from a Native American tribe must be signed by the Chief Executive Officer or tribal chairperson of the tribe.

All applications must contain the following information/documents:

(1) The name of the organization or agency and the Chief Program Official designated as responsible for administering funds under the Act, and the name, telephone number, and fax number, if available, of a contact person in the designated organization or agency.

(2) A copy of a current resolution stating that the designated organization or agency has the authority to submit an application on behalf of the Native American individuals in the tribe(s) and to administer programs and activities funded under this program (section 303(b)(2)).

(3) A description of the procedures designed to involve knowledgeable individuals and interested organizations in providing services under the Act (section 303(b)(2)). For example, knowledgeable individuals and interested organizations may include: tribal officials or social services staff involved in child abuse or domestic violence prevention, tribal law enforcement officials, representatives of State coalitions against domestic violence, and operators of domestic violence shelters and service programs.

(4) A description of the tribe's operation of and/or capacity to carry out a domestic violence prevention and services program. This might be demonstrated in ways such as the following:

(a) The current operation of a shelter, safehouse, or domestic violence prevention program;

(b) The establishment of joint or collaborative service agreements with a local public agency or a private non-profit agency for the operation of domestic violence prevention activities or services; or

(c) The operation of social services programs as evidenced by receipt of "638" contracts with the Bureau of Indian Affairs (BIA); title II Indian Child Welfare grants from the BIA; Child Welfare Services grants under title IV–B of the Social Security Act; or Family Preservation and Family Support grants under title IV–B of the Social Security Act.

(5) A description of the services to be provided, how the Native American tribe or tribal organization plans to use the grant funds to provide the direct services, to whom the services will be provided, and the expected results of the services (section 303(b)(2)).

(6) Documentation of the procedures that assure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services by any program assisted under the Act. Include procedures that ensure that individual client records cannot be identified when providing statistical data on program services and activities (section 303(a)(2)(E)).

(7) The EIN number of the Native American tribe, tribal organization, or non-profit organization submitting the application.

Each application must contain the following assurances:

(a) That not less than 70 percent of the funds shall be used for immediate shelter and related assistance for victims of family violence and their dependents and not less than 25 percent of the funds distributed shall be used to provided related assistance (section 303(f)).

(b) That grant funds made available under the Act will not be used as direct payment to any victim or dependent of a victim of family violence (section 303(c)).

(c) That the address or location of any shelter or facility assisted under the Act will not be made public, except with the written authorization of the person or persons responsible for the operations of such shelter (section 303(a)(2)(E)).

(d) That law or procedure has been implemented for the eviction of an abusing spouse from a shared household (section 303(a)(2)(F)).

(e) That all programs or activities funded in whole or in part under the Act will prohibit discrimination on the basis of age, handicap, sex, race, color, national origin or religion (section 307).

(f) That applicant will comply with the applicable Departmental record-keeping and reporting requirements and general requirements for the administration of grants under 45 CFR parts 74 and 92.

Part VI. Other Information

A. Notification Under Executive Order 12372

For States, this program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," for State plan consolidation and implication only—45 CFR 100.12. The review and comment provisions of the Executive Order and part 100 do not apply. Federally-recognized Native American tribes are exempt from all provisions and requirements of E.O. 12372.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the application requirements contained in this instruction have been approved by the Office of Management and Budget under control number 0970–0062.

C. Certifications

Applications must comply with the required certifications found at Appendix A as follows:

1. Anti-Lobbying Certification and Disclosure Form. Pursuant to 45 CFR part 93, the certification must be signed and submitted with the application. If applicable, a standard form LLL, which discloses lobbying payments must be submitted.

2. Certification Regarding Drug-Free Workplace Requirements.

3. Certification Regarding Debarment: The signature on the application by the chief program official attests to the applicants intent to comply with the Drug-Free Workplace requirements and compliance with the Debarment Certification. The Drug-Free Workplace and Debarment certifications do not have to be returned with the application.

4. Certification Regarding Environmental Tobacco Smoke: The signature on the application by the chief program official attests to the applicants intent to comply with the requirements regarding environmental tobacco smoke and services to children under age 18 of the Pro-Children Act of 1994. The applicant further agrees that it will require the language of this certification be included in any sub-awards which contain provisions for children's services and that all grantees shall certify accordingly.

(Catalog of Federal Domestic Assistance number 93.671, Family Violence Prevention and Services)

Dated: April 8, 2003.

Clarence H. Carter,

Director, Office of Community Services.

Appendix A—Required Certifications:

Attachment—A Certification Regarding Lobbying and Disclosure of Lobbying Activities and Instructions
Attachment—B Certification Regarding Debarment;
Attachment—C Regarding Environmental Tobacco Smoke; and
Attachment—D Drug-Free Workplace Requirements.

BILLING CODE 4184–01–P

Administration for Children and Families
U.S. Department of Health and Human Services

Attachment A

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements
The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ``Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ``Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____
Signature

_____
Title

_____
Organization

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known* Congressional District, *if known*		5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, *if known*:
6. Federal Department/Agency:		7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:		9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):		b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

Attachment B

Administration for Children and Families
U.S. Department of Health and Human Services

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions Instructions for Certification 1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not

proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification 1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.3. The prospective lower tier participant shall provide immediate written notice to the person to

which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those
regulations.5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion--Lower Tier Covered Transactions(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment C

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment D

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification) 1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below. 2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act. 3. For grantees other than individuals, Alternate I applies. 4. For grantees who are individuals, Alternate II applies. 5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements. 6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios). 7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five). 8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:
Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15); *Conviction* means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;
Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).
Certification Regarding Drug-Free Workplace Requirements
Alternate I. (Grantees Other Than Individuals) The grantee certifies that it will or will continue to provide a drug-free workplace by:
(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
(b) Establishing an ongoing drug-free awareness program to inform employees about --
(1)The dangers of drug abuse in the workplace;
(2) The grantee's policy of maintaining a drug-free workplace;
(3) Any available drug counseling, rehabilitation, and employee assistance programs; and
(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace; c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --
(1) Abide by the terms of the statement; and
(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted --
(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).
(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:
Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)
The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR Doc. 03–9154 Filed 4–14–03; 8:45 am]
BILLING CODE 4184–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation: Notice of Meeting

AGENCY: President's Committee on Mental Retardation (PCMR), HHS.
ACTION: Notice of meeting.

DATES: Monday, May 12, 2003 from 9 a.m. to 5 p.m.; and Tuesday, May 13, 2003, from 9 a.m. to 3 p.m. The full committee meeting of the President's Committee on Mental Retardation will be open to the public.
ADDRESSES: The meeting will be held at the Aerospace Center Building, Aerospace Auditorium, 6th Floor East, 370 L'Enfant Promenade, SW., Washington, DC 20447. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Sally Atwater at 202–619–0634 no later than April 25, 2003. We will attempt to meet requests after that date, but cannot guarantee availability. All meeting sites are barrier free.
Agenda: The Committee plans to discuss critical issues relating to individuals with mental retardation concerning education and transition, family services and support, public awareness, employment, and assistive technology and information.

FOR FURTHER INFORMATION CONTACT: Sally Atwater, Executive Director, President's Committee on Mental Retardation, Aerospace Center Building, Suite 701, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone—(202) 619–0634, Fax—(202) 205–9519, E-mail—*satwater@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a board range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with mental retardation, and for reviewing legislative proposals that impact on the quality of life that is experienced by citizens with mental retardation and their families.

Dated: March 25, 2003.
Sally Atwater,
Executive Director, President's Committee on Mental Retardation.
[FR Doc. 03–9087 Filed 4–14–03; 8:45 am]
BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974, As Amended; Computer Matching Program

AGENCY: Office of Child Support Enforcement (OCSE), ACF, DHHS.
ACTION: Notice of a computer matching program.

SUMMARY: In compliance with the Privacy Act of 1974, as amended by Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, we are publishing a notice of a computer matching program that OCSE will conduct on behalf of itself and the District of Columbia Department of Human Services, Income Maintenance Administration (IMA) for verification of continued eligibility for Public Assistance. The match will utilize National Directory of New Hire (NDNH) records and IMA records. The purpose of the computer matching program is to exchange personal data for purposes of identifying individuals who are employed and also are receiving payments pursuant to the Temporary Aid to Needy Families (TANF) benefit program being administered by IMA.
DATES: OCSE will file a report of the subject OCSE matching program with the Committee on Governmental Affairs of the Senate and the Committee on Government Reform and Oversight of the House of Representatives and the

Office of Information and Regulatory Affairs, the Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by writing to the Director, Office of Federal Systems, Office of Child Support Enforcement, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20047. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Director, Office of Federal Systems, Office of Child Support Enforcement, Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20047. Telephone Number (202) 401–9271.

SUPPLEMENTARY INFORMATION: Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state and local government records.

The amendments require Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with source agencies;
2. Provide notification to applicants and beneficiaries that their records are subject to matching;
3. Verify match findings before reducing, suspending, or terminating an individual's benefits or payments;
4. Furnish detailed reports to Congress and OMB; and
5. Establish a Data Integrity Board that must approve matching agreements.

This Computer Match meets the requirements of Pub. L. 100–503.

Dated: April 7, 2003.

Sherri Z. Heller,

Commissioner, Office of Child Support Enforcement.

Notice of Computer Matching Program

A. PARTICIPATING AGENCIES

OCSE and IMA.

B. PURPOSE OF THE MATCH

To exchange personal data for purposes of identifying individuals who are employed and also are receiving payments pursuant to TANF benefit programs being administered by the IMA and to verify continuing eligibility for TANF benefits.

OCSE will match public assistance records, obtained from IMA, to the NDNH. After matching has been conducted, OCSE will provide matched data to IMA which will use this information to verify the continued eligibility of individuals to receive public assistance benefits and, if ineligible, to take such action, as may be authorized by law and regulation. Under the matching program, IMA will obtain data provided by OCSE.

C. AUTHORITY FOR CONDUCTING THE MATCH

The authority for conducting the matching program is contained in section 453(j)(3) of the Social Security Act (42 U.S.C. 653(j)(3)).

D. RECORDS TO BE MATCHED

The system of records maintained by the ACF under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match, is the Location and Collection System of Records, DHHS/OCSE No. 09–90–0074, last published in the **Federal Register** at 65 FR 57817 on September 26, 2000. The match is a routine use under this system of records.

OCSE, as the source agency, will collect from IMA electronic files containing the names and other personal identifying data of eligible public assistance beneficiaries. Upon receipt of the electronic files of IMA beneficiaries, OCSE will perform a computer match against the NDNH. The NDNH database consists of Quarterly Wage, New Hire, and Unemployment Insurance information. The matches will be furnished by OCSE to IMA.

1. The electronic files provided by IMA will contain data elements of the client's name and SSN.
2. OCSE will match the SSN on the IMA file by computer against the NDNH database. Matching records, based on SSNs, will produce data elements of the individual's name; SSN; employer, and current work or home address, etc.

E. INCLUSIVE DATES OF THE MATCHING PROGRAM

The effective date of the matching agreement and date when matching may actually begin shall be at the expiration of the 40-day review period for OMB and Congress, or 30 days after publication of the matching notice in the **Federal Register**, whichever date is later. By agreement between DHHS and IMA, the matching program will be in effect for 18 months from the effective date, with an option to renew for 12 additional months, unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

[FR Doc. 03–9089 Filed 4–14–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

State Median Income Estimate for a Four-Person Family (FFY 2004); Notice of the Federal Fiscal Year (FFY) 2004 State Median Income Estimates for Use Under the Low Income Home Energy Assistance Program (LIHEAP) Administered by the Administration for Children and Families, Office of Community Services, Division of Energy Assistance

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of estimated State median income for FFY 2004.

SUMMARY: This notice announces the estimated median income for four-person families in each State and the District of Columbia for FFY 2004 (October 1, 2003 to September 30, 2004). LIHEAP grantees may adopt the State median income estimates beginning with the date of this publication of the estimates in the **Federal Register** or at a later date as discussed below. This means that LIHEAP grantees could choose to implement this notice during the period between the heating and cooling seasons. However, by October 1, 2003, or by the beginning of a grantee's fiscal year, whichever is later, LIHEAP grantees using State median income estimates must adjust their income eligibility criteria to be in accord with the FFY 2004 State median income estimates.

This listing of estimated State median incomes provides maximum income levels for households to which LIHEAP grantees may make payments under LIHEAP.

EFFECTIVE DATE: The estimates are effective at any time between the date of this publication and October 1, 2003, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

FOR FURTHER INFORMATION CONTACT: Leon Litow, Administration for Children and Families, DHHS, Office of Community Services, Division of Energy Assistance, 5th Floor West, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone: (202) 401–5304, E-Mail: *llitow@acf.hhs.gov*.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35, as amended), we are announcing the estimated median income of a four-person family for each State, the District of Columbia, and the United States for FFY 2004 (the period of October 1, 2003, through September 30, 2004).

Section 2605(b)(2)(B)(ii) of the LIHEAP statute provides that 60 percent of the median income for each State, as annually established by the Secretary of the Department of Health and Human Services, is one of the income criteria that LIHEAP grantees may use in determining a household's eligibility for LIHEAP.

LIHEAP is currently authorized through the end of FFY 2004 by the Coats Human Services Reauthorization Act of 1998, Pub. L. 105–285, which was enacted on October 27, 1998.

Estimates of the median income of a four-person family for each State and the District of Columbia for FFY 2004 have been developed by the Bureau of the Census of the U.S. Department of Commerce, using the most recently available income data. In developing the median income estimates for FFY 2004, the Bureau of the Census used the following three sources of data: (1) The Current Population Survey 2002 Annual Demographic File; (2) the 2000 Decennial Census of Population; and (3) 2001 per capita personal income estimates, by State, from the Bureau of Economic Analysis (BEA) of the U.S. Department of Commerce.

As indicated above, the Current Population Survey 2000 Annual Demographic File is one of the data sources used in developing the State median estimates for FFY 2004. The use of this file introduces the following changes in development of the estimates:

1. The Annual Demographic File enhances income estimates produced by the Bureau of the Census from the March Current Population (CPS). In 2001, the Bureau of the Census began referring to the March CPS file as the CPS Annual Demographic File (ADF) due to a significant sample expansion to improve the accuracy of State estimates of children's health insurance coverage and an expansion of the months in which the survey is conducted.

This sample expansion, known as the State Children's Health Insurance Program (SCHIP) sample, has three components: (1) Asking the March Income Supplement questions of selected households in the February and April CPS samples, that is, of the households not also included in the March sample; (2) interviewing selected sample households from the preceding November CPS sample during the February–April period using the March Income Supplement; and (3) increasing the monthly CPS sample in States with high sampling errors for uninsured children. The sample increase added about 28,000 interviewed households to the 2001 ADF, resulting in a total sample size of about 78,000 interviewed households.

Although the expanded sample was implemented in 2001, only information from the regular 2001 March CPS sample was released when the FFY 2003 State median income estimates were calculated. The FFY 2004 estimates shown below use the expanded sample from the 2002 ADF.

2. Prior income estimates from the March CPS have been based on population controls from the 1990 Decennial Census of Population. The 2002 ADF estimates are based on population controls from the 2000 Decennial Census of Population. Nationally, the use of Census 2000-based population controls lowered the national median household income by 0.3 percent.

For further information on the estimating method and data sources, contact the Housing and Household Economic Statistics Division, at the Bureau of the Census (301–763–3243).

A state-by-state listing of median income, and 60 percent of median income, for a four-person family for FFY 2004 follows. The listing describes the method for adjusting median income for families of different sizes as specified in regulations applicable to LIHEAP, at 45 CFR 96.85(b), which was published in the **Federal Register** on March 3, 1988 at 53 FR 6824.

Dated: March 6, 2003.

Clarence H. Carter,

Director.

ESTIMATED STATE MEDIAN INCOME FOR A FOUR-PERSON FAMILY, BY STATE, FEDERAL FISCAL YEAR 2004 [1]

States	Estimated State median income for a four-person family [2]	60 percent of estimated State median income for a four-person family
Alabama	$54,594	$32,756
Alaska	71,395	42,837
Arizona	56,067	33,640
Arkansas	47,838	28,703
California	63,761	38,257
Colorado	67,634	40,580
Connecticut	82,517	49,510
Delaware	73,301	43,981
District of Col.	61,799	37,079
Florida	56,824	34,094
Georgia	59,497	35,698
Hawaii	66,014	39,608
Idaho	51,098	30,659
Illinois	66,507	39,904
Indiana	63,573	38,144
Iowa	61,656	36,994
Kansas	61,686	37,012
Kentucky	54,319	32,591
Louisiana	51,234	30,740
Maine	58,425	35,055
Maryland	82,879	49,727
Massachusetts	80,247	48,148
Michigan	68,337	41,002
Minnesota	72,635	43,581
Mississippi	46,810	28,086
Missouri	61,036	36,622
Montana	48,078	28,847
Nebraska	60,626	36,376
Nevada	59,283	35,570
New Hampshire	72,606	43,564
New Jersey	80,577	48,346
New Mexico	46,596	27,958
New York	66,498	39,899
North Carolina	56,500	33,900
North Dakota	55,138	33,083
Ohio	64,282	38,569
Oklahoma	53,949	32,369
Oregon	58,737	35,242
Pennsylvania	66,130	39,678
Rhode Island	70,446	42,268
South Carolina	59,212	35,527
South Dakota	59,718	35,831
Tennessee	56,052	33,631
Texas	56,606	33,964
Utah	59,035	35,421
Vermont	62,938	37,763
Virginia	69,616	41,770
Washington	65,997	39,598
West Virginia	49,470	29,682
Wisconsin	65,441	39,265
Wyoming	58,541	35,125

Note—FFY 2004 covers the period of October 1, 2003 through September 30, 2004. The estimated median income for a four-person family living in the United States is $63,278 for FFY 2004. The estimates are effective for the Low Income Home Energy Assistance Program (LIHEAP) at any time between the date of this publication and October 1, 2003, or by the beginning of a LIHEAP grantee's fiscal year, whichever is later.

[1] In accordance with 45 CFR 96.85, each State's estimated median income for a four-person family is multiplied by the following percentages to adjust for family size: 52% for one person, 68% for two persons, 84% for three persons, 100% for four persons, 116% for five persons, and 132% for six persons. For each additional family member above six persons, add 3% to the percentage for a six-person family (132%), and multiply the new percentage by the State's estimated median income for a four-person family.

[2] Prepared by the Bureau of the Census from the Current Population Survey 2002 Annual Demographic File, 2000 Decennial Census of Population and Housing, and 2001 per capita personal income estimates, by State, from the Bureau of Economic Analysis (BEA). For further information, contact the Housing and Household Economic Statistics Division at the Bureau of the Census (301–763–3243).

[FR Doc. 03–9088 Filed 4–14–03; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS 03–01]

Family Violence Prevention and Services Program

AGENCY: Office of Community Services (OCS), Administration for Children and Family (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of the availability of funds to State domestic violence coalitions for grants to carry out family violence intervention and prevention activities.

SUMMARY: This instruction governs the proposed award of fiscal year (FY) 2003 formula grants under the Family Violence Prevention and Services Act (FVPSA) to private non-profit State domestic violence coalitions. The purpose of these grants is to assist in the conduct of activities to promote domestic violence intervention and prevention and to increase public awareness of domestic violence issues.

This instruction sets forth the application requirements, the application process, and other administrative and fiscal requirements for grants in FY 2003.

Closing Dates and Applications

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on May 15, 2003.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the Office of Community Services, Administration for Children and Families (ACF), Attention: Catherine L. Beck, 5th Floor-West Wing, 370 L'Enfant Promenade, SW., Washington, DC 20447.

ADDRESSES: Applications should be sent to the Department of Health and Human Services, Office of Community Services, Administration for Children and Families, Attention: Catherine L. Beck, Fifth Floor—West Wing, 370 L'Enfant Promenade, SW., Washington, DC 20447.

FOR FURTHER INFORMATION: William D. Riley (202) 401–5529, Catherine L. Beck (202) 401–9352, Sunni Knight (202) 401–5319, or James Gray (202) 401–5705, Joseph Longergan, Director, Division of Mandatory Grants.

SUPPLEMENTARY INFORMATION:

Confidentiality

Family Violence Prevention and Services Act programs must establish or implement policies and protocols that maintain the safety and confidentiality of adult victims of domestic violence and their dependents. It is essential that the confidentiality of individuals receiving FVPSA services be protected. Thus, when providing statistical data on program services and activities, individual identifiers of client records will not be used (section 303G).

I. Introduction

This notice announcing the availability of grants to State Domestic Violence Coalitions carries out several requirements in the FVPSA.

- The Department must use 10 percent of funds under the FVPSA for grants to State Domestic Violence Coalitions; and
- An application for a State coalition grant must meet the specific requirements in the statute covering eligibility and program activities.

In addition, grantees must meet other requirements, such as annual program and financial reporting and fiscal expenditure period requirements.

This notice provides information on all application requirements.

II. Background

As context for this FY 2003 notice, we wish to emphasize the importance of the work of the State Domestic Violence Coalitions and their activities and efforts leading to improved (more comprehensive and integrated) service delivery systems for victims of domestic violence and their dependents. Reducing domestic violence through coordinated prevention and services strategies is the primary goal of national efforts under the statute.

A. The Importance of Coordination of Services

The impact of domestic violence includes physical and psychological trauma, isolation from family and friends, harm to children witnessing or experiencing violence in homes in which the violence occurs, increased fear, reduced mobility and employability, homelessness, substance abuse, and a host of other health and related mental health consequences.

When programs that seek to address these issues operate independently of each other, a fragmented, and consequently less effective, prevention and service delivery system is the result. Coordination and collaboration among the police, prosecutors, the courts, victim services providers, child welfare and family preservation services, and medical and mental health service providers is needed to provide more responsive and effective services to victims of domestic violence and their families. Faith and community based organizations should be included in the coordination and collaborative efforts. It is essential that all interested parties be involved in the design and improvement of intervention and prevention activities.

The significant correlation between domestic violence, child abuse and the use of welfare by battered women as an "economic escape route" also suggests the need to coordinate domestic violence intervention activities with programs that address child abuse, and the Temporary Assistance for Needy Families (TANF), the Federal welfare program, at the State and local levels.

B. Strengthening Prevention and Intervention Programs

Domestic violence prevention and services programs need to be inclusive in their efforts to address the needs of majority, as well as underserved, populations. Ethnic and rural communities face unique barriers in seeking services. Culture, language, and isolation can limit these populations from seeking assistance or communicating their needs. People with disabilities require special considerations regarding safety planning, transportation, and/or decreasing the risk of future violence.

Crisis intervention is essential in responding to domestic violence. Assessing the victim's safety, assessing the level of risk, and attending to the psychological and physical effects of trauma requires a coordinated effort among counselors, law enforcement, and medical personnel. Once these immediate needs are addressed, there is a need to continue comprehensive efforts throughout intervention, treatment, and future preventive services, for survivors, families, and perpetrators. These collective efforts could include: transitional housing assistance; child care; job skills training; mental health and substance abuse services to survivors and perpetrators; long-term support for survivors; coordination with adult and child protective services; and safe enforcement of child support for TANF and non-TANF families.

Domestic violence prevention programs may also extend to adolescents. The increasing incidence of date rape and violent adolescent relationships indicate the need to provide educational programs and

intervention prior to adulthood. Adolescents may have witnessed domestic violence as a child, experienced abuse directly, or themselves been perpetrators of abusive behavior. Studies on the prevention of domestic abuse and violence in interpersonal relationships suggest that youth education may represent an effective community action to reduce the incidence of violence in adolescent relationships.

Perpetrators of domestic violence often have multiple problems that contribute to their battering behavior, such as alcohol or drug abuse, insecurity or extreme jealousy, lack of self discipline or criminal behavior, or severe reactions to stress. Consequently, services for perpetrators may be more effective through coordinated efforts with substance abuse, mental health, and criminal justice programs.

Witnessing violence as a child is an important risk factor for being a victim or perpetrator of violence later in life. Developing innovative strategies for identifying and treating child witnesses is an under-explored potential avenue for preventing violence. Providing home visitation services, integrating children into shelter services with survivors, and providing long-term education and outreach can reduce the potential for these children to domestic violence as adults.

III. State Coalition Grant Requirements

This section provides information and requirements for family violence prevention and services grants for State domestic violence coalitions and is organized as follows:

A. Legislative Authority
B. Background
C. Eligibility
D. Funds Available
E. Expenditure Period
F. Application Requirements
G. Reporting Requirements
H. Paperwork Reduction Act
I. Executive Order 12372
J. Certifications

A. Legislative Authority

Title III of the Child Abuse Amendments of 1984 (Pub. L. 98–457, 42 U. S. C. 10401, *et seq.*) is entitled the Family Violence Prevention and Services Act (the Act). The Act was first implemented in FY 1986, was reauthorized and amended in 1992 by Pub. L. 102–295, and was amended and reauthorized for fiscal years 1996 through 2000 by Pub. L. 103–322, the Violence Crime Control and Law Enforcement Act of 1994, and by Pub. L. 104–235, the Child Abuse Prevention and Treatment Act Amendment of 1996. The Act was most recently amended by the Victims of Trafficking and Violence Protection Act (Pub. L. 106–386, October 28, 2000).

B. Background

Section 311 of the Act, 42 U.S.C. 10410, requires the Secretary to award grants to statewide private non-profit State domestic violence coalitions to conduct activities to promote domestic violence intervention and prevention.

C. Eligibility

To be eligible for grants under this program announcement, an organization shall be a statewide private non-profit domestic violence coalition meeting the following criteria:

(1) The membership of the coalition includes representatives from a majority of the programs for victims of domestic violence operating within the State (a State domestic violence coalition may include representatives of Indian Tribes and Tribal organizations as defined in the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450b);

(2) The Board membership of the coalition is representative of such programs;

(3) The purpose of the coalition is to provide services, community education, and technical assistance to domestic violence programs in order to establish and maintain shelter and related services (as defined in the FVPSA) for victims of domestic violence and their children; and,

(4) In the application submitted by the coalition for the grant, the coalition provides assurances satisfactory to the Secretary that the coalition:

(A) has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial entities in the preparation of the application; and

(B) will actively seek and encourage the participation of such entities in the activities carried out with the grant.

D. Funds Available

The Department will make 10 percent of the Family Violence Prevention and Services Act appropriation available for grants to State domestic violence coalitions. One grant each will be available for the State domestic violence coalitions of the 50 states, the Commonwealth of Puerto Rico, and the District of Columbia. The coalitions of the U. S. Territories (Guam, U. S. Virgin Islands, Northern Mariana Islands, American Samoa, and Trust Territory of the Pacific Islands) are also eligible for domestic violence coalition grant awards.

E. Expenditure Period

The FVPSA funds may be used for expenditures obligated on and after October 1 of each fiscal year for which they are granted, and will be available for expenditure through September 30 of the following fiscal year and may be used for obligations incurred from October 1, 2002. Recipients must liquidate all obligations incurred under the award by September 30, 2004.

F. Application Requirements

The State domestic violence coalition application must be signed by the Executive Director of the Coalition or the official designated as responsible for the administration of the grant. The application must contain the following information (consistent with the requirements of the Family Violence Prevention and Services Act):

1. A description of the process and anticipated outcomes of utilizing these Federal funds to work with local domestic violence programs and providers of direct services to encourage appropriate responses to domestic violence within the State, including:

(a) Training and technical assistance for local programs and professionals working with victims of domestic violence;

(b) Planning and conducting State needs assessments and planning for comprehensive services;

(c) Serving as an information clearinghouse and resource center for the State; and

(d) Collaborating with other governmental systems that affect battered women (section 311(a) (1), 42 U.S.C. 10410(a)(1)).

2. A description of the public education campaign regarding domestic violence to be conducted by the coalition through the use of public service announcements and informative materials that are designed for print media, billboards, public transit advertising, electronic broadcast media, and other forms of information dissemination that inform the public about domestic violence, including information aimed at underserved racial, ethnic or language-minority populations (section 311(a)(4), 42 U.S.C. 10410(a)(4)).

3. The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with judicial and law enforcement agencies concerning appropriate responses to domestic violence cases and an examination of issues including:

(a) Inappropriateness of mutual protection orders;

(b) Prohibition of mediation when domestic violence is involved;

(c) Use of mandatory arrests of accused offenders;
(d) Discouragement of dual arrests;
(e) Adoption of aggressive and vertical prosecution policies and procedures;
(f) Use of mandatory requirements for pre-sentence investigations;
(g) Length of time taken to prosecute cases or reach plea agreements;
(h) Use of plea agreements;
(i) Uonsistency of sentencing, including comparisons of domestic violence crimes with other violent crimes;
(j) Restitution to victims;
(k) Use of training and technical assistance to law enforcement and other criminal justice professionals;
(l) Reporting practices of, and the significance to be accorded to, prior convictions (both felony and misdemeanor) and protection orders;
(m) Use of interstate extradition in cases of domestic violence crimes;
(n) The use of statewide and regional planning; and,
(o) Any other matters the State Domestic Violence Coalition believes merits investigation (section 311(a)(2), 42 U.S.C. 10401(a)(2)).

4. The anticipated outcomes and a description of planned grant activities to be conducted in conjunction with family law judges, criminal court judges, child protective services agencies, child welfare agencies, family preservation and support service agencies, and children's advocates to develop appropriate responses to child custody and visitation issues in domestic violence cases and in cases where domestic violence and child abuse are both present, including:
(a) Inappropriate use of mutual protection orders;
(b) Prohibition of mediation when domestic violence is involved;
(c) Inappropriate use of marital or conjoint counseling in domestic violence cases;
(d) Use of training and technical assistance for Family Law Judges, Criminal Court Judges, and court personnel;
(e) The presumption of custody to domestic violence victims;
(f) Use of comprehensive protection orders to grant fullest protection possible to victims of domestic violence, including temporary custody support and maintenance;
(g) Development with Child Protective Services of supportive responses that enable victims to protect their children;
(h) Implementation of supervised visitations or denial of visitation to protect against danger to victims or their children; and
(i) The possibility of permitting domestic violence victims to remove children from the State when the safety of the children or the victim is at risk (section 311(a)(3), 42 U.S.C. 10410(a)(3)).

5. The anticipated outcomes and a description of other activities, including any participation in the National Council Against Domestic Violence; participation in the Violence Against Women Network (VAWANET) and its Web site; and/or collaboration with other national or regional organizations whose purpose is to further domestic violence intervention and prevention.

6. The following documentation will certify the status of the domestic violence coalition and must be included in the grant application:
(a) a description of the procedures developed between the State domestic violence agency and the Statewide coalition that allow for implementation of the following cooperative activities:
(i) the applicant coalition's participation in the planning and monitoring of the distribution of grants and grant funds provided in the State, under section 303(a) of the Act (section 311(a)(5), 42 U.S.C. 10410(a)(5)).
(ii) the participation of the State domestic violence coalition in compliance activities regarding the State's family violence prevention and services program grantees as required by section 303 (3) of the Act. The description should specifically address the coalition's role in planning, monitoring and compliance activities with respect to maintaining client confidentially in accordance with relevant requirements including any requirements under the Health Insurance Probability and Accountability Act of 1996 and section 303 (g) of the Act. (section 303 (g)) requires recipients of FVPSA formula grants to establish or implement policies and protocols for maintaining the safety and confidentiality of the adult victims and their children of domestic violence, sexual assault, and stalking.
(b) A copy of a currently valid 501(c)(3) certification letter from the Internal Revenue Service (IRS) stating private non-profit status; or a copy of the applicant's listing in the IRS' most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code;
(c) A copy of the articles of incorporation bearing the seal of the State which the corporation or association is domiciled;
(d) A current list of the organizations operating programs for victims of domestic violence programs in the State and the applicant coalition's current membership list by organization;
(e) A list of the applicant coalition's current Board of Directors, with each individual's organizational affiliation, and the Chairperson identified;
(f) A copy of the resume of any coalition or contractual staff to be supported by funds from this grant and/or a statement of requirements for staff or consultants to be hired under this grant; and,
(g) A budget narrative that clearly describes the planned expenditure of funds under this grant.

7. Required Documentation and Assurances are to be included in the application as an appendix:
(a) The applicant coalition must provide documentation in the form of support letters, memoranda of agreement, or jointly signed statements, that the coalition:
(i) Has actively sought and encouraged the participation of law enforcement agencies and other legal or judicial organizations in the preparation of the grant application (section 311(b)(4)(A), 42 U.S.C. 10410(b)(4)(A)); and, (ii) Will actively seek and encourage the participation of such organizations in grant funded activities (section 311(b)(4)(B), 42 U.S.C. 10410 (b)(4)(B)).
(b) The applicant coalition must provide a signed statement that the coalition will not use grant funds, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar legal document by any Federal, State or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress, or any State or local legislative body, or State proposals by initiative petition, except that representatives of the State Domestic Violence Coalition may testify or make other appropriate communications:
(i) When formally requested to do so by a legislative body, a committee, or a member of such organization (section 311 (d)(1), 42 U.S.C. 10410(d)(1)); or,
(ii) In connection with legislation or appropriations directly affecting the activities of the State domestic violence coalition or any member of the coalition (section 311(d)(2), 42 U.S.C. 10410 (d)(2)).
(c) The applicant coalition must provide a signed statement that the State domestic violence coalition will prohibit discrimination on the basis of age, handicap, sex, race, color, and national origin or religion, in accordance with section 307 of the Act, 42 U.S.C. 10406.

G. Reporting Requirements

1. The State domestic violence coalition grantee must submit an annual report of activities describing the coordination, training and technical assistance, needs assessment, and comprehensive planning activities carried out; the public information and education services provided; the activities conducted in conjunction with judicial and law enforcement agencies; the actions conducted in conjunction with other agencies such as the State child welfare agency; and any other activities undertaken under this grant award. The annual report also must provide an assessment of the effectiveness of the grant-supported activities.

The annual report is due 90 days after the end of the fiscal year in which the grant is awarded (December 29). The final program report is due 90 days after the end of the expenditure period (December 29). Program Reports are to be sent to: Office of Community Services, Administration for Children and Families, Attn: William D. Riley, 370 L'Enfant Promenade, SW., 5th Floor West, Washington, DC 20447.

2. The State domestic violence coalition grantees must also submit an annual financial report, Standard Form 269 (SF–269). A financial report is due 90 days after the end of the fiscal year in which the grant is awarded. A final financial report is due 90 days after the end of the expenditure period. Financial reports are to be sent to: Administration for Children and Families, Division of Mandatory Grants, Attention: Joseph Lonergan, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting of record-keeping requirement inherent in a proposed or final rule, or program announcement. This program announcement contains information collection requirements in sections (F) and (G) of Part III, which require that certain information must be provided in annual reports, fiscal reports, and as part of a grantee's application.

Public reporting burden for this collection of information is estimated to average six hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information.

In accordance with the PRA, the application requirements contained in this notice have been approved by OMB under control number 0970–0062. This project description expires 12/31/2003.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

I. Executive Order 12372

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs" for State plan consolidation and simplification only—45 CFR 100.12. The review and comment provisions of the Executive Order and part 100 do not apply.

J. Certifications

Applicants must comply with the required certifications found at Attachments A, B, C, and D as follows:

1. *The Anti-Lobbying Certification and Disclosure Form* must be signed and submitted with the application. If applicable, a Standard Form LLL, which discloses lobbying payments, must be signed and submitted.

2. *Certification Regarding Debarment:* The signature on the application by a coalition official responsible for the administration of the program attests to the applicant's intent to comply with the Debarment Certification. The Debarment Certification does not have to be returned with the application.

3. *Certification Regarding Environmental Tobacco Smoke:* The signature on the application by a coalition official certifies that the applicant will comply with the requirements regarding environmental tobacco smoke and services to children under 18 of the Pro-Children Act of 1994. The applicant further agrees that it will require the language of this certification be included in any standards which contain provisions for children's Services and that all grantees shall certify accordingly.

4. *Certification Regarding Drug-Free Workplace Requirements:* The signature on the application by a coalition official attests to the applicant's intent to comply with the Drug-Free Workplace requirements.

(Catalog of Federal Domestic Assistance Number 93.591, Family Violence Prevention and Services: Grants to State Domestic Violence Coalitions)

Dated: April 8, 2003.

Clarence H. Carter,

Director, Office of Community Services, ACF/DHHS.

List of Attachments

Attachment A—Certification Regarding Lobbying
Attachment B—Certification Regarding Debarment
Attachment C—Certification Regarding Environmental Tobacco Smoke
Attachment D—Certification Regarding Drug-Free Workplace

BILLING CODE 4184–01–P

Attachment A

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, ``Disclosure Form to Report Lobbying,'' in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, ``Disclosure Form to Report Lobbying,'' in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Signature

_____

Title

_____

Organization

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

1. Type of Federal Action: ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known* Congressional District, *if known*:		5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: Congressional District, *if known*:
6. Federal Department/Agency:		7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:		9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):		b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

Attachment B – Page 1

Administration for Children and Families
U.S. Department of Health and Human Services

CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

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7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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Certification Regarding Debarment, Suspension, and Other Responsibility Matters--Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

Attachment B – Page 3

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled ``Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,'' without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

****

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion--Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994 (Act), requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment D

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about --

(1)The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will --
(1) Abide by the terms of the statement; and
(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;
(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted --
(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).
(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[FR Doc. 03–9212 Filed 4–14–03; 8:45 am]
BILLING CODE 4184–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 84N–0102]

Cumulative List of Orphan Drug and Biological Designations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the cumulative list of orphan drug and biological designations as of December 31, 2002. FDA has announced the availability of previous lists, which are updated monthly, identifying the drugs and biologicals granted orphan designation under the Federal Food, Drug, and Cosmetic Act (the act).

ADDRESSES: Copies of the cumulative list of orphan drug and biological designations are available from the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and the Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3666.

FOR FURTHER INFORMATION CONTACT: Jeffrey Fritsch, Office of Orphan Products Development (HF–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3666.

SUPPLEMENTARY INFORMATION: FDA's Office of Orphan Products Development (OPD) reviews and takes final action on applications submitted by sponsors seeking orphan designation of their drug or biological under section 526 of the act (21 U.S.C. 360bb). In accordance with this section of the act, which requires public notification of designations, FDA maintains a cumulative list of orphan drug and biological designations. This list includes the name of the drug or biological, the specific disease/condition for which the drug or biological is designated, and information about the sponsor such as the name, address, telephone, and contact.

At the end of each calendar year, the agency publishes a cumulative list of orphan drug and biological designations current through the calendar year. The list that is the subject of this notice is the cumulative list of orphan drug and biological designations through December 31, 2002, and, therefore, brings the June 7, 2002 (67 FR 39409) publication up to date. This list is available upon request from the Dockets Management Branch (see **ADDRESSES**). Those requesting a copy should specify Docket No. 84N–0102, which is the docket number for this notice. In addition, the list is updated monthly and is available upon request from OPD or the FDA's Dockets Management Branch (see **ADDRESSES**). The current list is also available on the Web site at http://www.fda.gov/orphan.

The orphan designation of a drug or biological applies only to the sponsor who requested the designation. Each sponsor interested in developing a drug or biological for an orphan indication must apply for orphan designation in order to obtain exclusive marketing rights. Any request for designation must be received by FDA before the submission of a marketing application for the proposed indication for which designation is requested (21 CFR 316.23). Copies of the orphan drug regulations (21 CFR part 316) (57 FR 62076, December 29, 1992) and explanatory background materials for use in preparing an application for orphan designation may be obtained from OPD (see **ADDRESSES**).

The names of the drugs and biologicals shown in the cumulative list of orphan designations may change upon marketing approval/licensing, reflecting the established, proper name approved by FDA. Because drugs and biologicals not approved/licensed for marketing are investigational, the appropriate established, proper name has not necessarily been assigned.

Dated: April 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9226 Filed 4–14–03; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pulmonary-Allergy Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 15, 2003, from 8 a.m. to 5 p.m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12545. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss biologics license application (BLA) 103976, XOLAIR Omalizumab (Humanized Monoclonal Antibody to Human IgE) by Genentech, Inc., for the treatment of allergic asthma.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 8, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 8, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kimberly Littleton Topper at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 8, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–9225 Filed 4–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01D–0368]

Draft Guidance for Industry on Submitting Marketing Applications According to the ICH/CTD Format; General Considerations; Availability; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening until June 16, 2003, the comment period for the draft guidance for industry entitled "Submitting Marketing Applications According to the ICH/CTD Format; General Considerations" that appeared in the **Federal Register** of September 5, 2001 (66 FR 46464). The agency is taking this action in response to several informal requests for an extension of the comment period.

DATES: Submit written or electronic comments on the draft guidance by June 16, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send two self-addressed adhesive labels to assist the office in processing your request. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Randy Levin, Center for Drug Evaluation and Research (HFD–001), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20857, 301–594–5400; or Robert Yetter, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0373.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 5, 2001 (66 FR 46464), FDA published a notice announcing the availability of a draft guidance for industry entitled "Submitting Marketing Applications According to the ICH/CTD Format; General Considerations." This guidance provides information on how to organize new drug applications, abbreviated new drug applications, and biologics license applications based on the International Conference on Harmonization M4 guidance on organizing the Common Technical Document for the registration of pharmaceuticals for human use. Interested persons were given until November 5, 2001, to submit written or electronic comments on the draft guidance. In response to several informal requests from drug and biologic manufacturers, FDA has decided to reopen the comment period on the draft guidance until June 16, 2003, to allow interested persons additional time to submit comments.

II. Comments

Interested persons may, on or before June 16, 2003, submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments to http://www.fda.gov/dockets/ecomments or two hard copies of any written comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document at either http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: April 8, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9224 Filed 4–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: March 2003

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of March 2003, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
AIRD, EILEEN B RIDGEWOOD, NJ	04/20/2003
ALMAZAN, MARIA LA CANADA, CA	04/20/2003
AMADOR, CARLOS MIAMI, FL	04/20/2003
AMY, LESLIE W RAYBROOK, NY	04/20/2003
BAIRD, KARIN LYNN YUCAIPA, CA	04/20/2003
BARON, ADOLFO MIAMI, FL	04/20/2003
BENTHALL, MARK JOSEPH ST LOUIS, MO	04/20/2003
BOOKER, THELMA A ATCHISON, KS	04/20/2003
BREARY, CHESTER H JR ORIENT, OH	04/20/2003
BRINGAS, AL YAZOO CITY, MS	04/20/2003
CANABAL-ENRIQUEZ, JOSE YAUCO, PR	04/20/2003
CANET, FRANCISCO MIAMI, FL	04/20/2003
CASTELLON, MIRIAM MAGALY MIAMI, FL	04/20/2003
CHADWICK, GARY V WEST VALLEY, UT	04/20/2003
CORNWALL, RICHARD O ADVANCE, NC	04/20/2003
CROSS, HARRY G GOLDSBORO, NC	04/20/2003
DAO, MICHAEL M CLARKSVILLE, TN	08/24/1998
DAVIS, VIRGIL JR COMPTON, CA	04/20/2003
DIALYSIS WITH HEART, INC SHREWSBURY, PA	04/20/2003
DIVERSIFIED HEALTH SVCS MEMPHIS, TN	08/27/2001
EPSTEIN, HELEN N WOODMERE, NY	04/20/2003
FERNANDEZ, ELIO MIAMI, FL	04/20/2003
FULCRUM SERVICES, INC TAMPA, FL	04/20/2003
GALIANO, CARMEN MIAMI, FL	04/20/2003
GARDNER, THOMAS VINCENT TRAVERSE CITY, MI	04/20/2003
GENCO, RICHARD S FALLSBURGH, NY	04/20/2003
GLICKLICH, DANA NATALIA NEW YORK, NY	04/20/2003
GRIMBLE, GERVIS JEROME LOS ANGELES, CA	04/20/2003
GS CARE CORP TAMPA, FL	04/20/2003
HANNA, GEORGE LOS ANGELES, CA	04/20/2003
HERNANDEZ, ROLANDO ARIAS INGLEWOOD, CA	04/20/2003
IMANI, ALI GHAZVINY LOS ANGELES, CA	04/20/2003
IZZO, MARY JO ROCHESTER, NY	04/20/2003
JEREZ, MERCEDES MIAMI, FL	04/20/2003
JOHNSON, DARRELL MIAMI, FL	04/20/2003
JONES, GENOLA MIRAMAR, FL	04/20/2003
KAI, TAMMY KAILUA, HI	04/20/2003
KALIANA, KUMAR M OXFORD, WI	04/20/2003
KATZ, ROBERT BAY SHORE, NY	04/20/2003
KHAN, AZIZ DIX HILLS, NY	04/20/2003
KILLINGS, CURTIS EARL LOS ANGELES, CA	04/20/2004
KOSHKARYAN, OGANES LOS ANGELES, CA	04/20/2003
KUSHKIN, ALEX L COLUMBUS, OH	04/20/2003
LACEY, ESTHER A ATLANTA, GA	04/20/2003
LOUIS, JACQUES C HARTSDALE, NY	04/20/2003
LUGONES, LOYDA L COLEMAN, FL	04/20/2003
LUGONES, PEDRO MIAMI, FL	04/20/2003
MANUEL, LAUREANO M CAMP HILL, PA	04/20/2003
MASSENBURG, OLAF WINSTON-SALEM, NC	04/20/2003
MENA, MARIO R PENSACOLA, FL	04/20/2003
MOLINA, ESPERANZA ELIZABETH RI BELL, CA	04/20/2003
MORALES, EMMAR D N ANDOVER, MA	04/20/2003
MOTA, REINIRDO MIAMI, FL	04/20/2003
MUNACO, VITO ROCHESTER, MI	04/20/2003
MURRAY, GERALDINE MIAMI, FL	04/20/2003
NODARSE, ANGELA MIAMI, FL	04/20/2003
PEREZ, LUIS ARMANDO COLEMAN, FL	04/20/2003
PEREZ, JORGE ENRIQUE MIAMI BEACH, FL	04/20/2003
PERKINS, CAROLYN CAMPBELL, MO	04/20/2003
PILLOT-COSTAS, JUAN PONCE, PR	04/20/2003
PUMA, YOON LONG BEACH, CA	04/20/2003
SCARBOUGH, BENARD KEYES LOS ANGELES, CA	04/20/2003
SIEBZENER, MARC LOUIS CHICAGO, IL	04/20/2003
SIMPSON, CYNTHIA MOUNT VERNON, NY	04/20/2003
SINIBALDI, JOSE LUIS INGLEWOOD, CA	04/20/2003
SKORUPKO, VADIM A SAN JOSE, CA	04/20/2003
SMART, TWANA JEAN LAS VEGAS, NV	04/20/2003
SREY, THAVY SIGNAL HILL, CA	04/20/2003
TALEI, MOUSA LOS ANGELES, CA	04/20/2003
THOMAS, SHARON A ATCHISON, KS	04/20/2003
THOMAS, ARCHIE MELVIN LOS ANGELES, CA	04/20/2003
THOMPSON, EDWIN G CLEVELAND, OH	04/20/2003
TRICHE, MITCHELL RAY SR LOS ANGELES, CA	04/20/2003
URCHECK, JEROME WALTER BERKLEY, MI	04/20/2003
VALDES, ROLANDO R HIALEAH, FL	04/20/2003
WHITE, LEROY SYDNEY COMPTON, CA	04/20/2003
WILLIAMS, EDDIE LEE OPA LOCKA, FL	04/20/2003
WOODS, RHONDA DUBLIN, VA	04/20/2003
YDROVO, ERICKA MIAMI, FL	04/20/2003
YDROVO, OSCAR MIAMI, FL	04/20/2003
FELONY CONVICTION FOR HEALTH CARE FRAUD	
BERLOW, BERNARD MINERSVILLE, PA	04/20/2003
BOWEN, DENNIS LEWISTOWN, PA	04/20/2003
DENNY, MARY ELLEN BAINBRIDGE, IN	04/20/2003
EDWARDS, MARY LATRICE COLORADO SPRNGS, CO	04/20/2003
HALE, KIMBERLY RENEE CEDAR RAPIDS, IA	04/20/2003
MCMAHAN, ANN ALEXANDER BLACK MOUNTAIN, NC	04/20/2003
NEWMAN, LEE DAVID LOS ANGELES, CA	04/20/2003
PIERARD, JAMES EDWARD E PEORIA, IL	04/20/2003
RAPER, HEATHER CORDELE, GA	04/20/2003
SIRCAR, SAMAR ROLLING HILLS, CA	04/20/2003
SOGOMONYAN, GEORGIY R LOMPOC, CA	04/20/2003
SORENSEN, PHILIP M OKEMOS, MI	04/20/2003
STETZ, MICHAEL POTTERVILLE, MI	04/20/2003
FELONY CONTROL SUBSTANCE CONVICTION	
BETUSH, MONICA OLEAN, NY	04/20/2003
GALPIN, KENNETH SCOTT PLACERVILLE, CA	04/20/2003
GARCIA-MEDINA, BENJAMIN A WHITE DEER, PA	04/20/2003
GRAVES, JAMES FREDERICK PACE, FL	04/20/2003
INFANTINO, VERNON A AKRON, OH	04/20/2003
PEARRE, PAMELA G JEFFERSON CITY, MO	04/20/2003
REYNOLDS, JANA L SPANISH FORK, UT	04/20/2003
SNYDER, BARBARA ELLEN ROCKVILLE, IN	04/20/2003
TOLEDO, ISABELLE SLOWMAN SMITHFIELD, UT	04/20/2003
WESTHOFF, JACQUELINE NELL FORT MORGAN, CO	04/20/2003
PATIENT ABUSE/NEGLECT CONVICTIONS	
ALFORD, JARED NEWARK, NJ	04/20/2003
BONNER, LISA L WETUMPKA, AL	04/20/2003
CLARENDON, HENRY MOWAT GAINESVILLE, FL	04/20/2003
DESENCLOS, ERIC JOSEPH MORENO VALLEY, CA	04/20/2003
FANNIN, BARBARA ATLANTA, GA	04/20/2003
GARDNER, TOD THOMAS HOPKINS, MN	04/20/2003
HACKBART, DAVID ALAN PLYMOUTH, MN	04/20/2003
IVORY, CONSTANT MARIE BUNKIE, LA	04/20/2003
JOHNSON, PEARLIE LATIMER	04/20/2003

Subject, city, state	Effective date
ALBANY, GA	
KANDOVA, ROZA M	04/20/2009
PHOENIX, AZ	
MCBETH, MARGARET C	04/20/2003
CROSS ANCHOR, SC	
MILLER, SUSAN E	04/20/2003
SOMERSET, WI	
NICHOLSON, DAVID WAYNE	04/20/2003
FLORENCE, AZ	
REDDY, HARI MARAYANA	04/20/2003
VICTORVILLE, CA	
RICE, VERNON E	04/20/2003
KANSAS CITY, MO	
SAIKIA, SATYAKI R	04/20/2003
WAUPUN, WI	
SEYMOUR, PATRICIA	04/20/2003
HULL, GA	
SPURGEON, MICHAEL D	04/20/2003
HARRISMAN, TN	
STRONG, ANTHONY RICHARD	04/20/2003
ARVADA, CO	
TAMEZ, ANDREW	04/20/2003
CORPUS CHRISTI, TX	
THELEN, TRACY ROSE	04/20/2003
EDEN VALLEY, MN	
CONTROLLED SUBSTANCE CONVICTIONS	
FLACK, PATRICA ANN	04/20/2003
SPRINGFIELD, OH	
KELLY, CAROLINE LEE	04/20/2003
NORWAY, MI	
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ABELL, SONIA T	04/20/2003
PALMYRA, MO	
AKERS, ALVIN E	04/20/2003
MOUNT DORA, FL	
ALLSBURY, ROSEANNE D	04/20/2003
SILSBEE, TX	
AMISOLA, JUDE M	04/20/2003
DIAMOND BAR, CA	
ANDERSON, URSULA	04/20/2003
LOS ANGELES, CA	
AUSTIN, KIM E	04/20/2003
MESA, AZ	
BARAJAS, LAURIE Y	04/20/2003
SHERRARD, IL	
BARNET, DONNA LYNN	04/20/2003
MESA, AZ	
BARRETT, THOMAS J	04/20/2003
EVANS, GA	
BARTON, LINDA ANN	04/20/2003
MODESTO, CA	
BENEDICT, MAUREEN ELAINE	04/20/2003
ST JOSEPH, MO	
BERKOWITZ, ROBERT A	04/20/2003
LYNDHURST, OH	
BLACK, CHRISTY ANN	04/20/2003
MERIDIAN, ID	
BLACK, ELWANDA	04/20/2003
ALPINE, AL	
BOOTMAN, STEVEN CRAIG	04/20/2003
LAKE FOREST, CA	
BOYD, JUDITH MARLENE	04/20/2003
BONIFAY, FL	
BRADFORD, PAUL MARTIN	04/20/2003
HIGHLAND, CA	
BRANDT, TOBY E	04/20/2003
MACUNGIE, PA	
BREWER, HOLLY	04/20/2003
VINTON, VA	
BROWN, ALBERT HARVEL	04/20/2003
CHICAGO, IL	
BROWN, MICHELLE R	04/20/2003
RICHMOND, VA	
BRYANT, HOLLI	04/20/2003
TRUSSVILLE, AL	
BURLAS, JEANNIE WITT	04/20/2003
LATROBE, PA	
CARROLL, JAMES L	04/20/2003
CLEARWATER, FL	
CARTER, BRADD SCOTT	04/20/2003
GRAND JCTION, CO	
CATHA, DELVIN	04/20/2003
BAPCHULE, AZ	
CEETO, HENRY	04/20/2003
RANCHO CUCAMONGA, CA	
COCHRANE, DENNIS JOEL	04/20/2003
SALINA, KS	
COE, AMY D	04/20/2003
PHOENIX, AZ	
COLLINS, LEE ANN	04/20/2003
LEMON FURNACE, PA	
COOKMAN, WADE E	04/20/2003
TUCSON, AZ	
COPELAND, GROVER H III	04/20/2003
CHICAGO, IL	
COPPOLA, LURA M	04/20/2003
GLENDALE, AZ	
COVERDALE, JULIE ANN	04/20/2003
PALMYRA, NJ	
CREWS, TARA DAWN	04/20/2003
NATHALIE, VA	
CSAPO, DORINE SUE	04/20/2003
FLINT, MI	
DAVIS, JEREMY PHILIP	04/20/2003
HOLLYWOOD, FL	
DAVIT, SAMUEL	04/20/2003
CLIFFSIDE PARK, NJ	
DAVITIASHVILI, NODARI	04/20/2003
REGO PARK, NY	
DAVY, GAGE WILLIAM	04/20/2003
HUDSON, FL	
DECHORETZ, RAY G	04/20/2003
MELROSE, MA	
DEL REAL, FRANK III	04/20/2003
FRESNO, CA	
DISABATO, ELEANOR JOAN	04/20/2003
HARTFORD, CT	
DOWNING, LAURA ELIZABETH	04/20/2003
GADSDEN, AL	
DUGAN, TERRI L	04/20/2003
GLENSHAW, PA	
FARQUHAR, PERRY GORDON	04/20/2003
MAD RIVER, CA	
FEIGHTNER, ROBERT DUANE	04/20/2003
TUCSON, AZ	
FELKER, MAUREEN ANN	04/20/2003
BEVERLY HILLS, CA	
FISCHER, NISHA L	04/20/2003
TEMPE, AZ	
FISHER, KAREN KLOVANISH	04/20/2003
LEBANON, IN	
FISHER, KIMBERLY MICHELLE	04/20/2003
JACKSONVILLE, FL	
FLEMING, RICHARD E	04/20/2003
SAN LUIS OBISPO, CA	
FLETCHER, JEREMIAH R	04/20/2003
CONWAY, VA	
GEORGE, LAVERA M	04/20/2003
MCKEESPORT, PA	
GERO, MARLENE BRENT	04/20/2003
DAYTONA BEACH, FL	
GHRAMM, KIMBERLY ANN	04/20/2003
SHOW LOW, AZ	
GILLARD, MARY S	04/20/2003
ASBURY PARK, NJ	
GRABOSKI, TAMMY L	04/20/2003
DUNCANSVILLE, PA	
HALL, HEIDE HALLADAY	04/20/2003
SCOTTSDALE, AZ	
HARPER, KYRA MAMIE	04/20/2003
CHICAGO, IL	
HEERLEIN, CHRISTINE N	04/20/2003
FENTON, MO	
HERZOG, MARK S	04/20/2003
PINCKNEY, MI	
HOUSER, ALFRED JAMES	04/20/2003
SANFORD, FL	
HOWLE, SUSAN L	04/20/2003
PHILADELPHIA, PA	
HUTER, ERIC LAWRENCE	04/20/2003
FT WALTON BCH, FL	
INGLE, MARGUERITE B	04/20/2003
NORFOLK, VA	
IVORY, GERRY N	04/20/2003
CHICAGO, IL	
JAMES, GARY D	04/20/2003
HAZARD, KY	
JARBOE, KATHRYN ROSE	04/20/2003
LEWISTON, ME	
KELLY, KATHY JOE	04/20/2003
LOVELAND, CO	
KINSER, JIMMY NOEL	04/20/2003
COEUR D'ALENE, ID	
KLAUMENZER, JANE W	04/20/2003
LONG BRANCH TWP, NJ	
KLEEFELD, BETTINA	04/20/2003
BIG RIVER, CA	
KNOEFLER, HALEE CRAIG	04/20/2003
RIVERSIDE, CA	
KOZUSKO, DEBORAH LOUISE	04/20/2003
OMAHA, NE	
KULMA, ROGER L	04/20/2003
DOWNERS GROVE, IL	
LACHARITE, CHRISTOPHER	04/20/2003
BOYNTON BEACH, FL	
LE, TRUNG DUY	04/20/2003
PHOENIX, AZ	
LOPEZ, JULIAN GARCIA	04/20/2003
LOS ANGELES, CA	
LOWE, MONICA ELIZABETH	04/20/2003
BAKERSFIELD, CA	
LUMAKIN, RODOLFO DIVINAGRACIA	04/20/2003
BELLFLOWER, CA	
MANIACI, BARBARA MELLER	04/20/2003
CAMILLUS, NY	
MANOS, MICHAEL G	04/20/2003
GROVETOWN, GA	
MARTINEZ PHARMACY DISCOUNT, IN	04/20/2003
MIAMI, FL	
MAUER, WILLIAM JOHN JR	04/20/2003
ARLINGTON HGTS, IL	
MAY, APRIL ANN	04/20/2003
BOISE, ID	
MAZZACANO, JULIE A	04/20/2003
TREVOSE, PA	
MAZZI, JAMES ALBERT	04/20/2003

Subject, city, state	Effective date
HUBBARD, OH	
MCCONAGHY-KALER, KRISTEN	04/20/2003
AGUANGA, CA	
MCCRARY, CHRISTEEN FINGER	04/20/2003
REDLANDS, CA	
MCDONOUGH, EDITH	04/20/2003
PORTSMOUTH, NH	
MCKINSTER, MICHAEL	04/20/2003
COLTON, CA	
MCLAREN, JACQUELINE LEA	04/20/2003
BRIGHTON, CO	
MCMILLAN, SUSAN ELIZABETH	04/20/2003
MESA, AZ	
MERCIER, MARY E	04/20/2003
NEW BRITAIN, CT	
MILLIRON, NANCY PAISLEY	04/20/2003
SALEM, VA	
MURRAY, WILLIAM O	04/20/2003
KNOXVILLE, TN	
MYERS, DEBRA KAY	04/20/2003
CARMICHAEL, CA	
NICHOLS, NANCY	04/20/2003
ROCHESTER, NY	
NIELSEN, LORI PRESTWICH	04/20/2003
OREM, UT	
OZOLINS-MORGAN, KELLY ANN	04/20/2003
EDMOND, OK	
PETERSON, SHERRY L	04/20/2003
WEST PLAINS, MO	
PHAM, MEGAN LOAN	04/20/2003
WESTMINSTER, CA	
PITMAN, KATHRYN A	04/20/2003
MOBILE, AL	
POL, WILLIAM	04/20/2003
LAKE HAVASU CITY, AZ	
POPE, BOBBY II	04/20/2003
WAUKETAN, IL	
PORTALES, RAMON	04/20/2003
SAN DIMAS, CA	
PRICE, DORIS	04/20/2003
RUTHER GLEN, VA	
RABUKHIN, ALEKSANDER	04/20/2003
REGO PARK, NY	
RICHARDSON, KENNETH DEWAYNE	04/20/2003
SARALAND, AL	
RIDGLEY, HARRY DEAN	04/20/2003
ORTING, WA	
RIPA, NICOLE ELIZABETH	04/20/2003
BEATRICE, NE	
ROBBINS, DONNA JEAN	04/20/2003
EDGEWATER, CO	
ROBERTS, JUDY A	04/20/2003
WYNANTSKILL, NY	
RUSSELL-FREY, SHERRI LEIGH	04/20/2003
TUCSON, AZ	
SAGE, TRUDANCE LYNN	04/20/2003
PUEBLO, CO	
SALTER, FRANCES D	04/20/2003
ATMORE, AL	
SAMUELS, ERIC LEE	04/20/2003
KANKAKEE, IL	
SCHAAF, PAMELA JEANNE	04/20/2003
BOUNTIFUL, UT	
SCOTT, DONNA L	04/20/2003
PHOENIX, AZ	
SEELYE, TREVOR D	04/20/2003
LAFAYETTE, CA	
SEKAYUMPTEWA, MARY LOU	04/20/2003
PHOENIX, AZ	
SELLNER, RUSSELL P	04/20/2003
COLORADO SPRINGS, CO	
SETTLES, REBECCA ANN	04/20/2003
LOS ANGELES, CA	
SHAFFER, BARRY GRANT	04/20/2003
BRIGHTON, CO	
SHANNON, CATHY A	04/20/2003
PHOENIX, AZ	
SIEGLER, MICHAEL LAWRENCE	04/20/2003
SUNNYVALE, CA	
SLAWINSKI, LISA MARIE	04/20/2003
SPRING HILL, FL	
SMITH, KATHY L	04/20/2003
SACO, ME	
SMITH, MARGARET JEAN	04/20/2003
KISSIMMEE, FL	
SMITH, STANLEY ORVAL	04/20/2003
REDDING, CA	
SMITHMEN, ANNA	04/20/2003
ELMIRA, NY	
SOMMER, JUDITH FORNES	04/20/2003
N TONAWANDA, NY	
SON, KA MYUNG	04/20/2003
LOS ANGELES, CA	
SOX, JOE HOWLE	04/20/2003
GULF SHORES, AL	
SPAIN, ROBERTA LEA	04/20/2003
OKEMAH, OK	
SPIRES, FAYE D	04/20/2003
WILMINGTON, NC	
SPURLOCK, RODNEY ARTHUR	04/20/2003
BELLEVUE, NE	
STEINER, GINNY MARIE	04/20/2003
TWIN FALLS, ID	
STEVENS, TRACY M	04/20/2003
EGG HARBOR CITY, NJ	
STILES, SHIRLEY LEE	04/20/2003
SUN CITY, CA	
STOLTZ, KAREN S	04/20/2003
ALTOONA, PA	
STRANGE, KIMBERLY KAY	04/20/2003
BROWNSBURG, IN	
SULLENTRUP, ANGEL LEE	04/20/2003
NEWBERG, MO	
SWARTZ, WENDY QUIRIN	04/20/2003
ALTOONA, PA	
SWEENEY, DREMA MERCER	04/20/2003
GREENVILLE, KY	
TAKAYAMA, DUANE	04/20/2003
SAN GABRIEL, CA	
TAMRAT, MERSHA	04/20/2003
GLENDALE, AZ	
TATGE, LUTHER WILLIS	04/20/2003
GOLDEN, CO	
TAYLOR, JAMES	04/20/2003
PHOENIX, AZ	
UNGER-MODER, JILL	04/20/2003
W LAFAYETTE, IN	
VANDENBERG, CINDY LOU	04/20/2003
HENRIETTA, NY	
VANDERGRIFF, JUDITH LYNNE	04/20/2003
DECATUR, AL	
VARNER, RONALD L	04/20/2003
EVANS, GA	
VEAL, PHILLIP MARK	04/20/2003
TUCSON, AZ	
VEAL, ANTHONY DEWAYNE	04/20/2003
PHOENIX, AZ	
VISEK, TERI LU	04/20/2003
OMAHA, NE	
VOGT, REGINA KAY	04/20/2003
MINNEAPOLIS, MN	
WELLS, TRACY JON	04/20/2003
ROCKLIN, CA	
WHEELER, HEATHER	04/20/2003
BRIGHAM CITY, UT	
WHITE, MICHAEL DALE	04/20/2003
STEPHENS CITY, VA	
WILLIAMS, LILLIAN	04/20/2003
COLUMBIA, MD	
YARROW, ROBIN ANN	04/20/2003
PORTLAND, CT	
YATES, MILDRED GERALDINE	04/20/2003
TROY, NY	
YOUNG, JAMES M	04/20/2003
SIERRA VISTA, AZ	
FEDERAL/STATE EXCLUSION/ SUSPENSION	
BRUSILOVSKY, ROMAN	04/20/2003
GLENVIEW, IL	
KOPP, RUTH LEWSHENIA	04/20/2003
PEKIN, IL	
LEE, HOI W	04/20/2003
RENTON, WA	
FRAUD/KICKBACKS	
HELLER, ERI	08/19/2002
SANTA MONICA, CA.	
OWNED/CONTROLLED BY CONVICTED ENTITIES	
ALAMO MEDICAL SUPPLY & EQPMT	04/20/2003
VAN NUYS, CA	
ALL STAR MARKETING INC	04/20/2003
MIAMI, FL	
ATLAS CLINICAL LAB, INC	04/20/2003
CORAL GABLES, FL	
BEST CARE CORP	04/20/2003
PENSACOLA, FL	
BEST MEDICAL BILLING, INC	04/20/2003
MIAMI, FL	
BLUE SKIES AND CANDY	04/20/2003
STOCKBRIDGE, GA	
MARIO MENA CORPORATION	04/20/2003
PENSACOLA, FL	
MIAMI CARE, INC	10/02/2001
MIAMI, FL	
NW ADULT DAY CARE CENTER, INC	04/20/2003
JACKSONVILLE, FL	
NW ADULT DAYCARE CTR OF JACK	04/20/2003
JACKSONVILLE, FL	
SANTA MONICA DISCOUNT PHARMACY	04/20/2003
LOS ANGELES, CA	
UNITED RESPIRATORY SVCS, INC	04/20/2003
MIAMI, FL	
WELLBEING DIAGNOSTIC CTR, INC	04/20/2003

Subject, city, state	Effective date
PENSACOLA, FL	
DEFAULT ON HEAL LOAN	
ARRON, BRETT LAWRENCE CHICAGO, IL	04/20/2003
BANERJEE, KAUSTUV PHILADELPHIA, PA	04/20/2003
BELL, DEREK A NORRISTOWN, PA	04/20/2003
DUDLEY, JAMES L LAS VEGAS, NV	04/20/2003
EVANS, STEVEN D PITTSBURGH, PA	04/20/2003
GAIN, JOHN J OXFORD, PA	04/20/2003
GILES, BEVERLY A PHILADELPHIA, PA	03/04/2003
HYNEMAN, MARTIN P READING, PA	04/20/2003
LABATE-STERLING, CATHLEEN A GRANTHAM, NH	04/20/2003
MCANALLEN, CURTIS M WESTERVILLE, OH	02/03/2003
SALOMON, ALIX P CHICAGO, IL	01/09/2003
SMITH, JOHN D PHILADELPHIA, PA	04/20/2003
SPEER, JAMES D CORPUS CHRISTI, TX	04/20/2003

Dated: March 31, 2003.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. 03–8802 Filed 4–14–03; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard Maritime Administration

[USCG 2003–14134]

Port Pelican LLC Deepwater Port License Application; Preparation of Environmental Impact Statement

AGENCY: Coast Guard, DHS, and Maritime Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Coast Guard and the Maritime Administration will hold a public meeting/informational open house to discuss issues to be addressed in the environmental impact statement for the Port Pelican LLC natural gas deepwater port license application.

DATES: The meeting date is April 29, 2003, 3 p.m. to 7 p.m., Lafayette, LA.

ADDRESSES: The meeting location is: Lafayette Hilton Hotel, West Pinhook Rd, Lafayette, LA 70503, (337) 235–6111.

FOR FURTHER INFORMATION CONTACT: If you have questions about the project or the meeting, contact Commander Mark Prescott, U.S. Coast Guard at (202) 267–0225 or *mprescott@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Coast Guard and the Maritime Administration (MARAD) recently issued a notice of intent (68 FR 16808, Apr. 7, 2003) to prepare an environmental impact statement (EIS) in connection with the Port Pelican LLC natural gas deepwater port license application. As part of the scoping process summarized in that notice, and as authorized by 40 CFR 1508.22 (b)(4), the Coast Guard and MARAD will hold a public meeting and informational open house in Lafayette, Louisiana on April 29, 2003, at the time and location noted above under **DATES** and **ADDRESSES.** Public comments will be accepted at that meeting and can also be submitted to the docket, as described in the April 7, 2003 notice of intent. Consult that notice for further information about the Port Pelican LLC license application. If you plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, contact the U.S. Coast Guard as indicated in **FOR FURTHER INFORMATION CONTACT**.

Dated: April 11, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection, Coast Guard.

Raymond R. Barberesi,

Director, Office of Ports and Domestic Shipping, Maritime Administration.

[FR Doc. 03–9345 Filed 4–11–03; 2:48 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1454–DR]

Kentucky; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky, (FEMA–1454–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003: Fleming County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9190 Filed 4–14–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1453–DR]

Ohio; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio, (FEMA–1453–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 3, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003: Darke, Delaware, Harrison, Hocking, Licking, Montgomery, Perry, Union, and Washington Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

Vinton County for emergency protective measures (Category B) for a period of 48 hours (already designated for Public Assistance).

Athens, Belmont, Morgan, and Noble Counties for Public Assistance and emergency protective measures (Category B) for a period of 48 hours.

Monroe County for Public Assistance (already designated for emergency protective measures (Category B) for a period of 48 hours).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9188 Filed 4–14–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1453–DR]

Ohio; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio, (FEMA–1453–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003: Preble County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9189 Filed 4–14–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1455–DR]

West Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia, (FEMA–1455–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 4, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003: Braxton, Lewis, Logan, Monroe, and Putnam Counties for Individual Assistance (already designated for Public Assistance).

Harrison County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9191 Filed 4–14–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

Clarification of Language in the 1994 Record of Decision for the Northwest Forest Plan: National Forests and Bureau of Land Management Districts Within the Range of the Northern Spotted Owl; Western Oregon and Washington, and Northwestern California

AGENCY: Bureau of Land Management, USDI; Forest Service, USDA.

ACTION: Notice of Availability (NOA) of the Draft Supplemental Environmental Impact Statement (DSEIS) for the Clarification of Language in the 1994 record of decision for the Northwest Forest Plan; National Forests and Bureau of Land Management Districts within the range of the Northern Spotted Owl.

SUMMARY: The USDI Bureau of Land Management and the USDA Forest Service have prepared a DSEIS to consider an amendment of selected portions of the Aquatic Conservation Strategy (ACS) (part of the Northwest forest Plan) to clarify guidance intended to protect and restore watersheds. This amendment is needed because projects intended to achieve Northwest Forest Plan goals have been delayed or stopped due to misapplication of certain passages in the ACS. This DSEIS supplements the Northwest Forest Plan Final SEIS. It is not intended to replace or reconsider the plan as a whole, but

focuses on specific passages within the ACS.

DATES: Written comments on the DSEIS must be postmarked or otherwise delivered by 4:15 p.m. 90 days following the date the Environmental Protection Agency publishes the NOA and filing of the DSEIS in the **Federal Register**. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. No public meetings have been scheduled.

ADDRESSES: Send written comments to: ACS EIS, P.O. Box 221090, Salt Lake City, UT 84122–1090; FAX: (801) 517–1014 (please address fax to "ACS EIS"); E-mail: acs *comments@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Joyce Casey; phone (503) 326–2430; E-mail: *jcasey01@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Two alternatives are considered in this DSEIS. No action would not change existing language within the ACS. The proposed action (preferred alternative) would make limited changes to clarify how the agencies are to design projects to follow the ACS.

The proposed action would approve limited changes to language within the ACS. The ACS is an integral part of the Northwest Forest Plan. The ACS is intended to maintain and restore the ecological health of watersheds and aquatic ecosystems within the Northwest Forest Plan area. The ACS includes language that has been interpreted to establish an expectation that all projects must achieve all ACS objectives. These interpretations hinder Federal land managers' ability to plan and implement projects needed to achieve Northwest Forest Plan goals. The proposed action would amend the Northwest Forest Plan to clarify that:

- The proper scales for Federal land managers to evaluate progress toward achievement of the ACS objectives are the watershed and broader scales;
- No single project should be expected to achieve all ACS objectives;
- Decision makers must design projects to follow the ACS. Project records must contain evidence that projects comply with relevant Standards and Guidelines in sections C and D of attachment A in the Northwest Forest Plan record of decision. Project records must also demonstrate how the decision maker used relevant information from applicable watershed analysis to provide context for the design and assessment of the project.
- References to ACS objectives in the Standards and Guidelines in Sections C and D do not require that decision makers find that site-specific projects, in themselves, will fully attain ACS objectives.

The proposed action (preferred alternative) would retain all existing components of the ACS, including Riparian Reserves, Key Watersheds, watershed analysis, and watershed restoration. It would reinforce concepts about appropriate scales of analysis and the role of standards and guidelines. It would remove the expectation that all projects must achieve all ACS objectives, and would reinforce the role of watershed analysis in providing context for actions that may affect aquatic or riparian habitat.

Dated: April 9, 2003.

Michael C. Ash,

Deputy Regional Forester, Pacific Northwest Region.

[FR Doc. 03–9128 Filed 4–14–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Special Trustee Advisory Board, Notice of Initiation of the Nomination/Selection Process

AGENCY: Office of the Special Trustee for American Indians (OST), Interior.

ACTION: Call for nominations for membership to the Special Trustee for American Indians Advisory Board.

SUMMARY: Pub. L. 108–7, making further continuing appropriations for the fiscal year 2003, and for other purposes, became law on February 20, 2003. Section 133 of the General Provisions for the Department of the Interior directed the Special Trustee for American Indians, in consultation with the Secretary of the Interior and the Tribes, to appoint new members of the Special Trustee's Advisory Board within 90 days of enactment of Pub. L. 108–7. This notice initiates the process to select the new membership of that Board. Nominations for interested individuals meeting the specific criteria described in this notice for becoming a member of the Advisory Board should be submitted with the requested information within 30 days of publication of this Notice.

DATES: All nominations must be postmarked by 30 days from the date of publication in the **Federal Register**.

ADDRESSES: Nominations and supporting documentation should be sent to: The Office of Special Trustee for American Indians; 1849 C Street, NW., Ste 5140; Washington, DC 20240, Attn: Richard Fitzgerald.

FOR FURTHER INFORMATION CONTACT: Richard Fitzgerald (202) 208–4866 You can obtain information and a copy of the Notice for the Nomination/Selection process by contacting the following offices: OST 1849 C Street, NW., Ste 5140; Washington, DC 20240 or OST at 505 Marquette St, NW., Ste 800; Albuquerque, NM 87102; (505) 816–1313.

SUPPLEMENTARY INFORMATION: Pub. L. 108–7, making further continuing appropriations for the fiscal year 2003, and for other purposes became law on February 20, 2003. Section 133 of the General Provisions for the Department of the Interior directed the Special Trustee for American Indians, in consultation with the Secretary of the Interior and the Tribes, to appoint new members to the Special Trustee Advisory Board. The Office of the Special Trustee is now initiating the process to select the membership of that Board. Section 306 of the American Indian Trust Fund Management Reform Act of 1994 (Pub. L. 103–412; 25 U.S.C. 4046) requires the Special Trustee to establish an advisory board to provide advice on all matters within the jurisdiction of the Special Trustee. The advisory board must consist of nine members which must meet the following criteria: five members representing trust fund account holders, including both tribal and Individual Indian Money accounts; two members having practical experience in trust fund and financial management; one member having practical experience in fiduciary investment management; and one member from academia having knowledge of general management of large organizations. Advisory board members serve a two year term; travel and per diem expenses are provided. Final selections will be made by and serve at the discretion of the Special Trustee for American Indians. Individuals who wish to serve as members of the advisory board must complete and submit the following information to this office within 30 days of publication of this Notice in the **Federal Register**:

A. Nominee's Full Name:
B. Business Address:
C. Business Phone:
D. Home Address:

E. Home Phone;
F. Occupation/Title;
G. Qualifications (education including degrees, major field of study and/or training for I(2–4) or whether you are an individual or tribal account holder for I(1)):
H. Career Highlights (significant related experience; civic and professional activities, elected offices, prior advisory committee experience, or career achievements related to the interest to be represented):
I. Indicate Specific Area of Interest to be Represented from the following:
1. A representative from the trust fund account holders, including both tribal and Individual Indian Money accounts;
2. A representative having practical experience in trust fund and financial management;
3. A representative having practical experience in fiduciary investment management; or
4. A representative from academia having knowledge of general management of large organizations.
J. Attach a minimum of two Letters of Reference from interests or organizations represented.
K. Nominated by: Include Nominator's name, address and telephone number(s).
L. Date of nomination:

Groups may nominate more than one person. If nominating more than one nominee, please indicate your preferred order of appointment selection.

Dated: April 1, 2003.

Richard V. Fitzgerald,

Trust Policy Officer.

[FR Doc. 03–9125 Filed 4–14–03; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Decision and Availability of the Record of Decision for the Final Environmental Impact Statement for the Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision, Churchill and Washoe Counties, NV

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Decision and Availability of the Record of Decision for the Final Environmental Impact Statement for the Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision.

SUMMARY: This is a notice of decision and availability of the Record of Decision (ROD) for the Final Environmental Impact Statement for the Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision (Final CCP EIS), Churchill and Washoe Counties, Nevada. Pursuant to the Council on Environmental Quality regulations implementing the National Environmental Policy Act (NEPA; 40 CFR 1505.2) and the U.S. Fish and Wildlife Service's (Service) Comprehensive Conservation Plan policy, the Service issues this ROD upon consideration of the Final CCP EIS prepared for the proposed action to develop and implement a comprehensive conservation plan for the Stillwater National Wildlife Refuge Complex. The Final CCP EIS was released to the public on May 29, 2002. A Notice of Availability of the Final CCP EIS was published in the **Federal Register** on May 31, 2002 (67 FR 38142). The ROD, which documents the selection of the Preferred Alternative as presented in the Final CCP EIS, was signed by U.S. Fish and Wildlife Service California/Nevada Office Manager Steve Thompson, on April 2003. The determination was based on a thorough analysis of the environmental, social, and economic considerations presented in the Final CCP EIS.

FOR FURTHER INFORMATION CONTACT: Project Leader, Stillwater National Wildlife Refuge Complex, 1000 Auction Road, Fallon, Nevada 89406, (775) 423–5128. A copy of the ROD or Final CCP EIS may be obtained from the above address or by download from: *http://pacific.fws.gov/planning/*.

SUPPLEMENTARY INFORMATION: The following is a summary of the Record of Decision for the Final Environmental Impact Statement for the Stillwater National Wildlife Refuge Complex Comprehensive Conservation Plan and Boundary Revision.

The U.S. Fish and Wildlife Service (Service) began developing a comprehensive conservation plan (CCP) for the Stillwater National Wildlife Refuge Complex (NWRC) in early 1997. The Final Environmental Impact Statement for the Stillwater NWRC Comprehensive Conservation Plan and Boundary Revision (Final CCP EIS) identifies and evaluates five alternatives for managing the Stillwater NWRC for the next 15 years. Each alternative consists of two main parts: (1) A boundary revision for Stillwater National Wildlife Refuge (NWR), and (2) the framework of a CCP, including refuge goals, objectives, and strategies, for achieving the purposes for which each refuge was established and for contributing toward the mission of the National Wildlife Refuge System. The Stillwater NWRC currently includes Stillwater NWR, Stillwater Wildlife Management Area (WMA), Fallon NWR, and Anaho Island NWR, which are located in west-central Nevada.

The Record of Decision (ROD) is a statement of the decision made, including how the decision responds to primary issues, other alternatives considered, public involvement in the decision making process, and the basis for the decision.

Decision

The U.S. Fish and Wildlife Service will implement Alternative E for the Stillwater NWRC, which was identified in the Final CCP EIS as the alternative that provides the best balance between satisfying the National Wildlife Refuge System and Service missions and purposes of Stillwater NWR and Anaho Island NWR and providing opportunities for compatible refuge uses. Alternative E also recognizes the need to protect cultural resources. Some guidelines and actions in Alternative E remain consistent with those presented in Alternative C of the Draft CCP EIS. Others were modified in the Final CCP EIS to respond to public comments and concerns. Alternative E, which is supported by the majority of the commenting public and endorsed by the Nevada Division of Wildlife and the Nevada Board of Wildlife Commissioners, represents the CCP which will guide Stillwater NWR and Anaho Island NWR management for the next 15 years.

Alternative E focuses on approximating natural habitat conditions as the primary means to conserve and manage the refuges' wildlife, restore their natural biological diversity, and fulfill international treaty obligations with respect to fish and wildlife, with the understanding that events occurring over the past 100 years have substantially altered habitat conditions. The needs of particular species, including species highlighted in regional conservation plans, may be used to adjust management practices where this is deemed necessary and within the general framework established by Alternative E. The following is a brief summary of key components.

Contingent on approval of the Stillwater NWRC Land Protection Plan proposed in the Final CCP EIS, Alternative E would expand the approved boundary of Stillwater NWR to include a majority of the lands that are now inside the Stillwater WMA and portions of Fallon NWR, as well as six

sections of land along the lower Carson River and 26 sections north of the existing Stillwater NWR. Major habitats proposed to be added to Stillwater NWR would be the lower Carson River and its delta marsh, the sand dunes along the southern edge of the Carson Sink, and the stabilized dunes and salt desert shrub habitat between the Carson River and Stillwater Marsh. The revised boundary of Stillwater NWR would exclude the northern portions of Fallon NWR and the western portions of the Stillwater WMA. Stillwater WMA would no longer be managed by the Service under an agreement with the Bureau of Reclamation. Although the size of Stillwater NWR would increase, the acreage of Federal lands managed primarily for wildlife in the Lahontan Valley would decline by about 25,517 acres. The most important lands with respect to refuge purposes and wetlands protection would be retained. Under this proposal, the approved boundary of Stillwater NWR would include about 172,254 acres, of which about 137,504 acres would be Federal. The acreage of non-Federal inholdings within the boundaries of Federal wildlife areas in the Lahontan Valley would decline by about 40 percent.

Some of these boundary revisions cannot be accomplished without Congressional action. Consistent with Public Law 101–618, the Service intends to recommend that Congress, through special legislation: (1) Revoke the wildlife reservation on Bureau of Reclamation lands known as Fallon NWR; (2) abolish the name Fallon NWR; and (3) establish primary Service jurisdiction on those portions of Stillwater WMA and the former Fallon NWR which the Service proposes to include in the revised Stillwater NWR boundary.

Anaho Island NWR will be managed as it has in the past, with no intent to conduct active habitat management. Habitat management on Stillwater NWR will focus on providing a variety of native wetland, riparian, and upland plant communities through the use of water management, integrated pest management, prescribed fire, and other tools described in the Final CCP EIS. A Habitat Management Plan will be developed concurrent with initial implementation of the CCP. A draft Integrated Pest Management Plan and an approved Fire Management Plan have already been prepared.

Water management on Stillwater NWR will focus on providing spring migration and breeding habitat. However, up to 25% of the refuge's acquired water rights will be reserved for fall delivery (October-November) to provide habitat for fall waterbird migration and for wildlife dependent recreational uses. A primary objective of water management will be to reduce salinity in wetland units located at higher elevations or in specified flow corridors to provide conditions suitable for native plant restoration.

Livestock grazing and muskrat trapping will no longer be allowed as commercial uses but can be used as habitat management tools to meet specific habitat objectives. Livestock grazing will no longer be allowed in uplands, which should aid native vegetation establishment in upland habitats. Farming will be allowed on up to 300 acres, but will require water from other sources to facilitate agricultural production. Compatibility determinations have been prepared that describe the stipulations associated with implementation of these management activities.

Priority wildlife dependent recreational uses found compatible on Stillwater NWR include hunting, wildlife observation and photography, and environmental education and interpretation. Additionally, horseback riding was found to be compatible. Anaho Island NWR will remain closed to all public access.

Hunting will be allowed on Stillwater NWR during all State of Nevada designated seasons for big game, upland game, and migratory birds. All wetland units historically open to waterfowl hunting will remain open. Boat access options will vary depending on wetland unit, but will include areas designated for non-motorized boats, motorized boats, or air-thrust boats, as well as areas designated for no boat use.

Options for wildlife observation and photography at Stillwater NWR will be enhanced through development of a ten-mile auto tour loop within the existing sanctuary, and trails at Stillwater Point Reservoir, Timber Lakes, and the lower Carson River. Outdoor education and interpretation will be promoted through development of a visitor center and outdoor education site along the ten-mile tour loop. A sign plan is currently being developed to evaluate interpretive opportunities along refuge roads and trails.

Alternative E, selected for implementation, represents the best balance between refuge purposes, resource conservation, and compatible wildlife dependent public use.

Other Alternatives Considered

The Draft CCP EIS and Final CCP EIS evaluated four other alternatives for the management of Stillwater NWRC. Under all alternatives, Anaho Island NWR would continue to be managed much as it has in the past for the protection of colonial nesting birds. The No Action Alternative (Alternative A) would retain the existing Stillwater NWR boundaries and baseline management as outlined in the 1987 Management Plan for Stillwater WMA and modified by the Service's water rights acquisition program. Alternative B would result in the lands within Stillwater WMA reverting back to U.S. Bureau of Reclamation management or other public land status. Management would focus on providing fall and winter habitat for waterfowl and opportunities for waterfowl hunting on Stillwater NWR, and breeding habitat for waterbirds on Fallon NWR. Under Alternative C, the Service would seek legislation to expand the Stillwater NWR boundary to include much of Stillwater WMA and Fallon NWR to conserve additional riparian and dune habitat. This alternative would emphasize the approximation of natural biological diversity with adjustments to enhance breeding habitat for waterbirds and fall and winter habitat for waterfowl, and would provide enhanced opportunities for wildlife observation and environmental education. Under Alternative D, legislation would also be sought to expand the Stillwater NWR boundary to include much of Stillwater WMA and Fallon NWR to conserve additional riparian and sand dune habitat. Management of Stillwater NWR would focus on restoring natural hydrologic patterns and other ecological processes. Visitor services management would focus on providing opportunities for wildlife observation and environmental education. These alternatives were not selected for implementation because they did not balance resource conservation goals with compatible public use as well as the selected alternative.

Public Involvement and Comments Received

Prior to release of the Final CCP EIS, the Service met with a variety of Federal agencies, the Nevada Division of Wildlife, local Native American Tribes, municipal governments, and several interest groups on a number of occasions, and held open houses to receive public comment. Seven planning updates were sent out to all on the mailing list. Fifty-four contributors provided 1,004 comments on the Draft CCP EIS. A complete history of the public involvement, comment period, and Service responses to comments are included in the Final CCP EIS.

The Service received only two comments following the distribution of the Final CCP EIS. Mr. John T. Moran, Jr., Chairman of the State of Nevada Board of Wildlife Commissioners (Commission), sent a letter confirming the Commission's unanimous decision to support the Service's selection and adoption of preferred Alternative E in the Final CCP EIS, provided no administrative changes to the intent of Alternative E as written were made. Comments on the Draft CCP EIS submitted by the Nevada Division of Wildlife sponsored working group were considered during development of the preferred Alternative E in the Final CCP EIS, and were incorporated into the Service's revised position as presented in Planning Update #7 (July 2001) for public review. No substantive changes were made from the information presented in the update, and this information was used to develop the visitor services, habitat management, and wildlife management options presented in Alternative E.

Ms. Lisa B. Hanf, Manager of the Federal Activities Office, U.S. Environmental Protection Agency (EPA), Region IX, submitted comments in support of the Service's decision to select preferred Alternative E for implementation and expressed appreciation for the Service's response to their comments regarding the Draft CCP EIS. Ms. Hanf further noted that EPA was currently working with the Service, U.S. Geological Survey, and the University of Nevada, Reno to identify measures that will reduce mercury transport to the wetlands, and appreciated the Service's attempts to identify potential mitigation strategies to improve the quality of water entering the wetlands. The Service is committed to improving the quality of water entering the wetlands and, as noted, has identified a number of mitigation strategies which could be used. The Service appreciates the opportunity to continue working closely with EPA and other entities actively involved in restoring the environmental health of wetland habitats at Stillwater NWR.

Churchill County Chair Gwen Washburn submitted comments reiterating the County's opposition to the refuge's proposed water management program and the proposed boundary revisions due to perceived impacts to the local economy, County and private inholdings and ground water resources. The County provided similar comments on the draft CCP/EIS and the Service provided detailed responses to the County's comments in the Final CCP/EIS. The Service has provided clarifications in response to Churchill County comments on the Final CCP/EIS under separate letter. No new information was received that would alter the conclusions contained in the Final CCP/EIS.

Environmentally Preferable Alternative

The alternative which causes the least damage to the biological and physical environment and best protects, preserves, and enhances historic, cultural, and natural resources is Alternative C, Option 1.

The focus of Alternative C, Option 1, was to manage the Stillwater NWR by using water management to simulate natural hydrologic processes to restore and maintain natural biological diversity. Another primary element was to increase the balance between the needs of wildlife resources and the recreational needs of a rapidly expanding local and regional population base, while providing equal emphasis to priority wildlife-dependent recreational uses. Additional sanctuary would have been provided in the area currently open to public use and access would have been restricted to open roads with vehicle pullouts. Boat access during waterfowl hunting season would have been restricted to 15 horsepower outboard motor boats with a 5 miles per hour restriction on speed, and a no boating designation would have been applied to some wetland units. Alternative C, Option 1, did not represent the best balance between resource conservation and public use when compared to Alternative E.

Findings and Basis for Decision

Based upon review and careful consideration of the impacts identified in the Final CCP EIS; results of the various studies and surveys conducted in conjunction with the Draft and Final CCP EIS; public comments received throughout the process including comments on the Draft and Final CCP EIS; and other relevant factors, including the purposes for each refuge established pursuant to Public Law 101–618 (104 Stat. 3289), and other statutory and regulatory guidance; the Service finds that:

(1) Alternative E consists of the components, programs, and facilities described above.

(2) Alternative E, as it is described in the Final CCP EIS for the Stillwater National Wildlife Refuge Complex, provides the best balance between accomplishing the purposes for which Stillwater NWR and Anaho Island NWR and statutory mission of the Service to provide long-term protection of the Refuges' resources and allowing for appropriate levels of visitor use and appropriate means of visitor enjoyment. Alternative E accomplishes identified management goals and desired future conditions.

(3) Alternative E represents the best balance between provision of habitat restoration, public access and recreation, and other programs, and public and agency concerns identified during the public participation process.

(4) Based on an Intra-Service Section 7 evaluation, no state or federally listed endangered or threatened species or their critical habitats are known to be adversely affected by Alternative E. Implementation of the decision will avoid significant adverse impacts on wetlands and is not likely to adversely affect any endangered or threatened species, or result in destruction or adverse modification of critical habitat of such species. The Service has determined that implementation of Alternative E will result in a beneficial effect to bald eagle, and is not likely to adversely affect threatened Lahontan cutthroat trout or endangered cui-ui.

(5) No historic properties listed in or eligible for listing in the National Register of Historic Places are known to be affected by the plan.

(6) The requirements of NEPA and the implementing regulations (40 CFR Parts 1500–1508) have been satisfied.

Measures To Minimize Environmental Harm

Public concerns, potential impacts, and methods or stipulations to mitigate those impacts are addressed in the Final CCP EIS. All practicable measures to avoid or minimize environmental impacts that could result from implementation of the selected action have been identified and incorporated into the selected action. Implementation of the selected action will avoid any adverse impacts on wetlands and any endangered or threatened species, and will not result in the destruction or adverse modification of critical habitat of such species. Mitigation measures, called stipulations, that will be followed are documented in Appendix O, Compatibility Determinations, in the Final CCP EIS. These stipulations make public and other uses compatible with the purpose for which the refuge was established. The referenced compatibility stipulations ensure that all practical means to avoid or minimize environmental harm from implementation of Alternative E have been adopted.

The Service has considered the environmental and relevant concerns presented by agencies, organizations and individuals on the proposed action to develop and implement a comprehensive conservation plan and boundary revision for the Stillwater

National Wildlife Refuge Complex. I have decided to implement Alternative E, the Service's preferred alternative. The ROD documents the written facts and conclusions relied upon in reaching this decision.

Dated: April 7, 2003.

Steve Thompson,

Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 03–9110 Filed 4–14–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CO–934–5700; COC65193 & COC65194]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease/s, COC 65193 & COC 65194 for lands in Moffat County, Colorado, were timely filed and were accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease/s as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and Bureau of Land Management is proposing to reinstate lease/s COC 65193 & COC 65194 effective September 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly A. Derringer,

Chief, Fluid Minerals Adjudication.

[FR Doc. 03–9124 Filed 4–14–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–03–1420–BJ]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Robert M. Scruggs, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, (775) 861–6541.

SUPPLEMENTARY INFORMATION:

1. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on January 17, 2003:

The supplemental plat showing a correction to the lotting in the NE¼NE¼ of section 6, Township 14 North, Range 20 East, Mount Diablo Meridian, Nevada, was accepted January 16, 2003.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on February 7, 2003:

The plat representing the dependent resurvey of a portion of the north boundary, a portion of the subdivisional lines and a portion of Mineral Survey No. 4518, and the subdivision of section 3 and a metes-and-bounds survey in section 3, Township 23 South, Range 63 East, Mount Diablo Meridian, Nevada, under Group No. 805, was accepted February 7, 2003.

This survey was executed to meet certain administrative needs of the Bureau of Land Management and the City of Henderson, Nevada.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on March 26, 2003:

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivision-of-section lines of section 24 and a metes-and-bounds survey in section 24, and the survey of Lots 4 and 5 in section 24, Township 19 South, Range 60 East, Mount Diablo Meridian, Nevada, under Group No. 808, was accepted March 25, 2003.

This survey was executed to meet certain administrative needs of the Bureau of Land Management and the City of Las Vegas, Nevada.

4. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: April 8, 2003.

Robert M. Scruggs,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 03–9117 Filed 4–14–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0048).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR 251, "Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf." This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements.

DATES: Submit written comments by May 15, 2003.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0048), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail your comments to MMS, the address is: *rules.comments@MMS.gov*. Reference Information Collection 1010–0048 in your subject line and mark your message for return receipt. Include your name and return address in your message text.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, telephone (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 251, Geological and Geophysical (G&G) Explorations of the Outer Continental Shelf.

OMB Control Number: 1010–0048.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

The OCS Lands Act (43 U.S.C. 1340) also states that "any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this OCS Lands Act, and which are not unduly harmful to aquatic life in such area." The section further requires that permits to conduct such activities may only be issued if it is determined that the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and do not disturb a site, structure, or object of historical or archaeological significance. Applicants for permits are required to submit form MMS–327 to provide the information necessary to evaluate their qualifications.

Regulations at 30 CFR part 251 implement these statutory requirements. We use the information to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the Government for certain costs. The information is necessary to determine if the applicants for permits or filers of notices meet the qualifications specified by the OCS Lands Act. The MMS uses information collected to understand the G&G characteristics of oil- and gas-bearing physiographic regions of the OCS. It aids the Secretary in obtaining a proper balance among the potentials for environmental damage, the discovery of oil and gas, and adverse impacts on affected coastal States. Information from permittees is necessary to determine the propriety and amount of reimbursement.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

Frequency: On occasion, annually, or as specified in permits.

Estimated Number and Description of Respondents: Approximately 150 Federal OCS permittees or notice filers.

Estimated Reporting and Recordkeeping "Hour" Burden: The estimated annual "hour" burden for this information collection is a total of 8,272 hours. The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 251	Reporting and recordkeeping requirement	Hour burden	Average number annual responses	Annual burden hours
251.4(a), (b); 251.5(a), (b), (d); 251.6; Permit Forms.	Apply for permits (form MMS–327) to conduct G&G exploration, including deep stratigraphic tests.	6	148 Applications	888
251.4(b); 251.5(c), (d); 251.6.	File notices to conduct scientific research activities, including notice to MMS prior to beginning and after concluding activities.	6	2 Notices	12
251.6(b); 251.7(b)(5)(iii)	Notify MMS if specific actions should occur; report archaeological resources. (No instances reported since 1982.)	1	1 Notice	1
251.7	Submit information on test drilling activities under a permit, including form MMS–123.	Burden included under 30 CFR 250.201, 250.203 and Form MMS–123 (1010–0049 and 1010–0044)		0
251.7(c)	Enter into agreement for group participation in test drilling, including publishing summary statement; provide MMS copy of notice/list of participants. (No agreements submitted since 1989.)	1	1 Agreement	1
251.7(d)	Submit bond on deep stratigraphic test	Burden included under 30 CFR part 256 (1010–0006)		0
251.8(a)	Request reimbursement for certain costs associated with MMS inspections. (No requests in many years. OCS Lands Act requires Government reimbursement.)	1	1 Request	1
251.8(b), (c)	Submit modifications to, and status/final reports on, activities conducted under a permit.	8	150 × 4 Reports = 600	4,800
251.9(c)	Notify MMS to relinquish a permit	½	8 Notices	4
251.10(c)	File appeals	Burden included under 1010–0121		0

Citation 30 CFR 251	Reporting and recordkeeping requirement	Hour burden	Average number annual responses	Annual burden hours
251.11; 251.12	Notify MMS and submit G&G data/information collected under a permit and/or processed by permittees or 3rd parties, including reports, logs or charts, results, analyses, descriptions, etc.	4	50 Respondents × 2 Submissions = 100.	400
251.13	Request reimbursement for certain costs associated with reproducing data/information.	20	50 Respondents × 2 Submissions = 100.	2,000
251.14(a)	Submit comments on MMS intent to disclose data/info. to the public.	1	1 Comment	1
251.14(c)(2)	Submit comments on MMS intent to disclose data/info. to an independent contractor/agent.	1	1 Comment	1
251.14(c)(4)	Contractor/agent submit written commitment not to sell, trade, license, or disclose data/info. without MMS consent.	1	1 Commitment	1
251.1 to 251.14	General departure and alternative compliance requests not specifically covered elsewhere in part 251 regulations.	2	1 Request	2
Permit Forms (Form MMS–327).	Request extension of permit time period	1	10 Extensions	10
Permit Forms (Form MMS–327).	Retain G&G data/information for 10 years and make available to MMS upon request.	1	150 Recordkeepers	150
Total Hour Burden			1,125 Responses	8,272

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no paperwork "non-hour cost" burdens associated with the collection of information.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on November 6, 2002, we published a **Federal Register** notice (67 FR 67643) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. In addition, § 250.199 provides the OMB control number for the information collection requirements imposed by the 30 CFR part 251 regulations and forms. The regulation also informs the public that they may comment at any time on the collections of information and provides the address to which they should send comments. We have received no comments in response to these efforts.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by May 15, 2003.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by the law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: March 4, 2003.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–9139 Filed 4–14–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Release of an Environmental Assessment Document for the Placement of Wireless Telecommunication Facilities

AGENCY: Catoctin Mountain Park, National Park Service, Interior.

ACTION: Notice of document availability.

SUMMARY: Catoctin Mountain Park will release for public review, the Environmental Assessment document for the application regarding the placement of wireless telecommunication facilities (WTF). On May 15, 2002, Verizon Wireless submitted an application for locating four wireless telecommunication facilities (WTF), each consisting of a monopole, attached antennas, associated cables, and a support equipment building at up to four different locations within Catoctin Mountain Park, a unit of the National Park Service. It is the responsibility of Catoctin Mountain Park and the purpose of the Environmental Assessment to evaluate the impacts by the proposed wireless telecommunication facilities on the park environs. The EA addresses several alternatives for placement of the WTF inside and outside park property. Two public information meetings will be held on April 29, 2003 and May 1, 2003.

DATES: Environmental Assessment release date—April 18, 2003.

Document Availability: The Environmental Assessment document will be available for public review at Catoctin Mountain Park headquarters located at 6602 Foxville Road, Thurmont Maryland, at Washington County Library (Hagerstown and Smithsburg branches) and Frederick County Library (Frederick and Thurmont branches) and online at the Catoctin Mountain Park's Web site *http://www.nps.gov/cato.*

FOR FURTHER INFORMATION CONTACT: Scott Bell, Environmental Protection Specialist, 301/416–0536.

Dated: April 7, 2003.

J. Mel Poole,

Superintendent, Catoctin Mountain Park.

[FR Doc. 03–9213 Filed 4–14–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Information Collection Activities Under OMB Review

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of data collection submission.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR), Recreation Use Data Report, OMB No. 1006–0002, abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before May 15, 2003.

ADDRESSES: Comments on this information collection should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street, NW., Washington, DC 20503. A copy of your comments should also be directed to the Bureau of Reclamation, Attention: Ms. Mollie Buckey, Office of Policy, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: For further information or a copy of the proposed collection of information, contact Ms. Mollie Buckey at (202) 513–0600.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Reclamation, including whether the information shall have practical use; (b) the accuracy of Reclamation's estimated burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Title: Recreation Use Data Report.

OMB No.: Reinstatement of OMB No. 1006–0002.

Summary: Reclamation will collect recreation and concession information in support of existing public laws, financial reporting requirements, and Reclamation's mission. The information will further Reclamation's ability to evaluate program and management effectiveness of existing recreation and concessionaire resources and facilities. It will ensure the accuracy and completeness of information about recreation opportunities on Reclamation project lands in the 17 Western States and validate public use of managed recreation resources.

Description of respondents: The information collection primarily affects other Federal agencies, State, local, or tribal governments or agencies who manage Reclamation's recreation resources and facilities; and for-profit concessionaires, subconcessionaires, and nonprofit organizations located on Reclamation lands with associated recreation services.

Frequency: Annually.

Form No. 7–2534, Managing Partners (Including Sites Managed by Reclamation)

Estimated number of respondents: 352.

Frequency of response: Initial response; updated annually if changes are made.

Estimated time for each response: 2 hours.

Total estimated annual reporting burden hours: 704.

Form No. 7–2535, Concessionaires

Estimated number of respondents: 225.

Frequency of response: Initial response; updated annually if changes are made.

Estimated time for each response: 2 hours.

Total estimated annual reporting burden hours: 450.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Reclamation will display a valid OMB control number on the forms. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on December 27, 2002 (67 FR 79146). Reclamation did not receive any comments on this collection of information during the comment period.

OMB has up to 60 days to approve or disapprove this information collection, but may respond after 30 days; therefore, public comment should be submitted to OMB within 30 days in order to assure maximum consideration.

Dated: February 21, 2003.

Wayne O. Deason,

Acting Director, Office of Program and Policy Services.

[FR Doc. 03–9136 Filed 4–14–03; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on May 13, 2002, Chattem Chemicals, Inc., 3801 St.

Elmo Avenue, Building 18 Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substance listed below:

Drug	Schedule
N-Ethylamphetamine (1475)	I
4-Methoxyamphetamine (7411)	I
2,5-Dimethoxyamphetamine (7396).	I
Difenoxin (9168)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Methylphenidate (1724)	II
Secobarbital (2315)	II
Meperidine (9230)	II
Codeine (9050)	II
Oxycodone (9143)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Thebaine (9333)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Fentanyl (9801)	II
Dextropropoxyphene (9273)	II

The firm plans to bulk manufacture the listed controlled substances to produce products for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD), and must be filed no later than 60 days from publication.

Dated: April 3, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–9228 Filed 4–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 25, 2002, Cody Laboratories, Inc., 331 33rd Street, Cody, Wyoming 82414, made application by renewal, and on March 5, 2003, by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of Schedule II of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	II
Methamphetamine (1105)	II
Amphetamine (1100)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phenylacetone (8501)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Fentanyl (9801)	II

The firm plans to produce bulk products for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD) and must be filed no later than June 16, 2003.

Dated: April 3, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–9227 Filed 4–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By notice dated June 7, 2002, and published in the **Federal Register** on June 20, 2002 (67 FR 42060), Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Coca Leaves (9040) and Poppy Straw (9650) basic classes of controlled substances listed in Schedule II.

The firm plans to import the controlled substances to manufacture bulk pharmaceutical controlled substances and non-controlled substance flavor extract.

No comments or objections have been received. DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Penick corporation to import these controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Penick Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest.

This investigation included inspection and testing of the company's physical security system, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations, section 1301.34 the above firm is granted registration as an importer of the basic classes of controlled substances listed.

Dated: April 3, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–9230 Filed 4–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a registration under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with section 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on May 20, 2002, Tocris Cookson, Inc., 16144 Westwoods Business Park, Ellisville, MO 63021–4500, made application to the Drug Enforcement Administration to be registered as an importer of Tetrahydrocannabinols (7370), a basic class of controlled. Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substances may file

written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Drug Operations Section, Domestic Drug Unit (ODOD), and must be filed no later than May 15, 2003. This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic class of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 3, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–9229 Filed 4–14–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,528]

Celestica Corporation Midwest Campus Including Leased Workers of Adecco Staffing Services, Rochester, Minnesota; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 29, 2003, applicable to workers of Celestica Corporation, Midwest Campus, Rochester, Minnesota. The notice was published in the **Federal Register** on February 24, 2003 (68 FR 8620).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that leased workers of Adecco Staffing Services were employed at the Midwest Campus of Celestica Corporation to produce electronic cards at the Rochester, Minnesota location of the subject firm.

Based on these findings, the Department is amending this certification to include leased workers of Adecco Staffing Services working at Celestica Corporation, Midwest Campus, Rochester, Minnesota.

The intent of the Department's certification is to include all workers of Celestica Corporation, Midwest Campus who were adversely affected by the shift in production to Canada.

The amended notice applicable to TA–W–50,528 is hereby issued as follows:

All workers of Celestica Corporation, Midwest Campus, Rochester, Minnesota, and leased workers of Adecco Staffing Services, Rochester, Minnesota producing electronic cards at Celestica Corporation, Midwest Campus, Rochester, Minnesota, who became totally or partially separated from employment on or after January 7, 2002, through January 29, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 8th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–9150 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–40,980]

Dyna-Craft Industries, Inc, Including Temporary Workers of Adecco, Murrysville, PA; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 6, 2002, applicable to workers of Dyna-Craft Industries, Inc., Murrysville, Pennsylvania. The notice was published in the **Federal Register** on September 27, 2002 (67 FR 61161).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that temporary workers of Adecco were working at Dyna-Craft Industries, Inc. to produce stamped metal frames for semiconductors at the Murrysville, Pennsylvania location of the subject firm.

Based on these findings, the Department is amending this certification to include temporary workers of Adecco, Murrysville, Pennsylvania working at Dyna-Craft Industries, Inc., Murrysville, Pennsylvania.

The intent of the Department's certification is to include all workers of Dyna-Craft Industries, Inc. who were adversely affected by the shift in production to Malaysia.

The amended notice applicable to TA–W–40,980 is hereby issued as follows:

All workers of Dyna-Craft Industries, Inc., Murrysville, Pennsylvania including temporary workers of Adecco, Murrysville, Pennsylvania engaged in employment related to the production of stamped metal frames for semiconductors at Dyna-Craft Industries, Inc., Murrysville, Pennsylvania, who became totally or partially separated from employment on or after January 20, 2001, through September 6, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 7th day of April 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–9144 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,059]

Flowserve, Williamsport, PA; Notice of Negative Determination Regarding Application for Reconsideration

By application of March 18, 2003, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 19, 2003, and published in the **Federal Register** on March 10, 2003 (68 FR 11409).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the

determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Flowserve, Williamsport, Pennsylvania was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met.

The petitioners allege that they are import impacted because their company's contract with a foreign customer "specifies that 50% of the contract work will be done at (foreign) facilities." Further, the petitioners note that Flowserve is required to buy valves and materials from foreign vendors and re-sell them to their foreign customer "thus taking work away from Williamsport."

Contact with a company official confirmed that all production for this customer was exclusively for export purposes.

As trade adjustment assistance is concerned exclusively with whether imports impact layoffs of petitioning worker groups, the above-mentioned allegations regarding agreements between the subject firm and their foreign customer base are irrelevant.

The petitioners list several Flowserve affiliates that have been certified for trade adjustment assistance due to import impact, and suggest that, as a result, the petitioning worker group should be equally eligible.

In fact, all of the facilities listed by the petitioners were certified due to increased imports from the company of products like or directly competitive with those produced at the certified facilities. In the case of the subject firm, sales and production were relatively stable during the investigative period and any declines immediately prior to plant closure corresponded with a shift of production to an affiliated domestic facility. There was no evidence of import impact; as has been established above, the only foreign production impact allegations did not concern imports.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 8th day of April, 2003.

Edward A. Tomchick

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–9148 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,016]

Laird Techonolgies, Delaware Watergap, PA; Notice of Negative Determination on Reconsideration

By application of February 11, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on February 3, 2003, and will soon be published in the **Federal Register**.

The petition for the workers of Laird Technologies, Delaware Watergap, Pennsylvania was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their purchases of imported metal stampings.

The petitioner states that the Department did not address allegations indicated in the petition of the subject firm as a "secondarily" affected firm. The petitioner further states that a list of trade certified firms that were also subject firm customers was attached to the petition.

Upon review of the original investigation, it appears that the Department overlooked the petitioners' assertion that they acted as an upstream supplier to firms listed on an attached page that were allegedly trade certified. A company official was contacted in regard to this list of customers in order to establish which facility locations may have been customers of the subject firm in the relevant period, and the amount of business that these customers accounted for at the subject firm. Of the listed firms that were revealed as trade certified, the customer sales data provided by the company official revealed that these customers cumulatively accounted for a negligible amount of the customer base, and thus did not contribute to layoffs at the subject firm.

Furthermore, as established in the original investigation, the preponderance in sales, production and employment declines are attributed to the subject firm's shifting a portion of production that services the export market, and therefore is unrelated to import impact.

In conclusion, the "upstream supplier" group eligibility requirement of section 222(b) of the Trade Act of 1974, as amended, was not met.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Laird Technologies, Delaware Watergap, Pennsylvania.

Signed at Washington, DC this 2nd day of April, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–9147 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,588]

Murray Engineering, Inc., Complete Design Service, Flint, MI; Notice of Negative Determination Regarding Application for Reconsideration

By application received on February 19, 2003, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Murray Engineering, Inc., Complete Design Service, Flint, Michigan was signed on February 5, 2003, and published in the **Federal Register** on February 24, 2003 (68 FR 8620).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Murray Engineering, Inc., Complete Design Service, Flint, Michigan engaged in activities related to industrial design and engineering services. The petition was denied because the petitioning workers did not produce an article within the meaning of section 222(3) of the Act.

The petitioner alleges that their services should be considered production because it involves a "tangible drawing essential and integral to the making or building of a product."

The engineering drawings and schematics prepared by subject firm workers services are not considered production within the meaning of section 222(3) of the Act.

The petitioner also asserts that the Department may be misled by the subject firm's name into thinking that there is not a tangible product involved, but states that subject firm workers produce "design product on paper."

Electronically generated information does not constitute production within the meaning of the Trade Act, and the fact that this information is generated on paper is irrelevant to worker group eligibility for trade adjustment assistance.

Finally, the petitioner appears to assert that the companies that produced the machines designed by the subject firm were certified and questions whether the Department has "discriminated" against the subject firm "because of a company name."

The subject firm does not produce the same product as its customers, nor do the subject firm workers produce a component that is integrated into further production by its customers. Thus, the issue of whether the subject firm's customers are certified or not is irrelevant in context with the petitioning worker group's eligibility for TAA. The design services produced by the subject firm do not constitute production within the meaning of section 222(3) of the Trade Act.

Only in very limited instances are service workers certified for TAA, namely the worker separations must be caused by a reduced demand for their services from a parent or controlling firm or subdivision whose workers produce an article and who are currently under certification for TAA.

In conclusion, the workers at the subject firm did not produce an article within the meaning of section 222(3) of the Trade Act 1974.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 31st day of March, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–9151 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,284]

Newell Rubbermaid Corporation, Newell Window Furnishings, Newell Operating Company, Levelor Hardware Group, Amerock Hardware Division, Bulldog Hardware Division, Ogdenburg, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 19, 2002, applicable to workers of Newell Rubbermaid Corp., Levelor Hardware Group, Amerock Hardware Div., Bulldog Hardware Div., Ogdenburg, New York. The notice was published in the **Federal Register** on January 9, 2003 (68 FR 1200).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of hardware items such as nuts, bolts and screws.

New information shows that some workers separated from employment at the subject firm had their wages reported under separate unemployment insurance (UI) tax accounts for Newell Window Furnishings and Newell Operating Company.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Newell Rubbermaid Corp., Newell Window Furnishings, Newell Operating Company, Levelor Hardware Group, Amerock Hardware Div., and Bulldog Hardware Div., all in Ogdenburg, New York who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,284 is hereby issued as follows:

All workers of Newell Rubbermaid Corp., Newell Window Furnishings, Newell Operating Company, Levelor Hardware Group, Amerock Hardware Div., Bulldog Hardware Div., Ogdenburg, New York, who became totally or partially separated from employment on or after November 27, 2001, through December 19, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 7th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–9149 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,934 and TA–W–50,934A]

Shadowline, Incorporated, Morganton, North Carolina and Shadowline, Incorporated, Boone, NC; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 10, 2003, applicable to workers of Shadowline, Incorporated, Morganton, North Carolina. The notice will soon be published in the **Federal Register**.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers produced lingerie. Information contained in the record shows that the company intended workers in Boone, North Carolina to be included in the certification. The workers at both North Carolina locations are considered by the company as one worker group. Data collected from the company official were for both locations.

It is the Department's intent to include all workers of Shadowline, Incorporated, adversely affected by increased imports. Accordingly, the Department is amending the certification to include all workers of

Shadowline, Incorporated, located in Boone, North Carolina.

The amended notice applicable to TA–W–50,934 is hereby issued as follows:

All workers of Shadowline, Incorporated, Morganton, North Carolina (TA–W–50,934) and Boone, North Carolina (TA–W–50,934A), who became totally or partially separated from employment on or after February 11, 2002, through March 10, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 31st day of March, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–9152 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,918]

Unilever Best Foods North America, Conopco, Santa Cruz, CA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 1, 2002, applicable to workers of Unilever Best Foods North America, Santa Cruz, California. The notice was published in the **Federal Register** on October 22, 2002 (67 FR 64923).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of packaged tea, including black tea and herbal tea.

New information shows that some workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Conopco.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Unilever Best Foods North America, Santa Cruz, California who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,918 is hereby issued as follows:

All workers of Unilever Best Foods North America, Conopco, Santa Cruz, California, who became totally or partially separated from employment on or after July 24, 2001, through October 1, 2004, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 7th day of April 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–9146 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,208 and TA–W–41, 208A]

Valeo Climate Control, USA–2 Division, Automotive Air Conditioning Condenser Line, Grand Prairie, TX; Valeo Climate Control, USA–2 Division, Aluminum Tubing Line, Grand Prairie, TX; Notice of Revised Determination on Reconsideration

By letter postmarked October 30, 2002, the company requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on September 27, 2002, based on the finding that imports of air conditioning condensers and aluminum tubing did not contribute importantly to worker separations at the Grand Prairie plant. The denial notice was published in the **Federal Register** on October 22, 2002 (67 FR 64922).

To support the request for reconsideration, the company supplied additional information to supplement that which was gathered during the initial investigation. Upon further review and contact with the company, it was revealed that the company began importing a significant portion of competitive condensers in the relevant period. Further, as established in the original investigation, a significant portion of tubing produced at the subject firm was integrated into the production of condensers.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Valeo Climate Control, USA–2 Division, Automotive Air Conditioning Condenser Line, and the Aluminum Tubing Line, Grand Prairie, Texas, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Valeo Climate Control, USA–2 Division, Automotive Air Conditioning Condenser Line (TA–W–41,208), and the Aluminum Tubing Line (TA–W–41,208A), Grand Prairie, Texas, who became totally or partially separated from employment on or after March 1, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 2nd day of April 2003.

Edward A. Tomchick

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–9145 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Overpayment Recovery Questionnaire (OWCP–20). A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 16, 2003.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, Email *hbell@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or Email).

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. 923 (b) and 20 CFR 725.544 (c), and the Federal Employees' Compensation Act, 5 U.S.C. 8129(b) and 20 CFR 10.430–10.441, provide for the recovery, waiver, compromise, or termination of overpayment of benefits to beneficiaries. The OWCP–20 collects information used to ascertain the financial condition of the beneficiary who has been overpaid to determine if the concealment or improper transfer of assets, and to identify and consider present and potential income and current assets for enforced collection proceedings. The form also provides a means for the beneficiary to explain why he/she is not at fault for the overpayment. If this information were not collected, Black Lung and FECA would have little basis to decide on collection proceedings. This information collection is currently approved for use through October 31, 2003.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks approval for the extension of this information collection in order to carry out its responsibility under the law to resolve overpayments under the Acts.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Overpayment Recovery Questionnaire.

OMB Number: 1215–0144.

Agency Number: OWCP–20.

Affected Public: Individuals or households.

Total Respondents: 4,500.

Total Responses: 4,500.

Time per Response: 45–75 minutes, average 1 hour.

Frequency: On occasion.

Estimated Total Burden Hours: 4,500.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,800.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 8, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–9142 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "Consumer Price Index Housing Survey." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before June 16, 2003.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number (202) 691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number (202) 691–7628. (See Addresses section).

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Price Index (CPI) is the timeliest instrument compiled by the U.S. Government that is designed to measure changes in the purchasing power of the urban consumer's dollar. The CPI is used most widely as a measure of inflation, and serves as an indicator of the effectiveness of Government economic policy. It also is used as a deflator of other economic series, that is, to adjust other series for price changes and to translate these series into inflation-free dollars.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

This request addresses the continuation of the current Housing sample collection, and new construction

units added yearly. The Housing sample continues utilizing Computer-Assisted Data Collection (CADC) technology. Field representatives use hand-held pen computers and electronically transmit collected data back to Washington, DC.

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: Consumer Price Index Housing Survey.

OMB Number: 1220–0163.

Affected Public: Individuals or households; business or other for-profit.

Total Respondents: 36,996.

Frequency: Semi-annually.

Total Responses: 62,942.

Average Time Per Response: 6 minutes.

Estimated Total Burden Hours: 6,581.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC this 3rd day of April, 2003.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 03–9143 Filed 4–14–03; 8:45 am]

BILLING CODE 4510–24–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–309–OM & 72–30–OM; ASLBP No. 03–806–01–OM]

Maine Yankee Atomic Power Company, Maine Yankee Atomic Power Station; Notice of Reconstitution of Atomic Safety and Licensing Board

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board in this proceeding, with the above-identified docket number, is hereby reconstituted by appointing Administrative Judge G. Paul Bollwerk, III, in place of Administrative Judge Thomas D. Murphy.

As reconstituted, the Licensing Board is comprised of the following administrative judges:

Ann M. Young, Chair,
Dr. Richard F. Cole,
G. Paul Bollwerk, III.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.701. The address of the new member is: G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Rockville, Maryland, this 9th day of April 2003.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 03–9198 Filed 4–14–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Sequoyah Fuels Corp.; Notice of Receipt of Amendment Request and Opportunity To Request a Hearing

I. Introduction

The U. S. Nuclear Regulatory Commission (NRC) has received, by letter dated January 28, 2003, a request from Sequoyah Fuels Corp. (SFC) for approval of a license amendment to Materials License SUB–1010, to address clean up and reclamation of the SFC site.

The SFC facility, located near Gore, Oklahoma, operated from 1970 to 1993, converting uranium oxide (yellowcake) to uranium hexaflouride, a step in the production of nuclear reactor fuel. From 1987 to 1993, the facility was also used to convert depleted uranium hexaflouride to uranium tetraflouride. The facility is currently licensed only to possess radioactive material. Originally, the license only permitted possession of source material. However, in a Staff Requirements Memorandum to SECY–02–0095, dated July 25, 2002, the Commission concluded that some of the waste at the SFC site could properly be classified as byproduct material as defined in section 11e.(2) of the Atomic Energy Act of 1954 as amended (AEA).

In response to a request from SFC, on December 11, 2002, NRC amended the license to allow possession of 11e.(2) byproduct material, in addition to source material.

In its reclamation plan, SFC proposes to build a disposal cell on the site and put the radioactive waste in that cell. The cell is designed to meet the requirements, in 10 CFR part 40, appendix A, for disposal of 11e.(2) byproduct material. SFC also requested permission to dispose of source material wastes in the cell, under the guidance in Attachment 1 to NRC Regulatory Issue Summary 2000–23 (November 30, 2000).

The staff will review SFC's request for conformance with 10 CFR Parts 20 and 40, using NUREG–1620, "Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act" and other applicable agency regulations and guidance. If NRC approves SFC's request, the approval will be documented in an amendment to SFC's license. However, before approving the request, NRC will need to make the findings required by the AEA and NRC regulations. These findings will be documented in a Technical Evaluation Report and an Environmental Impact Statement.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Sequoyah Fuels Corporation, P.O. Box 610, Gore, Oklahoma, Attention: Mr. John Ellis; and

(2) The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to 301–415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

III. Further Information

The application for the license amendment and the request to revise the License Application are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. Documents may also be examined and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20854. Any questions with respect to this action should be referred to Myron Fliegel, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T8–A33, Washington, DC 20555–0001. Telephone: (301) 415–6629.

Dated at Rockville, Maryland, this 8th day of April, 2003.

For the Nuclear Regulatory Commission.

Lidia Roché,

Acting Chief, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–9197 Filed 4–14–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of April 14, 21, 28, May 5, 12, 19, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of April 14, 2003

There are no meetings scheduled for the Week of April 14, 2003.

Week of April 21, 2003—Tentative

There are no meetings scheduled for the Week of April 21, 2003.

Week of April 28, 2003—Tentative

There are no meetings scheduled for the Week of April 28, 2003.

Week of May 5, 2003—Tentative

There are no meetings scheduled for the Week of May 5, 2003.

Week of May 12, 2003—Tentative

Thursday, May 15, 2003

9:30 a.m.—Briefing on results of Agency Action Review Meeting (Public Meeting) (Contact: Robert Pascarelli, 301–415–1245)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of May 19, 2003—Tentative

There are no meetings scheduled for the Week of May 19, 2003.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

Additional Information

By a vote of 4–0 on April 8, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (Closed—Ex. 1)" be held on April 9, and on less than one week's notice to the public.

By a vote of 4–0 on April 8 & 9, the Commission determined pursuant to U.S. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (Closed—Ex. 1)" be held on April 11, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: April 10, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–9311 Filed 4–11–03; 11:24 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 4, 2003, through April 17, 2003. The last biweekly notice was published on April 1, 2003, (68 FR 15756).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or

different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By May 15, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Detroit Edison Company, Docket No. 50–16, Enrico Fermi Atomic Power Plant, Unit 1 (Fermi 1), Monroe County, Michigan

Date of amendment request: January 28, 2003, (Reference NRC–03–0011).

Description of amendment request: The proposed amendment will revise the Technical Specifications by:

1. Section A.1, 2, 4, 8, C.1, D, E.1, H.3.b, I.5, I.7b, I.9.d have been previously deleted and the word "Deleted" used as a place marker to alleviate the need to renumber all sections. This request proposes to remove these sections and renumber as appropriate.

2. Sections C.2 and E.2 cover the Reactor Building and Fuel and Repair Building Drains. This request proposes to delete the requirements in sections C.2 and E.2, which is all that remains in sections C and E. Section C, Reactor Building, and E, Fuel and Repair Building, will be deleted in their entirety.

3. Added, "Monitoring or sampling for tritium will not be required if the sample results have determined that tritium is not present during a given evolution" in Section F. This is to clarify the intent of "During other evolutions resulting in radioactive gaseous effluents, the effluents shall be monitored or sampled and analyzed for tritium and particulates."

4. Section H.1 and 2 cover alarms, including surveillances, allowed out of service time, compensatory measures and alarm readouts for alarms associated with water intrusion. This request proposed to delete these sections on water intrusion alarms.

5. Sections H.3 and 4 cover required inspections of the facility. This request proposes to delete the requirement for radiation surveillance of the steam cleaning room access plug, which is Item c. of H.3, Fuel and Repair Building.

This proposal adds the words "(until made inactive)" to H.3 Reactor Building Item c. This request also proposes to delete recording liquid waste tank levels, which is Item c. in Section H.4.

6. Table H–1 lists the required Fermi 1 alarms and their alarm points. Only water intrusion alarms are currently covered in this table. This request proposed to delete this alarm table.

7. Editorial changes are included in this proposed request. In section I.2, the word "employes" will be changed to "employees". In Section I.2.b the word "He" will be changed to "The Health Physicist". In Section I.7 the word "his" will be removed from the following sentence, "The Custodian may temporarily change a procedure by Written Order following his determination that the change does not constitute a significant increase in the hazards associated with the operation." In Section I.9.h the word "usual" will be changed to "unusual".

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration using the standards in 10 CFR 50.92(c). The licensee's analysis is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident.

Removing the requirements for water intrusion monitoring, liquid waste tanks level recording, and building drains will not significantly increase the possibility of an accident as long as the probability of an uncontrolled sodium and water reaction is not significantly increased. This is accomplished by the amount of volume of the area in which the sodium is present where water intrusion is currently monitored. It would take a long period of time for the water intrusion to reach the sodium piping and this would still not increase the probability as long as the piping is not breached. When the piping is breached during the sodium abatement process, it will be completed under controlled conditions. Removal of the instrumentation may delay the discovery of a liquid spill but cannot affect the probability of the spill since it is only instrumentation. The consequences of an accident will not be increased because the previously analyzed accident accounts for all of the radioactive material contained within the liquid waste tanks and primary sodium to be released. This change will not increase the amount of radioactive material. The editorial changes, steam cleaning room plug radiation survey deletion, or the clarification made to gaseous effluent monitoring for tritium will not significantly increase the probability or consequences of an accident, because they have no impact on how any systems are operated or what systems are removed from the facility.

2. The proposed change does not create the possibility of a new or different accident from any previously evaluated.

Removing the requirements for water intrusion monitoring and liquid waste tanks level recording will not create the possibility of a new or different accident from any previously evaluated. The accidents these systems monitor for have already been analyzed for, including a release of the radioactive sodium during a sodium and water reaction and the release of the entire contents of the liquid waste tanks. Removing the building drains requirements will not cause a different type of accident since the drains only affect where liquid flows. Where liquid flows cannot cause an accident unless the drains place water where it does not belong. This can only impact a liquid water release or sodium accident. The editorial changes, survey deletion, and the clarification made to gaseous effluent monitoring for tritium will not create the possibility of a new or different accident, since they do not introduce any new modes of operation of facility equipment.

3. The proposed change does not involve a significant reduction in a margin of safety.

The removal of the requirements for water intrusion monitoring, liquid waste tanks level recording, and building drains may slightly reduce the margin of safety, but not significantly. Removing them does not in itself introduce water into the sodium containing systems. Nor does removing them allow for an unmonitored discharge of any radioactive effluents. Discharges are still controlled by Section C of the proposed amendment to the Technical Specifications. The decommissioning project is now ongoing and the facility no longer normally vacant as it was during the initial time following facility retirement. In addition, the calculated consequences of releasing the radioactive material are small and within 10 CFR 20 limits. The editorial changes or survey deletion will not significantly reduce a margin of safety, because the survey is of a floor plug that has been removed from the entrance to an area and has no function. The

clarification made to gaseous effluent monitoring for tritium will not significantly reduce a margin of safety since tritium monitoring is still required for evolutions involving sodium processing and pipe cutting, and during other activities, unless results have determined tritium is not present during a given evolution.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John Flynn, Esquire, Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Section Chief: Claudia M. Craig.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 25, 2002.

Description of amendment request: The amendments would revise the Technical Specifications (TS) for the Ventilation Filter Testing Program (VFTP), Annulus Ventilation System (AVS), Auxiliary Building Filtered Ventilation Exhaust System (ABFVES), Fuel Handling Ventilation Exhaust System (FHVES), and Control Room Area Ventilation System (CRAVS), and containment penetrations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the changes contained in this proposed amendment against the 10 CFR 50.92(c) requirements to demonstrate that all three standards are satisfied. A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or
3. Involve a significant reduction in a margin of safety.

First Standard

Does operation of the facility in accordance with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

This licensee amendment request proposes amendments to the system TS and/or Bases and/or VFTP TS requirements for the AVS, ABFVES, FHVES, and CRAVS. It also proposes amendments to the TS and Bases for Containment Penetrations. The AVS is in standby during normal plant operations and operates only following a Safety Injection signal or during a test. It is not an accident initiator. The ABFVES is in operation during normal plant operations. However, the ABFVES is not used in direct support of any phase of power generation or conversion or transmission, shutdown cooling, fuel handling operations, or processing of radioactive fluids. Therefore, it is not an accident initiator. The FHVES is utilized to support fuel handling operations when moving recently irradiated fuel. It is not an accident initiator. The CRAVS operates during normal plant operations. However, it is not an accident initiator (the CRAVS being defined so as to exclude equipment that maintains an appropriately low temperature in the control room). The status of containment penetrations is required to be controlled so as to minimize the consequences of a fuel handling accident or a weir gate drop accident. The containment penetrations by themselves are not accident initiators. No accident initiators are associated with the changes proposed in this license amendment request. For these reasons, operation of the facility in accordance with this proposed amendment does not involve a significant increase in the probability of any accident previously evaluated.

In support of the proposed amendment, an analysis has been performed to determine the radiological consequences of the design basis LOCA [loss-of-coolant accident) at Catawba Nuclear Station. The analysis made use of the Alternative Source Term (AST) methodology and in general conformed to the regulatory positions of Regulatory Guide 1.183, ["Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors," (ML003716792)

(Draft DG1081 Issued December 1999)] and the draft regulatory positions of DG–1111. Total Effective Dose Equivalent (TEDE) radiation doses at the Exclusion Area Boundary (EAB), boundary of the Low Population Zone (LPZ), and to the control room operators were calculated and found to be acceptable.

TEDE's have been estimated from the radiation doses with the current analysis (reported in the UFSAR [Updated Final Safety Analysis Report]) using the guidelines of Regulatory Guide 1.183 modified as reported in Appendix A of Attachment 3 [of the licensee's submittal dated November 25, 2002]. These TEDE's are compared to the limiting TEDE's from the proposed analysis as follows:

TEDE'S FOLLOWING THE DESIGN BASIS LOCA

Location	TEDE'S (Rem)	
	UFSAR	Proposed
EAB	9.95	7.21

TEDE'S FOLLOWING THE DESIGN BASIS LOCA—Continued

Location	TEDE'S (Rem)	
	UFSAR	Proposed
LPZ	1.90	3.97
Control Room	1.57	2.65

The new value for the control room TEDE radiation dose is higher than the TEDE radiation dose equivalent to the radiation doses currently reported in the UFSAR. However, the limiting control room TEDE radiation dose reported in this submittal is lower than the acceptance criterion by 47%. The new LPZ TEDE radiation dose is higher than the equivalent TEDE radiation dose currently represented. On the other hand, the margin to the acceptance criterion is 84%. The TEDE radiation doses newly computed at the EAB for the design basis LOCA is lower than the corresponding equivalent EAB TEDE radiation dose currently represented in the UFSAR. The margin in the EAB TEDE radiation dose to the guideline value is 71%. In all cases, there is significant margin between the newly calculated post-LOCA TEDE radiation doses and the corresponding regulatory guideline values. In the sense that the margins to the germane regulatory guideline values are still large, the new values of TEDE radiation doses are comparable to the equivalent TEDE associated with the post-LOCA radiation doses currently listed in the UFSAR. Therefore, the proposed amendment is determined to not result in a significant increase in accident consequences.

The changes proposed to the TS for Containment Penetrations are editorial in nature and will have no effect upon accident consequences.

The changes proposed to the VFTP TS for the AVS, ABFVES, and FHVES will not result in a significant increase in any accident consequences. The changes to make the penetration values for Unit 2 consistent with Unit 1 for the AVS, ABFVES, and FHVES are acceptable because the appropriate safety factors as delineated in the applicable regulatory guideline documents are still maintained. The change to the flowrate specified for the ABFVES is consistent with the design basis operation of this system. Also, the editorial changes proposed to the VFTP TS will have no impact on any accidents.

Operation of the facility in accordance with the proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated.

Second Standard

Does operation of the facility in accordance with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

This proposed amendment does not involve addition, removal, or modification of any plant system, structure, or component. These changes will not affect the operation of any plant system, structure, or components as directed in plant procedures.

The analysis performed in support of this license amendment request, together with the analyses of the design basis fuel handling accident and weir gate drop reported in previously submitted and NRC approved license amendment requests, includes full scope implementation of AST methodology. This analysis does not represent any change in the post-accident operation of any plant system, structure, or component.

Operation of the facility in accordance with this amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Third Standard

Does operation of the facility in accordance with the proposed amendment involve a significant reduction in the margin of safety?

Margin of safety is related to confidence in the ability of fission product barriers to perform their design functions following any of their design basis accidents. These barriers include the fuel cladding, the Reactor Coolant System, and the containment. The performance of these barriers either during normal plant operations or following an accident will not be affected by the changes associated with the license amendment request.

The AVS is associated with the containment fission product barrier. Its post-accident operation will not be affected by implementation of the amendment to its TS. The operation of the ABFVES either during normal plant operations or following an accident will not be affected by implementation of the amendment to its TS. The operation of the FHVES either during normal plant operations or following an accident will not be affected by implementation of the amendment to its TS. The operation of the CRAVS either during normal plant operations or following an accident will not be adversely affected by the proposed changes to its TS Bases. The operation of Containment Penetrations following an accident will not be adversely affected by the proposed change to its TS.

As noted, an analysis of radiological consequences of the design LOCA at Catawba Nuclear Station has been performed in support of this license amendment request. The design basis LOCA scenarios were selected based on extensive evaluations of Catawba, its design basis, and its anticipated response to a design basis LOCA. Credit was taken only for safety related systems, structures, and components in simulating the mitigation of radiological consequences of the LOCA. Limiting values were taken for performance characteristics of the Class 1E systems modeled in the analysis. The radiological consequences (TEDE radiation doses at the EAB, LPZ, and in the control room) are within the regulatory guideline values with significant margin.

The changes proposed to the VFTP TS for the AVS, ABFVES, and FHVES will not result in a significant reduction in the margin of safety. These changes are supported by regulatory guidance documents, and are consistent with existing system operation. Also, the editorial changes proposed to the VFTP TS will not have any impact on safety.

Operation of the facility in accordance with the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, and Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina and York County, South Carolina

Date of amendment request: November 20, 2002, as supplemented January 21, 2003.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) for REQUIRED ACTIONS requiring suspension of operations involving positive reactivity additions and various NOTES that preclude reduction in boron concentration. The proposed changes revise these REQUIRED ACTIONS and NOTES to limit the introduction of positive reactivity such that the required margin to criticality, the shutdown margin and refueling boron concentration limits will still be satisfied. The licensee stated that the changes are consistent with the Technical Specification Task Force (TSTF) traveler number 286, Revision 2. Associated changes are also proposed for the TS Bases. *Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the change contained in this proposed amendment against the 10 CFR 50.92 (c) requirements to demonstrate that all three standards are satisfied. A "no significant hazards consideration" is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or
3. Involve a significant reduction in a margin of safety.

First Standard

The proposed changes do not involve any physical alteration of plant systems, structures, or components. The proposed changes revise ACTIONS in the Catawba Nuclear Station (CNS) and McGuire Nuclear Station (MNS) Technical Specifications (TS) that require suspending operations involving positive reactivity additions and several Limiting Condition for Operation (LCO) Notes that preclude reduction in boron concentration. The change revises these ACTIONS and LCO Notes to limit the introduction of reactivity such that the required SHUTDOWN MARGIN (SDM) or refueling boron concentration will still be satisfied. The proposed change ensures that the reactivity condition [k_{eff}] specified in mode definition, the SDM of LCO 3.1.1 and minimum boron concentration requirements of LCO 3.9.1 are met. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated in the updated final safety analysis report (UFSAR) because the accident analysis assumptions and initial conditions will continue to be maintained.

Second Standard

The proposed changes do not involve any physical alteration of plant systems, structures, or components. The proposed changes, which allow positive reactivity additions that do not result in the SDM or the refueling boron concentration being exceeded, do not introduce new failure mechanisms for system structures, or components not already considered in the UFSAR. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created because no new failure mechanisms or initiating events have been introduced.

Third Standard

The proposed changes do not involve a significant reduction in a margin of safety because the ability to make the reactor subcritical and maintain it subcritical during all operating conditions and modes of operation will be maintained. The margin of safety is defined by the SDM of LCO 3.1.1 and minimum boron concentration requirements of LCO 3.9.1. The proposed changes do not affect these operating restrictions and the margin of safety, which assures the ability to make and maintain the reactor subcritical, is not affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, and Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina and York County, South Carolina

Date of amendment request: January 31, 2003.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) to incorporate an asymmetrical ice mass distribution within the ice condenser containment (ICC) by specifying revised safety analysis ice mass quantity requirements for three specific radial zones of the ice bed. Associated changes to the Bases were also proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke Energy Corporation (Duke) has concluded that operation of Catawba Nuclear Station (CNS) Units 1 & 2, and McGuire Nuclear Station (MNS) Units 1 & 2, in accordance with the proposed changes to the Technical Specifications (TS) does not involve a significant hazards consideration. Duke's conclusion is based on its evaluation, in accordance with 10 CFR 50.91(a)(1), of the three standards set forth in 10 CFR 50.92(c).

A. The Proposed Change Does Not Involve a Significant Increase In The Probability or Consequences Of An Accident Previously Evaluated.

The only analyzed accidents of possible consideration in regards to changes potentially affecting the ice condenser are a loss of coolant accident (LOCA) and a high energy line break (HELB) inside containment. However, the ice condenser is not postulated as being the initiator of any LOCA or HELB. That is because it is designed to remain functional following a design basis earthquake, and the ice condenser does not interconnect or interact with any systems that interconnect or interact with the Reactor Coolant or Main Steam Systems. Since these proposed changes do not result in, or require, any physical change to the ice condenser that could introduce an interaction with the Reactor Coolant or Main Steam Systems, then there can be no change in the probability of an accident previously evaluated.

Regarding consequences of analyzed accidents, the ice condenser is an engineered safety feature designed, in part, to limit the containment sub-compartment and containment vessel pressure immediately following the initiation of a LOCA or HELB. Conservative sub-compartment and containment pressure analysis [based on the proposed changes] shows these criteria will be met if the total ice mass within the ice bed is maintained in accordance with the DBA [Design Basis Accident] analysis; therefore, the proposed TS SR [Surveillance Requirement] changes of these requirements will not increase the consequences of any accident previously evaluated.

Thus, based on the above, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The Proposed Change Does Not Create The Possibility Of A New Or Different Kind Of Accident From Any Accident Previously Evaluated.

As previously described, the ice condenser is not postulated as being the initiator of any design basis accident. The proposed changes do not impact any plant system, structure or component that is an accident initiator. The proposed TSs and TS Bases changes do not involve any hardware changes to the ice condenser or other change that could create any new accident mechanisms. Therefore, there can be no new or different accidents created from those already identified and evaluated.

C. The Proposed Change Does Not Involve A Significant Reduction In A Margin Of Safety.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of the fuel cladding and the reactor coolant system will not be impacted by the proposed changes. The Application provides a description of additional sub-compartment and containment pressure response analysis that has been performed. This analysis demonstrates that containment will remain fully capable of performing its design function with implementation of the proposed changes. Therefore, no safety margin will be significantly impacted.

Ice Condenser plant historical operating experience has shown that the condition of the ice condenser can be ensured to be fully capable of performing its specified safety functions with performing ice mass verifications and ice mass distribution SRs on an 18 month frequency. The request to increase the MNS [McGuire] surveillance interval from 9 months to 18 months will provide performance of ice mass verification at the end of the fuel cycle, which will verify that the maintenance program is effective in maintaining the ice mass for the entire fuel cycle. Duke's utilization of the data from previous performance of TS required ice mass inspections, and additional inspection beyond these requirements, has enabled the development of a maintenance program that is reliably predictive regarding the specific operating characteristics of each [of] the ice beds at Catawba and McGuire Nuclear Stations. This maintenance program reliably predicts sublimation and determines which ice baskets to replenish prior to beginning a new 18 months operating cycle. An ice mass surveillance performed at the conclusion of the 18 month frequency in an as-found condition verifies that the maintenance program is restoring the ice bed operating cycle to maintain the ice mass quantity and distribution requirements for performance of the intended safety functions.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket No. 50–370, McGuire Nuclear Station, Unit 2, Mecklenburg County, North Carolina

Date of amendment request: January 31, 2003.

Description of amendment request: The proposed amendment would authorize the licensee to change the Updated Final Safety Analysis Report (UFSAR) to describe a process for the intentional puncture of an irradiated fuel rod in order to transfer the fuel rod gap gasses to a collection chamber, and then straighten the fuel rod for storage in a broken rod capsule.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Duke Energy has evaluated whether or not a significant hazards consideration is involved with the proposed amendment by focusing on the three standards set forth in 10 CFR 50.92, "Issuance of amendment," as discussed below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The bent rod, located in the McGuire Unit 2 spent fuel pool, has no interfaces with any primary system, secondary system, or power transmission system. All work will be performed in the spent fuel pool, with the bent rod located under approximately 23 feet of water. None of the systems listed above are modified by the activity. No accident initiator or accident mitigation systems, for any UFSAR [Updated Final Safety Analysis Report] Chapter 15 accidents, other than fuel handling accidents, are affected with this proposed procedure for degassing and straightening of the irradiated Mk-BW fuel rod. For these reasons, the activity does not involve an increase in the probability of an accident previously evaluated.

This evolution is bounded by the UFSAR Chapter 15 dropped fuel assembly fuel handling accident inside the fuel handling building. This accident assumes that the postulated accident occurs 100 hours after reactor shutdown, the fuel assembly had 60 GWD/MTU [Gigawatt Days/Metric Ton Uranium] burnup, all rods in one fuel assembly are ruptured, and the assembly damaged has the highest peaking factor. The resultant Exclusion Area Boundary doses for the UFSAR Chapter 15 accident are 0.8 Rem Whole Body and 9.1 Rem Thyroid.

For the planned evolution, the cladding on only one rod will be breached and the fission product gas contained. This evolution will occur approximately ten years after reactor shutdown. The fuel rod burnup is only 20.46 GWD/MTU, and the fuel pin peaking factor is 1.28. Some accident mitigation will be provided by the fuel building ventilation system filters, although the majority of the activity will be from Kr-85, a noble gas, which is unaffected by these filters. The highest potential dose occurs to a worker in the fuel building, with whole body doses of less than 3 mRem and a thyroid dose of less than 3E–11 mRem. Doses at the Exclusion Area Boundary are trivial.

Should the gas container fail, the offsite activity release and, as such, the consequences of this accident will be less than any previously evaluated. Analyses have been performed to determine upper bounds for the source term, the offsite doses, and the control room dose. Both the source term and doses were found to be significantly lower than the results of the corresponding design basis analyses.

For the above reasons, it is determined that the intentional degassing of the Mk-BW fuel rod does not involve a significant increase in either the probability or the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

As discussed above, no "accident initiators" are affected by the proposed activity. The planned evolution is bounded by the dropped fuel assembly fuel handling accident inside the fuel handling building. The fuel rod straightening and degassing tools are no heavier than other fuel handling tools utilized in the spent fuel pool during routine operations. A safety tray will be placed on top of the racks and below the work area to capture any falling debris during the operation. Also a mockup operation will be performed at the Framatome facilities to identify and correct any deficiencies in the tools and processes.

For these reasons, the activity will not create the possibility of a new or different type of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Margin of safety is associated with the confidence in the ability of the fission product barriers (the fuel and fuel cladding, the reactor coolant system pressure boundary, and the containment) to limit the level of radiation doses to the public. The proposed degassing of the fuel rod will intentionally breach the fuel rod cladding, but the fuel rod gap gasses will be captured in a collection chamber for holdup and later controlled release.

This evolution will occur beyond a nine year cooling and isotopic decay period. The level of activity in the fuel rod is very low compared to the level of activity associated with the postulated fuel handling accident; the only significant activity remaining is approximately 10 Ci [Curies] of Krypton 85. The bent rod will be maintained under 23 feet of water. Should the collection chamber fail, and the fuel rod gap gas activity released, the highest potential dose occurs to a worker in the fuel handling building, with whole body doses of less than 3 mRem, and a thyroid dose of less than 3E–11 mRem. For this reason, the resulting dose to the public is inconsequential. Both offsite doses and doses to the control room were found to be small compared to the limits of 10 CFR 100 and GDC 19. For these reasons, the activity does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: March 14, 2003.

Description of amendment request: The licensee requests modification of the River Bend Technical Specifications to revise several of the Surveillance Requirements (SRs) pertaining to testing of the Division 1 and 2 standby diesel generators (DGs). The proposed change would modify specific restrictions associated with these SRs that prohibit performing required testing in Modes 1 and 2. The affected SRs are SR 3.8.1.9 and SR 3.8.1.10.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The DG and its associated emergency loads are accident mitigating features, not accident initiating equipment. Therefore, there will be no impact on any accident probabilities by the approval of the requested amendment.

The design of plant equipment is not being modified by these proposed changes. As such, the ability of the DG to respond to a design basis accident will not be adversely impacted by these proposed changes. The capability of the DG to supply power in a timely manner will not be compromised by permitting performance of DG testing during periods of power operation. Additionally, limiting testing to only one DG at a time ensures that design basis requirements for backup power is met, should a fault occur on the tested DG. Therefore, there would be no significant impact on any accident consequences.

Based on the above, the proposed change to permit certain DG surveillance tests to be performed during plant operation will have no effect on accident probabilities or consequences. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident causal mechanisms would be created as a result of NRC [U.S. Nuclear Regulatory Commission] approval of this amendment request since no changes are being made to the plant that would introduce any new accident causal mechanisms. Equipment will be operated in the same configuration with the exception of the plant mode in which the testing is conducted. This amendment request does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems.

Based on the above, implementation of the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The proposed changes to the testing requirements for the DG do not affect the operability requirements for the DG, as verification of such operability will continue to be performed as required. Continued verification of operability supports the capability of the DG to perform its required function of providing emergency power to plant equipment that supports or constitutes the fission product barriers.

Consequently, the performance of these fission product barriers will not be impacted by implementation of this proposed amendment.

In addition, the proposed changes involve no changes to setpoints or limits established or assumed by the accident analysis. On this and the above basis, no safety margins will be impacted.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three

standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Robert A. Gramm.

Energy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: February 27, 2003.

Description of amendment request: The proposed amendment deletes requirements from the technical specifications (TS) and other elements of the licensing bases to maintain a post accident sampling system (PASS). Licensees were generally required to implement PASS upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to PASS were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. Lessons learned and improvements implemented over the last 20 years have shown that the information obtained from PASS can be readily obtained through other means or is of little use in the assessment and mitigation of accident conditions.

The changes are based on Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–413, "Elimination of Requirements for a Post Accident Sampling System (PASS)." The NRC staff issued a notice of opportunity for comment in the **Federal Register** (FR) on December 27, 2001 (66 FR 66949), on possible amendments concerning TSTF–413, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the FR on March 20, 2002 (67 FR 13027). The licensee affirmed the applicability of the following NSHC determination in its application dated February 27, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The PASS was originally designed to perform many sampling and analysis functions. These functions were designed and intended to be used in post accident situations and were put into place as a result of the TMI–2 accident. The specific intent of the PASS was to provide a system that has the capability to obtain and analyze samples of plant fluids containing potentially high levels of radioactivity, without exceeding plant personnel radiation exposure limits. Analytical results of these samples would be used largely for verification purposes in aiding the plant staff in assessing the extent of core damage and subsequent offsite radiological dose projections. The system was not intended to and does not serve a function for preventing accidents and its elimination would not affect the probability of accidents previously evaluated.

In the 20 years since the TMI–2 accident and the consequential promulgation of post accident sampling requirements, operating experience has demonstrated that a PASS provides little actual benefit to post accident mitigation. Past experience has indicated that there exists in-plant instrumentation and methodologies available in lieu of a PASS for collecting and assimilating information needed to assess core damage following an accident. Furthermore, the implementation of Severe Accident Management Guidance (SAMG) emphasizes accident management strategies based on in-plant instruments. These strategies provide guidance to the plant staff for mitigation and recovery from a severe accident. Based on current severe accident management strategies and guidelines, it is determined that the PASS provides little benefit to the plant staff in coping with an accident.

The regulatory requirements for the PASS can be eliminated without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. The elimination of the PASS will not prevent an accident management strategy that meets the initial intent of the post-TMI–2 accident guidance through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of PASS requirements from Technical Specifications (TS) (and other elements of the licensing bases) does not involve a significant increase in the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The elimination of PASS related requirements will not result in any failure mode not previously analyzed. The PASS was intended to allow for verification of the extent of reactor core damage and also to provide an input to offsite dose projection calculations. The PASS is not considered an accident precursor, nor does its existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radioisotopes within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the PASS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety. Methodologies that are not reliant on PASS are designed to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The use of a PASS is redundant and does not provide quick recognition of core events or rapid response to events in progress. The intent of the requirements established as a result of the TMI–2 accident can be adequately met without reliance on a PASS.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: March 20, 2003.

Description of amendment request: This proposed change reflects an expanded operating domain for Vermont Yankee Nuclear Power Station (VY) resulting from the proposed implementation of the Average Power Range Monitor, Rod Block Monitor Technical Specifications/Maximum Extended Load Line Limit Analysis (ARTS/MELLLA).

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change involves allowing VY to operate in an expanded operating domain. Physical changes provide for enhanced instrument performance or were the result of safety analyses that support mitigation of design bases accidents. There are no changes to radioactive source terms or release pathways. The proposed change does not result in any significant change in the availability of logic systems or safety-related systems themselves. Required protective functions will be maintained. The proposed change does not degrade plant design, operation, or the performance of any safety system assumed to function in the accident analysis.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility for a new or different kind of accident from any previously evaluated.

The proposed change, which allows VY to operate in an expanded operating domain, does not introduce any new accidents or failure mechanisms because the change and the effects on existing structures, systems and components have been evaluated and found to not have any adverse effects. The proposed change will not substantially impose new requirements or eliminate any existing requirements.

Therefore, the proposed change does not create the possibility of a new or different kind of accident than those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change, which allows VY to operate in an expanded operating domain, does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. There is no impact on the conclusions of any safety analysis. The proposed change does not involve any increase in calculated off-site dose consequences. The performance of equipment will not be significantly affected.

Therefore, there is no significant reduction in the margin of safety as a result of this proposed change.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: January 31, 2003.

Description of amendment request: The proposed amendments would change the Technical Specifications (TS) allowable values (AVs) for isolation condenser system isolation Function 4.a, Steam Flow-High, and Function 4.b, Return Flow-High.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes support the replacement of a differential pressure switch with a functionally equivalent differential pressure switch. Since there are no functional changes and no change in analytical limits, there is no significant increase in the probability or consequences of an accident previously evaluated.

Additionally, these changes will not increase the consequences of an accident previously evaluated because the proposed changes do not adversely impact structures, systems, or components. Furthermore, there will be no change in the types or significant increase in the amounts of any effluents released offsite as a result of the proposed change.

In summary, the proposed changes do not involve a significant increase in the probability of consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change does not adversely impact the manner in which the instrument will operate under normal and abnormal operating conditions. Therefore, these changes provide an equivalent level of safety and will not create the possibility of a new or different kind of accident from any accident previously evaluated. The changes in allowed values do not affect the current safety analysis assumptions. Therefore, these changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed changes do not affect the probability of failure or availability of the affected instrumentation. The revised AVs do not affect the analytical limits assumed in the safety analyses for actuation of instrumentation. Therefore, the proposed changes do not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: February 17, 2003.

Description of amendment request: The proposed amendment would revise Technical Specification (ITS) 3.6.3 "Containment Isolation Valves," to allow verification by administrative means of isolation devices in high radiation areas, and isolation devices that are locked, sealed or otherwise secured. The specific Conditions and Surveillance Requirements (SR) in ITS 3.6.3 that will be affected are: (1) Condition A—Required Action A.2, (2) Condition B—Required Actions B.1 and B.2, (3) Condition C—Required Action C.2, and (4) SR 3.6.3.3 and SR 3.6.3.4. The licensee stated that the changes are consistent with the NUREG–1430, "Standard Technical Specifications: Babcock and Wilcox Plants," Revision 2, and Standard Technical Specification Task Force (TSTF) Traveler TSTF–440. Associated changes are also proposed for the ITS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed License Amendment Request (LAR) will revise the position verification requirements for manual containment isolation devices that are locked, sealed, or otherwise secured in the closed position. The proposed changes will allow the use of administrative controls to verify the position of these types of devices when they are being used to meet the Required Actions of ITS 3.6.3 Condition A, Condition B or Condition C, and will exclude these valves from Surveillance Requirement (SR) 3.6.3.3 and

SR 3.6.3.4 physical position verification requirements.

The design function of the affected containment isolation valves, and the initial conditions for accidents that require these valves to be closed, will not be affected by the proposed changes. Therefore, the changes will not increase the probability or consequences of an accident previously evaluated.

2. Does not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed license amendment will revise the position verification requirements for manual containment isolation devices that are locked, sealed, or otherwise secured in the closed position.

No changes to the actual position/status of these valves are proposed by this amendment. The proposed amendment will not result in changes to the design, physical configuration or operation of the plant. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does not involve a significant reduction in the margin of safety.

Changes to the position verification requirements of normally closed manual containment isolation valves that are locked, sealed, or otherwise secured do not change the position/status of these valves. The proposed amendment does not impact the ability of these valves to perform their design function of controlling containment leakage rates during design basis radiological accidents. Therefore, the proposed amendment does not result in a reduction of the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602–1551.

NRC Section Chief: Allen G. Howe.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: March 11, 2003.

Description of amendment request: **The proposed amendment would change the operating license to authorize the licensee to revise the updated final safety analysis report (UFSAR) by deleting a footnote stating that the Nuclear Regulatory Commission (NRC) does not endorse the reactor building crane as single-failure-proof.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

For heavy load handling associated with the spent fuel pool, Section 5.1.4(2) of NUREG–0612 states "The effects of heavy load drops in the reactor building should be analyzed to show that the evaluation criteria of Section 5.1 are satisfied."

An alternative to this is Section 5.1.4(1): "The reactor building crane, and associated lifting devices used for handling of * * * heavy loads, should satisfy the single-failure-proof guidelines of Section 5.1.6 of this report."

The upgraded crane and handling systems satisfy the guidelines of Section 5.1.6. The evaluation criteria of NUREG–0612, Section 5.1 are met with a single-failure-proof crane that satisfies the guidelines of Section 5.1.6, or consequence analysis that satisfies Section 5.1.4(2).

Section 5.2 of NUREG–0612 states that an evaluation of fault trees shows that: "(1) The likelihood for unacceptable consequences in terms of excessive releases of gap activity or potential for criticality due to accidental dropping of postulated heavy loads after implementation of the guidelines of Section 5.1 is very low; and (2) The potential for unacceptable consequences is comparable for any of the alternatives evaluated for fault trees, indicating the relative equivalency between alternatives."

Since the NRC fault tree evaluation shows that the potential for unacceptable consequences is comparable for the two alternatives in Section 5.1.4 of NUREG–0612, the proposed request does not significantly change the potential for unacceptable consequences to the plant in conducting heavy load handling above the spent fuel pool. The probability of a load drop accident caused by use of the reactor building crane has been reduced to where it is so small to be considered not credible within regulatory accepted standards. The reason for this is attributed to the following:

(a) The reactor building crane is single-failure-proof. In 1985, the DAEC [Duane Arnold Energy Center] Reactor Building Crane was modified to meet the requirements of NUREG–0554 "Single Failure Proof Cranes for Nuclear Power Plants." The design of the Ederer hoist and trolley system was evaluated in a Staff SER [Safety Evaluation Report] of the Generic Licensing Topical Report EDR–1, Rev. 3, for Ederer's Nuclear Safety-Related Extra Safety and Monitoring (X–SAM) Cranes, dated August 3, 1983.

(b) The rigging used with the crane will be single-failure-proof per Section 5.1.6 of NUREG–0612.

(c) The requirements of NUREG–0612 Phase 1 have been implemented. The NRC provided a Safety Evaluation (SE) and Technical Evaluation Report (TER) by letter dated June 12, 1984 that concluded that the guidelines of NUREG–0612, Sections 5.1.1 and 5.3 had been satisfied and that Phase I of this issue for the DAEC was acceptable.

Therefore, this proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The crane has been upgraded to meet single-failure-proof requirements in accordance with the applicable provisions of NUREG–0612 and NUREG–0554. The use of a single-failure-proof crane with rigging and procedures that implement the requirements of NUREG–0612 assures that a cask drop is not credible. The loading on the single-failure-proof crane will not exceed the design rated load of the crane.

Rigging for critical loads will meet NUREG–0612 requirements for single-failure-proof handling systems whenever a critical load is to be lifted over safety related equipment, or over the spent fuel pool, or over the cask when it is in the reactor building and loaded with fuel. When a cask is loaded on the crane hook, the crane trolley and bridge movements will be maintained within well defined limits of operation.

The loading conditions, load combinations, allowable stress limits, and methods of analysis used in the evaluations are consistent with the current licensing basis for the DAEC and NRC approved methods.

Therefore, this proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in a margin of safety.

In 1985, the reactor building crane was upgraded to single-failure-proof in compliance with NUREG–0554. The upgraded crane and handling system is in compliance with NUREG–0612, Sections 5.1.1 and 5.1.6. The NRC in NUREG–0612, Section 5.2 documented their review of the potential consequences of a load drop when handled by a single-failure-proof crane using single-failure-proof rigging compared with other alternatives and concluded as follows: "The likelihood for unacceptable consequences in terms of excessive releases of gap activity or potential for criticality due to accidental dropping of postulated heavy loads after implementation of the guidelines of Section 5.1 is very low."

This means that a load drop is considered to be unlikely within regulatory accepted standards when the load is handled by a single-failure-proof crane and handling system, and performed in accordance with Section 5.1 of NUREG–0612. A single-failure-proof crane design incorporates the applicable design basis event that in this case is a seismic event. A load drop is of such low probability that it is considered unlikely when it is handled with the reactor building crane since the crane and its handling systems satisfy the NUREG–0612 criteria for a single-failure-proof crane. Therefore, any load lifted over the spent fuel pool using the reactor building crane has a very low probability of falling into the spent fuel pool accidentally or as a result of a design basis event.

Therefore, this proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Alvin Gutterman, Morgan Lewis, 1111 Pennsylvania Avenue NW., Washington, DC 20004.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: January 29, 2003.

Description of amendment request: **The proposed amendment would change the drywell leakage and sump monitoring detection section of the Technical Specifications (TSs). These proposed changes clarify the definitions and restructure the coolant leakage section of the TSs and revise unidentified leakage and total leakage requirements. The revisions add a TS Limiting Condition for Operation for leakage-detection instrumentation being inoperable. This request supercedes the Nuclear Management Company's license amendment request of October 8, 2002, as supplemented November 8, 2002, which was previously noticed in the Federal Register on October 17, 2002 (67 FR 64144).**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification changes do not introduce new equipment or new equipment operating modes, nor do the proposed changes alter existing system relationships. Additionally, the proposed changes do not affect any accident previously evaluated in the Monticello Updated Safety Analysis Report (USAR). The changes simply redefine the parameters for evaluation of leakage in the drywell. The evaluation criteria for drywell leakage have been refocused into the areas that are most susceptible to IGSCC [intergranular stress corrosion cracking]. Consequently, the probability of an accident previously evaluated is not significantly increased.

The equipment referenced in the proposed changes is still required to monitor the reactor coolant system operational leakage to ensure appropriate action is taken before the integrity of the reactor coolant pressure boundary is impaired. As a result, operation of the facility with the proposed changes will continue to meet the licensing basis and applicable guidelines. As such, the consequences of any accident previously evaluated are not significantly affected.

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not involve physical alterations of the plant; no new or different type of equipment will be installed; nor are there significant changes in the methods governing normal plant operation. The changes simply redefine the parameters for evaluation of leakage in the drywell. The evaluation criteria for drywell leakage have been refocused into the areas that are most susceptible to IGSCC. Additionally, the changes do not create any new failure mechanisms, malfunctions, or accident initiators not already considered in the design and licensing bases.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed amendment redefines the parameters for evaluation of leakage in the drywell. There are no physical alterations of the plant; no new or different type of equipment will be installed; nor are there significant changes in the methods governing normal plant operation. Additionally, the proposed changes do not exceed or alter a design basis or safety limit as established in the Monticello licensing basis.

Therefore, these proposed changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: February 11, 2003.

Description of amendment request: **The proposed amendments would revise technical specification (TS) 5.5.9, "Ventilation Filter Testing Program (VFTP)" by (1) incorporating filter test face velocity limits for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system, and shield building ventilation system; and (2) making editorial changes. The proposed amendments would also delete the additional conditions in Appendix B of the Operating Licenses which require the licensee to complete an evaluation of the maximum test face velocity for the ventilation systems in TS 5.5.9. The additional conditions also require the licensee to submit a license amendment request for a TS amendment to specify the maximum test face velocity if the maximum actual face velocity is the greater than 110 percent of 40 fpm. Additionally, the proposed amendments would revise the penetration and system bypass limit from 0.05 percent to 0.5 percent for the ventilation systems.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

Revision of the Allowable Filtration Penetration and System Bypass

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes to increase the penetration and system bypass limit for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system and shield building ventilation system from 0.05% to 0.5%. These ventilation systems are included in the plant design to mitigate accident consequences and are not assumed accident initiators, thus, this change does not involve a significant increase in the probability of an accident. This change will assure that the subject ventilation systems will perform within their intended design ranges thus, this change assures that the consequences of an accident are not increased.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

This proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed Technical Specification change. No new

failure mode has been created and no new equipment performance burdens are imposed. Therefore the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This license amendment request proposes to increase the penetration and system bypass limit for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system and shield building ventilation system from 0.05% to 0.5%. Site dose analyses are required to demonstrate that regulatory dose limits are met using Technical Specification allowed penetration and system bypass with an appropriate safety factor as an input to the evaluation. Since the dose analyses have not been modified to credit 0.05% penetration and system bypass, this proposed change has no effect on the dose analyses which demonstrate that the regulatory limits are satisfied. Since the NRC regulatory limits must continue to be met and the safety factor will not be changed by this proposed Technical Specification change, this change does not involve a significant reduction in the margin of safety.

Addition of Filter Test Face Velocities

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes to add filter test face velocity minimum values for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system and shield building ventilation system. These ventilation systems are included in the plant design to mitigate accident consequences and are not assumed accident initiators, thus, this change does not involve a significant increase in the probability of an accident. This change will assure that the subject ventilation systems will perform within their intended design ranges thus, this change assures that the consequences of an accident are not increased.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

This proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed Technical Specification change. No new failure mode has been created and no new equipment performance burdens are imposed. Therefore the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This license amendment request proposes to add filter test face velocity minimum values for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system and shield building ventilation system. These additional Technical Specification limits on system performance assures these ventilation systems are tested and maintained within their designed function limits and may increase the margin of safety for these systems. Therefore this change does not involve a significant reduction in the margin of safety.

Editorial and Administrative Changes

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes editorial changes to Technical Specification Section 5.5.9, including replacement of ventilation system names with abbreviations and miscellaneous changes associated with addition of a new paragraph to this section, and proposes an administrative change to delete the Operating License Additional Condition for each unit that relates to NRC Generic Letter 99–02. Since these changes are editorial or administrative, they do not change any plant operating limits or technical requirements. Therefore these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

This proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed. Therefore, the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This license amendment request proposes editorial changes to Technical Specification Section 5.5.9, including replacement of ventilation system names with abbreviations and miscellaneous changes associated with addition of a new paragraph to this section, and proposes an administrative change to delete the Operating License Additional Condition for each unit that relates to NRC Generic Letter 99–02. Since these changes are editorial or administrative, they do not change any plant operating limits or technical requirements. Therefore these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: March 11, 2003.

Description of amendment request: **The proposed amendments would revise Technical Specification (TS) 3.1.4, "Rod Group Alignment Limits," and TS 3.1.7, "Rod Position Indication," to allow up to 1 hour of soak time following substantial rod movement during which individual rod position indicators may not be within its limits.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes to allow up to one hour of soak time following substantial rod movement during which time the rod position indication may be outside its limits. This would allow an additional hour for rod position indication to be inoperable or a control rod to be misaligned prior to entry into a Technical Specification LCO [Limiting Condition for Operation] Condition and Required Actions.

Rod position indication instrumentation is not an assumed accident initiator and thus this change does not involve a significant increase in the probability of an accident. Rod position indication instrumentation provides information on control rod position. Inoperable rod position indication instrumentation for an additional hour does not make a rod misaligned. The consequences of a rod misaligned for an additional hour are considered separately, thus inoperable rod position indication instrumentation, by itself, for an additional hour does not involve an increase in the consequences of an accident.

This license amendment request may allow a misaligned rod to be undetected for an additional hour. Plant safety analyses consider two types of rod misalignment events, static misalignment and a dropped rod. This license amendment request does not involve a significant increase in the probability of a misaligned control rod event because the one-hour time extension does not affect the control rod drive system features, whose failure would result in either type of misalignment. This proposed one-hour time extension for a control rod to be misaligned does not involve a significant increase in the consequences of a rod misalignment event as follows. The analyses show that a single dropped rod event, without any operator intervention, does not result in any fuel pin failure, therefore the rod drop event is not time dependent and an additional hour with the misalignment undetected and unmitigated does not increase the consequences of the event. Multiple rod drop events cause the reactor to trip and therefore an additional hour would not have any impact on this event.

In the static misalignment event, one or more control rods are assumed to be statically misplaced from the allowed position. This situation might occur if a rod were left behind when inserting or withdrawing banks, or if a single rod were to be withdrawn. The analysis of this event is bounded by modeling the most limiting configuration which is the control banks at the full power insertion limit except for a single control rod fully withdrawn. The analyses show that, without any operator intervention, a single fully withdrawn rod event does not result in any fuel pin failure, therefore the static rod misalignment event is not time dependent and an additional hour with the misalignment undetected and unmitigated does not increase the consequences of the event. Multiple rod misalignment events are bounded by the single rod misalignment analyses and therefore an additional hour would not have any impact on this event.

Therefore this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

This proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed. Therefore the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This license amendment request proposes to allow up to one hour of soak time following substantial rod movement during which time the rod position indication may be outside its limits. This would allow an additional hour for rod position indication to be inoperable or a control rod to be misaligned prior to entry into a Technical Specification LCO Condition and Required Actions.

The rod position indication system is an instrumentation system that provides indication to the operators that a control rod may be misaligned. Inoperable individual rod position indication instrumentation does not by itself in any way harm or impact reactor operation. Inoperable rod position indication instrumentation may impair the ability of the operators to detect a misaligned rod. The impact of inoperable rod position indication instrumentation may be offset by availability of other indications that a rod is misaligned such as nuclear instrumentation indication that reactor power has shifted to one side of the core or thermocouple indication that the core temperatures increased in one region of the core and/or decreased in another region of the core.

The Prairie Island staff is not aware of a misaligned control rod in more than 50 reactor-years of plant operation. The likelihood of a misaligned rod at Prairie Island is small and the likelihood of a misaligned rod coincident with inoperable rod position indication during the allowed one-hour extension is smaller.

The addition of one hour soak time for the rod position indication instrumentation will allow the operators and engineers to focus on monitoring the reactor performance without unnecessary entry into LCO Conditions and Required Actions with the concomitant administrative activities. Thus, these changes may enhance plant safety and reliability of equipment.

In conclusion, the proposed addition of an LCO Note in LCO 3.1.4 and 3.1.7 does not involve a significant reduction in the margin of safety because rod position indication instrumentation inoperability by itself does not impact plant safety, rod misalignment is unlikely, there may be other indications of rod misalignment, rod misalignment coincident with rod position indication instrumentation inoperability within the one hour extension is unlikely, and plant safety may be enhanced by avoiding unnecessary LCO Condition entry.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: March 19, 2003.

Description of amendment request: **The proposed amendments would revise the Technical Specification (TS) 5.3, "Plant Staff Qualifications." The proposed amendments would revise requirements that have been superseded based on licensed operator training programs being accredited by the National Academy for Nuclear Training (NANT) and promulgation of the revised 10 CFR part 55, "Operators' Licenses," which became effective on May 26, 1987.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed Technical Specification change is an administrative change to clarify the current requirements for licensed operator qualifications and the licensed operator training program. With this change, the Technical Specifications continue to meet the current requirements of 10 CFR [Part] 55.

Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR [Part] 55 rule, concluded that this impact remains acceptable as long as the licensed operator training programs are certified to be accredited and are based on a systems approach to training. The Prairie Island Nuclear Generating Plant licensed operator training program is accredited by the National Academy for Nuclear Training and is based on a systems approach to training. The proposed Technical Specification change takes credit for the National Academy for Nuclear Training accreditation of the licensed operator training program. The Technical Specification requirements for all other plant staff qualifications remain unchanged.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed Technical Specification change is an administrative change to clarify the current requirements for licensed operator qualifications and the licensed operator training program and to conform to the revised 10 CFR [Part] 55.

As discussed above, although licensed operator qualifications and training may have an indirect impact on the possibility of a new or different kind of accident from any accident previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised rule, concluded that this impact remains acceptable as long as licensed operator training programs are certified to be accredited and based on a systems approach to training. As previously noted, the Prairie Island Nuclear Generating Plant licensed operator training program is accredited by the National Academy for Nuclear Training and is based on a systems approach to training. The proposed Technical

Specification change takes credit for the National Academy for Nuclear Training accreditation of the licensed operator training program. The Technical Specification requirements for all other plant staff qualifications remain unchanged.

Additionally, the proposed Technical Specification change does not affect plant design, hardware, system operation, or procedures. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed Technical Specification change is an administrative change to clarify the current requirements applicable to licensed operator qualifications and the licensed operator training program. With this change the Technical Specifications continue to be consistent with the requirements of 10 CFR [Part] 55. The Technical Specification qualification requirements for all other plant staff remain unchanged.

Licensed operator qualifications and training can have an indirect impact on a margin of safety. However, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR [Part] 55, determined that this impact remains acceptable when licensees maintain a licensed operator training program that is accredited and based on a systems approach to training. As noted previously, the Prairie Island Nuclear Generating Plant licensed operator training program is accredited by the National Academy for Nuclear Training and is based on a systems approach to training.

The NRC has concluded, as stated in NUREG–1262, "Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal Regulations, Part 55 on Operators' Licenses," that the standards and guidelines applied by the Institute for Nuclear Power Operations' National Academy for Nuclear Training in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining a National Academy for Nuclear Training accredited, systems approach based licensed operator training program is equivalent to maintaining an NRC approved licensed operator training program which conforms with applicable NRC Regulatory Guides or NRC endorsed industry standards. The margin of safety is maintained by virtue of maintaining the National Academy for Nuclear Training accredited licensed operator training program.

In addition, the NRC published NRC Regulatory Issue Summary 2001–01, "Eligibility of Operator License Applicants;" dated January 18, 2001, "to familiarize addressees with the NRC's current guidelines for the qualification and training of reactor operator (RO) and senior operator (SO) license applicants." This document again acknowledges that the Institute for Nuclear Power Operations' National Academy for Nuclear Training guidelines for education and experience, outline acceptable methods for implementing the NRC's regulations in this area.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: February 6, 2003.

Description of amendment requests: **The proposed license amendments would revise Surveillance Requirements (SRs) 3.3.1.2 and 3.3.1.3 of TS 3.3.1, "Reactor Trip System Instrumentation," of the Diablo Canyon Technical Specifications. The change to SR 3.3.1.2 is consistent with NRC-approved Industry/Technical Specifications Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–371. The change to SR 3.3.1.3 is editorial in nature.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to Technical Specifications (TS) Surveillance Requirement (SR) 3.3.1.2 and SR 3.3.1.3 is consistent with the NRC approved Industry/Technical Specifications Task Force Standard Technical Specification Change Traveler, TSTF–371, and NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," Revision 2.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. The reactor trip system (RTS) instrumentation will be unaffected. Protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The probability and consequences of accidents previously evaluated in the Updated Final Safety Analysis Report (UFSAR) are not adversely affected because the change to the nuclear instrumentation system (NIS) power range channel daily surveillance assures the conservative response of the channel even at part-power levels.

The proposed change modifies the NIS power range channel daily surveillance requirement to help assure the NIS power range functions are tested in a manner consistent with the safety analysis and licensing basis.

The proposed change will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed change will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the USAR.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no hardware change or change in the method by which any safety-related plant system performs its safety function. This change will not affect the normal method of plant operation or change any operating parameters. No performance requirements or response time limits will be affected. The NIS power range high trip setpoint adjustment requirements, prior to adjusting indicated power in a decreasing power direction, will ensure the reactor power level is consistent with assumptions made in the safety analysis and licensing basis.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of the proposed change. There will be no adverse effect or challenges imposed on any safety-related system as a result of the change.

This amendment does not alter the design or performance of the Eagle 21 System, NIS, or Solid State Protection System used in the plant protection systems.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change requires a revision to the criteria for implementation of NIS power range channel adjustments based on secondary power calorimetric calculations; however, the change does not eliminate any RTS surveillances or alter the frequency of surveillances required by the Technical Specifications. The revision to the criteria for implementation of the daily surveillance will have a conservative effect on the performance of the NIS power range channels, particularly at part-power conditions. The nominal trip setpoints specified in the Technical Specification Bases and the safety analysis limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis is changed.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio limits, heat flux hot channel factor (FQ), nuclear enthalpy rise hot channel factor (FDH), loss of coolant accident peak cladding temperature, peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

The imposition of appropriate surveillance testing requirements will not reduce any margin of safety since the change will assure that safety analysis assumptions on reactor power are verified on a periodic frequency.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: February 28, 2003.

Description of amendment requests: **The proposed license amendments would revise Technical Specification (TS) 3.3.1, "Reactor Trip System (RTS) Instrumentation," to add Surveillance Requirement (SR) 3.3.1.16 to function 3.a, "Power Range Neutron Flux Rate-High Positive Rate Trip," in Table 3.3.1–1. The amendments would also eliminate periodic pressure sensor response time testing (RTT) and periodic protection channel RTT.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes.

The design of the Reactor Trip System (RTS) instrumentation, specifically the positive flux rate trip (PFRT) function, will be unaffected. The reactor protection system will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The proposed change imposes additional surveillance requirements to assure safety-related structures, systems, and components are verified to be consistent with the safety analysis and licensing basis. In this specific case, a response time verification requirement will be added to the PFRT function.

The Technical Specification Bases changes do not result in a condition where the design, material, or construction standards that were applicable prior to change are altered. The same RTS and engineered safety features actuation system instrumentation is being used; the time response allocations/modeling assumptions in the Updated Final Safety Analysis Report (UFSAR) Chapter 15 analyses are still the same; only the method of verifying time response is changed. The proposed change will not change any system interface and could not increase the likelihood of an accident since these events are independent of this change.

The proposed change will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed activity will not change, degrade or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the UFSAR.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This change will not affect the normal method of plant operation or change any operating parameters. No performance requirements will be affected; however, the proposed change does impose additional surveillance requirements for the PFRT function. These additional requirements are consistent with assumptions made in the safety analysis and licensing basis.

This change does not alter the performance of the process protection racks, nuclear instrumentation, and logic systems used in the plant protection systems. These systems will still have their response time verified by test before being placed in operational service. Changing the method of verifying instrument response for these systems (assuring equipment operability) from time response testing to channel and calibration checks will not create any new [accident] initiators or scenarios. Periodic surveillance of these systems will continue and may be used to detect degradation that could cause the response time characteristic to exceed the total allowance. The total response time allowance for each function bounds all degradation that cannot be detected by periodic surveillance.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. There will be no adverse effects or challenges imposed on any safety-related system as a result of this change.

Therefore the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio limits, heat flux hot channel factor, nuclear enthalpy rise hot channel factor, loss of coolant accident peak cladding temperature, peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

The safety analysis limits assumed in the transient and accident analyses are unchanged. None of the acceptance criteria for any accident analysis are changed. The imposition of additional surveillance requirements maintains the margin of safety by assuring that the affected safety analysis assumptions on equipment response time are verified on a periodic frequency.

This change does not affect the total system response time assumed in the safety analysis. The periodic system response time verification method for the process protection racks, nuclear instrumentation, and logic systems are modified to allow use of engineering data. The method of verification still provides assurance that the total system response is within that defined in the safety analysis, since calibration tests will continue to be performed and may be used to detect any degradation which might cause the response time to exceed the total allowance. The total response time allowance for each function bounds all degradation that cannot be detected by periodic surveillance. Based on the above, it is concluded that the proposed change does not result in a significant reduction in margin with respect to plant safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket No. 50–323, Diablo Canyon Nuclear Power Plant, Unit No. 2, San Luis Obispo County, California

Date of amendment request: March 3, 2003.

Description of amendment request: The proposed license amendment would revise Technical Specification (TS) 5.5.9, "Steam Generator Tube Surveillance Program," and TS 5.6.10, "Steam Generator Tube Inspection Report," for Diablo Canyon Power Plant (DCPP) Unit 2, to apply a probability of detection (POD) of 1.0 to the bobbin indication in the steam generator (SG) 4 tube at row 44, column 45 at the second tube support plate (TSP) on the hot leg side (R44C45–2H) for the beginning of cycle (BOC) voltage distribution for the DCPP Unit 2 BOC Cycle 12 operational assessment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The use of probability of detection (POD) of 1.0 for the bobbin indication in the Diablo Canyon Power Plant (DCPP) Unit 2 steam generator (SG) 4 tube at row 44, column 45 at the second tube support plate (TSP) on the hot leg side (R44C45–2H) for the beginning of cycle (BOC) voltage distribution for the DCPP Unit 2 BOC cycle 12 operational assessment does not increase the probability of an accident. Based on industry and plant specific bobbin detection data for outside diameter stress corrosion cracks (ODSCC) within the SG tube support plate region, large voltage bobbin indications, such as those the size of indication R44C45–2H, can be detected with 100 percent certainty. Since large voltage ODSCC bobbin indications within the SG TSP can be detected, they will not be left in service, and therefore these indications should not be included in the voltage distribution for the purpose of operational assessments. Therefore, these large voltage indications will not result in an increase in the probability of a steam generator tube rupture (SGTR) accident or an increase in the consequences of a SGTR or main steam line break (MSLB) accident.

Therefore, the proposed changes will not result in a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of a POD of 1.0 for the DCPP Unit 2 R44C45–2H bobbin indication for the BOC voltage distribution for the DCPP Unit 2 BOC cycle 12 operational assessment concerns the SG tubes and can only affect the SGTR accident. Since the SGTR accident is already considered in the Final Safety Analysis Report Update, there in [is] no possibility to create a design basis accident which has not been previously evaluated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The use of POD of 1.0 for the DCPP Unit 2 R44C45–2H bobbin indication for the BOC voltage distribution for the DCPP Unit 2 BOC cycle 12 operational assessment does not involve a significant reduction in a margin of safety. The applicable margin of safety potentially impacted is the Technical Specification 5.6.10, "Steam Generator Tube Inspection Report," projected end-of-cycle leakage for a MSLB accident and the projected end-of-cycle probability of burst. Based on industry and plant specific bobbin detection data for ODSCC within the SG tube support plate region, large voltage bobbin indications, such as those the size of indication R44C45–2H, can be detected with 100 percent certainty and will not be left in service. Therefore these indications should not be included in the voltage distribution for the purpose of operational assessments. Therefore, these large voltage indications will not result in a significant increase in the actual end-of-cycle leakage for a MSLB accident or the actual end-of-cycle probability of burst.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Christopher J. Warner, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: February 14, 2003.

Description of amendment request: The proposed amendment would extend the surveillance test intervals and allowed out-of-service times for the end-of-cycle recirculation pump trip instrumentation.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR), Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment would extend the allowed out-of-service times (AOTs) and surveillance test intervals (STIs) for the end of cycle recirculation pump trip (EOC-RPT) instrumentation system. No changes are being made to any EOC-RPT instrumentation setpoints or components. The effect of the proposed changes is to reduce the potential for unnecessary plant scrams or transients. The proposed changes were evaluated in General Electric Company Topical Report GENE–770–06–1–A which concluded that they do not result in a degradation in overall plant safety.

Since the proposed changes do not affect any accident initiator, and since the EOC-RPT instrumentation will remain capable of performing its design function, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Extending the AOTs and STIs for the EOC-RPT instrumentation does not change the design function or operation of any plant equipment. Additionally, no new modes of plant operation are involved with these changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

No changes are being made to any plant instrumentation setpoints or to the required level of redundancy. The proposed changes were evaluated in General Electric Company Topical Report GENE–770–06–1–A, which concluded that they do not result in a degradation in overall plant safety.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

PSEG Nuclear LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: January 29, 2003.

Description of amendment request: The licensee proposed administrative and editorial changes to the Salem Nuclear Generating Station (Salem), Unit No. 1 and Unit No. 2 Technical Specifications (TSs) as follows: (1) The second equation in Salem Unit No. 2 TS Limiting Condition for Operation 3.2.2 on page 3/4 2–5 will be revised; (2) Salem Unit No. 2 TS Table 3.3–6 will be revised to indicate that one operable channel of containment air particulate activity reactor coolant system (RCS) leakage detection instrumentation is required for operation in Modes 1 through 4; (3) Salem Unit No. 1 TS 3/4.7.6 Action Statements "d." (for Modes 1, 2, 3 and 4) and "e." (for Modes 5 and 6) will be revised to refer to Action 25 in TS Table 3.3–6; and (4) Salem Unit No. 2 TS 3/4.7.6 Action Statements "d." (for Modes 1, 2, 3 and 4) and "e." (for Modes 5 and 6) will be revised to refer to Action 28 in TS Table 3.3–6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes to the TSs are administrative or editorial in nature and do not change the intent of any Technical Specification requirement. No changes are being made to any plant systems, structures or components (SSCs).

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed administrative and editorial changes to the TSs do not change the design function or operation of any plant equipment. Additionally, no new modes of plant operation are involved with these changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed changes are administrative and editorial corrections to the TSs that do not affect the ability of plant SSCs to perform their design basis accident functions. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Southern California Edison Company, et al., Docket No. 50–206, San Onofre Nuclear Generating Station, Unit 1, San Diego County, California

Date of amendment request: March 11, 2003.

Description of amendment request: The amendment application requests a revision to the Unit 1 defueled Technical Specifications administrative controls section to propose changes in organizational responsibilities. Specifically, the proposed change identifies that the Vice President, Engineering & Technical Services would be responsible for decommissioning activities. Additionally, the Station Manager would be designated as having approval authority for activities within the Station Manager's organization.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

No. This is a request to revise the San Onofre Nuclear Generating Station, Unit 1 permanently defueled technical specifications administrative controls. The proposed administrative changes are due to a realignment of the Unit 1 Decommissioning Project into the Engineering & Technical Services organization and the establishment of the Station Manager position within the Nuclear Generation organization. The proposed changes identify the Vice President, Engineering & Technical Services to be responsible for decommissioning activities and provides the Station Manager the opportunity to approve procedures and changes to procedures and changes to the Process Control Program that are under the Station Manger's responsibility. Therefore, the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different type of accident from any accident previously evaluated?

No. The proposed changes are administrative. Therefore, the proposed changes do not involve the possibility of a new or different type of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

No. The proposed changes are administrative. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis. These administrative changes do not affect the design or operation of the facility and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Acting Section Chief: Mark Thaggard.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendments request: March 25, 2003.

Description of amendments request: The proposed amendments would revise Technical Specification 3.5.2, "ECCS—Operating," Surveillance Requirement (SR) 3.5.2.5. Specifically, the proposed change would replace the requirement to verify specific surveillance test values for the Emergency Core Cooling System (ECCS) pumps with the requirement to verify the developed head for each ECCS pump in accordance with the Inservice Testing Program. This new requirement is identical to SR 3.5.2.4 in NUREG–1432, "Standard Technical Specifications, Combustion Engineering Plants," Revision 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Deleting the specific surveillance test values for Emergency Core Cooling System (ECCS) pumps from Surveillance Requirement (SR) 3.5.2.5 does not affect the probability of occurrence or consequences of an accident previously evaluated because ECCS pumps are for accident mitigation and do not contribute to initiation of accidents. Periodic surveillance testing of the ECCS pumps in accordance with the Inservice Testing (IST) program provides assurance that the pumps will perform as assumed in the safety analysis. There is no change to the safety analysis.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

ECCS pumps are for accident mitigation and do not contribute to accident initiation. The ECCS system will still be verified capable of meeting its emergency core cooling and IST requirements. There is no change to the safety analysis.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

There is no change to the safety analysis. Testing of the ECCS pumps as required by the IST Program combined with the existing Technical Specification 3.5.2—"ECCS—Operating" surveillance requirements ensure that the ECCS requirements remain met without a significant reduction in a margin of safety. Therefore, there is no significant reduction in a margin of safety.

Based on the above, SCE [Southern California Edison Company] concludes that the proposed amendments present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Tennessee Valley Authority, Docket Nos. 50–327 and 328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: March 13, 2003.

Description of amendment request: The proposed amendments would modify the Sequoyah Nuclear Plant, Units 1 and 2, Operating Licenses DPR–77 and DPR–79. This proposed request provides Technical Specification (TS) change 03–01 that would revise the limiting condition for operation for TS Section 3.5.1, "Cold Leg Injection Accumulators" and TS Section 3.5.5, "Refueling Water Storage Tank." This revision would modify the single boron concentration requirement by inserting a table that defines the minimum and maximum amount of boron that is required for accident mitigation based on the number of tritium producing rods in the core.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change modifies the required boron concentration for the cold leg accumulators (CLAs) and refueling water storage tank (RWST). The proposed values have been verified to maintain the required accident mitigation safety function for the CLAs and RWST. The CLAs and RWST safety function is to mitigate accidents that require the injection of borated water to cool the core and to control reactivity. These functions are not potential sources for accident generation and the modification of the boron concentration that supports event mitigation will not increase the potential for an accident. Therefore, the possibility of an accident is not increased by the proposed changes. The boron levels for this change are based on the number or tritium producing rods in the core. As the number of rods is increased the need for additional shutdown boron also increases. This effect has been evaluated with the same methodology utilized for previous NRC approved amendments associated with tritium production. This methodology ensures that the impact of tritium producing rods is adequately compensated for by the required boron concentrations and has been incorporated into the proposed revision. Since the boron levels will continue to maintain the safety function of the CLAs and RWST in the same manner as currently approved, the consequences of an accident is not increased by the proposed changes.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change only modifies boron concentrations for accident mitigation functions of the CLAs and RWST. These functions do not have a potential to generate accidents as they only serve to perform mitigation functions associated with an accident. The proposed requirements will maintain the mitigation function in an identical manner as currently approved. There are no plant equipment or operational changes associated with the proposed revision other than the adjustment of the boron level in the CLAs and RWST. Therefore, since the CLA and RWST functions are not altered and the plant will continue to operate without change, the possibility of a new or different kind of an accident is not created.

3. Does the proposed change involve a significant reduction in a margin of safety?

This change proposes boron concentration requirements that support the accident mitigation functions of the CLAs and RWST equivalent to the currently approved limits. The proposed change does not alter any plant equipment or components and does not alter any setpoints utilized for the actuation of accident mitigation system or control functions. The proposed boron values have been verified to provide the same level of reactivity control for accident mitigation. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority (TVA), Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: March 12, 2003.

Description of amendment request: The proposed amendment would revise the Updated Final Safety Analysis Report (UFSAR) and the Technical Specification Bases. The revision would update the quality assurance criteria and the basis for the seismic qualification of the ducting installed as part of the suspended ceiling air delivery system in the main control room (MCR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The design function of the MCR ducting system is to support pressurization and cooling of the control room during normal and accident conditions. The MCR ducting is a passive plant feature and does not act as an accident initiator. Consequently, the changes in the MCR ducting system and suspended ceiling quality assurance (QA) requirements and qualification methodology do not result in an increase in the probability of an accident previously evaluated.

For the principal design basis accidents, Loss of Coolant Accident (LOCA), Internal Flood, Steam Generator Tube Rupture (STGR), Main Steam Line Break (MSLB), etc., the integrity of the MCR HVAC [heating, ventilation, and air conditioning] system, including the suspended ceiling, will not be compromised. These accidents do not have a structural effect on the MCR. This means that for postulated radiological or toxic chemical accidents, the ability to both pressurize and maintain MCR temperatures within the design limits is unaffected by the limited QA and newly defined seismic requirements for the air delivery components.

An accident that involves a fire that affects the MCR or the habitability of the MCR was not a consideration for the qualification of the air distribution components. A fire of this nature will result in plant operation from the Auxiliary Control Room which is supported by a separate heating, ventilation and air conditioning (HVAC) supply system.

An earthquake (including the Design Basis SSE [safe shutdown earthquake]) is the only event for which the design basis for the MCR HVAC and suspended ceiling is potentially challenged. A seismic qualification report by an industry seismic expert concludes that the air delivery components will remain in place, will retain their structural integrity such that flow will not be impeded, and the pressure boundary will not be lost during and subsequent to a design basis seismic event. Further, as assured by TVA's qualification report, the suspended ceiling will remain in place during and subsequent to a seismic event or accident. Thus, the revised QA and seismic qualification requirements for the MCR air delivery components and suspended ceiling will not result in loss of safety function for any design basis accident or event. Consequently, the accident dose consequences as previously evaluated in the UFSAR are not affected by the proposed license amendment.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The MCR air delivery components addressed by the proposed amendment are not an accident initiator and therefore, failure of these components will not initiate a design basis accident. In addition, the subject air delivery components and suspended ceiling have been seismically qualified, as previously discussed, and a determination has been made that they will not fail during a design basis accident. Therefore, the air delivery components and suspended ceiling will continue to perform their safety function during normal and accident conditions. Consequently, this activity does not create a possibility of a new or different type of accident than any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The changes addressed in TVA's proposed amendment are associated with changes in QA requirements and seismic qualification methodology for safety related air delivery components and for the suspended ceiling. The change does not affect specific HVAC equipment safety limits, design limits, set points, or other critical parameters. In addition, the new seismic analysis methodology and limited QA requirements ensure that these components will continue to perform their safety functions during normal and accident conditions. The previously implied margin of safety against structural or functional failure of the air delivery components or suspended ceiling during and after a design basis SSE has not been reduced. Consequently, the MCR HVAC system or suspended ceiling margin of safety has not been significantly reduced by this proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: March 24, 2003.

Description of amendment request: The proposed amendment would revise the design and licensing basis failure modes and effects analysis for specific valves in the essential raw cooling water system, component cooling water system, and control air system. Tennessee Valley Authority has identified a condition where containment integrity, accident flood levels, and sump boron concentrations subsequent to a high-energy line break events could not be assured automatically as stated in the updated final safety analysis report (UFSAR). In certain postulated events, manual actions may be required using equipment not currently evaluated in the UFSAR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated[?]

Response: No.

The manual actions required by this change are only needed after a high energy line break (HELB) accident, such as a loss-of-coolant-accident (LOCA), main steam line break (MSLB), feedwater line break accidents, etc., has occurred inside containment and a single failure of an outboard containment isolation valve to close has occurred on one of four specific lines inside containment. In this event, the manual actions ensure containment is isolated, which is consistent with the current design. Consequently, the manual actions of isolating the air and water lines after an accident do not affect the frequency of any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR).

The UFSAR currently indicates that the containment vessel design and the containment isolation system automatically ensure containment integrity is maintained and thus ensure that release of radioactive material from containment remains below allowable limits during and subsequent to an accident. Current UFSAR Failure Modes and Effects Analysis (FMEA) for the affected essential raw cooling water (ERCW), component cooling system (CCS), and control air system (CAS) valves indicate a single failure of the outboard containment isolation valve in conjunction with a concurrent accident and consequential (due to interaction) failure of the system piping inside containment, has no adverse effect on the plant; thus, containment integrity is ensured automatically. This change revises these evaluations to indicate manual actions are required to ensure containment integrity in the event of an HELB and single failure of an outboard containment isolation valve. Evaluations have been performed to ensure adequate instrumentation and time is available to recognize the need and to manually isolate an affected line subsequent to an HELB if the outboard containment isolation valve does not close. The emergency procedures have been revised that require manual actions to be performed to isolate CAS, ERCW, and CCS and to open and close a post accident sampling facility (PASF) cooling water supply valve. The Operations Staff has confirmed that the subject containment lines can be isolated within the allowable time and without exceeding the dose limitations as required by 10 CFR [Part] 50, Appendix A, General Design Criteria (GDC) 19, "Control Room."

Evaluations have indicated that adequate instrumentation, time, and staffing are available to manually isolate the lines into containment. Operator actions are achievable and can be accomplished without heroic actions. Therefore, containment integrity from overpressurization or flooding is maintained within the current design basis analysis, and the radiological consequences of an accident will not be increased by this change. Consequently, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated[?]

Response: No.

This change implements manual actions to isolate four specific containment lines in lieu of automatic containment isolation for previously identified accidents. The manual actions are required to maintain containment integrity from overpressurization, containment flood levels, sump pH levels, and emergency core cooling system (ECCS) water boron concentrations subsequent to an HELB inside containment concurrent with a single failure of an outboard containment isolation valve on a CAS, ERCW, or CCS line. The UFSAR FMEA evaluations will be revised by this proposed change to include the failure modes and associated manual actions.

NRC Information Notice (IN) 97–78, "Crediting of Operator Actions in Place of Automatic Actions and Modifications of

Operator Actions, including Response Times," provided guidance to the industry concerning use of operator actions in place of automated system or component actuation. IN 97–78 states: In those instances where licensees consider temporary or permanent changes to the facility which credit operator actions, the NRC has relied on the guidance provided in * * * ANSI/ANS 58.8, "Time Response Design Criteria for Safety-related Operator Actions," * * * for evaluating such changes. The American Nuclear Society (ANS)–58.8, establishes the requirements for safety-related operator actions, which are summarized as follows: (1) The specific operator actions required, (2) the potentially harsh or inhospitable environmental conditions expected, (3) ingress/egress paths taken by the operators to accomplish functions, (4) procedural guidance for required actions, (5) operator training and qualifications to carry out actions, (6) any additional support personnel and/or equipment to carry out actions, (7) information required by the control room staff to determine whether action is required, including qualified instrumentation to diagnose the situation and to verify that the action is successfully, (8) ability to recover from credible errors in performance of manual actions, and the expected time required to make such a recovery, and (9) consideration of risk significance of operator actions.

The manual actions implemented by this change can be completed within the guidance and criteria provided in IN 97–78 and ANS–58.8. Consequently, the manual actions can be credited in the mitigation of the specific accidents. With credit for the manual actions to isolate the affected lines subsequent to an accident inside containment, the type of accidents and consequences currently evaluated in the UFSAR, remains the same. Therefore, the proposed change does not create the possibility of new or different kinds of accidents from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety[?]

Response: No.

This change establishes requirements for manual actions to isolate one air line and three water lines subsequent to an accident inside containment concurrent with a single failure of a containment isolation valve to close. The manual actions ensure air or water cannot continue to enter containment with a single failure of an outboard containment isolation valve when the line pressure boundary inside containment is lost due to an accident and associated pipe interactions. The safety-related configuration of the lines (outboard motor operated valve and inboard check valve) continues to ensure the containment environment is automatically prevented from exiting the line to outside the containment. Safety-related instrumentation is available to inform operators that the manual actions are required, and operators have been trained in the requirements for addressing the failures of valves to close. In addition, adequate time and resources are available to perform the manual actions. The manual actions meet the criteria for safety-related operator actions contained in NRC IN 97–78 and ANS–58.8. Further, the proposed change to allow credit for the manual actions does not affect the offsite and Main Control Room dose consequences of the accidents currently reported in UFSAR Chapter 15, Accident Analyses. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Section Chief: Allen G. Howe.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: March 6, 2003.

Brief description of amendments: **Technical Specifications Section 1.1 "Definitions" for Engineered Safety Feature (ESF) Response Time and Reactor Trip System (RTS) Response Time require U.S. Nuclear Regulatory Commission (NRC) review and approval of any methodology used to allocate response times in lieu of measuring them. The application requests NRC review and approval of a topical report to allow the use of allocated signal processing and actuation logic response times in the overall verification of the protection system channel response time.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change does not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. The same RTS and ESFAS [Engineered Safety Feature Actuation System] instrumentation are being used and the time response allocations and modeling assumptions in the Chapter 15 safety analysis are unchanged. Only the method of verifying the time response is changed. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade, or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the FSAR [Final Safety Analysis Report]. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not alter the performance of the process protection racks, the nuclear instrumentation, or the logic systems used in the plant protection systems. Periodic surveillance of these systems will continue and may be used to detect degradation that could cause the response time characteristics to exceed the total allowance. Changing the method of periodically verifying instrument response for these systems from response time testing to calibration and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these systems will continue and may be used to detect degradation that could cause the response time characteristic to exceed the total allowance. The total time response allowance for each function bounds all degradation that cannot be detected by periodic surveillance. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not affect the total system response time assumed in the safety analysis. The periodic response time verification method for the Process protection racks, the nuclear instrumentation and the logic systems is modified to allow the use of actual test data or engineering data. The method of verification still provides assurance that the total system response time is within that defined in the safety analysis, since calibration tests will continue to be performed and may be used to detect any degradation which might cause the response time to exceed the total allowance. The total response time allowance for each function bounds all degradation that cannot be detected by periodic surveillance. Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: March 18, 2003.

Brief description of amendments: **The proposed amendment would delete certain of the Surveillance Requirements in Technical Specification 3.6.3 entitled "Containment Isolation Valves."**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

(1) Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since there are no hardware changes. Protection systems will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The probability and consequences of accidents previously evaluated in the FSAR [Final Safety Analysis Report] are not adversely affected.

The proposed changes will not involve a significant increase in the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve any physical alteration of the units. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints at which protective or mitigative actions are initiated that are affected by the proposed change. The proposed change will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures, which ensure the unit remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed change does not alter assumptions made in the safety analyses.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not adversely affect operation of plant equipment and will not result in a change to the setpoints at which protective actions are initiated. None of the acceptance criteria for any accident analysis is changed. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (FQ), nuclear enthalpy rise hot channel factor (FDH), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and 2, Louisa County, Virginia

Date of amendment request: December 13, 2002.

Description of amendment request: **The proposed amendments will extend the Completion Time of Technical Specification (TS) 3.8.7, Inverters-Operating, Required Action A.1, from 24 hours to 14 days for an inoperable inverter on either Train H or Train J.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:**

1. The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to extend the Completion Time for an inoperable inverter from 24 hours to 14 days does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. In addition, this proposed change will not alter assumptions relative to the mitigation of an accident or transient event.

The licensee performed an evaluation to determine the risk significance of the proposed change. This risk evaluation concluded that the increases in annual core damage frequency (CDF) and large early release frequency (LERF) associated with the proposed change can be characterized as "very small changes" by Regulatory Guide (RG) 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis." Additional evaluation by the licensee determined that the incremental conditional core damage probability (ICCDP) and incremental conditional large early release probability (ICLERP) associated with the proposed change are within the acceptance criteria in RG 1.177, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Technical Specifications." Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed change to extend the Completion Time for an inoperable inverter has been evaluated for its effect on plant safety. The licensee's risk-informed evaluation concluded that the increases in annual CDF and LERF associated with the proposed change can be characterized as "very small changes" by RG 1.174. The

ICCDP and ICLERP associated with the proposed change are within the acceptance criteria in RG 1.177. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: November 27, 2002.

Brief description of amendment: This amendment deletes technical specification (TS) 5.5.3, "Post Accident Sampling," and thereby eliminates the requirements to have and maintain the post accident sampling system at the Clinton Power Station, Unit 1. The amendment also addresses related changes to TS 5.5.2, "Primary Coolant Sources Outside Containment."

Date of issuance: March 21, 2003.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment No.: 155.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 21, 2003 (68 FR 2797).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 2003.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: April 10, 2002, as supplemented February 12, 2003.

Brief description of amendment: The amendment deleted Technical Specification 4.6.1.c, related to 24-month emergency diesel generator surveillance, and relocated these requirements to the Updated Final Safety Evaluation Report (UFSAR).

Date of issuance: April 3, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days, including the relocation of the emergency diesel generator maintenance requirements of Technical Specification 4.6.1.c to the Updated Final Safety Analysis Report (UFSAR), as was described in the licensee's application dated April 10, 2002, and evaluated in the NRC staff's safety evaluation dated April 3, 2003, and which relocation shall be included in the next scheduled update of the UFSAR pursuant to 10 CFR 50.71(e).

Amendment No.: 243.

Facility Operating License No. DPR–50: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 28, 2002 (67 FR 36926).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 2003.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: July 24, 2002, as supplemented February 21, 2003.

Brief Description of amendments: The amendments revise the Technical Specifications Section 3.1.7, "Standby Liquid Control (SLC) System," to reflect modifications being made to the system as a result of transition to the GE14 fuel design.

Date of issuance: March 25, 2003.

Effective date: March 25, 2003.

Amendment Nos.: 227 and 255.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications and Appendix B, "Additional Conditions."

Date of initial notice in ***Federal Register:*** August 20, 2002 (67 FR 53984).

The February 21, 2003, supplement contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 25, 2003.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, North Carolina

Date of amendment request: November 7, 2002, as supplemented February 17, 2002.

Brief description of amendment: The amendment revises the Minimum Critical Power Ratio (MCPR) Safety Limit contained in Technical Specification 2.1.1.2 from 1.09 to 1.11 for two recirculation loop operation and from 1.10 to 1.13 for single recirculation loop operation.

Date of issuance: March 25, 2003.

Effective date: March 25, 2003.

Amendment No.: 254.

Facility Operating License No. DPR–62: Amendment changes the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75869). The February 17, 2003, supplement contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 25, 2003.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: August 28, 2002, as supplemented November 21, 2002.

Brief description of amendment: This amendment revises the Technical Specifications (TS) by adding Topical Report EMF–2328 (P)(A), "PWR Small Break LOCA Evaluation Model, S–RELAP5 Based" as reference in the TS to allow the licensee to update the methodologies that are used for safety analyses for the Shearon Harris Nuclear Power Plant, Unit 1. The amendment also relocates referenced methodologies within TS 6.9.1.6.2 to group mechanical design methodologies together.

Date of issuance: March 28, 2003.

Effective date: March 28, 2003.

Amendment No.: 114.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63691). The November 21, 2002, supplement contained clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 2003.

No significant hazards consideration comments received: No.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: May 23, 2002, as supplemented December 20, 2002, and February 27, 2003.

Brief description of amendment: The amendment revises the Fermi 2 Technical Specifications (TSs) to allow a one-time deferral of the Type A primary containment integrated leak rate test. Specifically, TS 5.5.12, "Primary Containment Leakage Rate Testing Program," would be revised to extend the current interval for performing the containment Type A test to 15 years.

Date of issuance: March 27, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 153.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42817).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 2003.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: November 6, 2001, as supplemented on December 27, 2001, and July 15, August 6, and October 29, 2002.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) associated with the spent fuel pool (SFP). Specifically, the amendment increases the allowable nominal average fuel assembly enrichment from 4.5 weight percent (w/o) Uranium-235 (U–235) to 4.85 w/o U–235 for all regions of the SFP, the new fuel storage racks (dry), and the reactor core; allows fuel to be located in the 40 storage cells in Region B of the SFP that are currently empty and blocked; credits SFP soluble boron for reactivity control during normal conditions; and reduces the Boraflex reactivity credit in Regions A and B of the SFP.

Date of issuance: April 1, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 274.

Facility Operating License No. DPR–65: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7414). The supplement dated December 27, 2001, provided a revision to the licensee's analysis of the issue of no significant hazards consideration, as originally provided in the November 6, 2001, application. The supplements dated July 15, August 6, and October 29, 2002, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 1, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: June 3, 2002, as supplemented on January 23, 2003.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.4.9, "Pressurizer," to increase the pressurizer water level limit when the plant is in MODE 3 (Hot Standby). The pressurizer water level limit for MODES 1 and 2 (Power Operation and Startup) remains unchanged. The amendment also revises TS 3.8.4, "DC Sources—Operating," to remove the notes that refer to the one-time amendment allowing the online replacement of station batteries 31 and 32. The notes were no longer applicable since the batteries have been replaced.

Date of issuance: March 25, 2003.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 216.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45566).

The January 23 letter provided clarifying information that did not enlarge the scope of the original **Federal Register** notice or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 25, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: December 4, 2002, which replaces the original applications dated May 1, 2002.

Brief description of amendment: The proposed amendment would change the Pilgrim Nuclear Power Station Technical Specification (TS) Figures 3.6.1, 3.6.2, and 3.6.3 to extend the applicability of the current reactor pressure vessel pressure-temperature (P–T) curves through the end of Operating Cycle (OC) 16. The current P–T curves were approved for use in License Amendment 190, dated April 13, 2001, and are limited to use through the end of OC 14. The proposed change would delete the 20 and 32 Effective Full Power Year curves and replace the wording of the title blocks to allow use through the end of OC 16.

Date of issuance: March 28, 2003.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 197.

Facility Operating License No. DPR–35: This amendment revised the TS.

Date of initial notice in ***Federal Register:*** February 18, 2003 (68 FR 7816).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 28, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 19, 2002, as supplemented by letter dated December 19, 2002.

Brief description of amendment: The amendment revises the Technical Specifications by: (1) Modifying the wording of the current Surveillance Requirement (SR) 4.0.1 and SR 4.0.3 to be consistent with NUREG–1431, Revision 2, Improved Standard Technical Specifications (ISTS) wording for SR 3.0.1 and SR 3.0.3; and (2) modifying the ISTS wording, adopted in Item (1), above, for SR 4.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of up to 24 hours "* * * when the allowable outage time limits of the ACTION requirements are less than 24 hours" to "* * * up to 24 hours or up to the limit of the specified surveillance interval, whichever is greater." In addition, the following requirement is added to SR 4.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: March 21, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 187.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications and Surveillance Requirements.

Date of initial notice in ***Federal Register:*** February 4, 2003 (68 FR 5670).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: December 20, 2002.

Brief description of amendment: This amendment approves several administrative changes to the Waterford Steam Electric Station, Unit 3 Technical Specifications (TSs) to revise, correct, or clarify certain titles, page numbers, and heading information. It also revises personnel and committee titles that have been changed, revises administrative reporting requirements to conform to 10 CFR 50.4, and deletes redundant or unnecessary requirements from TSs 5.4, 6.6, and 6.7.

Date of issuance: April 3, 2003.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 188.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 4, 2003 (68 FR 5673).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 3, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendments: August 16, 2002.

Brief description of amendments: The amendments modify the Unit 3 allowable value Technical Specification, and the Units 2 and 3 surveillance requirements Technical Specification for the reactor protection system scram discharge volume water level-high function.

Date of issuance: April 3, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 198/191.

Facility Operating License Nos. DPR–19 and DPR–25: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68737).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 3, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: November 27, 2002.

Brief description of amendments: These amendments delete Technical Specification (TS) 5.5.3, "Post Accident Sampling," and thereby eliminate the requirements to have and maintain the post accident sampling system at the LaSalle County Station, Units 1 and 2. The amendments also address related changes to TS 5.5.2, "Primary Coolant Sources Outside Containment."

Date of issuance: March 21, 2003.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment Nos.: 158/144.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 21, 2003 (68 FR 2802).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 21, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: August 22, 2002.

Brief description of amendments: The amendments modify the required surveillance interval from monthly to quarterly for calibration of the trip units associated with the instrumentation channels of the Anticipated Transient Without Scram-Recirculation Pump Trip system.

Date of issuance: April 1, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 213 and 207.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 1, 2002 (67 FR 61682). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 1, 2003.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit 2, Berrien County, Michigan

Date of application for amendment: October 16, 2002, as supplemented January 28, 2003.

Brief description of amendment: The amendment would revise the Technical Specification values for the 4 kilovolt degraded-voltage and loss-of-voltage relays.

Date of issuance: March 26, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment No.: 256.

Facility Operating License No. DPR–74: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68739).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 2003.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: December 19, 2002.

Brief description of amendment: The amendment revised the Technical Specifications to add the definition of shutdown margin (SDM), incorporate new, more restrictive SDM limits, add the associated limiting condition for operation actions and completion times for each applicable operating condition if the SDM is not met, and add surveillance requirements for verifying SDM.

Date of issuance: March 27, 2003.

Effective date: March 27, 2003.

Amendment No.: 180.

Facility Operating License No. DPR–63: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 21, 2003 (68 FR 2806).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 27, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: March 29, 2002, as supplemented by letter dated January 24, 2003.

Brief description of amendment: The amendment changes the surveillance requirement of TS 5.5.12, "Primary Containment Leakage Rate Testing Program," to allow a one-time 5-year extension to the 10-year interval for performing the next Type A containment integrated leakage rate test (ILRT). The change allows ILRT testing within 15 years from the last ILRT, which was performed in September 1993.

Date of issuance: March 21, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 249.

Facility Operating License No. DPR 49: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 30, 2002 (67 FR 21291).

The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: April 22, 2002, as supplemented October 25, 2002, January 23, and February 12, 2003.

Brief description of amendment: The amendment changes TS Surveillance Requirement 4.7.A.2.b, "Primary Containment Integrity," to allow a one-time, 5-year extension to the 10-year interval for performing the next Type A containment integrated leakage rate test (ILRT). The change allows ILRT testing within 15 years from the last ILRT, which was performed in March 1993.

Date of issuance: March 31, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 134.

Facility Operating License No. DPR–22. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 3, 2002 (67 FR 56324).

The October 25, 2002, January 23, and February 12, 2003, supplements provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 2003.

No significant hazards consideration comments received: No.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: July 25, 2002, as supplemented on October 21, 2002.

Brief description of amendment: The amendment would modify Technical Specification (TS) requirements for missed surveillance tests in TS 4.0.3 using the Consolidated Line Item Improvement Program, modify TS 4.0.1 to be consistent with the Standard Technical Specifications (STS), and incorporate a TS Bases Control Program in Section 6.0 in accordance with the STS.

Date of issuance: March 31, 2003.

Effective date: March 31, 2003.

Amendment No.: 145.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75883)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 31, 2003.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: April 4, 2002, as supplemented by letter dated January 9, 2003.

Brief Description of amendments: The amendments revise Technical

Specifications 5.5.17, "Containment Leakage Rate Testing Program," to reflect a one-time deferral of the Type A Containment Integrated Leak Rate Test (ILRT). The 10-year interval between ILRTs is to be extended to 15 years from the previous ILRTs that were completed in March 1994 for Unit 1 and March 1995 for Unit 2.

Date of issuance: March 21, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 159/150.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68743).

The supplement, dated January 9, 2003, provided clarifying information that did not change the scope of the April 4, 2002, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 21, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: November 15, 2002, as supplemented by letters dated February 19, 2003, and February 26, 2003.

Description of amendment: This one-time condition establishes special provisions and requirements for safe operation of Unit 2 while heavy load lifts are performed during the Unit 1 steam generator replacement project. The provisions for heavy load lifts are described in Topical Report 24370–TR–C–002, which was previously submitted on April 15, 2002, for NRC review and approval. The topical report contains prerequisite actions for heavy load movement, active monitoring during heavy load movement, and compensatory measures in response to the unlikely event of a heavy load drop.

Date of issuance: March 26, 2003.

Effective date: As of the date of issuance and shall be implemented within 45 days of issuance.

Amendment No.: 273.

Facility Operating License No. DPR–79: Amendment revises the Operating License.

Date of initial notice in ***Federal Register:*** December 10, 2002 (67 FR 75885).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 26, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 7th day of April, 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–9026 Filed 4–14–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Model Application Concerning Technical Specifications Improvement Regarding Scram Discharge Volume Vent and Drain Valves Actions for Boiling Water Reactors Using the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE), a model no significant hazards consideration (NSHC) determination, and a model license amendment application relating to a change in the technical specifications (TSs) required actions for inoperable vent and drain valves for the scram discharge volume (SDV) for boiling water reactors (BWRs). The purpose of these models is to permit the NRC to efficiently process amendments that propose to incorporate this change into plant-specific TS. Licensees of nuclear power reactors to which the models apply may request amendments utilizing the model application.

DATES: The NRC staff issued a **Federal Register** Notice (68 FR 8637, February 24, 2003) which provided a model SE and a model NSHC determination related to changing the completion times to address inoperable valves in SDV vent or drain lines. The NRC staff hereby announces that the model SE and NSHC determination may be referenced in plant-specific applications. The staff has posted a model application on the NRC web site to assist licensees in using the consolidated line item improvement process (CLIIP) to incorporate this change. The NRC staff can most efficiently consider applications based upon the model application if the application is submitted within a year of this **Federal Register** Notice.

FOR FURTHER INFORMATION CONTACT: William Reckley, Mail Stop: O–7D1, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1323.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, "Consolidated Line Item Improvement Process for Adopting Standard Technical Specifications Changes for Power Reactors," was issued on March 20, 2000. The CLIIP is intended to improve the efficiency of NRC licensing processes. This is accomplished by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on proposed changes to the STS following a preliminary assessment by the NRC staff and finding that the change will likely be offered for adoption by licensees. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or to proceed with announcing the availability of the change for proposed adoption by licensees. Those licensees opting to apply for the subject change to TS are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves changes to required actions for inoperable SDV vent and drain valves for BWRs. This proposed change was proposed for incorporation into the STS by the BWR Owners Group as Technical Specification Task Force (TSTF)–404, Revision 0.

Applicability

This proposed change to required actions for inoperable SDV vent and drain valves is applicable to BWRs.

The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without referencing the model SE and the NSHC. Variations from the approach recommended in this notice may, however, require additional review by the NRC staff and may increase the time and resources needed for the review.

Public Notices

In a notice in the **Federal Register** dated February 24, 2003 (68 FR 8637), the staff requested comment on the use of the CLIIP for proposed changes to the required actions and completion times for inoperable SDV vent and drain valves at BWRs.

TSTF–404, as well as the NRC staff's SE and model application, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agency wide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

The staff received only informal comments regarding typographical and editorial errors in the model SE and NSHC determination. A specific change involves correcting the abbreviation for scram discharge volume in the model SE and NSHC determination (from S.V. to SDV). Licensees may reference in their plant-specific applications the corrected SE, NSHC determination, and environmental assessment provided below.

U.S. Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation

Model Safety Evaluation—Consolidated Line Item Improvement Technical Specifications Task Force (TSTF) Change TSTF–404, Scram Discharge Volume Vent and Drain Valves

1.0 Introduction

By application dated [□], [Licensee] (the licensee) requested changes to the Technical Specifications (TSs) for [facility]. The proposed changes would revise the required action within TS [3.1.8, "Scram Discharge Volume (SDV) Vent and Drain Valves"] for the condition of having one or more SDV vent or drain lines with one valve inoperable. These changes are based on Technical Specifications Task Force (TSTF) change traveler TSTF–404 (Revision 0) that has been approved generically for the BWR [boiling water reactor]/4[6] Standard Technical Specifications (STS), NUREG–1433 [1434], Revision 2. A notice announcing the availability of this proposed TS change using the consolidated line item improvement process (CLIIP) was published in the **Federal Register** on [□] (68 FR yyyyy).

2.0 Regulatory Evaluation

NRC regulations and review standards such as Appendix A, "General Design Criteria for Nuclear Power Plants," to 10 CFR Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), include specific requirements for reactor protection and reactivity control systems. The reactor protection systems for BWRs use a hydraulic system to insert control rods into the reactor core. During an actuation of the reactor protection system (a scram), water is exhausted from the control rod drive mechanisms to the SDVs. Proper maintenance and operation of the SDVs in terms of instrumentation and limiting water volumes are essential for assuring the reliability of the reactor protection system (see NRC Bulletin 80–17, "Failure of Control Rods to Insert During A Scram at a BWR," related Orders to specific facilities, and information provided in plant final safety analysis reports and TS Bases). Maintaining the SDVs to ensure that accumulated water does not hamper or slow the insertion of control rods requires vent and drain valves. The vent and drain valves isolate during a scram to limit the amount of coolant discharged so that adequate core cooling is maintained and offsite doses remain within regulatory limits.

Specific regulatory requirements for SDV vent and drain valves are defined in TS [3.1.8, "Scram Discharge Volume (SDV) Vent and Drain Valves."] The existing limiting condition for operation [3.1.8], requires that each SDV vent and drain valve be operable. The operability of all SDV vent and drain valves ensures that the SDV vent and drain valves will close during a scram to contain reactor water discharged to the SDV piping. Since the vent and drain lines are provided with two valves in series, the single failure of one valve in the open position will not impair the isolation function of the system. Additionally, the valves are required to open on scram reset and during plant operation to control the amount of water accumulating in the SDV

If one or more SDV vent and drain lines have a single valve that is inoperable, the existing required action is to restore the valve(s) to operable status within 7 days. If an inoperable valve is not restored to operable status, a plant shutdown to MODE 3 is required within 12 hours. If one or more SDV vent or drain lines have both valves inoperable, the associated line must be isolated within 8 hours. In this condition, the plant is allowed to operate indefinitely. A note associated with the required action clarifies that the valves may be opened under administrative controls to allow draining of the SDV. The existing SDV vent and drain valve required actions are inconsistent in that, although the operational and safety concerns are similar for having one or both valves in a line being inoperable, the actions for a single inoperable valve do not allow for the isolation of the line and administrative controls to support the draining of the SDV.

The proposed change would revise the required actions to be more consistent with the safety significance of one inoperable valve in a SDV line versus two inoperable valves in an SDV line.

3.0 Technical Evaluation

The proposed changes to TS 3.1.8 are:

1. Required Action A.1 is revised from restoring the single inoperable SDV vent and drain valve in one or more SDV vent and drain lines to operable status to isolating the associated line.

2. The Note to Required Action B.1 which allows an isolated line to be unisolated under administrative controls for the purpose of draining and venting the SDV is moved to a note that applies to both Conditions A (single inoperable valve) and B (both valves inoperable).

With one SDV vent or drain valve inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the SDV. The current ACTION statement allows 7 days to repair the inoperable valve; the proposed change is to allow for the isolation of the affected line and continue operation. If the affected line is not isolated within the 7-day time period (or the inoperable valve is not restored), the licensee would then be required to proceed to MODE 3 in the next 12 hours. Maintaining the 7-day Completion Time is acceptable because of the low probability of the concurrent events of a scram within the 7 days of the Completion Time and a failure of the redundant valve(s). Alternately, if the inoperable valve was initially closed, there would be ample time and warning available to drain the SDV before an automatic scram would occur due to SDV high level.

The allowance to administratively open a line that is isolated to comply with the actions (to permit draining and venting the SDV) is allowed by existing Required Action B.1. This allowance is being moved to apply to all ACTIONS based on the change proposed to Action A. This would allow any accumulated

water in the line to be drained, to preclude a reactor scram on SDV high level. A reactor scram is initiated if the SDV water level in the instrument volume exceeds a specified setpoint. The setpoint is chosen so that all control rods are inserted before the SDV has insufficient volume to accept a full scram. Regarding the isolation of the SDV, the remaining operable SDV vent and drain valve(s) would close automatically on a scram signal to isolate the lines. Or, if both valves in a line were inoperable (and opened under this provision), the reactor coolant release could be terminated by resetting the scram from the control room, or by manually closing the valves. Resetting the scram automatically closes the scram outlet valves, isolating the control rod drive discharge path to the SDV.

Based on the low probability of an event occurring during the defined Completion Time associated with this condition, the subsequent isolation of the affected lines, and the ability to open and drain the lines before an automatic scram due to SDV high water level, the proposed change maintains the necessary safety features and is therefore acceptable. [Note-optional section if licensee provides markup of affected Bases pages: The change to TS [3.1.8] requires that the licensee revise the discussion in the associated Bases section. Although the licensee's application included possible wording for the revised Bases discussion for TS [3.1.8], the licensee will formally address the change to the Bases in accordance with [the Bases Control Program or its administrative procedure for revising Bases]. The staff does not believe that the Bases change will require prior NRC approval when evaluated against the criteria in 10 CFR 50.59, "Changes, tests, and experiments," and, therefore, agrees that the revision of the Bases to TS [3.1.8] should be addressed separately from this amendment and should be included in a future update of the TS Bases in accordance with [the Bases Control Program or the licensee's administrative controls].

4.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendments. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20. The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards consideration, and there has been no public comment on such finding (FR). Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

6.0 Conclusion

The Commission has concluded, based on the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

Model No Significant Hazards Consideration Determination

Description of Amendment Request: The proposed amendment revises TS [3.1.8, "Scram Discharge Volume (SDV) Vent and Drain Valves,"] to allow a vent or drain line with one inoperable valve to be isolated instead of requiring the valve to be restored to Operable status within 7 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A change is proposed to allow the affected SDV vent and drain line to be isolated when there are one or more SDV vent or drain lines with one valve inoperable instead or requiring the valve to be restored to operable status within 7 days. With one SDV vent or drain valve inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the SDV. Following the completion of the required action, the isolation function is fulfilled since the associated line is isolated. The ability to vent and drain the SDVs is maintained and controlled through administrative controls. This requirement assures the reactor protection system is not adversely affected by the inoperable valves. With the safety functions of the valves being maintained, the probability or consequences of an accident previously evaluated are not significantly increased.

Criterion 2—The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in the margin of safety.

The proposed change ensures that the safety functions of the SDV vent and drain valves are fulfilled. The isolation function is maintained by redundant valves and by the required action to isolate the affected line. The ability to vent and drain the SDVs is maintained through administrative controls. In addition, the reactor protection system will prevent filling of an SDV to the point that it has insufficient volume to accept a full scram. Maintaining the safety functions related to isolation of the SDV and insertion of control rods ensures that the proposed change does not involve a significant reduction in the margin of safety.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Dated at Rockville, Maryland, this 8th day of April 2003.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–9196 Filed 4–14–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of Wisconsin: NRC Staff Draft Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Wisconsin

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed agreement with the State of Wisconsin.

SUMMARY: By letter dated August 21, 2002, former Governor Scott McCallum of Wisconsin requested that the U. S. Nuclear Regulatory Commission (NRC) enter into an Agreement with the State as authorized by section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would relinquish, and Wisconsin would assume, portions of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing the summary of a draft assessment by the NRC staff of the Wisconsin regulatory program. Comments are requested on the proposed Agreement and the staff's draft assessment which finds the Program adequate to protect public health and safety and compatible with NRC's program for regulation of Agreement material.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Wisconsin from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150.

DATES: The comment period expires May 15, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Comments may be submitted electronically at *nrcrep@nrc.gov*.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of Wisconsin including all information and documentation submitted in support of the request, and copies of the full text of the NRC Staff Draft Assessment are also available for public inspection in the NRC's Public Document Room—ADAMS Accession Numbers: ML030160104 and ML030900662.

FOR FURTHER INFORMATION CONTACT: Lloyd A. Bolling, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2327 or e-mail LAB@nrc.gov.

SUPPLEMENTARY INFORMATION: Since section 274 of the Act was added in 1959, the Commission has entered into Agreements with 32 States. The Agreement States currently regulate approximately 16,250 agreement material licenses, while NRC regulates approximately 4,900 licenses. Under the proposed Agreement, approximately 260 NRC licenses will transfer to Wisconsin. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This Notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials.

In a letter dated August 21, 2002, former Governor McCallum certified that the State of Wisconsin has a program for the control of radiation hazards that is adequate to protect public health and safety within Wisconsin for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this Notice.

The radioactive materials and activities (which together are usually referred to as the "categories of materials") which the State of Wisconsin requests authority over are: (1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act; (2) the possession and use of source materials; and (3) the possession and use of special nuclear materials in quantities not sufficient to form a critical mass, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

—Specify the materials and activities over which authority is transferred;
—Specify the activities over which the Commission will retain regulatory authority;
—Continue the authority of the Commission to safeguard nuclear materials and restricted data;
—Commit the State of Wisconsin and NRC to exchange information as necessary to maintain coordinated and compatible programs;
—Provide for the reciprocal recognition of licenses;
—Provide for the suspension or termination of the Agreement; and
—Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Wisconsin.

(c) Wisconsin currently registers users of naturally-occurring and accelerator-produced radioactive materials. The regulatory program is authorized by law in section 3145, subsection 254.34 of the revised Wisconsin Statutes. Subsection 254.335(1) provides the authority for the Governor to enter into an Agreement

[1] The radioactive materials are: (a) Byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) source materials as defined in Section 11z. of the Act; and (d) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

with the Commission. Wisconsin law (subsection 254.335(2)) contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Wisconsin licenses until the licenses expire or are replaced by State-issued licenses.

(d) The NRC staff draft assessment finds that the Wisconsin program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

II. Summary of the NRC Staff Draft Assessment of the Wisconsin Program for the Control of Agreement Materials

NRC staff has examined the Wisconsin request for an Agreement with respect to the ability of the Wisconsin radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (referred to herein as the "NRC criteria"), (46 FR 7540; January 23, 1981, as amended by policy statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983).

(a) *Organization and Personnel.* The agreement materials program will be located within the existing Radiation Protection Section (Program) of the Wisconsin Department of Health and Family Services. The Program will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the Program staff members are specified in the Wisconsin State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection. Supervisory level staff have more than ten years working experience each, in radiation protection.

The Program currently has one staff vacancy, which they are actively recruiting to fill. The Program performed, and NRC staff reviewed, an analysis of the expected Program workload under the proposed Agreement. Based on the NRC staff review of the State's staff analysis, Wisconsin has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The Program will employ a staff of 9.5 full-time professional/technical and administrative employees for the agreement materials program. The distribution of the qualifications of the individual staff members will be balanced to the distribution of categories of licensees transferred from NRC. Each individual on the staff is qualified in accordance with the Program's training and qualification procedure to function in the areas of responsibility to which the individual is assigned.

(b) *Legislation and Regulations.* The Wisconsin Department of Health and Family Services (DHFS) is designated by law in Chapter 254 of the Wisconsin Revised Statutes to be the radiation control agency. The law provides the DHFS the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The DHFS is authorized to promulgate regulations.

The law requires the DHFS to adopt rules that are compatible with equivalent NRC regulations and that are equally stringent to the equivalent NRC regulations. Wisconsin has adopted HFS 157 Radiation Protection Code effective August 1, 2002. The NRC staff reviewed and forwarded comments on these regulations to the Wisconsin staff. The NRC staff review verified that, with the comments incorporated, the Wisconsin rules (and legally binding requirements) contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The DHFS has extended the effect of the rules, where appropriate, to apply to naturally occurring radioactive materials and to radioactive materials produced in particle accelerators, in addition to agreement materials. The NRC staff also concludes that Wisconsin will not attempt to enforce regulatory matters reserved to the Commission.

Wisconsin regulations are different from the NRC regulations with respect to the termination of the license. Current NRC regulations permit a license to be terminated when the facility has been decommissioned, *i.e.*, cleaned of radioactive contamination, such that the residual radiation will not cause a total effective dose equivalent greater than 25 millirem per year to an average member of the group of individuals reasonably expected to receive the greatest exposure. Normally, the NRC regulations require that the 25 millirem dose constraint be met without imposing any restrictions regarding the future use of the land or buildings of the facility ("unrestricted release"). Under certain circumstances, NRC regulations in 10 CFR part 20, subpart E, allow a license to be terminated if the 25 millirem dose constraint is met with restrictions on the future use ("restricted release"). Wisconsin law does not allow a license to be terminated under restricted release conditions. Wisconsin will instead issue a special "decommissioning-possession only" license as an alternate to license termination under restricted release. NRC staff has concluded that this approach is compatible with NRC regulations.

(c) *Storage and Disposal.* Wisconsin has also adopted NRC compatible requirements for the handling and storage of radioactive material. Wisconsin will not seek authority to regulate the land disposal of radioactive material as waste. The Wisconsin waste disposal requirements cover the preparation, classification and manifesting of radioactive waste, generated by Wisconsin licensees, for transfer for disposal to an authorized waste disposal site or broker.

(d) *Transportation of Radioactive Material.* Wisconsin has adopted regulations compatible with NRC regulations in 10 CFR part 71. Part 71 contains the requirements that licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Wisconsin will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) *Recordkeeping and Incident Reporting.* Wisconsin has adopted the sections compatible with the NRC regulations which specify requirements for licensees to keep records, and to report incidents, accidents, or events involving materials.

(f) *Evaluation of License Applications.* Wisconsin has adopted regulations compatible with the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Wisconsin has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the Program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The Wisconsin radiation control program has adopted a schedule providing for the inspection of licensees as frequently as the inspection schedule used by NRC. The Program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the reporting of inspection results to the licensees. The Program has also adopted, by rule based on the Wisconsin Revised Statutes, procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The Wisconsin Department of Health and Family Services is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The Program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Wisconsin law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* Wisconsin law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Wisconsin. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier.

Wisconsin also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The Wisconsin Radiation Protection Code provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits Wisconsin to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that Wisconsin's program will continue to be compatible with the Commission's program for the regulation of agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Wisconsin to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its draft assessment, the NRC staff concludes that the State of Wisconsin meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

NRC will continue the formal processing of the proposed Agreement which includes publication of this Notice once a week for four consecutive weeks for public review and comment.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 2nd day of April, 2003.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

Appendix A

Agreement Between the United States Nuclear Regulatory Commission and the State of Wisconsin for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of the State of Wisconsin providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Wisconsin is authorized under s. 254.335 (1), Wisconsin Statutes, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Wisconsin certified on August 21, 2002, that the State of Wisconsin (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory authority for such materials; and,

Whereas, The Commission found on [date] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Article I

Subject to the exceptions provided in articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. By-product materials as defined in section 11e. (1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

B. The regulation of the export from or import into the United States of byproduct,

source, or special nuclear material, or of any production or utilization facility;

C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material wastes as defined in the regulations or orders of the Commission;

D. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;

E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

F. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other persons;

G. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

With the exception of those activities identified in Article II, paragraphs A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include the additional areas specified in Article II, paragraphs E, F and G, whereby the State can exert regulatory authority and responsibility with respect to those activities and materials.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and will assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other agreement state. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by the Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on July 1, 2003, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

For the United States Nuclear Regulatory Commission.

Nils J. Diaz,

Chairman.

For the State of Wisconsin.

Jim Doyle,

Governor.

[FR Doc. 03–9027 Filed 4–14–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comment Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Request for comments.

SUMMARY: Under the provision of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission.

At OPIC's request, OMB is reviewing this information collection for emergency processing for 90 days, under OMB control number 3420–0023.

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received within 30 calendar days of this notice.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency submitting officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Bruce Campbell, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202–336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Self-Monitoring Questionnaire for Investment Fund Sub-projects
Form Number: OPIC–217
Frequency of Use: Annually for duration of project.
Type of Respondents: Business or other institution (except farms); individuals.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies or citizens investing overseas.
Reporting Hours: 3 hours per project.
Number of Responses: 325 per year.
Federal Cost: $19,500.
Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development aboard.

Dated: April 8, 2003.

Eli Landy,

Senior Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 03–9069 Filed 4–14–03; 8:45 am]

BILLING CODE 3210–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting

TIME AND DATE: Thursday, April 24, 2003, 1:30 p.m. (OPEN Portion), 1:45 p.m. (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting OPEN to the Public from 1:30 p.m. to 1:45 p.m. Closed portion will commence at 1:45 p.m. (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Testimonial Jon M. Huntsman, Jr.
3. Approval of January 30, 2003 Minutes (Open Portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:45 p.m.)

1. Finance Project in Ecuador.
2. Approval of January 30, 2003 Minutes (Open Portion).
3. Pending Major Projects.
4. Reports.

FOR FURTHER INFORMATION CONTACT: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: April 11, 2003.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 03–9323 Filed 4–11–03; 12:16 pm]

BILLING CODE 3210–01–M

PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest on Late Premium Payments; Interest on Underpayments and Overpayments of Single-Employer Plan Termination Liability and Multiemployer Withdrawal Liability; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in April 2003. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in May 2003. The interest rates for late premium payments under part 4007 and for underpayments and overpayments of single-employer plan termination liability under part 4062 and multiemployer withdrawal liability under part 4219 apply to interest accruing during the second quarter (April through June) of 2003.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in April 2003 is 4.80 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between May 2002 and April 2003.

For premium payment years beginning in:	The required interest rate is:
May 2002	5.68
June 2002	5.65
July 2002	5.52
August 2002	5.39
September 2002	5.08
October 2002	4.76
November 2002	4.93
December 2002	4.96
January 2003	4.92
February 2003	4.94
March 2003	4.81
April 2003	4.80

Late Premium Payments; Underpayments and Overpayments of Single-Employer Plan Termination Liability

Section 4007(b) of ERISA and § 4007.7(a) of the PBGC's regulation on Payment of Premiums (29 CFR part 4007) require the payment of interest on late premium payments at the rate established under section 6601 of the Internal Revenue Code. Similarly, § 4062.7 of the PBGC's regulation on Liability for Termination of Single-Employer Plans (29 CFR part 4062) requires that interest be charged or credited at the section 6601 rate on underpayments and overpayments of employer liability under section 4062 of ERISA. The section 6601 rate is established periodically (currently quarterly) by the Internal Revenue Service. The rate applicable to the second quarter (April through June) of 2003, as announced by the IRS, is 5 percent.

The following table lists the late payment interest rates for premiums and employer liability for the specified time periods:

From	Through	Interest rate (percent)
7/1/96	3/31/98	9
4/1/98	12/31/98	8
1/1/99	3/31/99	7
4/1/99	3/31/00	8
4/1/00	3/31/01	9
4/1/01	6/30/01	8
7/1/01	12/31/01	7
1/1/02	12/31/02	6
1/1/03	6/30/03	5

Underpayments and Overpayments of Multiemployer Withdrawal Liability

Section 4219.32(b) of the PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) specifies the rate at which a multiemployer plan is to charge or credit interest on underpayments and overpayments of withdrawal liability under section 4219 of ERISA unless an applicable plan provision provides otherwise. For interest accruing during any calendar quarter, the specified rate is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates"). The rate for the second quarter (April through June) of 2003 (*i.e.*, the rate reported for March 17, 2003) is 4.25 percent.

The following table lists the withdrawal liability underpayment and overpayment interest rates for the specified time periods:

From	Through	Interest rate (percent)
4/1/96	6/30/97	8.25
7/1/97	12/31/98	8.50
1/1/99	9/30/99	7.75
10/1/99	12/31/99	8.25
1/1/00	3/31/00	8.50
4/1/00	6/30/00	8.75
7/1/00	3/31/01	9.50
4/1/01	6/30/01	8.50
7/1/01	9/30/01	7.00
10/1/01	12/31/01	6.50
1/1/02	12/31/02	4.75
1/1/03	6/30/03	4.25

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in May 2003 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of April 2003.

Joseph H. Grant,

Deputy Executive Director and Chief Operating Officer, Pension Benefit Guaranty Corporation.

[FR Doc. 03–9193 Filed 4–14–03; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25998; File No. 812–11760]

Pacific Life Insurance Company, et al.; Notice of Application

April 9, 2003.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application for exemption pursuant to section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting exemptions from the provisions of section 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act and rule 22c–1 thereunder.

APPLICANTS: Pacific Life Insurance Company ("Pacific Life"); Separate Account A of Pacific Life ("Pacific Separate Account A"); Pacific Select Variable Annuity Separate Account of Pacific Life Insurance Company ("PSVA Separate Account"); Pacific Life and Annuity Company ("PL&A") (together with Pacific Life the "PL Insurers"); Separate Account A of Pacific Life and Annuity Company ("PL&A Separate Account A") (together with Pacific Separate Account A, PSVA Separate Account, and any other separate account of Pacific Life, PL&A or any life insurance company that is a successor in interest to PL Insurers, the "Separate Accounts"); and Pacific Select Distributors, Inc. ("PSD") (collectively referred to herein as "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order to permit, when contracts are returned during the free look period, (i) the recapture of certain credit enhancements ("Credit Enhancements") applied to the "Contract Value" (as defined herein) of Contractholders [1] under: (a) Pacific Value variable annuity, a flexible premium deferred variable annuity contract that Pacific Life issues through Pacific Separate Account A ("Pacific Value"), and (b) other Variable Contracts and any Future Variable Contracts offered by a Future Account, provided that any such Variable Contract or Future Variable Contract is substantially similar in all material respects to Pacific Value; and (ii) the recapture of any amounts credited under Pacific Portfolios variable annuity ("Pacific Portfolios"), Pacific Innovations Select variable annuity ("Pacific Innovations Select"), and Pacific One variable annuity ("Pacific One"), each a flexible premium deferred variable annuity contract funded by Pacific Separate Account A; Pacific Select Variable Annuity, a flexible premium deferred annuity and variable accumulation contract funded by Pacific Select Variable Annuity Separate Account ("PSVA"), Pacific Innovations Select variable annuity, a flexible premium deferred variable annuity contract funded by PL&A Separate Account A ("PL&A Innovations Select"), or any Variable Contract or Future Variable Contract that is sold to Contractholders in situations where selling and/or maintenance costs associated with the Variable Contracts are reduced ("Cost Reduction Credit") or to Contractholders who meet certain criteria as established by the relevant PL Insurer ("Eligible Person Credit"), provided that any such Variable Contract or Future Variable Contract is substantially similar in all material respects to PSVA, Pacific Portfolios, Pacific One, Pacific Innovations Select or PL&A Innovations Select.

FILING DATES: The Application was filed with the SEC on August 24, 1999 and amended and restated on March 28, 2000, April 30, 2002, November 25, 2002 and April 8, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on May 1, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service.

[1] The term "Contractholder" refers to contractholders of any variable annuity contract funded by a Separate Account (each, a "Variable Contract" and collectively, "Variable Contracts"), and also to contractholders of any variable annuity contract funded in the future by a Separate Account or a separate account that will be established in the future by a PL Insurer to support variable annuity contracts issued by a PL Insurer ("Future Account") (collectively, "Future Variable Contracts").

Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Robin S. Yonis, Esq., Pacific Life Insurance Company, 700 Newport Center Drive, Newport Beach, California 92660.

FOR FURTHER INFORMATION CONTACT: Mark Cowan, Senior Counsel, or Zandra Y. Bailes, Branch Chief, at (202) 942–0670 (Division of Investment Management, Office of Insurance Products).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW., Washington, DC, 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Pacific Life is a life insurance company that is domiciled in California. Along with subsidiaries and affiliates, Pacific Life's operations include life insurance, annuities, pension and institutional products, group employee benefits, broker/dealer operations and investment advisory services. Pacific Life is authorized to conduct life insurance and annuity business in the District of Columbia and all states except New York. Its principal offices are located at 700 Newport Center Drive, Newport Beach, California 92660.

2. Pacific Separate Account A was established on September 7, 1994 as a segregated asset account of Pacific Life and is registered with the Commission as a unit investment trust. Pacific Life is the legal owner of the assets in Pacific Separate Account A. Pacific Separate Account A currently has 37 subaccounts or "Variable Investment Options." Each Variable Investment Option invests in a corresponding series of Pacific Select Fund ("Select Fund"), an open-end registered management investment company for which Pacific Life serves as investment adviser, or The Prudential Series Fund, Inc., an open-end registered investment company for which Prudential Investments Fund Management LLC serves as investment adviser. Pacific Separate Account A funds the variable benefits available under Pacific Value, Pacific Innovations Select, Pacific Portfolios, Pacific One, Pacific One Select variable annuity ("Pacific One Select"), Pacific Innovations variable annuity ("Pacific Innovations"), and Pacific Odyssey variable annuity ("Pacific Odyssey"). Interests in Pacific Separate Account A under Pacific Value, Pacific Innovations Select, Pacific Portfolios, Pacific One, Pacific One Select, Pacific Innovations, and Pacific Odyssey are registered under the Securities Act of 1933, as amended (the "1933 Act").

3. PSVA Separate Account was established by Pacific Life on November 30, 1989 as a segregated asset account of Pacific Life and is registered with the Commission as a unit investment trust. Pacific Life is the legal owner of the assets in PSVA Separate Account. Each Variable Investment Option invests in a corresponding series of Select Fund. PSVA Separate Account currently has 33 Variable Investment Options. PSVA Separate Account currently funds the variable benefits available under PSVA. Interests in PSVA Separate Account are registered under the 1933 Act.

4. PL&A is a life insurance company domiciled in Arizona. PL&A's operations include life insurance, annuity and institutional products, group life and health insurance and various other insurance products and services. At the end of 2002, PL&A's total statutory assets were $854 million. PL&A is authorized to conduct life insurance and annuity business in Arizona, New York and certain other states. PL&A's principal office is located at 700 Newport Center Drive, Newport Beach, California 92660.

5. PL&A Separate Account A was established by PL&A on January 25, 1999 as a segregated asset account of PL&A and is registered with the Commission as a unit investment trust. PL&A is the legal owner of the assets in PL&A Separate Account A. Each Variable Investment Option invests in a corresponding series of Select Fund. PL&A Separate Account A currently has 33 Variable Investment Options. PL&A Separate Account A currently funds the variable benefits available under PL&A Innovations Select. Interests in PL&A Separate Account A are registered under the 1933 Act.

6. PSD, a wholly-owned subsidiary of Pacific Life, serves as the principal underwriter for the Variable Contracts issued by the PL Insurers. It is also anticipated that PSD will serve as the principal underwriter for any Future Variable Contracts issued by the PL Insurers. PSD is registered with the Commission as a broker/dealer under the Securities Exchange Act of 1934, as amended. The PL Insurers and PSD have entered into selling agreements with various broker/dealers, under which such broker/dealers act as agents of the relevant PL Insurer and PSD in the sale of the relevant PL Insurer's Variable Contracts.

7. Pacific Value offers a "Credit Enhancement" feature under which Pacific Life automatically adds an amount to each Contractholder's overall "Contract Value" at the time any amount is paid to Pacific Life by or on behalf of the Contractholder as consideration of the benefits provided under the Variable Contract (referred to herein as "Purchase Payments"). The term "Contract Value" refers to the sum (as calculated at the end of each business day) of: (i) The aggregate amount of Purchase Payments and any prior Credit Enhancements, and any earnings or losses thereon, less any fees and charges, held for a Contractholder's Variable Contract in any Variable Investment Option; (ii) the aggregate amount of Purchase Payments and any prior Credit Enhancements, and any interest earned thereon, less any fees and charges held for a Contractholder's Variable Contract in any fixed option available under his or her Variable Contract; (iii) the amount, including any interest accrued, held to secure the principal amount the Contractholder has on any outstanding loan under his or her Variable Contract; less (iv) the amount, including any associated withdrawal charge, of any withdrawal from the Variable Contract.

8. Credit Enhancements are allocated among a Contractholder's investment options then in effect in the same proportion that the applicable Purchase Payment is allocated. The Credit Enhancement with respect to each Purchase Payment is based on the Contractholder's total Purchase Payments made into Pacific Value less total withdrawals, including any withdrawal charges, from Pacific Value as of the date the Purchase Payment is applied. The Credit Enhancement available under Pacific Value, expressed as a percentage of the relevant Purchase Payment is set forth below:

	Credit Enhancement (percent)
Contracts issued on or after April 1, 2000; Total Purchase Payments Less Total Withdrawals:	
Less than $250,000	4.0
$250,000 or more	5.0
Contracts issued before April 1, 2000; Total Purchase Payments Less Total Withdrawals:	
Less than $100,000	3.0
At least $100,000 but less than $2.5 million	4.0
$2.5 million or more	5.0

9. PL Insurers may agree to credit a Cost Reduction Credit under the Variable Contracts (other than Pacific Innovations), in situations where selling and/or maintenance costs associated with the Variable Contracts are reduced, such as the sale of several Variable Contracts to the same Contractholder(s), sales of large Variable Contracts, sales of Variable Contracts in connection with a group or sponsored arrangement or mass transactions over multiple Variable Contracts. The amount of any Cost Reduction Credit will be determined based upon the amount of reduction in the selling and/or maintenance cost associated with the sale of that particular Variable Contract. A Cost Reduction Credit may be applied at the time that a Purchase Payment is made. Any Cost Reduction Credit applied at that time will not exceed 1.45% of the amount of such Purchase Payment. Alternatively, Cost Reduction Credits may be credited on the basis of Contract Value. Any Cost Reduction Credit credited on the basis of Contract Value will not exceed 1.45% of Contract Value at the time that it is credited.

10. PL Insurers may agree to credit an Eligible Person Credit under the Variable Contracts (other than Pacific One Select) owned by persons who meet criteria established by the relevant PL Insurer. These persons may include current and retired officers, directors and employees of Pacific Life and its affiliates, trustees of Pacific Select Fund, registered representatives and employees of broker/dealers with a current selling agreement with Pacific Life or PL&A, respectively, and the affiliates of those broker/dealers, employees of affiliated asset management firms and certain other service providers, and immediate family members of such persons (collectively referred to as "Eligible Persons"). Under the Eligible Person Credit Program, the relevant PL Insurer credits additional amounts to Pacific Innovations Select, Pacific Portfolios, PSVA or PL&A Innovations Select Variable Contracts owned by Eligible Persons if such Variable Contracts are purchased directly through PSD. Under these circumstances, Eligible Persons will not be afforded the benefit of services of any other broker/dealer nor will any commission be payable to any broker/dealer in connection with such purchases. Rather, Eligible Persons must contact the relevant PL Insurer or PSD directly with servicing questions, changes in their Variable Contracts and related matters. Eligible Persons are currently credited with a 5% Eligible Person Credit on each Purchase Payment plus a 0.25% (annualized) Credit of Contract Value, payable quarterly in advance, from the second Contract Year through the third Contract Year for Pacific Innocations Select and PL&A Innovations Select and a 1% (annualized) Credit of Contract Value, payable quarterly in advance from the fourth Contract Year until annuitization, on an annual basis. Eligible Person who are Pacific Portfolios or PSVA Contractholders are currently credited with a 5% Eligible Person Credit on each Purchase Payment plus a 0.25% (annualized) Eligible Person Credit on Contract Value from the second Contract Year through the fifth Contract Year for PSVA (sixth Contract Year for Pacific Portfolios) on a quarterly basis, and a 1% (annualized) Eligible Person Credit on Contract Value from the sixth Contract Year for PSVA (seventh Contract Year for Pacific Portfolios) until annuitization, payable quarterly. The amount currently credited to Variable Contracts owned by Eligible Persons will approximate the reduction in expenses realized by the relevant PL Insurer by not incurring brokerage commission in selling such Variable Contracts, with the determination of the expense reduction and of such crediting being made in accordance with administrative procedures established by the relevant PL Insurer.

11. In the future, PL Insurers may credit Contracts issued to Eligible Persons with Eligible Person Credits greater than 5% of each Purchase Payment, except that with respect to Purchase Payments made during: (i) The relevant free look period; and (ii) after the relevant free look period has expired, but during the first Contract month, the amount of any Eligible Person Credit will be limited to no more than 9% of such Purchase Payment.

12. Although the PL Insurers are seeking to offer Credit Enhancements, Eligible Person Credits and Cost Reduction Credits (collectively, "Credits") through Variable Contracts and Future Variable Contracts, no PL Insurer will apply more than one Credit to the Contract Value of a Contractholder's Variable Contract or Future Variable Contract. Thus, if a PL Insurer applies the Credit Enhancement to the Contract Value of a particular Variable Contract or Future Variable Contract, it will not also apply an Eligible Person Credit or a Cost Reduction Credit. Similarly, if a PL Insurer applies the Eligible Person Credit to the Contract Value of a particular Variable Contract or Future Variable Contract, it will not also apply a Cost Reduction Credit or a Credit Enhancement. If a PL Insurer offers a Cost Reduction Credit to the Contract Value of a particular Variable Contract or Future Variable Contract, it will not also apply an Eligible Person Credit or a Credit Enhancement.

13. The Variable Contracts issued by the PL Insurers permit Contractholders to cancel their Variable Contracts and to receive a refund during the "free look" period, which is mandated by state law. The free look period for Variable Contracts issued by the PL Insurers generally is a 10-day period beginning on the day a Contractholder receives his or her Variable Contract.[2] Where a Contractholder returns a Variable Contract during the free look period, the Variable Contract will be canceled and treated as void from the Contract Date.

14. In most instances, a Contractholder who returns a Variable Contract during the free look period is entitled to a refund of his or her Contract Value, as of the end of the business day on which the PL Insurer received a Contractholder's Variable Contract for cancellation.[3] Contractholders for all Variable Contracts issued by PL Insurers (other than PSVA) generally will also receive a refund of any amounts that may have been deducted to pay for state premium taxes and/or other taxes. PSVA Contractholders who exercise their free-look rights are entitled to, in addition to a refund of Contract Value, a refund of any Variable Contract charges and fees deducted from the portion of their Contract Value allocated to Variable Investment Options.

15. There are two circumstances under which the Contract Value returned to a Contractholder who returns his or her Variable Contract during the free look period will be subject to certain additional deductions. First, the amount of any Credit Enhancement added to the Contract Value of a Pacific Value Contractholder will be deducted if the Contractholder returns the Variable Contract during the free look period. Second, any Cost Reduction Credit or Eligible Person Credit that is added to the Contract Value of a Pacific One, Pacific Portfolios, PSVA, Pacific Innovations Select and PL&A Innovations Select Contractholder who returns his or her Variable Contract during the free look period will also be deducted from the amount ultimately returned to the Contractholder.

16. The relief sought in the Application is intended to permit PL Insurers to deduct the amounts of any Credit Enhancement, Cost Reduction Credit or Eligible Person Credit added to the Contract Value of any Variable Contract or Future Variable Contract, funded by a Separate Account or a Future Account, offering such credits in cases where Contractholders return their Variable Contract or Future Variable Contract during the free look period.

17. Under the current practice in effect for each applicable Variable Contract, the amount of the Credit Enhancement or the Eligible Person Credit added to a Contractholder's Contract Value is returned to a PL Insurer where free look rights are exercised, together with any gains or losses on the amount credited.[4] In addition, PSVA Contractholders receive any Contract fees and charges that Pacific Life may have deducted from the credited amounts.

18. If the relief sought in the Application is granted, Applicants would change the amount that Contractholders with any Credit Enhancement, Cost Reduction Credit or Eligible Person Credit would receive if they exercised their rights under the applicable free look policy. If the relief applied for in the Application is granted, Contractholders exercising their free look rights would not receive the amounts added to their Contract Value in the form of Credit Enhancements, Cost Reduction Credits or Eligible Person Credits, but such Contractholders would realize the gains or incur the losses on the credit amounts.

Applicants' Legal Analysis

1. Applicants seek exemptive relief pursuant to section 6(c) from sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and rule 22c–1 thereunder to the extent deemed necessary to permit the PL Insurers: (1) To recapture any Credit Enhancement when a Contractholder returns a Variable Contract and/or Future Variable Contract during the free look period; and (2) to recapture any Cost Reduction Credits and Eligible Person Credits when a Contractholder returns a Variable Contract or Future Variable Contract during the free look period.

2. Subsection (i) of section 27 of the 1940 Act provides that section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such separate account, except as provided in paragraph (2) of that subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless "(A) such contract is a redeemable security."

3. Section 2(a)(32) of the 1940 Act defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate shares of the issuer's current net assets, or the cash equivalent thereof.

4. Because the amount returned to a Contractholder who cancels a Variable Contract during the free look period does not include the amount of any Credit Enhancement, Cost Reduction Credit or Eligible Person Credit conditionally added to the Contractholder's Contract Value, the Contractholder arguably is not receiving his or her proportionate share of the applicable Separate Account's then-current net assets. Applicants assert, however, that the recapture of the Credit Enhancement offered under Pacific Value or the Cost Reduction Credit and the Eligible Person Credit offered under the Variable Contracts, as described in the Application, would not deprive a Contractholder of his or her proportionate share of the issuer's current net assets. Any Credit Enhancements, Cost Reduction Credits or Eligible Person Credits added to the Contract Value of a Contractholder are expressly conditioned on the Contractholder's decision to keep the Variable Contract beyond the free look period. Further, Applicants assert that a Contractholder's interest in the amount of a Credit Enhancement, Cost Reduction Credit or an Eligible Person Credit allocated to his or her Contract Value is not vested until the applicable free look period has expired without return of the Variable Contract in question. Unless and until the amount of the Credit Enhancement, Cost Reduction Credit or Eligible Person Credit is vested (*i.e.*, at the end of the free look period), Applicants believe that the relevant PL Insurer retains the right and interest in the amount of the Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit.

5. Applicants further contend that it would be patently unfair to allow a Contractholder exercising his or her free look right to retain the Credit Enhancement or the Cost Reduction Credit or the Eligible Person Credit under a Variable Contract that has been returned for a refund after a period of only a few days. If PL Insurers could not recapture the amounts of such credits, individuals could purchase a Variable Contract, and simply return it for a quick profit. This could deter PL Insurers from offering the Credit Enhancement, the Cost Reduction Credit and Eligible Credit under Variable Contracts or Future Variable Contracts.

6. Moreover, because the amount of the Credit Enhancement, Cost Reduction Credit or Eligible Person Credit is not vested during the free look period, Applicants state that it is arguable that any earnings or losses attributable to these credits should also be returned to the relevant PL Insurer as the sponsoring insurance company. PL Insurers have taken and will continue to take this approach unless and until the relief requested under the Application is granted. However, if and when the Commission grants the relief requested in the Application, any gains or losses attributable to the amount of the Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit will be allocated to the Contractholders.

7. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing a redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

[2] Certain states require longer free look periods with respect to variable annuity contracts.

[3] Under the laws of a number of states, if free look rights are exercised within the allotted time, the sponsoring insurance company is required to refund a Contractholder's Purchase Payment allocated to the Variable Investment Options available under the Separate Account, instead of the value of the Variable Investment Options on the date the Variable Contract is returned. In those states, if a Contractholder exercises his free look rights when his Contract Value is less than the amount of his Purchase Payments, Pacific Life bears the risk of loss. Pacific Life currently allocates Purchase Payments during the free-look period to the investment options selected by the Contractholder, in accordance with the Contractholder application or the Contractholder's most recent allocation instructions, regardless of whether Pacific Life is required to refund a Contractholder's Purchase Payment or the value of the Variable Investment Options if a Contractholder exercises his free look rights.

[4] However, if the amount of a Credit Enhancement, Cost Reduction Credit or Eligible Person Credit, together with any gains on such credits, exceed the withdrawal charge percentage applicable for a particular Variable Contract, the PL Insurer will refund the amount of the excess.

8. PL Insurers' recapture of the Credit Enhancement, the Cost Reduction Credit and the Eligible Person Credit in instances where a Contractholder returns a Variable Contract during the free look period might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the applicable Variable Investment Option of a Separate Account. In other words, because any such Credit Enhancements, Cost Reduction Credits and Eligible Person Credits credited by a PL Insurer are immediately added, on a conditional basis, to the Contract Value of certain Contractholders, and further because these amounts are allocated by the Contractholder to certain Variable Investment Options for the benefit of the participating Contractholder, the net asset value of each Variable Investment Option arguably is affected by these credits.

9. Applicants contend, however, that the recapture of the Credit Enhancement, Cost Reduction Credit and Eligible Person Credit under the circumstances described in this Application should not be deemed to be a violation of section 22(c) and rule 22c–1. To the extent that the recapture practices described in the Application are considered to be technical violations of these provisions, Applicants respectfully request relief from section 22(c) and rule 22c–1 in order to recapture Credit Enhancements, Cost Reduction Credits and Eligible Person Credits as discussed above for Variable Contracts and Future Variable Contracts cancelled during the free look period.

10. Applicants claim that the recapture of the Credit Enhancement, Cost Reduction Credit and the Eligible Person Credit does not involve either of the practices that rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices.

11. Applicants submit that the proposed recapture of the Credit Enhancement, Cost Reduction Credit and the Eligible Person Credit poses no such threat of dilution. To effect a recapture of a Credit Enhancement, Cost Reduction Credit or an Eligible Person Credit, PL Insurers redeem interests in a Contractholder's Variable Investment Option at a price determined on the basis of the current net asset value of each of the Variable Investment Options of the Separate Account in which the Contractholder's Contract Value is allocated. The amount recaptured will be equal to the amount of the Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit paid out of the general account assets of the relevant PL Insurer. In those instances where applicable state law does not require the return of Purchase Payments, and thus permits Contractholders to retain any investment gain or to realize any investment loss, in the event of the exercise of a free look right, the amount refunded will be determined on the basis of the current net asset value of the various Variable Investment Options of the applicable Separate Accounts including gain or loss. Thus, Applicants believe that no dilution will occur upon the recapture of a Credit Enhancement, Cost Reduction Credit or an Eligible Person Credit.

12. Applicants also submit that the second practice that rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit.

Conclusion

Applicants submit that their request for an order for the exemptive relief described above is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9158 Filed 4–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC 25999; File No. 812–12894]

Pruco Life Insurance Company, et al.; Notice of Application

April 9, 2003.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an amended order under section 6(c) of the Investment Company Act of 1940 (the "1940 Act" or "Act") granting exemptions from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an amendment of an Existing Order (described below) to permit the recapture of Credit amounts that differ from the Credit amounts contemplated by the Existing Order under the circumstances specified herein.

APPLICANTS: Pruco Life Insurance Company ("Pruco Life"); Pruco Life Flexible Premium Variable Annuity Account ("Pruco Life Account"); Pruco Life Insurance Company of New Jersey ("Pruco Life of New Jersey," and collectively with Pruco Life, the "Insurance Companies"); Pruco Life of New Jersey Flexible Premium Variable Annuity Account ("Pruco Life of New Jersey Account," and collectively with Pruco Life Account, the "Accounts"); and Prudential Investment Management Services LLC ("PIMS," and collectively with the Insurance Companies and the Accounts, "Applicants").

FILING DATE: The application was filed on October 15, 2002, and amended and restated on April 8, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 5, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o The Prudential Insurance Company of America, 213 Washington Street, Newark, NJ 07102–2992, Attn: C. Christopher Sprague, Esq.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, or William J. Kotapish, Assistant Director, at (202) 942–0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. On August 12, 2002, the Commission issued the Existing Order exempting certain transactions of Applicants from the provisions of sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and rule 22c–1 thereunder to permit, under specified circumstances, the recapture of certain credits applied to purchase payments made under certain deferred variable annuity contracts ("Strategic Partners Annuity One" or "Contracts") and Future Contracts described in the Existing Order.[1]

2. The Existing Order allows the Insurance Companies to recapture credit amounts ("Credits") that differ depending upon the purchase payment amount and the contract owner's age when the purchase payment is made. Specifically, a 4% Credit is applied to purchase payments less than $250,000 and a 5% Credit is applied to purchase payments of $250,000 or more if the Contract owner is age 80 or younger (for jointly-owned Contracts, if the older owner is 80 or younger) when the purchase payment is made. If the Contract owner is age 81 or older (for jointly-owned Contracts, if the older owner is 81 or older) when the purchase payment is made, a 3% Credit is applied, regardless of the amount of the purchase payment. These Credits generally vest upon the expiration of the free look period. However, if a Credit is applied to a purchase payment made within one year prior to death, and the death benefit amount is equal to contract value, then any Credit attributable to that purchase payment will be recaptured in calculating the death benefit payable under the Contracts.

3. Applicants seek to amend the Existing Order in one respect. Namely, the Insurance Companies would add a new "tier" to the above-referenced bonus structure, under which they would grant a Credit equal to 6% of any purchase payment of $1 million or more made by a Contract owner aged 80 or younger (for jointly-owned Contracts, if the older owner is aged 80 or younger). The 6% Credit would vest upon the expiration of the free look period (except for certain 6% Credits applied within one year prior to death). As to recapture upon death, if a 6% Credit is applied to a purchase payment made within one year before death, and the death benefit amount is equal to Contract value, then the Credit attributable to that purchase payment will be recaptured in calculating the death benefit amount. However, there will be no such recapture if the death benefit amount is equal to the roll-up value, the step-up value, the greater of roll-up and step-up, or total purchase payments (less any withdrawals).

4. Subsequent to the Existing Order, on December 13, 2002, Applicants filed a post-effective amendment to the registration statement for the version of Strategic Partners Annuity One currently offered by Pruco Life (File No. 333–37728) (the "Pruco Life SPAO Amendments"). That post-yeffective amendment is now effective. The Pruco Life SPAO Amendments made several changes to the Strategic Partners Annuity One Contract, including the addition of a new "Income Appreciator" benefit. Applicants have incorporated the Pruco Life SPAO Amendments filing by reference into the application for purposes of detailing the features of the Pruco Life Strategic Partners Annuity One Contract that will offer the 6% Credit. The Strategic Partners Annuity One Contract described in the Pruco Life SPAO Amendments is substantially similar in all material respects to the Strategic Partners Annuity One Contract that was described in the Existing Order, with these salient differences: (a) Addition of a new, Income Appreciator Benefit, (b) increased maximum issue age for the guaranteed minimum income benefit and the guaranteed minimum death benefit and the availability of each of these benefits individually, (c) expanded availability of the fixed rate option, (d) change in the date on which the guaranteed minimum death benefit value is "frozen", (e) availability of the earnings appreciator supplemental death benefit and the guaranteed minimum income benefit to older age owners, and (f) modification to the joint ownership and spousal continuance features. Applicants seek the exemptive relief needed to recapture the 6% Credit under the version of Strategic Partners Annuity One described in the Pruco Life SPAO Amendments (and under any future version of the Pruco Life Strategic Partners Annuity One Contract that is substantially similar, in all material respects, to the Contract described in the Pruco Life SPAO Amendments).

5. In addition, on December 10, 2002, Pruco Life of New Jersey filed a post-effective amendment to the version of Strategic Partners Annuity One that it currently sells (File No. 333–49230). That filing also has become effective. Applicants have incorporated that filing (the "Pruco Life of New Jersey SPAO Amendments") by reference into the application. The version of Strategic Partners Annuity One described in the Pruco Life of New Jersey SPAO Amendments is substantially similar in all material respects to the version described in the Existing Order, except for these salient differences: (a) The newer version offers, for an additional charge, a banded bonus structure featuring credit amounts of either 3%, 4%, 5%, or 6%, (b) the newer version offers an enhanced guaranteed minimum death benefit at a higher charge, (c) the newer version modifies the joint ownership feature and adds a spousal continuance feature, and (d) the newer version reflects certain changes to the fixed options. Applicants also seek the exemptive relief needed to recapture the 6% Credit under the version of Strategic Partners Annuity One described in the Pruco Life of New Jersey SPAO Amendments (and under any future version of the Pruco Life of New Jersey Strategic Partners Annuity One Contract that is substantially similar, in all material respects, to the Contract described in the Pruco Life of New Jersey SPAO Amendments).

6. The prospectuses for the currently offered versions of the Strategic Partners Annuity One variable annuity offer the 6% Credit. However, the prospectuses also indicate that unless and until the Commission grants the relief requested in the application, the respective insurer will not recoup the amount of any 6% Credit granted within 12 months prior to death, and for a Contract that is returned during the free look period, will only recapture the value of the 6% Credit as of the business day on which the insurer receives the redemption request (less any charges attributable to that Credit).

7. The version of Strategic Partners Annuity One that offers a Credit (including the 6% Credit proposed in the application) has certain charges that differ from the counterpart contract not offering any Credit. The Contract with Credit has a different withdrawal charge schedule, under which the withdrawal charge is 8% of the amount withdrawn if no contract anniversary has elapsed since the purchase payment was made, 8% if only one contract anniversary has elapsed, 8% if only two contract anniversaries have elapsed, 8% if only three contract anniversaries have elapsed, 7% if only four contract anniversaries have elapsed, 6% if only five contract anniversaries have elapsed, and 5% if only six contract anniversaries have elapsed. The withdrawal charge no longer applies once seven or more contract anniversaries have elapsed since the date that the purchase payment was made. In contrast, the withdrawal charge applicable to the Contract not

[1] Investment Company Act Release Nos. 25660 (July 15, 2002) (notice) and 25695 (August 12, 2002) (order).

offering any Credit is 7% of the amount withdrawn if no contract anniversary has elapsed since the purchase payment was made, 6% if only one contract anniversary has elapsed, 5% if only two contract anniversaries have elapsed, 4% if only three contract anniversaries have elapsed, 3% if only four contract anniversaries have elapsed, 2% if only five contract anniversaries have elapsed, and 1% if only six contract anniversaries have elapsed. The withdrawal charge no longer applies once seven or more contract anniversaries have elapsed since the date that the purchase payment was made. In addition, there is an additional, asset-based charge equal to 10 basis points annually that applies to the version of Strategic Partners Annuity One under which Credits (including the 6% Credit) are not recaptured after expiration of the free look period unless death occurs within one year of a purchase payment.

Applicants' Legal Analysis

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to section 6(c) of the Act, amend the Existing Order to the extent necessary to permit the recapture of the 6% Credit amounts described above under the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants submit that the recapture of 6% Credits will not raise concerns under sections 2(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act, and rule 22c–1 thereunder for the same reasons given in support of the Existing Order. 6% Credits under the Contracts will be recaptured only if the owner exercises his/her free look right, and with respect to certain 6% Credits granted within one year prior to death. The amounts recaptured equal the Credits provided by each Insurance Company from its own general account assets. When the Insurance Companies recapture any 6% Credit, they are merely retrieving their own assets, and the owner has not been deprived of a proportionate share of the applicable Account's assets, because his or her interest in the 6% Credit amount has not vested. With respect to 6% Credit recaptures upon the exercise of the free-look privilege, it would be unfair to allow an owner exercising that privilege to retain a 6% Credit amount under a Contract that has been returned for a refund after a period of only a few days. If the Insurance Companies could not recapture the 6% Credit during the free look period, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit. Applicants also note that the Contract owner is entitled to retain any investment gain attributable to the 6% Credit, even if the Credit is ultimately recaptured. Furthermore, the recapture of 6% Credits relating to purchase payments made within one year prior to death is designed to provide the Insurance Companies with a measure of protection against "anti-selection." The risk here is that, rather than spreading purchase payments over a number of years, an owner will make very large payments shortly before death, thereby leaving the Insurance Companies less time to recover the cost of the 6% Credits applied, to their financial detriment.

3. Applicants submit that the provisions for recapture of any 6% Credits under the Contracts do not, and any such Future Contract provisions will not, violate section 2(a)(32) and 27(i)(2)(A) of the Act, and rule 22c–1 thereunder, and that the relief requested is consistent with the exemptive relief provided under the Existing Order.

4. Applicants submit that their request for an amended order that applies to any Account or any Future Account established by an Insurance Company in connection with the issuance of Contracts and Future Contracts, and underwritten or distributed by PIMS or other broker-dealers, is appropriate in the public interest. Such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in this application. Having Applicants file additional applications would impair Applicants' ability effectively to take advantage of business opportunities as they arise.

5. Applicants undertake that Future Contracts funded by Accounts or by Future Accounts that seek to rely on the order issued pursuant to the application will be substantially similar to the Contracts in all material respects.

Conclusion

Applicants submit that their request for an amended order meets the standards set out in section 6(c) of the 1940 Act and that an amended order should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9159 Filed 4–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26003; File No. 812–12906]

John Hancock Life Insurance Company, et al.

April 10, 2003.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order of approval pursuant to section 26(c) of the Investment Company Act of 1940 (the "Act").

APPLICANTS: John Hancock Life Insurance Company ("John Hancock"), John Hancock Variable Life Insurance Company ("JHVLICO"), John Hancock Variable Life Account S ("Account S"), John Hancock Variable Life Account UV ("Account UV"), John Hancock Variable Life Account U ("Account U"), John Hancock Variable Annuity Account JF ("Account JF"), John Hancock Variable Annuity Account I ("Account I"), and John Hancock Variable Annuity Account H ("Account H") (collectively, "Applicants").

FILING DATE: The application was filed on December 2, 2002 and amended and restated on April 10, 2003.

SUMMARY OF APPLICATION: Applicants request an order permitting (1) Account S, Account UV, Account U, Account JF, and Account H (together with Account I, the "Separate Accounts") to substitute shares of the International Equity Index Fund (the "Hancock International Fund") for their shares of the Templeton Foreign Securities Fund (the "Templeton Foreign Fund"); (2) Account JF and Account H to substitute shares of the International Opportunities Fund (the "Hancock International Opportunities Fund") for their shares of the Templeton Developing Markets Securities Fund (the "Templeton Developing Fund");

and (3) all of the Separate Accounts to substitute shares of the AIM V.I. Premier Equity Fund (together with the Hancock International Fund and the Hancock International Opportunities Fund, the "Replacing Funds") for their shares of the AIM V.I. Growth Fund (together with the Templeton Foreign Fund and the Templeton Developing Fund, the "Replaced Funds").

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 30, 2003 and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicants, c/o Arnold R. Bergman, Esq., John Hancock Life Insurance Company, John Hancock Place, PO Box 111, Boston MA 02117. Copy to Foley & Lardner, 3000 K Street, NW., Washington, DC, 20007, for the attention of Thomas C. Lauerman, Esq.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, at (202) 942–0552 or Zandra Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (Phone: (202) 942–8090).

Applicants' Representations

1. John Hancock is a stock life insurance company organized under the laws of Massachusetts. John Hancock is a publicly-held financial services company whose primary business is life insurance and annuities.

2. JHVLICO is a wholly-owned subsidiary of John Hancock organized under the laws of Massachusetts. JHVLICO is a stock life insurance company whose primary business is life insurance and annuities.

3. Account S is a separate investment account established by JHVLICO under Massachusetts law to fund variable life insurance policies issued by JHVLICO. Account S is registered under the Act as a unit investment trust (File No. 811–7782).

4. The variable life insurance policies Funded by Account S that are affected by this application are as follows: Medallion Executive Variable Life ("MEVL"), MEVL II, and MEVL III, interests under all of which are also registered under the Securities Act of 1933 (the "1933 Act") (File No. 333–425); Majestic Variable Universal Life ("MVUL"), and MVUL 98, interests under both of which are also registered under the 1933 Act (File No. 333–15075); Variable Master Plan Plus ("VCOLI"), interests under which are also registered under the 1933 Act (File No. 33–79108); Majestic VCOLI ("MVCOLI"), interests under which are also registered under the 1933 Act (File No. 333–60274); and Variable Estate Protection ("VEP"), Majestic Variable Estate Protection ("MVEP"), MVEP98, and VEP Plus, interests under all of which also are registered under the 1933 Act (File No. 33–64366); and VEP Edge, interests under which are also registered under the 1933 Act (File No. 33–55172).

5. Account UV is a separate investment account established by John Hancock under Massachusetts law to fund variable life insurance policies issued by John Hancock. Account UV is registered under the Act as a unit investment trust (File No. 811–7766).

6. The variable life insurance policies funded by Account UV that are affected by this application are as follows: VEP (NY), interests under which are also registered under the 1933 Act (File No. 33–64364); VEP Plus—NY, interests under which are also registered under the 1933 Act (File No. 333–73082); VEP Edge—NY, interests under which are also registered under the 1933 Act (File No. 333–73072); MVUL98–NY, interests under which are also registered under the 1933 Act (File No. 333–42378); MVEP98–NY, interests under which are also registered under the 1933 Act (File No. 333–73444); MEVL III–NY, interests under which are also registered under the 1933 Act (File No. 333–63654); MVL Plus—NY, interests under which are also registered under the 1933 Act (File No. 70734); MVL Edge—NY, interests under which are also registered under the 1933 Act (File No. 333–70746); and VCOLI–NY, interests under which are also registered under the 1933 Act (File No. 333–67744).

7. Account U is a separate investment account established by JHVLICO under Massachusetts law to fund variable life insurance policies issued by JHVLICO. Account U is registered under the Act as a unit investment trust (File No. 811–3068).

8. The Account U variable life insurance policies affected by this application are as follows: MVL Plus, and MVL Edge, interests under both of which are also registered under the 1933 Act (File Nos. 33–76660 and 333–52128, respectively); and eVariable Life, interests under which are also registered under the 1933 Act (File No. 333–50312).

9. Account JF is a separate investment account established by JHVLICO under Massachusetts law to fund variable annuity contracts issued by JHVLICO. Account JF is registered under the Act as a unit investment trust (File No. 811–07451).

10. The Account JF variable annuity contracts affected by this application are as follows: Revolution Access, Revolution Extra, Revolution Standard, and Revolution Value, interests under all of which are also registered under the 1933 Act (File Nos. 333–84769, 333–84767, 333–84763, and 333–81127, respectively).

11. Account I is a separate investment account established by JHVLICO under Massachusetts law to fund variable annuity contracts issued by JHVLICO. Account I is registered under the Act as a unit investment trust (File No. 811–8696).

12. The only Account I variable life insurance policy affected by this application is eVariable Annuity, interests under which are also registered under the 1933 Act (File No. 333–16949).

13. Account H is a separate investment account established by John Hancock under Massachusetts law to fund variable annuity contracts issued by John Hancock. Account H is registered under the Act as a unit investment trust (File No. 811–07711).

14. The Account H contracts affected by this application are as follows: Revolution Access, Revolution Extra, Revolution Standard, and Revolution Value, interests under all of which are also registered under the 1933 Act (File Nos. 333–84771, 333–84783, 333–84765 and 333–81103, respectively).

15. Purchase payments under the variable life insurance policies and variable annuity contracts identified above (collectively, the "Contracts") are allocated to one or more subaccounts ("Subaccounts") of the Separate Accounts.

16. Income, gains and losses, whether or not realized, from assets allocated to a Separate Account are, as provided in the Contracts, credited to or charged

against that Separate Account without regard to other income, gains or losses of John Hancock or JHVLICO. The assets maintained in the Separate Accounts will not be charged with any liabilities arising out of any other business conducted by John Hancock or JHVLICO. Nevertheless, all of the obligations of each of those companies arising under the Contracts, including its commitment to make cash value payments, annuity payments or death benefit payments, are general corporate obligations of that company. Accordingly, all of the assets of John Hancock or JHVLICO, as the case may be, are available to meet its obligations under its Contracts.

17. Each Separate Account meets the definition of "separate account" contained in section 37 of the Act.

18. Each of the Contracts permits its owner to allocate the Contract's accumulated value among numerous available Subaccounts, each of which invests in a different investment portfolio ("Fund") of an underlying mutual fund. Each of the Contracts has at least 32 different Subaccounts that, together with their corresponding Funds (including the applicable Replaced Funds), are currently available for this purpose.

19. Each Contract permits its owner to transfer the Contract's accumulated value from one Subaccount to another Subaccount of the issuing Separate Account at any time, subject to certain potential restrictions and charges described below. No sales charge applies to such a transfer of accumulated value among Subaccounts.

20. The only other charges on such transfers are, under certain Contracts, flat dollar amounts that may be assessed to help defray the administrative costs of effecting the transfers. In some cases, the Contracts permit up to a specified number of free transfers in a Contract year, before any such transfer charge may be imposed. Also, under certain Contracts, no transfer is permitted if it would result in the Contract being invested in more than 18 investment options over the life of the Contract ("Lifetime Cap") or, after the annuity payment commencement date, in more than four investment options at any one time.

21. John Hancock or JHVLICO, as applicable, has reserved the right to make certain changes, including to substitute, for the shares held in any Subaccount, the shares of another Fund or the shares of another underlying mutual fund, as stated in each prospectus for the Contracts contained in its applicable registration statement under the 1933 Act.

The Funds

22. The Templeton Foreign Fund and the Templeton Developing Fund are separate Portfolios of the Franklin Templeton Variable Insurance Products Trust (the "Templeton Trust"). The Templeton Trust is registered as a management investment company under the Act (File No. 811–5583), and the shares in each of its portfolios (including the Templeton Foreign Fund and the Templeton Developing Fund) are also registered under the 1933 Act (File No. 33–23493).

23. Both the Templeton Foreign Fund and the Templeton Developing Fund issue more than one "class" of shares, which differ only as to charges they impose for sales and administrative services. In each case, the Contracts use only the "Class 2" shares, which impose an asset-based sales charge pursuant to rule 12b–1 under the Act ("Rule 12b–1 fee") equal to .25% per annum of the Fund's average daily net assets. Apart from the investment management fees and other Fund operating expenses, which also affect the net asset values of their shares, these Funds impose no other charges or deductions on their shares.

24. The AIM V.I. Growth Fund and the AIM V.I. Premier Equity Fund are separate portfolios of the AIM Variable Insurance Funds ("AIM V.I. Funds"). The AIM Variable Insurance Funds is registered as a management investment company under the Act (File Nos. 811–07452), and the shares in each of its Portfolios (including the AIM V.I. Growth Fund and AIM V.I. Premier Equity Fund) are also registered under the 1933 Act (File No. 33–57340).

25. Each of the AIM V.I. Growth Fund and the AIM Premier Equity Fund issues more than one "class" of shares, which differ only as to charges that they impose for sales and administrative services. In each case, the Contracts use only the "Series I" shares of the AIM V.I. Growth Fund and the AIM V.I. Premier Equity Fund, which do not impose any Rule 12b–1 fees or any other fees or charges, other than investment management fees and other operating expenses that affect the net asset value of their shares.

26. The Hancock International Fund and the Hancock International Opportunities Fund are portfolios of the John Hancock Variable Series Trust I (the "Hancock Trust"). The Hancock Trust is registered as a management investment company under the Act (File No. 811–04990), and the shares in each of its portfolios (including the Hancock International Fund and the Hancock International Opportunities Fund) are also registered under the 1933 Act (File No. 33–2081).

27. Both the Hancock International Fund and the Hancock International Opportunities Fund offer only one class of shares, and that class does not impose any Rule 12b–1 fee or any other fees or charges, other than investment management fees and other operating expenses that affect the net asset value of their shares.

The Funds' Investment Program

28. The Templeton Foreign Fund is managed by Templeton Investment Counsel, LLC, which has no affiliation with John Hancock.

29. The investment objective of the Templeton Foreign Fund is long-term capital growth. The Fund is an international fund that seeks to achieve its objective by investing primarily in equity securities of large to medium size companies outside the U.S. The Fund's current policy is, under normal circumstances, to invest at least 80% of its assets in non-U.S. companies. The Fund's investment philosophy is "bottom-up," long-term, and value oriented.

30. The Hancock International Fund is managed by John Hancock and sub-advised by Independence Investment LLC, which is indirectly wholly-owned by John Hancock. The investment objective of the Hancock International Fund is to track the performance of a broad-based equity index of foreign companies in developed and emerging markets. This Portfolio follows a "passive" investment strategy of owning a representative number of stocks in the index it seeks to track. The Fund is normally fully invested at all times.

31. The index used by the Hancock International Fund is a composite that is weighted 90% to the Morgan Stanley Capital International ("MSCI") Europe, Australia and Far East ("EAFE") Gross Domestic Product ("GDP") Index. The MSCI EAFE GDP Index is an index of non-U.S. equities in developed countries, within which each country's representation is weighted in proportion to its gross-domestic product, while companies within each country are weighted by market capitalization. The remaining 10% of the composite consists of the MSCI Emerging Markets Free ("EMF") Index. The MSCI EMF Index is a market capitalization-weighted index of emerging market stocks.

32. The Templeton Developing Fund is managed by Templeton Asset Management Ltd., which has no affiliation with John Hancock. The investment objective of the Templeton Developing Fund is long-term capital appreciation. The Fund seeks to attain this objective by investing primarily in stocks of "emerging markets" companies, and, under normal circumstances, it invests at least 80% of its assets in such companies. The Fund's investment philosophy is "bottom-up," value oriented, and long-term.

33. The Hancock International Opportunities Fund is managed by John Hancock and is sub-advised by T. Rowe Price International, Inc. The investment objective of this Fund is long-term capital appreciation. The Fund seeks to achieve this objective by investing primarily in the stocks of large established and medium sized companies located outside the U.S., primarily in developed countries and, to a lesser extent, in emerging markets. The Fund's investment philosophy entails fundamental research on individual companies, combined with stock selection of companies with certain growth characteristics. In addition, the Hancock International Opportunities Fund broadly diversifies, whereas the Templeton Developing Fund may, at times, have significant investments in one or more countries and or sectors.

34. The AIM V.I. Growth Fund is managed by AIM Advisors, Inc., which has no affiliation with John Hancock. The investment objective of the AIM V.I. Growth Fund is capital growth. The Fund seeks to meet its objective by investing principally in seasoned and better capitalized companies considered to have strong earnings momentum. The portfolio managers focus on companies that have experienced above-average growth in earnings and have excellent prospects for future growth.

35. The AIM V.I. Premier Equity Fund also is managed by AIM Advisors, Inc. The investment objective of the AIM V.I. Premier Equity Fund is long-term capital growth. Income is a secondary investment objective. The Fund seeks to meet its objective by investing, normally, at least 80% of its net assets in equity securities, including convertible securities. The portfolio managers focus on undervalued equity securities.

Fund Financial Information

36. The net assets of each Fund as of December 31, 2003 were as follows:

Fund	Net assets
Templeton Foreign	$697,780,000
Hancock International	98,917,000
Templeton Developing	306,406,000
Hancock International Opportunities	87,288,000
AIM V.I. Growth	363,992,000
AIM V.I. Premier Equity	1,530,359,000

37. Of the net assets shown above for each Replaced Fund, the following amounts were attributable to Contracts, and thus would have been transferred pursuant to the Substitutions described herein: Templeton Foreign $7,830,000; Templeton Developing, $3,823,000; and AIM V.I., Growth $27,559,000.

38. The total fees and expenses of the Funds for the twelve months ended December 31, 2003, expressed as an annual percentage of average daily net assets, were as follows:

Fund	Total expenses (including advisory fees and 12b–1 fees) (Percent)
Templeton Foreign	1.13
Hancock International	*.28
Templeton Developing	1.83
Hancock International Opportunities	*1.24
AIM V.I. Growth	.91
AIM Premier Equity	.85

*Includes expense reimbursement. This percentage would otherwise have been .46% for the Hancock International Fund and 1.25% for the Hancock International Opportunities Fund. No expenses or fees for the other funds were waived or reimbursed.

The expense reimbursement arrangements referred to above are provided for in each affected Fund's Investment Management Agreement.

39. The Fund's investment advisory and Rule 12b-1 fee rates (as an annual percentage of average daily net assets) are as follows:

Fund	Advisory fees rate	Rule 12b–1 fee rate
Templeton Foreign	.75% of first $200 million, .675% of next $1.1 billion, and .60% of additional amounts.	.25%.
Hancock International	.18% of the first $100 million, 15% of the next $100 million, and .11% of additional amounts.	None.
Templeton Developing	1.25%	.25%.
Hancock International Opportunities	1.30% of first $20 million, 1.15% of next $30 million, and 1.05% of additional amounts.	None.
AIM V.I. Growth and AIM V.I. Premier Equity	.65% of the first $250 million and .60% of additional amounts	None.

40. Neither the Templeton Foreign Fund nor the Hancock International Fund has achieved performance that is clearly superior or inferior to that of the other.

41. The overall performance record of the Hancock International Opportunities Fund has been superior to that of the Templeton Developing Fund.

42. The overall performance record of the AIM V.I. Premier Equity Fund has been superior to that of the AIM V.I. Growth Fund.

Terms of Substitutions

43. Each Substitution will take place at the applicable Funds' relative per share net asset values determined on the date of the Substitution in accordance with section 22 of the Act and rule 22c–1 thereunder. Each Substitution will be effected by having each Subaccount that invests in a Replaced Fund redeem its shares of the Replaced Fund at the net asset value calculated on the date of the Substitution and purchase shares of the appropriate Replacing Fund at the net asset value calculated on the same date.

44. John Hancock and JHVLICO will pay all expenses and transaction costs of the Substitutions, including all legal, accounting, and brokerage expenses relating to the Substitutions, the below-described disclosure documents, and this application. No costs will be borne directly or indirectly by Contract owners.

45. Affected Contract owners will not incur any fees or charges as a result of the Substitutions, and the Substitutions will result in no change in their accumulated values under their Contracts. Nor will the rights or the obligations of John Hancock or JHVLICO under the Contracts, or the insurance benefits to Contract owners, be altered in any way. The Substitutions will not cause the fees and charges under the Contracts currently being paid by Contract owners to be greater after the Substitutions than before the Substitutions.

46. The Substitutions requested in this application will be described in supplements to the applicable prospectuses for the Contracts filed with the Commission or in other supplemental disclosure documents, (collectively, "Supplements") and mailed to all affected Contract owners. Each Supplement will give the relevant Contract owners notice of each Substitution that would affect their respective Contracts and will describe the reasons for engaging in that Substitution. The Supplements will also inform existing Contract owners with values allocated to a Subaccount investing in a Replaced Fund that no additional amounts may be allocated to the Subaccounts that invest in that Fund on or after the date of Substitution.

47. In addition, the affected Contract owners will have (and the Supplements will inform them that they have) an opportunity to reallocate their accumulated value:

• Prior to a Substitution, from the Subaccount investing in the Replaced Fund in that Substitution, or

• For 30 days after a Substitution, from a Subaccount investing in the Replacing Fund in that Substitution to one or more Subaccounts investing in other Funds available under the applicable Contract without the reallocation resulting in any transfer charge or limitation, counting toward the Lifetime Cap, or diminishing the number of free transfers that otherwise may be made in a given Contract year.

48. Each affected Contract owner will also be provided with a prospectus for each relevant Replacing Fund, which will accompany or precede the Supplement discussed above.

49. Within five days after a Substitution, John Hancock and JHVLICO each will send to its affected Contract owners written confirmation that the Substitutions have occurred. The confirmations will also identify the shares of the Replaced Portfolios that have been eliminated and the shares of the Replacing Portfolios that have been substituted. That confirmation will reiterate the free transfer rights disclosed in the Supplements that such owners will have previously received.

50. The Substitutions will in no way alter the tax treatment of owners in connection with their Contracts, and no tax liability will arise for Contract owners as a result of the Substitutions.

Applicants' Legal Analysis

1. According to Applicants, the legislative history makes it clear that the purpose of section 26(c) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate shares of a particular issuer. Applicants state that section 26(c) does this by preventing unscrutinized substitutions, which might, in effect, force shareholders dissatisfied with the replacing security to redeem their shares, thereby possibly incurring either a loss of any sales load deducted from their original investment, an additional sales load upon reinvestment of the redemption proceeds, or both.

2. Applicants submit that all of the Substitutions will benefit Contract owners by moving them to Funds with lower overall expenses and equal or better performance record and prospects.

3. Applicants also contend that the investment characteristics of each Replacing Fund are very similar to those of the corresponding Replaced Fund. In this connection, Applicants point out that the Hancock International Opportunities Fund is somewhat more conservative than the Templeton Developing Fund, and that the AIM V.I. Premier Equity Fund is somewhat more conservative than the AIM V.I. Growth Fund. However, Applicants assert that the Hancock International Fund should not be considered to be either more or less conservative than the Templeton Foreign Fund.

4. Applicants assert that the Substitutions will be effected in a manner that has no adverse economic consequences for Contract owners. In this regard, Applicants will afford affected Contract owners protection against increased expenses and changes, under terms described in Applicants' Condition 1, below.

5. Applicants note that Contract owners who do not wish to participate in a Replacing Fund will have an opportunity to reallocate their accumulated value among other available Subaccounts without the imposition of any charge or limitation.

6. The Substitution from AIM V.I. Growth Fund is to the much larger AIM V.I. Premier Equity Fund, which, according to Applicants, has potential advantages to Contract owners in terms of economies of scale and diversification of portfolio investments. Applicants acknowledge that The Templeton Developing Fund is larger than the Hancock International Opportunities Fund and that the Templeton Foreign Fund is larger than the Hancock International Fund, which would replace it. Nevertheless, Applicants point out that, even without any reimbursement arrangement, the expense ratio of each Replaced Fund is higher than that of the corresponding Replacing Fund.

7. To summarize, Applicants submit (a) that the Substitutions will benefit the affected Contract owners and will not entail any of the abuses against which section 26(c) is addressed, and (b) that the approvals Applicants request under section 26(c) are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

As conditions to the approvals that Applicants seek,

1. For each fiscal period (not to exceed a fiscal quarter) during the 24 months following the date of Substitution into the Hancock International Fund and the Hancock International Opportunities Fund, each of John Hancock and JHVLICO will adjust the Contract values invested in either of such Funds as a result of the Substitutions, to the extent necessary to effectively reimburse the affected owners for their proportionate share of any amount by which the annual rate of the Replacing Fund's total operating expenses (after any expense waivers or reimbursements) for that fiscal period, as a percentage of the Fund's average daily net assets, plus the annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under the terms of the owner's Contract for that fiscal period, exceed the sum of:

• The annualized rate of the corresponding Replaced Fund's total operating expenses, as a percentage of such replaced Fund's average daily net assets, for the twelve months ended December 31, 2002; plus

• The annual rate of any asset-based charges (excluding any such charges that are for premium taxes) deducted under that Contract for such twelve months.

2. For a period of three years following the date of the Substitution of the AIM V.I. Premier Equity Fund for the AIM V.I. Growth Fund, neither John Hancock nor JHVLICO will receive any direct or indirect benefits from AIM V.I. Premier Equity Fund, any investment adviser or underwriter to that Fund, or any "affiliated person" (as that term is in section 2(a)(3) of the Act) of any of them, that exceed the rate of any benefits that such insurance company directly or indirectly has been receiving from AIM V.I. Growth Fund, any investment adviser or underwriter to that Fund, or any affiliated person of any of them. For this purpose, "benefits" shall be construed to include any investment advisory fees, payments pursuant to rule 12b–1 plans, shareholder or other service fees, administrative fees, revenue sharing payments, or other similar payments in connection with assets subject to the Substitution (whether such benefits are with respect to the AIM V.I. Premier Equity Fund or part of an overall relationship with AIM V.I. Funds, any investment adviser or underwriter to any of such Fund, or any affiliated person of any of them). In this connection, Applicants also represent that neither such Substitution nor the selection of AIM V.I. Premier Equity Fund as a Replacing Fund have been motivated by the receipt or promised receipt by John Hancock, JHVLICO or any of their affiliated persons of any benefit or other thing of value from AIM V.I. Premier Equity Fund, any investment adviser or underwriter to such Fund, or any affiliated person of any of them.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9261 Filed 4–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47650; File No. SR–MSRB–2003–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to Rule G–14, on Reports of Sales or Purchases

April 8, 2003.

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 (the "Exchange Act") and Rule 19b–4 thereunder,[1] notice is hereby given that on April 7, 2003, the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MSRB–2003–02) (the "proposed rule change") described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB has filed with the Commission a proposed rule change with regard to Rule G–14, on reports of sales or purchases, to increase transparency in the municipal securities market. The proposed rule change would not change the wording of Rule G–14.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase price transparency for municipal securities by increasing the amount of price data available on the day after trade date.

Background Information

Since the implementation of the inter-dealer trade reporting system in 1995, the MSRB has been increasing price transparency in the municipal securities market in measured steps.[2] The first price transparency report was a T+1 report that summarized high, low and average inter-dealer prices for issues that met a trading threshold of four or more trades in the inter-dealer market. In 1998, the MSRB implemented the customer transaction reporting system and customer transaction data was added to the T+1 summary report. The trading threshold of four trades was retained, but since it applied regardless of whether the trades were inter-dealer or customer, many more issues met the trading threshold and were subject to price reporting. In January 2000, the MSRB further enhanced the T+1 report by publishing individual transaction data (rather than high, low and average prices) for each issue contained in the report.

In October 2000 the MSRB began offering a comprehensive transaction report, which lists all municipal securities transactions (regardless of frequency of trading) and includes late-reported trades, inter-dealer trades compared after trade date, and transaction data corrected by dealers after trade date. The Comprehensive Report began with a minimum one-month delay in trade publication. That delay has gradually been reduced such that the report currently is disseminated on a daily basis, one week after trade date. To make more trade data available on a T+1 basis, in 2002, the MSRB began the process of lowering the trading threshold in the T+1 Daily Report. In May 2002, the MSRB changed the trading threshold to three trades.[3] In November 2002, the trading threshold was lowered to two trades.[4]

The T+1 Daily Report and the Comprehensive Report have been well received by market professionals seeking information on market price levels and trading activity for individual securities.[5] The reports have garnered greater and greater use over time, both with market professionals and through free, customer-oriented outlets such as "InvestingInBonds.com" operated by The Bond Market Association ("TBMA"). At this time, in preparation for the move to real-time price transparency in mid-2004, the MSRB believes that the trading threshold in the T+1 Daily Reports should be eliminated to further increase the price transparency that is available on T+1.

Proposed Changes in the T+1 Daily Report

The MSRB has noted since the outset of its transparency initiative that, as the market obtains experience with price transparency, price reports eventually would need to occur on a more contemporaneous and comprehensive basis, culminating with real-time transaction reporting.[6] The proposal to change the T+1 Daily Report at this time is part of the MSRB's longstanding plan to introduce transparency in measured steps, allowing the market time to adjust to new situations presented by each new level of price transparency. As an example, when price reports were first introduced in 1995, the MSRB was concerned that an observer might be misled if he or she considered an isolated transaction or pair of transactions as providing the same

[1] 15 U.S.C. 78s(b)(1) and 17 CFR 240.19b–4 thereunder.

[2] This plan has been discussed in many notices since 1994. *See, e.g.*, "Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information," *MSRB Reports*, Vol. 14, No. 1 (January 1994).

[3] *See* Release No. 34–45861 (May 1, 2002), 67 FR 30989.

[4] *See* Release No. 34–46819 (November 12, 2002), 67 FR 69779.

[5] Currently, the MSRB has twenty-four subscribers to the T+1 Daily Report and fifty-one to Comprehensive Report.

[6] *See, e.g.*, "Board to Proceed with Pilot Program to Disseminate Inter-Dealer Transaction Information," *MSRB Reports*, Vol. 14, No. 1 (January 1994).

indicator of "market price" as a stock exchange quotation. The MSRB believes that, considering the unique nature of the municipal securities market, the market has adapted very well to price transparency. The MSRB is not aware of any problems occurring similar to the concerns expressed in 1995. The reception of the Comprehensive Report and the previous lowering of trading thresholds on the T+1 Daily Report has been positive and the use of the data in those reports by market professionals and pricing services has increased the efficiency and accuracy with which issues are priced in the secondary market.

The proposed rule change would increase substantially the number of trades and issues appearing each day on the T+1 Daily Report. On a typical trading day, dealers report approximately 26,000 transactions in 10,000 issues, with a total par value traded of about $9.5 billion.[7] The present T+1 Daily Report, with a trading threshold of two or more trades per day, includes an average of 19,760 trades in 5,600 issues, with a total par value of about $7.7 billion. Currently, only about 76% of transactions reported on trade date are shown on the report. Under the proposed rule change, all trades reported by dealers on trade date would be made visible on T+1.

Although the MSRB believes it is appropriate to increase T+1 transparency at this time, and to move forward with its plans for real-time trade reporting in mid-2004, the MSRB also is mindful of concerns expressed by dealers that further increases in transparency on a more contemporaneous basis could have an effect on liquidity. One concern sometimes noted is that because of the nature of the municipal securities market, including the prevalence of thinly traded issues, it sometimes is possible to identify institutional investors and dealers by the exact par value given on trade reports. For example, it might be common market knowledge that a $4.25 million position in an issue initially was purchased in the primary market by a specific institution. Trade reports in the secondary market showing this exact par value later being sold then could reveal the identity of that party as well as the price received. Where the market for a specific security is thin and only one or two dealers are active, revealing the exact par amount also may convey information about a dealer's inventory (*i.e.*, size of position and acquisition cost). Other dealers may use this information to trade against the dealer's position, reducing the incentive for a dealer to take large positions in these circumstances.

In response to these concerns, the MSRB proposes to take a step similar to that used by the NASD's "TRACE" system in the corporate bond market and to display par value of large trades with a large trade indicator rather than the exact par value.[8] While this will result in less information being made visible on T+1 about par value traded, the MSRB believes that it will help to preserve the anonymity of trading parties and will not detract in a substantial way from the benefits of the price transparency it provides.

The enhanced Daily Report with the frequently traded threshold removed would replace the current T+1 Daily Report and would be made available each day to subscribers via the Internet. Subscribers to the current Service receive the report free of charge, and their subscriptions would continue. New subscriptions would continue to be available free to parties who sign a subscription agreement. In addition, recent reports would continue to be available for examination, also free of charge, at the MSRB's Public Access Facility in Alexandria, VA.

The MSRB will continue to produce its Comprehensive Report on a one-week delay basis with details about all transactions traded one-week prior. The Comprehensive Report will continue to provide information on the size of each transaction including the exact par amount reported to the MSRB on transactions in amounts greater than one million dollars. The Comprehensive Report also will continue to be useful since it will include details of transactions reported to the MSRB late, inter-dealer trades compared after trade date, and any transaction data corrected by dealers after trade date.

Implementation Schedule

The enhanced report would be available to subscribers as soon as practical after Commission approval of the proposed rule change. It is estimated that the period between approval and implementation would not exceed four weeks.

2. Basis

The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Exchange Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the Board.

B. Self-regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition in that it applies equally to all dealers in municipal securities.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Member, Participants, or Others

Written comments on the proposed rule change were not solicited, but the MSRB had earlier received a copy of a comment letter from TBMA to the Commission in reference to proposed rule change SR–MSRB–2002–07 regarding shortening the delay in publication of the Comprehensive Report from two weeks after trade date to a one-week delay.[9] In its letter, the TBMA expressed its continued support for the MSRB's steps to expand transparency in the municipal securities market. TBMA also stated a concern that price dissemination on a next-day basis for all issues that trade only once per day would not necessarily provide useful information to investors and other market participants or could adversely affect liquidity or might be misleading.

As noted above, the final reduction of the T+1 trading threshold is part of a long-term plan for measured increases in transparency. The Board believes that prior experience with the program indicates both that the additional information provided by the proposed rule change will be useful and will not be misconstrued by users of the data, who now have experience with the price information and know how to interpret it.

As noted above, the MSRB also has considered the concerns expressed by the TBMA that further increases in transparency on a more contemporaneous basis could have an effect on liquidity. The MSRB believes that the proposal to display par value of transactions over one million dollars with a large trade indicator rather than exact par value will ameliorate these concerns.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the forgoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the MSRB's principal offices. All submissions should refer to File No. SR–MSRB–2002–14 and should be submitted by May 6, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9109 Filed 4–14–03; 8:45 am]

BILLING CODE 8010–01–P

[7] This baseline data is based upon market activity from April 1, 2001 through July 31, 2001.

[8] *See* NASD Notice to Members 01–18, "Fixed Income Transaction Reporting and Dissemiantion," March 2001.

[9] *See* letter from Frank Chin, Chair, Municipal Executive Committee, TBMA, to Jonathan G. Katz, Secretary, Commission, dated August 8, 2002.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47635; File No. SR–NASD–2003–63]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Modify the Transaction Credit Program for Exchange-Listed Securities

April 4, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On April 3, 2003, Nasdaq submitted Amendment No. 1 to the proposed rule change.[3] The NASD filed the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing with the Commission a proposed rule change to NASD Rule 7010(c)(2). The proposed rule change responds to the decision of the Consolidated Tape Association to change the way participants in the CT/CQ Plans are charged for the capacity expense attributable to each participant. Nasdaq proposes to amend NASD Rule 7010(c) in order to maintain the same distribution of transaction credits that exists today for InterMarket trading. Nasdaq will make the rule change effective upon the distribution of revenue for the first quarter of 2003.[7]

The text of the proposed rule change, as amended, is below. Proposed new language is *italicized*.

* * * * *

7010. System Services

(a)–(b) No change.

(c) (1) No change.

(2) Exchange-Listed Securities Transaction Credit

NASD members that trade securities listed on the NYSE ("Tape A") and Amex ("Tape B") in over-the-counter transactions may receive from the NASD transaction credits based on the number of transactions attributed to them. A transaction is attributed to a member if (i) the transaction is executed through CAES or ITS and the member acts as liquidity provider (*i.e.*, the member sells in response to a buy order or buys in response to a sell order) or (ii) the transaction is not executed through CAES or ITS and the member is identified as the executing party in a trade report submitted to the NASD that the NASD submits to the Consolidated Tape Association. An NASD member may earn credits from one or both pools maintained by the NASD, each pool representing 50% of the revenue paid by the Consolidated Tape Association to the NASD for each of Tape A and Tape B transactions *after deducting the amount that the NASD pays to the Consolidated Tape Association for capacity usage*. An NASD member may earn credits from the pools according to the member's pro rata share of all over-the-counter transactions attributed to NASD members in each of Tape A and Tape B for each calendar quarter.

(d)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey S. Davis, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission dated April 2, 2003 ("Amendment No. 1). In Amendment No. 1, Nasdaq made technical corrections to the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.196–19b–4(f)(2).

[6] For purposes of determining the effective date of the filing and calculating the 60-day abrogation date, the Commission considers the period to commence on April 3, 2003, the date Nasdaq filed Amendment No. 1.

[7] Nasdaq expects that the Consolidated Tape Association will distribute revenue in the first week of May 2003.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's InterMarket is a quotation, communication, and execution venue that allows NASD members to quote and trade stocks listed on the New York Stock Exchange, Inc. ("NYSE") and the American Stock Exchange LLC ("Amex"). The InterMarket competes with regional exchanges like the Chicago Stock Exchange, Inc., the Boston Stock Exchange, Inc., and the Cincinnati Stock Exchange, Inc. for retail order flow in stocks listed on the NYSE and the Amex. Through the InterMarket, Nasdaq operates the Computer Assisted Execution System ("CAES"), a system that facilitates the execution of trades in listed securities between NASD members that participate in InterMarket, and the InterMarket Trading System ("ITS"), a national market plan system that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.[8]

Nasdaq proposes to modify the InterMarket Transaction Credit Program (the "Program"). Under the Program, Nasdaq shares a portion of the tape revenues that it receives (through the NASD) from the Consolidated Tape Association ("CTA"), by providing a transaction credit to members who engage in over the counter ("OTC") trading activity in CTA-eligible securities. Nasdaq calculates two separate pools of revenue from which credits can be earned: one representing 50% of the revenues received from the CTA for providing trade reports in NYSE-listed securities executed in the InterMarket for dissemination by the CTA, the other representing 50% of the revenue received from the CTA for reporting Amex trades.

On November 22, 2002, the CTA met and unanimously approved a modification to its capacity planning and payment process. As a result of this modification, Nasdaq and other CTA participants will incur CTA expenses based on predicted capacity rather than on an ex-post basis. Further, participants will be billed this cost directly as opposed to CTA deducting all operating costs from the Consolidated Tape ("CT") and Consolidated Quotation ("CQ") revenues collected. This is a change from the prior CTA practice of deducting operational system costs directly from the CT and CQ gross income available for distribution prior to the disbursement of transaction credits to plan participants.

Nasdaq proposes to amend its transaction credit formula in order to adjust to this CTA billing change. Specifically, prior to Nasdaq distributing 50% of data revenues it receives from CTA, Nasdaq will deduct the capacity expense allocated to Nasdaq by the CTA. Nasdaq will allocate this capacity expense to Tape A and Tape B according to each tape's percentage of total trades executed on Nasdaq.[9] Deducting the capacity expense prior to distributing tape revenue effectively preserves the current arrangements, whereby Nasdaq and its InterMarket members share these capacity costs.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the Act, including section 15A(b)(5) of the Act,[10] which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq represents that the proposed rule change, as amended, will maintain the current cost of conducting business through InterMarket for members that provide liquidity through ITS or CAES. Nasdaq believes that continuing to encourage members to provide liquidity will enhance the efficiency of InterMarket and benefit investors whose trades are routed to InterMarket by increasing the likelihood that they will be promptly executed.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The forgoing rule change has become effective on April 3, 2003, upon filing of Amendment No. 1 to the proposed rule change pursuant to section 19(b)(3)(A)(ii) of the Act[11] and subparagraph (f)(2) of Rule 19b–4 thereunder[12] in that it establishes or changes a due, fee, or other charge imposed by the Nasdaq. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change, as amended, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2003–63 and should be submitted by May 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9108 Filed 4–14–03; 8:45 am]

BILLING CODE 8010–01–P

[8] *See* CAES/ITS User Guide, p. 5, at *www.intermarket.nasdaqtrader.com.*

[9] For example, if Nasdaq incurs $100,000 in capacity expenses, and its members execute 700 transactions in Tape A securities and 300 transactions in Tape B securities, Nasdaq will allocate $70,000 of capacity expense to Tape A and $30,000 to Tape B.

[10] 15 U.S.C. 78o–3(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(2).

[13] For purposes of determining the effective date of the filing and calculating the 60-day abrogation date, the Commission considers the period to commence on April 3, 2003, the date Nasdaq filed Amendment No. 1.

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47652; File No. SR–NYSE–2003–08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing and Trading ELDS on the Exchange

April 8, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 4, 2003, the New York Stock Exchange, Inc. (the "Exchange" or the "NYSE") filed with the Securities and Exchange Commission (the "SEC" or the "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend section 703.21 of the Exchange's Listed Company Manual relating to the listing and trading of equity-linked debt securities ("ELDS") on the Exchange. The text of the proposed rule change is set forth below in its entirety. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

Listed Company Manual

* * * * *

703.00 Subsequent Listing Applications and Debt Securities Applications

* * * * *

703.21 Equity-Linked Debt Securities

The Exchange will consider listing equity-linked debt securities ("ELDS") that meet the criteria of this paragraph. "Equity-linked debt securities" are non-convertible debt of an issuer where the value of the debt is based, at least in part, on the value of another issuer's common stock[or], non-convertible preferred stock, *common units of a master limited partnership or any other common equity security of a type classified for trading as stocks by the Exchange,*

(A) through (D)—No change

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend section 703.21 of the Exchange's Listed Company Manual (the "Manual") relating to the listing and trading of equity-linked debt securities ("ELDS") on the Exchange. The Exchange is proposing to clarify that the definition of ELDS covers non-convertible debt of an issuer where the value of the debt is based, at least in part, not only on the value of another issuer's common stock or non-convertible preferred stock, but also on the value of common units of a publicly traded master limited partnership, as well as any other equity security of a type classified for trading as "stocks" by the Exchange. The Exchange represents that this terminological clarification is consistent with the intent of the original rule of section 703.21 and should provide issuers with greater transparency regarding the scope of the rule. The Exchange believes that this rule change will provide issuers with more flexibility in developing ELDS and thus provide greater investment choices in the market without having an adverse effect on investor protection.[3]

The Exchange represents that its rules and policies currently applicable to ELDS generally will apply to ELDS linked to limited partnership units and other equity securities.[4]

2. Statutory Basis

NYSE believes that the proposed rule change is consistent with section 6 of the Act,[5] in general, and furthers the objectives of section 6(b)(5)[6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Securities Exchange Act Release No. 34545, dated August 18, 1994 (the "Release"), the Commission stated that, except under limited circumstances, the issuance of ELDS relating to any underlying security may not exceed five percent of the total shares outstanding of such underlying security. Footnote 10 of the Release states that the only exceptions to this restriction are where either (1) the issuer of the ELDS and the issuer of the underlying security are affiliated; or (2) the issuer of the ELDS holds an amount of the underlying security at least equal to the amount of the underlying security represented by the ELDS. As required by the SEC under the Release, the maximum percentage of ELDS that may be issued will be evaluated by the Exchange on a case-by-case basis in consultation with, and with the approval of, the staff of the Commission.

[4] An equity security on which the value of the debt is based must meet the requirements of Section 703.21(C) of the Manual.

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2003–08 and should be submitted by May 6, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act.[8] Specifically, The Commission believes that the proposed change does not raise any significant regulatory issues that were not addressed in the Commission's prior approval orders regarding ELDS. The proposed rule change clarifies the existing listing criteria for ELDS contained in Paragraph 703.21 of the Manual by clarifying that the definition of ELDS covers non-convertible debt of an issuer where the value of the debt is based, at least in part, not only on the value of another issuer's common stock or non-convertible preferred stock, but also on the value of common units of a publicly traded master limited partnership, as well as any other equity security of a type classified for trading as "stocks" by the Exchange. The Commission notes that an equity security on which the value of the debt is based must meet the requirements of section 703.21(c). The Commission believes that this change is consistent with the intent of the original rule of section 703.21 and will provide issuers with greater transparency regarding the scope of the rule.

NYSE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register** to accommodate the listing and trading of ELDS based on publicly traded master limited partnerships. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[9] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because these products are similar to other ELDS currently trading on NYSE.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–2003–08), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9160 Filed 4–14–03; 8:45 am]

BILLING CODE 8010–01–P

[7] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1300 Annex Bldg., 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Employee Work Activity Questionnaire—20 CFR, Subpart P, 404.1574 and .1592—0960–0483. Form SSA–3033 is used to determine if the claimant meets the disability requirements of the law, when the claimant returns to work after the alleged or established onset date of disability. When a possible unsuccessful work attempt or nonspecific subsidy is involved, Form SSA-3033 will be used to request a description of the employee's work effort. The respondents are employers of Old-Age and Survivors Disability Insurance (OASDI) and Supplemental Security Income (SSI) disability applicants and beneficiaries.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 15,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 3,750 hours.

2. Request for Internet Services Representative Payee Report—20 CFR 401.45—0960–0668.

Background

SSA is testing the Internet Representative Payee Report form (I623) that electronically reports on the use of benefit payments made on behalf of Social Security beneficiaries and SSI recipients. In support of this process, a proof of concept (POC) test limited to 40 organizational representative payees use the I623 to complete and file the representative payee report instead of using the paper SSA–623. Initially SSA projected a 6-month POC test, but is planning to expand the POC to a full operational year.

The Collection

Organizations participating in the POC will designate up to three employees that will be authenticated using SSA's existing Integrated Registration for Employers and Submitters (IRES) OMB control number 0960–0626. Once authenticated, the employee will be required to enter a Personal Identification Number (PIN) and Password to gain access to the online I623 application. The PIN and Password will serve as the electronic signature. SSA will use the information collected through the I623 to determine whether the payments provided to the representative payee have been used for the beneficiary's current maintenance and personal needs and whether the representative payee continues to be concerned with the beneficiary's welfare. The respondents are organizational representative payees designated to receive funds on behalf of Social Security beneficiaries and/or SSI recipients.

Type of request: Extension of an OMB-approved Information Collection.

Number of Respondents: 40 organizations.

Frequency of Response: 117.5 per respondent.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 1,175 hours.

3. Statement of Claimant or Other Person—0960–0045. In special situations, when there is no standard form or questionnaire, Form SSA–795 is used by SSA to obtain information from claimants or other persons having knowledge of facts in connection with many aspects of the Social Security or SSI programs. The information requested on form SSA–795 must be of sufficient importance that a signed statement, including a penalty clause, is necessary. The information collected is used to process such issues as claims for benefits or continuing eligibility, benefit amount, insured status, use of funds by a representative payee or a myriad of other program-related matters. The most typical respondents are applicants for Social Security or SSI benefits or beneficiaries of these programs. However, respondents could also include friends and relatives of the involved parties, coworkers, neighbors, or anyone else in a position to provide information pertinent to the issue(s).

Number of Respondents: 305,500.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 76,375 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Claimant's Medications—20 CFR, Subpart P, 404.1512 and Subpart I, 416.912—0960–0289. The information on Form HA–4632 is used to process title II and title XVI disability claims. Claimants provide an updated list of medications using form HA–4632. This information enables the Administrative Law Judge who conducts the hearing to fully inquire into medical treatment the claimant is receiving and the effect of medications on the claimant?s medical treatment. The respondents are applicants for title II and title XVI benefits.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 171,939.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 42,985 hours.

2. Letter to Employer Requesting Wage Information—0960–0138. Form SSA—L4201–U2 is used to collect wage data from employers to establish and/or verify wage information for SSI claimants, beneficiaries and deemors. SSA uses the data to determine if an individual is eligible for SSI and, if so, to determine the amount of the payment due. The respondents are employers of applicants for and recipients of SSI payments.

Type of Request: Extension of an OMB-approved Information Collection.

Number of Respondents: 133,000.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 66,500 hours.

Dated: April 8, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–9085 Filed 4–14–03; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Technical Corrections to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative

ACTION: Notice.

SUMMARY: Pursuant to authority delegated to the United States Trade Representative ("USTR") in Presidential Proclamation 6969 of January 27, 1997 (62 FR 4415), USTR is making technical corrections to general note 12(t) and chapters 29, 42, 64, 98, and 99 of the Harmonized Tariff Schedule of the United States ("HTS"), as set forth in the annex to this notice. These modifications correct inadvertent errors and omissions, so that the intended tariff treatment is provided, in: (1) The rules of origin for certain goods of chapter 34 under the North American Free Trade Agreement ("NAFTA"); (2) the tariff provisions previously proclaimed in chapter 29 to cover particular chemical products; (3) chapter 42 for goods of beneficiary countries of the Andean Trade Preference Act; (4) the named subheadings of heading 6406 of the HTS for goods of Jordan; (5) note 3(b) to subchapter XIX of chapter 98 for textile and apparel goods eligible for special tariff benefits under the African Growth and Opportunity Act; (6) note 3(b) to subchapter XX of chapter 98 for goods eligible for special tariff benefits under the United States-Caribbean Basin Trade Partnership Act; and (7) chapter 99 for certain steel products.

EFFECTIVE DATE: The corrections made in this notice are effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after the dates provided in the annex sections.

FOR FURTHER INFORMATION CONTACT: Katharine J. Mueller, Office of the United States Trade Representative, Room 223, 600 17th St., NW., Washington, DC 20508. The telephone number is (202) 395–3581.

SUPPLEMENTARY INFORMATION: Presidential Proclamation 7515 (December 18, 2001) modified the HTS, pursuant to section 1206(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3006(a)), to reflect in the HTS the amendments made to the International Convention on the Harmonized Commodity Description and Coding System. Conforming modifications in the heading-specific rules of origin under the NAFTA were proclaimed in order to continue to accord the previously agreed tariff treatment to originating goods of Canada and of Mexico. In modifying these rules, which are enumerated in HTS general note 12(t), a tariff classification rule applicable to goods falling in certain subheadings of heading 3401 was inadvertently deleted.

Presidential Proclamation 6763 (December 23, 1994) implemented the trade agreements resulting from the Uruguay Round of Multilateral Trade Negotiations (60 FR 1007), including the tariff treatment that was necessary or appropriate to carry out Schedule XX-United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade. Among the provisions created in Section A of

the Annex to that proclamation was subheading 2916.31.05, covering p-Sulfobenzoic acid, potassium salt. Because that chemical does not properly fall under the immediately superior text "benzoic acid and its salts," it cannot receive the previously agreed tariff treatment contained in Schedule XX, and the product is being added to an appropriate subheading under heading 2916 so that such tariff treatment can be accorded.

On December 31, 2002, the USTR published a **Federal Register** notice (67 FR 79954) making several technical corrections, including changes to (1) subheadings in chapters 42, 46, 61, 62 of the HTS with respect to goods of beneficiary countries of the Andean Trade Preference Act to remedy technical errors introduced in Presidential Proclamation 7616 of October 31, 2002, implementing the preferential tariff treatment authorized by the Andean Trade Promotion and Drug Eradication Act; (2) subheadings in chapter 64 of the HTS with respect to goods of Jordan to remedy technical errors introduced in Presidential Proclamation 7512 of December 7, 2001, implementing the Agreement between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area. These corrections were intended to ensure that the intended tariff treatment was provided.

Since the publication of this **Federal Register** notice, it has come to the attention of USTR that the technical correction made with respect to the one of the chapter 42 subheadings was incorrectly stated, so that the intended modification to the tariff schedule was not made. Further, two of the chapter 64 subheadings were incorrectly stated; HTS subheadings 6404.10.30 and 6404.10.35, which do not exist, were listed, rather than the correct HTS subheadings 6406.10.30 and 6406.10.35.

Presidential Proclamation 7626 (November 13, 2002) implemented modifications in the preferential tariff treatment provided under provisions of the Caribbean Basin Economic Recovery Act, pursuant to the United States-Caribbean Basin Trade Partnership Act, and of the African Growth and Opportunity Act. For each program, a conforming change to note 3(b) of the subchapter notes was inadvertently omitted.

Presidential Proclamation 7529 (March 5, 2002) implemented additional tariffs and tariff-rate quotas on certain steel products, and provided exemptions for products of certain countries and exclusions for particular products of a type otherwise covered by the tariffs or TRQs.

Additional product exclusions were established in a notice issued by the USTR and published in the **Federal Register** on March 31, 2003 (68 FR 15494). A conforming change included in that notice inadvertently contained errors in adding reference to new HTS provisions established to implement certain product exclusions.

Proclamation 6969 authorized the USTR to exercise the authority provided to the President under section 604 of the Trade Act of 1974 (19 U.S.C. 2483) to embody rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969, the rectifications, technical and conforming changes, and similar modifications set forth below shall be embodied in the HTS with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date noted.

Accordingly, the HTS is modified as provided in the annex to this notice, effective with respect to gods entered, or withdrawn from warehouse for consumption, on or after the dates provided therein.

Robert B. Zoellick,

United States Trade Representative.

Annex

1. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 10, 2002, general note 12(t) is modified by redesignating tariff classification rule 1 (as inserted by Proclamation 7515) as rule 1A, and by inserting in numerical sequence the following tariff classification rule immediately below the side heading which reads "*Chapter 34*":

"1. (A) A change to subheadings 3401.11 through 3401.20 from any other heading; or

(B) A change to subheadings 3401.11 through 3401.20 from any other subheading within heading 3401, whether or not there is also a change from any other heading, provided there is a regional value content of not less than:

(1) 65 percent where the transaction value method is used, or

(2) 50 percent where the net cost method is used."

2. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 1995 and prior to the date that is fifteen days after the date of publication of this notice in the **Federal Register**, the entries of which are unliquidated on the latter date, and effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the date that is fifteen days after the date of publication of this notice in the **Federal Register**, heading 2916 of the HTS is modified as follows:

(A) The superior text appearing immediately below that of subheading 2916.31 and reading "Benzoic acid and its salts:" and subheadings 2916.31.05 and 2916.31.15 are deleted, and the following new subheading is inserted in numerical sequence, with its article description at the same level of indentation as the immediately superior text "Other:" to subheading 2916.31.20, with the material inserted in the HTS in the columns entitled "Heading/Subheading", "Article Description", "Rates of Duty 1 General", "Rates of Duty 1 Special" and "Rates of Duty 2":

[2916.31] "2916.31.10	[Unsaturated...:] [Aromatic...:] [Benzoic...:] Benzoic acid and its salts ...	6.5%	Free (A*,CA,E,IL,J,MX) 1.6% (JO)	15.4¢/kg+40%"

Conforming changes: General note 4(d) is modified by deleting "2916.31.15 India" and by inserting in lieu thereof "2916.31.10 India".

(B) Subheading 2916.31.10, as established in subdivision (A) above, shall be accorded all staged duty reductions previously proclaimed for subheading 2916.31.15.

(C) Subheading 2916.39.05 is redesignated as 2916.39.04 and its article description is modified to read as follows, at the same level of indentation:

"m-Chloroperoxybenzoic acid; and p-Sulfobenzoic acid, potassium salt"

3. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after August 6, 2002, for HTS subheading 4202.32.80, the Rates of Duty 1-Special subcolumn is modified by deleting the rate of duty and the following symbol "J" parentheses.

4. Effective with respect to goods of Jordan entered, or withdrawn from warehouse for consumption, on or after December 17, 2001, for HTS subheadings 6406.10.30 and 6406.10.35, the expression "¢kg" is deleted at each occurrence from the Rates of Duty 1-Special subcolumn for the duty rate followed by the symbol "JO" in parentheses and "¢pr." is inserted in lieu thereof; and such modifications shall likewise be made in the years 2003 through 2010, inclusive, for such special duty rate for goods of Jordan.

5. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after November 13, 2002, Note 3(b) to subchapter XIX of chapter 98 of the HTS is amended by deleting the comma after the phrase "subheading 9819.11.06" and inserting the phrase "and 9819.11.30,".

6. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after November 13, 2002, Note 3(b) to subchapter XX of chapter 98 of the HTS is amended by deleting the phrase "9820.11.06 and 9820.11.18", and inserting in lieu thereof, "9820.11.06, 9820.11.18, and 9820.11.33,".

7. Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m. EST, on March 20, 2003, subheading 9903.74.01 is modified by deleting "9903.77.78" and by inserting in lieu thereof "9903.77.84", and by inserting at the end of the article description "and 9903.82.10 through 9903.82.17".

[FR Doc. 03–9221 Filed 4–14–03; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 25.785–1B; Flight Attendant Seat and Torso Restraint System Installations

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Availability of Proposed Advisory Circular (AC) 25.785–1B, and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides information and guidance regarding an acceptable means, but not the only means, of compliance with the portions of §§ 25.785 and 121.311 of 14 CFR Part 25 which deal with flight attendant seats. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before June 16, 2003.

ADDRESSES: Send all comments on proposed AC to: Federal Aviation Administration, Attention: Jeff Gardlin, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jan Thor, Transport Standards Staff, at the address above, telephone (425) 227–2127.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify AC 25.785–1B and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC. As this AC is a revision of an existing document, where the only changes are adding a new paragraph 9, Direct View, and updating paragraph 5, Definition of Terms, we request you limit your comments to these areas only. The rest of the AC remains unchanged. The proposed AC can be found and downloaded from the Internet at *http://www.faa.gov/certification/aircraft/air_index.htm*, by taking the following steps: Under "Aircraft Certification Related Information" click on "Advisory Circulars." Under "Search Help" click on "Related Links." Then click on "Draft Advisory Circulars." Then under "Search Help" click on "Open for Comment." A paper copy of the proposed AC may be obtained by contacting the person named above under the caption **FOR FURTHER INFORMATION CONTACT.**

Discussion

The guidelines incorporated in the AC are intended to address the adequacy of new designs and are not intended to require that in-service airplanes be modified solely for the purpose of meeting them. Voluntary modifications to existing cabins are not required to meet the new criteria but modifiers should incorporate them to the extent practical considering the scope and intent of the voluntary modification.

Issued in Renton, Washington, on April 2, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 03–9079 Filed 4–14–03; 8:45 am]

BILLING CODE 9079–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Certain Properties From All Terms, Conditional, Reservations and Restrictions for Homestead General Aviation Airport, Homestead, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release certain airport properties (approximately 152.93 acres) at the Homestead General Aviation Airport, Homestead, FL from all conditions, reservations, and restrictions. The release of property will allow Miami Dade County to dispose of the property for other than aeronautical purposes. Land parcel number 1, containing 85.70 acres on the southeast corner of theoretical SW., 232nd Avenue and SW., 280th Street, unincorporated Miami-Dade County, Florida. Land parcel number 2, containing 67.23 acres on the northeast corner of theoretical SW., 232nd Avenue and theoretical SW., 296th Street, unincorporated Miami-Dade County, Florida. The parcel is currently designated as aeronautical use property. The property will be disposed of for roadway purposes.

The fair market value of the property has been determined by appraisal to be $228,500. In exchange for the property, the airport will receive funds equal to the fair market value as determined by the appraisal.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Airport Manager's office and the FAA Airports District Office.

SUPPLEMENTARY INFORMATION: Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

DATES: May 15, 2003.

ADDRESSES: Documents are available for review at the Airport Manager's office, Miami Dade Aviation Department, Miami International Airport, Miami, FL 33159 and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Miguel A. Martinez, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

FOR FURTHER INFORMATION CONTACT: Miguel A. Martinez, Program Manager, Orlando Airports District Office, 5950

Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

Bart Vernace,

Assistant Manager, Orlando Airports District Office Southern Region.

[FR Doc. 03–9182 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

High Density Airports; Notice of Submission Deadline for International Slots for the Winter 2003/2004 Scheduling Season

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of submission deadline.

SUMMARY: On October 1, 1999, the FAA amended the regulations governing takeoff and landing slots and slot allocation procedures at certain High Density Traffic Airports. One element of the final rule established that the deadline for submission of requests for international slots would be published in a **Federal Register** notice for each scheduling season. The purpose of the amendment is for the FAAA deadline for international slot requests to coincide with the International Air Transport Association (IATA) deadline for submission of international requests. For the Winter 2003/2004 Scheduling Season, the IATA submission deadline is May 18, 2003, which falls on a Sunday. Therefore, the FAA announces in this notice that the deadline for submitting requests for international slots for allocation under 14 CFR 93.217 is May 19, 2003.

DATES: Requests for international slots must be submitted no later than May 19, 2003.

ADDRESSES: Requests may be submitted by mail to Slot Administration Office, AGC–220, Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591; facsimile: 202–267–7277; ARINC: DCAYAXD; e-mail address: *7–AWA-slotadmin@faa.gov.*

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Operations and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number 202–267–3134.

Issued on April 8, 2003, in Washington, DC.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 03–9184 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–17]

Petition for Exemption; Disposition of Petition Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of a prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of a certain petition previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7653.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 8, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–14832.

Petitioner: Air Platforms, Inc.

Section of 14 CFR Affected: 14 CFR 21.25(a), 36, and 91.313(e)(1) and (2).

Description of Relief Sought/Disposition: To allow Air Platforms, Inc. to gain a restricted category airworthiness certificate for its English Electric Canberra B.6 airplanes without meeting the noise limits of part 36. In addition, it would have allowed Air Platforms, Inc. to fly its Canberras over densely populated areas and along congested airways.

Denial, 3/26/2003, Exemption No. 8006

[FR Doc. 03–9075 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–18]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 5, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 10, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03–9185 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

DATES: The meeting will be held April 22–25, 2003 starting at 9 a.m. (unless stated otherwise)

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 186 meeting. *Note: Specific working group sessions will be held on April 22, 23 & 25.* The plenary agenda will include:

April 24

- Opening Plenary Session (Chairman's Introductory Remarks, Review of Meeting Agenda, Review/Approval of Previous Meeting Summary)
- SC–186 Activity Reports
  - WG–1, Operations & Implementation
  - WG–2, Traffic Information Service—Broadcast (TIS–B)
  - WG–3, 1090 MHz Minimum Operational Performance Standard (MOPS)
  - WG–4, Application Technical Requirements
  - WG–5, Universal Access Transceiver (UAT) MOPS
  - WG–6, Automatic Dependent Surveillance-Broadcast (ADS–B) Minimum Aviation System Performance Standards (MASPS)
- EUROCAE WG–51 Activity Report
- Review ASA MASPS
- Closing Plenary Session (Date, Place and Time of Next Meeting, Other Business, Review Actions Items/Work Program, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 31, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–9073 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 198 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 198: Next-Generation Air/Ground Communications System (NEXCOM).

DATES: The meeting will be held on April 29–30, 2003, starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, 1828 L Street, Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 198 meeting. The agenda will include:

- April 29:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda and Minutes of Previous Meeting)
  - Status of Working Group 5 (WG) Document from Program Management Committee
  - Resolve Final Review and Comments (FRAC), for Change 1, DO–284, Next Generation Air/Ground Communication System (NEXCOM) Safety and Performance Requirements (SPR)
- April 30:
  - Continue as necessary with resolution of FRAC comments of Change 1, DO–284
  - Closing Plenary Session (Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 2, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–9074 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (03–02–C–00–MTJ) To Impose and To Use a Passenger Facility Charge (PFC) at the Montrose Regional Airport, Submitted by the County of Montrose, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at the Montrose Regional Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before May 15, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Craig Sparks, Acting Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration: 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Scott Brownlee, Director of Aviation, at the following address: Montrose Regional

Airport, 2100 Airport Road, Montrose, Colorado 81401.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Montrose Regional Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (03–02–C–00–MTJ) to impose and use a PFC at the Montrose Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 2, 2003, the FAA determined that the application to impose a PFC submitted by the County of Montrose, Colorado, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 5, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 5, 2003.

Proposed charge expiration date: March 10, 2006.

Total requested for use approval: $821,726.89.

Brief description of proposed projects: Construct portion of Taxiway A, rehabilitate Taxiway B and a portion of the general aviation apron, construct an aircraft rescue and fire fighting (ARFF)/snow removal equipment (SRE) building, rehabilitate portion of general aviation apron (Phases I and II), rehabilitate portion of general aviation apron and Runway 13/31, extend Runway 17 safety area.

Class or classes of air carriers that the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice, and other documents germane to the application in person at the Montrose Regional Airport.

Issued in Renton, Washington, on April 2, 2003.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03–9183 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–02–C–00–VPS To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Okaloosa Regional Airport, Valparaiso, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Okaloosa Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 15, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jerry Sealy, Airport Director of the County of Okaloosa, FL at the following address: Okaloosa Regional Airport, State Road 85, Eglin AFB, FL, 32542.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Okaloosa, FL under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Farris, Program Manager, Orlando Airports District Office, Suite 400, 5950 Hazeltine National Drive, Orlando, Florida 32822, (407) 812–6331 Ext. 25. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Okaloosa Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 2, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Okaloosa County, FL was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 17, 2003.

The following is a brief overview of the application.

Proposed charge effective date: August 1, 2018.

Proposed charge expiration date: December 1, 2019.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $2,885,235.

Brief description of proposed project(s): Expand surface parking lot, project formulation costs.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Charter operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration Southern Region Headquarters, Airports Division ASO–600, 1701 Columbia Ave., College Park, Georgia 30337.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Okaloosa Regional Airport.

Issued in Orlando, FL, on April 2, 2003.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 03–9080 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number PS–ACE100–2002–005]

Proposed Policy on 14 CFR 23.1357(d), Regarding Circuit Breakers and Fuses for Part 23 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: This notice announces a Federal Aviation Administration (FAA) proposed policy on reviewing certification plans regarding Circuit Breakers and Fuses for certification. This notice advises the public, especially manufacturers of normal, utility, and acrobatic category airplanes, and commuter category airplanes and their suppliers, that the FAA intends to adopt a policy concerning reviewing certification plans regarding Circuit Breakers and Fuses for certification. This notice is necessary to advise the public of this FAA policy and give all interested persons an opportunity to present their views on it.

DATE: Send your comments by May 15, 2003.

DISCUSSION: We are making this proposed policy statement available to the public and all manufacturers for their comments.

ADDRESSES: Copies of the proposed policy statement, PS–ACE100–2002–005, may be requested from the following: Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Service, Federal Aviation Administration, 901 Locust Street, Room 301, Kansas City, MO 64106. The proposed policy statement is also available on the Internet at the following address *http://www.airweb.faa.gov/policy*. Send all comments on this proposed policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy, ACE–111, 901 Locust Street, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4127; fax: 816–329–4090; e-mail: *wes.ryan@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite your comments on this proposed policy statement. Send any data or views as you may desire. Identify the proposed Policy Statement Number PS–ACE100–2002–005 on your comments, and if you submit your comments in writing, send two copies of your comments to the above address. The Small Airplane Directorate will consider all communications received on or before the closing date for comments. We may change the proposal contained in this notice because of the comments received.

Comments sent by fax or the Internet must contain "Comments to proposed policy statement PS–ACE100–2002–005" in the subject line. You do not need to send two copies if you fax your comments or send them through the Internet. If you send comments over the Internet as an attached electronic file, format it in either Microsoft Word 97 for Windows or ASCII text. State what specific change you are seeking to the proposed policy memorandum and include justification (for example, reasons or data) for each request.

Issued in Kansas City, Missouri on March 28, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9176 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement No. ANM–03–115–04; Exit Bands

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of policy on colored exit bands required by § 25.811(f)(1) and (2).

DATES: The policy was issued by the Transport Airplane Directorate on April 2, 2003.

FOR FURTHER INFORMATION CONTACT: Michael T. Thompson, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airframe and Cabin Safety Branch, ANM–115, 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–1157; fax (425) 227–1149; e-mail: *michael.t.thompson@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion of Comments

A notice of proposed policy was published in the **Federal Register** on February 27, 2003 (68 FR 9113). One commenter responded to the request for comments.

Background

The policy further simplifies the certification process pertaining to installation of the required 2-inch colored band outlining the exits on transport category airplanes. These bands are necessary so that rescue personnel can readily recognize exits in the side of the fuselage.

The policy as well as the disposition of public comments received is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/finalpaper.cfm*. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, on April 2, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9077 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Policy Statement No. ANM–03–111–18

Installation of Transport Category Airplane Flightdeck Liquid Crystal Displays

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed policy on installation of liquid crystal displays (LCD) on transport category airplanes.

DATES: Send your comments on or before May 15, 2003.

ADDRESSES: Address your comments to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. John McConnell, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane and Flightcrew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1365; fax (425) 227–1100; e-mail: *john.mcconnell@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The proposed policy is available on the Internet at the following address: *http://www.faa.gov/certification/aircraft/anminfo/devpaper.cfm*. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

The FAA invites your comments on this proposed policy. We will accept your comments data, views or arguments by letter, fax or e-mail. Send your comments to the person indicated in **FOR FURTHER INFORMATION CONTACT.** Mark your comments, "Comments to Policy Statement No. ANM–03–111–18."

Use the following format when preparing your comments:

- Organize your comments issue-by-issue.

- For each issue, state what specific change you are requesting to the proposed policy.
- Include justification, reasons, or data for each change you are requesting.

We also welcome comments in support of the proposed policy.

We will consider all communications received on or before the closing date for comments. We may change the proposed policy because of the comments received.

Background

The policy memorandum clarifies the FAA certification policy on the installation of liquid crystal displays. It addresses the lack of published approved criteria for LCD technology and provides guidance on performance levels that have been found to be acceptable for LCDs used as pilot displays in the flightdeck of transport category airplanes.

Issued in Renton, Washington, on April 2, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9078 Filed 4–14?–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Clarification and Standardized Policy for Specific Sections of FAA Order 8150.1B, Technical Standard Order Program

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and request comments on proposed policy clarification to three specific areas of FAA Order 8150.1B, Technical Standard Order Program. The proposed policy provides guidance to Federal Aviation Administration personnel, Technical Standard Order (TSO) authorization holders and those persons issued letters of TSO design approval, on how to manage incomplete systems, information and data needed when one source receives multiple articles, and general marking requirements.

DATES: Comments must be received on or before May 9, 2003.

ADDRESSES: Comments on the proposed policy may be mailed to: Federal Aviation Administration, Aircraft Certification Service, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Mr. John Petrakis, AIR–120; deliver to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591; or e-mailed to: *John.Petrakis@FAA.GOV*.

FOR FURTHER INFORMATION CONTACT: Mr. John Petrakis, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs Branch, AIR–120, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9274.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed policy listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed policy may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for the Director of the Aircraft Certification Service will consider comments specified above before issuing the final policy.

Background

This policy memorandum addresses three specific areas of FAA Order 8150.1B, Technical Standard Order Program. Since the issuance of the order in May 2002, questions concerning (1) the management and marking requirements of incomplete systems, (2) clarification on data needed when multiple articles are shipped to one source, and (3) clarification of general TSO marking requirements.

The information derived from this notice will become effective via a signed memorandum, and will be incorporated into the next revision to FAA Order 8150.1B.

How To Obtain Copies

A copy of the proposed policy may be obtained via the Internet at, *http://av-info.faa.gov/tso/Tsopro/Proposed.htm*. You may also request a copy of the proposed policy memorandum from Mr. John Petrakis. See the section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address.

Issued in Washington, DC on April 7, 2003.

David W. Hempe,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–9076 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Information Collection Activities

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice of OMB approvals.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.5(b), this notice announces that new information collections requirements (ICRs) listed below have been approved by the Office of Management and Budget (OMB). These ICRs pertain to 49 CFR parts 225, 229, 241, and 244. Additionally, FRA hereby announces that other ICRs listed below have been re-approved by the Office of Management and Budget (OMB). These ICRs pertain to parts 209, 230, 238, 240, and 260. The OMB approval numbers, titles, and expiration dates are included herein under supplementary information.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to display OMB control numbers and inform respondents of their legal significance once OMB approval is obtained. The following new FRA information collections were approved: (1) OMB No. 2130–0500, Accident/Incident Reporting and Recordkeeping (49 CFR part 225) (Final Rule) (Forms FRA F6180.54; 55; 55a; 56; 57; 78; 81; 97; 98; 99; 107). The expiration date for this information collection is April 30, 2006. (2) OMB No. 2130–0556, U.S. Locational Requirement For Dispatching U.S. Rail Operations (49 CFR part 241) (Final Rule). The expiration date for this information collection is January 31, 2006. The following information collections were re-approved: (1) OMB No. 2130–0505, Inspection and Maintenance Standards For Steam Locomotives (49 CFR parts 209 and 230). The expiration date for this information collection is January 31, 2006. (2) OMB No. 2130–0548, Railroad Rehabilitation and Improvement Financing Program (49 CFR part 260). The expiration date for this information collection is January 31, 2006.

Additionally, the following information collections were previously approved: (1) OMB No. 2130–0552, Locomotive Cab Sanitation Standards (49 CFR part 229) (Final Rule). The expiration date for this information collection is June 30, 2005. (2) OMB No. 2130–0557, Safety Integration Plans (49 CFR part 244) (Final Rule). The expiration date for this information collection is March 31, 2005. Furthermore, the following information collections were previously re-approved: (1) OMB No. 2130–0517, Supplemental Qualifications Statement For Railroad Safety Inspector Applicants (Form FRA–F–120). The expiration date for this information collection is August 31, 2005. (2) OMB No. 2130–0533, Qualifications For Locomotive Engineers (49 CFR part 240). The expiration date for this information collection is June 30, 2005. (3) OMB No. 2130–0544, Passenger Equipment Safety Standards (49 CFR part 238). The expiration date for this information collection is June 30, 2005.

Persons affected by the above referenced information collections are not required to respond to any collection of information unless it displays a currently valid OMB control number. These approvals by the Office of Management and Budget (OMB) certify that FRA has complied with the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and with 5 CFR 1320.5(b) by informing the public about OMB's approval of the information collection requirements of the above cited forms and regulations.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on April 9, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–9072 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket No. FRA–2003–14648]

Applicant: CSX Transportation, Mr. Eric G. Peterson, Assistant Chief Engineer, Signal Design and Construction, 4901 Belfort Road, Suite 130 (S/C J–370), Jacksonville, Florida 32256.

CSX Transportation seeks approval of the proposed modification of the traffic control system (TCS) on the single track Wildwood Lead, milepost 0J2–145.31, near Wauhatchie Alabama, on the Nashville Division, Chattanooga, Subdivision. The proposed change consists of the relocation of the Northbound Absolute Signal from milepost 0J2–145.31 to milepost 0J2–144.75, effectively decreasing the limits of the TCS by approximately .56 mile.

The reason given for the proposed changes is to decrease the limits of the TCS on the Wildwood Lead to accommodate switching moves in Wauhatchie Yard.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on April 7, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–9071 Filed 4–14–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 631X)]

CSX Transportation, Inc.—Abandonment Exemption—in Summit County, OH

CSX Transportation, Inc. (CSXT), has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a line of railroad, known as the Lumber Lead, extending from former Conrail milepost 11.49 to a point at or near former Conrail milepost 11.56, a distance of approximately 0.07 of a mile, in Summit County, OH. The line traverses United States Postal Service Zip Code 44305.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d)

must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 15, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 25, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 5, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative: Natalie S. Rosenberg, 500 Water Street, J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

CSXT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 18, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by April 15, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: April 4, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–8926 Filed 4–14–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

President's Commission on the United States Postal Service

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice of meeting.

SUMMARY: Notice is given of a meeting of the President's Commission on the United States Postal Service.

DATES: The meeting will be held on Tuesday, April 29, 2003 from 8:30 a.m. to approximately 2:30 pm CST.

ADDRESSES: The meeting will be held in the Grand Ballroom (2nd Floor) of the Chicago Hilton, 720 S. Michigan Avenue, Chicago, Illinois 60605.

FOR FURTHER INFORMATION CONTACT: Roger Kodat, Designated Federal Official, 202–622–7073.

SUPPLEMENTARY INFORMATION: At the public meeting, the Commission will examine issues relating to the Postal Service's workforce, including the collective bargaining process and binding arbitration. Witnesses will testify at the invitation of the Commission. At the meeting, the Workforce Subcommittee will report to the Commission. Seating is limited.

Dated: April 11, 2003.

Roger Kodat,

Designated Federal Official.

[FR Doc. 03–9307 Filed 4–11–03; 10:50 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 97–27

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–27, Changes in Methods of Accounting.

DATES: Written comments should be received on or before June 16, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Changes in Methods of Accounting.

OMB Number: 1545–1541.

Revenue Procedure Number: Revenue Procedure 97–27.

Abstract: The information requested in Revenue Procedure 97–27 is required in order for the Commissioner to determine whether the taxpayer properly is requesting to change its method of accounting and the terms and conditions of that change.

Current Actions: Section 13.02(2) concerned taxpayers that filed 3115s under Revenue Procedure 97–27 on or before December 31, 1997. Section 13.02(3) concerned taxpayers that were within an open window period for filing 3115s under Revenue Procedure 92–20 on May 15, 1997. Since taxpayers will no longer be eligible for either provision, those two sections are no longer relevant

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 3,000.

Estimated Time Per Respondent: 3 hours, 1 minute.

Estimated Total Annual Burden Hours: 9,083.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 8, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9215 Filed 4–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4136

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4136, Credit for Federal Tax Paid on Fuels.

DATES: Written comments should be received on or before June 16, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Credit for Federal Tax Paid on Fuels.

OMB Number: 1545–0162.

Form Number: Form 4136.

Abstract: Internal Revenue Code section 34 allows a credit for Federal excise tax for certain fuel uses. Form 4136 is used to figure the amount of income tax credit. The data is used by the IRS to verify the validity of the claim for the type of nontaxable or exempt use.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, and farms.

Estimated Number of Respondents: 619,851.

Estimated Time Per Respondent: 4 hr., 35 min.

Estimated Total Annual Burden Hours: 2,840,190.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 7, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9216 Filed 4–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8822

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8822, Change of Address.

DATES: Written comments should be received on or before June 16, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Change of Address.

OMB Number: 1545–1163.

Form Number: Form 8822.

Abstract: Form 8822 is used by taxpayers to notify the Internal Revenue

Service that they have changed their home or business address or business location.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,500,000.

Estimated Time Per Respondent: 16 min.

Estimated Total Annual Burden Hours: 387,501.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 9, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9217 Filed 4–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–57

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002–67, Settlement of Section 351 Contingent Liability Tax Shelter Cases.

DATES: Written comments should be received on or before June 16, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the Internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Settlement of Section 351 Contingent Liability Tax Shelter Cases.

OMB Number: 1545–1801.

Revenue Procedure Number: Revenue Procedure 2002–67.

Abstract: Revenue Procedure 2002–67 prescribes procedures for taxpayers who elect to participate in a settlement initiative aimed at resolving tax shelter cases involving contingent liability transactions that are the same or similar to those described in Notice 2001–17 ("contingent liability transaction"). There are two resolution methodologies: a fixed concession procedure and a fast track dispute resolution procedure that includes binding arbitration.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and Individuals.

Estimated Number of Respondents: 150.

Estimated Average Time Per Respondent: 50 hours.

Estimated Total Annual Reporting Burden: 7,500 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 9, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9223 Filed 4–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference).

DATES: The meeting will be held Friday, May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, May 16, 2003 from 1 p.m. EST to 2 p.m. EST via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 4, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9218 Filed 4–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, May 6, 2003.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Tuesday, May 6, 2003 from 3 p.m. EST to 4:30 p.m. EST via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 4, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9219 Filed 4–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc Issue Committee of the Taxpayer Advocacy Panel will be held Monday, May 5, 2003 from 1 p.m. PST to 3 p.m. PST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6095, or write Anne Gruber, TAP Office, 915 2nd Ave, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6095.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 4, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9220 Filed 4–14–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register
Vol. 68, No. 72
Tuesday, April 15, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

Correction

In notice document 03–8560 appearing on page 17072 in the issue of Tuesday, April 8, 2003, make the following correction:

On page 17072, in the second column, in the second line, "Tulapid", should read "Tulalip".

[FR Doc. C3–8560 Filed 4–14–03; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

[EOIR No. 135]

Executive Office for Immigration Review; Notice of Class Action Judgment in Barahona-Gomez v. Ashcroft

Correction

In notice document 03–6691 beginning on page 13727 in the issue of Thursday March 20, 2003, make the following corrections:

1. On page 13727, in the second column, the subject heading is corrected to read as set forth above.

2. On page 13728, in the appendix, in the second column, in paragraph (c)(2), in the seventh and eighth lines, "October 1, 1995" should read " October 1, 1996".

[FR Doc. C3–6691 Filed 4–14–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
April 15, 2003

Part II

National Credit Union Administration

12 CFR Part 701
Organization and Operations of Federal Credit Unions; Final Rule

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Final rule.

SUMMARY: The NCUA Board is amending its chartering and field of membership manual to update chartering policies and streamline documentation. These final amendments are in response to NCUA's more than four years experience with existing chartering and field of membership policies.

DATES: This regulation is effective May 15, 2003.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540; Regina Metz, Staff Attorney, Office of General Counsel, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6540; Lynn K. Markgraf, Program Officer, Office of Examination and Insurance, 1775 Duke Street, Alexandria, Virginia 22314 or telephone (703) 518–6360.

SUPPLEMENTARY INFORMATION: NCUA's current chartering and field of membership policy is set out in Interpretive Ruling and Policy Statement 99–1, Chartering and Field of Membership Policy (IRPS 99–1), as amended by IRPS 00–1 and IRPS 02–2. The policy is incorporated by reference in NCUA's regulations at 12 CFR 701.1. It is also published as NCUA's Chartering and Field of Membership Manual (Chartering Manual), which is the document most interested parties use and to which references in the following discussion are made.

In 1998, Congress updated the laws on field of membership with the passage of the Credit Union Membership Access Act (CUMAA). On December 17, 1998, in response to CUMAA, the NCUA Board issued a final rule on chartering and field of membership. 63 FR 73022, December 30, 1998. When the NCUA Board issued its final rule, it instructed NCUA's Field of Membership Taskforce to coordinate and monitor implementation of the new chartering policies and make necessary recommendations for policy clarifications and amendments to IRPS 99–1. Accordingly, recommendations were made, and final amendments to NCUA's chartering policy were issued by the NCUA Board in 2000 and again in 2002. 65 FR 64512, October 27, 2000; 67 FR 20013, April 24, 2002.

Over the past four years, NCUA's Field of Membership Taskforce has continued to monitor and review the implementation of the Chartering Manual and its amendments in an effort to improve consistency and provide a basis, if necessary, for further clarifications and modifications. In connection with this review, last year the NCUA Board issued a proposed rule, with a 60-day comment period, that comprehensively updated the agency's chartering policy. 67 FR 72444, December 5, 2002. The comment period ended on February 3, 2003.

Six hundred and seventy comments were received. Comments were received from 263 federal credit unions, 113 state-chartered credit unions, 131 Florida bankers and 69 other banks, 31 state credit union leagues or trade associations, and 4 national credit union trade associations, 32 credit union members, 14 state bank trade associations and 3 national bank trade associations, 2 members of Congress, 2 law firms, 1 insurance company, 2 credit union service organizations (CUSOs), 1 credit union contractor, 1 institute, and 1 shared service center.

Except for the banks and bank trade associations, most commenters were very supportive of the proposed chartering and field of membership policies, with some commenters suggesting ways they would improve the final rule. Many stated that they appreciated the added flexibility permitted under the proposal, and some addressed how the proposal would afford them the opportunity to diversify their membership and how this would result in decreased economic risk. Besides the bank commenters, four credit unions and the institute opposed the proposal. Two of these commenters believe it would harm small credit unions. After the following discussion of the proposed amendments, there is a separate section devoted to the comments received from the bankers and bank trade associations.

A. Proposed Amendments

1. Overlapping Fields of Membership Among Credit Unions

As stated in the proposal, the NCUA Board has found no empirical evidence to indicate that overlaps have an adverse impact on credit unions and believes overlaps should generally be permitted. Therefore, except for select group expansions for multiple group credit unions, the NCUA Board proposed to eliminate overlap protection and provide the option to all credit unions to remove any existing exclusionary clauses in its charter.

Under the Federal Credit Union Act (the Act), the agency must do an overlap analysis on select group expansions for multiple group credit unions so no significant changes were proposed in this area. 12 U.S.C 1759(f)(2)(D). On select group expansions, however, the NCUA Board stated that overlaps of groups of less than 3,000 should be classified as an incidental overlap and no overlap analysis should be required. The 3,000 threshold is taken directly from the CUMAA.

The NCUA Board also stated if two credit unions want to retain an exclusionary clause that is a business decision for them to make. If, however, one credit union wants the exclusionary clause removed, the NCUA Board stated the request should be approved and should be treated as a housekeeping amendment.

One hundred and twenty-two commenters supported this proposed change. Thirteen commenters opposed the change. They generally opposed this change because they believe it may harm small to mid-size credit unions that cannot compete with the rates and total range of services offered by the larger credit unions.

The NCUA Board is committed to the concept of consumer choice as reflected in CUMAA. NCUA has approved charter expansions that overlap other credit unions for decades, without any evidence that the overlap harms the overlapped credit union. Overlap protection can harm the credit union member by denying consumer choice. By adopting the proposed change, the agency's policy will accurately reflect today's marketplace, which provides many choices in financial services to the consumer. Therefore, the NCUA Board believes it is appropriate to eliminate the remaining overlap protections that still exist in the regulation to the extent permitted by statute. The NCUA Board does not believe this overlap policy will have an adverse impact on small credit unions. Accordingly, the NCUA Board is adopting the proposed change on overlaps in the final rule including the procedure on how to remove existing exclusionary clauses.

The NCUA Board is also eliminating a paperwork relic for credit unions that wish to expand their single occupational or associational common bond. Under the current rule, a single common bond credit union needs to obtain a letter from a group's sponsor indicating that the group wants to be added to the credit union's field of membership. The purpose of this requirement was so that NCUA could monitor overlaps. Since overlaps are now permitted for single common bond credit unions, this sponsor letter serves no safety and soundness or other policy purpose. A couple of commenters specifically addressed this issue and suggested the elimination of this requirement. Therefore, the NCUA Board is modifying the single common bond expansion procedure for both occupational and associational credit unions. Under the new procedure, a credit union need only state how the common bond is shared and how it will serve the expanded group. The requirement for a sponsor letter is eliminated.

The NCUA Board is also clarifying in the final rule that a single common bond credit union can merge into a multiple common bond credit union if the single common bond credit union is completely overlapped by the multiple common bond credit union. The NCUA Board believes that, if a multiple group credit union has a complete overlap of a single common bond credit union's field of membership, then the two credit unions should be allowed to merge without analyzing the group's ability to form its own credit union. This change is consistent with the new overlap policy as well as previous modifications to merger policy. Chapter 2, section IV.D.1.c is modified accordingly in the final rule.

2. Reasonable Proximity and Service Facility for Select Group Expansions

Under CUMAA, if the formation of a separate credit union is not practicable or consistent with the standards in the Act, then a select group can be included in the "field of membership of a credit union that is within reasonable proximity to the location of the group." 12 U.S.C. 1759(f)(1)(B). The Act does not define a service facility for the purpose of analyzing reasonable proximity. In the proposal, the NCUA Board defined a service facility for multiple group expansions as a place where shares are accepted for members' accounts, loan applications are accepted, or loans are disbursed.

In defining reasonable proximity, the NCUA Board has continually stated that the group to be added must be within the "service area" of a "service facility" of the credit union. After reviewing CUMAA and its legislative history again, the NCUA Board proposed a new definition of a service facility for the purpose of the reasonable proximity analysis. The NCUA Board proposed that a wholly-owned ATM or a shared service facility in which a credit union has an ownership interest constitutes a credit union for the purpose of the reasonable proximity analysis. Under the proposal, underserved areas still require a physical presence other than an ATM or shared service facility.

One hundred and thirty-four commenters agreed with the proposed change. Two commenters who supported expanding the definition of service facility also suggested eliminating the reasonable proximity requirement altogether. Eleven commenters did not agree with the use of an ATM for purposes of the reasonable proximity analysis. One of these commenters opposed the use of shared branch networks for the reasonable proximity analysis. Many of these commenters were concerned that such a definition would harm small credit unions.

Sixty-nine commenters supported the proposal, but recommended NCUA further expand the definition of service facility. Many of these commenters recommended that NCUA change "wholly owned" ATM to "branded" ATM and also include the web, telephone, and the United States mail as service facilities. A few of these commenters wrote that NCUA should also consider shared or network ATMs as service facilities.

The NCUA Board does not have the legal authority to eliminate the reasonable proximity requirement. The NCUA Board also believes an ownership interest is crucial in analyzing the reasonable proximity requirement for ATMs and shared service facilities. However, the NCUA Board is clarifying that services provided by an ATM are irrelevant to this analysis as long as it is wholly-owned by the credit union.

The NCUA Board believes that the proposed definition of a service facility for determining reasonable proximity is reasonable and is consistent with economic realities of the "clicks and windows" age. However, the NCUA Board is clarifying in the final rule that a service facility does not include a credit union's internet web site.

In response to some commenters, the NCUA Board is clarifying in the final rule that the requisite ownership interest can be in a shared service center, a shared service network, or similar organization. Therefore, as long as the credit union has an ownership interest in the service center, network, or similar organization, the credit union can expand around any of them. The credit union does not need to have an ownership interest in the specific service facility. This means, for example, that, if the credit union has an ownership interest in a CUSO, it can expand around any service center connected to the CUSO. This also would allow a participating credit union with an ownership interest in the service facility to expand around other service facilities connected to the shared service network or similar organization.

3. Associational Common Bond

The Chartering Manual defines what constitutes an associational common bond. Under the current definition the group must: (1) Hold meetings open to all members; (2) sponsor other activities which demonstrate that the members of the group meet to accomplish the objectives of the association; and (3) have an authoritative definition of who is eligible for membership. Other factors were also considered by the agency. The NCUA Board proposed that the three mandatory requirements be eliminated and merged into the list of factors to be considered by the agency. Under the proposal, a consideration of the totality of circumstances would determine whether an associational common bond exists. The NCUA Board also explicitly stated in the proposal that national associations in their entirety qualify for credit union service if the headquarters are within reasonable proximity to the credit union.

One hundred and seven commenters supported the proposed change. Four commenters opposed the proposal. The NCUA Board believes, for the reasons provided in the proposal, that a totality of the circumstances analysis is appropriate in determining an associational common bond and is adopting that approach in the final rule.

Eight commenters specifically approved of the clarification on national associations. Four commenters did not agree with the clarification. In response to concerns raised by some commenters, the NCUA Board is clarifying that current policy already permits a multiple group credit union to add national associations to its field of membership as long as the national association headquarters are within reasonable proximity to the credit union. If a multiple group credit union wishes to add just a chapter of the national association, the office of the chapter must be in reasonable proximity to the credit union. If a credit union is chartered to serve a single association, there is no reasonable proximity requirement. Therefore, the proposed clarification is adopted in the final rule.

The NCUA Board wants to reiterate that associations that are primarily based on client-customer relationships do not qualify as an associational common bond. Finally, the NCUA Board is making some technical wording changes in this section to eliminate possible ambiguities.

4. Occupational Common Bond

The NCUA Board has previously determined that an occupational common bond can also include designations based on employment in a trade, industry or profession (TIP), but because of operational concerns chose not to implement a TIP policy. Having addressed these concerns, the NCUA Board proposed a new definition of occupational common bond based on a TIP.

This type of common bond can include employment at any number of corporations or other legal entities that, while not under common ownership, share a common bond by virtue of producing similar products, providing similar services, sharing the same profession or trade, or participating in the same industry. The common bond of a TIP credit union is not based on a relationship with a single employer, but rather, on the commonality of interests or characteristics of those groups comprising the TIP. Individuals in those groups will share or participate in the same purpose, interest, or endeavor as a result of their employment. If persons in different groups possess common interests that are reasonably tied to a common endeavor or purpose, then the groups can be combined to form a single field of membership and, thus, a single common bond credit union. This commonality of interest constitutes a common bond of trade, industry or profession and meets the statutory requirement of "one group that has a common bond of occupation." 12 U.S.C. 1759(a)(1).

In the proposal, the NCUA Board stated that, while there is some latitude in defining trade, industry, or profession, the group must have a close nexus. Furthermore, the NCUA Board stated that a TIP must be narrowly defined and in most cases, will contain a geographic limitation. The geographic limitation will generally correspond to the credit union's current or planned service area. The NCUA Board limited the TIP to single common bond credit unions and proposed allowing any credit union to convert to a TIP single occupational credit union. Upon such a conversion, the credit union could retain its members of record.

One hundred and seventy commenters supported the TIP proposal. A few commenters who supported the proposal believe that a diverse field of membership should reduce sponsor risk and risk to the National Credit Union Share Insurance Fund. A few commenters expressed concern with how TIP will be implemented. Four commenters opposed the TIP concept because they believe it would hurt small credit unions.

Many commenters provided examples of different TIPs, ranging from an educational TIP to a petroleum TIP. Some of the commenters believed that the general thrust of occupational chartering based upon TIP should be more "horizontal" than "vertical." That is, they viewed the TIP proposal as focusing on only some members of a trade or industry, as opposed to everyone working in the same trade or industry. The NCUA Board does not believe that these terms provide a meaningful or relevant distinction and is not using them in the Chartering Manual. In the proposal, the NCUA Board was simply illustrating who could become a member depended on whether the credit union had a professional TIP or an industry TIP. Again, if the TIP is the healthcare industry, everyone working at a hospital would be included in the TIP. If the credit union has a nurses TIP, then only nurses could be served. This is a clear and important distinction. A TIP can be "vertical" or "horizontal," but it is critical that a credit union understand which type of occupational common bond it is choosing.

In a similar vein, some commenters asked why a credit union could not serve clerical staff if a TIP is based on a single profession, for example, Certified Public Accountants (CPAs). The answer is that a TIP credit union based on profession or trade can only serve members of the same profession or trade. An engineer TIP can only serve engineers; a teachers TIP can only serve teachers. This is one of the fundamental criteria of a TIP. However, if a TIP is based on an industry, such as healthcare, the credit union can serve physicians, nurses, and administrative staff. Therefore, as stated above, how the TIP is characterized, whether by profession or industry, will be critical in determining who the credit union can serve. If the credit union wants to serve CPAs, it should request a CPA TIP. If the credit union wants to include administrative staff, then it should request a TIP based on the accounting industry.

A few commenters support applying TIP only to single common bond credit unions. Thirty-one commenters recommended applying TIP to multiple common bond credit unions. The NCUA Board believes that a narrow approach is appropriate at this time because expansion of the TIP policy would raise additional operational issues. For this reason, the NCUA Board is limiting this type of occupational common bond to a single common bond credit union.

The NCUA Board stated in the proposal that a credit union converting to a TIP will usually have a geographic limitation that comports with its current or planned service area. Nine commenters opposed a geographic limitation on the TIP occupational common bond. A few commenters requested broad geographic options. A few commenters noted that, for a credit union already serving members nationwide, there should be no geographic limitation. The NCUA Board believes that, initially, a general geographic limitation is necessary for a successful implementation of the TIP policy. However, after considering the commenters' suggestions, the NCUA Board also believes a credit union having a national field of membership or operating in multiple states may request a TIP with no geographic restriction. Accordingly, the NCUA Board has clarified the Chartering Manual to include this concept.

The NCUA Board continues to believe that another fundamental criterion of a TIP common bond is that the group must have a close nexus and a commonality of interests. Because of this requirement, a TIP cannot include third-party vendors and other suppliers and contractors. In this regard, some TIPs might be more limiting than the traditional definition of an occupational common bond. An automobile TIP may include all workers manufacturing automobiles but may not include the steel suppliers or other component suppliers. A healthcare TIP may include all hospital personnel but may not include employees of unaffiliated retail pharmacies. Furthermore, a TIP common bond charter can be similar to, but distinguishable from, a common bond based on a single corporation or employer.

For example, all Army personnel would qualify as a single common bond employer group or TIP, but all nurses would only qualify as a TIP.

One commenter requested that a company that has one large, predominant industry and some smaller industries still be allowed to be included in a single industrial common bond. The NCUA Board believes such a company would not have the close nexus and commonality of interest required of a TIP occupational common bond based on industry. However, this same company could qualify for a traditional single employer occupational common bond.

A few commenters requested information about the scope of the TIP business plan. One commenter also asked how a credit union will verify an individual as a TIP member. When a credit union is chartered or converts to a TIP it must submit a business plan that addresses how it will serve the TIP and how it will verify an individual is part of that TIP. Verification may include a state license, payroll statements, or any other documentation indicating that an individual is a member of the specified TIP. Some commenters have asked that retirees and corporate accounts be included in a TIP field of membership. The NCUA Board sees no impediment to such a change and has modified the final rule to allow retirees for all TIPs and corporate accounts for industry TIPs.

The NCUA Board requested comment on whether the final rule should contain a preapproved list of TIPs. A few commenters recommended that the final rule should not contain a preapproved list of TIPs. A few commenters supported an initial listing of NCUA preapproved TIPS, if it did not limit possible TIPs. A few commenters suggested other governmental sources a credit union could review to develop a TIP.

The NCUA Board believes that a list of preapproved TIPs would not prove very useful to most credit unions. Instead, the NCUA Board prefers that the agency approve TIPs, on a case-by-case basis, to ensure consistency among the reasons, address operational issues and to ensure the legal underpinnings of the policy are met. The NCUA Board encourages credit unions to review the U.S. Bureau of Labor Statistics' Standard Occupational Classification System (SOCS) and the U.S. Census Bureau's North American Industrial Classification System (NAICS) for guidance in developing a TIP. Although the information contained in the SOCS and NAICS is neither controlling nor binding on NCUA, the systems do contain some useful information for credit unions considering converting to a TIP occupational common bond.

Finally, the NCUA Board is clarifying that if, for safety and soundness reasons, a TIP credit union needs to convert back to its original field of membership, it can obtain the field of membership it had before the conversion. Such a conversion would need to be approved by the regional director. After the conversion, a credit union could continue to serve members of record of the TIP.

5. Economic Advisability and the Process for Select Group Expansions of Less than 3,000

Economic advisability is critically important both in the chartering process and in the addition of select groups to a multiple common bond credit union. NCUA's responsibility is to ensure that a new credit union has a reasonable likelihood of succeeding in today's financial marketplace.

Based on the historical experience since the promulgation of IRPS 99–1, plus other chartering data since 1990, the NCUA Board proposed to raise the expedited processing threshold for adding groups from 500 to less than 3,000. In conjunction with this proposal, the NCUA Board also proposed raising the number of members in a group requiring an overlap analysis from 500 to less than 3,000.

One hundred and thirty-three commenters supported the proposed change. One commenter requested no economic ability analysis or overlap analysis be conducted on groups of 3,000 or more either. A few commenters opposed the change and some of these commenters stated they believed that it would hurt small credit unions.

The NCUA Board is adopting the proposed amendment in the final rule. NCUA will continue to perform an economic advisability analysis and overlap analysis for a group of 3,000 or more. NCUA's experience supports the view that a primary potential membership of less than 3,000 will rarely be economically advisable. In fact, 3,000 is the same threshold at or above which Congress requires the agency to look at the group more closely to determine if it can form its own credit union. The final rule merely makes consistent the application of the statutory 3,000 figure as the break point for mandatory analysis of a group that chooses to affiliate with an existing credit union, rather than charter its own credit union. In some circumstances, a smaller number of potential members may be economically advisable, and such groups, if they express the desire to form a separate credit union, will be given that opportunity. However, as always, the group's desire and initiative to form a credit union are critical factors in evaluating economic advisability.

6. Community Charters

Over the years, the NCUA Board has approved numerous conversions of credit unions to community charters. The NCUA Board proposed three different definitions of what constitutes a local community. These definitions were based on the Board's experience and authority under the Act to determine what constitutes a local community for purposes of a federal community charter.

First, the NCUA Board proposed that any city, county, or smaller political jurisdiction, regardless of population size, meets the definition of a local community. The NCUA Board stated that this is an irrebuttable presumption, regardless of population size, and that no documentation demonstrating that the political jurisdiction is a community would be required.

Second, the NCUA Board proposed that any area that is a Metropolitan Statistical Area (MSA), or its equivalent, or a portion thereof, where the population of the MSA or its equivalent does not exceed one million, may meet the definition of a local community. The NCUA Board stated that, if the proposed community meets the MSA criteria and population limits, the credit union must submit a letter describing how the area meets the standards for community interaction and/or common interests.

Third, the NCUA Board proposed increasing the presumption of a local community from 200,000 residents to 500,000 residents for multiple political jurisdictions that are not part of a single MSA. The NCUA Board stated that, if the credit union meets this criterion, the credit union must submit a letter describing how the area meets the standards for community interaction and/or common interests.

One hundred and eighty-one commenters supported the new definitions of a local community and the changes to the community section. Seven commenters requested a more expansive definition of a local community. Four commenters did not support the proposal and believe the definition of local community will hurt small credit unions.

The NCUA Board is adopting the proposed definition of a local community in the final rule. As stated in the proposal, this definition of local community comports with the general experience of this Board in determining what constitutes a local community charter.

The NCUA Board clarified in the proposed rule that a community charter can apply to convert to serve a different community area. A couple of commenters specifically approved of the proposal. The NCUA Board is adopting this provision in the final rule without change.

The NCUA Board clarified in the proposal that persons or organizations that regularly do business in a community can be included in a community credit union's charter. A couple of commenters specifically approved of this clarification. The NCUA Board is adopting this clarification in the final rule and is

providing an example in the final rule to demonstrate that a community charter can serve individuals and organizations that regularly conduct business in the community.

Twenty-two commenters requested that, if a credit union converts to a community charter, all groups outside the community boundary should continue to be served by the community credit union. The NCUA Board believes that such an interpretation is not permitted under CUMAA. However, as stated in this rule, and previous NCUA rules, groups obtained through an emergency merger or emergency purchase and assumption can continue to be served by the new community credit union.

One commenter believes credit unions should be able to serve multiple, noncontiguous communities, and another commenter believes NCUA should not restrict a credit union to a single charter type, but should permit credit unions to be hybrids of different charter types. Unfortunately, the Act does not specifically permit hybrid charters and does not generally permit a credit union to serve multiple noncontiguous communities. However, there are some exceptions to this rule, involving emergency mergers, underserved areas and the grandfathering of certain fields of memberships.

7. Common Bond Conversions

In the current Chartering Manual, the sections on federal charter conversions for occupational common bond credit unions, associational common bond credit unions, and multiple group common bond credit unions all contain a general three-year prohibition on converting to another type of charter, except to a community charter. This prohibition was originally established for operational and administrative reasons. The NCUA Board proposed the elimination of this prohibition since it unduly limits the flexibility needed for federal credit unions to serve their members and make well-reasoned business decisions.

Fifty-nine commenters specifically supported the proposal. One commenter specifically opposed the change. The NCUA Board has not been provided any compelling rationale to retain this prohibition so it is deleting this requirement and adopting the proposal in the final rule.

8. Charter Conversions

The NCUA Board clarified in the proposed rule that, if a State charter wants to convert to Federal charter and had previously obtained a group or area through a procedure similar to NCUA's emergency merger provision, it can retain that field of membership when it converts to a Federal charter. Sixty-four commenters specifically supported this clarification. Two commenters specifically opposed it because of possible abuse.

The NCUA Board is adopting in the final rule the clarification that a State charter that converts to a Federal charter may retain any groups obtained through a State's emergency field of membership provision. Any subsequent expansions or amendments to the field of membership of the Federal charter must comply with Federal field of membership policies. The NCUA Board does not believe that adoption of this clarification will lead to any abuse because most State emergency provisions are not broader than those for Federal charters.

The NCUA Board requested comment on whether there was a compelling rationale to permit any type of State charters to retain their State fields of membership when converting to Federal charters. The NCUA Board also requested comment on other ways to streamline the procedure for converting from a State charter to Federal charter. Several commenters support streamlining the conversion process. Nine commenters requested that State charters converting to Federal charters should be able to retain all groups in their current fields of membership. Although some of these commenters provided good business reasons for adopting such a policy, no commenter provided a compelling justification for such a policy change. The NCUA Board will continue to review this issue in the future to determine if a change in policy is appropriate.

9. The Appeal Process

The NCUA Board proposed a change to the appeal process. The NCUA Board clarified that, if a credit union seeks a second reconsideration of an application, and it is still not approved by the region, it will be treated as an appeal and sent to the NCUA Board for a decision. Furthermore, Chapter Three of the Chartering Manual on underserved areas does not have a separate appeals section, so the NCUA Board proposed adding an appeal provision to this section.

Fifty commenters specifically supported the changes to the appeal process and only one commenter opposed it. The NCUA Board is adopting the proposed changes to the appeals process, with minor modifications, including the addition of an appeal process for underserved areas.

10. Miscellaneous Clarifications

The NCUA Board proposed three other amendments to conform to other proposals made by the NCUA Board or to clarify existing policy. First, the NCUA Board proposed a change to chapter 1, section XII to permit foreign branching by Federal credit unions. Any existing or proposed branches on United States military installations or United States embassies are unaffected by this change.

The few commenters that addressed the issue supported the proposed amendment. The NCUA Board is adopting this proposal in the final rule.

Second, the NCUA Board clarified how corporate accounts can be cited in a credit union's charter by adding them to the list of groups in "Other Persons Eligible for Credit Union Membership." Forty-three commenters supported the clarification and the NCUA Board is adopting this clarification in the final rule.

Third, the NCUA Board clarified that in a spin-off all members of the group to be spun off, regardless of how they voted, will be transferred if the spin-off is approved by the voting membership. Forty-three commenters supported the clarification. The NCUA Board believes that this treatment of members in a spin-off is consistent with CUMAA and is adopting this clarification in the final rule.

A couple of commenters recommended NCUA review its investment area definition; specifically, the definition of empowerment zones or enterprise communities used to add underserved areas. Before a Federal credit union can expand its field of membership to serve an underserved area, the area must, among other things, be classified as an investment area under section 103(16) of the Community Development Banking and Financial Institutions (CDFI) Act of 1994 (the CDFI Act), 12 U.S.C. 4703(16). The CDFI Act permits the U.S. Department of the Treasury's CDFI Fund to further define investment area.

NCUA has reviewed its investment area definition in response to these commenters and also because the CDFI Fund recently issued an interim final rule, revising its program, including its own investment area definition. 68 FR 5704, February 4, 2003 (to be codified at 12 CFR part 1805). The CDFI Fund has deleted the following criteria from its definition:

- An area where the percentage of occupied distressed housing (as indicated by lack of complete plumbing and occupancy of more than one person per room) is at least 20 percent;

- An area located outside of a Metropolitan Area with a county population loss between the most recent decennial census and the previous decennial census of at least 10 percent; and
- An area located outside of a Metropolitan Area with a county net migration loss (out-migration minus in-migration) over the 5-year period preceding the most recent decennial census of at least 5 percent.

The CDFI Fund also modified its section on empowerment zones and enterprise communities in its investment area definition. The definition now includes an area that wholly consists of or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986, 26 U.S.C. 1391.

With the release of the 2000 Census data as well as the new definitions of an investment area, the NCUA Board has also updated its definition of an investment area in chapter 3 of the Chartering Manual. The NCUA Board does not expect these revisions to have any measurable impact on bringing credit union service to underserved areas. In general, the NCUA Board acknowledges that the three eliminated criteria were either redundant or not accurate measures of economic distress. The NCUA Board believes that the changes will have no adverse effect on geographic areas qualifying as investment areas. Therefore, the final investment area definition is revised to conform to the CDFI Fund's new definition.

A couple of commenters asked for the agency to abolish the requirement of a sponsor letter from a select group that a multiple common bond credit union wants to add to its field of membership. The NCUA Board believes, at this time, the sponsor letter for multiple group expansions is beneficial for credit unions because it demonstrates the desire of the group. The Board is not deleting the requirement but the NCUA Board will continue to monitor the usefulness of requiring the letter.

Finally, the NCUA Board proposed some technical wording changes to all of the chapters in the Chartering Manual and updated the Appendices. The final rule includes additional changes to the forms in Appendix D to make them easier to understand and use. These changes are not substantive.

B. Comments From Banks and Bank Trade Organizations

Bank and bank trade organization commenters objected to the proposal and argued that Federal credit unions should be subject to taxation like banks. In general, these commenters opposed all 10 categories in the proposal listed above. Specifically, the commenters argued that the NCUA Board's proposal does not adhere to CUMAA, including the definitions of "local" and "common bond," and objected to: The proposals to use MSAs to define local communities; defining a service facility as including ATMs; the concept of the TIP occupational common bond; and the change to the standard clause to include corporate and other business sponsors.

The NCUA Board has considered all issues raised by these commenters and has previously addressed the major issues in this preamble since other commenters discussed the same provisions. As to the question of taxation, it is a statutory issue, not a regulatory issue. Most recently Congress addressed this issue in CUMAA at section 2.(4), which states that "[c]redit unions, unlike many other participants in the financial services market, are exempt from Federal and most State taxes * * *".

Finally, as in the past, some of the commenters from banking organizations stated that the proposed regulation does nothing to encourage the formation of separate credit unions to serve groups of fewer than 3,000 persons. The NCUA Board strongly disagrees with this comment. In fact, the NCUA Board's policy is that any group that can meet the economic advisability requirements should form its own credit union. The NCUA Board has simply established criteria that provide guidance based on historical experience relative to those groups that may have the best opportunity to succeed. Every effort will be made to encourage new charters, but operational feasibility and requirements are valid factors and cannot be ignored in the decision making process. Nothing in this rule prevents a group with less than 3,000 from applying to charter its own credit union. In fact, NCUA has put in place an Express Chartering Program to help small but viable groups in chartering a credit union.

C. Internet Expansion Requests

The Field of Membership Taskforce has developed an internet, select group expansion form. This process allows credit unions to submit requests for occupational groups of less than 3,000 online with an expedited approval by NCUA. The Field of Membership Taskforce is in the process of developing a form to allow associational groups of less than 3,000 to be approved by NCUA online. The regional offices can provide credit unions with specific details on how to do an expansion through the internet.

D. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small credit unions, primarily those under one million dollars in assets. The final rule will not have a significant economic impact on a substantial number of small credit unions and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The Office of Management and Budget control number assigned to § 701.1 is 3133–0015, and to forms included in Appendix D is 3133–0116. NCUA has determined that the final rule will not increase paperwork requirements and a paperwork reduction analysis is not required.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule will not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that the final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final

rule as defined by section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this is not a major rule.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 27, 2003.

Becky Baker,

Secretary of the Board.

■ Accordingly, NCUA amends 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

Section 701.6 is also authorized by 15 U.S.C. 3717.

Section 701.31 is also authorized by 15 U.S.C. 1601, *et seq.*, 42 U.S.C. 1981 and 3601–3610.

Section 701.35 is also authorized by 12 U.S.C. 4311–4312.

■ 2. Section 701.1 is revised to read as follows:

§ 701.1 Federal credit union chartering, field of membership modifications, and conversions.

National Credit Union Administration policies concerning chartering, field of membership modifications, and conversions are set forth in Interpretive Ruling and Policy Statement 03–1, Chartering and Field of Membership Policy (IRPS 03–1). Copies may be obtained by contacting NCUA at the addresses found in § 790.2(c) of this chapter.

(Approved by the Office of Management and Budget under control number 3133–0015.)

Note: The text of the Interpretive Ruling and Policy Statement (IRPS 03–1) does not appear in the Code of Federal Regulations.

■ 3. IRPS 03–1 is added to read as follows:

Chapter 1—Federal Credit Union Chartering

I—Goals of NCUA Chartering Policy

The National Credit Union Administration's (NCUA) chartering and field of membership policies are directed toward achieving the following goals:

- To encourage the formation of credit unions;
- To uphold the provisions of the Federal Credit Union Act;
- To promote thrift and credit extension;
- To promote credit union safety and soundness; and
- To make quality credit union service available to all eligible persons.

NCUA may grant a charter to single occupational/associational groups, multiple groups, or communities if:

- The occupational, associational, or multiple groups possess an appropriate common bond or the community represents a well-defined local community, neighborhood, or rural district;
- The subscribers are of good character and are fit to represent the proposed credit union; and
- The establishment of the credit union is economically advisable.

Generally, these are the primary criteria that NCUA will consider. In unusual circumstances, however, NCUA may examine other factors, such as other federal law or public policy, in deciding if a charter should be approved.

Unless otherwise noted, the policies outlined in this manual apply only to federal credit unions.

II—Types of Charters

The Federal Credit Union Act recognizes three types of federal credit union charters—single common bond (occupational and associational), multiple-common bond (more than one group each having a common bond of occupation or association), and community.

The requirements that must be met to charter a federal credit union are described in Chapter 2. Special rules for credit unions serving low-income groups are described in Chapter 3.

If a federal credit union charter is granted, Section 5 of the charter will describe the credit union's field of membership, which defines those persons and entities eligible for membership. Generally, federal credit unions are only able to grant loans and provide services to persons within the field of membership who have become members of the credit union.

III—Subscribers

Federal credit unions are generally organized by persons who volunteer their time and resources and are responsible for determining the interest, commitment, and economic advisability of forming a federal credit union. The organization of a successful federal credit union takes considerable planning and dedication.

Persons interested in organizing a federal credit union should contact one of the credit union trade associations or the NCUA regional office serving the state in which the credit union will be organized. Lists of NCUA offices and credit union trade associations are shown in the appendices. NCUA will provide information to groups interested in pursuing a federal charter and will assist them in contacting an organizer.

While anyone may organize a credit union, a person with training and experience in chartering new federal credit unions is generally the most effective organizer. However, extensive involvement by the group desiring credit union service is essential.

The functions of the organizer are to provide direction, guidance, and advice on the chartering process. The organizer also provides the group with information about a credit union's functions and purpose as well as technical assistance in preparing and submitting the charter application. Close communication and cooperation between the organizer and the proposed members are critical to the chartering process.

The Federal Credit Union Act requires that seven or more natural persons—the "subscribers"—present to NCUA for approval a sworn organization certificate stating at a minimum:

- The name of the proposed federal credit union;
- The location of the proposed federal credit union and the territory in which it will operate;
- The names and addresses of the subscribers to the certificate and the number of shares subscribed by each;
- The initial par value of the shares;
- The detailed proposed field of membership; and
- The fact that the certificate is made to enable such persons to avail themselves of the advantages of the Federal Credit Union Act.

False statements on any of the required documentation filed in obtaining a federal credit union charter may be grounds for federal criminal prosecution.

IV—Economic Advisability

IV.A—General

Before chartering a federal credit union, NCUA must be satisfied that the institution will be viable and that it will provide needed services to its members. Economic advisability, which is a determination that a potential charter will have a reasonable opportunity to succeed, is essential in order to qualify for a credit union charter.

NCUA will conduct an independent on-site investigation of each charter application to ensure that the proposed credit union can be successful. In general, the success of any credit union depends on: (a) The character and fitness of management; (b) the depth of the members' support; and (c) present and projected market conditions.

IV.B—Proposed Management's Character and Fitness

The Federal Credit Union Act requires NCUA to ensure that the subscribers are of good "general character and fitness." Prospective officials and employees will be the subject of credit and background investigations. The investigation report must demonstrate each applicant's ability to effectively handle financial matters. Employees and officials should also be competent, experienced, honest and of good character. Factors that may lead to disapproval of a prospective official or employee include criminal convictions, indictments, and acts of fraud and dishonesty. Further, factors such as serious or unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

NCUA also needs reasonable assurance that the management team will have the requisite skills—particularly in leadership and accounting—and the commitment to dedicate the time and effort needed to make the proposed federal credit union a success.

Section 701.14 of NCUA's Rules and Regulations sets forth the procedures for NCUA approval of officials of newly chartered credit unions. If the application of a prospective official or employee to serve is not acceptable to the regional director, the group can propose an alternate to act in that individual's place. If the charter applicant feels it is essential that the disqualified individual be retained, the individual may appeal the regional director's decision to the NCUA Board. If an appeal is pursued, action on the application may be delayed. If the appeal is denied by the NCUA Board, an acceptable new applicant must be provided before the charter can be approved.

IV.C—Member Support

Economic advisability is a major factor in determining whether the credit union will be chartered. An important consideration is the degree of support from the field of membership. The charter applicant must be able to demonstrate that membership support is sufficient to ensure viability.

NCUA has not set a minimum field of membership size for chartering a federal credit union. Consequently, groups of any size may apply for a credit union charter and be approved if they demonstrate economic advisability. However, it is important to note that often the size of the group is indicative of the potential for success. For that reason, a charter application with fewer than 3,000 primary potential members (*e.g.*, employees of a corporation or members of an association) may not be economically advisable. Therefore, a charter applicant with a proposed field of membership of fewer than 3,000 primary potential members may have to provide more support than an applicant with a larger field of membership. For example, a small occupational or associational group may be required to demonstrate a commitment for long-term support from the sponsor.

IV.D—Present and Future Market Conditions—Business Plan

The ability to provide effective service to members, compete in the marketplace, and to adapt to changing market conditions are key to the survival of any enterprise. Before NCUA will charter a credit union, a business plan based on realistic and supportable projections and assumptions must be submitted.

The business plan should contain, at a minimum, the following elements:

- Mission statement;
- Analysis of market conditions, including if applicable, geographic, demographic, employment, income, housing, and other economic data;
- Evidence of member support;
- Goals for shares, loans, and for number of members;
- Financial services needed/desired;
- Financial services to be provided to members of all segments within the field of membership;
- How/when services are to be implemented;
- Organizational/management plan addressing qualification and planned training of officials/employees;
- Continuity plan for directors, committee members and management staff;
- Operating facilities, to include office space/equipment and supplies, safeguarding of assets, insurance coverage, etc.;
- Type of record keeping and data processing system;
- Detailed semiannual pro forma financial statements (balance sheet, income and expense projections) for 1st and 2nd year, including assumptions—*e.g.*, loan and dividend rates;
- Plans for operating independently;
- Written policies (shares, lending, investments, funds management, capital accumulation, dividends, collections, etc.);
- Source of funds to pay expenses during initial months of operation, including any subsidies, assistance, etc., and terms or conditions of such resources; and
- Evidence of sponsor commitment (or other source of support) if subsidies are critical to success of the federal credit union. Evidence may be in the form of letters, contracts, financial statements from the sponsor, and any other such document on which the proposed federal credit union can substantiate its projections.

While the business plan may be prepared with outside assistance, the subscribers and proposed officials must understand and support the submitted business plan.

V—Steps in Organizing a Federal Credit Union

V.A—Getting Started

Following the guidance contained throughout this policy, the organizers should submit wording for the proposed field of membership (the persons, organizations and other legal entities the credit union will serve) to NCUA early in the application process for written preliminary approval. The proposed field of membership must meet all common bond or community requirements.

Once the field of membership has been given preliminary approval, and the organizer is satisfied the application has merit, the organizer should conduct an organizational meeting to elect seven to ten persons to serve as subscribers. The subscribers should locate willing individuals capable of serving on the board of directors, credit committee, supervisory committee, and as chief operating officer/manager of the proposed credit union.

Subsequent organizational meetings may be held to discuss the progress of the charter investigation, to announce the proposed slate of officials, and to respond to any questions posed at these meetings.

If NCUA approves the charter application, the subscribers, as their final duty, will elect the board of directors of the proposed federal credit union. The new board of directors will then appoint the supervisory committee.

V.B—Charter Application Documentation

V.B.1—General

As discussed previously in this Chapter, the organizer of a federal credit union charter must, at a minimum, provide evidence that:

- The group(s) possess an appropriate common bond or the geographical area to be served is a well-defined local

community, neighborhood, or rural district;

- The subscribers, prospective officials, and employees are of good character and fitness; and
- The establishment of the credit union is economically advisable.

As part of the application process, the organizer must submit the following forms, which are available in Appendix D of this Manual:

- Federal Credit Union Investigation Report, NCUA 4001;
- Organization Certificate, NCUA 4008;
- Report of Official and Agreement to Serve, NCUA 4012;
- Application and Agreements for Insurance of Accounts, NCUA 9500; and
- Certification of Resolutions, NCUA 9501.

Each of these forms is described in more detail in the following sections.

V.B.2—Federal Credit Union Investigation Report, NCUA 4001

The application for a new federal credit union will be submitted on NCUA 4001. State-chartered credit unions applying for conversion to a federal charter will use NCUA 4000. (See Chapter 4 for a full discussion.) The organizer is required to certify the information and recommend approval or disapproval, based on the investigation of the request.

V.B.3—Organization Certificate, NCUA 4008

This document, which must be completed by the subscribers, includes the seven criteria established by the Federal Credit Union Act. NCUA staff assigned to the case will assist in the proper completion of this document.

V.B.4—Report of Official and Agreement to Serve, NCUA 4012

This form documents general background information of each official and employee of the proposed federal credit union. Each official and employee must complete and sign this form. The organizer must review each of the NCUA 4012s for elements that would prevent the prospective official or employee from serving. Further, such factors as serious, unresolved past due credit obligations and bankruptcies disclosed during credit checks may disqualify an individual.

V.B.5—Application and Agreements for Insurance of Accounts, NCUA 9500

This document contains the agreements with which federal credit unions must comply in order to obtain National Credit Union Share Insurance Fund (NCUSIF) coverage of member accounts. The document must be completed and signed by both the chief executive officer and chief financial officer. A federal credit union must qualify for federal share insurance.

V.B.6—Certification of Resolutions, NCUA 9501

This document certifies that the board of directors of the proposed federal credit union has resolved to apply for NCUSIF insurance of member accounts and has authorized the chief executive officer and recording officer to execute the Application and Agreements for Insurance of Accounts. Both the chief executive officer and recording officer of the proposed federal credit union must sign this form.

VI—Name Selection

It is the responsibility of the federal credit union organizers or officials of an existing credit union to ensure that the proposed federal credit union name or federal credit union name change does not constitute an infringement on the name of any corporation in its trade area. This responsibility also includes researching any service marks or trademarks used by any other corporation (including credit unions) in its trade area. NCUA will ensure, to the extent possible, that the credit union's name:

- Is not already being officially used by another federal credit union;
- Will not be confused with NCUA or another federal or state agency, or with another credit union; and
- Does not include misleading or inappropriate language.

The last three words in the name of every credit union chartered by NCUA must be "Federal Credit Union."

The word "community," while not required, can only be included in the name of federal credit unions that have been granted a community charter.

VII—NCUA Review

VII.A—General

Once NCUA receives a complete charter application package, an acknowledgment of receipt will be sent to the organizer. At some point during the review process, a staff member will be assigned to perform an on-site contact with the proposed officials and others having an interest in the proposed federal credit union.

NCUA staff will review the application package and verify its accuracy and reasonableness. A staff member will inquire into the financial management experience and the suitability and commitment of the proposed officials and employees, and will make an assessment of economic advisability. The staff member will also provide guidance to the subscribers in the proper completion of the Organization Certificate, NCUA 4008.

Credit and background investigations may be conducted concurrently by NCUA with other work being performed by the organizer and subscribers to reduce the likelihood of delays in the chartering process.

The staff member will analyze the prospective credit union's business plan for realistic projections, attainable goals, adequate service to all segments of the field of membership, sufficient start-up capital, and time commitment by the proposed officials and employees. Any concerns will be reviewed with the organizer and discussed with the prospective credit union's officials. Additional on-site contacts by NCUA staff may be necessary. The organizer and subscribers will be expected to take the steps necessary to resolve any issues or concerns. Such resolution efforts may delay processing the application.

NCUA staff will then make a recommendation to the regional director regarding the charter application. The recommendation may include specific provisions to be included in a Letter of Understanding and Agreement. In most cases, NCUA will require the prospective officials to adhere to certain operational guidelines. Generally, the agreement is for a limited term of two to four years. A sample Letter of Understanding and Agreement is found in Appendix B.

VII.B—Regional Director Approval

Once approved, the board of directors of the newly formed federal credit union will receive a signed charter and standard bylaws from the regional director. Additionally, the officials will be advised of the name of the examiner assigned responsibility for supervising and examining the credit union.

VII.C—Regional Director Disapproval

When a regional director disapproves any charter application, in whole or in part, the organizer will be informed in writing of the specific reasons for the disapproval. Where applicable, the regional director will provide information concerning options or suggestions that the applicant could consider for gaining approval or otherwise acquiring credit union service. The letter of denial will include the procedures for appealing the decision.

VII.D—Appeal of Regional Director Decision

If the regional director denies a charter application, in whole or in part, that decision may be appealed to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reasons for denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal with a recommendation to the NCUA Board.

Before appealing, the prospective group may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

VII.E—Commencement of Operations

Assistance in commencing operations is generally available through the various credit union trade organizations listed in Appendix E.

All new federal credit unions are also encouraged to establish a mentor relationship with a knowledgeable, experienced credit union individual or an existing, well-operated credit union. The mentor should provide guidance and assistance to the new credit union through attendance at meetings and general oversight. Upon request, NCUA will provide assistance in finding a qualified mentor.

VIII—Future Supervision

Each federal credit union will be examined regularly by NCUA to determine that it remains in compliance with applicable laws and regulations and to determine that it does not pose undue risk to the NCUSIF. The examiner will contact the credit union officials shortly after approval of the charter in order to arrange for the initial examination (usually within the first six months of operation).

The examiner will be responsible for monitoring the progress of the credit union and providing the necessary advice and guidance to ensure it is in compliance with applicable laws and regulations. The examiner will also monitor compliance with the terms of any required Letter of Understanding and Agreement. Typically, the examiner will require the credit union to submit copies of monthly board minutes and financial statements.

The Federal Credit Union Act requires all newly chartered credit unions, up to two years after the charter anniversary date, to obtain NCUA approval prior to appointment of any new board member, credit or supervisory committee member, or senior executive officer. Section 701.14 of the NCUA Rules and Regulations sets forth the notice and application requirements. If NCUA issues a Notice of Disapproval, the newly chartered credit union is prohibited from making the change.

NCUA may disapprove an individual serving as a director, committee member or senior executive officer if it finds that the competence, experience, character, or integrity of the individual indicates it would not be in the best interests of the members of the credit union or of the public to permit the individual to be employed by or associated with the credit union. If a Notice of Disapproval is issued, the credit union may appeal the decision to the NCUA Board.

IX—Corporate Federal Credit Unions

A corporate federal credit union is one that is operated primarily for the purpose of serving other credit unions. Corporate federal credit unions operate under and are administered by the NCUA Office of Corporate Credit Unions.

X—Groups Seeking Credit Union Service

NCUA will attempt to assist any group in chartering a credit union or joining an existing credit union. If the group is not eligible for federal credit union service, NCUA will refer the group to the appropriate state supervisory authority where different requirements may apply.

XI—Field of Membership Designations

NCUA will designate a credit union based on the following criteria:

Single Occupational: If a credit union serves a single occupational sponsor, such as ABC Corporation, it will be designated as an occupational credit union. A single occupational common bond credit union may also serve a trade, industry, or profession (TIP), such as all teachers.

Single Associational: If a credit union serves a single associational sponsor, such as the Knights of Columbus, it will be designated as an associational credit union.

Multiple Common Bond: If a credit union serves more than one group, each of which has a common bond of occupation and/or association, it will be designated as a multiple common bond credit union.

Community: All community credit unions will be designated as such, followed by a description of their geographic boundaries (*e.g.* city or county).

Credit unions desiring to confirm or submit an application to change their designations should contact the appropriate NCUA regional office.

XII—Foreign Branching

Federal credit unions are permitted to serve foreign nationals within their fields of membership wherever they reside provided they have the ability, resources, and management expertise to serve such persons. Before a credit union opens a branch outside the United States, it must submit an application to do so and have prior written approval of the regional director. A federal credit union may establish a service facility on a United States military installation or United States embassy without prior NCUA approval.

Chapter 2—Field of Membership Requirements for Federal Credit Unions

I—Introduction

I.A.1—General

As set forth in Chapter 1, the Federal Credit Union Act provides for three types of federal credit union charters—single common bond (occupational or associational), multiple common bond (multiple groups), and community. Section 109 (12 U.S.C. 1759) of the Federal Credit Union Act sets forth the membership criteria for each of these three types of credit unions.

The field of membership, which is specified in Section 5 of the charter, defines those persons and entities eligible for membership. A single common bond federal credit union consists of one group having a common bond of occupation or association. A multiple common bond federal credit union consists of more than one group, each of which has a common bond of occupation or association. A community federal credit union consists of persons or organizations within a well-defined local community, neighborhood, or rural district.

Once chartered, a federal credit union can amend its field of membership; however, the same common bond or community requirements for chartering the credit union must be satisfied. Since there are differences in the three types of charters, special rules, which are

fully discussed in the following sections of this Chapter, may apply to each.

I.A.2—Special Low-Income Rules

Generally, federal credit unions can only grant loans and provide services to persons who have joined the credit union. The Federal Credit Union Act states that one of the purposes of federal credit unions is "to serve the productive and provident credit needs of individuals of modest means." Although field of membership requirements are applicable, special rules set forth in Chapter 3 may apply to low-income designated credit unions and those credit unions assisting low-income groups or to a federal credit union that adds an underserved community to its field of membership.

II—Occupational Common Bond

II.A.1—General

A single occupational common bond federal credit union may include in its field of membership all persons and entities who share that common bond. NCUA permits a person's membership eligibility in a single occupational common bond group to be established in five ways:

- Employment (or a long-term contractual relationship equivalent to employment) in a single corporation or other legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity with a controlling ownership interest (which shall not be less than 10 percent) in or by another legal entity makes that person part of a single occupational common bond;
- Employment in a corporation or other legal entity which is related to another legal entity (such as a company under contract and possessing a strong dependency relationship with another company) makes that person part of a single occupational common bond;
- Employment or attendance at a school makes that person part of a single occupational common bond (see Chapter 2, Section III.A.1); or
- Employment in the same Trade, Industry, or Profession (TIP) (see Chapter 2, Section II.A.2).

A geographic limitation is not a requirement for a single occupational common bond. However, for purposes of describing the field of membership, the geographic areas being served may be included in the charter. For example:

- Employees, officials, and persons who work regularly under contract in Miami, Florida for ABC Corporation and subsidiaries;
- Employees of ABC Corporation who are paid from * * *;
- Employees of ABC Corporation who are supervised from * * *;
- Employees of ABC Corporation who are headquartered in * * *; and/or
- Employees of ABC Corporation who work in the United States.

The corporation or other legal entity (*i.e.*, the employer) may also be included in the common bond—*e.g.*, "ABC Corporation." The corporation or legal entity will be defined in the last clause in Section 5 of the credit union's charter.

A charter applicant must provide documentation to establish that the single occupational common bond requirement has been met.

Some examples of single occupational common bonds are:

- Employees of the Hunt Manufacturing Company who work in West Chester, Pennsylvania. (common bond—same employer with geographic definition);
- Employees of the Buffalo Manufacturing Company who work in the United States. (common bond—same employer with geographic definition);
- Employees, elected and appointed officials of municipal government in Parma, Ohio. (common bond—same employer with geographic definition);
- Employees of Johnson Soap Company and its majority owned subsidiary, Johnson Toothpaste Company, who work in, are paid from, are supervised from, or are headquartered in Augusta and Portland, Maine. (common bond—parent and subsidiary company with geographic definition);
- Employees of MMLLJS contractor who work regularly at the U.S. Naval Shipyard in Bremerton, Washington. (common bond—employees of contractors with geographic definition);
- Employees, doctors, medical staff, technicians, medical and nursing students who work in or are paid from the Newport Beach Medical Center, Newport Beach, California. (single corporation with geographic definition);
- Employees of JLS, Incorporated and MJM, Incorporated working for the LKM Joint Venture Company in Catalina Island, California. (common bond—same employer—ongoing dependent relationship);
- Employees of and students attending Georgetown University. (common bond—same occupation);
- Employees of all the schools supervised by the Timbrook Board of Education in Timbrook, Georgia. (common bond—same employer); or
- All licensed nurses in Fairfax County, Virginia. (occupational common bond TIP).

Some examples of insufficiently defined single occupational common bonds are:

- Employees of manufacturing firms in Seattle, Washington. (no defined occupational sponsor; overly broad TIP);
- Persons employed or working in Chicago, Illinois. (no occupational common bond);

II.A.2—Trade, Industry, or Profession

A common bond based on employment in a trade, industry, or profession can include employment at any number of corporations or other legal entities that—while not under common ownership—have a common bond by virtue of producing similar products, providing similar services, or participating in the same type of business.

While proposed or existing single common bond credit unions have some latitude in defining a trade, industry, or profession occupational common bond, it cannot be defined so broadly as to include groups in fields which are not closely related. For example, the manufacturing industry, energy industry, communications industry, retail industry, or entertainment industry would not qualify as a TIP because each industry lacks the necessary commonality. However, textile workers, realtors, nurses, teachers, police officers, or U.S. military personnel are closely related and each would qualify as a TIP.

The common bond relationship must be one that demonstrates a narrow commonality of interests within a specific trade, industry, or profession. If a credit union wants to serve a physician TIP, it can serve all physicians, but that does not mean it can also serve all clerical staff in the physicians' offices. However, if the TIP is based on the health care industry, then clerical staff would be able to be served by the credit union because they work in the same industry and have the same commonality of interests.

If a credit union wants to include the airline services industry, it can serve airline and airport personnel but not passengers. Clients or customers of the TIP are not eligible for credit union membership (*e.g.*, patients in hospitals).

Any company that is involved in more than one industry cannot be included in an industry TIP (*e.g.*, a company that makes tobacco products, food products, and electronics). However, employees of these companies may be eligible for membership in a variety of trade/profession occupational common bond TIPs.

Since a TIP must be narrowly defined, it cannot include third party vendors and other suppliers. For example, the steel suppliers to the automobile industry would not be part of the automobile industry TIP.

However, the automobile industry includes manufacturers and their automobile dealerships.

In general, except for credit unions currently serving a national field of membership or operating in multiple states, a geographic limitation is required for a TIP credit union. The geographic limitation will be part of the credit union's charter and generally correspond to its current or planned operational area. More than one federal credit union may serve the same trade, industry, or profession, even if both credit unions are in the same geographic location.

This type of occupational common bond is only available to single common bond credit unions. A TIP cannot be added to a multiple common bond or community field of membership.

To obtain a TIP designation, the proposed or existing credit union must submit a request to the regional director. New charter applicants must follow the documentation requirements in Chapter 1. New charter applicants and existing credit unions must submit a business plan on how the credit union will serve the group with the request to serve the TIP. The business plan also must address how the credit union will verify the TIP. Examples of such verification include state licenses, professional licenses, organizational memberships, pay statements, union membership, or employer certification. The regional director must approve this type of field of membership before a credit union can serve a TIP. Credit unions converting to a TIP can retain members of record but cannot add new members from its previous group or groups, unless it is part of the TIP.

Section II.B on Occupational Common Bond Amendments does not apply to a TIP common bond. Removing or changing a geographical limitation will be processed as a housekeeping amendment. If safety and soundness concerns are present, the regional director may require additional information before the request can be processed.

Section II.H, on Other Persons Eligible for Credit Union Membership, applies to TIP based credit unions except for the corporate account provision which only applies to industry based TIPs. Credit unions with industry based TIPs may include corporations as members because they have the same commonality of interests as all employees in the industry. For example, an airline service TIP (industry) can serve an airline carrier (corporate account); however, a nurses TIP (profession) could not serve a hospital (corporate account) because not everyone working in the hospital shares the same profession.

If a TIP designated credit union wishes to convert to a different TIP or employer-based occupational common bond, or different charter type, it only retains members of record after the conversion. The regional director, for safety and soundness reasons, may approve a TIP designated credit union to convert to its original field of membership.

II.B—Occupational Common Bond Amendments

II.B.1—General

Section 5 of every single occupational federal credit union's charter defines the field of membership the credit union can legally serve. Only those persons or legal entities specified in the field of membership can be served. There are a number of instances in which Section 5 must be amended by NCUA.

First, a group sharing the credit union's common bond is added to the field of membership. This may occur through various ways including agreement between the group and the credit union directly, or through a merger, corporate acquisition, purchase and assumption (P&A), or spin-off.

Second, if the entire field of membership is acquired by another corporation, the credit union can serve the employees of the new corporation and any subsidiaries after receiving NCUA approval.

Third, a federal credit union qualifies to change its common bond from:

- A single occupational common bond to a single associational common bond;
- A single occupational common bond to a community charter; or
- A single occupational common bond to a multiple common bond.

Fourth, a federal credit union removes a portion of the group from its field of membership through agreement with the group, a spin-off, or because a portion of the group is no longer in existence.

An existing single occupational common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the occupational common bond requirement has been met. The regional director must approve all amendments to an occupational common bond credit union's field of membership.

II.B.2—Corporate Restructuring

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This requires a change to the credit union's field of membership. NCUA will not permit a single common bond credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

II.B.3—Economic Advisability

Prior to granting a common bond expansion, NCUA will examine the amendment's likely effect on the credit union's operations and financial condition. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, a regional director may require additional information prior to making a decision.

II.B.4—Documentation Requirements

A federal credit union requesting a common bond expansion must submit an Application for Field of Membership Amendment (NCUA 4015–EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

II.C—NCUA'S Procedures for Amending the Field of Membership

II.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

II.C.2—Regional Director's Decision

NCUA staff will review all amendment requests in order to ensure compliance with NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site review. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to

submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. NCUA will carefully consider the economic advisability of expanding the field of membership of a credit union with financial or operational problems.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

II.C.3—Regional Director Approval

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

II.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedure.

II.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial, and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

II.D—Mergers, Purchase and Assumptions, and Spin-Offs

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single occupational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A), or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

II.D.1—Mergers

Generally, the requirements applicable to field of membership expansions found in this chapter apply to mergers where the continuing credit union has a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state-chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

If a single occupational credit union wants to merge into a multiple common bond or community credit union, Section IV.D or Section V.D of this Chapter, respectively, should be reviewed.

II.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any common bond restrictions. Under this authority, therefore, a single occupational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is also an unlike single common bond, the continuing credit union will remain a single common bond credit union. Future common bond expansions will be based on the continuing credit union's original single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

II.D.3—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. In the few instances where a P&A may be appropriate, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. However, if the P&A does not meet the emergency merger criteria, it must be processed under the common bond requirements.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities, without regard to common bond restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit union's original common bond will be controlling for future common bond expansions.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

II.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have a common bond (applies only to single occupational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

II.E—Overlaps

II.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit single occupational federal credit unions to overlap any other charter without performing an overlap analysis.

II.E.2—Organizational Restructuring

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. NCUA will permit a complete overlap of the credit unions' fields of membership.

If a sponsor organization sells off a group, new members can no longer be served unless they otherwise qualify for membership in the credit union or it converts to a multiple common bond charter.

Credit unions must submit documentation explaining the restructuring and providing information regarding the new organizational structure.

II.E.3—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

II.F—Charter Conversion

A single occupational common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A single occupational common bond federal credit union may apply to convert to a multiple common bond charter by adding a non-common bond group that is within a reasonable proximity of a service facility. Groups within the existing charter may be retained and continue to be served. However, future amendments, including any expansions of the original single common bond group, must be done in accordance with multiple common bond policy.

II.G—Removal of Groups From the Field of Membership

A credit union may request removal of a portion of the common bond group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union desires to remove the group. If the regional director concurs with the

request, membership will continue for those who are already members under the "once a member, always a member" provision of the Federal Credit Union Act.

II.H—Other Persons Eligible for Credit Union Membership

A number of persons, by virtue of their close relationship to a common bond group, may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Members of the immediate family or household;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an "immediate family or household" of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or school.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member." The "once a member, always a member" provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

III—Associational Common Bond

III.A.1—General

A single associational federal credit union may include in its field of membership, regardless of location, all members and employees of a recognized association. A single associational common bond consists of individuals (natural persons) and/or groups (non-natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests. Separately chartered associational groups can establish a single common bond relationship if they are integrally related and share common goals and purposes. For example, two or more churches of the same denomination, Knights of Columbus Councils, or locals of the same union can qualify as a single associational common bond.

Individuals and groups eligible for membership in a single associational credit union can include the following:

- Natural person members of the association (for example, members of a union or church members);
- Non-natural person members of the association;
- Employees of the association (for example, employees of the labor union or employees of the church); and
- The association.

Generally, a single associational common bond does not include a geographic definition and can operate nationally. However, a proposed or existing federal credit union may limit its field of membership to a single association or geographic area. NCUA may impose a geographic limitation if it is determined that the applicant credit union does not have the ability to serve a larger group or there are other operational concerns. All single associational common bonds should include a definition of the group that may be served based on the association's charter, bylaws, and any other equivalent documentation.

The common bond for an associational group cannot be established simply on the basis that the association exists. In determining whether a group satisfies associational common bond requirements for a federal credit union charter, NCUA will consider the totality of the circumstances, which includes:

- Whether members pay dues;
- Whether members participate in the furtherance of the goals of the association;
- Whether the members have voting rights. To meet this requirement, members need not vote directly for an officer, but may vote for a delegate who in turn represents the members' interests;
- Whether the association maintains a membership list;
- Whether the association sponsors other activities;
- The association's membership eligibility requirements; and
- The frequency of meetings.

A support group whose members are continually changing or whose duration is temporary may not meet the single associational common bond criteria. Each class of member will be evaluated based on the totality of the circumstances. Individuals or honorary members who only make donations to the association are not eligible to join the credit union.

Educational groups—for example, parent-teacher organizations, alumni associations, and student organizations in any school—and church groups may constitute associational common bonds.

Student groups (*e.g.*, students enrolled at a public, private, or parochial school) may constitute either an associational or occupational common bond. For example, students enrolled at a church sponsored school could share a single associational common bond with the members of that church and may qualify for a federal credit union charter. Similarly, students enrolled at a university, as a group by itself, or in conjunction with the faculty and employees of the school, could share a single occupational common bond and may qualify for a federal credit union charter.

The terminology "Alumni of Jacksonville State University" is insufficient to demonstrate an associational common bond. To qualify as an association, the alumni association must meet the requirements for an associational common bond. The alumni of a school must first join the alumni association, and not merely be alumni of the school to be eligible for membership.

Homeowner associations, tenant groups, consumer groups, and other groups of persons having an "interest in" a particular cause and certain consumer cooperatives may also qualify as an association.

Associations based primarily on a client-customer relationship do not meet associational common bond requirements. However, having an incidental client-customer relationship does not preclude an associational charter as long as the associational common bond requirements are met. For example, a fraternal association that offers insurance, which is not a condition of membership, may qualify as a valid associational common bond.

Applicants for a single associational common bond federal credit union charter or a field of membership amendment to include an association must provide, at the request of the regional director, a copy of the association's charter, bylaws, or other equivalent documentation, including any legal documents required by the state or other governing authority.

The associational sponsor itself may also be included in the field of membership—*e.g.*, "Sprocket Association"—and will be shown in the last clause of the field of membership.

III.A.2—Subsequent Changes to Association's Bylaws

If the association's membership or geographical definitions in its charter and bylaws are changed subsequent to the effective date stated in the field of membership, the credit union must submit the revised charter or bylaws for NCUA's consideration and approval prior to serving members of the association added as a result of the change.

III.A.3—Sample Single Associational Common Bonds

Some examples of associational common bonds are:

- Regular members of Locals 10 and 13, IBEW, in Florida, who qualify for membership in accordance with their charter and bylaws in effect on May 20, 2001;
- Members of the Hoosier Farm Bureau in Grant, Logan, or Lee Counties of Indiana, who qualify for membership in accordance with its charter and bylaws in effect on March 7, 1997;
- Members of the Shalom Congregation in Chevy Chase, Maryland;
- Regular members of the Corporate Executives Association, located in Westchester, New York, who qualify for membership in accordance with its charter and bylaws in effect on December 1, 1997;
- Members of the University of Wisconsin Alumni Association, located in Green Bay, Wisconsin;
- Members of the Marine Corps Reserve Officers Association; or
- Members of St. John's Methodist Church and St. Luke's Methodist Church, located in Toledo, Ohio.

Some examples of insufficiently defined single associational common bonds are:

- All Lutherans in the United States. (Too broadly defined); or
- Veterans of U.S. military service. (Group is too broadly defined; no formal association of all members of the group).

Some examples of unacceptable single associational common bonds are:

- Alumni of Amos University. (No formal association);
- Customers of Fleetwood Insurance Company. (Policyholders or primarily customer/client relationships do not meet associational standards);
- Employees of members of the Reston, Virginia Chamber of Commerce. (Not a sufficiently close tie to the associational common bond); or
- Members of St. John's Lutheran Church and St. Mary's Catholic Church located in Anniston, Alabama. (Churches are not of the same denomination).

III.B—Associational Common Bond Amendments

III.B.1—General

Section 5 of every associational federal credit union's charter defines the field of membership the credit union can legally serve. Only those persons who, or legal entities that, join the credit union and are specified in the field of membership can be served. There are three instances in which Section 5 must be amended by NCUA.

First, a group that shares the credit union's common bond is added to the field of membership. This may occur through various ways including agreement between the group and the credit union directly, or through a merger, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its common bond from:

- A single associational common bond to a single occupational common bond;
- A single associational common bond to a community charter; or
- A single associational common bond to a multiple common bond.

Third, a federal credit union removes a portion of the group from its field of membership through agreement with the group, a spin-off, or a portion of the group is no longer in existence.

An existing single associational federal credit union that submits a request to amend its charter must provide documentation to establish that the associational common bond requirement has been met. The regional director must approve all amendments to an associational common bond credit union's field of membership.

III.B.2—Organizational Restructuring

If the single common bond group that comprises a federal credit union's field of membership undergoes a substantial restructuring, the result is often that portions of the group are sold or spun off. This is an event requiring a change to the credit union's field of membership. NCUA may not permit a single associational credit union to maintain in its field of membership a sold or spun-off group to which it has been providing service unless the group otherwise qualifies for membership in the credit union or the credit union converts to a multiple common bond credit union.

If the group comprising the single common bond of the credit union merges with, or is acquired by, another group, the credit union can serve the new group resulting from the merger or acquisition after receiving a housekeeping amendment.

III.B.3—Economic Advisability

Prior to granting a common bond expansion, NCUA will examine the amendment's likely impact on the credit union's operations and financial condition. In most cases, the information needed for analyzing the effect of adding a particular group will be available to NCUA through the examination and financial and statistical reports; however, in particular cases, a regional director may require additional information prior to making a decision.

III.B.4—Documentation Requirements

A federal credit union requesting a common bond expansion must submit an Application for Field of Membership Amendment (NCUA 4015–EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

III.C—NCUA Procedures for Amending the Field of Membership

III.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

III.C.2—Regional Director's Decision

NCUA staff will review all amendment requests in order to ensure conformance to NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site review. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. The economic advisability of expanding

the field of membership of a credit union with financial or operational problems must be carefully considered.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

III.C.3—Regional Director Approval

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

III.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

III.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

III.D—Mergers, Purchase and Assumptions, and Spin-offs

In general, other than the addition of common bond groups, there are three additional ways a federal credit union with a single associational common bond can expand its field of membership:

- By taking in the field of membership of another credit union through a common bond or emergency merger;
- By taking in the field of membership of another credit union through a common bond or emergency purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a common bond spin-off.

III.D.1—Mergers

Generally, the requirements applicable to field of membership expansions found in this section apply to mergers where the continuing credit union is a federal charter. That is, the two credit unions must share a common bond.

Where the merging credit union is state-chartered, the common bond rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

If a single associational credit union wants to merge into a multiple common bond or community credit union, Section IV.D or Section V.D of this Chapter, respectively, should be reviewed.

III.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to common bond or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any common bond restrictions. Under this authority, therefore, a single associational common bond federal credit union may take into its field of membership any dissimilar charter type.

The common bond characteristic of the continuing credit union in an emergency merger does not change. That is, even though the merging credit union is a multiple common bond or community, the continuing credit union will remain a single common bond credit union. Similarly, if the merging credit union is an unlike single common bond, the continuing credit union will remain a single common bond credit union. Future common bond expansions will be based on the continuing credit union's single common bond.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

III.D.3—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. In the few instances where a P&A may be appropriate, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency merger criteria are satisfied. However, if the P&A does not meet the emergency merger criteria, it must be processed under the common bond requirements.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities, without regard to common bond restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the purchased and/or assumed credit union's field of membership does not share a common bond with the purchasing and/or assuming credit union, then the continuing credit union's original common bond will be controlling for future common bond expansions.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

III.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new credit union or goes to an existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the affected credit unions have the same common bond (applies only to single associational credit unions);
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

III.E—Overlaps

III.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit single associational federal credit unions to overlap any other charters without performing an overlap analysis.

III.E.2—Organizational Restructuring

A federal credit union's field of membership will always be governed by the common bond descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the common bond described in Section 5. NCUA will permit a complete overlap of the credit unions' fields of membership. If a sponsor organization sells off a group, new members can no longer be served unless they otherwise qualify for membership in the credit union or it converts to a multiple common bond.

Credit unions must submit documentation explaining the restructuring and providing information regarding the new organizational structure.

III.E.3—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

III.F—Charter Conversions

A single associational common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A single associational common bond federal credit union may apply to convert to a multiple common bond charter by adding a non-common bond group that is within a reasonable proximity of a service facility. Groups within the existing charter may be retained and continue to be served. However, future amendments, including any expansions of the original single common bond group, must be done in accordance with multiple common bond policy.

III.G—Removal of Groups From the Field of Membership

A credit union may request removal of a portion of the common bond group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support; or
- The group initiates action to be removed from the field of membership.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union desires to remove the group. If the regional director concurs with the request, membership will continue for those who are already members under the "once a member, always a member" provision of the Federal Credit Union Act.

III.H—Other Persons Eligible for Credit Union Membership

A number of persons by virtue of their close relationship to a common bond group may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Volunteers;
- Members of the immediate family or household;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an "immediate family or household" of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. One example is volunteers working at a church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member." The "once a member, always a member" provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

IV—Multiple Occupational/ Associational Common Bonds

IV.A.1—General

A federal credit union may be chartered to serve a combination of distinct, definable single occupational and/or associational common bonds. This type of credit union is called a multiple common bond credit union. Each group in the field of membership must have its own occupational or associational common bond. For example, a multiple common bond credit union may include two unrelated employers, or two unrelated associations, or a combination of two or more employers or associations. Additionally, these groups must be within reasonable geographic proximity of the credit union. That is, the groups must be within the service area of one of the credit union's service facilities. These groups are referred to as select groups. A multiple common bond credit union cannot include a TIP or expand using single common bond criteria.

A federal credit union's service area is the area that can reasonably be served by the service facilities accessible to the groups within the field of membership. The service area will most often coincide with that geographic area primarily served by the service facility. Additionally, the groups served by the credit union must have access to the service facility. The non-availability of other credit union service is a factor to be considered in determining whether the group is within reasonable proximity of a credit union wishing to add the group to its field of membership.

A service facility for multiple common bond credit unions is defined as a place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch or a shared branch network if either: (1) The credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center. This definition does not include the credit union's Internet website.

The select group as a whole will be considered to be within a credit union's service area when:

- A majority of the persons in a select group live, work, or gather regularly within the service area;
- The group's headquarters is located within the service area; or
- The group's "paid from" or "supervised from" location is within the service area.

IV.A.2—Sample Multiple Common Bond Field of Membership

An example of a multiple common bond field of membership is:

"The field of membership of this federal credit union shall be limited to the following:

1. Employees of Teltex Corporation who work in Wilmington, Delaware;
2. Partners and employees of Smith & Jones, Attorneys at Law, who work in Wilmington, Delaware;
3. Members of the M&L Association in Wilmington, Delaware, who qualify for membership in accordance with its charter and bylaws in effect on December 31, 1997."

IV.B—Multiple Common Bond Amendments

IV.B.1—General

Section 5 of every multiple common bond federal credit union's charter defines the field of membership and select groups the credit union can legally serve. Only those persons or legal entities specified in the field of membership can be served. There are a number of instances in which Section 5 must be amended by NCUA.

First, a new select group is added to the field of membership. This may occur through agreement between the group and the credit union directly, or through a merger, corporate acquisition, purchase and assumption (P&A), or spin-off.

Second, a federal credit union qualifies to change its charter from:

- A single occupational or associational charter to a multiple common bond charter;
- A multiple common bond to a single occupational or associational charter;
- A multiple common bond to a community charter; or
- A community to a multiple common bond charter.

Third, a federal credit union removes a group from its field of membership through agreement with the group, a spin-off, or because the group no longer exists.

IV.B.2—Numerical Limitation of Select Groups

An existing multiple common bond federal credit union that submits a request to amend its charter must provide documentation to establish that the multiple common bond requirements have been met. The regional director must approve all amendments to a multiple common bond credit union's field of membership.

NCUA will approve groups to a credit union's field of membership if the agency determines in writing that the following criteria are met:

- The credit union has not engaged in any unsafe or unsound practice, as determined by the regional director, which is material during the one year period preceding the filing to add the group;
- The credit union is "adequately capitalized." NCUA defines adequately capitalized to mean the credit union has a net worth ratio of not less than 6 percent. For low-income credit unions or credit unions chartered less than ten years, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement. For any other credit union, the regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level;
- The credit union has the administrative capability to serve the proposed group and the financial resources to meet the need for additional staff and assets to serve the new group;
- Any potential harm the expansion may have on any other credit union and its members is clearly outweighed by the probable beneficial effect of the expansion. With respect to a proposed expansion's effect on other credit unions, the requirements on overlapping fields of membership set forth in Section IV.E of this Chapter are also applicable; and
- If the formation of a separate credit union by such group is not practical and consistent with reasonable standards for the safe and sound operation of a credit union.

A detailed analysis is required for groups of 3,000 or more primary potential members requesting to be added to a multiple common bond credit union. It is incumbent upon the credit union to demonstrate that the formation of a separate credit union by such a group is not practical. The group must provide evidence that it lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisability criteria outlined in Chapter 1. If this can be demonstrated, the group may be added to a multiple common bond credit union's field of membership.

IV.B.3—Documentation Requirements

A multiple common bond credit union requesting a select group expansion must submit a formal written request, using the Application for Field of Membership Amendment (NCUA 4015 or NCUA 4015–EZ) to the appropriate NCUA regional director. An authorized credit union representative must sign the request.

The NCUA 4015–EZ (for groups less than 3,000 potential members) must be accompanied by the following:

- A letter, or equivalent documentation, from the group requesting credit union service. This letter must indicate:
  - That the group wants to be added to the applicant federal credit union's field of membership;
  - The number of persons currently included within the group to be added and their locations; and
  - The group's proximity to credit union's nearest service facility.
- The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

The NCUA 4015 (for groups of 3,000 or more primary potential members) must be accompanied by the following:

- A letter, or equivalent documentation, from the group requesting credit union service. This letter must indicate:
  - That the group wants to be added to the federal credit union's field of membership;
  - Whether the group presently has other credit union service available;
  - The number of persons currently included within the group to be added and their locations;
  - The group's proximity to credit union's nearest service facility, and
  - Why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. A credit union need not address every item on the list, simply those issues that are relevant to its particular request:

Member location—whether the membership is widely dispersed or concentrated in a central location.

Demographics—the employee turnover rate, economic status of the group's members, and whether the group is more apt to consist of savers and/or borrowers.

Market competition—the availability of other financial services.

Desired services and products—the type of services the group desires in comparison to the type of services a new credit union could offer.

Sponsor subsidies—the availability of operating subsidies.

The desire of the sponsor—the extent of the sponsor's interest in supporting a credit union charter.

Employee interest—the extent of the employees' interest in obtaining a credit union charter.

Evidence of past failure—whether the group previously had its own credit union or previously filed for a credit union charter.

Administrative capacity to provide services—will the group have the management expertise to provide the services requested.

- If the group is eligible for membership in any other credit union, documentation must be provided to support inclusion of the group under the overlap standards set forth in Section IV.E of this Chapter; and
- The most recent copy of the group's charter and bylaws or equivalent documentation (for associational groups).

IV.B.4—Corporate Restructuring

If a select group within a federal credit union's field of membership undergoes a substantial restructuring, a change to the credit union's field of membership may be required if the credit union is to continue to provide service to the select group. NCUA permits a multiple common bond credit union to maintain in its field of membership a sold, spun-off, or merged select group to which it has been providing service. This type of amendment to the credit union's charter is not considered an expansion; therefore, the criteria relating to adding new groups are not applicable.

When two groups merge and each is in the field of membership of a credit union, then both (or all affected) credit unions can serve the resulting merged group, subject to any existing geographic limitation and without regard to any overlap provisions. However, the credit unions cannot serve the other multiple groups that may be in the field of membership of the other credit union.

IV.C—NCUA'S Procedures for Amending the Field of Membership

IV.C.1—General

All requests for approval to amend a federal credit union's charter must be submitted to the appropriate regional director.

IV.C.2—Regional Director's Decision

NCUA staff will review all amendment requests in order to ensure conformance to NCUA policy.

Before acting on a proposed amendment, the regional director may require an on-site review. In addition, the regional director may, after taking into account the significance of the proposed field of membership amendment, require the applicant to submit a business plan addressing specific issues.

The financial and operational condition of the requesting credit union will be considered in every instance. An expanded field of membership may provide the basis for reversing adverse trends. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's adverse trends. The applicant credit union must clearly establish that the approval of the expanded field of membership meets the requirements of Section IV.B.2 of this Chapter and will not increase the risk to the NCUSIF.

IV.C.3—Regional Director Approval

If the regional director approves the requested amendment, the credit union will be issued an amendment to Section 5 of its charter.

IV.C.4—Regional Director Disapproval

When a regional director disapproves any application, in whole or in part, to amend the field of membership under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedure.

IV.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial, and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

IV.D—Mergers, Purchase and Assumptions, and Spin-Offs

In general, other than the addition of select groups, there are three additional ways a multiple common bond federal credit union can expand its field of membership:

- By taking in the field of membership of another credit union through a merger;
- By taking in the field of membership of another credit union through a purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a spin-off.

IV.D.1—Voluntary Mergers

a. All Select Groups in the Merging Credit Union's Field of Membership Have Less Than 3,000 Primary Potential Members.

A voluntary merger of two or more federal credit unions is permissible as long as each select group in the merging credit union's field of membership has less than 3,000 primary potential members. While the merger requirements outlined in Section 205 of the Federal Credit Union Act must still be met, the requirements of Chapter 2, Section IV.B.2 of this manual are not applicable.

b. One or More Select Groups in the Merging Credit Union's Field of Membership has 3,000 or More Primary Potential Members.

If the merging credit unions serve the same group, and the group consists of 3,000 or more primary potential members, then the ability to form a separate credit union analysis is not required for that group. If the merging credit union has any other groups consisting of 3,000 or more primary potential members, special requirements apply. NCUA will analyze each group of 3,000 or more primary potential members, except as noted above, to determine whether the formation of a separate credit union by such a group is practical. If the formation of a separate credit union by such a group is not practical because the group lacks sufficient volunteer and other resources to support the efficient and effective operations of a credit union or does not meet the economic advisable criteria outlined in Chapter 1, the group may be merged into a multiple common bond credit union. If the formation of a separate credit union is practical, the group must be spun-off before the merger can be approved.

c. Merger of a Single Common Bond Credit Union Into a Multiple Common Bond Credit Union.

A financially healthy single common bond credit union with a primary potential membership of 3,000 or more cannot merge into a multiple common bond credit union, absent supervisory reasons, unless the continuing credit union already serves the same group.

d. Merger Approval.

If the merger is approved, the qualifying groups within the merging credit union's field of membership will be transferred intact to the continuing credit union and can continue to be served.

Where the merging credit union is state-chartered, the field of membership rules applicable to a federal credit union apply.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

IV.D.2—Supervisory Mergers

The NCUA may approve the merger of any federally insured credit union when safety and soundness concerns are present without regard to the 3,000 numerical limitation. The credit union need not be insolvent or in danger of insolvency for NCUA to use this statutory authority. Examples constituting appropriate reasons for using this authority are: abandonment of the management and/or officials and an inability to find replacements, loss of sponsor support, serious and persistent record keeping problems, sustained material decline in financial condition, or other serious or persistent circumstances.

IV.D.3—Emergency Mergers

An emergency merger may be approved by NCUA without regard to field of membership rules, the 3,000 numerical limitation, or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent record keeping problems; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions including numerical limitation requirements. Under this authority, any single occupational or associational common bond, multiple common bond, or community charter may merger into a multiple common bond credit union and that credit union can continue to serve the merging credit union's field of membership. Subsequent field of membership expansions of the continuing multiple common bond credit union must be consistent with multiple common bond policies.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

IV.D.4—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. Generally, the requirements applicable to field of membership expansions found in this chapter apply to purchase and assumptions where the purchasing credit union is a federal charter.

A P&A has limited application because, in most cases, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency criteria are satisfied. Specified loans, shares, and certain other designated assets and liabilities, without regard to field of membership restrictions, may also be acquired without changing the character of the continuing federal credit union for purposes of future field of membership amendments. Subsequent field of membership expansions must be consistent with multiple common bond policies.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

IV.D.5—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All common bond requirements apply regardless of whether the spun-off group becomes a new charter or goes to an existing federal charter.

The request for approval of a spun-off group must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a group, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

Spin-offs involving federally insured credit unions in different NCUA regions must be approved by all regional directors where the credit unions are headquartered and the state regulators, as applicable. Spin-offs in the same region also require approval by the state regulator, as applicable.

IV.E—Overlaps

IV.E.1—General

An overlap exists when a group of persons is eligible for membership in two or more credit unions, including state charters. An overlap is permitted when the expansion's beneficial effect in meeting the convenience and needs of the members of the group proposed to be included in the field of membership clearly outweighs any adverse effect on the overlapped credit union.

Credit unions must investigate the possibility of an overlap with federally insured credit unions prior to submitting an expansion request if the group has 3,000 or more primary potential members. If cases arise where the assurance given to a regional director concerning the unavailability of credit union service is inaccurate, the misinformation may be grounds for removal of the group from the federal credit union's charter.

When an overlap situation requiring analysis does arise, officials of the expanding credit union must ascertain the views of the overlapped credit union. If the overlapped credit union does not object, the applicant must submit a letter or other documentation to that effect. If the overlapped credit union does not respond, the expanding credit union must notify NCUA in writing of its attempt to obtain the overlapped credit union's comments.

NCUA will approve an overlap if the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union.

In reviewing the overlap, the regional director will consider:

- The view of the overlapped credit union(s);
- Whether the overlap is incidental in nature—the group of persons in question is so small as to have no material effect on the original credit union;
- Whether there is limited participation by members or employees

of the group in the original credit union after the expiration of a reasonable period of time;

- Whether the original credit union fails to provide requested service;
- Financial effect on the overlapped credit union;
- The desires of the group(s);
- The desire of the sponsor organization; and
- The best interests of the affected group and the credit union members involved.

Generally, if the overlapped credit union does not object, and NCUA determines that there is no safety and soundness problem, the overlap will be permitted.

Potential overlaps of a federally insured state credit union's field of membership by a federal credit union will generally be analyzed in the same way as if two federal credit unions were involved. Where a federally insured state credit union's field of membership is broadly stated, NCUA will exclude its field of membership from any overlap protection.

NCUA will permit multiple common bond federal credit unions to overlap community charters without performing an overlap analysis.

IV.E.2—Overlap Issues as a Result of Organizational Restructuring

A federal credit union's field of membership will always be governed by the field of membership descriptions contained in Section 5 of its charter. Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of any select group listed in Section 5. Where acquisitions are made which add a new subsidiary, the group cannot be served until the subsidiary is included in the field of membership through a housekeeping amendment.

Overlaps may occur as a result of restructuring or merger of the parent organization. When such overlaps occur, each credit union must request a field of membership amendment to reflect the new groups each wishes to serve. The credit union can continue to serve any current group in its field of membership that is acquiring a new group or has been acquired by a new group. The new group cannot be served by the credit union until the field of membership amendment is approved by NCUA.

Credit unions affected by organizational restructuring or merger should attempt to resolve overlap issues among themselves. Unless an agreement is reached limiting the overlap resulting from the corporate restructuring, NCUA will permit a complete overlap of the credit unions' fields of membership. When two groups merge, or one group is acquired by the other, and each is in the field of membership of a credit union, both (or all affected) credit unions can serve the resulting merged or acquired group, subject to any existing geographic limitation and without regard to any overlap provisions. This is accomplished through a housekeeping amendment.

Credit unions must submit to NCUA documentation explaining the restructuring and provide information regarding the new organizational structure.

IV.E.3—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

IV. F—Charter Conversion

A multiple common bond federal credit union may apply to convert to a community charter provided the field of membership requirements of the community charter are met. Groups within the existing charter which cannot qualify in the new charter cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion. Members of record can continue to be served. Also, in order to support a case for a conversion, the applicant federal credit union may be required to develop a detailed business plan as specified in Chapter 2, Section V.A.3.

A multiple common bond federal credit union may apply to convert to a single occupational or associational common bond charter provided the field of membership requirements of the new charter are met. Groups within the existing charter, which do not qualify in the new charter, cannot be served except for members of record, or groups or communities obtained in an emergency merger or P&A. A credit union must notify all groups that will be removed from the field of membership as a result of conversion.

IV. G—Removal of Groups From the Field of Membership

A credit union may request removal of a group from its field of membership for various reasons. The most common reasons for this type of amendment are:

- The group is within the field of membership of two credit unions and one wishes to discontinue service;
- The federal credit union cannot continue to provide adequate service to the group;
- The group has ceased to exist;
- The group does not respond to repeated requests to contact the credit union or refuses to provide needed support;
- The group initiates action to be removed from the field of membership; or
- The federal credit union wishes to convert to a single common bond.

When a federal credit union requests an amendment to remove a group from its field of membership, the regional director will determine why the credit union desires to remove the group. If the regional director concurs with the request, membership will continue for those who are already members under the "once a member, always a member" provision of the Federal Credit Union Act.

IV. H—Other Persons Eligible for Credit Union Membership

A number of persons, by virtue of their close relationship to a common bond group, may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Persons retired as pensioners or annuitants from the above employment;
- Volunteers;
- Members of the immediate family or household;
- Organizations of such persons; and
- Corporate or other legal entities in this charter.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an "immediate family or household" of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Volunteers, by virtue of their close relationship with a sponsor group, may be included. Examples include volunteers working at a hospital or church.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member." The "once a member, always a member" provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

V—Community Charter Requirements

V.A.1—General

Community charters must be based on a single, geographically well-defined local community, neighborhood, or rural district where individuals have common interests and/or interact. More than one credit union may serve the same community.

NCUA recognizes four types of affinity on which a community charter can be based—persons who live in, worship in, attend school in, or work in the community. Businesses and other legal entities within the community boundaries may also qualify for membership.

NCUA has established the following requirements for community charters:

- The geographic area's boundaries must be clearly defined;
- The area is a "well-defined local, community, neighborhood, or rural district;" and
- Individuals must have common interests and/or interact.

V.A.2—Documentation Requirements

In addition to the documentation requirements set forth in Chapter 1 to charter a credit union, a community credit union applicant must provide additional documentation addressing the proposed area to be served and community service policies.

A community credit union must meet the statutory requirements that the proposed community area is (1) well-defined, and (2) a local community, neighborhood, or rural district.

"Well-defined" means the proposed area has specific geographic boundaries. Geographic boundaries may include a city, township, county (or its political equivalent), or a clearly identifiable neighborhood. Although congressional districts and state boundaries are well-defined areas, they do not meet the requirement that the proposed area be a local community.

The well-defined local community, neighborhood, or rural district requirement *is met* if:

- The area to be served is in a recognized single political jurisdiction, *i.e.*, a city, county, or their political equivalent, or any contiguous portion thereof.

The well-defined local community, neighborhood, or rural district requirement *may be met* if:

- The area to be served is in multiple contiguous political jurisdictions, *i.e.*, a city, county, or their political equivalent, or any contiguous portion thereof and if the population of the requested well-defined area does not exceed 500,000; or
- The area to be served is a Metropolitan Statistical Area (MSA) or its equivalent, or a portion thereof, where the population of the MSA or its equivalent does not exceed 1,000,000.

If the proposed area meets either the multiple political jurisdiction or MSA criteria, the credit union must submit a letter describing how the area meets the standards for community interaction and/or common interests.

If NCUA does not find sufficient evidence of community interaction and/or common interests or if the area to be served does not meet the MSA or multiple political jurisdiction requirements of the preceding paragraph, the application must include documentation to support that it is a well-defined local community, neighborhood, or rural district.

It is the applicant's responsibility to demonstrate the relevance of the documentation provided in support of the application. This must be provided in a narrative summary. The narrative summary must explain how the documentation demonstrates interaction and/or common interests. For example, simply listing newspapers and organizations in the area is not sufficient to demonstrate that the area is a local community, neighborhood, or rural district.

Examples of acceptable documentation may include:

- The defined political jurisdictions;
- Major trade areas (shopping patterns and traffic flows);
- Shared/common facilities (for example, educational, medical, police and fire protection, school district, water, etc.);
- Organizations and clubs within the community area;
- Newspapers or other periodicals published for and about the area;
- A local map designating the area to be served and locations of current and proposed service facilities and a regional or state map with the proposed community outlined; or
- Other documentation that demonstrates that the area is a community where individuals have common interests and/or interact.

An applicant need not submit a narrative summary or documentation to support a proposed community charter, amendment or conversion as a well-defined local community, neighborhood or rural district if the NCUA has previously determined that the same exact geographic area meets that requirement in connection with consideration of a prior application since IRPS 99–1, as amended. Applicants may contact the appropriate regional office to find out if the area they are interested in has already been determined to meet the community requirements. If the area is the same as a previously approved area, an applicant need only include a statement to that effect in the application. Applicants may be required to submit their own summary and documentation regarding the community requirements if NCUA has reason to believe that prior submissions are no longer accurate.

A community credit union is frequently more susceptible to competition from other local financial institutions and generally does not have substantial support from any single sponsoring company or association. As a result, a community credit union will often encounter financial and operational factors that differ from an occupational or associational charter. Its diverse membership may require special marketing programs targeted to different segments of the community. For example, the lack of payroll deduction creates special challenges in the development of savings promotional programs and in the collection of loans.

Accordingly, it is essential for the proposed community credit union to develop a detailed and practical business and marketing plan for at least the first two years of operation. The proposed credit union must not only address the documentation requirements set forth in Chapter 1, but also focus on the accomplishment of the

unique financial and operational factors of a community charter.

Community credit unions will be expected to regularly review and to follow, to the fullest extent economically possible, the marketing and business plan submitted with their application.

V.A.3—Special Documentation Requirements for a Converting Credit Union

An existing federal credit union may apply to convert to a community charter. Groups currently in the credit union's field of membership but outside the new community credit union's boundaries may not be included in the new community charter. Therefore, the credit union is required to notify groups that will be removed from the field of membership as a result of the conversion. Members of record can continue to be served.

The documentation requirements set forth in Section V.A.2 of this Chapter must be met before a community charter can be approved. In order to support a case for a conversion to community charter, the applicant federal credit union must develop a business plan incorporating the following data:

- Pro forma financial statements for the first two years after the proposed conversion, including assumptions—*e.g.*, member, share, loan, and asset growth;
- Marketing plan addressing how the community will be served;
- Financial services to be provided to members;
- A local map showing current and proposed service facilities; and
- Anticipated financial impact on the credit union in terms of need for additional employees and fixed assets.

Before approval of an application to convert to a community credit union, NCUA must be satisfied that the institution will be viable and capable of providing services to its members.

V.A.4—Community Boundaries

The geographic boundaries of a community federal credit union are the areas defined in its charter. The boundaries can usually be defined using political borders, streets, rivers, railroad tracks, etc.

A community that is a recognized legal entity, may be stated in the field of membership—for example, "Gus Township, Texas" or "Kristi County, Virginia."

A community that is a recognized MSA must state in the field of membership the political jurisdiction(s) that comprise the MSA.

V.A.5—Special Community Charters

A community field of membership may include persons who work or attend school in a particular industrial park, shopping mall, office complex, or similar development. The proposed field of membership must have clearly defined geographic boundaries.

V.A.6—Sample Community Fields of Membership

A community charter does not have to include all four affinities (*i.e.*, live, work, worship, or attend school in a community). Some examples of community fields of membership are:

- Persons who live, work, worship, or attend school in, and businesses located in the area of Johnson City, Tennessee, bounded by Fern Street on the north, Long Street on the east, Fourth Street on the south, and Elm Avenue on the west;
- Persons who live or work in Green County, Maine;
- Persons who live, worship, or work in and businesses and other legal entities located in Independent School District No. 1, DuPage County, Illinois;
- Persons who live, worship, work (or regularly conduct business in), or attend school on the University of Dayton campus, in Dayton, Ohio;
- Persons who work for businesses located in Clifton Country Mall, in Clifton Park, New York; or
- Persons who live, work, or worship in the Binghamton, New York, MSA, consisting of Broome and Tioga Counties, New York.

Some examples of insufficiently defined community field of membership definitions are:

- Persons who live or work within and businesses located within a ten-mile radius of Washington, D.C. (using a radius does not establish a well-defined area);
- Persons who live or work in the industrial section of New York, New York. (not a well-defined neighborhood, community, or rural district); or
- Persons who live or work in the greater Boston area. (not a well-defined neighborhood, community, or rural district).

Some examples of unacceptable local communities, neighborhoods, or rural districts are:

- Persons who live or work in the State of California. (does not meet the definition of local community, neighborhood, or rural district).
- Persons who live in the first congressional district of Florida. (does not meet the definition of local community, neighborhood, or rural district).

V.B—Field of Membership Amendments

A community credit union may amend its field of membership by adding additional affinities or removing exclusionary clauses. This can be accomplished with a housekeeping amendment.

A community credit union also may expand its geographic boundaries. Persons who live, work, worship, or attend school within the proposed well-defined local community, neighborhood or rural district must have common interests and/or interact. The credit union must follow the requirements of Section V.A.3 of this chapter.

V.C—NCUA Procedures for Amending the Field of Membership

V.C.1—General

All requests for approval to amend a community credit union's charter must be submitted to the appropriate regional director. If a decision cannot be made within a reasonable period of time, the regional director will notify the credit union.

V.C.2—NCUA's Decision

The financial and operational condition of the requesting credit union will be considered in every instance. The economic advisability of expanding the field of membership of a credit union with financial or operational problems must be carefully considered.

In most cases, field of membership amendments will only be approved for credit unions that are operating satisfactorily. Generally, if a federal credit union is having difficulty providing service to its current membership, or is experiencing financial or other operational problems, it may have more difficulty serving an expanded field of membership.

Occasionally, however, an expanded field of membership may provide the basis for reversing current financial problems. In such cases, an amendment to expand the field of membership may be granted notwithstanding the credit union's financial or operational problems. The applicant credit union must clearly establish that the expanded field of membership is in the best interest of the members and will not increase the risk to the NCUSIF.

V.C.3—NCUA Approval

If the requested amendment is approved by NCUA, the credit union will be issued an amendment to Section 5 of its charter.

V.C.4—NCUA Disapproval

When NCUA disapproves any application to amend the field of membership, in whole or in part, under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

V.C.5—Appeal of Regional Director Decision

If a field of membership expansion request, merger, or spin-off is denied by the regional director, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

V.D—Mergers, Purchase and Assumptions, and Spin-Offs

There are three additional ways a community federal credit union can expand its field of membership:

- By taking in the field of membership of another credit union through a merger;
- By taking in the field of membership through a purchase and assumption (P&A); or
- By taking a portion of another credit union's field of membership through a spin-off.

V.D.1—Standard Mergers

Generally, the requirements applicable to field of membership expansions apply to mergers where the continuing credit union is a community federal charter.

Where both credit unions are community charters, the continuing credit union must meet the criteria for expanding the community boundaries. A community credit union cannot merge into a single occupational/associational, or multiple common bond credit union, except in an emergency merger. However, a single occupational or associational, or multiple common bond credit union can merge into a community charter as long as the merging credit union has a service facility within the community boundaries or a majority of the merging credit union's field of membership would qualify for membership in the community charter. While a community charter may take in an occupational, associational, or multiple common bond credit union in a merger, it will remain a community charter.

Groups within the merging credit union's field of membership located outside of the community boundaries may not continue to be served. The merging credit union must notify groups that will be removed from the field of membership as a result of the merger. However, the credit union may continue to serve members of record.

Where a state-chartered credit union is merging into a community federal credit union, the continuing federal credit union's field of membership will be worded in accordance with NCUA policy. Any subsequent field of membership expansions must comply with applicable amendment procedures.

Mergers must be approved by the NCUA regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union, and, as applicable, the state regulators.

V.D.2—Emergency Mergers

An emergency merger may be approved by NCUA without regard to field of membership requirements or other legal constraints. An emergency merger involves NCUA's direct intervention and approval. The credit union to be merged must either be insolvent or likely to become insolvent, and NCUA must determine that:

- An emergency requiring expeditious action exists;
- Other alternatives are not reasonably available; and
- The public interest would best be served by approving the merger.

If not corrected, conditions that could lead to insolvency include, but are not limited to:

- Abandonment by management;
- Loss of sponsor;
- Serious and persistent recordkeeping; or
- Serious and persistent operational concerns.

In an emergency merger situation, NCUA will take an active role in finding a suitable merger partner (continuing credit union). NCUA is primarily concerned that the continuing credit union has the financial strength and management expertise to absorb the troubled credit union without adversely affecting its own financial condition and stability.

As a stipulated condition to an emergency merger, the field of membership of the merging credit union may be transferred intact to the continuing federal credit union without regard to any field of membership restrictions, including the service facility requirement. Under this authority, a federal credit union may take in any dissimilar field of membership.

Even though the merging credit union is a single common bond credit union or multiple common bond credit union or community credit union, the continuing credit union will remain a community charter. Future community expansions will be based on the continuing credit union's original community area.

Emergency mergers involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the merging credit union and, as applicable, the state regulators.

V.D.3—Purchase and Assumption (P&A)

Another alternative for acquiring the field of membership of a failing credit union is through a consolidation known as a P&A. Generally, the requirements applicable to community expansions found in this chapter apply to purchase and assumptions where the purchasing credit union is a federal charter.

A P&A has limited application because, in most instances, the failing credit union must be placed into involuntary liquidation. However, in the few instances where a P&A may occur, the assuming federal credit union, as with emergency mergers, may acquire the entire field of membership if the emergency criteria are satisfied.

In a P&A processed under the emergency criteria, specified loans, shares, and certain other designated assets and liabilities may also be acquired without regard to field of membership restrictions and without changing the character of the continuing federal credit union for purposes of future field of membership amendments.

If the P&A does not meet the emergency criteria, then only members of record can be obtained unless they

otherwise qualify for membership in the community charter.

P&As involving federally insured credit unions in different NCUA regions must be approved by the regional director where the continuing credit union is headquartered, with the concurrence of the regional director of the purchased and/or assumed credit union and, as applicable, the state regulators.

V.D.4—Spin-Offs

A spin-off occurs when, by agreement of the parties, a portion of the field of membership, assets, liabilities, shares, and capital of a credit union are transferred to a new or existing credit union. A spin-off is unique in that usually one credit union has a field of membership expansion and the other loses a portion of its field of membership.

All field of membership requirements apply regardless of whether the spun-off group goes to a new or existing federal charter.

The request for approval of a spin-off must be supported with a plan that addresses, at a minimum:

- Why the spin-off is being requested;
- What part of the field of membership is to be spun off;
- Whether the field of membership requirements are met;
- Which assets, liabilities, shares, and capital are to be transferred;
- The financial impact the spin-off will have on the affected credit unions;
- The ability of the acquiring credit union to effectively serve the new members;
- The proposed spin-off date; and
- Disclosure to the members of the requirements set forth above.

The spin-off request must also include current financial statements from the affected credit unions and the proposed voting ballot.

For federal credit unions spinning off a portion of the community, membership notice and voting requirements and procedures are the same as for mergers (see Part 708 of the NCUA Rules and Regulations), except that only the members directly affected by the spin-off—those whose shares are to be transferred—are permitted to vote. Members whose shares are not being transferred will not be afforded the opportunity to vote. All members of the group to be spun off (whether they voted in favor, against, or not at all) will be transferred if the spin-off is approved by the voting membership. Voting requirements for federally insured state credit unions are governed by state law.

V.E—Overlaps

V.E.1—General

Generally, an overlap exists when a group of persons is eligible for membership in two or more credit unions. NCUA will permit community credit unions to overlap any other charters without performing an overlap analysis.

V.E.2—Exclusionary Clauses

An exclusionary clause is a limitation precluding the credit union from serving the primary members of a portion of a group or community otherwise included in its field of membership. NCUA no longer grants exclusionary clauses. Those granted prior to the adoption of this new chartering manual will remain in effect unless the credit unions agree to remove them or one of the affected credit unions submits a housekeeping amendment to have it removed.

V.F—Charter Conversions

A community federal credit union may convert to a single occupational or associational, or multiple common bond credit union. The converting credit union must meet all occupational, associational, and multiple common bond requirements, as applicable. The converting credit union may continue to serve members of record of the prior field of membership as of the date of the conversion, and any groups or communities obtained in an emergency merger or P&A. A change to the credit union's field of membership and designated common bond will be necessary.

A community credit union may convert to serve a new geographical area provided the field of membership requirements of V.A.3 of this chapter are met. Members of record of the original community can continue to be served.

V.G—Other Persons With a Relationship to the Community

A number of persons who have a close relationship to the community may be included, at the charter applicant's option, in the field of membership. These include the following:

- Spouses of persons who died while within the field of membership of this credit union;
- Employees of this credit union;
- Volunteers in the community;
- Members of the immediate family or household; and
- Organizations of such persons.

Immediate family is defined as spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Household is defined as persons living in the same residence maintaining a single economic unit.

Membership eligibility is extended only to individuals who are members of an "immediate family or household" of a credit union member. It is not necessary for the primary member to join the credit union in order for the immediate family or household member of the primary member to join, provided the immediate family or household clause is included in the field of membership. However, it is necessary for the immediate family member or household member to first join in order for that person's immediate family member or household member to join the credit union. A credit union can adopt a more restrictive definition of immediate family or household.

Under the Federal Credit Union Act, once a person becomes a member of the credit union, such person may remain a member of the credit union until the person chooses to withdraw or is expelled from the membership of the credit union. This is commonly referred to as "once a member, always a member." The "once a member, always a member" provision does not prevent a credit union from restricting services to members who are no longer within the field of membership.

Chapter 3—Low-Income Credit Unions and Credit Unions Serving Underserved Areas

I—Introduction

One of the primary reasons for the creation of federal credit unions is to make credit available to people of modest means for provident and productive purposes. To help NCUA fulfill this mission, the agency has established special operational policies for federal credit unions that serve low-income groups and underserved areas. The policies provide a greater degree of flexibility that will enhance and invigorate capital infusion into low-income groups, low-income communities, and underserved areas. These unique policies are necessary to provide credit unions serving low-income groups with financial stability and potential for controlled growth and to encourage the formation of new charters as well as the delivery of credit union services in low-income communities.

II—Low-Income Credit Union

II.A—Defined

A credit union serving predominantly low-income members may be designated as a low-income credit union. Section 701.34 of NCUA's Rules and Regulations defines the term "low-income members" as those members:

- Who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics; or
- Whose annual household income falls at or below 80 percent of the median household income for the nation as established by the Census Bureau.

The term "low-income members" also includes members who are full-time or part-time students in a college, university, high school, or vocational school.

To obtain a low-income designation from NCUA, an existing credit union must establish that a majority of its members meet the low-income definition. An existing community credit union that serves a geographic area where a majority of residents meet the annual income standard is presumed to be serving predominantly low-income members. A low-income designation for a new credit union charter may be based on a majority of the potential membership.

II.B—Special Programs

A credit union with a low-income designation has greater flexibility in accepting nonmember deposits insured by the NCUSIF, are exempt from the aggregate loan limit on business loans, and may offer secondary capital accounts to strengthen its capital base. It also may participate in special funding programs such as the Community Development Revolving Loan Program for Credit Unions (CDRLP) if it is involved in the stimulation of economic development and community revitalization efforts.

The CDRLP provides both loans and grants for technical assistance to low-income credit unions. The requirements for participation in the revolving loan program are in Part 705 of the NCUA Rules and Regulations. Only operating credit unions are eligible for participation in this program.

II.C—Low-Income Documentation

A federal credit union charter applicant or existing credit union wishing to receive a low-income designation should forward a separate request for the designation to the regional director, along with appropriate documentation supporting the request.

For community charter applicants, the supporting material should include the median household income or annual wage figures for the community to be served. If this information is unavailable, the applicant should identify the individual zip codes or census tracts that comprise the community and NCUA will assist in obtaining the necessary demographic data.

Similarly, if single occupational or associational or multiple common bond charter applicants cannot supply income data on its potential members, they should provide the regional director with a list which includes the number of potential members, sorted by their residential zip codes, and NCUA will assist in obtaining the necessary demographic data.

An existing credit union can perform a loan or membership survey to determine if the credit union is primarily serving low-income members.

II.D—Third Party Assistance

A low-income federal credit union charter applicant may contract with a third party to assist in the chartering and low-income designation process. If the charter is granted, a low-income credit union may contract with a third party to provide necessary management services. Such contracts should not exceed the duration of one year subject to renewal.

II.E—Special Rules for Low-Income Federal Credit Unions

In recognition of the unique efforts needed to help make credit union service available to low-income groups, NCUA has adopted special rules that pertain to low-income credit union charters, as well as field of membership additions for low-income credit unions. These special rules provide additional latitude to enable underserved, low-income individuals to gain access to credit union service.

NCUA permits credit union chartering and field of membership amendments based on associational groups formed for the sole purpose of making credit union service available to low-income persons. The association must be defined so that all of its members will meet the low-income definition of Section 701.34 of the NCUA Rules and Regulations. Any multiple common bond credit union can add low-income associations to their fields of membership.

A low-income designated community federal credit union has additional latitude in serving persons who are affiliated with the community. In addition to serving members who live, work, worship, or attend school in the community, a low-income community federal credit union may also serve persons who participate in programs to alleviate poverty or distress, or who participate in associations headquartered in the community.

Examples of a low-income designated community and an associational-based low-income federal credit union are as follows:

- Persons who live in [the target area]; persons who work, worship, attend school, or participate in associations headquartered in [the target area]; persons participating in programs to alleviate poverty or distress which are located in [the target area]; incorporated and unincorporated organizations located in [the target area] or maintaining a facility in [the target area]; and organizations of such persons.
- Members of the Canarsie Economic Assistance League, in Brooklyn, NY, an association whose members all meet the low-income definition of Section 701.34 of the NCUA Rules and Regulations.

III—Service to Underserved Communities

III.A—General

All federal credit unions may include in their fields of membership, without regard to location, communities satisfying the definition of underserved areas in the Federal Credit Union Act. Adding an underserved area will not change the charter type of a federal credit union. More than one federal credit union can serve the same underserved area. The Federal Credit Union Act defines an underserved area as a local community, neighborhood, or rural district that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994.

For an underserved area, the well-defined local community, neighborhood, or rural district requirement is met if:

- The area to be served is in a recognized single political jurisdiction, *i.e.*, a city, county, or their political equivalent, or any contiguous portion thereof;
- The area to be served is in multiple contiguous political jurisdictions, *i.e.* a city, county, or their political equivalent, or any contiguous portion thereof and if the population of the requested well-defined area does not exceed 500,000; or
- The area to be served is a Metropolitan Statistical Area (MSA) or its equivalent, or a portion thereof, where the population of the MSA or its equivalent does not exceed 1,000,000.

If the area to be served does not meet the MSA or multiple political jurisdiction requirements outlined above, the application must include documentation to support that it is a

well-defined local community, neighborhood, or rural district.

For an underserved area, an investment area includes any of the following (as reported in the most recently completed decennial census or equivalent government data):

- An area that wholly consists of or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code (26 U.S.C. 1391);
- An area where the percentage of the population living in poverty is at least 20 percent;
- An area in a Metropolitan Area where the median family income is at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater;
- An area outside of a Metropolitan Area, where the median family income is at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;
- An area where the unemployment rate is at least 1.5 times the national average;
- An area meeting the criteria for economic distress that may be established by the Community Development Financial Institutions Fund (CDFI) of the United States Department of the Treasury.

In addition, the local community, neighborhood, or rural district must be underserved, based on data considered by the NCUA Board and the Federal banking agencies.

Once an underserved area has been added to a federal credit union's field of membership, the credit union must establish and maintain an office or facility in the community within two years. A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted and loans are disbursed. This definition includes a credit union owned branch, a shared branch, a mobile branch, an office operated on a regularly scheduled weekly basis, or a credit union owned electronic facility that meets, at a minimum, these requirements. This definition does not include an ATM or the credit union's Internet web site.

If a credit union has a preexisting office within close proximity to the underserved area, then it will not be required to maintain an office or facility within the underserved area. Close proximity will be determined on a case-by-case basis, but the office must be readily accessible to the residents and the distance from the underserved area will not be an impediment to a majority of the residents to transact credit union business.

The federal credit union adding the underserved community must document that the community meets the definition for serving underserved areas in the Federal Credit Union Act. The charter type of a federal credit union adding such a community will not change. Therefore, the credit union will not be able to receive the benefits afforded to low-income designated credit unions, such as expanded use of nonmember deposits and access to the Community Development Revolving Loan Program for Credit Unions.

A federal credit union that desires to include an underserved community in its field of membership must first develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan to determine if the community is being adequately served. The regional director may require periodic service status reports from a credit union about the underserved area to ensure that the needs of the community are being met as well as requiring such reports before NCUA allows a federal credit union to add an additional underserved area.

IV—Appeal Procedures for Underserved Areas

IV.A—NCUA Approval

If the requested underserved area is approved by NCUA, the credit union will be issued an amendment to Section 5 of its charter.

IV.B—NCUA Disapproval

When NCUA disapproves any application to add an underserved area, in whole or in part, under this chapter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

IV.C—Appeal of Regional Director Decision

If the regional director denies an underserved area request, the federal credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. A reconsideration will contain new and material evidence addressing the reasons for the initial denial. The regional director will have 30 days from the date of the receipt of the request for reconsideration to make a final decision. If the request is again denied, the applicant may proceed with the appeal process within 60 days of the date of the last denial. A second request for reconsideration will be treated as an appeal to the NCUA Board.

Chapter 4—Chapter Conversions

I—Introduction

A charter conversion is a change in the jurisdictional authority under which a credit union operates.

Federal credit unions receive their charters from NCUA and are subject to its supervision, examination, and regulation.

State-chartered credit unions are incorporated in a particular state, receiving their charter from the state agency responsible for credit unions and subject to the state's regulator. If the state-chartered credit union's deposits are federally insured, it will also fall under NCUA's jurisdiction.

A federal credit union's power and authority are derived from the Federal Credit Union Act and NCUA Rules and Regulations. State-chartered credit unions are governed by state law and regulation. Certain federal laws and regulations also apply to federally insured state chartered credit unions.

There are two types of charter conversions: federal charter to state charter and state charter to federal charter. Common bond and community requirements are not an issue from NCUA's standpoint in the case of a federal to state charter conversion. The procedures and forms relevant to both types of charter conversion are included in Appendix D.

II—Conversion of a State Credit Union to a Federal Credit Union

II.A—General Requirements

Any state-chartered credit union may apply to convert to a federal credit union. In order to do so it must:

- Comply with state law regarding conversion and file proof of compliance with NCUA;
- File the required conversion application, proposed federal credit union organization certificate, and other documents with NCUA;
- Comply with the requirements of the Federal Credit Union Act, *e.g.*, chartering and reserve requirements; and
- Be granted federal share insurance by NCUA.

Conversions are treated the same as any initial application for a federal charter, including an on-site examination by NCUA where appropriate. NCUA will also consult with the appropriate state authority regarding the credit union's current financial condition, management expertise, and past performance. Since the applicant in a conversion is an ongoing credit union, the economic advisability of granting a charter is more readily determinable than in the case of an initial charter applicant.

A converting state credit union's field of membership must conform to NCUA's chartering policy. The field of membership will be phrased in accordance with NCUA chartering policy. However, if the converting credit union is a multiple group charter and the new federal charter is a multiple group, then the new federal charter may retain in its field of membership any group that the state credit union was serving at the time of conversion. Subsequent changes must conform to NCUA chartering policy in effect at that time.

If the converting credit union is a community charter and the new federal charter is community-based, it must meet the community field of membership requirements set forth in Chapter 2, Section V of this manual. If the state-chartered credit union's community boundary is more expansive than the approved federal boundary, only members of record outside of the new community boundary may continue to be served.

The converting credit union, regardless of charter type, may continue to serve members of record. The converting credit union may retain in its field of membership any group or community added pursuant to state emergency provisions.

II.B—Submission of Conversion Proposal to NCUA

The following documents must be submitted with the conversion proposal:

- Conversion of State Charter to Federal Charter (NCUA 4000);
- Organization Certificate (NCUA 4008). Only Part (3) and the signature/notary section should be completed and, where applicable, signed by the credit union officials.
- Report of Officials and Agreement to Serve (NCUA 4012);
- The Application to Convert From State Credit Union to Federal Credit Union (NCUA 4401);
- The Application and Agreements for Insurance of Accounts (NCUA 9500);
- Certification of Resolution (NCUA 9501);
- Written evidence regarding whether the state regulator is in agreement with the conversion proposal; and
- Business plan, as appropriate, including the most current financial report and delinquent loan schedule.

If the state charter is applying to become a federal community charter, it must also comply with the documentation requirements included in Chapter 2, Section V.A.2 of this manual.

II.C—NCUA Consideration of Application To Convert

II.C.1—Review by the Regional Director

The application will be reviewed to determine that it is complete and that the proposal is in compliance with Section 125 of the Federal Credit Union Act. This review will include a determination that the state credit union's field of membership is in compliance with NCUA's chartering policies. The regional director may make further investigation into the proposal and may require the submission of additional information to support the request to convert.

II.C.2—On-Site Review

NCUA may conduct an on-site examination of the books and records of the credit union. Non-federally insured credit unions will be assessed an insurance application fee.

II.C.3—Approval by the Regional Director and Conditions to the Approval

The conversion will be approved by the regional director if it is in compliance with Section 125 of the Federal Credit Union Act and meets the criteria for federal insurance. Where applicable, the regional director will specify any special conditions that the credit union must meet in order to convert to a federal charter, including changes to the credit union's field of membership in order to conform to NCUA's chartering policies. Some of these conditions may be set forth in a Letter of Understanding and Agreement (LUA), which requires the signature of the officials and the regional director.

II.C.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the conversion.

II.C.5—NCUA Disapproval

When NCUA disapproves any application to convert to a federal charter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- Options to consider, if appropriate, for gaining approval; and
- Appeal procedures.

II.C.6—Appeal of Regional Director Decision

If a conversion to a federal charter is denied by the regional director, the applicant credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but a request for reconsideration by the regional director. The regional director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the application is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

II.D—Action by Board of Directors

II.D.1—General

Upon being informed of the regional director's preliminary approval, the board must:

- Comply with all requirements of the state regulator that will enable the credit union to convert to a federal charter and cease being a state credit union;
- Obtain a letter or official statement from the state regulator certifying that the credit union has met all of the state requirements and will cease to be a state credit union upon its receiving a federal charter. A copy of this document must be submitted to the regional director;
- Obtain a letter from the private share insurer (includes excess share insurers), if applicable, certifying that the credit union has met all withdrawal requirements. A copy of this document must be submitted to the regional director; and

- Submit a statement of the action taken to comply with any conditions imposed by the regional director in the preliminary approval of the conversion proposal and, if applicable, submit the signed LUA.

II.D.2—Application for a Federal Charter

When the regional director has received evidence that the board of directors has satisfactorily completed the actions described above, the federal charter and new Certificate of Insurance will be issued.

The credit union may then complete the conversion as discussed in the following section. A denial of a conversion application can be appealed. Refer to Section II.C.6 of this chapter.

II.E—Completion of the Conversion

II.E.1—Effective Date of Conversion

The date on which the regional director approves the Organization Certificate and the Application and Agreements for Insurance of Accounts is the date on which the credit union becomes a federal credit union. The regional director will notify the credit union and the state regulator of the date of the conversion.

II.E.2—Assumption of Assets and Liabilities

As of the effective date of the conversion, the federal credit union will be the owner of all of the assets and will be responsible for all of the liabilities and share accounts of the state credit union.

II.E.3—Board of Directors' Meeting

Upon receipt of its federal charter, the board will hold its first meeting as a federal credit union. At this meeting, the board will transact such business as is necessary to complete the conversion as approved and to operate the credit union in accordance with the requirements of the Federal Credit Union Act and NCUA Rules and Regulations.

As of the commencement of operations, the accounting system, records, and forms must conform to the standards established by NCUA.

II.E.4—Credit Union's Name

Changing of the credit union's name on all signage, records, accounts, investments, and other documents should be accomplished as soon as possible after conversion. The credit union has 180 days from the effective date of the conversion to change its signage and promotional material. This requires the credit union to discontinue using any remaining stock of "state credit union" stationery immediately, and discontinue using credit cards, ATM cards, etc., within 180 days after the effective date of the conversion, or the reissue date, whichever is later. The regional director has the discretion to extend the timeframe for an additional 180 days. Member share drafts with the state-chartered name can be used by the members until depleted.

II.E.5—Reports to NCUA

Within 10 business days after commencement of operations, the recently converted federal credit union must submit to the regional director the following:

- Report of Officials (NCUA 4501); and
- Financial and Statistical Reports, as of the commencement of business of the federal credit union.

III—Conversion of a Federal Credit Union to a State Credit Union

III.A—General Requirements

Any federal credit union may apply to convert to a state credit union. In order to do so, it must:

- Notify NCUA prior to commencing the process to convert to a state charter and state the reason(s) for the conversion;
- Comply with the requirements of Section 125 of the Federal Credit Union Act that enable it to convert to a state credit union and to cease being a federal credit union; and
- Comply with applicable state law and the requirements of the state regulator.

It is important that the credit union provide an accurate disclosure of the reasons for the conversion. These reasons should be stated in specific terms, not as generalities. The federal credit union converting to a state charter remains responsible for the entire operating fee for the year in which it converts.

III.B—Special Provisions Regarding Federal Share Insurance

If the federal credit union intends to continue federal share insurance after the conversion to a state credit union, it must submit an Application for Insurance of Accounts (NCUA 9600) to the regional director at the time it requests approval of the conversion proposal. The regional director has the authority to approve or disapprove the application.

If the converting federal credit union does not intend to continue federal share insurance or if its application for continued insurance is denied, insurance will cease in accordance with the provisions of Section 206 of the Federal Credit Union Act.

If, upon its conversion to a state credit union, the federal credit union will be terminating its federal share insurance or converting from federal to non-federal share insurance, it must comply with the membership notice and voting procedures set forth in Section 206 of the Federal Credit Union Act and Part 708 of NCUA's Rules and Regulations, and address the criteria set forth in Section 205(c) of the Federal Credit Union Act.

Where the state credit union will be non-federally insured, federal insurance ceases on the effective date of the charter conversion. If it will be otherwise uninsured, then federal insurance will cease one year after the date of conversion subject to the restrictions in Section 206(d)(1) of the Federal Credit Union Act. In either case, the state credit union will be entitled to a refund of the federal credit union's NCUSIF capitalization deposit after the final date on which any of its shares are federally insured.

The NCUA Board reserves the right to delay the refund of the capitalization deposit for up to one year if it determines that payment would jeopardize the NCUSIF.

III.C—Submission of Conversion Proposal to NCUA

Upon approval of a proposition for conversion by a majority vote of the board of directors at a meeting held in accordance with the federal credit union's bylaws, the conversion proposal will be submitted to the regional director and will include:

- A current financial report;
- A current delinquent loan schedule;
- An explanation and appropriate documents relative to any changes in insurance of member accounts;
- A resolution of the board of directors;
- A proposed Notice of Special Meeting of the Members (NCUA 4221);
- A copy of the ballot to be sent to all members (NCUA 4506);
- If the credit union intends to continue with federal share insurance, an application for insurance of accounts (NCUA 9600);
- Evidence that the state regulator is in agreement with the conversion proposal; and
- A statement of reasons supporting the request to convert.

III.D—Approval of Proposal To Convert

III.D.1—Review by the Regional Director

The proposal will be reviewed to determine that it is complete and is in compliance with Section 125 of the Federal Credit Union Act. The regional director may make further investigation into the proposal and require the submission of additional information to support the request.

III.D.2—Conditions to the Approval

The regional director will specify any special conditions that the credit union must meet in order to proceed with the conversion.

III.D.3—Approval by the Regional Director

The proposal will be approved by the regional director if it is in compliance with Section 125 and, in the case where the state credit union will no longer be federally insured, the notice and voting requirements of Section 206 of the Federal Credit Union Act.

III.D.4—Notification

The regional director will notify both the credit union and the state regulator of the decision on the proposal.

III.D.5—NCUA Disapproval

When NCUA disapproves any application to convert to a state charter, the applicant will be informed in writing of the:

- Specific reasons for the action;
- If appropriate, options or suggestions that could be considered for gaining approval; and
- Appeal procedures.

III.D.6—Appeal of Regional Director Decision

If the regional director denies a conversion to a state charter, the applicant credit union may appeal the decision to the NCUA Board. An appeal must be sent to the appropriate regional office within 60 days of the date of denial and must address the specific reason(s) for the denial. The regional director will then forward the appeal to the NCUA Board. NCUA central office staff will make an independent review of the facts and present the appeal to the NCUA Board with a recommendation.

Before appealing, the credit union may, within 30 days of the denial, provide supplemental information to the regional director for reconsideration. The request will not be considered as an appeal, but a request for reconsideration by the regional director. The regional director will have 30 business days from the date of the receipt of the request for reconsideration to make a final decision. If the application is again denied, the credit union may proceed with the appeal process to the NCUA Board within 60 days of the date of the last denial by the regional director.

III.E—Approval of Proposal by Members

The members may not vote on the proposal until it is approved by the regional director. Once approval of the proposal is received, the following actions will be taken by the board of directors:

- The proposal must be submitted to the members for approval and a date set for a meeting to vote on the proposal. The proposal may be acted on at the annual meeting or at a special meeting for that purpose. The members must also be given the opportunity to vote by written ballot to be filed by the date set for the meeting.
- Members must be given advance notice (NCUA 4221) of the meeting at which the proposal is to be submitted. The notice must:
  - Specify the purpose, time and place of the meeting;
  - Include a brief, complete, and accurate statement of the reasons for and against the proposed conversion, including any effects it could have upon share holdings, insurance of member accounts, and the policies and practices of the credit union;
  - Specify the costs of the conversion, *i.e.*, changing the credit union's name, examination and operating fees, attorney and consulting fees, tax liability, etc.;
  - Inform the members that they have the right to vote on the proposal at the meeting, or by written ballot to be filed not later than the date and time announced for the annual meeting, or at the special meeting called for that purpose;
  - Be accompanied by a Federal to State Conversion—Ballot for Conversion Proposal (NCUA 4506); and
  - State in bold face type that the issue will be decided by a majority of members who vote.
- The proposed conversion must be approved by a majority of all of the members who vote on the proposal, a quorum being present, in order for the credit union to proceed further with the proposition, provided federal insurance is maintained. If the proposed state-chartered credit union will not be federally insured, 20 percent of the total membership must participate in the voting, and of those, a majority must vote in favor of the proposal. Ballots cast by members who did not attend the meeting but who submitted their ballots in accordance with instructions above will be counted with votes cast at the meeting. In order to have a suitable record of the vote, the voting at the meeting should be by written ballot as well.
- The board of directors shall, within 10 days, certify the results of the membership vote to the regional director. The statement shall be verified by affidavits of the Chief Executive Officer and the Recording Officer on NCUA 4505.

III.F—Compliance With State Laws

If the proposal for conversion is approved by a majority of all members who voted, the board of directors will:

- Ensure that all requirements of state law and the state regulator have been accommodated;
- Ensure that the state charter or the license has been received within 90 days from the date the members approved the proposal to convert; and
- Ensure that the regional director is kept informed as to progress toward conversion and of any material delay or of substantial difficulties which may be encountered.

If the conversion cannot be completed within the 90-day period, the regional director should be informed of the reasons for the delay. The regional director may set a new date for the conversion to be completed.

III.G—Completion of Conversion

In order for the conversion to be completed, the following steps are necessary:

- The board of directors will submit a copy of the state charter to the regional director within 10 days of its receipt. This will be accompanied by the federal charter and the federal insurance certificate. A copy of the financial reports as of the preceding month-end should be submitted at this time.
- The regional director will notify the credit union and the state regulator in writing of the receipt of evidence that the credit union has been authorized to operate as a state credit union.
- The credit union shall cease to be a federal credit union as of the effective date of the state charter.
- If the regional director finds a material deviation from the provisions that would invalidate any steps taken in the conversion, the credit union and the state regulator shall be promptly notified in writing. This notice may be either before or after the copy of the state charter is filed with the regional director. The notice will inform the credit union as to the nature of the adverse findings. The conversion will not be effective and completed until the improper actions and steps have been corrected.

• Upon ceasing to be a federal credit union, the credit union shall no longer be subject to any of the provisions of the Federal Credit Union Act, except as may apply if federal share insurance coverage is continued. The successor state credit union shall be immediately vested with all of the assets and shall continue to be responsible for all of the obligations of the federal credit union to the same extent as though the conversion had not taken place. Operation of the credit union from this point will be in accordance with the requirements of state law and the state regulator.

• If the regional director is satisfied that the conversion has been accomplished in accordance with the approved proposal, the federal charter will be canceled.

• There is no federal requirement for closing the records of the federal credit union at the time of conversion or for the manner in which the records shall be maintained thereafter. The converting credit union is advised to contact the state regulator for applicable state requirements.

• The credit union shall neither use the words "Federal Credit Union" in its name nor represent itself in any manner as being a federal credit union.

• Changing of the credit union's name on all signage, records, accounts, investments, and other documents should be accomplished as soon as possible after conversion. Unless it violates state law, the credit union has 180 days from the effective date of the conversion to change its signage and promotional material. This requires the credit union to discontinue using any remaining stock of "federal credit union" stationery immediately, and discontinue using credit cards, ATM cards, etc., within 180 days after the effective date of the conversion, or the reissue date, whichever is later. The regional director has the discretion to extend the timeframe for an additional 180 days. Member share drafts with the federal chartered name can be used by the members until depleted. If the state credit union is not federally insured, it must change its name and must immediately cease using any credit union documents referencing federal insurance.

• If the state credit union is to be federally insured, the regional director will issue a new insurance certificate.

BILLING CODE 7535-01-P

APPENDIX A

GLOSSARY

These definitions apply only for use with this Manual. Definitions are not intended to be all inclusive or comprehensive. This Manual, the Federal Credit Union Act, and NCUA Rules and Regulations, as well as state laws, may be used for further reference.

Adequately capitalized - A credit union is considered adequately capitalized when it has a net worth ratio of at least 6 percent. A multiple common bond credit union must be adequately capitalized in order to add new groups to its charter. The regional director may determine that a net worth ratio of less than 6 percent is adequate if the credit union is making reasonable progress toward meeting the 6 percent net worth requirement, and the addition of the group would not adversely affect the credit union's capitalization level.

Affinity - A relationship upon which a community charter is based. Acceptable affinities include living, working, worshiping, or attending school in a community.

Appeal - The right of a credit union or charter applicant to request a formal review of a regional director's adverse decision by the National Credit Union Administration Board.

Associational common bond - A common bond comprised of members and employees of a recognized association. It includes individuals (natural persons) and/or groups (non-natural persons) whose members participate in activities developing common loyalties, mutual benefits, and mutual interests.

Business plan - Plan submitted by a charter applicant or existing federal credit union addressing the economic advisability of a proposed charter or field of membership addition.

Charter - The document which authorizes a group to operate as a credit union and defines the fundamental limits of its operating authority, generally including the persons the credit union is permitted to accept for membership. Charters are issued by the National Credit Union Administration for federal credit unions and by the designated state chartering authority for credit unions organized under the laws of that state.

Common bond - The characteristic or combination of characteristics which distinguishes a particular group of persons from the general public. There are two common bonds which can serve as a basis for a group forming a federal credit union or being included in an existing federal credit union's field of membership: occupational - employment by the same company, related companies or in a trade, industry, or profession (TIP); and associational - membership in the same association.

Community credit union - A credit union whose field of membership consists of persons who live, work, worship, or attend school in the same well-defined local community, neighborhood, or rural district.

Credit union - A member-owned, not-for-profit cooperative financial institution formed to permit those in the field of membership specified in the charter to save, borrow, and obtain related financial services.

Economic advisability - An overall evaluation of the credit union's or charter applicant's ability to operate successfully.

Emergency merger - Pursuant to Section 205(h) of the Federal Credit Union Act, authority of NCUA to merge two credit unions without regard to common bond policy.

Exclusionary clause - A limitation, written in a credit union's charter, which precludes the credit union from serving a portion of a group which otherwise could be included in its field of membership.

Federal share insurance - Insurance coverage provided by the National Credit Union Share Insurance Fund and administered by the National Credit Union Administration. Coverage is provided for qualified accounts in all federal credit unions and participating state credit unions.

Field of membership - The persons (including organizations and other legal entities) a credit union is permitted to accept for membership.

Household - Persons living in the same residence maintaining a single economic unit.

Housekeeping Amendment - A field of membership amendment to delete groups, change group names, change group locations, remove exclusionary clauses, and to add other persons eligible for credit union membership by virtue of their close relationship to a common bond group or the community for community charters.

Immediate family member - A spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

Letter of Understanding and Agreement - Agreement between NCUA and federal credit union officials not to engage in certain activities and/or to establish reasonable operational goals. These are normally entered into with new charter applicants for a limited time.

Mentor - An individual who provides guidance and assistance to newly chartered, small, or low-income credit unions. All new federal credit unions are encouraged to establish a mentor relationship with a trained, experienced credit union individual or an existing credit union.

Metropolitan Statistical Area (MSA) - The Office of Management and Budget defines a metropolitan statistical area as an urbanized area that has at least one urbanized area in excess of 50,000 and "comprises the central county or counties

containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county as measured through commuting."

Merger - Absorption by one credit union of all of the assets, liabilities and equity of another credit union. Mergers must be approved by the National Credit Union Administration and by the appropriate state regulator whenever a state credit union is involved.

Multiple common bond credit union - A credit union whose field of membership consists of more than one group, each of which has a common bond of occupation or association.

Occupational common bond - Employment by the same entity or related entities or a Trade, Industry, or Profession.

Once a member, always a member - A provision of the Federal Credit Union Act which permits an individual to remain a member of the credit union until he or she chooses to withdraw or is expelled from the membership of the credit union. Under this provision, leaving a group that is named in the credit union's charter does not terminate an individual's membership in the credit union.

Organizations of such persons - An organization or organizations composed exclusively of persons who are within the field of membership of the credit union.

Overlap - The situation which results when a group is eligible for membership in more than one credit union.

Primary potential members - Members or employees who belong to an associational or occupational group.

Purchase and assumption - Purchase of all or part of the assets of and assumption of all or part of the liabilities of one credit union by another credit union. The purchased and assumed credit union must first be placed into involuntary liquidation.

Service area - The area that can reasonably be served by the service facilities accessible to the groups within the field of membership.

Service facility - A place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed. This definition includes a credit union owned branch, a mobile branch, an office operated on a regularly scheduled weekly basis, a credit union owned ATM, or a credit union owned electronic facility that meets, at a minimum, these requirements. A service facility also includes a shared branch or a shared branch network if either: (1) the credit union has an ownership interest in the service facility either directly or through a CUSO or similar organization; or (2) the service facility is local to the credit union and the credit union is an authorized participant in the service center. This definition does not include the credit union's Internet website. A service facility does not include an

ATM or interest in a shared branch network for purposes of serving an underserved area.

Single associational common bond credit union - A credit union whose field of membership includes members and employees of a recognized association.

Single common bond credit union - A credit union whose field of membership consists of one group which has a common bond of occupation or association.

Single occupational common bond credit union - A credit union whose field of membership consists of employees of the same entity or related entities or part of a Trade, Industry, or Profession (TIP).

Spin-off - The transfer of a portion of the field of membership, assets, liabilities, shares, and capital of one credit union to a new or existing credit union.

Subscribers - For a federal credit union, at least seven individuals who sign the charter application and pledge at least one share.

Trade, Industry, or Profession (TIP) - A single occupational common bond credit union based on employment in a trade, industry, or profession including employment at any number of corporations or other legal entities that while not under common ownership – have a common bond by virtue of producing similar products, providing similar services, or participating in the same type of business.

Underserved community - A local community, neighborhood, or rural district that is an "investment area" as defined in Section 103(16) of the Community Development Banking and Financial Institutions Act of 1994. The area must also be underserved based on other NCUA and federal banking agency data.

Unsafe or unsound practice - Any action, or lack of action, which would result in an abnormal risk or loss to the credit union, its members, or the National Credit Union Share Insurance Fund.

APPENDIX B

LETTER OF UNDERSTANDING AND AGREEMENT

To the Board of Directors and Other Officials
_____ Federal Credit Union

Since the purposes of credit unions are to promote thrift and to make funds available for loans to credit union members for provident and productive purposes, and since newly chartered credit unions do not generally have sufficient reserves to cover large losses on loans or meet unduly large liquidity requirements, Federal insurance coverage of member accounts under the National Credit Union Share Insurance Fund will be granted to the above named credit union subject to the conditions listed in this Letter of Understanding and Agreement and in the Organization Certificate and Application and Agreements for Insurance of Accounts. These terms are listed below and are subject to acceptance by authorized credit union officials.

1. The credit union will refrain from soliciting or accepting brokered fund deposits from any source without the prior written approval of the Regional Director.

2. The credit union will refrain from the making of large loans, that is, loans in excess of 5 percent of unimpaired capital and surplus, to any one member or group of members without the prior written approval of the Regional Director.

3. The credit union will not establish or invest in a Credit Union Service Organization (CUSO) without the prior written approval of the Regional Director.

4. The credit union will not enter into any insurance programs whereby the credit union member finances the payment of insurance premiums through loans from the credit union.

5. Any special insurance plan/program, that is, insurance other than usual and normal surety bonding or casualty or liability or loan protection and life savings insurance coverage, which the credit union officials intend to undertake, will be submitted to the Regional Director of the National Credit Union Administration for written approval prior to the officials committing the credit union thereto.

6. The credit union will prepare and mail to the district examiner financial and statistical reports as required by the Federal Credit Union Act and Bylaws by the 20th of each month following that for which the report is prepared.

7. As the credit union's officials gain experience and the credit union achieves target levels of growth and profitability, the above terms and conditions may be renegotiated by the two parties.

We, the undersigned officials of the _____ Federal Credit Union, as authorized by the board of directors, acknowledge receipt of and agree to the attached Letter of Understanding and Agreement dated _____.

This Letter of Understanding and Agreement has been voluntarily entered into with the National Credit Union Administration. We agree to comply with all terms and conditions expressed in this Letter of Understanding and Agreement.

Should the NCUA Board determine that these terms and conditions have not been complied with or that the board of directors or other officials have not conducted the affairs of the credit

union in a sound and prudent manner, the NCUA Board may terminate insurance coverage of the credit union. If actions by the officials, in violation of this Letter of Understanding and Agreement, cause the credit union to become insolvent, the officials assume such personal liability as may result from their actions.

The term of this Letter of Understanding and Agreement shall be for the period of at least 24 months from the date the credit union is insured. This Letter of Understanding and Agreement may, at the option of the Regional Director, be extended for an additional 24 months at the end of the initial term of this agreement.

Dated this _____ (day) of _____ (month) _____ (year).

NATIONAL CREDIT UNION ADMINISTRATION BOARD
ON BEHALF OF THE NATIONAL CREDIT UNION SHARE INSURANCE FUND

_____
Regional Director

_____ Federal Credit Union

By:

_____
Chief Executive Officer Date

_____
Chief Financial Officer Date

_____
Secretary Date

APPENDIX C

NCUA OFFICES

CENTRAL OFFICE

1775 Duke Street
Alexandria, VA 22314-3428

Commercial: 703-518-6300

REGION I - Albany

9 Washington Square
Washington Avenue Extension
Albany, NY 12205-5512

Commercial: 518-862-7400
FAX: 518-862-7420

Connecticut Maine
Massachusetts New Hampshire
New York Rhode Island
Vermont

REGION II - Capital

1775 Duke Street, Suite 4206
Alexandria, VA 22314-3437

Commercial: 703-519-4600
FAX: 703-519-4620

Delaware District of Columbia
Maryland New Jersey
Pennsylvania Virginia

REGION III - Atlanta

7000 Central Parkway, Suite 1600
Atlanta, GA 30328-4598

Commercial: 678-443-3000
FAX: 678-443-3020

Alabama Arkansas
Florida Georgia
Kentucky Louisiana
Mississippi North Carolina
Puerto Rico South Carolina
Tennessee Virgin Islands

REGION IV - Chicago

4225 Naperville Road, Suite 125
Lisle, IL 60532-3658

Commercial: 630-955-4100
FAX: 630-955-4120

Illinois Indiana
Michigan Missouri
Ohio Wisconsin
West Virginia

REGION V - AUSTIN

4807 Spicewood Springs Road, Suite 5200
Austin, TX 78759-8490

Commercial:	512-342-5600
FAX:	512-342-5620

Arizona	Colorado
Iowa	Kansas
Minnesota	Nebraska
New Mexico	North Dakota
Oklahoma	South Dakota
Texas	

REGION VI - Pacific

2300 Clayton Road, Suite 1350
Concord, CA 94520-2407

Commercial:	925-363-6200
FAX:	925-363-6220

Alaska	California
Guam	Hawaii
Idaho	Montana
Nevada	Oregon
Utah	Washington
Wyoming	

APPENDIX D

NCUA FORMS

Form Number	Form Title
NCUA 4000	Conversion of State Charter to a Federal Charter – Federal Credit Union Investigation Report
NCUA 4001	Federal Credit Union Investigation Report
NCUA 4008	Organization Certificate
NCUA 4009	Approval of Organization Certificate and Certification of Insurance
NCUA 4012	Report of Official and Agreement to Serve
NCUA 4015	Application for Field of Membership Amendment
NCUA 4015-EZ	Application for Field of Membership Amendment (use for all single common bond expansions and multiple common bond expansions of less than 3,000)
NCUA 4221	Notice of Meeting of Members to Convert from a Federal to State Chartered Credit Union
NCUA 4401	Application to Convert from a State to a Federal Credit Union
NCUA 4505	Affidavit - Proof of Results of Membership Vote - Proposed Conversion From Federal Credit Union to State Credit Union
NCUA 4506	Federal to State Conversion - Ballot for Conversion Proposal
NCUA 9500	Application and Agreements for Insurance of Accounts
NCUA 9501	Certification of Resolutions
NCUA 9600	Information to be Provided in Support of the Application of a State Chartered Credit Union for Insurance of Accounts

CONVERSION OF STATE CHARTER TO FEDERAL CHARTER

FEDERAL CREDIT UNION INVESTIGATION REPORT

This report must be filled in completely and submitted with the other completed forms listed in Chapter 4 and in the instructions for this form.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed Name: _____ Federal Credit Union
Second Choice of Name: _____ Federal Credit Union

2. Contact Person_____
Bus. Tel. No./Area Code: _____Res. Tel. No./Area Code_____

3. The credit union will maintain its office at:

_____ _____ _____ _____
(City) (County) (State) (Zip)

4. Permanent mailing address of credit union:

_____
_____
_____

5. Define proposed field of membership (Attach a copy of current state charter field of membership):

_____
_____
_____

6. The board will have (an odd number 5 to 15) _____ members; the credit committee (an odd number, 3 to 7) _____ members; the supervisory committee (3 to 5) _____ members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

7. Type or print the list of the subscribers who have signed the organization certificate (7 not more than 10 persons). Names should be IDENTICAL to signatures on the Organization Certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name:	***Address:***	
Occupation:		***Years of Membership:***
Name:	***Address:***	
Occupation:		***Years of Membership:***
Name:	***Address:***	
Occupation:		***Years of Membership:***
Name:	***Address:***	
Occupation:		***Years of Membership:***
Name:	***Address:***	
Occupation:		***Years of Membership:***
Name:	***Address:***	
Occupation:		***Years of Membership:***
Name:	***Address:***	
Occupation:		***Years of Membership:***
Name:	***Address:***	
Occupation:		***Years of Membership:***
Name:	***Address:***	
Occupation:		***Years of Membership:***

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of his/her knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.
Signature _____, Organizer
Organizer's Address: _____
_____
_____

FORM 4000 INSTRUCTIONS

A. INFORMATION FOR CHARTERS AND BYLAWS

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in its trade area. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal credit union is described in the field of membership, item 5. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. Any segment of a larger organization should be identified with the parent. The field of membership for each type of common bond and samples are discussed in detail in Chapter 2 of the "*Chartering and Field of Membership Manual*."

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and address of the subscribers should be recorded legibly and completely in item 7 of this report. It is from this information that the National Credit Union Administration prepares Section 3 of the charter. The names of the subscribers must be IDENTICAL to their signatures on the Organization Certificate.

C. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Application to Convert, NCUA 4401 – one original;

2. Written evidence regarding whether the state regulator is in agreement with the conversion proposal;

3. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original;

4. Certificate of Resolution, NCUA 9501 - one original;

5. Organization Certificate, NCUA 4008 - one notarized original. At least seven, *but no more than ten persons*, must sign the organization certificate. The person administering the oath must not be one of the subscribers. The oath on the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;

6. Report of Official and Agreement to Serve, NCUA 4012 – one original for each board member, credit committee member, and supervisory committee member;

7. Most current financial report and delinquent loan schedule; and

8. Business Plan - refer to Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan.

FEDERAL CREDIT UNION INVESTIGATION REPORT

This form must be filled in completely and submitted with the other completed forms listed in the instructions to this form.

A. INFORMATION FOR CHARTER AND BYLAWS

1. Proposed name: _____ Federal Credit Union
Second choice: _____ Federal Credit Union

2. Contact Person: _____
Business Tel.: _____
Residence Tel.: _____
Address: _____
_____
_____

3. The credit union will maintain its offices at:

_____
(City, State, County, Zip Code)

3a. Proposed permanent mailing address of credit union:

_____
_____
_____

4. Define proposed field of membership: _____
_____
_____
_____
_____
_____
_____
_____
_____

5. The board will have (an odd number, 5 to 15) _____members; the credit committee will have (an odd number, 3 to 7) _____members; the supervisory committee will have (3 to 5) _____members. Each official must complete a Report of Official and Agreement to Serve (NCUA 4012) which is to be submitted with this investigation report.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

(Attach a separate sheet if space available is not adequate.)

GENERAL INFORMATION

1. **Potential membership: _____**

   NOTE: Number of employees for occupational, active members for associational (or families for religious groups), or population per most recent census for community-type fields of membership.

2. **Potential interest (survey results).**

   NOTE: Sample must consist of a minimum of 250 potential members. Copy of survey form(s) utilized should be attached.

   Number of people surveyed: _____
   Number of people responding to survey: _____
   Number of people pledging an initial deposit: _____
   Total dollars pledged: $_____
   Number pledging systematic savings: _____
   Total dollars pledged (per month): $_____

3. **Number of persons attending the charter-organization meeting: _____**

4. **Attach a business plan containing, at a minimum, the following elements:**

   - **mission statement;**
   - **analysis of market conditions, including if applicable, geographic, demographic, employment, income, housing, and other economic data;**
   - **evidence of member support;**
   - **goals for shares, loans, and for number of members;**
   - **financial services needed/desired;**
   - **financial services to be provided to members of all segments within the field of membership;**
   - **how/when services are to be implemented;**
   - **organizational/management plan addressing qualification and planned training of officials/employees;**

   - **continuity plan for directors, committee members, and management staff;**
   - **operating facilities, to include office space/equipment and supplies, safeguarding of assets, insurance coverage, etc.;**
   - **type of record keeping and data processing system;**
   - **detailed semiannual pro forma financial statements (balance sheet, income and expense projections) for 1st and 2nd year, including assumptions - e.g., loan and dividend rates;**
   - **plans for operating independently;**
   - **written policies (shares, lending, investments, funds management, capital accumulation, dividends, collections, etc.);**
   - **source of funds to pay expenses during initial months of operation, including any subsidies, assistance, etc., and terms or conditions of such resources; and**
   - **evidence of sponsor commitment (or other source of support) if subsidies are critical to success of the federal credit union. Evidence may be in the form of letters, contracts, financial statements from the sponsor, and any other such document on which the proposed federal credit union can substantiate its projections.**

5. **What potential difficulties do you detect in the elected officials carrying out their management responsibilities or in the FCU achieving its stated objectives?**

   _____
   _____
   _____
   _____

6. **What provisions have been made to overcome potential difficulties?**

   _____
   _____
   _____
   _____

Dates of planned contacts by organizer to determine progress and to assist the group:

First Contact Date: _____
Second Contact Date: _____
Third Contact Date: _____

SPECIFIC INFORMATION - OCCUPATIONAL (same company) CHARTER APPLICANTS

1. How long has the sponsor company been in existence? _____

2. What was the highest number of employees during the past three years? _____ Lowest number during the past three years? _____ If a large variance, please explain. _____

3. Are there any contemplated changes in the corporate structure of the company? _____ If yes, explain. _____

4. Have there been any significant changes in the corporate structure in the past three years? _____ If yes, please explain. _____

5. Are there any negotiations now in progress between management and labor that could lead to work stoppages? _____ If yes, please explain. _____

6. If the credit union cannot operate on the employer's property, explain how the credit union will be able to transact business effectively with the members.

7. If the employees to be served by the credit union work in more than one location or city, identify each location with the corresponding number of employees working at each. _____

8. Are there other employees of the company who are not being included in the proposed field of membership? _____ If so, give the number and location of the other employees and explain why they are not included in the proposed credit union's field of membership. _____

SPECIFIC INFORMATION - OCCUPATIONAL (trade, industry or profession) CHARTER APPLICANTS

1. Explain how the credit union will be able to transact business effectively with the members. _____

SPECIFIC INFORMATION - ASSOCIATIONAL CHARTER APPLICANTS

1. State the purpose and goals of the organization sponsoring this charter.

2. List the types of activities and their frequency, which the organization sponsors that provide contact among the members and from which common loyalties, mutual benefits, and mutual interests are developed. _____

3. In what year was the organization established? _____ **Is it incorporated?** _____
Where is the headquarters located? _____

4. Give statistics as to trends in membership during the last five years. _____

5. What is the frequency of membership meetings? _____
Average attendance: _____ **Dues required: $**_____

6. State the geographic territory where members reside. _____

7. Submit a copy of the current bylaws of the association, the constitution, articles of incorporation, or equivalent documentation and recent financial statements, i.e. balance sheet, and income and expense statement, with this application.

8. If the bylaws, constitution, articles of incorporation, or equivalent documentation provide for more than one type of membership and if all classes of membership are to be included in the credit union's field of membership, provide justification for the inclusion of other than "regular" members.

SPECIFIC INFORMATION – MULTIPLE COMMON BOND CHARTER APPLICANTS

1. Explain how the credit union will be able to transact business effectively with the members.

SPECIFIC INFORMATION - COMMUNITY CHARTER APPLICANTS

1. Community charters must be based on a well-defined local community, neighborhood, or rural district where individuals have common interests and/or interact. Please refer to Chapter 2, Section V of the *"Chartering and Field of Membership Manual"* when answering this question.

2. Provide a map which clearly outlines the credit union's proposed community boundaries and identify proposed service facilities.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

1. List of subscribers who have signed the Organization Certificate (7 not more than 10 persons). Names should be IDENTICAL to signature on the Organization Certificate (NCUA 4008). Each subscriber listed below has subscribed to at least one share in accordance with Section 103 of the Federal Credit Union Act:

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

Name: _____
Address: _____
_____
Occupation: _____
Years of Residence: _____

2. Are all of the subscribers within the field of membership? _____ Do they appear to be representative of the group described in the definition of the field of membership? _____ If not, explain. _____

3. Does your investigation indicate that the subscribers are persons of good character? _____ If not, explain. _____

4. From your investigation, is it your judgment that the directors and committee members are persons of good character, and that they have the ability and determination to operate a credit union satisfactorily? _____ If not, explain. _____

5. Does it appear that there are any factions within the group which may render smooth and efficient credit union operations difficult? _____ If so, explain. _____

6. Is there any indication that the proposed credit union would be used for selfish gain by any person or group of persons within the group to be served?_____

7. Is an application for a State Charter now pending? _____

8. Has the group ever had a credit union? _____ If so, when did it liquidate or merge? _____

ANY ADDITIONAL COMMENTS OR INFORMATION THAT IS DEEMED PERTINENT OR HELPFUL IN GIVING CONSIDERATION TO THIS APPLICATION SHOULD BE INCLUDED AS AN ATTACHMENT.

The undersigned certifies that to the best of their knowledge and belief the above information is true and correct.

I do (do not) recommend that a charter be granted to this group.

Signature: _____, Organizer
Organizer's Address: _____
_____
_____
Telephone No.: _____ Date: _____

FORM 4001 INSTRUCTIONS

A. INFORMATION FOR CHARTER AND BYLAWS

The subscriber should select a name for the proposed credit union. It is the responsibility of the federal credit union organizers to ensure that the proposed federal credit union name does not constitute an infringement on the name of any corporation in its trade area. The last three words in the name must be "Federal Credit Union." Since the name selected should not duplicate exactly the name of an existing credit union, item 1 provides space for a second choice.

The territory of operations of a Federal Credit Union is described in the field of membership, item 4. The principal office of the credit union will usually be maintained at a location described in the field of membership.

The proposed field of membership should be defined so clearly that it leaves no room for any doubt as to whom the credit union is to serve or the area which it is to operate. Corporations and other organizations referred to in the definition of the field of membership should be designated by the exact names rather than by some local or popular contraction of these names. The field of membership for each type of common bond and samples are discussed in detail in Chapter 2 of the "*Chartering and Field of Membership Manual*."

With the guidance of the organizer, the subscribers to the Organization Certificate decide on the number of directors and credit committee members. The board and credit committee must be composed of an odd number of members. The supervisory committee is appointed by the board of directors.

B. ECONOMIC ADVISABILITY OF ORGANIZING PROPOSED CREDIT UNION

This section of the report contains information on the required business plan elements and other information needed to make a decision on the economic advisability of chartering the proposed credit union.

C. CHARACTER AND FITNESS OF SUBSCRIBERS

The names and addresses of the subscribers should be recorded legibly and completely in item C. 1. of this report. It is from this information that the National Credit Union Administration prepares Section 3 of the charter. The names of the subscribers must be IDENTICAL to their signatures on the Organization Certificate.

D. SUBMITTAL OF CHARTER APPLICATION

In addition to this Investigation Report, the following should be submitted to the appropriate regional director of NCUA:

1. Organization Certificate, NCUA 4008 - one notarized original. At least seven, *but no more than ten persons*, must sign the organization certificate. The person administering the oath must not be one of the subscribers. The oath on the organization certificate must be executed and show the notary's seal and date the commission expires as required by State law;

2. Report of Official and Agreement to Serve, NCUA 4012 – one original for each board member, credit committee member, and supervisory committee member;

3. Business Plan - refer to Part B, question 4 of this form and Chapter 1 of the *Chartering and Field of Membership Manual* for a discussion of the components of an acceptable business plan;

4. Application and Agreements for Insurance of Accounts, NCUA 9500 - one original; and

5. Certification of Resolutions, NCUA 9501 - one original.

NATIONAL CREDIT UNION ADMINISTRATION

_____

FEDERAL CREDIT UNION

(A corporation chartered under
the laws of the United States)

CHARTER NO. _____

NCUA 4008
PAGE 1

ORGANIZATION CERTIFICATE

_____ FEDERAL CREDIT UNION

Charter No. _____

TO NATIONAL CREDIT UNION ADMINISTRATION:

We, the undersigned, do hereby associate ourselves as a Federal Credit Union for the purposes indicated in and in accordance with the provisions of the Federal Credit Union Act, (12 U.S.C. 1751 et seq.). We hereby request approval of this organization certificate; we hereby apply for insurance of member accounts; we agree to comply with the requirements of said Act, with the terms of this organization certificate and with all laws, rules, and regulations now or hereafter applicable to Federal Credit Unions.

(1) The name of this credit union shall be _____ Federal Credit Union.

(2) This credit union will maintain its office and will operate in the territory described in the field of membership.

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PAGE 2

(3) The names and addresses of the subscribers to this certificate and the number of shares subscribed by each are as follows:

NAME	ADDRESS	SHARES

(4) The par value of the shares of this credit union will be stated in the bylaws.

(5) The field of membership shall be limited to those having the following common bond: _____

_____

_____

_____

_____

_____

_____

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PAGE 3

(6) The term of this credit union's existence shall be perpetual: Provided, however, that upon the finding that this credit union is bankrupt or insolvent or has violated any provision of this organization certificate, of the bylaws, of the Federal Credit Union Act including any amendments thereto or thereof, or of any regulations issued thereunder, this organization certificate may be suspended or revoked under the provisions of Section 120(b) of the Federal Credit Union Act.

(7) This certificate is made to enable the undersigned to avail themselves of the advantages of said Act.

(8) The management of this credit union, the conduct of its affairs, and the powers, duties, and privileges of its directors, officers, committees and membership shall be set forth in the approved bylaws and any approved amendments thereto or thereof.

IN WITNESS THEREOF we[1] have here unto subscribed our names this

_____ _____ _____
(day) (month) (year)

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

Subscribed before me, an officer competent to

administer oaths, at _____
CITY/STATE

this _____ _____ _____
(day) (month) (year)

Signed _____

Title _____
(Notary public or other competent officer)

1 At least seven signers none of whom should administer the oath.

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PAGE 4

APPROVAL OF ORGANIZATION CERTIFICATE
AND
CERTIFICATION OF INSURANCE

Pursuant to the provisions of the Federal Credit Union Act (12 U.S.C. 1751 et. Seq.), the foregoing organization certificate and insurance of member accounts of _____ Federal Credit Union are approved this

_____ _____ _____
(day) (month) (year)

_____
CHAIRPERSON
NATIONAL CREDIT UNION ADMINISTRATION

REPORT OF OFFICIAL AND AGREEMENT TO SERVE

TO: NATIONAL CREDIT UNION ADMINISTRATION

Proposed _____ Federal Credit Union

Title of Prospective Position: _____

Name: _____
Mr./Ms./Mrs. Last, First, Middle

Maiden Name (If Different From Above): _____

Address (Res.): _____
Street, City, State, Zip Code

Telephone Number: (___)_____

Place of Birth: _____ Date of Birth: _____
City/State/Country

Employer: _____

Social Security Number (Optional): _____

Type of Business: _____

Number of years with present employer: _____ Your position title: _____

Education background (enter highest grade completed)
High School: _____ College: _____ Major Field of Study: _____

Other training or experience:

_____
_____
_____
_____

Are you willing to accept the position of trust for which you have been selected and to remain in office until a qualified successor is found? ___ YES ___ NO

Have you been informed as to the general duties and responsibilities of an official of the proposed Federal Credit Union and are you willing to devote the time necessary to familiarize yourself with and to perform your duties?
___ YES ___ NO

Estimated number of hours per month you will be able to volunteer:_____

IF THE ANSWER IS YES TO THE FOLLOWING QUESTION, PLEASE PROVIDE INFORMATION AS INSTRUCTED ON THE FOLLOWING PAGE:

Have you ever been convicted of any CRIMINAL OFFENSE involving dishonesty or a breach of trust? ___ YES ___ NO

To facilitate the process of obtaining a credit and background check, please provide the following:

1. Any other names which you have used: _____and,
2. Previous address, (if your address changed over the past 2 years):

_____
_____
_____

3. Name of Spouse: _____

READ THE FOLLOWING CAREFULLY BEFORE SIGNING

CERTIFICATION AND AGREEMENT TO SERVE

I certify that the information provided on this form is true and correct. Further, I, the undersigned, having been duly designated to occupy the position(s) indicated above, do hereby agree to serve in the above-stated office(s) of this proposed credit union until the first annual meeting held in accordance with the Federal Credit Union Act and the bylaws of this credit union and until the election of my successor(s). I further pledge to carry out the duties and responsibilities commensurate with said office(s) as promulgated by the Federal Credit Union Act and the bylaws of this credit union. I have read the Privacy Act Notice that follows.

Date Signature Witness

PRIVACY ACT NOTICE

The Privacy Act of 1974 (Public Law 93-579) requires that you be advised as to the legal authority, purpose and uses of the information solicited by this form. Pursuant to Sections 104 and 205(d) of the Federal Credit Union Act, the information in this form is requested for the purpose of completing the investigation required for a new Federal credit union. The information in this form will be primarily used in considering the soundness of the management for the proposed Federal credit union. However, this form may be disclosed to any of the following sources: a congressional office in response to your inquiry to that office; an appropriate Federal, state or local authority in the investigation or enforcement of a statute or regulation; or employees of a Federal agency for audit purposes. Failure to complete this form or omission of any item of information, except for disclosure of your social security number, may result in a delay in the process for chartering the proposed Federal credit union. In accordance with Section 792.68 of NCUA's regulations, you are not required to furnish your social security number on this form. Your social security number, if voluntarily provided, will be used to more easily verify the information required by this form. No penalty will result to you as a management official or to the chartering of the proposed Federal credit union if you do not provide your social security number.

Further information needed if answer to CRIMINAL OFFENSE question on the previous page was YES:

CRIMINAL OFFENSE:

Nature of offense: _____
Date of occurrence: _____ Date of conviction: _____
Sentence conferred: _____
(Attach a separate sheet if space provided is not adequate)

CRIMINAL OFFENSE GUIDELINES

The Federal Credit Union Act, Subchapter II, Section 205(d), requires that, except with the written consent of the NCUA Board, no person shall serve as director, officer, committee member, or employee of an insured credit union who has been convicted or who is hereafter convicted, of any criminal offense involving dishonesty or breach of trust. To assist the NCUA Board in making a determination of the fitness of a person who is selected to serve and who the organizer believes is qualified to serve as an official, the specific information above will need to be furnished.

If the NCUA Board believes that, in view of the facts presented and the date of the offense, they can give their consent to the appointment they will so advise that person in writing. If on the other hand, the NCUA Board believes after careful consideration that they cannot in good conscience give their written consent to the appointment they will contact the organizer and ask that another person be selected for the position. The person selected will have to complete a Report of Official and Agreement to Serve.

An indication of whether the bonding company would agree to provide coverage should be included if the person is to serve as treasurer. Bonding company agrees to provide coverage: ___ YES ___ NO

AUTHORIZATION TO OBTAIN A CREDIT REPORT

The National Credit Union Administration (NCUA) may evaluate the competence, experience, character, and integrity of any individual who is to serve as an official, employee, or committee member of a federally insured credit union, in accordance with §1790a of the Federal Credit Union Act and Chapter 1, §V.B.4 of the NCUA Chartering and Field of Membership Manual.

NCUA may disapprove any individual whose employment it believes will not be in the best interest of the credit union or of the public. To assist in the evaluation process, NCUA may obtain and review an individual's credit report.

Your signature on this document authorizes NCUA to obtain a copy of your credit report.

Last First Middle

Social Security Number: _____

Date of Birth: _____

Signature Date

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT
NCUA FORM 4015

USE FOR MULTIPLE COMMON BOND EXPANSION FOR GROUPS OF 3,000 OR MORE PERSONS

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union: _____ Telephone Number: _____ Charter Number: _____

2. Name and address of group: _____ Telephone Number: _____

If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.

3. Provide the proposed field of membership wording. Use the example wording found in NCUA's *Chartering and Field of Membership Manual*, Chapter 2, Section IV.A.2.

4. How many primary potential members (excluding immediate family and household members) are in the group:

5. (a) What is the distance between the group's location and your credit union's nearest service facility[1] to which the group has access (Reference Chapter 2, Section IV.A.1):

(b) What is the address of this service facility:

[1] A service facility is defined as a place where shares are accepted for members' accounts, loan applications are accepted or loans are disbursed.

(c) Describe the service area[2] primarily served by the above service facility:

6. Is the group in the field of membership of any other credit union? Yes___ No___

If yes, and the overlapped credit union is not a community credit union or a non-federally insured credit union, please address the following:

☐ Provide the name and location of the other servicing credit union:

☐ Include a letter from the overlapped credit union indicating whether it concurs or objects to the overlap. If the overlapped credit union objects or fails to respond, document attempts to resolve the issue:

☐ Explain how the expansion's beneficial effect in meeting the convenience and needs of the members of the group clearly outweighs any adverse effect on the overlapped credit union:

[2] A federal credit union's service area is the area that can reasonably be served by the service facility accessible to the groups within the field of membership. It will most often coincide with that geographic area primarily served by the service facility.

7. Attach a letter, or equivalent documentation, from the group requesting credit union service indicating:

- ☐ that the group wants to be added to the federal credit union's field of membership;
- ☐ whether the group presently has other credit union service available;
- ☐ the number of persons currently included within the group to be added and the group's location(s);
- ☐ the group's proximity to the credit union's nearest service facility; and
- ☐ why the formation of a separate credit union for the group is not practical or consistent with safety and soundness standards. *The formation of a separate credit union may not be practical if the group lacks sufficient volunteers or resources to support the operation of a credit union or does not meet the economic advisability criteria outlined in Chapter 1 of NCUA's Chartering and Field of Membership Manual.*

8. Other comments:

_____
_____
_____
_____
_____
_____

Name and title of credit union board-authorized representative (e.g., President/CEO):

_____ _____ _____
(Typed/Printed Name) (Signature) (Date)

APPLICATION FOR FIELD OF MEMBERSHIP AMENDMENT
NCUA FORM 4015-EZ

USE FOR MULTIPLE COMMON BOND EXPANSIONS OF LESS THAN 3,000 PERSONS AND ALL SINGLE COMMON BOND EXPANSIONS

Attach a separate application for each group included in your request for expansion. The application must be complete or it will be returned unprocessed.

1. Name and address of credit union: _____ Telephone Number: _____ Charter Number: _____

2. Name and address of group: _____ Telephone Number: _____

If the group is an association, include a copy of the association's Charter/Bylaws or other equivalent organizational documentation.

3. Provide the proposed field of membership wording: _____

4. **Multiple Common Bond Expansions Only:** Attach a letter, or equivalent documentation, from the group requesting credit union service indicating:

- ☐ that the group wants to be added to the federal credit union's field of membership;
- ☐ the number of persons to be added and the group's location(s); and
- ☐ the group's distance to the credit union's nearest service facility.

5. **Single Common Bond Expansions Only:** How the group shares the occupational or associational common bond _____
How many primary potential members (excluding immediate family and household members) are in the group: ____

Name and title of credit union board-authorized representative (e.g., President/CEO):

_____ _____ _____
(Typed/Printed Name and Title) (Signature) (Date)

NOTICE OF MEETING OF MEMBERS TO CONVERT FROM A FEDERAL TO A STATE CHARTERED CREDIT UNION

_____ FEDERAL CREDIT UNION

_____ (City) _____ (State)

THIS PROPOSITION WILL BE DECIDED BY A MAJORITY OF THE MEMBERS WHO VOTE.

Notice is hereby given that a meeting of the members of _____ Federal Credit Union has been called and will be held at _____ on _____, at _____ o'clock, __.M. for the purpose of considering and voting upon the following resolution:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and that its operation under Federal charter be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union and are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."

The board of directors of this credit union has given careful consideration to the advantages and the disadvantages of the proposed conversion and believes it to be in the best interest of the members for the following reasons:

The proposed conversion would result in the following disadvantages or adverse changes in services and benefits to the members of the credit union:

The proposed conversion would result in the following costs of conversion (i.e. changing the credit unions name, examination and operating fees, attorney and consulting fees, tax liability, etc):

The board of directors recommends that the members approve the proposal to convert to a State charter.

The members' accounts will ☐ will not ☐ continue to be insured by the National Credit Union Share Insurance Fund.

Attached is your ballot. You are urged to bring your ballot to the meeting and to cast your vote after hearing the discussion of the proposal. If you cannot attend the meeting, you are urged to mark your vote, date and sign your ballot, and return it to the following address by no later than the date and the time announced for the meeting of the members:

BY ORDER OF THE BOARD OF DIRECTORS

_____
TITLE: _____
(CHAIRPERSON)

_____
TITLE: _____
(BOARD SECRETARY)

Issued _____ (Date)

NCUA 4221 PAGE 3

APPLICATION TO CONVERT FROM A STATE TO A FEDERAL CREDIT UNION

The _____ Credit Union of _____ (city), _____ (State), incorporated under the laws of the State of _____ on _____ by decision of its board of directors, hereby makes application to the National Credit Union Administration to convert to a Federal credit union.

1. Field of membership. Provide a copy of the credit union's charter, articles of incorporation or bylaws, as amended to date.
   _____
   _____
   _____

2. Is proposed Federal charter to cover same field of membership? Yes ☐ No ☐ If answer is "No," explain fully: _____
   _____
   _____
   _____
   _____

3. Standard financial and statistical reports as of _____ or comparable forms of reports, certified correct by the treasurer and verified by the affidavit of the president or vice-president, are attached.

4. A schedule of delinquent loans classified 2 to 6 months, 6 to 12 months, and 12 months and over delinquent is attached.

5. The following policies on loans to members are currently in effect in this credit union:

   a. Interest rates on loans: _____

   b. Charges incident to making loans which are passed on to borrowers: _____

   c. Maturity limits: _____

   d. Unsecured loan limit: _____

   e. Secured loan limit: _____

   f. Types of security accepted: _____

   g. Requirements of amortization (Repayment requirements): _____

6. Attached is a list of unsecured loans in excess of the amounts stipulated in the Act. (For each loan show account number, original amount, terms, and unpaid balance.)

NCUA 4401 PAGE 1

7. Attached is a list of loans with maturities in excess of periods stipulated in the Act and the NCUA Rules and Regulations. (For each loan show account number, original amount, terms, unpaid balance, and security.)

8. Types of accounts which members are required or are permitted to maintain: Share ☐ Deposit ☐ Other ☐ (describe): _____

9. Describe any real estate owned by credit union, including a list of its current market value: _____

10. Describe and list any investments which are outside of the investment powers of Federal credit unions (Refer to Section 107(7), Federal Credit Union Act):_____

11. Names and locations of any depository institutions in which the credit union deposits its funds but which are beyond the purview of deposit powers authorized by Section 107(8) of the Federal Credit Union Act: _____

12. Describe any services rendered to or on behalf of members or of the public, other than accepting and maintaining accounts of members and making loans to members: _____

13. Describe what you propose to do about any policies, procedures, assets or liabilities which do not comply with the Federal Credit Union Act: _____

14. Give specific reasons as to why you desire to convert to a Federal credit union:

We hereby authorize the National Credit Union Administration to examine our books and our records.

We, the undersigned _____ Chief Executive Officer and _____ Chief Financial Officer of the _____ Credit Union of _____ State of _____ certify: That we are the duly elected Chairperson and the Chief Financial Officer, respectfully, of said credit union; that the statements made in this Application to Convert from a State to a Federal Credit Union and the schedules attached hereto are true, complete, and correct to the best of our knowledge and belief and are made in good faith.

_____
TITLE: _____
(CHAIRPERSON)

_____
TITLE: _____
(CHIEF FINANCIAL OFFICER)

AFFIDAVIT
PROOF OF RESULTS OF MEMBERSHIP VOTE - PROPOSED CONVERSION FROM FEDERAL CREDIT UNION TO STATE CREDIT UNION

We, the undersigned _____ chairperson and _____ secretary of the _____ Federal Credit Union, hereby swear or affirm as follows:

1. That the conversion proposal as set forth in the attached Notice of Meeting of the Members was fully explained to the members present at said meeting of members.

2. That on the date of the said meeting of members there were _____ members of this credit union qualified to vote; _____ members were present at said meeting; of those members present, _____ members voted in favor of the conversion and _____ members voted against the conversion; of those members not present at the meeting but who filed ballots, _____ members voted in favor of the conversion and _____ members voted against the conversion; and that, without duplication of the votes of any member, a total of _____ members voted in favor of the conversion and _____ members voted against the conversion.

3. That the action of the members of this credit union at said meeting is fully and completely recorded in the minutes of said meeting and all ballots cast by the members on the question of conversion, either at the meeting or by delivery to the credit union, are on file with the secretary of this credit union.

_____
TITLE: _____
(CHAIRPERSON)

_____
TITLE: _____
(BOARD SECRETARY)

_____
FEDERAL CREDIT UNION

Subscribed before me, an officer competent to administer oaths, at _____ _____, this _____
(day) (month) (year)

Signed _____

(SEAL)

Title _____
(Notary Public or other competent officer)

My Commission Expires _____, _____
(year)

FEDERAL TO STATE CONVERSION

BALLOT FOR CONVERSION PROPOSAL

I have read the notice concerning the meeting of the members of the _____ Federal Credit Union called for _____ to consider and to vote upon the following proposition:

"RESOLVED, That the _____ Federal Credit Union be converted to a credit union chartered under the laws of the State of _____ and operation under Federal Charter Number _____ be discontinued.

RESOLVED FURTHER, That the board of directors and the officers of this credit union are hereby authorized and directed to do all things necessary to effect and to complete the conversion of this credit union from a Federal to State-chartered credit union."

I hereby cast my vote on the proposition: (Place an X in the square opposite the appropriate statement.)

I vote for the conversion ☐

I vote against the conversion ☐

_____ (Account Number)

_____ (Signature of Member)

Date: _____

NCUA 4506

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS

Date: _____

TO: The National Credit Union Administration Board (Board)

The proposed _____ Federal Credit Union

_____
(Street Address)

_____
(City) (State) (Zip Code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To pay the reasonable cost of such examinations as the Board may deem necessary in connection with determining the eligibility of the application for insurance.

2. To permit and pay the reasonable cost of such examinations as in the judgment of the Board may from time to time be necessary for the protection of the fund and other insured credit unions.

3. To permit the Board to have access to any information or report with respect to any examination made by or for any public regulatory authority and furnish such additional information with respect thereto as the Board may require.

4. To provide protection and indemnity against burglary, defalcation, and other similar insurable losses, of the type, in the form, and in an amount at least equal to that required by the laws under which the credit union is organized and operates.

5. To maintain such special reserves as the Board, by regulation or in special cases, may require for protecting the interest of members.

6. Not to issue or have outstanding any account or security the form of which, by regulation or in special cases, has not been approved by the Board.

7. To pay and maintain the capitalization deposit required by Title II of the Federal Credit Union Act.

8. To pay the premium charges for insurance imposed by Title II of the Federal Credit Union Act.

NCUA 9500 PAGE 1

9. To comply with the requirements of Title II of the Federal Credit Union Act and of regulations prescribed by the Board pursuant thereto.

10. To permit the Board to have access to all records and information concerning the affairs of the credit union and to furnish such information pertinent thereto that the Board may require.

11. To comply with Title 18 of the United States Code and other pertinent Federal statutes as they may exist or may be hereafter promulgated or amended.

We, the undersigned, certify to the correctness of the information submitted. We, the undersigned, further certify that to the best of our knowledge and belief no proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or a breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any proposed or future officer commits a criminal offense.

Chairperson

Chief Financial Officer

Note: A willfully false certification is a criminal offense. U.S. Code, Title 18, Sec. 1001.

NCUA 9500 PAGE 2

CERTIFICATION OF RESOLUTIONS

_____ FEDERAL CREDIT UNION (PROPOSED)

We certify that we are the duly elected and qualified chief executive officer and recording officer of the above-named proposed Federal credit union and that at the charter-organization meeting, the board of directors passed the following resolution and recorded it in its minutes:

"Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it further resolved that the president and treasurer be authorized and directed to execute the Application and Agreements for Insurance of Accounts as prescribed by the Board and any other papers and documents required in connection therewith; to pay all expenses and do all other things necessary or proper to secure and continue in force such insurance."

Chief Executive Officer

Recording Officer, Board of Directors

NCUA 9501 PAGE 1

INFORMATION TO BE PROVIDED IN SUPPORT OF THE APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

Existing credit unions must complete the entire application. All other applicants do not have to complete questions 8, 11, 12, 13, 15, and 16.

_____Credit Union

1. Show below the location of the credit union's books and records.

_____
(Street Address)

_____
(City) (State) (Zip) (Telephone)

2. Show the date (month, day, year) in which the credit union was chartered.
_____

3. Attach a copy of the credit union's field of membership as shown in the charter, articles of incorporation and/or bylaws, as amended to date. Please identify it as the first schedule in the consecutive number sequence as discussed in the instructions. Schedule No. _____

4. Potential membership (total number of persons who could be served including present members). _____

5. Identify charter type (e.g., single common bond, multiple common bond, community). _____

6. Does the credit union operate under standard bylaws provided by the state supervisory authority? Yes ☐ No ☐ (Complete a.)

   a. Attach a copy of the current official bylaws under which the credit union operated. Schedule No. _____

7. Is the credit union under any administrative restraints by the State Supervisory Authority? Yes ☐ No ☐ (Complete a.)

   a. Explain fully on an attached schedule. Schedule No. _____

8. Attach a copy of the latest State supervisory authority examination. Copies of any correspondence from the accountant's report if made in lieu of a State supervisory authority examination. Copies of any correspondence from the State supervisory authority which accompanied the examination report should also be included.

9. Attach copies of the Balance Sheet and Statement of Income and Expense (or Financial and Statistical Report) for the month preceding the date of this application and for the same month of the preceding year.
Schedule Nos. _____

10. Reserves

    Show below the requirements of the State law and/or your bylaws for transfer of earnings to reserves (either monthly or at the end of each accounting period).

    _____

11. Delinquent Loans and Charged-off Loans

    a. Attach a copy of the delinquent loan list as of the month-end preceding the date of this application. See instructions pertaining to Item No. 11a.
    Schedule No. _____

    b. List below the requested information on delinquent loans for the latest four calendar quarters preceding the date of the application (March 31, June 30, September 30 and December 31). Also show total share and loan balances for all members for the same period.

(a) *Other Delinquent Categories	(b) Delinquent Categories	Date	Date	Date	Date
	2 to less than 6 mos.	$	$	$	$
	6 to less than 12 mos.	$	$	$	$
	12 mos. and over	$	$	$	$
	Totals	$	$	$	$
	Share Balances	$	$	$	$
	Loan Balances	$	$	$	$

*See instructions pertaining to Item No. 11 b.

c. List below the requested information on loans charged off during the last three years and the current year. List total of all reserves both revocable and irrevocable for the same period as (balance at year-end and or current period).

	Year	Year	Year	Current Yr. To Date	*Totals Since Organization
Total Charged Off					
Total Recovered					
Net Charged Off					

*If this information is available.

12. Does the credit union have any unrecorded or contingent liabilities, (including pending law suits or civil actions)? Yes ☐ No ☐ Complete a.

a. List on an attached schedule the complete description of such liabilities, including amounts, status of the items, and a description of the circumstances creating the liabilities or contingent liabilities. Schedule No. _____

13. Do any asset accounts other than loans to members, investments, and real estate have actual values less than the book values shown on the Balance Sheet?

List on a separate schedule a description of such assets, showing at least the following information; account number, description of item, book value and actual value. Schedule No. _____

14. List below or on an attached schedule, any investments or real estate as discussed in the instructions pertaining to Item No. 14. Schedule No. _____. Attach a copy of the credit union's current investment policies. Investments/Loans to Credit Union Service Organization (CUSO) should be listed separately.

Description of Item	Current Market Value	Current Book Value
	$	$
	$	$
	$	$

15. Individual Share and Loan Ledgers:

a. Were the totals of the trial balance of the individual share and loan ledgers in agreement with the balances of the respective general ledger control accounts as of the month-end preceding the date of this application? _____

b. What are the differences as of the month and preceding the date of this application?

	Shares	Loans
Balances in General Ledger	$	$
Totals of the trial balance of the individual ledgers	$	$
Differences	$	$

16. Supervisory Committee:

a. What is the effective date of the last complete comprehensive annual audit performed by the supervisory committee?
Effective Date _____

(1) If the effective date of the annual audit is not within the last 18 months what is the supervisory committee's target date for completion of a comprehensive audit? Date _____

b. Show the effective date of the supervisory committee's last controlled verification of all members' accounts:
Effective Date _____

(1) If all members' accounts have not been verified under controlled conditions during the last two years, what is the supervisory committee's target date for completion of the verification program?
Date _____

c. If it is necessary to complete either 16a(1) or 16 b(1); please describe the directors' plans for seeing that the target dates are met. (Discuss below or on an attached schedule.) Schedule No. _____

17. List below the credit union's surety bond coverage.

a. Name of carrier _____

b. Standard form number of the bond (i.e., 23, 576, 577, 578, 581, 562 CU-1, other) _____

c. Basic amount of coverage $_____

d. Bond premium paid to (date) _____

e. What is the amount of coverage required by State law or your bylaws? _____

f. Riders to the bond (list below) (i.e., faithful performance, forgery, misplacement, etc.)

_____

_____

18. Does the credit union render any services to or perform any functions on behalf of the members, non-members, organizations, or the public other than the usual savings and loan services for members? _____

Attach a schedule describing each activity in full. Schedule No. _____

19. Does the board of directors or management know of any adverse economic condition that is affecting or will affect the credit union's present or future operation or that of the sponsor organization?

_____

Attach a schedule describing the condition and its possible effect on the credit union's future. Schedule No. _____

20. To the best of the credit union's knowledge and belief, has any director, officer, committee member, or employee been convicted of any criminal offense involving dishonesty or breach of trust? _____

a. Attach a statement describing the circumstances. Schedule No. _____

21. Lending policies and practices:

a. Complete the following schedule showing the present policies and practices on loans to members.

b. Complete the following schedule of largest loans with the attached instructions pertaining to Item No. 21.

LENDING POLICIES AND PRACTICES

	Maximum Loan Amount	Maximum Period of Repayment	Required Amount of Down Payment (Equity)
1. Credit Union Policies and Practices			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
(1) New Auto Collateral			
(2) Used Auto Collateral			
(3) Real Estate			
(a) First Mortgage			
(b) Second Mortgage			
(4) Comakers			
(5) Others (describe)			
c. Loans to Organizations			
d. Loans to Directors, Officers, or Committee Members			
2. State Credit Union Law; Bylaws			
a. Unsecured Loan Limits			
b. Secured Loan Limits			
c. Loans to Directors, Officers, or Committee Members			

List on an attached page, any additional policies, including the interest rates applied to members' loans and the method of assessing and accounting for interest income, i.e.: add-on, discount or unpaid balance.

SCHEDULE OF LARGEST LOANS

Complete this form as discussed in the instructions pertaining to Item 21b.

Account No.	Unpaid Bal.	Repayment Period (Mths)	Repayment Status		Appraised Collateral Value*	Collateral Description
			Current	Mths Delq.		

7. Comments (include all other pertinent information, if applicable, not previously discussed). _____

_____

_____

_____

8. Attach the latest Financial and Statistical Report of CUSO, if available.

FORM 9600 INSTRUCTIONS

APPLICATION OF A STATE CHARTERED CREDIT UNION FOR INSURANCE OF ACCOUNTS

The application and all supporting documents should be prepared, photocopied, and submitted in accordance with these instructions. Additional schedules may be included if deemed appropriate.

Existing credit unions must complete the entire application. All other applicants do not have to complete questions 8, 11, 12, 13, 15, and 16.

Existing credit unions must submit current policies and financial statements as noted in the application. All other applicants must submit proposed policies and pro forma financial statements for the first and second year of operation.

When an item specifies that a schedule should be prepared and attached, please assign a schedule number in consecutive order, starting with number one. Please show the schedule number at the top right-hand corner of the schedule.

Some of the items are self-explanatory and require no special instructions. Other items, however, need special explanations, definitions, and instructions for completion. These are listed below, identified by the same item numbers as appear in Exhibit A.

Item No. 10: Reserves: The term "reserves" means that account, or accounts, which represents segregated portions of earnings as provided by the law, bylaws, and/or the credit union's management for the absorption of losses relating to loans to members.

Item No. 11a: The delinquent loan list requested should include, for each delinquent loan, the account number of the borrower, date of loan, original amount of loan, unpaid balance, date of last payment of principle, excluding transfers from pledged shares, collateral, and comments regarding the collectibility of each loan in the categories 6 months to less than 12 months and 12 months and over. Payments of interest only should be so identified.

Item No. 11b: The schedule provided for the delinquent loan information is set up in delinquency categories of 2 months to less than 6 months, 6 to less than 12 months, and 12 months and over. Credit unions that compute delinquency using categories other than shown in column (b) may use these other categories and show them in column (a). Credit unions using column (a) need not show the delinquencies in the column (b) categories. It is not necessary to report on loans which are delinquent less than 2 months.

Adverse Trends: If items 8, 9, or 11 indicate adverse trends such as significant decreases in shares, loans or reserves, increases in loan delinquency or loan charge-offs, or unresolved serious exceptions shown in the State examination report, the credit union may attach an explanation and identify it as "Explanation of Adverse Trends or Unresolved

Examination Exceptions" and assign it a schedule number.

Item No. 14: This item need be completed only if the credit union owns any of the following:

A. Investments in U.S. Government securities guaranteed as to principle and interest or Federal Agency securities, the market value of which is now less than the book value.

B. Real estate other than that used entirely for the credit union's own office(s).

C. Other investments of any type except:

1. Loans to other credit unions.
2. Certificates of, or accounts in, federally insured financial institutions.
3. Deposits or accounts in corporate credit unions.

If corporate bonds are listed, please show maturity date, rate of interest on bonds and current yield rate.

If stocks are listed, please show number of shares and bid price.

Please identify the source of the market valuation information and the date of such information.

Item No. 21b: In selecting the largest loans for this Exhibit, list the largest outstanding unpaid loan balance and proceed in descending order by dollar amount until the number specified below has been shown. The number of such loans to be listed will be determined as follows:

If your credit union has the following no. of outstanding loans	You should list the following no. of the largest unpaid balances
Under 100	5
100 to 199	10
200 to 299	15
300 to 399	20
400 or more	25

If any of the above loans are delinquent, please show the number of months delinquent in the appropriate "Status of Re-payment" column.

Complete the Credit Union Service Organization (CUSO) schedule for each investment/loan to a CUSO.

TERMINATION OF INSURANCE

Should the credit union, after obtaining insurance of member accounts, desire to terminate its insured status, this could be accomplished by complying with the provisions of Section 206(a), (c) and (d) of Title II of the Federal Credit Union Act. This action would require approval by a vote of the majority of the members, and ninety days written notice of the proposed termination date to NCUA. Member accounts would continue to be insured for one year following termination of insurance and the insurance premium

would be paid during that period. After termination of insurance, the credit union shall give prompt and reasonable notice to all members whose accounts are insured that it has ceased to be an insured credit union.

Sections 206(a)(2) and 206(d)(2) and (3) of the Act provide that an insured credit union may also terminate its insurance by converting from its status as an insured credit union under the Act to insurance from a corporation authorized and duly licensed to insure member accounts. In this event, approval is required by a majority of all the directors and by affirmative vote of a majority of the members voting, provided that at least 20 percent of the members have voted on the proposition. Under this provision for termination, insurance of member accounts would cease as of the date of termination.

APPLICATION AND AGREEMENTS FOR INSURANCE OF ACCOUNTS STATE CHARTERED CREDIT UNION

TO: The National Credit Union Administration Board Date _____

The _____ Credit Union,

Insurance Certificate Number _____ (if applicable)

_____

(mailing address) (city) (state) (zip code)

applies for insurance of its accounts as provided in Title II of the Federal Credit Union Act, and in consideration of the granting of insurance, hereby agrees:

1. To permit and pay the cost of such examinations as the NCUA Board deems necessary for the protection of the interests of the National Credit Union Share Insurance Fund.

2. To permit the Board to have access to all records and information concerning the affairs of the credit union, including any information or report related to an examination made by or for any other regulating authority, and to furnish such records, information, and reports upon request of the NCUA Board.

3. To possess such fidelity coverage and such coverage against burglary, robbery, and other losses as is required by Parts 713 and 741 of NCUA's regulations.

4. To meet, at a minimum, the statutory reserve and full and fair disclosure requirements imposed on Federal Credit Unions by Part 702 of NCUA's regulations, and to maintain such special reserves as the NCUA Board may be regulation or on a case-by-case basis determine are necessary to protect the interests of members. Any waivers of the statutory reserve or full and fair disclosure requirements or any direct charges to the statutory reserve other than loss loans must have the prior written approval of the NCUA Board. In addition, corporate credit unions shall be subject to the reserve requirements specified in Part 704 of NCUA's regulations.

5. Not to issue or have outstanding any account or security the form of which has not been approved by the NCUA Board, except accounts authorized by state law for state credit unions.

6. To maintain the deposit and pay the insurance premium charges imposed as a condition of insurance pursuant to Title II (Share Insurance) of the Federal Credit Union Act.

7. To comply with the requirement of Title II (Share Insurance) of the Federal Credit Union Act and of regulations prescribed by the NCUA Board pursuant thereto.

8. For any investments other than loans to members and obligations or securities expressly authorized in Title I of the Federal Credit Union Act, as amended to establish now and maintain at the end of each accounting period and prior to payment of any dividend, an Investment Valuation Reserve Account in an amount at least equal to the net excess of book value over current market value of the investments. If the market value cannot be determined, an amount equal to the full book value will be established. When, as of the end of any dividend period, the amount in the Investment Valuation Reserve exceeds the difference between book value and market value, the board of directors may authorize the transfer of the excess to Undivided Earnings.

9. When a state-chartered credit union is permitted by state law to accept nonmember shares or deposits from sources other than other credit unions and public units, such nonmember accounts shall be identified as nonmember shares or deposits on any statement or report required by the NCUA Board for insurance purposes. Immediately after a state-chartered credit union receives notice from NCUA that its member accounts are federally insured, the credit union will advise any present nonmember share and deposit holders by letter that their accounts are not insured by the National Credit Union Share Insurance Fund. Also, future nonmember share and deposit fund holders will be so advised by letter as they open accounts.

10. In the event a state-chartered credit union chooses to terminate its status as a federally-insured credit union, then it shall meet the requirements imposed by Sections 206(a)(1) and 206(c) of the Federal Credit Union Act and Part 741.208 of NCUA's regulations.

11. In the event a state-chartered credit union chooses to convert from federal insurance to some other insurance from a corporation authorized and duly licensed to insure member accounts, then it shall meet the requirements imposed by Sections 206(a)(2), 206(c), 206(d)(2), and 206(d)(3) of the Federal Credit Union Act and any other applicable federal law.

In support of this application we submit the following schedules:

Schedule No.	Title

CERTIFICATIONS AND RESOLUTIONS

We, the undersigned, certify that we are the duly elected and qualified presiding officer and recording officer of the credit union and that at a properly called and regular or special meeting of its board of directors, at which a quorum was present, the following resolutions were passed and recorded in its minutes:

We, the undersigned, certify to the correctness of the information submitted.

Be it resolved that this credit union apply to the National Credit Union Administration Board for insurance of its accounts as provided in Title II of the Federal Credit Union Act.

Be it resolved that the presiding officer and recording officer be authorized and directed to execute the Application and Agreement for Insurance of Accounts as prescribed by the NCUA Board and any other papers and documents required in connection therewith and to pay all expenses and do all such other things necessary or proper to secure and continue in force such insurance.

We further certify that to the best of our knowledge and belief no existing or proposed officer, committee member, or employee of this credit union has been convicted of any criminal offense involving dishonesty or breach of trust, except as noted in attachments to this application. We further agree to notify the Board if any existing, proposed or future officer, committee member or employee is indicted for such an offense.

_____

(Signature) Chairperson, Board of Directors

_____

(Print or type Chairperson's Name)

_____

(Signature) Secretary, Board of Directors

_____

(Print or type Secretary's Name)

APPENDIX E

TRADE ASSOCIATIONS

Credit Union National Association
(CUNA)
P.O. Box 431
Madison, WI 53701
608-231-4000

National Association of Federal Credit
Unions (NAFCU)
3138 N. 10th Street, Suite 300
Arlington, VA 22201
703-522-4770

National Association of State Credit Union
Supervisors (NASCUS)
1655 North Fort Myer Drive
Suite 300
Arlington, VA 22209
703-528-8351

National Federation of Community
Development Credit Unions
(NFCDCU)
120 Wall Street, 10th Floor
New York, NY 10005-3902
212-809-1850

[FR Doc. 03–8721 Filed 4–14–03; 8:45 am]
BILLING CODE 7536–01–C

Federal Register

Tuesday,
April 15, 2003

Part III

Environmental Protection Agency

40 CFR Part 51
Revision to the Guideline on Air Quality Models: Adoption of a Preferred Long Range Transport Model and Other Revisions; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AH–FRL–7478–3]

RIN 2060–AF01

Revision to the Guideline on Air Quality Models: Adoption of a Preferred Long Range Transport Model and Other Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA's *Guideline on Air Quality Models* (''*Guideline*'') addresses the regulatory application of air quality models for assessing criteria pollutants under the Clean Air Act. In today's action we promulgate several additions and changes to the *Guideline*. We adopt a new dispersion model, CALPUFF, in appendix A of the *Guideline*. CALPUFF becomes the preferred technique for assessing long range transport of pollutants and their impacts on Federal Class I areas. Action on AERMOD and the Emissions and Dispersion Modeling System (EDMS) is deferred. We make various editorial changes to update and reorganize information, and remove obsolete models.

DATES: This rule is effective May 15, 2003. Beginning April 15, 2003 the new model (*i.e.*, CALPUFF) *should be* used for its intended purposes, in accordance with today's document. The period before required implementation of a new model allows user's sufficient time to prepare meteorological data bases and to become familiar with model operation. The new model *may be* used sooner, if desired.

ADDRESSES: All documents relevant to this rule have been placed in Docket No. A–99–05 at the following address: EPA Docket Center, (EPA/DC) EPA West (MC 6102T), 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room (B102) is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Leader, Air Quality Modeling Group (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–5562 (*Tikvart.Joe@epa.gov*).

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of Related Information?

EPA established an official public docket for this action under Docket ID No. A–99–05. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West (MC 6102T), 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room (B102) is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Our Air Quality Modeling Group maintains an Internet Web site (Support Center for Regulatory Air Models—SCRAM) at: *http://www.epa.gov/scram001*. You may find codes and documentation for models referenced in today's action on the SCRAM Web site. We have also uploaded various support documents (*e.g.*, evaluation reports).

II. Background

The *Guideline* is used by EPA, States, and industry to prepare and review new source permits and State Implementation Plan revisions. The *Guideline* is intended to ensure consistent air quality analyses for activities regulated at 40 CFR 51.112, 51.117, 51.150, 51.160, 51.166, and 52.21. We originally published the *Guideline* in April 1978 and it was incorporated by reference in the regulations for the Prevention of Significant Deterioration (PSD) of Air Quality in June 1978. We revised the *Guideline* in 1986, and updated it with supplement A in 1987, supplement B in July 1993, and supplement C in August 1995. We published the *Guideline* as appendix W to 40 CFR part 51 when we issued supplement B. We republished the *Guideline* in August 1996 (61 FR 41838) to adopt the CFR system for labeling paragraphs. On April 21, 2000 we published proposed revisions in the **Federal Register** (65 FR 21506), which is the basis for today's promulgation.

Today's notice promulgates those components of the proposal that were clearly supported by public comments and that were otherwise not controversial, notably:

- Adoption of CALPUFF in appendix A, as proposed, for assessing long range transport of pollutants and their impacts on Federal Class I areas;
- Removal of the Climatological Dispersion Model (CDM), RAM and the Urban Airshed Model (UAM) from appendix A, as proposed;
- Simplification of complex terrain screening techniques in section 5;
- Revision of section 9 to reflect our October 1997 settlement with the Utility Air Regulatory Group regarding specification of emissions from background sources, as proposed;
- Updating information in appendix W and reorganizing its structure; and
- Transfer of appendix B and appendix C to our Web site, as proposed.

The proposal also included (1) adopting AERMOD [1] to replace the Industrial Source Complex (ISC3) model in many assessments that now use it, (2) revising ISC3 by incorporating a new downwash algorithm (PRIME) and renaming the model ISC–PRIME, and (3) updating the Emissions Dispersion Modeling System (EDMS) by incorporating improved emissions and dispersion modules. Regarding AERMOD, nearly every commenter urged EPA to integrate aerodynamic downwash into AERMOD (*i.e.*, not to require two models for some analyses). The only cautions were associated with the need for documentation, evaluation and review of the downwash enhancement to AERMOD. As a result of AERMIC's (the American Meteorological Society (AMS)/ EPA Regulatory Model Improvement Committee) efforts to revise AERMOD, incorporating the PRIME algorithm and making a few other incidental modifications and to respond to the public's cautions, we believe that AERMOD, as modified for downwash, merits another public examination of performance results. Also, since the April 2000 proposal, the Federal Aviation Administration decided to configure EDMS3.1 to incorporate the AERMOD dispersion model, and results of its performance with AERMOD only recently became available. Consequently, AERMOD and EDMS4.0, as well as other conforming changes for the *Guideline*, will be reconsidered in a Supplemental Notice of Proposed Rulemaking (SNPR) in the near future. Note that since AERMOD is not included in today's promulgation, the proposed merger of the *Guideline's* sections 4 and 5 will be deferred to AERMOD's adoption in the future.

III. Public Hearing on the Proposal

We held the 7th Conference on Air Quality Modeling (7th conference) in Washington, DC on June 28–29, 2000. As required by section 320 of the Clean Air Act, these conferences take place

[1] AMS/EPA Regulatory *MOD*el.

approximately every three years to standardize modeling procedures. This conference served as the forum for receiving public comments on the *Guideline* revisions proposed in April 2000. The 7th conference featured presentations in several key modeling areas that support the revisions promulgated today. A presentation by the Interagency Workgroup on Air Quality Modeling (IWAQM [2]) covered long range transport modeling for point sources. This presentation was followed by a critical review/discussion of the CALPUFF modeling system and available performance evaluations, facilitated jointly by the Air & Waste Management Association's AB–3 Committee and the American Meteorological Society's Committee of Meteorological Aspects of Air Pollution.

We asked the public to address the following questions:

- Has the scientific merit of the models presented been established?
- Are the models' accuracy sufficiently documented?
- Are the proposed regulatory uses of individual models for specific applications appropriate and reasonable?
- Do significant implementation issues remain or is additional guidance needed?
- Are there serious resource constraints imposed by modeling systems presented?
- What additional analyses or information are needed?

We placed a transcript of the 7th conference proceedings and a copy of all written comments, which embody answers to the above questions, in Docket No. AQM–95–01.

IV. Discussion of Public Comments and Issues

All comments submitted to Docket No. A–99–05 are filed in Category IV–D. We summarized these comments, developed detailed responses, and drew conclusions on appropriate actions for today's action in the summary of public comments and EPA responses.[3] In this document, we considered and discussed all significant comments. Whenever the comments revealed any new information or suggested any alternative solutions, we considered such in our final action.

The remainder of this preamble section provides an overview of the primary issues encountered by the Agency during the public comment period and summarizes our response-to-comments.[3] This overview also serves to explain the changes to the *Guideline* in today's action, and the main technical and policy concerns addressed by the Agency. Guidance and editorial changes associated with the resolution of these issues are adopted in the appropriate sections of the *Guideline*. While modeling by its nature involves approximation based on scientific methodology, and entails utilization of advanced technology as it evolves, we believe these changes respond to recent advances in the area so that the *Guideline* continues to reflect the best and most proven of the publicly available models and analytical techniques, as well as to reflect reasonable policy choices.

CALPUFF

CALPUFF is a Lagrangian dispersion model that simulates pollutant releases as a continuous series of *puffs*. Preceding our proposal to adopt CALPUFF in the *Guideline*, IWAQM carefully studied the potential regulatory application of CALPUFF in its Phase 1 report [4] and in its Phase 2 report.[5]

In our April 2000 **Federal Register** notice, we proposed adoption of the CALPUFF modeling system, developed by Earth Tech, Inc., for refined use in modeling long range transport and dispersion to characterize reasonably attributable impacts from one or a few sources for PSD Class I impacts. We also proposed use of CALPUFF for those applications involving complex wind regimes, with case-by-case justification. We sought comments on the use of CALPUFF for these applications, as well as on related uses of meteorological information, *e.g.*, on use of prognostic mesoscale meteorological models and the length of record for meteorological data.

Scientific merits and accuracy. In public comments there was a general consensus that the technical basis of the CALPUFF modeling system has merit and provides substantial capabilities to not only address long range transport, but to address transport and dispersion effects in some complex wind situations.

Commenters generally agreed that the CALPUFF modeling system has adequate accuracy for use in the 50–200km range, with some studies showing that acceptable results can be achieved at least out to 200 to 300km. Since the 7th Modeling Conference, enhancements were made to CALPUFF that allow puffs to be split both horizontally (to address wind direction shear) and vertically (to address spatial variation in meteorological conditions). These enhancements likely will extend the system's ability to treat transport and dispersion beyond 300km.

With respect to accuracy for complex wind situations, we believe that the commenters agreed with our proposal to promote use of CALPUFF for complex winds with prior approval by the reviewing authority. CALPUFF has been demonstrated to perform as well as, or better than, other short-range plume dispersion models for a few cases involving complex winds, several with wind fields that are dominated by terrain effects. Some suggested a need for more testing of CALPUFF, prior to accepting its results in all cases involving complex wind situations. We intend to post on our Web site citations to investigations for any cases involving complex winds as they become available, and to build a knowledge base from which determinations can be made on the use of CALPUFF for various complex wind situations. This will support consideration of new field study comparisons as they become available. For the reasons stated above, it is apparent that CALPUFF contains the scientific basis for more appropriately addressing long range transport and dispersion effects in complex wind situations than do standard plume models.

We conclude that, although the scientific advancements will continue to emerge, CALPUFF in its current configuration is suitable for regulatory use for long range transport, and on a case-by-case basis for complex wind situations. We will require approval to be obtained prior to accepting CALPUFF for complex wind situations, as this will ensure that a *protocol* is agreed to between the parties involved, and that all are willing to accept the results as binding. As experience is gained in using CALPUFF for complex wind

[2] IWAQM was formed in 1991 to provide a focus for development of technically sound air quality models for regulatory assessments of long range transport of pollutant source impacts on federal Class I areas. IWAQM is an interagency collaboration that includes efforts by EPA, U.S. Forest Service, National Park Service, and Fish and Wildlife Service.

[3] Summary of Public Comments and EPA Responses 7th Conference on Air Quality Modeling, Washington, D.C., June 2000 (Air Docket A–99–05, Item V–C–1). This document may also be examined from EPA's SCRAM Web site (*http://www.epa.gov/scram001*). Note that comments/responses re: AERMOD & EDMS are deferred to a companion document to be released when the SNPR is published.

[4] Environmental Protection Agency, 1993. Interagency Workgroup on Air Quality Modeling (IWAQM) Phase I report: Interim Recommendation for Modeling Long range Transport and Impacts on Regional Visibility; EPA Publication No. EPA–454/R–93–015.

[5] Environmental Protection Agency, 1998. Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long-Range Transport Impacts. EPA Publication No. EPA–454/R–98–019.

situations, acceptance will become clear and those cases that are problematic will be better identified. As suggested by comments, we have removed reference to WYNDvalley from the *Guideline*.

Implementation issues/additional guidance. Some comments suggested that the CALMET (meteorological preprocessor for CALPUFF) and CALPUFF options should be defined for a variety of specific situations. We believe that more experience is needed before specific guidance can be offered for the variety of applications envisioned that might use the CALPUFF modeling system. We placed emphasis on (1) amplifying the available guidance information, (2) expanding the data formats for meteorological input data, and (3) making the code more robust to various choices in compilers. When sufficient experience has been attained, and it has become obvious what settings should be employed for best results for certain situations, we will promulgate expanded guidance after allowing opportunity for public review and comment. In the meantime, we will release interim guidance as it becomes available to assist users in tailoring CALPUFF for application. We have created a series of frequently asked questions (FAQ) with answers which the public can access via Earth Tech's Internet Web site: (*http://www.src.com/calpuff/calpuff1.htm*). This interim FAQ list will be extended as resources permit.

For long range transport and complex winds applications, we proposed that if only National Weather Service (NWS) or comparable standard meteorological observations are employed, then five consecutive years of data should be used. We further proposed that less than five years of data were acceptable if appropriate NWS data are merged with available mesoscale meteorological fields. These proposals were generally supported by public comments,[3] but the commenters did provide a variety of opinions about how many years of data should be minimally acceptable, ranging from 1 to 5 years. As we explained in our response-to-comments, we sought to strike a balance between the need for a sufficiently robust meteorological record to ensure results of reliable integrity, while maintaining administrative and computational burdens at a practical level. In consultation with the Regional Offices, we therefore have agreed to allow use of less than five, but at least three, years of assimilated mesoscale meteorological data. More than 3 years may lead to the objectionable computations burdens noted here, whereas less than 3 provides insufficient variation in meteorological conditions to capture the range of possible concentrations. We have also clarified that when merging NWS data with mesoscale meteorological fields, the NWS data should be shown to be relevant and appropriate.

For long range transport, we proposed use of a CALPUFF screening approach on a case-by-case basis that was first outlined in the IWAQM Phase 2 report (*op. cit.*) and was generally supported by commenters. The full scope of public comments is presented and addressed in our response-to-comments document.[3] We agree with the comments suggesting use of terrain heights for each receptor ring to be representative of the Class I areas of interest. Furthermore, to ensure an appropriate degree of flexibility, we will allow the permitting agency to decide whether it will accept the CALPUFF screening results as proposed, and in that decision process will defer to the appropriate reviewing authority to decide on the details of how the CALPUFF screen is to be implemented.

Resource constraints. The full scope of public comments is presented and addressed in our response-to-comments document.[3] There was a general sense from commenters that a skilled person having experience with CALMET can perform the required processing steps. Still some commenters encouraged us to find and promote a simplification to the CALMET meteorological processing steps. We did not support the suggestion to use screening level (ISC-like) meteorological data until such time as packaged data sets are made available. This would negate the benefits of using the system to simulate trajectories over large downwind distances, thereby undermining the purpose for which CALPUFF is intended. Although the processing steps are numerous and complex, they can be managed by competent staff.

Long range transport and complex wind situations are not trivial modeling problems. All commenters were aware that to address these situations requires more information (*e.g.*, terrain heights, land use mosaic, time and space variations in meteorological conditions) than is typical when using standard plume models. Processing the input data is a necessary but demanding task. The complexity of these situations requires a selection of options to provide the flexibility to tailor the model to specific situations. The CALPUFF system is currently configured to support a specific applied approach for long range transport, while at the same time, it has the flexibility for case-by-case applications involving complex winds.

Additional analyses. Some commenters questioned whether CALPUFF has undergone sufficient testing to secure its accuracy for assessing impacts on air quality related values (AQRVs). We believe the available testing for assessing AQRVs addresses many of these concerns. In addition, it should be recognized that the FLMs are responsible for defining the relevant AQRV's of interest and the procedures to employ to assess whether there is an adverse impact. When CALPUFF is used for a visibility impact assessment, this would likely be for a Class I AQRV assessment, and the reviewing authorities are the FLMs responsible for the management and protection of the resources for the particular Class I areas involved. The Federal Land Managers' Air Quality Related Values Work Group (FLAG) was formed in 1997 to provide a more consistent approach for FLMs to evaluate air pollution effects on their resources. In IWAQM's Phase 2 report, we indicated that EPA would use the procedures specified by the FLMs as a consequence of their deliberations (*e.g.*, in their FLAG report: *http://www.aqd.nps.gov/ard/flagfree/index.htm*). To assist permit applicants, the FLMs have provided procedures in the December 2000 (Phase I) FLAG report for performing such analyses as may be required. Included in these instructions, they have identified significance thresholds for potential adverse impacts, and methodologies for computing a visibility impact. The commenters are in fact addressing the FLAG procedures which are not the subject of today's action. To the extent that they were addressed in the response to comments developed by the FLMs in the FLAG Phase I report, we refer commenters to that document.

Criticism was also directed at CALPUFF's treatment of chemical transformations, which affect AQRVs. Specific concern was expressed about the sulfate and aqueous phase chemistry algorithms. As chronicled on the FLAG Web site (above), these procedures and criteria have been published and received review and comment. However, today's rule addresses the suitability of CALPUFF for PSD increment consumption and for complex wind situations (with case-by-case approval), not AQRV analyses.

Other Modeling Systems

Our proposal to remove UAM–IV from appendix A as a recommended model for ozone and to remove reference to ROM and RADM for

regional scale applications was supported by some commenters who understood that these models were no longer state-of-the-science. Those who objected to removal of UAM–IV were concerned that the Models-3/CMAQ (Community Multi-scale Air Quality) model, as a replacement for UAM–IV, was not sufficiently tested. In fact, Models-3/CMAQ is identified as only one option among currently available models that are appropriate in simulating the highly complex ozone/PM–2.5 formation and transport processes. It is the responsibility of the appropriate control agency(ies) with jurisdiction for the model application to exercise discretion in the choice of models. Alternately, criteria for using models not in appendix A are clearly delineated in revised wording that we proposed for subsection 3.2.2 of appendix W. These options should more than mitigate concerns expressed by the commenters.

We generally agree that Models-3/CMAQ and REMSAD will continue to benefit from further evaluation and testing for use in urban/regional scale assessments of ozone and PM–2.5, and are not the only models available for these applications. The same is true of all similar regional scale models. However, CMAQ and REMSAD have been successfully subjected to peer scientific reviews and are currently undergoing performance evaluations that will extend over several years as data bases become more extensive and complete for both ozone and PM–2.5.

While comment was solicited on the need to integrate ozone and fine particle impacts (*i.e.*, the "one atmosphere" approach) for regional scale assessments, we did not receive substantial comment. Comments on integrating analyses were supportive and comments on source-specific analyses indicated that more work was needed in this area. It is clear that further developmental efforts on estimating the impact of individual sources is necessary before specific modeling requirements are identified for such applications.

Comments [3] were generally supportive of our proposal to remove appendix B (Summaries of Alternative Air Quality Models) from appendix W and maintaining it as a PDF file on our SCRAM Internet Web site. As we stated in the preamble to the notice of proposed rulemaking for this action, appendix B of the *Guideline* was created solely for the convenience of those seeking information about alternatives to the models adopted in appendix A. The models described in appendix B may or may not have not been the subject of performance evaluations and their inclusion in appendix B does not confer special status or EPA sanction on their use. Conversely, the fact that a model has not been listed in appendix B carries no implication that its performance or acceptability for use is any poorer than appendix B listed models. Whether or not a model is listed, potential users will be subject to the same requirements, *i.e.*, to demonstrate that the model performs acceptably for its intended regulatory application. Because production and maintenance of appendix B information in the Code of Federal Regulations presents a substantial administrative burden for EPA and is not updated frequently enough to provide current information to potential users, we are moving the appendix B repository of alternative model summary descriptions to our Internet SCRAM Web site. This action offers the advantages of easier and less expensive maintenance, as well as more frequent updating, and is thus more likely to contain a comprehensive description of alternative models which have been brought to our attention. Similarly, the air quality checklist (formerly appendix C of the *Guideline*) will be available on the Web site as a PDF file.

The appendix B listing will therefore now appear as a list of *Alternative Models* (PDF file) on our Web site. We have clarified in its *Introduction and Availability* section that new models added to the list were/are not necessarily the subject of review upon their addition. On the other hand, it should be noted that the models identified in our proposal (*i.e.*, ADMS, SCIPUFF, OBODM, and CAMx) were included in the review process for today's action concerning the list of alternative models. At the request of the developer, we will remove MESOPUFF from appendix B since its function is replaced by CALPUFF.

Comments on the dispersion model ADMS argued that proprietary limitations on the availability of ADMS should not preclude it from having equal status with other Appendix A models and that it should be recommended in appendix A. However, as specified by *Guideline* paragraph 3.1.1(c)(vi), air quality models used in U.S. regulatory programs must be in the public domain at reasonable cost. This is because the source code needs to be open for public access and scrutiny to enable meaningful opportunity for public comment on new source permits, PSD increment consumption and SIPs. These criteria have been in place in U.S. regulatory programs since the inception of the *Guideline* and are needed to meet EPA's obligations under the CAA and the Administrative Procedure Act. Until the joint issues of availability (source code) and cost are addressed by the authors of ADMS, it is most appropriately listed as an alternative model for use on a case-by-case basis. Even if the model is justified on a case-by-case basis, users are responsible for making the model available for public review and comment for specific applications.

A similar comment regarding the puff model SCIPUFF did not consider that the model has not gone through the same extensive testing and regulatory evaluation as has CALPUFF, nor has it been as widely used as CALPUFF for regulatory applications. As has been done by CALPUFF's developers, a commitment to support public availability of SCIPUFF would have to be made by its supporter before it could be considered for adoption in appendix A.

Developers of neither ADMS nor SCIPUFF have addressed conflicts associated with multiple models for the same application in such a way as to assist EPA in resolving this issue. Moreover, we believe that neither ADMS nor SCIPUFF technically fill a particular technical need that is different from that occupied by the suite of refined dispersion models that EPA has promulgated for regulatory purposes after public review and comment.

Based on public comments and the rationale provided in our notice of proposed rulemaking, our decision to reference the ozone limiting method (OLM) and CAL3QHC for use in specific circumstances is justified.

Meteorological Data Issues

In our proposal we solicited comment on terminology and meaning of "site-specific" data and on use of surface meteorological data derived from the NWS's Automated Surface Observing System (ASOS). More specifically, we invited comment on whether the policy of modeling with the most recent 5 years of NWS meteorological data should include ASOS data and whether the period of record must be the most recent 5 years, regardless of whether it contains ASOS data.

No one provided negative comments on the use of the term "site-specific" or associated definitions as used in the proposed revisions. Thus, for the reasons discussed in the proposal, we will retain this terminology.

The majority of commenters who addressed the topic of ASOS data felt that the ASOS data were inferior for use with Gaussian models, though not all commenters agreed. With respect to the

use of the most recent 5 years of meteorological data, there was some concern about the reliability of ASOS data. We revised guidance to specifically address this concern by allowing flexibility in the choice of ASOS or observer-based observations depending on which provided the most representative meteorological information.

Final Action

Today's action amends appendix W of 40 CFR part 51 as detailed below:

CALPUFF

The public comments provided constructive suggestions but did not suggest altering promulgation of the CALPUFF modeling system. We will therefore promulgate use of the CALPUFF modeling system as follows:

(A) Long Range Transport

CALPUFF will be adopted as a refined model for use in sulfur dioxide and particulate matter ambient air quality standards and PSD increment impact analyses involving (1) transport greater than 50km from one or several closely spaced sources, and (2) analyses involving a mixture of both long range and short-range source-receptor relationships in a large modeling domain (*e.g.*, several industrialized areas located along a river or valley). The screening approach outlined in the IWAQM Phase 2 report is available for use on a case-by-case basis that generally provides concentrations that are higher than those obtained using refined characterizations of the meteorological conditions.

Given the judgement and refinement involved, conducting a long range transport modeling assessment will require significant consultation with the appropriate reviewing authority, and for Class I analyses the appropriate FLM. To facilitate use of complex air quality and meteorological modeling systems, a written protocol may be considered for developing consensus in the methods and procedures to be followed.

(B) Complex Winds

(1) On a case-by-case basis, the CALPUFF modeling system may be applied for air quality estimates involving complex meteorological conditions, where the assumptions of steady-state straight-line transport both in time and space are inappropriate.

(2) In such situations, where the otherwise preferred dispersion model is found to be less appropriate, use of the CALPUFF modeling system will be in accordance with the procedures and requirements outlined in paragraph 3.2.2(e) of the *Guideline*.

The public comments provided constructive suggestions, but did not suggest altering the meteorological data requirements for refined modeling assessments using the CALPUFF modeling system. Therefore, we will promulgate use of the CALPUFF modeling system with the following meteorological data requirements. For long range transport and for complex winds situations, there are two possibilities:

(A) If only NWS or comparable standard meteorological observations are employed, then five years of meteorological data should be used.

(B) If mesoscale meteorological fields are employed with appropriate NWS observations, then less than five years but at least three years of meteorological data may be used. Following the suggestions provided in public comments, we revised the *Guideline* to emphasize that appropriate NWS observations should be used in conjunction with mesoscale meteorological data.

In response to the suggestions provided in public comments, we: (1) Created a series of frequently asked questions to provide additional technical information to users, which will be made publicly available via Earth Tech's Internet Web site, (2) expanded the meteorological and precipitation data formats that can be processed, (3) have tested and made changes as necessary that allow the modeling software to be compiled by several Fortran compilers, thus making the code more robust to various choices in compilers, and (4) will maintain and make publicly available via our Web site, a list of technical papers and reports that describe testing and evaluation of the CALPUFF modeling system in a variety of situations and thus provide a basis for wider use of the CALPUFF modeling system.

For appropriate applications, CALPUFF *may be* used during the one-year period following the promulgation of today's notice. After one year following promulgation of today's notice, CALPUFF should be used for appropriate applications.

Other Modeling Systems

We have removed UAM–IV from appendix A for urban ozone applications and removed reference to ROM and RADM for regional scale applications to reflect the current state-of-science. Similarly, we have identified Models-3/CMAQ and REMSAD as example modeling systems that have been evaluated and peer reviewed for regional scale applications, and make clear that this does not preclude the use of other models.

We have removed appendix B and appendix C from appendix W and placed equivalent counterparts on our SCRAM Internet Web site. Former appendix B will simply become a list of alternative model summaries, and should be readily updated as new models in the proper format are submitted and not on a restrictive schedule. Given the current status of ADMS and SCIPUFF, as well as OBODM, CAMx and UAMV (an update to UAM–IV), all have now been included in the web-based Alternative Models list.

As proposed, we have referenced OLM and CAL3QHC for use in specific circumstances, and removed RAM and CDM from appendix A.

Meteorological Data Issues

The terminology for "site-specific" has been implemented as proposed since there was a lack of negative comment. The prevailing concept is, as commenters recognized, *representativeness*, and this is now emphasized in our guidance.

Due to limitations of ASOS data for use with standard dispersion models, paragraph 8.3.1.2(a) of appendix W has been revised to indicate that where the latest 5 years of data includes ASOS data (now the typical situation) discretion should be used. Where judgment indicates ASOS data are inadequate for cloud cover observations, the most recent 5 years of NWS data that are observer-based may be considered for use.

In response to public comment, we have updated our meteorological data processors (*i.e.*, MPRM and CALMET) to allow processing of meteorological data formats from the National Climatic Data Center necessary to operate associated air quality models; no further updates to MPRM are necessary at this time. The meteorological monitoring guidance [6] has been updated.

Final Editorial Changes to Appendix W

Preface

You will note some minor revisions to reflect current EPA practice.

Section 2

In a streamlining effort, we removed section 2.2 and added a new section 2.3 to address model availability.

[6] Environmental Protection Agency, 2000. Meteorological Monitoring Guidance for Regulatory Modeling Applications. EPA Publication No. EPA–454/R–99–005. U.S. Environmental Protection Agency, Research Triangle Park, NC. (*www.epa.gov/scram001*).

Section 3

As proposed, we revised section 3 to more accurately reflect current EPA practice, *e.g.*, functions of the Model Clearinghouse and enhanced criteria for the use of alternative models. Requirements for alternative models when preferred models are less appropriate for specific applications have been clarified. These requirements include scientific peer review and the establishment of an acceptable protocol prior to the model's use.

Section 4

We revised section 4.2.2 to reflect the widespread use of short-term models for all averaging periods. Hence, we no longer reference long-term models (*e.g.*, ISCLT) in the *Guideline*.[7]

Section 5

To simplify, the list of acceptable, yet equivalent, screening techniques for complex terrain was removed. CTSCREEN and guidance for its use are retained; CTSCREEN remains acceptable for all terrain above stack top. The screening techniques whose descriptions we removed, *i.e.*, Valley (as implemented in SCREEN3), COMPLEX I (as implemented in ISC3), SHORTZ/LONGZ, and RTDM remain available for use in applicable cases where established/accepted procedures are used. Consultation with the appropriate reviewing authority is still advised for application of these screening models.

Section 6

As proposed, we revised section 6 to reflect the new PM–2.5 and ozone ambient air quality standards that were issued on July 18, 1997 (62 FR 38652 & 62 FR 38856). You will note that we inserted respective subsections for particulate matter and lead from section 8, so that section 6 now primarily contains modeling guidance for the criteria pollutants regulated in Part 51 (SO2 analyses are covered in section 4). We also updated information on receptor models.

- We enhanced the subsection on particulate matter as much as possible to reflect the Agency's current thinking on approaches for fine particulates (PM–2.5). You will note that we removed the references to the Climatological Dispersion Model (CDM 2.0) as well as to RAM from this section, and also deleted CDM and RAM from appendix A (*see* below).
- We enhanced the subsection on ozone to better reflect modeling approaches we currently envision, and added a reference for current guidance on ozone attainment demonstrations.[8] You will note that we removed the reference to the Urban Airshed Model (UAM–IV) from this section, and deleted UAM from appendix A. UAM–IV is no longer the recommended photochemical model for attainment demonstrations for ozone.
- We updated the subsection on carbon monoxide by removing reference to RAM. While UAM–IV is deleted from appendix A, reference to areawide analyses is retained. For refined intersection modeling, CAL3QHCR is specifically mentioned for use on a case-by-case basis.
- In the subsection on NO_2 models, we added a third tier for the screening approach that allows the use of the ozone limiting method on a case-by-case basis. You may recall that this approach was removed with the *Guideline* update promulgated on August 9, 1995 (60 FR 40465).
- In the subsection on lead, we deleted references to 40 CFR 51.83, 51.84, and 51.85, conforming to previous EPA action (51 FR 40661).

Section 7

For regional scale modeling, we removed reference to the Regional Oxidant Model (ROM) and the Regional Acid Deposition Model (RADM) from section 7 because they are outdated and replaced by a reference to Models-3 [9] in section 6. We enhanced the subsection on visibility to reflect the provisions of the Clean Air Act, including those for reasonable attribution of visibility impairment and regional haze, as well as the new NAAQS for PM–2.5. For assessment of reasonably attributable haze impairment due to one or a small group of sources, CALPUFF is available for use on a case-by-case basis. We identify REMSAD and new approaches under the Models-3/CMAQ umbrella for possible use to develop and evaluate national policy and assist State and local control agencies. For long range transport analyses, we recommend the CALPUFF modeling system. To facilitate use of a complex air quality and meteorological modeling system like CALPUFF, we stipulate that a written protocol may be considered for developing consensus in the methods and procedures to be followed.

Section 8

As proposed, we revised section 8 to better reflect our current regulatory practice for the general modeling considerations addressed.

- We revised subsection 8.2.6 to refer to subsection 6.2.3 for details on chemical transformation of NO_X.
- We merged subsection 8.2.8 (Urban/Rural Classification) with subsection 8.2.3 (Dispersion Coefficients), and removed reference to WYNDvalley.
- We merged discussions in subsections 8.2.9 (Fumigation) and 8.2.10 (Stagnation) into one new subsection (8.2.8—Complex Winds), and specifically identify the availability of CALPUFF for certain situations on a case-by-case basis.
- We removed the distinction between short-term and long-term models because when assessing the impacts from criteria air pollutants, long-term estimates are now practicable using hour-by-hour meteorological data.

Section 9

As proposed,

- We revised subsection 9.2.3 (recommendations for estimating background concentrations from nearby sources) to reflect a settlement reached on October 16, 1997 in a petition brought by the Utility Air Regulatory Group (UARG). In accordance with the settlement, we are clarifying the definition of "nearby sources." The "maximum allowable emission limit," specified in Tables 9–1 and 9–2, is tied in certain circumstances [10] to the emission rate representative of a nearby source's maximum physical capacity to emit. We also clarify that nearby sources should be modeled only when they operate at the same time as the primary source(s) being modeled. Where a nearby source does not, by its nature, operate at the same time as the primary source being modeled, the burden is on the primary source to demonstrate to the satisfaction of the appropriate reviewing authority that this is, in fact, the case. We added footnotes to Tables 9–1 and 9–2 to refer back to applicable paragraphs of subsection 9.2.3 that provide the necessary clarification.

[7] Note that because appendix W is designed to guide assessments for criteria pollutants, the proposed discontinuation of ISCLT for purposes herein does not preclude its use for other pollutant assessments, as applicable. For example, the ASPEN model (Assessment System for Population Exposure Nationwide) uses the capabilities of ISCLT to estimate ambient concentrations of toxic pollutants nationwide by census tract. Such applications require the abbreviated computing possible with ISCLT.

[8] Environmental Protection Agency, 1998. Use of Models and Other Analyses in Attainment Demonstrations for the 8-hr Ozone NAAQS (Draft). Office of Air Quality Planning & Standards, Research Triangle Park, NC. (Docket No. A–99–05, II–A–14) (Also available on SCRAM Web site, *http://www.epa.gov/scram001*, as *draft8hr.pdf*)

[9] Environmental Protection Agency, 1998. EPA Third-Generation Air Quality Modeling System. Models-3, Volume 9b: User Manual. EPA Publication No. EPA–600/R–98/069(b). Office of Research and Development, Washington, DC.

[10] See section 8.2.3 of the *Guideline*.

• We enhanced section 9.3 (Meteorological Input Data) to develop concepts of meteorological data representativeness, minimum meteorological data requirements, and the use of prognostic mesoscale meteorological models in certain situations. These models (*e.g.*, the Penn State/NCAR MM4 [11,12,13] or MM5 [14] model) assimilate meteorological data from several surface and upper air stations in or near a domain and generate a 3-dimensional field of wind, temperature and relative humidity profiles. We revised recommendations for length of record for meteorological data (subsection 9.3.1.2) for long range transport and complex wind situations. In paragraph 9.3.1.2(d) we specifically allow the use of at least three years (need not be consecutive) of assimilated mesoscale meteorological data.

• We revised subsection 9.3.2 (National Weather Service Data) to inform users that National Weather Service (NWS) surface and upper air meteorological data are available on CD–ROM from the National Climatic Data Center. Recent years of such surface data are derived from the NWS's Automated Surface Observing System (ASOS). We revised subsection 9.3.1.2 to address the possible occurrence of ASOS data within 5-year sets of meteorological data.

• We revised subsection 9.3.3.1 to clarify that, while site-specific measurements are frequently made "on-property" (*i.e.*, on the source's premises), acquisition of adequately representative site-specific data does not preclude collecting data from a location off property. Conversely, collection of meteorological data on property does not of itself guarantee adequate representativeness. The subsection was also enhanced by improving the discussion of collection of temperature difference measurements; a paragraph was developed that focuses on measurement of aloft winds for simulation of plume rise, dispersion and transport (some details for CTDMPLUS were moved to its appendix A descriptions); a paragraph was added to address collection and use of direct turbulence measurements; and the paragraph that discusses meteorological data preprocessor has been enhanced.

• We revised subsection 9.3.3.2 by removing reference to the STAR processing routine because ISCLT and CDM 2.0 (for which STAR formatted data were developed) have been removed.

• We revised subsection 9.3.4 (Treatment of Calms) to increase accuracy.

Section 10

We updated section 10 to reflect current thinking and state-of-the-practice regarding model accuracy and uncertainty.

Section 11

As proposed, we made minor revisions to section 11 to reflect the new ambient air quality standards for fine particles and ozone. Because EPA has revised its emissions trading program for SO_2, we have deleted subsection 11.2.3.4.

Section 12 & 13

We redesignated section 13 (Bibliography) as section 12 (References) and *vice-versa*. We revised them by adding some references, deleting obsolete/superseded ones, and resequencing. You will note that a peer scientific review for CALPUFF has been included.

Section 14

In a streamlining effort, we removed section 14 (Glossary). Given current familiarity with modeling terminology, we no longer consider that maintenance of such a glossary is as necessary as it once may have been. For these and other reasons relating to Office of Federal Register policy (see discussion of appendix B below), we have revised the glossary and placed it on our Internet Web site.

Appendix A

We updated the introduction to appendix A (section A.0). As mentioned before, we added CALPUFF to appendix A. We removed the Climatological Dispersion Model (CDM 2.0), the Gaussian-Plume Multiple Source Air Quality Algorithm (RAM), and the Urban Airshed Model (UAM) from appendix A. These models have been superseded and are no longer considered preferred techniques.

Appendix B

We have moved the appendix B repository of alternate model summary descriptions to our Internet SCRAM Web site (*http://www.epa.gov/scram001*). Placement of this material on the Web site offers many advantages. In this format, we will be able to maintain the list and model descriptions more easily and inexpensively.

Several model developers have submitted new dispersion models for inclusion in this Web site repository of alternate models:

• Second-Order Closure Integrated Puff Model (SCIPUFF);

• Open Burn/Open Detonation Dispersion Model (OBODM);

• Atmospheric Dispersion Modeling System (ADMS);

• Comprehensive Air Quality Model with extensions (CAMx); and

• Urban Airshed Model—V (UAMV).

As described below, codes (executables) for these models, as well as applicable documentation, have been uploaded to our Internet SCRAM Web site. Finally, we deleted a model currently listed in appendix B, MESOPUFF II, which CALPUFF replaces.

Appendix C

As proposed, we also moved appendix C (Example Air Quality Analysis Checklist) from the CFR to our Internet SCRAM Web site. We believe this checklist is outdated, in need of revision, and would be more practical to maintain if posted on EPA's Internet SCRAM Web site.

Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Order.

This rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business that meets the RFA default definitions for small business (based on Small Business Administration size standards), as described in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities. Today's rule will not have any impacts on small entities because existing and new sources of air emissions that model air quality for State Implementation Plans and the prevention of significant deterioration are typically not small entities. The modeling techniques described today are primarily used by state air control agencies and by industry.

To the extent that any small entities would ever have to model air quality using the modeling techniques described in today's rule, the impacts of using updated modeling techniques would be minimal, if not non-existent. The action promulgated today incorporates comments received at the 7th Conference on Air Quality Modeling in June 2000 in Washington, DC. The rule features a new modeling system for calculating PSD increment consumption—CALPUFF—and serves to increase efficiency and accuracy. This system employs procedural concepts that are very similar to those currently used, changing only mathematical formulations and specific data elements. No impacts on small entities in the use of CALPUFF are anticipated. We do not believe that CALPUFF's use poses a significant or unreasonable burden on any small entities. This final action imposes no new regulatory burdens and, as such, there will be no additional impact on small entities regarding reporting, recordkeeping, compliance requirements.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan.

The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule recommends a new modeling system for calculating PSD increment consumption—CALPUFF—that increases efficiency and accuracy. CALPUFF has been used for these purposes on a case-by-case basis (per *Guideline subsection* 3.2.2) for several years, as has its predecessor—MESOPUFF II. While *Guideline subsection* 3.2.2 still allows for alternative models to be used, EPA is now sufficiently confident in CALPUFF's technical formulation and performance to adopt it in appendix A of the *Guideline*. Since the two modeling systems are comparable in scope and purpose, use of CALPUFF itself does not involve any increase in costs. The optional use of prognostic meteorological data (*e.g.*, MM5) input files, however, may result in a small incremental cost increase. To the extent that the use of more refined models with comprehensive input data bases reduces the potential for over-or underprediction of air quality impacts, air quality management programs become more economically efficient. Moreover, modeling costs (which include those for input data acquisition) are typically among the implementation costs that are considered as part of the programs (*i.e.*, PSD) that establish and periodically revise requirements for compliance. Any incremental modeling costs attributable to today's rule do not approach the $100 million threshold prescribed by UMRA. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule therefore contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism " (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism

[11] Stauffer, D.R. and Seaman, N.L., 1990. Use of four-dimensional data assimilation in a limited-area mesoscale model. Part I: Experiments with synoptic-scale data. Monthly Weather Review, 118: 1250–1277.

[12] Stauffer, D.R., Seaman, N.L., and Binkowski, F.S., 1991. Use of four-dimensional data assimilation in a limited-area mesoscale model. Part II: Effect of data assimilation within the planetary boundary layer. Monthly Weather Review, 119: 734–754.

[13] Hourly Modeled Sounding Data. MM4—1990 Meteorological Data, 12-volume CD–ROM. Jointly produced by NOAA's National Climatic Data Center and Atmospheric Sciences Modeling Division. August 1995. Can be ordered from NOAA National Data Center's Internet Web site @ *www.nndc.noaa.gov/.*

[14] *http://www.mmm.ucar.edu/mm5/mm5-home.html*

implications." "Policies that have federalism implications " is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities (see D. Unfunded Mandates Reform Act of 1995, above). The rule would add better, more accurate techniques for air dispersion modeling analyses and does not impose any additional requirements for any of the affected parties covered under Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. As stated above (see D. Unfunded Mandates Reform Act of 1995, above), the rule does not impose any new requirements for calculating PSD increment consumption, and does not impose any additional requirements for the regulated community, including Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this rule.

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13175 do not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 applies to any rule that EPA determines (1) to be "economically significant " as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both the criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks " (62 FR 19885, April 23, 1997) because it does not impose an economically significant regulatory action as defined by Executive Order 12866 and the action does not involve decisions on environmental health or safety risks that may disproportionately affect children.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act of 1998

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2), and will be effective 30 days from the publication date of this notice.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 2, 2003.

Christine Todd Whitman,

Administrator.

■ Part 51, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 100; 42 U.S.C. 7401–7671q.

■ 2. Appendix W to Part 51 revised to read as follows:

Appendix W to Part 51—Guideline on Air Quality Models

Preface

a. Industry and control agencies have long expressed a need for consistency in the application of air quality models for regulatory purposes. In the 1977 Clean Air Act, Congress mandated such consistency and encouraged the standardization of model applications. The *Guideline on Air Quality Models* (hereafter, *Guideline*) was first published in April 1978 to satisfy these requirements by specifying models and providing guidance for their use. The *Guideline* provides a common basis for estimating the air quality concentrations of criteria pollutants used in assessing control strategies and developing emission limits.

b. The continuing development of new air quality models in response to regulatory requirements and the expanded requirements for models to cover even more complex problems have emphasized the need for periodic review and update of guidance on these techniques. Three primary on-going activities provide direct input to revisions of the *Guideline*. The first is a series of annual

EPA workshops conducted for the purpose of ensuring consistency and providing clarification in the application of models. The second activity is the solicitation and review of new models from the technical and user community. In the March 27, 1980 **Federal Register**, a procedure was outlined for the submittal to EPA of privately developed models. After extensive evaluation and scientific review, these models, as well as those made available by EPA, are considered for recognition in the *Guideline*. The third activity is the extensive on-going research efforts by EPA and others in air quality and meteorological modeling.

c. Based primarily on these three activities, new sections and topics are included as needed. EPA does not make changes to the guidance on a predetermined schedule, but rather on an as needed basis. EPA believes that revisions of the *Guideline* should be timely and responsive to user needs and should involve public participation to the greatest possible extent. All future changes to the guidance will be proposed and finalized in the **Federal Register**. Information on the current status of modeling guidance can always be obtained from EPA's Regional Offices.

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1.0 Introduction

a. The *Guideline* recommends air quality modeling techniques that should be applied to State Implementation Plan (SIP) revisions for existing sources and to new source reviews (NSR), including prevention of significant deterioration (PSD). (*See* Ref. 1, 2, 3). Applicable only to criteria air pollutants, it is intended for use by EPA Regional Offices in judging the adequacy of modeling analyses performed by EPA, State and local agencies and by industry. The guidance is appropriate for use by other Federal agencies and by State agencies with air quality and land management responsibilities. The *Guideline* serves to identify, for all interested parties, those techniques and data bases EPA considers acceptable. The *Guideline* is not intended to be a compendium of modeling techniques. Rather, it should serve as a common measure of acceptable technical analysis when supported by sound scientific judgement.

b. Due to limitations in the spatial and temporal coverage of air quality measurements, monitoring data normally are not sufficient as the sole basis for demonstrating the adequacy of emission limits for existing sources. Also, the impacts of new sources that do not yet exist can only be determined through modeling. Thus, models, while uniquely filling one program need, have become a primary analytical tool in most air quality assessments. Air quality measurements can be used in a complementary manner to dispersion models, with due regard for the strengths and weaknesses of both analysis techniques. Measurements are particularly useful in assessing the accuracy of model estimates. The use of air quality measurements alone however could be preferable, as detailed in a later section of this document, when models are found to be unacceptable and monitoring data with sufficient spatial and temporal coverage are available.

c. It would be advantageous to categorize the various regulatory programs and to apply a designated model to each proposed source needing analysis under a given program. However, the diversity of the nation's topography and climate, and variations in source configurations and operating characteristics dictate against a strict modeling "cookbook". There is no one model capable of properly addressing all conceivable situations even within a broad category such as point sources. Meteorological phenomena associated with threats to air quality standards are rarely amenable to a single mathematical treatment; thus, case-by-case analysis and judgement are frequently required. As modeling efforts become more complex, it is increasingly important that they be directed by highly competent individuals with a broad range of experience and knowledge in air quality meteorology. Further, they should be coordinated closely with specialists in emissions characteristics, air monitoring and data processing. The judgement of experienced meteorologists and analysts is essential.

d. The model that most accurately estimates concentrations in the area of interest is always sought. However, it is clear from the needs expressed by the States and EPA Regional Offices, by many industries and trade associations, and also by the deliberations of Congress, that consistency in

the selection and application of models and data bases should also be sought, even in case-by-case analyses. Consistency ensures that air quality control agencies and the general public have a common basis for estimating pollutant concentrations, assessing control strategies and specifying emission limits. Such consistency is not, however, promoted at the expense of model and data base accuracy. The *Guideline* provides a consistent basis for selection of the most accurate models and data bases for use in air quality assessments.

e. Recommendations are made in the *Guideline* concerning air quality models, data bases, requirements for concentration estimates, the use of measured data in lieu of model estimates, and model evaluation procedures. Models are identified for some specific applications. The guidance provided here should be followed in air quality analyses relative to State Implementation Plans and in supporting analyses required by EPA, State and local agency air programs. EPA may approve the use of another technique that can be demonstrated to be more appropriate than those recommended in this guide. This is discussed at greater length in Section 3. In all cases, the model applied to a given situation should be the one that provides the most accurate representation of atmospheric transport, dispersion, and chemical transformations in the area of interest. However, to ensure consistency, deviations from this guide should be carefully documented and fully supported.

f. From time to time situations arise requiring clarification of the intent of the guidance on a specific topic. Periodic workshops are held with the headquarters, Regional Office, State, and local agency modeling representatives to ensure consistency in modeling guidance and to promote the use of more accurate air quality models and data bases. The workshops serve to provide further explanations of *Guideline* requirements to the Regional Offices and workshop reports are issued with this clarifying information. In addition, findings from on-going research programs, new model submittals, or results from model evaluations and applications are continuously evaluated. Based on this information changes in the guidance may be indicated.

g. All changes to the *Guideline* must follow rulemaking requirements since the *Guideline* is codified in Appendix W of Part 51. EPA will promulgate proposed and final rules in the **Federal Register** to amend this Appendix. Ample opportunity for public comment will be provided for each proposed change and public hearings scheduled if requested.

h. A wide range of topics on modeling and data bases are discussed in the *Guideline*. Section 2 gives an overview of models and their appropriate use. Section 3 provides specific guidance on the use of "preferred" air quality models and on the selection of alternative techniques. Sections 4 through 7 provide recommendations on modeling techniques for application to simple-terrain stationary source problems, complex terrain problems, and mobile source problems. Specific modeling requirements for selected regulatory issues are also addressed. Section 8 discusses issues common to many modeling analyses, including acceptable model components. Section 9 makes recommendations for data inputs to models including source, meteorological and background air quality data. Section 10 covers the uncertainty in model estimates and how that information can be useful to the regulatory decision-maker. The last chapter summarizes how estimates and measurements of air quality are used in assessing source impact and in evaluating control strategies.

i. Appendix W to 40 CFR Part 51 itself contains an appendix: Appendix A. Thus, when reference is made to "Appendix A" in this document, it refers to Appendix A to Appendix W to 40 CFR Part 51. Appendix A contains summaries of refined air quality models that are "preferred" for specific applications; both EPA models and models developed by others are included.

2.0 Overview of Model Use

a. Before attempting to implement the guidance contained in this document, the reader should be aware of certain general information concerning air quality models and their use. Such information is provided in this section.

2.1 Suitability of Models

a. The extent to which a specific air quality model is suitable for the evaluation of source impact depends upon several factors. These include: (1) The meteorological and topographic complexities of the area; (2) the level of detail and accuracy needed for the analysis; (3) the technical competence of those undertaking such simulation modeling; (4) the resources available; and (5) the detail and accuracy of the data base, i.e., emissions inventory, meteorological data, and air quality data. Appropriate data should be available before any attempt is made to apply a model. A model that requires detailed, precise, input data should not be used when such data are unavailable. However, assuming the data are adequate, the greater the detail with which a model considers the spatial and temporal variations in emissions and meteorological conditions, the greater the ability to evaluate the source impact and to distinguish the effects of various control strategies.

b. Air quality models have been applied with the most accuracy, or the least degree of uncertainty, to simulations of long term averages in areas with relatively simple topography. Areas subject to major topographic influences experience meteorological complexities that are extremely difficult to simulate. Although models are available for such circumstances, they are frequently site specific and resource intensive. In the absence of a model capable of simulating such complexities, only a preliminary approximation may be feasible until such time as better models and data bases become available.

c. Models are highly specialized tools. Competent and experienced personnel are an essential prerequisite to the successful application of simulation models. The need for specialists is critical when the more sophisticated models are used or the area being investigated has complicated meteorological or topographic features. A model applied improperly, or with inappropriate data, can lead to serious misjudgements regarding the source impact or the effectiveness of a control strategy.

d. The resource demands generated by use of air quality models vary widely depending on the specific application. The resources required depend on the nature of the model and its complexity, the detail of the data base, the difficulty of the application, and the amount and level of expertise required. The costs of manpower and computational facilities may also be important factors in the selection and use of a model for a specific analysis. However, it should be recognized that under some sets of physical circumstances and accuracy requirements, no present model may be appropriate. Thus, consideration of these factors should lead to selection of an appropriate model.

2.2 Levels of Sophistication of Models

a. There are two levels of sophistication of models. The first level consists of relatively simple estimation techniques that generally use preset, worst-case meteorological conditions to provide conservative estimates of the air quality impact of a specific source, or source category. These are called screening techniques or screening models. The purpose of such techniques is to eliminate the need of more detailed modeling for those sources that clearly will not cause or contribute to ambient concentrations in excess of either the National Ambient Air Quality Standards (NAAQS)[1] or the allowable prevention of significant deterioration (PSD) concentration increments.[2,3] If a screening technique indicates that the concentration contributed by the source exceeds the PSD increment or the increment remaining to just meet the NAAQS, then the second level of more sophisticated models should be applied.

b. The second level consists of those analytical techniques that provide more detailed treatment of physical and chemical atmospheric processes, require more detailed and precise input data, and provide more specialized concentration estimates. As a result they provide a more refined and, at least theoretically, a more accurate estimate of source impact and the effectiveness of control strategies. These are referred to as refined models.

c. The use of screening techniques followed, as appropriate, by a more refined analysis is always desirable, however there are situations where the screening techniques are practically and technically the only viable option for estimating source impact. In such cases, an attempt should be made to acquire or improve the necessary data bases and to develop appropriate analytical techniques.

2.3 Availability of Models

a. For most of the screening and refined models discussed in the *Guideline*, codes, associated documentation and other useful information are available for download from EPA's Support Center for Regulatory Air Modeling (SCRAM) Internet Web site at *http://www.epa.gov/scram001*. A list of alternate models that can be used with case-by-case justification (subsection 3.2) and an example air quality analysis checklist are also posted on this Web site. This is a site with which modelers should become familiar.

3.0 Recommended Air Quality Models

a. This section recommends the approach to be taken in determining refined modeling techniques for use in regulatory air quality programs. The status of models developed by EPA, as well as those submitted to EPA for review and possible inclusion in this guidance, is discussed. The section also addresses the selection of models for individual cases and provides recommendations for situations where the preferred models are not applicable. Two additional sources of modeling guidance are the Model Clearinghouse and periodic Regional/State/Local Modelers workshops.

b. In this guidance, when approval is required for a particular modeling technique or analytical procedure, we often refer to the "*appropriate reviewing authority*". In some EPA regions, authority for NSR and PSD permitting and related activities has been delegated to State and even local agencies. In these cases, such agencies are "*representatives*" of the respective regions. Even in these circumstances, the Regional Office retains the ultimate authority in decisions and approvals. Therefore, as discussed above and depending on the circumstances, the appropriate reviewing authority may be the Regional Office, Federal Land Manager(s), State agency(ies), or perhaps local agency(ies). In cases where review and approval comes solely from the Regional Office (sometimes stated as "*Regional Administrator*"), this will be stipulated. If there is any question as to the appropriate reviewing authority, you should contact the Regional modeling contact (*http://www.epa.gov/scram001/tt28.htm#regionalmodelingcontacts*) in the appropriate EPA Regional Office, whose jurisdiction generally includes the physical location of the source in question and its expected impacts.

c. In all regulatory analyses, especially if other than preferred models are selected for use, early discussions among Regional Office staff, State and local control agencies, industry representatives, and where appropriate, the Federal Land Manager, are invaluable and are encouraged. Agreement on the data base(s) to be used, modeling techniques to be applied and the overall technical approach, prior to the actual analyses, helps avoid misunderstandings concerning the final results and may reduce the later need for additional analyses. The use of an air quality analysis checklist, such as is posted on EPA's Internet SCRAM Web site (subsection 2.3), and the preparation of a written protocol help to keep misunderstandings at a minimum.

d. It should not be construed that the preferred models identified here are to be permanently used to the exclusion of all others or that they are the only models available for relating emissions to air quality. The model that most accurately estimates concentrations in the area of interest is always sought. However, designation of specific models is needed to promote consistency in model selection and application.

e. The 1980 solicitation of new or different models from the technical community and the program whereby these models were evaluated, established a means by which new models are identified, reviewed and made available in the *Guideline*. There is a pressing need for the development of models for a wide range of regulatory applications. Refined models that more realistically simulate the physical and chemical process in the atmosphere and that more reliably estimate pollutant concentrations are needed. Thus, the solicitation of models is considered to be continuous.

3.1 Preferred Modeling Techniques

3.1.1 Discussion

a. EPA has developed models suitable for regulatory application. Other models have been submitted by private developers for possible inclusion in the *Guideline*. These refined models have undergone evaluation exercises [7,8,9,10,11,12,13,14,15] that include statistical measures of model performance in comparison with measured air quality data as suggested by the American Meteorological Society [16] and, where possible, peer scientific reviews. [17,18,19,20,21]

b. When a single model is found to perform better than others, it is recommended for application as a preferred model and listed in Appendix A. If no one model is found to clearly perform better through the evaluation exercise, then the preferred model listed in Appendix A is selected on the basis of other factors such as past use, public familiarity, cost or resource requirements, and availability. No further evaluation of a preferred model is required for a particular application if the EPA recommendations for regulatory use specified for the model in the *Guideline* are followed. Alternative models to those listed in Appendix A should generally be compared with measured air quality data when they are used for regulatory applications consistent with recommendations in subsection 3.2.

c. The solicitation of new refined models which are based on sounder scientific principles and which more reliably estimate pollutant concentrations is considered by EPA to be continuous. Models that are submitted in accordance with the established provisions will be evaluated as submitted. These requirements are:

i. The model must be computerized and functioning in a common computer code suitable for use on a variety of computer systems.

ii. The model must be documented in a user's guide which identifies the mathematics of the model, data requirements and program operating characteristics at a level of detail comparable to that available for currently recommended models.

iii. The model must be accompanied by a complete test data set including input parameters and output results. The test data must be included in the user's guide as well as provided in computer-readable form.

iv. The model must be useful to typical users, *e.g.*, State air pollution control agencies, for specific air quality control problems. Such users should be able to operate the computer program(s) from available documentation.

v. The model documentation must include a comparison with air quality data (and/or tracer measurements) or with other well-established analytical techniques.

vi. The developer must be willing to make the model available to users at reasonable cost or make it available for public access through the Internet or National Technical Information Service: the model cannot be proprietary.

d. The evaluation process will include a determination of technical merit, in accordance with the above six items including the practicality of the model for use in ongoing regulatory programs. Each model will also be subjected to a performance evaluation for an appropriate data base and to a peer scientific review. Models for wide use (not just an isolated case) that are found to perform better will be proposed for inclusion as preferred models in future *Guideline* revisions.

3.1.2 Recommendations

a. Appendix A identifies refined models that are preferred for use in regulatory applications. If a model is required for a particular application, the user should select a model from that appendix. These models may be used without a formal demonstration of applicability as long as they are used as indicated in each model summary of Appendix A. Further recommendations for the application of these models to specific source problems are found in subsequent sections of the *Guideline*.

b. If changes are made to a preferred model without affecting the concentration estimates, the preferred status of the model is unchanged. Examples of modifications that do not affect concentrations are those made to enable use of a different computer or those that affect only the format or averaging time of the model results. However, when any changes are made, the Regional Administrator should require a test case example to demonstrate that the concentration estimates are not affected.

c. A preferred model should be operated with the options listed in Appendix A as "Recommendations for Regulatory Use." If other options are exercised, the model is no longer "preferred." Any other modification to a preferred model that would result in a change in the concentration estimates likewise alters its status as a preferred model. Use of the model must then be justified on a case-by-case basis.

3.2 Use of Alternative Models

3.2.1 Discussion

a. Selection of the best techniques for each individual air quality analysis is always encouraged, but the selection should be done in a consistent manner. A simple listing of models in this guide cannot alone achieve that consistency nor can it necessarily provide the best model for all possible situations. EPA reports [22,23] are available to assist in developing a consistent approach when justifying the use of other than the preferred modeling techniques recommended

in the *Guideline*. An ASTM reference[24] provides a general philosophy for developing and implementing advanced statistical evaluations of atmospheric dispersion models, and provides an example statistical technique to illustrate the application of this philosophy. An EPA reference[25] provides a statistical technique for evaluating model performance for predicting peak concentration values, as might be observed at individual monitoring locations. In many cases, this protocol should be considered preferentially to the material in Chapter 3 of reference 22. The procedures in these documents provide a general framework for objective decision-making on the acceptability of an alternative model for a given regulatory application. The documents contain procedures for conducting both the technical evaluation of the model and the field test or performance evaluation.

b. This section discusses the use of alternate modeling techniques and defines three situations when alternative models may be used.

3.2.2 Recommendations

a. Determination of acceptability of a model is a Regional Office responsibility. Where the Regional Administrator finds that an alternative model is more appropriate than a preferred model, that model may be used subject to the recommendations of this subsection. This finding will normally result from a determination that (1) a preferred air quality model is not appropriate for the particular application; or (2) a more appropriate model or analytical procedure is available and applicable.

b. An alternative model should be evaluated from both a theoretical and a performance perspective before it is selected for use. There are three separate conditions under which such a model may normally be approved for use: (1) If a demonstration can be made that the model produces concentration estimates equivalent to the estimates obtained using a preferred model; (2) if a statistical performance evaluation has been conducted using measured air quality data and the results of that evaluation indicate the alternative model performs better for the given application than a comparable model in Appendix A; or (3) if the preferred model is less appropriate for the specific application, or there is no preferred model. Any one of these three separate conditions may make use of an alternative model acceptable. Some known alternative models that are applicable for selected situations are listed on EPA's SCRAM Internet Web site (subsection 2.3). However, inclusion there does not confer any unique status relative to other alternative models that are being or will be developed in the future.

c. Equivalency, condition (1) in paragraph (b) of this subsection, is established by demonstrating that the maximum or highest, second highest concentrations are within 2 percent of the estimates obtained from the preferred model. The option to show equivalency is intended as a simple demonstration of acceptability for an alternative model that is so nearly identical (or contains options that can make it identical) to a preferred model that it can be treated for practical purposes as the preferred model. Two percent was selected as the basis for equivalency since it is a rough approximation of the fraction that PSD Class I increments are of the NAAQS for SO^2, *i.e.*, the difference in concentrations that is judged to be significant. However, notwithstanding this demonstration, models that are not equivalent may be used when one of the two other conditions described in paragraphs (d) and (e) of this subsection are satisfied.

d. For condition (2) in paragraph (b) of this subsection, the procedures and techniques for determining the acceptability of a model for an individual case based on superior performance are contained in references 22–25 should be followed, as appropriate. Preparation and implementation of an evaluation protocol which is acceptable to both control agencies and regulated industry is an important element in such an evaluation.

e. Finally, for condition (3) in paragraph (b) of this subsection, an alternative refined model may be used provided that:

i. The model has received a scientific peer review;

ii. The model can be demonstrated to be applicable to the problem on a theoretical basis;

iii. The data bases which are necessary to perform the analysis are available and adequate;

iv. Appropriate performance evaluations of the model have shown that the model is not biased toward underestimates; and

v. A protocol on methods and procedures to be followed has been established.

3.3 Availability of Supplementary Modeling Guidance

a. The Regional Administrator has the authority to select models that are appropriate for use in a given situation. However, there is a need for assistance and guidance in the selection process so that fairness and consistency in modeling decisions is fostered among the various Regional Offices and the States. To satisfy that need, EPA established the Model Clearinghouse[5] and also holds periodic workshops with headquarters, Regional Office, State, and local agency modeling representatives.

b. The Regional Office should always be consulted for information and guidance concerning modeling methods and interpretations of modeling guidance, and to ensure that the air quality model user has available the latest most up-to-date policy and procedures. As appropriate, the Regional Office may request assistance from the Model Clearinghouse after an initial evaluation and decision has been reached concerning the application of a model, analytical technique or data base in a particular regulatory action.

4.0 Simple-Terrain Stationary Source Models

4.1 Discussion

a. Simple terrain, as used here, is considered to be an area where terrain features are all lower in elevation than the top of the stack of the source(s) in question. The models recommended in this section are generally used in the air quality impact analysis of stationary sources for most criteria pollutants. The averaging time of the concentration estimates produced by these models ranges from 1 hour to an annual average.

b. In the early 1980s, model evaluation exercises were conducted to determine the "best, most appropriate point source model" for use in simple terrain.[8,17] No one model was found to be clearly superior and, based on past use, public familiarity, and availability, ISC (predecessor to ISC3[26]) became the recommended model for a wide range of regulatory applications. Other refined models which also employed the basic Gaussian kernel, *i.e.*, BLP, CALINE3, OCD, and EDMS, were developed for specialized applications (Appendix A). Performance evaluations were also made for these models, which are identified in Appendix A.

4.2 Recommendations

4.2.1 Screening Techniques

a. Where a preliminary or conservative estimate is desired, point source screening techniques are an acceptable approach to air quality analyses. EPA has published guidance for screening procedures,[27] and a computerized version of the recommended screening technique, SCREEN3, is available.[28]

b. All screening procedures should be adjusted to the site and problem at hand. Close attention should be paid to whether the area should be classified urban or rural in accordance with subsection 8.2.3. The climatology of the area should be studied to help define the worst-case meteorological conditions. Agreement should be reached between the model user and the appropriate reviewing authority (paragraph 3.0(b)) on the choice of the screening model for each analysis, and on the input data as well as the ultimate use of the results.

4.2.2 Refined Analytical Techniques

a. A brief description of preferred models for refined applications is found in Appendix A. Also listed in that appendix are the model input requirements, the standard options that should be selected when running the program, and output options.

b. When modeling for compliance with short term NAAQS and PSD increments is of primary concern, a short term model may be used to provide long term concentration estimates. The conversion from long term to short term concentration averages by any transformation technique is not acceptable in regulatory applications.

c. The state-of-the-science for modeling atmospheric deposition is evolving and the best techniques are currently being assessed and their results are being compared with observations. Consequently, the approach taken for any purpose should be coordinated with the appropriate reviewing authority (paragraph 3.0(b)).

5.0 Model Use in Complex Terrain

5.1 Discussion

a. For the purpose of the *Guideline*, complex terrain is defined as terrain exceeding the height of the stack being modeled. Complex terrain dispersion models are normally applied to stationary sources of pollutants such as SO_2 and particulates.

b. A major outcome from the EPA Complex Terrain Model Development project has been the publication of a refined dispersion model (CTDM) suitable for regulatory application to plume impaction assessments in complex terrain.[29] Although CTDM as originally produced was only applicable to those hours characterized as neutral or stable, a computer code for all stability conditions—CTDMPLUS—together with a user's guide,[30] and site specific meteorological and terrain data processors[31,32] is available. Moreover, CTSCREEN,[33] a version of CTDMPLUS that does not require site specific meteorological data inputs, is also available as a screening technique.

c. The methods discussed in this section should be considered in two categories: (1) Screening techniques, and (2) the refined dispersion model, CTDMPLUS, discussed in this subsection and listed in Appendix A.

d. Continued improvements in ability to accurately model plume dispersion in complex terrain situations can be expected, *e.g.*, from research on lee side effects due to terrain obstacles. New approaches to improve the ability of models to realistically simulate atmospheric physics, *e.g.*, hybrid models which incorporate an accurate wind field analysis, will ultimately provide more appropriate tools for analyses. Such hybrid modeling techniques are also acceptable for regulatory applications after the appropriate demonstration and evaluation.[22]

5.2 Recommendations

a. Recommendations in this section apply primarily to those situations where the impaction of plumes on terrain at elevations equal to or greater than the plume centerline during stable atmospheric conditions are determined to be the problem. If a violation of any NAAQS or the controlling increment is indicated by using any of the preferred screening techniques, then a refined complex terrain model may be used. Phenomena such as fumigation, wind direction shear, lee-side effects, building wake- or terrain-induced downwash, deposition, chemical transformation, variable plume trajectories, and long range transport are not addressed by the recommendations in this section.

b. Where site specific data are used for either screening or refined complex terrain models, a data base of at least 1 full-year of meteorological data is preferred. If more data are available, they should be used. Meteorological data used in the analysis should be reviewed for both spatial and temporal representativeness.

c. Placement of receptors requires very careful attention when modeling in complex terrain. Often the highest concentrations are predicted to occur under very stable conditions, when the plume is near, or impinges on, the terrain. The plume under such conditions may be quite narrow in the vertical, so that even relatively small changes in a receptor's location may substantially affect the predicted concentration. Receptors within about a kilometer of the source may be even more sensitive to location. Thus, a dense array of receptors may be required in some cases. In order to avoid excessively large computer runs due to such a large array of receptors, it is often desirable to model the area twice. The first model run would use a moderate number of receptors carefully located over the area of interest. The second model run would use a more dense array of receptors in areas showing potential for high concentrations, as indicated by the results of the first model run.

d. When CTSCREEN or CTDMPLUS is used, digitized contour data must be first processed by the CTDM Terrain Processor[32] to provide hill shape parameters in a format suitable for direct input to CTDMPLUS. Then the user supplies receptors either through an interactive program that is part of the model or directly, by using a text editor; using both methods to select receptors will generally be necessary to assure that the maximum concentrations are estimated by either model. In cases where a terrain feature may "appear to the plume" as smaller, multiple hills, it may be necessary to model the terrain both as a single feature and as multiple hills to determine design concentrations.

e. The user is encouraged to confer with the Regional Office if any unresolvable problems are encountered with any screening or refined analytical procedures, *e.g.*, meteorological data, receptor siting, or terrain contour processing issues.

5.2.1 Screening Techniques

a. CTSCREEN[33] can be used to obtain conservative, yet realistic, worst-case estimates for receptors located on terrain above stack height. CTSCREEN accounts for the three-dimensional nature of plume and terrain interaction and requires detailed terrain data representative of the modeling domain. The model description and user's instructions are contained in the user's guide.[33] The terrain data must be digitized in the same manner as for CTDMPLUS and a terrain processor is available.[32] A discussion of the model's performance characteristics is provided in a technical paper.[34] CTSCREEN is designed to execute a fixed matrix of meteorological values for wind speed (u), standard deviation of horizontal and vertical wind speeds (σ_v, σ_w), vertical potential temperature gradient ($d\theta/dz$), friction velocity (u_*), Monin-Obukhov length (L), mixing height (z_i) as a function of terrain height, and wind directions for both neutral/stable conditions and unstable convective conditions. Table 5–1 contains the matrix of meteorological variables that is used for each CTSCREEN analysis. There are 96 combinations, including exceptions, for each wind direction for the neutral/stable case, and 108 combinations for the unstable case. The specification of wind direction, however, is handled internally, based on the source and terrain geometry. Although CTSCREEN is designed to address a single source scenario, there are a number of options that can be selected on a case-by-case basis to address multi-source situations. However, the appropriate reviewing authority (paragraph 3.0(b)) should be consulted, and concurrence obtained, on the protocol for modeling multiple sources with CTSCREEN to ensure that the worst case is identified and assessed. The maximum concentration output from CTSCREEN represents a worst-case 1-hour concentration. Time-scaling factors of 0.7 for 3-hour, 0.15 for 24-hour and 0.03 for annual concentration averages are applied internally by CTSCREEN to the highest 1-hour concentration calculated by the model.

b. Placement of receptors requires very careful attention when modeling in complex terrain. Often the highest concentrations are predicted to occur under very stable conditions, when the plume is near, or impinges on, the terrain. The plume under such conditions may be quite narrow in the vertical, so that even relatively small changes in a receptor's location may substantially affect the predicted concentration. Receptors within about a kilometer of the source may be even more sensitive to location. Thus, a dense array of receptors may be required in some cases. In order to avoid excessively large computer runs due to such a large array of receptors, it is often desirable to model the area twice. The first model run would use a moderate number of receptors carefully located over the area of interest. The second model run would use a more dense array of receptors in areas showing potential for high concentrations, as indicated by the results of the first model run.

c. As mentioned above, digitized contour data must be preprocessed[32] to provide hill shape parameters in suitable input format. The user then supplies receptors either through an interactive program that is part of the model or directly, by using a text editor; using both methods to select receptors will generally be necessary to assure that the maximum concentrations are estimated by either model. In cases where a terrain feature may "appear to the plume" as smaller, multiple hills, it may be necessary to model the terrain both as a single feature and as multiple hills to determine design concentrations.

d. Other screening techniques, *e.g.*, Valley (as implemented in SCREEN3[28]), COMPLEX I (as implemented in ISC3[28]), SHORTZ/LONGZ[35], and RTDM[36] may be acceptable for complex terrain cases where established procedures are used. The user is encouraged to confer with the appropriate reviewing authority (paragraph 3.0(b)) if any unresolvable problems are encountered, *e.g.*, applicability, meteorological data, receptor siting, or terrain contour processing issues.

5.2.2 Refined Analytical Techniques

a. When the results of the screening analysis demonstrate a possible violation of NAAQS or the controlling PSD increments, a more refined analysis may need to be conducted.

b. The Complex Terrain Dispersion Model PLus Algorithms for Unstable Situations (CTDMPLUS) is a refined air quality model that is preferred for use in all stability conditions for complex terrain applications. CTDMPLUS is a sequential model that requires five input files: (1) General program specifications; (2) a terrain data file; (3) a receptor file; (4) a surface meteorological data file; and (5) a user created meteorological profile data file. Two optional input files consist of hourly emissions parameters and a file containing upper air data from rawinsonde data files, *e.g.*, a National Climatic Data Center TD–6201 file, unless

there are no hours categorized as unstable in the record. The model description and user instructions are contained in Volume 1 of the User's Guide.[30] Separate publications [32,31] describe the terrain preprocessor system and the meteorological preprocessor program. In *Part I* of a technical article [37] is a discussion of the model and its preprocessors; the model's performance characteristics are discussed in *Part II* of the same article.[38] The size of the CTDMPLUS executable file on a personal computer is approximately 360K bytes. The model produces hourly average concentrations of stable pollutants, *i.e.*, chemical transformation or decay of species and settling/deposition are not simulated. To obtain concentration averages corresponding to the NAAQS, *e.g.*, 3- or 24-hour, or annual averages, the user must execute a postprocessor program such as CHAVG. CTDMPLUS is applicable to all receptors on terrain elevations above stack top. However, the model contains no algorithms for simulating building downwash or the mixing or recirculation found in cavity zones in the lee of a hill. The path taken by a plume through an array of hills cannot be simulated. CTDMPLUS does not explicitly simulate calm meteorological periods, and for those situations the user should follow the guidance in subsection 9.3.4. The user should follow the recommendations in the User's Guide under General Program Specifications for: (1) Selecting mixed layer heights, (2) setting minimum scalar wind speed to 1 m/s, and (3) scaling wind direction with height. Close coordination with the Regional Office is essential to insure a consistent, technically sound application of this model.

c. The performance of CTDMPLUS is greatly improved by the use of meteorological data from several levels up to plume height. However, due to the vast range of source-plume-hill geometries possible in complex terrain, detailed requirements for meteorological monitoring in support of refined analyses using CTDMPLUS should be determined on a case-by-case basis. The following general guidance should be considered in the development of a meteorological monitoring protocol for regulatory applications of CTDMPLUS and reviewed in detail by the Regional Office before initiating any monitoring. As appropriate, EPA guidance (see reference 100) should be consulted for specific guidance on siting requirements for meteorological towers, selection and exposure of sensors, etc. As more experience is gained with the model in a variety of circumstances, more specific guidance may be developed.

d. Site specific meteorological data are critical to dispersion modeling in complex terrain and, consequently, the meteorological requirements are more demanding than for simple terrain. Generally, three different meteorological files (referred to as surface, profile, and rawin files) are needed to run CTDMPLUS in a regulatory mode.

e. The surface file is created by the meteorological preprocessor (METPRO) [31] based on site specific measurements or estimates of solar and/or net radiation, cloud cover and ceiling, and the mixed layer height. These data are used in METPRO to calculate the various surface layer scaling parameters (roughness length, friction velocity, and Monin-Obukhov length) which are needed to run the model. All of the user inputs required for the surface file are based either on surface observations or on measurements at or below 10m.

f. The profile data file is prepared by the user with site specific measurements (from at least three levels) of wind speed, wind direction, turbulence, and potential temperature. These measurements should be obtained up to the representative plume height(s) of interest (*i.e.*, the plume height(s) under those conditions important to the determination of the design concentration). The representative plume height(s) of interest should be determined using an appropriate complex terrain screening procedure (*e.g.*, CTSCREEN) and should be documented in the monitoring/modeling protocol. The necessary meteorological measurements should be obtained from an appropriately sited meteorological tower augmented by SODAR if the representative plume height(s) of interest exceed 100m. The meteorological tower need not exceed the lesser of the representative plume height of interest (the highest plume height if there is more than one plume height of interest) or 100m.

g. Locating towers on nearby terrain to obtain stack height or plume height measurements for use in profiles by CTDMPLUS should be avoided unless it can clearly be demonstrated that such measurements would be representative of conditions affecting the plume.

h. The rawin file is created by a second meteorological preprocessor (READ62) [31] based on NWS (National Weather Service) upper air data. The rawin file is used in CTDMPLUS to calculate vertical potential temperature gradients for use in estimating plume penetration in unstable conditions. The representativeness of the off-site NWS upper air data should be evaluated on a case-by-case basis.

i. In the absence of an appropriate refined model, screening results may need to be used to determine air quality impact and/or emission limits.

TABLE 5–1A.—NEUTRAL/STABLE METEOROLOGICAL MATRIX FOR CTSCREEN

Variable	Specific values				
U (m/s)	1.0	2.0	3.0	4.0	5.0
σ_v (m/s)	0.3	0.75	.....	.....	.....
σ_w (m/s)	0.08	0.15	0.30	0.75	.....
$\Delta\theta/\Delta z$ (K/m)	0.01	0.02	0.035	.....	.....
WD	(Wind direction optimized internally for each meteorological combination)				

Exceptions:
(1) If $U \leq 2$ m/s and $\sigma_v \leq 0.3$ m/s, then include $\sigma_w = 0.04$ m/s.
(2) If $\sigma_w = 0.75$ m/s and $U \geq 3.0$ m/s, then $\Delta\theta/\Delta z$ is limited to ≤ 0.01 K/m.
(3) If $U \geq 4$ m/s, then $\sigma w \geq 0.15$ m/s.
(4) $\sigma_w \leq \sigma_v$

TABLE 5–1B.—UNSTABLE/CONVECTIVE METEOROLOGICAL MATRIX FOR CTSCREEN

Variable	Specific values				
U (m/s)	1.0	2.0	3.0	4.0	5.0
u_* (m/s)	0.1	0.3	0.5	.....	.....
L (m)	−10	−50	−90	.....	.....
$\Delta\sigma/\Delta z$ (K/m)	0.030 (potential temperature gradient above z_i)				
z_i (m)	0.5h	1.0h	1.5h	.....	.....
	(where h = terrain height)				

6.0 Models for Ozone, Particulate Matter, Carbon Monoxide, Nitrogen Dioxide, and Lead

6.1 Discussion

a. This section identifies modeling approaches or models appropriate for addressing ozone (O_3) [1], carbon monoxide (CO), nitrogen dioxide (NO_2), particulates ($PM_{2.5}$ and PM–10), and lead. These pollutants are often associated with emissions from numerous sources. Generally, mobile sources contribute significantly to emissions of these pollutants or their precursors. For cases where it is of interest to estimate concentrations of CO or NO_2 near a single or small group of stationary sources, refer to Section 4. (Modeling approaches for SO_2 are discussed in Section 4.)

b. Several of the pollutants mentioned in the preceding paragraph are closely related to each other in that they share common sources of emissions and/or are subject to chemical transformations of similar precursors.[39, 40] For example, strategies designed to reduce ozone could have an effect on the secondary component of PM–2.5 and vice versa. Thus, it makes sense to use models which take into account the chemical coupling between O_3 and PM–2.5, when feasible. This should promote consistency among methods used to evaluate strategies for reducing different pollutants as well as consistency among the strategies themselves. Regulatory requirements for the different pollutants are likely to be due at different times. Thus, the following paragraphs identify appropriate modeling approaches for pollutants individually.

c. The NAAQS for ozone was revised on July 18, 1997 and is now based on an 8-hour averaging period. Models for ozone are needed primarily to guide choice of strategies to correct an observed ozone problem in an area not attaining the NAAQS for ozone. Use of photochemical grid models is the recommended means for identifying strategies needed to correct high ozone concentrations in such areas. Such models need to consider emissions of volatile organic compounds (VOC), nitrogen oxides (NO_X) and carbon monoxide (CO), as well as means for generating meteorological data governing transport and dispersion of ozone and its precursors. Other approaches, such as Lagrangian or observational models may be used to guide choice of appropriate strategies to consider with a photochemical grid model. These other approaches may be sufficient to address ozone in an area where observed concentrations are near the NAAQS or only slightly above it. Such a decision needs to be made on a case-by-case basis in concert with the Regional Office.

d. A control agency with jurisdiction over one or more areas with significant ozone problems should review available ambient air quality data to assess whether the problem is likely to be significantly impacted by regional transport.[41] Choice of a modeling approach depends on the outcome of this review. In cases where transport is considered significant, use of a nested regional model may be the preferred approach. If the observed problem is believed to be primarily of local origin, use of a model with a single horizontal grid resolution and geographical coverage that is less than that of a regional model may suffice.

e. The fine particulate matter NAAQS, promulgated on July 18, 1997, includes particles with an aerodynamic diameter nominally less than or equal to 2.5 micrometers (PM–2.5). Models for PM–2.5 are needed to assess adequacy of a proposed strategy for meeting annual and/or 24-hour NAAQS for PM–2.5. PM–2.5 is a mixture consisting of several diverse components. Because chemical/physical properties and origins of each component differ, it may be appropriate to use either a single model capable of addressing several of the important components or to model primary and secondary components using different models. Effects of a control strategy on PM–2.5 is estimated from the sum of the effects on the components composing PM–2.5. Model users may refer to guidance [42] for further details concerning appropriate modeling approaches.

f. A control agency with jurisdiction over one or more areas with PM–2.5 problems should review available ambient air quality data to assess which components of PM–2.5 are likely to be major contributors to the problem. If it is determined that regional transport of secondary particulates, such as sulfates or nitrates, is likely to contribute significantly to the problem, use of a regional model may be the preferred approach. Otherwise, coverage may be limited to a domain that is urban scale or less. Special care should be taken to select appropriate geographical coverage for a modeling application.[42]

g. The NAAQS for PM–10 was promulgated in July 1987. A SIP development guide [43] is available to assist in PM–10 analyses and control strategy development. EPA promulgated regulations for PSD increments measured as PM–10 in a notice published on June 3, 1993. As an aid to assessing the impact on ambient air quality of particulate matter generated from prescribed burning activities, a reference[44] is available.

h. Models for assessing the impacts of particulate matter may involve dispersion models or receptor models, or a combination (depending on the circumstances). Receptor models focus on the behavior of the ambient environment at the point of impact as opposed to source-oriented dispersion models, which focus on the transport, diffusion, and transformation that begin at the source and continue to the receptor site. Receptor models attempt to identify and apportion sources by relating known sample compositions at receptors to measured or inferred compositions of source emissions. When complete and accurate emission inventories or meteorological characterization are unavailable, or unknown pollutant sources exist, receptor-modeling may be necessary.

i. Models for assessing the impact of CO emissions are needed for a number of different purposes. Examples include evaluating effects of point sources, congested intersections and highways, as well as the cumulative effect of numerous sources of CO in an urban area.

j. Models for assessing the impact of sources on ambient NO_2 concentrations are primarily needed to meet new source review requirements, such as addressing the effect of a proposed source on PSD increments for annual concentrations of NO_2. Impact of an individual source on ambient NO_2 depends, in part, on the chemical environment into which the source's plume is to be emitted. There are several approaches for estimating effects of an individual source on ambient NO_2. One approach is through use of a plume-in-grid algorithm imbedded within a photochemical grid model. However, because of the rigor and complexity involved, and because this approach may not be capable of defining sub-grid concentration gradients, the plume-in-grid approach may be impractical for estimating effects on an annual PSD increment. A second approach is to develop site specific conversion factors based on measurements. If it is not possible to develop site specific conversion factors and use of the plume-in-grid algorithm is also not feasible, other screening procedures may be considered.

k. In January 1999 (40 CFR part 58, Appendix D), EPA gave notice that concern about ambient lead impacts was being shifted away from roadways and toward a focus on stationary point sources. EPA has also issued guidance on siting ambient monitors in the vicinity of such sources.[45] For lead, the SIP should contain an air quality analysis to determine the maximum quarterly lead concentration resulting from major lead point sources, such as smelters, gasoline additive plants, etc. General guidance for lead SIP development is also available.[46]

6.2 Recommendations

6.2.1 Models for Ozone

a. *Choice of Models for Multi-source Applications.* Simulation of ozone formation and transport is a highly complex and resource intensive exercise. Control agencies with jurisdiction over areas with ozone problems are encouraged to use photochemical grid models, such as the Models-3/Community Multi-scale Air Quality (CMAQ) modeling system [47], to evaluate the relationship between precursor species and ozone. Judgement on the suitability of a model for a given application should consider factors that include use of the model in an attainment test, development of emissions and meteorological inputs to the model and choice of episodes to model.[41] Similar models for the 8-hour NAAQS and for the 1-hour NAAQS are appropriate.

b. *Choice of Models to Complement Photochemical Grid Models.* As previously noted, observational models, Lagrangian models, or the Empirical Kinetics Modeling Approach (EKMA) [48, 49] may be used to help guide choice of strategies to simulate with a photochemical grid model and to corroborate results obtained with a grid model. Receptor models have also been used

[1] Modeling for attainment demonstrations for O_3 and PM–2.5 should be conducted in time to meet required SIP submission dates as provided for in the respective implementation rules. Information on implementation of the 8-hr O_3 and PM–2.5 standards is available at: *http://www.epa.gov/ttn/naaqs/*.

to apportion sources of ozone precursors (*e.g.*, VOC) in urban domains. EPA has issued guidance[41] in selecting appropriate techniques.

c. *Estimating the Impact of Individual Sources.* Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2).

6.2.2 Models for Particulate Matter

6.2.2.1 PM–2.5

a. *Choice of Models for Multi-source Applications.* Simulation of phenomena resulting in high ambient PM–2.5 can be a multi-faceted and complex problem resulting from PM–2.5's existence as an aerosol mixture. Treating secondary components of PM–2.5, such as sulfates and nitrates, can be a highly complex and resource-intensive exercise. Control agencies with jurisdiction over areas with secondary PM–2.5 problems are encouraged to use models which integrate chemical and physical processes important in the formation, decay and transport of these species (*e.g.*, Models-3/CMAQ[47] or REMSAD[50]). Primary components can be simulated using less resource-intensive techniques. Suitability of a modeling approach or mix of modeling approaches for a given application requires technical judgement[42], as well as professional experience in choice of models, use of the model(s) in an attainment test, development of emissions and meteorological inputs to the model and selection of days to model.

b. *Choice of Analysis Techniques to Complement Air Quality Simulation Models.* Receptor models may be used to corroborate predictions obtained with one or more air quality simulation models. They may also be potentially useful in helping to define specific source categories contributing to major components of PM–2.5.[42]

c. *Estimating the Impact of Individual Sources.* Choice of methods used to assess the impact of an individual source depends on the nature of the source and its emissions. Thus, model users should consult with the Regional Office to determine the most suitable approach on a case-by-case basis (subsection 3.2.2).

6.2.2.2 PM–10

a. Screening techniques like those identified in subsection 4.2.1 are applicable to PM–10. Conservative assumptions which do not allow removal or transformation are suggested for screening. Thus, it is recommended that subjectively determined values for "half-life" or pollutant decay not be used as a surrogate for particle removal. Proportional models (rollback/forward) may not be applied for screening analysis, unless such techniques are used in conjunction with receptor modeling.[43]

b. Refined models such as those discussed in subsection 4.2.2 are recommended for PM–10. However, where possible, particle size, gas-to-particle formation, and their effect on ambient concentrations may be considered. For point sources of small particles and for source-specific analyses of complicated sources, use the appropriate recommended steady-state plume dispersion model (subsection 4.2.2). For guidance on determination of design concentrations, see paragraph 8.2.1.1(e).

c. Receptor models have proven useful for helping validate emission inventories and for corroborating source-specific impacts estimated by dispersion models. The Chemical Mass Balance (CMB) model is useful for apportioning impacts from localized sources.[51,52,53] Other receptor models, *e.g.*, the Positive Matrix Factorization (PMF) model[54] and Unmix[55], which don't share some of CMB's constraints, have also been applied. In regulatory applications, dispersion models have been used in conjunction with receptor models to attribute source (or source category) contributions. Guidance is available for PM–10 sampling and analysis applicable to receptor modeling.[56]

d. Under certain conditions, recommended dispersion models may not be reliable. In such circumstances, the modeling approach should be approved by the Regional Office on a case-by-case basis. Analyses involving model calculations for stagnation conditions should also be justified on a case-by-case basis (subsection 8.2.8).

e. Fugitive dust usually refers to dust put into the atmosphere by the wind blowing over plowed fields, dirt roads or desert or sandy areas with little or no vegetation. Reentrained dust is that which is put into the air by reason of vehicles driving over dirt roads (or dirty roads) and dusty areas. Such sources can be characterized as line, area or volume sources. Emission rates may be based on site specific data or values from the general literature. Fugitive emissions include the emissions resulting from the industrial process that are not captured and vented through a stack but may be released from various locations within the complex. In some unique cases a model developed specifically for the situation may be needed. Due to the difficult nature of characterizing and modeling fugitive dust and fugitive emissions, it is recommended that the proposed procedure be cleared by the Regional Office for each specific situation before the modeling exercise is begun.

6.2.3 Models for Carbon Monoxide

a. Guidance is available for analyzing CO impacts at roadway intersections.[57] The recommended screening model for such analyses is CAL3QHC.[58,59] This model combines CALINE3 (listed in Appendix A) with a traffic model to calculate delays and queues that occur at signalized intersections. The screening approach is described in reference 57; a refined approach may be considered on a case-by-case basis with CAL3QHCR.[60] The latest version of the MOBILE (mobile source emission factor) model should be used for emissions input to intersection models.

b. For analyses of highways characterized by uninterrupted traffic flows, CALINE3 is recommended, with emissions input from the latest version of the MOBILE model.

c. For urban area wide analyses of CO, an Eulerian grid model should be used. Information on SIP development and requirements for using such models can be found in several references.[57,61,62,63]

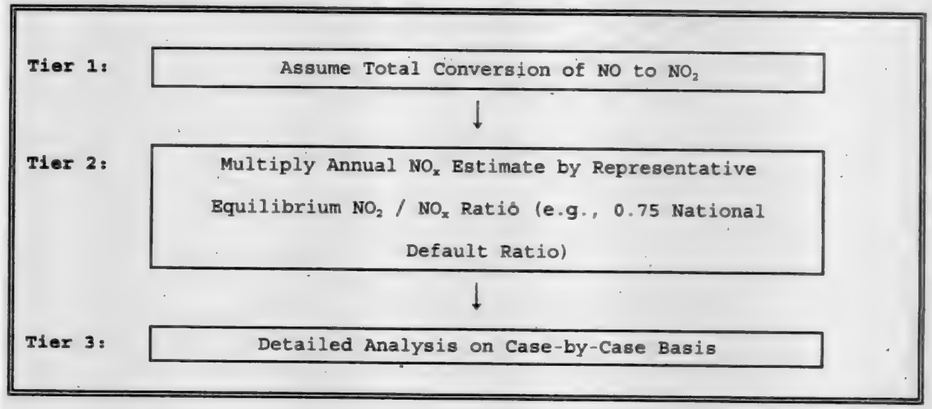
d. Where point sources of CO are of concern, they should be treated using the screening and refined techniques described in Section 4.

6.2.4 Models for Nitrogen Dioxide (Annual Average)

a. A tiered screening approach is recommended to obtain annual average estimates of NO_2 from point sources for New Source Review analysis, including PSD, and for SIP planning purposes. This multi-tiered approach is conceptually shown in Figure 6–1 and described in paragraphs b through d of this subsection:

FIGURE 6-1

Multi-tiered Screening Approach for Estimating Annual NO_2 Concentrations from Point Sources



b. For Tier 1 (the initial screen), use an appropriate model in subsection 4.2.2 to estimate the maximum annual average concentration and assume a total conversion of NO to NO_2. If the concentration exceeds the NAAQS and/or PSD increments for NO_2, proceed to the 2nd level screen.

c. For Tier 2 (2nd level) screening analysis, multiply the Tier 1 estimate(s) by an empirically derived NO_2/NO_X value of 0.75 (annual national default).[64] The reviewing agency may establish an alternative default NO_2/NO_X ratio based on ambient annual average NO_2 and annual average NO_X data representative of area wide quasi-equilibrium conditions. Alternative default NO_2/NO_X ratios should be based on data satisfying quality assurance procedures that ensure data accuracy for both NO_2 and NO_X within the typical range of measured values. In areas with relatively low NO_X concentrations, the quality assurance procedures used to determine compliance with the NO_2 national ambient air quality standard may not be adequate. In addition, default NO_2/NO_X ratios, including the 0.75 national default value, can underestimate long range NO_2 impacts and should be used with caution in long range transport scenarios.

d. For Tier 3 (3rd level) analysis, a detailed screening method may be selected on a case-by-case basis. For point source modeling, other refined screening methods, such as the ozone limiting method,[65] may also be considered. Also, a site specific NO_2/NO_X ratio may be used as a detailed screening method if it meets the same restrictions as described for alternative default NO_2/NO_X ratios. Ambient NO_X monitors used to develop a site specific ratio should be sited to obtain the NO_2 and NO_X concentrations under quasi-equilibrium conditions. Data obtained from monitors sited at the maximum NO_X impact site, as may be required in a PSD pre-construction monitoring program, likely reflect transitional NO_X conditions. Therefore, NO_X data from maximum impact sites may not be suitable for determining a site specific NO_2/NO_X ratio that is applicable for the entire modeling analysis. A site specific ratio derived from maximum impact data can only be used to estimate NO_2 impacts at receptors located within the same distance of the source as the source-to-monitor distance.

e. In urban areas (subsection 8.2.3), a proportional model may be used as a preliminary assessment to evaluate control strategies to meet the NAAQS for multiple minor sources, *i.e.*, minor point, area and mobile sources of NO_X; concentrations resulting from major point sources should be estimated separately as discussed above, then added to the impact of the minor sources. An acceptable screening technique for urban complexes is to assume that all NO_X is emitted in the form of NO_2 and to use a model from Appendix A for nonreactive pollutants to estimate NO_2 concentrations. A more accurate estimate can be obtained by: (1) Calculating the annual average concentrations of NO_X with an urban model, and (2) converting these estimates to NO_2 concentrations using an empirically derived annual NO_2/NO_X ratio. A value of 0.75 is recommended for this ratio. However, a spatially averaged alternative default annual NO_2/NO_X ratio may be determined from an existing air quality monitoring network and used in lieu of the 0.75 value if it is determined to be representative of prevailing ratios in the urban area by the reviewing agency. To ensure use of appropriate locally derived annual average NO_2 / NO_X ratios, monitoring data under consideration should be limited to those collected at monitors meeting siting criteria defined in 40 CFR Part 58, Appendix D as representative of "neighborhood", "urban", or "regional" scales. Furthermore, the highest annual spatially averaged NO_2/NO_X ratio from the most recent 3 years of complete data should be used to foster conservatism in estimated impacts.

f. To demonstrate compliance with NO_2 PSD increments in urban areas, emissions from major and minor sources should be included in the modeling analysis. Point and area source emissions should be modeled as discussed above. If mobile source emissions do not contribute to localized areas of high ambient NO_2 concentrations, they should be modeled as area sources. When modeled as area sources, mobile source emissions should be assumed uniform over the entire highway link and allocated to each area source grid square based on the portion of highway link within each grid square. If localized areas of high concentrations are likely, then mobile sources should be modeled as line sources using an appropriate steady-state plume dispersion model (*e.g.*, CAL3QHCR; subsection 6.2.3).

g. More refined techniques to handle special circumstances may be considered on a case-by-case basis and agreement with the appropriate reviewing authority (paragraph 3.0(b)) should be obtained. Such techniques should consider individual quantities of NO and NO_2 emissions, atmospheric transport

and dispersion, and atmospheric transformation of NO to NO_2. Where they are available, site specific data on the conversion of NO to NO_2 may be used. Photochemical dispersion models, if used for other pollutants in the area, may also be applied to the NO_x problem.

6.2.5 Models for Lead

a. For major lead point sources, such as smelters, which contribute fugitive emissions and for which deposition is important, professional judgement should be used, and there should be coordination with the appropriate reviewing authority (paragraph 3.0(b)). To model an entire major urban area or to model areas without significant sources of lead emissions, as a minimum a proportional (rollback) model may be used for air quality analysis. The rollback philosophy assumes that measured pollutant concentrations are proportional to emissions. However, urban or other dispersion models are encouraged in these circumstances where the use of such models is feasible.

b. In modeling the effect of traditional line sources (such as a specific roadway or highway) on lead air quality, dispersion models applied for other pollutants can be used. Dispersion models such as CALINE3 and CAL3QHCR have been used for modeling carbon monoxide emissions from highways and intersections (subsection 6.2.3). Where there is a point source in the middle of a substantial road network, the lead concentrations that result from the road network should be treated as background (subsection 9.2); the point source and any nearby major roadways should be modeled separately using the appropriate recommended steady-state plume dispersion model (subsection 4.2.2).

7.0 Other Model Requirements

7.1 Discussion

a. This section covers those cases where specific techniques have been developed for special regulatory programs. Most of the programs have, or will have when fully developed, separate guidance documents that cover the program and a discussion of the tools that are needed. The following paragraphs reference those guidance documents, when they are available. No attempt has been made to provide a comprehensive discussion of each topic since the reference documents were designed to do that. This section will undergo periodic revision as new programs are added and new techniques are developed.

b. Other Federal agencies have also developed specific modeling approaches for their own regulatory or other requirements.[66] Although such regulatory requirements and manuals may have come about because of EPA rules or standards, the implementation of such regulations and the use of the modeling techniques is under the jurisdiction of the agency issuing the manual or directive.

c. The need to estimate impacts at distances greater than 50km (the nominal distance to which EPA considers most steady-state Gaussian plume models are applicable) is an important one especially when considering the effects from secondary pollutants. Unfortunately, models originally available to EPA had not undergone sufficient field evaluation to be recommended for general use. Data bases from field studies at mesoscale and long range transport distances were limited in detail. This limitation was a result of the expense to perform the field studies required to verify and improve mesoscale and long range transport models. Meteorological data adequate for generating three-dimensional wind fields were particularly sparse. Application of models to complicated terrain compounds the difficulty of making good assessments of long range transport impacts. EPA completed limited evaluation of several long range transport (LRT) models against two sets of field data and evaluated results.[13] Based on the results, EPA concluded that long range and mesoscale transport models were limited for regulatory use to a case-by-case basis. However a more recent series of comparisons has been completed for a new model, CALPUFF (Section A.3). Several of these field studies involved three-to-four hour releases of tracer gas sampled along arcs of receptors at distances greater than 50km downwind. In some cases, short-term concentration sampling was available, such that the transport of the tracer puff as it passed the arc could be monitored. Differences on the order of 10 to 20 degrees were found between the location of the simulated and observed center of mass of the tracer puff. Most of the simulated centerline concentration maxima along each arc were within a factor of two of those observed. It was concluded from these case studies that the CALPUFF dispersion model had performed in a reasonable manner, and had no apparent bias toward over or under prediction, so long as the transport distance was limited to less than 300km.[67]

7.2 Recommendations

7.2.1 Visibility

a. Visibility in important natural areas (*e.g.*, Federal Class I areas) is protected under a number of provisions of the Clean Air Act, including Sections 169A and 169B (addressing impacts primarily from existing sources) and Section 165 (new source review). Visibility impairment is caused by light scattering and light absorption associated with particles and gases in the atmosphere. In most areas of the country, light scattering by PM–2.5 is the most significant component of visibility impairment. The key components of PM–2.5 contributing to visibility impairment include sulfates, nitrates, organic carbon, elemental carbon, and crustal material.

b. The visibility regulations as promulgated in December 1980 (40 CFR 51.300–307) require States to mitigate visibility impairment, in any of the 156 mandatory Federal Class I areas, that is found to be "reasonably attributable" to a single source or a small group of sources. In 1985, EPA promulgated Federal Implementation Plans (FIPs) for several States without approved visibility provisions in their SIPs. The IMPROVE (Interagency Monitoring for Protected Visual Environments) monitoring network, a cooperative effort between EPA, the States, and Federal land management agencies, was established to implement the monitoring requirements in these FIPs. Data has been collected by the IMPROVE network since 1988.

c. In 1999, EPA issued revisions to the 1980 regulations to address visibility impairment in the form of regional haze, which is caused by numerous, diverse sources (*e.g.*, stationary, mobile, and area sources) located across a broad region (40 CFR 51.308–309). The state of relevant scientific knowledge has expanded significantly since the Clean Air Act Amendments of 1977. A number of studies and reports[68,69] have concluded that long range transport (*e.g.*, up to hundreds of kilometers) of fine particulate matter plays a significant role in visibility impairment across the country. Section 169A of the Act requires states to develop SIPs containing long-term strategies for remedying existing and preventing future visibility impairment in 156 mandatory Class I federal areas. In order to develop long-term strategies to address regional haze, many States will need to conduct regional-scale modeling of fine particulate concentrations and associated visibility impairment (*e.g.*, light extinction and deciview metrics).

d. To calculate the potential impact of a plume of specified emissions for specific transport and dispersion conditions ("plume blight"), a screening model, VISCREEN, and guidance are available.[70] If a more comprehensive analysis is required, a refined model should be selected . The model selection (VISCREEN vs. PLUVUE II or some other refined model), procedures, and analyses should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and the affected Federal Land Manager (FLM). FLMs are responsible for determining whether there is an adverse effect by a plume on a Class I area.

e. CALPUFF (Section A.3) may be applied when assessment is needed of reasonably attributable haze impairment or atmospheric deposition due to one or a small group of sources. This situation may involve more sources and larger modeling domains than that to which VISCREEN ideally may be applied. The procedures and analyses should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) and the affected FLM(s).

f. Regional scale models are used by EPA to develop and evaluate national policy and assist State and local control agencies. Two such models which can be used to assess visibility impacts from source emissions are Models-3/CMAQ[47] and REMSAD.[50] Model users should consult with the appropriate reviewing authority (paragraph 3.0(b)), which in this instance would include FLMs.

7.2.2 Good Engineering Practice Stack Height

a. The use of stack height credit in excess of Good Engineering Practice (GEP) stack height or credit resulting from any other dispersion technique is prohibited in the development of emission limitations by 40 CFR 51.118 and 40 CFR 51.164. The definitions of GEP stack height and dispersion technique are contained in 40 CFR 51.100. Methods and procedures for making the appropriate stack height calculations, determining stack height credits and an example of applying those techniques are found in several references[71,72,73,74], which provide a great deal of additional information for evaluating and describing building cavity and wake effects.

b. If stacks for new or existing major sources are found to be less than the height defined by EPA's refined formula for determining GEP height, then air quality impacts associated with cavity or wake effects due to the nearby building structures should be determined. The EPA refined formula height is defined as H + 1.5L (see reference 73). Detailed downwash screening procedures[27] for both the cavity and wake regions should be followed. If more refined concentration estimates are required, the recommended steady-state plume dispersion model in subsection 4.2.2 contains algorithms for building wake calculations and should be used.

7.2.3 Long Range Transport (LRT) (*i.e.*, Beyond 50km)

a. Section 165(d) of the Clean Air Act requires that suspected adverse impacts on PSD Class I areas be determined. However, 50km is the useful distance to which most steady-state Gaussian plume models are considered accurate for setting emission limits. Since in many cases PSD analyses show that Class I areas may be threatened at distances greater than 50km from new sources, some procedure is needed to (1) determine if an adverse impact will occur, and (2) identify the model to be used in setting an emission limit if the Class I increments are threatened. In addition to the situations just described, there are certain applications containing a mixture of both long range and short range source-receptor relationships in a large modeled domain (*e.g.*, several industrialized areas located along a river or valley). Historically, these applications have presented considerable difficulty to an analyst if impacts from sources having transport distances greater than 50km significantly contributed to the design concentrations. To properly analyze applications of this type, a modeling approach is needed which has the capability of combining, in a consistent manner, impacts involving both short and long range transport. The CALPUFF modeling system, listed in Appendix A, has been designed to accommodate both the Class I area LRT situation and the large modeling domain situation. Given the judgement and refinement involved, conducting a LRT modeling assessment will require significant consultation with the appropriate reviewing authority (paragraph 3.0(b)) and the affected FLM(s). The FLM has an affirmative responsibility to protect air quality related values (AQRVs) that may be affected, and to provide the appropriate procedures and analysis techniques. Where there is no increment violation, the ultimate decision on whether a Class I area is adversely affected is the responsibility of the appropriate reviewing authority (Section 165(d)(2)(C)(ii) of the Clean Air Act), taking into consideration any information on the impacts on AQRVs provided by the FLM. According to Section 165(d)(2)(C)(iii) of the Clean Air Act, if there is a Class I increment violation, the *source* must demonstrate to the satisfaction of the FLM that the emissions from the source will have no adverse impact on the AQRVs.

b. If LRT is determined to be important, then refined estimates utilizing the CALPUFF modeling system should be obtained. A screening approach[67,75] is also available for use on a case-by-case basis that generally provides concentrations that are higher than those obtained using refined characterizations of the meteorological conditions. The meteorological input data requirements for developing the time and space varying three-dimensional winds and dispersion meteorology for refined analyses are discussed in paragraph 9.3.1.2(d). Additional information on applying this model is contained in Appendix A. To facilitate use of complex air quality and meteorological modeling systems, a written protocol approved by the appropriate reviewing authority (paragraph 3.0(b)) and the affected FLM(s) may be considered for developing consensus in the methods and procedures to be followed.

7.2.4 Modeling Guidance for Other Governmental Programs

a. When using the models recommended or discussed in the *Guideline* in support of programmatic requirements not specifically covered by EPA regulations, the model user should consult the appropriate Federal or State agency to ensure the proper application and use of the models. For modeling associated with PSD permit applications that involve a Class I area, the appropriate Federal Land Manager should be consulted on all modeling questions.

b. The Offshore and Coastal Dispersion (OCD) model, described in Appendix A, was developed by the Minerals Management Service and is recommended for estimating air quality impact from offshore sources on onshore, flat terrain areas. The OCD model is not recommended for use in air quality impact assessments for onshore sources. Sources located on or just inland of a shoreline where fumigation is expected should be treated in accordance with subsection 8.2.8.

c. The Emissions and Dispersion Modeling System (EDMS), described in Appendix A, was developed by the Federal Aviation Administration and the United States Air Force and is recommended for air quality assessment of primary pollutant impacts at airports or air bases. Regulatory application of EDMS is intended for estimating the cumulative effect of changes in aircraft operations, point source, and mobile source emissions on pollutant concentrations. It is not intended for PSD, SIP, or other regulatory air quality analyses of point or mobile sources at or peripheral to airport property that are independent of changes in aircraft operations. If changes in other than aircraft operations are associated with analyses, a model recommended in Chapter 4 or 5 should be used.

8.0 General Modeling Considerations

8.1 Discussion

a. This section contains recommendations concerning a number of different issues not explicitly covered in other sections of this guide. The topics covered here are not specific to any one program or modeling area but are common to nearly all modeling analyses for criteria pollutants.

8.2 Recommendations

8.2.1 Design Concentrations (see also subsection 11.2.3.1)

8.2.1.1 Design Concentrations for SO_2, PM–10, CO, Pb, and NO_2

a. An air quality analysis for SO_2, PM–10, CO, Pb, and NO_2 is required to determine if the source will (1) cause a violation of the NAAQS, or (2) cause or contribute to air quality deterioration greater than the specified allowable PSD increment. For the former, background concentration (subsection 9.2) should be added to the estimated impact of the source to determine the design concentration. For the latter, the design concentration includes impact from all increment consuming sources.

b. If the air quality analyses are conducted using the period of meteorological input data recommended in subsection 9.3.1.2 (*e.g.*, 5 years of National Weather Service (NWS) data or at least 1 year of site specific data; subsection 9.3.3), then the design concentration based on the highest, second-highest short term concentration or the highest long term average, whichever is controlling, should be used to determine emission limitations to assess compliance with the NAAQS and PSD increments.

c. When sufficient and representative data exist for less than a 5-year period from a nearby NWS site, or when site specific data have been collected for less than a full continuous year, or when it has been determined that the site specific data may not be temporally representative (subsection 9.3.3), then the highest concentration estimate should be considered the design value. This is because the length of the data record may be too short to assure that the conditions producing worst-case estimates have been adequately sampled. The highest value is then a surrogate for the concentration that is not to be exceeded more than once per year (the wording of the deterministic standards). Also, the highest concentration should be used whenever selected worst-case conditions are input to a screening technique, as described in EPA guidance.[27]

d. If the controlling concentration is an annual average value and multiple years of data (site specific or NWS) are used, then the design value is the highest of the annual averages calculated for the individual years. If the controlling concentration is a quarterly average and multiple years are used, then the highest individual quarterly average should be considered the design value.

e. As long a period of record as possible should be used in making estimates to determine design values and PSD increments. If more than 1 year of site specific data is available, it should be used.

8.2.1.2 Design Concentrations for O_3 and PM–2.5

a. Guidance and specific instructions for the determination of the 1-hr and 8-hr design concentrations for ozone are provided in Appendix H and I (respectively) of reference

4. Appendix H explains how to determine when the expected number of days per calendar year with maximum hourly concentrations above the NAAQS is equal to or less than 1. Appendix I explains the data handling conventions and computations necessary for determining whether the 8-hour primary and secondary NAAQS are met at an ambient monitoring site. For PM–2.5, Appendix N of reference 4, and supplementary guidance [76], explain the data handling conventions and computations necessary for determining when the annual and 24-hour primary and secondary NAAQS are met. For all SIP revisions the user should check with the Regional Office to obtain the most recent guidance documents and policy memoranda concerning the pollutant in question. There are currently no PSD increments for O_3 and PM–2.5.

8.2.2 Critical Receptor Sites

a. Receptor sites for refined modeling should be utilized in sufficient detail to estimate the highest concentrations and possible violations of a NAAQS or a PSD increment. In designing a receptor network, the emphasis should be placed on receptor resolution and location, not total number of receptors. The selection of receptor sites should be a case-by-case determination taking into consideration the topography, the climatology, monitor sites, and the results of the initial screening procedure. For large sources (those equivalent to a 500MW power plant) and where violations of the NAAQS or PSD increment are likely, 360 receptors for a polar coordinate grid system and 400 receptors for a rectangular grid system, where the distance from the source to the farthest receptor is 10km, are usually adequate to identify areas of high concentration. Additional receptors may be needed in the high concentration location if greater resolution is indicated by terrain or source factors.

8.2.3 Dispersion Coefficients

a. Steady-state Gaussian plume models used in most applications should employ dispersion coefficients consistent with those contained in the preferred models in Appendix A. Factors such as averaging time, urban/rural surroundings (see paragraphs (b)–(f) of this subsection), and type of source (point vs. line) may dictate the selection of specific coefficients. Coefficients used in some Appendix A models are identical to, or at least based on, Pasquill-Gifford coefficients [77] in rural areas and McElroy-Pooler [78] coefficients in urban areas.[79]

b. The selection of either rural or urban dispersion coefficients in a specific application should follow one of the procedures suggested by Irwin [80] and briefly described in paragraphs (c)–(f) of this subsection. These include a land use classification procedure or a population based procedure to determine whether the character of an area is primarily urban or rural.

c. Land Use Procedure: (1) Classify the land use within the total area, A_o, circumscribed by a 3km radius circle about the source using the meteorological land use typing scheme proposed by Auer [81]; (2) if land use types I1, I2, C1, R2, and R3 account for 50 percent or more of A_o, use urban dispersion coefficients; otherwise, use appropriate rural dispersion coefficients.

d. Population Density Procedure: (1) Compute the average population density, $\bar{p}$ per square kilometer with A_o as defined above; (2) If $\bar{p}$ is greater than 750 people/km^2, use urban dispersion coefficients; otherwise use appropriate rural dispersion coefficients.

e. Of the two methods, the land use procedure is considered more definitive. Population density should be used with caution and should not be applied to highly industrialized areas where the population density may be low and thus a rural classification would be indicated, but the area is sufficiently built-up so that the urban land use criteria would be satisfied. In this case, the classification should already be "urban" and urban dispersion parameters should be used.

f. Sources located in an area defined as urban should be modeled using urban dispersion parameters. Sources located in areas defined as rural should be modeled using the rural dispersion parameters. For analyses of whole urban complexes, the entire area should be modeled as an urban region if most of the sources are located in areas classified as urban.

g. Buoyancy-induced dispersion (BID), as identified by Pasquill [82], is included in the preferred models and should be used where buoyant sources, *e.g.*, those involving fuel combustion, are involved.

8.2.4 Stability Categories

a. The Pasquill approach to classifying stability is commonly used in preferred models (Appendix A). The Pasquill method, as modified by Turner [83], was developed for use with commonly observed meteorological data from the National Weather Service and is based on cloud cover, insolation and wind speed.

b. Procedures to determine Pasquill stability categories from other than NWS data are found in subsection 9.3. Any other method to determine Pasquill stability categories must be justified on a case-by-case basis.

c. For a given model application where stability categories are the basis for selecting dispersion coefficients, both σ_y and σ_z should be determined from the same stability category. "Split sigmas" in that instance are not recommended. Sector averaging, which eliminates the σ_y term, is commonly acceptable in complex terrain screening methods.

8.2.5 Plume Rise

a. The plume rise methods of Briggs [84, 85] are incorporated in many of the preferred models and are recommended for use in many modeling applications. In the convective boundary layer, plume rise is superposed on the displacements by random convective velocities.[86] No explicit provisions in these models are made for multistack plume rise enhancement or the handling of such special plumes as flares; these problems should be considered on a case-by-case basis.

b. Gradual plume rise is generally recommended where its use is appropriate: (1) In complex terrain screening procedures to determine close-in impacts and (2) when calculating the effects of building wakes. If the building wake is calculated to affect the plume for any hour, gradual plume rise is also used in downwind dispersion calculations to the distance of final plume rise, after which final plume rise is used. Plumes captured by the near wake are re-emitted to the far wake as a ground-level volume source.

c. Stack tip downwash generally occurs with poorly constructed stacks and when the ratio of the stack exit velocity to wind speed is small. An algorithm developed by Briggs [85] is the recommended technique for this situation and is found in the point source preferred models.

8.2.6 Chemical Transformation

a. The chemical transformation of SO_2 emitted from point sources or single industrial plants in rural areas is generally assumed to be relatively unimportant to the estimation of maximum concentrations when travel time is limited to a few hours. However, in urban areas, where synergistic effects among pollutants are of considerable consequence, chemical transformation rates may be of concern. In urban area applications, a half-life of 4 hours [83] may be applied to the analysis of SO_2 emissions. Calculations of transformation coefficients from site specific studies can be used to define a "half-life" to be used in a steady-state Gaussian plume model with any travel time, or in any application, if appropriate documentation is provided. Such conversion factors for pollutant half-life should not be used with screening analyses.

b. Use of models incorporating complex chemical mechanisms should be considered only on a case-by-case basis with proper demonstration of applicability. These are generally regional models not designed for the evaluation of individual sources but used primarily for region-wide evaluations. Visibility models also incorporate chemical transformation mechanisms which are an integral part of the visibility model itself and should be used in visibility assessments.

8.2.7 Gravitational Settling and Deposition

a. An "infinite half-life" should be used for estimates of particle concentrations when steady-state Gaussian plume models containing only exponential decay terms for treating settling and deposition are used.

b. Gravitational settling and deposition may be directly included in a model if either is a significant factor. When particulate matter sources can be quantified and settling and dry deposition are problems, professional judgement should be used, and there should be coordination with the appropriate reviewing authority (paragraph 3.0(b)).

8.2.8 Complex Winds

a. *Inhomogeneous Local Winds.* In many parts of the United States, the ground is neither flat nor is the ground cover (or land use) uniform. These geographical variations can generate local winds and circulations, and modify the prevailing ambient winds and circulations. Geographic effects are most apparent when the ambient winds are light or calm.[87] In general these geographically induced wind circulation effects are named after the source location of the winds, *e.g.*, lake and sea breezes, and mountain and valley winds. In very rugged hilly or mountainous terrain, along coastlines, or near large land use variations, the characterization of the winds is a balance of various forces, such that the assumptions of steady-state straight-line transport both in time and space are inappropriate. In the special cases described, the CALPUFF modeling system (described in Appendix A) may be applied on a case-by-case basis for air quality estimates in such complex non-steady-state meteorological conditions. The purpose of choosing a modeling system like CALPUFF is to fully treat the time and space variations of meteorology effects on transport and dispersion. The setup and application of the model should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)) consistent with limitations of paragraph 3.2.2(e). The meteorological input data requirements for developing the time and space varying three-dimensional winds and dispersion meteorology for these situations are discussed in paragraph 9.3.1.2(d). Examples of inhomogeneous winds include, but aren't limited to, situations described in the following paragraphs (i)–(iii):

i. *Inversion Breakup Fumigation.* Inversion breakup fumigation occurs when a plume (or multiple plumes) is emitted into a stable layer of air and that layer is subsequently mixed to the ground through convective transfer of heat from the surface or because of advection to less stable surroundings. Fumigation may cause excessively high concentrations but is usually rather short-lived at a given receptor. There are no recommended refined techniques to model this phenomenon. There are, however, screening procedures [27] that may be used to approximate the concentrations. Considerable care should be exercised in using the results obtained from the screening techniques.

ii. *Shoreline Fumigation.* Fumigation can be an important phenomenon on and near the shoreline of bodies of water. This can affect both individual plumes and area-wide emissions. When fumigation conditions are expected to occur from a source or sources with tall stacks located on or just inland of a shoreline, this should be addressed in the air quality modeling analysis. The Shoreline Dispersion Model (SDM) listed on EPA's Internet SCRAM Web site (subsection 2.3) may be applied on a case-by-case basis when air quality estimates under shoreline fumigation conditions are needed.[88] Information on the results of EPA's evaluation of this model together with other coastal fumigation models is available.[89] Selection of the appropriate model for applications where shoreline fumigation is of concern should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

iii. *Stagnation.* Stagnation conditions are characterized by calm or very low wind speeds, and variable wind directions. These stagnant meteorological conditions may persist for several hours to several days. During stagnation conditions, the dispersion of air pollutants, especially those from low-level emissions sources, tends to be minimized, potentially leading to relatively high ground-level concentrations. If point sources are of interest, users should note the guidance provided for CALPUFF in paragraph (a) of this subsection. Selection of the appropriate model for applications where stagnation is of concern should be determined in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

8.2.9 Calibration of Models

a. Calibration of models is not common practice and is subject to much error and misunderstanding. There have been attempts by some to compare model estimates and measurements on an event-by-event basis and then to calibrate a model with results of that comparison. This approach is severely limited by uncertainties in both source and meteorological data and therefore it is difficult to precisely estimate the concentration at an exact location for a specific increment of time. Such uncertainties make calibration of models of questionable benefit. Therefore, model calibration is unacceptable.

9.0 Model Input Data

a. Data bases and related procedures for estimating input parameters are an integral part of the modeling procedure. The most appropriate data available should always be selected for use in modeling analyses. Concentrations can vary widely depending on the source data or meteorological data used. Input data are a major source of uncertainties in any modeling analysis. This section attempts to minimize the uncertainty associated with data base selection and use by identifying requirements for data used in modeling. A checklist of input data requirements for modeling analyses is posted on EPA's Internet SCRAM Web site (subsection 2.3). More specific data requirements and the format required for the individual models are described in detail in the users' guide for each model.

9.1 Source Data

9.1.1 Discussion

a. Sources of pollutants can be classified as point, line and area/volume sources. Point sources are defined in terms of size and may vary between regulatory programs. The line sources most frequently considered are roadways and streets along which there are well-defined movements of motor vehicles, but they may be lines of roof vents or stacks such as in aluminum refineries. Area and volume sources are often collections of a multitude of minor sources with individually small emissions that are impractical to consider as separate point or line sources. Large area sources are typically treated as a grid network of square areas, with pollutant emissions distributed uniformly within each grid square.

b. Emission factors are compiled in an EPA publication commonly known as AP–42 [90]; an indication of the quality and amount of data on which many of the factors are based is also provided. Other information concerning emissions is available in EPA publications relating to specific source categories. The appropriate reviewing authority (paragraph 3.0(b)) should be consulted to determine appropriate source definitions and for guidance concerning the determination of emissions from and techniques for modeling the various source types.

9.1.2 Recommendations

a. For point source applications the load or operating condition that causes maximum ground-level concentrations should be established. As a minimum, the source should be modeled using the design capacity (100 percent load). If a source operates at greater than design capacity for periods that could result in violations of the standards or PSD increments, this load [2] should be modeled. Where the source operates at substantially less than design capacity, and the changes in the stack parameters associated with the operating conditions could lead to higher ground level concentrations, loads such as 50 percent and 75 percent of capacity should also be modeled. A range of operating conditions should be considered in screening analyses; the load causing the highest concentration, in addition to the design load, should be included in refined modeling. For a steam power plant, the following (b–h) is typical of the kind of data on source characteristics and operating conditions that may be needed. Generally, input data requirements for air quality models necessitate the use of metric units; where English units are common for engineering usage, a conversion to metric is required.

b. *Plant layout.* The connection scheme between boilers and stacks, and the distance and direction between stacks, building parameters (length, width, height, location and orientation relative to stacks) for plant structures which house boilers, control equipment, and surrounding buildings within a distance of approximately five stack heights.

c. *Stack parameters.* For all stacks, the stack height and inside diameter (meters), and the temperature (K) and volume flow rate (actual cubic meters per second) or exit gas velocity (meters per second) for operation at 100 percent, 75 percent and 50 percent load.

d. *Boiler size.* For all boilers, the associated megawatts, 10^6 BTU/hr, and pounds of steam per hour, and the design and/or actual fuel consumption rate for 100 percent load for coal (tons/hour), oil (barrels/hour), and natural gas (thousand cubic feet/hour).

e. *Boiler parameters.* For all boilers, the percent excess air used, the boiler type (*e.g.*, wet bottom, cyclone, etc.), and the type of firing (*e.g.*, pulverized coal, front firing, etc.).

f. *Operating conditions.* For all boilers, the type, amount and pollutant contents of fuel, the total hours of boiler operation and the boiler capacity factor during the year, and the percent load for peak conditions.

[2] Malfunctions which may result in excess emissions are not considered to be a normal operating condition. They generally should not be considered in determining allowable emissions. However, if the excess emissions are the result of poor maintenance, careless operation, or other preventable conditions, it may be necessary to consider them in determining source impact.

g. *Pollution control equipment parameters.* For each boiler served and each pollutant affected, the type of emission control equipment, the year of its installation, its design efficiency and mass emission rate, the date of the last test and the tested efficiency, the number of hours of operation during the latest year, and the best engineering estimate of its projected efficiency if used in conjunction with coal combustion; data for any anticipated modifications or additions.

h. *Data for new boilers or stacks.* For all new boilers and stacks under construction and for all planned modifications to existing boilers or stacks, the scheduled date of completion, and the data or best estimates available for items (b) through (g) of this subsection following completion of construction or modification.

i. In stationary point source applications for compliance with short term ambient standards, SIP control strategies should be tested using the emission input shown on Table 9–1. When using a refined model, sources should be modeled sequentially with these loads for every hour of the year. To evaluate SIPs for compliance with quarterly and annual standards, emission input data shown in Table 9–1 should again be used. Emissions from area sources should generally be based on annual average conditions. The source input information in each model user's guide should be carefully consulted and the checklist (paragraph 9.0(a)) should also be consulted for other possible emission data that could be helpful. PSD and NAAQS compliance demonstrations should follow the emission input data shown in Table 9–2. For purposes of emissions trading, new source review and demonstrations, refer to current EPA policy and guidance to establish input data.

j. Line source modeling of streets and highways requires data on the width of the roadway and the median strip, the types and amounts of pollutant emissions, the number of lanes, the emissions from each lane and the height of emissions. The location of the ends of the straight roadway segments should be specified by appropriate grid coordinates. Detailed information and data requirements for modeling mobile sources of pollution are provided in the user's manuals for each of the models applicable to mobile sources.

k. The impact of growth on emissions should be considered in all modeling analyses covering existing sources. Increases in emissions due to planned expansion or planned fuel switches should be identified. Increases in emissions at individual sources that may be associated with a general industrial/commercial/residential expansion in multi-source urban areas should also be treated. For new sources the impact of growth on emissions should generally be considered for the period prior to the start-up date for the source. Such changes in emissions should treat increased area source emissions, changes in existing point source emissions which were not subject to preconstruction review, and emissions due to sources with permits to construct that have not yet started operation.

TABLE 9–1.—MODEL EMISSION INPUT DATA FOR POINT SOURCES [1]

Averaging time	Emission limit (#/MMBtu) [2]	×	Operating level (MMBtu/hr) [2]	×	Operating factor (*e.g.*, hr/yr, hr/day)
Stationary Point Source(s) Subject to SIP Emission Limit(s) Evaluation for Compliance With Ambient Standards (Including Areawide Demonstrations)					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition.		Actual operating factor averaged over most recent 2 years.[3]
Short term	Maximum allowable emission limit or federally enforceable permit limit.		Actual or design capacity (whichever is greater), or federally enforceable permit condition.[4]		Continuous operation, *i.e.*, all hours of each time period under consideration (for all hours of the meteorological data base).[5]
Nearby Source(s) [6, 7]					
Same input requirements as for stationary point source(s) above.					
Other Sources [7]					
If modeled (subsection 9.2.3), input data requirements are defined below.					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.[6]		Annual level when actually operating, averaged over the most recent 2 years.[3]		Actual operating factor averaged over the most recent 2 years.[3]
Short term	Maximum allowable emission limit or federally enforceable permit limit.[6]		Annual level when actually operating, averaged over the most recent 2 years.[3]		Continuous operation, *i.e.*, all hours of each time period under consideration (for all hours of the meteorological data base).[5]

[1] The model input data requirements shown on this table apply to stationary source control strategies for STATE IMPLEMENTATION PLANS. For purposes of emissions trading, new source review, or prevention of significant deterioration, other model input criteria may apply. Refer to the policy and guidance for these programs to establish the input data.

[2] Terminology applicable to fuel burning sources; analogous terminology (*e.g.*, #/throughput) may be used for other types of sources.

[3] Unless it is determined that this period is not representative.

[4] Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.

[5] If operation does not occur for all hours of the time period of consideration (*e.g.*, 3 or 24 hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (*e.g.*, if operation is only 8 a.m. to 4 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating time periods.)

[6] *See* paragraph 9.2.3(c).

[7] *See* paragraph 9.2.3(d).

TABLE 9–2.—POINT SOURCE MODEL INPUT DATA (EMISSIONS) FOR PSD NAAQS COMPLIANCE DEMONSTRATIONS

Averaging time	Emission limit (#/MMBtu) [1]	×	Operating level (MMBtu/hr) [1]	×	Operating factor (*e.g.*, hr/yr,hr/day)
Proposed Major New or Modified Source					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.		Design capacity or federally enforceable permit condition.		Continuous operation (*i.e.*, 8760 hours).[2]
Short term (≤ 24 hours)	Maximum allowable emission limit or federally enforceable permit limit.		Design capacity or federally enforceable permit condition.[3]		Continuous operation (*i.e.*, all hours of each time period under consideration) (for all hours of the meteorological data base).[2]
Nearby Source(s) [4,6]					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.[5]		Actual or design capacity (whichever is greater), or federally enforceable permit condition.		Actual operating factor averaged over the most recent 2 years.[7,8]
Short term (≤ 24 hours)	Maximum allowable emission limit or federally enforceable permit limit.[5]		Actual or design capacity (whichever is greater), or federally enforceable permit condition.[3]		Continuous operation (*i.e.*, all hours of each time period under consideration) (for all hours of the meteorological data base).[2]
Other Source(s) [6,9]					
Annual & quarterly	Maximum allowable emission limit or federally enforceable permit limit.[5]		Annual level when actually operating, averaged over the most recent 2 years.[7]		Actual operating factor averaged over the most recent 2 years.[7,8]
Short term (≤ 24 hours)	Maximum allowable emission limit or federally enforceable permit limit.[5]		Annual level when actually operating, averaged over the most recent 2 years.[7]		Continuous operation (*i.e.*, all hours of each time period under consideration) (for all hours of the meteorological data base).[2]

[1] Terminology applicable to fuel burning sources; analogous terminology (*e.g.*, #/throughput) may be used for other types of sources.

[2] If operation does not occur for all hours of the time period of consideration (*e.g.*, 3 or 24 hours) and the source operation is constrained by a federally enforceable permit condition, an appropriate adjustment to the modeled emission rate may be made (*e.g.*, if operation is only 8 a.m. to 4 p.m. each day, only these hours will be modeled with emissions from the source. Modeled emissions should not be averaged across non-operating time periods.

[3] Operating levels such as 50 percent and 75 percent of capacity should also be modeled to determine the load causing the highest concentration.

[4] Includes existing facility to which modification is proposed if the emissions from the existing facility will not be affected by the modification. Otherwise use the same parameters as for major modification.

[5] *See* paragraph 9.2.3(c).

[6] *See* paragraph 9.2.3(d).

[7] Unless it is determined that this period is not representative.

[8] For those permitted sources not in operation or that have not established an appropriate factor, continuous operation (*i.e.*, 8760) should be used.

[9] Generally, the ambient impacts from non-nearby (background) sources can be represented by air quality data unless adequate data do not exist.

9.2 Background Concentrations

9.2.1 Discussion

a. Background concentrations are an essential part of the total air quality concentration to be considered in determining source impacts. Background air quality includes pollutant concentrations due to: (1) Natural sources; (2) nearby sources other than the one(s) currently under consideration; and (3) unidentified sources.

b. Typically, air quality data should be used to establish background concentrations in the vicinity of the source(s) under consideration. The monitoring network used for background determinations should conform to the same quality assurance and other requirements as those networks established for PSD purposes.[91] An appropriate data validation procedure should be applied to the data prior to use.

c. If the source is not isolated, it may be necessary to use a multi-source model to establish the impact of nearby sources. Since sources don't typically operate at their maximum allowable capacity (which may include the use of "dirtier" fuels), modeling is necessary to express the potential contribution of background sources, and this impact would not be captured via monitoring. Background concentrations should be determined for each critical (concentration) averaging time.

9.2.2 Recommendations (Isolated Single Source)

a. Two options (paragraph (b) or (c) of this section) are available to determine the background concentration near isolated sources.

b. Use air quality data collected in the vicinity of the source to determine the background concentration for the averaging times of concern. Determine the mean background concentration at each monitor by excluding values when the source in question is impacting the monitor. The mean annual background is the average of the annual concentrations so determined at each monitor. For shorter averaging periods, the meteorological conditions accompanying the concentrations of concern should be identified. Concentrations for meteorological conditions of concern, at monitors not impacted by the source in question, should be averaged for each separate averaging time to determine the average background value. Monitoring sites inside a 90° sector downwind of the source may be used to determine the area of impact. One hour concentrations may be added and averaged to determine longer averaging periods.

c. If there are no monitors located in the vicinity of the source, a "regional site" may be used to determine background. A "regional site" is one that is located away from the area of interest but is impacted by similar natural and distant man-made sources.

9.2.3 Recommendations (Multi-Source Areas)

a. In multi-source areas, two components of background should be determined: Contributions from nearby sources and contributions from other sources.

b. *Nearby Sources:* All sources expected to cause a significant concentration gradient in the vicinity of the source or sources under consideration for emission limit(s) should be explicitly modeled. The number of such sources is expected to be small except in unusual situations. Owing to both the uniqueness of each modeling situation and the large number of variables involved in identifying nearby sources, no attempt is made here to comprehensively define this term. Rather, identification of nearby sources calls for the exercise of professional judgement by the appropriate reviewing authority (paragraph 3.0(b)). This guidance is not intended to alter the exercise of that judgement or to comprehensively define which sources are nearby sources.

c. For compliance with the short-term and annual ambient standards, the nearby sources as well as the primary source(s) should be evaluated using an appropriate Appendix A model with the emission input data shown in Table 9–1 or 9–2. When modeling a nearby source that does not have a permit and the emission limit contained in the SIP for a particular source category is greater than the emissions possible given the source's maximum physical capacity to emit, the "maximum allowable emission limit" for such a nearby source may be calculated as the emission rate representative of the nearby source's maximum physical capacity to emit, considering its design specifications and allowable fuels and process materials. However, the burden is on the permit applicant to sufficiently document what the maximum physical capacity to emit is for such a nearby source.

d. It is appropriate to model nearby sources only during those times when they, by their nature, operate at the same time as the primary source(s) being modeled. Where a primary source believes that a nearby source does not, by its nature, operate at the same time as the primary source being modeled, the burden is on the primary source to demonstrate to the satisfaction of the appropriate reviewing authority (paragraph 3.0(b)) that this is, in fact, the case. Whether or not the primary source has adequately demonstrated that fact is a matter of professional judgement left to the discretion of the appropriate reviewing authority. The following examples illustrate two cases in which a nearby source may be shown not to operate at the same time as the primary source(s) being modeled. Some sources are only used during certain seasons of the year. Those sources would not be modeled as nearby sources during times in which they do not operate. Similarly, emergency backup generators that never operate simultaneously with the sources that they back up would not be modeled as nearby sources. To reiterate, in these examples and other appropriate cases, the burden is on the primary source being modeled to make the appropriate demonstration to the satisfaction of the appropriate reviewing authority.

e. The impact of the nearby sources should be examined at locations where interactions between the plume of the point source under consideration and those of nearby sources (plus natural background) can occur. Significant locations include: (1) The area of maximum impact of the point source; (2) the area of maximum impact of nearby sources; and (3) the area where all sources combine to cause maximum impact. These locations may be identified through trial and error analyses.

f. *Other Sources:* That portion of the background attributable to all other sources (*e.g.*, natural sources, minor sources and distant major sources) should be determined by the procedures found in subsection 9.2.2 or by application of a model using Table 9–1 or 9–2.

9.3 Meteorological Input Data

a. The meteorological data used as input to a dispersion model should be selected on the basis of spatial and climatological (temporal) representativeness as well as the ability of the individual parameters selected to characterize the transport and dispersion conditions in the area of concern. The representativeness of the data is dependent on: (1) The proximity of the meteorological monitoring site to the area under consideration; (2) the complexity of the terrain; (3) the exposure of the meteorological monitoring site; and (4) the period of time during which data are collected. The spatial representativeness of the data can be adversely affected by large distances between the source and receptors of interest and the complex topographic characteristics of the area. Temporal representativeness is a function of the year-to-year variations in weather conditions. Where appropriate, data representativeness should be viewed in terms of the appropriateness of the data for constructing realistic boundary layer profiles and three dimensional meteorological fields, as described in paragraphs (c) and (d) below.

b. Model input data are normally obtained either from the National Weather Service or as part of a site specific measurement program. Local universities, Federal Aviation Administration (FAA), military stations, industry and pollution control agencies may also be sources of such data. Some recommendations for the use of each type of data are included in this subsection.

c. For long range transport modeling assessments (subsection 7.2.3) or for assessments where the transport winds are complex and the application involves a non-steady-state dispersion model (subsection 8.2.8), use of output from prognostic mesoscale meteorological models is encouraged.[92,93,94] Some diagnostic meteorological processors are designed to appropriately blend available NWS comparable meteorological observations, local site specific meteorological observations, and prognostic mesoscale meteorological data, using empirical relationships, to diagnostically adjust the wind field for mesoscale and local-scale effects. These diagnostic adjustments can sometimes be improved through the use of strategically placed site specific meteorological observations. The placement of these special meteorological observations (often more than one location is needed) involves expert judgement, and is specific to the terrain and land use of the modeling domain. Acceptance for use of output from prognostic mesoscale meteorological models is contingent on concurrence by the appropriate reviewing authorities (paragraph 3.0(b)) that the data are of acceptable quality, which can be demonstrated through statistical comparisons with observations of winds aloft and at the surface at several appropriate locations.

9.3.1 Length of Record of Meteorological Data

9.3.1.1 Discussion

a. The model user should acquire enough meteorological data to ensure that worst-case meteorological conditions are adequately represented in the model results. The trend toward statistically based standards suggests a need for all meteorological conditions to be adequately represented in the data set selected for model input. The number of years of record needed to obtain a stable distribution of conditions depends on the variable being measured and has been estimated by Landsberg and Jacobs[95] for various parameters. Although that study indicates in excess of 10 years may be required to achieve stability in the frequency distributions of some meteorological variables, such long periods are not reasonable for model input data. This is due in part to the fact that hourly data in model input format are frequently not available for such periods and that hourly calculations of concentration for long periods may be prohibitively expensive. Another study[96] compared various periods from a 17-year data set to determine the minimum number of years of data needed to approximate the concentrations modeled with a 17-year period of meteorological data from one station. This study indicated that the variability of model estimates due to the meteorological data input was adequately reduced if a 5-year period of record of meteorological input was used.

9.3.1.2 Recommendations

a. Five years of representative meteorological data should be used when estimating concentrations with an air quality model. Consecutive years from the most recent, readily available 5-year period are preferred. The meteorological data should be *adequately representative,* and may be site specific or from a nearby NWS station. Where professional judgment indicates NWS-collected ASOS (automated surface observing stations) data are inadequate {for cloud cover observations, the most recent 5 years of NWS data that are observer-based may be considered for use.

b. The use of 5 years of NWS meteorological data or at least 1 year of site specific data is required. If one year or more

(including partial years), up to five years, of site specific data is available, these data are preferred for use in air quality analyses. Such data should have been subjected to quality assurance procedures as described in subsection 9.3.3.2.

c. For permitted sources whose emission limitations are based on a specific year of meteorological data, that year should be added to any longer period being used (*e.g.*, 5 years of NWS data) when modeling the facility at a later time.

d. For LRT situations (subsection 7.2.3) and for complex wind situations (paragraph 8.2.8(a)), if only NWS or comparable standard meteorological observations are employed, five years of meteorological data (within and near the modeling domain) should be used. Consecutive years from the most recent, readily available 5-year period are preferred. Less than five, but at least three, years of meteorological data (need not be consecutive) may be used if mesoscale meteorological fields are available, as discussed in paragraph 9.3(c). These mesoscale meteorological fields should be used in conjunction with available standard NWS or comparable meteorological observations within and near the modeling domain. If site specific meteorological data are available, these data may be especially helpful for local-scale complex wind situations, when appropriately blended together with standard NWS or comparable observations and mesoscale meteorological fields.

9.3.2 National Weather Service Data

9.3.2.1 Discussion

a. The NWS meteorological data are routinely available and familiar to most model users. Although the NWS does not provide direct measurements of all the needed dispersion model input variables, methods have been developed and successfully used to translate the basic NWS data to the needed model input. Site specific measurements of model input parameters have been made for many modeling studies, and those methods and techniques are becoming more widely applied, especially in situations such as complex terrain applications, where available NWS data are not adequately representative. However, there are many model applications where NWS data are adequately representative, and the applications still rely heavily on the NWS data.

b. Many models use the standard hourly weather observations available from the National Climatic Data Center (NCDC). These observations are then preprocessed before they can be used in the models.

9.3.2.2 Recommendations

a. The preferred models listed in Appendix A all accept as input the NWS meteorological data preprocessed into model compatible form. If NWS data are judged to be adequately representative for a particular modeling application, they may be used. NCDC makes available surface[97,98] and upper air[99] meteorological data in CD–ROM format.

b. Although most NWS measurements are made at a standard height of 10 meters, the actual anemometer height should be used as input to the preferred model.

c. Wind directions observed by the National Weather Service are reported to the nearest 10 degrees. A specific set of randomly generated numbers has been developed for use with the preferred EPA models and should be used with NWS data to ensure a lack of bias in wind direction assignments within the models.

d. Data from universities, FAA, military stations, industry and pollution control agencies may be used if such data are equivalent in accuracy and detail to the NWS data, and they are judged to be adequately representative for the particular application.

9.3.3 Site Specific Data

9.3.3.1 Discussion

a. Spatial or geographical representativeness is best achieved by collection of all of the needed model input data in close proximity to the actual site of the source(s). Site specific measured data are therefore preferred as model input, provided that appropriate instrumentation and quality assurance procedures are followed and that the data collected are adequately representative (free from inappropriate local or microscale influences) and compatible with the input requirements of the model to be used. It should be noted that, while site specific measurements are frequently made "on-property" (*i.e.*, on the source's premises), acquisition of adequately representative site specific data does not preclude collection of data from a location off property. Conversely, collection of meteorological data on a source's property does not of itself guarantee adequate representativeness. For help in determining representativeness of site specific measurements, technical guidance [100] is available. Site specific data should always be reviewed for representativeness and consistency by a qualified meteorologist.

9.3.3.2 Recommendations

a. EPA guidance[100] provides recommendations on the collection and use of site specific meteorological data. Recommendations on characteristics, siting, and exposure of meteorological instruments and on data recording, processing, completeness requirements, reporting, and archiving are also included. This publication should be used as a supplement to other limited guidance on these subjects.[91,101,102] Detailed information on quality assurance is also available.[103] As a minimum, site specific measurements of ambient air temperature, transport wind speed and direction, and the variables necessary to estimate atmospheric dispersion should be available in meteorological data sets to be used in modeling. Care should be taken to ensure that meteorological instruments are located to provide representative characterization of pollutant transport between sources and receptors of interest. The appropriate reviewing authority (paragraph 3.0(b)) is available to help determine the appropriateness of the measurement locations.

b. All site specific data should be reduced to hourly averages. Table 9–3 lists the wind related parameters and the averaging time requirements.

c. *Missing Data Substitution.* After valid data retrieval requirements have been met[100] hours in the record having missing data should be treated according to an established data substitution protocol provided that data from an adequately representative alternative site are available. Such protocols are usually part of the approved monitoring program plan. Data substitution guidance is provided in Section 5.3 of reference 100. If no representative alternative data are available for substitution, the absent data should be coded as missing using missing data codes appropriate to the applicable meteorological pre-processor. Appropriate model options for treating missing data, if available in the model, should be employed.

d. *Solar Radiation Measurements.* Total solar radiation or net radiation should be measured with a reliable pyranometer or net radiometer, sited and operated in accordance with established site specific meteorological guidance.[100,103]

e. *Temperature Measurements.* Temperature measurements should be made at standard shelter height (2m) in accordance with established site specific meteorological guidance.[100]

f. *Temperature Difference Measurements.* Temperature difference (δT) measurements should be obtained using matched thermometers or a reliable thermocouple system to achieve adequate accuracy. Siting, probe placement, and operation of δT systems should be based on guidance found in Chapter 3 of reference 100, and such guidance should be followed when obtaining vertical temperature gradient data.

g. *Winds Aloft.* For simulation of plume rise and dispersion of a plume emitted from a stack, characterization of the wind profile up through the layer in which the plume disperses is required. This is especially important in complex terrain and/or complex wind situations where wind measurements at heights up to hundreds of meters above stack base may be required in some circumstances. For tall stacks when site specific data are needed, these winds have been obtained traditionally using meteorological sensors mounted on tall towers. A feasible alternative to tall towers is the use of meteorological remote sensing instruments (*e.g.*, acoustic sounders or radar wind profilers) to provide winds aloft, coupled with 10-meter towers to provide the near-surface winds. (For specific requirements for CTDMPLUS, see Appendix A.) Specifications for wind measuring instruments and systems are contained in reference 100.

h. *Turbulence.* There are several dispersion models that are capable of using direct measurements of turbulence (wind fluctuations) in the characterization of the vertical and lateral dispersion (*e.g.*, CTDMPLUS and CALPUFF). For specific requirements for CTDMPLUS and CALPUFF, see Appendix A. For technical guidance on measurement and processing of turbulence parameters, see reference 100. When turbulence data are used in this manner to directly characterize the vertical and lateral dispersion, the averaging time for the turbulence measurements should be one hour

(Table 9–3). There are other dispersion models (*e.g.*, BLP, and CALINE3) that employ P–G stability categories for the characterization of the vertical and lateral dispersion. Methods for using site specific turbulence data for the characterization of P–G stability categories are discussed in reference 100. When turbulence data are used in this manner to determine the P–G stability category, the averaging time for the turbulence measurements should be 15 minutes.

i. *Stability Categories.* For dispersion models that employ P–G stability categories for the characterization of the vertical and lateral dispersion (*e.g.*, ISC3), the P–G stability categories, as originally defined, couple near-surface measurements of wind speed with subjectively determined insolation assessments based on hourly cloud cover and ceiling height observations. The wind speed measurements are made at or near 10m. The insolation rate is typically assessed using observations of cloud cover and ceiling height based on criteria outlined by Turner.[77] It is recommended that the P–G stability category be estimated using the Turner method with site specific wind speed measured at or near 10m and representative cloud cover and ceiling height. Implementation of the Turner method, as well as considerations in determining representativeness of cloud cover and ceiling height in cases for which site specific cloud observations are unavailable, may be found in Section 6 of reference 100. In the absence of requisite data to implement the Turner method, the SRDT method or wind fluctuation statistics (*i.e.*, the σ_E and σ_A methods) may be used.

j. The SRDT method, described in Section 6.4.4.2 of reference 100, is modified slightly from that published from earlier work [104] and has been evaluated with three site specific data bases.[105] The two methods of stability classification which use wind fluctuation statistics, the σ_E and σ_A methods, are also described in detail in Section 6.4.4 of reference 100 (note applicable tables in Section 6). For additional information on the wind fluctuation methods, several references are available.[106,107,108,109].

k. *Meteorological Data Preprocessors.* The following meteorological preprocessors are recommended by EPA: PCRAMMET,[110] MPRM,[111] METPRO,[112] and CALMET.[113] PCRAMMET is the recommended meteorological preprocessor for use in applications employing hourly NWS data. MPRM is a general purpose meteorological data preprocessor which supports regulatory models requiring PCRAMMET formatted (NWS) data. MPRM is available for use in applications employing site specific meteorological data. The latest version (MPRM 1.3) has been configured to implement the SRDT method for estimating P–G stability categories. METPRO is the required meteorological data preprocessor for use with CTDMPLUS. CALMET is available for use with applications of CALPUFF. All of the above mentioned data preprocessors are available for downloading from EPA's Internet SCRAM Web site (subsection 2.3).

TABLE 9–3.—AVERAGING TIMES FOR SITE SPECIFIC WIND AND TURBULENCE MEASUREMENTS

Parameter	Averaging time (in hours)
Surface wind speed (for use in stability determinations)	1
Transport direction	1
Dilution wind speed	1
Turbulence measurements (σ_E and σ_A) for use in stability determinations	[1] 1
Turbulence Measurements for direct input to dispersion models	1

[1] To minimize meander effects in σ_A when wind conditions are light and/or variable, determine the hourly average σ value from four sequential 15-minute σ's according to the following formula:

$$\sigma_{1\text{-hr}} = \sqrt{\frac{\sigma_{15}^2 + \sigma_{15}^2 + \sigma_{15}^2 + \sigma_{15}^2}{4}}$$

9.3.4 Treatment of Near-calms and Calms

9.3.4.1 Discussion

a. Treatment of calm or light and variable wind poses a special problem in model applications since steady-state Gaussian plume models assume that concentration is inversely proportional to wind speed. Furthermore, concentrations may become unrealistically large when wind speeds less than 1 m/s are input to the model. Procedures have been developed to prevent the occurrence of overly conservative concentration estimates during periods of calms. These procedures acknowledge that a steady-state Gaussian plume model does not apply during calm conditions, and that our knowledge of wind patterns and plume behavior during these conditions does not, at present, permit the development of a better technique. Therefore, the procedures disregard hours which are identified as calm. The hour is treated as missing and a convention for handling missing hours is recommended.

9.3.4.2 Recommendations

a. Hourly concentrations calculated with steady-state Gaussian plume models using calms should not be considered valid; the wind and concentration estimates for these hours should be disregarded and considered to be missing. Critical concentrations for 3-, 8-, and 24-hour averages should be calculated by dividing the sum of the hourly concentrations for the period by the number of valid or non-missing hours. If the total number of valid hours is less than 18 for 24-hour averages, less than 6 for 8-hour averages or less than 3 for 3-hour averages, the total concentration should be divided by 18 for the 24-hour average, 6 for the 8-hour average and 3 for the 3-hour average. For annual averages, the sum of all valid hourly concentrations is divided by the number of non-calm hours during the year. For models listed in Appendix A, a post-processor computer program, CALMPRO [114] has been prepared, is available on the SCRAM Internet Web site (subsection 2.3), and should be used.

b. Stagnant conditions that include extended periods of calms often produce high concentrations over wide areas for relatively long averaging periods. The standard steady-state Gaussian plume models are often not applicable to such situations. When stagnation conditions are of concern, other modeling techniques should be considered on a case-by-case basis (see also subsection 8.2.8).

c. When used in steady-state Gaussian plume models, measured site specific wind speeds of less than 1 m/s but higher than the response threshold of the instrument should be input as 1 m/s; the corresponding wind direction should also be input. Wind observations below the response threshold of the instrument should be set to zero, with the input file in ASCII format. In all cases involving steady-state Gaussian plume models, calm hours should be treated as missing, and concentrations should be calculated as in paragraph (a) of this subsection.

10.0 Accuracy and Uncertainty of Models

10.1 Discussion

a. Increasing reliance has been placed on concentration estimates from models as the primary basis for regulatory decisions concerning source permits and emission control requirements. In many situations, such as review of a proposed source, no practical alternative exists. Therefore, there is an obvious need to know how accurate models really are and how any uncertainty in the estimates affects regulatory decisions. During the 1980's, attempts were made to encourage development of standardized evaluation methods.[16,115] EPA recognized the need for incorporating such information and has sponsored workshops [116] on model accuracy, the possible ways to quantify accuracy, and on considerations in the incorporation of model accuracy and uncertainty in the regulatory process. The Second (EPA) Conference on Air Quality Modeling, August 1982,[117] was devoted to that subject.

b. To better deduce the statistical significance of differences seen in model performance in the face of unaccounted for uncertainties and variations, investigators have more recently explored the use of bootstrap techniques.[118,119] Work is underway to develop a new generation of evaluation metrics [24] that takes into account the statistical differences (in error distributions) between model predictions and observations.[120] Even though the procedures and measures are still evolving to describe performance of models that characterize atmospheric fate, transport and diffusion [121, 122, 123] there has been general acceptance of a need to address the uncertainties inherent in atmospheric processes.

10.1.1 Overview of Model Uncertainty

a. Dispersion models generally attempt to estimate concentrations at specific sites that really represent an ensemble average of numerous repetitions of the same event.[24] The event is characterized by measured or "known" conditions that are input to the models, *e.g.*, wind speed, mixed layer height, surface heat flux, emission characteristics, etc. However, in addition to the known conditions, there are unmeasured or unknown variations in the conditions of this event, *e.g.*, unresolved details of the atmospheric flow such as the turbulent velocity field. These unknown conditions, may vary among repetitions of the event. As a result, deviations in observed concentrations from their ensemble average, and from the concentrations estimated by the model, are likely to occur even though the known conditions are fixed. Even with a *perfect model* that predicts the correct ensemble average, there are likely to be deviations from the observed concentrations in individual repetitions of the event, due to variations in the unknown conditions. The statistics of these concentration residuals are termed "inherent" uncertainty. Available evidence suggests that this source of uncertainty alone may be responsible for a typical range of variation in concentrations of as much as ±50 percent.[124]

b. Moreover, there is "reducible" uncertainty [115] associated with the model and its input conditions; neither models nor data bases are perfect. Reducible uncertainties are caused by: (1) Uncertainties in the input values of the known conditions (*i.e.*, emission characteristics and meteorological data); (2) errors in the measured concentrations which are used to compute the concentration residuals; and (3) inadequate model physics and formulation. The "reducible" uncertainties can be minimized through better (more accurate and more representative) measurements and better model physics.

c. To use the terminology correctly, reference to model accuracy should be limited to that portion of reducible uncertainty which deals with the physics and the formulation of the model. The accuracy of the model is normally determined by an evaluation procedure which involves the comparison of model concentration estimates with measured air quality data.[125] The statement of accuracy is based on statistical tests or performance measures such as bias, noise, correlation, etc.[16] However, information that allows a distinction between contributions of the various elements of inherent and reducible uncertainty is only now beginning to emerge.[24] As a result most discussions of the accuracy of models make no quantitative distinction between (1) limitations of the model versus (2) limitations of the data base and of knowledge concerning atmospheric variability. The reader should be aware that statements on model accuracy and uncertainty may imply the need for improvements in model performance that even the "perfect" model could not satisfy.

10.1.2 Studies of Model Accuracy

a. A number of studies[126,127] have been conducted to examine model accuracy, particularly with respect to the reliability of short-term concentrations required for ambient standard and increment evaluations. The results of these studies are not surprising. Basically, they confirm what expert atmospheric scientists have said for some time: (1) Models are more reliable for estimating longer time-averaged concentrations than for estimating short-term concentrations at specific locations; and (2) the models are reasonably reliable in estimating the magnitude of highest concentrations occurring sometime, somewhere within an area. For example, errors in highest estimated concentrations of ±10 to 40 percent are found to be typical [128,129], *i.e.*, certainly well within the often quoted factor-of-two accuracy that has long been recognized for these models. However, estimates of concentrations that occur at a specific time and site, are poorly correlated with actually observed concentrations and are much less reliable.

b. As noted above, poor correlations between paired concentrations at fixed stations may be due to "reducible" uncertainties in knowledge of the precise plume location and to unquantified inherent uncertainties. For example, Pasquill [130] estimates that, apart from data input errors, maximum ground-level concentrations at a given hour for a point source in flat terrain could be in error by 50 percent due to these uncertainties. Uncertainty of five to 10 degrees in the measured wind direction, which transports the plume, can result in concentration errors of 20 to 70 percent for a particular time and location, depending on stability and station location. Such uncertainties do not indicate that an estimated concentration does not occur, only that the precise time and locations are in doubt.

10.1.3 Use of Uncertainty in Decision-Making

a. The accuracy of model estimates varies with the model used, the type of application, and site specific characteristics. Thus, it is desirable to quantify the accuracy or uncertainty associated with concentration estimates used in decision-making. Communications between modelers and decision-makers must be fostered and further developed. Communications concerning concentration estimates currently exist in most cases, but the communications dealing with the accuracy of models and its meaning to the decision-maker are limited by the lack of a technical basis for quantifying and directly including uncertainty in decisions. Procedures for quantifying and interpreting uncertainty in the practical application of such concepts are only beginning to evolve; much study is still required.[115,116,117,131,132]

b. In all applications of models an effort is encouraged to identify the reliability of the model estimates for that particular area and to determine the magnitude and sources of error associated with the use of the model. The analyst is responsible for recognizing and quantifying limitations in the accuracy, precision and sensitivity of the procedure. Information that might be useful to the decision-maker in recognizing the seriousness of potential air quality violations includes such model accuracy estimates as accuracy of peak predictions, bias, noise, correlation, frequency distribution, spatial extent of high concentration, etc. Both space/time pairing of estimates and measurements and unpaired comparisons are recommended. Emphasis should be on the highest concentrations and the averaging times of the standards or increments of concern. Where possible, confidence intervals about the statistical values should be provided. However, while such information can be provided by the modeler to the decision-maker, it is unclear how this information should be used to make an air pollution control decision. Given a range of possible outcomes, it is easiest and tends to ensure consistency if the decision-maker confines his judgement to use of the "best estimate" provided by the modeler (*i.e.*, the design concentration estimated by a model recommended in the *Guideline* or an alternate model of known accuracy). This is an indication of the practical limitations imposed by current abilities of the technical community.

c. To improve the basis for decision-making, EPA has developed and is continuing to study procedures for determining the accuracy of models, quantifying the uncertainty, and expressing confidence levels in decisions that are made concerning emissions controls.[133,134] However, work in this area involves "breaking new ground" with slow and sporadic progress likely. As a result, it may be necessary to continue using the "best estimate" until sufficient technical progress has been made to meaningfully implement such concepts dealing with uncertainty.

10.1.4 Evaluation of Models

a. A number of actions have been taken to ensure that the best model is used correctly for each regulatory application and that a model is not arbitrarily imposed. First, the *Guideline* clearly recommends the most appropriate model be used in each case. Preferred models, based on a number of factors, are identified for many uses. General guidance on using alternatives to the preferred models is also provided. Second, the models have been subjected to a systematic performance evaluation and a peer scientific review. Statistical performance measures, including measures of difference (or residuals) such as bias, variance of difference and gross variability of the difference, and measures of correlation such as time, space, and time and space combined as recommended by the AMS Woods Hole Workshop [16], were generally followed. Third, more specific information has been provided for justifying the site specific use of alternative models in previously cited EPA guidance [22,25], and new models are under consideration and review.[24] Together these documents provide methods that allow a judgement to be made as to what models are most appropriate for a specific application. For the present, performance and the theoretical evaluation of models are being used as an indirect means to quantify one element of uncertainty in air pollution regulatory decisions.

b. EPA has participated in a series of conferences entitled, "Harmonisation within Atmospheric Dispersion Modelling for Regulatory Purposes." [135] for the purpose of promoting the development of improved methods for the characterization of model performance. There is a consensus developing on what should be considered in the evaluation of air quality models [136],

namely quality assurance planning, documentation and scrutiny should be consistent with the intended use, and should include:

- Scientific peer review;
- Supportive analyses (diagnostic evaluations, code verification, sensitivity and uncertainty analyses);
- Diagnostic and performance evaluations with data obtained in trial locations, and
- Statistical performance evaluations in the circumstances of the intended applications.

Performance evaluations and diagnostic evaluations assess different qualities of how well a model is performing, and both are needed to establish credibility within the client and scientific community. Performance evaluations allow us to decide how well the model simulates the average temporal and spatial patterns seen in the observations, and employ large spatial/temporal scale data sets (*e.g.*, national data sets). Performance evaluations also allow determination of relative performance of a model in comparison with alternative modeling systems. Diagnostic evaluations allow determination of a model capability to simulate individual processes that affect the results, and usually employ smaller spatial/temporal scale date sets (*e.g.*, field studies). Diagnostic evaluations allow us to decide if we get the right answer for the right reason. The objective comparison of modeled concentrations with observed field data provides only a partial means for assessing model performance. Due to the limited supply of evaluation data sets, there are severe practical limits in assessing model performance. For this reason, the conclusions reached in the science peer reviews and the supportive analyses have particular relevance in deciding whether a model will be useful for its intended purposes.

c. To extend information from diagnostic and performance evaluations, sensitivity and uncertainty analyses are encouraged since they can provide additional information on the effect of inaccuracies in the data bases and on the uncertainty in model estimates. Sensitivity analyses can aid in determining the effect of inaccuracies of variations or uncertainties in the data bases on the range of likely concentrations. Uncertainty analyses can aid in determining the range of likely concentration values, resulting from uncertainties in the model inputs, the model formulations, and parameterizations. Such information may be used to determine source impact and to evaluate control strategies. Where possible, information from such sensitivity analyses should be made available to the decision-maker with an appropriate interpretation of the effect on the critical concentrations.

10.2 Recommendations

a. No specific guidance on the quantification of model uncertainty for use in decision-making is being given at this time. As procedures for considering uncertainty develop and become implementable, this guidance will be changed and expanded. For the present, continued use of the "best estimate" is acceptable; however, in specific circumstances for O_3, PM–2.5 and regional haze, additional information and/or procedures may be appropriate.[41,42]

11.0 Regulatory Application of Models

11.1 Discussion

a. Procedures with respect to the review and analysis of air quality modeling and data analyses in support of SIP revisions, PSD permitting or other regulatory requirements need a certain amount of standardization to ensure consistency in the depth and comprehensiveness of both the review and the analysis itself. This section recommends procedures that permit some degree of standardization while at the same time allowing the flexibility needed to assure the technically best analysis for each regulatory application.

b. Dispersion model estimates, especially with the support of measured air quality data, are the preferred basis for air quality demonstrations. Nevertheless, there are instances where the performance of recommended dispersion modeling techniques, by comparison with observed air quality data, may be shown to be less than acceptable. Also, there may be no recommended modeling procedure suitable for the situation. In these instances, emission limitations may be established solely on the basis of observed air quality data as would be applied to a modeling analysis. The same care should be given to the analyses of the air quality data as would be applied to a modeling analysis.

c. The current NAAQS for SO_2 and CO are both stated in terms of a concentration not to be exceeded more than once a year. There is only an annual standard for NO_2 and a quarterly standard for Pb. Standards for fine particulate matter (PM–2.5) are expressed in terms of both long-term (annual) and short-term (daily) averages. The long-term standard is calculated using the three year average of the annual averages while the short-term standard is calculated using the three year average of the 98th percentile of the daily average concentration. For PM–10, the convention is to compare the arithmetic mean, averaged over 3 consecutive years, with the concentration specified in the NAAQS (50 $\mu g/m^3$). The 24-hour NAAQS (150 $\mu g/m^3$) is met if, over a 3-year period, there is (on average) no more than one exceedance per year. For ozone the short term 1-hour standard is expressed in terms of an expected exceedance limit while the short term 8-hour standard is expressed in terms of a three year average of the annual fourth highest daily maximum 8-hour value. The NAAQS are subjected to extensive review and possible revision every 5 years.

d. This section discusses general requirements for concentration estimates and identifies the relationship to emission limits. The following recommendations apply to: (1) Revisions of State Implementation Plans and (2) the review of new sources and the prevention of significant deterioration (PSD).

11.2 Recommendations

11.2.1 Analysis Requirements

a. Every effort should be made by the Regional Office to meet with all parties involved in either a SIP revision or a PSD permit application prior to the start of any work on such a project. During this meeting, a protocol should be established between the preparing and reviewing parties to define the procedures to be followed, the data to be collected, the model to be used, and the analysis of the source and concentration data. An example of requirements for such an effort is contained in the Air Quality Analysis Checklist posted on EPA's Internet SCRAM Web site (subsection 2.3). This checklist suggests the level of detail required to assess the air quality resulting from the proposed action. Special cases may require additional data collection or analysis and this should be determined and agreed upon at this preapplication meeting. The protocol should be written and agreed upon by the parties concerned, although a formal legal document is not intended. Changes in such a protocol are often required as the data collection and analysis progresses. However, the protocol establishes a common understanding of the requirements.

b. An air quality analysis should begin with a screening model to determine the potential of the proposed source or control strategy to violate the PSD increment or NAAQS. For traditional stationary sources, EPA guidance[27] should be followed. Guidance is also available for mobile sources.[57]

c. If the concentration estimates from screening techniques indicate that the PSD increment or NAAQS may be approached or exceeded, then a more refined modeling analysis is appropriate and the model user should select a model according to recommendations in Sections 4–8. In some instances, no refined technique may be specified in this guide for the situation. The model user is then encouraged to submit a model developed specifically for the case at hand. If that is not possible, a screening technique may supply the needed results.

d. Regional Offices should require permit applicants to incorporate the pollutant contributions of all sources into their analysis. Where necessary this may include emissions associated with growth in the area of impact of the new or modified source. PSD air quality assessments should consider the amount of the allowable air quality increment that has already been consumed by other sources. Therefore, the most recent source applicant should model the existing or permitted sources in addition to the one currently under consideration. This would permit the use of newly acquired data or improved modeling techniques if such have become available since the last source was permitted. When remodeling, the worst case used in the previous modeling analysis should be one set of conditions modeled in the new analysis. All sources should be modeled for each set of meteorological conditions selected.

11.2.2 Use of Measured Data in Lieu of Model Estimates

a. Modeling is the preferred method for determining emission limitations for both new and existing sources. When a preferred model is available, model results alone (including background) are sufficient. Monitoring will normally not be accepted as the sole basis for emission limitation. In some instances when the modeling technique

available is only a screening technique, the addition of air quality data to the analysis may lend credence to model results.

b. There are circumstances where there is no applicable model, and measured data may need to be used. However, only in the case of an existing source should monitoring data alone be a basis for emission limits. In addition, the following items (i–vi) should be considered prior to the acceptance of the measured data:

i. Does a monitoring network exist for the pollutants and averaging times of concern?

ii. Has the monitoring network been designed to locate points of maximum concentration?

iii. Do the monitoring network and the data reduction and storage procedures meet EPA monitoring and quality assurance requirements?

iv. Do the data set and the analysis allow impact of the most important individual sources to be identified if more than one source or emission point is involved?

v. Is at least one full year of valid ambient data available?

vi. Can it be demonstrated through the comparison of monitored data with model results that available models are not applicable?

c. The number of monitors required is a function of the problem being considered. The source configuration, terrain configuration, and meteorological variations all have an impact on number and placement of monitors. Decisions can only be made on a case-by-case basis. Guidance is available for establishing criteria for demonstrating that a model is not applicable.[22]

d. Sources should obtain approval from the appropriate reviewing authority (paragraph 3.0(b)) for the monitoring network prior to the start of monitoring. A monitoring protocol agreed to by all concerned parties is highly desirable. The design of the network, the number, type and location of the monitors, the sampling period, averaging time as well as the need for meteorological monitoring or the use of mobile sampling or plume tracking techniques, should all be specified in the protocol and agreed upon prior to start-up of the network.

11.2.3 Emission Limits

11.2.3.1 Design Concentrations

a. Emission limits should be based on concentration estimates for the averaging time that results in the most stringent control requirements. The concentration used in specifying emission limits is called the design value or design concentration and is a sum of the concentration contributed by the source and the background concentration.

b. To determine the averaging time for the design value, the most restrictive NAAQS should be identified by calculating, for each averaging time, the ratio of the difference between the applicable NAAQS (S) and the background concentration (B) to the (model) predicted concentration (P) (*i.e.*, (S–B)/P). The averaging time with the lowest ratio identifies the most restrictive standard. If the annual average is the most restrictive, the highest estimated annual average concentration from one or a number of years of data is the design value. When short term standards are most restrictive, it may be necessary to consider a broader range of concentrations than the highest value. For example, for pollutants such as SO_2, the highest, second-highest concentration is the design value. For pollutants with statistically based NAAQS, the design value is found by determining the more restrictive of: (1) The short-term concentration over the period specified in the standard, or (2) the long-term concentration that is not expected to exceed the long-term NAAQS. Determination of design values for PM–10 is presented in more detail in EPA guidance.[43]

11.2.3.2 NAAQS Analyses for New or Modified Sources

a. For new or modified sources predicted to have a significant ambient impact[91] and to be located in areas designated attainment or unclassifiable for the SO_2, Pb, NO_2, or CO NAAQS, the demonstration as to whether the source will cause or contribute to an air quality violation should be based on: (1) The highest estimated annual average concentration determined from annual averages of individual years; or (2) the highest, second-highest estimated concentration for averaging times of 24-hours or less; and (3) the significance of the spatial and temporal contribution to any modeled violation. For Pb, the highest estimated concentration based on an individual calendar quarter averaging period should be used. Background concentrations should be added to the estimated impact of the source. The most restrictive standard should be used in all cases to assess the threat of an air quality violation. For new or modified sources predicted to have a significant ambient impact[91] in areas designated attainment or unclassifiable for the PM–10 NAAQS, the demonstration of whether or not the source will cause or contribute to an air quality violation should be based on sufficient data to show whether: (1) The projected 24-hour average concentrations will exceed the 24-hour NAAQS more than 1 percent of the time, on average ; (2) the expected (*i.e.*, average) annual mean concentration will exceed the annual NAAQS; and (3) the source contributes significantly, in a temporal and spatial sense, to any modeled violation.

11.2.3.3 PSD Air Quality Increments and Impacts

a. The allowable PSD increments for criteria pollutants are established by regulation and cited in 40 CFR 51.166. These maximum allowable increases in pollutant concentrations may be exceeded once per year at each site, except for the annual increment that may not be exceeded. The highest, second-highest increase in estimated concentrations for the short term averages as determined by a model should be less than or equal to the permitted increment. The modeled annual averages should not exceed the increment.

b. Screening techniques defined in subsection 4.1 can sometimes be used to estimate short term incremental concentrations for the first new source that triggers the baseline in a given area. However, when multiple increment-consuming sources are involved in the calculation, the use of a refined model with at least 1 year of site specific or 5 years of (off-site) NWS data is normally required (subsection 9.3.1.2). In such cases, sequential modeling must demonstrate that the allowable increments are not exceeded temporally and spatially, *i.e.*, for all receptors for each time period throughout the year(s) (time period means the appropriate PSD averaging time, *e.g.*, 3-hour, 24-hour, etc.).

c. The PSD regulations require an estimation of the SO_2, particulate matter (PM–10), and NO_2 impact on any Class I area. Normally, steady-state Gaussian plume models should not be applied at distances greater than can be accommodated by the steady state assumptions inherent in such models. The maximum distance for refined steady-state Gaussian plume model application for regulatory purposes is generally considered to be 50km. Beyond the 50km range, screening techniques may be used to determine if more refined modeling is needed. If refined models are needed, long range transport models should be considered in accordance with subsection 7.2.3. As previously noted in Sections 3 and 7, the need to involve the Federal Land Manager in decisions on potential air quality impacts, particularly in relation to PSD Class I areas, cannot be overemphasized.

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135. "Ten years of Harmonisation activities: Past, present and future" at *http://www.dmu.dk/AtmosphericEnvironment/Harmoni/Conferences/Belgirate/BelgiratePapers.asp*

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Appendix A to Appendix W of Part 51—Summaries of Preferred Air Quality Models

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A.0 Introduction and Availability

(1) This appendix summarizes key features of refined air quality models preferred for specific regulatory applications. For each model, information is provided on availability, approximate cost (where applicable), regulatory use, data input, output format and options, simulation of atmospheric physics, and accuracy. These models may be used without a formal demonstration of applicability provided they satisfy the recommendations for regulatory use; not all options in the models are necessarily recommended for regulatory use.

(2) Many of these models have been subjected to a performance evaluation using comparisons with observed air quality data. Where possible, several of the models contained herein have been subjected to evaluation exercises, including (1) statistical performance tests recommended by the American Meteorological Society and (2) peer scientific reviews. The models in this appendix have been selected on the basis of the results of the model evaluations, experience with previous use, familiarity of the model to various air quality programs, and the costs and resource requirements for use.

(3) With the exception of EDMS, codes and documentation for all models listed in this appendix are available from EPA's Support Center for Regulatory Air Models (SCRAM) Web site at *http://www.epa.gov/scram001*. Documentation is also available from the National Technical Information Service (NTIS), *http://www.ntis.gov* or U.S. Department of Commerce, Springfield, VA 22161; phone: (800) 553–6847. Where possible, accession numbers are provided.

A.1 Buoyant Line and Point Source Dispersion Model (BLP)

Reference

Schulman, Lloyd L. and Joseph S. Scire, 1980. Buoyant Line and Point Source (BLP) Dispersion Model User's Guide. Document P–7304B. Environmental Research and Technology, Inc., Concord, MA. (NTIS No. PB 81–164642)

Availability

The computer code is available on EPA's Internet SCRAM website and also on diskette (as PB 2002–500051) from the National Technical Information Service (see Section A.0).

Abstract

BLP is a Gaussian plume dispersion model designed to handle unique modeling problems associated with aluminum reduction plants, and other industrial sources where plume rise and downwash effects from stationary line sources are important.

a. Recommendations for Regulatory Use

(1) The BLP model is appropriate for the following applications:

- Aluminum reduction plants which contain buoyant, elevated line sources;
- Rural areas;
- Transport distances less than 50 kilometers;
- Simple terrain; and
- One hour to one year averaging times.

(2) The following options should be selected for regulatory applications:

(i) Rural (IRU=1) mixing height option;

(ii) Default (no selection) for plume rise wind shear (LSHEAR), transitional point source plume rise (LTRANS), vertical potential temperature gradient (DTHTA), vertical wind speed power law profile exponents (PEXP), maximum variation in number of stability classes per hour (IDELS), pollutant decay (DECFAC), the constant in Briggs' stable plume rise equation (CONST2), constant in Briggs' neutral plume rise equation (CONST3), convergence criterion for the line source calculations (CRIT), and maximum iterations allowed for line source calculations (MAXIT); and

(iii) Terrain option (TERAN) set equal to 0.0, 0.0, 0.0, 0.0, 0.0, 0.0

(3) For other applications, BLP can be used if it can be demonstrated to give the same estimates as a recommended model for the same application, and will subsequently be executed in that mode.

(4) BLP can be used on a case-by-case basis with specific options not available in a recommended model if it can be demonstrated, using the criteria in Section 3.2, that the model is more appropriate for a specific application.

b. Input Requirements

(1) Source data: point sources require stack location, elevation of stack base, physical stack height, stack inside diameter, stack gas exit velocity, stack gas exit temperature, and pollutant emission rate. Line sources require coordinates of the end points of the line, release height, emission rate, average line source width, average building width, average spacing between buildings, and average line source buoyancy parameter.

(2) Meteorological data: Hourly surface weather data from punched cards or from the preprocessor program PCRAMMET which provides hourly stability class, wind direction, wind speed, temperature, and mixing height.

(3) Receptor data: Locations and elevations of receptors, or location and size of receptor grid or request automatically generated receptor grid.

c. Output

(1) Printed output (from a separate post-processor program) includes:

(2) Total concentration or, optionally, source contribution analysis; monthly and annual frequency distributions for 1-, 3-, and 24-hour average concentrations; tables of 1-, 3-, and 24-hour average concentrations at each receptor; table of the annual (or length of run) average concentrations at each receptor;

(3) Five highest 1-, 3-, and 24-hour average concentrations at each receptor; and

(4) Fifty highest 1-, 3-, and 24-hour concentrations over the receptor field.

d. Type of Model

BLP is a gaussian plume model.

e. Pollutant Types

BLP may be used to model primary pollutants. This model does not treat settling and deposition.

f. Source-Receptor Relationship

(1) BLP treats up to 50 point sources, 10 parallel line sources, and 100 receptors arbitrarily located.

(2) User-input topographic elevation is applied for each stack and each receptor.

g. Plume Behavior

(1) BLP uses plume rise formulas of Schulman and Scire (1980).

(2) Vertical potential temperature gradients of 0.02 Kelvin per meter for E stability and 0.035 Kelvin per meter are used for stable plume rise calculations. An option for user input values is included.

(3) Transitional rise is used for line sources.

(4) Option to suppress the use of transitional plume rise for point sources is included.

(5) The building downwash algorithm of Schulman and Scire (1980) is used.

h. Horizontal Winds

(1) Constant, uniform (steady-state) wind is assumed for an hour.

Straight line plume transport is assumed to all downwind distances.

(2) Wind speeds profile exponents of 0.10, 0.15, 0.20, 0.25, 0.30, and 0.30 are used for stability classes A through F, respectively. An option for user—defined values and an option to suppress the use of the wind speed profile feature are included.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

(1) Rural dispersion coefficients are from Turner (1969), with no adjustment made for variations in surface roughness or averaging time.

(2) Six stability classes are used.

k. Vertical Dispersion

(1) Rural dispersion coefficients are from Turner (1969), with no adjustment made for variations in surface roughness.

(2) Six stability classes are used.

(3) Mixing height is accounted for with multiple reflections until the vertical plume standard deviation equals 1.6 times the mixing height; uniform mixing is assumed beyond that point.

(4) Perfect reflection at the ground is assumed.

l. Chemical Transformation

Chemical transformations are treated using linear decay. Decay rate is input by the user.

m. Physical Removal

Physical removal is not explicitly treated.

n. Evaluation Studies

Schulman, L.L. and J.S. Scire, 1980. Buoyant Line and Point Source (BLP) Dispersion Model User's Guide, P–7304B. Environmental Research and Technology, Inc., Concord, MA.

Scire, J.S. and L.L. Schulman, 1981. Evaluation of the BLP and ISC Models with SF_6 Tracer Data and SO_2 Measurements at Aluminum Reduction Plants. APCA Specialty Conference on Dispersion Modeling for Complex Sources, St. Louis, MO.

A.2 CALINE3

Reference

Benson, Paul E, 1979. CALINE3—A Versatile Dispersion Model for Predicting Air Pollutant Levels Near Highways and Arterial Streets. Interim Report, Report Number FHWA/CA/TL–79/23. Federal Highway Administration, Washington, DC. (NTIS No. PB 80–220841)

Availability

The CALINE3 model is available on diskette (as PB 95–502712) from NTIS. The source code and user's guide are also available on EPA's Internet SCRAM Web site (Section A.0).

Abstract

CALINE3 can be used to estimate the concentrations of nonreactive pollutants from highway traffic. This steady-state Gaussian model can be applied to determine air pollution concentrations at receptor locations downwind of "at-grade," "fill," "bridge," and "cut section" highways located in relatively uncomplicated terrain. The model is applicable for any wind direction, highway orientation, and receptor location. The model has adjustments for averaging time and surface roughness, and can handle up to 20 links and 20 receptors. It also contains an algorithm for deposition and settling velocity so that particulate concentrations can be predicted.

a. Recommendations for Regulatory Use

CALINE–3 is appropriate for the following applications:

- Highway (line) sources;
- Urban or rural areas;
- Simple terrain;
- Transport distances less than 50 kilometers; and
- One-hour to 24-hour averaging times.

b. Input Requirements

(1) Source data: Up to 20 highway links classed as "at-grade," "fill" "bridge," or "depressed"; coordinates of link end points; traffic volume; emission factor; source height; and mixing zone width.

(2) Meteorological data: Wind speed, wind angle (measured in degrees clockwise from the Y axis), stability class, mixing height, ambient (background to the highway) concentration of pollutant.

(3) Receptor data: Coordinates and height above ground for each receptor.

c. Output

Printed output includes concentration at each receptor for the specified meteorological condition.

d. Type of Model

CALINE–3 is a Gaussian plume model.

e. Pollutant Types

CALINE–3 may be used to model primary pollutants.

f. Source-Receptor Relationship

(1) Up to 20 highway links are treated.

(2) CALINE–3 applies user input location and emission rate for each link. User-input receptor locations are applied.

g. Plume Behavior

Plume rise is not treated.

h. Horizontal Winds

(1) User-input hourly wind speed and direction are applied.

(2) Constant, uniform (steady-state) wind is assumed for an hour.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

(1) Six stability classes are used.

(2) Rural dispersion coefficients from Turner (1969) are used, with adjustment for roughness length and averaging time.

(3) Initial traffic-induced dispersion is handled implicitly by plume size parameters.

k. Vertical Dispersion

(1) Six stability classes are used.

(2) Empirical dispersion coefficients from Benson (1979) are used including an adjustment for roughness length.

(3) Initial traffic-induced dispersion is handled implicitly by plume size parameters.

(4) Adjustment for averaging time is included.

l. Chemical Transformation

Not treated.

m. Physical Removal

Optional deposition calculations are included.

n. Evaluation Studies

Bemis, G.R. *et al.*, 1977. Air Pollution and Roadway Location, Design, and Operation—Project Overview. FHWA–CA–TL–7080–77–25, Federal Highway Administration, Washington, D.C.

Cadle, S.H. *et al.*, 1976. Results of the General Motors Sulfate Dispersion Experiment, GMR–2107. General Motors Research Laboratories, Warren, MI.

Dabberdt, W.F., 1975. Studies of Air Quality on and Near Highways, Project 2761. Stanford Research Institute, Menlo Park, CA.

A.3 CALPUFF

References

Scire, J.S., D.G. Strimaitis and R.J. Yamartino, 2000. A User's Guide for the CALPUFF Dispersion Model (Version 5.0). Earth Tech, Inc., Concord, MA.

Scire J.S., F.R. Robe, M.E. Fernau and R.J. Yamartino, 2000. A User's Guide for the CALMET Meteorological Model (Version 5.0). Earth Tech, Inc., Concord, MA.

Availability

The model code and its documentation are available at no cost for download from the model developers' Internet Web site: *http://www.src.com/calpuff/calpuff1.htm*. You may also contact Joseph Scire, Earth Tech, Inc., 196 Baker Avenue, Concord, MA 01742; Telephone: (978) 371–4200, Fax: (978) 371–2468, e-mail: *jss@src.com*.

Abstract

CALPUFF is a multi-layer, multi-species non-steady-state puff dispersion modeling system that simulates the effects of time- and space-varying meteorological conditions on pollutant transport, transformation, and removal. CALPUFF is intended for use on scales from tens of meters from a source to hundreds of kilometers. It includes algorithms for near-field effects such as building downwash, transitional buoyant and momentum plume rise, partial plume penetration, subgrid scale terrain and coastal interactions effects, and terrain impingement as well as longer range effects such as pollutant removal due to wet scavenging and dry deposition, chemical transformation, vertical wind shear, overwater transport, plume fumigation, and visibility effects of particulate matter concentrations.

a. Recommendations for Regulatory Use

(1) CALPUFF is appropriate for long range transport (source-receptor distances of 50 to several hundred kilometers) of emissions from point, volume, area, and line sources. The meteorological input data should be fully characterized with time-and-space-varying three dimensional wind and meteorological conditions using CALMET, as discussed in paragraphs 9.3(c) and 9.3.1.2(d) of Appendix W.

(2) CALPUFF may also be used on a case-by-case basis if it can be demonstrated using the criteria in Section 3.2 that the model is more appropriate for the specific application. The purpose of choosing a modeling system like CALPUFF is to fully treat stagnation, wind reversals, and time and space variations of meteorology effects on transport and dispersion, as discussed in paragraph 8.2.8(a).

(3) For regulatory applications of CALMET and CALPUFF, the regulatory default option should be used. Inevitably, some of the model control options will have to be set specific for the application using expert judgement and in consultation with the relevant reviewing authorities.

b. Input Requirements

Source Data:

1. Point sources: Source location, stack height, diameter, exit velocity, exit temperature, base elevation, wind direction specific building dimensions (for building downwash calculations), and emission rates for each pollutant. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent

emission factors) may also be entered. Arbitrarily-varying point source parameters may be entered from an external file.

2. Area sources: Source location and shape, release height, base elevation, initial vertical distribution (σ_z) and emission rates for each pollutant. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent emission factors) may also be entered. Arbitrarily-varying area source parameters may be entered from an external file. Area sources specified in the external file are allowed to be buoyant and their location, size, shape, and other source characteristics are allowed to change in time.

3. Volume sources: Source location, release height, base elevation, initial horizontal and vertical distributions (σ_y, σ_z) and emission rates for each pollutant. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent emission factors) may also be entered. Arbitrarily-varying volume source parameters may be entered from an external file. Volume sources with buoyancy can be simulated by treating the source as a point source and entering initial plume size parameters—initial (σ_y, σ_z)—to define the initial size of the volume source.

4. Line sources: Source location, release height, base elevation, average buoyancy parameter, and emission rates for each pollutant. Building data may be entered for line source emissions experiencing building downwash effects. Particle size distributions may be entered for particulate matter. Temporal emission factors (diurnal cycle, monthly cycle, hour/season, wind speed/stability class, or temperature-dependent emission factors) may also be entered. Arbitrarily-varying line source parameters may be entered from an external file.

Meteorological Data (different forms of meteorological input can be used by CALPUFF):

1. Time-dependent three-dimensional meteorological fields generated by CALMET. This is the preferred mode for running CALPUFF. Inputs into CALMET include surface observations of wind speed, wind direction, temperature, cloud cover, ceiling height, relative humidity, surface pressure, and precipitation (type and amount), and upper air sounding data (wind speed, wind direction, temperature, and height). Optional large-scale model output (*e.g.*, from MM5) can be used by CALMET as well (paragraph 9.3.1.2(d)).

2. Single station surface and upper air meteorological data in CTDMPLUS data file formats (SURFACE.DAT and PROFILE.DAT files). This allows a vertical variation in the meteorological parameters but no spatial variability.

3. Single station meteorological data in ISCST3 data file format. This option does not account for variability of the meteorological parameters in the horizontal or vertical, except as provided for by the use of stability-dependent wind shear exponents and average temperature lapse rates.

Gridded terrain and land use data are required as input into CALMET when Option 1 is used. Geophysical processor programs are provided that interface the modeling system to standard terrain and land use data bases provided by the U.S. Geological Survey (USGS).

Receptor Data:

CALPUFF includes options for gridded and non-gridded (discrete) receptors. Special subgrid-scale receptors are used with the subgrid-scale complex terrain option. An option is provided for discrete receptors to be placed at ground-level or above the local ground level (*i.e.*, flagpole receptors). Gridded and subgrid-scale receptors are placed at the local ground level only.

Other Input:

CALPUFF accepts hourly observations of ozone concentrations for use in its chemical transformation algorithm. Subgrid-scale coastlines can be specified in its coastal boundary file. Optional, user-specified deposition velocities and chemical transformation rates can also be entered. CALPUFF accepts the CTDMPLUS terrain and receptor files for use in its subgrid-scale terrain algorithm. Inflow boundary conditions of modeled pollutants can be specified in a boundary condition file.

c. Output

CALPUFF produces files of hourly concentrations of ambient concentrations for each modeled species, wet deposition fluxes, dry deposition fluxes, and for visibility applications, extinction coefficients. Postprocessing programs (PRTMET and CALPOST) provide options for analysis and display of the modeling results.

d. Type of Model

(1) CALPUFF is a non-steady-state time- and space-dependent Gaussian puff model. CALPUFF includes parameterized gas phase chemical transformation of SO_2, $SO_4^=$, NO, NO_2, HNO_3, NO_3^-, and organic aerosols. CALPUFF can treat primary pollutants such as PM–10, toxic pollutants, ammonia, and other passive pollutants. The model includes a resistance-based dry deposition model for both gaseous pollutants and particulate matter. Wet deposition is treated using a scavenging coefficient approach. The model has detailed parameterizations of complex terrain effects, including terrain impingement, side-wall scrapping, and steep-walled terrain influences on lateral plume growth. A subgrid-scale complex terrain module based on a dividing streamline concept divides the flow into a lift component traveling over the obstacle and a wrap component deflected around the obstacle.

(2) The meteorological fields used by CALPUFF are produced by the CALMET meteorological model. CALMET includes a diagnostic wind field model containing objective analysis and parameterized treatments of slope flows, valley flows, terrain blocking effects, and kinematic terrain effects, lake and sea breeze circulations, and a divergence minimization procedure. An energy-balance scheme is used to compute sensible and latent heat fluxes and turbulence parameters over land surfaces. A profile method is used over water. CALMET contains interfaces to prognostic meteorological models such as the Penn State/NCAR Mesoscale Model (*e.g.*, MM5; Section 13.0, ref. 94), as well as the RAMS and Eta models.

e. Pollutant Types

CALPUFF may be used to model gaseous pollutants or particulate matter that are inert or undergo linear chemical reactions, such as SO_2, $SO_4^=$, NO, NO_2, HNO_3, NO_3^-, NH_3, PM–10, and toxic pollutants. For regional haze analyses, sulfate and nitrate particulate components are explicitly treated.

f. Source-Receptor Relationships

CALPUFF contains no fundamental limitations on the number of sources or receptors. Parameter files are provided that allow the user to specify the maximum number of sources, receptors, puffs, species, grid cells, vertical layers, and other model parameters. Its algorithms are designed to be suitable for source-receptor distances from tens of meters to hundreds of kilometers.

g. Plume Behavior

Momentum and buoyant plume rise is treated according to the plume rise equations of Briggs (1974, 1975) for non-downwashing point sources, Schulman and Scire (1980) for line sources and point sources subject to building downwash effects, and Zhang (1993) for buoyant area sources. Stack tip downwash effects and partial plume penetration into elevated temperature inversions are included.

h. Horizontal Winds

A three-dimensional wind field is computed by the CALMET meteorological model. CALMET combines an objective analysis procedure using wind observations with parameterized treatments of slope flows, valley flows, terrain kinematic effects, terrain blocking effects, and sea/lake breeze circulations. CALPUFF may optionally use single station (horizontally-constant) wind fields in the CTDMPLUS data format.

i. Vertical Wind Speed

Vertical wind speeds are not used explicitly by CALPUFF. Vertical winds are used in the development of the horizontal wind components by CALMET.

j. Horizontal Dispersion

Turbulence-based dispersion coefficients provide estimates of horizontal plume dispersion based on measured or computed values of σ_v. The effects of building downwash and buoyancy-induced dispersion are included. The effects of vertical wind shear are included through the puff splitting algorithm. Options are provided to use Pasquill-Gifford (rural) and McElroy-Pooler (urban) dispersion coefficients. Initial plume size from area or volume sources is allowed.

k. Vertical Dispersion

Turbulence-based dispersion coefficients provide estimates of vertical plume dispersion based on measured or computed values of σ_w. The effects of building downwash and buoyancy-induced dispersion are included. Vertical dispersion during convective conditions is simulated with a probability density function (pdf) model based on Weil *et al.* (1997). Options are provided to use Pasquill-Gifford (rural) and McElroy-Pooler (urban) dispersion coefficients. Initial plume size from area or volume sources is allowed.

l. Chemical Transformation

Gas phase chemical transformations are treated using parameterized models of SO_2 conversion to $SO_4^=$ and NO conversion to NO_2, HNO_3, and $SO_4^=$. Organic aerosol formation is treated.

m. Physical Removal

Dry deposition of gaseous pollutants and particulate matter is parameterized in terms of a resistance-based deposition model. Gravitational settling, inertial impaction, and Brownian motion effects on deposition of particulate matter is included. Wet deposition of gases and particulate matter is parameterized in terms of a scavenging coefficient approach.

n. Evaluation Studies

Berman, S., J.Y. Ku, J. Zhang and S.T. Rao, 1977: Uncertainties in estimating the mixing depth—Comparing three mixing depth models with profiler measurements, *Atmospheric Environment*, 31: 3023–3039.

Environmental Protection Agency, 1998. Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long-Range Transport Impacts. EPA Publication No. EPA–454/R–98–019. Office of Air Quality Planning & Standards, Research Triangle Park, NC.

Irwin, J.S. 1997. A Comparison of CALPUFF Modeling Results with 1997 INEL Field Data Results. In *Air Pollution Modeling and its Application, XII.* Edited by S.E. Gyrning and N. Chaumerliac. Plenum Press, New York, NY.

Irwin, J.S., J.S. Scire and D.G. Strimaitis, 1996. A Comparison of CALPUFF Modeling Results with CAPTEX Field Data Results. In *Air Pollution Modeling and its Application, XI.* Edited by S.E. Gyrning and F.A. Schiermeier. Plenum Press, New York, NY.

Strimaitis, D.G., J.S. Scire and J.C. Chang. 1998. Evaluation of the CALPUFF Dispersion Model with Two Power Plant Data Sets. Tenth Joint Conference on the Application of Air Pollution Meteorology, Phoenix, Arizona. American Meteorological Society, Boston, MA. January 11–16, 1998.

A.4 Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS)

Reference

Perry, S.G., D.J. Burns, L.H. Adams, R.J. Paine, M.G. Dennis, M.T. Mills, D.G. Strimaitis, R.J. Yamartino and E.M. Insley, 1989. User's Guide to the Complex Terrain Dispersion Model Plus Algorithms for Unstable Situations (CTDMPLUS). Volume 1: Model Descriptions and User Instructions. EPA Publication No. EPA–600/8–89–041. Environmental Protection Agency, Research Triangle Park, NC. (NTIS No. PB 89–181424)

Perry, S.G., 1992. CTDMPLUS: A Dispersion Model for Sources near Complex Topography. Part I: Technical Formulations. *Journal of Applied Meteorology*, 31(7): 633–645.

Availability

This model code is available on EPA's Internet SCRAM Web site and also on diskette (as PB 90–504119) from the National Technical Information Service (Section A.0).

Abstract

CTDMPLUS is a refined point source Gaussian air quality model for use in all stability conditions for complex terrain applications. The model contains, in its entirety, the technology of CTDM for stable and neutral conditions. However, CTDMPLUS can also simulate daytime, unstable conditions, and has a number of additional capabilities for improved user friendliness. Its use of meteorological data and terrain information is different from other EPA models; considerable detail for both types of input data is required and is supplied by preprocessors specifically designed for CTDMPLUS. CTDMPLUS requires the parameterization of individual hill shapes using the terrain preprocessor and the association of each model receptor with a particular hill.

a. Recommendation for Regulatory Use

CTDMPLUS is appropriate for the following applications:

- Elevated point sources;
- Terrain elevations above stack top;
- Rural or urban areas;
- Transport distances less than 50 kilometers; and
- One hour to annual averaging times when used with a post-processor program such as CHAVG.

b. Input Requirements

(1) Source data: For each source, user supplies source location, height, stack diameter, stack exit velocity, stack exit temperature, and emission rate; if variable emissions are appropriate, the user supplies hourly values for emission rate, stack exit velocity, and stack exit temperature.

(2) Meteorological data: For applications of CTDMPLUS, multiple level (typically three or more) measurements of wind speed and direction, temperature and turbulence (wind fluctuation statistics) are required to create the basic meteorological data file ("PROFILE"). Such measurements should be obtained up to the representative plume height(s) of interest (*i.e.*, the plume height(s) under those conditions important to the determination of the design concentration). The representative plume height(s) of interest should be determined using an appropriate complex terrain screening procedure (*e.g.*, CTSCREEN) and should be documented in the monitoring/modeling protocol. The necessary meteorological measurements should be obtained from an appropriately sited meteorological tower augmented by SODAR and/or RASS if the representative plume height(s) of interest is above the levels represented by the tower measurements. Meteorological preprocessors then create a SURFACE data file (hourly values of mixed layer heights, surface friction velocity, Monin-Obukhov length and surface roughness length) and a RAWINsonde data file (upper air measurements of pressure, temperature, wind direction, and wind speed).

(3) Receptor data: Receptor names (up to 400) and coordinates, and hill number (each receptor must have a hill number assigned).

(4) Terrain data: User inputs digitized contour information to the terrain preprocessor which creates the TERRAIN data file (for up to 25 hills).

c. Output

(1) When CTDMPLUS is run, it produces a concentration file, in either binary or text format (user's choice), and a list file containing a verification of model inputs, *i.e.*,

- Input meteorological data from "SURFACE" and "PROFILE"
- Stack data for each source
- Terrain information
- Receptor information
- Source-receptor location (line printer map).

(2) In addition, if the case-study option is selected, the listing includes:

- Meteorological variables at plume height
- Geometrical relationships between the source and the hill
- Plume characteristics at each receptor, *i.e.*,

—Distance in along-flow and cross flow direction
—Effective plume-receptor height difference
—Effective σ_y σ_z values, both flat terrain and hill induced (the difference shows the effect of the hill)
—Concentration components due to WRAP, LIFT and FLAT.

(3) If the user selects the TOPN option, a summary table of the top 4 concentrations at each receptor is given. If the ISOR option is selected, a source contribution table for every hour will be printed.

(4) A separate disk file of predicted (1-hour only) concentrations ("CONC") is written if the user chooses this option. Three forms of output are possible:

(i) A binary file of concentrations, one value for each receptor in the hourly sequence as run;

(ii) A text file of concentrations, one value for each receptor in the hourly sequence as run; or

(iii) A text file as described above, but with a listing of receptor information (names, positions, hill number) at the beginning of the file.

(3) Hourly information provided to these files besides the concentrations themselves includes the year, month, day, and hour information as well as the receptor number with the highest concentration.

d. Type of Model

CTDMPLUS is a refined steady-state, point source plume model for use in all stability conditions for complex terrain applications.

e. Pollutant Types

CTDMPLUS may be used to model non-reactive, primary pollutants.

f. Source-Receptor Relationship

Up to 40 point sources, 400 receptors and 25 hills may be used. Receptors and sources are allowed at any location. Hill slopes are assumed not to exceed 15°, so that the linearized equation of motion for Boussinesq flow are applicable. Receptors upwind of the impingement point, or those associated with

any of the hills in the modeling domain, require separate treatment.

g. Plume Behavior

(1) As in CTDM, the basic plume rise algorithms are based on Briggs' (1975) recommendations.

(2) A central feature of CTDMPLUS for neutral/stable conditions is its use of a critical dividing-streamline height (H_c) to separate the flow in the vicinity of a hill into two separate layers. The plume component in the upper layer has sufficient kinetic energy to pass over the top of the hill while streamlines in the lower portion are constrained to flow in a horizontal plane around the hill. Two separate components of CTDMPLUS compute ground-level concentrations resulting from plume material in each of these flows.

(3) The model calculates on an hourly (or appropriate steady averaging period) basis how the plume trajectory (and, in stable/neutral conditions, the shape) is deformed by each hill. Hourly profiles of wind and temperature measurements are used by CTDMPLUS to compute plume rise, plume penetration (a formulation is included to handle penetration into elevated stable layers, based on Briggs (1984)), convective scaling parameters, the value of H_c and the Froude number above H_c.

h. Horizontal Winds

CTDMPLUS does not simulate calm meteorological conditions. Both scalar and vector wind speed observations can be read by the model. If vector wind speed is unavailable, it is calculated from the scalar wind speed. The assignment of wind speed (either vector or scalar) at plume height is done by either:

- Interpolating between observations above and below the plume height, or
- Extrapolating (within the surface layer) from the nearest measurement height to the plume height.

i. Vertical Wind Speed

Vertical flow is treated for the plume component above the critical dividing streamline height (H_c); see "Plume Behavior".

j. Horizontal Dispersion

Horizontal dispersion for stable/neutral conditions is related to the turbulence velocity scale for lateral fluctuations, σ_v, for which a minimum value of 0.2 m/s is used. Convective scaling formulations are used to estimate horizontal dispersion for unstable conditions.

k. Vertical Dispersion

Direct estimates of vertical dispersion for stable/neutral conditions are based on observed vertical turbulence intensity, *e.g.*, σ_w (standard deviation of the vertical velocity fluctuation). In simulating unstable (convective) conditions, CTDMPLUS relies on a skewed, bi-Gaussian probability density function (pdf) description of the vertical velocities to estimate the vertical distribution of pollutant concentration.

l. Chemical Transformation

Chemical transformation is not treated by CTDMPLUS.

m. Physical Removal

Physical removal is not treated by CTDMPLUS (complete reflection at the ground/hill surface is assumed).

n. Evaluation Studies

Burns, D.J., L.H. Adams and S.G. Perry, 1990. Testing and Evaluation of the CTDMPLUS Dispersion Model: Daytime Convective Conditions. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J.O., S.G. Perry and D.J. Burns, 1990. An Analysis of CTDMPLUS Model Predictions with the Lovett Power Plant Data Base. Environmental Protection Agency, Research Triangle Park, NC.

Paumier, J.O., S.G. Perry and D.J. Burns, 1992. CTDMPLUS: A Dispersion Model for Sources near Complex Topography. Part II: Performance Characteristics. *Journal of Applied Meteorology*, 31(7): 646–660.

A.6 Emissions and Dispersion Modeling System (EDMS) 3.1

Reference

Benson, Paul E., 1979. CALINE3—A Versatile Dispersion Model for Predicting Air Pollutant Levels Near Highways and Arterial Streets. Interim Report, Report Number FHWA/CA/TL–79/23. Federal Highway Administration, Washington, DC. (NTIS No. PB 80–220841)

Federal Aviation Administration, 1997. Emissions and Dispersion Modeling System (EDMS) Reference Manual. FAA Report No. FAA–AEE–97–01, USAF Report No. AL/EQ–TR–1997–0010, Federal Aviation Administration, Washington, DC 20591. SEE Availability below. (**Note:** this manual includes supplements that are available on the EDMS Internet Web site: *http://www.aee.faa.gov/aee–100/aee–120/edms/banner.htm*)

Petersen, W.B. and E.D. Rumsey, 1987. User's Guide for PAL 2.0—A Gaussian-Plume Algorithm for Point, Area, and Line Sources. EPA Publication No. EPA–600/8–87–009. Office of Research and Development, Research Triangle Park, NC. (NTIS No. PB 87–168 787/AS)

Availability

EDMS is available for $45 ($55 for users outside of the United States). The order form is available from: *http://www.aee.faa.gov*. Click the EDMS button on the left side of the page, and then click on the "EDMS Order Form" link. The $45 cost covers the distribution of the EDMS package: A CD ROM containing the executable installation file, the user manual, and the model changes document. This EDMS package does not include the source code, which is available only through special request and FAA approval. Upon installation the user will have on their computer an executable file for the model and supporting data and program files. Official contact at Federal Aviation Administration: Ms. Julie Draper, AEE, 800 Independence Avenue, SW., Washington, DC 20591, Phone: (202) 267–3494.

Abstract

EDMS is a combined emissions/dispersion model for assessing pollution at civilian airports and military air bases. This model, which was jointly developed by the Federal Aviation Administration (FAA) and the United States Air Force (USAF), produces an emission inventory of all airport sources and calculates concentrations produced by these sources at specified receptors. The system stores emission factors for fixed sources such as fuel storage tanks and incinerators and also for mobile sources such as aircraft or automobiles. The EDMS emissions inventory module incorporates methodologies described in AP–42 for calculating aircraft emissions, on-road and off-road vehicle emissions, and stationary source emissions. The dispersion modeling module incorporates PAL2 and CALINE3 (Section A.3) for the various emission source types. Both of these components interact with the database to retrieve and store data. The dispersion module, which processes point, area, and line sources, also incorporates a special meteorological preprocessor for processing up to one year of National Climatic Data Center (NCDC) hourly data.

a. Recommendations for Regulatory Use

EDMS is appropriate for the following applications:

- Cumulative effect of changes in aircraft operations, point source and mobile source emissions at airports or air bases;
- Simple terrain;
- Non-reactive pollutants;
- Transport distances less than 50 kilometers; and
- 1-hour to annual averaging times.

b. Input Requirements

(1) All data are entered through the EDMS graphical user interface. Typical entry items are annual and hourly source activity, source and receptor coordinates, etc. Some point sources, such as heating plants, require stack height, stack diameter, and effluent temperature inputs.

(2) Wind speed, wind direction, hourly temperature, and Pasquill-Gifford stability category (P–G) are the meteorological inputs. They can be entered manually through the EDMS data entry screens or automatically through the processing of previously loaded NCDC hourly data.

c. Output

Printed outputs consist of:

- A summary emission inventory report with pollutant totals by source category and detailed emission inventory reports for each source category; and
- A concentration summary report for up to 8760 hours (one year) of meteorological data that lists the number of sources, receptors, and the five highest concentrations for applicable averaging periods for the respective primary NAAQS.

d. Type of Model

For its emissions inventory calculations, EDMS uses algorithms consistent with the EPA Compilation of Air Pollutant Emission Factors, AP–42 (Section 11.0, ref. 96). For its dispersion calculations, EDMS uses the Point Area & Line (PAL2) model and the CALifornia LINE source (CALINE3) model, both of which use Gaussian algorithms.

e. Pollutant Types

EDMS includes emission factors for carbon monoxide, nitrogen oxides, sulfur oxides, hydrocarbons, and suspended particles and calculates the dispersion for all except hydrocarbons.

f. Source-Receptor Relationship

(1) Within hardware and memory constraints, there is no upper limit to the number of sources and receptors that can be modeled simultaneously.

(2) The Gaussian point source equation estimates concentrations from point sources after determining the effective height of emission and the upwind and crosswind distance of the source from the receptor. Numerical integration of the Gaussian point source equation is used to determine concentrations from line sources (runways). Integration over area sources (parking lots), which includes edge effects from the source region, is done by considering finite line sources perpendicular to the wind at intervals upwind from the receptor. The crosswind integration is done analytically; integration upwind is done numerically by successive approximations. Terrain elevation differences between sources and receptors are neglected.

(3) A reasonable height above ground level may be specified for each receptor.

g. Plume Behavior

(1) Briggs final plume rise equations are used. If plume height exceeds mixing height, concentrations are assumed equal to zero. Surface concentrations are set to zero when the plume centerline exceeds mixing height.

(2) For roadways, plume rise is not treated.

(3) Building and stack tip downwash effects are not treated.

h. Horizontal Winds

(1) Steady state winds are assumed for each hour. Winds are assumed to be constant with altitude.

(2) Winds are entered manually by the user or automatically by reading previously loaded NCDC annual data files.

i. Vertical Wind Speed

Vertical wind speed is assumed to be zero.

j. Horizontal Dispersion

(1) Six stability classes are used (P–G classes A through F).

(2) Aircraft runways, vehicle parking lots, stationary sources, and training fires are modeled using PAL2. Either rural (Pasquill-Gifford) or urban (Briggs) dispersion settings may be specified globally for these sources.

(3) Vehicle roadways, aircraft taxiways, and aircraft queues are modeled using CALINE3. CALINE3 assumes urban dispersion curves. The user specifies terrain roughness.

k. Vertical Dispersion

(1) Six stability classes are used (P–G classes A through F).

(2) Aircraft runways, vehicle parking lots, stationary sources, and training fires are modeled using PAL2. Either rural (Pasquill-Gifford) or urban (Briggs) dispersion settings may be specified globally for these sources.

(3) Vehicle roadways, aircraft taxiways, and aircraft queues are modeled using CALINE3. CALINE3 assumes urban dispersion curves. The user specifies terrain roughness.

l. Chemical Transformation

Chemical transformations are not accounted for.

m. Physical Removal

Deposition is not treated.

n. Evaluation Studies

None cited.

A.5 Industrial Source Complex Model (ISC3)

Reference

Environmental Protection Agency, 1995. User's Guide for the Industrial Source Complex (ISC3) Dispersion Models, Volumes 1 and 2. EPA Publication Nos. EPA–454/B–95–003a & b. Environmental Protection Agency, Research Triangle Park, NC. (NTIS Nos. PB 95–222741 and PB 95–222758, respectively)

Availability

The model code is available on the EPA's Internet SCRAM website. ISCST3 (as PB 2002–500055) is also available on diskette from the National Technical Information Service (see Section A.0).

Abstract

The ISC3 model is a steady-state Gaussian plume model which can be used to assess pollutant concentrations from a wide variety of sources associated with an industrial source complex. This model can account for the following: Settling and dry deposition of particles; downwash; area, line and volume sources; plume rise as a function of downwind distance; separation of point sources; and limited terrain adjustment. ISC3 operates in both long-term and short-term modes.

a. Recommendations for Regulatory Use

ISC3 is appropriate for the following applications:

- Industrial source complexes;
- Rural or urban areas;
- Flat or rolling terrain;
- Transport distances less than 50 kilometers;
- 1-hour to annual averaging times; and
- Continuous toxic air emissions.

The following options should be selected for regulatory applications: For short term or long term modeling, set the regulatory "default option"; *i.e.*, use the keyword *DFAULT*, which automatically selects stack tip downwash, final plume rise, buoyancy induced dispersion (BID), the vertical potential temperature gradient, a treatment for calms, the appropriate wind profile exponents, the appropriate value for pollutant half-life, and a revised building wake effects algorithm; set the "rural option" (use the keyword *RURAL*) or "urban option" (use the keyword *URBAN*); and set the "concentration option" (use the keyword *CONC*).

b. Input Requirements

Source data: Location, emission rate, physical stack height, stack gas exit velocity, stack inside diameter, and stack gas temperature. Optional inputs include source elevation, building dimensions, particle size distribution with corresponding settling velocities, and surface reflection coefficients.

Meteorological data: ISCST3 requires hourly surface weather data from the preprocessor program RAMMET, which provides hourly stability class, wind direction, wind speed, temperature, and mixing height. For ISCLT3, input includes stability wind rose (STAR deck), average afternoon mixing height, average morning mixing height, and average air temperature.

Receptor data: Coordinates and optional ground elevation for each receptor.

c. Output

Printed output options include:

- Program control parameters, source data, and receptor data;
- Tables of hourly meteorological data for each specified day;
- "N"-day average concentration or total deposition calculated at each receptor for any desired source combinations;
- Concentration or deposition values calculated for any desired source combinations at all receptors for any specified day or time period within the day;
- Tables of highest and second highest concentration or deposition values calculated at each receptor for each specified time period during a(n) "N"-day period for any desired source combinations, and tables of the maximum 50 concentration or deposition values calculated for any desired source combinations for each specified time period.

d. Type of Model

ISC3 is a Gaussian plume model. It has been revised to perform a double integration of the Gaussian plume kernel for area sources.

e. Pollutant Types

ISC3 may be used to model primary pollutants and continuous releases of toxic and hazardous waste pollutants. Settling and deposition are treated.

f. Source-Receptor Relationships

ISC3 applies user-specified locations for point, line, area and volume sources, and user-specified receptor locations or receptor rings.

User input topographic evaluation for each receptor is used. Elevations above stack top are reduced to the stack top elevation, *i.e.*, "terrain chopping".

User input height above ground level may be used when necessary to simulate impact at elevated or "flag pole" receptors, *e.g.*, on buildings.

Actual separation between each source-receptor pair is used.

g. Plume Behavior

ISC3 uses Briggs (1969, 1971, 1975) plume rise equations for final rise.

Stack tip downwash equation from Briggs (1974) is used.

Revised building wake effects algorithm is used. For stacks higher than building height plus one-half the lesser of the building height or building width, the building wake algorithm of Huber and Snyder (1976) is used. For lower stacks, the building wake algorithm of Schulman and Scire (Schulman

and Hanna, 1986) is used, but stack tip downwash and BID are not used.

For rolling terrain (terrain not above stack height), plume centerline is horizontal at height of final rise above source.

Fumigation is not treated.

h. Horizontal Winds

Constant, uniform (steady-state) wind is assumed for each hour.

Straight line plume transport is assumed to all downwind distances.

Separate wind speed profile exponents (Irwin, 1979; EPA, 1980) for both rural and urban cases are used.

An optional treatment for calm winds is included for short term modeling.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

Rural dispersion coefficients from Turner (1969) are used, with no adjustments for surface roughness or averaging time.

Urban dispersion coefficients from Briggs (Gifford, 1976) are used.

Buoyancy induced dispersion (Pasquill, 1976) is included.

Six stability classes are used.

k. Vertical Dispersion

Rural dispersion coefficients from Turner (1969) are used, with no adjustments for surface roughness.

Urban dispersion coefficients from Briggs (Gifford, 1976) are used.

Buoyancy induced dispersion (Pasquill, 1976) is included.

Six stability classes are used.

Mixing height is accounted for with multiple reflections until the vertical plume standard deviation equals 1.6 times the mixing height; uniform vertical mixing is assumed beyond that point.

Perfect reflection is assumed at the ground.

l. Chemical Transformation

Chemical transformations are treated using exponential decay. Time constant is input by the user.

m. Physical Removal

Dry deposition effects for particles are treated using a resistance formulation in which the deposition velocity is the sum of the resistances to pollutant transfer within the surface layer of the atmosphere, plus a gravitational settling term (EPA, 1994), based on the modified surface depletion scheme of Horst (1983).

n. Evaluation Studies

Bowers, J.F. and A.J. Anderson, 1981. An Evaluation Study for the Industrial Source Complex (ISC) Dispersion Model, EPA Publication No. EPA–450/4–81–002. Office of Air Quality Planning & Standards, Research Triangle Park, NC.

Bowers, J.F., A.J. Anderson and W.R. Hargraves, 1982. Tests of the Industrial Source Complex (ISC) Dispersion Model at the Armco Middletown, Ohio Steel Mill. EPA Publication No. EPA–450/4–82–006. Office of Air Quality Planning & Standards, Research Triangle Park, NC.

Environmental Protection Agency, 1992. Comparison of a Revised Area Source Algorithm for the Industrial Source Complex Short Term Model and Wind Tunnel Data. EPA Publication No. EPA–454/R–92–014. Office of Air Quality Planning & Standards, Research Triangle Park, NC. (NTIS No. PB 93–226751)

Environmental Protection Agency, 1992. Sensitivity Analysis of a Revised Area Source Algorithm for the Industrial Source Complex Short Term Model. EPA Publication No. EPA–454/R–92–015. Office of Air Quality Planning & Standards, Research Triangle Park, NC. (NTIS No. PB 93–226769)

Environmental Protection Agency, 1992. Development and Evaluation of a Revised Area Source Algorithm for the Industrial Source Complex Long Term Model. EPA Publication No. EPA–454/R–92–016. Office of Air Quality Planning & Standards, Research Triangle Park, NC. (NTIS No. PB 93–226777)

Environmental Protection Agency, 1994. Development and Testing of a Dry Deposition Algorithm (Revised). EPA Publication No. EPA–454/R–94–015. Office of Air Quality Planning & Standards, Research Triangle Park, NC. (NTIS No. PB 94–183100)

Scire, J.S. and L.L. Schulman, 1981. Evaluation of the BLP and ISC Models with SF_6 Tracer Data and SO_2 Measurements at Aluminum Reduction Plants. Air Pollution Control Association Specialty Conference on Dispersion Modeling for Complex Sources, St. Louis, MO.

Schulman, L.L. and S.R. Hanna, 1986. Evaluation of Downwash Modification to the Industrial Source Complex Model. *Journal of the Air Pollution Control Association*, 36: 258–264.

A.7 Offshore and Coastal Dispersion Model (OCD)

Reference

DiCristofaro, D.C. and S.R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model, Version 4. Volume I: User's Guide, and Volume II: Appendices. Sigma Research Corporation, Westford, MA. (NTIS Nos. PB 93–144384 and PB 93–144392)

Availability

This model code is available on the EPA's Internet SCRAM Web site and also on diskette (as PB 91–505230) from the National Technical Information Service (see Section A.0). Official contact at Minerals Management Service: Mr. Dirk Herkhof, Parkway Atrium Building, 381 Elden Street, Herndon, VA 20170, Phone: (703) 787–1735.

Abstract

(1) OCD is a straight-line Gaussian model developed to determine the impact of offshore emissions from point, area or line sources on the air quality of coastal regions. OCD incorporates overwater plume transport and dispersion as well as changes that occur as the plume crosses the shoreline. Hourly meteorological data are needed from both offshore and onshore locations. These include water surface temperature, overwater air temperature, mixing height, and relative humidity.

(2) Some of the key features include platform building downwash, partial plume penetration into elevated inversions, direct use of turbulence intensities for plume dispersion, interaction with the overland internal boundary layer, and continuous shoreline fumigation.

a. Recommendations for Regulatory Use

OCD has been recommended for use by the Minerals Management Service for emissions located on the Outer Continental Shelf. OCD is applicable for overwater sources where onshore receptors are below the lowest source height. Where onshore receptors are above the lowest source height, offshore plume transport and dispersion may be modeled on a case-by-case basis in consultation with the appropriate reviewing authority (paragraph 3.0(b)).

b. Input Requirements

(1) Source data: Point, area or line source location, pollutant emission rate, building height, stack height, stack gas temperature, stack inside diameter, stack gas exit velocity, stack angle from vertical, elevation of stack base above water surface and gridded specification of the land/water surfaces. As an option, emission rate, stack gas exit velocity and temperature can be varied hourly.

(2) Meteorological data (over water): Wind direction, wind speed, mixing height, relative humidity, air temperature, water surface temperature, vertical wind direction shear (optional), vertical temperature gradient (optional), turbulence intensities (optional).

(3) Meteorological data (over land): Wind direction, wind speed, temperature, stability class, mixing height.

(4) Receptor data: Location, height above local ground-level, ground-level elevation above the water surface.

c. Output

(1) All input options, specification of sources, receptors and land/water map including locations of sources and receptors.

(2) Summary tables of five highest concentrations at each receptor for each averaging period, and average concentration for entire run period at each receptor.

(3) Optional case study printout with hourly plume and receptor characteristics. Optional table of annual impact assessment from non-permanent activities.

(4) Concentration files written to disk or tape can be used by ANALYSIS postprocessor to produce the highest concentrations for each receptor, the cumulative frequency distributions for each receptor, the tabulation of all concentrations exceeding a given threshold, and the manipulation of hourly concentration files.

d. Type of Model

OCD is a Gaussian plume model constructed on the framework of the MPTER model.

e. Pollutant Types

OCD may be used to model primary pollutants. Settling and deposition are not treated.

f. Source-Receptor Relationship

(1) Up to 250 point sources, 5 area sources, or 1 line source and 180 receptors may be used.

(2) Receptors and sources are allowed at any location.

(3) The coastal configuration is determined by a grid of up to 3600 rectangles. Each element of the grid is designated as either land or water to identify the coastline.

g. Plume Behavior

(1) As in ISC, the basic plume rise algorithms are based on Briggs' recommendations.

(2) Momentum rise includes consideration of the stack angle from the vertical.

(3) The effect of drilling platforms, ships, or any overwater obstructions near the source are used to decrease plume rise using a revised platform downwash algorithm based on laboratory experiments.

(4) Partial plume penetration of elevated inversions is included using the suggestions of Briggs (1975) and Weil and Brower (1984).

(5) Continuous shoreline fumigation is parameterized using the Turner method where complete vertical mixing through the thermal internal boundary layer (TIBL) occurs as soon as the plume intercepts the TIBL.

h. Horizontal Winds

(1) Constant, uniform wind is assumed for each hour.

(2) Overwater wind speed can be estimated from overland wind speed using relationship of Hsu (1981).

(3) Wind speed profiles are estimated using similarity theory (Businger, 1973). Surface layer fluxes for these formulas are calculated from bulk aerodynamic methods.

i. Vertical Wind Speed

Vertical wind speed is assumed equal to zero.

j. Horizontal Dispersion

(1) Lateral turbulence intensity is recommended as a direct estimate of horizontal dispersion. If lateral turbulence intensity is not available, it is estimated from boundary layer theory. For wind speeds less than 6 m/s, lateral turbulence intensity is assumed inversely proportional to wind speed.

(2) Horizontal dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

(3) Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement and wind direction shear enhancement.

(4) At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either lateral turbulence intensity or Pasquill-Gifford curves. The change is implemented where the plume intercepts the rising internal boundary layer.

k. Vertical Dispersion

(1) Observed vertical turbulence intensity is not recommended as a direct estimate of vertical dispersion. Turbulence intensity should be estimated from boundary layer theory as default in the model. For very stable conditions, vertical dispersion is also a function of lapse rate.

(2) Vertical dispersion may be enhanced because of obstructions near the source. A virtual source technique is used to simulate the initial plume dilution due to downwash.

(3) Formulas recommended by Pasquill (1976) are used to calculate buoyant plume enhancement.

(4) At the water/land interface, the change to overland dispersion rates is modeled using a virtual source. The overland dispersion rates can be calculated from either vertical turbulence intensity or the Pasquill-Gifford coefficients. The change is implemented where the plume intercepts the rising internal boundary layer.

l. Chemical Transformation

Chemical transformations are treated using exponential decay. Different rates can be specified by month and by day or night.

m. Physical Removal

Physical removal is also treated using exponential decay.

n. Evaluation Studies

DiCristofaro, D.C. and S.R. Hanna, 1989. OCD: The Offshore and Coastal Dispersion Model. Volume I: User's Guide. Sigma Research Corporation, Westford, MA.

Hanna, S.R., L.L. Schulman, R.J. Paine and J.E. Pleim, 1984. The Offshore and Coastal Dispersion (OCD) Model User's Guide, Revised. OCS Study, MMS 84–0069. Environmental Research & Technology, Inc., Concord, MA. (NTIS No. PB 86–159803)

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Environmental Protection Agency, 1998. Interagency Workgroup on Air Quality Modeling (IWAQM) Phase 2 Summary Report and Recommendations for Modeling Long-Range Transport Impacts. EPA Publication No. EPA–454/R–98–019. (NTIS No. PB 99–121089)

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Part IV

Federal Election Commission

11 CFR Parts 104, et al.
Public Financing of Presidential Candidates and Nominating Conventions; Proposed Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 104, 107, 110, 9003, 9004, 9008, 9032 through 9036, and 9038

[Notice 2003–8]

Public Financing of Presidential Candidates and Nominating Conventions

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed changes to its rules governing publicly financed presidential candidates, in both the primary and general elections, and national nominating conventions. These regulations implement the provisions of the Presidential Election Campaign Fund Act and the Presidential Matching Payment Account Act, which establish eligibility requirements for presidential candidates and convention committees seeking public financing and indicate how funds received under the public financing system may be spent. They also require the Commission to audit publicly financed committees and seek repayment where appropriate. The proposed rules implement the Bipartisan Campaign Reform Act of 2002, as it applies particularly to the Presidential Election Campaign Fund Act and the Presidential Matching Payment Account Act. The proposed rules also reflect the Commission's experience in administering this program during the 2000 election cycle and seek to anticipate some questions that may arise during the 2004 presidential election cycle. No final decisions have been made by the Commission on any of the proposed revisions in this document. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before May 9, 2003. If the Commission receives sufficient requests to testify, it will hold a hearing on these proposed rules on May 19, 2003, at 10 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *pubfund2004@fec.gov* and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, or Mr. Robert M. Knop, or Ms. Delanie DeWitt Painter, Attorneys, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is considering revising parts of its regulations governing the public financing of presidential campaigns, 11 CFR parts 9001 through 9039, to more effectively administer the public financing program during the 2004 election cycle. These rules implement the provisions of the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 to 9013 ["Fund Act"], and the Presidential Matching Payment Account Act, 26 U.S.C. 9031 to 9042 ["Matching Payment Act"]. In addition, the Commission is considering how the Bipartisan Campaign Reform Act of 2002 ["BCRA"], Public Law 107–155, 116 Stat. 81 (Mar. 27, 2002), in its amendments to the Federal Election Campaign Act of 1971, 2 U.S.C. 431 to 455 ["FECA"], along with the Commission's implementing regulations related to BCRA, may affect the public funding rules. The Commission publishes this Notice of Proposed Rulemaking ["NPRM"] to invite comments on the proposed amendments.

Please note that the proposed revisions would affect primary elections, general elections, and national nominating conventions. The Commission plans to seek comment at a later date on issues that affect only minor and new party candidates. The Commission also plans a separate rulemaking on selected issues related to all Federal candidates, which may include issues related to publicly funded candidates, including questions concerning candidate travel, mailing lists (including list exchanges and list rentals), and allocation of expenses between candidates.

Presidential Candidates

I. Winding Down Costs

The Commission is considering several changes to its rules governing winding down costs for both primary and general election candidates. Many issues that have arisen in the Commission's audits of publicly funded presidential candidates have involved winding down costs.

A. Restrictions on Winding Down Costs

The Commission is revisiting the issue of limiting winding down expenses. The current regulations at 11 CFR 9034.4(a)(3) permit primary candidates to make disbursements for winding down costs, and to receive and use matching funds to make those disbursements, over an indefinite period of time after the candidate's Date of Ineligibility ["DOI"]. Similarly, under 11 CFR 9004.4(a)(4), general election candidates may use public funds after the end of the expenditure report period to pay for the costs of winding down the general election campaign. The rules treat both primary and general election winding down costs as qualified campaign expenses.

The Commission has permitted publicly financed candidates to use Federal funds to pay for certain winding down expenses since 1976. *See* Informational Letter Re: Advisory Opinion Request 1976–54. In 1979, the Commission stated that winding down costs "although perhaps incurred after a candidate's date of ineligibility may nevertheless be considered qualified campaign expenses if they are associated with the termination of the candidate's campaign." *Explanation and Justification for the Rules Governing Presidential Election Campaign Fund and Presidential Primary Matching Fund*, 44 FR 20336, 20340 (Apr. 4, 1979). In 1983, the Commission considered a time limitation for winding down costs, but ultimately did not include it in the final rules because of concerns raised by comments opposing the change. *Explanation and Justification for the Rules Governing Presidential Primary Matching Fund*, 48 FR 5224, 5228 (Feb. 4, 1983).

The Commission again contemplated restrictions on the amount of winding down costs in 1995. *Explanation and Justification for the Rules Governing Public Financing of Presidential Primary and General Election Candidates*, 60 FR 31854, 31865–31866 (June 16, 1995). The Commission stated that winding down costs "can result in additional audit fieldwork and preparation of addenda to audit reports" and that as part of an "effort to streamline and shorten the audit process," the Commission sought comment on ways to reduce winding down time for campaigns. *Id.* The Commission considered limiting winding down expenses to a dollar amount or a fixed percentage of the candidate's total expenditures during the campaign or matching funds certified to a primary candidate. *Id.* at 31866. Alternatively, the Commission considered "a cutoff date after which winding down expenses would no longer be considered qualified campaign expenses." *Id.* Commenters objected that campaigns need resources to respond during the audit process, to defend themselves in enforcement actions and to verify the proper payment of the campaign's remaining bills. *Id.* Ultimately, the Commission did not add new restrictions to the rules governing winding down costs, stating that it would be "quite difficult to select an amount or time frame sufficient to meet reasonable expenses incurred in winding down the campaign." *Id.*

In recent election cycles, the winding down period for some candidates has extended over several years, and the amount of winding down costs has increased. During the audit and repayment process, presidential committees and the Commission's auditors estimate future winding down costs, and may sometimes reach substantially disparate winding down estimates. Issues have arisen as to the appropriate amounts and types of winding down expenses and as to the length of time committees need to wind down. These disputes lengthen the audit and repayment process and can provide a basis for judicial challenges to the Commission's repayment determinations. Both actual and estimated future winding down costs are included in a primary election candidate's Statement of Net Outstanding Campaign Obligations ["NOCO"] or a general election candidate's Statement of Net Outstanding Qualified Campaign Expenses ["NOQCE"]. Consequently, if the Commission auditors' figures are lower than the committee's estimates, a dispute may arise in determining the candidate's NOCO or NOQCE and any remaining entitlement, surplus funds, or resulting repayment. Disallowed winding down expenses can increase the amount of any surplus funds and the resulting repayment determination, or they can reduce or eliminate a deficit and the corresponding amount of a primary candidate's entitlement to matching funds. Therefore, the Commission is again considering ways to limit winding down expenses in order to establish a fair and readily determined amount to ensure public funds are used in accordance with statutory purposes, campaigns are treated consistently with respect to winding down costs, and to provide for more expeditious completion of these matters. Thus, the proposed rules establish both an ending date and maximum amount for winding down costs.

The Commission proposes new sections governing winding down expenses at 11 CFR 9004.11 and 11 CFR 9034.11 that would delineate new restrictions on both the amount and timing of winding down costs. Publicly funded campaign committees should wind down in as quick and efficient manner as possible. The proposed restrictions are intended to contain winding down costs and periods, but allow campaigns a reasonable amount of winding down costs and a long enough winding down period to respond during the audit and repayment process and verify the payment of bills to terminate the campaign. The proposed restrictions would work in concert. Thus, candidates would be unable to continue to use public funds to pay for winding down costs if they reach the monetary limit prior to the end of their winding down period or if their winding down period ends before they reach the monetary limit.

The proposed rules at 11 CFR 9004.11 and 9034.11 include both a temporal restriction and a limitation of the total amount of winding down expenses. The proposed time restriction would permit a candidate to use public funds to pay for winding down expenses only until the end of the "winding down period." The winding down period would begin on the day after the candidate's date of ineligibility, for primary candidates who do not participate in the general election, or the day after the end of the expenditure report period for publicly funded general election candidates, or the day following the date 30 days after the general election for candidates who participate in the general election but do not receive public funds for the general election. The winding down period would end no earlier than the latest of: (1) 30 days after the candidate's receipt of an audit report that does not contain any repayment determinations; (2) 60 days after service of notice to the candidate of the Commission's repayment determination, if the committee does not dispute the repayment determination; or (3) 30 days after service of notice of the Commission's repayment determination following an administrative review.

The proposed winding down period would allow sufficient time for campaigns to seek administrative review of repayment determinations. The 30-day period following a candidate's receipt of an audit report that does not contain a repayment determination would allow sufficient time to complete winding down because the audit and repayment process would have concluded. The 60-day period allowed for winding down after service to a candidate of a repayment determination that the candidate does not dispute reflects the amount of time permitted for candidates to respond to repayment determinations at 11 CFR 9007.2(c)(2) and 9038.2(c)(2). If a candidate disputes any repayment determination by responding and seeking administrative review, the winding down period would extend to 30 days after service of notice of the Commission's repayment determination following administrative review. This is consistent with 11 CFR 9007.2(d)(2) and 9038.2(d)(2), which require candidates to make a post-administrative review repayment within 30 days after service of the Commission's post-administrative review repayment determination. The Commission notes that if it is unable by an affirmative vote of at least 4 of its members to make a repayment determination after an administrative review, the 30-day period would run from the date of service of notice of the Commission's final action concerning the administrative review.

The proposed rules would accommodate repayment determinations related to Commission audit reports, addenda to audit reports and 11 CFR 9039.3 inquiries. Thus, if a candidate did not dispute a repayment determination in an audit report but did subsequently dispute a repayment determination arising from an inquiry pursuant to 11 CFR 9039.3, the candidate's winding down period would extend until 30 days after service of notice of the Commission's repayment determination upon administrative review related to the 11 CFR 9039.3 investigation. In addition, the time restriction's terms are "no earlier than" the expiration of the specified time period to permit the Commission the administrative flexibility of choosing a convenient end point, like the end of a month, and to allow for staff to estimate time for

Commission approval and transmittal to the committee of the audit report or repayment determination.

To reflect this new time restriction, the Commission also proposes revising 11 CFR 9004.9(a)(4) and 9034.5(b)(2) to require candidates' NOCO or NOQCE Statements to break down estimated winding down costs through the end of the winding down period, rather than the expected termination of the committee's political activity.

In addition to the temporal restriction, the proposed rules at 11 CFR 9004.4(a)(4) and 9034.4(a)(3) would limit the total amount of winding down expenses that may be paid for, in whole or part, with public funds. This "winding down limitation" would limit the total amount of publicly funded winding down expenses for primary candidates to the lesser of either: (1) 5% of the overall expenditure limitation; or (2) 5% of the total of the candidate's expenditures subject to the overall expenditure limitation as of the candidate's DOI, plus the candidate's expenses exempt from the overall expenditure limitation as of DOI, such as fundraising, legal and accounting compliance expenses and other expenses. For general election candidates, the winding down limitation would be the lesser of: (1) 2.5% of the expenditure limitation; or (2) 2.5% of the total of the candidate's expenditures subject to the expenditure limitation as of the end of the expenditure report period, plus the candidate's expenses exempt from the expenditure limitation, such as fundraising expenses, as of the end of the expenditure report period.

The Commission notes that the fundraising exemption for general election candidates is applicable only to those candidates who may accept contributions to defray qualified campaign expenses pursuant to 26 U.S.C. 9003(b)(2) or 9003(c)(2): minor party candidates and major party candidates who may solicit contributions to make up a deficiency in public funds received. *See* 11 CFR 100.152, 9003.3(b) and (c). Those general election candidates who may solicit contributions may also exempt legal and accounting compliance expenses from their expenditure limitations. *See* 11 CFR 100.146, 9003.3(b) and (c). Thus, the proposed rule would address the calculation of the winding down limitation for those general election candidates who may solicit contributions by calculating the total of their expenditures subject to the limit and their exempt expenses. The winding down limitation for fully funded major party general election candidates would generally be 2.5% of the expenditure limitation. For both primary and general candidates, expenses for transportation of Secret Service and national security staff and media transportation expenses that are reimbursed by the media do not count against the expenditure limitations. *See* 11 CFR 9004.6(a), 9034.6(a). In addition, taxes on non-exempt function income such as interest, dividends and sale of property are exempt from a primary candidate's overall expenditure limitation. *See* 11 CFR 9034.4(a)(4).

Notwithstanding the amount determined based on these calculations, the proposed rule would permit all primary and general election candidates to spend a minimum of $100,000 on winding down costs. The $100,000 minimum winding down limitation is proposed to recognize that publicly funded committees face winding down expenses related to the requirements of the audit and repayment process that do not vary with the size of the committees. The Commission seeks comment on whether $100,000 is the appropriate minimum amount and whether it should be adjusted for inflation or replaced with a percentage of the expenditure limitation.

In practice, the winding down limitation for primary candidates with large campaigns and for fully funded major party general election candidates would be the maximum winding down limitation: 5% of the overall expenditure limitation for primary candidates or 2.5% of the expenditure limitation for general election candidates. For primary candidates with smaller campaigns, the winding down limitation would equal 5% of their expenses prior to DOI. The winding down limitation for most minor party general election candidates and major party candidates who must solicit contributions to make up a deficiency in public funds would equal 2.5% of their expenses during the expenditure report period. For purposes of calculating the amount of the winding down limitation based on a primary or general candidate's expenses, a candidate's expenses would include both disbursements and accounts payable as of the DOI or the end of the expenditure report period for the following categories of expenses (as listed on page 2 of FEC Form 3P): operating expenses (line 23), fundraising (line 25), exempt legal and accounting (line 26), and other disbursements (line 29). The following payments would not be included in the expenses used to calculate the winding down limitation: Transfers to other authorized committees (line 24), loan repayments (line 27), or contribution refunds (line 28). The winding down limitation would not include any expenditures in excess of the general election candidate's expenditure limitation or the primary candidate's overall expenditure limitation; thus, making expenditures or accepting in-kind contributions that exceed the expenditure limits would not provide a basis for an increased winding down limitation. The maximum winding down limitation would be calculated based upon a percentage of the primary candidate's overall expenditure limitation or the general election candidate's expenditure limitation pursuant to 26 U.S.C. 441a(b), similar to the calculation of the 20% fundraising exemption or the 15% compliance exemption. *See* 11 CFR 100.146, 100.152, 9002.11(b)(5) and 9035.1(c)(1) and (2).

All expenses incurred and paid by a candidate during the winding down period, including fundraising costs, would be subject to the winding down limitation. Expenses for legal and accounting compliance costs paid for with public funds would count against the winding down limitation, but compliance costs paid by a General Election Legal and Accounting Compliance Fund ["GELAC"] would not count against the winding down limitation.

The Commission reviewed the amounts spent for winding down costs by all publicly funded candidates during the 2000 election cycle. It compared their approximate winding down costs to the proposed winding down limitation. Of three publicly funded general election candidates, one would have spent less than 1% of the expenditure limitation, the second would have spent less than 2% of his expenditures, while the third would have spent only slightly more than the 2.5% winding down limitation. The last committee paid some of its winding down expenses with GELAC funds, which reduced its percentage to less than 2%. Ten primary candidates received matching funds in 2000. Three of these primary candidates' winding down limitations would have been calculated based on the maximum winding down limitation of 5% of the overall expenditure limitation. Of these, one would have exceeded the winding down limitation, spending more than approximately 8% of the expenditure limitation. Six primary candidates' winding down limitations would have been calculated based on their expenditures. Of these, four candidates would have exceeded the 5% winding down limitation, with winding down costs ranging between approximately 13% and 42% of their expenditures. One candidate that would have been subject to the minimum winding down limitation of $100,000 spent substantially less than that amount. Of all 13 publicly funded committees in the 2000 presidential elections, five primary committees had winding down expenses that would have exceeded the proposed amount limitation. One of these committees had sufficient funds in its related GELAC that could have paid the excessive winding down expenses. The other four committees would have received fewer matching funds after their DOIs.[1]

The proposal puts forth a lower percentage for general election campaign committees than for primary campaigns for several reasons. General election candidates may pay for winding down costs with funds from the candidates' GELAC, an option not currently available for primary election campaigns. General election campaigns are also shorter in length than most primary campaigns and thus, may have fewer transactions and vendors to deal with while terminating the campaign. The Commission also notes that the total amount of public funds and expenditure limitations are larger for major party candidates who receive public funds; thus, a smaller percentage of their expenditures would result in a larger dollar figure.

Under the proposed rules, the use of public funds to pay for winding down expenses in excess of these restrictions would constitute a non-qualified campaign expense that may be subject to repayment. However, these restrictions would apply to the use of public funds or a mixture of public and private funds for winding down costs. The proposed rules would not limit the payment of winding down expenses from a candidate's GELAC. The proposed rules would also allow a primary candidate who is in a deficit position at the DOI to pay for winding down costs in excess of the restrictions after the committee's accounts no longer contain any matching funds. *See* 11 CFR 9038.2(b)(2)(iii)(B) and (iv). Primary candidates who have a surplus at the DOI would be required to make a surplus repayment to the United States Treasury before they could use private funds for winding down costs in excess of the restrictions. *See* 11 CFR 9038.3(c).

The proposal includes both temporal and amount restrictions rather than just one or the other so that these restrictions would work together to reinforce each other. The proposed rules would not permit the use of public funds for winding down costs after either: (1) The total amount of winding down expenses reach the winding down dollar limitation or (2) the end of the winding down period, whichever event occurs first. The proposed restrictions would prevent the pre-payment of large amounts for speculative future winding down goods and services prior to the end of the winding down period. They would also prevent a prolonged winding down period from extending and complicating the audit process. In addition, the proposed rules are intended to reflect factors that could affect the amount of winding down costs needed to terminate the campaign. The proposed winding down limitation is based on a percentage of a campaign's expenses to reflect that larger campaigns generally incur more expenses as they terminate their activities. The calculation includes exempt expenses such as fundraising and legal and accounting compliance costs to reflect the actual size of the campaign that is winding down. In addition, the proposed rule would restrict the expenses used to calculate the winding down limitation to the period prior to a primary candidate's DOI or the end of a general election candidate's expenditure report period to prevent candidates from increasing their winding down limitation by spending more for winding down expenses.

One factor under consideration, but not included in the proposed rules that follow, is the number of complaints and other compliance actions filed against a presidential candidate or campaign committee. Winding down costs include, *inter alia*, the costs of "complying with the post-election requirements of the Act," such as the audit and repayment process, reporting and recordkeeping. 11 CFR 9004.4(a)(4) and 9034.4(a)(3). The compliance process is separate from the required audit and repayment process and its requirements are not election dependent, which raises the issue of whether such compliance costs should be considered "post-election requirements of the Act." Compliance matters, unlike compulsory audits and repayment determinations, are not unique to candidates who receive public funds. Consequently, the proposed rule would allow a publicly funded candidate to pay initial expenses for compliance matters arising from the campaign with public funds as winding down costs, but the winding down period would not be prolonged until enforcement matters related to the campaign have closed, if the audit and repayment process has concluded. Private funds would be available to general election candidates through their GELAC and to primary candidates after their accounts no longer contain public funds. As discussed below, however, the proposed rules would also permit a GELAC to pay the primary committee's winding down expenses under certain conditions. The Commission seeks comment on whether the existence of compliance matters should be considered as a factor in determining a candidate's winding down period or winding down limitation.

The proposed new sections at 11 CFR 9004.11 (general election) and 9034.11 (primary election) governing winding down costs are intended to simplify and clarify the rules governing winding down costs. Proposed new 11 CFR 9004.11 and 9034.11 contain the definition of winding down costs, moved from current sections 9004.4(a)(4) and 9034.4(a)(3)(i), the proposed temporal and monetary restrictions, and proposed rules governing the allocation of winding down costs between a candidate's primary election and general election campaigns. In addition, the Commission proposes revisions to 11 CFR 9004.4(a)(4) and 9034.4(a)(3)(i) and (ii) to move provisions from those sections to the new sections and to otherwise conform these sections to the proposed new rules. Proposed 11 CFR 9004.4(a)(4) would state that payments may be used to defray winding down costs subject to the restrictions of new 11 CFR 9004.11. Current section 9004.4(a)(4)(ii) would be renumbered as 9004.4(a)(5). Proposed 11 CFR 9034.4(a)(3)(i) would state that winding down costs subject to the restrictions in proposed 11 CFR 9034.11 are qualified campaign expenses. Proposed 11 CFR 9034.4(a)(3)(ii) would include a reference to proposed 11 CFR 9034.11.

The Commission seeks comment on the proposed winding down restrictions. Are the restrictions fair to publicly funded committees? Should winding down expenses be limited to a fixed dollar amount or a combination of a dollar amount and a percentage rather than the proposed percentage? If so, what dollar amount would be appropriate? Would it be preferable to apply a percentage or dollar cap to specific categories of winding down expenses rather than the total of winding down costs? Would a shorter or longer winding down period be preferable to the proposed time period? Should there be a minimum winding

[1] Of course, this comparison is hypothetical because the committees may have behaved differently had the proposed rules been in effect.

down period, and if so, how long should the minimum winding down period be?

Specifically, the Commission seeks comment on whether the winding down period should include an additional time period or dollar allowance for candidates who seek judicial review of a Commission repayment determination and if so, how long that period should be. Should candidates who accept public funds for both the primary and general elections be allowed to combine their primary and general election winding down limitations into a joint monetary limit for the total winding down expenses of both committees, with the temporal limit based on the last repayment determination received by either committee? Would the proposed rule encourage candidates to attempt to extend the audit process to lengthen the winding down period?

The Commission is also considering two alternatives to the proposed temporal and monetary restrictions on winding down expenses. The first alternative would, in effect, disallow the use of public funds to pay for winding down costs. Under this alternative, a primary election candidate would not be permitted to use public funds to pay for either: (1) All expenses incurred after the candidate's DOI or (2) all expenses for goods or services to be used after the DOI even if the expenses are incurred prior to the DOI. A general election candidate would not be permitted to use public funds to pay for either: (1) All expenses incurred after the end of the expenditure report period or (2) all expenses for goods or services to be used after the end of the expenditure report period even if they are incurred during the expenditure report period.

This alternative would end the Commission's treatment of winding down costs as qualified campaign expenses. Winding down costs are a category of qualified campaign expenses recognized by the Commission that is not specifically identified in the Fund Act or the Matching Payment Act. This category of qualified campaign expenses is an exception to the rules requiring qualified campaign expenses to be incurred during the expenditure report period, for general election candidates, 26 U.S.C. 9002(11)(B), or prior to a primary candidate's DOI, 11 CFR 9032.9(a)(1); *see also* 26 U.S.C. 9032(6) and 9033(c)(2). Since winding down costs are incurred after the end of a candidate's active campaign, the question arises whether they are incurred "to further" a general election candidate's election to the office of President or Vice President, 26 U.S.C. 9002(11), or "in connection with" a primary candidate's campaign for the nomination, 26 U.S.C. 9032(9). Comments are sought on whether permitting public funds to be used for winding down costs may be inconsistent with these provisions or with 26 U.S.C. 9038(b)(3), which requires candidates to retain matching funds "for the liquidation of all obligations to pay qualified campaign expenses for a period not exceeding 6 months after the end of the matching payment period" and to "promptly" repay a ratio of any surplus funds.

Disallowing the use of public funds for winding down expenses would ensure that public funds are used for expenses that further a candidate's active campaign. Under this alternative, general election candidates would be able to pay for their winding down expenses with GELAC funds. Primary candidates would not pay for winding down costs with matching funds, but could use contributions or other private funds to pay these costs. Under this approach, a primary candidate's winding down costs would not count as liabilities in determining the candidate's net outstanding campaign obligations; thus, winding down costs could not increase a primary candidate's entitlement to Federal funds or decrease a surplus.

Please note that this alternative is not set forth in the draft rules that follow. This alternative would require the deletion of the rules governing winding down costs as well as changes to other rules to delete references to winding down costs. Specifically, this alternative would require deletion or revisions to: 11 CFR 9002.11(c) (expenses after the last day of the candidate's eligibility may be qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a)); 9004.4(a)(4) (winding down costs as qualified campaign expenses); 9004.4(b)(3) (non-qualified campaign expenses do not include winding down expenses permitted by 11 CFR 9004.4(a)(4)); 9004.9(a)(1) and (4) (inclusion of estimated winding down expenses in the NOCQE statement); 9032.9(c) (expenses after the last day of candidate's eligibility may be qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a)); 9034.4(a)(3) (winding down costs as qualified campaign expenses); 9034.4(a)(5) (bonuses are permitted until 30 days after DOI); 9034.4(b)(3) (non-qualified campaign expenses do not include winding down expenses permitted by 11 CFR 9034.4(a)(3)); and 9034.5(b)(1) and (2) (inclusion of estimated winding down expenses in the NOCO statement). Please also note that this alternative is inconsistent with some of the other proposals in this rulemaking, such as dividing winding down expenses between a candidate's primary and general campaigns or treating certain convention expenses of ineligible candidates as qualified campaign expenses, as discussed below. The Commission seeks comment on this alternative approach. Would disallowing the use of public funds for winding down costs hinder candidates from responding adequately during the audit and repayment process? Would this alternative serve as a disincentive for candidates to seek public funds? Is this approach nonetheless required by the Fund Act and the Matching Payment Act? Should primary candidates be permitted to establish a separate account of solely private funds, with separate contribution limits for contributors, to be used for winding down expenses? If so, may the Commission permit contributors to make more than one contribution of the amount specified in 2 U.S.C. 441a(a)(1)(A) or 2 U.S.C. 441a(a)(2)(A) to the same candidate or authorized committee? May the Commission permit such candidates and authorized committees to accept such contributions consistent with 2 U.S.C. 441a(f) and 441i(e)(1)(A)?

The Commission is also considering a second alternative approach to winding down costs. This alternative, which is also not set forth in the draft rules that follow, would not place restrictions on the amount or timing of winding down costs but would more precisely delineate the types of winding down costs that are permissible. The Commission is considering various categories of permissible winding down costs including staff salaries, legal and accounting services, office space rental, utilities, computer services, other overhead expenses, consultants, storage, insurance, office supplies and fundraising expenses.

The Commission seeks comment on this alternative. Disputes over winding down expenses often concern the appropriate amounts spent for particular expenses, the appropriate length of time a campaign should continue to need certain goods or services, and whether the campaign committee has provided sufficient documentation of expenses. Should a list of permissible winding down expenses provide guidance as to the appropriate amounts, duration, or documentation required to support such expenses? Should there be any dollar limits on any of the expenses? Would this alternative reduce the amount of winding down expenses? The Commission also seeks comment on any other alternative proposals for limiting winding down expenses.

The Commission proposes another change to clarify the rules on winding down costs at 11 CFR 9034.4(b)(3). Current paragraph (a) of 11 CFR 9034.4 lists qualified campaign expenses, while paragraph (b) sets forth certain non-qualified campaign expenses. Paragraph (a)(1) states that, except as provided in paragraph (b)(3), all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses. Paragraph (b)(3) states that general election and post-ineligibility expenditures are not qualified campaign expenses, except to the extent permitted under paragraph (a)(3), which concerns winding down and continuing-to-campaign expenses. For clarity, the Commission is proposing to add a provision to paragraph (b)(3) to specifically state that the winding down and continuing-to-campaign costs addressed in paragraph (a)(3) and 11 CFR 9034.11 are considered qualified campaign expenses. Corresponding changes would be made to the similar provision for the general election, 11 CFR 9004.4(b)(3).

Please note that the Commission is not proposing any changes at this time to 11 CFR 9008.10(g)(7), governing winding down costs of convention committees. The Commission nonetheless welcomes comments as to whether similar restrictions should apply to winding down expenses for convention committees.

B. Candidates Who Run in Both Primary and General Elections

The Commission seeks comment on proposed revisions to its rules to clarify which costs constitute primary winding down costs for candidates who participate in both the primary and general elections. The Commission's current regulations allow only candidates who do not run in the general election to begin to incur winding down costs and to treat winding down expenses for salary, overhead and computer costs as 100% compliance costs beginning immediately after their DOI. *See* 11 CFR 9034.4(a)(3)(i) and (iii). Candidates who run in the general election, whether or not they receive public funds for that election, must wait until the day following the date 30 days after the general election, which is the end of the expenditure report period for publicly financed general election candidates, 11 CFR 9002.12, before they may begin to incur and pay winding down expenses or allocate them as 100% compliance expenses. In 1999, the Commission revised 11 CFR 9034.4(a)(3)(iii) to allow primary candidates who do not run in the general election to begin to treat 100% of winding down expenses for salary, overhead and computer costs as 100% compliance costs beginning immediately after their DOI. *Explanation and Justification for the Rules Governing Public Financing of Presidential Primary and General Election Candidates*, 64 FR 49355, 49358–59 (Sept. 13, 1999). The wording of 11 CFR 9034.4(a)(3)(iii), however, refers to "candidates who receive public funding for the general election" but does not expressly address the situation of a candidate who runs in both the primary and general elections and does not receive public funding for the general election. In the 2000 election, questions arose about how to treat administrative expenses incurred during the general election expenditure report period by a publicly funded primary election candidate who also ran in the general election but did not receive public funds for the general election.

The Commission's approach in 11 CFR 9034.4(a)(3)(iii) reflects its belief that candidates who are actively campaigning in the general election should not be considered to be terminating political activity and winding down their primary campaigns. The proposal seeks to extend this concept to apply without regard to whether their general election campaigns are publicly funded. Expenses incurred by such candidates during the expenditure report period, for publicly funded general election candidates, or the equivalent time period ending 30 days after the general election, for other general election candidates, should be considered general election expenses, rather than primary winding down costs. This approach prevents the use of primary matching funds for non-qualified expenses related to the general election. *See* 11 CFR 9032.9(a) and 9034.4(b). Although this approach may result in general election campaigns incurring some administrative costs related to terminating the primary campaign during the general election period, identifying those costs would consume resources of audited committees and the Commission. This approach is also consistent with the Commission's bright line rules for allocating expenses between primary and general campaigns at 11 CFR 9034.4(e), which in effect allow some primary related expenses to be paid by the general election committee and *vice versa*.

The Commission proposes a new paragraph at 11 CFR 9034.11(e), which is based on current 11 CFR 9034.4(a)(3)(i), with revisions to clarify this rule and to prevent any future confusion. The proposed rule at 11 CFR 9034.11(e) would provide that a candidate who runs in the general election must wait until the day following the date 30 days after the general election before using matching funds for primary winding down costs, regardless of whether the candidate receives public funds for the general election. This rule would also clarify that no expenses incurred prior to 31 days after the general election by candidates who run in the general election may be considered primary winding down costs or paid with matching funds.

The Commission also proposes revisions to 11 CFR 9035.1(c)(1) that would include a revised version of current 11 CFR 9034.4(a)(3)(iii) to provide that only candidates who do not run in the general election may treat 100% of salary, overhead and computer expenses as compliance expenses immediately after their date of ineligibility. Candidates who run in the general election must wait until the day following the date 30 days after the general election to treat these expenses as exempt compliance costs. The Commission proposes, for greater clarity, to move this revised version of 11 CFR 9034.4(a)(3)(iii) into current 11 CFR 9035.1(c)(1), which concerns the legal and compliance exemption to the expenditure limitations, because this paragraph concerns the treatment of certain winding down expenses as 100% compliance costs.

The Commission seeks comment on these proposals. Should there be an exception for expenses incurred during the time period prior to 31 days after the general election that are solely related to winding down the primary campaign, and if so, what requirements should there be to ensure that such costs are solely related to winding down the primary campaign? For example, should there be an exception for fundraising expenses incurred during this period to retire a primary committee's NOCO? Would primary-related fundraising activities during this period also have the effect of promoting the candidate's general election campaign? Would a fundraising exception encourage candidates to add a solicitation to general election related events or communications during this period in order to treat expenses for those activities as primary winding down expenses?

In addition, the definition of "winding down costs" in new section 9034.11(a) would include a revised

version of the first sentence of current 11 CFR 9034.4(a)(3)(i) to clarify that winding down costs are limited to costs associated with the termination of political activity related to seeking that candidate's nomination for election. This would clarify that primary election campaign winding down expenses are legally distinct from general election campaign winding down expenses.

A related issue is how to allocate winding down expenses for candidates who run in both the primary and general elections. Allocating winding down expenses between the primary and general election campaigns during the period following the date 30 days after the general election, can be complicated because both campaigns are winding down simultaneously, often using the same staff, offices, equipment, vendors and legal representatives. The Commission proposes new sections 11 CFR 9004.11(d) and 9034.11(d) allowing a candidate who runs in both the primary and general election to divide winding down costs between the primary and general campaigns using any allocation method, including allowing either the primary or the general campaign to pay 100% of winding down expenses.

This proposal would give candidates the flexibility to allocate their winding down expenses based on the particular circumstances of their campaigns. Winding down activity for some candidates may be largely or entirely focused on one election. For example, candidates who do not receive public funds for the general election might concentrate winding down activity on their publicly funded primary committee. In addition, candidates might concentrate winding down efforts and expenses on the committee that must address more difficult and complex issues in the audit and repayment process or that has a larger potential repayment.

An alternative proposal for dividing winding down expenses between the primary and general campaigns, which was used in some 2000 election cycle audits, would be to divide expenses equally but allow committees to use an alternative allocation method if they provide sufficient documentation to support that allocation. Because the documentation of the primary and general election committees' allocation must be reviewed and disputes may arise about whether committees have provided sufficient documentation to support their proposed allocation, this alternative could prolong the audit process and use the resources of the Commission and audited committees. The draft rules that follow do not incorporate this alternative. The Commission seeks comment as to what amount or type of documentation should be considered sufficient to support allocations proposed by committees. What standard would be appropriate for evaluating alternative allocations proposed by committees?

The Commission seeks comment on any other method of allocating winding down expenses between the primary and general election committees. Specifically, would either of these alternative proposals result in the primary or general election campaign using public funds to pay for non-qualified expenses related to the other election? Should campaigns be permitted to allocate their costs to effectually reduce potential repayments? Would a default allocation of 50% for each committee be equitable to differently situated candidates? Finally, are these alternative approaches inconsistent with the Fund Act or the Matching Payment Act?

C. Use of GELAC Funds To Pay Winding Down Costs

The Commission's rules at 11 CFR 9003.3(a) permit publicly funded major party presidential candidates to establish and solicit private contributions to GELAC funds, if certain conditions are met. Payments from these accounts for exempt legal and accounting services are not counted against the candidate's overall expenditure limits under 2 U.S.C. 441a(b) and 11 CFR 110.8. *See* 11 CFR 100.8(b)(15).

In 1995, the Commission adopted 11 CFR 9004.4(a)(4)(iii) to address the use of the GELAC to pay certain winding down costs of general election candidates. This paragraph states that 100% of salary, overhead and computer expenses incurred by a campaign after the end of the expenditure report period may be paid from a GELAC, and that such expenditures will be presumed to be solely to ensure compliance with the FECA and the Fund Act. 60 FR 31875 (June 16, 1995). This paragraph was included in the 1996 through 1999 editions of the Code of Federal Regulations, but was inadvertently omitted from the 2000, 2001 and 2002 editions. The Commission intends to reinstate this important provision, with certain revisions discussed below, but move it to the regulation that governs GELAC funds, proposed 11 CFR 9003.3(a)(2)(i)(I).

The Commission is also considering whether, and to what extent, GELAC funds may be used to pay for primary winding down expenses incurred after the end of the expenditure report period. As noted above, the primary and general election campaigns are simultaneously winding down during this period and often share salary, overhead and computer expenses. The current regulations at 11 CFR 9034.4(a)(3)(iii) recognize that a significant amount of winding down activity during this period is related to compliance and allow primary campaigns to treat 100% of salary, overhead and computer costs during this period as legal and accounting compliance expenses exempt from the expenditure limitations. Permitting the GELAC to pay salary, overhead, and computer costs after the end of the expenditure report period for both the primary and general campaigns would allow candidates who run in both the primary and general elections to choose to pay these costs from the GELAC without having to allocate them between the primary and general campaign committees. In addition, the primary and general election committees often share winding down expenses related to legal and accounting compliance such as attorneys and accountants. Further, primary campaign committees may lack sufficient funds to complete winding down activity.

The Commission proposes to revise the language of former 11 CFR 9004.4(a)(4)(iii), at proposed 11 CFR 9003.3(a)(2)(i)(I), to allow contributions to the GELAC to be used for winding down expenses for legal and accounting compliance activities incurred after the end of the expenditure report period by either the primary or general election committee or by both committees. All salary, overhead, and computer expenses after the end of the expenditure report period would be considered winding down expenses for legal and accounting compliance activities payable by the GELAC.

The Commission seeks comments on the proposed rule. Should the GELAC be allowed to pay for the primary committee's legal and accounting compliance expenses during the winding down period or must the primary committee pay all primary winding down expenses? The Commission also seeks comment on whether, and to what extent, GELAC funds may be used to pay for primary winding down expenses other than legal and accounting compliance expenses, salary, overhead and computer costs. Should the rule list in more detail the types of primary winding down expenses that may be paid with GELAC funds?

D. Convention Expenses of Ineligible Candidates

The Commission proposes to add a new provision to the rules to reflect its decision in AO 2000–12 permitting certain convention expenses incurred by presidential primary candidates after their dates of ineligibility to be considered qualified campaign expenses. In AO 2000–12, the Commission determined that certain expenses related to meetings and events at the national nominating conventions could be treated as qualified campaign expenses by ineligible candidates. First, the Commission determined that expenses for certain meetings and receptions to thank delegates and supporters could be treated as qualified campaign expenses under 11 CFR 9034.4(a)(5), which specifically includes gifts to "committee employees, consultants and volunteers" for "campaign-related activities or services." The current rule limits this to $150 per individual and $20,000 total for all gifts. The Commission noted that such meetings should be restricted to attendees who served the campaign in the capacity of a committee employee, consultant or volunteer to be considered qualified campaign expenses, and that the current regulation does not allow the payment of travel expenses to attend or organize the events to be considered qualified campaign expenses.

Second, the Commission permitted the ineligible candidates to incur qualified campaign expenses related to fundraising events at the conventions. The Commission stated that as long as the candidates' primary committees had remaining net outstanding campaign obligations, they may continue to receive matching funds, and may use matching funds to pay for fundraising expenses to retire those campaign obligations as qualified campaign expenses. *See* 11 CFR 9034.1(b). The Commission concluded that the candidates may incur qualified campaign expenses for expenses related to specific fundraising events held at the nominating conventions. It stated that the candidates could also use matching funds to pay the travel expenses for candidates to attend the fundraising events and for campaign staff who participate in the organizing and administration of the fundraising events. The Commission emphasized that the fundraising expenses must be for specific fundraising events at the convention. In addition, expenses allocable to participation by the candidates or their staff members in any other part of the conventions would constitute non-qualified campaign expenses. Finally, such expenses would be qualified campaign expenses only if, at the time of the convention, the candidates had net outstanding campaign obligations. *See* 11 CFR 9034.1(b).

Consequently, the Commission proposes adding new 11 CFR 9034.4(a)(6) to reflect its decision in AO 2000–12. The proposed rules at paragraph (a)(6)(i) provide that expenses directly related to a specific fundraising event at a national nominating convention to retire an ineligible candidate's debt owed by the candidate's primary committee, including travel expenses for the candidate to attend the fundraising event and for those campaign staff who organize and administer the fundraising event, may be considered qualified campaign expenses. This paragraph provides that covered travel expenses would consist of transportation, hotel or other lodging, and *per diem* subsistence for the candidates, their spouses, campaign staff, and volunteers who organize or administer the event. The proposed rule provides that expenses allocable to participation by the candidate or staff in the national nominating convention itself, or in any activities related to the convention, other than the fundraising event, would constitute non-qualified campaign expenses. The proposed rule also states that expenses for a fundraising event at the convention may be considered qualified campaign expenses only to the extent that, on the date of the fundraising event, the candidate has net outstanding campaign obligations pursuant to 11 CFR 9034.1(b). Proposed paragraph (a)(6)(ii) would also permit expenses for events to thank campaign employees, consultants and volunteers to be considered qualified campaign expenses, but would provide that travel expenses to such events would not constitute qualified campaign expenses.

The Commission's decision in AO 2000–12 delineates a carefully circumscribed exception to the Commission's general past practice that convention expenses of ineligible candidates are non-qualified campaign expenses. As AO 2000–12 states, the Commission has generally concluded in its audits of presidential primary campaign committees that expenses associated with attending national nominating conventions incurred by losing primary candidates are non-qualified campaign expenses. The opinion discusses a number of audits of presidential campaigns in which the Commission determined that expenses of ineligible candidates related to the national nominating convention such as preparatory staff work, hotel, and airline tickets were non-qualified campaign expenses. For example, the U.S. Court of Appeals for the District of Columbia Circuit upheld the Commission's determination that convention-related expenses incurred by an unsuccessful presidential campaign committee to attend the convention and for activities to bolster the support and enthusiasm of the candidate's delegates were non-qualified campaign expenses where the committee claimed that the expenses were fundraising activities because the video and audio record of the candidate's attendance at the convention would be used for later fundraising efforts. *Robertson* v. *FEC*, 45 F.3d 486, 492 (D.C. Cir. 1995). AO 2000–12 explains that while the Commission's general practice is that expenses for ineligible candidates, such as travel costs, related to the convention are non-qualified campaign expenses, matching funds may be used for such expenses in certain limited circumstances.

Prior to the 1996 election cycle, the Commission sought comment on whether to expand the definition of "qualified campaign expense" in 11 CFR 9032.9 to include losing candidates' convention expenses. *See Explanation and Justification to the Rules Governing Public Financing of Presidential Primary and General Election Candidates*, 60 FR 31854, 31871 (June 16, 1995). In declining to do so, however, the Commission noted that the statutory definition of qualified campaign expense is limited to expenses "incurred by a candidate, or by his authorized committee, in connection with his campaign for nomination for election." *Id.*; *see* 26 U.S.C. 9032(9)(A). This definition arguably does not apply to those no longer seeking the presidential nomination. However, the 1995 *Explanation and Justification* cited above noted that candidates are permitted to count fundraising expenses incurred after DOI, including those incurred at a national nominating convention, as qualified campaign expenses as part of their winding down costs, but only those expenses directly related to fundraising are qualified campaign expenses. *Id.*

The Commission seeks comment on this proposed rule and on its previous treatment of these expenses. Should the Commission incorporate the exception described in AO 2000–12 into its regulations? Are there any possible adverse consequences of allowing ineligible candidates to treat these expenses as qualified campaign expenses? Should the Commission

retain its general practice that convention expenses of ineligible candidates are non-qualified campaign expenses? Should the definition of "qualified campaign expense" in 11 CFR 9032.9 or the rules governing the use of funds for qualified campaign expenses in 11 CFR 9034.4 be expanded to include as qualified campaign expenses the convention expenses of ineligible primary candidates who speak, appear, serve as a delegate or retain delegates, or who are nominated as the party's vice presidential candidate, or who otherwise participate in the party's national nominating convention? How would such a change be reconciled with the requirement that qualified campaign expenses must be made "in connection with [a candidate's] campaign for nomination for election?" *See* 26 U.S.C. 9032(9). Should expenses of ineligible presidential primary candidates at the national convention be considered permissible winding down costs or some other type of qualified campaign expense?

II. Primary Expenditure Limitations and Repayments

A. In-Kind Contributions Count Toward the Expenditure Limits (11 CFR 9035.1 and 9038.2)

The Commission proposes to clarify its rules at 11 CFR 9035.1 and 9038.2(b)(2)(ii)(A) concerning attribution of expenses to the expenditure limitations for presidential primary candidates and repayments based upon expenditures in excess of those limitations. The Commission's recent rulemaking on coordinated and independent expenditures implementing the requirements of BCRA delineates the rules governing coordinated expenditures, coordinated communications, party expenditures, coordinated party communications and the dissemination, distribution or republication of campaign materials prepared by a candidate. *See Explanation and Justification for the Rules Governing Coordinated and Independent Expenditures*, 68 FR 421 (Jan. 3, 2002). In that rulemaking, the Commission generally defined "coordinated" for the purpose of coordinated expenditures. 11 CFR 109.20. The final rules also establish particular criteria for a communication to be considered a "coordinated communication." *See, e.g.*, 11 CFR 109.21(c) (content standards) and (d) (conduct standards). In addition to these general rules, the particular circumstances of political party committees are addressed, and "party coordinated communications" are defined. *See* 11 CFR 109.37 and 11 CFR part 109, subpart D.

In establishing new rules governing coordinated expenditures, the Commission recognized that some in-kind contributions arising from coordinated communications made by party committees or other persons may not necessarily be received or accepted by the candidate. *See* 11 CFR 109.21(b)(2) and 11 CFR 109.37(a)(3). The Commission believes guidance would be helpful regarding the application of the coordinated and independent expenditures final rules to situations involving the expenditure limitations applicable to publicly funded presidential candidates. Specifically, the Commission proposes to address the extent to which in-kind contributions, coordinated expenditures, coordinated communications, coordinated party expenditures, and coordinated party communications will count against expenditure limitations and will be included in the total amount of a publicly funded candidate's expenditures subject to the limits for purposes of repayment determinations.

The current rules at 11 CFR 9035.1(a) and 11 CFR 110.8(a) set forth the state-by-state and overall expenditure limitations for candidates receiving public funds for the primary election. *See* 2 U.S.C. 441a(b), (c), and 26 U.S.C. 9035(a). The Commission has generally treated the receipt of in-kind contributions by presidential primary candidates as expenditures made by those candidates and has included in-kind contributions in the amount of the candidate's expenditures subject to the expenditure limitations and in the calculation of repayments based on amounts in excess of the candidate's expenditure limitations. For example, in a repayment determination arising from an audit of a 1988 candidate, the Commission concluded that in-kind contributions for testing-the-waters expenses from a multicandidate political committee "leadership PAC" associated with a presidential candidate to that candidate were subject to the candidate's state-by-state expenditure limitation and part of the total of the candidate's expenditures subject to *pro rata* repayment. In addition, the Commission concluded, in making that repayment determination, that Federal matching funds and private contributions were commingled in a committee's accounts. The Commission considered in-kind contributions to be part of this commingled pool of available funds, and thus, these expenditures were included in calculating the amount in excess of the limitations subject to *pro rata* repayment.

During certain audits from the 1996 and 2000 cycles, the Commission considered whether some of the costs of producing and airing television advertisements during the presidential primary and general election campaigns, which were paid by the national party committees, should be treated as coordinated in-kind contributions to presidential primary candidates, and if so, whether such costs should count against presidential candidates' expenditure limitations and be included in the amount of expenditures in excess of the limitations that would be subject to *pro rata* repayment. After considering this issue, the Commission declined to make repayment determinations on this basis in these audits.

A related issue is whether current 11 CFR 9038.2(b)(2)(ii)(A) represents a permissible interpretation of the Matching Payment Act. Section 9038.2(b)(2)(ii)(A) provides that one example of a Commission repayment determination for the use of funds for non-qualified campaign expenses is a determination that a candidate, a candidate's authorized committee(s), or agents have made expenditures in excess of the expenditure limitations set out at 11 CFR part 9035. The Commission considered this issue in a rulemaking proceeding prior to the 2000 election cycle, but made no changes to the regulation at that time. *Notice of Disposition for the Rules Governing Public Funding of Presidential Primary Candidates-Repayments*, 65 FR 15273 (Mar. 22, 2000). The Notice of Disposition sets forth alternative arguments concerning whether this rule has a statutory basis and states that the Commission did not change the rule because there was no consensus in favor of changing the regulation. *Id.* at 15275. Although the Commission recommended that Congress revise 26 U.S.C. 9038(b) to specifically state whether repayments must be made by publicly funded primary candidates who have made expenditures that exceed the spending limits, to date Congress has not acted to clarify this issue. *See* FEC, *Legislative Recommendations 2002* (May 14, 2002). At this point, the Commission is considering whether to clarify that under section 9038.2(b)(2)(ii)(A), it will continue to seek repayments from primary candidates who exceed the expenditure limitations, including candidates who have received in-kind contributions.

1. Revisions to 11 CFR 9035.1

The Commission believes that additional guidance concerning the attribution of in-kind contributions to the expenditure limitations would be beneficial. The Commission proposes to revise its rules by adding a new paragraph at 11 CFR 9035.1(a)(3) to provide that guidance and to apply the Commission's recently promulgated final rules on Coordinated and Independent Expenditures, 68 FR 421 (Jan. 3, 2003), to publicly funded presidential candidates. The proposed rules that follow are intended to clarify that certain in-kind contributions will count against the presidential candidate's state-by-state and overall expenditure limitations under certain conditions, as explained below. Included are certain in-kind contributions received or accepted in the form of coordinated expenditures pursuant to 11 CFR 109.20, coordinated communications pursuant to 11 CFR 109.21, and coordinated party expenditures in excess of the coordinated party expenditure limitations at 2 U.S.C. 441a(d) and 11 CFR 109.32(a), which would include party coordinated communications pursuant to 11 CFR 109.37.

The Commission notes that the rules treat some coordinated expenditures as made by a person or party committee, but not as received or accepted by a candidate. *See* 11 CFR 109.21(b)(2) and 109.37(a)(3). Specifically, expenditures that meet the conduct standards for a common vendor at 11 CFR 109.21(d)(4) or a former employee or independent contractor at 11 CFR 109.21(d)(5) are not treated as received or accepted by a candidate unless the candidate, authorized committee, or their agent engages in the conduct described in 11 CFR 109.21(d)(1) (request or suggestion), (d)(2) (material involvement), or (d)(3) (substantial discussion). Thus, only certain, specific actions taken by the candidate or the candidate's authorized committee or agents, as set forth in 11 CFR 109.21 and 109.37, result in the receipt or acceptance of an in-kind contribution arising from coordinated communication or a party coordinated communication. Only these received or accepted in-kind contributions are treated as expenditures made by the candidate. *See* 11 CFR 109.20(b) (requiring a candidate to report coordinated expenditures as expenditures); 109.21(b)(1) (requiring a candidate to report received or accepted coordinated communications as expenditures); 109.37(a)(3) (stating that candidates are not required to report as expenditures party coordinated communications that do not constitute received or accepted in-kind contributions). Coordinated communications or party coordinated communications that are *not* in-kind contributions received or accepted by the candidate, the candidate's authorized committee, or agents under 11 CFR 109.21(b)(2) or 109.37(a)(3) would *not* be subject to the candidate's expenditure limitation. The proposed rule also provides that the value of in-kind contributions would be the usual and normal charge for the goods and services provided.

Although coordinated party expenditures are made in connection with the general election campaign of a presidential candidate, they may be made prior to the date of the candidate's nomination, pursuant to 11 CFR 109.34. The Commission notes that to the extent coordinated expenditures are in excess of the coordinated party expenditure limitation at 11 CFR 109.32(a), they may be attributable to a presidential primary candidate's expenditure limitations based on the "bright line" rules at 11 CFR 9034.4(e) for attributing expenditures between the primary and general election spending limitations. For example, party coordinated communications broadcast prior to the date of the candidate's nomination may count against the presidential candidate's primary expenditure limitations. *See* 11 CFR 9034.4(e)(6). The Commission seeks comment on whether this is an appropriate conclusion.

The Commission is not specifically listing in the proposed rule the dissemination, distribution or republication of campaign material prepared by a candidate, which is governed by 11 CFR 109.23. Section 109.23(a) provides that the candidate who prepared the campaign materials does not receive or accept an in-kind contribution, and need not report an expenditure, unless the dissemination, distribution, or republication of campaign materials is a coordinated communication under 11 CFR 109.21 or a party coordinated communication under 11 CFR 109.37. Thus, the cost of such campaign materials would not count against the candidate's expenditure limitations unless the candidate receives or accepts them as in-kind contributions in the form of coordinated communications or party coordinated communications. Since the proposed rules in 11 CFR 9035.1(a)(3) would specifically include received or accepted coordinated communications and party coordinated communications, a reference to the republication of campaign materials is unnecessary.

The Commission also notes that 11 CFR 109.32(a)(4) provides that any coordinated party expenditures made under section 109.32(a), which specifies the limitations for coordinated party expenditures in presidential elections, shall not count against the candidate's expenditure limitations; however, any coordinated expenditures by a political party in excess of the limitations at section 109.32(a) would count against the candidate's expenditure limitations. Thus, the proposed rule in 11 CFR 9035.1(a)(3) would not adversely affect the coordinated party expenditure limitations at 2 U.S.C. 441a(d)(2) because the proposed rule would only apply to amounts in excess of those limitations. The Commission seeks comment on whether this is an appropriate approach.

2. Revisions to 11 CFR 9038.2

The Commission also proposes to amend 11 CFR 9038.2(b)(2)(ii)(A) to clarify that repayment determinations for candidates who exceed the expenditure limitations will be based on expenditures made by a candidate, the candidate's authorized committees, or agents, either directly by disbursing campaign funds for expenditures, or indirectly by receiving or accepting in-kind contributions that are subject to the expenditure limitations pursuant to 11 CFR 9035.1(a)(3). The wording "receive or accept" in this section and in proposed section 9035.1(a)(3) is consistent with the terminology used in 11 CFR 109.21(b)(2), 11 CFR 109.23(a) and 11 CFR 109.37(a)(3) to ensure that any coordinated expenditures or republished campaign materials that are not considered "received or accepted" by a candidate would not count against the expenditure limitations or be subject to repayment.

B. In-Kind Contributions in the Repayment Ratio (11 CFR 9038.2(b)(2)(iii))

A related issue is the calculation of the repayment ratio. The current regulations at 11 CFR 9038.2(b)(2)(iii) provide for a ratio repayment of amounts used for nonqualified campaign expenses, which includes expenditures in excess of the spending limitations. *See* 11 CFR 9038.2(b)(2)(ii)(A). Paragraph (b)(2)(iii) currently states that the amount of a repayment shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the candidate's total deposits, as of 90 days after the candidate's date of ineligibility. "Total deposits" is defined

as all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts. 11 CFR 9038.3(c)(2). However, the current rules do not specifically include the value of in-kind contributions received or accepted in the calculation of the repayment ratio. Including in-kind contributions received or accepted in the calculation of the repayment ratio would reduce the resulting ratio to more accurately reflect the amount of public funds that are spent in excess of the expenditure limitations or used for other non-qualified campaign expenses.

The Commission proposes to revise 11 CFR 9038.2(b)(2)(iii) to include both total deposits and in-kind contributions received or accepted by the candidate or the candidate's authorized committee or agents in the calculation of the repayment ratio for non-qualified campaign expenses. In-kind contributions would be valued at the usual and normal charge for the goods and services provided to the candidate. The Commission requests comment on this proposed change.

C. Parallel Changes to General Election Rules (11 CFR 9004.4(b)(2) and 9007.2(b)(2))

The Commission is considering certain parallel changes to the rules governing the expenditure limitations and repayments for general election committees at 11 CFR 9004.4(b)(2) and 9007.2(b)(2), but is not including specific changes in the proposed rules at this time. The Commission notes that expenditures in excess of the coordinated party expenditure limitations at 2 U.S.C. 441a(d) and 11 CFR 109.32(a) may be in connection with the general election and attributable to a candidate's general election expenditure limitation under the "bright line" rules at 11 CFR 9034.4(e). The Commission also notes that general election candidates who receive the full public grant may not accept any contributions, including in-kind contributions, and must repay the entire amount of any in-kind contribution received. *See* 26 U.S.C. 9007(b)(3). The Commission seeks comment on whether changes similar to those proposed for primary candidates would be appropriate for general election candidates and on any other issues related to including in-kind contributions in a general election candidate's total expenditures.

III. GELAC Funds (11 CFR 9003.3(a))

A. Funds Remaining in the GELAC

The Commission proposes to revise its rules concerning the use of GELAC funds to update the permissible uses of GELAC funds consistent with BCRA. Currently, the rules at 11 CFR 9003.3(a)(2)(iv) state that if there are "excess campaign funds" after payment of all expenses set out in section 9003.3(a)(2)(i), such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of primary election debts.

BCRA amended 2 U.S.C. 439a to eliminate its reference to "excess campaign funds." The Commission revised 11 CFR part 113 accordingly. *See Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds*, 67 FR 76962, 76978–79 (Dec. 13, 2002). The Commission proposes to replace the reference to "excess campaign funds" in 11 CFR 9003.3(a)(2)(iv) with "funds remaining in the GELAC" in order to clarify that only funds that are not needed for GELAC expenses may be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113.

The Commission also proposes revisions to 11 CFR 9003.3(a)(2)(iv) to more clearly state that GELAC funds must be not be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113 until the completion of the audit and repayment process, which includes making any repayments owed. The Commission requests comments on these proposed changes.

B. Primary Repayments

The Commission is also considering whether candidates should be required to use GELAC funds to make any repayments arising from their primary campaigns, if the primary committee is unable to make the repayment, before the remaining funds in the GELAC could be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113. Currently, GELAC funds may be used to make general election repayments. 11 CFR 9003.3(a)(2)(i)(D). Therefore, the Commission proposes revisions to 11 CFR 9003.3(a)(2)(i)(D) to specify that the GELAC may make repayments owed by the candidate's primary campaign committee pursuant to 11 CFR 9038.2 and 9038.3. Under this proposal, if a candidate's primary or general election committees do not have sufficient funds to make a repayment, the GELAC funds must be used to make the repayment before funds remaining in the GELAC may be used for the purposes permitted under 2 U.S.C. 439a and 11 CFR part 113. However, the proposed rule would not require that repayments must be made before other permissible uses of GELAC funds under paragraphs (a)(2)(i)(A) through (H). These proposed amendments to the GELAC rules are based on the Commission's interpretation of 2 U.S.C. 439a(a)(1), which permits contributions to be used "for otherwise authorized expenditures in connection with the campaign for Federal office of the candidate or individual." This provision is sufficiently broad to encompass both primary repayments and the other limited purposes specified in 11 CFR 9003.3(a)(2)(i).

C. Solicitation of GELAC Funds

The Commission is also considering whether to revisit its rules regarding the solicitation and deposit of GELAC contributions prior to June 1 of the calendar year in which a presidential general election is held. The Commission is considering changing the June 1 date to an earlier date or abolishing the June 1 restriction. Under current 11 CFR 9003.3(a)(1)(i), prior to June 1 of the presidential election year, contributions may only be deposited in a GELAC if they are made for the primary election, exceed the contributor's contribution limit for the primary and are redesignated by the contributor for the GELAC pursuant to 11 CFR 110.1. In addition, contributions shall not be solicited for the GELAC before June 1 of the calendar year in which a presidential general election is held. 11 CFR 9003.3(a)(1)(i)(A). As a result of this regulation, although candidates are permitted to establish GELAC accounts at any time, they are barred from soliciting or accepting any direct contributions to the GELAC until five months before the general election.

The Commission revised this section in 1999 to establish the June 1 time limit. *See Explanation and Justification to the Rules Governing Public Financing of Presidential Primary and General Election Candidates*, 64 FR 49355, 49356–57 (Sept. 13, 1999). In the 1999 rulemaking, the Commission considered changes to "address problems that have arisen when primary candidates established GELACs relatively early in the primary campaign but subsequently failed to win their party's nomination." *Id.* at 49356. One problem was that candidates who do not receive their party's nomination must refund contributions received by the GELAC, but difficulties arose if GELAC funds had been used to defray overhead or GELAC fundraising expenses. *Id.* Another problem was ensuring that the GELAC is not improperly used to make

primary election expenditures. *Id.* After considering several alternative approaches, the Commission decided to continue to permit GELACs to be established at any time but added the June 1 starting date for deposits other than excessive primary contributions and solicitations of contributions to the GELAC. *Id.* The Commission explained that it selected the June 1 date because "barring unforeseen circumstances, this is the point when a party's prospective nominee can be reasonably assured that he or she will need to raise funds for a GELAC" and the date gives prospective nominees "sufficient time to raise the funds that will be needed." *Id.* The effective date of these regulatory amendments was June 1, 2000, which meant that the pre-June 1 solicitation prohibition was not operative for the 2000 election cycle.

The Commission seeks comment on whether it should delete this restriction or continue to use June 1 of the presidential election year as the starting date for GELAC solicitations and most deposits to a GELAC. Would an earlier date in the election year such as May 1 or April 1 be preferable, given that many presidential primaries have been moved to earlier dates? Should an earlier date be used for presidential candidates who run unopposed in the primaries or who have a reasonable certainty prior to June 1 of the election year that they will become their party's nominee? Should the starting date be eliminated? Are these restrictions required by, or consistent with, the FECA and the Fund Act?

D. Redesignation of Excessive Contributions and GELACs

In addition, the Commission proposes to revise the rules at 11 CFR 9003.3(a)(1) governing the sources of GELAC funds to reflect the Commission's recent changes to its rules at 11 CFR 110.1(b)(5)(ii)(B) concerning the redesignation of excessive contributions. *See Explanation and Justification for the Rules Governing Contribution Limitations and Prohibitions*, 67 FR 69928, 69930–32 (Nov. 19, 2002). The Commission revised 11 CFR 110.1(a)(5)(ii)(B) to allow authorized committees to redesignate primary contributions that would otherwise be excessive to the general election without obtaining a signed written document under certain circumstances. *Id.* at 69930. Specifically, the Commission simplified the redesignation of certain excessive contributions to a candidate's authorized committee made before a primary election, but not designated in writing for a particular election. *Id.* The Commission allowed the candidate's committee to presume that the contributor of such excessive contributions intended to contribute any excessive amount to that candidate's general election, without obtaining written permission from the contributor for the redesignation. *Id.* The Commission set forth several requirements for a committee to designate contributions by this presumption, including that the candidate's committee must be permitted to accept general election contributions. *Id.* The Commission explained that "if a presidential candidate's authorized committee accepts public funding in the general election, the presumption is available to any such committees only to the extent they are permitted to accept contributions to a general election legal and accounting compliance fund." *Id.* at 69930–31.

Thus, 11 CFR 110.1(b)(5)(ii)(B) now allows the treasurer of the recipient candidate committee to treat all or part of an excessive primary contribution as made with respect to the general election, as long as it meets the following requirements: (1) The contribution was made before the primary election; (2) the contribution was not designated for a particular election; (3) the contribution would exceed the primary election contribution limitations if it were treated as a primary contribution; (4) the redesignation would not cause the contributor to exceed the contribution limitations; and (5) the treasurer provides a written notification to the contributor within 60 days of receipt of the contribution of the amount that was redesignated and that the contributor may request a refund.

Therefore, the Commission proposes to revise 11 CFR 9003.3(a)(1)(i), (a)(1)(i)(C) and (a)(1)(v) to permit publicly funded presidential candidates to presume that excessive contributors to primary campaigns would consent to the redesignation of their contributions to the candidate's GELAC. The proposed changes provide that excessive contributions may be placed in the GELAC if they are lawfully redesignated for the GELAC pursuant to 11 CFR 110.1. The rule at 11 CFR 9003.3(a)(1)(i)(C) would provide that a contribution that meets the requirements of 11 CFR 110.1(b)(5)(ii)(B) would be considered designated for the GELAC. The proposed reference to 11 CFR 110.1(b)(5)(ii)(B) would incorporate the requirements of that section. The Commission notes that presumptively redesignated contributions to the GELAC, like all other contributions accepted for the GELAC, must be refunded within 60 days of a candidate's DOI if the candidate does not become the nominee. *See* 11 CFR 9003.3(a)(1)(i)(A). The recordkeeping requirements in 11 CFR 110.1(l) are separately addressed in section 9003.3(a)(1)(ii)(A)(*4*).

A related proposal, which is not included in the proposed rules that follow, would be to revise 11 CFR 9003.3 to expressly allow excessive contributions to a GELAC to be presumptively redesignated to a presidential candidate's authorized committee for the primary election, based on the conditions delineated at 11 CFR 110.1(b)(5)(ii)(C) for redesignation of excessive general contributions to a candidate's primary election. The Commission's rules at 11 CFR 110.1(b)(5)(ii)(C), like the rule for presumptive redesignations for a general election, allow authorized committees to redesignate general election contributions that would otherwise be excessive for the primary election without obtaining a signed written document under certain circumstances. *See* 67 FR 69931. Such presumptively redesignated contributions would be included in the calculation of a presidential primary candidate's NOCO but could not be submitted for matching because they are redesignated for a different election and the contributor lacked the donative intent to influence the primary election. *See* 11 CFR 9034.3(e) and (k).

The Commission seeks comment on these proposals. Should a different rule apply for redesignation of excessive contributions to or from a GELAC than for redesignations to or from the general election of candidates who do not accept public funds? Should such presumptive redesignations be subject to additional restrictions than those delineated at 11 CFR 110.1(b)(5)(ii)?

IV. Other Presidential Candidate Issues

A. Quarterly and Monthly Reporting Requirements (11 CFR 104.5(b)(2))

The Commission made a number of changes to its rules governing reporting when implementing BCRA's new reporting requirements. *Explanation and Justification for the Rules Governing Bipartisan Campaign Reform Act of 2002 Reporting*, 68 FR 404 (Jan. 3, 2003). One of these changes was revising 11 CFR 104.5(a) to set forth a new reporting schedule for principal campaign committees of House of Representatives and Senate candidates following BCRA's requirements that such candidates must file quarterly

reports in non-election years. *Id.* at 408 and 418. BCRA did not change the reporting schedule for the principal campaign committees or other authorized committees of presidential candidates; thus, 11 CFR 104.5(b)(2) was not changed. *Id.* Currently, principal campaign committees of presidential candidates may file campaign reports in non-election years on either a monthly or a quarterly basis. 2 U.S.C. 434(a)(3)(B); 11 CFR 104.5(b)(2) and 9006.2. However, the current rules do not explain how presidential candidates may change their reporting frequency during a non-election year from monthly to quarterly or *vice versa*. The rules governing unauthorized committees at 11 CFR 104.5(c) set forth requirements for such committees to change their reporting frequency, such as notifying the Commission of the change. The Commission is considering similar requirements for principal campaign committees of presidential candidates.

The Commission proposes to revise the rules at section 104.5(b)(2) to allow a principal campaign committee ("PCC") of a presidential candidate to change its filing schedule in a non-election year only after notifying the Commission in writing of its intention at the time it files a required report under its current filing frequency. The PCC would then be required to file the next required report under its new filing frequency. In addition, a PCC could change its filing frequency no more than once in a calendar year. This approach is consistent with the requirements for unauthorized committees at 11 CFR 104.5(c). The Commission notes that presidential PCCs are not permitted to change their filing frequency during election years under 2 U.S.C. 434(a)(3)(A), except that a PCC that files quarterly reports shall begin filing monthly reports at the next reporting period after it receives contributions or makes expenditures in excess of $100,000. The Commission requests comments on this proposal.

B. Election Cycle Reporting—Matching Fund Submissions (11 CFR 9036.1(b)(1)(ii) and 9036.2(b)(1)(v))

In 2000, the Commission revised its rules at 11 CFR 104.3 to require authorized committees to aggregate, itemize, and report all receipts and disbursements on an election-cycle basis rather than on a calendar-year-to-date basis. 65 FR 42619 (July 11, 2000). The new rules, which reflect a 1999 amendment to 2 U.S.C. 434(b) (Pub. L. No. 106–58, 641, 113 Stat. 430, 477 (1999)), apply to reporting periods beginning on or after January 1, 2001. 65 FR 70644 (Nov. 27, 2000). Under these regulations, an election cycle begins on the first day after the date of the previous general election for the office the candidate seeks and ends on the date of the next general election for that office. The election cycle is thus four years for presidential candidates.

The Commission's rules regarding threshold submissions for matching funds currently require candidates to submit a contributor list including occupation and name of employer information for contributions from individuals aggregating in excess of $200 per calendar year. 11 CFR 9036.1(b)(1)(ii). Similarly, the rules for subsequent submissions at 11 CFR 9036.2(b)(1)(v) provide that the occupation and employer information need not be disclosed on the contributor list for contributions made by individuals aggregating in excess of $200 per calendar year, but such information is subject to the recordkeeping and reporting requirements. The Commission is proposing to revise 11 CFR 9036.1(b)(1)(ii) and 9036.2(b)(1)(v) to specify that the matching fund submission and recordkeeping requirements include occupation and employer information for those individuals who contribute more than $200 in an election cycle, rather than in a calendar year, to reflect the statutory change.

C. Billing the Press for the Costs of Reconfiguring an Aircraft (11 CFR 9004.6(a)(3) and 9034.6(a)(3))

The Commission's rules at 11 CFR 9004.6 and 9034.6 establish procedures for authorized committees to obtain reimbursement for transportation and other services that are provided to the media and the Secret Service over the course of a campaign. The current rules contain a non-exhaustive listing of such services, and state at 11 CFR 9004.6(a)(3) and 9034.6(a)(3) that presidential campaign committees may seek reimbursement from the media only for the billable items specified in the White House Press Corps Travel Policies and Procedures issued by the White House Travel Office, in conjunction with the White House Correspondents' Association ["White House Manual"]. The reference to the White House Manual has been in the rule since 1999. *See Explanation and Justification for the Rules Governing Party Committee Coordinated Expenditures; Costs of Media Travel with Publicly Financed Presidential Candidates*, 64 FR 42579, 42581–82 (Aug. 5, 1999). Expenses for which a committee receives no reimbursement are considered qualified campaign expenses, and, with the exception of those expenses relating to Secret Service personnel and national security staff, are subject to the overall expenditure limitation. 11 CFR 9004.6(a)(2) and 9034.6(a)(2).

In the 1996 campaign, some committees incurred significant expenses to reconfigure campaign aircraft. The expenses included both interior work, such as equipment installation, and exterior work such as campaign logos. However, these expenses were not included in the White House Manual for 1996, which was not changed in 2000. The Commission is accordingly seeking comment on whether it is appropriate for campaign committees to obtain reimbursement for all or part of aircraft reconfiguration expenses from the media, and whether the rules should be revised accordingly. If so, which of these expenditures should be billed to the press? Are there other specific expenditures not included in the White House Manual for which reimbursement might also be appropriate? Given that the numbers of members of the press on each flight, or segment of each flight, will likely vary, comments are sought on the feasibility of determining the *pro rata* share for each person, where the reconfigured plane will make numerous flights, and that precise number is not known in advance. More broadly, the Commission seeks comment on whether the ability of committees to seek reimbursement from the media should be governed solely by what billable items are specified in the White House Manual, as current 11 CFR 9004.6(a)(3) and 9034.4(a)(3) require, or whether the Commission should consider other criteria, or enumerate the criteria in the regulations, or both. Please note that the draft rules that follow do not contain specific changes to 11 CFR 9004.6 or 9034.6.

D. Candidate Salary (11 CFR 9004.4(b)(6), 9034.4(b)(5))

The Commission recently revised its rules governing personal use of campaign funds at 11 CFR part 113 to implement BCRA's changes to 2 U.S.C. 439a. In that rulemaking, the Commission addressed the use of contributions to pay salaries to candidates and decided to allow campaign funds to be used for candidate salaries, including privately funded presidential candidates, under certain conditions delineated at 11 CFR 113.1(g)(1)(i)(I). *See Explanation and Justification for the Rules Governing Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds*, 67 FR 76962, 76971–73 (Dec. 13, 2002). The Explanation and Justification for 11 CFR 113.1(g) stated that a salary payment to a candidate from campaign funds would be considered personal use if the salary payment is "in excess of the salary paid to a Federal officeholder—U.S. House, U.S. Senate, or the Presidency." *Id.* The new rules, however, do not specifically state whether or not publicly funded presidential candidates may receive salaries from their campaigns. The Commission noted that a candidate's salary is a non-qualified campaign expense under 11 CFR 9004.4(b) and 9034.4(b), *see also* 11 CFR 9002.11 and 9032.9. *Id.* at 76972.

Currently, the rules at 11 CFR 9004.4(b)(6) and 9034.4(b)(5) state that payments made to a candidate by the candidate's committee, other than to reimburse funds advanced by the candidate, are non-qualified campaign expenses. In promulgating these rules in 1987, the Commission explained that "no payments may be made to the candidate from accounts containing public funds" except for reimbursements, and candidates "may not receive a salary for services performed for the campaign nor may a candidate receive compensation for lost income while campaigning." *See Explanation and Justification for the Rules on Public Financing of Presidential Primary and General Election Candidates*, 52 FR 20864, 20866 and 20870 (June 3, 1987).

The Commission is considering whether to revise its rules to allow publicly funded general election and primary presidential candidates to receive salary payments paid for, in whole or part, with public funds. Thus, salary payments to candidates would be considered qualified campaign expenses. The Commission is considering allowing salary payments to be paid to publicly funded candidates under similar conditions to those for salary payments to other Federal candidates at 11 CFR 113.1(g)(1)(i)(I). Thus, the candidate's publicly funded principal campaign committee would be permitted to make salary payments to the candidate. Salary payments to publicly funded candidates would be permissible beginning on January 1 of the calendar year prior to the presidential election year or the filing of the candidate's statement of candidacy, whichever is later. This earlier starting date than the time restrictions for other Federal candidates would recognize that the presidential primary campaign begins before the presidential election year. Salary payments paid by the candidate's primary committee would be permitted through the candidate's date of ineligibility and salary payments from a candidate's general election committee would begin on the date of nomination and end on the date of the general election. Only non-incumbent presidential candidates who are not currently Federal officeholders would be able to receive a salary paid with public funds.

Candidates who hold office in a State would be able to receive salary payments only to the extent they are permitted to do so under the laws of that State. Salary payments would be limited to the lesser of the annual salary paid to the President or the earned income that the candidate received during the year prior to becoming a candidate. Any earned income the candidate would receive from salaries or wages from any other source would count against the salary limitation. In addition, the candidate would be required to provide income tax records for the relevant year and other evidence of earned income upon request by the Commission. Finally, salary payments could be made only on a pro rata basis.

The Commission seeks comment on this approach, but no specific provision is proposed in the draft rules that follow. Should candidate salary be considered a qualified campaign expense payable with public funds or should candidate salaries for publicly funded candidates continue to be considered non-qualified campaign expenses? Would candidates avail themselves of a salary paid with public funds? Would the proposed change encourage candidates of modest means who depend on their earned income to run for the Presidency? Is this an appropriate use for public funds, and is there a potential for abuse? Should any additional restrictions on candidate salaries apply to publicly funded candidates?

Should payments of salary to candidates who receive public funds be prohibited so that in addition to the committee being required to repay the public funds involved, the candidate would violate 2 U.S.C. 439a by accepting the salary payments? Should the candidate and committee agreements described in 11 CFR 9003.1 and 9033.1 contain a provision agreeing that no salary would be paid to the candidate?

E. Gifts and Bonuses (11 CFR 9004.4(a)(5) and 9034.4(a)(5))

The Commission is considering revisiting its rules governing payment of gifts and bonuses by primary and general election candidates at current 11 CFR 9004.4(a)(5) and 9034.4(a)(5). The current rules allow gifts and bonuses to be treated as qualified campaign expenses if they meet certain restrictions. Gifts for committee employees, consultants and volunteers in recognition of campaign-related activities or services are limited to $150 per individual recipient and a total of $20,000 for all gifts. 11 CFR 9004.4(a)(5) and 9034.4(a)(5). Monetary bonuses for employees and consultants in recognition for campaign-related activities or services must be provided for pursuant to a written contract made prior to the general election for general election candidates or the DOI for primary candidates and must be paid no later than 30 days after the DOI for primary candidates or the end of the expenditure report period for general election candidates. *Id.*

The Commission has not proposed any changes to these rules in the draft rules that follow, but seeks comment on the current rules. Should the Commission maintain its current rules on gifts and bonuses? Should the current restrictions on gifts and bonuses be strengthened, reduced, or eliminated? Should the permissible dollar amounts for gifts to individuals or the total amounts of gifts be lowered, or raised? Should the requirement of a written contract be clarified to delineate what constitutes an acceptable written agreement? Is the requirement of a written contract for monetary bonuses too restrictive, since written contracts are not required for salary payments? Should additional restrictions be added, such as limiting the amount of bonuses or requiring committees to provide other documentation of the reasons for the bonus such as the type and amount of work performed? What additional, or different, controls should be used for gifts and bonuses? Should candidates be required to sign any contracts that include employment bonus provisions? This would ensure that high-level campaign officials do not engage in self-dealing. If the current restrictions are deleted from the rules, how should the Commission ensure that gifts and bonuses comply with the restrictions on personal use of campaign funds at 2 U.S.C. 439a and 11 CFR part 113?

In addition, should changes also be made to current 11 CFR 9008.7(a)(4)(xii) to make the rule for convention committees more similar to the rules for candidates by including the same requirements for bonuses? Currently 11 CFR 9008.7(a)(4)(xii) limits all gifts and monetary bonuses to national committee or convention committee employees, volunteers and convention officials to $150 per individual or a total of $20,000 for all gifts.

F. Shortfall Exemption (11 CFR 9035.1(c))

During recent election cycles, the Presidential Primary Matching Payment Account has occasionally experienced a shortfall in that it contained insufficient funds to fully pay all of the matching funds to which primary candidates were entitled on the dates payments were due. *See* 26 U.S.C. 9037; 11 CFR 9036.4(c)(2), 9037.1, 9037.2. The delay or deficiency in matching fund payments has resulted in inconvenience and additional costs for candidates such as the costs of obtaining bridge loans from banks to pay for their expenses until they received their full entitlement of matching funds several months later. Such expenses currently count against a candidate's overall expenditure limitation, reducing the amount the candidate may spend on other campaign activities.

In order to mitigate the effect of a potential shortfall on candidates, the Commission proposes a new "shortfall exemption" from a primary candidate's overall expenditure limitation at new paragraph 11 CFR 9035.1(c)(3). This new exemption would equal 5% of the amount of any delayed or deficient payment of matching funds to which the candidate is entitled.

The Commission seeks comment on this proposal. To what extent would the proposed exemption ameliorate the negative impact of delayed or deficient payments of matching funds on a primary candidate's campaign? Should a different percentage be used? Would this exemption be workable for candidates? Is this exemption a permissible interpretation of the statutory spending limit?

G. Expenditures by a Multicandidate Political Committee for Qualified Campaign Expenses of a Candidate (Proposed 11 CFR 110.2(l) and 9034.10)

In December 2002, the Commission published an NPRM entitled "Leadership PACs" seeking comment on its proposal to promulgate new regulations addressing this specific type of multicandidate political committee. The Commission conducted a public hearing on February 26, 2003, to discuss the NPRM. During the public hearing, the issue of leadership PACs paying for qualified campaign expenses of potential Presidential candidates during the "testing the waters" stage was raised and discussed. Because this issue implicates the regulations addressing Presidential campaigns and elections, the Commission has decided to seek comment on the relationship, if any, between multicandidate political committees and Presidential candidates in this NPRM. The Commission is continuing to review the Leadership PACs NPRM as it applies outside Presidential campaigns and elections, and the comments received in connection with the NPRM, and the Commission intends to conclude that rulemaking at a later date.

The proposed rules herein would create a new paragraph in 11 CFR 110.2 and a new section in 11 CFR part 9034 that would address the payment by a multicandidate political committee of a qualified campaign expense of a Presidential candidate. Proposed section 110.2(l) would apply to candidates who are not accepting public funding from the Presidential Election Campaign Fund for the primary or general election. Proposed 11 CFR 9034.10 would apply to Presidential candidates who are accepting public funding for the primary election. Because Presidential candidates who accept public funding for the general election may not accept contributions from multicandidate political committees, the proposed rules would not include a parallel provision in 11 CFR subchapter E.

1. Scope of the Proposed Rules

Proposed 11 CFR 110.2(l) and 9034.10 would be applicable to all multicandidate political committees, not just those commonly known as Leadership PACs. The rationale for this approach is that leadership PACs are not defined or specifically addressed in FECA or in the current Commission regulations. Rather, leadership PACs are formed as multicandidate political committees that are defined and addressed in FECA and current Commission regulations. In the Commission's experience, other types of multicandidate political committees do not make expenditures for qualified campaign expenses of potential Presidential candidates. Thus, including all multicandidate political committees within the proposed rules would not have unintended consequences of encompassing other types of activity.

Nevertheless, the Commission seeks comment on whether the proposed rules should be limited to leadership PACs. If the Commission were to adopt such an approach, it would also become necessary for the Commission to adopt a definition for "leadership PACs." Consequently, the Commission seeks comment as to what that definition should be.

2. Definition of "Qualified Campaign Expense"

Proposed 11 CFR 9034.10(a) would include a definition of "qualified campaign expense" that would vary from the current definition in 11 CFR 9032.9 but would limit the scope of the proposed definition to proposed 11 CFR 9034.10. The definition in proposed paragraph (a) would adopt language similar to that of 11 CFR 9032.9(a) but would not include the timing element of section 9032.9(a)(1). The timing element of current section 9032.9(a)(1), which limits qualified campaign expenses to expenses incurred between the date a person becomes a candidate and the last day of the candidate's eligibility, should not be applied here because a major goal of the proposed rules is to treat qualified campaign expenses that are paid by multi-candidate committees as in-kind contributions to Presidential candidates whenever such qualified campaign expenses are incurred, even if they are incurred prior to the date a person becomes a candidate.

Additionally, the proposed definition would not include the provisions in section 9032.9(a)(3) requiring that a qualified campaign expense comply with all Federal, state, and local laws. The purpose of this provision in section 9032.9(a)(3) is to prevent the authorized committees from paying for items such as parking tickets. Because the purpose of proposed section 9034.10 is to treat the payment of qualified campaign expenses of a Presidential candidate by multicandidate political committees as in-kind contributions, it would be inconsistent with this purpose to exclude these items.

Proposed 11 CFR 9034.10(a)(1) and (2) would be the operative definition of "qualified campaign expense" as it would be applied to proposed 11 CFR 110.2(l) and 9034.10. Under the proposed definition, "qualified campaign expense" would mean purchase, payment, etc. that is incurred by, on behalf of, or for the benefit of a candidate or the candidate's authorized committee and is made in connection with that candidate's campaign for nomination. Proposed paragraph (a)(3) would provide a non-exhaustive list of examples of expenses that would be considered as a qualified campaign expense, such as polling expenses, staff salary, travel, and office space expenses. The Commission seeks comment on whether polling expenses in proposed paragraph (a)(3)(i) should be limited to polls that reference a Presidential candidate. The Commission notes that none of the foregoing expenses would be qualified campaign expenses under the proposed rule unless they were made in connection with a Presidential candidate's campaign for nomination. The Commission seeks comment on whether more specific examples of qualified campaign expenses should be provided and whether there are other expenses that should be included in proposed paragraph (a)(3). The Commission also seeks comments on whether it should use a terminology other than "qualified campaign expenses" in this proposed section to avoid confusion with the current definition of "qualified campaign expenses."

3. Qualified Campaign Expenses as In-Kind Contributions

The NPRM would set forth the consequences of a multicandidate committee paying for qualified campaign expenses for a Presidential candidate in proposed 11 CFR 9034.10(b)(1) through (4). The introductory language of proposed paragraph (b) would limit the "look back" period of the proposed rules to January 1 of the year immediately following the last Presidential election year. Thus, if an expenditure made by a multi-candidate committee for a qualified campaign expense were made prior to that date, it would not be subject to the provisions of proposed section 9034.10. The Commission seeks comments on whether the "look back" period should start at a different date, such as the day after the last Presidential election or some other date. Additionally, the proposed rule would only apply to qualified campaign expenses paid by multi-candidate committees for individuals who actually become Presidential candidates.

Under the proposed rule, an expenditure by a multicandidate political committee for a qualified campaign expense of a Presidential candidate would have four effects. First, the expenditure would be deemed as an in-kind contribution from the multicandidate political committee to the Presidential candidate under proposed 11 CFR 9034.10(b)(1). Second, proposed paragraph (b)(2) would subject the expenditure/contribution to the contribution limitations for multicandidate political committees to Presidential candidates, *i.e.* $5000 per election. Third, under proposed paragraph (b)(3), the expenditure would count towards the expenditure limitations for Presidential candidates accepting public funding under 11 CFR part 9035. Finally, proposed paragraph (b)(4) would subject the expenditure to the audit provision of 11 CFR 9038.1. The proposed rules would also amend current 11 CFR 9038.1(a)(2) to make clear that multicandidate political committees that make expenditures for qualified campaign expenses would be subject to examinations and audits as deemed necessary. The Commission seeks comments on whether changes to the audit provision of 11 CFR 9038.1 is appropriate or necessary to effectuate any new rule it may promulgate in this area. It is important to note that, under this proposed rule, coordination would not be relevant in determining that a multicandidate political committee has made an in-kind contribution when it pays for a qualified campaign expense of a Presidential candidate.

As stated above, proposed 11 CFR 9034.10(b)(2) would subject a multicandidate political committee's expenditure for qualified campaign expenses to the contribution limitations that apply to Presidential campaign committees. Under proposed paragraph (c), any amount of the expenditure that exceeds the contribution limit for multicandidate political committees to Presidential candidate committees would be deemed an excessive contribution and liability would attach to both the multicandidate political committee for making the excessive contribution and the authorized committee of the Presidential candidate for accepting an excessive contribution. The Commission seeks comment on whether the proposed rules should include a provision that would allow the authorized committee to "cure" the excessive contribution and, therefore, avoid liability. For instance, if the authorized committee of the Presidential candidate reimburses the multicandidate political committee for any expenditure for qualified campaign expenses that exceed the contribution limit within thirty days of the date of the person becoming a candidate, should these expenditures not be considered as excessive contributions? The Commission seeks comment on this approach or suggestions on alternative ways excessive contributions may be "cured."

While proposed 11 CFR 9034.10 would apply to Presidential candidates who accept public funding for their primary election campaigns, the proposed rules would add a new paragraph (l) to current section 110.2 that would apply to Presidential candidates who do not accept any public funds. Proposed 11 CFR 110.2(l)(1) would incorporate by reference the definition of "qualified campaign expense" in proposed section 9034.10(a) for purposes of proposed paragraph (l). Proposed paragraph (l)(2) would include the same "look back" period as proposed section 9034.10(b).

Similar to proposed section 9034.10(b)(1) and (2), an expenditure by a multicandidate political committee for a qualified campaign expense of a Presidential candidate who is not receiving public funds would be deemed to be an in-kind contribution from the multicandidate political committee to the Presidential candidate and that contribution would be subject to the relevant contribution limitations. Proposed 11 CFR 110.2(l)(1) and (2). Proposed section 110.2(l) would not have provisions that parallel proposed section 9034.10(b)(3) and (4) because Presidential candidates who do not receive public funding for their campaigns are not subject to the expenditure limitations in 11 CFR part 9035 or the audit provisions of 11 CFR 9038.1. Proposed 11 CFR 110.2(l)(3) would include similar language as proposed section 9034.10(c) stating that expenditures exceeding the contribution limits for multicandidate political committees to Presidential candidates would be deemed as excessive contributions.

The Commission seeks comment on this proposal to treat expenditures by multicandidate committees for qualified campaign expenses of Presidential candidates as in-kind contributions. The Commission also welcomes comments on the ramifications of such treatment as well as on the issues raised above.

H. Technical Amendments

1. Word Omitted From 11 CFR 9038.2(b)(4)

Under 11 CFR 9038.2(b)(4), the Commission may determine that the net income derived from an investment or other use of surplus public funds after a candidate's DOI, less Federal, State and local taxes paid on that income, shall be paid to the Federal Treasury. However, the word "taxes" was inadvertently dropped from that paragraph and needs to be included.

2. Correcting Citations in 11 CFR 104.5(b)(1)

The Commission proposes to correct several citations in 11 CFR 104.5(b)(1) to reflect changes to 11 CFR 104.5(a) promulgated in the implementation of BCRA. Specifically, the Commission proposes in 11 CFR 104.5(b)(1)(i)(C) to change the reference to 11 CFR 104.5(a)(1)(i) to "paragraph (a)(2)(i) of this section" and to change the reference to 11 CFR 104.5(a)(1)(ii) to "paragraph (a)(2)(ii) of this section." In 11 CFR 104.5(b)(1)(ii), the Commission proposes to change the reference to 11

CFR 104.5(a)(1) to "paragraphs (a)(1) and (2) of this section".

3. Private Contributions Received After DOI (11 CFR 9034.4(a)(3)(ii))

The Commission proposes to revise 11 CFR 9034.4(a)(3)(ii) to clarify the rules governing ineligible primary election presidential candidates who continue to campaign after their dates of ineligibility. Currently, paragraph (a)(3)(ii) provides that these candidates may use contributions received after the DOI to campaign. However, current 11 CFR 9034.5(a)(2)(i) provides that a candidate's cash on hand on the NOCO Statement should include "all contributions dated on or before" the DOI, whether or not submitted for matching. Thus, the current rules do not make clear how contributions should be treated that are made or dated before the DOI but received after the DOI by a candidate who continues to campaign. The proposed rules would clarify that each contribution made, dated, and received after a candidate's DOI may be used to continue to campaign.

In addition, the Commission proposes to delete the next sentence in section 9034.4(a)(3)(ii), which states: "The candidate shall be entitled to receive the same proportion of matching funds to defray net outstanding campaign obligations as the candidate received before his or her date of ineligibility." In practice, each submission for matching funds is reviewed individually; thus, a candidate receives a different proportion of matching funds for each submission. The Commission proposes deleting the sentence to make clear that candidates would continue to receive matching funds based on the Commission's review of each matching fund submission, rather than on the proportion of matching funds the candidate received for any previous submission.

4. Clarification of 11 CFR 9032.9(c)

Current 11 CFR 9032.9(c) states that expenditures incurred "before the beginning of the expenditure report period" are qualified campaign expenses if they meet the requirements of 11 CFR 9034.4(a), which addresses, *inter alia*, testing the waters expenses prior to the date an individual becomes a candidate. This wording is the same as the equivalent rule for general election candidates at 11 CFR 9002.11(c), and appears to be an error because the term "expenditure report period" applies to general election candidates. *See* 11 CFR 9002.12. To clarify this section, the Commission proposes changing this wording to "prior to the date the individual becomes a candidate," the same wording used in 11 CFR 9034.4(a)(2), governing testing the waters expenses.

5. Documentation of Disbursements

The current rules describe the requirements for the documentation of disbursements applicable to all committees in 11 CFR 102.9(b) and provide additional documentation requirements for publicly funded committees at 11 CFR 9003.5 (general election candidates), 9008.10 (convention committees) and 9033.11 (primary candidates). The Commission proposes to revise 11 CFR 9003.5, 9008.10 and 9033.11 to clarify that publicly funded candidates must comply with both the general rules at section 102.9(b) and the particular rules applicable to publicly funded primary or general election candidates governing the documentation of disbursements. The proposed rules would add new paragraphs 11 CFR 9003.5(b)(4) and 9033.11(b)(4) stating that the requirements of section 102.9(b) also apply to disbursements, and would revise the introductory language in section 9008.10 to state that the requirements in that section are in addition to the requirements of 11 CFR 102.9(b). Adding these proposed references to 11 CFR 102.9(b) would improve the ease of use of the rules for publicly funded committees.

National Nominating Conventions

The Commission is proposing a number of changes to its regulations concerning national nominating conventions, 11 CFR part 9008. Some of these proposed changes are necessary in order to give effect to BCRA's ban on the use of non-Federal funds by national party committees. The rest of the proposed changes are designed to clarify certain requirements in light of the Commission's experience in administering the public financing of national nominating conventions over the past several presidential election cycles.

I. Current Legal Structure of Convention Financing

Under 26 U.S.C. 9008(b), the national committees of both major and minor political parties are entitled to public funds to defray expenses incurred in connection with a presidential nominating convention. Major party committees receive an inflation-adjusted payment from the Presidential Election Campaign Fund for their national nominating conventions. 26 U.S.C. 9008(b)(1). Minor party committees receive a proportional amount of that payment based on the number of votes the party's candidate received in the last presidential election compared to the average number of votes received by the major party candidates. 26 U.S.C. 9008(b)(2). For the 2004 conventions, the major party committees will be entitled to receive $14,880,000 in July 2003 and an additional payment in 2004 for an inflation adjustment, subject to all applicable requirements.[2] A national committee of a major or minor party may not make expenditures related to the convention that exceed the expenditure limitations, which are equal to the full amount of the payment to major parties. 26 U.S.C. 9008(d). Thus, the major party convention committees may not receive *any* contributions, as defined in 2 U.S.C. 431(8), that would count towards their expenditure limit if they accepted the full payment. Any such contributions would combine with the public funds to make total expenditures exceed the limit.

In addition to the public funds provided to the national committees of both major and minor political parties in connection with a presidential nominating convention, "host committees" and "municipal funds" may defray certain expenses incurred in connection with hosting these conventions. A host committee is defined as any local organization, such as a local civic association, business league, chamber of commerce, real estate board, board of trade, or convention bureau (1) which is not organized for profit; (2) whose net earnings do not inure to the benefit of any private shareholder or individual; and (3) whose principal objective is the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees. 11 CFR 9008.52(a). Host committees may provide the convention committees with certain services and facilities, as specified in 11 CFR 9008.52(c). Any host committee expenditures that comply with 11 CFR 9008.52 do not constitute convention committee expenditures and do not count toward the convention committee's expenditure limit. 11 CFR 9008.8(b)(1).

"Municipal fund" is the term that has come to apply to local government agencies and the separate funds or accounts established by them to receive and disburse funds in order to defray certain expenses for a convention in that locality. Municipal funds may make expenditures for the same purposes as host committees. 11 CFR 9008.53. As with host committees, expenditures by a municipal fund that are in compliance with 11 CFR 9008.53 do not constitute convention committee expenditures and do not count toward the convention committee's expenditure limit. 11 CFR 9008.8(b)(2).

Under current regulations, host committees and municipal funds are allowed to accept monetary and in-kind donations from the same sources: local businesses, including corporations; local banks; local labor organizations; and local individuals. 11 CFR 9008.52 and 9008.53. Municipal funds, however, face more limitations on their fundraising than host committees. *See* 11 CFR 9008.53(b)(1)(i) and (ii). Municipal funds may not accept donations "restricted" for use in connection with a particular convention; they may not engage in fundraising restricted to a particular convention; and they may not themselves be restricted to a particular convention. 11 CFR 9008.53(b)(1)(i) and (ii). Host committees are not subject to any of these limitations. Once raised, funds received by a host committee or municipal fund may be used for the same purposes. *See* 11 CFR 9008.52(c)(1) and 9008.53. If the funds are raised and spent in compliance with 11 CFR 9008.52 or 9008.53, then they are exempt from the definition of "contribution and expenditure" in the Commission's regulations concerning corporate and labor organization funds, 11 CFR part 114. *See* 11 CFR 114.1(a)(2)(viii). On this basis, host committees and municipal funds accept and spend such funds, which constitute non-Federal funds.

II. Historical Basis for Current Legal Structure

In 1977, the Commission explained the basis for permitting in-kind contributions to host committees from corporations and labor organizations, stating: "Such in-kind contributions are presumably not politically motivated but are undertaken chiefly to promote economic activity and good will of the host city." *Explanation and Justification for 1977 Amendments to the Federal Election Campaign Act of 1971*, H.R. Doc. No. 95–44, 136 (1977). Similarly, donations of money were described as "presumably commercially motivated rather than politically, and thus will not be considered an unlawful contribution." *Id.* at 137. Host committee funds were "to be used for purposes designed to promote a good image of the host city to the convention attendees." *Id.* at 136–37.

The Commission acknowledged that the host committee exception to the convention committee's expenditure limit could be considered a means of avoiding the expenditure limit. *Id.* at 137. The Commission explained that "it appears from the testimony of the major parties before the Commission that the Congress in deciding upon a dollar figure for expenditure limitations, took into consideration only those expenses actually paid by the national party for the 1972 convention and ignored in its computation the value of services provided by host cities and committees." *Id.* The Commission described its regulation on the use of funds by host committees as "represent[ing] an interpretation of 26 U.S.C. 9008(1) that the [expenditure] limit applies only to expenditures made *by the national party*, and that expenditures made *by private host committees* under certain restrictions will not be counted toward the ceiling." *Id.* (emphasis in original).

In 1979, the Commission recodified some of its regulations, including those related to corporate donations to host committees. The Commission described again the basis for this exception to the prohibition on corporate and labor organization funds in 2 U.S.C. 441b, stating: "While incorporated businesses are prohibited by 2 U.S.C. 441b from making contributions or expenditures in connection with a Federal election, donations by such corporations to a host committee in accordance with restrictions set forth in [11 CFR 9008.7(d) (1979)] are sufficiently akin to commercial transactions to fall outside the scope of that prohibition." *Explanation and Justification of Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions*, 44 FR 63036, 63038 (Nov. 1, 1979).

The basis for the municipal fund exception to the expenditure limit was also discussed, and the Commission explained that the expenditure limit would be "unrealistically low" if the value of "certain facilities and services" provided by the city "as part of an overall package to attract the convention to that city" counted toward the convention committee's expenditure limit. *Id.* at 63037. With regard to host committees, the Commission justified the restriction on who may donate funds as "necessary to insure that such donations are commercially, rather than politically motivated." *Id.* at 63038.[3] The Commission also observed that "Defrayal of convention expenses by a host committee is intended to be a very narrow exception to the statutory limitation on convention expenses." *See id.* at 63038. The 1979 document made the same point about the apparent Congressional intent as presented in the 1977 Explanation and Justification. *Id.* at 63037.

In 1994, the Commission again revised its regulations governing publicly financed presidential nominating conventions. Incorporating the conclusions reached in Advisory Opinions 1982–27 and 1983–29, the Commission promulgated its municipal fund regulation, 11 CFR 9008.53. *Explanation and Justification of Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions*, 59 FR 33606, 33614 (June 29, 1994). Like donations to host committees, the Commission explained that "the new rules recognize that local businesses and organizations that donate to municipal funds are motivated by commercial and civic reasons, rather than election-influencing purposes." *Id.* at 33615.

Five years later, in 1999, the Commission reiterated the presumed motivation of donors to host committees and municipal funds. In lifting the prohibition on bank donations to host committees, the Commission agreed with the observation that "local branches of national banks have the same interest in promoting the city and supporting commerce" as local corporations. *Explanation and Justification for Public Financing of Presidential Primary and General Election Candidates*, 64 FR 49355, 49357 (Sept. 13, 1999).

III. Petition for Rulemaking

A petition for rulemaking jointly filed by three organizations seeks the repeal or revision of the Commission's regulations that permit host committees to accept corporate and labor organization funds and to use these funds for expenses incurred in conducting a nominating convention. The petition argues that the host committee regulation, 11 CFR 9008.52, and the exemption from the part 114 definition of "contribution and expenditure" of activity permitted by the host committee regulation, 11 CFR 114.1(a)(2)(viii), are contrary to FECA and BCRA. According to the petition, 2 U.S.C. 441b of FECA is violated by the

[2] In 2000, the Democratic and Republican National Committees each received $13,512,000 for their national nominating convention, while the Reform Party received $2,522,690. No candidate received a sufficient number of votes in the 2000 presidential general election to provide his or her party with minor party status in 2004.

[3] At that time, the amount of donations to host committees was also limited. *See* 11 CFR 9008.7(d)(3)(ii) (1980).

cited regulations because corporations and labor organizations are permitted to contribute funds and in-kind contributions in connection with a nominating convention. Similarly, according to the petition, 2 U.S.C. 441i of BCRA is violated by 11 CFR 9008.52(c) because it allows national party committees to receive in-kind contributions paid for with corporate and labor organization funds. In support of its position, the petition puts forth a statutory and regulatory analysis, and it cites and attaches many articles from various media outlets that purport to describe convention financing practices. The petition is available on the Commission's website.

The petition's conclusion that the cited host committee regulations violate FECA and BCRA obviously contradicts the Commission's treatment of host committees since 1977. The proposed rules that follow are consistent with the Commission's historical treatment of host committees and do not reflect the position advanced by the petitioners. Nonetheless, the Commission seeks comment on whether corporate or labor organization donations to host committees under the conditions prescribed in current 11 CFR 9008.52(c) are contrary to FECA or BCRA. If the approach sought by the petition were adopted, the Commission also seeks comment on whether the exemption from the convention committee expenditure limit for host committee expenses, 11 CFR 9008.8(b)(1), should also be repealed. Similarly, the Commission also seeks comment on whether corresponding changes would be required for the municipal fund regulations, 11 CFR 9008.8(b)(2) and 9008.53.

IV. Application of BCRA's Non-Federal Funds Provisions to Convention Committees, Host Committees and Municipal Funds

Under BCRA, "[a] national committee of a political party * * * may not solicit, receive, or direct to another person a contribution, donation, or transfer of funds or any other thing of value, or spend any funds, that are not subject to the limitations, prohibitions, and reporting requirements of [FECA]." 2 U.S.C. 441i(a)(1). BCRA also prohibits officers and agents of the national party committees and entities that are "directly or indirectly established, financed, maintained, or controlled" by national party committees from soliciting, receiving, directing, or spending such non-Federal funds. 2 U.S.C. 441i(a)(2); *see also* 11 CFR 300.10(c)(1) and 300.10(c)(2). BCRA also prohibits Federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by or acting on behalf of one or more Federal candidate or officeholder from soliciting, receiving, directing, transferring, or spending non-Federal funds in connection with an election for Federal office. 2 U.S.C. 441i(e)(1)(A); *see also* 11 CFR 300.61.[4]

The Commission has promulgated rules implementing BCRA's new restrictions and prohibitions on the receipt, solicitation, direction, and use of certain types of non-Federal funds by political party committees, candidates, and officeholders. *See Explanation and Justification for Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 FR 49064 (July 29, 2002) (hereinafter "Non-Federal Funds Final Rules"). In this rulemaking, the Commission considers the impact of these new restrictions and prohibitions in BCRA and the Non-Federal Funds Final Rules on national nominating conventions. Specifically, the Commission considers the roles filled by national political party committees, their convention committees, host committees, and municipal funds, as well as the involvement of Federal candidates and officeholders.

A. Are Host Committees and Municipal Funds "Agents" of National Party Committees Under 2 U.S.C. 441i(a) and (e) and 11 CFR 300.2(b)?

One issue that arises from BCRA's ban on national parties soliciting, receiving, directing, and using non-Federal funds is whether host committees and municipal funds are "agents" of national party committees. In the Non-Federal Funds Final Rules, the Commission defined an "agent," for purposes of 11 CFR part 300, as "any person who has actual authority, either express or implied * * * to solicit, direct, or receive any contribution, donation, or transfer of funds" on behalf of a national committee of a political party. 11 CFR 300.2(b). The Commission seeks comment on whether host committees and municipal funds satisfy the definition of "agents" in 11 CFR 300.2(b) with respect to the national political party committees or their convention committees. If host committees and municipal funds are "agents" of national party committees, then they, like the national party committees themselves, would be prohibited from soliciting, receiving, directing, or spending non-Federal funds by operation of 2 U.S.C. 441i(a)(1) and (2) and 11 CFR 300.10(a) and (c)(1).

The Commission does not propose regulatory text that would presume that host committees or municipal funds would necessarily qualify as "agents" of the national political parties. This approach, if adopted, would not preclude the Commission from determining that in a particular case a host committee or municipal fund does, in fact, meet the definition of "agent" in 11 CFR 300.2(b) with respect to the pertinent national party committee. The Commission also seeks comment on whether host committees and municipal funds should be treated *per se* as not agents of national party committees and, therefore, as not subject as a matter of law to 2 U.S.C. 441i(a)(2) or 11 CFR 300.10(c)(1) as agents acting on behalf of a national party committee, no matter how such host committees and municipal funds operate or interact with the national party committees.

The Commission is also considering an alternative approach, whereby host committees and municipal funds would be treated as *per se* agents of national party committees. Such an approach would limit permissible funds for a host committee or municipal fund to funds subject to FECA's limitations, prohibitions, and reporting requirements, regardless of how the host committees and municipal funds functioned and related to the national party committees. If the Commission were to consider host committees and municipal funds as *per se* agents of convention committees, how should it restructure the rules relating to national nominating conventions in 11 CFR part 9008? Would host committees or municipal funds be Federal political committees? Would all their transactions with convention committees amount to in-kind contributions? If host committees and municipal funds are limited to funds subject to FECA's limitations, prohibitions, and reporting requirements, should any uses of such funds be exempt from the convention committee's expenditure limit? The Commission recognizes that host committees and municipal funds supplement the funds that are otherwise capped by the expenditure limit and therefore removing the exemption from the expenditure limit for host committees and municipal funds would have a profound impact on convention financing. The Commission seeks comment on whether such a result is mandated by BCRA.

[4] In connection with any election other than an election for Federal office, BCRA also prohibits the same persons from soliciting, receiving, directing, transferring, spending, or disbursing funds in excess of the amounts permitted under 2 U.S.C. 441a(a) or funds from sources prohibited by FECA. 2 U.S.C. 441i(e)(1)(B).

The legislative debates of BCRA suggest that BCRA would entail significant changes in convention financing. During the Senate's consideration of BCRA, Senator Mitch McConnell said the bill "will end national party conventions as we have known them." 148 CR S2122 (daily ed. Mar. 20, 2002). Senator McConnell went on to state that "[t]he soft money ban covers the committees that are created to host these grand events" and to say that post-BCRA conventions would have to be put on with "80 percent less funding." *Id.* Senator McConnell's conclusion that passage of BCRA would mean: "All the soft money that you used to put on the convention the last time is now gone." *Id.* Senator Fred Thompson earlier that day described "the nature of the problem" addressed by BCRA and noted in regard to what he called the "big outfits" that donate non-Federal funds "the same entities pick up our expenses for the convention." 148 CR S2110 (daily ed. Mar. 20, 2002). During Senate consideration of an earlier version of BCRA, Senator Robert Bennett stated: "One very practical example that we can expect is the scaling down, if not the elimination, of party conventions because party conventions now are financed entirely with soft money which, under this bill, would become illegal. So we may see party conventions disappear altogether, or we may see them become very truncated affairs, which the media may decide is not worth covering." 147 CR S3092 (daily ed. Mar. 29, 2001). Senator McConnell raised the issue during this earlier consideration as well. He stated: "Host committees for national conventions are abolished. Last year it took each party $80 million to put on their national conventions. They got $15 million from the Treasury. All the rest of it was this odious soft money which is going to be abolished. In order to continue to put on the national conventions in hard dollars, the two committees will have to come up with about $60 million each in hard dollars to put on the national conventions." 147 CR S3234 (Apr. 2, 2001). The Commission seeks comment on how these debates or any other legislative history on this issue should be interpreted.

What effect does BCRA's non-Federal funds ban have on the rules relating to convention financing? Can the Commission simply retain the pre-BCRA rules? Is there legal justification for retaining the pre-BCRA rules? Does BCRA have any impact on the convention committee expenditure limit? Would limiting host committees and municipal funds to Federal funds have as significant an impact on convention financing as eliminating the expenditure limit exemption for host committees and municipal funds? If so, is such a result required by BCRA?

B. Are Host Committees and Municipal Funds Entities "Established, Financed, Maintained, or Controlled" by National Party Committees Under 2 U.S.C. 441i(a) and 11 CFR 300.2(c)?

Another issue that arises under BCRA is whether host committees and municipal funds are "directly or indirectly established, financed, maintained, or controlled" by a national party committee. If host committees and municipal funds are considered entities directly or indirectly established, financed, maintained, or controlled by the national party committees, then they, like the national party committees themselves, are prohibited from soliciting, receiving, directing, or spending non-Federal funds. 2 U.S.C. 441i(a)(2); 11 CFR 300.10(c)(2). In the Non-Federal Funds Final Rules, the Commission provided a non-exhaustive list of factors that may be considered in determining whether an entity is directly or indirectly established, financed, maintained, or controlled by a national party committee. 11 CFR 300.2(c). *See* Non-Federal Funds Final Rules, 67 FR at 49084 ("The Commission has concluded that the affiliation factors laid out in 11 CFR 100.5(g) properly define 'directly or indirectly established, financed, maintained, or controlled' for purposes of BCRA.") The Commission seeks comment on whether host committees and municipal funds satisfy the factors listed in 11 CFR 300.2(c) and should, therefore, be considered *per se* entities that are directly or indirectly established, financed, maintained, or controlled by the national party committees holding conventions in the relevant cities. Alternatively, the Commission seeks comment on whether host committees and municipal funds do not meet the criteria listed in 11 CFR 300.2(c) and, therefore, should be considered *per se* as a matter of law as entities that are not directly or indirectly established, financed, maintained, or controlled by the national party committees. Or should this question be resolved on a case-by-case basis by applying section 300.2(c)?

The Commission notes that the regulatory text relating to host committees and municipal funds proposed in this NPRM does not presume that host committees or municipal funds satisfy any of the criteria listed in 11 CFR 300.2(c) for determining whether entities are directly or indirectly established, financed, maintained, or controlled by national party committees. This approach, if adopted, would not preclude a Commission finding that a particular host committee or municipal fund does, in fact, satisfy one or more of the specified factors in 11 CFR 300.2(c) with respect to a particular national party committee. If the Commission were to conclude that host committees or municipal funds are, as a matter of law, "directly or indirectly established, financed, maintained, or controlled" by national political parties, many of the same questions raised in the context of the discussion of "agency," above, would need to be addressed. Accordingly, the Commission seeks comments on the same issues raised above in connection with the agency discussion.

C. Impact of BCRA on Convention Committees

In contrast to host committees and municipal funds, convention committees are, as a matter of law, entities directly established, financed, maintained, or controlled by national party committees. The Commission's regulations *require* national party committees to "establish a convention committee which shall be responsible for conducting the day to day arrangements and operations of that party's presidential nominating convention." 11 CFR 9008.3(a)(2). In addition, under 11 CFR 9008.3(a)(2), convention committees are required to receive the national party's entitlement to public funds and are responsible for making "[a]ll expenditures on behalf of the national committee for convention expenses;" as such, they clearly are "agents" of the national party committees as well as "entities directly or indirectly established, financed, maintained, or controlled" by the national party committees, as those terms are defined in 11 CFR 300.2(b) and (c). Therefore, for purposes of this NPRM, the Commission proposes that BCRA's ban in 2 U.S.C. 441i(a)(1) on national parties soliciting, receiving, directing, and using non-Federal funds shall apply to convention committees by operation of 2 U.S.C. 441i(a)(2) and 11 CFR 300.10(c). *See also* 11 CFR 300.2(b) and (c).

The Commission seeks comment on whether this prohibition extends to bar convention committees from accepting many of the in-kind donations typically provided by host committees and municipal funds. Commission regulations permit certain local businesses and organizations to donate

funds or make in-kind donations to a host committee to be used for the purposes listed in 11 CFR 9008.52(c)(1). A review of this list reveals that many of the contemplated transactions could not be characterized as in-kind donations to the convention committee, but instead relate to the provision of services primarily used by convention attendees. For example, the permitted expenses' purposes include: Welcoming convention attendees; facilitating commerce by distributing guides to attendees; providing bus transportation; and providing law enforcement services. *See* 11 CFR 9008.52(c)(1). In order to conclude that the convention committee received "a contribution, donation, or transfer of funds or any other thing of value * * * that are not subject to the limitations, prohibitions, and reporting requirements of [FECA]," the Commission would need to determine that the convention committee itself received something of value. In many of the transactions contemplated by 11 CFR 9008.52(c)(1), host committees are providing something of value to convention delegates, other attendees, press, local businesses, and the local community; in these transactions the convention committee is a bystander, not a recipient of something of value. When a host committee provides, for example, a shopping/dining guide, to convention attendees, it is difficult to conclude that the convention committee received anything of value. The Commission seeks comment on whether BCRA requires that permissible host committee and municipal fund expenses must be limited to such activities.

Other permissible host committee and municipal fund expenses certainly provide something of value to the convention committee. For example, host committees and municipal funds are permitted to provide an auditorium or convention center and construction services for that location. 11 CFR 9008.52(c)(1)(v). The Commission seeks comment on whether BCRA permits host committees and municipal funds to provide things of value to convention committees. Assuming that it does, in order to ensure that non-Federal funds raised by host committees and municipal funds are not spent on behalf of convention expenses beyond the "very narrow" host committee/municipal fund exception to the convention committee's expenditure limit, however, the Commission is also considering revising its regulations to more precisely circumscribe the permitted purposes for host committee and municipal fund expenses as discussed below. *See Explanation and Justification for Regulations on Federal Financing of Presidential Nominating Conventions and the Presidential Election Campaign Fund*, 44 FR 63036, 63038 (Nov. 1, 1979) (stating: "Defrayal of convention expenses by a host committee is intended to be a very narrow exception to the statutory limitation on convention expenses.").

D. Solicitation of Funds for Host Committees and Municipal Funds Under BCRA

1. 2 U.S.C. 441i(a) and (e)(1)

As explained above, BCRA prohibits national party committees, as well as their agents and entities they directly or indirectly establish, finance, maintain, or control from soliciting or directing non-Federal funds on behalf of, or to, others. 2 U.S.C. 441i(a). BCRA also prohibits Federal candidates and individuals holding Federal office from soliciting, receiving, directing, transferring, or spending funds in connection with an election for Federal office unless the funds are subject to the limitations, prohibitions, and reporting requirements of FECA. 2 U.S.C. 441i(e)(1)(A). BCRA extends these prohibitions to the agents of Federal candidates acting on their behalf and individuals holding Federal office and entities directly or indirectly established, financed, maintained, or controlled by either. 2 U.S.C. 441i(e)(1).

The foregoing restrictions on Federal candidates and officeholders under 2 U.S.C. 441i(e)(1), in contrast to the restrictions on national party committees under 2 U.S.C. 441i(a), only apply to funds "in connection with an election for Federal office" or any other election. 2 U.S.C. 441i(e)(1)(A) and (B). The Commission seeks comment on what impact this statutory distinction has on any of the issues addressed in this rulemaking.

Are *all* host committee and municipal fund activities "in connection with an election for Federal office" or any other election within the meaning of 2 U.S.C. 441i(e)? If not, are *any* such activities "in connection with an election for Federal office"? If none satisfy that statutory phrase, do the prohibitions and limitations of section 441i(e) not apply as a matter of law to the funds solicited, raised, and spent by host committees and municipal funds on that basis alone? In the alternative, are host committee and municipal fund activities subject to this provision of 2 U.S.C. 441i(e) only if they are *not* for the purpose of promoting the convention city and its commerce? As described above, the Commission's past treatment of host committee and municipal fund expenses viewed those expenses as a permissible exception to the prohibition on corporate or labor organization funds because they lacked an election-influencing purpose. FECA's definitions of "contribution" and "expenditure" both require that such be made "for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i) and 431(9)(A)(i). Does the Commission's determination that certain permissible host committee and municipal fund expenses are not "contributions" or "expenditures" also require that the Commission determine those expenses are not "in connection with an election for Federal office" under 2 U.S.C. 441i(e)(1)(A)?

Are any of the costs of conducting a convention "in connection with an election for Federal office"? FECA clearly defines "election" to include "a convention or caucus of a political party which has the authority to nominate a candidate." 2 U.S.C. 431(1)(B). However, other election administering expenses, whether incurred by States or privately funded in those States that require political parties to pay the costs of certain primary elections, are not considered FECA-regulated expenses. *See, e.g.*, AO 1991–33 (noting that the parties act as agents of the State in performing the ministerial functions of administering the primaries). Are the costs of conducting a convention, whether incurred by a convention committee, host committee, or municipal fund, regulated by FECA, other than those provisions that expressly mention convention activities? Although the Fund Act provides for grants of public funds to pay these expenses and imposes an expenditure limitation in exchange for accepting such a grant, should the Commission conclude that some or all of the expenses of conducting a nominating convention are not subject to FECA as amended by BCRA? If the Commission determines that these expenses are *not* in connection with a Federal election, what changes should it make to its regulations?

The Commission carefully considered the scope of BCRA's prohibition on solicitation and direction of non-Federal funds by national party committees, Federal candidates, Federal officeholders, and their agents in the Non-Federal Funds Final Rules. *See* 67 FR at 49087–93, 49106–09, 49122–23, and 49131–32. The Commission seeks comment on whether the new rules implementing BCRA's ban on the solicitation of non-Federal funds are sufficient to resolve the question of whether national party committees, Federal candidates, Federal officeholders, or their agents may solicit funds for host committees and municipal funds. *See* 11 CFR part 300, subparts A and D. Alternatively, should the Commission promulgate an additional regulation in its Federal Financing of Presidential Nominating Conventions regulations (11 CFR part 9008) that would specifically apply BCRA and the Non-Federal Funds Final Rules to the financing of national nominating conventions and explain how the Commission's regulations in 11 CFR part 300 work in this context?

2. 2 U.S.C. 441i(d)

BCRA prohibits national party committees, their officers and agents acting on their behalf, and entities directly or indirectly established, financed, maintained, or controlled by them from soliciting any funds for, or making or directing any donations to, certain tax-exempt organizations. 2 U.S.C. 441i(d). BCRA's prohibition on this type of donor and fundraising activity extends only to tax-exempt organizations with a political purpose or that conduct activities in connection with a Federal election. Specifically, this prohibition extends to tax-exempt organizations described in 26 U.S.C. 501(c) that make "expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity)" and organizations described in 26 U.S.C. 527. *Id.* In considering how to implement these BCRA provisions, the Commission concluded that a safe harbor is an appropriate way to help ensure that party committees, and others to whom 11 CFR 300.11 and 300.37 apply, comply with the Act.

Commission regulations at 11 CFR 300.11 and 300.50 implement this safe harbor and set forth a process by which a section 501(c) organization can certify that it does not make expenditures or disbursements in connection with an election for Federal office. Under 11 CFR 300.11(c) and 300.50(c), national party committees, their agents, and entities they directly or indirectly establish, finance, maintain, or control may obtain and rely upon a certification that the organization has not and does not intend to make expenditures or disbursements in connection with an election for Federal office as specified in 11 CFR 300.11(d).

The Commission seeks comment on whether, as a matter of law, host committees and municipal funds make "disbursements" in connection with an election for Federal office, even as they adhere to the requirements in current 11 CFR 9008.52, which arguably would leave host committees and municipal funds outside the certification safe harbor set out in 11 CFR 300.11. A "disbursement" is defined, in 11 CFR 300.2(d), as "any purchase or payment made by: (1) a political committee; or (2) any other person, including an organization that is not a political committee, that is subject to [FECA]." The Commission has historically treated host committees and municipal funds as organizations that are subject to FECA that make purchases or payments in connection with a Federal election because FECA defines presidential nominating conventions as Federal elections. 2 U.S.C. 431(1)(B). As is noted above, the Commission is seeking comment on whether this historical treatment of host committees and municipal funds is appropriate. The Commission's past treatment of permissible host committee and municipal fund disbursements has been that they are not expenditures for the purpose of influencing an election and, therefore, are not subject to the corporate and labor organization prohibition in 2 U.S.C. 441b. However, BCRA reaches far beyond expenditures and requires only "disbursements in connection with an election" to make a 501(c) organization subject to the prohibition in 2 U.S.C. 441i(d)(1). The Commission seeks comment on what impact this BCRA statutory provision has, if any, on the Commission's treatment of host committees and municipal funds.

The Commission proposes a new regulation, 11 CFR 9008.55, in order to apply 11 CFR part 300 to the solicitation of funds for those host committees or municipal funds that have 26 U.S.C. 501(c) status. Paragraph (a) would state the general proposition that all host committee and municipal fund payments in compliance with 11 CFR part 9008 are disbursements in connection with a Federal election for purposes of 11 CFR part 300. Paragraph (b) would state that host committees and municipal funds would not be eligible to make the certification pursuant to 11 CFR 300.11(d). The Commission seeks comment on the proposed new regulation and the approach embodied in it.

In the alternative, the Commission seeks comment on whether host committees and municipal funds should be eligible to make the certification pursuant to 11 CFR 300.11(d) and, if so, under what circumstances? The Commission also seeks comment on whether Congress, in enacting BCRA, in any way intended to restrict convention financing practices that were legal before BCRA became law, including the activities of host committees and municipal funds (and any involvement therein by national party committees, Federal candidates, Federal officeholders, and their agents.) Specifically, comment is sought on whether permissible host committee and municipal fund expenses do not constitute disbursements in connection with an election.

3. 2 U.S.C. 441i(e)(4)

In 2 U.S.C. 441i(e)(1), BCRA prohibits Federal candidates and officeholders[5] from soliciting, receiving, directing, transferring, or spending funds in connection with an election for Federal or non-Federal office unless the funds meet the source and amount restrictions of the Act. *See also* 11 CFR 300.61 and 11 CFR 300.62. BCRA creates two exceptions from that general rule in 2 U.S.C. 441i(e)(4). First, BCRA allows Federal candidates, individuals holding Federal office, and individuals who are agents acting on behalf of either to make general solicitations, without source or amount restrictions, for a 501(c) organization, other than organizations whose "principal purpose" is to conduct certain Federal election activity, specifically voter registration, voter identification, GOTV activities, or generic campaign activity, so long as the solicitation does not specify how the funds will be spent. Second, BCRA permits Federal candidates and Federal officeholders, and individuals who are agents acting on their behalf, to make a solicitation explicitly to obtain funds for a 501(c) organization whose principal purpose is to conduct Federal election activity as described above or for a 501(c) organization to conduct these activities, provided that only individuals are solicited for no more than $20,000 per calendar year. The final rule at 11 CFR 300.65 implements these exceptions for Federal candidate and officeholder solicitations for 501(c) organizations.

As noted above in connection with national party committee solicitations of non-Federal funds, host committees and municipal funds operating in compliance with 11 CFR part 9008

[5] An "individual holding Federal office" is defined as "an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States." 11 CFR 300.2(o). It does not include those "who are appointed to positions such as the secretaries of departments in the executive branch, or other positions that are not filled by election." Non-Federal Funds Final Rules, 67 FR at 49,087. This definition is identical to the definition of "Federal officeholder" in 11 CFR 113.2(c).

arguably make disbursements in connection with the national nominating convention, which is an election under FECA. Under 11 CFR 300.52(a)(1) and 300.65(a)(1), Federal candidates, individuals holding Federal office, and agents acting on their behalf are prohibited from making general solicitations of non-Federal funds for 501(c) organizations that "engage in activities in connection with an election." Accordingly, the exception permitting Federal candidates, Federal officeholders, and their agents to make general solicitations on behalf of 501(c) organizations would arguably not, as a matter of law, apply to host committees and municipal funds. In addition, the exception permitting Federal candidates, Federal officeholders, and their agents to make specific solicitations for certain 501(c) organizations may not, as a matter of law, apply to host committees and municipal funds because it is not their principal purpose to engage in certain types of Federal election activity described in 2 U.S.C. 431(20)(A)(i) and (ii).

To make clear that the above-described exceptions to the general ban on solicitation do not apply to solicitation of non-Federal funds by Federal candidates, Federal officeholders, and their agents on behalf of host committees and municipal funds, the Commission is considering adding a new provision to part 9008. *See* new 11 CFR 9008.55. Paragraph (c) of this section would state that host committees and municipal funds are ineligible for the exceptions in 11 CFR 300.65. The Commission seeks comment on this approach.

E. Effect of BCRA on Offsets

The Commission has permitted convention committees to "offset" in-kind contributions received from host committees that are deemed impermissible in post-convention audits. Rather than require repayment of 100% of these receipts, the convention committee may offset them with convention committee expenditures that could have been paid by the host committee. The Commission seeks comment on whether BCRA requires any reevaluation of this practice.

F. Effect of BCRA on Commercial Vendor Activities Related to Nominating Conventions

The current rules at 11 CFR 9008.9 permit convention committees to receive goods and services from commercial vendors, including corporations, at reduced or discounted rates, or at no charge, under certain circumstances. The prohibition in BCRA against the receipt of non-Federal funds, 2 U.S.C. 441a(a), may necessitate a change to this regulation.

Current 11 CFR 9008.9(a) permits commercial vendors, including businesses that are incorporated, to provide reductions or discounts in the ordinary course of business; that is, if the vendor has an established practice of providing the same reductions or discounts for the same amount of goods or services to non-political clients, or if the reduction or discount is consistent with established practice in the commercial vendor's trade or industry. The Commission believes this provision is consistent with BCRA and therefore proposes to retain it in its current location. It would be revised to combine the introductory text and to make other conforming changes based on the other proposed changes to the rule described below.

Current provisions (b) and (c) of 11 CFR 9008.9, however, address items provided for promotional consideration (which are something of value), such as complimentary, temporary use of automobiles, and items of *de minimis* value, such as tote bags for convention attendees. The rationale for the promotional consideration exception was explained in Advisory Opinion 1988–25, where the Commission considered whether it was permissible, under FECA and the Fund Act, for General Motors to provide complimentary use of automobiles to convention committees for use during the 1988 Democratic and Republican conventions in exchange for GM's ability to advertise the fact that its vehicles were the "official" vehicles of the respective conventions. The Commission concluded that GM's provision of 500 automobiles to the Democratic and Republican convention committees in exchange for advertising rights did not violate the prohibition against corporate contributions in connection with a Federal election, in 2 U.S.C. 441b(a). The Commission based its conclusion primarily on evidence that GM had a practice of providing complimentary use of automobiles to other, non-political conventions of similar size and duration in exchange for such advertising authority and on evidence that the value of GM's donation was proportionate to the commercial return GM expected to receive during the life of the convention.

The rationale for allowing commercial vendors to provide items of *de minimis* value at little or no charge to convention attendees was explained in Advisory Opinion 1980–53, where the Commission considered whether it was permissible, under FECA and the Fund Act, for Kelly Services, Inc., to provide, at no charge, tote bags to persons attending the 1980 Democratic and Republican conventions. The Commission concluded that Kelly Services' provision of 9,200 tote bags to the Democratic convention and 7,600 tote bags to the Republican convention did not violate the prohibition against corporate contributions in connection with a Federal election, in 2 U.S.C. 441b, and did not count toward the national parties' expenditure limits, in 11 CFR 9008.7(a). The Commission based its conclusion on three factors: (1) The low cost of the tote bags ($2.12 each); (2) evidence that the tote bags were being provided solely for bona fide advertising purposes of a local business; and (3) evidence that the tote bags were provided in the ordinary course of Kelly Services' business.

While the provision of items for promotional consideration and items of *de minimis* value were permissible under FECA and the Fund Act, these provisions may contravene BCRA's prohibition on national party committee acceptance of non-Federal funds, 2 U.S.C. 441i(a)(1), by authorizing national party committees to receive and accept something of value not paid for with Federal funds. The Commission seeks comment on whether these practices, which were legally permissible in the past, are barred by BCRA. However, as explained above, the rules proposed in this NPRM contemplate that it is still appropriate for host committees and municipal funds to accept these corporate in-kind donations, provided such donations are in accordance with 11 CFR 9008.52 and 9008.53. Accordingly, the Commission is proposing to move the provisions of current 11 CFR 9008.9(b) and (c) (convention committees) to 11 CFR 9008.52(a) (host committees), with a conforming amendment to 11 CFR 9008.53(a) (municipal funds). The introductory text would no longer reference the provision of goods or services at no charge as that reference pertained to paragraphs (b) and (c).

Under this reorganization, current paragraph (d) of 11 CFR 9008.9, which states that the value of goods or services provided under this section do not count towards the national party's expenditure limit, would be retained as redesignated paragraph (b) of 11 CFR 9008.9, but would be limited to standard industry reductions and discounts provided pursuant to 11 CFR 9008.9(a). The definition of "commercial vendor" would continue to be that set out at 11 CFR 116.1(c):

Any person providing goods or services to a candidate or political committee whose usual and normal business involves the sale, rental, lease or provision of those goods or services.

G. Effect of BCRA on Private Events in the Convention City

Private events are often held in the city hosting a nominating convention during the convention. Corporations, labor organizations, and other groups can hold these events, which are frequently described as hospitality events, and often invite convention attendees including delegates, Federal candidates and officeholders, and party officials. These events are typically held in locations outside the convention venue, but often in close proximity to it. The temporal and geographic proximity of these events to nominating conventions has not previously subjected the events to regulation under FECA solely because of that proximity. Of course, FECA regulation could be triggered by such events if, for example, a Federal political committee holds a fundraising event. The Commission seeks comment on whether BCRA requires that private hospitality events held by corporations, labor unions, and other organizations in the convention city during the convention are subject to regulation and, if so, on what basis? Does it make any difference whether Federal candidates or officeholders or party officials or their agents (acting on their behalf) are invited to, appear, are recognized, or speak at such events?

V. Definition of "Municipal Fund"

Over time, host committees and municipal funds have come to play increasingly similar roles in convention funding. The Commission therefore seeks comment on whether these entities should be treated similarly under the Commission's rules. Under this approach, which is reflected in the proposed rules that follow, host committees and municipal funds would continue to be permitted to spend money for identical purposes. The rules would change, however, to make municipal funds subject to the same disclosure requirements that apply to host committees under 11 CFR 9008.51 and 9008.52. Current host committee disclosure rules would also be revised as described below and would apply to both host committees and municipal funds. More importantly, the Commission's description of "municipal funds" would be revised to remove provisions that operate as barriers to municipal funds raising money in conjunction with host committees.

While the Commission's rules define "host committee," *see* 11 CFR 9008.52(a), they do not currently define "municipal fund." The Commission is proposing to add the following definition, at new 11 CFR 9008.50(c): "A municipal fund is any separate fund or account of a government agency, municipality, or municipal corporation whose principal purpose is the encouragement of commerce in the municipality and whose receipt and use of funds is subject to control of officials of the State or local government." Under this definition, any organization operating under 11 CFR 9008.53 would be required to use a separate account for receipts and payments related to convention activities. Should the Commission adopt additional requirements for municipal fund status? Should municipal funds be limited to accounts subject to audit by State or local public agencies? Are there any other arrangements that would assure the funds received and disbursed by a municipal fund would be used for the promotion of the city and its commerce?

The proposed definition would eliminate the current provision in 11 CFR 9008.53(b)(1)(i) and (ii), requiring municipal funds to comply with two conditions: (1) The fund or account is not permitted to be restricted to use in connection with any particular convention; and (2) Donations to the fund or account must be unrestricted and shall not be solicited or designated for use in connection with any particular convention, event or activity. 11 CFR 9008.53(b)(1)(i) and (ii).

Host committees do not operate under similar limitations on fundraising. *See* 11 CFR 9008.52. These limitations complicate joint fundraising by a municipal fund and a host committee, and their utility has diminished as municipal funds have become functionally similar to host committees. Moreover, because hosting a national nominating convention is a significant undertaking even for large communities, organizations like municipal funds will necessarily devote substantial efforts toward their roles in hosting a convention. In these circumstances, little purpose is served by prohibiting municipal funds from engaging in fundraising devoted to a particular nominating convention or accepting donations accompanied by correspondence that refers to such a convention.

In the advisory opinions that formed the basis for this current rule, Advisory Opinions 1982–27 and 1983–29, the requesters assured the Commission that the undesignated nature of the donations received demonstrated the civic, not political, motives of the municipal funds and their donors. Subsequently, the Commission promulgated the regulation with these same restrictions on municipal funds in an effort to ensure that both the donations and use of the donations arose from civic, not political, motives. The Commission seeks comment on whether this requirement is unnecessary. A municipal fund's references to the political party that intends to hold its national nominating convention in the host city may not necessarily betray a partisan political motivation, and insisting on no such reference in the solicitation materials and in the responses from donors may serve little or no purpose.

Consequently, the Commission proposes deleting from its definition of municipal funds the requirements that the fund itself, solicitations for donations to the fund, and the donations to the fund not be restricted to a particular convention. The Commission also proposes to restructure the municipal fund regulation, 11 CFR 9008.53, to follow the structure of the host committee regulation, 11 CFR 9008.52, and to use the name by which these funds have come to be known, "municipal funds." Alternatively, the Commission also seeks comment on whether it should retain the current distinction between municipal funds and host committees. Under the alternative approach, should the Commission clarify the prohibitions of 11 CFR 9008.53, namely that a municipal fund may not be restricted or accept or solicit restricted donations? What standard should the Commission adopt for when a municipal fund is "restricted to use in connection with any particular convention" contrary to 11 CFR 9008.53(b)(1)(i)? Under what circumstances is it appropriate to conclude that donations or solicitations restricted or designated for use in connection with a particular convention contrary to 11 CFR 9008.53(b)(1)(ii)?

The Commission seeks comment on whether the examination and audit authority of the Commission outlined in 11 CFR 9008.54, which mandates audits of convention host committees without cause, has an adequate statutory basis under FECA. In promulgating the predecessor to the current 11 CFR 9008.54, the Commission explained that: "This section provides for an examination and audit of each host committee. Such committees are permitted to receive donations to defray convention expenses. It is hence necessary for the Commission to audit them in order to insure that those donations were properly raised and

spent." *Explanation and Justification for Presidential Election Campaign Fund and Federal Financing of Presidential Nominating Conventions*, 44 FR 63036, 63038 (Nov. 1, 1979). The Fund Act specifically authorizes the Commission "to conduct such examinations and audits (in addition to the examinations and audits required by section 9007(a)), . . . as it deems necessary to carry out the functions and duties imposed on it by this chapter." 26 U.S.C. 9009(b). In addition, as authority for this requirement, the Commission currently cites 2 U.S.C. 437, which includes the statutory provisions requiring host committee reporting; 2 U.S.C. 438(a)(8), the Commission's general regulation authority; 26 U.S.C. 9008, which provides for payments for presidential nominating conventions; and 26 U.S.C. 9009, which includes further regulation authority in addition to the provision cited above concerning audits additional to those required by 26 U.S.C. 9007.

Host committees are the only non-publicly funded committees that are subject to an automatic audit by the Commission. Convention committees are also subject to automatic audits under 11 CFR 9008.11 no later than December 31 of the year the convention was held and may, at any time, be subject to other examinations and audits as the Commission deems necessary. However, convention committees receive millions of dollars of public funds and the Commission's audit authority helps insure that those public funds are lawfully spent. The audit authority provided to the Commission under 11 CFR 9008.11 is also statutorily based in 26 U.S.C. 9008 and 9009.

The Commission seeks comment on whether the host committees should be subject to automatic audits under 11 CFR 9008.54.

While the Commission is proposing to treat host committees and municipal funds the same in most respects (*i.e.*, permitted expenses, registration and reporting requirements), it does not propose to audit municipal funds as it currently audits host committees. Under the current rules, host committees are subject to a Commission audit pursuant to 11 CFR 9008.54, while municipal funds are not routinely subject to a Commission audit. The Commission, however, has conducted financial transaction examinations of municipal fund accounts, and it expects to continue to do so in the appropriate circumstances. The Commission believes that the governmental controls over municipal funds obviate the need to subject municipal funds to a routine audit like host committees are subject to pursuant to 11 CFR 9008.54. Because municipal funds necessarily are separate accounts of a government agency or municipality, the municipal funds are subject to financial controls by the local authorities. Under these circumstances, the Commission does not believe routine audits are necessary. The Commission seeks comment on this approach and specifically whether the comity required between agencies of the Federal government and agencies at the State or local level counsels against routine audits of municipal funds.

The absence of routine audits should not be misconstrued to limit the Commission's authority to examine municipal fund transactions related to conventions. Because municipal funds provide substantial in-kind donations to publicly funded convention committees, the Commission's audit of convention committees under 11 CFR 9008.11 may require a detailed and thorough review of municipal fund transactions. Additionally, municipal funds are subject to Commission audit pursuant to 11 CFR 111.10.

Current 11 CFR 9008.50, entitled "Scope," sets out the scope of subpart B of part 9008, "Host Committees Representing a Convention City; Convention Expenditures by Government Agencies and Municipal Corporations." The Commission is proposing to change the title of this Subpart to "Host Committees and Municipal Funds Representing a Convention City." The title of 11 CFR 9008.50 would be changed to "Scope and Definitions," and the current provisions of this section would be revised with conforming changes and placed in new paragraph (a). The definition of "host committee" would be moved from 11 CFR 9008.52(a) to new 11 CFR 9008.50(b), and the new definition of "municipal fund" would appear at new 11 CFR 9008.50(c). Conforming changes using the newly defined term "municipal fund" would be made to 11 CFR 9008.8(b)(2) and 9008.12(b)(7).

VI. Permissible Expenditures by Convention Committees, Host Committees and Municipal Funds

Permissible expenditures by convention committees are currently set forth at 11 CFR 9008.7(a), while those by host committees and municipal funds are found at current 11 CFR 9008.52(c). *See also* 11 CFR 9008.53(b). As described above, these rules are intended to require convention committees to pay expenditures that are "political" in nature, while permitting host committees and municipal funds to pay commercially motivated expenses. The intent of the existing rules is for the convention committee to pay expenses incurred in connection with nominating its party's candidates, while the host committee and the municipal fund pay expenses incurred to make the convention city attractive to potential visitors and those seeking a site to hold future conventions or similar events. Some expenditures fit into both categories, which has caused confusion. Furthermore, the current rules do not state the types of expenditures that a host committee or municipal fund may *not* incur on behalf of a convention committee.

After the last several election cycles, some observers have raised questions about whether host committees and municipal funds continue to operate in the manner contemplated by the regulations. The Commission has encountered host committees and municipal funds that paid for expenses that the Commission determined were not for permissible host committee or municipal fund purposes. In an effort to provide additional guidance on the scope of expenses that may be paid by a host committee or municipal fund, the Commission noted that its "decisions regarding the audits of the 1996 convention and host committees serve to provide additional guidance for the 2000 election cycle." *Explanation and Justification for Public Financing of Presidential Primary and General Election Candidates*, 64 FR 49355, 49358 (Sept. 13, 1999). The Commission therefore seeks comment on whether donations to host committees and municipal funds should be considered to stem from political motivations, at least in part. If so, what changes to the Commission's rules should be made? Comment is also sought on whether the Commission should seek to limit the exception for host committee and municipal fund expenses to ensure that impermissible funds are not used in connection with the national nominating convention. If so, what measures should the Commission adopt? Is the total amount of expenses the appropriate measure, or should the Commission continue to focus on the purpose of the expenses?

Given the evolution in the operation of host committees and municipal funds, as well as the need to ensure, in light of BCRA, that a host committee or municipal fund's non-Federal funds are not used to provide facilities or services that constitute an impermissible contribution to convention committees, the Commission is proposing to reorganize the types of permissible expenses listed in current 11 CFR 9008.7(a)(4) and 9008.52(c). The current regulations provide a definition of "convention expenses" in 11 CFR 9008.7(a)(4), which explains that convention expenses "include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities." 11 CFR 9008.7(a)(4). The current regulation includes a non-exhaustive list of 13 examples of particular types of convention expenses. *See* 11 CFR 9008.7(a)(4)(i) to (xiii).

A. Revisions to Convention Expenses, 11 CFR 9008.7(a)(4).

The Commission is considering two alternatives for revising 11 CFR 9008.7(a)(4), both of which are set out in the regulatory text portion of this NPRM. The alternatives are intended to reach the same result as to what expenses may be paid by convention committees, host committees, and municipal funds. They differ as to the location of various provisions regarding permissible and impermissible expenses. Alternative A would involve removing the list of thirteen examples of particular types of convention expenses in 11 CFR 9008.7(a)(4). The Commission's experience with national nominating conventions indicates that, generally speaking, the public funds provided for conventions are carefully conserved, given the convention committees' limited resources. Thus, the Commission is considering, under Alternative A, whether the convention committees' use of funds can be adequately addressed with the general and generic definition of "convention expenses" in section 9008.7(a)(4). Additionally, using a broad and generic definition is consistent with the approach in the Commission's regulations concerning qualified campaign expenses for presidential primary and general elections. *See* 11 CFR 9002.11 (general election definition of qualified campaign expense); 11 CFR 9004.4 (general election use of payments); 11 CFR 9032.9 (primary election definition of qualified campaign expense); and 11 CFR 9034.4 (primary election use of contributions and matching payments).

Moreover, a number of the examples qualify as "convention expenses" in such an unambiguous way, the value of stating them as an example is questionable. For example, one states that "salaries and expenses of convention committee employees * * * and similar personnel, whose responsibilities involve planning, management or otherwise conducting the convention." Could such expenses fail to meet the general definition of "convention expenses" in section 9008.7(a)(4) under any interpretation? A few of the examples impose some limitations that may not otherwise be obvious. Entertainment activity expenses is one such provision, 11 CFR 9008.7(a)(4)(viii). While provisions such as this one focus on preventing the convention committee from subsidizing other organizations, the Commission is considering whether the opposite arrangement is more frequently encountered. The Commission also seeks comment on two other particular provisions: 11 CFR 9008.7(a)(4)(iii) and (iv), which permit convention committees to reimburse national party committees for a portion of certain employees' compensation. Do convention committees typically make the arrangements contemplated by these provisions? Or do some employees temporarily leave the employ of the national party committees and become employees of the convention committees?

The Commission seeks comment on its proposed simplification of the definition of convention expenses under Alternative A. Particularly, are any of the thirteen examples necessary to include in the codified regulation? Are there any drawbacks to deleting the thirteen examples? Does the proposed definition of "convention expense" standing alone provide sufficient guidance?

Alternatively, the Commission seeks comment on whether it should refine the current list of examples. Under this alternative, the Commission would retain the general definition of "convention expenses" in 11 CFR 9008.7(a)(4). What changes should be made to the list of examples? Should any be deleted? Should other examples be added?

In contrast, Alternative B would retain the list of thirteen permissible convention expenses currently located in section 9008.7(a)(4), but move them to a new section, 11 CFR 9008.17. Under this alternative, new section 9008.17 would contain lists of permissible expenses for convention committees (paragraphs (a) and (b)), and host committees and municipal funds (paragraphs (b) and (c)). *See* proposed 11 CFR 9008.17. Paragraph (a) of section 9008.17 would define "convention expenses" generally in the same manner as it is currently defined in section 9008.7(a)(4). *See* proposed 11 CFR 9008.17(a). The thirteen specific permissible convention expenses that may be paid by convention committees currently listed in section 9008.7(a)(4) would be moved to new section 9008.17(a) and (b).

Please note that under Alternative B, section 9008.7(a)(4) would be revised to cross reference 11 CFR 9008.17(a) and (b). Alternative B's version of section 9008.7(a)(4) is not set out in the regulation text that follows. Neither alternative would amend the prohibited uses of a convention committee's public funds listed in 11 CFR 9008.7(b).

B. Substantive Changes to Permissible Host Committee and Municipal Fund Expenses.

The Commission also proposes under both alternatives to revise the list of permissible expense purposes for host committees and municipal funds listed in current 11 CFR 9008.52(c)(1). The proposed revised listed would appear in paragraph (b) of section 9008.52, and would be based substantially on the current list in section 9008.52(c)(1). However, the Commission proposes a number of changes intended to clarify and add specificity as to the range of permissible expenses.

The Commission proposes to combine current 11 CFR 9008.52(c)(1)(i) and (c)(1)(x) to state that host committees and municipal funds may pay expenses incurred for the purpose of promoting the suitability of the city as a convention site including those related to the selection committee's accommodations. *See* 11 CFR 9008.52(b)(1). The Commission seeks comment on this proposed revision, particularly whether the rule should be limited to such costs incurred prior to signing the site selection agreement.

The Commission proposes to narrow the focus of the provision concerning the use of an auditorium or convention center and construction-related services in current section 9008.52(c)(1)(v). *See* proposed 11 CFR 9008.52(b)(5). To that end, the revised purpose would contain a non-exhaustive list of permissible construction-related services and would make it clear that only construction-related services for the purpose of designing, creating, or installing the physical or technological infrastructure for the conduct of the convention are permissible. *Id.* It would also codify in the regulations some of the Commission's decisions made in connection with the 1996 conventions. Specifically, the Commission considered a number of television production expenses and determined that some were permissible host committee expenses and others were not. Many of the distinctions the Commission made were based on whether the particular expense was related to the infrastructure of the

convention center. Another of the Commission's decisions related to 1996 reflected in the proposed section 9008.52(b)(5) was to permit host committees to pay telephone charges incurred by the convention committee.

The proposal would narrow the rule in current section 9008.52(c)(1)(vi) allowing for the provision of local transportation services. Whereas the current section allows for the provision of local transportation services without restriction, the Commission proposes to narrow this purpose to the host committee to provide such services only if they are made available to convention delegates and other individuals attending the convention. *See* proposed 11 CFR 9008.52(b)(6).

The rule in current section 9008.52(c)(1)(vii) allowing for the provision of law enforcement services would be expanded. In light of heightened security concerns involving high-profile events attended by large numbers of people, such as presidential conventions, the Commission proposes to broaden this purpose to permit the provision of "security services" as well as law enforcement services. *See* proposed 11 CFR 9008.52(b)(7). The Commission also proposes to delete the current requirement that only law enforcement services "necessary to assure orderly conventions" may be provided, in recognition of the fact that maintenance of orderly conventions is only one of many legitimate security concerns. *Id.* To codify another of the Commission's decisions in connection with the 1996 conventions, tickets, badges, and passes would be specifically mentioned as part of permitted security.

The provision related to hotel rooms in current 11 CFR 9008.52(c)(1)(ix) would also be clarified. This would codify another of the Commission's 1996 decisions. The provision would be clarified to permit host committees and municipal funds to provide hotel rooms to convention committees for whatever rate the host committee paid for the rooms, including at no charge or at a reduced rate based on the number of other rooms rented. *See* proposed 11 CFR 9008.52(c)(9).

The Commission proposes to eliminate the final purpose of "other similar convention related facilities and services," in current section 9008.52(c)(1)(xi), which has created confusion and could be improperly read to include a broad array of expenses that is inconsistent with a specific list of permitted expenses. The Commission seeks comment on this change.

The Commission seeks comment on the proposed changes to the list of permissible host committee and municipal fund expense purposes. Specifically, does the proposed regulation provide sufficient guidance to inform convention committees, host committees, and municipal funds of what is permitted? Are other restrictions necessary to ensure that the permitted expenses are appropriate for host committees and municipal funds? Should other expense purposes be added to list? Are there any other aspects of the Commission's 1996 decisions that should be incorporated into the rules?

The Commission also proposes to add a new provision defining impermissible host committee and municipal fund expense purposes. This provision is proposed as paragraph (c) of section 9008.52 under Alternative A. It would include a general prohibition on providing anything of value to a convention committee, national political party committee, or any other political committee, except as expressly permitted under 11 CFR 9008.52(b)(1) and (5) through (8). *See* proposed 11 CFR 9008.52(c)(1). These purposes listed in paragraph (b) of proposed section 9008.52 are included in the exception because appropriate host committee and municipal fund expenses under these sections would involve the provision of something of value to the convention committee. The purposes listed in section 9008.52(b)(2) through (4) are not included in the exception because a host committee or municipal fund must not provide anything of value to the convention committee as it welcomes attendees to the convention city, facilitates commerce, or pays its own administrative expenses, which are the purposes listed in the cited provisions. The list of prohibited expense purposes includes another provision to prohibit the use of donations to host committee or municipal funds for expenses related to creating, producing, or directing the convention proceedings. *See* proposed 11 CFR 9008.52(c)(2). The proposal is intended to limit any of the permissible purposes so that if the expense would be prohibited by 11 CFR 9008.52(c)(2), then it would not be permitted even if it might also satisfy one of the permissible expense purposes in 11 CFR 9008.52(b). This proposal would codify one of the more significant of the Commission's decisions in connection with the 1996 conventions that the Commission cited as guidance in the 1999 rulemaking. *See Explanation and Justification for Public Financing of Presidential Primary and General Election Candidates*, 64 FR 49355, 49358 (Sept. 13, 1999). The Commission seeks comment on whether this proposal is sufficient to contain the non-Federal funds of host committees and municipal funds to uses consistent with the prohibitions and limitations imposed on the use of such funds by BCRA. Should additional expense purposes be added to the prohibited list? Do the listed prohibitions provide adequate guidance?

C. Regulatory Structure of Permissible Host Committee and Municipal Fund Expenses.

Again, the Commission is considering two alternatives that differ as to the location for the provisions regarding permissible host committee and municipal fund expenses. Both reflect the proposed substantive changes to the host committee and municipal fund permitted expenses described above in the section entitled "Substantive Changes to Permissible Host Committee and Municipal Fund Expenses." Alternative A would involve providing a revised list of permissible host committee/municipal fund expenses in paragraph (b) of section 9008.52. *See* proposed 11 CFR 9008.52. Alternative B would involve providing substantially the same revised list of permissible host committee and municipal fund expenses, but would locate them in paragraphs (b) and (c) of new section 9008.17, rather than in 11 CFR 9008.52(b). Paragraph (b) of new section 9008.17 would list expenses that may be paid by convention committees, host committees, or municipal funds and paragraph (c) of 9008.17 would list expenses that may be paid by host committees or municipal funds, but shall not be paid by convention committees. Finally, the new provisions expressly prohibiting certain expenses to host committees and municipal funds would appear in 11 CFR 9008.52(c) under Alternative A and in 11 CFR 9008.17(d) under Alternative B.

Please note that under Alternative B, 11 CFR 9008.52 and 9008.53 would be revised to cross reference to the appropriate provisions of the new section 9008.17; the Alternative B version of sections 9008.52 and 9008.53 is not set out in the proposed regulations that follow. The Commission seeks comment on the two different organization schemes for permissible host committee and municipal fund expenses.

VII. Definition of "Local" Businesses, Labor Organizations, Other Organizations, and Individuals

Commission regulations currently permit host committees and municipal funds to receive donations from local businesses, local labor organizations, and other local organizations or individuals who maintain a local residence or who work for a local business, local labor organization, or local organization. 11 CFR 9008.52(c)(1) and 9008.53(b)(1). Frequently, the Commission has been called upon to determine whether a particular individual, corporation, labor organization, or other organization qualifies as "local" within the meaning of 11 CFR 9008.52(c)(1) and 9009.53(b). These often entail difficult and seemingly arbitrary distinctions. For example, does the presence of a single employee working from a home-based office constitute a business's local office under section 9008.52 and section 9008.53?

Given the Commission's proposal to tighten the restrictions that prohibit host committees and municipal funds from paying expenses that have primarily a political, rather than commercial, purpose, the Commission is considering whether it remains necessary to focus on the source of host committee and municipal fund donations. Accordingly, the Commission proposes to delete the requirements in 11 CFR 9008.52(c)(1) (host committees) and 11 CFR 9008.53(b)(1) (municipal funds) that only "local" businesses, labor organizations, other organizations, and individuals may make donations to host committees and municipal funds. A conforming change would also be made to 11 CFR 9008.12(b)(7). Under the Commission's proposal, any business, labor organization, other organization, or individual, no matter where they are located, reside, or do business, would be permitted to make donations or in-kind contributions to host committees and municipal funds, provided those donations and in-kind contributions comply with the restrictions prescribed in the regulations. Regardless of what it does on the categories of expenses that host committees and municipal funds may pay for, should the Commission abolish the locality requirement with respect to donations to host committees and municipal funds? If the Commission adopted this proposal, would it make it more feasible for smaller and mid-size cities, whose corporate and business presence may not be as great as the nation's largest cities, to successfully stage a national convention? The Commission seeks public comment on this approach.

As an alternative to deleting these "local" requirements, the Commission is considering an alternative approach that would retain the requirement that only "local" businesses, labor organizations, and other organizations may make donations and in-kind contributions to host committees and municipal funds. Under this alternative, the Commission would clarify its 1999 amendment to these regulations. The accompanying Explanation and Justification explained that this language was intended to cover "individuals who work for a business's local office, or a labor organization's local office, or another organization's local office." *Explanation and Justification of Rules Governing Public Financing of Presidential Primary and General Election Candidates*, 64 FR 49355, 49358 (Sept. 13, 1999). However, the regulatory text did not require that the individuals work in the *local office* of the local organization; it only required that the individuals work for an organization that had a local office, which suggested that employees of a nationwide organization could donate to a host committee for any area where the organization maintained a facility. Thus, under this alternative, the Commission would revise the provision so that it would read "individuals * * * who work for the local office of a business, labor organization, or other organization." A third alternative approach the Commission is considering is to rely exclusively on an individual's residence to determine whether the individual is local, instead of looking to an individual's employment as well. The Commission seeks comment on each of these alternatives.

VIII. Host Committee and Municipal Fund Registration and Reporting Requirements

Under 11 CFR 9008.51(a)(1), host committees must register with the Commission within 10 days of the date on which the party chooses the convention city. Host committees must also report using FEC Form 4 to disclose all receipts and disbursements, including in-kind contributions, made with respect to a national nominating convention. 11 CFR 9008.51(b). The initial reports are not due until the earlier of 60 days after the convention or 20 days prior to the presidential general election. *Id.* Subsequent reports are due quarterly, on the fifteenth day after the end of the quarter. 11 CFR 9008.51(b)(2). A final host committee report is due ten days after it ceases reportable activity. 11 CFR 9008.51(b)(3). Municipal funds, in contrast, are required to file only one report, which is due on the same day as the initial host committee report. 11 CFR 9008.51(c). This report need list only categories of facilities and services provided for the convention for disbursements and the total amounts of general revenues and private donations received to defray the expenses. *Id.* This municipal fund reporting regime was intended to strike a balance between two competing concerns: ensuring adequate public disclosure, on the one hand, and avoiding the imposition of unduly burdensome requirements on municipalities and other governmental entities, on the other. *See Explanation and Justification for Regulations on Presidential Election Campaign Fund and Financing of Presidential Nominating Conventions*, 59 FR 33606, 33614 (June 29, 1994).

The Commission seeks comment on several proposed revisions to these registration and reporting requirements for host committees and municipal funds, as described below. First, the Commission's experience has been that not all host committees are established within the ten days of the date on which the party chooses the convention, which is the current registration deadline. Accordingly, the Commission is proposing to revise the registration deadline in 11 CFR 9008.51(a) to require registration within ten days of the date on which the party chooses the convention city or ten days after the host committee is formed, whichever occurs later. Revised paragraph (a) would require that such registration be made by filing a Statement of Organization on FEC Form 1. The Commission is proposing that municipal funds be similarly treated as host committees, so they would be required to register with the Commission within ten days of the date on which the party chooses the convention city or ten days after the municipal fund is formed, whichever occurs later. Alternatively, the Commission seeks comment on whether either of the host committee or municipal fund registration deadlines should be ten days after they first solicit or accept donations for convention activities, or make disbursements for this purpose.

Second, the Commission proposes to apply the same reporting requirements that currently apply to host committees to municipal funds. Currently, paragraph (b)(1) of 11 CFR 9008.51 requires host committees to file a post convention report with the Commission on FEC Form 4. This report must be filed either 60 days following the last day that the convention is officially in session or 20 days prior to the presidential general election, whichever date is earlier. Currently, paragraph (b)(1) does not, however, provide a date for the close of books for host

committees' post-convention reports. The Commission proposes to revise paragraph (b)(1) to establish this date as of 15 days prior to the date of filing. This timeframe is consistent with the timeframes employed for post-convention reports filed by convention committees, *see* 11 CFR 9008.3(b)(2)(ii), and the Commission believes it should also provide sufficient time for host committees and municipal funds to prepare their reports. The Commission seeks comment on this approach.

Under current paragraph (b)(2) of 11 CFR 9008.51, host committees are required to file quarterly reports if they continue to accept receipts or make disbursements after the completion date of the post convention report. Host committees must continue to file such reports until they cease all activity. 11 CFR 9008.51(b)(2).

By contrast, under current paragraph (c) of 11 CFR 9008.51, municipal funds are required to file a post convention letter only rather than a post convention report on FEC Form 4. The timeframe within which municipal funds have to file this letter is the same as the timeframe applicable to host committees' post convention reports. Unlike host committees, however, municipal funds are not required to continue filing information with the Commission regarding their post convention activities, even if they accept receipts or make disbursements after the completion date of the post convention letter.

Given that the Commission is proposing to permit municipal funds to accept donations and make disbursements on the same terms as host committees, the Commission believes that it is necessary to apply the same reporting requirements to municipal funds that currently apply to host committees. Moreover, the Commission proposes to require continuing reporting in order to ensure that the reported information is "complete" as required by 2 U.S.C. 437(1). Accordingly, the Commission proposes to change paragraph (b) of 11 CFR 9008.51 to make the same reporting requirements apply to municipal funds as apply to host committees. As a conforming amendment, the Commission proposes to delete paragraph (c) of 11 CFR 9008.51, which sets forth the current municipal fund reporting requirements. The Commission seeks public comment on this approach, particularly on the issue of whether continuing reports are required in FECA to ensure completeness or are inconsistent with FECA's reference to a singular financial statement. 2 U.S.C. 437.

The Commission also proposes to revise paragraph (b)(1) of 11 CFR 5008.51 to clarify that reports filed pursuant to the requirements of 2 U.S.C. 437 contain the information specified in part 104, notwithstanding part 104's references to 2 U.S.C. 434. Although host committees and municipal funds are required to report by 2 U.S.C. 437(1), and 11 CFR part 104 refers to 2 U.S.C. 434, the Commission believes that having the information presented in the same format as that of other required reports would greatly aid the public disclosure of this financial activity. The Commission also proposes to revise 11 CFR 107.2 to reflect the revisions made to the registration and reporting requirements for host committees and municipal funds.

Finally, the Commission is proposing that convention committees, host committees, and municipal funds be required to submit a copy of all agreements that any one of those organizations makes with the city, county or State hosting the convention or any of the other convention-related organizations. *See* new 11 CFR 9008.3(b)(ii) (convention committees) and new 11 CFR 9008.51(a)(3) (host committees/municipal funds). Under the Commission's proposal, any such agreements would be required to be submitted along with the first required report due after the execution of the agreement. *Id.* This would include subsequent agreements to a previous agreement. Host committees and municipal funds would not be required to submit agreements made with convention committees if such agreements were already submitted to the Commission by the convention committee. *See* new 11 CFR 9008.51(a)(3).

The Commission is also seeking comment on which form convention committees, host committees, and municipal funds should use to report to the Commission. Current regulations require convention committees and host committees to use FEC Form 4 when reporting to the Commission. *See* 11 CFR 9008.3(b)(2)(i) and 9008.51(b)(1). The proposed rules that follow would maintain this requirement, in addition to requiring that municipal funds also use FEC Form 4 under new 11 CFR 9008.51(b)(1). The Commission is also considering eliminating this form and requiring convention committees, host committees, and municipal funds to file FEC Form 3P instead. FEC Form 3P is for reports of receipts and disbursements by authorized committees of candidates for the Office of President or Vice President. Use of FEC Form 3P would require some adaptation for the convention scenarios. The Commission seeks comment on whether it should maintain its requirement of FEC Form 4, or if it should adopt FEC Form 3P for convention committees, host committees, and municipal funds.

IX. Convention Legal and Accounting Fund ("CLAF")

The Commission is proposing that convention committees be permitted to establish separate legal and accounting funds ("CLAF") to pay for the legal and accounting services related solely to compliance with the Federal Election Campaign Act and the Presidential Election Campaign Fund Act. *See* proposed 11 CFR 9008.8(b)(4)(ii)(B). Under this proposal, the funds raised by the CLAF would be required to be deposited in a separate account and would have to comply with the limitations and prohibitions of 11 CFR parts 110, 114 and 115. Contributions to the CLAF could not exceed $25,000 per person, and $15,000 per multi-candidate political committee in any calendar year.

If proposed section 9008.8(b)(4)(ii)(B) were adopted, the payment by the CLAF of compensation to any individual or entity for legal and accounting services to ensure compliance with the FECA and the Fund Act and rendered to or on behalf of the convention committee in connection with the presidential nominating convention or convention-related activities would not be considered an expenditure and would not count against the expenditure limitations of this section. The convention committee would report contributions received to pay for legal and accounting services on a separate Schedule A, and would report payments for legal and accounting services on a separate Schedule B.

The Commission notes that its current regulations permit convention committees some flexibility in this area. National party committees, under 11 CFR 9008.8(b)(4), may raise contributions for convention related legal and accounting costs subject to national party committee limits for individuals and multi-candidate committees and otherwise in compliance with 11 CFR parts 110, 114 and 115. Furthermore, the regulations do not require that a separate account be established for legal and accounting receipts and expenditures. The current regulations also exempt payments made for legal and accounting expenditures from the expenditure limitations of section 9008.8.

Nevertheless, the establishment of a separate convention legal and accounting fund would provide several beneficial aspects for the convention committee. The CLAF would have a separate contribution limit from the National committee's limit but subject to the same limitations and restrictions of the National committee. May the Commission permit contributors to make one contribution of the amount specified in 2 U.S.C. 441a(a)(1)(B) or 2 U.S.C. 441a(a)(2)(B) to the political committees established and maintained by the same national political party and a second contribution up to that same amount to a CLAF? May the Commission permit such committees to accept such contributions consistent with 2 U.S.C. 441a(f) and 441i(a)(1) and (2)? Contributions raised for the CLAF and spent for the convention related legal and accounting costs would free up convention grant funds to cover political activities rather than being used to pay lawyers and accountants. And finally, funds raised for the CLAF would help ensure that sufficient resources were available to the convention committee for legal and compliance obligations. The Commission seeks comment on all issues raised by this proposal.

X. Effective Date

The Commission invites comment on what the effective date should be for any regulations it adopts relating to financing of the national nominating conventions. Specifically, considering that efforts related to the 2004 conventions are underway, should any or all changes to the Commission's regulations not become effective until the 2008 conventions? If certain changes are required by BCRA, which became effective on November 5, 2002, does the Commission have the legal authority under the Administrative Procedures Act or otherwise to postpone the effective date until after the 2004 conventions have been held? Can the Commission have final regulations effective, but not enforce them until the 2008 conventions? If the Commission took either of these actions, would the Commission be essentially suspending BCRA as it applies to convention financing until 2008 and, if so, does the Commission have the power legally to do so? Alternatively, should any arrangements that were memorialized in a written contract by a convention committee, host committee or municipal fund prior to the effective date of the regulatory changes be subject to the regulations in effect at the contract's execution? For example, in September 1999, the Commission declined to modify existing regulations regarding the division of expenses between convention committees and host committees and stated it was doing so "given that the party committees have already entered into contractual agreements with the sites selected." *Explanation and Justification for Public Financing of Presidential Primary and General Election Candidates*, 64 FR 49355, 49358 (Sept. 13, 1999). If the Commission concludes that BCRA as a matter of law requires certain regulatory changes, and that therefore its existing regulations are no longer consistent with the statutory law, does the Commission nevertheless have the legal authority to decline to modify existing regulations or to postpone the effective date of new regulations? The Commission also seeks comments on alternative approaches to the effective date issue.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these proposals, which apply only to presidential candidates and their campaign committees. Presidential candidates, their committees and national party committees are not small entities. Most of these presidential campaigns receive full or partial funding from the Federal Government, and are subsequently audited by the Commission. The Commission reviews these rules every four years to reflect its experience in the previous presidential campaign. These rules propose no sweeping changes, and are largely intended to simplify this process. Many expand committee options; several are technical; and others codify past Commission practice. Those few proposals that might increase the cost of compliance by small entities would not do so in such an amount as to cause a significant economic impact.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 107

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 9003

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9008

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 9032

Campaign funds.

11 CFR Part 9033

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9034

Campaign funds.

11 CFR Part 9035

Campaign funds.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9038

Administrative practice and procedure, Campaign funds.

For the reasons set out in the preamble, it is proposed to amend Subchapters A, E and F of Chapter I of title 11 of the Code of Federal Regulations as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

1. The authority citation for Part 104 would continue to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, and 441a.

2. Section 104.5 would be amended by:

a. Revising paragraph (b)(1)(i)(C);
b. Revising paragraph (b)(1)(ii); and
c. Revising paragraph (b)(2).

Revisions are to read as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

* * * * *

(b) * * *
(1) * * *
(i) * * *

(C) In lieu of the monthly reports due in November and December, a pre-election report shall be filed as prescribed at paragraph (a)(2)(i) of this section, a post-general election report shall be filed as prescribed at paragraph (a)(2)(ii) of this section, and a year-end report shall be filed no later than January 31 of the following calendar year.

(ii) If on January 1 of the election year, the committee does not anticipate

receiving and has not received contributions aggregating $100,000 and does not anticipate making and has not made expenditures aggregating $100,000, the committee shall file a preelection report or reports, a post general election report and, quarterly reports, as prescribed in paragraphs (a)(1) and (2) of this section.

* * * * *

(2) *Non-election year reports.* During a non-election year, the treasurer shall file either monthly reports as prescribed by paragraph (b)(1)(i) of this section; or quarterly reports as prescribed by paragraph (a)(1) of this section. A principal campaign committee of a presidential candidate reporting under paragraph (b)(2) of this section may elect to change the frequency of its reporting from monthly to quarterly or vice versa during a non-election year only after notifying the Commission in writing of its intention at the time it files a required report under its current filing frequency. The committee will then be required to file the next required report under its new filing frequency. The committee may change its filing frequency no more than once per calendar year.

* * * * *

PART 107—PRESIDENTIAL NOMINATING CONVENTION, REGISTRATION AND REPORTS

3. The authority citation for part 107 would continue to read as follows:

Authority: 2 U.S.C. 437, 438(a)(8).

4. Section 107.2 would be revised to read as follows:

§ 107.2 Registration and reports by host committees and municipal funds.

Each host committee and municipal fund shall register and report in accordance with 11 CFR 9008.51. The reports shall contain the information specified in 11 CFR part 104.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

5. The authority citation for part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441k.

6. Section 110.2 would be amended by adding paragraph (l) to read as follows:

§ 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).

* * * * *

(l) *Expenditures for qualified campaign expenses of a Presidential candidate.* (1) For purposes of this paragraph (l), qualified campaign expense has the same meaning as 11 CFR 9034.10(a).

(2) If a multicandidate political committee makes an expenditure for any qualified campaign expense of a candidate for President, who is not accepting public funding under 11 CFR subchapter E or F, on or after January 1 of the year immediately following the last Presidential election year, the expenditure shall be:

(i) Deemed to be an in-kind contribution by that multicandidate political committee to the authorized committee of the candidate for President; and

(ii) Subject to the contribution limitations set forth in paragraph (b) of this section.

(3) Any expenditure described in paragraph (l)(2) of this section, when aggregated with other contributions to the same candidate for President, that exceed the contribution limitation in paragraph (b) of this section shall be deemed to be an excessive contribution.

PART 9003—ELIGIBILITY FOR PAYMENTS

7. The authority for part 9003 would continue to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

8. Section 9003.3 would be amended by:

a. Revising the introductory language in paragraph (a)(1)(i);

b. Revising paragraph (a)(1)(i)(C);

c. Revising paragraph (a)(1)(v);

d. Revising paragraph (a)(2)(i)(D);

e. Revising paragraph (a)(2)(i)(G);

f. Revising paragraph (a)(2)(i)(H);

g. Adding new paragraph (a)(2)(i)(I);

h. Revising paragraph (a)(2)(iii); and

i. Revising paragraph (a)(2)(iv).

Revisions and additions are to read as follows:

§ 9003.3 Allowable contributions; General election legal and accounting compliance fund.

(a) * * *

(1) * * *

(i) A major party candidate, or an individual who is seeking the nomination of a major party, may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A general election legal and accounting compliance fund ("GELAC") may be established by such individual prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States. Before June 1 of the calendar year in which a Presidential general election is held, contributions may only be deposited in the GELAC if they are made for the primary and exceed the contributor's contribution limits for the primary and are lawfully redesignated for the GELAC pursuant to 11 CFR 110.1.

* * * * *

(C) Contributions shall be deposited in the GELAC only if they are designated in writing for the GELAC, or transferred pursuant to paragraph (a)(1)(ii), (iii), (iv) or (v) of this section. Any contribution which otherwise could be matched pursuant to 11 CFR 9034.2 shall not be considered designated in writing for the GELAC unless the contributor specifically redesignates it for the GELAC , it is accompanied by a proper designation for the GELAC, or it meets the requirements of 11 CFR 110.1(b)(5)(ii)(B). Any contribution that is designated in writing or redesignated for the GELAC shall not be matched pursuant to 11 CFR 9034.2.

* * * * *

(v) Contributions made with respect to the primary election that exceed the contributor's limit for the primary election may be redesignated for the GELAC and transferred to the GELAC if the candidate redesignates the contribution for the GELAC in accordance with 11 CFR 110.1.

* * * * *

(2) * * *

(i) * * *

(D) To make repayments under 11 CFR 9007.2, 9038.2, or 9038.3;

* * * * *

(G) To make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of Federal funds, provided that the amounts so loaned are restored to the GELAC;

(H) To defray unreimbursed costs incurred in providing transportation and services for the Secret Service and national security staff pursuant to 11 CFR 9004.6; and

(I) To defray winding down expenses for legal and accounting compliance activities incurred after the end of the expenditure report period by either the candidate's primary election committee, general election committee, or both committees. For purposes of this section, 100% of salary, overhead and computer expenses incurred after the end of the expenditure report period shall be considered winding down expenses for legal and accounting compliance activities payable from GELAC funds, and will be presumed to be solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*

* * * * *

(iii) Amounts paid from the GELAC for the purposes permitted by paragraphs (a)(2)(i) (A) through (F), (H) and (I) of this section shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (*See also* 11 CFR 100.146.) When the proceeds of loans made in accordance with paragraph (a)(2)(i)(G) of this section are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

(iv) Contributions to and funds deposited in the GELAC may not be used to retire debts remaining from the presidential primaries, except that, after payment of all expenses set out in paragraph (a)(2)(i) of this section, and the completion of the audit and repayment process, including the making of all repayments owed to the United States Treasury by both the candidate's primary and general election committees, funds remaining in the GELAC may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR part 113, including payment of primary election debts.

* * * * *

9. Section 9003.5 would be amended by adding new paragraph (b)(4), to read as follows:

§ 9003.5 Documentation of disbursements.

* * * * *

(b) * * *

(4) The documentation requirements of 11 CFR 102.9(b) shall also apply to disbursements.

* * * * *

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

10. The authority citation for part 9004 would continue to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

11. Section 9004.4 would be amended by:

a. Revising the section heading;

b. Revising paragraph (a)(3);

c. Revising paragraph (a)(4) introductory text;

d. Removing paragraph (a)(4)(i);

e. Redesignating paragraph (a)(5) as paragraph (a)(6) and redesignating paragraph (a)(4)(ii) as paragraph (a)(5) and revising newly-designated (a)(5); and

f. Revising paragraph (b)(3).

Revisions, removals, and redesignations are to read as follows:

§ 9004.4 Use of payments; examples of qualified campaign expenses and non-qualified campaign expenses.

(a) * * *

(3) To restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period;

(4) To defray winding down costs pursuant to 11 CFR 9004.11; and

(5) To defray costs associated with the candidate's general election campaign paid after the end of the expenditure report period, but incurred by the candidate prior to the end of the expenditure report period, for which written arrangement or commitment was made on or before the close of the expenditure report period.

* * * * *

(b) * * *

(3) *Expenditures incurred after the close of the expenditure report period.* Except for accounts payable costs pursuant to paragraph (a)(5) of this section and winding down cost pursuant to 11 CFR 9004.11, any expenditures incurred after the close of the expenditure report period, as defined in 11 CFR 9002.12, are not qualified campaign expenses.

* * * * *

12. Section 9004.9 would be amended by revising paragraph (a)(4) to read as follows:

§ 9004.9 Net outstanding qualified campaign expenses.

(a) * * *

(4) The amount submitted as an estimate of necessary winding down costs under paragraph (a)(1)(iii) of this section shall be broken down by expense category and quarterly or monthly time period. This breakdown shall include estimated costs for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing and storage. The breakdown shall estimate the costs that will be incurred in each category from the time the statement is submitted until the expected end of the winding down period.

* * * * *

13. New section 9004.11 would be added, to read as follows:

§ 9004.11 Winding down costs.

(a) *Winding down costs. Winding down costs* are costs associated with the termination of the candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies. Winding down costs shall be considered qualified campaign expenses.

(b) *Winding down period.* The candidate may use public funds to pay for winding down costs only until the end of the winding down period. The winding down period begins on the day following the last day of the expenditure report period and continues until no earlier than:

(1) 30 days after the candidate's receipt of a Commission audit report that does not contain a repayment determination;

(2) 60 days after service of notice to the candidate of a Commission repayment determination if the candidate does not file a request for an administrative review of the repayment determination; or

(3) 30 days after service of notice to the candidate of the Commission's post-administrative review repayment determination or 30 days after service of notice of other final action concerning the administrative review.

(c) *Winding down limitation.* The total amount of winding down costs that may be paid for with public funds shall not exceed the lesser of:

(1) 2.5% of the expenditure limitation pursuant to 11 CFR 110.8(a)(2); or

(2) 2.5% of the total of:

(i) The candidate's expenditures subject to the expenditure limitation as of the end of the expenditure report period; plus

(ii) The candidate's expenses exempt from the expenditure limitation as of the end of the expenditure report period; except that

(iii) The winding down limitation shall be no less than $100,000.

(d) *Allocation of primary and general election winding down costs.* A candidate who runs in both the primary and general election may divide winding down expenses between his or her primary and general election committees using any allocation method, including payment of 100% of these expenses by the primary or general election committee.

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

14. The authority citation for Part 9008 would be revised to read as follows:

Authority: 2 U.S.C. 437, 438(a)(8), 441i; 26 U.S.C. 9008, 9009(b).

15. Section 9008.3 would be amended by redesignating paragraph (b)(1)(ii) as paragraph (b)(1)(iii) and adding new paragraph (b)(1)(ii), to read as follows:

§ 9008.3 Eligibility for payments; registration and reporting.

* * * * *

(b) * * *

(1) * * *

(ii) Each convention committee established by a national committee under paragraph (a)(2) of this section shall submit to the Commission a copy of any and all signed agreements that the convention committee has entered into with the city, county, or State hosting the convention, a host committee, or a municipal fund, including subsequent modifications to previous agreements. Each such agreement or modification shall be filed along with the first report due under paragraph (b)(2) of this section after the agreement or modification is executed.

* * * * *

16. In section 9008.7, paragraph (a)(4) would be revised to read as follows:

§ 9008.7 Use of funds.

(a) * * *

(4) "Convention expenses" include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities.

* * * * *

17. Section 9008.8 would be amended by revising the paragraph heading for paragraph (b)(2), revising paragraph (b)(2), and revising paragraph (b)(4)(ii)(B) to read as follows:

§ 9008.8 Limitation of expenditures.

* * * * *

(b) * * *

(2) *Expenditures by municipal funds.* Expenditures made by municipal funds shall not be considered expenditures by the national committee and shall not count against the expenditure limitations of this section if the funds are spent in accordance with the requirements of 11 CFR 9008.53.

* * * * *

(4) * * *

(ii) * * *

(B) The contributions raised by a Convention Legal and Accounting Fund to pay for legal and accounting services must comply with the limitations and prohibitions of 11 CFR parts 110, 114 and 115 and shall be deposited in a separate account. These contributions shall not exceed $25,000 per person, and $15,000 per multi-candidate political committee in any calendar year.

* * * * *

18. Section 9008.9 would be revised to read as follows:

§ 9008.9 Receipt of goods and services from commercial vendors.

(a) *Standard reductions or discounts.* A commercial vendor may sell, lease, rent or provide goods or services to the national committee with respect to a Presidential nominating convention at reduced or discounted rates, provided that it does so in the ordinary course of business. A reduction or discount shall be considered in the ordinary course of business if the commercial vendor has an established practice of providing the same reductions or discounts for the same amount of its goods or services to non-political clients, or if the reduction or discount is consistent with established practice in the commercial vendor's trade or industry. Examples of reductions or discounts made in the ordinary course of business include standard volume discounts and reduced rates for corporate, governmental or preferred customers. Reductions or discounts provided under this section need not be reported. For purposes of this section, *commercial vendor* has the same meaning as provided in 11 CFR 116.1(c).

(b) *Expenditure Limits.* The value of goods or services provided pursuant to this section will not count toward the national party's expenditure limitation under 11 CFR 9008.8(a).

19. Section 9008.10 would be amended by revising the introductory language to read as follows:

§ 9008.10 Documentation of disbursements; net outstanding convention expenses.

In addition to the requirements set forth at 11 CFR 102.9(b), the convention committee must include as part of the evidence of convention expenses the following documentation:

* * * * *

20. Section 9008.12 would be amended by revising paragraph (b)(7) to read as follows:

§ 9008.12 Repayments.

* * * * *

(b) * * *

(7) The Commission may seek repayment, or may initiate an enforcement action, if the convention committee knowingly helps, assists or participates in the making of a convention expenditure by the host committee or municipal fund that is not in accordance with 11 CFR 9008.52 or 9008.53, or the acceptance of a contribution by the host committee or municipal fund from an impermissible source.

* * * * *

21. Part 9008 would be amended by adding new § 9008.17, to read as follows:

§ 9008.17 Payment for Convention and Host Committee or Municipal Fund Expenses.

(a) *Convention expenses* include all expenses incurred by or on behalf of a political party's national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities. The following convention expenses may be paid by the convention committee, but shall not be paid by the host committee or municipal fund:

(1) Salaries and expenses of convention committee employees, volunteers and similar personnel, whose responsibilities involve planning, management or otherwise conducting the convention;

(2) Salary or portion of the salary of any national committee employee for any period of time during which, as a major responsibility, that employee performs services related to the convention;

(3) Expenses of national committee employees, volunteers or other similar personnel if those expenses were incurred in the performance of services for the convention in addition to the services normally rendered to the national committee by such personnel;

(4) Expenses for conducting meetings of or related to committees dealing with the conduct and operation of the convention, such as rules, credentials, platform, site, contests, call, arrangements and permanent organization committees, including printing materials and rental costs for meeting space;

(5) Expenses for entertainment activities which are part of the official convention activity sponsored by the national committee, including but not limited to dinners, concerts, and receptions; except that expenses for the following activities are excluded:

(i) Entertainment activities sponsored by or on behalf of candidates for nomination to the office of President or Vice President, or State delegations;

(ii) Entertainment activities sponsored by the national committee if the purpose of the activity is primarily for national committee business, such as fund-raising events, or selection of new national committee officers;

(iii) Entertainment activities sponsored by persons other than the national committee; and

(iv) Entertainment activities prohibited by law;

(6) Expenses for printing convention programs, a journal of proceedings, agendas, and other similar publications;

(7) Administrative and office expenses for conducting the convention, including stationery, office supplies, office machines, and telephone charges; but excluded from these expenses are the cost of any services supplied by the national committee at its headquarters or principal office if such services are incidental to the convention and not utilized primarily for the convention;

(8) Payment of the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses;

(9) Expenses for gifts or monetary bonuses for national committee or convention committee employees, volunteers and convention officials in recognition for convention-related activities or services, provided that the gifts and bonuses do not exceed $150 total per individual, and the total for all gifts and bonuses does not exceed $20,000;

(10) Expenses for producing biographical films, or similar materials, for use at the convention, about candidates for nomination or election to the office of President or Vice President, but any other political committee(s) that use part or all of the biographical films or materials shall pay the convention committee for the reasonably allocated cost of the biographical films or materials used; and

(11) To defray any expenses related to creating, producing, or directing convention proceedings, such as directors, producers, and writers.

(b) The following expenses may be paid by the convention committee, host committee, or municipal fund. Convention committees, host committees, and municipal funds may use donated funds and in-kind donations they have received for the following purposes:

(1) To defray those expenses incurred for the purpose of promoting or evaluating the suitability of the city as a convention site, including accommodations and hospitality for officials and employees of the convention and national party committees who are responsible for choosing the sites of the conventions;

(2) To provide the convention committee use of an auditorium or convention center and to provide construction and related services for that location to design, create, or install the physical or technological infrastructure for the conduct of the convention, such as: construction of podiums; press facilities; seating; lighting equipment; electrical systems; air conditioning systems; loudspeaker and other communication systems; computer networks; office facilities; office equipment; and other expenses for preparing, maintaining, or dismantling the physical site of the convention, including convention hall utilities;

(3) To defray the costs of various local transportation services that are widely available to convention delegates and other individuals attending the convention, including the provision of buses and automobiles;

(4) To defray the costs of law enforcement and other security services, facilities, and personnel, including tickets, badges, and passes;

(5) To defray the cost of using convention bureau personnel to provide central housing and reservation services; and

(6) To provide hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention.

(c) The following expenses may be paid by the host committee or municipal fund, but shall not be paid by the convention committee. Convention committees are also prohibited from using public funds as specified in 11 CFR 9008.7(b). Host committees and municipal funds may use donated funds and in-kind donations they have received for the following purposes:

(1) To defray those expenses incurred in facilitating commerce, such as providing the convention attendees with shopping and entertainment guides and distributing the samples and promotional material specified in 11 CFR 9008.52(a);

(2) To defray those expenses incurred for welcoming the convention attendees to the city, such as expenses for information booths, receptions, and tours; and

(3) To defray the host committee's administrative expenses incurred by the host committee, such as host committee employee compensation and expense reimbursement, host committee office rent, and host committee liability insurance.

(d) *Prohibited uses of donations received by host committees and municipal funds.* Host committees and municipal funds shall not use donated funds or in-kind donations in connection with a national nominating convention for the following purposes:

(1) To provide anything of value to a convention committee, a national political party committee, or any other political committee, except as expressly permitted by paragraphs (b) and (c) of this section; or

(2) To defray any expenses related to creating, producing, or directing convention proceedings, such as directors, producers, and writers.

22. The title of Subpart B of Part 9008 would be revised to read as follows:

Subpart B—Host Committees and Municipal Funds Representing a Convention City

23. Section 9008.50 would be revised to read as follows:

§ 9008.50 Scope and definitions.

(a) *Scope.* This subpart B governs registration and reporting by host committees and municipal funds representing convention cities. Unsuccessful efforts to attract a convention need not be reported by any city, committee or other organization. Subpart B also describes permissible sources of funds and other permissible donations to host committees and municipal funds. In addition, subpart B describes permissible disbursements by host committees and municipal funds to defray convention expenses and to promote the convention city and its commerce.

(b) *Definition of host committee.* A *host committee* includes any local organization, such as a local civil association, business league, chamber of commerce, real estate board, board of trade, or convention bureau that satisfies all of the following conditions:

(1) It is not organized for profit;

(2) Its net earnings do not inure to the benefit of any private shareholder or individual; and

(3) Its principal purpose is the encouragement of commerce in the convention city, as well as the projection of a favorable image of the city to convention attendees.

(c) *Definition of municipal fund.* A *municipal fund* is any separate fund or account of a government agency, municipality, or municipal corporation whose principal purpose is the encouragement of commerce in the municipality and whose receipt and use of funds is subject to control of officials of the State or local government.

24. Section 9008.51 would be amended by:

a. Revising the paragraph heading for paragraph (a);

b. Revising paragraph (a)(1);

c. Adding paragraph (a)(3);

d. Revising paragraph (b); and

e. Deleting paragraph (c).

The revisions, additions, and deletions are to read as follows:

§ 9008.51 Registration and reports.

(a) *Registration by host committees and municipal funds.*

(1) Each host committee and municipal fund shall register with the Commission by filing a *Statement of Organization* on FEC Form 1 within 10 days of the date on which such party chooses the convention city, or within 10 days after the formation of the host committee or municipal fund, whichever is later. In addition to the information already required to be provided on FEC Form 1, the following information shall be disclosed by the registering entity on FEC Form 1: The name and address; the name and address of its officers; and a list of the activities that the registering entity plans to undertake in connection with the convention.

* * * * *

(3) Each host committee and municipal fund required to register with the Commission under paragraph (a) of this section, shall submit to the Commission a copy of any and all signed agreements that they have entered into with the city, county, or State hosting the convention, a host committee, a municipal fund, or a convention committee, including subsequent modifications to previous agreements, unless such agreements or modifications have already been submitted to the Commission by the convention committee. Each such agreement or modification shall be filed along with the first report due under paragraph (b) of this section after the agreement or modification is executed.

(b) *Post-convention and quarterly reports by host committees and municipal funds; content and time of filing.* (1) Each host committee or municipal fund required to register with the Commission pursuant to paragraph (a) of this section shall file a post convention report on FEC Form 4. The report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. This report shall be complete as of 15 days prior to the date on which the report must be filed and shall disclose all the information required by 11 CFR part 104 with respect to all activities related to a presidential nominating convention.

(2) If such host committee or municipal fund has receipts or makes disbursements after the completion date of the post convention report, it shall begin to file quarterly reports no later than 15 days after the end of the following calendar quarter. This report shall disclose all transactions completed as of the close of that calendar quarter. Quarterly reports shall be filed thereafter until the host committee or municipal fund ceases all activity that must be reported under this section.

(3) Such host committee or municipal fund shall file a final report with the Commission not later than 10 days after it ceases activity that must be reported under this section, unless such status is reflected in either the post-convention report or a quarterly report.

Alternative to § 9008.17

25. Section 9008.52 would be revised to read as follows:

§ 9008.52 Receipts and disbursements of host committees.

(a) *Receipt of goods or services from commercial vendors.* (1) *Definition of "commercial vendor."* For purposes of this section, *commercial vendor* has the same meaning as provided in 11 CFR 116.1(c).

(2) *Standard reductions or discounts.* Commercial vendors may sell, lease, rent or provide their goods or services to the host committee at reduced or discounted rates, or at no charge, provided that they do so in the ordinary course of business. A reduction or discount shall be considered in the ordinary course of business if the commercial vendor has an established practice of providing the same reductions of discounts for the same amount of its goods or services to non-political clients, or if the reduction or discount is consistent with established practice in the commercial vendor's trade or industry. Examples of reductions or discounts made in the ordinary course of business include standard volume discounts and reduced rates for corporate, governmental or preferred customers. Reductions or discounts provided under this section need not be reported.

(3) *Items provided for promotional consideration.* (i) A commercial vendor may provide goods or services to a host committee in exchange for promotional consideration provided that doing so is in the ordinary course of business.

(ii) The provision of goods or services shall be considered in the ordinary course of business under this paragraph:

(A) If the commercial vendor has an established practice of providing goods or services on a similar scale and on similar terms to non-political clients, or

(B) If the terms and conditions under which the goods or services are provided are consistent with established practice in the commercial vendor's trade or industry in similar circumstances.

(iii) In all cases, the value of the goods or services provided shall not exceed the commercial benefit reasonably expected to be derived from the unique promotional opportunity presented by the national nominating convention.

(iv) The host committee shall maintain documentation showing: the goods or services provided; the date(s) on which the goods or services were provided; the terms and conditions of the arrangement; and what promotional consideration was provided. In addition, the host committee shall disclose in its report covering the period the goods or services are received in a memo entry, a description of the goods or services provided for promotional consideration, the name and address of the commercial vendor, and the dates on which the goods or services was provided (*e.g.*, "Generic Motor Co., Detroit, Michigan—ten automobiles for use 7/15–7/20, received on 7/14", or "Workers Inc., New York, New York—five temporary secretarial assistants to work 8/1–8/30, received on 8/1").

(4) *Items of de minimis value.* Commercial vendors (including banks) may sell at nominal cost, or provide at no charge, items of *de minimis* value, such as samples, discount coupons, maps, pens, pencils, or other items included in tote bags for those attending the convention. The items of *de minimis* value may be distributed by or with the help of persons employed by the commercial vendor, or employed by or volunteering for a host committee. The value of the items of *de minimis* value provided under this paragraph need not be reported.

(b) *Receipt of donations from businesses, organizations, and individuals.* Businesses (including banks), labor organizations, and other organizations or individuals may donate funds or make in-kind donations to a host committee to be used only for the following purposes:

(1) To defray those expenses incurred for the purpose of promoting the suitability of the city as a convention site, including accommodations and hospitality for officials and employees of the convention and national party committees who are responsible for choosing the sites of the conventions;

(2) To defray those expenses incurred in facilitating commerce, such as providing the convention attendees with shopping and entertainment guides and distributing the samples and promotional material specified in paragraph (a) of this section;

(3) To defray those expenses incurred for welcoming the convention attendees to the city, such as expenses for information booths, receptions, and tours;

(4) To defray the host committee's administrative expenses incurred by the host committee, such as host committee employee compensation and expense reimbursement, host committee office rent, and host committee liability insurance;

(5) To provide the convention committee use of an auditorium or convention center and to provide construction and related services for that location to design, create, or install the physical or technological infrastructure for the conduct of the convention, such as: construction of podiums; press facilities; seating; lighting equipment; electrical systems; air conditioning systems; loudspeaker and other communication systems; computer networks; office facilities; office equipment; and other expenses for preparing, maintaining, or dismantling the physical site of the convention, including convention hall utilities;

(6) To defray the costs of various local transportation services that are widely available to convention delegates and other individuals attending the convention, including the provision of buses and automobiles;

(7) To defray the costs of law enforcement and other security services, facilities, and personnel, including tickets, badges, and passes;

(8) To defray the cost of using convention bureau personnel to provide central housing and reservation services; and

(9) To provide hotel rooms for the rate paid by the host committee, including either at no charge or at a reduced rate on the basis of the number of rooms actually booked for the convention.

(c) *Prohibited uses of donations received by host committees.* Host committees shall not use donated funds or in-kind donations in connection with a national nominating convention for the following purposes:

(1) To provide anything of value to a convention committee, a national political party committee, or any other political committee, except as expressly permitted by paragraphs (b)(1) and (b)(5) through (8) of this section; or

(2) To defray any expenses related to creating, producing, or directing convention proceedings, such as directors, producers, and writers.

26. Section 9008.53 would be revised to read as follows:

§ 9008.53 Receipts and disbursements of municipal funds.

(a) *Receipt of goods and services provided by commercial vendors.* Municipal funds may accept goods or services from commercial vendors for convention uses under the same terms and conditions (including reporting requirements) set forth at 11 CFR 9008.52 for host committees.

(b) *Receipt and use of donations to a municipal fund.* Businesses (including banks), labor organizations, and other organizations or individuals may donate funds or make in-kind donations to a municipal fund to pay for expenses listed in 11 CFR 9008.52(b), provided that such funds or in-kind donations shall not be used for the expenses listed in 11 CFR 9008.52(c).

27. Section 9008.55 would be added to read as follows:

§ 9008.55 Solicitation of non-Federal funds for host committees and municipal funds.

(a) Host committee and municipal fund payments made in compliance with this part shall be deemed *disbursements in connection with a Federal election* for purposes of 11 CFR part 300.

(b) Host committees and municipal funds shall not be eligible to make the certification pursuant to 11 CFR 300.11(d).

(c) Host committees and municipal funds shall not be eligible for the exception in 11 CFR 300.65.

PART 9032—DEFINITIONS

28. The authority for part 9032 would continue to read as follows:

Authority: 26 U.S.C. 9032 and 9039(b).

29. Section 9032.9 would be amended by revising paragraph (c) to read as follows:

§ 9032.9 Qualified campaign expense.

* * * * *

(c) Except as provided in 11 CFR 9034.4(e), expenditures incurred either prior to the date the individual becomes a candidate or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a). Expenditures described under 11 CFR 9034.4(b) will not be considered qualified campaign expenses.

PART 9033—ELIGIBILITY FOR PAYMENTS

30. The authority citation for part 9033 would continue to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

31. Section 9033.11 would be amended by adding new paragraph (b)(4), to read as follows:

§ 9033.11 Documentation of disbursements.

* * * * *

(b) * * *

(4) The documentation requirements of 11 CFR 102.9(b) shall also apply to disbursements.

* * * * *

PART 9034—ENTITLEMENTS

32. The authority citation for Part 9034 would continue to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

33. Section 9034.4 would be amended by:

a. Revising the section heading;
b. Revising paragraph (a)(3)(i);
c. Revising paragraph (a)(3)(ii);
d. Removing paragraph (a)(3)(iii);
e. Adding paragraph (a)(6); and
f. Revising paragraph (b)(3).

Revisions and additions are to read as follows:

§ 9034.4 Use of contributions and matching payments; examples of qualified campaign expenses and non-qualified campaign expenses.

(a) * * *

(3) * * *

(i) Winding down costs subject to the restrictions in 11 CFR 9034.11 shall be considered qualified campaign expenses.

(ii) If the candidate continues to campaign after becoming ineligible due to the operation of 11 CFR 9033.5(b), the candidate may only receive matching funds based on net outstanding campaign obligations as of the candidate's date of ineligibility. The statement of net outstanding campaign obligations shall only include costs incurred before the candidate's date of ineligibility for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, and shall not include winding down costs until the date on which the candidate qualifies to receive winding down costs under 11 CFR 9034.11. Each contribution made, dated and received after the candidate's date of ineligibility may be used to continue to campaign, and may be submitted for matching fund payments. Payments from the matching payment account that are received after the candidate's date of ineligibility may be used to defray the candidate's net outstanding campaign obligations, but shall not be used to defray any costs associated with continuing to campaign unless the candidate reestablishes eligibility under 11 CFR 9033.8.

* * * * *

(6) Certain expenses incurred by ineligible candidates attending national nominating conventions.

(i) Expenses incurred by a candidate after the candidate's date of ineligibility to conduct a specific fundraising event at a national nominating convention needed to retire the candidate's net outstanding campaign obligations may be treated as qualified campaign expenses. The costs of the candidate's travel to attend such fundraising events, as well as the travel expenses of campaign staff who participate in the organization and administration of such events, may be treated as qualified campaign expenses. Travel costs consist of transportation, hotel or other lodging, and per diem subsistence for the candidate, the candidate's spouse, and campaign staff and volunteers who organize or administer the fundraising event. Expenses allocable to participation by the candidate or campaign staff in the national nominating convention, any other activities related to the convention, or any other activities conducted by the political party, other than such candidate fundraising events, are non-qualified campaign expenses. Expenses related to such a fundraising event may be treated as qualified campaign expenses only to the extent that, on the date of the fundraising event, the candidate has net outstanding campaign obligations pursuant to 11 CFR 9034.1(b).

(ii) Expenses incurred by a candidate after the candidate's date of ineligibility attributable to a meeting, reception, or other event at a national nominating convention to thank campaign employees, consultants and volunteers pursuant to paragraph (a)(5) of this section, may be treated as qualified campaign expenses so long as such a meeting, reception or event is restricted to attendees who served the candidate's primary campaign as employees, consultants, or volunteers. Travel expenses for the candidate to attend such events or for campaign staff who organize such events at the national nominating convention are not qualified campaign expenses.

(b) * * *

(3) *General election and post-ineligibility expenditures.* Except for continuing to campaign costs and winding down costs pursuant to paragraph (a)(3) of this section and certain convention expenses described in paragraph (a)(6) of this section, any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses. In addition, any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility, or for property, services, or facilities used to benefit the candidate's general election campaign, are not qualified campaign expenses.

* * * * *

34. Section 9034.5 would be amended by revising paragraph (b)(2) to read as follows:

§ 9034.5 Net outstanding campaign obligations.

* * * * *

(b) * * *

(2) The amount submitted as estimated necessary winding down costs under paragraph (a)(1) of this section shall be broken down by expense category and quarterly or monthly time period. This breakdown shall include estimated costs for office space rental, staff salaries, legal expenses, accounting expenses, office supplies, equipment rental, telephone expenses, postage and other mailing costs, printing and storage. The breakdown shall estimate the costs that will be incurred in each category from the time the statement is submitted until the expected end of the winding down period.

* * * * *

35. Section 9034.10 would be added to read as follows:

§ 9034.10 Expenditures for qualified campaign expenses by multicandidate political committees.

(a) *Definition.* For purposes of this section, qualified campaign expense means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred by, on behalf of, or for the benefit of a candidate or the candidate's authorized committee; and

(2) Made in connection with a candidate's campaign for nomination.

(3) Examples of a qualified campaign expense include, but are not limited to:

(i) Polling expenses;

(ii) Travel expenses;

(iii) Staff salaries; and

(iv) Office space expenses.

(b) If a multicandidate political committee makes an expenditure for any qualified campaign expense of a candidate on or after January 1 of the year immediately following the last Presidential election year, the expenditure shall be:

(1) Deemed to be an in-kind contribution by that multicandidate political committee to the authorized committee of the candidate and subject to the provision of 11 CFR 9035.1(a)(3)(iv);

(2) Subject to the contribution limitations set forth in 11 CFR 110.2(b);

(3) Included in the expenditures subject to the expenditure limitations in 11 CFR part 9035; and

(4) Subject to the provisions of 11 CFR 9038.1.

(c) Any expenditure described in paragraph (b) of this section, when aggregated with other contributions to the same candidate, that exceed the contribution limitation in 11 CFR 110.2(b) shall be deemed to be an excessive contribution.

36. New section 9034.11 would be added, to read as follows:

§ 9034.11 Winding down costs.

(a) *Winding down costs. Winding down costs* are costs associated with the termination of political activity related to a candidate's seeking his or her nomination for election, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies. Winding down costs shall be considered qualified campaign expenses.

(b) *Winding down period.* The candidate may use matching funds to pay for winding down costs only until the end of the winding down period. The *winding down period* begins on the day following the candidate's date of ineligibility for candidates who do not run in the general election, or on the day following the date 30 days after the general election for candidates who run in the general election, and continues until no earlier than:

(1) 30 days after the candidate's receipt of a Commission audit report that does not contain a repayment determination;

(2) 60 days after service of notice to the candidate of a Commission repayment determination if the candidate does not file a request for an administrative review of the repayment determination; or

(3) 30 days after service of notice to the candidate of the Commission's post-administrative review repayment determination or 30 days after service of notice of the Commission's determination that no repayment is owed.

(c) *Winding down limitation.* The total amount of winding down costs that may be paid for, in whole or part, with matching funds shall not exceed the lesser of:

(1) 5% of the overall expenditure limitation pursuant to 11 CFR 9035.1; or

(2) 5% of the total of:

(i) The candidate's expenditures subject to the overall expenditure limitation as of the candidate's date of ineligibility; plus

(ii) The candidate's expenses exempt from the expenditure limitations as of the candidate's date of ineligibility; except that

(iii) The winding down limitation shall be no less than $100,000.

(d) *Allocation of primary and general election winding down costs.* A candidate who runs in both the primary and general election may divide winding down expenses between his or her primary and general election committees using any allocation method, including payment of 100% of these expenses by the primary or general election committee.

(e) *Primary winding down costs during the general election period.* A primary election candidate who does not run in the general election may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination or after the date of the party's nominating convention, if he or she has not withdrawn before the convention. A primary election candidate who runs in the general election, regardless of whether the candidate receives public funds for the general election, must wait until 31 days after the general election before using any matching funds for winding down costs related to the primary election. No expenses incurred by a primary election candidate who runs in the general election prior to 31 days after the general election shall be considered primary winding down costs.

PART 9035—EXPENDITURE LIMITATIONS

37. The authority citation for Part 9035 would continue to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

38. Section 9035.1 would be amended by:

a. Adding new paragraph (a)(3);

b. Adding new paragraph (a)(4);

c. Revising the paragraph heading in paragraph (c);

d. Revising paragraph (c)(1); and

e. Adding new paragraph (c)(3).

Additions and revisions are to read as follows:

§ 9035.1 Campaign expenditure limitation; compliance and fundraising exemptions.

(a) * * *

(3) In addition to expenditures made by a candidate or the candidate's authorized committee(s) using campaign funds, the Commission will attribute to the candidate's overall expenditure limitation and to the expenditure limitations of particular states under 11 CFR 110.8 the total amount of all:

(i) Coordinated expenditures under 11 CFR 109.20;

(ii) Coordinated communications under 11 CFR 109.21 that are in-kind contributions received or accepted by the candidate, the candidate's authorized committee(s), or agents, under 11 CFR 109.21(b);

(iii) Coordinated party expenditures, including party coordinated communications pursuant to 11 CFR 109.37 that are in-kind contributions received or accepted by the candidate, the candidate's authorized committee(s), or agents under 11 CFR 109.37(a)(3), and that exceed the coordinated party expenditure limitation for the presidential general election at 11 CFR 109.32(a); and

(iv) Other in-kind contributions received or accepted by the candidate or the candidate's authorized committee(s) or agents.

(4) The amount of each in-kind contribution attributed to the expenditure limitations under this section is the usual and normal charge for the goods or services provided to the candidate or the candidate's authorized committee(s) as an in-kind contribution.

* * * * *

(c) *Compliance, fundraising and shortfall exemptions.*

(1) A candidate may exclude from the overall expenditure limitation set forth in paragraph (a) of this section an amount equal to 15% of the overall expenditure limitation as exempt legal and accounting compliance costs under 11 CFR 100.146. In the case of a candidate who does not run in the general election, for purposes of the expenditure limitations set forth in this section, 100% of salary, overhead and computer expenses incurred after a candidate's date of ineligibility may be treated as exempt legal and accounting compliance expenses beginning with the first full reporting period after the candidate's date of ineligibility. Candidates who continue to campaign or re-establish eligibility may not treat 100% of salary, overhead and computer expenses incurred during the period between the date of ineligibility and the date on which the candidate either re-establishes eligibility or ceases to continue to campaign as exempt legal and accounting compliance expenses. For purposes of the expenditure limitations set forth in this section, candidates who run in the general election, regardless of whether they receive public funds, must wait until the day following the date 30 days after the general election before they may treat 100% of salary, overhead and computer expenses as exempt legal and accounting compliance expenses.

* * * * *

(3) A candidate may exclude from the overall expenditure limitation of this section 5% of the amount of any matching funds to which the candidate was entitled that were not paid to the candidate, or were paid on a date subsequent to the date on which payment of such matching funds was due to the candidate, because of a shortfall in the matching payment account.

* * * * *

PART 9036—REVIEW OF MATCHING FUND SUBMISSIONS AND CERTIFICATION OF PAYMENTS BY COMMISSION

39. The authority citation for Part 9036 would continue to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

40. Section 9036.1 would be amended by revising paragraph (b)(1)(ii) to read as follows:

§ 9036.1 Threshold submission.

* * * * *

(b) * * *

(1) * * *

(ii) The occupation and name of employer for individuals whose aggregate contributions exceed $200 in an election cycle;

* * * * *

41. Section 9036.2 would be amended revising paragraph (b)(1)(v) to read as follows:

§ 9036.2 Additional submissions for matching fund payments.

* * * * *

(b) * * *

(1) * * *

(v) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed $200 in the election cycle, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432(c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

* * * * *

PART 9038—EXAMINATIONS AND AUDITS

42. The authority citation for Part 9038 would continue to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

43. Section 9038.1 would be amended by revising paragraph (a)(2) to read as follows:

§ 9038.1 Audit.

(a) * * *

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter, including examinations and audits of multicandidate political committees operating under 11 CFR 9034.10.

* * * * *

44. Section 9038.2 would be amended by:

a. Revising paragraph (b)(2)(ii)(A);

b. Revising the introductory text of paragraph (b)(2)(iii); and

c. Revising paragraph (b)(4).

Revisions are to read as follows:

§ 9038.2 Repayments.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) Determinations that a candidate, a candidate's authorized committee(s) or agents have made expenditures in excess of the limitations set forth in 11 CFR part 9035, by either making disbursements that are expenditures or by receiving or accepting in-kind contributions that are subject to the expenditure limitations pursuant to 11 CFR 9035.1(a)(3);

* * * * *

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to: the candidate's total deposits, as of 90 days after the candidate's date of ineligibility plus the usual and normal charge for all goods or services provided as in-kind contributions. For the purposes of this paragraph (b)(2)(iii)—

* * * * *

(4) The Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus. The Commission may determine that the net income derived from an investment or other use of surplus public funds after the candidate's date of ineligibility, less Federal, State and local taxes paid on such income, shall be paid to the Treasury.

* * * * *

Dated: April 7, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–8761 Filed 4–14–03; 8:45 am]

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Federal Register

Tuesday,
April 15, 2003

Part V

Department of Homeland Security

6 CFR Part 29

Procedures for Handling Critical Infrastructure Information; Proposed Rule

DEPARTMENT OF HOMELAND SECURITY

6 CFR Part 29

RIN 1601–AA14

Procedures for Handling Critical Infrastructure Information

AGENCY: Office of the Secretary, Homeland Security.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice of proposed rulemaking establishes for Federal agencies the uniform procedures to implement Section 214 of the Homeland Security Act of 2002 regarding the receipt, care, and storage of Critical Infrastructure Information (CII) voluntarily submitted to the Federal Government. The protection of critical infrastructure reduces the vulnerability of the United States to acts of terrorism.

DATES: Written comments on this notice of proposed rulemaking may be submitted to the Department of Homeland Security on or before June 16, 2003.

ADDRESSES: Submit written comments (preferably an original and three copies) to Associate General Counsel (General Law), Department of Homeland Security, Washington, DC 20528. Electronic comments may be submitted to *cii.regcomments@DHS.gov*.

FOR FURTHER INFORMATION CONTACT: Frank Nolan, (202) 282–8495, not a toll free call.

SUPPLEMENTARY INFORMATION:

I. Background

On November 25, 2002, the President signed into law the Homeland Security Act (Pub. L. 107–296), which created the new Department of Homeland Security (DHS) and established its responsibilities. Pursuant to the provisions of the Act, the Department came into existence on January 24, 2003.

The responsibilities of the Department include the taking of action to prevent terrorist attacks within the United States and to reduce the vulnerability of the United States to acts of terrorism. The reduction of that vulnerability includes the protection of vital physical or computer-based systems and assets, collectively referred to as "critical infrastructure," the incapacitation or destruction of which would have a debilitating impact on national security, national economic security, national public health or safety, or any combination of these matters. The Department of Homeland Security recognizes the importance of receiving information from those with direct knowledge on the security of that critical infrastructure in order to reduce the vulnerability of this critical infrastructure to acts of terrorism.

The Department recognizes that its receipt of information pertaining to the security of critical infrastructure, much of which is not customarily within the public domain, is best encouraged through the assurance that such information will be utilized for securing the United States and will not be disseminated to the general public. Accordingly, section 214 of the Homeland Security Act, subtitle B of Title 2, which is referenced as the Critical Infrastructure Information Act of 2002 ("CII Act"), provides for the establishment of a critical infrastructure protection program that protects from disclosure to the general public any critical infrastructure information which the public may voluntarily provide to the Department.

Although the Homeland Security Act establishes a working definition of critical infrastructure information, the Department relies upon the discretion of the submitter as to whether the volunteered information meets the definition of critical infrastructure information. These procedures establish how critical infrastructure information volunteered by the public will be protected pursuant to section 214 of the Homeland Security Act.

II. Notice of Proposed Rulemaking

This notice of proposed rulemaking establishes the procedures for protecting critical infrastructure information which are referenced in section 214(e) of the CII Act of 2002.

This regulation establishes uniform procedures for the receipt, care, and storage of Critical Infrastructure Information (CII) voluntarily provided to the Federal Government by the public. These procedures apply to all Federal agencies that receive, care for, or store CII that is voluntarily submitted to the Federal Government pursuant to the CII Act of 2002. 6 U.S.C. 130, *et seq.* In addition, these procedures apply to United States Government contractors, to Foreign, State, and local governments, and to government authorities, pursuant to their express agreements.

III. Procedural Requirements

In recognition of the importance of these procedures, the Department is providing this notice of proposed rulemaking of uniform procedures for the receipt, care, and storage of voluntarily submitted CII. As these procedures will affect Federal, State, and local governments and entities, the Department recognizes the importance of providing the opportunity for comment upon these procedures by both the government and private sector.

Executive Order 12866

It has been determined that this rulemaking is a significant regulatory action for purposes of section 3(f)(4) of Executive Order 12866. This rulemaking is, however, not considered an economically significant regulatory action for the purposes of Executive Order 12866. This rulemaking has been reviewed and approved by the Office of Management and Budget.

Regulatory Flexibility Act Certification

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply.

Paperwork Reduction Act of 1995

OMB does not consider nonspecific or nondirective reporting—such as the information requested in the rule—that the respondent wishes to provide on a specific topic without further specification being sought to be subject to the Paperwork Reduction Act.

List of Subjects in 6 CFR Part 29

Classified information, Confidential business information, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth above, 6 CFR is proposed to be amended by adding part 29 to read as follows:

PART 29—CRITICAL INFRASTRUCTURE INFORMATION

Sec.

29.1 Purpose and scope.
29.2 Definitions.
29.3 Effect of provisions.
29.4 Critical Infrastructure Information Program administration.
29.5 Authority to receive Critical Infrastructure Information.
29.6 Acknowledgment, validation, and marking of receipt.
29.7 Safeguarding of protected Critical Infrastructure Information.
29.8 Disclosure of information.
29.9 Investigation and reporting of violation of CII procedures.

Authority: Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*); 5 U.S.C. 301.

§ 29.1 Purpose and Scope.

(a) *Purpose.* This part implements Section 214 of Title II, Subtitle B, of the Homeland Security Act of 2002 through the establishment of uniform procedures for the receipt, care, and storage of Critical Infrastructure Information (CII) voluntarily submitted to the Federal Government. Title II, Subtitle B, of the Homeland Security Act is referred to herein as the CII Act of 2002. It is Department of Homeland Security (DHS) policy to encourage the voluntary submission of CII by protecting that information from unauthorized disclosure to the fullest extent permitted by law. As required by the CII Act of 2002, the procedures established herein include mechanisms regarding:

(1) The acknowledgement of receipt by a Federal agency of critical infrastructure information voluntarily submitted to the Federal Government;

(2) The maintenance of the identification of critical infrastructure information voluntarily submitted to the Federal Government for purposes of and subject to the provisions of the CII Act of 2002;

(3) The receipt, care, storage, and proper marking of the information as Protected CII;

(4) The protection and maintenance of the confidentiality of such information that permits the sharing of such information within the Federal Government and with Foreign, State, and local governments; and

(5) The issuance of notices and warnings related to the protection of critical infrastructure and protected systems in such a manner to protect from public disclosure the identity of the submitting person or entity, as well as information that is proprietary, business-sensitive, relates specifically to the submitting person or entity, and/or is not appropriately in the public domain.

(b) *Scope.* These procedures apply to all Federal agencies that receive, care for, or store CII voluntarily submitted to the Federal Government pursuant to the CII Act of 2002. In addition, these procedures apply to United States Government contractors, to Foreign, State, and local governments, and government authorities, pursuant to their express agreements.

§ 29.2 Definitions.

For purposes of this part:

(a) *Critical Infrastructure* has the same definition as described in section 2 of the Homeland Security Act of 2002, and means systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination thereof.

(b) *Critical Infrastructure Information or CII* means information not customarily in the public domain and related to the security of critical infrastructure or protected systems. CII consists of records or information concerning:

(1) Actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms the interstate commerce of the United States, or threatens public health or safety;

(2) The ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(3) Any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(c) *Critical Infrastructure Information Program or "CII Program"* means the maintenance, management, and review of these procedures and of the information provided to DHS in expectation of the protections provided by the CII Act of 2002.

(d) *Information Sharing and Analysis Organization or ISAO* means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of:

(1) Gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems to ensure the availability, integrity, and reliability thereof;

(2) Communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of an interference, compromise, or an incapacitation problem related to critical infrastructure or protected systems; and

(3) Voluntarily disseminating critical infrastructure information to its members, Federal, State, and local governments, or any other entities that may be of assistance in carrying out the purposes specified in paragraphs (d)(1) and (d)(2) of this section.

(e) *Local Government* has the same meaning as established in section 2 of the Homeland Security Act of 2002, and means:

(1) A county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(2) An Indian tribe or authorized tribal organization, or in Alaska a Native village or Alaska Regional Native Corporation; and

(3) A rural community, unincorporated town or village, or other public entity.

(f) *Protected Critical Infrastructure Information or Protected CII* means CII (including the identity of the submitting person or entity) that is voluntarily submitted to DHS for its use regarding the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, when accompanied by an express statement as described in § 29.5 of this chapter. This information maintains its protected status unless the CII Program Manager renders a final decision that the information is not Protected CII.

(g) *Protected System* means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure and includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(h) *Purpose* has the meaning as described in section 214(a)(1) of the CII Act of 2002, and includes the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose.

(i) *Submission to DHS* as referenced in these procedures means any transmittal of CII from any entity to DHS. The CII may be provided to DHS either directly or indirectly via another Federal agency, which, upon receipt of the CII, will forward it to DHS.

(j) *Voluntary or Voluntarily*, when used in reference to any submission of

CII to DHS, means submitted in the absence of DHS's exercise of legal authority to compel access to or submission of such information; such submission may be accomplished by (*i.e.* come from) a single entity or an ISAO on behalf of itself or its members. The term does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings. In the case of any action brought under the securities laws—as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47)) the term "voluntary" does not include information or statements contained in any documents or materials filed, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(i)) with the Securities and Exchange Commission or with Federal banking regulators; and with respect to the submission of CII, it does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities.

§ 29.3 Effect of provisions.

(a) *Freedom of Information Act access and mandatory submissions of information.* The CII Act of 2002 and these procedures do not apply to or affect any requirement pertaining to information that must be submitted to a Federal agency or pertaining to the obligation of any Federal agency to disclose such information under the Freedom of Information Act. Similarly, the CII Act of 2002 and these procedures do not apply to any information that is submitted to a Federal agency pursuant to any legal requirement. The fact that a person or entity has voluntarily submitted information pursuant to the CII Act of 2002 does not constitute compliance with any requirement to submit that information or any other such information to a Federal agency under any other provision of law. Moreover, when information is required to be submitted to a Federal agency to satisfy a provision of law, it is not to be marked by the submitter, by DHS, or by any other party, as submitted or protected under the CII Act of 2002 or to be otherwise afforded the protections of the CII Act of 2002.

(b) *Freedom of Information Act disclosure exemptions.* Information that is separately exempt from disclosure under the Freedom of Information Act or applicable State or local law does not lose its separate exemption protection due to the applicability of these procedures or any failure to follow them.

(c) *Restriction on use of protected CII by regulatory and other federal agencies.* No Federal agency shall request, obtain, maintain, or use information protected under the CII Act of 2002 as a substitute for the exercise of its own legal authority to compel access to or submission of such information. Federal agencies shall not utilize CII for regulatory purposes without the written consent of the submitter.

(d) *Independently obtained information.* These procedures shall not be construed to limit or in any way affect the ability of a Federal, State, or local Government entity, agency, or authority, or any third party, under applicable law, to obtain information by means of a different law, regulation, rule, or other authority.

(e) *No private rights or privileges.* Nothing contained in these procedures is intended to confer any substantive or procedural right or privilege on any person or entity. Nothing in these procedures shall be construed to create a private right of action for enforcement of any provision of these procedures or a defense to noncompliance with any independently applicable legal obligation.

§ 29.4 Critical Infrastructure Information Program administration.

(a) *IAIP Directorate Program Management.* The Secretary of the Department of Homeland Security shall designate the Under Secretary of the Information Analysis Infrastructure Protection (IAIP) Directorate as the senior DHS official responsible for the direction and administration of the Critical Infrastructure Information Program.

(b) *Appointment of CII Program Manager.* The Under Secretary of IAIP shall:

(1) Appoint a CII Program Manager within the IAIP Directorate to direct and administer the CII Program;

(2) Commit necessary resources to the effective implementation of the CII Program; and

(3) Promulgate implementing directives and prepare training materials as necessary for the proper treatment of Protected CII.

(c) *Appointment of CII Officers.* The CII Program Manager shall establish procedures to ensure that any DHS component or other entity that works with Protected CII appoints one or more employees to serve as a CII Officer for the activity in order to provide proper management and oversight. Persons appointed to these positions shall be fully familiar with these procedures.

(d) *Responsibilities of a CII Officer.* The CII Officer shall:

(1) Oversee the storage and handling of Protected CII;

(2) Establish and maintain an ongoing self-inspection program, to include periodic review and assessment of the entity's storage, handling, and use of Protected CII;

(3) Establish additional procedures as necessary to prevent unauthorized access to Protected CII; and

(4) Ensure prompt and appropriate coordination with the CII Program Manager regarding any request, appeal, challenge, complaint, or suggestion arising out of the implementation of these procedures.

(e) *Critical Infrastructure Information Management System (CIIMS).* The CII Program Manager shall develop and use an electronic database, to be known as the "Critical Infrastructure Information Management System" (CIIMS), to record the receipt, acknowledgement, validation, storage, destruction, and disclosure of Protected CII. This compilation of CII shall be protected by the provisions of the CII Act of 2002.

§ 29.5 Authority to receive Critical Infrastructure Information.

(a) The Secretary of Homeland Security shall designate the DHS IAIP Directorate as the sole entity authorized to acknowledge and validate the receipt of Protected CII.

(b) CII shall receive the protections of section 214 of the CII Act of 2002 only when:

(1) Such information is voluntarily submitted either directly to the IAIP Directorate or indirectly to the DHS IAIP Directorate by submitting it to any Federal agency which then, pursuant to the submitter's express direction, forwards the information to the DHS IAIP Directorate;

(2) The information is submitted for use by DHS for the security of critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or other informational purposes, as evidenced below, and

(3) The information is accompanied by an express statement as follows:

(i) In the case of written information or records, through a written marking on the information or records substantially similar to the following: "This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002"; or

(ii) In the case of oral information, within fifteen (15) calendar days of the oral submission, through a written statement similar to the one above accompanied by a written or otherwise tangible version of the oral information initially provided.

(c) Information that is not submitted to the CII Program Manager, either directly by the submitter or indirectly through another Federal agency by request of the submitter, will not qualify for protection under the CII Act of 2002. Any Federal agency or DHS component, other than the IAIP Directorate, that receives information with a request for protection under the CII Act of 2002 shall forward the information to the CII Program Manager. Only the CII Program Manager, or the Program Manager's designee, is authorized to acknowledge and validate the receipt of Protected CII.

(d)(1) Federal agencies, or DHS components other than the IAIP Directorate, shall maintain information as protected by the provisions of the CII Act of 2002 only:

(i) When that information is provided to the agency or component by the CII Program Manager, or his designee, and is marked "Protected CII"; or

(ii) When the information is provided to the agency or component by the submitter pursuant to paragraph (b) of this section, that information is forwarded to the CII Program Manager pursuant to paragraph (c) of this section, and the CII Program Manager acknowledges and validates the information as "Protected CII" and authorizes the agency or component to mark the information as "Protected CII".

(2) The Federal agency or DHS component forwarding the information to the CII Program Manager may not disseminate, distribute, or make public the information until the CII Program Manager has notified the agency or component that the Program Manager has acknowledged and validated the information.

§ 29.6 Acknowledgment, validation, and marking of receipt.

(a) *Authorized official.* Only the CII Program Manager, or the Program Manager's designee, is authorized to acknowledge and validate the receipt of information as Protected CII.

(b) *Presumption of Protection.* All information submitted in accordance with the procedures set forth herein will be presumed to be treated as Protected CII from the time the information is received by a Federal agency or DHS component. The information shall remain protected unless and until the CII Program Manager renders a final decision that the information is not Protected CII.

(c) *Marking of information.* In addition to markings made by submitters of CII pursuant to § 29.5(b), all Protected CII shall be clearly identified through markings made by the CII Program Manager. The CII Program Manager shall mark CII materials as follows: "Protected Critical Infrastructure Information."

(d) *Acknowledgement of receipt of information.* The CII Program Manager, or the Program Manager's designee, shall acknowledge receipt of information submitted as Protected CII, and in so doing shall:

(1) Contact the submitter, by the means specified in § 29.7(e), within thirty (30) days of receipt;

(2) Maintain a database including date of receipt, name of submitter, description of information, and date and manner of acknowledgment; and

(1) At a minimum, provide the submitter with a unique tracking number whenever the information is provided to the CII Program Manager electronically by submission through an internet-enabled DHS on-line incident reporting form.

(e) *Validation of information.* (1) The CII Program Manager shall be responsible for reviewing all submissions that request protection under the CII Act of 2002. The Program Manager shall review the submitted information to validate the satisfaction of the definition of CII as established by law. In making this initial validation determination, the Program Manager shall give deference to the submitter's expectation that the information qualifies for protection. However, if the Program Manager makes an initial determination that some or all of the information submitted does not meet the requirements for protection under the CII Act of 2002, the CII Program Manager shall:

(i) Notify the submitter of the initial determination that the information is not considered to be Protected CII. This notification also shall:

(A) Request that the submitter further explain the nature of the information and the submitter's basis for believing the information qualifies for protection under the CII Act of 2002;

(B) Advise the submitter that the CII Program Manager will review any further information provided before rendering a final determination;

(C) Notify the submitter that any response to the notification must be received by the CII Program Manager no later than thirty (30) days after the date of the notification; and

(D) Request the submitter to state whether, in the event the CII Program Manager makes a final determination that any such information is not Protected CII, the submitter prefers that the information be maintained without the protections of the CII Act of 2002 or be disposed of in accordance with the Federal Records Act.

(ii) If the CII Program Manager makes a final determination that the information is not Protected CII, the Program Manager, per the submitter's stated preference, shall either maintain the information without the protections of the CII Act of 2002 or dispose of it in accordance with the Federal Records Act. If the submitter, however, cannot be notified or the submitter's response is not received within thirty (30) days after the submitter received the notification, the Program Manager shall destroy the information in accordance with the Federal Records Act unless the Program Manager determines that there is a need to retain it for law enforcement and/or national security reasons.

(2) [Reserved]

(f) In the event the CII Program Manager determines that any information is not submitted in good faith accordance with the CII Act of 2002 and these procedures, the Program Manager is not required to notify the submitter that the information does not qualify as Protected CII. This is the only exception to the notice requirement of these procedures.

(g) *Changing the status of CII to Non-CII.* Only the CII Program Manager or the Program Manager's designee may change the status of Protected CII to non-Protected CII and remove its Protected CII markings.

§ 29.7 Safeguarding of protected Critical Infrastructure Information.

(a) All persons granted access to Protected CII are responsible for safeguarding all such information in their possession or control. Protected CII shall be protected at all times either by appropriate storage or having it under the personal observation and control of a person authorized by the CII Officer to receive it. Each person who works with Protected CII is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it.

(b) *Use and storage.* During working hours, reasonable steps shall be taken to minimize the risk of access to Protected CII by unauthorized personnel. After working hours, Protected CII shall be stored in a secure container, such as a locked desk or file cabinet, or in a facility where Government or Government-contract security is provided.

(c) *Reproduction.* A document or material containing Protected CII may

be reproduced to the minimum extent necessary consistent with the need to carry out official duties, provided that the reproduced material is marked and protected in the same manner as the original material.

(d) *Disposal of information.* Material containing Protected CII shall be disposed of by any method that prevents unauthorized retrieval.

(e) *Transmission of information.* Protected CII shall be transmitted only by U.S. first class, express, certified, or registered mail, or through secure electronic means.

(f) Automated Information Systems that contain CII shall comply with the requirements of the Federal Information Security Management Act of 2002, 44 U.S.C. 3531–3538, implementing policy, and Office of Management and Budget Circular No. A–130, Appendix III.

§ 29.8 Disclosure of information.

(a) *Authorization of access.* The Under Secretary of IAIP, or his or her designee, may choose to provide or authorize access to Protected CII when it is determined that this access supports a lawful and authorized Government purpose as enumerated in the CII Act of 2002, other law, regulation, or legal authority.

(b) *Federal, State and Local Government access.* The CII Program Manager may provide Protected CII to an employee of the Federal Government, or of a State or local government, provided that such information is shared for purposes of securing the critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, reconstitution, or for another informational purpose relating to homeland security. Protected CII may be made available to a State or local government entity only pursuant to its express agreement with the Program Manager that acknowledges the understanding and responsibilities of the recipient.

(c) *Disclosure of information to Federal contractors.* Disclosure of Protected CII to Federal contractors may be made after a CII Officer certifies that the contractor is performing services in support of the purposes of DHS. The contractor shall safeguard Protected CII in accordance with these procedures. Contractors shall not further disclose Protected CII to any of their components, employees, or other contractors (including subcontractors) without the prior written approval of a CII Officer unless such disclosure is expressly authorized in writing by the submitter.

(d) *Further use or disclosure of information by State and Local governments.* (1) State and local governments receiving information marked "Protected Critical Infrastructure Information" shall not disclose that information to any other party, or remove any CII markings, without first obtaining authorization from the CII Program Manager, who shall be responsible for requesting and obtaining written consent for any such State or local government disclosure from the person or entity that submitted the information.

(2) The CII Program Manager may not authorize State and local governments to further disclose or distribute the information to another party unless the Program Manager first obtains the written consent of the person or entity submitting the information.

(3) State and local governments may use Protected CII only for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act.

(e) *Disclosure of information to appropriate entities and the general public.* The IAIP Directorate may provide advisories, alerts, and warnings to relevant companies, targeted sectors, other government entities, or the general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the IAIP Directorate shall protect from disclosure the source of any voluntarily submitted CII that forms the basis for the warning; and any information that is proprietary, business-sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(f) *Access by Congress and whistleblower protection.* (1)(i) Pursuant to section 214(a)(1)(D) of the Homeland Security Act, Protected CII shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of the CII Act of 2002, except—

(A) In furtherance of an investigation or the prosecution of a criminal act; or

(B) When disclosure of the information is made—

(*1*) To either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof or subcommittee of any such joint committee; or

(*2*) To the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office.

(ii) If any disclosure is made pursuant to these exceptions, prior written authorization must be obtained, in consultation with the DHS Office of the General Counsel, from the DHS Secretary, DHS Deputy Secretary, Under Secretary for IAIP, the DHS Inspector General, or the CII Program Manager.

(2) Consistent with the authority to disclose information for any purpose described in § 29.2(h), disclosure of Protected CII may be made, without the written consent of the person or entity submitting such information, to the DHS Inspector General, or to any other employee designated by the Secretary of Homeland Security. Disclosure may be made by any officer or employee of the United States who reasonably believes that such information:

(i) Evidences an employee's or agency's conduct in violation of criminal law, or any other law, rule, or regulation, affecting or relating to the protection of the critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, or reconstitution; or

(ii) Evidences mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety affecting or relating to the protection of the critical infrastructure and protected systems, analysis, warning, interdependency study, recovery, or reconstitution.

(3) Disclosures of the above nature are authorized by law and therefore are not subject to penalty under section 214(f) of the Homeland Security Act of 2002.

(g) *Responding to requests made under the Freedom of Information Act or State/local information access laws.* (1) Protected CII shall be treated as exempt from disclosure under the Freedom of Information Act and, if provided by the CII Program Manager, or the Program Manager's designee, to a State or local government agency, entity or authority, or an employee or contractor thereof, shall not be made available pursuant to any State or local law requiring disclosure of records or information. Any Federal, State, or local government agency with questions regarding the protection of Protected CII from public disclosure shall contact the CII Program Manager, who may in turn consult with the DHS Office of the General Counsel.

(2) These procedures do not limit or otherwise affect the ability of a State or local government entity, agency, or authority to obtain information directly from the same person or entity voluntarily submitting information to DHS. Information independently obtained by a State or local government entity, agency, or authority is not subject to the CII Act of 2002's prohibition on making such information available pursuant to any State or local law requiring disclosure of records or information.

(h) *Ex parte communications with decision-making officials.* Pursuant to section 214(a)(1)(B) of the Homeland Security Act of 2002, Protected CII is not subject to "any agency rules or judicial doctrine regarding ex parte communications with a decision-making official."

(i) *Restriction on use of Critical Infrastructure Information in civil actions.* Protected CII shall not, without the written consent of the person or entity submitting such information, be used by any Federal, State, or local authority, or by any third party, in any civil action arising under Federal or State law if such information is submitted in good faith for homeland security purposes.

(j) *Disclosure to foreign governments.* The CII Program Manager, or the Program Manager's designee, may provide Protected CII to a Foreign Government without the written consent of the person or entity submitting such information to the same extent it may provide advisories, alerts, and warnings to other governmental entities as described in § 29.8(e) of this chapter, or in furtherance of an investigation or the prosecution of a criminal act.

(k) *Obtaining written consent for further disclosure from the person or entity submitting information.* Only the CII Program Manager, or the Program Manager's designee, may seek and obtain written consent from persons or entities submitting information when such consent is required under the CII Act of 2002 to permit disclosure. A person or entity's consent to additional disclosure, if conditioned both on a limited release of Protected CII for DHS's purposes and in a manner that offers reasonable protection against disclosure to the general public, shall not result in the information's loss of treatment as Protected CII.

§ 29.9 Investigation and reporting of violation of CII procedures.

(a) All persons authorized to have access to Protected CII shall report any possible violations of security procedures, the loss or misplacement of Protected CII, and any unauthorized disclosure of Protected CII immediately to the CII Program Manager, who shall in turn report the incident to the IAIP Directorate Security Officer and to the DHS Inspector General.

(b) *Review and investigation of written report.* The Inspector General, CII Program Manager, or IAIP Security Officer, shall investigate the incident and, in consultation with the Office of the General Counsel, determine whether a violation of procedures, loss of information, and/or unauthorized disclosure has occurred. If the investigation reveals any evidence of wrongdoing, DHS, through the Office of the General Counsel, shall immediately contact the Department of Justice, Criminal Division, for consideration of prosecution under the criminal penalty provisions of section 214(f) of the CII Act of 2002.

(c) *Notification to originator of Protected CII.* If the CII Program Manager or the IAIP Security Officer determines that an unauthorized disclosure occurred, or that Protected CII is missing, the CII Program Manager shall notify the submitter of the information in writing. The written notice shall contain a description of the incident and the date of disclosure, if known.

(d) *Criminal and administrative penalties:* Pursuant to section 214(f) of the Homeland Security Act of 2002, whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any CII protected from disclosure by the Homeland Security Act and coming to the officer or employee in the course of his or her employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under Title 18 of the United States Code, imprisoned not more than one (1) year, or both, and shall be removed from office or employment.

Dated: April 9, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–9126 Filed 4–14–03; 8:45 am]

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 82

[Docket No. 02–117–5]

Exotic Newcastle Disease; Additions to Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the exotic Newcastle disease regulations by quarantining El Paso and Hudspeth Counties, TX, and Dona Ana, Luna, and Otero Counties, NM, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread exotic Newcastle disease from the quarantined area. This action is necessary on an emergency basis to prevent the spread of exotic Newcastle disease from the quarantined area.

DATES: This interim rule was effective April 10, 2003. We will consider all comments that we receive on or before June 16, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–117–5, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–117–5. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–117–5" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Aida Boghossian, Senior Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

Exotic Newcastle disease (END) is a contagious and fatal viral disease affecting the respiratory, nervous, and digestive systems of birds and poultry. END is so virulent that many birds and poultry die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry.

The regulations in "Subpart A—Exotic Newcastle Disease (END)" (9 CFR 82.1 through 82.15, referred to below as the regulations) were established to prevent the spread of END in the United States in the event of an outbreak. In § 82.3, paragraph (a) provides that any area where birds or poultry infected with END are located will be designated as a quarantined area, and that a quarantined area is any geographical area, which may be a premises or all or part of a State, deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END. Less than an entire State will be designated as a quarantined area only if the State enforces restrictions on intrastate movements from the quarantined area that are at least as stringent as the regulations. The regulations prohibit or restrict the movement of birds, poultry, products, and materials that could spread END from quarantined areas. Areas quarantined because of END are listed in § 82.3, paragraph (c).

On October 1, 2002, END was confirmed in the State of California. The disease was confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption, and in commercial poultry.

In an interim rule effective on November 21, 2002, and published in the **Federal Register** on November 26, 2002 (67 FR 70674–70675, Docket No. 02–117–1), we amended the regulations in § 82.3(c) by quarantining Los Angeles County, CA, and portions of Riverside and San Bernardino Counties, CA, and restricting the interstate movement of birds, poultry, products, and materials that could spread END from the quarantined area.

In a second interim rule effective on January 7, 2003, and published in the **Federal Register** on January 13, 2003 (68 FR 1515–1517, Docket No. 02–117–2), we further amended § 82.3(c) by adding Imperial, Orange, San Diego, Santa Barbara, and Ventura Counties, CA, and the previously non-quarantined portions of Riverside and San Bernardino Counties, CA, to the list of quarantined areas. Because the Secretary of Agriculture signed a declaration of extraordinary emergency with respect to the END situation in California on January 6, 2003 (see 68 FR 1432, Docket No. 03–001–1, published January 10, 2003), that second interim rule also amended the regulations to provide that the prohibitions and restrictions that apply to the interstate movement of birds, poultry, products, and materials that could spread END will also apply to the intrastate movement of those articles in situations where the Secretary of Agriculture has issued a declaration of extraordinary emergency (new § 82.16).

On January 16, 2003, END was confirmed in backyard poultry on a premises in Las Vegas, NV. Therefore, in a third interim rule effective January 17, 2003, and published in the **Federal Register** on January 24, 2003 (68 FR 3375–3376, Docket No. 02–117–3), we amended § 82.3(c) by quarantining Clark County, NV, and a portion of Nye County, NV, and prohibiting or restricting the movement of birds, poultry, products, and materials that

could spread END from the quarantined area. On January 17, 2003, the Secretary of Agriculture signed a declaration of extraordinary emergency because of END in Nevada (see 68 FR 3507, Docket No. 03–001–2, published January 24, 2003).

On February 4, 2003, END was confirmed in backyard poultry on a premises in the Colorado River Indian Nation in Arizona. Therefore, in a fourth interim rule effective February 10, 2003, and published in the **Federal Register** on February 14, 2003 (68 FR 7412–7413, Docket No. 02–117–4), we amended § 82.3(c) by quarantining La Paz and Yuma Counties, AZ, and a portion of Mohave County, AZ, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. On February 7, 2003, the Secretary of Agriculture signed a declaration of extraordinary emergency because of END in Arizona (see 68 FR 7338, Docket No. 03–001–3, published February 13, 2003).

On April 9, 2003, END was confirmed in backyard poultry on a premises in El Paso County, TX. Therefore, in this interim rule, we are amending § 82.3(c) by designating El Paso and Hudspeth Counties, TX, and Dona Ana, Luna, and Otero Counties, NM, as a quarantined area and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. As provided for by the regulations in § 82.3(a), this quarantined area encompasses the area where poultry infected with END were located and a surrounding geographical area deemed by epidemiological evaluation to be sufficient to contain all birds or poultry known to be infected with or exposed to END.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the spread of END. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments that we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the regulations by quarantining El Paso and Hudspeth Counties, TX, and Dona Ana, Luna, and Otero Counties, NM, and prohibiting or restricting the movement of birds, poultry, products, and materials that could spread END from the quarantined area. This action is necessary on an emergency basis to prevent the spread of END from the quarantined area.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 82

Animal diseases, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, 9 CFR part 82 is amended as follows:

PART 82—EXOTIC NEWCASTLE DISEASE (END) AND CHLAMYDIOSIS; POULTRY DISEASE CAUSED BY SALMONELLA ENTERITIDIS SEROTYPE ENTERITIDIS

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

■ 2. In § 82.3, paragraph (c) is amended by adding, in alphabetical order, entries for New Mexico and Texas to read as follows:

§ 82.3 Quarantined areas.

* * * * *

(c) * * *

* * * * *

New Mexico

Dona Ana County. The entire county.
Luna County. The entire county.
Otero County. The entire county.

Texas

El Paso County. The entire county.
Hudspeth County. The entire county.

Done in Washington, DC, this 10th day of April 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–9322 Filed 4–15–03; 8:45 am]

BILLING CODE 3410–34–P

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AC05

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Capital Adequacy

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or agency) amends its capital adequacy regulations to add a definition of total liabilities for the net collateral ratio calculation, limit the amount of term preferred stock that may count as total surplus, clarify the circumstances in which we may waive disclosure requirements for an issuance of equities by a Farm Credit System (FCS, Farm Credit or System) institution, and make several nonsubstantive technical changes. These amendments update, modify, and clarify certain capital requirements.

EFFECTIVE DATE: This regulation will become effective 30 days after publication in the **Federal Register** during which either or both houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:
Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479; TTY (703) 883–4434;
or
Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our rule are to:

- Limit the effect of Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities* (SFAS 133), on the net collateral ratio;
- Ensure that Farm Credit institutions do not overly rely on term preferred stock to meet regulatory capital requirements;
- Explain how the FCA may include other debt or equity in the definition of permanent capital;
- Clarify the requirements for the FCA to consider waiving disclosure requirements for issuances of stock to more than a single sophisticated investor; and
- Make several nonsubstantive technical changes to our capital regulations.

II. Introduction

The FCA proposed amendments to the capital adequacy regulations on October 22, 2002. (*See* 67 FR 64833.) We now adopt the final amendments without changes from the proposed rule. The amendments will update, modify, and clarify certain capital requirements, as follows:

- Revisions to the net collateral ratio calculation will limit the effect of new accounting requirements for derivatives. This revision is in response to a petition we received in May 2001, from two System banks.
- There will be a limit on the amount of term preferred stock that can be counted in total surplus.
- Term preferred stock will be excluded from liabilities in the calculation of the net collateral ratio for System banks to the extent that the stock is counted as total surplus.
- We also clarify certain requirements and make additional technical corrections.

The amendments are more fully described in the section-by-section analysis below.

III. Comments

We received one comment letter on the proposed rule. The comment was submitted on behalf of two Farm Credit banks. The banks commended the agency for developing the proposed rule, stated their agreement with the objectives set out in the proposed rule, and expressed support for the rule "in its entirety."

IV. Section-by-Section Analysis

Section 615.5201(e)—Definition of Direct Lender Institution

We amend § 615.5201(e) by removing the phrase "loan of lease" and adding, in its place, the phrase "loan or lease" to correct a typographical error.

Section 615.5201(l)—Definition of Permanent Capital

We add a new paragraph (8) to the definition of permanent capital in § 615.5201(l). This amendment reflects a statutory change to section 4.3A of the Farm Credit Act of 1971, as amended, by the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 Act). The 1992 Act added section 4.3A(a)(1)(E), which includes in permanent capital any debt or equity instrument or other account that the FCA determines appropriate to be considered as permanent capital. The amendment states that we may include a debt or equity instrument or other account in permanent capital in whole or in part, and on a permanent or temporary basis. The language of this amendment is similar to language in existing § 615.5301(b)(1)(iv) and (i)(5), which states that we may include additional items in core or total surplus when we deem their inclusion to be appropriate. The inclusion of additional items gives institutions more flexibility in meeting their capital requirements.

Section 615.5250(c)(5)—Waiver of Disclosure Requirements

We amend § 615.5250(c)(5) to clarify the circumstances in which we may waive any or all of the disclosures we require institutions to make to potential investors in stock issuances. The existing waiver language was interpreted by some institutions to apply only when a single investor acquires all the equities of an entire class issued by an institution. Our revision clarifies that we may waive disclosure requirements when the following conditions are met: (1) Equities are sold only to sophisticated investors; (2) equities are sold in blocks of $100,000 or more; and (3) purchasers of equities agree that any subsequent sale or transfer must be in blocks of $100,000 or more. Any subsequent sale or transfer of equities that is less than $100,000 must receive our prior written approval.

We also correct the reference to paragraph (b) in existing paragraph (c)(5). The reference should have been to the disclosure requirements in paragraph (c)(1).

Section 615.5301(i)—Definition of Total Surplus

We add a new paragraph (4) to the definition of total surplus in § 615.5301(i) to limit the amount of term preferred stock that may be included in total surplus to 25 percent of permanent capital. Conforming changes are made to paragraph (3).

Our existing regulations have included term preferred stock in total surplus without limit. The final rule contains a limitation equal to 25 percent of permanent capital, to ensure that System institutions do not overly rely on this type of capital to meet regulatory capital requirements. This limitation is generally comparable to the treatment of intermediate-term preferred stock in the regulatory capital requirements for commercial banks. Commercial banks' Federal financial regulators exclude term preferred stock from Tier 1 capital and limit the amount of intermediate-term preferred stock that can count as Tier 2 capital to an amount equal to 50 percent of Tier 1 capital.[1] In addition, the amount a commercial bank may count as Tier 2 capital can be no greater than its Tier 1 capital. This means, in effect, that no more than 25 percent of a commercial bank's minimum total regulatory (Tier 1 + Tier 2) capital may consist of intermediate-term preferred stock.[2] We believe a similar limit to that imposed on commercial banks is also appropriate for System institutions and, therefore, impose a limitation on the total surplus ratio.

We note that the limitation will not prohibit System institutions from issuing preferred stock in excess of what may be counted as total surplus, but such excess amounts will not qualify as total surplus. The preferred stock will, however, be treated as permanent capital to the extent permitted in the permanent capital calculation.

[1] *See* 12 CFR Part 325, App. A (I.A.2(d)) (Federal Deposit Insurance Corporation); 12 CFR part 3, App. A (2(b)(4)) (Comptroller of the Currency); and 12 CFR part 208, App. A (II.A.2(iv)) (Board of Governors of the Federal Reserve System).

[2] This example assumes that a commercial bank has Tier 2 capital equal in amount to its Tier 1 capital.

New Section 615.5301(j)—Definition of Total Liabilities

We add a new § 615.5301(j) to define "total liabilities" for the purpose of calculating the net collateral ratio. This new definition limits the effect of the new accounting requirements for derivatives in SFAS 133, as promulgated by the Financial Accounting Standards Board. The net collateral ratio is a bank's net collateral, as defined in § 615.5301(c), divided by the bank's total liabilities. Section 615.5301(j)(1) specifies that total liabilities are valued in accordance with generally accepted accounting principles (GAAP), with the following exclusions for the effects of SFAS 133: (1) Adjustments to the carrying amount [3] of any liability that is designated as being hedged; and (2) any derivative recognized as a liability that is designated as a hedging instrument.

Prior to SFAS 133, GAAP allowed many derivative instruments to be treated by System banks as off-balance sheet items. However, with the adoption of SFAS 133, System banks must now recognize all derivative instruments at their fair value as either an asset or a liability on the balance sheet. If a derivative instrument qualifies as a designated hedge,[4] System banks may be required to adjust the carrying value of certain assets or liabilities.

As a result of SFAS 133, System banks that use derivatives may have to recognize an increase in the amount of total liabilities when calculating their net collateral ratios. These increases in total liabilities have resulted in lower net collateral ratios than what the banks would have had under the previous accounting requirements for derivative instruments.

Under SFAS 133, a System bank's total liabilities will often increase for a derivative instrument designated as hedged. This resulting increase in the bank's liabilities from a derivative instrument designated as a hedge has no offsetting equivalent increase in the collateral amount used in the computation of its net collateral ratio because of the way net collateral is defined in § 615.5301(c). Thus, a derivative instrument used by a bank to hedge against interest rate risk can often result in an unintended decline in the bank's net collateral ratio.

We believe a bank's net collateral ratio should not be negatively affected by derivative instruments appropriately used to hedge against interest rate risk or other types of market risks. Appropriate use of derivatives as hedges protects System banks against a true economic decline in their net collateral. Accordingly, our amendment excludes the effect of SFAS 133 on the calculation of the net collateral ratio for derivative instruments that qualify as hedges under SFAS 133.

Conversely, we believe derivative instruments that are not designated to hedge specific assets or liabilities do not provide adequate protections for interest rate or other market risks. Therefore, our definition of total liabilities *includes* derivative instruments that do not qualify as designated hedges.

Section 615.5301(j)(2) also excludes from total liabilities the amount of term preferred stock that is eligible to be counted as total surplus in the numerator of a bank's calculation of its total surplus ratio. In the absence of such exclusion, the existing rule could have required certain forms of term preferred stock to be considered liabilities. The exclusion eliminates the potential inconsistency of treating a particular balance sheet item as a liability for net collateral purposes but as capital for the total surplus ratio.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

■ For the reasons stated in the preamble, we amend part 615 of chapter VI, title 12 of the Code of Federal Regulations as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

■ 1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

Subpart H—Capital Adequacy

■ 2. Amend § 615.5201 as follows:

■ a. Remove the words "loan of lease" in paragraph (e) and add in their place, the words "loan or lease"; and

■ b. Add a new paragraph (l)(8).

§ 615.5201 Definitions.

(l) * * *

(8) Any other debt or equity instruments or other accounts the FCA has determined are appropriate to be considered permanent capital. The FCA may permit one or more institutions to include all or a portion of such instrument, entry, or account as permanent capital, permanently or on a temporary basis, for purposes of this part.

* * * * *

Subpart I—Issuance of Equities

■ 3. Amend § 615.5250 by revising paragraph (c)(5) to read as follows:

§ 615.5250 Disclosure requirements.

(c) * * *

(5) For a class of stock, the FCA may waive any or all of the disclosure requirements of paragraph (c)(1) of this section when each investor acquires at least $100,000 of the stock if the sophistication of the purchaser warrants, provided that subsequent transfers of the stock in amounts of less than $100,000 must receive the prior written approval of the FCA.

* * * * *

Subpart K—Surplus and Collateral Requirements

■ 4. Amend § 615.5301 as follows:

■ a. Redesignate paragraphs (i)(4) through (i)(7) as paragraphs (i)(5) through (i)(8);

■ b. Remove the reference "§ 615.5201(j)(4)(iv)" in paragraph (i)(2) and add in its place, the reference "§ 615.5201(l)(4)(iv)";

■ c. Revise paragraph (i)(3);

■ d. Add a new paragraph (i)(4); and

■ e. Add a new paragraph (j).

§ 615.5301 Definitions.

(i) * * *

(3) Common and perpetual preferred stock (other than allocated stock) that is not purchased or held as a condition of obtaining a loan, provided that the institution has no established plan or practice of retiring such stock;

(4) Term preferred stock that is not purchased or held as a condition of obtaining a loan, up to a maximum of 25 percent of the institution's permanent capital (as calculated after deductions required in the permanent capital ratio computation). The amount of includible term stock must be reduced by 20 percent (net of redemptions) at the beginning of each of the last 5 years of the term of the instrument;

* * * * *

(j) *Total liabilities* means liabilities valued in accordance with generally accepted accounting principles (GAAP), except that total liabilities shall exclude the following:

(1) As set forth in Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities*, as promulgated by the Financial Accounting Standards Board—

(i) Adjustments to the carrying amount of any liability designated as being hedged; and

(ii) Any derivative recognized as a liability that is designated as a hedging instrument.

(2) Term preferred stock to the extent such stock is included as total surplus in the computation of the bank's total surplus ratio pursuant to § 615.5301(i).

Dated: April 10, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–9320 Filed 4–15–03; 8:45 am]

BILLING CODE 6705–01–P

[3] GAAP defines the carrying amount of a liability as the face amount of a liability increased or decreased by any applicable accrued interest payable and any applicable unamortized premium, discount, finance charges, or issue costs.

[4] Under SFAS 133, derivative instruments designated as hedges routinely reduce an entity's exposure to changes in the fair value of an asset or liability (*i.e.*, fair value hedge) or changes in expected future cash flows (*i.e.*, cash flow hedge) attributable to a particular risk. For Farm Credit banks, derivative instruments are routinely used to reduce their exposure to (hedge against) changes in interest rates or other types of market risks.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–54–AD; Amendment 39–13111; AD 2003–07–15]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 Series Airplanes Modified by Supplemental Type Certificate ST01783AT–D

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 767–300 series airplanes modified by Supplemental Type Certificate ST01783AT–D, that requires modifying the in-flight entertainment (IFE) system and revising the airplane flight manual. The actions specified by this AD are intended to ensure that the flight crew is able to remove electrical power from the IFE system when necessary and is advised of appropriate procedures for such action. Inability to remove power from the IFE system during a non-normal or emergency situation could result in inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Effective May 21, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 21, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from TIMCO Engineered Systems, Inc., 623 Radar Road, Greensboro, North Carolina 27410. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Chupka, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6070; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 767–300 series airplanes modified by Supplemental Type Certificate ST01783AT–D was published in the **Federal Register** on January 3, 2003 (68 FR 308). That action proposed to require modifying the in-flight entertainment (IFE) system and revising the airplane flight manual.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 37 airplanes of the affected design in the worldwide fleet. The FAA estimates that 37 airplanes of U.S. registry will be affected by this AD.

It will take approximately 66 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification on U.S. operators is estimated to be $146,520, or $3,960 per airplane.

It will take approximately 1 work hour per airplane to accomplish the AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision on U.S. operators is estimated to be $2,220, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and

responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–07–15 Boeing: Amendment 39–13111. Docket 2002–NM–54–AD.

Applicability: Model 767–300 series airplanes modified by Supplemental Type Certificate (STC) ST01783AT–D, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is able to remove electrical power from the in-flight entertainment (IFE) system when necessary and is advised of appropriate procedures for such action, accomplish the following:

Modification and Airplane Flight Manual Revision

(a) Within 18 months after the effective date of this AD, accomplish paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the IFE system installed on the airplane by installing two new relays and a new circuit breaker, according to TIMCO Service Bulletin TSB–767–23–009, Revision IR, dated August 22, 2001.

(2) Revise the procedures under "Electrical Smoke or Fire" in the "Emergency Procedures" section of the airplane flight manual (AFM) to include TIMCO AFM Supplement TIM–AFM–01035, dated March 13, 2002. When the information in that AFM supplement has been incorporated into the FAA-approved general revisions of the AFM, the general revisions may be incorporated into the AFM, and the AFM supplement may be removed from the AFM.

Part Installation

(b) As of the effective date of this AD, no person may install an IFE system according to STC ST01783AT–D on any airplane, unless the IFE system is modified and the AFM is revised according to this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The modification shall be done in accordance with TIMCO Service Bulletin TSB–767–23–009, dated August 22, 2001; the AFM revision shall be done in accordance with TIMCO Airplane Flight Manual Supplement TIM–AFM–01035, dated March 13, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from TIMCO Engineered Systems, Inc., 623 Radar Road, Greensboro, North Carolina 27410. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on May 21, 2003.

Issued in Renton, Washington, on April 4, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8741 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–01–AD; Amendment 39–13118; AD 2003–08–07]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 222, 222B, 222U, and 230 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 222, 222B, 222U, and 230 helicopters. This action requires inspecting the main rotor pendulum weight support (pendulum weight support) for file or grinding marks, gouges, and appropriate edge breaks. It also requires, if necessary, reworking and remarking or replacing the pendulum weight support. Regardless, this AD requires a magnetic particle inspection for a crack and replacing the pendulum weight support if a crack is found. This amendment is prompted by a pendulum weight support failure and shedding of the pendulum weight set in flight and a subsequent determination of manufacturing defects on certain serial-numbered pendulum weight supports. This condition, if not corrected, could result in the pendulum weights separating from the pendulum weight support and striking the vertical fin or tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective May 1, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 1, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 16, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–01–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Charles Harrison, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5128, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: Transport Canada, which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 222, 222B, 222U, and 230 helicopters. Transport Canada advises that pendulum weight supports could have manufacturing discrepancies like file or grinding marks, gouges, or too small edge radius. This part, if not reworked and inspected or replaced, could fail in flight.

BHTC has issued the following alert service bulletins, all dated March 28, 2002:

- Bell Helicopter Textron (BHT) Alert Service Bulletin (ASB) 222–02–92 for Model 222 and 222B helicopters;
- BHT ASB 222U–02–63 for Model 222U helicopters; and
- BHT ASB 230–02–25 for Model 230 helicopters.

The ASBs specify inspecting the pendulum support weights and, if necessary, reworking and remarking or replacing the pendulum weight supports no later than the next scheduled 150 hours time-in-service (TIS) inspection, and prior to installation of spare supports. Transport Canada classified these ASBs as mandatory and issued AD CF–2002–33, dated July 4, 2002, to ensure the continued airworthiness of these helicopters in Canada. Transport Canada's AD requires accomplishing the actions within 50 hours TIS, as does this AD.

These helicopter models are manufactured in Canada and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, this AD is being issued to prevent the pendulum weights from separating and striking the vertical fin or tail rotor, and subsequent loss of control of the helicopter. This AD requires, within 50 hours TIS, inspecting each pendulum weight support, part number (P/N) 222–011–114–101 or "103, for file or grinding marks, gouges, and appropriate edge breaks. It also requires, if necessary, reworking and remarking or replacing the pendulum weight support. Regardless, this AD requires a magnetic particle inspection for a crack and replacing the pendulum weight support if a crack is found. The actions must be accomplished in accordance with the ASB's described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Therefore, inspecting each pendulum weight support for discrepancies, reworking and remarking or replacing each pendulum weight support, if necessary, and performing a magnetic particle inspection for a crack (and replacing the pendulum weight support if a crack is found) is required within 50 hours TIS, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 108 helicopters will be affected by this AD, that it will take approximately 10 work hours to accomplish the inspection, reworking and remarking or replacing the two pendulum weight supports, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,734 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $252,072, assuming that all helicopters in the fleet will require replacing two pendulum weight supports.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003–SW–01–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant

regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–08–07 Bell Helicopter Textron Canada: Amendment 39–13118. Docket No. 2003–SW–01–AD.

Applicability: Model 222 helicopters, serial numbers (S/N) 47006 through 47089; Model 222B helicopters, S/N 47131 through 47156; Model 222U helicopters, S/N 47501 through 47574; and Model 230 helicopters, S/N 23001 through 23038, with main rotor pendulum weight support (pendulum weight support), part number (P/N) 222–011–114–101 or –103, except for pendulum weight supports with a S/N having a prefix of "FN" and numbers 363 through 409, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 50 hours time-in-service, unless accomplished previously.

To prevent the main rotor pendulum weights (pendulum weights) from separating from the pendulum weight support and striking the vertical fin or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect the edges of each pendulum weight support, P/N 222–011–114–101 or –103, for an edge break of 0.02 to 0.04 inch radius or 0.02 to 0.04 inch × 45 degrees chamfer in accordance with the Accomplishment Instructions, paragraphs 1 through 3, in Bell Helicopter Textron (BHT) Alert Service Bulletin (ASB) 222–02–92 for Model 222 and 222B helicopters; BHT ASB 222U–02–63 for Model 222U helicopters; or BHT ASB 230–02–25 for Model 230 helicopters, all dated March 28, 2002.

(b) Inspect the edges of each pendulum weight support for file marks, grinding marks, or gouges, and to ensure that edge break machining/polishing marks are in the correct direction as shown in Figure 1 of each ASB cited in paragraph (a) of this AD.

(c) If the edge breaks do not meet the requirements in paragraphs (a) and (b) of this AD:

(1) Rework the edges in accordance with Figure 1 and the Accomplishment Instructions, paragraph 6, in the applicable ASB.

(2) Perform a magnetic particle inspection of the pendulum weight supports for a crack.

(3) Re-identify reworked pendulum weight supports in accordance with the Accomplishment Instructions, paragraphs 8 through 10, in the applicable ASB.

(d) If the edge breaks meet the requirements in paragraphs (a) and (b) of this AD, perform a magnetic particle inspection of the pendulum weight supports for a crack.

(e) If a crack is found in the pendulum weight support or the pendulum weight support cannot be reworked to meet the requirements of this AD, replace the pendulum weight support with an airworthy pendulum weight support before further flight.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(g) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(h) The inspections and rework and replacement, if necessary, shall be done in accordance with Bell Helicopter Textron Alert Service Bulletin 222–02–92, Bell Helicopter Textron Alert Service Bulletin 222U–02–63, or Bell Helicopter Textron Alert Service Bulletin 230–02–25, all dated March 28, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on May 1, 2003.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–2002–33, dated July 4, 2002.

Issued in Fort Worth, Texas, on April 7, 2003.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–9011 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 16, 141, 157

[Docket No. RM03–6–000]

Amendments To Conform Regulations With Order No. 630 (Critical Energy Infrastructure Information Final Rule)

April 9, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to revise its regulations requiring that companies make information directly available to the public under certain circumstances. The revisions are necessary to conform these regulations to Order No. 630, which established guidelines for the handling of Critical Energy Infrastructure Information (CEII). In order to restrict availability of information that could be used in a terrorist attack against the nation's energy infrastructure, Order No. 630 explained that the Commission believed CEII would be exempt from disclosure under the Freedom of Information Act (FOIA). The order set out a definition of CEII and established procedures for persons with a legitimate need for such information to follow in seeking access to it. Order No. 630 only covered information submitted to or prepared by the Commission. The revisions proposed in this rulemaking address instances in which the Commission's rules and regulations require companies to make information available directly to the public. Revisions will be necessary to ensure that protection of CEII is consistent in both contexts.

DATES: Comments are due May 16, 2003.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426.

FOR FURTHER INFORMATION CONTACT: Wilbur T. Miller, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8953.

SUPPLEMENTARY INFORMATION:

I. Introduction

1. In this Notice of Proposed Rulemaking (NOPR), the Commission proposes specific changes to its regulations that require companies to make certain information available directly to the public. The changes are necessary to reconcile those regulations with Order No. 630, which established standards and procedures for the handling of Critical Energy Infrastructure Information (CEII) submitted to or created by the Commission.[1] Because Order No. 630 addressed only situations in which a person might seek access to CEII that is in the Commission's possession, further changes to ensure consistent treatment and protection of CEII are needed where companies possess CEII and are required by the Commission's regulations to make it available to the public unconditionally.

2. The Commission is proposing to revise its regulations in several areas. These include 18 CFR part 4, which requires that applicants for hydropower licenses, permits and exemptions make various types of information available to the public. Another area proposed for revision is 18 CFR part 16, which requires that applicants for projects subject to sections 14 and 15 of the Federal Power Act[2] make specified information available to the public. A third area is 18 CFR 141.300, which establishes requirements for filing FERC Form No. 715, Annual Transmission Planning and Evaluation Report. The instructions to Form No. 715 in turn require that portions of the form be made available to the public by the public utility upon request. Finally, 18 CFR part 157 governs applications for certificates of public convenience and necessity, and for orders permitting and approving abandonment under section 7 of the Natural Gas Act. Several sections in part 157 require that certain information, some of which may be CEII, be made available by applicants to landowners or other members of the public.

A. Order No. 630

3. Order No. 630 arose from the Commission's concern that CEII could be employed by terrorists to engineer attacks against the nation's energy facilities. In the wake of the September 11, 2001, tragedy, the Commission removed from easy public access various categories of documents that might contain CEII.[3] The Commission issued a notice of inquiry[4] on January 16, 2002, followed by a NOPR[5] on September 5, 2002, seeking comments on the best procedures for protecting CEII. On February 21, 2003, the Commission issued a final rule in Order No. 630.[6]

4. In issuing the final rule, the Commission found that concerns for the safety of the public and the nation's energy systems compelled it to ensure that CEII is not readily available to the public.[7] The Commission had previously taken steps to remove various categories of documents that were likely to contain CEII from public availability through the Internet, the Federal Energy Regulatory Records Information System (FERRIS), and the Commission's public reference room.[8] Apart from reaffirming that decision, Order No. 630 stated the Commission's conclusion that, in light of the heightened appreciation for security concerns in the wake of the September 11 attack, information constituting CEII would be exempt from disclosure under one or more of the exemptions to FOIA.[9] The Commission emphasized that Order No. 630 did not constitute a determination of the applicability of any FOIA exemption to any specific situation, but rather reflected the Commission's understanding of the exemptions' applicability to CEII, an understanding that informed the Commission's choices in the rulemaking. FOIA requests still must be processed on an individual basis as required by statute.[10]

5. Order No. 630 defined CEII in § 388.113(c)(1) of the Commission's regulations as "information about proposed or existing critical infrastructure that":

(i) Relates to the production, generation, transportation, transmission, or distribution of energy;

(ii) Could be useful to a person in planning an attack on critical infrastructure;

(iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552; and

(iv) Does not simply give the location of the critical infrastructure.[11]

The order defined "critical infrastructure" in § 388.113(c)(2) of the Commission's regulations as:

existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters.[12]

6. Of particular concern to the Commission in defining CEII was location information. Such information is particularly relevant, for example, to participants in the National Environmental Policy Act (NEPA) process. Consequently, the Commission concluded that the following types of location information would not be considered CEII:

(1) USGS 7.5-minutes topographic maps showing the location of pipelines, dams, or other aboveground facilities; (2) alignment sheets showing the location of pipeline and aboveground facilities, right of way dimensions, and extra work areas; (3) drawings showing site or project boundaries, footprints, building locations and reservoir extent; and (4) general location maps.[13]

7. For submission of CEII to the Commission, Order No. 630 adopted a

[1] 68 FR 9857 (Mar. 3, 2003); III FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003).

[2] 16 U.S.C. 807–808.

[3] *See* 67 FR 3129 (Jan. 23, 2002), IV FERC Stats. & Regs. ¶35,542 (Jan. 16, 2002).

[4] *Id.*

[5] *See* 67 FR 57994 (Sept. 13, 2002), IV FERC Stats. & Regs. ¶ 32,564, (Sept. 5, 2002).

[6] *See* note 1.

[7] 68 FR 9857, at pp. 9858–59.

[8] *Id.* at p. 9858.

[9] 5 U.S.C. 552; *see* 68 FR 9857 at pp. 9859–61, 9871–73 (Appendix B).

[10] 68 FR 9857, at pp. 9859–60.

[11] *Id.* at p. 9870.

[12] *Id.*

[13] *Id.* at p. 9862. The Commission stated, however, that it would not place this information on the Internet. Id.

process that largely parallels the process for submission of confidential materials. The order revised section 388.112 of the Commission's regulations to provide that an entity submitting CEII to the Commission is responsible for identifying and marking CEII with the legend "Contains Critical Energy Infrastructure Information-Do Not Release." Information identified as CEII is placed in a nonpublic file, with the Commission retaining the right to make a determination whether CEII treatment has been properly claimed. The submitter is notified in the event any person or entity requests release of the CEII, and also prior to any release of the information being made.[14]

8. In reaching the conclusion that it could and should protect CEII, the Commission recognized that, in many instances, individuals and entities would have a legitimate need to obtain CEII. The Commission recognized, for instance, that interveners, landowners and other persons retained an interest in participating meaningfully in Commission proceedings. Order No. 630 also recognized other legitimate users of CEII, including state agencies and market participants seeking to develop new or expanded energy resources.[15]

9. In order to protect the legitimate interests of these and other users of CEII, Order No. 630 established the position of CEII Coordinator to consider requests for release of CEII. The order added § 375.313 to the Commission's regulations to delegate authority to that official to consider such requests, and also added § 388.113 to create procedures for requesting access to CEII.[16] A person desiring access to CEII must file a written request with the CEII Coordinator containing the following information:

> Requester's name, date and place of birth, title, address, and telephone number; the name, address, and telephone of the person or entity on whose behalf the information is requested; a detailed statement explaining the particular need for and intended use of the information; and a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested. Requesters are also requested to include their social security number for identification purposes.[17]

In determining whether to grant a request for CEII, the CEII Coordinator is required to balance the requester's need for the information against the information's sensitivity. In the event the request is granted, the CEII Coordinator is authorized to impose conditions upon the requester's use of the information, including the requirement that the requester sign a non-disclosure agreement. Determinations by the CEII Coordinator are subject to rehearing under section 385.713 of the Commission's regulations.[18]

B. CEII Made Available Directly to the Public

10. During the comment process, some commenters noted that the Commission requires companies to make certain information available directly to the public and that such information, if it contained CEII, would not be covered by the rulemaking that culminated in Order No. 630. The Commission agreed with the need to eliminate this inconsistent treatment and stated that it would address the matter in future modifications to its regulations.[19] The Commission has identified several such portions of its regulations.

1. Electric Transmission Provisions

11. One provision proposed for revision relates to FERC Form No. 715, the Annual Transmission Plan and Evaluation Report. The Commission's regulations, at 18 CFR 141.300, require the filing of Form No. 715. The form itself, in its instructions, states that "[r]espondents must also make available to the public, upon request, in hard copy, the above items (Parts 1–6 of Form No. 715), and, in electronic form, items 1, 2, 4, 5, and 6." Some of the information that Form No. 715 calls for may include CEII.[20] For example, part 2 requires "regional or subregional case base power flow data." Part 3 requires "transmission system maps and diagrams used by the Respondent for transmission planning." Part 4 requires detailed transmission planning reliability critieria. Part 5 requires transmission planning assessment practices.

2. Natural Gas Provisions

12. Another instance is the Commission's regulations governing applications for certificates of public convenience and necessity and for orders permitting abandonment. Under § 157.10(b), copies of applications, supplements and amendments under part 157 of the Commission's regulations, including exhibits required by §§ 157.14, 157.16 and 157.18, must be supplied on request to interveners.[21] Complete copies of the filings must be made available in central locations in each county throughout the project area.[22] The required exhibits include material that might be CEII, such as flow diagrams and related data,[23] and total gas supply data.[24] In addition to § 157.10, §§ 157.6(d), 157.22(e)(3)–(4) and 157.203(d) may also on occasion require that CEII be made available to certain persons.

3. Hydropower Provisions

13. Part 4 of the Commission's regulations, which governs licenses, permits, exemptions and other applications under the Federal Power Act, contains a number of provisions that require applicants to make information about their projects available to the public. Under 18 CFR 4.32(a)(3), an applicant for a preliminary license, permit or exemption must provide notification to affected property owners. The notification must include Exhibit G to the application.[25] 18 CFR 4.32(b)(3) and (b)(4) require the applicant to make information, including a copy of the application and all exhibits, available to the public for inspection and reproduction at specified locations.[26] Under 18 CFR 4.34(i)(4)(i) and (i)(6)(iii), an applicant using alternative procedures must distribute an information package and maintain a public file of all relevant documents, including scientific studies. Finally, 18 CFR 4.38(g), which provides for pre-filing consultation in the case of an original license, requires the applicant to make available for public inspection various items, including detailed maps[27] and a general engineering design.[28] All of these provisions likely will require the public disclosure of CEII.

14. Part 16, which specifies procedures for the takeover and relicensing of existing projects, also contains public notification requirements. An applicant for a new license, at the time it notices its intention to apply for relicensing, must make available for public inspection[29] a number of items, including the original application, as-built drawings, diagrams, emergency action plans, and operation and maintenance reports.[30] In addition, the provisions regarding pre-filing consultation require that items including detailed maps and a general engineering design be made available for public inspection.[31] These regulations would require the disclosure of CEII.

15. Parts 4 and 16, apart from containing provisions requiring that CEII be made available to the public, also in several instances require applicants to serve CEII on Indian tribes, resource agencies and other government offices. Such provisions are found at 18 CFR 4.32(b)(1)–(2); 4.38(b)(1), (c)(4), (d); 16.8(b)(1), (c)(4), (d). In Order No. 630, the Commission noted that the Federal Records Act[32] effectively requires a Federal agency receiving information from another Federal agency to treat it in the same manner that the originating agency would have treated it.[33] This requirement would not apply to the provisions listed above, however, because the resource agency would be receiving the CEII directly from the applicant, not from the Commission. Consequently, to ensure consistent treatment of CEII, the Commission proposes to add provisions for instances where information must be provided to other agencies and to tribes that would parallel the proposed provisions applicable to information made available to the public. The Commission notes that neither the proposals contained in this NOPR nor Order No. 630 is intended to require companies to withhold CEII. Instead, they are intended to ensure that the Commission's regulations do not require companies to reveal CEII. Consequently, the Commission anticipates that, in most instances, companies will share CEII with other Federal agencies without requiring other agencies to request access to CEII.

II. Discussion

16. The Commission in this NOPR proposes to reconcile the requirements for making information available to the public with Order No. 630 by providing that companies subject to the disclosure requirements of Form No. 715 and parts 4, 16 and 157 omit CEII from the information made available. Instead, the company would include a statement briefly describing the omitted information, without revealing CEII, and referring the reader to the procedures for challenging CEII claims and for requesting CEII. Such challenges and requests would take place under the procedures adopted in Order No. 630 and found in 18 CFR 388.112 and 388.113, employing the definition of CEII found at 18 CFR 388.113(c). Therefore, a member of the public could still obtain the information, but would have to follow procedures different from those applicable now.

17. The treatment of CEII under the proposed procedures should largely parallel the treatment of the same information filed with the Commission. Form No. 715 and parts 4, 16 and 157 require that companies make available certain portions of information that they are submitting to the Commission. Consequently, the company should simply omit, from the information made available to the public, all materials designated as CEII in its submission to the Commission. The proposed revisions require that the company adhere to any previous determinations by the Commission or the CEII Coordinator as to the status of any information claimed to constitute CEII.[34] Thus, if information designated as CEII in the submission to the Commission is later determined not to constitute CEII, the company should make that information available as specified in the pertinent regulation. This approach should be relatively simple and straightforward. The Commission invites comments, however, on any other approach that might function better.

18. Besides § 157.10, other provisions in part 157 could conceivably be interpreted as requiring the disclosure by a company of CEII. Section 157.6(d) requires notification to affected landowners, including a description of "the proposed project [and] its location (including a general location map)."[35] Where the Commission approves a pre-filing collaborative process, the applicant must maintain a public file of all relevant documents.[36] Finally, in the case of blanket certificates, an applicant must provide notice to landowners, including a brief description of facilities to be constructed or replaced.[37] In each of these cases, the Commission believes it should ordinarily be unnecessary for the applicant to release CEII. Where maps or other descriptions are required, it should be possible for the applicant to meet the requirement without including information so detailed or sensitive that it would require the inclusion of CEII, particularly given that Order No. 630 omitted location information from the definition of CEII. Where a NEPA Pre-Filing process or collaborative process is approved, there are no specific requirements that should lead to the disclosure of CEII. The regulation simply requires that the applicant make available all "relevant documents." The Commission does not interpret this provision as requiring the disclosure of CEII. Nevertheless, in the interest of caution the Commission is proposing to amend all three provisions to provide for the protection of CEII.

19. The Commission invites comment on provisions in its rules and regulations other than those specifically discussed in this NOPR that may require revisions to ensure consistency with Order No. 630.

20. The Commission notes that it does not intend to revisit issues already addressed in Order No. 630. Such issues include the need for protecting CEII, the definition of CEII, and the procedures for submitting and obtaining access to CEII.[38] The Commission also notes that FOIA has no bearing on the matters discussed in this NOPR, as it concerns only requirements that companies make information available, not requests to obtain information from the Commission.

III. Information Collection Statement

21. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[39] The public disclosure of information originally supplied by an agency to the recipient is, however, excluded from the

[14] *Id.* at p. 9870.
[15] *Id.* at pp. 9863, 9865.
[16] *Id.* at pp. 9869–70.
[17] *Id.* at pp. 9870–71.
[18] *Id.* at p. 9870.
[19] *Id.* at p. 9868.
[20] *See* "New Reporting Requirements Implementing Section 213(b) of the Federal Power Act," 100 FERC ¶61,141 (2002). In this order, the Commission modified its practice of making Form 715 available to the public. Due to national security considerations, it determined that certain portions of Form 715 would no longer be made available on the Commission's Web site or through its public databases. This change in policy was to remain in effect until the Commission took final action in Docket No. RM02–4–000. As explained above, a final rule was issued in Order No. 630, which is now pending rehearing.
[21] 18 CFR 157.10(b). Materials that are voluminous or difficult to reproduce may be made available in an accessible central location in each county in the project area. 18 CFR 157.10(b)(1).
[22] 18 CFR 157.10(c).
[23] 18 CFR 157.14(a)(7)–(9).
[24] 18 CFR 157.14(a)(10).
[25] 18 CFR 4.32(a)(3)(ii).
[26] 18 CFR 4.32(b)(3)(i), (b)(4)(ii)–(iv).
[27] 18 CFR 4.38(b)(1)(i).
[28] 18 CFR 4.38(b)(1)(ii).
[29] *See* 18 CFR 16.7(e).
[30] 18 CFR 16.7(d)(1)–(2).
[31] 18 CFR 16.8(i); *see* 18 CFR 16.8(b)(1)(i)–(ii).
[32] 44 U.S.C. 3510(b).
[33] 68 FR 9857, at p. 9866.
[34] Sections 157.6(d)(3)(iv), 157.22(e)(4), and 157.203(d) require information to be made available that would not necessarily be identical to information submitted to the Commission. For example, 18 CFR 157.6(d)(3)(iv) requires that an applicant include in a notice to landowners a description of the proposed project. This description would not necessarily be contained in the application submitted to the Commission. As explained below, the Commission believes that, as a practical matter, these three provisions will seldom if ever require an applicant to make CEII available. Should such a situation arise, it would be the applicant's responsibility to determine what information constituted CEII and omit it from the information made available.
[35] 18 CFR 157.6(d)(3)(iv).
[36] 18 CFR 157.22(e)(4).
[37] 18 CFR 157.203(d).
[38] Those issues are still subject to rehearing as part of Docket No. RM02–4–000. That proceeding remains the appropriate forum for their resolution.
[39] 5 CFR 1320.12.

coverage of the regulations.[40] The only information collection requirement contained in this proposed rulemaking is a requirement that companies include a statement outlining the procedures for seeking access to CEII. Because that statement would be supplied by the Commission, the information collection regulations do not apply to this proposed rulemaking.

IV. Environmental Analysis

22. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[41] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[42] This proposed rule, if finalized, is procedural in nature and therefore falls under this exception; consequently, no envfronmental consideration would be necessary.

V. Regulatory Flexibility Act Certification

23. The Regulatory Flexibility Act of 1980 (RFA)[43] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that this proposed rule, if finalized, would not have such an impact on small entities.

VI. Comment Procedure

24. The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due May 16, 2003. Comments must refer to Docket No. RM03–6–000, and may be filed either in electronic or paper format. Those filing electronically do not need to make a paper filing.

25. Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Rich Text Format, or ASCII format, as listed on the Commission's Web site at *http://ferc.gov*, under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-Mail address upon receipt of comments. User assistance for electronic filing is available at 202–502–8258 or by E-Mail to *efiling@ferc.gov*. Comments should not be submitted to the E-Mail address.

26. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

27. All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington DC 20426, during regular business hours. Additionally, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's home page using the FERRIS link.

VII. Document Availability

28. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

29. From FERC's home page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

30. User assistance is available for FERRIS and the FERC's Web site during normal business hours by contacting, FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, for TTY (202) 502–8659.

[40] 5 CFR 1320.3(c)(2).

[41] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶30,783 (1987).

[42] 18 CFR 380.4(a)(2)(ii).

[43] 5 U.S.C. 601–612.

List of Subjects

18 CFR Part 4

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 16

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural Gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission proposes to amend parts 4, 16, 141 and 157, chapter I, title 18, Code of Federal Regulations, as follows.

PART 4—LICENSES, PERMITS, EXEMPTIONS AND DETERMINATION OF PROJECT COSTS

■ 1. The authority citation for part 141 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. Section 4.32 is amended by adding paragraph (k) as follows:

§ 4.32 Acceptance for filing or rejection; information to be made available to the public; requests for additional studies.

* * * * * *

(k) *Critical Energy Infrastructure Information.*

(1) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to any person, the applicant shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: "Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR § 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator."

(2) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

■ 3. Section 4.34 is amended by adding paragraph (i)(10) as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene; alternative procedures.

* * * * * *

(i) *Alternative procedures.* * * *

(10) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to the public, the applicant shall follow the procedures set out in § 4.32(k).

■ 4. Section 4.38 is amended by adding paragraph (i) as follows:

§ 4.38 Consultation requirements.

* * * * * *

(i) *Critical Energy Infrastructure Information.* If this section requireS an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 4.32(k) of this subpart.

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

■ 5. The authority citation for part 16 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

■ 6. Section 16.7 is amended by adding paragraph (d)(7) as follows:

§ 16.7 Information to be made available to the public at the time of notification of intent under section 15(b) of the Federal Power Act.

* * * * * *

(d) *Information to be made available.* * * *

(7) If paragraph (d) of this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to the public, the applicant shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: "Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR § 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator."

(A) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(B) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

* * * * * *

■ 7–8. Section 16.8 is amended by adding paragraph (k) as follows:

§ 16.8 Consultation requirements.

* * * * * *

(k) *Critical Energy Infrastructure Information.* If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 16.7(d)(7) of this subpart.

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

■ 9. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 10. Section 141.300 is amended by adding paragraph (d) as follows:

§ 141.300 FERC Form No. 715, Annual Transmission Planning and Evaluation Report.

* * * * * *

(d) *Critical Energy Infrastructure Information.*

(1) If the instructions in Form No. 715 require a utility to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to the public, the utility shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: "Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR § 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator."

(2) The utility completing Form No. 715, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that utility has made with the Commission and shall adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the utility will be directed to make the information available to the requester.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 11. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 12. Section 157.6 is amended by adding paragraph (d)(6) as follows:

§ 157.6 Applications; general requirements.

* * * * * *

(d) *Landowner notification.* * * *

(6) If paragraph (d)(3) of this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to a landowner, the applicant shall follow the procedures set out in § 157.10(d).

■ 13. Section 157.10 is amended by adding paragraph (d) as follows:

§ 157.10 Interventions and protests.

* * * * * *

(d) *Critical Energy Infrastructure Information.*

(1) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as

defined in § 388.113(c) of this chapter, to the public, the applicant shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: "Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR § 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator."

(2) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

■ 14. Section 157.14 is amended by revising paragraph (a) to read as follows:

§ 157.14 Exhibits.

(a) *To be attached to each application.* All exhibits specified must accompany each application when tendered for filing. Together with each exhibit applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived from the exhibits. If the Commission determines that a formal hearing upon the application is required or that testimony and hearing exhibits should be filed, the Secretary will promptly notify the applicant that submittal of all exhibits and testimony of all witnesses to be sponsored by the applicant in support of his case-in-chief is required. Submittal of these exhibits and testimony must be within 20 days from the date of the Secretary's notice, or any other time as the Secretary will specify. Exhibits, except exhibits F, F–1, G, G–I, G–II, and H(iv), must be submitted to the Commission on electronic media as prescribed in § 385.2011 of this chapter. Interveners and persons becoming interveners after the date of the Secretary's notice must be advised by the applicant of the afore-specified exhibits and testimony, and must be furnished with copies upon request. If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to an intervener, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

■ 15. Section 157.16 is amended by revising the introductory text to read as follows:

§ 157.16 Exhibits relating to acquisitions.

In addition to the exhibits required by § 157.14, every application involving acquisition of facilities must be accompanied by the exhibits listed below. Together with each exhibit applicant must provide a full and complete explanation of the data submitted, the manner in which it was obtained, and the reasons for the conclusions derived from the exhibits, unless the applicant includes a statement identifying the schedule and rate containing the required information and data filed as prescribed in § 385.2011 of this chapter. If the Commission determines that a formal hearing upon the application is required or that testimony and hearing exhibits should be filed, the Secretary will promptly notify the applicant that submittal of all the exhibits and testimony of all witnesses to be sponsored by the applicant in support of his case-in-chief is required. Submittal of these exhibits and testimony must be within 20 days from the date of the Secretary's notice, or any other time specified by the Secretary in the notice. Sections 157.6(a) and 385.2011 of this chapter will govern the submissions required to be furnished to the Commission. Interveners and persons becoming interveners after the date of the Secretary's notice must be advised by the applicant of the afore-specified exhibits and testimony, and must be furnished with copies upon request. If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to an intervener, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

■ 16. Section 157.22 is amended by adding paragraph (e)(9) as follows:

§ 157.22 Collaborative procedures for applications for certificates of public convenience and necessity and for orders permitting and approving abandonment.

* * * * *

(e) * * *

(9) If paragraph (e)(3) or (e)(4) requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to the public, the applicant shall follow the procedures set out in § 157.10(d) of this subpart.

* * * * *

15. Section 157.203 is amended by adding paragraph (d)(4) as follows:

§ 157.203 Blanket certification.

* * * * *

(d) *Landowner notification.* * * *

(4) If paragraph (d)(1) or (d)(2) of this section require an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to landowners, the applicant shall follow the procedures set out in § 157.10(d).

[FR Doc. 03–9267 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 501

[BOP–1117–I]

RIN 1120–AB17

Bureau of Prisons Emergencies

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim final rule.

SUMMARY: The Bureau of Prisons (Bureau) makes this interim final rule to clarify that, when there is an institutional or system-wide Bureau emergency which the Director or designee, such as a Warden, considers a threat to human life or safety, the Director or designee may suspend the operation of the rules in this chapter as necessary to handle the emergency. This rule clarifies that the Director may suspend Bureau rules as needed in light of any emergency affecting the Bureau, and the Warden may do so to deal with emergencies at the institution level. This rule change clarifying the Director's authority to modify Bureau rules to handle emergencies is especially necessary in light of the recent terrorist attacks, threats to national security, threats of anthrax surrounding mail processing, and other events occurring on and after September 11, 2001.

DATES: This rule is effective April 16, 2003. Comments are due by June 16, 2003.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: The Bureau makes this interim final rule to clarify that, when there is an institutional or system-wide Bureau emergency which the Director or designee, such as a Warden, considers a threat to human life or safety, the Director or designee may suspend the operation of the rules in this chapter as necessary to handle the emergency. This rule clarifies that the Director may suspend Bureau rules as needed in light of any emergency affecting the Bureau, and the Warden may do so to deal with emergencies at the institution level. This rule change clarifying the Director's authority to modify Bureau rules to handle emergencies is especially necessary in light of the recent terrorist attacks, threats to national security, threats of anthrax surrounding mail processing, and other events occurring on and after September 11, 2001.

Previously, 28 CFR 501.1 stated that, when there is an institutional emergency which the Warden considers a threat to human life or safety, the Warden may suspend the operation of the rules contained in this chapter to the extent he deems necessary to handle the emergency. The rule also required the Warden to notify the Director within eight hours of any suspension of rules under this section. This rule change simply clarifies that the authority to suspend operation of Bureau rules to handle an institutional or system-wide Bureau emergency originates with the Director.

To provide additional safeguards against indefinite suspension of Bureau rules, this rule also requires that, if the Warden suspends operation of the rules, the Warden must, within eight hours of the suspension, notify the Director by providing written documentation which (1) Describes the institutional emergency that threatens human life or safety; and (2) explains why suspension of the rules is necessary to handle the institutional emergency.

Also, if the Warden does not provide the Director with written justification for suspension every 30 days, or if the Director so chooses for any other reason, suspension of the rules to handle the institutional emergency ceases.

Administrative Procedure Act

This rule relates to a matter of agency management or personnel, and is therefore exempt from the usual requirements of prior notice and comment. See 5 U.S.C. 553(a)(2).

Where To Send Comments

You can send written comments on this rule to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

We will consider comments received during the comment period before taking final action. We will try to consider comments received after the end of the comment period. In light of comments received, we may change the rule.

We do not plan to have oral hearings on this rule. All the comments received remain on file for public inspection at the above address.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make Bureau documents easier to read and understand. If you can suggest how to improve the clarity of these regulations, call or write Sarah Qureshi at the telephone number or address listed above.

List of Subjects in 28 CFR Part 501

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 501 as follows.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 501—SCOPE OF RULES

■ 1. Revise the authority citation for 28 CFR part 501 to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

■ 2. Revise § 501.1 to read as follows:

§ 501.1 Bureau of Prisons emergencies.

(a) *Suspension of rules during an emergency.* The Director of the Bureau of Prisons (Bureau) may suspend operation of the rules in this chapter as necessary to handle an institutional emergency or an emergency affecting the Bureau. When there is an institutional emergency which the Director or Warden considers a threat to human life or safety, the Director or Warden may suspend the operation of the rules in this chapter as necessary to handle the emergency.

(b) *Responsibilities of the Warden.*—

(1) *Notifying the Director.* If the Warden suspends operation of the rules, the Warden must, within eight hours of the suspension, notify the Director by providing written documentation which:

(i) Describes the institutional emergency that threatens human life or safety; and

(ii) Sets forth reasons why suspension of the rules is necessary to handle the institutional emergency.

(2) *Submitting certification to Director of continuing emergency.* 30 days after the Warden suspends operation of the rules, and every 30 days thereafter, the Warden must submit to the Director written certification that an institutional emergency threatening human life or safety and warranting suspension of the rules continues to exist. If the Warden does not submit this certification to the Director, or if the Director so orders at any time, the suspension of the rules will cease.

[FR Doc. 03–9310 Filed 4–15–03; 8:45 am]

BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 241–0392; FRL–7471–4]

Revisions to the Arizona State Implementation Plan and California State Implementation Plan, Maricopa County Environmental Services Department and Bay Area Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a limited approval and limited disapproval of revisions to the Maricopa County Environmental Services Department portion of the Arizona State Implementation Plan (SIP) and the Bay Area Air Quality Management District portion of the California SIP. This action was proposed in the **Federal Register** on June 5, 2002, and concerns volatile organic compound (VOC) emissions from solvent cleaning operations. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and directs Arizona and California to correct rule deficiencies.

EFFECTIVE DATE: This rule is effective on May 16, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Maricopa County environmental Services Department, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, AZ 85004.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

FOR FURTHER INFORMATION CONTACT: Al Petersen, U.S. Environmental Protection Agency, Region IX, (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On June 5, 2002 (67 FR 38630), EPA proposed a limited approval and limited disapproval of the following rules that were submitted for incorporation into the Arizona and California SIPs.

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Revised	Submitted
MCESD	331	Solvent Cleaning	04/07/99	08/04/99
BAAQMD	8–16	Solvent Cleaning Operations	09/15/98	03/28/00

We proposed a limited approval because we determined that these rules improve the SIP and are largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. The provisions in MCESD rule 331 include the following:

- The provisions of this rule exempt sources that are not necessarily covered by another federally approved rule.
- Subsections of this rule provide methods of determining capture efficiency, but do not refer to EPA's January 9, 1995, guidance document, *Guidelines for Determining Capture Efficiency,* describing calculation procedures.
- Sections II and III of the appendix to this rule do not clarify which and how standards are adjusted for boiling point.
- Section I–6 of the appendix to this rule raise the threshold limit from 10.75 sq ft to 13 sq ft for additional control without adequately justifying this relaxation.

The provisions in BAAQMD rule 8–16 include the following:

- Section 8–16–501.2 allows facility-wide make-up solvent recording on an annual basis, which is not sufficient to ensure that the rule is enforceable pursuant to CAA section 110(a)(2)(A).
- Rule 8–16 contains a number of incorrect section references that may result in enforcement ambiguity.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we did not receive any comments.

III. EPA Action

No comments were submitted that change our assessment of the rules as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the CAA, EPA is finalizing a limited approval of the submitted rules. This action incorporates the submitted rules into the Arizona and California SIPs, respectively, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rules. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the CAA according to 40 CFR 52.31. In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rules have been adopted by the MCESD and BAAQMD, and EPA's final limited disapproval does not prevent the local agencies from enforcing them.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective May 16, 2003.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 5, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(94)(i)(G) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(94) * * *

(i) * * *

(G) Rule 331, revised on April 7, 1999.

* * * * *

Subpart F—California

■ 3. Section 52.220 is amended by adding paragraph (c)(277)(i)(C)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(277) * * *

(i) * * *

(C) * * *

(*3*) Rule 8–16, adopted on March 7, 1979 and amended on September 15, 1998.

* * * * *

[FR Doc. 03–9041 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[DC–T5–2003–01a; FRL–7483–6]

Clean Air Act Approval of Operating Permits Program Revision; District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the District of Columbia's Clean Air Act title V operating permit program, pertaining to requirements for public notification of permit actions. In a notice of deficiency (NOD) published in the **Federal Register** on December 21, 2001, EPA notified the District of Columbia of EPA's finding that the District's provisions for providing public notification of permitting actions did not fully comply with the requirements of the Clean Air Act (CAA) and its implementing regulations. Direct final approval of this program revision resolves the deficiency identified in the NOD and the District of Columbia maintains final full approval of the Clean Air Act title V operating permits program.

EFFECTIVE DATE: This rule is effective on June 2, 2003 without further notice, unless EPA receives adverse written comment by May 16, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to Kristeen Gaffney, Acting Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and District of Columbia Department of Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Paresh R. Pandya, U.S. Environmental Protection Agency, Region III (3AP11), 1650 Arch Street, Philadelphia, PA 19103 at (215) 814–2167, or by e-mail at *pandya.perry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The EPA granted final interim approval of the District of Columbia's operating permit program on August 7, 1995 (60 FR 40101). The District amended its operating permit program to address deficiencies identified in the interim approval action. The EPA proposed full approval of the District of Columbia's operating permit program in the **Federal Register** on October 16, 2001 (66 FR 52538). Adverse comments were received and EPA withdrew that approval. A final rulemaking action was published in the **Federal Register** on December 4, 2001 (66 FR 62954) which summarized the adverse comments, provided EPA's responses, and promulgated final full approval of the District of Columbia's operating permit program. Subsequently, in reevaluating the commenter's concerns, EPA agreed that the commenter had identified a deficiency in the District of Columbia's title V operating permit program relating to the District of Columbia's public notification requirements. The EPA published a notice of deficiency (NOD) in the **Federal Register** (pursuant to 40 CFR 70.4(i) and 70.10(b)) on December 21, 2001 (66 FR 65947) to notify the District of Columbia and the public that EPA found a deficiency in the District of Columbia's title V operating permit program. The deficiency relates to the District of Columbia's regulatory authority to provide public notification of permit actions.

II. Description of Action

The EPA's regulations at 40 CFR 70.7(h) and 70.7(d)(3)(i) provide that public notice shall be provided for all permit proceedings, except those qualifying as administrative permit amendments or minor permit modifications. Such public notification shall be provided by a number of means, including "by publication in a newspaper of general circulation in the area where the source is located or in a State publication designed to give general public notice; to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list; and by other means if necessary to assure adequate notice to the affected public." *See*, 40 CFR 70.7(h)(1). EPA's regulations at 40 CFR 70.4(b)(16) require that State part 70 program submittals contain provisions requiring the permitting authority to implement the requirements of 40 CFR 70.7. The District of Columbia's operating permit program regulations at 20 DCMR 303.10 required that public notice of draft initial permits, significant modifications and permit renewals be published in the District of Columbia Register and that copies of such notice be sent to persons on a permit mailing list. However, the regulations did not expressly require that "other means" be employed if necessary to assure adequate public notice. Because the District of Columbia's operating permit program regulations did not require the District to provide public notice by other means if necessary to assure adequate notice to the affected public, the District of Columbia's operating permit program did not fully comply with the requirements of the Clean Air Act and 40 CFR part 70.

Title V provides for the approval of State programs for the issuance of operating permits that incorporate the applicable requirements of the Clean Air Act. To receive title V program approval, a State permitting authority must submit a program to EPA that meets certain minimum criteria, and EPA must disapprove a program that fails, or withdraw an approved program that subsequently fails, to meet these criteria. These criteria include requirements for proper public participation procedures (40 CFR 70.7(h)).

The EPA's title V implementing regulations at 40 CFR 70.4 and 70.10(b) and (c) provide that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. A list of potential bases for program withdrawal is provided at 40 CFR 70.10(c)(1)(i), and includes the case where the permitting authority's legal authority does not meet the requirements of 40 CFR part 70.

III. Final Action

On April 4, 2003, the District of Columbia submitted revisions to 20 DCMR 303.10(a)(1)(B) which require that a notice be published in the District of Columbia Register and using any "other means" necessary to assure adequate notice to the affected public of the application, the preliminary determination, the location of the public file and the procedures for submitting written comments and requesting a hearing. With this amendment to 20 DCMR 303.10(a)(1)(B), the District of Columbia has adequately resolved the deficiency EPA identified in its December 21, 2001 notice of deficiency and maintains final full approval of the Clean Air Act title V operating permits program.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the operating permit program revisions if adverse comments are filed relevant to the issues discussed in this action. This rule will be effective on June 2, 2003 without further notice unless EPA receives adverse comments by May 16, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub, L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the

Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing state operating permit program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove an operating permits program submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program submission, to use VCS in place of an operating permit program submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action approving revisions to the District of Columbia operating permit program may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 9, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

■ Appendix A of part 70 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Appendix A to part 70 is amended by adding paragraph (c) in the entry for the District of Columbia to read as follows:

Appendix A to part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

District of Columbia

* * * * *

(c) The District of Columbia Department of Health submitted program amendments on April 4, 2003. The rule amendments contained in the April 4, 2003 submittal adequately addressed the deficiency identified in the Notice of Deficiency effective on December 13, 2001. The District of Columbia hereby maintains final full approval effective on June 2, 2003.

* * * * *

[FR Doc. 03–9343 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0126; FRL–7302–6]

Pesticides; Minimal Risk Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule reorganizes certain existing tolerance exemptions. All of these chemical substances were reviewed as part of the tolerance reassessment process required under the Food Quality Protection Act of 1996 (FQPA). As a result of that review, certain chemical substances are now classified as "minimal risk," and are therefore being shifted to the section of 40 CFR part 180 that holds minimal risk chemicals. The Agency is merely moving certain tolerance exemptions from one section of the Code of Federal Regulations to another. No existing tolerance exemptions are lost or expanded and no new tolerance exemptions are added as a result of this action.

DATES: This final rule is effective on April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–305–6304; fax number: 703–305–0599; e-mail address: *boyle.kathryn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you formulate or market pesticide products. Potentially affected categories and entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)
- Antimicrobial pesticides (NAICS 32561

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies Of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0126. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00. html,* a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

In a **Federal Register** Notice published on May 24, 2002, (67 FR 36534) (FRL–6834–8) EPA established a new § 180.950 to list the pesticide chemicals that are exempted from the requirement of a tolerance based on the Agency's determination that these chemicals are of "minimal risk." As the first step in populating this section, the Agency shifted the existing tolerance exemptions for commonly consumed food commodities, animal feed items, and edible fats and oils to this section.

In a proposed rule published in the **Federal Register** on November 20, 2002, (67 FR 70036)(FRL–7278–3) the Agency proposed to shift almost 90 tolerance exemptions for certain inert ingredients that have been classified by the Agency as List 4A, "minimal risk" to 40 CFR 180.950. This action merely moves certain tolerance exemptions from one section of the CFR to another section: no existing tolerance exemptions are lost or expanded, and no new tolerance exemptions are added, as a result of this action.

Four comments were received in response to the publication of the proposed rule. All four sets of comments concerned only the group of chemical substances referred to as "weathered materials." "Weathered materials" can be described as the materials in and of the earth, that is, rocks and minerals. This would include substances such as various clays, limestone, marble, graphite, gypsum, various silicates and various oxides. These "weathered materials" comprise over 40 tolerance exemptions. The Agency will address these comments at a later date through the publication of another proposed rule. No action on the Agency's prior proposal regarding weathered materials is being taken in this final rule.

However, no comments were received on shifting any of the other 44 tolerance exemptions such as the various citrate compounds or the various cellulose compounds. The decision documents supporting the minimal risk, List 4A classification were placed in the e-dockets for the proposed rule. Based on the information contained in those documents and in the proposed rule, and for the reasons explained above, 44 tolerance exemptions are being shifted to 40 CFR 180.950.

As explained in the proposed rule, for some of the chemical substances, EPA is making minor changes to the chemical names that were previously used, *i.e.,* EPA is using different naming conventions for the chemicals to be listed in 40 CFR 180.950. Additionally, the Agency has attempted to identify each of the listed substances using the Chemical Abstracts Service Registry Number (CAS Reg. No.). The CAS Reg. No. provides one of the most distinct and universally accepted means of identifying chemical substances. The lack of a CAS Reg. No. will not preclude the Agency from including substances in 40 CFR 180.950. Generally, there will be only one CAS Reg. No. per listed substance; however, it is possible that more than one CAS Reg. No. may be appropriate for some substances, such as when there is both a hydrated and anhydrous form. EPA has both broadened and consolidated names to account for differing terminologies and current usage status.

The tolerance exemptions shifted from 40 CFR 180.2 to 40 CFR 180.950 are: Citric acid, fumaric acid, and sodium chloride.

The following tolerance exemptions are shifted from 40 CFR 180.1001(c): Animal glue; calcium citrate; α-cellulose; citric acid; coffee grounds; corn dextrin; dextrin; guar gum; hydroxyethyl cellulose; hydroxypropyl methylcellulose; lecithin; licorice root; methylcellulose; potassium chloride; potassium citrate; silica, hydrated; silicon dioxide, fumed, amorphous; sodium acetate; sodium alginate; sodium carboxymethylcellulose; sodium chloride; and xanthan gum.

The following tolerance exemptions are shifted from 40 CFR 180.1001(d): Cellulose acetate; hydroxypropyl cellulose; locust bean gum; paper fiber, deinked or recycled; paper fiber, produced by the kraft (sulfate) or sulfite pulping processes; silicon dioxide, fumed, amorphous; soapbark (quillaja); sodium citrate, and wool fat (anhydrous lanolin).

The following tolerance exemptions are shifted from 40 CFR 180.1001(e): Castor oil, u.s.p.; α-cellulose; citric acid; dextrin; methyl cellulose; potassium citrate; silica, amorphous, fumed (crystalline free)...; sodium carboxymethylcellulose, and xanthan gum.

The tolerance exemptions in § 180.1036 (hydrogenated castor oil) are also being shifted to § 180.950.

Because today's action merely moves certain tolerance exemptions from one section of the CFR to another section, it will have no substantive or procedural effect on the moved tolerance exemptions. No tolerance exemptions are lost as a result of this action.

B. What is the Agency's Authority for Taking This Action?

This proposed rule is issued under section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170). Section 408(e) of FFDCA authorizes EPA to establish, modify, or revoke tolerances, or exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities and processed foods.

III. Statutory and Executive Order Reviews

This final rule merely shifts existing exemptions in 40 CFR part 180. This has no substantive effect and hence causes no impact. The Agency is acting on its own initiative under FFDCA section 408(e) in shifting these existing tolerance exemptions to a new section. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions*

Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et. seq.*), the Agency hereby certifies that these proposed actions will not have significant negative economic impact on a substantial number of small entities. As noted above, this action will have no substantive or procedural effect on the tolerance exemptions affected. However, by grouping tolerance exemptions that have qualified as minimal risk inerts in one location in the CFR, this action will make it easier for small entities to efficiently use EPA's tolerance regulations. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IV. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule"as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, administrative practices and procedures, pesticides and pests, reporting and recordkeeping requirements.

Dated: April 8, 2003.

Peter Caulkins,

Acting Director, Registration Division.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.2 [Amended]

■ 2. In § 180.2, paragraph (a), is amended by removing the terms "citric acid," "fumaric acid," and "sodium chloride."

■ 3. In § 180.950 the table to paragraph (e) is amended by adding alphabetically the following entries.

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *

(e) * * *

Chemical	CAS No.
Acetic acid, sodium salt	127–09–3
Animal glue	None
Carob gum (locust bean gum)	9000–40–2
Castor oil	8001–79–4
Castor oil, hydrogenated	8001–78–3
Cellulose	9004–34–6
Cellulose acetate	9004–35–7
Cellulose, carboxy methyl ether, sodium salt	9004–32–4
Cellulose, 2-hydroxyethyl ether	9004–62–0
Cellulose, 2-hydroxypropyl ether	9004–64–2
Cellulose, 2-hydroxypropyl methyl ether	9004–65–3
Cellulose, methyl ether	9004–67–5
Cellulose, mixture with cellulose carboxymethyl ether, sodium salt	51395–75–6
Cellulose, pulp	65996–61–4
Cellulose, regenerated	68442–85–3
Citric acid	77–92–9
Citric acid, calcium salt	7693–13–2
Citric acid, calcium salt (2:3)	813–94–5
Citric acid, dipotassium salt	3609–96–9
Citric acid, disodium salt	144–33–2
Citric acid, monohydrate	5949–29–1
Citric acid, monopotassium salt	866–83–1
Citric acid, monosodium salt	18996–35–5
Citric acid, potassium salt	7778–49–6
Citric acid, tripotassium salt	866–84–2
Citric acid, tripotassium salt, monohydrate	6100–05–6
Citric acid, sodium salt	994–36–5
Citric acid, trisodium salt	68–04–2
Citric acid, trisodium salt, dihydrate	6132–04–3
Citric acid, trisodium salt, pentahydrate	6858–44–2
Coffee grounds	68916–18–7
Dextrins	9004–53–9
Fumaric acid	110–17–8
Guar gum	9000–30–0
Lanolin	8006–54–0
Lecithins	8002–43–5
Lecithins, soya	8030–76–0
Licorice Extract	68916–91–6
Maltodextrin	9050–36–6
Paper	None
Potassium chloride	7447–40–7
Silica, amorphous, fumed (crystalline free)	112945–52–5
Silica, amorphous, precipitated and gel	7699–41–4
Silica gel	63231–67–4
Silica gel, precipitated, crystalline-free	112926–00–8
Silica, hydrate	10279–57–9
Silica, vitreous	60676–86–0
Soapbark (Quillaja saponin)	1393–03–9
Sodium alginate	9005–38–3
Sodium chloride	7647–14–5
Xanthan gum	11138–66–2

§ 180.1001 [Amended]

■ Section 180.1001 is amended as follows:

■ 4. The table in paragraph (c) is amended by removing the following entries: Animal glue; Calcium citrate; α-Cellulose; Citric acid; Coffee grounds; Corn dextrin; Dextrin; Guar gum; Hydroxyethyl cellulose; Hydroxypropyl methylcellulose; Lecithin; Licorice root; Methyl cellulose; Potassium chloride; Potassium citrate (CAS Reg. No. 866–84–2); Silica, hydrated; Silicon dioxide, fumed, amorphous; Sodium acetate; Sodium alginate; Sodium carboxymethylcellulose; Sodium chloride; Xanthan Gum.

■ 5. The table in paragraph (d) is amended by removing the following entries: Cellulose acetate (CAS Reg. No. 9004–35–7), minimum number average molecular weight, 28,000; Hydroxypropyl cellulose; Locust bean gum; Paper fiber, deinked or recycled, conforming to 21 CFR 109.30(a)(9) and 21 CFR 176.260; Paper fiber, produced by the kraft (sulfate) or sulfite pulping processes; Silicon dioxide, fumed, amorphous; Soapbark (quillaja); Sodium citrate, Wool fat (anhydrous lanolin).

■ 6. The table in paragraph (e) is amended by removing the following entries: Castor oil, U.S.P.; α-Cellulose; Citric acid; Dextrin (CAS Reg. No. 9004–53–9); Methylcellulose; Potassium citrate (CAS Reg. No. 866–84–2); Silica, amorphous, fumed (crystalline free) (CAS Reg. No. 112945–52–5); Sodium alginate; Sodium carboxymethylcellulose, Xanthan gum.

§ 180.1036 [Removed]

■ 7. Section 180.1036 is removed in its entirety

[FR Doc. 03–9210 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[WO–850–1820–XZ–24–1A]

RIN 1004–AD34

Application Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Land Management (BLM) amends its regulations pertaining to the list of State Offices addresses and Areas of Jurisdiction included in the Code of Federal Regulations. The public will continue to direct personal, messenger, express mail, direct filing, and other delivery by United States mail to the same street or post office box address as before. This rule will have no impact or cost to the public.

EFFECTIVE DATE: April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Diane O. Williams, Regulatory Affairs, (202) 452–5030. Persons who use a telecommunications device for the deaf may contact Ms. Williams through the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, 7 days a week.

ADDRESSES: You may send inquiries or suggestions to Director (172), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153; Attention: RIN 1004–AD34.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose of Rule
II. Procedural Matters

I. Background and Purpose of Rule

The BLM is issuing this final rule for the convenience of the public to provide a current list of BLM State Offices locations. This is necessary due to several recent office moves. This list has no substantive impact on the public, nor imposes any costs, and merely updates a list of addresses and areas of jurisdiction included in the Code of Federal Regulations. Therefore, the Department of the Interior, for good cause, finds under 5 U.S.C. 553(b)(B) and 553(d)(3) that notice and public procedures are unnecessary and that this rule may take effect upon publication.

II. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This final regulation is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. This final regulation will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This final regulation will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The final regulation does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients, nor does it raise novel legal or policy issues.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act of 1980 (RFA) 5 U.S.C. 601 *et seq.*, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The BLM has determined under the RFA that this final rule would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This final rule is not a major rule as defined at 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It should not have an annual effect on the economy of $100 million or more. The rule will not cause a major increase in costs of prices for consumers, individual industries, Federal, State, or local government agencies, or geographics regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

The BLM has determined that the final rule is not significant under the Unfunded Mandates Reform Act of 1995 because it will not result in the expenditure by State, local, and tribal governments, in the aggregates, or by the private sector, of $100 million or more in any one year.

Further, the final rule will not significantly or uniquely affect small governments. It does not require action

by any non-federal government entity. Therefore, the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*, is not required.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights are affected by this rule which only updates the list of addresses for BLM State Offices printed in the Code of Federal Regulations. The Department therefore certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights or require further discussion of the Takings implications under this Executive Order.

Executive Order 13132, Federalism

In accordance with Executive Order 13132, BLM finds that the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. This final rule does not preempt State law.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, BLM finds that the rule does not include policies that have tribal implications. This final rule is purely an administrative action having no effects upon the public or the environment, imposing no costs, and merely updating a list of BLM State Offices addresses included in the Code of Federal Regulations.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, Civil Justice Reform, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and that it meets the requirements of the sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This final rule does not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction of 1995, 44 U.S.C. 3501 *et seq.* This final rule merely updates a list of BLM State Offices addresses included in the Code of Federal Regulations. This final rule does not require the public to provide information.

National Environment Policy Act

This final rule is purely administrative action and has no effect upon the public or the environment, it imposes no costs, and merely updates a list of BLM State Offices addresses included in the Code of Federal Regulations for the convenience of the public. Therefore, it is categorically excluded from the environmental review under section 102(2)(C) of the National Environment Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1. In addition, the Department has determined that none of the exceptions to categorical exclusions, listed in 516 DM 2, Appendix 2, applies to this rule. The Council on Environment Quality regulations at 40 CFR 1508.4, define "categorical exclusions" as a category of actions that the Department has determined ordinarily do not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor environmental impact statement under the NEPA is required.

Executive Order 13211, Actions Concerning Regulation That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, BLM has determined that the final rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This final rule merely updates a list of BLM State Offices addresses included in the Code of Federal Regulations.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. The BLM invites your comments on how to make these regulations easier to understand, including answers to questions such as the following:

1. Are the requirements in the final regulations clearly stated?
2. Do the final regulations contain technical language or jargon that interferes with their clarity?
3. Does the format of the final regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
4. Would the final regulations be easier to understand if they were divided into more (but shorter) sections?
5. Is the description of the final regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in making the final regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure, Archives and records, Public lands.

Dated: April 8, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

■ For the reasons discussed in the preamble, the Bureau of Land Management, amends 43 CFR part 1820 as follows:

PART 1820—APPLICATION PROCEDURES

■ 1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

■ 2. In § 1821.10 amend paragraph (a) by revising the list of State Offices and Areas of Jurisdiction to read as follows:

§ 1821.10 Where are the BLM offices located?

(a) * * *

State Offices and Areas of Jurisdiction

Alaska State Office, 222 West 7th Avenue, #13, Anchorage, Alaska 99513–7599—Alaska.
Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203—Arizona.
California State Office, 2800 Cottage Way, Room W–1834, Sacramento, California 95825–1886—California.
Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093–Colorado.
Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153—Arkansas, Iowa, Louisiana, Minnesota, Missouri, and States east of the Mississippi River.
Idaho State Office, 1387 South Vinnell Way, Boise, Idaho 83709–1657—Idaho.
Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, P.O. Box 36800, Billings, Montana 59107–6800—Montana, North Dakota, and South Dakota.

Nevada State Office, 1340 Financial Boulevard, Reno, Nevada 89502–7147, P.O. Box 1200, Reno, Nevada 89520–0006—Nevada.
New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87505, P.O. Box 27115, Santa Fe, New Mexico 87502–0115—Kansas, New Mexico, Oklahoma, and Texas.
Oregon State Office, 333 Southwest 1st Avenue, Portland, Oregon 97204, P.O. Box 2965, Portland, Oregon 92708–3420—Oregon and Washington.
Utah State Office, 324 South State Street, Salt Lake City, Utah 84111–2303, P.O. Box 45155, Salt Lake City, Utah 84145–0155—Utah.
Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009, P.O. Box 1828, Cheyenne, Wyoming 82003—Wyoming and Nebraska.

* * * * *

[FR Doc. 03–9350 Filed 4–15–03; 8:45 am]

BILLING CODE 4310–84–P

Proposed Rules

Federal Register
Vol. 68, No. 73
Wednesday, April 16, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Docket Number TM–02–03]

RIN # 0581–AA40

National Organic Program; Proposed Amendments to the National List of Allowed and Prohibited Substances

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the U.S. Department of Agriculture's (USDA) National List of Allowed and Prohibited Substances (National List) to reflect recommendations submitted to the Secretary by the National Organic Standards Board (NOSB) from June 6, 2000 through October 20, 2002. Technical corrections have also been included in this proposed rule to clarify specific sections of the National List and adequately reflect previous NOSB recommendations. Consistent with recommendations from the NOSB, this proposed rule would: add ten substances, along with any restrictive annotations, to the National List, revise the annotations of two substances, and make eight technical revisions. In addition to amending the National List, this proposed rule would offer the opportunity for public comment on the use of ethylene in organic crop production.

DATES: Comments must be received by April 28, 2003.

ADDRESSES: Interested persons may comment on this proposed rule using the following procedures:

- *Mail:* Comments may be submitted by mail to: Richard H. Mathews, Program Manager, National Organic Program, USDA–AMS–TMP–NOP, 1400 Independence Ave., SW., Room 4008-So., Ag Stop 0268, Washington, DC 20250.
- *E-mail:* Comments may be submitted via the internet to: *National.List@usda.gov.*
- *Fax:* Comments may be submitted by fax to: (202) 205–7808.
- Written comments on this proposed rule should be identified with the docket number TMD–02–03. Commenters should identify the topic and section number of this proposed rule to which the comment refers.
- Clearly indicate if you are for or against the proposed rule or some portion of it and your reason for it. Include recommended language changes as appropriate.
- Include a copy of articles or other references that support your comments. Only relevant material should be submitted.

It is our intention to have all comments to this proposed rule, whether submitted by mail, E-mail, or fax, available for viewing on the NOP homepage. Comments submitted in response to this proposed rule will be available for viewing in person at USDA–AMS, Transportation and Marketing, Room 4008-South Building, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday (except official Federal holidays). Persons wanting to visit the USDA South Building to view comments received in response to this proposed rule are requested to make an appointment in advance by calling (202) 720–3252.

FOR FURTHER INFORMATION CONTACT: Toni A. Strother, Agricultural Marketing Specialist, Telephone: (202) 720–3252; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION:

I. Background

On December 21, 2000 the Secretary established, within the National Organic Standards (NOS) [7 CFR part 205], the National List (§§ 205.600 through 205.607). The National List is the Federal list that identifies synthetic substances and ingredients that are allowed and nonsynthetic (natural) substances and ingredients that are prohibited for use in organic production and handling. Since established, the National List has not been amended. However, under the authority of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), the National List can be amended by the Secretary based on proposed amendments developed by the NOSB.

This proposed rule would amend the National List to reflect recommendations submitted to the Secretary by the NOSB from June 6, 2000 through October 20, 2002. Between the specified time period, the NOSB has recommended that the Secretary add ten substances to §§ 205.601 through 205.603 of the National List based on petitions received from industry participants. These substances were evaluated by the NOSB using the criteria specified in OFPA (7 U.S.C. 6517 and 6518) and the NOS. The NOSB also recommended that the Secretary revise the annotations of two substances included within sections 205.602 and 205.605.

The NOSB has recommended that the Secretary add additional substances to sections 205.603 and 205.605 which have not been included in this proposed rule but are under review and, as appropriate, will be included in future rulemaking.

In addition to the amendments made based on June 6, 2000 through October 20, 2002 NOSB recommendations, this proposed rule would also make technical revisions to specific sections of the National List that provide clarity and adequately reflect the intent of the paragraphs identified within those sections.

II. Overview of Proposed Amendments

The following provides an overview of the proposed amendments made to designated sections of the National List:

Section 205.601 Synthetic Substances Allowed for Use in Organic Crop Production

This proposed rule would amend the introductory paragraph of § 205.601 by adding language which clarifies that synthetic substances used in crop production must be used in a manner which does not contribute to contamination of crops, soil, or water. The proposed amendment further clarifies that synthetic substances, except those in paragraphs (c), (j), (k), and (l), may only be used when the provisions of § 205.206(a) through (d) prove insufficient to prevent or control the target pest.

This proposed rule would amend paragraph (a) of § 205.601 (as algicide, disinfectants and sanitizers, including irrigation cleaning systems) by adding the following materials:

Copper Sulfate, for use as an algicide, is limited to one application per field during any 24-month period. Application rates are limited to those which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

Ozone Gas, for use as an irrigation system cleaner only; and

Peracetic acid, for use in disinfecting equipment, seed, and asexually propagated planting material.

Paragraph (a) is proposed to be further amended by correcting the spelling of the word "demisters" contained in subparagraph (a)(4) to "demossers."

This proposed rule would amend paragraph (e) of § 205.601 by adding the following material:

Copper Sulfate, for use as tadpole shrimp control in rice production, is limited to one application per field during any 24-month period. Application rates are limited to levels which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

This proposed rule would amend paragraph (i) of § 205.601 (as plant disease control) by adding the following substance:

Peracetic acid, for use to control fire blight bacteria when approved by the Environmental Protection Agency (EPA) under a Special Local Need (24c) registration.

This proposed rule would revise paragraph (k) of § 205.601 (as plant growth regulators) by inserting the word "gas" behind "ethylene" to be consistent with the June 2000 NOSB recommendation for the substance. Section 205.601(k) will now read "As plant growth regulators—Ethylene gas, for regulation of pineapple flowering."

This proposed rule revises paragraph (m) of § 205.601 by inserting a new subpart (2) as follows:

(2) EPA List 3—Inerts of unknown toxicity—for use only in passive pheromone dispensers.

Section 205.602 Nonsynthetic Substances Prohibited for Use in Organic Crop Production

This proposed rule would amend § 205.602 by adding the following substance:

Calcium chloride, except as a brine-sourced foliar spray to treat physiological disorders associated with calcium uptake.

This proposed rule revises current paragraph (h) of § 205.602 by amending its annotation to read as follows:

Sodium nitrate—unless use is restricted to no more than 20% of the crop's total nitrogen requirement; use in spirulina production is unrestricted until October 21, 2005.

Section 205.603 Synthetic Substances Allowed for Use in Organic Livestock Production

This proposed rule would revise current subparagraph (4) of § 205.603 (a) by correcting the spelling of the word "chlorohexidine" to "chlorhexidine."

This proposed rule would amend paragraph (d) of § 205.603 (as feed additives) by adding the following substances:

DL—Methionine, DL—Methionine—Hydroxy Analog, and DL—Methionine—Hydroxy Analog Calcium—for use only in organic poultry production until October 21, 2005.

This proposed rule would revise current subparagraph (1) of § 205.603 (d) by removing examples (i) and (ii), copper sulfate and magnesium sulfate, as they are both approved for use by FDA and do not need to be listed individually as examples. As currently published, subparagraphs § 205.603 (d) (1) (i) and (ii) may mislead readers to believe that the use of trace minerals are limited only to copper sulfate and magnesium sulfate. Therefore, the revision made in this proposed rule for current subparagraph (1) of § 205.603 (d) would read "Trace minerals, used for enrichment or fortification when FDA approved."

This proposed rule would amend current paragraph (e) of § 205.603 (As synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or synthetic substances listed in this section and used as active pesticide ingredients in accordance with any limitations on the use of such substances.) by redesignating current paragraph (f) of § 205.603 as new subparagraph (1) under § 205.603 (e). While drafting § 205.603 for final publication in the **Federal Register**, current paragraph (f) was intended to be designated as § 205.603 (e) (1), however, its designation was not properly assigned. Therefore, this proposed rule redesignates current paragraph (f) of § 205.603 as subparagraph (e) (1) of the same section.

Section 205.605 Nonagricultural (nonorganic) Substances Allowed as Ingredients In or On Processed Products Labeled as "Organic" or "Made with Organic (specified ingredients or food group(s))'

This proposed rule would amend current paragraph (a) of § 205.605 by adding agar-agar, carageenan and tartaric acid as technical corrections. These substances were included on the National List proposed in the **Federal Register** on December 16, 1997, but were inadvertently removed from the National List published in the **Federal Register** on March 13, 2000, proposed rule and on December 21, 2000, Final Rule (7 CFR Part 205).

This proposed rule would revise current paragraph (b) (10) of § 205.605 by amending its annotation to read as follows:

Ethylene, allowed for postharvest ripening of tropical fruit and degreening of citrus.

III. Request for Public Comment on the Use of Ethylene

Ethylene, for organic crop production, was a substance that was petitioned and reviewed for inclusion onto the National List after promulgation of the proposed rule published in the **Federal Register** on March 13, 2000. The NOSB approved and recommended that ethylene gas be included on the National List with the annotation "for regulation of pineapple flowering." After receiving the NOSB recommendation for the material, the NOP, while finalizing the NOS, included the material on the National List without receiving public comment on the material through the Federal rulemaking process. As a result, this proposed rule requests public comment on the use of ethylene gas for regulation of pineapple flowering.

IV. Related Documents

Eight notices were published regarding the meetings of the NOSB and its deliberations on recommendations and substances petitioned for amending the National List. Substances and recommendations included in this proposed rule were announced for NOSB deliberation in the following **Federal Register** Notices: (1) 64 FR 54858, October 8, 1999 (Ethylene); (2) 65 FR 33802, May 25, 2000, (Ethylene gas); (3) 65 FR 64657, October 30, 2000, (Calcium borogluconate and Peracetic acid); (4) 66 FR 10873, February 20, 2001, (Poloxalene); (5) 66 FR 48654, September 21, 2001, (Calcium chloride, Copper sulfate, Methionine); (6) 67 FR 19375, April 19, 2002, (Potassium sorbate and Sodium propionate); (7) 67 FR 54784, August 26, 2002, (Ozone gas, Pheromones, Sodium (Chilean) nitrate, Propylene glycol, Magnesium hydroxide/Magnesium oxide, Kaolin pectin, Bismuth subsalicylate, Flunixin, Xylazine, Tolazoline, Butorphanol, Mineral oil, Activated charcoal, Epinephrine); and (8) 67 FR 62950,

October 9, 2002, (Potassium sulfate and Calcium propionate).

V. Statutory and Regulatory Authority

The Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 *et seq.*), authorizes the Secretary, at section 6517(d)(1), to make amendments to the National List based on proposed amendments developed by the NOSB. Sections 6518(k)(2) and 6518(n) of OFPA authorize the NOSB to develop proposed amendments to the National List for submission to the Secretary and establish a petition process by which persons may petition the NOSB for the purpose of having substances evaluated for inclusion onto or deletion from the National List. The National List petition process is implemented under § 205.607 of the NOS. The current petition process (65 FR 43259) can be accessed through the NOP Web site at *http://www.ams.usda.gov/nop.*

A. Executive Order 12866

This action has been determined to be non-significant for purposes of Executive Order 12866, and therefore, does not have to be reviewed by the Office of Management and Budget.

B. Executive Order 12988

Executive Order 12988 instructs each executive agency to adhere to certain requirements in the development of new and revised regulations in order to avoid unduly burdening the court system. The final rule was reviewed under this Executive Order and no additional related information has been obtained since then. This proposed rule is not intended to have a retroactive effect.

States and local jurisdictions are preempted under section 2115 of the Organic Foods Production Act (OFPA) (7 U.S.C. 6514) from creating programs of accreditation for private persons or State officials who want to become certifying agents of organic farms or handling operations. A governing State official would have to apply to USDA to be accredited as a certifying agent, as described in section 2115(b) of the OFPA (7 U.S.C. 6514(b)). States are also preempted under sections 2104 through 2108 of the OFPA (7 U.S.C. 6503 through 6507) from creating certification programs to certify organic farms or handling operations unless the State programs have been submitted to, and approved by, the Secretary as meeting the requirements of the OFPA.

Pursuant to section 2108(b)(2) of the OFPA (7 U.S.C. 6507(b)(2)), a State organic certification program may contain additional requirements for the production and handling of organically produced agricultural products that are produced in the State and for the certification of organic farm and handling operations located within the State under certain circumstances. Such additional requirements must: (a) Further the purposes of the OFPA, (b) not be inconsistent with the OFPA, (c) not be discriminatory toward agricultural commodities organically produced in other States, and (d) not be effective until approved by the Secretary.

Pursuant to section 2120(f) of the OFPA (7 U.S.C. 6519(f)), this regulation would not alter the authority of the Secretary under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), the Poultry Products Inspections Act (21 U.S.C. 451 *et seq.*), or the Egg Products Inspection Act (21 U.S.C. 1031 *et seq.*), concerning meat, poultry, and egg products, nor any of the authorities of the Secretary of Health and Human Services under the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 *et seq.*), nor the authority of the Administrator of the Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136 *et seq.*).

Section 2121 of the OFPA (7 U.S.C. 6520) provides for the Secretary to establish an expedited administrative appeals procedure under which persons may appeal an action of the Secretary, the applicable governing State official, or a certifying agent under this title that adversely affects such person or is inconsistent with the organic certification program established under this title. The OFPA also provides that the U.S. District Court for the district in which a person is located has jurisdiction to review the Secretary's decision.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) requires agencies to consider the economic impact of each rule on small entities and evaluate alternatives that would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the market. The purpose is to fit regulatory actions to the scale of businesses subject to the action.

Pursuant to the requirements set forth in the RFA, the Agricultural Marketing Service (AMS) performed an economic impact analysis on small entities in the final rule published in the **Federal Register** on December 21, 2000. AMS has also considered the economic impact of this action on small entities. Due to the changes reflected in this proposed rule that allow the use of additional substances in agricultural production and handling, the Administrator of AMS certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. This action relaxes the regulations published in the final rule and provides small entities with more tools to use in day-to-day operations. Small agricultural service firms, which include producers, handlers, and accredited certifying agents, have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000 and small agricultural producers are defined as those having annual receipts of less than $5,000,000.

The U.S. organic industry at the end of 2001 included nearly 6,600 certified crop and livestock operations, including organic production and handling operations, producers, and handlers. These operations reported certified acreage totaling more than 2.34 million acres, 72,209 certified livestock, and 5.01 million certified poultry. Data on the numbers of certified handling operations are not yet available, but likely number in the thousands, as they would include any operation that transforms raw product into processed products using organic ingredients. Growth in the U.S. organic industry has been significant at all levels. From 1997 to 2001, the total organic acreage grew by 74 percent; livestock numbers certified organic grew by almost 300 percent over the same period, and poultry certified organic increased by 2,118 percent over this time. Sales growth of organic products has been equally significant, growing on average around 20 percent per year. Sales of organic products were approximately $1 billion in 1993, but are estimated to reach $13 billion this year, according to the Organic Trade Association (the association that represents the U.S. organic industry). In addition, USDA has accredited 81 certifying agents who have applied to USDA to be accredited in order to provide certification services to producers and handlers. A complete list of names and addresses of accredited certifying agents may be found on the AMS NOP Web site, at *http://www.ams.usda.gov/nop.* AMS believe that most of these entities would be considered small entities under the criteria established by the SBA.

Additional regulatory flexibility analysis beyond the regulatory flexibility analysis published in the NOP final rule on December 21, 2000, is not required for the purposes of this proposed rule. Comments from small entities affected by parts of this proposed rule will be considered in relation to the requirements of the RFA. These comments must be submitted separately and cite 5 U.S.C. 609 in the correspondence.

D. Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the existing information collection requirements for the NOP are approved under OMB number 0581–0181. No additional collection or recordkeeping requirements are imposed on the public by this proposed rule. Accordingly, OMB clearance is not required by section 350(h) of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulation at 5 CFR part 1320.

E. General Notice of Public Rulemaking

This proposed rule reflects recommendations submitted to the Secretary by the NOSB. The ten substances proposed to be added to the National List were based on petitions from the industry and evaluated by the NOSB using criteria in the Act and the regulations. Because these substances are critical to organic production and handling operations, producers and handlers should be able to use them in their operations as soon as possible. Accordingly, AMS believes that a 10-day period for interested persons to comment on this rule is appropriate.

List of Subjects in 7 CFR Part 205

Administrative practice and procedure, Agriculture, Animals, Archives and records, Imports, Labeling, Organically produced products, Plants, Reporting and recordkeeping requirements, Seals and insignia, Soil conservation.

For the reasons set forth in the preamble, 7 CFR Part 205, Subpart G is proposed to be amended as follows:

PART 205—NATIONAL ORGANIC PROGRAM

1. The authority citation for 7 CFR Part 205 continues to read as follows:

Authority: 7 U.S.C. 6501–6522.

2. Section 205.601 is amended by:

a. Revising the introductory text.

b. Redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(4) and (a)(7), respectively.

c. Adding new paragraphs (a)(3), (a)(5), and (a)(6).

d. Revising the word "demisters" in newly redesignated paragraph (a)(7) to read "demossers".

e. Redesignating paragraphs (e)(3) through (e)(7) as paragraphs (e)(4) through (e)(8).

f. Adding a new paragraph (e)(3).

g. Redesignating paragraphs (i)(7) through (i)(10) as paragraphs (i)(8) through (i)(11), respectively.

h. Adding a new paragraph (i)(7).

i. Revising paragraph (k).

j. Adding new paragraph (m)(2).

The revisions read as follows:

§ 205.601 Synthetic substances allowed for use in organic crop production.

In accordance with restrictions specified in this section, the following synthetic substances may be used in organic crop production: Provided, That, use of such substances do not contribute to contamination of crops, soil, or water. Substances allowed by this section, except those in paragraphs (c), (j), (k), and (l) of this section, may only be used when the provisions set forth in § 205.206(a) through (d) prove insufficient to prevent or control the target pest.

(a) * * *

(3) Copper sulfate—for use as an algicide, is limited to one application per field during any 24-month period. Application rates are limited to those which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

* * * * *

(5) Ozone gas—for use as an irrigation system cleaner only.

(6) Peracetic acid—for use in disinfecting equipment, seed, and asexually propagated planting material.

* * * * *

(e) * * *

(3) Copper Sulfate—for use as tadpole shrimp control in rice production, is limited to one application per field during any 24-month period. Application rates are limited to levels which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and accredited certifying agent.

* * * * *

(i) * * *

(7) Peracetic acid—for use to control fire blight bacteria when approved by the Environmental Protection Agency (EPA) under a Special Local Need (24c) registration.

* * * * *

(k) As plant growth regulators. Ethylene gas—for regulation of pineapple flowering.

* * * * *

(m) * * *

(2) EPA List 3—Inerts of unknown toxicity—for use only in passive pheromone dispensers.

* * * * *

3. Section 205.602 is revised to read as follows:

§ 205.602 Nonsynthetic substances prohibited for use in organic crop production.

The following nonsynthetic substances may not be used in organic crop production:

(a) Ash from manure burning.

(b) Arsenic.

(c) Calcium chloride, brine process is natural and prohibited for use except as a foliar spray to treat a physiological disorder associated with calcium uptake.

(d) Lead salts.

(e) Potassium chloride—unless derived from a mined source and applied in a manner that minimizes chloride accumulation in the soil.

(f) Sodium fluoaluminate (mined).

(g) Sodium nitrate—unless use is restricted to no more than 20% of the crop's total nitrogen requirement, or until October 21, 2005; for unrestricted use in spirulina production.

(h) Strychnine.

(i) Tobacco dust (nicotine sulfate).

(j)–(z) [Reserved]

4. Section 205.603 is amended by:

a. Revising paragraph (a).

b. Revising the word "chlorohexidine" in paragragh (a)(4) to read "chlorhexidine".

c. Redesignating paragraphs (b)(1) through (b)(5) and (b)(6) as (b)(2) through (b)(6) and (b)(1), respectively.

(d) Redesignating paragraphs (d)(1) and (d)(2) as paragraphs (d)(2) and (d)(3), resepectively.

e. Adding a new paragraph (d)(1).

f. Revising newly redesignated paragraph (d)(2).

g. Redesignating paragraph (f) as paragraph (e)(1) and reserving paragraph (e)(2);

h. Reserving paragraphs (f)–(z).

The revisions and addition read as follows:

§ 205.603 Synthetic substances allowed for use in organic livestock production.

* * * * *

(a) As disinfectants, sanitizer, and medical treatments as applicable.

(1) Alcohols.

(i) Ethanol-disinfectant and sanitizer only, prohibited as a feed additive.

(ii) Isopropanol-disinfectant only.

(2) Aspirin-approved for health care use to reduce inflammation.

(3) Biologics-Vaccines.

(4) Chlorhexidine—Allowed for surgical procedures conducted by a veterinarian. Allowed for use as a teat dip when alternative germicidal agents and/or physical barriers have lost their effectiveness.

(5) Chlorine materials—disinfecting and sanitizing facilities and equipment. Residual chlorine levels in the water

shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act.

(i) Calcium hypochlorite.

(ii) Chlorine dioxide.

(iii) Sodium hypochlorite.

(6) Electrolytes-without antibiotics.

(7) Glucose.

(8) Glycerine-Allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils.

(9) Hydrogen peroxide.

(10) Iodine.

(11) Magnesium sulfate.

(12) Oxytocin-use in postparturition therapeutic applications.

(13) Parasiticides. Ivermectin—prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder stock when organic system plan-approved preventive management does not prevent infestation. Milk or milk products from a treated animal cannot be labeled as provided for in subpart D of this part for 90 days following treatment. In breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic and must not be used during the lactation period of breeding stock.

(14) Phosphoric acid-allowed as an equipment cleaner, *Provided*, That, no direct contact with organically managed livestock or land occurs.

* * * * *

(d) * * *

(1) DL—Methionine, DL—Methionine—hydroxy analog, and DL—Methionine—hydroxy analog calcium—for use only in organic poultry production until October 21, 2005.

(2) Trace minerals, used for enrichment or fortification when FDA approved.

* * * * *

5. Section 205.605 is revised to read as follows:

§ 205.605 Nonagricultural (nonorganic) substances allowed as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))."

The following nonagricultural substances may be used as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))" only in accordance with any restrictions specified in this section.

(a) *Nonsynthetics allowed:*

Acids (Alginic; Citric—produced by microbial fermentation of carbohydrate substances; and Lactic).
Agar-agar.
Bentonite.
Calcium carbonate.
Calcium chloride.
Carageenan.
Colors, nonsynthetic sources only.
Dairy cultures.
Diatomaceous earth—food filtering aid only.
Enzymes—must be derived from edible, nontoxic plants, nonpathogenic fungi, or nonpathogenic bacteria.
Flavors, nonsynthetic sources only and must not be produced using synthetic solvents and carrier systems or any artificial preservative.
Kaolin.
Magnesium sulfate, nonsynthetic sources only.
Nitrogen—oil-free grades.
Oxygen—oil-free grades.
Perlite—for use only as a filter aid in food processing.
Potassium chloride.
Potassium iodide.
Sodium bicarbonate.
Sodium carbonate.
Tartaric acid.
Waxes—nonsynthetic (Carnauba wax; and Wood resin).
Yeast—nonsynthetic, growth on petrochemical substrate and sulfite waste liquor is prohibited (Autolysate; Bakers; Brewers; Nutritional; and Smoked—nonsynthetic smoke flavoring process must be documented).

(a) *Synthetics allowed:*

Alginates.
Ammonium bicarbonate—for use only as a leavening agent.
Ammonium carbonate—for use only as a leavening agent.
Ascorbic acid.
Calcium citrate.
Calcium hydroxide.
Calcium phosphates (monobasic, dibasic, and tribasic).
Carbon dioxide.
Chlorine materials—disinfecting and sanitizing food contact surfaces, *Except*, That, residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act (Calcium hypochlorite; Chlorine dioxide; and Sodium hypochlorite).
Ethylene—allowed for postharvest ripening of tropical fruit and degreening of citrus.
Ferrous sulfate—for iron enrichment or fortification of foods when required by regulation or recommended (independent organization).
Glycerides (mono and di)—for use only in drum drying of food.
Glycerin—produced by hydrolysis of fats and oils.
Hydrogen peroxide.
Lecithin—bleached.
Magnesium carbonate—for use only in agricultural products labeled "made with organic (specified ingredients or food group(s))," prohibited in agricultural products labeled "organic".
Magnesium chloride—derived from sea water.
Magnesium stearate—for use only in agricultural products labeled "made with organic (specified ingredients or food group(s))," prohibited in agricultural products labeled "organic".
Nutrient vitamins and minerals, in accordance with 21 CFR 104.20, Nutritional Quality Guidelines For Foods.
Ozone.
Pectin (low-methoxy).
Phosphoric acid—cleaning of food-contact surfaces and equipment only.
Potassium acid tartrate.
Potassium tartrate made from tartaric acid.
Potassium carbonate.
Potassium citrate.
Potassium hydroxide—prohibited for use in lye peeling of fruits and vegetables.
Potassium iodide—for use only in agricultural products labeled "made with organic (specified ingredients or food group(s))," prohibited in agricultural products labeled "organic".
Potassium phosphate—for use only in agricultural products labeled "made with organic (specific ingredients or food group(s))," prohibited in agricultural products labeled "organic".
Silicon dioxide.
Sodium citrate.
Sodium hydroxide—prohibited for use in lye peeling of fruits and vegetables.
Sodium phosphates—for use only in dairy foods.
Sulfur dioxide—for use only in wine labeled "made with organic grapes," *Provided*, That, total sulfite concentration does not exceed 100 ppm.
Tocopherols—derived from vegetable oil when rosemary extracts are not a suitable alternative.
Xanthan gum.

(c)–(z) [Reserved]

6. In § 205.607, paragraph (c) is revised to read as follows:

§ 205.607 Amending the National List.

* * * * *

(c) A petition to amend the National List must be submitted to: Program Manager, USDA/AMS/TMP/NOP, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC 20250.

* * * * *

Dated: April 11, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Services.

[FR Doc. 03–9412 Filed 4–15–03; 10:52 am]

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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317 and 381

[Docket No. 00–046P]

Nutrition Labeling: Nutrient Content Claims on Multi-Serve, Meal-Type Meat and Poultry Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend its nutrition labeling regulations to change the definition of "meal-type" products to allow for nutrient content claims on multiple-serve food containers, to adopt the definition of "main dish" used by the Food and Drug Administration (FDA), and to define how meal-type products and main dishes should be nutritionally labeled. The change in the definition of meal-type products would allow nutrient content claims to be based on 100 grams of product rather than on the serving size, which is based on the Reference Amounts Customarily Consumed (RACC) for the food components. These actions are being proposed in response to a petition filed by ConAgra, Inc. (the petitioner). The proposed changes will help to ensure that FSIS' nutrition labeling regulations are parallel, to the maximum extent possible, to the nutrition labeling regulations of FDA, which were promulgated under the Nutrition Labeling and Education Act (NLEA) of 1990.

DATES: Interested persons are requested to submit written comments by June 16, 2003.

ADDRESSES: Submit an original and two copies of comments to the FSIS Docket Clerk, Room 102, Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Robert C. Post, Ph.D., Director, Labeling and Consumer Protection Staff, Office of Policy, Program and Employee Independence Development, FSIS, at (202) 205–0279 or by fax at (202) 205–3625.

SUPPLEMENTARY INFORMATION:

Background

The Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*) authorize the Secretary of Agriculture to establish and maintain inspection programs designed to ensure that meat and poultry products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. FSIS regulates the labeling of meat and poultry products, and FDA has responsibility for the labeling of all other foods.

In January of 1993, FSIS and FDA published their final rules on nutrition labeling. Both agencies amended their respective regulations to (1) require either mandatory or voluntary nutrition labeling on most of the food products they regulate; (2) revise the list of required nutrients and food components; (3) specify a new format for declaring the nutrients and food components in nutrition labeling; (4) permit specific products to be exempt from nutrition labeling; (5) establish RACC specific for food categories; and (6) prescribe a simplified form of nutrition labeling and the conditions under which such labeling may be used.

If people are to use the nutrition information to construct healthy diets that include products from across the food supply, the two agencies recognized that the regulations need to be as consistent as possible. There was overwhelming support in response to the proposal on claims for FSIS to proceed with the adoption of FDA-defined nutrient content claims, including adopting a constant value of 100 grams for comparison of nutrient content claims on meal-type products. As a result, both agencies issued regulations establishing, as nearly uniform as possible, definitions for nutrient content claims to allow consumers to make valid comparisons among food product categories.

In addition, the agencies participated in the Interagency Committee on Serving Sizes to jointly establish the RACC for food and the criteria for converting RACC to serving sizes in common household measures. The final FSIS rule, among other things, established RACC for 23 meat (9 CFR 317.12(b)) and 22 poultry product categories (9 CFR 381.412(b)). These amounts were calculated to reflect the amount of food, including snacks, dinners, and condiments, that persons four years of age and older customarily consume. These calculations were based on consumption survey data and on data used by food manufacturers and grocers. RACC are designed to be used by food companies as the basis for determining the serving sizes for nutrition labeling of their products.

Nutrient content claims for both FDA and FSIS are composed of two defined parts: The amount (weight) of the nutrient and the amount (generally a serving) of food in which the nutrient is found. If the food is considered to be an individual food, the amount of food (a serving) is represented as the RACC for the food category. If the food is a meal-type product, the amount of food is measured by weight, *i.e.*, 100 grams. If a "low-fat" or "healthy" claim is used, the amount of fat is limited to a maximum of 3 grams per RACC for individual foods and 3 grams per 100 grams of product for single-serve meal-type products.

However, FSIS and FDA have established different criteria for what constitutes a meal. FSIS defined a "meal-type" product (9 CFR 317.313(l) and 381.413(l)) as a product for consumption by one person on one eating occasion that constitutes the major portion of a meal. For purposes of making a nutrition claim, a meal-type product must (1) make a significant contribution to the diet by weighing at least 6 ounces, but no more than 12 ounces per serving (container); (2) contain ingredients from two or more food groups, depending on the weight of the product; and (3) represent, or be in a form commonly understood to be, a meal (breakfast, dinner, etc). In addition, the serving size for meal-type products is defined as the entire content (edible portion only) of the package

FDA defined a "meal-type" product (21 CFR 101.13(l)) for the purpose of making a claim as a product that makes a major contribution to the total diet by (1) weighing at least 10 ounces per labeled serving; (2) containing not less than three 40-gram portions of food or combinations of foods from two or more of the four food groups; and (3) representing, or being in a form commonly understood to be, a meal (breakfast, dinner, etc). FDA's regulations do not restrict the use of the meal-type product claims to single-serve containers.

FDA also defined a "main-dish" product (21 CFR 101.13(m)) for the purpose of making a claim as a food that makes a major contribution to the meal by (1) weighing at least 6 ounces per labeled serving; (2) containing not less than 40 grams of food, or combinations of foods from at least two of four food groups; and (3) representing, or being in the form commonly understood to be, a main dish (*i.e.*, not a beverage or dessert). FSIS regulations do not define a "main-dish" product.

FSIS' and FDA's rationale for allowing different criteria to serve as the basis for evaluating nutrient content claims on meal-type products versus other types of foods is that meal-type products have potentially large variations in amounts customarily consumed, and the average serving size would not be an appropriate basis for comparison of nutrients. Rather, a constant value of 100 grams was determined to be an appropriate basis. It was further reasoned that restricting this category to a single-serving criterion and requiring that products within the category be represented as a meal would adequately distinguish these products from other similarly formulated products.

ConAgra's Petition

In September 1998, ConAgra petitioned FSIS to amend the definition

of "meal-type" products in its regulations to allow nutrient content claims on multi-serve food containers based on the same criteria as for meals that are sold in single-serving containers. Specifically, the petitioner sought an amendment of the definition of "meat" (9 CFR 317.313(l)) to include product in multiple-serving containers in the general principles (9 CFR 317.313) and the "healthy" regulations (9 CFR 317.363). FSIS' initial response was that the few changes requested by the petitioner would not be sufficient to address all of the issues and amend the regulations so that manufacturers can make consistent nutrition content claims on multi-serve containers. FSIS requested that the petitioner provide additional data to justify the changes it is seeking and clearly state the need for consistent definitions for main dish and meal-type products that do not compromise the established RACC for food products and that are consistent with the intent of the NLEA.

After several follow-up discussions with FSIS, ConAgra provided the Agency with marketing and consumption data that FSIS termed insufficient to justify granting the change in the regulations. FSIS said that it was concerned that to allow such claims could confuse and mislead consumers, create market inequities between sellers of individual food products and sellers of meal-type products, and discourage the development of products eligible for such claims. The Agency said that the data submitted by the petitioner did not alleviate those concerns.

In 2001, FSIS concluded that more conclusive data submitted by the petitioner indicated that there was a market for multi-serve meals that did not exist in 1993 when the nutrition labeling regulations were issued. Because of the increasing popularity of multi-serve meals and evidence that a significant number of consumers were purchasing such meals, FSIS said it was prepared to consider changing the regulatory definition of "meal-type" products and allowing nutrient content claims based on a 100 gram criterion as long as there are no established RACC for the food product category in question. It also said that consistency in nutrient content claims and RACC criteria for all meat and poultry products must be maintained in accordance with the regulations. The Agency noted that if Federal regulations regarding the basis for which nutrient content claims are made are modified for consistency, FSIS and FDA need identical definitions for what constitutes a meal and a main-dish product. FSIS granted the petition in November 2001. The petition and the supporting documentation are available in the FSIS Docket Room (*see* **ADDRESSES**) and on the FSIS Web site at *http://www.fsis.usda.gov*.

Costs and Benefits Associated With the Proposal

No significant cost impact is seen as a result of this proposed rule. All costs would be borne by industry, which petitioned for the change. The only labels that would be affected would be those of multi-serve, meal-type products above 6 ounces that would be able to bear nutrient content claims. The Agency believes that no more than 300 products currently on the market will be affected by the change. Lean and extra-lean products that have the same definition for meal-type products as main-dish products would not be affected. Therefore, the expected additional labeling costs would be nominal for the industry.

A more consistent format across similar food products would be of benefit to consumers, who would be able to make more informed choices in their food purchases. There is evidence that consumers are experiencing some confusion about how some food products are labeled.

The Proposed Rule

The proposed rule would provide consumers of meat and poultry products with additional consistency in nutrition labeling with FDA's requirements by amending § 317.309 and the parallel poultry regulations at § 381.409 to provide for the nutrition labeling of multi-serve meal-type products and of main-dish products. The proposal also would amend § 317.313(l) and § 317.313(m) and the parallel poultry regulations at § 381.413(l) and § 381.413(m) by revising the definitions of a "meal-type" product and a "main-dish" product for the purpose of making a claim on the packaging of the food products. In addition, the proposal would amend the individual nutrient content claim regulations for both meat and poultry products.

FSIS' paramount objectives in considering modification to its nutrition labeling regulations were that such changes not undermine the basic principles or intent of the misbranding provisions of the Federal Meat Inspection Act and the Poultry Products Inspection Act, and that such modifications result in labels that would not mislead consumers or create unfair marketing advantages for any segment of the food industry. The Agency also was concerned about extending the use of the 100-gram criterion for nutrient content claims to include products not in single-serve containers. Although useful, the 100-gram criterion does not provide nutrient information to consumers that is as definitive as the amount of nutrient per RACC.

However, in the interests of maintaining consistency between FSIS and FDA and of providing incentives to industry to develop meals and main dishes in multi-serve containers that are able to bear nutrient content claims, FSIS is proposing changes in its nutrition labeling regulations. The Agency believes that consumers will benefit from the information on the containers of products that were formulated to qualify to bear such claims.

Executive Order 12866 and the Regulatory Flexibility Act

This proposed rule has been determined to be not economically significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget. FSIS is responding to an industry petition for a labeling change affecting approximately 300 food products.

Executive Order 12778

This proposal has been reviewed under Executive Order 12778, Civil Justice Reform. When this rule becomes final:

(1) All State and local laws and regulations that are inconsistent with this rule will be preempted: (2) no retroactive effect will be given to this rule: and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Effect on Small Entities

The Administrator, FSIS, has made a determination that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposal would change the definition of "meal-type" products to allow for nutrient content claims on multi-serve food containers and adopt FDA's definition of "main-dish" products. In addition, small entities are exempt from nutrition labeling regulations if their products do not make nutrition claims or bear nutrition information.

Additional Public Notification

Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this proposed rule and are informed about the mechanism for providing their comments, FSIS will announce it and make copies of this Federal Register publication through the FSIS Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www/fsis.uisda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register**, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents and stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other persons who have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information, contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv), go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Paperwork Requirements

This proposed rule has been reviewed under the Paperwork Reduction Act and imposes no new paperwork or recordkeeping requirements.

List of Subjects

9 CFR Part 317

Food labeling, Food packaging, Meat inspection, Nutrition.

9 CFR Part 381

Food labeling, Food packaging, Nutrition, Poultry and poultry products.

Proposed Rule

For the reasons discussed in the preamble, FSIS is proposing to amend 9 CFR, Parts 317 and 381, as follows:

PART 317—LABELING, MARKING DEVICES AND CONTAINERS

1. The authority citation for 9 CFR part 317 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

2. Section 317.309 would be amended by revising paragraph (b)(12) to read as follows:

§ 317.309 Nutrition label content.

* * * * *

(b) * * *

(12) The serving size for meal-type products and main-dish products as defined in § 317.313(l) and § 317.313(m) in single-serving containers will be the entire edible content of the package. Serving size for meal-type products and main-dish products in multi-serve containers will be based on the reference amount applicable to the product in § 317.312(b) if the product is listed in § 317.312(b). Serving size for meal-type products and main-dish products in multi-serve containers that are not listed in § 317.312(b) will be based on the reference amount according to § 317.312(c), (d), and (e).

* * * * *

3. Section 317.313 would be amended by revising paragraph (l) and by adding paragraph (m) to read as follows:

§ 317.313 Nutrient content claims; general principles

* * * * *

(l) For purposes of making a claim, a "meal-type" product will be defined as a product that:

(1) Makes a major contribution to the diet by

(i) Weighing at least 10 ounces per labeled serving, and

(ii) Containing not less than three 40 gram portions of food, or combinations of foods, from two or more of the following four food groups, except as noted in paragraph (l)(1)(ii)(E) of this section:

(A) Bread, cereal, rice, and pasta;

(B) Fruits and vegetables;

(C) Milk, yogurt, and cheese;

(D) Meat, poultry, fish, dry beans, eggs, nuts; except that:

(E) These foods will not be sauces (except for foods in the four food groups in paragraphs (l)(1)(ii)(A) through (D) of this section, that are in the sauces), gravies, condiments, relishes, pickles, olives, jams, jellies, syrups, breadings, or garnishes; and

(2) Is represented as, or is in the form commonly understood to be, a breakfast, lunch, dinner, meal, or entree. Such representations may be made either by statements, photographs, or vignettes.

* * * * *

§ 317.354 [Amended]

4. Section 317.354 would be amended as follows:

a. By adding the phrase "and main-dish products as defined in § 317.313(m)," after the phrase "meal-type products as defined in § 317.313(l)," whenever it occurs in the introductory text of paragraphs (b)(1), (c)(1), and (e)(1).

b. By adding the phrase "and main-dish product as defined in § 317.313(m)" after the phrase "meal-type product as defined in § 317.313(l)," whenever it occurs in the introductory text of paragraphs (b)(2) and (c)(2).

c. By adding the phrase "or a main-dish product" after the phrase "meal-type product" in paragraphs (d)(1) and (e)(2)(ii)(B).

§ 317.356 [Amended]

5. Section 317.356 would be amended as follows:

a. By adding the phrase "and main-dish products as defined in § 317.313(m)" after the phrase "meal-type products as defined in § 317.313(l)," whenever it occurs in paragraphs (b) introductory text and paragraph (c)(3).

b. By adding the phrase "and main-dish product as defined in § 317.313(m)" after the phrase "meal-type product as defined in § 317.313(l)," whenever it occurs in paragraphs (d)(1) introductory text and paragraph (d)(2)(i).

§ 317.360 [Amended]

6. Section 317.360 would be amended as follows:

a. By adding the phrase "and main-dish products as defined in § 317.313(m)" after the phrase "meal-type products as defined in § 317.313(l)," whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), and (c)(4).

b. By adding the phrase "and main-dish product as defined in § 317.313(m)" after the phrase "meal-type product as defined in § 317.313(l)," whenever it occurs in the introductory text of paragraphs (b)(3), (b)(5), and (c)(5).

c. By adding the phrase "or a main-dish product" after the phrase "a meal-type product" in paragraph (c)(1)(i).

§ 317.361 [Amended]

7. Section 317.361 would be amended as follows:

a. By adding the phrase "and main-dish products as defined in § 317.313(m)," after the phrase "meal-type products as defined in § 317.313(l)," whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), and (b)(6).

b. By adding the phrase "and main-dish product as defined in § 317.313(m)" after the phrase "meal-type product as defined in § 317.313(l)," whenever it occurs in the introductory text of paragraphs (b)(3), (b)(5), and (b)(7).

c. By adding the phrase "or a main-dish product" after the phrase "a meal-type product" in paragraph (b)(1)(i).

§ 317.362 [Amended]

8. Section 317.362 would be amended as follows:

a. By adding the phrase "and main-dish products as defined in § 317.313(m)" after the phrase "meal-type products as defined in § 317.313(l)," whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), (c)(2), (d)(2), (d)(4), and paragraph (e)(1) and (e)(2).

b. By adding the phrase "and main-dish product as defined in § 317.313(m)" after the phrase "meal-type product as defined in § 317.313(l)," whenever it occurs in the introductory text of paragraph (b)(3), (b)(5), (c)(3), (c)(5), and (d)(5).

c. By adding the phrase "or a main-dish product" after the phrase "a meal-type product," in paragraphs (b)(1)(i) and (c)(1)(i).

§ 317.363 [Amended]

9. Section 317.363 would be amended as follows:

a. By adding the phrase "main-dish product, as defined in § 317.313(m) and a," before the phrase "meal-type product, as defined in § 317.313(l)" in the introductory text of paragraphs (b)(2)(i) and (b)(3)(i).

b. By adding the phrase "main dish and" before the phrase "meal-type products" in the introductory text of paragraphs (b)(2)(i) and (b)(3)(i).

c. By adding the phrase "main-dish product, as defined in § 317.313(m)," in place of the phrase "meal-type product as defined in § 317.313(l)" in paragraph (b)(4)(i) and by adding the phrase "main-dish products" in place of the phrase "meal-type products" in paragraph (b)(4)(i).

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

10. The authority citation for Part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

11. Section 381.409 would be amended by revising paragraph (b)(12) to read as follows:

§ 381.409 Nutrient label content.

* * * * *

(b) * * *

(12) The serving size for meal-type products and main-dish products as defined in § 381.413(l) and § 381.413 (m) in single-serve containers will be the entire edible content of the package. Serving size for meal-type products and main-dish products in multi-serve containers will be based on the reference amount applicable to the product in § 381.412(b) if the product is listed in § 381.412(b). Serving size for meal-type products and main-dish products in multi-serve containers that are not listed in § 381.412(b) will be based on the reference amount according to § 381.412(c), (d), and (e).

* * * * *

12. Section 381.413 would be amended by revising paragraph (1) and by adding paragraph (m) to read as follows:

§ 381.413 Nutrient content claims; general principles.

* * * * *

(l) For purposes of making a claim, a "meal-type" product will be defined as a product that:

(1) Makes a major contribution to the diet by:

(i) Weighing at least 10 ounces per labeled serving, and

(ii) Containing not less than three 40 gram portions of food, or combinations of foods, from two or more of the following four food groups, except as noted in paragraph (l)(1)(ii)(E) of this section:

(A) Bread, cereal, rice, and pasta;

(B) Fruits and vegetables;

(C) Milk, yogurt, and cheese;

(D) Meat, poultry, fish, dry beans, eggs, and nuts; except that:

(E) These foods will not be sauces (except for foods in the four food groups in paragraph (l)(1)(ii)(A) through (D) of this section that are in the sauces), gravies, condiments, relishes, pickles, olives, jams, jellies, syrups, breadings, or garnishes; and

(2) Is represented as, or is in a form commonly understood to be, a main dish (*e.g.*, not a beverage or a dessert). Such representations may be made either by statements, photographs, or vignettes.

* * * * *

§ 381.454 [Amended]

13. Section 381.454 would be amended as follows:

a. By adding the phrase "and main-dish products as defined in § 381.413(m)," after the phrase "meal-type products as defined in § 381.413(l)" wherever it occurs in the introductory text of paragraphs (b)(1), (c)(1), and (e)(1).

b. By adding the phrase "and main-dish product as defined in § 381.413(m)" after the phrase "meal-type product as defined in § 381.413(l)," whenever it occurs in the introductory text of paragraphs (b)(2) and (c)(2).

c. By adding the phrase "or in a main-dish product" after the phrase "meal-type product" in paragraphs (d)(1) and (e)(2)(ii)(B).

§ 381.456 [Amended]

14. Section 381.456 would be amended as follows:

a. By adding the phrase "and main-dish products as defined in § 381.413(m)" after the phrase "meal-type products as defined in § 318.413(l)," whenever it occurs in paragraph (b) introductory text and paragraph (c)(3).

b. By adding the phrase "and main-dish product as defined in § 381.413(m)" after the phrase "meal-type product as defined in § 381.413(m)" whenever it occurs in paragraphs (d)(1) introductory text and paragraph (d)(2)(i).

§ 381.460 [Amended]

15. Section 381.460 would be amended as follows:

a. By adding the phrase "and main-dish products as defined in § 318.413(m)" after the phrase "meal-type products as defined in § 381.413(l)," whenever it occurs in the introductory text of paragraphs (b)(2), b)(4), and (c)(4).

b. By adding the phrase "and main-dish product as defined in § 381.413(m)" after the phrase "meal-type product as defined in § 381.413(l)," whenever it occurs in the introductory text of paragraphs (b)(3), (b)(5), and (c)(5).

c. By adding "or a main-dish product" after the phrase "a meal-type product" in paragraph (c)(1)(i).

§ 381.461 [Amended]

16. Section 381.461 would be amended as follows:

a. By adding the phrase "and main-dish products as defined in § 381.413(m)," after the phrase "meal-type products as defined in § 381.413(l)," whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), and (b)(6).

b. By adding the phrase "and main-dish product as defined in § 381.413(m)" after the phrase "meal-type product as defined in § 381.413(l)," whenever it occurs in the introductory text of paragraphs (b)(3), (b)(5), and (b)(7).

c. By adding the phrase "or a main-dish product" after the phrase "of a meal-type product" in paragraph (b)(1)(i).

§ 381.462 [Amended]

17. Section 381.462 would be amended as follows:

a. By adding the phrase "and main-dish products as defined in § 381.413(m)" after the phrase "meal-type products as defined in § 381.413(l)," whenever it occurs in the introductory text of paragraphs (b)(2), (b)(4), (c)(2), (d)(4) and paragraphs (e)(1) and (e)(2).

b. By adding the phrase "and main-dish product as defined in § 381.413(m)" after the phrase "meal-type product as defined in § 381.413(l)," whenever it occurs in the introductory text of paragraph (b)(3), (b)(5), (c)(3), (c)(5), (d)(3), and (d)(5).

c. By adding the phrase "or a main-dish product" after the phrase "a meal-type product," in paragraphs (b)(1)(i) and (c)(1)(i).

§ 381.463 [Amended]

18. Section 381.463 would be amended as follows:

a. By adding the phrase "main-dish product, as defined in § 381.413(m) and a," before the phrase "meal-type product, as defined in § 381.413(l)" in the introductory text of paragraph (b)(2)(i) and (b)(3)(i).

b. By adding the phrase "main-dish and" before the phrase "meal-type products" in the introductory text of paragraphs (b)(2)(i) and (b)(3)(i).

c. By adding the phrase "main-dish product, as defined in § 381.413(m)," in place of the phrase "meal-type product, as defined in § 381.413(l)" in paragraph (b)(4)(i) and by adding the phrase "main-dish products" in place of the phrase "meal-type products" in paragraph (b)(4)(i).

Done at Washington, DC, on April 9, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–9258 Filed 4–15–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–05–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require identification of the valves installed on the engine struts as hydraulic supply (fire) shutoff valves for the engine-driven pump, corrective action if necessary, and eventual replacement of discrepant valves with serviceable parts. This action is necessary to prevent leakage of hydraulic (flammable) fluid into an engine fire, which could result in an uncontrolled fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–05–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–05–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Frey, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6468; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–05–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No.

2003–NM–05–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that various intermittent limit switch functioning problems have caused the failure of certain "Circle Seal" valves installed as the engine-driven pump (EDP) direct-current (DC) motor-operated shutoff valves on certain Boeing Model 747 series airplanes. This particular valve may malfunction if the motor limit switches are not actuated, causing the motor to run at the stop until the clutch fails. If the clutch fails, the valve cannot open and close for the affected hydraulic system. This failure mode was discovered during production testing on Model 747 series airplanes. The subject valve was incorrectly identified by the manufacturer as an acceptable optional part for Model 747 series airplanes. This valve may have been installed during production or normal maintenance. The EDP valve is intended to prevent hydraulic fluid from being supplied to an engine fire, which could result in an uncontrolled fire.

Related Rulemaking

The FAA previously issued similar rulemaking for the same unsafe condition on certain Boeing Model 737, 757, and 767 series airplanes. AD 2001–11–07, amendment 39–12249 (66 FR 31135, June 11, 2001), requires repetitive operational checks to detect malfunctioning of certain motor-operated hydraulic shutoff valves, and their eventual replacement with new valves as terminating action for the repetitive inspections.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–29A2102, including an Evaluation Form, dated June 29, 2000, which describes procedures for determining, by a records check or inspection, whether certain Circle Seal valves have been installed on the engine struts as the EDP DC motor-operated shutoff valves. Corrective action for discrepant valves includes repetitive tests of the hydraulic supply (fire) shutoff valves, immediate replacement of failed valves, and eventual replacement of all subject valves with serviceable valves. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 681 airplanes of the affected design in the worldwide fleet. The FAA estimates that 130 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to identify the valve, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $7,800, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Replacing a valve, if required, would take approximately 6 work hours, at an average labor rate of $60 per work hour. Required parts and hydraulic fluid would cost approximately $4,438 per valve. Based on these figures, the cost impact of replacing a valve is estimated to be $4,798.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2003–NM–05–AD.

Applicability: Model 747 series airplanes, certificated in any category, as listed in Boeing Alert Service Bulletin 747–29A2102, dated June 29, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of hydraulic (flammable) fluid into an engine fire, which could result in an uncontrolled fire, accomplish the following:

Part Identification

(a) Within 6 months after the effective date of this AD, check maintenance records or perform a general visual inspection of each engine strut to determine whether any discrepant valve is installed as a hydraulic supply (fire) shutoff valve for the engine-driven pump. A discrepant valve is a Circle Seal valve part number (P/N) S270T010–3 or a valve that cannot be readily identified. Identify the part in accordance with Boeing Alert Service Bulletin 747–29A2102, excluding the Evaluation Form, dated June 29, 2000. If no discrepant valve is installed, no further work is required by this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Actions for Discrepant Valves

(b) For any discrepant valve found during the part identification required by paragraph (a) of this AD:

(1) Within 6 months after the effective date of this AD, do a hydraulic supply (fire) shutoff valve test, in accordance with paragraph 3.J. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–29A2102, dated June 29, 2000.

(i) If the valve passes the test, repeat the test in accordance with paragraph (b)(2) of this AD.

(ii) If the valve does not pass the test: Before further flight, replace the valve and do a hydraulic supply (fire) shutoff valve test, in accordance with paragraph 3.I. of the Accomplishment Instructions of the service bulletin.

(2) Repeat the test specified in paragraph (b)(1) of this AD on each discrepant valve at least every 6 months, until the actions specified by paragraph (b)(3) of this AD have been accomplished.

(3) Within 4 years after identifying the valve as required by paragraph (a) of this AD: Replace each discrepant valve with a serviceable valve and do a hydraulic supply (fire) shutoff valve test, in accordance with paragraph 3.I. of the Accomplishment Instructions of the service bulletin. Replacement of the valve terminates the repetitive tests required by paragraph (b)(2) of this AD for that valve.

Part Installation

(c) As of the effective date of this AD, no person may install a Circle Seal valve P/N S270T010–3 on any airplane unless the requirements of this AD are accomplished for that valve.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 8, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9301 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–184–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; Model DC–8–50 Series Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–60 Series Airplanes; Model DC–8–70 Series Airplanes; and Model DC–8–70F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplanes. This proposal would require an inspection to determine the material composition of the auxiliary spar cap of the lower inboard of the left and right wings. For certain airplanes, this proposal also would require repetitive detailed and dye penetrant inspections for cracking of the spar cap, and corrective actions if necessary. This action is necessary to detect and correct stress corrosion cracking of the auxiliary spar cap, which could cause excessive loads to the structure attaching the support fitting of the main landing gear (MLG) to the wing, and result in loss of the MLG. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–184–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington FAA, or at the Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–184–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received numerous reports indicating that cracking has occurred in the auxiliary spar cap of the lower inboard near the outboard attach bolts on various McDonnell Douglas Model DC–8 airplanes. The cracking occurred on airplanes that have accumulated more than 36,000 total flight hours. Investigation indicates that the cracking appeared to be due to stress corrosion. Such cracking of the auxiliary spar cap, if not detected and corrected, could cause excessive loads on the structure attaching the support fitting of the main landing gear (MLG) to the wing, and result in loss of the MLG.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991. That service bulletin describes procedures for performing repetitive detailed and dye penetrant inspections to detect stress cracking of the auxiliary spar cap of the lower inboard of the left and right wings. For cracking that is within certain limits, the service bulletin describes corrective actions such as repair or rework and application of corrosion-inhibiting compound, if necessary. For any cracking that is outside the limits specified in the service bulletin, the service bulletin describes procedures for replacing the auxiliary spar cap with either a new spar cap made with 7075–T6 aluminum or with a new, improved spar cap made with 7075–T73 aluminum. Additionally, for any cracking that is detected at the bathtub end of both forward and aft bolt holes, the service bulletin describes procedures for replacement of those MLG fittings with new or serviceable fittings. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require an inspection to determine the material composition of the auxiliary spar cap. If the spar cap is made of 7075–T6 aluminum, the proposed AD would require accomplishment of the actions and procedures specified in the service bulletin described above for the repetitive inspections for cracking, and repair, rework, and replacement of the spar cap if necessary.

Operators should note that the FAA has received information indicating that there may be a parts availability problem in procuring spar caps made of 7075–T73 aluminum. However, we have determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of the terminating action (replacement of both spar caps with caps made of 7075–T73 aluminum). In making this determination, we consider that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking of the auxiliary spar cap before it represents a hazard to the airplane.

Differences Between This NPRM and the Service Information

The FAA considers that, prior to performing the inspections and corrective actions described in the service bulletin above, it is necessary to perform an inspection to determine the material composition of the auxiliary spar cap of the lower inboard of the left and right wings. That inspection may be done per a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, or by performing an eddy current test of the auxiliary spar cap per the Non-Destructive Testing Standard Practice Manual MDC–93K0393 (NDTSPM) 06–10–01.006. If the auxiliary spar cap is composed of 7075–T6 aluminum, this proposed AD would require accomplishment of the actions specified in the service bulletin described above, as applicable.

Additionally, operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain cracking outside the limits specified in the service bulletin, this proposal would require the disposition of any such cracking that was detected to be accomplished per a method approved by the FAA.

Cost Impact

There are approximately 264 airplanes of the affected design in the worldwide fleet. The FAA estimates that 244 airplanes of U.S. registry would be affected by this proposed AD. We estimate that it would take approximately 2 work hours per airplane to accomplish the proposed inspection to determine the material of the spar cap. We estimate that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $29,280, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–184–AD.

Applicability: Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–61, DC–8–62, and DC–8–63 airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F airplanes; Model DC–8–71, DC–8–72, and DC–8–73 airplanes; as listed in McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the auxiliary spar cap, which could cause excessive loads to the structure attaching the support fitting of the main landing gear (MLG) to the wing, and result in loss of the MLG; accomplish the following:

Inspection To Determine the Material of the Auxiliary Spar Cap

(a) Within 24 months or 2,000 flight cycles after the effective date of this AD, whichever occurs later, inspect to determine the material composition of the auxiliary spar cap (Part Numbers 5615058–1 through –506 inclusive) of the lower inboard of the left and right wings, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, or by performing an eddy current test of the auxiliary spar cap per the Non-Destructive Testing Standard Practice Manual MDC–93K0393 (NDTSPM) 06–10–01.006. If the material of the spar cap is 7075–T73 aluminum, no further action is required by this paragraph.

Inspections for Cracking and Follow-on Corrective Actions

(b) If the material of the auxiliary spar cap found during the inspection required by paragraph (a) of this AD is 7075–T6 aluminum: Within 2 years or 2,000 flight cycles after accomplishing the inspection required by paragraph (a) of this AD, perform a detailed inspection and a dye penetrant inspection for cracking of the auxiliary spar cap and the bathtub end of either the forward or the aft bolt hole of the lower inboard of the left and right wings, as applicable, per McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no cracking is detected, repeat the inspection at intervals not to exceed 6,400 flight hours, until the auxiliary spar cap is replaced with a spar cap made with 7075–T73 aluminum, in accordance with the service bulletin.

(2) If any cracking of the auxiliary spar cap or at the bathtub end of either the forward or the aft bolt hole is detected that is within the limits specified in the service bulletin, before further flight, rework or repair the spar cap, as applicable, and apply corrosion inhibiting compound, in accordance with the service bulletin. Repeat the inspection for cracking at intervals not to exceed 1,600 flight hours, until the auxiliary spar cap is replaced with a spar cap composed of 7075–T73 aluminum. Replacement of both spar caps with 7075–T73 aluminum is terminating action for the requirements of this AD.

(3) If any cracking at the bathtub end of both the forward and aft bolt holes is detected that is within the limits specified in the service bulletin, before further flight, replace the MLG fitting with a new or serviceable fitting, in accordance with the service bulletin.

(4) If any cracking of the auxiliary spar cap is detected that is outside the limits specified in the service bulletin, before further flight, replace the auxiliary spar cap with a cap composed of 7075–T73 aluminum, in accordance with the service bulletin, or by a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. For a repair method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO, FAA.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 8, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9302 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–48–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727–200 series airplanes. This proposal would require installation of four lanyards on the forward access panel/door. This action is necessary to prevent the forward ceiling access panel/door from falling down and blocking the aisle, which would impede evacuation in an emergency. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to 425.227.1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–48–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6435; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–48–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during a hard landing of a Model 727–200 series airplane, the forward ceiling access panel/door fell into the passenger aisle and blocked passengers from reaching the forward doors. This condition, if not corrected, could impede evacuation in an emergency.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 727–25–0298, dated February 13, 2003, which describes procedures for installing four lanyards on the forward access panel/door. This modification will restrict the forward ceiling panel drop to 6 inches. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

There are approximately 100 airplanes of the affected design in the worldwide fleet. The FAA estimates that 78 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,680, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2003–NM–48–AD.

Applicability: Model 727–200 series airplanes, certificated in any category, as listed in Boeing Special Attention Service Bulletin 727–25–0298, dated February 13, 2003.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the forward ceiling access panel/door from falling down and blocking the aisle, which would impede evacuation in an emergency, accomplish the following:

Lanyard Installation

(a) Within 18 months after the effective date of this AD, install 4 lanyards on the forward access panel/door, in accordance with Boeing Special Attention Service Bulletin 727–25–0298, dated February 13, 2003.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 8, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9303 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–64–AD]

RIN 2120–AA64

Airworthiness Directives; Robert E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would apply to certain Robert E. Rust (R.E. Rust) Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. The earlier NPRM would have required you to repetitively inspect the tailplane attachment brackets and replace each bracket. The earlier NPRM would have also required you to repetitively inspect each joint of the port and starboard engine mount frame and the rear upper mount frame tubes for cracks and/or damage and repair any cracks and/or damage found. The earlier NPRM resulted from reports of stress corrosion cracking found on the tailplane attachment brackets and fatigue cracking and chaffing of the engine mount frame. We incorrectly referenced replacing the tailplane attachment brackets (part number C1.TP.167) upon accumulating 9,984 hours time-in-service (TIS). The hour limitation should be 9,984 fatigue hours. Fatigue hours are hours TIS multiplied by the role factor (operational use) as defined in the manufacturer's service information. This proposed supplemental NPRM also adds an hour limitation for performing the repetitive inspection of the tailplane 1 attachment brackets. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these additional actions.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before June 23, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–64–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2000–CE–64–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Work 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com*. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that

summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–64–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused Us To Issue the Earlier NPRM?

We received reports that an unsafe condition exists on certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. After reviewing several of these airplanes, stress corrosion cracking was found on the tailplane attachment brackets and fatigue cracks and chaffing were found on the engine mount frame.

Cracks in the engine mount frame were found in the area of the junction of the front and rear top tube and engine mounting foot support brackets and in the front of the frame. We have determined that fatigue is the cause of the cracks. The upper aft mount frame tubes were also found to have damage caused by chaffing by the cowling support rod.

What Are the Consequences if the Condition Is Not Corrected?

These conditions, if not corrected, could result in failure of the tailplane attachment brackets and failure of the engine mount. Such failures could lead to loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 12, 2002 (67 FR 68536). The NPRM proposed to require you to repetitively inspect the tailplane attachment brackets and replace each bracket. The NPRM also proposed to require you to repetitively inspect each joint of the port and starboard engine mount frame and the rear upper mount frame tubes for cracks and/or damage and repair any cracks and/or damage found.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Change the Compliance Time for Replacing the Tailplane Attachment Brackets

What Is the Commenter's Concern?

The commenter states that replacement parts for the tailplane attachment brackets may not be available from the manufacturer within 90 days after the effective date of this AD. Therefore, the commenter suggests allowing more time to acquire parts by changing the compliance time for replacing the tailplane attachment brackets if cracks are found during the initial inspection from 90 days to 12 months after the effective date of this AD.

What Is FAA's Response to the Concern?

The commenter does not offer any solution to ensure the airworthiness of the airplanes until the parts become available. We cannot increase the compliance time unless other means to ensure the continued airworthiness of these airplanes are substantiated.

We will consider an alternative method of compliance if the alternative provides an equivalent level of safety as outlined in paragraph (*d*) of this AD.

We are not changing the final rule AD action based on this comment.

Comment Issue No. 2: Change the Compliance Time for the Repetitive Inspections of the Tailplane Attachment Brackets

What Is the Commenter's Concern?

The commenter suggests that the repetitive inspections of the tailplane attachment brackets should be changed to every 150 fatigue hour or 6 months, whichever comes first, in order to ensure the airworthiness of these airplanes. The NPRM only proposed inspections every 6 months.

What Is FAA's Response to the Concern?

We concur with the commenter. Requiring repetitive inspections at every 150 fatigue hours or 6 months, whichever comes first, will ensure that the unsafe condition will not go undetected on high usage airplanes for a long period of time and will ensure the airworthiness of the affected airplanes.

We will make this change. Fatigue hours are hours TIS multiplied by the role factor (operational use) as specified in British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985. Because adding the fatigue hours requirement to the repetitive inspection compliance time could increase the burden upon the public, we will reopen the comment period and issue a supplemental NPRM.

Comment Issue No. 3: Remove the Grace Period Allowed Beyond the Safe Life Limit for Replacing the Tailplane Attachment Brackets

What Is the Commenter's Concern?

The commenter states that the ultimate safe life limit of 9,984 fatigue hours for part number C1.TP.167 is a never exceed life and cannot be extended. Once an airplane has reached this safe life limit, the tailplane attachment bracket must be replaced before further flight.

What Is FAA's Response to the Concern?

We concur that a life limit is a never exceed limit. However, the safe life limit for the tailplane attachment bracket has not previously been established and enforced for the owners/operators of the affected airplanes. The life limit was not part of the type certificate data and was not previously mandated by an AD. Part of this proposed AD is establishing the safe life limit for this part. Removing the 90 day grace period for these airplanes already over or nearing 9,984 fatigue hours on the tailplane attachment bracket could inadvertently ground these airplanes when the AD becomes effective.

We are not changing the final rule AD action based on this comment.

The Supplemental NPRM

What Events Have Caused FAA To Issue a Supplemental NPRM?

In addition to adding the fatigue hour requirement to the repetitive inspection compliance time, we are correcting reference to the life limit as 9,984 fatigue hours instead of 9,984 hours TIS. Fatigue hours are hours TIS multiplied by the role factor (operational use).

How Will the Changes to the NPRM Impact the Public?

Proposing to change the intervals for performing the repetitive inspections of the tailplane attachment brackets to include an hour limitation and changing hours TIS to fatigue hours go beyond the scope of what was already proposed. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment on the proposed AD.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relate to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 54 airplanes in the U.S. registry.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the proposed inspections of the tailplane attachment brackets:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
32 workhours × $60 per hour = $1,920	No parts required	$1,920	$1,920 × 54 = $103,680.

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per airplane
3 workhours × $60 per hour = $180 per bracket	$600 per bracket (2 brackets per airplane).	$180 + $600 = $780.

We estimate the following costs to accomplish the proposed inspections of the engine mount frame:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
16 workhours × $60 per hour = $960	No parts required	$960	$960 × 54 = $51,840.

The FAA has no method of determining the number of repairs or replacements each owner/operator would incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary on each airplane.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time for the initial inspection proposed in this AD is "within the next 90 days after the effective date of this AD."

Why Is the Proposed Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

An unsafe condition specified by this proposed AD is caused by corrosion. Corrosion can occur regardless of whether the aircraft is in operation or is in storage. Therefore, to assure that the unsafe condition specified in the proposed AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of TIS.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Robert E. Rust: Docket No. 2000–CE–64–AD

(a) *What airplanes are affected by this AD?* This AD affects R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, that are type certificated in any category.

Note 1: We recommend all owners/operators of DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, with experimental airworthiness certificates comply with the actions required in this AD.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the tailplane attachment brackets caused by stress corrosion cracking and failure of the engine mount, which could result in loss of the tail section and separation of the engine from the airplane respectively. Such failures could lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

(1) Tailplane Attachment Brackets

Compliance	Actions	Procedures
(i) Initially inspect within the next 90 days after the effective date of this AD. (A) Inspect thereafter at intervals not to exceed 6 months or 150 fatigue hours, whichever occurs first, until the modification required by paragraph (d)(1)(ii) of this AD is incorporated. (B) When the modification required by paragraph (d)(1)(ii) is incorporated, you may terminate the repetitive inspections of the tailplane attachment brackets.	Inspect, using dye penetrant, the tailplane attachment brackets, part-number (P/N) C1.TP.167 (or FAA-approved equivalent part) for cracks.	In accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997; and Civil Modification Mandatory Modification No. Chipmunk H357, dated March 12, 1984. Calculate fatigue hours by multiplying the TIS by the role factor in accordance with British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985.
(ii) At whichever of the following that occurs first: (A) Prior to further flight after the inspection where any crack is found; or (B) Upon accumulating 9,984 fatigue hours or within the next 90 days after the effective date of this AD, whichever occurs later	Replace the tailplane attachment bracket by incorporating Modification H357 (P/N C1.TP.313) or FAA-approved equivalent part number. Installing P/N C1.TP.313 (or FAA-approved equivalent part number) terminates the repetitive inspection requirement of the tailplane attachment brackets.	In accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997; and Civil Modification Mandatory Modification No. Chipmunk H357, dated March 12, 1984. Calculate fatigue hours by multiplying the TIS by the role factor in accordance with British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985.
(iii) As of the effective date of this AD	Only install a tailplane attachment bracket that is P/N C1.TP.313. or FAA-approved equivalent part number.	Not applicable.
(iv) As of the effective date of this AD	Incorporate the following into the Aircraft Logbook: "In accordance with AD **-**-**, the tailplane attachment bracket is life limited to 9,984 fatigue hours.".	In accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997.

(2) Engine Mount Frames

Actions	Compliance	Procedures
(i) Inspect each joint of the port and starboard engine mount frame and the rear upper mount frame tubes for cracks and/or damage.	Initially inspect within the next 90 days after the effective date of this AD. Repetitively inspect thereafter at intervals not to exceed 600 hours TIS.	In accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995.

Actions	Compliance	Procedures
(ii) If cracks and/or damage is found during any inspection required in paragraph (d)(2)(i) of this AD. (A) obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD and incorporate this repair scheme, or repair in accordance with FAA Advisory Circular (AC) 43.13–1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4–99; or. (B) replace with a new or serviceable part	Prior to further flight after the inspection in which any crack and/or damage is found. Repetitively inspect as required in paragraph (d)(2)(i) of this AD.	Repair in accordance with AC 43.13–1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4–99 or in accordance with the repair scheme obtained from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD. Replace in accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995, or AC 43.13–1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4–99.
(iii) Bind the rear upper mount frame tubes with a high density polythene tape at the location where the cowling support rod clip is secured.	Prior to further flight after the initial inspection required in paragraph (d)(1) of this AD.	In accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.13. Send these requests to the Manager, Atlanta Aircraft Certification Office (ACO). Contact Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com*. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on April 10, 2003.

Dorenda D. Baker,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9304 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA77

TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2002, (NDAA–02), and a Technical Correction Included in the NDAA–03

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: This rule proposes several changes to the TRICARE program that were enacted by Congress in the NDAA–02 (December 28, 2001). Specifically, revisions to the definition of durable medical equipment (DME); adoption of the same pricing methods for durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) as are in effect for the Medicare program; clarification that rehabilitative therapy is a TRICARE benefit; addition of augmentative communication devices (ACD)/speech generating devices (SGD) as a TRICARE benefit; addition of hearing aids for family members of active duty members as a TRICARE benefit; revisions to the definition of prosthetics; permanent authority for transitional health care for certain members separated from active duty; and revisions to the time period of eligibility for transitional health care.

This proposed rule also addresses a technical correction found in section 706 of the NDAA–03 relating to transitional health care for dependents of certain members separated from active duty.

Public comments are invited and will be considered for possible revisions to the final rule.

DATES: Written comments will be accepted until June 16, 2003.

ADDRESSES: Forward comments to Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretech Parkway, Aurora, Colorado 80011–9066.

FOR FURTHER INFORMATION CONTACT: Ann N. Fazzini, Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone, (303) 676–3803. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

SUPPLEMENTARY INFORMATION:

I. Durable Medical Equipment (DME)

Section 703 of the NDAA–02, Pub. L. 107–107, provides authority for any durable medical equipment that can improve, restore, or maintain the function of a malformed, diseased, or injured body part, or can otherwise minimize or prevent the deterioration of the patient's function or condition. It also provides authority for any durable medical equipment that can maximize the patient's function consistent with the patient's physiological or medical needs. Although the wording is not identical, TRICARE's policies and definitions in place at this time currently provide coverage within these criteria. Nonetheless, we are revising the current DME definition by adding the phrases found in the NDAA–02 to the regulatory definition of DME in order to ensure consistency between the law and the regulation.

Section 703 also makes available coverage to customize or accessorize durable medical equipment if it is essential for achieving therapeutic benefit for the patient; making the equipment serviceable; or otherwise assuring the proper functioning of the equipment. Our policies in place at this time provide coverage within these criteria. Specifically, TRICARE's current policy regarding Durable Medical Equipment includes a provision to allow customization, accessories, and

supplies that are essential to provide therapeutic benefit, or to assure the proper functioning of the equipment or to make the equipment serviceable. Nonetheless, we are revising the current DME definition by adding the NDAA–02 language to the regulatory definition of DME in order to ensure consistency between the law and the regulation.

II. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Reimbursement

Section 707 of the NDAA–02, Pub. L. 107–107, changed the statutory authorization (in 10 U.S.C. 1079(j)(2)) that TRICARE payment methods "may be" determined to the extent practicable in accordance with Medicare payment rules to a mandate that TRICARE payment methods "shall be" so determined. As a result, TRICARE proposes to adopt Medicare's pricing of Durable Medical Equipment, Prosthetic, Orthotics, and Supplies (DMEPOS). Under Medicare, DMEPOS prices are established by using fee schedules, reasonable charge or average wholesale pricing (AWP). Most payments of DME are based on a fee schedule. A standard fee is established for each DMEPOS item by state. Payment is calculated using either the fee schedule amount or the actual charge submitted on the claim, whichever is lower. The fee schedule allowances include the application of national floors and ceilings. Reasonable charge allowances by Medicare are stipulated by Medicare law and not left to the discretion of the Medicare carrier. Medicare law specifically states that the amount allowed by Medicare must be the lowest of: The actual charge, the suppliers customary charge or the 50th percentile of arrayed and weighted customary charges in the absence of a customary charge for the specific service rendered; the prevailing charge, the Inflation-Indexed Charge or the Lowest Charge Level.

III. Rehabilitative Therapy

Section 704 of the NDAA–02, Pub. L. 107–107, authorizes providing rehabilitative therapy to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician. We interpret the term "rehabilitative therapies" to include physical therapy, speech therapy, and occupational therapy. We are adding a definition of rehabilitative therapy to our regulation and incorporating the NDAA–02 language found in section 704 into the definition. Physical, speech, and occupational therapies are currently covered by TRICARE to improve and/or restore function. Additionally, current policies provide no restrictions on medically necessary and appropriate therapies—in other words, there is no dollar limit on the care nor is care restricted to a specific number of visits.

Section 701 of the NDAA–02, Pub. L. 107–107, provides a definition of custodial care as treatment or services regardless of who recommends such treatment of services or where such services are provided that (a) can be rendered safely and reasonably by a person who is not medically skilled; or (b) is or are designed mainly to help the patient with activities of daily living. The definition was revised by the interim final rule published in the **Federal Register**, 67 FR 40602, June 13, 2002.

We read the language in section 704 of the NDAA–02 in conjunction with the language in Section 701(c) of the NDAA–02 and conclude when TRICARE will cover rehabilitative therapies. That is, rehabilitative therapies shall be covered to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician. The rehabilitative therapy must be medically necessary and appropriate, necessary to the establishment of a safe and effective maintenance program in connection with a specific medical condition, and not custodial care.

IV. Augmentative Communication Devices (ACD)/Speech Generating Device (SGD)

Section 702 of the NDAA–02, Pub. L. 107–107, provides that an "augmentative communication device may be provided as a voice prosthesis" under TRICARE. We propose a policy that is in line with the policy developed by the Centers for Medicare and Medicaid Services (CMS). We further propose using the same terminology used by Medicare when referring to this type of device—CMS refers to "augmentative communication devices" as "speech generating devices". In order to facilitate consistent terminology in the industry, we propose adopting the term "speech generating device (SGD)". In proposing this policy, we have also taken into consideration recommendations provided to us by the American Speech-Language-Hearing Association in defining this benefit.

V. Hearing Aids

Section 702 of the NDAA–02, Pub. L. 107–107, provides for coverage of a hearing aid if a family member of an active duty member has a "profound" hearing loss as determined under standards prescribed in regulations by the Secretary of Defense in consultation with the administering Secretaries. There is no industry standard or industry definition of "profound" hearing loss so we have developed one for TRICARE purposes and welcome comments regarding our proposed definition.

The policy proposed in this rule enhances current TRICARE coverage of hearing aids by: (1) Offering a hearing aid benefit via the TRICARE Basic Program to family members of an active duty member when the family member has a "profound" hearing loss; (2) differentiating hearing thresholds for adults and children; and, (3) revising the hearing threshold levels currently in TRICARE policy.

VI. Prosthetics

Section 702 of NDAA–02, Pub. L. 107–107, gives the Department the discretion to provide a prosthetic device that includes the following: (1) Any accessory or item of supply that is used in conjunction with the device for the purpose of achieving therapeutic benefit and proper functioning. (2) Services necessary to train the recipient of the device in the use of the device. (3) Repair of the device for normal wear and tear or damage. (4) Replacement of the device if the device is lost or irreparably damaged or the cost of repair would exceed 60 percent of the cost of replacement. (5) A prosthetic device customized for a patient may be provided under this section only by a prosthetic practitioner who is qualified to customize the device, as determined under regulations prescribed by the Secretary of Defense in consult with the other Secretaries.

TRICARE currently offers benefits for the above criteria 1, 2, 3, and 5. Regarding criterion (4), TRICARE currently allows for replacement when required due to growth or change in the patient's condition. Nonetheless, our policies will be revised to ensure consistency with the language found in section 702.

Regarding criterion 5, TRICARE has no specific provider requirements for a prosthetic practitioner to be qualified to customize the device. Rather, otherwise authorized providers currently provide prostheses and customization of prostheses. We are aware that CMS has established a Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics. The purpose of this committee is to advise CMS on developing a proposed rule that would establish payment provisions and requirements for providers of prostheses and custom-fabricated orthotics under the Medicare program. Once the Committee provides their findings, we will review them for consideration under the TRICARE program. In the meantime, we will continue to allow prostheses customization by otherwise authorized TRICARE providers.

This proposed rule also updates the definition of prosthetic device, and adds definitions for prosthetics and prosthetic supplies. This brings us in line with industry standards.

VII. Transitional Health Care

Section 736 of the NDAA–02, Pub. L. 107–107, makes permanent the authority for transitional health care benefits for certain members by deleting the expiration date that was in place for transitional health care benefits. Prior to Pub. L. 107–107, transitional health care benefits were to expire on December 31, 2001. Section 736 also extended coverage for either 60 or 120 days based on years of service to those eligible for transitional health care benefits. Further, it deleted coverage for dependents of those eligible for transitional coverage, but the Department of Defense created a demonstration project to include coverage for such dependents.

Section 706 of the National Defense Authorization Act for Fiscal Year 03 (NDAA–03) re-inserted transitional health care coverage benefits for dependents and deemed the provision to have been enacted as part of section 736 of the NDAA–02. Consequently, there is no need for this rule to include regulatory language addressing the removal of dependents from transitional health care coverage.

VIII. Regulatory Procedures

Section 801 of title 5, United States Code, and Executive Order 12866 requires certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a major rule under 5 U.S.C. 801. It is a significant regulatory action but not economically significant, and has been reviewed by the Office of Management and Budget as required under the provisions of E. O. 12866. In addition, we certify that this proposed rule will not significantly affect a substantial number of small entities.

Paperwork Reduction Act

This rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511). If, however, any program implemented under this rule causes such a burden to be imposed, approval thereof will be sought from the Office of Management and Budget in accordance with the Act, prior to implementation.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2(b) is proposed to be amended by revising the definitions of "Durable medical equipment", and "Prosthetic device (prosthesis)", by adding definitions of "Augmentative Communication Device", "Profound hearing loss"; "Prosthetic", "Prosthetic supplies"; "Rehabilitative therapy", and "Speech generating device" in alphabetical order to read as follows:

§ 199.2 Definitions.

* * * * *

(b) * * *

Augmentative communication device. See *Speech generating device.*

* * * * *

Durable medical equipment. Equipment for which the allowable charge is over $100 and which:

(1) Is medically necessary for the treatment of a covered illness or injury;

(2) Improves, restores, or maintains the function of a malformed, diseased, or injured body part, or can otherwise minimize or prevent the deterioration of the patient's function or condition;

(3) Can maximize the patient's function consistent with the patient's physiological or medical needs.

(4) Is primarily and customarily designed and intended to serve a medical purpose rather than primarily for transportation, comfort, or convenience.

(5) Can withstand repeated use;

(6) Provides the medically appropriate level of performance and quality for the medical condition present (that is, nonluxury or nondeluxe);

(7) Is other than spectacles, eyeglasses, contact lenses, or other optical devices, hearing aids (unless otherwise provided as a covered TRICARE benefit), or other communication devices (unless otherwise provided as a covered TRICARE benefit); and

(8) Is other than exercise equipment, spas, whirlpools, hot tubs, swimming pools or other such items.

* * * * *

Profound hearing loss (adults). An "adult" (a spouse as defined in section 199.3(b) of this part of a member of the Uniformed Services on active duty for 30 days) with a hearing threshold of:

(1) 40 dB HL or greater in one or both ears when tested at 500, 1,000, 1,500, 2,000, 3,000 or 4,000Hz; or

(2) 26 dB HL or greater in one or both ears at any three or more of those frequencies; or

(3) A speech recognition score less than 94 percent.

Profound hearing loss (children). A "child" (an unmarried child of an active duty member who otherwise meets the criteria (including age requirements) in section 199.3 of this part) with a 26dB or greater hearing threshold level in one or both ears when tested in the frequency range at 500, 1,000, 2,000, 3,000, or 4,000 Hz.

* * * * *

Prosthetic. Artificial legs, arms, and eyes.

Prosthetic device (prosthesis). Devices (other than a dental device) which replace all or part of an internal body organ (including contiguous tissue), or replace all or part of the function of a permanently inoperative or malfunctioning internal body organ are covered when furnished on a physician's order. Examples of prosthetic devices include cardiac pacemakers, breast prostheses (including a surgical brassiere) for post mastectomy patients, maxillofacial devices and devices which replace all or part of the ear or nose.

Prosthetic supplies. Supplies that are necessary for the effective use of a prosthetic device.

* * * * *

Rehabilitative therapy. Speech therapy, occupational therapy, and physical therapy to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient and prescribed by a physician.

* * * * *

Speech generating device. (1) Speech aids that provide an individual who has severe speech impairment with the ability to meet his functional speaking needs. Such devices are considered

prosthetic devices and are characterized by:

(i) Being a dedicated speech device, used solely by the individual who has severe speech impairment:

(ii) May have digitized speech output, using pre-recorded messages, less than or equal to 8 minutes recording time;

(iii) May have synthesized speech output, which requires message formulation by spelling and device access by physical contact with the device-direct selection techniques;

(iv) May have synthesized speech output, which permits multiple methods of message formulation and multiple methods of device access; or

(v) May be software that allows a laptop computer, desktop computer or personal digital assistant (PDA) to function as a speech generating device.

(2) Examples of devices that do not meet the above definition and are excluded from coverages as SGDs include, but are not limited to:

(i) Devices that are not dedicated speech devices, but are devices that are capable of running software for purposes other than for speech generation, *e.g.*, devices that can also run a word processing package, an accounting program, or perform other non-medical functions.

(ii) Laptop computers, desktop computers, or PDAs, which may be programmed to perform the same function as a speech generating device, are non-covered since they are not primarily medical in nature and do not meet the definition of prosthetic, prosthetic device, prosthetic supply, or durable medical equipment.

(iii) A device that is useful to someone without severe speech impairment is not considered an SGD.

* * * * *

3. Section 199.3 is proposed to be amended by revising paragraph (e) to read as follows:

§ 199.3 Eligibility.

* * * * *

(e) *Eligibility Under the Transitional Assistance Management Program (TAMP).* (1) Transitional health care benefits under TRICARE are authorized for the following eligibles:

(i) A member who is involuntarily separated from active duty and the dependents of the member.

(ii) A member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active duty for a period of more than 30 days and the dependents of the member.

(iii) A member who is separated from active duty for which the member is involuntarily retained under 10 U.S.C. 12305, in support of a contingency operation and the dependents of the member.

(iv) A member who is separated from active duty pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency operation and the dependents of the member.

(2) Time period of eligibility. Transitional health care shall be available for a specified period of time for members and dependents beginning on the date which the member is separated as follows:

(i) For members separated with less than 6 years of service, 60 days.

(ii) For members separated with 6 or more years of active service, 120 days.

* * * * *

4. Section 199.4 is proposed to be amended by revising paragraph (d)(3)(ii)(A), paragraph (d)(3)(vii), the text of paragraph (g)(41) preceding the note, paragraph (g)(47), paragraph (g)(51) and by adding new paragraph (e)(23), new paragraph (e)(24), and new paragraph (e)(25) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(3) * * *

(ii) * * *

(A) Scope of benefit. Subject to the exceptions in paragraphs (B) and (C) below, only durable medical equipment (DME) which is ordered by a physician for the specific use of the beneficiary, and which complies with the definition of "Durable Medical Equipment" in Sec. 199.2 of this part, and which is not otherwise excluded by this Regulation qualifies as a Basic Program Benefit. In addition, any customization of durable medical equipment owned by the patient is authorized to be provided to the patient and any accessory or item of supply for any such authorized durable medical equipment, may be provided to the patient if the customization, accessory, or item of supply is essential for—

(1) Achieving therapeutic benefit for the patient

(2) Making the equipment serviceable; or

(3) Otherwise assuring the proper functioning of the equipment.

* * * * *

(vii) Prosthetics, prosthetic devices, and prosthetic supplies, as determined by the Secretary of Defense to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. Additionally, the following are covered:

(A) Any accessory or item of supply that is used in conjunction with the device for the purpose of achieving therapeutic benefit and proper functioning;

(B) Services necessary to train the recipient of the device in the use of the device;

(C) Repair of the device for normal wear and tear or damage;

(D) Replacement of the device if the device is lost or irreparably damaged or the cost of repair would exceed 60 percent of the cost of replacement.

* * * * *

(e) * * *

(23) A speech generating device (SGD) as defined in § 199.2 of this part is covered as a voice prosthesis. The prosthesis provisions found in paragraph (d)(3)(vii) of this section apply.

(24) A hearing aid, but only for a dependent of a member of the uniformed services on active duty and only if the dependent has a profound hearing loss as defined in § 199.2 of this part. Medically necessary and appropriate services and supplies, including hearing examinations, required in connection with this hearing aid benefit are covered.

(25) Rehabilitation therapy as defined in § 199.2 of this part to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician. The rehabilitation therapy must be medically necessary and appropriate, must be necessary to the establishment of a safe and effective maintenance program in connection with a specific medical condition, and must not be custodial care.

* * * * *

(g) * * *

(41) *Hair transplants, wigs, hair pieces, or cranial prosthesis.*

Note: * * *

* * * * *

(47) *Eye and hearing examinations.* Eye and hearing examinations except as specifically provided in paragraphs (c)(2)(xvi), (c)(3)(xi), and (e)(24) of this section, or except when rendered in connection with medical or surgical treatment of a covered illness or injury.

* * * * *

(51) *Hearing aids.* Hearing aids or other auditory sensory enhancing devices, except those allowed in paragraph (e)(24) of this section.

* * * * *

4. Section 199.14 is proposed to be amended by redesignating paragraphs (k) through (n) as paragraphs (l) through (o) and adding a new paragraphs (k) to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(k) Reimbursement of Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS). Reimbursement of DMEPOS is based on the same amounts established under the Medicare DMEPOS fee schedule under 42 CFR part 414, subpart D.

* * * * *

Dated: April 9, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9153 Filed 4–15–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–206]

RIN 1625–AA00

RIN 1625–AA11

Regulated Navigation Area and Safety Zone; Huntington Cleveland Harborfest and Parade of Sail, Cleveland Harbor, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary regulated navigation area during the Huntington Cleveland Harborfest, and a moving safety zone for the Parade of Sail in the Port of Cleveland, Ohio. These regulations are necessary to manage vessel traffic and ensure the safety of both spectators and participant vessels. These regulations are intended to restrict vessel traffic from a portion of Lake Erie in the vicinity of Cleveland, Ohio.

DATES: Comments must reach the Coast Guard on or before May 10, 2003.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office (MSO) Cleveland, 1055 East Ninth Street, Cleveland, Ohio, 44114. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and available for inspection or copying at MSO Cleveland between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Allen Turner, Chief, Port Operations Department, MSO Cleveland at (216) 937–0128.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–03–206), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please include a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to MSO Cleveland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

During Huntington Cleveland Harborfest, tall ships will moor in Cleveland Harbor at the Cleveland Port Authority and along Cleveland's Inner Harbor. A regulated navigation area (RNA) will be established inside Cleveland's break wall to protect those boarding the tall ships and spectator vessels from vessels transiting at excessive speeds creating large wakes, and also to prevent obstructed waterways.

A moving safety zone will be established around the Parade of Sail during the transit through Cleveland Harbor and Lake Erie in the vicinity of Cleveland, Ohio. A large number of spectator craft is expected which would result in congestion, the safety zone will ensure that spectator craft do not impede the path of the parade vessels.

Discussion of Proposed Rule

The RNA would be established from 12 p.m. on Wednesday, July 9, 2003, until 1 p.m. on Monday, July 14, 2003. The RNA would encompass all of Cleveland Harbor between a perpendicular line drawn from Dock 28 of Cleveland Port Authority across the breakwall; and a perpendicular line drawn from the northwestern edge of Burke Lake Front Airport across to the breakwall. Within the RNA, no vessel shall exceed 5 mph nor produce a wake. Any vessel within the RNA shall not pass within 50 feet of a moored tall ship. Any vessel within the RNA must adhere to the direction of the Captain of the Port or the on scene representative who will be the Patrol Commander.

On July 9, 2003, from 2 p.m. until the 8 p.m. the Parade of Sail, a moving safety zone would be established around all tall ships participating in the parade. The safety zone would extend 100 yards in all directions of each vessel officially participating in the parade. The parade will begin approximately 2 miles northwest of Cleveland Harbor inlet and pass through Cleveland Harbor via the main entrance channel. After coming through the main entrance, the parade will travel east down the inner harbor to the eastern end of the break wall and exit through the eastern inlet. The parade will turn around in Lake Erie east of the harbor, and then reenter the harbor through the eastern inlet of the break wall south of the original track. The safety zone will be in effect until the last vessel moors at approximately 8 p.m.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the short amount of time that vessels will be restricted from the zones, and the actual location of the safety zones within the waterways.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: the proposed zone is only in effect for few hours on the day of the event. Vessel traffic can safely pass outside the proposed safety zone during the events. In cases where recreational boat traffic congestion is greater than expected and consequently obstructs shipping channels, commercial traffic may be allowed to pass through the safety zone with the permission of the Captain of the Port Cleveland. Before the effective period, the Coast Guard will issue maritime advisories to users who might be impacted through notification in the Ninth Coast Guard District Local Notice to Mariners, and through Marine Information Broadcasts. The Coast Guard has not received any reports from small entities negatively affected during previous similar events.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Cleveland (*see* **ADDRESSES.**)

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Energy Effects

The Coast Guard has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(g) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

2. Add temporary § 165.T09–206 to read as follows:

§ 165.T09–206 Huntington Cleveland Harborfest and Parade of Sail.

(a) Regulated navigation area. (1) *Location.* All waters of Cleveland Harbor, including the Inner Harbor, encompassed by a line starting at 41°30′49.38″ N, 081°41′37.2″ W (northwest corner of Burke Lakefront Airport); then northwest to 41°31′1.2″ N, 081°41′49.2 W; then southwesterly following the breakwall to 41°30′41.4″ N, 081°42′25.2″ W; then southeasterly to 41°30′27″ N, 081°42′13.3 W (extending directly across the harbor from the northwestern corner of Dock 28 of the Cleveland Port Authority to the breakwall); then following the contours of the waterfront back to the point of origin including all portions of the Rock and Roll Museum inner harbor. All coordinates are North American Datum 1983.

(2) *Enforcement period.* This section is effective from 12 p.m. on Wednesday, July 9, 2003 through 1 p.m. on Monday, July 14, 2003. The section is effective during that same period.

(3) *Special regulations.* Vessels within the regulated navigation area (RNA) shall not exceed 5 miles per hour or shall proceed at no-wake speed, which ever is slower. Vessels within the RNA shall not pass within 20 feet of a moored tall ship. Vessels within the RNA must adhere to the direction of the Patrol Commander or other official patrol craft.

(b) *Safety zone.*—(1) *Location.* The following is a moving safety zone: All navigable waters and adjacent shoreline 100 yards ahead of the first official parade vessel, 50 yards abeam of each parade vessel, and 50 yards astern of the last vessel in the parade between the muster point at 41°31′30″ N, 081°45′00″ W until each official parade vessel is moored.

(2) *Enforcement period.* This section is effective from 12 p.m. on Wednesday, July 9, 2003 through 1 p.m. on Monday, July 14, 2003. Paragraph (b)(1) of this section will be enforced from 2 p.m. until 8 p.m. on Wednesday, July 9, 2003.

(c) *Regulations.* All vessel operators shall comply with the instructions of the U.S. Coast Guard Captain of the Port Cleveland or his on-scene representative which will be the Patrol Commander. Permission to deviate from the above rules must be obtained from the Captain of the Port or the Patrol Commander via VHF/FM radio, Channel 6 or by telephone at (216) 937–0111.

Dated: April 2, 2003.

Ronald F. Silva,

Rear Admiral, Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 03–9358 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 275–0384b; FRL–7471–3]

Revisions to the California State Implementation Plan, Lake County Air Quality Control District and San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Lake County Air Quality Management District (LCAQMD) and San Diego County Air Pollution Control District (SDCAPCD) portions of the California State Implementation Plan (SIP). The LCAQMD and SDCAPCD revisions concern the emission of particulate matter (PM–10) from open burning. We are proposing to approve the local rules that regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 16, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Lake County Air Quality Management District, 885 Lakeport Boulevard, Lakeport, CA 95453.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

A copy of a rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* This is not an EPA website and it may not contain the same version of the rule that was submitted to EPA. Readers should verify that the adoption date of the rule listed is the same as the rule submitted to EPA for approval and be aware that the official submittal is only available at the agency addresses listed above.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (Air–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local LCAQMD sections 226.5, 232.1, 238.5, 249.3, 250.5, 431.5, 431.7, 432.5, 433, 433.5, 436, and 436.5 and SDAPCD rule 101. This proposal also addresses the recision of SIP LCAQMD section 442 and SDCAPCD rules 101 through 112. In the rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second commend period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 5, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–9042 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[DC–T5–2003–01b; FRL–7483–7]

Clean Air Act Approval of Operating Permits Program Revision; District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to maintain full approval of the title V operating permit program of the District of Columbia. In a notice of deficiency (NOD) published in the **Federal Register** on December 21, 2001 (66 FR 65947), EPA notified the District of Columbia of EPA's finding that the District's provisions for providing public notification of permitting actions did not fully comply with the requirements of the Clean Air Act (CAA) and its implementing regulations. On April 4, 2003, the District of Columbia submitted revisions to the public notification requirements of the operating permit program. The program revision adequately resolves the deficiency identified in the NOD and the District of Columbia maintains final full approval of the Clean Air Act title V operating permit program and this action proposes to approve the amendment. In the Final Rules section of this **Federal Register**, EPA is approving the District's operating permit program as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct

final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by May 16, 2003.

ADDRESSES: Written comments should be mailed to Kristeen Gaffney, Acting Chief, Permits and Technical Assessment Branch, Mailcode 3AP11, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002.

FOR FURTHER INFORMATION CONTACT: Paresh R. Pandya, (215) 814–2167, or by e-mail at *pandya.perry@epa.gov*.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: April 9, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–9344 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0125; FRL–7302–3]

Indoxacarb; Proposed Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish a temporary tolerance for combined residues of Indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxy carbonyl) [4-(trifluor omethoxy)phenyl]amino]carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate + its R-enantiomer [(R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoro methoxy)phenyl]amino]carbonyl]indeno [1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate in or on peaches under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). This action is in response to university extension specialists, DuPont Crop Protection, and EPA's combined efforts to generate the information necessary for use of the reduced risk pesticide, Indoxacarb, on peaches for control of oriental fruit moth and plum curculio. This proposed temporary tolerance supports a non-crop destruct experimental use permit (EUP) under section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of Indoxacarb on peaches in Georgia, Michigan, New Jersey, Pennsylvania, South Carolina, and West Virginia. This regulation proposes to establish a maximum permissible level for residues of Indoxacarb in this food commodity pursuant to section 408(e) of FFDCA, as amended by FQPA.

DATES: Comments, identified by docket ID number OPP–2003–0125, must be received on or before May 1, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Rita Kumar, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–8291; e-mail address: kumar.rita@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS Code 111)
- Animal production (NAICS Code 112)
- Food manufacturing (NAICS Code 311)
- Pesticide manufacturing (NAICS Code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0125. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at http://www.epa.gov/opptsfrs/home/guidelin.htm.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0125. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0125. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0125.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2003–0125. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background and Statutory Findings

EPA, in cooperation with DuPont Crop Protection and university extension specialists, under section 408(e) of the FFDCA, 21 U.S.C. 346a, is proposing to establish a tolerance for combined residues of the insecticide Indoxacarb, in or on peaches at 10.0 parts per million (ppm). This action is in response to university extension specialists, DuPont, and EPA's combined efforts to generate the information necessary for registration of the reduced risk pesticide, Indoxacarb, on peaches for control of oriental fruit moth and plum curculio. This proposed temporary tolerance supports a non-crop destruct experimental use permit (EUP) under section 5 of FIFRA authorizing use of Indoxacarb on peaches in Georgia, Michigan, New Jersey, Pennsylvania, South Carolina, and West Virginia. Section 5 of FIFRA authorizes EPA to issue an experimental use permit for a pesticide. This provision was not amended by FQPA. EPA has established regulations governing such experimental use permits in 40 CFR part 172. Section 408(r) of FFDCA authorizes EPA to issue temporary tolerances for pesticide residues from FIFRA experimental use permits.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue * * *"

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for combined residues of Indoxacarb on peaches at 10.0 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by Indoxacarb are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity rodents	DPX-MP062 NOAEL = M 3.1 mg/kg/day F 2.1 mg/kg/day LOAEL = M 6.0 mg/kg/day, F 3.8 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency.
870.3150	90–Day oral toxicity in nonrodents	DPX-JW062 NOAEL = 5.0 mg/kg/day LOAEL = 19 mg/kg/day based on hemolytic anemia, as indicated by decrease in HGB, RBCs; increases in platelets, increased reticulocytes; and secondary histopathologic findings indicative of blood breakdown (pigment in Kupffer cells, renal tubular epithelium, and spleen and bone marrow macrophages); increase in splenic EMH; and RBC hyperplasia in bone marrow in dogs.
870.3200	21/28–Day dermal toxicity	DPX-MP062 NOAEL = 2,000 mg/kg/day LOAEL = >2,000 mg/kg/day in rats. DPX-MP062 NOAEL = 50 mg/kg/day LOAEL = 500 mg/kg/day based on decreased body weights, body weight gains, food consumption, and food efficiency in F*, and changes in hematology parameters (increased reticulocytes), the spleen (increased absolute and relative weight M* only, gross discoloration), clinical signs of toxicity in both sexes in rats.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3700	Prenatal developmental in rodents	DPX-MP062 Maternal NOAEL = 2.0 mg/kg/day LOAEL = 4.0 mg/kg/day based on decreased mean body weights, body weight gains, food consumption. Developmental NOAEL = 2.0 mg/kg/day LOAEL = 4.0 mg/kg/day based on decreased fetal weights. DPX-JW062 Maternal NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on mortality, clinical signs, and decreased mean body weights, body weight gains, and food consumption. Developmental NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on decreased numbers of live fetuses/litter. DPX-JW062 Maternal NOAEL = 1.1 mg/kg/day LOAEL = 2.2 mg/kg/day based on decreased mean body weights, body weight gains, food consumption, and food efficiency. Developmental NOAEL = 1.1 kg/day LOAEL = 2.2 mg/kg/day based on decreased fetal body weights.
870.3700	Prenatal developmental in nonrodents	DPX-JW062 - rabbits Maternal NOAEL = 500 mg/kg/day LOAEL = 1,000 mg/kg/day based on slight decreases in maternal body weight gain and food consumption. Developmental NOAEL = 500 mg/kg/day LOAEL = 1,000 mg/kg/day based on decreased fetal body weights and reduced ossification of the sternebrae.
870.3800	Reproduction and fertility effects	DPX-JW062 Parental/Systemic NOAEL = 1.5 mg/kg/day LOAEL = 4.4 mg/kg/day based on decreased body weights, body weight gains, and food consumption of F_0 females, and increased spleen weights in the F_0 and F_1 females Reproductive NOAEL = 6.4 mg/kg/day LOAEL = 6.4 mg/kg/day Offspring NOAEL = 1.5 mg/kg/day LOAEL = 4.4 mg/kg/day based on decrease in the body weights of the F_1 pups during lactation.
870.4100	Chronic toxicity rodents	DPX-JW062 NOAEL = M 5, F 2.1 mg/kg/day LOAEL = M 10, F 3.6 mg/kg/day based on decr. body weight, body weight gain, and food consumption and food efficiency; decreased HCT, HGB and RBC at 6 months in F only. no evidence of carcinogenic potential
870.4100	Chronic toxicity dogs	DPX-JW062 NOAEL = M 2.3, F 2.4 mg/kg/day LOAEL = M 18, F 19 mg/kg/day based on decr. HCT, HGB and RBC; increased Heinz bodies and reticulocytes and associated secondary microscopic changes in the liver, kidneys, spleen, and bone marrow; increased absolute and relative liver weights.
870.4200	Carcinogenicity rats	DPX-JW062 see 870.4100. No evidence of carcinogenicity
870.4300	Carcinogenicity mice	DPX-JW062 NOAEL = M 2.6, F4.0 mg/kg/day LOAEL = M 14, F 20 mg/kg/day based on decreased body weight, body weight gain, and food efficiency and clinical signs indicative of neurotoxicity. No evidence of carcinogenicity
870.5100	Gene Mutation	DPX-MP062 strains TA97a, TA98, TA100 and TA1535 of *S. typhimurium* and strain WP2(uvrA) of *E. coli* were negative for mutagenic activity both with and without S9 activation for the concentration range 10–5,000 µg/plate DPX-JW062 strains TA97a, TA98, TA100 and TA1535 of *S. typhimurium* and strain WP2(uvrA) of *E. coli* were negative for mutagenic activity both with and without S9 activation for the concentration range 10–5,000 µg/plate.

TABLE 1.— SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.5300	Gene Mutation	DPX-MP062 negative for mutagenic activity for the following concentration ranges: 3.1–250 µg/mL (-S9); 3.1–250 µg/mL (+S9) DPX-JW062 negative for mutagenic activity for the following concentration ranges: Negative;100–1,000 µg/mL (-S9); 100–1,000 µg/mL (+S9), precipitate ≥1,000 µg/mL
870.5375	Cytogenetics	DPX-MP062 no evidence of chromosomal aberrations induced by the test article over background for the following concentration ranges: 15.7–1,000 µg/mL (±S9) DPX-JW062 no evidence of chromosomal aberrations induced by the test article over background for the following concentration ranges: 19–300 µg/mL (- S9), 19–150 µg/mL (+S9); partial insoluble and cytotoxicity ≥150 µg/mL
870.5395	Cytogenetics	DPX-MP062 no evidence of mutagenicity for the following dose ranges: 3,000–4,000 mg/kg - males; 1,000–2,000 mg/kg - females DPX-JW062 no evidence of mutagenicity at 2,500 or 5,000 mg/kg
870.5550	Other Effects	DPX-MP062 no evidence of mutagenic activity at the following concentration range: 1.56–200 µg/mL; cytotoxicity was seen at concentrations of ≥100 µg/mL DPX-JW062 No evidence of mutagenic activity at the following concentration range: 0.1–50 µg/mL, cytotoxicity observed at ≥50 µg/mL
870.6200	Acute neurotoxicity screening battery	DPX-MP062 NOAEL = M 100, F 12.5 mg/kg LOAEL = M 200 mg/kg based on decreased body weight gain, decreased food consumption, decreased forelimb grip strength, and decreased foot splay. F 50 mg/kg based on decreased body weight, body weight gain, and food consumption DPX-JW062 NOAEL= M > 2,000 mg/kg = F < 500 mg/kg LOAEL > M 2,000 mg/kg F < 500 mg/kg based on clinical signs, decreased body weight gains and food consumption, and FOB effects
870.6200	Subchronic neurotoxicity screening battery	DPX-MP062 NOAEL = M 0.57, F 0.68 mg/kg/day LOAEL = M 5.6, F 3.3 mg/kg/day based on decreased body weight and alopecia
870.7485	Metabolism and pharmacokinetics	Both DPX-MP062 and DPX-JW062 were extensively metabolized and the metabolites were eliminated in urine, feces, and bile. The metabolite profile for DPX-JW062 was dose dependent and varied quantitatively between males and females. Differences in metabolite profiles were also observed for the different label positions (indanone and trifluoromethoxyphenyl rings). All biliary metabolites undergo further biotransformation in the gut. The proposed metabolic pathway for both DPX-MP062 and DPX-JW062 has multiple metabolites bearing one of the two ring structures (see 870–4100 chronic toxicity rodents above).

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor (SF).

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (*e.g.*, risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for Indoxacarb used for human risk assessment is shown in Table 2 of this unit:

TABLE 2.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR INDOXACARB FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (females 13–50 years of age)	NOAEL = 2.0 mg/kg/day UF = 100 Acute RfD = 0.02 mg/kg	FQPA SF = 1 aPAD = acute RfD+FQPA SF = 0.02 mg/kg/day	Developmental rat toxicity study. developmental LOAEL = 4.0 mg/kg/day based on decreased fetal body weight.
Acute Dietary general population including infants and children	NOAEL = 12.5 mg/kg UF = 100 Acute RfD = 0.12 mg/kg	FQPA SF = 1 aPAD = acute RfD+FQPA SF = 0.12 mg/kg/day	Acute oral rat neurotoxicity study. LOAEL = 50 mg/kg based on decreased body weight and body weight gain in females.
Chronic Dietary all populations	NOAEL = 2.0 mg/kg/day UF = 100 Chronic RfD = 0.02 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD+FQPA SF = 0.02 mg/kg/day	90–day rat subchronic toxicity study, 90–day rat neurotoxicity study, chronic/carcinogenicity rat study. LOAEL = 3.3 mg/kg/day based on decreased body weight, alopecia, body weight gain, food consumption and food efficiency; decreased hematocrit, hemoglobin and red blood cells only at 6 months. 3.3 mg/kg/day is the lowest LOAEL of the three studies.
Short-Term Oral (1–7 days) (Residential)	oral study NOAEL= 2.0 mg/kg/day	LOC for MOE = 100 (Residential, includes the FQPA SF)	Developmental rat toxicity study. . Maternal LOAEL = 4.0 mg/kg/day based on decreased mean maternal body weights, body weight gains, and food consumption.
Intermediate-Term Oral (1 week - several months) (Residential)	oral study NOAEL= 2.0 mg/kg/day	LOC for MOE = 100 (Residential, includes the FQPA SF)	90–day rat subchronic toxicity study. LOAEL = 3.8 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency.
Short- (1–7 days), Intermediate- (1 week - several months), and Long-(several months - lifetime) Term Dermal (Occupational/Residential)	dermal study NOAEL= 50 mg/kg/day	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	28–day rat dermal toxicity study. LOAEL = 500 mg/kg/day based on decreased body weights, body weight gains, food consumption, and food efficiency in females, and changes in hematology parameters (increased reticulocytes), the spleen (increased absolute and relative weight males only, gross discoloration), and clinical signs of toxicity in both sexes.
Short-Term Inhalation (1–7 days) (Occupational/ Residential)	oral study NOAEL= 2.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	Rat developmental toxicity study. Maternal LOAEL = 4.0 mg/kg/day based on decreased mean maternal body weights, body weight gains, and food consumption.
Intermediate-Term Inhalation (1 week - several months) (Occupational/Residential)	oral study NOAEL= 2.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	90–day rat subchronic toxicity study. LOAEL = 3.8 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency.
Long-Term Inhalation (several months - lifetime) (Occupational/Residential)	oral study NOAEL= 2.0 mg/kg/day (inhalation absorption rate =100%)	LOC for MOE = 100 (Occupational) LOC for MOE = 100 (Residential, includes the FQPA SF)	90–day rat subchronic toxicity study, 90–day rat neurotoxicity study, chronic/carcinogenicity rat study. LOAEL = 3.3 mg/kg/day based on decreased body weight, body weight gain, food consumption and food efficiency; decreased hematocrit, hemoglobin and red blood cells only at 6 months.

TABLE 2.— SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR INDOXACARB FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Cancer (oral, dermal, inhalation)	"not likely" to be carcinogenic to humans	N/A	no evidence of carcinogenicity in either the rat or mouse in acceptable carcinogenicity studies and no evidence of mutagenicity.

* The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.564) for the combined residues of Indoxacarb, in or on a variety of raw agricultural commodities. Including tolerances already established for: alfalfa, forage at 10 ppm; alfalfa, hay at 50 ppm; apple at 1.0 ppm; apple, wet pomace at 3.0 ppm; brassica, head and stem, subgroup at 5.0 ppm; cattle, goat, horse, sheep, and hog fat at 1.5 ppm; cattle, goat, horse, sheep, and hog meat at 0.05 ppm; cattle, goat, horse, sheep , and hog meat byproducts at 0.03 ppm; corn, sweet, forage at 10 ppm; corn, sweet, kernel plus cob with husk removed at 0.02 ppm; corn, sweet stover at 15 ppm; cotton gin byproducts at 15 ppm; cotton, undelinted seed at 2.0 ppm; lettuce, head at 4.0 ppm; lettuce, head at 5.0 ppm; lettuce, leaf at 10.0 ppm; milk at 0.15 ppm; and milk, fat at 4.0 ppm; peanut at 0.01 ppm; peanut, hay at 40 ppm; pear at 0.20 ppm; potato at 0.01 ppm; soybean, seed at 0.8 ppm; soybean, aspirated grain fractions at 45 ppm; and vegetables, fruiting, group at 0.50 ppm. Risk assessments were conducted by EPA to assess dietary exposures from Indoxacarb in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: An acute Tier 2 (partially refined analysis) dietary assessment was performed with use of anticipated residues (ARs) from field trial data, processing factors (where applicable), and assumed 100% crop treated (CT) for all crops. ARs for meat, milk, poultry, and eggs (MMPE) raw agricultural commodities (RACs) were calculated also.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: Chronic exposure estimates are expressed in mg/kg bw/day and as a percent of the cPAD. The chronic dietary assessment assumed tolerance level residues, DEEM® default processing factors, assumed 100% CT for all crops other than peaches, and 1% CT for the peach EUP (300 acres)(Tier 1).

iii. *Cancer.* There is no evidence for mutagenicity and there is no evidence of carcinogenicity in either the rat or mouse. Indoxacarb has been classified as "not likely to be carcinogenic in humans" by the Agency; therefore, no carcinogenic dietary risk analysis was performed.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Dietary exposure estimates were based on 1% PCT for peaches. This PCT of 1% was based on the fact that the 2–year experimental use permit was issued for only 300 acres of peaches to be treated annually, which amounts to 0.2% of the total peach acreage in the United States. The reason for using 1% instead of 0.2% is to allow for any uncertainties in the residue evaluation. Before making this tolerance permanent, reevaluation of dietary exposure will be performed using all available information. Other commodities were assumed to be 100% treated.

The Agency believes that the three conditions previously discussed have been met. With respect to Condition 1, EPA finds that the PCT information described 1% for Indoxacarb used on peaches is reliable and has a valid basis. A 2–year EUP has been issued for this use, which will allow for use of Indoxacarb on 300 acres of peaches in some eastern states. Before the use can be expanded for treatment of greater than 300 acres per year, permission from the Agency must be obtained. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which Indoxacarb may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for Indoxacarb in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of Indoxacarb.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW (screening concentration in ground water), which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent reference dose (%RfD) or percent population adjusted dose (%PAD). Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to Indoxacarb they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of Indoxacarb for acute exposures are estimated to be 13.7 parts per billion (ppb) for surface water and 0.02 ppb for ground water. The EECs for chronic exposures are estimated to be 3.7 ppb for surface water and 0.02 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (*e.g.*, for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Indoxacarb is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether Indoxacarb has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, Indoxacarb does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that Indoxacarb has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* There is no evidence for either qualitative or quantitative susceptibility. In all developmental studies, the developmental endpoint occurs at the maternal LOAEL or above. Although there is no rabbit developmental toxicity study with indoxacarb, a study is not required since: (1) studies both using methyl cellulose comparing JW062 in the rabbit and rat demonstrate that the toxicity profiles for the rat and rabbit are similar and that the rat is the more sensitive species; (2) range finding studies in the rat comparing indoxacarb and JW062 indicate that the maternal and external developmental toxicity are comparable; (3) a dietary developmental toxicity study in the rat with JW062 had comparable toxicity to the gavage indoxacarb rat developmental toxicity study. Developmental toxicity only occurred at levels at or above maternal toxicity.

The reproduction toxicity study with JW062 can be used to satisfy the requirement for an indoxacarb study because: 1) systemic toxicity is at similar doses and of similar magnitude to that observed in subchronic feeding studies with both indoxacarb and JW062; 2) based on the data base, the HIARC determined that there was support for using data from dietary studies conducted with JW062 to satisfy the data requirements for indoxacarb.

The Agency has required a developmental neurotoxicity study as confirmatory data due to:

- Clinical signs of neurotoxicity in several studies, males and females, mice and rats, at some doses that do not cause mortality;
- Signs of neurotoxicity in the acute neurotoxicity study rat with indoxacarb (males and females), no mortality in males at neurotoxic doses;

- Clinical signs of neurotoxicity in the 90–day toxicity study rat indoxacarb (females), mortality;
- Clinical signs of neurotoxicity in the 90–day toxicity study mouse with the racemic mixture, JW062 (males and females), no mortality in females at neurotoxic doses, mortality in males;
- Clinical signs of neurotoxicity in the 18 month carcinogenicity study mouse with JW062 (males and females) high and mid dose, mortality at the high but no mortality at the mid dose; and
- Clinical signs of neurotoxicity in the developmental toxicity study rat with JW062 (using methyl cellulose as the vehicle), at doses causing mortality.

3. *Conclusion.* The Agency concluded that the FQPA safety factor could be reducecd to 1X for Indoxacarb because:

- There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to *in utero* and/or postnatal exposure;
- The requirement of a developmental neurotoxicity study is not based on the criteria reflecting special concern for the developing fetuses or young which are generally used for requiring a DNT study - and a safety factor (*e.g.:* neuropathy in adult animals; CNS malformations following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring) - and therefore does not warrant an FQPA safety factor; and
- The dietary (food and drinking water) exposure assessments will not underestimate the potential exposures for infants and children
- There are no registered residential uses at the current time.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates drinking water level of comparison (DWLOCs) which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [*e.g.,* allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to Indoxacarb will occupy 12% of the aPAD for the U.S. population, 69% of the aPAD for females 13 years and older, 67% of the aPAD for infants less than 1 year old and 36% of the aPAD for children 1 to 2 years old. In addition, there is potential for acute dietary exposure to Indoxacarb in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPad, as shown in Table 3 of this unit:

TABLE 3.— AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO INDOXACARB

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population	0.12	7	13.7	0.02	3,700
Females 13 +	0.02	69	13.7	0.02	180
All infants less than 1 year	0.12	67	13.7	0.02	400
Children 1 to 2	0.12	36	13.7	0.02	760

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to Indoxacarb from food will utilize 30% of the cPAD for the U.S. population, 29% of the cPAD for infants less than 1 year old and 79% of the cPAD for children 1 to 2 years old. There are no residential uses for Indoxacarb that result in chronic residential exposure to Indoxacarb. Based the use pattern, chronic residential exposure to residues of Indoxacarb is not expected. In addition, there is potential for chronic dietary exposure to Indoxacarb in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 4 of this unit:

TABLE 4.— AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON- CANCER) EXPOSURE TO INDOXACARB

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.02	30	3.7	0.02	490
All infants less than 1 year old	0.02	29	3.7	0.02	140
Children 1 to 2	0.02	79	3.7	0.02	43

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Indoxacarb is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which do not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population.* There is no evidence for mutagenicity and there is no evidence of carcinogenicity in either the rat or mouse. Indoxacarb has been classified as "not likely to be carcinogenic in humans" by the Agency; therefore, Indoxacarb is not expected to pose carcinogenic risk when used as directed.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to Indoxacarb residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (high performance liquid chromatography HPLC/UV Method AMR 2712–93) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: *furlow.calvin@epa.gov.*

B. International Residue Limits

There are no established or proposed Codex, Canadian, or Mexican maximum residue limits (MRLs) for residues of indoxacarb; therefore, international harmonization is not an issue at this time.

V. Conclusion

A 15–day comment period is being allowed for this proposed rule because of the speed of growth and the pest pressure, and the Agency's desire to be suportive of efforts by peach growers and researchers to find alternatives to organophosphates for control of oriental fruit moth and plum curculio in peaches. Additionally, the Agency feels that there is strong evidence in support of the safety of this proposed action.

Therefore, a temporary tolerance for 3 years is proposed for combined residues of Indoxacarb, (S)-methyl 7-chloro-2,5-dihydro-2-[[(methoxy carbonyl) [4-(trifluoromethoxy)phenyl] amino]carbonyl] indeno[1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate + its R-enantiomer] (R)-methyl 7-chloro-2,5-dihydro-2-[[(methoxycarbonyl)[4-(trifluoro methoxy)phenyl]amino]carbonyl]indeno [1,2-e][1,3,4]oxadiazine-4a(3H)-carboxylate in peaches at 10.0 ppm.

VI. Statutory and Executive Order Reviews

This proposed rule is establishing a tolerance under section 408(d) of the FFDCA. EPA is proposing this regulation in cooperation with Research Extension Specialists at the University of Georgia, Rutgers University, Clemson University, Pennsylvania State University, Michigan State University, University of West Virginia, and DuPont de Nemours and Company. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this proposed rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is

defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 10, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–9340 Filed 4–15–03; 8:45 a.m.]

BILLING CODE 6560–50–S

Notices

Federal Register
Vol. 68, No. 73
Wednesday, April 16, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 03–001–4]

Declaration of Extraordinary Emergency in New Mexico and Texas Because of Exotic Newcastle Disease

Exotic Newcastle disease (END) has been confirmed in the State of Texas, near the Texas-New Mexico border. The disease has been confirmed in backyard poultry, which are raised on private premises for hobby, exhibition, and personal consumption. Previously, END had been confirmed in the States of Arizona, California, and Nevada. The Secretary of Agriculture signed a declaration of extraordinary emergency with respect to END in California on January 6, 2003 (see 68 FR 1432, Docket No. 03–001–1, published January 10, 2003), a second declaration of extraordinary emergency with respect to END in Nevada on January 17, 2003 (see 68 FR 3507, Docket No. 03–001–2, published January 24, 2003), and a third declaration of extraordinary emergency with respect to END in Arizona on February 7, 2003 (see 68 FR 7338, Docket No. 03–001–3, published February 13, 2003).

END is a contagious and fatal viral disease affecting domestic, wild, and caged poultry and birds. It is one of the most infectious diseases of poultry in the world, and is so virulent that many birds die without showing any clinical signs. A death rate of almost 100 percent can occur in unvaccinated poultry flocks. END can infect and cause death even in vaccinated poultry. This disease in poultry and birds is characterized by respiratory signs accompanied by nervous manifestations, gastrointestinal lesions, and swelling of the head.

END is spread primarily through direct contact between healthy birds or poultry and the bodily discharges of infected birds or poultry. Within an infected flock, END is transmitted by direct contact, contaminated feeding and watering equipment, and aerosols produced by coughing, gasping, and other respiratory disturbances. Dissemination between flocks over long distances is often due to movement of contaminated equipment and service personnel, such as vaccination crews. Movement of carrier birds and those in an incubating stage accounts for most of the outbreaks in the pet bird industry.

The existence of END in Texas near the Texas-New Mexico border represents a threat to the U.S. poultry and bird industries. It constitutes a real danger to the national economy and a potential serious burden on interstate and foreign commerce. The United States Department of Agriculture (the Department) has reviewed the measures being taken by New Mexico and Texas to control and eradicate END and has consulted with the appropriate State Government and Indian tribal officials in New Mexico and Texas. Based on such review and consultation, the Department has determined that the measures being taken by the States are inadequate to control or eradicate END. Therefore, the Department has determined that an extraordinary emergency exists in New Mexico and Texas because of END.

This declaration of extraordinary emergency authorizes the Secretary to (1) hold, seize, treat, apply other remedial actions to, destroy (including preventative slaughter), or otherwise dispose of, any animal, article, facility, or means of conveyance if the Secretary determines the action is necessary to prevent the dissemination of END and (2) prohibit or restrict the movement or use within the States of New Mexico and Texas, or any portion of the States of New Mexico and Texas, of any animal or article, means of conveyance, or facility if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of END. The appropriate State Government and Indian tribal officials in New Mexico and Texas have been informed of these facts.

Effective Date: declaration of extraordinary emergency shall become effective April 10, 2003.

Ann M. Veneman,

Secretary of Agriculture.

[FR Doc. 03–9321 Filed 4–15–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 01–040N]

Announcement of and Request for Comment on FSIS' Tentative Determinations on the Availability of *Salmonella* Test Results

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing its intention to make publicly available the results of its testing for *Salmonella* on livestock and poultry carcasses and in raw ground meat and poultry products. The Agency also intends to post the results of all completed sampling sets on its Web site. FSIS conducts the *Salmonella* testing as part of its Hazard Analysis and Critical Control Point (HACCP) verification activities. FSIS is acting in response to a petition submitted by the Center for Science in the Public Interest, suggestions made by meat and poultry processors, and suggestions made by the National Advisory Committee on Microbiological Criteria for Foods (NACMCF).

DATES: Comments must be received on or before May 16, 2003.

ADDRESSES: Please submit one original and two copies of written comments to the FSIS Docket Room, Docket No. 01–040N, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 112 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. Comments may also be submitted via facsimile at (202) 205–0381. All comments received in response to this notice will be considered part of the public record, and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Ph.D, Acting Assistant Deputy Administrator for Policy Analysis and Formulation, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Introduction

On July 25, 1996, FSIS published a final rule in the **Federal Register** entitled, "Pathogen Reduction; Hazard Analysis and Critical Control Point (PR/HACCP) Systems" (61 FR 38806). This rule established, among other things, pathogen reduction performance standards for *Salmonella* that establishments slaughtering livestock and poultry and producing raw ground meat and poultry products must meet. FSIS conducts an ongoing testing program to determine compliance with these *Salmonella* performance standards for classes of livestock and poultry products.

FSIS has received a petition from the Center for Science in the Public Interest (CSPI) requesting that FSIS post on its website all plant-specific test results for *Salmonella* in carcasses and raw ground meat and poultry products, and that FSIS post such test results in a timely and relevant manner as they become available. CSPI contends that consumers could use plant-specific *Salmonella* results posted on the FSIS website to determine whether individual establishments are meeting the *Salmonella* performance standard and could make informed purchasing decisions on the basis of that information.

In addition, numerous establishments and industry associations have advised the Agency that it would be very valuable for them to receive the results of each sample as the Agency finishes its analysis during the course of a *Salmonella* set. Timely receipt of this information, the establishments say, will enable them to more readily associate the results with the conditions in their plants at the time the samples were taken and will facilitate corrections and improvements in their operations.

FSIS has determined that, if it makes the results available to establishments on a sample-by-sample basis, the agency will not be able to protect the confidentiality of the results until the conclusion of the collection and testing of full sample sets, as is currently the case. The industry representatives have stated that the opportunities created by having the results available on a timely basis outweigh any disadvantages of the information being publicly available. The NACMCF has expressed similar views.

Based on its consideration of the petition, the NACMCF's recommendation, and its contacts with industry, FSIS is announcing its intention to modify its handling of *Salmonella* testing results. The Agency requests comment on its plans.

Background

The Salmonella Performance Standards for Raw Meat and Poultry

In 9 CFR 310.25(b) and 381.94(b), FSIS has set out performance standards for the prevalence of *Salmonella* in livestock and poultry carcasses and raw ground meat and poultry products. FSIS samples and tests raw meat and poultry products in individual establishments to determine the prevalence of *Salmonella* in the products and to determine compliance with the *Salmonella* performance standards.

Prior to December 2001, FSIS used the sample results to directly enforce the performance standards in 9 CFR 310.25(b)(iii)(3) and 381.94(b)(iii)(3). These regulations state that failure to meet the performance standard in three consecutives tests "constitutes failure to maintain sanitary conditions and failure to maintain an adequate HACCP plan." The Agency stated that it would suspend inspection as a result of such a failure because it would not be able to find that the product of an establishment that had failed three sets in a row was not adulterated.

A decision in early December 2001 by the U.S. Court of Appeals for the Fifth Circuit in *Supreme Beef Processors, Inc.* v. *USDA*, however, limited FSIS' ability to directly enforce the *Salmonella* performance standards in grinding operations. Based on the court's decision, a grinding operation's failure to meet a *Salmonella* performance standard is not in and of itself a noncompliance. However, the failure may be an indicator of noncompliances in aspects of the establishment's total food safety program, such as Sanitation Standard Operating Procedures (Sanitation SOPs) and HACCP plans. Thus, FSIS now uses sample set failures as an indication that there is something wrong in the establishment's HACCP system, and that the system needs to be carefully evaluated by the Agency. However, FSIS does not initiate enforcement actions based on individual *Salmonella* testing results. In addition to the *Salmonella* set failures, FSIS uses other pertinent information in its evaluation of an establishment's HACCP system. This information includes, but is not limited to, summary reports compiled from the evaluations of reviews of the establishment's SSOPs, prerequisite and good manufacturing programs, and HACCP plans by the consumer safety officer or food safety assessment team; documentation of observations and verification activities of in-plant inspection personnel; and generic *E. coli* and other microbial test results.

Public Release of Test Results and the Freedom of Information Act

The Agency held public meetings on March 6 and December 16, 1997, to inform industry constituents and consumer advocates that FSIS would send individual establishments the results of testing on their own product upon completion of the full sample sets, and that plant-specific results would be released to the public in accordance with the provisions of the Freedom of Information Act (FOIA) (5 U.S.C. § 552).[1] At the December 16, 1997, public meeting, FSIS presented an issue paper entitled, "Public Release of *Salmonella* Testing Results," which outlined the Agency's position.[2] On April 2, 1998, FSIS published this issue paper in the **Federal Register** (63 FR 16245).[3] In this paper, FSIS stated that it planned to "publish annually a report on the *Salmonella* testing program." Since then, FSIS has made the Agency's *Salmonella* test results available on the Web site through a progress report: *http://www.fsis.usda.gov/FOIA/popular.htm*. In this report, FSIS provides *Salmonella* testing results on an aggregate basis for large, small, and very small plants; the percent of products that have tested positive for *Salmonella*; and the prevalence of *Salmonella* with each product category. Prevalence, for the purposes of the FSIS HACCP verification activity, is not a statistical representation of the true presence of *Salmonella* in product. FSIS conducts statistically-based baseline

[1] Transcript of Proceedings, HACCP Implementation Meeting; Washington, DC, December 16, 1997, page 152–153. This document is available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. The document may also be accessed via the World Wide Web at *www.fsis.usda.gov/FOIA/popular.htm* as a related document under the Notices and Directives, and Federal Register Publications section. Transcript of Proceedings, Publication of Salmonella Testing Data; Washington, DC, March 6, 1997, page 3. This document is also available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. This document may also be accessed via the World Wide Web at *www.fsis.usda.gov/FOIA/popular.htm* as a related document under the Notices and Directives, and Federal Register Publications section.

[2] Transcript of Proceedings, HACCP Implementation Meeting; December 16, 1997, Washington, DC, page 151–153.

[3] Notice, Pathogen Reduction Performance Standards; Salmonella Testing Data, 63 FR 16243–16245, April 2, 1998. This document is available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. This document may also be accessed via the World Wide Web at *www.fsis.usda.gov/FOIA/popular.htm* under the Notices and Directives, and Federal Register Publications section.

studies to determine the true prevalence of microorganisms, including *Salmonella*.

FSIS has considered the *Salmonella* test results as information for use by the Agency in its deliberative process on how best to proceed with respect to the establishment involved. Predecisional information can be exempted from disclosure under the FOIA (5 U.S.C. 552(b)(5)). Accordingly, FSIS has not disclosed plant-specific testing results until the set was complete.

The FOIA requires that federal agencies make certain information that is released under the FOIA available to the public in electronic format and by computer telecommunications (5 U.S.C. 552(a)(2)). In response to legislative amendments to the FOIA (E–FOIA), on July 28, 2000, the U.S. Department of Agriculture published a final rule, "USDA Freedom of Information Act Regulations" (65 FR 46335), in which the Department adopted regulations governing the electronic release of information requested under FOIA. Significant in consideration of the CSPI petition is that these regulations provide that one reason to release information requested under FOIA electronically is that "it has become or is likely to become the subject of subsequent requests for substantially the same records." *Salmonella* testing results have been, and continue to be, requested in significant numbers.

Recommendations From the National Advisory Committee on Microbiological Criteria for Foods

On October 8, 2002, the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) made final a report that recommended that the data from the *Salmonella* performance standard program be made public, so as to provide guidance to industry in order that commercial operations may assess their process control.[4] The Committee points out that, when HACCP systems and other prerequisite programs in ground beef operations are adequate and verified, the measurement of *Salmonella* reflects the total process control, particularly the microbial conditions of raw material. The report also states that the information would be helpful in meeting the *Salmonella* performance standards. In addition, the report recommends that the *Salmonella* test results be made available to each establishment as they become available to facilitate Continuous Improvement Programs. Finally, the report states that making *Salmonella* data that is suitably codified to protect proprietary information available to the public, to the extent possible, should lead to generation of additional data and increased knowledge of the many facets influencing control of enteric pathogens on raw meat and poultry.

The CSPI Petition

As mentioned above, FSIS received a petition dated October 1, 2001, from CSPI requesting that FSIS post on its website all plant-specific test results for *Salmonella* in carcasses and raw ground meat and poultry products, and that FSIS continue to post such test results in a timely and relevant manner as they become available. According to CSPI, consumers could use plant-specific *Salmonella* results posted on the FSIS website to determine whether individual establishments are meeting the *Salmonella* performance standard and could make informed purchasing decisions on the basis of that information.

The petition states that the presence of *Salmonella* positives above the performance standard is an indication that the plant's system for controlling contamination is not working. Therefore, according to CSPI, posting the individual establishment test results on the web would encourage establishments to improve their sanitation procedures because consumers would be less likely to purchase products made by facilities that repeatedly exceed standards. Additionally, the petition states that posting test results on the FSIS Web site could benefit Federal and state health officials in their efforts to track the cause of food poisoning outbreaks and to identify contamination trends based on product type, plant geographical location, and seasonality. The petition also states that posting plant-specific *Salmonella* test results on the FSIS Web site would be consistent with the USDA's implementing regulations for FOIA. Quoting a House of Representatives report, the petitioner states that one of the purposes of the FOIA provisions requiring electronic release of information is to improve public access to agency records and information.

Industry and Consumer Advocate Comments and Concerns

Before and during the March 6, 1997, public meeting referred to above, many industry representatives raised concerns regarding posting *Salmonella* testing results on the World Wide Web. Some of their concerns were based on the assumption that foreign countries who do not monitor their own products, nor have equivalent process controls established to determine whether *Salmonella* is present on meat and poultry products, could use the *Salmonella* data to discriminate against U.S. product. They argued that use of the data could lead to the following results: (1) A negative impact on U.S. companies' efforts to secure markets and fair prices internationally; (2) use of the data by foreign governments as a pretext for imposing non-tariff barriers against U.S. product and to protect their own domestic industry; and (3) discrimination against specific U.S. products and establishments by foreign buyers if an establishment received positive *Salmonella* test results. In addition, they stated that the context in which the *Salmonella* testing results would be presented would also have an impact on the aforementioned effects.

At the same public meeting, consumer advocates favored publication of plant-specific *Salmonella* data along with the plant name, location, and product line.[5] They stated that progressive companies would want the results of their *Salmonella* tests known, and that the public is sophisticated enough to accept the fact that there are going to be positive *Salmonella* test results on some raw product.[6]

On the other hand, during the December 16, 1997, meeting, an industry representative opined that, "it would be beneficial for plants to have the Salmonella data as it was collected so if a trend was developing, the plant could take some corrective action before the whole series was out."[7]

In the five years that have followed, the concerns expressed by industry about foreign reaction to specific *Salmonella* results have not materialized. However, through numerous informal communications and at scheduled meetings, the Agency has received industry input that correlates with the last comment cited and with the NACMCF's recommendations.

[4] Final Response, NACMCF Final Response to the Questions Posed by FSIS regarding Performance Standards with Particular Reference to Ground Beef Products, Washington, DC, October 8, 2002. This document is available for review in the FSIS Docket Room Monday through Friday from 8:30 a.m. until 4:30 p.m. This document may also be accessed via the World Wide Web at *www.fsis.usda.gov/FOIA/popular.htm*.

[5] Transcript of Proceedings, Publication of Salmonella Testing Data; Washington, DC, March 6, 1997, page 75.

[6] Transcript of Proceedings, Publication of Salmonella Testing Data; Washington, DC, March 6, 1997, pages 70–72.

[7] Transcript of Proceedings, HACCP Implementation Meeting; December 16, 1997, Washington, DC, page 153.

Availability of FSIS' Salmonella Testing Program's Results

FSIS now agrees with CSPI and NACMCF that release of the *Salmonella* data as sample results are obtained, rather than at the completion of a full sample set, could lead to the generation of data and information that could be used to sort out which, if any, of the many factors that could influence control of enteric pathogens on raw meat and poultry is actually doing so. FSIS also agrees that providing *Salmonella* data to industry as test results are obtained will allow commercial operations to assess their process control more effectively.

Tentative Determinations

In light of the foregoing, FSIS intends to release *Salmonella* testing results to individual establishments as they become available and before the conclusion of the collection and testing of full sample sets. Receiving this information in this way should allow establishments to more readily identify their process control deficiencies and assess the relative efficacy of their process controls.

The Office of Public Health and Science (OPHS), Laboratory Sample Data Management Staff (LSDMS), has developed a double-folded mechanism to forward *Salmonella* testing results to individual establishments as they become available. First, all *Salmonella* testing results will be available via FSIS' Laboratory Electronic Application for Results Notification (LEARN) system. By maneuvering through the components of this electronic program, an inspector can copy the applicable page and forward it to an establishment's management official as "notification" as instructed by the contents of the LEARN directive—10,200.1. In addition, an establishment can elect to provide OPHS, LSDMS, with an e-mail address, and the establishment's *Salmonella* testing results will be e-mailed to them as they are entered into its internal database. If an individual requests *Salmonella* testing data for an establishment, FSIS intends to respond to the request in turn, generally providing the specific existent information requested. Once a sample set is concluded, FSIS will post the results on its Web site on an aggregate basis (*e.g.*, results will be identifiable only by the establishments' state and district locations). As sample sets continue to be collected and tested, FSIS will regularly update the content of the postings (*e.g.*, by season or quarter) throughout the year. FSIS will not make the establishments' sample-by-sample results available on its Web site because the Agency is not convinced of the value of posting this information. While the value of this information to the tested establishment is clear, the value to the general public is not. FSIS can see the value to the general public of more frequent posting of information about trends in *Salmonella* testing results than the current annual reports that the Agency issues.

Request for Comment

FSIS is seeking comment on its plan to modify its handling of *Salmonella* testing results. The Agency's final decision regarding the availability of *Salmonella* testing results will be published in the **Federal Register**.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done at Washington, DC, on April 7, 2003.

Dr. Garry L. McKee,

Administrator.

[FR Doc. 03–8971 Filed 4–15–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Hood/Willamette Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Action of meeting.

SUMMARY: The Hood/Willamette Resource Advisory Committee (RAC) will meet on Thursday, May 15, 2003. The meeting is scheduled to begin at 10 a.m. and will conclude at approximately 4 p.m. The meeting will be held at The Resort at the Mountain; 68010 East Fairway; Welches, Oregon; (503) 622–3101. The tentative agenda includes: (1) Report on status of 2002 and 2003 projects; (2) Election of chairperson; (3) Decision on overhead rate for 2004 projects; (4) Presentation of 2004 Projects; and (5) Public Forum.

The Public Forum is tentatively scheduled to begin at 1 p.m. Time alloted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the May 15th meeting by sending them to Designated Federal Official Donna Short at the address given below. A field trip to visit Title II projects is scheduled for the next day, Friday, May 16, 2003 at the same location. The field trip will start at 8.

FOR FURTHER INFORMATION CONTACT: For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District, 3225 Highway 20; Sweet Home, Oregon 97386; (541) 367–9220.

Dated: April 10, 2003.

Dallas J. Emch,

Forest Supervisor.

[FR Doc. 03–9298 Filed 4–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Catron County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Catron County Resource Advisory Committee will meet in Reserve, New Mexico, on May 1, 2003, from 10 a.m. MDST to 4 p.m. MDST. The purpose of the meeting is to review potential projects and adopt operating guidelines including the next meeting date.

DATES: The meeting will be held May 1, 2003.

ADDRESSES: The meeting will be held at the Catron County Courtroom of the Catron County Court House, 101 Main Street, Reserve, New Mexico 87830. A period of time will be allocated in the morning and afternoon for the committee to hear public comment.

FOR FURTHER INFORMATION CONTACT: Michael Gardner, Rural Community Assistant Staff, Gila National Forest, (505) 388–8212.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring Pub. L. 106–393 related matters to the attention of the Committee will have the opportunity at this meeting. Public input sessions will be provided on the agenda.

Dated: April 10, 2003.

Marcia R. Andre,

Forest Supervisor, Gila National Forest.

[FR Doc. 03–9299 Filed 4–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 030401077–3077–01]

Notice of Intent to Create an Infrared Spectroscopy Library

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The National Institute of Standards and Technology announces its intent to create a new Infrared Spectroscopic Library. The initial version of the new library will contain between 20,000 and 50,000 spectra from approximately the same number of chemical compounds. The initial version of the library will only be available as images of the original spectra. Interested parties are invited to submit comments to the address below.

DATES: Comments must be received by June 16, 2003.

ADDRESSES: Comments should be sent to the attention of Dr. W. Gary Mallard at the National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 8380, Gaithersburg, MD 20899–8380.

FOR FURTHER INFORMATION CONTACT: Dr. W. Gary Mallard by writing to the above address or by e-mail at *gary.mallard@nist.gov* or by telephone at (301) 975–2444.

SUPPLEMENTARY INFORMATION: As part of its responsibilities under Title 15 U.S.C. 290 to collect, evaluate and publish high quality Standard Reference Data (SRD), NIST creates and maintains evaluated SRD databases. From time to time exceptional collections from non-governmental sources become available for distribution. One such source of infrared spectral data has become available. The data has been collected over a long period of time by an industrial laboratory, primarily in the condensed phase with a variety of instruments. The industrial laboratory plans to donate the data to NIST. It is the intent of NIST to create digitized images (TIFF or PDF) files of each of these spectra and index them in terms of their chemical identity and structure. The resulting data will be made available over the NIST WebBook (*http://webbook.nist.gov/chemistry*) for general use.

Infrared (IR) spectral data is used to identify unknown compounds. The location of the features of the IR data are characteristic of specific functional groups of the molecule. Large collections of IR data with many different structural features aid in the classification of the compound even if an identification cannot be made from the data.

We invite comments concerning this update.

Dated: April 9, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–9305 Filed 4–15–03; 8:45 am]

BILLING CODE 3510–13–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination under the African Growth and Opportunity Act (AGOA)

April 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination.

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that handloomed fabric and handmade articles made from such handloomed fabric that are produced in and exported from Namibia qualify for preferential treatment under Section 112(a) of the African Growth and Opportunity Act. Therefore, imports of eligible products from Namibia with an appropriate AGOA Visa will qualify for duty-free treatment under the AGOA.

EFFECTIVE DATE: May 5, 2003.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION: The African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. 106-200)(AGOA) provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries. In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA (66 FR 7837). The first digit of the visa number corresponds to one of 9 groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping "9" is reserved for handmade, handloomed, or folklore articles.

In Section 2 of Executive Order 13191 of January 17, 2001, CITA is authorized to "consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, or folklore articles" (66 FR 7272). Consultations were held on March 26, 2003 and CITA has now determined that handloomed fabrics and handmade articles made from such handloomed fabrics produced in and exported from Namibia are eligible for preferential tariff treatment under section 112(a) of the AGOA. In the letter published below, CITA directs the Commissioner of Customs and Border Protection to allow entry of such qualifying products from Namibia under Harmonized Tariff Schedule provision 9819.11.27, when accompanied by an appropriate export visa in grouping "9".

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 10, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (CITA), pursuant to Sections 112(a) of the African Growth and Opportunity Act (Title I of Pub. L. No. 106-200) (AGOA) and Executive Order 13191 of January 17, 2001, has determined that, effective on May 5, 2003, handloomed fabric produced in Namibia and handmade articles produced in Namibia from such handloomed fabric shall be treated as being handloomed, handmade, or folklore articles under the AGOA, and that an export visa issued by the Government of Namibia for Grouping "9" is a certification by the Government of Namibia that the article is handloomed, handmade, or folklore. CITA directs you to permit duty-free entry of such articles accompanied by the appropriate visa and entered under heading 9819.11.27 of the Harmonized Tariff Schedule of the United States.

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–9327 Filed 4–15c–03; 8:45 am]

BILLING CODE 3210–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

April 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

EFFECTIVE DATE: April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

On April 11, 2003, CITA agreed to Taiwan's request for special shift for 2003 of 9.1 million square meters equivalent into Group I from Group II.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68577, published on November 12, 2002.

Category	Twelve-month limit [1]
Group I	
200–220, 224, 225/317/326, 226, 227, 300/301, 313–315, 360–363, 369–S [2], 369–O [3], 400–414, 469pt [4], 603, 604, 611, 613/614/615/617, 618, 619/620, 624, 625/626/627/628/629 and 666pt [5], as a group.	217,879,904 square meters equivalent.
Group II	
237, 239pt [6], 331pt. [7], 332, 333/334/335, 336, 338/339, 340–345, 347/348, 351, 352/652, 359–C/659–C [8], 659–H [9], 359pt. [10], 433–438, 440, 442, 443, 444, 445/446, 447/448, 459pt. [11], 631pt. [12], 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 651, 659–S [13], 659pt. [14], 846 and 852, as a group.	613,275,380 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[4] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[5] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

[6] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[7] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[8] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[9] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[10] Category 359pt.: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[11] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[12] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.6800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard, III

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–9351 Filed 4–15–03; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Residential Fire Survey

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Consumer Product Safety Commission (CPSC) requests comments on a proposed survey to evaluate (1) the causes of residential fires and (2) the role of smoke alarms, sprinklers, and fire extinguishers in those fires. The study will consist of a random digit dialing (RDD) telephone survey to identify households that had a fire within the previous three months. The survey will include both fires reported to the fire service and those not reported. Data collection will take place over a 12-month period and will identify consumer products involved in fire causes. The information will help CPSC and its federal partners, the U.S. Fire Administration and the Centers for Disease Control and Prevention, to focus efforts to reduce residential fire losses. CPSC will consider all comments received in response to this notice before requesting approval for this telephone survey from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than June 16, 2003.

ADDRESSES: Written comments should be captioned "Residential Fire Survey" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to the attention of that office, room 419, North Tower, 4330 East-West Highway, Bethesda, Maryland, 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information, or to obtain a copy of the questions to be used for this collection of information, call or write Linda E. Smith, Division of Hazard Analysis, Directorate for Epidemiology, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814 telephone (301) 504–7310, or email *lsmith@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Reduction of fire deaths is one of CPSC's strategic goals. An estimated 396,500 residential fires were attended by the fire service in 2001 and resulted in 3,140 deaths, 15,575 injuries, and $5.6 billion in property loss. Although residential fire losses have decreased greatly over the past 15 years, the U.S. continues to have one of the highest fire death rates per capita in the world.

One of the reasons for the observed reduction in fire deaths is thought to be the increased prevalence of smoke alarms, which are intended to give early warning of a fire and allow more time for the occupants to escape unharmed. Since 1984 when CPSC last conducted a survey of residential fires, the prevalence of smoke alarms in U.S. households has greatly increased. Prevalence, however, does not mean that the alarms will be operational. In 1992, a CPSC study of smoke alarms installed in residences showed that among households that had smoke alarms, 20 percent of the households had no alarms that worked. Changes continue to be made to smoke alarm technology and installation requirements with the intent of increasing the number of households with an adequate number of working alarms.

In 1984, it was estimated that fires that were not attended by the fire service accounted for 97 percent of all U.S. residential fires. CPSC and its fire partners wish to determine the current magnitude of the overall fire problem, including the prevalence of fires both attended and unattended by the fire service. In addition, CPSC wishes to learn if there has been a further reduction in the percentage of fires that are serious enough to warrant the attendance of the fire service, and the extent to which the involvement of smoke alarms has contributed to the reduced number of such fires.

The reduction of fire deaths, the most severe result of residential fires, is part of a collaborative effort by CPSC, the U.S. Fire Administration, and the Centers for Disease Control and Prevention. The resulting data are expected to provide statistically-based support and focus for integrated national programs, including the benefits derived by the use of smoke alarms, sprinklers, and fire extinguishers. The resulting data also will provide current estimates of all residential fires that involve specific types of consumer products, providing more comprehensive fire data upon which to target prevention activities.

B. Description of the Collection of Information

This collection of information will consist of a random digit dialing (RDD) telephone survey. Use of RDD will result in a probability sample of all U.S. households, ensuring that the estimates will be representative of the U.S. population. Selected high-risk subsets of the population will be over-sampled to ensure that the fire problem in those groups can be adequately characterized. These include rural households, and low socioeconomic households. Data collection will take place over a 12-month period to account for variation in the number and causes of fire that occur over the course of a year.

The intention of the survey is to contact both households that have experienced a fire during the previous 3 months and households that have not experienced a fire. Demographic data on fire and non-fire households will be collected so that fire risk can be calculated for different demographic groups.

Households that have had fires will be asked about the cause of the fire, the products involved in starting the fire, and the items that burned. Information about the severity of the fire will be collected, including deaths, non-fatal injuries, medical treatment, property damage, and whether the fire was attended by the fire service. Information will be obtained on the number, characteristics, and performance of smoke alarms. CPSC is particularly interested in obtaining information on the role of the smoke alarm in warning the occupants that there was a fire. Information also will be obtained on the presence and performance of fire sprinklers and fire extinguishers.

A contractor will conduct a cognitive pre-test of the telephone questionnaire using a Computer-Assisted Telephone Interviewing (CATI) program. Revisions to the CATI programming will be made based on the pretest. Data collection for the survey will be conducted over a one-year period. The contractor will then review and edit the data and construct a database for CPSC analysis.

C. Burden on Respondents

Households will be screened using RDD methodology to identify 1,500 households who have had a fire within the previous three months. The estimated incidence of fire households is approximately 2.5%. Screening to identify household qualification is expected to take an average of approximately 2 minutes. It is estimated that the study will require screening of 86,680 households to yield 1,500 qualified, cooperative respondents.

The interview with fire households is estimated to take an average of 22 minutes to administer over the telephone. In addition, a sub-sample of 2,000 non-fire households will be interviewed using a 6-minute demographic survey.

Given these estimates, the burden on respondents is calculated to be:

- 86,680 screening interviews @ 2 minutes = 173,360 minutes;
- 1,500 interviews with fire households @ 22 minutes = 33,000 minutes; and
- 2,000 interviews with non-fire households @ 6 minutes = 12,000 minutes,

for a total of 218,360 minutes, or 3,639.3 interviewing hours of burden for respondents. The staff estimates that the annualized cost to respondents for the hour burden for the collection of information is $85,305, based on $23.44 per hour (September 2002 Bureau of Labor Statistics, Department of Labor cost for employee compensation, private industry, state and local government.)

D. Requests for Comments

The Commission solicits written comments from all interested persons about the proposed survey to determine residential fire cause and smoke alarm performance. The Commission specifically seeks information relevant to the following topics:

- Whether the survey described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;
- Whether the estimated burden of the proposed collection of information is accurate;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: April 9, 2003.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–9256 Filed 4–15–03; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Senior Executive Service; Performance Review Board; Membership

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of names of members.

SUMMARY: This notice lists the individuals who have been appointed to the Commission's Senior Executive Service Performance Review Board.

EFFECTIVE DATE: April 16, 2003.

ADDRESSES: Consumer Product Safety Commission, Office of the Secretary, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Shawn Blain, Office of Human Resources Management, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–7220.

Members of the Performance Review Board are listed below:

Mary Sheila Gall, Thomas Hill Moore, Susan W. Ahmed, Mary Ann T. Danello (alternate), William H. DuRoss, III (non-voting), Jacqueline Elder, Hugh McLaurin (alternate), Ronald L. Medford (alternate), Thomas W. Murr, Jr., Alan H. Schoem (alternate), Marc J. Schoem (alternate), Patricia M. Semple, Andrew G. Stadnik, Patrick D. Weddle.

Alternate members may be designated by the Chairman or the Chairman's designee to serve in the place of regular members who are unable to serve for any reason.

Dated: April 11, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–9363 Filed 4–15–03; 8:45 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for Grants to Support New Senior Companion and Foster Grandparent Projects

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (hereinafter, the "Corporation") announces the availability of funding for grants to support, for twelve months, two new Senior Companion projects in geographic areas that do not fall within approved service areas of current Corporation-funded Senior Companion projects, and three new Foster Grandparent projects in geographic areas that do not fall within approved service areas of current Corporation-funded Foster Grandparent projects. Public agencies (including state and local agencies and other units of government), non-profit organizations (including community-based organizations, both faith-based and secular), institutions of higher education, and Indian Tribes are eligible to apply. Sponsors of Senior Companion projects that receive no funds from the Corporation, other than funding for Programs of National Significance (PNS), are eligible to apply. Current sponsors of Senior Companion projects funded by the Corporation are not eligible to apply for funding of a new Senior Companion project.

The purpose of the Senior Companion Program (SCP) is to provide opportunities for income eligible individuals 60 years of age and over to serve adults with special needs. The purpose of the Foster Grandparent Program (FGP) is to provide opportunities for income eligible individuals 60 years of age and over to serve children and youth with special or exceptional needs on a person to person basis.

Individual Senior Companion grant awards will be approximately $210,000 to cover the costs of 46 new Senior Companion service years for twelve months. Individual Foster Grandparent grant awards will be approximately $205,600 to cover the costs of 45 Foster Grandparent service years for twelve months. Future funding is contingent on performance and the availability of appropriations.

DATES: The deadline for applications is 11:59 p.m. Eastern Daylight Time on June 6, 2003. However, if for some legitimate reason it is necessary for you to submit a paper application, we must receive it by 5 p.m. on June 6, 2003.

ADDRESSES: Applications must be submitted using eGrants, the Corporation's integrated, secure, web-based system for applications. Application guidelines and instructions can be obtained through our Web site at *http://www.cns.gov/egrants/index.html*. Application guidelines and instructions also can be obtained by contacting the appropriate Corporation State Office. Information on how to contact state offices is located on our Web site: *http://www.nationalservice.org*. Click on "Contact Information" at the very bottom of the page. If you cannot submit an application electronically, submit a paper application, together with an electronic version of the application on a 3.5" diskette to facilitate data entry into the eGrants system, to the following address: Corporation for National and Community Service, National Senior Service Corps, Attn: Mr. Peter L. Boynton, Room 9401, 1201 New York Avenue, NW., Washington, DC., 20525. Due to delays in delivery of regular U.S.P.S. mail to government offices, there is no guarantee that your application will arrive in time to be considered. We suggest that if you are submitting a paper application, you use U.S.P.S. priority mail or a commercial overnight delivery service. Also, submit an explanation as to why you could not submit electronically. We will not accept an application that is submitted by facsimile.

FOR FURTHER INFORMATION CONTACT: Contact Peter Boynton at (202) 606–5000 ext. 554, or pboynton@cns.gov. TDD (202) 565–2799. This Notice, with the complete application guidelines included, is available on the Corporation's Web site at: *http://www.cns.gov/whatshot/notices.html*. Upon request, this information will be made available in alternative formats for people with disabilities.

Dated: April 10, 2003.

Teresa Scanell,

Director, National Senior Service Corps.

[FR Doc. 03–9329 Filed 4–15–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

RIN 1820 ZA24

National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority and selection criterion.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for Collaborative Research Projects in Traumatic Brain Injury (TBI) under the Disability and Rehabilitation Research Projects (DRRP) Program under the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2003 and later years. We take this action to focus research attention on an identified national need. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before May 16, 2003.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address: *donna.nangle@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov*.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in Room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not

preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice published in the **Federal Register**.

When inviting applications we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the competitive priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Note: The proposed priority supports President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priority is also in concert with NIDRR's Long-Range Plan (the Plan), which can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Through the implementation of the NFI and the Plan, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of expertise, information, and training to facilitate the advancement of knowledge and understanding of the unique needs of traditionally underserved populations; (3) determine best strategies and programs to improve rehabilitation outcomes for underserved populations; (4) identify research gaps; (5) identify mechanisms for integrating research and practice; and (6) disseminate findings.

Disability and Rehabilitation Research Projects (DRRP) Program

The purpose of the DRRP Program is to plan and conduct research, demonstration projects, training, and related activities that help to maximize the full inclusion and integration of individuals with disabilities into society and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (the Act). An applicant for assistance under this program must demonstrate in its application how it will address, in whole or in part, the needs of individuals with disabilities from minority backgrounds (34 CFR 350.40(a)). The approaches an applicant may take to meet this requirement are found in 34 CFR 350.40(b).

General DRRP Requirements

- Involve, as appropriate, individuals with disabilities or their family members, or both, and persons who are members of groups that have traditionally been underrepresented in all aspects of the research as well as in design of clinical services and dissemination activities.
- Demonstrate knowledge of culturally appropriate methods of data collection, including understanding of culturally sensitive measurement approaches.
- Collaborate with other related projects, including the other funded Traumatic Brain Injury Model Systems (TBIMS) projects.

Priority

Background

In 1987, NIDRR established the TBI Model System (TBIMS) program by funding four projects to provide comprehensive, multidisciplinary rehabilitation services to persons who experience TBI and to conduct research to foster advances in TBI rehabilitation. Most recently, in FY 2002, NIDRR funded 16 TBIMS projects. The focus of these projects is research on interventions to improve outcomes for individuals who experience TBI. Contact information and abstracts on these 16 TBI Model Systems can be found at the National Rehabilitation Information Center (NARIC), *http://www.naric.com/search/pd/browse.html*, by scrolling down to the Health and Function chapter, and clicking on the link to the TBI projects.

The TBIMS projects serve a substantial number of individuals, allowing the projects to conduct clinical and community-based research and program evaluation. In addition, TBIMS projects contribute data on model systems patients to the TBI National Data Base maintained by the TBI National Data Center *(http://www.tbindc.org)* housed at Kessler Medical Rehabilitation Research and Education Corporation. Information is currently collected throughout the rehabilitation process, including points following discharge from the rehabilitation facility allowing for long-term follow-up of persons with TBI. There are currently over 3500 cases in this database.

As discussed, TBI model systems projects provide care to TBI survivors, contribute to the national database, and conduct focused research projects. NIDRR seeks to build upon the capacity within the model systems by providing funding to support large-scale collaborative research projects such as randomized trials or observational research that requires large sample sizes. These collaborative research efforts must include at least three existing model systems projects, but may also include non-model systems entities. You may obtain additional information about the background of this priority by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Proposed Priority

The Assistant Secretary proposes to fund Traumatic Brain Injury collaborative research projects for the purpose of generating new knowledge through research to improve treatment and services delivery outcomes for persons with TBI. A collaborative research project must:

(1) Collaborate with three or more of the 16 NIDRR TBI Model Systems projects;

(2) Conduct research on questions of significance to TBI rehabilitation, using clearly identified research designs such as randomized control trials, observational research methodologies, or longitudinal studies. The research must focus on areas identified in the NFI and the Plan, ensuring that each project has sufficient sample size and methodological rigor to generate robust findings.

(3) Areas of interest include health and function, technology for function, community integration and independent living, employment, and long-term outcomes.

(4) Disseminate research findings to clinical and consumer audiences, using accessible formats.

(5) Evaluate impact of research findings on improved outcomes for persons with TBI.

Proposed Selection Criterion

The emphasis on research rigor plus the importance of the collaborative research program require a modification to the selection criteria for this program. The Secretary proposes to add a criterion to reflect increased emphasis on research management. This criterion reads as follows: There must be a clearly delineated plan for research management, with focus on quality controls for data collection, management of research protocols, and provisions for oversight at collaborating sites.

Executive Order 12866

This notice of proposed priority has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priority are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priority, we have determined that the benefits of the proposed priority justify the costs.

Summary of potential costs and benefits: The potential cost associated with this proposed priority is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the TBIMS and collaborative projects have been well established over the years that similar projects have been completed. This proposed priority will generate new knowledge through research to improve treatment and services delivery outcomes for persons with TBI through collaborative research projects.

The benefit of this proposed priority and proposed application and project requirements will be the establishment of new collaborative projects that support the President's NFI.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.133A, Disability Rehabilitation Research Project)

Program Authority: 29 U.S.C. 762(g) and 764(b).

Dated: April 11, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–9306 Filed 4–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–533–008]

Algonquin Gas Transmission Company; Notice of Supplemental Compliance Filing

April 10, 2003.

Take notice that on April 7, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Second Sub First Revised Sheet No. 634, effective March 4, 2003.

Algonquin states that the purpose of this filing is to supplement its March 14, 2003, tariff filing submitted in compliance with the Order on Compliance Filing issued by the Commission in Docket Nos. RP00–533–004 and RP03–193–000 on March 4, 2003 (March 4 Order) [102 FERC ¶ 61,264].

Algonquin states that copies of its filing have been mailed to all affected customers of Algonquin and interested state commissions, as well as to all parties listed on the Official Service List compiled by the Secretary of the Commission in Docket No. RP00–533.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9393 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–338–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

April 10, 2003.

Take notice that on April 7, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective May 8, 2003:

Seventh Revised Sheet No. 225, Original Sheet No. 380A.

CIG states that the proposed tariff provision permits CIG and a shipper, under certain circumstances, to combine multiple delivery points included in a transportation service agreement into an aggregate group for nominations, scheduling, allocations and invoicing purposes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Intervention and Protest Date: April 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9396 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–047]

Dominion Transmission, Inc.; Notice of Negotiated Rates

April 9, 2003.

Take notice that on March 31, 2003, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Sheet No. 1402, with an effective date of April 1, 2003.

DTI states that the tariff sheet relates to a negotiated rate transaction between DTI and Rochestar Gas and Electric corporation (RG&E). DTE states that the transaction provides RG&E with firm transportation service and conforms to the forms of service agreement contained in DTI's tariff. DTI states that the term of the agreement is for a primary term of April 1, 2003, through March 31, 2004, and from year to year thereafter.

DTI states that copies of the filing have been served upon DTI's customers, interested state commissions and on all persons on the official service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.*Comment Date:* April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9249 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–048]

Dominion Transmission, Inc.; Notice of Negotiated Rates

April 9, 2003.

Take notice that on March 31, 2003, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Sheet No. 1403, with an effective date of April 1, 2003.

DTI states that the tariff sheet relates to a negotiated rate transaction between DTI and PSEG Energy Resources & Trade, LLC (PSEG). The transaction provides PSEG with firm transportation service and conforms to the forms of service agreement contained in DTI's tariff.

DTI states that copies of the filing have been served upon DTI's customers, interested state commissions and on all persons on the official service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9250 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–049]

Dominion Transmission, Inc.; Notice of Negotiated Rates

April 9, 2003.

Take notice that on March 31, 2003, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Sheet No. 1401, with an effective date of April 1, 2003.

DTI states that the tariff sheet relates to a negotiated rate transaction between DTI and Virginia Power Services Energy Corp., Inc (VPSE). The transaction provides VPSE with firm transportation service and conforms to the forms of service agreement contained in DTI's tariff.

DTI states that copies of the filing have been served upon DTI's customers, interested state commissions and on all persons on the official service list.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9251 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–80–000]

Eastern Shore Natural Gas Company; Notice of Application

April 10, 2003.

Take notice that on April 1, 2003, Eastern Shore Natural Gas Company, (Eastern Shore), 417 Bank Lane, Dover, Delaware 19904, filed in Docket No CP03–80–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA), for a certificate of public convenience and necessity to construct and operate certain pipeline facilities in Pennsylvania and Maryland in order to provide additional firm transportation capacity on its system, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the Commission's Web site at *http://www.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202)502–8222 or for TTY, call (202)208–1659.

Eastern Shore proposes to construct and operate facilities in three phases, to be placed in service by November 1, 2003, November 1, 2004, and November 1, 2005, respectively.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. Comments and protests may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and ion landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important to file comments or to intervene as early in the process as possible.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission Order approving or denying a certificate will be issued.

Any questions regarding the application may be directed to Eric M. Pearson, Manager of Engineering, Eastern Shore Natural Gas Company, 417 Bank Lane, Dover, Delaware 19904, at (302)734–6710, ext. 6506.

Comment Date: May 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9391 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–336–012]

El Paso Natural Gas Company; Notice COmpliance Filing

April 9, 2003.

Take notice that on April 4, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A, Substitute Fourth Revised Sheet No. 127, with an effective date of May 1, 2003.

El Paso states that the substitute tariff sheet is being filed to revise the list of Rate Schedule FT–2 shippers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9243 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–337–000]

El Paso Natural Gas Company; Notice of Revenue Crediting Report

April 9, 2003.

Take notice that on March 31 2003, El Paso Natural Gas Company (EPNG) tendered for filing its revenue crediting report for the calendar year 2002.

EPNG states that the report details EPNG's crediting of risk sharing revenues for the calendar year 2002 in accordance with Section 25.3 of the General Terms and Conditions of its Volume No. 1–A Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9248 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. RP03–335–000.

Enbridge Offshore Pipelines (UTOS) LLC; Notice of Proposed Change in FERC Gas Tariff

April 9, 2003.

Take notice that on March 31, 2003, Enbridge Offshore Pipelines (UTOS) LLC, (UTOS) tendered for filing as part of it FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, to become effective on May 1, 2003:

First Revised Sheet No. 4.
Second Revised Sheet No. 100.
Second Revised Sheet No. 135.

UTOS states that the proposed changes would increase revenues from jurisdictional services by $977,555 based on the 12-month period ending November 30, 2002, as adjusted.

UTOS states that the principal reasons for the tariff change is: (1) Addition of an ACA Surcharge; (2) increased cost of capital; (3) recovery of a management fee and (4) continuing decline in level of transportation volumes.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9246 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–333–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

April 9, 2003.

Take notice that on April 2, 2003, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Ninth Revised Sheet No. 41, proposed to be effective February 1, 2003.

Great Lakes states that the proposed tariff sheet is being filed to resolve the chronology and timing of recently approved revisions to Great Lakes' tariff in Docket

Nos. RP02–396–002 and RP03–189–000, so that the proposed tariff sheet will reflect the currently approved and effective tariff language. Great Lakes respectfully requests a waiver of the notice requirement so that the effective date of the proposed tariff sheet may be kept consistent with its original effective date of February 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9244 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–336–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

April 9, 2003.

Take notice that on April 4, 2003, Gulfstream Natural Gas System, L.L.C.(Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, reflecting effective dates of April 1, 2003 and May 1, 2003, respectively.

Original Sheet No. 8C.
Original Sheet No. 8D.

Gulfstream states that this filing is being made to implement two negotiated rate transactions, one under Rate Schedule FTS and one under Rate Schedule ITS, pursuant to Section 31 of the General Terms and Conditions (GT&C) of Gulfstream'sFERC Gas Tariff.

Gulfstream also states that the tariff sheets being filed herewith identify these negotiated rates, including the exact legal name of the relevant shippers, the negotiated rates, the rate schedules, the contract terms, the receipt points, the delivery points, the Maximum Daily Quantity (MDQ), and the Maximum Hourly Flow Rate. Gulfstream also states that these proposed tariff sheets include footnotes where necessary to provide further detail on the agreements listed thereon.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9247 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–374–000]

Hackberry LNG Terminal, L.L.C.; Notice of Technical Conference

April 9, 2003.

On April 23, 2003, staff of the Office of Energy Projects (OEP) will convene a cryogenic design and technical conference concerning Hackberry LNG Terminal L.L.C.'s proposed liquefied natural gas (LNG) import terminal and storage facility in Cameron Parish, Louisiana.

The conference will be held on Wednesday, April 23, 2003 at 8:30 AM at the Holiday Inn Express in Sulphur, Louisiana. In view of the nature of security issues to be explored, the conference will not be open to the public. Attendance at the conference will be limited to existing parties to the proceeding and to representatives of interested local, State, and Federal agencies. Any person planning to attend the April 23rd conference must notify the Office of General Counsel (Joel Arneson) at (202) 502–8562 by noon on April 21, 2003. Participants will be required to sign a non-disclosure statement prior to admission.

In addition, the staff of OEP will conduct a workshop on issues related to LNG storage tank and retention system designs at 1 PM on April 23rd. This session will be open to the public and will also be held at the Holiday Inn Express.

Information concerning any changes to the above may be obtained from the Commission's Office of External Affairs at (202) 502–8004 or toll free at 1–(866) 208–FERC (208–3372).

Magalie R. Salas,

Secretary.

[FR Doc. 03–9234 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–245–000]

Kinder Morgan Interstate Gas Transmission LLC; Notice of Technical Conference

April 10, 2003.

The Commission in its Order issued on February 28, 2003,[1] directed that a technical conference be held to address certain issues raised by Kinder Morgan's tariff filing to reflect the addition of a new interruptible storage-based park and loan service for its system under Rate Schedule S–PALS.

Take notice that the technical conference will be held on Tuesday, April 22, 2003, at 10 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9394 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–79–000]

National Fuel Gas Supply Corporation; Notice of Application

April 10, 2003.

Take notice that on April 2, 2003, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP03–79–000 an application for authorization to abandon certain pipeline facilities, located in Steuben County, New York. The application is on file with the Commission and open to public inspection. It is available for review on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659.

National Fuel indicates that there will be no abandonment or decrease in service to any customers of as a result of the proposed abandonment.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the nonparty commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commissions' final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. The preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Any questions regarding the application should be directed to David W. Reitz, Deputy General Counsel for National Fuel, 10 Lafayette Square, Buffalo, New York 14203 at (719) 857–7949, or at reitzd@natfuel.com.

Comment Date: May 1, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9390 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–53–001]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

April 9, 2003.

Take notice that on April 3, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets, with an effective date of May 27, 2003:

Sixth Revised Volume No. 1
Fourth Revised Sheet No. 4B
Second Revised Volume No. 2
Twenty-Sixth Revised Sheet No. 1B
Sixth Revised Sheet No. 1760

Natural states that the purpose of this filing is to cancel Natural's Rate Schedule X–129, which provided for a firm gas transportation service, with related interruptible overrun gas transportation service, by Natural for Texas Gas Transmission Corporation (Texas Gas) pursuant to a gas transportation agreement between Natural and Texas Gas dated October 20, 1981, as amended.

Natural states that the subject tariff sheets are being filed in compliance with Ordering Paragraph (A) of the Federal Energy Regulatory Commission's order issued March 21, 2003 in Docket No. CP03–53–000 (March 21st Order). Natural explains that such order authorized Natural to abandon, effective May 27, 2003, its firm gas transportation service with related interruptible overrun gas transportation service for Texas Gas authorized in Docket No. CP82–50, as amended.

Natural states that copies of the filing have been mailed to all parties set out on the Commission's official service list in Docket No. CP03–53.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9235 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–267–001]

Northern Natural Gas Company; Notice of Compliance Filing

April 10, 2003.

Take notice that on April 7, 2003, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets, with an effective date of April 1, 2003:

Substitute Fifth Revised Sheet No. 221.
Substitute Original Sheet No. 222A.

Northern states that the filing is being made in compliance with the Commission's Order issued on March 26, 2003 in Docket No. RP03–267–000, *et al.*, regarding electronic contracting.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9395 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–036]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

April 9, 2003.

Take notice that on April 4, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Seventh Revised Sheet No. 15 and Original Sheet No. 21A.

GTN states that these sheets are being filed to reflect the implementation of one Negotiated Rate Agreement. GTN requests that the Commission accept the proposed tariff sheets to be effective April 1, 2003.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

[1] Kinder Morgan Interstate Gas Transmission LLC., 102 FERC ¶ 61,236 (2003).

Comment Date: April 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9252 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–334–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

April 9, 2003.

Take notice that on April 4, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Tenth Revised Sheet No. 375, to become effective April 4, 2003.

Williston Basin states that it has revised the above-referenced tariff sheet found in Section 48 of the General Terms and Conditions of its Tariff to remove a retired receipt point, Point ID No. 03059 (Five Mile), from Williston Basin's Big Horn Pool.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9245 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–55–000, et al.]

NM Mid-Valley Genco LLC, et al.; Electric Rate and Corporate Filings

April 9, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. NM Mid-Valley Genco LLC

[Docket No. EG03–55–000]

Take notice that on April 4, 2003, NM Mid-Valley Genco LLC (Applicant), with its principal office at 3650 IDS Center, 80 So. 8th Street, Minneapolis, MN 55402–2217, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and part 365 of the Commission's regulations.

Applicant states that it will own and operate the approximately 2.52 megawatt (gross) Mid-Valley Landfill Gas Project, located in the City of Rialto, San Bernardino, California, with the possibility of expansion up to an additional 3.78 megawatts, and will sell electric energy exclusively at wholesale.

Comment Date: April 30, 2003.

2. NM Colton Genco LLC

[Docket No. EG03–56–000]

Take notice that on April 4, 2003, NM Colton Genco LLC (Applicant), with its principal office at 3650 IDS Center, 80 So. 8th Street, Minneapolis, MN 55402–2217, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and part 365 of the Commission's regulations.

Applicant states that it will own and operate the approximately 1.26 megawatt (gross) Colton Landfill Gas Project, located in the City of Colton, San Bernardino, California, with the possibility of expansion up to an additional 1.26 megawatts, and will sell electric energy exclusively at wholesale.

Comment Date: April 30, 2003.

3. NM Milliken Genco LLC

[Docket No. EG03–57–000]

Take notice that on April 4, 2003, NM Milliken Genco LLC (Applicant), with its principal office at 3650 IDS Center, 80 So. 8th Street, Minneapolis, MN 55402–2217, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and part 365 of the Commission's regulations.

Applicant states that it will own and operate the approximately 2.52 megawatt (gross) Milliken Landfill Gas Project, located in the City of Ontario, San Bernardino, California, with the possibility of expansion up to an additional 1.26 megawatts, and will sell electric energy exclusively at wholesale.

Comment Date: April 30, 2003.

4. New York Independent System Operator, Inc.

[Docket No. ER03–18–002]

Take notice that on April 4, 2003, the New York Independent System Operator, Inc., (NYISO) filed corrected tariff revisions to its Market Administration and Control Area Services Tariff (Services Tariff).

NYISO states that copies of this filing have been served on all parties listed on the official service list. The NYISO states that it has also served a copy of this filing to all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission, and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: April 25, 2003.

5. Carolina Power & Light Company

[Docket Nos. ER03–414–001 and ER03–415–001]

Take notice that on April 4, 2003, Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., tendered for filing revised Facility Interconnection and Operating Agreements with Cogentrix of North Carolina, Inc., in accordance with Commission Order dated March 7, 2003.

Progress Energy Carolinas, Inc., states that a copy of the filing was served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: April 25, 2003.

6. Entergy Services, Inc. and Entergy Power, Inc.

[Docket No. ER03–682–001]

Take notice that on April 2, 2003, Entergy Services, Inc. (ESI), on behalf of Entergy New Orleans, Inc. (ENO), and Entergy Power, Inc. (EPI) filed an amendment to its March 31, 2003 filing under section 205 of the Federal Power Act for approval of a power purchase agreement between the ENO and EPI as well as two additional purchase power agreements, between ENO and, respectively, Entergy Gulf States, Inc. and Entergy Arkansas, Inc

ESI states that copies of this filing were served on the affected state utility commissions.

Comment Date: April 23, 2003.

7. Yankee Atomic Electric Company

[Docket No. ER03–704–000]

Take notice that on April 4, 2003, Yankee Atomic Electric Company (Yankee) submitted for filing revisions to Yankee's wholesale power contract, Yankee Atomic Electric Company, Rate Schedule FERC No. 3 (the Power Contract) to resume collections to recover the costs of completing the decommissioning of Yankee's retired nuclear generating plant. Yankee states that the schedule of resumed decommissioning collections is based on a new decommissioning cost estimate (the 2003 Estimate). Yankee also states that the purpose of this filing is to reinitiate decommissioning cost collections under the Power Contract in order to fund the decommissioning of Yankee's Rowe Nuclear Generating Plant located in Rowe, Massachusetts based on the 2003 Estimate.

Yankee states that copies of this filing have been served on Yankee's wholesale customers and regulators in the states of Massachusetts, Connecticut, Rhode Island, Vermont, Maine and New Hampshire.

Comment Date: April 25, 2003.

8. Georgia Power Company

[Docket No. ER03–705–000]

Take notice that on April 4, 2003, Georgia Power Company filed a Notice of Cancellation notifying the Commission that the Interim Agreement for Gulf Power Company Scherer Unit 3 Transmission Facilities Service Payment to Georgia Power Company (designated Georgia Rate Schedule 824), dated August 31, 1989, and filed with the Federal Energy Regulatory Commission by Georgia Power Company, terminated by its own terms on June 1, 1995.

Comment Date: April 25, 2003.

9. PECO Energy Company

[Docket No. ER03–706–000]

Take notice that on April 4, 2003, PECO Energy Company (PECO) submitted for filing a Revised Title Page and First Revised Sheet Nos. 38, 40, 41, 42, 44, and 45 to the Construction Agreement between PECO and Old Dominion Electric Cooperative (Old Dominion) designated as Service Agreement No. 683 under the PJM Open Access Transmission Tariff. PECO states that the pages were revised pursuant to PJM's modifications to the scope of work required to interconnect the Rock Springs Electric Generating Facility located in Cecil County, Maryland.

PECO states that copies of this filing were served on Old Dominion and PJM Interconnection, L.L.C.

Comment Date: April 25, 2003.

10. Cleco Power LLC

[Docket No. ER03–707–000]

Take notice that on April 4, 2003, Cleco Power LLC, (Cleco Power) tendered for filing Fifth Revised Sheet Nos. 77 and 78, an Attachment E, from Cleco Power's open access transmission tariff, titled "Index of Point-to-Point Transmission Service Customers", to include TransAlta Energy Marketing (U.S) Inc., as a short-term firm and non-firm transmission customer. Cleco Power states that Cleco Power and TransAlta Energy Marketing (U.S) Inc., have executed agreements under which Cleco Power will provide short-term firm point-to-point transmission service and non-firm point-to-point transmission service to TransAlta Energy Marketing (U.S) Inc., under its Open Access Transmission Tariff.

Comment Date: April 25, 2003.

11. Pacific Gas and Electric Company

[Docket No. ER03–708–000]

Take notice that on April 4, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing revisions to its Reliability Must-Run Service Agreements with the California Independent System Operator Corporation (ISO) for Helms Power Plant, PG&E First Revised Rate Schedule FERC No. 207, Humboldt Power Plant, PG&E First Revised Rate Schedule FERC No. 208, Hunters Point Power Plant, PG&E First Revised Rate Schedule FERC No. 209, and San Joaquin Power Plant, PG&E First Revised Rate Schedule FERC No. 211. PG&E states that this filing revises portions of the Rate Schedules to adjust Table B–2, Hourly Capital Item Charges, and Table B–4, Hourly Surcharge Penalty Rate, of Schedule B, "Monthly Option Payment" to recognize capital items placed in service pursuant to the terms of the RMR Agreements.

PG&E states that copies of this filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment Date: April 25, 2003.

12. Louisiana Generating LLC

[Docket No. ER03–709–000]

Take notice that on April 4, 2003, Louisiana Generating LLC filed under section 205 of the Federal Power Act, and Commission Order No. 614, a request that the Commission accept for filing a revised market-based rate tariff; and grant any waivers necessary to make the revised tariff sheets effective as soon as possible.

Comment Date: April 25, 2003.

13. PJM Interconnection, L.L.C.

[Docket No. ER03–710–000]

Take notice that on April 4, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) and a construction service agreement (CSA) between PJM and Jersey-Atlantic Wind, LLC and Atlantic City Electric Company d/b/a Conectiv Power Delivery.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a March 6, 2003 effective date for the ISA and CSA. PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: April 25, 2003.

14. Alliant Energy Corporate Services Inc.

[Docket No. ER03–712–000]

Take notice that on April 4, 2003, Alliant Energy Corporate Services Inc. (ALTM) tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and City of Bellevue, Iowa. ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of March 31, 2003.

Comment Date: April 25, 2003.

15. Oregon Trail Electric Consumers Cooperative, Inc.

[Docket No. ES03–30–000]

Take notice that on April 2, 2003, Oregon Trail Electric Consumers Cooperative, Inc. (Oregon Trail) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to (1) make long-term borrowings under a loan agreement with the National Rural Utilities

Cooperative Finance Corporation (CFC) in an amount not to exceed $6 million and (2) make no more than $5 million of short-term borrowings under a line of credit agreement with CFC.

Oregon Trail also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: April 30, 2003.

16. Florida Power Corporation, dba Progress Energy Florida, Inc.

[Docket No. SC03–1–000]

Take notice that on April 2, 2003, Florida Power Corporation, dba Progress Energy Florida, Inc. (FPC), tendered for filing pursuant to Section 205 of the Federal Power Act an amendment to its open-access transmission tariff. FPC states that the purpose of the amendment is to recover stranded costs as a transmission surcharge if and when the City of Casselberry, Florida "municipalizes" and becomes a transmission customer of FPC. FPC further states that the customers within the City of Casselberry are currently served at retail by FPC. FPC requests an effective date for the tariff amendment upon commencement of transmission service by Casselberry. FPC requests waiver of the Commission's notice regulations for that purpose. FPC states that the basis for the stranded cost calculation is explained in the testimony and transmittal letter accompanying the tariff amendment.

The proposed tariff amendment affects only the City of Casselberry and would have no impact on any other customer under FPC's open-access transmission tariff. FPC has served a copy of the tariff amendment filing on the City of Casselberry and on the Florida Public Service Commission.

Comment Date: April 23, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9236 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–216–003, et al.]

TRANSLink Development Company, LLC, et al.; Electric Rate and Corporate Filings

April 8, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. TRANSLink Development Company, LLC

[Docket No. ER03–216–003]

Take notice that on April 2, 2003, TRANSLink Development Company, LLC, (TRANSLink Development), and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing the definition and criteria of "Material Effect," as those terms are used in the Appendix I Agreement between the Midwest ISO and TRANSLink Development, conditionally accepted by the Commission in its January 15, 2003 Order. The Midwest ISO has requested an effective date April 3, 2003.

In addition, the Midwest ISO states that it has electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: April 23, 2003.

2. San Diego Gas & Electric Company

[Docket No. ER03–217–002]

Take notice that on April 3, 2003, San Diego Gas & Electric Company (SDG&E) tendered for filing pursuant to Commission's Order issued January 24, 2003, Service Agreements numbers 17 and 18, FERC Electric Tariff, First Revised Volume No. 6. SDG&E states that these agreements were accepted for filing on January 24, 2003, conditioned upon SDG&E's filing of designations for both interconnection agreements in compliance with Order No. 614 and Section 35.9(a) of the Commission's Regulations.

SDG&E states that copies of the filing have been served on Termoelectrica de Mexicali S. de R.L. de C.V., Termoelectrica U.S., LLC, and on the California Public Utilities Commission.

Comment Date: April 24, 2003.

3. Avista Corporation

[Docket No. ER03–435–001]

Take notice that on April 3, 2003, Avista Corporation (Avista) tendered for filing with the Federal Energy Regulatory Commission, a compliance filing in response to a Letter Order issued on March 19, 2003. Avista states that the Letter Order accepted for filing, effective January 1, 2003, an Agreement for the Purchase and Sale of Power between Avista Corporation and Public Utility District No. 1 of Douglas County, Washington (Rate Schedule) conditioned upon Avista filing a revised Rate Schedule properly paginated.

Avista states that copies of the filing were served upon Public Utility District No. 1 of Douglas County, the sole party to the Rate Schedule.

Comment Date: April 24, 2003.

4. San Diego Gas & Electric Company

[Docket No. ER03–548–001]

Take notice that on April 3, 2003, San Diego Gas & Electric Company (SDG&E) tendered for filing its First Revised Service Agreement No. 9 and First Revised Service Agreement No. 11 to SDG&E's FERC Electric Tariff, First Revised Volume No. 6, incorporating revisions to the Expedited Interconnection Facilities Agreements with CalPeak Power Enterprise, LLC and CalPeak Power Border, LLC, (collectively, CalPeak) respectively.

SDG&E states that the revised Service Agreements implement Internal Revenue Service Notice 2001–82, "Expansion of Safe Harbor Provisions Under Notice 88–129", which provides that in certain circumstances, regulated public utilities such as SDG&E will not realize income upon contributions by interconnecting electric generators of certain interconnection facilities. SDG&E further states that the amendment clarifies terms pertaining to creditworthiness requirements of CalPeak and the guarantor of CalPeak's financial obligations as contemplated by Section 10.22.

SDG&E states that copies of the filing have been served on CalPeak and on the California Public Utilities Commission.

Comment Date: April 24, 2003.

5. DB Energy Trading LLC

[Docket No. ER03–657–001]

Take notice that on April 2, 2003, DB Energy Trading LLC (DB Energy) tendered for filing an application for an order accepting its rate schedule to permit sales of power and capacity at market-based rates and granting certain waivers and blanket approvals. DB Energy requests waiver of the 60-day prior notice rule

Comment Date: April 17, 2003.

6. New York Independent System Operator, Inc.

[Docket No. ER03–690–000]

Take notice that on April 1, 2003, the New York Independent System Operator, Inc. (NYISO), filed proposed revisions to the NYISO's Market Administration and Control Area Services Tariff (Services Tariff) and Open Access Transmission Tariff (OATT). NYISO states that the proposed révisions are intended to limit the extent to which prices at the Hydro Quebec external proxy bus can rise to non-competitive levels. The NYISO has requested that the Commission make the filing effective on May 31, 2003.

NYISO states that a copy of this filing was served upon all signatories of the NYISO's OATT and Services Tariff.

Comment Date: April 22, 2003.

7. Michigan Electric Transmission Company, LLC

[Docket No. ER03–692–000]

Take notice that on April 1, 2003, Michigan Electric Transmission Company, LLC (METC) submitted an unexecuted Interconnection Facilities Agreement Between METC and the City of Hart (Facilities Agreement and Hart, respectively). METC requests an effective date of March 13, 2003 for the Facilities Agreement.

Comment Date: April 22, 2003.

8. ISG Sparrows Point Inc.

[Docket No. ER03–693–000]

Take notice that on April 1, 2003 ISG Sparrows Point Inc. (ISG Sparrows Point) petitioned the Federal Energy Regulatory Commission (Commission) for acceptance of ISG Sparrows Point FERC Electric Tariff, Original Volume Number 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. ISG Sparrows Point requests an effective date for the rate schedule of May 1, 2003.

Comment Date: April 18, 2003.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–694–000]

Take notice that on April 1, 2003, PJM Interconnection, L.L.C. (PJM), filed revisions to Schedule 3 of the PJM Operating Agreement to establish a charge on the submission of excessive numbers of bids or offers in the energy market or FTR auctions.

PJM proposes an effective date of June 1, 2003 for the operating agreement revisions.

PJM states that copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: April 22, 2003.

10. Ocean Energy Services, Inc.

[Docket No. ER03–695–000]

Take notice that on March 31, 2003, Ocean Energy Services, Inc., tendered for filing a Notice of Cancellation for the Market Based Rate Schedule in Docket No. ER96–588–000 dated January 19, 1996.

Comment Date: April 14, 2003.

11. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ER03–696–000]

Take notice that on April 2, 2003, Florida Keys Electric Cooperative Association, Inc. (FKEC) tendered for filing a revised rate for non-firm transmission service provided to the City Electric System, Key West, Florida (CES) in accordance with the terms and conditions of the Long-Term Joint Investment Transmission Agreement between the Parties.

FKEC states that a copy of this filing has been served on CES and the Florida Public Service Commissioner.

Comment Date: April 23, 2003.

12. PacifiCorp

[Docket No. ER03–697–000]

Take notice that on April 2, 2003, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations a Notice of Cancellation of PacifiCorp's First Revised Rate Schedule No. 462 with Deseret Generation & Transmission Co-Operative effective July 31, 2003.

PacifiCorp states that copies of this filing were supplied to Deseret Generation & Transmission Co-Operative, the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment Date: April 23, 2003.

13. Georgia-Pacific Corporation

[Docket No. ER03–698–000]

Take notice that on April 2, 2003, Georgia-Pacific Corporation (G-P) tendered for filing a Notice of Cancellation of its Market-Based Rate Schedule, designated as FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 1, which was originally accepted for filing by the Commission on December 8, 2000 in Docket Nos. ER00–3604–000 and ER00–3604–0001.

Comment Date: April 23, 2003.

14. Northeast Utilities Service Company

[Docket No. ER03–699–000]

Take notice that on April 3, 2003, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Non-Firm Point-To-Point Transmission Service to Cargill Power Markets, LLC under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to Cargill Power Markets, LLC. NUSCO also requests, that the Service Agreement become effective May 1, 2003.

Comment Date: April 24, 2003.

15. Smarr EMC

[Docket No. ER03–700–000]

Take notice that on April 3, 2003, Smarr EMC (Smarr) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 revisions to Smarr's First Revised Electric Rate Schedule FERC No. 1 and First Revised Electric Rate Schedule FERC No. 2.

Smarr states that copies of this filing have been mailed to each of Smarr's Member-Owner/Purchasers. Smarr respectfully requests that the amendments to its Rate Schedules become effective June 1, 2003.

Comment Date: April 24, 2003.

16. Southern California Edison Company

[Docket No. ER03–701–000]

Take notice that on April 3, 2003, Southern California Edison Company

(SCE) tendered for filing an increase in the rate for scheduling and dispatching services provided in 2003 as embodied in SCE's agreements with the following entities:

Entity	Rate Schedule FERC No.
1. Arizona Electric Power Cooperative	132
2. Arizona Public Service Company	348
3.Imperial Irrigation District	268
4. Metropolitan Water Districtof Southern California	292
5. M–S–R Public Power Agency	339
6. Pacific Gas and Electric Company	256, 318

SCE states that the proposed changes would increase revenues from these entities by $628 based on transactions for the twelve-month period. Since SCE is requesting an effective date of June 2, 2003, the prorated estimated increase in 2003 scheduling and dispatching service revenues would be $365.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California.

Comment Date: April 24, 2003.

17. Northeast Utilities Service Company

[Docket No. ER03–702–000]

Take notice that on April 3, 2003, Northeast Utilities Service Company (NUSCO), tendered for filing, a Service Agreement to provide Firm Point-To-Point Transmission Service to Cargill Power Markets, LLC, under the NU System Companies' Open Access Transmission Service Tariff No. 9.

NUSCO states that a copy of this filing has been mailed to Cargill Power Markets, LLC. NUSCO also requests that the Service Agreement becomes effective May 1, 2003.

18. PJM Interconnection, L.L.C.

[Docket No. ER03–703–000]

Take notice that on April 1, 2003, PJM Interconnection, L.L.C. (PJM) filed amendments to the Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area (RAA), the PJM West Reliability Assurance Agreement Among Load Serving Entities in the PJM West Region (West RAA), the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (Operating Agreement) and the PJM Open Access Transmission Tariff (Tariff) to make the following changes:

1. Amend the West RAA and RAA and make conforming changes to the Operating Agreement and Tariff to eliminate the "available capacity" approach from the West RAA and replace it with an "unforced capacity or 'UCAP' " approach for the entire PJM region.

2. Amend the RAA and West RAA to change the voting and quorum requirements for the PJM Reliability Committee.

3. Amend the RAA to eliminate outdated provisions on procedures applicable before the "Pool-Wide Choice Date."

4. Amend the RAA and West RAA to eliminate the requirement to file new signatory pages with the Commission.

PJM requests that these amendments become effective on June 1, 2003. PJM states that copies of its filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region.

Comment Date: April 22, 2003.

19. Florida Power & Light Company

[Docket No. ER03–716–000]

Take notice that on March 28, 2003 Florida Power & Light Company (FPL) tendered for filing a Notice of Termination of an Interconnection & Operation Agreement (IOA) between FPL and CPV Gulfcoast, Ltd. (CPVG). FPL states that termination of the IOA has been mutually agreed to by FPL and CPVG. FPL requests that the termination be made effective March 13, 2003 as mutually agreed by the parties. Given that termination of the IOA has been mutually agreed to by FPL and CPVG, FPL also requests that the Commission not act on FPL's February 14, 2003 filing of the 2nd Revised Service Agreement No. 195 and for it to be withdrawn from the docket.

Comment Date: April 18, 2003.

20. Old Dominion Electric Cooperative

[Docket No. ES03–31–000]

Take notice that on April 4, 2003, Old Dominion Electric Cooperative submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term, secured or unsecured debt in an amount not to exceed $501 million.

Comment Date: April 23, 2003.

21. Texas-New Mexico Power Company

[Docket No. ES03–32–000]

Take notice that on April 4, 2003, Texas-New Mexico Power Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue short-term, unsecured debt in an amount not to exceed $291.3 million.

Comment Date: April 18, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9238 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 9, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12362–000.

c. *Date filed:* September 3, 2002.

d. *Applicant:* Idrogo Hydro Electric.

e. *Name of Project:* Medina Dam Project.

f. *Location:* On the Medina River, in Medina County, Texas. The project would utilize the existing Medina Dam owned by the Bexar Medina Atascosa Water Control and Improvement District.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Michael Idrogo, Idrogo Hydro Electric, 317 West Rosewood Avenue, San Antonio, TX 78212, (210) 681–4894.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12183–000, *Date Filed:* June 4, 2002, Date Notice Closed: October 8, 2002.

l. *The Description of Project:* The proposed pumped storage project would consist of : (1) The existing 1580-foot-long, 164-foot-high Medina Dam as the upper dam, (2) the existing Medina Lake as the upper reservoir having a surface area of 5,575 acres and storage capacity of 254,000 acre-feet and normal water surface elevation of 1,072 feet msl, (3) an existing 440-foot-long, 50-foot-high lower diversion dam, (4) an existing lower reservoir having a surface area of 400 acres with a storage capacity of 5,000 acre-feet and normal water surface elevation of 928 feet msl, (5) a proposed powerhouse containing three generating units having a total installed capacity of 3 MW, (6) a proposed 11-mile-long, 115 kV transmission line, and (7) appurtenant facilities.

The project would have an annual generation of 130 GWh that would be sold to a local utility.

m. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

n. Competing Applications—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *See* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

r. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9239 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 9, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12434–000.

c. *Date filed:* January 17, 2003.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi L&D#18 Project.

f. *Location:* On the Mississippi River, in Hendersen and Des Moines Counties, Illinois and Iowa, utilizing the U.S. Army Corps of Engineers Mississippi Lock and Dam #18.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener

files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps' existing Mississippi Lock and Dam # 18 and consist of: (1) Twelve proposed 80-foot-long, 108-inch-diameter steel penstocks, (2) a proposed powerhouse containing 12 generating units having a total installed capacity of 28 MW, (3) a proposed 1,000-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

The applicant estimates that the average annual generation would be 172 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *See* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9240 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

April 9, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12435–000.

c. *Date filed:* January 17, 2003.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Mississippi L&D#24 Project.

f. *Location:* On the Mississippi River, in Pike and Calhoun Counties, Missouri and Illinois, utilizing the U.S. Army Corps of Engineers Mississippi Lock and Dam #24.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Raymond Helter, Universal Electric Power Corp., 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps' existing Mississippi Lock and Dam # 24 and consist of: (1) Twenty proposed 80-foot-long, 114-inch-diameter steel penstocks, (2) a proposed powerhouse containing ten generating units having a total installed capacity of 50 MW, (3) a proposed 500-foot-long, 14.7 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 307 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *See* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9241 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2852–015]

New York State Electric & Gas Corporation; Notice of Teleconference

April 9, 2003.

a. *Date and Time of Teleconference:* May 7, 2003, 10 a.m. to 1 p.m.

b. *FERC Contact:* Patricia Leppert at (202) 502–6034; *patricia.leppert@ferc.gov* or John Costello at (202) 502–6119; *john.costello@ferc.gov*.

c. *Purpose of the Teleconference:* To clarify the January 22, 2003, letter from New York State Department of Environmental Conservation which provided comments on the Environmental Assessment for the Keuka Hydroelectric Project issued December 12, 2002. In addition, to clarify the January 6, 2003, letter from the New York State Office of Parks, Recreation, and Historic Preservation which provided comments on the draft Programmatic Agreement proposed by the Commission for the Keuka Project.

d. *Proposed Agenda:*

(1) Introduction Recognition of Participants Teleconference Objectives

(2) Clarification of the comments (a list of questions will be provided to the participants prior to the meeting)

(3) Summary of Meeting

(4) Follow-up Actions

e. To access the teleconference:

(1) Call 1–800–369–1828

(2) The Leader name is "John Costello"

(3) The passcode is "Costello"

Magalie R. Salas,

Secretary.

[FR Doc. 03–9242 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

April 10, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 199–199.

c. *Date Filed:* February 21, 2003.

d. *Applicant:* South Carolina Public Service Authority.

e. *Name of Project:* Santee-Cooper Project.

f. *Location:* Santee and Cooper Rivers (Lake Marion and Lake Moultrie) in Berkeley, Calhoun, Clarendon, Orangeburg, and Sumter Counties, South Carolina. The project occupies federal lands in the Francis Marion National Forest.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)-825(r) and §§ 799 and 801.

h. *Applicant Contact:* Mr. G. Denton Lindsay, Jr., Santee Cooper Property Management Division, One Riverwood Drive, PO Box 2946101, Moncks Corner, SC 29461–4003, (843) 761–8000.

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon, (202) 502–8887, or e-mail address: *diana.shannon@ferc.gov.*

j. *Deadline for filing motions to intervene, protests, comments:* April 30, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Description of Proposed Action:* The Applicant, on behalf of the South Carolina Department of Natural Resources (SCDNR), seeks approval to use project lands and waters to construct a 480-acre Greentree Reservoir in Lake Marion within a Forest Management area, for the purposes of enhancing habitat for waterfowl and other wildlife and for providing recreational opportunities to the public. Creation of the Greentree Reservoir will require approximately 9,500 feet of dike, adjacent rim ditch, placement of eight water control structures and a pump, and the dredging of a 6 x 280 foot intake channel. The site will be managed by the SCDNR. Approximately 340 of the 480 acres inside the diked area will be flooded to an average depth of 8.7 inches after November 1 and will be dewatered by March 1 of each year.

l. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "Ferris" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene-Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents-Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the project number (199–199) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings. All documents should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments-Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9392 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–2001–000 and RM01–8–000]

Electric Quarterly Reports, Revised Public Utility Filing Requirements; Notice of Extension of Time

April 9, 2003.

On March 28, 2003, the Commission issued Order 2001–D, requiring public utilities to review their fourth quarter 2002 Electric Quarterly Report submissions to ensure that the data filed was correct. FERC staff had discovered several problems which affected data quality for many filers. If any errors were found in the review, utilities were directed to refile corrected data within fourteen days of the date of the order. The due date is April 11, 2003.

FERC staff is holding an EQR Workshop on April 11, 2003. Several filers expressed concern that they would not be able to participate in the EQR Workshop and make the necessary data corrections in a timely manner. In order to encourage participation in the EQR Workshop, we will extend the deadline for filing the corrected data required by Order 2001–D.

Notice is hereby given that the time to file corrections to the fourth quarter 2002 Electric Quarterly Report as required by Order 2001–D is extended to and including April 18, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9237 Filed 4–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Proposed Rate Adjustment, Public Forum, and Opportunities for Public Review and Comment for Georgia-Alabama-South Carolina System of Projects

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of proposed rate.

SUMMARY: Southeastern Power Administration (Southeastern) proposes to revise existing schedules of rates and charges applicable to the sale of power from the Georgia-Alabama-South Carolina System of Projects effective for a 4-year period, October 1, 2003, through September 30, 2007. Additionally, opportunities will be available for interested persons to review the present rates, the proposed rates and supporting studies, to participate in a forum and to submit written comments. Southeastern will evaluate all comments received in this process.

DATES: Written comments are due on or before July 15, 2003. A public information and comment forum will be held in Atlanta, Georgia, at 10 a.m., on May 29, 2003. Persons desiring to speak at the forum should notify Southeastern at least 3 days before the forum is scheduled, so that a list of forum participants can be prepared. Others may speak if time permits.

ADDRESSES: Written comments should be submitted to: Administrator, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia, 30635–6711. The public information and comment forum for the Georgia-Alabama-South Carolina System of Projects will be at the Westin Atlanta Airport, 4736 Best Road, Atlanta, Georgia (404) 762–7676.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance & Marketing, Southeastern Power Administration, Department of Energy, 1166 Athens Tech Road, Elberton, Georgia, 30635, (706) 213–3800.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Energy (the Secretary), by order issued July 25, 2002 (67 FR 51564), confirmed and approved on an interim basis Wholesale Power Rate Schedules SOCO–1–A, SOCO–2–A, SOCO–3–A, SOCO–4–A, ALA–1–J, MISS–1–J, Duke-1–A, Duke-2–A, Duke-3–A, Duke-4–A, Santee-1–A, Santee-2–A, Santee-3–A, Santee-4–A, Pump 1–A , Pump-2, and Regulation-1 applicable to Georgia-Alabama-South Carolina System of Projects' power for a period ending September 30, 2007. These rate schedules have been submitted to the Federal Energy Regulatory Commission (FERC) in Docket No. EF02–3011–000 with a request for approval on a final basis.

Discussion: Existing rate schedules are predicated upon a June 2002 repayment study and other supporting data contained in FERC Docket No. EF02–3011–000. The current repayment study prepared in March 2003 shows that existing rates are not adequate to recover all costs required by present repayment criteria. Southeastern is proposing to establish rates that will recoup these unrecovered costs.

Existing rates for the Georgia-Alabama-South Carolina System have been in effect since October 1, 2002. Rates contained in FERC Docket No. ER02–3011–000 are predicated on a repayment study that did not include costs associated with pumped storage units at the Richard B. Russell project. Construction of the Russell pumped storage units was completed in 1993; however, U. S. District Court in Charleston, South Carolina, had issued an injunction prohibiting operation of these units. The injunction was entered on May 24, 1988. On May 3, 2002, the court dissolved this injunction. The Corps of Engineers declared these units commercially available on September 1, 2002. As of this date, Southeastern must include these costs in its costs for recovery.

Southeastern is proposing the following rate schedules to be effective for the period from October 1, 2003 through September 30, 2007.

Rate Schedule SOCO–1–B

Available to public bodies and cooperatives in Georgia, Alabama, Mississippi, and Florida to whom power may be wheeled and scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated.

Rate Schedule SOCO–2–B

Available to public bodies and cooperatives in Georgia, Alabama, Mississippi, and Florida to whom power may be wheeled pursuant to contracts between the Government and Southern Company Services, Incorporated. The customer is responsible for providing a scheduling arrangement with the Government.

Rate Schedule SOCO–3–B

Available to public bodies and cooperatives in Georgia, Alabama, Mississippi, and Florida to whom power may be scheduled pursuant to contracts between the Government and Southern Company Services, Incorporated. The customer is responsible for providing a transmission arrangement.

Rate Schedule SOCO–4–B

Available to public bodies and cooperatives in Georgia, Alabama, Mississippi, and Florida. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

Rate Schedule ALA–1–K

Available to the Alabama Electric Cooperative, Incorporated.

Rate Schedule MISS–1–K

Available to the South Mississippi Electric Power Association to whom power may be wheeled pursuant to contract between the Government and Alabama Electric Cooperative, Inc.

Rate Schedule Duke–1–B

Available to public bodies and cooperatives in North Carolina and South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and Duke Power Company.

Rate Schedule Duke–2–B

Available to public bodies and cooperatives in North Carolina and South Carolina to whom power may be wheeled pursuant to contracts between the Government and Duke Power Company. The customer is responsible for providing a scheduling arrangement with the Government.

Rate Schedule Duke–3–B

Available to public bodies and cooperatives in North Carolina and South Carolina to whom power may be scheduled pursuant to contracts between the Government and Duke Power Company. The customer is responsible for providing a transmission arrangement.

Rate Schedule Duke–4–B

Available to public bodies and cooperatives in North Carolina and South Carolina served through the transmission facilities of Duke Power Company. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

Rate Schedule Santee–1–B

Available to public bodies and cooperatives in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the

Government and South Carolina Public Service Authority.

Rate Schedule Santee–2–B

Available to public bodies and cooperatives in South Carolina to whom power may be wheeled pursuant to contracts between the Government and South Carolina Public Service Authority. The customer is responsible for providing a scheduling arrangement with the Government.

Rate Schedule Santee–3–B

Available to public bodies and cooperatives in South Carolina to whom power may be scheduled pursuant to contracts between the Government and South Carolina Public Service Authority. The customer is responsible for providing a transmission arrangement.

Rate Schedule Santee–4–B

Available to public bodies and cooperatives in South Carolina served through the transmission facilities of South Carolina Public Service Authority. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

Rate Schedule SCE&G–1–B

Available to public bodies and cooperatives in South Carolina to whom power may be wheeled and scheduled pursuant to contracts between the Government and South Carolina Electric & Gas Company.

Rate Schedule SCE&G–2–B

Available to public bodies and cooperatives in South Carolina to whom power may be wheeled pursuant to contracts between the Government and South Carolina Electric & Gas Company. The customer is responsible for providing a scheduling arrangement with the Government.

Rate Schedule SCE&G–3–B

Available to public bodies and cooperatives in South Carolina to whom power may be scheduled pursuant to contracts between the Government and South Carolina Electric & Gas Company. The customer is responsible for providing a transmission arrangement.

Rate Schedule SCE&G–4–B

Available to public bodies and cooperatives in South Carolina served through the transmission facilities of South Carolina Electric & Gas Company. The customer is responsible for providing a scheduling arrangement with the Government and for providing a transmission arrangement.

Rate Schedule Pump–1–A

Available to all customers of the Georgia-Alabama-South Carolina System and applicable to energy from pumping operations at the Carters and Richard B. Russell projects.

Rate Schedule Pump–2

Available to public bodies and cooperatives who provide their own scheduling arrangement and elect to allow Southeastern to use a portion of their allocation for pumping.

Rate Schedule Regulation–1

Available to public bodies and cooperatives in Georgia, Alabama, Mississippi, Florida, South Carolina, or North Carolina to whom regulation service is provided pursuant to contracts between the Government and the customer.

Rate Schedule Replacement–1

Available to all customers in the Georgia-Alabama-South Carolina System and applicable to replacement energy.

The proposed rates for capacity, energy, and generation services are as follows:

Capacity: $3.73 per kw per month.

Energy: 9.22 mills per kwh.

Generation Services: $0.12 per kw per month.

Under this scenario, 75 per cent of generation revenues are recovered from capacity sales and 25 per cent are recovered from energy sales. These rates are expected to produce an average revenue increase of $26.4 million in FY 2004 and all future years.

The rates for transmission, scheduling, reactive supply, and regulation and frequency response apply to all four scenarios and are illustrated in Table 1.

SOUTHEASTERN POWER ADMINISTRATION PROPOSED RATES FOR TRANSMISSION SCHEDULING, REACTIVE, AND REGULATION CHARGES

Rate schedule	Transmission charge $/KW/month	Scheduling charge $/KW/month	Reactive charge $/KW/month	Regulation charge $/KW/month
SOCO–1–B	2.08	0.0806	0.11	0.0483
SOCO–2–B	2.08	N/A	0.11	N/A
SOCO–3–B	N/A	0.0806	N/A	0.0483
SOCO–4–B	N/A	N/A	N/A	N/A
ALA–1–K	N/A	N/A	N/A	N/A
MISS–1–K	1.88	N/A	N/A	N/A
Duke–1–B	0.87	N/A	N/A	N/A
Duke–2–B	0.87	N/A	N/A	N/A
Duke–3–B	N/A	N/A	N/A	N/A
Duke–4–B	N/A	N/A	N/A	N/A
Santee–1–B	1.52	N/A	N/A	N/A
Santee–2–B	1.52	N/A	N/A	N/A
Santee–3–B	N/A	N/A	N/A	N/A
Santee–4–B	N/A	N/A	N/A	N/A
SCE&G–1–B	1.01	N/A	N/A	N/A
SCE&G–2–B	1.01	N/A	N/A	N/A
SCE&G–3–B	N/A	N/A	N/A	N/A
SCE&G–4–B	N/A	N/A	N/A	N/A
Pump–1–A	N/A	N/A	N/A	N/A
Pump–2	N/A	N/A	N/A	N/A
Regulation–1	N/A	N/A	N/A	N/A
Replacement–1	N/A	N/A	N/A	N/A

The referenced repayment studies are available for examination at 1166 Athens Tech Road, Elberton, Georgia 30635–6711. Proposed Rate Schedules SOCO–1–B, SOCO–2–B, SOCO–3–B, SOCO–4–B, ALA–1–K, MISS–1–K, Duke–1–B, Duke–2–B, Duke–3–B, Duke–4–B, Santee–1–B, Santee–2–B, Santee–3–B, Santee–4–B, SCE&G–1–B, SCE&G–2–B, SCE&G–3–B, SCE&G–4–B, Pump–1–A, Pump–2, Regulation–1, and Replacement–1 are also available.

Dated: March 28, 2003.

Charles A. Borchardt,

Administration.

[FR Doc. 03–9326 Filed 4–15–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Collections from Central Valley Project Power Contractors to Carry Out the Restoration, Improvement, and Acquisition of Environmental Habitat Provisions of the Central Valley Project Improvement Act of 1992

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final procedures.

SUMMARY: The Western Area Power Administration (Western), by publication of this notice, announces final procedures for the collection of the Restoration Fund. Western published the proposed procedures in the **Federal Register** on October 29, 2002. Included in this notice is a discussion of the comments on the proposed procedures. These procedures supersede the procedures published in the **Federal Register** on August 4, 1998.

DATES: The final procedures will become effective January 1, 2005, and will remain in effect until superseded.

ADDRESSES: Information regarding the final procedures, including comments, letters, and other supporting documents made or kept by Western to develop these final procedures, is available for public inspection and copying at the Sierra Nevada Region Office, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710.

FOR FURTHER INFORMATION CONTACT: Ms. Melinda C. Grow, Public Utilities Specialist, Rates Division, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4443, e-mail *grow@wapa.gov*.

SUPPLEMENTARY INFORMATION: Section 3407 of the Central Valley Project Improvement Act (CVPIA) (Pub. L. 102–575, Stat. 4706, 4726) establishes in the Treasury of the United States the Central Valley Project (CVP) Restoration Fund (Restoration Fund) to carry out the habitat restoration, improvement, and acquisition provisions of the CVPIA. The CVPIA further requires the Secretary of the Interior to assess and collect annual mitigation and restoration payments from CVP Water and Power Contractors (Restoration Payments). The Secretary of the Interior, through the Bureau of Reclamation (Reclamation), is responsible for determining and collecting CVP Water and Power Contractors' share of the annual Total Restoration Fund Payment Obligation.

Because Western markets and transmits CVP power and maintains all CVP power contracts, Western agreed to collect the Restoration Payments from CVP Power Contractors. Western executed a letter of agreement with Reclamation to establish procedures for depositing collections from CVP Power Contractors into the Restoration Fund.

Through an open and public process, the existing procedures became effective on September 3, 1998, and remain in effect until superseded (63 FR 41561, August 4, 1998). Western indicated that it would review the procedures associated with the assessment and collection of the Restoration Payments from CVP Power Contractors every 5 years or if one of the following occurs: (1) If there is a significant change to or suspension of the legislation, (2) if a material issue arises, (3) if an apparent inequity in the procedures is discovered, or (4) if any significant change occurs that affects the procedures.

Western published a new marketing plan (2004 Power Marketing Plan) in the **Federal Register** on June 25, 1999. The 2004 Power Marketing Plan specifies the terms and conditions under which Western will market power from CVP and the Washoe Project beginning January 1, 2005 (64 FR 34417). Since the current method to assess and collect Restoration Fund payments from CVP Power Contractors is tied to the 1994 Marketing Plan (57 FR 45782, October 5, 1992) and long-term firm CVP power contracts will expire on December 31, 2004, it is necessary to change the method of assessing and collecting Restoration Payments from CVP Power Contractors.

Western will prorate and assess to CVP Power Contractors the annual Power Restoration Payment Obligation (PRPO), as determined by Reclamation. Western will issue each CVP Power Contractor a monthly Restoration Fund Bill reflecting its share of the PRPO. The CVP Power Contractors will pay that amount to Western. Western will transfer all amounts collected from CVP Power Contractors to Reclamation for deposit into the Restoration Fund.

Public Notice and Comment

Summarized below is the process Western used to ensure involvement of interested parties in the development of the final procedures for the assessment and collection of Restoration Fund payments from CVP Power Contractors.

1. Western published a notice in the **Federal Register** (67 FR 65974) on October 29, 2002. This notice officially announced the proposed procedures, initiated the public consultation and comment period, and announced the public information and comment forums.

2. Western sent letters on November 1, 2002, to all CVP preference customers and interested parties transmitting the **Federal Register** notice dated October 29, 2002, and announcing the times and locations for two public forums.

3. Western held public information and comment forums on November 20, 2002, at its Sierra Nevada Region office in Folsom, California. At the public information forum, Western explained the proposed procedures and answered questions. Western held the public comment forum after the public information forum to give the public the opportunity to comment for the record. Three representatives from the following organizations made oral comments.

Northern California Power Agency (California).
Navigant Consulting Inc., on behalf of the Sacramento Municipal Utility District (California).
City of Palo Alto (California).

4. Western received six comment letters during the public consultation and comment period. Western reviewed and considered all comments received by the end of the public consultation and comment period, December 30, 2002, in developing the final procedures.

Western received written comments from the following organizations:

Sacramento Municipal Utility District (California).
Northern California Power Agency (California).
Tuolumne Public Power Agency (California).
Calaveras Public Power Agency (California).
Silicon Valley Power—City of Santa Clara (California).

Trinity Public Utility District (California).

Below are the paraphrased comments Western received and Western's responses to those comments. Specific comments are used for clarification when necessary.

A. Definition and Usage of the Terms

Comment: There was some confusion with respect to the definition and usage of the term "Total Power Restoration Fund Payment Obligation" as articulated in the proposed procedures. The definition intended to describe the payments collected from both Water and Power Contractors and yet the definition title only included power. Further, the use of this term confuses the meaning of the first section of the proposed procedures as to when Western is referring to the Water and Power contractors. The commentor requested clarification on the use of this term.

Response: Western evaluated the use of this term throughout the proposed procedures. The definition, as well as the usage of this term, was changed to clarify its usage and is reflected in the final procedures.

Comment: The commentor requested the inclusion of the ancillary service, regulation, in the definition of the Base Resource. Western should consider defining the Base Resource as only those resources that produce power from CVP and Washoe operations, as well as the Enron contract, and that no other products will be considered as part of the 2004 Power Marketing Plan Base Resource.

Response: The 2004 Marketing Plan (64 FR 34417) as well as the Base Resource Contracts have consistently defined the Base Resource " * * * as the CVP and Washoe Project power output and any additional purchases (as determined by Western) to be available for marketing after meeting the requirements of Project Use and First Preference customers and any other adjustments required for maintenance, reserves, transformation losses and [certain] ancillary services." While the Base Resource contracts do include the term "regulation" in this definition, Western believes that this service is covered by the 2004 Marketing Plan's definition under " * * * certain ancillary services." Western proposes to change the method for Restoration Fund collections due to the publication of the 2004 Marketing Plan. Western wishes to maintain definition consistency and, therefore, intends to use the same definition for Base Resource as indicated in the 2004 Marketing Plan and the Base Resource Contracts.

B. Inclusion of the PRPO in Western's Power Rate

Comment: Western should consider including the PRPO as part of the CVP revenue requirement and include it in the power rates.

Response: The Secretary of the Interior, through Reclamation, is responsible for assessing and collecting the mitigation and restoration payments from CVP Power and Water contractors. Since Reclamation does not have a formal business relationship with CVP Power Contractors, Western entered into a written agreement with Reclamation that establishes procedures to deposit the Restoration Fund Payments collected from CVP Power Contractors into the Restoration Fund. With regard to Restoration Fund collections, Western acts only as a billing agent on behalf of Reclamation. However, Western does not assume any financial liability for balances which are not collected from the CVP Power Contractors. All legal actions for the collection of Restoration Payments owed by Power Contractors will be initiated by Reclamation in cooperation with Western. Therefore, Western believes it is inappropriate to include the PRPO in the CVP power rate.

C. Allocating the PRPO

Comment: The 2004 Marketing Plan allocates power to the Power Contractors as the Base Resource only after meeting the requirements of Project Use and the First Preference Customers and any adjustments for maintenance, reserves, transformation losses, and certain ancillary services. Depending on reservoir levels, hydrology and water conditions, and Reclamation's water deliveries, there could be times when the Power Contractors receive little or no power benefit from CVP. The commentor stated that during these times, the only beneficiaries of CVP power are the water contractors, and they should pay the full burden of the Restoration Fund. The commentor suggested that instead of using the Power Contractor's Base Resource Percentage as the determinant for assessing an individual Power Contractor, Western should use the actual energy used by the Power Contractor.

Response: The PRPO due from the Power Contractors each year is assessed by Reclamation. Through the Letter of Agreement, Western has agreed to collect the PRPO from the Power Contractors regardless of the amount of power received from CVP resources. Therefore, even if Western were to base a Power Contractor's PRPO obligation on power deliveries, which is similar to the methodology used by Western in the 1998 procedures, Western would have to reduce the billing determinants and increase the Restoration Fund multipliers in order to collect the full PRPO. The end result would be the same. As a billing agent for Reclamation, this role does not afford Western the authority, nor the right, to change the amount assessed to CVP Water customers from the Total Restoration Fund Payment Obligation. Given these circumstances and in an effort to stabilize the Power Contractors' payments, Western proposed a method of calculation based on the Power Contractor's individual Base Resource percentages multiplied by the PRPO.

Comment: Several commentors advocated support of the proposed methodology to use a Power Contractor's Base Resource percentage as the basis for Restoration Fund payments.

Response: Western considered the comments provided on the allocation methodology and agrees with using the Base Resource percentage in the final procedures.

D. Year-end Reconciliation Process

Comment: Western should provide further clarification on the program year and billing months for the year-end reconciliation process as it relates to the Exchange Program. One commentor suggested changing the computation to include exchanges for all 12 months of the fiscal-year, rather than exchanges that occur from October through July.

Response: Western intends the year-end reconciliation process to assist in rectifying underpayment made by recipients of exchange energy and overpayments by other Power Contractors. Throughout the year, after Western prepares the monthly power bills, Western will track the amount of exchange energy used and given up by respective Power Contractors. In a typical year, this tracking system will begin with power deliveries for a 12-month period from the July to June service months. In the first year of implementation, the transition year, the tracking system will capture exchange energy associated with power deliveries during the January 1, 2005, through the June 2005 service period. This tracking system will culminate in a year-end reconciliation process that will result in a true-up on August's Restoration Fund bills. Depending on a Power Contractor's net usage of the Exchange Program, there will be either an additional charge or a credit applied to August's Restoration Fund bill. Western considered conducting a monthly reconciliation as suggested, but due to time and resource limitations, Western decided to use the annual true-up instead. Western provided further clarification on these annual reconciliation procedures in the final procedures.

E. Third-Party Payment

Comment: Western should ensure that billing and payment procedures are flexible enough to accept payments from third-party billing agents, such as the recently created CVP Business Corporation.

Response: Western understands that some Power Contractors may wish to use a third-party for payment of their share of the PRPO. Although such a business arrangement does not transfer the Power Contractor's obligation to make payment, Western understands that the Power Contractor might wish to use a third-party agent. As such, Western has ensured that the final procedures allow for third-party agents to make payments on behalf of the Power Contractors.

F. First Preference Customer Exclusion

Comment: Several commentors supported Western's proposal to exempt First Preference customers from payments to the Restoration Fund in recognition of the contributions these counties have made toward restoration programs.

Response: Western proposed excluding all First Preference customers as a result of the significant environmental contributions of the Trinity River Division and New Melones projects toward CVPIA Restoration Fund programs. After evaluating comments provided during the comment period and reviewing documents that support these environmental benefits, Western plans to maintain the position of exclusion for this subset of customers and document this in the final procedures.

Comment: Several commentors opposed the exclusion of the First Preference customers from Restoration Fund payments. Comments stated that the Trinity Public Utility District (TPUD) has already been receiving an increase in the payments of in-lieu-of (ILO) taxes for impacts of the CVP on Trinity County. This increase of ILO taxes, coupled with the temporary exclusion granted to TPUD for Restoration Fund collections, provides more than appropriate compensation for the impacts experienced by Trinity County as a result of the construction of Trinity Dam. Similarly, other comments questioned Western's intent to include Calaveras and Tuolumne counties in the exclusion. The comment indicated that these two counties already benefit from Western's new marketing plan proposal to deliver firm load factor energy to them, even though New Melones may not generate power for months.

Response: Western's rationale for excluding First Preference customers from post-2004 Restoration Fund collections is based on the contributions the Trinity and New Melones Dam projects and their operation have had toward environmental efforts in the areas of mitigation and restoration as they apply to CVPIA and other legislation.

Western considered the environmental contributions of the Trinity River Division (TRD) and New Melones Project as the basis for excluding First Preference customers. Western did not base this decision on the financial impacts upon the individual First Preference customers. Some customers commented or inferred that this was necessary for Western to base its decision. Western examined this financial data as requested by the customers; however, these calculations do not provide a full representation of the benefits and/or burdens experienced by the First Preference customers. There are other intangible benefits provided by the TRD and New Melones Project that either directly or indirectly provide environmental mitigation in support of CVPIA and/or projects supported by the CVPIA Restoration Fund. Since the First Preference customers' energy entitlements are limited to a mathematical calculation associated with the generation of each respective dam, any change to the generation output or reoperation directly affects the calculation of the First Preference customers' energy entitlement. This concept is a necessary basis for Western's decision to exclude First Preference customers from future Restoration Fund collections.

Comment: One commentor disagreed with Western including the Sierra Conservation Center (SCC) in the exclusion, believing that the construction of the New Melones Dam had no impact on SCC.

Response: The authorizing legislation of the TRD and the New Melones Project (Pub L. 69–386 (Trinity), Pub. L. 87–874 (New Melones)) does not discriminate among First Preference customers within the counties of origin. In the interest of consistency and equity, all preference customers within the counties will be treated the same. The basis for Western's rationale for exclusion is contingent on the benefit or contribution that the Trinity and New Melones project operations have had on CVPIA environmental mitigation and restoration.

Comment: Western should consider limiting the period of exclusion to no longer than 5 years, as circumstances regarding the rationale for exclusion change periodically.

Response: Western reviewed the procedures and agrees to include a provision in the final procedures that provides for a review process every 5 years or earlier if certain conditions are met.

Acronyms and Definitions

As used throughout the remainder of this notice, the following acronyms and definitions when used with initial capitalization, whether singular or plural, have the following meanings:

2004 Power Marketing Plan: The final marketing program for power marketed by the Sierra Nevada Region after 2004 established through a public process and published in the June 25, 1999, **Federal Register** (64 FR 34417).

Administrator: The Administrator of the Western Area Power Administration.

Base Resource: CVP and Washoe Project power output and existing power purchase contracts extending beyond 2004 determined by Western to be available for marketing, after meeting the requirements of Project Use and First Preference Customers, and any adjustments for maintenance, reserves, transformation losses, and certain ancillary services.

Billing Month: The month CVP Power Contractors will be billed for the Restoration Payments.

Billing Year: The period, September through August, that represents the annual Restoration Fund billing cycle.

Central Valley Project (CVP): The multipurpose Federal water and power project extending from the Cascade Range in northern California to the plains along the Kern River south of the city of Bakersfield.

CVP Improvement Act of 1992 (CVPIA): Title 34 of Pub. L. 102–575, 106 Stat. 4706 *et seq.* A legislative act, enacted on October 30, 1992, that defines provisions for habitat restoration, improvement and acquisition, and other fish and wildlife restoration activities in the CVP area of California.

DOE: United States Department of Energy.

Exchange Program: A program established in accordance with the 2004 Power Marketing Plan and intended to allow customers to more effectively use their power allocations.

First Preference Customer: A customer wholly located in Trinity, Calaveras, or

Tuolumne counties, California, as specified under the Trinity River Division Act (69 Stat. 719) and the New Melones provisions of the Flood Control Act of 1962 (76 Stat. 1173, 1191–1192).

Fiscal Year (FY): The Federal fiscal year that currently begins October 1 and ends September 30.

Interior: United States Department of the Interior.

kW: Kilowatt, the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatthour, the electrical unit of energy that equals the generation of 1,000 watts over 1 hour.

Letter of Agreement: Letter of Agreement No. 93–SAO–10156, a written agreement between Reclamation and Western that establishes procedures to deposit the Restoration Payments collected from CVP Power Contractors into the Restoration Fund.

Midyear Adjustment: The adjustment to the annual PRPO as determined by Reclamation on or about April 1 of each year.

Power: Capacity and energy.

Power Contractor: An entity purchasing CVP power from Western under a contract with a term in excess of 1 year.

Power Restoration Payment Obligation (PRPO): The portion of the Total Restoration Payment Obligation calculated and assigned annually to CVP Power Contractors by Reclamation.

Project Use: The power used to operate CVP or Washoe Project facilities in accordance with authorized purposes and pursuant to Reclamation law.

Reclamation: United States Department of the Interior, Bureau of Reclamation.

Restoration Fund: The CVP Restoration Fund, established by section 3407 of the CVPIA, into which revenues provided by the CVPIA are deposited and from which funds are appropriated by the Secretary to carry out the habitat restoration, improvement, and acquisition provisions of the CVPIA.

Restoration Fund Bill(s): The instrument prepared and issued monthly as a mechanism for collecting the Restoration Payments from CVP Power Contractors.

Restoration Payment(s): The amount(s) recorded as payable on CVP Power Contractors' Restoration Fund Bills.

Secretary: Secretary of DOE.

Total Restoration Fund Payment Obligation: The total amount of payments collected from the CVP Water and Power Contractors calculated annually by Reclamation.

Washoe Project: The Federal water project located in the Lahontan Basin in west-central Nevada and east-central California, as described in Western's final 2004 Power Marketing Plan for the Sierra Nevada Region.

Western: United States Department of Energy, Western Area Power Administration.

Final Procedures

Determination of the PRPO

Reclamation is responsible for assigning the PRPO for the CVP Power Contractors. On or about July 1 of each year, Reclamation will provide a letter to Western's Regional Manager of the Sierra Nevada Region with the determined PRPO amount and a detailed explanation of the computation for the upcoming FY. Upon receiving the letter from Reclamation, Western will notify each CVP Power Contractor of the annual PRPO and the monthly amounts to be collected from CVP Power Contractors.

Allocating the PRPO

Western will allocate the PRPO among CVP Power Contractors each FY. After notification by Reclamation, Western will calculate the annual obligation for each CVP Power Contractor. Western will base its calculation on the assigned Base Resource percentage for each CVP Power Contractor as specified in their power contracts. This annual obligation will be divided by the number of months in the FY; *i.e.*, twelve, or in the case of FY 2005, the number of months remaining in the FY; *i.e.*, nine, to determine the monthly obligation.

Since the 2004 Power Marketing Plan does not begin until January 1, 2005, and Restoration Fund collections for FY 2005 (October 1, 2004, through September 30, 2005) begin prior to this, FY 2005 will be a transition year for Restoration Fund collections from Power Contractors.

Western will base Restoration Fund collections from Power Contractors for October through December 2004 upon the existing collection methodology articulated in the August 4, 1998, **Federal Register**. Western intends to begin collection under these new proposed procedures beginning with January 2005 collections. As a point of clarification, Western will bill the Power Contractors for the October 2004 collection in their September 2004 bills based upon energy and capacity amounts for their June 2004 service month. A similar process will continue through the December 2004 collection.

In December 2004, Western will total the Restoration Fund collections made by the Power Contractors from October and November 2004, and the amounts payable for December 2004, and subtract this amount from the annual PRPO to calculate the balance to collect for the remaining months of the FY. Western will multiply this total by each Power Contractor's Base Resource percentage. This amount will then be divided by nine, representing the remaining months in the FY (January through September) to determine each Power Contractor's monthly obligation.

Year-End Reconciliation Process

Implementation of the Exchange Program may result in some Power Contractors receiving small amounts of energy in excess of their Base Resource percentage in some months. Although recipients of this exchange energy will pay for this power, Restoration Fund obligations are based on the Power Contractors' percentage of the Base Resource excluding exchange energy. Alternatively, some Power Contractors that are not able to use all of their Base Resource and return it as exchange energy could be overpaying their Restoration Fund obligations, since their actual power usage might be less than their Base Resource percentage in a given month.

In an effort to rectify underpayment made by recipients of exchange energy and overpayments by other Power Contractors, Western will conduct a reconciliation process, otherwise known as an annual true-up, before preparing August Restoration Fund Bills. This reconciliation will require Western to identify energy amounts exchanged among individual Power Contractors on a monthly basis. Normally, with the exception of the first year of implementation, the applicable billing periods will track exchange energy associated with power deliveries from July to June service months. During the first year of implementation, the tracking system will track exchange energy from January 1, 2005, through the June 2005 service month. This information will provide the basis for determining the amount of energy exchanged during the billing year.

Western will add an additional charge, or a balloon payment, to the August Restoration Fund Bills for each Power Contractor who received exchange energy during the past year that exceeded their Base Resource percentage. Conversely, Western will also post an offsetting credit on their August bills for those Power Contractors that provided exchange energy, thus decreasing the amount of Base Resource energy received.

Exclusion of First Preference Customers From the Power Restoration Payment Obligation

Western has discretion how the PRPO is assessed to CVP Power Contractors. As a consequence, Western reviewed the contribution the Trinity River Division and New Melones projects provide, either directly or indirectly, to environmental mitigation in support of CVPIA and/or projects supported by the CVPIA Restoration Fund.

The Trinity River Division's contribution to, and support of, environmental mitigation and restoration is many fold. The diversion of Trinity River water through the Trinity River Division's plants and tunnels benefits CVPIA related projects due to its unique characteristics. The lower temperature of Trinity River water makes the Sacramento River more conducive to spawning of endangered and threatened fish species. In addition, other benefits include the dilution effects the Trinity River water affords Spring Creek Dam releases/overflows and the substantial volume increase provided to the Sacramento River. Further, the final outcome of the Supplemental Environmental Impact Statement for the Trinity Record of Decision may make it necessary to further reoperate Trinity Dam to comply with river flow requirements. It is possible that the First Preference entitlement calculation for Trinity County may be reduced, thus effecting the energy entitlement authorized by law. The construction of the New Melones Dam, though originally intended to provide flood control protection, is now also valuable for the benefits it provides for environmental mitigation. Like the TRD, its benefit to the CVP in assisting to meet CVPIA goals and programs is unique and unlike the benefit that any other facility can provide. New Melones' water releases to the Stanislaus River, which flow ultimately into the San Joaquin River, bear the sole CVP burden of complying and supporting the Vernalis Adaptive Management Plan (VAMP) as prescribed in Water Right Decision 1641. This program was based on the Bay-Delta hearings, supports the State's Water Quality Plan, and is also contained in CVPIA legislation. This program requires that water pulse flow targets be met and maintained so that 12 years of studies are available and analyzed for use by the State Water Quality Review Board. In essence, this program has contributed toward a reoperation of New Melones in an effort to support VAMP. In addition, New Melones' water releases help to support other fish habitat and riparian projects along the Stanislaus and San Joaquin rivers as well as water conditions in the California Delta, as required by CVPIA.

The environmental benefits of the TRD and New Melones projects toward CVPIA Restoration Fund programs are significant. Since CVPIA was enacted, these facilities have been reoperated so CVP meets the standards and guidelines set forth by CVPIA. With the reoperation of these facilities and the fact that the First Preference customers' energy entitlements are based on the generation output of these facilities, their reoperation ultimately affects these customers. These circumstances provide a basis by which to exclude Restoration Fund collections from any First Preference customers within the affected areas.

Adjustment to the PRPO

Each FY's annual PRPO is subject to a Midyear Adjustment determined by Reclamation. The Midyear Adjustment occurs on or about April 1 of each FY, following Reclamation's annual determination of available CVP water supply for the year. Reclamation notifies Western, in writing, of the Midyear Adjustment. Upon receiving Reclamation's notification, Western will factor the Midyear Adjustment amount into the calculation for the remaining PRPO for the year. The bills for the remainder of the billing year will reflect the adjusted PRPO. Western will then notify each CVP Power Contractor of the Midyear Adjustment to the annual PRPO.

Collection of CVP Power Contractors' Restoration Fund Payment

Each CVP Power Contractor and any applicable thirdparty agents will receive a Restoration Fund Bill each month on or about the twenty-fifth (25th) but no later than the last day of the month. The Restoration Fund billing cycle for each FY will begin within 30 days following August 1 or the date written notification of the annual PRPO is received from Reclamation, whichever occurs later.

Payment Due Date

All CVP Power Contractors' Restoration Payments are due and payable before the close of business twenty calendar days after each Restoration Fund Bill is issued, or the next business day thereafter, if said day is a Saturday, Sunday, or Federal holiday.

Late Payment Charges Assessed to Delinquent Restoration Payments

Western will add a late payment charge of five hundredths percent (0.05%) of the principal amount unpaid for each day the Restoration Fund Bill payment is delinquent. Payments received will be first applied to the charges for the late payment assessed on the principal and then to the payment of the principal.

Deposit of CVP Power Contractors' Restoration Payments Into the Restoration Fund

On or about the twenty-seventh (27th) calendar day of the month following each Billing Month, Western will transfer all of the Restoration Payments received, including late payment charges, to Reclamation for deposit into the Restoration Fund. The thirtieth (30th) of September of each FY is the last day Western will transfer Restoration Payments, including late payment charges, to Reclamation for that FY.

Review Process

Western will review the procedures for the assessing and collecting of Restoration Payments from the CVP Power Contractors every 5 years or if one of the following occurs: (1) If there is a significant change to or suspension of the legislation, (2) if a material issue arises, (3) if an apparent inequity in the procedures is discovered, or (4) if any significant change occurs that affects the procedures.

Availability of Information

All studies, comments, letters, memorandums, or other documents made or kept by Western for developing the final procedures, will be made available for inspection and copying at Western's Sierra Nevada Region Office, 114 Parkshore Drive, Folsom, CA 95630–4710.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities. Western has determined that this action relates to rates or services offered by Western and, therefore, is not a rule within the purview of the Act.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500 through 1508), and the Integrated DOE NEPA Implementing Procedures (10 CFR part 1021), Western has determined this action is

categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866. This notice is not required to be cleared by the Office of Management and Budget.

Dated: March 27, 2003.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 03–9325 Filed 4–15–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0012; FRL–7303–8]

Perfluorooctanoic Acid (PFOA), Fluorinated Telomers; Request for Comment, Solicitation of Interested Parties for Enforceable Consent Agreement Development, and Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has identified potential human health concerns from exposure to perfluorooctanoic acid (PFOA) and its salts, although there remains considerable scientific uncertainty regarding potential risks. EPA is requesting public comment on pertinent topics of interest, as discussed in this document, and the submission of additional data concerning these chemicals. EPA is also soliciting the identification of interested parties who want to monitor or participate in negotiations on one or more enforceable consent agreements (ECAs) under section 4 of the Toxic Substances Control Act (TSCA) concerning PFOA and fluorinated telomers which may metabolize or degrade to PFOA, and is announcing the first public meeting for these ECA negotiations.

DATES: Comments on this notice must be received on or before May 16, 2003.

Notify EPA in writing on or before May 16, 2003 of your desire to be accorded "interested party" status for the purpose of participating in or monitoring the negotiations for development of ECAs concerning PFOA and telomers.

A public meeting has been scheduled to initiate negotiations on an ECA for PFOA and telomers, from 1 p.m. to 5 p.m., on Friday, June 6, 2003.

ADDRESSES: Submit your comments, identified by docket ID number OPPT–2003–0012, online at *http://www.epa.gov/edocket/* (EPA's preferred method), or by mail to EPA Docket Center (7407), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. For additional comment submission methods and detailed instructions, go to Unit I.C. of the **SUPPLEMENTARY INFORMATION.**

Submit your notification for "interested party" status separately from any comments submitted, identified "Attention: PFOA ECA Notification" by mail to Brigitte Farren, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. To protect personal information from disclosure to the public, please submit these notifications separately from your comments and do not use any online electronic commenting system to submit this notification.

The public meeting to initiate negotiations on ECAs for PFOA and telomers will be held at the Environmental Protection Agency, EPA East Bldg., Rm. 1153, 1201 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Mary Dominiak, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8104; e-mail address: *dominiak.mary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to manufacturers, importers, processors, exporters, distributors, and users of PFOA, fluoropolymers, fluoroelastomers, and telomer chemicals. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0012. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102–Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. Additional information concerning the topics discussed in this notice can be found in Administrative Record (AR)–226: PFOS, PFOA, Telomers, and Related Chemicals, which was established by the Agency in 2000 to receive information on various fluorinated chemicals, including PFOA. These materials are also available in the EPA Docket Center. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. (Please note, however, that to protect personal information from disclosure to the public, you should not follow the instructions in this section to submit your notification for "interested party" status. Such notification should be submitted separately from any comments on this document using the specific instructions provided under **ADDRESSES.** Do not use any online electronic commenting system to submit this notification.) To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2003–0012. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0012. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0012. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI,

please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has prepared a preliminary risk assessment (Ref. 1) on perfluorooctanoic acid (PFOA) (Octanoic acid, pentadecafluoro-; Chemical Abstracts Service Registry Number (CAS No.) 335–67–1) and its salts, predominantly ammonium perfluorooctanoate (APFO) (Octanoic acid, pentadecafluoro-, ammonium salt (CAS No. 3825–26–1)). This preliminary assessment indicates potential nationwide human exposure to low levels of PFOA. Based on certain animal studies, there could be a potential risk of developmental and other adverse effects associated with these exposures in humans. However, this assessment also reflects substantial uncertainty about the interpretation of the risk. EPA has identified areas where additional information could be very helpful in allowing the Agency to develop a more accurate assessment of the potential risks posed by PFOA and the other compounds addressed in this notice, and to identify what voluntary or regulatory mitigation or other actions, if any, would be appropriate. EPA is making this preliminary assessment public in order to identify the Agency's concerns, to indicate areas where additional information or investigation would be useful, and to request the submission of data addressing these issues.

EPA is also soliciting the identification of parties who would be interested in monitoring or participating in negotiations for the development of one or more ECAs under section 4 of TSCA on PFOA and on fluorinated telomers (hereafter "telomers") which may metabolize or degrade to PFOA. The intent of the ECAs would be to develop additional information, particularly environmental fate and transport information, to enhance understanding of the sources of PFOA in the environment and the pathways by which human exposure to PFOA is occurring.

III. Background

In 1999, EPA began an investigation after receiving data on perfluorooctyl sulfonate (PFOS) indicating that PFOS was persistent, unexpectedly toxic, and bioaccumulative. These data also showed that PFOS had been found in very low concentrations in the blood of the general population and in wildlife around the world. 3M Company (3M), the sole manufacturer of PFOS in the United States and the principal manufacturer worldwide, announced in May 2000 that it was discontinuing its perfluorooctanyl chemistries, including PFOS. EPA followed the voluntary 3M phaseout with regulatory action under TSCA section 5 to limit any future manufacture or importation of PFOS before EPA has had an opportunity to review activities and risks associated with the proposed manufacture or importation (Ref. 2).

In June 2000, EPA indicated that it was expanding its investigation of PFOS to encompass other fluorochemicals, including PFOA, in order to determine whether these other fluorochemicals might present concerns similar to those found with PFOS. EPA was concerned in part because 3M had also found PFOA in human blood during the studies on PFOS (Ref. 3).

In September 2002, the Director of OPPT initiated a priority review on PFOA because the developmental toxicity data, the carcinogenicity data, and the blood monitoring data presented in an interim revised hazard assessment raised the possibility that PFOA might meet the criteria for consideration under TSCA section 4(f) (Refs. 4 and 5). When the priority review commenced, EPA anticipated completing the review within a few months. However, as explained in this notice, there remain substantial uncertainties associated with the preliminary risk assessment. EPA believes these uncertainties may be reduced through acquisition of the information described in this notice. EPA is therefore continuing the priority review in order to acquire this information and better inform the Agency's decisionmaking.

A. PFOA Sources and Uses

PFOA and its salts are fully fluorinated organic compounds that can be produced synthetically and formed through the degradation or metabolism of certain other manmade fluorochemical products. PFOA is a synthetic chemical and is not naturally occurring. Consequently, all PFOA in the environment is attributable to human activity.

PFOA is used primarily to produce its salts, which are used as essential processing aids in the production of fluoropolymers and fluoroelastomers. Although they are made using PFOA, finished fluoropolymer and fluoroelastomer products are not expected to contain PFOA. In recent years, less than 600 metric tons per year of PFOA and its salts have been manufactured or imported in the United States (Ref. 6). The major fluoropolymers manufactured using PFOA salts are polytetrafluoroethylene (PTFE) and polyvinylidine fluoride (PVDF). PTFE has hundreds of uses in many industrial and consumer products, including soil, stain, grease, and water resistant coatings on textiles and carpet; uses in the automotive, mechanical, aerospace, chemical, electrical, medical, and building/construction industries; personal care products; and non-stick coatings on cookware. PVDF is used primarily in three major industrial sectors: Electrical/electronics, building/construction, and chemical processing.

PFOA can be commercially manufactured by two major alternative processes: The Simons Electro-Chemical Fluorination (ECF) process, and a telomerization process. Releases from manufacturing processes are one source of PFOA in the environment. Historically, most U.S. production was by 3M using the ECF process. 3M discontinued its manufacture of PFOA between 2000 and 2002, and other domestic producers are using the telomerization process exclusively.

In the ECF process, an electric current is passed through a solution of anhydrous hydrogen fluoride and an organic feedstock of octanoic acid or a derivative. The ECF process replaces the carbon-hydrogen bonds on molecules of the organic feedstock with carbon-fluorine bonds. Perfluorination occurs when all the carbon-hydrogen bonds are replaced with carbon-fluorine ones. The ECF process yields between 30–45% straight chain (normal) perfluorooctanonyl fluoride (PFOF), along with a variable mixture of byproducts and impurities. The output of the ECF process consists of a complex combination of chemical substances with varying molecular weights, including higher and lower straight-chain homologues; branched-chain perfluoroalkyl fluorides of various chain lengths; straight-chain, branched, and cyclic perfluoroalkanes and ethers; and other byproducts. After disposal or recovery of some of the byproducts and impurities, the acid fluoride is base hydrolyzed in batch reactors to yield PFOA. The PFOA salts are synthesized by base neutralization of the acid to the salt in a separate reactor.

In the telomerization process, tetrafluoroethylene is reacted with other fluorine-bearing chemicals to yield fluorinated intermediates which are readily converted into PFOA. This process yields predominantly straight-chain acids with an even number of carbon atoms. Distillation can be used to obtain pure components. Commercial products manufactured through the telomerization process, sometimes known as telomers, are generally mixtures of perfluorinated compounds with even carbon numbers, although the process can also produce compounds with odd carbon numbers.

In addition to releases from the deliberate manufacture of PFOA through either the ECF or telomerization processes, and from the use of PFOA and its salts in the manufacture and processing of fluoropolymers and fluoroelastomers, PFOA may have entered the environment through other sources. 3M has indicated that PFOA may have been present as a trace contaminant in some of the fluorochemical products which it discontinued manufacturing between 2000 and 2002 (Ref. 7). Because these products are no longer being manufactured, they will likely not be a significant potential future source of PFOA.

EPA has also received data which indicate that the 8–2 telomer alcohol (1-Decanol, 3,3,4,4,5,5,6,6,7,7,8,8,9,9,10,10,10-heptadecafluoro- (CAS No. 678–39–7)) although not itself made with PFOA, can be metabolized by living organisms or biodegrade under environmental conditions to produce PFOA (Refs. 8 and 9). Other telomer chemicals have not been tested to determine whether they may also metabolize or degrade to form PFOA. Telomers are used widely in a range of commercial products, including some that are directly released into the environment, such as fire fighting foams, as well as soil, stain, and grease resistant coatings on carpets, textiles, paper, and leather. The extent to which these telomer-containing products might degrade to release PFOA is unknown. However, anecdotal evidence of the atmospheric presence of telomer alcohols in a multi-city North American survey suggests that telomers may be one source of environmental PFOA (Ref. 10). Additional fate information is necessary to determine whether and the extent to which telomer product degradation may be a source of PFOA.

EPA is not currently aware of any other potential sources of PFOA in the environment. EPA specifically requests comment on this issue, and the submission of any data identifying or characterizing PFOA sources. EPA is especially interested in the thermal stability and oxidative degradation products of materials containing PFOA or telomer chemicals which are incinerated.

B. Hazard and Exposure

EPA has conducted a detailed review of all available hazard and exposure information on PFOA. This review is available in the Agency's *Revised Draft Hazard Assessment on PFOA and Its Salts* (Ref. 11). This draft hazard assessment has not been formally peer reviewed, but has been reviewed internally by the EPA Office of Research and Development (ORD).

PFOA is persistent in the environment. It does not hydrolyze, photolyze, or biodegrade under environmental conditions. Based on recent human biomonitoring data provided by industry, which found PFOA in the blood of workers and the general population in all geographic regions of the United States, exposure to PFOA is potentially nationwide, although the routes of exposure for the general population are unknown.

Several epidemiological studies on the effects of PFOA in humans have been conducted on workers. An association with PFOA exposure and prostate cancer was reported in one study; however, this result was not observed in an update to the study in which the exposure categories were modified. A non-statistically significant increase in the levels of the hormone estradiol in workers with high serum PFOA levels (>30 parts per million (ppm)) was also reported, but none of the other hormone levels analyzed indicated any adverse effects.

APFO is the most widely used salt of PFOA, and most animal toxicity studies have been conducted with APFO. An extensive array of animal toxicity studies have been conducted in rodents and monkeys. These studies have shown that APFO exposure can result in a variety of toxic effects in animals including liver toxicity, developmental toxicity, and immunotoxicity. In addition, rodent bioassays have shown that chronic APFO exposure is associated with a variety of tumor types. The mechanisms of APFO tumorigenesis are not clearly understood. At this time, EPA is evaluating the scientific evidence and has not reached any conclusions on the potential significance to humans of the rodent cancer data.

There are marked gender differences in the elimination of PFOA in rats. In addition, there are substantial differences in the half-life of PFOA in rats, monkeys, and humans. The gender and species differences are not completely understood and therefore the extent of potential risks to humans is uncertain.

C. Preliminary Risk Assessment

Because TSCA section 4(f) is focused narrowly on the specific toxicity endpoints of cancer, birth defects, and gene mutation, the preliminary risk assessment prepared as part of this priority review focused on the potential risks for developmental toxicity in humans. EPA did not include cancer risk in this preliminary assessment due to questions concerning the potential significance to humans of the rodent cancer data. Because data indicate that PFOA is not mutagenic, concern for gene mutation was not an issue for this preliminary assessment.

The preliminary risk assessment used a margin of exposure (MOE) approach (Ref. 1). For many risk assessments, the MOE is calculated as the ratio of the administered dose from the animal toxicology study to the estimated human exposure level. The human exposure is estimated from a variety of potential exposure scenarios, each of which requires a variety of assumptions.

A more accurate estimate of the MOE can be derived if measures of internal dose are available for humans and the animal model. In this preliminary risk assessment, serum levels of PFOA, which are a measure of internal dose, were available for some administered dose levels in the rat 2-generation reproductive toxicology study and from human biomonitoring studies. Thus, internal dose was used for the

calculation of MOEs in this assessment. The actual values of the MOEs derived must be viewed with caution, however, due to the differences in kinetics between humans and rodents. The range of MOEs in the preliminary assessment encompasses some values that would indicate potential concern and other values that would indicate a low level of concern. Due to the uncertainties in the assessment, and the possibility that the additional information discussed in this notice might reduce those uncertainties, the Agency has not attempted further interpretation of these MOEs at this time. The interpretation of the significance of the MOEs for ascertaining potential levels of concern will necessitate a better understanding of the appropriate dose metric in rats, and the relationship of the dose metric to the human serum levels.

As this priority review of PFOA progresses, EPA will continue to develop the characterization of hazard and potential risk associated with exposure to PFOA. Because the scientific interpretation issues in this case are particularly complex, given the unusual properties and behavior of PFOA and the absence of data on exposure pathways and levels, EPA anticipates that a more comprehensive risk analysis will be taken to the Agency's Science Advisory Board for review and comment in fall 2003. The preliminary risk assessment described in this notice has not been formally peer reviewed, but has gone through internal review by multiple EPA offices, including ORD, the Office of Science Coordination and Policy (OSCP), the Office of Pesticide Programs (OPP), and the Office of Policy, Economics, and Innovation (OPEI). The preliminary risk assessment has also been the subject of an external letter peer review.

D. Uncertainties and Data Needs

Although EPA has concerns with respect to the potential nationwide presence of PFOA in blood and with the potential for developmental and other effects suggested by animal studies, there are significant uncertainties in the Agency's quantitative assessment of the risks of PFOA. In addition, the uncertainties discussed in this unit with respect to the identification of the pathway or pathways that result in human exposure to PFOA (air, water, food, etc.), and the uncertainties associated with how PFOA gets into those pathways (including the products or processes that are responsible for the presence of PFOA in the environment) make it difficult to determine what, if any, particular risk mitigation measures would be appropriate. The Agency believes that the additional information identified in this notice would better inform this priority review and Agency decisionmaking with respect to PFOA.

The sources of PFOA in the environment, as described in Unit II.A., are not fully defined or understood. Historically, direct PFOA releases during the manufacture of PFOA and its use in the manufacture and processing of fluoropolymers and fluoroelastomers have been quantified at some sites. Industry has identified and implemented voluntary control technologies to reduce releases, as well as to improve PFOA recovery for recycling or destruction, as described in Unit II.E. The effectiveness of these programs could be assessed, possibly through the ECA process described in Unit V., by monitoring PFOA levels at the respective facilities and determining if the release reduction and waste management programs are reducing the PFOA levels in the media surrounding the affected facilities. PFOA exposures and releases to the environment may also come from the distribution of PFOA in aqueous dispersions of fluoropolymers used by processors to apply coatings to metals and textiles, a topic which industry is also attempting to resolve.

In addition, the question of the potential contribution to PFOA levels from telomer manufacture and from telomer product degradation remains. The universe of specific telomer chemicals that may ultimately degrade or metabolize to PFOA has not been fully defined. Preliminary data suggest that only higher perfluorinated homologues (chemicals with carbon chain lengths of eight and higher) would be converted into PFOA via normal environmental pathways. The 8–2 telomer alcohol has been shown to biodegrade and metabolize to form PFOA, but other telomer chemicals, including telomer iodides and telomer-derived polymers, have not yet been tested. Determining possible telomer product sources of PFOA may be particularly difficult because these fluorochemicals are typically used in products in very low concentrations, indicating that any individual source contribution by specific products could be very small, widely distributed, and difficult to detect. For example, products contaminated with volatile, unreacted telomer alcohol residuals could potentially release those residuals into the environment where they could be subject to biodegradation.

The exposure routes leading to the presence of PFOA in human blood are not known. The nationwide presence of PFOA in human blood, contrasted with the limited geographic locations of fluorochemical plants making or using the chemical, suggests that there must be additional sources of PFOA in the environment, and exposures beyond those attributable to direct releases from industrial facilities. But whether these exposures are due to PFOA in the air, the water, on dusts or sediments, in dietary sources, or through some combination of routes is currently unknown. Data evaluating the environmental presence of PFOA in water are very limited and site-specific. Data on the presence of PFOA in air or soil are not currently available. Data on the presence of PFOA in wildlife suggest that animals are not as likely as humans to have PFOA in their blood, and that PFOA is not found as widely in animals as PFOS. Whether these differences may be due to different exposure pathways or to differences in how the chemicals are processed or retained by animals and humans is unknown. The technical difficulties of detecting and accurately measuring the chemical in all these various media, particularly in the low concentrations that EPA would anticipate, are considerable.

The preliminary risk assessment on potential developmental toxicity was based on a comparison of serum levels in the 2-generation rat reproductive study with those found in the human population. However, there are considerable species differences in the kinetics of PFOA. Interpretation of the significance of the MOEs for ascertaining potential levels of concern will necessitate a better understanding of the appropriate dose metric in rats, and the relationship of the dose metric to the human serum levels.

Finally, there are some uncertainties regarding the use of the human biomonitoring data. Although the available data include a range of populations with various demographics in many States and all geographic areas of the country, there may be some populations that are not represented. Because it is unknown how the human exposures are occurring, proximity to a manufacturing facility may or may not be a factor in exposure. However, populations living near these facilities were not sampled. Therefore, it is possible that PFOA serum levels may be underestimated for certain portions of the U.S. population. The children's sample was derived from blood collected in 1994/1995; therefore, it may not reflect the current status of PFOA in children's blood.

Voluntary activities by industry are underway as described in Unit II.E. to help address some of these uncertainties and data gaps. For example, pharmacokinetics studies examining the biological processing of PFOA in rats are expected to be completed in the summer and fall of 2003. These studies may help to reduce the uncertainty in the estimation of risk to humans. In addition, EPA has submitted a nomination to the Centers for Disease Control and Prevention (CDC) to include PFOS, PFOA, and certain related fluorochemicals in the next National Health and Nutrition Examination Survey (NHANES). This would provide a national baseline of PFOA exposure, both to indicate whether current data are representative of the U.S. population and to offer a gauge with which to measure the effectiveness of actions to reduce exposures.

EPA will continue to develop and clarify issues relating to hazard, exposure, and risk as the priority review continues and the Agency receives additional information that allows further resolution of the uncertainties identified in this unit.

Additional data beyond EPA's current activities and the voluntary efforts undertaken by the industry may be necessary to resolve the existing uncertainties and fill remaining data gaps, including gaps not yet identified. EPA requests comment on these issues, and particularly requests that comments include the submission of any additional data that may help to fill these gaps. Certain specific information requests are identified in Unit IV.

E. Ongoing Voluntary Activities

In 2000, EPA opened a non-regulatory public docket file, Administrative Record AR–226, for information on PFOS, PFOA, telomers, and related fluorinated chemicals, and began to express its concerns to the global fluorochemical industry (Ref. 3). In response, the industry began providing information to the Agency, all of which has been placed into AR–226. Two industry groups, the Fluoropolymer Manufacturing Group (FMG) and the Telomer Research Program (TRP), formed and began pursuing voluntary collective actions to address issues associated with PFOA and the telomers. 3M continued its ongoing research efforts despite having discontinued the manufacture of both PFOS and PFOA. Much of the information reflected in the EPA's revised draft hazard assessment and preliminary risk assessment on PFOA was provided through these voluntary activities on the part of industry.

In March 2003, EPA received letters from 3M, FMG, and TRP documenting their ongoing voluntary programs and outlining their plans for continuing research and product stewardship activities (Refs. 7, 12, and 13). These letters have been placed in the public docket for this notice and can be accessed as described in Unit I.B.2. The letters contain substantial additional information concerning the specifics of the voluntary industry actions beyond what is presented in this notice.

In its letter, 3M indicated that it would not resume the manufacture of PFOA for commercial sale; that it would continue its medical monitoring efforts for workers and provide biannual reports to EPA and update its epidemiological study reports to EPA every 5 years; and that it will continue monitoring groundwater, surface water, and other environmental media and provide a summary report to EPA within 2 years. 3M also stated that it would work with other members of industry to conduct additional validation of PFOA analytical methods and sampling protocols and to participate in human health and environmental fate and effects studies of PFOA. 3M also indicated that the facilities and employees of its subsidiary, Dyneon LLC, would continue to be part of the 3M monitoring program.

The members of the FMG—Asahi Glass Fluoropolymers USA, Inc.; Daikin America, Inc.; E.I. duPont de Nemours & Company; and Dyneon LLC—indicated that they and their parent companies represent most of the known use of APFO for the production of fluoropolymers both in the United States and worldwide. Their letter includes commitments to reduce emissions of APFO from fluoropolymer and APFO manufacturing facilities on a global, individual company-wide basis by a minimum of 50% by 2006; to conduct studies on both finished polymers and finished products from these polymers to determine if any exposure to the general population can be related to the fluoropolymer industry; to conduct studies on emissions from fluoropolymer processing facilities to determine the level of current emissions; and to develop additional toxicological data on APFO. The companies noted that they are participating in activities through the Association of Plastics Manufacturers in Europe (APME) to conduct pharmacokinetics studies in rats and develop a pharmacokinetic model, and would share those data with EPA as they are developed, beginning in spring 2003. The companies indicated that they would continue to follow principles of product stewardship similar to those described in the Responsible Care® programs of the American Chemistry Council and the Synthetic Organic Chemical Manufacturers Association in their efforts to support toxicological research, control occupational exposures in their own facilities, monitor employee health, assist customers in protecting their employees, and meet the general commitment to reduce emissions to the environment. The companies stated that they will continue to use appropriate criteria, including such standards as the interim air and water screening levels and water quality guidelines recently adopted in West Virginia, to evaluate operations and emissions (Refs. 14 and 15). The letter includes a schedule for the completion of various studies already underway.

The members of the TRP—AGA Chemicals (Asahi Glass); Clariant GmbH; Daikin America, Inc.; and E.I. duPont de Nemours & Company—indicated that they comprise the major telomer producers, and that they are evaluating telomer products sold in the United States to determine whether they contribute to significant human or environmental exposure to PFOA. They noted that their evaluation has six key components: Analysis of products and articles; analysis of "aged" products and "in use" articles; characterization of potential release of PFOA from telomer-based product manufacture; characterization of potential release of PFOA from telomer-treated article manufacture; analysis of possible biodegradation of telomer-based polymeric products; and evaluation of the ultimate fate and disposal routes for telomer-treated articles in the United States. The letter includes lists and schedules for these various evaluation components, as well as for the submission of additional information to the Agency.

EPA appreciates the industry response to the Agency's concerns regarding PFOA and the telomers, and looks forward to continued cooperation on assessment and management activities. EPA invites the participation of additional interested persons in these efforts. EPA considers that the timely submission of the information which industry has already committed to provide will be essential to developing a better and more complete understanding of the potential risks of PFOA. However, in light of the concerns identified to date, the Agency will continue its ongoing expeditious review.

While the voluntary industry activities as described in the letters will provide substantial additional information, EPA considers it likely that

issues will remain even after these activities are complete, and that the results of some of these programs may well identify additional questions that will need to be answered. EPA requests comment on these issues.

IV. Specific Requests for Comments, Data, and Information

EPA specifically requests comments, data, and information on the following topics.

A. Use and Production Volume Information

What are the specific chemical identities (by Ninth Collective Index name and CAS No., if available) of the telomer chemicals, including polymers derived from these telomers, and of the fluoropolymers and fluoroelastomers made with PFOA or related chemicals, currently in commerce? In what volumes and at what locations are these chemicals manufactured or imported? How and in what volumes are these chemicals used? What are the benefits of these chemicals and products in their specific uses, and what alternatives to these chemicals may be available for specific uses?

B. Exposure Information

How are products containing the chemicals identified in Unit IV.A. used? How are these products disposed of? What environmental releases occur at manufacturing and processing facilities where these chemicals are used? What data are available on worker exposures to these chemicals? What data are available on exposures to the general population? What data are available on measured levels of these chemicals in humans and the environment, in all environmental media? What data are available on the biodegradation of these chemicals, on releases of these chemicals from consumer and industrial products, and on their breakdown during product biodegradation, incineration, and other disposal practices?

C. Monitoring and Related Information

EPA specifically requests that any persons who have in their possession existing human or environmental monitoring data indicating or assessing the presence of PFOA and related fluorochemicals in humans, in wildlife, or in any environmental media, including studies conducted in other countries, provide those data to the Agency in response to the publication of this notice to enhance the understanding of PFOA presence in the environment and of the pathways leading to exposures. EPA includes in this request any existing data not otherwise provided to EPA concerning the toxicity, pharmacokinetics, and half-life of PFOA in organisms.

D. Additional Data

Are there other pieces of information not addressed in Unit IV. A., B., and C., that would help EPA more accurately assess the risks of these chemicals and determine appropriate further action, if warranted?

V. Enforceable Consent Agreement Development

EPA is interested in developing one or more ECAs under TSCA section 4 and 40 CFR part 790 for PFOA and telomers that focus on identifying environmental fate and transport information, as well as other relevant information to enhance understanding of the sources of PFOA in the environment and the pathways by which human exposure to PFOA is occurring. The objective of the ECA process is to conclude one or more ECAs that will set in place an industry-sponsored testing program that will address a number of EPA's current data needs for PFOA and telomers. EPA expects that industry will meet the voluntary testing commitments made in their letters of intent, as discussed in Unit III.E. Therefore, EPA anticipates that the ECA process will focus generally on testing issues beyond or supplemental to those contained in the industry letters of intent.

A. Solicitation of Interested Parties

EPA is soliciting interested parties to monitor or participate in negotiations on ECAs for PFOA and telomers. As discussed in Unit III.E., 3M; AGA Chemicals; Asahi Glass Fluoropolymers USA, Inc.; Clariant GmbH; Daikin America, Inc.; Dyneon LLC; and E.I. duPont de Nemours & Company, have been pursuing voluntary collective actions to address issues associated with PFOA and telomers and have been keeping EPA informed of these activities. Any person who desires treatment as an "interested party" during the development of the ECAs must respond in writing to this notice on or before May 16, 2003 following the instructions in Unit I., and must specifically request that they be given "interested party" status. These interested parties will not incur any obligations by being so designated. Negotiations will be conducted in one or more meetings, all of which will be open to the public. EPA will contact all interested parties who have expressed a desire to participate in or monitor the ECA negotiations and advise them of all meeting dates. EPA will also notify the public of such meeting dates in the electronic public docket for this action. The negotiation time schedule for PFOA and telomers will be established at the first negotiation meeting. It is EPA's current intent to move quickly to attempt to finalize any ECAs, if possible. If an ECA is not established in principle within a reasonable time-frame, negotiations will be terminated, and any unmet data needs may be pursued via a test rule promulgated under TSCA section 4. If the data generated from the ECA do not meet the Agency's needs, EPA reserves the right to proceed with rulemaking to obtain the needed data. EPA also reserves the right to announce and convene subsequent ECA negotiations for additional data, if the testing from voluntary activities, the initial ECA, or from a test rule identify additional data gaps which must be filled.

B. ECA Process and Public Participation in Negotiations

EPA will provide the public with an opportunity to comment on and participate in the development of any ECAs on PFOA and telomers to ensure that the views of interested parties are taken into account during the ECA process. This process is described generally in this unit, and is more fully addressed in 40 CFR part 790.

Individuals and groups who respond to this notice by May 16, 2003 and request treatment as interested parties will have the status of interested parties. All negotiating meetings for the development of this ECA will be open to the public and minutes of each meeting will be prepared by EPA and placed in the official public docket for this action. The Agency will advise interested parties and the public of meeting dates and make available meeting minutes, testing proposals, background documents, and other relevant materials exchanged at or prepared for negotiating meetings. Where tentative agreement is reached on an acceptable testing program, a draft ECA will be made available for comment by interested parties and, if necessary, EPA will hold a public meeting to discuss any comments that have been received and determine whether revisions to the ECA are appropriate. EPA will not reimburse costs incurred by non-EPA participants in this ECA negotiation process.

Enforceable consent agreements will only be concluded where an agreement can be obtained, which is satisfactory to the Agency, manufacturers or processors who are potential test sponsors, and other interested parties, concerning the need for and scope of testing. In the absence of an ECA, EPA reserves the right to proceed with rulemaking.

More specifically, EPA will not enter into an ECA if either the Agency and affected manufacturers or processors cannot reach an agreement on the provisions of the ECA, or the draft ECA is considered inadequate by other interested parties who have submitted timely objections to the draft ECA. However, EPA may reject these objections if the Agency concludes that:

1. They are not made in good faith;
2. They are untimely;
3. They are not related to the adequacy of the proposed testing program or other features of the ECA that may affect EPA's ability to fulfill the goals and purposes of TSCA; or
4. They are not accompanied by a specific explanation of the grounds on which the draft ECA is considered objectionable.

EPA will prepare an explanation of the basis for each ECA. That document will summarize the agreement (including the needed data development), explain the objectives of the data collection/development activity, and outline the chemicals' use and exposure characteristics. That document, which will also announce the availability of the final ECA, will be published in the **Federal Register**. Upon the successful completion of an ECA, export notification under TSCA section 12(b) would be required for all signatories to the ECA who export or intend to export the chemicals subject to the ECA. A separate action would be published in the **Federal Register** following the announcement of the ECA to apply the export notification requirement to others by adding the ECA chemicals to the list of chemicals subject to testing consent orders at 40 CFR 799.5000.

VI. References

These references have been placed in the official docket that was established under docket ID number OPPT–2003–0012 for this action as indicated in Unit I.B.2. Reference documents identified with an Administrative Record number (AR226–XXXX) are available in the public version of the official docket maintained in the OPPT Docket. Copies of these documents may be obtained as described in Unit I.B.2.

1. USEPA. Preliminary Risk Assessment of the Developmental Toxicity Associated with Exposure to Perfluorooctanoic Acid (PFOA) and its Salts. OPPT, Risk Assessment Division. Washington, DC. April 10, 2003.

2. **Federal Register**. (65 FR 62319, October 18, 2000) (FRL–6745–5); (67 FR 11008; March 11, 2002) (FRL–6823–6); (67 FR 11014, March 11, 2002) (FRL–6823–7); (67 FR 72854, December 9, 2002) (FRL–7279–1).

3. (AR226–0639) PFOS Presentation to CMA. Auer, Charles M., USEPA. Washington, DC. June 19, 2000.

4. (AR226–1127) Revision of PFOA Hazard Assessment and Next Steps. Memorandum from Charles M. Auer to Oscar Hernandez, Mary Ellen Weber, and Ward Penberthy. USEPA. Washington, DC. September 27, 2002.

5. Section 4(f) of TSCA (15 U.S.C. 2603 (4)).

6. (AR226–0620) Sulfonated Perfluorochemicals in the Environment: Sources, Dispersion, Fate, and Effects. 3M. St. Paul, MN. March 1, 2000.

7. Environmental, Health And Safety Measures Relating to Perfluorooctanoic Acid and Its Salts (PFOA). Letter from Dr. Larry Wendling, 3M, to Stephen L. Johnson, USEPA. 3M. St. Paul, MN. March 13, 2003.

8. Characterization of Fluorinated Metabolites by a Gas Chromatographic-Helium Microwave Plasma Detector; The Biotransformation of 1H, 1H, 2H, 2H-Perfluorodecanol to Perfluorooctanoate. Hagen, Donald F.; Belisle, John; Johnson, James D.; and Venkateswarlu, P. *Analytical Biochemistry*. 118, 336–343 (1981).

9. (AR226–1149). Revision 1, Biodegradation Screen Study for Telomer-Type Alcohols. Lange, Cleston C. Pace Analytical Services, Minneapolis, MN. November 6, 2002.

10. Mabury, Scott. Annual Report of Activities for Telomer Research Program Grant to University of Toronto. University of Toronto, Toronto, Canada. September 2002.

11. (AR226–1136) Revised Draft Hazard Assessment of Perfluorooctanoic Acid and Its Salts. USEPA, OPPT, Risk Assessment Division. Washington, DC. November 4, 2002.

12. Voluntary Actions to Evaluate and Control Emissions of Ammonium Perfluorooctanoate (APFO). Letter from Charles D. Allen, Asahi Glass Fluoropolymers USA, Inc.; Takahiko Sakanoue, Daikin America, Inc.; James E. Gregory, Dyneon LLC.; and Richard J. Angiullo, E.I. duPont de Nemours & Company, to Stephen L. Johnson, USEPA. March 14, 2003.

13. Letter of Intent for the Telomer Research Program from H. Okuno, AGA Chemicals, Inc.; Hans Ludwig Panke and Reinhard Jung, Clariant GmbH; Takahiko Sakanoue, Daikin America, Inc.; and Stephen H. Korzeniowski, E.I. duPont de Nemours & Company, to Stephen L. Johnson, USEPA. March 14, 2003.

14. Order on Consent between E.I. duPont de Nemours & Company and USEPA, Region III and Region V. Philadelphia, PA. March 12, 2002.

15. West Virginia Department of Environmental Protection. Final. Ammonium Perfluorooctanoate (C8) Assessment of Toxicity Team (CATT) Report. Charleston, WV. August 2002.

List of Subjects

Environmental protection, Chemicals, Hazardous substances.

Dated: April 14, 2003.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–9418 Filed 4–14–03; 1:26 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0078; FRL–7296–2]

Kansas State Plan for Certification of Applicators of Restricted Use Pesticides; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: The State of Kansas has submitted to EPA programmatic amendments to its State Plan for Certification and Training of Applicators of Restricted Use Pesticides. The proposed amendment establishes new requirements for the recertification of pesticide applicators. Notice is hereby given of the intention of the Regional Administrator, Region VII, to approve the revised Plan for the Certification of Applicators of Restricted Use Pesticides. EPA is soliciting comments on the proposed amendments.

DATES: Comments, identified by docket ID number OPP–2003–0078, must be received on or before May 16, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: John T. Tice, Water, Wetlands and Pesticides Division, WWPD-PEST, 100 Centennial Mall N., Room 289, Lincoln, NE 68508; telephone number: (402) 437–5080; e-mail address: Tice.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those involved in agriculture and anyone involved with the distribution and application of pesticides for agricultural purposes. Others involved with pesticides in a non-agricultural setting may also be affected. In addition, it may be of interest to others, such as, those persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0078. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

In addition to the sources listed in this unit, you may obtain copies of the amended Kansas Certification Plan, other related documents, or additional information by contacting:

1. John T. Tice at the address listed under **FOR FURTHER INFORMATION CONTACT**.

2. Jeanne Fox, Kansas Department of Agriculture, 109 SW 9th St., Third Floor, Topeka, KS 66612; telephone number: (785) 296–2265; e-mail address: jfox@kda.state.ks.us.

3. Jeanne Heying, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3240; e-mail address: heying.jeanne@epa.gov.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

i. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0078. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0078. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention: Docket ID Number OPP–2003–0078.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0078. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has reviewed the revised Kansas Certification Plan and finds it in compliance with FIFRA and 40 CFR part 171 and is announcing its intention to approve the amended plan and seeks public comment.

List of Subjects

Environmental protection, Education, Pests and pesticides.

Dated: April 7, 2003.

Nathaniel Scurry,

Regional Administrator, Region VII.

[FR Doc. 03–9339 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0116; FRL–7300–8]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by October 13, 2003, or May 16, 2003 for EPA Registration Numbers: 003008–00021, 075341–00001, and 075341–00007, orders will be issued canceling these registrations. The Agency will consider withdrawal requests postmarked no later than October 13, 2003 or 30 days after publication in the **Federal Register** for EPA Registration Numbers indicated above.

FOR FURTHER INFORMATION CONTACT: James A. Hollins, Information Resources Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5761, e-mail address: *hollins.james@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number

OPP–2003–0116. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel 34 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in Table 1 of this unit:

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration no.	Product Name	Chemical Name
000100–00754	Supracide 25WP	O,O-Dimethyl phosphorodithioate, S-ester with 4-(mercaptomethyl)-2-
000279 AZ–93–0002	Prevail FT Termiticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
000279 AZ–93–0009	Ammo 2.5 EC Insecticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
000279 AZ–95–0004	Biflex TC Termiticide	(2-Methyl{1,1'-biphenyl}-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-
000572–00329	Urban Insect Spray	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
000655–00318	Prentox Warfarin Technical	3-(alpha-Acetonylbenzyl)-4-hydroxycoumarin
000655–00441	Prentox Residual Concentrate DV-One	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phesphorothioate 2,2-Dichlorovinyl dimethyl phosphate
000655–00557	Prentox Diazinon 14G	O,O-Diethyl O-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate
000655–00644	Prentox Pyronyl Oil Concentrate #1233-A	N-Octyl bicycloheptene dicarboximide (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
000655–00788	Carbaryl 5D	1-Naphthyl-N-methylcarbamate
000655–00789	Prentox Carbaryl 10D	1-Naphthyl-N-methylcarbamate
001757–00041	Amerstat 233	Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione
003008–00021	Osmose Special K-33 Preservative	Arsenic acid Chromic acid Cupric oxide
004822–00084	Bolt Ant and Roach Killer	o-Isopropoxyphenyl methylcarbamate
004822–00318	Raid Ant & Roach Killer	o-Isopropoxyphenyl methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
005011–00060	Formula GH-18	1,2-Dibromo-2,2-dichloroethyl dimethyl phosphate
007173–00072	Rozol Rodenticide Mineral Oil Concentrate	2-((p-Chlorophenyl)phenylacetyl)-1,3-indandione
007173–00216	Maki Paraffin Blocks with Bitrex	3-(3-(4'-Bromo-(1,1'-biphenyl)-4-yl)-3-hydroxy-1-phenylpropyl)-4-hydroxy-2H-1-
010163 AZ–02–0001	Sandea Herbicide	3-Chloro-5-((((((4,6-dimethoxy-2-pyrimidinyl)amino)carbonyl)amino)
010163 OR–99–0003	Savey Ovicide/Miticide 50-WP	trans-5-(4-Chlorophenyl)-N-cyclohexyl-4-methyl-2-oxo-3-thiazolidinecarboxamide
010163 WA–95–0002	Metasystox-R Spray Concentrate	S-(2-(Ethylsulfinyl)ethyl) O,O-dimethyl phosphorothioate
010163 WA–95–0003	Metasystox-R Spray Concentrate	S-(2-(Ethylsulfinyl)ethyl) O,O-dimethyl phosphorothioate
010182 AZ–93–0007	Prelude Termiticide/Insecticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
010182 AZ–93–0008	Demon TC Insecticide	Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
019713 AZ–94–0005	Drexel Dimethoate 4EC	O,O-Dimethyl S-((methylcarbamoyl)methyl) phosphorodithioate
019713 AZ–96–0004	Drexel Dimethoate 2.67	O,O-Dimethyl S-((methylcarbamoyl)methyl) phosphorodithioate
041200–00002	Rabon 350 Mineral	Gardona (cis-isomer)
062719 ID–94–0013	Lorsban 4E-HF	O,O-Diethyl O-(3,5,6-trichloro-2-pyridyl) phosphorothioate
065361 CA–89–0059	Plantfume 103 Smoke Generator	O,O,O,O-Tetraethyl dithiopyrophosphate

TABLE 1.—REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration no.	Product Name	Chemical Name
067379 AZ–90–0014	Vinco Formaldehyde Solution	Formaldehyde
071711 ID–02–0005	Moncut 70-DF	a,a,a-Trifluoro-3'-isopropoxy-o-toluanalide
071711 OR–01–0015	Moncut 50WP	a,a,a-Trifluoro-3'-isopropoxy-o-toluanalide
075341–00001	Hollow Heart Concentrate	Sodium arsenate Sodium dichromate Sodium fluoride
075341–00007	Osmoplastic SD Wood Preserving Compound	Coal tar creosote Sodium dichromate Sodium fluoride

Unless a request is withdrawn by the registrant within 180 days (30 days where indicated) of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during the indicated comment period.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 of this unit, in sequence by EPA company number:

TABLE 2—REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company no.	Company Name and Address
000100	Syngenta Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000279	FMC Corp.Agricultural Products Group, 1735 Market St, Philadelphia, PA 19103.
000572	Rockland Corp., 686 Passaic Ave.Box 809, West Caldwell, NJ 07007.
000655	Prentiss Inc., C.B. 2000, Floral Park, NY 11001.
001757	Drew Industrial Division, Ashland Chemical Co., One Drew Plaza, Boonton, NJ 07005.
003008	Osmose Inc., 980 Ellicott St, Buffalo, NY 14209.
004822	S.C. Johnson & Son Inc., 1525 Howe Street, Racine, WI 53403.
005011	Aire-Mate Inc., Box 406, Westfield, IN 46074.
007173	Liphatech, Inc., 3600 W. Elm Street, Milwaukee, WI 53209.
010163	Gowan Co, Box 5569, Yuma, AZ 85366.
010182	Zeneca Ag Products, Inc., Box 18300, Greensboro, NC 27419.
019713	Drexel Chemical Co, 1700 Channel Ave.Box 13327, Memphis, TN 38113.
041200	Midway Co-Op, Inc., Box 40, Osborne, KS 67473.
062719	Dow Agrosciences LLC, 9330 Zionsville Rd 308/2E225, Indianapolis, IN 46268.
065361	Glad-A-Way Gardens Inc., 2669 E. Clark Ave., Santa Maria, CA 93455.
067379	Associated Citrus Packers Inc., 2 W. 6th St, Yuma, AZ 85364.
071711	Nichino America, Inc., 4550 New Linden Hill Rd., Suite 501, Wilmington, DE 19808.
075341	Osmose Utilities Services, Inc., 980 Ellicott Street, Buffalo, NY 14209.

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before October 13, 2003 or May 16, 2003 for EPA Registration Numbers 003008–00021, 075341–00001 and 075341–00007. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in the **Federal Register** of June 26, 1991 (56 FR 29362) (FRL–3846–4). Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product. Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in a Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 1, 2003.

Linda Vlier Moos

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 03–8959 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0281; FRL–7299–1]

Pesticides; North American Free Trade Agreement Guidance Document on Requirements for Tolerances on Imported Commodities; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document provides detailed guidance on data requirements that meet North American Free Trade Agreement (NAFTA) standards for the establishment of pesticide import tolerances or maximum residue levels in Canada, Mexico, and the United States. It has been developed consistently with the goals of the North American Free Trade Agreement. This guidance document does not change the U.S. data requirements for obtaining a U.S. import tolerance. This notice starts a 60–day public comment period, during which the public is encouraged to submit comments to EPA in accordance with procedures described in Unit I. of this document.

DATES: Comments, identified by docket ID number OPP–2002–0281, must be received on or before June 16, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Robert McNally, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8085; fax number: (703) 308–8041; e-mail address: mcnally.robert@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

Does this Action Apply to Me?

You may be potentially affected by this action if you sell, distribute, manufacture, or use pesticides for agricultural applications, produce food, distribute or sell food, or implement governmental pesticide regulations. Potentially affected entities may include, but are not limited to:

- Food manufacturers (NAICS 311), e.g., commercial processors
- Pesticide manufacturers (NAICS 32532), e.g., pesticide registrants and pesticide producers

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0281. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For members of the public submitting comments, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the person who submitted the comment, and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0281. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2002–0281. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2002–0281.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID number OPP–2002–0281. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

A. What Action is the Agency Taking?

This notice constitutes and announces the availability of the NAFTA Guidance Document on Data Requirements for Tolerances on Imported Commodities. It has been developed consistently with the goals of the NAFTA. A common NAFTA approach to import tolerances will promote trade between North America and the rest of the world.

B. What is the Agency's authority for taking this action?

In the **Federal Register** of June 1, 2000 (65 FR 35069) (FRL–6559–30, EPA issued a guidance on import tolerances. The NAFTA Guidance Document on Data Requirements for Tolerances on Imported Commodities is consistent with the earlier U.S. guidance.

EPA regulates pesticides under two major statutes: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). FIFRA requires that pesticides be registered (licensed) by EPA before they may be sold or distributed for use in the U.S. Section 408 of the FFDCA authorizes EPA to establish, modify, or maintain tolerances or tolerance exemptions for pesticide residues in or on food. Any food with pesticide residues not covered by a tolerance or tolerance exemption or with residues in excess of the tolerance may be subject to regulatory action by the U.S. government (including seizure). Pesticide tolerances and exemptions are enforced by individual States and the U.S. Food and Drug Administration for most foods, and by the U.S. Department of Agriculture for meat, poultry, and some egg products.

EPA has an obligation under section 408 of the FFDCA to establish tolerances for pesticide chemicals at levels that are "safe." EPA also has an obligation to ensure that the tolerances continue to be "safe" over time, since new information may alter EPA's earlier safety finding under the FFDCA.

List of Subjects

Environmental protection, NAFTA pesticides and tolerances.

Dated: March 27, 2003.

Lois A Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–9338 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7484–5]

Toxicological Review of Benzene—Noncancer Effects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the final document, *Toxicological Review of Benzene—Noncancer Effects* (EPA/635/R–02/001F), prepared by the Office of Research and Development's (ORD) National Center for Environmental Assessment (NCEA).

ADDRESSES: The document is available on NCEA's Web site at *http://www.epa.gov/ncea* under the *What's New* and *Publications* menus. A limited number of paper copies will be available from EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695. Please provide your name and mailing address and the title and EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: For further information, please contact David Bayliss, National Center for Environmental Assessment-Washington (8623D), U.S. Environmental Protection Agency, Washington, DC 20460; telephone: 202–564–3294; facsimile: 202–565–0078; e-mail: *bayliss.david@epa.gov*. For general information contact: Technical Information Staff, NCEA–W (8623D), U.S. Environmental Protection Agency, Washington, DC 20460; telephone: 202–564–3261; facsimile: 202–565–0050; e-mail: *nceadc.comment@epa.gov*.

SUPPLEMENTARY INFORMATION: The *Toxicological Review of Benzene—Noncancer Effects* characterizes the potential noncancer health hazards associated with environmental exposure to benzene. This toxicological review will serve as a scientific document for hazard identification and dose-response assessment in updating the noncancer health effects summary on benzene in the EPA's Integrated Risk Information System (IRIS).

The Toxicological Review concludes that chronic benzene exposure may pose several types of noncancer human health hazards. Hematotoxicity, *e.g.*, progressive deterioration of hematopoietic function, has been consistently reported to be the most sensitive indicator of noncancer toxicity in both experimental animal studies and occupationally exposed humans. The hazards can result from inhalation, oral or dermal exposure, though the exposure circumstances vary. The Toxicological Review includes estimates of chronic exposure levels for oral exposure (reference dose) and inhalation exposure (reference concentration) that are thought to be without appreciable risk.

Earlier drafts of the assessment were subjected to independent expert peer review, as well as to public review and comment. The comments of the expert panel and the public are addressed in the revisions of the draft document.

Dated: April 10, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–9341 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7484–4]

Anniston Lead Superfund Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), the United States Environmental Protection Agency ("EPA") proposes to enter into a Prospective Purchaser Agreement ("PPA") regarding the Anniston Lead Superfund Site in Anniston, Calhoun County, Alabama. EPA proposes to enter into the PPA with Habitat for Humanity of Calhoun County, Inc. (Habitat). Pursuant to the PPA, Habitat will conduct time-critical removal actions at the properties ("Properties") covered by the PPA under EPA oversight. The PPA provides Habitat with a covenant not to sue from the United States for Existing Contamination on the Properties and releases any Superfund liens on the Properties as well. EPA will consider comments on the proposed PPA until May 16, 2003.

EPA may withdraw from or modify the proposed PPA should such comments disclose facts or considerations which indicate the proposed PPA is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: April 3, 2003.

Archie Lee,

Chief, CERCLA Program Services Branch, Waste Management Division.

[FR Doc. 03–9349 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7483–8]

Joyce National Powder Company Superfund Site, CERCLA Section 122(h) Administrative Settlement; Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, As Amended

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative cost recovery settlement concerning the Joyce National Powder Company Superfund Site, Eldred Township, McKean County, Pennsylvania (Proposed Settlement). The Proposed Settlement with Robert F. Gustke and Paul G. Modie (Settling Parties) has been approved by the Attorney General, or her designee, of the United States Department of Justice. The Proposed Settlement was signed by the Regional Administrator of the U.S. Environmental Protection Agency (EPA), Region III, on March 17, 2003, pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), and is subject to review by the public pursuant to this notice.

The Proposed Settlement resolves EPA's claim for past response costs under section 107 of CERCLA, 42 U.S.C. 9607, against the Settling Parties, and requires the Settling Parties to pay to the EPA Hazardous Substance Superfund $190,000 in reimbursement of Past Response Costs, which had totaled $676,147.37. Settling Parties agreed that Robert F. Gustke will pay $165,000 and Paul G. Modie will pay $25,000. The Settling Parties will receive a Covenant Not to Sue for present and future liabilities at this Site.

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA will consider all comments received and may withdraw or withhold consent to the proposed settlement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be provided on or before May 16, 2003.

ADDRESSES: The proposed settlement agreement is available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed settlement agreement may be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103; telephone number (215) 814–2476. Comments should reference the "Joyce National Powder Company Superfund Site" and "EPA Docket No. CERCLA–03–2003–0036DM" and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Casaletto (3RC42), (215) 814–2647, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

Dated: April 9, 2003.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 03–9342 Filed 4–15–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 8, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 16, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1015.

Title: Ultra Wideband Transmission Systems Operating under Part 15 (ET Doc. 98–153).

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not-for-profit institutions.

Number of Respondents: 500.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 500 hours.

Total Annual Costs: $625.

Needs and Uses: The information will be used to coordinate the operation of the Ultra Wideband (UWB) transmission systems in order to avoid interference with sensitive U.S. government radio systems. Initial operation in a particular area may not commence until the information has been sent to the Commission. The UWB operators will be required to provide the name, address and other pertinent contact information of the user, the desired geographical area of operation, and the FCC ID number, and other nomenclature of the UWB device. This information will be collected by the Commission and forwarded to the National Telecommunications and Information Administration (NTIA under the U.S. Department of Commerce. This information collection is essential to controlling potential interference to Federal radio communications.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.
[FR Doc. 03–9308 Filed 4–15–03; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–51–A (Auction No. 51); DA 03–1065]

Auction of Regional Narrowband PCS Licenses Scheduled for September 24, 2003; Comment Sought on Package Bidding Procedures, Reserve Prices or Minimum Opening Bids, and Other Auction Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of six regional Personal Communications Service (PCS) licenses in the 900 MHz band ("narrowband PCS" scheduled to commence on September 24, 2003 (Auction No. 51). This document also seeks comment on package bidding procedures, reserve prices or minimum opening bids and other auction procedures.

DATES: Comments are due on or before April 17, 2003 and reply comments are due on or before April 24, 2003.

ADDRESSES: Comments and reply comments must be sent by electronic mail to the following address: *auction51@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Auctions and Industry Analysis Division: *For legal questions:* Christopher Shields at (202) 418–0660. *For general auction questions:* Lisa Stover at (717) 338–2888. *For questions about package bidding:* Martha Stancill at (202) 418–0660 or Craig Bomberger at (202) 418–0660. Commercial Wireless Division: *For service rule questions:* Amal Abdallah at (202) 418–7307, Evan Baranoff at (202) 418–7142, JoAnn Epps at (202) 418–0620 or Dwain Livingston at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 51 Comment Public Notice* released on April 3, 2003. The complete text of the *Auction No. 51 Comment Public Notice*, including the attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 51 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

I. General Information

1. By the *Auction No. 51 Comment Public Notice*, the Wireless Telecommunications Bureau ("Bureau") announces the auction of six regional Personal Communications Service (PCS) licenses in the 900 MHz band ("narrowband PCS") scheduled to commence on September 24, 2003 ("Auction No. 51"). These licenses were previously included as part of the inventory for Auction No. 50, *Auction No. 50 Comment Public Notice*, 67 FR 72417 (December 5, 2002). The one comment that the Bureau received in response to the *Auction No. 50 Comment Public Notice* stated that the regional licenses are uniquely complimentary and proposed a combinatorial (package bidding) auction, *Auction No. 50 Procedures Public Notice*, 68 FR 15174 (March 28, 2003). The commenter noted that these regional licenses effectively constitute a nationwide license and suggested that they would be more highly valued as a combined package by prospective auction participants intending to deploy nationwide service. After consideration of the issues raised by the comments, the Bureau determined that it may be appropriate to use package bidding for the regional licenses. Accordingly, the Bureau removed the six regional licenses from the Auction No. 50 inventory and announced that they would be included in Auction No. 51.

2. The following table describes the licenses that will be included in Auction No. 51:

Region	Channel no.	Channel description	Frequency bands (MHz)	Bandwidth (kHz)
Northeast	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
South	16	12.5 kHz/50 kHz paired	901.8125–901.8250, 930.65–930.70	62.5
South	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
Midwest	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
Central	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5
West	17	12.5 kHz/50 kHz paired	901.8250–901.8375, 930.70–930.75	62.5

3. The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *." Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau therefore seeks comment on the proposed Auction No. 51 procedures as set forth in sections following the "II. Introduction to Package Bidding."

II. Introduction to Package Bidding

4. "Package bidding" refers to an auction design in which bidders may place bids on groups, or *packages*, of licenses. A bid on a package is an all-or-nothing bid for all of the licenses in that package. This is a departure from the Bureau's usual simultaneous multiple-round (SMR) design, in which bidders only have the ability to submit individual bids for each license. Like the Bureau's existing SMR design, its current implementation of package bidding uses a simultaneous multiple-round design. In addition to submitting bids on packages, bidders may also submit bids on individual licenses.

A. License Complementarities

5. Under certain circumstances, package bidding may be desirable for bidders that wish to aggregate licenses. Bidders have aggregated licenses under our SMR auction design. However, package bidding may be appropriate when bidders have strong and divergent complementarities among licenses, and when package bidding rules do not introduce other undue difficulties. Complementarities exist when the value of the whole is greater than the sum of the parts. In the context of spectrum auctions, complementarities could result in a bidder being willing to pay more for two licenses together than the sum of the amounts it would be willing to pay for either license individually. That is, a bidder willing to pay $1 million for a license covering Washington, DC, or $1 million for a license covering Baltimore, Maryland, would be willing to pay more than $2 million for both licenses together.

6. Divergent complementarities exist when the patterns of complementarities are different for different bidders. For example, if one bidder has complementarities for a geographic aggregation and another bidder has complementarities for a bandwidth aggregation, then either of these bidders achieving its desired aggregation would prevent the other bidder from doing so. That is, if there are two licenses available in each of two markets, a bidder successfully aggregating both licenses in one market (bandwidth aggregation) precludes another bidder from aggregating one license in each market (geographic aggregation).

B. Exposure Problem

7. The *exposure problem* is a financial risk that occurs when a bidder, in hopes of also winning complementary items, bids more for a single object than the object alone is worth to that bidder. Package bidding allows bidders to mitigate the exposure problem by placing all-or-nothing bids on packages of licenses.

8. The following builds upon the previous example of a bidder willing to pay $1 million for a license covering Washington, DC, or $1 million for a license covering Baltimore, Maryland, but willing to pay more than $2 million for both licenses together. For purposes of this explanation, assume that the bidder is willing to pay $3 million for both licenses together.

9. In an SMR auction in which bids are submitted on individual licenses, the bidder would clearly be willing to bid $1 million for each of the Washington and Baltimore licenses, for a total of $2 million. If the auction price of one of those licenses exceeds $1 million, the bidder faces a dilemma. The bidder can stop bidding for a license when the license price exceeds what the bidder is willing to pay for that license alone, or the bidder can keep bidding in hopes of winning both licenses. This exposes the bidder to a financial risk. On the one hand, if the bidder wins both licenses by bidding $1 million for Washington and $1.5 million for Baltimore, it will pay a total of $2.5 million for both licenses, which is less than the $3 million it is willing to pay for both licenses together. Thus, the bidder would be satisfied with its decision to bid $1.5 million for the Baltimore license even though that license alone is only worth $1 million to the bidder. On the other hand, if the bidder bids $1.5 million for the Baltimore license (again, in hopes of winning both licenses) but wins only that license and not the Washington license as well, the bidder would have to pay more for the Baltimore license than the license is worth to the bidder.

10. In a package bidding auction, the bidder in the example could submit package bids to avoid such a risk. The bidder could create a package of the Washington and Baltimore licenses and submit a bid for the package. The bidder would either win the package— *i.e.*, both licenses—at the amount it bid for the package, or it would not win the package. By placing a bid on a package, the bidder would not have to worry about the possibility of only winning part of the package. That is, the bidder could bid up to $3 million for the package and thereby express what it is willing to pay not only for the licenses but also for the complementarity of the licenses.

C. Threshold Problem

11. Allowing package bidding potentially introduces a *threshold problem*—the difficulty that multiple bidders for the single licenses (or smaller packages) that constitute a larger package may have in outbidding a single bidder on the larger package, even though the multiple bidders may value the sum of the parts more than the single bidder values the whole. This may occur because bidders for parts of a larger package each have an incentive to hold back in the hope that a bidder for another part will increase its bid sufficiently for the bids on the pieces collectively to beat the bid on the larger package. The package bidding procedures that the Bureau proposes are designed to facilitate the emergence of bids that will overcome this problem. Specifically, the Bureau proposes to allow bids on licenses and packages that individually are not high enough to enter immediately into the provisionally winning set. This allowance is meant to facilitate price discovery and diminish the threshold problem. Effectively, bidders can take "baby steps" toward getting into the provisionally winning set. Additionally, under these proposed package bidding procedures, the auction will close after two consecutive rounds with no new bids. Thus, after a round with no new bids, bidders will be notified that if no new bids are placed in the subsequent round, the auction will close.

D. Other Package Bidding Highlights

12. Implementing package bidding requires changes in some of the procedures used in the Bureau's SMR auctions. Some of the main differences are introduced in this section in order to highlight the differences between the Bureau's proposed package bidding procedures for Auction No. 51 and the Bureau's SMR auction procedures. Later in this public notice, in the "Auction Structure" and "Bidding Procedures" sections, the Bureau seeks comment on the package bidding procedures for Auction No. 51.

i. Provisionally Winning Bids

13. In an SMR auction it is a simple matter to determine high bids. At the end of a bidding round, the high bids are determined based on the highest gross bid amount received for each license. A high bid from a previous round is sometimes referred to as a "standing high bid." A "standing high bid" remains the high bid until there is a higher bid on the same license at the close of a subsequent round.

14. In a package bidding auction, provisionally winning bids are similar to standing high bids. Provisionally winning bids are the set of bids that maximizes revenue at the end of a particular round. The set of provisionally winning bids cannot include overlapping bids; each license may be assigned only once. In the event of tied bids or tied sets of bids, ties are broken randomly. The set of provisionally winning bids may, of course, include package bids as well as individual license bids.

15. Unlike in an SMR auction, a provisionally winning bid does not necessarily remain a provisional winner until there is a higher bid on the same license or package at the close of a

subsequent round. That is, a bid on a license that is a provisionally winning bid at the end of a round might not be a provisionally winning bid at the end of a subsequent round even if no other bids are received for that license. Determining the provisionally winning bids in a package bidding auction is more complex than determining the standing high bids in an SMR auction. In a package bidding auction, whether a bid is a provisional winner depends on both the amount of the bid and the amount of revenue generated in the auction when that bid is combined with other bids submitted in the auction. With package bidding it is possible that, because of an increase in the bids submitted by one or more other bidders, a previous round's provisionally winning bid may cease to be a provisional winner in a subsequent round even though no higher bid has been placed on that license or package. In a package bidding auction, competing bids for a license or package consist of not only other bids for the same license or package, but also bids on packages that include any of the same licenses. Moreover, because of this, a bid that is not a provisionally winning bid at the end of a given round could become a provisionally winning bid at the end of a subsequent round. This is explained further in the following section.

ii. All Bids Considered

16. Under the Bureau's proposed package bidding procedures, all bids placed in an auction are considered throughout the course of the auction. This is in contrast with the SMR procedures under which, at the conclusion of a round, only new bids placed in that round and standing high bids are considered. Bidders in a package bidding auction must therefore be mindful that even if a bid did not become a provisional winner when placed, it could become a provisionally winning bid later in the auction.

17. The following table portrays the six licenses available in Auction No. 51:

Channel	Region				
	West	Central	Midwest	South	Northeast
16				CN–RPC002–16 (South–16)	
17	CN–RPC005–17 (West–17)	CN–RPC004–17 (Central–17)	CN–RPC003–17 (Midwest–17)	CN–RPC002–17 (South–17)	CN–RPC001–17 (Northeast–17)

18. For purposes of this example, assume that bidders place the following bids in a round: $50,000 for each of the six licenses and $200,000 for the package South–16/South–17/Northeast–17 (the northeast region license and both licenses in the south region). The resulting provisionally winning bids following the round would be as follows (the individual license bids of $50,000 for each of South–16, South–17 and Northeast–17 are not provisionally winning bids and are not shown):

Channel	Region				
	West	Central	Midwest	South	Northeast
16					
17	$50,000	$50,000	$50,000	$200,000	

Total revenue = $350,000

19. Next, assume that a bidder places a bid of $160,000 for the package South–16/South–17 (both licenses in the south region) in the next round, and no other new bids are placed.

Channel	Region				
	West	Central	Midwest	South	Northeast
16					
17				$160,000	

20. Then, the provisionally winning bids following that round would be as follows:

Channel	Region				
	West	Central	Midwest	South	Northeast
16					
17	$50,000	$50,000	$50,000	$160,000	$50,000

Total revenue = $360,000

21. Note that in this example the bid of $50,000 for the northeast region license was not a provisionally winning bid after the first round but became a provisionally winning bid after the next round. The new bid of $160,000 for package of both licenses in the south region, when considered with the previous $50,000 bid for the northeast region license, was able to beat the previous $200,000 bid for the package of the northeast region license and both licenses in the south region.

22. Considering bids from all rounds allows more potential combinations of bids, and therefore, potentially greater flexibility for bidders to submit bids that may become part of the provisionally winning set. As in the example, it helps ensure that bids on single licenses or small packages can combine with other bids to become winners, even when a different combination of bids has comprised the provisionally winning set for a number of rounds. Considering bids from all prior rounds also permits the bids of bidders no longer eligible to participate in the auction to become part of the provisionally winning set when that is the most economically efficient outcome. Moreover, considering all bids throughout the auction encourages sincere bidding.

iii. Mutually Exclusive Rounds

23. As explained in the previous section, all bids placed throughout the course of the auction are considered when determining the winning bids. However, the proposed procedures restrict how the bids are considered. Bids placed by a bidder in one round are considered mutually exclusive of that bidder's bids placed in all other rounds. If a bidder places a bid for one license in one round and for another license in another round, one bid or the other could be a provisionally winning bid, but not both at the same time. Likewise, if a bidder places several bids in one round and several bids in another round, any or all of the bids from one round or the other could be provisionally winning bids, but not bids from both rounds at the same time.

24. Using the example from the previous section, assume that in the first round of the example the $50,000 bid for each of the six licenses was placed by Bidder 1 and the $200,000 bid for the package of the northeast region license and both licenses in the south region was placed by Bidder 2. In the next round of the example, the bid of $160,000 for the package of both licenses in the south region was placed by Bidder 1. Under these assumptions, the provisionally winning bids at the end of the second round could include Bidder 1's bids from one round or the other, but not both—i.e., any or all of Bidder 1's $50,000 bids for each of the six licenses from the first round, or Bidder 1's bid of $160,000 for the package of both licenses in the south region from the second round. Since the choice of Bidder 1's bids in the first round achieves greater revenue, the provisionally winning bids after the second round would remain the same as after the first round:

Channel	Region				
	West	Central	Midwest	South	Northeast
16				[redacted]	
17	$50,000	$50,000	$50,000	[redacted]	

Bidder 1 Bidder 2

Total revenue = $350,000

25. This treatment of bids as mutually exclusive across rounds is done on a per bidder basis. The provisionally winning bids could include Bidder 1's bids from one round and Bidder 2's bids from a different round.

26. This mutually exclusive treatment of bids—for each bidder, allowing its bids from only one round to become provisionally winning bids—allows bidders to mind budget constraints and to pursue backup strategies. For example, if a bidder wants the license in the west region or the license in the central region but not both, the bidder could place a bid for one of the licenses in one round and a bid for the other license in the next round. Because the bids are considered mutually exclusive, only one could become a provisionally winning bid.

iv. Renewing Bids

27. The proposed procedures include bid renewal to provide a mechanism that bidders can use so that their bids from different rounds are not considered mutually exclusive. For example, assume a bidder places a bid for the west region license in one round. In the following round, the bidder places a bid for the central region license and renews its bid on the west region license. Then, after that round, either bid or both could become a provisionally winning bid.

28. This concludes the "II. Introduction to Package Bidding." In the following "Auction Structure" and "Bidding Procedures," sections, the Bureau seeks comment on the specific package bidding procedures for Auction No. 51.

III. Auction Structure

A. Simultaneous Multiple Round With Package Bidding

29. The Bureau proposes to award all licenses included in Auction No. 51 in a simultaneous multiple-round with package bidding (SMR–PB) auction. This methodology offers every license for bid at the same time with successive bidding rounds in which bidders may place bids. Bidders will be able to submit bids on individual licenses, as in the Bureau's simultaneous multiple round auction design, but may also submit all-or-nothing bids on packages of licenses. The Bureau seeks comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

30. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. The total upfront payment does

Total revenue = $360,000

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24. Using the example from the previous section, assume that in the first round of the example the $50,000 bid for each of the six licenses was placed by Bidder 1 and the $200,000 bid for the package of the northeast region license and both licenses in the south region was placed by Bidder 2. In the next round of the example, the bid of $160,000 for the package of both licenses in the south region was placed by Bidder 1. Under these assumptions, the provisionally winning bids at the end of the second round could include Bidder 1's bids from one round or the other, but not both—i.e., any or all of Bidder 1's $50,000 bids for each of the six licenses from the first round, or Bidder 1's bid of $160,000 for the package of both licenses in the south region from the second round. Since the choice of Bidder 1's bids in the first round achieves greater revenue, the provisionally winning bids after the second round would remain the same as after the first round:

Channel	Region				
	West	Central	Midwest	South	Northeast
16					
17	$50,000	$50,000	$50,000	**$200,000**	

Bidder 1 Bidder 2

Total revenue = $350,000

25. This treatment of bids as mutually exclusive across rounds is done on a per bidder basis. The provisionally winning bids could include Bidder 1's bids from one round and Bidder 2's bids from a different round.

26. This mutually exclusive treatment of bids—for each bidder, allowing its bids from only one round to become provisionally winning bids—allows bidders to mind budget constraints and to pursue backup strategies. For example, if a bidder wants the license in the west region or the license in the central region but not both, the bidder could place a bid for one of the licenses in one round and a bid for the other license in the next round. Because the bids are considered mutually exclusive, only one could become a provisionally winning bid.

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B. Upfront Payments and Initial Maximum Eligibility

30. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. The total upfront payment does

not affect the dollar amount a bidder may bid on licenses.

31. For Auction No. 51 the Bureau proposes to calculate upfront payments on a license-by-license basis using the following formula:

$.00001 * kHz * License Area Population, rounded.

The Bureau seeks comment on this proposal.

32. The amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Each license is assigned a specific number of bidding units equal to the upfront payment, on a bidding unit per dollar basis. This number does not change during the auction. A bidder's upfront payment is not attributed to specific licenses or packages. Rather, a bidder may place bids on licenses and packages as long as the total number of bidding units associated with those licenses and packages does not exceed the bidder's eligibility. For a package, the Bureau proposes to calculate the bidding units by adding together the bidding units of the individual licenses that make up the package. Eligibility cannot be increased during the auction. Thus, in calculating its upfront payment amount, an applicant should determine the maximum number of bidding units (either individually or in a package) it may wish to bid on in any single round and submit an upfront payment covering that number of bidding units. The Bureau seeks comment on this proposal. The Bureau lists the proposed bidding units and upfront payments for all licenses in Attachment A of the *Auction No. 51 Comment Public Notice.*

C. Activity and Eligibility Rules

33. In order to ensure that the auction closes within a reasonable period of time, an activity rule provides incentives for bidders to participate throughout the auction. The activity rule requires each bidder to have active bids in each round that account for a specified fraction of the bidder's current eligibility, as measured in bidding units. A bidder that does not satisfy the activity rule will either use an activity rule waiver (if any remain) or lose bidding eligibility for the next round. Losing eligibility matters to bidders because a bidder's bidding activity cannot exceed its current eligibility.

i. Measuring Activity

34. In SMR auctions, a bidder's activity in a round is determined by adding the bidding units associated with licenses on which the bidder is active. A bidder is considered active on a license in the current round of an SMR auction if it is either the high bidder at the end of the previous bidding round (and did not withdraw the high bid in the current round), or if it submits a bid in the current round (and does not subsequently remove the bid). In a package bidding auction, calculating activity levels in a round is not as simple because a bidder can submit bids on different packages that contain one or more of the same licenses. To illustrate this, suppose a bidder submits bids on the following packages in round *t*:

Package/Licenses	Bidding units
Package A:	
South–16 (38,000 bu)	76,000 bu
South–17 (38,000 bu)	
Package B:	
Northeast–17 (34,000 bu).	
South–17 (38,000 bu)	108,000 bu
Central–17 (36,000 bu)	

35. For Auction No. 51, the Bureau proposes to measure a bidder's bidding activity in a round as the maximum number of bidding units the bidder can win considering new bids placed and provisionally winning bids renewed in that round. Thus, when a bidder submits bids in a round the FCC Automated Auction System will determine the set of bids, among the bidder's new bids and renewed provisionally winning bids, that contains the most bidding units and has no overlap among the licenses. For instance, in the example, the two bids contain four distinct licenses. The sum of the bidding units associated with these four licenses is 146,000. However, since both packages contain license South–17, this bidder cannot win both packages at the same time. Under the Bureau's proposal the maximum number of bidding units that the bidder can win is the 108,000 associated with Package B, so the bidder's bidding activity is 108,000 bidding units. The Bureau seeks comment on this proposal.

36. A bidder is also considered to be active if the bidder has provisionally winning bids from the previous round. A bidder's bids made in different rounds will be considered mutually exclusive, so the bidding units associated with provisionally winning bids must be viewed independently from the bidding units associated with current round bids. The Bureau proposes to define a bidder's eligibility activity in a round as the greater of (i) its bidding activity in the round and (ii) the bidding units associated with the bidder's provisionally winning bids from the prior round. To illustrate how eligibility activity will be calculated in a round the Bureau continues with its example. Suppose this bidder has provisionally winning bids on the following licenses from round *t–1*:

License	Bidding units
South–16	38,000 bu
South–17	38,000 bu

37. The number of bidding units associated with this bidder's provisionally winning bids is 76,000. Recall that the bidder's bidding activity for the round is 108,000 bidding units. The eligibility activity for this bidder in round *t* is therefore 108,000, the greater of its bidding activity (108,000 bidding units) and the bidding units associated with its bids in the provisionally winning set (76,000 bidding units).

ii. Auction Requirement

38. For Auction No. 51, the Bureau proposes that, in each round of the auction, a bidder desiring to maintain its current eligibility would be required to have eligibility activity equal to sixty percent (three-fifths) of its current eligibility. For a bidder that failed to meet the activity requirement in a given round, the Automated Auction System would reduce the bidder's eligibility for the next round to five-thirds times its eligibility activity in the current round. Thus, a bidder's eligibility in the current round is equal to either its eligibility in the previous round (bidder met the activity requirement) or five-thirds of its eligibility activity in the previous round (bidder did not meet the activity requirement), whichever is less:

Eligibility (t) = Min (Eligibility (t–1), 5/3*Eligibility Activity (t–1))

39. Activity rule waivers provide an exception to this rule and are discussed in the next section, "Activity Rule Waivers and Reducing Eligibility."

40. In addition, the Bureau proposes to retain the discretion to increase to eighty percent (four-fifths) the proportion of bidding units on which bidders must be active to retain their current eligibility. Any such change will be announced to bidders prior to the beginning of the round in which the change takes effect. The Bureau seeks comment on these proposals. Commenters that believe these activity rules should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

iii. Activity Rule Waivers and Reducing Eligibility

41. For Auction No. 51, the Bureau proposes that each bidder be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's eligibility activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license or package. Activity rule waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

42. The Automated Auction System assumes that bidders with insufficient eligibility activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding round in which a bidder's eligibility activity is below the activity requirement unless: (i) The bidder has no activity rule waivers remaining; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. **Note:** If a bidder has no waivers remaining and does not satisfy the activity requirement, its current eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

43. A bidder with insufficient eligibility activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the "reduce eligibility" function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in the previous section. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

44. The activity rule waivers described are automatic waivers. Under the Bureau's SMR auction design, bidders can submit automatic or proactive waivers. Unlike automatic waivers, proactive waivers keep the auction open absent other bidding activity. The Bureau proposes not to allow bidders to submit proactive waivers in the context of package bidding for Auction No. 51. As part of the package bidding design for Auction No. 51 the Bureau is proposing a two-round simultaneous stopping rule, in which the bidding on all licenses remains open until the second consecutive round in which no new bids are placed. After the second consecutive such round, bidding closes simultaneously on all licenses. The two-round stopping rule affords bidders some additional time to consider their current status, and eliminates the need for bidders to use a proactive activity rule waiver to prevent the auction from closing in the current round. The Bureau seeks comment on this proposal.

D. Information Relating to Auction Delay, Suspension, or Cancellation

45. For Auction No. 51, the Bureau proposes that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within its discretion, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

IV. Bidding Procedures

A. Round Structure

46. The Commission will conduct this auction over the Internet. Telephonic Bidding will also be available, and the FCC Wide Area Network will be available as well.

47. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. The package bidding format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will also be included in a subsequent public notice.

48. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureau seeks comment on this proposal.

B. Reserve Price or Minimum Opening Bid

49. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

50. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

51. In light of the Balanced Budget Act's requirements, the Bureau proposes to establish minimum opening bids for Auction No. 51. The Bureau believes a minimum opening bid, which has been used in other auctions, is an effective bidding tool.

52. Specifically, for Auction No. 51, the Commission proposes the following license-by-license formula for calculating minimum opening bids:

$.00001 * kHz * License Area Population, rounded.

53. For a package, the Bureau proposes to calculate the minimum opening bid by adding together the minimum opening bids of the individual licenses that make up the package. The Bureau lists the proposed minimum opening bids for all licenses in Attachment A of the *Auction No. 51 Comment Public Notice.* The Bureau seeks comment on this proposal.

C. Packages

54. The Bureau proposes that, in addition to bidding on individual

licenses, bidders be permitted to create and bid on up to twelve different packages of their own choosing during the course of the auction. Bidders will not be required to identify or create their packages before the start of the auction, but may create their packages as the auction progresses. A bidder may modify or delete a package it has created up until the point where it has bid on the package and the round has closed. If the bidder submits a bid on a package and subsequently removes the bid during the same round, the bidder has the option of also deleting or modifying the package. However, once a bidder bids on a package and the round closes, the package may not be modified or deleted and counts as one of the bidder's twelve allowable packages. A bid on an individual license does not count as a bid on a package; packages consist of two or more licenses. The Bureau seeks comment on this proposal.

D. Winning and Provisionally Winning Bids

55. Winning bids in a package bidding auction are the set of "consistent" bids (non-overlapping, and for each winning bidder, only bids made or renewed in the same round) on individual licenses and packages that maximizes total revenue when the auction closes. Provisionally winning bids are the set of consistent bids that maximizes total revenue in a particular round (they would win if the auction were to close in that round), assigning each license to either a bidder or the FCC. When determining winning and provisionally winning bids, all bids made in every round throughout the course of the auction (except for bids that are placed and subsequently removed during the same round) will be considered. In addition, each license is treated as having a bid placed by the FCC at $1000 less than the minimum opening bid. This procedure will ensure that a bid on a license or package at the minimum opening bid always beats the FCC bid.

56. Since there can be more than one set of consistent bids that produces the maximum revenue, the Bureau proposes to use a procedure that randomly selects among these tied sets when determining the provisionally winning bids. This tie breaking procedure involves two steps: (i) The assignment of a selection number to each bid, and (ii) the determination of, among all tied bid sets, the set that produces the maximum sum of selection numbers. The Bureau seeks comment on this proposal.

57. A bid's selection number is the sum of n pseudo-random numbers where n is the number of licenses comprising the bid's package. A bid's selection number will be included in the publicly-available round results released after each round.

58. Once the selection numbers have been generated for each bid, the second step of the tie breaking procedure will decide the provisionally winning bids. Computer software is used to determine, among all tied bid sets, the set that produces the maximum sum of selection numbers. Thus, the set of provisionally winning bids is the set of consistent bids that maximizes revenue and maximizes the sum of selection numbers. Each bid will be assigned a new selection number in every round. Consequently, if there are ties, the set of provisionally winning bids may change even after a round in which there are no new bids. The solver will not be run after the last round of the auction, so that the winning set is the same as the set of provisional winners generated after the next-to-the-last round (*i.e.*, there won't be any surprise winners).

59. Please note that it is possible that a provisionally winning bid might not be the highest bid on the particular license or package. This possibility is primarily due to each bidder's bids being considered mutually exclusive across rounds. For example, if one bidder has placed the highest bid on each of two different licenses in two different rounds (and did not renew the earlier of the two bids), then those two bids are considered as mutually exclusive and only one of them can be a provisionally-winning bid.

E. Minimum Acceptable Bids and Bid Increments

60. The Bureau proposes that in each round, eligible bidders will be able to place bids on a given license or package in any of nine different amounts. The Automated Auction System interface will list the nine acceptable bid amounts for each license and package. In the first round of the auction, the minimum acceptable bid for a license or package will be equal to its minimum opening bid. The Bureau proposes that in all subsequent rounds, the minimum acceptable bid for a license or package will be the greatest of: (i) The minimum opening bid; (ii) the bidder's own previous high bid on a license or package plus x%, where the Bureau will specify the value of x in each round; and (iii) the current price estimate of the license plus z%, or for a package, the sum of the current price estimates for the licenses in the package plus z%, where the Bureau will specify the value of z in each round.

61. Current price estimates are estimates of the prices of the individual licenses being auctioned. The estimates take into account the minimum opening bids for the licenses as well as all the bids placed in the auction and, therefore, reflect all available information that has been revealed in the auction about the relative demands for the licenses. Current price estimates for the component licenses of a package that is provisionally winning are constrained to sum to the provisionally winning bid for the package. These estimates are generated during round results following every round of the auction as part of the mathematical optimization process used by the Bureau to determine the provisionally winning bids. The precise methodology used to calculate current price estimates is described in Attachment B of the *Auction No. 51 Comment Public Notice.* Until a bid is placed on a license or on a package containing that license, by any bidder in any round, the current price estimate is the FCC bid amount.

62. The Bureau proposes to retain an exception to part (iii) for calculating the minimum acceptable bid for a "global" package—a package consisting of all six of the licenses available in the auction. After the first round of the auction, part (iii) of the minimum acceptable bid rule for a global package will always be the revenue generated by the provisionally winning bid set in the previous round plus w%. The Bureau makes this distinction in order to retain the ability to ensure that bids for the global package will continue to increase even if it employs a percentage z that does not guarantee that outcome.

63. The result of the minimum acceptable bid calculation will be rounded using the Bureau's standard rounding procedure. Initially, the Bureau proposes to set x at ten, z at five and w at five, but retains the discretion to adjust these variables during the course of the auction.

64. For bids higher than the minimum acceptable bid—*i.e.*, multi-increment bids—the Bureau proposes to define the amount of the additional bid increments as v% of the minimum acceptable bid, where the minimum acceptable bid is determined as discussed. Initially, the Bureau proposed to set v at ten, but proposes to retain the discretion to adjust the amount during the course of the auction. Thus, when v equals ten, a bidder will be able to place multi-increment bids of the minimum acceptable bid plus approximately 10%, 20%, etc. with the maximum bid being approximately equal to the minimum acceptable bid plus 80%.

65. The Bureau retains the discretion to change minimum acceptable bids, and to do so on a license-by-license and package-by-package basis, if circumstances so dictate. The Bureau will do so by announcement in the Automated Auction System. The Bureau seeks comment on these proposals.

F. Last and Best Bids

66. The Bureau proposes to allow bidders that wish to drop out of the auction or that believe they are about to lose their bidding eligibility to have an opportunity before they drop out to place up to two mutually exclusive sets of "last and best" bids on any licenses or packages for which they remain eligible. This is a limited exception to minimum acceptable bids and to click-box bidding. Such bids may be of any amount (in thousand dollar increments) between the bidder's previous high bid on the license or package and the amount of the highest acceptable bid for the license or package in the current round (the eighth increment above the minimum acceptable bid). If a bidder chooses this option, it will not be permitted to make any further bids during the auction. The Bureau seeks comment on this proposal.

G. Renewed Bids

67. Without regard to the minimum acceptable bid requirement, the Bureau proposes to allow a bidder to "renew" in the current round the highest previous bid it made on any license or package; that is, it may resubmit the bid without increasing the amount bid. No eligibility activity or bidding activity is conferred for renewing a non-provisionally winning bid. Renewed provisionally winning bids confer bidding activity (non-renewed provisionally winning bids count toward eligibility activity). Renewed bids will be treated as being made in the current round.

68. Renewals provide bidders a means to ensure that bids from previous rounds are considered in addition to the bids placed in the current round. Otherwise, bids made in different rounds are treated as mutually exclusive, so that the bidder may win some or all of the bids from the current round, or a previous round, but not both. The Bureau seeks comment on this proposal.

H. Information Regarding Bid Removal and Bid Withdrawal

69. For Auction No. 51, the Bureau proposes the following bid removal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By removing selected bids in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

70. The Bureau proposes for Auction No. 51 that bidders not be permitted, in any round, to withdraw bids made in previous rounds. With the implementation of package bidding, bidders should not face exposure risks as they might in a simultaneous multiple round auction design. Bid withdrawal was designed to allow bidders to back out of failed aggregations—to avoid winning some licenses that are worth little to them without the others they need to implement their business plan. Therefore, to the extent that bids are allowed on all packages of licenses with significant complementarities, the use of withdrawals to mitigate such risk is no longer necessary. The Bureau seeks comment on this proposal.

I. Stopping Rule

71. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." For Auction No. 51 the Bureau proposes to employ a two-round simultaneous stopping rule. A two-round simultaneous stopping rule means that all licenses remain open until two consecutive rounds have occurred in which no new bids are received. After the second consecutive such round, bidding closes simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license. Renewed bids are not considered new bids for purposes of the stopping rule; in other words, a round in which the only bids that are placed are renewed bids is considered a round with no new bids for purposes of the stopping rule. Last and best bids are considered new bids for purposes of the stopping rule. The Bureau seeks comment on this proposal.

72. The Bureau proposes to reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the minimum acceptable bids. The Bureau seeks comment on these proposals.

V. Conclusion

73. Comments are due on or before April 17, 2003, and reply comments are due on or before April 24, 2003. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureau requires that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction51@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 51 Comments. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. Copies of comments and reply comments will also be available from the Commission's copy contractor: Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554; phone (202) 863–2893; fax (202) 863–2898; e-mail *qualexint@aol.com.*

74. In addition, the Bureau requests that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

75. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's ex parte rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–9389 Filed 4–15–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 17304NF.
Name: Direct Worldwide Logistics, Inc.
Address: 7520 Lawndale Avenue, Houston, TX 77012.
Date Revoked: March 20, 2003.
Reason: Surrendered license voluntarily.
License Number: 15898N.
Name: FSL International Inc.
Address: 12616 So. Yukon Avenue, Hawthorne, CA 90250.
Date Revoked: February 19, 2003.
Reason: Surrendered license voluntarily.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 03–9312 Filed 4–15–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License

Reissuance

Notice is hereby given that the following Ocean Transportation Intermediary licenses has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
17304F	Direct Worldwide Logistics, Inc., 7520 Lawndale Avenue, Houston, TX 77012.	March 20, 2003.
17322N	Trans State Logistics, Inc., 1011 So. Fremont Avenue, Suite 203, Alhambra, CA 91803.	December 8, 2002.
2023F	Pike Shipping Co., Inc., 2 Canal Street, 22nd Floor, New Orleans, LA 70130.	January 10, 2003.
4156F	Gulf Eagle USA, Inc., 502 McCormick Drive, Suite H, Glen Burnie, MD 21061.	July 18, 2002.
4028NF	BNX Shipping Inc., 2029 E. Cashdan Street, Rancho Dominguez, CA 90220.	February 24, 2003.
156F	W. M. Stone & Company, Incorporated, 838 Granby Street, Norfolk, VA 23514.	March 24, 2003.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 03–9313 Filed 4–15–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

Guardship America, Inc., 9435 Washington Boulevard, Suite J, Laurel, MD 29723. *Officers:* Syl Taylor, C.F.O./Director (Qualifying Individual), Leslie G. Samuels, President.

Global Marine Transportation Inc., 205 W. 88th Street, Suite 4C, New York, NY 10024. *Officer:* Gloria P. Avendano, President (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Thiel-Logistics USA,Inc., 3200 N.W. 112 Avenue, Miami, FL 33172. *Officers:* Lorenzo Lorenzo, Vice President (Qualifying Individual), Gunther Thiel, Chairman.

Perfect Express Corporation, 220 North Inglewood Avenue, Inglewood, CA 90301. *Officers:* Fang Hsien (Vincent) Lu, Vice President (Qualifying Individual), Patrick Chen, President/CEO.

Keystone Global Logistics, LLC, 309 Anderson Street, Crescent, PA 15046. *Officers:* Mariusz J. Bielawski, President (Qualifying Individual), Sheree Moorhouse, Vice President.

A A Pacific Inc., 1275 Anderson Avenue, Unit #6, Fort Lee, NJ 07024. *Officers:* Kefei Zhao, Marketing Director (Qualifying Individual), Xiaomei Liu, President.

RBA Logistics, Inc., 2804 N. Cannon Blvd, Kannapolis, NC 28083. *Officers:* Paul L. Blackwelder, Vice President (Qualifying Individual), Mary O. Bare, President.

Kabayan Cargo, Travel & Remittance Services, 1628 Sumatra Street, Hayward, CA 94544. Tranquilino Dionisio Gaspar, Sole Proprietor.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant

A.M. Cargo Services, Inc., 5220 N.W. 72 Avenue, Bay #4, Miami, FL 33166–4858. *Officers:* Anna Maria Musumeci, President (Qualifying Individual), Anthony Musumeci, Director.

Dated: April 11, 2003.
Bryant L. VanBrakle,
Secretary.
[FR Doc. 03–9314 Filed 4–15–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System
SUMMARY: *Background.*

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 16, 2003.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following reports:

1. *Report title:* Report of Transaction Accounts, Other Deposits, and Vault Cash
Agency form number: FR 2900
OMB control number: 7100–0087
Frequency: Weekly, quarterly
Reporters: Depository institutions
Annual reporting hours: 779,506 hours
Estimated average hours per response: 3.50 hours
Number of respondents: 3,888 weekly and 5,135 quarterly
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 248(a), 461, 603, and 615) and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: Nonexempt institutions B currently defined as those with reservable liabilities greater than the exemption amount B file the FR 2900 weekly if their total deposits are greater than or equal to the nonexempt deposit cutoff and quarterly if their total deposits are less than the nonexempt deposit cutoff. U.S. branches and agencies of foreign banks and Edge and agreement corporations are required to report the FR 2900 weekly regardless of their deposit size. These mandatory reports are used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates.
Current actions: The Federal Reserve proposes the following revisions: (1) changing the definition of "nonexempt institutions" to be any depository institution with net transaction accounts greater than the exemption amount, effective with the September 2003 panel shift; (2) instituting a new "reduced reporting limit" B any institution with total deposits at or above a $1 billion reduced reporting limit would report the FR 2900 weekly, effective with the September 2003 panel review; (3) reducing the reporting frequency for the two nonpersonal time deposit items on the FR 2900 to one day each year, effective September 2003; (4) raising the nonexempt deposit cutoff to $150.0 million, an upward adjustment from the 2003 indexed level of $112.3 million, effective for the September 2003 panel review; and (5) adding the item "net Eurocurrency liabilities" to the FR 2900, to be reported one day each year beginning June 2004.

2. *Report title:* Annual Report of Total Deposits and Reservable Liabilities
Agency form number: FR 2910a
OMB control number: 7100–0175
Frequency: Annually
Reporters: Depository institutions
Annual reporting hours: 3,052
Estimated average hours per response: 30 minutes
Number of respondents: 6,103
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552 (b)(4)).
Abstract: Currently, the FR 2910a is filed by (non–FR 2900) institutions whose total deposits are greater than or equal to the exemption amount and by all other institutions whose total deposits cannot be verified as being below the exemption amount. This mandatory report is used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates.
Current actions: The Federal Reserve proposes adding the item "net transaction accounts" to the FR 2910a, effective June 2003; and changing the reporting date for the FR 2910a to June 30th, effective June 2003.

3. *Report title:* Report of Repurchase Agreements (RPs) on U.S. Government

and Federal Agency Securities with Specified Holders

Agency form number: FR 2415
OMB control number: 7100–0074
Frequency: Weekly, quarterly, or annually
Reporters: U.S chartered commercial banks, U.S branches and agencies of foreign banks, thrift institutions, and credit unions
Annual reporting hours: 2,615 hours
Estimated average hours per response: 30 minutes
Number of respondents: 84 weekly, 128 quarterly, and 350 annually
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2) and 3105(b)) and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: This voluntary report collects one data item, repurchase agreements (RPs), in denominations of $100,000 or more, in immediately–available funds, on U.S. government and federal agency securities, transacted with specified holders. Depository institutions file the FR 2415 report either weekly, quarterly or annually depending on the volume of their RPs. In general, the larger the respondent's level of RPs, the more frequent its reporting. The weekly panel reports daily data once each week; the quarterly panel files daily data for the four one–week reporting periods that contain quarter–end dates; the annual panel reports daily data only for the week encompassing June 30 each year. The primary purpose of the data is for construction of the RP component of the M3 monetary aggregate and for analysis of depository institutions' funding practices.
Current actions: The Federal Reserve proposes the following revisions: (1) raising the thresholds for re–screening existing FR 2415 respondents on all three reporting panels; (2) reducing the cutoff for screening U.S. banks that do not file the FR 2415; and (3) adding credit unions to the existing reporting panels.

4. *Report title:* Monthly Survey of Industrial Electricity Use
Agency form number: FR 2009a,b,c
OMB control number: 7100–0057
Frequency: Monthly
Reporters: FR 2009a/c: Electric utility companies; FR 2009b: Cogenerators
Annual reporting hours: FR 2009a/c: 1,920 hours; FR 2009b: 900 hours
Estimated average hours per response: FR 2009a/c: 1 hour; FR 2009b: 30 minutes
Number of respondents: FR 2009a/c: 160; FR 2009b: 150
Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, 353 et seq, and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: The survey collects information on the volume of electric power delivered during the month to classes of industrial customers. There are three versions of the survey: the FR 2009a and FR 2009c collect information from 137 electric utilities, the FR 2009a in Standard Industrial Codes (SIC) codes and the FR 2009c in North American Industry Classification System (NAICS) codes. The FR 2009b collects information from 124 manufacturing and mining facilities that generate electric power for their own use (cogenerators). The electric power data are used in deriving the Federal Reserve's monthly index of industrial production (IP) as well as for calculating the monthly estimates of electric power used by industry. The IP index is widely used by the Federal Reserve, other government agencies, businesses, and academia for economic analysis, policy review, and research.
Current actions: The Federal Reserve proposes to continue using the FR 2009a report form. This report form was approved for discontinuance in 2000 owing to the industrial output index being revised to reflect the new North American Industry Classification System (NAICS) from the Standard Industrial Classification (SIC) codes. However, many respondents continue to prefer reporting in SIC codes. The FR 2009c is in the same format as the FR 2009a but uses NAICS instead of SIC codes. The Federal Reserve also propose to reduce the authorized panel size to 160 utilities and 150 cogenerators to more accurately reflect the target population.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. *Report title:* Allocation of Low Reserve Tranche and Reservable Liabilities Exemption
Agency form number: FR 2930/2930a
OMB control number: 7100–0088
Frequency: Annually and on occasion
Reporters: Depository institutions
Annual reporting hours: 47 hours
Estimated average hours per response: 15 minutes
Number of respondents: 186
Small businesses are affected.
General description of report: This information collection is mandatory: FR 2930 (12 U.S.C. 248(a), 461, 603, and 615) and FR 2930a: (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: The FR 2930 and FR 2930a provide information on the allocation of the low reserve tranche and reservable liabilities exemption for depository institutions having offices (or groups of offices) that file separate FR 2900 deposit reports. The data collected on these reports are needed for the calculation of required reserves.

2. *Report title:* Report of Foreign (Non–U.S.) Currency Deposits
Agency form number: FR 2915
OMB control number: 7100–0237
Frequency: Quarterly
Reporters: Depository institutions
Annual reporting hours: 306 hours
Estimated average hours per response: 30 minutes
Number of respondents: 153
Small businesses are affected.
General description of report: This information collection is mandatory (12 U.S.C. 248(a)(2) and 347(d)) and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: The FR 2915 collects weekly averages of the amounts outstanding for foreign (non–U.S.) currency deposits held at U.S. offices of depository institutions, converted to U.S. dollars and included in the FR 2900. Foreign currency deposits are subject to reserve requirements and, therefore, are included in the FR 2900. However, because foreign currency deposits are not included in the monetary aggregates, the FR 2915 data are used to remove foreign currency deposits from FR 2900 data in calculating the monetary aggregates. FR 2915 data also are used to monitor the volume of foreign currency deposits.

Proposal to approve under OMB delegated authority the discontinuation of the following report:

1. *Report title:* Report of Certain Eurocurrency Transactions
Agency form number: FR 2950/2951
OMB control number: 7100–0087
Frequency: Weekly, quarterly
Reporters: Depository institutions
Annual reporting hours: 20,248 hours
Estimated average hours per response: 1 hour
Number of respondents: 389 weekly and 5 quarterly
Small businesses are affected.
General description of report: This information collection is mandatory [FR 2950: (12 U.S.C. 248(a), 461, 603, and 615)] and [FR 2951: (12 U.S.C. 248(a), 461, and 347(d))] and is given confidential treatment (5 U.S.C. 552(b)(4)).
Abstract: The FR 2950/2951 collects information on Eurocurrency liabilities from depository institutions that obtain funds from foreign (non–U.S.) sources or that have foreign branches. This report is filed with the same frequency as the FR 2900. These mandatory reports are used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates.
Current actions: The Federal Reserve proposes discontinuing the FR 2950/2951 in May 2004, contingent upon some report items being added to the bank credit family of reports. (The Weekly Report of Assets and Liabilities for Large Banks: FR 2416; OMB No. 7100–0075; the Weekly Report of Selected Assets: FR 2644; OMB No. 7100–0075; and the Weekly Report of Assets and Liabilities for Large U.S Branches and Agencies of Foreign Banks: FR 2069; OMB No. 7100–0030)

Board of Governors of the Federal Reserve System, April 10, 2003.

Jennifer J. Johnson,
Secretary of the Board.
[FR Doc. 03–9262 Filed 4–15–03; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: *Background.* On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal.

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before [insert date 60 days from publication in the Federal Register].

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Proposal for approval under OMB delegated authority to conduct the following survey:

Report title: Survey of Small Business Finances
Agency form number: FR 3044
OMB control number: 7100–0262
Frequency: One–time
Reporters: Small businesses
Annual reporting hours: 5,100 hours
Estimated average hours per response: 1 hour
Number of respondents: 5,100
Small businesses are affected.
General description of report: This information collection would be voluntary and authorized by law (12 U.S.C. §§ 252(a)(1), 1817(j), and 1841 et seq.). Individual respondent data would be provided in a public–use file. However, any information that could identify respondent firms, or the financial institutions that they use, would be excluded from the public dataset pursuant to the Freedom of Information Act (5 U.S.C. § 552(b)(4)).
Abstract: This voluntary survey would be similar to the 1987, 1993, and 1998 Surveys of Small Business Finances (SSBF). In part, this survey would be conducted to collect information needed to satisfy the requirements of Section 2227 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996. This law requires the Board to conduct a study and submit a report to the Congress every five years "...detailing the extent of small business lending by all creditors...."

The 2003 SSBF would gather data from small businesses on their financial relationships, credit experiences, lending terms and conditions, income and balance sheet information, the location and types of financial institutions used, and other firm characteristics. The survey would be conducted by a private survey firm,

which would be chosen in a competitive bidding process. In conjunction with the Federal Reserve, the survey firm would update and finalize the questionnaire for the new survey. The survey firm would then conduct two pre–tests with a minimum of fifty small business firms in each pre–test. Following pre–test revisions to the questionnaire, the survey would be conducted by means of computer–assisted telephone interviews. Interviewing would likely commence in early 2004.

Board of Governors of the Federal Reserve System, April 10, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–9264 Filed 4–15–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 9, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. MainSource Financial Group, Greensburg, Indiana; to acquire 100 percent of the voting shares of First Community Bancshares, Inc., Bargersville, Indiana, and thereby indirectly acquire voting shares of First Community Bank & Trust, Bargersville, Indiana.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. The Jere J. Ruff Family Limited Partnership, II, Longview, Texas; to acquire 44.26 percent of the voting shares of The First State Bank, Hallsville, Texas.

2. Ruff Management, L.L.C., Longview, Texas; to acquire 52.32 percent of the voting shares of The First State Bank, Hallsville, Texas.

3. Ruff Partners, Ltd., Longview, Texas; to acquire 52.32 percent of the voting shares of The First State Bank, Hallsville, Texas.

Board of Governors of the Federal Reserve System, April 10, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–9263 Filed 4–15–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1256–N]

RIN 0938–AM60

Medicare Program; Notice of Ambulance Fee Schedule in Accordance With Federal District Court Order

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the steps CMS is taking to comply with the Order in *Lifestar Ambulance Service, Inc.* v. *United States*, No. 4:02–CV–127–1 (M.D. Ga. Jan. 16, 2003) Medicare Covered Ambulance Services.

EFFECTIVE DATE: This notice is effective on April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Tayloe, (410) 786–4546.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4531 of the Balanced Budget Act of 1997 (BBA) required the Secretary of the Department of Health and Human Services to establish a national fee schedule (FS) for payment of ambulance services through a negotiated rulemaking process. The statute provided that the Secretary phase in the application of payment rates under the FS in an efficient and fair manner and that the aggregate amount of payment for such services under the new FS not exceed the amount that would have been paid under the old system (42 U.S.C. § 1395m(l)(1), (2), (3)). The BBA provided that the FS would apply to services furnished on or after January 1, 2000.

The September 12, 2000 proposed rule (65 FR 55078) and the February 27, 2002 final rule (67 FR 9100) both provide for payment for ambulance services to be made in two parts: a base rate and a payment for mileage. Section 423 of the Medicare, Medicaid and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA), which was passed after the publication of the proposed rule and prior to the promulgation of the final rule, provided that during the phase-in of the FS there would be full payment of any national mileage rate for ambulance services furnished by suppliers in States where the Medicare carrier did not previously pay separately for all mileage within the county from which the beneficiary is transported. Two States have been identified as qualifying under this provision: North Carolina and Tennessee. The BIPA states that this provision shall apply to services furnished on or after July 1, 2001. The FS was implemented on April 1, 2002 by the February 27, 2002 final rule. The final rule announced the 5-year phase-in that is based on a blend of a percentage of the payment based on the old payment system with a percentage of the payment based on the FS according to the following schedule:

Calendar year	Percentage of old payment system	Percentage of fee schedule
2002*	80	20
2003	60	40
2004	40	60
2005	20	80
2006	0	100

*April 1, 2002 through December 31, 2002 only.

The full national FS mileage rate in those States that qualify for section 423 of the BIPA (North Carolina and Tennessee) has been paid as of April 1, 2002.

In *Lifestar Ambulance Service, Inc.* v. *United States*, No. 4:02–CV–127–1 (M.D. Ga. Jan 16, 2003), three ambulance suppliers seeking to represent a nationwide class of ambulance suppliers sued the Secretary, arguing that he has no discretion to give the FS an effective date other than January 1, 2000. The district court agreed with the plaintiff suppliers and issued an order certifying a nationwide class of ambulance suppliers and requiring the Secretary to adopt a FS for the January 1, 2000 through March 31, 2002 period. The court's decision also requires the Secretary to pay full mileage in accordance with the BIPA provision for the July 1, 2001 through March 31, 2002 period. *Id.* at 20–21.

II. Provisions of the Notice

The purpose of this notice is to comply with the court's order requiring a FS to be established for the January 1, 2000 through March 31, 2002 period. By this notice, the Secretary is establishing a FS based on the FS as described in the February 27, 2002 final rule, with a modified phase-in as follows:

Calendar year	Percentage of old payment system	Percentage of fee schedule
2000*	95	5
2001	90	10
2002	80	20

*January 1, 2002 through March 31, 2002.

Additionally, in accordance with the district court's order, the Medicare program will pay full BIPA mileage for services provided on or after July 1, 2001.

The BBA provided that the Secretary shall phase in the application of payment rates under the FS in an efficient and fair manner. As previously detailed, based on the discretion afforded the Secretary by the BBA, the final rule published on February 27, 2002 provided for a linear progression from the prior payment system to FS payments, commencing with a 20 percent/80 percent blended payment for the last three quarters of FY 2002, and ending with a 100 percent FS payment for FY 2006.

Five percent, 10 percent, and 20 percent is the most appropriate progression of blending percentages for the January 1, 2000 through March 31, 2002 period. For the first quarter of 2002, 20 percent is the same blending percentage as the percentage already used for the FS during the other 9 months in 2002. The 5 percent and 10 percent are the most appropriate percentages for 2000 and 2001, in that they comply with the statutory requirement for an efficient and fair phase-in, and are consistent with the linear progression in blending percentages promulgated in the February 27, 2002 final rule.

The *Lifestar* court recognized the Secretary's statutory discretion to set the phase-in percentages for the January 1, 2000 through March 31, 2002 period. The court also stated that these phase-in percentages must provide meaningful relief to the *Lifestar* plaintiffs. The FS described in this notice provides meaningful relief as evidenced in more detail under the impact section, below. We estimate that 2/3 of 15,000 suppliers will be receiving a total of $81 million for this period.

The statute at 42 U.S.C. 1395(m)(l)(3)(B) provides that FS payment amounts in subsequent years to the first year of the FS be set equal to the FS payment amounts from the previous year increased by a statutorily prescribed inflation factor. The FS final rule used data from 1998 and inflated it using the statutorily prescribed inflation factors to obtain the 2002 amounts. See 67 FR 9100, 9125. To determine the FS amounts for earlier years (that is, the period of January 1, 2000 through December 31, 2001), we have deflated the FS amounts for 2002 by the same statutorily prescribed ambulance inflation factors. These deflation factors are:

Calendar year	Deflation percentage
2000/2001	3.7
2001/2002	2.2

III. Appeal of Lifestar Decision/ Recoupment

The Secretary has appealed the *Lifestar* decision. In the event the district court's decision is reversed on appeal, any FS or BIPA mileage payment made in accordance with this notice for the January 1, 2000 through March 31, 2002 period will be subject to recoupment.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

The court's January 16, 2003 order in *Lifestar* requires establishment of a FS for the January 1, 2000 through March 31, 2002 period within 90-days of the date of the order. It would be impracticable to provide a period for prior notice and comment and still meet the 90-day deadline. In fact, the Congress has recognized the impracticability of providing prior notice and comment where a statutory provision must be implemented within 150 days. *See* 42 U.S.C. 1395hh(b)(2)(B) (providing that a notice of proposed rulemaking is not required if a statute establishes a specific deadline for implementation that is less than 150 days from enactment).

Therefore, we find good cause to waive the notice of proposed rulemaking and comment period with respect to the issuance of this notice.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

There are approximately 15,000 suppliers nationwide that submit claims to Medicare for ambulance services. The Medicare program pays approximately $2.1 billion in Medicare benefits per year for these services. We estimate that approximately two-thirds of suppliers will benefit from this January 1, 2000 through March 31, 2002 FS and that the aggregate amount of program spending will be approximately $81 million. The break out of this expenditure is as follows:

Calendar year	Program expenditures (in millions)
2000	$16
2001	$43
2002	$22
Total	$81

These amounts include approximately $16 million by which suppliers in North Carolina and Tennessee will benefit due to implementation of the BIPA ambulance mileage provision for the period of July 1, 2001 through March 31, 2002.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). The aggregate amount of program spending to comply with the court's order will be approximately $81 million. Therefore this notice is not a major notice as defined in Title 5, United States Code, section 804(2) and is not an economically significant notice under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not considered to be small entities. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Authority: Sections 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 1, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 11, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–9503 Filed 4–15–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Method and Materials for Promoting Migration of T Cells to the Vasculature of a Tumor

Patrick Hwu and Mary Tschoi (NCI).
Serial No. 60/447,497 filed 14 Feb 2003.
Licensing Contact: Jonathan Dixon; (301) 435–5559; *dixonj@od.nih.gov.*

Adoptive immunotherapy with T cells is a promising therapeutic modality for cancer. However, the effectiveness of this method of treatment appears to be limited by the inefficient migration of T cells to the tumor site. The present invention provides materials and methods that promote the migration of T cells to the vasculature of a tumor.

This invention discloses a novel method of administering modified autologous T cells, which bind to cell-surface molecules on endothelial cells of the vasculature of a tumor. Using the disclosed method and modified T cells, investigators were able to promote the migration of T cells to molecules expressed on the vasculature of tumors. It is anticipated that this method and these modified autologous T cells will improve the effectiveness of adoptive immunotherapy for a variety of tumors, including melanoma and many carcinomas and sarcomas.

This research has been described, in part, in Dudley *et al.*, Science 298:850–854 (25 October 2002).

Amplification and Overexpression of Septin9 MLL Septin-Like Fusion (MSF) and Methods Related Thereto

Cristina Montagna *et al.* (NCI).
DHHS Reference No. E–003–2003.
Licensing Contact: Matthew Kiser; (301) 435–5236; *kiserm@od.nih.gov.*

This invention pertains to methods of detecting cancer, a method of inhibiting a protein, oligonucleotides for use therein, a method of inducing apoptosis, methods of testing a candidate drug for efficacy as an anti-cancer drug and methods for evaluating the progression of cancer.

The inventors have demonstrated that the Septin9 gene in mice (MSF gene in humans) is amplified in cancer models for breast cancer. Furthermore, it has been shown that the product encoded by this gene is overexpressed in cancer. In this regard, the present invention provides methods of detecting cancer in a mammal. One method comprises determining whether or not the mammal has an amplification of the Septin9 (MSF) locus or an ortholog of the gene. In this method, overexpression of the protein or of the nucleic acid molecule is indicative of cancer. Another method comprises determining whether or not the mammal has an overexpression of a protein or of a nucleic acid molecule, wherein the protein or the nucleic acid molecule is encoded by a MSF gene, a Septin9 gene, or an ortholog. In this method, overexpression of the protein or the nucleic acid molecule is indicative of cancer.

Additionally, the present invention also provides a method of inhibiting a protein encoded by the Septin9 gene (MSF gene) or an ortholog in a cell. The method comprises administering to the cell an interference RNA in an amount sufficient to reduce mRNA stability and inhibit protein synthesis. Isolated or purified oligonucleotides, which are suitable for use in the above method, are also disclosed.

This research is described, in part, in Montagna *et al.*, The septin 9 (MSF) gene is amplified and overexpressed in mouse mammary gland adenocarcinomas and human breast cancer cell lines, Cancer Research, in press.

Methods of Inhibiting Metastasis or Growth of a Tumor Cell

Sam Hwang (NCI).
Serial No. 60/425,472 filed 12 Nov 2002.
Licensing Contact: Jonathan Dixon; (301) 435–5559; e-mail: *dixonj@od.nih.gov.*

Cancer metastasis is the primary mechanism of clinical morbidity and mortality in patients from cancer. Recently, chemokine receptors have been shown to potentially play a role in tumor metastasis. One such receptor, CXC Chemokine Receptor-4 (CXCR-4), is expressed in many cancer-derived cell lines, from breast carcinoma and melanoma.

The present invention discloses the use of polypeptides to block CXCR-4-mediated metastasis. One such polypeptide, an 18 amino acid peptide named T22, has been shown to block CXCR-4 in CXCR-4-expressing melanoma cells. This invention shows that CXCR-4 can be blocked through the use of the T22 peptide to prevent the spreading of melanoma tumor cells in the lungs in a murine model of melanoma metastasis. By not allowing cells to metastasize, this invention could potentially reduce the morbidity and mortality that are normally associated with metastatic melanoma.

Method of Distinguishing Epithelioid Melanoma from Fibroblastoid Melanoma

Denise Simmons (NCI).
DHHS Reference No. E–233–2002 filed 31 Oct 2002.
Licensing Contact: Matthew Kiser; (301) 435–5236; *kiserm@od.nih.gov.*

The incidence of primary cutaneous malignant melanoma is increasing such that, at the beginning of this century, the lifetime risk for developing melanoma approached one in 75 in the United States. In addition, the death rate from melanoma has doubled over the last 50 years.

Melanoma in humans can have epithelioid or fibroblastoid morphology. The fibroblastoid morphology has been associated with resistance to treatment and escape mechanisms. Therefore, there is a need for a method of distinguishing epithelioid and fibroblastoid melanoma. The ability to distinguish epithelioid and fibroblastoid melanoma would be useful in diagnosis and determining treatment protocols. It is an object of the present invention to provide such a method.

The present invention provides a method of distinguishing epithelioid melanoma from fibroblastoid melanoma. The method comprises assaying a sample of melanoma cells for retinyl ester synthesis. Retinyl ester synthesis is indicative of the melanoma cells being epithelioid, whereas the absence of retinyl ester synthesis is indicative of the melanoma cells being fibroblastoid.

This research is described, in part, in Simmons *et al.*, Carcinogenesis, Vol. 23 No. 11, pp 1821–1830, November 2002.

Chondropsin-Class Antitumor V-ATPase Inhibitor Compounds, Compositions and Methods of Use Thereof

Michael Boyd and Kirk Gustafson (NCI).
DHHS Reference No. E–191–2002 filed 24 Jul 2002.
Licensing Contact: George Pipia; (301) 435–5560; *pipiag@od.nih.gov.*

Vacuolar type (H+) ATPase (V-ATPase) has been described as "a universal proton pump of eukaryotes". V-ATPase is responsible for maintaining internal acidity and is important in myriad of physiological functions, such as sorting of membrane proteins, proinsulin conversion, neurotransmitter uptake, and cellular degradation process. This new chondropsin, Poecillastrin-A, is a cytotoxic, 33-member ring, macrolide lactam, isolated from the sponge Poecillastra sp. It is structurally related to the chondropsin class of macrolide lactams. However, it possesses unique patterns of methylation and oxygenation, and it is the first member of this family of polyketide derivatives with a 33-membered macrocyclic ring. Its in vitro antitumor activity is comparable to that of the chondropsins, however the new structural features found in Poecillastrin-A broaden the known structural diversity of this family of potent antiproliferative and cytotoxic macrolide lantams. The chondropsins and poecillastrin A produce a distinctive pattern of differential cytotoxicity in the NCI's 60 cell antitumor screen that directly correlates with selective V-ATPase inhibitors. This compound and its derivatives could be directed to any cancer types and may have applicability as highly selective anticancer small molecule inhibitors.

This research is described, in part, in M. A. Rashid *et al.*, Organic Letters 2002, 4, 3293–3296. Also, for a reference on selective V-ATPase inhibitors see: M. R. Boyd *et al.*, J. Pharmacol. Exp. Ther. 2001, 297, 114–120.

Scorpionate-Like Pendant Macrocyclic Ligands, Complexes and Compositions Thereof, and Methods of Using Same

Martin Brechbiel and Hyun-soon Chong (NCI).
DHHS Reference No. E–063–2002/0 filed 03 Jun 2002.
Licensing Contact: Matthew Kiser; (301) 435–5236; kiserm@od.nih.gov.

Monoclonal antibodies (mAbs) have been employed as targeting biomolecules for the delivery of radionuclides into tumor cells in radioimmunotherapy (RIT). Numerous clinical trials have been performed to validate this modality of cancer therapy. Several useful B^- emitting radionuclides, including ^{131}I, ^{90}Y, ^{177}Lu, and ^{153}Sm, have been employed for labeling mAbs for RIT applications. The pure B^- emitting radionuclide ^{90}Y has been extensively studied in RIT due to its physical properties. The macrocyclic chelating agent 1,4,7,10-tetraazacyclododecane-N,N′,N″,N‴-tetraacetic acid ("DOTA") is well-known to be an effective chelator of Y(III) and lanthanides. In general, DOTA conjugated to mAbs displays relatively slow and inefficient radiolabeling with Y(III) isotopes under mild conditions. This is contrary to the rapid and high-yield radiolabeling (> 90%) of mAbs conjugated with bifunctional derivatives of the acyclic chelating agent diethylenetriaminepentaacetic acid (DTPA). Thus, there is still a need for a compound that possesses complex stability comparable to that of DOTA, the excellent practical complexation kinetics of DTPA, and increased stability in vitro and in vivo. The subject invention provides such a compound.

The invention provides substituted 1,4,7-triazacyclononane-N,N′,N″-triacetic acid compounds with a pendant donor amino group, metal

complexes thereof, compositions thereof and methods of using same. The compounds of the present invention possess the same octadentate coordinating groups as DOTA and DTPA; however, these compounds have a combined macrocyclic and acyclic character. The macrocyclic component chosen is based upon 1,4,7-triazacyclononane-N,N',N''-triacetic acid ("NOTA"), while the acyclic component is a pendant bis(carboxymethyl)amino donor group that is connected by an alkylene bridge that is optionally substituted with an aralkyl group. The cooperative binding of the pendant donor groups coupled with the pre-organization and macrocyclic effect of the NOTA sub-structure accelerates complexation with metal ions and isotopes (*e.g.*, Y(III), Gd(III); etc.) while maintaining a high level of stability of the complexes.

Compositions and Methods for Inhibiting Vascular Channels and Methods of Inhibiting Proliferation

Myung Hee Park, Paul M.J. Clement, Hartmut M. Hanauske-Abel, Edith C. Wolff, Hynda K. Kleinman, Bernadette M. Cracchiolo (NIDCR).
DHHS Reference No. E–320–2001/0 filed 23 Aug 2001 and PCT/US02/26909 filed 23 Aug 2002.
Licensing Contact: Matthew Kiser; (301) 435–5236; *kiserm@od.nih.gov*.

Angiogenesis, the recruitment of new blood vessels, is recognized as an important factor in tumor proliferation in many types of cancer. It is generally accepted that therapeutic approaches that inhibit angiogenesis effectively limit, or even prevent, the formation of solid tumors. It has also been shown that anti-angiogenic therapeutics allow conventional radiation therapy and chemotherapy to be more effective.

This invention pertains to certain compounds that inhibit angiogenesis in a previously unrecognized way. These compounds also inhibit the proliferation of cells within intraepithelial neoplasias (clusters of abnormally proliferating epithelial cells that are the origin of cancers). The subject compounds specifically block the formation of the amino acids hypusine and hydroxyproline. The former is the critical residue of eukaryotic translation initiation factor 5A (eIF5A), which is important in cell cycle progression, and hydroxyproline constitutes the critical residue of the collagens. The targeted enzymes are deoxyhypusine hydroxylase and prolyl 4-hydroxylase, respectively.

This invention provides evidence for an important role of eIF–5A in angiogenesis, and discloses a family of compounds with useful clinical properties. Specifically, these compounds include the core structures and potential derivatives of ciclopirox olamine, deferiprone, deferoxamine, and 2,2'-dipyridyl.

Ciclopirox olamine has potential for treatment of oral-pharyngeal cancer, and chemoprevention and treatment of cervical and vulvar cancer. Notably, this drug is FDA-approved in the USA as a topical medication against fungal infections while, in Europe, it is also approved for the treatment of yeast infections of the genital tract. The compound has a known clinical profile and lacks teratogenicity, potentially expediting clinical trials for new cancer treatment indications.

sFRP and Peptide Motifs That Interact With sFRP and Methods of Their Use

Jeffrey Rubin, Aykut Uren (both of NCI), Matthew Gillespie, Nicole Horwood, (both of St. Vincent's Institute of Medical Research), Brian Kay and Bernard Weisblum
Serial No. PCT/US02/00869 filed 10 Jan 2002; Serial No. 60/260,908 filed 10 Jan 2001.
Licensing Contact: Susan S. Rucker; (301) 435–4478; email: *ruckers@od.nih.gov*.

These patent applications describe and claim inventions related to the protein sFRP–1 and methods of regulating signal transduction pathways using sFRP–1. sFRP–1 is a member of a family of secreted proteins (secreted Frizzled Related Proteins) that were originally identified as being able to bind to Wnt proteins. When bound to Wnts, sFRP–1 alters the ability of Wnt protein to bind its receptor (Frizzled), typically acting as an antagonist of Wnt signaling.

More particularly, the patent applications and inventions claimed therein relate to methods for influencing bone remodeling using sFRP–1. In particular, the patent application and claimed inventions relate to methods of inhibiting osteoclastogenesis with the sFRP–1 protein. The ability to inhibit osteoclast formation may be of value in developing treatments for diseases such as post menopausal osteoporosis, Paget's disease, lytic bone metastases, multiple myeloma, hyperparathyroidism, rheumatoid arthritis, periodontitis and hypercalcemia of malignancy.

In addition to describing the method of inhibiting osteoclast formation, the patent applications disclose various peptides containing a conserved motif that allows the peptide containing the motif to bind to sFRP–1.

This work has been published as WO 02/055547 (July 10, 2002).

Dated: April 8, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–9284 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

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Scytovirins and Related Conjugates, Antibodies, Compositions, Nucleic Acids, Vectors, Host Cells, Methods of Production and Methods of Using Scytovirin

Michael R. Boyd (NCI), Barry R. O'Keefe (NCI), Tawnya C. McKee (NCI), Heidi R. Bokesch (SAIC).
Serial No. 60/381,322 filed 16 May 2002,
Licensing Contact: Sally Hu; (301) 435–5606; *hus@od.nih.gov*.

This invention provides: (1) Isolated and purified antiviral peptides or antiviral proteins named Scytovirins isolated and purified from aqueous extracts containing the cyanobacteria, Scytonema varium; (2) an antibody which binds an epitope of Scytovirin isolated and purified from Scytonema varium; (3) a purified nucleic acid molecule that comprises a sequence which encodes an amino acid sequence homologous to Scytovirin; (4) a vector comprising the isolated and purified nucleic acid molecule and a host cell or organism comprising the vector; (5) a conjugate comprising the peptide and an effector component; and (6) a method of inhibiting prophylactically and therapeutically a viral infection. Thus, this invention may represent potential new therapeutics for treatment of retroviral infections, including AIDS. This invention is further described in Bokesch *et al.*, "A Potent Anti-HIV Protein from the Cultured Cyanobacteria Scytonema varium," Biochemistry, 2003, 42, 2578–2584.

Benzoylalkylindolepyridinium Compounds and Pharmaceutical Compositions Comprising Such Compounds

William G. Rice, Mingjun Huang, Robert W. Buckheit, Jr., David G. Covell, Grzegorz Czerwinski, Christopher Michejda, and Vadim Makarov (NCI).
DHHS Reference No. E–278–98/1 filed 18 Dec 2000 (PCT/US01/48311).
Licensing Contact: Sally Hu; (301) 435–5606; e-mail: *hus@od.nih.gov*.

The present invention provides novel antiviral compounds active against HIV. These compounds, referred to as benzoylalkylindolepyridinium compounds (BAIPs) are effective against HIV isolates that have developed mutations rendering conventional drugs ineffective. BAIPs apparently do not require intracellular phosphorylation nor bind to the reverse transcriptase (RT) active site, which distinguishes their mechanism of action from the dideoxynucleoside (ddN) and acyclic nucleoside phosphonate (ANP) nucleoside analog drugs. ddN and ANP have proven clinically effective against limited human immunodeficiency virus (HIV) infection, but resistance rapidly emerges due to mutations in and around the RT active site. The BAIPs also may be distinguished from non-nucleoside reverse transcriptase inhibitors (NNRTIs), in part because the BAIPs bind to a different site on the RT enzyme. The usage of NNRTIs is limited by the rapid emergence of resistant strains also. Moreover, unlike the NNRTIs, BAIPs of the present invention have been shown to be effective against HIV-1, HIV-2 and simian immunodeficiency virus (SIV) proliferation. Thus, BAIPs are broadly antiviral, non-nucleoside reverse transcriptase inhibitors (BANNRTIs).

Spontaneous Breathing Apparatus and Method

Theodor Kolobow (NHLBI).
Serial No. 08/933,003 filed 18 Sep 1997; PCT/US98/19714 filed 18 Sep 1998; Serial No. 09/555,229 filed 26 May 2000.
Licensing Contact: Michael Shmilovich; 301/435–5019; email: *mish@codon.nih.gov*.

A novel assisted breathing system and method that greatly decreases/eliminates the work of breathing and is under the total control of the patient.

The system includes a minitracheostomy tube, a reverse thrust gas insufflation catheter introduced through a special minitracheostomy tube to deliver well humidified air/oxygen to near the carina, and a threshold valve to limit airway plateau pressure. Inspiration is effected through spontaneous closing of the glottic opening, while expiration follows opening of the glottis. The patient can control the rate of respiration and tidal volumes. Lung inflation is therefore passive and accounts for the nominal work of breathing. Speech, sound, and coughing ability remains unimpeded.

Ultrasound-Hall Effect Imaging System And Method

Han Wen (NHLBI).
Serial No. 60/021,204 filed 03 Jul 1996; PCT/US97/11272 filed 02 Jul 1997; Serial No. 09/202,459 filed 14 Dec 1998; and related foreign patent applications.
Licensing Contact: Michael Shmilovich; (301) 435–5019; email: *mish@codon.nih.gov*.

The invention provides for a novel ultrasound-based imaging modality that is based on the interaction of a static magnetic field and conductive moieties in the imaged sample under electrical excitation. The invention also provides a novel ultrasound-based imaging modality that provides a contrast mechanism which reflects the conductivity distribution of the medium being imaged. The disclosed methods and system have the following advantages over other ultrasonic imaging systems: (a) The method is not limited to contrast based solely on acoustic properties; (b) it dispenses with acoustic beam excitation and is suitable for fast 2D and 3D image formation with wide angle signal reception. A working prototype system has been constructed and demonstrated 3D imaging. Results are published in peer reviewed journals: H. Wen, Ultrason. Imaging 2000 Apr;22(2):123–136; H. Wen, Ultrason. Imaging 1999 Jul;21(3):186–200; H. Wen *et al.*, Ultrason. Imaging 1998 Jul;20(3):206–220; H. Wen *et al.*, IEEE TransBiomed. Eng. 1998 Jan;45(1):119–124.

Dated: April 8, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–9285 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–P

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ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Mutant A. nidulans Strains Requiring Anticancer or Antifungal Compounds for Growth

Katherine Jung *et al.* (NCI)
DHHS Reference No. E–312–2002/0 (Biological Materials)
Licensing Contact: Susan Ano; 301/435–5515; *anos@od.nih.gov*.

This technology describes four genetically modified strains of Aspergillus nidulans that bear mutations in the gene encoding γ-tubulin, a protein required for initiation of microtubule formation and mitosis. As a result of the mutations, these strains require the presence of an antimicrotubule agent as either an absolute or conditional requirement for growth, making the strains useful for

drug discovery screens. Related proteins α- and β-tubulin, which form the actual microtubules, are used in drug discovery efforts for anticancer drugs and are the targets of chemotherapeutics paclitaxel and vincristine. Significantly, identifying compounds that affect γ-tubulin function, which is fundamentally different than that of α- and β-tubulin, could lead to new types or classes of anticancer or antifungal compounds that act in a different manner. Furthermore, use of these strains in drug discovery offers the advantage of detecting growth against a background of no growth, compared to more typical methods of detecting decreased growth. Additionally, since microtubules are involved in a myriad of cell processes such as cell division, cell motility, and intracellular transport; these mutant strains could be useful in the study of these processes. These cell lines are available for licensing through Biological Materials Licenses. Related research has been published in Jung *et al.*, Mol. Biol. Cell 12: 2119–2136, 2001.

Mutant S. pombe Strains Carrying a Human γ-tubulin Gene or a Multicopy S. pombe γ-tubulin Plasmid

Katherine Jung *et al.* (NCI)
DHHS Reference No. E–313–2002/0 (Biological Materials)
Licensing Contact: Susan Ano; 301/435–5515; *anos@od.nih.gov*.

This technology describes two strains of Schizosaccharomyces pombe that have been genetically modified to affect the expression of γ-tubulin, a protein required for initiation of microtubule formation and mitosis. One strain carries a null mutation for expression of its γ-tubulin gene but has been transformed with DNA encoding human γ-tubulin. The second strain carries the S. pombe γ-tubulin gene on a multicopy plasmid and thus overexpresses S. pombe γ-tubulin. Since microtubules are involved in a myriad of cell processes such as cell division, cell motility, and intracellular transport, these mutant strains could be useful in the study of these and other processes, in particular by screening to discover compounds of medical and agricultural use. Specifically, the S. pombe strain carrying the human γ-tubulin gene could be used to identify potential antineoplastic agents, since compounds that specifically inhibit the growth of this strain will target human γ-tubulin. Compounds that inhibited growth of the strain overexpressing fungal γ-tubulin but not human γ-tubulin would be potential antifungal agents. These cell lines are available for licensing through Biological Materials Licenses. Related research has been published in Horio & Oakley, J. Cell Biol. 126: 1465–1473, 1994.

Polyclonal Antibodies Specific to Phosphorylation and Acetylation Sites of Human p53

Dr. Ettore Appella (NCI)
DHHS Reference No. E–262–2002/0
Licensing Contact: Sally Hu; 301/435–5606; *hus@od.nih.gov*.

This invention describes the antibodies that are specific to phosphorylated and acetylated sites of p53 and might be used as a powerful tool to study the function of the modifications and the mechanisms that regulate activation of p53. Those polyclonal antibodies have been raised by inoculating an animal with synthetic peptide mimicking the modified residue and its surrounding under conditions which elicit immune response. Those antibodies also can be used in medical diagnostics. They can be applied to monitor activity of corresponding enzymes, which catalyze the particular modification in the state of phosphorylation and acetylation of p53. The polyclonal antibodies from this invention are available for licensing via biological material licenses (BML).

Method for the Diagnosis and Treatment of Vascular Disease

Toren Finkel *et al.* (NHLBI)
DHHS Reference Nos. E–037–2003 filed 15 Nov 2002 and E–125–2003 filed 05 Feb 2003
Licensing Contact: Fatima Sayyid, 301/435–4521; *sayyidf@od.nih.gov*.

Cardiovascular disease is a major health risk throughout the industrialized world. Atherosclerosis, the most prevalent of cardiovascular diseases, is the principal cause of heart attack, stroke, and gangrene of the extremities. It is also the principal cause of death in the United States.

This invention portrays a method for diagnosing decreased vascular function, detecting increased cardiovascular risk and diagnosing atherosclerosis. An embodiment includes assaying the number of endothelial progenitor cells and treating a subject with decreased vascular function by administering a therapeutically effective amount of endothelial progenitor cells.

Related research has been published in Hill *et al.*, New England Journal of Medicine 348: 593–600 Feb 13 2003.

Cyr61 as a Marker for Acute Renal Failure

Drs. Robert A. Star and Yasunari Muramatsu (NIDDK)
Provisional Patent Application Serial No. 60/367,411 filed 25 Mar 2002
Licensing Contact: Pradeep Ghosh; 301/435–5282; *ghoshp@od.nih.gov*.

This invention relates to a method of diagnosing Acute Renal Failure (ARF) at an early stage by determining urinary cysteine-rich protein, Cyr61 levels and a method for treating early ARF by administering Cyr61. Acute renal failure is a disease of high morbidity and mortality and therapeutic interventions are still lacking. The invention is based on the fact that acute renal ischemia is associated with increased Cyr61 mRNA and protein levels. Cyr61 is a member of connective tissue growth factor family and plays an important role in the wound repair and neovascularization process. Increased expression of Cyr61 mRNA in ARF results in enhanced synthesis of Cyr61 protein and because Cyr61 is a secreted protein, the urine level of Cyr61 increases in ARF patients. Increased levels of urinary Cyr61 may thus have a potential as a diagnostic marker for ARF. In addition, because of its neovascularization properties, administration of Cyr61 may stimulate the renal repair process and/or prevent renal injury. Therefore, Cyr61 is a biomarker that also has potential therapeutic use for the treatment of ARF in patients with ischemia, sepsis, or following renal transplantation.

Dated: April 8, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–9287 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Business Initiatives Research (topics 182 and 184).

Date: April 16, 2003.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Executive Plaza South, Room 6005, 6120 Executive Blvd., Rockville, MD 20852. (Telephone conference call).

Contact Person: Sherwood Githens, Ph.D., Scientific Review Administrator, Special Review and Logistics Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892. (301) 435–1822.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9271 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Technologies for the Molecular Analysis of Cancer.

Date: April 25, 2003.

Time: 12 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Executive Plaza South, Room 6005, 6100 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, Special Review and Logistics Branch, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892. (301) 435–1822.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9272 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Re-Competition of the Cooperative Breast Cancer Tissue Resource.

Date: April 24, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6116 Executive Boulevard, 607, Rockville, MD 20852. (Telephone conference call.)

Contact Person: C. Michael Kerwin, Ph.D., Scientific Review Administrator, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8057, MSC 8329, Bethesda, MD 20892–8329. 301–496–7421. *kerwinm@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9273 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Clinical Research in Peripheral Arterial Disease.

Date: June 12–13, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Katherine M. Malinda, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7198, Bethesda, MD 20892. 301/435–0297.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: April 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9269 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: June 25, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To discuss sleep research and education priorities and programs.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Carl E. Hunt, MD, Director, National Center on Sleep Disorders Research, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 10138, Bethesda, MD 20892. 301 435–0199.

Information is also available on the Institute's/Center's Home Page: *www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9270 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Agent of Bioterrorism Pathogenesis and Host Defense.

Date: May 13, 2003.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817. (Telephone conference call.)

Contact Person: Eleazar Cohen, Ph.D., Scientific Review Administrator, Scientific Review Program, NIAID/NIH, 6700B Rockledge Drive, Rm 2220, Bethesda, MD 20892. 301–496–2550. *ec17w@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9268 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1–BB (18)—Review of R41 Applications.

Date: April 28, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–443–9787. *etaylor@niaaa.nih.gov.*

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel, ZAA1–BB (16) SBIR.

Date: April 28, 2003.

Time: 11 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Wilco Building, 6000 Executive Boulevard, Bethesda, MD 20892. (Telephone conference call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–443–9787. *etaylor@niaaa.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9274 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: May 8–9, 2003.

Closed: May 8, 2003, 10:30 a.m. to recess.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: May 9, 2003, 8:30 a.m. to adjournment.

Agenda: Presentation of NIMH Director's report and discussion of NIMH program and policy issues.

Place: National Institutes of Health, Building 31C, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, Ph.D., Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home Page: *www.nimh.nih.gov/council/advis.cfm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research. Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9275 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Male-Sites: Contraceptive Clinical Trials.

Date: May 5, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892. (301) 435–6902. *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9276 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Disease; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Biomechanics & Inflammation in Osteoarthritis.

Date: April 28, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call)

Contact Person: Richard J. Bartlett, Ph.D., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Bldg./Bldg. 45, MSC 6500/Room 5AS–37B, Bethesda, MD 20892. (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing

limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9277 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Cooperative Agreements.

Date: May 2, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone conference call).

Contact Person: Charisee A. Lamar, Ph.D., Scientific Review Administrator, NIAMS, One Democracy Plaza, 6701 Democracy Blvd., Suite 879, Bethesda, MD 20892, (301) 451–6514.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9278 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "INVEST".

Date: May 15, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9279 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: May 14–15, 2003.

Time: 9 a.m. to 12 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Intramural Research Program, National Institute on Drug Abuse, Johns Hopkins Bayview Campus, Bldg. C, 2nd Floor Auditorium, Baltimore, MD 21224.

Contact Person: Stephen J. Heishman, Ph.D., Research Psychologist, Clinical Pharmacology Branch, Intramural Research Program, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5500 Nathan Shock Drive, Baltimore, MD 21224, (410) 550–1547.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9280 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Program Projects.

Date: May 5, 2003.

Time: 8:30 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tracy A. Shahan, Ph.D., Scientific Review Administrator, National Institutes of Health, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9281 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: May 20–21, 2003.

Open: May 20, 2003,

Time: 1 p.m. to 5 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room D, Bethesda, MD 20892.

Closed: May 21, 2003, 9 AM to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Room D, Bethesda, MD 20892.

Contact Person: Mary Leveck, PHD, Deputy Director, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

Information is also available on the Institute's/Center's Home Page: *http://www.nih.gov/ninr/a—advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: April 9, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9282 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: β_2 Microglobulin Fusion Proteins and High Affinity Variants

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the inventions embodied in: U.S. Provisional Patent Application 60/088,813, filed June 10, 1998; International Patent Application No. PCT/US99/12309, filed June 3, 1999 (published as WO 9964597A1); and U.S. Patent Application Ser. No. 09/719,243, filed December 7, 2000; to Vaccinex, Inc., having a place of business in Rochester, NY. The United States of America is an assignee to the patent rights of these inventions.

The contemplated exclusive license may be limited to the development of human therapeutics for cancer and other infectious diseases.

DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before June 16, 2003 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Michael A. Shmilovich, J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5019; Facsimile: (301) 402–0220; e-mail: *shmilovichm@od.nih.gov*. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

SUPPLEMENTARY INFORMATION: The patent applications cover immunologically active fusion proteins of an immunogenic peptide, β_2 microglobulin or a high affinity mutant of β_2m, and an optional linker between the first and second domains and/or a single peptide preceding the N-terminal of the first domain. Expressed fusion proteins are cytotoxic CD8+ T lymphocyte (CTL) activating and enhance immunogenicity. The fusion proteins, the nucleic acids encoding them, and the cell lines expressing them have broad utility in activating CTLs in response to viral or tumor antigens. The fusion proteins can be used as adjuvants in vaccines that enhance the efficacy of viral or cancer antigen presentation by MHC–1 presenting cells. As a therapeutic, the fusion proteins can be used in vivo or ex vivo to enhance the immunogenicity of cancer cells.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 7, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–9286 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors Technical Reports Review Subcommittee Meeting; Review of Draft NTP Technical Reports

Pursuant to Pub. L. 92–463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee on May 22, 2003 in the Rodbell Auditorium, Rall Building, South Campus, National Institute of Environmental Health Sciences (NIEHS), 111 T.W. Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m.

Agenda

The primary agenda topic is the peer review of six draft NTP Technical Reports of rodent toxicology and carcinogenesis studies conducted by the NTP. The reports are listed in the table below in the tentative order of their review. There will be a brief presentation describing the p53 (+/−) and the p16 (+/−) haploinsufficient transgenic mouse models for short-term cancer bioassays prior to the reviews of the aspartame and acesulfame potassium reports.

The agenda and roster of Subcommittee members will be available prior to the meeting on the NTP Web homepage at *http://ntp-server.niehs.nih.gov* and upon request to the NTP Executive Secretary, Dr. Mary S. Wolfe, PO Box 12233, 111 T.W. Alexander Dr., MD A3–01, Research Triangle Park, NC 27709, T: 919–541–0530; F: 919–541–0295; e-mail: *wolfe@niehs.nih.gov*. Following the meeting, summary minutes will be available on the NTP Web site and in hard copy upon request to the Executive Secretary. Plans are underway for making this meeting available for viewing on the Internet (*http://www.niehs.nih.gov/external/video.htm*).

The NTP Board of Scientific Counselors Technical Reports Review Subcommittee meeting is open to the public. Attendance at this meeting is limited only by the space available. Individuals who plan to attend are asked to register with the NTP Executive Secretary (*see* contact information above). The names of those registered will be given to the NIEHS Security Office in order to gain access to the campus. Persons attending who have not pre-registered may be asked to provide pertinent information about the meeting, *i.e.*, title or host of meeting before gaining access to the campus. All visitors (whether or not you are pre-registered) will need to be prepared to show 2 forms of identification (ID) (*e.g.*, driver's license, government ID). Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, are asked to notify the NTP Executive Secretary at least seven business days in advance of the meeting (see contact information above).

Draft Reports Available for Public Review and Comment

Approximately one month prior to the meeting, the draft reports will be available for public review, free of charge, through ehpOnline (*http://ehp.niehs.nih.gov*). Printed copies of the draft NTP Technical Reports can be obtained, as available, from Central Data Management (CDM), NIEHS, PO Box 12233, MD EC–03, Research Triangle Park, NC 27709, T: 919–541–3419, F: 919–541–3687, e-mail: *CDM@niehs.nih.gov*.

Comments on any of the NTP Technical Reports are welcome. Time will be provided at the meeting for oral public comment on the reports. Persons requesting time for an oral presentation on a particular report are asked to notify the Executive Secretary (contact information given above) by May 14, 2003 and provide their contact information (name, affiliation, mailing address, phone, fax, e-mail), and supporting organization (if any). Persons registering to make comments are asked to provide a written copy of their statement to the Executive Secretary on or before May 14, 2003, to enable review by the Subcommittee and NTP staff prior to the meeting. These statements can supplement or expand an oral presentation. Each speaker will be allotted at least 7 minutes and, if time permits, up 10 minutes for presentation of oral comments. Each organization is allowed one time slot per report being reviewed. Registration for making public comments will also be available on-site. If registering on-site to speak and reading comments from printed text, the speaker is asked to provide 25 copies of the statement. These copies will be distributed to the Subcommittee and NTP staff and will supplement the record.

Written comments without an oral presentation at the meeting are also welcome. Comments should include contact information for the submitter (name, affiliation, mailing address, phone, fax, and e-mail) and supporting organization (if any). Written comments should be received by the Executive Secretary on or before May 14, 2003, to enable distribution to the Subcommittee and NTP staff for their review and consideration prior to the meeting.

Request for Additional Information

The NTP would welcome receiving toxicology and carcinogenesis information from completed, ongoing or planned studies as well as current production data, human exposure information, and use patterns for any of the chemicals listed in this announcement. Please send this information to CDM at the address given above. CDM will forward the information to the appropriate NTP staff scientist.

NTP Technical and Toxicity Report Series

The NTP conducts toxicology and carcinogenesis studies of agents of public health concern. Any scientist, organization, or member of the public may nominate a chemical for NTP testing. Details about the nomination process are available on the NTP Web site (*http://ntp-server.niehs.nih.gov*, select How to Nominate Substances). The results of short-term rodent toxicology studies are published in the NTP Toxicity Report series. Longer-term studies, generally, rodent carcinogenicity studies, are published in the NTP Technical Report series. Shorter-term carcinogenicity studies will appear in a new Technical Report Series being unveiled at the upcoming meeting. The studies of aspartame and acesulfame potassium will be the first two studies reported in the new series. Study abstracts for all reports are available at the NTP Web site under NTP Study Information. PDF files of completed reports are available free-of-charge from ehpOnline under Publications and hard copies of published reports can be obtained through subscription to ehpOnline (*http://ehp.niehs.nih.gov/* contact information: T: 919–653–2595 or 866–541–3841, e-mail: *ehponline@ehp.niehs.nih.gov*).

NTP Board of Scientific Counselors

The NTP Board of Scientific Counselors ("the Board") is a technical advisory body composed of scientists from the public and private sectors who provide primary scientific oversight and peer review to the NTP. Specifically, the Board advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and overall scientific quality. The Technical Reports Review Subcommittee of the Board provides scientific peer review of the findings and conclusions of NTP Technical Reports. The Report on Carcinogens Subcommittee of the Board provides scientific peer review of nominations to the Report on Carcinogens, a Congressionally mandated listing of agents known or reasonably anticipated to be human carcinogens.

The Board's members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. The NTP strives for equitable geographic distribution and for minority and female representation on the Board.

Dated: April 8, 2003.

Kenneth Olden,

Director, National Toxicology Program.

NATIONAL TOXICOLOGY PROGRAM (NTP) TECHNICAL REPORTS TENTATIVELY SCHEDULED FOR REVIEW BY THE NTP BOARD OF SCIENTIFIC COUNSELORS TECHNICAL REPORTS REVIEW SUBCOMMITTEE ON MAY 22, 2003 AT THE NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES, RESEARCH TRIANGLE PARK, NC

Chemical CAS number	Report number	Primary uses	Route and exposure levels	Review order
Propylene Glycol Mono-t-butyl Ether 57018–52–7.	TR 515	Solvent	Two-year study by inhalation 0, 75, 300, or 1,200 ppm in air to F344/N rats and B6C3F1 mice.	1
2-Methylimidazole 693–98–1.	TR 516	Chemical and pharmaceutical intermediate.	Two-year study by feed 0, 300, 1,000, or 3,000 ppm to male F344/N rats 0, 1,000, 2,500 or 5,000 ppm to female F344/N rats 0, 625, 1,250, or 2,500 ppm to male and female B6C3F1 mice.	2
Triethanolamine 102–71–6	TR 518	Large variety of industrial and manufacturing applications.	Two-year dermal study 0, 200, 630, or 2,000 mg/kg to male B6C3F1 mice and 0, 100, 300, or 1,000 mg/kg to female B6C3F1 mice.	3
Stoddard Solvent IIC 64742–88–7.	TR 519	Paint and dry cleaning solvent	Two-year study by inhalation 0, 550, 1,100, or 2,200 mg/cubic meter in air to F344/N rats and B6C3F1 mice.	4
Aspartame 22839–47–0	NEW 01	Artificial sweetener	Nine-month study by feed 0, 3,125, 6,250, 12,500, 25,000, or 50,000 ppm to p53 (+/−) haploinsufficient mice.	5
Acesulfame Potassium 55589–62–3.	NEW 02	Artificial sweetener	Nine-month study by feed 0, 0.3%, 1%, or 3% to p53 (+/−) haploinsufficient mice.	6

[FR Doc. 03–9283 Filed 4–15–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Directorate of Information Analysis and Infrastructure Protection; National Infrastructure Advisory Council; Notice of Open Meeting

The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, April 22, 2003, from 4:30 p.m. until 6:30 p.m. EDT. The meeting, which will be held telephonically, will be open to the public via a "listen only" telephone bridge line. Members of the public interested in attending by telephone should call (toll free) 1–800–304–8043 or (toll) 1–719–955–1038 and, when prompted, enter pass code 1129948.

The Council advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services. At this meeting, the Council will discuss potential future issues to take up for consideration and potential dates for future meetings.

Agenda:

I. Opening of Meeting and Roll Call of Members: Nancy J. Wong, Director, Office of Planning and Partnerships, U.S. Department of Homeland Security (DHS)/Designated Federal Officer, NIAC.

II. Opening Remarks: Robert P. Liscouski, Assistant Secretary of Homeland Security for Infrastructure Protection, DHS; Richard K. Davidson, Chairman, NIAC; and John T. Chambers, Vice Chairman, NIAC.

III. Introduction of Possible Topics for Future NIAC Study: Chairman Davidson.

a. Internet Protocol ver. 6: Vice Chairman Chambers.

b. Cyber Vulnerability Disclosure Guidelines: Vice Chairman Chambers and John W. Thompson, Chairman and CEO, Symantec Corporation, Member of the NIAC.

c. Other topics: NIAC Members.

IV. Discussion of Topics: NIAC Members.

V. Discussion of Possible Dates for Future Meetings: Chairman Davidson, NIAC Members.

VI. Adjournment

Written comments may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Council members, the Council suggests that presenters forward the public presentation materials ten days prior to the meeting date to the following address: Mr. Eric T. Werner, Office of Planning and Partnerships, Directorate of Information Analysis and Infrastructure Protection, U.S. Department of Homeland Security, 14th Street & Constitution Avenue, NW., Room 6073, Washington, DC 20230.

For more information contact Eric Werner on (202) 482–7470.

Dated; April 11, 2003.

Eric T. Werner,

Council Liaison Officer.

[FR Doc. 03–9368 Filed 4–11–03; 4:24 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CA–668–1040 (P)]

Call for Nominations for the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee

AGENCY: Bureau of Land Management, Interior; Forest Service, Agriculture.

SUMMARY: Under the Santa Rosa and San Jacinto Mountains National Monument Act of 2000, Public Law 106–351 (16 U.S.C. 431 note), the Department of the Interior's Bureau of Land Management and the Department of Agriculture's U.S. Forest Service are opening nominations for five members of the public to serve on the Santa Rosa and San Jacinto Mountains National Monument Advisory Committee. Nominations will be accepted for forty-five days following the publication date of this notice. The call for nominations is for representatives for the California Department of Fish and Game or the California Department of Parks and Recreation, the cities of Palm Springs and La Quinta, a representative of a local conservation organization, and a representative of a local developer or builder organization.

Committee members will be appointed to serve 3-year terms. The three-year term would begin November 2003. All members will serve without pay but will be reimbursed for travel and per diem expense at the current rates for government employees under 5 U.S.C. 5703. The Secretary of the Interior will make appointments to the Committee with the concurrence of the Secretary of Agriculture.

The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (Act) required that the Secretaries of the Interior and Agriculture establish a National Monument Advisory Committee (Committee) to advise them on resource management issues associated with the Santa Rosa and San Jacinto Mountains National Monument, specifically providing guidance on the National Monument Plan. This notice requests the public to submit nominations for five memberships on the Committee. The Committee is managed under the provisions of the Federal Advisory Committee Act.

SUPPLEMENTARY INFORMATION: As directed by the Act, the Secretary of the Interior and the Secretary of Agriculture jointly established an advisory committee for the Santa Rosa and San Jacinto Mountains National Monument (Monument). The Committee's purpose is to advise the Secretaries with respect to the preparation and implementation of a management plan for the Monument. The Committee meets every other month on a Saturday. The purpose of the Committee is to gather and analyze information, conduct studies and field examinations, hear public testimony, ascertain facts, and, in an advisory capacity only, develop recommendations concerning planning for the management and uses of the National Monument. The designated Federal officer, or his or her designee, in connection with special needs for advice, may call additional meetings. A Committee Chairperson and Vice Chairperson will be elected by the Committee from among its' members annually.

Any individual or organization may nominate one or more persons to serve on the Committee. Individuals may nominate themselves for Committee membership. You may obtain nomination forms that each agency requires from the BLM or Forest Service by contacting the individuals listed in **ADDRESSES** below. To make a nomination, you must submit completed nomination forms, letters of reference from the represented interests or organization, and any other information that speaks to the nominee's qualification, to the offices listed above. You may make nominations for the following categories of interest, as specified in the Act: (1) a representative of the California Department of Fish and Game or the California Department of State Parks (2) a representative from each of the following cities: Palm Springs and La Quinta (3) a representative of a local conservation organization (4) a representative of a local developer or builder organization. Nominations to the Committee should describe and document the proposed member's qualifications for membership on the Advisory Committee. Nomination packets will include the nominee's legal name.

DATES: Submit nomination packets to the address listed below no later than 45 days after the publication of this notice to call for nominations in the **Federal Register**.

ADDRESSES: Request nomination packets and send completed nomination packets to: Advisory Committee Nominations, Ms. Danella George, Bureau of Land Management, PO Box 581260, North Palm Springs, California, 92258–1260.

FOR FURTHER INFORMATION CONTACT: Ms. Danella George, Santa Rosa and San Jacinto Mountains National Monument, (760) 251–4800.

Dated: February 25, 2003.

Danella George,

Designated Federal Official, Santa Rosa and San Jacinto Mountains National Monument Advisory Committee, and Santa Rosa and San Jacinto Mountains National Monument Manager, Bureau of Land Management.

[FR Doc. 03–9123 Filed 4–15–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Colorado: Filing of Plats of Survey

April 8, 2003.

SUMMARY: The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 am., April 8, 2003. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

(33% to CO–956–1420–BJ–0000–241A)
(6.7% to CO–956–7130–BJ–7377–241A)
(6.7% to CO–956–7130–BJ–7378–241A)
(6.6% to CO–956–1910–BJ–4239–241A)
(47% to CO–956–9820–BJ–CO01–241A)

The plat representing the dependent resurvey and survey in Township 50 North, Range 8 West, New Mexico Principal Meridian, Group 1370, Colorado, was accepted January 6, 2003.

The plat representing the dependent resurvey and survey in Township 50 North, Range 9 West, New Mexico Principal Meridian, Group 1370, Colorado, was accepted January 6, 2003.

The plat representing the corrective dependent resurvey for the ¼ sec. cor. of secs. 31 and 36, W. bdy. of T. 48 N., R. 8 W., New Mexico Principal, Group 1346, Colorado, was accepted February 7, 2003.

The plat representing the corrective dependent retracement, correcting the 1966–1990 tie to the section corner of sections 13, 18, 19 and 24, on the W. bdy. of T. 44 N., R. 13 W., New Mexico Principal Meridian, Group 937, Colorado, was accepted February 27, 2003.

The supplement plat, amending lots 9 and 12, in the E½NW¼ of section 30, to Parcels A and B of Lots 1 and 4, T. 38 N., R. 3 West, New Mexico Principal Meridian. Parcels A of Lots 1 and 4 are in government ownership and Parcels B of Lots 1 and 4 are in Private ownership. This based upon the plats approved May 20, 1884 , October 28, 1996 and Warranty Deed, Serial No. CO184, Dated September 5, 1950, was accepted March 4, 2003.

These surveys and plats were requested by the Bureau of Land Management for administrative and management purposes.

The plat representing the dependent resurvey of a portion of the east boundary, and the dependent resurvey of certain mineral surveys in the NE¼ of section 12, T. 1 S., R. 72 W, Sixth Principal Meridian, Group 1337, Colorado, was accepted January 28, 2003.

The plat representing the dependent resurvey of Mineral Survey Number 17116, the Leroy lode, in SE¼ of section 1, T. 1 S., R. 72 W, Sixth Principal Meridian, Group 1337, Colorado, was accepted January 28, 2003.

The plat representing the dependent resurvey of Mineral Survey Number 15850, the Zephyr and Cyclone lodes, in NW¼ of section 1, T. 1 S., R. 72 W, Sixth Principal Meridian, Group 1337, Colorado, was accepted January 28, 2003.

The plat representing the dependent resurvey of Mineral Survey Number 15085, the Jack Pine and Orion lodes, in section 20, T. 1 S., R. 72 W, Sixth Principal Meridian, Group 1337, Colorado, was accepted February 26, 2003.

The plat representing the subdivision survey of section 10, T. 1 S., R. 72 W, Sixth Principal Meridian, Group 1337, Colorado, was accepted February 26, 2003.

The plat representing the dependent resurvey of the S½ mile between section 1 and 2, and Mineral Survey Number 16383, Frederick and a portion of the Warrior lodes, in section 2, T. 1 S., R. 72 W, Sixth Principal Meridian, Group 1337, Colorado, was accepted February 26, 2003.

These surveys and plats were requested by Zone Land Surveyor, Arapahoe-Roosevelt National Forest, for a pilot forest health partnership between the Forest Service and Boulder County, and for management purposes.

The plat (3 sheets), of the dependent resurvey of Track 37 and survey of Track 37 A and Track 37 B, in section 1, T. 24 S., R. 69 W., Sixth Principal Meridian, Group 1294, Colorado, was accepted February 12, 2003.

This survey and plats were requested by the Forest Supervisor, Pike and San Isabel Nation Forest, for boundary identification and management purposes.

The plat representing the dependent resurvey and survey in the SW¼ of section 30, T. 5 S. R. 82 W., Sixth Principal Meridian, Group 1375, Colorado, was accepted February 19, 2003.

The supplemental plat , creating new lots 16 and 17, from old lot 5, in section 5, T. 1 S., R. 99 W., Sixth Principal Meridian Colorado, was accepted March 10, 2003.

This survey and plats requested by the White River National Forest for the purpose of land exchanges and management purposes.

The plat, representing the dependent resurvey and survey in section 4, T. 7 S., R. 74 W., Sixth Principal Meridian, Group 1380, Colorado, was accepted March 10, 2003.

This survey and plat were requested by the Federal Highway Administration for the the purpose of boundary identification for highway improvement projects.

Darryl A. Wilson,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 03–9265 Filed 4–15–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Programmatic Environmental Assessment for Exploration Activities in the Eastern Sale Area; Eastern Planning Area, Gulf of Mexico Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of a programmatic environmental assessment.

SUMMARY: The Minerals Management Service (MMS) has prepared a programmatic environmental assessment (PEA) for exploration drilling and associated activities in the current sale area of the Eastern Planning Area (EPA) on the Gulf of Mexico (GOM) outer continental shelf (OCS). The MMS published notice in the **Federal Register** on June 3, 2002, that a PEA was in preparation.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Dr. Thomas W. Bjerstedt, telephone (504) 736–5743.

SUPPLEMENTARY INFORMATION: The PEA considered the area-wide environmental impacts of exploration drilling in the current sale area of the Eastern Planning Area. The PEA implements the tiering process for National Environmental Policy Act (NEPA) documentation outlined in 40 CFR 1502.20, which encourages agencies to tier environmental documents to eliminate repetitive discussions of the same issue. The site-specific EA's that MMS prepares for an operator's Exploration Plan in this area can be tiered from the PEA and the EA analyses can focus on the specific activities proposed. The PEA itself tiers from the Final EIS for Lease Sale 181 (MMS 2001–051).

Public Comments: The June 3, 2002, **Federal Register** notice solicited comments on any new information or issues that should be considered in the PEA. No comments pertaining to this notice were received by MMS. On July 12, 2002, MMS sent letters to the Governors of Louisiana, Alabama, Mississippi, and Florida. This letter informed them that a PEA was in preparation that considered area-wide resources and impacts from exploratory drilling in the EPA sale area, and solicited new information or issues for consideration in the PEA. The State of Florida replied on August 26, 2002, stating a number of issues for consideration in the PEA. The State of Alabama replied on August 8, 2002, stating that the State's concerns were expressed in earlier letters to the GOM Regional Director dated September 26, 2001, and May 28, 2002, regarding the 2002–2007 Central and Western Planning Area Multisale Draft EIS (MMS–2002–056), and the Proposed Notice of Sale for the Eastern GOM Lease Sale 181, respectively. The State was concerned about visual impacts presented by OCS drilling or production structures less than 15 miles offshore Alabama's coastline and about the potential for mercury contamination in association with OCS platforms. The States of Louisiana and Mississippi did not reply to the GOM Regional Director's July 12, 2002, letter. The MMS considered or addressed all of the issues provided by the States in the preparation of the PEA.

Dated: March 20, 2003.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 03–9331 Filed 4–15–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Preparation of a Programmatic Environmental Assessment for Structure Removal Operations in the Gulf of Mexico (2003)

AGENCY: Minerals Management Service, Interior.

ACTION: Preparation of a programmatic environmental assessment.

SUMMARY: The Minerals Management Service (MMS) will prepare a programmatic environmental assessment (PEA) to assess the potential impacts of explosive and nonexplosive structure removal operations in the Gulf of Mexico. Preparation of the PEA is an important step in the decision process for future permitting for the removal of offshore structures and for further consultation and coordination with other Federal agencies.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. T.J. Broussard, telephone (504) 736–3245.

SUPPLEMENTARY INFORMATION: The PEA will focus on the decommissioning activities related to the explosive and non-explosive severing of seafloor obstructions and facilities (*e.g.*, wellheads, caissons, conductors, platforms, mooring devices) and the subsequent salvage operations that may be employed. The PEA will examine the potential impacts of structure removal operations on marine and socioeconomic environments. The geographic area of the proposed action includes all water depths of the Central and Western Planning Areas and the 256-block area currently available for leasing in the Eastern Planning Area. The PEA will be used as part of the rulemaking process by the National Oceanographic and Atmospheric Administration for incidental take regulations under Subpart I of the Marine Mammal Protection Act and to initiate consultation for explosive, structure removal operations under Section 7 of the Endangered Species Act. Topics of primary concern to be addressed in the PEA include removal technologies, industry needs related to water depth and location, and the potential impacts of structure removal operations on marine and socioeconomic environments.

Public Comments: The MMS requests that affected and/or interested parties submit their comments regarding any information or issues that should be addressed in the PEA to the Minerals Management Service, Gulf of Mexico OCS Region, Office of Leasing and Environment, Attention: Regional Supervisor (MS 5410), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Comments should be enclosed in an envelope labeled "Comments on the Structure Removal Operations PEA." You may also comment by e-mail to *environment@mms.gov*. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments must be submitted no later than 30 days from the date of publication of this Notice in the **Federal Register**.

Dated: March 25, 2003.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 03–9330 Filed 4–15–03; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1020 (Final)]

Barium Carbonate From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1020 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of barium carbonate, provided for in subheading 2836.60.00 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: March 17, 2003.

FOR FURTHER INFORMATION CONTACT: George Deyman (202) 205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of barium carbonate from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on September 30, 2002, by Chemical Products Corp., Cartersville, GA.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as "barium carbonate, regardless of form or grade."

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on July 16, 2003, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on July 31, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 24, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 28, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is July 25, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is August 7, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before August 7, 2003. On August 26, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 28, 2003, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

Issued: April 9, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9336 Filed 4–15–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–431 (Final)]

Drams and Dram Modules From Korea

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of a countervailing duty investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–432 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from Korea of DRAMs and DRAM modules, provided for in subheadings 8473.30.10 and 8542.21.80 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: April 7, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as DRAMs from Korea, whether assembled or unassembled. Assembled DRAMs include all package types. Unassembled DRAMs include processed wafers, uncut die, and cut die. Processed wafers fabricated in Korea, but assembled into finished semiconductors outside Korea are also included in the scope. Processed wafers fabricated outside Korea and assembled into finished semiconductors in Korea are not included in the scope.

The scope of this investigation additionally includes memory modules containing DRAMs from Korea. A memory module is a collection of DRAMs, the sole function of which is memory. Memory modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, small outline dual in-line memory modules, Rambus in-line memory modules, and memory cards or other collections of DRAMs, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. This investigation also covers future DRAM module types.

The scope of this investigation additionally includes, but is not limited to, video random access memory and synchronous graphics RAM, as well as various types of DRAMs, including fast page-mode, extended data-out, burst extended data-out, synchronous dynamic RAM, Rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMs. Also included in the scope of this investigation are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with the Customs Service that neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this investigation does not include DRAMs or memory modules that are re-imported for repair or replacement.

Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background. The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in Korea of DRAMs and DRAM modules. The investigation was requested in a petition filed on November 1, 2002, by Micron Technology, Inc., Boise, ID.

Participation in the investigation and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on June 10, 2003, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on June 24, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 17, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 19, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is June 17, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is July 1, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 1, 2003. On July 16, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 18, 2003, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: April 11, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9333 Filed 4–15–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–204–9]

Steel: Monitoring Developments in the Domestic Industry

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On March 5, 2003, the Commission established a schedule for the conduct of the subject investigation (68 FR 12380, March 14, 2003). The Commission is revising its schedule for the investigation as follows: the hearings will be held at the U.S. International Trade Commission Building at 9:30 a.m. on July 10, 2003 (stainless steel products), July 17, 2003 (carbon and alloy tubular products), July 22, 2003 (carbon and alloy flat products), and July 24, 2003 (carbon and alloy long products), and the deadlines for filing posthearing briefs are July 18, 2003 (for material covered at the hearing on July 10, 2003), July 25, 2003 (for material covered at the hearing on July 17, 2003), and August 1, 2003 (for material covered at the hearings on July 22 and 24, 2003).

For further information concerning this investigation see the Commission's notice cited above and the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and F (19 CFR part 206).

Authority: This investigation is being conducted under authority of section 204(a) of the Trade Act of 1974; this notice is published pursuant to § 206.3 of the Commission's rules.

Issued: April 11, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9332 Filed 4–15–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation TA–2104–5]

U.S.-Chile Free Trade Agreement: Potential Economywide and Selected Sectoral Effects

AGENCY: United States International Trade Commission.

ACTION: Scheduling of public hearing and notice of opportunity to submit comments.

EFFECTIVE DATE: April 10, 2003.

SUMMARY: The public hearing on this matter has been scheduled for May 1, 2003. Notice of institution for this investigation was published in the **Federal Register** on March 19, 2003 (68 FR 13324).

FOR FURTHER INFORMATION CONTACT: Further information may be obtained from James Stamps, Project Leader, Office of Economics (202–205–3227). For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). For media information, contact Peg O'Laughlin (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on May 1, 2003. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., April 21, 2003. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 24, 2003; the deadline for filing post-hearing briefs or statements is 5:15 p.m., May 8, 2003. In the event that, as of the close of business on April 21, 2003, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary of the Commission (202–205–1816) after April 21, 2003, to determine whether the hearing will be held.

Written Submission: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitted desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission intends to publish only a public report in this investigation. Accordingly, any confidential business information received by the Commission in this investigation and used in preparing the report will not be published in a manner that would reveal the operations of the firm supplying the information. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than 5:15 p.m. on May 8, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

List of Subjects

Chile, tariffs, trade, imports and exports.

Issued: April 10, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9335 Filed 4–15–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1006, 1008, and 1009 (Final)]

Urea Ammonium Nitrate Solutions From Belarus, Russia, and Ukraine

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

imports from Belarus, Russia,[2] and Ukraine of urea ammonium nitrate solutions, provided for in subheading 3102.80.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective April 19, 2002, following receipt of a petition filed with the Commission and Commerce by the Nitrogen Solutions Fair Trade Committee, an ad hoc coalition of U.S. urea ammonium nitrate solutions producers, consisting of CF Industries, Inc., Long Grove, IL; Mississippi Chemical Corp., Yazoo City, MS; and Terra Industries, Inc., Sioux City, IA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of urea ammonium nitrate solutions from Belarus, Russia, and Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 23, 2002 (67 FR 65143). Pursuant to Commerce's notice of extension of the time limits for its final antidumping determinations (67 FR 67823, November 7, 2002), the Commission published a notice of revised schedule in the **Federal Register** of November 20, 2002 (67 FR 70093). The hearing was held in Washington, DC, on February 20, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on April 10, 2003. The views of the Commission are contained in USITC Publication 3591 (April 2003), entitled Urea Ammonium Nitrate Solutions from Belarus, Russia, and Ukraine: Investigations Nos. 731–TA–1006, 1008, and 1009 (Final).

By order of the Commission.
Issued: April 10, 2003.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. 03–9334 Filed 4–15–03; 8:45 am]
BILLING CODE 7020–02–P

[2] On February 19, 2003, Commerce signed a suspension agreement concerning UAN from Russia; however, pursuant to petitioners' request on the following day, Commerce continued its investigation and published notices of suspension, continuance, and completion of the investigation in the **Federal Register** of March 3, 2003 (68 FR 9977–9984). The Commission thus continued its investigation of subject imports from Russia pursuant to 19 U.S.C. 1673c(g).

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. v. Archer-Daniels-Midland Company and Minnesota Corn Processors, LLC; Public Comments and Plaintiff's Response

Notice is hereby given pursuant to section 2(d) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(d), that the Public Comments and Plaintiff's Response thereto have been filed with the United States District Court of the District of Columbia in *United States* v. *Archer-Daniels-Midland Company*, Case Number: 1:02-cv-1768 (JDB).

On September 6, 2002, the United States filed a civil antitrust Complaint alleging that the proposed acquisition by Archer-Daniels-Midland Company ("ADM") of Minnesota Corn Processors, LLC ("MCP") would violate section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleged that ADM and MCP are two of the largest corn wet millers in the United States, competing to manufacture and sell corn syrup and high fructose corn syrup ("HFCS") to many of the same purchasers throughout the United States and Canada. ADM's acquisition of MCP would have eliminated this competition and increased concentration in the already highly concentrated corn syrup and HFCS markets, making anticompetitive coordination among the few remaining corn wet millers in these markets more likely. As as result, the proposed acquisition would have substantially lessened competition for the manufacture and sale of corn syrup and HFCS products in violation of section 7 of the Clayton Act.

Public comment was invited within the statutory 60-day comment period. The three comments received, and the response thereto, are hereby published in the **Federal Register** and filed with the Court. Copies of these materials are available for inspection at the U.S. Department of Justice, Antitrust Division, Suite 215 North, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2692), and at the Clerk's Office of the U.S. District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001.

Constance K. Robinson,
Director of Operations, Antitrust Division.

Response of the United States to Public Comments on the Proposed Final Judgment

Communications with respect to this document should be addressed to:

Roger W. Fones, Chief, Donna N. Kooperstein, Assistant Chief; Michael P. Harmonis, Jessica K. Delbaum, Attorneys.

Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW., Washington, DC 20530. (202) 307–6357.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) ("Tunney Act"), plaintiff, the UNITED STATES OF AMERICA, acting under the direction of the Attorney General, hereby files comments received from members of the public concerning the proposed Final Judgment in this civil antitrust suit and the Response of the United States to those comments.

I. Factual Background

A. The Parties to the Transaction

Archer-Daniels-Midland Company ("AMD") and Minnesota Corn Processors, LLC ("MCP") were two of the largest corn wet millers in the United States, competing to manufacture and sell corn syrup, high fructose corn syrup ("HFCS") and other wet-milled products principally to the food and beverage industries in the United States and Canada. In addition, both firms manufactured and sold fuel ethanol, and they also procured, transported, stored, manufactured, processed, and merchandised a wide variety of other agricultural commodities and products.

B. The Proposed Acquisition

On July 11, 2002, ADM entered into an agreement with MCP to acquire MCP's corn wet milling business, including MCP's two corn wet milling plants in Marshall, Minnesota and Columbus, Nebraska and its network of regional blending, storage, and distribution stations. As a result of the transaction, MCP has become a wholly-owned subsidiary of ADM.

C. The Complaint

On September 6, 2002, the United States Department of Justice (the "Department") filed a complaint with this Court alleging that ADM's acquisition of MCP substantially would lessen competition in the markets for corn syrup and HFCS in the United States and Canada, in violation of section 7 of the Clayton Act (15 U.S.C. 18). The transaction would have eliminated the competition between ADM and MCP, making anticompetitive coordination among the few remaining corn wet millers more likely in those markets.

D. The Proposed Settlement

The Department, ADM, and MCP filed a joint stipulation for entry of a proposed Final Judgment settling this action on September 6, 2002. The proposed Final Judgment contains three principal provisions for relief. First, it requires ADM and MCP to have dissolved CornProductsMPC Sweeteners LLC ("CPMCP") on or prior to December 31, 2002. CPMCP was the marketing and sales joint venture that MCP had formed with Corn Products International ("CPI") to serve as the exclusive sales and distribution outlet in the United States, Canada, and Mexico for most corn syrup and HFCS products made by CPI and MCP in the United States. Second, prior to or simultaneously with the closing of ADM's acquisition of MCP, the proposed Final Judgment requires the defendants to have provided CPI written notice of their election to dissolve CPMCP. Upon written notice of their election to dissolve CPMCP, the defendants additionally were required to have provided CPI with written notice that CPI is permitted to conduct independent operations in competition with the defendants and CPMCP. Third, the proposed Final Judgment requires the defendants to compete independently of CPMCP and CPI. The proposed Final Judgment does not affect or alter any obligations of ADM and MCP to facilitate or ensure that CPMCP completes the performance of any existing contracts or commitments to its customers.

E. Compliance With The Tunney Act

To date, the parties have compiled with the provisions of the Tunney Act as follows:

(1) The Complaint and proposed Final Judgment were filed on September 6, 2002;

(2) The Competitive Impact Statement ("CIS") was filed on September 13, 2002;

(3) Defendants filed statements pursuant to 15 U.S.C. 16(g) on September 17 and 18, and October 2, 2002;

(4) A summary of the terms of the proposed Final Judgment and CIS was published in the Washington Post, a newspaper of general circulation in the District of Columbia, for seven days during the period September 23, 2002, through September 29, 2002;

(5) The Complaint, proposed Final Judgment and CIS were published in the **Federal Register** on November 7, 2002, 67 FR 67,864 (2002);[1]

(6) The 60-day public comment period specified in 15 U.S.C. 16(b) commenced on November 7, 2002, and terminated on January 7, 2003; and

(7) The United States hereby files the comments of members of the public (attached as Appendix A) together with this Response of the United States to the comments, pursuant to 15 U.S.C. 16(b).

The United States will move this Court for entry of the proposed Final Judgment after the comments and the Response are published in the **Federal Register**. The proposed Final Judgment cannot be entered before that publication. 15 U.S.C. 16(d).

II. Legal Standard Governing the Court's Public Interest Determination

Upon the publication of the public comments and this Response, the United States will have fully complied with the Tunney Act. After receiving the United States' motion for entry of the proposed Final Judgment, the Court must determine whether it "is in the public interest." 15 U.S.C. 16(e). In doing so, the Court must apply a deferential standard and should withhold its approval only under very limited conditions. *See, e.g., Mass. Sch. of Law at Andover, Inc.* v. *United States*, 118 F.3d 776, 783 (D.C. Cir. 1997). Specifically, the Court should review the proposed Final Judgment "in light of the violations charged in the complaint and * * * without approval only [a] if any of the terms appear ambiguous, [b] if the enforcement mechanism is inadequate, [c] if third parties will be positively injured, or [d] if the decree otherwise makes 'a mockery of judicial power.'" *Id.* (quoting *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1462 (D.C. Cir. 1995)).

With this standard in mind, the Court should review the comments of members of the public concerning the proposed Final Judgment and the United States' Response to those comments. As this Response makes clear, entry of the proposed Final Judgment is in the public interest.

III. Summary of Public Comments

In a total of three comments, nine individuals and three organizations expressed their views on the proposed Final Judgment. Their comments are summarized below.

[1] The Department also posted the Complaint, proposed Final Judgment and the CIS on its Web site, *http://www.usdoj.gov/atr/cases/indx358.htm.*

Peter C. Carstensen, Professor of Law at the University of Wisconsin Law School, writing on behalf of himself, the National Farmers Union, the Organization for Competitive Markets, and Professors Paul Brietzke, John Connor, Thomas Greaney, Neil E. Harl, Delbert Robertson, Stephen Ross, and Kyle Stiegert, filed a comment that is critical of the Department's CIS in several respects. Professor Carstensen states that the Department's CIS failed to disclose or discuss: (1) MCP's and CPI's separate market shares in the corn syrup and HFCS markets identified in the complaint; (2) ADM's direct and indirect ownership interests in Tate & Lyle PLC ("Tate & Lyle"), the corporate parent of A.E. Staley Manufacturing Company ("Staley"); (3) a recent decision by the United States Court of Appeals for the Seventh Circuit, in the HFCS antitrust litigation; (4) additional relief that would go beyond the competitive harm from the merger; and (5) the impact of ADM's acquisition of MCP in the market for ethanol. Professor Carstensen concludes that the Department should file a revised CIS, one that provides additional factual and other information he requests.

The American Antitrust Institute ("AAI"), an independent education, research, and advocacy organization, filed a comment endorsing the comment filed by Professor Carstensen.

C. LeRoy Deichman, a former farmer-member of MCP and certified professional agronomist, complains that MCP may have manipulated the shareholder vote on ADM's proposal to acquire MCP. Mr. Deichman also is disappointed that the acquisition eliminates MCP as a positive role model for other farmer-cooperative organizations, and he is concerned that the transaction might lead to lower prices for farmers and higher prices to consumers of corn sweeteners and ethanol.

IV. The Department's Response To Specific Comments

We now turn to the comments that raise questions about our analysis or that suggest relief different or supplemental to that contained in the proposed Final Judgment. Copies of this Response, without the Appendix, are being mailed to those who filed comments.

A. Professor Carstensen's Comment

Congress enacted the Tunney Act, among other reasons, "to encourage additional comment and response by providing more adequate notice [concerning a proposed consent judgment] to the public," S. REp. No.

93–298, at 5 (1973); H.R. Rep. No. 93–1463, at 7 (1974), reprinted in 1974 U.S.C.C.A.N. 6535, 6538. The CIS is the primary means by which Congress sought to provide more adequate notice to the public. The Tunney Act requires that the CIS recite:

(1) The nature and purpose of the proceeding;

(2) A description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) An explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief;

(4) The remedies available to potential private plaintiffs damaged by the alleged violation in the event that such proposal for the consent judgment is entered in such proceeding;

(5) A description of the procedures available for modification of such proposal; and

(6) A description and evaluation of alternatives to such proposal actually considered by the United States.

15 U.S.C. 16(b). In this case, the Department has satisfied all of these requirements. See CIS at 1–3 (explaining the nature and purpose of the proceeding), 3–6 (describing events that gave rise to the alleged violation of the antitrust law), 6–7 (explaining the proposed Final Judgment), 7 (explaining remedies available to potential private plaintiffs), 7–8 (explaining procedures available for modifying the proposed Final Judgment), and 8 (describing and evaluating alternatives to the proposed Final Judgment).

Professor Carstensen's comments purport to challenge the content of the CIS but are in fact criticisms of the Department's enforcement decisions, specifically the scope of the Complaint and the substance of the proposed Final Judgment. As explained below, these criticisms are without merit.

1. The Department Is Not Required To Disclose in the Complaint or the CIS MCP's and CPI's Separate Market Shares in the Corn Syrup and HFCS Markets

The Complaint at, ¶¶ 19–20, sets out market concentration data, including individual capacity shares for ADM and CPMCP (the joint venture of MCP and CPI), in the relevant corn syrup and HFCS markets in the United States and Canada, alleging that these markets are highly concentrated and that the concentration levels will substantially increase after the transaction.[2] This is a sufficient allegation of market concentration in a Section 7 case. *See, e.g., United States* v. *Philadelphia Nat'l Bank*, 374 U.S. 321, 363–64 (1963) (noting that acquisition by a firm that would control 30% of the market after the acquisition threatens undue concentration and is presumptively unlawful). Professor Carstensen contends that the CIS should set forth separate market shares attributable to each of the CPMCP partners, MCP and CPI, so that the post-remedy change in the Herfindahl-Hirschman Index ("HHI") can be calculated. See Professor Carstensen's Comment at 5.[3]

But such precise calculations are neither required by law nor very informative in assessing the effectiveness of the remedy in this case.[4] As the Complaint alleges and the CIS explains, the harm from ADM's acquisition of MCP was an increased likelihood of successful anticompetitive coordination among the remaining firms. The goal of the proposed Final Judgment, therefore, is to preserve the number of effective independent competitors. An independent competitor is effective if it has enough productive capacity to increase its output significantly in response to anticompetitive price increases. The proposed Final Judgment accomplishes this goal by requiring that ADM and MCP dissolve CPMCP by December 31, 2002, thus preserving the number of effective independent competitors, including CPI.

Professor Carstensen suggests without explanation that ADM and CPI may not compete after acquisition. *See* Professor Carstensen's Comment at 7. Based on the Department's investigation, both ADM and CPI will have the ability and incentive to compete to increase their sales at their rivals' expense. There is excess capacity throughout the corn wet milling industry, a condition that gives ADM, CPI, and their competitors the incentive to respond aggressively to any increase in price.

In summary, the Department found that ADM's acquisition of MCP, as originally structured, would have enhanced the prospects for coordination among the four remaining corn wet millers, likely raising domestic prices for corn syrup and HFCS above competitive levels. The Department has concluded that the restructuring of the acquisition as required by the proposed Final Judgment resolves these competitive concerns by preserving the pre-acquisition number of effective, competitive sellers of corn syrup and HFCS.

2. ADM's Ownership Interest in Tate & Lyle Does Not Threaten Competition

Professor Carstensen contends that ADM "directly and indirectly" has a 25% stake in Tate & Lyle, the corporate parent of Staley, which is one of the five corn wet milling operations in the United States. In Professor Carstensen's view, this stake in Staley threatens competition, and so it should have been discussed in the CIS. See Professor Carstensen's Comment at 5–7.

The Complaint and CIS appropriately focus on the potential anticompetitive effects of the acquisition being challenged, not pre-existing or prior transactions, such as ADM's acquisition of Tate & Lyle stock. The relevance of the ADM-Staley cross ownership to this case is limited to whether ADM's acquisition of MCP should be analyzed as reducing the number of competitors from five to four or from four to three. The Department's investigation revealed that ADM and Staley should be treated as independent competitors.

Professor Carstensen overstates ADM's equity interest in Tate & Lyle. His own citations reveal that ADM has a 41.5% interest in Compagnie Industrielle et Financiere des Produits Amylaces ("CIP"), a European firm with a 10% interest in Tate & Lyle.[5] ADM also has a direct 5.76% interest in Tate & Lyle. *See* Tate & Lyle, 2002 Annual Report 63 (2002). Thus, even assuming for purposes of analysis that ADM's 41.5% ownership of CIP gives ADM control of CIP's 10% interest in Tate & Lyle (and Staley), ADM's interest in Tate & Lyle is less than 16%, and its share of Staley's profits is not quite 10% ((10% × 41.5%) + 5.76% = 9.91%).

Based on its investigation, the Department concluded that ADM's 16% stake in Tate & Lyle does not give ADM control or influence over Staley's business decisions, give ADM access to competitively sensitive information at Staley, or materially affect competition in more subtle ways; *e.g.*, by realigning incentives so that ADM is less inclined to compete aggressively against Staley because of its share of Staley's profits. Department staff thus determined that ADM's ownership interest in Tate & Lyle (and Staley) does not support treating ADM's acquisition of MCP as a four to three rather than a five to four situation, and so there was no reason to mention that interest in the CIS.

3. The Seventh Circuit's Decision in the High Fructose Corn Syrup Litigation Is Consistent With the Department's Complaint

Professor Carstensen contends that the Department's CIS should have discussed the Seventh Circuit's decision in *In re High Fructose Corn Syrup Litig.*, 295 F.3d 651, 653–54 (7th Cir. 2002), cert. denied, 71 U.S.L.W. 3352 (U.S. Feb. 24, 2003) (No. 02–692), 71 U.S.L.W. 3353 (U.S. Feb. 24, 2003) (No. 02–705), 71 U.S.L.W. 3367 (U.S. Feb. 24, 2003) (No. 02–736). *See, e.g.*, Professor Carstensen's Comment at 2. Professor Carstensen believes the decision is particularly relevant because it suggests to him that ADM should not be permitted to acquire MCP "without any other change in the structure" of the HFCS industry. *See id.* at 6–8.

Beyond what is said about how to decide summary judgment motions in antitrust cases, the HFCS decision suggests that the manufacturers of corn syrup and HFCS operate in concentrated markets under conditions that are conducive to coordinated interaction. The Department reached a similar conclusion and thus brought this case. That said, the Department had no reason, and certainly no obligation, to discuss the HFCS litigation in the CIS.

4. The Department Has Considered All Appropriate Forms of Relief

Professor Carstensen contends that the Department did not consider alternative remedies, including a remedy he proposes to dissolve the CPMCP joint venture, to divest ADM's interest in Tate & Lyle and to bar ADM's acquisition of MCP. Professor Carstensen would have the Department "increase [ ] the number of separate firms from 5 to 6," *see* Professor Carstensen's Comment at 8, thereby increasing rather than preserving the existing competition. This remedy is inappropriate—the purpose of an antittrust remedy is to restore or protect competition, but not to enhance it. *See, e.g., Ford Motor Co.* v. *United States*, 405 U.S. 562, 573 (1972). Professor Carstensen's remedy is also inappropriate because it reaches beyond the Complaint. *See United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1459 (D.C. Cir. 1995). By proposing this remedy, Professor Carstensen improperly invites the Court to restructure an industry without legal basis and to intrude on the Department's prosecutorial role. *See id.*

The Department did consider the only appropriate relief raised by Professor Carstensen, barring the acquisition. See CIS at 8. However, that relief would have required a full trial on the merits against the defendants. The Department concluded that the proposed Final Judgment would preserve the existence of five independent competitors, while avoiding the time, expense, and uncertainty of trial. *Id.*

5. The Department Considered the Impact of the Acquisition in the Ethanol Market

Professor Carstensen also has asserted that "this merger may create significant competitive issues" and that there is "a plausible basis for concern" in the ethanol market. *See* Professor Carstensen's Comment at 10–11 (emphasis added). He goes on to construct his own hypothetical case, and now demands that the Court evaluate the proposed Final Judgment against that case. *Id.* at 8–15. Under the principles of Microsoft Corp., however, this demand is improper, for it too reaches far beyond the Complaint. *See* 56 F.3d at 1459. In any event, Department staff, in the course of its investigation, carefully considered the competitive implications of ADM's acquisition of MCP in the market for ethanol and found no evidence to support any credible theory of antitrust violation.

B. AAI's Comment

AAI's comment voices many of the same concerns expressed by Professor Carstensen, all of which were addressed supra.

C. C. LeRoy Deichman's Comment

C. LeRoy Deichman's principal concern appears to be the MCP manipulated the shareholder vote on ADM's acquisition of MCP. That concern, and Mr. Deichman's concern that MCP is being eliminated as a role model for other farmer cooperatives that might be interested in building their own ethanol producing facilities, do not raise antitrust issues, and it is inappropriate for the Department to respond to them in this memorandum. Mr. Deichman's concerns that the acquisition may lead to higher prices in ethanol and sweetener markets raise antitrust issues that we have already addressed. In short, consumers would be forced to pay ethanol and sweetener prices above competitive levels only if the acquisition enable makers of these products to behave in a noncompetitive manner, and it is highly unlikely that the acquisition will have that effect. See sections IV.A.1. and 5. Finally, Mr. Deichman's concern about farm prices (which we take to mean corn prices) is unwarranted. Having carefully reviewed the facts, the Department found no reason to believe that the acquisition would have an adverse impact on competition in markets other than the corn syrup and HFCS markets alleged in the Complaint. Indeed, in addition to the five corn wet millers preserved as a result of the proposed Final Judgment, there exist many other alternative buyers of corn to whom farmers can sell their crops. Therefore, the acquisition is highly unlikely to give corn wet millers monopsony power to depress the prices they pay farmers for corn.

Conclusion

The Competitive Impact Statement and this Response to Comments demonstrate that the proposed Final Judgment serves the public interest. Accordingly, after publication of the Response in the **Federal Register** pursuant to 15 U.S.C. 16(b), the United States will move this Court to enter the Final Judgment.

Dated this 1st day of April, 2003.

Michael P. Harmonis, Jessica K. Delbaum,

Attorneys; United States Department of Justice, Antitrust Division, 325 7th Street, NW., Suite 500, Washington, DC 20530. (202) 307–6371.

Certificate of Service

I hereby certify that on this 1st day of April, 2003, I have caused a copy of the foregoing Response of the United States to Public Comments on the Proposed Final Judgment and the attached Appendix to be served by first class mail, postage prepaid, and by facsimile on counsel for defendants in this manner:

David James Smith, Vice President, Secretary & General Counsel, Archer-Daniels-Midland Company, 4666 Faries Parkway, Decatur, IL 62526. Telephone: (217) 424–6183. Facsimile: (217) 424–6196. Counsel

[2] CPI and MCP were selling all of their corn syrup and HFCS products in the United States through the CPMCP joint venture, and so they effectively were competing as one firm.

[3] The Department uses the HHI to measure market concentration, and it is calculated by summing the squares of the individual shares of all firms in the market. *See* U.S. Department of Justice/Federal Trade Commission's *Horizontal Merger Guidelines* § 1.5 issued 1992, revised 1997, reprinted in 4 Trade Reg. Rep. (CCH) at ¶ 13,104, available at *http://www.atrnet.gov/policies/mergers*. A market is broadly characterized as being highly concentrated if its HHI is above 1800. *See id.*

[4] HHI statistics provide a useful framework, but they are only the starting point for merger analysis. See Horizontal Merger Guidelines at § 1.51(c). For the Court's information, however, the net effect of the acquisition and proposed relief is to decrease the relevant HHI in corn syrup by about 50 points, to increase the relevant HHI in HFCS 42 by about 300 points, and to increase the relevant HHI in HFCS 55 by about 100 points.

[5] *See* Archer-Daniels-Midland Co., 1998 Annual Report 5 (1998), *http://www.sec.gov/Archives/edgar/data/7084/0000007084–98–000029.txt*; Tate & Lyle, 2002 Annual Report 63 (2002), *http://www.tateandlyle.com/IR/financials/annual_reports/documents/2002_TL_AR_Full.pdf*.

for Defendant Archer-Daniels-Midland Company.

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Jessica K. Delbaum,
Attorney, Antitrust Division, U.S. Department of Justice, 325 Seventh St., NW., Suite 500, Washington, DC 20530. Telephone: (20) 616–1636. Facsimile: (202) 616–2441.

Appendix A

University of Wisconsin Law School, 975 Bascom Mall, Madison, Wisconsin 53706.

December 27, 2002.

Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Re: Proposed Settlement of *United States* v. *Archer-Daniels-Midland Co and Minnesota Corn Processors, LLC.*

Dear Mr. Fones: Enclosed is a Tunney Act comment on the proposed settlement of the suit challenging ADM's acquisition of Minnesota Corn Processors. The goals motivating this comment are to contribute to the improvement of antitrust analysis and enforcement. My work was entirely pro bono and uncompensated.

I am honored that seven distinguished scholars of antitrust and economics have agreed to support this statement. Their names are listed therein. In addition, two major organizations, the National Farmers Union and the Organization for Competitive Markets also support this statement.

If you or any of your staff have any questions about this comment, please feel free to contact me at the above address or by phone (608/263–7416). I can also be reached by email at *pccarste@facstaff.wisc.edu.*

Yours truly

Peter C. Carstensen,
Young-Bascom Professor of Law.

Tunney Act Comments on the Proposed Settlement of *United States* v. *Archer-Daniels-Midland Co and Minnesota Corn Processors, LLC,* Federal District Court, District of Columbia, Civil Case No. 02–1768

Submitted by Professor Peter C. Carstensen on behalf of himself and The National Farmers Union, The Organization for Competitive Markets, Professor Paul Brietzke, Professor John Connor, Professor Thomas Greaney, Professor Neil E. Hari, Professor Delbert Robertson, Professor Stephen Ross, Professor Kyle Stiegert

At a time when the U.S. government and the American public are demanding that private enterprises provide full and complete disclosure of essential information to avoid repetition of the scandals that have destroyed Enron, Worldcom, and Arthur Anderson, it is incumbent on the Department of Justice to make the same kind of full and complete disclosure of information and analysis in connection with its obligations under the Tunney Act. Only then, can the court and the public in fact judge the appropriateness of the proposed settlement of this or any other major antitrust case. The court should not grant approval to this proposed consent decree until the requirements of the Tunney Act are fully satisfied.

I am joined in these comments by two important organizations, the National Farmers Union and the Organization for Competitive Markets, concerned with competition policy and its impact on the markets for agricultural products as well as a group of seven scholars in the fields of economics and antitrust law. Appendix A provides additional background information about both the organizations and individuals supporting these comments.

The government is proposing to settle its challenge to Archer-Daniels-Midland's (ADM) acquisition of Minnesota Corn Processors (MCP) by allowing the acquisition on condition that MCP withdraw from a joint marketing arrangement with Corn Products International (Corn Products) concerning high fructose corn syrup (HFCS). As demonstrated below, the disclosure contained in the Competitive Impact Statement filed in connection with the proposed settlement of the government's does not satisfy the basic requirements of the Tunney Act.

The Competitive Impact Statement fails to disclose essential facts about the impact of this acquisition on the directly affected markets and ADM's status and role in those markets. Further it does not explain how the proposed decree, in light of those facts and an apparent failure to consider relevant relief options as well as the Antitrust Division's own Merger Guidelines, can successfully protect the identified markets from increased risks of anticompetitive conduct. Finally, the Competitive Impact Statement omits entirely any discussion of the impact of allowing this combination in the related ethanol markets in which ADM is by many orders of magnitude the largest firm and MCP is the second largest.

It is our position that the government must file a revised Competitive Impact Statement that discloses all relevant information and analysis relating to the competitive implications of this settlement. Without such disclosure, the record will not disclose "the competitive impact of such judgment" nor its "impact . . . upon the public generally. . . ." Clayton Act, Section 5(e)(1) and (2); 15 USC sec. 16(e)(1) and (2).; As result, the District Court can not perform its obligation to "determine that the entry of such judgment is in the public interest." Section 5(e); 15 USC sec. 16(e).

Summary

In order to determine whether the proposed settlement of this merger case will serve the public interest in preserving competition in all the markets in which the combining enterprises both compete, it is essential that all relevant facts be fully disclosed. This acquisition will cause a substantial change in the market structure of the corn syrup, HFCS and ethanol markets. In all of these markets the effect of this transaction will or may be to increase concentration.

The initial focus of concern should be the analysis of the corn syrup and HFCS markets. Yet, the Competitive Impact Statement fails to disclose certain essential facts about those markets, ADM's position in them, and the government's basis for believing that the remedy proposed would eliminate the anticompetitive risks posed by the disclosed as well as undisclosed facts about those markets. First, there is no disclosure of MCP's separate market share in corn syrup or either of the two HFCS markets that the complaint and Competitive Impact Statement focus on. Hence, it is not possible to tell what impact this acquisition will have on concentration in these already concentrated markets where entry of new competitors is unlikely. Second, the Competitive Impact Statement does not disclose or discuss ADM's ownership directly and indirectly of 25% of the stock of the corporate parent of one of its major, putative competitors in these markets. Third, the Competitive Impact Statement does not report the decision of the 7th Circuit that examined the risks of anticompetitive, interdependent conduct in the HFCS markets and found them to be real and substantial. Fourth, the Competitive Impact Statement discussion of alternative remedies implies that the government did not consider obvious additional relief that would have both allowed this merger and reduced the ownership linkages among ostensible competitors within both the HFCS and ethanol markets. Finally, and most seriously, the Competitive Impact Statement does not explain why, in light of the foregoing facts, the proposed remedy, separating MCP from Corn Products but allowing its combination with ADM, is likely to achieve the goal of preserving and enhancing competition in these markets. Because of these omissions of facts and explanations of essential analysis, it is not possible for a court, under even the most lax version of the government's self-serving standard for review, to approve this proposed decree.

In respect to the markets involving ethanol, the Competitive Impact Statement is totally silent. The facts are that ADM is the largest producer of ethanol with a very large market share, and MCP is the second largest producer. In addition, ADM is one of an apparently limited number of firms that have the resources to market and distribute ethanol to end users. Thus, this combination will substantially increase ADM's share of the ethanol production market and may further entrench its position in the marketing of ethanol. It is possible that there are good reasons why, despite these prima facie anticompetitive implications of this acquisition, it is unlikely to have such

effects. Given that the government has chosen to challenge the combination of these two firms, and their respective position in the ethanol market is well known, it is incumbent on the government to explain why this aspect of the combination does not raise any antitrust concerns. The government, as is evident from its statement of its interpretation of the standard for review, takes an unjustifiedly narrow view of its obligation to the court and the public in explaining its enforcement decisions. It is notable that the Antitrust Division in other contexts and the FTC in the context of announcing a decision not to challenge a merger have been able to make informative statements about the merits of their decisions.

I. The Facts in the Case

ADM is a very large diversified company with extensive activities in a variety of markets. Among its major activities are the production of corn syrup, HFCS and ethanol. In the corn syrup and HFCS markets, ADM is a major producer. According to the government's complaint, it has 10% of the relevant production capacity for corn syrup, 33% for HFCS 42 and 25% for HFCS 55, the two distinct types of HFCS. The markets for all three of these products are, according to the government, highly concentrated and not amenable to entry even if prices are increased substantially above cost.

ADM is also the leading producer of ethanol.[1] Various estimates of its productive capacity and production exist. Its present share of production is unlikely to be less than 30% of all domestic production and may exceed 50%. In addition it is one of a relatively few firms with the specialized skills, equipment and volume to engage in the distribution and marketing of ethanol. As will be discussed infra, this may involve substantially more economies of scale and scope than actual production of ethanol. It also appears to be the case that ADM like the handful of other major marketers acts as a marketing agent for a number of producers who lack the skill, volume and specialized equipment to market their own production.

MCP was originally a cooperative that operated two plants engaged in the "wet" milling of corn. From the wet milling process, it produced corn syrup, HFCS and ethanol. Its market share in the corn syrup and HFCS markets is not known. Prior to the conclusion of this merger, MCP sold its corn syrup and HFCS production through a joint venture with Corn Products. In combination, those two firms had productive capacity of 20% of corn syrup, 15% of HFCS 42 and 15% of HFCS 55. In production of ethanol, MCP was the second largest producer with 6% of total production capacity and one of only four firms, including ADM, with productive capacity exceeding 100 million gallons a year.[2]

[1] The Renewable Fuels Association (RFA) web site lists ADM with total capacity of 950 million gallons. *www.ethanolrfa.org/eth_prod_fac.html* (visited on Oct. 9, 2002).

[2] The RFA site, see note 1 supra, reports that MCP has a capacity of 140 million gallons. Williams Bio-Energy (135 million) and Cargill (110 million) are the only other producers with a capacity over 100 million gallons according to this source.

The Antitrust Division's challenge to this acquisition focused only on the corn syrup and HFCS markets. The Division proposes to settle its suit against this merger by obtaining termination of MCP's joint venture with Corn Products concerning the marketing of HFCS and corn syrup. The settlement would then allow ADM to acquire MCP's two facilities.

Although for litigation purposes a focus primarily on the HFCS markets is sensible because those are the best markets in which to challenge this merger, once the government has decided to settle the HFCS element based on a partial divestiture of unrelated facilities, then it becomes essential to examine the impact of the merger not only in the HFCS markets but also in the other markets where MCP and ADM have substantial, competitive market positions.

II. The HFCS Market

The government's objection to this merger was based only on its impact on the HFCS market and the more general corn syrup market. HFCS comes in two varieties—HFCS 42 and HFCS 55 (signifying the percentage of fructose in each type). The government contends that each type has unique uses and no good substitutes, given current prices for alternative sweeteners. These markets are concentrated with a limited number of competitors. The government also contends that there are substantial barriers to entry into the production of corn syrup or either type of HFCS. Hence, normal market forces are unlikely to reverse any increase in concentration. For these reasons, a substantial merger within these markets creates significant risks of anticompetitive harms. Those risks are, first, the danger of tacit or explicit coordination among competitors to impose higher prices on buyers and, second, that a sufficiently dominant firm can engage in unilateral, anticompetitive acts that exclude new competition and/or exploit existing buyers.

Prior to this merger, there were 5 producers of HFCS, treating the MCP-Corn Products combination as a single firm because of the joint marketing arrangement. It appears from the Competitive Impact Statement and complaint that MCP has substantial corn syrup and HFCS production capacity. Neither the complaint nor the Competitive Impact Statement provides the breakdown in capacity between MCP and Corn Products.[3] As a direct result of that omission, neither the public nor the court can determine the impact of acquisition of MCP's facilities on the concentration levels in any of these markets.

Tate & Lyle, based in the U.K., is a processor of corn products operating on a global basis. Its American subsidiary, A.E. Staley, is among the five leaders in the HFCS market. Staley also has an ethanol plant in Tennessee with a capacity of 60 million gallons. ADM is the largest single shareholder in Tate & Lyle with 15.8% of its voting stock.[4] In addition, ADM owns 41% of Compagnie Industrielle et Financiere des Produits Amylaces SA (CIP) and refers to it as an "affiliate" in its most recent 10–K.[5] CIP in turn holds 10% of Tate & Lyle's stock.[6] Thus, directly and indirectly ADM has a 25% stake in its ostensible competitor. While neither its direct nor its total stake gives ADM and absolutely controlling position, a block this size confers substantial leverage. It is obvious that Tate & Lyle's management would be foolish indeed to initiate vigorous competition in the corn syrup, HFCS or ethanol markets with its largest shareholder.

Given the dissolution of the MCP-Corn Products deal, there will remain five separate producers in the corn syrup and HFCS markets, but one, ADM, will be larger and another, Corn Products, will be smaller. Unfortunately, the Competitive Impact Statement does not say how much larger ADM will be. Although current theories of merger enforcement emphasize the examination of the likely competitive effects of a merger, it is still the case that the initial, prima facie, case rests on a change in the HHI statistic. Where there is a partial transfer of market share, the resulting change in the HHI requires comparing the sum of the buyer's share and acquired share to the share retained by the seller (or former joint venturer). If the sum from the merger is greater than the retained share, the result will be an increase in the HHI; if the sum is less, then the HHI will decline. Thus to determine the likely HHI effect of the combination of MCP's position with ADM's given the reduction in Corn Products's share it is essential to know the relative shares of MCP and Corn Products.

Even without that information, some general conclusions exist. Concentration is well above the 1800 level, pre-merger, in all three markets. It is highest in the "42" market where the pre-merger HHI exceeds 3000; in corn syrup and HFCS 55, it is about 2600, pre-merger. In the syrup market, unless the capacity transferred exceeds 10% (*i.e.,* ADM's new position exceeds 20% in total) the HHI will remain the same or decline. In the case of the HFCS markets, the HHI is certain to increase because market share is moving from a smaller factor to a larger one. The only question in those markets is how much the HHI will increase. In the "42" market where concentration is higher and ADM's share is large, the transfer of 3% or more will result in a net increase of HHI by ore than 100 points. In the "55" market, a transfer of more than 4% would also yield an increase of 100 or more points. As MCP's share increases in the two HFCS markets, there would be an even greater increase in the HHI. Without capacity information on MCP, the net effect on the HHI in corn syrup

[3] ADM and probably Corn Products act as agents for the sale of HFCS and corn syrup produced by smaller local plants including cooperatives. Presumably, given the contractual control over such output, it has been included in the market share totals that the government has identified for the major market participants. If such controlled production has not been included, it would increase the market share of ADM in particular and so only make the structural impact of this acquisition more significant.

[4] Tate & Lyle Annual Report, 2002, at page 63.

[5] The stock ownership in CIP is reported in ADM's 1998, 10–K at Item 1, page 5; Exhibit 13, of ADM's 10–K for 2002, describes CIP is an "unconsolidated affiliate" of ADM.

[6] Tate & Lyle Annual Report, 2002, at page 63.

or the extent of the increase in the HFCS markets is unknown. But it appears substantially likely that there will be a more than 100 point increase in the HHI in one or both of the HFCS markets. Further, if ADM has influence over A.E. Staley's competition in these markets because of ADM's stake in Tate & Lyle, the implications of resulting change in the HHI would be even more pronounced because the disparity between ADM/Staley/MCP and Corn Products will be even greater.

This merger will thus increase the level of concentration in both HFCS markets. Section 1.51(c) of the Merger Guidelines states that: "Where the post-merger HHI exceeds 1800, it will be presumed that mergers producing an increase in the HHI of more than 100 points are likely to create or enhance market power or facilitate its exercise. The presumption may be overcome by a showing that factors set forth in sections 2–5 of the Guidelines make it unlikely that the merger will create or enhance market power or facilitate its exercise. . . ." (Emphasis added.) Moreover, the HFCS markets are ones that, on objective criteria of the sort set forth in sections 2–5 of the Guidelines, are vulnerable to collective action by competitors. The products are homogeneous, the entry barriers are high, and there is excess capacity that can be used to discipline competitors who break ranks. While some buyers are very large, *e.g.*, Coke and Pepsi, the vast majority of sales are to smaller businesses with little bargaining power. A further reason for concern is that the key players, notably ADM, have a history of unlawful collusion in other comparable product markets. See, *e.g.*, *U.S.* v. *Andreas*, 216 F3d 645 (7th Cir. 2000)(affirming conviction of ADM executives for pricing fixing of lysine). To allow ADM to increase its direct ownership of HFCS capacity while retaining its substantial stake in Tate & Lyle would seem to exacerbate the risks of tacit or express collusion.

Even more directly relevant, ADM and its "competitors" (A.E. Staley, Cargill, American Maize-Products, and Corn Products) have been charged in a buyer class action with overt price fixing in HFCS (Corn Products has actually settled with the plaintiffs already) from 1988 to 1995. Although the trial court dismissed the suit on summary judgment, the 7th Circuit in an opinion written by Chief Judge Posner in June of this year reversed. *In re* High Fructose Corn Syrup Antitrust Litigation, 295 F3d 651 (7th Cir. 2002). Judge Posner's analysis of industry structure and context is that this is an industry with characteristics and incentives to engage in collusive behavior. "[D]efendants pretty much conceded that the structure of the HFCS market, far from being inimical to secret price fixing, is favorable to it." *Id.* at 656. The opinion pointed out a number of factors that demonstrated the capacity and incentive to engage in collusive conduct. However, the opinion focused on the claim that there was express agreement and not merely tacit, interdependent price setting. On that issue, it found that the HFCS markets are ones where "the overall evidence of conspiracy . . . was abundant although not conclusive." *Id.* at 655. Despite the manifest relevance of this detailed analysis of the nature of the HFCS markets, pre-merger, to the likely effect of this acquisition on competition in those markets, the Competitive Impact Statement makes no reference whatsoever to it.

The anticompetitive conduct at issue in the 7th Circuit decision occurred in the context of five firm competition in these markets with a lower HHI than will exist after ADM acquires MCP. Thus, it would seem that allowing this acquisition without any other change in the structure, *e.g.*, terminating ADM's stake in Tate & Lyle, will continue and potentially make more likely interdependent conduct among the producers of HFCS.

The Competitive Impact Statement fails to reference or discuss MCP's share of the corn syrup, HFCS 42 or HFCS 55 markets; it makes no mention of ADM's continuing stake in Tate & Lyle or the option of requiring divestiture of this stake as an added element of remedy; it does not refer to the 7th Circuit decision; nor does it discuss the Guideline factors that make collective anticompetitive conduct likely. It focuses on the dissolution of the MCP-Corn Products joint venture and the obligation of ADM to compete independently of Corn Products. The essential national is that "the decree will ensure that there are at least five independent (sic) competitors in the corn syrup and HFCS markets, and will preserve and encourage ongoing competition between ADM and Corn Products." (Emphasis added.)

The government's implicit contention is that because the number of legally distinct firms with separate marketing capacity will remain the same, competition will not be harmed. But it was that number of competitors that created the conditions for collusion. No basis is given for the optimistic assessment that ADM will not influence the competition of Tate & Lyle. Indeed, the statement provides no clue as to incentives or economically rational motivations that would bring about competition given the history of these specific markets and ADM. Hence, some additional rational should exist to justify continuing the present number of competitors and increasing the HHI.[7] In fact, it would seem that under the Guidelines, this merger remains presumptively illegal. *See*, Guidelines 1.51(C), *supra*. It is imaginable that the government's lawyers have some logical and plausible explanation for allowing this acquisition despite all these negative implications. But their duty under the Tunney Act is to make a public statement of those reasons so that the public and the court can determine whether those claims are in fact plausible.

On the other hand, given the 7th Circuit decision, it seems possible to argue that the Corn Products—MCP agreement together with ADM's stake in Tate & Lyle should have been the target of antitrust enforcement together with barring the acquisition of MCP by ADM. Such a strategy would have increased the number of separate firms from 5 to 6 and ensured that each was economically independent of all the others.

The discussion of alternative remedies in the Competitive Impact Statement implies by its silence that the government did not consider the foregoing alternative.[8] This raises a separate but very important issue in this case. It would seem to be a serious failure in basic enforcement if the government elected to settle a case involving markets with high concentration, serious risks of anticompetitive conduct, and cross ownership of stock among major competitors without considering whether a more comprehensive review of the relationship among industry participants was necessary and whether further separation of those ties would be appropriate.

In sum, the Competitive Impact Statement is so flawed that it does not provide the court or the public with a basis to determine whether the increase in concentration resulting from this merger is substantial (the MCP market shares must be given as must those of Corn Products to allow any kind of evaluation of the structural claims of the government) or why the acquisition will not increase the already significant risk of anticompetitive collaboration within the HFCS markets.[9] Before the public can effectively comment on the proposed decree, it is essential for the government to revise the Competitive Impact Statement to make full disclosure of necessary factual information and its reasoning. Similarly, it is impossible for a court to determine, based on this submission, whether or not the proposed judgment is in the public interest.

II. Ethanol

Neither the settlement nor the Competitive Impact Statement address the apparently high and increased concentration in ethanol production resulting from this combination. Even more troubling, there is no analysis of the impact of this acquisition on the marketing and distribution of ethanol. It is true, as the government emphasizes in its filing, that the D.C. Court of Appeals in U.S. v. Microsoft, 56 F3d 1448 (D.C. Cir. 1995), took the position that in reviewing a consent decree under the Tunney Act, a district could not consider alleged anticompetitive conduct not included in the complaint. In that case,

[7] It deserves emphasis here that the antitrust authorities moved to the use of the HHI index to measure market power because of the conclusion the firms with larger market shares present greater risks of anticompetitive conduct. Unlike simple concentration ratios, the HHI is sensitive to the allocation of market share among firms within a market.

[8] Section 5(e) calls for the court in reviewing the proposed decree to have the opportunity to consider 'alternative remedies actually considered" by the government. In order to accomplish that goal, the government in section VI of the Competitive Impact Statement reported the only alternative that it actually "considered" consisted of taking this case to trial.

[9] It is undoubtedly the case that the firms engaged in the HFCS market have very good information about the market positions of their competitors. Hence, this information is not competitively sensitive nor is its disclosure going to threaten the business strategy of any firm in this market. The only real effect of concealing this information is to impose a significant handicap on the public in commenting on the proposed settlement. It ought to be axiomatic that the government must disclose the post-transaction HHI shares of any merger or acquisition which it proposes a court approve under the Tunney Act.

the additional issues that the district court wanted considered were not directly related to the specific competitive practices challenged in that case.[10] In the present case, in contrast, the ethanol production and distribution capacity of both firms is inextricably linked with their HFCS production capacity. Therefore, approving this decree allowing the acquisition of MCP necessarily affects directly this related market. Hence, in order to perform its obligation to "determine that the entry of such judgment is in the public interest". Section 5(e); 15 U.S.C. sec. 16(e), the court must be informed about the other competitive effects of the merger. This is necessary even if the court's ultimate standard may only be whether the "settlement is within the reaches of the public interest." 56 F3d at 1460 (internal quotations omitted).

Prior to the acquisition, ADM was, by a very large margin, the leading producer of ethanol. Its share ranged from something over 30% to more than 50% depending on whether the base is capacity including that under construction or actual production.[11] MCP had about 6% of current capacity. Thus the pre-merger HHI was at least mildly concentrated around the 1600 level, and this merger will increase that level by 350 to 600 points resulting in a post-merger concentration of 2000 to as much as 2300. This falls well into the highly concentrated level.[11]

It appears that ethanol is a distinct product both because it has distinct production technology and because it is an ingredient in gasoline intended to reduce its pollution effects.[12] There was another product, methy tertiary butyl ether (MTBE), that has recently been banned in California, one of the largest areas of consumption, because of its polluting effects on ground water. Thus, a firm able to control the production or marketing of all ethanol would have significant power over price. The geographic market seems to be national.

There are two methods of producing ethanol. The "dry" method involves grinding corn into a mash and fermenting it to create ethanol which must then be separated from the water and the residual solids. The ethanol is concentrated to achieve 100% purity and then "denatured" by the addition of some gasoline making it unfit for human consumption. The remaining solids are dried and sold as cattle feed (this is a high protein feed that appears to have significant commercial value). All new ethanol plants under construction apparently use the dry process.

The "wet" process involves a similar production of mash which is then treated to convert the carbohydrates to sugar from which various products are produced: corn syrup, high fructose syrup, and ethanol by subsequent fermentation of the sugar. Based on some comments on a couple of web sites, it appears that there is flexibility in the wet process to choose among the types of products that will be extracted. Most of MDM's facilities and MCP's two plants are wet.

In 2001, total American production of ethanol was about 1.77 billion gallons; it is expected to rise to 2 billion in 2002 and may exceed 5 billion within a few years especially if the Senate version of the energy bill is ultimately adopted because it strongly favors ethanol. Although this section of the Senate bill was adopted in conference, no final legislation emerged from Congress this session.

With respect to the production of ethanol, the barriers to new entry seem to be low. An efficient, modern plant with a capacity of 40 million gallons costs about $55 million to build and construction takes about a year and a half after regulatory and zoning approval. It seems easy to expand to 80 million gallons, but after that there can be serious input constraints caused by the need to buy very large volumes of corn. Also, the market for the cattle feed solids may be saturated in the immediate area. There are as many as ten or more plants under construction; most of these have a capacity of 40 million gallons, and a significant additional number are in the planning stage. This means that efficient entry can occur with a capacity that represents about 2% of present total production and less than 1% of expected production in the next few years. This suggests that adding a new plant will not disrupt the market and so entry should not be difficult. Hence, while ADM is and will remain for the foreseeable future, by a very substantial margin, the largest ethanol producer in the market, it does not appear that its acquisition of MCP will significantly alter its market power in the ethanol production market. Presumably this is the view of the government as well.

However, this merger may create significant competitive issues in the distribution and marketing of ethanol. Marketing involves both specialized equipment and skills that are subject to economies of scale and scope. Ethanol is shipped in railroad tanker cars, barges and tanker trucks from various places of production in the Midwest to California or the east coast, for example. Ethanol is often added to gasoline at the point when a tanker truck is picking up a load of gas for delivery to service stations. For this reason, access to terminal tank farms is very important in the marketing process. If a firm can not get space in the farm, the marketing of ethanol in this context is more costly (separate location means two stops and delay). A key issue can be getting such access. While the costs of specialized equipment including a dedicated tank may not be substantial, getting access in the first place may be difficult given limited space and the potential that established ethanol suppliers may have or obtain exclusionary rights in their contracts.

It appears, therefore, that there are significant economics of scale and scope in the marketing process. The high volume marketer can get discounts and preferred service from railroads. It can afford to operate or lease barges, develop terminal storage facilities to concentrate the quantity of product for its delivery to refiners or gasoline terminal locations. Finally a major trader can get access to terminal facilities when small dealers might be excluded and/or get access on more favorable terms.

ADM is undoubtedly the largest marketer of ethanol. ADM has volume, special equipment (barges and rail cars) as well as good access to terminals and pipelines. There are two other major integrated marketers: Cargill (number 4 in ethanol production) and Williams Companies (number 3 in production) a major pipeline operator and dealer in petroleum products. Cargill and Williams have overall marketing resources comparable to ADM because of their multiple lines of business and their substantial ethanol production capacity. All three of these companies use marketing agreements to obtain additional supplies of ethanol.[13] Although presumable the government's lawyers have examined these marketing agreements, they are not available to the public. The impression is that they usually entail exclusive dealing commitments involving a 5 year or longer obligation (early termination terms unknown) which may provide economically questionable compensation terms for the marketer in that the contracts do not provide appropriate incentives for effective and efficient marketing. Thus, such contracts are likely to confer substantial control over the marketing of ethanol on a limited group of firms.

There also appears to be a few unintegrated or less integrated firms offering distribution services as well: One such firm is Murex NA.[14] Another trader—Ethanol Products—is associated with Broin Engineering, an ethanol plant builder, that represents 10 production facilities with 300 million gallons of capacity and claims another 115 million in development. There may be one or two additional marketers, but no other web sites provided very much information.

There is a plausible basis for concern that the impact of this merger in the marketing and distribution of ethanol is likely to be anticompetitive: ADM has a record of conspiring to cartelize various markets;[15] Cargill the second or third largest marketer of ethanol is also in the group of defendants in the HFCS litigation; and the Williams Companies, the other large marketer of

[10] Subsequent history has in fact vindicated the district court's concerns. *U.S.* v. *Microsoft*, 253 F3d 34 (DC Cir. 2001) cert. den. _U.S._, 122 S. Ct. 350.

[11] It has been suggested that ADM might actually control 55% of existing production capacity. In that case, the level of concentration would be significantly higher (a 55% share is an HHI of 3025; and the post merger HHI would increase by 660 to 3685).

[12] The following market analysis is based on interviews, web materials and newspaper articles available to Professor Carstensen.

[13] Williams' web site claims that it markets for 14 production facilities. Cargill's cite did not provide specific information, but clearly it is seeking to act as a marketer.

[14] The brief Web site description of this company (*http://www.murexltd.com/Homel.htm*) suggests that it markets ethanol and other products. Its Web site reports that the company provides marketing, owns specialized railcars for transporting ethanol, and has storage faciilities in key locations to hold supplies until they can be delivered. It claims to represent 60 million gallons of capacity currently but to have contracts covering 200 million gallons in place for production in 2003. This is about 10% of the 2002/3 national production capacity.

[15] A.E. Staley in whose parent ADM holds a 25% stake is another ethanol producer and coconspirator in the HFCS litigation.

ethanol has recently settled claims that it overcharged California energy customers with a payment of more than $400 million and a restructuring of its supply contracts that may save customers another 1$1 billion.[16] Thus, all three major marketers of ethanol have recent histories of anticompetitive conduct and exploitation of consumers. The acquisition of MCP will increase concentration of control over distribution which will make both tacit collusion among these leading marketers more likely and increase the potential for unilateral anticompetitive conduct by ADM which remains the overwhelming dominant marketer in this business.

To determine the seriousness of these risks, it is important to have a good estimate of the volume needed to achieve minimum efficient scale for marketing ethanol. Assuming Murex with a 200 million gallon share is an efficient competitor,[17] then additional entry into distribution may occur as the volume expands. Other middle-sized petroleum marketing organizations might exist that have substantial volumes of goods going to market through the same networks. Entry into ethanol marketing may not be difficult for such firms if they exist and can easily add ethanol sales to their existing marketing efforts. Key here is the minimum size needed to make effective use of dedicated facilities such as terminal tanks, railcars, etc., that must be used in an ethanol specific way. Thus, the question is what are the product specific economies of scale and scope.

Given the foregoing market information, it would be possible to determine whether ADM's control over the marketing of ethanol, including its own production, that of MCP, and that under contract to the resulting firm, together with the market shares of the other two major, integrated marketers, would have an adverse effect on entry or expansion by independents in the marketing arena. If it takes 200 million gallons of volume for product-specific economies, then the current set of 5 or 6 marketers may be all that can be accommodated given ADM's dominance. Even with substantial growth in the total volume,[18] it may be difficult to make entry into marketing because the increments of new plants—circa 40 to 80 million gallons—will be insufficient to warrant entry into marketing unless the entrant can get additional clients. But from the perspective of the owner of a new plant, the question will be whether to select an established marketer or affiliate with a new entrant that needs additional volume to be efficient.

If economies of scale with ethanol marketing are significant, entry is difficult, and a few firms control the majority of product being marketed, it becomes possible to withhold some product as the new energy requirements kick in and drive up price (compare Enron or El Paso in California electric markets). In addition, because both ADM and MCP use the wet process, it is possible to manipulate ethanol supplies by shifting plant output to other products, *e.g.*, HFCS. This means that as the dominant firm, ADM may be able to have unilateral, anticompetitive effect in the marketing of ethanol by manipulating supply. On the other hand, ethanol is a uniform product with growing demand. Moreover, that demand is unlikely to be very price elastic (10% of a gallon of gas is not going to effect the price at the pump very much).[19] So, assuming limits on effective entry in the marketing level, existing marketers may engage in interdependent price setting to the detriment of the competitive market. The history of ADM's conduct in comparable markets and the presence in ethanol of some of its co-conspirators from other cartelistic efforts, strongly reinforces the proposition that there is a risk of such conduct if it is economically feasible.

The Merger Guidelines speak to these risks. "Where products are relatively undifferentiated and capacity primarily distinguishes firms . . . the merger firm may find it profitable unilaterally to raise price and suppress output. . . . Where the merging firms have a combined market share of at least thirty-five percent, the merged firms may find it profitable to raise price and reduce joint output. . . ." Guidelines 2.21. While this statement creates no presumption, it identifies the unilateral effect that is a possible consequence of this acquisition in addition to the potential for collusive reductions in output based on control of the marketing-distribution process. Recent news reports, after the filing of the Competitive Impact Statement, indicate that traders believe that ADM has the capacity and incentive to withhold supplies and drive up prices.[20] This is exactly the anticompetitive risk that this market structure posses.

The Competitive Impact Statement filed by the government explaining its analysis of the ADM–MCP merger does not even advert to the fact of ADM's leading position in ethanol production and marketing or MCP's substantial market share. As a result, it is not possible to tell whether the government has examined both the marketing and production aspects of ethanol. While it is probable that the government lawyers have in fact investigated at least some of the ethanol aspects of this merger, there is no public record of what aspects they examined or what conclusions they reached. If the government had simply sued the merger, the ethanol issues would have been subsumed under the corn syrup and HFCS issues because of the unitary nature of the production process. Once the government has elected to settle the case by allowing the acquisition, the impact of the acquisition in the related market where the parties have such large market shares becomes a very important aspect of a public interest analysis: "the court may consider . . . any other considerations bearing upon the adequacy of such judgment. . . ." Clayton Act, sec. 5(e); 15 U.S.C. sec. 16(e).

The government's failure to report the conclusions of its investigation of the ethanol market is, therefore, another serious flaw in this case. Given ADM's market position and its history, the government ought to have explained why it did not believe that there was any serious anticompetitive risk in these markets given its willingness to allow ADM to acquire the second largest producer of ethanol.

It can be argued that disclosure concerning the ethanol market is inconsistent with the confidentiality requirements imposed on merger filings. As the DOJ's comments to the DOT in the Hawaiian airlines case demonstrates, it is possible for the DOJ to report not only its conclusions about competitive effects but also explain in some detail its reasoning on the public record even when it has "confidential" information. *See*, PUBLIC COMMENTS OF THE DEPARTMENT OF JUSTICE, Joint Application of ALOHA AIRLINES, INC. and HAWAIIAN AIRLINES, INC., DOT Docket No. OST–2002–13002, filed Aug. 30, 2002. Indeed, the FTC has recently demonstrated exactly such a responsible approach in connection with the cruise line merger investigation. *See*, Statement of the Federal Trade Commission, Concerning Royal Caribbean Cruises, Ltd./P&O Princess Cruises plc, FTC File No. 021 0041, October 4, 2002; Dissenting Statement of Commissioners Sheila F. Anthony and Mozelle W. Thompson, *id.*

The public information about the ethanol markets—both production and marketing—does not demonstrate the kind of obvious anticompetitive risks that are manifest in the case of HFCS and corn syrup. Nevertheless, this acquisition will work a very substantial change in those markets that will increase concentration and so will necessarily tend to reinforce any anticompetitive potentials that may exist. Thus, another serious deficiency in the present Competitive Impact Statement is that it totally ignores the impact of this acquisition on ethanol. If it were in fact that case the government has completely failed to consider the competitive implications of that aspect of this merger, then it would also be clear that the government had failed in the most basic obligations of its responsibility to analyze the competitive implications of the transaction. It seems more likely that the government has examined at least some of the ethanol related issues and satisfied itself that this acquisition will not result in a significant risk of a "substantial[ ] lessen[ing] of competition" of the sort prohibited by section 7 of the Clayton Act. But if that is so, it owes it to the court and the public to explain what markets it considered (did it review both the production and the marketing components of ethanol?) and what its conclusions were on the

[16] See David Barboza, *A big Victory by California in Energy Case*, New York Times, Nov. 12, 2002, at C1.

[17] Murex markets other petroleum products and so in terms of dealing with railroads, barges, terminals or pipeline has more relevant volume than just its ethanol.

[18] 200 million gallons is 10% of current volume estimates but only 4% of the projected 5 billion gallon volume of the future.

[19] The price of corn which is largely a function of broader demand considerations will influence the supply side of the market significantly as will the market price for animal feed products that ethanol production also yields.

[20] "Ethanol prices have risen 20 percent in the past six months. . . . Todd Kruggel, a broker . . . [said:] "ADM and the other big boys may be storing what they're making until California demand gears up some more." Bloomberg News Service, Price of gas additive ethanol keeps rising, Wisconsin State Journal (Madison, Wisconsin), Nov. 12, 2002 at C9.

questions of entry, economies of scale and scope in distribution, and the potential for either unilateral or collusive conduct in this important, developing market.

This is not a situation where the government has conducted an investigation and concluded that no action was required. Here it has elected to object to the acquisition and highlighted, for purposes of that litigation, the most troublesome aspects of the merger. But its settlement, by failing to block the acquisition, necessarily has an effect in other markets in which these firms compete. A complete Competitive Impact Statement must advise the court and the public of the implications of the settlement for competition in those other markets. Without such disclosure, the record will not disclose "the competitive impact of such judgment" nor its "impact. . . upon the pulic generally . . ." Clayton Act, section 5(e)(1) and (2); 15 U.S.C. 16(e)(1) and (2). As result, the District Court can not perform its obligation to "determine that the entry of such judgment is in the public interest." section 5(e); 15 U.S.C. 16(e).

Conclusion

In Philadelphia Bank, the Court stated that ". . . if concentration is already great, the importance of preventing even slight increases in concentration and so preserving the possibility of eventual deconcentration is correspondingly great." *U.S.* v. *Philadelphia National Bank*, 374 US 321, 365, n. 42 (1963). The HFCS markets are such markets, characterized by substantial risks of anticompetitive conduct. The ethanol market as it presently exists is also concentrated and the forces of deconcentration might well be frustrated if the leading firm can retain a dominant position in production and that reinforces and entrenches its dominance in marketing. It would appear that blocking this merger and critically reviewing the MCP-Corn Products marketing agreement in HFCS as well as ADM's links to Tate & Lyle would have been a much more appropriate enforcement strategy based on the observable facts.

The Antitrust Division may have more information that might possibly negate the apparent anticompetitive risks in both the HFCS and ethanol markets that this acquisition would seem to create. It is the duty of the government to explain and justify its actions under the Tunney Act. It has not done so. In the absence of such information, the District Court should not approve this settlement because it lacks the basis on which to make the essential public interest determination that Congress has required.

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December 27, 2002.

Background information concerning the supporters of this information:

Organizations

The National Farmers Union

The National Farmers Union is Officially called the Farmers Educational and cooperative Union of America. It was founded in 1902 and is a general farm organization with membership of nearly 3000,000 farm and ranch families throughout the United States.

The Organization for Competitive Markets

The Organization for Competitive Markets is a multidisciplinary nonprofit group made up of farmers, ranchers, academics, attorneys, political leaders and business people. OCM provides research, information and advocacy towards a goal of increasing competition in the agricultural marketplace and protecting those markets from abuses of corporate power. OCM views the current consolidation of agriculture as market failure resulting in misallocation of resources and the destruction of rural economies and culture.

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The American Antitrust Institute

December 27, 2002.

Roger W. Fones, Chief,
Transportation, Energy & Agriculture Section Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Re: Tunney Act Comments *re U.S.* v. *Archer-Daniels-Midland Co. and Minnesota Com Processors, LLC*, Civil Case No. 02–1768

Dear Mr. Fones: The American Antitrust Institute ("AAI") is an independent non-profit education, research and advocacy organization, described in detail at www.antitrustinstitute.org. The mission of the AAI is to support the laws and institutions of antitrust. We write to endorse the thrust of the Tunney Act comments submitted by Professor Peter C. Carstensen of the University of Wisconsin Law School. Professor Carstensen, a member of the AAI Advisory Board, has shared with us his analysis of the Archer-Daniels-Midland ("ADM") acquisition of Minnesota Com Processors ("MCP") and his concern that the Justice Department's Competitive Impact Statement ("CIS") does not provide an adequate explanation of the consent decree.

A substantial purpose of the Antitrust Penalties and Procedures Act, 15 U.S.C. section 16(b)–(h), commonly referred to as the Tunney Act, is to facilitate public comments and thereby to assist the Court in making its determination of whether a proposed decree is in the public interest. The Tunney Act requires the Department to make public a CIS, which, in this case is available at *http://www.usdoj.gov/atr/cases/indx 358.htm*. Section (b)(3) of the Act requires that the CIS recite:

(1) The nature and purpose of the proceeding;

(2) A description of the practices or events giving rise to the alleged violation of the antitrust laws;

(3) An explanation of the proposal for a consent judgment, including an explanation of any unusual circumstances giving rise to such proposal or any provision contained therein, relief to be obtained thereby, and the anticipated effects on competition of such relief; [and]

(6) A description and evaluation of alternatives to such proposal actually considered by the United States.

We recognize that it is difficult, if not impossible, for a member of the public to have the same facts before it that influenced the Department's investigation and its negotiated outcome. Professor Carstensen's efforts to learn about the ADM merger have nonetheless succeeded in raising what appear to be important questions about the possible competitive effects of the merger that are not considered in the CIS. He writes,

The Competitive Impact Statement fails to disclose essential facts about the impact of this acquisition on the directly affected markets and ADM's status and role in those markets. Further, it does not explain how the proposed decree, in light of those facts and an apparent failure to consider relevant relief options as well as the Antitrust Division's own Merger Guidelines, can successfully protect the identified markets from increased risks of anticompetitive conduct. Finally, the Competitive Impact Statement omits entirely any discussion of the impact of allowing this combination in the related ethanol markets in which ADM is by many orders of magnitude the largest firm and MCP is the second largest.

Even when the Tunney Act is interpreted rather narrowly, it is recognized that Congress intended to encourage public comment. As Judge Kollar-Kotelly noted in the recent *U.S.* v. *Microsoft Corp.*, Civ. Act. No. 98–1232, Memorandum Opinion at 20 (July 1, 2002):

The legislative history explains that the purpose of requiring the United States to provide this information is to "encourage[e], and in some cases, solicit, additional information and public comment that will assist the court in deciding whether the relief should be granted." 119 Cong. Rec. at 24,600. The reports from both houses of Congress agree that the purpose of this portion of the Act, in conjunction with sections (c) and (d), is to encourage comment and response by providing more adequate notice to the public. S. Rep. 93–278, H.R. Rep. 93–298 at 5 (1973); H.R. Rept. 93–1463 at 7 (1974), reprinted in 1974 U.S.C.C.A.N. at 6538. According to the Senate Report on the bill, "additional participation by interested parties in the

approval of consent decrees" serves as a public means to counterbalance the "great influence and economic power" available to antitrust violators. Sen. Rept. No. 93–298, at 5 (1973).

The House Report echoes this concern:

Given the high rate of settlement in public antitrust cases, it is imperative that the integrity of and public confidence in procedures relating to settlements via consent decree procedures be assured. Your Committee agrees with S. Rept. No. 93–298, 'The bill seeks to encourage additional comment and response by providing more adequate notice to the public,' (p. 5) but stresses that effective and meaningful public comment is also a goal." H.R. Rept. No. 93–1463, at 6–7.

It is not possible for the public to play the role envisioned by the statute unless adequate information is presented in the CIS, with the result that the Court cannot fulfill its own role of determining whether the proposed decree will serve the public interest. 15 U.S.C. 16(e). With respect to the corn syrup and HFCS markets, the CIS fails to disclose essential facts necessary to an understanding of either the competitive problem or the selected remedy. With respect to the ethanol market, the CIS is totally silent, despite the apparent fact that ADM is the leading producer and MCP is the second leading producer. We recognize that the Department may have been aware of all the relevant facts and may have carried out a perfectly designed and perfectly executed investigation, reaching a perfectly understandable compromise. Nevertheless, neither the public nor the Court can evaluate whether the proposed decree is in the public interest because there is too little disclosure for an evaluation to be made.

The Department has traditionally been reluctant to say a great deal in its CIS disclosures, presumably because it risks disclosure of confidential information, adds to the staff's workload, and opens up the door to additional inquiry. We urge the Department to look to the example of the Federal Trade Commission in its handling of the recent cruise case, in which it permitted two possible mergers to go forward, without condition, but (without the requirements of a Tunney Act hanging over its head) provided a detailed explanation of its reasoning, accompanied by a minority statement.[1] After the Enron and related scandals, we operate in a new age where transparency of government regulation is of even greater importance. ADM is a company that has had more than its share of scandal and illegal activity.[2] In order to sustain the public's confidence in the antitrust settlement process, we urge the Department and the Court to give the Tunney Act the benefit of any doubt by revising the CIS so as to meet Professor Carstensen's objections.

Sincerely.

[1] *See http://www.ftc.gov/os/caselist/021004.htm.* Also *see* Warren Grimes, Norman Hawker, John Kwoka, Robert Lande, and Diana Moss, "The FTC's Cruise Lines Decisions: Three Cheers for Transparency, *http//www.antitrustinstitute.org/recent2/217.cfm.*

[2] *See, e.g.,* James B. Lieber, Rats in the Grain, the Dirty Tricks and Trials of Archer Daniels Midland (200) and Kurt Eichenwald, The Informant (2000).

Albert A. Foer,
President.
433 Hager Drive, Gibson City, IL, 60936.
(217) 784–4425.

Send by Express Mail.

Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture, Division, Antitrust, Justice Department, Suite 500, Washington, DC 20530.

Gentlemen (& women); I am thankful for this opportunity to offer my brief comment to you on the proposed ADM–MCP purchase transaction.

I will try not to duplicate the obvious facts and data that you no doubt have indicating the anticompetitive effect this transaction could have on:

(1) The market price the farmer receives (and *growth of same*)

(2) The ethanol and

(3) Sweetener industry market prices.

I will instead attempt to offer some of the not so obvious that you may not have but are never the less, just as important.

I am hopeful that you can provide evidence that this public comment opportunity *does have meaning* instead of [being 'cut & dried' or a 'done deal' that ADM has under control], the well grounded perception that most have expressed to me. This perception plus (1) the extended corn harvest in SW MN, (2) most stakeholders being unaware of this public comment forum and (3) many of us who are (aware of), being poor writers and cramped for time means relatively few comments from those who would otherwise do so, which is unfortunate. So I hope you can bear with us and receive what we (I) intended to convey on this very important issue. To provide *all* of the important details is beyond the scope of this comment writing, but please if u do want more detail, I'd be most honored to respond with the full impact & detail that you need (if I know it not redundant) to make your most important decisions and conveyance of same!

I have personal knowledge that many of the new coops that have formed & now producing ethanol did so with the knowledge that MCP was a positive role model. This transaction not only erases that positive role model but becomes a *very* negative factor. (MCP was the largest by a factor of 5X, the oldest & relied on by others in many respects) If you need I'd love to give details showing the 'chilling' net impact on new producer equity formation.

The superior third party acquisition proposal (p.pg 48) that was in the MCP office on August 31, could have & indeed perhaps should have been handled differently *i.e.,* at least let the board or voting members know of its existence. (The vote would've been different)

The implementation of that proposal offers to

(1) Retain the more competitive environment for corn markets, ethanol, sweeteners, etc.

(2) Retain each members freedom to sell or not to sell.

(3) "The new CP MCP development opportunity.

(4) The producer (corngrower) processor opportunity, that was conceived in the mid '70's.

(5) Be less likely to be challenged, changed, *delayed* or terminated on grounds posed by the Antitrust Division of the US Justice Department (p, pg 43).

I'd sure love to give details on this if u need some.

Then I have many questions regarding how the information was A. Presented to the members at the 'information' meetings. In consideration our limited time at this point & hoping most of these questions have been submitted by others I'll bring up only one question I had as follows:

I asked specific questions about the probability of regulatory delays or indeed a Department of Justice complaint challenging the merger. The answer I receive was—*No way. ADM has that under control.* If the Department of Justice does anything it will be a mere formality of no consequence! Vote for this transaction & you'll have your money 'very soon' after the vote on Sept. 5. Clarification of 'very soon' was given as before the end of the month (September). Each of the questions (answers) were (superbly) handled in a similar tone.

And B. How the vote was handled.

(i) Was it true that the company (MCP) wouldn't allow one of the board members who voted No to look at the ballot talley?

Ref. Dean Buesing

(2) Was it true that one of the no votes cast early at the Marshall office couldn't be found when the member asked for it back before the final tally was to be tabulated?

Same reference.

Thanks,

C. LeRoy Deichman, CPAg.,
433 Hager Drive, Gibson City, IL 60936, (217) 784–4425.

P.S.

If every component of this transaction was legal (I'm not saying it wasn't)—then I'd like to meet with the people who make the laws.—To see that this injustice never happens again!

I wish my appraisal of the growth that could've occurred would be asked for by the decision makers.

I repeat, since I don't know which of what else I had to say would be redundant & other reasons listed herin I defer for now pending your request for more. (Including any resume in this field)

I *out of time!*

Thanking you again for this opportunity.

[FR Doc. 03–9290 Filed 4–15–03; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mico-Optio-Electro-Mechnical Systems

Notice is hereby given that, on January 31, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act")", Micro-Opto-Electro-Mechanical Systems (MOEMS) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Corning Intellisense, Boston, MA has been added as a party to this venture. Also, Standard MEMS, Hauppauge, NY has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MOEMS intends to file additional written notification disclosing all changes in membership.

On December 29, 1998, MOEMS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 19, 1999 (64 FR 13603).

The last notification was filed with the Department of August 3, 1999. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 21, 2000 (65 FR 15177).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 03–9292 Filed 4–15–03; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Water Heater Industry Joint Research and Development Consortium

Notice is hereby given that, on March 3, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Water Heater Industry Joint Research and Development Consortium ("the Consortium") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status and an extension of its term. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances Specifically, the membership of GSW Water Heating Company, a Division of GSW Inc., Fergus, Ontario, CANADA, has been transferred to GSW Water products Inc., a new wholly owned subsidiary of GSW Inc, Fergus, Ontario, CANADA. Also, the term of the Consortium has been changed as of February 20, 2003, from a term of eight years beginning February 27, 1995, to a period of nine years beginning February 27, 1995.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Consortium intends to file additional written notification disclosing all changes in membership.

On February 28, 1995, the Consortium filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 27, 1995 (60 FR 15789).

The last notification was filed with the Department on March 4, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on April 4, 2002 (67 FR 16125).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 03–9291 Filed 4–15–03; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11146, *et al.*]

Proposed Exemptions; ACR Homes, Inc. Employee Stock Ownership Plan and Trust (the ESOP)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "*moffittb@pwba.dol.gov*", or by FAX to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed

exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

ACR Homes, Inc. Employee Stock Ownership Plan and Trust (the ESOP) Located in Roseville, Minnesota

[Application No. D–11146]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the past sale on August 28, 2001 (the Stock Redemption), by the ESOP to the ACR Homes, Inc., the sponsoring employer (the Employer), of 3,600 shares of the Employer's class A common stock (the Shares) for $511,250 in cash; provided that the following conditions were satisfied:

(a) The Stock Redemption was a one-time cash transaction;

(b) The ESOP received the fair market value of the Shares as determined by an independent, qualified appraiser on the date of the Stock Redemption; and

(c) The ESOP paid no commissions or other expenses associated with the Stock Redemption.

EFFECTIVE DATE: If granted, this exemption will be effective as of August 28, 2001.

Summary of Facts and Representations

1. The ESOP was established by the Employer on January 1, 1995 for the benefit of its employees. Since 1995, the ESOP has been amended and restated from time to time to comply with the Act, the Code and the regulations thereunder. Specifically, the ESOP was amended and restated on January 1, 1998, to reflect the Employer's status as a subchapter "S" corporation, as elected under section 1361 of the Code. It is represented that the ESOP meets the requirements of sections 401(a), 409, and 4975(e)(7) of the Code, as well as the relevant requirements of the Act.[1]

As of November 25, 2002, the ESOP had approximately 350 participants and beneficiaries. James A. Nelson (Mr. Nelson) and Dorothy Nelson (Mrs. Nelson, collectively; the Nelsons) are trustees of the ESOP. After the Stock Redemption, Mr. Nelson and Mrs. Nelson respectively owned 30.5% and 29.5% of the issued and outstanding shares of the Employer's stock (the Stock). Mr. Nelson is the president of the Employer. Mrs. Nelson is a vice-president and secretary of the Employer.

The Employer is a Minnesota corporation that provides residential services for people with developmental disabilities. The Employer owns a subsidiary, ACR Mississippi, Inc., that provides similar services.

2. The Employer has only one class of shares of the Stock (a/k/a, the Class A Shares). As of December 31, 2000 (*i.e.*, before the Stock Redemption), there were 1,000,000 Class A Shares authorized and a total of 40,000 shares issued and outstanding with the following ownership:

Shareholder	Type	No. of shares	% Ownership
ESOP	Class A	19,600	49
James Nelson	Class A	10,400	26
Dorothy Nelson	Class A	10,400	25
Total		40,000	100

An appraisal for the Stock dated June 15, 2001 (the Appraisal), was prepared by the Hawthorne Company, an independent and qualified appraising firm in Minneapolis, Minnesota. The Appraisal stated that each Share of the Stock was worth $140, as of December 31, 2000. Therefore, as of December 31, 2000, the ESOP's ownership interest in the Stock (*i.e.*, 19,600 shares) was worth $2,744,000.

3. Under a Stock Redemption Agreement dated August 28, 2001 (the Agreement), the ESOP sold 3,600 shares of the Stock (*i.e.*, the Shares) to the Employer for a purchase price of $511,200 or $142 per Share. This purchase price was determined by an update of the Appraisal, as discussed more fully below. The Employer paid the entire purchase price in cash.

The applicant represents that the cash received by the ESOP in the Stock Redemption was immediately credited to the accounts of participants in proportion to the Shares that were sold from their accounts in the Stock Redemption.[2] The applicant represents that the Stock Redemption was in the best interest of the ESOP's participants and beneficiaries. The specific reasons are discussed more fully below.

The Employer financed its purchase of the Shares through two simultaneous sales of 1,800 of newly-issued shares of the Stock to Mr. Nelson and Mrs. Nelson, respectively, at the same price of $142 per Share (the Nelson Sale).[3]

The applicant represents that the Stock Redemption and the Nelson Sale decreased the ESOP's ownership of the total outstanding Stock of the Employer from 49% to 40%, and increased the Nelsons' combined ownership of the Stock from 51% to 60%.

Following the Stock Redemption on August 28, 2001, the total outstanding shares of the Stock were owned as follows:

[1] Section 407(d)(6) of the Act defines the term "employee stock ownership plan" as an individual account plan (A) which is a stock bonus plan which is qualified, or a stock bonus plan and money purchase plan both of which are qualified, under section 401 of the Code, and which is designed to invest primarily in qualifying employer securities, and (B) which meets such other requirements as the Secretary of the Treasury may prescribe by regulation.

The Department is providing no opinion herein as to whether such requirements have been met.

[2] For example, if a participant had 100 Shares allocated to her account and 18 had been redeemed, after the Stock Redemption, such account would have been allocated an additional $2,556 of cash (*i.e.*, $142 per share × 18 shares).

[3] The applicant represents that the Nelsons were advised, by a prior law firm (see discussion in Paragraph 7), to structure the Stock Redemption as a two-step transaction.

Shareholder	Type	Number of shares	% Ownership
ESOP	Class A	16,000	40
James Nelson	Class A	12,200	30 5
Dorothy Nelson	Class A	11,800	29.5
Total		40,000	100

4. As stated earlier, the Appraisal was prepared on June 15, 2001 by Hawthorne Company, an independent qualified appraisal firm (the Appraiser). The Appraisal considered three valuation approaches: (i) The market approach, (ii) the income approach, and (iii) the asset approach. In determining fair market value of the Shares, the Appraisal primarily relied on the income approach. The Appraisal utilized the single-period capitalization of cash flows method in the valuation of the Shares. Using this method, the Appraiser generated an estimate of the long-term sustainable "free cash flow" of the Employer, given its current operating status.[4]

The Appraiser represents that it utilized an 18% required annual rate of return in the past valuations of the Shares. Because the Appraiser did not believe the risk profile of the Employer had changed since the last valuation, it continued to utilize an 18% required annual rate of return in the Appraisal. By subtracting an estimate of long-term growth from the required rate of return, the Appraiser arrived at a capitalization rate of 9.5%. This capitalization rate of 9.5% was applied to the projected net cash flow figure. Under this methodology, the Appraisal established a fair market value of a minority interest in the Stock at $140 per Share as of December 31, 2000.

5. An update to the Appraisal was prepared on August 28, 2001 (the Update), which was the date of the Stock Redemption. The Update stated that the ESOP should sell 3,600 Shares to the Employer for the purchase price of $511,200, or $142 per Share.[5] In preparing the Update, the Appraiser reviewed the Employer's current annual financial statements; the Employer's operational status as of August 28, 2001; the Stock Redemption Agreement; the Employer's Board of Directors' minutes approving the Stock Redemption, and subscription agreements between the Employer and the Nelsons. In addition, the Appraiser held discussions with representatives of the Employer regarding the current operations, financial condition, future prospects, projected operations and performance of the Employer. Finally, the Appraiser considered any restrictions on transferability associated with the Shares.[6]

6. The Stock Redemption was a one-time cash transaction. The ESOP did not pay any commissions or other expenses associated with the sale. The applicant represents that the fair market value of the Shares was determined by an independent, qualified appraiser at the time of the transaction. In this regard, the Employer paid the ESOP $142 per Share, in accordance with the Appraiser's valuation of the Stock, as stated in the Update, at the time of the transaction. The applicant maintains that the sale was in the best interest and protective of the ESOP and its participants and beneficiaries at the time of the transaction. Among other things, the sale increased the liquidity and diversification of the ESOP's portfolio. The sale enabled the ESOP to realize a portion of the gains that had been earned on the investment, following its acquisition of the Stock in 1996. Specifically, the transaction allowed the ESOP's participants to realize a reasonable rate of return from the appreciation of the Stock over a 5-year period.

7. The applicant's current legal counsel states that at the time of the sale, the Employer was represented by another law firm. The applicant states that the prior law firm failed to advise the Employer that the Stock Redemption would be a prohibited transaction under the Act. In this regard, the applicant maintains that the prior law firm drafted the legal documents governing all aspects of the Stock Redemption and the subsequent sale to the Nelsons. The Employer represents that it understood, from the nature of the prior law firm's involvement in designing and documenting the transaction, that the law firm did not see any legal obstacles to completing the transaction. When the Employer's current legal counsel discovered the prohibited transaction, the applicant promptly applied to the Department to request a retroactive exemption.

8. In summary, the applicant represents that the transaction satisfied the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The Stock Redemption was a one-time cash transaction;

(b) The ESOP received the current fair market value for the Shares, as established by an independent, qualified appraiser;

(c) The ESOP paid no commissions or other expenses associated with the Stock Redemption; and

(d) The Stock Redemption provided the ESOP and its participants and beneficiaries with more liquidity, a reasonable rate of return on its investment in the Stock, and an opportunity to diversify the overall investment portfolio.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

Lehman Brothers Holding Inc. (LBHI) and Lehman Brothers Inc. (LBI), et al. (Collectively, the Applicants) Located in New York, NY

[Application No. D–11164]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408 of the Act (or ERISA) and section 4975(c)(2) of the Code and in accordance with the procedures set

[4] The Appraiser defined "free cash flow" as all cash remaining after operating the business, repaying debt, and investing in fixed assets. Thus, "free cash flow" represents the theoretical dividend paying capacity of the Employer. The Appraiser then applied an appropriate capitalization multiple to that estimate of cash flows.

[5] The Update was actually characterized as a "fairness opinion" by the Appraiser. Under the Update, the Appraiser concluded that the ESOP would not be receiving less than fair market value for the Stock. In response to the Department's request for more specificity regarding the valuation, the Appraiser noted, by letter dated March 6, 2003, that they were of the opinion that on August 28, 2001, the fair market value of the Stock was approximately $141.00 per share.

[6] The appraiser further maintains that its method of valuation of the Shares follows the guidelines set forth by the IRS's Revenue Ruling 59–60, 1959–1 Cum. Bull. 237 (as modified by Rev. Rul 68–609 (1968–2 C.B. 327)) for the valuation of corporate securities. In addition, the Appraiser followed the guidelines of the Valuation Advisory Committee of the ESOP Association (incorporating the Department's Proposed Regulations Relating to the Definition of "Adequate Consideration" (see 53 FR 17632; May 17, 1988)), the Uniform Standards of Professional Appraisal Practice, the American Society of Appraisers, and the Institute of Business Appraisers.

forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990).[7]

Section I. Covered Transactions

If the exemption is granted, the restrictions of section 406 of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) of the Code, shall not apply April 16, 2003, to the purchase of any securities by LBHI and LBI and their affiliates, (collectively, the Asset Manager), on behalf of employee benefit plans (the Client Plans), including Client Plans investing in a pooled fund (the Pooled Fund), for which the Asset Manager acts as a fiduciary, from any person other than the Asset Manager or an affiliate thereof, during the existence of an underwriting or selling syndicate with respect to such securities, where LBI and its affiliates (collectively, the Affiliated Broker-Dealer) are a manager or member of such syndicate, provided that the following conditions are satisfied:

(a) The securities to be purchased are—

(1) Either:

(i) Part of an issue registered under the Securities Act of 1933 (the 1933 Act) (15 U.S.C. 77a et seq.) or, if exempt from such registration requirement, are (A) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (B) issued by a bank, (C) exempt from such registration requirement pursuant to a federal statute other than the 1933 Act, or (D) are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (the 1934 Act) (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of that Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all reports required to be filed thereunder with the Securities and Exchange Commission (SEC) during the preceding 12 months; or

(ii) Part of an issue that is an "Eligible Rule 144A Offering" (the Eligible Rule 144A Offering), as defined in SEC Rule 10f-3 (17 CFR 270.10f–3(a)(4)). Where the Eligible Rule 144A Offering is of equity securities, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum;

(2) Purchased prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities, except that—

(i) If such securities are offered for subscription upon exercise of rights, they may be purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) If such securities are debt securities, they may be purchased at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities and may be purchased on a day subsequent to the end of the first day on which any sales are made, provided that the interest rates on comparable debt securities offered to the public subsequent to the first day and prior to the purchase are less than the interest rate of the debt securities being purchased; and

(3) Offered pursuant to an underwriting or selling agreement under which the members of the syndicate are committed to purchase all of the securities being offered, except if—

(i) Such securities are purchased by others pursuant to a rights offering; or

(ii) Such securities are offered pursuant to an over-allotment option.

(b) The issuer of such securities has been in continuous operation for not less than three years, including the operation of any predecessors, unless—

(1) Such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.*, Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); or

(2) Such securities are issued or fully guaranteed by a person described in paragraph (a)(1)(i)(A) of Section I of this exemption; or

(3) Such securities are fully guaranteed by a person who has issued securities described in paragraphs (a)(1)(i)(B), (C), or (D) of Section I, and who has been in continuous operation for not less than three years, including the operation of any predecessors.

(c) The amount of such securities to be purchased by the Asset Manager on behalf of a Client Plan does not exceed three percent of the total amount of the securities being offered. Notwithstanding the foregoing, the aggregate amount of any securities purchased with assets of all Client Plans managed by the Asset Manager (or with respect to which the Asset Manager renders investment advice within the meaning of 29 CFR 2510.3–21(c)) does not exceed:

(1) 10 percent of the total amount of any equity securities being offered;

(2) 35 percent of the total amount of any debt securities being offered that are rated in one of the four highest rating categories by at least one of the Rating Organizations; or

(3) 25 percent of the total amount of any debt securities being offered that are rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations; and

(4) If purchased in an Eligible Rule 144A Offering, the total amount of the securities being offered for purposes of determining the percentages for (1)–(3) above is the total of:

(i) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to "qualified institutional buyers" (QIBs), as defined in SEC Rule 144A (17 CFR 230.144A(a)(1)); plus

(ii) The principal amount of the offering of such class in any concurrent public offering.

(d) The consideration to be paid by the Client Plan in purchasing such securities does not exceed three percent of the fair market value of the total net assets of the Client Plan, as of the last day of the most recent fiscal quarter of the Client Plan prior to such transaction.

(e) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.

(f) The Affiliated Broker-Dealer does not receive, either directly, indirectly, or through designation, any selling concession or other consideration that is based upon the amount of securities purchased by Client Plans pursuant to this exemption. In this regard, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designations generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

(g)(1) The amount the Affiliated Broker-Dealer receives in management, underwriting or other compensation is not increased through an agreement, arrangement, or understanding for the purpose of compensating the Affiliated Broker-Dealer for foregoing any selling concessions for those securities sold pursuant to this exemption. Except as described above, nothing in this paragraph shall be construed as precluding the Affiliated Broker-Dealer from receiving management fees for serving as manager of the underwriting or selling syndicate, underwriting fees for assuming the responsibilities of an underwriter in the underwriting or selling syndicate, or other consideration that is not based upon the amount of securities purchased by the Asset Manager on behalf of Client Plans pursuant to this exemption; and

(2) The Affiliated Broker-Dealer shall provide to the Asset Manager a written certification, signed by an officer of the Affiliated Broker-Dealer, stating the amount that the Affiliated Broker-Dealer received in compensation during the past quarter, in connection with any offerings covered by this exemption, was not adjusted in a manner inconsistent with Section I(e), (f), or (g) of this exemption.

(h) In the case of a single Client Plan, the covered transaction is performed under a written authorization executed in advance by an independent fiduciary (Independent Fiduciary) of the Client Plan.

(i) Prior to the execution of the written authorization described in paragraph (h) above of this Section I, the following information and materials must be provided in hard copy or in electronic form by the Asset Manager to the Independent Fiduciary of each single Client Plan:

(1) A copy of the notice of proposed exemption and of the final exemption as published in the **Federal Register**; and

(2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(j) Subsequent to an Independent Fiduciary's initial authorization permitting the Asset Manager to engage in the covered transactions on behalf of a single Client Plan, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(k) In the case of existing plan investors in a Pooled Fund, such Pooled Fund may not engage in any covered transactions pursuant to this exemption, unless the Asset Manager has provided the written information described below to the Independent Fiduciary of each plan participating in the Pooled Fund. The following information and materials shall be provided in hard copy or in electronic form not less than 45 days prior to the Asset Manager's engaging in the covered transactions on behalf of the Pooled Fund pursuant to the exemption:

(1) A notice of the Pooled Fund's intent to purchase securities pursuant to this exemption and a copy of the notice of proposed exemption and of the final exemption as published in the **Federal Register**;

(2) Any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests; and

(3) A termination form expressly providing an election for the Independent Fiduciary to terminate the plan's investment in the Pooled Fund without penalty to the plan. Such form shall include instructions specifying how to use the form. Specifically, the instructions will explain that the plan has an opportunity to withdraw its assets from the Pooled Fund for a period at least 30 days after the plan's receipt of the initial notice described in paragraph (1) of this Section I(k) above and that the failure of the Independent Fiduciary to return the termination form by the specified date shall be deemed to be an approval by the plan of its participation in covered transactions as a Pooled Fund investor. Further, the instructions will identify the Asset Manager and its Affiliated Broker-Dealer and state that this exemption may be unavailable unless the Independent Fiduciary is, in fact, independent of those persons. Such fiduciary must advise the Asset Manager, in writing, if it is not an "Independent Fiduciary," as that term is defined in Section II(g) of this exemption.

For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof. However, in-house plans must notify the Asset Manager, as provided above.

(l) In the case of a plan whose assets are proposed to be invested in a Pooled Fund subsequent to implementation of the procedures to engage in the covered transactions, the plan's investment in the Pooled Fund is subject to the prior written authorization of an Independent Fiduciary, following the receipt by the Independent Fiduciary of the materials described in Section I(k)(1) and (2). For purposes of this paragraph, the requirement that the authorizing fiduciary be independent of the Asset Manager shall not apply in the case of an in-house plan sponsored by the Applicants or an affiliate thereof.

(m) Subsequent to an Independent Fiduciary's initial authorization of a plan's investment in a Pooled Fund that engages in the covered transactions, the Asset Manager will continue to be subject to the requirement to provide any reasonably available information regarding the covered transactions that the Independent Fiduciary requests.

(n) At least once every three months, and not later than 45 days following the period to which such information relates, the Asset Manager shall:

(1) Furnish the Independent Fiduciary of each single Client Plan, and of each plan investing in a Pooled Fund, with a report (which may be provided electronically) disclosing all securities purchased on behalf of that Client Plan or Pooled Fund pursuant to this exemption during the period to which such report relates, and the terms of the transactions, including:

(i) The type of security (including the rating of any debt security);

(ii) The price at which the securities were purchased;

(iii) The first day on which any sale was made during this offering;

(iv) The size of the issue;

(v) The number of securities purchased by the Asset Manager for the specific Client Plan or Pooled Fund;

(vi) The identity of the underwriter from whom the securities were purchased;

(vii) The spread on the underwriting;

(viii) The price at which any such securities purchased during the period were sold; and

(ix) The market value at the end of such period of each security purchased during the period and not sold;

(2) Provide to the Independent Fiduciary in the quarterly report a representation that the Asset Manager has received a written certification signed by an officer of the Affiliated Broker-Dealer, as described in paragraph (g)(2) of this Section I, affirming that, as to each offering covered by this exemption during the past quarter, the Affiliated Broker-Dealer acted in compliance with Section I(e), (f), and (g) of this exemption, and that a copy of such certification will be provided to the Independent Fiduciary upon request;

(3) Disclose to the Independent Fiduciary that, upon request, any other reasonably available information regarding the covered transactions that the Independent Fiduciary requests will be provided, including, but not limited to:

(i) The date on which the securities were purchased on behalf of the plan;

(ii) The percentage of the offering purchased on behalf of all Client Plans and Pooled Funds; and

(iii) The identity of all members of the underwriting syndicate;

(4) Disclose to the Independent Fiduciary in the quarterly report, any instance during the past quarter where the Asset Manager was precluded for any period of time from selling a security purchased under this

[7] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of Title II of the Code.

exemption in that quarter because of its status as an affiliate of the Affiliated Broker-Dealer and the reason for this restriction;

(5) Provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a single Client Plan, that the authorization to engage in the covered transactions may be terminated, without penalty, by the Independent Fiduciary on no more than five days' notice by contacting an identified person; and

(6) Provide explicit notification, prominently displayed in each quarterly report, to the Independent Fiduciary of a plan investing in a Pooled Fund, that the Independent Fiduciary may terminate investment in the Pooled Fund, without penalty, by contacting an identified person.

(o) Each single Client Plan shall have total net assets with a value of at least $50 million. In addition, in the case of a transaction involving an Eligible Rule 144A Offering on behalf of a single Client Plan, each such Client Plan shall have at least $100 million in securities, as determined pursuant to SEC Rule 144A (17 CFR 230.144A). In the case of a Pooled Fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having total net assets with a value of at least $50 million. For purchases involving an Eligible Rule 144A Offering on behalf of a Pooled Fund, the $100 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having at least $100 million in assets and the Pooled Fund itself qualifies as a QIB, as determined pursuant to SEC Rule 144A (17 CFR 230.144A(a)(F)).

For purposes of the net asset tests described above, where a group of Client Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement or the $100 million net asset requirement may be met by aggregating the assets of such Client Plans, if the assets are pooled for investment purposes in a single master trust.

(p) The Asset Manager qualifies as a "qualified professional asset manager" (QPAM), as that term is defined under Part V(a) of PTE 84–14 (49 FR 9494, 9506, March 13, 1984) and, in addition, has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

(q) No more than 20 percent of the assets of a Pooled Fund, at the time of a covered transaction, is comprised of assets of employee benefit plans maintained by the Asset Manager, the Affiliated Broker-Dealer, or an affiliate for their own employees, for which the Asset Manager, the Affiliated Broker-Dealer, or an affiliate exercises investment discretion.

(r) The Asset Manager and the Affiliated Broker-Dealer maintain, or cause to be maintained, for a period of six years from the date of any covered transaction such records as are necessary to enable the persons described in Section I(s) of this exemption to determine whether the conditions of this exemption have been met, except that —

(1) No party in interest with respect to a Client Plan, other than the Asset Manager and the Affiliated Broker-Dealer, shall be subject to a civil penalty under section 502(i) of the Act or the sanctions imposed by section 4975(a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by Section I(s); and

(2) A prohibited transaction shall not be considered to have occurred if, due to circumstances beyond the control of the Asset Manager or the Affiliated Broker-Dealer, such records are lost or destroyed prior to the end of the six-year period.

(s)(1) Except as provided in subparagraph (2) of this Section I(s) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in Section I(r) are unconditionally available at their customary location for examination during normal business hours by —

(i) Any duly authorized employee or representative of the Department, the Internal Revenue Service, or the SEC;

(ii) Any fiduciary of a Client Plan, or any duly authorized employee or representative of such fiduciary;

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a Client Plan, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a Client Plan, or duly authorized employee or representative of such participant or beneficiary;

(2) None of the persons described in subparagraphs (s)(1)(ii)—(iv) of this Section I shall be authorized to examine trade secrets of the Asset Manager or the Affiliated Broker-Dealer, or commercial or financial information which is privileged or confidential; and

(3) Should the Asset Manager or the Affiliated Broker-Dealer refuse to disclose information on the basis that such information is exempt from disclosure pursuant to Section I (s)(2) above, the Asset Manager shall, by the close of the (thirtieth)(30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

Section II. Definitions

(a) The term "Asset Manager" means any asset management affiliate of any Applicant (as "affiliate" is defined in Section II(c)) that meets the requirements of this exemption.

(b) The term "Affiliated Broker-Dealer" means any broker-dealer affiliate of any Applicant (as "affiliate" is defined in paragraph (c) of this Section II) that meets the requirements of this exemption. Such Affiliated Broker-Dealer may participate in an underwriting or selling syndicate as a manager or member. The term "manager" means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered, or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(c) The term "affiliate" of a person includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with such person;

(2) Any officer, director, partner, employee, or relative (as defined in section 3(15) of the Act) of such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(d) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(e) The term "Client Plan" means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act and whose assets are under the management of the Asset Manager, including a plan investing in a Pooled Fund (as "Pooled Fund" is defined in Section II(f) below).

(f) The term "Pooled Fund" means a common or collective trust fund or pooled investment fund maintained by the Asset Manager.

(g)(1) The term "Independent Fiduciary" means a fiduciary of a Client Plan who is unrelated to, and independent of, the Asset Manager and the Affiliated Broker-Dealer. For purposes of this exemption, a Client Plan fiduciary will be deemed to be unrelated to, and independent of, the Asset Manager and the Affiliated Broker-Dealer if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager or the Affiliated Broker-Dealer and represents that such fiduciary shall advise the Asset Manager if those facts change.

(2) Notwithstanding anything to the contrary in this Section II(g), a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Asset Manager or the Affiliated Broker-Dealer;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Asset Manager or the Affiliated Broker-Dealer for his or her own personal account in connection with any transaction described in this exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Asset Manager, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Client Plan sponsor or of the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Client Plan sponsor or of the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's investment manager/adviser and (B) the decision to authorize or terminate authorization for transactions described in Section I, then this Section II(g)(2)(iii) shall not apply.

(3) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

(4) In the case of existing Client Plans in a Pooled Fund, at the time the Asset Manager provides such Client Plans with initial notice pursuant to this exemption, the Asset Manager will notify the fiduciaries of such Client Plans that they must advise the Asset Manager, in writing, if they are not independent, within the meaning of this Section II(g).

(h) The term "security" shall have the same meaning as defined in section 2(36) of the Investment Company Act of 1940 (the 1940 Act), as amended (15 U.S.C. 80a–2(36)(1996)). For purposes of this exemption, mortgage-backed or other asset-backed securities rated by a Rating Organization will be treated as debt securities.

(i) The term "Eligible Rule 144A Offering" shall have the same meaning as defined in SEC Rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) under the 1940 Act.

(j) The term "qualified institutional buyer" or "QIB" shall have the same meaning as defined in SEC Rule 144A (SEC Rule 144A) (17 CFR 230.144A(a)(1)) under the Securities Act of 1933.

(k) The term "Rating Organizations" means Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors.

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of April 16, 2003.

Summary of Facts and Representations

The Applicants

1. LBHI, a Delaware corporation, is one of the leading global investment banks. LBHI and its numerous subsidiaries serve institutional, corporate, retirement plan, government and high net worth individual clients and customers. The businesses of LBHI and its subsidiaries include asset management;[8] capital raising for clients through securities underwriting and direct placements; corporate finance and strategic advisory services; merchant banking; securities sales and trading; research; and the trading of foreign exchange, derivative products and certain commodities. Hereinafter, LBHI, together with its affiliates including LBI shall be referred to as the "Asset Manager" when discussing their activities relating to investment advisory and/or investment management services. LBHI and its affiliates currently have approximately $21 billion in assets under management. LBI is a wholly owned direct subsidiary of LBHI and is a U.S. registered broker-dealer.

2. It is represented that the Applicants and their various affiliates are all regulated by other federal government agencies such as the SEC, as well as state government agencies, and industry self-regulatory organizations (*e.g.*, the New York Stock Exchange (NYSE) and the National Association of Securities Dealers).

Requested Exemption

3. The Applicants request a prohibited transaction exemption that would permit the purchase of securities by the Asset Manager for its ERISA-covered Client Plans, including any Pooled Funds, from underwriting or selling syndicates in which the Affiliated Broker-Dealer participates as a manager or member. Such purchase would be made by the Asset Manager for the Client Plans from an underwriter or broker-dealer, other than the Affiliated Broker-Dealer, and such Affiliated Broker-Dealer would receive no selling concessions in connection with the securities sold to the Client Plans. If granted, the proposed exemption would be effective as the date the proposed exemption is published in the **Federal Register**.

4. The Applicants represent that if the Affiliated Broker-Dealer is a member of an underwriting or selling syndicate, the Asset Manager may purchase underwritten securities for Client Plans in accordance with Part III of Class PTE 75–1, (40 FR 50845, October 31, 1975). Part III of this class exemption provides limited relief from the Act's prohibited transaction provisions for plan fiduciaries that purchase securities from an underwriting or selling syndicate of which the fiduciary or an affiliate is a member. However, such relief is not available if the Affiliated Broker-Dealer manages the underwriting or selling syndicate.

5. In addition, regardless of whether a fiduciary or its affiliate is a manager or merely a member of an underwriting or selling syndicate, PTE 75–1 does not provide exemptive relief for the purchase of unregistered securities. This includes those securities that are purchased by an underwriter for resale to a "qualified institutional buyer" (*i.e.*, a QIB) pursuant to the SEC's Rule 144A under the 1933 Act. Rule 144A is commonly utilized in connection with sales of securities issued by foreign corporations to U.S. investors that are QIBs. Notwithstanding the unregistered nature of such shares, syndicates selling Rule 144A Securities are the functional equivalent of those selling registered securities.

[8] It should be noted that Lincoln Capital Fixed Income Management Company, LLC, a subsidiary of LBHI, acquired the fixed income management business of Lincoln Capital Asset Management Company (Lincoln) as of the close of business on January 31, 2003. Currently, the fixed income management business of Lincoln has approximately $27.4 billion in assets under management.

6. The Applicants represent that the Affiliated Broker-Dealer regularly serves as manager of underwriting or selling syndicates for registered securities, and as a manager or a member of underwriting or selling syndicates for Rule 144A Securities. Accordingly, the Asset Manager is currently unable to purchase on behalf of the Client Plans Rule 144A Securities sold in such offerings, resulting in such Client Plans being unable to participate in significant investment opportunities.

7. Since 1975, there has been a significant amount of consolidation in the financial services industry in the United States. As a result, there are more situations in which a plan fiduciary may be affiliated with the manager of an underwriting syndicate.[9] Further, many plans have expanded investment portfolios in recent years to include securities issued by foreign corporations. As a result, the exemption provided in PTE 75–1, Part III, is often unavailable for purchase of domestic and foreign securities that may otherwise constitute appropriate plan investments.[10]

Client Plan Investments in Offered Securities

8. The Applicants represent that the Asset Manager makes its investment decisions on behalf of, or renders investment advice to, Client Plans pursuant to the governing document of the particular Client Plan or Pooled Fund and the investment guidelines and objectives set forth in the management or advisory agreement. Because the Client Plans are covered by Title I of the Act, such investment decisions are subject to the fiduciary responsibility provisions of the Act.

9. The Applicants state, therefore, that the decision to invest in a particular offering is made on the basis of price, value, and a Client Plan's investment criteria, not on whether the securities are currently being sold through an underwriting or selling syndicate. The Applicants further state that, because the Asset Manager's compensation for its services is generally based upon assets under management, the Asset Manager has little incentive to purchase securities in an offering in which the Affiliated Broker-Dealer is an underwriter unless such a purchase is in the interests of Client Plans. If the assets under management do not perform well, the Asset Manager will receive less compensation and could lose clients, costs which far outweigh any gains from the purchase of underwritten securities.[11]

10. The Applicants state that the Asset Manager generally purchase securities in large blocks because the same investments will be made across several accounts. If there is a new offering of an equity or fixed income security that the Asset Manager wishes to purchase, it may be able to purchase the security through the offering syndicate at a lower price than it would pay in the open market, without transaction costs and with reduced market impact if it is buying a relatively large quantity. This is because a large purchase in the open market can cause an increase in the market price and, consequently, in the cost of the securities. Purchasing from an offering syndicate can thus reduce the costs to the Client Plans.

11. However, absent an exemption, if the Affiliated Broker-Dealer is a manager of a syndicate that is underwriting a securities offering, the Asset Manager will be foreclosed from purchasing any securities on behalf of its Client Plans from that underwriting syndicate. This will force the Asset Manager to purchase the same securities in the secondary market. In such a circumstance, the Client Plans may incur greater costs both because the market price is often higher than the offering price, and because of transaction and market impact costs. In turn, this will cause the Asset Manager to forego other investment opportunities because the purchase price of the underwritten security in the secondary market exceeds the price that the Asset manager would have paid to the selling syndicate.

Underwriting of Securities Offerings

12. The Applicants represent that the Affiliated Broker-Dealer currently manages and participates in firm commitment underwriting syndicates for registered offerings of both equity and debt securities. While equity and debt underwritings may operate differently with regard to the actual sales process, the basic structures are the same. In a firm commitment underwriting, the underwriting syndicate acquires the securities from the issuer and then sells the securities to investors.

13. The Applicants represent that while, as a legal matter, a selling syndicate assumes the risk that the underwritten securities might not be fully sold, as a practical matter, this risk is reduced, in marketed deals, through "building a book" (*i.e.*, taking indications of interest from potential purchasers) prior to pricing the securities. Accordingly, there is no incentive for the underwriters to use their discretionary accounts (or the discretionary accounts of their affiliates) to buy up the securities as a way to avoid underwriting liabilities.

14. Each selling syndicate has a lead manager, who is the principal contact between the syndicate and the issuer and who is responsible for organizing and coordinating the syndicate. The syndicate may also have co-managers, who generally assist the lead manager in working with the issuer to prepare the registration statement to be filed with the SEC and in distributing the underwritten securities. While equity syndicates typically include additional members that are not managers, more recently, membership in many debt syndicates has been limited to lead and co-managers.

15. If more than one underwriter is involved in a selling syndicate, the lead manager, who has been selected by the issuer of the underwritten securities, contacts other underwriters, and the underwriters enter into an "Agreement Among Underwriters." Most lead managers have a standing form of agreement. This document is then supplemented for the particular deal by sending an "invitation telex" or "terms telex" that sets forth particular terms to the other underwriters.

16. The arrangement between the syndicate and the issuer of the underwritten securities is embodied in an underwriting agreement, which is signed on behalf of the underwriters by one or more of the managers. In a firm commitment underwriting, the underwriting agreement provides, subject to certain closing conditions, that the underwriters are obligated to purchase the underwritten securities from the issuer in accordance with their respective commitments. This obligation is met by using the proceeds received from the buyers of the securities in the offering, although there is a risk that the underwriters will have to pay for a portion of the securities in the event that not all of the securities are sold.

17. The Applicants represent that, generally, the risk that the securities will not be sold is small because the underwriting agreement is not executed until after the underwriters have obtained sufficient indications of interest to purchase the securities from a sufficient number of investors to assure that all the securities being offered will be acquired by investors. Once the underwriting agreement is executed, the underwriters immediately begin contacting the investors to confirm the sales, first orally and then by written confirmation, and sales are finalized within hours and sometimes minutes. In registered transactions, the underwriters are particularly anxious to complete the sales as soon as possible because until they "break syndicate," they cannot enter the market. In many cases, the underwriters will act as market-makers for the security. A market-maker holds itself out as willing to buy or sell the security for its own account on a regular basis.

18. The Applicants represent that the process of "building a book" or soliciting indications of interest occurs as follows: In a registered equity offering, after a registration statement is filed with the SEC and, while it is under review by the SEC staff, representatives of the issuer of the securities and the selling syndicate managers conduct meetings with potential investors, who learn about the company and the underwritten securities. Potential investors also receive a preliminary prospectus. The underwriters cannot make any firm sales until the registration statement is declared effective by the SEC. Prior to the effective date, while the investors cannot become legally obligated to make a purchase, they indicate whether they have an interest in buying, and the managers compile a "book" of investors who are willing to "circle" a particular portion of the issue. These indications of interest are sometimes referred to as a "soft circle" because investors cannot be legally bound to buy the securities until the registration statement is effective. However, the Applicants represent that investors generally follow through on their indications of interest, and would be expected to do so, barring any sudden adverse developments (in which case it is likely that the offering would be withdrawn or the price range modified and the process restarted), because, if the investors that gave an indication of interest do not follow through, the underwriters may be reluctant to include them in future offerings.

19. Assuming that the marketing efforts have produced sufficient indications of interest, the Applicants represent that the issuer of the securities and the selling syndicate managers together will set the price of the securities and ask the SEC to declare the registration effective. After the registration statement becomes effective and the underwriting agreement is executed, the underwriters contact those investors that have indicated an interest in purchasing securities in the offering to execute the sales. The Applicants represent that offerings are often oversubscribed, and many have an over-allotment option that the underwriters can exercise to acquire additional shares from the issuer. Where an offering is oversubscribed, the underwriters decide how to allocate the securities among the potential purchasers. However, if an issue is a "hot issue," (*i.e.*, it is selling in the market at a premium above its offering price) the underwriters may not hold this hot issue in their own accounts, nor sell it to their employees, officers and directors. Subject to certain exceptions, a hot issue may also not be sold to the personal accounts of those responsible for investing for others, such as officers of banks, insurance companies, mutual funds, and investment advisers. (NASD Manual & Notices to Members, IM–2110–1)

20. The Applicants represent that debt offerings may be "negotiated" offerings, "competitive bid" offerings, or "bought deals." "Negotiated" offerings, which often involve non-investment grade securities, are conducted in the same manner as an equity offering with regard to when the underwriting agreement is executed and how the securities are offered. "Competitive bid" offerings, in which the issuer determines the price for the securities through competitive bidding rather than negotiating the price with the underwriting syndicate, are performed under "shelf" registration statements pursuant to the SEC's Rule 415 under the 1933 Act (17 CFR 230.415).[12]

21. In a competitive bid offering, prospective lead underwriters will bid against one another to purchase debt securities, based upon their determinations of the degree of investor interest in the securities. Depending on the level of investor interest and the size of the offering, a bidding lead underwriter may bring in co-managers to assist in the sales process. Most of the securities are frequently sold within hours, or sometimes even less than an hour, after the securities are made available for purchase.

22. Because of market forces and the requirements of Rule 415, the competitive bid process is generally available only to issuers of investment-grade securities who have been subject to the reporting requirements of the 1934 Act for at least one (1) year.

23. Occasionally, in highly-rated debt issues, underwriters "buy" the entire deal off of a "shelf registration" before obtaining indications of interest. These "bought" deals involve issuers whose securities enjoy a deep and liquid secondary market, such that an underwriter has confidence without pre-marketing that it can identify purchasers for the bonds.

Structure of Diversified Financial Services Firms

24. The Applicants represent that there are internal policies in place that restrict contact and the flow of information between investment management personnel and non-investment management personnel in the same or affiliated financial service firms. These policies are designed to protect against "insider trading," *i.e.*, trading on information not available to the general public that may affect the market price of the securities. Diversified financial services firms must be concerned about insider trading problems because one part of the firm—*e.g.*, the mergers and acquisitions group—could come into possession of non-public information regarding an upcoming transaction involving a particular issuer, while another part of the firm—*e.g.*, the investment management group—could be trading in the securities of that issuer for its clients.[13]

25. The Applicants represent that their business separation policies and procedures are also structured to restrict the flow of any information to or from the Asset Manager that could limit its flexibility in managing client assets, and of information obtained or developed by the Asset Manager that could be used by other parts of the organization, to the

[9] For additional information, please see the studies submitted by the Morgan Guaranty Trust Company of New York and J.P. Morgan Investment Management Inc. in connection with the exemption application underlying PTE 2000–25.

[10] Pursuant to the Gramm-Leach-Bliley Act, signed into law in November 1999, certain provisions of the Glass-Steagall Act and the Bank Holding Company Act of 1956, as amended, were repealed. The effect of such law will likely be further consolidation in the industry. The law facilitates cross-ownership and control among bank holding companies and securities firms through the creation of "financial holding companies" that are permitted to engage in a broad range of financial and related activities, including underwriting and broker-dealer activities.

[11] In fact, under the terms of the proposed exemption set forth below, the Affiliated Broker-Dealer may receive no compensation or other consideration, direct or indirect, in connection with any transaction that would be permitted under the proposed exemption.

[12] Rule 415 permits an issuer to sell debt as well as equity securities under an effective registration statement previously filed with the SEC by filing a post-effective amendment or supplemental prospectus.

[13] The Insider Trading and Securities Fraud Enforcement Act of 1988 required broker-dealers to maintain and enforce written policies and procedures that are "reasonably designed . . . to prevent misuse in violation of [the federal securities laws] . . . of material, nonpublic information by such broker or dealer or any person associated with such broker or dealer." (Section 15(f) of the 1934 Act (15 U.S.C. 780(f)); see also, Rules 342 and 351 of the NYSE and SEC Regulation M (17 CFR 242.100(b)(3)).

detriment of the Asset Manager's clients.

26. The Applicants represent that major clients of the Affiliated Broker-Dealer include investment management firms that are competitors of the Asset Manager. Similarly, the Asset Manager deals on a regular basis with broker-dealers that compete with the Affiliated Broker-Dealer. If special consideration were shown to an affiliate, such conduct would likely have an adverse effect on the relationships of the Affiliated Broker-Dealer and of the Asset Manager with firms that compete with such affiliate. Therefore, a goal of the Applicants' business separation policies is to avoid any possible perception of improper flows of information between the Affiliated Broker-Dealer and the Asset Manager, in order to prevent any adverse impact on client and business relationships.

Underwriting Compensation

27. The Applicants represent that the underwriters are compensated through the "spread," or difference, between the price at which the underwriters purchase the securities from the issuer and the price at which the securities are sold to the public. The spread is divided into three components.

28. The first component includes the management fee, which generally represents an agreed upon percentage of the overall spread and is allocated among the lead manager and co-managers. Where there is more than one managing underwriter, the way the management fee will be allocated among the managers is generally agreed upon between the managers and the issuer prior to soliciting indications of interest. Thus, the allocation of the management fee is not reflective of the amount of securities that a particular manager sells in an offering.

29. The second component is the underwriting fee, which represents compensation to the underwriters (including the non-managers, if any) for the risks they assume in connection with the offering and for the use of their capital. This component of the spread is also used to cover the expenses of the underwriting that are not otherwise reimbursed by the issuer of the securities.

30. The first and second components of the "spread" are received without regard to how the underwritten securities are allocated for sales purposes or to whom the securities are sold. The third component of the spread is the selling concession, which generally constitutes 60 percent or more of the spread. The selling concession compensates the underwriters for their actual selling efforts. The allocation of selling concessions among the underwriters generally follows the allocation of the securities for sales purposes. However, a buyer of the underwritten securities may designate other broker-dealers (who may be other underwriters, as well as broker-dealers outside the syndicate) to receive the selling concessions arising from the securities they purchase.

31. Securities are allocated for sales purposes into two categories. The first and larger category is the "institutional pot," which is the pot of securities from which sales are made to institutional investors. Selling concessions for securities sold from the institutional pot are generally designated by the purchaser to go to particular underwriters or other broker-dealers. If securities are sold from the institutional pot, the selling syndicate managers sometimes receive a portion of the selling concessions, referred to as a "fixed designation," [14] attributable to securities sold in this category, without regard to who sold the securities or to whom they were sold. For securities covered by this proposed exemption, however, the Affiliated Broker-Dealer may not receive, either directly or indirectly, any compensation that is attributable to the fixed designation generated by purchases of securities by the Asset Manager on behalf of its Client Plans.

32. The second category of allocated securities is "retail," which are the securities retained by the underwriters for sale to their retail customers. The underwriters receive the selling concessions from their respective retail retention allocations. Securities may be shifted between the two categories based upon whether either category is oversold or undersold during the course of the offering.

33. The Applicants assert that the Affiliated Broker-Dealer's inability to receive any selling concessions, or any compensation attributable to the fixed designations generated by purchases of securities by the Asset Manager's Client Plans, removes the primary economic incentive for the Asset Manager to make purchases that are not in the interests of its Client Plans from offerings for which the Affiliated Broker-Dealer is an underwriter. The reason is that the Affiliated Broker-Dealer will not receive any additional fees as a result of such purchases by the Asset Manager.

[14] A fixed designation is sometimes referred to as an "auto pot split."

Rule 144A Securities

34. The Applicants represent that a number of the offerings of Rule 144A Securities in which the Affiliated Broker-Dealer participates represent good investment opportunities for the Asset Manager's Client Plans. Particularly with respect to foreign securities, a Rule 144A offering may provide the least expensive and most accessible means for obtaining these securities. However, PTE 75–1, part III, does not cover Rule 144A Securities. Therefore, absent an exemption, the Asset Manager is foreclosed from purchasing such securities for its Client Plans in offerings in which the Affiliated Broker-Dealer participates.

35. The Applicants state that Rule 144A acts as a "safe harbor" exemption from the registration provisions of the 1933 Act for sales of certain types of securities to QIBs. QIBs include several types of institutional entities, such as employee benefit plans and commingled trust funds holding assets of such plans, which own and invest on a discretionary basis at least $100 million in securities of unaffiliated issuers.

36. Any securities may be sold pursuant to Rule 144A except for those of the same class or similar to a class that is publicly traded in the United States, or certain types of investment company securities. This limitation is designed to prevent side-by-side public and private markets developing for the same class of securities as is the reason that Rule 144A transactions are generally limited to debt securities.

37. Buyers of Rule 144A Securities must be able to obtain, upon request, basic information concerning the business of the issuer and the issuer's financial statements, much of the same information as would be furnished if the offering were registered. This condition does not apply, however, to an issuer filing reports with the SEC under the 1934 Act, for which reports are publicly available. The condition also does not apply to a "foreign private issuer" for whom reports are furnished to the SEC under Rule 12g3–2(b) of the 1934 Act (17 CFR 240.12g3–2(b)), or to issuers who are foreign governments or political subdivisions thereof and are eligible to use Schedule B under the 1933 Act (which describes the information and documents required to be contained in a registration statement filed by such issuers).

38. Sales under Rule 144A, like sales in a registered offering, remain subject to the protections of the anti-fraud rules of federal and state securities laws. These rules include section 10(b) of the 1934 Act and Rule 10b–5) thereunder (17 CFR 240.10b–5 and section 17(a) of the 1933 Act (15 USA 77a). Through these and other provisions, the SEC may use its full range of enforcement powers to exercise its regulatory authority over the market for Rule 144A Securities, in the event that it detects improper practices.

39. The Applicants represent that this potential liability for fraud provides a considerable incentive to the issuer of the securities and the members of the selling syndicate to insure that the information contained in a Rule 144A offering memorandum is complete and accurate in all material respects. Among other things, the lead manager typically obtains an opinion from a law firm, commonly referred to as a "10b–5" opinion, stating that the law firm has no reason to believe that the offering memorandum contains any untrue statement of material fact or omits to state a material fact necessary in order to make sure the statements made, in light of the circumstances under which they were made, are not misleading.

40. The Applicants represent that Rule 144A offerings generally are structured in the same manner as underwritten registered offerings. The major difference is that a Rule 144A offering uses an offering memorandum rather than a prospectus that is filed with the SEC. The marketing process is the same in most respects, except that the selling efforts are limited to contacting QIBs and there are no general solicitations for buyers (*e.g.* no general advertising). In addition, the Affiliated Broker-Dealer's role in these offerings is typically that of a lead or co-manager. Generally, there are no non-manager members in a Rule 144A selling syndicate. However, the Applicants request that the proposed exemption extend to authorization for situations where the Affiliated Broker-Dealer acts only as a syndicate member, not as a manager.

41. According to the Applicant, one of the policy objectives of Rule 144A was to attract more foreign issuers to the United States, and Rule 144A has been achieving this objective—from April 1990 through December 1993, the first three years of Rule 144A, over $25.6 billion in foreign securities was sold under Rule 144A placements. See SEC Staff Report on Rule 144A (August 18, 1994), [1994–95 Transfer Binder] Fed. Sec. L. Rep. ¶85,428 (Question 1). This figure continued to hold in 1998, at 30.4 percent, so that foreign issuer Rule 144A offerings have kept pace with the rapid growth of Rule 144A offerings overall. (Securities Data Company, Inc.)

Summary

41. In summary, the Applicants represent that the subject transactions have satisfied or will satisfy the statutory criteria for an exemption set forth under section 408(a) of the Act because:

(a) The Client Plans have gained or will gain access to desirable investment opportunities;

(b) In each offering, the Asset Manager has purchased or will purchase the securities for its Client Plans from an underwriter or broker-dealer other than the Affiliated Broker-Dealer;

(c) Conditions similar to those of PTE 75–1, part III, have restricted or will restrict the types of securities that may be purchased, the types of underwriting or selling syndicates and issuers involved, and the price and timing of the purchases;

(d) The amount of securities that the Asset Manager may purchase on behalf of Client Plans has been subject to or will be subject to percentage limitations;

(e) The Affiliated Broker-Dealer has not permitted and will not be permitted to receive, either directly, indirectly or through designation, any selling concession with respect to the securities sold to the Asset Manager for the account of a Client Plan;

(f) Prior to any purchase of securities, the Asset Manager has made or will make the required disclosures to an Independent Fiduciary of each Client Plan and obtain written authorization;

(g) The Asset Manager has provided or will provide regular reporting to an Independent Fiduciary of each Client Plan with respect to all securities purchased pursuant to the exemption, if granted;

(h) Each Client Plan has been subject or will be subject to a minimum size requirement of at least $50 million ($100 million for Eligible Rule 144A offerings),[15] with certain exceptions for Pooled Funds; and

(i) The Asset Manager is required or will be required to have total assets under management in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

Discussion of Proposed Exemption

1. The exemptive relief for underwritings proposed herein is similar to that provided in PTE 75–1, Part III. Under PTE 75–1, exemptive relief is subject to a number of conditions and limitations, including the following: (1) The plan fiduciary or its affiliate may not be a manager of the underwriting or selling syndicate; (2) the purchase must be from a person other than the plan fiduciary or its affiliate; (3) the types of securities that may be purchased and the price and timing of the purchases are circumscribed; (4) the amount of securities purchased on behalf of each plan may not exceed three percent of the offering; and (5) the consideration paid may not exceed three percent of the plan's total net assets (one percent, if the consideration involved exceeds $1 million).

2. The exemptive relief proposed herein differs from that provided by PTE 75–1 in the following respects: (1) The proposed exemption covers transactions where the plan fiduciary is affiliated with a manager, as well as a member, of the underwriting or selling syndicate;[16] (2) the proposed exemption covers purchases of Rule 144A Securities;[17] (3) percentage limitations on the amount of securities that may be purchased have been modified to provide an aggregate limitation on a fiduciary's purchases for all Client Plans from a particular offering; and (4) the proposed exemption provides additional conditions, including the following: (a) The transaction is not part of an agreement, arrangement, or understanding designed to benefit the plan fiduciary or its affiliate; (b) neither a manager nor a member of the underwriting or selling syndicate may

[15] SEC Rule 10f–3(a)(4) (17 CFR 270.10f–3(a)(4)) states that the term "Eligible Rule 144A Offering" means an offering of securities that meets the following conditions:

(i) The securities are offered or sold in transactions exempt from registration under section 4(2) of the Securities Act of 1933 (15 U.S.C. 77d(2)), Rule 144A thereunder, or Rules 501–508 thereunder;

(ii) The securities are sold to persons that the seller and any person acting on behalf of the seller reasonably believe to include QIBs, as defined in Rule 144A; and

(iii) The seller and any person acting on behalf of the seller reasonably believe that the securities are eligible for resale to other QIBs pursuant to Rule 144A.

[16] In restricting the scope of PTE 75–1, Part III, to exclude transactions where the plan fiduciary is affiliated with the syndicate manager, the Department was concerned that the syndicate manager, as distinguished from a mere member of a syndicate, has a greater interest in the success of the sale of the new securities. If an affiliate of the managing underwriter is an investment manager for plans, those plans could provide a potential market for the less attractive offerings of underwritten securities. This proposed exemption contains certain safeguards and conditions that are designed to address these potential conflict of interest situations.

[17] The Department notes that the provisions of the Act do not preclude plans from investing in any securities sold by an underwriting or offering syndicate, including those securities sold pursuant to Rule 144A. The exemptive relief provided by PTE 75–1, Part III, and the additional relief sought here are required because of the affiliation between the plan fiduciary and a member of the underwriting or selling syndicate.

receive any selling concessions with respect to the securities purchased for Client Plans by its affiliate; (c) prior to any purchase of securities on behalf of a Client Plan, certain disclosures are provided to an Independent Fiduciary of each such Client Plan and written authorization is obtained; (d) periodic reporting regarding the covered transactions is provided to an Independent Fiduciary of each Client Plan; and (e) investing plans and their investment managers must meet certain minimum size requirements.

Types of Securities and Offerings

3. In Section I, paragraphs (a) and (b) of the proposed exemption are derived from PTE 75–1, Part III, and provide the following: (1) The securities [16] are part of an issue registered under the 1933 Act, or if exempt from registration under such Act, fall within specified categories: (a) Issued or guaranteed by the United States; (b) issued by a bank; (c) exempt from registration under a federal statute other than the 1933 Act; (d) registered under the 1934 Act; or (e) are part of an "Eligible Rule 144A Offering;[19] (2) the securities are purchased for not more than the offering price within a specific time period,[20] subject to certain specified exceptions for rights offerings and debt offerings;[21] (3) the securities are sold pursuant to a firm-commitment offering, in which the syndicate members are committed to purchasing all the securities being offered, subject to certain exceptions for rights offerings and over-allotment options; and (4) the issuer of the securities has been in continuous operation for not less than three years (including the operation of any predecessors), with certain exceptions.

Percentage Limitations on the Amount of Purchased Securities

4. In Section I, paragraphs (c) and (d) of the proposed exemption contain percentage limitations applicable to the amount of purchased securities. The first percentage test in paragraph (c) provides that the amount of securities to be purchased by the Asset Manager on behalf of a particular Client Plan may not exceed three percent of the total amount of securities being offered. Paragraph (c) further provides percentage limitations on the aggregate amount of securities that the Asset Manager may purchase for all its Client Plans, including Pooled Funds, from the total amount of securities being offered: (1) 10 percent for equity securities; (2) 35 percent for debt securities rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, *i.e.*, Standard & Poor's Rating Services, Moody's Investors Service, Inc., Duff & Phelps Credit Rating Co., or Fitch IBCA, Inc., or their successors (collectively, the Rating Organizations); and (3) 25 percent for debt securities rated in the fifth or sixth highest rating categories by at least one of the Rating Organizations.[22]

5. Paragraph (d) of Section I provides that the consideration to be paid by the Client Plan in purchasing the offered securities may not exceed three percent of the fair market value of such Client Plan's total net assets. However, paragraph (d) eliminates the requirement contained in PTE 75–1, Part III, that, if the consideration involved exceeds $1 million, it may not exceed one percent of the fair market value of the plan's total assets. This modification by the Department parallels the amendment in 1997 of the SEC Rule 10f–3.

Underwriting Compensation

6. The proposed exemption requires in paragraph (e) of Section I that any purchase of securities by the Asset Manager pursuant to the exemption may not be part of an agreement, arrangement, or understanding designed to benefit the Asset Manager or an affiliate.[23] Paragraph (f) of Section I further provides that the Affiliated Broker-Dealer may not receive, either directly, indirectly, or through designation, any selling concession or other consideration that is based upon the amount of securities purchased by the Asset Manager's Client Plans pursuant to the proposed exemption. The Affiliated Broker-Dealer may also not receive, either directly or indirectly, that portion of the fixed designation that is attributable to securities purchased pursuant to the exemption. The Affiliated Broker-Dealer is not precluded from receiving management fees, underwriting fees, or other consideration that is not based upon the amount of securities actually sold to the Asset Manager's Client Plans.

7. Paragraph (g) of section I provides that the amount the Affiliated Broker-Dealer receives in management fees, underwriting fees, or other compensation may not be increased for the purpose of offsetting the reduction of the Affiliated Broker-Dealer's compensation from selling concessions. Further, the Affiliated Broker-Dealer must provide the Asset Manager with a written certification, signed by an officer of the Affiliated Broker-Dealer, that the Affiliated Broker-Dealer complied with the underwriting compensation requirements found in paragraphs (e), (f), and (g) of section I of the proposed exemption, in any offering where the Asset Manager purchased securities for its Client Plans.[24]

Disclosures

8. The proposed exemption requires in paragraphs (h) and (l) of section I that the Asset Manager obtain written authorization from an Independent Fiduciary of each Client Plan, including each fiduciary of a plan that invests in a Pooled Fund, before engaging in the covered transactions.[25] Prior to, and subsequent to, execution of the written authorization, the Asset Manager must provide certain disclosures described in Section I (i), (j), (k), and (m) to an Independent Fiduciary of each Client Plan.

Periodic Reporting

9. In Section I, paragraph (n) of the proposed exemption requires that at least on a quarterly basis, the Asset Manager provide a report to an Independent Fiduciary of each Client Plan and of each plan investing in a Pooled Fund containing information about the Covered Securities purchased during the previous quarter. The Department modeled paragraph (n), in part, on the reporting provisions of Rule 10f–3 (17 CFR 270.10f–3).[26]

10. Because the transactions covered by this proposed exemption are similar in nature to those covered by Rule 10f–3, the Department has determined that it is appropriate to adopt similar reporting requirements as in that rule. However, in addition to the items required to be reported by investment companies under Rule 10f–3, the proposed exemption requires that the Asset Manager report to the Independent Fiduciary the price at which any securities purchased during the reporting period were sold and the market value at the end of the reporting period of each security purchased during such period.[27]

11. The additional information should help the Independent Fiduciary monitor compliance with the exemption, if granted. The Independent Fiduciaries of the Client Plans would play a similar role to that of the Board of Directors of an investment company, *i.e.*, they have a fiduciary duty to monitor the activities of the Asset Manager. In monitoring compliance, the Independent Fiduciary should bear in mind that the Asset Manager's subsequent decision to hold or sell a security purchased pursuant to the exemption, would not be covered by the exemption, if granted.[28]

12. Further, the Asset Manager must report any instance during the past quarter where the Asset Manager was precluded from selling any security purchased under the exemption for any period of time because of its status as an affiliate of the Affiliated Broker-Dealer. Such a situation could arise where a security was purchased by the Asset Manager pursuant to this proposed exemption on the first day of the offering and the rest of the offering was not selling well. In this situation, SEC Regulation M,[29] or the general anti-fraud or anti-manipulation provisions of the securities laws,[30] may limit the Asset Manager's ability to subsequently trade in that security, although these restrictions will generally not apply to the Asset Manager if the proper business separations are in place between the Affiliated Broker-Dealer and the Asset Manager. (see, *e.g.*, Regulation M, 17 CFR 242.100(b)(3)). Should the Asset Manager's ability to trade a security purchased on behalf of a Client Plan be restricted, this information may be relevant to the decision whether or not to continue to permit purchases under the exemption.

Minimum Size Requirements

13. The proposed exemption applies only to Client Plans with total net assets of at least $50 million, as provided in paragraph (o) of Section I. In the case of a Pooled Fund, however, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such Pooled Fund are held by plans having total net assets of at least $50 million. In the case of an Eligible Rule 144A Offering, each Client Plan must have at least $100 million in securities. For a Pooled Fund, the $100 million requirement will be met if 50 percent or more of the units of

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[16] With respect to any purchase of asset-backed securities by a Client Plan, the Department notes that this proposed exemption provides relief only for the transactions described herein and does not cover any additional prohibited transactions that may occur as a result of a purchase of such securities. For example, additional prohibited transactions may occur by operation of the "look-through rule" contained in the Department's regulation defining "plan assets" for purposes of plan investments (see 29 CFR 2510.3–101). Such additional prohibited transactions may be covered by one of the Department's existing individual exemptions for asset-backed securities. A listing of such exemptions is provided in the text of the operative language of PTE 2002–41 (67 FR 54487, August 22, 2002), which granted an amendment to these exemptions.

Further, the Department has noted that, under the Department's plan asset regulation, if a plan invests in a publicly-offered security, the plan's assets will not include, solely by reason of such investment, any of the underlying assets of the entity issuing the security (*i.e.*, the "look-through rule" will not apply and the operations of the entity will not be subject to scrutiny under the prohibited transaction provisions of the Act). The regulation defines a "publicly-offered" security as one that is freely transferable, widely-held, and registered under the federal securities laws. For this purpose, a class of securities is considered "widely held" if it is owned by 100 or more investors who are independent of the issuer and of one another (see 29 CFR 2510.3–101(b)(3)).

[19] In Section I, paragraph (a)(1)(ii) of the proposed exemption requires that if the securities are equity securities in an Eligible Rule 144A Offering, the offering syndicate shall obtain a legal opinion regarding the adequacy of the disclosure in the offering memorandum. This condition may be satisfied by the type of "10b–5" opinion customarily obtained in connection with such offerings. The Department believes that requiring such review by a law firm will help insure that the offering memorandum meets federal securities law standards. The Department notes that in Section I, paragraph (c) of the proposed exemption requires debt securities to be rated by at least one independent nationally recognized statistical rating organization, thus insuring that sufficient information about those securities and their issuer will be available to investors.

[20] The language regarding the timing of the purchase differs slightly from PTE 75–1, Part III. This language is based upon Rule 10f–3 (17 CFR 270.10f–3).

[21] In Section I, paragraph (a)(2)(ii) of the proposed exemption permits certain purchases of debt after the first day of the offering. Should the debt be downgraded after the offering commences and prior to being purchased for a Client Plan, the Department expects that the Asset Manager would consider whether, prior to purchase, the price was adjusted to reflect the downgrade.

[22] In Section I, paragraph (c)(4) of the proposed exemption requires that when calculating the percentages of securities purchased in an Eligible Rule 144A Offering, one must consider any concurrent public offering. The Department notes than any concurrent offering will necessarily be in a foreign securities market, since Rule 144A is unavailable where there is a concurrent domestic offering.

[23] The Department notes that the intent of the condition in paragraph (e) of Section I of the proposed exemption is not to deny direct benefits to other parties to a transaction but, rather, to exclude relief for transactions that are part of a broader overall agreement, arrangement, or understanding designed to benefit parties in interest.

[24] The certification required in paragraph (g)(2) of Section I of the proposed exemption is necessary because the Asset Manager and its Client Plans must monitor compliance with all the conditions of the exemption, if granted. However, the Asset Manager would not normally have access to the Affiliated Broker-Dealer's records detailing each underwriter's share of the compensation from a particular underwriting, as those records are considered confidential. Such records are required to be maintained pursuant to SEC and NASD rules and would, of course, be made available to the Department pursuant to the terms of the exemption, if granted.

[25] In this regard, the Department notes that the fiduciary responsibility provisions of the Act apply to the decision of an Independent Fiduciary to authorize the Asset Manager to invest in securities covered by this proposed exemption (the Covered Securities) and to the decision to continue such authorization. Section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. Accordingly, the Independent Fiduciary must act "prudently" with respect to the decision to authorize investment in these Covered Securities and the decision to continue such authorization.

The Department wishes to emphasize that it expects that the Independent Fiduciary, prior to authorizing investment in these Covered Securities, will fully understand the potential risks and rewards associated with investing in the initial offering of a security, following disclosure by the Asset Manager of all relevant information pertaining to the proposed transactions. Such consideration must necessarily include the fact that the Asset Manager's affiliate may be the managing underwriter. In addition, the Independent Fiduciary must be capable of periodically monitoring the actions taken by the Asset Manager in the performance of its duties. Thus, in considering whether to enter into transactions of the kind described herein, the Independent Fiduciary should take into account its ability to provide adequate oversight of the Asset Manager.

The Department further notes that, under section 405(a) of the Act, any plan fiduciary (including an investment manager) will have co-fiduciary liability for any breach of fiduciary responsibility of another plan fiduciary: (1) if he knowingly participates in or conceals such breach; (2) if, by his failure to comply with section 404(a)(1) of the Act, he enables another fiduciary to commit such a breach; or (3) if he has knowledge of the breach of another fiduciary and he fails to make a reasonable effort, under the circumstances, to remedy the breach. Finally, the granting of the exemption proposed herein should not be viewed as an endorsement by the Department of any plans' participation in the covered transactions.

[26] PTE 75–1, Part III, was based, in part, on a prior version of Rule 10f–3.

[27] See Section I(n) of the proposed exemption, below.

[28] The Department notes that this proposed exemption would provide relief from the self-dealing and conflict of interest provisions of Part 4 of Title I of the Act for purchases of securities by the Asset Manager from an underwriting or selling syndicate in which an affiliate of the Asset Manager participates as a manager or member of such syndicate. It would not provide relief from any acts of self-dealing not directly arising from a purchase of the Covered Securities. Thus, no relief would be available for any violation of section 406(b) of the Act that may arise after the purchase. For example, because it is well-documented that securities purchased in IPOs may not perform well in the long term, a violation of the Act could occur if the Asset Manager's decision regarding the holding or sale of the Covered Securities by the Client Plan was influenced by the interests of the Affiliated Broker-Dealer.

The Affiliated Broker-Dealer's interest in the security may extend beyond the sale of the security.

[29] A security might be put on a restricted list, for example, if the offering was not completely sold before the security begins trading in the market. In this instance, the restricted period for purposes of Regulation M (17 CFR 242.101(a))) continues until all of the securities are sold.

[30] These rules include section 17(a) of the 1933 Act (15 U.S.C. 77q(a)) and sections 9, 10(b), and 15(c) of the 1934 Act (15 U.S.C. 78i, 78j(b) and 78o(c)).

As the SEC noted in its preamble to Regulation M, addressing Regulation M's protections against price manipulation: "[I]mmediately following an offering * * * underwriters now engage in substantial syndicate-related market activity, and enforce penalty bids in order to reduce volatility in the market for the offering security" (62 FR 519, 521, January 3, 1997). The SEC defines penalty bid as "an arrangement that permits the managing underwriter to reclaim a selling concession from a syndicate member in connection with an offering when the securities originally sold by the syndicate member are purchased in syndicate covering transactions." SEC Regulation M (17 CFR 242.100(b)).

beneficial interest in such Pooled Fund are held by plans having at least $100 million in assets and the Pooled Fund itself qualifies as a QIB, as determined pursuant to Rule 144A (17 CFR 230.144A(a)(F)). The Department believes that these minimum size requirements are necessary to insure an appropriate level of plan investor sophistication for the covered transactions.

14. Further, the proposed exemption applies only if the Asset Manager is a "qualified professional asset manager" (QPAM), as defined under Part V(a) of PTE 84–14 (49 FR 9494, 9506, March 13, 1984),[31] subject to the following modifications: The Asset Manager has as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $5 billion and shareholders' or partners' equity in excess of $1 million.

FOR FURTHER INFORMATION CONTACT: Ms. Silvia Quezada of the Department at (202) 693–8553. (This is not a toll-free number.)

Goldman, Sachs & Co. and Its Affiliates Located in New York, New York

[Application No. D–11169]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32847, August 10, 1990).

Section I—Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(A) through (D) of the Act and the sanctions resulting from application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to any purchase or sale of securities, in the context of a portfolio liquidation or restructuring, between (i) Goldman, Sachs & Co. (Goldman) and its current and future affiliates, including certain foreign broker-dealers or banks (the Foreign Affiliates, as defined in Section III below), (collectively, the Applicant) and (ii) employee benefit plans (the Plans) with respect to which the Applicant is a party in interest, provided that the conditions set forth in Section II are satisfied.

[31] PTE 84–14 provides a class exemption, under certain conditions, for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including a single customer or pooled separate account) in which the plan has an interest and which is managed by a QPAM.

Section II—Conditions

A. The Applicant customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank;

B. The Applicant (including an affiliate) does not have discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, nor renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

Notwithstanding the foregoing, the Applicant may be a directed trustee (as defined in Section III below) with respect to the Plan assets involved in the transaction.

In addition, although the Applicant does not have discretionary authority or control over such Plan assets at the time of the transaction and has not used its discretion to appoint the transition broker-dealer, it may act as a fiduciary with respect to the Plan assets involved in the transaction, solely as: (i) The investment manager of such assets to be managed as an Index or Model-Driven Fund; or (ii) the investment manager of such assets who supplies a list of securities or other investments to be purchased, which list is prepared without regard to the identity of the broker-dealer and without reference to the portfolio being liquidated or restructured, and is substantially the same list that would be provided to other similarly situated investors with substantially similar investment guidelines and objectives, or is substantially similar to the investments in existing portfolios managed in the same style.

Lastly, a transaction will not fail to meet the requirements of this section if the Applicant is being terminated as a manager of the Plan assets involved in the transaction, its investment discretion is terminated prior to the commencement of the portfolio liquidation or restructuring, and the Applicant has not used its discretion to appoint the transition broker-dealer;

C. The transaction is a purchase or sale, for no consideration other than cash;

D. The terms of any transaction are at least as favorable to the Plan as those obtainable in a comparable arm's length transaction with an unrelated party;

E. An Independent Fiduciary has given prior approval that the transaction may be effectuated as a principal transaction and at a price that—

(1) For an equity security, is specified in advance by the Independent Fiduciary and is a stated dollar amount, or is based on an objective measure (as of a specified date or dates), including, but not limited to, the closing price, the opening price, or the volume-weighted average price; or

(2) For a fixed income security, is a stated dollar amount, or is within the bid and asked spread, as of the close of the relevant market (or another predetermined time on a specified date or dates), as reported by an independent third party reporting service or a publicly available electronic exchange or trading system;

F. In the case where the price for any transaction is not based on an objective measure, the Independent Fiduciary has given prior approval for the transaction, specifying whether the transaction is to be agency or principal, either on a security-by-security basis, or based on the whole portfolio or an identifiable part of the portfolio (such as all debt securities, all equity securities, all domestic securities, or the like);

G. All purchases and sales executed on a principal basis are effected within two days following the Independent Fiduciary's direction to purchase or sell a given security—except that, with the approval of the Independent Fiduciary, the Applicant may extend such initial period for a time not exceeding two additional days, on the same terms;

H. The Independent Fiduciary is furnished with confirmations including the relevant information required under Rule 10b–10 of the Securities Exchange Act of 1934 (the 1934 Act), to the extent required under Rule 10b–10, as well as a report, within five business days after the transaction is completed, containing the following information with respect to each security:

(1) The identity of the security;

(2) The date on which the transaction occurred;

(3) The quantity and price of the securities involved; and

(4) Whether the transaction was executed with the Applicant as principal or agent;

I. Each Plan shall have total net assets with a value of at least $100 million. For purposes of the net assets test, where a group of Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $100 million net assets requirement may be met by aggregating the assets of such Plans, if the assets are pooled for investment purposes in a single master trust;

J. The Applicant complies with all applicable securities or banking laws relating to the transaction;

K. Any Foreign Affiliate is a registered broker-dealer or bank subject to regulation by a governmental agency, as described in Section III, B, and is in compliance with all applicable rules and regulations thereof in connection with any transaction covered by the proposed exemption;

L. Any Foreign Affiliate, in connection with any transaction covered by the proposed exemption, is in compliance with the requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act, and Securities and Exchange Commission (SEC) interpretations thereof, providing for foreign affiliates a limited exemption from U.S. broker-dealer registration requirements;

M. Prior to any transaction, the Foreign Affiliate enters into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions. In this regard, the Foreign Affiliate must (i) agree to submit to the jurisdiction of the United States; (ii) agree to appoint an agent for service of process in the United States, which may be an affiliate (the Process Agent); and (iii) consent to service of process on the Process Agent;

N. The Applicant maintains, or causes to be maintained, within the United States for a period of six years from the date of any transaction, such records as are necessary to enable the persons described in Paragraph O, below, to determine whether the conditions of the exemption have been met, except that—

(1) A party in interest with respect to a Plan, other than the Applicant, shall not be subject to a civil penalty under section 502(i) of the Act, or the taxes imposed by section 4975 (a) and (b) of the Code, if such records are not maintained, or not available for examination, as required by Paragraph O; and

(2) This record-keeping condition shall not be violated if, due to circumstances beyond the Applicant's control, such records are lost or destroyed prior to the end of the six year period; and

O. Notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the Applicant makes the records referred to in Paragraph N, above, unconditionally available within the United States during normal business hours at their customary location to the following persons or a duly authorized representative thereof: (1) The Department, the Internal Revenue Service, or the SEC; (2) any fiduciary of a Plan; (3) any contributing employer to a Plan; (4) any employee organization any of whose members are covered by a Plan; and (5) any participant or beneficiary of a Plan. However, none of the persons described in Items (2) through (5) of this subsection is authorized to examine the trade secrets of the Applicant, or commercial or financial information which is privileged or confidential.

Section III—Definitions

A. The term "Goldman" means Goldman, Sachs & Co. and its current and future affiliates, including the Foreign Affiliates (as defined in Paragraph C, below); each domestic affiliate must be one of the following: (i) A broker-dealer registered under the 1934 Act; (ii) a reporting dealer who makes primary markets in securities of the United States Government or of any agency of the United States Government ("Government securities") and reports daily to the Federal Reserve Bank of New York its positions with respect to Government securities and borrowings thereon; or (iii) a bank supervised by the United States or a State. Goldman, including its current and future affiliates, including the Foreign Affiliates, are collectively referred to herein as "the Applicant."

B. The term "affiliate" shall include: (1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such person; (2) any officer, director, or partner, employee or relative (as defined in section 3(15) of the Act) of such person; and (3) any corporation or partnership of which such person is an officer, director or partner. For purposes of this definition, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

C. The term "Foreign Affiliate" means an affiliate of Goldman that is subject to regulation as a broker-dealer or bank by: (1) The Securities and Futures Authority or the Financial Services Authority in the United Kingdom, (2) the Federal Authority for Financial Services Supervision, *i.e.*, der Bundesanstalt fuer Finanzdienstleistungsaufsicht (the BAFin) in Germany, (3) the Ministry of Finance and/or the Tokyo Stock Exchange in Japan, (4) the Ontario Securities Commission and/or the Investment Dealers Association, or the Office of the Superintendent of Financial Institutions, in Canada, (5) the Swiss Federal Banking Commission in Switzerland, or (6) the Australian Prudential Regulation Authority or the Australian Securities & Investments Commission, and/or the Australian Stock Exchange Limited, in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

D. The term "security" shall include equities, fixed income securities, options on equity or fixed income securities, government obligations, and any other instrument that constitutes a security under U.S. securities laws. The term "security" does not include swap agreements or other notional principal contracts.

E. The term "index" means a securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(i) Engaged in the business of providing financial information, evaluation, advice, or securities brokerage services to institutional clients,

(ii) A publisher of financial news or information, or

(iii) A public securities exchange or association of securities dealers;

(2) The index is created and maintained by an organization independent of the Applicant; and

(3) The index is a generally accepted standardized index of securities that is not specifically tailored for the use of the Applicant.

F. The term "Index Fund" means any investment fund, account, or portfolio trusteed or managed by the Applicant, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile, and other characteristics of an independently maintained securities index (as "index" is defined in Paragraph E, above) by either (i) replicating the same combination of securities that compose such index, or (ii) sampling the securities that compose such index based on objective criteria and data;

(2) For which the Applicant does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of "plan assets"—plan investments); and

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

G. The term "Model-Driven Fund" means any investment fund, account, or portfolio trusteed or managed by the Applicant, in which one or more investors invest, and—

(1) Which is composed of securities, the identity of which and the amount of which, are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager, to transform an Index (as defined in Paragraph E, above);

(2) Which contains "plan assets" subject to the Act, pursuant to the Department's regulations (see 29 CFR 2510.3–101, Definition of "plan assets"—plan investments); and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Fund, or the utilization of any specific objective criteria, that is intended to benefit the Applicant or any party in which the Applicant may have an interest.

H. The term "Plan" means an employee benefit plan that is subject to the fiduciary responsibility provisions of the Act.

I. The term "Independent Fiduciary" means a fiduciary of a Plan who is unrelated to, and independent of, the Applicant. For purposes of the proposed exemption, a Plan fiduciary will be deemed to be unrelated to, and independent of, the Applicant if such fiduciary represents that neither such fiduciary, nor any individual responsible for the decision to authorize or terminate authorization for transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant and represents that such fiduciary shall advise the Applicant if those facts change.

(1) Notwithstanding anything to the contrary in this Section III, I, a fiduciary is not independent if:

(i) Such fiduciary directly or indirectly controls, is controlled by, or is under common control with the Applicant;

(ii) Such fiduciary directly or indirectly receives any compensation or other consideration from the Applicant for his or her own personal account in connection with any transaction described in the proposed exemption;

(iii) Any officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Applicant, responsible for the transactions described in Section I, is an officer, director, or highly compensated employee (within the meaning of section 4975(e)(2)(H) of the Code) of the Plan sponsor or the fiduciary responsible for the decision to authorize or terminate authorization for transactions described in Section I. However, if such individual is a director of the Plan sponsor or the responsible fiduciary, and if he or she abstains from participation in (A) the choice of the Plan's broker-dealer or bank executing the transactions covered herein, and (B) the decision to authorize or terminate authorization for transactions described in Section I, then Section III, I(1)(iii) shall not apply.

(2) The term "officer" means a president, any vice president in charge of a principal business unit, division or function (such as sales, administration or finance), or any other officer who performs a policy-making function for the entity.

J. The term "directed trustee" means a Plan trustee whose powers and duties with respect to any assets of the Plan involved in the portfolio liquidation or restructuring are limited to (i) the provision of nondiscretionary trust services to the Plan, and (ii) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services is discretionary. For purposes of the proposed exemption, a person who is otherwise a directed trustee will not fail to be a directed trustee solely by reason of having been delegated, by the sponsor of a master or prototype Plan, the power to amend such Plan.

Effective Date: This proposed exemption, if granted, will be effective as of February 6, 2003.

Summary of Facts and Representations

1. The Goldman, Sachs entities (the GS Entities) collectively form a leading global investment banking, securities and investment management firm that provide a wide range of services worldwide to a substantial and diversified client base that includes corporations, financial institutions, governments, and high-net-worth individuals. The Goldman, Sachs Group, Inc. is a financial holding company incorporated under Delaware law in May 1999 and headquartered in New York, New York, and is the parent company of Goldman, Sachs & Co. (*i.e.*, Goldman) and other principal subsidiaries. As of May 31, 2002, the GS Entities collectively had approximately $327.2 billion in assets, and approximately $18.86 billion in shareholders' equity.

2. Goldman's Foreign Affiliates that are covered by the proposed exemption are subject to regulation as a broker-dealer or bank by the following: (i) The Securities and Futures Authority or the Financial Services Authority in the United Kingdom, (ii) the Federal Authority for Financial Services Supervision, *i.e.*, the BAFin in Germany, (iii) the Ministry of Finance and/or the Tokyo Stock Exchange in Japan, (iv) the Ontario Securities Commission and/or the Investment Dealers Association, or the Office of the Superintendent of Financial Institutions, in Canada, (v) the Swiss Federal Banking Commission in Switzerland, or (vi) the Australian Prudential Regulation Authority or the Australian Securities & Investments Commission, and/or the Australian Stock Exchange Limited, in Australia, or any governmental regulatory authority that is a successor in interest to any such regulator.

The Applicant requests an individual exemption for Goldman and its current and future affiliates, including the Foreign Affiliates identified above, which would permit principal transactions with employee benefit plans (*i.e.*, the Plans), as described herein.

The Applicant represents that the Foreign Affiliates are subject to regulation by a governmental agency in the foreign country in which they are located. The Applicant states that registration of a foreign broker-dealer or bank with the governmental agency in these cases addresses regulatory concerns similar to those addressed by registration of a broker-dealer with the SEC under the 1934 Act. The rules and regulations set forth by the above-referenced agencies and the SEC share a common objective: the protection of the investor by the regulation of securities markets. The foreign regulatory regimes have been described in detail in numerous other exemptions previously granted by the Department [see, *e.g.*, Prohibited Transaction Exemption (PTE) 2000–57 (65 FR 56341, September 18, 2000), granted to Goldman, Sachs & Co.].

Further, the Applicant represents that, in connection with the transactions covered by the proposed exemption, the Foreign Affiliates' compliance with any applicable requirements of Rule 15a–6 (17 CFR 240.15a–6) of the 1934 Act (as discussed further in Item 9, below), and SEC interpretations thereof, providing for foreign affiliates a limited exemption from U.S. registration requirements, will offer additional protections to the Plans.

3. The Applicant represents that it customarily purchases and sells securities for its own account in the ordinary course of its business as a broker-dealer or bank. Such trades are referred to as principal transactions. In the subject principal transactions with Plans, occurring in the context of a portfolio liquidation or restructuring, the Applicant may be a party in interest with respect to such Plans.

The Applicant believes that the principal transactions at issue may fall outside the scope of relief provided by PTE 75–1 (40 FR 50845, October 31, 1975), Part II,[32] because that class exemption is unavailable where the broker-dealer's affiliate is the trustee of a Plan, even if only a directed trustee. In addition, because PTE 75–1 provides an exemption only for U.S. registered broker-dealers and U.S. banks, it is unavailable for the Applicant's Foreign Affiliates.[33] Thus, the Applicant seeks an individual exemption permitting it to execute principal transactions with Plans in the situations described above.

As a condition of the proposed exemption, the Applicant (including an affiliate) may not have discretionary authority or control with respect to the investment of the Plan assets involved in the transaction, nor render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets. However, the Applicant may be a directed trustee of the Plan (as discussed further in Item 5, below).

In addition, this condition will be deemed met if the Applicant is the "legacy manager" whose appointment as a manager of plan assets has been terminated prior to the commencement of the portfolio liquidation or restructuring, since the legacy manager would not have been involved in the selection of the "transition broker-dealer" and would no longer be acting as a fiduciary with respect to the assets involved in the liquidation or restructuring.

This condition will also be met if the Applicant is the "destination manager," who was not involved in the selection of the transition broker-dealer but provides such broker-dealer with a list of securities to be purchased for the Plan with the proceeds of the securities being liquidated, so long as the list represents those securities in an Index or Model-Driven Fund.

Similarly, this condition will be met if the destination manager prepares for the Plan sponsor (*i.e.*, the Independent Fiduciary) a list of securities to be purchased for the Plan with the proceeds of the securities being liquidated, so long as that list is prepared without regard to the identity of the transition broker-dealer and without reference to the portfolio being liquidated or restructured, and is substantially the same list that would be provided to other similarly situated investors with substantially similar investment guidelines and objectives, or is substantially similar to the investments in existing portfolios managed in the same style.

Thus, the Applicant may be retained as an investment manager for the Plan with respect to some or all of the portfolio resulting from the liquidation or restructuring (as discussed further in Item 6, below), provided that an Independent Fiduciary has given prior approval for the principal transactions, as part of the liquidation or restructuring, and the other conditions set forth herein are met.[34]

4. The Applicant represents that when sponsors of Plans terminate an investment manager, it is customary to hire a broker-dealer to liquidate the portfolio of the terminated manager and/or create the portfolio of the newly hired manager. An Independent Fiduciary, generally the Plan sponsor, hires a broker-dealer to perform these so-called "transition services." The Independent Fiduciary instructs the broker-dealer to purchase or sell a list of securities within a specified period. The list of securities to be sold is from the portfolio held by the Plan at the time the manager is terminated. The list of securities to be purchased is from a list prepared by the new manager (who may or may not be affiliated with the Applicant). Generally, the transition broker-dealer takes both the legacy portfolios and the destination portfolios, matches any securities that appear in both, and allocates such securities to the appropriate destination managers ratably. Then the remaining legacy securities are sold, the cash proceeds placed in the appropriate custody account, and the destination securities are purchased.

The Applicant represents that, while the Independent Fiduciary may specify that the transactions are to be executed by the broker-dealer as agent in markets where such transactions are typical,[35] it is often the case that the markets involved require principal transactions, such as is the case for NASDAQ National Market securities or fixed income securities.

The Applicant represents that often the Independent Fiduciary and the transition broker-dealer will agree that certain principal transactions will be effected at a price determined by an objective reference outside the control of the transition broker-dealer, including, but not limited to, the opening or closing price of the security for the day on the principal exchange on which the security is traded, the volume-weighted average price[36] for the day, or the price as reported by an independent reporting service for that particular day. In such case, the Applicant represents that the price at which the principal transaction will occur will be determined by market forces and not by the broker-dealer.

Prior to any transaction that is not based on an objective reference for pricing, as in the case of a security that is not publicly traded, the Independent Fiduciary shall specify whether the transaction is to be agency or principal, either on a security-by-security basis, or based on the whole portfolio or an identifiable part of the portfolio (such as all debt securities, all equity securities, all domestic securities, or the like). According to the Applicant, the Independent Fiduciary can assess the fairness of pricing for a non-publicly-traded security by one of the following means: (i) Review the value at which the security is being carried by the Plan; (ii) review the price that other dealers are quoting and the prices at which the

[32] PTE 75–1, Part II, provides a class exemption, subject to certain conditions, from section 406(a) of the Act and section 4975(c)(1)(A) through (D) of the Code, for principal transactions between employee benefit plans and U.S. registered broker-dealers or U.S. banks that are parties in interest with respect to such plans. PTE 75–1, Part II(d) states, among other things, that "such broker-dealer, reporting dealer or bank is not a fiduciary with respect to the plan, and such broker-dealer, reporting dealer or bank is a party in interest or disqualified person with respect to the plan solely by reason of section 3(14)(B) of the Act or section 4975(e)(2)(B) of the Code, or by reason of a relationship to a person described in such sections."

[33] Goldman, and certain foreign affiliates thereof, obtained an individual exemption PTE 2000–57 (65 FR 56341, September 18, 2000) from the Department to engage in principal transactions, among other things, with employee benefit plans, effective April 15, 1999. In this regard, the Department notes that the relief provided by PTE 2000–57 may not cover the principal transactions described in this proposed exemption.

[34] The Department notes that the proposed exemption is unavailable for any principal transaction occurring upon or after the Applicant's assumption of responsibility as an investment manager for the Plan assets that would be involved in such transaction (notwithstanding the transactions described herein). Once the transition has been completed and the purchases and sales have been consummated, the destination manager will then assume fiduciary responsibility for the portfolio, and the proposed exemption will not apply to any subsequent principal transactions with an affiliate, as described herein, unless the manager is terminated (*i.e.*, a "legacy" investment manager).

[35] The Applicant represents that where securities are to be purchased or sold on an agency basis, the Applicant will comply with the safe harbor provided by 29 CFR 2510.3–21(d) for the execution of a securities transaction.

Further, the Department notes that PTE 86–128 (51 FR 41686, November 18, 1986) provides a class exemption permitting, among other things, persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions as an agent for the plan, provided the conditions set forth therein are met.

[36] For purposes of the proposed exemption, the term volume-weighted average price means the weighted average of the price of each trade that was reported for the security on a given day.

security has been trading in the recent past; or (iii) canvass other holders of the security regarding an appropriate trading price.

Regardless of the type of investment, any principal transaction will be for cash, and the terms at least as favorable to the Plan as those obtainable in a comparable arm's length transaction with an unrelated party.

5. The Applicant represents that purchases and sales of securities effected as part of transition services will take place as follows. The Independent Fiduciary of a Plan, after such due diligence as it deems appropriate under the circumstances, selects a broker-dealer to purchase or sell a specified portfolio of securities. Where the broker-dealer selected is the Applicant and an affiliate of the Applicant is the directed trustee of the Plan, such affiliate must be a fiduciary that has no discretionary authority or control with respect to the investment of the Plan assets involved in the transaction (including determining the broker-dealer to be hired to provide transition services for the Plan), nor renders investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

The Applicant asserts that permitting it to engage in principal transactions where one of its affiliates is a directed trustee of a Plan will provide Plans with additional expert broker-dealers experienced at transition services from which Plans may choose to implement changes in investment managers or investment strategies.

In such situations, the Applicant believes it may not be able to rely on the Department's class exemptions providing relief for principal transactions. For example, the Applicant believes that the Independent Fiduciary for the subject transactions is unlikely to be a "qualified professional asset manager" (QPAM), as defined in PTE 84–14, (49 FR 9494, 9506, March 13, 1984),[37] or an "in-house asset manager" (INHAM), as defined in PTE 96–23 (61 FR 15975, April 10, 1996).[38]

6. Although the Applicant may not have discretionary authority or control over the Plan assets involved at the time of the transaction, this condition is not violated and the proposed exemption provides relief for purchases and sales of securities where the Applicant's affiliate will serve as the new investment manager for such assets, where such manager has provided a list of securities to be purchased for the Plan to the transition broker-dealer, as described below.

Where the destination manager will be managing the assets in an Index Fund (as defined in Section III, F) or a Model-Driven Fund (as defined in Section III, G), the list of securities to be purchased is the optimum portfolio that has been identified by the manager's computer model, or is a slice of the underlying index, or a slice of the Fund (taking into account round lots and other conventions).

Where the destination manager of an actively managed portfolio supplies a list of securities that it would purchase if it were to receive cash, the transition broker-dealer uses that list to assemble the desired portfolio prior to the date that the destination manager assumes responsibility for the portfolio. That list is prepared without reference to the identity of the transition broker-dealer, without reference to the portfolio being liquidated, and without reference to the securities held in inventory by the transition broker-dealer. The Applicant asserts that compliance with condition II.B(ii) can be demonstrated by comparison with a list that was provided on the same day to other similarly situated investors with substantially similar investment guidelines and objectives or by comparison with the holdings in existing investment portfolios managed in the same style.

According to the Applicant, the choice of a destination manager of an actively managed portfolio generally precedes and is separate from any decision regarding the transition broker-dealer. The Independent Fiduciary has selected the destination manager on the basis of its investment style and performance, and the Plan's asset allocation requirements. The destination manager may introduce the transition broker-dealer to the Independent Fiduciary but is not responsible for choosing the transition broker-dealer, nor for giving advice on which the Independent Fiduciary intends to rely as a primary basis for such choice. When the transition broker-dealer is selected, the Independent Fiduciary requests that the destination manager provide the list of securities to be purchased, which is the same list that the destination manager would provide to any new client with the same investment style choices, as described above. The Applicant further represents that the situation should not present an opportunity for self-dealing on the part of the transition broker-dealer or destination manager, since the destination manager would not be acting as a fiduciary with respect to the buy portfolio until after the portfolio is purchased.[39]

7. Generally, the time period for the transition program is specified in advance by the Independent Fiduciary as of a date certain, to be completed by a date certain. The Applicant represents that this time period may vary, based on the size of the portfolio, but, generally, does not exceed four business days. As a condition of the proposed exemption, all purchases and sales executed on a principal basis must be effected within two days following an Independent Fiduciary's direction to purchase or sell a given security—except that, with the approval of the Independent Fiduciary, the Applicant may extend such initial period for an additional two days, on the same terms.

8. As previously described in Item 4, above, the Applicant represents that the Independent Fiduciary often specifies an objective method or reference for pricing, such as the closing price, opening price, or the volume-weighted average price for the security on a particular day. In the fixed income markets, it is generally customary for an Independent Fiduciary to specify that the price be within the bid-asked spread, as of the close of the relevant market (or another predetermined time on a specified date or dates). Such benchmarks provide an Independent Fiduciary with a basis for measuring the performance of the broker-dealer and satisfying itself that the Plan obtained best execution.

The Applicant represents that it will provide the Independent Fiduciary with confirmations that include the relevant information required under Rule 10b–10 of the 1934 Act, to the extent required under Rule 10b–10, as well as a report, within five business days after any principal transaction, which specifies the security, the date of the transaction, the quantity and price paid or received by the Plan, and the manner of execution (agency or principal). The Applicant states that such disclosure is meaningful because it can be verified against objective prices obtainable through independent pricing services available to the public.

Only Plans with total assets in excess of $100 million are covered by the proposed exemption. However, for purposes of the net assets test, where a group of Plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $100 million net assets requirement may be met by aggregating the assets of such Plans, if the assets are pooled for investment purposes in a single master trust.

9. Finally, the Applicant notes that many Plans have expanded their investment portfolios in recent years to include foreign securities. With respect to the Foreign Affiliates covered by the proposed exemption, the Applicant represents that Rule 15a–6 of the 1934 Act provides an exemption from U.S. registration requirements for a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security (including over-the-counter equity and debt options) by a "U.S. institutional investor" or a "major U.S. institutional investor," provided that the foreign broker-dealer, among other things, enters into these principal transactions through a U.S. registered broker or dealer intermediary.

The term "U.S. institutional investor," as defined in Rule 15a–6(b)(7), includes an employee benefit plan within the meaning of the Act if:

(a) The investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is either a bank, savings and loan association, insurance company or registered investment adviser, or

(b) The employee benefit plan has total assets in excess of $5 million, or

(c) The employee benefit plan is a self-directed plan with investment decisions made solely by persons that are "accredited investors," as defined in Rule 501(a)(1) of Regulation D of the Securities Act of 1933, as amended.

The term "major U.S. institutional investor," as defined in Rule 15a–6(b)(4), includes a U.S. institutional investor that has total assets in excess of $100 million.[40] The Applicant represents that the intermediation of the U.S. registered broker or dealer imposes upon the foreign broker-dealer the requirement that the securities transaction be effected in accordance with a number of U.S. securities laws and regulations applicable to U.S. registered broker-dealers.

The Applicant represents that under Rule 15a–6, a foreign broker-dealer that induces or attempts to induce the purchase or sale of any security by a U.S. institutional or major U.S. institutional investor in accordance with Rule 15a–6 must, among other things:

(a) Provide written consent to service of process for any civil action brought by or proceeding before the SEC or a self-regulatory organization;

(b) Provide the SEC with any information or documents within its possession, custody or control, any testimony of foreign associated persons, and any assistance in taking the evidence of other persons, wherever located, that the SEC requests and that relates to transactions effected pursuant to the Rule;

(c) Rely on the U.S. registered broker or dealer through which the principal transactions with the U.S. institutional and major U.S. institutional investors are effected, among other things, for:

(1) Effecting the transactions, other than negotiating their terms;

(2) Issuing all required confirmations and statements;

(3) As between the foreign broker-dealer and the U.S. registered broker or dealer, extending or arranging for the extension of any credit in connection with the transactions;

(4) Maintaining required books and records relating to the transactions, including those required by Rules 17a–3 (Records to be Made by Certain Exchange Members) and 17a–4 (Records to be Preserved by Certain Exchange Members, Brokers and Dealers) of the 1934 Act; [41]

(5) Receiving, delivering, and safeguarding funds and securities in connection with the transactions on behalf of the U.S. institutional investor or major U.S. institutional investor in compliance with Rule 15c3–3 (Customer Protection—Reserves and Custody of Securities) of the 1934 Act; [42] and

(6) Participating in all oral communications (*e.g.*, telephone calls) between the foreign associated person and the U.S. institutional investor, other than a major U.S. institutional investor. Under certain circumstances, the foreign associated person may have direct communications and contact with the U.S. institutional investor. (See April 9, 1997 No-Action Letter.)

10. Prior to any transaction, the Foreign Affiliate will enter into a written agreement with the Plan in which the Foreign Affiliate consents to the jurisdiction of the courts of the United States for any civil action or proceeding brought in respect of the subject transactions. In this regard, the Foreign Affiliate must (i) agree to submit to the jurisdiction of the United States; (ii) agree to appoint a Process Agent for service of process in the United States; and (iii) consent to service of process on the Process Agent.

11. In summary, the Applicant represents that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act for the following reasons:

(a) Permitting the Applicant to engage in principal transactions where its affiliate is the directed trustee of a Plan will provide Plans with additional expert broker-dealers experienced at transition services from which Plans may choose as service providers;

(b) Permitting the Applicant to engage in principal transactions, as described herein, will provide Plans with more predictable and verifiable pricing and enable transitions to occur in dealer markets in a timely and efficient manner, by transferring to the broker-dealer the risk of adverse execution;

(c) An Independent Fiduciary will give prior approval for the principal transactions and will monitor the prices received by the Plan through independent, verifiable means; and

(d) An Independent Fiduciary will ensure that securities assembled for either an Index or Model-Driven Fund or actively managed portfolio by a transition broker-dealer affiliated with the destination manager are consistent with the Plan's investment guidelines and objectives.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

[37] PTE 84–14 provides a class exemption, subject to certain conditions, for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including a single customer or pooled separate account) in which the plan has an interest and which is managed by a QPAM.

[38] PTE 96–23 provides a class exemption, subject to certain conditions, for transactions between a party in interest with respect to an employee benefit plan and an investment fund (including a single customer or pooled separate account) in which the plan has an interest and which is managed by an INHAM.

[39] The Department notes, and the Applicant concurs, that no relief would be provided under the proposed exemption for any violation of section 406(b) of the Act by the destination manager or transition broker-dealer. In this regard, section 406(b) of the Act prohibits, among other things, a fiduciary for a plan from dealing with the assets of the plan in his own interest or for his own account or acting, in his individual or in any other capacity, in a transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interest of its participants or beneficiaries.

[40] The Department notes that the categories of entities that qualify as "major U.S. institutional investors" has been expanded by an SEC No-Action letter. See No-Action Letter issued to Cleary, Gottlieb, Steen & Hamilton on April 9, 1997 (the April 9, 1997 No-Action Letter).

[41] The Applicant represents that all such requirements relating to record-keeping of principal transactions would be applicable for any Foreign Affiliate in a transaction that would be covered by the proposed exemption.

[42] Under certain circumstances described in the April 9, 1997 No-Action Letter (*e.g.*, clearance and settlement transactions), there may be direct transfers of funds and securities between a Plan and a Foreign Affiliate. Please note that in such situations (as in the other situations covered by Rule 15a–6), the U.S. broker-dealer will not be acting as a principal with respect to any duties it is required to undertake pursuant to Rule 15a–6.

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 11th day of April, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 03–9352 Filed 4–15–03; 8:45 am]

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DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–05; Exemption Application No. D–11061]

Grant of Individual Exemptions; John Hancock Life Insurance Company

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains an exemption issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

John Hancock Life Insurance Company, Located in Boston, MA (Prohibited Transaction Exemption 2003–05, Application No. D–11061)

Exemption

Section I: Transactions

The restrictions of sections 406(a)(1)(A) and 406(a)(1)(D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A) and 4975(c)(1)(D) of the Code shall not apply to: [1]

(a) The purchase of a timber asset (Timber Asset(s)), as defined in section III(f), below, from International Paper Company or any affiliate, as defined in section III(a), below, (collectively, International Paper) by a certain insurance company separate account (ForesTree IP), as defined in section III(d), below, maintained and managed by Hancock, as defined in section III(e), below, for the investment of the assets of one or more employee pension benefit plans sponsored by International Paper (the IP Plan or IP Plans); provided that the following conditions are satisfied:

(1) The fair market value of the Timber Asset sold to ForesTree IP is determined by an independent, qualified appraiser, as defined in section III(h), below, as of the date of the transaction,

(2) The fair market value of the Timber Asset sold to ForesTree IP must be documented by an appraisal report in writing issued, as of the date of the transaction, by the independent, qualified appraiser;

(3) The price paid by ForesTree IP for the Timber Asset does not exceed the fair market value of such asset, as determined by an independent, qualified appraiser, as of the date of the transaction, but can be at a price that is less than the fair market value of such asset, as of the date of the transaction; and

(4) The general conditions set forth in section II, below, are satisfied.

(b) The sale of a timber product (Timber Product(s)), as defined in section III(g), below, to International Paper by ForesTree IP; provided that the following conditions are satisfied:

[1] For purposes of this exemption, references to specific provisions of title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

(1) Prior to soliciting bids for the sale of a Timber Product, Hancock (or its designee) establishes a minimum bid (the Minimum Bid) based on its assessment of the fair market value of the Timber Product offered for sale;

(2) Hancock (or its designee) solicits from each party on the buyers list (the Buyer's List), as defined in section III(c), below, for the relevant geographic area in which the Timber Product is located, a written bid for the purchase of the Timber Product offered for sale;

(3) The highest price bid for the Timber Product offered for sale must meet or exceed the Minimum Bid established by Hancock (or its designee) and must not be less than the fair market value of such Timber Product at the time the contract for sale is legally binding on the parties involved;

(4) Where International Paper is the highest price bidder for the Timber Product offered for sale, the transaction may not go forward, unless Hancock (or its designee) has received bids on such Timber Product from at least two (2) other bidders, in addition to International Paper, provided that each such bidder satisfies the definition of a *bona fide* bidder, as set forth in section III(i), below; and provided further that neither Hancock's general account nor any other account managed by Hancock is either of the two other bidders; and

(5) The general conditions set forth in section II, below, are satisfied.

Section II: General Conditions

(a) Any IP Plan that invests in ForesTree IP has total assets in excess of $100 million;

(b) Hancock acts as a discretionary investment manager for ForesTree IP;

(c) Hancock (or its designee) negotiates on behalf of ForesTree IP the terms and conditions of any purchase of a Timber Asset by ForesTree IP from International Paper and the terms and conditions of any sale of a Timber Product by ForesTree IP to International Paper;

(d) Prior to ForestTree IP entering into any purchase of a Timber Asset or any sale of a Timber Product, Hancock determines on behalf of such account that each such transaction is feasible, in the interest of the account based on the investment policy and objectives of the account, and protective of the participants in the account;

(e) The terms and conditions of each transaction involving the sale of a Timber Asset by International Paper to ForesTree IP or the purchase of a Timber Product by International Paper from ForesTree IP are at least as favorable to ForesTree IP as the terms obtainable by ForesTree IP in a similar transaction negotiated at arm's length with an unrelated third party;

(f) The transactions subject to this exemption are not part of an agreement, arrangement, or understanding designed to benefit a party in interest;

(g) Each transaction subject to this exemption is exclusively a cash transaction;

(h) The investment of plan assets by any IP Plan in ForesTree IP does not exceed 20 percent (20%) of the total assets of such plan;

(i) The total amount of contributions received by Hancock from International Paper on behalf of the IP Plans and allocated to ForesTree IP must not in the aggregate exceed $100 million; and

(j) Hancock maintains, or causes to be maintained, within the United States for a period of six (6) years from the date of each transaction which is subject to this exemption, in a manner that is convenient and accessible for audit and examination, such records as are necessary to enable the persons described, below in paragraph (k)(1), to determine whether the conditions of the exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of Hancock, the records are lost or destroyed prior to the end of the six (6) year period; and

(2) No party in interest other than Hancock shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required below by paragraph (k)(1).

(k)(1) Except as provided in subparagraph (2) of this paragraph (k) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (j), above, are unconditionally available at their customary location for examination during normal business hours by—

(i) Any duly authorized employee or representative of the Department, or the Internal Revenue Service;

(ii) Any fiduciary of an IP Plan or any duly authorized representative of such fiduciary;

(iii) Any contributing employer to an IP Plan or any duly authorized employee representative of such employer; and

(iv) Any participant or beneficiary of an IP Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (k)(1)(ii)–(iv) are authorized to examine the trade secrets of Hancock or its affiliates or commercial or financial information which is privileged or confidential.

Section III: Definitions

(a) The term, "affiliate" or "affiliates," of a person means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative of, or partner in any such person; and

(3) Any corporation or partnership of which such person is an officer, director, partner, or employee.

(b) The term, "control," means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term, "Buyer's List," means a comprehensive and current list of the names of the active forest products companies and prospective buyers of Timber Products in the geographic area in which such Timber Products are located, which is compiled and maintained by Hancock (or its designee) for each such geographic area for the purpose of selling Timber Products in such area on behalf of any of the timber accounts managed by Hancock, provided that, with respect to the Buyer's List utilized by ForesTree IP:

(1) International Paper's name may not be added to the Buyer's List for a geographic area solely for the purpose of a sale by ForesTree IP of Timber Products in such area; and

(2) The name of a prospective buyer of Timber Products in a geographic area may not be removed by Hancock from the Buyer's List for such geographic area, unless such buyer:

(A) Has failed to perform satisfactorily in a previous transaction;

(B) Is no longer in business;

(C) Requests, orally or in writing, to be removed from such list; or

(D) Has failed to respond for a period of two (2) years to previous solicitations by ForesTree IP to bid on Timber Products offered for sale in the geographic area;

(d) The term, "ForesTree IP," refers to the non-pooled insurance company separate account maintained and managed by Hancock for the investment of assets of one or more of the IP Plans, as well as to any partnership, limited liability company, or corporation in which ForesTree IP invests. The term, "ForesTree IP," does not include the other ForesTree Separate Accounts managed by Hancock.

(e) The term, "Hancock," means John Hancock Financial Services (Financial Services); John Hancock Life Insurance Company (JHLIC); John Hancock Variable Life Insurance Company (Variable Life); Hancock Natural Resource Group (Resource Group); John Hancock Timber Resource Group (Timber Resource); or other affiliates of JHLIC, as defined in section III(a), above, as well as the employees of Resource Group and Timber Resource.

(f) The term, "Timber Asset(s)," means a fee simple in timberland (and appurtenant rights),[2] or a timber lease, or a timber deed, provided that, with respect to any timber lease, or timber deed:

(1) The underlying fee simple is owned by a person other than International Paper, Hancock, or any other account managed by Hancock at the time of the sale; and

(2) The entire deed or lease held by International Paper is purchased by ForesTree IP.

(g) The term, "Timber Product(s)," means standing timber or timber in the form of logs.

(h) The term, "independent, qualified appraiser," means an individual or firm which is qualified to serve in the capacity as an appraiser; is independent of the parties in interest engaging in the transaction and their affiliates; and satisfies the following conditions:

(1) Other than serving as the independent, qualified appraiser for a transaction which is subject to this exemption, the individual or firm has no current employment relationship with Hancock or with International Paper;

(2) No individual or firm may serve as an independent, qualified appraiser during any year in which the gross receipts such individual or firm received from business with Hancock exceeds 5 percent (5%) of such individual's or firm's gross receipts from all sources for the prior year, and from business with International Paper for that year exceeds 5 percent (5%) of such individual's or firm's gross receipts from all sources for the prior year;

(3) If an individual is selected to serve as the independent, qualified appraiser, then such individual must:

(A) Have a forestry degree; and

(B) Have a minimum of five (5) years of experience as a timberland appraiser; or

(C) Otherwise demonstrate proficiency in timberland appraisal work which is equivalent to the level of expertise demonstrated by the requirements, as set forth in section III(h)(3)(A) and (B), above;

(4) If a firm is selected to serve as the independent, qualified appraiser, then such firm must have:

(A) A minimum of five (5) years of experience as a timberland appraiser; or

(B) Otherwise demonstrate proficiency in timberland appraisal work; and

(5) The individual or the firm that serves as the independent, qualified appraiser for transactions covered by this exemption must have the ability to access appropriate timberland sales comparison data.

(i) The term, "*bona fide* bidder," means a bidder on a Timber Product offered for sale by ForesTree IP, only if

(1) The bidder has made an offer to purchase the Timber Product, in accordance with the terms of the bid solicitation;

(2) The bidder's name appears on the Buyer's List at the time of bid solicitation and at the time of the bid;

(3) Hancock neither knows or should know of any impediment to the bidder's consummation of the purchase of the Timber Product offered for sale upon which the bidder has bid; and

(4) Hancock has no reason to believe that the bid was not made in good faith by the bidder with the present intent of procuring the Timber Product offered for sale by ForesTree IP.

Written Comments

In the notice of proposed exemption (the notice), the Department of Labor (the Department) invited all interested persons to submit written comments and requests for a hearing on the proposed exemption within 45 days of the date of the publication of the notice in the **Federal Register** on January 22, 2003. All comments and requests for a hearing were due by March 14, 2003.

During the comment period, the Department received no requests for a hearing. However, the Department did receive comment letters from four (4) commentators. At the close of the comment period, the Department forwarded a copy of each of these comment letters to the applicant and requested that the applicant respond in writing to the issues raised by the commentators. The concerns expressed by the commentators and the applicant's response thereto are summarized in the numbered paragraphs below.

1. One commentator objected to the proposed exemption because he views the proposed transactions as Enron-like deceptive transactions between two International Paper entities. The commentator suggested that the Timber Assets should remain with International Paper as a long term investment, and that International Paper would suffer if it does not.

In response, the applicant notes that the commentator appears to believe that the proposed transactions would constitute a "repurchase" by International Paper of assets it already owns— a "scheme" for transferring assets among International Paper entities. In this regard, the IP Plan and ForesTree IP are independent of International Paper and a transfer to the IP Plan from International Paper is in no way a "repurchase" of the assets by International Paper.

Further, the applicant maintains that there is no "scheme" here. The filing of this exemption was initiated by Hancock to obtain relief from the prohibited transaction provisions of the Act. Hancock is a professional timber manager unaffiliated with International Paper. Hancock, and not International Paper, sought the exemption so that if the investment attributes of the Timber Assets International Paper offered for sale were consistent with the investment objectives of ForesTree, the account would have an opportunity to acquire those Timber Assets.

In addition, the applicant points out that the commentator seems more concerned with the fact that International Paper is selling the Timber Assets than with the fact that Hancock will be permitted to bid on those assets that International Paper offers for sale. In this regard, it is the applicants understanding that the sale of International Paper timberlands is part of its strategic plan to monetize non-strategic timberland following its merger with Champion International.

Hancock, and not International Paper, will decide whether ForesTree IP will engage in a transaction with International Paper, and Hancock is subject to the fiduciary duties of the Act. It is represented that Hancock will cause ForesTree IP to engage in a transaction only if the transaction is in the interest of ForesTree IP (that is, the IP Plan). It is further represented that Hancock's acquisition sourcing will in no way take the interests of International Paper into account in considering the merits of each such transaction.

The commentator also indicated a lack of confidence in the third party appraisal that Hancock is required to obtain, pursuant to a condition of this exemption, citing the "sample intensity." In this context, the applicant understands "sample intensity" to refer to the extent of the samples of timber inventory used by an appraiser (or prospective buyer) to assess the value of that inventory. The commentator's concern regarding sample intensity is addressed by Hancock's due diligence process, including the timber inventory verification described below, and the appraisal methodology that uses multiple valuation approaches to independently establish market value.

In this regard, the applicant notes that the purchase price of Timber Assets is established through Hancock's intensive due diligence process, that includes, among other things, timber inventory verification through an actual on-the-ground survey of the timber, using a statistically sound sampling methodology. Hancock uses the timber inventory analysis together with information regarding timber markets, timber price forecast, forest management expenses, timber growth models, and harvesting plans among other things to develop a discount cash flow analysis, projected total return and purchase price given the relative riskiness of the market area. The purchase price established through this process is the starting basis for prices offered by Hancock in competitive bids or negotiated sale transactions. A third-party appraisal verifies that the purchase price, established through the process noted above, is not more than fair market value.

In doing so, the third-party appraiser will typically use multiple valuation methodologies to estimate the market value of Timber Assets. These include the cost approach, the sales comparison approach, and the income approach (discount cash flow analysis). The different approaches help to establish the most probable value range based on the differences between buyers and sellers in the marketplace. The appraiser then, based on the data presented, determines a value in the range that represents the most probable price assuming the property were offered for sale.

2. One commentator noted his opposition to the proposed exemption on the grounds that International Paper's domination of the relevant timber markets could make the fair market value, and thus the price, obtained by Hancock for Timber Products artificially low.

In response the applicant notes that this comment does not appear to be a criticism of the sale by the IP Plan of Timber Products to International Paper, so much as a criticism of the IP Plan's allocation to timber in the first place. In this regard, the applicant maintains that whether or not the IP Plan invests in timber is not the subject of this exemption. Rather, this exemption is designed to ensure that ForesTree IP has access to all market outlets in a competitive manner.

In the opinion of the applicant, participation by International Paper in the bid process increases, not decreases, the chances of ForesTree IP of obtaining a favorable price, because it expands the universe of potential timber purchasers. One of Hancock's objectives in seeking this exemption is to increase the potential buyers, and thus the price, of ForesTree IP's Timber Products. It is the applicant's view that the mergers to which the commentator refers would make it even more important to include International Paper in the Timber Products bidding process so as to have as many potential bidders as possible.

The commentator also asserts that the proposed exemption would permit "incestuous dealings" between the IP Plan and International Paper. The applicant maintains that there is no conflict of interest in this case, because the IP Plan is represented by an independent investment manager. In this regard, Hancock manages the entire ForesTree IP account in its sole discretion and will determine if, and when, it is in the interest of ForesTree IP to enter into a transaction with International Paper, pursuant to the procedures established as part of this exemption. Furthermore, Hancock will be fully responsible and liable for that decision.

3. One commentator objected to the proposed exemption because, in his view, International Paper does not provide sufficient pension benefits to IP Plan participants and beneficiaries.

In response the applicant, points out that the IP Plan is a defined benefit plan, and Hancock has no control over the plan of benefits provided to plan participants under the IP Plan. Rather, Hancock is charged with investing the assets of the IP Plan allocated to timber as effectively as it can. In the view of the applicant, the commentator's complaint is with the design of the IP Plan and not the manner in which it is invested.

4. One commentator believes that the fact that Hancock must seek an exemption for the proposed transactions indicates that the transactions are "ill-advised."

In response the applicant points out that the drafters of the Act recognized that exemptions to prohibited transaction provisions would certainly be required and, in fact, incorporated more than ten such statutory exemptions into the Act. More importantly, Congress authorized the Department to issue individual exemptions where an individual plan's interest could be adequately protected. In the applicant's view, the fact that Hancock has applied for this exemption indicates only that it seeks to obtain the best return possible for ForesTree IP by expanding the account's potential pool of counterparties.

The commentator also objected to the proposal on the grounds that recent corporate scandals have cast doubt upon the "investment schemes" of "corporate financial officers."

In this regard, the applicant points out that Hancock, and not the financial officers of International Paper, is responsible for deciding whether or not ForesTree IP enters into transactions with International Paper. In addition, the applicant maintains that the subject transactions will be effected, if at all, in a straightforward and transparent manner. In this regard, the exemption requires that specified conditions be met and that records of the transactions and conditions be maintained.

Lastly, the applicant notes that the commentator provided no support for his assertion that the subject transactions (routine types of transactions under a professionally managed timber program) constitute a "speculation venture of unknown risk." The commentator objected to the fact the IP Plan invests in timber at all, which, as the applicant noted above, is the result of a reasonable asset allocation decision on the part of the plan fiduciaries. Moreover, there is nothing to suggest that timber is a speculative investment. The applicant maintains that Hancock and its affiliates are in the business of prudently managing the risks associated with timber investments. As discussed above, Hancock's due diligence process is thorough and is designed to assess risk.

5. During the comment period, the Department also received a comment from the applicant. In this regard, in a letter dated March 14, 2003, the applicant requested certain amendments to the operant language of the exemption and changes to the representations which were set forth in the Summary of Facts and Representations (the SFR) published in the notice. A discussion of the applicant's comments and the Department's responses, thereto are also set forth in the subparagraphs, below.

A. For the sake of consistency with the language in section I(a)(1) and (2) of the exemption, the applicant proposes a revision of section I(a)(3), as set forth in the notice, on page 3040, column 3, line 26–27, to replace the phrase, "at the time of purchase," with the phrase, "as of the date of the transaction."

[2] It is represented that certain property rights, including mineral rights, easements, and recreational leases, are appurtenant to a fee simple and are brought and sold, and appraised along with the fee simple.

The Department concurs and in the final exemption has amended the language of section I(a)(3), accordingly.

B. Section I(a)(1) requires that the price paid by ForesTree IP for the Timber Asset be determined by an independent, qualified appraiser, as defined in section III(h), below, as of the date of the transaction. Section I(a)(2) provides that the fair market value of the Timber Assets sold to ForesTree IP must be documented in a written appraisal report by an independent, qualified appraiser, as of the date of the transaction. Section I(a)(3) provides that the price paid by ForesTree IP for the Timber Asset may not exceed the fair market value of such asset at the time of the purchase.

It is the applicant's view that, given the conditions in sections I(a)(2) and (3) of the exemption, it is not necessary to require that the Timber Asset price be determined by the independent, qualified appraiser. In this regard, the applicant maintains that the other conditions make it impossible for ForesTree IP to purchase a Timber Asset for more than fair market value and that the condition in section I(a)(1) does not provide any additional protection to the IP Plans and their participants and beneficiaries. Moreover, the applicant believes that section I(a)(1) would interfere with Hancock's duty to negotiate the best price for ForesTree IP, including a price that is less than the appraised value of the Timber Asset. Accordingly, the applicant requests that section I(a)(1), as set forth in the notice, on page 3040, column 3, lines 13–17, be deleted and that the remaining three (3) subparagraphs in section I(a) be renumbered.

In the view of the Department, a determination by an independent, qualified appraiser of the fair market value of a Timber Asset at the time of the transaction provides a safeguard which insures that the IP Plan through ForesTree IP does not pay to much for such asset. Accordingly, the Department has decided not to delete section I(a)(1) of the exemption and has decided not to renumber section I(a)(2), section I(a)(3), or section I(a)(4).

However, the Department does not intend that compliance with the language of section (I)(a)(1)would preclude Hancock from negotiating on behalf of ForesTree IP a price for a Timber Asset which is less than the fair market value of such asset at the time of the transaction. Accordingly, the Department has determined in the final exemption to amend the language of section I(a)(1), as set forth in the notice, on page 3040, column 3, lines 13–17, to delete the bracketed words and add the italicized words as follows:

The [price paid by ForesTree IP for] *fair market value of the* Timber Asset *sold to ForesTree IP* is determined by an independent, qualified appraiser, as defined in section III(h), below, as of the date of the transaction.

Further the Department has determined in the final exemption to amend the language of section I(a)(3), as set forth in the notice, on page 3040, column 3, lines 24–27, to delete the bracketed phrase and add the italicized phrases as follows:

The price paid by ForesTree IP for the Timber Asset does not exceed the fair market value of such asset, [at the time of the purchase] *as determined by an independent, qualified appraiser as of the date of the transaction, but can be at a price that is less than the fair market value of such asset, as of the date of the transaction.*

C. Because Hancock utilizes affiliated and unaffiliated timber managers in managing ForesTree IP, the applicant believes that it would be more accurate to reference Hancock's "designees," as is currently reflected in section I(b)(2). Accordingly, the applicant requests that the phrase, "(or its designee)," be inserted after the word, "Hancock," in the following sections of the final exemption, section I(b)(1), section I(b)(3), section I(b)(4), section II(c), and section III(c).

The Department concurs and has amended the language, as set forth in the notice, to insert the parenthetical phrase, "(or its designee)," after the word, "Hancock," in the following locations:

(1) In section I(b)(1)on page 3040, column 3, line 36;

(2) In section I(b)(3)on page 3040, column 3, line 51;

(3) In section I(b)(4)on page 3040, column 3, line 59;

(4) In section II(c)on page 3041, column 1, line 9; and

(5) In section III(c)on page 3041, column 2, line 68.

D. The applicant has suggested that the Department delete section II(h), as set forth in the notice, on page 3041, column 1, lines 42–46. Section II(h) precludes ForesTree IP from purchasing Timber Assets from or selling Timber Products to Hancock's general account or any other account managed by Hancock. In this regard, the applicant expressed concern that section II(h)suggests that ForesTree IP could not use Prohibited Transaction Exemption 98–61 (PTE 98–61), in an appropriate case, for transactions between ForesTree IP and other Hancock separate accounts. In this regard, PTE 98–61 provides relief from section 406(b)(2) of the Act, for purchases and sales of Timber Assets between certain separate accounts, as defined in PTE 98–61, that are managed by Resource Group and Timber Resource or other affiliates of JHLIC. In support of the request that section II(h) be deleted, the applicant notes that: (1) The exemption provides relief only for transactions between ForesTree IP and International Paper; (2) Hancock is not seeking relief for transactions between ForesTree IP and the general account or other Hancock separate accounts; and (3) section I(b)(4) of the exemption already provides that neither Hancock's general account nor any other account managed by Hancock may be counted as one of the two *bona fide* bidders required where International Paper is the highest price bidder for the Timber Products offered for sale by ForesTree IP.

The Department concurs with the applicant's request, and accordingly, has deleted section II(h) from the final exemption. As a result of the deletion of section II(h)from the final exemption, subsections (i), (j), (k), and (l) of section II have, accordingly, been reordered as subsections (h), (i), (j), and (k) of section II. Conforming changes have also been made to cross references within these subsections.

Further, the Department wishes to note that for transactions between ForesTree IP and other Hancock separate accounts, ForesTree IP may rely on PTE 98–61 only for transactions, as described therein, and only if the conditions, as set forth in PTE 98–61 are satisfied.

E. The applicant notes that section II(k), as set forth in the notice, makes reference on page 3041, column 1, line 64, to paragraph (1)(1) (the numeral "one" followed by the numeral "one"). The applicant requests that the reference be changed so as to refer to paragraph(l)(1) (the letter "l" and then the numeral "one"). The applicant also notes that, if the Department accepts the proposed deletion of section II(h), as discussed above, this reference will actually become paragraph(k)(1).

The Department concurs with the applicant's request. As the Department did decide to delete section II(h) from the final exemption, the reference to paragraph (1)(1), as set forth in the notice, on page 3041, column 1, line 64, had been changed to paragraph (k)(1) in the final exemption.

F. The applicant requests a revision to the language of section III(e), as set forth in the notice, on page 3041, column 3, lines 38–48. Section II(e), states:

The term, "Hancock," means John Hancock Financial Services (Financial Services); John Hancock Life Insurance Company (JHLIC); John Hancock Variable Life Insurance Company (Variable Life); Hancock Natural Resources Group (Resources Group); John Hancock Timber Resource Corporation (Timber Resource); or other affiliates of JHLIC, as defined in section III(a), above.

Pursuant to section III(a), the term, "affiliate" or "affiliates," of a person includes "any officer, director, employee, relative of, or partner in any such person." The applicant is concerned that the combination of these two definitions omits from the term, "Hancock," (and perhaps from relief) employees of Hancock affiliated entities, other than JHLIC. In this regard, the applicant seeks to ensure that the exemption provides relief for the individual employees of those entities making decisions with respect to ForesTree IP. Accordingly, the applicant suggested a revision to section III(e) to add the phrase, "as well as the employees of such entities," to the language of section III(e) in the final exemption. Subsequently, in an e-mail to the Department, dated April 2, 2003, the applicant clarified that in addition to employees of JHLIC, incorporated into the definition of affiliate, as set forth in section III(a)(2), the term, "Hancock" should include employees of Resource Group, and Timber Resource.

The Department concurs with the applicant's request. Accordingly, the language of section III(e), as set forth in the Notice, on page 3041, column 3, line 48, has been amended to add the phrase, "as well as the employees of Resource Group and Timber Resource," after the word, "above."

The applicant also suggested a few corrections to the names of the entities listed in the definition of the term, "Hancock," as set forth in section III(e) in the Notice, on page 3041, column 3, lines 43–46. In this regard, "Hancock Natural Resources Group" should be "Hancock Natural Resource Group," and "(Resources Group)" should become "(Resource Group)." In the same paragraph, "John Hancock Timber Resource Corporation" should be changed to "John Hancock Timber Resource Group."

The Department concurs and in the final exemption has amended the language of section III(e), accordingly.

G. Section III(h)(2), as set forth in the Notice, on page 3042, column 1, lines 18–27, requires that:

No individual or firm may serve as an independent, qualified appraiser during any year in which the gross receipts such individual or firm received from business with Hancock and from business with International Paper for that year exceeds 5 percent (5%) of such individual's or firm's gross receipts from all sources for the prior year.

The applicant seeks confirmation that the "5 percent gross receipt test" in section III(h)(2) applies separately with respect to Hancock and to International Paper. In this regard, it is the applicant's understanding that an individual appraiser may not have gross receipts from Hancock in excess of 5 percent (5%) or from International Paper in excess of 5 percent (5%).

The Department confirms the applicant's understanding of section III(h)(2). In addition, the Department has decided to amend the language of section III(h)(2), as set forth in the notice, on page 3042, column 1, line 22, to insert the phrase, "exceeds 5 percent (5%) of such individual's or firm's gross receipts from all sources for the prior year," after the word, "Hancock."

H. The applicant has requested and the Department concurs with the following modifications, corrections, or updates to the information that appeared in the SFR of the notice:

(1) References to "Resources Group" that appeared in the SFR throughout representations 2, 4, 5 and 6 should have been references to "Resource Group;"

(2) A reference to ".5 million" that appeared in the second paragraph of representation 2 in the SFR should have been a reference to "0.5 million;"

(3) The reference to Olympic Resource Management that appeared in the fifth paragraph of representations 4 in the SFR should be revised. In this regard, the applicant has informed the Department that Resource Group recently chose not to renew its contract with Olympic Resource Management. It is represented that Hancock Forest Management, Inc., a recently formed affiliate of Resource Group, has taken over the duties of Olympic Resource Management with respect to the western United States and Canada;

(4) The eighth sentence in the first paragraph of representation 5 of the SFR, should be revised to delete the bracketed words and add the italicized words as follows:

John Hancock [expects that] *allocated* the remaining $15 million [will be allocated before] *for investment near* the end of the year 2002;

(5) The reference to "$1 million to $2 million" that appeared in the second sentence of representation 6 in the SFR should have been a reference to "$1 billion to $2 billion;"

(6) The second sentence in representation 6 of the SFR should be further revised to delete the bracketed words and add the italicized words as follows:

In this regard, John Hancock, *at the time of its application, originally anticipated* [anticipates] that $1 billion to $2 billion worth of Timber Assets [will] *would* be marketed by International Paper for sale over the next two (2) years, as a result of the May 2000 merger of International Paper and Champion International;

(7) After the second sentence in representation 6 of the SFR, the applicant has requested the addition of the following sentence:

Since the filing of the exemption application, John Hancock has learned that International Paper's business strategy with respect to these assets may have changed, but John Hancock does not yet know what the new divestment strategy will be; and

(8) The reference to "section III (i) below" that appeared in representation 10(f) should have been a reference to "section III (i)" as that section actually comes before representation 10(f) in the SFR.

After giving full consideration to the entire record, including the written comments from the commentators and the applicant's response to such comments and the comment from the applicant, the Department has decided to grant the exemption, as described and amended, above. In this regard, the comment letters, the applicant's response thereto, and the applicant's comment letter submitted to the Department have been included as part of the public record of the exemption application. The complete application file, including all supplemental submissions received by the Department, is made available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice published on January 22, 2003, at 68 FR 3040.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary

responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed in Washington, DC, this 11th day of April, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 03–9353 Filed 4–15–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–06; Exemption Application No. D–11059]

Grant of Individual Exemption To Replace Prohibited Transaction Exemptions (PTEs) 81–56, 85–19 and 89–5, Involving the Truman Arnold Companies Retirement Plan and Trust (the Plan) Located in Texarkana, TX

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Grant of individual exemption to replace PTEs 81–56, 85–19 and 89–5.

SUMMARY: This document contains a final exemption before the Department of Labor (the Department) which will replace PTEs 81–56 (46 FR 36273, July 17, 1981), 85–19 (50 FR 3045, January 23, 1985) and 89–5 (54 FR 4348, January 30, 1989). These are individual exemptions (the Prior Exemptions) that were previously issued by the Department to the Truman Arnold Companies, a party in interest with respect to the Plan. Each of the Prior Exemptions permitted the Employer to contribute and/or lease from the Plan certain improved real property under the provisions of three distinct written leases.

The final exemption incorporates many of the facts and representations contained in the Prior Exemptions and updates information to the extent there have been changes. Because it appears that PTE 81–56 expired on September 30, 1999 and the parties have not been covered by an administrative exemption since that time, the final exemption provides retroactive exemptive relief from October 1, 1999 until September 30, 2002. In addition, to resolve uncertainty regarding the expiration dates of the leases described in PTE 81–56 and PTE 85–19, the exemption merges the leases, along with the lease described in PTE 89–5, under a new master lease (the Master Lease) and provides retroactive exemptive relief, effective October 1, 2002, with respect to such past and continued lease arrangements.

Further, the final exemption permits the replacement of AmSouth Bank, the Plan's former independent fiduciary, with Regions Bank, the Plan's current trustee. Thus, the exemption affects participants and beneficiaries of the Plan, as well as Plan fiduciaries.

EFFECTIVE DATE: This exemption is effective from October 1, 1999 until September 30, 2002 with respect to the leasing arrangement described in PTE 81–56, In addition, this exemption applies retroactively from October 1, 2002 with respect to the consolidation of the properties described in the Prior Exemptions under the Master Lease.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8556. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 6, 2003, the Department published a notice of proposed exemption in the **Federal Register** at 68 FR 6205. The proposed exemption would replace PTEs 81–56, 85–19 and 89–5. The Prior Exemptions provided exemptive relief from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from the sanctions resulting from the application of section 4975 of the Internal Revenue Code of 1986 (the Code).

The proposed exemption was requested in an application filed on behalf of the Plan pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this exemption is being issued solely by the Department.

The proposed exemption gave interested persons an opportunity to comment and to request a hearing. In this regard, all interested persons were invited to submit written comments or requests for a hearing on the pending exemption on or before March 24, 2003. All comments were to be made a part of the record. During the comment period, the Department received no written comments or requests for a public hearing.

For further information regarding the exemption application or other matters discussed therein, interested persons are encouraged to obtain copies of the exemption application file (Exemption Application No. D–11059) the Department is maintaining in this case. The complete application file, as well as all supplemental submissions received by the Department are made available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, Room N–1513, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, after giving full consideration to the entire record, the Department has decided to grant the exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act, section 4975(c)(2) of the Code, and the procedures set forth in 29 CFR 2570, subpart B (55 FR 32836, August 10, 1990), the Department finds that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(4) The exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including administrative exemptions. Furthermore, the fact that a transaction is subject to an administrative exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This exemption is subject to the express condition that the facts and representations set forth in the notices of proposed exemption relating to PTEs 81–56, 85–19, 89–5 and this notice, accurately describe, where relevant, the material terms of the Master Lease transaction consummated pursuant to this exemption.

Exemption

Under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990), the Department hereby amends and replaces PTEs 81–56, 85–19 and 89–5. Accordingly, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply (1) effective October 1, 1999 until September 30, 2002, to the leasing by the Plan of a parcel of real property and the improvements thereon (the New Facilities Property), as described in Prohibited Transaction Exemption (PTE) 81–56 (46 FR 36273, July 17, 1981), to the Truman Arnold Companies, Inc. (the Employer), a party in interest with respect to the Plan; and (2) effective October 1, 2002, to the leasing, by the Plan to the Employer, under the provisions of a master lease (the Master Lease) of the New Facilities Property, another parcel of real property and the improvements comprising the Employer's headquarters (the Home Site Property), as described in PTE 85–19 (50 FR 3045, January 23, 1985), and two buildings (the Buildings) constructed on the Home Site Property and described in PTE 89–5 (54 FR 4348, January 30, 1989). (The New Facilities Property, the Home Site Property and the Buildings are collectively referred to herein as the "Properties.")

This exemption is subject to the following conditions:

(a) The terms of the Master Lease remain at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party.

(b) The Employer is obligated under the terms of the Master Lease for expenses incurred by the Properties, including taxes and assessments, maintenance, insurance and utilities.

(c) The interests of the Plan with regard to the Master Lease are, at all times, represented by an independent fiduciary. Such independent fiduciary—

(i) Represents the interests of the Plan for the remaining duration of the Master Lease;

(ii) Monitors the terms and conditions of the Master Lease on behalf of the Plan;

(iii) Enforces compliance with all conditions of the Master Lease;

(iv) Ensures that the Master Lease remains in the best interest of the Plan and protective of the Plan's participants and beneficiaries;

(v) Following review and evaluation of the Master Lease, determines that the retention of the Properties by the Plan and the continued leasing of such Properties to the Employer are in the best interest of the Plan and its participants and beneficiaries;

(vi) Adjusts the rental rate under the Master Lease every third year such lease is in effect based upon independent appraisals of the Properties and ensures that the rentals equal the greater of 14 percent of the fair market value of the Properties or the prior rental amounts paid; and

(vii) Takes all actions that are necessary and proper to enforce and protect the rights of the Plan and its participants and beneficiaries.

(d) The rental rate under the Master Lease, during its initial term and each renewal term remains at 14 percent of the fair market value of the Properties, which amount is not less than the current fair market value of such Properties;

(e) The aggregate fair market value of the Properties that are subject to the Master Lease, at no time, exceeds 25 percent of the Plan's assets.

For a more complete statement of the facts and representations supporting the Department's decision to grant the Prior Exemptions and this final exemption, refer to the proposed exemptions and their respective grant notices which are cited above.

Signed at Washington, DC, this 11th day of April, 2003.

Ivan L. Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–9354 Filed 4–15–03; 8:45 am]

BILLING CODE 4510–29–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, April 24, 2003, and Friday, April 25, 2003, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on April 24, and at 9 a.m. on April 25.

Topics for discussion include: Medicare payment for outpatient drugs under part B; volume of physician services and related physician payment issues; hospital financial performance; incentives to improve quality; use of market competition in fee-for-service Medicare; geographic variation; implications for beneficiaries and policy reform of market variation; long-term care hospital patient characteristics; examining differences between hospital-based and free-standing skilled nursing facilities; dialysis quality and cost; comments on CMS's social health maintenance organization demonstration report; and the impact of the GME cap on geriatricians.

Agendas will be e-mailed on April 16, 2003. The final agenda will be available on the Commission's Web site (*www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 03–9293 Filed 4–15–03; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[03—042]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC, 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: BOREAS Data User Satisfaction Survey.

OMB Number: 2700–.

Type of review: New collection.

Need and Uses: NASA will utilize the information collected to improve the data, documentation, ordering processes, and services provided to users of the Boreal Ecosystem-Atmosphere Study (BOREAS) data.

Affected Public: Not-for-profit institutions; business or other for-profit; Federal government; State, local or tribal government.

Number of Respondents: 50.

Responses Per Respondent: 1.

Annual Responses: 50.

Hours Per Request: 30 min.

Annual Burden Hours: 25.

Frequency of Report: On occasion.

Patricia Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–9362 Filed 4–15–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Fellowships Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel (American Jazz Masters category) to the National Council on the Arts will be held from 1 p.m. to 4:30 p.m. on April 30, 2003, in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting, from 1 p.m. to 2:45 p.m., will be open to the public for policy discussion. The open session will include opening remarks by Dana Gioia, Chairman of the National Endowment for the Arts; a presentation by A. B. Spellman, Deputy Chairman for Guidelines, Panel & Council Operations: NEA American Jazz Masters—A New Look/Different Opportunities; and Changing the BEAT: A Study of the Work Life of Jazz Musicians, a presentation by Research Officer Tom Bradshaw. The remaining portion of this meeting, from 3 p.m. to 4:30 p.m., will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: April 8, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–9295 Filed 4–15–03; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

Tennessee Valley Authority; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–90, issued to Tennessee Valley authority (TVA the licensee), for operation of the Watts Bar Nuclear Plant (WBN), Unit 1, located in Rhea County, Tennessee.

The proposed amendment would revise, for one time only, a portion of Surveillance Requirement (SR) 3.5.2.3 of the Watts Bar Technical Specifications (TS) for the emergency core cooling system (ECCS). The revision would extend, until the refueling outage in the fall of 2003, the verification that the ECCS safety injection hot leg injection lines are full of water. SR 3.5.2.3 currently requires a verification frequency of 31 days.

The reason for the exigency is due to an emergent issue that occurred when recent ultrasonic testing of the safety injection system hot leg injection piping identified a quantity of gas at the piping high points. TVA stated that it could not have reasonably avoided this exigency. Until questions were raised on the way this SR was performed, TVA had no indication that the safety injection system hot leg injection lines had accumulated gas.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6), for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The design function of the emergency core cooling system (ECCS) is to provide core cooling and reactivity control for various design bases accidents. With gas potentially entrained in the safety injection system hot leg injection piping, the primary considerations would be maintenance of adequate core cooling and prevention of water hammer resulting from initiation of flow to the reactor core for mitigation of a design basis event. In the event of a postulated large break loss of coolant accident (LBLOCA), the reactor coolant system (RCS) will de-pressurize rapidly, ECCS injection from the refueling water storage tank (RWST) will occur, followed by cold leg recirculation, and then hot leg recirculation. No flow will exist in the hot leg injection piping until hot leg recirculation is initiated.

TVA reviewed the Nuclear Steam Supply System (NSSS) vendor's previous bounding evaluation performed on the effects of injecting the nitrogen gas contained in the four safety injection system accumulators into the RCS following a LOCA. The mass of nitrogen for the accumulators assumed to be injected into the RCS is significantly greater than the mass of gas that could reasonably be expected to exist in the safety injection hot leg injection lines. Therefore, the injection of the postulated gas in the hot leg injection lines would have an insignificant effect on the cooldown of the RCS in the hot leg recirculation mode.

If a layer of gas existed, it would flow to the core by mixing with the water in the line. If a solid bubble were conservatively assumed with the RCS depressurized, the pressure from the pump would push any entrained gas to the RCS hot legs as the hot leg injection valves opened and the safety injection pump came up to operating speed. The two separated water volumes would travel to the RCS hot legs at near the same velocity and would not impact one another. No significant water hammer would occur.

For the design basis small break LOCA (SBLOCA) and the SBLOCA that is smaller than the design basis 4-inch pipe size break, the hot leg swapover is the same, although delayed, for the SBLOCA scenario as for the LBLOCA. No significant water hammer would occur.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change to the WBN TS and its associated bases do not introduce any new accident initiator mechanisms. The exclusion of hot leg injection piping from the ECCS water inventory surveillance does not cause the initiation of any accident nor create any new credible limiting single failure. Further, the change does not result in any event previously deemed incredible being made credible since, as discussed above, there are no new adverse impacts associated with the introduction of gas into the reactor core from those previously evaluated. Further, there is no adverse impact created by a potential water hammer situation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety.

No. The exclusion of safety injection system hot leg injection piping from the ECCS water inventory surveillance does not result in a condition where the design, material, and construction standards that were acceptable prior to this change are altered. The potential to introduce gas from the hot leg injection piping into the reactor core during postulated large and small break LOCA accidents does not adversely affect design assumptions for emergency core cooling or reactivity control. Since adverse water hammer events are not postulated, the proposed changes to TS and its associated Bases will have no affect on the availability, operability, or performance of the WBN ECCS systems. Therefore, the subject change does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 16, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and available electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons

why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 8, 2003, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 10th day of April, 2003.

For the Nuclear Regulatory Commission.

Kahtan N. Jabbour,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–9315 Filed 4–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483]

Union Electric Co.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30 issued to Union Electric Company (the licensee) for operation of the Callaway Plant, Unit 1 located in Callaway County, Missouri.

The proposed amendment would allow the use of generic personnel titles in place of plant-specific personnel titles and require either the operations manager or the assistant operations manager to hold a senior reactor operator (SRO) license.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in title 10 of the Code of Federal Regulations (10 CFR), § 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect accident initiators or assumptions. The radiological consequences of an accident previously evaluated remain unchanged. These changes involve administrative changes concerning the use of personnel titles and do not affect responsibilities or qualifications of plant personnel.

Allowing the "operations manager or assistant operations manager" to hold an SRO license is also an administrative change. At [the] Callaway plant[,] the Superintendent, Operations is assisted by an Assistant Superintendent, Operations who is required to meet the same minimum qualifications and to assist with the same responsibilities, duties, and authorities.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes are administrative in nature. As such, there are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. This amendment will not affect the normal method of plant operation or change any operating parameters. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this amendment. There will be no adverse effects or challenges imposed on any safety-related system as a result of this amendment.

Therefore, the proposed changes do not create a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protective functions. The use of generic personnel titles will not reduce any margin of safety. [These changes involve administrative changes concerning the use of personnel titles and do not affect responsibilities or qualifications of plant personnel.]

Allowing the "operations manager or assistant operations manager" to hold an SRO license is also an administrative change. At [the] Callaway plant[,] the Superintendent, Operations is assisted by an Assistant Superintendent, Operations who is required to meet the same minimum qualifications and to assist with the same responsibilities, duties, and authorities.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 16, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the Public Document Room Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first

prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 21, 2003, which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated in Rockville, Maryland, this 9th day of April, 2003.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Chief, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–9316 Filed 4–15–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: and (d) ways to minimize the burden related to the collecton of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Request for Medicare Payment; OMB 3220–0131

Under section 7(d) of the Railroad Retirement Act, the RRB administers the Medicare program for persons covered by the railroad retirement system. The collection obtains the information needed by Palmetto GBA, the Medicare carrier for railroad retirement beneficiaries, to pay claims for payments under part B of the Medicare program. Authority for collecting the information is prescribed in 42 CFR 424.32.

The RRB currently utilizes Forms G–740S and CMS 1500 to secure the information necessary to pay Part B Medicare Claims. One reponse is completed for each claim. Completion is required to obtain a benefit. No changes are proposed to RRB Form G–740S or CMS Form 1500. The RRB estimates annual respondent burden associated with RRB Form G–740s as follows:

Estimated number of responses: 100.

Estimated completion time per response: 15 minutes.

Estimated annual of burden hours: 25.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Bush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–9266 Filed 4–15–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47651; File No. SR–CBOE–2003–03]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to the Withdrawal of Approval for Securities Underlying Options Traded on the Exchange

April 8, 2003.

On January 27, 2003, the Chicago Board Options Exchange, Inc. ("CBOE") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE rule 5.4, which governs the withdrawal of approval for securities underlying options traded on the Exchange.

The Exchange proposed to add new Interpretation and Policy .11 to CBOE rule 5.4 to clarify the manner in which the Exchange determines whether the so-called "float" of the underlying security was fewer than 6.3 million shares ("float" requirement) or the number of "holders" of the underlying security was fewer than 1,600 ("holders" requirement). Specifically, the Exchange proposed to expressly state that in determining whether any of the events specified in Interpretation and Policy .01(a) or (b) to CBOE rule 5.4 have occurred, the Exchange would monitor on a daily basis news sources for information of corporate actions, including stock splits, mergers and acquisitions, distribution of special cash dividends, recapitalizations, and stock buy backs. If a corporate action indicates that an underlying security no longer meets the Exchange's requirements for continued approval under Interpretation and Policy .01(a) or (b) to CBOE rule 5.4, the Exchange would not open additional series of option contracts of the class covering the underlying security. If, however, information of a corporate action does not indicate that any of the events specified in Interpretation and Policy .01(a) or (b) to CBOE rule 5.4 have occurred, the Exchange shall consider the requirements set forth in Interpretation and Policy .01(a) and (b) to have been satisfied.[3]

The proposed rule change was published for comment in the **Federal Register** on March 4, 2003.[4] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[7] because it clarifies how the Exchange determines whether the "float" and "holder" requirements set forth in Interpretation and Policy .01(a) and (b) to CBOE rule 5.4 respectively are satisfied. Specifically, the Commission believes it is reasonable to permit the Exchange to monitor on a daily basis news sources for information of corporate actions indicating whether the events specified in Interpretation and Policy .01(a) and (b) to CBOE rule 5.4 have occurred to establish whether an underlying security of a class of options no longer meets the Exchange's requirements for continued approval.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[8], that the proposed rule change (File No. SR–CBOE–2003–03) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9318 Filed 4–15–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47657; File No. SR–PHLX–2002–86]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Automatic Execution of Booked Customer Limit Orders

April 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2002, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Exchange. On February 27, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On March 28, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[4] On April 9, 2003, the Exchange filed Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange represents that existing Interpretation and Policy .03 to CBOE rule 5.4 would continue to apply when the Exchange considers whether any of the events specified in Interpretation and Policy .01 have occurred with respect to an underlying security. Specifically, Interpretation and Policy .03 to CBOE rule 5.4 provides that the Exchange shall ordinarily rely on information made publicly available by the issuer and/or markets in which such security is traded. Telephone conversation between Patrick Sexton, CBOE, and Frank N. Genco, Attorney, Division of Market Regulation, Commission, on February 11, 2003.

[4] *See* Securities Exchange Act Release No. 47400 (February 25, 2003), 68 FR 10286.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Deborah Lassman Flynn, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 26, 2003 ("Amendment No. 1"). In Amendment No. 1, the Phlx replaces in its entirety the original proposed rule change.

[4] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated March 27, 2003 ("Amendment No. 2"). In Amendment No. 2, the Phlx replaces in its entirety Amendment No. 1.

[5] *See* letter from Richard S. Rudolph, Director and Counsel, Phlx to Deborah Lassman Flynn, Assistant Director, Division, Commission, dated April 9, 2003 ("Amendment No. 3"). In Amendment No. 3, the Phlx incorporates changes to the text of the Exchange rule 1080 that have been made in separate proposed rule change filings since the time the current proposed rule change was submitted.

change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to amend PHLX rule 1080, Philadelphia Stock Exchange Automated Options Market ("AUTOM") and Automatic Execution System ("AUTO–X"),[6] to provide for the automatic execution of eligible inbound customer and off-floor broker-dealer limit orders[7] against booked customer limit orders at the Exchange's disseminated price. Specifically, the Exchange is proposing to amend PHLX rule 1080(g) to reflect that the contra-side of an eligible inbound customer or off-floor broker-dealer limit order executed via AUTO–X may be a booked customer limit order. The text of the proposed rule change is set forth below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a) No change

(b) (i)(A)—(B) No change.

(C) Off-floor broker-dealer limit orders, up to the minimum number of contracts permitted by the Exchange, subject to the restrictions on order entry set forth in Commentary .05 of this rule. Generally, orders up to 1,000 contracts, depending on the option, are eligible for AUTOM order delivery on an issue-by-issue basis, subject to the approval of the Options Committee. The Options Committee may determine to increase the eligible order delivery size to an amount greater than 1,000 contracts, on an issue-by-issue basis. The following types of broker-dealer limit orders are eligible for AUTOM: day, GTC, Immediate or Cancel ("IOC"), simple cancel, simple cancel to reduce size (cancel leaves), cancel to change price, cancel with replacement order. *For purposes of this rule 1080, the term "off-floor broker-dealer" means either: (1) A broker-dealer that delivers orders from off the floor of the Exchange for the proprietary account(s) of such broker-dealer; or (2) a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such market maker.*

(ii) The Exchange's Options Committee may determine to accept additional types of orders as well as to discontinue accepting certain types of orders.

(A) In accordance with this sub-paragraph (ii), the Options Committee has determined to allow a customer limit order to be submitted in conjunction with a proprietary contra-side order via AUTOM; these orders must be labeled with a "K" (for the customer limit order) and "L" (for the proprietary order which is an immediate-or-cancel order that is not eligible for automatic execution) indicator, respectively. The customer limit order labeled "K" may be executed by the specialist or crowd, except that it may not be executed against the proprietary order labeled "L" until the customer limit order labeled "K" has been exposed to the trading crowd for not less than 30 seconds.

(iii) No change.

(c) AUTO–X.—AUTO–X is a feature of AUTOM that automatically executes eligible market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO–X automatically executes eligible orders using the Exchange disseminated quotation (except if executed pursuant to the NBBO Feature in sub-paragraph (i) below) and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged, such as pursuant to sub-paragraph (iv) below. An order may also be executed partially by AUTO–X and partially manually.

The Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option or series provided that the effectiveness of any such restriction shall be conditioned upon its having been approved by the Securities and Exchange Commission pursuant to section 19(b) of the Securities Exchange Act of 1934 and the rules and regulations thereunder. Any such restriction on the use of AUTO–X approved by the Options Committee will be clearly communicated to Exchange membership and AUTOM users through an electronic message sent via AUTOM and through an Exchange information circular. Such restriction would not take effect until after such communication has been made.

Currently, the Exchange's maximum allowable AUTO–X guarantee is 250 contracts. With respect to options on the Nasdaq-100 Index Tracking Stock ("QQQ")[SM], orders of up to 2,000 contracts in the first two (2) near term expiration months, and 1,000 contracts for all other expiration months, are eligible for AUTO–X.

For each option, there shall be a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size, as determined by the specialist and subject to the approval of the Options Committee.

The Exchange shall provide automatic executions for eligible customer and broker-dealer orders up to the Exchange's disseminated size as defined in Exchange rule 1082 *(except with respect to orders eligible for "Book Match" as described in rule 1080(g)(ii) below)*, subject to a minimum guaranteed AUTO–X size and a maximum guaranteed AUTO–X size (up to a size of 250 contracts).

- If the Exchange's disseminated size is greater than the minimum guaranteed AUTO–X size, and less than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to Exchange's disseminated size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.
- If the Exchange's disseminated size is less than the minimum guaranteed AUTO–X size for that option, inbound eligible orders shall be automatically executed up to such minimum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist or placed on the limit order book.
- If the Exchange's disseminated size is greater than the maximum guaranteed AUTO–X size, inbound eligible orders shall be automatically executed up to such maximum guaranteed AUTO–X size. Remaining contracts shall be executed manually by the specialist.

The minimum and maximum guaranteed AUTO–X size applicable to each option shall be posted on the Exchange's Web site.

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(c)(i)–(iii) No change.

(iv) (A)–(D) No change.

(E) when the specialist posts a bid or offer that is better than the specialist's own bid or offer *(except with respect to orders eligible for "Book Match" as described in rule 1080(g)(ii) below)*;

(F)–(I) No change.

(v) No change.

(d)–(f) No change.

(g) [The Wheel-]AUTO–X Contra-Party Participation—*The contra-side to automatically executed orders may be: (i) a Wheel Participant; or (ii) a booked customer limit order.*

(i) The Wheel—Contra-party participation for AUTO–X automatic execution shall rotate among Wheel Participants (which are specialists and ROTs signed-up on the Wheel for that listed option) in each option in accordance with procedures established by the Exchange. The Wheel will be activated each trading day within three minutes following the completion of the opening rotation for that listed option. An ROT must be present in his Wheel assignment area to participate in Wheel executions. Specialists on the Options Floor are required to participate on the Wheel in assigned issues.

No two associated or dually affiliated ROTs may be on the Wheel for the same option at the same time. Regardless of an ROT's total assigned issues, and ROT may only sign-on the Wheel in one assignment area at any given time. In order to be placed on the Wheel for an entire trade day, the respective ROT must sign-on, in person on the trading floor for that listed option.

AUTO–X participation shall be assigned to Wheel Participants on a routine basis, beginning at a random place on the rotational Wheel each day, from those participants signed-on in that listed option. The Wheel shall rotate and assign contracts in accordance with procedures established by the Exchange.

(ii) Book Match—For purposes of this sub-paragraph, the contra-side to automatically executed inbound eligible customer and off-floor broker-dealer orders shall be a customer limit order on the book where: (A) The Exchange's disseminated size includes a customer limit order on the book; and (B) the disseminated price is the National Best Bid or Offer. This feature is called Book Match. The inbound eligible order shall not be automatically executed prior to the expiration of a 10-second timer; the specialist may execute such order prior to the expiration of 10 seconds.

(h)–(j) No change.

Commentary:

.01–.05. No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PHLX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PHLX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposal is to increase automated options order handling by enabling the Exchange to automatically execute eligible inbound customer and off-floor broker-dealer limit orders delivered via AUTOM against customer limit orders on the specialist's limit order book.[8] The proposal represents the first phase ("Phase I") of the Exchange's "Book Match" system, which the Exchange anticipates will eventually automatically match all eligible inbound order types against orders resting on the limit order book ("booked limit orders").[9]

Currently, the Exchange's AUTOM System and its automatic execution feature, AUTO–X, do not automatically execute otherwise eligible inbound orders if all or part of the Exchange's disseminated size at the disseminated price consists of a booked limit order. In that situation, inbound orders that would otherwise be eligible for automatic execution are matched manually by the specialist.[10]

The Exchange proposes, pursuant to PHLX rule 1080(g)(ii), that when the Exchange's disseminated price is equal to the National Best Bid or Offer ("NBBO"), and all or part of the Exchange's disseminated size at the NBBO disseminated price includes a customer limit order on the book, eligible inbound customer and off-floor broker-dealer limit orders would be automatically executed against booked customer limit orders at the NBBO, up to the size of the booked customer limit orders at the NBBO.[11] If the inbound customer or off-floor broker-dealer limit order is for a greater size than the Exchange's disseminated size, the remaining portion of the order would be executed manually or placed on the limit order book by the specialist.

The proposal would further provide that inbound eligible customer or off-floor broker-dealer limit orders would be subject to a 10-second timer before execution. The specialist may, however, determine that the booked customer limit order was in the process of being

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[6] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. See Phlx rule 1080.

[7] In April of 2002, the Commission approved, on a six-month pilot basis, the Exchange's proposal to allow off-floor broker-dealers to submit proprietary limit orders directly onto the limit order book via AUTOM (the "pilot"). See Securities Exchange Act Release No. 45758 (April 15, 2002), 67 FR 19610 (April 22, 2002) (SR–Phlx–2001–40). In the pilot, the Exchange defined "off-floor broker-dealer" as (a) a broker-dealer that delivers orders from "upstairs" for the proprietary account(s) of such broker-dealer, or (b) a market maker located on an exchange or trading floor other than the Exchange's trading floor who elects to deliver orders via AUTOM for the proprietary account(s) of such broker-dealer. The Commission approved the pilot on a permanent basis in October 2002. See Securities Exchange Act Release No. 46660 (October 15, 2002), 67 FR 64951 (October 22, 2002) (SR–Phlx–2002–50).

[8] The electronic "limit order book" is the Exchange's automated specialist limit order book, which automatically routes all unexecuted AUTOM orders to the book and displays orders real-time in order of price-time priority. Orders not delivered through AUTOM may also be entered onto the limit order book. See Phlx rule 1080, Commentary .02.

[9] The Exchange notes that it was required by the Commission to commit to the automatic execution of eligible inbound orders against specialist and Registered Options Trader ("ROT") limit orders entered onto the limit order book through an electronic interface system known as "ROT Access" under the *Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions.* See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File 3–10282 (the "Order"). See also Securities Exchange Act Release No. 46763 (November 1, 2002), 67 FR 68898 (November 13, 2002) (SR–Phlx–2002–04). The Exchange has committed to roll out the system for the automatic execution of orders placed on the limit order book through ROT Access beginning in January 2004. The instant proposal represents the first phase in the eventual rollout of that system.

[10] Phlx rule 1080(c)(iv) sets forth the various situations in which orders otherwise eligible for automatic execution via AUTO–X are handled manually by the specialist, including this situation, where there is a booked limit order. See Securities Exchange Act Release No. 45927 (May 15, 2002), 67 FR 36289 (May 23, 2002) (SR–Phlx–2001–24).

[11] The disseminated price consisting of a booked limit order at which the eligible inbound order would be executed must be the NBBO. For instance, if the Phlx bid is the National Best Bid, but the Phlx offer is not the National Best Offer, an inbound buy order would not be subject to Book Match, but would instead be handled manually.

traded and may execute the inbound order prior to the expiration of the 10-second timer. The Exchange states that the purpose of the timer is to enable the specialist to ascertain whether a member of the trading crowd is in the process of executing the booked customer limit order (thus providing the opportunity for the booked customer limit order to be executed at a better price). In that situation, if the specialist determines that the booked customer limit order is in the process of being executed in the crowd, the specialist would be able to execute the inbound order.[12] Today, because the inbound order is not eligible for automatic execution against a booked limit order and is handled manually by the specialist, there is an opportunity to ascertain this. Under the proposal, if the specialist determines that the booked customer limit order is not in the process of being executed in the crowd, the inbound order would be matched with the booked customer limit order and automatically executed after 10 seconds.

Another purpose of the timer is to allow the specialist to seek price improvement on behalf of the booked customer limit order, both in the crowd and on away markets. Once a customer limit order is booked, a fiduciary responsibility devolves upon the specialist to execute such an order at the best price available, subject to the customer's limit price, when the order becomes marketable. In order to enable the specialist to carry out that fiduciary responsibility, the Exchange believes the specialist should be given a period of time (*i.e.*, 10 seconds) to determine whether there is a better price available at which to execute the booked customer limit order.

a. *Off-Floor Broker-Dealer Limit Orders Delivered by the Same Broker-Dealer that Delivered the Customer Limit Order on the Book*

The Exchange believes that the Book Match proposal could create an opportunity for off-floor member organizations to internalize orders (*i.e.*, submit a proprietary order as contra-side to their customers' limit orders on the book) without providing the specialist and trading crowd with a sufficient time period to determine to execute the customer limit order.

In order to address this potential issue, the Exchange proposes to establish by rule that member organizations that seek to submit a related proprietary contra-side order (*i.e.*, their own order or that of an affiliate) via AUTOM in conjunction with a customer limit order they deliver to the limit order book, would be required to designate such orders with a special indicator ("K" for the customer limit order, and "L" for the proprietary order). Such orders would not be eligible for AUTO–X or Book Match, and the customer limit order labeled "K" must be exposed to the crowd for a period of 30 seconds before it is eligible to be executed against the proprietary order labeled "L." The proposal would provide that the customer limit order on the book may be executed by the specialist or crowd prior to the expiration of 30 seconds.

The Exchange believes that these new order types, to be delivered via AUTOM in the unique situation where a broker-dealer submits a customer limit order onto the book with an accompanying proprietary contra-side order, combined with the 30-second crowd exposure requirement for the customer limit order, should provide the specialist and trading crowd with a sufficient time frame within which to determine to execute the customer limit order on the book, thus maintaining fairness and orderliness in the Exchange's markets.

b. *Linkage Orders*

The Exchange further believes that the Book Match function will enable the Exchange to promptly execute orders delivered to the Exchange pursuant to the Plan for the Purpose of Creating and Operating an Intermarket Options Linkage (the "Plan")[13] and PHLX rules 1083–1087 adopted to implement the Plan,[14] by matching eligible inbound linkage orders in a timely fashion. The Exchange represents that its systems are capable of recognizing inbound Linkage Principal Acting as Agent Orders ("P/A Orders")[15] and Principal Orders ("P Orders"),[16] and that Book Match would execute eligible linkage orders at the Firm Customer Quote Size[17] in the case of P/A Orders, and at the Firm Principal Quote Size[18] in the case of P Orders.

c. *Yielding Requirements*

The Exchange is proposing to match both inbound marketable customer and off-floor broker-dealer limit orders with customer limit orders on the book at the NBBO. In the case of inbound non-marketable limit orders, the Exchange's rules concerning the establishment of a bid or offer, and yielding requirements in parity situations would apply. Currently, PHLX rule 1080, Commentary .05(ii) provides that off-floor broker-dealer limit orders entered via AUTOM establishing a bid or offer may establish priority, and the specialist and crowd may match such a bid or offer and be at parity, subject to the yield provisions set forth in PHLX rule 1014, which require "controlled accounts"[19] to yield priority to customer orders when bidding or offering at the same price for the same series.

Orders of controlled accounts must yield priority to customer orders (except that PHLX ROTs closing in-person are not currently required to yield priority to orders of customer accounts). Off-floor broker-dealer accounts, a subset of "controlled accounts," must yield priority to customer orders at the same price. Therefore, if an off-floor broker-dealer limit order is placed on the limit order book, followed by a customer limit order placed on the limit order book at the same price, the off-floor broker-dealer limit order must yield priority to the customer limit order, even though the customer limit order was placed on the limit order book after the off-floor broker-dealer order.

Orders of controlled accounts currently are not required to yield priority to other controlled account orders, except that when both an order of a PHLX ROT closing in-person and some other order of a controlled account are established in the crowd at the same price, and then a customer order is established at that price, the order of the controlled account must yield to the customer order while the order of the PHLX ROT closing in-person does not have to so yield.[20]

2. Statutory Basis

For these reasons, the Exchange believes that its proposal is consistent with section 6(b) of the Act[21] in general, and section 6(b)(5)[22] in particular in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and protect investors and the public interest by providing a system that should result in a greater number of automatic executions for customer and broker-dealer orders on the Exchange, and by providing the specialist with the opportunity to determine if a booked customer limit order has already traded, and to seek the best price available for the customer, at the time an eligible inbound order is received.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–2002–86 and should be submitted by May 7, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9317 Filed 4–15–03; 8:45 am]

BILLING CODE 8010–01–P

[12] *See* rule 11Ac1–1(c)(3)(ii)(B) under the Act provides that no responsible broker or dealer shall be obligated to execute a transaction for any subject security if, at the time the order sought to be executed is presented, such responsible broker or dealer is in the process of effecting a transaction in such subject security, and, immediately after the completion of such transaction, such responsible broker or dealer communicates to its exchange or association pursuant to paragraph (c)(1) of this section, a revised bid or offer; provided, however, that such responsible broker or dealer shall nonetheless be obligated to execute any such order in such subject security as provided in paragraph (c)(2) of this section at its revised bid or offer in any amount up to its published quotation size or revised quotation size.

[13] *See* Securities Exchange Act Release Nos. 44482 (June 27, 2001), 66 FR 35470 (July 5, 2001); 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (Notice of Phlx Joining the Plan); and 43086 (July 26, 2000), 65 FR 48023 (August 4, 2000) (Approval of the Plan).

[14] *See* Securities Exchange Act Release No. 47296 (January 31, 2003), 68 FR 6528 (February 7, 2003) (SR–Phlx–2002–67).

[15] Phlx rule 1083(j)(i) defines a "P/A Order" as an order for the principal account of a specialist (or equivalent entity on another exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent.

[16] Phlx rule 1083(j)(ii) defines a "P Order" as an order for the principal account of an eligible market maker and is not a P/A Order.

[17] "Firm Customer Quote Size" with respect to a P/A Order means the lesser of (a) the number of option contracts that the exchange sending a P/A Order guarantees it will automatically execute at its disseminated price in a series of an eligible option class for public customer orders entered directly for execution in that market; or (b) the number of option contracts that the exchange receiving a P/A Order guarantees it will automatically execute at its disseminated price in a series of an eligible option class for public customer orders entered directly for execution in that market. This number shall be at least 10. *See* Phlx rule 1083(g).

[18] "Firm Principal Quote Size" means the number of options contracts that an exchange guarantees it will execute at its disseminated price for incoming Principal Orders in an eligible option class. This number shall be at least 10. *See* Phlx rule 1083(h).

[19] Phlx rule 1014(g)(i)(A) provides that an account type is either a controlled account or a customer account. A controlled account includes any account controlled by or under common control with a broker-dealer (specialist accounts of Phlx option specialists, however, are not subject to yielding requirements placed upon controlled accounts by this rule). Customer accounts are all other accounts.

[20] The Exchange notes that it has filed proposed amendments to its rules, including proposed new rules concerning the allocation of trades on the Exchange's Options Floor, pursuant to an order issued by the Commission in relation to settling *In the Matter of Certain Activities of Options Exchanges*, which requires the Exchange (as well as other options exchanges) to implement certain undertakings. *See* the "Order," supra note 9. One such undertaking is to adopt new, or amend existing, rules to include any practice or procedure, not currently authorized by rule, whereby market makers determine by agreement the spreads or option prices at which they will trade any option, or the allocation of orders in that option. Specifically, the Order required that by March 12, 2001, draft proposed rules must be filed and the Exchange must take all reasonable steps to promptly stop any such practice or procedure that has not been filed or is not already authorized by rule. *See* section IV.B.j. of the Order. Among the proposed amendments are the elimination of the exception to the yielding requirements for specialist accounts of option specialists, and the elimination of the exception to the yielding requirement for ROTs closing in person. Therefore, under that proposal, controlled accounts would be required to yield priority to customer accounts without exception. *See* Securities Exchange Act Release No. 47499 (March 13, 2003), 68 FR 14459 (March 25, 2003) (SR–Phlx–2001–39).

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Region IV Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Roundtable

The Small Business Administration Region IV Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Thursday, May 1, 2003, at 12:30 p.m. at the Sheraton Music City, 777 McGavock Park, Nashville, TN 37214, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the Federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact W. Clinton Smith in writing or by fax, in order to be put on the agenda. W. Clinton Smith, U.S. Small Business Administration, Tennessee District Office, 50 Vantage Way, Suite 201, Nashville, TN 37228, phone (615) 736–5039, fax (615) 736-7232, e-mail: *w.smith@sba.gov*.

For more information, see our Web site at *www.sba.gov/ombudsman*.

Dated: April 9, 2003.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 03–9297 Filed 4–15–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Military Reservist Economic Injury Disaster Loans, Interest Rates for Third Quarter FY 2003

In accordance with the Code of Federal Regulations 13—Business Credit and Assistance § 123.512, the following interest rate is effective for Military Reservist Economic Injury Disaster Loans approved on or after April 14, 2003.

Military Reservist Loan Program—2.953%

Dated: April 10, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–9296 Filed 4–15–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 4337]

Amendment of the Restriction on the Use of United States Passports for Travel To, In or Through Iraq

On February 1, 1991, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(2) and (a)(3), all United States passports, with certain exceptions, were declared invalid for travel to, in, or through Iraq unless specifically validated for such travel. The restriction was originally imposed on the grounds that (1) armed hostilities then were taking place in Iraq and Kuwait and (2) there was an imminent danger to the safety of United States travelers to Iraq. American citizens then residing in Iraq and American professional reporters and journalists on assignment there were exempted from the restriction on the grounds that such exemptions were in the national interest. The restriction has been extended for additional one-year periods since then, and was last extended through February 25, 2004 by Public Notice 4283 of February 25, 2003. (68 FR 8791).

The armed hostilities now taking place in Iraq have increased the danger faced by U.S. citizens in Iraq, and current conditions in Iraq are extremely hazardous for Americans. Nevertheless, in light of U.S. national interests in facilitating the provision of humanitarian and other critical services in support of the Iraqi people, and pursuant to the authorities set forth in 22 U.S.C. 211a, Executive Order 11295, and 22 CFR 51.73, I have decided to amend the restriction on the use of U.S. passports for travel to, in, or through Iraq to exempt from its coverage certain persons providing humanitarian and other critical services in support of the Iraqi people.

Accordingly, Public Notice 4283, published on February 25, 2003 (68 FR 8791) is hereby amended by deleting the penultimate paragraph (beginning with "Accordingly") and replacing it with the following:

"Accordingly, United States passports shall continue to be invalid for travel to, in, or through Iraq unless specifically validated for such travel under the authority of the Secretary of State. This restriction on the validity of U.S. passports for travel to, in or through Iraq shall not apply to U.S. passports held by (1) persons resident in Iraq since February 1, 1991; (2) professional reporters and journalists on assignment there; (3) persons conducting humanitarian activities, as defined in 31 CFR Section 575.330, through nongovernmental organizations registered with the U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) pursuant to 31 CFR Section 575.527(a); (4) persons conducting humanitarian activities subject to a specific license issued by OFAC; (5) persons conducting humanitarian activities funded by the U.S. Government; (6) personnel of the United Nations and its agencies; or (7) U.S. States Government personnel and contractors on official U.S. Government assignment in Iraq."

This Public Notice amending Public Notice Number 4283 shall be effective from the date it is published in the **Federal Register** and shall expire at midnight on February 25, 2004, unless sooner extended or revoked by Public Notice.

Dated: April 11, 2003.

Colin L. Powell,

Secretary of State, Department of State.

[FR Doc. 03–9498 Filed 4–15–03; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Navigation and Spectrum Policy 2003 Federal Radionavigation Plan

AGENCY: Office of Secretary of Transportation.

ACTION: Notice and request for public comment.

SUMMARY: Under the authority of the National Defense Authorization Act of FY 1998, the Department of Transportation, in conjunction with the Department of Defense, is required to publish a Federal Radionavigation Plan (FRP) not less than every two years. The FRP represents the official United States government policy and plan for common-use (*i.e.* civil and military) radionavigation systems. The FRP was last published in 2001 by the Department of Defense and the Department of Transportation. The next publication of the document is planned for 2003. When it is signed, a notice will be published in the **Federal Register** announcing its availability.

Due to the many advances in technology, radionavigation services are now widely used by public, industry, and government sectors alike. Improved services, lowered costs of user equipment, and new benefits have increased the overall user base of radionavigation services. As such, a key goal of the Office of Navigation and Spectrum Policy is to solicit input from all user communities on the desired policy and plan for federally operated common-use radionavigation services. The Department of Transportation encourages all users of radionavigation systems and users of the FRP to submit their comments and inputs for updating the content of the 2001 FRP to reflect the current policy and plan for the 2003 FRP edition.

DATES: Comments must be filed by July 1, 2003. Late-filed comments will be considered to the extent possible.

ADDRESSES: Written comments on the content, format, or scope of the FRP document should be emailed to: *FRPinputs@ost.dot.gov* Copies of the 2001 FRP can be downloaded free of charge at: *http://www.navcen.uscg.gov/pubs/frp2001/default.htm.*

FOR FURTHER INFORMATION CONTACT: The Office of the Secretary, Navigation and Spectrum Policy at (202) 366–0353.

Dated: April 7, 2003.

Michael E. Shaw,

Director, Navigation and Spectrum Policy.

[FR Doc. 03–9084 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Marine Transportation System National Advisory Council

ACTION: National Advisory Council public meeting.

SUMMARY: The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold a meeting to discuss the Council's Team reports, its SEA–21 proposal, short sea shipping, shipbuilding, MTS infrastructure needs and other issues. A public comment period is scheduled for 9 a.m. to 10 a.m. on Tuesday, May 13, 2003. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Raymond Barberesi by May 5, 2003. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Copies of oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by May 20, 2003.

DATES: The meeting will be held on Monday, May 12, 2003, from 10 a.m. to 5:30 p.m. and Tuesday, May 13, 2003, from 8 a.m. to 12 p.m.

ADDRESSES: The meeting will be held in the Hotel Monaco, 700 F Street, NW., Washington, DC 20001. The hotel's phone number is (202) 628–7177.

FOR FURTHER INFORMATION CONTACT: Raymond Barberesi, (202) 366–4357; Maritime Administration, MAR 830, Room 7201, 400 Seventh St., SW, Washington, DC 20590; *Raymond.Barberesi@marad.dot.gov.*

(Authority: 5 U.S.C. App 2, Sec. 9(a)(2); 41 CFR 101–6. 1005; DOT Order 1120.3B)

Dated: April 10, 2003.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–9289 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on 10–16–02.

DATES: Comments must be submitted on or before May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald Filbert at the National Highway Traffic Safety Administration, Office of Injury Control Operations & Resources, (NTI–200), 202–366–2701. 400 Seventh Street, SW., 5119E, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 23 CFR Part 1313 Certificate Requirements for State Grants for Drunk Driving Prevention Programs.

OMB Number: 2127–0501.

Type of Request: Extension of a currently approved collection.

Abstract: Title 23 of the U.S. Code established a Federal alcohol incentive grant program designed to encourage States to enact strong, effective anti-drunk driving legislation and improve the enforcement of these laws.

Affected Public: State, local, and tribal government.

Estimated Total Annual Burden: 1,360.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 10, 2003.

Marilena Amoni,

Acting Associate Administrator for Office of Injury Control Operations & Resources.

[FR Doc. 03–9355 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on October 1, 2002 (67 FR 61722–61723).

DATES: Comments must be submitted on or before May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Luke Loy, National Highway Traffic Safety Administration, Office of Enforcement, 202–366–5308. 400 Seventh Street, SW., Room 6111, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Motor Vehicle Importation.

OMB Number: 2127–0002.

Type of Request: Extension of a currently approved collection.

Affected Public: Business or other for-profit.

Abstract: The National Highway Traffic Safety Administration's (NHTSA's) statute at 49 U.S.C. subchapter III *Importing Noncomplying Motor Vehicles and Equipment* (49 U.S.C. section 30141 *et seq.*) requires that a motor vehicle which does not conform to applicable Federal Motor vehicle Safety Standards (FMVSS) be refused admission into the United States. NHTSA may authorize importation of nonconforming vehicles upon specified terms and conditions to insure that any such vehicle or equipment will be brought into conformity with all applicable FMVSS or will be exported out of or abandoned to the United States at no cost.

Estimated Burden Hours: 72,500.

Number of Respondents: 838,000.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 10, 2003.

Delmas Maxwell Johnson,

Associate Administrator for Administration.

[FR Doc. 03–9356 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** notice with a 60-day comment period was published on August 19, 2002 (67 FR 53839–53840, or U.S. DOT Docket Number NHTSA–2002–12908).

DATES: Comments must be submitted on or before May 16, 2003.

FOR FURTHER INFORMATION CONTACT: Johanna Lowrie at the National Highway Traffic Safety Administration, Office of Crashworthiness Standards (NVS–111) (202) 366–5269. 400 Seventh Street, SW., 5311, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Vehicle Information for the General Public.

OMB Number: 2127 New.

Type of Request: Regular.

Abstract: NHTSA currently collects vehicle information through the Office of Vehicle Safety Compliance (OVSC). This information collection is mandatory and is specific to Compliance requirements of certain Federal Motor Vehicle Safety Standards (FMVSS). The information collected by OVSC has been useful to the New Car Assessment Program (NCAP) in selecting vehicles for it's crash testing programs, but more information is needed. At the same time, the public's interest in vehicle information continues to grow. The public is interested not only in crash test results and other vehicle ratings, but is also interested in information on the benefit and availability of safety features. NHTSA also needs safety feature information when it attempts to analyze petitions for rulemaking asking the agency to mandate certain safety features.

An example of the type of information we propose to collect includes: Specific advanced frontal air bags information that would include the number of air bag deployment stages; technologies air bag deployment is dependent upon; air bag on/off switch information; child restraint anchorages system information; seat belt information that would include pretensioner, load limiters or other energy management systems for the seat belt, seat belt extenders and adjustable upper belt anchorages; dynamic head restraints; side air bag information that would include where the side air bag is mounted, what type of side bag is mounted and whether the side air bags meet the requirements of the recommendations of the Technical Working Group on Out of Position Occupants (TWG); Automatic Door Lock (ADL) information; crash avoidance information, anti-theft devices, and Static Stability Rating (SSF) information.

NHTSA will use this information on the NHTSA Web site, in the "Buying a Safer Car" and "Buying a Safer Car for Child Passengers" brochures, other consumer publications, as well as internally for benefit analysis. NHTSA plans on making this burden easier by sending out electronic files with the original letter requesting information. In the future, NHTSA plans on developing a process for the manufacturers to submit the information on a secure website.

Affected Public: Manufacturers that sell motor vehicles in the United States under 10,000 lbs.

Estimated Total Annual Burden: 880 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 10, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–9357 Filed 4–15–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34322]

Canadian National Railway Company—Trackage Rights Exemption—CSX Transportation, Inc. and New York Central Lines, LLC

New York Central Lines, LLC (NYC) and CSX Transportation, Inc. (CSXT) have agreed to grant overhead trackage rights to Canadian National Railway Company (CN) over segments of the following rail lines owned by NYC and operated by CSXT: (1) NYC's Niagara Branch at CP–7 (generally between milepost 7.1+/− and milepost 7.2+/−), between the connection with CN at the easterly end of CN's International Bridge and the connection with NYC's Belt Line Branch at Buffalo (Black Rock), NY; (2) NYC's Belt Line Branch between the connection with NYC's Niagara Branch at CP–7 (milepost 7.2+/−) at Buffalo (Black Rock), NY, and NYC's Chicago Line at CP–437 (milepost 0.0+/−) at Buffalo, NY; and (3)(a) NYC's Chicago Line, between the connection with NYC's Belt Line Branch and NYC's connection with PRR's Howard Street Running Track at CP–437 at Buffalo, NY; and (b) between CP–437 at Buffalo, NY, and the connection between NYC and the South Buffalo Railway Company (SBRR) at the west end of NYC's Seneca Yard near milepost 5.0+/− of NYC's Chicago Line, via either (i)(a) Chicago Line between CP–437 and CP–2, or (b) Compromise Branch between CP–437 and CP–2, and (ii) NYC's designated Seneca Yard trackage between CP–2 and CP–5, a total of approximately 12.8 miles, depending on the route, including such NYC Seneca Yard trackage as CN shall require to reasonably interchange or conduct interchange with SBRR or Buffalo & Pittsburgh Railroad Inc. (BPRR).

The transaction was scheduled to be consummated on April 3, 2003 (7 days after the notice was filed).

The purpose of this transaction is to amend the trackage rights granted to CN in *Canadian National Railway Company—Trackage Rights Exemption—New York Central Lines LLC*, STB Finance Docket 33769 (STB served June 29, 1999); and *Canadian National Railway Company—Trackage Rights Exemption—New York Central Lines LLC*, STB Finance Docket No. 33798 (STB served Sept. 17, 1999).

The amended trackage rights will facilitate CN's interchange with BPRR and CN's interchange with the Norfolk Southern Railway Company. In addition, the amended trackage rights will allow CN to easily access its already existing trackage rights and lessen traffic on segments of the NYC's Compromise Branch Line and NYC's Chicago Line.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34322, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Michael J. Barron, Jr., Canadian National Railway Company, 455 North Cityfront Plaza Drive, Chicago, IL 60611–5317.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov.*"

Decided: April 8, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–9328 Filed 4–15–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

Notice of Call for Redemption: 8¾ Percent Treasury Bonds of 2003–08

1. Public notice is hereby given that all outstanding 8¾ percent Treasury Bonds of 2003–08 (CUSIP No. 912810 CC 0) dated August 15, 1978, due August 15, 2008, are hereby called for redemption at par on August 15, 2003, on which date interest on such bonds will cease.

2. Full information regarding the presentation and surrender of such bonds held in coupon and registered form for redemption under this call will be found in Department of the Treasury Circular No. 300 dated March 4, 1973, as amended (31 CFR part 306), and from the Definitives Section of the Bureau of the Public Debt (telephone (304) 480–7936), and on the Bureau of the Public Debt's Web site, *http://www.publicdebt.treas.gov.*

3. Redemption payments for such bonds held in book-entry form, whether on the books of the Federal Reserve Banks or in Treasury-Direct accounts, will be made automatically on August 15, 2003.

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 03–9171 Filed 4–15–03; 8:45 am]

BILLING CODE 4810–40–M

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. No. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the "Fund") within the Department of the Treasury is soliciting comments concerning the Community Development Financial Institutions ("CDFI") Program; Financial Assistance Component Application.

DATES: Written comments should be received on or before June 16, 2003, to be assured of consideration.

ADDRESSES: Direct all comments to Linda G. Davenport, Acting Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, Facsimile Number (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: The Financial Assistance Component application may be obtained from the Fund's Web site at *http://www.cdfifund.gov.* Requests for additional information should be directed to Linda G. Davenport, Acting Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005, or call (202) 622–8662.

SUPPLEMENTARY INFORMATION:

Title: The Community Development Financial Institutions Program—Financial Assistance Component Application.

OMB Number: 1559–0006.

Abstract: The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to certified CDFIs. Through the Financial Assistance Component of the CDFI Program, the Fund makes financial investments in and may provide technical assistance grants to CDFIs that have comprehensive business plans for creating demonstrable community development impact through the deployment of capital within their respective target markets for community development finance purposes.

Type of review: Extension.

Affected Public: Not-for-profit institutions, businesses or other for-profit institutions and tribal entities.

Estimated Number of Respondents: 200.

Estimated Annual Time Per Respondent: 100 hours.

Estimated Total Annual Burden Hours: 20,000 hours.

Requests for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Fund, including whether the information shall have practical utility; (b) the accuracy of the Fund's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 4703, 4703 note, 4704, 4706, 4707, 4717; 12 CFR part 1805.

Dated: April 8, 2003.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 03–9294 Filed 4–15–03; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Release of Non-Public Information

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before May 16, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, or e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Release of Non-Public Information.

OMB Number: 1550–0081.

Form Number: N/A.

Regulation requirement: 12 CFR 510.5.

Description: This information collection provides an orderly mechanism for expeditious processing of requests from the public (including litigants in lawsuits where OTS is not a party) for non-public or confidential OTS information (documents and testimony), while preserving OTS's need to maintain the confidentiality of such information.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 36.

Estimated Frequency of Response: On occasion.

Estimated Burden Hours per Response: 5 hours.

Estimated Total Burden: 180 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: April 10, 2003.

Deborah Dakin,

Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 03–9288 Filed 4–15–03; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0074]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine eligibility for continued educational assistance for veterans, individuals on active duty, and reservists who change their programs of education or places of training.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 16, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to "OMB Control No. 2900–0074" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Change of Program or Place of Training for Veterans, Servicepersons, and Members of the Selected Reserve, VA Form 22–1995.

OMB Control Number: 2900–0074.

Type of Review: Extension of a currently approved collection.

Abstract: VA pays educational benefits to eligible veterans and persons on active duty, and to persons in the Selected Reserve. Each veteran, person on active duty, or person in the Selected Reserve must be pursuing an approved program of training to be eligible for benefits. The eligible student must complete VA Form 22–1995 to identify and request approval for a supplementary educational objective or place of training. VA uses the information to determine continued eligibility for educational benefits, and to monitor the number of times a veteran, person on active duty, or person in the Selected Reserve has changed his or her educational objectives.

Affected Public: Individuals or households.

Estimated Annual Burden: 16,000 hours.

Estimated Average Burden Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 80,000.

Dated: April 3, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–9360 Filed 4–15–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0319]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to establish a legal contract between VA and a Federal fiduciary.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 16, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to "OMB Control No. 2900–0319" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Fiduciary Agreement, VA Form 21–4703.

OMB Control Number: 2900–0319.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 21–4703 is used to maintain supervision of the distribution and use of VA benefits paid to a fiduciary on behalf of a beneficiary who is determine to be incompetent. The form is used as a legal binding contract between VA and Federally appointed fiduciaries. It outlines a fiduciary's responsibilities with respect to the use of funds received on behalf of incompetent beneficiaries.

Affected Public: Individuals or households, business or other for-profit, not for profit institutions, and State, local or tribal government.

Estimated Annual Burden: 1,467 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 17,600.

Dated: April 2, 2003.

By direction of the Secretary.

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 03–9361 Filed 4–15–03; 8:45 am]

BILLING CODE 8320–01–P

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Federal Register

Wednesday,
April 16, 2003

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0088, FRL–7462–6]

RIN 2060–AG68

National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing refractory products manufacturing facilities and implements section 112(d) of the Clean Air Act (CAA) by requiring all major sources to meet HAP emission standards reflecting the application of maximum achievable control technology (MACT). The final rule will protect air quality and promote the public health by reducing emissions of several of the HAP listed in section 112(b)(1) of the CAA, including ethylene glycol, formaldehyde, hydrogen fluoride (HF), hydrochloric acid (HCl), methanol, phenol, and polycyclic organic matter (POM). Exposure to these substances has been demonstrated to cause adverse health effects such as irritation of the lung, skin, and mucous membranes, effects on the central nervous system, and damage to the liver, kidneys, and skeleton. The EPA has classified the HAP formaldehyde and POM as probable human carcinogens. The final rule will reduce nationwide emissions of HAP from these facilities by an estimated 124 megagrams per year (Mg/yr) (137 tons per year (tpy)).

EFFECTIVE DATE: April 16, 2003.

ADDRESSES: Docket No. OAR–2002–0088 contains supporting information used in developing the final rule. The docket is located at the Air and Radiation Docket and Information Center in the EPA Docket Center, (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW, Washington, DC 20460, telephone (202) 566–1744.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Fairchild, U.S. EPA, Office of Air Quality Planning and Standards, Emission Standards Division, Minerals and Inorganic Chemicals Group, (C504–05), Research Triangle Park, NC 27711, telephone number (919) 541–5167, electronic mail address *fairchild.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include those listed in the following table:

Category	NAICS	Examples of regulated entities
Industrial	327124	Clay refractories manufacturing plants.
Industrial	327125	Nonclay refractories manufacturing plants.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.9782 of today's final rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Electronic Docket (E-Docket). The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0088. The official public docket is the collection of materials that is available for public viewing in the Refractory Products Manufacturing NESHAP Docket at the Air and Radiation Docket and Information Center in the EPA Docket Center, (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. The Docket Center is open from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search" and key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as confidential business information and other information whose disclosure is restricted by statute, which are not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this document.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's document also will be available on the WWW. Following the Administrator's signature, a copy of this action will be posted at *http://www.epa.gov/ttn/oarpg* on EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules. The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 16, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to the final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background and Public Participation
A. What Is the Source of Authority for Development of NESHAP?
B. What Criteria Are Used in the Development of NESHAP?
C. How Was the Rule Developed?
II. Summary of the Final Rule
A. What Source Category Is Affected by the Final Rule?
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I. Background and Public Participation

A. What is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Major sources of HAP are those that have the potential to emit greater than 10 tpy of any one HAP or 25 tpy of any combination of HAP. The category of major sources covered by the final rule was listed as Chromium Refractories Production on July 16, 1992 (57 FR 31576).

Section 112(c) of the CAA allows EPA to revise the source category list at any time. After obtaining information from chromium refractories manufacturing plants that indicated that some facilities were major sources due to HAP emissions from the manufacturing of nonchromium refractories, we decided to expand the scope of the source category to include most manufacturers of refractory products. On November 18, 1999, we revised the source category name from Chromium Refractories Production to Refractories Manufacturing (64 FR 63025) to reflect the broadened scope of the source category. At proposal (67 FR 42108, June 20, 2002), we changed the source category name from Refractories Manufacturing to Refractory Products Manufacturing to further clarify the source category.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standards are set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

C. How Was the Rule Developed?

We proposed the standards for refractory products manufacturing on June 20, 2002 (67 FR 42108). The public comment period lasted from June 20, 2002 to August 19, 2002. Industry representatives, regulatory agencies, environmental groups, and the general public were given the opportunity to comment on the proposed rule and to provide additional information during the public comment period. We offered at proposal the opportunity for oral presentation of data, views, or arguments concerning the proposed rule at a public hearing. One organization requested a public hearing, but it later withdrew the request, and a hearing was not held.

We received a total of eight public comments on the proposed rule. Comments were submitted by three industry trade associations, two refractory products manufacturing companies, and two other companies. One trade association submitted two sets of comments. The final rule reflects our full consideration of all of the comments received. Major public comments on the proposed rule, along with our responses to those comments, are summarized in this preamble.

II. Summary of the Final Rule

A. What Source Category Is Affected by the Final Rule?

Today's final rule applies to the Refractory Products Manufacturing source category. This source category includes, but is not limited to, any facility that manufactures refractory bricks and shapes that are produced using an organic HAP compound, pitch-impregnated refractory products, fired chromium refractory products, and fired clay refractory products. Fired refractory products are those that have undergone thermal processing in a kiln.

B. What Are the Affected Sources?

Today's final rule establishes emission limitations (emission limits and operating limits) and work practice standards for several types of refractory products manufacturing sources. Table 1 of this preamble lists the affected sources that will be subject to today's final rule.

TABLE 1.—AFFECTED SOURCES FOR THE REFRACTORY PRODUCTS MANUFACTURING RULE

Refractory product type	Affected sources
Sources subject to emission limits:	
Resin-bonded	Existing and new curing ovens and kilns.
Pitch-bonded ..	Existing and new curing ovens and kilns.

TABLE 1.—AFFECTED SOURCES FOR THE REFRACTORY PRODUCTS MANUFACTURING RULE—Continued

Refractory product type	Affected sources
Pitch-impregnated.	Existing and new defumers and coking ovens, and new shape preheaters.
Other formed products that use organic additives.	Existing and new shape dryers and kilns used to process refractory shapes that are made using an organic HAP compound.
Clay	New kilns.
Sources subject to work practice standards:	
Pitch-impregnated.	Existing shape preheaters and existing and new pitch working tanks.
Chromium	Existing and new kilns.
Clay	Existing kilns.

C. What Are the Emission Limits?

Today's final rule specifies separate emission limits for existing and new thermal process sources that emit organic HAP and new clay refractory products kilns. Facilities that operate thermal process sources that emit organic HAP have the option of meeting a total hydrocarbon (THC) concentration limit of 20 parts per million by volume, dry basis (ppmvd), corrected to 18 percent oxygen, or reducing THC mass emissions by at least 95 percent. The sources that will be subject to these organic HAP emission limits include new and existing shape dryers, curing ovens, kilns, coking ovens, and defumers. In addition, new shape preheaters will be subject to these same emission limits. For continuous process sources of organic HAP, the format of the emission limits is a 3-hour block average. For batch process sources, the format of the standard is the average of the 3-hour peak THC emissions periods for two test runs.

For affected new clay refractory products kilns, the final rule includes separate emission limits for HF and HCl. For affected continuous kilns, you will have to meet an HF emission limit of 0.019 kilograms per megagram (kg/Mg) (0.038 pounds per ton (lb/ton)) of uncalcined clay processed or reduce HF mass emissions by at least 90 percent. You will also be required to meet an HCl emission limit of 0.091 kg/Mg (0.18 lb/ton) of product or reduce uncontrolled HCl emissions by at least 30 percent. If you own or operate a new affected periodic (batch process) clay refractory products kiln, you will be required to reduce HF emissions by at least 90 percent and HCl emissions by at least 30 percent.

D. What Are the Operating Limits?

Operating limits are limits on operating parameters of process equipment or control devices. Today's final rule specifies process and control device operating limits for thermal process sources that emit organic HAP and for clay refractory kilns. For each of these operating limits, you will be required to measure the appropriate operating parameters during the performance test and establish limits on the operating parameters based on those measurements. Following the performance test, you will be required to monitor those parameters and ensure that the established limits are not exceeded.

For affected thermal process sources that emit organic HAP, we are requiring operating limits on the organic HAP processing rate and the operating temperatures of your control devices. The operating limit on the organic HAP processing rate requires you to maintain the rate at which organic HAP are processed in an affected process unit at or below the rate measured during the most recent performance test. For sources that are controlled with a thermal oxidizer, you will be required to establish the operating limit for the combustion chamber temperature. For affected sources that are controlled with a catalytic oxidizer, you will be required to establish the operating limit for the temperature at the inlet of the catalyst bed. Also, you must check the activity level of the catalyst at least every 12 months.

If you have a new clay refractory products kiln that is controlled with a dry limestone adsorber (DLA), you will be required to monitor continuously the pressure drop across the DLA and check the limestone feed hopper and feeder setting at least daily to ensure that the limestone is free flowing. You will also be required to document the source of the limestone used during the most recent performance test and maintain records that demonstrate that the source of limestone has not changed.

If you own or operate a new clay refractory products kiln that is controlled with dry lime injection fabric filters (DIFF) or dry lime scrubber/fabric filters (DLS/FF), you will be required to install a bag leak detection system, initiate corrective action within 1 hour of a bag leak detection system alarm, and complete corrective actions according to your operation, maintenance, and monitoring (OM&M) plan. You will also be required to verify at least once every 8 hours that lime is free flowing and record the lime feeder setting daily to confirm that the feeder setting is at or above the level established during the most recent performance test. If you use a wet scrubber, you will be required to establish operating limits for the pressure drop across the scrubber, liquid pH, liquid flow rate, and chemical feed rate (if applicable).

If you use a control device or technique listed in today's final rule, you may establish operating limits for alternative operating parameters subject to prior written approval by the Administrator on a case-by-case basis. You will be required to submit the application for approval of alternative operating parameters no later than the notification of the performance test. You will have to install, operate, and maintain the alternative parameter monitoring systems in accordance with the application approved by the Administrator.

E. What Are the Work Practice Standards?

Today's final rule establishes work practice standards for existing shape preheaters that are used to produce pitch-impregnated refractory products, existing and new pitch working tanks that are used to produce pitch-impregnated refractory products, existing and new chromium refractory products kilns, and existing clay refractory products kilns.

If you operate an affected existing shape preheater, you will be required to control emissions of POM from the shape preheater by cleaning the residual pitch from the surfaces of the baskets or containers that are used for holding refractory shapes in a shape preheater and autoclave at least every ten impregnation cycles, or by ducting the exhaust from the shape preheater to a control device that meets the applicable emission limits for thermal process sources of organic HAP. If you choose to clean the basket surfaces, you may remove residual pitch by abrasive blasting or subject the baskets to a thermal process cycle that matches or exceeds the temperature and cycle time of the affected shape preheater and is ducted to a thermal or catalytic oxidizer that is comparable to the control device for your defumer or coking oven. If you choose to duct shape preheater emissions to a control device, you may duct the emissions to the coking oven control device, defumer control device, or to another thermal or catalytic oxidizer that is comparable to the coking oven or defumer controls and meets the applicable emission limits for thermal process sources of organic HAP.

If you have an affected existing or new pitch working tank, you must duct the exhaust from the tank to either the coking oven control device, the defumer control device, or an equivalent thermal or catalytic oxidizer.

If you have an affected existing or new chromium refractory products kiln or an affected existing clay refractory products kiln, you must use natural gas, or an equivalent fuel, as the kiln fuel at all times except during periods of natural gas curtailment or other periods when natural gas is not available.

F. What Are the Testing and Initial Compliance Requirements for Sources Subject to Emission Limits?

Under today's final rule, you must conduct an initial performance test on each affected source to demonstrate initial compliance with the emission limits. In accordance with 40 CFR 63.7(a)(2), you are required to conduct the test within 180 days after the compliance date using specified test methods.

If you have an affected existing or new shape dryer, curing oven, kiln, coking oven, or defumer, or a new shape preheater, and you choose to comply with the THC concentration limit of 20 ppmvd corrected to 18 percent oxygen, you must measure emissions of THC in stack gases exhausted to the atmosphere using EPA Method 25A of 40 CFR part 60, appendix A, Determination of Total Gaseous Organic Concentration Using a Flame Ionization Analyzer. You must also measure the oxygen concentration of the stack gas using EPA Method 3A of 40 CFR part 60, appendix A, Determination of Oxygen and Carbon Dioxide Concentrations in Emissions From Stationary Sources (Instrumental Analyzer Procedure). If you decide to comply with the 95 percent THC reduction limit, you must measure THC mass emissions at the inlet and outlet of the control device using EPA Method 25A.

For continuous process sources, you must conduct a minimum of three 1-hour test runs. For batch process sources, you must conduct at least two test runs. Each batch process test run must be conducted over a separate batch cycle, unless you manufacture the product associated with the maximum organic HAP processing rate infrequently and it will disrupt production to perform the compliance test over multiple process cycles. In such cases, you may conduct both runs of the performance test simultaneously over a single batch process cycle using paired sampling trains.

Today's final rule requires affected batch process sources to be tested throughout two complete batch cycles unless you develop an emissions profile or meet certain conditions for terminating a performance test run before the completion of the batch cycle. If you choose to develop an emissions profile, you must sample THC emissions throughout a complete batch cycle, determine the average THC mass emissions rate for each hour of the batch cycle, and identify the 3-hour period of peak THC emissions. During any subsequent test runs, you are not required to sample emissions outside that 3-hour period of peak THC emissions. During subsequent performance tests, you will have to complete at least two test runs, but you will only have to test during the 3-hour peak emissions period for each run.

If you choose not to develop an emissions profile, you may terminate testing before the completion of a batch cycle if you meet certain conditions. For each of two test runs, you will have to begin testing at the start of the batch cycle and continue testing for at least 3 hours beyond the precise time when the process reaches peak operating temperature. You may stop the test run at that time if you can show that the following conditions are met: (1) THC concentrations are not increasing over the 3-hour period since the process peak temperature was reached; (2) at least 1 hour has passed since any reduction in the operating temperature of the control device (thermal or catalytic oxidizer); and (3) either the average THC concentration at the inlet to the control device for the previous hour has not exceeded 20 ppmvd, corrected to 18 percent oxygen, or your source met the applicable emission limit at the control device outlet during each of the previous 3 hours after the process reached peak temperature.

For both continuous process and batch process performance tests, you must conduct performance tests on affected thermal process sources under the conditions that will result in the highest levels of organic HAP emissions expected to occur for that affected source. You determine these "worst-case" conditions by taking into account the organic HAP processing rate, the process operating temperatures, and the processing times. The organic HAP processing rate is the rate at which the mass of organic HAP materials contained in refractory shapes are processed in an affected thermal process source.

If you decide to start production of a refractory product that is likely to have an organic HAP processing rate that is more than 10 percent greater than the rate established during the most recent performance test, you will be required to conduct a new performance test for that product and establish a new operating limit for the organic HAP processing rate. You will also have to conduct a new performance test on an affected uncontrolled kiln following any process changes that are likely to increase kiln emissions of organic HAP.

If the source is a batch process source and is controlled with a thermal or catalytic oxidizer, you may reduce the operating temperature of the control device or shut the control device off if you satisfy all of the following conditions: (1) You do not use an emissions profile and limit testing to the 3-hour peak emissions period; (2) at least 3 hours have passed since the process unit reached its maximum temperature; (3) the applicable emission limit (THC concentration or THC percentage reduction) has been met during each of the three 1-hour periods since the process reached peak temperature; (4) mass emissions of THC have not increased during the 3-hour period since maximum process temperature was reached; and (5) either the average THC concentration at the inlet to the oxidizer has not exceeded 20 ppmvd, corrected to 18 percent oxygen, for at least 1 hour, or the applicable emission limit has been met during each of the four 15-minute periods immediately following the oxidizer temperature reduction. If you elect to shut off or reduce the temperature of a thermal or catalytic oxidizer by satisfying these conditions, you may use the results from the performance test to establish the time at which the oxidizer for that specific source can be shut off (or temperature reduced) during the production of other refractory products that use organic HAP. For any such product, you must operate the oxidizer at a temperature at least as high as that established during the performance test, minus 16°C (25°F), from the start of the batch cycle until 3 hours have passed since the process reached its peak temperature. You will have to maintain that oxidizer temperature for the same length of time beyond the process peak temperature as during the performance test.

For each new kiln that manufactures clay refractory products, you must measure emissions of HF and HCl using one of three methods: (1) EPA Method 26A of 40 CFR part 60, appendix A, Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources—Isokinetic Method; (2) EPA Method 26 of 40 CFR part 60, appendix A, Determination of Hydrogen Halide and Halogen Emissions from Stationary Sources—Non-isokinetic Method; or (3)

EPA Method 320 of 40 CFR part 63, appendix A, Measurement of Vapor Phase Organic and Inorganic Emissions by Extractive Fourier Transfer Infrared (FTIR) Spectroscopy. You can use Method 26 only if the gas stream does not contain HF or HCl in the solid phase (*e.g.*, HF as PM or HCl as PM). You must conduct the tests for HF and HCl while the affected kiln is operating at the maximum production level likely to occur. Each test run must last at least 1 hour in duration.

If you have an affected continuous clay refractory products kiln, you must determine initial compliance with the production-based mass emission limits for HF and HCl by calculating the mass emissions per unit of production for each test run using the mass emission rates of HF and HCl and the rate at which uncalcined clay is processed (on a fired-product basis), as measured during your performance test. To determine initial compliance with any of the percentage reduction emission limits, you must measure mass emissions of the specific HAP (HF or HCl) at the inlet and outlet of the control device for each test run.

If you have an affected batch process clay refractory kiln, you must comply with the percentage reduction limit. You will be required to test throughout two complete batch cycles unless you develop an emissions profile. If you choose to develop an emissions profile, you must sample HF and HCl emissions throughout one complete batch cycle. For both continuous and batch process kilns, you must measure and record the average uncalcined clay processing rate for each test run.

If you own or operate an affected new clay refractory products kiln that is controlled with a DLA, and you decide to change the source of limestone, you must repeat the performance test on the kiln within 60 days of the date when you begin using limestone from the new limestone source.

In addition to the procedures previously described, you will be required to follow the procedures specified in EPA Methods 1 to 4 of appendix A of 40 CFR part 60, where applicable. You must perform EPA Method 1, Sample and Velocity Traverses for Stationary Sources, (or Method 1A) to select the locations of sampling points and the number of traverse points. You must perform EPA Method 2, Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube), (or Method 2A, 2C, 2D, 2F, or 2G) to determine gas velocity and volumetric flow rate. You must perform EPA Method 3, Gas Analysis for the Determination of Dry Molecular Weight, (or Method 3A or 3B) to determine the exhaust gas molecular weight. You must perform EPA Method 4, Determination of Moisture Content in Stack Gases, to measure the moisture content of the exhaust gas.

Prior to the initial performance test, you must install any continuous parameter monitoring systems (CPMS) that are required for demonstrating continuous compliance. During the performance test, you must use those CPMS to establish the applicable operating limits (*e.g.*, minimum thermal oxidizer combustion chamber temperature).

G. What Are the Initial Compliance Requirements for Sources Subject to a Work Practice Standard?

If you own or operate an affected existing shape preheater, an existing pitch working tank, or a new pitch working tank, you must select a method for complying with the applicable work practice standard and provide a description of that method as part of your initial notification, as required by 40 CFR 63.9(b)(2). For affected shape preheaters, if you choose to comply with the work practice standard by cleaning pitch from basket or container surfaces, you must describe in your initial notification the cleaning method. If you choose to comply by capturing and ducting emissions from the shape preheater to a control device, you must describe the design (*e.g.*, thermal oxidizer combustion chamber temperature and residence time) and operation of that control device.

For affected existing or new pitch working tanks, you must describe, in your initial notification, the design and operation of the control device to which the emissions from the working tank are exhausted. You also must verify that the performance of the control device is the same as, or is equivalent to, the control device that is used to control organic HAP emissions from an affected defumer or coking oven.

For affected new or existing chromium refractory products kilns and for existing clay refractory products kilns, you must indicate, in your initial notification, the type of fuel used in those kilns.

H. What Are the Continuous Compliance Requirements for Sources Subject to Emission Limits?

Today's final rule requires owners and operators of affected sources to demonstrate continuous compliance with each emission limitation. You must follow the requirements in your OM&M plan and in your startup, shutdown, and malfunction plan (SSMP) and document conformance with both plans. For each affected source equipped with an add-on air pollution control device (APCD), you must inspect each system at least once each calendar year and record the results of each inspection. You must install, operate, and maintain each required CPMS to monitor the operating parameters established during your initial performance test. You must collect all data while the process is operational. You will have to operate the CPMS at all times when the process is operating. You must also conduct proper maintenance of the CPMS, including inspections, calibrations, and validation checks. You must repeat any required performance tests at least every 5 years.

For each affected source, you must monitor and maintain the organic HAP processing rate below the level established during the most recent performance test. You must also record the process operating temperature hourly. For batch process sources, you must record the cycle time for each batch cycle. If you decide to start production of a refractory product that is likely to have an organic HAP processing rate that is more than 10 percent greater than the maximum organic HAP processing rate established during the most recent performance test, you will have to conduct a new performance test for that product and establish a new operating limit for the maximum organic HAP processing rate.

For affected continuous sources that are controlled with a thermal oxidizer, you must maintain the 3-hour block average combustion chamber temperature at or above the combustion chamber temperature operating limit established during the most recent performance test. For affected continuous sources that are controlled with a catalytic oxidizer, you must maintain the 3-hour block average temperature at the inlet of the catalyst bed at or above the corresponding temperature operating limit established during the most recent performance test. For affected batch process sources that are controlled with a thermal oxidizer, you must maintain the average hourly combustion chamber temperature at or above the combustion chamber temperature operating limit established during the most recent performance test.

To document compliance with these operating limits for thermal or catalytic oxidizers, you must measure and record the specified average hourly temperatures. You must also report any average hourly control device operating temperature below the operating limit established during the most recent performance test.

If you control emissions from an affected source using process modifications or an add-on control device other than a thermal or catalytic oxidizer, you must demonstrate continuous compliance by operating a THC continuous emission monitoring system (CEMS) in accordance with Procedure 1 of 40 CFR part 60, appendix F.

For new clay refractory kilns that are controlled with a DLA, you must monitor continuously the pressure drop across the DLA. You also must check the limestone feed hopper and limestone feeder setting daily to ensure that there is limestone in the hopper, the limestone is free flowing, and the feed rate has not changed. In addition, you must continue using the same source of limestone as was used during the most recent performance test and maintain records that demonstrate that the source of limestone has not changed.

For new clay refractory kilns that are controlled with a DIFF or DLS/FF, you must maintain free-flowing lime in the feed hopper or silo at all times. You also must maintain the lime feeder setting at or above the level established during the most recent performance test and record the feeder setting once each day. You must initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions according to your OM&M plan.

For kilns that are controlled with a wet scrubber, you must continuously maintain the 3-hour block average scrubber pressure drop, scrubber liquid pH, scrubber liquid flow rate, and chemical addition rate (if applicable) at or above the corresponding operating limits established during the most recent performance test. Finally, you must record the uncalcined clay processing rate for all affected kilns.

If you operate an affected continuous kiln, you may bypass the control device and continue operating the kiln during periods of scheduled maintenance on the kiln control device, upon approval of the permitting authority. However, you must request prior approval from the permitting authority before taking the control device offline. You must minimize HAP emissions during the period when the control device is offline. You must also minimize the time period when the control device is offline. Unlike scheduled maintenance, a malfunction of a control device must be addressed in your SSMP. As specified in 40 CFR 63.6(f)(1) and (h)(1), emission standards do not apply during periods of startup, shutdown, or malfunction.

I. What Are the Continuous Compliance Requirements for Sources Subject to a Work Practice Standard?

If you have an affected existing shape preheater, an existing pitch working tank, or a new pitch working tank, you must perform the appropriate work practice, and you must document in your Notification of Compliance Status that you have complied with the work practice standard, as required by 40 CFR 63.9.

For affected new or existing chromium refractory products kilns and for existing clay refractory products kilns, you must use natural gas, or its equivalent, as the kiln fuel, and document the type of fuel used. During periods of natural gas curtailment or other periods when natural gas is unavailable, you are allowed to use an alternative fuel. However, you must meet the notification requirements specified in 40 CFR 63.9812(f) and the reporting requirements specified in 40 CFR 63.9814(g). You must also incorporate procedures for using alternative fuels in your OM&M Plan.

J. What Are the Notification, Recordkeeping, and Reporting Requirements?

If you have an affected refractory products manufacturing source, you must submit initial notifications, notifications of performance tests, and notifications of compliance status by the specified dates in the final rule, which may vary depending on whether the affected source is new or existing. In addition to the information specified in 40 CFR 63.9(h)(2)(i), you must also include the following in your Notification of Compliance Status: (1) The operating limit parameter values established for each affected source and a description of the procedures used to establish the values; (2) design information and analysis demonstrating conformance with requirements for capture and collection systems; (3) your OM&M plan, as specified in 40 CFR 63.9794; (4) your SSMP; and (5) descriptions of the methods you use to comply with any applicable work practice standards. You must submit semiannual compliance reports containing statements and information concerning emission limitation deviations, out of control CPMS, and periods of startup, shutdown, or malfunction when actions consistent with the approved SSMP were taken in accordance with 40 CFR 63.6(e)(3).

If you operate an affected clay or chromium refractory products kiln and you must use an alternative fuel due to a natural gas curtailment or other interruption of natural gas supply, you must submit a notification of alternative fuel use that includes the information specified in 40 CFR 63.9812(f). You must submit a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel. The report must include the information specified in 40 CFR 63.9814(g).

If you operate a continuous kiln that is an affected thermal process source of organic HAP or is a new clay refractory products kiln, and you must take the control device offline for scheduled maintenance, you must request prior approval from the permitting authority, as specified in 40 CFR 63.9792(e). In addition, you must maintain records of all maintenance activities and the time intervals when the control device is offline. Finally, you must incorporate into your OM&M plan the procedures for minimizing HAP emissions when the control device is out of service.

For all affected sources, you must maintain records for at least 5 years from the date on which the data are recorded. You must keep the records onsite for at least the first 2 years, but you can store the records offsite for the remaining 3 years.

K. What Are the Compliance Deadlines?

Existing sources must comply within 3 years of the date of publication of today's final rule. New or reconstructed sources must comply at startup or upon the date of publication of today's final rule, depending on their startup date.

III. Summary of Major Changes Since Proposal

A. Emission Limits and Work Practice Standards

For thermal process sources of organic HAP, we replaced the proposed combustion efficiency limit with a 95 percent THC reduction limit. We believe that the 95 percent THC reduction limit will result in organic HAP emissions reductions that are comparable to the reductions that would have been achieved through the proposed 99.8 percent combustion efficiency limit. Furthermore, percentage reduction provides a better measure of the performance of a control device in reducing organic emissions than does combustion efficiency, because percentage reduction is a direct measure of reductions in THC emissions across the control device. In addition, the combination of the proposed THC concentration and the percentage reduction limits allows considerable flexibility in how owners and operators

choose to comply with today's final rule.

The available emission data for the refractory products manufacturing industry indicate that sources that are controlled to levels above the MACT floor (i.e., more stringent than the MACT floor control level) achieve THC emissions reductions of at least 95 percent, and sources that are controlled to levels below the MACT floor achieve THC emissions reductions that are less than 95 percent. Based on our analysis of the data, we concluded that a 95 percent THC reduction represents the level of emissions control that is achieved by a thermal process source of organic HAP that is controlled to the MACT floor level. Additional information on our analysis of the available THC emission reduction data is provided in Docket No. OAR–2002–0088.

We did not propose a percentage THC reduction because we believed that testing the inlets of the control devices used on thermal process sources of organic HAP was not feasible for most sources. However, based on the public comments received on the proposed rule, we believe that refractory products manufacturers can measure THC at the inlets and outlets of most affected sources. Furthermore, those facilities that cannot obtain inlet and outlet measurements still have the option of complying with the 20 ppmvd THC emission limit.

For the proposed rule, we developed HF and HCl emission limits based on the emission levels that could be achieved by the best-controlled kiln in the brick and structural clay products industry. Since proposal, we have obtained additional information on the types of emission controls used in the brick and structural clay products industry to reduce emissions of HF and HCl from kilns. Based on that information, we have concluded that the best-controlled similar source for clay refractory products kilns is a small brick kiln that is controlled with a DLA. A small brick kiln is a kiln with a production capacity of less than 9.1 Mg per hour (Mg/hr) (10 tons per hour (tons/hr)). The data indicate that a DLA can achieve HF emissions reductions of 90 percent and HCl emissions reductions of 30 percent, We used those emissions reductions to develop the HF and HCl emission limits specified in the final rule. The revised emission limits for HF are a 90 percent reduction or 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed. For HCl, the revised emission limits are a 30 percent reduction or 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed.

For proposal, we based the HF and HCl emission limits for new clay refractory products kilns on emission data for a brick kiln that was controlled with a DLS/FF. When we developed those proposed emission limits, we made no distinction between kiln size and control options. However, a review of the emission data for controlled brick kilns indicates that kiln size must be considered when determining feasible control options for reducing emissions of HF and HCl. For brick kilns with production capacities of 9.1 Mg/hr (10 tons/hr) or greater (i.e., large kilns), several control devices have been demonstrated to be highly effective in reducing HF and HCl emissions. Those controls include DLS/FF, DIFF, and wet scrubbers. However, for brick kilns that are designed with production capacities below 9.1 Mg/hr (10 tons/hr), only the DLA has been demonstrated to be a feasible control option for HF and HCl. With DLS/FF, DIFF, and wet scrubbers, it is necessary to maintain minimum exhaust gas flow rates for effective HF and HCl removal, and those minimum exhaust flow rates are significantly greater than the flow rates characteristic of small brick kilns. On the other hand, the performance of the DLA is unaffected by exhaust gas flow rates through the system, and DLA have been used on small brick kilns. Consequently, we have concluded that the best-controlled small brick kiln is equipped with a DLA. We have also concluded that clay refractory products kilns are similar to small brick kilns because 90 percent of the clay refractory products tunnel kilns currently in use were designed to operate at 4.5 Mg/hr (5 tons/hr) or less, and there are no clay refractory products kilns that operate with production rates greater than 8.2 Mg/hr (9 tons/hr).

For existing clay and chromium refractory products kilns, we are still requiring limits on the types of fuels that can be used in affected kilns. However, we have also included a provision for the affected facilities to use alternative fuels during specified times of natural gas curtailment and during other times when natural gas is unavailable. To comply with this provision, owners or operators of affected kilns must notify the permitting authority within 48 hours following the declaration of such an emergency or the interruption of the natural gas supply. In addition, within 10 working days after the facility terminates the use of the alternative fuel, the final rule requires submittal of a report that details the dates of alternative fuel usage and the amount of alternative fuel used.

B. Compliance Testing

For batch process sources, we have reduced the minimum number of compliance test runs from three to two. We believe that two test runs are adequate for characterizing emissions from batch process sources. Although we are still requiring a minimum of three 1-hour test runs for continuous sources, we believe that it is unnecessary to test batch process sources for three runs. Under the final rule, each test run on a batch process source will last at least 3 hours, and in most cases a test run will last considerably longer (*i.e.*, in excess of 10 hours). Thus, even with the reduced number of test runs, an emission test on a batch process source will still require a much longer test period than a test on a continuous process source. Because of the extensive duration of each test run, we believe that a second test run is adequate for corroborating the results of the initial test run, and a third test run is unnecessary. Many batch process refractory products are specialty items that are produced infrequently. Because we are requiring each test run to be conducted over a separate batch process cycle, it may not be practical, and it may disrupt production of other products, to require testing over separate cycles. In some cases, conducting the compliance test over multiple process cycles could require a testing period of weeks or months, thereby preventing the use of the batch process source for manufacturing other refractory products. For this same reason, we have included in today's final rule a provision for allowing owners and operators to conduct both test runs simultaneously over a single batch process cycle using paired sampling trains, under certain conditions. Rather than basing compliance on a rolling 3-hour average, today's final rule requires compliance for batch process sources to be based on emissions over the 3-hour peak emissions period.

For situations in which a facility begins production of a new product that constitutes a slight increase in the maximum organic HAP processing rate, we are no longer requiring a repeat performance test. Specifically, if the organic HAP processing rate for the new product is no more than 10 percent greater than the organic HAP processing rate established during the most recent compliance test, a repeat performance test is not required. We believe this change is appropriate for several reasons. The HAP content of some raw materials used in refractory products manufacturing can vary slightly from shipment to shipment, and those variations may be beyond the control of the user. The net increase in controlled emissions from a source that uses a material with a slightly higher HAP content would most likely be within the measurement error of the test method. On the other hand, if the organic HAP processing rate for the new product is more than 10 percent greater than the operating limit for the maximum organic HAP processing rate, a new compliance test must be performed.

C. Control Device Monitoring and Operation

In the final rule, we have added the requirement that owners or operators of affected sources that are controlled with a catalytic oxidizer must have the catalyst activity level checked at least every 12 months and take any necessary corrective action, such as replacing the catalyst, to ensure that the catalyst is performing as designed. We continue to require catalyst bed inlet temperature monitoring. However, we believe this additional requirement is needed because, unlike thermal oxidizers, catalytic oxidizer performance cannot be ensured simply by monitoring the operating temperature. Catalyst beds can become poisoned and rendered ineffective without any apparent change in operation. Requiring an annual check of catalyst activity will help to identify catalyst poisoning and other potential performance problems before they become serious. An activity level check can consist of passing an organic compound of known concentration through a sample of the catalyst, measuring the percentage reduction of the compound across the catalyst sample, and comparing that percentage reduction to the percentage reduction for a fresh sample of the same type of catalyst.

We have made several changes to the monitoring requirements for new clay refractory products kilns. We have added monitoring requirements for kilns controlled with a DLA. Specifically, owners or operators of affected kilns are required to monitor continuously the pressure drop across the DLA, check the limestone feed hopper daily to ensure that limestone is free flowing, check the limestone feeder setting daily, use the same source of limestone as was used during the most recent performance test, and maintain records that demonstrate that the source of limestone has not changed. We have eliminated the requirement to monitor the fabric filter inlet temperature for affected clay refractory kilns that are controlled with a DIFF or a DLS/FF. Finally, we have eliminated the requirement to monitor the water injection rate for kilns that are controlled with a DLS/FF.

We have also included in the final rule a provision to allow owners and operators of affected continuous process kilns to bypass the control device and continue operating the kilns during periods when the control device is offline for scheduled maintenance. However, the owner or operator must request approval from the permitting authority before taking the control device out of service. The owner or operator must minimize the time periods during which the control device is offline and must also minimize HAP emissions from the affected sources during these periods. The owner or operator must also maintain records of all maintenance activities and the time when the control device was offline. In addition, procedures for minimizing HAP emissions during periods when the control device is offline must be incorporated into the OM&M plan for the kiln.

D. Definitions

We have modified the definitions of *refractory product* and *research and development process unit*, and have added definitions for *dry limestone adsorber, period of natural gas curtailment or supply interruption, resin-bonded refractory products, pitch-bonded refractory products*, and *redundant sensor*. We also deleted the incorporation by reference of the publication "Industrial Ventilation: A Manual of Recommended Practice."

IV. Summary of Responses to Major Comments

A. MACT Floors

Comment: One commenter pointed out that more than 30 refractory products manufacturing plants have closed permanently over the past 3 years. The commenter stated that the MACT floors used to develop the proposed rule are based on data that no longer reflect the current status of the industry. The commenter believes that it is improper for us to use the old data while the industry is in the process of realignment. In response to a request by us, the same commenter provided a list of 35 plants that have closed recently.

Response: We have reviewed the list of 35 recently closed plants provided by the commenter and among those plants, we considered only one, the North American Refractories plant in Womelsdorf, PA, to be a major or synthetic area source of organic HAP. However, we were aware of the impending closure of that particular facility before we determined the MACT floors for the proposed rule, and we did not include affected sources at that plant in our MACT floor analyses. Because we based our determination of the MACT floors for sources of organic HAP emissions only on major and synthetic area sources and none of those plants has closed, the closing of the 35 plants has no impact on the MACT floor analyses used to develop the proposed or final NESHAP.

B. Emission Limits

Comment: One commenter stated that the proposed combustion efficiency limit has no relationship to the MACT floors for thermal process sources of organic HAP. He believes that the proposed combustion efficiency limit is an arbitrary limit based on theoretical calculations and is not supported by the data. The commenter also stated that we cannot identify any plants that have met a 99.8 percent combustion efficiency. He believes that the proposed combustion efficiency limit cannot be met by existing sources; consequently, the stringency of the 99.8 percent combustion efficiency limit will force all affected facilities to meet the alternative proposed limit on THC. The same commenter stated that he has been informed by control device vendors that sources would have to operate well above the MACT floor level of control to meet a 99.8 percent combustion efficiency limit. Another commenter agreed that the combustion efficiency limit will force the industry to meet the alternative THC limit. Both commenters also stated that most of the thermal oxidizers currently used in the refractory products manufacturing industry would not be able to meet the outlet exhaust gas limitation of 3 percent carbon dioxide that is a prerequisite for choosing the combustion efficiency limit compliance option. One commenter added that sources controlled with catalytic oxidizers would be unable to meet the 99.8 percent combustion efficiency limit.

The same two commenters also commented on the appropriateness of a combustion efficiency limit. One of the commenters stated that he contacted thermal oxidizer vendors and a trade association that represents control device manufacturers and vendors, all of whom stated that they were unfamiliar with combustion efficiency. They indicated that thermal oxidizer performance guarantees invariably are written in terms of destruction and removal efficiency (DRE). The other commenter concurred that vendors offer performance guarantees in terms of DRE and not in terms of combustion

efficiency. The commenter stated that he believes that there is no known correlation between combustion efficiency and DRE, and he noted that we also have made that point on several occasions. Finally, the same commenter stated that the Pennsylvania Department of Environmental Resources informed him that they do not incorporate emission limits for combustion efficiency in their operating permits.

Response: After reviewing these comments, we have decided not to include the combustion efficiency limit in the final rule. Although we still maintain that the proposed combustion efficiency limit could be achieved by refractory products manufacturing sources that are controlled to the MACT floor level, we acknowledge that refractory products manufacturing industry personnel, vendors, emission testing contractors, and permitting agency personnel may not be familiar with the concept of using combustion efficiency as a measure of the control of organic pollutants. In addition, combustion efficiency is essentially an indicator of control device performance rather than a direct measure of emissions reductions or control. There are alternatives to a combustion efficiency limit that provide reliable measures of control device performance and emissions reductions, and we have included one such alternative, a percentage THC reduction, in the final rule. We believe that a THC percentage reduction is a more appropriate format for an emission limit than is combustion efficiency because percentage reduction is a measure of emissions reductions and can be related directly to the MACT floor for thermal process sources of organic HAP.

Comment: Two commenters recommended that we consider a limit on DRE instead of a combustion efficiency limit. One of the commenters stated that control device vendors typically offer performance guarantees in terms of a DRE limit, coupled with an outlet concentration limit for low-emitting sources. The other commenter stated that an alternative limit of 95 percent DRE for THC would be appropriate for the refractory products manufacturing industry. One of the commenters evaluated two catalytic oxidizers used at his facility. He concluded that the oxidizers would be unable to meet a 99.8 percent combustion efficiency limit or the proposed THC limit of 20 ppmvd, corrected to 18 percent oxygen. However, he believes that both of the catalytic oxidizers he evaluated could achieve a DRE of approximately 95 percent. The same commenter also disagreed with our statement that a DRE limit would be problematic due to the lack of access to control device inlets for emission testing on most affected sources. He stated that facilities can retrofit existing sources to allow for control device inlet testing.

Response: We agree with the commenters that a DRE limit, which generally is referred to as a percentage reduction limit in NESHAP, would be appropriate for the refractory products manufacturing industry. Consequently, we have decided to incorporate an emission limit of 95 percent THC reduction in today's final rule as an alternative to the THC emission concentration limit. We believe that percentage reduction provides the best measure of the performance of a control device in reducing organic emissions. Because percentage reduction is a direct measure of emissions reductions, we also believe it is more consistent with the MACT floor concept than is the proposed combustion efficiency limit. Unlike combustion efficiency, we have THC percentage reduction data for several refractory products manufacturing sources. By comparing those data to the MACT floor levels established by today's rule (see Docket No. OAR–2002–0088), we were able to conclude that the 95 percent THC reduction limit that we have incorporated into the final rule is representative of the emissions reductions that sources controlled to the MACT floor level should be able to achieve on a consistent basis.

Comment: One commenter commented on the fact that the same combustion efficiency limit was proposed for several different types of thermal process sources, such as periodic kilns, tunnel kilns, dryers, and coking ovens. He believes that differences in the operation of these various types of sources warrant different emission limits.

Response: We considered establishing separate emission limits for each type of thermal process source of organic HAP. However, the MACT floors for both existing and new sources are based on thermal oxidizer control, and the MACT floor level thermal oxidizer operating temperatures and residence times are similar for the various types of thermal process sources. These thermal oxidizers represent relatively high levels of control, and based on their design and operating parameters, we would not expect there to be significant differences in performance levels among them. Furthermore, when the theoretical performance levels of these thermal oxidizers are compared, the Arrhenius equation predicts that all of them would achieve essentially complete control of organic emissions. The available valid emission test data on organic emissions from controlled thermal process sources of organic HAP also do not support making such distinctions in emission limits. Consequently, we decided to establish the same emission limits for all types of thermal process sources of organic HAP subject to today's final rule.

Comment: Two commenters stated that the available emission data do not support the proposed THC limit of 20 ppmvd. The commenters believe that the data support an emission limit of 30 ppmvd THC, based on the average THC emission concentration for the available test data on controlled kilns.

Response: To determine the MACT floors and the corresponding emission limits for existing sources, we first must consider the number of sources in operation at major and synthetic area source facilities. In the case of kilns that are used to fire refractory products that contain organic HAP, there are fewer than 30 kilns that can be considered in establishing the MACT floor. Under section 112(d)(3) of the CAA, we must select the average or median of the best-performing five sources. In this case, the MACT floor for kilns corresponds to the third-best performing kiln.

To rank kilns in terms of their performance in controlling organic HAP emissions, we needed emissions data for each of the best-performing kilns. However, we did not have data on emissions of organic HAP (or THC as a surrogate for organic HAP) for any of the best-controlled kilns. The specific kilns referenced by the commenters are not among the best-performing kilns in operation at major or synthetic area source facilities, so it would be contrary to the requirements of the CAA to average emission data for those kilns, as the commenters suggest, because such an average would include data from sources that are clearly not among the top five best-performing kilns located at major or synthetic area source facilities.

An alternative approach to determining MACT floors by ranking sources according to demonstrated emissions reductions is to rank the sources based on the likely performance level of the control devices in place. We used this alternative approach to determine the MACT floors for organic HAP emissions from thermal process sources. Using the Arrhenius equation, we ranked all of the controlled kilns located at major or synthetic area source facilities and selected the third-best kiln as the MACT floor. However, to develop the 20 ppmvd THC emission limit, we did consider all of the available data, including the kiln emission data referenced by the commenters. After considering the design of the control devices for those kilns and the likely variations in emission data, we concluded that the available data support a 20 ppmvd THC emission limit.

Comment: One commenter stated that Congress intended MACT standards to be industry-specific, and he objected to the use of data for the brick and structural clay products industry to establish emission limits for HF and HCl from clay refractory products kilns. The commenter stated that it is inappropriate to use data from another industry to develop emission limits for the refractory products manufacturing industry.

Response: Section 112(d) of the CAA requires us to establish emission limits for new sources based on the performance of the best-controlled similar source. The CAA does not specify that the similar source must be within the same source category. To the contrary, our interpretation of section 112(d) is that we are obligated to consider similar sources from other source categories in determining the best-controlled similar source for establishing MACT for new sources.

For clay refractory products kilns, we concluded that the best-controlled similar sources are found in the brick and structural clay products industry. We believe that brick kilns are similar to clay refractory products kilns for several reasons: (1) Most clay refractory products are fired in tunnel kilns, as is the case for brick manufacturing; (2) in both industries, tunnel kilns are designed to have three temperature zones, a preheating or drying zone, a firing zone, and a cooling zone; (3) in both industries, unfired shapes (bricks or refractories) are loaded onto rail cars and transported through each successive temperature zone through a series of timed pushes; (4) both clay refractory kilns and brick kilns typically operate at peak temperatures of approximately 2000°F; (5) firing times in clay refractory and brick kilns are similar; (6) the raw materials used in producing bricks (primarily common clay and shale, but also fire clay) and clay refractories (primarily fire clay) are similar; and (7) at least one refractory products manufacturer fires both clay refractory products and brick and structural clay products in the same kilns.

The HF and HCl controls currently used in the brick and structural clay products industry are a function of kiln size (*i.e.*, production rate). Kilns with production capacities of less than 9.1 Mg/hr (10 tons/hr) are classified as small kilns, and those with production capacities of at least 9.1 Mg/hr (10 tons/hr) are classified as large kilns. For small brick kilns, the best-performing source is a kiln controlled with a DLA. For large kilns, the best-performing sources are those controlled with either a DIFF, DLS/FF, or wet scrubber. Although DIFF, DLS/FF, and wet scrubbers generally are more effective than DLA in reducing emissions of HF and HCl, large kiln controls require minimum exhaust gas flow rates that are significantly higher than the flow rates characteristic of small kilns. Consequently, the DLA is the only device that has been demonstrated to be feasible for controlling HF and HCl emissions from small brick kilns. Using the same size classification system, the clay refractory products kilns currently in operation would all be classified as small kilns. All operate at less than 9.1 Mg/hr (10 tons/hr), and 90 percent operate at no more than 4.5 Mg/hr (5 tons/hr). Because of the similarities in design and operation discussed in the previous paragraph, and taking into account kiln size, we have concluded that small brick kilns and clay refractory products kilns are similar sources. In the final rule, we are incorporating HF and HCl emission limits based on the performance of DLA-controlled brick kilns.

Comment: One commenter expressed concern with how we used data for the brick and structural clay products industry to develop emission limits for new clay refractory products kilns. He stated that we used the same data to propose more stringent HF and HCl limits for new clay refractory products kilns than were proposed for new brick and structural clay products kilns under the proposed Brick and Structural Clay Products NESHAP (67 FR 47894, July 22, 2002). The proposed HF emission limit for new brick and structural clay products kilns is 0.014 kg/Mg (0.027 lb/ton), whereas the proposed HF limit for new clay refractory products kilns is 0.001 kg/Mg (0.002 lb/ton). In addition, the proposed HCl emission limit for new brick and structural clay products kilns is 0.019 kg/Mg (0.037 lb/ton), whereas the proposed HCl limit for new clay refractory products kilns is 0.0025 kg/Mg (0.005 lb/ton).

Response: In selecting the proposed HF and HCl emission limits for new clay refractory products kilns, we reviewed the available emission data from the brick and structural clay products industry and selected the single best-performing similar source, which was an individual brick kiln controlled with a DLS/FF. To select the HF and HCl emission limits for brick kilns in the proposed Brick and Structural Clay Products NESHAP, we used a different approach based on the overall performance of the available control technologies. We reviewed the available data and concluded that the three best-performing control technologies (DLS/FF, DIFF, and wet scrubbers) are essentially comparable in terms of reducing HF and HCl emissions. We also considered the variability in the data and selected the percentage reductions that we believe all three technologies can achieve on a continuous basis according to the available test data. We used those percentage reductions, which were 95 percent for HF and 90 percent for HCl, to derive the proposed production-based emission limits from the emission factors for uncontrolled HF and HCl from brick kilns. Those production-based emission limits were 0.014 kg/Mg (0.027 lb/ton) for HF and 0.019 kg/Mg (0.037 lb/ton) for HCl. After reconsidering both approaches for selecting emission limits, we have concluded that the technology-based approach that we used to develop the emission limits for the proposed Brick and Structural Clay Products NESHAP is the appropriate method for establishing HF and HCl emission limits for new clay refractory products kilns.

In the proposed Brick and Structural Clay Products NESHAP, we also subcategorized according to kiln size by differentiating between large kilns (*i.e.*, those with production capacities of 9.1 Mg/hr (10 tons/hr) or greater) and small kilns (*i.e.*, those with production capacities that are less than 9.1 Mg/hr (10 tons/hr)). For today's final rule, we have incorporated this same size classification system into our determination of the emission limits for new clay refractory products kilns. We have concluded that small brick kilns are similar to clay refractory products kilns and that the best-controlled similar source for clay refractory products kilns is a small brick kiln controlled with a DLA. Although there are other technologies that perform well in controlling HF and HCl emissions from brick kilns (*i.e.*, DLS/FF, DIFF, and wet scrubbers), those control devices have been used only on large brick kilns. On the other hand, DLA are currently in use on both large and small brick kilns. The available data indicates that a DLA can achieve emissions reductions of 90 percent HF and 30 percent HCl on a consistent basis. We have applied these emissions reductions to HF and HCl data from uncontrolled clay refractory products kilns and are incorporating into today's final rule the

revised emission limits for new clay refractory products kilns. The resulting emission limits for HF are a 90 percent reduction or 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed. For HCl, the limits are a 30 percent reduction or 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed.

Comment: One commenter questioned the need to establish emission limits for chromium refractory products kilns. He stated that chromium compounds should be treated no differently than any of the other listed HAP. He noted that the use of chromium for refractory products manufacturing has decreased significantly in recent years, and that our own estimates indicate that total chromium compound emissions in 1996 were less than 10 tpy for the entire industry. He also pointed out that the large chromium refractory products facility referenced in the proposal has been shut down.

Response: As noted by the commenter, chromium compounds are one of the listed HAP in section 112(b) of the CAA. Chromium, in the form of chromite or chromium oxide, is a principal ingredient in the formulation of many refractory products and is emitted from kilns that fire chromium refractory products. Some of the chromium is emitted in the hexavalent form, which is a known human carcinogen. Under section 112(d) of the CAA, we are required to establish emission standards that are at least as stringent as the MACT floor for all listed HAP that are emitted from major sources. Consequently, regardless of the trend in chromium refractory production, we are required to establish emission limits based on the MACT floor level of control, which for chromium refractory products kilns is the work practice of firing kilns with natural gas or the equivalent.

Comment: One commenter opposed the provision in the proposed rule that limits the types of fuels used to fire clay and chromium refractory products kilns. He stated that many refractory products manufacturing industry kilns are designed to use fuels other than natural gas, such as fuel oil, propane, and pulverized coal. The need to use these alternative fuels is of particular importance during natural gas shortages or price increases. He pointed out that during natural gas shortages, residential users receive priority over industrial users of natural gas. He believes that prohibiting the use of these alternative fuels could adversely impact the viability of some refractory products manufacturing operations.

Response: We agree with the commenter that the Refractory Products Manufacturing NESHAP should include appropriate provisions for the use of alternative fuels during specified times of natural gas curtailment and other situations when natural gas is unavailable. We consider such situations analogous to malfunctions, which are addressed in 40 CFR 63.6. Just as an exceedance of emission limits during a malfunction is not considered a violation, as indicated in 40 CFR 63.6(f)(1) and (h)(1), we believe that using other fuels during periods when natural gas is unavailable should also not be considered a violation of the work practice standard for clay and chromium refractory products kilns. We also note that operating permits for existing refractory products manufacturing facilities generally allow the use of fuel oil and other substitutes for natural gas in some situations. Thus, the MACT floor for existing clay and chromium refractory products kilns is the use of natural gas or equivalent fuel except during periods when natural gas is unavailable.

In the final rule, we are allowing owners and operators of affected chromium and clay refractory products kilns to use alternative fuels during periods when natural gas in unavailable due to a supply curtailment or other factors. However, we do not believe that natural gas price increases constitute such a situation, and the final rule makes it clear that natural gas prices cannot be considered the basis for a MACT floor that requires using an alternative fuel. The final rule also requires owners or operators to notify the regulatory authority within 48 hours after the declaration of natural gas curtailment or the interruption of natural gas supply. In addition, the owner or operator must submit a report that details the dates of alternative fuel usage and the amount of alternative fuel used within 10 working days after the facility terminates the use of the alternative fuel.

C. Compliance Testing and Monitoring

Comment: One commenter stated that the requirement to test batch process sources during three separate process cycles is redundant, unnecessary, and burdensome. He believes that it would be adequate to test one process cycle. He pointed out that there are significant variations in product mixes and raw materials from cycle to cycle, and that while it could be argued that testing one cycle is adequate, it could also be argued that testing ten cycles is inadequate for characterizing emissions. He noted that testing during cool-down periods, in particular, is unnecessary.

Response: We agree with the commenter that testing batch process sources for three cycles of a "worst-case" batch may be unnecessary to characterize emissions and control device performance. Under the final rule, we are requiring owners and operators of affected batch process sources to perform at least two test runs on each of two separate process cycles. We believe that a second test run is necessary to corroborate the results of the initial test run. However, we also note that each test run on a batch process source must be a minimum of 3 hours in duration, and for many batch process sources, the minimum test run duration is likely to be in excess of 10 hours. Thus, even requiring only two test runs will necessitate at least 20 hours of testing for such sources, and we consider a test of that duration to be adequate for demonstrating compliance with emission limits. We also note that other NESHAP, such as subparts U, JJJ, OOO, and UUUU to 40 CFR part 63, do not require batch process sources to be tested for three test runs.

We are also including in the final rule a separate batch process testing provision for refractory products that are produced infrequently. In such cases, we are allowing owners and operators of affected batch process sources to test a single batch process cycle using two separate sampling trains simultaneously, rather than requiring them to conduct test runs over two separate batch cycles. Many refractory products that are produced in batch process sources are specialty items that may only be manufactured a few times per year. When such products represent the "worst-case" in terms of organic HAP emissions, requiring multiple test runs over separate process cycles could extend the test period over several weeks or months. Production of other refractory products could inadvertently be disrupted while the facility attempts to complete its compliance demonstration. We also point out that requiring performance tests on batch process sources to be conducted over no more than a single process cycle is not without precedent; at least four other NESHAP (subparts U, JJJ, OOO, and UUUU to 40 CFR part 63) require batch process sources to be tested over only a single process cycle. To satisfy this provision of today's final rule, owners or operators will be required to include in the Notification of Performance Test an explanation for why testing two separate batch cycles is impractical.

Comment: Two commenters expressed concern with the requirement that the compliance test on an affected source would have to be repeated before the facility began manufacturing a new product that represents the "worst-case" in terms of organic HAP emissions (*i.e.*, the organic HAP processing rate for the new product would exceed the maximum organic HAP processing rate established during the most recent performance test). One commenter stated that this requirement would be costly, time-consuming, and could result in disruptions in production. Another commenter further elaborated that production delays could result while the facility tries to schedule a performance test. Both commenters requested that we specify a level for the allowable changes in the HAP content of raw materials and not require a new compliance test when the changes in HAP content are below that level. One of the commenters stated that a level of 10 percent would be appropriate.

Response: We agree with the commenters that a new compliance test should not be required when a facility begins producing a new product that constitutes a slight increase in the maximum organic HAP processing rate established during the most recent performance test. We have written this provision in the final rule to allow increases in the maximum organic HAP processing rate up to 10 percent without triggering a new performance test. We believe this is appropriate for two reasons. The HAP content of some raw materials (*e.g.*, resins or binders) used in refractory products manufacturing can vary slightly from shipment to shipment, and those variations may be beyond the control of the user. Even if the HAP content of the resin or binder is 10 percent more than the HAP content of the same material that was processed during the compliance test, the net increase in controlled emissions would most likely be within the measurement error of the test method. Therefore, we believe it is reasonable to allow increases of up to 10 percent in the organic HAP processing rate without requiring a new compliance test.

Comment: Two commenters questioned the requirement for monitoring catalytic oxidizer temperatures at the inlet to the catalyst bed. Both commenters stated that monitoring the catalyst bed outlet temperatures would be a much better indicator of performance.

Response: We disagree with the commenters that monitoring catalyst bed outlet temperatures would provide a better indication of catalyst oxidizer performance than monitoring catalyst bed inlet temperatures. Monitoring catalyst bed inlet temperatures ensures that the inlet gas stream is heated to the minimum temperature at which catalytic oxidation will occur. Above this minimum temperature, as temperature increases through catalytic oxidization, control (destruction) efficiency increases. We also note that the monitoring of inlet temperature must be performed at the inlet to the catalyst bed and not at the inlet to the oxidizer itself. After passing through the inlet to the oxidizer, the waste gases pass through a preheat zone, which raises the temperature to the minimum required for catalytic oxidization. Monitoring must take place between this preheat zone and the inlet to the catalyst bed. We do not believe that monitoring catalyst bed outlet temperatures would be appropriate for two reasons: (1) Catalyst bed outlet temperature is more of an indicator of the concentration of organics in the inlet gas stream; the higher the organic concentration at the inlet, the higher the bed outlet temperature; and (2) some catalytic oxidizers are equipped with heat recovery units that are located at the outlet of the catalyst bed and can interfere with bed outlet temperature monitoring. Consequently, we have concluded that monitoring the bed inlet temperature is a better indicator of the performance of catalytic oxidizers than bed outlet temperature monitoring. We continue to require catalyst bed inlet temperature monitoring in the final rule. In addition, we are requiring owners or operators of affected sources that are controlled with catalytic oxidizers to measure the activity of the catalyst bed at least every 12 months and take whatever corrective action is needed, such as replacing the catalyst, to ensure that the catalyst is performing as designed.

D. Economic and Environmental Impacts

Comment: Two commenters disagreed with our estimates of the annual increase in energy costs that would be associated with the proposed NESHAP. One of the commenters stated that, based on our estimated annual energy costs of $569,800 and estimated annual natural gas consumption of 644 million cubic feet (644×10^6 ft^3), the unit price for natural gas would be $0.89 per thousand standard cubic feet (scf) ($/1,000 scf) without accounting for electricity costs. If the cost of electricity is considered, the resulting unit price for natural gas would be even lower. He pointed out that current unit prices for natural gas are considerably higher. The average natural gas unit prices in four States (Kentucky, Missouri, Indiana, and Pennsylvania) for the years 2000 to 2002 ranged from $6.34 to $6.97/1,000 scf and averaged $6.37/1,000 scf for the four States. Based on data from the Department of Energy's Energy Information Administration (DOE-EIA), one of the commenters stated that the average unit price for natural gas in 2001 was $4.56/1,000 scf. The commenter believes that, regardless of which of these current unit prices are used, the estimated annual energy costs should have been several times greater.

Response: After reviewing our estimated annual energy costs, we discovered an error in our estimate that an additional 644×10^6 ft^3 of natural gas would be consumed annually under the proposed NESHAP. That estimate was based on the inclusion of several sources that would not have been subject to the final rule. However, we did not use that figure (644×10^6 ft^3) to estimate annual energy costs. Our estimated annual energy costs were based on the assumption that annual natural gas consumption would increase by 158×10^6 ft^3. That figure was derived from the models used to estimate annual control costs, and we believe that figure is accurate. Using a consumption of 158×10^6 ft^3 of natural gas per year and a natural gas unit price of $3.30/1,000 scf, we estimated the cost of natural gas to be $520,200/yr. The difference between this cost and the total energy costs presented in the preamble to the proposed rule ($569,800) is the cost of electricity, which we estimated to be approximately $49,600/yr.

We agree with the commenters that current natural gas unit prices are considerably higher than the unit price ($3.30/1,000 scf) that we used to estimate energy costs for the proposed rule. However, according to DOE–EIA, natural gas prices are projected to drop back to their pre-1999 levels within a year and remain below $4.00/1,000 scf until the year 2020. Natural gas unit prices are projected to average $3.45/1,000 scf for the years 2006 to 2009, which represent the first 3 years in which facilities will be required to comply with the Refractory Products Manufacturing NESHAP. This average unit price is only slightly higher than the unit price of $3.30/1,000 scf that we used to estimate energy costs for the proposed rule. Furthermore, electricity prices are projected by DOE-EIA to average $0.043 per kilowatt-hour (kw-hr) for the same 3-year period, whereas our estimated energy costs were based on electricity unit prices of $0.059/kw-hr. Using those projected unit prices for natural gas and electricity, our energy costs for the proposed rule would have been $580,000, as compared to the figure of $569,800 reported in the preamble to the proposed rule. (*See*

Docket No. OAR–2002–0088 for additional information).

Comment: Two commenters stated that the proposed Refractory Products Manufacturing NESHAP does not account for the current economic status of the refractory products manufacturing industry. One of the commenters noted that approximately 40 percent of the domestic steel industry is in bankruptcy, and the steel industry accounts for about 60 percent of the domestic refractory products market. He also pointed out that three major refractory products manufacturing companies are in bankruptcy, more than 30 plants have permanently closed in recent years, and pressure from foreign competition in the refractory products market is increasing. The other commenter reiterated the statements of the first commenter regarding bankruptcies among major domestic refractory producers and the increase in foreign competition.

Response: During the early stages of regulatory development, we issued an information collection request (ICR) to the refractory products manufacturing industry. Our economic impact analysis (EIA) makes use of detailed facility-level data on production for the year 1997 obtained from the industry's responses to the ICR. This information, along with publically available data (*i.e.*, U.S. Census Bureau), was used at proposal to construct a model of the markets for refractory products that is consistent with market, facility, and company conditions in 1997. Because the ICR provided data only for 1997, we are limited in our ability to update the model completely to reflect conditions in later years. However, for the final rule we have, to the extent practicable, updated the economic model to reflect current market conditions, including: (1) The exclusion of refractory manufacturing facilities known to have closed since the base year of 1997; (2) the assumption that producers will absorb the full cost of the rule; with only six out of 147 producers affected by the rule and the financial stress on the industry, we assume producers will be unable to increase market prices to recover some of their increase in production costs; and (3) the incorporation of parameters from a recent update of an iron and steel model to inform the estimated demand for refractories (*i.e.*, the demand elasticity, or the sensitivity of demand from the steel market based on market conditions in the iron and steel industry). The iron and steel model was specifically revised to address current conditions in the steel industry.

We also acknowledged in the EIA at proposal that both steel and refractory manufacturing companies are currently under financial stress. In the EIA, we discussed several trends that have placed considerable pressure on refractory manufacturers, including reduced production by integrated domestic steelmakers, improved quality of refractories (thus requiring less frequent replacement), and increased imports of refractory products.

We note that the vast majority of facilities in the industry (both foreign and domestic producers) are unaffected by the rule. The regulatory costs of the rule are approximately $2 million per year, which represents a small share of total industry production costs of approximately $2,300 million per year. In the model for the final rule, prices are not predicted to change, and the quantities of refractories produced are projected to decrease by 3,792 tons. It is assumed that the loss in domestic production will be absorbed by foreign imports. Our analysis concludes these six facilities incurring regulatory costs will absorb the majority of the costs and burden of the rule, with one facility projected to close as a result of the rule. At the parent company level, the costs uniformly are less than 1 percent of baseline corporate sales. Overall, we have adjusted the economic model to address the issues raised by the commenters, and we believe that the final rule will have a limited impact on the refractory products manufacturing industry.

E. Definitions

Comment: Two commenters commented on how the term *refractory product* is defined in the proposed rule. Both commenters stated that, based on this definition, some graphite manufacturing sources could be confused with certain refractory products manufacturing sources that would be affected by the final rule. It is their understanding that we intend to develop a separate NESHAP for the graphite manufacturing industry, and graphite manufacturing sources, although similar to some refractory products manufacturing sources, would not be subject to the Refractory Products Manufacturing NESHAP. The commenters suggested adding the phrase, ". . . containing less than 50 percent carbon" to the definition of *refractory product.*

Response: We agree with the commenters that the definition of *refractory product* in the proposed rule could inadvertently affect certain graphite manufacturing sources. Consequently, we have written the definition as requested by the commenters. In addition, we are including a definition for pitch-bonded refractory products in the final rule. We believe that definition will help to preclude graphite baking ovens, which are not subject to today's final rule, from being classified as pitch-bonded curing ovens, which are regulated under today's final rule.

Comment: One commenter commented on how the term *research and development process unit* is defined in the proposed rule. The commenter stated that the proposed definition is inconsistent with the definition of research and development facilities specified in section 112(c)(7) of the CAA, 40 CFR 63.41, and several other NESHAP published in 40 CFR part 63. The difference between those definitions and the proposed definition specified in the Refractory Products Manufacturing NESHAP is the exclusion of the phrase "in a de minimis manner" from the proposed rule.

Response: We agree with the commenter that the definition of *research and development process unit* in the Refractory Products Manufacturing NESHAP should be consistent with the definition of research facilities in the CAA and in other rules. We have written the definition of *research and development process unit* as suggested by the commenter.

V. Summary of Impacts

A. What Are the Health Impacts?

The HAP that will be controlled by today's final rule are associated with a variety of adverse health effects. These adverse health effects include chronic health disorders (*e.g.*, irritation of the lung, skin, and mucous membranes, gastrointestinal effects, and damage to the kidneys and liver) and acute health disorders (*e.g.*, respiratory irritation and central nervous system effects such as drowsiness, headache, and nausea). The EPA has classified two of the HAP (formaldehyde and POM) as probable human carcinogens.

The EPA does not have the type of current detailed data on each of the facilities and the people living around the facilities covered by today's final rule for this source category that would be necessary to conduct an analysis to determine the actual population exposures to the HAP emitted from these facilities and the potential for resultant health effects. Therefore, EPA does not know the extent to which the adverse health effects described above occur in the populations surrounding these facilities. However, to the extent the adverse effects do occur, and today's final rule reduces emissions, subsequent exposures will be reduced.

Following is a discussion of the health effects of seven HAP: ethylene glycol, formaldehyde, HF, HCl, methanol, phenol, and POM. Although today's rule will reduce emissions of HF and HCl from any new clay refractory product kilns that emit these HAP, it will not reduce emissions of these HAP from existing kilns. We estimate that emissions of methanol from affected existing thermal process sources of organic HAP (*i.e.*, shape dryers, curing ovens, and kilns) also will not be reduced by today's final rule. However, methanol is a constituent of some resins used in resin-bonded refractory production, and today's final rule will regulate methanol emissions from any affected source that produces refractory products made with resins that contain methanol.

Ethylene Glycol

Acute (short-term) exposure of humans to ethylene glycol by ingesting large quantities causes central nervous system depression (including drowsiness and respiratory failure), gastrointestinal upset, cardiopulmonary effects, and renal damage. The only effects noted in the one available study of humans acutely exposed to low levels of ethylene glycol by inhalation were throat and upper respiratory tract irritation. Rats and mice exposed chronically (long-term) to ethylene glycol in their diet exhibited signs of kidney toxicity and liver effects. No information is available on the reproductive or developmental effects of ethylene glycol in humans, but several studies of rodents have shown ethylene glycol to be fetotoxic. The EPA has not classified ethylene glycol for carcinogenicity.

Formaldehyde

Both acute and chronic exposure to formaldehyde irritates the eyes, nose, and throat, and may cause coughing, chest pains, and bronchitis. Reproductive effects, such as menstrual disorders and pregnancy problems, have been reported in female workers exposed to formaldehyde. Limited human studies have reported an association between formaldehyde exposure and lung and nasopharyngeal cancer. Animal inhalation studies have reported an increased incidence of nasal squamous cell cancer. The EPA considers formaldehyde a probable human carcinogen (Group B2).

Hydrogen Fluoride

Acute inhalation exposure to gaseous HF can cause severe respiratory damage in humans, including severe irritation and pulmonary edema. Chronic exposure to fluoride at low levels has a beneficial effect of dental cavity prevention and may also be useful for the treatment of osteoporosis. Exposure to higher levels of fluoride may cause dental fluorosis or mottling, while very high exposures through drinking water or air can result in crippling skeletal fluorosis. One study reported menstrual irregularities in women occupationally exposed to fluoride. The EPA has not classified HF for carcinogenicity.

Hydrogen Chloride

Hydrogen chloride, also called hydrochloric acid, is corrosive to the eyes, skin, and mucous membranes. Acute inhalation exposure may cause eye, nose, and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic occupational exposure to HCl has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of HCl in humans. In rats exposed to HCl by inhalation, altered estrus cycles have been reported in females, and increased fetal mortality and decreased fetal weight have been reported in offspring. The EPA has not classified HCl for carcinogenicity.

Methanol

Acute or chronic exposure of humans to methanol by inhalation or ingestion may result in blurred vision, headache, dizziness, and nausea. No information is available on the reproductive, developmental, or carcinogenic effects of methanol in humans. Birth defects have been observed in the offspring of rats and mice exposed to methanol by inhalation. A methanol inhalation study using rhesus monkeys reported a decrease in the length of pregnancy and limited evidence of impaired learning ability in offspring. The EPA has not classified methanol with respect to carcinogenicity.

Phenol

Acute inhalation and dermal exposure to phenol is highly irritating to the skin, eyes, and mucous membranes in humans. Oral exposure to small amounts of phenol may cause irregular breathing, muscular weakness and tremors, coma, and respiratory arrest at lethal concentrations. Anorexia, progressive weight loss, diarrhea, vertigo, salivation, and a dark coloration of the urine have been reported in chronically exposed humans. Gastrointestinal irritation and blood and liver effects have also been reported. No studies of developmental or reproductive effects of phenol in humans are available, but animal studies have reported reduced fetal body weights, growth retardation, and abnormal development in the offspring of animals exposed to phenol by the oral route. The EPA has classified phenol in Group D, not classifiable as to human carcinogenicity.

Polycyclic Organic Matter

The term polycyclic organic matter defines a broad class of compounds that includes the polycyclic aromatic hydrocarbon (PAH) compounds, of which benzo[a]pyrene is a member. Dermal exposures to mixtures of PAH cause skin disorders in humans and animals. No information is available on the reproductive or developmental effects of POM in humans, but animal studies have reported that oral exposure to benzo[a]pyrene causes reproductive and developmental effects. Human studies have reported an increase in lung cancer in humans exposed to POM-bearing mixtures including coke oven emissions, roofing tar emissions, and cigarette smoke. Animal studies have reported respiratory tract tumors from inhalation exposure to benzo[a]pyrene and forestomach tumors, leukemia, and lung tumors from oral exposure to benzo[a]pyrene. The EPA has classified seven PAH compounds (benzo[a]pyrene, benz[a]anthracene, chrysene, benzo[b]fluoranthene, benzo[k]fluoranthene, dibenz[a,h]anthracene, and indeno[1,2,3-cd]pyrene) as Group B2, probable human carcinogens.

B. What Are the Air Emission Reduction Impacts?

At the current level of control and 1996 production levels, we estimate nationwide emissions of HAP from the refractory products manufacturing industry to be about 246 Mg/yr (271 tpy). For the eight refractory products facilities that we estimate to be major sources, baseline annual HAP emissions are about 153 Mg/yr (169 tpy). We estimate that today's final rule will reduce nationwide HAP emissions by about 124 Mg/yr (137 tpy).

Among the major sources, POM emissions account for approximately 60 percent of the total annual HAP emissions. Phenol, HF, HCl, and ethylene glycol account for 13 percent, 10 percent, 7 percent, and 7 percent of total annual HAP emissions,

respectively. Formaldehyde and chromium compounds each account for less than 1 percent of total baseline annual HAP emissions. Today's final rule will reduce annual POM emissions by as much as 90 Mg/yr (99 tpy). Emissions of phenol and ethylene glycol will be reduced by approximately 19 Mg/yr (21 tons/year) and 11 Mg/yr (12 tpy), respectively. Implementing today's rule will also reduce volatile organic compound (VOC) and carbon monoxide (CO) emissions by 166 Mg/yr (182 tpy) and 71 Mg/yr (78 tpy), respectively. The final rule will result in an increase in annual nitrogen oxides (NO_X) emissions of about 79 Mg/yr (87 tpy) due to the operation of additional thermal oxidizers to control organic HAP emissions.

Indirect or secondary air impacts of today's final rule result from increased electricity usage associated with operation of control devices required by the rule. Assuming that affected plants will purchase electricity from a power plant, we estimate that the final rule will result in increases of secondary emissions of criteria pollutants, including particulate matter less than 10 micrometers in aerodynamic diameter (PM–10), sulfur dioxide (SO_2), NO_X, and CO from power plants. Under today's final rule, secondary PM–10 emissions will increase by 0.22 Mg/yr (0.24 tpy); secondary SO_2 emissions will increase by about 8.9 Mg/yr (9.8 tpy); secondary NO_X emissions will increase about 4.5 Mg/yr (4.9 tpy); and secondary CO emissions will increase by about 0.15 Mg/yr (0.16 tpy).

We estimate that there will be no new sources within the refractory products manufacturing industry within the next 3 years. Therefore, we are not projecting air impacts for new sources under today's final rule.

C. What Are the Cost Impacts?

The estimated total capital costs of today's final rule are $4.6 million. These capital costs apply to existing sources and include the costs to purchase and install thermal oxidizers on affected sources that are not currently controlled. The estimated annualized cost of today's final rule is $2.3 million. The annualized costs account for the annualized capital costs of the control and monitoring equipment, operation and maintenance expenses, performance testing, and recordkeeping and reporting costs.

D. What Are the Economic Impacts?

Given the estimated costs to comply with the regulation, we prepared an economic analysis to evaluate how these costs would impact producers and consumers of refractories, and society as a whole. The refractory products manufacturing industry currently consists of 147 establishments. There are eight major sources in the industry affected by the rule, six of which will incur costs to reduce emissions and report compliance, and two of which only incur minor recordkeeping and reporting costs. In recent years, the industry has experienced substantial financial stress that coincides with the decline in the steel industry, which is a major consumer of refractory products. Since our analysis at proposal, the number of facilities in operation has decreased by 14 due to bankruptcies or closures.

The industry consists of three market sectors, including: bricks and shapes, monolithics, and RCF. In 1997, the industry produced about two million tons of bricks and shapes, 870,000 tons of monolithics, and about 34,000 tons of RCF for a total market value of approximately two billion dollars.

The total annualized regulatory compliance cost of the rule is $2.3 million (in 1998 dollars), which represents 0.001 percent of total market value. Because foreign competition currently has a strong influence on this industry, and only six out of 147 producers are affected by the rule, our analysis of the final rule assumes that producers of bricks and shapes will not be able to increase prices to recover a portion of the compliance costs. Thus, these producers are assumed to absorb the full cost of the regulation, which represents the maximum potential impact on producers. If prices happen to rise as a result of the regulation, impacts on producers will be lower than reported here.

Our analysis predicts that domestic production of bricks and shapes will decrease by approximately 4,000 tons (or 2/10ths of one percent). Foreign imports are assumed to absorb this loss in domestic production, which represents approximately two percent of total foreign imports. The monolithics and RCF sectors of the market are not subject to the rule and thus no price or production level changes are predicted. After accounting for the changes in the market for refractories and the increase in foreign imports, the total cost of the regulation on society as a whole is approximately $2 million.

Of the eight plants affected by the rule, one facility may close due to regulatory costs. The estimated regulatory cost to this facility assumes the use of add-on controls, which would exceed the total revenues of this facility, hence our model estimates that it would close. However, we recognize that this facility, as well as the other affected facilities, have several options to change input materials, or attributes of their production process such that they could substantially reduce the cost associated with add-on control technology. Without explicit knowledge of decisions to be made by this and other facilities in response to the regulation, our analysis assumes that only add-on control technology will be installed.

E. What Are the Non-Air Quality Environmental and Energy Impacts?

To comply with today's final rule, we expect that affected facilities will control organic HAP emissions by installing and operating thermal oxidizers. Therefore, we project that today's rule will have no water or solid waste impacts.

Energy impacts consist of the electricity and fuel needed to operate control devices and other equipment that are required under the final rule. Assuming that affected facilities comply with the final rule by installing and operating thermal oxidizers, we project that today's final rule will increase overall energy demand (*i.e.*, electricity and natural gas) by about 280 thousand gigajoules per year (265 billion British thermal units per year). Electricity requirements are expected to increase by about 1,570 megawatt-hours per year under today's rule. Natural gas requirements are expected to increase by about 7 million cubic meters per year (250 million cubic feet per year) under today's final rule.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because none of the listed criteria applies to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

The information collection requirements in the final rule will be submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (ICR No. 2040.01), and a copy may be obtained from Susan Auby by mail at U.S. EPA, Office of Environmental Information, Collection Strategies Division (MD–2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by e-mail at *auby.susan@epa.gov*; or by calling (202) 566–1672. You may also download a copy off the Internet at *http://www.epa.gov/icr*. The information requirements are not enforceable until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA's policies set forth in 40 CFR part 2, subpart B.

With two exceptions, the final rule will not require any notifications, reports, or recordkeeping beyond those required by the NESHAP General Provisions. The first exception applies to facilities that operate sources that are subject to limits on the type of fuel used. In such cases, the owner or operator may use an alternative fuel under certain conditions but must submit a notification before using the alternative fuel, must report on alternative fuel use after terminating use of the alternative fuel, and must maintain records of alternative fuel use. The second exception pertains to continuous kilns; the final rule requires reporting and recordkeeping whenever the control device used on a continuous kiln is taken offline for scheduled maintenance.

The annual monitoring, reporting, and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the rule) is estimated to be 726 labor hours per year at a total annual cost of $31,460. This burden estimate includes time for acquisition, installation, and use of monitoring technology and systems; preparation and a one-time submission of an SSMP, with immediate reports for any event when the procedures in the plan were not followed; preparation of an OM&M plan; one-time notifications; semiannual compliance reports; and recordkeeping. Total annualized capital/startup costs associated with the monitoring requirements (*e.g.*, costs for hiring performance test contractors and purchase of monitoring and file storage equipment) over the 3-year period of the ICR are estimated at $45,390, with operation and maintenance costs of $910/yr.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act (RFA)

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with the final rule. The EPA has also determined that the rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are defined as: (1) A small business whose parent company has fewer than 500 employees, according to Small Business Administration size standards established under the NAICS for the industries affected by today's rule; (2) a small governmental jurisdiction that is a government or a city, county, town, school district or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. We have determined that of the six facilities affected by the rule, there is one facility owned by a small company that will experience an impact of less than one-half of one percent (<0.50 percent) of company sales.

Although the final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the rule on small entities. However, we were unable to identify any specific requirements of the final rule that we could relax to reduce the burden of today's rule on small entities. If the final rule had established emission limits more stringent than the MACT floor, we could have reduced the stringency of the emission limits for small entities. However, the emission limits established by today's rule are based on the MACT floor, which is the minimum level of stringency allowed under section 112 of the CAA. Today's rule does provide two options for owners and operators of affected thermal process sources of organic HAP. Thus, the one small entity that is affected by today's rule can choose to comply with either of two organic HAP emission limits. Having the choice between compliance options will provide small business with some measure of flexibility in how it chooses to comply with the final rule.

Today's rule requires continuous parameter monitoring rather than continuous emission monitoring. We believe that the parameter monitoring requirements we have incorporated in the final rule satisfy the requirements of section 114(a)(3) of the CAA for enhanced monitoring without the additional expense that would have been associated with continuous emission monitoring. Finally, the reporting and recordkeeping requirements of today's rule are consistent with the requirements of the General Provisions to 40 CFR part 63. For these reasons, we believe that today's rule satisfies the requirements of

the CAA without imposing any unnecessary burden on small businesses or any other affected entity.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law No. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that today's final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of today's final rule for any year has been estimated to be approximately $2.3 million. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. None of the affected facilities is owned or operated by State governments, and the rule requirements will not supercede State regulations that are more stringent. Thus, Executive Order 13132 does not apply to the rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate refractory products manufacturing facilities. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that EPA considered.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. Today's final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Furthermore, the final rule has been determined not to be "economically significant" as defined under Executive Order 12866.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Today's final rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Today's final rule involves technical standards. The EPA cites the following standards: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 25A, 26, 26A, 311, and 320. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA method/performance specifications. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, and 311. The search and review results have been documented and can be found in Docket No. OAR–2002–0088.

The voluntary consensus standard ASME PTC 19–10–1981–Part 10, "Flue and Exhaust Gas Analyses," is cited in the rule for its manual methods for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19–10–1981–Part 10 is an acceptable alternative to Method 3B.

Also, five voluntary consensus standards: ASTM D1979–91, ASTM D3432–89, ASTM D4747–87, ASTM D4827–93, and ASTM PS9–94 are incorporated by reference in EPA Method 311.

In addition to the voluntary consensus standards EPA cites in the rule, the search for emissions measurement procedures identified 13 other voluntary consensus standards. The EPA determined that ten of the 13 standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the rule were impractical alternatives to EPA test methods for the purposes of the rule. Therefore, EPA does not intend to adopt these standards for this purpose. The reasons for this determination for the ten methods are discussed in the docket.

Two of the 12 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the rule because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2.

The voluntary consensus standard ASTM D6348–98, "Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy," has been reviewed by the EPA as a potential alternative to EPA Method 320. Suggested revisions to ASTM D6348–98 were sent to ASTM by the EPA that would allow the EPA to accept ASTM D6348–98 as an acceptable alternative. The ASTM Subcommittee D22–03 is currently undertaking a revision of ASTM D6348–98. Because of this, we are not citing this standard as a acceptable alternative for EPA Method 320 in the rule today. However, upon successful ASTM balloting and demonstration of technical equivalency with the EPA FTIR methods, the revised ASTM standard could be incorporated by reference for EPA regulatory applicability. In the interim, facilities have the option to request ASTM D6348–98 as an alternative test method under 40 CFR 63.7(f) and 63.8(f) on a case-by-case basis.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until June 16, 2003. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 28, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Part 63 is amended by adding subpart SSSSS to read as follows:

Subpart SSSSS—National Emission Standards for Hazardous Air Pollutants for Refractory Products Manufacturing

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What This Subpart Covers

§ 63.9780 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for refractory products manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations.

§ 63.9782 Am I subject to this subpart?

You are subject to this subpart if you own or operate a refractory products manufacturing facility that is, is located at, or is part of, a major source of hazardous air pollutant (HAP) emissions according to the criteria in paragraphs (a) and (b) of this section.

(a) A refractory products manufacturing facility is a plant site that manufactures refractory products (refractory bricks, refractory shapes, monolithics, kiln furniture, crucibles, and other materials used for lining furnaces and other high temperature process units), as defined in § 63.9824. Refractory products manufacturing facilities typically process raw material by crushing, grinding, and screening; mixing the processed raw materials with binders and other additives; forming the refractory mix into shapes; and drying and firing the shapes.

(b) A major source of HAP is a plant site that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

§ 63.9784 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at a refractory products manufacturing facility.

(b) The existing affected sources are shape dryers, curing ovens, and kilns that are used to manufacture refractory products that use organic HAP; shape preheaters, pitch working tanks, defumers, and coking ovens that are used to produce pitch-impregnated refractory products; kilns that are used to manufacture chromium refractory products; and kilns that are used to manufacture clay refractory products.

(c) The new or reconstructed affected sources are shape dryers, curing ovens, and kilns that are used to manufacture refractory products that use organic HAP; shape preheaters, pitch working tanks, defumers, and coking ovens used to produce pitch-impregnated refractory products; kilns that are used to manufacture chromium refractory products; and kilns that are used to manufacture clay refractory products.

(d) Shape dryers, curing ovens, kilns, coking ovens, defumers, shape preheaters, and pitch working tanks that are research and development (R&D) process units are not subject to the requirements of this subpart. (See definition of *research and development process unit* in § 63.9824).

(e) A source is a new affected source if you began construction of the affected source after June 20, 2002, and you met the applicability criteria at the time you began construction.

(f) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(g) An affected source is existing if it is not new or reconstructed.

§ 63.9786 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If the initial startup of your affected source is before April 16, 2003, then you must comply with the emission limitations for new and reconstructed sources in this subpart no later than April 16, 2003.

(2) If the initial startup of your affected source is after April 16, 2003, then you must comply with the emission limitations for new and reconstructed sources in this subpart upon initial startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission limitations for existing sources no later than April 17, 2006.

(c) You must be in compliance with this subpart when you conduct a performance test on an affected source.

(d) If you have an existing area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart according to paragraphs (d)(1) and (2) of this section.

(1) Any portion of the existing facility that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the existing facility must be in compliance with this subpart by 3 years after the date the area source becomes a major source.

(e) If you have a new area source (*i.e.*, an area source for which construction or reconstruction was commenced after June 20, 2002) that increases its emissions or its potential to emit such that it becomes a major source of HAP, you must be in compliance with this subpart upon initial startup of your affected source as a major source.

(f) You must meet the notification requirements in § 63.9812 according to the schedule in § 63.9812 and in 40 CFR part 63, subpart A. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

Emission Limitations and Work Practice Standards

§ 63.9788 What emission limits, operating limits, and work practice standards must I meet?

(a) You must meet each emission limit in Table 1 to this subpart that applies to you.

(b) You must meet each operating limit in Table 2 to this subpart that applies to you.

(c) You must meet each work practice standard in Table 3 to this subpart that applies to you.

§ 63.9790 What are my options for meeting the emission limits?

To meet the emission limits in Table 1 to this subpart, you must use one or both of the options listed in paragraphs (a) and (b) of this section.

(a) *Emissions control system.* Use an emissions capture and collection system and an add-on air pollution control device (APCD) and demonstrate that the resulting emissions or emissions reductions meet the applicable emission limits in Table 1 to this subpart, and demonstrate that the capture and collection system and APCD meet the applicable operating limits in Table 2 to this subpart.

(b) *Process changes.* Use raw materials that have little or no potential to emit HAP during the refractory products manufacturing process or implement manufacturing process changes and demonstrate that the resulting emissions or emissions reductions meet the applicable emission limits in Table 1 to this subpart without an add-on APCD.

General Compliance Requirements

§ 63.9792 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations (including operating limits and work practice standards) in this subpart at all times, except during periods specified in paragraphs (a)(1) and (2) of this section.

(1) Periods of startup, shutdown, and malfunction.

(2) Periods of scheduled maintenance on a control device that is used on an affected continuous kiln, as specified in paragraph (e) of this section.

(b) Except as specified in paragraph (e) of this section, you must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i). During the period between the compliance date specified for your affected source in § 63.9786 and the date upon which continuous monitoring systems have been installed and validated and any applicable operating limits have been established, you must maintain a log detailing the operation and maintenance of the process and emissions control equipment.

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP) according to the provisions in § 63.6(e)(3).

(d) You must prepare and implement a written operation, maintenance, and monitoring (OM&M) plan according to the requirements in § 63.9794.

(e) If you own or operate an affected continuous kiln and must perform scheduled maintenance on the control device for that kiln, you may bypass the kiln control device and continue operating the kiln upon approval by the Administrator, provided you satisfy the conditions listed in paragraphs (e)(1) through (3) of this section.

(1) You must request approval from the Administrator to bypass the control device while the scheduled maintenance is performed. You must submit a separate request each time you plan to bypass the control device, and your request must include the information specified in paragraphs (e)(1)(i) through (vi) of this section.

(i) Reason for the scheduled maintenance.

(ii) Explanation for why the maintenance cannot be performed when the kiln is shut down.

(iii) Detailed description of the maintenance activities.

(iv) Time required to complete the maintenance.

(v) How you will minimize HAP emissions from the kiln during the period when the control device is out of service.

(vi) How you will minimize the time when the kiln is operating and the control device is out of service for scheduled maintenance.

(2) You must minimize HAP emissions during the period when the kiln is operating and the control device is out of service.

(3) You must minimize the time period during which the kiln is operating and the control device is out of service.

(f) You must be in compliance with the provisions of subpart A of this part, except as noted in Table 11 to this subpart.

§ 63.9794 What do I need to know about operation, maintenance, and monitoring plans?

(a) For each continuous parameter monitoring system (CPMS) required by this subpart, you must develop, implement, make available for inspection, and revise, as necessary, an OM&M plan that includes the information in paragraphs (a)(1) through (13) of this section.

(1) A list and identification of each process and add-on APCD that is required by this subpart to be monitored, the type of monitoring device that will be used, and the operating parameters that will be monitored.

(2) Specifications for the sensor, signal analyzer, and data collection system.

(3) A monitoring schedule that specifies the frequency that the parameter values will be determined and recorded.

(4) The operating limits for each parameter that represent continuous compliance with the emission limitations in § 63.9788, based on values of the monitored parameters recorded during performance tests.

(5) Procedures for installing the CPMS at a measurement location relative to each process unit or APCD such that measurement is representative of control of emissions.

(6) Procedures for the proper operation and routine and long-term maintenance of each process unit and APCD, including a maintenance and inspection schedule that is consistent with the manufacturer's recommendations.

(7) Procedures for the proper operation and maintenance of monitoring equipment consistent with the requirements in §§ 63.8(c)(1), (3), (4)(ii), (7), and (8), and 63.9804.

(8) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d).

(9) Procedures for evaluating the performance of each CPMS.

(10) Procedures for responding to operating parameter deviations, including the procedures in paragraphs (a)(10)(j) through (iii) of this section:

(i) Procedures for determining the cause of the operating parameter deviation.

(ii) Actions for correcting the deviation and returning the operating parameters to the allowable limits.

(iii) Procedures for recording the times that the deviation began and ended, and when corrective actions were initiated and completed.

(11) Procedures for keeping records to document compliance and reporting in accordance with the requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(12) If you operate a kiln that is subject to the limits on the type of fuel used, as specified in items 3 and 4 of Table 3 to subpart SSSSS, procedures for using alternative fuels.

(13) If you operate an affected continuous kiln and you plan to take the kiln control device out of service for scheduled maintenance, as specified in § 63.9792(e), the procedures specified in paragraphs (a)(13)(i) and (ii) of this section.

(i) Procedures for minimizing HAP emissions from the kiln during periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service.

(ii) Procedures for minimizing any period of scheduled maintenance on the kiln control device when the kiln is operating and the control device is out of service.

(b) Changes to the operating limits in your OM&M plan require a new performance test. If you are revising an operating limit parameter value, you must meet the requirements in paragraphs (b)(1) and (2) of this section.

(1) Submit a Notification of Performance Test to the Administrator as specified in § 63.7(b).

(2) After completing the performance tests to demonstrate that compliance with the emission limits can be achieved at the revised operating limit parameter value, you must submit the performance test results and the revised operating limits as part of the Notification of Compliance Status required under § 63.9(h).

(c) If you are revising the inspection and maintenance procedures in your

OM&M plan, you do not need to conduct a new performance test.

Testing and Initial Compliance Requirements

§ 63.9796 By what date must I conduct performance tests?

You must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.9786 and according to the provisions in § 63.7(a)(2).

§ 63.9798 When must I conduct subsequent performance tests?

(a) You must conduct a performance test every 5 years following the initial performance test, as part of renewing your 40 CFR part 70 or 40 CFR part 71 operating permit.

(b) You must conduct a performance test when you want to change the parameter value for any operating limit specified in your OM&M plan.

(c) If you own or operate a source that is subject to the emission limits specified in items 2 through 9 of Table 1 to this subpart, you must conduct a performance test on the source(s) listed in paragraphs (c)(1) and (2) of this section before you start production of any refractory product for which the organic HAP processing rate is likely to exceed by more than 10 percent the maximum organic HAP processing rate established during the most recent performance test on that same source.

(1) Each affected shape dryer or curing oven that is used to process the refractory product with the higher organic HAP processing rate.

(2) Each affected kiln that follows an affected shape dryer or curing oven and is used to process the refractory product with the higher organic HAP processing rate.

(d) If you own or operate a kiln that is subject to the emission limits specified in item 5 or 9 of Table 1 to this subpart, you must conduct a performance test on the affected kiln following any process changes that are likely to increase organic HAP emissions from the kiln (*e.g.*, a decrease in the curing cycle time for a curing oven that precedes the affected kiln in the process line).

(e) If you own or operate a clay refractory products kiln that is subject to the emission limits specified in item 10 or 11 of Table 1 to this subpart and is controlled with a dry limestone adsorber (DLA), you must conduct a performance test on the affected kiln following any change in the source of limestone used in the DLA.

§ 63.9800 How do I conduct performance tests and establish operating limits?

(a) You must conduct each performance test in Table 4 to this subpart that applies to you.

(b) Before conducting the performance test, you must install and validate all monitoring equipment.

(c) Each performance test must be conducted according to the requirements in § 63.7 and under the specific conditions in Table 4 to this subpart.

(d) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(e) You must conduct separate test runs for at least the duration specified for each performance test required in this section, as specified in § 63.7(e)(3) and Table 4 to this subpart.

(f) For batch process sources, you must satisfy the requirements specified in paragraphs (f)(1) through (5) of this section.

(1) You must conduct at least two test runs.

(2) Each test run must last an entire batch cycle unless you develop an emissions profile, as specified in items 8(a)(i)(4) and 17(b)(i)(4) of Table 4 to this subpart, or you satisfy the conditions for terminating a test run prior to the completion of a batch cycle as specified in item 8(a)(i)(5) of Table 4 to this subpart.

(3) Each test run must be performed over a separate batch cycle unless you satisfy the conditions for conducting both test runs over a single batch cycle, as described in paragraphs (f)(3)(i) and (ii) of this section.

(i) You do not produce the product that corresponds to the maximum organic HAP processing rate for that batch process source in consecutive batch cycles.

(ii) To produce that product in two consecutive batch cycles would disrupt production of other refractory products.

(4) If you want to conduct a performance test over a single batch cycle, you must include in your Notification of Performance Test the rationale for testing over a single batch cycle.

(5) If you are granted approval to conduct a performance test over a single batch cycle, you must use paired sampling trains and collect two sets of emissions data. Each set of data can be considered a separate test run.

(g) You must use the data gathered during the performance test and the equations in paragraphs (g)(1) through (3) of this section to determine compliance with the emission limitations.

(1) To determine compliance with the total hydrocarbon (THC) emission concentration limit listed in Table 1 to this subpart, you must calculate your emission concentration corrected to 18 percent oxygen for each test run using Equation 1 of this section:

$$C_{THC-C} = \frac{2.9 \times C_{THC}}{(20.9 - C_{O_2})} \qquad \text{(Eq. 1)}$$

Where:

C_{THC-C}=THC concentration, corrected to 18 percent oxygen, parts per million by volume, dry basis (ppmvd)

C_{THC}=THC concentration (uncorrected), ppmvd

C_{O2}=oxygen concentration, percent.

(2) To determine compliance with any of the emission limits based on percentage reduction across an emissions control system specified in Table 1 to this subpart, you must calculate the percentage reduction for each test run using Equation 2 of this section:

$$PR = \frac{ER_i - ER_o}{ER_i} \times 100 \qquad \text{(Eq. 2)}$$

Where:

PR=percentage reduction, percent

ER_i=mass emissions rate of specific HAP or pollutant (THC, HF, or HCl) entering the control device, kilograms (pounds) per hour

ER_o=mass emissions rate of specific HAP or pollutant (THC, HF, or HCl) exiting the control device, kilograms (pounds) per hour.

(3) To determine compliance with production-based hydrogen fluoride (HF) and hydrogen chloride (HCl) emission limits in Table 1 to this subpart, you must calculate your mass emissions per unit of uncalcined clay processed for each test run using Equation 3 of this section:

$$MP = \frac{ER}{P} \qquad \text{(Eq. 3)}$$

Where:

MP=mass per unit of production, kilograms of pollutant per megagram (pounds per ton) of uncalcined clay processed

ER=mass emissions rate of specific HAP (HF or HCl) during each performance test run, kilograms (pounds) per hour

P=average uncalcined clay processing rate for the performance test, megagrams (tons) of uncalcined clay processed per hour.

(h) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you, as specified in Table 4 to this subpart.

(i) For each affected source that is equipped with an add-on APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must meet the requirements in § 63.8(f) and paragraphs (i)(1) through (3) of this section.

(1) For sources subject to the THC concentration limit specified in item 3 or 7 of Table 1 to this subpart, you must satisfy the requirements specified in paragraphs (i)(1)(i) through (iii) of this section.

(i) You must install a THC continuous emissions monitoring system (CEMS) at the outlet of the control device or in the stack of the affected source.

(ii) You must meet the requirements specified in Performance Specification (PS) 8 of 40 CFR part 60, appendix B.

(iii) You must meet the requirements specified in Procedure 1 of 40 CFR part 60, appendix F.

(2) For sources subject to the emission limits specified in item 3, 4, 7, or 8 of Table 1 to this subpart, you must submit a request for approval of alternative monitoring methods to the Administrator no later than the submittal date for the Notification of Performance Test, as specified in § 63.9812(d). The request must contain the information specified in paragraphs (i)(2)(i) through (v) of this section.

(i) Description of the alternative add-on APCD or process changes.

(ii) Type of monitoring device or method that will be used, including the sensor type, location, inspection procedures, quality assurance and quality control measures, and data recording device.

(iii) Operating parameters that will be monitored.

(iv) Frequency that the operating parameter values will be determined and recorded to establish continuous compliance with the operating limits.

(v) Averaging time.

(3) You must establish site-specific operating limits during the performance test based on the information included in the approved alternative monitoring methods request and, as applicable, as specified in Table 4 to this subpart.

§ 63.9802 How do I develop an emissions profile?

If you decide to develop an emissions profile for an affected batch process source; as indicated in item 8(a)(i)(4) or 17(b)(i)(4) of Table 4 to this subpart, you must measure and record mass emissions of the applicable pollutant throughout a complete batch cycle of the affected batch process source according to the procedures described in paragraph (a) or (b) of this section.

(a) If your affected batch process source is subject to the THC concentration limit specified in item 6(a), 7(a), 8, or 9 of Table 1 to this subpart or the THC percentage reduction limit specified in item 6(b) or 7(b) of Table 1 to this subpart, you must measure and record the THC mass emissions rate at the inlet to the control device using the test methods, averaging periods, and procedures specified in items 10(a) and (b) of Table 4 to this subpart for each complete hour of the batch process cycle.

(b) If your affected batch process source is subject to the HF and HCl percentage reduction emission limits in item 11 of Table 1 to this subpart, you must measure and record the HF mass emissions rate at the inlet to the control device through a series of 1-hour test runs according to the test method specified in item 14(a) of Table 4 to this subpart for each complete hour of the batch process cycle.

§ 63.9804 What are my monitoring system installation, operation, and maintenance requirements?

(a) You must install, operate, and maintain each CPMS required by this subpart according to your OM&M plan and the requirements in paragraphs (a)(1) through (15) of this section.

(1) You must satisfy all applicable requirements of performance specifications for CPMS specified in 40 CFR part 60, appendix B, upon promulgation of such performance specifications.

(2) You must satisfy all applicable requirements of quality assurance (QA) procedures for CPMS specified in 40 CFR part 60, appendix F, upon promulgation of such QA procedures.

(3) You must install each sensor of your CPMS in a location that provides representative measurement of the appropriate parameter over all operating conditions, taking into account the manufacturer's guidelines.

(4) You must use a CPMS that is capable of measuring the appropriate parameter over a range that extends from a value of at least 20 percent less than the lowest value that you expect your CPMS to measure, to a value of at least 20 percent greater than the highest value that you expect your CPMS to measure.

(5) You must use a data acquisition and recording system that is capable of recording values over the entire range specified in paragraph (a)(4) of this section.

(6) You must use a signal conditioner, wiring, power supply, and data acquisition and recording system that are compatible with the output signal of the sensors used in your CPMS.

(7) You must perform an initial calibration of your CPMS based on the procedures specified in the manufacturer's owner's manual.

(8) You must use a CPMS that is designed to complete a minimum of one cycle of operation for each successive 15-minute period. To have a valid hour of data, you must have at least three of four equally-spaced data values (or at least 75 percent of the total number of values if you collect more than four data values per hour) for that hour (not including startup, shutdown, malfunction, or out-of-control periods).

(9) You must record valid data from at least 90 percent of the hours during which the affected source or process operates.

(10) You must determine and record the 15-minute block averages of all measurements, calculated after every 15 minutes of operation as the average of the previous 15 operating minutes (not including periods of startup, shutdown, or malfunction).

(11) You must determine and record the 3-hour block averages of all 15-minute recorded measurements, calculated after every 3 hours of operation as the average of the previous 3 operating hours (not including periods of startup, shutdown, or malfunction).

(12) You must record the results of each inspection, calibration, initial validation, and accuracy audit.

(13) At all times, you must maintain your CPMS including, but not limited to, maintaining necessary parts for routine repairs of the CPMS.

(14) You must perform an initial validation of your CPMS under the conditions specified in paragraphs (14)(i) and (ii) of this section.

(i) Prior to the initial performance test on the affected source for which the CPMS is required.

(ii) Within 180 days of your replacing or relocating one or more of the sensors of your CPMS.

(15) Except for redundant sensors, as defined in § 63.9824, any device that you use to conduct an initial validation or accuracy audit of your CPMS must meet the accuracy requirements specified in paragraphs (15)(i) and (ii) of this section.

(i) The device must have an accuracy that is traceable to National Institute of Standards and Technology (NIST) standards.

(ii) The device must be at least three times as accurate as the required accuracy for the CPMS.

(b) For each temperature CPMS that is used to monitor the combustion chamber temperature of a thermal oxidizer or the catalyst bed inlet temperature of a catalytic oxidizer, you must meet the requirements in paragraphs (a) and (b)(1) through (6) of this section.

(1) Use a temperature CPMS with a minimum accuracy of ±1.0 percent of the temperature value or 2.8 degrees Celsius (°C) (5 degrees Fahrenheit (°F)), whichever is greater.

(2) Use a data recording system with a minimum resolution of one-half or better of the required CPMS accuracy specified in paragraph (b)(1) of this section.

(3) Perform an initial validation of your CPMS according to the requirements in paragraph (3)(i) or (ii) of this section.

(i) Place the sensor of a calibrated temperature measurement device adjacent to the sensor of your temperature CPMS in a location that is subject to the same environment as the sensor of your temperature CPMS. The calibrated temperature measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. While the process and control device that is monitored by your CPMS are operating normally, record concurrently and compare the temperatures measured by your temperature CPMS and the calibrated temperature measurement device. Using the calibrated temperature measurement device as the reference, the temperature measured by your CPMS must be within the accuracy specified in paragraph (b)(1) of this section.

(ii) Perform any of the initial validation methods for temperature CPMS specified in performance specifications for CPMS established in 40 CFR part 60, appendix B.

(4) Perform an accuracy audit of your temperature CPMS at least quarterly, according to the requirements in paragraph (b)(4)(i), (ii), or (iii) of this section.

(i) If your temperature CPMS includes a redundant temperature sensor, record three pairs of concurrent temperature measurements within a 24-hour period. Each pair of concurrent measurements must consist of a temperature measurement by each of the two temperature sensors. The minimum time interval between any two such pairs of consecutive temperature measurements is 1 hour. The measurements must be taken during periods when the process and control device that is monitored by your temperature CPMS are operating normally. Calculate the mean of the three values for each temperature sensor. The mean values must agree within the required overall accuracy of the CPMS, as specified in paragraph (b)(1) of this section.

(ii) If your temperature CPMS does not include a redundant temperature sensor, place the sensor of a calibrated temperature measurement device adjacent to the sensor of your temperature CPMS in a location that is subject to the same environment as the sensor of your temperature CPMS. The calibrated temperature measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. While the process and control device that is monitored by your temperature CPMS are operating normally, record concurrently and compare the temperatures measured by your CPMS and the calibrated temperature measurement device. Using the calibrated temperature measurement device as the reference, the temperature measured by your CPMS must be within the accuracy specified in paragraph (b)(1) of this section.

(iii) Perform any of the accuracy audit methods for temperature CPMS specified in QA procedures for CPMS established in 40 CFR part 60, appendix F.

(5) Conduct an accuracy audit of your CPMS following any 24-hour period throughout which the temperature measured by your CPMS exceeds the manufacturer's specified maximum operating temperature range, or install a new temperature sensor.

(6) If your CPMS is not equipped with a redundant temperature sensor, perform at least quarterly a visual inspection of all components of the CPMS for integrity, oxidation, and galvanic corrosion.

(c) For each pressure CPMS that is used to monitor the pressure drop across a DLA or wet scrubber, you must meet the requirements in paragraphs (a) and (c)(1) through (7) of this section.

(1) Use a pressure CPMS with a minimum accuracy of ±5.0 percent or 0.12 kilopascals (kPa) (0.5 inches of water column (in. w.c.)), whichever is greater.

(2) Use a data recording system with a minimum resolution of one-half the required CPMS accuracy specified in paragraph (c)(1) of this section, or better.

(3) Perform an initial validation of your pressure CPMS according to the requirements in paragraph (c)(3)(i) or (ii) of this section.

(i) Place the sensor of a calibrated pressure measurement device adjacent to the sensor of your pressure CPMS in a location that is subject to the same environment as the sensor of your pressure CPMS. The calibrated pressure measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. While the process and control device that is monitored by your CPMS are operating normally, record concurrently and compare the pressure measured by your CPMS and the calibrated pressure measurement device. Using the calibrated pressure measurement device as the reference, the pressure measured by your CPMS must be within the accuracy specified in paragraph (c)(1) of this section.

(ii) Perform any of the initial validation methods for pressure CPMS specified in performance specifications for CPMS established in 40 CFR part 60, appendix B.

(4) Perform an accuracy audit of your pressure CPMS at least quarterly, according to the requirements in paragraph (c)(4)(i), (ii), or (iii) of this section.

(i) If your pressure CPMS includes a redundant pressure sensor, record three pairs of concurrent pressure measurements within a 24-hour period. Each pair of concurrent measurements must consist of a pressure measurement by each of the two pressure sensors. The minimum time interval between any two such pairs of consecutive pressure measurements is 1 hour. The measurements must be taken during periods when the process and control device that is monitored by your CPMS are operating normally. Calculate the mean of the three pressure measurement values for each pressure sensor. The mean values must agree within the required overall accuracy of the CPMS, as specified in paragraph (c)(1) of this section.

(ii) If your pressure CPMS does not include a redundant pressure sensor, place the sensor of a calibrated pressure measurement device adjacent to the sensor of your pressure CPMS in a location that is subject to the same environment as the sensor of your pressure CPMS. The calibrated pressure measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. While the process and control device that is monitored by your pressure CPMS are operating normally, record concurrently and compare the pressure measured by your CPMS and the calibrated pressure measurement device. Using the calibrated pressure measurement device as the reference, the pressure measured by your CPMS must be within the accuracy specified in paragraph (c)(1) of this section.

(iii) Perform any of the accuracy audit methods for pressure CPMS specified in QA procedures for CPMS established in 40 CFR part 60, appendix F.

(5) Conduct an accuracy audit of your CPMS following any 24-hour period throughout which the pressure measured by your CPMS exceeds the manufacturer's specified maximum operating pressure range, or install a new pressure sensor.

(6) At least monthly, check all mechanical connections on your CPMS for leakage.

(7) If your CPMS is not equipped with a redundant pressure sensor, perform at least quarterly a visual inspection of all components of the CPMS for integrity, oxidation, and galvanic corrosion.

(d) For each liquid flow rate CPMS that is used to monitor the liquid flow rate in a wet scrubber, you must meet the requirements in paragraphs (a) and (d)(1) through (7) of this section.

(1) Use a flow rate CPMS with a minimum accuracy of ±5.0 percent or 1.9 liters per minute (L/min) (0.5 gallons per minute (gal/min)), whichever is greater.

(2) Use a data recording system with a minimum resolution of one-half the required CPMS accuracy specified in paragraph (d)(1) of this section, or better.

(3) Perform an initial validation of your CPMS according to the requirements in paragraph (3)(i) or (ii) of this section.

(i) Use a calibrated flow rate measurement system to measure the liquid flow rate in a location that is adjacent to the measurement location for your flow rate CPMS and is subject to the same environment as your flow rate CPMS. The calibrated flow rate measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. While the process and control device that is monitored by your flow rate CPMS are operating normally, record concurrently and compare the flow rates measured by your flow rate CPMS and the calibrated flow rate measurement device. Using the calibrated flow rate measurement device as the reference, the flow rate measured by your CPMS must be within the accuracy specified in paragraph (d)(1) of this section.

(ii) Perform any of the initial validation methods for liquid flow rate CPMS specified in performance specifications for CPMS established in 40 CFR part 60, appendix B.

(4) Perform an accuracy audit of your flow rate CPMS at least quarterly, according to the requirements in paragraph (d)(4)(i), (ii), or (iii) of this section.

(i) If your flow rate CPMS includes a redundant sensor, record three pairs of concurrent flow rate measurements within a 24-hour period. Each pair of concurrent measurements must consist of a flow rate measurement by each of the two flow rate sensors. The minimum time interval between any two such pairs of consecutive flow rate measurements is 1 hour. The measurements must be taken during periods when the process and control device that is monitored by your flow rate CPMS are operating normally. Calculate the mean of the three flow rate measurement values for each flow rate sensor. The mean values must agree within the required overall accuracy of the CPMS, as specified in paragraph (d)(1) of this section.

(ii) If your flow rate CPMS does not include a redundant flow rate sensor, place the sensor of a calibrated flow rate measurement device adjacent to the sensor of your flow rate CPMS in a location that is subject to the same environment as the sensor of your flow rate CPMS. The calibrated flow rate measurement device must satisfy the accuracy requirements of paragraph (a)(15) of this section. While the process and control device that is monitored by your flow rate CPMS are operating normally, record concurrently and compare the flow rate measured by your pressure CPMS and the calibrated flow rate measurement device. Using the calibrated flow rate measurement device as the reference, the flow rate measured by your CPMS must be within the accuracy specified in paragraph (d)(1) of this section.

(iii) Perform any of the accuracy audit methods for liquid flow rate CPMS specified in QA procedures for CPMS established in 40 CFR part 60, appendix F.

(5) Conduct an accuracy audit of your flow rate CPMS following any 24-hour period throughout which the flow rate measured by your CPMS exceeds the manufacturer's specified maximum operating range, or install a new flow rate sensor.

(6) At least monthly, check all mechanical connections on your CPMS for leakage.

(7) If your CPMS is not equipped with a redundant flow rate sensor, perform at least quarterly a visual inspection of all components of the CPMS for integrity, oxidation, and galvanic corrosion.

(e) For each pH CPMS that is used to monitor the pH of a wet scrubber liquid, you must meet the requirements in paragraphs (a) and (e)(1) through (5) of this section.

(1) Use a pH CPMS with a minium accuracy of ±0.2 pH units.

(2) Use a data recording system with a minimum resolution of 0.1 pH units, or better.

(3) Perform an initial validation of your pH CPMS according to the requirements in paragraph (e)(3)(i) or (ii) of this section.

(i) Perform a single-point calibration using an NIST-certified buffer solution that is accurate to within ±0.02 pH units at 25°C (77°F). If the expected pH of the liquid that is monitored lies in the acidic range (less than 7 pH), use a buffer solution with a pH value of 4.00. If the expected pH of the liquid that is monitored is neutral or lies in the basic range (equal to or greater than 7 pH), use a buffer solution with a pH value of 10.00. Place the electrode of your pH CPMS in the container of buffer solution. Record the pH measured by your CPMS. Using the certified buffer solution as the reference, the pH measured by your CPMS must be within the accuracy specified in paragraph (e)(1) of this section.

(ii) Perform any of the initial validation methods for pH CPMS specified in performance specifications for CPMS established in 40 CFR part 60, appendix B.

(4) Perform an accuracy audit of your pH CPMS at least weekly, according to the requirements in paragraph (e)(4)(i), (ii), or (iii) of this section.

(i) If your pH CPMS includes a redundant pH sensor, record the pH measured by each of the two pH sensors. The measurements must be taken during periods when the process and control device that is monitored by your pH CPMS are operating normally. The two pH values must agree within the required overall accuracy of the CPMS, as specified in paragraph (e)(1) of this section.

(ii) If your pH CPMS does not include a redundant pH sensor, perform a single point calibration using an NIST-certified buffer solution that is accurate to within ±0.02 pH units at 25°C (77°F). If the expected pH of the liquid that is monitored lies in the acidic range (less than 7 pH), use a buffer solution with a pH value of 4.00. If the expected pH of the liquid that is monitored is neutral or lies in the basic range (equal to or greater than 7 pH), use a buffer solution with a pH value of 10.00. Place the electrode of the pH CPMS in the container of buffer solution. Record the pH measured by your CPMS. Using the certified buffer solution as the reference, the pH measured by your CPMS must be within the accuracy specified in paragraph (e)(1) of this section.

(iii) Perform any of the accuracy audit methods for pH CPMS specified in QA

procedures for CPMS established in 40 CFR part 60, appendix F.

(5) If your CPMS is not equipped with a redundant pH sensor, perform at least monthly a visual inspection of all components of the CPMS for integrity, oxidation, and galvanic corrosion.

(f) For each bag leak detection system, you must meet the requirements in paragraphs (f)(1) through (11) of this section.

(1) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the "Fabric Filter Bag Leak Detection Guidance" (EPA–454/R–98–015, September 1997). That document is available from the U.S. EPA; Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center (D205–02), Research Triangle Park, NC 27711. It is also available on the Technology Transfer Network (TTN) at the following address: *http://www.epa.gov/ttn/emc/cem.html*. Other types of bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(2) The bag leak detection system must be certified by the manufacturer to be capable of detecting particulate matter (PM) emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(3) The bag leak detection system sensor must provide an output of relative PM loadings.

(4) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(5) The bag leak detection system must be equipped with an alarm system that will be engaged automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily recognized by plant operating personnel.

(6) For positive pressure fabric filter systems, a bag leak detector must be installed in each baghouse compartment or cell.

(7) For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(8) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(9) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time according to section 5.0 of the "Fabric Filter Bag Leak Detection Guidance."

(10) Following initial adjustment of the system, the owner or operator must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time except as detailed in the OM&M plan. In no case may the sensitivity be increased by more than 100 percent or decreased by more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection that demonstrates that the fabric filter is in good operating condition. You must record each adjustment of your bag leak detection system.

(11) Record the results of each inspection, calibration, and validation check.

(g) For each lime feed rate measurement device that is used to monitor the lime feed rate of a dry injection fabric filter (DIFF) or dry lime scrubber/fabric filter (DLS/FF), or the chemical feed rate of a wet scrubber, you must meet the requirements in paragraph (a) of this section.

(h) For each affected source that is subject to the emission limit specified in item 3, 4, 7, or 8 of Table 1 to this subpart, you must satisfy the requirements of paragraphs (h)(1) through (3) of this section.

(1) Install a THC CEMS at the outlet of the control device or in the stack of the affected source.

(2) Meet the requirements of PS–8 of 40 CFR part 60, appendix B.

(3) Meet the requirements of Procedure 1 of 40 CFR part 60, appendix F.

(i) Requests for approval of alternate monitoring methods must meet the requirements in §§ 63.9800(i)(2) and 63.8(f).

§ 63.9806 How do I demonstrate initial compliance with the emission limits, operating limits, and work practice standards?

(a) You must demonstrate initial compliance with each emission limit that applies to you according to the requirements specified in Table 5 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements specified in § 63.9800 and Table 4 to this subpart.

(c) You must demonstrate initial compliance with each work practice standard that applies to you according to the requirements specified in Table 6 to this subpart.

(d) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.9812(e).

Continuous Compliance Requirements

§ 63.9808 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) At all times, you must maintain your monitoring systems including, but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(c) Except for, as applicable, monitoring system malfunctions, associated repairs, and required quality assurance or quality control activities, you must monitor continuously whenever your affected process unit is operating. For purposes of calculating data averages, you must not use data recorded during monitoring system malfunctions, associated repairs, and required quality assurance or quality control activities. You must use all the data collected during all other periods in assessing compliance. A monitoring system malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring system to provide valid data. Monitoring system malfunctions include out of control continuous monitoring systems (CMS), such as a CPMS. Any averaging period for which you do not have valid monitoring data as a result of a monitoring system malfunction and for which such data are required constitutes a deviation, and you must notify the Administrator in accordance with § 63.9814(e). Monitoring system failures are different from monitoring system malfunctions in that they are caused in part by poor maintenance or careless operation. Any period for which there is a monitoring system failure and data are not available for required calculations constitutes a deviation and you must notify the Administrator in accordance with § 63.9814(e).

§ 63.9810 How do I demonstrate continuous compliance with the emission limits, operating limits, and work practice standards?

(a) You must demonstrate continuous compliance with each emission limit specified in Table 1 to this subpart that applies to you according to the requirements specified in Table 7 to this subpart.

(b) You must demonstrate continuous compliance with each operating limit specified in Table 2 to this subpart that applies to you according to the requirements specified in Table 8 to this subpart.

(c) You must demonstrate continuous compliance with each work practice standard specified in Table 3 to this subpart that applies to you according to the requirements specified in Table 9 to this subpart.

(d) For each affected source that is equipped with an add-on APCD that is not addressed in Table 2 to this subpart or that is using process changes as a means of meeting the emission limits in Table 1 to this subpart, you must demonstrate continuous compliance with each emission limit in Table 1 to this subpart and each operating limit established as required in § 63.9800(i)(3) according to the methods specified in your approved alternative monitoring methods request as described in § 63.9800(i)(2).

(e) You must report each instance in which you did not meet each emission limit and each operating limit in this subpart that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.9814.

(1) During periods of startup, shutdown, and malfunction, you must operate according to your SSMP.

(2) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating according to your SSMP and your OM&M plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.9812 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4), and 63.9 (b) through (e) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2) and (3), if you start up your affected source before April 16, 2003, you must submit an Initial Notification not later than 120 calendar days after April 16, 2003.

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after April 16, 2003, you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a Notification of Performance Test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test, you must submit a Notification of Compliance Status as specified in § 63.9(h) and paragraphs (e)(1) and (2) of this section.

(1) For each compliance demonstration that includes a performance test conducted according to the requirements in Table 4 to this subpart, you must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test, according to § 63.10(d)(2).

(2) In addition to the requirements in § 63.9(h)(2)(i), you must include the information in paragraphs (e)(2)(i) through (iv) of this section in your Notification of Compliance Status.

(i) The operating limit parameter values established for each affected source with supporting documentation and a description of the procedure used to establish the values.

(ii) Design information and analysis with supporting documentation demonstrating conformance with requirements for capture/collection systems in Table 2 to this subpart.

(iii) A description of the methods used to comply with any applicable work practice standard.

(iv) For each APCD that includes a fabric filter, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.9804(f).

(f) If you operate a clay refractory products kiln or a chromium refractory products kiln that is subject to the work practice standard specified in item 3 or 4 of Table 3 to this subpart, and you intend to use a fuel other than natural gas or equivalent to fire the affected kiln, you must submit a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.9824. The notification must include the information specified in paragraphs (f)(1) through (5) of this section.

(1) Company name and address.

(2) Identification of the affected kiln.

(3) Reason you are unable to use natural gas or equivalent fuel, including the date when the natural gas curtailment was declared or the natural gas supply interruption began.

(4) Type of alternative fuel that you intend to use.

(5) Dates when the alternative fuel use is expected to begin and end.

(g) If you own or operate an affected continuous kiln and must perform scheduled maintenance on the control device for that kiln, you must request approval from the Administrator before bypassing the control device, as specified in § 63.9792(e). You must submit a separate request for approval each time you plan to bypass the kiln control device.

§ 63.9814 What reports must I submit and when?

(a) You must submit each report in Table 10 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date in Table 10 to this subpart and as specified in paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.9786 and ending on June 30 or December 31 and lasting at least 6 months but less than 12 months. For example, if your compliance date is March 1, then the first semiannual reporting period would begin on March 1 and end on December 31.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31 for compliance periods ending on June 30 and December 31, respectively.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 40 CFR part 71 and, if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section. In such cases, you must notify the Administrator of this change.

(c) The compliance report must contain the information in paragraphs (c)(1) through (6) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying that, based on information and belief formed after reasonable inquiry, the statements and information in the report are true, accurate, and complete.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period, and you took actions consistent with your SSMP and OM&M plan, the compliance report must include the information specified in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limitations (emission limit, operating limit, or work practice standard) that apply to you, the compliance report must include a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which any affected CPMS was out of control as specified in § 63.8(c)(7), the compliance report must include a statement that there were no periods during which the CPMS was out of control during the reporting period.

(d) For each deviation from an emission limitation (emission limit, operating limit, or work practice standard) that occurs at an affected source where you are not using a CPMS to comply with the emission limitations in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) and (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The compliance report must include the total operating time of each affected source during the reporting period.

(2) The compliance report must include information on the number, duration, and cause of deviations (including unknown cause, if applicable) and the corrective action taken.

(e) For each deviation from an emission limitation (emission limit, operating limit, or work practice standard) occurring at an affected source where you are using a CPMS to comply with the emission limitation in this subpart, the compliance report must include the information in paragraphs (c)(1) through (4) and (e)(1) through (13) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) The date and time that each startup, shutdown, or malfunction started and stopped.

(3) The date, time, and duration that each CPMS was inoperative.

(4) The date, time and duration that each CPMS was out of control, including the information in § 63.8(c)(8), as required by your OM&M plan.

(5) The date and time that each deviation from an emission limitation (emission limit, operating limit, or work practice standard) started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction.

(6) A description of corrective action taken in response to a deviation.

(7) A summary of the total duration of the deviations during the reporting period and the total duration as a percentage of the total source operating time during that reporting period.

(8) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(9) A summary of the total duration of CPMS downtime during the reporting period and the total duration of CPMS downtime as a percentage of the total source operating time during that reporting period.

(10) A brief description of the process units.

(11) A brief description of the CPMS.

(12) The date of the latest CPMS initial validation or accuracy audit.

(13) A description of any changes in CPMS, processes, or controls since the last reporting period.

(f) If you have obtained a title V operating permit pursuant to 40 CFR part 70 or 40 CFR part 71, you must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A). If you submit a compliance report according to Table 10 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation (including any operating limit), then submitting the compliance report will satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submitting a compliance report will not otherwise affect any obligation you may have to report deviations from permit requirements to the permit authority.

(g) If you operate a clay refractory products kiln or a chromium refractory products kiln that is subject to the work practice standard specified in item 3 or 4 of Table 3 to this subpart, and you use a fuel other than natural gas or equivalent to fire the affected kiln, you must submit a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel. The report must include the information in paragraphs (g)(1) through (6) of this section.

(1) Company name and address.

(2) Identification of the affected kiln.

(3) Reason for using the alternative fuel.

(4) Type of alternative fuel used to fire the affected kiln.

(5) Dates that the use of the alternative fuel started and ended.

(6) Amount of alternative fuel used.

§ 63.9816 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests as required in § 63.10(b)(2)(viii).

(b) You must keep the records required in Tables 7 through 9 to this subpart to show continuous compliance with each emission limitation that applies to you.

(c) You must also maintain the records listed in paragraphs (c)(1) through (10) of this section.

(1) Records of emission data used to develop an emissions profile, as indicated in items 8(a)(i)(4) and 17(b)(i)(4) of Table 4 to this subpart.

(2) Records that document how you comply with any applicable work practice standard.

(3) For each bag leak detection system, records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action taken.

(4) For each kiln controlled with a DLA, records that document the source of limestone used.

(5) For each deviation of an operating limit parameter value, the date, time, and duration of the deviation, a brief explanation of the cause of the deviation and the corrective action taken, and whether the deviation occurred during a period of startup, shutdown, or malfunction.

(6) For each affected source, records of production rate on a process throughput basis (either feed rate to the process unit or discharge rate from the process unit).

(7) Records of any approved alternative monitoring method(s) or test procedure(s).

(8) Records of maintenance activities and inspections performed on control devices, including all records associated with the scheduled maintenance of continuous kiln control devices, as specified in § 63.9792(e).

(9) If you operate a source that is subject to the THC emission limits specified in item 2, 3, 6, or 7 of Table 1 to this subpart and is controlled with a catalytic oxidizer, records of annual checks of catalyst activity levels and subsequent corrective actions.

(10) Current copies of the SSMP and the OM&M plan, including any revisions and records documenting conformance with those revisions.

§ 63.9818 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You may keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.9820 What parts of the General Provisions apply to me?

Table 11 to this subpart shows which parts of the General Provisions specified in §§ 63.1 through 63.15 apply to you.

§ 63.9822 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement to this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority to this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of the U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as specified in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the applicability requirements in §§ 63.9782 and 63.9784, the compliance date requirements in § 63.9786, and the emission limitations in § 63.9788.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9824 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in 40 CFR 63.2, the General Provisions of this part, and in this section as follows:

Additive means a minor addition of a chemical, mineral, or metallic substance that is added to a refractory mixture to facilitate processing or impart specific properties to the final refractory product.

Add-on air pollution control device (APCD) means equipment installed on a process vent that reduces the quantity of a pollutant that is emitted to the air.

Autoclave means a vessel that is used to impregnate fired and/or unfired refractory shapes with pitch to form pitch-impregnated refractory products. Autoclaves also can be used as defumers following the impregnation process.

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter in order to detect bag failures. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light-scattering, light-transmittance, or other effects to monitor relative PM loadings.

Basket means the metal container used to hold refractory shapes for pitch impregnation during the shape preheating, impregnation, defuming, and, if applicable, coking processes.

Batch process means a process in which a set of refractory shapes is acted upon as a single unit according to a predetermined schedule, during which none of the refractory shapes being processed are added or removed. A batch process does not operate continuously.

Binder means a substance added to a granular material to give it workability and green or dry strength.

Catalytic oxidizer means an add-on air pollution control device that is designed specifically to destroy organic compounds in a process exhaust gas stream by catalytic incineration. A catalytic oxidizer includes a bed of catalyst media through which the process exhaust stream passes to promote combustion and incineration at a lower temperature than would be possible without the catalyst.

Chromium refractory product means a refractory product that contains at least 1 percent chromium by weight.

Clay refractory product means a refractory product that contains at least 10 percent uncalcined clay by weight prior to firing in a kiln. In this definition, the term "clay" means any of the following six classifications of clay defined by the U.S. Geologic Survey: ball clay, bentonite, common clay and shale, fire clay, fuller's earth, and kaolin.

Coking oven means a thermal process unit that operates at a peak temperature typically between 540° and 870°C (1000° and 1600°F) and is used to drive off the volatile constituents of pitch-impregnated refractory shapes under a reducing or oxygen-deprived atmosphere.

Continuous parameter monitoring system (CPMS) means the total equipment that is used to measure and record temperature, pressure, liquid flow rate, gas flow rate, or pH on a continuous basis in one or more locations. "Total equipment" includes the sensor, mechanical components, electronic components, data acquisition system, data recording system, electrical wiring, and other components of a CPMS.

Continuous process means a process that operates continuously. In a continuous process unit, the materials or shapes that are processed are either continuously charged (fed) to and discharged from the process unit, or are charged and discharged at regular time intervals without the process unit being shut down. Continuous thermal process units, such as tunnel kilns, generally include temperature zones that are maintained at relatively constant

temperature and through which the materials or shapes being processed are conveyed continuously or at regular time intervals.

Curing oven means a thermal process unit that operates at a peak temperature typically between 90° and 340°C (200° and 650°F) and is used to activate a thermosetting resin, pitch, or other binder in refractory shapes. Curing ovens also perform the same function as shape dryers in removing the free moisture from refractory shapes.

Defumer means a process unit that is used for holding pitch-impregnated refractory shapes as the shapes defume or cool immediately following the impregnation process. This definition includes autoclaves that are opened and exhausted to the atmosphere following an impregnation cycle and used for holding pitch-impregnated refractory shapes while the shapes defume or cool.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart including, but not limited to, any emission limitation (emission limit, operating limit, or work practice standard);

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation (emission limit, operating limit, or work practice standard) in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Dry injection fabric filter (DIFF) means an add-on air pollution control device that includes continuous injection of hydrated lime or other sorbent into a duct or reaction chamber followed by a fabric filter.

Dry lime scrubber/fabric filter (DLS/FF) means an add-on air pollution control device that includes continuous injection of humidified hydrated lime or other sorbent into a reaction chamber followed by a fabric filter. These systems may include recirculation of some of the sorbent.

Dry limestone adsorber (DLA) means an air pollution control device that includes a limestone storage bin, a reaction chamber that is essentially a packed-tower filled with limestone, and may or may not include a peeling drum that mechanically scrapes reacted limestone to regenerate the stone for reuse.

Emission limitation means any restriction on the emissions a process unit may discharge.

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering a process exhaust stream through a filter or filter media; a fabric filter is also known as a baghouse.

Fired refractory shape means a refractory shape that has been fired in a kiln.

HAP means any hazardous air pollutant that appears in section 112(b) of the Clean Air Act.

Kiln means a thermal process unit that operates at a peak temperature greater than 820°C (1500°F) and is used for firing or sintering refractory, ceramic, or other shapes.

Kiln furniture means any refractory shape that is used to hold, support, or position ceramic or refractory products in a kiln during the firing process.

Maximum organic HAP processing rate means the combination of process and refractory product formulation that has the greatest potential to emit organic HAP. The maximum organic HAP processing rate is a function of the organic HAP processing rate, process operating temperature, and other process operating parameters that affect emissions of organic HAP. (See also the definition of *organic HAP processing rate*.)

Organic HAP processing rate means the rate at which the mass of organic HAP materials contained in refractory shapes are processed in an affected thermal process unit. The organic HAP processing rate is a function of the amount of organic HAP contained in the resins, binders, and additives used in a refractory mix; the amounts of those resins, binders, and additives in the refractory mix; and the rate at which the refractory shapes formed from the refractory mix are processed in an affected thermal process unit. For continuous process units, the organic HAP processing rate is expressed in units of mass of organic HAP per unit of time (*e.g.*, pounds per hour). For batch process units, the organic HAP processing rate is expressed in units of mass of organic HAP per unit mass of refractory shapes processed during the batch process cycle (*e.g.*, pounds per ton).

Particulate matter (PM) means, for the purposes of this subpart, emissions of particulate matter that serve as a measure of total particulate emissions as measured by EPA Method 5 of 40 CFR part 60, appendix A.

Peak emissions period means the period of consecutive hourly mass emissions of the applicable pollutant that is greater than any other period of consecutive hourly mass emissions for the same pollutant over the course of a specified batch process cycle, as defined in paragraphs (1) and (2) of this definition. The peak emissions period is a function of the rate at which the temperature of the refractory shapes is increased, the mass and loading configuration of the shapes in the process unit, the constituents of the refractory mix, and the type of pollutants emitted.

(1) The 3-hour peak THC emissions period is the period of 3 consecutive hours over which the sum of the hourly THC mass emissions rates is greater than the sum of the hourly THC mass emissions rates for any other period of 3 consecutive hours during the same batch process cycle.

(2) The 3-hour peak HF emissions period is the period of 3 consecutive hours over which the sum of the hourly HF mass emissions rates is greater than the sum of the hourly HF mass emissions rates for any other period of 3 consecutive hours during the same batch process cycle.

Period of natural gas curtailment or supply interruption means a period of time during which the supply of natural gas to an affected facility is halted for reasons beyond the control of the facility. An increase in the cost or unit price of natural gas does not constitute a period of natural gas curtailment or supply interruption.

Pitch means the residue from the distillation of petroleum or coal tar.

Pitch-bonded refractory product means a formed refractory product that is manufactured using pitch as a bonding agent. Pitch-bonded refractory products are manufactured by mixing pitch with magnesium oxide, graphite, alumina, silicon carbide, silica, or other refractory raw materials, and forming the mix into shapes. After forming, pitch-bonded refractory products are cured in a curing oven and may be subsequently fired in a kiln.

Pitch-impregnated refractory product means a refractory shape that has been fired in a kiln, then impregnated with heated coal tar or petroleum pitch under pressure. After impregnation, pitch-impregnated refractory shapes may undergo the coking process in a coking oven. The total carbon content of a pitch-impregnated refractory product is less than 50 percent.

Pitch working tank means a tank that is used for heating pitch to the impregnation temperature, typically between 150° and 260°C (300° and 500°F): temporarily storing heated pitch between impregnation cycles; and transferring pitch to and from the autoclave during the impregnation step in manufacturing pitch-impregnated refractory products.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Redundant sensor means a second sensor or a back-up sensor that is integrated into a CPMS and is used to check the parameter value (*e.g.*, temperature, pressure) measured by the primary sensor of the CPMS.

Refractory product means nonmetallic materials containing less than 50 percent carbon by weight and having those chemical and physical properties that make them applicable for structures, or as components of systems, that are exposed to environments above 538°C (1000°F). This definition includes, but is not limited to: refractory bricks, kiln furniture, crucibles, refractory ceramic fiber, and other materials used as linings for boilers, kilns, and other processing units and equipment where extremes of temperature, corrosion, and abrasion would destroy other materials.

Refractory products that use organic HAP means resin-bonded refractory products, pitch-bonded refractory products, and other refractory products that are produced using a substance that is an organic HAP, that releases an organic HAP during production of the refractory product, or that contains an organic HAP, such as methanol or ethylene glycol.

Refractory shape means any refractory piece forming a stable mass with specific dimensions.

Research and development process unit means any process unit whose purpose is to conduct research and development for new processes and products and is not engaged in the manufacture of products for commercial sale, except in a de minimis manner.

Resin-bonded refractory product means a formed refractory product that is manufactured using a phenolic resin or other type of thermosetting resin as a bonding agent. Resin-bonded refractory products are manufactured by mixing resin with alumina, magnesium oxide, graphite, silica, zirconia, or other refractory raw materials, and forming the mix into shapes. After forming, resin-bonded refractory products are cured in a curing oven and may be subsequently fired in a kiln.

Responsible official means one of the following:

(1) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decisionmaking functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(i) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding $25 million (in second quarter 1980 dollars); or

(ii) The delegation of authority to such representatives is approved in advance by the Administrator;

(2) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(3) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this part, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (*e.g.*, a Regional Administrator of EPA); or

(4) For affected sources (as defined in this subpart) applying for or subject to a title V permit: "responsible official" shall have the same meaning as defined in part 70 or Federal title V regulations in this chapter (42 U.S.C. 7661), whichever is applicable.

Shape dryer means a thermal process unit that operates at a peak temperature typically between 40° and 700°C (100° and 1300°F) and is used exclusively to reduce the free moisture content of a refractory shape. Shape dryers generally are the initial thermal process step following the forming step in refractory products manufacturing. (See also the definition of a *curing oven*.)

Shape preheater means a thermal process unit that operates at a peak temperature typically between 180° and 320°C (350° and 600°F) and is used to heat fired refractory shapes prior to the impregnation step in manufacturing pitch-impregnated refractory products.

Thermal oxidizer means an add-on air pollution control device that includes one or more combustion chambers and is designed specifically to destroy organic compounds in a process exhaust gas stream by incineration.

Uncalcined clay means clay that has not undergone thermal processing in a calciner.

Wet scrubber means an add-on air pollution control device that removes pollutants from a gas stream by bringing them into contact with a liquid, typically water.

Work practice standard means any design, equipment, work practice, or operational standard, or combination thereof, that is promulgated pursuant to section 112(h) of the Clean Air Act.

Tables to Subpart SSSSS of Part 63

As stated in § 63.9788, you must comply with the emission limits for affected sources in the following table:

TABLE 1 TO SUBPART SSSSS OF PART 63.—EMISSION LIMITS

For . . .	You must meet the following emission limits . . .
1. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 2 through 9 of this table.
2. Continuous process units that are controlled with a thermal or catalytic oxidizer.	a. The 3-hour block average THC concentration must not exceed 20 parts per million by volume, dry basis (ppmvd), corrected to 18 percent oxygen, at the outlet of the control device; or b. The 3-hour block average THC mass emissions rate must be reduced by at least 95 percent.
3. Continuous process units that are equipped with a control device other than a thermal or catalytic oxidizer.	a. The 3-hour block average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 3-hour block average THC mass emissions rate must be reduced by at least 95 percent.
4. Continuous process units that use process changes to reduce organic HAP emissions.	The 3-hour block average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
5. Continuous kilns that are not equipped with a control device	The 3-hour block average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
6. Batch process units that are controlled with a thermal or catalytic oxidizer.	a. The 2-run block average THC concentration for the 3-hour peak emissions period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 2-run block average THC mass emissions rate for the 3-hour peak emissions period must be reduced by at least 95 percent.
7. Batch process units that are equipped with a control device other than a thermal or catalytic oxidizer.	a. The 2-run block average THC concentration for the 3-hour peak emissions period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the control device; or b. The 2-run block average THC mass emissions rate for the 3-hour peak emissions period must be reduced by at least 95 percent.
8. Batch process units that use process changes to reduce organic HAP emissions.	The 2-run block average THC concentration for the 3-hour peak emissions period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
9. Batch process kilns that are not equipped with a control device	The 2-run block average THC concentration for the 3-hour peak emissions period must not exceed 20 ppmvd, corrected to 18 percent oxygen, at the outlet of the process gas stream.
10. Each new continuous kiln that is used to produce clay refractory products.	a. The 3-hour block average HF emissions must not exceed 0.019 kilograms per megagram (kg/Mg) (0.038 pounds per ton (lb/ton)) of uncalcined clay processed, OR the 3-hour block average HF mass emissions rate must be reduced by at least 90 percent; and b. The 3-hour block average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed, OR the 3-hour block average HCl mass emissions rate must be reduced by at least 30 percent.
11. Each new batch process kiln that is used to produce clay refractory products.	a. The 2-run block average HF mass emissions rate for the 3-hour peak emissions period must be reduced by at least 90 percent; and b. The 2-run block average HCl mass emissions rate for the 3-hour peak emissions period must be reduced by at least 30 percent.

As stated in § 63.9788, you must comply with the operating limits for affected sources in the following table:

TABLE 2 TO SUBPART SSSSS OF PART 63.—OPERATING LIMITS

For . . .	You must . . .
1. Each affected source listed in Table 1 to this subpart	a. Operate all affected sources according to the requirements to this subpart on and after the date on which the initial performance test is conducted or required to be conducted, whichever date is earlier; and b. Capture emissions and vent them through a closed system; and c. Operate each control device that is required to comply with this subpart on each affected source during all periods that the source is operating, except where specified in § 63.9792(e), item 2 of this table, and item 13 of Table 4 to this subpart; and

TABLE 2 TO SUBPART SSSSS OF PART 63.—OPERATING LIMITS—Continued

For . . .	You must . . .
	d. Record all operating parameters specified in Table 8 to this subpart for the affected source; and e. Prepare and implement a written OM&M plan as specified in § 63.9792(d).
2. Each affected continuous kiln that is equipped with an emission control device.	a. Receive approval from the Administrator before taking the control device on the affected kiln out of service for scheduled maintenance, as specified in § 63.9792(e); and b. Minimize HAP emissions from the affected kiln during all periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service; and c. Minimize the duration of all periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service.
3. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	Satisfy the applicable operating limits specified in items 4 through 9 of this table.
4. Each affected continuous process unit	Maintain the 3-hour block average organic HAP processing rate (pounds per hour) at or below the maximum organic HAP processing rate established during the most recent performance test.
5. Continuous process units that are equipped with a thermal oxidizer	Maintain the 3-hour block average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature for the oxidizer established during the most recent performance test.
6. Continuous process units that are equipped with a catalytic oxidizer	a. Maintain the 3-hour block average operating temperature at the inlet of the catalyst bed of the oxidizer at or above the minimum allowable operating temperature for the oxidizer established during the most recent performance test; and b. Check the activity level of the catalyst at least every 12 months.
7. Each affected batch process unit	For each batch cycle, maintain the organic HAP processing rate (pounds per batch) at or below the maximum organic HAP processing rate established during the most recent performance test.
8. Batch process units that are equipped with a thermal oxidizer	a. From the start of each batch cycle until 3 hours have passed since the process unit reached maximum temperature, maintain the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established for the corresponding period during the most recent performance test, as determined according to item 11 of Table 4 to this subpart; and b. For each subsequent hour of the batch cycle, maintain the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established for the corresponding hour during the most recent performance test, as specified in item 13 of Table 4 to this subpart.
9. Batch process units that are equipped with a catalytic oxidizer	a. From the start of each batch cycle until 3 hours have passed since the process unit reached maximum temperature, maintain the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable operating temperature established for the corresponding period during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; and b. For each subsequent hour of the batch cycle, maintain the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable operating temperature established for the corresponding hour during the most recent performance test, as specified in item 13 of Table 4 to this subpart; and c. Check the activity level of the catalyst at least every 12 months.
10. Each new kiln that is used to process clay refractory products	Satisfy the applicable operating limits specified in items 11 through 13 of this table.
11. Each affected kiln that is equipped with a DLA	a. Maintain the 3-hour block average pressure drop across the DLA at or above the minimum levels established during the most recent performance test; and b. Maintain free-flowing limestone in the feed hopper, silo, and DLA at all times; and c. Maintain the limestone feeder at or above the level established during the most recent performance test; and

TABLE 2 TO SUBPART SSSSS OF PART 63.—OPERATING LIMITS—Continued

For . . .	You must . . .
	d. Use the same grade of limestone from the same source as was used during the most recent performance test and maintain records of the source and type of limestone used.
12. Each affected kiln that is equipped with a DIFF or DLS/FF	a. Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with the OM&M plan; and b. Verify at least once each 8-hour shift that lime is free-flowing by means of a visual check, checking the output of a load cell, carrier gas/lime flow indicator, or carrier gas pressure drop measurement system; and c. Record the lime feeder setting daily to verify that the feeder setting is at or above the level established during the most recent performance test.
13. Each affected kiln that is equipped with a wet scrubber	a. Maintain the 3-hour block average pressure drop across the scrubber, liquid pH, and liquid flow rate at or above the minimum levels established during the most recent performance test; and b. If chemicals are added to the scrubber liquid, maintain the 3-hour block average chemical feed rate at or above the minimum chemical feed rate established during the most recent performance test.

As stated in § 63.9788, you must comply with the work practice standards for affected sources in the following table:

TABLE 3 TO SUBPART SSSSS OF PART 63.—WORK PRACTICE STANDARDS

For . . .	You must . . .	According to one of the following requirements . . .
1. Each basket or container that is used for holding fired refractory shapes in an existing shape preheater and autoclave during the pitch impregnation process.	a. Control POM emissions from any affected shape preheater.	i. At least every 10 preheating cycles, clean the residual pitch from the surfaces of the basket or container by abrasive blasting prior to placing the basket or container in the affected shape preheater; or ii. At least every 10 preheating cycles, subject the basket or container to a thermal process cycle that meets or exceeds the operating temperature and cycle time of the affected preheater, AND is conducted in a process unit that is exhausted to a thermal or catalytic oxidizer that is comparable to the control device used on an affected defumer or coking oven; or iii. Capture emissions from the affected shape preheater and vent them to the control device that is used to control emissions from an affected defumer or coking oven, or to a comparable thermal or catalytic oxidizer.
2. Each new or existing pitch working tank	Control POM emissions	Capture emissions from the affected pitch working tank and vent them to the control device that is used to control emissions from an affected defumer or coking oven, OR to a comparable thermal or catalytic oxidizer.
3. Each new or existing chromium refractory products kiln.	Minimize fuel-based HAP emissions	Use natural gas, or equivalent, as the kiln fuel, except during periods of natural gas curtailment or supply interruption, as defined in § 63.9824.
4. Each existing clay refractory products kiln	Minimize fuel-based HAP emissions	Use natural gas, or equivalent, as the kiln fuel, except during periods of natural gas curtailment or supply interruption, as defined in § 63.9824.

As stated in § 63.9800, you must comply with the requirements for performance tests for affected sources in the following table:

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each affected source listed in Table 1 to this subpart.	a. Conduct performance tests	i. The requirements of the general provisions in subpart A of this part and the requirements to this subpart.	(1) Record the date of the test; and (2) Identify the emission source that is tested; and (3) Collect and record the corresponding operating parameter and emission test data listed in this table for each run of the performance test; and (4) Repeat the performance test at least every 5 years; and (5) Repeat the performance test before changing the parameter value for any operating limit specified in your OM&M plan; and (6) If complying with the THC concentration or THC percentage reduction limits specified in items 2 through 9 of Table 1 to this subpart, repeat the performance test under the conditions specified in items 2.a.2. and 2.a.3. of this table; and (7) If complying with the emission limits for new clay refractory products kilns specified in items 10 and 11 of Table 1 to this subpart, repeat the performance test under the conditions specified in items 14.a.i.4. and 17.a.i.4. of this table.
	b. Select the locations of sampling ports and the number of traverse points.	i. Method 1 or 1A of 40 CFR part 60, appendix A.	(1) To demonstrate compliance with the percentage reduction limits specified in items 2.b., 3.b., 6.b., 7.b., 10, and 11 of Table 1 to this subpart, locate sampling sites at the inlet of the control device and at either the outlet of the control device or at the stack prior to any releases to the atmosphere; and (2) To demonstrate compliance with any other emission limit specified in Table 1 to this subpart, locate all sampling sites at the outlet of the control device or at the stack prior to any releases to the atmosphere.
	c. Determine gas velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A.	Measure gas velocities and volumetric flow rates at 1-hour intervals throughout each test run.
	d. Conduct gas molecular weight analysis.	(i) Method 3, 3A, or 3B of 40 CFR part 60, appendix A; or (ii) ASME PTC 19.10–1981–Part 10	As specified in the applicable test method. You may use ASME PTC 19.10–1981–Part 10 (available for purchase from Three Park Avenue, New York, NY 10016–5990) as an alternative to EPA Method 3B.
	e. Measure gas moisture content	Method 4 of 40 CFR part 60, appendix A.	As specified in the applicable test method.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	a. Conduct performance tests		(1) Conduct the performance test while the source is operating at the maximum organic HAP processing rate, as defined in § 63.9824, reasonably expected to occur; and (2) Repeat the performance test before starting production of any product for which the organic HAP processing rate is likely to exceed the maximum organic HAP processing rate established during the most recent performance test by more than 10 percent, as specified in § 63.9798(c); and (3) Repeat the performance test on any affected uncontrolled kiln following process changes (e.g., shorter curing oven cycle time) that could increase organic HAP emissions from the affected kiln, as specified in § 63.9798(d).
	b. Satisfy the applicable requirements listed in items 3 through 13 of this table.		
3. Each affected continuous process unit.	a. Perform a minimum of 3 test runs ...	The appropriate test methods specified in items 1, 4, and 5 of this table.	Each test run must be at least 1 hour in duration.
	b. Establish the operating limit for the maximum organic HAP processing rate.	i. Method 311 of 40 CFR part 63, appendix A, OR material safety data sheets (MSDS), OR product labels to determine the mass fraction of organic HAP in each resin, binder, or additive; and	(1) Calculate and record the organic HAP content of all refractory shapes that are processed during the performance test, based on the mass fraction of organic HAP in the resins, binders, or additives; the mass fraction of each resin, binder, or additive, in the product; and the process feed rate; and
		ii. Product formulation data that specify the mass fraction of each resin, binder, and additive in the products that are processed during the performance test; and	(2) Calculate and record the organic HAP processing rate (pounds per hour) for each test run; and
		iii. Process feed rate data (tons per hour).	(3) Calculate and record the maximum organic HAP processing rate as the average of the organic HAP processing rates for the three test runs.
	c. Record the operating temperature of the affected source.	Process data	During each test run and at least once per hour, record the operating temperature in the highest temperature zone of the affected source.
4. Each continuous process unit that is subject to the THC emission limit listed in item 2.a., 3.a., 4, or 5 of Table 1 to this subpart.	a. Measure THC concentrations at the outlet of the control device or in the stack.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	b. Measure oxygen concentrations at the outlet of the control device or in the stack.	i. Method 3A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of oxygen in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.
	c. Determine the hourly average THC concentration, corrected to 18 percent oxygen.	i. Equation 1 of § 63.9800(g)(1); and ... ii. The 1-minute THC and oxygen concentration data.	(1) Calculate the hourly average THC concentration for each hour of the performance test as the average of the 1-minute THC measurements; and (2) Calculate the hourly average oxygen concentration for each hour of the performance test as the average of the 1-minute oxygen measurements; and (3) Correct the hourly average THC concentrations to 18 percent oxygen using Equation 1 of § 63.9800(g)(1).
	d. Determine the 3-hour block average THC emission concentration, corrected to 18 percent oxygen.	The hourly average concentration of THC, corrected to 18 percent oxygen, for each test run.	Calculate the 3-hour block average THC emission concentration, corrected to 18 percent oxygen, as the average of the hourly average THC emission concentrations, corrected to 18 percent oxygen.
5. Each continuous process unit that is subject to the THC percentage reduction limit listed in item 2.b. or 3.b. of Table 1 to this subpart.	a. Measure THC concentrations at the inlet and outlet of the control device.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC at the inlet and outlet of the control device; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration at the control device inlet and outlet.
	b. Determine the hourly THC mass emissions rates at the inlet and outlet of the control device.	i. The 1-minute THC concentration data at the control device inlet and outlet; and ii. The volumetric flow rates at the control device inlet and outlet.	Calculate the hourly THC mass emissions rates at the control device inlet and outlet for each hour of the performance test.
	c. Determine the 3-hour block average THC percentage reduction.	i. The hourly THC mass emissions rates at the inlet and outlet of the control device.	(1) Calculate the hourly THC percentage reduction for each hour of the performance test using Equation 2 of § 63.9800(g)(1); and (2) Calculate the 3-hour block average THC percentage reduction.
6. Each continous process unit that is equipped with a thermal oxidizer.	a. Establish the operating limit for the minimum allowable thermal oxidizer combustion chamber temperature.	i. Continuous recording of the output of the combustion chamber temperature measurement device.	(1) At least every 15 minutes, measure and record the thermal oxidizer combustion chamber temperature; and (2) Provide at least one measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average thermal oxidizer combustion chamber temperature for each hour of the performance test; and (4) Calculate the minimum allowable combustion chamber temperature as the average of the combustion chamber temperatures for the three test runs, minus 14°C (25°F).
7. Each continuous process unit that is equipped with a catalytic oxidizer.	a. Establish the operating limit for the minimum allowable temperature at the inlet of the catalyst bed.	i. Continuous recording of the output of the temperature measurement device.	(1) At least every 15 minutes, measure and record the temperature at the inlet of the catalyst bed; and (2) Provide at least one catalyst bed inlet temperature measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average catalyst bed inlet temperature for each hour of the performance test; and

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
			(4) Calculate the minimum allowable catalyst bed inlet temperature as the average of the catalyst bed inlet temperatures for the three test runs, minus 14°C (25°F).
8. Each affected batch process unit.	a. Perform a minimum of two test runs	i. The appropriate test methods specified in items 1, 9, and 10 of this table.	(1) Each test run must be conducted over a separate batch cycle unless you satisfy the requirements of § 63.9800(f)(3) and (4); and (2) Each test run must begin with the start of a batch cycle, except as specified in item 8.a.i.4. of this table; and (3) Each test run must continue until the end of the batch cycle, except as specified in items 8.a.i.4. and 8.a.i.5. of this table; and (4) If you develop an emissions profile, as described in § 63.9802(a), AND for sources equipped with a thermal or catalytic oxidizer, you do not reduce the oxidizer operating temperature, as specified in item 13 of this table, you can limit each test run to the 3-hour peak THC emissions period; and (5) If you do not develop an emissions profile, a test run can be stopped, and the results of that run considered complete, if you measure emissions continuously until at least 3 hours after the affected process unit has reached maximum temperature, AND the hourly average THC mass emissions rate has not increased during the 3-hour period since maximum process temperature was reached, and the hourly average concentrations of THC at the inlet of the control device have not exceeded 20 ppmvd, corrected to 18 percent oxygen, during the 3-hour period since maximum process temperature was reached or the hourly average THC percentage reduction has been at least 95 percent during the 3-hour period since maximum process temperature was reached, AND, for sources equipped with a thermal or catalytic oxidizer, at least 1 hour has passed since any reduction in the operating temperature of the oxidizer, as specified in item 13 of this table.
	b. Establish the operating limit for the maximum organic HAP processing rate.	i. Method 311 of 40 CFR part 63, appendix A, OR MSDS, OR product labels to determine the mass fraction of organic HAP in each resin, binder, or additive; and	(1) Calculate and record the organic HAP content of all refractory shapes that are processed during the performance test, based on the mass fraction of HAP in the resins, binders, or additives; the mass fraction of each resin, binder, or additive, in the product, and the batch weight prior to processing; and
		ii. Product formulation data that specify the mass fraction of each resin, binder, and additive in the products that are processed during the performance test; and	(2) Calculate and record the organic HAP processing rate (pounds per batch) for each test run; and
		iii. Batch weight (tons)	(3) Calculate and record the maximum organic HAP processing rate as the average of the organic HAP processing rates for the two test runs.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	c. Record the batch cycle time	Process data	Record the total elapsed time from the start to the completion of the batch cycle.
	d. Record the operating temperature of the affected source.	Process data	Record the operating temperature of the affected source at least once every hour from the start to the completion of the batch cycle.
9. Each batch process unit that is subject to the THC emission limit listed in item 6.a., 7.a., 8, or 9 of Table 1 to this subpart.	a. Measure THC concentrations at the outlet of the control device or in the stack.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration.
	b. Measure oxygen concentrations at the outlet of the control device or in the stack.	i. Method 3A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of oxygen in the exhaust stream; and (2) Provide at least 50 1-minute measurements for each valid hourly average oxygen concentration.
	c. Determine the hourly average THC concentration, corrected to 18 percent oxygen.	i. Equation 1 of § 63.9800(g)(1); and ... ii. The 1-minute THC and oxygen concentration data.	(1) Calculate the hourly average THC concentration for each hour of the performance test as the average of the 1-minute THC measurements; and (2) Calculate the hourly average oxygen concentration for each hour of the performance test as the average of the 1-minute oxygen measurements; and (3) Correct the hourly average THC concentrations to 18 percent oxygen using Equation 1 of § 63.9800(g)(1).
	d. Determine the 3-hour peak THC emissions period for each test run.	The hourly average THC concentrations, corrected to 18 percent oxygen.	Select the period of 3 consecutive hours over which the sum of the hourly average THC concentrations, corrected to 18 percent oxygen, is greater than the sum of the hourly average THC emission concentrations, corrected to 18 percent oxygen, for any other period of 3 consecutive hours during the test run.
	e. Determine the average THC concentration, corrected to 18 percent oxygen, for each test run.	The hourly average THC emission concentrations, corrected to 18 percent oxygen, for the 3-hour peak THC emissions period.	Calculate the average of the hourly average THC concentrations, corrected to 18 percent oxygen, for the 3 hours of the peak emissions period for each test run.
	f. Determine the 2-run block average THC concentration, corrected to 18 percent oxygen, for the emission test.	The average THC concentration, corrected to 18 percent oxygen, for each test run.	Calculate the average of the average THC concentrations, corrected to 18 percent oxygen, for each run.
10. Each batch process unit that is subject to the THC percentage reduction limit listed in item 6.b. or 7.b. of Table 1 to this subpart.	a. Measure THC concentrations at the inlet and outlet of the control device.	i. Method 25A of 40 CFR part 60, appendix A.	(1) Each minute, measure and record the concentrations of THC at the control device inlet and outlet; and (2) Provide at least 50 1-minute measurements for each valid hourly average THC concentration at the control device inlet and outlet.
	b. Determine the hourly THC mass emissions rates at the control device inlet and outlet.	i. The 1-minute THC concentration data at the control device inlet and outlet; and ii. The volumetric flow rates at the control device inlet and outlet.	(1) Calculate the hourly mass emissions rates at the control device inlet and outlet for each hour of the performance test.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	c. Determine the 3-hour peak THC emissions period for each test run.	The hourly THC mass emissions rates at the control device inlet.	Select the period of 3 consecutive hours over which the sum of the hourly THC mass emissions rates at the control device inlet is greater than the sum of the hourly THC mass emissions rates at the control device inlet for any other period of 3 consecutive hours during the test run.
	d. Determine the average THC percentage reduction for each test run.	i. Equation 2 of § 63.9800(g)(2); and ... ii. The hourly THC mass emissions rates at the control device inlet and outlet for the 3-hour peak THC emissions period.	Calculate the average THC percentage reduction for each test run using Equation 2 of § 63.9800(g)(2).
	e. Determine the 2-run block average THC percentage reduction for the emission test.	The average THC percentage reduction for each test run.	Calculate the average of the average THC percentage reductions for each test run.
11. Each batch process unit that is equipped with a thermal oxidizer.	a. Establish the operating limit for the minimum thermal oxidizer combustion chamber temperature.	i. Continuous recording of the output of the combustion chamber temperature measurement device.	(1) At least every 15 minutes, measure and record the thermal oxidizer combustion chamber temperature; and (2) Provide at least one temperature measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average combustion chamber temperature for each hour of the 3-hour peak emissions period, as defined in item 9.d. or 10.c. of this table, whichever applies; and (4) Calculate the minimum allowable thermal oxidizer combustion chamber operating temperature as the average of the hourly combustion chamber temperatures for the 3-hour peak emissions period, minus 14°C (25°F).
12. Each batch process unit that is equipped with a catalytic oxidizer.	a. Establish the operating limit for the minimum temperature at the inlet of the catalyst bed.	i. Continuous recording of the output of the temperature measurement device.	(1) At least every 15 minutes, measure and record the temperature at the inlet of the catalyst bed; and (2) Provide at least one catalyst bed inlet temperature measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average catalyst bed inlet temperature for each hour of the 3-hour peak emissions period, as defined in item 9.d. or 10.c. of this table, whichever applies; and (4) Calculate the minimum allowable catalytic oxidizer catalyst bed inlet temperature as the average of the hourly catalyst bed inlet temperatures for the 3-hour peak emissions period, minus 14°C (25°F).
13. Each batch process unit that is equipped with a thermal or catalytic oxidizer.	a. During each test run, maintain the applicable operating temperature of the oxidizer until emission levels allow the oxidizer to be shut off or the operating temperature of the oxidizer to be reduced.		(1) The oxidizer can be shut off or the oxidizer operating temperature can be reduced if you do not use an emission profile to limit testing to the 3-hour peak emissions period, as specified in item 8.a.i.4. of this table; and (2) At least 3 hours have passed since the affected process unit reached maximum temperature; and

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
			(3) The applicable emission limit specified in item 6.a. or 6.b. of Table 1 to this subpart was met during each of the previous three 1-hour periods; and (4) The hourly average THC mass emissions rate did not increase during the 3-hour period since maximum process temperature was reached; and (5) The applicable emission limit specified in item 6.a. and 6.b. of Table 1 to this subpart was met during each of the four 15-minute periods immediately following the oxidizer temperature reduction; and (6) If the applicable emission limit specified in item 6.a. or 6.b. of Table 1 to this subpart was not met during any of the four 15-minute periods immediately following the oxidizer temperature reduction, you must return the oxidizer to its normal operating temperature as soon as possible and maintain that temperature for at least 1 hour; and (7) Continue the test run until the applicable emission limit specified in items 6.a. and 6.b. of Table 1 to this subpart is met for at least four consecutive 15-minute periods that immediately follow the temperature reduction; and (8) Calculate the hourly average oxidizer operating temperature for each hour of the performance test since the affected process unit reached maximum temperature.
14. Each new continuous kiln that is used to process clay refractory products.	a. Measure emissions of HF and HCl ..	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	(1) Conduct the test while the kiln is operating at the maximum production level; and (2) You may use Method 26 of 40 CFR part 60, appendix A, only if no acid PM (*e.g.*, HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present; and (3) If you use Method 320 of 40 CFR part 63, appendix A, you must follow the analyte spiking procedures of Section 13 of Method 320 unless you can demonstrate that the complete spiking procedure has been conducted at a similar source; and (4) Repeat the performance test if the affected source is controlled with a DLA and you change the source of the limestone used in the DLA.
	b. Perform a minimum of 3 test runs ...	The appropriate test methods specified in items 1 and 14.a. of this table.	Each test run must be at least 1 hour in duration.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
15. Each new continuous kiln that is subject to the production-based HF and HCl emission limits specified in items 10.a. and 10.b. of Table 1 to this subpart.	a. Record the uncalcined clay processing rate.	i. Production data; and ii. Product formulation data that specify the mass fraction of uncalcined clay in the products that are processed during the performance test.	(1) Record the production rate (tons per hour of fired product); and (2) Calculate and record the average rate at which uncalcined clay is processed (tons per hour) for each test run; and (3) Calculate and record the 3-run average uncalcined clay processing rate as the average of the average uncalcined clay processing rates for each test run.
	b. Determine the HF mass emissions rate at the outlet of the control device or in the stack.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	Calculate the HF mass emissions rate for each test.
	c. Determine the 3-hour block average production-based HF emissions rate.	i. The HF mass emissions rate for each test run; and ii. The average uncalcined clay processing rate.	(1) Calculate the hourly production-based HF emissions rate for each test run using Equation 3 of §63.9800(g)(3); and (2) Calculate the 3-hour block average production-based HF emissions rate as the average of the hourly production-based HF emissions rates for each test run.
	d. Determine the HCl mass emissions rate at the outlet of the control device or in the stack.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	Calculate the HCl mass emissions rate for each test run.
	e. Determine the 3-hour block average production-based HCl emissions rate.	i. The HCl mass emissions rate for each test run; and ii. The average uncalcined clay processing rate.	(1) Calculate the hourly production-based HCl emissions rate for each test run using Equation 3 of §63.9800(g)(3); and (2) Calculate the 3-hour block average production-based HCl emissions rate as the average of the production-based HCl emissions rates for each test run.
16. Each new continuous kiln that is subject to the HF and HCl percentage reduction limits specified in items 10.a. and 10.b. of Table 1 to this subpart.	a. Measure the HF mass emissions rates at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	Calculate the HF mass emissions rates at the control device inlet and outlet for each test run.
	b. Determine the 3-hour block average HF percentage reduction.	i. The HF mass emissions rates at the inlet and outlet of the control device for each test run	(1) Calculate the hourly HF percentage reduction using Equation 2 of §63.9800(g)(2); and (2) Calculate the 3-hour block average HF percentage reduction as the average of the HF percentage reductions for each test run.
	c. Measure the HCl mass emissions rates at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	Calculate the HCl mass emissions rates at the control device inlet and outlet for each test run.
	d. Determine the 3-hour block average HCl percentage reduction.	i. The HCl mass emissions rates at the inlet and outlet of the control device for each test run.	(1) Calculate the hourly HCl percentage reduction using Equation 2 of §63.9800(g)(2); and (2) Calculate the 3-hour block average HCl percentage reduction as the average of HCl percentage reductions for each test run.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
17. Each new batch process kiln that is used to process clay refractory products.	a. Measure emissions of HF and HCl at the inlet and outlet of the control device.	i. Method 26A of 40 CFR part 60, appendix A; or ii. Method 26 of 40 CFR part 60, appendix A; or iii. Method 320 of 40 CFR part 63, appendix A.	(1) Conduct the test while the kiln is operating at the maximum production level; and (2) You may use Method 26 of 40 CFR part 60, appendix A, only if no acid PM (*e.g.*, HF or HCl dissolved in water droplets emitted by sources controlled by a wet scrubber) is present; and (3) If you use Method 320 of 40 CFR part 63, you must follow the analyte spiking procedures of Section 13 of Method 320 unless you can demonstrate that the complete spiking procedure has been conducted at a similar source; and (4) Repeat the performance test if the affected source is controlled with a DLA and you change the source of the limestone used in the DLA.
	b. Perform a minimum of 2 test runs ...	i. The appropriate test methods specified in items 1 and 17.a. of this table.	(1) Each test run must be conducted over a separate batch cycle unless you satisfy the requirements of §63.9800(f)(3) and (4); and (2) Each test run must consist of a series of 1-hour runs at the inlet and outlet of the control device, beginning with the start of a batch cycle, except as specified in item 17.b.i.4. of this table; and (3) Each test run must continue until the end of the batch cycle, except as specified in item 17.b.i.4. of this table; and (4) If you develop an emissions profile, as described in §63.9802(b), you can limit each test run to the 3-hour peak HF emissions period.
	c. Determine the hourly HF and HCl mass emissions rates at the inlet and outlet of the control device.	i. The appropriate test methods specified in items 1 and 17.a. of this table.	Determine the hourly mass HF and HCl emissions rates at the inlet and outlet of the control device for each hour of each test run.
	d. Determine the 3-hour peak HF emissions period.	The hourly HF mass emissions rates at the inlet of the control device.	Select the period of 3 consecutive hours over which the sum of the hourly HF mass emissions rates at the control device inlet is greater than the sum of the hourly HF mass emissions rates at the control device inlet for any other period of 3 consecutive hours during the test run.
	e. Determine the 2-run block average HF percentage reduction for the emissions test.	i. The hourly average HF emissions rates at the inlet and outlet of the control device.	(1) Calculate the HF percentage reduction for each hour of the 3-hour peak HF emissions period using Equation 2 of §63.9800(g)(2); and (2) Calculate the average HF percentage reduction for each test run as the average of the hourly HF percentage reductions for the 3-hour peak HF emissions period for that run; and (3) Calculate the 2-run block average HF percentage reduction for the emission test as the average of the average HF percentage reductions for the two test runs.

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
	f. Determine the 2-run block average HCl percentage reduction for the emission test.	i. The hourly average HCl emissions rates at the inlet and outlet of the control device.	(1) Calculate the HCl percentage reduction for each hour of the 3-hour peak HF emissions period using Equation 2 § 63.9800(g)(2); and (2) Calculate the average HCl percentage reduction for each test run as the average of the hourly HCl percentage reductions for the 3-hour peak HF emissions period for that run; and (3) Calculate the 2-run block average HCl percentage reduction for the emission test as the average of the average HCl percentage reductions for the two test runs.
18. Each new kiln that is used to process clay refractory products and is equipped with a DLA.	a. Establish the operating limit for the minimum pressure drop across the DLA.	Data from the pressure drop measurement device during the performance test.	(1) At least every 15 minutes, measure the pressure drop across the DLA; and (2) Provide at least one pressure drop measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average pressure drop across the DLA for each hour of the performance test; and (4) Calculate and record the minimum pressure drop as the average of the hourly average pressure drops across the DLA for the two or three test runs, whichever applies.
	b. Establish the operating limit for the limestone feeder setting.	Data from the limestone feeder during the performance test.	(1) Ensure that limestone in the feed hopper, silo, and DLA is free-flowing at all times during the performance test; and (2) Establish the limestone feeder setting 1 week prior to the performance test; and (3) Record and maintain the feeder setting for the 1-week period that precedes the performance test and during the performance test.
19. Each new kiln that is used to process clay refractory products and is equipped with a DIFF or DLS/FF.	a. Document conformance with specifications and requirements of the bag leak detection system.	Data from the installation and calibration of the bag leak detection system.	Submit analyses and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems as part of the Notification of Compliance Status.
	b. Establish the operating limit for the lime feeder setting.	i. Data from the lime feeder during the performance test.	(1) For continuous lime injection systems, ensure that lime in the feed hopper or silo is free-flowing at all times during the performance test; and (2) Record the feeder setting for the three test runs; and (3) If the feed rate setting varies during the three test runs, calculate and record the average feed rate for the two or three test runs, whichever applies.
20. Each new kiln that is used to process clay refractory products and is equipped with a wet scrubber.	a. Establish the operating limit for the minimum scrubber pressure drop.	i. Data from the pressure drop measurement device during the performance test.	(1) At least every 15 minutes, measure the pressure drop across the scrubber; and (2) Provide at least one pressure drop measurement during at least three 15-minute periods per hour of testing; and

TABLE 4 TO SUBPART SSSSS TO PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS—Continued

For . . .	You must . . .	Using . . .	According to the following requirements . . .
			(3) Calculate the hourly average pressure drop across the scrubber for each hour of the performance test; and (4) Calculate and record the minimum pressure drop as the average of the hourly average pressure drops across the scrubber for the two or three test runs, whichever applies.
	b. Establish the operating limit for the minimum scrubber liquid pH.	i. Data from the pH measurement device during the performance test.	(1) At least every 15 minutes, measure scrubber liquid pH; and (2) Provide at least one pH measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average pH values for each hour of the performance test; and (4) Calculate and record the minimum liquid pH as the average of the hourly average pH measurements for the two or three test runs, whichever applies.
	c. Establish the operating limit for the minimum scrubber liquid flow rate.	i. Data from the flow rate measurement device during the performance test.	(1) At least every 15 minutes, measure the scrubber liquid flow rate; and (2) Provide at least one flow rate measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average liquid flow rate for each hour of the performance test; and (4) Calculate and record the minimum liquid flow rate as the average of the hourly average liquid flow rates for the two or three test runs, whichever applies.
	d. If chemicals are added to the scrubber liquid, establish the operating limit for the minimum scrubber chemical feed rate.	i. Data from the chemical feed rate measurement device during the performance test.	(1) At least every 15 minutes, measure the scrubber chemical feed rate; and (2) Provide at least one chemical feed rate measurement during at least three 15-minute periods per hour of testing; and (3) Calculate the hourly average chemical feed rate for each hour of the performance test; and (4) Calculate and record the minimum chemical feed rate as the average of the hourly average chemical feed rates for the two or three test runs, whichever applies.

As stated in § 63.9806, you must show initial compliance with the emission limits for affected sources according to the following table:

TABLE 5 TO SUBPART SSSSS OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS

For . . .	For the following emission limit . . .	You have demonstrated compliance if . . .
1. Each affected source listed in Table 1 to this subpart.	a. Each applicable emission limit listed in Table 1 to this subpart.	i. Emissions measured using the test methods specified in Table 4 to this subpart satisfy the applicable emission limits specified in Table 1 to this subpart; and ii. You establish and have a record of the operating limits listed in Table 2 to this subpart over the performance test period; and iii. You report the results of the performance test in the Notification of Compliance Status, as specified by § 63.9812(e)(1) and (2).

TABLE 5 TO SUBPART SSSSS OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITS—Continued

For . . .	For the following emission limit . . .	You have demonstrated compliance if . . .
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 3 through 8 of this table	You have satisfied the applicable requirements specified in items 3 through 8 of this table.
3. Each affected continuous process unit that is subject to the THC emission concentration limit listed in item 2.a., 3.a., 4, or 5 of Table 1 to this subpart.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	The 3-hour block average THC emission concentration measured during the performance test using Methods 25A and 3A is equal to or less than 20 ppmvd, corrected to 18 percent oxygen.
4. Each affected continuous process unit that is subject to the THC percentage reduction limit listed in item 2.b. or 3.b. of Table 1 to this subpart.	The average THC percentage reduction must equal or exceed 95 percent.	The 3-hour block average THC percentage reduction measured during the performance test using Method 25A is equal to or greater than 95 percent.
5. Each affected batch process unit that is subject to the THC emission concentration limit listed in item 6.a., 7.a., 8, or 9 of Table 1 to this subpart.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	The 2-run block average THC emission concentration for the 3-hour peak emissions period measured during the performance test using Methods 25A and 3A is equal to or less than 20 ppmvd, corrected to 18 percent oxygen.
6. Each affected batch process unit that is subject to the THC percentage reduction limit listed in item 6.b. or 7.b. of Table 1 to this subpart.	The average THC percentage reduction must equal or exceed 95 percent.	The 2-run block average THC percentage reduction for the 3-hour peak emissions period measured during the performance test using Method 25A is equal to or exceeds 95 percent.
7. Each affected continuous or batch process unit that is equipped with a control device other than a thermal or catalytic oxidizer and is subject to the emission limit listed in item 3 or 7 of Table 1 to this subpart.	a. The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; or	i. You have installed a THC CEMS at the outlet of the control device or in the stack of the affected source; and
	b. The average THC percentage reduction must equal or exceed 95 percent.	ii. You have satisfied the requirements of PS–8 of 40 CFR part 60, appendix B.
8. Each affected continuous or batch process unit that uses process changes to reduce organic HAP emissions and is subject to the emission limit listed in item 4 or 8 of Table 1 to this subpart.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	i. You have installed a THC CEMS at the outlet of the control device or in the stack of the affected source; and ii. You have satisfied the requirements of PS–8 of 40 CFR part 60, appendix B.
9. Each new continuous kiln that is used to process clay refractory products.	a. The average HF emissions must not exceed 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed; OR the average uncontrolled HF emissions must be reduced by at least 90 percent.	i. The 3-hour block average production-based HF emissions rate measured during the performance test using one of the methods specified in item 14.a.i. of Table 4 to this subpart is equal to or less than 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed; or ii. The 3-hour block average HF emissions reduction measured during the performance test is equal to or greater than 90 percent.
	b. The average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed; OR the average uncontrolled HCl emissions must be reduced by at least 30 percent.	i. The 3-hour block average production-based HCl emissions rate measured during the performance test using one of the methods specified in item 14.a.i. of Table 4 to this subpart is equal to or less than 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed; or ii. The 3-hour block average HCl emissions reduction measured during the performance test is equal to or greater than 30 percent.
10. Each new batch process kiln that is used to process clay refractory products.	a. The average uncontrolled HF emissions must be reduced by at least 90 percent.	The 2-run block average HF emission reduction measured during the performance test is equal to or greater than 90 percent.
	b. The average uncontrolled HCl emissions must be reduced by at least 30 percent.	The 2-run block average HCl emissions reduction measured during the performance test is equal to or greater than 30 percent.

As stated in § 63.9806, you must show initial compliance with the work practice standards for affected sources according to the following table:

TABLE 6 TO SUBPART SSSSS OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

For each . . .	For the following standard . . .	You have demonstrated initial compliance if . . .
1. Each affected source listed in Table 3 to this subpart.	a. Each applicable work practice standard listed in Table 3 to this subpart.	i. You have selected a method for performing each of the applicable work practice standards listed in Table 3 to this subpart; and ii. You have included in your Initial Notification a description of the method selected for complying with each applicable work practice standard, as required by § 63.9(b); and iii. You submit a signed statement with the Notification of Compliance Status that you have implemented the applicable work practice standard listed in Table 3 to this subpart; and iv. You have described in your OM&M plan the method for complying with each applicable work practice standard specified in Table 3 to this subpart.
2. Each basket or container that is used for holding fired refractory shapes in an existing shape preheater and autoclave during the pitch impregnation process.	a. Control POM emissions from any affected shape preheater.	i. You have implemented at least one of the work practice standards listed in item 1 of Table 3 to this subpart; and ii. You have established a system for recording the date and cleaning method for each time you clean an affected basket or container.
3. Each affected new or existing pitch working tank.	Control POM emissions	You have captured and vented emissions from the affected pitch working tank to the device that is used to control emissions from an affected defumer or coking oven, or to a thermal or catalytic oxidizer that is comparable to the control device used on an affected defumer or coking oven.
4. Each new or existing chromium refractory products kiln.	Minimize fuel-based HAP emissions	You use natural gas, or equivalent, as the kiln fuel.
5. Each existing clay refractory products kiln	Minimize fuel-based HAP emissions	You use natural gas, or equivalent, as the kiln fuel.

As stated in § 63.9810, you must show continuous compliance with the emission limits for affected sources according to the following table:

TABLE 7 TO SUBPART SSSSS TO PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
1. Each affected source listed in Table 1 to this subpart.	a. Each applicable emission limit listed in Table 1 to this subpart.	i. Collecting and recording the monitoring and process data listed in Table 2 (operating limits) to this subpart; and ii. Reducing the monitoring and process data associated with the operating limits specified in Table 2 to this subpart; and iii. Recording the results of any control device inspections; and iv. Reporting, in accordance with § 63.9814(e), any deviation from the applicable operating limits specified in Table 2 to this subpart.
2. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 3 though 7 of this table	Satisfying the applicable requirements specified in items 3 through 7 of this table.

TABLE 7 TO SUBPART SSSSS TO PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS—Continued

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
3. Each affected process unit that is equipped with a thermal or catalytic oxidizer.	a. The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC percentage reduction must equal or exceed 95 percent.	i. Collecting the applicable data measured by the control device temperature monitoring system, as specified in items 5, 6, 8, and 9 of Table 8 to this subpart; and ii. Reducing the applicable data measured by the control device temperature monitoring system, as specified in items 5, 6, 8, and 9 of Table 8 to this subpart; and iii. Maintaining the average control device operating temperature for the applicable averaging period specified in items 5, 6, 8, and 9 of Table 2 to this subpart at or above the minimum allowable operating temperature established during the most recent performance test.
4. Each affected process unit that is equipped with a control device other than a thermal or catalytic oxidizer.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC performance reduction must equal or exceed 95 percent.	Operating and maintaining a THC CEMS at the outlet of the control device or in the stack of the affected source, according to the requirements of Procedure 1 of 40 CFR part 60, appendix F.
5. Each affected process unit that uses process changes to meet the applicable emission limit.	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen.	Operating and maintaining a THC CEMS at the outlet of the control device or in the stack of the affected source, according to the requirements of Procedure 1 of 40 CFR part 60, appendix F.
6. Each affected continuous process unit	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC percentage reduction must equal or exceed 95 percent.	Recording the organic HAP processing rate (pounds per hour) and the operating temperature of the affected source, as specified in items 3.b. and 3.c. of Table 4 to this subpart.
7. Each affected batch process unit	The average THC concentration must not exceed 20 ppmvd, corrected to 18 percent oxygen; OR the average THC percentage reduction must equal or exceed 95 percent.	Recording the organic HAP processing rate (pounds per batch); and process cycle time for each batch cycie; and hourly average operating temperature of the affected source, as specified in items 8.b. through 8.d. of Table 4 to this subpart.
8. Each kiln that is used to process clay refractory products.	As specified in items 9 through 11 of this table.	Satisfying the applicable requirements specified in items 9 through 11 of this table.
9. Each affected kiln that is equipped with a DLA.	a. The average HF emissions must not exceed 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed, OR the average uncontrolled HF emissions must be reduced by at least 90 percent; and b. The average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed, or the average uncontrolled HCl emissions must be reduced by at least 30 percent.	i. Maintaining the pressure drop across the DLA at or above the minimum levels established during the most recent performance test; and ii. Verifying that the limestone hopper contains an adequate amount of free-flowing limestone by performing a daily visual check of the limestone in the feed hopper; and iii. Recording the limestone feeder setting daily to verify that the feeder setting is at or above the level established during the most recent performance test; and iv. Using the same grade of limestone as was used during the most recent performance test and maintaining records of the source and grade of limestone.
10. Each affected kiln that is equipped with a DIFF or DLS/FF.	a. The average HF emissions must not exceed 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed; OR the average uncontrolled HF emissions must be reduced by at least 90 percent; and b. The average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed; OR the average uncontrolled HCl emissions must be reduced by at least 30 percent.	i. Verifying at least once each 8-hour shift that lime is free-flowing by means of a visual check, checking the output of a load cell, carrier gas/lime flow indicator, or carrier gas pressure drop measurement system; and ii. Recording feeder setting daily to verify that the feeder setting is at or above the level established during the most recent performance test; and

TABLE 7 TO SUBPART SSSSS TO PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITS—Continued

For . . .	For the following emission limit . . .	You must demonstrate continuous compliance by . . .
11. Each affected kiln that is equipped with a wet scrubber.	a. The average HF emissions must not exceed 0.019 kg/Mg (0.038 lb/ton) of uncalcined clay processed; OR the average uncontrolled HF emissions must be reduced by at least 90 percent; and b. The average HCl emissions must not exceed 0.091 kg/Mg (0.18 lb/ton) of uncalcined clay processed; OR the average uncontrolled HCl emissions must be reduced by at least 30 percent.	iii. Initiating corrective action within 1 hour of a bag leak detection system alarm AND completing corrective actions in accordance with the OM&M plan, AND operating and maintaining the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period. i. Maintaining the pressure drop across the scrubber, liquid pH, and liquid flow rate at or above the minimum levels established during the most recent performance test; and ii. If chemicals are added to the scrubber liquid, maintaining the average chemical feed rate at or above the minimum chemical feed rate established during the most recent performance test.

As stated in § 63.9810, you must show continuous compliance with the operating limits for affected sources according to the following table:

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
1. Each affected source listed in Table 2 to this subpart.	a. Each applicable operating limit listed in Table 2 to this subpart.	i. Maintaining all applicable process and control device operating parameters within the limits established during the most recent performance test; and ii. Conducting annually an inspection of all duct work, vents, and capture devices to verify that no leaks exist and that the capture device is operating such that all emissions are properly vented to the control device in accordance with the OM&M plan.
2. Each affected continuous kiln that is equipped with a control device.	a. The operating limits specified in items 2.a. through 2.c. of Table 2 to this subpart.	i. Operating the control device on the affected kiln during all times except during periods of approved scheduled maintenance, as specified in § 63.9792(e); and ii. Minimizing HAP emissions from the affected kiln during all periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service; and iii. Minimizing the duration of all periods of scheduled maintenance of the kiln control device when the kiln is operating and the control device is out of service.
3. Each new or existing curing oven, shape dryer, and kiln that is used to process refractory products that use organic HAP; each new or existing coking oven and defumer that is used to produce pitch-impregnated refractory products; each new shape preheater that is used to produce pitch-impregnated refractory products; AND each new or existing process unit that is exhausted to a thermal or catalytic oxidizer that also controls emissions from an affected shape preheater or pitch working tank.	As specified in items 4 through 9 of this table.	Satisfying the applicable requirements specified in items 4 through 9 of this table.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
4. Each affected continuous process unit	Maintain process operating parameters within the limits established during the most recent performance test.	i. Recording the organic HAP processing rate (pounds per hour); and ii. Recording the operating temperature of the affected source at least hourly; and iii. Maintaining the 3-hour block average organic HAP processing rate at or below the maximum organic HAP processing rate established during the most recent performance test.
5. Continuous process units that are equipped with a thermal oxidizer.	Maintain the 3-hour block average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established during the most recent performance test.	i. Measuring and recording the thermal oxidizer combustion chamber temperature at least every 15 minutes; and ii. Calculating the hourly average thermal oxidizer combustion chamber temperature; and iii. Maintaining the 3-hour block average thermal oxidizer combustion chamber temperature at or above the minimum allowable operating temperature established during the most recent performance test; and iv. Reporting, in accordance with §63.9814(e), any 3-hour block average operating temperature measurements below the minimum allowable thermal oxidizer combustion chamber operating temperature established during the most recent performance test.
6. Continuous process units that are equipped with a catalytic oxidizer.	a. Maintain the 3-hour block average temperature at the inlet of the catalyst bed at or above the minimum allowable catalyst bed inlet temperature established during the most recent performance test.	i. Measuring and recording the temperature at the inlet of the catalyst bed at least every 15 minutes; and ii. Calculating the hourly average temperature at the inlet of the catalyst bed; and iii. Maintaining the 3-hour block average temperature at the inlet of the catalyst bed at or above the minimum allowable catalyst bed inlet temperature established during the most recent performance test; and iv. Reporting, in accordance with §63.9814(e), any 3-hour block average catalyst bed inlet temperature measurements below the minimum allowable catalyst bed inlet temperature established during the most recent performance; and v. Checking the activity level of the catalyst at least every 12 months and taking any necessary corrective action, such as replacing the catalyst, to ensure that the catalyst is performing as designed.
7. Each affected batch process unit	Maintain process operating parameters within the limits established during the most recent performance test.	i. Recording the organic HAP processing rate (pounds per batch); and ii. Recording the hourly average operating temperature of the affected source; and iii. Recording the process cycle time for each batch cycle; and iv. Maintaining the organic HAP processing rate at or below the maximum organic HAP processing rate established during the most recent performance test.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
8. Batch process units that are equipped with a thermal oxidizer.	Maintain the hourly average temperature in the thermal oxidizer combustion chamber at or above the hourly average temperature established for the corresponding 1-hour period of the cycle during the most recent performance test.	i. Measuring and recording the thermal oxidizer combustion chamber temperature at least every 15 minutes; and ii. Calculating the hourly average thermal oxidizer combustion chamber temperature; and iii. From the start of each batch cycle until 3 hours have passed since the process unit reached maximum temperature, maintaining the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established for the corresponding period during the most recent performance test, as determined according to item 11 of Table 4 to this subpart; and iv. For each subsequent hour of the batch cycle, maintaining the hourly average operating temperature in the thermal oxidizer combustion chamber at or above the minimum allowable operating temperature established for the corresponding hour during the most recent performance test, as specified in item 13 of Table 4 to this subpart; and v. Reporting, in accordance with §63.9814(e), any temperature measurements below the minimum allowable thermal oxidizer combustion chamber temperature measured during the most recent performance test.
9. Batch process units that are equipped with a catalytic oxidizer.	Maintain the hourly average temperature at the inlet of the catalyst bed at or above the corresponding hourly average temperature established for the corresponding 1-hour period of the cycle during the most recent performance test.	i. Measuring and recording temperatures at the inlet of the catalyst bed at least every 15 minutes; and ii. Calculating the hourly average temperature at the inlet of the catalyst bed; and iii. From the start of each batch cycle until 3 hours have passed since the process unit reached maximum temperature, maintaining the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable bed inlet temperature established for the corresponding period during the most recent performance test, as determined according to item 12 of Table 4 to this subpart; and iv. For each subsequent hour of the batch cycle, maintaining the hourly average operating temperature at the inlet of the catalyst bed at or above the minimum allowable bed inlet temperature established for the corresponding hour during the most recent performance test, as specified in item 13 of Table 4 to this subpart; and v. Reporting, in accordance with §63.9814(e), any catalyst bed inlet temperature measurements below the minimum allowable bed inlet temperature measured during the most recent performance test; and vi. Checking the activity level of the catalyst at least every 12 months and taking any necessary corrective action, such as replacing the catalyst, to ensure that the catalyst is performing as designed.
10. Each new kiln that is used to process clay refractory products.	As specified in items 11 through 13 of this table.	Satisfying the applicable requirements specified in items 11 through 13 of this table.
11. Each new kiln that is equipped a DLA	a. Maintain the average pressure drop across the DLA for each 3-hour block period at or above the minimum pressure drop established during the most recent performance test.	i. Collecting the DLA pressure drop data, as specified in item 18.a. of Table 4 to this subpart; and ii. Reducing the DLA pressure drop data to 1-hour and 3-hour block averages; and

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
		iii. Maintaining the 3-hour block average pressure drop across the DLA at or above the minimum pressure drop established during the most recent performance test.
	b. Maintain free-flowing limestone in the feed hopper, silo, and DLA.	Verifying that the limestone hopper has an adequate amount of free-flowing limestone by performing a daily visual check of the limestone hopper.
	c. Maintain the limestone feeder setting at or above the level established during the most recent performance test.	Recording the limestone feeder setting at least daily to verify that the feeder setting is being maintained at or above the level established during the most recent performance test.
	d. Use the same grade of limestone from the same source as was used during the most recent performance test.	Using the same grade of limestone as was used during the most recent performance test and maintaining records of the source and grade of limestone.
12. Each new kiln that is equipped with a DIFF or DLS/FF.	a. Initiate corrective action within 1 hour of a bag leak detection system alarm and complete corrective actions in accordance with the OM&M plan; AND operate and maintain the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period.	i. Initiating corrective action within 1 hour of a bag leak detection system alarm and completing corrective actions in accordance with the OM&M plan; and ii. Operating and maintaining the fabric filter such that the alarm does not engage for more than 5 percent of the total operating time in a 6-month block reporting period; in calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted; if corrective action is required, each alarm shall be counted as a minimum of 1 hour; if you take longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by you to initiate corrective action.
	b. Maintain free-flowing lime in the feed hopper or silo at all times for continuous injection systems; AND maintain feeder setting at or above the level established during the most recent performance test for continuous injection systems.	i. Verifying at least once each 8-hour shift that lime is free-flowing via a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system, or other system; recording all monitor or sensor output, and if lime is found not to be free flowing, promptly initiating and completing corrective actions; and ii. Recording the feeder setting once each day of operation to verify that the feeder setting is being maintained at or above the level established during the most recent performance test.
13. Each new kiln that is used to process clay refractory products and is equipped with a wet scrubber.	a. Maintain the average pressure drop across the scrubber for each 3-hour block period at or above the minimum pressure drop established during the most recent performance test.	i. Collecting the scrubber pressure drop data, as specified in item 20.a. of Table 4 to this subpart; and ii. Reducing the scrubber pressure drop data to 1-hour and 3-hour block averages; and iii. Maintaining the 3-hour block average scrubber pressure drop at or above the minimum pressure drop established during the most recent performance test.
	b. Maintain the average scrubber liquid pH for each 3-hour block period at or above the minimum scrubber liquid pH established during the most recent performance test.	i. Collecting the scrubber liquid pH data, as specified in item 20.b. of Table 4 to this subpart; and ii. Reducing the scrubber liquid pH data to 1-hour and 3-hour block averages; and iii. Maintaining the 3-hour block average scrubber liquid pH at or above the minimum scrubber liquid pH established during the most recent performance test.

TABLE 8 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH OPERATING LIMITS—Continued

For . . .	For the following operating limit . . .	You must demonstrate continuous compliance by . . .
	c. Maintain the average scrubber liquid flow rate for each 3-hour block period at or above the minimum scrubber liquid flow rate established during the most recent performance test.	i. Collecting the scrubber liquid flow rate data, as specified in item 20.c. of Table 4 to this subpart; and ii. Reducing the scrubber liquid flow rate data to 1-hour and 3-hour block averages; and iii. Maintaining the 3-hour block average scrubber liquid flow rate at or above the minimum scrubber liquid flow rate established during the most recent performance test.
	d. If chemicals are added to the scrubber liquid, maintain the average scrubber chemical feed rate for each 3-hour block period at or above the minimum scrubber chemical feed rate established during the most recent performance test.	i. Collecting the scrubber chemical feed rate data, as specified in item 20.d. of Table 4 to this subpart; and ii. Reducing the scrubber chemical feed rate data to 1-hour and 3-hour block averages; and iii. Maintaining the 3-hour block average scrubber chemical feed rate at or above the minimum scrubber chemical feed rate established during the most recent performance test.

As stated in § 63.9810, you must show continuous compliance with the work practice standards for affected sources according to the following table:

TABLE 9 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS

For . . .	For the following work practice standard . . .	You must demonstrate continuous compliance by . . .
1. Each affected source listed in Table 3 to this subpart.	Each applicable work practice requirement listed in Table 3 to this subpart.	i. Performing each applicable work practice standard listed in Table 3 to this subpart; and ii. Maintaining records that document the method and frequency for complying with each applicable work practice standard listed in Table 3 to this subpart, as required by §§ 63.10(b) and 63.9816(c)(2).
2. Each basket or container that is used for holding fired refractory shapes in an existing shape preheater and autoclave during the pitch impregnation process.	Control POM emissions from any affected shape preheater.	i. Controlling emissions from the volatilization of residual pitch by implementing one of the work practice standards listed in item 1 of Table 3 to this subpart; and ii. Recording the date and cleaning method each time you clean an affected basket or container.
3. Each new or existing pitch working tank	Control POM emissions	Capturing and venting emissions from the affected pitch working tank to the control device that is used to control emissions from an affected defumer or coking oven, or to a thermal or catalytic oxidizer that is comparable to the control device used on an affected defumer or coking oven.
4. Each new or existing chromium refractory products kiln.	Minimize fuel-based HAP emissions	i. Using natural gas, or equivalent, as the kiln fuel at all times except during periods of natural gas curtailment or supply interruption; and ii. If you intend to use an alternative fuel, submitting a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.9824; and iii. Submitting a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel, as specified in § 63.9814(g).
5. Each existing clay refractory products kiln	Minimize fuel-based HAP emissions	i. Using natural gas, or equivalent, as the kiln fuel at all times except during periods of natural gas curtailment or supply interruption; and

TABLE 9 TO SUBPART SSSSS OF PART 63.—CONTINUOUS COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

For . . .	For the following work practice standard . . .	You must demonstrate continuous compliance by . . .
		ii. If you intend to use an alternative fuel, submitting a notification of alternative fuel use within 48 hours of the declaration of a period of natural gas curtailment or supply interruption, as defined in § 63.9824; and iii. Submitting a report of alternative fuel use within 10 working days after terminating the use of the alternative fuel, as specified in § 63.9814(g).

As stated in § 63.9814, you must comply with the requirements for reports in the following table:

TABLE 10 TO SUBPART SSSSS OF PART 63.—REQUIREMENTS FOR REPORTS

You must submit a(n) . . .	The report must contain . . .	You must submit the report . . .
1. Compliance report	The information in § 63.9814(c) through (f)	Semiannually according to the requirements in § 63.9814(a) through (f).
2. Immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP.	a. Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority.
3. Report of alternative fuel use	The information in § 63.9814(g) and items 4 and 5 of Table 9 to this subpart.	If you are subject to the work practice standard specified in item 3 or 4 of Table 3 to this subpart, and you use an alternative fuel in the affected kiln, by letter within 10 working days after terminating the use of the alternative fuel.

As stated in § 63.9820, you must comply with the applicable General Provisions requirements according to the following table:

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.1	Applicability		Yes.
§ 63.2	Definitions		Yes.
§ 63.3	Units and Abbreviations		Yes.
§ 63.4	Prohibited Activities	Compliance date; circumvention, severability	Yes.
§ 63.5	Construction/Reconstruction	Applicability; applications; approvals	Yes.
§ 63.6(a)	Applicability	General Provisions (GP) apply unless compliance extension; GP apply to area sources that become major.	Yes.
§ 63.6(b)(1)–(4)	Compliance Dates for New and Reconstructed Sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for section 112(f).	Yes.
§ 63.6(b)(5)	Notification		Yes.
§ 63.6(b)(6)	[Reserved]		
§ 63.6(b)(7)	Compliance Dates for New and Reconstructed Area Sources That Become Major.	Area sources that become major must comply with major source standards immediately upon becoming major, regardless of whether required to comply when they were area sources.	Yes.
§ 63.6(c)(1)–(2)	Compliance Dates for Existing Sources	Comply according to date in subpart, which must be no later than 3 years after effective date; for section 112(f) standards, comply within 90 days of effective date unless compliance extension.	Yes.
§ 63.6(c)(3)–(4)	[Reserved]		
§ 63.6(c)(5)	Compliance Dates for Existing Area Sources That Become Major.	Area sources that become major must comply with major source standards by date indicated in subpart or by equivalent time period (for example, 3 years).	Yes.

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS—Continued

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.6(d)	[Reserved]		
§ 63.6(e)(1)–(2)	Operation & Maintenance	Operate to minimize emissions at all times; correct malfunctions as soon as practicable; requirements independently enforceable; information Administrator will use to determine if operation and maintenance requirements were met.	Yes.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan (SSMP).		Yes.
§ 63.6(f)(1)	Compliance Except During SSM	You must comply with emission standards at all times except during SSM.	Yes.
§ 63.6(f)(2)–(3)	Methods for Determining Compliance	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g)(1)–(3)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§ 63.6(h)(1)–(9)	Opacity/Visible Emission (VE) Standards		Not applicable.
§ 63.6(i)(1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	Yes.
§ 63.6(j)	Presidential Compliance Exemption	President may exempt source category	Yes.
§ 63.7(a)(1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct 180 days after first subject to rule.	Yes.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test	Must notify Administrator 60 days before the test.	Yes.
§ 63.7(b)(2)	Notification of Rescheduling	Must notify Administrator 5 days before scheduled date and provide rescheduled date.	Yes.
§ 63.7(c)	Quality Assurance/Test Plan	Requirements; test plan approval procedures; performance audit requirements; internal and external QA procedures for testing.	Yes.
§ 63.7(d)	Testing Facilities		Yes.
§ 63.7(e)(1)	Conditions for Conducting Performance Tests	Performance tests must be conducted under representative conditions; cannot conduct performance tests during SSM; not a violation to exceed standard during SSM.	No, § 63.9800 specifies requirements; Yes; Yes.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests	Must conduct according to subpart and EPA test methods unless Administrator approves alternative.	Yes.
§ 63.7(e)(3)	Test Run Duration	Must have three test runs of at least 1 hour each; compliance is based on arithmetic mean of three runs; conditions when data from an additional test run can be used.	Yes; Yes, except where specified in § 63.9800 for batch process sources; Yes.
§ 63.7(f)	Alternative Test Method		Yes.
§ 63.7(g)	Performance Test Data Analysis		Yes.
§ 63.7(h)	Waiver of Test		Yes.
§ 63.8(a)(1)	Applicability of Monitoring Requirements		Yes.
§ 63.8(a)(2)	Performance Specifications	Performance Specifications in appendix B of 40 CFR part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved]		
§ 63.8(a)(4)	Monitoring with Flares		Not applicable.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b)(2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	Specific requirements for installing and reporting on monitoring systems.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance	Maintenance consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable SSM	Reporting requirements for SSM when action is described in SSMP.	Yes.
§ 63.8(c)(1)(ii)	SSM not in SSMP	Reporting requirements for SSM when action is not described in SSMP.	Yes.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	How Administrator determines if source is complying with operation and maintenance requirements.	Yes.
§ 63.8(c)(2)–(3)	Monitoring System Installation	Must install to get representative emission and parameter measurements.	Yes.
§ 63.8(c)(4)	CMS Requirements		No, § 63.9808 specifies requirements.
§ 63.8(c)(5)	COMS Minimum Procedures		Not applicable.

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS—Continued

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.8(c)(6)	CMS Requirements		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(c)(7)(i)(A)	CMS Requirements		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(c)(7)(i)(B)	CMS Requirements		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(c)(7)(i)(C)	CMS Requirements		Not applicable.
§ 63.8(c)(7)(ii)	CMS Requirements	Corrective action required when CMS is out of control.	Yes.
§ 63.8(c)(8)	CMS Requirements		Yes.
§ 63.8(d)	CMS Quality Control		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(e)	CMS Performance Evaluation		Applies only to sources required to install and operate a THC CEMS.
§ 63.8(f)(1)–(5)	Alternative Monitoring Method		Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test		Yes.
§ 63.8(g)	Data Reduction		Applies only to sources required to install and operate a THC CEMS.
§ 63.9(a)	Notification Requirements		Yes.
§ 63.9(b)(1)–(5)	Initial Notifications		Yes.
§ 63.9(c)	Request for Compliance Extension		Yes.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.		Yes.
§ 63.9(e)	Notification of Performance Test	Notify Administrator 60 days prior	Yes.
§ 63.9(f)	Notification of VE/Opacity Test		Not applicable.
§ 63.9(g)	Additional Notifications When Using CMS		Applies only to sources required to install and operate a THC CEMS.
§ 63.9(h)	Notification of Compliance Status		Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines		Yes.
§ 63.9(j)	Change in Previous Information		Yes.
§ 63.10(a)	Recordkeeping/Reporting		Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting		Yes.
§ 63.10(b)(2)(i)–(v)	Records Related to Startup, Shutdown, and Malfunction.		Yes.
§ 63.10(b)(2)(vi) and (x–xi).	CMS Records		Yes.
§ 63.10(b)(2)(vii)–(ix).	Records	Measurements to demonstrate compliance with emission limitations; performance test, performance evaluation, and visible emission observation results; measurements to determine conditions of performance tests and performance evaluations.	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Not applicable.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting Initial Notification and Notification of Compliance Status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)(1)–(6), (9)–(15).	Records	Additional Records for CMS	Not applicable.
§ 63.10(c)(7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS.	No, § 63.9816 specifies requirements.
§ 63.10(d)(1)	General Reporting Requirements	Requirements for reporting	Yes.
§ 63.10(d)(2)	Report of Performance Test Results	When to submit to Federal or State authority	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations		Not applicable.

TABLE 11 TO SUBPART SSSSS OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART SSSSS—Continued

Citation	Subject	Brief description	Applies to subpart SSSSS
§ 63.10(d)(4)	Progress Reports	Must submit progress reports on schedule if under compliance extension.	Yes.
§ 63.10(d)(5)	Startup, Shutdown, and Malfunction Reports	Contents and submission	Yes.
§ 63.10(e)(1)–(2)	Additional CMS Reports		Applies only to sources required to install and operate a THC CEMS.
§ 63.10(e)(3)	Reports		No, § 63.9814 specifies requirements.
§ 63.10(e)(4)	Reporting COMS data		Not applicable.
§ 63.10(f)	Waiver for Recordkeeping/Reporting		Yes.
§ 63.11	Flares		Not applicable.
§ 63.12	Delegation		Yes.
§ 63.13	Addresses		Yes.
§ 63.14	Incorporation by Reference		Yes.
§ 63.15	Availability of Information		Yes.

[FR Doc. 03–5622 Filed 4–15–03; 8:45 am]

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Federal Register

Wednesday,
April 16, 2003

Part III

Securities and Exchange Commission

17 CFR Parts 228, et al.
Standards Relating to Listed Company Audit Committees; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240, 249 and 274

[Release Nos. 33–8220; 34–47654; IC–26001; File No. S7–02–03]

RIN 3235–AI75

Standards Relating to Listed Company Audit Committees

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: As directed by the Sarbanes-Oxley Act of 2002, we are adopting a new rule to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with the audit committee requirements mandated by the Sarbanes-Oxley Act of 2002. These requirements relate to: The independence of audit committee members; the audit committee's responsibility to select and oversee the issuer's independent accountant; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and funding for the independent auditor and any outside advisors engaged by the audit committee. The rule implements the requirements of section 10A(m)(1) of the Securities Exchange Act of 1934, as added by section 301 of the Sarbanes-Oxley Act of 2002. Under the rule, listed issuers must be in compliance with the new listing rules by the earlier of their first annual shareholders meeting after January 15, 2004, or October 31, 2004. Foreign private issuers and small business issuers will have additional time to comply. In addition, we are adopting amendments to make several changes to our current disclosure requirements regarding audit committees.

DATES: *Effective Date:* April 25, 2003.

Compliance Dates: Each national securities exchange and national securities association must provide to the Commission, no later than July 15, 2003, proposed rules or rule amendments that comply with the requirements of Exchange Act Rule 10A–3. Further, each national securities exchange and national securities association must have final rules or rule amendments that comply with Rule 10A–3 approved by the Commission no later than December 1, 2003. Listed issuers, other than foreign private issuers and small business issuers, must be in compliance with the new listing rules by the earlier of (1) their first annual shareholders meeting after January 15, 2004, or (2) October 31, 2004. Foreign private issuers and small business issuers that are listed must be in compliance with the new listing rules by July 31, 2005. See section II.F.1 for more information regarding implementation and compliance dates. Issuers must comply with the disclosure changes in Regulation S–B, Regulation S–K, Schedule 14A, Form 20–F, Form 40–F and Form N–CSR beginning with reports covering periods ending on or after (or proxy or information statements for actions occurring on or after) the compliance date for the listing standards applicable to the particular issuer. Until such date, issuers should continue to comply with existing Items 7(d)(3)(iv) and 22(b)(14) in their proxy and information statements, if applicable.

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Minton, Special Counsel, or Elizabeth M. Murphy, Chief, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2910, or, with respect to investment companies, Christopher P. Kaiser, Senior Counsel, Office of Disclosure Regulation, Division of Investment Management, at (202) 942–0724, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting new Rule 10A–3 [1] under the Securities Exchange Act of 1934 (the "Exchange Act"),[2] amendments to Forms 20–F [3] and 40–F [4] and Items 7 and 22 of Schedule 14A [5] under the Exchange Act, amendments to Item 401 [6] of Regulation S–B [7] and Item 401 [8] of Regulation S–K [9] under the Securities Act of 1933 (the "Securities Act") [10] and amendments to Form N–CSR [11] under the Exchange Act and the Investment Company Act of 1940 (the "Investment Company Act").[12]

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I. Background and Overview of the New Rule and Amendments

In this release, we implement section 10A(m)(1) of the Exchange Act,[13] as added by section 301 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"),[14] which requires us to direct, by rule, the national securities exchanges [15] and national securities associations [16] (or "SROs") to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards regarding issuer audit committees. We received over 185 comments in response to our release proposing to implement the directive in section 10A(m) of the Exchange Act.[17] The final rule and form amendments we adopt today have been revised, as discussed in this release, to incorporate a number of changes recommended by commenters.

Accurate and reliable financial reporting lies at the heart of our disclosure-based system for securities regulation, and is critical to the integrity of the U.S. securities markets. Investors need accurate and reliable financial information to make informed investment decisions. Investor confidence in the reliability of corporate financial information is fundamental to the liquidity and vibrancy of our markets.

Effective oversight of the financial reporting process is fundamental to preserving the integrity of our markets. The board of directors, elected by and accountable to shareholders, is the focal point of the corporate governance system. The audit committee, composed of members of the board of directors, plays a critical role in providing oversight over and serving as a check and balance on a company's financial reporting system. The audit committee provides independent review and oversight of a company's financial reporting processes, internal controls and independent auditors. It provides a forum separate from management in which auditors and other interested parties can candidly discuss concerns. By effectively carrying out its functions and responsibilities, the audit committee helps to ensure that management properly develops and adheres to a sound system of internal controls, that procedures are in place to objectively assess management's practices and internal controls, and that the outside auditors, through their own review, objectively assess the company's financial reporting practices.

Since the early 1940s, the Commission, along with the auditing and corporate communities, has had a continuing interest in promoting effective and independent audit committees.[18] It was largely with the Commission's encouragement, for instance, that the SROs first adopted audit committee requirements in the 1970s.[19] Over the years, others have expressed support for strong, independent audit committees,[20] including the National Commission on Fraudulent Financial Reporting, also known as the Treadway Commission,[21] and the General Accounting Office.[22]

In 1998, the NYSE and the NASD sponsored a committee to study the effectiveness of audit committees. This committee became known as the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (the "Blue Ribbon Committee"). In its 1999 report, the Blue Ribbon Committee recognized the importance of audit committees and issued ten recommendations to improve their effectiveness.[23] In response to these recommendations, the NYSE and the NASD, among others, revised their listing standards relating to audit committees,[24] and we adopted new rules requiring disclosure relating to the functioning, governance and independence of corporate audit committees.[25] Beginning last year, at the Commission's request,[26] the NYSE and the NASD again reviewed their corporate governance standards, including their audit committee rules, in light of several high-profile corporate failures, and have proposed changes to their rules to provide more demanding standards for audit committees.[27]

Recent events involving alleged misdeeds by corporate executives and independent auditors have damaged investor confidence in the financial markets.[28] They have highlighted the need for strong, competent and vigilant audit committees with real authority.[29] In response to the threat to the U.S. financial markets posed by these events, Congress passed, and the President signed into law on July 30, 2002, the Sarbanes-Oxley Act. The Sarbanes-Oxley Act mandates sweeping corporate disclosure and financial reporting

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[1] 17 CFR 240.10A–3.
[2] 15 U.S.C. 78a *et seq.*
[3] 17 CFR 249.220f.
[4] 17 CFR 249.240f.
[5] 17 CFR 240.14a–101.
[6] 17 CFR 228.401.
[7] 17 CFR 228.10 *et seq.*
[8] 17 CFR 229.401.
[9] 17 CFR 229.10 *et seq.*
[10] 15 U.S.C. 77a *et seq.*
[11] 17 CFR 249.331 and 17 CFR 274.128.
[12] 15 U.S.C. 80a–1 *et seq.*

[13] 15 U.S.C. 78j–1(m)(1).
[14] Pub. L. 107–204, 116 Stat. 745 (2002).
[15] A "national securities exchange" is an exchange registered as such under section 6 of the Exchange Act [15 U.S.C. 78f]. There are currently nine national securities exchanges registered under section 6(a) of the Exchange Act: American Stock Exchange (AMEX), Boston Stock Exchange, Chicago Board Options Exchange (CBOE), Chicago Stock Exchange, Cincinnati Stock Exchange, International Securities Exchange, New York Stock Exchange (NYSE), Philadelphia Stock Exchange and Pacific Exchange. In addition, an exchange that lists or trades security futures products (as defined in Exchange Act section 3(a)(56) [15 U.S.C. 78c(56)]) may register as a national securities exchange under section 6(g) of the Exchange Act solely for the purpose of trading security futures products. Regarding security futures products, see section II.F.2.b.
[16] A "national securities association" is an association of brokers and dealers registered as such under section 15A of the Exchange Act [15 U.S.C. 78o–3]. The National Association of Securities Dealers (NASD) is the only national securities association registered with the Commission under section 15A(a) of the Exchange Act. The NASD partially owns and operates The Nasdaq Stock Market (Nasdaq). Nasdaq has filed an application with the Commission to register as a national securities exchange. In addition, section 15A(k) of the Exchange Act [15 U.S.C. 78o–3(k)] provides that a futures association registered under section 17 of the Commodity Exchange Act [7 U.S.C. 21] shall be registered as a national securities association for the limited purpose of regulating the activities of members who are registered as broker-dealers in security futures products pursuant to section 15(b)(11) of the Exchange Act [15 U.S.C. 78o(b)(11)]. Regarding security futures products, see section II.F.2.b.
[17] Release No. 33–8173 (Jan. 8, 2003) [68 FR 2638] ("Proposing Release"). The public comments we received, and a summary of the comments prepared by our staff (the "Comment Summary"), can be viewed in our Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549, in File No. S7–02–03. Public comments submitted by electronic mail and the Comment Summary also are available on our Web site, *http://www.sec.gov.*
[18] In 1940, the Commission investigated the auditing practices of McKesson & Robbins, Inc., and the Commission's ensuing report prompted action on auditing procedures by the auditing community. *In the Matter of McKesson & Robbins,* Accounting Series Release (ASR) No. 19, Exchange Act Release No. 2707 (Dec. 5, 1940).
[19] For example, in 1972, the Commission recommended that companies establish audit committees composed of outside directors. See ASR No. 123 (Mar. 23, 1972). In 1974 and 1978, the Commission adopted rules requiring disclosures about audit committees. See Release No. 34–11147 (Dec. 20, 1974) and Release No. 34–15384 (Dec. 6, 1978).
[20] *See, e.g.,* Preliminary Report of the American Bar Association Task Force on Corporate Responsibility (July 16, 2002). The report is available on the American Bar Association's Web site at *http://www.abanet.org/buslaw/.*
[21] The Treadway Commission was sponsored by the American Institute of Certified Public Accountants, the American Accounting Association, the Financial Executives Institute (now Financial Executives International), the Institute of Internal Auditors and the National Association of Accountants. Collectively, these groups were known as the Committee of Sponsoring Organizations, or COSO. The Treadway Commission's report, the Report of the National Commission on Fraudulent Financial Reporting (October 1987), is available at *http://www.coso.org.*
[22] GAO, "CPA Audit Quality: Status of Actions Taken to Improve Auditing and Financial Reporting of Public Companies," at 5 (GAO/AFMD–89–38, March 1989).
[23] See Report and Recommendations of the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees (February 1999). The Blue Ribbon Committee Report is available at *http://www.nyse.com.*
[24] See, for example, Exchange Act Release No. 42231 (Dec. 14, 1999) [64 FR 71523] (Nasdaq rules) and Exchange Act Release No. 42233 (Dec. 14, 1999) (NYSE rules) [64 FR 71529]. See also Exchange Act Release No. 42232 (Dec. 14, 1999) [64 FR 71518] (American Stock Exchange rules) and Release No. 34–43941 (Feb. 7, 2001) [66 FR 10545] (Pacific Exchange rules).
[25] See Exchange Act Release No. 42266 (Dec. 22, 1999) [64 FR 73389].
[26] See Press Release No. 2002–23 (Feb. 13, 2002).
[27] See File Nos. SR–NASD–2002–141 and SR–NYSE–2002–33 (pending before the Commission).
[28] See, for example, John Waggoner and Thomas A. Fogarty, "Scandals Shred Investors' Faith: Because of Enron, Andersen and Rising Gas Prices, the Public is More Wary Than Ever of Corporate America," USA Today, May 2, 2002; and Louis Aguilar, "Scandals Jolting Faith of Investors," Denver Post, June 27, 2002.
[29] See, for example, John Good, "After Enron, Beef Up Those Audit Committees," The Commercial Appeal, Apr. 26, 2002; and "FT Comment After Enron: Giving Meaning to the Codes of Best Practice: Corporate Governance: Companies Need Truly Independent Directors, Strong Audit Committees, an Outlet for Whistleblowers and Tight Controls on Share Options," The Financial Times, Feb. 19, 2002.

reform to improve the responsibility of public companies for their financial disclosures. This release is the most recent of several that we have issued to implement provisions of the Sarbanes-Oxley Act.[30]

Under new Exchange Act Rule 10A–3, SROs will be prohibited from listing any security of an issuer that is not in compliance with the following standards, as discussed in more detail in this release:

- Each member of the audit committee of the issuer must be independent according to specified criteria;
- The audit committee of each issuer must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm[31] engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer, and each such registered public accounting firm must report directly to the audit committee;
- Each audit committee must establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters;
- Each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties; and
- Each issuer must provide appropriate funding for the audit committee.

With the exceptions specified below, listed issuers must be in compliance with the new listing rules by the earlier of (1) their first annual shareholders meeting after January 15, 2004, or (2) October 31, 2004. Foreign private issuers[32] and small business issuers[33] that are listed must be in compliance with the new listing rules by July 31, 2005.

In addition, the final rule amendments make several changes to our current disclosure requirements regarding audit committees.

II. Discussion

Under section 3(a)(58) of the Exchange Act,[34] as added by section 205 of the Sarbanes-Oxley Act, the term audit committee is defined as:

- A committee (or equivalent body) established by and amongst the board of directors of an issuer for the purpose of overseeing the accounting and financial reporting processes of the issuer and audits of the financial statements of the issuer; and
- If no such committee exists with respect to an issuer, the entire board of directors of the issuer.

Accordingly, an issuer either may have a separately designated audit committee composed of members of its board or, if it chooses to do so or if it fails to form a separate committee, the entire board of directors will constitute the audit committee. If the entire board constitutes the audit committee, the new SRO rules adopted under Exchange Act Rule 10A–3, including the independence requirements, will apply to the issuer's board as a whole.

In addition, because Exchange Act section 10A(m) imposes requirements that only apply to issuers listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association,[35] the requirements of Exchange Act Rule 10A–3 only apply to issuers that are so listed. None of the requirements of section 10A(m) of the Exchange Act or Exchange Act Rule 10A–3 apply to other reporting companies under section 13(a)[36] or 15(d)[37] of the Exchange Act.[38]

Some commenters requested clarification regarding application of the rule to listed issuers organized as limited partnerships that do not have their own board of directors but instead rely on a managing general partner.[39] We have added a clarification that in the case of a listed issuer that is a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term "board of directors" means the board of directors of the managing general partner, managing member or equivalent body.

A. Audit Committee Member Independence

1. Scope of the Requirement

As early as 1940, the Commission encouraged the use of audit committees composed of independent directors.[40] An audit committee comprised of independent directors is better situated to assess objectively the quality of the issuer's financial disclosure and the adequacy of internal controls than a committee that is affiliated with management. Management may face market pressures for short-term performance and corresponding pressures to satisfy market expectations. These pressures could be exacerbated by the use of compensation or other incentives focused on short-term stock appreciation, which can promote self-interest rather than the promotion of long-term shareholder interest. An independent audit committee with adequate resources helps to overcome this problem and to align corporate interests with those of shareholders.

Our final rules enhance audit committee independence by implementing the two basic criteria for determining independence enumerated in section 10A(m) of the Exchange Act, which are discussed in more detail below. Commenters expressed general overall support for the Commission's approach to implementing section 10A(m) of the Exchange Act. Advocates of investors in particular endorsed the Commission's proposals, though not all believed that section 10A(m) and the Commission's proposals went far enough.[41] Several supported having the Commission mandate all independence requirements for listed issuers, not just those specified in Exchange Act section 10A(m), as compared to the proposed approach of building on additional SRO standards for independence. However, a substantial number of commenters did not support having the Commission replace the SROs' role in setting additional criteria, preferring to leave additional requirements to the SRO rulemaking process with appropriate Commission oversight.[42]

As noted in the Proposing Release, in seeking to ensure appropriate levels of independence, we recognize that SROs currently restrict additional business or personal relationships.[43] Further, several SROs are seeking significant improvements to tighten these requirements, in particular in the additional listing standards that are currently under consideration.[44] We fully support the goals the SROs are trying to achieve through these ongoing efforts, and we are firmly committed to working with the SROs to ensure the success of these proposals. Many of the additional relationships that commenters requested the Commission include in the final rule are already restricted by existing SRO rules, or would be restricted under the new SRO proposals.

We continue to believe that our specific mandate under section 10A(m) of the Exchange Act, where independence is evaluated by reference to payments of advisory and compensatory fees and affiliate status, is best fulfilled by the final rule. These requirements standing alone do not, for example, preclude independence on the basis of other commercial relationships not specified in the final rule, and they do not extend to the broad categories of family members that may be reached by SRO listing standards. Instead, as proposed, our requirements build and rely on SRO standards of independence that cover additional relationships not specified in Exchange Act section 10A(m). Our final rule allows SROs flexibility to adopt and administer additional requirements of these sorts through SRO rulemaking conducted under Commission oversight and approval. As mentioned in the Proposing Release, we encourage SROs to review and adopt rigorous independence requirements in connection with their implementation of the standards in Exchange Act rule 10A–3. We will review the rules submitted by the SROs to implement Exchange Act rule 10A–3 so that they contain appropriate overall standards for audit committee independence.

2. Advising, Consulting or Compensatory Fees

As for the two criteria for independence in Exchange Act rule 10A–3, the first is that audit committee members are barred from accepting any consulting, advisory or other compensatory fee from the issuer or any subsidiary thereof, other than in the member's capacity as a member of the board of directors and any board committee.[45] This prohibition will preclude payments to a member as an officer or employee, as well as other compensatory payments.[46]

To prevent evasion of the requirement, disallowed payments to an audit committee member includes payments made either directly or indirectly. The overwhelming majority of commenters supported our determination that barring indirect as well as direct compensatory payments is necessary to implement the intended purposes of Exchange Act section 10A(m).[47] For example, payments to spouses of members raise questions regarding independence comparable to those raised by payments to members themselves. In addition, we believe that payments for services to law firms, accounting firms, consulting firms, investment banks or financial advisory firms in which audit committee members are partners, members, executive officers or hold similar positions, as discussed in more detail below, are the kinds of compensatory payments that were intended to be precluded by Exchange Act section 10A(m). The final rules, therefore, mandate that indirect acceptance of compensatory payments includes payments to spouses, minor children or stepchildren or children or stepchildren sharing a home with the member. In addition, indirect acceptance includes payments accepted by an entity in which such member is a partner, member, officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary.

Commenters generally supported the extent to which family members are included, although a few recommended an extension to additional members,[48] and a few others recommended narrowing the family members covered.[49] We continue to believe that an extension to all relatives is beyond the scope necessary to address the prohibitions in section 10A(m), and we are adopting the family member formulation as proposed. Also, we agree with the commenters who argued that given the limited number of immediate family members affected, an exception for family members that are non-executive employees is not necessary.[50]

Several commenters requested additional guidance regarding the types of prohibited services in the "indirect"

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[30] For example, see Release No. 34–46421 (Aug. 27, 2002) [67 FR 56462] (Ownership reports and trading by officers, directors and principal security holders); Release No. 33–8124 (Aug. 28, 2002) [67 FR 57276] (Certification of disclosure in companies' quarterly and annual reports); Release No. 33–46685 (Oct. 18, 2002) [67 FR 65325] (Proposals regarding improper influence on conduct of audits); Release No. 33–8138 (Oct. 22, 2002) [67 FR 66208] (Proposals regarding internal control reports); Release No. 33–8170 (Dec. 20, 2002) [67 FR 79466] (Proposals regarding mandated electronic filing and Web site posting for Forms 3, 4 and 5); Release No. 33–8176 (Jan. 22, 2003) [68 FR 4820] (Conditions for use of non-GAAP financial information); Release No. 34–47225 (Jan. 22, 2003) [68 FR 4338] (Insider trades during pension plan blackout periods); Release No. 33–8177 (Jan. 23, 2003) [68 FR 5110] (Disclosure regarding audit committee financial experts and company codes of ethics); Release No. 33–8180 (Jan. 24, 2003) [68 FR 4862] (Retention of records relevant to audits and reviews); Release No. 34–47262 (Jan. 27, 2003) [68 FR 5348] (Adoption of Form N–CSR); Release No. 33–8182 (Jan. 28, 2003) [68 FR 5982] (Disclosure about off-balance sheet arrangements); Release No. 33–8183 (Jan. 28, 2003) [68 FR 6006] (Strengthening the Commission's requirements regarding auditor independence); Release Nos. 33–8185 (Jan. 29, 2003) [68 FR 6296] and 33–8186 (Jan. 29, 2003) [68 FR 6324] (Implementation of standards of professional conduct for attorneys); and Release No. 33–8212 (Mar. 21, 2003) [68 FR 15600] (Certification of disclosure in certain Exchange Act reports).

[31] The term "registered public accounting firm" is defined in section 2(a)(12) of the Sarbanes-Oxley Act. See 15 U.S.C. 78c(a)(59). We anticipate that the Public Company Accounting Oversight Board will have established the registration of public accounting firms by the time the implementing listing rules are operative.

[32] The term "foreign private issuer" is defined in Exchange Act Rule 3b–4(c) [17 CFR 240.3b–4(c)]. A foreign private issuer is a non-government foreign issuer, except for a company that (1) has more than 50% of its outstanding voting securities owned by U.S. investors and (2) has either a majority of its officers and directors residing in or being citizens of the U.S., a majority of its assets located in the U.S., or its business principally administered in the U.S.

[33] The term "small business issuer" is defined in Exchange Act Rule 12b–2 [17 CFR 240.12b–2] as a U.S. or Canadian issuer with less than $25 million in revenues and public float that is not an investment company. Such issuers are eligible to use Form 10–KSB (17 CFR 249.310b) for their annual reports and Form 10-QSB (17 CFR 249.308b) for their quarterly reports.

[34] 15 U.S.C. 78c(a)(58).

[35] In this release, we refer to issuers that are listed on one or more of these markets as "listed issuers."

[36] 15 U.S.C. 78m(a).

[37] 15 U.S.C. 78o(d).

[38] Non-listed issuers should still refer to the disclosure updates adopted in this release, as those changes may provide greater flexibility to non-listed issuers in preparing the disclosures they already must make regarding audit committee member independence. See section II.G.3.

[39] *See, e.g.*, the Letter of Plains All American Pipeline, L.P.

[40] See note 18 above.

[41] *See, e.g.*, the Letters of American Federation of Labor and Congress of Industrial Organizations *et al.* ("AFL–CIO"); California Public Employees' Retirement System ("CalPERS"); Council of Institutional Investors ("CII"); International Brotherhood of Teamsters ("Teamsters"); State of Wisconsin Investment Board ("SWIB"); Transparency International—USA.

[42] *See, e.g.*, the Letters of American Bar Association ("ABA"); America's Community Bankers; American Bankers Association; American Institute of Certified Public Accountants ("AICPA"); Computer Sciences Corporation ("CSC"); Deloitte & Touche LLP ("Deloitte"); Letter on behalf of German Chief Financial Officers ("German CFOs"); New York Stock Exchange, Inc. ("NYSE"); PricewaterhouseCoopers LLC ("PwC"); Public Service Enterprise Group Incorporated ("PSEG"); Ralph S. Saul; Southern Company.

[43] See note 24 above.

[44] See note 27 above.

[45] If the committee member is also a shareholder of the issuer, payments made to all shareholders of that class generally, such as dividends, will not be prohibited by this provision. Also, to conform the application of the compensatory fee prohibition with the affiliate prohibition, the final rule clarifies that the compensatory fee prohibition applies to fees from the issuer or any subsidiary thereof.

[46] The final rule does not specify any limits or restrictions on fees paid for capacity as a member of the board of directors or any board committee.

[47] Compare, for example, the Letters of CalPERS; California State Teachers' Retirement System ("CalSTRS"); CSC; NYSE with the Letter of America's Community Bankers.

[48] *See, e.g.*, the Letters of CalPERS and Marcus B. Elliott.

[49] *See, e.g.*, the Letter of State Street Corporation ("State Street").

[50] *See, e.g.*, the Letter of NYSE.

category.[51] In particular, commenters were most concerned with the application of the prohibition to issuers or associated entities that provide financial services. To clarify application of the prohibition, the final rule specifies that the prohibition covers accounting, consulting, legal, investment banking or financial advisory services. Other commercial relationships are not covered by the final rule, although, as previously discussed, we expect that SROs will contain restrictions on additional services and activities in their own listing standards.[52] For example, the prohibitions in Exchange Act Rule 10A–3 do not include non-advisory financial services such as lending, check clearing, maintaining customer accounts, stock brokerage services or custodial and cash management services. Further, the final rule relates only to requirements for audit committee membership. They do not affect the ability of a director associated with an entity that provides such services to a listed issuer from otherwise serving on that issuer's board of directors, again to the extent other SRO rules permit such relationships.

Several commenters requested clarification regarding the types of positions that are covered at associated entities.[53] The Proposing Release would have applied the prohibition where the audit committee member was a partner, member or principal or occupied a similar position with the associated entity. Some commenters questioned whether the prohibition extended to solely passive ownership positions, such as limited partners in a limited partnership and non-managing members of a manager-managed limited liability company that have no active role in providing services to the entity. Some thought the term "principal" was vague outside of organizations that specifically use that term. Others noted that while the formulation correctly indicated the Commission's intention to capture all partners or limited liability company members of a law firm, accounting firm, consulting firm or other professional organization, it was not clear how the formulation was to be applied to entities that do not have or use the term partners or members, such as certain investment banking firms organized as corporations.

In response to these concerns, we have clarified that the list of covered positions includes partners and members (except for limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity), officers such as managing directors occupying a comparable position and executive officers (to address organizations that do not have partners and members) and others occupying a similar position. We believe extending the prohibition to any employee of an associated entity, as requested by some commenters, would be overly broad for purposes of Exchange Act Rule 10A–3, although SROs may require such an extension in their implementing rules.[54] However, we do believe the formulation should include those persons, such as partners or members in professional organizations, regardless of control, whose compensation could be directly affected by the prohibited fees, even if they are not the primary service provider. Finally, we have deleted the term "principal" because we believe the reference to "those occupying similar positions" covers entities such as professional corporations that use the "principal" designation for positions similar to a partner in a partnership.

The final rule, like our proposal, applies the prohibitions only to current relationships with the audit committee member and related persons. They do not extend to a "look back" period before appointment to the audit committee, although we expect the SROs to require such periods in their own listing standards. Similar to the comments regarding including additional independence standards in the final rule, the majority of commenters supported our proposal, arguing it is consistent with the language in Exchange Act section 10A(m) and the Commission's approach of building and relying on the SRO's independence standards that already include look back periods for a broad variety of relationships.[55]

In the Proposing Release, we requested comment on whether we should explicitly clarify whether the prohibition on "compensatory fees" excludes compensation under a retirement or similar plan in which a former officer or employee of the issuer participates. Many commenters supported such a clarification.[56] We believe such a clarification is appropriate particularly given that the rules apply only to current relationships, especially where the retirement compensation received is for prior service and is not contingent in any way on continued service. Accordingly, the final rule specifies that, unless an SRO's listing rules provide otherwise, compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service).[57]

Exchange Act section 10A(m) prohibits the receipt of "any" consulting, advisory or compensatory fees. While the Sarbanes-Oxley Act specifically included a *de minimis* exception with respect to other requirements, such as the audit committee pre-approval requirements in Exchange Act section 10A(i)(1)(B),[58] it provided no similar *de minimis* exception in Exchange Act section 10A(m), even though several SROs currently have such exceptions in their listing standards. Consistent with the express language in Exchange Act section 10A(m), our proposed rule did not contain a *de minimis* exception. Nevertheless, we requested comment on whether there should be such an exception. Several commenters, including those that represent investor groups, argued forcefully that no additional relationships should be exempted, including *de minimis* payments. They argued that the statutory mandate is clear, audit committee members should be truly independent, and even a *de minimis* level of payments would create the appearance of conflict.[59] Several other commenters, primarily representing issuers and their advisors, supported some form of *de minimis* or immaterial exception, believing that issuers should have flexibility to pay some level of *de minimis* or immaterial fees to make the requirement less restrictive.[60]

We are not persuaded that such an exception is an appropriate deviation from the explicit mandate in Exchange Act section 10A(m). We believe the policies and purposes behind that section, and particularly the use of the term "any" when describing such fees in the statute, weighs against providing for such an exception. Further, given the narrow class of services covered by the final rule, the lack of a *de minimis* exception should be less necessary. Moreover, if the level of compensation that the member or associated entity receives is truly *de minimis* and immaterial, we are not persuaded that requiring an issuer to locate another provider so that the member can remain qualified for audit committee service would be overly burdensome. In section II.F.5, we provide a limited accommodation to address the concerns by some commenters regarding an audit committee member that ceases to be independent for reasons outside the member's reasonable control.

3. Affiliated Person of the Issuer or Any Subsidiary Thereof

Consistent with the express requirement in Exchange Act section 10A(m)(3)(B)(ii), the second basic criterion for determining independence is that a member of the audit committee of an issuer that is not an investment company may not be an affiliated person of the issuer or any subsidiary of the issuer apart from his or her capacity as a member of the board and any board committee. Consistent with the Proposing Release, we are defining the terms "affiliate" and "affiliated person" consistent with our other definitions of these terms under the securities laws, such as in Exchange Act rule 12b–2[61] and Securities Act rule 144,[62] with an additional safe harbor.[63] We are defining "affiliate" of, or a person "affiliated" with, a specified person, to mean "a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified."[64] We are defining the term "control" consistent with our other definitions of this term under the Exchange Act[65] as "the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise."[66] Commenters generally supported this approach.[67]

Our definition of "affiliated person" for non-investment companies, like our existing definitions of this term for these issuers, requires a factual determination based on a consideration of all relevant facts and circumstances. To facilitate the analysis on facts and circumstances where we are presumptively comfortable, we are adopting a safe harbor for that aspect of the definition of "affiliated person," with minor modifications from the original proposal.[68] Under the safe harbor as adopted, a person who is not an executive officer or a shareholder owning 10% or more of any class of voting equity securities of a specified person will be deemed not to control such specified person.[69] Many commenters supported the safe harbor and the certainty it will provide to non-affiliates.[70] We have clarified in the final rule, in response to several commenter suggestions, that the ownership prong should be based on ownership of any class of voting equity securities, instead of any class of equity securities.

The Proposing Release specified that those that cannot rely on the safe harbor would not be deemed to be or presumed to be affiliates. Those persons would need to conduct a facts and circumstances analysis of control. Nevertheless, some commenters and others reporting on the proposals were concerned that the 10% shareholder prong in the safe harbor somehow is, is implied to be, or would become viewed as an upper ownership limit for non-affiliate status.[71] We have no intention of this being the case. While SROs in their listing rules could establish an upper ownership limit that would preclude independence, the safe harbor in Exchange Act Rule 10A–3 does not establish such a limit. The safe harbor is designed to identify a group of those that are *not* affiliates so as to provide comfort to those individuals or entities that no additional facts and circumstances analysis is necessary. It only creates a safe harbor position for non-affiliate status. Failing to meet the 10% ownership threshold has no bearing on whether a particular person is an affiliate based on an evaluation of all facts and circumstances. A director who is not an executive officer but beneficially owns more than 10% of the issuer's voting equity could be determined to be not an affiliate under a facts and circumstances analysis of control.

We continue to believe that a 10% ownership limit is an appropriate threshold to presume (along with the other aspects of the safe harbor) that a person is *not* an affiliate. Accordingly, we are not changing that threshold. However, the safe harbor does not in any way specify or imply that a certain level of share ownership automatically presumes that a person is an affiliate. To prevent further misconceptions, we have added an explicit paragraph to the final rule to reinforce these points.

We received several comments regarding how beneficial ownership is to be determined for purposes of the safe harbor, as well as for other aspects of the rule, such as the multiple listing exception. Accordingly, we have included an instruction to the final rule to clarify that calculations of beneficial ownership are to be made consistent with Exchange Act rule 13d–3.[72]

The proposed rules would have deemed a director, executive officer, partner, member, principal or designee of an affiliate to be an affiliate. While some commenters expressed specific

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[51] *See, e.g.*, the Letters of American Bankers Association; AXA SA; Cleary, Gottlieb, Steen & Hamilton ("Cleary"); F.N.B. Corporation; Linklaters; National Association of Real Estate Investment Trusts; PwC; Greg Swalwell.

[52] As a result, we have declined the suggestion by some commenters to codify in the final rule that additional services are expressly permitted. *See, e.g.*, the Letters of Curtis Thaxter Stevens Border & Micoleau LLC and Linklaters.

[53] *See, e.g.*, the Letters of Cleary; Cravath, Swaine & Moore ("Cravath"); Ford Motor Company; Linklaters; Sullivan & Cromwell ("S&C").

[54] *See, e.g.*, the Letter of CII.

[55] Compare, *e.g.*, the Letters of ABA; AICPA; American Bankers Association; the Association of the Bar of the City of New York ("NYCBA"); CenturyTel, Inc.; CSC; Deloitte; New York State Bar Association ("NYSBA"); NYSE; PwC; Siemens AG with the Letters of AFL–CIO; CalPERS; CalSTRS; CII; James Fanto; Teamsters; Transparency International—USA.

[56] *See, e.g.*, the Letters of ABA; AICPA; CenturyTel, Inc.; Deloitte; NYSE; Siemens AG; S&C.

[57] The requirement that the compensation be fixed precludes retirement payments that are tied to the continued performance of the relevant entity. The requirement that the compensation be fixed does not preclude customary objectively determined adjustment provisions such as cost of living adjustments.

[58] 15 U.S.C. 78j–1(i)(1)(B).

[59] *See, e.g.*, the Letters of CalPERS; CII; SWIB.

[60] *See, e.g.*, the Letters of AICPA; America's Community Bankers; American Bankers Association; American Stock Exchange, Inc. ("Amex"); Cleary; Cravath; Ford Motor Company; NYCBA; PwC; S&C.

[61] 17 CFR 240.12b–2.

[62] 17 CFR 230.144.

[63] Exchange Act section 3(a)(19), in defining several terms in relation to investment companies, includes a definition of "affiliated person" by reference to the Investment Company Act. Because that definition is tailored to investment companies, the definition in Exchange Act Rule 10A–3 uses a definition for non-investment companies consistent with our other definitions of "affiliate" for non-investment companies.

[64] *See* Exchange Act Rule 10A–3(e)(1)(i).

[65] *See, e.g.*, Exchange Act Rule 12b–2.

[66] *See* Exchange Act Rule 10A–3(e)(4).

[67] *See, e.g.*, the Letters of ABA; Cleary; CSC; Matsushita Electric Industrial Co., Ltd. ("Matsushita"); PwC; Greg Swalwell.

[68] *See* Exchange Act rule 10A–3(e)(1). Note that this safe harbor does not address the question of whether a person "is controlled by, or is under common control with" the issuer. We proposed a similar safe harbor from the definition of "affiliate" for Securities Act rule 144 in 1997. See Release No. 33–7391 (Feb. 20, 1997) [62 FR 9246].

[69] The Proposing Release also would have included a requirement that the person not be a director. Several commenters pointed out that this requirement is ambiguous because all audit committee members would be directors and the affiliate prohibition would already exclude capacity as a director. Accordingly, that requirement has been removed in the final rule. Also, the final rule clarifies that the safe harbor is available not just for determinations with respect to the issuer, but to any "specified person." Thus, it is also available for determinations with respect to subsidiaries of the issuer, which are also covered by the affiliate prohibition.

[70] *See, e.g.*, the Letters of Cleary; CSC; Matsushita; Nippon Keidanren (Japan Business Federation); PwC; Greg Swalwell.

[71] *See, e.g.*, the Letters of ABA; Cravath; National Venture Capital Association; The News Corporation Limited. See also Roberta S. Karmel, "Federalization of the Law Regarding Audit Committees," *New York Law Journal*, vol. 229, p. 3 (Feb. 20, 2003).

[72] 17 CFR 240.13d–3.

support for this formulation,[73] several others believed the formulation was overly broad and would capture those who may not necessarily control the affiliate, such as outside directors of an affiliate.[74] These commenters raised concerns similar to those raised regarding our proposal to include partners, members and principals in the compensatory fee prohibition. Many also were concerned that including the term "designee" could inadvertently mean that where there was a controlling shareholder, all directors that were elected, including those that met the independence requirements, could be considered "designees" of an affiliate and disqualified from service because the controlling shareholder had the power to elect all such directors.

After evaluating these comments, we are narrowing the formulation. Under the final rule, only executive officers, directors that are also employees of an affiliate, general partners and managing members of an affiliate will be deemed to be affiliates. The limitation on directors will exclude outside directors of an affiliate from the automatic designation. Also, the reference to executive officers, general partners and managing members of an affiliate includes the positions we intend to cover. This will help clarify that passive, non-control positions, such as limited partners, and those that do not have policy making functions, are not covered. The formulation for being deemed to be an affiliate is narrower than the formulation of covered positions for the indirect acceptance aspect of the "no compensation" prong due to their different purposes. We believe a wider formulation is necessary for the "no compensation" prong to capture those whose compensation is more directly linked to fees from the prohibited services but who otherwise do not hold executive positions. Finally, we have removed the term "designee." However, consistent with our historical interpretations of the term "affiliate," an affiliate could not evade the prohibitions in the rule simply by designating a third party representative or agent that it directs to act in its place.

For issuers that are investment companies, we are adopting, as proposed, the requirement that a member of the audit committee of an investment company may not be an "interested person" of the investment company, as defined in section 2(a)(19)[75] of the Investment Company Act.[76] As described in the Proposing Release, we have substituted the section 2(a)(19) test for the affiliation test applied to operating companies because the section 2(a)(19) test is tailored to capture the broad range of affiliations with investment advisers, principal underwriters, and others that are relevant to "independence" in the case of investment companies. Commenters supported this substitution.[77]

4. New Issuers

Under Exchange Act section 10A(m)(3)(C), we have the authority to exempt from the independence requirements particular relationships with respect to audit committee members, if appropriate in light of the circumstances. As discussed in the Proposing Release, companies coming to market for the first time may face particular difficulty in recruiting members that meet the independence requirements. Before completion of a company's initial public offering, the board of directors often will consist primarily, if not exclusively, of representatives of venture capital investors and insiders. Such representation is entirely consistent with the desire of these parties to have representation in their private venture. The difficulty of recruiting independent directors before an initial public offering, coupled with the uncertainty of whether the initial public offering will be completed, may discourage companies from accessing the public markets to grow their business and provide liquidity, as well as from achieving the other benefits of being a public company, if all of their audit committee members must be independent at the time of the initial public offering. Further, the audit committee of some new public companies may function more effectively if it can maintain historical knowledge and experience during the transition to public company status.

As a result, we proposed an exemption for one member of a non-investment company issuer's audit committee from the independence requirements for 90 days from the effective date of an issuer's initial registration statement under section 12 of the Exchange Act or a registration statement under the Securities Act covering an initial public offering of securities of the issuer. We requested comment on whether this exemption should be extended. While not all agreed,[78] the overwhelming majority of commenters believed the proposed exemption was too restrictive to address the potential problems new issuers may face.[79] Particularly given the increased focus on board service in general, and audit committee service in particular, commenters argued that additional accommodations in both the length of the exemption and the number of members covered are necessary to not overly burden access to the capital markets.

While we recognize these potential difficulties, we continue to believe that it is important to have at least some independent representation on the audit committee at the time of an initial listing, and that a majority of the committee and the full committee should reach the independence requirements as soon as practicable. Accordingly, to balance the concerns between the need for independence and the ability to recruit qualified candidates, we are adopting a revised exception for non-investment company issuers that requires at least one fully independent member at the time of an issuer's initial listing, a majority of independent members within 90 days, and a fully independent committee within one year.

5. Overlapping Board Relationships

As discussed in the Proposing Release, many companies, particularly financial institutions and other entities with a holding company structure, operate or obtain financing through subsidiaries. For these companies, the composition of the boards of the parent company and the subsidiary are sometimes similar given the control structure between the parent and the subsidiary. If an audit committee member of the parent is otherwise independent, merely serving also on the board of a controlled subsidiary should not adversely affect the board member's independence, assuming that the board member also would be considered independent of the subsidiary except for the member's seat on the parent's board. Accordingly, we proposed an exemption from the "affiliated person" requirement for a committee member that sits on the board of directors of both a parent and a direct or indirect consolidated

[73] *See, e.g.*, the Letter of PwC.

[74] *See, e.g.*, the Letters of ABA; Cravath; S&C.

[75] 15 U.S.C. 80a–2(a)(19).

[76] The "interested person" test will apply to business development companies, as well as registered investment companies. Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act, but are subject to certain provisions of that Act. See sections 2(a)(48) and 54–65 of the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53–64].

[77] *See, e.g.*, the Letters of ABA; Deloitte; the Investment Company Institute ("ICI").

[78] *See, e.g.*, the Letter of SWIB.

[79] *See, e.g.*, the Letters of ABA; AICPA; Amex; CalSTRS; Cleary; CSC; Deloitte; KPMG LLP; National Venture Capital Association ("NVCA"); NYCBA; NYSE; S&C; Vinson & Elkins L.L.P.

majority-owned subsidiary, if the committee member otherwise meets the independence requirements for both the parent and the subsidiary, including the receipt of only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of the parent or subsidiary.

Commenters were nearly unanimous in their support for such an exemption.[80] However, many commenters believed the exemption, particularly the requirement that the subsidiary must be both consolidated and majority-owned, was overly restrictive.[81] Some companies may possess the requisite ownership to establish control, but may not consolidate the subsidiary due to particular accounting situations.[82] Others may have the requisite control to consolidate by means other than ownership and therefore may not meet the ownership test. Several commenters were particularly concerned regarding unconsolidated 50% owned joint ventures, arguing that many of the reasons provided by the Commission for the exemption apply as well to such joint ventures where two parents exercise joint control.[83] Other commenters noted that while the Commission's proposal addresses parents and subsidiaries, it did not provide similar accommodations for independent directors that serve on boards of sibling subsidiaries under common control of a parent, if such directors would be independent other than for the fact that the two sibling subsidiaries are affiliated through the parent.

To address these concerns, we are expanding the exemption. Under the final rule, an audit committee member may sit on the board of directors of a listed issuer and any affiliate so long as, except for being a director on each such board of directors, the member otherwise meets the independence requirements for each such entity, including the receipt of only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of each such entity. Under the revised exemption, audit committee members will still be required to be independent of the issuer and its affiliate, but the exemption will now apply regardless of the source of control.

There are some foreign private issuers that operate under a dual holding company structure.[84] Each holding company is a foreign private issuer organized in a different national jurisdiction. The holding companies together collectively own and supervise the management of one or more businesses conducted as a single economic enterprise. The holding companies do not conduct any business other than collectively owning and supervising such businesses. The boards of directors of these dual holding companies may have all, some or no members in common. The dual holding companies may have established a joint audit committee for the group consisting of directors from each dual holding company. The audit committee members of such entities would otherwise meet the independence requirements for the overall group, but could technically be considered affiliates, or as persons who are not directors, because of the particular structural form of the dual holding companies. We are providing an accommodation for such dual holding companies. First, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies. Second, dual holding companies will not be deemed to be affiliates of each other by virtue of their dual holding company arrangements with each other, including where directors of one dual holding company are also directors of the other dual holding company, or where directors of one or both dual holding companies are also directors of the businesses jointly controlled, directly or indirectly, by the dual holding companies (and in each case receive only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of the dual holding companies or any entity that is jointly controlled, directly or indirectly, by the dual holding companies).

6. Other Requests for Independence Exemptions

As discussed in section II.G.1 below, issuers availing themselves of exemptions from Exchange Act rule 10A–3 will generally have to disclose that fact. Apart from the two limited exemptions discussed in sections II.B.4 and 5 above and the exemptions for controlling persons, foreign governmental board representatives and non-management employee members of foreign private issuers discussed in section II.F.3.a below, we are not exempting other particular relationships from the independence requirements at this time.

We noted in the Proposing Release that despite the existence of exemptions based on exceptional and limited circumstances in several existing SRO rules,[85] section 10A(m) of the Exchange Act, as enacted by Congress, does not contain any such exemption. Nevertheless, we requested comment as to whether such an exemption would be appropriate. Commenters were split on this point, with the commenters representing investors and investor groups not supporting such an exemption, and the commenters predominantly representing SROs supporting the freedom to provide such exemptions.[86] Some of the commenters that advocated against the exemption were concerned that the existing SRO exceptions have been or could be applied in practice more broadly than intended, though some commenters supporting such an exemption disputed this point. Consistent with our proposal, our final rules do not contain any exemptions based on exceptional and limited circumstances.

We also announced in the Proposing Release that, given the policy and purposes behind the Sarbanes-Oxley Act, as well as to maintain consistency and to ease administration of the requirements by the SROs, we do not intend to entertain exemptions or waivers for particular relationships on a case-by-case basis.[87] We requested comment on whether we should permit companies to request exemptive relief from the Commission or SROs on a case-by-case basis. Commenters also were split on this point, with the commenters representing predominantly investors and investor groups not supporting case-by-case

[80] *See, e.g.*, America's Community Bankers; American Bankers Association; CalPERS; CSC; Deloitte; NYSE; PwC; Southern Company; Greg Swalwell. But see the Letter of SWIB.

[81] *See, e.g.*, the Letters of Dow Corning Corporation; Michael Groll; Kinder Morgan Energy Partners, L.P.; S&C.

[82] *See, e.g.*, the Letter of Michael Groll.

[83] *See, e.g.*, the Letter of Dow Corning Corporation.

[84] *See, e.g.*, the Letters of Reed Elsevier PLC; Royal Dutch Petroleum Company; Unilever PLC.

[85] See, for example, section 303.01 of the NYSE's listing standards; Rule 4350(d) of the NASD's listing standards and section 121B of the AMEX's listing standards. The rules of the NYSE, NASD and AMEX are available on their Web sites at *http://www.nyse.com*, *http://www.nasd.com* and *http://www.amex.com*, respectively.

[86] Compare, *e.g.*, the Letters of CalPERS; CII; CSC; Deloitte; PwC; SWIB, with the Letters of AICPA; Amex; The Nasdaq Stock Market, Inc. ("Nasdaq"); NVCA.

[87] Similarly, Commission staff will not entertain no-action letter or exemption requests in this area.

relief.[88] After carefully considering these comments, we still believe that general case-by-case exemptions would be neither appropriate nor consistent with the policies and purposes of the Sarbanes-Oxley Act. However, as requested by many commenters,[89] the Commission has exemptive authority to respond to, and will remain sensitive to, evolving standards of corporate governance, including changes in U.S. or foreign law, to address any new conflicts that cannot be anticipated at this time.

B. Responsibilities Relating to Registered Public Accounting Firms

1. Scope of the Requirement

One of the audit committee's primary functions is to enhance the independence of the audit function, thereby furthering the objectivity of financial reporting. The Commission has long recognized the importance of an auditor's independence in the audit process.[90] The auditing process may be compromised when a company's outside auditors view their main responsibility as serving the company's management rather than its full board of directors or its audit committee. This may occur if the auditor views management as its employer with hiring, firing and compensatory powers. Under these conditions, the auditor may not have the appropriate incentive to raise concerns and conduct an objective review. Further, if the auditor does not appear independent to the public, then investor confidence is undermined and one purpose of the audit is frustrated. One way to help promote auditor independence, then, is for the auditor to be hired, evaluated and, if necessary, terminated by the audit committee. This would help to align the auditor's interests with those of shareholders.

Accordingly, we are adopting as proposed the requirement that the audit committee of a listed issuer will need to be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer, and the independent auditor will have to report directly to the audit committee.[91] These oversight responsibilities include the authority to retain the outside auditor, which includes the power not to retain (or to terminate) the outside auditor. In addition, in connection with these oversight responsibilities, the audit committee must have ultimate authority to approve all audit engagement fees and terms.[92]

Overall, commenters supported the requirement as proposed, believing additional specificity is not needed and flexibility should be given to the audit committee regarding the execution of these responsibilities, without rigid rules.[93] A few commenters, however, suggested that we should limit the requirement to cover only certain registered public accounting firms that perform audit, review or attest services for the issuer, that we should limit the coverage of services specified by the proposal, or that we should clearly delineate which oversight responsibilities remain with management.[94] We believe these specific decisions regarding the execution of the audit committee's oversight responsibilities, as well as decisions regarding the extent of desired involvement by the audit committee, are best left to the discretion of the audit committee of the individual issuer in assessing the issuer's individual circumstances. Accordingly, we are not limiting the oversight responsibilities provided by the statute and the proposal.

Some commenters requested further clarification regarding the scope of the services included in the requirement, including "audit, review or attest services." We believe these services encompass the same services covered in the "Audit Fees" category in an issuer's disclosure of fees paid to its independent public accountants. As discussed in our recent release revising the Commission's auditor independence requirements,[95] this category includes services that normally would be provided by the accountant in connection with statutory and regulatory filings or engagements. In addition to services necessary to perform an audit or review in accordance with Generally Accepted Auditing Standards ("GAAS"),[96] this category also may include services that generally only the independent accountant reasonably can provide, such as comfort letters, statutory audits, attest services, consents and assistance with and review of documents filed with the Commission. This approach does not affect the operation of other Commission rules regarding permissible services or preclude the audit committee from oversight or other involvement in the provision of audit-related or other permissible services.

In the Proposing Release, we requested comment on whether other responsibilities not listed in Exchange Act section 10A(m) should be under the supervision of the audit committee, such as the appointment, compensation, retention and oversight of an issuer's internal auditor. Commenters were split on whether the Commission should mandate oversight responsibility regarding an issuer's internal auditor, with the majority not supporting action by the Commission at this time.[97] Given this split, we are not extending the responsibility requirement to include such oversight.

2. Clarifications Regarding Possible Conflicts With Other Requirements

We proposed adding an instruction to the rule to clarify that the requirements regarding auditor responsibility do not conflict with, and are not affected by, any requirement under an issuer's governing law or documents or other home country requirements that requires shareholders to elect, approve or ratify the selection of the issuer's auditor. The requirements instead relate to the assignment of responsibility to oversee the auditor's work as between the audit committee and management. Commenters welcomed this clarification.[98] However, several commenters recommended extending the instruction to include other requirements in the rule, such as auditor compensation and termination, to address foreign requirements that vest these responsibilities with shareholders.[99] We agree with these commenters that the same reasons that justify the clarification regarding auditor selection justify an extension to these other responsibilities. We also agree with those commenters that noted that the clarification should apply even if shareholders are not required to vote on the responsibilities, but voluntarily elect to do so.[100]

Accordingly, we are expanding the instruction. The revised instruction clarifies that none of the audit committee requirements in the final rule conflicts with, nor do they affect the application of, any requirement or ability under an issuer's governing law or documents or other home country legal or listing provisions that requires or permits shareholders to ultimately vote on, approve or ratify such requirements. In addition, we are adopting as proposed the further clarification that if such responsibilities are vested with shareholders, and the issuer provides a recommendation or nomination regarding such matters to its shareholders, the audit committee of the issuer, or body performing similar functions, must be responsible for making the recommendation or nomination.

The proposed instruction also included a clarification that the requirement that the audit committee select auditors does not conflict with any requirement in a company's home jurisdiction that prohibits the full board of directors from delegating such responsibility to a committee. In that case, the audit committee would need to be granted advisory and other powers with respect to such matters to the extent permitted by law, including submitting nominations or proposals to the full board. Several commenters noted that this instruction should be expanded to address other responsibilities in the final rule for the same reasons as those relating to shareholder approval.[101] In some jurisdictions, boards may be prohibited from delegating such responsibilities to a committee, including the ability to submit nominations or recommendations to shareholders as called for in the instruction regarding shareholder approval of such matters.

Accordingly, we are expanding the instruction to cover other situations where the board of directors may be prohibited from delegating responsibility to the audit committee, including the ability to submit nominations or recommendations to shareholders. The revised instruction clarifies that none of the audit committee requirements in the final rule, including the requirement that the audit committee provide recommendations to shareholders where such responsibilities are vested with shareholders, conflicts with any legal or listing requirement in an issuer's home jurisdiction that prohibits the full board of directors from delegating such responsibilities to the audit committee or limits the degree of such delegation. However, we continue to believe that in such an instance, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law, including submitting nominations or recommendations to the full board of directors.

Finally, some commenters noted that in some jurisdictions, the outside auditor can only be removed by court order upon specified circumstances.[102] Other commenters noted that the government is required to select the outside auditor for some foreign private issuers. Similar to the previous instructions, we are providing an additional instruction to clarify that the requirements in the final rule do not conflict with any legal or listing requirement in an issuer's home jurisdiction vesting such responsibilities with a government entity or tribunal. Similar to the other instructions, in such an instance we believe the audit committee should be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law.

Some commenters requested that we provide for these clarifications as explicit exemptions from the final rule. As noted previously, however, we believe that the rule's requirements relate to the assignment of such responsibilities as between the audit committee and management. They do not conflict with, and otherwise have no bearing on, the vesting of such responsibilities in other bodies such as shareholders or government entities. Accordingly, we believe it is more appropriate to clarify what the requirements do not apply to or conflict with in the form of an instruction rather than an exemption.

3. Application to Investment Companies

We proposed to exempt investment companies from the requirement that the audit committee be responsible for the selection of the independent auditor. We proposed the exemption in light of section 32(a) of the Investment Company Act,[103] which requires that independent auditors of registered investment companies be selected by majority vote of the disinterested directors.[104]

On January 28, 2003, we adopted amendments to our existing requirements regarding auditor independence.[105] Those amendments require that the audit committee of a registered investment company pre-approve all audit, review, or attest engagements required under the securities laws, a requirement that was supported by the commenters.[106] In order to conform the rules that we are adopting today to the auditor independence rules, we are removing the proposed exemption for investment companies from the requirements regarding selection of the auditor. As a result, the audit committee will be required to select the independent

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[88] Compare, *e.g.*, the Letters of AICPA; CalPERS; CII; CSC; NVCA; the Comptroller of the State of New York; PwC; SWIB, with the Letters of Amex; Deloitte; Ralph S. Saul; S&C.

[89] *See, e.g.*, the Letters of Association of Private French Enterprises—Association of Large French Enterprises ("AFEP–AGREF"); Cleary; Italian Association of Limited Liability Companies ("Assonime"); NYSE.

[90] The federal securities laws recognize the importance of independent auditors. *See, e.g.*, Items 25 and 26 of Schedule A of the Securities Act and sections 12(b)(1)(J) and 13(a)(2) of the Exchange Act [15 U.S.C. 78l(b)(1)(J) and 78m(a)(2)]. See also Title II of the Sarbanes-Oxley Act [Pub. L. 107–204, Title II, 116 Stat. 771–75].

[91] In response to several commenters' questions, we have removed the phrase "or related work" from the final rule where describing the preparation and issuance of an issuer's audit report. We believe the reference to "or other audit, review or attest services" appropriately delineates the intention behind the phrase "or related work."

[92] *See* also Release No. 33–8183 (Jan. 28, 2003). In response to several commenters' questions, these responsibilities are provided as examples and are not intended to be an exclusive list of responsibilities.

[93] *See, e.g.*, the Letters of AICPA; CalSTRS; Financial Executives Institute ("FEI").

[94] *See, e.g.*, the Letters of Deloitte; Ernst & Young LLP ("E&Y"); PwC; State Street.

[95] *See* Release No. 33–8183 (Jan. 28, 2003).

[96] *See* also section 2(a)(2) of the Sarbanes-Oxley Act which defines the term "audit."

[97] Compare, *e.g.*, the Letters of Francisco J. Barragan; Melody Boehl; Marcus B. Elliott; Institute of Internal Auditors; and National Association of Corporate Directors with the Letters of ABA; Canadian Bankers Association ("CBA"); CSC; Deloitte; FEI; C.H. Moore, Jr.; Nasdaq; NYSBA; and NYSE.

[98] *See, e.g.*, the Letters of AICPA; The Treasury of the Government of Australia; CalPERS; Deloitte; Financial Services Agency of Japan ("FSA"); German CFOs; NYSE; PwC; Alexander Schaub; Telekom Austria AG.

[99] *See, e.g.*, the Letters of Assonime; Canadian Bankers Association; Cleary; PwC; S&C.

[100] *See, e.g.*, the Letter of Cleary.

[101] *See, e.g.*, the Letters of Brazilian Securities Commission; Cleary; S&C.

[102] *See, e.g.*, the Letters of Aventis SA; Deloitte; France Telecom SA.

[103] 15 U.S.C. 80a–31(a).

[104] Section 32(a) applies to management investment companies and face-amount certificate companies. It does not apply to unit investment trusts, which do not have boards of directors and which we are excluding entirely from the requirements that we are adopting today. *See* section II.F.3.d. concerning unit investment trusts.

There are three types of investment companies: face-amount certificate companies, unit investment trusts and management companies. *See* section 4 of the Investment Company Act [15 U.S.C. 80a–4]. The Investment Company Act divides management companies into two sub-categories, defining an open-end company as a management company that offers for sale or has outstanding any redeemable securities of which it is the issuer and a closed-end company as any management company other than an open-end company. *See* section 5(a) of the Investment Company Act [15 U.S.C. 80a–5(a)]. A unit investment trust is an investment company that is organized under a trust indenture, contract of custodianship or agency, or similar instrument; does not have a board of directors; and issues only redeemable securities, each of which represents an undivided interest in a unit of specified securities, but does not include a voting trust. *See* section 4(2) of the Investment Company Act of 1940 [15 U.S.C. 80a–4(2)].

[105] *See* Release No. 33–8183 (Jan. 28, 2003).

[106] *See, e.g.*, Letter of Investment Company Institute dated January 13, 2003, in response to Release No. 33–8154 (Dec. 2, 2002) [67 FR 76780], proposing auditor independence rules adopted in Release No. 33–8183 (Jan. 28, 2003).

auditor and, under section 32(a) of the Investment Company Act, the independent directors will be required to ratify the selection.

C. Procedures for Handling Complaints

The audit committee must place some reliance on management for information about the company's financial reporting process. Since the audit committee is dependent to a degree on the information provided to it by management and internal and outside auditors, it is imperative for the committee to cultivate open and effective channels of information. Management may not have the appropriate incentives to self-report all questionable practices. A company employee or other individual may be reticent to report concerns regarding questionable accounting or other matters for fear of management reprisal.[107] The establishment of formal procedures for receiving and handling complaints should serve to facilitate disclosures, encourage proper individual conduct and alert the audit committee to potential problems before they have serious consequences.

Accordingly, under the listing standards called for by our final rules, each audit committee must establish procedures for:[108]

- The receipt, retention and treatment of complaints received by the issuer regarding accounting, internal accounting controls or auditing matters, and
- The confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters.

As proposed, we are not mandating specific procedures that the audit committee must establish. Commenters were split over whether specific procedures should be mandated. The minority, representing primarily consultants and other third-party providers of such services, as well as several commenters representing investors, believed the Commission should mandate specific procedures, and many advocated a national "one-size-fits-all" approach.[109] A substantial number of commenters, however, supported the Commission's approach of not mandating specific procedures, instead preferring to leave flexibility to the audit committee to develop appropriate procedures in light of a company's individual circumstances, so long as the required parameters are met.[110]

Given the variety of listed issuers in the U.S. capital markets, we believe audit committees should be provided with flexibility to develop and utilize procedures appropriate for their circumstances. The procedures that will be most effective to meet the requirements for a very small listed issuer with few employees could be very different from the processes and systems that would need to be in place for large, multi-national corporations with thousands of employees in many different jurisdictions. We do not believe that in this instance a "one-size-fits-all" approach would be appropriate. As noted in the Proposing Release, we expect each audit committee to develop procedures that work best consistent with its company's individual circumstances to meet the requirements in the final rule. Similarly, we are not adopting the suggestion of a few commenters that, despite the statutory language, the requirement should be limited to only employees in the financial reporting area.[111]

While the scope of the requirements generally includes complaints received by a listed issuer regardless of source, Exchange Act section 10A(m)(4)(B) and the relevant portion of the rules referring to confidential, anonymous submission of concerns are directed to employees of the issuer. One commenter noted that investment companies rarely have direct employees.[112] The commenter suggested that, for investment companies, the confidential, anonymous submission requirements should extend to employees of entities engaged by an investment company to prepare or assist in preparing its financial statements. We encourage the SROs to consider the appropriate scope of the requirement with regard to investment companies, taking account of the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[113]

D. Authority to Engage Advisors

To be effective, an audit committee must have the necessary resources and authority to fulfill its function. The audit committee likely is not equipped to self-advise on all accounting, financial reporting or legal matters. To perform its role effectively, therefore, an audit committee may need the authority to engage its own outside advisors, including experts in particular areas of accounting, as it determines necessary apart from counsel or advisors hired by management, especially when potential conflicts of interest with management may be apparent.

The advice of outside advisors may be necessary to identify potential conflicts of interest and assess the company's disclosure and other compliance obligations with an independent and critical eye. Often, outside advisors can draw on their experience and knowledge to identify best practices of other companies that might be appropriate for the issuer. The assistance of outside advisors also may be needed to independently investigate questions that may arise regarding financial reporting and compliance with the securities laws. Accordingly, as proposed, the final rule specifically requires an issuer's audit committee to have the authority to engage outside advisors, including counsel, as it determines necessary to carry out its duties.[114] Commenters supported this requirement as proposed.[115]

E. Funding

An audit committee's effectiveness may be compromised if it is dependent on management's discretion to compensate the independent auditor or the advisors employed by the committee, especially when potential conflicts of interest with management may be apparent. Accordingly, as proposed, the final rule requires the issuer to provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of compensation:

- To any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer;[116] and
- To any advisors employed by the audit committee.

This requirement will further the standard relating to the audit committee's responsibility to appoint, compensate, retain and oversee the outside auditor. It also will add meaning to the standard relating to the audit committee's authority to engage independent advisors. Not only could an audit committee be hindered in its ability to perform its duties objectively by not having control over the ability to compensate these advisors, but the role of the advisors also could be compromised if they are required to rely on management for compensation. Thus, absent such a provision, both the audit committee and the advisors could be less willing to address disagreements or other issues with management.

Commenters supported this requirement.[117] We also requested comment on whether there should be limits on the amount of compensation that could be requested by the audit committee. The overwhelming majority of commenters did not support compensation limits, arguing that to do otherwise would subvert the intent of the requirement.[118] These commenters argued that audit committee members' own fiduciary duties to the issuer and natural oversight by the board of directors as a whole over the audit committee would address any concerns over abuse. The final rule does not set funding limits.

Some commenters believed it would be appropriate to supplement the funding requirements.[119] While the Commission's proposal would address the compensation of advisors, it would not provide assurance that the audit committee itself can obtain the funding it needs to carry out its duties. Specifically, these commenters believed the final rule should also state that the issuer must provide appropriate funding for ordinary administrative expenses of the audit committee. We find merit in this suggestion. An audit committee's effectiveness may be compromised if it is dependent on management's discretion to pay for the committee's expenses, especially when potential conflicts of interest with management may be apparent. Accordingly, the final rule provides that, in addition to funding for advisors, the issuer must provide appropriate funding for ordinary administrative expenses of the audit committee that are necessary or appropriate in carrying out its duties.

F. Application and Implementation of the Standards

1. SROs Affected and Implementation Dates

Section 10A(m) of the Exchange Act by its terms applies to all national securities exchanges and national securities associations. These entities, to the extent that their listing standards do not already comply with the final rule, will be required to issue or modify their rules, subject to Commission review, to conform their listing standards.[120] The SROs are not precluded from adopting additional listing standards regarding audit committees, as long as they are consistent with Exchange Act rule 10A–3.

To facilitate timely implementation of the requirements, we proposed compliance dates by when each SRO must provide to the Commission proposed rules and rule amendments to implement Exchange Act rule 10A–3, as well as by when such rules or rule amendments must be approved by the Commission. As proposed, SROs would have had until 60 days after publication of our final rule in the **Federal Register** to provide proposed rules or rule amendments, and until 270 days after publication of our final rule to have such rules or rule amendments approved by the Commission. Commenters generally supported these compliance dates, although several requested additional time to submit the proposed rules and rule amendments.[121]

In response to these comments, the SRO compliance dates we are adopting in the final rule are designed to facilitate timely implementation of the new requirements, while providing additional time for SROs to submit proposed rules or rule amendments. Under the final rule, each SRO must provide to the Commission proposed rules or rule amendments that comply with the requirements no later than July 15, 2003. Final rules or rule amendments must be approved by the Commission no later than December 1, 2003.

Regarding when listed issuers must be in compliance with the new listing rules, we proposed that the new requirements would need to be operative by the SROs no later than the first anniversary of the publication of our final rule in the **Federal Register**. A few commenters believed the proposed implementation dates were adequate for issuers to make the necessary changes to their audit committees, arguing that timely implementation is key to restoring investor confidence and public trust.[122] However, a substantial group of commenters recommended modifications and additional time for issuers to comply, for three primary reasons.

First, commenters noted that the new requirements as proposed would become operative during the 2004 annual shareholder meeting period for most listed issuers.[123] Given the importance of allowing issuers to identify, evaluate and recruit qualified directors, as well as the desirability of avoiding the burden and expense of requiring special shareholder meetings to elect those directors, commenters requested the ability to coordinate compliance with their annual shareholder meeting schedule, such as the first annual shareholders meeting after approval of the SRO implementing rules, which could occur after the original compliance date proposed by the Commission.

Second, several commenters requested additional time for compliance by foreign private issuers.[124] The new SRO rules may represent the first time that some foreign listed issuers will be subject to such requirements. Some were concerned that the pool of candidates available in some countries that would be qualified to perform the functions required of audit committee members may be limited. As such, it may take additional time to locate and attract qualified directors.

Finally, several commenters requested accommodations for smaller listed

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[107] The Sarbanes-Oxley Act provides additional protections for employees who provide evidence of fraud. See, for example, section 806 of the Sarbanes-Oxley Act.

[108] Exchange Act rule 10A–3 is not intended to preempt or supersede any other federal or state requirements relating to receipt and retention of records.

[109] *See, e.g.*, the Letters of AuditConcerns, Inc.; CalPERS; Michael Chenkin; Confidential Communications Services, LLC; David Gold; The HR Hotline, Inc.; SWIB; Teamsters.

[110] *See, e.g.*, the Letters of ABA; AICPA; American Bankers Association; Cleary; CSC; Deloitte; Edison Electric Institute; E&Y; FEI; ICI; Nasdaq; The Network, Inc.; NYCBA; NYSBA; PSEG; PwC; Ralph S. Saul; State Street Corporation.

[111] *See, e.g.*, the Letter of S&C.

[112] *See* the Letter of PwC.

[113] Compare Release No. 33–8185 (Jan. 29, 2003) (attorney employed by an investment adviser who prepares, or assists in preparing, materials for a registered investment company to be submitted to or filed with the Commission by or on behalf of the investment company is appearing and practicing before the Commission); Release No. 34–47262 (Jan. 27, 2003) (disclosure required of code of ethics applicable to the principal executive officer and financial officer of a registered management investment company, or persons performing similar functions, regardless of whether they are employees of the investment company or a third party).

[114] As proposed, the requirement does not preclude access to or advice from the company's internal counsel or regular outside counsel. It also does not require an audit committee to retain independent counsel.

[115] *See, e.g.*, the Letters of AICPA; CSC; Deloitte; FEI; ICI; PwC.

[116] Exchange Act section 10A(m)(6)(A) uses the phrase "rendering or issuing an audit report." For consistency, we have conformed the language in the final rule to the language used in the oversight requirement in Exchange Act section 10A(m)(2) which refers to "preparing or issuing an audit report." Similarly, the final rule includes as proposed the phrase "other audit, review or attest services." *See* section II.B.1 regarding a discussion of the scope of this formulation.

[117] *See, e.g.*, the Letters of AICPA; CalPERS; Deloitte; FEI; ICI; PwC.

[118] Compare, *e.g.*, the Letters of ABA; Deloitte; E&Y; FEI; PwC with the letters of Southern Company; CalPERS.

[119] *See, e.g.*, the ABA Letter.

[120] An SRO that wished to do so could satisfy the requirements of the rule by requiring that a listed issuer must comply with the requirements set forth in Exchange Act rule 10A–3.

[121] *See, e.g.*, the Letters of ABA; NYSE.

[122] *See, e.g.*, the Letters of CalPERS; CII; CSC; ICI; PwC.

[123] *See, e.g.*, the Letters of ABA; AFEP–AGREF; AXA SA; Cleary; German CFOs; Nippon Keidanren; JPMorgan Chase Bank; Matsushita.

[124] *See, e.g.*, the Letters of Cleary; Davis Polk & Wardwell; Deloitte; European Federation of Accountants ("FEE"); PwC; Telekom Austria AG.

issuers.[125] These issuers may need additional time to locate a sufficient number of qualified directors to meet the requirements. In addition, small business issuers that are listed on some markets, such as Nasdaq, have previously been exempt from listing requirements that require independence for the entire audit committee.[126] Commenters requested an additional transition period for such companies to alleviate the potential burdens they may face.

In response to these concerns, we are adopting a revised set of implementation dates, with an extended date for foreign private issuers and smaller issuers. We are distinguishing listed issuers that are not foreign private issuers by size based upon whether they are a "small business issuer," as defined in Exchange Act rule 12b–2. A small business issuer is a U.S. or Canadian issuer with less than $25 million in revenues and public float that is not an investment company.[127]

Under the final rule, listed issuers, other than foreign private issuers and small business issuers, must be in compliance with the new listing rules by the earlier of (1) their first annual shareholders meeting after January 15, 2004, or (2) October 31, 2004. Foreign private issuers and small business issuers must be in compliance with the new listing rules by July 31, 2005. We believe these dates strike an appropriate balance between the need for timely implementation of the requirements and the ability of listed issuers to comply with the requirements without an unreasonable burden.

As discussed in the Proposing Release, the OTC Bulletin Board (OTCBB), the Pink Sheets and the Yellow Sheets are not affected by Exchange Act rule 10A–3, and therefore issuers whose securities are quoted on these interdealer quotation systems similarly will not be affected, unless their securities also are listed on an exchange or Nasdaq.[128] Each of these quotation systems does not provide issuers with the ability to list their securities, but is a quotation medium for the over-the-counter securities market that collects and distributes market maker quotes to subscribers. These interdealer quotation systems do not maintain or impose listing standards, nor do they have a listing agreement or arrangement with the issuers whose securities are quoted through them. Although market makers may be required to review and maintain specified information about the issuer and to furnish that information to the interdealer quotation system,[129] the issuers whose securities are quoted on such systems do not have any filing or reporting requirements with the system.[130]

2. Securities Affected

In enacting section 10A(m) of the Exchange Act, Congress made no distinction regarding the type of securities to be covered. Section 10A(m)(1)(A) of the Exchange Act prohibits the listing of "any security" of an issuer that does not meet the new standards for audit committees. Accordingly, the final rule applies not just to voting equity securities, but to any listed security, regardless of its type, including debt securities, derivative securities and other types of listed securities. We believe investors in all securities of an issuer, whether common equity or fixed income, will benefit from the increased financial oversight of an issuer that would result from a strong and effective audit committee.

Despite the statutory language, a few commenters believed that debt securities and non-convertible preferred securities should be exempted in their entirety.[131] As discussed above, we do not believe such a broad-based exemption is consistent with the language and the intent of section 10A(m). Effective oversight of financial reporting improves the quality and accuracy of such reporting. Quality and accurate financial reporting facilitates the proper pricing and liquidity of all securities on listed markets, regardless of type. While the Sarbanes-Oxley Act made explicit distinctions between debt and equity securities in several different provisions,[132] it made no such distinction in enacting Exchange Act section 10A(m). To avoid undue burden on listed issuers, including debt issuers, we have adopted several exemptions where consistent with the purposes and policies of section 10A(m) and the protection of investors, such as the overlapping board exemption discussed in section II.A.5 and the multiple listing exemption discussed below.

a. Multiple Listings

Many companies today issue multiple classes of securities through various ownership structures on various markets. For example, a company may have a class of common equity securities listed on one market, several classes of debt listed on one or more other markets, and derivative securities listed on yet another market. If an issuer already was subject to the requirements in Exchange Act rule 10A–3 as a result of one listing, there would be little or no additional benefit from having the requirements imposed on the issuer due to an additional listing.

In addition, companies often issue non-equity securities through controlled subsidiaries for various reasons. Requiring these subsidiaries, which often have no purpose other than to issue or guarantee the securities, to be subject to the audit committee requirements would add little additional benefit if the subsidiary is closely controlled or consolidated by a parent issuer that is subject to the requirements. Instead, imposing the requirements on these subsidiaries could create an onerous burden on the parent to recruit and maintain an audit committee meeting the requirements for each specific subsidiary.

Accordingly, we are adopting as proposed an exemption from the requirements for listings of additional classes of securities of an issuer at any time the issuer is subject to the requirements as a result of the listing of a class of common equity or similar securities. The additional listings could be on the same market or on different markets. Some commenters questioned conditioning the exemption on the listing of a class of common equity or similar securities.[133] We proposed conditioning this exemption on the listing of a class of common equity or similar securities because these securities will most likely represent the primary public listing of the company and the applicable listing standards, including those required by our rules, would be likely to be the most comprehensive. We are persuaded that this approach is proper in respect of the listing of subsidiaries' securities, but it is not necessary in the case of multiple listings of the issuer itself. Therefore, the exemption for additional classes of a listed issuer will apply if any class of securities of the issuer is listed on a national securities exchange or national securities association subject to these rules.

Of course, just as an SRO may adopt standards for audit committees that are stricter than those provided in Exchange Act rule 10A–3, they also may apply their listing standards, including those implementing Exchange Act rule 10A–3, to classes of securities where Exchange Act rule 10A–3 would not require it. For example, in the case of an issuer with a class of debt securities listed on an SRO subject to these rules, another SRO may condition listing by that issuer of its common equity securities on full compliance with that second SRO's listing standards regarding the requirements in Exchange Act rule 10A–3. Moreover, our rules do not embody a "first in time" principle, so that in the above example, once the class of common equity securities was listed on the second SRO subject to our requirements, unless SRO rules provide otherwise, the multiple listing exemption could be applied in respect of the debt securities listed on the first SRO.

Also as proposed, we are extending the exemption to listings of non-equity securities by certain additional subsidiaries of a parent company, if the parent company is subject to the requirements as a result of the listing of a class of equity securities. We proposed having the exemption apply to non-equity listings by direct or indirect consolidated majority-owned subsidiaries of a parent company. While commenters uniformly supported the exemption,[134] some believed that, for many of the same reasons discussed above regarding the independence exemption for overlapping boards of directors, the number of subsidiaries that would be covered by the multiple listing exemption was too restrictive.[135]

In this instance, however, we believe that a greater degree of interest between the parent and the subsidiary is important. The multiple listing exemption will mean that, unless an SRO's rules provide otherwise, a publicly traded entity will not need to have any independent audit committee members or otherwise be subject to the audit committee responsibilities in Exchange Act rule 10A–3. It is more important in this instance to ensure that the parent company's audit committee is in the appropriate position to provide oversight for the financial reporting of the subsidiary. This is most likely to be the case if the parent consolidates the subsidiary into its own financial statements. Nevertheless, we also understand that a parent may possess the requisite ownership threshold, but may not consolidate the subsidiary due to particular accounting situations.[136] Similarly, 50% owned joint ventures may not be consolidated by the two parents that exercise joint control.[137]

To address these concerns, we are expanding the exemption from the proposal to include listings of non-equity securities by a direct or indirect subsidiary that is consolidated or at least 50% beneficially owned by a parent company, if the parent company is subject to the requirements as a result of the listing of a class of its equity securities. However, as proposed, if the subsidiary were to list its own equity securities (other than non-convertible, non-participating preferred securities[138]), the subsidiary will be required to meet the requirements to protect its own public shareholders. The multiple listing exemption is available to U.S. subsidiaries if the parent is a foreign private issuer, even if the foreign parent is relying on one of the special exemptions for foreign private issuers (such as the board of auditors exemption). However, the special exemptions available to the foreign parent are of course not available to its U.S. subsidiary.

b. Security Futures Products and Standardized Options

The enactment of the Commodity Futures Modernization Act of 2000, or CFMA,[139] addressed the regulation of security futures products.[140] It permits national securities exchanges registered under section 6 of the Exchange Act[141] and national securities associations registered under section 15A(a) of the Exchange Act[142] to trade futures on individual securities and on narrow-based security indices ("security futures") without being subject to the issuer registration requirements of the Securities Act and Exchange Act as long as they are cleared by a clearing agency that is registered under section 17A of the Exchange Act[143] or that is exempt from registration under section 17A(b)(7)(A) of the Exchange Act. In December 2002, we adopted rules to provide comparable regulatory treatment for standardized options.[144]

The role of the clearing agency for security futures products and standardized options is fundamentally different from a conventional issuer of securities. For example, the purchaser of these products does not, except in the most formal sense, make an investment decision regarding the clearing agency. As a result, information about the clearing agency's business, its officers and directors and its financial statements is less relevant to investors in these products than to investors in the underlying security. Similarly, the investment risk in these products is determined by the market performance of the underlying security rather than the performance of the clearing agency. Moreover, the clearing agencies are self-regulatory organizations subject to regulatory oversight. Furthermore, unlike a conventional issuer, the clearing agency does not receive the proceeds from sales of security futures products or standardized options.[145]

Recognizing these fundamental differences, we are adopting as proposed an exemption for the listing of a security futures product cleared by a clearing agency that is registered under section 17A of the Exchange Act or exempt from registration under section 17A(b)(7) of the Exchange Act. We are adopting as proposed a similar exemption for the listing of standardized options issued by a clearing agency registered under section 17A of the Exchange Act.

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[125] *See, e.g.*, the Letters of ABA; Amex; Nasdaq.

[126] *See, e.g.*, rule 4350(d)(2)(C) of the NASD's listing standards.

[127] Public float is the aggregate market value of a company's outstanding voting and non-voting common equity (*i.e.*, market capitalization) minus the value of common equity held by affiliates of the company.

[128] The OTCBB is operated by The Nasdaq Stock Market, Inc., which is owned by the NASD. Information about the OTCBB can be found at *http://www.otcbb.com*. The Pink Sheets and the Yellow Sheets (as well as the corresponding Electronic Quotation Service) are operated by Pink Sheets LLC. Information about the Pink Sheets, the Yellow Sheets and the Electronic Quotation Service can be found at *http://www.pinksheets.com*.

[129] *See* 17 CFR 240.15c2–11.

[130] However, under OTCBB rules, issuers of securities quoted on the OTCBB must be subject to periodic filing requirements with the Commission or other regulatory authority. *See* NASD rule 6530.

[131] *See, e.g.*, the Letters of ABA; NYSE; S&C.

[132] *See, e.g.*, section 501 of the Sarbanes-Oxley Act.

[133] *See, e.g.*, the Letters of ABA; NYSBA.

[134] *See, e.g.*, the Letters of ABA; CalPERS; CSC; Edison International; Ford Motor Company; General Electric Company; General Motors Acceptance Corporation; NYSE; PSEG; PwC; Transamerica Finance Corporation ("TFC"); Southern Company.

[135] *See, e.g.*, the Letters of ABA; Cingular Wireless; Corning Incorporated; Dow Corning Corporation; FEI; PwC; S&C; TFC.

[136] *See e.g.*, the Letter of Michael Groll.

[137] *See, e.g.*, the Letters of Cingular Wireless; Corning Incorporated; Dow Corning Corporation; FEI; PwC.

[138] Trust-preferred and similar securities also fall within this category.

[139] Pub. L. No. 106–554, 114 Stat. 2763 (2000).

[140] Securities Act section 2(a)(16) [15 U.S.C. 77b(a)(16)], Exchange Act section 3(a)(56) [15 U.S.C. 78c(a)(56)], and Commodities Exchange Act section 1a(32) [7 U.S.C. 1a(32)] define "security futures product" as a security future or an option on a security future.

[141] 15 U.S.C. 78f.

[142] 15 U.S.C. 78o–3(A).

[143] 15 U.S.C. 78q–1.

[144] See Release No. 33–8171 (Dec. 23, 2002) [68 FR 188]. In that release, we exempted standardized options issued by registered clearing agencies and traded on a registered natfonal securities exchange or on a registered national securities association from all provisions of the Securities Act, other than the section 17 antifraud provision of the Securities Act, as well as the Exchange Act registration requirements. Standardized options are defined in Exchange Act rule 9b–1(a)(4) [17 CFR 240.9b–1(a)(4)] as option contracts trading on a national securities exchange, an automated quotation system of a registered securities association, or a foreign securities exchange which relate to option classes the terms of which are limited to specific expiration dates and exercise prices, or such other securities as the Commission may, by order, designate.

[145] However, the clearing agency may receive a clearing fee from its members.

3. Issuers Affected

a. Foreign Issuers

As discussed in the Proposing Release, U.S. investors increasingly have been seeking opportunities to invest in a wide range of securities, including the securities of foreign issuers, and foreign issuers have been seeking opportunities to raise capital and effect equity-based acquisitions in the U.S. using their securities as the "acquisition currency." The Commission has responded to these trends by seeking to facilitate the ability of foreign issuers to access U.S. investors through listings and offerings in the U.S. capital markets. We have long recognized the importance of the globalization of the securities markets both for investors who desire increased diversification and international companies that seek capital in new markets.

Section 10A(m) of the Exchange Act makes no distinction between domestic and foreign issuers. With the growing globalization of the capital markets, the importance of maintaining effective oversight over the financial reporting process is relevant for listed securities of any issuer, regardless of its domicile. Many foreign private issuers already maintain audit committees, and the global trend appears to be toward establishing audit committees.[146] Thus, as proposed, the Commission's direction to the SROs will apply to listings by foreign private issuers as well as domestic issuers.

However, as discussed in the Proposing Release, we are aware that the requirements may conflict with legal requirements, corporate governance standards and the methods for providing auditor oversight in the home jurisdictions of some foreign issuers. Even before we published the Proposing Release, several foreign issuers and their representatives had expressed concerns about the possible application of Exchange Act section 10A(m).[147] The Proposing Release prompted many thoughtful comments from dozens of foreign private issuers and their representatives from around the world. These commenters expressed overwhelming support for the Commission's approach of providing tailored exemptions and guidance where the requirements of Exchange Act section 10A(m) could result in a direct conflict with home country requirements. In our final rules, we have attempted to address commenters' concerns regarding the specific areas in which foreign corporate governance arrangements differ significantly from general practices among U.S. corporations. In addition to the clarifications discussed in section II.B., we discuss these matters below.

i. Employee Representation

We understand that some countries, such as Germany, require that non-management employees, who would not be viewed as "independent" under the requirements, serve on the supervisory board or audit committee.[148] Having such employees serve on the board or audit committee can provide an independent check on management, which itself is one of the purposes of the independence requirements under the Sarbanes-Oxley Act. Accordingly, we are adopting as proposed a limited exemption from the independence requirements to address this concern, so long as the employees are not executive officers, as defined by Exchange Act rule 3b–7.[149]

Commenters expressed support for this exemption.[150] Some commenters, however, recommended extending the exemption to include also non-executive employees that serve on the supervisory board or audit committee as a result of an issuer's governing law or documents or an employee collective bargaining or similar agreement. Under the final rule, non-executive employees can sit on the audit committee of a foreign private issuer if the employee is elected or named to the board of directors or audit committee of the foreign private issuer pursuant to the issuer's governing law or documents, an employee collective bargaining or similar agreement or other home country legal or listing requirements.

ii. Two-Tier Board Systems

Some foreign private issuers have a two-tier board system, with one tier designated as the management board and the other tier designated as the supervisory or non-management board. In this circumstance, we believe that the supervisory or non-management board is the body within the company best equipped to comply with the requirements. Our final rule clarifies that in the case of foreign private issuers with two-tier board systems, the term "board of directors" means the supervisory or non-management board for purposes of Exchange Act rule 10A–3. As such, the supervisory or non-management board can either form a separate audit committee or, if the entire supervisory or non-management board is independent within the provisions and exceptions of the rule, the entire board can be designated as the audit committee.[151] Commenters supported this clarification.[152]

iii. Controlling Shareholder Representation

Controlling shareholders or shareholder groups are more prevalent among foreign issuers than in the U.S., and those controlling shareholders have traditionally played a more prominent role in corporate governance. In jurisdictions providing for audit committees, representation of controlling shareholders on these committees is common. As proposed, we believe that a limited exception from the independence requirements can accommodate this practice without undercutting the fundamental purposes of the rule. We proposed that one member of the audit committee can be a shareholder, or representative of a shareholder or group, owning more than 50% of the voting securities of a foreign private issuer, if the "no compensation" prong of the independence requirements is satisfied, the member in question has only observer status on, and is not a voting member or the chair of, the audit committee, and the member in question is not an executive officer of the issuer.

Several commenters requested that the exemption be extended. Some believed the 50% ownership threshold was too high, arguing that a shareholder can exercise control through lower levels of ownership or through non-ownership means.[153] Others requested the ability to have more than one representative if there is more than one controlling shareholder.[154] A few objected to the observer-only status provided by the proposed exemption.[155]

In response to commenters' concerns, we are making minor modifications to the exemption. We are expanding the types of controlling persons covered by the exemption, but we continue to believe that it is appropriate that such representatives have only observer status on, and not be a voting member or chair of, the audit committee. Under the final rule, an audit committee member can be a representative of an affiliate of the foreign private issuer, if the "no compensation" prong of the independence requirements is satisfied, the member in question has only observer status on, and is not a voting member or the chair of, the audit committee, and the member in question is not an executive officer of the issuer. As revised, this limited exception is designed to address foreign practices, assure independent membership and an independent chair of the audit committee and still exclude management from the committee. As the exemption is designed to provide only a limited accommodation for the practices of some foreign private issuers, we are not extending the exemption to domestic issuers, as requested by some commenters.[156]

iv. Foreign Government Representation

Foreign governments may have significant shareholdings in some foreign private issuers or may own special shares that entitle the government to exercise certain rights relating to these issuers. However, due to their shareholdings or other rights, these representatives may not be considered independent under the final rule. To address foreign practices, we believe that foreign governmental representatives should be permitted to sit on audit committees of foreign private issuers. Commenters supported our proposal to exempt one member of the audit committee that is foreign government representative, provided the "no compensation" prong of the independence requirements is met and the member in question is not an executive officer of the issuer.[157] As with the exemption for controlling shareholder representatives, this limited exception is designed to address foreign practices and still exclude management from the committee. However, some believed the exemption should not be limited to just one foreign government representative if the representatives are otherwise independent and are not executive officers of the issuer. Under the final rule, any audit committee member can be a representative of a foreign government or foreign governmental entity, if the "no compensation" prong of the independence requirement is satisfied and the member in question is not an executive officer of the issuer.

We recognize that foreign governments may have varying arrangements relating to their state holdings. Some governments may hold shares directly, some through various branches or agencies, some through an institution organized under public law, and some by other entities. Several commenters believed the legal form of the entity that holds the governmental shareholdings should not be determinative.[158] We agree. The exemption applies regardless of the manner in which the foreign government owns its interest.

v. Listed Issuers That Are Foreign Governments

Several commenters also requested a specific exemption for listed issuers that are themselves foreign governments, as these issuers most likely would not be able to comply with the requirements. Accordingly, we are exempting in the final rule listed issuers that are foreign governments, as defined in Exchange Act rule 3b–4(a).[159]

vi. Boards of Auditors or Similar Bodies

While as noted above there is a continuing trend toward having audit committees in foreign jurisdictions, several foreign jurisdictions require or provide for auditor oversight through a board of auditors or similar body, or groups of statutory auditors, that are in whole or in part separate from the board of directors.[160] We believe that these boards of auditors or statutory auditors are intended to be independent of management, although their members may not in all cases meet all of the independence requirements set forth in section 10A(m) of the Exchange Act. In addition, while these bodies provide independent oversight of outside auditors, they may not have all of the responsibilities set forth in rule 10A–3. The establishment of an audit committee in addition to these bodies, with duplicative functions, might not only be costly and inefficient, but it also could generate possible conflicts of powers and duties. Accordingly, we proposed an exemption from certain of the requirements for audit committees for boards of auditors or statutory auditors of foreign private issuers that fulfilled the remaining requirements of the rule, if those boards operate under legal or listing provisions intended to provide oversight of outside auditors that is independent of management, membership on the board excludes executive officers of the issuer and certain other requirements were met.

Commenters expressed strong support for the exemption as an appropriate response to address the potential conflicts regarding these alternative structures.[161] However, several suggested refinements to the technical wording in the proposed exemption to ensure that it properly covers the appropriate structures in various jurisdictions.[162] Also, many requested removing the proposed requirement that the issuer must be listed on a market outside the U.S., as the board of auditor requirement often is a home country

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[146] *See*, for example, "Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence," Statement of the IOSCO Technical Committee (Oct. 2002) (available at *http://www.iosco.org*); Egon Zehnder International, Board of Directors Global Study (2000) (available at *http://www.zehnder.com*); and KPMG LLP, Corporate Governance in Europe: KPMG Survey 2001/2002 (2002) (available at *http://www.kpmg.com*).

[147] *See, e.g.*, Petition for Rulemaking submitted by the Organization for International Investment, File No. 4–462 (Aug. 19, 2002).

[148] *See, e.g.*, Co-Determination Act of 1976 (Mitbestimmungsgesetz). The exemptions provided in the final rule are available to any foreign private issuer that meets their individual requirements. Examples provided in this release are meant to be for illustrative purposes only.

[149] Exchange Act rule 3b–7 [17 CFR 240.3b–7] defines the term "executive officer" as an issuer's president, any vice president of the registrant in charge of a principal business unit, division or function (such as sales, administration or finance), any other officer who performs a policy-making function or any other person who performs similar policy-making functions for the registrant. Executive officers of subsidiaries may be deemed executive officers of the issuer if they perform such policy-making functions for the issuer.

[150] *See, e.g.*, the Letters of Allianz AG; Deutsches Aktieninstitut; German CFOs; NYSE; Alexander Schaub; Telekom Austria AG.

[151] *See* note above and the accompanying text.

[152] *See, e.g.*, the Letters of AFL–CIO; CalPERS; Deutsches Aktieninstitut; FEE.

[153] *See, e.g.*, the Letters of ABA; Cleary; PwC; S&C.

[154] *See, e.g.*, the Letter of AFEP–AGREF.

[155] *See, e.g.*, the Letters of ABA; S&C.

[156] *See, e.g.*, the Letters of Cleary; Duchossois Industries, Inc.; NYSE.

[157] *See, e.g.*, the Letters of ABA; Compania Cervecerias Unidas S.A. ("CCU"); France Telecom SA.

[158] *See, e.g.*, the Letters of Davis Polk & Wardwell; Telekom Austria AG.

[159] 17 CFR 240.3b–4(a). Under that definition, the term "foreign government" means the government of any foreign country or of any political subdivision of a foreign country. The exemption encompasses all registrants that are eligible to register securities under Schedule B of the Securities Act.

[160] For example, under current Japanese law, we understand that large Japanese corporations must maintain a board of corporate statutory auditors, a legally separate and independent body from the corporation's board of directors that is elected by shareholders. *See, e.g.*, Law for Special Exceptions to the Commercial Code Concerning Audits, etc. of Corporations (Law No. 22, 1974, as amended). Further, we understand that effective April 1, 2003, Japanese corporations will have the option to elect either a governance system with a separate board of directors and board of corporate auditors or a system based on nominating, audit and compensation committees under the board of directors. We also understand that the Italian corporate governance regime provides for an independent board of statutory auditors ("Collegio Sindicale") and the Brazilian corporate governance regime allows a Fiscal Council ("Conselho Fiscal"). *See, e.g.*, the Letters of Assonime; Brazilian Securities Commission. As noted previously, the examples provided in this release are for illustrative purposes only. The exemption provided in the final rule for boards of auditors or similar bodies will be available to any foreign private issuer that meets the exemption's requirements because of the issuer's home country regime.

[161] *See, e.g.*, the Letters of ABA; Assonime; Baker & McKenzie; Brazilian Securities Commission; CalPERS; Cleary; FSA; Japan Corporate Auditors Association; Japanese Ministry of Economy, Trade and Industry; Nippon Keidanren; Matsushita; Nomura Holdings, Inc; NTT DoCoMo, Inc.; NYSE; ORIX Corporation.

[162] *See, e.g.*, the Letters of ABA; Assonime; Baker & McKenzie; Brazilian Securities Commission; Cleary; ORIX Corporation; S&C.

legal requirement and not a listing requirement.[163] Others believed that the exemption as proposed would not cover the unique situations in some countries where the board of auditors or similar body consists of one or more independent members of the board of directors in addition to one or more non-board members.[164] Without a modification, these commenters believed issuers from such jurisdictions could not satisfy the exemption because of the requirement that the board of auditors must be entirely separate from the board of directors. The overwhelming majority of commenters did not believe a sunset provision for the exemption would be appropriate.[165]

Accordingly, we are making several modifications to the exemption as adopted. Under the final rule, the listing of securities of a foreign private issuer will be exempt from all of the audit committee requirements if the issuer meets the following requirements:

- The foreign private issuer has a board of auditors (or similar body), or has statutory auditors (collectively, a "Board of Auditors"), established and selected pursuant to home country legal or listing provisions expressly requiring or permitting such a board or similar body;
- The Board of Auditors is required to be either separate from the board of directors, or composed of one or more members of the board of directors and one or more members that are not also members of the board of directors;
- The Board of Auditors are not elected by management of the issuer and no executive officer of the issuer is a member of the Board of Auditors;
- Home country legal or listing provisions set forth or provide for standards for the independence of the Board of Auditors from the issuer or the management of the issuer;
- The Board of Auditors, in accordance with any applicable home country legal or listing requirements or the issuer's governing documents, is responsible, to the extent permitted by law, for the appointment, retention and oversight of the work of any registered public accounting firm engaged (including, to the extent permitted by law, the resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer; and
- The remaining requirements in the rule, such as the complaint procedures requirement, advisors requirement and funding requirement, apply to the Board of Auditors, to the extent permitted by law.

This revised formulation is designed to address the jurisdictions that provide for boards of auditors or similar structures. In all instances, the requirements described in the revised exemption are to apply consistent with home country requirements. We recognize that while these bodies are designed to provide independent oversight of outside auditors, they may not meet all of the same requirements or have all of the responsibilities set forth in Exchange Act rule 10A–3. This approach nonetheless is a preferable method of implementing the protections of the Sarbanes-Oxley Act against the backdrop of this particular category of conflicting home country governance framework.

We have eliminated the requirement that the issuer must also be listed on a market outside the U.S. Also, we are not adopting a sunset date for the exemption. Finally, despite some commenters suggestions, we have not extended the relief to foreign private issuers that have audit committees.[166]

vii. Requests for Other Foreign Exemptions

A foreign private issuer availing itself of the exemptions discussed in this section will be subject to specific disclosure requirements discussed in section II.G.1 below. Consistent with our proposal, there will be no other ability for an SRO to exempt or waive foreign issuers from the requirements. In adopting these exemptions, we recognize that some foreign jurisdictions continue to have historical structures that may conflict with maintaining audit committees meeting the requirements of section 10A(m) of the Exchange Act. We encourage foreign issuers that access the U.S. capital markets to continue to move toward internationally accepted best practices in corporate governance.[167] We also understand that corporate governance structures throughout the world will continue to evolve, and that all future conflicts cannot be anticipated at this time. Accordingly, as requested by many commenters,[168] the Commission has the authority to respond to, and will remain sensitive to, the evolving standards of corporate governance throughout the world to address any new conflicts that may arise with foreign corporate governance rules and practices that cannot be anticipated at this time.

b. Small Businesses

Section 10A(m) of the Exchange Act makes no distinction based on an issuer's size. As discussed in the Proposing Release, we think that improvements in the financial reporting process for companies of all sizes are important for promoting investor confidence in our markets. In this regard, because there have been instances of financial fraud at small companies as well as at large companies, we think that improving the effectiveness of audit committees of small and large companies is important.[169] The final rule, therefore, applies to listed issuers of all sizes as proposed.

The majority of commenters generally agreed with this approach and did not support lesser standards for smaller issuers.[170] These commenters did not believe the requirements will impose a disproportionate burden on small issuers. A few commenters, however, were concerned that smaller issuers may have particular difficulty locating qualified audit committee candidates that will meet the independence criteria, especially given the implementation period proposed by the Commission.[171] While these commenters advocated various approaches, such as an exceptional and limited circumstances exemption for smaller issuers or SRO authority to exempt individual small issuers on a case-by-case basis, most agreed that an additional initial implementation period would be appropriate for these issuers.

We recognize that because the final rule applies only to listed issuers, quantitative listing standards applicable to listed securities, such as minimum revenue, market capitalization and

[163] *See, e.g.*, the Letters of ABA, Cleary; Internet Initiative Japan, Inc.; FSA; Japanese Ministry of Economy, Trade and Industry; Nippon Keidanren; Linklaters; NYSE; S&C.

[164] *See, e.g.*, the Letters of Perusahaan Perseroan (Persero) PT Telekomunikasi Indonesia Tbk; S&C.

[165] Compare, *e.g.*, the letters of ABA; FSA; Japanese Ministry of Economy, Trade and Industry; Nippon Keidanren; Japan Corporate Auditors Association; Matsushita; Nomura Holdings, Inc; NTT DoCoMo, Inc.; NYSE; ORIX Corporation with the letters of CalPERS; PwC.

[166] *See, e.g.*, the Letters of FSA; Japanese Ministry of Economy, Trade and Industry; Nippon Keidanren; Matsushita; Nomura Holdings, Inc; PwC; ORIX Corporation; S&C.

[167] See, *e.g.*, IOSCO Principles of Auditor Independence and the Role of Corporate Governance in Monitoring an Auditor's Independence (2002); OECD Principles of Corporate Governance (1999).

[168] *See, e.g.*, the Letters of AFEP–AGREF; Assonime; Cleary; NYSE.

[169] *See* Beasley, Carcello and Hermanson, Fraudulent Financial Reporting: 1987–1997, An Analysis of U.S. Public Companies (Mar. 1999) (study commissioned by the Committee of Sponsoring Organizations of the Treadway Commission).

[170] *See, e.g.*, the Letters of CalPERS; CBA; CSC; Deloitte; PwC.

[171] *See, e.g.*, the Letters of ABA; Amex; Nasdaq.

shareholder equity requirements, will limit the size of issuers that will be affected by the requirements.[172] However, we are sensitive to the possible implication for smaller issuers and for SROs that would like to specialize in securities of these issuers. As discussed in section II.F.1, we are providing an extended compliance period for listed issuers that are small business issuers. In addition, the modifications to several of the other exemptions in the final rule, such as the overlapping board exemption and the new issuer exemption, should provide additional flexibility to small and new issuers in meeting the requirements of the rule. Our approach of not mandating specific procedures for the auditor responsibility requirement and the complaint procedures requirement also should provide issuers flexibility in meeting these requirements.

c. Issuers of Asset-Backed Securities and Certain Other Passive Issuers

In several of our releases implementing provisions of the Sarbanes-Oxley Act,[173] we have noted the special nature of asset-backed issuers.[174] Because of the nature of these entities, such issuers are subject to substantially different reporting requirements. Most significantly, asset-backed issuers are generally not required to file the types of financial statements that other companies must file. Also, such entities typically are passive pools of assets, without a board of directors or persons acting in a similar capacity. Accordingly, we are excluding asset-backed issuers from the requirements as proposed. Commenters supported this exclusion.[175]

Several commenters advocated similar relief for additional types of securities that are issued by trusts where the trust's activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.[176] For example, issuers of royalty trust securities and trust issued receipts often meet such criteria. Structures such as royalty trusts act as mere conduits though which proceeds on the underlying assets are distributed to securityholders.[177] For securities such as trust issued receipts, the receipts represent undivided beneficial ownership of the specified underlying securities that are held in the trust.[178] Because such structures are similar to asset-backed issuers in that they do not have a board of directors or comparable persons from which to form an audit committee, the same policy reasons that exempt asset-backed issuers generally apply to such structures as well.

We recognize that we cannot anticipate all of the various types of these entities that may seek a listing on a national securities exchange or national securities association. Under the final rule, SROs may exclude from Exchange Act Rule 10A–3's requirements issuers that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

d. Investment Companies

We proposed that the rule cover closed-end investment companies and so-called "exchange-traded funds" ("ETFs") structured as open-end investment companies.[179] We proposed to exclude ETFs structured as unit investment trusts ("UITs"). Two commenters argued that open-end ETFs should also be excluded from the rule.[180] The commenters stated that the rule would impose unjustified competitive burdens on open-end ETFs in relation to both open-end investment companies that are not exchange-traded and ETFs structured as UITs.

However, Exchange Act section 10A(m)(1) requires us to direct the SROs to prohibit the listing of any security of an issuer that is not in compliance with the enumerated audit committee standards. Thus, the statute is specifically addressed to issuers listed for trading on SROs, and, as a result, we believe that it would be inconsistent with the statute to exclude open-end ETFs from the rule. With regard to the exclusion for UIT ETFs, we note that UITs, like asset-backed issuers and unlike open-end ETFs, are not actively managed and do not have boards of directors from which audit committee members could be drawn.

4. Determining Compliance With Proposed Standards

Apart from the general requirement to prohibit the listing of a security not in compliance with the enumerated standards, section 10A(m) of the Exchange Act does not establish specific mechanisms for a national securities exchange or a national securities association to ensure that issuers comply with the standards on an ongoing basis. SROs are required to comply with statutory provisions and Commission rules pertaining to SROs and to enforce their own rules, including rules that govern listing requirements and affect their listed issuers.

To further the purposes of section 10A(m), we proposed that SROs, as part of their implementing rules, must require a listed issuer to notify the applicable SRO promptly after an executive officer of an issuer becomes aware of any material noncompliance by the listed issuer with the requirements.[181] The overwhelming majority of commenters supported this proposal.[182] Accordingly, the final rule includes this requirement as proposed.

We also requested comment on whether listed issuers should be required to disclose periodically to the

[172] Examples of the types of quantitative standards necessary for initial and continued listings on the NYSE, Nasdaq and AMEX are available on their respective Web sites.

[173] *See* note above.

[174] The term "Asset-Backed Issuer" is defined in 17 CFR 240.13a–14(g) and 240.15d–14(g).

[175] *See, e.g.*, the Letters of CSC; Deloitte; NYSE.

[176] *See, e.g.*, the Letters of ABA; Nasdaq; NYSE.

[177] For a more detailed description of royalty trusts, see Staff Accounting Bulletin No. 47. Of course, the exemption we are establishing will not extend to structures that hold, in addition to the royalty interest, an interest in the operating company that actually owns the oil and gas properties, such as structures commonly known as Canadian income trusts. In these situations, the trustee often also delegates significant management decisions to an operating company; which in turn may delegate those decisions to a manager. The operating company often has a board of directors that is appointed by both the manager and the trust unit holders. We believe such structures should be treated in a manner similar to limited partnerships.

[178] For a further description of trust issued receipts, see, for example, rule 1200 of the AMEX's listing standards, rule 1200 of the NYSE's listing standards, and HOLDRs, SEC No-Action Letter (Sep. 3, 1999) (the staff agreed not to recommend enforcement action to the Commission if, among other things, the trust did not register as an investment company under the Investment Company Act).

[179] Business development companies are covered by the final rules.

Investment companies may avail themselves of the general exemptions in Exchange Act Rule 10A–3(c) [17 CFR 240.10A–3(c)], if applicable. The independence exemptions of Exchange Act rule 10A–3(b)(1)(iv)(A)–(E) [17 CFR 240.10A–3(b)(1)(iv)(A)–(E)] will not apply to investment companies.

[180] *See* the Letters of Amex; Barclays Global Investors, N.A.

[181] We encourage the SROs to impose a similar requirement for noncompliance with other SRO listing standards that pertain to corporate governance standards apart from the audit committee requirements in Exchange Act Rule 10A–3, to the extent SROs do not already provide for such a notice requirement. Commenters also expressed strong support for such a requirement.

[182] *See, e.g.*, the Letters of Amex; CalPERS; CII; CSC; Matsushita; PwC; Transparency International-USA.

SROs whether they have been in compliance with the standards. Commenters were more mixed on this point. Several commenters supported periodic confirmation of compliance to SROs.[183] Others believed it would be redundant to require periodic confirmations in addition to notice of actual breaches, and believed it should be left to the SROs to decide whether periodic confirmations should be included as part of their compliance monitoring procedures.[184] Two national securities exchanges indicated they already require or intend to require such confirmations.[185] We are not adopting a requirement that listed issuers must provide periodic confirmations of compliance to SROs at this time. However, we recognize, as many of the commenters did, that periodic confirmations can be part of an effective overall system for monitoring compliance with listing rules.

5. Opportunity To Cure Defects

Section 10A(m)(1)(B) of the Exchange Act specifies that our rules must provide for appropriate procedures for an issuer to have an opportunity to cure any defects that would be the basis for a prohibition of the issuer's securities as a result of its failure to meet section 10A(m)'s audit committee standards, before imposition of such a prohibition. To effectuate this mandate, our final rule requires SROs to establish such procedures before they prohibit the listing of or delist any security of an issuer.[186] As discussed in the Proposing Release, we believe that existing continued listing or maintenance standards and delisting procedures of the SROs generally will suffice as procedures for an issuer to have an opportunity to cure any defects on an ongoing basis. These procedures already provide issuers with notice and opportunity for a hearing, an opportunity for an appeal and an opportunity to cure any defects before their securities are delisted.[187]

We requested comment as to whether the Commission should specify the maximum time limits for an opportunity to cure defects. Commenters were mixed on this point. Some supported having the Commission mandate specific time periods for the SROs, such as 30 days or 90 days.[188] Others did not support specific time periods, again believing that it should be left to the individual SROs to decide the appropriate time periods given the differences of each market.[189] We are not mandating specific time periods in the final rule. However, as mentioned in the Proposing Release, we expect that the rules of each SRO will provide for definite procedures and time periods for compliance to the extent they do not already do so.

Several commenters expressed concern regarding rare situations that may occur where an audit committee member ceases to be independent for reasons outside the member's reasonable control. For example, an audit committee member could be a partner in a law firm that provides no services to the listed issuer on which the member sits, but the listed issuer could acquire another company that is one of the law firm's clients. Without an opportunity to cure such a defect, the audit committee member would cease to be independent. Additional time may be necessary to cure such defects, such as ceasing the issuer's relationship with the audit committee member's firm or replacing the audit committee member. Accordingly, under our final rule, SRO implementing rules may provide that if a member of an audit committee ceases to be independent for reasons outside the member's reasonable control, that person, with notice by the issuer to the applicable national securities exchange or national securities association, may remain an audit committee member of the listed issuer until the earlier of the next annual meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.

G. Disclosure Changes Regarding Audit Committees

1. Disclosure Regarding Exemptions

Exchange Act rule 10A–3 provides for certain exemptions. Because these exemptions will distinguish certain issuers from most other listed issuers, we believe that it is important for investors to know if an issuer is availing itself of one of these exemptions. Accordingly, we are adopting as proposed a requirement that these issuers must disclose their reliance on an exemption and their assessment of whether, and if so, how, such reliance will materially adversely affect the ability of their audit committee to act independently and to satisfy the other requirements of Exchange Act rule 10A–3. Such disclosure will need to appear in, or be incorporated by reference into, annual reports filed with the Commission.[190] The disclosure also will need to appear in proxy statements or information statements of issuers subject to our proxy rules for shareholders' meetings at which elections for directors are held.

While two commenters[191] did not believe the proposed disclosure would result in meaningful disclosure to investors, and several others did not support the assessment disclosure,[192] commenters representing investors and investor groups and others uniformly believed the disclosure, including the assessment disclosure, would provide meaningful information to investors.[193] The purpose of the disclosure is not to single out particular issuers or to imply that a particular listed issuer's home country regime is somehow less effective. Instead, the disclosure is designed to provide additional transparency to investors regarding the listed issuer's audit committee arrangements and the issuer's assessment of the effectiveness of those arrangements.

We proposed that foreign private issuers availing themselves of the exemption for boards of auditors and similar structures would be required to file an exhibit to their annual reports stating that they are doing so. This exhibit would have been in addition to the disclosure required in the body of the report regarding the issuer's use of that exemption. Several commenters did not support the exhibit requirement, arguing that it would be unnecessarily redundant of the disclosure in the report.[194] To avoid imposing a duplicative requirement, we are not adopting the exhibit requirement.

We proposed to exclude unit investment trusts from the disclosure requirements relating to their use of the general exemption for UITs. As a passive investment vehicle, a UIT has no board of directors, and there is little reason why investors would expect a UIT to have an audit committee. We also proposed to exclude issuers availing themselves of the multiple listing exemption from the disclosure requirements. These issuers, or their controlling parents, will be required to comply with the audit committee requirements as a result of a separate listing. Accordingly, disclosure of the use of that exemption will not serve the purpose of highlighting for investors those issuers that are different from most other listed issuers. The majority of commenters supported these proposals, and we are adopting them.[195]

We requested comment on whether we should exclude additional issuers from the exemption disclosure requirement. Some commenters recommended excluding disclosure of additional exemptions, such as the exemptions for overlapping boards, security futures products, standardized options, securities issued by foreign governments and securities issued by Asset-Backed Issuers and similar passive issuers.[196] For overlapping boards, issuers relying on that exemption will still be required to have independent directors, so disclosure of the exemption would not serve to highlight those issuers that are different from most issuers. Regarding security futures products, standardized options, foreign governments and Asset-Backed Issuers and similar passive issuers, like UITs, there would be little reason to believe that these issuers would have audit committees. Accordingly, we also are excluding listed issuers that rely on these exemptions from the disclosure requirement.

2. Identification of the Audit Committee in Annual Reports

An issuer subject to the proxy rules of section 14 of the Exchange Act[197] is currently required to disclose in its proxy statement or information statement, if action is to be taken with respect to the election of directors, whether the issuer has a standing audit committee, the names of each committee member, the number of committee meetings held by the audit committee during the last fiscal year and the functions performed by the committee.[198] As discussed in the Proposing Release, we believe it is important for investors to be able to readily determine basic information about the composition of a listed issuer's audit committee. To foster greater availability of this basic information, we are adopting as proposed a requirement that disclosure of the members of the audit committee be included or incorporated by reference in the listed issuer's annual report.[199] Also, because the Exchange Act now provides that in the absence of an audit committee the entire board of directors will be considered to be the audit committee, we also are requiring a listed issuer that has not separately designated, or has chosen not to separately designate an audit committee, to disclose that the entire board of directors is acting as the issuer's audit committee.

We are adopting as proposed similar changes for foreign private issuers that file their annual reports on Form 40–F. Foreign private issuers that file their annual reports on Form 20–F already are required to identify the members of their audit committee in their annual reports. For these listed issuers, however, we are adopting the requirement that these issuers must disclose if the entire board of directors is acting as the audit committee.[200] We also are adopting similar changes for registered management investment companies.[201]

Commenters expressed support for these changes.[202] Some commenters, however, recommended that listed issuers that are not required to provide disclosure of their reliance on one of the exemptions to the rule—such as a subsidiary relying on the multiple listing exemption, a foreign government issuer or an Asset-Backed Issuer or similar issuer—also should be excluded from the requirement to disclose whether or not they have a separate audit committee.[203] According to these commenters, because these listed issuers need not disclose they are availing themselves of the exemption to the audit committee requirements, it would be anomalous to require these same listed issuers to disclose whether or not they have an audit committee. We are persuaded by these comments. Accordingly, we are excluding such issuers from this disclosure requirement. We are not making a corresponding change to Form N–CSR for registered management investment companies. We expect that registered management investment companies would only rarely, if at all, rely on the exemptions that trigger a disclosure requirement.[204] We believe that in such an unusual case, it would nonetheless be appropriate for the investment company to disclose whether it has an audit committee.

3. Updates to Existing Audit Committee Disclosure

An issuer subject to the proxy rules is currently required to disclose additional information about its audit committee in its proxy statement or information statement, if action is to be taken with

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[183] *See, e.g.*, the Letters of CalPERS; CII; PwC; Transparency International-USA.

[184] *See, e.g.*, the Letters of CSC; Nasdaq.

[185] *See* the Letters of Amex; NYSE.

[186] These procedures, of course, cannot include an extended exemption or waiver of the requirements apart from those provided for in Exchange Act Rule 10A–3.

[187] *See, e.g.*, NASD rule 4800 Series and NYSE Listed Company Manual section 804.

[188] *See, e.g.*, the Letters of CalPERS; CSC; PwC.

[189] *See, e.g.*, the Letters of ABA; NYSE.

[190] This disclosure is to be included in Part III of annual reports on Form 10–K [17 CFR 249.310] and 10–KSB (through an addition to Item 401 of Regulations S–K and S–B). Consequently, companies subject to the proxy rules will be able to incorporate the required disclosure from a proxy or information statement that involves the election of directors into the annual report, if the issuer filed such proxy or information statement within 120 days after the end of the fiscal year covered by the report. See General Instruction G.(3) of Form 10–K and General Instruction E.3. of Form 10–KSB.

For foreign private issuers that file their annual reports on Form 20–F, the disclosure requirement will appear in new Item 16D.

For foreign private issuers that file their annual reports on Form 40–F, the disclosure requirement will appear in paragraph (14) to General Instruction B.

For registered investment companies, the disclosure will appear in Item 5(b) of Form N–CSR and Item 22(b)(14) of Schedule 14A.

[191] *See, e.g.*, the Letters of ABA; S&C.

[192] *See, e.g.*, the Letters of Cravath; Nippon Keidanren; Matsushita; NTT DoCoMo, Inc.

[193] *See, e.g.*, the Letters of CalPERS; CII; CSC; Deloitte; E&Y; PwC; Teachers Insurance and Annuity Association " College Retirement Equities Fund ("TIAA–CREF"); Transparency International-USA.

[194] *See, e.g.*, the Letters of ABA; Cleary; NTT DoCoMo, Inc.; ORIX Corporation.

[195] Compare, *e.g.*, the Letters of ABA; CCU; General Electric Company; General Motors Corporation; General Motors Acceptance Corporation; Nasdaq; PSEG with the Letter of CalPERS.

[196] *See, e.g.*, the ABA Letter.

[197] 15 U.S.C. 78n.

[198] See Item 7(d)(1) of Schedule 14A. Identical information is required with respect to nominating and compensation committees of the board of directors.

[199] Because this information will be included in Part III of annual reports on Forms 10–K and 10–KSB, companies subject to the proxy rules will be able to incorporate the required disclosure from a proxy or information statement that involves the election of directors, where it is already required to appear, into their annual reports. Information regarding the number of meetings of the audit committee and the basic functions performed by the audit committee, as well as the information regarding nominating and compensation committees, will continue to be required only in proxy or information statements that involve the election of directors.

[200] In addition, we have added an instruction to Item 6.C. in Form 20–F that if the company is relying on the exemption in Exchange Act rule 10A–3(c)(3) because it has a board of auditors or similar body, the disclosure required by that Item with regard to the company's audit committee can be provided with respect to the company's board of auditors, or similar body.

[201] Item 22(b)(14) of Schedule 14A and Item 5 of Form N–CSR. Form N–CSR is used by registered management investment companies to file certified shareholder reports with the Commission under the Sarbanes-Oxley Act. See Investment Company Act Release No. 25914 (Jan. 27, 2003) [68 FR 5348].

[202] *See, e.g.*, the Letters of ABA; CalPERS; CSC; PwC; Transparency International-USA.

[203] *See, e.g.*, the Letters of Edison International; General Electric Company; TFC.

Unit investment trusts are not required to provide disclosure of their use of the exemption under Exchange Act rule 10A–3(c)(6)(ii). See Exchange Act rule 10A–3(d). As proposed, UITs were not subject to any requirement that they disclose whether or not they have a separate audit committee, since UITs do not file proxy or information statements where action is to be taken with respect to election of directors, or Form N–CSR, where such disclosure would be made.

[204] These exemptions include those for listing certain securities of subsidiaries of a parent whose listed securities are subject to Exchange Act rule 10A–3, security futures products, standardized options, securities issued by asset-backed issuers, foreign governments and passive issuers. Exchange Act rule 10A–3(c)(2), (4)–(7) [17 CFR 240.10A–3(c)(2), (4)–(7)].

respect to the election of directors.[205] First, the audit committee must provide a report disclosing whether the audit committee has reviewed and discussed the audited financial statements with management and discussed certain matters with the independent auditors.[206] Second, issuers must disclose whether the audit committee is governed by a charter, and if so, include a copy of the charter as an appendix to the proxy statement at least once every three years.[207] Finally, the issuer must disclose whether the members of the audit committee are independent. Under the existing requirements, issuers whose securities are listed on the NYSE or AMEX or quoted on Nasdaq must disclose whether the audit committee members are independent, as defined in the applicable listing standards.[208] These issuers also must disclose if its board of directors has determined to appoint one director to its audit committee due to an exceptional and limited circumstances exception in the applicable listing standards.[209] Issuers whose securities are not listed on the NYSE or AMEX or quoted on Nasdaq also are required to disclose whether their audit committee members are independent. These issuers may choose which definition of independence to use from any of the NYSE, AMEX or Nasdaq listing standards.[210]

Regarding the independence disclosure, all national securities exchanges and national securities associations under our final rule will need to have independence standards for audit committee members, not just the NYSE, AMEX and Nasdaq. The specification in the existing requirements to listings on these three markets is therefore no longer necessary.

Accordingly, as proposed, we are updating the disclosure requirements regarding the independence of audit committee members to reflect the new SROs rules to be adopted under Exchange Act rule 10A–3. Commenters supported these updates.[211] If the registrant is a listed issuer, it will still be required to disclose whether the members of its audit committee are independent. The listed issuer must use the definition of independence for audit committee members included in the listing standards applicable to the listed issuer. Further, because the Exchange Act now provides that in the absence of an audit committee the entire board of directors will be considered to be the audit committee, we are clarifying in the rules that if the registrant does not have a separately designated audit committee, or committee performing similar functions, the registrant must provide the disclosure with respect to all members of its board of directors.

Non-listed issuers that have separately designated audit committees will still be required to disclose whether their audit committee members are independent. In determining whether a member is independent, these registrants will be allowed to choose any definition for audit committee member independence of a national securities exchange or national securities association that has been approved by the Commission.[212]

In the Proposing Release, we proposed eliminating disclosure by listed issuers of use of an exceptional and limited circumstances exception in existing SRO listing standards. We did so because our rules do not provide a similar exception to the independence requirements mandated by Exchange Act rule 10A–3. However, it is conceivable that some SROs may retain an exceptional and limited circumstances exception for SRO independence requirements apart from those in Exchange Act rule 10A–3. We are therefore retaining disclosure of the use of such an exemption for standards apart from the requirements in Exchange Act rule 10A–3. We also are eliminating the exclusion of small business issuers from this disclosure requirement, as it is conceivable that such an exception could extend to these issuers as well.

Issuers must comply with the new disclosure changes regarding use of exemptions, identification of the audit committee in annual reports and the independence disclosure updates beginning with reports covering periods ending on or after (or proxy or information statements for actions occurring on or after) the compliance date for the listing standards applicable to the particular issuer. If the issuer is not a listed-issuer, it should use the date that would apply as if it was a listed issuer. Until such dates, issuers should continue to comply with existing Items 7(d)(3)(iv) and 22(b)(14) in their proxy and information statements, if applicable.

Several commenters advocated additional disclosure regarding a board's determination of an audit committee member's independence apart from that currently required.[213] Several of the additional SRO listing standards currently under consideration by the Commission would require such disclosure by listed issuers.[214] We intend to analyze these proposals and the SRO rules implementing Exchange Act 10A–3 to determine if any additional disclosure in this area would be appropriate.

4. Audit Committee Financial Expert Disclosure for Foreign Private Issuers

In our release adopting the disclosure requirements for audit committee financial experts, we expressed our intention to revisit the disclosure requirements regarding the independence of audit committee financial experts of foreign private issuers.[215] Specifically, we noted that in conjunction with the adoption of rules implementing Exchange Act section 10A(m), we would revise the audit committee financial expert disclosure requirements that apply to foreign private issuers such that the concept of "independence" under the section 10A(m) rules would be consistent with the concept of "independence" under the audit committee financial expert disclosure requirements. Therefore, we are now adopting amendments to the audit committee financial expert disclosure provisions as they apply to foreign private issuers. If the foreign private issuer is a listed issuer, the amendments require the foreign private issuer to disclose whether its audit committee financial expert is independent, as that term is defined by the SRO listing standards applicable to that issuer.[216] If a foreign private issuer is not a listed issuer, it must choose one of the SRO definitions of audit committee member independence that have been approved by the Commission in determining whether its audit committee financial expert, if it has one, is independent. It must also disclose which definition was used. Foreign private issuers need not comply with these disclosure requirements until July 31, 2005.

Also in that release, we noted our intention to address the treatment of a foreign private issuer with a board of auditors or statutory auditors under home country legal or listing provisions. Specifically, we requested comment as to whether and, if so, how foreign private issuers with boards of auditors or similar bodies or statutory auditors should comply with the audit committee financial expert disclosure requirements. We received several comments both supporting and opposing application of such disclosure requirements to issuers with such bodies. One commenter suggested that the audit committee financial expert's expertise should be related to home country generally accepted accounting principles ("GAAP"), even if the issuer's primary financial statements are filed with the Commission in conformity with U.S. GAAP. We believe that the intent of section 407 of Sarbanes-Oxley Act is to strengthen audit committee oversight of the preparation and audit of financial statements that are presented to U.S. investors, and thus we continue to believe that the audit committee financial expert's expertise should be related to the body of generally accepted accounting principles used in the issuer's primary financial statements filed with the Commission. We do, however, acknowledge the differing regulatory structures of foreign jurisdictions. Therefore, we have added a sentence to the instructions to the audit committee financial expert disclosure provisions to clarify that, for purposes of those provisions, the term "audit committee" means the board of auditors or similar bodies or statutory auditors, if the issuer meets the criteria specified in new rule 10A–3(c)(3).[217]

H. Application to the Commission's Auditor Independence Rules

Similar to the issues addressed by the multiple listing exception discussed in section II.F.2.a, some commenters raised an issue with respect to the audit committee pre-approval requirements contained in the Commission's auditor independence rules.[218] Those rules require that the issuer's audit committee pre-approve audit and non-audit services provided to the issuer and its consolidated subsidiaries[219] by the independent accountant. However, to the extent that a consolidated entity contains more than one issuer, some have indicated that it is not clear whether the parent company audit committee's pre-approval of the services to be provided by the independent accountant would satisfy the pre-approval requirements for the separately-issued financial statements of a subsidiary which also is an issuer.[220]

The Commission believes that the audit committee of the parent company that controls another entity within the consolidated group can perform the pre-approval function for the parent company and any consolidated subsidiaries both with respect to the consolidated financial statements and with respect to the financial statements of any consolidated subsidiary that also is an issuer. However, the Commission also understands that there may be instances where such entities have their own audit committees. In those situations, we would not expect that both audit committees be responsible for pre-approving the services that are provided by the auditor. Rather, the relevant facts and circumstances surrounding the engagement or relationship should be evaluated to determine which audit committee is in the best position to review the impact of the service on the auditor's independence.

As noted at the beginning of section II, the definition of the term "audit committee" in Exchange Act section 3(a)(58) provides that an issuer either may have a separately designated audit committee composed of members of its board, or if it chooses to do so or if it fails to form a separate committee, the entire board of directors will constitute the audit committee.[221] Moreover, as discussed in section II.F.3.a.vi, certain foreign jurisdictions permit many of the functions normally performed by audit committees to be performed by a board of auditors or similar body which is separate in whole or in part from the issuer's board of directors.

In either of these situations, commenters have asked how issuers should comply with the audit committee pre-approval requirements established by the Commission in its rules on auditor independence. While the Commission's rules on auditor independence require that the audit committee pre-approve audit and non-audit services provided by the independent accountant, those rules do not require that companies establish separately-designated audit committees. If an issuer chooses to do so or fails to form a separate committee, the entire board of directors will constitute the audit committee and may perform the pre-approval function for the issuer.[222] Furthermore, consistent with the intent of Exchange Act rule 10A–3(c)(3), in situations where the issuer has a board of auditors or similar body as allowed by law or listing requirements of that jurisdiction, such board or body may perform the audit committee pre-approval function required by the Commission's rules on auditor independence.

The Commission also reminds registrants and their auditors that the Commission's rules require that auditors communicate certain information to the audit committee.[223] The same body responsible for pre-approval of audit and non-audit services also should be the body to whom these required communications are made by the issuer's auditor.

III. Paperwork Reduction Act

A. Background

The amendments described in this document contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 ("PRA").[224] We published a notice requesting comment on the collection of information requirements in the Proposing Release, and we submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with the PRA.[225] As discussed in Part II

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[205] *See* Item 7(d)(3) of Schedule 14A. These disclosure requirements were adopted in Release No. 34–42266 (Dec. 22, 1999).

[206] *See* Item 7(d)(3)(i) of Schedule 14A. The requirements for the audit committee report are specified in Items 306 of Regulations S–B [17 CFR 228.306] and S–K [17 CFR 229.306]. Under the existing requirements, if the company does not have an audit committee, the board committee tasked with similar responsibilities, or the full board of directors, is responsible for the disclosure.

[207] *See* Items 7(d)(3)(ii) and (iii) of Schedule 14A.

[208] *See* Item 7(d)(3)(iv)(A)(1) of Schedule 14A.

[209] *See* Item 7(d)(3)(iv)(A)(2) of Schedule 14A.

[210] *See* Item 7(d)(3)(iv)(B) of Schedule 14A. Whichever definition is chosen must be applied consistently to all members of the audit committee.

[211] *See, e.g.*, the Letters of ABA; CalPERS; CSC; PwC.

[212] Such definition must include the requirements of Exchange Act section 10A–3. These issuers will still be required to state which definition was used. Further, the requirement that the same definition must be applied consistently to all members of the audit committee will be retained.

[213] *See, e.g.*, the Letters of AFL–CIO; AICPA; Amex; Deloitte; PwC; Transparency International-USA. However, for commenters that did not support such expanded disclosure, *see, e.g.*, the Letters of ABA; Southern Company.

[214] *See* note 27 above.

[215] *See* Release No. 33–8177 (Jan. 23, 2003).

[216] *See* revised Item 16A of Form 20–F and revised paragraph 8 to General Instruction B of Form 40–F.

[217] *See* revised Instruction 3 to Item 401(h) of Regulation S–K and revised Instruction 3 to Item 16A of Form 20–F.

[218] *See* Release No. 33–8183 (Jan. 28, 2003).

[219] In accordance with the Commission's rules on auditor independence, the issuer's audit committee is required to pre-approve audit and non-audit services for the issuer and all of its consolidated subsidiaries whether those subsidiaries are separate issuers or not.

[220] For example, some entities may be issuers as a result of registered debt outstanding.

[221] *See* note above and the accompanying text.

[222] However, as previously discussed, if the issuer is a listed issuer and its entire board constitutes the audit committee, the new SRO rules adopted under Exchange Act Rule 10A–3, including the independence requirements, will apply to the issuer's board as a whole. See note 34 above and the accompanying text.

[223] Auditors are required to communicate the following information to the issuer's audit committee: (1) All critical accounting policies and practices used by the issuer, (2) all alternative accounting treatments of financial information within GAAP related to material items that have been discussed with management, including the ramifications of the use of such alternative treatments and disclosures and the treatment preferred by the accounting firm, and (3) other material written communications between the accounting firm and management of the issuer. See Rule 2–07 of Regulation S–X [17 CFR 210.2–07].

[224] 44 U.S.C. 3501 *et seq.*

[225] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

above, we received several comment letters on the proposals. We have made several changes to the proposals in response to these comments which will reduce the incremental burden associated with the final rule and rule amendments. Accordingly, we are revising our previous burden estimates.

The titles for the collections of information are:

(1) "Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15 and Schedule 14A)" (OMB Control No. 3235–0059);

(2) "Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)" (OMB Control No. 3235–0057);

(3) "Form 10–K" (OMB Control No. 3235–0063);

(4) "Form 10–KSB" (OMB Control No. 3235–0420);

(5) "Form 20–F" (OMB Control No. 3235–0288);

(6) "Form 40–F" (OMB Control No. 3235–0381);

(7) "Regulation S–K" (OMB Control No. 3235–0071);

(8) "Regulation S–B" (OMB Control No. 3235–0417); and

(9) "Form N–CSR" (OMB Control No. 3235–0570).

These regulations and forms were adopted pursuant to the Securities Act, the Exchange Act and the Investment Company Act and set forth the disclosure requirements for periodic reports, registration statements and proxy and information statements filed by companies to ensure that investors are informed. The hours and costs associated with preparing, filing and sending these forms constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

B. Summary of Amendments

Under our amendments, we would direct SROs to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards relating to the issuer's audit committee. We are making these changes pursuant to the legislative mandate in section 10A(m) of the Exchange Act, as added by section 301 of the Sarbanes-Oxley Act. As part of our amendments, we are adopting several limited exemptions from the requirements to address the special circumstances of particular issuers. If an issuer were to avail itself of one of these exemptions, it would need to disclose this fact and its assessment of whether, and if so, how, such reliance will materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of the final rule. Such disclosure will need to appear in its proxy or information statement for shareholders' meetings at which elections for directors are held. The disclosure also will need to appear in, or be incorporated by reference into, the annual reports of these companies filed with the Commission. We are excluding issuers from these disclosure requirements for reliance on certain exemptions, such as the overlapping board exemption, the multiple listing exemption and the exemption for exchange-traded UITs, foreign government issuers and Asset-Backed Issuers and similar issuers. Collectively, we call these changes the "Exemption Disclosure."

Under our amendments, listed issuers also will be required to disclose the names of the members of their audit committee, or that their entire board of directors is acting as their audit committee, in their annual reports. Listed issuers that will be excluded from the Exemption Disclosure will also be excluded from this disclosure, except for issuers relying on the overlapping board exemption. We call these changes the "Identification Disclosure."

Finally, we are adopting several updates to existing disclosure requirements regarding audit committees to reflect our amendments and changes made by the Sarbanes-Oxley Act. We call these changes the "Disclosure Updates."

These disclosure changes are designed to alert investors of basic information about an issuer's audit committee, including the identity of the issuer's audit committee, whether the issuer is availing itself of an exemption and whether the members of the audit committee are independent. Compliance with the revised disclosure requirements is mandatory. There will be no mandatory retention period for the information disclosed, and responses to the disclosure requirements will not be kept confidential. We do not believe that the imposition of these disclosure changes will alter significantly the number of respondents that file on the affected forms.

In addition to the above, our final rule adopts, as proposed, a requirement that SROs must require a listed issuer to notify the applicable SRO promptly after an executive officer of an issuer becomes aware of any material noncompliance by the listed issuer with the proposed requirements. We believe that any burden imposed by this collection of information will be minimal. For the most part, we believe that listed issuers are already required to make the type of disclosure contemplated by this requirement, either pursuant to existing SRO rules or as a requirement of existing listing agreements. We therefore believe that any reporting and recordkeeping requirements imposed by this aspect of the requirements are "usual and customary" activities for listed issuers.[226]

C. Summary of Comment Letters and Revisions to Proposals

We requested comment on the PRA analysis contained in the Proposing Release. We received no comments in response to this request. While we have adopted the disclosure amendments substantially as proposed, some of the changes we have made in the final rules will reduce the number of listed issuers that will be required to make the required disclosure. For example, we have excluded additional issuers from the Exemption Disclosure. These changes will reduce the burden on these registrants. Accordingly, we are revising our PRA reporting and cost burden estimates.

D. Revisions to PRA Reporting and Cost Burden Estimates

As a result of the changes described above, the reporting and cost burden estimates for the collections of information have changed. For purposes of the PRA, we now estimate that the annual incremental paperwork burden for all companies to prepare the disclosure that will be required under our amendments will be approximately 401 hours of personnel time and a cost of approximately $62,400 for the services of outside professionals. We derived these estimates first by estimating the total amount of time it will take for a company to prepare the required disclosure. The Disclosure Updates simply update the disclosure requirements to reflect our amendments and changes to terminology made by the Sarbanes-Oxley Act. We do not believe these changes will change the burden required by this disclosure. The Exemption Disclosure will require only a minimal additional statement by issuers that avail themselves of one of the exemptions in Exchange Act rule 10A–3. We estimated that the Exemption Disclosure will add 0.25 hours per affected filing. The Identification Disclosure will require a company to disclose either the members of its audit committee, or a brief statement that the board of directors of the issuer is acting as the audit committee. We estimated that the Identification Disclosure will add 0.25 hours per affected filing.

[226] *See* 5 CFR 1320.3(b)(2).

The Exemption Disclosure and Identification Disclosure apply only to listed issuers. Accordingly, not all issuers will be required to make the disclosure. We estimate that there are approximately 7,250 issuers that are listed on a national securities exchange or traded on the Nasdaq National Market or the Nasdaq Smallcap Market.[227] Each of these listed issuers, except for certain issuers relying on exemptions, will be required to at least provide the basic Identification Disclosure in their annual report. Some of these listed issuers also will need to make the Exemption Disclosure.[228] We have increased the number of issuers that will not need to make the Exemption Disclosure.

Further, since the disclosure in the annual report may be incorporated by reference from an issuer's proxy or information statement, we assume that the disclosure will appear in a maximum of one report per affected issuer. As the information will appear in part III of an issuer's Form 10–K or 10–KSB (which can be incorporated by reference from the issuer's proxy statement if directors are to be elected), or in item 5 of Form N–CSR, which may also be incorporated by reference, we assume that affected issuers will follow the general practice of most issuers of including the disclosure in their proxy or information statement where directors are elected and incorporating by reference the disclosure into their annual report. Accordingly, we reduced the number of affected reports on Forms 10–K, 10–KSB and N–CSR to account for this assumption.[229] Further, we assume that the Identification Disclosure is already provided in these proxy or information statements,[230] and the burden hours for this disclosure by these filers therefore has already been assigned to Schedules 14A and 14C. Accordingly, we estimated that the Identification Disclosure will not affect the burden for Schedules 14A and 14C.

The tables below illustrate the revised incremental annual compliance burdens of the collections of information in hours and in cost for annual reports and proxy and information statements under the Exchange Act. The burden was calculated by multiplying the estimated number of affected responses by the estimated average number of hours each entity spends preparing the disclosure. We have based our estimates of the number of affected responses on the actual number of filers during the 2002 fiscal year and our estimates of the number of listed issuers that may be affected by the disclosure changes.[231] For Exchange Act annual reports and proxy and information statements, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $300 per hour.[232] The portion of the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

CALCULATION OF THE INCREMENTAL BURDEN OF THE EXEMPTION DISCLOSURE[233]

	Affected responses (A)	Incremental hours/form (B)	Total incremental burden (C)=(A)×(B)	75% company (D)=(C)×0.75	25% professional (E)=(C)×0.25	$300 professional cost (F)=(E)×300
20–F	292[234]	0.25	73	18	55	$16,500.00
40–F	7[235]	0.25	2	1	2	$600.00
10–K	54[236]	0.25	14	11	4	$1,200.00
10–KSB	22[237]	0.25	5	5	2	$600.00
14A	271[238]	0.25	68	51	17	$5,100.00
14C	17[239]	0.25	4	3	1	$300.00
Total			167	89	81	$24,300.00

CALCULATION OF THE INCREMENTAL BURDEN OF THE IDENTIFICATION DISCLOSURE

	Affected responses (A)	Incremental hours/form (B)	Total incremental burden (C)=(A)×(B)	75% company (D)=(C)×0.75	25% professional (E)=(C)×0.25	$300 professional cost (F)=(E)×300
20–F	0[240]	0.25	0	0	0	$0.00
40–F	134[241]	0.25	34	9	26	$7,800.00
10–K	1,073[242]	0.25	268	201	67	$20,100.00
10–KSB	430[243]	0.25	108	81	27	$8,100.00
N–CSR	113[244]	0.25	28	21	7	$2,100.00

[227] We derived this estimate from 2002 data from the Standard & Poors Research Insight Compustat Database and the Commission's 2001 annual report.

[228] With respect to investment companies, the independence exemptions will not be available. A general exemption will be applicable to UITs, but UITs are excluded from Exemption Disclosure requirements. We anticipate that only a negligible number of investment companies will fall under the other general exemptions. Accordingly, we anticipate that the reporting burden imposed by the Exemption Disclosure requirements on listed investment companies will be negligible.

[229] Foreign private issuers are exempt from the requirements to provide proxy materials, so we assume no adjustment to the number of affected annual reports on Forms 20–F and 40–F.

[230] *See* Item 7(d)(1) of Schedule 14A.

[231] We estimate that 5% of listed issuers will be required to provide disclosure regarding the new issuer exemption in Exchange Act Rule 10A–3(b)(iv)(A). This is based on a weighted average of the number of listed companies that went public over the last three years.

[232] This allocation of the burden is consistent with our recent PRA submissions for Exchange Act periodic reports and proxy and information statements. See, *e.g.*, Release No. 33–8144 (Nov. 4, 2002). Traditionally, we have estimated that the company carried 25% of the burden internally and 75% of the burden of preparation was carried by outside professionals retained by the company. We believe that the new allocation more accurately reflects current practice for annual reports and proxy and information statements. We estimate, however, that the traditional 25% company and 75% outside professional allocation remains applicable for Forms 20–F and 40–F because those forms are prepared by foreign private issuers who rely more heavily on outside counsel for their preparation.

CALCULATION OF THE INCREMENTAL BURDEN OF THE IDENTIFICATION DISCLOSURE—Continued

	Affected responses (A)	Incremental hours/form (B)	Total incremental burden (C)=(A)×(B)	75% company (D)=(C)×0.75	25% professional (E)=(C)×0.25	$300 professional cost (F)=(E)×300
14A	0[245]	0.25	0	0	0	$0.00
14C	0[246]	0.25	0	0	0	$0.00
Total			438	312	127	$38,100.00

Regulation S–K includes the requirements that a registrant must provide in filings under both the Securities Act and the Exchange Act. Regulation S–B includes the requirements that a small business issuer must provide in filings under the Securities Act and the Exchange Act. The disclosure changes will include changes to items under Regulation S–K and Regulation S–B. However, the filing requirements themselves are included in Form 10–K, Form 10–KSB, Form 20–F, Form 40–F, Schedule 14A and Schedule 14C. We have reflected the burden for the new requirements in the burden estimates for those firms. The items in Regulation S–K and Regulation S–B do not impose any separate burden. We previously have assigned one burden hour each to Regulations S–B and S–K for administrative convenience to reflect the fact that these regulations do not impose any direct burden on companies.

[283] For convenience, the estimated PRA hour burdens have been rounded to the nearest whole number, and the estimated PRA cost burdens have been rounded to the nearest $100. As a result of rounding, the sum of the entries in columns (D) and (E) of the tables may not exactly equal the corresponding entry in column (C).

[234] This figure is based on our estimate of the total number of affected responses by listed issuers.

[235] This figure is based on our estimate of the total number of affected responses by listed issuers.

[236] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Part III information would be incorporated by reference from a proxy or information statement.

[237] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Part III information would be incorporated by reference from a proxy or information statement.

[238] This figure is based on our estimate of the total number of affected responses by listed issuers.

[239] This figure is based on our estimate of the total number of affected responses by listed issuers.

[240] Issuers that file their annual report on Form 20–F are already required to identify the members of their audit committee.

[241] This figure is based on our estimate of the total number of affected responses by listed issuers.

[242] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Part III information would be incorporated by reference from a proxy or information statement.

[243] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Part III information would be incorporated by reference from a proxy or information statement.

[244] This figure is based on our estimate of the total number of affected responses by listed issuers, as adjusted for the number of responses where Item 5 information would be incorporated by reference from a proxy or information statement.

[245] We estimate that proxy statements on Schedule 14A are already required to identify the members of their audit committee.

[246] We estimate that information statements on Schedule 14C are already required to identify the members of their audit committee.

IV. Cost-Benefit Analysis

The amendments represent the implementation of a Congressional mandate. We recognize that implementation of the Sarbanes-Oxley Act will likely create costs and benefits to the economy. We are sensitive to the costs and benefits imposed by our rules, and we have identified certain costs and benefits of our amendments.

A. Background

Section 10A(m)(1) of the Exchange Act, as added by section 301 of the Sarbanes-Oxley Act, requires us to direct, by rule, the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards regarding issuer audit committees. The new rule must become effective by April 26, 2003, which is 270 days after the date of enactment of the Sarbanes-Oxley Act and section 10A(m) of the Exchange Act.

In general, according to the standards listed in section 10A(m) of the Exchange Act, SROs will be prohibited from listing any security of an issuer that is not in compliance with the following standards:

- Each member of the audit committee of the issuer must be independent according to specified criteria;
- The audit committee of each issuer must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee;
- Each audit committee must establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters;
- Each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties; and
- Each issuer must provide appropriate funding for the audit committee.

The amendments described in this document respond directly to the requirements in section 10A(m) of the Exchange Act. In addition, our amendments include several additional provisions, such as:

- Revising existing disclosure requirements regarding the composition of audit committees by also requiring this disclosure in annual reports of listed issuers filed with the Commission;
- Requiring a company availing itself of one of the exemptions from the requirements to disclose that it is doing so;
- Updating existing disclosure requirements regarding audit committees to reflect changes made by the amendments and the Sarbanes-Oxley Act; and
- Revising the disclosure requirements regarding the independence of audit committee financial experts for foreign private issuers.

B. Benefits

One of the main goals of the Sarbanes-Oxley Act is to improve investor confidence in the financial markets. The amendments in this document are among many required by the Sarbanes-Oxley Act.[247] They seek to help achieve the Act's goals by promoting strong, effective audit committees to perform their oversight role. By increasing the competence of audit committees, the amendments are designed to further greater accountability and to improve the quality of financial disclosure and oversight of the process by qualified and independent audit committees. Vigilant and informed oversight by a strong, effective and independent audit committee could help to counterbalance pressures to misreport results and impose increased discipline on the process of preparing financial information. Improved oversight may help detect fraudulent financial reporting earlier and perhaps thus deter it or minimize its effects. All of these benefits imply increased market efficiency due to improved information and investor confidence in the reliability of a company's financial disclosure and system of internal controls. These benefits are not readily quantifiable. Commenters overwhelmingly supported the benefits of the amendments and the importance of audit committees to the financial reporting process. Further, as the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees summarized regarding its own recommendations for audit committees:

> Improving oversight of the financial reporting process necessarily involves the imposition of certain burdens and costs on public companies. Despite these costs, the Committee believes that a more transparent and reliable financial reporting process ultimately results in a more efficient allocation of and lower cost of capital. To the extent that instances of outright fraud, as well as other practices that result in lower quality financial reporting, are reduced with improved oversight, the benefits clearly justify these expenditures of resources.[248]

In addition, we are requiring basic information about the composition of an issuer's audit committee in a listed issuer's annual report. The disclosure is currently only required in proxy or information statements where directors are being elected, and not all listed issuers are subject to the proxy rules or elect directors each year. Also, because the Exchange Act now provides that in the absence of an audit committee the entire board of directors will be considered to be the audit committee, we are requiring a listed issuer that has not or has chosen not to separately designate an audit committee to disclose that the entire board of directors is acting as the issuer's audit committee. Also, if a company relies on one of the exemptions to the requirements, some minimal additional disclosure will be required. In our final rules, we are excluding certain issuers from these disclosure requirements to reduce overall burdens consistent with investor protection. We also are making several updates to existing disclosure requirements regarding audit committees and audit committee financial experts to reflect the final rule and changes made by the Sarbanes-Oxley Act.

As a result of these disclosure changes, investors will receive more detailed information on a consistent basis about the basic composition of an issuer's audit committee. These disclosures will afford investors greater visibility about the issuer's audit committee. Providing this information on a more widespread basis also may allow investors to ask more direct and useful questions of management and directors regarding the composition and role of the audit committee. The overwhelming majority of commenters, including many representing investor groups, expressed strong support for the changes, believing they provide important information for investors.

C. Costs

SROs not in compliance with the standards will need to spend additional time and incur additional costs in modifying their rules to comply. There also may be ongoing costs in monitoring compliance with the standards and taking appropriate remedial steps. If the standards have the effect of causing companies to delist or forego listing of their securities, SROs will lose trading volume. The standards could have the effect of discouraging the formation of trading markets that specialize in particular types of issuers (*i.e.*, small issuers or foreign issuers), if those issuers found the requirements too burdensome to seek a listing on those markets. The possibility of these effects and their magnitude if they were to occur are difficult to quantify.

Issuers will need to comply with the audit committee standards if they wish to have their securities listed on a national securities exchange or national securities association. This may require one-time costs by companies to spend additional time and incur additional costs in establishing or modifying their audit committees (or full boards if they do not have a separate audit committee) to comply with the standards. There may be search costs involved in locating independent directors willing to serve on a company's audit committee, including the costs of preparing proxy statements and holding shareholder meetings to elect those directors. If the requirements reduce the pool of candidates that will be willing to serve on an issuer's audit committee, these search costs may increase. Convincing directors to serve on an audit committee may require additional compensation or increased liability insurance coverage due to the new requirements imposed on audit committees. Companies may decide to increase the size of their boards to accommodate new directors meeting the new requirements. If additional independent directors were added to the board, or if existing non-independent directors are replaced, this may increase the percentage of the board that is independent from management. If a company had previously received services from an audit committee member of the type that will be prohibited under the final rule, the company may incur costs in locating an alternative provider for these services.

There also may be ongoing costs in monitoring compliance with the standards or maintaining any additional procedures established by the standards, such as the procedures for handling complaints. To the extent the audit committee incurs expenses or engages independent counsel or other advisors where it could not do so previously, there will be additional costs for the payment for such expenses and advisors. Companies also may incur additional ongoing expenses if they decide to increase the size of their boards in response to the requirements. In addition, the incremental cost of future director searches to replace an audit committee member may likely be higher as a result of the additional independence requirements.

We believe that as a result of many current SRO listing standards,[249] the Commission's audit committee disclosure requirements adopted in 1999,[250] the prior disclosures related to the involvement of the audit committee in recommending or approving changes in auditors and the resolution of disagreements between management and the auditors,[251] and professional standards that require communications between the auditor and audit committees on auditor independence issues,[252] many companies currently

[247] See note above.

[248] See note above.

[249] See note 24 above.

[250] See note 25 above.

[251] See, e.g., Item 4 of Form 8–K [17 CFR 249.308] and Item 304 of Regulation S–K [17 CFR 229.304].

[252] See, e.g., AICPA, "Communications with Audit Committees," Statements of Auditing Standards ("SAS") 61, as amended by SAS 89 and

Continued

have audit committees. However, these audit committees may not meet all of the requirements of the final rule. Smaller companies may constitute a larger representative share of issuers that do not meet the requirements, particularly the independence requirements. However, we recognize that because the requirements apply only to listed issuers, the quantitative listing standards applicable to listed securities, such as minimum revenue, market capitalization and shareholder equity requirements, will limit the size of issuers that will be affected by the requirements. Nevertheless, we are providing an additional transition period for smaller issuers to alleviate some of the potential burdens they may face. We are also providing an additional transition period for foreign issuers. Companies that do not currently meet the requirements will face all of the costs described above. However, these entities, because they currently lack the protections provided by the standards, may bear a disproportionately greater risk of fraudulent financial reporting, and thus may reap proportionately greater benefits.

We also are adopting limited exemptions to the requirements, such as an exemption for multiple listings, a limited exemption for new public companies and exemptions for certain foreign issuers, to alleviate some of the burdens companies may face where consistent with investor protection. Commenters expressed overwhelming support for these exemptions which will alleviate unnecessary costs and burdens companies may face without any attendant loss in investor protection. Companies that perceive the requirements as too onerous could be dissuaded from seeking or maintaining a listing for their securities, which could impact capital formation and negatively impact the transparency and liquidity of its securities.

We requested comment on the type, amount and duration of these costs. We received no specific data in response to our request. We have no reliable basis for estimating the actual number of companies that will face increased costs as a result of Exchange Act Section 10A(m) or the amount of such costs.

With respect to the disclosure changes regarding audit committees, issuers subject to the proxy rules are already required to compile most of this information for proxy or information statements where directors are being elected. Foreign private issuers that file their annual reports on Form 20-F also are already required to identify the members of their audit committee. The disclosure regarding if a listed issuer is availing itself of an exemption to the requirements should result in minimal additional disclosure. Using estimates derived from our Paperwork Reduction Act analysis, we estimated that the incremental impact of our disclosure changes will result in a total cost of $112,525 for all affected companies.[253]

In formulating the final amendments, we considered several regulatory alternatives that would be consistent with the specific mandate required by section 10A(m) of the Exchange Act. For example, we considered the propriety of excluding all foreign issuers, issuers of a particular size or additional classes of securities, but we determined that such an exclusion would not be appropriate or consistent with the policies underlying the Sarbanes-Oxley Act. The overwhelming majority of commenters agreed with this approach. We think that improvements in the financial reporting process for all listed issuers are important for promoting investor confidence in our markets.

We also considered whether we should provide objective guidance for determining who is an "affiliated person" for purposes of the independence requirement. While the majority of commenters supported a safe harbor, some did not want a safe harbor for fear any thresholds in the safe harbor would be viewed as a ceiling that would disqualify a director from serving on the audit committee. In considering the uncertainty that may arise in determining whether a person is an "affiliated person," we have adopted a safe harbor from the definition of affiliate for non-investment companies. However, to add clarity we have added explicit language specifying that the thresholds in the safe harbor are not designed to be viewed as an upper limit on permissible levels.

We have also adopted other limited exemptions to alleviate some of the burdens companies may face where consistent with the Sarbanes-Oxley Act and investor protection. We have expanded these exemptions in a number of instances, where consistent with the Sarbanes-Oxley Act and investor protection, to alleviate unnecessary burdens and expenses. We believe the final rule reflects an appropriate balance between investors and investor groups who advocated more stringent requirements and issuers and their representatives who requested a much larger expansion of the exemptions.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 23(a)(2) of the Exchange Act[254] requires us, when adopting rules under the Exchange Act, to consider the impact that any new rule would have on competition. In addition, section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The amendments represent the implementation of a Congressional mandate. They are intended to increase the independence and effectiveness of listed company audit committees. We anticipate these requirements will enhance the proper functioning of the capital markets by increasing the quality and accountability of financial reporting and restoring investor confidence. This increases the competitiveness of companies participating in the U.S. capital markets. However, the requirements relate only to companies listed on a national securities exchange or national securities association. Competitors not subject to the standards specified in section 10A(m) of the Exchange Act may be subject to fewer corporate governance burdens. Similarly, to the extent foreign exchanges or other markets do not impose these standards, competitors could, all things being equal, migrate to those markets to avoid compliance. This could cause U.S. exchanges and securities associations to lose trading volume and investors to lose liquidity or the benefits of trading in a U.S. market. Competitors and markets not subject to the standard, however, also may suffer from decreased investor confidence compared to those that do comply with the new standards.

Section 2(b) of the Securities Act,[255] section 3(f) of the Exchange Act[256] and section 2(c) of the Investment Company Act[257] require us, when engaging in rulemaking where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. The amendments are designed to enhance the quality and accountability of the financial reporting process and may help increase investor confidence, which implies increased efficiency and competitiveness of the U.S. capital markets. Increased market efficiency and investor confidence also may encourage more efficient capital formation. As noted above, however, the requirements could have certain indirect negative effects, such as inconsistent application across all competitors. In addition, the requirements, while providing great flexibility for implementation, do remove a certain amount of individual control over the corporate governance process, which could have the possible effect of stifling more efficient approaches from being implemented if they were to develop.

If a company found the requirements too onerous, it could be dissuaded from accessing the U.S. public capital markets, which could impact capital formation. The possibility of these effects and their magnitude if they were to occur are difficult to quantify. We are adopting several limited exemptions from the requirements to alleviate some of the burdens companies may face where consistent with investor protection. For example, the limited exemption for new public companies is intended to counteract any disincentive the requirements may have on a company's willingness to access the public capital markets.

We requested comments on these analyses in the Proposing Release. We received no comments in response to these requests.

VI. Final Regulatory Flexibility Analysis

This Final Regulatory Flexibility Analysis, or FRFA, has been prepared in accordance with the Regulatory Flexibility Act.[258] This FRFA involves new rules and amendments to direct the national securities exchanges and national securities associations to prohibit the listing of any security of an issuer that is not in compliance with several enumerated standards relating to the issuer's audit committee. An Initial Regulatory Flexibility Analysis ("IRFA") was prepared in accordance with the Regulatory Flexibility Act[259] in conjunction with the Proposing Release. The Proposing Release included the IRFA and solicited comments on it.

A. Need for the Amendments

We are adopting new Exchange Act rule 10A–3 to comply with the mandate of the Sarbanes-Oxley Act and new section 10A(m)(1) of the Exchange Act. The amendments are intended to enhance investor confidence in the fairness and integrity of the securities markets by increasing the competence and independence, and hence effectiveness, of listed company audit committees. In addition, the amendments change current disclosure requirements regarding audit committees to increase the transparency of these committees. We believe that these amendments will help to improve the quality and accountability of financial disclosure and oversight of the process by qualified and independent audit committees.

B. Significant Issues Raised by Public Comment

We received no comments in response to the IRFA.

C. Small Entities Subject to the Amendments

The amendments will directly affect the national securities exchanges that trade listed securities, none of which is a small entity as defined by Commission rules. Exchange Act rule 0–10(e)[260] states that the term "small business," when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Exchange Act rule 11Aa3–1.[261] The amendments also will directly affect national securities associations. No affected national securities association is a small entity, as defined by 13 CFR 121.201.

The amendments may have an indirect effect on some small entities. We also have defined the term "small business" in Exchange Act rule 0–10(a) to be an issuer, other than an investment company, that, on the last day of its most recent fiscal year, had total assets of $5 million or less and when used with reference to an investment company, an investment company together with other investment companies in the same group of related investment companies with net assets of $50 million or less as of the end of its most recent fiscal year.[262] Under these limits, depending on other restrictions imposed by the various SROs, such as quantitative listing standards, a small entity may be listed on a national securities exchange or a national securities association. We estimate that 7,250 issuers are listed on a national securities exchange or traded on Nasdaq, and we estimate that 6,640 of these issuers are not investment companies.[263] We estimate that less than 225, or approximately 3%, of the issuers that are not investment companies,[264] and less than 25, or approximately 4% of the issuers that are investment companies,[265] are "small entities" for purposes of the Regulatory Flexibility Act that possibly could be affected by the amendments.

D. Reporting, Recordkeeping, and Other Compliance Requirements

Under the amendments, national securities exchanges and national securities associations are directed to prohibit the listing of any security of an issuer, both large and small, that is not in compliance with certain enumerated standards regarding the issuer's audit committee. These standards relate to: The independence of audit committee members; the audit committee's responsibility to select and oversee the issuer's independent accountant; procedures for handling complaints regarding the issuer's accounting practices; the authority of the audit committee to engage advisors; and funding for the independent auditor and any outside advisors engaged by the audit committee.

Small entities will need to comply with these standards if they wish to have their securities listed on a national securities exchange or a national securities association. The rules will not require an entity to maintain an audit committee. However, the Exchange Act now provides that in the absence of an audit committee, the entire board of directors will be considered to be the audit committee. There are reasons to believe that many small entities currently have separately-designated audit committees.[266] However, not all of the audit committees of these small entities may comply with the new requirements. A small entity whose board or audit committee does not comply with the new requirements will

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90; AICPA, Codification of Statements on Auditing Standards ("AU°) § 380; Independence Standards Board, "Independence Discussion with Audit Committees," Independence Standard No. 1 (Jan. 1999).

253 The estimate is based on the burden hour estimates calculated under the Paperwork Reduction Act. For purposes of the Paperwork Reduction Act, we estimate that the additional disclosure will result in 401 internal burden hours and $62,400 in external costs. Assuming a cost of $125/hour for in-house professional staff, the total cost for the internal burden hours would be $50,125. Hence the aggregate cost estimate is $112,525 ($50,125 + 62,400). The $125/hour cost estimate is based on data obtained from *The SIA Report on Management and Professional Earnings in the Securities Industry (Oct. 2001).*

254 15 U.S.C. 78w(a)(2).

255 17 U.S.C. 77b(b).

256 15 U.S.C. 78c(f).

257 15 U.S.C. 80a–2(c).

258 5 U.S.C. 601.

259 5 U.S.C. 603.

260 17 CFR 240.0–10(e).

261 17 CFR 240.11Aa3–1.

262 *See* Exchange Act rule 0–10(a).

263 *See* note above.

264 We derived this estimate from the Standard & Poors Research Insight Compustat Database.

265 We derived this estimate from information compiled by Commission staff.

266 *See, e.g.*, NACD, *2001–2002 Public Company Governance Survey* (Nov. 2001).

need to spend additional time and incur additional costs in modifying their audit committees or board to comply with the standards. Small entities may face particular difficulties in recruiting directors that meet the independence requirements..

There also may be ongoing costs in monitoring compliance with the standards or maintaining any additional procedures established by the standards, such as the procedures for handling complaints. To the extent the audit committee incurs expenses or engages independent counsel or other advisors where it could not do so previously, there will be additional costs for the payment of these expenses and advisors. Due to the small size of these small entities, these additional costs may have a larger proportional impact on these entities than larger listed issuers.

In addition, the small entity may need to make additional disclosure about its audit committee in its annual report as well as its proxy or information statement if directors are being elected. This may require additional costs in order to collect, record and report the information to be disclosed under the rules. Small entities subject to the proxy rules are already required to disclose most of the information affected by our amendments in proxy or information statements where directors are being elected. This information should be readily available to small entities. Further, the disclosure regarding any exemption from the listing standards should entail only a minimal additional statement.

We have little data to determine how many small entities do not already comply with the final rules and amendments or how much it would cost to comply. We recognize that because the amendments apply only to listed issuers, the quantitative listing standards applicable to listed securities, such as minimum revenue, market capitalization and shareholder equity requirements, will limit the size and number of issuers that will be affected by the requirements.

E. Agency Action To Minimize Effect on Small Entities

The Regulatory Flexibility Act directs us to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the requirements.

The coverage of section 10A(m) of the Exchange Act, as added by Congress in section 301 of the Sarbanes-Oxley Act, makes no distinction based on an issuer's size. We think that improvements in the financial reporting process for listed issuers of all sizes are important for promoting investor confidence in our markets. For example, a 1999 report commissioned by the organizations that sponsored the Treadway Commission found that the incidence of financial fraud was greater in small companies.[267] However, we are sensitive to the costs and burdens that will be faced by small entities. We have endeavored through the amendments to alleviate the regulatory burden on all listed issuers, including the small proportion of small entities that will be affected, while meeting our regulatory objectives.

We believe that a blanket exemption for small entities from coverage of the requirements is not appropriate and inconsistent with the policies underlying the Sarbanes-Oxley Act. Similarly, we believe that different compliance requirements for small entities also would interfere with achieving the primary goal of the amendments to increase the competency and effectiveness of audit committees for all companies with listed securities. The majority of commenters generally agreed with this approach and did not support lesser standards for smaller issuers overall. These commenters did not believe the requirements will impose a disproportionate burden on small issuers. We recognize that because the requirements apply only to listed issuers, the quantitative listing standards applicable to listed securities, such as minimum revenue, market capitalization and shareholder equity requirements, already serve somewhat as a limit on the size of issuers that will be affected by the requirements.

Other commenters, however, were concerned that smaller issuers may have particular difficulty locating qualified audit committee candidates that will meet the independence criteria, especially given the implementation period proposed by the Commission. While these commenters advocated various approaches, such as an exceptional and limited circumstances exemption for smaller issuers or SRO authority to exempt individual small issuers on a case-by-case basis, most agreed that an additional implementation period would be appropriate for these issuers. We are sensitive to the possible implication for smaller issuers and for SROs that would like to specialize in securities of these issuers. The final rule provides an extended compliance period for listed issuers that are small business issuers. In addition, the modifications to several of the other exemptions in the final rule, such as the overlapping board exemption and the new issuer exemption, should provide additional flexibility to small and new issuers in meeting the requirements of the rule. Our approach of not mandating specific procedures for the auditor responsibility requirement and the complaint procedures requirement should give issuers additional flexibility in meeting these requirements. Given the fact that the requirements will impact such a small number of small entities, we are not aware of how to further clarify, consolidate or simplify these amendments for small entities.

The amendments use performance standards in a number of respects. As noted above, we are not specifying the specific procedures or arrangements an issuer or audit committee must develop to comply with the standards. We do provide design standards regarding audit committee member independence, as these are the standards we are directed to implement by Congress. Accordingly, we believe that design standards are necessary to achieve the objectives of the statutory mandate. We do have the authority under section 10A(m)(3)(C) to exempt particular relationships with respect to audit committee members, although, for the reasons discussed above, we are not using that authority at this time for small entities.

[267] *See* note above.

VII. Effective Date

The final rules and amendments are effective on April 25, 2003. The Administrative Procedure Act, or APA, generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective.[268] This requirement, however, does not apply if the agency finds good cause for making the rule effective sooner.[269] The Commission believes that it is appropriate to waive the full 30-day advance publication of the new rule and amendments. The Sarbanes-Oxley Act requires the rules to be effective by April 26, 2003. We have been working with the SROs to implement the statutory requirement in an orderly fashion. However, because of the extended compliance dates, a notice period of less than 30 days should not prejudice anyone. Under the final rule and amendments, SROs are not required to submit proposals implementing the directive in Exchange Act rule 10A–3 until July 15, 2003. The rules based on those proposals must be approved by the Commission by December 1, 2003. Listed issuers do not have to comply with the new listing rules until their first annual shareholders meeting after January 15, 2004, at the earliest, and small business issuers and foreign private issuers will have additional time to comply. Issuers need not comply with the disclosure changes until reports covering periods ending on or after (or proxy or information statements for actions occurring on or after) the compliance date for the listing standards applicable to the listed issuer. Because of this delay before any action is required as a result of the rules, the Commission finds good cause to make the new rules and amendments effective on April 25, 2003.

[268] 5 U.S.C. 553(d).

[269] *Id.*

VIII. Statutory Authority and Text of Rule Amendments

The amendments contained in this document are being adopted under the authority set forth in sections 2,[270] 6,[271] 7,[272] 8,[273] 10,[274] 17[275] and 19[276] of the Securities Act, sections 3(b), 10A, 12, 13, 14, 15, 23 and 36[277] of the Exchange Act, sections 8,[278] 20,[279] 24(a),[280] 30[281] and 38[282] of the Investment Company Act of 1940 and sections 3 and 301 of the Sarbanes-Oxley Act.

Text of Amendments

List of Subjects

17 CFR Parts 228, 229, 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Part 274

Reporting and recordkeeping requirements, Securities, Investment Companies.

[270] 15 U.S.C. 77b.
[271] 15 U.S.C. 77f.
[272] 15 U.S.C. 77g.
[273] 15 U.S.C. 77h.
[274] 15 U.S.C. 77j.
[275] 15 U.S.C. 77q.
[276] 15 U.S.C. 77s.
[277] 17 U.S.C. 78mm.
[278] 15 U.S.C. 80a-8.
[279] 15 U.S.C. 80a-20.
[280] 15 U.S.C. 80a-24(a).
[281] 15 U.S.C. 80a-29.
[282] 15 U.S.C. 80a-37.

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 1. The general authority citation for Part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g; 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11 and 7202.

* * * * *

■ 2. Amend § 228.401 by adding paragraph (f) to read as follows:

§ 228.401 (Item 401) Directors, Executive Officers, Promoters and Control Persons.

* * * * *

(f) *Identification of the audit committee.* (1) If you meet the following requirements, provide the disclosure in paragraph (f)(2) of this section:

(i) You are a listed issuer, as defined in § 240.10A–3 of this chapter;

(ii) You are filing either an annual report on Form 10–KSB (17 CFR 249.310b), or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) if action is to be taken with respect to the election of directors; and

(iii) You are neither:

(A) A subsidiary of another listed issuer that is relying on the exemption in § 240.10A–3(c)(2) of this chapter; nor

(B) Relying on any of the exemptions in § 240.10A–3(c)(4) through (c)(7) of this chapter.

(2)(i) State whether or not the small business issuer has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the small business issuer has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the small business issuer's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(ii) If applicable, provide the disclosure required by § 240.10A–3(d) of this chapter regarding an exemption from the listing standards for audit committees.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 3. The general authority citation for Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78u–5, 78w, 78*ll*(d), 78mm, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 4. Amend § 229.401 by:
■ a. Revising Instruction 3 to paragraph (h); and
■ b. Adding paragraph (i).

The additions and revisions read as follows:

§ 229.401 (Item 401) Directors, executive officers, promoters and control persons.

* * * * *

Instructions to Item 401(h)

* * * * *

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this Item 401(h), the term *board of directors* means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of § 240.10A–3(c)(3), for purposes of this Item 401(h), the term *board of directors* means the issuer's board of auditors (or similar body) or statutory auditors, as applicable. Also, in the case of a foreign private issuer, the term generally accepted accounting principles in paragraph (h)(2)(i) of this Item means the body of *generally accepted accounting principles* used by that issuer in its primary financial statements filed with the Commission.

* * * * *

(i) *Identification of the audit committee.* (1) If you meet the following requirements, provide the disclosure in paragraph (i)(2) of this section:

(i) You are a listed issuer, as defined in § 240.10A–3 of this chapter;

(ii) You are filing either an annual report on Form 10–K or 10–KSB (17 CFR 249.310 or 17 CFR 249.310b), or a proxy statement or information statement pursuant to the Exchange Act (15 U.S.C. 78a *et seq.*) if action is to be taken with respect to the election of directors; and

(iii)You are neither:

(A) A subsidiary of another listed issuer that is relying on the exemption in § 240.10A–3(c)(2) of this chapter; nor

(B) Relying on any of the exemptions in § 240.10A–3(c)(4) through (c)(7) of this chapter.

(2)(i)State whether or not the registrant has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(ii) If applicable, provide the disclosure required by § 240.10A–3(d) of this chapter regarding an exemption from the listing standards for audit committees.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The authority citation for Part 240 is revised to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7202, unless otherwise noted.

* * * * *

■ 6. Add § 240.10A–3 to read as follows:

§ 240.10A–3 Listing standards relating to audit committees.

(a) Pursuant to section 10A(m) of the Act (15 U.S.C. 78j–1(m)) and section 3 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7202):

(1) *National securities exchanges.* The rules of each national securities exchange registered pursuant to section 6 of the Act (15 U.S.C. 78f) must, in accordance with the provisions of this section, prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.

(2) *National securities associations.* The rules of each national securities association registered pursuant to section 15A of the Act (15 U.S.C. 78o–3) must, in accordance with the provisions of this section, prohibit the initial or continued listing in an automated inter-dealer quotation system of any security of an issuer that is not in compliance with the requirements of any portion of paragraph (b) or (c) of this section.

(3) *Opportunity to cure defects.* The rules required by paragraphs (a)(1) and (a)(2) of this section must provide for appropriate procedures for a listed issuer to have an opportunity to cure any defects that would be the basis for a prohibition under paragraph (a) of this section, before the imposition of such prohibition. Such rules also may provide that if a member of an audit committee ceases to be independent in accordance with the requirements of this section for reasons outside the member's reasonable control, that person, with notice by the issuer to the applicable national securities exchange or national securities association, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.

(4) *Notification of noncompliance.* The rules required by paragraphs (a)(1) and (a)(2) of this section must include a requirement that a listed issuer must notify the applicable national securities exchange or national securities association promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of this section.

(5) *Implementation.* (i) The rules of each national securities exchange or national securities association meeting the requirements of this section must be operative, and listed issuers must be in compliance with those rules, by the following dates:

(A) July 31, 2005 for foreign private issuers and small business issuers (as defined in § 240.12b–2); and

(B) For all other listed issuers, the earlier of the listed issuer's first annual shareholders meeting after January 15, 2004, or October 31, 2004.

(ii) Each national securities exchange and national securities association must provide to the Commission, no later than July 15, 2003, proposed rules or rule amendments that comply with this section.

(iii) Each national securities exchange and national securities association must have final rules or rule amendments that comply with this section approved by the Commission no later than December 1, 2003.

(b) *Required standards*—(1) *Independence.* (i) Each member of the audit committee must be a member of the board of directors of the listed issuer, and must otherwise be independent; provided that, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies.

(ii) *Independence requirements for non-investment company issuers.* In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is not an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that, unless the rules of the national securities exchange or national securities association provide otherwise, compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or

(B) Be an affiliated person of the issuer or any subsidiary thereof.

(iii) *Independence requirements for investment company issuers.* In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that, unless the rules of the national securities exchange or national securities association provide otherwise, compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or

(B) Be an "interested person" of the issuer as defined in section 2(a)(19) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(19)).

(iv) *Exemptions from the independence requirements.*

(A) For an issuer listing securities pursuant to a registration statement under section 12 of the Act (15 U.S.C. 78l), or for an issuer that has a registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) covering an initial public offering of securities to be listed by the issuer, where in each case the listed issuer was not, immediately prior to the effective date of such registration statement, required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)):

(*1*) All but one of the members of the listed issuer's audit committee may be exempt from the independence requirements of paragraph (b)(1)(ii) of this section for 90 days from the date of effectiveness of such registration statement; and

(*2*) A minority of the members of the listed issuer's audit committee may be exempt from the independence requirements of paragraph (b)(1)(ii) of this section for one year from the date of effectiveness of such registration statement.

(B) An audit committee member that sits on the board of directors of a listed issuer and an affiliate of the listed issuer is exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if the member, except for being a director on each such board of directors, otherwise meets the independence requirements of paragraph (b)(1)(ii) of this section for each such entity, including the receipt of only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of each such entity.

(C) An employee of a foreign private issuer who is not an executive officer of the foreign private issuer is exempt from the requirements of paragraph (b)(1)(ii) of this section if the employee is elected or named to the board of directors or audit committee of the foreign private issuer pursuant to the issuer's governing law or documents, an employee collective bargaining or similar agreement or other home country legal or listing requirements.

(D) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:

(*1*) The member is an affiliate of the foreign private issuer or a representative of such an affiliate;

(*2*) The member has only observer status on, and is not a voting member or the chair of, the audit committee; and

(*3*) Neither the member nor the affiliate is an executive officer of the foreign private issuer.

(E) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:

(*1*) The member is a representative or designee of a foreign government or foreign governmental entity that is an affiliate of the foreign private issuer; and

(*2*) The member is not an executive officer of the foreign private issuer.

(F) In addition to paragraphs (b)(1)(iv)(A) through (E) of this section, the Commission may exempt from the requirements of paragraphs (b)(1)(ii) or (b)(1)(iii) of this section a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances.

(2) *Responsibilities relating to registered public accounting firms.* The audit committee of each listed issuer, in its capacity as a committee of the board of directors, must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee.

(3) *Complaints.* Each audit committee must establish procedures for:

(i) The receipt, retention, and treatment of complaints received by the listed issuer regarding accounting, internal accounting controls, or auditing matters; and

(ii) The confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.

(4) *Authority to engage advisers.* Each audit committee must have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

(5) *Funding.* Each listed issuer must provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of:

(i) Compensation to any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer;

(ii) Compensation to any advisers employed by the audit committee under paragraph (b)(4) of this section; and

(iii) Ordinary administrative expenses of the audit committee that are necessary or appropriate in carrying out its duties.

(c) *General exemptions.* (1) At any time when an issuer has a class of securities that is listed on a national securities exchange or national securities association subject to the requirements of this section, the listing of other classes of securities of the listed issuer on a national securities exchange or national securities association is not subject to the requirements of this section.

(2) At any time when an issuer has a class of common equity securities (or similar securities) that is listed on a national securities exchange or national securities association subject to the requirements of this section, the listing of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the issuer (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) is not subject to the requirements of this section.

(3) The listing of securities of a foreign private issuer is not subject to the requirements of paragraphs (b)(1) through (b)(5) of this section if the foreign private issuer meets the following requirements:

(i) The foreign private issuer has a board of auditors (or similar body), or has statutory auditors, established and selected pursuant to home country legal or listing provisions expressly requiring or permitting such a board or similar body;

(ii) The board or body, or statutory auditors is required under home country legal or listing requirements to be either:

(A) Separate from the board of directors; or

(B) Composed of one or more members of the board of directors and one or more members that are not also members of the board of directors;

(iii) The board or body, or statutory auditors, are not elected by management of such issuer and no executive officer of the foreign private issuer is a member of such board or body, or statutory auditors;

(iv) Home country legal or listing provisions set forth or provide for standards for the independence of such board or body, or statutory auditors, from the foreign private issuer or the management of such issuer;

(v) Such board or body, or statutory auditors, in accordance with any applicable home country legal or listing requirements or the issuer's governing documents, are responsible, to the extent permitted by law, for the appointment, retention and oversight of the work of any registered public accounting firm engaged (including, to the extent permitted by law, the

resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer; and

(vi) The audit committee requirements of paragraphs (b)(3), (b)(4) and (b)(5) of this section apply to such board or body, or statutory auditors, to the extent permitted by law.

(4) The listing of a security futures product cleared by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) or that is exempt from the registration requirements of section 17A pursuant to paragraph (b)(7)(A) of such section is not subject to the requirements of this section.

(5) The listing of a standardized option, as defined in § 240.9b–1(a)(4), issued by a clearing agency that is registered pursuant to section 17A of the Act (15 U.S.C. 78q–1) is not subject to the requirements of this section.

(6) The listing of securities of the following listed issuers are not subject to the requirements of this section:

(i) Asset-Backed Issuers (as defined in § 240.13a–14(g) and § 240.15d–14(g));

(ii) Unit investment trusts (as defined in 15 U.S.C. 80a–4(2)); and

(iii)Foreign governments (as defined in § 240.3b–4(a)).

(7) The listing of securities of a listed issuer is not subject to the requirements of this section if:

(i) The listed issuer, as reflected in the applicable listing application, is organized as a trust or other unincorporated association that does not have a board of directors or persons acting in a similar capacity; and

(ii) The activities of the listed issuer that is described in paragraph (c)(7)(i) of this section are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(d) *Disclosure.* Any listed issuer availing itself of an exemption from the independence standards contained in paragraph (b)(1)(iv) of this section (except paragraph (b)(1)(iv)(B) of this section), the general exemption contained in paragraph (c)(3) of this section or the last sentence of paragraph (a)(3) of this section, must:

(1) Disclose its reliance on the exemption and its assessment of whether, and if so, how, such reliance would materially adversely affect the ability of the audit committee to act independently and to satisfy the other requirements of this section in any proxy or information statement for a meeting of shareholders at which directors are elected that is filed with the Commission pursuant to the requirements of section 14 of the Act (15 U.S.C. 78n); and

(2) Disclose the information specified in paragraph (d)(1) of this section in, or incorporate such information by reference from such proxy or information statement filed with the Commission into, its annual report filed with the Commission pursuant to the requirements of section 13(a) or 15(d) of the Act (15 U.S.C. 78m(a) or 78o(d)).

(e) *Definitions.* Unless the context otherwise requires, all terms used in this section have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions apply for purposes of this section:

(1)(i) The term *affiliate* of, or a person *affiliated* with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(ii)(A) A person will be deemed not to be in control of a specified person for purposes of this section if the person:

(*1*) Is not the beneficial owner, directly or indirectly, of more than 10% of any class of voting equity securities of the specified person; and

(*2*) Is not an executive officer of the specified person.

(B) Paragraph (e)(1)(ii)(A) of this section only creates a safe harbor position that a person does not control a specified person. The existence of the safe harbor does not create a presumption in any way that a person exceeding the ownership requirement in paragraph (e)(1)(ii)(A)(*1*) of this section controls or is otherwise an affiliate of a specified person.

(iii) The following will be deemed to be affiliates:

(A) An executive officer of an affiliate;

(B) A director who also is an employee of an affiliate;

(C) A general partner of an affiliate; and

(D) A managing member of an affiliate.

(iv) For purposes of paragraph (e)(1)(i) of this section, dual holding companies will not be deemed to be affiliates of or persons affiliated with each other by virtue of their dual holding company arrangements with each other, including where directors of one dual holding company are also directors of the other dual holding company, or where directors of one or both dual holding companies are also directors of the businesses jointly controlled, directly or indirectly, by the dual holding companies (and, in each case, receive only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of the dual holding companies or any entity that is jointly controlled, directly or indirectly, by the dual holding companies).

(2) In the case of foreign private issuers with a two-tier board system, the term *board of directors* means the supervisory or non-management board.

(3) In the case of a listed issuer that is a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term *board of directors* means the board of directors of the managing general partner, managing member or equivalent body.

(4) The term *control* (including the terms *controlling, controlled by* and under *common control with*) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(5) The term *dual holding companies* means two foreign private issuers that:

(i) Are organized in different national jurisdictions;

(ii) Collectively own and supervise the management of one or more businesses which are conducted as a single economic enterprise; and

(iii) Do not conduct any business other than collectively owning and supervising such businesses and activities reasonably incidental thereto.

(6) The term *executive officer* has the meaning set forth in § 240.3b–7.

(7) The term *foreign private issuer* has the meaning set forth in § 240.3b–4(c).

(8) The term *indirect* acceptance by a member of an audit committee of any consulting, advisory or other compensatory fee includes acceptance of such a fee by a spouse, a minor child or stepchild or a child or stepchild sharing a home with the member or by an entity in which such member is a partner, member, an officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary of the issuer.

(9) The terms *listed* and *listing* refer to securities listed on a national securities exchange or listed in an automated inter-dealer quotation system of a national securities association or to issuers of such securities.

Instructions to § 240.10A–3

1. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with, and do not affect the application of, any requirement or ability under a listed issuer's governing law or documents or other home country legal or listing provisions that requires or permits shareholders to ultimately vote on, approve or ratify such requirements. The requirements instead relate to the assignment of responsibility as between the audit committee and management. In such an instance, however, if the listed issuer provides a recommendation or nomination regarding such responsibilities to shareholders, the audit committee of the listed issuer, or body performing similar functions, must be responsible for making the recommendation or nomination.

2. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v), (c)(3)(vi) and Instruction 1 of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that prohibits the full board of directors from delegating such responsibilities to the listed issuer's audit committee or limits the degree of such delegation. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law, including submitting nominations or recommendations to the full board.

3. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that vests such responsibilities with a government entity or tribunal. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law.

4. For purposes of this section, the determination of a person's beneficial ownership must be made in accordance with § 240.13d–3.

■ 7. Amend § 240.14a–101 by:

■ a. Adding a sentence to the end of paragraph (d)(1) of Item 7;

■ b. Revising paragraph (d)(3)(iv) of Item 7; and

■ c. Revising the introductory text of paragraph (b)(14) of Item 22.

The additions and revisions read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

* * * * *

Item 7. Directors and executive officers.

* * *

(d)(1) * * * Such disclosure need not be provided to the extent it is duplicative of disclosure provided in accordance with Item 401(i) of Regulation S–K (§ 229.401(i) of this chapter).

* * * * *

(3) * * *

(iv)(A) If the registrant is a listed issuer, as defined in § 240.10A–3:

(*1*) Disclose whether the members of the audit committee are independent, as independence for audit committee members is defined in the listing standards applicable to the listed issuer. If the registrant does not have a separately designated audit committee, or committee performing similar functions, the registrant must provide the disclosure with respect to all members of its board of directors.

(*2*) If the listed issuer's board of directors determines, in accordance with the listing standards applicable to the listed issuer, to appoint a director to the audit committee who is not independent (apart from the requirements in § 240.10A–3) because of exceptional or limited or similar circumstances, disclose the nature of the relationship that makes that individual not independent and the reasons for the board of directors' determination.

(B) If the registrant, including a small business issuer, is not a listed issuer, disclose whether the registrant has an audit committee established in accordance with section 3(a)(58)(A) of the Act (15 U.S.C. 78c(a)(58)(A)) and, if so, whether the members of the committee are independent. In determining whether a member is independent, the registrant must use a definition for audit committee member independence of a national securities exchange registered pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o–3(a)) that has been approved by the Commission (as such definition may be modified or supplemented), and state which definition was used. Whichever definition is chosen must be applied consistently to all members of the audit committee.

* * * * *

Item 22. Information required in investment company proxy statement.

* * *

(b) * * *

(14) State whether or not the Fund has a separately designated audit committee established in accordance with section 3(a)(58)(A) of the Act (15 U.S.C. 78c(a)(58)(A)). If the entire board of directors is acting as the Fund's audit committee as specified in section 3(a)(58)(B) of the Act (15 U.S.C. 78c(a)(58)(B)), so state. If applicable, provide the disclosure required by § 240.10A–3(d) regarding an exemption from the listing standards for audit committees. Identify the other standing committees of the Fund's board of directors, and provide the following information about each committee, including any separately designated audit committee:

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 8. The general authority citation for Part 249 is revised to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, and 7202, unless otherwise noted.

* * * * *

■ 9. Amend Form 20–F (referenced in § 249.220f) by:

■ a. Revising the Instruction to Item 6.C;

■ b. Revising paragraph (a)(2) of Item 16A;

■ c. Revising instruction 3 to Item 16A; and

■ d. Adding Item 16D.

The additions and revisions read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 6. Directors, Senior Management and Employees

* * * * *

Instructions to Item 6.C

1. The term "plan" is used very broadly and includes any type of arrangement for compensation, even if the terms of the plan are not contained in a formal document.

2. If the company is a listed issuer as defined in Exchange Act Rule 10A–3 (17 CFR 240.10A–3) and its entire board of directors is acting as the company's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

3. If the company has a board of auditors or similar body, as described in Exchange Act Rule 10A–3(c)(3) (17 CFR 240.10A–3(c)(3)), the disclosure required by this Item 6.C. with regard to the company's audit committee can be provided with respect to the company's board of auditors, or similar body.

* * * * *

Item 16A. Audit Committee Financial Expert

* * * * *

(a)(1) * * *

(2) If the registrant provides the disclosure required by paragraph (a)(1)(i) of this Item, it must disclose the name of the audit committee financial expert and whether that person is *independent*, as that term is defined in the listing standards applicable to the registrant if the registrant is a listed issuer, as defined in 17 CFR 240.10A–3. If the registrant is not a listed issuer, it must use a definition of audit committee member independence of a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)) that has been approved by the Commission (as such definition may be modified or supplemented) in determining whether its audit committee financial expert is independent, and state which definition was used.

* * * * *

Instructions to Item 16A

* * * * *

3. In the case of a foreign private issuer with a two-tier board of directors, for purposes of this Item 16A, the term *board of directors* means the supervisory or non-management board. In the case of a foreign private issuer meeting the requirements of 17 CFR 240.10A–3(c)(3), for purposes of this Item 16A, the term *board of directors* means the issuer's board of auditors (or similar body) or statutory auditors, as applicable. Also, in the case of a foreign private issuer, the term *generally accepted accounting principles* in paragraph (b)(1) of this Item means the body of generally accepted accounting principles used by that issuer in its primary financial statements filed with the Commission.

* * * * *

Item 16D. Exemptions From the Listing Standards for Audit Committees

If applicable, provide the disclosure required by Exchange Act rule 10A–3(d) (17 CFR 240.10A–3(d)) regarding an exemption from the listing standards for audit committees. You do not need to provide the information called for by this Item 16D unless you are using this form as an annual report.

* * * * *

■ 10. Amend Form 40–F (referenced in § 249.240f) by:

■ a. Revising paragraph (8)(a)(2) of General Instruction B; and

■ b. Adding paragraph (14) to General Instruction B.

The additions and revisions read as follows:

Note: The text of Form 40–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 40–F

* * * * *

General Instructions

* * * * *

B. Information To Be Filed on This Form

* * * * *

(8)(a)(1) * * *

(2) If the registrant provides the disclosure required by paragraph (8)(a)(1)(i) of this General Instruction B, it must disclose the name of the audit committee financial expert and whether that person is *independent*, as that term is defined in the listing standards applicable to the registrant if the registrant is a listed issuer, as defined in 17 CFR 240.10A–3. If the registrant is not a listed issuer, it must use a definition of audit committee member independence of a national securities exchange registered pursuant to section 6(a) of the Exchange Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Exchange Act (15 U.S.C. 78o–3(a)) that has been approved by the Commission (as such definition may be modified or supplemented) in determining whether its audit committee financial expert is independent, and state which definition was used.

* * * * *

(14) Identification of the Audit Committee. (a) If you meet the following requirements, provide the disclosure in paragraph (b) of this section:

(1) You are a listed issuer, as defined in Exchange Act Rule 10A–3 (17 CFR 240.10A–3) of this chapter;

(2) You are using this form as an annual report; and

(3) You are neither:

(i) A subsidiary of another listed issuer that is relying on the exemption in Exchange Act Rule 10A–3(c)(2) (17 CFR 240.10A–3(c)(2)); nor

(ii) Relying on any of the exemptions in Exchange Act Rule 10A–3(c)(4) through (c)(7) (17 CFR 240.10A–3(c)(4) through (c)(7)).

(b)(1) State whether or not the registrant has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)), or a committee performing similar functions. If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(2) If applicable, provide the disclosure required by Exchange Act Rule 10A–3(d) (17 CFR 240.10A–3(d)) regarding an exemption from the listing standards for audit committees.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 11. The authority citation for Part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 12. Form N–CSR (referenced in §§ 249.331 and 274.128) is amended by:

■ a. Removing the phrase "Items 4 and 10(a)" from General Instruction D and in its place adding "Items 4, 5 and 10(a)";

■ b. Removing the phrase "The information required by Item 4" from General Instruction D and in its place adding "The information required by Items 4 and 5"; and

■ c. Adding Item 5 to read as follows.

Note: The text of Form N–CSR does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

Item 5. Audit Committee of Listed Registrants

(a) If the registrant is a listed issuer as defined in rule 10A–3 under the Exchange Act (17 CFR 240.10A–3), state whether or not the registrant has a separately-designated standing audit committee established in accordance with section 3(a)(58)(A) of the Exchange Act (15 U.S.C. 78c(a)(58)(A)). If the registrant has such a committee, however designated, identify each committee member. If the entire board of directors is acting as the registrant's audit committee as specified in section 3(a)(58)(B) of the Exchange Act (15 U.S.C. 78c(a)(58)(B)), so state.

(b) If applicable, provide the disclosure required by rule 10A–3(d) under the Exchange Act (17 CFR 240.10A–3(d)) regarding an exemption from the listing standards for audit committees.

Instruction. The information required by this Item is only required in an annual report on this Form N–CSR.

* * * * *

By the Commission.

Dated: April 9, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9157 Filed 4–15–03; 8:45 am]

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Federal Register

Wednesday,
April 16, 2003

Part IV

Federal Communications Commission

47 CFR Part 64

Provision of Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities and Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission; Final Rule and Notice

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; FCC 03–46]

Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Waiver and clarification.

SUMMARY: This document extends the previously granted one-year waivers of the emergency call handling, voice carry over (VCO), and speech-to-speech (STS) telecommunications relay services mandatory minimum standards for five years for IP Relay providers. Additionally, this document waives the "900" number services (a type of pay-per-call service) and the hearing carry over (HCO) telecommunications relay service (TRS) mandatory minimum standards for a five-year period for IP Relay providers. All waivers are contingent on IP Relay providers filing an annual report with the Commission detailing the technological changes in these areas, the progress made, and the steps taken to resolve the technical problems that prohibit IP Relay providers from meeting the TRS mandatory minimum standards waived in this document. These waivers of TRS mandatory minimum standards apply to all other current and potential IP Relay providers.

DATES: Effective March 14, 2002.

FOR FURTHER INFORMATION CONTACT: Janet Sievert, of the Consumer & Governmental Affairs Bureau at (202) 418–1362 (voice), (202) 418–1398 (TTY), or e-mail *jsievert@fcc.gov*. For additional information concerning the information collection(s) contained in the *Order on Reconsideration*, contact Leslie Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration*, adopted March 4, 2003, and released March 14, 2003. *See* 67 FR 39863, June 11, 2002. This *Order on Reconsideration* contains a new information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507 of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection(s) contained in this *Order on Reconsideration*. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY). This *Order on Reconsideration* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Synopsis

In this *Order on Reconsideration*, the Commission resolves two petitions for reconsideration filed by WorldCom, Inc., and Sprint Corporation. WorldCom requests that the Commission extend the emergency call handling, VCO, and STS waivers from a one-year period to either a five-year period or an indefinite time. Because a one-year period may be too short of a time period for the necessary technological advancements to make it feasible for IP Relay providers to offer emergency call handling, VCO and STS, the Commission extended the one-year waiver of these requirements to a five-year period. Sprint requests that the Commission grant IP Relay providers waivers of the 900 number services and hearing carry over (HCO) TRS mandatory minimum standards. Additionally, because it is technically infeasible for IP Relay providers to offer 900 number services (47 CFR 64.604(a)(3)) and one-line HCO (47 CFR 64.604(a)(5)), the Commission waived these TRS mandatory minimum standards for a period of five years for IP Relay providers. All waivers were granted contingent on IP Relay providers filing an annual report with the Commission detailing the technological changes in these areas, the progress made, and the steps taken to resolve the technical problems that prohibit IP Relay providers from meeting the TRS mandatory minimum standards waived. For administrative convenience all wavers granted in this document expire on January 1, 2008.

Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA) requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Act of 1996 (SBREFA). 5 U.S.C.605(b). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction. 5 U.S.C. 601(b). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definitions(s) in the **Federal Register**." A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration. This item imposes a regulatory burden on IP Relay providers , requiring them to file an annual report with the Commission concerning the status of technology developed that will allow IP Relay providers to meet the telecommunications relay services mandatory minimum standards waived herein for IP Relay providers. Currently only three entities are providing IP Relay: AT&T, Sprint, and WorldCom. These are large entities. There is one entity, Hamilton Relay, Inc.; that is preparing to offer IP Relay service which may be a small entity. The effect of this reporting requirement on any small business will not be significant. Based on the small number of entities providing IP Relay service, we conclude that this action will not cause a significant impact on small business. Based on the above, we conclude that our action will not affect a substantial number of small businesses. Therefore, we certify that the requirements of this *Order on Reconsideration* will not have a significant economic impact on a substantial number of small entities. The Commission will send a copy of the *Order on Reconsideration* including a copy of this final certification, in a report to Congress pursuant to the Congressional Review Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). In addition, the *Order on Reconsideration* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**. *See* 5 U.S.C. 605(b).

Paperwork Reduction Act

This Order on Reconsideration contains a new information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general pubic to comment on the information collection(s) contained in the *Order on Reconsideration* as required by the Paperwork Reduction Act ("PRA") of 1995, Public Law 104–13. Public and agency comments are due June 16, 2003. The information collection(s) shall become effective following approval by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date.

Ordering Clauses

Accordingly, *It is ordered* that, pursuant to the authority contained in Sections 1.2 and 225 of the Communications Act of 1934, as amended, 47 U.S.C.151, 152 and 225, this *Order on Reconsideration is adopted*.

It is further ordered that WorldCom's Petition for Reconsideration IS GRANTED to the extent indicated herein.

It is further ordered that Sprint's Petition for Limited Reconsideration IS GRANTED to the extent indicated herein (granting waivers of 47 CFR 64.604(a)(3) and 47 CFR 64.604(a)(5)).

It is further ordered that IP Relay providers subject to the waivers granted shall submit annually a report, as indicated herein, to the Commission twelve months after publication of this *Order on Reconsideration* in the **Federal Register**.

It is further ordered that the late filed comments of Telecommunications for the Deaf, Inc., and Self Help for Hard of Hearing People are considered as part of the record in this proceeding.

It is further ordered that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *Shall send* a copy of the *Order on Reconsideration*, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered that the information collection(s) contained in the *Order on Reconsideration Shall become effective* following approval by the Office of Management and Budget in the **Federal Register** announcing the effective date for those sections.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–9253 Filed 4–15–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 26, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 16, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business and other for-profit entities.

Number of Respondents: 4.

Estimated Time per Response: 10 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 40 hours.

Total Annual Costs: N/A.

Needs and Uses: On March 14, 2003, the FCC released an Order on Reconsideration ("Order"), *In the Matter of Provision of Improved Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, FCC 03–46. In this Order, the Commission will require IP Relay providers to submit a report to the FCC annually detailing the technical developments that have occurred to enable IP Relay providers to meet the TRS mandatory minimum standards waived in the Order.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–9254 Filed 4–15–03; 8:45 am]

BILLING CODE 6712–01–P

Federal Register

Wednesday,
April 16, 2003

Part V

The President

Proclamation 7663—Pan American Day and Pan American Week, 2003

Federal Register
Vol. 68, No. 73
Wednesday, April 16, 2003

Presidential Documents

Title 3—

The President

Proclamation 7663 of April 11, 2003

Pan American Day and Pan American Week, 2003

By the President of the United States of America

A Proclamation

Our Nation takes great pride in the unity of the Pan American community. We enjoy strong bonds of friendship with our neighbors throughout the Western Hemisphere, and the almost 33 million citizens of Latin American and Caribbean descent who are a part of the rich cultural diversity of our country. Their contributions have enriched our Nation. In the Western Hemisphere, we share common commitments to overcoming poverty, achieving peace and prosperity for all, and providing safety in our hemisphere. As we observe Pan American Day and Pan American Week, we renew our dedication to working with the Pan American community of nations to protect democracy, promote economic growth, and provide for the defense and security of all our citizens.

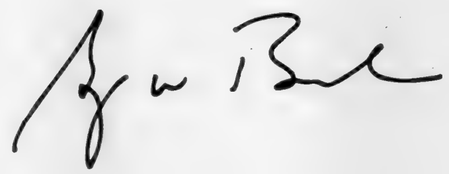
The governments of the region continue to make important progress in advancing democracy, as demonstrated by the free, fair, and transparent elections that took place throughout the region this past year. The United States joins with our neighbors in the hemisphere in congratulating the citizens and governments of those nations on their achievements, and my Administration remains dedicated to working with the democratically elected governments of the Americas to defend freedoms whenever and wherever they are threatened. The historic Inter-American Democratic Charter, adopted on September 11, 2001, continues to guide efforts across the region to protect human rights and political freedoms, combat corruption, promote good governance, and strengthen democratic institutions.

The countries of our hemisphere have made great strides in opening their economies in recent decades, and we must continue to work towards open exchanges of ideas and goods throughout Pan America. To promote these goals, we must welcome the expansion of economic integration and renew our dedication to creating a Free Trade Area of the Americas.

Ensuring hemispheric security remains one of our most important common objectives. Today and in the future, we will continue our efforts to safeguard our citizens and to ensure that individuals throughout our hemisphere enjoy the full benefits of freedom. By working together, we can achieve the Pan American goals of protecting democracy and human rights, defeating tyranny, and overcoming poverty and lawlessness.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 14, 2003, as Pan American Day, and April 13 through April 19, 2003, as Pan American Week. I encourage the Governors of the 50 States, the Governor of the Commonwealth of Puerto Rico, and the officials of other areas under the flag of the United States of America to honor these observances with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–9555
Filed 4–15–03; 9:18 am]
Billing code 3195–01–P

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Wednesday, April 16, 2003

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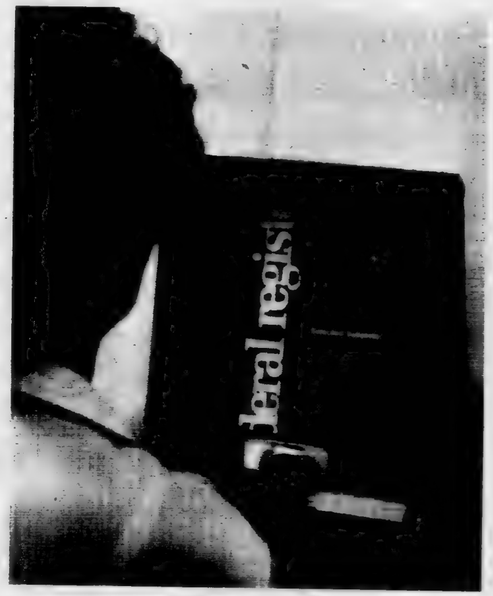
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AG96

Tobacco Payment Program

AGENCIES: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule implements the Tobacco Payment Program authorized by the Agricultural Assistance Act of 2003. Section 205 of that Act requires the Commodity Credit Corporation to provide assistance to producers of tobacco. This rule is intended to implement this legislative mandate. Other provisions of the Agricultural Assistance Act of 2003 will be implemented under separate rules.

EFFECTIVE DATE: April 16, 2003.

FOR FURTHER INFORMATION CONTACT: Misty Jones at (202) 720–0200, or via electronic mail at *Misty_Jones@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Notice and Comment

Section 217 of Title II of Division N of the Consolidated Appropriations Resolution, 2003, (Pub. L. 108–7) (Agricultural Assistance Act of 2003) requires that the regulations to implement this program be promulgated without regard to the notice and comment provisions of 5 U.S.C. 553, the Statement of Policy of the Secretary of Agriculture relating to notices of proposed rulemaking and public participation in rulemaking (36 FR 13804, July 24, 1971). Thus, this rule is final as published.

Executive Order 12866

This final rule has been determined to be not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget (OMB).

Federal Assistance Programs

This final rule applies to the following Federal assistance programs, as found in the Catalog of Federal Domestic Assistance: 10.073—Crop Disaster Program.

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking with respect to the subject of this rule.

Environmental Assessment

The environmental impacts of this proposed rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and FSA's regulations for compliance with NEPA, 7 CFR part 799. To the extent these authorities may apply, CCC has concluded that this rule is categorically excluded from further environmental review as evidenced by the completion of an environmental evaluation. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12778

The final rule has been reviewed in accordance with Executive Order 12778. This final rule preempts State laws to the extent such laws are inconsistent with it. This rule is not retroactive. Before judicial action may be brought concerning this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. *See* the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) does not apply to this rule because CCC is not required by 5 U.S.C. 553 or any other law to publish a notice of proposed rulemaking for the subject of this rule. Further, this rule contains no unfunded mandates as defined in sections 202 and 205 of UMRA.

Small Business Regulatory Enforcement Fairness Act of 1996

Section 217(c) of the Agricultural Assistance Act of 2003 ("2003 Act"), Pub. L. 108–7, requires CCC to use the authority in section 808 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121 (SBREFA), to forgo the usual 60-day delay in the effective date of major rules required by SBREFA (5 U.S.C. 801(a)(3)(A)(ii)). This rule affects a number of agricultural producers who may have a strong urgent need of the payments to be provided under it. For these reasons and in accord with 5 U.S.C. 808(2), CCC has determined that delay is contrary to public interest and this rule is effective upon the date of filing for public inspection by the Office of the Federal Register.

Paperwork Reduction Act

Section 217(c) of the Agricultural Assistance Act of 2003 requires that these regulations be promulgated and the programs administered without regard to 44 U.S.C. 35, the Paperwork Reduction Act. This means that the information to be collected from the public to implement these programs and the burden, in time and money, that the collection of the information would have on the public do not have to be approved by the Office of Management and Budget or be subject to the 60-day public comment period required by 5 CFR 1320.8(d)(1).

Background

Section 205 of the Agricultural Assistance Act of 2003 directs the Secretary of Agriculture to use funds of the Commodity Credit Corporation (CCC) to provide assistance to persons associated with certain 2002-crop tobaccos. Tobaccos with an established 2002 acreage allotment or poundage quotas are eligible for payment. Eligible persons include owners of the land with an established 2002 acreage allotment or

quota, as well as growers, and in some cases, controllers of farms with quotas or allotments. This rule promulgates regulations governing payment eligibility in accord with the legislation.

As provided for by statute and set out by rule, each eligible kind of tobacco will have its own fund. For each kind, the fund amount will be based on multiplying the national quota or allotment (converted by a formula to pounds) by 5.55 cents per pound. For flue-cured tobacco (types 11–14) and for cigar filler tobacco (types 42–44 and 54–55), the fund will be divided into two parts, one for eligible owners and the other for eligible growers. The other eligible tobaccos "pot" will be divided into three equal parts, one for eligible owners, the other for eligible controllers and the remaining part for growers. The other eligible tobaccos are burley tobacco (type 31), fire-cured tobacco (types 21–23), dark air-cured tobacco (types 35–36), and Virginia sun-cured tobacco (type 37). Eligible persons will share in the sub-accounts based on basic or effective quota or allotment amounts as specified in the rule (irrespective of the actual production amounts that may or may not have occurred on a particular farm so long as the participants meet other program rules for payment).

Similar programs have been provided for in the past in part 1400. As with those programs, eligibility determinations will be made as of July 1 of the calendar year that corresponds with the crop year covered (2002 in this case). It is understood that, to the extent practicable, Congress has intended that this program be run in the same manner as its predecessors in part 1400. There is nothing in the history of this statute to indicate a view to the contrary, as would be expected were significant changes intended. This rule has been drafted accordingly. The statute specifies which tobaccos are eligible for payment and the factors for converting allotments to pounds. The statute sets a payment date of June 1, 2003. Payments will be made in advance of that date, if possible.

Cost/Benefit Assessment

Payments to eligible persons in 2003 are estimated to total $55 million dollars.

List of Subjects in 7 CFR Part 1464

Agricultural commodities, Acreage allotments, Marketing quotas, Tobacco.

■ For the reasons set out in the preamble, 7 CFR part 1464 is amended as set forth below.

PART 1464—TOBACCO

■ 1. The authority citation for 7 CFR part 1464 is revised to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1441, 1445, 1445–1, 1445–2; 15 U.S.C. 714b, 714c; Pub. L. 106–78, 113 Stat. 1135; Pub. L. 106–113, 113 Stat. 1501; Pub. L. 108–7, 117 Stat. 11.

■ 2. Add subpart G to read as follows:

Subpart G—Tobacco Payment Program

Sec.

1464.601 Applicability and basic terms for payments.
1464.602 Administration.
1464.603 Eligibility.
1464.604 Definitions.
1464.605 Sign up.
1464.606 [Reserved]
1464.607 Payment benefits.
1464.608 Offsets and assignments.
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1464.610 Cumulative liability.
1464.611 Estates, trusts, and minors.
1464.612 Death, incompetence, or disappearance.
1464.613 Appeals.

Subpart G—Tobacco Payment Program

§ 1464.601 Applicability and basic terms for payments.

This subpart sets forth the terms and conditions of the Tobacco Payment Program (TOPP). Under this program CCC will make direct payments on a farm relating to basic tobacco quotas or allotments established for the 2002 crop year under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*) for eligible tobaccos. Payments are subject to the availability of funds and payment formulas set out in this part.

§ 1464.602 Administration.

This subpart shall be administered by the Executive Vice President, CCC or his designee, under the general supervision of the Farm Service Agency (FSA), Deputy Administrator for Farm Programs (Deputy Administrator). The program shall be carried out in the field by State and county FSA committees and FSA employees in accordance with this subpart.

§ 1464.603 Eligibility.

For a person to be considered an eligible person for purposes of this part, such person must own or control (in some cases only) a farm for which on the status date a basic 2002 crop quota or allotment for eligible tobacco was established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*). Also, growers of that tobacco are eligible for payments to the extent provided for in this part.

§ 1464.604 Definitions.

The definitions set forth in this section shall apply to the administration of TOPP under this subpart. The definitions in §§ 718.2 and 723.104 of this title also apply to TOPP. The definitions in this section apply rather than the definitions in §§ 718.2 and 723.104 of this title to the extent that the definitions in those sections differ. The following terms shall have the following meanings:

Controller means that person or entity who, as determined by the Deputy Administrator, controls the land used to produce eligible tobacco and share in the risk of production.

Eligible person means an owner, or (as applicable) controller of a farm for which a basic quota or allotment was established for the 2002 crop year under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 to the extent otherwise provided in these rules. Growers of that tobacco, as specified in this part, can also be eligible for payment. For this TOPP, an eligible person's status, as owner or controller or grower, will be determined as of July 1, 2002.

Eligible tobacco means each of the following kinds of tobacco: Flue-cured tobacco (types 11, 12, 13 and 14), burley tobacco (type 31), Virginia sun-cured tobacco (type 37), fire-cured tobacco (types 21–23), dark air-cured tobacco (types 35–36), and cigar filler/binder tobacco (types 42 through 44, 54 and 55).

Grower means for flue-cured tobacco and cigar binder tobacco, a "producer," as defined below, for all other eligible tobaccos, as "grower/tenant," as defined below.

Grower/tenant means a person or entity who provides labor to produce tobacco and share in the risk of production.

Owner means with respect to a quota or allotment farm the person or entity who owns the land for which the tobacco quota or allotment was established for the 2002 crop as of the operative status date of July 1, 2002 provided for in this part.

Payment pounds means the pounds of tobacco for which a person is eligible to be paid under this subpart.

Producer means a person or entity actively engaged in planting, growing, harvesting, and/or marketing of tobacco, or who shares in the risk of producing the crop.

Share in the risk of production means having a direct financial stake in the success of the crop through a direct share in the actual proceeds from the actual marketing of the crop which share is conditional upon the success of that marketing. Farm owners who cash-lease their farmland to a tobacco producer for the right to grow tobacco on that land and receive payment for such right regardless of whether or not a tobacco crop is marketed are not considered to share in the risk of production. Farm laborers who provide service in exchange for a wage and whose payment is not subject to the marketing or the tobacco crop are not considered to shared in the risk of production.

TOPP means the Tobacco Payment Program.

§ 1464.605 Sign up.

(a) To apply for TOPP funds, persons must submit an application to the county FSA office by the date established by the Deputy Administrator. Late applications may be accepted if approved by the Deputy Administrator, if the lateness was the result of documented hardship.

(b) Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

§ 1464.606 [Reserved]

§ 1464.607 Payment benefits.

(a) Payment will only be made subject to the availability of funds and only for eligible tobacco and for eligible persons who meet all conditions of eligibility for whom monies are provided by the terms of this section.

(b) The total national payment amount made available for each kind of eligible tobacco for all claimants for that kind of tobacco, will be computed by multiplying the 2002 crop national poundage amount for that kind by 5.55 cents per pound.

(c) The national poundage amount of a kind shall be, for those tobaccos for which poundage quotas were established for individual farms, the national basic quota, in total, for all farms. For all other tobaccos, the 2002 crop national poundage amount shall be determined by multiplying the national basic acreage allotment for that kind of tobacco by the following per acre conversion factors:

(1) For fire-cured tobacco (type 21) 1,746 pounds;

(2) For fire-cured tobacco (types 22–23) 2,676 pounds;

(3) For dark air-cured tobacco (types 35–36) 2,475 pounds; and

(4) For Virginia sun-cured tobacco (type 37) 1,502 pounds.

(d) Once the national payment amount is determined for the eligible tobacco kind, it will for flue-cured tobacco (types 11–14) and for cigar filler tobacco (types 42–44 and 54–55) be divided into two equal parts, one for eligible owners and the other for eligible growers. Shares in the sub-accounts will be determined using basic poundage quota amounts for flue-cured tobacco and basic allotments for the cigar filler types. For cigar filler type allotments, a conversion to pounds will be made using the same conversion factor provided in paragraph (b) of this section.

(e) For those eligible tobaccos not covered in paragraph (d) of this section, the national payment amount fund as determined under paragraph (b) of this section will be divided into three equal parts. Those parts shall be: one for eligible owners; one for eligible controllers; and one for eligible growers. Shares in each sub-account will be determined for burley tobacco using:

(1) Basic poundage quota amounts for owners; and

(2) Effective quota amounts for controllers and growers.

(f) For all other tobaccos covered by paragraph (e) of this section, shares in each sub-account will be determined using:

(1) Basic allotments for owners; and

(2) Effective allotment amounts for controllers and growers. Allotments will be converted to pounds using the conversion factors in paragraph (c) of this section. "Effective quotas" and "effective allotments" means the amount of quota or allotment before any transfer which, as determined by the Deputy Administrator, occurred after a disaster.

(g) Growers who otherwise meet the terms of this part, will qualify based on the full amount of the basic quota or effective quota or allotment, as the case may be, for the kind involved, even though they did not fully produce the operative pounds. Such growers must meet the labor, active engagement in farming, and risk of production elements of the "grower" definition of § 1464.604, as applicable to their kind of tobacco. The Deputy Administrator may provide other elements of eligibility as necessary to accomplish the provisions of this part in accord with the operative legislation.

(h) Payments will be made as soon as practicable.

(i) The amount of TOPP funds allocated to the eligible persons in Georgia will be disbursed only if the State of Georgia agrees to use an equal amount of funds (not to exceed $13,000,000) to make payments in the same manner as provided for in this section.

(j) All payments under this part are subject to the eligibility of funds. In the case where a payment to a farm is disputed the Deputy Administrator may require that all interested parties agree to the resolution of the dispute before any payment is made and may delay payments to the farm until any such disputes are resolved. Also, as determined appropriate to accomplish the goal that program payments be made expeditiously in a manner that is administratively efficient, the Deputy Administrator may properly exclude payments to a person who does not file a timely claim and all payments may be made to those parties whose claim to the payment is not challenged. Nothing in this section shall, however, be construed to prevent the agency from denying any payment to any person based upon a failure of that person to meet any eligibility criteria set forth in this part.

§ 1464.608 Offsets and assignments.

(a) TOPP payments, or a portion thereof, shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor. However, offsets and withholdings of TOPP payments maybe taken in accordance with part 1403 of this chapter.

(b) TOPP payments may be assigned as provided in part 1404 of this chapter.

§ 1464.609 Misrepresentation and scheme or device.

(a) A person who is determined to have misrepresented any fact with the intention of affecting a TOPP program determination or received payments as a result of such misrepresentation shall not be entitled to payments and must refund all payments, plus interest in accordance with 7 CFR part 1403.

(b) A person determined to have knowingly adopted a scheme or device that tends to defeat the purpose of the program, or made any fraudulent representation shall refund all payments, plus interest determined in accordance with 7 CFR part 1403 and shall not receive any payment not yet made.

(c) Persons who are party to the TOPP application must refund any excess or unearned TOPP payments to CCC, plus interest, made under such application.

§ 1464.610 Cumulative liability.

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in addition to any other liability of such

person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1464.611 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such persons furnish evidence of the authority to execute such documents.

(b) A minor who is a producer shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and has executed the applicable program documents; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1464.612 Death, incompetence, or disappearance.

In the case of death, incompetence, or disappearance of any person who is eligible to receive assistance in accordance with this part, such person or persons as specified in part 707 of this title may receive such assistance.

§ 1464.613 Appeals.

Determinations made under this part may be appealed as provided in parts 11 and 780 of this title.

Signed in Washington, DC, on April 7, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–9319 Filed 4–16–03; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150–AC07

Availability of Official Records

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations on availability of official records in three areas. The amendments require those who submit documents claimed to contain proprietary or other confidential information to specifically mark those portions of the document containing such information to decrease the chances of inadvertent public release of the information by the NRC, codify NRC's practices and delineate the circumstances under which the agency will not return confidential documents that have been submitted to the NRC, and codify NRC's practices of making as many copies of copyrighted material submitted to the agency as it needs to perform its regulatory and licensing functions. The amendments are necessary to conform the NRC's regulations regarding the availability of official records to case law and agency practice.

EFFECTIVE DATE: June 16, 2003.

ADDRESSES: The comments received in response to NRC's proposed rule for availability of official records are available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Copies of comments received also may be examined at the NRC Public Document Room (PDR), One White Flint North, First Floor, 11555 Rockville Pike, Rockville, Maryland or by contacting 1–800–397–4209 or 301–415–4737, or by email at *pdr@nrc.gov*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR.

Comments received also may be viewed via the NRC's interactive rulemaking website (*http://ruleforum.llnl.gov*). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; email *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Catherine M. Holzle, Senior Attorney, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone (301) 415–1560, email *CMH@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background
II. Responses to Comments
III. Final Action
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Certification
IX. Backfit Analysis
X. Small Business Regulatory Enforcement Fairness Act

I. Background

Procedures governing the submission of proprietary information to the NRC are found at 10 CFR 2.790. Under this regulation, absent extraordinary circumstances, material determined to be proprietary is protected by the NRC and not released to the public. The regulations set forth procedures that submitters may use to challenge an NRC determination that material is not proprietary, or a decision by the agency to release proprietary information to the public. The regulations also address the circumstances under which the agency would (or would not) return a document containing proprietary information to the submitter. In the past, the regulation had not addressed the right of the NRC to reproduce copyrighted material submitted to it.

On December 23, 1992 (57 FR 61013), the Commission published proposed amendments to § 2.790 explaining the need for standardized markings on proprietary documents submitted to the NRC, expanding the circumstances under which the NRC would not return proprietary information to the submitter, and clarifying that the agency would reproduce copyrighted material submitted to it, as necessary to carry out its regulatory and licensing functions. The proposed changes were not intended to modify agency policy or practice regarding the public disclosure of proprietary information submitted to the NRC. However, public commenters on the proposed rule expressed concern over the potential for increased public disclosure of proprietary submittals, probably due to NRC's failure to make clear that NRC's refusal to return a proprietary document to its submitter did not mean that the NRC intended to release the document to the public. The earlier commenters also indicated that the established process worked fairly well, that overly-prescriptive document marking procedures would be cumbersome and unnecessary, but that the proposed copyright provisions seemed reasonable.

In response, the NRC issued a revised proposed rule for comment on October 17, 2001 (66 FR 52721). The revised proposal made the regulation easier to understand, and proposed additional changes and clarifications. Specifically, the proposed rule, as revised, differentiated between the discrete determinations of document withholding from the public and document return to the submitter, and incorporated additional "exceptions" to the document return rule. It did not propose any changes to the document withholding criteria nor to the previously proposed copyright provision.

In the revised proposed rule, the NRC also responded in detail to the comments it had received on the December 23, 1992, proposed rule. Some of the comments received on the October 17, 2001, proposed rule make arguments that the Commission rejected in that notice. After reviewing these arguments again, the Commission stands by its explanation set forth in the October 17th notice and will not address those same arguments again.

II. Responses to Comments

A. Overview

The Commission received six comments in response to its October 17, 2001, notice of proposed rulemaking. The comments were from an individual, two nuclear industry vendors, one electric generation company, and two nuclear industry trade organizations. The comment period ended on December 31, 2001, but the NRC gave full consideration to comments received after that date. The comments pertained to the proposed changes in all three categories: document return, including disclosure of proprietary information; document marking; and copyright handling. Most of the comments considered the proposed document return regulations as overly broad, particularly as they apply to the functions of the Office of Investigations. The proposed document marking provisions also were criticized and commonly viewed by commenters as unnecessary, unworkable, or burdensome, and the proposed copyright handling procedures were deemed either unnecessary or unauthorized. The specific comments are addressed below.

B. Document Disclosure

1. Comment. Some commenters focused on the issue of disclosure of proprietary information over the submitter's objections, which was not the subject of this rulemaking, rather than the core issue regarding return to the submitter of documents claimed to contain proprietary information. Although the Commission does not propose changes in its current document disclosure policy or practice, this issue warrants a response as it represents a fairly widespread concern among the comments received. Certain commenters objected to the potential for disclosure of proprietary information pursuant to a balancing test, a long-standing provision of 10 CFR 2.790(b)(5), giving the Commission discretionary disclosure authority. The objection is based on a claim that balancing is not within the Commission's authority once a determination is made that the submitted information is proprietary and falls within exemption 4 of the Freedom of Information Act (FOIA).[1] Rather, the commenters asserted, the balance already has been struck by Congress in favor of the protection of proprietary information. Additionally, one commenter argued that the Trade Secrets Act, 18 U.S.C. 1905, prohibits disclosure of information falling within exemption 4 of FOIA.

Response. The Commission is not making any changes to § 2.790(b)(5). Current regulations, which are based on sound judicial case law,[2] recognize the NRC's authority to balance the public's interest in disclosure against the potential harm that such disclosure would cause the submitter. This authority has not been enhanced by the proposed changes and there is nothing in the FOIA, FOIA case law, or the Trade Secrets Act that prohibits a balancing of this type.

Courts have expressly acknowledged that, when determining whether to disclose information that falls within exemption 4 of the FOIA, agencies may balance the public's interest in disclosure against the harm that would be caused by disclosure to the provider of the information. *See Public Citizen Health Research Group* v. *FDA*, 185 F. 3d 898 (D.C. Cir. 1999); *see also Chrysler Corp.* v. *Brown*, 441 U.S. 281, 293–94 (1979) (holding that Congress did not intend FOIA exemptions to be mandatory bars to disclosure). The public interest to be weighed in this balance has been narrowly defined as an interest in determining the bases for and effects of agency action (*i.e.*, determining "what the government is up to"), and does not include incidental benefits from disclosure that may be enjoyed by members of the public. *Public Citizen*, 185 F. 3d at 904, 905. Section 2.790(b)(5), which weighs the public's interest in being "fully apprised as to the bases for and effects of the proposed action," currently reflects this understanding of the interests that the Commission may properly consider when deciding whether to disclose proprietary information. There is no need to alter the balancing test the Commission has long used.

One commenter argued that the Trade Secrets Act, 18 U.S.C. 1905, prohibits the use of a balancing test to determine whether to disclose information considered proprietary under FOIA exemption 4. According to the Supreme Court, in order for an agency to disclose information considered proprietary and otherwise prohibited from disclosure under the Trade Secrets Act, the agency must act pursuant to properly promulgated rules based on a federal statute other than FOIA itself. *See Chrysler Corp.*, 441 U.S. at 301–05, 308. Section 2.790(b)(5) of the Commission's regulations, which permits the use of a balancing test to determine whether to disclose proprietary information, was enacted pursuant to the Commission's rulemaking authority under the Atomic Energy Act of 1954, as amended (AEA). *See* 42 U.S.C. 2201(p). This rulemaking authority enables the Commission to make such rules as may be necessary to carry out the purposes of the AEA, one of which is the dissemination of unclassified scientific and technical data. *See* 42 U.S.C. 2013(b), 2201(p). Because § 2.790(b)(5) was properly promulgated under the authority of the AEA, using rulemaking procedure required by the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, it authorizes the Commission to disclose information that would otherwise be prohibited from disclosure under the Trade Secrets Act. *See Chrysler Corp.*, 441 U.S. at 301–05, 308.

Finally, the proprietary determination decisionmaking process provides several opportunities for the submitter to make a case for withholding information from public disclosure. As a practical matter, the final determination may be the outcome of a series of exchanges between the agency and the submitter, almost always resulting in the protection of truly confidential and privileged portions of the material, while making available enough of the rest to inform the public adequately of the vital details that the public needs to understand and inquire into the Commission's actions. The Commission stresses that it rarely, if ever, has released proprietary information over the objection of a submitter. The Commission emphasizes that there is nothing in the final rule that will result in a more liberal release

[1] This exemption protects "trade secrets and commercial or financial information obtained from a person and privileged or confidential," 5 U.S.C. 552(b)(4) (2000).

[2] Indeed, this very regulatory authority of the NRC was tested in court nearly twenty years ago and remains good law today. *General Electric Co.* v. *NRC*, No. 80–2244 (C.D. Ill. Nov. 30, 1983), motion to vacate denied (C.D. Ill. June 26, 1984), aff'd in part, rev'd in part and remanded, 750 F. 2d 1394 (7th Cir. 1984). That same case also provides fundamental legal authority for the proposition that a rule permitting withdrawal of documents before public release would be inapplicable once the agency was in receipt of a FOIA request for the information.

of information deemed to be proprietary.

C. Document Return

2. Comment. Some commenters urged that, to protect proprietary information adequately, the NRC should implement presubmission review procedures during which a document would not be considered an "agency record" under the FOIA. The purpose of the procedure would be to allow submitters an absolute right to withdraw documents for which proprietary protection is denied during the "presubmission" period. One commenter requested clarification of the return provision to indicate that information would not be returned automatically if a withholding request is denied, but may be returned upon request. This commenter also wished to see the procedures for supplementing information pursuant to a potential denial of proprietary treatment and for the negotiation process on the matter.

Response. These comments seek a period of delay before a submitted document would have legal status as an agency record. The scheme suggested by the comments would allow documents to be tendered to the Commission on an informal basis along with a withholding request, pending a Commission determination on whether to grant or deny the withholding request. Then, should the Commission decide that the submitted information would not be withheld, the submitter could exercise an absolute right to withdraw the information, thereby avoiding any possibility of document capture (and possible release) under the FOIA.

The Commission finds this suggested approach to be legally flawed. A document becomes an "agency record" subject to capture under the FOIA if: (1) It is created or obtained by the agency; and (2) it is under the control of the agency at the time of an FOIA request. *United States Department of Justice* v. *Tax Analysts,* 492 U.S. 136, 144–45 (1989). According to the Supreme Court, "[b]y control we mean that the materials have come into the agency's possession in the legitimate conduct of its official duties." *Id.,* 492 U.S. at 145. In this context, "control" is a broad concept, and exists at the moment the agency gains possession of documents submitted in the normal course of agency business. Therefore, the Commission does not believe that establishing presubmission review procedures would produce the commenter's desired legal effect of forestalling a document's becoming an agency record subject to capture under the FOIA.

Moreover, if presubmission procedures were seen as an attempt to evade or circumvent FOIA, the Commission would not expect them to survive judicial scrutiny. At least one court has held that an agency may not exclude documents from the legal ambit of the FOIA through presubmission procedures. *See Teich* v. *FDA,* 751 F. Supp. 243 (D.D.C. 1990). In fact, the court discredited procedures similar to those proposed by the commenter, stating that "presubmission review is nothing more than an attempt to get around the FOIA." *Id.* at 248.

While the Commission is not prepared to institute document presubmission procedures, commenter's concerns are mitigated by case law, which in recent years, has broadened the definition of what constitutes proprietary information. Additionally, the Commission historically has worked closely with submitters to negotiate a version acceptable for public release for information initially claimed to be proprietary but upon which there is ultimate mutual agreement that proprietary treatment is not appropriate. Indeed, we reiterate that the NRC has rarely, if ever, publicly released purportedly proprietary information over the objection of a submitter, and such a release only would be undertaken after considerable thought and discourse between the parties. Thus, the Commission is not revising its regulations to provide for presubmission procedures.

The commenter is correct in that the proposed rule does not call for automatic return of documents denied proprietary status. Commission policy is to return a document only upon request, subject to the document return exceptions. The rule neither addresses the negotiation process for obtaining the grant of a withholding request, nor how submittal of supplemental supporting documentation in support of the proprietary claim fits into the scheme. It is unclear that singling out this aspect of the administrative process for elaboration would be helpful. It would entail a fuller description than the other parts of the rule. This is viewed as unnecessary and potentially too limiting to be useful, and our regulations customarily do not go into that level of administrative detail.

3. Comment. One commenter asserted that the provisions for determining what constitutes proprietary information make no distinction between documents containing proprietary information that the Commission requires applicants, licensees, or others to submit, which are subject to the disclosure criteria set forth in *National Parks & Conservation Association* v. *Morton,* 498 F. 2d 765 (D.C. Cir. 1974), and those that are voluntarily submitted, which are subject to the disclosure criteria set forth in *Critical Mass Energy Project* v. *Nuclear Regulatory Commission,* 975 F.2d 871 (D.C. Cir. 1992). A commenter suggested that the rule be revised to distinguish between voluntary and mandatory submittals to reflect the dichotomy in standards applied to the proprietary determination for these documents.

Response. FOIA exemption 4 authorizes agencies to withhold from public disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). Until the *Critical Mass* case, the test for whether information could be withheld as confidential under exemption 4 was two-pronged: disclosure had to be likely either to impair the Government's ability to obtain information in the future or to cause substantial harm to the competitive position of the submitter. *National Parks & Conservation Association* v. *Morton,* 498 F. 2d 765 (D.C. Cir. 1974). In *Critical Mass,* the court established a new and broader standard of categorical protection for information voluntarily submitted to an agency. For such information, the court found that there is a governmental interest to be protected, namely that of maintaining the continued and full availability of the information to the agency. In addition, the court held that the exemption also recognizes the submitter's interest in protecting information that "for whatever reason, "would customarily not be released to the public by the person from whom it was obtained'." *Critical Mass,* 975 F.2d at 878, citing *Sterling Drug, Inc.* v. *FTC,* 450 F. 2d 698, 709 (D.C. Cir. 1971). Thus, the court found that there was broad protection for voluntarily submitted information, provided it is not customarily disclosed to the public by the submitter.

Currently, § 2.790 does not explicitly distinguish between voluntary and mandatory submittals. Instead, the Commission's rules provide that in determining whether a submittal is proprietary, a number of factors are considered. In the Commission's view, this approach allows for maximum flexibility in accommodating the continually evolving legal standards governing the classification of proprietary information. Explicitly defining specific standards for voluntary submittals and mandatory submittals in the text of the final rule would remove this flexibility and potentially require revisions to the rule as judicial case law changes. Therefore, the Commission has chosen to maintain its present approach to the classification of proprietary information in the text of the rule, with a slight modification intended to capture the precise standard for voluntarily submitted information set forth in *Critical Mass.* Under the current rule, one factor to be considered when determining whether a submittal is proprietary is "whether the information is of a type customarily held in confidence by its owner and whether there is a rational basis therefor." 10 CFR 2.790(b)(4)(ii). In response to this comment, and in order to align the Commission's rules with the holding of *Critical Mass,* the final rule eliminates any inquiry into whether there is a rational basis for withholding voluntarily submitted information if it is of a type customarily held in confidence by its owner. In cases of mandatory submittals, the rational basis factor may be weighed along with the others listed in § 2.790(b)(4) in order to determine proprietary status. In cases of voluntarily submitted information, the only factor to be considered in determining whether the information is proprietary is the "customarily held in confidence" factor, in accordance with *Critical Mass.* Thus, the final rule will accurately reflect the standard of *Critical Mass* while retaining the flexibility to accommodate future changes to the legal criteria for determining when submitted information is considered to be proprietary.

4. Comment. A few of the commenters considered the proposed rule to sweep too broadly with respect to retention of documents obtained during investigations conducted by the NRC Office of Investigations (OI) and preferred to see the rule provision restricted to "evidence" obtained during an ongoing OI investigation. Some commenters were concerned about the additional release under FOIA of confidential information inadvertently revealed at Advisory Committee or at open Commission meetings. One of these commenters also objected to the proposed change from the 30-day period after denial of a withholding request to a "reasonable time" after which the information in question would be publicly released, assuming no other resolution was reached sooner.

Response. The Commission does not agree with the suggestion that only those documents that specifically form the basis of the OI's decision, *i.e.,* "evidence," should be subject to the return exception, or for that matter, only those documents relied upon to make an official finding or to develop a report, decision, or policy by an advisory committee or the Commission in Sunshine Act meetings. Such an interpretation would add nothing to the provisions that provide for retention of documents that form the basis of a final decision or agency action. The Commission would not compound a mistake by deliberating making publicly available confidential information that had been inadvertently or erroneously released at an Advisory Committee or an open Commission meeting. The Commission takes pains to ensure that inappropriate disclosures do not occur. However, in the unusual circumstance that it should happen, the NRC would not simply publish the information under the theory that "the horse is already out of the barn."

As for the issue regarding a suitable period of time to provide the submitter after denial of a withholding request, the Commission has changed it from 30 days to a "reasonable time" to allow maximum flexibility, particularly in situations in which time may be of the essence and a 30-day period is simply untenable. The regulation merely substitutes the less definitive qualifier "reasonable time" for the specific but rigid quantifier 30 days. In no case would the submitter be afforded inadequate notice; notice is guaranteed and the amount of time to be provided is specified in the notice itself. This modification will permit an informed decision of the amount of time that may be afforded judiciously for the submitter to address the denial without jeopardizing any of the Commission's competing responsibilities. Even where a brief period is deemed necessary, the submitter still will be provided adequate opportunity to address the matter.

D. Document Marking

5. Comment. The proposed rule used the term "confidential" to encompass all types of information that might be susceptible to protection under 10 CFR 2.790. One commenter was troubled by the potential for confusion because the same term is used in the context of classified national security information. The commenter suggested an alternative.

The Commission's proposed rule also would require submitters of documents containing proprietary or other confidential information to mark those portions of the documents claimed to be withholdable from the public and would provide direction on how this is to be done. The comments on the proposed document marking provisions were largely oriented toward pragmatic concerns over the potential burdens of performing "adjacent" marking and top-of-page marking, calling them duplicative, time-consuming, impractical, and unnecessary. Some commenters viewed the marking provisions as too prescriptive and suggested that a general requirement, combined with submitters' self-interest, would accomplish the Commission's goal of reducing the risk of inadvertent disclosure of proprietary or otherwise confidential material. Two commenters generally supported the proposed marking requirement, one requesting clarification to determine whether the "first page" to which the proposed regulation referred was the cover letter or a substantive page, and if the cover letter, whether it also must bear an indication of confidential content. The commenter suggested a "decontrolling" provision for the cover letter when separated from the remaining material. This commenter believes that identification in the affidavit of the location of confidential material by page number should be adequate. One commenter requested guidance on how portion marking might be done (*e.g.,* would bracketing of material to be withheld be appropriate?), and on identification in the affidavit of the location of information to be withheld.

Response. The proposed rule used the term "confidential" because it was already employed in the existing version of the rule and because exemption 4 of the FOIA, the primary statutory provision for withholding information from public disclosure that serves as the model for this section, as well as the judicial case law, utilize that term. Thus, there is value in employing it. Changing the term now might produce confusion, particularly since it will be at variance with both the statutory language and the interpretive case law. Thus, the Commission has decided to retain the term "confidential" in accordance with established usage and case law, with the understanding that the intent is to interpret the term consistently with that usage and not as a reference to classified national security information.

In response to the comments regarding the marking requirements for documents containing confidential information, *e.g.,* proprietary or personal privacy information, the Commission's final rule provides submitters of confidential information greater leeway. As to the need for adjacent marking, it is noted that, while some parties may submit one type of confidential information (*e.g.,* proprietary information), others may submit documents or packages with mixed, or more than one, type of

confidential information (*e.g.*, both proprietary and personal privacy information). This was the primary reason for the "adjacent" marking requirement. While this identification still could be confined to any required affidavit, the benefit to the Commission of adjacent marking is in obviating the need for NRC personnel to cross-reference the document to the affidavit to determine which particular portions should be protected and under what basis.

It will be acceptable to employ a bracketing approach akin to that commonly used in the FOIA process, in which portions of documents subject to particular exemptions are enclosed with brackets and marked with the statutory (exemption) basis for withholding. This is a reasonable way to handle the adjacent marking requirement, where less than an entire page is affected by the marking, and without marking each paragraph. However, the Commission's intention is not to be overly-prescriptive in the particulars of either the marking language or the mechanics, in order for submitters to have broad latitude for whatever is most sensible in each case.

The Commission does not agree that the reference to "first page" of the document is ambiguous; the provision refers to "document, or a portion of it," sought to be withheld. The reference does not encompass a "cover letter," unless the cover letter itself reveals confidential material, in which case it should be marked accordingly. Obviously, submitters are free to place any legend they choose on cover correspondence to indicate public availability where only the attachments are to be withheld from the public.

There seemed to be a consensus among commenters that a less prescriptive form of document marking would work as well as the proposed marking language and that a general requirement, coupled with the submitter's self-interest, would produce the same results. The Commission agrees with this observation and has decided to relax this requirement to reflect a less rigid standard, relying on the submitter to identify proprietary or other confidential material appropriately. The Commission will accept any marking that clearly indicates the material to be withheld from public disclosure, or the affected portion thereof, such as by the following legends: "withhold from public disclosure under 10 CFR 2.790," "proprietary," or "confidential." Any cover letter, likewise, should provide notice of confidential content in the enclosure, although there would be no reason to withhold from public disclosure a cover letter that itself contained no confidential material. As for the affidavit, identification of confidential material by page number should be adequate, as suggested by one of the commenters. Ultimately, the Commission will honor any legend that signifies the same sense of restriction intended to be conveyed by the prescribed marking, as described more fully in response to the following comment.

6. Comment. Another commenter expressed concern that confidential documents not be vulnerable to disclosure for inadvertent or immaterial failure to follow the prescribed marking requirements and sought clarification of handling procedures in such situations, as well as a reasonable opportunity for the submitter to rectify the situation upon discovery of the error. This commenter also objected to the redaction and affidavit requirement for personal privacy information, indicating that imposing the document marking requirement for this type of information presented an administrative burden without a corresponding benefit. The commenter suggested a categorical exemption to withhold in the entirety medical, personnel, and operator examination records, and possibly other documents containing personal privacy information, arguing that it usually is clear when a document contains privacy information and the need to protect it normally requires no further justification. Finally, the commenter sought clarification of the affidavit requirement for privacy information to state that a licensee official might sign the affidavit, rather than the subject of the personal information.

Response. As noted in this comment, the proposed rule attempted to provide reassurance that submitters would not be penalized for inadvertent failure to follow prescribed marking procedures. The Commission reiterates its position that it prefers use of the standardized language set forth in the final rule because it does not believe that requiring standardized language will result in a serious hardship on submitters, especially since the NRC intends to use standardized marking language as a processing tool and not as a means of limiting access to the withholding request procedure. The NRC will not impose a penalty, however, for failure to use the precise wording prescribed. Language substantially similar to that prescribed will be equally acceptable.[3]

The Commission continues to have concerns when submitters intend that the NRC treat information as proprietary or confidential, yet do not request this treatment or request this treatment without identifying those portions warranting such treatment. A major purpose of the rule is to put the public on notice that the NRC will not place itself in the position of having to comb through documents searching for confidential information that had not been identified by the submitter and for which there was no reasonable designation. There is, however, ample opportunity to resolve situations cooperatively where the submitter inadvertently neglects to mark confidential information and subsequently seeks to have it so designated. There is no need to codify such a process, and in response to admonishments not to be overly-prescriptive, the final rule does not address every type of situation that may be encountered, nor the manner in which each would be handled. Moreover, preserving the flexibility for treating each circumstance in the most appropriate fashion would seem to counsel against such codification.

As to the objection regarding the affidavit requirement for personal information, the Commission agrees with the comment that an affidavit need not accompany a request to withhold personal privacy information. The affidavit requirement is better suited to submittals containing proprietary information. The final rule thus does not require that an affidavit accompany submittals containing personal privacy information. Nonetheless, the submitter needs to identify personal privacy information in accordance with the marking requirements, to assist in the avoidance of inadvertent release.

Finally, although no comment was received on this point, the proposed rule contained a provision in § 2.790(e)(2) for the Commission to "waive the requirements of this paragraph on request, or on its own initiative, in circumstances the Commission deems appropriate." The waiver was intended to apply to the affidavit requirement. Therefore, the language has been moved to paragraph (b)(1)(ii), which pertains to affidavits, and revised to reflect that correction.

[3] "The point is not to enforce a standard rigidly for its own sake, but to afford appropriate protection to submitter's confidential information, as economically and efficiently as possible. The NRC would work with submitters, as it always has, to resolve any discrepancies of which it was aware within a particular request." NRC Proposed Rule on Availability of Official Records (October 17, 2001; 66 FR 52721, 52723).

E. Copyright Handling

7. Comment. The Commission proposed to codify its practices regarding the copying of copyrighted material submitted to it. Two commenters suggested that, under the "fair use" doctrine of copyright law, the Commission already is authorized to make copies of submittals as necessary to perform its official responsibilities, and that § 2.790(e) is unnecessary. One commenter was concerned that proposed § 2.790(e) violates the Copyright Act (17 U.S.C. 101 *et seq.*) by allowing the Commission an unrestricted right to make and distribute copies as a condition of providing the Commission with information. Two commenters objected to the "hold harmless" provision, which was intended to limit liability of NRC employees for inadvertent copyright infringement in making copies of documents when the submitter lacked the requisite authority to grant reproduction permission (proposed § 2.790(e)(1)(ii)). These commenters considered this an improper attempt to shield the Commission from responsibility for wrongful acts arising out of potential copyright abuses. Finally, one commenter suggested that it is unfair for the Commission to require, as a condition of acceptance for any submittal, that the submitter grant a license to the Commission to make copies because the submitter may not in fact have the legal authority to do so.

Response. The Commission agrees with the comment that, under the "fair use" doctrine, the Commission is authorized to make such copies of information submitted to it as necessary to perform its official responsibilities. The purpose of § 2.790(e) is simply to codify and give public notice of the Commission's intent to make copies of documents submitted to it as necessary to perform its mission, and to make explicit its view that such activity per se constitutes "fair use." Section 2.790(e) is intended to eliminate any confusion about how the Commission will make use of information submitted to it.

The Commission recognizes that § 2.790(e) is coextensive with the "fair use" doctrine, and does not grant the Commission an unrestricted right to copy material submitted to it. Rather, the Commission's right to copy submittals is linked directly to the need to perform its statutory mission of protecting the public health and safety and promoting the common defense and security. The Commission disagrees with the comment that § 2.790(e) would give it a virtually unlimited right to reproduce copyrighted material. The Commission does not intend to make or distribute copies of submittals in a manner inconsistent with traditional copyright protections. The Commission makes copies available pursuant to its responsibilities under the Federal Records Act and the Administrative Procedure Act. The NRC will continue its practice of placing copyrighted documents into the electronic record-keeping system for inspection. This does not entitle non-NRC parties to copy documents not otherwise authorized by copyright laws, much as with volumes maintained by public libraries.

Commenters expressed further concern that the "hold harmless" provision, proposed § 2.790(e)(1)(ii), was an improper attempt to shield the Commission from liability for copyright infringement. This provision sought to limit liability resulting from unauthorized reproduction or distribution of documents submitted to the NRC. The Commission never intended to shield from liability for copyright infringement NRC employees who go beyond fair use. The intent of the "hold harmless" provision was simply to make clear that NRC personnel must not be held liable for making copies of materials utilized pursuant to the proper performance of their official responsibilities. As proposed, the specific goal of § 2.790(e)(1)(ii) was the prevention of suits by third parties who might claim copyright infringement in the event their copyrighted material was submitted by another to the NRC and copied by the Commission without the copyright holder's knowledge or consent. However, under the fair use doctrine, no liability should attach to the copying and internal distribution of submittals as necessary to carry out the Commission's regulatory responsibilities. Thus, upon further reflection, because the fair use doctrine permits the copying necessary to carry out its official duties, the Commission has concluded that the proposed provision is unnecessary. It has been deleted from the final rule.

Because § 2.790(e) is based upon the fair use doctrine, and because the fair use doctrine provides that copies may be made without the consent of the copyright holder, the remaining provisions of §§ 2.790(e)(1) and 2.790(e)(2)[4] also are unnecessary. These provisions would have required that, as a condition for the Commission's accepting any submittal, the submitter explicitly authorize the Commission to make and distribute copies of the submittal, and provided notice of the Commission's "hold harmless" position. However, in the Commission's view, any submittal may be copied as necessary to support the agency's mission, regardless of any stated copyright restrictions accompanying the submittal or any objections from copyright holders. Similarly, these copies may be distributed within the agency for use in carrying out the Commission's official responsibilities. The fair use doctrine requires no express grant of permission and thus, such a requirement is not needed in the regulation. Moreover, it may create problems for those submitters who are unable to make such a warranty over the objection of third-parties who may hold copyrights in some or all of the information being submitted. Finally, the "hold harmless" provision, likewise, is deemed unnecessary and has been removed.

In sum, in response to these comments, and in order to avoid confusion regarding the Commission's intent in promulgating § 2.790(e), changes have been made in the final rule. Sections 2.790(e)(1) and 2.790(e)(2) have been deleted. Section 2.790(e) has been retained to give explicit notice of the Commission's intent to copy and distribute submittals within the agency as necessary to carry out its official responsibilities, consistent with the fair use doctrine.

III. Final Action

The NRC is amending its regulations on availability of official records to provide specific guidance for marking information a submitter seeks to have withheld from public disclosure on the basis of proprietary content or other confidential information, to codify NRC practices concerning circumstances under which submitted documents will not be returned to the submitter, and to explain and clarify NRC's practices regarding handling of copyrighted material submitted to it.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this final rule the Commission is codifying its practices regarding the treatment of proprietary information and copyrighted material. This action does not constitute the

[4] One portion of § 2.790(e)(2) addressed affidavit waivers and has been relocated in the regulation to clarify that point, as explained above.

establishment of a standard that establishes generally applicable requirements, and the use of a voluntary consensus standard is not applicable.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for the final regulation.

VI. Paperwork Reduction Act Statement

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

This final rule brings NRC's regulations concerning the availability of official records into conformance with case law and current Commission practice. This rule informs the public of document marking requirements for submitted information, of four additional exceptions to a submitter's limited right to withdraw submitted information, and of Commission practice concerning the reproduction and distribution of submitted copyright material. The rule reflects Commission administrative and procedural practice and has only minor impact on the benefits or costs associated with the Commission's regulations. Some submitters already mark documents consistent with the requirements in this rule. For others, the rule will shift some responsibility to the submitter for ensuring that its confidential material is identified and protected. It also codifies the Commission's practices regarding its dissemination of copyrighted material.

VIII. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The rule sets forth new document marking requirements for submitted information, clarifies the right of the submitter of information to have certain information returned on request, and provides notice of Commission practice concerning the reproduction and distribution of copyrighted material. The rule does not impose substantial obligations or have significant financial impact on entities, including any regulated entities that may be "small entities," as defined by the Regulatory Flexibility Act (5 U.S.C. 601(3)), or under the Size Standards adopted by the NRC in 10 CFR 2.810.

IX. Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because these amendments do not include any provisions that would impose backfits as defined in 10 CFR chapter 1.

X. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104–121, the NRC has determined that this action is not a major rule.

List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552. Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)), sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note.) Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. Section 2.790 is amended by revising the introductory text of paragraph (a); adding introductory text to paragraph (b); revising paragraphs (b)(1), (b)(4)(ii); and (c); redesignating paragraph (e) as paragraph (f); and adding new paragraph (e), to read as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

(a) Subject to the provisions of paragraphs (b), (c), (d), (e), and (f) of this section, final NRC records and documents, including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rulemaking proceeding subject to this part shall not, in the absence of an NRC determination of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, except for matters that are:

* * * * * *

(b) The procedures in this section must be followed by anyone submitting a document to the NRC who seeks to have the document, or a portion of it, withheld from public disclosure because it contains trade secrets, privileged or confidential commercial or financial information.

(1) The submitter shall request withholding at the time the document is submitted and shall comply with the document marking and affidavit requirements set forth in this paragraph. The NRC has no obligation to review

documents not so marked to determine whether they contain information eligible for withholding under paragraph (a) of this section. Any documents not so marked may be made available to the public at the NRC Website, *http://www.nrc.gov* or at the NRC Public Document Room.

(i) The submitter shall ensure that the document containing information sought to be withheld is marked as follows:

(A) The top of the first page of the document and the top of each page containing such information must be marked with language substantially similar to: "confidential information submitted under 10 CFR 2.790;" "withhold from public disclosure under 10 CFR § 2.790;" or "proprietary" to indicate it contains information the submitter seeks to have withheld.

(B) Each document, or page, as appropriate, containing information sought to be withheld from public disclosure must indicate, adjacent to the information, or at the top if the entire page is affected, the basis (*i.e.*, trade secret, personal privacy, etc.) for proposing that the information be withheld from public disclosure under paragraph (a) of this section.

(ii) The Commission may waive the affidavit requirements on request, or on its own initiative, in circumstances the Commission, in its discretion, deems appropriate. Otherwise, except for personal privacy information, which is not subject to the affidavit requirement, the request for withholding must be accompanied by an affidavit that—

(A) Identifies the document or part sought to be withheld;

(B) Identifies the official position of the person making the affidavit;

(C) Declares the basis for proposing the information be withheld, encompassing considerations set forth in § 2.790(a);

(D) Includes a specific statement of the harm that would result if the information sought to be withheld is disclosed to the public; and

(E) Indicates the location(s) in the document of all information sought to be withheld.

(iii) In addition, an affidavit accompanying a withholding request based on paragraph (a)(4) of this section must contain a full statement of the reason for claiming the information should be withheld from public disclosure. Such statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate paper. The affiant must designate with appropriate markings information submitted in the affidavit as a trade secret, or confidential or privileged commercial or financial information within the meaning of § 9.17(a)(4) of this chapter, and such information shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

* * * * *

(4) * * *

(ii) Whether the information is of a type customarily held in confidence by its owner and, except for voluntarily submitted information, whether there is a rational basis therefor;

* * * * *

(c) The Commission either may grant or deny a request for withholding under this section.

(1) If the request is granted, the Commission will notify the submitter of its determination to withhold the information from public disclosure.

(2) If the Commission denies a request for withholding under this section, it will provide the submitter with a statement of reasons for that determination. This decision will specify the date, which will be a reasonable time thereafter, when the document will be available at the NRC Website, *http://www.nrc.gov*. The document will not be returned to the submitter.

(3) Whenever a submitter desires to withdraw a document from Commission consideration, it may request return of the document, and the document will be returned unless the information—

(i) Forms part of the basis of an official agency decision, including but not limited to, a rulemaking proceeding or licensing activity;

(ii) Is contained in a document that was made available to or prepared for an NRC advisory committee;

(iii) Was revealed, or relied upon, in an open Commission meeting held in accordance with 10 CFR Part 9, Subpart C;

(iv) Has been requested in a Freedom of Information Act request; or

(v) Has been obtained during the course of an investigation conducted by the NRC Office of Investigations.

* * * * *

(e) Submitting information to NRC for consideration in connection with NRC licensing or regulatory activities shall be deemed to constitute authority for the NRC to reproduce and to distribute sufficient copies to carry out the Commission's official responsibilities.

* * * * *

Dated in Rockville, Maryland, this 7th day of April, 2003.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–9438 Filed 4–16–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM237; Special Conditions No. 25–230–SC]

Special Conditions: Boeing Model 777 Series Airplanes; Overhead Crew Rest Compartments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These final special conditions are for Boeing Model 777 series airplanes. This airplane will have novel or unusual design features associated with the installation of an overhead flightcrew rest and an overhead flight attendant rest. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: The effective date of these final special conditions is April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Standards Staff, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2195; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On December 19, 2001, the Boeing Commercial Airplane Group (BCAG), P.O. Box 3707, Seattle, Washington 98124, applied for a change to Type Certificate No. T00001SE for a design change to install an overhead flight crew rest (OFCR) and an overhead flight attendant rest (OFAR) in the Boeing Model 777 series airplanes. The Boeing Model 777 series airplanes are large twin engine airplanes with various passenger capacities and ranges depending upon airplane configuration.

The OFCR compartment, adjacent to Door 1, is located in the overhead above the main passenger cabin and will include a maximum of two private berths and two seats. Occupancy of the OFCR will be limited to a maximum of four occupants. Several different OFAR compartments are being proposed under this design change. The OFAR adjacent to Door 3 will have berths for a maximum of seven occupants. The OFAR adjacent to Door 5 will have three compartment options available, with berths for a maximum of six, eight or ten occupants.

Both crew rests, the OFCR and OFAR, will be accessed from the main deck by stairs. In addition, an emergency hatch that opens directly into the main passenger cabin area will be provided for each compartment. A smoke detection system, an oxygen system, and occupant amenities will also be provided. These compartments will only be occupied in flight, not during taxi, takeoff, or landing.

Crew rest compartments have been previously installed and certified in the main passenger cabin area, above the main passenger area, and below the passenger cabin area adjacent to the cargo compartment of the Boeing Model 777 series airplanes. Also, overhead crew rest compartments have been installed on the Boeing Model 747 series airplanes.

The FAA has previously issued special conditions that contain the additional safety standards that must be met for the overhead crew rest compartments on Boeing Model 747 series airplanes. The FAA certified the lower lobe flight attendant rest compartment on the Boeing Model 777 series airplanes by an equivalent level of safety finding to the requirements of § 25.819. In addition, the FAA recently issued Special Conditions No. 25–169–SC, dated December 1, 2000, amended on May 2, 2001, for Boeing Model 777 series airplanes for overhead crew rest compartments for Flight Structures Inc. of Arlington, Washington. The FAA also issued Special Conditions No. 25–192–SC, dated November 6, 2001, for Model 777 series airplanes for overhead crew rest compartments for the Boeing Commercial Airplane Group—Wichita Division Designated Alteration Station (DAS) of Wichita, Kansas.

Type Certification Basis

Under the provisions of § 21.101, Amendment 21–69, effective September 16, 1991, Boeing Commercial Airplane Group must show that the Model 777 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet No. T00001SE or the applicable regulations in effect on the date of application for the change. Subsequent changes have been made to § 21.101 as part of Amendment 21–77, but those changes do not become effective until June 10, 2003. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. T00001SE for the Boeing Model 777 series airplanes include 14 CFR part 25, as amended by Amendments 25–1 through 25–82. The U.S. type certification basis for the Boeing Model 777 series airplanes is established in accordance with 14 CFR 21.17 and 21.29 and the type certification application date. The type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101(b)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Compliance with these special conditions does not relieve the applicant from the existing airplane certification basis requirements. One particular area of concern is that the overhead crew rest compartment installation creates a smaller compartment volume within the overhead area of the airplane. The applicant must comply with the requirements of §§ 25.365(e), (f), and (g), for the overhead crew rest compartment, as well as any other airplane compartments whose decompression characteristics are affected by the installation of an overhead crew rest compartment. Compliance with § 25.831 must be demonstrated for all phases of flight where occupants will be present.

Novel or Unusual Design Features

While the installation of an overhead crew rest compartment is not a new concept for large transport category airplanes, each compartment design has unique features by virtue of its design, location, and use on the airplane. Previously, crew rest compartments have been installed and certified in the main passenger cabin area of the Boeing Model 777–200 and –300 series airplanes and the overhead area of the passenger compartment of the Model 777–200. Other crew rest compartments have been installed below the passenger cabin area adjacent to the cargo compartment. Similar overhead crew rest compartments have also been installed on the Boeing Model 747 series airplanes. The modification is evaluated with respect to the interior and assessed in accordance with the certification basis of the airplane. However, part 25 does not provide all of the requirements for crew rest compartments within the overhead area of the passenger compartment. Further, these special conditions do not negate the need to address other applicable part 25 regulations.

Due to the novel or unusual features associated with the installation of this overhead crew rest compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificate.

Operational Evaluations and Approval

These special conditions outline requirements for overhead crew rest compartment design approvals (*i.e.*, type design changes and supplemental type certificates) administered by the FAA's Aircraft Certification Service. Prior to operational use of an overhead crew rest compartment, the FAA's Flight Standards Service must evaluate and approve the "basic suitability" of the overhead crew rest compartment for crew occupation. Additionally, if an operator wishes to utilize an overhead crew rest compartment as "sleeping quarters," the crew rest compartment must undergo an additional evaluation and approval (Reference §§A121.485(a), 121.523(b) and 135.269(b)(5)). Compliance with these special conditions does not ensure that the applicant has demonstrated compliance with the requirements of part 121 or part 135.

In order to obtain an operational evaluation, the type design holder must contact the Aircraft Evaluation Group (AEG) in the Flight Standards Service and request a "basic suitability" evaluation or a "sleeping quarters" evaluation of their crew rest. The results of these evaluations should be documented in a 777 Flight Standardization Board (FSB) Report Appendix. Individual operators may reference these standardized evaluations in discussions with their FAA Principal Operating Inspector (POI) as the basis for an operational approval, in lieu of an on-site operational evaluation.

Any changes to the approved overhead crew rest compartment configuration that affect crewmember emergency egress or any other procedures affecting the safety of the occupying crewmembers and/or related training shall require a re-evaluation and approval. The applicant for a crew rest design change that affects egress, safety procedures, or training is responsible for notifying the FAA's AEG that a new crew rest evaluation is required.

Procedures must be developed to assure that a crewmember entering the overhead crew rest compartment through the vestibule to fight a fire will examine the vestibule and the lavatory areas for the source of the fire prior to entering the remaining areas of the crew rest compartment. These procedures are intended to assure that the source of the fire is not between the crewmember and the primary exit. In the event a fire source is not immediately self-evident to the firefighter, the firefighter should check for potential fire sources at areas closest to the primary exit first, then proceed to check areas in such a manner that the fire source, when found, would not be between the firefighter and the primary exit. Procedures describing methods to search the overhead crew rests for fire source(s) must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

Discussion of the Special Conditions

In general, the requirements listed in these special conditions are similar to those previously approved in earlier certification programs, such as for the Boeing Model 777–200 series airplanes and Boeing Model 747 overhead crew rest compartments. These special conditions establish seating, communication, lighting, personal safety, and evacuation requirements for the overhead crew rest compartment. In addition, passenger information signs, supplemental oxygen, and a seat or berth for each occupant of the crew rest compartment are required. These items are necessary because of turbulence and/or decompression. When applicable, the requirements parallel the existing requirements for a lower deck service compartment and provide an equivalent level of safety to that provided for main deck occupants.

Special Condition No. 1

This special condition requires the seats and berths must be certified to the maximum flight loads. Due to the location and configuration of the overhead crew rest compartment, occupancy during taxi, takeoff, and landing is prohibited, and occupancy is limited to crewmembers during flight. Occupancy would be limited to four in the OFCR or the combined total of approved seats and berths in the OFCR whichever is less. Occupancy would be limited to twelve in an OFAR, or the combined total of approved seats and berths in the OFAR, whichever is less. This special condition has the requirements for door access and locking and the installation of ashtrays, and for appropriate placards to prohibit passenger access, access by crewmembers not trained in evacuation procedures, smoking and hazardous quantities of flammable fluids, explosives, or other dangerous cargo. The phrase "hazardous quantities" as used in this SC permits trained crewmembers to continue to carry baggage containing minute quantities of flammable fluids (*e.g.*, finger nail polish, aerosol hairspray, etc.) that would pose no threat to the airplane or its occupants. This wording is consistent with the existing wording of §§ 25.831(d), 25.855 (h)(2), 25.857 (b)(2), (c)(3) & (e)(4) and 25.1353(c)(3).

Special Condition No. 2

This special condition precludes occupants from being trapped in the crew rest compartment in the event of an emergency, there must be at least two emergency evacuation routes that could be used by each occupant of the overhead crew rest compartment to rapidly evacuate to the main cabin. These two routes must be sufficiently separated to minimize the possibility of an event rendering both routes inoperative. The main entry route meeting the appropriate requirements may be utilized as one of the emergency evacuation routes, or alternatively two other emergency routes must be provided. The intent of Special Condition No. 2(b) is to ensure that one of the two routes would be clear of moving occupants under most foreseeable circumstances.

The following clarifies the intent of Special Condition No. 2(b) concerning the utility of the egress routes. There are three issues that should be considered. First, occupied passenger seats are not considered an impediment to the use of an egress route (for example, the egress route drops into one row of seats by means of a hatch) provided that the seated occupants do not inhibit the opening of the egress route (for example, a hatch).

Second, an egress route may utilize areas where normal movement of passengers occurs if it is demonstrated that the passengers would not impede egress to the main deck. If the egress means (a hatch in this design) opens into a main aisle, cross aisle, or galley complex to an extent that it contacts a standing ninety-fifth percentile male, then the contact should only momentarily interrupt the opening of the egress hatch. The interruption to the egress means can be considered momentary if the egress means would continue to open normally once the person has moved out of the way.

Third, the escape hatch should be provided with a means to prevent it from being inadvertently closed by a passenger on the main deck. This will ensure main deck passengers can not prevent the overhead crew rest occupants from using the escape route. The crew should be able to stow the escape hatch prior to landing.

Training requirements for the occupants of the overhead crew rest area are included in this special condition.

New qualitative and quantitative criteria have been added to this special condition since the issuance of Special Conditions No. 25–192–SC to clarify how compliance can be shown to Special Condition No. 2(a).

Special Condition No. 3

This special condition requires that each evacuation route must be designed and procedures specified to allow for removal of an incapacitated person from the crew rest compartment to the main deck. Additional assistants to evacuate an incapacitated person may ascend up to one half the elevation change from the main deck to the overhead compartment, or to the first landing, whichever is lower. This special condition allows for five passenger seats to be emptied for the purpose of demonstrating evacuation of an incapacitated person, where the escape route is over seats.

Special Condition No. 4

This special condition requires the provision of exit signs, placards for evacuation routes, illumination for signs, placards and door handles. This special condition allows for exit signs with a reduced background area to be used. The material surrounding the sign must be light in color to more closely match and enhance the illuminated background of the sign that has been reduced in area (letter size stays the same). These reduced background area signs have been allowed under previous equivalent levels of safety for small transport executive jets.

Special Condition No. 5

This special condition requires an emergency lighting system to prevent the occupants from being isolated in a dark area due to loss of the normal crew rest compartment lighting. The emergency lighting must be activated under the same conditions as the main deck emergency lighting system.

Special Condition No. 6

This special condition requires a two-way voice communications and public address speaker(s) to alert the occupants to an in-flight emergency. Also required is a system to alert the occupants of the overhead crew rest compartment in the event of decompression and to don oxygen masks.

Special Condition No. 7

This special condition requires occupants of each overhead crew rest to be informed of an emergency situation via emergency alarm means, use of the public address system, or crew interphone system. Also, power is to be maintained to the emergency alarm system for a specific duration after certain failures.

Special Condition No. 8

This special condition requires a means that is readily detectable by seated or standing occupants of the overhead crew rest compartment to indicate when seat belts should be fastened. The requirement for visibility of the sign by standing occupants may be met by a general area sign that is visible to occupants standing in the main floor area or corridor of the crew rest compartment. It would not be essential that the sign be visible from every possible location in the crew rest compartment. However, the sign should not be remotely located or located where it may be easily obscured.

Special Condition No. 9

This special condition requires the overhead crew rest compartment, which is remotely located from the passenger cabin, to be equipped with these tools specified to fight a fire should a fire occur: a hand-held fire extinguisher, protective breathing equipment (PBE), and a flashlight.

This requirement has been modified from previously issued Special Conditions No. 25–192–SC to clarify how it should be interpreted relative to the requirements of § 25.1439(a). Amendment 25–38 modified the requirements of § 25.1439(a) by adding, "In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation." The requirements of § 25.1439(a) apply to the overhead crew rest compartment, which is an isolated separate compartment. However, the PBE requirements for isolated separate compartments of § 25.1439(a) are not appropriate because the overhead crew rest compartment is novel and unusual in terms of the number of occupants. In 1976 when Amendment 25–38 was adopted, underfloor galleys were the only isolated compartments that had been certificated with a maximum of two crewmembers expected to occupy those galleys. Special Condition No. 9 addresses overhead crew rest compartments that can accommodate up to 12 crewmembers. This large number of occupants in an isolated compartment was not envisioned at the time Amendment 25–38 was adopted. In the event of a fire, the occupant's first action should be to leave the confined space, unless the occupant(s) is fighting the fire. It is not appropriate for all overhead crew rest compartment occupants to don PBE. Taking the time to don the PBE would prolong the time for the occupant's emergency evacuation and possibly interfere with efforts to extinguish the fire.

Special Condition No. 10

This special condition requires a smoke detection system and appropriate warnings since the overhead crew rest compartment is remotely located from the main passenger cabin and will not always be occupied. The smoke detection system must be capable of detecting a fire in each occupiable area of the compartment created by the installation of a curtain or door.

Special Condition No. 11

This special condition requires the overhead crew rest compartment to be designed such that fires within the compartment can be controlled without having to enter the compartment; or, the design of the access provisions must allow crew equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the firefighting equipment, and to gain access must not exceed the time for the crew rest compartment to become smoke filled, making it difficult to locate the fire source.

Special Condition No. 12

This special condition requirement concerning fires within the compartment was developed for, and applied to, lower lobe crew rest compartments in Boeing Model 777–200 and –300 series airplanes. It was not applied to the overhead crew rest compartment in earlier certification programs such as the Boeing Model 747 airplanes. The Model 747 special conditions were issued before the new flammability requirements were developed. This requirement originated from a concern that a fire in an unoccupied overhead crew rest compartment could spread into the passenger compartment or affect other vital systems, before it could be extinguished. This special condition would require either the installation of a manually activated fire containment system that is accessible from outside the overhead crew rest compartment, or a demonstration that the crew could satisfactorily perform the function of extinguishing a fire under the prescribed conditions. A manually activated built-in fire extinguishing system would be required only if a crewmember could not successfully locate and extinguish the fire during a demonstration where the crewmember is responding to the alarm.

The overhead crew rest compartment smoke or fire detection and fire suppression systems (including airflow management features which prevent hazardous quantities of smoke or fire extinguishing agent from entering any other compartment occupied by crewmembers or passengers) is considered complex in terms of paragraph 6d of Advisory Circular (AC) 25.1309–1A, "System Design and Analysis." In addition, the FAA considers failure of the overhead crew rest compartment fire protection system (*i.e.*, smoke or fire detection and fire suppression systems) in conjunction with an overhead crew rest fire to be a catastrophic event. Based on the "Depth of Analysis Flowchart" shown in Figure 2 of AC 25.1309–1A, the depth of analysis should include both qualitative and quantitative assessments (reference paragraphs 8d, 9, and 10 of AC 25.1309–1A). In addition, it should be noted that hazardous quantities of flammable fluids, explosives, or other dangerous cargo are prohibited from being carried in the overhead crew rest compartment, a prohibition addressed in Special Condition No. 1(a)(5).

The requirements to enable crewmember(s) quick entry to the overhead crew rest compartment and to locate a fire source inherently places limits on the amount of baggage that may be carried and the size of the overhead crew rest compartment. The overhead crew rest compartment is limited to stowage of crew personal luggage and it is not intended to be used for the stowage of cargo or passenger baggage. The design of such a system to include cargo or passenger baggage would require additional requirements to ensure safe operation.

The FAA accepts the fact that during the one-minute smoke detection time that penetration of a small quantity of smoke from this overhead crew rest design into an occupied area on this airplane configuration would be acceptable based upon the limitations placed in this and other associated special conditions. The FAA position is predicated on the fact that these special conditions place sufficient restrictions in the quantity and type of material allowed in crew carry-on bags that the threat from a fire in this remote area would be equivalent to that experienced on the main cabin.

Special Condition No. 13

This special condition requires that the oxygen equipment and a supplemental oxygen deployment warning for the overhead crew rest compartment must be equivalent to that provided for main deck passengers. Procedures for occupants of the overhead crew rest area in the event of decompression must be established.

Special Condition No. 14

This special condition has the requirements for a divided overhead crew rest compartment to address supplemental oxygen equipment and deployment means, signs, placards, curtains, doors, emergency illumination, alarms, seat belt fasten signals, and evacuation routes.

The wording in the Special Condition No. 14(a) was modified from previously issued special conditions to clarify that oxygen masks are not required in common areas where seats or berths are not installed. A visual indicator to don oxygen masks is required in these areas. The visual indicator is in addition to the aural alert for donning oxygen masks.

Special Condition No. 15

This special condition eliminates the requirements for flight deck communication as required by Special Condition No. 6, and emergency fire fighting and protective equipment as required by Special Condition No. 9, for lavatories or other small areas within an overhead crew rest compartment.

Special Condition No. 16

This special condition requires that where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher.

Special Condition No. 17

This special condition requires that the materials in the crew rest compartment must meet the flammability requirements of § 25.853(a), and the mattresses must meet the fire blocking requirements of § 25.853(c).

Special Condition No. 18

This special condition requirement is a reiteration of existing main deck lavatory requirements to provide clear applicability. Overhead crew rest compartment lavatories are required to comply with the existing rules on lavatories in the absence of other specific requirements. In addition, any lavatory located in the crew rest compartment must also meet the requirements of Special Condition No. 10 for smoke detection due to placement within this remote area.

Special Condition No. 19

This special condition has requirements for fire protection requirements for overhead crew rest stowage compartments as a function of size (compartment interior volume). The special condition has been revised from the special conditions previously issued due to the introduction of larger stowage compartments into the overhead crew rest compartment. The fire protection requirements for stowage compartments in the overhead crew rest compartment are more stringent than those for stowage in the main passenger cabin because the overhead crew rest compartment is a remote area that can remain unoccupied for long periods of time in contrast to the main cabin that is under continuous monitoring by the cabin crew and passengers. For stowage compartments less than 25 ft^3 the safety objective of these requirements is to contain the fire. The FAA research indicates that properly constructed compartments meeting the material requirements will prevent burn through. For stowage compartments greater than 25 ft^3 but less than 200 ft^3 the safety of objective of these requirements is to detect and contain the fire for sufficient time to allow it to be extinguished by the crew. The requirements for these sizes of compartments are comparable to the requirements for Class B cargo compartments. The fire protection requirements are intended to provide a level of safety for the overhead crew rest compartment that is equivalent the level of safety established by the existing regulations for the main cabin.

These special conditions along with the original type certification basis provide the regulatory requirements necessary for certification of this modification. Other special conditions may be developed, as needed, based on further FAA review and discussions with the applicant, manufacturer, and civil aviation authorities.

The addition of galley equipment or a kitchenette incorporating a heat source (*e.g.*, cook tops, microwaves, coffee pots, etc.), other than a conventional lavatory or kitchenette hot water heater, within the overhead crew rest compartment, may require further special conditions to be considered. A hot water heater is acceptable without further special conditions consideration.

Previous Comment

During a previous publication of substantially identical special conditions, a comment was received after the comment period closed. The commenter thought that requiring placards prohibiting storage of "hazardous quantities of flammable fluids" was unnecessary and a duplication of International Air Transport Association (IATA) Dangerous Goods Regulations, specifically, "Provisions for Dangerous Goods Carried by Passengers or Crew." The FAA concurs with the commenter

that the placard requirement is similar to the IATA requirement, therefore, the requirement for the placard has been removed.

Discussion of Comments Received on Special Conditions No. 25–216–SC

Notice of final special conditions; request for comments, No. 25–216–SC, for Boeing Model 777 series airplanes was published in the **Federal Register** on October 11, 2002 (67 FR 63250). Three commenters responded to the notice.

The First Commenter

The first commenter requests changing the title of the special conditions to read "Boeing Model 777 Series * * *" since it is the intent to utilize these special conditions on various models of the 777. The FAA concurs with this comment and the change is incorporated.

Next, this commenter requests a revision to the section of the preamble entitled "Operational Evaluations and Approval." This commenter has a concern that a prescribed procedure in a dynamic situation, such as a crew rest fire, could be detrimental to the ability of the firefighter to address the fire threat. The FAA agrees and this comment is incorporated.

In the preamble material for Special Condition No. 13, the commenter suggests adding the following text: "Training requirements for the occupants of the overhead crew rest area in the event of decompression are included in the requirement." The commenter feels this clarification is needed to ensure consistency with Special Condition No. 13. The FAA concurs and the intent of this comment is incorporated.

The commenter's next request is for an editorial correction in the preamble material for Special Condition No. 14; it should read Special Condition No. 14(a). The FAA concurs with the commenter and the editorial correction is made.

The commenter requests that Special Condition No. 2 be revised to add the phrase "if the open panel would impede evacuation from the main deck." The FAA disagrees. This comment is not incorporated as it deals with the method of compliance. The current statement adequately states the objectives of the requirement.

The commenter requests that Special Condition No. 8 be changed to include the statement "Consideration can be given to bunks, walls, partitions, etc. that can be utilized to brace oneself during turbulence." The FAA disagrees and this comment is not incorporated. The suggested statement would be considered a method of compliance. The current statement adequately states the objectives of this requirement.

Additionally, the commenter requests that in the preamble for Special Condition No. 10, the term "* * *occupiable area* * *" be included to better clarify the intent. The FAA concurs and the words "occupiable area" are added to Special Condition No. 10.

The commenter's next request is to add a paragraph requiring procedures describing methods to search the crew rest for fire sources. This requirement would ensure that the proper procedures are transmitted to the operators. The FAA agrees and this change is incorporated in Special Condition No. 11.

Another request by the commenter concerns an editorial change to Special Condition No. 13. The commenter suggests deleting the final paragraph because it is redundant to the text that immediately precedes it. The FAA agrees and the paragraph is deleted.

The commenter also requests that Special Condition No. 14(d) be revised to include the phrase, "except for curtained bunks." The FAA agrees and this comment is incorporated in Special Condition No. 14 as it helps clarify the intent of the requirement.

The Second Commenter

The second commenter's request concerns the requirements of Special Condition No. 9(b) that requires the installation of two protective breathing equipment (PBE) devices, or one PBE for each hand-held fire extinguisher, whichever is greater. The commenter however, does not feel that it would provide any additional safety benefit to require additional PBEs for all of the fire extinguishers. The FAA disagrees and this comment is not incorporated. The current statement adequately states the objective of the requirement. This special condition is intended to clarify the requirements of § 25.1439(a), that requires one PBE for each occupant of isolated, separate compartments; and § 121.337(b)(9)(iv), that requires a PBE for each required hand held fire extinguisher. As stated this requirement provides protection for each person engaged in fighting a fire.

Another request by this commenter addresses Special Condition No. 19. The commenter believes that the stowage areas in the entry vestibule should not be considered remote, and should be treated like similar compartments on the main deck such as a closet. The FAA disagrees, and this comment is not incorporated. The current statement adequately states the objective of the requirement. All areas behind the overhead crew rest entry door are considered remote, the area is unoccupied during taxi, takeoff and landing, and the area is not required to be occupied during flight.

The Third Commenter

The third commenter requests that Special Condition No. 1 be revised as follows: "1: The occupancy of the overhead crew rest compartment is limited to the total number of installed bunks and seats in each compartment. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the overhead crew rest compartment. When being used for required flight crew rest, the maximum occupancy of the OFCR compartment is two. The maximum occupancy in the OFAR is twelve."

The FAA disagrees and this comment is not incorporated. This issue should be covered during the Operational Evaluation and Approval as described in the preamble in the paragraph "Operational Evaluations and Approval." The number of occupants in a specific phase of flight, such as when it is being used as a required flight crew rest, is an operational issue and is outside the scope of these special conditions. Also, these special conditions are for this specific project for an overhead crew rest and do not pertain specifically to either a Overhead Flight Crew Rest (OFCR) or an Overhead Flight Attendant Rest (OFAR), again, this is an operational issue is outside the scope of these special conditions.

The next comment concerns occupying the crew rest during taxi, takeoff, and landing. These special conditions do not cover occupancy during taxi, takeoff, and landing, therefore, this comment is not incorporated.

The commenter's last request encompasses both Special Conditions No. 6 and 7. The commenter views the OFCR as being an extension of the flight deck. Except for emergency notifications, all communications to the OFCR should come from the flight deck. The FAA agrees and this comment is incorporated into Special Condition No. 6 to include provisions to provide only the relevant information to the flight crewmembers in the overhead crew rest. Special Condition No. 7 remains unchanged.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 777 series airplanes. Should the Boeing Commercial Airplane Group apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1) Amendment 21–69, effective September 16, 1991.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Boeing Model 777 series airplanes with overhead crew rest compartments. These special conditions apply to both overhead flight crew rest (OFCR) compartments and/or overhead flight attendant rest (OFAR) compartments, unless specifically stated otherwise.

1. Occupancy of the overhead crew rest compartment is limited to the total number of installed bunks and seats in each compartment. There must be an approved seat or berth able to withstand the maximum flight loads when occupied for each occupant permitted in the overhead crew rest compartment. The maximum occupancy is four in the OFCR and twelve in the OFAR.

(a) There must be appropriate placards, inside and outside each entrance to the overhead crew rest compartment to indicate:

(1) The maximum number of occupants allowed,

(2) That occupancy is restricted to crewmembers that are trained in the evacuation procedures for the overhead crew rest compartment,

(3) That occupancy is prohibited during taxi, take-off and landing, and

(4) That smoking is prohibited in the overhead crew rest compartment.

(b) There must be at least one ashtray on the inside and outside of any entrance to the overhead crew rest compartment.

(c) There must be a means to prevent passengers from entering the overhead crew rest compartment in the event of an emergency or when no flight attendant is present.

(d) There must be a means for any door installed between the overhead crew rest compartment and passenger cabin to be capable of being quickly opened from inside the compartment, even when crowding occurs at each side of the door.

(e) For all doors installed, there must be a means to preclude anyone from being trapped inside the overhead crew rest compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of the compartment at any time.

2. There must be at least two emergency evacuation routes, which could be used by each occupant of the overhead crew rest compartment to rapidly evacuate to the main cabin and be able to be closed from the main passenger cabin after evacuation. In addition'

(a) The routes must be located with sufficient separation within the overhead crew rest compartment, and between the evacuation routes, to minimize the possibility of an event rendering both routes inoperative.

Compliance to the requirements of Special Condition No. 2(a) may be shown by inspection or by analysis. Regardless which method is used, the maximum acceptable exit separation is 60 feet measured between exit openings.

Compliance by Inspection

An overhead crew rest compartment in which the evacuation routes are located such that each occupant of the seats and berths has an unobstructed route to at least one of the evacuation routes regardless of the location of a fire would be acceptable by inspection. A fire within a berth that only blocks the occupant of that berth from exiting the berth need not be considered. Therefore, exits which are located at absolute opposite ends (*i.e.*, adjacent to opposite end walls) of the crew rest would require no further review or analysis with regard to exit separation.

Compliance by Analysis

Analysis must show the overhead crew rest compartment configuration and interior features provide for all occupants of the overhead crew rest to escape the compartment in the event of a hazard inside or outside of the compartment. Elements to consider in this evaluation are as follows:

(1) Fire inside or outside the overhead crew rest compartment considered separately and the design elements used to reduce the available fuel for the fire,

(2) Design elements to reduce the fire ignition sources in the overhead crew rest compartment,

(3) Distribution and quantity of emergency equipment within the overhead crew rest compartment,

(4) Structural failure or deformation of components that could block access to the available evacuation routes (*e.g.*, seats, folding berths, contents of stowage compartments, etc),

(5) An incapacitated person blocking the evacuation routes,

(6) Any other foreseeable hazard not identified above that could cause the evacuation routes to be compromised.

Analysis must consider design features affecting access to the evacuation routes. The design features that should be considered include but are not limited to seat back break over, the elimination of rigid structure that reduces access from one part of the compartment to another, the elimination of items that are known to be the cause of potential hazards, the availability of emergency equipment to address fire hazards, the availability of communications equipment, supplemental restraint devices to retain items of mass that could hinder evacuation if broken loose and load path isolation between components that contain the evacuation routes.

Analysis of the fire threats should be used in determining the placement of required fire extinguishers and PBEs and should take into consideration the possibility of fire in any location in the overhead crew rest compartment. The location and quantity of PBEs and fire extinguishers should allow occupants located in any approved seats or berths access to the equipment necessary to fight a fire in the overhead crew rest compartment.

The intent of this special condition is to provide sufficient exit separation, therefore the exit separation analysis described above should not be used to approve exits which have less physical separation (measured between the centroid of each exit opening) than the minimums prescribed below, unless compensating features are identified and submitted to the FAA for evaluation and approval.

For overhead crew rest compartments with one exit located near the forward or aft end of an overhead crew rest compartment (as measured by having the centroid of the exit opening within 20 percent of the forward or aft end of the total overhead crew rest compartment length) the exit separation should not be less than 50 percent of the total overhead crew rest compartment length.

For overhead crew rest compartments with neither required exit located near the forward or aft end of the overhead crew rest compartment (as measured by

not having the centroid of either exit opening within 20 percent of the forward or aft end of the total overhead crew rest compartment length) the exit separation should not be less than 30 percent of the total overhead crew rest compartment length.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure, or persons standing below or against the escape route. One of the two evacuation routes should not be located where, during times in which occupancy is allowed, normal movement by passengers occurs (*i.e.*, main aisle, cross aisle or galley complex) that would impede egress from the overhead crew rest compartment. If an evacuation route utilizes an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If there is low headroom at or near the evacuation route, provisions must be made to prevent or to protect occupants (of the overhead crew rest compartment) from head injury. The use of evacuation routes must not be dependent on any powered device. If the evacuation path is over an area where there are passenger seats, a maximum of five passengers may be displaced from their seats temporarily during the evacuation process of an incapacitated person(s). If the evacuation procedure involves the evacuee stepping on seats, the seats must not be damaged to the extent that they would not be acceptable for occupancy during an emergency landing.

(c) Emergency evacuation procedures, including the emergency evacuation of an incapacitated occupant from the overhead crew rest compartment, must be established. All of these procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

(d) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

3. There must be a means for the evacuation of an incapacitated person (representative of a ninety-fifth percentile male) from the overhead crew rest compartment to the passenger cabin floor.

(a) The evacuation must be demonstrated for all evacuation routes. A crewmember (a total of one assistant within the overhead crew rest compartment) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. These additional assistants must be standing on the floor while providing assistance. For evacuation routes having stairways, the additional assistants may ascend up to one half the elevation change from the main deck to the overhead crew rest compartment, or to the first landing, whichever is lower.

4. The following signs and placards must be provided in the overhead crew rest compartment:

(a) At least one exit sign, located near each exit, meeting the requirements of § 25.812(b)(1)(i), except that a sign with reduced background area of no less than 5.3 square inches (excluding the letters) may be utilized, provided that it is installed such that the material surrounding the exit sign is light in color (*e.g.*, white, cream, light beige). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters would also be acceptable.

(b) An appropriate placard located near each exit defining the location and the operating instructions for each evacuation route.

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions.

(d) The exit handles and evacuation path operating instruction placards must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. There must be a means in the event of failure of the aircraft's main power system, or of the normal overhead crew rest compartment lighting system, for emergency illumination to be automatically provided for the overhead crew rest compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the overhead crew rest compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

6. There must be means for two-way voice communications between crewmembers on the flight deck and occupants of the overhead crew rest compartment. There must also be two-way communications between the occupants of the overhead crew rest compartment and each flight attendant station required to have a public address system microphone per § 25.1423(g) in the passenger cabin. In addition, the public address system will include provisions to provide only the relevant information to the flight crewmembers in the overhead crew rest compartment (*e.g.*, fire in flight, aircraft depressurization, preparation of the compartment occupants for landing, etc.).

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor level emergency exits to alert occupants of the overhead crew rest compartment of an emergency situation. Use of a public address or crew interphone system will be acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight, after the shutdown or failure of all engines and auxiliary power units (APU), for a period of at least ten minutes.

8. There must be a means, readily detectable by seated or standing occupants of the overhead crew rest compartment, which indicates when seat belts should be fastened. In the event there are no seats, at least one means must be provided to cover anticipated turbulence (*e.g.*, sufficient handholds). Seat belt type restraints must be provided for berths and must be compatible for the sleeping attitude during cruise conditions. There must be a placard on each berth requiring that seat belts must be fastened when occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard identifying the head position.

9. In lieu of the requirements specified in § 25.1439(a) that pertain to isolated compartments and to provide a level of safety equivalent to that which is provided occupants of an isolated galley, the following equipment must be provided in the overhead crew rest compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur,

(b) Two protective breathing equipment (PBE) devices approved to Technical Standard Order (TSO)–C116 or equivalent, suitable for firefighting, or one PBE for each hand-held fire extinguisher, whichever is greater, and

(c) One flashlight.

Note: Additional PBEs and fire extinguishers in specific locations, (beyond the minimum numbers prescribed in Special Condition No. 9 may be required as a result of the egress analysis accomplished to satisfy Special Condition No. 2(a).

10. A smoke or fire detection system (or systems) must be provided that monitors each occupiable area within the overhead crew rest compartment, including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication to the flightdeck within one minute after the start of a fire;

(b) An aural warning in the overhead crew rest compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. The overhead crew rest compartment must be designed such that fires within the compartment can be controlled without a crewmember having to enter the compartment, or the design of the access provisions must allow crewmembers equipped for firefighting to have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, to don the firefighting equipment, and to gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the fire source. Procedures describing methods to search the overhead crew rests for fire sources(s) must be established. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

12. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the overhead crew rest compartment from entering any other compartment occupied by crewmembers or passengers. This means must include the time periods during the evacuation of the overhead crew rest compartment and, if applicable, when accessing the overhead crew rest compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers when the access to the overhead crew rest compartment is opened, during an emergency evacuation, must dissipate within five minutes after the access to the overhead crew rest compartment is closed. Hazardous quantities of smoke may not enter any other compartment occupied by crewmembers or passengers during subsequent access to manually fight a fire in the overhead crew rest compartment (the amount of smoke entrained by a firefighter exiting the overhead crew rest compartment through the access is not considered hazardous). During the one-minute smoke detection time, penetration of a small quantity of smoke from the overhead crew rest compartment into an occupied area is acceptable. Flight tests must be conducted to show compliance with this requirement.

If a built-in fire extinguishing system is used in lieu of manual firefighting, then the fire extinguishing system must be designed so that no hazardous quantities of extinguishing agent will enter other compartments occupied by passengers or crew. The system must have adequate capacity to suppress any fire occurring in the overhead crew rest compartment, considering the fire threat, volume of the compartment and the ventilation rate.

13. There must be a supplemental oxygen system equivalent to that provided for main deck passengers for each seat and berth in the overhead crew rest compartment. The system must provide an aural and visual warning to warn the occupants of the overhead crew rest compartment to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously for a minimum of five minutes or until a reset push button in the overhead crew rest compartment is depressed. Procedures for crew rest occupants in the event of decompression must be established. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

14. The following requirements apply to overhead crew rest compartments that are divided into several sections by the installation of curtains or partitions:

(a) To compensate for sleeping occupants, there must be an aural alert that can be heard in each section of the overhead crew rest compartment that accompanies automatic presentation of supplemental oxygen masks. A visual indicator that occupants must don an oxygen mask is required in each section where seats or berths are not installed. A minimum of two supplemental oxygen masks are required for each seat or berth. There must also be a means by which the oxygen masks can be manually deployed from the flight deck.

(b) A placard is required adjacent to each curtain that visually divides or separates, for privacy purposes, the overhead crew rest compartment into small sections. The placard must require that the curtain(s) remains open when the private section it creates is unoccupied. The vestibule section adjacent to the stairway is not considered a private area and, therefore, does not require a placard.

(c) For each section of the overhead crew rest compartment created by the installation of a curtain, the following requirements of these special conditions must be met with the curtain open or closed:

(1) No smoking placard (Special Condition No. 1),

(2) Emergency illumination (Special Condition No. 5),

(3) Emergency alarm system (Special Condition No. 7),

(4) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8), and

(5) The smoke or fire detection system (Special Condition No. 10).

(d) Overhead crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate section of the overhead crew rest compartment, except for curtained bunks, and must meet the requirements of § 25.812(b)(1)(i).

(e) Sections within an overhead crew rest compartment that are created by the installation of a rigid partition with a door physically separating the sections, the following requirements of these special conditions must be met with the door open or closed:

(1) There must be a secondary evacuation route from each section to the main deck, or alternatively, it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment. Removal of an incapacitated occupant within this area must be considered. A secondary evacuation route from a small room designed for only one occupant for short time duration, such as a changing area or lavatory, is not required. However, removal of an incapacitated occupant within a small room, such as a changing area or lavatory, must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section meeting the requirements of § 25.812(b)(1)(i) that direct occupants to the primary stairway exit. An exit sign with reduced background area as

described in Special Condition No. 4(a) may be used to meet this requirement.

(f) For each smaller section within the main overhead crew rest compartment created by the installation of a partition with a door, the following requirements of these special conditions must be met with the door open or closed:

(1) No smoking placards (Special Condition No. 1);

(2) Emergency illumination (Special Condition No. 5);

(3) Two-way voice communication (Special Condition No. 6);

(4) Emergency alarm system (Special Condition No. 7);

(5) Seat belt fasten signal or return to seat signal as applicable (Special Condition No. 8);

(6) Emergency firefighting and protective equipment (Special Condition No. 9); and

(7) Smoke or fire detection system (Special Condition No. 10).

15. The requirements of two-way voice communication with the flight deck and provisions for emergency firefighting and protective equipment are not applicable to lavatories or other small areas that are not intended to be occupied for extended periods of time.

16. Where a waste disposal receptacle is fitted, it must be equipped with an automatic fire extinguisher that meets the performance requirements of § 25.854(b).

17. Materials (including finishes or decorative surfaces applied to the materials) must comply with the flammability requirements of § 25.853(a) as amended by Amendment 25–83. Mattresses must comply with the flammability requirements of § 25.853(c), as amended by Amendment 25–83.

18. The addition of a lavatory within the overhead crew rest compartment would require the lavatory to meet the same requirements as those for a lavatory installed on the main deck except with regard to Special Condition No. 10 for smoke detection.

19. All enclosed stowage compartments within the overhead crew rest compartment that are not limited to stowage of emergency equipment or airplane supplied equipment (*i.e.*, bedding) must meet the design criteria given in the table below. Enclosed stowage compartments greater than 200 ft3 in interior volume are not addressed by this special condition. The in flight accessibility of very large enclosed stowage compartments and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand fire extinguisher will require additional fire protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

Fire protection features	Stowage compartment interior volumes		
	Less than 25 cubic feet	25 cubic feet to 57 cubic feet	57 cubic feet to 200 cubic feet
Materials of Construction [1]	Yes	Yes	Yes.
Detectors [2]	No	Yes	Yes.
Liner [3]	No	Yes	Yes.
Locating Device [4]	No	Yes	Yes.

[1] *Material:* The material used to construct each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards established for interior components (*i.e.*, 14 CFR part 25 Appendix F, parts I, IV, and V) per the requirements of § 25.853. For compartments less than 25 ft3 in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] *Detectors:* Enclosed stowage compartments equal to or exceeding 25 ft3 in interior volume must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide: (a) A visual indication in the flight deck within one minute after the start of a fire, (b) An aural warning in the overhead crew rest compartment, and (c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

[3] *Liner:* If it can be shown that the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment (*i.e.*, § 25.855 at Amendment 25–93, and Appendix F, part I, paragraph (a)(2)(ii)), then no liner would be required for enclosed stowage compartments equal to or greater than 25 ft3 in interior volume but less than 57 ft3 in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft3 in interior volume but less than or equal to 200 ft3, a liner must be provided that meets the requirements of § 25.855 for a Class B cargo compartment.

[4] *Location Detector:* Overhead crew rest compartment which contain enclosed stowage compartments exceeding 25 ft3 interior volume and which are located away from one central location such as the entry to the overhead crew rest compartment or a common area within the overhead crew rest compartment would require additional fire protection features and/or devices to assist the firefighter in determining the location of a fire.

Issued in Renton, Washington on April 9, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9505 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–99–AD; Amendment 39–13114; AD 2003–08–03]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas airplane models. This amendment requires repetitive inspections for chafing or potential chafing of the wiring for the throttle control module (TCM) on the center pedestal in the flight deck compartment, corrective actions if necessary, an inspection of the TCM to determine its part number and configuration, and modification of the TCM. Doing this modification terminates the repetitive inspections. The actions specified by this AD are intended to prevent chafing of wiring inside the TCM, fuel shutoff lever lights, and/or aft pedestal lightplates due to degradation of protective sleeving, which could result in electrical arcing and failure of the auto throttle/speed control system and consequent smoke and/or fire in the cockpit.

DATES: Effective May 22, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 22, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on January 3, 2003 (68 FR 305). That action proposed to require an inspection of the throttle control module (TCM) on the center pedestal in the flight deck compartment to determine its part number and configuration, modification of the TCM, repetitive inspections for chafing or potential chafing of the TCM wiring, and corrective actions if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

The Air Transport Association of America (ATA) states that its members support the intent of the proposal. In a comment attached to the ATA's comment, one ATA member states that it appreciates the FAA's decision in the supplemental NPRM to extend the compliance time for the proposed actions to 5 years.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 401 Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes of the affected design in the worldwide fleet. The FAA estimates that 321 airplanes of U.S. registry will be affected by this AD.

We estimate that it will take approximately 2 work hours per airplane to perform the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $38,520, or $120 per airplane, per inspection cycle.

It will take approximately 15 work hours per airplane to accomplish the required modification at an average labor rate of $60 per work hour. Required parts will cost approximately $1,712 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $838,452, or $2,612 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–08–03 McDonnell Douglas: Amendment 39–13114. Docket 2001–NM–99–AD.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC10A and KDC–10), DC–10–40, DC–10–40F, MD–10–10F, and MD–10–30F airplanes; as listed in Boeing Alert Service Bulletin DC10–76A048, Revision 01, dated January 29, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or

repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of wiring inside the throttle control module, fuel shutoff lever lights, and/or aft pedestal lightplates due to degradation of protective sleeving, which could result in electrical arcing and failure of the auto throttle/speed control system and consequent smoke and/or fire in the cockpit, accomplish the following:

Repetitive Inspections for Chafing

(a) Within 18 months after the effective date of this AD, perform a general visual inspection for chafing or potential chafing of the wiring of the throttle control module located on the center pedestal in the flight compartment, per Boeing Alert Service Bulletin (ASB) DC10–76A049, excluding the Appendix and Evaluation Form, dated January 29, 2002. Thereafter, repeat the inspection at intervals not to exceed 18 months, until the actions specified in paragraph (c) of this AD are accomplished.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Corrective Actions for Chafing or Potential Chafing

(b) If any evidence of chafing or potential chafing is found during any inspection required by paragraph (a) of this AD, before further flight, repair the chafed wires or reposition wires, as applicable, per Boeing ASB DC10–76A049, excluding the Appendix and Evaluation Form, dated January 29, 2002.

Inspection and Modification

(c) Within 5 years after the effective date of this AD, do the actions specified in paragraphs (c)(1) and (c)(2) of this AD, per Boeing ASB DC10–76A048, excluding the Evaluation Form, dated August 6, 2001; or Revision 01, excluding the Evaluation Form, dated January 29, 2002.

(1) Do an inspection of the throttle control module on the center pedestal in the flight deck compartment to determine its part number and configuration, which will identify the group applicability information.

(2) Modify the throttle control module on the center pedestal in the flight deck compartment per the applicable figure in the service bulletin. Accomplishment of the modification constitutes terminating action for the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin DC10–76A048, excluding the Evaluation Form, dated August 6, 2001, or Boeing Alert Service Bulletin DC10–76A048, Revision 01, excluding the Evaluation Form, dated January 29, 2002; and Boeing Alert Service Bulletin DC10–76A049, excluding the Appendix and Evaluation Form, dated January 29, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on May 22, 2003.

Issued in Renton, Washington, on April 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–8894 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–37–AD; Amendment 39–13117; AD 2003–08–06]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, B1, B2, BA, and D Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter model helicopters that requires fireproofing the engine oil tank breather pipe (breather pipe) where it passes through the firewall from the engine compartment to the main gearbox compartment. This amendment is prompted by the discovery of a design deficiency that permitted the installation of a non-fireproof breather pipe. The actions specified by this AD are intended to prevent the spread of fire between two designated fire zones of the helicopter, additional structural damage, and a decrease in the time available to execute an emergency landing.

DATES: Effective May 22, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 22, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for Eurocopter France (Eurocopter) Model AS350B, B1, B2, BA, and D helicopters was published in the **Federal Register** on November 4, 2002 (67 FR 67131). That action proposed to require modifying the breather pipe by installing a protection sheath, part number ASNA0199–024, on the segment of the engine oil tank breather pipe between the engine and the main gearbox compartments.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on specified Eurocopter model helicopters. The DGAC advises that the breather pipe should be made fireproof by fitting it with a heat-resistant silicone sheath.

Eurocopter has issued AS 350 Service Bulletin No. 79.00.11, Revision No. 1, dated May 5, 2000, which specifies modifying the engine oil tank breather pipe with a high-temperature silicone glass sheath, then inspecting for oil leaks. The service bulletin states that it relates to MOD 072793. It further states that the high-temperature silicone glass sheath, part number (P/N) ASNA0199–024, is included in modification kit 350A0727930071. The DGAC classified this service bulletin as mandatory and issued AD No. 2000–268–078(A), dated June 28, 2000, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter states that we should add the following statement to the AD: "Those aircraft modified in accordance with STC SH3324NM do not apply." The commenter has a Supplemental Type Certificate that includes the installation of a fire sleeve, which he believes satisfies the intent of this AD. We agree that there may be other methods of compliance that provide an acceptable level of safety; however, we are not changing the AD since Note 1 and paragraph (b) of the AD allow an owner/operator to request approval for an alternate method of compliance if the helicopter has been modified, altered, or repaired so that the performance of the requirements of the AD is affected.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed, except in paragraph (a) of this AD, the part number is corrected to read ASNA0199–024, and the reference to the manufacturer's service bulletin is corrected to refer to paragraph "2.B." instead of "2.A." The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 470 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $25 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $39,950.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–08–06 Eurocopter France: Amendment 39–13117. Docket No. 2002–SW–37–AD.

Applicability: Eurocopter France Model AS350B, B1, B2, BA, and D helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before flight, unless accomplished previously.

To prevent a fire from spreading from the engine compartment through the firewall to the main gearbox due to a non-fireproof engine oil tank breather pipe (breather pipe), additional structural damage, and a decrease in the time available to execute an emergency landing, accomplish the following:

(a) Modify the engine oil tank breather pipe to make it fireproof by installing a high-temperature silicone glass protective sheath, part number ASNA0199–024, in accordance with the Accomplishment Instructions, paragraph 2.B., in Eurocopter AS 350 Service Bulletin No. 79.00.11, Revision No. 1, dated May 5, 2000.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Eurocopter AS 350 Service Bulletin No. 79.00.11, Revision No. 1, dated May 5, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, and fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on May 22, 2003.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2000–268–078(A), dated June 28, 2000.

Issued in Fort Worth, Texas, on April 8, 2003.

Michele M. Owsley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–9014 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–52–AD; Amendment 39–13115; AD 2003–08–04]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC120B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified model Eurocopter France (ECF) helicopters that requires inspecting the attachment of the bolted assemblies of the cyclic pitch flight control torque tube (torque tube) for an appropriate locking device. If a bolted assembly is single-locked, the AD requires, if necessary, tightening the self-locking nuts at certain intervals and modifying the torque tube after a certain time. This amendment is prompted by the discovery that some of the attachments of the torque tube were fastened with a single-locking device instead of the intended double-locking device. The actions specified by this AD are intended to prevent separation of the cyclic pitch stick yokes from the torque tube, loss of cyclic control, and subsequent loss of control of the helicopter.

DATES: Effective May 22, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 22, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Monschke, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model ECF helicopters was published in the **Federal Register** on February 14, 2002 (67 FR 6883). That action proposed determining whether the attachment of the bolted assembly of the torque tube is a single or double-locking device; and if the bolted assembly is single-locked, repetitively inspecting and, if necessary, tightening the self-locking nuts to a specified torque. The AD also proposed modifying the torque tube to provide double locking for the attachment pins of the cyclic pitch stick yokes to the torque tube after a specified time interval.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on ECF Model EC120B helicopters. The DGAC advises that the design fails to provide double-locking of the attachment pins of the cyclic pitch stick yokes to the torque tube.

ECF has issued Alert Service Bulletin No. 67A003, dated August 2, 2001 (ASB), which specifies inspecting single-locking devices within 50 hours time-in-service (TIS) and modifying single-locking devices to make them double locking within 500 hours TIS or 24 months, whichever occurs first. The DGAC classified this ASB as mandatory and issued AD 2001–373–008(A), dated August 22, 2001, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter, the manufacturer, states that the compliance time should be changed to 500 hours TIS or 24 months, whichever occurs first, in accordance with DGAC AD No. 2001–373–008(A). The commenter thinks the more restrictive compliance time proposed in the AD is unnecessary and will unnecessarily penalize U.S. operators. The commenter believes the initial and periodic checks required in the AD provide an adequate measure of safety until the modification is accomplished at the less restrictive compliance time. The commenter believes that with these checks an unsafe condition is not justified.

The FAA agrees that the inspections in the ASB provide a temporary measure of safety. However, we strongly prefer terminating action in lieu of inspections for unsafe conditions. In this case, certain ECF Model EC120B helicopters were manufactured with a single locking device on the pins that connect the cyclic pitch stick yokes to the pitch torque tube. These pins must be retained by two separate locking devices in accordance with 14 CFR § 27.607. Additionally, self-locking nuts must incorporate a nonfriction locking device in addition to the self-locking device. In determining the compliance time for modifying the torque tube, we considered the consequences of missed inspections and the seriousness of this unsafe condition, possible loss of cyclic pitch control. The FAA has determined that, due to the seriousness of this unsafe condition, the torque tube must be modified within the next 250 hours TIS or 12 months, whichever occurs first. This is more than ample time for U.S. operators to install a relatively simple fix to terminate the inspections. Considering the safety implications, these compliance times do not unnecessarily penalize U.S. operators; therefore, the compliance time will remain as proposed.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. The regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

The FAA estimates that this AD will affect 44 helicopters of U.S. registry, and the required actions will take approximately 5 work hours per helicopter to accomplish at an average labor rate of $60 per work hour. Required parts will cost approximately $195. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $21,780.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–08–04 Eurocopter France: Amendment 39–13115. Docket No. 2001–SW–52–AD.

Applicability: Model EC120B helicopters, serial numbers 1001 through 1029 inclusive, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the cyclic pitch stick yokes from the cyclic pitch flight control torque tube (torque tube), loss of cyclic control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS), determine whether each attachment of the bolted assembly of the torque tube (attachment) has a single or double-locking device in accordance with the Accomplishment Instructions, paragraph 2.B.1., of Eurocopter France Alert Service Bulletin No. 67A003, dated August 2, 2001 (ASB).

(1) If the attachment has a double-locking device (a castellated self-locking nut with a cotter pin), no further action is required by this AD.

(2) If the attachment has a single-locking device (a castellated self-locking nut without a cotter pin or a self-locking nut only), in accordance with the Accomplishment Instructions, paragraph 2.B.1., of the ASB, before further flight:

(i) Torque each nut to 0.4 to 0.5 mdaN (36 to 44 inch-lbs), and

(ii) Apply a slippage mark on the nut and torque tube.

(b) At intervals not to exceed 50 hours TIS, inspect the attachment for movement of the locking device indicated by a misalignment of the slippage mark.

(1) If no movement has occurred, record the inspection.

(2) If movement has occurred, replace, retorque, and reapply the slippage mark to the nut in accordance with the Accomplishment Instructions, paragraph 2.B.2., of the ASB.

(c) Within 250 hours TIS or 12 months, whichever occurs first, modify the torque tube in accordance with the Accomplishment Instructions, paragraph 2.B.3., of the ASB.

(d) Modifying the torque tube in accordance with paragraph (c) of this AD is terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The inspection of the attachment of the bolted assembly of the torque tube and modification of the torque tube shall be done in accordance with the Accomplishment Instructions, paragraph 2.B.1., 2.B.2., and 2.B.3., of Eurocopter Alert Service Bulletin No. 67A003, dated August 2, 2001. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 22, 2003.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile, (France) AD 2001–373–008(A), dated August 22, 2001.

Issued in Fort Worth, Texas, on April 8, 2003.

Michele M. Owsley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–9013 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14847; Airspace Docket No. 03–ACE–32]

Modification of Class E Airspace; Eureka, KS

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The FAA has developed an Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 18, ORIGINAL Standard Instrument Approach Procedure (SIAP) to serve Eureka Municipal Airport, Eureka, KS. This modification of Class E airspace at Eureka, KS provides additional controlled airspace at and above 700 feet Above Ground Level (AGL) to contain the new SIAP

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the SIAP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, S.W., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14847/ Airspace Docket No. 03–ACE–32, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the

public docket containing the proposal, any comments received, and any final disposition in person on the Dockets Office between 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Eureka, KS. The FAA has developed an RNAV (GPS) RWY 18, ORIGINAL SIAP to serve Eureka Municipal Airport, Eureka, KS. Additional controlled airspace at and above 700 feet AGL is required to contain the new SIAP within controlled airspace, and thereby segregate aircraft operating under Instrument Flight Rules (IFR) in instrument conditions from those aircraft operating under visual flight rules. This amendment brings the legal description of the Eureka, KS Class E airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14847/Airspace Docket No. 03–ACE–32." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration order 74009.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ACE KS E5 Eureka, KS

Eureka Municipal Airport, KS
(Lat. 37°51′06″ N., long . 96°17′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Eureka Municipal Airport.

* * * * *

Issued in Kansas City, MO, on April 8, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–9508 Filed 4–16–03; 8:45 am]

BILLING CODE 4819–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14846; Airspace Docket No. 03–ACE–31]

Modification of Class E Airspace; Aurora, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Aurora Municipal Airport, NE has been renamed Aurora Municipal-Al Potter Field Airport, NE. The Aurora Nondirectional Radio Beacon (NDB) will be decommissioned effective July 10, 2003. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) that accommodates NDB Standard Instrument Approach Procedures (SIAPs) at Aurora, NE will no longer be needed.

The intended effect of this rule is to amend the airport name in the Aurora, NE Class E airspace area legal description, provide appropriate controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) at Aurora, NE, delete the Aurora NDB and coordinates from the legal description and comply with the criteria of FAA Order 7400.2E.

EFFECTIVE DATE: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 20, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14846/ Airspace Docket No. 03–ACE–31, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m, Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Aurora, NE. It modifies the name of the airport at Aurora, NE from "Aurora Municipal Airport" to "Aurora Municipal-Al Potter Field Airport." The Aurora NDB is decommissioned effective July 10, 2003. NDB SIAPs that serve Aurora Municipal-Al Potter Field Airport will no longer be applicable. Controlled airspace extending upward from 700 feet AGL that accommodates these SIAPs will no longer be needed. The amendment to Class E airspace at Aurora, NE provides controlled airspace at and above 700 feet AGL to contain SIAPs, other than the NDB SIAPs, at Aurora Municipal-Al Potter Field Airport. Additional Class E airspace necessary for the NDB SIAPs is revoked. The Aurora NDB and coordinates, and reference to these, are deleted from the legal description of Aurora, NE Class E airspace. It brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14846/Airspace Docket No. 03–ACE–31." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Aurora, NE

Aurora Municipal-Al Potter Field Airport, NE
(Lat 40°53′39″ N., long 97°59′40″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Aurora Municipal-Al Potter Field Airport.

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Issued in Kansas City, MO, on April 8, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–9507 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14868; Airspace Docket No. 2003–ANE–103]

Amendment to Class E Airspace; Windsor Locks, Bradley International Airport, CT

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action revises the Class E Airspace area at Windsor Locks, Bradley International Airport, CT (BDL) to provide for adequate controlled airspace for those aircraft using Instrument Approach Procedures to the airport.

DATES: Effective 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 19, 2003.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2003–14868/Airspace Docket No. 2003–ANE–103, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person at the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated above.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, New England Region, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299. Call the Manager, Airspace branch, ANE–520, telephone (781) 238–7520, fax (781) 238–7596, to make prior arrangements for your visit.

FOR FURTHER INFORMATION CONTACT: David T. Bayley, Air Traffic Division, Airspace Branch, ANE–520, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7552; fax (781) 238–7596.

SUPPLEMENTARY INFORMATION: This action revises the extensions to the controlled airspace in the vicinity of Bradley International Airport, Windsor Locks, CT. Amendments to existing standard Instrument Approach Procedures (SIAPs) and implementation of new Area Navigation (RNAV) procedures have eliminated the need for controlled airspace extending upward from the surface on each side of the Bradley Vortac 314° radial extending to the northwest. This action also widens the controlled airspace extending to the southwest of the Bradley International Airport, Windsor Locks, CT. This extension of protected airspace is defined using the CHUPP Non-Directional Beacon (NDB) instead of referencing the Bradley Vortac coordinates. The intended effect of this rule is to provide appropriate controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) at Bradley International Airport, CT.

Class E airspace designations for airspace areas extending upward from the surface designated as an extension to a Class c surface area are published in Paragraph 6003 of FAA Order 7400.9K, dated August 8, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended to withdrawn in light of the comments received. Factual information that supports for commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the voerall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is non-controversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Subpart E—Class E Airspace

* * * * *

Paragraph 6003 Class E airspace areas designated as an extension to a Class C surface area

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ANE CT E3 Windsor Locks, CT [Revised]

Windsor Locks, Bradley International Airport, CT
(Lat. 41°56′20″N, long. 72°41′00″W)
CHUPP NDB
(Lat. 41°52′39″N., long. 72°45′58″)

That airspace extending upward from the surface within 2.9 miles on each side of the 225° bearing from the CHUPP NDB extending from the 5-mile radius of the Bradley International Airport to 8.6 miles southwest of the airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Issued in Burlington, MA, on April 10, 2003.

Thomas R. Davidson,

Manager, Air Traffic Division, New England Region.

[FR Doc. 03–9506 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket Nos. 93N–0182 and 82N–0166]

RIN 0910–AA01

Labeling for Oral and Rectal Over-the-Counter Drug Products Containing Aspirin and Nonaspirin Salicylates; Reye's Syndrome Warning

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule to amend its regulations to revise the Reye's syndrome warning required for oral and rectal over-the-counter (OTC) human drug products containing aspirin and to require a warning on OTC drug products containing nonaspirin salicylates as active ingredients. The revised warning will inform consumers of the symptoms of Reye's syndrome and advise that aspirin and nonaspirin salicylate drug products should not be given to children or teenagers who have or are recovering from chicken pox or flu-like symptoms. This final rule also finalizes FDA's notice of proposed rulemaking to require a Reye's syndrome warning for orally administered OTC drug products for relief of symptoms associated with overindulgence in food and drink (overindulgence drug products) that contain bismuth subsalicylate that published in the **Federal Register** of May 5, 1993 (58 FR 26886). FDA is issuing this final rule after considering public comment on the agency's notices of proposed rulemaking and all relevant data and information that have come to the agency's attention.

DATES:

Effective Date: This final rule is effective April 19, 2004.

Compliance Dates: The compliance date for OTC antidiarrheal and overindulgence drug products that contain bismuth subsalicylate as an active ingredient and have annual sales greater than $25,000 is April 19, 2004. The compliance date for OTC antidiarrheal and overindulgence drug products that contain bismuth subsalicylate as an active ingredient and have annual sales less than $25,000 is April 18, 2005. The compliance date for OTC drug products containing aspirin and nonaspirin salicylates as an active ingredient and marketed under a new drug application (NDA) or abbreviated new drug application (ANDA) is October 18, 2004. The compliance dates for all other OTC drug products containing aspirin and nonaspirin salicylates as an active ingredient and marketed under an OTC drug monograph (for internal analgesic, antipyretic, and antirheumatic drug products, or for menstrual drug products) will be established when the final monographs for those drug products are published in a future issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ida I. Yoder, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 5, 1993 (58 FR 26886), FDA published a notice of proposed rulemaking to require a Reye's syndrome warning for OTC overindulgence drug products that contain bismuth subsalicylate (the May 1993 proposed rule). The proposed warning stated: "Children and teenagers who have or are recovering from chicken pox, flu symptoms, or flu should NOT use this product. If nausea, vomiting, or fever occur, consult a doctor because these symptoms could be an early sign of Reye syndrome, a rare but serious illness." The agency did not propose this warning for OTC antidiarrheal drug products that contain bismuth subsalicylate because bismuth subsalicylate was not a proposed monograph ingredient for that use at that time.

This warning was intended to inform consumers of the earliest recognizable symptoms of Reye's syndrome and advise that OTC overindulgence drug products containing bismuth subsalicylate should not be used during the period when children or teenagers have, or are recovering from, the flu or chicken pox. The agency mentioned that it was considering revising the Reye's syndrome warning currently required for products containing aspirin in § 201.314(h)(1) (21 CFR 201.314(h)(1)) to be the same as the proposed warning for products containing bismuth subsalicylate.

In the **Federal Register** of October 20, 1993 (58 FR 54228), FDA published a notice of proposed rulemaking to revise the Reye's syndrome warning required for OTC drug products containing aspirin to be consistent with the proposed warning for OTC overindulgence drug products containing bismuth subsalicylate (the October 1993 proposed rule). The

agency also proposed to extend the warning to OTC drug products containing nonaspirin salicylates, such as choline salicylate, magnesium salicylate, and sodium salicylate, but did not specify whether the warning would apply to products containing salicylates used as inactive ingredients.

In response to the two proposals, the agency received comments from two manufacturers and two professional associations. These comments are on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 under Docket No. 82N–0166 or 93N–0182.

The agency has determined that the two proposals should be combined so that all Reye's syndrome warnings appear in one place (§ 201.314(h)(1)), with an appropriate cross reference in the individual ingredient monographs. Thus, there is no need for a separate rule for overindulgence drug products containing bismuth subsalicylate. This Reye's syndrome warning also applies to OTC antidiarrheal drug products containing bismuth subsalicylate because bismuth subsalicylate is a monograph ingredient for this use at this time.

In the proposed rules to amend parts 201 and 257 (21 CFR parts 201 and 357), the agency advised that any final rule based on the proposals will be effective 6 months and 12 months, respectively, after the date of publication in the **Federal Register**. The agency is setting the effective date for this final rule at 12 months, but is establishing varying compliance dates for this final rule. (*See Compliance Dates* in the **DATES** section and section II, comment 11 of this document.) Any OTC drug product that is subject to this final rule that is initially introduced or initially delivered for introduction into interstate commerce after the compliance dates for the rule will be considered misbranded under sections 201(n) and 502(a) and (f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(n) and 352(a) and (f)) if it does not contain the new warning required by this final rule. Further, any OTC drug product subject to this final rule that is repackaged or relabeled after the compliance dates of the rule must comply with the rule regardless of the date that the product was initially introduced or initially delivered for introduction into interstate commerce.

II. The Agency's Conclusions on the Comments

(Comment 1) One comment supported the agency's proposal to require a Reye's syndrome warning on products containing nonaspirin salicylates. Other comments asserted that there are no scientific data establishing an association between nonaspirin salicylates and Reye's syndrome. The comments argued that numerous epidemiological studies of the etiology of Reye's syndrome have failed to suggest an association with nonaspirin salicylates. One comment included published reports of the Ohio Department of Health study (Ref. 1), the Public Health Service (PHS) pilot and main studies (Refs. 2 and 3), and the Yale study (Ref. 4) and cited two reports from Australia published in 1987 (Ref. 5) and 1990 (Ref. 6). The comment also included unpublished data (Ref. 7) based on the Ohio Department of Health study and the PHS pilot study.

The comments contended that the low incidence of Reye's syndrome, in spite of widespread use of nonaspirin salicylates and the presence of naturally occurring salicylates in food, strongly argues against an association with nonaspirin salicylates. The comments added that the case reports associating Reye's syndrome with the use of bismuth subsalicylate, calcium salicylate, and choline salicylate cited in the proposal provided insufficient detail to support such an association. The comments also criticized the in vitro data cited by the agency and questioned whether mitochondrial swelling, seen in the presence of salicylates in the studies, is relevant to the pathogenesis of Reye's syndrome. One comment suggested that aspirin's acetylation mechanism may be responsible for the association between aspirin and Reye's syndrome.

The agency has reviewed the epidemiologic studies submitted by the comment and agrees that they did not find an association between nonaspirin salicylates and Reye's syndrome. However, these studies lacked sufficient subjects to adequately evaluate such an association.

The PHS pilot study (Ref. 2) reported an association between Reye's syndrome and salicylate use, but did not differentiate between aspirin and other salicylates. In the main study (Ref. 3), the independent risk of Reye's syndrome with nonaspirin salicylates could not be assessed because only two cases were not exposed to aspirin. The Ohio Department of Health study (Ref. 1) reported a significant association between aspirin use and Reye's syndrome (relative risk 11.5; confidence interval 2.7 - 48.4; $p < 0.001$). Further analysis (Ref. 7) of data from the second year of this study and the PHS pilot study showed that the Ohio study had a higher percentage of nonaspirin salicylate use in the Reye's syndrome cases than in the controls (25 percent versus 16.8 percent), whereas the findings for the PHS pilot study were mixed (14.8 percent versus 21.1, 31.6, and 12.7 percent). None of these findings were significant.

The agency notes that the Yale study (Ref. 4) investigated the validity of the reported association of aspirin and Reye's syndrome by evaluating potential bias associated with earlier studies. The authors concluded that there is a strong association between aspirin and Reye's syndrome, as reported in other studies, but the study did not evaluate the association of nonaspirin salicylates and Reye's syndrome. The two Australian studies mentioned by the comment (Refs. 5 and 6) did not show an association between salicylate ingestion (including aspirin) and Reye's syndrome.

The agency is aware of a number of reports linking bismuth subsalicylate-containing products to Reye's syndrome (Ref. 8). As of May 1999, the agency found 27 cases of potential neurologic reaction for these products reported from 1989 through 1997 in its Spontaneous Reporting System (SRS). Fifteen of these cases had a possible diagnosis of Reyes syndrome, and most of these were children. The remaining 12 cases (6 pediatric and 6 adult) included a variety of neurological disorders. Table 1 summarizes the 15 reports.

TABLE 1.—CASE REPORTS OF REYE'S SYNDROME OR SUSPECTED REYE'S SYNDROME IN PEOPLE WHO TOOK BISMUTH SUBSALICYLATE

FDA Number[1]	Age[2]	Gender[3]	Event (year)	Other drugs[4]	Outcome[5]
578534 and 725706	6Y	F	1989	APAP (only)	D
823003	P	M		U	U
8230071	P	U	1985 or 1986	U	U
824682	P	F	1989	U	D

TABLE 1.—CASE REPORTS OF REYE'S SYNDROME OR SUSPECTED REYE'S SYNDROME IN PEOPLE WHO TOOK BISMUTH SUBSALICYLATE—Continued

FDA Number[1]	Age[2]	Gender[3]	Event (year)	Other drugs[4]	Outcome[5]
824683	12Y	F		U	D
8304791	between 8 and 15Y	U	1978	ASA	H
830513	U	U	1989	U	U
8305161	between 8 and 15Y	U	1978	ASA	H
952481	6Y	M	1991	NR	D
957562	12Y	F	1992	ASA, D	D
958922	34M	F	1992	NR	D
947149	3Y	F	1993	NR	D
15020571	14Y	M	1994	APAP, CC	H
1623073	4Y	F	1995	APAP, D	D
1855719	2Y	M	1996	NR	D

[1] Also literature report
[2] M = months, Y = years, P = pediatric, U = unknown
[3] F = female, M = male, U = unknown
[4] ASA = aspirin, APAP = acetaminophen, CC = cough/cold preparation, D = diphenhydrmine, NR = none reported, U = unknown
[5] D = died, H = hospitalized, U = unknown

Because of the limited information available on these cases, it is not certain that bismuth subsalicylate was the cause of Reye's syndrome. However, most of the reports identified bismuth subsalicylate use only prior to the diagnosis of Reye's syndrome. Death was reported in 60 percent of the cases.

The agency notes that a recent report by Orlowski (Ref. 9) suggested that many people originally diagnosed with Reye's syndrome may have had metabolic disorders. To test this hypothesis, Orlowski evaluated the medical records of subjects in the Australian studies (Refs. 5 and 6) that had not shown an association with aspirin or salicylate ingestion and Reye's syndrome. The medical records of 26 people who were originally diagnosed with Reye's syndrome and survived were reassessed using more precise diagnostic criteria. Eighteen (69 percent) of these were subsequently diagnosed as having other diseases (15 with inborn errors of metabolism). The most common metabolic disorder was medium-chain acyl-coenzyme-A dehydrogenase deficiency. Orlowski speculated that the disappearance of Reye's syndrome in the 1980s may be more related to the discovery of, and ability to diagnose, inborn errors of metabolism that mimic Reye's syndrome clinically, biochemically, and pathologically than to warning labels and the reduced use of aspirin. Although some people previously diagnosed with Reye's syndrome have been found to have metabolic disorders that may meet the criteria for a diagnosis of Reye's syndrome, and some people with metabolic disorders may be predisposed to developing Reye's syndrome, the agency finds there is no definitive evidence at this time that Reye's syndrome can generally be attributed to metabolic disorders. As discussed previously, other studies (Refs. 1, 2, and 3) have shown an association with aspirin ingestion and Reye's syndrome.

The agency notes one comment's statement that the incidence of Reye's syndrome is low despite many foods with naturally occurring salicylates. Salicylates occur in many foods at low concentrations and in certain foods at relatively high concentrations. For instance, a few herbs and spices contain as much as 200 milligrams salicylate per 100 grams (Ref. 10). However, these food products are generally consumed in small amounts. The agency has no information to suggest that salicylates in food are associated with Reye's syndrome. Although salicylates are present in a wide range of foods, the amount consumed from foods is generally lower than the therapeutic doses in drugs.

The references submitted by the comment that suggested that the acetylation mechanism of aspirin may be responsible for Reye's syndrome did not provide adequate information to support this suggestion. The references included discussion of the hydrolysis of acetylsalicylic acid into acetyl and salicylic acid moieties and the further hydrolysis of the acetyl moiety to acetate, which is ultimately metabolized to carbon dioxide. Up to 50 percent of orally administered doses of acetylsalicylic acid are hydrolyzed before they reach the blood stream because of esterases located in the gut wall and the clearance of the compound by the liver (Ref. 11). Packham (Ref. 12) noted that the acetyl moiety can rapidly acetylate cyclo-oxygenase in platelets at micromolar concentration. However, it may not remain in the circulation long enough to acetylate other proteins to an extent that alters their function. Salicylic acid is the circulating drug form which is shared by all salicylate products. It undergoes direct renal excretion and hepatic biotransformation through several enzymatic systems.

As noted in the October 1993 proposed rule (58 FR 54228 at 54229) there are some in vitro biochemical data that suggest salicylate may contribute to mitochondrial injury that is characteristic of Reye's syndrome. Based on a more recent in vitro study, Trost and Lemasters (Ref. 13) suggested that induction of the mitochondrial permeability transition (MPT) is a common pathophysiological mechanism causing mitochondrial injury in Reye's syndrome. In that study, MPT induction by aspirin required alkaline hydrolysis. Because aspirin spontaneously decomposes to salicylate, the authors said it is likely that salicylate, rather than acetylsalicylate, is the primary inducer of MPT.

While some in vitro studies (Refs. 14 and 15) suggest salicylate is responsible for mitochondrial injury that may be responsible for the pathogenesis of Reye's syndrome, the agency agrees with the comment that the evidence is not sufficient to show the salicylate moiety is responsible for Reye's syndrome. The pathogenesis of Reye's syndrome is not known. None of the submitted references link Reye's syndrome to either the salicylate or acetyl drug moiety.

Although the agency does not have definitive evidence that drugs containing nonaspirin salicylates significantly increase the risk of Reye's syndrome, a number of case reports (Ref. 8) suggest an association. Because of the serious consequences of Reye's syndrome, the agency has determined, in the interest of safe use of OTC drug

products containing nonaspirin salicylates, these products should bear a warning to alert consumers that children and teenagers recovering from chicken pox or flu-like symptoms should not use these products.

(Comment 2) Several comments contended that requiring a Reye's syndrome warning on the large number of drug products containing salicylates as inactive ingredients would reduce its effectiveness for products such as aspirin for which the warning is justified. The comments noted that salicylates are commonly used as flavorings in many OTC drugs, including mouth rinses, toothpastes, cough medications, stomach remedies, laxatives, stool softeners, and other mint-flavored oral medications. These flavorings impart a distinctive characteristic that cannot be readily duplicated using other ingredients.

The comments added that salicylates are used as buffers, stabilizing agents, and preservatives. Replacing salicylates with alternative excipients as buffering agents does not provide comparable hydrogen-ion concentration (pH) control, thereby increasing the risk of microbial contamination. Further, alternative buffering agents do not provide adequate suspension of the active ingredient, potentially leading to misdosing. The comments contended that practical replacements for salicylate excipients do not exist.

One comment concluded that the widespread presence of salicylates in prescription and OTC drugs, and foods, together with the very low reported incidence of Reye's syndrome in recent years, strongly suggests that exposure to nonaspirin salicylate inactive ingredients is not a risk factor for developing Reye's syndrome. The comment argued that a Reye's syndrome warning is not needed for drug products containing nonaspirin salicylates as inactive ingredients unless the products could be used to self-treat symptoms such as nausea, diarrhea, and vomiting (which may be early signs of Reye's syndrome). The comment projected a significant economic impact in the cost of relabeling drugs containing salicylates as inactive ingredients.

The agency discussed one report in the October 1993 proposed rule (58 FR 54228 at 54229) of Reye's syndrome associated with a drug product containing a nonaspirin salicylate as an inactive ingredient. This case resulted in the death of a child treated with a theophylline drug product that contained calcium salicylate as an emulsifying agent. The report provided minimal information. Other than this case report, the agency is not aware of any data supporting an association of Reye's syndrome with salicylate inactive ingredients. The concentration of salicylates contained as inactive ingredients in OTC drug products is generally low and the mechanism of action responsible for the development of Reye's syndrome is unknown. Therefore, the agency does not have sufficient data and information at this time to require a Reye's syndrome warning on OTC drug products containing salicylates as inactive ingredients. In the event additional data become available on the association of salicylates, as inactive ingredients, with Reye's syndrome, the agency will reconsider this position.

(Comment 3) Several comments asserted that the use of the same warning for OTC drug products containing bismuth subsalicylate and aspirin is inappropriate. The comments stated that the purpose of the current voluntary warning on OTC overindulgence drug products containing bismuth subsalicylate is different from that for aspirin-containing OTC drug products, in that it is intended to discourage attempts to self-treat symptoms (nausea and vomiting) that may be early signs of Reye's syndrome. Because the intended uses for aspirin (minor aches and pains and fever) are different, the comments contended that the warnings should be different.

The agency agrees that the warning on bismuth subsalicylate products that mentions nausea and vomiting is helpful in discouraging self-treatment of symptoms that may be early signs of Reye's syndrome and in encouraging prompt medical attention. Likewise, people who take an aspirin product for aches and pains and fever related to the flu could also have nausea and vomiting. Regardless of the product's indication, the warning statement is intended to alert consumers when they should not use the products and that prompt medical attention should be sought if certain symptoms are present. Therefore, based on the information available suggesting that Reye's syndrome is associated with both aspirin and nonaspirin salicylates, the agency has determined that the warning statement in this final rule should be the same for all OTC drug products containing salicylates as an active ingredient.

(Comment 4) One comment urged the agency not to include Reye's syndrome symptoms on aspirin-containing products, asserting that this additional language is beyond the scope of traditional or appropriate label warnings, *i.e.*, providing sufficient information for consumers' safe and effective use of an OTC drug product. The comment suggested that knowledge of Reye's syndrome symptoms may be important for the safe use of OTC drug products containing bismuth subsalicylate, but it is not needed for the safe and effective use of aspirin. Noting the agency's rejection of a recommendation to include symptoms in the Reye's syndrome warning in current § 201.314(h)(1) (*see* the March 7, 1986, final rule (51 FR 8180 at 8181)), the comment suggested that the agency's rationale still applies today. The comment further suggested that the listing of symptoms in the warning may cause consumers to believe that the common symptoms of nausea and vomiting or fever should prompt a call to a doctor.

Another comment suggested that the addition of nausea, vomiting, and fever to the Reye's syndrome warning is redundant because consumers are already familiar with these common symptoms of flu. Pointing out that the labeling type size is already small due to the amount of required label information, the comment asserted that this additional verbiage would decrease label readability and the conspicuousness of the warning.

The agency disagrees with the comment's assertion that including the symptoms in the warning is beyond the scope of traditional or appropriate OTC drug label warnings. Warnings for certain ingredients caution consumers to consult a doctor or to discontinue use of the product if specific symptoms appear. For example, the warning in § 340.50(c)(1) (21 CFR 340.50(c)(1)) alerts consumers of the specific symptoms of excessive caffeine consumption, stating in part: "* * * too much caffeine may cause nervousness, irritability, sleeplessness, and, occasionally, rapid heart beat." A proposed warning for products containing aspirin and other salicylates states: "If ringing in the ears or a loss of hearing occurs, consult a doctor before taking any more of this product." (*See* 53 FR 46204 at 46256, November 16, 1988.) Thus, symptoms have traditionally been included in warnings for certain OTC drug products.

As one comment noted, the agency rejected a recommendation for including symptoms in the Reye's syndrome warning in 1986. FDA has reconsidered this position, and now recognizes increased value in information on the symptoms of Reye's syndrome that can be particularly helpful to alert consumers of the potential situations where problems could arise with the use of these products. Listing the early symptoms of Reye's syndrome will help alert consumers to contact a doctor during the early stages of the syndrome, when a better outcome is expected.

(Comment 5) Noting that the medical literature demonstrates that fever is not a symptom of Reye's syndrome, two comments recommended that the agency modify the proposed warning by deleting "fever" from the list of Reye's syndrome symptoms. The comments also cited a conclusion from the National Institutes of Health Consensus Development Conference (Ref. 16) that "neither fever nor jaundice is usually present" as a symptom of Reye's syndrome.

One comment stated that the proposed list of Reye's syndrome symptoms is incomplete because important symptoms (*e.g.*, lethargy, confusion, aggressiveness) were not included. The comment noted that by omitting some important symptoms from the list, parents may not seek emergency treatment for a child with Reye's syndrome. The comment added that the proposal overwarns by including fever, and parents may call a doctor whenever a fever is present.

Fever is not a generally recognized symptom of Reye's syndrome. Thus, the term "fever" is being deleted from the proposed warning. While nausea and vomiting are easily recognizable, early symptoms of Reye's syndrome, the agency agrees with the comment that adding other associated symptoms would more accurately reflect the situation in which parents and young people need to be concerned about the possibility of Reye's syndrome. The agency has also considered that label space is limited and believes the broad term "changes in behavior" is understood by consumers and covers the symptoms mentioned by the comment. When changes in behavior are associated with nausea and vomiting it is important to seek medical care as soon as possible. Therefore, the warning statement includes the phrase, "if changes in behavior with nausea and vomiting occur."

(Comment 6) One comment contended that there is no scientific evidence of an association between Reye's syndrome and the use of aspirin by children and teenagers who "are recovering from" chicken pox, flu, or flu symptoms. The comment stated that while a warning about the recovery period from a preceding illness may be appropriate for products used to treat, and possibly mask, the early symptoms of Reye's syndrome, such a warning on aspirin is not supported by the studies that have been reported to show an association with aspirin. Further, such a warning is inconsistent with the message repeatedly given to the public that aspirin should not be used for the symptoms of flu or chicken pox.

The comment stated that the studies used by FDA to support the regulation provide no evidence that aspirin taken while recovering from chicken pox or flu (but not for chicken pox or flu symptoms themselves) increases the risk of Reye's syndrome. Unless further studies show that there is a risk in taking aspirin for situations other than the symptoms of flu or chicken pox, the comment contended there is no basis for the proposed change. Any use of aspirin while "recovering from" these illnesses would be for residual symptoms of chicken pox or flu and therefore would be covered by the current warning.

The agency disagrees with the comment. As stated in the agency's May 1993 proposed rule (58 FR 26886 to 26887), Reye's syndrome most commonly occurs following influenza, chicken pox, and several other common viral infections. As symptoms of the initial viral illness begin to diminish or clear, the dramatic symptoms of Reye's syndrome (i. e., intractable vomiting, lethargy, or delirium) begin (Ref. 17). It is not clear that aspirin or other salicylate use in children is safe at any time from onset to complete recovery from the initial viral illness. Some of the residual symptoms, including fever, associated with the initial viral illness may still be present at the time that symptoms of Reye's syndrome develop. Although fever is not usually a symptom of Reye's syndrome and aspirin is not used to treat the symptoms of Reye's syndrome, it may be used to treat lingering symptoms of the initial viral illness in some people. Thus, the agency believes it is important that aspirin and other salicylates not be given to children and teenagers when flu symptoms are present or when the symptoms are disappearing and the child seems to be recovering from the illness (58 FR 26886 at 26887). The warning for OTC aspirin drug products should be consistent with that for other salicylates and include a broad warning not to use the product both during the illness and during recovery. Therefore, the agency is retaining the proposed phrase "who have or are recovering from" in this final rule.

(Comment 7) Two comments recommended that the word "flu" not be included in the proposed Reye's syndrome warning. One comment noted that, in issuing the current aspirin label regulation in 1988, FDA refused to expand the warning beyond "chicken pox or flu symptoms," based on the PHS study on which it relied for scientific justification for the warning requirement. The comment asserted that adding the word "flu" would provide no new information and may confuse consumers who are unable to differentiate "flu" from flu symptoms. The other comment recommended that the words "flu symptoms" not be included in the warning because they are redundant and likely to confuse consumers. The comment recommended that the agency use only one of these in the warning.

The agency disagrees with the comments that use of the words "flu symptoms" along with the word "flu" is redundant, but agrees that including both in the warning may confuse some consumers who may be unable to differentiate "flu" from "flu symptoms." Therefore, the agency is replacing "flu" and "flu symptoms" with "flu-like symptoms," as this description broadens the warning to help consumers who may not be sure the symptoms are due to the flu.

(Comment 8) One comment asserted that the proposed amendment would remove the reference to consult a doctor, and would significantly undermine a doctor's ability to prescribe aspirin under certain circumstances despite the reported risk of Reye's syndrome. The comment stated that the proposed warning simply directs children and teenagers not to use the drug, whereas the current warning cautions against use "before a doctor is consulted about Reye's syndrome." Further, while there may be no conditions for which bismuth subsalicylate should be used in children or teenagers having chicken pox or flu symptoms, aspirin has other important uses that might justify a physician's recommendation that it be used, despite the warning. The comment explained that if a doctor believes that a child suffering from the pain and disability of juvenile rheumatoid arthritis should use aspirin, and the benefits outweigh the risks, the doctor should be able to make a patient-specific assessment of risks, and consumers should not be afraid to follow the doctor's advice. The comment concluded that without justification, it is inappropriate to reverse the reasoned position held by the agency in 1982 (47 FR 57886 at 57895, December 28, 1982) in which the suggested warning against salicylate use in children did not apply to all circumstances, but included the phrase "unless directed by a doctor." The agency stated that the possible benefits of salicylates might outweigh the risk of Reye's syndrome in certain cases such as juvenile rheumatoid arthritis.

The agency disagrees with the comment that a doctor's advice to take an aspirin-containing drug in limited circumstances will be undermined or that consumers will be frightened from using the drug at the direction of a doctor if the revised Reye's syndrome warning is used in the product's labeling. Salicylates (including aspirin) should not be given to, or used by, children and teenagers who have or are recovering from certain viral illnesses. In most conditions for which aspirin is indicated there are alternative medications that doctors can recommend. In rare instances where other medications are contraindicated, a patient's doctor may determine that the benefits of aspirin use outweigh the risks. In those cases, it is still possible for the doctor to override the label warning if, in his or her judgment, aspirin should be used. The agency believes the revised warning continues to reflect the agency's 1982 position.

(Comment 9) One comment recommended that the agency modify the proposed warning to include "while using this medication" as follows: "If nausea, vomiting, or fever occur while using this medication, consult a doctor because these symptoms could be an early sign of Reye's syndrome, a rare but serious illness." The comment stated that reference to indications and adverse effects that are similar may be confusing to consumers, who may assume that the presence of nausea, vomiting, or fever alone is an absolute indication of Reye's syndrome. The comment suggested this change would convey a clearer message that this drug, when used to treat the symptoms of a viral illness in children and teenagers, may precipitate Reye's syndrome.

The agency does not believe the proposed warning suggests that any individual symptom is an absolute indication of Reye's syndrome. However, the agency has deleted "fever" and added "changes in behavior" to the list of symptoms to more accurately reflect the symptoms associated with the development of Reye's syndrome. (*See* section II, comment 5 of this document.) The agency is adding the phrase "when using this product" to convey a clearer message that the drug, when used to treat the symptoms of a viral illness, may precipitate Reye's syndrome.

(Comment 10) Noting that pediatric nurse practitioners have been a source of primary health care to children and teens for over 25 years, one comment suggested amending the proposed Reye's syndrome warning by replacing "doctor" with "health-care professional."

The agency agrees with the comment that health care professionals play important roles in delivering clinical services directly to consumers and may sometimes serve as primary medical care providers. However, because of the serious consequences of Reye's syndrome the agency believes that a doctor should be consulted if symptoms associated with Reye's syndrome (*e.g.*, changes in behavior with nausea and vomiting) occur after taking a salicylate. In addition, the agency believes that the use of the term "doctor" is consistent with other OTC drug product labeling warnings. As discussed in the OTC labeling requirements final rule (64 FR 13254 at 13261, March 17, 1999), the agency determined that questions related to certain conditions and symptoms are best answered by a doctor who is trained and licenced specifically to make a differential diagnosis and to treat disease entities. Therefore, the agency is retaining the term "doctor" in the warning.

(Comment 11) Two comments stated that due to economic hardship, 6 months was too short to revise labels, dispose of existing label stock, relabel product, and initiate the distribution process. Therefore, one comment requested that the agency consider an 18-month implementation date instead of the proposed 6 months. Another comment requested 12 months. One comment stated that labeling changes could be made more efficiently if multiple rulings for similar products become effective simultaneously. The comment suggested that the agency incorporate all revisions into the final monograph for OTC internal analgesic drug products to decrease costs.

The agency agrees with the comments that 6 months may not be a reasonable amount of time for manufacturers to implement the required warning for salicylate-containing drug products. The labeling for most OTC drug products (those containing aspirin) covered by this final rule already includes a Reye's syndrome warning similar to the warning in this final rule, and most manufacturers would need to make only minor labeling revisions. Because of the large number of affected products and because many of these products are internal analgesics that contain aspirin and already have a Reye's syndrome warning, the agency is providing that the compliance dates for those products to incorporate the new warning will be established when the final monographs for OTC internal analgesic, antipyretic, and antirheumatic drug products and OTC menstrual drug products are published in a future issue of the **Federal Register**. Thus, all of the labeling revisions required by those final monographs and the new Reye's syndrome warning can be implemented at the same time. The agency currently expects those final monographs or portions of the final monographs to publish within the next 18 to 24 months. Thus, any economic hardship on manufacturers of these products is greatly reduced or eliminated.

Manufacturers of OTC antidiarrheal drug products have 12 or 24 months to implement the new Reye's syndrome warning, which will be done concurrently with implementation of the labeling in the final monograph for those drug products, published elsewhere in this issue of the **Federal Register**. Because the Reye's syndrome warning is only one small part of the labeling for OTC antidiarrheal drug products containing bismuth subsalicylate, the agency is requiring all labeling for those products to be implemented at the same time. Manufacturers of OTC overindulgence drug products also have 12 or 24 months to implement the new Reye's syndrome warning. Because the agency does not currently expect the final rule for those products to publish in the next 18 to 24 months, it is requiring those products to include the Reye's syndrome warning before the final monograph is published. There are a limited number of affected products in this product category, and any economic costs for manufacturers of those products should be minimal. All manufacturers are encouraged to incorporate this new warning information into product labeling if they print new labeling before the required implementation times.

Although this final rule may have an economic impact on a few manufacturers, the agency concludes that the potential benefits of the rule, including reduced risk of adverse effects, override these economic concerns. (*See* section II, comment 1 of this document.)

III. The Agency's Final Conclusions

The agency has determined that the Reye's syndrome warning should apply to all oral and rectal OTC drug products containing salicylates as active ingredients, regardless of their intended use. Therefore, the requirement for a Reye's syndrome warning for aspirin and nonaspirin salicylates (including bismuth subsalicylate) will appear in one location (§ 201.314(h)). A reference to this warning is included in § 335.50(c)(2)(i)(A) (21 CFR 335.50(c)(2)(i)(A)) of the final monograph for OTC antidiarrheal drug products. A reference will also be included in 21 CFR part 343 in the final monograph for OTC internal analgesic, antipyretic, and antirheumatic drug products and in part 357, subpart J, in the final monograph for OTC overindulgence drug products, when the monographs for those products are finalized. Other labeling that was proposed in § 357.950 for drug products for the relief of symptoms associated with overindulgence in food and drink will be finalized in a future issue of the **Federal Register**. The OTC drug product labeling format and content requirements in § 201.66(c)(5)(ii)(A) state that the warning in § 201.314(h)(i) shall follow the subheading "Reye's syndrome:".

Mandating warnings in an OTC drug monograph does not require a finding that any or all of the OTC drug products covered by the monograph actually caused an adverse event, and FDA does not so find. Nor does FDA's requirement of warnings repudiate the prior OTC drug monographs and monograph rulemakings under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that warnings are necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the Federal Food, Drug, and Cosmetic Act. This judgment balances the benefits of these drug products against their potential risks (*see* 21 CFR 330.10(a)).

FDA's decision to act in this instance need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals, Corp.*, 252 F.3d 986, 991 (8th Cir. 2001)). To mandate warnings, or take similar regulatory action, FDA need not show, nor do we allege, actual causation. For an expanded discussion of case law supporting FDA's authority to require such warnings, *see* Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use, final rule, 67 FR 72555 (December 6, 2002).

IV. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million (adjusted annually for inflation). The rules that led to the development of this final rule were published in 1993, before the Unfunded Mandates Reform Act of 1995 was enacted. The agency explains in this final rule that the final rule will not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

The agency concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. This final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to revise the Reye's syndrome warning that is already required for OTC drug products that contain aspirin for use by children and adolescents and to extend the requirement to those products that contain nonaspirin salicylates (including bismuth subsalicylate) as active ingredients. The revised warning is similar to the voluntary warning already included on some OTC antidiarrheal and overindulgence drug products that contain bismuth subsalicylate. This final rule is intended to bring uniformity and consistency to the labeling of OTC drug products containing aspirin and nonaspirin salicylates.

A. Benefits

The revised warning will inform consumers of the symptoms of Reye's syndrome and advise that aspirin or nonaspirin salicylate (including bismuth subsalicylate) drug products should not be given to children or teenagers who have or are recovering from chicken pox or flu-like symptoms. As stated in the October 1993 proposed rule (58 FR 54228), the agency has reconsidered the need to include all OTC drug products containing salicylates in this required warning. Fifteen adverse drug reports linking bismuth subsalicylate with Reye's syndrome have been entered into the agency's database since March 1991, when the first Reye's syndrome death associated with bismuth subsalicylate was reported to the agency (Refs. 8 and 18). Most of these cases occurred in children, and deaths were reported in the majority of these cases.

FDA cannot quantify the expected benefits of this rule, because it lacks the data to conduct a quantitative risk assessment. The agency notes, however, that in most disease surveillance systems, reported cases are recognized to represent only a fraction of the actual total. Reye's syndrome is manifested by a change in mental status ranging from lethargy to delirium, seizures, and respiratory arrest (Ref. 19). Mortality is related to the stage of coma at the time of hospital admission and has been estimated to be as high as 40 percent (Ref. 19). It has been estimated that 30 percent of Reye's syndrome patients who deteriorate to the stage of neurologic seizure, and survive, develop serious neurologic sequelae. Thus, alerting consumers to the early symptoms of Reye's syndrome is essential so that prompt medical treatment can be obtained, with a better prognosis for the patient.

B. Costs

Based on information in the agency's drug listing system, there are between 900 and 1,500 manufacturers and distributors that together produce about 5,000 OTC drug products containing salicylates as an active ingredient that will be affected by this final rule. Over 90 percent of these products are internal analgesic, antipyretic, and antirheumatic drug products, which may have more than one stock keeping unit (SKU) (individual products, packages, and sizes). Because the majority of the products already include a warning statement that is similar to the labeling required by this final rule, most changes will be minor. Further, the cost to implement the new warning statement should be negligible because the agency is providing that the warning can be coordinated with the other labeling changes that will be included in a future final monograph for those products.

As discussed elsewhere in this issue of the **Federal Register**, about 8 percent

(400) of the affected products are antidiarrheal drug products that contain bismuth subsalicylate as the active ingredient. The cost to implement the new Reye's syndrome warning for those products is significantly mitigated because the warning will be incorporated into the new labeling for those products as a result of publication of the final monograph for OTC antidiarrheal drug products.

The remaining 2 percent (100) of affected products includes OTC drug products containing aspirin and nonaspirin salicylates marketed under an NDA or ANDA or marketed under the tentative final monograph for OTC overindulgence drug products. A number of the overindulgence drug products that contain bismuth subsalicylate as the active ingredient also bear antidiarrheal claims and, thus, will need to be relabeled as a result of publication of the final monograph for those drug products. The cost to add a warning to product labeling generally averages about $2,000 to $3,000 per SKU. Thus, the cost for these products to be relabeled is estimated to be between $200,000 and $300,000.

C. Small Business Impacts

Census data provide aggregate industry statistics on the total number of manufacturers for Standardized Industrial Classification Code 2384 Pharmaceutical Preparations by establishment size, but do not distinguish between manufacturers of prescription and OTC drug products. According to the U.S. Small Business Administration (SBA) designations for this industry, however, over 92 percent of the roughly 700 establishments and over 87 percent of the 650 firms are small. (Because census size categories do not correspond to the SBA designation of 750 employees, these figures are based on 500 employees.)

The agency's drug listing system indicates that between 900 and 1,500 marketers will need to relabel as the result of this final rule. Thus, the agency believes that many of the manufacturers affected by this final rule would be small. However, the cost of relabeling of private label products is incurred by the private label manufacturers, not the individual small marketers. The effect on individual firms will vary with the number of the firm's SKUs that require relabeling and the size and cost of the firm's labeling inventory. Most small firms will not incur significant regulatory costs because they manufacture few affected SKUs and use less expensive labeling stock. Because most firms will be able to incorporate these required changes when incorporating other regulatory requirements, this final rule should have a minimal economic impact on small entities.

D. Alternatives

The agency considered and rejected a more costly alternative that would have required all products to be relabeled within 12 to 18 months of publication of this final rule in the **Federal Register**, with a multimillion dollar cost to industry based on the potential number of affected products. Because 80 percent of the products (a number of which have multiple SKUs) already have a Reye's syndrome warning on their label, the agency concluded that the incremental benefits of a reworded warning did not outweigh the costs. As discussed in section II, comment 11 of this document, the agency has set the implementation date of this final rule for the Reye'syndrome warning for OTC antidiarrheal drug products that contain bismuth subsalicylate as an active ingredient to coincide with the compliance dates for the final monograph for those drug products. The agency considers this a reasonable time for manufacturers to implement these final rules, and the costs associated with implementation will be less for one label change than for two label changes. The agency has also set the compliance dates for the majority of the products (internal analgesic, antipyretic, and antirheumatic) affected by this final rule to coincide with the final monograph for those drug products, to be published in the future. The agency encourages manufacturers to relabel their products voluntarily, if new labeling is implemented before that final monograph publishes.

The agency considered, but rejected, an exemption from coverage for small entities because the new labeling information is also needed by consumers who purchase products marketed by those entities. However, longer compliance dates are being provided for antidiarrheal and overindulgence drug products containing bismuth subsalicylate with annual sales less than $25,000 (an additional 12 months) and for products containing aspirin and nonaspirin salicylates marketed under an NDA or ANDA (an additional 6 months).

E. Conclusion

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

This analysis shows that the agency has considered the burden to small entities and provided compliance dates that should significantly reduce the burden. Thus, the agency certifies that this final rule will not have a significant impact on a substantial number of small entities.

V. Paperwork Reduction Act of 1995

FDA concludes that the warning statement set forth in this final rule is not subject to review by the Office of Management and Budget because it does not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the required labeling is a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VI. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. References

The following references are on display in the Dockets Management Branch (*see* section I of this document) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Halpin, T. et al., "Reye's Syndrome and Medication Use," *Journal of the American Medical Association*, 248:687–723, 1982.
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3. Hurwitz, E. et al., "Public Health Service Study of Reye's Syndrome and Medications: Report of the Main Study," *Journal of the American Medical Association*, 257:1905–1911, 1987.
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7. Biometric Research Institute, "Analysis of Exposure to Non-Aspirin Salicylates Among Subjects from the Ohio Department of Health Survey and the Public Health Service Pilot Study on Reye Syndrome," June 13, 1986, in comment C2, Docket No. 93N–0182, Dockets Management Branch.
8. Adverse Drug Reaction Reports, in OTC Vol. 03RSFR, Docket No. 93N–0182, Dockets Management Branch.
9. Orlowski, J. P., "Whatever Happened to Reye's Syndrome? Did It Ever Really Exist?" *Critical Care Medicine*, 27:1582–1587, 1999.
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12. Packham, M., "Mode of Action of Acetylsalicylic Acid," in *Acetylsalicylic Acid: New Uses for an Old Drug*, edited by H. Barnett et al., Raven Press, New York, NY, pp. 63–82, 1982.
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14. Martens, M. E., and C. Lee, "Reye's Syndrome: Salicylates and Mitochondrial Functions," *Biochemical Pharmacology*, 33:2869–2876, 1984.
15. Yoshida, Y. et al., "Effect of Salicylic Acid on Mitochondrial Peroxisomal Fatty Acid Catabolism," *Pediatric Research*, 23:338–341, 1988.
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17. Wolinsky, J. S., "Reye's Syndrome," in *Cecil Textbook of Medicine*, 19th ed., edited by J. B. Wyngaarden et al., W. B. Saunders Co., Philadelphia, PA, pp. 2194–2195, 1992.
18. Adverse Drug Reaction Reports, in OTC Vol. 03RSNPR, Docket No. 93N–0182, Dockets Management Branch.
19. Betts, R., "Influenza," in *Principles and Practices of Infectious Diseases*, 4th ed., edited by G. L. Mandell, J. E. Bennett, and R. Dolin, Churchhill Livingston, New York, NY, pp. 1546–1567, 1995.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

■ 1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 358, 360, 360b, 360gg–360ss, 371, 374, 379e; 42 U.S.C. 216, 241, 262, 264.

■ 2. Section 201.314 is amended by revising paragraphs (h)(1) and (h)(4) to read as follows:

§ 201.314 Labeling of drug preparations containing salicylates.

* * * * *

(h)(1) The labeling of orally or rectally administered over-the-counter drug products containing aspirin or nonaspirin salicylates as active ingredients subject to this paragraph is required to prominently bear the following warning: "Reye's syndrome [subheading in bold type]: Children and teenagers who have or are recovering from chicken pox or flu-like symptoms should not use this product. When using this product, if changes in behavior with nausea and vomiting occur, consult a doctor because these symptoms could be an early sign of Reye's syndrome, a rare but serious illness."

* * * * *

(4) Any product subject to paragraphs (h)(1), (h)(2), and (h)(3) of this section that is not labeled as required by these paragraphs and that is initially introduced or initially delivered for introduction into interstate commerce after the following dates is misbranded under sections 201(n) and 502(a) and (f) of the Federal Food, Drug, and Cosmetic Act.

(i) Compliance by October 18, 2004, for OTC drug products containing aspirin and nonaspirin salicylates as an active ingredient and marketed under a new drug application or abbreviated new drug application.

(ii) Compliance by April 19, 2004, for OTC antidiarrheal and overindulgence drug products that contain bismuth subsalicylate as an active ingredient and have annual sales greater than $25,000.

(iii) Compliance by April 18, 2005, for OTC antidiarrheal and overindulgence drug products that contain bismuth subsalicylate as an active ingredient and have annual sales less than $25,000.

(iv) Compliance dates for all other OTC drug products containing aspirin and nonaspirin salicylates as an active ingredient and marketed under an OTC drug monograph (for internal analgesic, antipyretic, and antirheumatic drug products, or for menstrual drug products) will be established when the final monographs for those products are published in a future issue of the **Federal Register**. In the interim, these products should continue to be labeled with the previous Reye's syndrome warning that appears in paragraph (h)(1) of this section.

Dated: March 31, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9382 Filed 4–16–03; 8:45 am]

BILLING CODE 4160–01–S

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 310, 335, and 369

[Docket No. 78N–036D]

RIN 0910–AA01

Antidiarrheal Drug Products for Over-the-Counter Human Use; Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule in the form of a final monograph establishing conditions under which over-the-counter (OTC) antidiarrheal drug products (to control the symptoms of diarrhea) are generally recognized as safe and effective and not misbranded. This final rule is part of FDA's ongoing review of OTC drug products. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph (TFM), and all new data and information on OTC antidiarrheal drug products that have come to the agency's attention. Also, this final rule amends the regulation that lists nonmonograph active ingredients by adding those OTC antidiarrheal active ingredients that have been found to be not generally recognized as safe and effective.

DATES: *Effective Date*: This rule is effective April 19, 2004.

Compliance Dates: The compliance date for products with annual sales less than $25,000 is April 18, 2005. The compliance date for all other OTC antidiarrheal drug products is April 19, 2004.

Comment Date: Comments on specific labeling items discussed in section IX of the **SUPPLEMENTARY INFORMATION** section

of this document are due by July 16, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Mary S. Robinson or Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 21, 1975 (40 FR 12902), FDA published under § 330.10(a)(6) (21 CFR 330.10(a)(6)) an advance notice of proposed rulemaking to establish a monograph for OTC antidiarrheal drug products, together with the recommendations of the Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products (the panel), which evaluated these drug classes. The agency's proposed regulation for OTC antidiarrheal drug products was published in the **Federal Register** of April 30, 1986 (51 FR 16138), in the form of a TFM. In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency issued a final rule establishing that certain active ingredients, including some antidiarrheal active ingredients, in OTC drug products are not generally recognized as safe and effective or are misbranded. These antidiarrheal active ingredients are listed in § 310.545(a)(3) (21 CFR 310.545(a)(3)). This final rule adds nine ingredients to that section.

On or after the compliance dates established in this final rule (*see* **DATES** section) no OTC drug product that is subject to this final rule and that contains a nonmonograph condition may be initially introduced or initially delivered for introduction into interstate commerce unless it is the subject of an approved new drug application (NDA) or abbreviated new drug application. Further, any OTC drug product subject to this final rule that is repackaged or relabeled after the effective date of the final rule must be in compliance with the monograph regardless of the date the product was initially introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the conditions in this final monograph as soon as possible.

In the TFM (51 FR 16138 at 16148), the agency proposed monograph status for activated attapulgite, calcium polycarbophil, and polycarbophil. The agency has reevaluated the data for these ingredients and classified them as nonmonograph conditions (*see* section III of this document). Kaolin and bismuth subsalicylate were category III (*see* § 330.10(a)(6)(iii)) in the TFM. They are monograph conditions in this final rule.

In the **Federal Register** of March 17, 1999 (64 FR 13254), the agency established a standardized format and content for the labeling of all OTC drug products (*see* § 201.66 (21 CFR 201.66)). The labeling in this final monograph incorporates those requirements. The agency is specifically soliciting comments on the labeling for bismuth subsalicylate and kaolin. If the comments justify a change, the agency will propose to amend the final monograph accordingly at a later date.

All "OTC Volumes" cited throughout this document refer to information on public display in the Dockets Management Branch (*see* **ADDRESSES**).

II. The Agency's Conclusions on the Comments

(Comment 1) One comment requested the agency to increase the proposed dose for activated attapulgite (51 FR 16138 at 16149) from a maximum of 8.4 grams (g) per day to a maximum of 9 g per day for adults and children 12 years of age and over. The comment also recommended higher daily doses for children under 12 years old. The comment submitted three clinical studies to support these higher doses (Refs. 1, 2, and 3).

The agency has determined that the studies are insufficient to support an increase in the daily dose. The studies were neither designed nor analyzed to support the requested increase of the maximum daily dose. The data do not provide information as to the basis or need for an increased dose, do not establish a target population for such a dose, and do not directly compare the two dose levels in order to establish that the higher dose is as safe and provides any additional benefit. The agency's detailed comments and evaluation of the studies are on file in the Dockets Management Branch (Ref. 4). Moreover, based on a reevaluation of the studies submitted to support the effectiveness of attapulgite (51 FR 16138 at 16142), the agency concludes that additional effectiveness data are needed to support monograph status (*see* section III of this document).

(Comment 2) One comment submitted a safety study (Ref. 5) and two clinical studies (Refs. 6 and 7) to support the use of bismuth subsalicylate for the prophylaxis of travelers' diarrhea.

The agency has determined that the data are insufficient to support use of bismuth subsalicylate for prophylaxis of travelers' diarrhea. The safety study (Ref. 5) evaluated a dose that was 50 percent higher and given for a time period that was 50 percent longer than planned for the travelers' diarrhea study, which was a 17-week, double-blind, parallel, randomized study conducted in 93 healthy, adult volunteers. One objective was to determine the blood levels and urinary excretion of bismuth resulting from long-term dosing. Average blood bismuth concentration, after 6 weeks of dosing, was significantly higher for the bismuth subsalicylate four times a day group than the two times a day group. Blood levels slowly decreased through a 9-week followup period. None of the subjects in either placebo group exhibited a detectable blood bismuth level.

One clinical study (Ref. 6) was a 14-day double-blind, randomized, placebo-controlled comparison of the prophylactic effects of two doses of bismuth subsalicylate on the incidence of travelers' diarrhea in 390 subjects traveling to destinations where the incidence of travelers' diarrhea was at least 20 percent. Depending upon the group assigned, subjects were given either 525 milligrams (mg) bismuth subsalicylate two times a day (low dose), 1,050 mg bismuth subsalicylate two times a day (high dose), or lactose placebo tablets two times a day.

The primary efficacy parameter was the incidence rate of travelers' diarrhea. The investigators concluded that both doses provide a statistically significant reduction in the occurrence of diarrhea. Additional analyses were done. In one analysis, the data were evaluated strictly according to the inclusion/exclusion criteria and the definition of diarrhea as stated in the protocol. Results indicated that the significant advantage of each dose regimen claimed in the original analyses was not maintained. A further (intent-to-treat) analysis was done using all subjects, *i.e.*, inclusion/exclusion criteria were ignored and all subjects were included. This evaluation also did not confirm the statistical advantage of each dose regimen claimed in the original analysis. In addition, this study is inadequate because there was a 47 percent rate of protocol violations and differences in definitions of diarrhea used (in the protocol and in the evaluable subjects) raise questions about the adequacy of the blinding of the study.

The other clinical study (Ref. 7) was a 21-day, double-blind, randomized, placebo-controlled clinical study comparing two dose levels of bismuth subsalicylate in the prevention of travelers' diarrhea. Subjects were randomly assigned bismuth subsalicylate either 1.05 g per day (262.5 mg four times a day) (low dose)), 2.1 g per day (525 mg four times a day) (high dose)), or 7.15 g lactose (two placebo tablets four times a day). Additional analyses were also done. In the original analysis, the difference in diarrheal incidence rate from placebo was only statistically significant for the high-dose regimen. Supplemental comparisons done only for subjects who completed all 21 days of the study or who contracted diarrhea ("four or more unformed stools in a 24-hour period") were consistent with the primary efficacy comparisons. The investigators concluded that 525 mg bismuth subsalicylate four times a day provides a statistically significant reduction in the occurrence of diarrhea for up to 3 weeks and that 262.5 mg four times a day provides a marginal benefit that could be considered in the range of the minimum effective dose. However, this significant reduction in the incidence of diarrhea was not discernible when the data from both analyses were evaluated. Similarly, when the effects of the "high" and "low" bismuth subsalicylate dose were compared, no significant difference in the incidence of diarrhea was detected.

Only the second clinical study (Ref. 7) showed that bismuth subsalicylate tablets in a dosage of 525 mg four times a day may be effective in the prevention of travelers' diarrhea. However, an additional double-blind, randomized, placebo-controlled study by another independent investigator is needed to substantiate the study findings. The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 8).

The agency is concerned about the benefit-to-risk ratio associated with prophylactic use for several weeks for acute diarrhea, which itself is usually self-limiting, lasting only from 24 to 72 hours. Although there have been no reported cases of bismuth encephalopathy associated with the dosage and time period usually recommended for OTC use, the safety of prophylactic use for 3 weeks to persons traveling to high-risk diarrhea areas is not well documented. Thus, any future study of effectiveness should also include an evaluation of tinnitus and other subtle and mild central nervous system symptomatology, such as vertigo, gait disturbances, etc. An evaluation of bismuth pharmacokinetics during the period of use would also be desirable.

(Comment 3) One comment submitted four clinical studies (Refs. 9 through 14) to support the use of bismuth subsalicylate for the treatment of diarrhea for the three labeling indications discussed in the proposal (51 FR 16138 at 16140 to 16141). The comment also requested that a travelers' diarrhea claim for bismuth subsalicylate be included in the final monograph.

The agency has determined that these studies (DuPont, Steffen-DuPont, Steffen, and Gryboski) support the use of bismuth subsalicylate to treat the symptoms of acute nonspecific diarrhea and, tentatively, travelers' diarrhea. The DuPont and Steffen-DuPont studies were double-blind, randomized, parallel group trials comparing the efficacy of bismuth subsalicylate with placebo for the treatment of acute, nonspecific diarrhea. The DuPont study (Ref. 10) involved 112 students from the United States enrolled at universities in Mexico and who were suffering from diarrhea. The subjects received placebo or bismuth subsalicylate at a dose of 525 mg per 30 milliliter (mL) solution every half hour up to a maximum of eight doses (4.2 g) per day for 2 days. The students were given diary cards on which to record the time of passage of each stool, the stool consistency, the severity of any associated symptoms, and the times and amounts of medication ingested. Diary cards were maintained for 72 hours (the 48-hour treatment period and the ensuing 24 hours). Diarrhea was defined as one or more symptoms of enteric infection (*e.g.*, fever, abdominal discomfort, urgency, nausea) plus either three or more unformed stools in an 8-hour period or four or more such stools in a 24-hour period.

The primary effectiveness measures were reduction in the duration of diarrhea, improvement in stool consistency, and reduction of stool frequency. Results significantly favoring bismuth subsalicylate were obtained for all parameters of effectiveness. Half of the subjects who took bismuth subsalicylate experienced total relief by 27 hours. Additionally, 78 percent of the subjects treated with bismuth subsalicylate had total relief of diarrhea and all associated symptoms at the end of the 72-hour period compared with 50 percent of the placebo-treated subjects. The mean percentage of total firm stools among subjects treated with bismuth subsalicylate was numerically greater than for the placebo-treated subjects at all time intervals, and significantly greater for the first 24 hours after treatment (36.6 percent versus 8.6 percent, $p<0.01$). Stool frequency data also showed that the number of unformed stools was numerically lower for all time intervals after the first 12 hours for the bismuth subsalicylate subjects compared to the placebo subjects. However, only the 12- to 24-hour interval showed statistical significance ($p=0.04$). Subjects global assessment of relief was 92 percent for those who received bismuth subsalicylate compared to 73 percent for those who received placebo on day 1 ($p=0.032$) and 98 percent versus 86 percent on day 2 ($p=0.059$). The physician's global ratings showed relief in 84 percent of subjects treated with bismuth subsalicylate and 58 percent of placebo subjects ($p<0.01$).

The Steffen-DuPont study (Ref. 10) included 130 Swiss nationals traveling in West Africa. It had essentially the same design as the DuPont study except that diarrhea was defined as one or more watery stools (pourable) or one or more pasty stools (do not retain shape). Subjects were given bismuth subsalicylate 1.05 g every hour up to a maximum of four doses (4.2 g) per day for 2 days, or placebo. Results indicated that 69 percent of subjects treated with bismuth subsalicylate had relief after 48 hours compared to 40.6 percent for placebo subjects. Stool consistency was numerically higher for subjects treated with bismuth subsalicylate than subjects who received placebo. Subject's global assessments of relief was 76 percent for those who received bismuth subsalicylate and 72 percent for those who received placebo on day 1 ($p=0.76$). On day 2, a significantly greater percentage of subjects treated with bismuth subsalicylate reported relief (89 percent) compared to placebo subjects (73 percent), $p=0.02$.

A subgroup analysis on subjects identified as having entry criteria (three or more unformed stools before entry) similar to subjects in the Dupont study allowed for direct comparisons of these two studies. The analysis confirmed a significant effect for bismuth subsalicylate over placebo.

The Gryboski study (Refs. 9 and 10) was a double-blind, placebo-controlled, parallel clinical trial, conducted for 7 days, that involved 29 infants and children (age range 2 to 70 months) with chronic diarrhea, defined as a change in the consistency of the stool to watery or soft (mushy) and of greater than 2 weeks duration. A bismuth subsalicylate suspension containing 525 mg/30 mL was given based on age as follows: 6 weeks to 2 years, 2.5 mL; 2 to 6 years, 10 mL. The results indicated that bismuth subsalicylate significantly

improved stool consistency and decreased stool frequency ($p<0.05$). However, because of the small sample size and because only one child was more than 3 years of age, this study alone cannot be used to establish dosages for infants and children.

In the Steffen study (Refs. 9 and 10), 2,580 people traveling to various third world countries were randomly assigned in a double-blind manner to bismuth subsalicylate (or 1 of 5 other active drugs) or 1 of 6 respective placebos. Treatment for diarrhea began immediately after the onset of symptoms. The study results, for 530 evaluable subjects, indicated that the cure rates for subjects treated with bismuth subsalicylate were 62 percent by the end of day 1 and 76 percent by the end of day 2, p=0.002 (Ref. 10). These rates were significantly greater than those in the placebo group (40 percent day 1, 55 percent day 2). While this study is supportive, the agency cannot consider it a critical study to support effectiveness for bismuth subsalicylate for several reasons: (1) The study did not provide baseline data, (2) the study did not contain objective measures of stool frequency and consistency, and (3) the raw data were not available to the agency for review.

In summary, the Dupont and the Steffen-Dupont studies support the monograph status of bismuth subsalicylate for OTC antidiarrheal use. Each study confirms the results of the other because of the similar design. The Steffen study is supportive. The Gryboski study, although well-controlled and supportive of bismuth subsalicylate, does not provide adequate information on dosing regimens for children under 12 years of age (*see* section II, comment 6 of this document).

The dosage for bismuth subsalicylate is: Adults and children 12 years of age and over: oral dose is 525 mg every 1/2 to 1 hour, or 1,050 mg every hour as needed, not to exceed 4,200 mg in 24 hours. Children under 12 years of age: ask a doctor.

Because almost 50 percent of persons traveling from an industrialized to an underdeveloped country experience diarrhea, this target population was used in the clinical studies. The primary etiology of diarrhea in the United States is nonbacterial, while diarrhea occurring in foreign countries is primarily bacterial. Thus, the agency needed to consider whether studies on travelers' diarrhea (a subset of diarrhea) in foreign countries could be extrapolated to acute nonspecific diarrhea in the United States (Ref. 15).

On July 26, 1991, the agency's Gastrointestinal Drugs Advisory Committee considered this question by evaluating the pathogens identified in the restudy stool samples in the Dupont and Steffen studies. The most common pathogen was *Escherichia coli* enterotoxin. The committee also considered the Gryboski study, in which the entry criteria included subjects with no evidence of parasitic or bacterial infection, and the Soriano study (Ref. 15), an additional study (not submitted by the comment) that was conducted in hospitalized children with acute diarrhea and focused on subjects infected with Rotavirus. The Soriano study showed that bismuth subsalicylate is superior to placebo and is also effective in subjects with diarrhea when the primary etiology is viral. The committee concluded that the studies support the use of bismuth subsalicylate in treating the symptoms of acute nonspecific and travelers' diarrhea.

In the TFM (51 FR 16138 at 16149), the agency proposed the following indications in § 335.50(b): (i) "Reduces the number of bowel movements in diarrhea," (ii) "Improves consistency of loose, watery bowel movements in diarrhea" and (iii) "Relieves cramps in diarrhea." The agency also stated (*see* comment 10, 51 FR 16138 at 16140 to 16141) that the indications "For the treatment of diarrhea" or "Controls (stops) diarrhea" could also be used depending on the results of studies conducted on the ingredients present in a product, but these indications were not included in proposed § 335.50(b) (*also, see* section II, comment 13 of this document). The agency concludes that the data support monograph status for these claims for bismuth subsalicylate with the exception of "relieves cramps in diarrhea." The data support the term "controls" or "relieves" rather than the absolute cessation of diarrhea inferred in the term "stops." Therefore, the agency is using the claim "controls" or "relieves" "diarrhea" as the primary indication in this final monograph. To further simplify labeling, the agency had revised the other claims, which are optional, to "reduces number of bowel movements" and "helps firm stool" (*see* new § 335.50(b)(1)).

FDA tentatively concludes that the data also support use for "travelers' diarrhea." Elsewhere in this issue of the **Federal Register**, the agency is proposing to amend the final monograph to include that indication. However, that indication may not appear in product labeling until the amendment is final. The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 16).

(Comment 4) One comment disagreed with an agency recommendation (Ref. 16) that the Reye's syndrome warning for products containing bismuth subsalicylate read: "WARNING: Children and teenagers who have or are recovering from chicken pox or flu should NOT use this medicine to treat vomiting or diarrhea. If vomiting or diarrhea is present, consult a doctor because this could be an early sign of Reye syndrome, a rare but serious illness." The comment contended that this reference to diarrhea should not be included because, unlike vomiting, diarrhea is not a recognized early warning symptom of Reye's syndrome. The comment added that this warning would be incorrect and confusing to consumers and that there is no scientific data linking Reye's syndrome to bismuth subsalicylate. One comment added that the following Reye's syndrome warning it voluntarily uses in its labeling is adequate for bismuth subsalicylate: "WARNING: Children and teenagers who have or are recovering from chicken pox or flu should not use this medicine to treat nausea or vomiting. If nausea or vomiting is present, consult a doctor because this could be an early sign of Reye Syndrome, a rare but serious illness."

FDA issued the Reye's syndrome warning in 21 CFR 201.314(h) at the time when scientific research was focused primarily on the association of Reye's syndrome and aspirin rather than nonaspirin salicylates. That warning is limited to aspirin and reads: "WARNING: Children and teenagers should not use this medicine for chicken pox or flu symptoms before a doctor is consulted about Reye's syndrome, a rare but serious illness reported to be associated with aspirin."

In the **Federal Register** of May 5, 1993 (58 FR 26886), the agency proposed a Reye's syndrome warning for OTC overindulgence drug products containing bismuth subsalicylate. In a technical amendment published in the **Federal Register** of January 3, 2000 (65 FR 7), the agency corrected the word "Reye" to "Reye's." Elsewhere in this issue of the **Federal Register**, the agency is finalizing the May 5, 1993, proposal, requiring the Reye's syndrome warning for all OTC drug products that contain bismuth subsalicylate.

(Comment 5) One comment disagreed with the agency's proposal (51 FR 16138 at 16143, *see* comment 17) that the maximum adult daily dose of bismuth subsalicylate be limited to 4.2 g because of the potential of salicylate toxicity. The comment argued that this limitation is contrary to the up to 8 g per 1 day limit of bismuth subsalicylate recommended by the panel (40 FR 12902 at 12930). The comment stated that 4.2 g per day is equivalent to 1.59 g per day salicylate, which is only about one-half of the maximum daily salicylate dosage limit recommended by the OTC Internal Analgesic Panel (42 FR 35346 at 35358, July 8, 1977).[1] The comment stated that it is essential that the maximum allowable dose be based on total salicylate consumption because some bismuth subsalicylate products may also contain other salicylates as excipients. Thus, the maximum daily dose should be limited by the equivalents of salicylate ingested, and that formulated products should contain a total of no more than 3.04 g of salicylate per day. The comment stated that the bismuth subsalicylate level should be established by the lowest clinically effective dose.

Based on clinical studies submitted (*see* section II, comment 3 of this document), bismuth subsalicylate for antidiarrheal use has been shown to be effective at a dose of 4.2 g per day. Thus, there is no rationale for increasing the daily dosage to up to 8 g. The agency is aware that products may contain other salicylates as excipients (formulation aids). Inactive ingredients must meet the requirements of § 330.1(e) (21 CFR 330.1(e)), *i.e.*, be safe and not interfere with the effectiveness or testing of the product. There is no basis at this time to place a restriction on the use of other salicylates as inactive ingredients. However, manufacturers would be prudent to use nonsalicylate inactive ingredients when bismuth subsalicylate is the active ingredient. The agency will consider a restriction should the need arise.

(Comment 6) One comment submitted a report (Ref. 17) from a Scientific Advisory Group (SAG) that evaluated pediatric dosing for bismuth subsalicylate. The SAG reviewed three studies (Refs. 18, 19, and 20) and marketing and epidemiological data. The SAG report concluded that: (1) The clinical data support the safety and effectiveness of bismuth subsalicylate to treat diarrhea in children between 3 and 12 years of age, (2) currently recommended dose regimens to treat diarrhea in children 6 to 12 years of age, based on the effective adult dose of bismuth subsalicylate, are rational and supportable. However, increasing the currently marketed labeled dose for children 3 to 6 years old is recommended, (3) no additional clinical studies are required to treat acute diarrhea in children 3 to 12 years old, and (4) bismuth subsalicylate labeling should include a warning to maintain adequate fluid intake when treating diarrhea in young children.

Based on the SAG's recommendations, the comment requested an age range and dosage schedule different from that included in the TFM. The comment stated that its age ranges were intended to be consistent with the age ranges specified in pediatric dose schedule C of the advance notice of proposed rulemaking for OTC internal analgesic, antipyretic, and antirheumatic drug products (42 FR 35346 at 35368). The comment explained that age groupings in that monograph were determined on the basis of body surface area, which, according to the Internal Analgesic Panel, is the most accurate parameter to use in calculating salicylate dosage. The SAG stated that the pediatric dosages on currently marketed bismuth subsalicylate containing products are rational for children ages 6 to 9 and 9 to 12 years of age. Employing extrapolations based on age (Young's rule), body-weight, and body-surface area from an effective adult dose, the SAG recommended an increase in the dose for children 3 to 6 years of age from the currently-labeled dose of 87 mg to 131 mg.

The agency has reviewed the SAG report, which discusses three controlled studies (Refs. 18, 19, and 20) in infants and children (8 weeks to under 5 years) with chronic or acute diarrhea. However, only one subject was above 3 years of age. The comment contended these studies were sufficient evidence to show effectiveness in childhood diarrhea at various doses. The doses of bismuth subsalicylate used were: (1) Gryboski study (chronic diarrhea) (Ref. 18): 44 mg every 4 hours for 7 days for infants from 8 weeks to 2 years of age (mean 5.7 mg/kilogram (kg)) and 88 mg every 4 hours for 7 days for children 2 to 6 years of age (only 1 subject in this study was above 3 years of age, 5.5 mg/kg); (2) Soriano-Brucker et al. study (Ref. 19): 20 mg/kg five times a day for 5 days, and (3) Figueroa et al. study (Ref. 20): 20 mg/kg and 30 mg/kg five times a day for 5 days. Because these studies did not include children 3 to under 12 years of age, the agency has no basis to conclude from these studies that the ingredient will be effective for these age groups. The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 21).

Another comment included the results of a double-blind, placebo controlled study of bismuth subsalicylate in children 3 to 6 years of age with acute diarrhea (Ref. 22). The study involved children from 13 clinical centers located in Central and South America and the United States. Subjects were randomized to receive 131 mg bismuth subsalicylate or matching placebo every 30 minutes for a total of eight doses per day for 2 consecutive days. Observations were recorded in a diary over a 5-day period. Subjects were eligible if they had diarrhea of less than 48 hours in duration. Efficacy parameters included duration of diarrhea (primary variable), stool consistency and frequency (secondary variables). A total of 291 patients were included in the final analysis. The study demonstrated that subjects receiving bismuth subsalicylate showed a statistically significant shorter duration of diarrhea versus placebo when evaluated at 72 hours (LR (likelihood ratio) p=0.009) and 120 hours (LR p=0.001), but statistical significance was not shown at 48 hours (LR p=0.228). The p-values were calculated via the likelihood ratio test for comparing equality of survival curves. The comment stated that the shorter observation period of 48 hours contained more censored observation times and hence had less statistical power to detect the treatment effect than that at 72 hours.

The agency considers it reasonable to expect efficacy to be shown at 120-hours due to the self-limited nature of nonspecific diarrhea. However, failure to demonstrate a statistically significant effect at 48-hours is a cause for concern in the pediatric population due to the danger that dehydration poses to this age group. Analysis of the secondary variables, stool consistency and frequency, revealed that while subjects treated with bismuth subsalicylate as compared to those treated with placebo had a statistically significant increase in the number of formed stools at the 36 to 48 hour time interval, they only demonstrated a trend towards a decrease in the frequency of unformed stools (defined as soft or watery bowel movements) and never achieved statistical significance for the entire duration (120 hours) of the study.

The study was well designed to demonstrate the product's effectiveness as an antidiarrheal agent. On review, the majority of the reported protocol violations (*i.e.*, randomization out of sequence, discrepancy in stool analysis, use of acetaminophen, study duration, and the filling out of the study diary cards) realistically should not have

[1] The panel's recommended maximum daily dosage for sodium dalicylate was 4 g. Sodium salicylate contains approximately 14 percent sodium and 86 percent salicylate. Four g of sodium dalicylate contains approximately 3.4 g of salicylate.

negatively impacted on the study's results. The size of the doses of bismuth subsalicylate used in this trial may have been subtherapeutic (hence the lack of a demonstrable treatment effect) since they were extrapolated from doses that have been shown to be effective in adult populations for the indication that was studied in this trial. Since bismuth subsalicylate's proposed antidiarrheal efficacy stems from various mechanisms (anti-infective, absorbent, and antisecretory) that work locally in the gastrointestinal tract, the product may not have had adequate time or surface area to work effectively in the pediatric subjects tested.

The agency concludes that another double-blind, placebo-controlled study in pediatric subjects with acute nonspecific diarrhea is needed to support the use of bismuth subsalicylate for OTC antidiarrheal use in children under 12 years of age. The agency recommends dose ranging studies using pharmacokinetic modeling to determine the doses to be used in the next trial. Accordingly, labeling for use in children 3 to under 12 years of age is not included in the monograph at this time.

(Comment 7) Two comments stated that it is generally recognized that the therapeutic value in bismuth salts is dependent on the percentage of bismuth oxide. One comment discussed two products (one containing bismuth subsalicylate and the other containing bismuth subnitrate) and stated that the dosage of the bismuth subnitrate product provides 16.75 percent more bismuth oxide than the bismuth subsalicylate product. The second comment stated that bismuth subgallate contains 9.35 mg/mL (52 to 57 percent) of bismuth oxide, bismuth subnitrate contains 75.84 mg/mL (not less than 79 percent) of bismuth oxide, and bismuth subsalicylate contains 11.20 mg/mL (62 to 66 percent) of bismuth oxide. The comment contended that bismuth subsalicylate at the recommended dosage is under dosed in effectiveness and concluded that bismuth subnitrate should be placed in category I. Another comment discussed the dose of bismuth subnitrate.

The comments did not submit any data to establish the exact mechanism of action of bismuth oxide in treating/relieving diarrhea. Bismuth subgallate, bismuth subnitrate, and bismuth subsalicylate, although chemically similar, are not chemically identical and, therefore, may not exert the same intended action. No clinical data have been submitted to show that these other bismuth compounds are acceptable for OTC antidiarrheal use. Additionally, no data have been submitted to show that bismuth subsalicylate and bismuth subnitrate are therapeutically equivalent or that bismuth subnitrate is as effective, or more effective, than bismuth subsalicylate for use as an OTC antidiarrheal drug product. Therefore, the agency concludes that there is no basis to include bismuth subgallate or bismuth subnitrate in this final monograph.

(Comment 8) One comment submitted a clinical study (Refs. 23, 24, and 25) and requested that activated charcoal (at a dose of 1,040 mg after each bowel movement (up to 8,320 mg per day)) be reclassified from category III to category I and included in the final monograph.

The agency has determined that the data are inadequate to support effectiveness. The prospective, randomized, double-blind study (Ref. 23) was conducted at a single center where 51 subjects having nonspecific gastroenteritis with diarrhea, with or without associated abdominal cramps, completed the study. The data showed weak trends on diarrhea-related endpoints and a somewhat stronger trend on the global endpoint. There was no statistical significance for any of the three measures of outcome: (1) The patients' "global" (subjective) evaluation of treatment effectiveness, (2) the time from initiation of treatment until the last unformed stool, and (3) the time from initiation of treatment until the last cramp was reported. Because there are no well-controlled studies showing effectiveness, most likely two independently-conducted, placebo-controlled clinical trials will be needed to confirm the effectiveness of activated charcoal for antidiarrheal use. The agency's detailed comments and evaluation of the data are on file in the Dockets Management Branch (Ref. 26).

(Comment 9) One comment requested that a product containing a combination of bismuth subnitrate and calcium hydroxide be reclassified from category III to category I. The comment stated that the product has been sold in the United States since 1900 and in Mexico since 1923 for OTC antidiarrheal use with no reports of consumer injury and contended that controlled studies are unnecessary because of the many years of usage without reported adverse side effects and the vast amount of material in the scientific literature. The comment explained that bismuth subnitrate has been used as an antidiarrheal for over 200 years and that calcium hydroxide, an antacid and astringent, extends the shelf life of the product by neutralizing the acid residue that leaches from the bismuth subnitrate into the supernatant liquid over a long-standing period. The comment provided selected extracts from reference textbooks (Ref. 27).

The panel classified bismuth subnitrate in category III because of insufficient effectiveness data and stated that it should not be used in infants under 2 years of age because of the risk of methemoglobinemia (40 FR 12902 at 12930). The panel placed calcium hydroxide in category III and stated that, although it is claimed useful for its antacid and buffering qualities, there is no evidence of effectiveness as an antidiarrheal (40 FR 12902 at 12930). The panel also stated that the combination of an antidiarrheal and an antacid is not rational concurrent therapy for a significant portion of the population and classified it as category II (40 FR 12902 at 12927 and 12930). The panel was also unable to find evidence to demonstrate that astringent properties for calcium hydroxide confer effectiveness in diarrhea (40 FR 12902 at 12929 to 12930).

While the absence of reported adverse reactions or historical use may be used as corroborative data, they cannot generally be considered as proof of safety or effectiveness (*see* § 330.10(a)(4)(i) and (a)(4)(ii)). New relevant data can be submitted in an NDA (*see* 21 CFR part 314) or a petition to amend the final monograph (*see* §§ 330.10(a)(12) and 10.30 (21 CFR 10.30)).

(Comment 10) Two comments requested the agency to designate rhubarb fluidextract and potassium carbonate as inactive ingredients instead of category II active ingredients in products that also included bismuth subnitrate and calcium hydroxide as active ingredients. The comments stated that rhubarb fluidextract is a necessary flavoring and coloring agent, while potassium carbonate causes the rhubarb fluidextract to go into solution. The comments added that the Panel was of the opinion that the potassium carbonate should be listed as an inactive ingredient (40 FR 12902 at 12926).

Based on data the manufacturer submitted, the panel reviewed rhubarb fluidextract and potassium carbonate as single active antidiarrheal ingredients (40 FR 12902 at 12926) as well as in combination with bismuth subnitrate and calcium hydroxide (40 FR 12902 at 12932). The manufacturer claimed that the rhubarb fluidextract is an astringent and that the potassium carbonate has some antacid value in the formulation (Ref. 28). The panel concluded that evidence was lacking to support effectiveness and placed the ingredients singly and in combination in category II. The panel stated that it found no evidence that potassium carbonate possesses any antidiarrheal properties and, thus, it should be regarded as an inactive ingredient. Likewise, the panel concluded that there was no evidence to permit classification of rhubarb fluidextract as an antidiarrheal (40 FR 12902 at 12926). No data were subsequently submitted to support these ingredients as active ingredients. Therefore, in the TFM (51 FR 16138 at 16146 to 16147), the agency placed rhubarb fluidextract and potassium carbonate singly and in combination in category II. No additional data have been submitted, and rhubarb fluidextract and potassium carbonate are nonmonograph active ingredients in this final rule.

The agency is not aware of rhubarb fluidextract or potassium carbonate being included as inactive ingredients in any OTC antidiarrheal drug products. Rhubarb garden root and rhubarb root are listed in 21 CFR 172.510 as flavors only in alcoholic beverages. Potassium carbonate is listed in 21 CFR 184.1619 as a substance affirmed as generally recognized as safe that may be added directly to human food. These ingredients would need to meet the criteria in § 330.1(e) to be acceptable inactive ingredients in products marketed under an OTC drug monograph.

(Comment 11) One comment submitted 6 clinical studies (Ref. 29) to support the use of kaolin and pectin in a "fixed" combination of 45 parts kaolin to 1 part pectin for the proposed labeling indications to treat diarrhea (51 FR 16138 at 16140 to 16141).

The agency has determined that these studies are insufficient to demonstrate that the "fixed" combination is effective. However, studies 295 and 303 demonstrate that kaolin alone, but not pectin, is effective. While only these studies are summarized in this document, the agency's detailed comments and evaluations of all the studies are on file in the Dockets Management Branch (Refs. 30 and 31). Kaolin (26.2 g) and/or pectin (583 mg) as single ingredients, or in combination, were administered in a 3 ounce (oz) dose in all six studies.

In study 303, acute nonspecific diarrhea was defined as the passage of three or more watery or mixed stools in 24 hours. In this 33-center study, the subjects were randomized as follows: 125 to receive kaolin and pectin in combination, 126 to receive kaolin, 133 to receive pectin, and 124 to receive placebo. Each subject received an initial 3-oz dose of study medication, followed by a 3-oz dose every 6 hours or after each bowel movement, whichever was more frequent (not to exceed 10 doses per 24 hours), for a 48-hour period or until diarrhea ended. From a total of 508 subjects, 414 were evaluable for effectiveness for both the first and second days of treatment.

The results indicated reasonable statistical evidence that stool consistency is improved by kaolin and pectin in combination and kaolin alone. However, this study did not provide sufficient statistical evidence that kaolin and pectin as a "fixed" combination is superior to kaolin in terms of improving stool consistency on day 2 of treatment. There was no statistical evidence that pectin is effective in improving stool consistency.

Treatment with both kaolin and pectin in combination and kaolin alone reduced the average elapsed time from first drug dose to either last liquid (watery or mixed) stool or first formed stool by 5 to 7 hours ($p<0.01$) in comparison to placebo during the 48-hour treatment period. The duration of diarrhea was the time from the first dose to the first formed stool, which was 37 hours with kaolin and pectin in combination and 43 hours with placebo, a 6 hour difference over the 48-hour duration of treatment. Neither kaolin and pectin in combination nor kaolin alone was superior to placebo in reducing the number of stools passed in the 48-hour treatment period.

Study 295 was a multicenter, double-blind, randomized study comparing the effectiveness of the combination with placebo to treat acute nonspecific diarrhea, which was defined as the passage of three or more liquid stools in the 24 hours immediately preceding entry into the study. The study had 213 subjects (109 received drug, 104 received placebo) who were instructed to take one 3-oz dose of medication after each bowel movement or at 6 hour intervals in the absence of a bowel movement, for a period of 48 hours or until diarrhea ended, not to exceed 10 doses in 24 hours. The subjects recorded on a diary card the date and hour of each bowel movement and the character of the stool.

The results showed improvement in the consistency of the stool in the drug group on day 2 of treatment. A statistically significant greater proportion of subjects receiving the combination had formed stools on day 2 (kaolin-pectin 51/81, 63 percent compared to placebo 30/75, 40 percent, $p<0.005$). The mean time to the first formed stool was 35 hours with kaolin and pectin in combination and 41 hours with placebo ($p=0.002$). The difference in the mean number of watery stools (kaolin-pectin 0.13, placebo 0.57) was 0.44 of a stool, and the difference in the mean number of formed stools (kaolin-pectin 0.97, placebo 0.52) was 0.45 of a stool. No statistical significance was demonstrated for frequency of bowel movements on day 1 and day 2. Numerically, the placebo group had a slightly larger mean stool frequency at baseline, which was taken 24 hours prior to entrance into the study (6.65 for drug and 7.67 for placebo), but there was little difference in the mean number of bowel movements between the two treatment groups on day 1 (3.78 for drug and 3.37 for placebo) and day 2 (2.02 for drug and 2.01 for placebo). The agency concludes that the combination resulted in a statistically significant improvement in the mean time to the first formed stool and in the consistency of the stool on day 2 of treatment.

In study 303, the improvement in stool consistency appeared to be due to the kaolin component whereas pectin seemed to perform similar to placebo. Thus, the improvement in stool consistency in study 295 appeared to be due entirely to kaolin alone. Therefore, the results indicate that kaolin alone improves stool consistency in a 24- to 48-hour period. Likewise, study 303 also showed that the combination and kaolin alone significantly reduced the duration from first drug doses to either first normal (formed) stool or last loose (watery or mixed) stool ($p<0.05$) by 5 to 7 hours (compared to placebo) during the 48-hour treatment period. Study 295 also showed that the combination significantly reduced the duration from first dose to first normal stool ($p<0.005$) by 7 hours.

The agency concludes that the evidence is not sufficient to show that kaolin and pectin in combination are better than kaolin alone. However, study 303 provides reasonable statistical evidence that kaolin as a single ingredient is likely to improve stool consistency in subjects with acute nonspecific diarrhea in 24 to 48 hours. Data from this and other studies have shown that pectin has no effect. Although study 295 involved a comparison of the combination only against placebo, rather than against the single ingredients, the study supports kaolin as the active ingredient in the combination product.

On April 9, 1993, the Nonprescription Drugs Advisory Committee and the Gastrointestinal Drugs Advisory Committee (the committees) met to discuss OTC antidiarrheal drug products containing attapulgite, kaolin, and pectin (Ref. 31). The committees evaluated studies 295 and 303 and determined that the data were sufficient to support the effectiveness of kaolin as a single ingredient, recommending that

products be labeled to state the results they provide and the timeframe in which they occur. Therefore, the agency is including the following indication for kaolin in this final monograph: "Helps firm stools within 24 to 48 hours" (*see* section III of this document).

Kaolin is an adsorbent that can interfere with the gastrointestinal absorption of a number of oral medications, including some antibiotics, digitalis glycosides, and theophylline, resulting in decreased therapeutic effectiveness. The interaction might be avoided if kaolin is given at least 3 hours before or after taking any oral medication. Therefore, the agency is requiring a specific drug interaction precaution statement for products containing kaolin: "Ask a doctor or pharmacist before use if you are taking any other drugs. Try to use at least 3 hours before or after taking any other drugs."

The committees also noted that the available data did not address the safety and effectiveness of kaolin in children and recommended that the ingredient should not be administered to children under 12 year of age without the specific recommendations of a doctor. Further, the agency is concerned about use in children because they may have a greater potential for fluid loss and electrolyte imbalance due to diarrhea and antidiarrheal products that only improve stool consistency may mask the extent of fluid loss. Dehydration due to diarrhea in children can occur early in the disease process and may have serious consequences, such as circulatory collapse and renal failure (Ref. 32). Kaolin improves stool consistency in 24 to 48 hours. However, current information is insufficient to show whether it also reduces fluid and electrolyte loss. None of the studies demonstrated the effectiveness of kaolin in children under 12 years of age. As noted in the TFM (51 FR 16138 at 16145), one study on the use of kaolin and pectin in children 3 to 11 years old indicated some possible benefit for a greater number of formed stools and a smaller number of liquid stools from either the kaolin-pectin combination or pectin alone. However, because of the lack of sufficient information, it could not be adequately evaluated. The agency concludes that the available information is insufficient to include monograph directions for kaolin for children 3 to under 12 years of age. Adequate data from a double-blind, placebo-controlled study in pediatric subjects with acute nonspecific diarrhea is needed to support the safety and effectiveness of kaolin for use in this age group.

Based on the studies evaluated, the dosage for kaolin in this final monograph is: Adults and children 12 years of age and over: oral dosage is 26.2 g after each loose stool. Continue to take every 6 hours until stool is firm but not more than 2 days. Do not exceed 262 g in 24 hours. Children under 12 years of age: ask a doctor.

(Comment 12) One comment contended that the proposed labeling indications are too detailed and technical and, thus, will not be understood by persons of low comprehension. The comment argued that many users of OTC drug products have little education and take these products on their own without the direction of a physician, clinician, nurse, or pharmacist. To simplify the labeling for persons of low comprehension, the comment suggested that the statement of identity be "for diarrhea" instead of "antidiarrheal." The comment also suggested that the indication "Reduces the number of bowel movements in diarrhea" be changed to "Decreases bowel movements" or "Reduces bowel movements."

The agency agrees. Section 335.50(a) in this final rule gives manufacturers the option of using either "antidiarrheal" or "for diarrhea" as the statement of identity for these products. The agency modified the indication to "reduces number of bowel movements" and included it as an additional optional claim for products containing bismuth subsalicylate (*see* section III this document).

(Comment 13) One comment stated that there was a contradiction in the indications proposed in § 335.50(b) (51 FR 16138 at 16149). The comment noted that the agency stated that it was recommending that the indications "For the treatment of diarrhea" or "Controls (stops) diarrhea" be used in the labeling of OTC antidiarrheal drug products, but these indications were not included in the proposed monograph (51 FR 16138 at 16140 to 16141). The comment also suggested that "relieves pain in diarrhea" be a monograph indication. The comment stated that these indications are good, simple, and understandable and should be adopted by the agency.

The comment is correct that the indications "For the treatment of diarrhea" or "Controls (stops) diarrhea" were not included in the TFM. In comment 10 of the TFM (51 FR 16138 at 16140 to 16141), the agency stated that one or more of the following indications could be used depending upon the results of studies conducted on the ingredient contained in the product: (1) "For the treatment of diarrhea" or "Controls (stops) diarrhea"; (2) "Reduces the number of bowel movements in diarrhea"; and (3) "Improves consistency of loose, watery bowel movements in diarrhea." Based on the data on attapulgite, calcium polycarbophil, and polycarbophil evaluated in the TFM, only the second and third indications were proposed at that time.

The agency would not object to use of the indication "relieves pain in diarrhea," provided studies support this claim. In the TFM (51 FR 16138 at 16141), the agency stated that there are other symptoms that are secondary to diarrhea, such as abdominal pain or cramps, and that some antidiarrheal ingredients may also act to relieve these symptoms. However, adequate supporting data have not been submitted to date.

(Comment 14) One comment requested revisions in the warning proposed in § 335.50(c), which stated: "Do not use for more than 2 days, or in the presence of fever, or in children under 3 years of age unless directed by a doctor." The comment recommended: "If diarrhea continues for more than 2 days or is accompanied by a fever, consult your doctor." The comment stated that the agency's proposed wording inappropriately suggests that consumers should be concerned about safety of the product if it is used for more than 2 days or in the presence of fever. The comment contended that its revision would alert consumers to the serious conditions that may be indicated by prolonged diarrhea or diarrhea accompanied by fever and would emphasize the need for medical attention because of the disease condition, not because of drug use, as might be inferred from the agency's proposed warning. The comment also recommended deletion of the part of the proposed warning regarding use in children under 3 years of age because it is redundant with information that appears in the directions section. The comment explained that the directions proposed in § 335.50(d) advise that these products should not be used in children under 3 years of age without consulting a doctor and the professional labeling proposed in § 335.80 provides health professionals information about using these products in children under 3 years of age.

The agency agrees that the information about use in children is repetitious and could be deleted. The directions in § 335.50(d) in this final monograph advise to "ask a doctor" for children under 12 years of age. The final monograph does not include proposed

§ 335.80—professional labeling, because of the lack of adequate studies to support the safety and effectiveness of the monograph ingredients in children of any age.

The OTC drug product labeling format has changed since the TFM was published. Under the current format, the word "fever" follows the subheading "Ask a doctor before use if you have." The phrase "Do not use for more than 2 days" is now included after the subheading "Stop use and ask a doctor if" as "[bullet] diarrhea lasts more than 2 days." Because this information is now in the final monograph, the agency is removing the warning statement for "DIARRHEA PREPARATIONS" in § 369.20 (21 CFR 369.20).

(Comment 15) One comment noted the agency's statement that the following labeling might be required for bismuth subsalicylate: "This product may cause the stool to darken or cause a temporary darkening of the tongue" (51 FR 16138 at 16143). Although agreeing in principle, the comment stated that it should appear as a notation and not as a warning because this effect is temporary and harmless. The comment suggested the labeling read as follows: "This product may cause a temporary, but harmless, darkening of the stool and tongue."

The agency agrees in part. Under the new OTC drug labeling format, this statement appears under the "Warnings" subheading "When using this product" as "a temporary, but harmless, darkening of the stool and/or tongue may occur".

III. Summary of Significant Changes From the Proposed Rule

The agency has reclassified activated attapulgite from proposed category I to a nonmonograph condition in § 310.545(a)(3) because of insufficient effectiveness data. On April 9, 1993, the committees discussed the continued marketing of products containing attapulgite (Ref. 31). They reviewed effectiveness studies (Refs. 33 through 36) cited in the TFM (51 FR 16138 at 16142) and reviewed two studies (Refs. 37 and 38) not previously considered. The committees determined that the data were not sufficient to support the effectiveness of activated attapulgite for antidiarrheal use. One study (Ref. 33) was not implemented according to its protocol and adequate data were not collected or recorded in the individual patient report forms. Thus, the results were not considered interpretable. The committees questioned the method of collection and reporting of data, and the amount of lactose in the placebo used in another study (Refs. 35, 36, and 37). The results were considered questionable because lactose can cause diarrhea in individuals with lactase deficiency. The committees concluded that replication of the study results by an independent investigator was needed.

The two new studies (Refs. 37 and 38) were active treatment-controlled, comparing attapulgite with loperamide. The authors of one study (Ref. 37) stated that the results of this bicentric, randomized, parallel-group, comparative study showed that attapulgite was as effective as loperamide in stopping diarrhea. They concluded that attapulgite offers the safety of a nonsystemic adsorbent while providing efficacy equivalent to that of loperamide, a systemic antiperistaltic drug. However, the committees determined that, because of the absence of a placebo control, the authors' conclusions indicated a value judgment and no conclusions of efficacy could be determined from the study. The results of the other study (Ref. 38), a randomized, parallel, open-label study, suggested that loperamide, the active treatment-control, was better than attapulgite. Because no placebo control was used, the committees felt that no decision could be made as to the effectiveness of attapulgite in stopping diarrhea.

While acknowledging that FDA's "Guidelines for the Clinical Evaluation of Antidiarrheal Drugs" (Ref. 39) indicate that a reference drug of proven efficacy may be used, the committees stated that improvement could be shown with any drug because the duration of symptoms of acute nonspecific diarrhea is 2 days. Therefore, it was the committees' consensus that placebo-controlled studies were needed to establish the effectiveness of attapulgite.

FDA notified the OTC drug manufacturers association by correspondence dated September 14, 1993, of the agency's intent to classify attapulgite as a nonmonograph condition (Ref. 40). The agency requested interested parties to submit any additional data on these ingredients in the form of a petition to reopen the administrative record. FDA placed this correspondence in the public docket, but has not received any additional data or other comments in response to its request. Thus, based on the above analysis and the recommendation of the committees, FDA has classified this ingredient as a nonmonograph condition in this final rule.

The agency has reclassified bismuth subsalicylate from category III to a monograph condition in § 335.10(a) (*see* section II, comment 3 of this document) and included specific labeling in § 335.50(b)(1), (b)(3)(ii), (c)(2), and (d)(2) for products containing bismuth subsalicylate (*see* section II, comments 3, 4, 5, and 15 of this document).

The agency has reclassified calcium polycarbophil and polycarbophil from proposed category I to a nonmonograph condition in § 310.545(a)(3) because of insufficient effectiveness data. On April 9, 1993, the committees discussed the continued marketing of OTC antidiarrheal drug products containing attapulgite, kaolin, and pectin (Ref. 31). Based on the effectiveness issues the committees raised, the agency rereviewed the data cited in the TFM (51 FR 16138 at 16141 to 16142) and determined that the existing data do not support the OTC use of calcium polycarbophil and polycarbophil for acute nonspecific diarrhea (Refs. 40 and 41). Only two of the studies relied on by the panel (40 FR 12926) and the agency (51 FR 16138 at 16141) to support monograph status involved subjects with acute nonspecific diarrhea (Refs. 42 and 43). These studies were conducted in a population in which the majority (88 to 92 percent) of subjects enrolled were less than 5 years old. No placebo controls were used and the comparative drug (kaolin-pectin suspension) had not been shown to be effective at the time of the trial. There was no indication of duration of diarrhea preceding treatment or relationship to onset of relief, and the randomization scheme was unequal and unclear. The agency does not believe that these data can be extrapolated to an adult population.

The other studies previously cited in support of polycarbophil included an uncontrolled study (Ref. 44) on the effectiveness of polycarbophil for the relief of constipation, a condition not covered in this monograph. Two other studies (Refs. 45 and 46) are inadequate because chronic diarrhea was considered, the patient selection criteria were not defined, and concomitant medications were unknown.

Therefore, the agency has classified calcium polycarbophil and polycarbophil as nonmonograph conditions. Placebo-controlled studies are needed to establish their effectiveness. FDA notified the OTC drug manufacturers association by correspondence dated May 5, 1994, of the agency's intent to classify calcium polycarbophil and polycarbophil as nonmonograph conditions (Ref. 41). FDA requested interested parties to submit any additional data concerning these ingredients to the agency. FDA placed this correspondence in the public docket, but has not received any

additional data or other comments in response to its request. New relevant data can be submitted in accordance with §§ 330.10(a)(12) and 10.30.

For products containing bismuth subsalicylate, a required indication is included in § 335.50(b)(1) as follows: "The labeling states [select one of the following: "controls" or "relieves"] "diarrhea". Additional indications" in § 335.50(b)(3)(ii)" * * * include one or both of the following * * *: "[bullet] reduces number of bowel movements" "[bullet] helps firm stool"." The indication "Relieves pain in diarrhea" has not been included because of insufficient data to support such a claim (*see* section II, comment 12 of this document).

The agency is including in new § 335.50(b)(2) the following indication for kaolin: "helps firm stool within 24 to 48 hours" (*see* section II, comment 11 of this document).

The agency has revised the warnings included in the TFM (*see* section II, comments 4, 14, and 15 of this document).

Because the potential for fluid loss and electrolyte imbalance due to diarrhea may have serious consequences, the agency is adding an additional direction in § 335.50(d)(1): "The labeling states '[bullet] drink plenty of clear fluids to help prevent dehydration caused by diarrhea.'"

IV. The Agency's Final Conclusions

Based on the available evidence, the agency is issuing a final monograph establishing conditions under which OTC antidiarrheal drug products are generally recognized as safe and effective and not misbranded. Any drug product labeled, represented, or promoted for uses as an OTC antidiarrheal drug product that contains any of the ingredients listed in § 310.545(a)(3)(i) or (a)(3)(ii) or that is not in conformance with the monograph (to be codified at 21 CFR part 335) may be considered a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)) and misbranded under section 502 of the act (21 U.S.C. 352). Such a product cannot be marketed for antidiarrheal use unless it is the subject of an approved application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations (21 CFR part 314). An appropriate citizen petition to amend the monograph may also be submitted in accordance with §§ 10.30 and 330.10(a)(12)(i). Any OTC antidiarrheal drug product initially introduced or initially delivered for introduction into interstate commerce after the compliance dates of the final rule for § 310.545(a)(3)(i) or this final rule that is not in compliance with the regulations is subject to regulatory action.

The agency is revoking the existing warning statement in § 369.20 for diarrhea preparations at the time that this monograph becomes effective. That warning is superseded by the requirements of the final monograph.

Mandating warnings in an OTC drug monograph does not require a finding that any or all of the OTC drug products covered by the monograph actually caused an adverse event, and FDA does not so find. Nor does FDA's requirement of warnings repudiate the prior OTC drug monographs and monograph rulemakings under which the affected drug products have been lawfully marketed. Rather, as a consumer protection agency, FDA has determined that warnings are necessary to ensure that these OTC drug products continue to be safe and effective for their labeled indications under ordinary conditions of use as those terms are defined in the act. This judgment balances the benefits of these drug products against their potential risks (*see* 21 CFR 330.10(a)).

FDA's decision to act in this instance need not meet the standard of proof required to prevail in a private tort action (*Glastetter* v. *Novartis Pharmaceuticals, Corp.*, 252 F.3d 986, 991 (8th Cir. 2001)). To mandate warnings, or take similar regulatory action, FDA need not show, nor do we allege, actual causation. For an expanded discussion of case law supporting FDA's authority to require such warnings, *see* Labeling of Diphenhydramine-Containing Drug Products for Over-the-Counter Human Use, a final rule that published in the **Federal Register** of December 6, 2002 (67 FR 72555).

V. Analysis of Impacts

An analysis of the costs and benefits of this regulation, conducted under Executive Order 12291, was discussed in the TFM for OTC antidiarrheal drug products (51 FR 16138 at 16147). (Executive Order 12291 was revoked by Executive Order 12866.) The agency certified that under the Regulatory Flexibility Act the proposed rule would not have a significant economic impact on a substantial number of small entities. No comments were received on the economic impact of this rulemaking.

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The proposed rule that has led to the development of this final rule was published on April 30, 1986, before the Unfunded Mandates Reform Act of 1995 was enacted. The agency explains in this final rule that the final rule will not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

The agency concludes that this final rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. The final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. The Unfunded Mandates Reform Act of 1995 does not require FDA to prepare a statement of costs and benefits for this final rule, because the final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this final rule is to establish allowable monograph ingredients and labeling under which OTC antidiarrheal drug products are generally recognized as safe and effective. The agency has identified 45 manufacturers currently marketing 383 OTC antidiarrheal drug products containing bismuth subsalicylate (334), attapulgite (32), kaolin and pectin (13), polycarbophil (2), and calcium polycarbophil (2). This final rule will result in the reformulation or removal of about 50 products containing activated attapulgite, calcium polycarbophil, polycarbophil, and pectin. These products may be reformulated to contain bismuth subsalicylate or kaolin. The agency is unaware of any current marketing of bismuth subnitrate, calcium hydroxide, charcoal (activated), potassium carbonate, or rhubarb fluidextract for antidiarrheal use.

The cost to reformulate a product will vary greatly depending on the nature of the change in formulation, the product, the process, and the size of the firm. Some of the manufacturers of the 50 products containing nonmonograph active ingredients may elect not to reformulate (*i.e.*, they may elect to discontinue marketing of the product). For those products that need reformulation, the cost can be significant. Because of the other monograph active ingredients available for reformulation, no manufacturer should need to change its dosage form; however, it will have to redo the validation (product, process, new supplier), conduct stability tests, and change master production records in order to ensure compliance with current good manufacturing practice. (*See* section 501(a)(1)(B) of the act (21 U.S.C. 351(a)(1)(B) and parts 210 and 211 (21 CFR parts 210 and 211).) The agency estimates the cost of reformulation to range form $100,000 to $500,000 per product. Therefore, if all 50 products are reformulated, the midpoint of the cost estimate implies total costs of $15 million. However, the agency believes the total costs will be much smaller because not all manufacturers will elect to reformulate and some may choose to discontinue a product line if sales are too low to justify the added cost and/or they also produce substitute products that do not require reformulation. Manufacturers may also elect to purchase reformulated products from another manufacturer and then be a distributor of that product.

Because these products must be manufactured in compliance with the pharmaceutical current good manufacturing practices (parts 210 and 211), all firms would have the necessary skills and personnel to perform these tasks either in-house or by contractual arrangement. The final rule does not require any new reporting or recordkeeping activities. No additional professional skills are needed.

This final rule establishes the monograph for OTC antidiarrheal drug products and will require relabeling of all products covered by the monograph. Estimates of relabeling costs for the type of changes required by this rule vary greatly and range from $500 to $15,000 per stockkeeping unit (SKU) (individual products, packages, and sizes) depending on whether the products are nationally branded or private label. The agency assumes the same weighted average cost to relabel (i.e., $3,600 per SKU) that it estimated for the final rule requiring uniform label formats of OTC drug products (64 FR 13254 at 13279 to 13281). Assuming 350 to 400 affected OTC SKUs in the marketplace, total one-time costs of relabeling would be $1.26 to 1.44 million. Because frequent labeling redesigns are a recognized cost of doing business in the OTC drug industry, these costs may be less. Manufacturers that make voluntary market-driven changes to their labeling during the implementation period can implement the regulatory requirements for a nominal cost.

This final rule may have an economic impact on some small entities. The agency's drug listing system indicates that about 350 to 400 products will need to be relabeled, and that this relabeling will be prepared by about 45 manufacturers, most of which are private label or contract manufacturers. Based on the Small Business Administration's determination that a small firm in this industry has fewer than 750 employees, roughly 70 percent of the firms are considered small. The economic impact on any particular firm is very difficult to measure, because it will vary with the type and number of products affected, the number of SKUs per product, and the ability to coordinate these label changes with those required for other purposes. For example, assuming average industry costs, a small company that had 5 products with 3 SKUs each for a total of 15 SKUs would experience a one-time cost of $54,000. A small private label manufacturer with the same product line and 10 customers per SKU, for a total of 150 SKUs, would experience a one-time cost of $540,000. If one or more products needed to be reformulated, the costs would increase by $100,000 to $500,000 per formulation.

Some of these relabeling costs will be mitigated because the agency is allowing 12 months for manufactures to implement the required labeling revisions for all products containing antidiarrheal active ingredients. Products with annual sales less than $25,000 have 12 additional months. Therefore, many of the labeling revisions may be done in the normal course of business. Among the steps the agency is taking to minimize the impact on small entities are: (1) Providing enough time for implementation to enable entities to use up existing labeling stock, and (2) allowing the labeling changes required by this final monograph to be implemented concurrently with the labeling changes required by the new OTC drug labeling format final rule. The agency believes that these actions provide substantial flexibility and reductions in cost for small entities.

The agency considered but rejected several labeling alternatives: (1) A shorter or longer implemention period, and (2) an exemption from coverage for small entities. While the agency believes that consumers would benefit from having this new labeling in place as soon as possible, the agency also acknowledges that coordination of the labeling changes resulting from implementation of the new OTC "drug facts" labeling and the antidiarrheal final rule may significantly reduce the costs of this final rule. A longer time period would unnecessarily delay the benefit of new labeling and revised formulations, where applicable, to consumers who self-medicate with these OTC antidiarrheal drug products. The agency rejected an exemption for small entities because the new labeling and revised formulations, where applicable, are also needed by consumers who purchase products marketed by those entities. However, a longer compliance date (24 months) is being provided for products with annual sales less than $25,000.

This analysis shows that the agency has undertaken important steps to reduce the burden to small entities. This economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

VI. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VII. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not

contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

IX. Request for Comments

This final monograph establishes labeling for OTC antidiarrheal drug products containing bismuth subsalicylate and kaolin. The warnings for products containing bismuth subsalicylate in § 335.50(c)(2) include: (1) The Reye's syndrome warning in § 201.314(h), (2) "Allergy alert: Contains salicylate. Do not take if you are [bullet] allergic to salicylates (including aspirin), [bullet] taking other salicylate products," (3) "Do not use if you have [bullet] an ulcer [bullet] a bleeding problem," (4) "Ask a doctor or pharmacist before use if you are taking any drug for [bullet] anticoagulation (thinning the blood) [bullet] diabetes [bullet] gout [bullet] arthritis," (5) "When using this product a temporary, but harmless, darkening of the stool and/or tongue may occur," and (6) "Stop use and ask a doctor if [bullet] symptoms get worse [bullet] ringing in the ears or loss of hearing occurs [bullet] diarrhea lasts more than 2 days".

These warnings for products containing kaolin in § 335.50(c)(3) include: (1) "Ask a doctor or pharmacist before use if you are taking any other drugs. Try to use at least 3 hours before or after taking any other drugs," and (2) "Stop use and ask a doctor if [bullet] symptoms get worse [bullet] diarrhea lasts more than 2 days".

In addition, products containing either ingredient must state: (1) "Do not use if you have [bullet] bloody or black stool," and (2) "Ask a doctor before use if you have [bullet] fever [bullet] mucus in the stool". The agency notes that fever and use for more than 2 days were included in the "Do not use" warning proposed in § 335.50(c) of the TFM (51 FR 16138 at 16149).

The indications in this final rule are similar to those discussed in the TFM, and the directions in this final rule are based on the studies discussed in this document. While interested persons may comment on any portions of the labeling in this final rule, the agency would like to receive specific comments primarily on the warnings labeling in § 335.50(c).

This final rule also includes labeling requirements for products that meet the criteria established in § 201.66(d)(10) (*see* § 335.50(e)). This reduced labeling results from the modified labeling format for OTC drug products in § 201.66(d)(10), which did not exist when the TFM was published. Interested persons may also comment on this labeling.

The agency is particularly interested in receiving comments on the specific labeling requirements discussed in this section of this document. Comments should be identified with the docket number found in brackets in the heading of this document. Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. If the comments justify a change in labeling, the agency will propose to amend the final monograph accordingly at a later date.

X. References

The following references are on display in the Dockets Management Branch (*see* **ADDRESSES**) under Docket No. 78N–036D and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. C85.
2. Comment No. C92.
3. Comment No. SUP12.
4. Letter from W. E. Gilbertson, FDA, to A. R. Giaquinto, Schering-Plough Corp., coded LET20.
5. Study IB–101, Comment No. CP2.
6. Steffen Study, Protocol PB–103, Comments No. CP2 and SUP10.
7. DuPont Study, Protocol PB–114, Comments No. CP2 and SUP10.
8. Letter from W. E. Gilbertson, FDA, to P. Sinnott, The Procter and Gamble Co., coded LET26.
9. Comment No. SUP8.
10. Comment No. SUP13.
11. Comment No. LET23.
12. Comment No. LET24.
13. Comment No. PR3.
14. Comment No. SUP14.
15. Comment No. TR1, pp. 43–46.
16. Letter from W. E. Gilbertson, FDA, to P. Sinnott, The Procter and Gamble Co., coded LET27.
17. Comment No. C94.
18. Gryboski, J. D. et al., "Bismuth Subsalicylate in the Treatment of Chronic Diarrhea in Childhood," *American Journal of Gastroenterology*, 80:871, 1985.
19. Soriano-Brucker, H. et al., "Bismuth Subsalicylate in the Treatment of Acute Diarrhea in Children: A Clinical Study," *Pediatrics*, 87:18–27, 1991.
20. Figueroa, D. et al., "Bismuth Subsalicylate Reduces Volume and Duration of Watery Diarrhea in Young Peruvian Children," *Thirty-First Interscience Conference on Antimicrobial Agents and Chemotherapy*, Chicago, IL, Prog. Abstr. 31:224 (Abstr. No. 754), 1991.
21. Letter from W. E. Gilbertson, FDA, to P. Sinnott, The Procter and Gamble Co., coded LET29.
22. Comment No. PR8.
23. Comment No. CP3.
24. Comment No. SUP11.
25. Comment No. PR4.
26. Comment No. LET25.
27. Comment No. C89.
28. OTC Vol. 090005.
29. Comment No. SUP09.
30. Letter from W. E. Gilbertson, FDA, to G. H. Ishler, The Upjohn Co., coded LET2.
31. Comment No. MM8.
32. T*he United States Pharmacopeia Dispensing Information*, 20th ed., Vol. I, United States Pharmacopeial Convention, Inc., Rockville, MD, pp. 1869–1870, 1999.
33. OTC Vol. 090133.
34. Comment No. SUP5.
35. Comment No. AMD2.
36. Comment No. SUP6.
37. De Sola Pool, N. et al., "A Comparison of Nonsystemic and Systemic Antidiarrheal Agents in the Treatment of Acute Nonspecific Diarrhea in Adults," *Today's Therapeutic Trends*, 52:31–38, 1987.
38. DuPont, H. L. et al., "A Randomized, Open-Label Comparison of Nonprescription Loperamide and Attapulgite in the Symptomatic Treatment of Acute Diarrhea," *The American Journal of Medicine*, 88 supp. 6A:20–23, 1990.
39. Food and Drug Administration, "Guidelines for the Clinical Evaluation of Antidiarrheal Drugs," September 1977, in OTC Vol. 09DFM.
40. Letter from W. E. Gilbertson, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET34.
41. Letter from W. E. Gilbertson, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET39.
42. Rutledge, M. L. et al., "Clinical Comparison of Calcium Polycarbophil and Kaolin-Pectin Suspensions in the Treatment of Acute Childhood Diarrhea," *Current Therapeutic Research*, 23:443–447, 1978.
43. Rutledge, M. L. et al., "Calcium Polycarbophil in Acute Childhood Diarrhea," *Clinical Pediatrics*, 2:61–63, 1963.
44. Grossman, A. J., R. C. Batterman, and P. Leifer, "Polyacrylic Resin: Effective Hydrophilic Colloid for the Treatment of Constipation," *Journal of the American Geriatric Society*, 5:187–192, 1957.
45. Roth, J. L. A., "Effects of Polycarbophil as Enteral Hydrosorbent in Diarrhea," *American Journal of Digestive Diseases*, 5:965–971, 1960.
46. Pimparker, B. D. et al., "Effect of Polycarbophil on Diarrhea and Constipation," *Gastroenterology*, 40:397–404, 1961.

List of Subjects

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 335

Labeling, Over-the-counter drugs.

21 CFR Part 369

Labeling, Medical devices, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR chapter I is amended as follows:

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

■ 2. Section 310.545 is amended by adding paragraph (a)(3)(i) heading, paragraphs (a)(3)(ii) and (d)(17), and by revising paragraph (d)(1) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(3) *Antidiarrheal drug products*—(i) *Approved as of May 7, 1991.*

* * * * *

(ii) *Approved as of* April 19, 2004; April 18, 2005, *for products with annual sales less than $25,000.*

Attapulgite, activated
Bismuth subnitrate
Calcium hydroxide
Calcium polycarbophil
Charcoal (activated)
Pectin
Polycarbophil
Potassium carbonate
Rhubarb fluidextract

* * * * *

(d) * * *

(1) May 7, 1991, for products subject to paragraphs (a)(1) through (a)(2)(i), (a)(3)(i), (a)(4), (a)(6)(i)(A), (a)(6)(ii)(A), (a)(7) (except as covered by paragraph (d)(3) of this section), (a)(8)(i), (a)(10)(i) through (a)(10)(iii), (a)(12)(i) through (a)(12)(iv)(A), (a)(14) through (a)(15)(i), and (a)(16) through (a)(18)(i)(A) of this section.

* * * * *

(17) April 19, 2004, for products subject to paragraph (a)(3)(ii) of this section. April 18, 2005, for products with annual sales less than $25,000.

* * * * *

■ 3. Part 335 is added to read as follows:

PART 335—ANTIDIARRHEAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Subpart A—General Provisions

335.1 Scope.
335.3 Definitions.

Subpart B—Active Ingredients

335.10 Antidiarrheal active ingredients.

Subpart C—Labeling

335.50 Labeling of antidiarrheal drug products.

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

Subpart A—General Provisions

§ 335.1 Scope.

(a) An over-the-counter antidiarrheal drug product in a form suitable for oral administration is generally recognized as safe and effective and is not misbranded if it meets each condition in this part and each general condition established in § 330.1 of this chapter.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

§ 335.3 Definitions.

As used in this part:

(a) *Antidiarrheal.* A drug that can be shown by objective measurement to treat or control (stop) the symptoms of diarrhea.

(b) *Diarrhea.* A condition characterized by increased frequency of loose, watery stools (three or more daily) during a limited period (24 to 48 hours), usually with no identifiable cause.

Subpart B—Active Ingredients

§ 335.10 Antidiarrheal active ingredients.

The active ingredient of the product consists of any one of the following when used within the dosage limits established for each ingredient in § 335.50(d):

(a) Bismuth subsalicylate.

(b) Kaolin.

Subpart C—Labeling

§ 335.50 Labeling of antidiarrheal drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product either as an "antidiarrheal" or "for diarrhea."

(b) *Indications.* The labeling of the product states, under the heading "Use," one or more of the phrases listed in this paragraph (b), as appropriate. Other truthful and nonmisleading statements, describing only the indications for use that have been established and listed in this paragraph (b) may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(1) *For products containing bismuth subsalicylate identified in § 335.10(a).* The labeling states [select one of the following: "controls" or "relieves"] "diarrhea".

(2) *For products containing kaolin identified in § 335.10(b).* The labeling states "helps firm stool within 24 to 48 hours".

(3) *Additional indications*—(i) When any additional indications are used, the heading "Uses" shall be used and each listed use shall be preceded by a bullet in accord with § 201.66(b)(4) of this chapter.

(ii) In addition to the indication in paragraph (b)(1) of this section, one or both of the following may be used for products containing bismuth subsalicylate in § 335.10(a): "[bullet] reduces number of bowel movements" "[bullet] helps firm stool".

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) *For products containing any ingredient identified in § 335.10.* (i) "Do not use if you have [bullet] bloody or black stool".

(ii) "Ask a doctor before use if you have [bullet] fever [bullet] mucus in the stool".

(2) *For products containing bismuth subsalicylate identified in § 335.10(a).* (i) The following shall appear in accordance with § 201.66(c)(5)(ii) of this chapter.

(A) The Reye's syndrome warning in § 201.314(h) of this chapter.

(B) "Allergy alert: Contains salicylate. Do not take if you are [bullet] allergic to salicylates (including aspirin), [bullet] taking other salicylate products".

(ii) "Do not use if you have [bullet] an ulcer [bullet] a bleeding problem".

(iii) "Ask a doctor or pharmacist before use if you are taking any drug for [bullet] anticoagulation (thinning the blood) [bullet] diabetes [bullet] gout [bullet] arthritis".

(iv) "When using this product a temporary, but harmless, darkening of the stool and/or tongue may occur".

(v) "Stop use and ask a doctor if [bullet] symptoms get worse [bullet] ringing in the ears or loss of hearing

occurs [bullet] diarrhea lasts more than 2 days".

(3) *For products containing kaolin identified in § 335.10(b).* (i) "Ask a doctor or pharmacist before use if you are taking any other drugs. Try to use at least 3 hours before or after taking any other drugs."

(ii) "Stop use and ask a doctor if [bullet] symptoms get worse [bullet] diarrhea lasts more than 2 days".

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) *For products containing any ingredient identified in § 335.10.* The labeling states "[bullet] drink plenty of clear fluids to help prevent dehydration caused by diarrhea".

(2) *For products containing bismuth subsalicylate identified in § 335.10(a).* The labeling states "[bullet] adults and children 12 years and over:" 525 milligrams "every 1/2 to 1 hour, or" 1,050 milligrams "every hour as needed [bullet] do not exceed" 4,200 milligrams "in 24 hours [bullet] use until diarrhea stops but not more than 2 days [bullet] children under 12 years: ask a doctor".

(3) *For products containing kaolin identified in § 335.10(b).* The labeling states "[bullet] adults and children 12 years and over:" 26.2 grams "after each loose stool [bullet] continue to take every 6 hours until stool is firm but not more than 2 days [bullet] do not exceed" [262 grams] "in 24 hours [bullet] children under 12 years of age: ask a doctor".

(e) *Products that meet the criteria established in § 201.66(d)(10) of this chapter.* The information described in § 201.66(c) of this chapter shall be printed in accordance with the following specifications.

(1) The labeling shall meet the requirements of § 201.66(c) of this chapter except that the information in § 201.66(c)(3) of this chapter may be omitted, and the information in § 201.66(c)(5) and (c)(6) of this chapter may be presented as follows:

(i) The words "Contains salicylate." may be omitted from the warning in § 335.50(c)(2)(i)(B).

(ii) The subheading "When using this product" in § 335.50(c)(2)(iv) may be omitted.

(iii) The words "continue to" may be omitted from the directions in § 335.50(d)(3).

(2) The labeling shall be printed in accordance with the requirements of § 201.66(d) of this chapter except that any requirements related to § 201.66(c)(3) of this chapter and the bullet in the warning in § 335.50(c)(1)(i) may be omitted.

PART 369—INTERPRETATIVE STATEMENTS RE WARNINGS ON DRUGS AND DEVICES FOR OVER-THE-COUNTER SALE

■ 4. The authority citation for 21 CFR part 369 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 371.

§ 369.20 [Amended]

5. Section 369.20 *Drugs; recommended warning and caution statements* is amended by removing the entry for "DIARRHEA PREPARATIONS."

Dated: March 31, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9380 Filed 4–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Deracoxib

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Novartis Animal Health US, Inc. The supplemental NADA provides for the veterinary prescription use of deracoxib tablets in dogs for the control of pain and inflammation associated with osteoarthritis.

DATES: This rule is effective April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7543, e-mail: mberson@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., 3200 Northline Ave., suite 300, Greensboro, NC 27408, filed a supplement to NADA 141–203 that provides for the veterinary prescription use of DERAMAXX (deracoxib) Chewable Tablets for the control of pain and inflammation associated with osteoarthritis. The supplemental NADA is approved as of February 11, 2003, and 21 CFR 520.538 is amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning February 11, 2003.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.538 is amended by revising paragraphs (d)(1) and (d)(2) to read as follows:

§ 520.538 Deracoxib.

* * * * *

(d) * * * (1) *Amount.* Administer orally as needed, as a single daily dose based on body weight.

(i) 1 to 2 mg/kilograms (kg) (0.45 to 0.91 mg/pound (lb), for use as in paragraph (d)(2)(i) of this section.

(ii) 3 to 4 mg/kg (1.4 to 1.8 mg/lb) for up to 7 days, for use as in paragraph (d)(2)(ii) of this section.

(2) *Indications for use.* (i) For the control of pain and inflammation associated with osteoarthritis.

(ii) For the control of postoperative pain and inflammation associated with orthopedic surgery in dogs weighing 4 or more pounds (1.8 kg).

* * * * *

Dated: March 8, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–9532 Filed 4–16–03; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WI114–01–7344a, FRL–7484–2]

Approval and Promulgation of Air Quality Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is making a determination that Manitowoc and Door Counties in Wisconsin have attained the one-hour ozone National Ambient Air Quality Standard (NAAQS), and we are approving the State of Wisconsin's request to redesignate Manitowoc and Door Counties to attainment for ground level ozone. In approving this redesignation request, we are also approving the State's plan for maintaining the one-hour ozone standard for the next 10 years as a revision to the Wisconsin State Implementation Plan (SIP). We are notifying the public that we believe the motor vehicle emissions budgets for volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the maintenance plan for Manitowoc and Door Counties are adequate for conformity purposes and approvable as part of the maintenance plan. In this direct final rule, we are also approving a 1999 periodic inventory for the Milwaukee-Racine ozone nonattainment area. The Wisconsin Department of Natural Resources (WDNR) submitted the redesignation request and SIP revisions on January 28, 2003, and submitted additional information on February 5, 2003 and February 27, 2003.

DATES: This rule is effective on June 16, 2003, unless EPA receives adverse written comments by May 19, 2003. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.

Send written comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

I. What Has Wisconsin Submitted?
A. Redesignation of Manitowoc and Door Counties and SIP Revision for Maintaining the One-Hour Ozone Standard
1. Why Has the State Made this Submission?
2. What Criteria Are EPA Using in Reviewing the State's Submission?
3. Is the State's Submission Consistent With the Clean Air Act?
B. 1999 Periodic Emissions Inventory for the Milwaukee-Racine Area
II. What Action Is EPA Taking?
III. Is This Action Final, or May I Submit Comments?
IV. What Statutory and Executive Order Reviews Did EPA Conduct?

I. What Has Wisconsin Submitted?

On January 28, 2003, the WDNR submitted a revision to its SIP for ozone. Additional information pertaining to the SIP was submitted on February 5, 2003 and February 27, 2003. This SIP revision contained four components: (1) A request to redesignate Manitowoc and Door Counties to attainment for ozone and a plan to ensure maintenance of the ozone standard through 2013, (2) the 1999 periodic inventory for the Milwaukee-Racine area, (3) maintenance plan updates for Sheboygan and Kewaunee Counties, and (4) new transportation conformity budgets based on the MOBILE6 emissions model for the Milwaukee-Racine and Sheboygan areas. This direct final action will address the redesignation request and maintenance plan for Manitowoc and Door Counties and the 1999 periodic inventory for the Milwaukee-Racine area. The maintenance plan updates for Kewaunee and Sheboygan Counties and the new transportation conformity budgets for the Milwaukee-Racine and Sheboygan areas will be addressed in a separate action.

A. Redesignation of Manitowoc and Door Counties and SIP Revision for Maintaining the One-Hour Ozone Standard

1. Why Has the State Made This Submission?

In accordance with requirements of the Clean Air Act as amended in 1990 (Act), Manitowoc and Door Counties were designated as ozone nonattainment areas on November 6, 1991 (56 FR 56850). At that time Manitowoc was classified as a moderate ozone nonattainment area and Door County was classified as a rural transport marginal) ozone nonattainment area. The nonattainment designations were based on monitored violations of the NAAQS for ozone.

Recent air quality data shows that both counties are attaining the ozone NAAQS. Therefore, on January 28, 2003, the WDNR submitted a request to redesignate the areas to attainment for ozone and a maintenance plan to ensure attainment through 2013.

2. What Criteria Are EPA Using in Reviewing the State's Submission?

The Act establishes the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that:

(1) The Administrator determines that the area has attained the NAAQS;

(2) The State containing such area has met all requirements applicable to the area under section 110 and Part D;

(3) The Administrator has fully approved the applicable implementation plan for the area under section 110(k);

(4) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions; and

(5) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A.

The EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498) and supplemented on April 28, 1992 (57 FR 18070). The

EPA has provided further guidance on processing redesignation requests in the following documents:

(1) "Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment," Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994.

(2) "Use of Actual Emissions in Maintenance Demonstrations for Ozone and Carbon Monoxide (CO) Nonattainment Areas," D. Kent Berry, Acting Director, Air Quality Management Division, November 30, 1993.

(3) "State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992," Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993.

(4) "State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act Deadlines," John Calcagni, Director, Air Quality Management Division, October 28, 1992.

(5) "Procedures for Processing Requests to Redesignate Areas to Attainment," John Calcagni, Director, Air Quality Management Division, September 4, 1992.

(6) "Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations," G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992.

(7) State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13498), April 16, 1992.

3. Is the State's Submission Consistent With the Clean Air Act?

The following paragraphs discuss each of these criteria with respect to Wisconsin's request to redesignate Manitowoc and Door Counties to attainment for ozone:

a. The area has attained the applicable NAAQS;

b. The area has met all relevant requirements under section 110 and part D of the Act;

c. The area has a fully approved SIP under section 110(k) of the Act;

d. The air quality improvement is permanent and enforceable;

e. The area has a fully approved maintenance plan pursuant to section 175A of the Act.

a. Attainment of the Ozone NAAQS

According to the September Calcagni memorandum, for ozone, an area is considered attaining the NAAQS if there are no violations, as determined in accordance with the regulation codified at 40 CFR 50.9, based on three consecutive calendar years of complete, quality assured monitoring data. A violation occurs when the ozone air quality monitoring data show greater than one (1.0) average expected exceedance per year at any site in the area. An exceedance occurs when the maximum hourly ozone concentration exceeds 0.124 parts per million (ppm). The data should be collected and quality-assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS) so that it is available to the public for review.

The Wisconsin request is based on an analysis of ozone air quality data from 1999–2002 as reported in AIRS. The State collected this data in an EPA approved, quality assured, National Air Monitoring System monitoring network. Table 1 below summarizes this air quality data.

TABLE 1.—AMBIENT AIR QUALITY MONITORING DATA FOR 1999–2002 EXTRACTED FROM AIRS (PPM)

Site ID	Site name	County	Year	1st Max	2nd Max	3rd Max	4th Max	No. exceed	3 yr avg
55–029–0004	Newport	Door	1999	.123	.112	.109	.109	0	
			2000	.108	.095	.095	.092	0	
			2001	.125	.113	.109	.107	1	0.3
			2002	.113	.110	.108	.100	0	0.3
55–071–0004	Collins	Manitowoc	1999	.122	.109	.101	.097	0	
			2000	.091	.090	.080	.078	0	
			2001	.112	.112	.109	.107	0	0
			2002	.105	.098	.093	.091	0	0
55–071–0007	Manitowoc	Manitowoc	1999	.130	.115	.107	.106	1	
			2000	.111	.092	.092	.091	0	
			2001	.120	.110	.109	.108	0	0.3
			2002	.101	.100	.099	.095	0	0

During the 1999–2002 time period, the Newport monitor in Door county recorded only one exceedance of the ozone NAAQS, resulting in a three year average of 0.3 exceedances per year for both 1999–2001 and 2000–2002. During the 1999–2002 time period, the Collins monitor in Manitowoc County recorded no exceedances of the ozone NAAQS, and the Manitowoc monitor in Manitowoc county recorded only one exceedance of the ozone NAAQS. For Manitowoc County, this resulted in a three year average of 0.3 exceedances per year for 1999–2001 and 0 exceedances per year for 2000–2002. The data demonstrates that the areas are monitoring attainment of the 1-hour ozone NAAQS.

As a result, the areas meet the first statutory criterion for redesignation to attainment of the ozone NAAQS. The State has committed to continue monitoring in the areas in accordance with 40 CFR part 58. (If, however, complete quality assured data show violations of the ozone NAAQS before the final EPA action on this redesignation, the area(s) will no longer qualify for redesignation).

b. Meeting Applicable Requirements of Section 110 and Part D

In November 1991, Manitowoc and Door Counties were designated nonattainment for ozone and classified as moderate and rural transport (marginal) areas, respectively. As a result of this designation, the WDNR was required to submit State Implementation Plans (SIP) that meet the requirements of the Act and demonstrate attainment and maintenance of the ozone NAAQS.

The status of all required SIP elements follows:

Section 110 Requirements

Section 110(a)(2) of the Act lists general elements to be included in each SIP after adoption by the State and reasonable notice and public hearing. The elements include, but are not limited to, provisions for establishment and operation of appropriate devices, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program as required in Parts C (prevention of significant deterioration (PSD)) and D (New Source Review (NSR)) of the Act; criteria for stationary source emission control measures, monitoring, and reporting; provisions for modeling; and provisions for public and local agency participation. For purposes of redesignation, EPA reviewed the Manitowoc and Door county SIPs and determined that the individual SIPs are consistent with the requirements of section 110 of the Act.

Part D Requirements

Before EPA may redesignate Manitowoc and Door Counties to attainment, the SIPs must have fulfilled the applicable requirements of Part D. Under Part D, an area's classification determines the requirements to which it is subject. Subpart 1 of Part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of Part D establishes additional requirements for ozone nonattainment areas classified under table 1 of section 181(a). As described in the General Preamble, specific requirements of subpart 2 may override subpart 1's general provisions (57 FR 13501 (April 16, 1992)). On November 6, 1991 (56 FR 56694), Manitowoc and Door Counties were designated as nonattainment and classified as moderate and rural transport (marginal), respectively. Therefore, to be redesignated to attainment, the State must meet the applicable requirements of subpart 1 of Part D—specifically sections 172 and 176, as well as the applicable requirements of subpart 2 of Part D.

Subpart 1 of Part D

Section 172(c) sets forth general requirements applicable to all nonattainment areas. Under 172(b), the section 172(c) requirements are applicable as determined by the Administrator, but no later than 3 years from the date of the nonattainment designation. As discussed below, Wisconsin has satisfied the section 172(c) requirements.

(1) Section 172(c)(1) requires nonattainment areas to provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable. EPA approved Wisconsin's RACM demonstration on November 13, 2001 (66 FR 56931).

(2) Section 172(c)(2) requires an area to submit a SIP providing for reasonable further progress (RFP). This requirement was superseded by the 15 percent RFP plan required under section 182(b)(1). EPA approved Wisconsin's RFP SIP on March 22, 1996 (61 FR 11735).

(3) Section 172(c)(3) requires submission and approval of a comprehensive, accurate, and current inventory of actual emissions. The requirement was superseded by the inventory requirement in section 182(a)(1). The WDNR submitted such an inventory on November 15, 1992. It was approved on June 15, 1994 (59 FR 30702).

(4) Section 172 (c)(4) requires the quantification of emissions that will be allowed from the construction of major new or modified stationary sources. 172(c)(5) requires permits for the construction and operation of new and modified major stationary sources anywhere in the nonattainment area. Section 182(a)(4) requires all major new sources or modifications in a marginal nonattainment area to achieve offsetting reductions of volatile organic compounds (VOC) at a ratio of at least 1.1 to 1.0. Section 182(b)(5) requires all major new sources or modifications in a moderate nonattainment area to achieve offsetting reductions of VOCs at a ratio of at least 1.15 to 1.0. The WDNR submitted nonattainment area NSR rules on November 15, 1992. EPA approved Wisconsin's rules on January 18, 1995, (60 FR 3538). The State PSD program will become effective in Manitowoc and Door Counties upon redesignation to attainment. EPA delegated the PSD program to WDNR on November 4, 1987.

(5) Section 172(c)(9) requires the state to provide for the implementation of contingency measures if the area fails to make reasonable further progress or attain the NAAQS. EPA approved the State's contingency measures on March 22, 1996 (61 FR 11735).

Section 176(c) of the Act requires States to establish criteria and procedures to ensure that Federally supported or funded projects conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federally supported or funded projects ("general conformity"). Section 176 further provides that state conformity revisions must be consistent with Federal conformity regulations that the Act required the EPA to promulgate. EPA approved Wisconsin's general and transportation conformity SIPs on July 29, 1996 (61 FR 39329) and August 27, 1996 (61 FR 43970), respectively. The on-highway motor vehicle budgets for Door County are 0.74 tons of VOC/day and 1.17 tons of NO_X/day, based on the area's 2013 level of emissions. The on-highway motor vehicle budgets for Manitowoc County are 1.89 tons of VOC/day and 3.59 tons of NO_X/day, based on the area's 2013 level of emissions. Door and Manitowoc Counties must use the motor vehicle emissions budgets from the maintenance plan in any conformity determination that is effective on or after the effective date of the maintenance plan approval.

Subpart 2 of Part D

Door County is a rural transport (marginal) ozone nonattainment area and is subject to the section 182(a) requirements. Manitowoc County is a moderate ozone nonattainment area and is subject to the section 182(a), 182(b), and 182(f) requirements. The following discussion describes each of these requirements, as well as Door and Manitowoc Counties' approval status for each item.

(1) The emission inventory required by section 182(a)(1) was approved on June 15, 1994 (59 FR 30702).

(2) The RACT corrections required by section 182(a)(2)(A) were approved on August 15, 1994 (59 FR 41709) and April 27, 1995 (60 FR 20643).

(3) The section 182(a)(2)(B) motor vehicle inspection and maintenance (I/M) requirement is not applicable to Manitowoc or Door Counties since the areas were not required to implement I/M prior to the enactment of the 1990 Amendments.

(4) The NSR rules required by section 182(a)(C), the offset ratio of 1.1 to 1 required by section 182(a)(4) for Door County, and the offset ratio of 1.15 to 1 required by section 182(b)(5) for Manitowoc County were approved on January 18, 1995 (60 FR 3538).

(5) The emission statement SIP required by section 182(a)(3)(B) was approved on December 6, 1993 (58 FR 64155).

(6) The 15 percent RFP plan required under section 182(b)(1) was approved on March 22, 1996 (61 FR 11735).

(7) The attainment demonstration required by section 182(b)(1) was

approved on November 13, 2001 (66 FR 56931).

(8) The VOC RACT requirements of section 182(b)(2) were approved as follows: primary submittal on August 15, 1994 (59 FR 41709) and April 27, 1995 (60 FR 20643); yeast manufacturing, molded wood parts or products coating, and wood door finishing on June 30, 1995 (60 FR 34170); screen printing and negative declarations on July 28, 1995 (60 FR 38722); iron and steel foundries on February 13, 1996 (61 FR 5514); wood furniture coating on April 4, 1996 (61 FR 14972); lithographic printing on April 9, 1996 (61 FR 105706); industrial adhesives on April 25, 1996 (61 FR 18257); and industrial solvent cleaning, plastic parts coating, and ink manufacturing on November 13, 2001 (66 FR 56931).

(9) The Stage II gasoline vapor recovery rules required by section 182(b)(3) were approved on August 13, 1993 (58 FR 43080).

(10) The motor vehicle inspection and maintenance (I/M) requirement to satisfy section 182(b)(4) is not applicable for Manitowoc County because there are no urbanized areas in Manitowoc County exceeding the population threshold specified in EPA's I/M rule (51 CFR Part 350).

(11) On July 13, 1994, Wisconsin submitted a section 182(f) NO_X petition to be relieved of the section 182(f) NO_X requirements based on urban airshed modeling (UAM). The modeling showed that NO_X emission reductions would not contribute to attainment of the ozone standard. EPA approved the section 182(f) petition on January 26, 1996 (61 FR 2428). On November 13, 2001 (66 FR 56931), EPA approved a revision to the 182(f) exemption which states that NO_X emission reductions other than those contained in the attainment demonstration are not necessary for attainment. A NO_X waiver remains in effect for the areas.

c. Fully Approved SIP Under Section 110(k) of the Act

Wisconsin has presented an adequate demonstration that the State has met all the requirements applicable to the areas under section 110 and part D. EPA has approved all relevant portions of the Wisconsin SIP for Manitowoc and Door Counties.

d. Improvement in Air Quality Due to Permanent and Enforceable Measures

The State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable. To satisfy this requirement, the State has calculated the change in emissions between 1990 and 1999 and has documented specific permanent and enforceable programs responsible for emission reductions over this time period.

Wisconsin is using 1990 for the nonattainment inventory because it is one of the years used to determine the design value of the areas for designation and classification. The 1990 inventory is based on the 1990 Base Year Emissions Inventory required by section 182(a)(1) and approved by EPA on June 15, 1994 (59 FR 30702). For comparison, the state developed a baseline inventory for 1999, one of the years the areas monitored attainment.

For the 1990 through 1999 time period, the state has quantified emission reductions from the following permanent and enforceable measures: Federal "Tier 0" vehicle standards; 1992 gasoline Reid vapor pressure change; Federal "Tier 1" vehicle standards; Federal architectural, industrial and maintenance coatings rule; Federal consumer and commercial products rule; autobody refinishing rule; Stage II vapor recovery; traffic markings rule; gasoline station tank breathing rule; Federal non-road engine standards; wood furniture coating rule; miscellaneous wood products coating rule; industrial adhesives rule; lithographic printing rule; and plastic parts coating rule.

Based on the inventories described above, Wisconsin's submittal documents changes in VOC and NO_X emissions from 1990 to 1999 for each county. Those changes in emissions are shown in tables 2 through 5 below.[1]

TABLE 2.—DOOR COUNTY 1990–1999 VOC EMISSION REDUCTIONS

[tons per day]

Sector	1990	1999	Net change 1990–1999
Point	0.00	0.14	0.14
Area	5.92	2.61	−3.31
Non-Road Mobile	4.15	4.41	0.26
Mobile	3.34	1.73	−1.61
Total	13.41	8.89	−4.52

[1] Any discrepancies between the table totals and the sum of their constituent values are due to rounding conventions. The sector totals were actually figured to three decimal places, summed, and then rounded to two decimal places to obtain the total emissions.

TABLE 3.—DOOR COUNTY 1990–1999 NO_X EMISSION REDUCTIONS

[tons per day]

Sector	1990	1999	Net change 1990–1999
Point	0.00	0.02	0.02
Area	0.54	0.35	−0.19
Non-Road Mobile	0.84	1.02	0.18
Mobile	3.23	2.69	−0.54
Total	4.61	4.07	−0.54

TABLE 4.—MANITOWOC COUNTY 1990–1999 VOC EMISSION REDUCTIONS

[tons per day]

Sector	1990	1999	Net change 1990–1999
Point	1.16	1.92	0.76
Area	9.40	6.28	−3.12
Non-Road Mobile	2.26	2.34	0.08
Mobile	9.16	4.36	−4.80
Total	21.98	14.90	−7.08

TABLE 5.—MANITOWOC COUNTY 1990–1999 NO_X EMISSION REDUCTIONS

[tons per day]

Sector	1990	1999	Net change 1990–1999
Point	3.20	3.39	0.19
Area	1.57	1.06	−0.51
Non-Road Mobile	1.91	2.47	0.56
Mobile	8.81	7.93	−0.88
Total	15.49	14.86	−0.63

Tables 2 and 3 show that Door County reduced VOC emissions by 4.52 tons per day and NO_X emissions by 0.54 tons per day between 1990 and 1999. Tables 4 and 5 show that Manitowoc County reduced VOC emissions by 7.08 tons per day and NO_X emissions by 0.63 tons per day between 1990 and 1999.

Based on this information, the State has adequately demonstrated that the improvement in air quality is due to permanent and enforceable emissions reductions.

e. Fully Approved Maintenance Plan Under Section 175A

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems.

Section 175A(d) requires that the contingency provisions include a requirement that the State will implement all control measures that were in the SIP prior to redesignation as an attainment area.

An ozone maintenance plan should address the following five elements: attainment inventory, demonstration of maintenance, monitoring network, verification of continued attainment, and a contingency plan.

Attainment Inventory

On November 13, 2001 (66 FR 56931), EPA approved Wisconsin's one-hour ozone attainment demonstration for the Milwaukee area, Manitowoc County and Door County. The approved demonstration shows modeled attainment in 2007. Consequently, Wisconsin must use 2007 as the attainment year for Manitowoc and Door Counties. The State has developed an attainment inventory by projecting the 1999 baseline emission inventory described above to 2007 using growth factors and control factors.

The attainment level of emissions are summarized in the tables below: [2]

TABLE 6.—DOOR COUNTY 2007 ATTAINMENT INVENTORY—VOC AND NO_X

[tons per day]

Sector	VOC	NO_X
Point	0.17	0.02
Area	2.62	0.36
Non-Road Mobile	3.96	1.05
Mobile	1.20	2.03
Total	7.94	3.46

[2] Any discrepancies between the table totals and the sum of their constituent values are due to rounding conventions. The sector totals were actually figured to three decimal places, summed, and then rounded to two decimal places to obtain the total emissions.

TABLE 7.—MANITOWOC COUNTY 2007 ATTAINMENT INVENTORY—VOC AND NO_X

[tons per day]

Sector	VOC	NO_X
Point	2.23	3.08
Area	6.53	1.11
Non-Road Mobile	1.70	2.46
Mobile	3.12	6.33
Total	13.58	12.98

Demonstration of Maintenance

In order to demonstrate continued attainment for ten years after EPA approves the redesignation, the State was required to develop inventories for 2007 and 2013. The 2007 attainment inventory was projected from the 1999 baseline inventory using growth and control factors. To demonstrate maintenance, the state initially projected the 1999 inventory to 2012, using the same methodology. Subsequently, due to a delay in submitting the redesignation request, an inventory was needed for 2013 to demonstrate maintenance for a full ten years after redesignation. For all sectors except highway mobile, the state assumed annual growth between 2012 and 2013 to be equivalent to the average annual growth between 2007 and 2012 by type sector. For highway mobile emissions, the state used the MOBILE6 model and assumed growth in vehicle miles traveled (VMT) between 2012 and 2013 to be equivalent to the average VMT growth between 2007 and 2012.

These emission estimates are presented in the tables below and demonstrate that VOC and NO_X emissions will decrease in future years.[3] The results of this analysis show that the area is expected to maintain the air quality standard for at least ten years into the future.

TABLE 8.—DOOR COUNTY VOC MAINTENANCE EMISSION INVENTORY SUMMARY

[tons per day]

Sector	2007	2013
Point	0.17	0.18
Area	2.62	2.83
Non-Road Mobile	3.96	3.68
Mobile	1.20	0.74
Total	7.94	7.44

[3] Any discrepancies between the table totals and the sum of their constituent values are due to rounding conventions. The sector totals were actually figured to three decimal places, summed, and then rounded to two decimal places to obtain the total emissions.

TABLE 9.—DOOR COUNTY NO_X MAINTENANCE EMISSION INVENTORY SUMMARY

[tons per day]

Sector	2007	2013
Point	0.02	0.02
Area	0.36	0.36
Non-Road Mobile	1.05	1.09
Mobile	2.03	1.17
Total	3.46	2.64

TABLE 10.—MANITOWOC COUNTY VOC MAINTENANCE EMISSION INVENTORY SUMMARY

[tons per day]

Sector	2007	2013
Point	2.23	2.45
Area	6.53	6.69
Non-Road Mobile	1.75	1.47
Mobile	3.12	1.89
Total	13.62	12.50

TABLE 11.—MANITOWOC COUNTY NO_X MAINTENANCE EMISSION INVENTORY SUMMARY

[tons per day]

Sector	2007	2013
Point	3.08	3.30
Area	1.11	1.12
Non-Road Mobile	2.41	2.45
Mobile	6.33	3.59
Total	12.93	10.47

The emission projections show that the emissions are not expected to exceed the level of the 2007 attainment year inventory during the 10-year maintenance period. In Door County, VOC and NO_X emissions are projected to decrease by 0.5 tons per day and 0.82 tons per day, respectively. In Manitowoc County, VOC and NO_X emissions are projected to decrease by 1.12 tons per day and 2.46 tons per day, respectively.

Monitoring Network

Wisconsin currently operates one ozone monitor in Door County and two ozone monitors in Manitowoc County. The WDNR has committed to continue operating and maintaining an approved ozone monitor network in both counties through the maintenance period and beyond.

Verification of Continued Attainment

Tracking—Continued attainment of the ozone NAAQS in Manitowoc and Door Counties depends, in part, on the

State's efforts toward tracking indicators of continued attainment during the maintenance period. The tracking plan for Manitowoc and Door Counties primarily consists of continued ambient ozone monitoring in accordance with the requirements of 40 CFR part 58. WDNR maintains a comprehensive ambient air quality monitoring network and air quality reporting program, including ozone monitoring sites throughout the state and a fully enhanced network in the area around Lake Michigan. These are structured in state statute to continue through and past the maintenance period. The state will also evaluate future VOC and NO_X emissions inventories for increases over 1999 levels.

Triggers include a violation of the one-hour ozone NAAQS; monitored ambient levels of ozone exceeding .124 ppm more than once per year at any one monitoring station; and levels exceeding .124 more than twice over a three year period at any one monitoring station.

Contingency Plan

Despite the best efforts to demonstrate continued compliance with the NAAQS, the ambient ozone concentrations may exceed or violate the NAAQS. Therefore, as required by section 175A of the Act, Wisconsin has provided contingency measures to promptly correct a future ozone air quality problem. For the years 2003 through 2007, Wisconsin has identified the following contingency measures: the NO_X SIP Call (upwind reductions in Illinois and Indiana); Federal non-road engine standards; BP Amoco Agreed Order (Indiana); Wisconsin rule NR 428 NO_X reductions; Tier 2 vehicle standards and low sulfur fuel; heavy duty diesel standards and low sulfur diesel fuel; and volatile organic liquid storage (Indiana). These measures are adopted and will be implemented over this time period. From 2008 through 2013, a violation of the standard will trigger the following: within 6 months Wisconsin will complete an analysis to determine appropriate VOC and/or NO_X control levels and locations to address the cause of the violation, including recommended control measures; Wisconsin will adopt selected contingent maintenance measures within 18 months; and the state commits to as short an implementation time-frame as would be appropriate based on the type of control adopted. Implementation schedules specific to each control measure are set forth in the State's submission. Potential contingency measures contained in the plan for this time period include the following: Reinstatement of requirements for offsets and/or LAER; application of RACT to smaller existing sources; tightening of RACT for existing sources; expanded geographic coverage of current point source measures; additional NO_X controls; transportation control measures, including, but not limited to, area-wide rideshare programs, telecommuting, transit improvements, and traffic flow improvements; high-enhanced I/M (OBDII); California Engine Standards; California Architectural Industrial Maintenance rule; California Commercial and Consumer Products; broader geographic applicability of existing area source measures; and California Off-road Engine Standards.

Commitment To Submit Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the Act, the State has committed to submit a revised maintenance SIP eight years after the areas are redesignated to attainment (see page 4–2 of Wisconsin's submittal). Such revised SIP will provide for maintenance for an additional 10 years.

B. 1999 Periodic Emissions Inventory for the Milwaukee-Racine Area

In accordance with requirements of the Act, the Milwaukee-Racine area was designated as an ozone nonattainment area on November 6, 1991 (56 FR 56850). At that time, the area, which includes the counties of Kenosha, Milwaukee, Ozaukee, Racine, Washington, and Waukesha, was classified as a severe ozone nonattainment area. Section 182(a)(3)(A) of the Act requires the State to submit an updated emissions inventory for the area every three years following the base year emissions inventory required by section 182(a)(1). The base year for the emissions inventory was 1990. The 1999 inventory submitted with the redesignation request for Manitowoc and Door Counties includes the Milwaukee-Racine area and addresses the need for the state to submit a 1999 inventory under section 182(a)(3)(A).

Wisconsin developed the inventory using the following methodology. For the point source sector, the State used reported point source emissions, EPA's Acid Rain Program point source emissions, and approved EPA techniques for emission calculation. Area source emission estimates were calculated using county-level estimates of population, gasoline consumption, employment or other related commercial/institutional, industrial and residential surrogates. For the appropriate categories, to avoid double counting, point source employment was subtracted from the county level employment prior to multiplication with emission factors. Emission factors were derived from local or national surveys or EPA procedural guidance for the development of emission inventories. Whenever feasible, Federal, state and local controls were factored into the emission calculations. For the non-road sector, most of the emissions inventory from EPA's Non-Road Engines and Vehicles Study was grown and controlled from 1990 using growth factors derived from projected equipment populations and control factors based on the Federal non-road engine standards. Aircraft emissions were estimated using the Federal Aviation Administration's Emissions and Dispersion Modeling System. Commercial marine emissions were estimated using the same methods detailed in Wisconsin's approved 1990 Base Year Inventory Document Report. Locomotive emissions were estimated using railroad length, frequency of travel and fuel consumed. Highway mobile sector emissions were calculated using the MOBILE6 model and estimated summer weekday 1999 VMT. The inventory methodology is consistent with EPA guidance.

II. What Action Is EPA Taking?

The EPA is making a determination that Manitowoc and Door Counties in Wisconsin have attained the one-hour ozone NAAQS, based on 1999–2002 air quality monitoring data. We are approving the ozone maintenance plan for Door and Manitowoc Counties and the corresponding transportation conformity budgets as a SIP revision meeting the requirements of section 175A. In addition, we are approving the redesignation request for Door and Manitowoc Counties because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) of the Act. We are also approving the 1999 inventory submitted as meeting the periodic emissions inventory requirement of section 182(a)(3)(A).

III. Is This Action Final, or May I Submit Comments?

EPA is publishing this action without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision. Should EPA receive adverse written comments by May 19, 2003, we will withdraw this direct final and respond to any comments in a final action. If EPA does not receive adverse comments, this action will be effective without further notice. Any parties interested in commenting on this action should do so at this time. If we do not receive comments, this action will be effective on June 16, 2003.

IV. What Statutory and Executive Order Reviews Did EPA Conduct?

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 3, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart YY—Wisconsin

■ 2. Section 52.2585 is amended by adding paragraphs (q) and (r) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(q) Approval—On January 28, 2003, the Wisconsin Department of Natural Resources submitted a request to redesignate Manitowoc and Door Counties to attainment. Additional information was submitted on February 5, 2003 and February 27, 2003. As part of the redesignation request, the State submitted a maintenance plan as required by section 175A of the Clean Air Act, as amended in 1990. Elements of the section 175 maintenance plan include a contingency plan and an obligation to submit a subsequent maintenance plan revision in 8 years as required by the Clean Air Act. The 2013 motor vehicle emission budgets for Door County are 0.74 tons of volatile organic compounds (VOC) per day and 1.17 tons of oxides of nitrogen (NO_X) per day. The 2013 motor vehicle emission budgets for Manitowoc County are 1.89 tons of VOC per day and 3.59 tons of NO_X per day.

(r) Approval—On January 28, 2003, the Wisconsin Department of Natural Resources submitted a 1999 periodic emissions inventory for the Milwaukee-Racine area. Additional information was submitted on February 5, 2003 and February 27, 2003. The inventory meets the requirement of section 182(2)(3)(A) of the Clean Air Act as amended in 1990.

■ Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 81.350 is amended by revising the attainment status designation table entries for the Door County and Manitowoc County areas for ozone to read as follows:

§ 81.350 Wisconsin.

* * * * *

WISCONSIN—OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
Door County Area:				
Door County	6/16/03	Attainment.		
Manitowoc County Area:				
Manitowoc County	6/16/03	Attainment.		

[1] This date is October 18, 2000, unless otherwise noted.

[FR Doc. 03–9347 Filed 4–16–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRN–7484–7]

RIN 2050–AC62

Oil Pollution Prevention and Response; Non-Transportation-Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or we) is today extending, by eighteen months from the dates promulgated in the July 2002 Spill Prevention Control and Countermeasure (SPCC) amendments, the dates for a facility to amend its SPCC Plan and implement the amended Plan (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). We are finalizing this extension to, among other things, provide sufficient time for the regulated community to undertake the actions necessary to update (or prepare) their plans in accordance with the amendments. The extension will also avoid a flood of individual extension requests it has become apparent we will otherwise receive.

DATES: This final rule is effective April 17, 2003.

ADDRESSES: The docket for this rulemaking is located in the EPA Docket Center at 1301 Constitution Ave., NW., EPA West, Suite B–102, Washington, DC 20460. The docket number for the final rule is OPA–2002–0001. The docket is contained in the EPA Docket Center and is available for inspection by appointment only, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. You may make an appointment to view the docket by calling 202–566–0276. You may copy a maximum of 100 pages from any regulatory docket at no cost. If the number of pages exceeds 100, however, we will charge you $0.15 for each page after 100. The docket will mail copies of materials to you if you are outside of the Washington, DC metropolitan area.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/CERCLA Call Center at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of this final rule, contact Hugo Paul Fleischman at 703–603–8769 (*fleischman.hugo@epa.gov*); or Mark W. Howard at 703–603–8715 (*howard.markw@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, Mail Code 5203G.

SUPPLEMENTARY INFORMATION: This final rule concerns an eighteen month extension of the deadlines in 40 CFR 112.3(a) and (b). The contents of this preamble are as follows:

I. General Information
II. Entities Affected by This Rule
III. Statutory Authority
IV. Background
V. Today's Action
VI. Statutory and Executive Order Reviews

I. General Information

Introduction. For the reasons explained in Section V of this notice, the Environmental Protection Agency (EPA or we) is finalizing a proposal to extend the dates in 40 CFR 112.3(a) and (b) for a facility to amend its Spill Prevention, Control, and Countermeasure (SPCC) Plan and implement the amended Plan (or, in the case of facilities becoming operational after August 16, 2002, prepare and implement a Plan that complies with the newly amended requirements). Today's rule extends these deadlines by eighteen months from the dates promulgated in the July 2002 SPCC rule amendments.

How Can I Get Copies of The Background Materials Supporting Today's Final Rule or Other Related Information?

1. EPA has established an official public docket for this proposed rule under Docket ID No. OPA–2002–0001. The official public docket consists of the documents specifically referenced in this final rule and other information related to this final rule. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center located at 1301 Constitution Ave. NW., EPA West Building, Room B–102, Washington, DC 20004.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr.*

You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

II. Entities Affected by This Rule

Industry category	NAICS code
Crop and Animal Production	111–112
Crude Petorleum and Natural Gas Extraction	211111
Coal Mining, Non-Metallic Mineral Mining and Quarrying	2121/2123/213114/213116
Electric Power Generation, Transmission, and Distribution	2211
Heavy Construction	234
Petroleum and Coal Products Manufacturing	324
Other Manufacturing	31–33
Petroleum Bulk Stations and Terminals	42271
Automotive Rental and Leasing	5321
Heating Oil Dealers	454311
Transportation (including Pipelines), Warehousing, and Marinas	482–486/488112–48819/4883/48849/492–493/71393
Elementary and Secondary Schools, Colleges	6111–6113
Hospitals/Nursing and Residential Care Facilities	622–623

The list of potentially affected entities in the above table may not be exhaustive. Our aim is to provide a guide for readers regarding those entities that EPA is aware potentially could be affected by this action. However, this action may affect other entities not listed in the table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

III. Statutory Authority

33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351

IV. Background

On July 17, 2002, at 67 FR 47042, EPA published final amendments to the Spill Prevention, Control, and Countermeasure (SPCC) rule. The rule was effective August 16, 2002. The rule included dates in 112.3(a) and (b) by which a facility would have time to amend its SPCC Plan to conform with newly promulgated requirements and to implement its amended Plan (note that for facilities becoming operational after August 16, 2002, the rule contained dates for the preparation and implementation of a Plan in compliance with the amended rule).

On January 9, 2003, EPA published both an interim final rule and a proposed rule. The interim final rule immediately extended the dates in 40 CFR 112.3(a) and (b) by sixty days. The proposed rule proposed extending the dates in those sections by one year.

V. Today's Action

EPA is extending by eighteen months the compliance dates in § 112.3(a) and (b). Thus, an onshore or offshore facility that: (1) Was in operation on or before August 16, 2002 must maintain its Plan, but must amend it, if necessary to ensure compliance, on or before August 17, 2004, and must implement the amended Plan as soon as possible, but not later than February 18, 2005; (2) becomes operational after August 16, 2002 through February 18, 2005, and could reasonably be expected to have a discharge as described in 40 CFR 112.1(b), must prepare a Plan on or before February 18, 2005, and fully implement it as soon as possible, but not later than February 18, 2005; and (3) becomes operational after February 18, 2005, and could reasonably be expected to have a discharge as described in 40 CFR 112.1(b), must prepare and implement a Plan before it begins operations. Today's rule is immediately effective; EPA is invoking the exception to the 30-day notice requirement in the Administrative Procedure Act because the purpose of the rulemaking is to relieve a restriction (5 U.S.C. 553(d)(1)).

A. Comments[1]

Extension of Time. The vast majority of commenters[2] supported an extension of time for compliance with the SPCC Plan amendments to allow the regulated community to undertake the various activities required to update (or prepare) their Plans, although one commenter believed that no additional time, other than the 60 days that EPA already provided, was needed. However, there was a broad range of times suggested by the commenters. Commenters supported the extension of compliance deadlines in a range from one to five years or "until all deficiencies are corrected."

[1] This section, and section B below, contain a summary of the comments received on the proposal, and the Agency's responses to such comments. For more detailed and additional information, see the response-to-comment document available in the docket for today's rule.

[2] Commenters represented oil industry and electrical utility interests, as well as a number of other industrial commenters. In addition, a substantial number of Professional Engineers (PEs) submitted comments.

Commenters who recommended extending the compliance deadlines echoed the Agency's view at the time of proposal that an extension is appropriate to address concerns that there is a shortage of PEs in some areas, to allow PEs (or their agents) to make visits to sometimes remote facilities, and for PEs to obtain the training necessary to certify Plans under the new amendments. In addition, many of these commenters agreed with EPA that an extension of the compliance deadlines in the rule would prevent a flood of individual extension requests going to the Regions pursuant to 40 CFR 112.3(f). However, commenters also identified a number of other reasons, such as the need to plan their budgets for capital expenditures and delays they would encounter at facilities affected by winter weather.

However, as noted above, a great number of these commenters argued for longer time extensions than the one year proposed to address the issues cited above. In addition, others argued for longer time frames, often citing reasons that are more specific to their individual facilities or industries. For example, many commenters, mostly electric utilities and cooperatives, suggested time extensions of between two and four years. These commenters stated that such additional time is needed because, among other things, much of their electrical equipment is located on property owned by others and that "delineating of responsibilities for Plan purposes will have the effect of slowing down the overall compliance deadlines."

Rule requirements during any extension period. Several commenters noted that although EPA extended the compliance deadlines in the rule, it did not delay the effective date of the rule itself. These commenters stated that they understood "this to mean that to the extent the July 2002 rule imposes new more stringent compliance obligations than did the old SPCC rule, the deadline for fulfillment of those obligations is extended under the interim final and proposed rule, to the same extent as the deadline for implementing amended Plans." These commenters asked EPA to confirm this understanding in the preamble to the final rule.

B. Response to Comments

Extension of Time in General: Nothing received in comments on the proposed rule has persuaded the Agency that its view at the time of proposal, that additional time for compliance is appropriate, was incorrect. As noted above, the vast majority of commenters on the rule supported a one-year or longer extension, and their comments contain information that lends additional support for such an extension.

However, as noted above, one commenter, a PE, did express the view that additional time for compliance with the amendments is unnecessary. Specifically, this commenter wrote that the 60-day interim extension that the Agency promulgated on January 9, 2003 was "more than an adequate time extension for the affected facilities to prepare amendments to their SPCC Plans." The commenter based this position on the following: (1) That the SPCC amendments were published in the **Federal Register** seven months before the compliance date, (2) that the final amendments reduced the number of facilities required to have Plans, (3) the commenter's personal experience that the facilities with which it deals are either finished with amending their Plans or in the final stages of doing so, (4) that the SPCC amendments were specifically written not to require a "local PE" and thus a shortage was unlikely, and (5) the view that with the slowdown in the economy, personnel resources should be available to carry out the activities within the additional 60-day period.

The Agency was not persuaded by this comment. Specifically, the fact that seven months were already provided by the rule, that the rule as a whole reduced the number of facilities subject to the rule, and that there is a slowdown in the economy, do not, without additional information or analysis, overcome the evidence provided in the comments (and the Agency's experience at the time of the proposal) that additional time is necessary. In addition, although this PE's individual experience does not suggest a difficulty meeting the existing deadlines, the experience of a good number of other PEs (and those who need to hire PEs) who commented on the rule does indicate the need for extending the deadlines. With respect to the fact that the rule does not itself require the use of a local PE, at least one commenter did report complications, stating that "individual state engineering registration and licensing boards do not always allow out-of-state PEs to practice in such a manner, thus limiting even further the number of available PEs for plan certification." In any event, even if a facility is permitted to use a non-local PE in areas with local shortages, the Agency expects that doing so would likely extend the PE certification process.[3]

Extension of Time for 18 months. Although the comments made it very clear to the Agency that an extension was warranted, no commenter made a compelling case for any particular time frame. In other words, no commenter provided a technical basis in support of the time frame it was advancing. As discussed above, commenters provided a great number of reasons for additional time, but very similar problems identified were often accompanied by widely varying suggestions as to the length of extension needed to address such problems.

The Agency has settled on an 18-month extension, which is six months greater than the one-year extension originally proposed. EPA believes this time frame better addresses concerns identified at proposal than the proposed one-year extension, and should address many of the other concerns raised in comments suggesting one year or longer time frames. For example, in addition to reducing the immediate demands on PEs, it provides an additional warm season to address sites affected by winter weather, and will provide additional time for facilities to budget for necessary capital expenditures. (In seeking an extension greater than a year, several commenters noted that many companies budget a year or more into the future for capital expenditures and thus need additional planning time to accommodate expenditures associated with complying with the amendments.) In situations where the extension does not provide enough relief for an individual facility, that facility may seek an extension pursuant to § 112.3(f), where applicable.[4] It is EPA's belief, however, that the 18-month extension will provide enough relief to prevent the Agency from again being faced with the prospect of an overwhelming number of requests for individual extensions under 40 CFR 112.3(f).

Rule requirements during any extension period. The commenter requesting clarification of rule requirements during the extension period discussed above was correct that EPA did not extend the effective date of the July 2002 rule itself. Instead, the Agency only extended the deadlines in 40 CFR 112.3(a) and (b) for amending and implementing (and in some cases, preparing) Plans to come into compliance with new requirements. Thus, the commenter is correct that to the extent that the July 2002 imposes new or more stringent compliance obligations than did the old SPCC rule, that the deadlines in 40 CFR 112.3(a) and (b) for fulfillment of those obligations is extended under this final rule.

On the other hand, a provision that provides regulatory relief in the revised rule is not affected by the compliance deadline extensions because such provisions are not addressed by 40 CFR 112.3(a) or (b); these are not provisions for which it would be "necessary" to amend existing Plans "to ensure compliance with" the July 2002 amendments.

[3] The same commenter suggested that "a possible alternate action may be to have both the 'SPCC Plan amendment due date" and the 'fully implemented no later than date' as August 18, 2003." The Agency rejected this approach for the reasons described here and later in today's preamble.

[4] For example, depending on site-specific circumstances, the commenters who may have trouble complying because their equipment subject to the amended rule is located on property owned by others may be able to obtain an individual extension.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Under the terms of Executive Order 12866, it has been determined that this rule is not a "significant regulatory action" because it would extend for eighteen the compliance dates in § 112.3(a) and (b). It would have no other substantive effect.

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (R.F.A.) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than $500,000 in revenues or 500 employees, respectively; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule will temporarily reduce regulatory burden on all facilities by extending for eighteen months the compliance dates in § 112.3(a) and (b). Further, the rule will reduce costs for both existing and new facilities.

After considering the economic impacts of today's rule on small entities, I certify that this action would not have a significant economic impact on a substantial number of small entities, because it provides temporary relief from otherwise applicable compliance deadlines.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's rule would reduce burden and costs on all facilities.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the rule would be to reduce

burden and costs for regulated facilities, including small governments that are subject to the rule.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This rule does not have federalism implications.

F. Executive Order 13175—Consultation and Coordination with Indian Tribal Governments

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date.

Today's rule would not significantly or uniquely affect communities of Indian tribal governments because they are in the same position as all other users or storers of oil. Therefore, we have not consulted with a representative organization of tribal groups.

G. Executive Order 13045—Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and, (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards such as materials specifications, test methods, sampling procedures, and business practices that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, NTTA is inapplicable.

I. Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 et seq.), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective April 17, 2003.

List of Subjects in 40 CFR Part 112

Environmental protection, Fire prevention, Flammable and combustible materials, Materials handling and storage, Oil pollution, Oil spill prevention, Oil spill response, Penalties, Petroleum, Piping, Reporting and recordkeeping requirements, Tanks, Transfer operations, Water pollution control, Water resources.

Dated: April 10, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, part 112 of the Code of Federal Regulations, is amended as follows:

PART 112—OIL POLLUTION PREVENTION

■ 1. The authority for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.; 33 U.S.C 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

Subpart A—[Amended]

■ 2. Section 112.3 is amended by revising paragraphs (a) and (b) to read as follows:

§ 112.3 Requirement to prepare and implement a Spill, Prevention, Control, and Countermeasure Plan.

* * * * *

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, on or before August 17, 2004, and must implement the amended Plan as soon as possible, but not later than February 18, 2005. If your onshore or offshore facility becomes operational after August 16, 2002, through February 18, 2005, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare a Plan on or before February 18, 2005 , and fully implement it as soon as possible, but not later than February 18, 2005.

(b) If you are the owner or operator of an onshore or offshore facility that becomes operational after February 18, 2005, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

* * * * *

[FR Doc. 03–9480 Filed 4–16–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 160

[CMS–0010–IFC]

RIN 0938–AM63

Civil Money Penalties: Procedures for Investigations, Imposition of Penalties, and Hearings

AGENCY: Office of the Secretary, HHS.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule establishes rules of procedure for the imposition, by the Secretary of Health and Human Services, of civil money penalties on entities that violate standards adopted by the Secretary under the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). We intend that this be the first installment of a rule that we term the "Enforcement Rule." The Enforcement Rule, when issued in complete form, will set forth procedural and substantive requirements for imposition of civil money penalties. In the interim, we are issuing these rules of procedure to inform regulated entities of our approach to enforcement and to advise regulated entities of certain procedures that will be followed as we enforce the Administrative Simplification provisions of HIPAA.

DATES: *Effective Date:* This interim final rule is effective May 19, 2003.

Comment Date: Comments on the interim final rule must be received by June 16, 2003.

Expiration Date: This interim final rule will cease to be in effect on September 16, 2003.

ADDRESSES: In commenting, please refer to file code CMS–0010–IFC. Because of staff and resource limitations, we cannot accept comments by facsimile ("FAX") transmission. Mail written comments (one original and three copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–0010–IFC, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey ("HHH") Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

Comments may also be submitted electronically to the following e-mail address: *CMS0010.Comments@hhs.gov*. For e-mail procedures, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

For further information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Karen Shaw, (202) 690–7711.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of this document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call Sharon Jones at (410) 786–9994.

Electronic Comments

We will consider all electronic comments that include the full name, postal address, and affiliation (if applicable) of the sender and are submitted to the electronic address identified in the **ADDRESSES** section of this preamble. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Copies of electronically submitted comments will be available for public inspection as soon as practicable at the address provided, and subject to the same process described, in the preceding paragraph.

Copies

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I. Background

This interim final rule establishes rules of procedure for the imposition, by the Secretary of Health and Human Services, of civil money penalties on entities that violate the Administrative Simplification regulations ("HIPAA rules") adopted by the Secretary under subtitle F of Title II of HIPAA ("HIPAA provisions"). We intend this interim final rule to be the first installment of a rule termed the "Enforcement Rule." The Enforcement Rule, when issued in complete form, will set forth procedural and substantive requirements for imposition of civil money penalties. In the interim, we are issuing these rules of procedure to inform regulated entities of our approach to enforcement and to advise regulated entities of certain procedures that will be followed with regard to enforcement. We intend to revise the procedural rule by the expiration date provided above.

We set out below the statutory and regulatory background of the rule, describe our approach to enforcement of the HIPAA provisions and rules in general and this rule in particular, and then discuss each section of the interim final rule. We also set out our analyses of impact and other issues under applicable law.

Statutory Background

HIPAA became law in 1996 (Public Law 104–191). Subtitle F of Title II of HIPAA, entitled "Administrative Simplification," requires the Secretary of HHS to adopt national standards for certain information-related activities of the health care industry. The purpose of subtitle F is to improve the Medicare program under title XVIII of the Social Security Act ("Act"), the Medicaid program under title XIX of the Act, and the efficiency and effectiveness of the health care system, by mandating the development of standards and requirements to enable the electronic exchange of certain health information. Section 262 of subtitle F added a new Part C to Title XI of the Act. Part C (42 U.S.C. 1320d–1320d–8) requires the Secretary to adopt national standards for certain financial and administrative transactions and various data elements to be used in those transactions, such as code sets and certain unique health identifiers. Recognizing that the industry trend toward computerizing health information, which HIPAA encourages, may increase the access to that information, the statute also requires national standards to protect the security and privacy of the information.

The HIPAA provisions, by statute, apply only to the following persons:

(1) A health plan.

(2) A health care clearinghouse.

(3) A health care provider who transmits any health information in electronic form in connection with a transaction referred to in section 1320d–2(a)(1) of this title.

42 U.S.C. 1320d–1(a)

Collectively, these entities are known as "covered entities." The statute requires certain consultations with industry as a predicate to the issuance of standards and gives most covered entities 2 years (small health plans have 3 years) to come into compliance with the standards, once adopted. 42 U.S.C. 1320d–1(c), 42 U.S.C. 1320d–4(b). The statute establishes civil money penalties and criminal penalties for violations. 42 U.S.C. 1320d–5, 42 U.S.C. 1320d–6. HHS will enforce the civil money penalties, while the U.S. Department of Justice will enforce the criminal penalties.

HIPAA's civil money penalty ("CMP") provision authorizes the Secretary to impose CMPs, as follows:

(1) *In general.* Except as provided in subsection (b), the Secretary shall impose on any person who violates a provision of this part [42 U.S.C. 1320d *et seq.*] a penalty of not more than $100 for each such violation, except that the total amount imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed $25,000.

(2) *Procedures.* The provisions of section 1128A [42 U.S.C. 1320a–7a] (other than subsections (a) and (b) and the second sentence of subsection (f)) shall apply to the imposition of a civil money penalty under this subsection in the same manner as such provisions apply to the imposition of a penalty under such section 1128A.

42 U.S.C. 1320d–5(a)

Subsection (b) of section 1320d–5 sets out a number of substantive limitations on the Secretary's authority to impose CMPs. First, a CMP may not be imposed with respect to an act that "constitutes an offense punishable" under the criminal penalty provision. 42 U.S.C. 1320d–5(b)(1). Second, a CMP may not be imposed "if it is established to the satisfaction of the Secretary that the person liable for the penalty did not know, and by exercising reasonable diligence would not have known, that such person violated the provision." 42 U.S.C. 1320d–5(b)(2). Third, a CMP may not be imposed if the failure to comply was due "to reasonable cause and not to willful neglect" and is corrected within a certain time. 42 U.S.C. 1320d–5(b)(3). Finally, a CMP may be reduced, if not waived entirely, "to the extent that the payment of such penalty would be excessive relative to the compliance failure involved." 42 U.S.C. 1320d–5(b)(4).

As noted above, HIPAA incorporates by reference certain provisions of section 1128A of the Act (42 U.S.C. 1320a–7a). Those provisions, as relevant here, provide a number of procedural requirements with respect to the imposition of CMPs. The Secretary may not initiate a CMP action "later than six years after the date" of the occurrence that forms the basis for the CMP. The Secretary may initiate a CMP action by serving notice "in any manner authorized by Rule 4 of the Federal Rules of Civil Procedure." 42 U.S.C. 1320a–7a(c)(1). A person upon whom the Secretary seeks to impose a CMP must be given written notice and an opportunity for a determination to be made "on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person." 42 U.S.C. 1320a–7a(c)(2). There are provisions authorizing the sanctions the hearing officer may impose for misconduct in connection with the CMP proceeding, judicial review of the Secretary's determination in the United States Court of Appeals for the circuit in which the person resides, and the issuance of subpoenas by the Secretary and the enforcement of those subpoenas. 42 U.S.C. 1320a–7a(c)(4), (e), (j). These provisions are discussed more fully below.

Regulatory Background

As noted above, HIPAA requires the Secretary of HHS to adopt a number of national standards to facilitate the exchange of certain health information. The Secretary has already issued a number of these HIPAA standards by regulation. We summarize these HIPAA Administrative Simplification rules below.

- Regulations implementing the statutory requirement for the adoption of standards for transactions and code sets ("Transactions Rule") were published on August 17, 2000 (65 FR 50312), and were recently modified (68 FR 8381, February 20, 2003). The Transactions Rule became effective on October 16, 2000, with an initial compliance date of October 16, 2002 for covered entities other than small health plans. The passage of the Administrative Simplification Compliance Act, Pub. L. 107–105, in 2001 enabled covered entities to obtain an extension of the compliance date to October 16, 2003 by filing a compliance plan by October 15, 2002. If a covered entity (other than a small health plan) did not file such a plan, it was required to comply with the Transactions Rule by October 16, 2002. All covered entities must be in compliance with the Transactions Rule, as modified, by October 16, 2003.
- Regulations implementing the statutory requirement for the adoption of privacy standards were published on December 28, 2000 (65 FR 82462) ("Privacy Rule"). The Privacy Rule became effective on April 14, 2001, with an initial compliance date of April 14, 2003 for covered entities other than small health plans. Modifications to the Privacy Rule were published on August 14, 2002 (67 FR 53182), and compliance with the modified privacy standards is required by the initial compliance date, April 14, 2003, for those covered entities that must comply by that date.
- Regulations implementing the statutory requirement for the adoption of an employer identifier standard were published on May 31, 2002 (67 FR 38009) and became effective on July 30, 2002. The initial compliance date is July 30, 2004 for most covered entities; small health plans have until July 30, 2005 to come into compliance.
- Regulations implementing the statutory requirement for the adoption of security standards were published on February 20, 2003 (68 FR 8334). They are effective on April 21, 2003, and the initial compliance date for covered entities other than small health plans is April 20, 2005; small health plans have until April 20, 2006 to comply.

The authority for administering and enforcing compliance with the Privacy Rule has been delegated to the Office for Civil Rights ("OCR") of HHS.[1] Responsibility for administering and enforcing the remaining HIPAA rules has been assigned to the Centers for Medicare & Medicaid Services ("CMS").[2]

II. General Approach

As the discussion above makes clear, the duty to comply with certain of the HIPAA rules is now a reality for many, if not most, covered entities. The immediacy of the compliance obligation brings with it the issue of how these rules will be enforced. Accordingly, we lay out below our general approach to enforcement. We then discuss how the rules below will fit in with the projected Enforcement Rule in its entirety and the basic approach of the interim final rule.

HHS's General Approach to Enforcement

The Department intends to seek and promote voluntary compliance with the rules promulgated to carry out the HIPAA provisions. With respect to the Privacy Rule, OCR has developed and is continuing to produce guidance and a wide array of other technical assistance materials to help covered entities effectively implement the Privacy Rule. These materials are available on the OCR Privacy web site at *http://www.hhs.gov/ocr/hipaa*. These efforts will continue after the April 14, 2003 compliance date, as OCR learns from its compliance activities and from those who are implementing the Privacy Rule where additional guidance and assistance are needed. Other components of the Department are also developing guidance and technical assistance on the Privacy Rule for their partners.

This approach reflects the requirements in 45 CFR part 160, subpart C, that, to the extent practicable, OCR will seek the cooperation of covered entities in obtaining compliance with the Privacy Rule, and may provide technical assistance to help covered entities voluntarily comply with the Rule. See 45 CFR 160.304. As further provided in 45 CFR 160.312(a)(2), OCR will seek to resolve matters by informal means before issuing findings of non-compliance, under its authority to investigate and resolve complaints, and to engage in compliance reviews.

With respect to enforcement of the remainder of the HIPAA rules, the enforcement approach of CMS is similar. "Enforcement activities will focus on obtaining voluntary compliance through technical assistance. The process will be primarily complaint driven and will consist of progressive steps that will provide opportunities to demonstrate compliance or submit a corrective action plan." HHS press release of October 15, 2002, announcing assignment of enforcement responsibility to CMS. CMS provides a wide variety of technical assistance and informational materials on its Web site, at *http://www.cms.gov/hipaa/hipaa2*.

HHS's Approach to the Enforcement Rule

As noted above, HHS intends to issue an Enforcement Rule in furtherance of its implementation of 42 U.S.C. 1320d–5. The Enforcement Rule, in its entirety, will address a number of substantive issues relating to the imposition of CMPs under section 1320d–5, such as the Department's policies for determining violations and calculating CMPs. In addition, the Enforcement Rule will establish various procedures for the imposition of CMPs, including the procedures for providing notice and a hearing on the Secretary's determination to impose a CMP. This interim final rule implements this latter aspect of the Enforcement Rule.

Administrative Procedure Act

We recognize that under the Administrative Procedure Act ("APA") most of the above-described provisions of the Enforcement Rule must be promulgated through notice-and-comment rulemaking. We intend to do so. However, to allow covered entities and the public to be informed as soon as possible of procedural requirements that will apply as compliance proceeds, we are expediting the publication of these procedural rules in final form. These rules set out the procedures for provision by the agency of the statutorily required notice and hearing and procedures for issuing administrative subpoenas. Such provisions are exempted from the requirement for notice-and-comment rulemaking under the "rules of agency * * * procedure, or practice" exemption at 5 U.S.C. 553(b)(3)(A). Even though notice-and-comment rulemaking is, therefore, not required with respect to the procedural rules adopted below, HHS is interested in input from the public, and thus is requesting public comment on them. We expect to augment these procedural rules with provisions that, while related to procedure, are substantive in nature. We anticipate including those provisions in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule. In any event, we plan to revise the procedural rule by the expiration date.

Approach of the Interim Final Rule

As noted above, the provisions of 42 U.S.C. 1320a–7a apply to the imposition of a CMP under 42 U.S.C. 1320d–5 "in the same manner as" they apply to the imposition of CMPs under section 1320a–7a itself. Within HHS, section 1320a–7a is implemented by the Office of Inspector General ("OIG") and, as pertinent here, through the OIG regulations that are codified at 42 CFR parts 1003, 1005, and 1006. We have used the OIG regulations as the platform for the rules below for two reasons. First, we read the "in the same manner as" language of the statute as indicating that the procedures for the imposition of CMPs under 42 U.S.C. 1320d–5 should be, in general, similar to those used by the OIG under 42 U.S.C. 1320a–7a. Second, HHS and much of the health care industry have operated under the OIG regulations implementing section 1320a–7a for more than a decade. There is, thus, a significant body of experience with, and understanding of, the OIG procedural rules, both within HHS and in a large part of the regulated universe. Based on this experience, we believe that the rules below will be workable and promote the efficient resolution of cases where the Secretary's proposed imposition of a CMP is challenged.

Accordingly, the rules below are based upon, and are in many respects the same as, the OIG regulations at 42 CFR parts 1003, 1005, and 1006. We have adapted, re-ordered, or combined the OIG language in a number of places for clarity of presentation or to reflect concepts peculiar to the HIPAA provisions or rules. To avoid confusion, we have also employed certain language usages in order to make the usage in the rules below consistent with that in the other HIPAA rules (for example, for mandatory duties, "must" instead of "will" or "shall"; for discretionary duties, "may" instead of "has the authority to"). We do not discuss those nonsubstantive changes below. Where we have materially changed the language of the OIG regulations, however, we discuss our reasons for doing so.

[1] On December 28, 2000, the Secretary delegated to the Director of OCR authority to enforce, administer, interpret, and implement the Privacy Rule. 65 FR 82381.

[2] HHS press release of October 15, 2002.

We also note that the rules below, as well as the Enforcement Rule as a whole, are not HIPAA standards, and thus the requirement for industry consultations in 42 U.S.C. 1320d–1(c) does not apply. Therefore, we have not engaged in such consultations with respect to the interim final rule below. For the same reason, HIPAA's timeframes for compliance (42 U.S.C. 1320d–4) do not apply to the interim final rule below.

III. Provisions of the Interim Final Rule

We discuss the interim final rule on a provision-by-provision basis below. As a general matter, we note that the provisions adopted are in many cases the same as or similar to analogous provisions of the OIG regulations. Where we have closely followed the OIG regulations, we have done so because we believe that these procedures work and satisfactorily address issues of concern addressed in prior rulemakings by the OIG. We do not reiterate those concerns, or their resolutions, here, but they have informed our decisionmaking on these rules.

Applicability

Section 160.500 states that the procedures established by this subpart are applicable to investigations, imposition of penalties, and hearings conducted as a result of a proposed imposition of civil money penalties. We use "applicability" instead of the basis and purpose statement of the OIG regulations, because we have followed a different format in the remainder of the HIPAA rules and wish to be consistent with that approach. Furthermore, this preamble constitutes the requisite basis and purpose statement.

Definitions

Definitions for the terms used in this new subpart that are not set forth elsewhere in part 160 are included in § 160.502.

- *ALJ* means an administrative law judge, the natural person who presides at and conducts a hearing requested by a respondent pursuant to this subpart.
- *Entity* means a legal person that is not a natural person. The term is intended to include all manner of organizations, such as corporations, associations, partnerships, and other entities that have a legal existence, other than a natural person. The term "entity" is necessary for this subpart to distinguish such legal persons from natural persons, because certain procedures in this rule, such as those involving subpoenas, are different for entities than they are for natural persons.

The term "entity" should not be confused with the regulatory term "covered entity." The latter term, which is defined at § 160.103, denotes those entities to which the HIPAA rules apply. The term "entity," as used in this interim final rule, describes a broader class of persons. For example, subpoenas could be directed to entities that are not covered entities under § 160.504 below.

- *Penalty* is defined to mean the amount calculated under 42 U.S.C. 1320d–5. This section of HIPAA sets a penalty of not more than $100 for each violation, subject to a calendar-year cap of $25,000 for all violations of an identical requirement or prohibition. The term includes the plural form of the word.
- *Person* is defined to mean a natural person or a legal person (such as an entity described above). The term includes, but is not limited to, covered entities. The term is broader than "covered entities," because some sections of the provisions below by their nature apply to persons other than covered entities in certain circumstances. For example, the provisions for subpoenas relate to natural persons who will be called to testify, and many, if not most, of these persons will not be covered entities. While the term "person" is used generically throughout the HIPAA rules, we have provided a definition of the term "person" for use in this subpart to provide a clear and efficient way of permitting these distinctions to be drawn. This definition is not intended to define "person" as that term is used in HIPAA.
- *Respondent* means a person (as defined herein) upon whom a penalty has been imposed, whether proposed or final, by the Secretary. Respondents will necessarily be covered entities. See the discussion below of § 160.506.

Investigational Subpoenas and Inquiries

Section 160.504 provides procedures for the issuance of subpoenas to both named persons and unnamed persons associated with subpoenaed entities. A subpoenaed entity is required to name a natural person or persons knowledgeable about the subjects on which information is sought. This procedure is similar to that provided for in Rule 30(b)(6) of the Federal Rules of Civil Procedure. Subpoenas issued under this section may require either testimony or the production of evidence.

The procedures adopted in this section are similar to those in 42 CFR part 1006. Like § 1006.4, § 160.504 provides that investigational inquiries are non-public proceedings conducted by the Secretary. A witness is entitled to be represented by an attorney during an investigational inquiry. However, while this section provides for the taking of witness testimony, it does not include all of the provisions of § 1006.4 regarding claims of privilege or objections, clarification of answers by the witness, corrections to the transcript, or the use by the Secretary of testimony or evidence obtained in an investigational inquiry. We anticipate addressing these issues in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule.

Basis for Penalty

Under § 160.506, CMPs are imposed for violations of 42 U.S.C. 1320d–1320d–8, section 264 of Pub. L. 104–191, or the implementing regulations at parts 160, 162 or 164 of this subchapter. CMPs may be imposed only on covered entities. As we have stated in prior rulemakings, it is the view of HHS that only covered entities are subject to the HIPAA provisions and rules. Thus, only covered entities can be liable for a CMP under 42 U.S.C. 1320d–5. See, for example, 67 FR 53252. Regulatory definition of what constitutes a violation requiring imposition of a CMP will be addressed in the subsequent notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule. This section, thus, functions to clarify and establish the linkage of the procedural rules to the criteria and processes for the substantive determinations that are to be developed through notice-and-comment rulemaking.

Amount of Penalty

Under § 160.508, the amount of the penalty is determined in accordance with 42 U.S.C. 1320d–5 and the provisions of this part. We anticipate addressing how penalties will be determined in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule. This section thus functions to clarify and establish the linkage of the procedural rules to the criteria and processes for the substantive determinations that are still to be developed.

Authority To Settle

Section 160.510 enunciates the authority of the Secretary to settle any issue or case or to compromise any penalty during the process addressed in this subpart. This authority is the same as that set forth in § 1003.106(f)(3) of the OIG regulations and implements statutory authority provided by the first sentence of 42 U.S.C. 1320a–7a(f). It provides for flexible resolution of cases and issues between the Secretary and a respondent. We anticipate that factors to be taken into account in determinations regarding the amount of penalties, like those set forth in § 1003.106(a) through § 1003.106(e) of the OIG regulations, will be addressed in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule. This section, like the preceding sections, thus serves to link substantive provisions yet to be developed into the procedural process put in place by the rules below.

Notice of Proposed Determination

Section 160.514 sets forth the requirements for the notice to a respondent sent when the Secretary proposes a penalty under this part. These requirements are substantially the same as those in § 1003.109 of the OIG regulations. Statistical sampling provisions, however, are not included in this section at this time. We anticipate addressing statistical sampling in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule.

Failure To Request a Hearing

Under § 160.516, when a respondent does not timely request a hearing on a proposed penalty, the Secretary will impose the proposed penalty or any less severe penalty permitted by 42 U.S.C. 1320d–5. The penalty is then final, and the respondent has no right to appeal a penalty imposed under these circumstances. This section is similar to § 1003.110 of the OIG regulations. This section simply states the necessary consequence of a respondent's failure to exercise the right to a hearing.

Collection of Penalty

Section 160.518 provides that once a determination to impose a penalty has become final, the penalty must be collected by the Secretary. The penalty may be recovered in a civil action in United States District Court, or by deduction from any sum owed to the respondent by the United States or a State agency. If the Secretary seeks to recover the penalty in a civil action, the respondent is prohibited from raising in that proceeding any matter that was raised or could have been raised in a hearing or appeal under this subpart. These provisions restate statutory provisions at 42 U.S.C. 1320a–7a(f) and (g).

Limitations

Section 160.522 sets forth the 6-year limitations period provided for by 42 U.S.C. 1320a–7a(c)(1). The section includes only the part of the statutory language that is relevant to the imposition of penalties in the context of the HIPAA rules. The statutory language concerning the "claim was presented" and "request for payment" are not included, because these phrases pertain to violations described in the parts of 42 U.S.C. 1320a–7a that are not incorporated by reference into 42 U.S.C. 1320d–5. Section 160.522 accordingly differs in this respect from § 1003.132 of the OIG regulations.

Hearing Before an ALJ

The requirements for a hearing request are contained in § 160.526. The parties to a hearing are the party against whom the Secretary has proposed a penalty (the respondent) and the Secretary. We recognize that the HHS party will be OCR and/or CMS. We have not described the party more specifically here, however, for several reasons. First, it is not feasible to parse out which component will actually appear for the Secretary, because the appropriate component (if both are not) will depend on the facts of the case. Second, the designation of the proper party component can be handled through the normal delegation process. Third, similar issues arise in other sections of this interim final rule (*see*, for example, § 160.514), and they are handled this way in those sections as well. A consistent approach is less confusing and more manageable.

The respondent may request a hearing following receipt of a notice of a proposed determination. The request for a hearing must be in writing. If the respondent fails to timely request a hearing, or thereafter withdraws or abandons the request for a hearing, or if the hearing request fails to raise any issue that may properly be addressed in a hearing, the administrative law judge (ALJ) is required to dismiss the hearing request. In such a case, the penalty becomes final, with no further appeal permitted.

Paragraph (c) of § 160.526 differs slightly from the corresponding paragraph in § 1005.2. Our provision requires specific admissions, denials or explanations in a respondent's hearing request. The degree of specificity required generally parallels the requirements applicable to the notice of proposed determination at § 160.514. Based on experience in prior administrative hearings, we believe that such additional specificity will assist the parties and the ALJ in ascertaining the findings of fact and conclusions of law that are actually in dispute in a case. This certainty will promote procedural regularity and permit more timely and efficient resolution of the case between the parties or adjudication of the case by the ALJ.

Rights of Parties; Authority of the ALJ

The provisions in § 160.528 and § 160.530 list the rights of the parties and the authorities of the ALJ not specifically provided elsewhere in this part. These sections are based upon § 1005.3 and § 1005.4 of the OIG regulations, but do not address attorneys' fees under 42 U.S.C. 406 or any limitation on the ALJ's authority to review the Secretary's exercise of discretion to impose a penalty. We anticipate addressing such issues in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule. We have clarified in § 160.530 that a summary judgment decision constitutes a hearing on the record.

Ex-parte Contacts

The provisions of § 160.532 are designed to ensure the fairness of the hearing by prohibiting ex-parte contacts with the ALJ on matters in issue. Routine questions about administrative procedures or the status of the case are permitted. These requirements are generally applicable to administrative hearings under 5 U.S.C. 554(d)(1) and are the same as those in § 1005.5 of the OIG regulations.

Prehearing Conferences

The provisions of § 160.534 closely track the provisions of the analogous OIG regulation at § 1005.6. The ALJ is required to schedule at least one prehearing conference, in order to narrow the issues to be addressed at the hearing and thus expedite the formal hearing process. Matters that may be discussed at a prehearing conference are identified and include the protection of the privacy of individually identifiable health information submitted into evidence, if appropriate.

Settlement

The Secretary has exclusive authority to settle any issue or case at any time and need not obtain the consent of the ALJ. This provision in § 160.536 tracks § 1003.126 of the OIG regulations.

Discovery

Consistent with the approach of § 1005.7 of the OIG regulations, § 160.538 provides for limited discovery in the form of the production for

inspection and copying of documents that are relevant and material to the issues before the ALJ. Like the OIG, we are specifically not authorizing other forms of discovery, such as depositions and interrogatories. Prehearing discovery is not provided for under the APA and is rarely available in administrative hearings. Full-scale discovery is inappropriate in administrative hearings, as it would unduly delay the streamlined administrative process. These regulations do, however, provide for exchange of relevant and material documents, as well as the exchange of witness lists, prior witness statements, and exhibits before the hearing, as provided in § 160.540 of the rule.

Exchange of Witness Lists, Statements, and Exhibits

Section 160.540 provides for the prehearing exchange of certain documents, including witness lists, copies of prior statements of witnesses, and copies of hearing exhibits.

Paragraph (a) of this section differs slightly from the corresponding paragraph in § 1005.8 of the OIG regulations, in that it provides for the exchange of witness lists, witness statements and exhibits at least 15 days before the hearing, but also allows the ALJ to order an earlier exchange if he or she deems it necessary.

Paragraph (b) provides that the ALJ must exclude witnesses and documents offered by a party that did not provide those materials before the hearing, except where there is good cause for the failure, or where there is not substantial prejudice to the objecting party. As with the OIG regulations, this provision is mandatory and serves to prevent the parties from litigating by surprise and to promote the procedural regularity of the hearing. Paragraph (b)(3) provides that where the witnesses or exhibits are not excluded, the ALJ must recess the hearing for a reasonable time to allow the objecting party the opportunity to prepare and respond to them, unless the objecting party agrees to proceed. This paragraph differs from § 1005.8(b)(3) of the OIG regulations, under which the decision to postpone the hearing is within the ALJ's discretion. This modification is equally beneficial to both parties to a hearing and will reduce the potential for unfair surprise during a hearing. It is preferable to the OIG provision that grants the ALJ discretion, because it provides clear notice to the parties and clear direction to the ALJ in the event witnesses or exhibits are not excluded.

Finally, any documents exchanged before the hearing would be deemed authentic for purposes of admissibility at the hearing unless a party objected to a particular document before the hearing.

Subpoenas for Attendance at the Hearing

Section 160.542 outlines procedures for the ALJ to issue, and for parties and prospective witnesses to contest, subpoenas to appear at the hearing. Subpoenas are authorized by 42 U.S.C. 1320a–7a(j) and may be issued by an ALJ pursuant to 5 U.S.C. 556(c). Either party may request that the ALJ issue a subpoena, if the appearance of a witness and the testimony are reasonably necessary for the party's case. The subpoena procedures here are the same as those at § 1005.9 of the OIG regulations.

Fees

Section 160.544 provides for the payment of witness fees by the party requesting a subpoena. This section tracks § 1005.10 of the OIG regulations.

Form, Filing, and Service of Papers; Computation of Time

Section 160.546 sets forth requirements for documents filed with the ALJ. Section 160.548 outlines the method for computing time periods under this part. These provisions track, respectively, § 1005.11 and § 1005.12 of the OIG regulations.

Motions

The provisions of § 160.550 set forth requirements for the content of motions and the time allowed for responses. This section tracks § 1005.13 of the OIG regulations.

Sanctions

Section 160.552 outlines the sanctions an ALJ may impose on parties and their representatives for failing to comply with an order or procedure, failing to defend an action, or other misconduct. These sanctions are specifically provided for by the statutory provision at 42 U.S.C. 1320a–7a(c)(4). This section tracks § 1005.14 of the OIG regulations.

The Hearing

Section 160.554 provides for a public hearing on the record. It allows for the admission of rebuttal evidence not exchanged before the hearing.

This section is based upon § 1005.15 of the OIG regulations, which also addresses the burden of proof at the hearing, and provides that the hearing is not limited to the items and information set forth in the notice of proposed determination. We anticipate addressing those issues in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule.

Witnesses

Under § 160.556, the ALJ may allow testimony to be admitted in the form of a written statement or deposition so long as the opposing party has a sufficient opportunity to subpoena the person whose statement is being offered. This section also allows an HHS investigator or other expert to be a witness, in addition to assisting counsel for the Secretary at counsel table during the hearing. These provisions closely track § 1005.16 of the OIG regulations.

Evidence

With certain limited exceptions, the Federal Rules of Evidence are not binding on the ALJ. However, the ALJ may apply the Federal Rules of Evidence to exclude unreliable evidence. Section 160.558 is substantially similar to § 1005.17 of the OIG regulations, but does not contain a paragraph corresponding to § 1005.17(j) regarding evidence as to the respondent's willingness and/or ability to enter into a corrective action plan. We anticipate addressing this issue in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule.

The Record

Section 160.560 provides for recording and transcription of the hearing, and for the record to be available for inspection and copying by any person. For good cause, the ALJ may order appropriate redactions made to the record. These provisions track § 1005.18 of the OIG regulations.

Post-Hearing Briefs

Section 160.562 provides that the ALJ has discretion to order post-hearing briefs, although the parties may file post-hearing briefs in any event if they desire. This section tracks § 1005.19 of the OIG regulations.

ALJ Decision

Section 160.564 provides that not later than 60 days after the filing of post-hearing briefs, the ALJ shall serve on the parties a decision making specific findings of fact and conclusions of law. The ALJ's decision is the final decision of the Secretary.

Section 1005.20 of the OIG regulations, upon which this section is based, provides for the ALJ to issue an "initial decision," which is then reviewable by the Departmental Appeals Board if properly appealed. We have not provided for a second level of administrative review in this rule, and thus this section refers to the "ALJ decision" rather than to an "initial decision." Neither section 1320a–7a nor the APA requires a second level of administrative review, although this is generally available in Department hearings. We anticipate addressing the issue of further administrative review in the notice-and-comment rulemaking that we plan for the remainder of the Enforcement Rule.

Judicial Review; Stay of ALJ Decision

Section 160.568 provides for judicial review of penalties imposed under this part, as authorized by 42 U.S.C. 1320a–7a(e). Section 160.570 provides that a respondent may request a stay of the effective date of a penalty pending judicial review. This section tracks § 1005.22(b) of the OIG regulations.

IV. Impact Statement and Other Required Analyses

Paperwork Reduction Act

We reviewed this interim final rule to determine whether it invokes issues that would subject it to the Paperwork Reduction Act (PRA). While the PRA applies to agencies and collections of information conducted or sponsored by those agencies, 5 CFR 1320.4(a) exempts collections of information that occur "during the conduct of . . . an administrative action, investigation, or audit involving an agency against specific individuals or entities," except for investigations or audits "undertaken with reference to a category of individual or entities such as a class of licensees or an entire industry." The rules adopted below come squarely within this exemption, as they deal entirely with administrative investigations and actions against specific individuals or entities. Therefore, we have determined that the PRA does not apply to this rule.

Executive Order 12866; Unfunded Mandates Reform Act of 1995; Regulatory Flexibility Act; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

We have examined the impacts of this rule as required by E.O. 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and E.O. 13132.

E.O. 12866 (as amended by E.O. 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). HHS has concluded that this rule should be treated as a "significant regulatory action" within the meaning of section 3(f)(4) of E.O. 12866 because the HIPAA provisions to be enforced have extremely broad implications for the nation's health care system, and because of the novel issues presented by, and the uncertainties surrounding, compliance among covered entities. However, E.O. 12866 requires a full economic impact analysis only for "economically significant" rules, which are defined in section 3(f)(1) of the order as rules that may "have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." Because this rule is procedural in nature, it has no intrinsic significant economic impact; therefore, no economic impact analysis has been prepared.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million in any 1 year. This interim final rule is purely procedural in nature and, as such, HHS has determined that this regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply implements procedures necessitated by enactment of HIPAA, in order to allow the Secretary to enforce subtitle F of Title II of HIPAA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 (proposed documents)/604 (final documents) of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule will not have a significant impact on small rural hospitals. The rule implements procedures necessary for the Secretary to enforce subtitle F of Title II of HIPAA.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. Because this rule is procedural in nature, it will not impose a burden large enough to require a section 202 statement under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*).

E.O. 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This interim final rule does not have "Federalism implications." The rule does not have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government" and therefore is not subject to E.O. 13132 (Federalism).

The Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) requires that rules that will have an impact on the economy of $100 million or more per annum be submitted for Congressional review. Because this rule is procedural in nature, it will not impose a burden large enough to require Congressional review under the statute.

List of Subjects in 45 CFR Part 160

Administrative practice and procedure, Computer technology, Healthcare, Health facilities, Health insurance, Health records, Hospitals, Investigations, Medicaid, Medicare, Penalties, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department of Health and Human Services amends 45 CFR subtitle A, subchapter C, part 160 as set forth below.

PART 160—GENERAL ADMINISTRATIVE REQUIREMENTS

■ 1. The authority citation for part 160 is revised to read as follows:

Authority: 42 U.S.C. 1302(a), 42 U.S.C. 1320d—1320d–8, and sec. 264 of Pub. L. 104–191, 110 Stat. 2033–2034 (42 U.S.C. 1320d–2(*note*)).

■ 2. Add a new subpart E to part 160 to read as follows:

Subpart E—Civil Money Penalties: Procedures for Investigations, Imposition of Penalties, and Hearings

Sec.

160.500 Applicability.
160.502 Definitions.
160.504 Investigational subpoenas and inquiries.
160.506 Basis for penalty.
160.508 Amount of penalty.
160.510 Authority to settle.
160.512 [Reserved]
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160.556 Witnesses.
160.558 Evidence.
160.560 The record.
160.562 Post hearing briefs.
160.564 ALJ decision.
160.566 [Reserved]
160.568 Judicial review.
160.570 Stay of ALJ decision.
160.572 [Reserved]

Subpart E—Civil Money Penalties: Procedures for Investigations, Imposition of Penalties, and Hearings

§ 160.500 Applicability.

This subpart applies to investigations conducted, penalties imposed, hearings conducted, and subpoenas issued, under the authority of 42 U.S.C. 1320d–5, relating to the imposition of civil money penalties.

§ 160.502 Definitions.

For the purposes of this subpart:

ALJ means Administrative Law Judge.

Entity means a legal person.

Penalty means the amount calculated under 42 U.S.C. 1320d–5, as determined in accordance with this part, and includes the plural of that term.

Person means a natural or legal person.

Respondent means the person upon whom the Secretary has imposed, or proposes to impose, a penalty.

§ 160.504 Investigational subpoenas and inquiries.

(a) The provisions of this paragraph govern subpoenas issued by the Secretary in accordance with 42 U.S.C. 405(d) and (e), 1320a–7a(j), and 1320d–5 to require the attendance and testimony of witnesses and the production of any other evidence during an investigation pursuant to this part.

(1) A subpoena issued under this paragraph must—

(i) State the name of the person to whom the subpoena is addressed;

(ii) State the statutory authority for the subpoena;

(iii) Indicate the date, time, and place that the testimony will take place;

(iv) Include a reasonably specific description of any documents or items required to be produced; and

(v) If the subpoena is addressed to an entity, describe with reasonable particularity the subject matter on which testimony is required. In that event, the named entity must designate one or more natural persons who will testify on its behalf, and must state as to each person so designated that person's name and address and the matters on which he or she will testify. The person so designated must testify as to matters known or reasonably available to the entity.

(2) A subpoena under this section must be served by—

(i) Delivering a copy to the natural person named in the subpoena or to the entity named in the subpoena at its last principal place of business; or

(ii) Registered or certified mail addressed to the natural person at his or her last known dwelling place or to the entity at its last known principal place of business.

(3) A verified return by the natural person serving the subpoena setting forth the manner of service or, in the case of service by registered or certified mail, the signed return post office receipt, constitutes proof of service.

(4) Witnesses are entitled to the same fees and mileage as witnesses in the district courts of the United States (28 U.S.C. 1821 and 1825). Fees need not be paid at the time the subpoena is served.

(5) A subpoena under this section is enforceable through the District Court of the United States for the district where the subpoenaed natural person resides or is found or where the entity transacts business.

(b) Investigational inquiries are non-public investigational proceedings conducted by the Secretary.

(1) Testimony at investigational inquiries will be taken under oath or affirmation.

(2) Attendance of non-witnesses is discretionary with the Secretary, except that a witness is entitled to be accompanied, represented, and advised by an attorney.

(3) The proceedings will be recorded and transcribed. The witness is entitled to a copy of the transcript, upon payment of prescribed costs, except that, for good cause, the witness may be limited to inspection of the official transcript of his or her testimony.

§ 160.506 Basis for penalty.

The Secretary shall impose a penalty on a person who is a covered entity and who the Secretary determines in accordance with this subpart has violated a provision of—

(a) 42 U.S.C. 1320d–1320d–8, as amended;

(b) Section 264 of Pub. L. 104–191 (42 U.S.C. 1320d–2(note)); or (c) Parts 160, 162 or 164 of this subchapter.

§ 160.508 Amount of penalty.

The penalty imposed under § 160.506 must be in accordance with 42 U.S.C. 1320d–5 and the applicable provisions of this part.

§ 160.510 Authority to settle.

Nothing in this subpart limits the authority of the Secretary to settle any issue or case or to compromise any penalty.

§ 160.512 [Reserved]

§ 160.514 Notice of proposed determination.

(a) If a penalty is proposed in accordance with this part, the Secretary must deliver, or send by certified mail with return receipt requested, to the respondent written notice of the Secretary's intent to impose a penalty. This notice of proposed determination must include—

(1) Reference to the statutory basis for the penalty;

(2) A description of the findings of fact regarding the act(s) or omission(s) with respect to which the penalty is proposed;

(3) The reason(s) why the act(s) or omission(s) subject(s) the respondent to a penalty;

(4) The amount of the proposed penalty;

(5) Instructions for responding to the notice, including a statement of the respondent's right to a hearing, a statement that failure to request a hearing within 60 days permits the imposition of the proposed penalty without the right to a hearing under § 160.554 or a right of appeal under § 160.568, and the address to which the hearing request must be sent.

(b) The respondent may request a hearing before an ALJ on the proposed penalty by filing a request therefor in accordance with § 160.526 of this subpart.

§ 160.516 Failure to request a hearing.

If the respondent does not request a hearing within the time prescribed by § 160.526, the Secretary must impose the proposed penalty or any less severe penalty permitted by 42 U.S.C. 1320d–5. The Secretary must notify the respondent by certified mail, return receipt requested, of any penalty that has been imposed and of the means by which the respondent may satisfy the penalty. The respondent has no right to appeal under § 160.568 with respect to a penalty with respect to which the respondent has not timely requested a hearing.

§ 160.518 Collection of penalty.

(a) Once a determination of the Secretary to impose a penalty has become final, the penalty must be collected by the Secretary.

(b) The penalty may be recovered in a civil action brought in the United States district court for the district where the respondent resides, is found, or is located.

(c) The amount of a penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States, or by a State agency, to the respondent.

(d) Matters that were raised or that could have been raised in a hearing before an ALJ or in an appeal under 42 U.S.C. 1320a–7a(e) may not be raised as a defense in a civil action by the United States to collect a penalty under this part.

§ 160.520 [Reserved]

§ 160.522 Limitations.

No action under this subpart may be entertained unless commenced by the Secretary, in accordance with § 160.514 of this subpart, within 6 years from the date on which the latest act or omission that is the subject of the action occurred.

§ 160.524 [Reserved]

§ 160.526 Hearing before an ALJ.

(a) The respondent may request a hearing before an ALJ. The parties to the hearing proceeding consist of—

(1) The respondent; and

(2) The Secretary.

(b) The request for a hearing must be made in writing signed by the respondent or by the respondent's attorney and sent by certified mail, return receipt requested, to the address specified in the notice of proposed determination. The request for a hearing must be mailed within 60 days after notice of the proposed determination is received by the respondent. For purposes of this section, the respondent's date of receipt of the notice of proposed determination is presumed to be 5 days after the date of the notice unless the respondent makes a reasonable showing to the contrary to the ALJ.

(c) The request for a hearing must clearly and directly admit, deny, or explain each of the findings of fact contained in the notice of proposed determination with regard to which the respondent has any knowledge. If the respondent has no knowledge of a particular finding of fact and so states, the finding shall be deemed denied. The request for a hearing must also state the circumstances or arguments that the respondent alleges constitute the grounds for any defense and the factual and legal basis for opposing the penalty.

(d) The ALJ must dismiss a hearing request where—

(1) The respondent's hearing request is not filed as required by paragraphs (b) and (c) of this section;

(2) The respondent withdraws the request for a hearing;

(3) The respondent abandons the request for a hearing; or

(4) The respondent's hearing request fails to raise any issue that may properly be addressed in a hearing.

§ 160.528 Rights of parties.

(a) Except as otherwise limited by this part, each party may—

(1) Be accompanied, represented, and advised by an attorney;

(2) Participate in any conference held by the ALJ;

(3) Conduct discovery of documents as permitted by this subpart;

(4) Agree to stipulations of fact or law that will be made part of the record;

(5) Present evidence relevant to the issues at the hearing;

(6) Present and cross-examine witnesses;

(7) Present oral arguments at the hearing as permitted by the ALJ; and

(8) Submit written briefs and proposed findings of fact and conclusions of law after the hearing.

(b) A party may appear in person or by a representative. Natural persons who appear as an attorney or other representative must conform to the standards of conduct and ethics required of practitioners before the courts of the United States.

§ 160.530 Authority of the ALJ.

(a) The ALJ must conduct a fair and impartial hearing, avoid delay, maintain order, and ensure that a record of the proceeding is made.

(b) The ALJ may—

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas requiring the attendance of witnesses at hearings and the production of documents at or in relation to hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of documentary discovery as permitted by this subpart;

(8) Regulate the course of the hearing and the conduct of representatives, parties, and witnesses;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Conduct any conference, argument or hearing in person or, upon agreement of the parties, by telephone; and

(13) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact. A summary judgment decision constitutes a hearing on the record for the purposes of this subpart.

(c) The ALJ may not—

(1) Find invalid or refuse to follow Federal statutes or regulations or delegations of authority by the Secretary;

(2) Enter an order in the nature of a directed verdict;

(3) Compel settlement negotiations; or

(4) Enjoin any act of the Secretary.

§ 160.532 Ex parte contacts.

No party or person (except employees of the ALJ's office) may communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for both parties to participate. This provision does not prohibit a party or person from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 160.534 Prehearing conferences.

(a) The ALJ must schedule at least one prehearing conference, and may schedule additional prehearing conferences as appropriate, upon reasonable notice to the parties.

(b) The ALJ may use prehearing conferences to discuss the following—

(1) Simplification of the issues;
(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;
(3) Stipulations and admissions of fact or as to the contents and authenticity of documents;
(4) Whether the parties can agree to submission of the case on a stipulated record;
(5) Whether a party chooses to waive appearance at an oral hearing and to submit only documentary evidence (subject to the objection of the other party) and written argument;
(6) Limitation of the number of witnesses;
(7) Scheduling dates for the exchange of witness lists and of proposed exhibits;
(8) Discovery of documents as permitted by this subpart;
(9) The time and place for the hearing;
(10) The potential for the settlement of the case by the parties; and
(11) Other matters as may tend to encourage the fair, just and expeditious disposition of the proceedings, including the protection of privacy of individually identifiable health information that may be submitted into evidence, if appropriate.
(c) The ALJ must issue an order containing the matters agreed upon by the parties or ordered by the ALJ at a prehearing conference.

§ 160.536 Settlement.

The Secretary has exclusive authority to settle any issue or case without the consent of the ALJ.

§ 160.538 Discovery.

(a) A party may make a request to another party for production of documents for inspection and copying that are relevant and material to the issues before the ALJ.
(b) For the purpose of this section, the term "documents" includes information, reports, answers, records, accounts, papers and other data and documentary evidence. Nothing contained in this section may be interpreted to require the creation of a document, except that requested data stored in an electronic data storage system must be produced in a form accessible to the requesting party.
(c) Requests for documents, requests for admissions, written interrogatories, depositions and any forms of discovery, other than those permitted under paragraph (a) of this section, are not authorized.
(d) This section may not be construed to require the disclosure of interview reports or statements obtained by any party, or on behalf of any party, of persons who will not be called as witnesses by that party, or analyses and summaries prepared in conjunction with the investigation or litigation of the case, or any otherwise privileged documents.
(e)(1) When a request for production of documents has been received, within 30 days the party receiving that request must either fully respond to the request, or state that the request is being objected to and the reasons for that objection. If objection is made to part of an item or category, the part must be specified. Upon receiving any objections, the party seeking production may then, within 30 days or any other time frame set by the ALJ, file a motion for an order compelling discovery. The party receiving a request for production may also file a motion for protective order any time before the date the production is due.
(2) The ALJ may grant a motion for protective order or deny a motion for an order compelling discovery if the ALJ finds that the discovery sought—
(i) Is irrelevant;
(ii) Is unduly costly or burdensome;
(iii) Will unduly delay the proceeding; or
(iv) Seeks privileged information.
(3) The ALJ may extend any of the time frames set forth in paragraph (e)(1) of this section.
(4) The burden of showing that discovery should be allowed is on the party seeking discovery.

§ 160.540 Exchange of witness lists, witness statements, and exhibits.

(a) The parties must exchange witness lists, copies of prior written statements of proposed witnesses, and copies of proposed hearing exhibits, including copies of any written statements that the party intends to offer in lieu of live testimony in accordance with § 160.556, at least 15 days before the hearing, unless the ALJ orders an earlier exchange.
(b) (1) If at any time a party objects to the proposed admission of evidence not exchanged in accordance with paragraph (a) of this section, the ALJ must determine whether the failure to comply with paragraph (a) of this section should result in the exclusion of that evidence.
(2) Unless the ALJ finds that extraordinary circumstances justified the failure timely to exchange the information listed under paragraph (a) of this section, the ALJ must exclude from the party's case-in-chief—
(i) The testimony of any witness whose name does not appear on the witness list; and
(ii) Any exhibit not provided to the opposing party as specified in paragraph (a) of this section.
(3) If the ALJ finds that extraordinary circumstances existed, the ALJ must then determine whether the admission of that evidence would cause substantial prejudice to the objecting party. If the ALJ finds that there is no substantial prejudice, the evidence may be admitted. If the ALJ finds that there is substantial prejudice, the ALJ may exclude the evidence, or, if he or she does not exclude the evidence, must postpone the hearing for such time as is necessary for the objecting party to prepare and respond to the evidence, unless the objecting party waives postponement.
(c) Unless the other party objects within a reasonable period of time before the hearing, documents exchanged in accordance with paragraph (a) of this section will be deemed to be authentic for the purpose of admissibility at the hearing.

§ 160.542 Subpoenas for attendance at hearing.

(a) A party wishing to procure the appearance and testimony of any person at the hearing may make a motion requesting the ALJ to issue a subpoena if the appearance and testimony are reasonably necessary for the presentation of a party's case.
(b) A subpoena requiring the attendance of a person in accordance with paragraph (a) of this section may also require the person (whether or not the person is a party) to produce relevant and material evidence at or before the hearing.
(c) When a subpoena is served by a respondent on a particular employee or official or particular office of HHS, the Secretary may comply by designating any HHS representative to appear and testify.
(d) A party seeking a subpoena must file a written motion not less than 30 days before the date fixed for the hearing, unless otherwise allowed by the ALJ for good cause shown. That motion must—
(1) Specify any evidence to be produced;
(2) Designate the witnesses; and
(3) Describe the address and location with sufficient particularity to permit those witnesses to be found.
(e) The subpoena must specify the time and place at which the witness is to appear and any evidence the witness is to produce.
(f) Within 15 days after the written motion requesting issuance of a subpoena is served, any party may file an opposition or other response.

(g) If the motion requesting issuance of a subpoena is granted, the party seeking the subpoena must serve it by delivery to the person named, or by certified mail addressed to that person at the person's last dwelling place or principal place of business.
(h) The person to whom the subpoena is directed may file with the ALJ a motion to quash the subpoena within 10 days after service.
(i) The exclusive remedy for contumacy by, or refusal to obey a subpoena duly served upon, any person is specified in 42 U.S.C. 405(e).

§ 160.544 Fees.

The party requesting a subpoena must pay the cost of the fees and mileage of any witness subpoenaed in the amounts that would be payable to a witness in a proceeding in United States District Court. A check for witness fees and mileage must accompany the subpoena when served, except that when a subpoena is issued on behalf of the Secretary, a check for witness fees and mileage need not accompany the subpoena.

§ 160.546 Form, filing, and service of papers.

(a) *Forms.* (1) Unless the ALJ directs the parties to do otherwise, documents filed with the ALJ must include an original and two copies.
(2) Every pleading and paper filed in the proceeding must contain a caption setting forth the title of the action, the case number, and a designation of the paper, such as motion to quash subpoena.
(3) Every pleading and paper must be signed by and must contain the address and telephone number of the party or the person on whose behalf the paper was filed, or his or her representative.
(4) Papers are considered filed when they are mailed.
(b) *Service.* A party filing a document with the ALJ or the Secretary must, at the time of filing, serve a copy of the document on the other party. Service upon any party of any document must be made by delivering a copy, or placing a copy of the document in the United States mail, postage prepaid and addressed, or with a private delivery service, to the party's last known address. When a party is represented by an attorney, service must be made upon the attorney in lieu of the party.
(c) *Proof of service.* A certificate of the natural person serving the document by personal delivery or by mail, setting forth the manner of service, constitutes proof of service.

§ 160.548 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event or default, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.
(b) When the period of time allowed is less than 7 days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government must be excluded from the computation.
(c) Where a document has been served or issued by placing it in the mail, an additional 5 days must be added to the time permitted for any response. This paragraph does not apply to requests for hearing under § 160.526.

§ 160.550 Motions.

(a) An application to the ALJ for an order or ruling must be by motion. Motions must state the relief sought, the authority relied upon and the facts alleged, and must be filed with the ALJ and served on all other parties.
(b) Except for motions made during a prehearing conference or at the hearing, all motions must be in writing. The ALJ may require that oral motions be reduced to writing.
(c) Within 10 days after a written motion is served, or such other time as may be fixed by the ALJ, any party may file a response to the motion.
(d) The ALJ may not grant a written motion before the time for filing responses has expired, except upon consent of the parties or following a hearing on the motion, but may overrule or deny the motion without awaiting a response.
(e) The ALJ must make a reasonable effort to dispose of all outstanding motions before the beginning of the hearing.

§ 160.552 Sanctions.

The ALJ may sanction a person, including any party or attorney, for failing to comply with an order or procedure, for failing to defend an action or for other misconduct that interferes with the speedy, orderly or fair conduct of the hearing. The sanctions must reasonably relate to the severity and nature of the failure or misconduct. The sanctions may include—
(a) In the case of refusal to provide or permit discovery under the terms of this part, drawing negative factual inferences or treating the refusal as an admission by deeming the matter, or certain facts, to be established;
(b) Prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;
(c) Striking pleadings, in whole or in part;
(d) Staying the proceedings;
(e) Dismissal of the action;
(f) Entering a decision by default;
(g) Ordering the party or attorney to pay the attorney's fees and other costs caused by the failure or misconduct; and
(h) Refusing to consider any motion or other action that is not filed in a timely manner.

§ 160.554 The hearing.

(a) The ALJ must conduct a hearing on the record in order to determine whether the respondent should be found liable under this part.
(b) The hearing must be open to the public unless otherwise ordered by the ALJ for good cause shown.
(c) After both parties have presented their cases, evidence may be admitted in rebuttal even if not previously exchanged in accordance with § 160.540.

§ 160.556 Witnesses.

(a) Except as provided in paragraph (b) of this section, testimony at the hearing must be given orally by witnesses under oath or affirmation.
(b) At the discretion of the ALJ, testimony of witnesses other than the testimony of expert witnesses may be admitted in the form of a written statement. Any such written statement must be provided to all other parties along with the last known address of the witness, in a manner that allows sufficient time for the other party to subpoena the witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing must be exchanged as provided in § 160.540. The ALJ may, at his or her discretion, admit prior sworn testimony of experts that has been subject to adverse examination, such as a deposition or trial testimony.
(c) The ALJ must exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:
(1) Make the interrogation and presentation effective for the ascertainment of the truth;
(2) Avoid repetition or needless consumption of time; and
(3) Protect witnesses from harassment or undue embarrassment.
(d) The ALJ must permit the parties to conduct cross-examination of witnesses as may be required for a full and true disclosure of the facts.

(e) The ALJ may order witnesses excluded so that they cannot hear the testimony of other witnesses. This provision does not authorize the exclusion of—

(1) A party who is a natural person;

(2) In the case of a party that is an entity, the officer or employee of the party appearing for the entity pro se or designated as the party's representative; or

(3) A natural person whose presence is shown by a party to be essential to the presentation of its case, including a person engaged in assisting the attorney for the Secretary.

§ 160.558 Evidence.

(a) The ALJ must determine the admissibility of evidence.

(b) Except as provided in this subpart, the ALJ is not bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate, for example, to exclude unreliable evidence.

(c) The ALJ must exclude irrelevant or immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence may be excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement shall be inadmissible to the extent provided in Rule 408 of the Federal Rules of Evidence.

(g) Evidence of crimes, wrongs, or acts other than those at issue in the instant case is admissible in order to show motive, opportunity, intent, knowledge, preparation, identity, lack of mistake, or existence of a scheme. This evidence is admissible regardless of whether the crimes, wrongs, or acts occurred during the statute of limitations period applicable to the acts or omissions that constitute the basis for liability in the case and regardless of whether they were referenced in the Secretary's notice of proposed determination sent in accordance with § 160.514.

(h) The ALJ must permit the parties to introduce rebuttal witnesses and evidence.

(i) All documents and other evidence offered or taken for the record must be open to examination by both parties, unless otherwise ordered by the ALJ for good cause shown.

§ 160.560 The record.

(a) The hearing must be recorded and transcribed. Transcripts may be obtained following the hearing from the ALJ.

(b) The transcript of the testimony, exhibits, and other evidence admitted at the hearing, and all papers and requests filed in the proceeding constitute the record for decision by the ALJ and the Secretary.

(c) The record may be inspected and copied (upon payment of a reasonable fee) by any person, unless otherwise ordered by the ALJ for good cause shown.

(d) For good cause, the ALJ may order appropriate redactions made to the record.

§ 160.562 Post hearing briefs.

The ALJ may require the parties to file post-hearing briefs. In any event, any party may file a post-hearing brief. The ALJ must fix the time for filing the briefs. The time for filing may not exceed 60 days from the date the parties receive the transcript of the hearing or, if applicable, the stipulated record. The briefs may be accompanied by proposed findings of fact and conclusions of law. The ALJ may permit the parties to file reply briefs.

§ 160.564 ALJ decision.

(a) The ALJ must issue a decision, based only on the record, which must contain findings of fact and conclusions of law.

(b) The ALJ may affirm, increase, or reduce the penalties imposed by the Secretary.

(c) The ALJ must issue the decision to both parties within 60 days after the time for submission of post-hearing briefs and reply briefs, if permitted, has expired. If the ALJ fails to meet the deadline contained in this paragraph, he or she must notify the parties of the reason for the delay and set a new deadline.

(d) The ALJ's decision is the final decision of the Secretary.

§ 160.566 [Reserved]

§ 160.568 Judicial review.

Judicial review of a penalty that has become final is authorized by 42 U.S.C. 1320a-7a(e).

§ 160.570 Stay of ALJ decision.

(a) Pending judicial review, the respondent may file a request for stay of the effective date of any penalty with the ALJ. The request must be accompanied by a copy of the notice of appeal filed with the Federal court. The filing of the request automatically stays the effective date of the penalty until such time as the ALJ rules upon the request.

(b) The ALJ may not grant a respondent's request for stay of any penalty unless the respondent posts a bond or provides other adequate security.

(c) The ALJ must rule upon a respondent's request for stay within 10 days of receipt.

§ 160.572 [Reserved]

Dated: April 11, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–9497 Filed 4–14–03; 3:54 pm]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket Nos. 96–45, 97–21; FCC 03–59]

Federal-State Joint Board on Universal Service; Changes to the Board of Directors of the National Exchange Carrier Association, Inc.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission amends its rules to extend the filing deadline by which the independent auditor hired by the Universal Service Administrative Company (USAC) must submit its draft audit report to the Wireline Competition Bureau (formerly known as the Common Carrier Bureau). At USAC's request, we extend the filing deadline from 60 days to 105 days after the end of the audit period.

DATES: Effective May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Katherine Tofigh, Attorney or Sharon Webber, Deputy Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket Nos. 96–45 and 97–21; FCC 03–59, released on March 26, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 Twelfth Street, SW., Washington, DC 20554.

1. In this Order, we amend § 54.717(f) of the Commission's rules to extend the filing deadline by which the independent auditor hired by the Universal Service Administrative Company (USAC) must submit its draft audit report to the Wireline Competition Bureau (formerly known as the Common Carrier Bureau). At USAC's request, we extend the filing deadline from 60 days to 105 days after the end of the audit period.

2. Under § 54.717 of the Commission's rules, USAC is required to designate an independent auditor to examine its operations and books of account to determine, among other things, whether USAC is properly administering the universal service support mechanisms to prevent fraud, waste, and abuse. The independent auditor is required to submit a draft audit report to the Wireline Competition Bureau audit staff within 60 days after the end of the audit period. Because USAC's fiscal year is the calendar year, the draft audit report is due by March 1.

3. USAC seeks a permanent waiver of this requirement or, in the alternative, a rule change that would allow the independent auditor to file the draft audit report on or before April 15 instead of March 1. USAC explains that because it closes its books in early February and its parent, the National Exchange Carrier Association (NECA), does not close its books until mid-February, the 60-day deadline leaves the independent auditor only two weeks to complete its draft audit report. Specifically, USAC asserts that meeting the March 1 deadline is extremely difficult because it provides the independent auditor with just two weeks to complete six financial audits and five program reviews. As a result of this short timeframe, it has been difficult for the independent auditor to meet the deadline during the last five years.

4. We amend § 54.717(f) of the Commission's rules to require submission of the independent auditor's draft audit report within 105 days after the end of the audit period. We are persuaded that the time frame specified in the existing rule does not provide adequate time for the independent auditor to complete its draft audit report. Since this rule's inception, the independent auditor has had difficulty meeting the deadline every year. In fact, USAC has received extensions on behalf of the independent auditor for the 1998, 2000, 2001, and 2002 annual audits. A permanent change of this deadline therefore is warranted. We are persuaded that no harm will result by providing the independent auditor an additional 45 days to submit the draft audit report. We find that the change in the audit deadline still gives sufficient time for the Wireline Competition Bureau audit staff and the independent auditor to review the draft audit report and comply with the other provisions of § 54.717 of the Commission's rules.

5. It is ordered that, pursuant to sections 1, 4, and 254 of the Communications Act of 1934, as amended, the rule set forth herein is adopted to allow submission of the draft audit report within 105 calendar days after the end of the audit period.

6. It is furthered ordered that section 54.717(f) of the Commission's rules is amended as set forth, effective May 19, 2003.

List of Subjects 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission:

William F. Caton,

Deputy Secretary.

Final Rule

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 54 as follows:

PART 54—UNIVERSAL SERVICE

Subpart H—Administration

■ 1. The authority citations continue to read as follows:

Authority: 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. Amend § 54.717 by revising paragraph (f) to read as follows:

§ 54.717 Audits of the Administrator.

* * * * *

(f) Within 105 calendar days after the end of the audit period, but prior to discussing the audit findings with the Administrator, the independent auditor shall be instructed by the Administrator to submit a draft of the audit report to the Wireline Competition Bureau Audit Staff.

* * * * *

[FR Doc. 03–9406 Filed 4–16–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 74
Thursday, April 17, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV03–929–2]

Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York; Continuance Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order.

SUMMARY: This document directs that a continuance referendum be conducted among eligible growers of cranberries in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York to determine whether they favor continuance of the marketing order regulating the handling of cranberries grown in the production area.

DATES: The referendum will be conducted from May 19 through May 30, 2003. To vote in this referendum, growers must have been engaged in producing cranberries within the production area during the period September 1, 2001, through August 31, 2002.

ADDRESSES: Copies of the marketing order may be obtained from USDA, Washington DC Marketing Field Office, 4700 River Road, Unit 155, Room 2A38, Riverdale, Maryland, 20737, or the Office of the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Stop 0237, Washington, DC, 20250–0237.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Regional Manager, Washington, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 4700 River Road Unit 155, Room 2A38, Riverdale, MD 20737; telephone (301) 734–5243; fax (301) 734–5275; or Melissa Schmaedick, Marketing Order Administration Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 1035, Moab, UT 84532; telephone (435) 259–7988; fax (435) 259–4945.

SUPPLEMENTARY INFORMATION: Pursuant to Marketing Order No. 929 (7 CFR part 929), hereinafter referred to as the "order," and the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act," it is hereby directed that a referendum be conducted to ascertain whether continuance of the order is favored by growers. The referendum shall be conducted during the period May 19 through May 30, 2003, among eligible cranberry growers in the production area. Only growers that were engaged in the production of cranberries in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York during the period of September 1, 2001, through August 31, 2002, may participate in the continuance referendum.

USDA has determined that continuance referenda are an effective means for determining whether growers favor continuation of marketing order programs. The USDA would not consider termination of the order if more than 50 percent of the growers who vote in the referendum and growers of more than 50 percent of the volume of cranberries represented in the referendum favor continuance of their program.

In evaluating the merits of continuance versus termination, the USDA will not only consider the results of the continuance referendum. The USDA will also consider all other relevant information concerning the operation of the order and the relative benefits and disadvantages to growers, processors, and consumers in order to determine whether continued operation of the order would tend to effectuate the declared policy of the Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the ballot materials used in the referendum herein ordered have been submitted to and approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0103. It has been estimated that it will take an average of 30 minutes for each of the approximately 1,100 producers of cranberries in the production area to cast a ballot. Participation is voluntary. Ballots postmarked after May 30, 2003, will be marked invalid and not included in the vote tabulation.

Kenneth G. Johnson, James B. Wendland, Patricia A. Petrella and Dawana Clark of the Washington, DC Marketing Field Office, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, are hereby designated as the referendum agents of USDA to conduct such referendum. The procedure applicable to the referendum shall be the "Procedure for the Conduct of Referenda in Connection With Marketing Orders for Fruits, Vegetables, and Nuts Pursuant to the Agricultural Marketing Agreement Act of 1937, as Amended" (7 CFR 900.400 *et seq.*).

Ballots will be mailed to all growers of record and may also be obtained from the referendum agents and from their appointees.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

Authority: 7 U.S.C. 601–674.

Dated: April 10, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–9409 Filed 4–16–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–324–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require repetitive inspections for discrepancies of certain areas of the forward and aft sides of the body station 2598 bulkhead, and repair if necessary. This action is necessary to find and fix such discrepancies of the bulkhead structure, which could result in failure of the structure to carry flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 2, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–324–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9–anm–nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–324–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6434; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–324–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–324–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of fatigue cracking in the bulkhead inner chords, outer chords, and diagonal brace attachment fittings on certain Boeing Model 747 series airplanes. The cracks ranged from 0.4 inch to 2.0 inches long and have been found on both the left and right sides of the bulkhead structure. These airplanes had accumulated between 5,982 and 18,487 total flight cycles. In addition, elongated fastener holes have been found in the diagonal brace rods on several airplanes. Such discrepancies of the bulkhead structure, if not found and fixed, could result in failure of the structure to carry flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–53A2467, including Evaluation Form, dated July 26, 2001, which describes procedures for repetitive detailed inspections of the body station 2598 bulkhead for discrepancies (cracking, elongated fastener holes) of the lower aft inner chords; upper aft outer chords; and diagonal brace attachment fittings, flanges, and rods and repair of any cracking or elongated fastener holes, if necessary. The service bulletin also specifies contacting Boeing for repair procedures for cracking of the outer chord. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between This Proposed AD and the Service Information

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, the FAA may consider further rulemaking.

Cost Impact

There are approximately 1,147 airplanes of the affected design in the worldwide fleet. The FAA estimates that 280 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours

per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $67,200, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–324–AD.

Applicability: Model 747 series airplanes, line numbers 1 through 1307 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix discrepancies of the bulkhead structure, which could result in failure of the structure to carry flight loads of the horizontal stabilizer, and consequent loss of controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Before the accumulation of 10,000 total flight cycles or within 1,000 flight cycles after the effective date of this AD, whichever is later: Do a detailed inspection of the body station 2598 bulkhead for discrepancies (cracking, elongated fastener holes) of the lower aft inner chords; upper aft outer chords; and diagonal brace attachment fittings, flanges, and rods; per Boeing Alert Service Bulletin 747–53A2467, excluding Evaluation Form, dated July 26, 2001. Repeat the inspection after that at intervals not to exceed 3,000 flight cycles.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repair

(b) If any discrepancy is found during any inspection required by paragraph (a) of this AD: Before further flight, repair per Boeing Alert Service Bulletin 747–53A2467, excluding Evaluation Form, dated July 26, 2001. If any discrepancy is found and the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 11, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9432 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14402; Airspace Docket No. 01–AWA–4]

RIN 2120–AA66

Proposed Modification of the Houston Class B Airspace Area; TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify the current Houston, TX, Class B airspace area to contain large turbine-powered aircraft during operations to the new Runway 8L/26R at George Bush Intercontinental Airport (IAH), and to the new primary runway (Runway 4) at William P. Hobby Airport (HOU). The FAA is proposing this action to enhance safety, and improve the management of aircraft operations in the Houston terminal area. Further, this effort supports the FAA's national airspace redesign goal of optimizing terminal and en route airspace areas to reduce aircraft delays and improve system capacity.

DATES: Comments must be received on or before June 2, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify both docket numbers, FAA–2003–14402/Airspace Docket No. 01–AWA–4, at the beginning of your comments.

You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX 76193.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Nos. FAA–2003–14402/Airspace Docket No. 01–AWA–4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may also obtain a copy of this notice by submitting a request to the FAA, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

On April 13, 2000, the FAA published a final rule modifying the Houston, TX, Class B airspace area (65 FR 19826). The modified Class B airspace area, implemented on June 15, 2000, eliminated references to the Hobby Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) as the point of origin and made the new point of origin the current geographical location of the Hobby VOR.

The Houston terminal area has experienced a significant growth in aircraft operations in the last 10 years. To accommodate this growth, the City of Houston is scheduled to complete construction of the new Runway 8L/26R for IAH in October 2003. Additionally, the flow of aircraft operations at HOU will be adjusted to use Runway 4 as the primary runway. To provide protection for operations to the new runway at IAH and the planned traffic flow adjustments at HOU, the FAA has developed the proposed modifications to the Houston Class B airspace area.

Public Input

In June 2002, an *ad hoc* committee was formed to provide comments and recommendations regarding the planned modifications to the Houston Class B airspace area. Details were provided to the *ad hoc* committee regarding planned airspace changes required to conduct triple simultaneous approaches to IAH using the new Runway 8L/26R and the need to adjust the flow of aircraft operations at HOU. The Aircraft Owners and Pilots Association (AOPA) participated in the *ad hoc* committee and suggested developing visual flight rule (VFR) flyways to help pilots transition the Houston terminal area while remaining clear of the Houston Class B airspace area. Additionally, AOPA suggested the FAA solicit input from representatives from the military, Weiser Airpark, and West Houston Airport. These groups and numerous other user groups were contacted for their input and the suggestion to include VFR flyways was incorporated into a presentation for public meetings. Additionally, AOPA's flyway comment will be addressed later in this document.

As announced in the FAA Southwest Region Airspace Branch letter to Airmen 02–02, three pre-NPRM informal airspace meetings were held on October 15 at Fletcher Aviation on HOU; October 16 at North Harris College; and October 22 at West Houston Airport. These meetings allowed interested airspace users an opportunity to present their views and offer suggestions regarding the planned modifications to the Houston Class B airspace area. All comments received during the informal airspace meetings and the subsequent comment period were considered in developing this proposal.

Analysis of Comments Received

Twelve commenters expressed a concern that the planned expansion of Area B and Area C of the Class B airspace area would compress general aviation traffic into lower altitudes, or would cause general aviation aircraft to fly further east or west of IAH to remain clear of the Class B airspace. The FAA partially agrees with these comments. To remain clear of the Houston Class B airspace area, aircraft would have to fly at lower altitudes or fly further east or west of IAH; however, this is necessary to separate them from large turbine-powered aircraft conducting instrument approaches within the Houston Class B airspace area. Aircraft conducting simultaneous, parallel approaches may

not be assigned the same altitude during turn-on to the final approach course. Therefore, each aircraft being turned on to the triple, simultaneous final approach courses will be assigned altitudes that differ by a minimum of 1,000 feet. In order to accommodate increased aircraft operations, the Houston Class B airspace area must be modified to provide additional altitudes in the lower stratum to the east and west of IAH.

Six commenters stated that aircraft from satellite airports west of Houston would have to travel significantly further than they presently do to get to practice areas. The FAA does not agree with these commenters. The FAA estimates that these aircraft would only have to fly approximately five additional nautical miles (NM) to remain clear of the Houston Class B airspace area. The planned modifications should not significantly increase the cost to pilots who wish to conduct practice maneuvers clear of the planned areas of the Houston Class B airspace area.

Four commenters stated that the FAA should use additional prominent landmarks instead of radials to describe the boundaries of the Class B airspace area. Specifically, it was suggested that the west boundary of Area C (southwest of HOU) could be described by using Highway 59 instead of radials and DME's from the Point Of Origin at HOU. This suggestion would increase the size of the Houston Class B airspace area approximately three NM and overlie the Sugar Land Airport Class D airspace area to the southeast. After consideration by FAA and users in the Sugar Land area, it was determined that additional restrictions to users would be created with minimal benefit. Additionally, the availability of prominent landmarks in the Houston Class B airspace area is minimal. Therefore, this suggestion is not being incorporated into the proposal. The current and planned boundary descriptions consist of a combination of prominent landmarks, latitude/longitude coordinates, and radials/arcs from the Humble VORTAC and the Point of Origin. The FAA believes that this mix of descriptors effectively assists pilots in identifying the lateral boundaries of the Houston Class B airspace area.

One commenter recommended that the FAA establish a VFR corridor directly above IAH to aid VFR aircraft transiting the Houston area. The FAA does not agree with the recommendation to establish a VFR corridor. The establishment of a corridor would reduce the efficiency of managing aircraft operations in the Houston Class B airspace area. The airspace over and between IAH and HOU is the busiest area due to aircraft departing and arriving IAH and HOU. Adding additional complexity to this area would not be in the best interest of safety or management of aircraft operations.

One commenter suggested developing north-south VFR flyways to the east and west of IAH to help pilots transition the Houston terminal area while remaining clear of the Houston Class B airspace area. Since the inception of the Houston Class B airspace area, several low altitude VFR transition routes have been published on the reverse side of the Houston VFR terminal area chart to assist pilots.

Four commenters expressed concern with the planned VFR flyway west of the airport because the area is already heavily traveled by VFR aircraft arriving and departing the busy west satellite airports. These commenters felt that the flyway would encourage pilots to fly in an already congested area and would not enhance safety or expedite travel. The FAA has withdrawn its plan for a north-south VFR flyway to the west of IAH. If the proposed modifications are implemented, most of the existing flyways remain the same except for adjustments to the suggested altitudes in Area C and Area D, to the east and west of IAH.

Notwithstanding the proposed modifications in this notice, we will continue to work with affected users to develop new and/or modify current flyways to assist in navigating in this busy terminal area.

The Proposal

The FAA is proposing an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Houston Class B airspace area. Specifically, this action (depicted in the attached chart) proposes to expand the lateral limits of Area A to the east of IAH; expand the lateral limits of Area B to the east and west of IAH; expand the lateral limits of Area C to the east and west of IAH and to the southwest of HOU; and expand the lateral limits of Area D to the southwest of HOU to improve the containment of turbo-jet aircraft operating within the Houston Class B airspace area.

Area A. The FAA proposes to modify Area A by expanding the boundary of Area A to the northeast of IAH. This modification would incorporate into Area A, one segment of the Class B airspace that is currently contained within Area B. Specifically, to the northeast of IAH, the FAA proposes to extend Area A to the north incorporating that part of Area B airspace that lies to the east on the extended instrument landing system (ILS) localizer course for Runway 26R, between the IAH 8 and 10 NM arcs. The effect of extending Area A as described would be to lower the floor of the Class B airspace in the affected segment from the current 2,000 feet mean sea level (MSL) to the surface. The reason for this change is to provide additional airspace needed to ensure that aircraft on the ILS approach to Runway 26R are contained within the Houston Class B airspace area.

Area B. The FAA proposes to modify Area B to the east and west of IAH. This modification would incorporate into Area B, two segments of the Class B airspace that are currently contained within Area C. Specifically, to the east of IAH, the FAA proposes to extend Area B to the east incorporating that part of Area C airspace that lies to the east on the extended ILS localizer course and downwind legs for Runway 26R, 26L, and 27, between the IAH 15 and 20 NM arcs. To the west of IAH, the FAA proposes to extend Area B to the west incorporating that part of Area C airspace that lies west on the extended ILS localizer course and downwind legs for Runway 8L, 8R, and 9, between the IAH 15 and 20 NM arcs. The effect of extending Area B as described would be to lower the floor of the Class B airspace in the affected segments from the current 3,000 feet MSL to 2,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft vectored for triple, simultaneous ILS approaches (with the required 1,000 feet vertical separation between aircraft) remain within the Houston Class B airspace area.

Area C. The FAA proposes to modify Area C to the east and west of IAH. This modification would incorporate into Area C, two segments of the Class B airspace that are currently contained within Area D. Specifically, to the east of IAH, the FAA proposes to extend Area C to the east incorporating that part of Area D airspace that lies to the east on the extended ILS localizer course and downwind legs for Runway 26R, 26L, and 27, between the IAH 20 and 30 NM arcs. To the west of IAH, the FAA proposes to extend Area C to the west incorporating that part of Area D airspace that lies to the west on the extended ILS localizer course and downwind legs for Runway 8L, 8R, and 9, between the IAH 20 and 30 NM arcs of the airport. The effect of extending Area C as described would be to lower the floor of the Class B airspace in the affected segments from the current 4,000 feet MSL to 3,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft vectored for triple, simultaneous ILS approaches (with the required 1,000 feet vertical separation between aircraft) remain within the Houston Class B airspace area. The FAA also proposes to modify Area C to the southwest of HOU by incorporating into Area C, one segment of the Class B airspace that is currently contained within Area D. Specifically, to the southwest of HOU, the FAA proposes to extend Area C to the southwest incorporating that part of Area D airspace that lies to the southwest on the extended ILS localizer course and downwind legs for Runway 4, between the IAH 15 and 20 NM arcs. The effect of extending Area C as described would be to lower the floor of the Class B airspace in the affected segment from the current 4,000 feet MSL to 3,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft vectored for the ILS Runway 4 approach remain within the Houston Class B airspace area.

Area D. The FAA proposes to modify Area D by expanding the boundaries of Area D to the southwest of HOU. This modification would add a segment to the Class B airspace. Specifically, the FAA proposes to extend Area D to the southwest of HOU incorporating airspace that lies to the southwest on the extended ILS localizer course and downwind legs for Runway 4, between the IAH 20 and 25 NM arcs. The effect of extending Area D as described would be to add a segment to the Class B airspace from 4,000 feet MSL to 10,000 feet MSL. The reason for this change is to provide additional airspace needed to ensure that aircraft vectored for the ILS Runway 4 approach remain within the Houston Class B airspace area.

Area E. The FAA is not proposing any changes to the lateral dimensions of Area E.

These modifications would improve the management of aircraft operations in the Houston terminal area, and enhance safety by extending and lowering the floor of Class B airspace to protect a high volume of instrument approaches to IAH and HOU airports. Additionally, this proposed action supports various efforts to enhance the efficiency and capacity of the National Airspace System including the National Airspace Redesign project and the FAA's Operational Evolution Plan.

The coordinates for this airspace docket are based on North American Datum 83. Class B airspace areas are published in paragraph 3000 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR section 71.1. The Class B airspace area listed in this document would be published subsequently in the Order.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this proposed rule: (1) Would generate benefits that justify its circumnavigation costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) would not have a significant impact on a substantial number of small entities; (4) would not constitute a barrier to international trade; and (5) would not contain any Federal intergovernmental or private sector mandate. These analyses are summarized here in the preamble, and the full Regulatory Evaluation is in the docket.

This NPRM would modify the Houston, TX, Class B airspace. The proposed rule would reconfigure the subarea boundaries, raise the altitude ceiling in certain segments of the airspace and lower the altitude floor in certain segments.

The NPRM would generate benefits for system users and the FAA in the form of enhanced operational efficiency and simplified navigation in the Houston terminal area. These modifications would impose some costs (an additional 5 NM circumnavigation around the expanded controlled airspace) on operators of non-compliant aircraft. However, the cost of circumnavigation is considered to be small. Thus, the FAA has determined this proposed rule would be cost-beneficial.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This proposed rule may impose some circumnavigation costs on individuals operating in the Houston terminal area; but the proposed rule would not impose any costs on small business entities. Operators of GA aircraft are considered individuals, not small business entities and are not included when performing a regulatory flexibility analysis. Flight schools are considered small business entities. However, the FAA assumes that they provide instruction in aircraft equipped to navigate in Class B airspace given they currently provide instruction in the Houston terminal area. Therefore, these small entities should not incur any additional costs as a result of the proposed rule. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies this rule would not have a significant economic impact on a substantial number of small entities. The FAA solicits comments from affected entities with respect to this finding and determination.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of

international standards and where appropriate, that they be the basis for U.S. standards.

The proposed rule is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 0104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Conclusion

In view of the minimal or zero cost of compliance of the proposed rule and the enhancements to operational efficiency that do not reduce aviation safety, the FAA has determined that the proposed rule would be cost-beneficial.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9H, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 3000—Subpart B-Class B Airspace

* * * * *

ASW TX B Houston, TX (Revised)

George Bush Intercontinental Airport (IAH)
(Primary Airport)
(Lat. 29°58′50″ N., long. 95°20′23″ W.)
William P. Hobby Airport (HOU) (Secondary Airport)
(Lat. 29°38′44″ N., long. 95°16′44″ W.)
Ellington Field (EFD)
(Lat. 29°36′27″ N., long. 95°09′32″ W.)
Humble VORTAC (IAH)
(Lat. 29°57′25″ N., long. 95°20′45″ W.)
Point of Origin
(Lat. 29°39′01″ N., long. 95°16′45″ W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL bounded by a line beginning at the intersection of the Humble VORTAC 8-mile DME arc and the 090° radial; thence clockwise along the Humble VORTAC 8-mile DME arc to the Humble VORTAC 048° radial; thence east along the Humble VORTAC 048° radial to the 10-mile DME arc of Humble VORTAC; thence clockwise along the Humble VORTAC 10-mile DME arc to the Humble VORTAC 090° radial; thence west to the point of beginning; and that airspace bounded by a line beginning at lat. 29°45′37″ N., long. 95°21′58″ W.; to lat. 29°45′46″ N., long. 95°11′47″ W.; thence clockwise along the 8-mile arc from the Point of Origin to intercept the 056° bearing from the point of origin; thence southwest along the 056° bearing to the 5.1–NM fix from the point of origin, thence direct to the point of origin 131° bearing/5.8-mile fix from the point of origin; thence southeast along the 131° bearing from the point of origin to intercept the 7-mile arc from the point of origin; thence clockwise on the 7-mile arc to the 156° bearing from the point of origin; thence north along the 156° bearing to the 6-mile fix from the point of origin; thence clockwise along the 6-mile arc to the 211° bearing from the point of origin; thence south along the 211° bearing from the point of origin to the 8-mile arc from the point of origin; thence clockwise to the point of beginning.

Area B. That airspace extending upward from 2,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of State Highway 59 (SH 59) and the 15-mile arc from the point of origin; thence counterclockwise along the 15-mile arc to State Road 6 (SR 6); thence southeast along SR 6 to the intersection of SR 6 and Farm Road 521 (FR 521); thence south along FR 521 to the intersection of FR 521 and the 15-mile arc from the point of origin; thence counterclockwise along the 15-mile arc to the 211° bearing from the point of origin; thence northeast along the 211° bearing to the 10-mile arc from the point of origin; thence counterclockwise along the 10-mile arc to the 156° bearing from the point of origin; thence southeast along the 156° bearing to the 15-mile arc from the point of origin; thence counterclockwise on the 15-mile arc to the intersection of the 15-mile arc and Interstate 10 (I–10); thence east on I–10 to the intersection of I–10 and the Humble VORTAC 20-mile DME arc; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 058° radial; thence west to the intersection of the Humble VORTAC 15-mile DME arc and Humble VORTAC 048° radial; thence counterclockwise along the Humble VORTAC 15-mile DME arc to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 303° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 293° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 249° radial; thence east to the intersection of the Humble VORTAC 242° radial and the Humble VORTAC 15-mile DME arc; thence counterclockwise along the Humble VORTAC 15-mile DME arc to lat. 29°43′40″ N., long. 95°27′40″ W.; thence southwest along SH 59 to the point of beginning, excluding Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 20-mile DME arc; thence clockwise along the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 249° radial; thence west to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 254° radial; thence clockwise on the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 283° radial; thence east to the

intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 293° radial; thence clockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 058° radial; thence east to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 067° radial; thence clockwise on the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 096° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 101° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 058° radial; thence west to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 048° radial; thence counterclockwise on the Humble VORTAC 15-mile DME arc to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 303° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 293° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 249° radial; thence east to the intersection of the Humble VORTAC 15-mile DME arc and the Humble VORTAC 242° radial; thence counterclockwise along the Humble VORTAC 15-mile DME arc to lat. 29°48′40″ N., long. 95°27′40″ W.; thence southwest along SH 59 to the point of beginning; and that airspace beginning at the intersection of the 15-mile arc and the 211° bearing from the point of origin; thence clockwise along the 15-mile arc to the intersection of the 15-mile arc and the 254° bearing from the point of origin; thence southwest to the intersection of the 20-mile arc and the 248° bearing from the point of origin; thence counterclockwise along the 20-mile arc from the point of origin to the intersection of the 20-mile arc and the 211° bearing from the point of origin; thence northeast along the 211° bearing from the point of origin to the intersection of the 10-mile arc and the 211° bearing from the point of origin; thence counterclockwise along the 10-mile arc to the intersection of the 10-mile arc and the 156° bearing from the point of origin; thence southeast along the 156° bearing to the 15-mile arc and 156° bearing from the point of origin; thence clockwise along the 15-mile arc from the point of origin to the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of SH 59 and the Humble VORTAC 30-mile DME arc; thence clockwise along the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 254° radial; thence east to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 249° radial; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and SH 59; thence southwest to and along SH 59 to the intersection of the 15-mile arc from the point of origin and SH 59; thence counterclockwise on the 15-mile arc from the point of origin to the intersection of the 15-mile arc from the point of origin and the 254° bearing from the point of origin; thence southwest to the intersection of the 20-mile arc from the point of origin and the 248° bearing from the point of origin; thence clockwise on the 20-mile arc from the point of origin to the intersection of the 20-mile arc from the point of origin and SH 59; thence southwest along SH 59 to the point of beginning; and that airspace beginning at the intersection of the 211° bearing and the 20-mile arc from the point of origin; thence northeast to the intersection of the 15-mile arc from the point of origin and the 211° bearing from the point of origin; thence counterclockwise on the 15-mile arc from the point of origin to the intersection of the 15-mile arc from the point of origin and I–10; thence east along I–10 to the intersection of the Humble VORTAC 20-mile DME arc and I–10; thence counterclockwise on the Humble VORTAC 20-mile DME arc to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 101° radial; thence east to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 096° radial; thence clockwise on the Humble VORTAC 30-mile DME arc until the intersection of the Humble VORTAC 30-mile DME arc and the 20-mile arc from the point of origin; thence clockwise on the 20-mile arc from the point of origin to the intersection of the 20-mile arc from the point of origin and the 248° bearing from the point of origin; thence southwest to the intersection of the 25-mile arc from the point of origin and the 245° bearing from the point of origin; thence counterclockwise on the 25-mile arc from the point of origin to the intersection of the 25-mile arc from the point of origin and the 211° bearing from the point of origin; thence northeast on the 211° bearing from the point of origin to the point of beginning; and that airspace beginning at the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 293° radial; thence west to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 283° radial; thence clockwise along the Humble VORTAC 30-mile DME arc to the intersection of the Humble VORTAC 30-mile DME arc and the Humble VORTAC 067° radial; thence west to the intersection of the Humble VORTAC 20-mile DME arc and the Humble VORTAC 058° radial; thence counterclockwise along the Humble VORTAC 20-mile DME arc to the point of beginning.

Area E. That airspace extending upward from 2,500 feet MSL to and including 10,000 feet MSL bounded by a line beginning at the intersection of the 15-mile arc from the point of origin and SR 6; thence southeast along SR 6 to the intersection of SR 6 and FR 521; thence south along FR 521 to the intersection of FR 521 and the 15-mile arc from the point of origin; thence clockwise along the 15-mile arc from the point of origin to the point of beginning.

* * * * *

Issued in Washington, DC, on April 10, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–9504 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 335

[Docket No. 78N–036T]

RIN 0910–AA01

Antidiarrheal Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed rule that would amend the final monograph for over-the-counter (OTC) antidiarrheal drug products to include relief of travelers' diarrhea as an indication for products containing bismuth subsalicylate. Travelers' diarrhea occurs in travelers and is most commonly caused by an infectious agent. This proposal is part of FDA's ongoing review of OTC drug products.

DATES: Submit written or electronic comments by July 16, 2003; written or electronic comments on the agency's economic impact determination by July 16, 2003. Please see section VIII of this document for the effective date of any final rule that may publish based on this proposal.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Mary S. Robinson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 21, 1975 (40 FR 12902), FDA published under 21 CFR 330.10(a)(6) an advance notice of proposed rulemaking to establish a monograph for OTC antidiarrheal drug products, together with the recommendations of the

Advisory Review Panel on OTC Laxative, Antidiarrheal, Emetic, and Antiemetic Drug Products, which evaluated these drug classes. The proposed rule was published in the **Federal Register** of April 30, 1986 (51 FR 16138), as a tentative final monograph.

In response to the proposed rule, one manufacturer requested a travelers' diarrhea claim for bismuth subsalicylate (Ref. 1). Travelers' diarrhea is an acute diarrheal illness occurring among travelers, particularly those visiting developing countries where sanitation is suboptimal. Virtually all cases of travelers' diarrhea are caused by infectious agents, acquired through the ingestion of fecally contaminated food and/or water. Bacterial pathogens account for the great majority of episodes. Overall, one of the most common etiologic agents in travelers' diarrhea are enterotoxigenic *Escherichia coli*, which are responsible for 50 to 75 percent of episodes in certain areas of the world. Other recognized enteropathogens can be isolated from most of the remainder of cases, but with great regional differences in prevalence. Viruses (rotavirus, Norwalk-like virus) and protozoa (amebas, Giardia) are collectively responsible for fewer than 10 percent of cases of travelers' diarrhea (Ref. 2).

The clinical data for this claim are discussed in section II, comment 3 of the final rule for OTC antidiarrheal drug products, published elsewhere in this issue of the **Federal Register**. The agency has tentatively determined that the data support the use of bismuth subsalicylate in treating the symptoms of travelers' diarrhea. Accordingly, the agency is proposing to amend the final monograph to include "relieves travelers' diarrhea" as a monograph indication for OTC antidiarrheal drug products containing bismuth subsalicylate identified in § 335.10(a).

II. Summary of the Agency's Proposal for Travelers' Diarrhea

The agency proposes to add the following definition in § 335.3(c): "*Travelers' diarrhea.* A subset of diarrhea occurring in travelers that is most commonly caused by an infectious agent." The agency is also proposing to add the following labeling indication in § 335.50(b)(1) for products containing bismuth subsalicylate: "[* * * "controls" or "relieves"] [* * * "travelers' diarrhea"] * * *." Products may not be labeled with this claim until the monograph amendment process is completed and the agency publishes a final rule in a future issue of the **Federal Register**.

III. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency tentatively concludes that this proposed rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. The proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this proposed rule is to provide an additional (optional) claim for OTC antidiarrheal drug products containing bismuth subsalicylate. Manufacturers can add this claim to their labeling when ordering new product labeling to be in compliance with the OTC antidiarrheal drug products final monograph. Adding this claim might result in additional product sales but, in any case, is completely optional. Thus, this proposed rule will not impose a significant economic burden on affected entities. Therefore, the agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

The agency invites public comment regarding any substantial or significant economic impact that this proposed rule would have on OTC antidiarrheal drug products. Types of impact may include, but are not limited to, costs associated with relabeling or repackaging. Comments regarding the impact of this proposed rule should be accompanied by appropriate documentation. A period of 90 days from the date of publication of this proposed rule in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this proposed rule in the preamble to the final rule.

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Rather, the proposed labeling statements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(a)).

V. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

VII. Request For Comments

Interested persons may submit written or electronic comments regarding this proposal and on the agency's economic impact determination to the Dockets Management Branch (*see* **ADDRESSES**) by (*see* **DATES**). Three copies of all written comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Proposed Effective Date

The agency is proposing that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

IX. References

The following references are on display in the Dockets Management Branch (*see* **ADDRESSES**) under Docket No. 78N–036D and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comments No. SUP 8, SUP 13, SUP 14, LET 21, LET 23, PR 3, and MT 2.

2. Wilson, J. D. et al., editors, *Harrison's Principles of Internal Medicine*, 12th ed., McGraw-Hill, Inc., New York, NY, pp. 523–524, 1991.

List of Subjects in 21 CFR Part 335

Labeling, Over-the-counter drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 335 be amended as follows:

PART 335—ANTIDIARRHEAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

■ 1. The authority citation for 21 CFR part 335 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

■ 2. Section 335.3 is amended by adding paragraph (c) to read as follows:

§ 335.3 Definitions.

* * * * *

(c) *Travelers' diarrhea.* A subset of diarrhea occurring in travelers that is most commonly caused by an infectious agent.

■ 3. Section 335.50 is amended by revising paragraph (b)(1) to read as follows:

§ 335.50 Labeling of antidiarrheal drug products.

* * * * *

(b) * * *

(1) *For products containing bismuth subsalicylate identified in § 335.10(a).* The labeling states [select one of the following: "controls" or "relieves"] [select one or both of the following: "diarrhea" or "travelers' diarrhea"]. If both "diarrhea" and "travelers' diarrhea" are selected, each shall be preceded by a bullet in accordance with § 201.66(b)(4) of this chapter and the heading "Uses" shall be used.

* * * * *

Dated: March 31, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9381 Filed 4–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA43

Financial Crimes Enforcement Network; Imposition of Special Measures Against the Country of Nauru

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury and FinCEN are issuing this proposed rule, pursuant to the provisions of section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), to impose "special measures" against Nauru. Nauru was previously designated as a country of primary money laundering concern pursuant to section 311 on December 20, 2002, a pre-requisite for the imposition of special measures.

DATES: Written comments may be submitted on or before May 19, 2003.

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, DC, area may be delayed. Comments submitted by electronic mail may be sent to *regcomments@fincen.treas.gov* with the caption in the body of the text, "Attention: Section 311 Special Measures Regulations." Comments may also be submitted by paper mail to FinCEN, P.O. Box 39, Vienna, VA 22183, Attn: Section 311 Special Measures Regulations. Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m. in the FinCEN Reading Room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, Department of the Treasury, (202) 622–1925; Office of the Assistant General Counsel for Banking and Finance (Treasury), (202) 622–0480; or the Office of Chief Counsel (FinCEN), (703) 905–3590 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2001, the President signed into law the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Public Law 107–56) (the Act). Title III of the Act makes a number of amendments to the anti-money laundering provisions of the Bank Secrecy Act (BSA) that are codified in subchapter II of chapter 53 of title 31, United States Code. These amendments are intended to promote the prevention, detection, and prosecution of international money laundering and the financing of terrorism.

Section 311 of the Act added section 5318A to the BSA. Section 5318A gives the Secretary of the Treasury (Secretary) the authority to designate a foreign jurisdiction, institution(s), class(es) of transactions, or type(s) of account(s) as a "primary money laundering concern" and to impose certain "special measures" with respect to such jurisdiction, institution(s), class(es) of transactions, or type(s) of account(s). On December 20, 2002, the Secretary designated Nauru as a jurisdiction of primary money laundering concern pursuant to section 5318A.[1]

Section 5318A identifies the factors that the Secretary must consider and the agencies with which he must consult before designating a primary money laundering concern. Upon designation, section 5318A sets forth five potential special measures, the factors to be considered in selecting these measures, and the agencies with which the Secretary must consult before imposing special measures on the designee.

Section 5318A gives the Secretary the authority to bring additional and useful pressure on those jurisdictions and institutions that pose money laundering concerns to encourage them to eliminate the bases for these concerns. Through the imposition of various special measures, the Secretary can gain more information about the concerned

[1] 67 FR 78859 (December 26, 2002).

jurisdictions, institutions, transactions, and accounts, can more effectively monitor the respective institutions, transactions, and accounts, and can protect U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

A. Required Consultations, and Statutory Factors To Consider, Prior to Designating a Primary Money Laundering Concern

Prior to making a finding that a foreign jurisdiction, institution(s), class(es) of transactions, or type(s) of account(s) is a primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General.

In addition to these consultations, the Secretary is required by the statute to consider "such information as the Secretary determines to be relevant," including the following "potentially relevant [jurisdictional] factors":

- Evidence that organized criminal groups, international terrorists, or both, have transacted business in the jurisdiction;
- The extent to which the jurisdiction or financial institutions operating in the jurisdiction offer bank secrecy or special regulatory advantages to non-residents or non-domiciliaries of the jurisdiction;
- The substance and quality of administration of the bank supervisory and counter-money laundering laws of the jurisdiction;
- The relationship between the volume of financial transactions occurring in the jurisdiction and the size of the economy of the jurisdiction;
- The extent to which the jurisdiction is characterized as an offshore banking or secrecy haven by credible international organizations or multilateral expert groups;
- Whether the United States has a mutual legal assistance treaty with the jurisdiction, and the experience of United States law enforcement officials and regulatory officials in obtaining information about transactions originating in or routed through or to such jurisdiction; and
- The extent to which the jurisdiction is characterized by high levels of official or institutional corruption.

Once the Secretary, after having consulted with the Secretary of State and the Attorney General and having considered the factors set forth immediately above, has made a finding that reasonable grounds exist for concluding that a jurisdiction, etc., is a primary money laundering concern, one or more of the five statutorily permitted "special measures" may be imposed following the appropriate consultations as described below.[2]

B. Special Measures

There are five specific "special measures" that can be imposed, either individually, jointly, or in any combination:

1. Recordkeeping and Reporting of Certain Financial Transactions

The Secretary may require domestic financial institutions and domestic financial agencies to maintain and/or to file reports concerning the aggregate amount of transactions or the specifics of each transaction with the primary money laundering concern. The records and reports shall include whatever information the Secretary deems to be relevant, including, but not limited to:

- The identity and address of the participants in a transaction or relationship;
- The legal capacity in which the participant is acting;
- The identity of the beneficial owner of the funds involved; and
- A description of the transaction.

2. Information Relating to Beneficial Ownership

The Secretary may require domestic financial institutions and domestic financial agencies "to take such steps as the Secretary may determine to be reasonable and practicable to obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person (other than a foreign entity whose shares are subject to public reporting requirements or are listed and traded on a regulated exchange or trading market)" involving the primary money laundering concern.

3. Information Relating to Certain Payable-Through Accounts

The Secretary may require domestic financial institutions and domestic financial agencies that open or maintain a payable-through account in the United States involving the primary money laundering concern to: (1) Identify each customer (and representative) who is permitted to use the account or whose transactions are routed through the account; and (2) obtain information about each such customer (and representative) that is substantially comparable to that which a U.S. depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

[2] For the purposes of this action, the required consultation was performed at the staff level.

4. Information Relating to Certain Correspondent Accounts

The Secretary can require domestic financial institutions and domestic financial agencies that open or maintain a correspondent account in the United States involving the primary money laundering concern to: (1) Identify each customer (and representative) who is permitted to use the account or whose transactions are routed through the account; and (2) obtain information about each such customer (and representative) that is substantially comparable to that which a U.S. depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

5. Prohibitions or Conditions on Opening or Maintaining Certain Correspondent or Payable-Through Accounts

The Secretary, after the respective consultations, can prohibit, or can impose conditions on, domestic financial institutions and financial agencies opening or maintaining in the United States any correspondent account or payable-through account for or on behalf of a foreign financial institution if the account involves the primary money laundering concern.

C. Additional Required Consultations, and Statutory Factors To Be Considered, in Advance of Imposing Any of the Special Measures

Prior to determining which special measure(s) to impose, the Secretary must consult with the Chairman of the Board of Governors of the Federal Reserve, any other appropriate Federal banking agency, the Secretary of State, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), the National Credit Union Administration (NCUA), and, in the sole discretion of the Secretary, "such other agencies and interested parties as the Secretary may find to be appropriate."

In determining generally which special measures to select and to impose, the Secretary, in consultation with the agencies and "interested parties" set forth above, must consider the following factors:

- Whether similar action has been or is being taken by other nations or multilateral groups;
- Whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;

- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, or class of transactions; and
- The effect of the action on United States national security and foreign policy.

In addition to (1) the consultations for the designation of a primary money laundering concern, and (2) the consultations with the larger group of agencies for determining which of the special measures to impose, the Secretary, in determining specifically whether to impose the fifth special measure, must consult with the Secretary of State, the Attorney General, and the Chairman of Board of Governors of the Federal Reserve.

Last, the Secretary, in determining whether to apply one or more special measures only to a foreign institution(s), transaction(s), class(es) of transactions, or type(s) of account(s) within a particular jurisdiction—as opposed to applying the special measure more generally to the foreign jurisdiction itself—must consult with the Secretary of State and the Attorney General, and shall take into consideration the following "institutional factors":

- The extent to which such financial institution(s), transaction(s), class(es) of transactions, or type(s) of account(s) are used to facilitate or promote money laundering in or through the jurisdiction;
- The extent to which such institutions, transaction(s), class(es) of transaction(s), or type(s) of account(s) are used for legitimate business purposes in the jurisdiction; and
- The extent to which such action is sufficient to ensure, with respect to transactions involving the jurisdiction and institutions operating in the jurisdiction, that the purposes of the BSA continue to be fulfilled, and to guard against international money laundering and other financial crimes.

D. Procedures for Imposing Special Measures

Pursuant to section 5318A, any of the first four "special measures" can be imposed by order, regulation, or as otherwise "permitted by law." If an order is issued, it can remain in effect for 120 days, unless authorized by a regulation promulgated before the end of the 120-day period. The fifth "special measure" can only be imposed through the issuance of a regulation.

II. Nauru

A. Background

Nauru is a small island of approximately 10 square miles that has a population of only approximately 12,000 people. At one point in time, the island had one of the highest per capita incomes in the developing world due to the mining and export of phosphates, a funding source expected to be completely depleted within five to ten years. As a result of the phosphate mining, the central part of the island, once thriving with vegetation and wildlife, has become uninhabitable and only the perimeter of the island remains available for habitation. This perimeter itself is vulnerable to storms and the movement of the ocean.

Although Nauru at one point in time was relatively wealthy, most of the funds emanating from the phosphate mining and originally contained in the country's trust funds have been depleted through waste, poor investments, and fraud. As a result, the country has been borrowing heavily to finance fiscal deficits. Currently, the basic infrastructure of the island is so poor that electric, water, and phone service is available only on a limited and sporadic basis.

B. Offshore Shell Banks in Nauru

In an effort to raise funds, the island has resorted to the selling of passports (or "economic citizenships") to non-resident foreigners, and, of greater concern, the selling of offshore banking licenses. Nauru is notorious for permitting the establishment of offshore shell banks with no physical presence in Nauru or in any other country. The evidence indicates that the entities that obtain these offshore banking licenses are subject to cursory and wholly inadequate review by the country's officials, lack any credible on-going supervision, and maintain no banking records that Nauru or any other jurisdiction can review. In addition, one of the common requirements imposed by Nauru on these offshore banks is that they not engage in economic transactions involving either the currency of Nauru (currently the Australian dollar) or its citizens or residents. Consequently, these offshore shell banks have no apparent legitimate connection with the economy or business activity of Nauru. Indeed, only one bank appears to be physically located in Nauru, the "Bank of Nauru." It is a local community bank that also serves as the Central Bank.

In 2000, FinCEN reported that 400 offshore banks had been granted licenses by Nauru.[3] It has been verified by on-site reports that a 1,000 square foot wooden structure is "home" to these banks that have no physical or legal residence anywhere in the world. The United States Government has been able to verify the names of 161 of the institutions licensed by Nauru.[4] These are institutions for which the limited information available indicates that there is a strong likelihood that they are shell banks that are not subject to effective banking supervision.

C. FATF Designation

As a consequence of the current practices of Nauru, the Financial Action Task Force on Money Laundering (FATF) placed Nauru on the "Non-Cooperative Countries and Territories" (NCCT) list in June 2000 for maintaining an inadequate anti-money laundering regime. According to FATF, Nauru's anti-money laundering weaknesses included, but were not limited to, the following: money laundering was not a criminal offense; offshore banks licensed by Nauru were not required to maintain customer identification or transaction records; Nauruan financial institutions were under no obligation to report suspicious transactions; and Nauru maintained strong bank secrecy laws. In July 2000, FinCEN issued an advisory to U.S. financial institutions, warning them to give enhanced scrutiny to all financial transactions originating in or routed to or through Nauru, or involving entities organized or domiciled, or persons maintaining accounts, in Nauru. In addition, the Office of the Comptroller of the Currency has issued 15 Alerts concerning offshore shell banks located in Nauru that were potentially attempting to engage in the business of banking in the United States without authority.

In June of 2001, FATF determined that Nauru had made insufficient progress towards remedying deficiencies in its anti-money laundering regime and warned Nauru that FATF would impose countermeasures by September 30, 2001, if Nauru failed to address these deficiencies.

On August 28, 2001, Nauru passed the Anti-Money Laundering Act of 2001 (the AML Act). On September 7, 2001, however, FATF indicated that the AML Act was not consistent with international standards because it did not apply to the numerous offshore

[3] FinCEN Advisory Issue 21 (July 2000).

[4] A list of these institutions was presented as Appendix A to the December 20, 2002, designation of Nauru as a jurisdiction of primary money laundering concern.

banks licensed by Nauru. In response to FATF pressure, on December 6, 2001, Nauru passed amendments to its AML Act. Nonetheless, according to FATF, the revised anti-money laundering law that now exists provides for a wholly inadequate anti-money laundering (AML) legislative and regulatory regime. In addition, Nauru has not yet addressed the remaining and most important deficiency of its AML legislation, that is, the inadequate procedures for licensing, regulating, and supervising its offshore banks. Thus, despite repeated warnings by FATF of its concern with Nauru's practices, and the clear consequences of not amending its practices, Nauru has not shouldered its responsibility to establish a sufficient AML regime.

On July 22, 2002, FATF wrote Nauruan officials to express FATF's concern about the practice in Nauru of issuing licenses to offshore shell banks and asked Nauru to cease licensing such entities. Nauru, however, has not ceased this activity.

D. Designation of Nauru as a Primary Money Laundering Concern and Imposition of Counter-Measures

After reviewing Nauru in light of the statutory factors set forth above, on December 20, 2002, the Treasury designated Nauru as a country of primary money laundering concern under section 5318A of the BSA.[5] As a result of this designation, and based upon an analysis of the entirety of circumstances in Nauru, Treasury has determined that grounds exist for the imposition of a special measure upon Nauru. Based upon its consideration of the following factors, Treasury intends to impose on Nauru the fifth special measure authorized by section 5318A.

E. Factors To Consider in Imposing Special Measures Under Section 5318A

1. Whether Similar Action Has Been or Is Being Taken by Other Nations or Multilateral Groups

As a result of FATF's call on December 5, 2001, for the imposition of counter-measures against Nauru, 27 FATF member countries, including all G–7 countries, have taken action against Nauru.[6]

2. Whether the Imposition of Any Particular Special Measure Would Create a Significant Competitive Disadvantage, Including Any Undue Cost or Burden Associated With Compliance, for Financial Institutions Organized or Licensed in the United States

Imposing sanctions against Nauru under section 5318A should not result in any competitive disadvantage, including any undue compliance cost or burden, to financial institutions in the United States. First, FATF member countries and the G–7 countries have already responded to FATF's call for the imposition of counter-measures against Nauru. Second, BSA section 5318(j) already requires the termination of correspondent accounts maintained by U.S. depository institutions and securities broker-dealers for foreign shell banks.[7] As a result, since we understand that most, if not all, Nauru-licensed banks are shells (other than the Central Bank of Nauru), most transactions between Nauru and U.S. financial institutions have or should already have ceased.

3. The Extent to Which the Action or the Timing of the Action Would Have a Significant Adverse Systemic Impact on the International Payment, Clearance, and Settlement System, or on Legitimate Business Activities Involving the Particular Jurisdiction, Institution, or Class of Transactions

The action against Nauru should have no significant adverse systemic impact on the international payment system or on legitimate business activities because of the small size of the economy and the absence of any meaningful, legitimate international business.

4. The Effect of the Action on United States National Security and Foreign Policy

The action is expected to have virtually no effect on United States national security or foreign policy.

The Secretary intends to impose the fifth special measure against Nauru pursuant to section 5318A. That special measure will prohibit covered U.S. financial institutions from opening or maintaining in the United States any correspondent account, or payable-through account, for a foreign financial institution if that account is maintained for, or on behalf of, a Nauru financial institution.

III. Section-by-Section Analysis

A. Overview

This proposed rule is designed to deny Nauru financial institutions access to the U.S. financial system through correspondent accounts. The proposed rule would prohibit certain U.S. financial institutions from maintaining correspondent accounts for, or on behalf of, a Nauru financial institution. Furthermore, if a U.S. financial institution covered by this proposed rule learns that a correspondent account that it maintains for a foreign bank is being used to provide services indirectly to a Nauru financial institution, the U.S. financial institution must terminate the correspondent account of the foreign bank.

On September 26, 2002, Treasury published in the **Federal Register** a final rule implementing sections 313 and 319(b) of the Act (the Section 313/319 Rule).[8] That rule, among other things, prohibits certain financial institutions from providing correspondent accounts to foreign shell banks, and requires such financial institutions to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to provide banking services indirectly to foreign shell banks. There will be significant overlap between the Section 313/319 Rule and this proposed rule for those financial institutions covered by the Section 313/319 Rule, although they are quite distinct, as described below.

B. Section 103.184 Definitions

Correspondent account. Section 103.184(a)(1) of the proposed rule's definition of correspondent account is the definition contained in 31 U.S.C. 5138A(e) (as added by section 311 of the Act). Section 5138A(e) defines the term to mean an account established to receive deposits from, make payments on behalf of, a foreign financial institution, or handle other financial transactions related to such institution. In the case of a U.S. depository institution, this broad definition would include most types of banking relationships between a U.S. depository institution and a foreign financial institution, including payable-through accounts. In the case of securities broker-dealers, futures commission merchants, introducing brokers, and mutual funds, a correspondent account would include any account that permits the foreign financial institution to engage in: trading in securities and futures, funds transfers, or other types of financial transactions. Treasury is using the same definition for purposes of the proposed rule as that established in the Section 313/319 Rule with two notable exceptions: (1) the term also applies to such accounts maintained by futures commission merchants and introducing brokers as well as mutual funds; and (2) the definition applies to such accounts maintained for any Nauru financial institution, as opposed to just Nauru banks.

Covered financial institution. Section 103.184(a)(2) of the proposed rule defines covered financial institution to include those financial institutions included in the definition under the Section 313/319 Rule, as well as futures commission merchants, introducing brokers, and mutual funds. The term is therefore defined to mean all of the following: any insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)); a commercial bank or trust company; a private banker; an agency or branch of a foreign bank in the United States; a credit union; a thrift institution; a corporation acting under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*); a broker or dealer registered or required to be registered with the SEC under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); a futures commission merchant or an introducing broker registered, or required to register, with the CFTC under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and an investment company that is an open-end company (as defined in section 5 of the Investment Company Act of 1940 (15 U.S.C. 80a–5) that is registered, or required to register, with the SEC pursuant to that Act. Futures commission merchants, introducing brokers, and mutual funds are being added in recognition of their offering of correspondent accounts within the meaning of 31 U.S.C. 5318A(e).

Nauru financial institution. Section 103.184(a)(3) of the proposed rule defines Nauru financial institution to include all foreign banks licensed by Nauru (other than the Central Bank of Nauru) and any other person organized under the law of Nauru who conducts as a business one or more of the following activities or operations on behalf of customers: trading in (1) money market instruments; (2) exchange, interest rate, and index instruments; (3) transferable securities; and (4) commodity futures. The definition of foreign bank is that contained in 31 CFR 103.11(o). The inclusion in this definition of financial institutions other than depository institutions is done in recognition that these activities are alternate viable routes for money laundering activity.

C. Requirements for Covered Financial Institutions

Prohibition on correspondent accounts. Section 103.184(b)(1) of the proposed rule would prohibit all covered financial institutions from establishing, maintaining, administering, or managing a correspondent account in the United States for, or on behalf of, a Nauru financial institution. Based on Treasury's understanding that the only banks in Nauru (other than the Central Bank) are shell banks, depository institutions and securities broker-dealers are already subject to essentially this same prohibition under the Section 313/319 Rule, subject to the inclusion in the proposed rule of certain additional Nauru financial institutions. The prohibition would require the additional covered financial institutions to review their account records to determine that they have no customers that are Nauru financial institutions.

Termination of known indirect accounts. In addition, section 103.184(b)(2) of the proposed rule would require a covered financial institution to terminate immediately any correspondent account which it currently establishes, maintains, administers, or manages for, or on behalf of, a foreign bank, if it obtains actual knowledge that the foreign bank is using this account to provide banking services indirectly to a Nauru financial institution. The proposed rule would not require covered financial institutions to review or investigate every account they maintain for foreign banks to ascertain whether such foreign banks are providing services to Nauru financial institutions. Instead, covered financial institutions must terminate such an account only if they become aware that a foreign bank is using its correspondent account to provide banking services indirectly to a Nauru financial institution. This distinction is significant and in contrast to the obligation under the Section 313/319 Rule, which imposed a new due diligence requirement on covered financial institutions to take reasonable steps to ensure that their foreign bank customers were not providing services to shell banks. This proposed rule would rely on existing due diligence procedures and not require covered financial institutions to make a separate inquiry of their foreign bank customers concerning Nauru financial institutions.

Reporting and recordkeeping not required. Section 103.184(b)(3) of the proposed rule states that nothing in the proposed rule imposes any reporting or recordkeeping requirement upon any covered financial institution that is not otherwise required by applicable law or regulation. If a covered financial institution that is subject to the Section 313/319 Rule (depository institution or securities broker-dealer) has previously received a certification or other information from a Nauru bank pursuant to that Rule in which it purports not to be a shell bank, this proposed rule would still require the termination of the account. More specifically, the safe harbor provisions of the Section 313/319 Rule will have no application to the measures that would be imposed under this proposed rule.

Section 5318A authorizes Treasury to prohibit a broad range of financial dealings with a country of primary money laundering concern. Indeed, the statute affords Treasury the authority to require the termination of any correspondent account that involves the primary money laundering concern. In the proposed rule, Treasury has taken a relatively conservative approach to this countermeasure by requiring only the termination of direct correspondent accounts with a Nauru financial institution and the termination of accounts for other foreign banks only when the U.S. institution has actual knowledge that the account is being used to provide services to a Nauru financial institution indirectly. In view of all the facts and circumstances, this more limited application is appropriate. Treasury notes, however, that the circumstances surrounding future designations may warrant the imposition of countermeasures that reach much further into nested financial relationships with the primary money laundering concern.

IV. Public Comments Requested

The Department of the Treasury invites comments from all interested persons, on all aspects of this rulemaking, and specifically seeks comments from the financial sector, including domestic financial institutions and domestic financial agencies, concerning the appropriateness and effectiveness of this particular special measure, the ability to comply with special measure five on Nauru, and any competitive disadvantage, cost, or burden associated with compliance.

V. Regulatory Flexibility Act

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial

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[5] *Supra* n1.

[6] Specifically, the countries have imposed stringent requirements for identifying clients and beneficial owners before business relationships are established with individuals or companies from Nauru. In addition, the countries have required enhanced and systematic reporting of financial transactions involving Nauru. Also, the countries have required that, in considering requests for approving the establishment in FATF member countries of subsidiaries or branches or representative offices of banks from Nauru, the country take into account the fact that the applicant bank is from an NCCT. Last, the countries have issued warnings to non-financial sector businesses that transactions with entities within NCCTs might run the risk of money laundering. (Source: FATF Reports).

[7] *See* Part III.A. *infra.*

[8] 67 FR 60562 (September 26, 2002) (codified at 31 CFR 103.177).

number of small entities. Financial institutions described in section 103.175(f)(2) are currently prohibited from establishing or maintaining correspondent accounts in the United States for, or on behalf of, a foreign shell bank. This rule would make it clear that all banks licensed by Nauru (other than the Central Bank of Nauru) are shell banks notwithstanding that such a bank may have provided a certification that it is not a shell bank.

With respect to futures commission merchants, introducing brokers, and open-end investment companies, Treasury and FinCEN believe that few, if any, such businesses are likely to maintain a correspondent relationship with a bank licensed by Nauru. Treasury and FinCEN specifically request comments on the extent to which the prohibition contained in the proposed rule would affect such businesses.

VI. Executive Order 12866

This final rule is not a "significant regulatory action" as defined in Executive Order 12866. Accordingly, a regulatory assessment is not required.

List of Subjects in 31 CFR Part 103

Banks and banking, Brokers, Counter-money laundering, Counter-terrorism, Currency, Foreign banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 31 CFR part 103 is proposed to be amended as follows:

PART 103—FINANCIAL RECORDKEEPING AND REPORTING OF CURRENCY AND FOREIGN TRANSACTIONS

1. The authority citation for part 103 is revised to read as follows:

Authority: 12 U.S.C. 1786(q), 1818, 1829b and 1951–1959; 31 U.S.C. 5311–5314 and 5316–5332; title III, secs. 311, 312, 313, 314, 319, 326, 352, Pub. L. 107–56, 115 Stat. 307.

2. Subpart I of part 103 is proposed to be amended by adding § 103.184 under the undesignated centerheading "SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS" to read as follows:

§ 103.184 Special measures against Nauru.

(a) *Definitions.* For purposes of this section:

(1) *Correspondent account* has the same meaning as provided in § 103.175(d)(1)(ii) and (2).

(2) *Covered financial institution* has the same meaning as provided in § 103.175(f)(2) and also includes the following:

(i) A futures commission merchant or an introducing broker registered, or required to register, with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*); and

(ii) An investment company that is an open-end company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–5) that is registered, or required to register, with the Securities and Exchange Commission pursuant to that Act.

(3) *Nauru financial institution* means the following:

(i) Any foreign bank, as that term is defined in § 103.11(o), licensed by Nauru, but does not include the Central Bank of Nauru; and

(ii) Any other person organized under the law of Nauru who conducts as a business one or more of the following activities or operations on behalf of customers:

(A) Trading in money market instruments;

(B) Trading in exchange, interest rate, and index instruments;

(C) Trading in transferable securities; or

(D) Trading in commodity futures trading.

(b) *Requirements for covered financial institutions*—(1) *Prohibition on correspondent accounts.* A covered financial institution shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a Nauru financial institution.

(2) *Termination of correspondent accounts.* A covered financial institution shall terminate any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank upon actual knowledge that the correspondent account is being used by the foreign bank to provide banking services indirectly to a Nauru financial institution.

(3) *Reporting and recordkeeping not required.* Nothing in this section shall require a covered financial institution to maintain any records, obtain any certification, or to report any information not otherwise required by applicable law or regulation.

Dated: April 10, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–9410 Filed 4–16–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2001–10881]

RIN 1625–AA36

Drawbridge Operation Regulations; Amendment to Drawbridge Operation Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing changes to its drawbridge regulations. These proposed changes include provisions for placing drawbridges on winter operations schedules in the Eighth and Ninth Coast Guard District and adding a new deviation procedure for drawbridge closures for local public events. We also propose to add several definitions, rewrite some sections and to make technical and conforming changes to this part. The last major update to the drawbridge regulations in Part 117 was in 1984. The Coast Guard proposes to amend 33 CFR part 117 to provide clearer language and more easily understood regulatory requirements.

DATES: Comments and related material must reach the Docket Management Facility on or before June 2, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before June 16, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

(2) By mail to the Docket Management Facility (USCG–2001–10881), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Chris Jaufmann, Office of Bridge Administration, United States Coast Guard Headquarters, (202) 267–0368. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking, USCG–2001–10881, indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to the Office of Bridge Administration at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would be helpful, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The last major update to the drawbridge regulations in part 117 was in 1984. The Coast Guard proposes to amend 33 CFR part 117 to provide clearer language and more easily understood regulatory requirements.

Discussion of Proposed Rule

The Coast Guard proposes to revise the winter operations provisions for drawbridges in the Ninth Coast Guard District and to expand those provisions to include drawbridges in the northern areas of the Eighth Coast Guard District, which are also affected by winter weather conditions. We propose adding a new deviation for drawbridge closures for local public events; to add six new definitions to the part; making a substantive revision to the regulation governing the removable span bridge across Lindsey Slough; and including in subpart A a specific requirement that all drawbridges be cycled a minimum of once every six months. We also propose to rewrite and reorganize sections in subpart A, and to make technical and conforming changes in subpart B.

Winter Operations in the Eighth and Ninth Coast Guard Districts

The Coast Guard proposes to revise § 117.45, *Operation during winter season in the Great Lakes area.* The revision would clarify the existing procedures for placing drawbridges in the Ninth Coast Guard District on advance notice operations during the winter season. This revision would allow the same procedures for placing drawbridges in the Eighth Coast Guard District on advance notice operation during the winter season. Historically, the winter season in both of these Districts runs from early December to early April, but winter conditions could start earlier or end later in the season.

Depending on the winter weather conditions, certain drawbridges in both Coast Guard Districts are placed on winter operations schedules each year, although not all of the drawbridges are placed on winter operations at the same times during the winter season. Some of these drawbridges have specific operating requirements in subpart B, while others operate on signal as required by 33 CFR 117.5, so a single permanent deviation cannot cover all these bridges. Historically, 28 bridges for the Eighth District and between 10 and 20 bridges for the Ninth District are placed on winter operations each year.

This proposed revision to § 117.45 would provide that the District Commanders in the Eighth and Ninth Coast Guard Districts may issue deviations from existing regulations, authorizing 12-hour advance notice operations for these bridges and allowing them to be untended during the published dates for winter operations for the bridges. The deviation provision would allow the District Commanders the flexibility both to maximize the use of the waterways for navigation during mild winters and the ability to allow the drawbridges to go to winter operations schedules earlier based on the early onset of winter conditions. Each year, prior to the start of the winter operations schedules for these bridges, the District Commanders would publish a notice of deviation in the **Federal Register**.

Drawbridge Closures for Local Public Events

The Coast Guard proposes to add a deviation for local public events that need a drawbridge closure of six hours or less. The short duration and frequency of local public events, such as street parades, marathons, races, or sporting events, make a deviation for drawbridge closures of six hours or less an appropriate method for authorizing the change in operations and giving the public notice of these temporary closures.

The data in Figure 1 shows that the length of closure for most local public events during 1999 and 2000 was less then six hours.

FIGURE 1

Year	No. of drawbridges affected	< = 6 hours event	> 6 hours event
1999	44	42	2
2000	39	39	0

For this proposed deviation, a single event could last a maximum of two days; however, the combined drawbridge closure time for both days of a single event could not exceed a total of six hours. If the authorized closure period for an event is broken into separate time periods on the same day or on consecutive days, the drawbridge would provide normal openings for navigation between the authorized closures. This proposed deviation would be in a new § 117.37 *Temporary change in drawbridge operating schedule for local public events.*

If the temporary drawbridge closure totals more than six hours, the District Commander would issue a temporary rule for the event period.

The District Commander would also issue a temporary rule for events totaling less than six hours, for which a notice of the deviation cannot be published in the **Federal Register** before the start of the event.

Cycling of Drawbridges

To clarify the bridge owner's responsibility to operate drawbridges at "sufficient intervals", the Coast Guard proposes to rewrite § 117.7(b)(3) to require the cycling of the drawbridges at least once every six months. This required cycling may be in conjunction with routine operation or maintenance of the bridge and will ensure that a drawbridge that opens infrequently still operates properly.

Definitions

The Coast Guard proposes to add six definitions in subpart A to be used throughout part 117. These definitions would clarify the terms "Automated drawbridge", "Deviation", "Public vessel", "Remotely operated drawbridge", "Removable drawspan bridge", and "Untended" in this part. We also propose to reword the four definitions currently in § 117.4—"Appurtenance", "Lowerable", "Nonstructural" and "Not essential to navigation" for plain language.

Lindsey Slough

The Coast Guard proposes to remove the word "maintenance" from § 117.165 there by requiring any vessel wanting to pass through the removable span bridge, across Lindsey Slough, to give a 72-hour advance notice.

The bridge was constructed in the 1960's and the permit to build the bridge dictated the opening requirement. A final rule setting a time requirement of 72 hours advance notice for passage was published in 49 FR 17452, on April 24, 1984. At the time, the primary focus was on access for maintenance barges and the term maintenance was included in the rule. However, the removable span has never been removed for any vessel and to do so would require a barge with a crane to be brought in to remove the span. Because the bridge has not had a request to open since 1984, the proposal to remove the term maintenance and require all vessels to provide 72-hours advance notice would seem to meet the reasonable needs of navigation and would not cause any undue burden on navigation.

Other Proposed Changes

Clarifications

The Coast Guard proposes to add three new sections to clarify existing requirements in part 117. We propose to add § 117.8 to explain how to request a permanent change to the operation of a drawbridge; § 117.36 to more clearly explain the closure requirements of a drawbridge for emergency repair and § 117.42 to clarify the requirements for remotely operated and automated drawbridges.

Section 117.35 would be rewritten to more clearly explain the closure requirements of a drawbridge for scheduled and unscheduled repairs.

This proposed rule would also rewrite the following sections to clarify their requirements: §§ 117.39, 117.41, 117.43, and 117.51.

Consolidations

The Coast Guard proposes to consolidate some sections in part 117 to provide clear guidance of their requirements and to remove redundant language. Sections § 117.3 and § 117.53 would be combined with § 117.1 to explain the purpose of part 117. The requirements in § 117.57 would be moved to subpart A and redesignated as § 117.40 since these requirements apply generally to drawbridges operated on advance notice.

Edits

The Coast Guard proposes to make minor corrections and edits, renumber some sections, and make technical and conforming changes through out the part. The sections that would be affected are: §§ 117.5, 117.31, 117.55, 117.145, 117.155, 117.193, 117.997(b)(2)(i) and (d)(2)(i).

Renumbering

The section headings for §§ 117.486, 117.487, and 117.488 are out of alphabetical order. These would be renumbered.

Similarly, this proposed rule would also redesignate §§ 117.731 and 117.731a as §§ 117.730 and 117.731.

Remove

Some sections and paragraphs are currently designated as "Reserved" or "Removed". This proposed rule would remove them and renumber the sections and redesignate paragraphs as necessary: (§§ 117.261 (e),(f),(h),(i),(m),(n),(q),(y),(ii),(pp), 117.271(b), 117.287(d)(3), 117.867, 117.881(b), 117.885, 117.891, 117.1039.)

Drawbridges that have been removed from the waterway or replaced by a fixed drawbridge no longer require regulations. These sections and paragraphs will be removed from subpart B. (§§ 117.261(c), (r), (hh), (nn), 117.277, 117.535, 117.620(a), 117.739(o) and (p)(3), 117.775, 117.783, 117.795(c), 117.821(a)(1), 117.907.) The Federal Street Bridge in § 117.713(a) has been replaced with a fixed bridge.

Some sections and paragraphs make unnecessary distinctions between tugs and tows and commercial and recreational vessels. This proposed rule would remove: §§ 117.325(b), 117.588(c), 117.618(b), 117.620(c), 117.869(a)(1), (a)(2).

Reference to clearance gauges in § 117.733(a) and § 117.949, are the same as the requirements in § 118.160. The Coast Guard proposes to remove the reference to clearance gauges from §§ 117.733(a) and 117.949.

The information in Appendix A is available not only on the Bridge Administration (G-OPT) Web site, *http://www.uscg.mil/hq/g-o/g-opt/g-opt.htm*, but is also published in the Coast Pilots. The Coast Guard proposes to remove Appendix A this part.

References to Federal, State, and local government vessels, emergency vessels or vessels in distress, which repeats requirements contained in § 117.31, would be removed from: §§ 117.181, 117.187(b), 117.195, 117.211(a)(3), 117.219(a), 117.221(a), 117.224(a), 117.225, 117.261(a), 117.269, 117.273(a) and (b), 117.287(a), 117.289, 117.291, § 117.305, 117.311, 117.313(a), 117.315(a) and (b), 117.317(a), 117.325(a) and (b), 117.353(a), 117.531(a)(1), 117.571(d), 117.573(c), 117.588(a), 117.597, 117.605(c), 117.620(a), 117.703(a), 117.731(c), 117.736, § 117.738(a)(2), 117.745(a)(1), 117.789(a), 117.791(a)(3), 117.797(a), 117.799(a), 117.823(a)(3), 117.843(a)(3), 117.892, 117.911(a), 117.968, 117.977, 117.993(a), 117.997(f)(2) and (g), § 117.1023(b).

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. There will be no cost to the general public. This proposal is to provide a more user-friendly part 117 that will remove redundancies and regulations that are no longer functional, make corrections and amendments, and provide clearer language for the user.

The addition of a new prevision that changes approximately 30 drawbridges from open-on-demand to advance notice during the winter season, throughout the Eighth and Ninth Coast Guard Districts, will not have a significant effect on the economy. Commercial and recreational vessel traffic is at its least during this time of the year.

The development of a new deviation for short-term events will not have a significant impact on the economy. This deviation allows the district commander to provide notice to the public in a timely manner without a possible 120 day long rule making process for an event that could last as short as 15 minutes and as long as six hours.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rulemaking would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard would assist small entities in understanding the proposed rule so that they could better evaluate its effects on them and participate in the rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Supporting Statement For Request For OMB Approval Under The Paperwork Reduction Act and 5 CFR 1320 SF–83–I: Changes To Drawbridge Operations

Summary of the Collection of Information: Under the provisions of 33 U.S.C. 499, the Secretary of Homeland Security is mandated to prescribe rules and regulations for governing the closures of drawbridges to navigation. This authorization was delegated to the Commandant of the Coast Guard under Department of Homeland Security Delegation number 0170 and the drawbridge operating regulations are set out in 33 CFR part 117. To change any regulation, 5 U.S.C. 553 requires rule making to be published in the **Federal Register** and that the notice shall include a statement of time, place, and nature of public rule making proceedings. The information collected for the rule can only be obtained from the bridge owners. The information collection requirements are contained in 33 CFR 117.35(a), 117.37(b), and 117.39.

Need for Information: To change any regulation, 5 U.S.C. 553 requires rule making to be published in the **Federal Register**. The information collected for the rule can only be obtained from the bridge owners. The information collection requirements are contained in 33 CFR 117.35(a), 117.37(b), and 117.39.

Proposed Use of Information:

—Determine if the request to close the drawbridge is necessary.
—Coordinate the bridge closure period(s) between the bridge owner and navigational traffic.
—Notify the public and navigational community of the date, time, length of closure periods, and reason for closure.

Description of the Respondents: State governments, Local municipalities, railroads.

Number of Respondents: 150.

Frequency of Response: 150.

Burden of Response: Nationwide, approximately 20,000 bridges are primarily owned by States, local municipalities and railroads. The Bridge Administration receives approximately 150 requests from approximately 150 bridge owners per year to authorize changes to general or specific drawbridge regulations. The estimated "annual hour burden", nationwide is therefore approximately 150 hours (1 hour per request). This burden estimate is based on the length of time it takes to generate a letter containing the required information for the requested change, to the District Bridge Administrator. The letter is prepared by someone at the clerical level, equivalent to a (GS–7). Therefore, we estimate that the average annual cost to prepare 150 letters with a change of request would be $4,350, as described below:

Estimate of Total Annual Burden:

Personnel	Per request			Total (per year)		
	Hourly rate*	Hours	Total	No. of requests	Hours	Cost
Clerical Level equivalent to (GS–7)	$29	1	$29	150	150	$4,350
Totals		1	29	150	150	4,350

*Based on hourly rates for government personnel in Enclosure (2) to COMDTINST 73101.1F.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this proposed rule would not have implications for Federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not economically significant and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. Revise the authority citation for part 117 to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170; and 33 CFR 1.05–1(g).

2. Revise § 117.1 to read as follows:

§ 117.1 Purpose.

(a) This part prescribes the general and special drawbridge operating regulations that apply to the drawbridges across the navigable waters of the United States and its territories. The authority to regulate drawbridges across the navigable waters of the United States is vested in the Secretary of Homeland Security.

(b) Subpart A of this part contains the general use, operation, and requirements that apply to all drawbridges.

(c) Subpart B of this part contains the requirements for operation of individual drawbridges. These requirements are in addition to or vary from the general requirements in subpart A of this part. Specific sections in subpart B of this part which vary from a general requirement in subpart A of this part supersede the general requirement. All other general requirements in subpart A of this part that are not at variance, apply to the bridges listed in subpart B of this part.

§ 117.3 [Removed]

3. Remove § 117.3.

4. Revise § 117.4 to read as follows:

§ 117.4 Definitions.

The following definitions apply to this part: *Appurtenance* means an attachment or accessory extending beyond the hull or superstructure that is not an integral part of the vessel and is not needed for a vessel's piloting, propelling, controlling, or collision avoidance capabilities.

Automated drawbridge means a drawbridge that is operated by an automated mechanism, not a drawtender. An automated drawbridge is normally kept in the open to navigation position and closes when the mechanism is activated.

Deviation means a District Commander's action authorizing a drawbridge owner to temporarily not comply with the drawbridge opening requirements in this part.

Lowerable means the nonstructural vessel appurtenance can be mechanically or manually lowered and raised again. The term *lowerable* also applies to a nonstructural vessel appurtenance, which can be modified to make the item flexible, hinged, collapsible, or telescopic so that it can be mechanically or manually lowered and raised again.

Nonstructural means that the item is not rigidly fixed to the vessel and could be relocated or altered.

Not essential to navigation means that nonstructural vessel appurtenance, when in the lowered position, would not adversely affect the vessel's piloting, propulsion, control, or collision avoidance capabilities.

Public vessel means a vessel that is owned and operated by the United States Government and is not engaged in commercial service, as defined in 46 U.S.C. 2101.

Remotely operated drawbridge means a drawbridge that is operated by remote control from a location away from the bridge.

Removable span bridge means a bridge that requires the complete removal of a span by means other than machinery installed at the bridge.

Untended means that there is no drawtender at the bridge.

5. Revise § 117.5 to read as follows:

§ 117.5 When the drawbridge shall open.

Except as otherwise authorized or required by this part, drawbridges must open promptly and fully for the passage of vessels when a request or signal to open is given in accordance with this subpart.

6. Revise § 117.7 to read as follows:

§ 117.7 General requirements of drawbridge owners.

Drawbridge owners must:

(a) Provide the necessary drawtender(s) for the safe and prompt opening of the drawbridge.

(b) Maintain the working machinery of the drawbridge in good operating condition.

(c) Cycle the drawspan(s) a minimum of once every six months to assure their satisfactory operation.

(d) Ensure that the drawbridge operates in accordance with the requirements of this part.

7. Add § 117.8 to read as follows:

§ 117.8 Permanent changes to drawbridge operation.

(a) A drawbridge owner may request a permanent change to a drawbridge operation requirement in this part by submitting a written request, with appropriate information and supporting documentation, to the District Commander.

(b) If after evaluating the request, the District Commander determines that the requested change is not needed, he will inform the drawbridge owner in writing and provide the reasons for denial of the requested change.

(c) If the District Commander decides that a change may be needed, he or she will begin a rulemaking.

8. In § 117.31 revise the section heading and paragraph (a) to read as follows:

§ 117.31 Drawbridge operations for emergency vehicles and emergency vessels.

(a) A drawtender, who receives notification that an emergency vehicle is responding to an emergency situation, must make all reasonable efforts to have the drawspan closed at the time the emergency vehicle arrives.

* * * * *

9. Revise § 117.35 to read as follows:

§ 117.35 Change in drawbridge operating schedule for maintenance.

(a) *Scheduled maintenance.* (1) To temporarily change the drawbridge-operating requirements to perform scheduled maintenance, the drawbridge owner must submit a written request to the District Commander for approval of the change.

(2) The request must describe the maintenance to be performed and the dates and times scheduled for the start and end of the maintenance period.

(3) Requests should be submitted as early as possible but not later than 90 days before start of the scheduled maintenance.

(b) *Unscheduled maintenance.* (1) If unforeseen mechanical or structural problems require a temporary change to the drawbridge-operating schedule to perform unscheduled maintenance, the drawbridge owner must obtain approval from the District Commander.

(2) The request must describe the unforeseen mechanical or structural problems, the maintenance to be performed, and the dates and times scheduled for the start and end of the maintenance period.

(3) Requests for schedule changes under this paragraph should be submitted at least 30 days before the start of the maintenance period.

(c) The District Commander's decision is normally forwarded to the bridge owner within five working days after receipt of the request. If the request is denied, the reasons for the denial will be set out in the District Commander's decision letter.

(d) *Publication.* (1) For maintenance lasting not more than 60 days, the District Commander may issue a deviation approval letter to the bridge owner and publish a "Notice of deviation from drawbridge regulation" in the **Federal Register** prior to the start of the maintenance period.

(2) For maintenance lasting more than 60 days, or for shorter periods when a "Notice of deviation from drawbridge regulations" cannot be published before the start of the maintenance period, the District Commander will issue a temporary rule prior to the start of the maintenance.

(3) The District Commander will also announce the drawbridge closure in the Local Notice to Mariners and other appropriate local media.

10. Add § 117.36 to read as follows:

§ 117.36 Closure of drawbridge for emergency repair.

(a) When a drawbridge becomes inoperable or should be immediately rendered inoperable because of mechanical failure or structural defect, the drawbridge owner must notify the District Commander without delay and give the reason for the emergency closure of the drawbridge.

(b) The District Commander will notify mariners about the bridge status through Broadcast Notices to Mariners, Local Notice to Mariners and any other appropriate local media.

(c) Repair work under this section shall be performed with all due speed in order to return the drawbridge to operation as soon as possible.

11. Revise § 117.37 to read as follows:

§ 117.37 Temporary change in drawbridge operating schedule for local public events.

(a) To temporarily close a drawbridge to navigation during local public events, such as a street parade, marathon, race, or sporting event, the drawbridge owner must submit a request to the District Commander for approval of the change.

(b) Requests for a change to the operating schedule of a drawbridge should be submitted as early as possible before the event.

(c) The request must include a description of the event and the dates and times of the period the drawbridge is to remain closed.

(d) The District Commander's decision is normally forwarded to the bridge owner within five working days after receipt of the request. If the request is denied, the reasons for the denial will be set out in the District Commander's decision letter.

(e) If the temporary drawbridge closure is for a single event totaling more than six hours, the District Commander will issue a temporary rule for the event period. The District Commander will also issue a temporary rule for an event totaling less than six hours, which does not meet the requirements in paragraph (f) of this section for issuing a deviation.

(f) The District Commander may issue a deviation from the regulations in this part—

(1) If the authorized closure for a single event covers no more than two days and the total bridge closure time for both days does not exceed a total of six hours;

(2) If temporary drawbridge closure is for six hours or less for a single event, and;

(3) If the District Commander can publish a notice of the deviation in the **Federal Register** before the start of the event.

(g) The drawbridge will return to its regular operating schedule immediately at the end of the designated time period.

(h) If the authorized closure period for an event is broken into separate time periods on the same day or on consecutive days, the drawbridge should provide normal openings for navigation between the authorized closures.

(i) The District Commander will also announce the drawbridge closure in the Local Notice to Mariners and other appropriate local media.

12. Revise § 117.39 to read as follows:

§ 117.39 Closure of drawbridge due to infrequent requests for openings.

(a) When there have been no requests for drawbridge openings for at least two years, the drawbridge owner may request that the District Commander authorize the drawbridge to remain closed to navigation and to be untended.

(b) Requests to remain closed to navigation must be submitted in writing to the District Commander for approval. The District Commander may authorize the closure and set out conditions, in addition to the requirements in paragraph (c) of this section.

(c) When drawbridges are authorized by the District Commander to remain closed to navigation and to be untended, the drawbridge owner must—

(1) Maintain the drawbridge working machinery in good operating condition;

(2) Cycle the drawspan(s) at least once every six months to assure their satisfactory operation and;

(3) Return the drawbridge to normal operations when required to do so by the District Commander.

(d) Drawbridges authorized under this section to remain closed to navigation and untended will be identified in subpart B of this part.

13. Add § 117.40 to read as follows:

§ 117.40 Advance notice for drawbridge opening.

When a drawbridge requires advance notice for opening, the drawbridge owner shall open the drawbridge at the requested time and allow for reasonable delay in arrival experienced by the vessel giving the advance notice.

(a) 14. Revise § 117.41 to read as follows:

§ 117.41 Maintaining drawbridges in the fully open position.

(a) Drawbridges permanently maintained in the fully open to navigation position may discontinue drawtender service as long as the drawbridge remains fully open to navigation. The drawbridge must remain in the fully open position until drawtender service is restored.

(b) If a drawbridge is normally maintained in the fully open to navigation position, but closes to navigation for the passage of pedestrian, vehicular or rail traffic, the drawbridge must be tended.

15. Add § 117.42 to read as follows:

§ 117.42 Remotely operated and automated bridges.

Upon written request by the owner of a drawbridge the District Commander may authorize a drawbridge to operate under an automated system or from a remote location. After approval, a description of the full operation of the remotely operated or automated drawbridge will be added to subpart B of this part.

16. Revise § 117.43 to read as follows:

§ 117.43 Deviation for testing drawbridge operation changes.

(a) To evaluate the need for a permanent change in regulations for drawbridges, the District Commander may authorize a temporary deviation from the drawbridge operations. The deviation, which may not exceed 90 days, will test a suggested change and seek public comment.

(b) A deviation to test a requested change to the drawbridge operating requirements may be initiated by the District Commander or may be requested by the public or the drawbridge owner.

(c) The District Commander may issue a deviation approval letter to the bridge owner and publish a "Notice of deviation from drawbridge regulation" in the **Federal Register** at least 30 days prior to the start of the test period. The District Commander will also announce the drawbridge closure in the Local Notice to Mariners and other appropriate local media.

(d) When the test deviation period ends, the drawbridge will resume its normal operation.

17. Revise § 117.45 to read as follows:

§ 117.45 Winter operations.

(a) The Commanders, Eighth and Ninth Coast Guard Districts, may issue deviations from regulations that authorize drawbridges located in their respective Coast Guard District area, to require 12 hours advance notice for drawbridge openings and to be untended during the winter season.

(b) Each year, before drawbridges in the Eighth and Ninth Coast Guard Districts begin winter season operations, the District Commander will publish a notice or notices of deviation authorizing the winter operations schedule in the **Federal Register** giving:

(1) The name and location of the bridge(s) affected;

(2) The period of time covered; and

(3) The telephone number of the party to whom requests for openings are given.

(c) The District Commander may provide additional notice of these deviations in the Local Notices to Mariners and other appropriate media.

18. Revise § 117.51 to read as follows:

§ 117.51 General.

The drawbridges in this subpart are listed by the waterway they cross and by the state in which they are located. Waterways are arranged alphabetically by state. The drawbridges listed under a waterway are generally arranged in order from the mouth of the waterway moving upstream. The drawbridges on the Atlantic Intracoastal Waterway are listed from north to south and on the Gulf Intracoastal Waterway from east to west.

§ 117.53 [Removed]

19. Remove § 117.53.

20. In § 117.55 revise paragraph (a) to read as follows:

§ 117.55 Posting of requirements.

(a) The owner of each drawbridge under this subpart, other than removable span bridges, shall ensure that a sign summarizing the requirements in this subpart applicable to the bridge is posted both upstream and downstream of the bridge. The requirements to be posted need not include those in subpart A of this section or §§ 117.51 through 117.59.

* * * * *

§ 117.57 [Removed]

21. Remove § 117.57.

22. Revise § 117.145 to read as follows:

§ 117.145 Burns Cutoff.

The Daggett Road Drawbridge, mile 3.0 at Stockton, must open on signal if at least 48 hours notice is given to the Port of Stockton.

23. Revise § 117.155 to read as follows:

§ 117.155 Eureka Slough.

The Northwestern Pacific Railroad Company Drawbridge, mile 0.3 at Eureka, need not be opened for the passage of vessels. The owner or agency controlling the bridge must restore the drawbridge to full operation within six months of notification from the District Commander.

24. Revise § 117.165 to read as follows:

§ 117.165 Lindsey Slough.

The center span of the Hastings Farms highway bridge, mile 2.0 between Egbert and Lower Hastings Tracts, must be removed for the passage of vessels if at least 72 hours notice is given to the Hastings Island Land Company office at Rio Vista.

§ 117.181 [Amended]

25. In § 117.181 remove the last sentence.

§ 117.187 [Amended]

26. In § 117.187 remove the last sentence in paragraph (b).

27. Revise § 117.193 to read as follows:

§ 117.193 San Leandro Bay.

The California Department of Transportation Highway drawbridges, mile 0.0 and the City of Alameda bicycle bridge, mile 0.1 between Alameda and Bay Farm Island, must open on signal; except that, from 5 a.m. to 8 a.m. and 5 p.m. to 9 p.m., the drawbridges must open on signal if at least 12 hours notice is given. Notice must be given to the drawtender of the Bay Farm Island bridges from 8 a.m. to 5 p.m. and to the drawtender of the Park Street bridge at Alameda at all other times. The draws need not be opened for the passage of vessels from 9 p.m. to 5 a.m.

§ 117.195 [Amended]

28. In § 117.195 remove the last sentence.

29. In § 117.211 revise paragraph (a)(3) to read as follows:

§ 117.211 Mystic River.

(a) * * *

(3) Public vessels of the United States, commercial vessels must be passed immediately at any time; however, the opening may be delayed no longer than eight minutes to allow trains, which have entered the drawbridge block and are scheduled to cross the bridge without stopping, to clear the block.

* * * * *

30. In § 117.219 revise paragraph (a) to read as follows:

§ 117.219 Pequonnock River.

(a) Public vessels of the United States shall be passed through as soon as possible.

* * * * *

31. In § 117.221 revise paragraph (a) to read as follows:

§ 117.221 Saugatuck River.

(a) Public vessels of the United States shall be passed through as soon as possible.

* * * * *

32. In § 117.224 revise paragraph (a) to read as follows:

§ 117.224 Thames River.

* * * * *

(a) Immediately on signal for public vessels of the United States and commercial vessels; except, when a train scheduled to cross the bridge, without stopping, has passed the Midway, Groton, or New London stations and is in motion toward the bridge, the draw must not be opened for the passage of any vessel until the train has crossed the bridge; and

* * * * *

33. Revise § 117.225 to read as follows:

§ 117.225 Yellow Mill Channel.

The drawn of the Stratford Avenue bridge, mile 0.3 at Bridgeport, shall open on signal if at least 24-hours notice is given. Public vessels of the United States shall pass through as soon as possible.

34. In § 117.255 add paragraph (c) to read as follows:

§ 117.255 Potomac River.

* * * * *

(c) This section is also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

35. Revise § 117.261 to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

(a) *General.* Public Vessels of the United States shall be passed through the drawspan of each bridge listed in this section at any time.

(b) *McCormick Bridge, mile 747.5 at Jacksonville Beach.* The draw shall open on signal; except that during April, May, October and November from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m. Monday through Friday except Federal holidays, the draw need open only on the hour and half hour. During April, May, October and November from 12 noon to 6 p.m. Saturdays, Sundays and Federal holidays, the draw need open only on the hour and half hour.

(c) *Bridge of Lions (SR A1A) bridge, mile 777.9 at St. Augustine.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m. the draw need open only on the hour and half-hour; however, the draw need not open at 8 a.m., 12 noon, and 5 p.m. Monday through Friday except Federal holidays. From 7 a.m. to 6 p.m. on Saturdays, Sundays and Federal holidays the draw need only open on the hour and half-hour.

(d) *Memorial bridge, mile 830.6 at Daytona Beach.* The draw shall open on signal; except that, from 7:45 a.m. to 8:45 a.m. and 4:45 p.m. to 5:45 p.m. Monday through Saturday except Federal holidays, the draw need open only at 8:15 a.m. and 5:15 p.m.

(e) *NASA Railroad bridge, mile 876.6 at Kennedy Space Center.*

(1) The draw is not constantly tended.

(2) The draw is normally in the fully open position displaying flashing green lights to indicate that vessels may pass.

(3) When a train approaches the bridge, the train stops and the operator initiates a command to lower the bridge. The lights go to flashing red and the draw lowers and locks, providing scanning equipment reveals nothing under the draw. The draw remains down until a manual raise command is initiated, or will rise automatically 5 minutes after the intermediate track circuit is no longer occupied by a rail car.

(4) After the train has cleared, the draw opens and the lights return to flashing green.

(f) *State Road 402, Max Brewer bridge, mile 878.9 at Titusville.* The draw shall open on signal; except that, from 6 a.m. to 7:15 a.m. and 3:15 p.m. to 4:30 p.m., Monday through Friday, except federal holidays, the draw need not open.

(g) *John F. Kennedy Space Center bridge, mile 885 at Addison Point.* The draw shall open on signal; except that, from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 5 p.m. Monday through Friday, except Federal holidays, the draw need not open.

(h) *Jensen Beach (SR 707a) bridge, mile 981.4 at Stuart.* The draw shall open on signal; except that from December 1 through May 1, from 7 a.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half-hour.

(i) *Ernest Lyons (SR A1A) bridge, mile 984.9 at Stuart.* The draw shall open on signal; except that, from December 1 through May 1, from 7 a.m. to 6 p.m., Monday through Friday, except federal holidays, the draw need open only on the hour and half-hour.

(j) *PGA Boulevard Bridge, mile 1012.6.* The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m., Monday through Friday except Federal holidays, the draw need open only on the quarter-hour and three-quarter hour. On Saturdays, Sundays and Federal holidays from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. On weekdays except Federal holidays from November 1 through April 30 from 9 a.m. to 4 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(k) *Parker (US 1) bridge, mile 1013.7.* The draw shall open on signal; except that, from 7 a.m. to 9 a.m. and 4 p.m. to 7 p.m. Monday through Friday except Federal holidays, the draw need open only on the hour and half-hour. On Saturdays, Sundays and Federal holidays from 8 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour. On weekdays except Federal holidays from November 1 through April 30 from 9 a.m. to 4 p.m., the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(l) *Flagler Memorial (SR A1A) bridge, mile 1021.9 at Palm Beach.* The draw shall open on signal, except that from October 1 to May 31, Monday through Friday except Federal holidays, from 7:30 a.m. to 9:30 a.m. and from 4 p.m. to 5:45 p.m., the draw need open only at 8:30 a.m. and 4:45 p.m.; and from 9:30 a.m. to 4 p.m., the draw need open only on the hour and half-hour.

(m) *Royal Park (SR 704) bridge, mile 1022.6 at Palm Beach.* The draw shall open on signal, except that from October 1 through May 31, Monday through Friday except Federal holidays, from 7:45 a.m. to 9:45 a.m. and from 3:30 p.m. to 5:45 p.m., the draw need open only at 8:45 a.m., 4:30 p.m., and 5:15 p.m. and from (9:30 a.m. to 3:30 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(n) *Southern Boulevard (SR 700/80) bridge, mile 1024.7 at Palm Beach.* The draw shall open on signal, except that, from October 1 through May 31, Monday through Friday except Federal holidays, from 7:30 a.m. to 9:15 a.m. and from 4:30 p.m. to 6:30 p.m., the draw need open only at 8:15 a.m. and 5:30 p.m. and from 9:15 a.m. to 4:30 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(o) *Ocean Avenue bridge, mile 1031.0 at Lantana.* The draw shall open on signal; except that, from December 1 to April 30, from 7 a.m. to 6 p.m. Monday through Friday, and from 10 a.m. to 6 p.m. Saturdays, Sundays and federal holidays, the bridge need open only on the hour, quarter-hour, half-hour, and three-quarter-hour.

(p) *N.E. 8th Street bridge, mile 1038.7 at Delray Beach.* The draw shall open on signal; except that, from November 1 to May 31, from 11 a.m. to 6 p.m., on Saturdays, Sundays, and Federal holidays, the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour.

(q) *Atlantic Avenue (SR806) bridge, mile 1039.6 at Delray Beach.* The draw shall open on signal; except that, from November 1 to May 31 from 10 a.m. to 6 p.m. Monday through Friday, the draw need open only on the hour and half-hour.

(r) *Boca Club, Camino Real bridge, mile 1048.2 at Boca Raton.* The draw shall open on signal, except that from 7 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half hour, and three quarter-hour.

(s) *Hillsboro Boulevard (SR 810) bridge, mile 1050.0 at Deerfield Beach.* The draw shall open on signal; except that, from October 1 through May 31, from 7 a.m. to 6 p.m., on Monday through Thursday, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour; and from 7 a.m. to 6 p.m., on Friday through Sunday and Federal holidays, the draw need open only on the hour and half-hour.

(t) *N.E. 14th Street bridge, mile 1055.0 at Pompano.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(u) *Atlantic Boulevard (SR814) bridge, mile 1056.0 at Pompano.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the hour and half-hour.

(v) *Commercial Boulevard bridge (SR 870), mile 1059.0, at Lauderdale-by-the-Sea.* The draws shall open on signal; except that, from November 1 through May 15 from 8 a.m. to 6 p.m., Monday through Friday, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour, and from 8 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(w) *Oakland Park Boulevard Bridge, mile 1060.5 at Fort Lauderdale.* The draw shall open on signal; except that from November 15 through May 15 from 7 a.m. to 10 p.m., Monday through Friday, the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour, and from 10 a.m. to 10 p.m. on Saturdays, Sundays, and Federal holidays, the draw need open only on the hour, quarter-hour, half-hour, and three-quarter hour.

(x) *East Sunrise Boulevard Bridge, mile 1062.6 at Fort Lauderdale.* The draw of the East Sunrise Boulevard drawbridge (SR 838), mile 1062.6, at Fort Lauderdale shall open on signal; except that from November 15 to May 15, from 10 a.m. to 6 p.m., the draw need open only on the hour, quarter-hour, half-hour and three-quarter hour.

(y) *Hollywood Beach Boulevard (SR820) bridge, mile 1072.2 at Hollywood.* The draw shall open on signal; except that from November 15 through May 15 from 10 a.m. to 6 p.m., the draw need open only on the hour and half-hour. From May 16 through November 14 on Saturdays, Sundays, and Federal holidays, from 9 a.m. to 7 p.m., the draw need open only on the hour and half-hour.

(z) *Hallandale Beach Boulevard (SR824) bridge, mile 1074.0 at Hallandale.* The draw shall open on signal; except that, from 7:15 a.m. to 6:15 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(aa) *N.E. 163rd Street (SR826) bridge, mile 1078.0 at Sunny Isles.* The draw shall open on signal; except that, from 7 a.m. to 6 p.m. on Monday through Friday except Federal holidays, and from 10 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need open only on the quarter-hour and three-quarter hour.

(bb) *Broad Causeway bridge, mile 1081.4 at Bay Harbor Islands.* The draw shall open on signal; except that, from 8 a.m. to 6 p.m., the draw need open only on the quarter-hour and three-quarter hour.

(cc) *MacArthur Causeway bridge, mile 1088.8 at Miami.* The draw shall open on signal; except that, from November 1 through April 30 from 7 a.m. to 9 a.m. and 4:30 p.m. to 6:30 p.m., the draw need open only on the hour and half-hour.

(dd) *Jewfish Creek, mile 1134, Key Largo.* The draw shall open on signal; except that from 10 a.m. to sunset, Thursday through Sunday and Federal holidays, the draw need open only on the hour and half hour.

36. Revise § 117.269 to read as follows:

§ 117.269 Biscayne Bay.

The draw of the East Span of the Venetian Causeway bridge, between Miami and Miami Beach, shall open on signal; except that, from November 1 through April 30 from 7:15 a.m. to 8:45 a.m. and 4:45 p.m. to 6:15 p.m. Monday through Friday, the draw need not be opened. However, the draws shall open at 7:45 a.m., 8:15 a.m., 5:15 p.m., and 5:45 p.m. if any vessels are waiting to pass. The draw shall open on signal on Thanksgiving Day, Christmas Day, New Year's Day, and Washington's Birthday. The draw shall open at any time for public vessels of the United States.

§ 117.271 [Amended]

37. In § 117.271 remove paragraph (b) and remove the paragraph designator (a) from paragraph (a).

38. In § 117.273 revise paragraphs (a) and (b) to read as follows:

§ 117.273 Canaveral Barge Canal.

(a) The Christa McAuliffe drawbridge, SR 3, mile 1.0, near Indianola shall open on signal from 6 a.m. to 10 p.m. except that, from 6:15 a.m. to 7:45 a.m. and 3:30 p.m. to 5:15 p.m. Monday through Friday, except Federal holidays, the draw need not open for the passage of vessels. From 10 p.m. to 6 a.m., the draw shall open on signal if at least three hours notice is given. The draw shall open as soon as possible for the passage of public vessels of the United States.

(b) The SR401 drawbridge, mile 5.5 at Port Canaveral, shall open on signal; except that, from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the drawbridge need not be opened for the passage of vessels. From 10 p.m. to 6 a.m., the drawbridge shall open on signal if at least three hours notice is given. The drawbridge shall open as soon as possible for the passage of pubic vessels of the United States.

* * * * *

§ 117.277 [Removed]

39. Remove § 117.277.

40. Revise § 117.287 to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

(a) Public vessels of the United States shall be passed through the draw of each bridge listed in this section at any time.

(b) The draw of the Gasparilla Island Causeway drawbridge, mile 34.3, at Boca Grande shall open on signal; except that from January 1 to May 31, from 7 a.m. to 5 p.m., the draw need open only on the hour, quarter hour, half hour and three quarter hour.

(c) The draw of the Venice Avenue bridge, mile 56.6 at Venice, shall open on signal, except that from 7 a.m. to 4:30 p.m., Monday through Friday except Federal holidays, the draw need open only at 10 minutes after the hour, 30 minutes after the hour and 50 minutes after the hour and except between 4:35 p.m. and 5:35 p.m. when the draw need not open.

(d) The draw of the Hatchett Creek (US–41) bridge, mile 56.9 at Venice, shall open on signal, except that, from 7 a.m. to 4:20 p.m., Monday through Friday except Federal holidays, the draw need open only on the hour, 20 minutes after the hour, and 40 minutes after the hour and except between 4:25 p.m. and 5:25 p.m. when the draw need not open. On Saturdays, Sundays, and Federal holidays from 7:30 a.m. to 6 p.m. the draw need open only on the hour, quarter-hour, half-hour, and three quarter-hour.

(e) The draw of the Siesta Drive bridge, mile 71.6 at Sarasota, Florida shall open on signal, except that from 7 a.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour. On weekends and Federal holidays, from 11 a.m. to 6 p.m., the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour.

(f) The draw of the Ringling Causeway (SR 780) bridge, mile 73.6, shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the hour and half hour.

(g) The draw of the Cortez (SR 684) bridge, mile 87.4, shall open on signal; except that from 7 a.m. to 6 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour.

(h) The draw of the Anna Maria (SR 64) bridge, mile 89.2, shall open on signal; except that from 7 a.m. to 6 p.m., the draw need open only on the hour, twenty minutes past the hour and forty minutes past the hour.

(i) The draw of the Pinellas Bayway, Structure "E" (SR 679) bridge, mile 113.0 at St. Petersburg Beach, shall open on signal; except that from 9 a.m. to 7 p.m. the draw need open only on the hour, 20 minutes past the hour and 40 minutes past the hour.

(j) The draw of the Pinellas Bayway, Structure "C" bridge, mile 114, at St. Petersburg Beach shall open on signal; except that from 7 a.m. to 7 p.m., the draw need open only on the hour, twenty minutes past the hour, and forty minutes past the hour.

(k) The draw of the Corey Causeway (SR693) bridge, mile 117.7 at South Pasadena, shall open on signal; except that, from 8 a.m. to 7 p.m. Monday through Friday, and 10 a.m. to 7 p.m. Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(l) The draw of the Treasure Island Causeway bridge, mile 119.0, shall open on signal, except that from 7 a.m. to 7 p.m. the draw need open only on the hour, quarter hour, half hour and three quarter hour. From 11 p.m. to 7 a.m. the draw shall open on signal if at least 10 minutes advance notice is given.

(m) The draw of the Welch Causeway (SR699) bridge, mile 122.8 at Madiera Beach, shall open on signal; except that, from 9:30 a.m. to 6 p.m. on Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour, 20 minutes after the hour, and 40 minutes after the hour.

(n) The draw of the Belleair Causeway bridge, mile 131.8 at Clearwater, shall open on signal; except that, from 12 noon to 6 p.m., on Saturdays, Sundays, and holidays, the draw need be opened only on the hour, quarter hour, half hour, and three-quarter hour.

(o) The draw of the Memorial Clearwater Causeway (SR60) bridge, mile 136.0 at Clearwater, shall open on signal; except that, from 9 a.m. to 6 p.m., the draw need be opened only on the hour, 20 minutes past the hour, and 40 minutes past the hour. From 2 p.m. to 6 p.m. Saturdays, Sundays, and Federal holidays, the draw need be opened only on the hour and half hour.

41. Revise § 117.289 to read as follows:

§ 117.289 Hillsboro Inlet.

The SR A–1–A drawbridge, mile 0.3 at Hillsboro Beach, shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need be opened only on the hour, quarter hour, half hour, and three quarter hour. Public vessels of the United States shall be passed at any time.

42. In § 117.291 revise paragraph (a) to read as follows:

§ 117.291 Hillsborough River.

(a) The drawbridges at Platt Street, mile 0.0, Brorein Street, mile 0.16, Kennedy Boulevard, mile 0.4, Cass Street, mile 0.7, Laurel Street, mile 1.0, West Columbus Drive, mile 2.3, and West Hillsborough Avenue, mile 4.8, must open on signal if at least two hours notice is given; except that, the drawbridge shall open on signal as soon as possible for public vessels of the United States.

* * * * *

43. Revise § 117.305 to read as follows:

§ 117.305 Miami River.

Each drawbridge from the mouth to and including N.W. 27th Avenue bridge, mile 3.7 at Miami, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. Monday through Friday except Federal holidays, the drawbridge need not be opened for the passage of vessels. Public vessels of the

United States shall be passed at any time.

44. Revise § 117.311 to read as follows:

§ 117.311 New Pass.

The State Road 789 drawbridge, mile 0.05, at Sarasota, need only open on the hour, twenty minutes past the hour, and forty minutes past the hour from 7 a.m. to 6 p.m. From 6 p.m. to 7 a.m., the draw shall open on signal if at least 3 hours notice is given to the bridge tender. Public vessels of the United States shall be passed at any time.

45. In § 117.313 revise paragraph (a) to read as follows:

§ 117.313 New River.

(a) The S.E. Third Avenue drawbridge, mile 1.4 at Fort Lauderdale, shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, the drawbridge need not be opened for the passage of vessels. Public vessels of the United States shall be passed at any time.

* * * * *

46. Revise § 117.315 to read as follows:

§ 117.315 New River, South Fork.

(a) The Southwest 12th Street drawbridge, mile 0.9 at Fort Lauderdale, shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Friday, the drawbridge need not be opened for the passage of vessels. Public vessels of the United States shall be passed through the draw as soon as possible.

(b) The SR84 drawbridge, mile 4.4 at Fort Lauderdale, shall open on signal if at least 24 hours notice is given. Public vessels of the United States shall be passed through the draw as soon as possible.

§ 117.317 [Amended]

47. In § 117.317 remove paragraph (a); redesignate paragraphs (b) through (j) as (a) through (i) respectively and in newly redesignated paragraphs (a), and (c), remove the word "Exempt" and add in its place the word "Public".

48. In § 117.325 remove the last sentence in paragraph (a); and revise paragraph (b) to read as follows:

§ 117.325 St. Johns River.

* * * * *

(b) The Fuller Warren (I10–I95) Drawbridge, mile 25.4, at Jacksonville, must open on signal except that, from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m., Monday through Friday except Federal holidays, the drawbridge need not be opened for the passage of vessels. From 9 a.m. to 4 p.m., Monday through Friday except Federal holidays, the drawbridge needs open only on the hour for the passage of vessels.

* * * * *

49. In § 117.353 revise paragraph (a) to read as follows:

§ 117.353 Atlantic Intracoastal Waterway, Savannah River to St. Marys River.

(a) *General.* Public vessels of the United States shall, upon proper signal, be passed through each drawbridge in this section at any time.

* * * * *

§§ 117.486 through 117.488 [Redesignated]

50. Redesignate §§ 117.486 through 117.488 as follows:

Old section	New section
117.486	117.487
117.487	117.488
117.488	117.486

51. In § 117.531 revise paragraph (a)(1) to read as follows:

§ 117.531 Piscataqua River.

(a) * * *

(1) Public Vessels of the United States, commercial vessels over 100 gross tons, inbound ferry service vessels and inbound commercial fishing vessels must be passed through each drawbridge as soon as possible. The opening signal from these vessels is four or more short blasts of a whistle, horn or a radio request.

* * * * *

§ 117.535 [Removed]

52. Remove § 117.535.

53. In § 117.571 revise paragraph (d) to read as follow:

§ 117.571 Spa Creek.

* * * * *

(d) The drawbridge shall always open on signal for public vessels of the United States.

54. In § 117.573 revise paragraph (c) to read as follows:

§ 117.573 Stoney Creek.

* * * * *

(c) Public vessels of the United States shall be passed as soon as possible.

55. In § 117.588 revise paragraphs (a) and (c) to read as follows:

§ 117.588 Bass River.

* * * * *

(a) Public Vessels of the United States shall be passed as soon as possible.

* * * * *

(c) That the Hall Whitaker drawbridge must open on signal if at least 24 hours notice is given.

56. Revise § 117.597 to read as follows:

§ 117.597 Dorchester Bay.

The William T. Morrisey Boulevard drawbridge, mile 0.0 at Boston, shall open on signal from April 16 through October 14; except that the drawbridge need not open for the passage of vessels from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. except on Saturdays, Sundays, or holidays observed in the locality. From October 15 through April 15, the drawbridge shall open on signal if at least 24 hours notice is given. Public vessels of the United States shall be passed as soon as possible.

57. In § 117.605 revise paragraph (c) to read as follows:

§ 117.605 Merrimack River.

* * * * *

(c) The Massachusetts Department of Public Works drawbridges, mile 5.8 at Newburyport and mile 12.6 at Rock Village, and Groveland bridge, mile 16.5 at Groveland, shall open on signal if at least two hours notice is given. Public vessels of the United States shall be passed through the drawbridge as soon as possible.

58. In § 117.618 revise paragraph (b) to read as follows:

§ 117.618 Saugus River.

* * * * *

(b) The General Edwards SR1A drawbridge, mile 1.7, between Revere and Lynn, Massachusetts, must open on signal except that from December 1 through March 31 at least 8 hour advance notice must be given.

* * * * *

59. In § 117.620 revise paragraphs (a) and (c) to read as follows:

§ 117.620 Westport River—East Branch.

(a) Public vessels of the United States shall be passed as soon as possible.

* * * * *

(c) That the Westport Point drawbridge, mile 1.2 at Westport, must open on signal if at least 24 hours notice is given.

60. In § 117.703 revise paragraph (a) to read as follows:

§ 117.703 Bass River.

* * * * *

(a) The drawbridge must open on signal if at least six hours notice is given, except that public vessels of the United States shall be passed as soon as possible.

* * * * *

61. In § 117.713 revise paragraph (a) to read as follows:

§ 117.713 Cooper River.

(a) The State Street drawbridge, mile 0.3 and the Conrail bridge at North River Avenue, mile 0.9, shall open on signal if at least four hours notice is given.

* * * * *

§ 117.731 [Redesignated as § 117.730]

62. Redesignate § 117.731 as § 117.730.

§ 117.731a [Redesignated as § 117.731]

63. Redesignate § 117.731a as § 117.731 and in newly redesignated § 117.731, revise paragraph (c) to read as follows:

§ 117.731 Mullica River.

* * * * *

(c) The drawbridge shall open as soon as possible for public vessels of the United States during the periods when four hours notice is required.

§ 117.733 [Amended]

64. In § 117.733 remove paragraph (a) and redesignate paragraphs (b), (c), (d), (e), (f), (g), (h), (i), (j) as paragraphs (a) through (i) respectively.

65. Revise § 117.736 to read as follows:

§ 117.736 Oceanport Creek.

The New Jersey Transit Rail Operations drawbridge, mile 8.4 near Oceanport, shall open on signal from May 15 through September 15 between 5 a.m. and 9 p.m.; except that, the drawbridge need not open 6 a.m. to 7:45 a.m. and 5:30 p.m. to 7:30 p.m on weekdays except holidays. The drawbridge shall open on signal upon four hours notice from May 15 through September 15 between 9 p.m. and 5 a.m. and from September 16 through May 14; except that, the drawbridge need not be opened from 6 a.m. to 7:45 a.m. and 5:30 p.m. to 7:30 p.m. on weekdays except holidays. Public vessels of the United States shall be passed as soon as possible at any time.

66. In § 117.738 revise paragraph (a)(2) to read as follows:

§ 117.738 Overpeck Creek.

(a) * * *

(2) Public vessels of the United States shall be passed through each drawbridge as soon as possible.

* * * * *

§ 117.739 [Amended]

67. In § 117.739 remove paragraphs (o) and (p)(2); redesignate paragraph (p)(3) as (p)(2) and redesignate (p) as (o).

68. In § 117.745 revise paragraphs (a)(1) and (b), introductory text, to read as follows:

§ 117.745 Rancocas River (Creek).

(a) * * *

(1) Public vessels of the United States shall be passed through each drawbridge as soon as possible without delay at any time. The opening signal from these vessels is four or more short blasts of a whistle or horn, or a radio request.

* * * * *

(b) The SR#543 drawbridge, mile 1.3 at Riverside and the SR#38 drawbridge, mile 7.8 at Centerton, shall operate as follows:

* * * * *

§ 117.775 [Removed]

69. Remove § 117.775.

§ 117.783 [Removed]

70. Remove § 117.783.

71. In § 117.789 revise paragraph (a) to read as follows:

§ 117.789 Harlem River.

(a) Each drawbridge across the Harlem River, except the Spuyten Duyvil railroad bridge, need not be opened from 5 p.m. to 10 a.m. However, at all times, public vessels of the United States shall be passed through each drawbridge listed in this section as soon as possible.

* * * * *

72. In § 117.791 remove paragraph (a)(3); redesignate paragraphs (a)(4) and (a)(5) as (a)(3) and (a)(4) and revise paragraph (f)(4) to read as follows:

§ 117.791 Hudson River.

* * * * *

(f) * * *

(4) During the period that the Federal Lock at Troy is inoperative, the drawbridges need not be opened for the passage of vessels.

§ 117.795 [Amended]

73. In § 117.795, remove paragraph (c).

74. In § 117.797 revise paragraph (a) to read as follows:

§ 117.797 Lake Champlain.

(a) The drawbridges listed in this section shall open as soon as possible for public vessels of the United States.

* * * * *

75. In § 117.799 revise paragraph (a) to read as follows:

§ 117.799 Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal.

(a) At all times, public vessels of the United States, state shall be passed through each drawbridge listed in this section as soon as possible.

* * * * *

§ 117.821 [Amended]

76. In § 117.821 remove paragraph (a)(1) and redesignate (a)(2) through (a)(6) as (a)(1) through (a)(5) respectively.

77. In § 117.823 revise paragraph (a)(3) to read as follows:

§ 117.823 Neuse River.

(a) * * *

(3) Shall always open on signal for public vessels of the United States.

* * * * *

78. In § 117.843 revise paragraph (a)(3) to read as follows:

(a) * * *

(3) Shall always open on signal for public vessels of the United States.

* * * * *

§ 117.867 [Removed]

79. Remove § 117.867 [Reserved]

§ 117.869 [Amended]

80. In § 117.869 remove paragraphs (a)(1) and (a)(2).

§ 117.881 [Amended]

81. In § 117.881 remove paragraph (b) and remove the paragraph designator (a) from paragraph (a).

§ 117.885 [Removed]

82. Remove § 117.885 [Reserved]

§ 117.891 [Removed]

83. Remove § 117.891 [Reserved]

84. Revise § 117.892 to read as follows:

§ 117.892 South Slough.

The Oregon State Highway drawbridge across South Slough at Charleston must open on signal for the passage of vessels, except that between the hours of 7 a.m. and 7 p.m., from June 1 through September 30, the drawbridge need be opened only on the hour and half-hour. This exception must not apply to commercial tugs and/or tows or public vessels of the United States.

§ 117.907 [Removed]

85. Remove § 117.907.

86. In § 117.911 revise paragraph (a) to read as follows:

§ 117.911 Atlantic Intracoastal Waterway, Little River to Savannah River.

(a) *General.* Public vessels of the United States, upon proper signal, will be passed through each drawbridge listed in this section at anytime.

* * * * *

§ 117.949 [Amended]

87. In § 117.949 remove the last sentence.

88. Revise § 117.968 to read as follows:

§ 117.968 Gulf Intracoastal Waterway.

The Port Isabel Drawbridge, mile 666.0, must open on signal; except that, from 5 a.m. to 8 p.m. on weekdays only, excluding holidays, the drawbridge need open only on the hour for pleasure craft. The drawbridge shall open on signal at any time for commercial vessels. When the drawbridge is open for a commercial vessel, waiting pleasure craft must be passed.

89. Revise § 117.977 to read as follows:

§ 117.977 Pelican Island Causeway, Galveston Channel.

The Pelican Island Causeway Drawbridge, mile 356.1 across Galveston Channel at Galveston, shall open on signal: except that, from 7 a.m. to 8:30 a.m., 12 noon to 1 p.m., and 4:15 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the drawbridge need not open for the passage of vessels. Public vessels of the United States shall be passed at any time.

90. In § 117.993 revise paragraph (a) to read as follows:

§ 117.993 Lake Champlain.

(a) The drawbridges listed in this section shall open as soon as possible for the passage of public vessels of the United States.

* * * * *

91. In § 117.997 the last sentence in paragraph (g) and revise paragraphs (b)(2)(i), (d)(2)(i), and (f) to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albermarle and Chesapeake Canal.

* * * * *

(b) * * *

(2) * * *

(i) Need not open for the passage of pleasure craft or commercial vessels that do not qualify under paragraph (b)(2)(ii) of this section.

* * * * *

(d) * * *

(2) * * *

(i) Need not open for the passage of pleasure craft or commercial vessels that do not qualify under paragraph (d)(2)(ii) of this section.

* * * * *

(f) The Draw of the Dominion Boulevard Bridge, mile 8.8, in Chesapeake shall open on signal, except from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays, the drawbridge need not open for the passage of recreational vessels.

* * * * *

92. In § 117.1023 revise paragraph (b) to read as follows:

§ 117.1023 Pamunkey River.

* * * * *

(b) Public vessels of the United States shall pass at any time.

§ 117.1039 [Removed]

93. Remove § 117.1039 [Reserved]

Appendix A to Part 117 [Removed]

94. Remove Appendix A to Part 117.

Dated: April 3, 2003.

David S. Belz,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 03–9083 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WI114–01–7344b, FRL–7484–3]

Approval and Promulgation of Air Quality Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to make a determination that Manitowoc and Door Counties in Wisconsin have attained the one-hour ozone National Ambient Air Quality Standard (NAAQS), and we are proposing to approve the State of Wisconsin's request to redesignate Manitowoc and Door Counties to attainment for ground level ozone. In proposing to approve this redesignation request, we are also proposing to approve the State's plan for maintaining the one-hour ozone standard for the next 10 years as a revision to the Wisconsin State Implementation Plan (SIP). We are notifying the public that we believe the motor vehicle emissions budgets for volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the maintenance plan for Manitowoc and Door Counties are adequate for conformity purposes and are proposing to approve the budgets as part of the maintenance plan. We are also proposing to approve a 1999 periodic inventory for the Milwaukee-Racine ozone nonattainment area. The Wisconsin Department of Natural Resources (WDNR) submitted the redesignation request and SIP revisions on January 28, 2003, and submitted additional information on February 5, 2003 and February 27, 2003. In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to that direct final rule, we plan to take no further action on this proposed rule. If we receive significant adverse comments, in writing, which we have not addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: EPA must receive written comments on or before May 19, 2003.

ADDRESSES: Send written comments to:

Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

You may inspect copies of the documents relevant to this action during normal business hours at the following location:

Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767.

SUPPLEMENTARY INFORMATION:

Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: April 3, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–9348 Filed 4–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0043; FRL–7180–2]

Pesticide Tolerance Nomenclature Changes; Proposed Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to make minor revisions to the terminology of certain commodity terms listed under 40 CFR part 180, subpart C. EPA is proposing this action to establish a uniform listing of commodity terms.

DATES: Comments, identified by docket ID number OPP–2002–0043, must be received on or before June 16, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9368; fax number: (703) 308–9368; e-mail address: *jamerson.hoyt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply To Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturer (NAICS 311)
- Pesticide manufacturer (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0043. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access an electronic copy of the commodity data base entitled *Food and Feed Commodity Vocabulary* go to: *http://www.epa.gov/pesticides/foodfeed/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this

unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0043. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0043. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0043.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0043. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

II. Background

A. What Action is the Agency Taking?

EPA's Office of Pesticide Programs (OPP) has developed a commodity vocabulary data base entitled *Food and Feed Commodity Vocabulary*. The data base was developed to consolidate all the major OPP commodity vocabularies into one standardized vocabulary. As a result, all future pesticide tolerances issued under 40 CFR part 180 will use the "preferred commodity term" as listed in the aforementioned data base. This is the third in a series of documents revising the terminology of commodity terms listed under 40 CFR part 180. Final rules, revising pesticide tolerance nomenclature, were published in the **Federal Register** on June 19, 2002 (67 FR 41802) (FRL–6835–2) and June 21, 2002 (67 FR 42392) (FRL–7180–1). This revision process will establish a uniform presentation of existing commodity terms under 40 CFR part 180. In this rule, EPA is making the following format changes to terminology of the commodity terms in 40 CFR part 180 to the extent the terminology is not already in this format:

1. The first letter of the commodity term is capitalized. All other letters, including the first letter of proper names, are changed to lower case.

2. Commodity terms are listed in the singular although there are the following exceptions: "leaves", "roots", "tops", "greens", "hulls", "vines", "fractions", "shoots", and "byproducts".

3. Commodity terms are amended so that generic terms, such as "corn" and "pea", precede modifying terms, such as "field", "dry" and "summer".

4. Abbreviated terms are replaced with the appropriate commodity terms. Examples - "K=CWHR)" is replaced with "kernel plus cob with husks removed" and "POST-H" is replaced with "postharvest".

5. Parenthesis are replaced with commas. Example - "Cherry (sweet), postharvest" is replaced with "Cherry, sweet, postharvest".

6. Crop group terms are revised to standardize with the "Food and Feed Vocabulary". Examples -

i. "Legume vegetables (succulent or dried) group", "Legume vegetable group (dry and succulent), and "Legume vegetables" are replaced with "Vegetable, legume, group 6".

ii. "Fruit, stone (cherry, peach, plum, prune) group" is replaced with "Fruit, stone,group 12".

iii. "Grass forage, fodder and hay" and "Grass, forage, fodder, and hay" are replaced with "Grass, forage, fodder and hay group 17".

iv. " Herbs and spices" is replaced with "Herb and spice group 19".

In addition to format changes to the commodity terms, this document also includes many revisions to the commodity terms. These revisions replace certain commodity terms that are no longer used by EPA with the appropriate matching term in the "Food and Feed Vocabulary". For example, "Clover, green" is replaced with "Clover, forage", "Peanut vines" is replaced with "Peanut, hay", "Swine, meat" is replaced with "Hog, meat", and "Bushnuts" is replaced with "Nut, macadamia".

This document also proposes the deletion of certain terms that are not needed to identify the tolerance commodities. Examples -

i. The term "preharvest" ("pre-H" or "(PRE-H)") is not needed since tolerances and exemptions established under part 180 apply to residues from only preharvest application, unless otherwise specified, in accordance with 40 CFR 180.1(i).

ii. The term "preslaughter" ("(PRE-S)" or "(PRE-S appli)") is not needed since tolerances and exemptions established under part 180 apply to residues from preslaughter application to livestock, unless otherwise specified.

iii. The terms "nutmeat" and "nutmeats" when used in association with the tree nut crops or peanut are not needed. For tree nut crops, nutmeat and almond hulls are the only edible portions of the crop consumed. Therefore, OPP's Food and Feed Vocabulary uses the commodity terms "Almond", "Pecan", "Walnut", etc. for the tree nuts and the commodity term "Peanut is used in place of "Peanut, nutmeat". Since almond hulls are fed to livestock, tolerances may be established for "Almond, hulls".

III. Statutory and Exective Order Reviews

This document proposes technical amendments to the Code of Federal Regulations which have no substantive impact on the underlying regulations, and do not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical amendment is not a "significant regulatory action" subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental organizations. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action proposes technical amendments to the Code of Federal Regulations which have no substantive impact on the underlying regulations. This technical amendment will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pest, Reporting and recordkeeping requirements.

Dated: April 9, 2003.

James Jones

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is proposed to be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.301 [Amended]

2. In § 180.301, the table to paragraph (a) is amended by changing the term " Corn, fresh, including sweet corn (K=CWHR)" to read "Corn, sweet, kernel plus cob with husks removed" and by realphabetizing the entry into the table.

3. In 180.491, the table to paragraph (a)(3) is revised to read as follows:

§ 180.491 Propylene oxide; tolerances for residues.

(a) * * *

(3) * * *

Commodity	Parts per million
Cocoa bean, bean	300
Gum, edible	300
Nutmeat, processed, except peanuts	300
Spices, processed	300

§ 180.495 [Amended]

4. In § 180.495, the table to paragraph (a) is amended by changing the entry "Poultry, eggs" to read "Egg" and by realphabetizing the entry into the table.

Subpart C— [Amended]

5. Subpart C is amended as follows:

i. By removing the following terms wherever they appear in subpart C:

a. (Pre-H)
b. pre-H
c. (PRE-H)
d. (negligible residue)
e. , nutmeat
f. , nutmeats
g. nut meat
h. nutmeat
i. nutmeats
j. (nutmeats)
k. (nuts)
l. (= N in whole milk)
m. (PRE-S appli)
n. (pre-s)

ii. In the following table, by changing the term exactly as it appears in the

Existing Term column to read exactly like the term in the New Term column wherever it appears in subpart C, and by realphabetizing the new term where necessary.

Existing Term	New Term
Almond, meat	Almond
Amaranth, grain	Amaranth, grain, grain
Animal feed, nongrass, group	Animal feed, nongrass, group 18
Animal feed, nongrass, group, except alfalfa	Animal feed, nongrass, group 18, except alfalfa
Aspirated grain fractions	Grain, aspirated fractions
Banana, pulp with peel removed	Banana, pulp
Banana, whole	Banana
Bean, dry	Bean, dry, seed
Bean, green, postharvest	Bean, succulent, postharvest
Bean, guar	Guar, seed
Bean, lima (green)	Bean, lima, succulent
Bean, mung, dry	Bean, mung, seed
Bean, snap	Bean, snap, succulent
Bean, snap, postharvest	Bean, snap, succulent, postharvest
Bean vine forage	Bean, forage
Beeswax	Honeycomb
Beet	Beet, garden
Beet, greens	Beet, garden, tops
Beet greens (alone)	Beet, garden, tops
Beet, roots	Beet, garden, roots
Beet, sugar, pulp	Beet, sugar, dried pulp
Beet, sugar, pulp (dried and/or dehydrated)	Beet, sugar, dried pulp
Beet, sugar, without tops	Beet, sugar, roots
Beet, tops	Beet, garden, tops
Black walnut meats	Walnut, black
Berry group	Berry group 13
Brassica, head and stem, subgroup	Brassica, head and stem, subgroup 5A
Brassica, head . stem subgroup (5-A)	Brassica, head and stem, subgroup 5A
Brassica, head and stem, subgroup, excluding cabbage	Brassica, head and stem, subgroup 5A, except cabbage
Brassica, leafy greens, subgroup	Brassica, leafy greens, subgroup 5B
Brassica, leafy greens, subgroup (Crop Subgroup 5-B)	Leafy greens subgroup 4A
Brassica vegetables crop group	Vegetable, brassica, leafy, group 5
Buckwheat, postharvest	Buckwheat, grain, postharvest
Buckwheat	Buckwheat, grain
Bushberry subgroup	Bushberry subgroup 13B
Bushnuts	Nut, macadamia
Canarygrass, annual, seed	Grass, canary, annual, seed
Canberries	Caneberry subgroup
Caneberries subgroup	Caneberry subgroup 13A
Caneberry crop subgroup	Caneberry subgroup 13A
Caneberry subgroup	Caneberry subgroup 13A
Canola	Canola, seed
Carambola	Starfruit
Carrot	Carrot, roots
Carrots	Carrot, roots
Carrot, postharvest	Carrot, roots, postharvest
Cattle, milk	Milk
Cherry, sour	Cherry, tart
Cherry (sour)	Cherry, tart
Cherry (sweet), postharvest	Cherry, sweet, postharvest
Chickpea	Chickpea, seed
Chickpeas	Chickpea, seed
Chick pea, seed (dry)	Chickpea, seed
Cilantro	Coriander
Cilantro, leaves	Coriander, leaves
Cipollini, bulb, postharvest	Onion, cipollini, bulb, postharvest
Citrus, pulp	Citrus, dried pulp
Citrus whole fruit	Citrus
Clover, chaff, grown for seed	Clover, seed screenings
Clover, fresh	Clover, forage
Clover, green	Clover, forage
Cocoa	Cocoa bean, dried bean
Cocoa bean	Cocoa bean, dried bean
Coffee	Coffee, bean
Copra	Coconut, copra
Copra, postharvest	Coconut, copra, postharvest
Corn, field, fodder	Corn, field, stover
Corn, field, forage (silage)	Corn, field, forage
Corn, field, milling fractions	Corn, field, milled byproducts
Corn, field, stover (fodder)	Corn, stover
Corn, fodder	Corn, stover
Corn, fodder (dry)	Corn, stover
Corn, fodder (field)	Corn, field, stover
Corn, fodder, field (dry)	Corn, field, stover
Corn, fodder, field (green)	Corn, field, stover
Corn, fodder, pop	Corn, pop, stover
Corn, fodder, sweet	Corn, sweet, stover
Corn, fresh	Corn, sweet, kernal plus cob with husks removed
Corn oil	Corn, field, refined oil
Corn, pop, fodder	Corn, pop, stover

Existing Term	New Term
Corn, pop, stover (fodder)	Corn, pop, stover
Corn, silage	Corn, field, forage
Corn, sweet, fodder	Corn, sweet, stover
Cottonseed	Cotton, undelinted seed
Crambe	Crambe, seed
Crop Group 16 (forage, stover and hay of Grain cereal)	Grain, cereal, forage, fodder and straw, Group 16
Crop Group 15 (Grain, cereal)	Grain, cereal, group 15
Crop Group 17 (grass, forage, and grass, hay)	Grass, forage, fodder and hay, group 17
Dandelions	Dandelion, leaves
Egg, whole	Egg
Field corn, fodder	Corn, field, stover
Filberts (hazelnuts)	Hazelnut
Filbert (Hazelnuts), postharvest	Hazelnut, postharvest
Flaxseed	Flax, seed
Flaxseed meal	Flax, meal
Foliage of legume vegetables	Vegetable, foliage of legume, group 7
Foliage of legume vegetables crop group (foliage)	Vegetable, foliage of legume, group 7
Foliage of legume vegetables (except soybean)	Vegetable, foliage of legume, except soybean, subgroup 7A
Fruit, citrus, group	Fruit, citrus, group 10
Fruit, pome, crop group	Fruit, pome, group 11
Fruit, pome, group	Fruit, pome, group 11
Fruit, stone (cherry, peach, plum, prune), group	Fruit, stone, group 12
Fruit, stone, group	Fruit, stone, group 12
Fruit, stone, group 12, except cherries	Fruit, stone, group 12, except cherry
Fruit, stone, group, except plum	Fruit, stone, group 12, except plum
Fruit, stone, group, except plum and prune	Fruit, stone, group 12, except plum and plum, prune, fresh
Fruit, stone, group, except fresh prune plum	Fruit, stone, group 12, except plum, prune, fresh
Forage, fodder, and straw of Grains, cereal crop group (forage)	Grain, cereal, forage, fodder and straw, group 16, forage
Forage, fodder, and straw of Grains, cereal crop group (hay)	Grain, cereal, forage, fodder and straw, group 16, hay
Forage, fodder, and straw of Grains, cereal crop group (stover)	Grain, cereal, forage, fodder and straw, group 16, stover
Forage, fodder, and straw of Grains, cereal crop group (straw)	Grain, cereal, forage, fodder and straw, group 16, straw
Garbanzo bean	Chickpea, seed
Ginseng	Ginseng, root
Ginseng, dried	Ginseng, dried root
Ginseng root, fresh	Ginseng, root
Grain, aspirated grain fractions	Grain, aspirated fractions
Grain, cereal crop group (grain)	Grain, cereal, group 15
Grain, cereal forage, fodder and straw, group	Grain, cereal, forage, fodder and straw, group 16
Grain, cereal, group	Grain, cereal, group 15
Grain, cereal, group, except wheat	Grain, cereal, group 15, except wheat
Grain, cereal, group (except barley, field corn, grain sorghum, oats, and wheat)	Grain, cereal, group 15, except barley, field corn, grain sorghum, oat, and wheat
Grains, Cereal, Forage, Fodder, and Straw, group	Grain, cereal, forage, fodder and straw, group 16
Grains, Cereal, Group	Grain, cereal, group 15
Grass, canary, annual straw	Canarygrass, annual, hay
Grass fodder	Grass, hay
Grass forage, fodder and hay	Grass, forage, fodder and hay, group 17
Grass, forage, fodder, and hay	Grass, forage, fodder and hay, group 17
Grass, forage, fodder and hay, group	Grass, forage, fodder and hay, group 17
Grass, hay (pasture and rangeland)	Grass, hay
Grass, seed cleanings (including hulls)	Grass, seed screenings
Grass, seed straw (including chaff)	Grass, straw, grown for seed
Head and stem Brassica crop subgroup	Brassica, head and stem, subgroup 5A
Herb and spice group	Herb and spice group 19
Herbs and spices	Herbs and spices group 19
Herb subgroup	Herb subgroup 19A
Herbs subgroup	Herb subgroup 19A
Hop, fresh	Hop, vine
Hop, green	Hop, vine
(inc. sweet K=CWHR)	, kernel plus cob with husks removed
(inc sweet K=CWHR)	, kernel plus cob with husks removed
(including sweet K=CWHR)	, kernel plus cob with husks removed
Leafy greens crop subgroup	Leafy greens subgroup 4A
Leafy greens subgroup	Leafy greens subgroup 4A
Leafy petioles subgroup	Leafy petioles subgroup 4B

Existing Term	New Term
Leafy vegetable (except Brassica) crop group	Vegetable, leafy, except brassica, group 4
Leafy vegetable (except Brassica) vegetables group	Vegetable, leafy, except brassica, group 4
Leafy vegetables (except brassica) group (except spinach)	Vegetable, leafy, except brassica, group 4, except spinach
Leaves of root and tuber vegetables (human food or animal feed) group	Vegetable, leaves of root and tuber, group 2
Legume vegetable group foliage (except soybean, forage and soybean, hay)	Vegetable, foliage of legume, except soybean, subgroup 7A
Legume vegetable group (dry or succulent)	Vegetable, legume, group 6
Legume vegetable group (dry and succulent)	Vegetable, legume, group 6
Legume vegetable (succulent or dried) group	Vegetable, legume, group 6
Legume vegetables	Vegetable, legume, group 6
Legume vegetables crop group, seed	Vegetable, legume, group 6
Legume vegetables (succulent or dried) group	Vegetable, legume, group 6
Legume vegetable (succulent or dried group, excluding soybeans)	Vegetable, legume, group 6, except soybean
Lentils	Lentil, seed
Mandarins	Tangerines
Melon subgroup	Melon subgroup 9A
Mustard, Chinese	Mustard greens
Nongrass animal feed (forage, fodder, straw, and hay)	Animal feed, nongrass, group 18 group
Nut, tree crop group	Nut tree, group 14
Nut, tree, group	Nut, tree, group 14
Nut, tree, group (except Almond, hulls)	Nut, tree, group 14
Oat, fodder	Oat, straw
Oat, forage, green	Oat, forage
Oat, green forage	Oat, forage
Orange	Orange, sweet
Oranges	Orange, sweet
Parsley	Parsley, leaves
Parsley, root	Parsley, turnip rooted, roots
Pea and bean, dried shelled, except soybean, subgroup	Pea and bean, dried shelled, except soybean, subgroup 6C
Pea and bean, succulent shelled, subgroup	Pea and bean, succulent shelled, subgroup 6B
Peach (including nectarines)	Peach
Pea, dried	Pea, dry, seed
Pea, dry	Pea, dry, seed
Pea, forage	Pea, field vines
Pea, hay	Pea, field, hay
Peanut forage	Peanut, hay
Peanut, oil	Peanut, refined oil
Peanut, shells	Peanut, hulls
Pea, southern, blackeyed	Pea, blackeyed
Peanut, vines	Peanut, hay
Peanut forage and hay	Peanut, hay
Pigeon peas	Pea, pigeon, seed
Pineapple bran (wet and dry)	Pineapple, bran
Pistachio nut	Pistachio
Pistachio nuts	Pistachio
Plum, dried	Plum, prune, dried
Potato, waste, dried	Potato, processed potato waste
(PRE- and POST-H)	, postharvest
Raisin	Grape, raisin
Raisins	Grape, raisin
Raisin waste	Grape, raisin, waste
Rape forage	Rapeseed, forage
Rapeseed	Rapeseed, seed
Rape seed	Rapeseed, seed
Rice	Rice, grain
Rice, fodder	Rice, straw
(roots PRE-H)	, roots
Rye, fodder	Rye, straw
Rye, forage, green	Rye, forage
Rye, green forage	Rye, forage
Rye, hay	Rye, forage
Safflower	Safflower, seed
Sorghum, aspirated grain fractions	Grain, aspirated fractions
Sorghum forage	Sorghum, forage
Sorghum, forage	Sorghum, grain, forage
Sorghum grain	Sorghum, grain
Sorghum, green forage	Sorghum, forage, hay
Sorghum milling fraction	Sorghum, grain, flour
Sorghum milling fractions (except flour)	Sorghum, grain, bran
Sorghum (milo)	Sorghum, grain
Sorghum, stover	Sorghum, grain, stover
Sorghum, hay	Sorghum, forage, hay
Sorgum, fodder	Sorghum, grain, stover
Soybean grain	Soybean, seed
Soybean, oil	Soybean, refined oil
Spearmint	Spearmint, tops
Spearmint hay	Spearmint, hay
Spice subgroup	Spice subgroup 19B
Spices subgroup	Spice subgroup 19B

Existing Term	New Term
Squash/Cucumber subgroup	Squash/Cucumber subgroup 9B
Sugarbeet, pulp	Beet, sugar, dried pulp
Sugarcane	Sugarcane, cane
Sunflower	Sunflower, seed
Sunflowers	Sunflower, seed
Sweet potato	Sweet potato, roots
Swine, fat	Hog, fat
Swine, kidney	Hog, kidney
Swine, liver	Hog, liver
Swine, meat	Hog, meat
Swine, meat by-products	Hog, meat byproducts
Tomato, fresh	Tomato
Tomato, fruit	Tomato
(tops PRE-H)	tops
Tree nut (crop group 14), nutmeat	Nut, tree, group 14
Tree nuts (crop group 14)	Nut, tree, group 14
Tuberous and Corm, Vegetable Crop Subgroup	Vegetable, tuberous and corm, subgroup 1C
Turnip, greens, tops	Turnip, greens
Turnip, tops	Turnip, greens
Wheat, fodder	Wheat, straw
Wheat, fodder, green	Wheat, hay
Wheat, forage (green)	Wheat, forage
Wheat, forage, green	Wheat, forage
Wheat, green fodder	Wheat, hay
Wheat, green forage	Wheat, forage
Wheat, stover	Wheat, straw
Vegetable, brassica, leafy, group	Vegetable, brassica, leafy, group 5
Vegetable, brassica, leafy group	Vegetable, brassica, leafy, group 5
Vegetable, brassica, leafy, group (except broccoli, cabbage, cauliflower, brussels sprouts, and mustard greens)	Vegetable, brassica, leafy, group 5, except broccoli, cabbage, cauliflower, brussels sprouts, and mustard greens
Vegetable, bulb, group	Vegetable, bulb, group 3
Vegetable, cucurbit, crop group	Vegetable, cucurbit, group 9
Vegetable, cucurbit, group	Vegetable, cucurbit, group 9
Vegetable, cucurbit, group (Crop Group 9)	Vegetable, cucurbit, group 9
Vegetable, cucurbit, melon, crop subgroup 9-A	Melon subgroup 9A
Vegetable, foliage of legume, except soybean, subgroup	Vegetable, foliage of legume, except soybean, subgroup 7A
Vegetable, foliage of legume, group (except soybean, forage and hay)	Vegetable, foliage of legume, except soybean, subgroup 7A
Vegetable, foliage of legume, group	Vegetable, foliage of legume, group 7
Vegetable, fruiting Crop Group	Vegetable, fruiting, group 8
Vegetable, fruiting, group (Crop Group 8)	Vegetable, fruiting, group 8
Vegetable, fruiting (except cucurbits) group	Vegetable, fruiting, group 8
Vegetables, fruiting (except cucurbits), group	Vegetable, fruiting, group 8
Vegetable, fruiting, group	Vegetable, fruiting, group 8
Vegetable, fruiting group	Vegetable, fruiting, group 8
Vegetable, fruiting, group (except cucurbits)	Vegetable, fruiting, group 8
Vegetable, fruiting, except cucurbit	Vegetable, fruiting, group 8
Vegetable, fruiting, crop group	Vegetable, fruiting, group 8
Vegetable, leaf petiole, subgroup	Leafy petioles subgroup 4B
Vegetable, leafy, except brassica, group	Vegetable, leafy, except brassica, group 4
Vegetable, leafy, except brassica, group (Crop Group 4)	Vegetable, leafy, except brassica, group 4
Vegetable, leafy, except Brassica, group	Vegetable, leafy, except brassica, group 4
Vegetable, leafy group, except brassica	Vegetable, leafy, except brassica, group 4
Vegetable, leaves of root and tuber, group	Vegetable, leaves of root and tuber, group 2
Vegetable, leaves of root and tuber, group (except sugar beet tops)	Vegetable, leaves of root and tuber, group 2, except sugar beet
Vegetable, legume, edible podded, subgroup	Vegetable, legume, edible podded, subgroup 6A
Vegetables, legume, edible podded, subgroup	Vegetable, legume, edible podded, subgroup 6A
Vegetable, legume, group	Vegetable, legume, group 6
Vegetable, legume, group (except soybean)	Vegetable, legume, group 6, except soybean
Vegetable, root and tuber, group	Vegetable, root and tuber, group 1
Vegetable, root, except sugar beet, subgroup	Vegetable, root, except sugar beet, subgroup 1B
Vegetable, root (except sugar beet) subgroup	Vegetable, root, except sugar beet, subgroup1B
Vegetable, root and tuber, group (except sugar beet)	Vegetable, root and tuber, group 1, except sugar beet
Vegetable, root, subgroup	Vegetable, root, subgroup 1A
Vegetable, tuberous and corm, except potato, subgroup	Vegetable, tuberous and corm, except potato, subgroup 1D

Existing Term	New Term
Vegetable, tuberous and corm, subgroup	Vegetable, tuberous and corm, subgroup 1C
Vegetable, tuberous and corm, subgroup (Crop Subgroup 1-C)	Vegetable, tuberous and corm, subgroup 1C
Yams	Yam, true, tuber

[FR Doc. 03–9483 Filed 4–16–03; 8:45 am]

BILLING CODE 6550–50–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 040703A]

RIN 0648–AN87

Fisheries of the South Atlantic; Pelagic Sargassum Habitat in the South Atlantic; Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a revised fishery management plan for the pelagic Sargassum habitat of the South Atlantic Region (FMP); request for comments.

SUMMARY: The South Atlantic Fishery Management Council (SAFMC) has submitted the subject FMP for review, approval, and implementation by NMFS. The FMP would: establish the management unit for Sargassum and stock status criteria for that management unit, designate essential fish habitat (EFH) and EFH habitat areas of particular concern (EFH-HAPC) for Sargassum, and establish harvesting restrictions for *Sargassum* taken in or from the exclusive economic zone (EEZ) off the southern Atlantic states.

DATES: Written comments must be received on or before June 16, 2003.

ADDRESSES: Comments on the FMP, which includes an Environmental Impact Statement, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–522–5583. Comments will not be accepted if submitted via e-mail or Internet.

Requests for copies of the FMP should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; Phone: 843–571–4366; fax: 843–769–4520; e-mail: *safmc@safmc.net*.

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter, 727–570–5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the Sustainable Fisheries Act, requires each Regional Fishery Management Council to submit any fishery management plan or amendment to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a plan or amendment, publish a notice in the **Federal Register** stating that the plan or amendment is available for public review and comment.

Sargassum is an abundant brown algae that occurs near the surface in warm waters of the western North Atlantic. Most *Sargassum* drifts between 2° N. and 40° N. lat. and 30° W. long. and the western edge of the Gulf Stream. The static standing crop of *Sargassum* is estimated to be 4 to 11 million metric tons (mt) or roughly 9 to 24 billion lb. *Sargassum* supports a diverse assemblage of marine organisms, including over 100 species of fish, fungi, micro- and macro-epiphytes, at least 145 species of invertebrates, five species of sea turtles, and numerous marine birds. *Sargassum* creates an unusual situation in regards to fishery management. As plants that may increase their biomass as much as 10 percent per day, floating mats or rafts of *Sargassum* represent a highly renewable natural resource that can be harvested or fished. *Sargassum* vegetation is considered a "fish" under the Magnuson-Stevens Act, and the harvest or take of this natural resource could be managed under a fishery management plan. Additionally, these mats or rafts of *Sargassum* vegetation provide habitat and protection for numerous species of vertebrates and invertebrates, including threatened or endangered sea turtles. Recognizing the importance of *Sargassum* as habitat, the SAFMC previously designated *Sargassum* as EFH and as EFH-HAPC for snapper-grouper species and coastal migratory pelagic (mackerel) species.

The SAFMC is concerned about the impacts of commercial harvest of this important resource. Over a 22–year period (1976–1997), 203.2 mt (448,000 lb) of Sargassum were harvested off the southern Atlantic states. The SAFMC has developed this FMP to protect and manage Sargassum as a fishery resource and to conserve this resource as EFH off the U.S. Atlantic coast from the North Carolina/Virginia boundary through the east coast of Florida, including the Atlantic side of the Florida Keys. In analyzing the proposed actions and alternatives in the FMP, *Sargassum* is discussed as both a fishery resource and as habitat for other managed species. The reader is reminded that discussions of importance of *Sargassum* as EFH for other species, as designated in other FMPs, should not be confused with the SAFMC's designations of EFH for *Sargassum* as a fishery resource in this FMP.

The FMP would establish the management unit for Sargassum as the population of Sargassum occurring within the SAFMC's area of jurisdiction and within state waters of North Carolina, South Carolina, Georgia, and the east coast of Florida. Based on that management unit, the FMP would establish stock status criteria as the following: Maximum Sustainable Yield (MSY) would be designated as 100,000 mt (220,448,550 lb). This is the estimated static standing stock (carrying capacity) off North Carolina, the current area of commercial harvest. Optimum Yield (OY) would be designated as 2.268 mt (5,000 lb). This value represents the average harvest during the period 1990 through 1999. Overfishing would be defined as the rate of harvest which compromises the stock's ability to produce MSY. Overfishing would be determined by establishing a maximum fishing mortality threshold using a measure of the stock's intrinsic rate of increase (r) as a proxy for a fishing mortality rate at MSY, where "r" is estimated to be 9–18 units per year. This overfishing definition would be associated with an MSY of 456,250 to 912,500 mt (100,584,210 to 201,168,430 lb) per year, which is larger than the SAFMC's preferred alternative of 100,000 mt for MSY. The stock would be considered overfished if the stock was reduced below the minimum stock size threshold (MSST). MSST would be established as 25,000 mt (55,114,638 lb), which would be $B_{MSY}/2$, where B_{MSY} is defined as one-half the carrying capacity (MSY) of the harvest area.

In a broad interpretation of the EFH final rule (67 FR 2343, January 17, 2002), the SAFMC would designate EFH and EFH-HAPC as places/locations where *Sargassum* occurs in the SAFMC's area of jurisdiction, including state waters off North Carolina, South Carolina, Georgia, and the east coast of Florida, including the Gulf Stream where it occurs in the EEZ, and the water column from the surface to the sea floor.

To limit the impacts of fishing on *Sargassum*, which already is designated as EFH for snapper and grouper species and coastal migratory pelagic species in other FMPs, the FMP would establish the following harvesting restrictions: (1) prohibit all harvest and possession of Sargassum from the South Atlantic EEZ south of the latitude line representing the North Carolina/South Carolina border (34° N. latitude); (2) prohibit all harvest of *Sargassum* from the South Atlantic EEZ within 100 nautical miles of shore between the 34° N. latitude line and the latitude line representing the North Carolina/Virginia border; (3) allow the harvest of *Sargassum* from that portion of the South Atlantic EEZ that is greater than 100 nautical miles from shore between the 34° N. latitude line and the latitude line representing the North Carolina/Virginia border during the months of November through June; (4) establish an annual Total Allowable Catch (TAC) of 2.268 mt (5,000 lb) landed wet weight of *Sargassum*; (5) require that a NMFS-approved observer be present on each *Sargassum* harvesting trip; and (6) require that nets used to harvest *Sargassum* be constructed of 4–inch (10–cm) stretch mesh or larger fitted to a frame no larger than 4 ft (1.22 meters) by 6 ft (1.83 meters).

A proposed rule that would implement measures outlined in the FMP has been received from the SAFMC. In accordance with the Magnuson-Stevens Act, NMFS is evaluating the proposed rule to determine whether it is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. If that determination is affirmative, NMFS will publish the proposed rule in the **Federal Register** for public review and comment.

Comments received by June 16, 2003, whether specifically directed to the FMP or the proposed rule, will be considered by NMFS in its decision to approve, disapprove, or partially approve the FMP. Comments received after that date will not be considered by NMFS in this decision. All comments received by NMFS on the FMP or the proposed rule during their respective comment periods will be addressed in the preamble of the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 11, 2003.

Richard W. Surdi,

Acting Office Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9490 Filed 4–16–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 74
Thursday, April 17, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV03–996–1–notice]

Peanut Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Request for nominations.

SUMMARY: The Farm Security and Rural Investment Act of 2002 requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary on quality and handling standards for domestically produced and imported peanuts. The initial Board was appointed by the Secretary and announced on December 5, 2002. USDA seeks nominations of individuals to be considered for selection as Board members for terms of office ending June 30, 2006. Nominees sought by this action would replace those producer and industry representatives who are serving for the initial one-year term of office that ends June 30, 2003. The Board consists of 18 members representing producers and industry representatives.

DATES: Written nominations must be received on or before May 19, 2003.

ADDRESSES: Nominations should be sent to Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 2A04, Unit 155, 4700 River Road, Riverdale, MD 20737; telephone: (301) 734–5243; Fax: (301) 734–5275; e-mail: *Kenneth Johnson@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 1308 of the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) (Farm Bill) requires the Secretary of Agriculture to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary regarding the establishment of quality and handling standards for all domestic and imported peanuts marketed in the United States. The Farm Bill requires the Secretary to consult with the Board before the Secretary establishes or changes quality and handling standards for peanuts.

The Farm Bill provides that the Board consist of 18 members, with three producers and three industry representatives from the States specified in each of the following producing regions: (a) Southeast (Alabama, Georgia, and Florida); (b) Southwest (Texas, Oklahoma, and New Mexico); and (c) Virginia/Carolina (Virginia and North Carolina).

For the initial appointments, the Farm Bill required the Secretary to stagger the terms of the members so that: (a) One producer member and peanut industry member from each peanut producing region serves a one-year term; (b) one producer member and peanut industry member from each peanut producing region serves a two-year term; and (c) one producer member and peanut industry member from each peanut producing region serves a three-year term. The term "peanut industry representatives" includes, but is not limited to, representatives of shellers, manufacturers, buying points, marketing associations and marketing cooperatives and other like entities. The Farm Bill exempted the appointment of the Board from the requirements of the Federal Advisory Committee Act. The initial Board was appointed by the Secretary and announced on December 5, 2002.

USDA invites those individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Board. Nominees sought by this action would replace one producer and one industry member from each peanut producing region who served for the initial one-year term of office that ends June 30, 2003. New members would serve for a 3-year term of office ending June 30, 2006.

Nominees should complete a Peanut Standards Board Background Information form and submit it to Mr. Johnson. Copies of this form may be obtained at the internet site: *http://www.ams.usda.gov/fv/peanut-farmbill.htm,* or from Mr. Johnson. USDA seeks a diverse group of members representing the peanut industry.

Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure that the recommendations of the Board have taken into account the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

Authority: Section 1308 of Public Law 107–171.

Dated: April 10, 2003.

A.J. Yates,

Administrator, Agriculture Marketing Service.

[FR Doc. 03–9408 Filed 4–16–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–039–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulation issued under the Animal Welfare Act governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers.

DATES: We will consider all comments that we receive on or before June 16, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 03–039–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–039–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 03–039–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information regarding the regulations for the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers, contact Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234; (301) 734–7833. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Animal Welfare.

OMB Number: 0579–0093.

Type of Request: Extension of approval of an information collection.

Abstract: The regulations in 9 CFR parts 1 through 3 were promulgated under the Animal Welfare Act (the Act) (7 U.S.C. 2131 *et. seq*) to ensure the humane handling, care, treatment, and transportation of regulated animals under the Act. The Act and regulations are enforced by USDA's Animal and Plant Health Inspection Service (APHIS).

The regulations in 9 CFR part 3, subparts A, D, and E cover dogs and cats, nonhuman primates, and marine mammals, respectively. Subpart F of 9 CFR part 3 covers warmblooded animals other than dogs, cats, nonhuman primates, marine mammals, rabbits, guinea pigs, and hamsters. Regulated facilities are required to keep certain records and provide specific information regarding APHIS' space, transportation, exercise plan, and perimeter fence requirements. We review this information to evaluate program compliance.

The reporting and recordkeeping requirements of 9 CFR part 3, subparts A, D, E, and F do not mandate the use of any official government form.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of response.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.48266615 hours per response.

Respondents: Dealers, exhibitors, research facilities, carriers, and intermediate handlers.

Estimated annual number of respondents: 8,190.

Estimated annual number of responses per respondent: 8.833211233.

Estimated annual number of responses: 72,344.

Estimated total annual burden on respondents: 34918 hours (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 11th day of April 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–9407 Filed 4–16–03; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Forest Service

Caribou-Targhee National Forest, Fremont County, ID, Big Bend Vegetation Management Project

AGENCY: Forest Service, USDA.

ACTION: Notice.

Revision of the Notice of Intent to prepare an Environmental Impact Statement for the Big Bend Ridge Vegetation Management Project, as published in the **Federal Register** page 40876 to 40877 on July 31, 1998 (Vol. 63, No. 147). This revision includes a change of project schedule and treatment acres.

SUMMARY: The USDA, Forest Service is preparing an Environmental Impact Statement of document the analysis and disclose the environmental impacts of the proposed Big Bend Vegetation Management Project, a timber sale and vegetation treatment. This revised Notice of Intent is to document some minor changes in the process.

In the original NOI, the tentative date for filing the Draft EIS was December of 1998 and the Final EIS was scheduled for March, 1999. Due to scheduling changes, the Draft EIS is now expected to be available for review in April, 2003. The final EIS is scheduled to be completed about July 2003.

The original NOI proposed approximately 1800 acres of prescribed burning to rejuvenate maple and aspen, reduce fuels in the wildland urban interface, improve big game winter range and test methods of Douglas-fir regeneration. The proposed action now proposes a total of 123 acres of prescribed burning. The objective of the 123 acres of burning is to promote aspen and shrubs in a high use big game wintering area. The rejuvenation of maple and the majority of big game winter range improvement were determined to be unnecessary. Timber harvest is now being proposed to accomplish aspen regeneration, big game browse improvement and fuels reduction. A nearby 2001 wildfire is being used to evaluate Douglas-fir regeneration from fire.

The original NOI proposed approximately 2500 acres of commercial thinning with 70 percent of it helicopter or cable harvest and 30 percent done with crawler tractor. The proposed action now includes 3023 acres of commercial thinning, improvement cutting and sanitation salvage with 40 percent helicopter harvest and 60 percent ground based harvest.

Dated: April 10, 2003.

Jerry B. Reese,

Caribou-Targhee National Forest Supervisor.

[FR Doc. 03–9420 Filed 4–16–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

New Mexico Collaborative Forest Restoration Program Technical Advisory Panel

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The New Mexico Collaborative Forest Restoration Program Technical Advisory Panel will meet in Albuquerque, New Mexico. The purpose of the meeting is to provide recommendations to the Regional Forester, USDA Forest Service Southwestern Region, on which forest restoration grant proposals submitted in response to the Collaborative Forest Restoration Program Request For Proposals best meet the objectives of the Community Forest Restoration Act (Title VI, Pub. L. No. 106–393).

DATES: The meeting will be held May 19–23, 2003, beginning at 1 p.m. on Monday, May 19 and ending at approximately 4 p.m. on Friday, May 23.

ADDRESSES: The meeting will be held at the Wyndham Albuquerque Hotel, 2910 Yale SE, Albuquerque, NM 87106, telephone (505) 244–8554. Written comments should be sent to Walter Dunn, at Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE, Albuquerque, NM 87102. Comments may also be sent via e-mail to *wdunn@fs.fed.us*, or via facsimile to Walter Dunn at (505) 842–3165.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at the Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE, Albuquerque, or during the Panel meeting at the Wyndham Albuquerque Hotel, 2910 Yale SE, Albuquerque, NM. Visitors are encouraged to call ahead to the Wyndham Albuquerque Hotel, 2910 Yale SE, Albuquerque, NM 87106, telephone (505) 244–8554 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Walter Dunn, Designated Federal Official, at (505) 842–3425, or Angela Sandoval, at (505) 842–3289, Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE, Albuquerque, NM 87102.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to the Forest Service staff and Council members. However, persons who wish to bring Collaborative Forest Restoration Program Grant Review matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by May 19, 2003 will have the opportunity to address the Council at those sessions.

Dated: April 10, 2003.

Abel M. Camarena,

Deputy Regional Forester.

[FR Doc. 03–9419 Filed 4–16–03; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the New York Advisory Committee to the Commission will convene a planning meeting via conference call on Wednesday, May 5, 2003 from 9 a.m. until 10:30 a.m. The purpose of the meeting is to plan a community forum on civil rights issues and post-9/11 law enforcement-community relations in New York.

This conference call is available to the public through the following call-in number: 1–800–473–8796, access code: 15778611. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Aonghas St. Hilaire of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116), by 4 p.m. on Friday, May 2, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC April 11, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–9450 Filed 4–16–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Extension of Time Limit of Preliminary Results of New Shipper Reviews: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit of the preliminary results of the four new shipper reviews initiated on November 1, 2002 (67 FR 67822) under the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China until no later than August 28, 2003. The period of review is September 1, 2001, through August 31, 2002. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Dana Mermelstein, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–3782 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(1) of the regulations require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated, and final results of review within 90 days after the date on which the preliminary results were issued. However, if the Department determines that the issues are extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the regulations allow the Department to extend the deadline for the preliminary results to up to 300 days after the date on which the new shipper review was initiated.

Background

The Department received timely requests for new shipper reviews of the antidumping order on freshwater crawfish tail meat from the People's Republic of China from the following: exporter Qingdao Jin Yong Xiang Aquatic Foods Co., Ltd., and its producer, Hefei Zhongbao Aquatic Co. Ltd.; producer and exporter, Hubei Qianjiang Houhu Frozen & Processing Factory; exporter Siyang Foreign Trading Corporation and its producer, Anhui Golden Bird Agricultural Products Development Co., Ltd.; and from producer and exporter, Zhoushan Huading Seafood Co., Ltd. These requests were filed in accordance with section 751(a)(2)(B) of the Act and section 351.214 of the Department's regulations. On November 1, 2002 the Department initiated these new shipper reviews covering the period September 1, 2001, through August 31, 2002. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping New Shipper Reviews*, 67 FR 67822 (November 7, 2002). The preliminary results of these reviews were scheduled for April 30, 2003.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B)(iv) of the Act, the Department may extend the deadline for completion of the preliminary results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that these cases are extraordinarily complicated, and the preliminary results of these new shipper reviews cannot be completed within the statutory time limit of 180 days. The Department finds that these new shipper reviews are extraordinarily complicated because there are a number of issues that must be addressed. For example, the Department has issued supplemental questionnaires requesting additional information concerning the bona fides of the sales under review, as well as supplemental questions regarding labor factors and other factors. Given the issues in this case, the Department may find it necessary to issue additional supplemental questionnaires in these new shipper reviews. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the regulations, the Department is extending the time limit for the completion of the preliminary results to three hundred (300) days from the date of initiation. The preliminary results will now be due no later than August 28, 2003.

This notice is published pursuant to sections 751(a)(2)(B)(iv) and 777(i)(1) of the Act.

Dated: April 11, 2003.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–9514 Filed 4–16–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–841]

Structural Steel Beams From Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administration Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for the preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the antidumping duty administrative review of structural steel beams ("SSB") from Korea.

EFFECTIVE DATE: April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Aishe Allen AD/CVD Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1102 or (202) 482–0172 respectively.

Background: On August 6, 2002, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on SSB from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 50856 (August 6, 2002). On August 30, 2002, Dongkuk Steel Mill Co., Ltd. ("DSM") and INI Steel Company ("INI"), Korean producers of subject merchandise, requested that the Department conduct an administrative review of their sales of subject merchandise during the period of review ("POR"). Also, on August 30, 2002, petitioners [1] requested that the Department conduct an administrative review of INI. On September 25, 2002, the Department published a notice of initiation of a review of SSB from Korea covering the period August 1, 2001 through July 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, (67 FR 60210) (September 25, 2002). The Department's preliminary results are currently due on May 3, 2003.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), and section 351.213(h)(2) of the Department's regulations, state that if it is not practicable to complete the review within the time specified, the administering authority may extend the 245-day period to issue its preliminary results by up to 120 days. Completion of the preliminary results of this review within the 245-day period is not practicable because the review involves significant affiliation issues, and a large number of transactions for each company (*i.e.*, DSM and INI). Additionally, the Department is investigating sales and cost for both companies which require the Department to gather and analyze a significant amount of information pertaining to each company's sales practices, manufacturing costs and corporate relationships.

Therefore, in accordance with section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department is extending the time period for issuing the preliminary results of review by 120 days until August 31, 2003. The final results continue to be due 120 days after the publication of the preliminary results.

This notice is issued and published in accordance with section 751(a)(3)(A) of the Act, and Section 351.213(h)(2) of the Department's regulations.

Dated: April 11, 2003.

Richard O. Weible,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–9513 Filed 4–16–03; 8:45 am]

BILLING CODE 3510–DS–M

[1] Petitioners are Nucor Corporation, Nucor Yamato Steel Co., and TXI-Chaparral Steel Co.

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 2002 through December 31, 2002. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Alicia Kinsey, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) ("the Act") requires the Department of Commerce (≥the Department") to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's annual list of subsidies on articles of cheese that were imported during the period October 1, 2002 through December 31, 2002.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: April 9, 2003.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

APPENDIX

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross[1] Subsidy ($/lb)	Net[2] Subsidy ($/lb)
Austria	European Union Restitution Payments	$ 0.29	$ 0.29
Belgium	EU Restitution Payments	$ 0.02	$ 0.02
Canada	Export Assistance on Certain Types of Cheese	$ 0.22	$ 0.22
Denmark	EU Restitution Payments	$ 0.05	$ 0.05
Finland	EU Restitution Payments	$ 0.00	$ 0.00
France	EU Restitution Payments	$ 0.03	$ 0.03
Germany	EU Restitution Payments	$ 0.07	$ 0.07
Greece	EU Restitution Payments	$0.01	$0.01
Ireland	EU Restitution Payments	$ 0.07	$ 0.07
Italy	EU Restitution Payments	$ 0.03	$ 0.03
Luxembourg	EU Restitution Payments	$0.07	$0.07
Netherlands	EU Restitution Payments	$ 0.04	$ 0.04
Norway	Indirect (Milk) Subsidy	$ 0.34	$ 0.34
	Consumer Subsidy	$ 0.15	$ 0.15
		$0.49	$0.49
Portugal	EU Restitution Payments	$ 0.04	$ 0.04
Spain	EU Restitution Payments	$ 0.02	$ 0.02
Switzerland	Deficiency Payments	$ 0.06	$ 0.06
U.K.	EU Restitution Payments	$ 0.05	$ 0.05

[1]Defined in 19 U.S.C. 1677(5).
[2]Defined in 19 U.S.C. 1677(6).

[FR Doc. 03–9512 Filed 4–16–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Mission

July 14–19, 2003.

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to apply to participate in the below described overseas trade mission. For a more complete description of the trade mission, obtain a copy of the mission statement from the contact officer indicated for this mission below.

Business Development Mission to Romania and Bulgaria

Bucharest and Sofia

Deputy Secretary of Commerce, Samuel Bodman, with Assistant Secretary and Director General of the U.S. and Foreign Commercial Service, Maria Cino, and Assistant Secretary of Commerce for Market Access and Compliance, William Lash, will lead a senior-level business development mission to help U.S. companies explore business opportunities in Romania and Bulgaria. The delegation will include 10–15 U.S.-based senior executives of small, medium and large U.S. firms representing, but not limited to, the following sectors: automotive parts, building products, information technology, telecommunications, defense industry, energy, medical products, environmental technologies, and tourism infrastructure.

Recruitment closes on May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Wright, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 2012, Washington, DC 20230, telephone 202–482–2567, fax 202–482–0178, or e-mail *Matthew.Wright@mail.doc.gov.*

SUPPLEMENTARY INFORMATION:

Goals for the Mission

The mission will further both U.S. commercial policy objectives and advance specific business interests. It is intended to: assist individual U.S. companies to pursue business opportunities by introducing them to government decision-making officials and to potential business partners; assist new-to-market firms to evaluate the market potential for their products and gain an understanding of how to operate successfully in Romania and Bulgaria; enhance the dialogue between government and industry on issues affecting the development of commercial relations; promote U.S. and Romanian and Bulgarian trade and investment and, as a result, contribute to the political and economic stability of important American allies; and assist U.S. companies to take advantage of opportunities arising from NATO accession.

Scenario for the Mission

American Embassy officials will provide a detailed briefing on the economic, commercial and political climate, and participants will receive individual counseling on their specific interests from the in-country U.S. Commercial Service industry specialists. Meetings will be arranged as appropriate with senior government officials and potential business partners. Networking events also will be organized to provide opportunities to meet Romanian and Bulgarian business and government representatives, as well as U.S. business people living and working in Romania and Bulgaria. The tentative trip itinerary is as follows: July 14, arrive Bucharest; July 15–16, one-on-one business meetings in Bucharest and evening travel to Sofia; July 17–18, one-on-one business meetings in Sofia. The precise schedule will depend in part on the availability of local government and business officials and the specific goals of the mission participants.

Recruitment and selection of private sector participants for this mission will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

Dated: April 11, 2003.

Carlos Poza,

Deputy Director General, U.S. & Foreign Commercial Service.

[FR Doc. 03–9421 Filed 4–16–03; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041403A]

Proposed Information Collection; Comment Request; Southwest Region Permit Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 16, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Alvin Katekaru, 808–973–2935, ext. 2072937, or at Alvin.Katekaru@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

Permits are required for persons to participate in Federally-managed fisheries in the western Pacific region and off the West Coast. There are three types of permits: basic fishery permits (e.g., western Pacific general longline fishing and receiving permits, precious coral permits, and troll or handline permits for pelagic management unit species in waters around the U.S. Pacific remote island areas); limited entry permits for selected fisheries (e.g., Hawaii longline fishery, Northwestern Hawaiian Islands (NWHI) bottomfish fishery, West Coast coastal pelagic fishery); and experimental fishing permits (EFPs). Appeals and certain waivers requests can also be submitted. Some fisheries require an application to transfer a permit.

The permit application forms provide basic information about permit holders and the vessels and gear being used. This information is important for understanding the nature of the fisheries and provides a link to participants. It also aids enforcement of regulations.

II. Method of Collection

Paper forms are required for most permit applications. Experimental fishing permits, waivers, and appeals are submitted in paper format, but forms are not used.

III. Data

OMB Number: 0648–0204.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations, individuals or households.
Estimated Number of Respondents: 369.
Estimated Time Per Response: 30 minutes for a permit application or permit transfer (unless otherwise noted below); 1 hour for additional permit information (when requested) for the coastal pelagic fishery of the Pacific coast; 1 hour for a limited entry permit application for bottomfish in the NWHI Ho'omalu Zone; 2 hours for a permit appeal; 2 hours for an application for an exemption or experimental fishing permit; and 1 hour for a waiver for NWHI Ho'omalu Zone or Mau Zone bottomfish permit renewal requirements.

Estimated Total Annual Burden Hours: 248.

Estimated Total Annual Cost to Public: $185.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–9487 Filed 4–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041403B]

Submission for OMB Review; Comment Request

SUPPLEMENTARY INFORMATION: The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Limits on Application of Take Prohibitions.

Form Number(s): None.

OMB Approval Number: 0648–0399.

Type of Request: Regular submission.

Burden Hours: 4,235.

Number of Respondents: 318.

Average Hours Per Response: 20 hours for a road maintenance agreement; 5 hours for a diversion screening limit project; 30 hours for an urban development package; 15 hours for a tribal plan or joint state/tribal plan; 10 hours for a fishery harvest or hatchery plan; 5 hours for a report of aided, salvaged, or disposed of salmonids; 2 hours for a research permit; 5 hours for an artificial propagation plan; and 5 hours for an annual report.

Needs and Uses: Section 4(d) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et. seq.) requires the National Marine Fisheries Service (NMFS) to adopt such regulations as it "deems necessary and advisable to provide for the conservation of" threatened species. Those regulations may include any or all of the prohibitions provided in section 9(a)(1) of the ESA, which specifically prohibits "take" of any endangered species ("take" includes actions that harass, harm, pursue, kill, or capture). The first salmonid species listed by NMFS as threatened were protected by virtually blanket application of the section 9 take prohibitions. There are now 20 separate Evolutionarily Significant Units (ESUs) of west coast salmonids listed as threatened, covering a large percentage of the land base in California, Oregon, Washington and Idaho. NMFS is obligated to enact necessary and advisable protective regulations.

NMFS makes section 9 prohibitions generally applicable to many of those threatened ESUs, but also seeks to respond to requests from states and others to both provide more guidance on how to protect threatened salmonids and avoid take, and to limit the application of take prohibitions wherever warranted. The regulations describe programs or circumstances that contribute to the conservation of, or are being conducted in a way that adequately limits impacts on, listed salmonids. The regulations do not apply the take prohibitions to those programs and circumstances. Certain of these limits on the take prohibitions entail submission of a plan to NMFS and/or annual or occasional reports by entities wishing to take advantage of these limits, or continue within them.

Affected Public: State, Local, or Tribal Government; business or other for-profit organizations, and farms.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–9488 Filed 4–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041403C]

Proposed Information Collection; Comment Request; Southwest Region Logbook Family of Forms.

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 16, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Alvin Katekaru, 808–973–2935, ext. 2072937, or at *Alvin.Katekaru@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Participants in Federally-managed fisheries in the western Pacific are required to provide certain information about their fishing activities. These can include logbooks, notifications, and other requirements, as well as use of a Vvessel monitoring system (VMS). The information is needed for the management of the fisheries.

II. Method of Collection

Reports from a Vessel Monitoring SystemVMS are automatic and electronic. Pre-landing and pre-offloading notifications are made by phone or FAX. Other submissions are made in paper form.

III. Data

OMB Number: 0648–0214.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations, individuals or households.

Estimated Number of Respondents: 162.

Estimated Time Per Response: 5.25 minutes per day for a logbook in Pacific Ppelagic fisheries (unless otherwise noted); 5 minutes per report for logbooks in the western Pacific Ccrustacean or pelagic toll or handline (in the Pacific remote islands area) fisheries; 7 minutes per day for a logbook in the western Pacific Pprecious Ccoral fishery; 5 minutes per report for a pelagic longline transhipment logbook; 5 minutes for a crustacean sales report in a logbook; 3 minutes for an at-sea crustacean catch report; 3 minutes for a crustacean pre-trip or pre-offloading notice; 1 hour per longline observer placement meeting; 4 hours for a claim of lost longline fishing time; 5 minutes for a report on lobster trapsgear left at sea; 5 minutes for a precious corals sales report; 2 hours for a protected species interaction report in the Northwestern Hawaiian Islands (NWHI) bottomfish fishery; 3 minutes for a NWHI lobster pre-season Vessel Monitoring System (VMS) report; 4 hours for installation of a VMS unit in Hawaii-based longline fishery; 2 hours for annual maintenance of a VMS unit in the Hawaii longline fishery; 24 seconds a day for automated VMS position reports from the Hawaii longline area closures; 4 hours for an experimental fishing report; 5 minutes for a pelagic management unit species dealer report; 24 seconds/day for notification of entry to/exit from a protected species zone[automated position report via a VMS]; 30 minutes for a request for longline closed area exemption; 5 minutes for crustacean dealer packing, weigh-out slips, and records; 3 minutes for a NWHI bottomfish fishery pre-trip notification; and 3 minutes for a NWHI bottomfish pre-landing notification.

Estimated Total Annual Burden Hours: 2,339.

Estimated Total Annual Cost to Public: $3,293.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 10, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–9489 Filed 4–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032703F]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits 1430 and 1431 and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application for scientific research from Jones & Stokes (J&S) in Sacramento, CA (1430) and California Department of Water Resources (CDWR) in Sacramento, CA (1431). These permits would affect federally threatened Central Valley spring-run Chinook salmon and Central Valley steelhead. This document serves to notify the public of the availability of the permit applications for review and comment.

DATES: Written comments on the permit applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific Standard Time on May 19, 2003.

ADDRESSES: Written comments on this request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the Internet. The applications and related documents are available for review by appointment, for permits 1430 and 1431: Protected Resources Division, NMFS, 650 Capitol Mall, Suite 8–300, Sacramento, CA 95814 (ph: 916–930–3600, fax: 916–930–3629). Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: Rosalie del Rosario at phone number 916–930–3600, or e-mail: *Rosalie.delRosario@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531B1543) (ESA), is based on a finding that such permits/modifications: (1) are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

This notice is relevant to the federally threatened Central Valley spring-run Chinook salmon (*Oncorhynchus tshawytscha*) and threatened Central Valley steelhead (*O. mykiss*).

Applications Received

J&S requests a 1–year permit (1430) for take of adult and juvenile threatened Central Valley spring-run Chinook

salmon and threatened Central Valley steelhead to assess potential impacts of water transfers on Central Valley fall-run Chinook salmon, spring-run Chinook salmon, and steelhead in the lower Yuba River. J&S requests authorization for an estimated total take of 18,306 adult spring-run Chinook salmon (that includes 0.5 percent incidental mortality) and 2,000 adult steelhead (0.5 percent incidental mortality) resulting from observation and release of adult fish, and 619,865 juvenile spring-run Chinook salmon (0.9 percent incidental mortality) and 18,324 juvenile steelhead (2 percent incidental mortality) resulting from capture, handling, and releasing of juvenile fish.

CDWR requests a 5–year permit (1431) for take of adult and juvenile Central Valley spring-run Chinook salmon and Central Valley steelhead associated with studies to evaluate the effects of Oroville-Thermalito Complex operations on andromous fishes in the Feather River. The studies concern spring-run Chinook salmon holding areas and spawning areas, Chinook salmon spawning escapement surveys, and steelhead life history. CDWR requests authorization for an estimated annual take resulting from carcass surveys, marking, releasing, and/or tissue samples of 40,555 adult spring-run Chinook salmon (that includes >0.01 percent incidental mortality) for the first 3 years and 50 adult spring-run Chinook salmon annually thereafter, 115 adult steelhead (4 percent incidental mortality), and 775 juvenile steelhead (3 percent incidental mortality) resulting from the proposed studies.

Dated: April 11, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–9492 Filed 4–16–03; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040103B]

Availability of Draft Environmental Assessment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that NMFS has prepared a draft environmental assessment (EA) of impacts on the human environment of the potential issuance of three enhancement permits authorizing take of listed salmon and steelhead in the upper Columbia River Basin associated with the operation of artificial propagation programs. This document serves to notify the public of the availability of the draft EA for review and comment before a final decision on whether to issue a Finding of No Significant Impact is made by NMFS.

DATES: Written comments on the draft EA must be received no later than 5 p.m. Pacific daylight time on May 2, 2003.

ADDRESSES: Written comments on the application should be sent to Hatcheries and Inland Fisheries Branch, Sustainable Fisheries Division, NMFS, 525 N.E. Oregon Street, Suite 510, Portland, Oregon 97232. Comments may also be sent via fax to (503) 872–2737. Comments will not be accepted if submitted via e-mail or the Internet. Requests for copies of the draft EA should be directed to the Portland office. The document also is available on the Internet at *http://www.nwr.noaa.gov/* or it may be reviewed by appointment during business hours at the Portland office by calling (503) 230–5409.

FOR FURTHER INFORMATION CONTACT: Kristine Petersen, Portland, Oregon, at phone number: (503) 230–5409, e-mail: *Kristine.Petersen@noaa.gov*

SUPPLEMENTARY INFORMATION: This document is relevant to the following species and evolutionarily significant units (ESUs):

Steelhead (*Oncorhynchus mykiss*): endangered Upper Columbia River.

Chinook salmon (*O. tshawytscha*): endangered Upper Columbia River spring run.

Background

National Environmental Policy Act (NEPA) requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. NMFS expects to take action on ESA section 10(a)(1)(A) submittals expected from the applicants. Therefore NMFS is seeking public input on the scope of the required NEPA analysis, including the range of reasonable alternatives and associated impacts of any alternatives.

On June 12, 2002, NMFS received an application for an ESA section 10 permit from the Washington Department of Fish and Wildlife requesting a multi-year authorization for an annual take of Upper Columbia River steelhead and Upper Columbia River spring chinook salmon associated with proposed steelhead artificial propagation programs intended to enhance the natural production of ESA-listed Upper Columbia River steelhead. Notice of the receipt of this permit application was published in the **Federal Register** on August 1, 2002, and a public informational meeting was held on August 28, 2002, in Wenatchee, WA to inform the public of the receipt of this permit application.

In April 2002, negotiations on the Anadromous Fish Agreement and Habitat Conservation Plans (HCP) for Rocky Reach Hydroelectric Project (Federal Energy Regulatory Commission (FERC) License Number 2145), Rock Island Hydroelectric Project (FERC License Number 943), and the Wells Hydroelectric Project (FERC License Number 2149) were completed related to the re-licensing of Wells Dam with Public Utilities District No. 1 of Douglas County, and Rocky Reach Dam, and Rock Island Dam with Public Utilities District No. 1 of Chelan County. These long-term agreements provide for mitigation in the form of artificial propagation programs to replace unavoidable losses to natural fish production. The artificial propagation component of each HCP specifies the number and species to be reared. The impacts of the HCP on the environment were considered in an Environmental Impact Statement (EIS) which was published for comment in the **Federal Register** on December 27, 2002.

On June 11, 2002, NMFS received a similar application for an ESA section 10 permit from the U.S. Fish and Wildlife Service, requesting a multi-year authorization for an annual take of Upper Columbia River steelhead and Upper Columbia River spring chinook salmon associated with a steelhead artificial propagation program in the Methow River Basin. Notice of the receipt of this permit application was published in the **Federal Register** on August 1, 2002, and a public informational meeting was held on August 28, 2002, in Wenatchee, WA to inform the public of the receipt of this permit application.

On October 23, 2002, NMFS received an application for a section 10 permit from the Confederated Tribes of the Colville Reservation, requesting a multi-year authorization for an annual take of ESA-listed Upper Columbia River steelhead and Upper Columbia River spring chinook salmon associated with a steelhead artificial propagation program in the Okanogan River Basin.

Funding for this program has been allocated through the Pacific Salmon Coastal Recovery Fund administered by NMFS, and is consistent with Bureau of Reclamation steelhead recovery efforts ongoing in the Okanogan Basin. Notice of the receipt of this permit application was published in the **Federal Register** on January 14, 2003.

In total the proposed programs would provide artificial propagation and release of about 1.03 million ESA-listed Upper Columbia River steelhead into the Upper Columbia River Basin and for the monitoring and management of the returning adult steelhead to the Upper Columbia River Basin. The general effects on the environment considered include the impacts on the physical, biological, and socioeconomic environments of the Upper Columbia River Basin.

Dated: April 8, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected ResourcesNational Marine Fisheries Service.

[FR Doc. 03–9493 Filed 4–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030409080–3080–01; I.D. 031103D]

RIN 0648–ZB41

Financial Assistance for North Atlantic Right Whale Research Programs Through A Competitive Grants Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce (DOC).

ACTION: Notice of solicitation for applications.

SUMMARY: The National Marine Fisheries Service (NMFS)(hereinafter "we" or "us") issues this document to solicit applications for Federal assistance under the North Atlantic Right Whale Grant Program (RWGP). This document describes how to submit applications for funding in FY 2003 under the Program and how we will determine which applications will be funded. Under the RWGP, we will provide financial assistance to eligible researchers working within waters inhabited by North Atlantic right whales and submitting applications pertaining only to this species. Applications will be reviewed for eligibility, technical merit, and consistency with the RWGP's goals and regional funding priorities. Final selection will be based on results of a peer review process (described below), as well as other restrictions based on appropriations language.

DATES: The application package must be postmarked by 5 p.m. (local time)June 16, 2003. The package must include: (1) one signed original of the entire application and all required forms, and (2) two signed copies of the entire application and all required forms (including supporting documentation). The applicant may also voluntarily submit an electronic copy (on CD or diskette in Microsoft Word v. 97 or earlier or WordPerfect v. 9 or lower) of the narrative project description.

ADDRESSES: All application packages should be sent to NOAA/NMFS Right Whale Grants Program, Protected Species Branch, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, email *rightwhalegrants@noaa.gov*.

Federal forms and required elements of the application packages can be obtained from the NMFS Right Whale Grants Program webpage at *http://www.nefsc.noaa.gov/psb/grantforms*. We cannot accept completed applications via the Internet or facsimile at this time.

FOR FURTHER INFORMATION CONTACT: Dr Phillip J. Clapham, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, 508 495–2316, email *rightwhalegrants@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

For fiscal year (FY) 2002, Congress directed that $1 million for right whale research be administered through a competitive grants program operated by the Northeast Consortium. For FY 2003 (and in future years if continued), this grant program will be administered by NMFS as the Right Whale Grants Program (hereafter referred to as the RWGP). This document describes how to submit applications for funding in FY 2003 under the RWGP and how we will determine which applications will be funded.

A. Background

Management of marine mammal populations falls within the jurisdiction of the National Marine Fisheries Service (NMFS) under the Marine Mammal Protection Act (MMPA) of 1972 and, for some species, under the Endangered Species Act (ESA) of 1973. The agency is mandated to conserve the endangered species under its jurisdiction, and must undertake actions to prevent further decline of populations, facilitate their recovery, and safeguard the quality of their habitat.

The North Atlantic right whale (*Eubalaena glacialis*) is among the world's most endangered cetaceans. The population is believed to number only about 300 individuals and appears to be declining. The lack of recovery is due in part to high mortality from human sources, notably fishing gear entanglements and vessel collisions. A Recovery Plan is in effect (NMFS 1991), and conservation of this species is a high priority for NMFS. Research directed at facilitating such conservation or to provide monitoring of the population's status and health, is also a high priority for the agency.

The RWGP is conducted by the Secretary of Commerce to provide Federal assistance to eligible researchers for: (1) detection and tracking of right whales; (2) behavior of right whales in relation to ships; (3) relationships between vessel speed, size or design with whale collisions; (4) modeling of ship traffic along the Atlantic coast; (5) population monitoring and assessment studies; (6) reproduction, health and genetic studies; (7) development of a Geographic Information System database or other system designed to investigate predictive modeling of right whale distribution in relation to environmental variables; (8) habitat quality studies including food quality and pollutant levels; and (9) any other work relevant to the recovery of North Atlantic right whales. The RWGP is administered by the Protected Species Branch of the NOAA/NMFS Northeast Fisheries Science Center in Woods Hole, Massachusetts.

B. Objectives

The principal objectives of the RWGP are to fund research or other activities that can provide information useful to management of North Atlantic right whales, with emphasis on understanding or mitigation of factors inhibiting the species' recovery.

Successful applications will be those that have a high probability of providing novel information that can be used to monitor the status and health of the North Atlantic right whale population, or to improve management strategies aimed at reducing risk from human factors or at otherwise facilitating the population's recovery. Priority will be given to researchers with a demonstrated track record of publishing the results of previous work in the peer-reviewed scientific literature.

C. Funding

This solicitation announces that a maximum of $2.0M may be available for distribution under the 2003 RWGP, in award amounts to be determined by the applications and available funds. There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If one incurs any costs prior to receiving any award agreement signed by an authorized NOAA official, one would do so solely at one's own risk of these costs not being included under the award. There is no set minimum or maximum amount for any award.

There is no limit on the number of applications that can be submitted by the same researcher during the 2003 competitive grant cycle. However, there are insufficient funds to award financial assistance to every applicant. Multiple applications submitted must clearly identify different projects and must be successful in the competitive review process.

Other researchers may be identified as Co-Investigators or collaborators on as many RWGP applications as needed so long as the total of all support does not exceed 100 percent of their time. In addition, Department of Commerce may act as collaborators if they are responsible for performing analyses on data collected under a RWGP award. See section I.D. for Eligibility Requirements.

There is no guarantee that sufficient funds will be available to make awards for all qualified projects. Publication of this notice does not oblige NOAA to award any specific project or to obligate any available funds. If an application for a financial assistance award is selected for funding, NOAA/NMFS has no obligation to provide any additional funding in connection with that award in subsequent years. However, multiple-year projects will be considered under the RWGP.

Notwithstanding any verbal or written assurance that applicants have received, pre-award costs are not allowed under the award unless the Grants Officer approves them in accordance with 15 CFR 14.28.

D. Eligibility

Eligible applicants are individuals, institutions of higher education, other nonprofits, commercial organizations, international organizations, foreign governments, organizations under the jurisdiction of foreign governments, and state, local and Indian tribal governments. Federal agencies, or employees of Federal agencies are not eligible to apply.

We support cultural and gender diversity in our programs and encourage eligible women and minority individuals and groups to submit applications. Furthermore, we recognize the interest of the Secretary of Commerce in defining appropriate marine management policies and programs that meet the needs of the U.S. insular areas, so we also encourage applications from eligible individuals, government entities, universities, colleges, and businesses in U.S. insular areas as defined by the Marine Mammal Protection Act (MMPA) (section 3(14), 16 U.S.C. 1362). This includes the Commonwealth of Puerto Rico, the U. S. Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands.

We are strongly committed to broadening the participation of Minority Serving Institutions (MSIs), which include Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities, in our programs. The DOC/NOAA/NMFS vision, mission, and goals are to achieve full participation by MSIs, to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. Therefore, we encourage all eligible applicants to include meaningful participation of MSIs whenever practicable.

NOAA/NMFS employees (whether full-time, part-time, or intermittent) are not allowed to help in the preparation of applications. NMFS staff are available to provide information regarding statistics on right whales, programmatic goals and objectives, ongoing marine mammal programs, Regional funding priorities, and, along with other Federal Program Officers, can provide information on application procedures and completion of required forms. Since this is a competitive program, NMFS and NOAA employees shall not provide assistance in conceptualizing, developing, or structuring applications, or write letters of support for any application. However, for activities that involve collaboration with current NMFS programs on North Atlantic right whales, employees of NMFS can write a letter verifying that they are collaborating with the project. Federal employee travel and salaries are not allowable costs under this program.

E. Permits and Approvals

It is the applicant's responsibility to obtain all necessary Federal, state, and local government permits and approvals where necessary for the proposed work to be conducted.

Applicants are expected to design their proposals so that they minimize the potential adverse impact on the environment. If applicable, documentation of requests or approvals of environmental permits must be included in the proposal package. These documents will help the NMFS staff determine if the application requires the preparation of an environmental assessment. Applications will be reviewed to ensure that they have sufficient environmental documentation to allow program staff to determine whether the proposal is categorically excluded from further NEPA analysis or whether an environmental assessment is necessary. For those applications needing an environmental assessment, affected applicants will be informed after the peer review stage and will be requested to assist in the preparation of a draft of the assessment (prior to award).

If the proposed research involves intrusive research (50 CFR 216.27(c)(6)) or an approach to within 500 yds of a right whale, the applicant must have submitted a complete MMPA/ESA scientific research and enhancement permit application before funding will be awarded. Intrusive research is defined under 50 CFR 216.3 as a procedure that involves: a break in or cutting of the skin or equivalent, insertion of an instrument or material into an orifice, introduction of a substance or object into the animals= immediate environment that is likely either to be ingested or to contact and directly affect animal tissues (*i.e.*, chemical substances), or a stimulus directed at animals that poses a risk to the health or welfare of the animal or has the potential to impact normal function or behavior (e.g., audio broadcasts directed at animals that potentially affects behavior, brainstem auditory evoked responses, etc.).

If proposed activities will take place within National Marine Sanctuaries, National Parks, National Seashores, and other Federally designated protected areas, it is the applicant's responsibility to request and obtain from the appropriate government agencies any necessary permits or letters of agreement prior to award.

For further information on permit requirements and applications procedures for federal natural resource permits, contact the NMFS Office of Protected Resources or see *http://www.nmfs.noaa.gov/prot_res/PR1/Permits/pr1permits_types.html.*

Failure to apply for and/or obtain Federal, state, and local permits, approvals, letters of agreement, or failure to provide environmental analyses where necessary (*i.e.*, NEPA environmental assessment) will also delay the award of funds if a project is otherwise selected for funding.

F. Duration and Terms of Funding

Fiscal year 2003 awards under the RWGP will have a maximum project period of 3 years.

If an applicant wishes to continue work on a project funded through this program beyond the project period and obligated award funds have not been expended by the end of this period, the applicant can notify the assigned Federal Program Officer 30 days prior to the end of the period to determine eligibility for a no-cost extension.

If a application is selected for funding, we have no obligation to provide any additional future funding in connection with that award. Renewal of an award is totally at our discretion.

G. Cost Sharing

Not applicable.

H. Catalog of Federal Domestic Assistance

The RWGP will be listed in the "Catalog of Federal Domestic Assistance" under number 11.472, titled "Unallied Science Programs". This information should be included on the Application Form, 424, space 10 (see section III, Application Instructions and Requirements, below).

I. Where to Send Applications

All application packages should be sent to NOAA/NMFS Right Whale Grants Program, Protected Species Branch, Northeast Fisheries Science Center, 166 Water Street, Woods Hole, MA 02543, 508 495–2316, email *rightwhalegrants@noaa.gov.*

J. Electronic Access Addresses

This solicitation, complete application packages (including required Federal forms) with instructions and addresses for submission are available on the NMFS RWGP web page at *http://www.nefsc.noaa.gov/psb/grantforms.*

II. Funding Priorities

For this solicitation, all applications must fall within at least one of the 9 following categories: (1) Detection and tracking of right whales; (2) Behavior of right whales in relation to ships; (3) Relationships between vessel speed, size or design with whale collisions; (4) Modeling of ship traffic along the Atlantic coast; (5) Population monitoring and assessment studies; (6) Reproduction, health and genetic studies; (7) Development of a Geographic Information System database or other system designed to investigate predictive modeling of right whale distribution in relation to environmental variables; (8) Habitat quality studies including food quality and pollutant levels; and (9) Any other work relevant to the recovery of North Atlantic right whales.

You must select only one of the 9 categories that best fits your application. Since we recognize that some projects could be designed to meet more than one category, you should determine which category best fits the goals of your proposed project.

The priorities are not listed in any particular order and each is of equal importance. Note that the purpose of the priority list is to guide applicants in application development by identifying those applications that will best compete during this grant cycle for these limited funds, and to provide technical reviewers with guidance for their evaluations. Applications will not be pooled or categorized by NMFS region, although regional funding priorities within NMFS may be a factor in the final ranking of applications.

Details of funding priorities for each of the 9 categories are as follows:

1. Detection and Tracking of Right Whales

Studies, including those involving passive or active acoustic tracking, as well as tagging or other telemetry, which improve knowledge of the distribution and movements of right whales in order to (among other things) better assess risks from ship-strike and fishing gear entanglements.

2. Behavior of Right Whales in Relation to Ships

Investigations of behavior or other biological factors which govern the response of right whales to ships and thus may affect the likelihood that right whales will collide with, or successfully avoid, oncoming vessels. This component may also include experiments to assess the response of right whales to ship-avoidance deterrence methods (e.g. "alarm" stimuli).

3. Relationships Between Vessel Speed, Size or Design with Whale Collisions

Investigations (using modeling or any other means) of how collision risk varies with the speed, size or design of a ship.

4. Modeling or Other Studies of Ship Traffic Along the Atlantic Coast

Investigations which provide novel information on patterns of ship traffic along the Atlantic coast of North America (U.S. and Atlantic Canada), in order to better assess, by area, the risk of collisions between ships and right whales.

5. Population Monitoring and Assessment Studies

Field or modeling studies which provide data or analysis for monitoring/assessment of population size and trend, vital rates, population structure, or distribution.

6. Reproduction, Health and Genetic Studies

Studies of the reproductive biology of right whales, of individual animal health (incorporating physiology, pathology or other methods), or of genetics (including but not limited to genetic diversity, population structure, effective population size, and paternity).

7. Development of a Geographic Information System Database or Other System Designed to Investigate Predictive Modeling of Right Whale Distribution in Relation to Environmental Variables

Studies seeking to correlate right whale distribution and environmental variables in order to reliably predict future aggregations of right whales from remotely sensed (or other) environmental data.

8. Habitat Quality Studies Including Food Quality and Pollutant Levels

Investigations of habitat quality, including abundance and quality of available prey resources, pollutant levels, and interactions of environmental variables with prey resources.

9. Any Other Work Relevant to the Recovery of North Atlantic Right Whales

Studies or other projects on topics not specifically covered in Categories 1–8 above, but which have the potential to contribute important information about North Atlantic right whales or to enhance their recovery.

III. Application Instructions and Requirements

The instructions in this document are designed to help applicants in preparing and submitting a application for Federal funding under the RWGP. All required federal forms, the narrative description of the budget and proposed project, and applicable supporting documentation must be complete and must follow the

format described here. One signed original and two signed copies of the complete application package must be submitted. The original application and copies should not be bound in any manner and must be printed on one side only. In addition, applicants may also voluntarily submit an electronic copy (on diskette or CD in Microsoft Word v. 97 or earlier or WordPerfect v. 9 or lower) of the narrative project description. The required unbound original and two copies, and the electronic copy (if the applicant wishes to submit one) must be sent to the address listed in section I.I of this document and postmarked by the submission deadline (see DATES) in order to be considered in the 2003 competition. We are not required to screen applications before the submission deadline, nor do we have to give applicants an opportunity to correct any deficiencies leading to rejection. However, we strongly recommend early submission of applications in the event that we have the resources to pre-screen. Note that there will be no extensions of the deadline for application revisions and that any revised applications must be re-submitted by the original solicitation deadline.

A. Required Federal Forms

Cover Sheets

SF–424 "Application for Federal Assistance" ("Catalog of Federal Domestic Assistance" number is 11.472, and title is "Unallied Science Programs")

SF–424B "Assurances - Non-Construction Programs" Project Budget

SF–424A "Budget Information - Non-Construction Programs≥Certifications and Disclosures

CD–511 "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying"

SF-LLL "Disclosure of Lobbying Activities" (as required under 15 CFR part 28)

CD–346 "Name Check"

B. Required Federal Forms for Construction Applications

Not applicable.

C. Required Elements of all Project Applications

You must follow the instructions in this document in order to apply for a grant under the RWGP. Your application must be complete and must follow the format described here. Your application must not be bound in any manner and must be printed on one side only. You must submit one signed original and two signed copies of your application. These unbound applications must be sent to the Application Addresses listed in Section I.I of this document by the application deadline (see **DATES**).

Assistance in filling out required forms and avoiding common problems can be found on the NOAA Grants web site at *http:// www.rdc.noaa.gov/grants/ index.html*. The RWGP web page at *http:// www.nefsc.noaa.gov/psb/ grantforms* has the forms necessary for applying for funds under the RWGP.

A complete application package must include the following elements:

1. Cover Sheet

Office of Management and Budget (OMB) Standard Forms 424 and 424B (4–92) or 424D must be the cover sheets for each application. To complete item 10 of Standard Form 424, the "Catalog of Federal Domestic Assistance" number is 11.472 and the title is "Unallied Science Program". For item 13 of Standard Form 424, a start date no earlier than 1 September 2003 should be selected.

2. Project Budget

Each application must include clear and concise budget information, both on the required Federal forms, in summary and in narrative detail.

Applications must use OMB standard form 424A, "Budget Information - Non Construction Programs" and associated form instructions.

All instructions should be read before completing the appropriate form. Federal columns on these forms must be filled in completely and separately and the amounts per category and total amounts must correspond with the budget narrative and justification.

On a separate sheet, describe and justify in narrative detail or on a spreadsheet the itemized costs per category and the corresponding direct and indirect cost totals. If the applicant currently has a negotiated indirect cost rate with the Federal Government, an amount for indirect costs can be included in the budget. Indirect costs are overhead costs for basic operational functions (e.g., lights, rent, water, insurance) that are incurred for common or joint objectives and, therefore, cannot be identified specifically within a particular project. Indirect costs can be included in the Federal cost as long as the method of calculation is clear and certain rules are followed. If indirect costs are included, the package should include a copy of the current, approved, negotiated indirect cost agreement with the Federal Government.

We will not consider fees, fund-raising activities, travel for Federal employees, salaries for federal employees, or profits as allowable costs in the proposed budget. The total costs of a project consist of all allowable costs you incur in accomplishing project activities during the project period. A project begins on the effective date of an award agreement between you and the Grants Officer and ends on the date specified in the award. Accordingly, we cannot reimburse applicants for time expended or costs incurred in developing a project or preparing the application, or in any discussions or negotiations with us prior to the award. We will not accept such expenditures as part of your cost share.

3. Title Page

A Title Page must be included for each project. The Title Page must list the project title, project duration (with a start date no earlier than 1 September 2003), applicant name, name of Principal Investigator or Contact, address and phone number of the Principal Investigator or Contact, the RWGP application category under which the project fits (see section II of this document), the project's objective(s), and a statement regarding the total costs of the project.

4. Project Summary

In 6 sentences or less, briefly summarize: project goals and objectives as they relate to the RWGP application categories (*i.e.*, Categories 1 to 9), Program goals; proposed activities; geographic area where activities would occur; and expected outcomes and benefits from the activities of the project. This summary will be posted on our website if the project is funded.

5. Narrative Project Description

The narrative description of the proposed project must not exceed 10 pages (not including curricula vitae, tables or figures, and supplemental documentation) and must be typed in Times New Roman size 12 font and double-spaced. The narrative should demonstrate the applicant's knowledge of the need for the project, and show how the proposed project builds upon any past and current work in the subject area, as well as relevant work in related fields. Applicants should not assume that reviewers already know the relative merits of the project.

The narrative project description must include each of the following elements in the order listed here:

(a) Project goals and objectives (maximum 2 pages). Identify the RWGP goal, listed earlier in this document, to which the project's goals and objective(s) correspond. Identify the problem/opportunity the project intends to address and describe its significance to the understanding and management of North Atlantic right whales. State expected project accomplishments.

(b) Project management (maximum 3 pages, excluding resume and curricula vitae). Describe how the proposed project will be organized and managed (e.g., financial accounting systems to be used and point of contact responsible for managing those systems, etc.).

The lead organization/individual and person listed as the technical contact, should be identified as the Principal Investigator. The Principal Investigator may or may not be the applicant. However, if the applicant is not the Principal Investigator, there must be an explanation of the relationship between the applicant and Principal Investigator (e.g., applicant will be responsible for managing the grant funds and the Principal Investigator will be responsible for completing the project milestones on time and within budget, etc.). One Principal Investigator must be designated on each project. If a Principal Investigator is not identified, we will return the application. Project participants or organizations that will have a significant role in conducting the project should be listed as Co-investigators. Organizations or individuals that support the project, for example, researchers contributing data or materials, should be referred to as Cooperators. Copies of the Principal Investigator's and all Co-investigator's current resumes or curricula vitae must be included in the package's Supporting Documentation section. In addition, the proof of eligibility documents (see II.C.6. Supporting Documentation) provided and listed in the Supporting Documents section of the application must name the Principal Investigator and/or Co-investigator. List any Federal awards the Principal Investigator and Co-investigators have received within the last five years and describe resultant products of such awards. Provide a statement of no more than one page on the qualifications and experience (e.g., resume or curriculum vitae) of consultants and/or subcontractors that are not named as Co-investigators and any Cooperators.

Include copies of agreements between the Principal Investigator and other participants in the project, describing the specific activities each participant would perform. Include copies of any endorsements received from institutions related to this project.

If any portion of the project will be conducted through consultants and/or subcontracts, procurement guidance found in 15 CFR part 24, "Grants and Cooperative Agreements to State and Local Governments," and 15 CFR part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations" must be followed. Describe how provisions for competitive subcontracting will be met if applicable.

(c) Project statement of work (maximum 6 pages). This is a narrative of the work plan that will ensure the proposed project's goals and objectives are met within the proposed award period. It should include detailed descriptions of activities, collaborators, milestones, and expected products resulting from a successfully completed project. The narrative should respond to the following questions:

(1) What specific activities does the project include and how do these activities relate to the project's goals and objectives?

(2) Who will be responsible for carrying out each activity? Highlight activities that will be conducted by Co-investigators or Cooperators, or by sub-contractors, volunteers, and others designated as Co-investigators or Cooperators. For all projects, highlight activities that will be subcontracted. Use of volunteer staff time to complete project activities and oversight of those volunteers should be discussed. The Principal Investigator is responsible for all technical oversight and implementation of the approved work plan as delineated in this Statement of Work.

(3) What are the project milestones? List milestones, describing specific activities and associated time lines necessary to meet them. Describe the time lines in increments (e.g., month 1, month 2, etc.), rather than by specific dates. (d) What are the major outcomes, results, or products expected? Describe expected outcomes, results, or products that will directly relate to the RWGP goals (*i.e.*, under Categories 1–9).

(4) How will outcomes, results, or products be disseminated or shared? Describe how project outcomes, results or products will be disseminated to or shared with researchers, managers and other potential users.

(5) Project impacts (maximum 1 page). Describe the potential impacts of this proposed project on the recovery of North Atlantic right whales. Identify any other potential project impacts.

(6) Project performance evaluation (maximum 1 page). Specify the quantitative and/or qualitative criteria to be used in evaluating the relative success or failure of the project in achieving the stated project goals and objectives.

6. Supporting Documentation

In order to be considered for an award in this funding cycle, the applicant must provide proof of eligibility documents.. Applicants requiring MMPA/ESA scientific research and enhancement permits or a Letter of Authorization (LOA) to conduct work on entangled animals, must include evidence they have submitted a complete MMPA/ESA application or a copy of their LOA in this section.

Applicants proposing activities that may require an environmental assessment under NEPA must include sufficient environmental analyses (*i.e.*, permit documentation) to allow program staff to determine whether or not the proposal can be categorically excluded from further NEPA analysis.

Curricula vitae or resumes of the Principals and Co-Investigators and all other required federal forms (*i.e.*, CD–511, SF-LLL, CD–346) must be included here.

Any other relevant documents and additional information that will help us to understand the proposed project and the problem/opportunity the project seeks to address should be included in this section.

Supporting documents will not count as a part of the 10 page limit.

IV. Screening, Review, and Selection Procedures

Screening, review, and selection procedures will take place in 3 steps, described in detail in this section: initial screening, peer review, and final selection by the Selecting Official (*i.e.*, the Science and Research Director, Northeast Fisheries Science Center). The peer review step will involve at least 3 individual reviewers per application. The Selecting Official will make the final decision regarding which applications will be funded based upon evaluations submitted by the peer reviewers as well as policy considerations such as costs, financial need, and duplication with other federally funded projects.

A. Initial Screening

The initial screening will ensure that application packages have all required forms and application elements (listed below and in Section III), clearly relate to the 2003 RWGP, and meet all of the eligibility criteria identified in Section I.D of this document.

Application packages received by the Protected Species Branch, Northeast Fisheries Science Center and

postmarked by the submission deadline will be screened to ensure that they: were postmarked by the due date (see DATES); include one original and 2 signed copies of the entire application package; include the correct OMB forms (424, 424A or 424D, and 424B) signed and dated (see section III.A and III.B of this document); identify a Principal Investigator and provide current resumes or curricula vitae for both the Principal and Co-Investigators (see section III.C); identify one of the 9 project categories (see section II); include application package elements 1 through 6 (see section III.C); and include MMPA or ESA permit application cover letters, and other environmental documentation, if applicable. Applications that pass this initial screening will be pooled based on the application category (*i.e.*, Categories 1–9) identified by the applicant.

Our ability to pre-screen is dependent upon the submission deadline and the availability of resources.

B. Peer Review

After initial screening, a team of reviewers will be asked to independently evaluate applications in the reviewers' specific area of expertise for technical soundness and feasibility, and for relevance to the overall goals of the RWGP. The review results will be used to numerically rank the applications and provide comments on the technical aspects and Program relevance of each application.

The Program category and proposed activities of each application will be used in selecting the most appropriate technical reviewers. Reviewers will include private and public sector experts by application category, and will include (but not necessarily be limited to) experts from fields such as marine mammal biology, conservation biology, population biology, reproductive biology, telemetry, modeling, genetics, statistics, marine ecology, oceanography, toxicology, veterinary medicine, pathology, marine affairs, fisheries biology, fisheries management, and marine mammal management. Each technical reviewer will be required to certify that they do not have a conflict of interest concerning the application(s) they are reviewing prior to their review.

To determine the technical soundness and feasibility of each application, and its relevance to the RWGP goals, the reviewers will provide an independent review using the weighted criteria outlined in Section IV.C. below. Each application will be reviewed by at least three reviewers. No consensus advice will be given by the reviewers. On a scale of 0–100, the reviewers will score the application in each criterion. An average, weighted score will be generated from each review using the numeric score per criteria and the weights assigned to each criteria.

C. Review Criteria

1. Soundness of Project Goals, Objectives, and Activities

Applications will be evaluated on clear identification of project goals and objectives and the ability to link those goals and objectives to project activities and the applicability of the project's goals and objectives to the RWGP goals. Reviewers should consider: the likelihood of meeting milestones and achieving anticipated results in the time line specified in the statement of work; the sufficiency of information to evaluate the project technically; if such information is sufficient, the strengths and/or weaknesses of the technical design relative to securing productive results; and if data collection is proposed, the inclusion of quality assurance considerations. the contribution of potential outcomes, results, or products to North Atlantic right whale biology and management; and, the amount of collaboration with other researchers in the right whale field. (Score = 1–50; Weight = 50 percent)

2. Adequacy of Project Management

The management of the project will be evaluated based on documentation of previous related experience and qualifications of the project's Principal Investigator, Co-investigator(s) and other personnel, including designated contractors, consultants, and Cooperators. Consideration will be made to previous awards received by the Principal Investigator and outcomes, results, or products (notably peer-reviewed scientific publications) resulting from such awards. (Score = 1–25; Weight = 25 percent)

3. Identification and Suitability of Project Performance Evaluation Methods

Applications will be scored based on their clear identification of performance evaluation methods and the suitability of those methods for evaluating the success or failure of the project in terms of meeting its original goals and objectives. (Score = 1–10; Weight = 10 percent)

4. Justification, Clarity, and Allocation of Project Costs

The proposed costs and overall budget of the project will be evaluated in terms of the work proposed. The itemized costs and the overall budget must be justified and allocated appropriately. (Score = 1–15; Weight = 15 percent)

Applicants proposing activities that may require an environmental assessment under NEPA must include sufficient environmental analyses to allow program staff to determine whether or not the proposal can be categorically excluded from further NEPA analysis. If insufficient documentation is provided or if proposals cannot be categorically excluded from NEPA review, the applicant will be notified after peer review that further information or an environmental assessment is necessary. Further documentation must be supplied immediately and the environmental assessments must be completed in time prior to the final consideration for funding.

After applications have undergone peer review, NMFS Protected Species staff will summarize panel rankings by averaging the scores and prepare recommendations for funding to the Selecting Official (i.e. the Science and Research Director (SRD), Northeast Fisheries Science Center). Only those applications having an average weighted score higher than 60 points in the peer review will be considered for funding.

In making recommendations to the Selecting Official, NMFS Protected Species staff generally recommend proposals in numerical rank order. They may make recommendations out of numerical rank order based upon a determination that the proposal satisfies one or more of the following factors: the potential value of the work to Program goals, NEPA review, and duplication with other federally funded or permitted projects.

D. Final Selection Procedures

The Selecting Official may reject the recommendation for any proposal selected out of numerical order or accept the recommendation as submitted. If the recommendation is rejected, the Selecting Official will provide a rationale for his/her selection based on the potential value of the work to Program goals, the NEPA review, and duplication with other federally funded or permitted projects. As a result, funding may not necessarily be given to applications which receive the highest rankings in the peer review process.

E. Project Funding

The final, exact amount of funds, the scope of work, and terms and conditions of a successful award will be determined in pre-award negotiations between the applicant and NOAA/NMFS representatives. Applicants should not initiate any project in expectation of Federal funding until they receive a grant award document signed by an authorized NOAA official.

Unsuccessful applications will be held by the Program Office for a period of one year from the date of receipt and then destroyed.

V. Administrative Requirements

The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements is contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation. The notice advises applicants of their responsibilities as applicants for Federal assistance.

If costs are incurred prior to receiving an award agreement signed by an authorized NOAA official, applicants do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that applicants have received, the Department of Commerce has no obligation to cover pre-award costs.

A. Obligations of Recipients (Successful Applicants)

Applicants awarded a grant for a project must:

1. Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

2. Keep records sufficient to document any costs incurred under the award, and allow access to these records for audit and examination by the Secretary of Commerce, the Comptroller General of the United States, or their authorized representatives; and, submit financial status reports (SF 269) to NOAA's Grants Management Division in accordance with the award conditions.

3. Submit annual reports, and for projects extending beyond a year, final reports within 90 days after completion of each project, to the individual identified as the NMFS Program Officer in the funding agreement. The final report must describe the project and include an evaluation of the work performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project.

We are committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, we suggest (but do not require) that applicants submit final reports in electronic format for publication on the NMFS Protected Species Home Page. Should this prove impracticable, applicants must then submit three printed copies of the final report. Awardees can charge the costs associated with preparing and transmitting your final reports to the grant award.

4. In addition to the final report, we require that successful applicants publish the results of their work in a timely fashion in the peer-reviewed scientific literature (except in specific cases where publication is not relevant to the nature of the proposed work). NMFS request that awardees submit any publications printed with award funds (such as manuals, surveys, etc.) to the NMFS Program Officer for dissemination to the public. Publications should be submitted either as three hard copies or in an electronic version.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act (APA) or any other law for this notice concerning grants, benefits, and contracts (5 U.S.C. section 553(a)(2)).

Because notice and comment is not required under the APA, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act (5 U.S.C. section 601 *et seq.*

This action has been determined to be not significant for purposes of Executive Order 12866.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This document contains collection-of-information requirements subject to the PRA. The use of Standard Forms 424, 424A, 424B, 424D, 269, SF-LLL, and CD–436 have been approved by OMB under the respective OMB control numbers 0348–0043, 0348–0044, 0348–0040, 0348–0042, 0348–0039, 0348–0046, and 0605–0001.

Dated: April 11, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs for NOAA Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9491 Filed 4–16–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 19, 2003.

Title, Form Number(s) and OMB Number: Industrial Capabilities Questionnaire; DD Form 2737; OMB Control Number 0704–0377.

Type of Request: Reinstatement.

Number of Respondents: 12,800.

Responses per Respondent: 1.

Annual Responses: 12,800.

Average Burden per Response: 12 Hours.

Annual Burden Hours: 153,600.

Needs and Uses: The Industrial Capability Questionnaire will be used by all Services and Defense Logistics Agency to gather business, industrial capability (employment labor skills, facilities, equipment, processes and technology), and manufactured item information to conduct required industrial assessments and support DoD planning and decisions. The questionnaires are directed at key industrial facilities supporting DoD requirements.

Affected Public: Business or Other For-Profit.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR,

1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9454 Filed 4–16–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 19, 2003.

Title, Form Number, and OMB Number: Acquisition Management Systems and Data Requirements Control List (AMSDL); Numerous Forms; OMB Control Number: 0704–0188.

Type of Request: Reinstatement.

Number of Respondents: 921.

Responses per Respondent: 1.

Annual Responses: 397,872.

Average Burden per Response: 66 hours.

Annual Burden Hours: 26,259,552 hours.

Needs and Uses: The Acquisition Management Systems and Data Requirements Control List (AMSDL) is a list of data requirements used in DoD contracts. This information is contained in DoD contracts for supplies, services, hardware, and software. The information collected from the public, DoD contractors, is necessary for DoD to support the design, test, manufacture, training, operation, and maintenance of procured items.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zieher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–9455 Filed 4–16–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 19, 2003.

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 232, Contract Financing and the clause at 252. 232–7002, Progress Payment for Foreign Military Sales Acquisition; OMB Number 0704–0321.

Type of Request: Extension.

Number of Respondents: 306.

Responses per Respondent: 12.

Annual Responses: 3,672.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 1,836.

Needs and Uses: This information collection requires a contractor whose contract includes Foreign Military Sales (FMS) requirements and progress payments type of financing, to submit progress payment requests with supporting schedules that clearly distinguish the contract's FMS requirements from U.S.S contract requirements.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10235, New Executive office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–9456 Filed 4–16–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by March 19, 2003.

Title, Form Number, and OMB Number: Disposition of Remains—Reimbursable Basis Request for Payment of Funeral and/or Interment Expenses; DD Forms 2065 and 1375; OMB Number 0704–0030.

Type of Request: Reinstatement.

Number of Respondents: 2,450.

Responses per Respondent: 1.

Annual Responses: 2,450.

Average Burden Per Response: DD 2065 = 20 minutes (average); DD 1375 = 10 minutes (average).

Annual Burden Hours: 425 hours.

Needs and Uses: The DD Form 2065 records disposition instructions and costs for preparation and final disposition of remains. DD Form 1375 provides next-of-kin with an instrument to apply for reimbursement of funeral/interment expenses. This information is used to adjudicate claims for reimbursement of these expenses.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondents Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposals should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9457 Filed 4–16–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–11]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–11 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 APR 2003

In reply refer to:
I-03/003058

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-11, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Japan for defense articles and services estimated to cost $482 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Appropriations
Senate Committee on Appropriations
House Committee on Armed Services
Senate Committee on Armed Services

Transmittal No. 03-11

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Japan

(ii) Total Estimated Value:

Major Defense Equipment*	$215 million
Other	$267 million
TOTAL	$482 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 1 MK 7 MOD 6(V) AEGIS Weapon System, 1 AN/SQQ-89(V) Surface Ship Undersea Combat System, 1 AN/UPX-29(V) Aircraft Identification Monitoring System MK XII Identification Friend or Foe system, 1 shipboard gridlock system, 1 Common Data Link Management System/Joint Tactical Information Distribution System, 1 MK 34 gun weapon system, 1 Navigation Sensor System Interface, 1 MK36 Decoy Launching System, 1 AN/WSN-7 Ring Laser Gyro Navigator, 1 AN/SQQ-121 Computer Aided Dead Reckoning Tracker, 18 SM-2 Block IIIB Standard missiles, 10 SM-2 Block IIIB Standard missiles with telemetry; 28 MK 13 MOD 0 canisters, containers, testing and combat system engineering technical assistance, computer programs and support maintenance, U.S. Government and contractor engineering and technical assistance, testing, publications and documentation, training, spare and repair parts, and other related elements of logistics support

(iv) Military Department: Navy (LTS, APG, and APP)

(v) Prior Related Cases, if any:

FMS case AOZ	$ 21 million	23Aug02
FMS case LSU	$521 million	22Jul02
FMS case AOO	$ 18 million	19Dec01
FMS case AOI	$ 17 million	1Nov00
FMS case AOB	$ 16 million	9Dec99
FMS case ANU	$ 17 million	21Dec98
FMS case AMZ	$ 7 million	17Oct94
FMS case LPE	$462 million	27Aug93
FMS case ALT	$ 10 million	27Aug93
FMS case ALI	$ 7 million	28Oct92
FMS case AKV	$ 12 million	24Mar92
FMS case LNW	$450 million	11Sep91
FMS case LND	$478 million	29Aug90
FMS case LKL	$468 million	24Jun88

* as defined in Section 47(6) of the Arms Export Control Act.

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 10 APR 2003

POLICY JUSTIFICATION

Japan – AEGIS Weapon Systems and Standard Missiles

The Government of Japan has requested a possible sale of 1 MK 7 MOD 6(V) AEGIS Weapon System, 1 AN/SQQ-89(V) Surface Ship Undersea Combat System, 1 AN/UPX-29(V) Aircraft Identification Monitoring System MK XII Identification Friend or Foe system, 1 shipboard gridlock system, 1 Common Data Link Management System/Joint Tactical Information Distribution System, 1 MK 34 gun weapon system, 1 Navigation Sensor System Interface, 1 MK36 Decoy Launching System, 1 AN/WSN-7 Ring Laser Gyro Navigator, 1 AN/SQQ-121 Computer Aided Dead Reckoning Tracker, 18 SM-2 Block IIIB Standard missiles, 10 SM-2 Block IIIB Standard missiles with telemetry; 28 MK 13 MOD 0 canisters, containers, testing and combat system engineering technical assistance, computer programs and support maintenance, U.S. Government and contractor engineering and technical assistance, testing, publications and documentation, training, spare and repair parts, and other related elements of logistics support. The estimated cost is $482 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring the peace and stability of that region. It is vital to the U.S. national interest to assist Japan to develop and maintain a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with these U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security. This proposed sale of SM-2 missiles and AEGIS Weapon System will provide substantial economic opportunities for U.S. industry and continue to promote greater interoperability and cooperation between our navies.

Installation of the AEGIS combat system on ships of the Japan Maritime Self Defense force will provide enhanced capabilities to Japan in providing for defense of its critical Sea Lines of Communication. AEGIS will be the keystone in Japan's effort to upgrade its anti-air warfare capability. Japan is fully capable of integrating this system into its operational forces and will receive data sufficient for basic maintenance of the equipment. Japan will use these missiles to update older or less reliable missiles currently in the Japan Maritime Self Defense Force fleet. Japan, which already has AEGIS systems and Standard missiles, will have no difficulty absorbing the additional system. The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principal contractors will be: Lockheed Martin Naval Electronics and Surveillance Systems of Morristown, New Jersey; Lockheed Martin Naval Electronics and Surveillance Systems of Syracuse, New York; Raytheon Company of Andover, Massachusetts; General Dynamics Armament Systems of Burlington, Vermont; Lockheed Martin Naval Electronics and Surveillance Systems of Eagan, Minnesota and Raytheon Company of Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment to Japan of any U.S. Government representatives. It will require the assignment of approximately 40 contractor representatives for approximately five years to support integration and testing of the AEGIS Combat Systems.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-11

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex Item No. vii

(vii) (C) Sensitivity of Technology:

1. The AEGIS Weapon System (AWS) hardware is unclassified, with the exception of the RF oscillator used in the Fire Control transmitter, which is classified Confidential. AEGIS documentation in general is unclassified. However, seven operation and maintenance manuals are classified Confidential, and one AEGIS maintenance manual supplement is classified Secret. The manuals and technical documents are limited to that necessary for operational and organizational maintenance.

2. While the hardware associated with the SPY-1D(V) radar and AN/SQQ-89 Surface Ship Undersea Combat System are unclassified, the computer programs are classified Secret. It is the combination of the SPY-1D(V) and AN/SQQ-89 sonar hardware and the computer programs that constitutes the technology sensitive aspects. The SPY-1D(V) radar and AN/SQQ-89 sonar hardware design and computer program documentation will not be released and the U.S. Navy will perform life cycle maintenance of the AEGIS weapons system computer programs.

3. The SM-2 Block IIIB Standard missiles will result in the transfer of sensitive technology and information as well as classified and unclassified defense equipment and technical data. The Standard missile hardware including: guidance section, Target Detecting Device, warhead, rocket motor, steering control section, safety and arming unit, and auto-pilot battery unit are classified Confidential. Certain operating frequencies and performance characteristics are classified Secret. Confidential documentation to be provided includes: parametric documents, general performance data, firing guidance, dynamics information, and flight analysis procedures.

4. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

5. A determination has been made that Japan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03–9459 Filed 4–16–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–14]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–14 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

10 APR 2003

In reply refer to: I-03/003307

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-14, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Australia for defense articles and services estimated to cost $75 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Appropriations
Senate Committee on Appropriations
House Committee on Armed Services
Senate Committee on Armed Services

Transmittal No. 03-14

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Australia

(ii) Total Estimated Value:

Major Defense Equipment*	$50 million
Other	$25 million
TOTAL	$75 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: up to nine Combat Control System MK2 Block 1C Mod 6 Tactical Subsystems (includes six ship sets, one integration/test/training module, and two engineering design modules), support/test equipment, spare and repair parts, supply support, training, documentation, U.S. Government and contractor technical assistance, and program management support.

(iv) Military Department: Navy (LBR)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 10 APR 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Australia – Combat Control System MK2 Block 1C Mod 6 Tactical Subsystems

The Government of Australia has requested a possible sale of up to nine Combat Control System (CCS) MK2 Block 1C Mod 6 Tactical Subsystems (includes six ship sets, one integration/test/ training module, and two engineering design modules), support/test equipment, spare and repair parts, supply support, training, documentation, U.S. Government and contractor technical assistance, and program management support. The estimated cost is $75 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of an ally which has been and continues to be an important force for political stability and economic progress in the Western Pacific region.

This proposed sale would not affect the military balance within the region. The CCS MK2 will be installed on an already existing fleet of diesel electric submarines, will improve the capabilities of the COLLINS-class submarines, and will enhance interoperability with the U.S. submarine force. The proposed sale of the MK2 CCS is another step in the Royal Australian Navy's commitment to further improving effectiveness of the COLLINS class submarine.

The prime contractor will be Raytheon Integrated Defense Systems of Tewksbury, Massachusetts. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require the assignment of two U.S. Government representatives for up to three years to Australia.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-14

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Combat Control System (CCS) MK2 Block 1C Mod 6 contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals: Torpedo and Harpoon engagement software, Target Motion Analysis (TMA) systems, All Sources Contact Management (ASCM) correlation, Weapon Data Converter (WDC) firmware, and Global Command and Control Communication System.

2. The CCS MK2 Block 1C Mod 6 Tactical Subsystem covers system hardware, software and associated documentation. It provides enhancements to achieve combat control commonality, improves maintainability, integrates new weapons capabilities and provides total combat system control of all surveillance and detection, target localization, weapon control, and communication functions.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce combat system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Australia can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03–9460 Filed 4–16–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE: Termination of the Worldwide TRICARE Transitional Health Care Demonstration Project

AGENCY: Office of the Secretary, DoD.
ACTION: Notice.

SUMMARY: Section 736 of the National Defense Authorization Act for Fiscal Year 2002 (NDAA–02), Pub. L. 107–107, eliminated transitional health care coverage for dependents of certain separating active duty members. On June 12, 2002, a **Federal Register** notice was published that created the Worldwide TRICARE Transitional Health Care Demonstration Project. The Demonstration provided eligibility for TRICARE transitional health care coverage to dependents excluded in the NDAA–02. The Notice stated that the Demonstration was to be in effect for 2 years or until rescinded by another authority.

Section 706 of the National Defense Authorization Act for Fiscal Year 03 re-inserted transitional health care coverage for dependents and deemed the provision to have been enacted as part of Section 736 of the NDAA–02 (retroactive to December 28, 2001). Consequently, the Worldwide TRICARE Transitional Health Care Demonstration Project is terminated.

EFFECTIVE DATE: December 28, 2001.

FOR FURTHER INFORMATION CONTACT: Ann N. Fazzini, Health Care Program Specialist (Reimbursement), TRICARE Management Activity, 16401 E. Centretech Parkway, Aurora, CO 80011–9066, telephone (303) 676–3803.

Dated: April 11, 2003.
L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 03–9452 Filed 4–16–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Coastal Storm Damage Reduction, Barrow, AK

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.
ACTION: Notice of intent.

SUMMARY: The U.S. Army Engineer District, Alaska, intends to prepare a Draft Environmental Impact Statement (DEIS) for the construction of coastal storm damage reduction measures at Barrow, AK. The city of Barrow is an isolated community on the Arctic Ocean at the northern tip of Alaska. Barrow is the economic center for the North Slope Borough with a population of 4,400 residents, the majority of which are Inupiat Eskimo. The community infrastructure at risk from storm damage, shoreline erosion, and flooding consists of roads, a utilidor, a sewage lagoon, and a landfill site.

The utilidor stretches more than 3 miles and contains sewage, water, and power lines, and communication facilities for the community. Beach erosion threatens over 1 mile of the utilidor and a low-lying beach road that separates Barrow's sewage lagoon and an old landfill from the sea.

FOR FURTHER INFORMATION CONTACT: Lizette Boyer (907) 753–2637, Alaska District, U.S. Corps of Engineers, Environmental Resources Section (CEPOA–EN–CW–ER), P.O. Box 6898, Elmendorf AFB, AK 99506–6898. E-mail: *Lizette.P.Boyer@poa02.usacearmy.mil.*

SUPPLEMENTARY INFORMATION: The DEIS will consider alternatives including the placement of sands and gravels suitable for beach nourishment along approximately 5 miles of beach, elevation of coastal roadways, and other structural and non-structural alternatives identified during scoping. The initial nourishment would require a large quantity of material. Viable borrow sources have not been identified. However, nearby Elson Lagoon could have suitable material and will be investigated as a borrow alternative. Excavation of borrow material from Elson Lagoon may have a dual purpose of creating a needed navigation channel for lightering barges and harboring local boats. Other borrow alternatives will be investigated.

Issues: Construction and gravel extraction for beach nourishment and other alternatives could affect protected wildlife. One of the structural constraints in developing storm damage reduction measures for Barrow is the need to identify an adequate source of sand and gravel (about 4 million cubic yards) within an economic transport range of the project site. The DEIS will consider the needs of the community to protect their infrastructure and the need to avoid significant adverse impacts to critical arctic environmental and traditional subsistence activities. The Barrow area is one of the remaining areas in Alaska where the threatened Steller's eider and spectacled eider sea ducks are known to nest. Elson Lagoon is highly productive for fish and waterfowl. Polar bears, seals, walruses, and beluga and bowhead whales are found in near shore waters at different times of the year. One known archeological site is along Elson Lagoon, but the Chukchi Seas coastline has many archeological artifacts that continue to be uncovered. The DEIS will consider impacts to marine intertidal and subtidal communities, fish and wildlife, wetlands, threatened and endangered species, essential fish habitat, water quality, cultural resources, socio-economic resources, justifiable and practicable mitigation, and other resources and concerns identified through scoping, public involvement, and interagency coordination.

Scoping: A copy of this notice and additional public information will be sent to interested parties to initiate scoping. All parties are invited to participate in the scoping process by identifying any additional concerns, issues, studies, and alternatives that should be considered. A scoping meeting will be held in June 2003 in Barrow, Alaska, at a place and time to be announced. The DEIS is estimated for release in spring 2007.

Guy R. McConnell,
Chief, Environmental Resources Section.
[FR Doc. 03–9467 Filed 4–16–03; 8:45 am]
BILLING CODE 3710–NL–M

DEPARTMENT OF DEFENSE

Department of the Army

Armed Forces Epidemiological Board; Meeting

AGENCY: Department of the Army, DoD.
ACTION: Notice of partially-closed meeting.

SUMMARY: In accordance with section 10(a)(2) of Public Law 92–463, The Federal Advisory Committee Act, announcement is made of the following meeting:

Name of Committee: Armed Forces Epidemiological Board (AFEB).
Dates: May 20, 2003 (Partially-closed meeting). May 21, 2003 (Open meeting).
Times: 7:30 a.m.–5:45 p.m. (May 20, 2003). 7:30 a.m.–5:15 p.m. (May 21, 2003).
Location: Armed Forces Medical Intelligence Center, Fort Detrick, MD (May 20, 2003, 8:20 a.m.–12 p.m.) and U.S. Army Medical Research Institute of Infectious Diseases, 1425 Porter Street, Fort Detrick, MD 21702–5011 (May 20, 2003, 12 p.m.–5:45 p.m. and May 21, 2003, *see* above).
Agenda: The purpose of the meeting is to address pending and new Board issues, provide briefings for Board members on topics related to ongoing and new Board issues, conduct subcommittee meetings, and conduct an executive working session.

For Further Information Contact: Colonel James R. Riddle, Executive Secretary, Armed Forces Epidemiological Board, Skyline Six, 5109 Leesburg Pike, Room 682, Falls Church, VA 22041–3258, (703) 681–8012/3.

Supplementary Information: In the interest of national security, and in accordance with Title 5, United States Code (U.S.C.) section 552b(c)(1), the morning session on 20 May 2003 will be closed to the public. The afternoon session on 20 May and the entire session on 21 May will be open to the public. Open sessions of the meeting will be limited by space accommodations. The meeting will be open to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof and Title 5, U.S.C., appendix 1, subsection 10(d). Any interested person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee.

Luz D. Ortiz,
Army Federal Register Liaison Officer.
[FR Doc. 03–9468 Filed 4–16–03; 8:45 am]
BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: National Defense University.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Pub. L. 102–183, as amended.

DATES: May 20, 2003.

ADDRESS: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu*

SUPPLEMENTARY INFORMATION: The Board meeting is open to the public.

Dated: April 10, 2003.
Patricia L. Toppings,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 03–9458 Filed 4–16–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS)

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a), Public Law 92–463, as amended, notice is hereby given of a forthcoming meeting of the Defense Department Advisory Committee on Women in the Services (DACOWITS). The purpose of the Committee meeting is to provide further briefings on various topics to Committee members. The meeting is open to the public, subject to the availability of space.

DATES: 8–9 May 2003.

ADDRESSES: Double Tree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Shannon Thaeler, USN DACOWITS, 4000 Defense Pentagon, Room 3D769, Washington, DC 20301–4000. Telephone (703) 679–2122.

SUPPLEMENTARY INFORMATION: Interested persons may submit a written statement of consideration by the Committee and make an oral presentation of such. Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than noon, May 9, 2003, from 4:45 p.m. to 5 p.m. before the full Committee. Presentations will be limited to two minutes. Number of oral presentations to be made will depend on the number of requests received from members of the public. Each person desiring to make an oral presentation must provide the point of contact listed above with one (1) copy of the presentation by noon, May 2, 2003 and bring 50 copies of any material that is intended for distribution at the meeting. Persons submitting a written statement only must submit one (1) copy of the statement to the DACOWITS staff by the close of the meeting on May 9, 2003.

Meeting Agenda

Thursday, May 8, 2003

Welcome Administrative Remarks
Women's Work Issues Panel
Dr. Bonnie Moore/RADM (Sel) Deborah Lower
Break
Work/Family Conflict Issues for Soldier and Families
TriCare 101
Lunch (by invitation only)
Special Guests: Service Senior Enlisted Advisors
Air Force Quality of Life Programs
National Guard Quality of Life Programs
Marine Corps Quality of Life Programs
Break
Mr. Abell, PDUSD (P&R)
Dr. Wolfowiz, Deputy Secretary of Defense

Friday, May 9, 2003

Reserve Panel: Comprehensive Review of the Guard and Reserve
Break
Best Practices, Civilian OB/GYN Hospital and Clinics
DOD Women's Health Research Program: LTC Karl Friedl
Lunch
Navy Family Summit: RADM (Sel) Marc Purcell
Caliber Associates Current Research Review Briefing
Committee Time
Public Forum

Dated: April 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9453 Filed 4–16–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Ebola Virion Proteins Expressed From Venezuelan Equine Encephalitis (VEE) Virus Replicons

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent Application No. 09/337,946 entitled "Ebola Virion Proteins Expressed from Venezuelan Equine Encephalitis (VEE) Virus Replicons," filed June 22, 1999. Foreign rights are also available (PCT/US99/14311). The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Using the Ebola GP, NP, VP24, VP30, VP35 and VP40 virion proteins, a method and composition for use in inducing an immune response which is protective against infection with Ebola virus is described.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–9469 Filed 4–16–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Monoclonal Antibody Against Ricin A Chain

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6 and 404.7, announcement is made of the availability for licensing of U.S. Patent No. 5,626,844 entitled "Monoclonal Antibody Against Ricin A Chain," issued May 6, 1997. The United States Government, as represented by the Secretary of the Army, has rights in this invention.

ADDRESSES: Commander, U.S. Army Medical Research and Materiel Command, ATTN: Command Judge Advocate, MCMR–JA, 504 Scott Street, Fort Detrick, Frederick, MD 21702–5012.

FOR FURTHER INFORMATION CONTACT: For patent issues, Ms. Elizabeth Arwine, Patent Attorney, (301) 619–7808. For licensing issues, Dr. Paul Mele, Office of Research & Technology Assessment, (301) 619–6664, both at telefax (301) 619–5034.

SUPPLEMENTARY INFORMATION: Monoclonal antibodies against the A chain of ricin have been found to be effective in protecting mammals from morbidity arising from exposure to ricin toxin. The neutralizing action of the antibodies does not appear to be mediated by complement or by immunoprecipitation. The antibodies of the invention are characterized as of isotype IgG1 having the binding characteristics which include: (a) binding specifically to the neutralizing epitope of the ricin A chain and (b) providing in vitro protection of at least 95% of EL–4 cells from 100 µg/mL ricin challenge when said antibody is present in the tissue culture at a level of at least 1000 µg/mL.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–9470 Filed 4–16–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Protective Glove and Method for Making Same

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.6, announcement is made of the availability for licensing of U.S. Patent No. US 6,543,059 B2 entitled "Protective Glove and Method for Making Same" issued April 8, 2003. This patent has been assigned to the United States Government as represented by the Secretary of the Army.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone: (508) 233–4928 or E-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR part 404.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–9471 Filed 4–16–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Army is deleting two systems of records notices from its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 19, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Act Office, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 10, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0351 DASG

SYSTEM NAME:

Army School Student Files: Physical Therapy Program (March 23, 1999, 64 FR 13972).

REASON: THESE RECORDS ARE NOW BEING MAINTAINED UNDER THE SYSTEM OF RECORDS NOTICE A0351A DASG, U.S. ARMY MEDICAL DEPARTMENT SCHOOL AND ACADEMY OF HEALTH SCIENCES ACADEMIC RECORDS (JULY 31, 2002, 67 FR 49678).

A0351 HSC

SYSTEM NAME:

Practical Nurse Course Files (February 22, 1993, 58 FR 10002).

REASON:

Individual Academic and Class Academic records are now covered under the system of records notice A0351a DASG, entitled 'U.S. Army Medical Department School and Academy of Health Science Academic Records'. Individual training records and Faculty Board files have been destroyed.

[FR Doc. 03–9461 Filed 4–16–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 16, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 11, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.
Title: National Evaluation of the Voluntary Public School Choice (VPSC) Program.
Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

Reporting and Recordkeeping Hour Burden:

Responses: 988.

Burden Hours: 416.

Abstract: Based on evaluation questions in the authorizing legislation, this evaluation will document implementation of the Voluntary Public Choice Program and establish baseline data on student achievement. The purposes are to provide information that helps determine whether to modify or extend the VPSC concepts; identifies promising practices and lessons learned; and provides insights about public school choice.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2263. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–9416 Filed 4–16–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–539–001, FERC–539]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB Review

April 10, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for review and extension of the current expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of January 28, 2003 (68 FR 4183–84) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by May 14, 2003.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer, 725 17th Street, NW., Washington, DC 20503. The Desk Officer may be reached by telephone at 202–395–7856. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–539–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. User assistance for FERRIS is available at 202–502–8222, or by e-mail to *Webmaster@ferc.gov*. or the Public Reference at (202)–8371 Press 0, TTY (202) 502–8659 or by e-mail to *public.reference.room@ferc.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202)502–8415, by fax at (202)273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. Collection of Information: FERC–539 "Gas Pipeline Certificates: Import/Export"

2. Sponsor: Federal Energy Regulatory Commission

3. Control No. 1902–0062.

The Commission is now requesting that OMB approve a three-year extension of the expiration date, with no changes to the existing collection. The information filed with the Commission is mandatory. Requests for confidential treatment of the information are provided for under Section 388.112 of the Commission's regulations.

4. Necessity of the Collection of Information: Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Section 3 of the Natural Gas Act (NGA), 15 U.S.C. 717–717w. Section 3 requires prior authorization before exporting or importing natural gas from or to the United States. Section 3 authorizes the Commission to grant an application, in whole or in part, with modifications and upon terms and conditions as the Commission may find necessary or appropriate. The 1992 amendments to Section 3 of the NGA concern the importation or exportation from/to a nation which has a free trade agreement with the United States. With the passage of both the North American Free Trade Agreement and the Canadian Free Trade Agreement, the construction, operation and sitting of import or export facilities are also the subject of the Commission's regulatory focus.

In Order No. 608, 64 FR 51209–51222 (September 22, 1999), the Commission created voluntary procedures whereby prospective applicants could use a collaborative process to resolve significant issues prior to filing an application. This collaborative process allows applicants and interested parties to come together and come to mutual agreements that may help to defuse some of the controversial issues which may otherwise arise once an application has been filed with the Commission.

The pre-filing consultation process combines efforts to address NGA issues with the National Environmental Policy Act (NEPA) review process into a single pre-filing collaborative process that also includes the administrative processes associated with the Clean Water Act, the National Historic Preservation Act, the Endangered Species Act and other relevant statutes. Combining the pre-filing consultation and environmental review into a single pre-filing process simplifies and expedites the authorization of gas facilities and services.

The Commission uses the information to determine the appropriateness of the proposed facilities and their proposed location. The determination involves among other things, an examination of adequacy of design, cost, reliability, redundancy and environmental acceptability. The information is necessary for the Commission to make a determination that the facilities and location are consistent with the public interest. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 153.

5. Respondent Description: The respondent universe currently comprises 12 companies (on average) subject to the Commission's jurisdiction

6. Estimated Burden: 2,886 total hours, 12 respondents(average), 1 response per respondent, 241 hours per response (average).

7. Estimated Cost Burden to respondents: 2,886 hours / 2080 hours per years × $117,041 per year = $162,394. The cost per respondent is equal to $13,533.00.

Statutory Authority: Section 3 of the Natural Gas Act, 15 U.S.C. 717–717w.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9522 Filed 4–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–84–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

April 11, 2003.

Take notice that on April 2, 2003, Transcontinental Gas Pipe Line Corporation (Transco), filed pursuant to section 7(c) of the Natural Gas Act (NGA), an application, in abbreviated form, for a certificate of public convenience and necessity authorizing Transco's replacement of certain pipeline facilities in Mobile County, Alabama, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Transco states that due to recent increases in the population density along its Mobile Bay Lateral, it must upgrade approximately 1.45 miles of pipeline in Mobile County, Alabama, in order to ensure compliance with USDOT regulations at 49 CFR 192.611 and maintain certificated service and the safety and reliability of the Mobile Bay Lateral. The replacement will take place in an area recently classified as meeting the DOT Class 3 Regulations, as defined at 49 CFR 192.5(b)(3)(i).

Transco requests an order granting the authorization requested by July 10, 2003. Transco states that this date is requested to enable commencement of the replacement activities on or about August 4, 2003, in order to restore service by September 15, 2003. Transco estimates the replacement costs to be $4.0 million.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding, with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Any questions regarding the application should be directed to Steve Isenhower, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251, at (713) 215–2704.

Comment Date: May 2, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9521 Filed 4–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12347–000]

Universal Electric Power Corporation; Notice of Extension of Deadline for Filing Comments and or Motions on Notice of Preliminary Permit Application

April 11, 2003.

On January 28, 2003, the Commission issued in the above-captioned docket a "Notice of Application Accepted for Filing and Soliciting Comments, Protests, and Motions to Intervene" for the Coffeeville L&D Hydroelectric Project. Take notice that the deadline for filing comments, protests, or motions to intervene is extended to April 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9523 Filed 4–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2782–006]

Parowan City, Utah; Notice of Ava

April 11, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Red Creek Hydroelectric Project located on Red Creek, in Iron County, Utah, and has prepared a final Environmental Assessment (EA) for the project. The project occupies 19.06 acres of United States lands administered by the Bureau of Land Management.

The final EA contains Commission staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the final EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Steve Hocking at (202) 502–8753 or *steve.hocking@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 03–9524 Filed 4–16–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM96–1–024]

Standards for Business Practices of Interstate Natural Gas Pipelines; Notice Regarding Standard Numbers for Compliance With Order No. 587–R

April 11, 2003.

In Order No. 587–R,[1] the Federal Energy Regulatory Commission (Commission) amended its regulations to adopt the most recent version, Version 1.6, of the consensus standards promulgated by the North American Energy Standards Board Wholesale Gas Quadrant (WGQ) and the WGQ standards governing partial day recalls. In addition, the Commission required pipelines to file tariff sheets to reflect the changed standards by May 1, 2003, with an effective date of July 1, 2003. In response to several comments on the appropriate method for referencing the standards, the Commission found that the pipelines could incorporate these standards by reference by identifying the number of the standard (using "z" as a placeholder such as 3.3.z2) and identifying whether the standard was adopted in Recommendation R02002 or R02002–2, as appropriate.

Subsequent to the issuance of Order No. 587–R, the WGQ assigned standard numbers to the partial day recall standards to replace the temporary reference numbers for the standards using the "z" placeholders. The WGQ assigned standard numbers are listed in a posting on the WGQ's Web site entitled "Assignment of Standard Numbers for Final Actions for R02002 and R02002–2, Ratified October 31, 2002" at *http://www.naesb.org/Final.htm.* Consequently, when incorporating partial day recall standards by reference, pipelines should use the WGQ assigned standard numbers as are listed in the Appendix to this Notice.

Magalie R. Salas,

Secretary.

APPENDIX.—ASSIGNED STANDARD NUMBERS FOR RECENT RATIFICATIONS R02002 AND R02002–2

Recommendation	Recommendation temporary reference ID for standard	WGQ assigned standard number
R02002	5.3.z1	5.3.44
	5.3.z2	5.3.45
	5.3.z3	5.3.46
	5.3.z4	5.3.47
	5.3.z5	5.3.48
	5.3.z6	5.3.49
	5.3.z7	5.3.50
	5.3.z8	5.3.51
	5.3.z9	5.3.52
	5.3.z10	5.3.53
	5.3.z11	5.3.54
R02002–2	5.1.z1	5.1.2
	5.1.z2	5.1.3
	5.1.z3	5.1.4
	5.2.z1	5.2.3
	5.3.z12	5.3.55
	5.3.z13	5.3.56
	5.3.z14	5.3.57
	5.3.z15	5.3.58

[FR Doc. 03–9525 Filed 4–16–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–R, 102 FERC ¶61,273 (March 12, 2003).

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0296; FRL–7279–9]

Pesticides; Data Submitter Rights for Data Submitted in Support of Tolerance Actions; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On January 19, 2000, EPA announced the availability for comment of a paper, discussing options to enable the Agency to appropriately implement the new provisions contained in section 408(i) of the Federal Food, Drug, and Cosmetic Act (FFDCA) to address exclusive use and compensation rights for data submitted to EPA in support of tolerance and tolerance exemption actions. EPA announces the availability for comment of a proposal which incorporates public comments received, and outlines the Agency's concept of the implementation of a data compensation program under FFDCA section 408(i). The Agency seeks public comment on this proposal.

DATES: Comments, identified by docket ID number OPP–2002–0296, must be received on or before July 16, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Cameo G. Smoot, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5454; fax number: (703) 308–5884; and e-mail address: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you submit data to EPA in support of establishing, maintaining, or exempting tolerances for pesticides under the FFDCA, or are a pesticide registrant or a person applying for pesticide registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Potentially affected entities may include, but are not limited to:

Pesticide Manufacturing (NAICS 32532) e.g., individuals or entities engaged in activities related to the registration of a pesticide product.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR part 152--Pesticide Registration and Classification Procedures and section 408(i) of the FFDCA. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0296. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI), or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket, but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are

submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets, or e-mail to submit CBI, or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2002–0296. The system is an "anonymous access" system, which means, EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID number OPP–2002–0296. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect, or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2002–0296.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID number OPP–2002–0296. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket, and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI, or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Action is the Agency Taking?

EPA is making available for comment a proposal to implement exclusive use and compensation rights for data submitted to the Environmental Protection Agency in support of tolerance and tolerance exemption actions and discussing confidentiality of tolerance and tolerance exemption data. On January 19, 2000 (65 FR 2947) (FRL–6385–7), EPA announced the availability for comment of a paper discussing options to enable the Agency to appropriately implement the new exclusive use and data compensation provisions contained in section 408(i) of the FFDCA. Today, the Agency is making available a paper that discusses the comments received and sets forth a proposal which considers those comments and incorporates the Agency's concept of the implementation of a data compensation program under FFDCA section 408(i). The Agency seeks public comment on this proposal.

List of Subjects

Environmental protection, Pesticides, Tolerances, Data compensation.

Dated: April 8, 2003.

James Jones,

Director, Office of Pesticide Programs.

[FR Doc. 03–9486 Filed 4–16–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7484–9]

Public Water System Supervision Program Revisions for Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and solicitation of requests for a public hearing.

SUMMARY: Notice is hereby given that Nebraska is revising its approved Public Water System Supervision Program. The EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, the EPA intends to approve these program revisions. All interested parties may request a public hearing on the approval.

DATES: A request for a public hearing must be submitted in writing by May 19, 2003 to the Regional Administrator at the EPA Region 7 address below.

ADDRESSES: Copies of documents related to this determination are available for inspection between the hours of 9 a.m. and 3 p.m., Monday through Friday, at the following locations: EPA Region 7, 901 N. 5th Street, Kansas City, Kansas, 66101, and Nebraska Health and Human Services, Mr. Jack Daniel, Administrator, 301 Centennial Mall South, 3rd Floor, PO Box 95007, Lincoln, Nebraska 68509–5007.

FOR FURTHER INFORMATION CONTACT: Kenneth Deason, 913–551–7585.

SUPPLEMENTARY INFORMATION: Nebraska has adopted (1) a revised definition of "public water systems" (63 FR 23361–23368, April 28, 1998); (2) regulations establishing Administrative Penalty Authority for all violations of their approved primacy program (63 FR 23361–23368, April 28, 1998); (3) a Stage 1 Disinfectant/ Disinfection By-Products Rule, setting requirements to limit the formation of chemical disinfectant by-products in drinking water (63 FR 69389–69476, December 16, 1998); and (4) an Interim Enhanced Surface Water Treatment Rule to improve control of microbial pathogens in drinking water, including the protozoan, Cryptosporidium (63 FR 69477–69521, December 16, 1998).

Any request for a public hearing must include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of information that the requesting person intends to submit at such hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request is made by May 19, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination will become final and effective on May 19, 2003.

Authority: 40 CFR 142.12

Dated: April 3, 2003.

James B. Gulliford,

EPA Region 7 Administrator.

[FR Doc. 03–9481 Filed 4–16–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7484–8]

Notice of Tentative Approval and Solicitation of Request for a Public Hearing for Public Water System Supervision Program Revisions for the State of West Virginia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval and Solicitation of requests for a public hearing.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act as amended, and the National Primary Drinking Water Regulations Implementation that the State of West Virginia is revising its approved Public Water System Supervision Program. West Virginia has amended its administrative penalty authority and the definition of a public water system, and has adopted the Consumer Confidence Report Rule requiring annual drinking water quality reports to the public, an Interim Enhanced Surface Water Treatment Rule (IESWTR) to improve control of microbial pathogens in drinking water, including specifically the protozoan Cryptosporidium, and a Stage 1 Disinfectants/Disinfection Byproducts Rule (DBPR), setting new requirements to limit the formation of chemical disinfection byproducts in drinking water. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has decided to tentatively approve these program revisions. All interested parties are invited to submit written comments on this determination and may request a public hearing.

DATES: Comments or a request for a public hearing must be submitted by May 19, 2003. This determination shall become effective on May 19, 2003 if no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, and if no comments are received which cause EPA to modify its tentative approval.

ADDRESSES: Comments or a request for a public hearing must be submitted to the U.S. Environmental Protection Agency Region III, 1650 Arch Street, Philadelphia, PA 19103–2029. All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

- Drinking Water Branch, Water Protection Division, U.S. Environmental Protection Agency Region III, 1650 Arch. Street, Philadelphia, PA 19103–2029.
- West Virginia Department of Health and Human Resources, Environmental Engineering Division, 815 Quarrier Street, Suite 418, Charleston, WV 25301.

FOR FURTHER INFORMATION CONTACT: Donna Weiss, Drinking Water Branch (3WP22) at the Philadelphia address given above; telephone (215) 814–2198 or fax (215) 814–2318.

SUPPLEMENTARY INFORMATION: All interested parties are invited to submit written comments on this determination and may request a public hearing. All comments will be considered, and, if necessary, EPA will issue a response. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by May 19, 2003, a public hearing will be held. A request for public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such a hearing; and (3) the signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Dated: April 8, 2003.
Donald S. Welsh,
Regional Administrator, EPA Region III.
[FR Doc. 03–9482 Filed 4–16–03; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act; Meetings

DATE AND TIME: *Tuesday, April 22, 2003, at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g

Audits conducted pursuant to 2 U.S.C. 437g, 438(b) and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: *Thursday, April 24, 2003, at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Committee 2003–03—State Senator Bill Boling, State Delegate Bill Janis, Chesterfield County School Board Member Beth Davis, and United States Representative Eric Cantor by counsel, Jan Witold Baran.

Draft Advisory Opinion 2003–04—Freeport-McMoRan Copper & Gold, Inc. (Freeport), and Freeport-McMoRan Copper & Gold, Inc. Citizenship Committee (the PAC) by counsel, R. Patrick Vance.

Final Audit Report: LaRouche's Committee for a New Bretton Woods.

Draft Notice of Public Hearing and Request for Comment Regarding Enforcement Procedures.

Routine Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,
Secretary of the Commission.
[FR Doc. 03–9586 Filed 4–15–03; 10:41 am]
BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 1, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Myron Lee Scott, Bethany, Illinois; to acquire additional voting shares of Scott Bancshares, Inc., Bethany, Illinois, and thereby indirectly acquire voting shares of Scott State Bank, Bethany, Illinois; Maroa Forsythe Community Bank, Maroa, Illinois; and State Bank of Niantic, Niantic, Illinois.

Board of Governors of the Federal Reserve System, April 11, 2003.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 03–9400 Filed 4–16–03; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Citizens Bancshares Employee Stock Ownership Plan, Edmond, Oklahoma; to acquire up to 40 percent of the voting shares of Citizens Bancshares, Inc., Edmond, Oklahoma, and thereby indirectly acquire voting shares of Citizens Bank of Edmond, Edmond, Oklahoma.

Board of Governors of the Federal Reserve System, April 11, 2003.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 03–9399 Filed 4–16–03; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 12, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc., Atlanta, Georgia; to acquire 100 percent of the voting shares of Lighthouse Community State Bank, Hilton Head, South Carolina. Lighthouse Community State Bank is currently operating as Lighthouse Community Bank, Hilton Head, South Carolina.

Board of Governors of the Federal Reserve System, April 11, 2003.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 03–9401 Filed 4–16–03; 8:45 am]
BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Blood Safety and Availability will meet on Thursday May 1, 2003, and Friday May 2, 2003, from 8 a.m. to 5 p.m. The meeting will take place at the Hyatt Regency Hotel on Capitol Hill, 400 New Jersey Ave., NW., Washington, DC 20001. The meeting will be entirely open to the public.

The purpose of this meeting will be to examine the economics of blood and where blood fits into the overall cost of health care.

Public comment will be solicited at the meeting. Public comment will be limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit 30 copies to the Acting Executive Secretary prior to close of business April 25, 2003. Those who wish to utilize electronic data projection in their presentation to the Committee must submit their material to the Acting Executive Secretary prior to close of business April 25, 2003. In addition, anyone planning to comment is encouraged to contact the Acting Executive Secretary at her/his earliest convenience.

FOR FURTHER INFORMATION CONTACT: CAPT Lawrence C. McMurtry, Acting Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Science, 1101 Wooton Parkway, Room 275, Rockville, MD 20852, (301) 443–2823, FAX (301) 443–4361, e-mail *lmcmurtry@osophs.dhhs.gov*

Dated: April 11, 2003.
Lawrence C. McMurtry,
Acting Executive Secretary, Advisory Committee on Blood Safety and Availability.
[FR Doc. 03–9515 Filed 4–16–03; 8:45 am]
BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announced the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Workgroup on the National Health Information Infrastructure.

Time and Date: 8:30 a.m.–4:30 p.m., April 22, 2003.

Place: Sheraton Buckhead Hotel, 3405 Lenox Road, NE, Atlanta, GA 30326.

Status: Open.

Purpose: The Workgroup will hear testimony about issues related to the population health dimension of the national health information infrastructure, including public health surveillance, disease registries, and privacy issues.

Contact Person For More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Mary Jo Deering, Lead Staff Person for the NCVHS Workgroup on the National Health Information Infrastructure, Office of Public Health and Science, DHHS, Room 738G, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 260–2652, or Majorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where an agenda for the meeting will be posted when available.

Dated: April 9, 2003.
James Scanlon,
Acting Director, Office of Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.
[FR Doc. 03–9365 Filed 4–16–03; 8:45 am]
BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

National Advisory Council for Healthcare Research and Quality: Request for Nominations for Public Members

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Request for nominations for public members.

SUMMARY: 42 U.S.C. 299c, section 921 of the Public Health Service (PHS Act), established a National Advisory Council for Healthcare Research and Quality (the Council). The Council is to advise the Secretary of HHS and the Director of the Agency for Healthcare Research and Quality (AHRQ) on matters related to actions of the Agency to enhance the quality, improve the outcomes, and reduce the costs of health care services, as well as improve access to such services, through scientific research and the promotion of improvements in clinical practice and in the organization, financing, and delivery of health care services. Seven current members' terms will expire in November 2003. To fill these positions in accordance with the legislative mandate establishing the Council, we are seeking individuals who are distinguished in the conduct of research, demonstration projects, and evaluations with respect to health care; individuals distinguished in the fields of health care quality research or health care improvement; individuals distinguished in the practice of medicine; individuals distinguished in the other health professions; individuals either representing the private health care sector (including health plans, providers, and purchasers) or individuals distinguished as administrators of health care delivery systems; individuals distinguished in the fields of health care economics, management science, information systems, law, ethics, business, or public policy, and individuals representing the interests of patients and consumers of health care. Individuals are particularly sought with experience and success in activities specified in the summary

paragraph above, through which the Agency carries out its work.

DATES: Nominations should be received on or before May 23, 2003.

ADDRESSES: Nominations should be sent to Ms. Anne Lebbon, AHRQ, 2101 East Jefferson Street, Suite 600, Rockville, Maryland, 20852. Nominations also may be faxed to (301) 594–2249.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Lebbon, AHRQ, at (301) 594–7216.

SUPPLEMENTARY INFORMATION: 42 U.S.C. 299c, section 921 of the PHS Act, provides that the National Advisory Council for Healthcare Research and Quality shall consist of 21 appropriately qualified representatives of the public appointed by the Secretary of Health and Human Services and eight ex officio representatives from Federal agencies conducting or supporting health care research. The Council meets in the Washington, DC, metropolitan area, generally in Rockville, Maryland, approximately three times a year to provide broad guidance to the Secretary and AHRQ's Director on the direction and programs for AHRQ.

Nine individuals will presently be selected by the Secretary to serve on the Council beginning with the meeting in the fall of 2003. Members generally serve 3-year terms. Appointments are staggered to permit an orderly rotation of membership.

Interested persons may nominate one or more qualified persons for membership on the Council. Nominations shall include a copy of the nominee's resume or curriculum vitae, and state that the nominee is willing to serve as a member of the Council. Potential candidates will be asked to provide detailed information concerning their financial interests, consultant positions, and research grants and contracts, to permit evaluation of possible sources of conflict of interest.

The Department is seeking a broad geographic representation and has special interest in assuring that women, minority groups, and the physically handicapped are adequately represented on advisory bodies and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, and/or physically handicapped candidates.

Dated: April 9, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–9415 Filed 4–16–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–61]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Dale Verell, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Youths Evaluation of Anti-Tobacco Ads—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

In FY 2002, Congress mandated CDC, Office on Smoking and Health (OSH), to facilitate programs to prevent tobacco use among young people using counter-advertising targeted to young people. Demoralization and the reduction of tobacco use among youth and adolescents are the focus of six objectives in *Healthy People 2010*. There are no nationwide studies assessing the perceived effectiveness of multiple categories of anti-tobacco advertisements (only one nationwide study exists which only explores the effectiveness of one type of message). CDC is coordinating an effort to plan, implement, and evaluate a media literacy lesson plan designed to clearly communicate messages that will prevent tobacco use among young people. The lesson plan will be based on principles that have been shown to enhance success, including: showing messages based on research; testing messages with the intended audiences; involving young people in media literacy, providing salient reasons to not smoke; enlisting the involvement and support of teachers and other influencers; and tracking the lesson plan's effectiveness.

For tobacco control efforts to continue to be successful and to promote the use of CDC media resources for tobacco control (Media Campaign Resource Center), it is critical that we understand which ads are perceived as most effective with the target audience. CDC planners are seeking a vehicle to evaluate anti-tobacco ads that are used by state health departments. In order to maximize the CDC's Media Campaign Resource Center, it is important to determine which ads should be promoted to the state health departments for use with their constituents. This understanding will facilitate any strategic changes and or promotions that may be necessary to increase the Media Campaign Resource Center's effectiveness and sustainability. The data will provide state health departments, the government, health education and communication practitioners, and committees that make recommendations regarding which types of tobacco prevention advertisements may be perceived as most likely to reduce tobacco use among youth.

CDC proposes to use an evaluation tool with middle and high school students from schools across the United States. GIS mapping will inform the selection of approximately 200 public and private American schools. The data collection instrument is a paper and pencil computer scan sheet. Students will view 12 tobacco prevention advertisements and respond using a computer scan sheet. The survey will take 26 minutes to complete and will be delivered during school hours. CDC will support the cost for development, implementation, data collection, and analysis out of funds budgeted for these purposes. There is no cost to the respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
7th to 12th graders (ages 12–19)	8000	1	30/60	4000
Total				4000

Nancy E. Cheal,

Acting Director, Office of Program Planning and Evaluation, Centers for Disease Control Prevention.

[FR Doc. 03–9422 Filed 4–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60 Day–03–60]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Dale Verell, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

International Performance Standards Project—New—Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC).

The Centers for Disease Control and Prevention (CDC) Public Health Practice Program Office (PHPPO), is proposing to implement a required data collection to:

a. Assess public health preparedness of countries to respond to a public health threat or emergency.

b. Assess progress of countries towards (1) identifying any gaps that need to be strengthened in their public health systems, (2) achieving the critical and enhanced capacities of their public health systems, and (3) setting optimal standards for system performance that will enhance the delivery of public health services.

c. Identify the focus of future proposed work plans, as well as help countries develop a public health research agenda.

d. Provide a consistent framework for each country to characterize the status of its public health infrastructure.

This assessment will use the International Instrument for performance measurement of Essential Public Health Functions. This instrument is used for rapid assessment of capacity at the level of the National Health Authority of countries to respond to public health threats and emergencies. This instrument focuses on the six areas of fiscal year 2002 Supplemental Funds for Public Health Preparedness and Response for Bioterrorism (Announcement Number 99051), as the framework for data collection. The six focus areas are:

Preparedness Planning and Readiness Assessment; Surveillance and Epidemiology Capacity; Laboratory Capacity—Biological Agents; Health Alert Network/Communication and Information Technology; Risk Communication and Health Information Dissemination (Public Information and Communication); Education and Training.

Hard copy assessment instruments will be used in a group setting within countries to collect the data. The respondents will be individuals from all levels of the health system who are knowledgeable about the functions of their system. This process is being done in conjunction with the World Bank and the governments of the different countries who elect to undertake performance measurement of their public health systems using this methodology. The process will be funded through the Bank and the government of the countries. No Federal funds will be used in the process. It is anticipated that more than nine (9) countries may be involved. There will be no cost to respondents.

Respondents	No. of respondents	No. of responses per respondent	Avg. burden response in hrs.	Total burden (in hrs.)
National Health Authorities in Europe and the Middle East	25	1	24	600
Total				600

Nancy E. Cheal,
Acting Director, Office of Program Planning and Evaluation, Centers for Disease Control Prevention.

[FR Doc. 03–9423 Filed 4–16–03; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03049]

Research on the Impact of Law on Public Health; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 1704 of the Public Health Service Act, 42 U.S.C. 300u–3, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a grant program for research to evaluate the impact of law on public health. This program addresses all the "Healthy People 2010" focus areas.

The purpose of the program is to stimulate research evaluating the implementation and impact of law on the prevention and control of death, disease, injury, and disability, on health promotion, on the conduct of public health services, and on the public health system and infrastructure. In this context, "law" means statutes, regulations and rules, contract specifications, licensing requirements, case law and other judicial rulings, and other legally enforceable policies of the federal government, state governments and their political subdivisions, tribes, and territories.

Special emphasis will be given to research that will produce, on an accelerated basis, scientifically valid findings that can be used to improve law's contribution to public health preparedness for, and response to, terrorism, outbreaks of infectious disease, and other major public health threats and emergencies.

Measurable outcomes of the program will be in alignment with the following performance goal for the CDC Public Health Practice Program Office (PHPPO): Prepare state and local health systems, departments and laboratories to respond to current and emerging public health threats.

C. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, public health and healthcare organizations, community-based organizations, faith-based organizations, and other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applications that are incomplete or non-responsive to the below requirements will be returned to the applicant without further consideration. The following are applicant requirements:

1. A principal investigator who has conducted scientific research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing research evaluating public health law or other public policies, programs or interventions.

3. Effective and well-defined working relationships within the performing organization and with outside entities that will ensure implementation of the proposed activities.

4. The overall match between the applicant's proposed research objectives and those described under the heading "Program Requirements."

D. Funding

Availability of Funds

Approximately $500,000 is available in FY 2003 to fund approximately three awards. It is expected that the average award will be $165,000, ranging from $150,000 to $250,000. It is expected that the awards will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

Research applications are solicited that address the specific program areas of interest below (not listed in priority order), and other areas the applicant demonstrates are significant for improved public health.

1. Terrorism: The impact of laws on public health preparedness for, and response to terrorism.

2. Infectious Diseases: The impact of laws on the prevention and transmission of diseases not related to terrorism, on the prevention of drug-resistant disease, and on patient safety.

3. Public Health Reporting: The effectiveness of state and local laws regarding the reporting of disease, injury, disability, and risk factors associated with those conditions.

4. Child, Adolescent, and Adult Health:

a. The impact of the absence of school-entry immunization laws on immunization levels.

b. The impact of legislatively mandated immunization insurance benefits (*e.g.*, first-dollar coverage laws) and of their enforcement on immunization levels.

c. The impact of standing orders laws on adult immunization levels.

d. The impact of state laws and case law on adolescent access to health care services and participation in research.

e. The impact of alcohol taxes on adolescent alcohol use and alcohol-related conditions.

5. HIV, STDs, and Tuberculosis: The impact of laws on the occurrence and transmission of HIV, sexually transmitted diseases, and tuberculosis, and the impact of laws on implementation of rapid HIV testing.

6. Injury: The impact of legislative and regulatory interventions on injury, and the impact of differing levels of their enforcement on injury.

7. The Built Environment and Public Health: The impact of State and local laws on the impact the Built Environment has on the health of the public.

8. Chronic Diseases:

a. The impact of State and local laws on chronic diseases and on risk factors for chronic diseases, with special emphasis on diabetes, obesity, tobacco, physical activity, and nutrition.

b. The impact of state and local laws on utilization of cancer screening services, on cancer incidence and mortality reporting, and on the variability of state coverage for Medicaid cancer services (including screening, diagnosis, treatment, and post-treatment services).

c. The impact of State and local laws on the occurrence of environmental health hazards (*e.g.*, mold and poor indoor air quality) in schools and on subsequent health and learning effects on students.

d. The impact of laws on self-administration of prescribed medications for students and on subsequent health and learning effects on students.

e. The impact of laws on the location of schools (*e.g.*, in proximity to hazardous waste sites) and on subsequent health and learning effects on students.

9. Occupational Health: The impact of Federal and State regulations, municipal ordinances, contract specifications, and health-related litigation on the safety and health of workers.

10. Public Health System: The impact of laws on the public health system and infrastructure and on the capacity of the public health workforce, health departments and laboratories, and private entities to perform essential public health services.

11. Public Health Practice:

a. The impact on public health practice of the "Standards for Privacy of Individually Identifiable Health Information" (the Privacy Rule) of the Health Insurance Portability and Accountability Act.

b. The impact of privacy laws on establishment and use of electronic medical records, in general, and on immunization and other public health registries, in particular.

For all these programmatic areas, it is the intent of this program to fund applications comprising innovative, multi-disciplinary research strategies. Model approaches also are sought for evaluating the impact of public health laws, within or across different areas of public health (*e.g.*, infectious diseases, chronic diseases, environmental health, injury prevention, and public health systems and infrastructure).

As appropriate and feasible, applicants are encouraged to address the fullest complement of possible measures for assessing outcomes. These measures could include health and safety outcomes (*e.g.*, frequency and severity of injury, illness, disability, or hazard exposure; frequency of risk or of preventive behaviors; economic outcomes (*e.g.*, costs at the level of the individual, household, community, industry, or society; or distribution of costs among payers); social outcomes (*e.g.*, impact on educational attainment, employment); as well as measures of change in behavior, knowledge, attitudes, use of technological interventions, the capacity of public health systems infrastructure, the quality and quantity of prevention services and public health practice, and other measures.

Applications are encouraged which include plans to obtain and analyze information on the implementation of the referenced laws, as appropriate and necessary for evaluating their impact, including quantitative and qualitative information on application, enforcement, or compliance activities associated with a law under evaluation, and on compliance-related knowledge, attitudes, and behaviors of the target audience(s). Information on implementation also may address factors that may either impede or promote the contribution laws make to public health.

F. Content

Letter of Intent (LOI)

An LOI is required for this program. LOIs will be evaluated to determine which applicants will be invited to submit a full application based on the reviewer's evaluation of the LOI, as described in Evaluation Criteria. LOIs must be no more than four pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

Mandatory Identifying Information

The following identifying information must appear only on the first page of the LOI:

1. The Program Announcement and number.

2. The name, address, telephone number, and fax number of the applicant and the e-mail address of a contact person.

3. The names, degrees, and titles of the principal investigator and all key project personnel.

This identifying information must not appear on the second, third or the fourth page.

Mandatory Project Information

The following information on the proposed research project must appear on the second, third and fourth pages:

1. A narrative description of the proposed research plan.

2. The number of months or years the project will take to completion.

3. The total funding required for each year of the project.

LOIs that do not include the mandatory information will be deemed non-responsive; the applicants will not be invited to submit full applications.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Programmatic Interest Areas, Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your PHS 398 (OMB Number 0925–0001) application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, single-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of, at a minimum, a plan, objectives, methods, evaluation and budget. Applications for research on the impact of public health laws should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to improving law's contribution to public health.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the role and responsibilities of the principal investigator.

5. A description of all the project staff and their role in the proposed research, regardless of their funding source, including their title, qualifications, experience, percentage of time each will devote to the project, as well as the portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed research, if applicable, including a letter of commitment from each and a clear statement of their role.

8. A detailed first year's budget for the grant with future annual projections, if relevant, including direct and indirect costs.

G. Submission and Deadline

Letter of Intent (LOI) Submission

The LOI must be received by 4 p.m. Eastern Time May 9, 2003. Submit the LOI to: Technical Information Management—PA#03049, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

LOIs may not be submitted electronically.

Application Forms

Submit the original and two copies of PHS 398 (OMB Number 0925–0001) (Errata Instruction Sheet for PHS 398 is posted on the CDC Web site.) Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*. If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time, July 9, 2003.

Submit the application to: Technical Information Management—PA#03049, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to 1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or 2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications that do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Letter of Intent

The Letter of Intent (LOI) will be reviewed by a panel to include reviewers other than CDC staff from the funding Centers/Institutes/Offices, and who will be involved in the peer review panel for the applications. The panel will review the LOI to determine if it indicates research of sufficient relevance to CDC program priorities and potential scientific significance to warrant submission of a full application. Only principal investigators whose LOIs are determined to meet these criteria will be requested to submit full applications. Evaluation criteria to be applied include the following:

1. Relevance to CDC program priorities; (60 percent)
2. Potential Scientific Significance. (40 percent)

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goal stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and will be an element of evaluation.

Applications will be reviewed for completeness and responsiveness as outlined under the "Eligible Applicants" Section (Items one through four.) Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation procedure by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a peer review group.

Criteria to be considered in the review are listed below.

All criteria are of equal importance, however, an application does not need to be strong in all categories to be judged likely to have a major scientific impact.

1. Significance—Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of this study on the concepts or methods that drive this field?

2. Approach—Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

3. Innovation—Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies?

4. Investigator—Is the principal investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other significant investigator participants?

5. Environment—Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

6. Human Subjects—Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

7. Dissemination—What plans have been articulated for disseminating findings?

A second programmatic review will be conducted by a panel of Senior Federal Officials. The Officials will review the ranked proposals to assure maximal impact and balance of the proposed research. The factors to be considered will include:

1. The results of the peer review.
2. The importance of the proposed research for meeting the primary goals of this initiative, as described in "Program Requirements" section.
3. Budgetary considerations.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:
   a. Current Budget Period Activities and Objectives.
   b. Current Budget Period Financial Status.
   c. New Budget Period Proposed Activities and Objectives.
   d. Detailed Line-Item Budget and Justification for the new budget period.
   e. Additional Requested Information.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of this announcement as posted on the CDC Web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–15 Proof of Non-Profit Status (if applicable)

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements".

Business management technical assistance may be obtained from: Merlin J. Williams, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2765, E-mail address: *MWilliams2@cdc.gov*.

For program technical assistance, contact: Anthony D. Moulton, PhD, Public Health Law Program, Public Health Program Practice Office, Centers for Disease Control and Prevention, 4770 Buford Hwy. (K–36), Atlanta, Georgia 30341–3724, Phone: 770–488–2405/Fax 770–488–2474, E-mail: *ADM6@CDC.GOV*.

Dated: April 11, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–9424 Filed 4–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., June 4, 2003; 8:30 a.m.–12 p.m., June 5, 2003.

Place: Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333. Telephone (404) 639–8008.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis (TB). Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating TB.

Matters to be Discussed: Agenda items include issues pertaining to improving TB control efforts in the Southeast, TB among the foreign born, and other TB-related topics.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Paulette Ford-Knights, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 11, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–9425 Filed 4–16–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0454]

Agency Information Collection Activities; Announcement of OMB Approval; Notice of a Claim for Generally Recognized as Safe Exemption Based on a Generally Recognized as Safe Determination

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Notice of a Claim for Generally Recognized as Safe Exemption Based on

a Generally Recognized as Safe Determination" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 3, 2003 (68 FR 5294), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0342. The approval expires on April 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: April 10, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9383 Filed 4–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0009]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for Exemption From Federal Preemption of State and Local Medical Device Requirements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the information collection provisions by May 19, 2003.

ADDRESSES: The Office of Management and Budget (OMB) is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to sshapiro@omb.eop.gov or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Stuart Shapiro, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Application for Exemption From Federal Preemption of State and Local Medical Device Requirements—21 CFR Part 808 (OMB Control Number 0910–0129)—Extension

Section 521(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360k(a)) provides that no State or local government may establish, or continue in effect, any requirement with respect to a medical device that is different from, or in addition to, any Federal requirement applicable to the device under the act. Under section 521(b) of the act, following receipt of a written application from the State or local government involved, FDA may exempt from preemption a requirement that is more stringent than the Federal requirement, or that is necessitated by compelling local conditions and compliance with the requirement would not cause the device to be in violation of any portion of any requirement under the act. Exemptions are granted by regulation issued after notice and opportunity for an oral hearing.

The regulations in 21 CFR 808.20 require a State or local government that is seeking an exemption from preemption to submit an application to FDA. The application must include a copy of the State or local requirement, as well as information about its interpretation and application, and a statement as to why the applicant believes that the requirement qualifies for exemption from preemption under the act. FDA will use the information in the application to determine whether the requirement meets the criteria for exemption in the act and whether granting an exemption would be in the interest of the public health.

In addition, 21 CFR 808.25 provides that an interested person may request a hearing on an application by submitting a letter to FDA following the publication by FDA of a proposed response to the application.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Numbers of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
808.20	3	1	3	100	300
808.25	3	1	3	10	30
Total					330

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA based its estimates of the number of submissions expected in the future contained in table 1 of this document on the number of submissions submitted in the last 3 years and on the number of inquiries received indicating that applications would be submitted in the next year. FDA based its estimates of the time required to prepare submissions on discussions with those who have prepared submissions in the last 3 years.

Dated: April 10, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9385 Filed 4–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0136]

Agency Information Collection Activities; Proposed Collection; Comment Request; Adoption of the FDA Food Code by Local, State, and Tribal Governments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's collection of information from local, State, and tribal agencies concerning their adoption of, or plans to adopt, all or portions of the FDA Food Code or its equivalent by regulation, law, or ordinance.

DATES: Submit written or electronic comments on the collection of information by June 16, 2003.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane., rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Adoption of the FDA Food Code by Local, State, and Tribal Governments (OMB Control Number 0910–0448)—Extension

FDA has developed its model Food Code to assist and promote consistent implementation of national food safety regulatory policy among the local, State, and tribal jurisdictions that have primary responsibility for the regulation or oversight of retail level food operations. The FDA Food Code provides a scientifically sound technical and legal basis for regulating the retail segment of the food industry. Authority for providing such assistance is derived from section 311(a) of the Public Health Service Act (42 U.S.C. 243(a)) and delegation of authority from the Public Health Service to the Commissioner of Food and Drugs relative to food protection is contained in 21 CFR 5.10(a)(2) and (a)(4). Under 31 U.S.C. 1535, FDA provides assistance to other Federal agencies such as the Indian Health Service (IHS).

Nationwide adoption of the model FDA Food Code is an important step towards the agency's goal for consistent, scientifically sound, and risk-based food safety standards and practices. A current, comprehensive, and accurate inventory of food code adoptions by States and U.S. territories, local, and tribal governments is necessary to determine the status of up-to-date protection of the U.S. population and to identify areas where assistance to these governments may promote the adoption of regulations based on the FDA Food Code.

This collection effort, which began in 2001, has had remarkable success with 97 percent participation from State and territorial agencies. FDA contracted with the Association of Food and Drug Officials (AFDO) to conduct the initial survey using the OMB approved survey form. Contacts were made by telephone and e-mail to determine the Food Code status in their jurisdiction(s). Follow up contacts by telephone and e-mail to minimize the burden on respondents were made to clarify responses.

The rulemaking process that local, State, territorial, and tribal governments must follow to adopt the Food Code is often a long and complicated process that can extend 2 or more years. For this reason, many agencies reported in the initial survey that they were still in the rulemaking process to adopt or update their food codes for the years 2004 and 2005 or beyond. Thus, FDA believes that further implementation of the initial survey is needed to cover this additional rulemaking in order to keep the current database accurate and up-to-date. Based on experience gained in the past 3 years from the initial survey, FDA has developed a more condensed follow up survey to further minimize the burden requirements on respondent agencies. For example, FDA now knows if responding agencies have adopted a new code since 1993, the types of establishments regulated by those codes, the populations of the jurisdiction covered, and the status of local health agencies in the States. This information will not be collected again. We have reduced the number of questions from 16 to 5. Collection(s) of information will be electronically and/or telephonically obtained thus, providing respondents with data already in the database to further the ease of response and lower the burden.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Food Code Survey	150	4	500	1	600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Experience in the initial survey has more clearly identified the respondents for updating the information in the database. For example, FDA will obtain information from IHS, relative to the tribal nations' adoption of the Food Code that IHS maintains, using the information categories in the revised follow up survey form for which this extension is requested. Seventy-three State and territorial agencies were identified as respondents for Food Code adoption and it appears that initially, only 30 local agencies in cities of 500,000 or more will need to be contacted because most local jurisdictions are under State requirements. This further reduces the total burden on respondents. Quarterly updates from respondents under active rulemaking will be requested by AFDO to keep the database current and accurate. Respondents that have concluded rulemaking will likely need only annual contact. Estimated response time is about 1 hour or less because most reporting will be done telephonically or electronically.

Dated: April 10, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9533 Filed 4–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0021]

Determination of Regulatory Review Period for Purposes of Patent Extension; HYPERION LTK SYSTEM

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for HYPERION LTK SYSTEM and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(3)(B).

FDA recently approved for marketing the medical device HYPERION LTK SYSTEM. HYPERION LTK SYSTEM is indicated for temporary reduction of hyperopia in patients with +0.75 to +2.5 diopters of manifest refraction spherical equivalent at the spectacle plane (with cylinder less than or equal to +0.75 diopters) who are 40 years of age or older with documented stability of refraction for the prior 6 months, as demonstrated by a change of less than or equal to 0.50D in spherical and cylindrical components of the manifest refraction. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for HYPERION LTK SYSTEM (U.S. Patent No. 4,976,709) from Sunrise Technologies International, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated October 31, 2002, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of HYPERION LTK SYSTEM represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for HYPERION LTK SYSTEM is 3,047 days. Of this time, 2,806 days occurred during the testing phase of the regulatory review period, while 241 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date a clinical investigation involving this device was begun*: February 28, 1992. FDA has verified the applicant's claim that the date the investigational device exemption (IDE) required under section 520(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(g)) for human tests to begin became effective February 28, 1992.

2. *The date the application was initially submitted with respect to the device under section 515 of the act (21 U.S.C. 360e)*: November 3, 1999. The applicant claims November 1, 1999, as the date the premarket approval application (PMA) for HYPERION LTK SYSTEM (PMA P990078) was initially submitted. However, FDA records indicate that PMA P990078 was submitted on November 3, 1999.

3. *The date the application was approved*: June 30, 2000. FDA has verified the applicant's claim that PMA P990078 was approved on June 30, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,644 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 16, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 14, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (see **ADDRESSES**). Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–9535 Filed 4–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 23, 2003, from 8:30 a.m. to 3:30 p.m.

Location: Gaithersburg Marriott, Salons A, B and C, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, ext. 127, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for an intraocular lens for primary implantation in the capsular bag for the correction of aphakia in an adult in whom a cataractous lens has been removed and who may benefit from improved near, intermediate and distance vision without spectacles. Background information for the day's topic, including the attendee list, agenda, and questions for the committee, will be available to the public one business day before the meeting, on the Internet at http://www.fda.gov/cdrh/panel/index.html. Material will be posted on May 22, 2003.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 16, 2003. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m., and for 30 minutes near the end of the committee deliberations on the PMA. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 16, 2003 and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–9386 Filed 4–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting; Correction

AGENCY: Food and Drug Adminstration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of April 3, 2003 (68 FR 16292). The notice announced a meeting of the Clinical Pharmacology Subcommittee of the Advisory Committee for Pharmaceutical Science, which was scheduled for April 22–23, 2003. The document was published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–8011, appearing on page 16292 in the **Federal Register** of Thursday, April 3, 2003, the following correction is made:

1. On page 16292, in the first column, in the "*Location*" section, "5600" is corrected to read "5630".

Dated: April 10, 2003.

Linda Arey Skladany,

Associate Commissioner for External Relations.

[FR Doc. 03–9384 Filed 4–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03E–0030]

Determination of Regulatory Review Period for Purposes of Patent Extension; FASLODEX

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FASLODEX and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm, 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product FASLODEX (fulvestrant). FASLODEX is indicated for the treatment of hormone receptor positive metastatic breast cancer in postmenopausal women with disease progression following anti-estrogen therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for FASLODEX (U.S. Patent No. 4,659,516) from AstraZeneca UK, Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 4, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of FASLODEX represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for FASLODEX is 1,935 days. Of this time, 1,541 days occurred during the testing phase of the regulatory review period, while 394 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: January 8, 1997. The applicant claims January 5, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was January 8, 1997, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: March 28, 2001. FDA has verified the applicant's claim that the new drug application (NDA) for FASLODEX (NDA 21–344) was initially submitted on March 28, 2001.

3. *The date the application was approved*: April 25, 2002. FDA has verified the applicant's claim that NDA 21–344 was approved on April 25, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,165 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 16, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 14, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (see **ADDRESSES**). Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–9536 Filed 4–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03E–0035]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZETIA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZETIA and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane,Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ZETIA (ezetimibe). ZETIA, administered alone, is indicated as adjunctive therapy to diet for the reduction of elevated total-chlorestorol (total-C), low density lipoprotein (LDL–C), and Apo B in patients with primary hypercholesterolemia. ZETIA, administered in combination with an HMG–CoA reductase inhibitor, is indicated as adjunctive therapy to diet for the reduction of elevated total-C, LDL–C, and Apo B in patients with primary hypercholesterolemia. The combination of ZETIA atorvastatin or simvastatin is indicated for the reduction of elevated total-C and LDL–C levels in patients with HoFH, as an adjunct to other lipid-lowering treatments or if such treatments are unavailable. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ZETIA (U.S. Patent No. 37,721) from Schering Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 3, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ZETIA represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ZETIA is 1,983 days. Of this time, 1,680 days occurred during the testing phase of the regulatory review period, while 303 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: May 23, 1997. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on May 23, 1997.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act: December 27, 2001.* FDA has verified the applicant's claim that the new drug application (NDA) for ZETIA (NDA 21–445) was initially submitted on December 27, 2001.

3. *The date the application was approved*: October 25, 2002. FDA has verified the applicant's claim that NDA 21–445 was approved on October 25, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 497 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 16, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 14, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (see **ADDRESSES**). Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–9534 Filed 4–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for SAMHSA State Incentive Grants (COSIG) for Treatment of Persons with Co-Occurring Substance Related and Mental Disorders.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT) and Center for Mental Health Services (CMHS) announces the availability of FY 2003 funds for the grant program described below. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: *http://www.fedgrants.gov.*

This notice is not a complete description of the program; potential applicants must obtain a copy of the

Request for Applications (RFA), including Part I, State Incentive Grants (COSIG) for Treatment of Persons with Co-Occurring Substance Related and Mental Disorders, Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application.

Funding Opportunity Title: State Incentive Grants (COSIG) for Treatment of Persons with Co-Occurring Substance Related and Mental Disorders—Short Title: COSIG.

Funding Opportunity Number: TI 03–003.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Section: 509 of the Public Health Service Act, as amended and subject to the availability of funds.

Funding Opportunity Description: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), and Center for Mental Health Services (CMHS), are accepting applications for Fiscal Year 2003 grants to develop and enhance the infrastructure of States and their treatment service systems to increase the capacity to provide accessible, effective, comprehensive, coordinated/integrated, and evidence-based treatment services to persons with co-occurring substance abuse and mental health disorders, and their families.

Eligible Applicants: Only the immediate Office of the Governor of States may apply. State-level agencies are not considered to be part of the immediate Office of the Governor. This means, for example, that the State Mental Health or Substance Abuse Authorities or other State-level agencies within the Office of the Governor cannot apply independently. SAMHSA has limited the eligibility to Governors of States because the immediate Office of the Governor has the greatest potential to provide the multi-agency leadership needed to develop the State's infrastructure/treatment service systems to increase the State's capacity to provide accessible, effective, comprehensive, coordinated/integrated, and evidence-based services to persons with co-occurring substance abuse and mental health disorders, and their families.

As defined in the Public Health Service (PHS) Act, the term "State" includes all 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. Applications from State agencies other than the Office of the Governor, or from government entities that do not meet the definition of "State," are not eligible for funding and will not be reviewed.

Due Date for Applications: June 13, 2003.

Estimated Funding Available/Number of Awards: It is expected that $6.5 million will be available for 6 to 10 awards in FY 2003. The average annual award will range from $500,000 to $1.1 million in total costs (direct and indirect). Grantees in years 1–3 will receive up to $1.1 million per year. Grantees with service pilots will receive up to half of the third year award in the 4th year to phase down the services pilot and up to $100,000 for evaluation in year 5. Grantees without service pilots will receive up to $100,000 for evaluation in both years 4 and 5. Applications with proposed budgets that exceed these amounts in any year will be returned without review.

Is Cost Sharing Required: No.

Period of Support: Up to 5 years, with annual continuations depending on availability of funds and progress achieved.

How to Get Full Announcement and Application Materials: Complete application kits may be obtained from: the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686. The PHS 5161–1 application form and the full text of the funding announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov* (Click on "Grant Opportunities").

When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Contact for Additional Information: Richard E. Lopez, J.D., Ph.D., Substance Abuse and Mental Health Agency, Center for Substance Abuse Treatment, Division of State and Community Assistance, 5600 Fishers Lane/Rockwall II, Room 8–147, Rockville, MD 20857, (301) 443–7615, E-Mail: *rlopez@samsha.gov.*

Dated: April 10, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–9387 Filed 4–16–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Suspension of Application Receipt Dates for a Fiscal Year (FY) 2003 Funding Opportunity

AGENCY: Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Suspension of future application receipt dates until further notice for SAMHSA/CSAT Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need Program (PA 03–001).

SUMMARY: This notice is to inform the public that future application receipt dates under the SAMHSA/CSAT program announcement, Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need—PA 03–001, are being cancelled until further notice. Effective immediately, no applications will be received for the future September 10 and January 10 receipt dates under this announcement.

The notice of funding opportunity for PA 03–001 was published in the **Federal Register** on June 24, 2002, (Vol. 67, Number 121, pages 42573–42574).

SAMHSA is currently re-engineering its discretionary grants process and it is possible that PA 03–001 may ultimately be withdrawn.

Information related to this notice may be obtained from: Tom Edwards, Division of Services Improvement, CSAT/SAMHSA, Tele: (301) 443–8453, e-mail: *tedwards@samhsa.gov.*

Dated: April 10, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–9388 Filed 4–16–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Paperless Drawback Prototype: Delay of Commencement of Test and Reopening of Application Period

AGENCY: Customs and Border Protection, Homeland Security; Treasury.

ACTION: General notice.

SUMMARY: In a document published in the **Federal Register** on September 27, 2002, Customs announced its plan to conduct a prototype test to determine the feasibility of filing paperless drawback claims. The document stated that drawback claimants who wished to participate in the test must submit applications to Customs by October 28, 2002. In an effort to encourage greater participation in the prototype, Customs in this document is announcing a reopening of the period for drawback claimants to submit applications to participate in the Paperless Drawback Prototype and sets a new timeframe for commencement of the test.

DATES: Drawback claimants who wish to participate in the Paperless Drawback Prototype must submit applications to Customs no later than May 19, 2003. The Paperless Drawback Prototype will commence no earlier than May 19, 2003, and will run for approximately one year with a final evaluation taking place at the end of the first 12-months of the prototype.

ADDRESS: Written comments regarding this notice, and prototype applications, should be addressed to the Bureau of Customs and Border Protection, Entry and Drawback Management Branch, 1300 Pennsylvania Avenue, NW., Room 5.2–33, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Questions pertaining to any aspect of this prototype should be directed to Sherri Lee Hoffman, Bureau of Customs and Border Protection, Entry and Drawback Management Branch, at (202) 927–0300 or via email at *sherri.lee.hoffman@customs.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

Title VI of the North American Free Trade Agreement Implementation Act, Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subpart B of title VI of the Act concerns the National Customs Automation Program (NCAP), an electronic system for the processing of commercial imports. Within subpart B, section 631 of the Act added section 411 to the Tariff Act of 1930 (19 U.S.C. 1411–1414), which defines the NCAP, provides for the establishment of and participation in the NCAP, and includes a list of existing and planned components. Section 411(a)(2)(F) identifies the electronic (*i.e.*, paperless) filing of drawback claims, records or entries as a planned NCAP component.

Section 101.9(b) of the Customs Regulations (19 CFR 101.9(b)) provides for the testing of NCAP planned components. The Paperless Drawback prototype is being tested in accordance with this provision.

A notice describing the Paperless Drawback Prototype, and setting forth the prototype's terms and conditions, was published in the **Federal Register** (67 FR 61197) on September 27, 2002. That document stated that the prototype was to commence no earlier than August 1, 2002, and the deadline by which drawback claimants were required to submit applications to Customs to participate in the prototype was October 28, 2002. In an effort to encourage greater participation in the prototype, Customs is reopening the application period until 30 days from the date of publication of this notice in the **Federal Register**. The Paperless Drawback Prototype will commence no earlier than 30 days from the application deadline date.

All of the remaining Paperless Drawback Prototype terms and conditions set forth in the September 27, 2002, **Federal Register** notice remain in effect.

Dated: April 11, 2003.

William S. Heffelfinger III,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–9405 Filed 4–16–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG). The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include: Continued orientation to the Trinity River Restoration Program, establishment of Committee bylaws, establishment of subcommittees, and setting future meeting dates. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 9 a.m. to 5 p.m. on Tuesday, April 22, 2003, and from 8 a.m. to 5 p.m. on Wednesday, April 23, 2003.

ADDRESSES: The meeting will be held at the Victorian Inn, 1709 Main Street, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Ellen Mueller of the U.S. Fish and Wildlife Service, California/Nevada Operations Office, 2800 Cottage Way, W–2606, Sacramento, California 95825, (916) 414–6464. Dr. Mary Ellen Mueller is the designee of the committee's Federal Official—Steve Thompson, Manager of the U.S. Fish and Wildlife Service, California/Nevada Operations Office.

SUPPLEMENTARY INFORMATION: For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, California 96093, (530) 623–1800.

Dated: April 11, 2003.

Ken McDermond,

Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 03–9573 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–10767; CHA–7]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Chugach Alaska Corporation for 3.93 acres of land located in the vicinity of Constantine Harbor, Alaska. Notice of this decision will be published four times in the *Anchorage Daily News.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision, shall have until May 19, 2003 to file an appeal.

2. Parties receiving service by certified mail shall have until 30 days from the receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Chris Sitbon, (907) 271–3226.

Chris Sitbon,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–9369 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–HY–P; AA–6689–A; ALA–2]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Sanak Corporation for lands within T. 60 S., R. 90 W., Seward Meridian, located in the vicinity of Pauloff Harbor, Alaska, containing approximately 3,200 acres. Notice of the decision will also be published four times in the *Anchorage Daily News.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until May 19, 2003 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, # 13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Ron Royer by phone at (907) 271–5677 or by e-mail at *Ron_Royer@ak.blm.gov.*

Ronald E. Royer,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 03–9367 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–030–1210–NJ]

Vehicular Road Closure to Motorized Public Access on Selected Public Lands in Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure.

SUMMARY: Closure of approximately 0.50 miles of access road, south of the main road, that historically accessed the now closed Mohave County refuse transfer station South of Truxton in T 24N R 12W sec 11, Gila and Salt River Baseline and Meridian within the Kingman Field Office Mohave County, Arizona. This action is intended to prevent motorized access to an area known for the frequent dumping of household and industrial waste, and to prevent further erosion and environmental damage to the adjacent wash.

DATES: Road Closure is effective immediately and extends until June 21, 2004.

SUPPLEMENTARY INFORMATION: In June, 2002, the Bureau of Land Management spent in excess of $30,000 removing hazardous materials and related debris from a trash dump at the end of this access road. Furthermore, this action is taken to prevent further degradation of environmental resources due to the illegal dumping of household waste, industrial waste, and hazardous materials. Exceptions to this closure include motorized vehicle use for administrative and emergency purposes and for authorized permittees. The authorized officer may issue a written authorization allowing motorized access for specific purposes. This closure is in accordance with provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) and 43 CFR 8364.1. The authority for this restriction is provided in 43 CFR 8364.1(a). Persons who violate this restriction are subject to arrest and, upon conviction, may be fined up to $100,000.00 and/or imprisoned for not more than 12 months as amended by 18 U.S.C. 3571 and 18 U.S.C. 3581.

FOR FURTHER INFORMATION CONTACT: Bob Hall, Public Affairs Specialist, (928) 692–4454 Bureau of Land Management, Kingman Field Office, 2475 Beverly Ave., Kingman AZ, 86401.

Dated: June 24, 2002.

John Christensen,

Kingman Field Office Manager.

[FR Doc. 03–9375 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–094–2810–HT;GPO DBG030001]

Notice of Shooting Closure Near Black Canyon Exit 13, Payette County, ID

SUMMARY: The following described public lands, as provided by title 43 CFR 8364, located in Payette County, Idaho, are closed to the discharge of all firearms, subject to the exemption below. The following public lands south of the Interstate Highway I–84 are involved with this closure order:

T. 6 N., R. 4 W., Boise Meridian, Payette County, Idaho
Section 10: SE¼,
Section 11: SW¼,
Section 14: NW¼,
Section 15: NE¼,
Containing 533.20 acres.

DATES: This order shall become effective immediately upon publication in the **Federal Register** and shall be in effect continuously for the next 10 years. At that time, this closure order shall be reviewed and a determination shall be made whether to reinstate, amend, modify or change the order by similar notification. This closure order may be rescinded at anytime if in the judgment of the authorized officer it is not effective or not needed.

ADDRESSES: Copies of maps that outline the closed area are available at the Bureau of Land Management, Lower Snake River District, 3948 Development Avenue, Boise, ID 83705.

FOR FURTHER INFORMATION CONTACT: The Fire Management Officer at (208) 384–3410.

SUPPLEMENTARY INFORMATION: The subject lands are being closed to protect Bureau of Land Management employees stationed at Wild West Guard Station and to safeguard personal and government owned property which amounts to considerable investment of public funds. Public safety is dependent on these facilities being operational at all times. Malicious vandalism by random and deliberate shooting has made this government facility extremely hazardous in recent years.

Exempt from this order are law enforcement officers of Federal, State and county governments while on official business of that agency. Any person who fails to comply with this closure order shall be subject to prosecution under penalty of law as provided by title 43 § 8360.0–7 and State or county statues, as applicable. Noncompliance is considered a misdemeanor, punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: January 28, 2003.

Daryl L. Albiston,

Four Rivers Field Manager.

[FR Doc. 03–9370 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–070–03–1230–EA]

Temporary Closure of Public Lands—Recreation Special Events: New Mexico, Farmington Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of affected public lands in San Juan County.

SUMMARY: The Bureau of Land Management, Farmington Field Office (BLM), announces the temporary closure of selected public lands under its administration in San Juan County. This action is taken to provide for public and participant safety and to protect adjacent natural and cultural resources during the conduct of permitted special recreation events.

SUMMARY: The State Director, New Mexico State Office, announces the temporary closure of selected public lands under BLM administration. This action is taken to provide for public and participant safety and to protect adjacent natural and cultural resources during the conduct of permitted special recreation events.

EFFECTIVE DATES: March through December 2003. Events may be canceled or rescheduled at short notice.

FOR FURTHER INFORMATION CONTACT: Richard Simmons, Outdoor Recreation Planner, Farmington Field Office, Bureau of Land Management, 1235 La Plata Hwy, Suite A, Farmington, New Mexico 87410, telephone: (505) 599–6345.

SUPPLEMENTARY INFORMATION: This notice applies to closures on and adjacent to permitted special events including but not limited to: Motorized Off Highway Vehicle events, Mountain Bike races, and Horse Endurance competitive event sites and routes. Competitive events are conducted along dirt roads, trails, washes, and areas approved for such use through the Special Recreation Permit application process. Events occur from March through December 2003. Closure period is from 6 a.m. event day until event finish or until the event has cleared between affected Check Point locations; approximately 2 to 48 hour periods. The general public will be advised of each event and closure specifics via local newspapers and mailed public letters within seven (7) to thirty (30) days prior to the running of an event. Event maps and information will be posted at the Farmington Field Office.

Locations most commonly used for permitted events include, but are not limited to:

1. Glade Recreation Area—San Juan Co., T30–31N R12–13W.
2. Alien Run Mountain Bike Trail—San Juan Co.: T31N R10W.
3. The Rock Garden—San Juan Co.: T30–31N R9W.
4. Pinyon Mesa—San Juan Co.: T30N R13–14W.
5. Navajo Lake Horse Trails—San Juan Co.: T30N R7–8W.
6. The Dunes OHV Area—San Juan Co.: T29N R13W.
7. Head Canyon Motocross Track—San Juan Co.: T30N R13W.
8. Simon Canyon—San Juan Co.: T30–31N R8W.
9. Angel Peak Recreation Area—San Juan Co.: T26–27N R10W.

Marking and effect of closure. BLM lands to be temporarily closed to public use include the width and length of those roads, trails and routes identified as the route for the permitted event, identified by colored flagging, chalk arrows in the dirt, traffic cones, temporary barricades and/or directional arrows attached to wooden stakes; vehicle closures for the public in vendor areas and spectator viewing areas, identified with colored ribbon and signs; camping closures, except in such areas designated for camping by the BLM, identified with signs and colored ribbon and/or barricades, gates, cones, and fences. The authorized applicants or their representatives are required to post warning signs, control access to, and clearly mark the event routes and area during closure periods. Public uses generally affected by a Temporary Closure include: road and trail uses, camping, picnicking, parking, cross-country travel, and public land exploration.

Spectator and support vehicles may be driven in designated areas and routes only. Spectators may observe the races from specified locations as directed by event and agency officials.

Interested parties may obtain a map and schedule of each closure area at the contact address.

Exceptions. Closure restrictions do not apply to permittee, their employees, competitors, medical/rescue, law enforcement, Oil and Gas Industry employees doing day-to-day necessary service, and BLM personnel monitoring the event.

Authority: 43 CFR 8364.1 and 43 CFR part 2930.

Penalty. Any person failing to comply with the closure orders may be subject to imprisonment for not more than 12 months, or a fine in accordance with the applicable provisions of 18 U.S.C. 3571, or both.

Dated: March 7, 2003.

Linda Rundell,

New Mexico State Director.

[FR Doc. 03–9379 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–$F–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–040–1320–DO]

Notice of Intent To Prepare a Resource Management Plan Amendment and Environmental Assessment and Call for Coal or Other Resource Information

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of intent to prepare a Resource Management Plan Amendment (RMPA) and associated Environmental Assessment (EA) for Federal coal resources in Haskell, Latimer, and LeFlore Counties, Oklahoma, and notice of scoping meetings.

SUMMARY: Pursuant to the Federal Land Policy and Management Act (FLPMA) of 1976 and the National Environmental Policy Act (NEPA) of 1969, the Bureau of Land Management (BLM) Oklahoma Field Office will prepare an amendment to the Oklahoma Resource Management Plan (RMP) (1994, as amended 1996) and complete an EA on the amendment for three potential competitive Federal coal lease sales covering lands in Haskell, Latimer, and LeFlore Counties, Oklahoma. The RMPA would evaluate three Lease Application Areas (LAAs) to determine whether they are suitable for further consideration for leasing. The LLAs total approximately 6,883 acres of previously unleased coal and are part of the Federal mineral estate. The RMPA will be prepared under guidance provided through BLM Planning Regulations. This notice is also to solicit coal and other resource information pursuant to 43 CFR 3420.1–2.

This notice formally initiates the public scoping phase to identify issues and review preliminary planning criteria that will help guide the preparation of the RMPA/EA. The BLM will encourage public participation and will begin by conducting two public

scoping meetings near the LAAs to solicit input from all concerned parties. The dates, times, and locations for these meetings will be announced in local and regional newspapers. Coal companies, other mineral extraction companies, state and local governments, and the general public are encouraged to submit information to the BLM to assist in the determination of coal development potential and possible conflicts with other resources.

DATES: The scoping comment period will commence with the publication of this notice. Meetings and comment closing dates will be announced through local media, a newsletter, and the BLM Web site: *http://www.nm.blm.gov*. At least 15 days public notice in local news media will be given for activities where the public is invited to attend.

ADDRESSES: Written comments should be sent to "RMPA/EA COMMENTS," BLM, Oklahoma Field Office, 7906 East 33rd Street, Tulsa, Oklahoma 74145–1352, Fax: (918) 621–4130. Comments, including the names and street addresses of respondents, will be available for public review at the Oklahoma Field Office during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the RMPA/EA. Individual respondents may request confidentiality. If you wish to withhold your name or address from public disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be available for public inspection in their entirety. The current RMP and all other documents relevant to this planning effort are also available for public review at the Oklahoma Field Office at the address dates and times listed above.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact: Doug Cook, Co-Team Leader, BLM, Oklahoma Field Office, 7906 East 33rd Street, Tulsa, Oklahoma 74145–1352, phone (918) 621–4124 or Keith Tyler, Co-Team Leader, BLM, Oklahoma Field Office, 221 North Service Road, Moore, Oklahoma 73160–4946, phone (405) 790–1015.

SUPPLEMENTARY INFORMATION: In February and June of 2002, BLM received three applications from Farrell-Cooper Mining Company for three competitive coal lease sales for land in Haskell, Latimer, and LeFlore Counties. The sizes and locations of these three LAAs are as follows: (1) Liberty West, 640 acres, in parts of sections 1 and 12, T. 10 N., R. 12 E. in Haskell County; (2) McCurtain, 2,380 acres, in parts of sections 8–11, 14–17, T. 8 N., R. 22 E. in Haskell County; and (3) Bull Hill, 3,863.17 acres, in parts of sections 9–12, T. 5 N., R. 20 E., and in parts of sections 1–3 and 7–10, T. 5 N., R. 21 E. in Latimer County and in parts of sections 4–6, T. 5 N., R. 23 E., sections 31–34, T. 6 N., R. 24 E.; sections 33–36, T. 6 N., R. 23 E. and sections 1–3, T. 5 N., R. 22 E. in LeFlore County. The total 6,883.17 acres of Federal mineral estate is administered by the BLM and the surface is privately owned.

Opportunities for the public to be informed and participate will occur throughout the planning process. To ensure local community participation and input, public scoping meetings will be held in two towns strategically located near the LAAs. Early participation by all interested parties is encouraged and will help guide the planning process and decision. The summary and list of attendees for each meeting will be available to the public and open for 30 days to any participants who wish to clarify their views. The results of scoping will be sent to all of those interested parties on the mailing list for this project in a newsletter or scoping report. BLM personnel have identified preliminary issues and management concerns. Preliminary issues include the following: Access and traffic; public interest/benefits regarding the extraction of the coal; identification of resource values on the private lands; and water quality. Preliminary management concerns include the following: Special status species of plants and animals; maintaining government-to-government relationships with tribal governments; effects of disproportionate impacts on disadvantaged communities resulting from the potential execution of the decision to lease the coal (Environmental Justice Executive Order 12898); potential for spread of noxious weeds; protection of designated streams (Clean Water Act, section 303-d), and application of unsuitability criteria. The public is encouraged to help identify any additional issues, questions, and concerns during the initial scoping phase. Industry and other interested parties are asked to provide any information that will be useful in meeting the Federal Coal Management Program defined in 43 CFR part 3420, including the application of coal planning screens.

Information resulting from this call for information will be used to determine potential for coal development and likelihood of conflict with other resources. Lands already considered in the Oklahoma RMP, adopted in January 1994 and as amended in 1996, need not be addressed.

The issue of Federal coal leasing and development will include:

1. Determining areas acceptable for further coal leasing consideration with standard stipulations;

2. Determining areas acceptable for consideration with special stipulations; and

3. Determining areas unacceptable for further coal leasing consideration. Any individual, business entity, or public body may participate in this process by providing coal or other resource information under this call. Planning criteria will be developed during the initial public scoping early in the process to help guide the planning effort. Preliminary planning criteria being considered by BLM for the planning effort include the following: Recognize valid existing rights; comply with existing law, executive orders, regulations, and BLM policy and program guidance; seek public input; consider adjoining lands to minimize land use conflict when making decisions; consider planning jurisdictions of other Federal agencies and State, local, and tribal governments; develop reasonable and sound alternatives; use current scientific data to evaluate appropriate strategies; analyze socioeconomic effects of alternatives along with the environmental effects; and consider public welfare and safety.

Written comments should address one or more of the following: (1) Issues to be considered, (2) whether the planning criteria are adequate for the issues, (3) feasible and reasonable alternatives to examine, or (4) relevant coal or other resource information having a bearing on the RMPA/EA.

Following the initial scoping phase, BLM will prepare an inventory to determine the existing condition of the environment in the three areas. The resources to be inventoried include air quality, geology, energy and mineral resources, soils, water resources, vegetation, wildlife, special status species, noxious weeds, land use, access, visual resources, noise, social and economic conditions, environmental justice, hazardous materials, and cultural and paleontological resources. A range of reasonable alternatives, including an alternative considering no action as required by NEPA, will be developed and analyzed. Through the comments received during the initial scoping, the public will assist in developing the alternatives. It is anticipated that the RMPA/EA process will require approximately 14 months to complete, resulting in a Decision Record and RMPA being published in spring of 2004.

Dated: February 13, 2003.

Timothy R. Spisak,

Acting State Director.

[FR Doc. 03–9374 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–00–24 1A]

Call for Nominations for the Wild Horse and Burro Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Wild Horse and Burro Advisory Board call for nominations.

SUMMARY: The purpose of this notice is to solicit public nominations for three members to the Wild Horse and Burro Advisory Board. The Board provides advice concerning management, protection, and control of wild free-roaming horses and burros on the public lands administered by the Department of the Interior, through the Bureau of Land Management, and the Department of Agriculture, through the Forest Service.

DATES: Nominations should be submitted to the address listed below under **ADDRESSES** no later than May 15, 2003.

ADDRESSES: National Wild Horse and Burro Program, Bureau of Land Management, Department of the Interior, P.O. Box 12000, Reno, Nevada 89520–0006, Attn: Janet Nordin; FAX 775–861–6711.

FOR FURTHER INFORMATION CONTACT: Sally Hampton, Acting Group Manager—Wild Horse and Burro Group, (202) 452–0379. Individuals who use a telecommunications device for the deaf (TDD) may contact Ms. Hampton at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Any individual or organization may nominate one or more persons to serve on the Wild Horse and Burro Advisory Board. Individuals may also nominate themselves for Board membership. All nomination letters should include the name, address, profession, relevant biographic data, and reference sources for each nominee, and should be sent to the address listed under **ADDRESSES**, above. Nominations for the following categories of interest are needed:

Wild Horse and Burro Research
Natural Resources Management
Livestock Management

The specific category that the nominee will represent should be identified in the letter of nomination. Board membership must be balanced in terms of categories of interest represented. Each member must be a person who, as a result of training and experience, has knowledge or special expertise that qualifies him or her to provide advice from among the categories of interest listed above. Members will be appointed to a term of 3 years.

Pursuant to section 7 of the Wild Free-Roaming Horse and Burro Act, Members of the Board cannot be employed by either Federal or State government.

Members will serve without salary, but will be reimbursed for travel and *per diem* expenses at current rates for government employees.

The Board will meet no less than two times annually. The Director, Bureau of Land Management may call additional meetings in connection with special needs for advice.

Dated: April 11, 2003.

Aaron Horton,

Acting Deputy Assistant Director, Renewable Resources and Planning.

[FR Doc. 03–9462 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–190.50–1610–DO]

Notice of Intent To Prepare an Amendment to the Hollister Resource Management Plan and Environmental Impact Statement for the Fort Ord Public Lands Project in Monterey County, CA

AGENCY: Bureau of Land Management.

ACTION: Notice of Intent to Prepare an Amendment to the Hollister Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for the Fort Ord Public Lands Project in Monterey County, California.

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare an amendment to the Hollister RMP for the Fort Ord Public Lands Project. Fort Ord is the site of a former United States military base in Monterey County, California that was closed pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101–510. Since 1992, the BLM has worked with the community in Monterey County to help facilitate the reuse of the former Fort Ord military base. The plan amendment would incorporate management prescriptions for the Fort Ord Project within the broader framework of the Hollister RMP. The plan amendment will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), and BLM management policies. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns. The public scoping process will identify planning issues and develop planning criteria.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below and will be accepted for 60 days following the publication of this notice in the **Federal Register**.

Public Participation: Public meetings will be held throughout the plan scoping and preparation period. In order to ensure local community participation and input, open houses will be held in locations most closely affiliated with the BLM lands at Fort Ord. Probable locations include Monterey/Pacific Grove, Salinas, and Seaside/Marina. Information concerning the planning process, including any public participation opportunities, will be announced by BLM through news releases, direct mailings or other applicable means of public notification. Current information about the Fort Ord planning process is also maintained on BLM's Web site *(http://www.ca.blm.gov/hollister)*.

ADDRESSES: Scoping comments should be sent to Eric Morgan, Project Manager, Bureau of Land Management, Hollister Field Office, 20 Hamilton Court, Hollister, California, 95023; Fax 831.394.8346. BLM will maintain a record of public documents related to the development of the RMP Amendment at the Hollister Field Office at the address listed above. Comments, including names and street addresses of respondents, will be available for public review at the Hollister Field Office located in Hollister, California during regular business hours, 7:30 a.m. to 4 p.m., Monday through Friday, excluding federal holidays, and may be published as part of the EIS. Individual

respondents may request confidentiality. Individuals who wish to withhold their name or street address from public review or from disclosure under the Freedom of Information Act must state this prominently at the beginning of their written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Eric Morgan, telephone (831) 394–8314 or E-Mail *emorgan@ca.blm.gov.*

SUPPLEMENTARY INFORMATION: A plan amendment is needed because the existing 1984 Hollister RMP does not address management of the Fort Ord Project area. Approximately 7,200 acres of former Army lands at Fort Ord were transferred to the BLM in October 1996, and approximately 6,000 additional acres are expected to be transferred to the BLM in the coming years. The new "public lands" transferred to the BLM are part of a base-wide mitigation strategy to assure the survival of numerous rare plants and animals. Reuse of the base is centered upon the three keystones of "Education, Economics and Environment (The Three E's)". BLM's management of these new public lands is currently governed by the BLM/Army Memorandum of Understanding (April 19, 1995), the U.S. Army Letter of Transfer (October 18, 1996), and the Fort Ord Multi-Species Habitat Management Plan. Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups, including: management and protection of sensitive, rare, threatened or endangered species; fire management; management integration with other agencies; management of recreation/visitor use and safety; management of livestock grazing; management consistent with community; and access and transportation on the public lands. Disciplines involved in the planning process will include specialists with expertise in wildlife management, minerals and geology, outdoor recreation, archaeology, lands and realty, botany, soils, information technology, sociology, and economics.

Eric Morgan,

Fort Ord Project Manager.

[FR Doc. 03–9366 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–00; GPO–03–0002; IDI–07702]

Expiration of Public Land Order; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Public Land Order No. 5734 which withdrew national forest system lands from the mining laws for use as a campground in the Boise National Forest was allowed to expire on July 20, 2002 in Valley County, Idaho.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3867.

SUPPLEMENTARY INFORMATION: Public Land Order No. 5734, published in the **Federal Register**, 45 FR 48629, dated July 21, 1980, as FR Doc. 80–21731, for the Boise National Forest, withdrew 20 acres of national forest lands from the mining laws for use as a campground has been allowed to expire.

1. At 9 a.m. on May 19, 2003, the segregative effect for the Federal interests in the above mentioned PLO, is lifted, and the land opened to such forms of disposition as may by law be made of forest system lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Don Dunn,

Acting Branch Chief for Lands and Minerals.

[FR Doc. 03–9371 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; HAG 03–0034; ORE–06585]

Public Land Order No. 7559; Partial Revocation of Public Land Order No. 2298; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes Public Land Order No. 2298 insofar as it affects 44.15 acres of public land withdrawn for the Forest Service's Warner Canyon Recreation Area. The land is no longer needed for the purpose for which it was withdrawn and the revocation is needed to make the land available for exchange. This action will open the land to such forms of disposition as may by law be made of National Forest System lands.

EFFECTIVE DATE: April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, PO Box 2965, Portland, Oregon 97208–2965, (503) 952–6189.

SUPPLEMENTARY INFORMATION: The remaining land withdrawn for the Warner Canyon Recreation Area has been conveyed out of Federal ownership.

Order

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 2298, which withdrew public lands for Forest Service administrative sites and recreation areas, is hereby revoked insofar as it affects the following described land:

Fremont National Forest

Willamette Meridian

Warner Canyon Recreation Area

T. 38 S., R. 21 E.,
Sec. 30, lots 8 and 10 (formerly part of lot 4).

The area described contains 44.15 acres in Lake County.

2. At 8:30 a.m. on April 17, 2003, the land described in Paragraph 1 will be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: March 11, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–9451 Filed 4–16–03; 8:45 am]

BILLING CODE 4370–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ES; N–75424]

Notice of Realty Action: Recreation and Public Purposes (R&PP) Act Classification; Lease and Conveyance of Public Lands near Silver Peak, Nevada

AGENCY: Bureau of Land Management.

ACTION: Classification of public land for lease and conveyance pursuant to the Recreation and Public Purposes Act.

SUMMARY: The following described public land in Esmeralda County, Nevada has been examined and found suitable for lease and conveyance under provisions of the Recreation and Public Purposes Act of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), for the purposes of an emergency services training center, in the town of Silver Peak, Nevada.

Mount Diablo Meridian, Nevada

T. 2 S., R. 39 E.,
Section 21, E½SE¼SE¼;
Section 27, NW¼NW¼NW¼;
Section 28, NE¼NE¼NE¼;
Containing 40 acres more or less.

These lands are hereby classified as suitable for lease or conveyance in accordance with section 7 of the Taylor Grazing Act, 43 U.S.C. 315f, and Executive Order No. 6910.

The lands are not needed for Federal purposes. Conveyance is consistent with BLM land use planning and would be in the public interest. Lease and patent will be issued to Esmeralda County and will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

3. A right-of-way authorized under the Act of March 4, 1911, 36 Stat. 1253 (43 U.S.C. 961) for powerline purposes granted to Sierra Pacific Power Company, its successor or assignees, by right-of-way No. N–3931.

4. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (U.S.C. 1761) for a power transmission line granted to Sierra Pacific Power Company, its successor or assignees, by right-of-way No. N–13241.

5. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (U.S.C. 1761) for a waterline to serve Silver Peak, granted to Esmeralda County, its successor or assignees, by right-of-way No. N–15898.

6. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (U.S.C. 1761) for a power transmission line granted to Sierra Pacific Power Company, its successor or assignees, by right-of-way No. N–30965.

7. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (U.S.C. 1761) for a water line granted to Foote Mineral Company, its successor or assignees, by right-of-way No. N–44618.

8. A right-of-way authorized under the Act of October 21, 1976, 90 Stat. 2776 (U.S.C. 1761) for a road granted to Homestead Minerals Company, its successor or assignees, by right-of-way No. N–51529.

9. A right-of-way authorized under the Act of February 15, 1901, 31 Stat. 790 (U.S.C. 959) for a water facility pipeline granted to Esmeralda County, its successor or assignees, by right-of-way No. N–74296.

Patent will contain the following provisions:

1. Esmeralda County, a political subdivision of the State of Nevada, its successors or assigns, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of actions, expense, and liability (hereinafter referred to in this clause as claims), resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentees employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from Mount Diablo Meridian, Nevada, T. 2 S., R. 39 E., section 21, E½SE¼SE¼; section 27, NW¼NW¼NW¼; section 28, NE¼NE¼NE¼; regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure or negligence of the United States;

2. No portion of the land shall under any circumstances revert to the United States if any portion has been used for solid waste disposal or for any other purpose which may result in the disposal, placement, storage, or release of any hazardous substance;

and will be subject to valid existing rights.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Tonopah Field Station, 1553 South Main Street, Tonopah, Nevada.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Assistant Field Manager, Tonopah Field Station, P.O. Box 911, Tonopah, NV 89049.

Classification Comments: Interested parties may submit comments involving the suitability of the land for use as an emergency services training center. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the uses described.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land will become effective 60 days from the date of publication of this notice in the **Federal Register**. The lands will not be conveyed until after the classification becomes effective.

Dated: February 2, 2003.

William S. Fisher,

Assistant Field Manager, Tonopah.

[FR Doc. 03–9372 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–1430–ES; NVN 61027]

Notice of Realty Action; Recreation and Public Purposes Act Classification; Douglas County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following described land, comprising 85.67 acres, has been examined and is determined to be suitable for classification for lease or conveyance pursuant to the authority in the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*):

Mt. Diablo Meridian, Nevada

T. 14 N., R. 20 E.
sec. 5, Lots 3, 4, 9 and 10 and S½NW¼SW¼SW¼SW¼, S½SW¼SW¼SW¼, W½SW¼SE¼SW¼SW¼.
sec. 6, S½NE¼SE¼SE¼SE¼, S½SE¼SE¼SE¼.
sec. 7, E½NE¼NE¼NE¼, S½NE¼NE¼.
sec. 8, N½NW¼NW¼, SW¼NW¼NW¼, N½SE¼NW¼NW¼, SW¼SE¼NW¼NW¾.
Containing 85.67 acres.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments.

ADDRESSES: Written comments should be sent to: Carson City Field Office, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, NV 89701. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Realty Specialist, Bureau of Land Management, 5665 Morgan Mill Road, Carson City, Nevada 89701; (702) 885–6000.

SUPPLEMENTARY INFORMATION: The public land is located within Douglas County, Nevada. The land is not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest. The Carson City Field Office has received several applications from churches expressing an interest in constructing churches and schools on the land.

The lease/patent, when issued will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way thereon for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

3. All mineral deposits in the land so patented, and to it, or persons authorized by it, the right to prospect for, mine and remove such deposits from the same under applicable law and regulations to be established by the Secretary of the Interior.

4. Those rights for highway purposes granted to the Nevada Department of Transportation, by right-of-way CC 018400, and its assigns, under the Act of November 9, 1921 (42 Stat. 216).

5. Those rights for gas pipeline purposes that have been granted to Paiute Pipeline Company, and its assigns, by rights-of-way Nev 064632 and N 17001 under the Act of February 25, 1920 (41 Stat. 0437; 30 U.S.C. 185, sec. 28).

6. Those rights for gas pipeline purposes that have been granted to Southwest Gas Corporation, and its assigns, by rights-of-way N 58973 and N 59816 under the Act of February 25, 1920 (41 Stat. 0437; 30 U.S.C. 185, sec. 28).

7. Those rights for communication line purposes that have been granted to Verizon California, Inc., and its assigns, by right-of-way N 40377 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

8. Those rights for access road purposes that have been granted to Hilltop Community Church, and its assigns, by right-of-way N 39139 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

9. Those rights for road and water pipeline purposes that have been granted to Douglas County, and its assigns, by rights-of-way N 56768, N 59346, N 59540 and N 74267 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

10. Those rights for drainage facility purposes that have been granted to the Indian Hills GID, and its assigns, by right-of-way N 58950 under the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws but not the mineral leasing laws, the material disposal laws, or the Geothermal Steam Act. The segregation shall terminate upon issuance of a conveyance document or publication in the **Federal Register** of an order specifying the date and time of opening. A previous classification for Recreation and Public Purposes under case number N 4481, as it affects the described land, is no longer appropriate and is hereby terminated.

Dated: March 7, 2003.

Charles P. Pope,

Assistant Manager, Non-renewable Resources, Carson City Field Office.

[FR Doc. 03–9373 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–086–1430–AE]

Restriction Order for Blackwell Island, Kootenai County, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Restriction Order for Blackwell Island, Kootenai County, Idaho, Order No. ID–080–34.

SUMMARY: By order the following restrictions apply to Blackwell Island described as all public lands administered by the Bureau of Land Management (BLM) located in Lots 1, 2, 3, 4, 7, 8, 10, 11, 14, 17, and 18 of the Aqua Terrace plat, portions of Government Lots 3, 4, and 5 all in the NW¼ sec. 14, T.50N., R.4W., B.M. and a portion of Government Lot 23 in the SW¼ sec. 11, T.50N., R.4W., B.M. all in Kootenai County, Idaho.

1. Overnight camping by any person or groups of persons is prohibited. Camping means entering, using or remaining in the closed area during the established night closure period from 11 p.m. to 5 a.m. or as otherwise posted.

2. Overnight boat moorage is prohibited. Moorage means making fast any vessel by use of anchor, line, painter or other means during the established night closure period from 11 p.m. to 5 a.m. or as otherwise posted.

3. Motorized boating use of the Blackwell Canals is prohibited except that portion from the developed boat launch ramp extending downstream to the Spokane River.

4. The consumption of or the possession of open containers of any alcoholic beverage is prohibited.

A map depicting the restricted areas is available for public inspection at the Bureau of Land Management, Coeur d'Alene Field Office, 1808 North Third Street, Coeur d'Alene, Idaho. These restrictions become effective immediately and shall remain in effect unless revoked and/or replaced with supplemental rules.

FOR FURTHER INFORMATION CONTACT: Terry Kincaid at BLM UCSC District, 1808 N. Third St., Coeur d'Alene, ID, 83814 or call (208) 769–5431.

SUPPLEMENTARY INFORMATION: The authority for establishing these restrictions is Title 43, Code of Federal Regulations, 8364.1.

These restrictions do not apply to:

(1) Any federal, state or local government officer or member of an organized rescue or fire fighting force while in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, contractor, or cooperator while in the performance of an official duty.

These restrictions are necessary to ensure public safety and to protect the resources of the public lands. A new public boat launching facility has been constructed on Blackwell Island. Constructed facilities are designed and provided only to accommodate day-use recreational activities. The small size of the site and its urban setting also make overnight camping activities incompatible with site management objectives. Further, it is recognized that an increase in boating use of the area will occur as a direct result of providing this new public boating access facility. The adjacent canals are narrow and shallow. Water depth and maneuvering space is not sufficient for safe motorized vessel navigation. Public input during the site development planning process supported a motorized boating restriction to protect canal banks and riparian habitat. Additionally, portions of the public lands were annexed into the City of Coeur d'Alene. The alcoholic beverage prohibition is necessary to make federal restrictions consistent with the city ordinance banning alcoholic beverages from any public park.

Violation of this order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Dated: January 30, 2003.

Stephanie Snook,

Acting District Manager.

[FR Doc. 03–9377 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–074–1654–HB DD8V]

Notice of Proposed Closure of Warm Springs to Overnight Camping To Implement the Snake River Activity/Operations Plan, Upper Snake River District, ID

AGENCY: Bureau of Land Management, Interior.

SUMMARY: The BLM Idaho Falls Field Office proposes to close Warm Springs to overnight camping in accordance with 43 CFR 8365.1–6. The notice affects lands covered by one land use plan and one activity level plan. The Snake River Activity/Operations Plan described the certain lands as closed to overnight camping. The proposed closure implements this plan, and it will remain in effect permanently with the publication of the final notice. Day use access will still be permitted.

EFFECTIVE DATE: Effective May 19, 2003.

Legal Description

Warm Springs: Those portions of the following described lands lying east of the South Fork Snake River.

Boise Meridian, Idaho

Township 3N, Range 42 E, Section 12, Lots 3–6, 10 and 11; Section 13, Lots 10 and 11.

SUPPLEMENTARY INFORMATION: Two federally listed species inhabit the Warm Springs area, the bald eagle (*Haliaeetus leucophealus*; listed as threatened) and the Ute ladies'-tresses orchid (*Spiranthes diluvialis*; listed as threatened). The closure will help protect prime habitat for the two species; and protect watershed, wildlife, and scenic values.

A new parking area has been constructed at Warm Springs. Constructed facilities are designed and provided only to accommodate day-use recreational activities. The overnight camping closure is mitigation identified for the parking area construction under section 7 consultation with U.S. Fish and Wildlife Service (FWS). FWS concurrence with the construction was contingent on this stipulation. The closure limits recreation use in the area and limits human interaction with sensitive species.

The authority for this closure is found under section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a) and 43 CFR 8365.1–6. Violation of this closure is punishable by a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months. Persons who are exempt from these rules include members of any organized rescue or fire-fighting force in performance of an official duty. Other exemptions may apply for administrative or operational purposes.

Maps of the closure area and information may be obtained from the Idaho Falls Field Office.

FOR FURTHER INFORMATION CONTACT: Monica Zimmerman, Bureau of Land Management, Upper Snake River District, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 524–7543.

Dated: March 18, 2003.

Glen Guenther,

Acting Idaho Falls Field Manager.

[FR Doc. 03–9376 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–080–1430–ET; Serial No. NMNM–109118]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of proposed withdrawal and opportunity for public meeting; New Mexico.

SUMMARY: The United States Department of Treasury for the Federal Law Enforcement Training Center (FLETC), has filed an application to withdraw and transfer jurisdiction of 1280.54 acres of surface and minerals and 640.26 acres of mineral estate underlying FLETC private surface from mining and mineral leasing for a period of 20 years. This notice closes the public lands for up to two years from all forms of appropriation under the public land laws, including location under the United States mining laws, to allow for continued firearms training and safety from bullets within the safety fan. The land will remain open to mineral leasing.

DATES: Comments must be received by July 16, 2003.

ADDRESSES: Comments or requests should be sent to the New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, NM 87502–7115.

FOR FURTHER INFORMATION CONTACT: John Bruin, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502, 505–438–7419.

SUPPLEMENTARY INFORMATION: On December 17, 2002, the United States Department of Treasury filed an application to withdraw the following described lands from public land laws, including the United States mining laws, subject to valid existing rights. The purpose of this withdrawal is to facilitate a multipurpose firearms training range and safety fan.

Federal Land and Mineral Estate

New Mexico Principal Meridian

T.16 S., R. 25 E.,
sec. 27, All;
sec. 28, E½E½;
sec. 33, E½NE¼;
sec. 34, NW¼. T. 17 S., R. 25 E.,
sec. 03, Lots 3, 4, S½NW¼, N½N½S½.

Containing 1280.54 acres of surface and minerals in Eddy County, New Mexico.

The area described below is Federal reserved mineral estate underlying Department of Treasury (FLETC) lands. This

notice closes the land to mining under the United States mining laws, subject to valid existing rights.

New Mexico Principal Meridian

T. 16 S., R. 25 E.,
sec. 33, SE¼;
sec. 34, SW¼;
sec. 35, S½S½.
T. 17 S., R. 25 E.,
sec. 04: Lots 1, 2, S½NE¼.

Containing 640.26 acres of mineral estate underlying FLETC private surface, in Eddy County New Mexico.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the New Mexico State Director, BLM, P.O. Box 27115, Santa Fe, NM 87502–6544.

Notice is hereby given that an opportunity for public meeting is afforded in connection with the proposed withdrawal. Public meeting requests must be submitted in writing to the New Mexico State Director, BLM, within 90 days from the date of publication of this notice.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied, canceled, or the land withdrawal is approved prior to that date. The temporary uses which may be permitted during the segregative period are licenses, permits, cooperative agreements, and discretionary land use authorizations of a temporary nature, but only with the approval of the authorized officer of the Bureau of Land Management.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Dated: December 23, 2002.

Cathy Queen,

Acting Field Manager.

[FR Doc. 03–9378 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0126).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled "Royalty-in-Kind (RIK) Pilot Program—Directed Communications by Operators of Federal Oil and Gas Leases."

DATES: Submit written comments on or before May 19, 2003.

ADDRESSES: Submit written comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0126), 725 17th Street, NW., Washington, DC 20503. Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also email your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB Control Number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3781, email *Sharron.Gebhardt@mms.gov*. You may also contact Sharron Gebhardt to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: "Royalty-in-Kind (RIK) Pilot Program—Directed Communications by Operators of Federal Oil and Gas Leases."

OMB Control Number: 1010–0126.

Bureau Form Number: None.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) under the Mineral Leasing Act (30 U.S.C. 192) and the OCS Lands Act (43 U.S.C. 1353) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

Most royalties are now paid in value. For example, when a company or individual enters into a contract to develop, produce, and dispose of minerals from Federal lands, that company or individual agrees to pay the United States a share (royalty) of the full value received for the minerals taken from leased lands. MMS has undertaken several pilot programs to study the feasibility of taking the Government's royalty in the form of production, that is, as RIK.

Collection of RIK requires communication between MMS and the operators of a lease to assure accurate and timely delivery of MMS's royalty share of production volumes.

MMS, as responsible steward of oil and gas royalties, must direct operators of affected MMS leases to carry out three types of communication to take MMS's RIK crude oil or natural gas. The types of information that operators must provide are as follows:

(1) About 8–10 days before end of the month, report initial information about the projected volumes and qualities of RIK production the operator expects to make available in the next month, and corrections to those projected volumes and qualities for the month, submitted at varying frequencies during the month;

(2) When needed, report billing information about transportation/billing arrangements for the RIK to the delivery point, and

(3) Report month-end summary information (lease imbalance statement) about total RIK volumes and qualities needed to carry over to the next month to resolve aggregated imbalances that have incurred in prior months of RIK deliveries.

Experience with the Wyoming and Texas 8(g) Pilots demonstrate directed communication requirements differed according to the needs of each pilot situation. For example, in the Wyoming Pilot, RIK was delivered to the purchasers at the lease. Therefore, the direction to make transportation arrangements was included in "Dear Operator" letters issued to those operators. For these reasons, we are not requesting OMB approval of specific "Dear Operator" letters to operators but, instead, requesting OMB approval to continue collecting the three kinds of reporting requirements concerning communications between operators and MMS. By obtaining continued approval for these three kinds of reporting requirements, MMS will be able to select the types of directed communications needed for each situation and include only those types in a "Dear Operator" letter appropriate to the operation.

The types of communication and the supporting data MMS will require operators to use in setting up the monthly delivery of RIK to the purchaser are standard business practices in the oil and gas industry. The information in the directed communication is essential to the delivery and acceptance of verifiable quantities and qualities of oil and gas and is exchanged as a normal part of the conduct of those business activities, even when the operators are not directed to do so.

In addition, due to their similarity, we are merging this ICR with OMB Control Number 1010–0130, Directed Communications between Operators of Federal RIK Leases and Deliverers of Equivalent Oil Production to the Strategic Petroleum Reserve (SPR).

On February 11, 1999, DOI announced that it would assist in an initiative to refill the SPR. This initiative involved collecting RIK oil production from Federal lessees in the Gulf of Mexico and transferring it to the Department of Energy (DOE). DOE issued contracts to companies to take Federal RIK crude oil delivered by MMS's operators and, in exchange, to deliver to DOE's SPR an equivalent volume and quality of crude oil. DOE was projected to use 28 million barrels of RIK oil to refill the SPR.

On November 6, 2001, President Bush announced an initiative to refill the SPR. MMS, in coordination with DOE, entered into a joint, 3-year initiative to fill the remaining capacity of the SPR. Operators of Federal leases in the Gulf of Mexico will deliver MMS's royalty oil to MMS's exchange partner at or near the lease. MMS's exchange partner will then deliver similar quantities of crude oil to MMS or its designated agent at Gulf Coast market centers. MMS's designated agent will be either DOE or its exchange contractor. DOE will then contract for the exchange or direct movement of exchange oil to the SPR.

MMS, as responsible steward of oil royalties, must direct operators of affected MMS leases to carry out three types of communication with MMS. The types of information operators must provide are as stated previously.

These types of information are necessary so that DOE's exchange contractors can arrange to timely accept accurate amounts and qualities of royalty oil that will be delivered by MMS's exchange partner and for MMS to verify timely fulfillment of operators' and lessees' royalty obligations to the Federal Government.

MMS received OMB approval for the three types of communications between MMS operators and MMS rather than approval of a single "Dear Operator" letter directing these communications. By obtaining approval for these kinds of reporting requirements, MMS is able to draft situation-specific "Dear Operator" letters—that is, letters addressing only the types of directed communications and other issues relevant to the specific situation.

MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge her duties. No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is mandatory.

Frequency: Intra-Monthly (variable).

Estimated Number and Description of Respondents: 145 lessees or operators of Federal oil and gas leases participating in RIK.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 4,050 hours.

The following chart details the individual components and estimated hour burdens. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. Therefore, we consider these to be usual and customary and took that into account in estimating the burden.

RESPONDENT ANNUAL BURDEN HOUR CHART

Reporting requirement	Burden hour per response	Annual number of responses	Annual burden hours
Wyoming Oil (OMB Control Number 1010–0126)	1	100	100
Natural Gas (Texas 8G and GOM) (OMB Control Number 1010–0126)	1	3,600	3,600
GOM Oil (OMB Control Number 1010-0126)	1	50	50
SPR Fill Initiative (OMB Control Number 1010–0130)	1	300	300
Totals		4,050	4,050

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on December 21, 2002 (67 FR 79142), announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to this notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days.

Therefore, to ensure maximum consideration, OMB should receive public comments by May 19, 2003.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: March 31, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–9417 Filed 4–16–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act, the Clean Water Act, and the Clean Air Act

Notice is hereby given that on March 25, 2003, a proposed Settlement Agreement (the "Agreement") in *In re:* Farmland Industries, Inc., *et al.*, Case No. 02–50557, was lodged with the United States Bankruptcy Court for the Western District of Missouri.

In this settlement the United States resolves all but one [1] of the Environmental Protection Agency's pre-petition (presently known and outstanding) claims for cost recovery and civil penalties under CERCLA, the Clean Water Act, and the Clean Air Act against Farmland Industries, Inc. The Settlement Agreement resolves EPA's claims for civil penalties in connection with three oil spills from pipelines owned and operated by Farmland, violations of "mobile source" regulations, 42 U.S.C. 7545(h) and (k), 40 CFR 105(a)(5)(v), 105(a)(6), 80.101(i), and 80.46(b) and (f), at Farmland's Coffeyville, Kansas refinery, and for cost recovery at six CERCLA sites at which Farmland Industries has been identified as a responsible party. The Settlement Agreement provides that the United States will have an allowed general unsecured claim totaling $2,693,882.60, in settlement of the above-described claims.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re:* Farmland Industries, Inc., *et al.*, Case No. 02–50557, Bankruptcy Court for Western District of Missouri, D.J. Ref. # 90–5–1–1–06976/2,3.

The Settlement Agreement may be examined at the Office of the United States Attorney, 400 E. 9th Street, Kansas City, MO, 64106, and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, Kansas, 66101. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $8.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert E. Maher, Jr.,

Assistant Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 03–9404 Filed 4–16–03; 8:45 am]

BILLING CODE 4410–15–M

[1] The one known EPA claim against Debtors not resolved by the subject settlement agreement arises in connection with violations of Clean Air Act regulations at Debtor's Coffeyville, Kansas refinery. EPA has filed a Proof of Claim in the bankruptcy reserving the right to pursue Debtor for this claim.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Notice is hereby given that, on March 27, 2003, the United States lodged with the Untied States District Court for the District of Rhode Island a proposed Consent Decree with Keyser-Roth corporation ("Kayser-Roth") in *United States* v. *Kayser-Roth Corp.*, Civil Action No. 98–160ML (D.R.I.). In the action, which was filed in March, 1998, the United States brought a claim against Kayser-Roth, pursuant to section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), seeking to recover past unreimbursed costs and prejudgment interest incurred with respect to the Stamina Mills, Inc. Su0erfund Site located in North Smithfield, Rhode Island (the "Site").

Pursuant to the terms of the proposed Consent Decree, Kayser-Roth has agreed to pay the United States, within 30 days of entry of the Decree, an amount equal to the sum of (a) $7,169,432, plus interest accruing from September 30, 2002 and (b) $45,211, plus interest accruing from October 17, 2002. The United States has agreed to provide Kayser-Roth with a covenant not to sue, pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), for Past Response Costs, which are defined as all costs that the Environmental Protection Agency paid at or in connection with the site through May 31, 2002 or that the Department of Justice, on behalf of the environmental Protection Agency, paid at or in connection with the Site through May 31, 2002, plus accrued interest on such costs. The United States has also agreed to extend the covenant to Collins & Aikman Products Co., Inc., which has provided an indemnity to Kayser-Roth in connection with the Site.

Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Kayser-Roth Corp.*, Civil Action No. 98–160Ml (D.R.I.), DOJ No. 90–11–2–356B. A copy of the comments should also be sent to Donald G. Frankel, Trial Attorney, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, One Gateway Center, Suite 616, Newton, Massachusetts 02458.

The proposed Consent Decree may be examined at EPA Region 1, One Congress Street, Suite 1100, Boston, MA 02114–2023 (contact Lloyd Selbst at 617–918–1739), and at the Office of the United States Attorney for the District of Rhode Island, 50 Kennedy Plaza, 8th Floor, Providence, Rhode Island 02903 (contact Lisa Dinerman at 410–528–5477). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web Site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@ussdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547, referencing *United States* v. *Kayser-Roth Corp.*, Civil Action No. 98–160ML (D.R.I.), DOJ No. 90–11–2–356B. In requesting a copy, please enclose a check in the amount of $6.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–9402 Filed 4–16–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on March 27, 2003, a proposed Consent Decree in *United States* v. *Mattiace Industries, Inc., et al.*, Civil Action No. CV–03–1011 (JS), was lodged with the United States District Court for the Eastern District of New York.

In this action, filed pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9607(a), the United States seeks recovery of all response costs incurred and to be incurred by the United States at or in connection with the Mattiace Petrochemicals Superfund Site located at 16 Garvies Point Road in the City of Glen Cove, Nassau County, New York. The Consent Decree, which was lodged concurrently with the filing of the complaint, provides for reimbursement of a portion of EPA's past costs and interim and future costs, as well as a work takeover of the remedial action at the Site that will last for approximately 25 years. Approximately eighty parties are participating in the settlement and they are funding the future cleanup.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to Mattiace Petrochemicals Superfund Site, D.J. Ref. 90–11–3–07234.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of New York, One Pierrepont Plaza, Brooklyn, New York 11201, and at U.S. EPA Region II, 290 Broadway, New York, New York 10007. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $37.00 (exclusive of attachments) (25 cents per page reproduction cost), payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–9403 Filed 4–16–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 50-day notice of information collection under review; extension of a currently approved collection, Strategic Planning Environmental Assessment Outreach.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 31, pages 7612–7613 on February 14, 2003, allow for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 19, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 295–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Strategic Planning Environmental Assessment Outreach.

(3) *Agency form number, if any, and the applicable component of the*

Department of Justice sponsoring the collection: Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice Office.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Not-for-profit institutions, Federal government, State, local, or tribal government. *Abstract:* Under the provisions of the Government Performance and Results Act, Federal agencies are directed to improve their effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction. This act requires that agencies update and revise their strategic plans every three years. The Strategic Planning office at ATF will use the voluntary outreach information to determine the agency's internal strengths and weakness and external opportunities and risks.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 1,500 respondents, who will complete a 18 minute questionnaire.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 450 total burden hours associated with this collection.

If additional information is required contact: Mr. Robert B. Briggs, Clearance officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: April 14, 2003.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 03–9526 Filed 4–16–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: extension of a currently approved collection, Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, November 30, page 7392 on February 13, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comments until May 19, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one more of the following four points:

(1) Evaluate whether the proposed collection information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Federal Firearms Licensee Firearms Inventory Theft/Loss Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 3310.11.Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for-profit. *Abstract:* Authorization of this form is requested as the Violent Crime Control and Law Enforcement Act requires Federal firearms licensees to report to the Bureau of Alcohol, Tobacco, Firearms and Explosives and to the appropriate local authorities any theft or loss of a firearm from the licensee's inventory or collection, within a specific time frame after the theft or loss is discovered.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4,000 respondents will complete a 24 minute form.

(6) *An estimate of the total burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 1,600 hours.

If additional information is required contact: Mr. Robert B Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: April 14, 2003.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 03–9527 Filed 4–16–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collective Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection, application for restoration of firearms privileges.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 16, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Donnie Hacker, Firearms Programs Division, 650 Massachusetts Avenue, NW., Room 7400, Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application For Restoration of Firearms Privileges.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number ATF F 3210.1, Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* Business or other for profit. Certain categories of persons are prohibited from possessing firearms. ATF F 3210.1, Application For Restoration of Firearms Privileges is the basis for ATF investigating the merits of an applicant to have his/her rights restored.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 250 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 125 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 14, 2003.

Robert B. Briggs.

Department Clearance Officer, Department of Justice.

[FR Doc. 03–9528 Filed 4–16–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review; extension of a currently approved collection; application and permit for permanent Exportation of firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 16, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Dave Marshall, National Firearms Act Branch, Room 5100, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological, collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit For Permanent Exportation of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 9 (5320.9). Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Individual or households. The form is used to obtain permission to export firearms and serves as a vehicle to allow either the removal of the firearm from registration in the National Firearms Registration and Transfer Record or collection of an excise tax. It is used by Federal firearms licensees and others to obtain a benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 70 respondents will complete a 18 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,050

annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 14, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–9529 Filed 4–16–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection; application to transport interstate or temporarily export certain National Firearms Act (NFA) firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 16, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Dave Marshall, National Firearms Act Branch, Room 5100, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application to Transport Interstate or Temporarily Export Certain National Firearms Act (NFA) Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5320.20. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or household. Other: None. The form is used to request permission to move certain NFA firearms in interstate or foreign commerce.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 800 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 400 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW. Washington, DC 20530.

Dated: April 14, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–9530 Filed 4–16–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: extension of a currently approved collection; annual Firearms Manufacturing and Exportation Report under 18 U.S.C. chapter 44, firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (AFT), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 16, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Nancy Smith, Firearms Programs Division, Room 7400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology, and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Firearms Manufacturing and Exportation Report Under 18 U.S.C. Chapter 44, Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5300.11. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Federal Government, State, Local, or Tribal Government. ATF collects this data for the purpose of law enforcement, fitness qualification, congressional inquiries, disclosure to the public in compliance with a court order, furnishing information to other Federal agencies, compliance inspections, and insuring that the requirements of the National Firearms Act are met.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,500 respondents will complete a 45 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,125 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: April 14, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–9531 Filed 4–16–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 10, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 or E-Mail: *King-Darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Agency (ESA).

Type of Review: New collection.

Title: Statement Recovery Forms.

OMB Number: 1215–0NEW.

Affected Public: Business or other for-profit and Individuals or households.

Frequency: As needed.

Number of Respondents: 3,200.

Form	Annual responses	Average response time (hours)	Annual burden hours
CA/EN–1108	2,720	0.5	1,360
EB/EN–1108	160	0.5	80
CA/EN–1122	320	0.25	80
Total	3,200		1,520

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,280.

Description: The information collected through Forms CA/EN–1108, EB/EN–1108 and CA/EN–1122 will be used by the U.S. Department of Labor to determine the amount of refund due to the United States out of the proceeds of an action asserted by an injured Federal employee against a liable third party for a compensable injury.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–9448 Filed 4–16–03; 8:45 am]

BILLING CODE 4510–CH–P

DEPARTMENT OF LABOR

Office of the Secretary of Labor

President's Council on the 21st Century Workforce and the Committees on Skills Gap, Demographics and Workplace Issues; Postponement of Meetings

AGENCY: Office of the Secretary of Labor.

ACTION: Notice of postponement of meeting of the President's Council on the 21st Century Workforce and meeting of Committees.

SUMMARY: The meetings scheduled for Tuesday, April 29, 2003, have been postponed indefinitely. These meetings were announced in the **Federal Register** on Friday, April 11, 2003, at 68 FR 17830.

FOR FURTHER INFORMATION CONTACT: Melanie Baker, Staff Assistant, Office of the 21st Century Workforce, U.S. Department of Labor, Room S–2235, 200 Constitution Avenue, NW., Washington, DC 20210. The contact telephone number is (202) 693–6490.

Signed in Washington, DC on April 11, 2003.

Shelley S. Hymes,

Director, Office of the 21st Century Workforce.

[FR Doc. 03–9449 Filed 4–16–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications; National Farm Worker Jobs Program; Housing Assistance for Migrants and Seasonal Farmworkers

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and Solicitation for Grant Applications (SGA) for the National Farm Worker Jobs Program and for Housing Assistance to Migrant and Seasonal Farmworkers.

SUMMARY: The U.S. Department of Labor (the Department or DOL), Employment and Training Administration (ETA), Office of National Programs (ONP), Division of Seasonal Farm Worker Programs (DSFP), announces a grant competition for operating the National Farm Worker Jobs Program (NFJP), AND for housing assistance for migrants and seasonal farmworkers (MSFWs), under Section 167 of the Workforce Investment Act of 1998 (WIA), 29 U.S.C. 9201. All applicants for grant funds should read this notice in its entirety.

Section 167, paragraph (a) of WIA requires that the Secretary award grants or contracts on a competitive basis to eligible entities for the purposes of carrying out the activities authorized under Section 167. Under this solicitation, DSFP anticipates that approximately $72,213,541 will be available for grant awards for the NFJP, and approximately $4,609,840 will be available for grant awards to provide housing assistance to migrants and seasonal farmworkers.

DATES: Applications, including those hand-delivered, must be received at the address below no later than 4:45 p.m., Eastern Time, on May 16, 2003.

Notice: All applicants are advised that U.S. mail delivery in the Washington, DC area has been erratic due to mail screening to detect anthrax contamination. All applicants should take this into consideration when preparing to meet the application deadline. Each applicant assumes the risk for ensuring a timely submission of an application. If, because of mail screening delays, the Department does not receive an application or receives it too late to give it proper consideration, even if the application was timely mailed, it will not be considered.

Note: Except as specifically provided, DOL/ETA acceptance of a proposal and an award of federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedures. For example, the OMB circulars require that an entity's procurement procedures must require that all procurement transactions must be conducted, as practical, to provide open and free competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement; *i.e.*, avoid competition.

ADDRESS: Applications must be directed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Serena Boyd, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be addressed to Serena Boyd, Division of Federal Assistance, phone (202) 693–3301 or fax (202) 693–2879. (These are not toll-free numbers). All inquiries should reference SGA/DFA–03–108 and include a contact name, fax and phone numbers. This announcement will be posted on the Internet on ETA's homepage at *http://wdsc.doleta.gov*. Award notifications will also be published on this homepage.

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL) FY 2003 Appropriations Act provided funding for PY 2003 (July 1, 2003 through June 30, 2004 only). No additional funds are being requested for PY 2004. Applicants should therefore note that awards made through this SGA process are for only one year. An applicant's description of the services to be provided should be limited to those service strategies that can be provided within the Program Year (PY) specified above.

Please note that two separate grants applications are being sought from this SGA. Applicants are invited to apply for funding to operate the local NFJP grants for the delivery of workforce investment services and related activities to migrant and seasonal farmworkers; or funding to provide farm worker housing assistance to eligible migrants and seasonal farmworkers; or both. Applications for funding the NFJP grants and the housing grants should be submitted separately, and will be reviewed and paneled by the Department separately.

Part I. National Farmworker Jobs Program

Purpose and Background

The U.S. Department of Labor, Division of Seasonal Farm Worker Programs of the Employment and Training Administration is requesting grant applications for operating the National Farm Worker Jobs Program (NFJP), and/or the farm worker Housing Assistance program, in accordance with Section 167 of the Workforce Investment Act of 1998 (WIA), 29 U.S.C. 9201. WIA calls for a competition for the NFJP program to be conducted every two years, but authorizes the Secretary to waive this requirement for an additional two years if the grantees are performing satisfactorily and upon receipt of an acceptable two-year plan for the succeeding two years.

The current NFJP grants were originally awarded to begin program operation on July 1, 1999, and subsequently extended for an additional two-year cycle in 2001. Therefore, operational authority for the current NFJP grants expires on June 30, 2003, ending the cycle that began on July 1, 2001. Housing Assistance grants were also last competed in 2001, and their operational authority will also expire on June 30, 2003.

The National Farm Worker Jobs Program (NFJP) is authorized by WIA Section 167 to serve economically disadvantaged persons who primarily depend on employment in agricultural labor performed within the United States, including Puerto Rico, who experience chronic unemployment and underemployment. Qualifying participants are typically those persons employed on a seasonal or part-time basis in the unskilled and semi-skilled manual labor occupations in crop and animal production. Through training and other workforce development services, the program assists eligible seasonal farmworkers and their families to prepare for jobs likely to provide stable, year-round employment in agricultural and non-agricultural occupations.

For many years, the NFJP served as the primary vehicle through which migrant and seasonal farmworkers were assisted through job training to achieve employment in higher-skills, better paying jobs, and through supportive services that allowed them to continue their agricultural work while providing for their families. Over the years, this "categorical" targeting resulted in the development of expertise among a small number of organizations that devoted their efforts almost exclusively to serving farmworkers. As the workforce development system continued to evolve toward integrated service delivery rooted in collaboration among workforce development programs, these organizations continued to be considered the primary, and sometimes the only, program operators equipped to serve farmworkers.

The enactment of the Workforce Investment Act (WIA) changed the way

services were delivered at the local level, by establishing the One-Stop Career Center system as the cornerstone of the workforce investment system. One-Stop Career Centers are intended to be the "location," whether physical or electronic, where all persons in the community may access services from a variety of partner programs. Thus, a key feature of the One-Stop system is its universality.

To ensure that the One-Stop system serves everyone in the community, WIA required that specific programs become partners in the system, including the NFJP. The NFJP's participation in the One-Stop system contributes to creating a seamless delivery of services through which collaborating programs provide improved and comprehensive services. One-Stop systems can also ensure a greater use of state and local formula funded grant programs to serve farmworkers through the intensive and training services they need.

This solicitation is intended to increase farmworkers' access to workforce investment services by supporting the continued movement of the One-Stop Career Center system toward universality and integrated service delivery based on initiatives that:

1. Remove barriers and disincentives to serving farmworkers and increase the access migrant and seasonal farmworkers have to services provided through the One-Stop system, including services provided by other One-Stop partner agencies.

2. Develop methods of collaboration, coordination and service delivery enhancement leading to optimal use of NFJP resources within the One-Stop system that promote employment, earnings and training opportunities for farmworkers through the One-Stop system.

3. Increase the opportunities for migrant and seasonal farmworkers to transition into occupations with high employment and wage growth potential both within and outside agricultural industry.

4. Use the expertise of community-based, faith-based and other organizations that specialize in serving farmworkers' workforce development needs to build the capacity of One-Stop systems to be effective in serving farmworkers.

This solicitation establishes the following objectives for the National Farmworker Jobs Program to support these initiatives:

- Development of workforce investment service arrangements that lead to co-enrollment of migrant and seasonal farmworkers in WIA Title I formula funded adult and dislocated worker services, and services provided by other One-Stop partner agencies.
- Development of training strategies leading to the specific skill training activities that enable farmworkers to transition into higher skilled and higher paid employment either in agriculture or outside the industry. These training strategies should also target employment with high growth potential.
- Improvement of English language proficiency of farmworkers who are not bilingual, and achievement of competencies for farmworkers who are basic skills deficient.
- The enabling of farmworkers to become proficient in basic computer skills and using the Internet as a source of information on job and training opportunities.

Legal and Regulatory Requirements: The NFJP program is subject to Section 167 of the Workforce Investment Act and the Department's regulations at 20 CFR part 669. This program is also subject to the requirements of 29 CFR parts 93 (New Restrictions on Lobbying), 96 (Audit Requirements), and 98 (Debarment, Suspension, and Drug-Free Workplace Requirements); as well as the Department's non-discrimination regulations at 29 CFR part 34 and the non-discrimination regulations implementing WIA Section 188 at 29 CFR part 37. Applicants should be familiar with and consult the WIA regulations at 20 CFR parts 660 through 671 in developing their grant proposals. Should the regulations at part 669 of WIA conflict with regulations elsewhere in 20 CFR, the regulations at part 669 will control.

In addition, this program is subject to the provisions of the "Jobs for Veterans Act," Public Law 107–288, which provides priority of service to veterans and certain of their spouses in all Department of Labor-funded job training programs. Please note that, to obtain priority of service, a veteran must meet that program's eligibility requirements (NFJP, in this instance). Comprehensive policy guidance is being developed and will be issued in the near future.

State Areas and Planning Estimates: State area planning estimates will be announced in a separate **Federal Register** Notice. The amount available nationally for the NFJP allotments is $72,213,541, and $4,609,840 is available for housing assistance. For purposes of this grant application, proposals are assumed to cover the entire agricultural area of the state unless otherwise stated by the applicant, including supporting rationale. The FY 2003 appropriation for this program provides that no state area shall receive less than 85 percent of its 1998 funding level. Funds will be awarded for one year only, as no budget authority has been requested for this program in FY 2004, and current congressional action affects only FY 2003.

Consultation with Governors and Local Boards: Executive Order No. 12372, "Intergovernmental Review of Federal Programs," and the implementing regulations at 29 CFR part 17 are applicable to this program. Under these requirements, an applicant must provide a copy of the funding proposal for comment to the states that have established a consultation process under the Executive Order. Applications must be submitted to the state's Single Point of Contact (SPOC), no later than the deadline for submission of the application to the Department. For states that have not established a consultative process under E.O. 12372, but have a State Workforce Investment Board (State Board), the State Board will be the SPOC. For WIA implementation purposes, this consultative process fulfills the requirement of WIA Section 167(e) concerning consultation with Governors and Local Workforce Investment Boards. To strengthen the implementation of E.O. 12372, the Department establishes the following timeframe for its treatment of comments from the state's SPOC on WIA Section 167 applications:

1. The SPOC must submit comments, if any, to the Department and to the applicant, no later than 30 days after the deadline date for the submission of applications;

2. The applicant's response to the SPOC comments, if any, must be submitted to the Department no later than 15 days after the post-marked date of the comments from the SPOC;

3. The Department will notify the SPOC of its decision regarding the SPOC comments and applicant response; and

4. The Department will implement that decision within 10 days after it has notified the SPOC.

Contents of Grant Application

Note: The following requirements apply to applicants for the NFJP portion of the program. Applicants for the housing assistance component of the program are directed to PART II of this SGA. Applicants seeking funding for both the NFJP program and the Housing Assistance program should submit two separate applications, as noted in the **SUMMARY** section of this SGA.

Applicants need not be a current or prior WIA Section 167 grantee to establish eligibility to be awarded a grant under this solicitation.

To provide training and employment opportunities and other related

assistance services to eligible migrant and seasonal farmworkers under WIA Section 167, the Department will select those applicants submitting proposals that are deemed the most responsive to the requirements of this SGA. WIA Section 167 provides that, in order for an applicant to be eligible to receive a grant the grantee must have:

1. An understanding of the problems of eligible migrant and seasonal farmworkers, including their dependents;

2. A familiarity with the geographical area to be served; and

3. A demonstrated capacity to effectively administer a diversified program of workforce investment activities and related assistance for eligible migrant and seasonal farmworkers.

Additionally, to be responsive to the objectives of this SGA, applications for a grant award must demonstrate how:

1. Service delivery arrangements will be put in place that lead to an expanded co-enrollment of migrant and seasonal farmworkers in WIA Title I formula funded adult and dislocated worker services, as well as services provided by other One-Stop partner agencies. Applicants must also demonstrate how they will work with Local Workforce Development Boards in the proposed service area(s) to assure that activities proposed under the Section 167 grant are coordinated with, and build on, the workforce development strategies and services indicated in the local workforce investment plan (*see* Workforce Investment Act final rules at § 661.345 to § 661.355).

If the applicant is a Local Workforce Investment Board (LWIB), a One-Stop Career Center operator applying on behalf of a LWIB, the application must demonstrate how efforts were undertaken to integrate services provided by all One'Stop partners and to enhance the workforce and related services provided to farmworkers.

2. Training strategies and specific skill opportunities will be provided that enable farmworkers to transition into higher skilled and higher paid jobs with employment growth potential either in agriculture or outside the industry.

3. The English language proficiency of farmworkers who are not bilingual will be improved and how competencies for farmworkers who are basic skill deficient will be improved.

4. Training strategies will be established to enable farmworkers to become proficient in basic computer skills and using the Internet as a source of information on job and training opportunities.

For purposes of this grant application, applications are solicited for a single NFJP operation per state, to serve the migrant and seasonal farmworkers of each state and Puerto Rico, with the following exceptions:

- Connecticut and Rhode Island are a combined state service area;
- Delaware and Maryland are a combined state service area;
- Applications for the combined state areas mentioned above must address the two states as a single geographic area, but the proposed service delivery plan for the combined state area must show that consideration has been given to the entire population of migrant and seasonal farmworkers working or residing within the combined state geographic area;
- Between 4 and 6 applications will be selected to operate the NFJP program in the agricultural counties of California; and
- No application will be accepted to provide services in Alaska due to the State's small relative share of seasonal agricultural employment.

Submission of Proposals

A cover letter, an original plus two (2) copies of the proposal, and one (1) blue ink-signed original SF 424 must be timely submitted to the U.S. Department of Labor, Employment and Training Administration, Division of Financial Assistance, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210. This proposal must have two parts: (1) A technical proposal; and (2) a cost proposal.

Hand-delivered applications. To be considered for funding, hand-delivered applications must be received not later than 4:45 p.m., Eastern Time, on the closing date, at the specified address.

Withdrawl of applications. Applications may be withdrawn by written notice or telegram (including mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative, if the representative's identity is made known and the representative signs a receipt for the application. Failure to adhere to the above instructions will be basis for a determination of non-responsiveness.

Format and Content of Grant Application

An application must consist of two (2) separate and distinct parts: A technical proposal and a cost proposal. The grant application should be limited to 50 numbered pages, double spaced, in 12-point type and typewritten on one side of the paper only. Letters of support and any required attachments will not be subject to the page limitations. Include all attachments under Part III.

Applicant Eligibility for the NFJP Program

A. Understanding the Problems of the Eligible Migrants and Seasonal Farmworkers in the State or Area

Understanding the area's economy and the problems faced by the migrant and seasonal farmworkers working within that economy is essential to formulating a comprehensive service strategy to increase their employment and earnings. In this section, applicants must describe the economy in the geographic area they propose to serve, and how that economy affects the employment conditions of migrant and seasonal farmworkers over the course of the service year.

1. Describe the agricultural economy present in the geographic area to be served. Include information about the general employment conditions, numbers of employers, and any changes in the economic conditions expected during the course of the year that hold implications for how best to meet the employment and training needs of farmworkers. In addition to indicating the number of employers in the geographic area to be served, describe the key growers and agribusiness employers in the area, especially those that are likely to make a significant contribution to employment growth in the higher-wage, higher-skilled agricultural occupations.

2. Describe the agricultural and non-agricultural labor markets in proposed service area(s). Applicants should be specific about the job opportunities that are expected to be available and the applicant's capacity to serve as a broker, both within the business community and the One-Stop system, to improve farmworkers' access to these opportunities. The description should also include a discussion of projected high growth occupations in the proposed service the area that hold the potential for improved employment and earnings for farmworkers.

3. Describe the socio-economic characteristics and problems faced by eligible migrant and seasonal farmworkers, and their dependents, in the proposed service area.

4. Summarize the applicant's understanding of the economy and labor market in the proposed service are and discuss the implications of descriptions provided in sub-sections 1, 2 and 3, above, for the kind of workforce development assistance required to significantly increase the employment and earnings of migrant and seasonal farmworkers in the area.

B. Familiarity With the Proposed Service Area

To achieve high performance in increasing farmworkers' employment and earnings, an NFJP grantee must have the capacity to mobilize a broad array of resources to meet the diverse needs of migrant and seasonal farmworkers in the proposed service area. The task of mobilizing resources must be informed by an understanding of the One-Stop Career Center system in the area(s) and the network of social, educational and health services available to support farmworkers' labor force participation and to assist them in improving their employment and earnings over time.

This section calls for information that demonstrates an understanding of the One-Stop system and the applicant's experience and effectiveness in establishing collaborative working relationships that achieve the integrated service delivery needed to increase employment and training opportunities for farmworkers. This section also calls for information that demonstrates the applicant's experience and effectiveness in collaborating with the network of social, educational and other services that exist in the proposed service area(s) and how the applicant proposes to engage these service networks to obtain appropriate services for migrant and seasonal farmworkers.

1. Describe the applicant's experience, if any, as an operator of a WIA Title I formula-funded program that served farmworkers. Include a description of how the applicant's work with the local One-Stop Career Center system resulted in enhancing the scope of workforce development assistance available to farmworkers. If the applicant is currently, or was previously, designated as the One-Stop Career Center operator, the operator of a "satellite" One-Stop Career Center, by the Local Workforce Investment Board, describe efforts to integrate services provided by all One-Stop partners to enhance workforce and related services to farmworkers. Indicate the success of these efforts.

2. Describe the applicant's experience in engaging One-Stop partners, other than the NFJP partner, in its service delivery strategy for migrant and seasonal farmworkers. The discussion should include a description of the applicant's experience at developing or continuously improving the working relationships between partners to enhance the scope and quality of workforce development services available to farmworkers. Include instances where co-enrollment of eligible migrant and seasonal farmworkers was achieved and how.

3. Describe the network of faith-based and community-based organizations in the service area; describe the applicant's experience in engaging these organizations in its service delivery strategy for migrants and seasonal farmworkers. Include a description of the applicant's experience in working with grassroots faith-based and community-based organizations in providing for supplementary and supportive services.

4. Describe the applicant's experience in representing the NFJP or another One-Stop partner in negotiations of Memoranda of Understanding (MOUs) with local workforce investment boards (local boards). Include specific examples of successfully negotiated arrangements that benefited the partner program represented by the organization, whether NFJP or any other partner. Also discuss how the negotiated terms of the MOU enhanced services for farmworkers and/or other participants. Where the applicant represents a partner program in a state and has been unable to negotiate an MOU with a local board, describe the efforts to develop an action plan with the local board and the results achieved.

5. If the applicant is a Local Workforce Investment Board (LWIB), or a One-Stop Career Center operator applying on behalf of a LWIB, describe efforts to integrate services provided by all One-Stop partners to enhance workforce and related services provided to farmworkers. Indicate the success of these efforts. Additionally, describe the success achieved in enrolling and serving farm workers in WIA formula-funded programs.

6. Describe the network of social, educational, faith-based and other services that exist in the proposed service area. Include a discussion of the applicant's existing (or proposed) working relationships with the One-Stop system and with other agencies, organizations, and institutions that are part of the service network and are relevant to the needs of farmworkers. Provide examples of the other services available, such as adult education, English as a Second Language, etc.

7. Describe the applicant's strategy mobilizing the local services network to provide comprehensive services to farmworkers while achieving optimal use of limited NFJP resources. The description should clearly present how the strategy will engage the local services network, including faith-based and community-based organizations, to provide the supportive services (also called "related assistance services") farmworkers may need to remain in the labor force or to participate in training. A major objective of the strategy should be to maximize the amount of NFJP funds available for training and other workforce development assistance by identifying other funding sources for supportive services.

C. Administrative Capacity

The information provided in this section should describe the applicant's capacity to effectively administer a diversified program of workforce investment activities. Applicants must describe the mechanisms it plans to use to establish and maintain program and fiscal oversight and integrity.

1. Program Integrity

The applicant should describe its management information and performance management systems and its plans to maintain the program records (including individual participant records) needed for reporting and performance accountability and management, and to establish and to maintain a case management system.

Additionally, the applicant must describe its experience with performance management systems and explain its perspective on the role of performance management and how it should be used to improve customer service.

Case management presumes a client-centered approach to delivering workforce investment activities and support services. For optimum results, case management should be technology-based; *i.e.*, fully utilizing computer technology and other electronic tools. Applicants should describe their experience in using case management systems, including the results achieved from using that approach.

2. Fiscal Integrity

The applicant must describe a record keeping system that is sufficient to prepare financial reports and to trace funds to adequate levels of expenditures to ensure lawful spending. In this connection, applicants must describe their capacity to manage the supportive services, often referred to as "related assistance services" and to account for expenditures related to these services.

"Related assistance services" refers to short-term support services designed to assist farmworkers to retain or stabilize their agricultural employment or to enable their participation in NFJP activities.

Describe the applicant's approach to managing the delivery of related

assistance services to farmworkers (except those housing assistance supportive services provided through a housing assistance grant). Include a description of how the need for related assistance services will be determined. The description should discuss whether the criteria used to determine the need for related assistance services differs among migrant and seasonal farmworker groups, what the differences are and the rationale for the differentiation.

Also describe the applicant's strategy for minimizing the use of NFJP funds for related assistance services and significantly increasing funding from other sources that are the traditional resource in rural communities of the state for providing supportive services.

3. Electronic Reporting

The NFJP program is required to use electronic reporting via the Internet. In this section, applicants' should describe the applicant's capacity to provide the equipment, access and staff qualified to perform on-line reporting. In addition, describe the applicant's capacity to provide all case management staff and others, as appropriate, with electronic tools such as PCs, software for word processing and spreadsheets, individual e-mail accounts, and Internet access with an agency provided ISP.

Note: PY 2003 grantees will be required to provide personal computers, individual e-mail accounts and Internet access for all customer service staff. For purposes of this SGA, customer service staff are those personnel who have or make the contacts with farm worker customers to conduct outreach, recruitment, objective assessment, testing, counseling, individual employment planning, job training planning, placement and follow-up.

D. Activities and Services Proposed for the State Service Area

This section calls for information that describes the proposed service approach in detail and elaborates on other aspects of the program design other than those provided in the qualifications statements under Sections A through C.

The proposed service plan should describe in detail the major program activities proposed for the service area for PY 2003 (July 1, 2003–June 30, 2004).

The applicant's proposal should show how the program activities described in this Section are intended to achieve the NFJP's objectives for PY 2003, as defined in this solicitation's Purpose and Background Section:

- Development of workforce investment service arrangements that lead to co-enrollment of migrant and seasonal farmworkers in WIA Title I formula funded adult and dislocated worker services, and services provided by other One-Stop partner agencies.
- Development of the training strategies and provision of the specific skill training that enable farmworkers to transition into higher skilled and higher paid employment, either in agriculture or outside the industry. These training strategies should also target employment with high growth potential.
- Improvement of English language proficiency of farmworkers who are not bilingual, and achievement of competencies for farmworkers who are basic skills deficient.
- Enabling farmworkers to become proficient in basic computer skills and using the Internet as a source of information on job and training opportunities.

The applicant's proposal should include the following information and descriptions and discuss how the plan of service achieves the above objectives:

Service strategy: Provide a brief statement of vision, strategy, goals and objectives that guide the proposed plan of services for farmworkers and the results expected to be achieved from implementing the strategy. Also, identify opportunities to strengthen the service strategy through new partnerships (*e.g.*, with faith-based and community-based organizations). The strategy and the service plan should strengthen migrant and seasonal farmworkers' ability to obtain or retain employment through activities that stabilize their agricultural employment, prepare them for higher-skill, higher-paid jobs within or outside of agriculture, or prepare them for success as entrepreneurs. The service strategy must describe how it reflects the result of collaboration with Local Workforce Investment Boards and complements the workforce development strategies and services presented in the local workforce investment plan. Discuss how the services strategy expands workforce and related services available to farm workers due to closer coordination between the Section 167 service strategy and plan and the local workforce investment plan.

If the applicant is a Local Workforce Investment Board (LWIB), a One-Stop Career Center operator applying on behalf of a LWIB, the application must demonstrate how the service strategy integrates services provided by all One-Stop partners, especially services provided by Section 167 grantees resulting in an enhancement of the workforce and related services provided to farmworkers.

1. State service area: Identify the state service area. If the proposal is for less than the entire agricultural area of the state, identify the geographic areas of the state where the organization proposes to operate. Provide the rationale for supporting the geographic area selected.

2. Program plan of service: Include an estimate of the number of migrant and seasonal farmworkers, respectively, who will be provided training services. Additionally, provide an estimate of the number of migrant and seasonal farmworkers, respectively, who will be provided related assistance services (excluding housing assistance). For the specific activities included in the plan, describe the program of services proposed according to the following categories:

(a) Outreach and recruitment: Describe strategies for conducting outreach and recruitment for eligible migrant and non-migratory farmworkers, respectively. Include descriptions of the specific types of places, such as through faith-based or community-based organizations, where outreach and recruitment will occur.

(b) Case Management: Describe the proposed customer-centered case management system. Include specific details, such as information about the staff's responsibilities for managing the case management system, the community resources that are available to staff, and the staffs' capacity for developing those resources through alliances and other joint endeavors, such as participation in the One-Stop system, in order to expand the availability of services for farmworker customers.

(c) Core Services: Describe how the organization expects to provide core services as a One-Stop Career Center, or in partnership with the local One-Stop Center, and the workforce investment delivery system in the service area. Briefly explain the eligibility determination system and how service priorities are determined.

(d) Intensive Services: Describe the intensive services proposed, the strategy for providing those services, and how the One-Stop system will be involved in the provision of services. Intensive services are defined in WIA section 134(d)(3) and 20 CFR 669.370 and include such activities as group and individual counseling, skill assessment, work experience, objective assessment and supportive services.

The description must include the proposed strategy for providing Individual Employment Plans, described at 20 CFR 669.400; case management, and must specifically address how the organization proposes to incorporate case management concepts to provide an individualized operating system for the delivery of client services, as well as how the organization plans to use objective assessments as described at 20 CFR 669.380 (*i.e.*, the delivery of intensive and training services should flow from the objective assessment process).

Additionally, please describe how the organization will build its capacity for responding appropriately to an individual's needs that are identified by the objective assessment. This may include how the program will develop and provide its intensive services, such as the ones identified in WIA 134(d)((3)(C) and 20 CFR 669.370, which specifically includes drop-out prevention, allowance payments and work experience. Descriptions should show that the case management system ensures a client-centered approach, one designed to prepare and coordinate comprehensive employment plans for participants that include access to necessary workforce investment activities and supportive services, using, where feasible, computer-based technologies. (*See* WIA subsection 101($).)

If work experience is expected to be offered as an activity, describe how the determination as to its appropriateness will be made, as well as how the organization will measure its effectiveness. Include a description of any controls to be used. It should be noted that work experience activities are WIA Intensive Services; therefore, applicants should provide a complete description and justification for any planned work experience activity that will be unpaid or that will use the for-profit sector to host the work experience participants. (To be allowed, work experience activities incorporating these concepts must be described in the approved grant plan. *See* 20 CFR 669.370 (b)(i) and (b)(ii)(B))

Include descriptions of any additional intensive services to be provided that have not been already described, such as provision of allowance payments.

(e) Training Services: Describe the training strategies to be used to significantly increase employment and earnings of farmworkers. Indicate how these training strategies will:

- Transition farmworkers into higher-skilled and higher-paid employment either in agriculture or outside the industry;
- Create cross training opportunities and assist farmworkers to qualify for cross training employment opportunities;
- Create entrepreneurial training and micro-enterprise development opportunities for farmworkers;
- Target appropriate individuals and provide training to improve the English language proficiency of farmworkers who are not bilingual, and achieve competency for farmworkers who are basic skills deficient; and
- Enable farmworkers to become proficient in basic computer skills and using the Internet as a source of information on job and training opportunities.

(f) Performance results: Describe how the organization will provide for job placement and other positive outcomes for participants. The description should address how job placement opportunities will be pursued among key growers and agribusiness employers likely to contribute to employment growth in the higher-wage, higher-skilled agricultural occupations. Similarly, the description should address how high-growth, high-wage, and high-skills job placement opportunities will be secured for farmworkers from those employers outside agriculture.

(g) Follow-up Services: Describe how the organization will conduct follow up for those who are placed in jobs and who are engaged in entrepreneurial activities.

(h) Related Assistance Services: Describe the supportive services needed by migrant and seasonal farmworkers and their dependents to assist them in retaining employment, engaging in cross training, training for other, non-agricultural occupations, or engaging in entrepreneurial training.

Describe the strategy for providing related assistance services under the NFJP. Provide separate descriptions for those farmworkers for whom only related assistance services will be provided. Describe the kinds of services anticipated and the limitations to be imposed, such as a unit cost limitation.

Discuss how supportive services available through the NFJP will be linked with the supportive services available to farmworkers through One-Stop partner programs, or other agencies providing needed supportive services.

Discuss how faith-based and community-based organizations will be used, where applicable, in providing related assistance services.

(i) Administrative Costs: Grantees are generally limited to 15 percent of the grant for administrative costs (see definition at 20 CFR Part 667). If the organization expects that the administrative cost burden will exceed 15 percent, provide the justification in this section.

Rating Criteria for Award

A DOL review panel will use the point scoring system and the Rating Criteria format specified below to review applications. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. It is required that all applicants use the Rating Criteria format when developing their applications in response to this SGA.

Scoring: The following full review criteria (totaling a maximum score of 100 points) apply to all applicants.

(1) Understanding the Problems of Migrants and Seasonal Farmworkers (20 points)

The application must demonstrate an in-depth understanding of the dynamics of the agricultural economy in the geographic area to be served, the socio-economic characteristics of eligible migrant and seasonal farmworkers and their families in the service area, and the implications of the foregoing for the kind of workforce development assistance strategies required to increase the employment and earnings of eligible workers in the proposed area of service.

Scoring on this factor will be based on how well the applicant links its understanding of the agricultural economy and the characteristics of the eligible population in the geographic area to be served to the workforce development assistance needed to achieve significant employment and earnings increases. The evaluation of the application's response to this factor will also look for evidence of insight into the opportunities that the local economy presents to move farmworkers into higher-paid, higher-skilled employment both within and outside the agricultural industry.

(2) Familiarity With Proposed Service Area (20 points)

The applicant must demonstrate its familiarity with the network of workforce development and related services, including, where applicable, services provided by faith-based and community-based organizations, available to assist farmworkers to increase their employment and earnings, and the applicant's experience and success with causing these networks to direct their resources to address farmworkers' employment, earnings and supportive services needs.

Scoring on this factor will be based on the comprehensiveness of the applicant's knowledge of the One-Stop Career Center system in the proposed area(s) of service and the related services offered by social, educational,

faith-based and community-based organizations, and health services whose services support farmworkers' labor force participation and assist them to improve their employment and earnings over time. The evaluation of the applicant's response to this factor will also look for evidence that the applicant has had experience in working within the One-Stop Career Center system as a partner or service provider and will be effective in mobilizing both the One-Stop system and other service systems in a way that maximizes the amount of NFJP funds that are available to fill training gaps in the local One-Stop system with respect to farmworkers and maximizes the funding available from non-NFJP sources for supportive services.

If the applicant is a Local Workforce Investment Board (LWIB), or a One-Stop Career Center operator applying on behalf of a LWIB, scoring will be based on the success of efforts to integrate services provided by all One-Stop partners, including Section 167 grantees, to enhance the workforce and related services provided to farmworkers. Special emphasis will be placed on the success achieved in enrolling and serving farm workers in WIA formula-funded programs.

(3) Administrative Capacity (20 points)

The applicant must demonstrate that it has or will have adequate management information, performance management, case management, accounting and program and fiscal reporting systems in place to assure the program and fiscal integrity of the services financed with funds awarded through this solicitation.

Scoring on this factor will be based on evidence that the applicant has the capacity to effectively administer a diversified program of workforce investment assistance using appropriate administrative systems to maintain program and fiscal oversight and monitoring. The evaluation of the application's response to this factor will look for evidence of effective accounting performance management, and program and fiscal reporting systems as well as the applicant's ability to report electronically through the Internet.

(4) Proposed Plan of Service (40 points)

The applicant must demonstrate that its proposed plan service will meet the objectives of this solicitation. The objectives in question seek to increase farmworkers' co-enrollment in WIA Title I formula funded adult and displaced worker services; transition farmworkers into higher-skilled, higher-paid jobs in or outside agriculture; improve the English language proficiency of farmworkers who are not bilingual; and enable farm workers to become proficient in computer skills and Internet use.

Scoring on this factor will be based on evidence that the applicant has used (1) its understanding of the problems of eligible migrant and seasonal farmworkers, (2) its knowledge of the agricultural economy (including placement opportunities among key growers, agribusiness, and non-agricultural employers), and (3) its familiarity with the proposed service area (including the network of social, educational, faith-based and community-based organizations) to develop a service strategy and plan of service that will be successful in meeting the objectives of this solicitation and holds the potential to have a measurable impact on improving the employment and earnings of farmworkers. Additionally, the evaluation of the applicant's response to this factor will look for (4) evidence of comprehensiveness and the potential effectiveness of the proposed service strategy and plan of service within the context of the background the proposal provides of the workforce development needs of farmworkers in the proposed service area and the opportunities to address those needs. If the applicant is a LWIB or a One-Stop Career Center operator applying on behalf of a LWIB, the evaluation (5) will assess whether significant success has been achieved in integrating services provided by all One-Stop partners, especially services provided by Section 167 grantees, to enhance of the workforce and related services farmworkers receive. Special emphasis will be placed on the success achieved in enrolling and serving farm workers in WIA formula-funded programs. Finally, if the applicant is not a LWIB or One-Stop operator applying on behalf of an LWIB, the evaluation of this factor will (6) assess whether the Section 167 service strategy and service plan reflect a knowledge of the local workforce investment plan and proposes services that complement that plan in a way that expands workforce services available to farm workers.

Review Process for Grant Applications

Panel Review: The Grant Officer will select potential grantees utilizing all information available to him/her. A review panel will rate each proposal according to the criteria specified in the SGA. Panel results are critical to selecting grantees but are advisory in nature and not binding on the Grant Officer. The Grant Officer may, at his/her discretion, request an applicant to submit additional or clarifying information if needed to make a selection. However, selections may be made without further contact with the applicants. In such situations, an award will be based on the offeror's signature on the SF 424, which constitutes a binding offer.

Responsibility Review: Prior to awarding a grant, the Department will conduct a responsibility review of each potential grantee through available records. The responsibility review relies on testing available records to determine if the applicant has a satisfactory history of accounting for Federal funds and property. The responsibility review is independent of the competitive process. Applicants failing to meet the requirements of this section may be disqualified for selection as grantees, irrespective of their standing in the competition. Any applicant that is not selected as a result of a Grant Officer's responsibility review will be advised of its appeal rights. The responsibility tests that will be applied are those present in the WIA regulations (20 CFR 667.170).

Areas not Competed: In the event that no grant applications are received for a state, or all applications received are deemed non-responsive, or a grant agreement is not successfully negotiated with a selected applicant, the Department will offer the Governor of the State a right of first refusal to submit an acceptable application if that state has not applied. If the Governor does not accept this offer within 15 days after being notified, the Department may designate another organization, reopen the area for competitive bidding, allocate the area funds by formula to all other service areas, or transfer the funds for that service area to national account activities.

Notification of Non-Selection: Any applicant that is not selected as a potential grantee or whose application has been denied in part or in whole by the Department will be notified in writing by the Grant Officer and advised of all appeal rights.

Notification of Selection: Applicants submitting applications in response to this SGA that are selected as potential grantees will be notified in writing by the Grant Officer. The notification will invite each potential grantee to negotiate the final terms and conditions of the grant as applicable, will establish a reasonable time and place for the negotiations, and will indicate the specific service delivery area and amount of funds to be allocated under the grant. FY 2003 funds will be awarded for the period July 1, 2003 to June 30, 2004. Grant plans will be approved for that one year only.

Part II. Housing Assistance

In the FY 2003 Appropriations bill Congress made available $4,609,840 for housing assistance services to eligible migrants and seasonal farmworkers. As noted in the Purpose and Background section of this SGA, applicants for Housing Assistance grants that are also applying for the NFJP grants must submit a separate application for the Housing Assistance grants. The Department will fund proposals according to the Rating Criteria listed at the end of this Part, up to the level of funding available.

The Department is committed to greater accountability in the utilization of Housing Assistance grants to ensure that housing supportive services are provided, as a first priority, to eligible migrant and seasonal farmworkers who have the greatest need for housing assistance. The Department intends to achieve greater accountability for addressing this priority through the following requirements:

- Housing assistance may only be provided to Section 167 eligible migrant and seasonal farmworkers;
- Housing assistance will be permitted for direct support payments for emergency and temporary housing and for direct investments in housing assistance for migrant and seasonal farmworkers at their home base. Indirect services, such as leveraging services to increase or maintain the housing stock available to farmworkers, are also authorized. However, these indirect services must focus exclusively on increasing (or maintaining) the stock of emergency and temporary housing, including portable housing units.
- Housing assistance must be related to the promotion of a farmworker's employment through a documented strategy that supports that farmworker's housing needs while they are employed in agricultural labor or while they are receiving intensive and/or training services. This strategy may be identified through an Individual Employment Plan (IEP).

The Department seeks to promote the use of temporary and portable housing designs that meet safety and health standards for use by migrant and seasonal farmworkers that have been unable to find safe, affordable housing during their migrations. Proposals that include such strategies should provide for the utilization of Energy Star-rated designs whenever possible. Please note that, as before, grant funds may not be used for facilities construction.

Contents of Grant Application

A. Understanding the Problems of the Eligible Migrant and Seasonal Farmworkers of the State or Area

An understanding of the area's economy, the housing market in the area and the problems faced by migrant and seasonal farmworkers working within that economy, is essential to formulating an effective strategy to provide housing assistance to migrant and seasonal farmworkers.

1. Describe the housing market in the area including the role that employer-provided housing and publicly subsidized housing plays in defining the stock of standard housing available to farmworkers and discuss the problems Section 167 eligible farmworkers encounter when seeking temporary and emergency housing in the state. Discuss how these problems affect their ability to obtain and retain employment, or to participate in job search and or training activities to improve their employment and earnings whether in or outside agriculture.

2. Describe the strategy for identifying, and conducting outreach to, eligible migrant farmworkers who have critical housing needs.

B. Familiarity With the Area To Be Served

In order to provide housing services that are appropriate for the migrant and seasonal farmworkers the program serves, the applicant must be familiar with the housing conditions in the proposed service area and the housing assistance available from other agencies that provide relevant assistance—for example, the One-Stop Career Center system, and the wider community of social service agencies, including faith-based and community-based agencies. The application should:

1. Provide an analysis of the housing assistance resources available from employers and state and local agencies to respond to the temporary and year-round housing needs of migrant and seasonal farmworkers in the state. Include housing assistance available through faith-based and community-based organizations. Discuss the applicant's experience and effectiveness in engaging the resources of these agencies to meet farmworkers' temporary and emergency housing needs.

2. Describe the types of housing assistance activities appropriate for addressing the needs of the eligible migrant and seasonal farmworkers in the area. Provide a housing assistance strategy for those farmworkers that require assistance in order to remain in agricultural labor, as well as for those who require temporary or emergency housing to obtain and retain employment, or to participate in job search and or job training activities to improve their employment and earnings, whether in or outside agriculture.

C. Administrative Capacity

The information provided in this section should describe the applicant's capacity to effectively administer a program of temporary and emergency housing assistance. Applicants must describe the mechanisms it plans to use to establish and maintain program and fiscal oversight and integrity.

1. Program Integrity

The applicant should describe its management information and performance management systems and its plans to maintain the program records (including individual participant records) needed for reporting and performance accountability and management, and to establish and to maintain a case management system.

Additionally, the applicant must describe its experience with performance management systems and explain its perspective on the role of performance management and how it should be used to improve customer service.

Case management presumes a client-centered approach to housing assistance as a support service. For optimum results, case management should be technology-based; *i.e.*, fully utilizing computer technology and other electronic tools. Applicants should describe their experience in using case management systems, including the results achieved from using the approach.

2. Fiscal Integrity

The applicant must describe a record keeping system that is sufficient to prepare financial reports and to trace funds to adequate levels of expenditures to ensure lawful spending.

Applicants must describe their capacity to manage housing assistance services, including a description of how eligibility to receive related assistance services will be determined. The description should discuss whether the criteria used to determine eligibility for housing assistance services differs among migrant and seasonal farmworker groups, what the differences are and the rationale for the differentiation.

Also describe the applicant's strategy for minimizing the use of WIA Section 167 funds for temporary and emergency

assistance services and significantly increasing funding from other sources that provide housing assistance in rural communities.

3. Electronic Reporting

The WIA Section 167 housing assistance program is required to use electronic reporting via the Internet. Describe the applicant's capacity to provide the equipment, access and staff qualified to perform on-line reporting. Describe the applicant's capacity to provide all case management staff and others, as appropriate, with electronic tools such as PCs, software for word processing and spreadsheets, individual e-mail accounts, and Internet access with an agency provided ISP.

Note: PY 2003 grantees will be required to provide personal computers, individual e-mail accounts and Internet access for all customer service staff.

D. Proposed Activities and Services

This section will elaborate on the description of an applicant's proposed service approach by describing the specific activities in the proposed service plan not already covered in the previous sections. Applicants should:

1. Describe the plan for identifying those farmworkers in need of housing assistance, including the process for eligibility determination and the coordination with the NFJP grantee in the state (to ensure that the housing assistance made available to individual migrant and seasonal farmworkers is supported by an individual plan or workforce investment activities).

2. Describe, if not done elsewhere, the case management approach to be used for housing assistance, and how the organization will manage the delivery of housing assistance services.

3. Describe in detail the specific housing assistance services to be offered, including an estimate of the number of migrant and seasonal farmworkers, respectively, that will be provided housing assistance. Provide separate information for temporary housing and for emergency housing.

4. Describe how eligible farmworkers' housing assistance will be coordinated with training and related assistance services provided through the NFJP partner if the applicant did not apply for or is not awarded an NFJP grant.

Format and Content of Application

The grant application is limited to 15 pages, double-spaced, in 12 point type. Letters of support and any required attachments are additional pages. Do not include detailed budgets or planning estimates with this grant application. Planning and budget documents will be requested from selected applicants.

Rating Criteria for Award

A DOL review panel will use the point scoring system and the Rating Criteria format specified below to review applications. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member. It is required that all applicants use the Rating Criteria format when developing their applications in response to this SGA.

Scoring: The following full review criteria totaling a maximum score of 100 points apply to all applicants.

(1) Eligibility and Understanding (20 points)

The application must demonstrate an in-depth understanding of the area's economy, the housing market in the area, and the problems faced by migrants and seasonal farmworkers in obtaining housing in the area where they live and work.

Scoring on this factor will be based on how well the applicant describes the housing market in the area, including the role that employer-provided housing and publicly-subsidized housing, and where, applicable, housing provided through faith-based and community-based organizations, play in defining the standard housing stock available to migrants and seasonal farmworkers. The applicant must also demonstrate knowledge of how housing availability impacts the farmworkers' ability to obtain and retain employment, or participate in job search and job training activities.

(2) Familiarity With Proposed Service Area (20 points)

The applicant must be able to demonstrate an in-depth knowledge of the housing conditions in the service area, the relevant social services agencies that provide housing assistance in the service area (including those in the One-Stop system, as well as faith-based and community-based organizations), and the resources available to those agencies, in order to maximize housing opportunities for migrants and seasonal farmworkers, both temporary and permanent.

Scoring on this factor will be based on the comprehensiveness of the analysis presented regarding the housing market in the area, the resources available from all other sources in the community, both public and private, and the impact on solutions to the temporary and/or permanent housing needs of migrants and seasonal farmworkers who are trying to get a job, keep a job, or participate in job search and job training activities.

(3) Administrative Capacity (20 points)

The applicant must demonstrate that it has or will have adequate management, fiscal and program integrity mechanisms plans to effectively administer a temporary and emergency housing assistance program.

Scoring on this factor will be based on evidence that the applicant has the capacity to effectively administer a housing assistance program, using the appropriate administrative systems to maintain program and fiscal oversight and monitoring. The evaluation of the applicant's response to this factor will look for evidence of effective management, program and fiscal accounting and reporting systems.

(4) Proposed Activities and Services (40 points)

The applicant must demonstrate that its proposed services plan will meet the objectives of this solicitation. The objectives in question seek to link services provided through the housing assistance strategy to those services provided to eligible migrants and seasonal farmworkers participating in an NFJP program (or other formula-funded programs of the state), to enable eligible migrants and seasonal farmworkers to obtain and retain employment, or participate in job search and job training activities.

Scoring on this factor will be based on evidence that the applicant has used its understanding of the housing problems of eligible migrant and seasonal farmworkers, its knowledge of the housing market in the proposed service area, and its knowledge of the housing resources available in the service area to develop a plan of service that successfully meets the objectives of this solicitation.

Review Process for Grant Applications

Panel Review: The Grant Officer will select potential grantees utilizing all information available to him/her. A review panel will rate each proposal according to the criteria specified in the SGA. Panel results are critical to selecting grantees but are advisory in nature and not binding on the Grant Officer. The Grant Officer may, at his/her discretion, request an applicant to submit additional or clarifying information if needed to make a selection. However, selections may be made without further contact with the applicants. In such situations, an award will be based on the offeror's signature on the SF 424, which constitutes a binding offer.

Responsibility Review: Prior to awarding a grant, the Department will conduct a responsibility review of each potential grantee through available records. The responsibility review relies on testing available records to determine if the applicant has a satisfactory history of accounting for Federal funds and property. The responsibility review is independent of the competitive process. Applicants failing to meet the requirements of this section may be disqualified for selection as grantees, irrespective of their standing in the competition. Any applicant that is not selected as a result of a Grant Officer's responsibility review will be advised of its appeal rights. The responsibility tests that will be applied are those present in the WIA regulations at 20 CFR 667.170.

Areas Not Competed: In the event that no grant applications are received for a specific service delivery area, or all applications received are deemed non-responsive, or a grant agreement is not successfully negotiated with a selected applicant, the Department will offer the Governor of the State a right of first refusal to submit an acceptable application if that state has not applied. If the Governor does not accept this offer within 15 days after being notified, the Department may designate another organization, reopen the service delivery area for competitive bidding, allocate the area funds by formula to all other service areas, or transfer the funds for that service area to national account activities.

Notification of Non Selection: Any applicant that is not selected as a potential grantee or whose application has been denied in part or in whole by the Department will be notified in writing by the Grant Officer and advised of all appeal rights.

Notification of Selection: Applicants submitting applications in response to this SGA that are selected as potential grantees will be notified in writing by the Grant Officer. The notification will invite each potential grantee to negotiate the final terms and conditions of the grant as applicable, will establish a reasonable time and place for the negotiations, and will indicate the specific service delivery area and amount of funds to be allocated under the grant. PY 2003 funds will be awarded for the period July 1, 2003 to June 30, 2004. Grant plans will be approved for that one year only.

Signed at Washington, DC, this 14th day of April, 2003.

Lorraine H. Saunders,

Grant Officer, Employment and Training Administration.

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify).

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges (sum of 6a-6h)	0.00			0.00	0.00
j. Indirect Charges					0.00
k. TOTALS (sum of 6i and 6j)	$ 0.00	$	$	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Previous Edition Usable

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

Authorized for Local Reproduction **Standard Form 424A (Rev. 7-97) Page 2**

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

Federal Agency Use Only

OMB No. 1225-0083 Exp. 02/28/2006

NOTE: Please place survey form directly behind the Standard Application for Federal Assistance (SF 424) fact sheet.

Purpose: This form is for applicants that are private nonprofit organizations (not including private universities). Please complete it to assist the federal government in ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for federal funding. Information provided on this form will not be considered in any way in making funding decisions and will not be included in the federal grants database.

1. Does the applicant have 501(c)(3) status?
   - ❑ Yes ❑ No
2. How many full-time equivalent employees does the applicant have? *(Check only one box).*
   - ❑ 3 or Fewer ❑ 15-50
   - ❑ 4-5 ❑ 51-100
   - ❑ 6-14 ❑ over 100
3. What is the size of the applicant's annual budget? *(Check only one box.)*
   - ❑ Less Than $150,000
   - ❑ $150,000 - $299,999
   - ❑ $300,000 - $499,999
   - ❑ $500,000 - $999,999
   - ❑ $1,000,000 - $4,999,999
   - ❑ $5,000,000 or more
4. Is the applicant a faith-based/religious organization?
   - ❑ Yes ❑ No
5. Is the applicant a non-religious community-based organization?
   - ❑ Yes ❑ No
6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?
   - ❑ Yes ❑ No
7. Has the applicant ever received a government grant or contract (Federal, State, or local)?
   - ❑ Yes ❑ No
8. Is the applicant a local affiliate of a national organization?
   - ❑ Yes ❑ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1225-0083**. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Departmental Clearance Officer, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-1301, Washington, D.C. 20210. **If you have comments or concerns regarding the status of your individual submission of this form, write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

[FR Doc. 03–9519 Filed 4–16–03; 8:45 am]
BILLING CODE 4510–30–S

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act (WIA) Section 167, the National Farmworker Jobs Program (NFJP), and Housing Assistance Grants

AGENCY: Employment and Training Administration (ETA), Department of Labor.

ACTION: Notice of formula allocations for the Program Year (PY) 2003 National Farmworker Jobs Program (NFJP), and for the Housing Assistance Grants; request for comments.

SUMMARY: Under section 182(d) of the Workforce Investment Act (WIA) of 1998, ETA is publishing the PY 2003 allocations for the NFJP authorized under section 167 of the WIA, and for the housing assistance grants authorized by the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7). The NFJP program allocations are distributed to the states by a formula that estimates, by state, the relative demand for NFJP services. The housing assistance allocations are distributed among the 12 agricultural regions established for the National Agricultural Worker Survey (NAWS). The allocations in this notice apply to the Program Year (PY) beginning July 1, 2003.

DATES: Comments must be submitted on or before May 31, 2003.

ADDRESSES: Comments should be submitted to Ms. Alina M. Walker, Acting Chief, Division of Seasonal Farmworker Programs, Room C–5325, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The e-mail address is *walker.alina@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Alina M. Walker, Acting Chief, Division of Seasonal Farmworker Programs, Room C–5325, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. The telephone number is (202) 693–2706. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background. On May 19, 1999, we published a notice of formula allocations with a new formula for allocating funds available for the NFJP (formerly referred to as the section 402 Migrant and Seasonal Farmworker (MSFW) Program) in the **FEDERAL REGISTER** at 64 FR 27390 (May 19, 1999). The notice explained how the new formula achieved its purpose of distributing funds geographically by state service area on the basis of each area's relative share of farmworkers who are eligible for enrollment in the NFJP. The new formula consists of a rational combination of multiple data sets that were selected to yield the relative share distribution of eligible farmworkers. The combined-data formula is substantially more relevant to the purpose of aligning the allocations with the eligible population than the allocations determined by the prior formula.

As stated in our notice of May 19, 1999, PY 2003 is the first year the allocation formula is scheduled to be applied without adjustment for the hold-harmless provisions described in section IV of the notice. However, as explained in section III of this notice, the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7) requires that no area receive less than 85% of its 1998 level. Section III also explains the methodology used for PY 2003 to allocate all funds under the formula that are not required to satisfy the 85% requirement. This methodology produces a more equitable result than the one applied for each of the 4 years of the hold-harmless phase. The methodology under the hold-harmless phase funded all states at their required minimum level before allocating the remaining funds in accordance with the formula. One result of this change is that the Rhode Island area is allocated its full share in PY 2003.

II. Limitations *on Uses of Section 167 Funds*. In appropriating the funds for PY 2003, Congress provided in its Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7) as follows: "That, notwithstanding any other provision of law or related regulation, $77,836,000 shall be for carrying out section 167 of the Workforce Investment Act of 1998, including $72,686,000 for formula grants, $4,640,000 for migrant and seasonal housing, and $510,000 for other discretionary purposes * * *." The Conference Agreement includes a 0.65 percent across-the-board rescission to discretionary budgetary resources provided in divisions A through K of this Act, as well as to any previously enacted fiscal year 2003 advanced appropriations. A total of $72,213,541 for formula grants, and $4,609,840 for housing assistance, is allocated as a result of applying this requirement.

III. PY 2003 Allocation Formula. The first step of the formula for PY 2003 distributes the total formula funds of $72,213,541 based on the same relative share of eligible farmworkers derived from the combined datasets described above, which is unchanged from PY 2002. Congress, furthermore, in its Appropriations Conference Report 108–010, provided that those states impacted by formula reductions from the prior year would receive no less than 85 percent of their comparable 1998 allocation levels. Consequently, the amount for each State calculated in step one was compared to an amount equal to 85 percent of each State's PY 1998 allocation. If the 1998 comparison level was higher for a State, that amount was assigned to that State. All such States' assigned 1998 comparison levels were added and these States were removed from the remaining calculations. For the remaining States whose formula amounts were higher, their formula amounts were added and the total was compared to the total amount of remaining funds. Since there were less funds remaining available, each remaining State's formula amount was reduced by the same proportion the total remaining available funds bore to the total remaining States' formula amounts. This reduced distribution was again tested against the 1998 comparison level and the above process was repeated until there were no remaining States being assigned the 1998 comparison level. Each State's final allocation was either the assigned 1998 comparison level or the final proportionally reduced formula amount.

IV. State Combinations: We anticipate a single plan of service for operating the PY 2003 NFJP in the jurisdiction comprised of Delaware and Maryland and the jurisdiction comprised of Rhode Island and Connecticut.

V. Housing Assistance Allocations: The funds available for new grants to provide housing assistance to eligible farmworkers in PY 2003 will be awarded to applicants selected under the competition for the housing assistance grants. This notice provides information on how ETA will be guided in the geographic distribution of the housing assistance funds.

The Department is relying on the allocation formula to distribute the housing assistance funds among 12 agricultural regions. The arrangement of the regions is the one used by the Department in its application of the data from the National Agricultural Workers Survey (NAWS) to the allocation formula. These regions are identical to the regions established for the NAWS with the exception that the NAWS recognizes Oklahoma as one of the Southern Plains states. The 12 regions established for these allocation objectives are as follows:

Delta/South East: Alabama, Arkansas, Georgia, Louisiana, Mississippi, Oklahoma, and South Carolina.

North East 1: Connecticut, Maine, New Hampshire, New York, Rhode Island, Massachusetts, and Vermont.

Appalachia: Kentucky, North Carolina, Tennessee, West Virginia and Virginia.

Mountain 3: Arizona and New Mexico.

Northeast 2: Delaware, Maryland, New Jersey and Pennsylvania.

Lake District: Michigan, Minnesota and Wisconsin.

Pacific Southwest: California.

Florida Peninsula: Florida.

Southern Plains: Texas.

Mountain 1 & 2: Colorado, Idaho, Montana, Nevada, Utah and Wyoming.

Corn Belt/Northern Plains: Kansas, Illinois, Indiana, Iowa, Missouri, Nebraska, North Dakota, Ohio, and South Dakota.

Pacific Northwest: Oregon and Washington.

PY 2003 Allocations: The first table in the attachment provides the allocations for the NFJP in PY 2003. NFJP grantees will use these figures in preparing the PY 2003 grant plans. The result of the regional allocation of the housing assistance funds is provided in the second table, entitled "Worker Housing Assistance PY 2003/Regional Allocations".

Signed in Washington, DC, this 11th day of April, 2003.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

BILLING CODE 4510-30-P

U. S. Department of Labor
Employment and Training Administration
National Farmworker Jobs Program
PY 2003 Allocations to States

State	PY 2002	PY 2003	Difference	% Diff
Total	**$74,965,000**	**$72,213,541**	**($2,751,459)**	**-3.7%**
Alabama	791,835	673,060	(118,775)	-15.0%
Alaska	-	-	-	0.0%
Arizona	1,782,406	1,662,726	(119,680)	-6.7%
Arkansas	1,167,409	992,298	(175,111)	-15.0%
California	18,079,946	19,407,350	1,327,404	7.3%
Colorado	978,063	959,800	(18,263)	-1.9%
Connecticut	258,821	293,698	34,877	13.5%
Delaware	130,521	121,757	(8,764)	-6.7%
Dist of Columbia	-	-	-	0.0%
Florida	4,631,415	3,936,703	(694,712)	-15.0%
Georgia	1,711,615	1,454,873	(256,742)	-15.0%
Hawaii	251,607	213,866	(37,741)	-15.0%
Idaho	1,065,059	1,043,681	(21,378)	-2.0%
Illinois	1,478,120	1,378,036	(100,084)	-6.8%
Indiana	942,812	896,699	(46,113)	-4.9%
Iowa	1,314,394	1,117,235	(197,159)	-15.0%
Kansas	885,389	1,043,293	157,904	17.8%
Kentucky	1,352,613	1,149,721	(202,892)	-15.0%
Louisiana	796,032	676,627	(119,405)	-15.0%
Maine	327,397	278,287	(49,110)	-15.0%
Maryland	369,537	351,821	(17,716)	-4.8%
Massachusetts	351,027	298,373	(52,654)	-15.0%
Michigan	979,102	913,360	(65,742)	-6.7%
Minnesota	1,274,775	1,083,559	(191,216)	-15.0%
Mississippi	1,449,044	1,231,687	(217,357)	-15.0%
Missouri	1,094,524	944,258	(150,266)	-13.7%
Montana	667,189	567,111	(100,078)	-15.0%
Nebraska	964,801	1,056,460	91,659	9.5%
Nevada	200,795	170,676	(30,119)	-15.0%
New Hampshire	112,600	97,637	(14,963)	-13.3%
New Jersey	521,483	675,564	154,081	29.5%
New Mexico	761,269	904,219	142,950	18.8%
New York	1,850,667	1,573,067	(277,600)	-15.0%
North Carolina	3,006,003	2,555,103	(450,900)	-15.0%
North Dakota	574,325	589,445	15,120	2.6%
Ohio	1,124,788	1,222,893	98,105	8.7%
Oklahoma	830,137	1,234,884	404,747	48.8%
Oregon	1,340,187	1,404,533	64,346	4.8%
Pennsylvania	1,490,911	1,498,994	8,083	0.5%
Puerto Rico	3,042,070	2,719,687	(322,383)	-10.6%
Rhode Island	6,751	37,555	30,804	456.3%
South Carolina	1,080,106	918,090	(162,016)	-15.0%
South Dakota	692,869	588,939	(103,930)	-15.0%
Tennessee	957,799	814,129	(143,670)	-15.0%
Texas	6,943,642	6,477,411	(466,231)	-6.7%
Utah	295,442	278,628	(16,814)	-5.7%
Vermont	213,134	181,164	(31,970)	-15.0%
Virginia	1,036,441	880,975	(155,466)	-15.0%
Washington	2,098,870	2,187,794	88,924	4.2%
West Virginia	219,325	186,426	(32,899)	-15.0%
Wisconsin	1,229,201	1,044,821	(184,380)	-15.0%
Wyoming	240,732	224,568	(16,164)	-6.7%

U. S Department of Labor
Employment and Training Administration
Farm Worker Housing Assistance (WIA 167)
PY 2003 Regional Allocations

Agricultural Regions	Share	Amount
Delta SE	0.0737564	$340,005
North East 1	0.0326755	$150,629
Appalachia	0.0692097	$319,046
Mountain 3	0.0411004	$189,466
Northeast 2	0.0424005	$195,460
Lake	0.0429960	$198,205
California	0.3107392	$1,432,458
Florida	0.0381806	$176,006
Southern Plain (TX)	0.1037126	$478,098
Mountain 1 & 2	0.0497507	$229,343
Corn Belt/Northern Plains	0.1379600	$635,974
Pacific NW	0.0575183	$265,150
Totals	0.9999999	$4,609,840
multiplier	4609840	

[FR Doc. 03–9520 Filed 4–16–03; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Underground Retorts

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Section 57.22401; Underground Retorts.

DATES: Submit comments on or before June 16, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

This regulation pertains to the safety requirements to be followed by the mine operators in the use of underground retorts to extract oil from shale by heat or fire. Prior to ignition of retorts, the mine operator must submit a written plan indicating the acceptable levels of combustible gases and oxygen; specifications and location of off-gas monitoring procedures and equipment; procedures for ignition of retorts and details of area monitoring and alarm systems for hazardous gases and actions to be taken to assure safety of miners.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA Home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "**Federal Register** Documents."

III. Current Actions

This request for information contains provisions whereby mine operators can maintain compliance with the regulations and assure the safety of miners where underground retorts are used.

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Underground Retorts.
OMB Number: 1219–0096.
Frequency: On Occasion.
Affected Public: Business or other for-profit.
Respondents: 1.
Estimated Time Per Respondent: 160 hours.
Total Burden Hours: 160 hours.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 3rd day of April, 2003.

David L. Meyer,
Director, Office of Administration and Management.

[FR Doc. 03–9444 Filed 4–16–03; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Notification of Methane Detected in Mine Atmosphere

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR sections 57.22004(c), 57.22229, 5722230, 5722231, and 57.22239; Methane Detected in Mine Atmosphere.

DATES: Submit comments on or before June 16, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Sections 103(c), (I), and (j) of the Federal Mine Safety and Health Act of 1977 authorizes the inspection, recordkeeping and reporting requirements implemented in 30 CFR 57, Subpart T-Safety Standards for Methane in Metal and Nonmetal mines. Methane is a flammable gas found in underground mining. Methane is a colorless, odorless, tasteless gas, and it tends to rise to the roof of a mine because it is lighter than air. Although methane itself is nontoxic, its presence reduces oxygen content by dilution when mixed with air, and consequently can act as an asphyxiant when present in large quantities. Methane mixed with air is explosive in the range of 5 to 15 percent, provided that 12 percent or more oxygen is present. The presence of dust containing volatile matter in the mine atmosphere may further enhance the explosion potential of methane in a mine.

Metal and Nonmetal mine operators are required to notify MSHA as soon as possible if any of the following events occur: (a) There is an outburst that results in 0.25 percent or more methane in the mine atmosphere; (b) there is a blowout that results in 0.25 percent or more methane in the mine atmosphere; (c) there is an ignition of methane; (d) air sample results indicate 0.25 percent or more methane in the mine atmosphere of a Subcategory I–B, I–C, II–B, V–B, or Category VI mine. If methane reaches 2.0 percent in a Category IV mine; or methane reaches 0.25 percent in the mine atmosphere of a Subcategory I–B, II–B, V–B, and VI mines, MSHA shall be notified immediately. MSHA investigates these occurrences to determine that the mine is placed in the proper category.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA Home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Federal Register Documents."

III. Current Actions

MSHA is seeking an extension of the information collection related to certification and notification of methane detected in mine atmosphere.

Type of Review: Extension.
Agency: Mine Safety and Health Administration.
Title: Methane Detected in Mine Atmosphere.
OMB Number: 1219–0103.
Recordkeeping: Certification of examinations shall be kept for at least one year.
Frequency: On Occasion.
Affected Public: Business or other for-profit.
Respondents: 8.

Estimated Time Per Respondent: 3.88 hours.

Total Burden Hours: 31 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this third day of April, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–9445 Filed 4–16–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR sections 56.3203(a), 57.3203(a), and 75.204(a); Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines.

DATES: Submit comments on or before June 16, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

30 CFR 56/57.3203 and 75.204 address the quality of rock fixtures and their installation. Roof and rock bolts and accessories are an integral part of ground control systems and are used to prevent the fall of roof, face, and ribs. These standards require that metal and nonmetal and coal mine operators obtain a certification from the manufacturer that rock bolts and accessories are manufactured and tested in accordance with the 1995 American Society for Testing and Materials (ASTM) publication "Standard Specification for Roof and Rock Bolts and Accessories" (ASTM F432–95).

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA Home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "**Federal Register** Documents."

III. Current Actions

MSHA is seeking to continue the requirement for mine operators to obtain certification from the manufacturer that roof and rock bolts and accessories are manufactured and tested in accordance with the applicable American Society for testing and Materials (ASTM) specifications and make that certification available to an authorized representative of the Secretary.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines.

OMB Number: 1219–0121.

Section	Total respondents	Frequency	Total responses	Avg. time/response (hrs)	Burden hours
56/57.3203(a); M/NM Surface	20	On Occasion	40	0.05	2
M/NM Underground	180	On Occasion	720	0.05	36
75.204(a); Coal Underground	893	On Occasion	3,572	0.05	179
Total	1,093		4,332		217

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Respondents: 1,093.

Estimated Time Per Respondent: .2 hours.

Total Burden Hours: 217 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this third day of April, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–9446 Filed 4–16–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Product Testing by Applicant or Third Party

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 7.3, 7.4, 7.6, 7.7, 7.23, 7.27, 7.28, 7.30, 7.43, 7.46, 7.47, 7.48, 7.50, 7.51, 7.63, 7.69; 7.70, 7.303, 7.306, 7.310, 7.311, 7.403, 7.407, 7.408, and 7.410, Product Testing by Applicant or Third Party.

DATES: Submit comments on or before June 16, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management, 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 318 of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 878, defines "permissible" equipment as that which has been approved according to specifications which are prescribed by the Secretary of Labor. This approval indicates that the Mine Safety and Health Administration's specifications and tests, designed to ensure that a product will not present a fire, explosion, or other specific safety hazard related to use, have been met. Additionally, 30 CFR Part 7 provides procedures whereby products may be tested and certified by the applicant or a third party.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "**Federal Register** Documents."

III. Current Actions

MSHA is seeking to continue the requirements for approving certain products and equipment for use in underground mines.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Product Testing by Applicant or Third Party.

OMB Number: 1219–0100.

Recordkeeping: 30 CFR 7.4(a) required respondents to maintain records of test results and procedures for a period of at least 3 years. Section 7.6(c) required respondents to maintain records of the initial sale of each unit having an approval marking for at least the expected shelf life of and service life of the product.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Respondents: 301.

Estimated Time Per Respondent: 1.4 hours.

Total Burden Hours: 421 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $58,429.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this fourth day of April, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–9447 Filed 4–16–03; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* Generic Customer

Satisfaction Surveys and NRC Form 671, Request for Review of a Customer Satisfaction Survey Under Generic Clearance.

3. *The form number if applicable:* NRC Form 671.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Voluntary reporting by the public and NRC licensees.

6. *An estimate of the number of responses:* 1,727.

7. *The number of annual respondents:* 1,727.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* 386 hours.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Voluntary customer satisfaction surveys will be used to contact users of NRC services and products to determine their needs, and how the Commission can improve its services and products to better meet those needs. In addition, focus groups will be contacted to discuss questions concerning those services and products. Results from the surveys will give insight into how NRC can make its services and products cost effective, efficient, and responsive to its customer needs. Each survey will be submitted to OMB for its review.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/OMB/index/html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 19, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0197), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 10th day of April 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–9440 Filed 4–16–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR part 40, "Domestic Licensing of Source Material"; NRC Form 244, "Registration Certificate—Use of Depleted Uranium under General License"; and NRC Form 484, "Domestic Monitoring Data Report."

2. *Current OMB approval number:* 3150–0020 and 3150–0031.

3. *How often the collection is required:* Reports required under 10 CFR part 40 are collected and evaluated on a continuing basis as events occur. There is a one-time submittal of information to receive a license. Renewal applications are submitted every 5 to 10 years. NRC Form 244 is submitted when depleted uranium is received or transferred under general license. NRC Form 484 is submitted biannually.

4. *Who is required or asked to report:* 10 CFR part 40: Applicants for and holders of NRC licenses authorizing the receipt, possession, use, or transfer of radioactive source and byproduct material.

NRC Form 244: Persons receiving, possessing, using, or transferring depleted uranium under the general license established in 10 CFR 40.25(a).

NRC Form 484: Uranium recovery facility licensees reporting ground-water monitoring data pursuant to 10 CFR 40.65.

5. *The number of annual respondents:* 10 CFR part 40: 271 (99 for NRC licensees and 172 for Agreement State licensees).

NRC Form 484: Included in 10 CFR part 40, above.

NRC Form 244: 60 (20 for NRC licensees and 40 for Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:*

10 CFR part 40: 59,367 total hours (21,886 for NRC Licensees (16,182 hours for reporting and 5,703 hours for recordkeeping) and (37,481 for Agreement State Licensees (28,083 hours for reporting and 9,398 hours for recordkeeping).

NRC Form 484: Included in 10 CFR part 40, above.

NRC Form 244: 60 hours (20 hours for NRC licensees and 40 hours for Agreement State licensees for reporting requirements).

7. *Abstract:* 10 CFR part 40 establishes requirements for licenses for the receipt, possession, use, and transfer of radioactive source and byproduct material. NRC Form 244 is used to report receipt and transfer of depleted uranium under general license, as required by 10 CFR part 40. NRC Form 484 is used to report certain groundwater monitoring data required by 10 CFR part 40 for uranium recovery licensees. The application, reporting, and recordkeeping requirements are necessary to permit the NRC to make a determination on whether the possession, use, and transfer of source and byproduct material is in conformance with the Commission's regulations for protection of public health and safety.

Submit, by June 16, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at *infocollects@nrc.gov.*

Dated in Rockville, Maryland, this 10th day of April, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–9441 Filed 4–16–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–318]

Calvert Cliffs Nuclear Power Plant, Inc., Calvert Cliffs Nuclear Power Plant, Unit No. 2; Exemption

1.0 Background

Calvert Cliffs Nuclear Power Plant, Inc. (CCNPPI or the licensee) is the holder of Renewed Facility Operating License No. DPR–69, which authorizes operation of Calvert Cliffs Nuclear Power Plant, Unit No. 2 (CCNPP2). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Calvert County in Maryland.

2.0 Purpose

Title 10 of the Code of Federal Regulations (10 CFR), part 50, section 50.46 and Appendix K identify requirements for calculating emergency core cooling system (ECCS) performance for reactors containing fuel with zircaloy or ZIRLO cladding, and 10 CFR 50.44 relates to the control of hydrogen gas generated in part from a metal-water reaction between the reactor coolant and reactor fuel having zircaloy or ZIRLO cladding.

Since 10 CFR 50.44, 10 CFR 50.46, and Appendix K specifically relate to the use of zircaloy or ZIRLO cladding, the licensee has requested a temporary exemption to 10 CFR 50.44, 10 CFR 50.46, and Appendix K that would allow CCNPP2 to operate in Cycles 15 and 16 with a core containing up to eight lead fuel assemblies (LFAs) clad with an advanced zirconium-based alloy (up to four LFAs containing fuel rods clad with Framatome proprietary zirconium-based M5 alloy, and up to four LFAs containing fuel rods clad with Westinghouse proprietary advanced zirconium-based alloys).

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. Under section 50.12(a)(2), special circumstances include, among other things, when application of the regulation in the particular circumstance would not serve, or is not necessary to achieve, the underlying purpose of the rule.

The underlying purpose of 10 CFR 50.46 and 10 CFR part 50, Appendix K, is to establish requirements for the calculation of ECCS performance and acceptance criteria for that performance in order to assure that the ECCS functions to transfer heat from the reactor core following a loss-of-coolant-accident (LOCA) such that (1) fuel and clad damage that could interfere with continued effective core cooling is prevented, and (2) clad metal-water reaction is limited to negligible amounts. The licensee has performed assessments of plant transients and accidents, including LOCAs, using methodologies approved for application to the Calvert Cliffs plants. Though the methodologies may not have been approved for licensing-basis analyses for some of the LFAs, the licensee provided information that confirmed that the methodologies were adequate for assessing them.

The licensee's analyses indicate that the LFAs will not affect the present design basis analyses for CCNPP2 during Cycles 15 and 16. The licensee attributed this finding in part to positioning of the LFAs in non-limiting locations. The licensee has clarified that it will place the LFAs in locations that represent the normal CCNPP2 operational fuel duty, including in "hot," though non-limiting, locations. The licensee believes this will provide data representative of the fuel operation and burnup for two cycles.

Because the LFAs will be placed in non-limiting locations (Technical Specification 4.2.1 limits placement of LFAs to non-limiting locations in the core), the placement scheme and the similarity of the advanced zirconium-based alloy cladding used in the LFAs to the Zircaloy-4 clad rods, which are currently in the reactor core, will assure that the behavior of the LFAs will be bounded by the fuel performance and safety analyses performed for the Zircaloy-4 clad rods. No safety limits will be changed or setpoints altered as a result of using the LFAs.

In similar reviews of applications to use advanced fuel, the staff found that fuels with advanced cladding do not introduce a mixed core penalty in licensing safety analyses, provided that the resident fuel and the LFA were of like geometry. The licensee has indicated that the LFAs and fuel currently in use at CCNPP2 are of like geometry. Therefore, the staff concludes that use of the LFAs will not introduce a mixed core penalty into the safety analyses for CCNPP2.

Based on the above, the staff finds that, with the LFAs in use, the ECCS performance calculations assure that the ECCS will function to achieve the goals stated in 10 CFR 50.46 and 10 CFR part 50, Appendix K. Accordingly, the staff finds that application of section 50.46 and Appendix K with respect to use of the LFAs with advanced zirconium-based alloy cladding at CCNPP2 is not necessary to achieve the underlying purpose of these regulations.

The underlying purpose of 10 CFR 50.44 is to ensure that means are provided for the control of hydrogen gas that may be generated following a postulated LOCA. The licensee submitted supporting documentation that shows that the use of the Baker-Just equation to determine the metal-water reaction rate is conservative for the Framatome M5™ cladding and the Westinghouse advanced zirconium alloy cladding. Therefore, the amount of hydrogen generated by metal-water reaction in these materials will be within the design basis. As such, the licensee has achieved the underlying purpose of 10 CFR 50.44, and application of that rule with respect to use of the LFAs with advanced zirconium-based alloy cladding at CCNPP2 is not necessary to achieve that purpose.

The staff examined the licensee's rationale to support the exemption request and, as set forth above, has determined that the use of LFAs with advanced zirconium-based alloy cladding in the Unit 2 core for Cycles 15 and 16 would meet the underlying purpose of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, Appendix K. Application of these regulations in these circumstances is not necessary to achieve the underlying purpose of the rule.

Therefore, the staff concludes that granting an exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate.

4.0 Conclusion

For the reasons set forth above, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Also, special circumstances are present. Therefore, the Commission hereby grants CCNPPI an exemption from the requirements of 10 CFR part 50, section 50.44, section 50.46, and 10 CFR part 50, Appendix K, with respect to the use of LFAs with advanced zirconium-based alloy cladding at CCNPP2 during cycles 15 and 16.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 77085 and 67 FR 75864).

This exemption is effective upon issuance.

Dated in Rockville, Maryland, this 11th day of April, 2003.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–9442 Filed 4–16–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Revised

The agenda for the 141st meeting of the Advisory Committee on Nuclear Waste (ACNW) scheduled for April 22–23, 2003, 11545 Rockville Pike, Rockville, Maryland, has been revised to include a presentation on the National Academy of Sciences Transportation Study in the Working Group Follow-On Session on Tuesday, April 22, 2003 in the NRC Auditorium as follows:

12:30 p.m.–1 p.m.: National Academy of Sciences Transportation Study (Open)—The Committee will hear presentations by and hold discussions with representatives of the National Academy of Sciences regarding a study the Academy will perform to analyze a broad range of matters including transportation cask testing, selection of routes to the proposed burial site, possible health impacts and public perceptions of risk.

The agenda for April 23, 2003 has been changed to reflect the cancellation of the presentations on DOE/NRC Key Technical Issue (KTI) Agreement Status. The new schedule has been modified as follows:

8:30–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35–9:30 a.m.: Update on NRC Division of Waste Management Activities (Open)—The Committee will hear presentations by and hold discussions with the Director, Division of Waste Management on recent DWM activities of interest.

9:30–10:30 a.m.: Discussion of Self-Assessment Survey Results (Open)—The Committee will discuss the results of the self-assessment survey.

10:45–12 Noon: ACNW Action Plan (Open)—The Committee members will discuss an update to the ACNW 2002–2003 Action Plan.

1–5 p.m.: Preparation of ACNW Reports (Open)—The Committee will discuss proposed ACNW reports on matters considered during this meeting.

5–5:15 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

All other items pertaining to this meeting remain the same as previously published in the **Federal Register** on Wednesday, April 9, 2003 (67 FR 17414).

For further information, contact Mr. Howard J. Larson, Special Assistant, ACNW, (Telephone: 301–415–6805), between 7:30 a.m. and 4:15 p.m., ET.

Dated: April 10, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–9437 Filed 4–16–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of Additional Draft Guidance for Review of Early Site Permit Applications

The U.S. Nuclear Regulatory Commission (the Commission) has published additional draft guidance for the Commission's review of early site permit (ESP) applications. The ESP process is intended, under Title 10 of the Code of Federal Regulations (10 CFR) part 52, to permit resolution of site-related issues regarding possible future construction and operation of a nuclear power plant at a site that is the subject of the ESP application. The Commission released a draft version of a review standard for ESPs on December 26, 2002 (68 FR 132). Since the release of that document for interim use and public comment, additional draft guidance has been developed in the areas of quality assurance and accident analysis. The Commission is now releasing this additional draft guidance for interim use and public comment. The draft review standard (including the additional guidance just released) is primarily intended to guide the Commission staff in its review of an ESP application, with a secondary purpose of informing potential applicants for an ESP and other stakeholders of information the staff needs to perform its review. The Commission plans to issue a final version of the review standard by the end of 2003; that version will incorporate the additional guidance developed as discussed herein.

The newly published additional draft guidance is available electronically for public inspection in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS #ML030970186). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). Any interested party may submit comments on the draft guidance for consideration by the NRC staff. To be certain of consideration, comments on the draft guidance must be received by June 13, 2003. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft guidance should be sent to: Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation, Mailstop O–4D9A, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may be hand-delivered to the NRC at 11555 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Comments may be submitted electronically by the Internet to the NRC at *esprs@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's Public Document Room in Rockville, Maryland or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS).

FOR FURTHER INFORMATION CONTACT: Mr. Michael L. Scott, Project Manager, New Reactor Licensing Project Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Scott may be contacted at (301) 415–1421 or by e-mail at *mls3@nrc.gov*.

Dated at Rockville, Maryland, this 11th day of April, 2003.

For the Nuclear Regulatory Commission.

James E. Lyons,

Director, New Reactor Licensing Project Office, Office of Nuclear Reactor Regulation.

[FR Doc. 03–9439 Filed 4–16–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Audits of States, Local Governments, and Non-Profit Organizations; Circular A–133 Compliance Supplement

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the 2003 Circular A–133 Compliance Supplement.

SUMMARY: On April 4, 2002 (67 FR 16138), the Office of Management and Budget (OMB) issued a notice of availability of the 2002 Circular A–133 Compliance Supplement. The notice also offered interested parties an opportunity to comment on the 2002 Circular A–133 Compliance Supplement. The 2003 Supplement adds four additional programs, updates for program changes, and makes technical corrections. A list of changes to the 2003 Supplement can be found at Appendix V of the supplement. Due to its length, the 2003 Supplement is not included in this Notice. See Addresses for information about how to obtain a copy. This Notice also offers interested parties an opportunity to comment on the 2003 Supplement.

DATES: The 2003 Supplement will apply to audits of fiscal years beginning after June 30, 2002 and supersedes the 2002 Supplement. All comments on the 2003 Supplement must be in writing and received by October 31, 2003. Late comments will be considered to the extent practicable.

ADDRESSES: Copies of the 2003 Supplement may be purchased at any Government Printing Office (GPO) bookstore (stock number: 41–001–00593–5). The main GPO bookstore is located at 710 North Capitol Street, NW., Washington, DC 20401, (202) 512–0132. A copy may also be obtained under the Grants Management heading from the OMB home page on the Internet which is located at *http://www.omb.gov* and then select "Grants Management."

Due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, we encourage respondents to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date.

Electronic mail comments may be submitted to: *tramsey@omb.eop.gov*. Please include "A–133 Compliance Supplement—2003" in the subject line and the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and E-mail address in the text of the message. Comments may also be submitted via facsimile to 202–395–4915.

Comments may be mailed to Terrill W. Ramsey, Office of Federal Financial Management, Office of Management and Budget, Room 6025, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Recipients should contact their cognizant or oversight agency for audit, or Federal awarding agency, as appropriate under the circumstances. Subrecipients should contact their pass-through entity. Federal agencies should contact Terrill W. Ramsey, Office of Management and Budget, Office of Federal Financial Management, telephone (202) 395–3993.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) received six comment letters on the 2002 Supplement. The comment letters dealt with various technical issues and changes were made where appropriate.

Linda Springer,

Controller.

[FR Doc. 03–9433 Filed 4–16–03; 8:45 am]

BILLING CODE 3110–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act; Meeting

OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (Volume 68, Number 62, Page 15773) on April 1, 2003. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's April 24, 2003 Board of Directors meeting scheduled for 2 pm on April 17, 2003 has been cancelled.

CONTACT PERSON FOR INFORMATION: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov*.

Dated: April 15, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03–9592 Filed 4–15–03; 11:37 am]

BILLING CODE 3210–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27666]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 11, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 6, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 6, 3003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Vermont Yankee Nuclear Power Corporation

[70–10104]

Vermont Yankee Nuclear Power Corporation ("Vermont"), 185 Old Ferry

Road, Brattleboro, Vermont 05301, an indirect subsidiary of National Grid USA, National Grid Transco Plc and Northeast Utilities, which are registered holding companies under the Act, has filed a declaration with the Commission under section 12(c) of the Act and rules 42, 46 and 54 under the Act.

Vermont, a Vermont corporation, operated a nuclear powered electric generating plant in Vernon, Vermont ("Plant") from 1972 to July 2002, when the Plant was sold to Entergy Nuclear Vermont Yankee LLC ("ENVY"). Eight sponsoring utilities ("Sponsors") own the entire common capital stock of Vermont. The Sponsors have each entered into power contracts with Vermont dated February 1, 1968, as amended, February 1, 1984, and September 21, 2001 (collectively, "Power Contracts") that entitle and obligate them to pay the operating costs of Vermont and to repurchase from Vermont the output of the Plant according to certain entitlement percentages.[1]

Vermont, having sold substantially all its assets and anticipating a decreased level of business operations in the future, proposes to issue dividends out of capital and repurchase stock as the final step in the restructuring mandated for these utilities designed to disengage them from nuclear generation. Vermont proposes to declare and pay one or more dividends out of capital in the aggregate amount of up to $43,000,000 in order to reduce its equity capital to a level more commensurate with its activities. Vermont intends to declare and pay these aggregate dividends in one or more steps with all dividends to be declared and paid by December 31, 2003. In addition, Vermont proposes to offer to repurchase and to repurchase, again out of available cash, the shares of its common stock held by New England Power Company, Connecticut Light and Power Company, Public Service Company of New Hampshire and Western Massachusetts Electric Company (collectively, "Non-Vermont Sponsors") at their then stated value, estimated at the time the declaration was filed to be $23.03 per share at the time of repurchase. Vermont intends to carry out the repurchase transaction in one or more steps over the next year, with all repurchases to be completed by December 31, 2003. Vermont Yankee will maintain minimum equity until it ultimately prepares to liquidate and wrap up its affairs after March 21, 2012.

Vermont was organized in 1966 for the purpose of constructing and operating the Plant and selling its electrical output to the Sponsors. With the trend toward restructuring of the utility industry in the 1990s, the Sponsors and Vermont began a search for a purchaser of the Plant in 1997, which culminated in a purchase and sale agreement with ENVY, dated August 15, 2001 ("Purchase Agreement"). The closing under the Purchase Agreement also involved Vermont entering into a power purchase agreement, dated September 6, 2001, with ENVY, which required Vermont to purchase from ENVY for resale at wholesale the output of the Plant through March 21, 2012. Under the Power Contracts each Sponsor agreed to repurchase at cost from Vermont its entitlement percentage of that output and to pay its aliquot share of Vermont's other operating expenses, including any liabilities under the Purchase Agreement. The Power Contracts have been approved as wholesale tariffs by the Federal Energy Regulatory Commission ("FERC").

As of July 31, 2002, Vermont's current capital (including Other Paid-In Capital, Capital Stock Expense, and Retained Earnings) consisted of $55,911,468 of equity, evidenced by 369,149 shares of common stock, $100 par value per share, which are held by the eight Sponsors in the proportions described at footnote 1. As a single purpose utility corporation, Vermont's economic life has been, and will continue to be, primarily keyed to the operating licensed life (March 21, 2012) of the Plant.

Balance sheet adjustments must be made so that all assets are appropriately characterized consistent with rate recovery. The unamortized balance of all assets of Vermont is being amortized as regulatory assets as authorized by FERC over the original operating licensed life of the Plant. The recoveries of all investments and assets have been approved by FERC and should be recovered in cost of service rates by March 21, 2012. In the event additional costs of service (operating and/or expense) requirements are needed at any future period, the Power Contracts impose a non-cancelable obligation on the Sponsors to pay these costs of service expenses.

The record states that Vermont's common equity as of September 30, 2002, was $57,249,189. This equity capital was appropriate so long as Vermont owned and operated substantial generating assets. However, after the closing of the Purchase Agreement, Vermont has become a pass-through entity for the purchase and resale at wholesale of the output of the Plant. Because less capital funds will be required to amortize any of the remaining regulatory assets or to fund any of those remaining end of life obligations, Vermont believes that appropriate steps should be taken to reduce Vermont's outstanding equity contemporaneously with its write-down of its assets.

To accomplish the reduction of equity, Vermont proposes a process with two components: (1) Vermont will declare and pay one or more dividends, payable out of capital, up to an aggregate of $116.48 per share (or up to an aggregate of $43,000,000 for all dividends); and (2) Vermont will offer to repurchase and will repurchase (in one or more steps) the shares of its common stock held by its Non-Vermont Sponsors at their then stated value of $23.03 per share. The repurchase price would also be paid out of capital and would reduce the stated capital of Vermont to approximately $4,500,000 (assuming that all shares are repurchased from the Non-Vermont Sponsors and that the maximum aggregate dividends proposed are paid). Vermont intends to maintain approximately this level of equity capital throughout the remainder of its life and then would return any remaining equity to its stockholders upon dissolution.

Vermont believes that the amount of equity capital needed to carry on its business will be less than was historically required because of the decreased role it will play during the balance of the term of its Power Contracts with its Sponsors. Vermont does not intend to engage in any business other than that of a purchaser and reseller at wholesale of the power produced by the Plant. Vermont will be involved with the payment of certain retained liabilities and the collection of certain potential claims under the Purchase Agreement. The two Vermont Sponsors, Central Vermont Public Service Corporation and Green Mountain Power Corporation, have agreed to remain as stockholders of Vermont during this period, either directly or through their respective wholly owned subsidiaries. Vermont expects to be able to satisfy its needs for cash with revenues paid to it under the Power Contracts. Accordingly, Vermont believes that the amount of capital that will remain after consummation of the transactions proposed will be sufficient to meet its ongoing business needs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9475 Filed 4–16–03; 8:45 am]

BILLING CODE 8010–01–P

[1] The Sponsors, the percentage of stock each holds in Vermont, and their entitlement percentages are as follows: Central Vermont Public Service Corporation, 33.23% of stock, 35% entitlement; Green Mountain Power Corporation, 18.99% of stock, 20% entitlement; New England Power Company, a subsidiary of National Grid USA and National Grid Transco Plc, 23.90% of stock; 22.5% entitlement; Connecticut Light and Power Company, a subsidiary of Northeast Utilities, 10.09% of stock, 9.5% entitlement; Central Maine Power Company, a subsidiary of Energy East Corporation, 4.25% of stock, 4% entitlement; Public Service Company of New Hampshire, a subsidiary of Northeast Utilities, 4.25% of stock, 4% entitlement; Western Massachusetts Electric Company, a subsidiary of Northeast Utilities, 2.65% of stock, 2.5% entitlement; Cambridge Electric Light Company, 2.66% of stock, 2.5% entitlement.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47658; File No. SR–Amex–2003–18]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to "At the Close" Orders in Nasdaq Securities

April 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 109, "Stopping Stock," Rule 118, Trading in Nasdaq National Market Securities, Rule 131, Types of Orders, and Rule 156, Representation of Orders, relating to "at the close" orders (1) to specify that these rules apply to Amex trading in Nasdaq National Market System securities ("Nasdaq securities"); (2) to provide for dissemination of order imbalance information to major news vendors by means of a structured communication process; and (3) to temporarily exempt from Rule 109(d) information relating to "pair off" transactions under such rule, pending implementation of systems changes by the Nasdaq Unlisted Trading Privileges Plan Processor (the "Nasdaq UTP Processor") to accommodate printing of such transactions as "stopped stock." The text of the proposed rule change is set forth below in its entirety. Proposed new language is in *italics*.[3]

* * * * *

Rule 109 "Stopping Stock"

(a) through (d) No change.

Commentary

.01 No change

.02 Paragraph (d) of this rule shall apply to at-the-close orders entered on the Exchange in Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges, except that the Exchange shall not disseminate information regarding "pair off" transactions reported pursuant to paragraph (d), pending implementation of systems changes by the Nasdaq Unlisted Trading Privileges Plan Processor to permit dissemination of "pair off" transactions as "stopped stock".

* * * * *

Trading in Nasdaq National Market Securities

Rule 118

(a) through (j) No change.

Commentary

.01 The following rules refer to trading in Nasdaq National Market securities and should be consulted by members and member organizations trading Nasdaq National Market securities on the Floor: Rule 1 (Commentary .05); Rule 3; Rule 7 (Commentary .02); Rule 24 (b); *Rule 109 (Commentary .02);* Rule 115 (Commentary .01); *Rule 131 (Commentary .02); Rule 156 (Commentary .01);* Rule 170 (Commentary .11); Rule 175; Rule 190 (Commentary .06); and Rule 205 (Commentary .05).

* * * * *

Types of Orders

Rule 131

(a) through (t) No change.

Commentary

.01 No change

.02 Paragraph (e) of this rule shall apply to the trading of Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

* * * * *

Representation of Orders

Rule 156

(a) through (e) No change.

Commentary

.01 Paragraph (c) of this rule shall apply to at-the-close orders entered on the Exchange in Nasdaq National Market securities to which the Exchange has extended unlisted trading privileges.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend its rules relating to execution of market on close ("MOC") and limit on close ("LOC") orders in Nasdaq securities traded on the Exchange pursuant to unlisted trading privileges ("UTP"). The Commission has previously approved rules and procedures governing MOC and LOC orders entered on the Exchange.[4] The procedures include publication of order imbalances beginning at 3:40 p.m. (or as close to this time as possible) in listed securities of 25,000 shares or more on the consolidated tape (Network B), and a prohibition on entry of MOC or LOC orders after 3:40 p.m. except to offset an at the close order imbalance. After 3:40 p.m., MOC and LOC orders are irrevocable except to correct an error. The Exchange proposes to amend Amex

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] At the Exchange's request, the Commission made two non-substantive formatting corrections to the Exchange's proposed rule text. Telephone conference among Michael Cavalier, Associate General Counsel, Amex; David Fisch, Managing Director, Rulings, Amex; Christopher B. Stone, Special Counsel, Division of Market Regulation, SEC; and Ann E. Leddy, Attorney, Division of Market Regulation, SEC (April 8, 2003).

[4] *See, e.g.*, Release No. 34–41877 (September 23, 1999), SR-Amex-99–32 (September 14, 1999); Release No. 34–40123 (July 2, 1998), SR-Amex-98–10 (June 24, 1998); Release No. 34–35660 (May 8, 1995), SR-Amex-95–09 (May 2, 1995); Release No. 34–29312 (June 21, 1991), SR-Amex-90–32 (June 15, 1991).

Rules 109(d) ("Stopping Stock"), 131(e) ("Types of Orders") and 156(c) ("Representation of Orders"), which apply to handling "at the close" orders, including MOC and LOC orders in Nasdaq securities, as described below.

Currently there is no publication of order imbalances in Nasdaq securities traded pursuant to UTP. Because certain Exchange MOC procedures are predicated on those publications, the Exchange intends to institute a procedure for publishing imbalances of orders entered on the Exchange in Nasdaq UTP securities at 3:40 p.m. Because the Nasdaq UTP Processor (currently operated by the Nasdaq Stock Market, Inc. ("Nasdaq")) for disseminating consolidated quotation and last sale information does not accommodate publication of order imbalances, the Exchange will utilize a structured communication process established with major news vendors (*e.g.*, Bloomberg and Dow Jones) utilizing, among other things, e-mail technology to permit public dissemination of order imbalance information at 3:40 p.m., or as soon thereafter as practicable. In addition, this information will be disseminated on the Amex website. Following an imbalance dissemination, all regular Exchange procedures for executing MOC and LOC orders will apply, subject to temporary modifications to Exchange "stopped stock" reporting procedures, noted below.

Rule 109(d) requires that a member holding both buy and sell MOC orders simultaneously must execute any imbalance against the prevailing Exchange bid or offer at the close, and then must "pair off" remaining buy and sell orders at the price of the immediately preceding sale. Rule 109(d)(1) provides that the "pair off" transaction must be reported to the consolidated last sale reporting system as "stopped stock", to inform the public that limit and LOC orders entered before the close may remain unexecuted. Insofar as it would be impermissible to report "pair off" transactions in Nasdaq securities as "stopped stock" to the consolidated tape for Amex-listed securities (Tape B), and because the Nasdaq UTP Processor does not currently support any sale condition code for reporting "stopped stock" transactions in its UTP Trade Data Feed ("UTDF"), the Exchange, as an interim measure, is proposing to temporarily exempt "pair-off" transactions in Nasdaq securities under Rule 109(d) from reporting on the consolidated tape, pending the Nasdaq UTP Processor's ability to accommodate Amex's need to print these transactions as "stopped stock". On February 28, 2003, the Amex made a formal Change Request to the Nasdaq UTP Processor to facilitate reporting of "stopped stock" transactions, including "pair off" transactions under Rule 109(d). According to a memo sent to the UTP Operating Committee by the Nasdaq UTP Processor on February 7, 2003, Nasdaq would consider all enhancements requested by February 28, 2003, and expects that the Nasdaq UTP Processor will implement approved enhancements by September 2003.

Prior to implementation of this change by the Nasdaq UTP Processor, "pair off" transactions will be executed at the closing price on the Amex and will be reported to the Nasdaq UTP Processor regular way. Another trade report consisting of the price of the preceding imbalance and "pair-off" transactions, with no associated volume, will be transmitted to the Processor utilizing the new "M" sale condition modifier on UTDF to identify the Amex's Official Closing Price in that stock. Nasdaq has announced that the "M" sale condition is expected to go into production on April 14, 2003.[5] An Amex transaction report with a "M" modifier will represent the Official Closing Price for a Nasdaq security traded on the Amex.

The following example illustrates how a "pair off" in a Nasdaq security would be reported:

Assume "at the close" orders in ABCD to buy 35,000 shares and to sell 5,000 shares. At 3:40 p.m., a buy imbalance of 30,000 shares would be disseminated to vendors as described above. At 3:55 p.m., an order to sell 35,000 shares is entered, offsetting the imbalance. At or as close as practicable to 4:00 p.m., with a current bid/ask of $10.12–$10.14 (35,000 by 40,000), the sell imbalance of 5,000 shares is executed against the bid with 5,000 shares from the specialist or orders on the specialist's book. At or as close as practicable to 4:00 p.m., the remaining buy and sell orders are stopped against each other and paired off at the bid price (under Rule 109(d)); Amex will report a 5,000 share regular trade for ABCD to the Nasdaq UTP Processor at $10.12. Amex will immediately report a second trade for ABCD for 35,000 shares at $10.12. Amex would then send a third report with a "M" modifier to establish $10.12 as the official closing price for this stock on the Amex.

The Exchange intends to implement the proposed exemption from reporting "pair off" transactions as "stopped stock" on a pilot basis until the Nasdaq UTP Processor can accommodate the Amex's request to print a transaction "stopped stock" (expected to be by September 2003).

Rule 131(e) defines "at the close order" as a market order which is to be executed at or as near to the close as practicable, as well as a limit order that is entered for execution at the closing price on the Exchange. Proposed Commentary .02 would apply Rule 131(e) to trading in Nasdaq securities. The Exchange also proposes to add Commentary .01 to Rule 156 (Representation of Orders) to make clear that Rule 156(c) applies to at the close orders in Nasdaq securities. Rule 156(c) provides that the acceptance of an "at the close order" by a broker does not make the broker responsible for an execution at the closing price.

Rule 118, Commentary .01, which specifies Exchange rule referencing trading in Nasdaq securities, would also be amended to add references to Rules 109, 131, and 156.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[6] in general, and furthers the objectives of section 6(b)(5),[7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–18 and should be submitted by May 8, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[9] in that it will provide market participants with a source of closing price information for Nasdaq securities in addition to that disseminated by Nasdaq, which will enhance intermarket competition by providing an additional information source for market participants to assess and compare pricing and execution quality among different markets trading Nasdaq securities.

The Exchange has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register** to accommodate trading in Nasdaq securities on the Amex in accordance with existing Amex rules governing "at the close" transactions. The Commission believes that the establishment of MOC and LOC procedures for Nasdaq securities by the Exchange should benefit investors, generally, and that the proposal's temporary exception regarding "pair off" transactions should prevent the Exchange from being unfairly disadvantaged until such time as the Nasdaq UTP Processor can complete the necessary technical enhancements.

Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[10] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because it will permit the Amex to disseminate its Official Closing Price for Nasdaq securities traded on the Amex utilizing the "M" sale condition at or about the time such condition is utilized by Nasdaq.[11] In addition, the proposed rule change regarding the exemption from reporting "pair off" transactions as "stopped stock" will be implemented on a pilot basis, pending the Nasdaq UTP Processor's implementation of necessary systems changes.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Amex–2003–18), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9476 Filed 4–16–03; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* Release No. 34–47517 (March 25, 2003), SR-NASD–2002–158 (March 18, 2003).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(2).

[11] Nasdaq has announced that it expects to place the "M" sale condition into production on April 14, 2003. The "M" sale condition will be utilized to disseminate the Nasdaq Official Closing Price on the Nasdaq market. *See* Release No. 34–47517, *supra* note 5.

[12] *See supra* note 10.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47663; File No. SR–NASD–2003–67]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. To Extend Operation of NASD's Alternative Display Facility on a Pilot Basis

April 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which NASD has prepared. NASD has designated the proposed rule change as constituting a "non-controversial" rule change under Rule 19b–4(f)(6),[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to extend for nine months the operation of its Alternative Display Facility ("ADF") on a pilot basis. The current ADF pilot program, which the SEC approved on July 24, 2002, is due to expire on April 24, 2003. The pilot program permits members to quote and trade only Nasdaq-listed securities on or through the ADF. In addition, the proposed rule change would amend NASD Rule 4613A to clarify that ADF market participants must have in close proximity to their ADF Facility terminal at which they make a market in a Nasdaq security quotation data from all markets trading Nasdaq securities.

Below is the text of the proposed rule change. Proposed new language is underlined; proposed deletions are in brackets.

* * * * *

4000A. NASD Alternative Display Facility

4100A. General

NASD Alternative Display Facility ("ADF") is the facility to be operated by NASD on a nine-month pilot basis for members that choose to quote or effect trades in Nasdaq securities ("ADF-eligible securities") otherwise than on Nasdaq or on an exchange. The ADF will collect and disseminate quotations, compare trades, and collect and disseminate trade reports. Those NASD members that utilize ADF systems for quotation or trading activities must comply with the Rule 4000A, Rule 5400 and Rule 6000A Series, as well as all other applicable NASD Rules. The ADF pilot will expire on [April 24, 2003] *January 26, 2004.*

* * * * *

4613A. Character of Quotations

(a) through (d) No change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

(e) Other Quotation Obligations.

(1) No change.

(2) *As required by Rule 11Ac1–2(e) under the Exchange Act* [A]*a* member that *uses an ADF terminal or other approved ADF electronic interface* [is registered as a market maker in a Nasdaq security] shall be obligated to have available in close proximity to *the ADF* [NASD's Alternative Display Facility] terminal *or interface* [at which it makes a market in a Nasdaq security] a quotation service that disseminates the bid price and offer price *from all markets trading* [then being furnished by or on behalf of other market makers trading and quoting] that Nasdaq security.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

a. Pilot Extension. On July 24, 2002, the Commission approved SR–NASD–2002–97,[4] which authorizes NASD to operate the ADF on a pilot basis for nine months, pending the anticipated approval of SR–NASD–2001–90, which proposes to operate the ADF on a permanent basis. As described in detail in SR–NASD–2001–90, the ADF is a quotation collection, trade comparison, and trade reporting facility developed by NASD in accordance with the Commission's SuperMontage Approval Order[5] and in conjunction with Nasdaq's anticipated registration as a national securities exchange.[6] In addition, on January 30, 2003, NASD filed proposed rule change SR–NASD–2003–009 to revise the transaction and quotation-related fees applicable to ADF activity during the pilot program. The rule change proposal became effective upon filing, with an implementation date of February 17, 2003.

As proposed in SR–NASD–2001–90, the ADF would provide market participants the ability to quote and trade Nasdaq and exchange-listed securities. The current ADF pilot program, however, permits operation of the ADF with respect to Nasdaq securities only. This is because, at the time of SEC approval, several regulatory issues relating to the trading of exchange-listed securities on the ADF had not been resolved.

According to NASD, the ADF has been operating successfully during the pilot period. NASD believes that the SEC, in approving the launch of SuperMontage, stated that the ADF met the conditions set forth in its SuperMontage Approval Order to provide an alternative quotation collection, trade comparison and trade reporting facility. NASD also notes that the issues related to trading exchange-listed securities—and by extension, approval of the operation of ADF on a permanent basis—remain unresolved.

Accordingly, NASD believes it is appropriate to extend the pilot period for ADF trading in Nasdaq securities, as set forth in SR–NASD–2002–97 and SR–NASD–2003–09, until January 25, 2004 or until approval of SR–NASD–2001–90.

b. Close Proximity Rule. In addition, the proposed rule change would amend NASD Rule 4613A to clarify that ADF market participants must have in close proximity to their ADF terminals (or other approved ADF electronic interfaces) quotation data from all markets trading Nasdaq securities. NASD believes that the current language in the rule suggests that ADF market participants must have quotation data in close proximity only from other market makers. NASD represents that it always intended for Rule 4613A to ensure that ADF market participants comply with the Vendor Display Rule.[7] NASD believes that the proposed change reflects more recent guidance from the SEC that market participants must have readily available quotation data from all markets trading Nasdaq securities, not just market makers.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NASD neither solicited nor received written comments on this proposed rule change. NASD did solicit written comments on rule change proposals SR–NASD–2001–90 and SR–NASD–2002–28, the underlying rule filings to SR–NASD–2002–97 and SR–2003–009, respectively. NASD responded to the comments received in response to SR–NASD–2001–90 in its Amendment No. 2 to that filing, which was submitted to the SEC on May 24, 2002. NASD responded to the comments received in response to SR–NASD–2002–28 in its Amendment No. 1 to that filing, which was submitted to the SEC on May 14, 2002.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NASD has designated the proposed rule change as a "non-controversial" rule change that is effective upon filing pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] NASD has represented that the proposed rule change does not significantly affect the protection of investors or the public interest and does not impose any significant burden on competition.

NASD requested that the Commission waive the written notice of its intent to file the proposed rule change set forth in Rule 19b–4(f)(6)(iii).[11] In addition, NASD has requested that the Commission waive the requirement that the rule change not become operative for 30 days after the date of the filing, as set forth in Rule 19b–4(f)(6)(iii),[12] to prevent the current ADF pilot program from lapsing. The Commission finds good cause for the proposed rule change to become operative prior to the 30th day after the date of publication of notice of filing to assure the uninterrupted operation of the ADF pilot after April 24, 2003.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[4] Securities Exchange Act Release No. 46249 (July 24, 2002), 67 FR 49822 (July 31, 2002).

[5] Securities Exchange Act Release No. 43863 (January 19, 2001), 66 FR 8020 (January 26, 2001) (SR–NASD–99–53).

[6] Securities Exchange Act Release No. 44396 (June 7, 2001) 66 FR 31952 (June 13, 2001).

[7] *See* 17 CFR 240.11Ac1–2(c), Rule 11Ac1–2(c) under the Exchange Act.

[8] *See* letter from Robert L. D. Colby, Deputy Director, Division of Market Regulation, SEC, to T. Grant Callery, Executive Vice President and General Counsel, NASD, dated March 18, 2003.

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *Id.*

or otherwise in furtherance of the purposes of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to NASD and, in particular, the requirements of section 15A of the Act[13] and the rules and regulations thereunder.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to SR–NASD–2003–67 and should be submitted by May 8, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9413 Filed 4–16–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78*o*–3

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47661; File No. SR–NASD–2003–51]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Regarding Fees for the Automated Confirmation Transaction Service ("ACT")

April 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2003 the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). On March 27, 2003, Nasdaq amended the proposed rule change.[3] The proposed rule change is described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposed rule change pursuant to section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to reduce fees for the use of the Automated Confirmation Transaction Service ("ACT").[6] Nasdaq will implement the proposed rule change on April 1, 2003.

The text of the proposed rule change, as amended, is below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

(a)–(f) No change.

(g) Automated Confirmation Transaction Service.

The following charges shall be paid by the participant for use of the Automated Confirmation Transaction Service (ACT):

Transaction Related Charges:	
Reporting of transactions executed through SuperMontage (or any other transaction execution system that makes use of SuperMontage's functionality to report transactions).	*$0.029/side.*
Reporting of all other transactions in Nasdaq National Market and SmallCap Market securities not subject to comparison through ACT ("Covered Transactions")	
Average daily volume of media transaction reports for Covered Transactions during the month in which a participant is the reporting party:	*Fee per side for reports of Covered Transactions to which such participant is a party:*
0 to 10,000	*$0.029.*
10,001 to 50,000	*$0.029 for a number of reports equal to 10,000 times the number of trading days in the month $0.015 for all remaining reports.*
More than 50,000	*$0.029 for a number of times the number of trading days in the month $0.015 for a number of reports equal to 40,000 times the number of trading days in the month $0.00 for all remaining reports.*
Reporting of all other transactions not subject to comparison through ACT.	*$0.029/side.*
Comparison	$0.0144/side per 100 shares (minimum 400 shares; maximum 7,500 shares).
[Automated Give-Up]	[$0.029/side].
Late Report—T+N	$0.288/side.
Browse/query	$0.288/query.[6]
Terminal fee	$57.00/month (ACT only terminals).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* March 26, 2003 letter from John M. Yetter, Assistant General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission ("Amendment No. 1"). In Amendment No. 1, Nasdaq revised the description of the proposed rule to specify the circumstances under which Nasdaq will aggregate trade reports for corporate entities.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] This filing applies to usage of ACT by NASD members. The usage of ACT by non-members is governed by NASD Rule 6120.

CTCI fee	$575.00/month.
WebLink ACT	$300/month (full functionality) or $150/month (up to an average of twenty transactions per day each month).**
[Trade reporting]	[$0.029/side (applicable only to reportable transaction not subject to trade comparison through ACT)***].
Risk Management Charges	$0.035/side and $17.25/month per correspondent firm (maximum $10,000/month per correspondent firm).
Corrective Transaction Charge	$0.25/Cancel, Error, Inhibit, Kill, or 'No' portion of No/Was transaction, paid by reporting side; $0.25/Break, Decline transaction, paid by each party.
ACT Workstation	$525/logon/month***[*].

* Each ACT query incurs the $0.288 fee; however, the first accept or decline processed for a transaction is free, to insure that no more than $0.288 is charged per comparison. Subsequent queries for more data on the same security will also be processed free. Any subsequent query on a different security will incur the $0.288 query charge.

** For the purposes of this service only, a transaction is defined as an original trade entry, either on trade date or as-of transactions per month.

[*** The trade reporting service charge is applicable to those trades input into ACT for reporting purposes only, such as NSCC Qualified Service Representative reports and reports of internalized transactions.]

*** [*] A firm that uses ACT risk management through one or more NWII terminals when the ACT Workstation is introduced will be eligible to evaluate the ACT Workstation for a free, three-month trial period, provided that the firm continues to pay charges associated with its NWII terminal(s) during that period.

(h)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

ACT is an automated trade reporting and reconciliation service that speeds the post-execution steps of price and volume reporting, comparison, and clearing of trades completed in Nasdaq, OTC Bulletin Board, and other over-the-counter securities. ACT handles transactions executed through Nasdaq's automated trading systems, as well as transactions negotiated over the telephone and internalized transactions. It also manages post-execution procedures for transactions in exchange-listed securities that are traded in the Nasdaq InterMarket.

As part of an ongoing effort to reduce the costs incurred by market participants to use Nasdaq services, Nasdaq is proposing to introduce volume-based discounts for trade reports submitted to ACT. The discounts reflected in this proposed rule change apply to all reports in Nasdaq National Market and SmallCap Market securities submitted to ACT by a market participant directly or through Nasdaq's Primex system (defined as "Covered Transactions"), but do not apply to reports submitted automatically through Nasdaq's other transaction execution systems.[7] Thus, the discounts offered by this proposed rule change apply to reports submitted pursuant to "automated give-up" ("AGU") and Qualified Service Representative ("QSR") arrangements,[8] as well as internalized trades and Primex trades. However, the discounts do not apply to transactions that are subject to trade comparison through ACT, for which Nasdaq will continue to charge $0.0144 per side for each 100 shares (subject to a minimum charge of $0.0576 and a maximum charge of $1.08).

Under the proposal, the per side fee paid by an ACT participant for its trade reports during a particular month would depend upon the volume of media transaction reports for Covered Transactions in which the ACT participant was identified as the reporting party during that month.[9] If an ACT participant's average daily volume of such media trade reports was 10,000 or less, its fee for all ACT reports for Covered Transactions during the month would be $0.029 per report. An ACT participant with an average daily volume of between 10,001 and 50,000 media trade reports in Covered Transactions during the month would pay $0.029 per report for a number of reports equal to 10,000 times the number of trading days in the month but only $0.015 per report for each additional report. Finally, an ACT participant with an average daily volume of more than 50,000 media reports would pay $0.029 per report for a number of reports equal to 10,000 times the number of trading days in the month and $0.015 for a number of reports equal to 40,000 times the number of trading days in the month, but all additional reports during the month would be free.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[10] in general, and section 15A(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq believes that the fee reductions reflected in this proposed rule change assure that all participants reporting Covered Transactions through ACT pay a share of the costs associated with operation of the system, but recognize that the marginal costs associated with increases in trade report volume are low. Accordingly, the fee charged for "marginal" reports decreases as a participant's volume increases. Nasdaq believes that this change will make it more economical for market participants to use ACT for reporting their trading activity.

[7] Nasdaq has submitted a separate proposed rule change relating to the ACT charges for reporting of SuperMontage transactions. *See* SR–NASD–2003–56, Rel. No. 34–47621 (April 2, 2003), 68 FR 17418 (April 9, 2003).

[8] AGU and QSR arrangements allow a participant to report trades executed with other brokers with whom they have entered into a contractual arrangement.

[9] Volume will be measured with reference to the market participant identifier ("MPID") appearing on trade reports. If a particular corporate entity has multiple MPIDs associated with the Central Registration Depository ("CRD") number under which it conducts business, Nasdaq will aggregate trade reports associated with all of its MPIDs. However, Nasdaq will not aggregate one corporate entity's reports with those associated with MPIDs assigned to subsidiaries or other affiliates with a different CRD number.

[10] 15 U.S.C. 78o–3.

[11] 15 U.S.C. 78o–3(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[12] and subparagraph (f)(2) of Rule 19b–4 thereunder,[13] because it establishes or changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. For purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on March 27, 2003, when Amendment No. 1 was filed.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609: Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2003–51 and should be submitted by May 8, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9414 Filed 4–16–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 15 U.S.C. 78s(b)(3)(a)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47662; File No. SR–NSCC–2003–01]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to New Rule 59, "Information Services for Investment Products"

April 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 17, 2003, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would add new Rule 59, "Information Services for Investment Products," to NSCC's rules authorizing NSCC to provide services for the transmission and receipt of data and information related to investment and financial products.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC currently provides limited information services capabilities through its Mutual Fund and Insurance Product services. There is significant demand in the financial services industry for NSCC to make additional information services containing a broader range of information available to a broader range of participants. The proposed rule would authorize NSCC to design and offer such information services. The services would benefit the financial services industry by providing a means whereby information could be transferred in an automated and standardized environment using NSCC's connectivity.

Information services for investment products under Rule 59 would not involve money settlement at NSCC or the guarantee of any obligation. Access to Rule 59 information services would be available to a broader range of participants than other NSCC services that entail settlement or counterparty default risk.

Participants eligible to use Rule 59 information services would include any entity that has signed a membership agreement with NSCC in any other capacity or an entity meeting any one of the following criteria which has entered into an agreement as set forth below:

(i) It is a broker or dealer registered under the Act;

(ii) It is a bank or trust company, including a trust company having limited power, which is a member of the Federal Reserve System or is supervised and examined by state or federal authorities having supervision over banks;

(iii) It is a clearing agency registered with the Commission pursuant to Section 19(a) of the Act;

(iv) It is subject to supervision or regulation pursuant to the provisions of state insurance law and either issues insurance contracts or is licensed to sell insurance products;

(v) It is an investment company registered under Section 8 of the Investment Company Act of 1940, as amended;

(vi) It is an organization or entity that acts as a third party administrator on

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

behalf of defined contribution plans as defined in Section 414(i) of the Internal Revenue Code of 1986, as amended;

(vii) It is an Investment Advisor as defined in Section 202(a)(ii) of the Investment Advisors Act of 1940, as amended;

(viii) If it does not qualify under paragraphs (i) through (vii) above, it has demonstrated to the Board of Directors that its business and capabilities are such that it could reasonably expect material benefit from direct access to NSCC's services.

Users of Rule 59 information that are not members or participants of NSCC in any other capacity would be bound by the terms and conditions of a standard NSCC contract applicable to such service, and the rules of NSCC would not apply to them. The contract would state that the user cannot hold itself out as a member of NSCC unless approved for NSCC membership under a different NSCC rule. Such contracts would also include terms regarding limitations of liability, standard of care, and indemnification substantially similar to those contained in NSCC's membership agreement and rules.

NSCC anticipates that the first such information service to be authorized under proposed Rule 59 would be a messaging system used by participants in the separately managed accounts industry.[3] It is expected that the Separately Managed Account Service ("SMAS") would be used for the transmission of information between sponsors of separately managed account programs and the investment managers participating in their programs in order to coordinate information such as account opening data and verification of funding amounts.[4] Currently, this information is generally communicated by a combination of methods such as multiple vendor platforms, faxes, emails, and telephone.

NSCC believes that the proposed rule change would facilitate the transmission of information for investment products in a standardized and automated format, using NSCC's connectivity. Standardization and automation of information on investment products can be expected to reduce processing errors that are typically associated with manual processes or the use of multiple platforms and methods to transmit information. Accordingly, NSCC believes this filing is consistent with the requirements of the Act and the rules and regulations thereunder because it promotes the prompt and accurate clearance and settlement of securities and other related transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change would have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC has, however, worked closely with the MMI regarding standardization of information for the separately managed accounts industry. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve the proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–NSCC–2003–01. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR-NSCC–2003–01 and should be submitted by May 8, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

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[3] Information about the separately managed account industry is available on the website of The Money Management Institute ("MMI"): *http://www.moneyinstitute.com*. The MMI is the national organization for the managed account industry, which is comprised principally of portfolio management firms and sponsors of investment programs.

[4] NSCC will file a Section 19(b) proposed rule change with the Commission before implementing any new service, such as the separately managed account service, under Rule 59.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47671; File No. SR–NYSE–2002–11]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 and Notice of Filing And Order Granting Accelerated Approval to Amendment No. 2 Thereto by the New York Stock Exchange, Inc. to Establish a Six-Month Pilot Program Permitting a Floor Broker to Use an Exchange Authorized and Issued Portable Telephone on the Exchange Floor

April 11, 2003.

On February 28, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement a six-month pilot program that would amend NYSE Rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker's use of an Exchange authorized and provided portable telephone on the Exchange Floor upon approval by the Exchange. On December 30, 2002, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended by Amendment No. 1, was published in the **Federal Register** on January 28, 2003.[4] One comment was received on the published proposed rule change, as amended by Amendment No. 1.[5] On March 24, 2003, the Exchange filed Amendment No. 2 to the proposed rule change.[6] This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2. Amendment No. 2 is being approved on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 30, 2002 ("Amendment No. 1"). Amendment No. 1 replaces the filing in its entirety and provides, in the proposed rule text and the purpose section of the filing, clarification and further details on the use of Exchange authorized and issued portable telephones on the Exchange Floor, and also proposes, among others, a pilot program for six months.

[4] *See* Securities Exchange Act Release No. 47221 (January 21, 2003), 68 FR 4261.

[5] *See* letter from Thomas N. McManus, Executive Director and Counsel, Morgan Stanley & Co. Incorporated, to Jonathan G. Katz, Secretary, Commission, dated March 6, 2003 ("Morgan Stanley Letter").

[6] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 21, 2003 ("Amendment No. 2"). Amendment No. 2 specifies the timing for the notification and implementation of the six-month pilot program as well as for the completion of a study, and eliminates the proposed prohibition against using Exchange authorized and provided portable telephones for orders in Investment Company Units (as defined in Section 703.16 of the Listed Company Manual), also known as Exchange-Traded Funds ("ETFs"). *See* notes 11 through 15, and accompanying text. Amendment No. 2 also extends the statutory time for the Commission to take action on the filing for a period of forty-five days.

I. Description of the Proposal

NYSE Rule 36 governs the establishment of telephone or electronic communications between the Exchange's Trading Floor and any other location. Rule 36.20 prohibits the use of portable telephone communications between the Trading Floor and any off-Floor location. According to the Exchange, the only way that voice communication can be conducted today by Floor brokers between the Trading Floor and an off-Floor location is by means of a telephone located at a broker's booth. Communications often involve a customer calling a broker at the booth for "market look" information. A broker may not use a portable phone currently in a trading crowd at the point of sale to speak with a person located off the Floor.

The Exchange proposes to amend NYSE Rule 36 to permit a Floor broker to use an Exchange authorized and issued portable telephone on the Floor with the approval of the Exchange. As noted above, the Exchange currently does not permit the use of portable telephones on its Floor. Thus, a Floor broker would be permitted to engage in direct voice communication from the point of sale to an off-Floor location, such as a member firm's trading desk or the office of one of the broker's customers. Such communications would permit the broker to accept orders consistent with Exchange rules, provide status and oral execution reports as to orders previously received, as well as provide "market look" observations as are routinely transmitted from a broker's booth location today. Only portable telephones authorized and issued by the Exchange would be permitted on the Exchange Floor. Any other type of portable telephone would continue to be prohibited.

Under the proposal, both incoming and outgoing calls, and orders on such calls, would be allowed, provided the requirements of all other Exchange rules have been met. A broker would not be permitted to represent and execute any order received as a result of such voice communication unless the order was first properly recorded by the member and entered into the Exchange's Front End Systemic Capture ("FESC").[7] In addition, Exchange rules require that any Floor broker receiving orders from the public over portable phones must be properly qualified to do direct access business under Exchange Rules 342 and 345, among others.[8] As a result, NYSE Rule 36 would be amended to specifically state that any Floor broker receiving orders from the public over portable phones must be properly qualified to do a public customer business.

Furthermore, the Exchange originally proposed in Amendment No. 1 that it would not permit portable communications at the point of sale for orders in ETFs, because there was an exception to NYSE Rule 123(e) that permitted orders in ETFs to first be executed and then entered into FESC.[9] In its original filing, the NYSE stated that technical restraints would be developed to implement this policy, thus preventing the use of portable phones where ETFs currently trade. The NYSE, however, determined that technical restraints could not be developed to prevent the use of portable phones in the Expanded Blue Room of the NYSE where ETFs currently trade. As a result, in Amendment No. 2, the Exchange proposed to eliminate the exception to NYSE Rule 123(e) for ETFs[10] and allow the use of portable phones for orders in ETFs.[11] Orders in ETFs would thus be subject to the same FESC requirements as orders in any other security listed on the Exchange. The Exchange states that requiring orders in ETFs to be first entered into FESC before execution or representation on the Floor would place them on an equal footing with orders in other securities with respect to order entry and recording procedures. As a result, the Exchange believes that allowing portable phones for orders in ETFs should be permitted. The Exchange also notes that the same surveillance procedures applicable to trading in all other equities would also apply to ETFs.

Although the Exchange originally stated in Amendment No. 1 that the proposal would be implemented on a six-month pilot basis from the date of Commission approval, and contained a

[7] *See* Securities Exchange Act Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) (SR–NYSE–98–25). *See also* Securities Exchange Act Release No. 44943 (October 16, 2001), 66 FR 53820 (October 24, 2001) (SR–NYSE–2001–39) (discussing certain exceptions to FESC, such as orders to offset an error, or a bona fide arbitrage, which may be entered within 60 seconds after a trade is executed). The Exchange believes that the exceptions to FESC for bona fide arbitrage and orders to offset transactions made in error do not raise unique issues with respect to the use of portable telephones on the Floor. The NYSE believes that the purpose of the FESC requirement is to ensure that orders are entered into an Exchange data base before they are executed, thereby minimizing the possibility that orders are being initiated on the Floor in contravention of NYSE and SEC rules. Members may, however, initiate bona fide arbitrage and error offset orders on the Floor, as expressly permitted by NYSE Rule 112 and SEC Rule 11a–1. The Exchange believes that the use of portable telephones, therefore, does not raise on-Floor trading concerns as to these types of orders because these orders are not normally transmitted by phone. Telephone conversation between Jeff Rosenstrock, Senior Special Counsel, NYSE, and Cyndi Rodriguez, Special Counsel, Division, Commission, on April 11, 2003.

[8] For more information regarding Exchange requirements for conducting a public business on the Exchange Floor, *see* Information Memo 01–41 (November 21, 2001), Information Memo 01–18 (July 11, 2001) (available on *www.nyse.com/regulation/regulation.html*), and Information Memo 91–25 (July 8, 1991).

[9] See Securities Exchange Act Release No. 45246 (January 7, 2002), 67 FR 1527 (January 11, 2002) (SR–NYSE–2001–52) (discussing an exception to FESC that allowed orders in ETFs to be entered within 90 seconds of execution for a one-year pilot period). *See also* Securities Exchange Act Release No. 46713 (October 23, 2002), 67 FR 66033 (October 29, 2002) (SR–NYSE–2002–48) (extending the exception until January 5, 2004), and note 7 and accompanying text.

[10] The Exchange stated in Amendment No. 2 that a separate proposed rule change would be filed with the Commission to eliminate the exception in Supplementary Material .23 of NYSE Rule 123(e) for ETF orders. *See* SR–NYSE–2003–09 which discusses in more detail the rational for eliminating the exception.

[11] *See* Amendment No. 2, *supra* note .

commitment to complete, within three months of Commission approval, a study of communications on the Exchange Floor pursuant to the recommendation of an Independent Consultant retained by the Exchange,[12] the Exchange now proposes in Amendment No. 2 to provide for Exchange authorized and provided portable phones on the Exchange Floor as a six-month pilot beginning on or about May 1, 2003.[13] Furthermore, the Exchange has committed to complete the study within three months of implementation of the pilot program, which would be on or about August 1, 2003.[14] The Exchange has also committed to notify the Division, OCIE, and the Exchange's membership within one week prior to the actual implementation date of this proposal.[15]

In its filing, the Exchange also noted that specialists are subject to separate restrictions in NYSE Rule 36 on their ability to engage in voice communications from the specialist post to an off-Floor location.[16] The Exchange's proposed amendment to NYSE Rule 36 would not apply to specialists, who would continue to be prohibited from speaking from the post to upstairs trading desks or customers.

II. Discussion

After careful review, the Commission finds that the proposed rule change and Amendment Nos. 1 and 2 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposal, as amended, is consistent with section 6(b)(5) of the Act,[18] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the proposal, as amended, would eliminate the requirement that an off-Floor customer must communicate with the Exchange Floor by calling a broker's booth and using the booth clerk as an intermediary to access the trading crowd, which may help to facilitate transactions in securities consistent with section 6(b)(5) of the Act.[19] While the Commission believes that the proposal to permit a Floor broker to use an Exchange authorized and issued portable telephone on the Floor on a six-month pilot basis could provide certain benefits, as stated by the NYSE in its filing, such as more direct access to the Exchange's trading crowds, and increased speed in the transmittal, and execution, of orders, it believes there are certain concerns.

The prohibition on the use of portable telephones in trading crowds on the NYSE was adopted in 1988.[20] In approving the prohibition, the Commission noted that the use of portable telephones in the trading crowd was different from such access at a booth phone. In particular, the Commission stated that the ability of a customer to communicate directly with a broker in the trading crowd could provide a significant time and place advantage to the customer, who invariably would be a large or institutional customer. The Commission also noted certain concerns that could result from such advantage.

While the Commission recognized that the NYSE had reasonable concerns for imposing the portable phone prohibition, the Commission noted that the NYSE's decision to prohibit the use of portable telephones on the Floor was not the only approach that could be consistent with the Act. The Commission further stated that its order did not foreclose an exchange from devising a program that would permit the use of portable telephones.

Under NYSE rules, a broker would not be permitted to represent and execute an order unless it was inputted into FESC. In addition, the filing has been amended so that only Exchange authorized and issued portable telephones would be permitted on the Floor. The benefit of this requirement is that the Exchange would have access to all phone records. This ability to track phone calls, along with the data captured in FESC, should aid the Exchange in surveilling for compliance with Exchange rules and address concerns identified in the adoption of the original prohibition. In this regard, the Commission notes that proper surveillance is an essential component of any telephone access policy to an Exchange Trading Floor. Surveillance procedures should help to ensure that Floor brokers who are interacting with the public on portable phones are authorized to do so, as NYSE Rule 36 will require,[21] and that orders are being handled in compliance with NYSE rules. The six-month pilot approval should provide the NYSE with an opportunity to review these procedures and address any potential concerns that have arisen during the pilot.

The Commission notes that the NYSE is expected to complete within three months of implementation of the portable phones a study of communications on the Exchange Floor, pursuant to a recommendation of an Independent Consultant retained by the Exchange.[22] In addition to this study, the Commission requests that the Exchange report any problems, surveillance or enforcement matters associated with the Floor brokers use of an Exchange authorized and issued portable telephone on the Floor. If the NYSE decides to request permanent approval or an extension of the pilot, we would expect, in addition to the report due in three months, that the NYSE submit information documenting the usage of the phones, any problems that have occurred, and any advantages or disadvantages that have resulted.[23]

In summary, the Commission notes that the proposal, by enabling customers to speak directly to a Floor broker in a trading crowd on Exchange authorized and issued portable phones, rather than being routed through the Floor broker booth, may help to expedite orders and make more direct the flow of information. The six-month pilot should help the Exchange to provide information to the Commission to ensure that these benefits exist, and provide for fair access with adequate monitoring of the orders being taken, and information being provided, over the portable phones.[24]

Finally, the Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.[25] Since the NYSE is also proposing in a separate rule filing to eliminate the exception to NYSE Rule 123(e), which provided that orders in ETFs must be entered into FESC within 90 seconds of execution,[26] the Commission believes that good cause exists to approve the portion of Amendment No. 2 that would allow the use of Exchange-provided and authorized portable phones for orders in ETFs on the Floor. As noted above, the prohibition of using portable phones for ETF orders was based on the 90-second delay for inputting ETF orders in FESC. Because this exception to FESC has been eliminated, the Commission believes that portable phones can be used for ETF orders as with other equity securities.[27] In addition, the Commission believes that it is beneficial to investors and Exchange members that the NYSE specified, in Amendment No. 2, a general time frame of approximately May 1, 2003 to implement the pilot program and of August 1, 2003 to complete the study of communications on the Exchange Floor. This should help firms and brokers in planning for the upcoming changes. Finally, we believe notice for NYSE members, the Division, and OCIE one week prior to the pilot program's implementation will be beneficial to market participants and the Commission. Based on the above, we believe good cause exists to grant accelerated approval to Amendment No. 2, consistent with sections 19 and 6(b) of the Act.[28]

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to Amendment No. 2 that are filed with the Commission, and all written communications relating to Amendment No. 2 between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE–2002–11 and should be submitted by May 8, 2003.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[29] that the proposed rule change and Amendment No. 1 (SR-NYSE–2002–11) be, and it hereby is, approved, and that Amendment No. 2 be, and it hereby is, approved on an accelerated basis, as a pilot program for six months beginning on or about May 1, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9472 Filed 4–16–03; 8:45 am]

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[12] *See In the Matter of New York Stock Exchange,* 70 S.E.C. Docket 106, Release No. 41574, 1999 WL 430863 (June 29, 1999).

[13] *See* Amendment No. 2, *supra* note 6.

[14] *See* Amendment No. 2, *supra* note 6.

[15] *See* Amendment No. 2, *supra* note 6. The Commission notes that should the NYSE be unable to implement the filing on or about May 1st, it would have to submit a rule proposal under Section 19(b) of the Act to change the date.

[16] *See* Securities Exchange Act Release No. 46560 (September 26, 2002), 67 FR 62088 (October 3, 2002) (SR–NYSE–00–31) (discussing restrictions on specialists' communications from the post).

[17] In approving this proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(5).

[20] The proposal resulting in the adoption of the prohibition was in response to a Commission order setting aside actions by the Exchange denying two of its members permission to install telephone connections to communicate from the Exchange Floor with non-member customers located off-Floor. *See* Securities Exchange Act Release No. 24429, May 6, 1987, 38 SEC Doc. 432. The NYSE's proposal that was ultimately approved by the Commission permitted access to non-member customers at the Floor booth, but prohibited such access through portable phones that could be used in the trading crowd.

[21] *See* note 8 and accompanying text for other NYSE requirement that Floor brokers be properly qualified before doing a public customer business.

[22] *See supra* note 12.

[23] This information along with any proposal to extend, or permanently approve, the pilot should be submitted at least two to three months prior to the expiration of the six-month pilot.

[24] In addition, as noted above, the Commission received one comment letter in support of the proposed rule change and Amendment No. 1. This commenter stated that the proposal would improve the overall quality of the flow of information and the efficiency of the communication process between the Exchange Floor and off-Floor participants, including both "direct access" investors and "upstairs" trading desks of NYSE member organizations. Furthermore, the commenter considered the use of portable phones to communicate directly to and from the Floor as enabling vigorous competition, innovative trading services, and faster executions on the Floor. *See* Morgan Stanley Letter, *supra* note 5. The commenter also suggested that the Exchange should aim to implement the rule change as fully contemplated and not make calls on portable phones linked through the booth, as some market participants might desire. In response, the Exchange stated that they were aware of certain market participants who preferred that phone calls between Floor brokers and off-Floor participants be connected through a Floor booth intermediary, and that, while technologically Floor brokers would have the ability on their portable phones to conference in Floor booth intermediaries on calls, such action is not required by this proposal. Telephone conversation between Jeff Rosenstrock, Attorney, NYSE, and Cyndi Rodriguez, Special Counsel, Division, Commission, on April 11, 2003.

[25] 15 U.S.C. 78s(b)(2).

[26] *See* notes 9 and 10, and accompanying text.

[27] During the pilot, the NYSE should address whether additional surveillance would be needed because of the derivative nature of the ETFs.

[28] 15 U.S.C. 78s and 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47672; File No. SR–NYSE–2002–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to Corporate Governance

April 11, 2003.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder,[2] notice is hereby given that on August 16, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, III below, which Items have been prepared by the NYSE. On April 4, 2003, the NYSE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to amend its Listed Company Manual ("Manual") to implement significant changes to its listing standards aimed at helping to restore investor confidence by empowering and ensuring the independence of directors and strengthening corporate governance practices. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

301.00 Introduction

* * * * *

This section describes the Exchange's policies and requirements with respect to independent [audit committees] *directors,* [ownership interests of corporate directors and officers,] shareholders' voting rights, and other matters affecting [shareholders' ownership interests and the maintenance of fair and orderly markets

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 3, 2003 ("Amendment No. 1"). Amendment No. 1 replaces the original filing in its entirety. Telephone call between Annemarie Tierney, Office of General Counsel, NYSE, and Jennifer Lewis, Attorney, Division, Commission, on April 9, 2003.

in listed securities] *corporate governance.*

When used in this Section 3, "officer" shall have the meaning specified in Rule 16a–1(f) under the Securities Exchange Act of 1934, or any successor rule.

* * * * *

303.00 Corporate Governance Standards

Pending the implementation of the new corporate governance standards set forth in Section 303A infra, in accordance with the transition provisions adopted by the Exchange, the standards contained in this Section 303.00 will continue to apply.

303A

General Application

Companies listed on the Exchange must comply with certain standards regarding corporate governance as codified in this Section 303A. Consistent with the NYSE's traditional approach, as well as the requirements of the Sarbanes-Oxley Act of 2002, certain provisions of Section 303A are applicable to some listed companies but not to others.

Equity Listings

Section 303(A) applies in full to all companies listing common equity securities, with the following exceptions:

Controlled Companies—

A company of which more than 50% of the voting power is held by an individual, a group or another company need not comply with the requirements of Sections 303A(1), (4) or (5). A controlled company that chooses to take advantage of any or all of these exemptions must disclose in its annual meeting proxy that choice, that it is a controlled company and the basis for the determination. Controlled companies must comply with the remaining provisions of Section 303A.

Limited Partnerships and Companies in Bankruptcy—

Due to their unique attributes, limited partnerships and companies in bankruptcy proceedings need not comply with the requirements of Sections 303A(1), (4) or (5). However, all limited partnerships (at the general partner level) and companies in bankruptcy proceedings must comply with the remaining provisions of Section 303A.

Closed-End Funds—

The Exchange considers the significantly expanded standards and requirements provided for in Section 303A to be unnecessary for closed-end management companies given the pervasive federal regulation applicable to them. However, closed-end management companies must comply with the requirements set out in Sections 303A(6), (7) and (12)(b).

Other Entities—

Section 303A does not apply to passive business organizations in the form of trusts (such as royalty trusts) or to derivatives and special purpose securities (such as those described in Sections 703.16, 703.19, 703.20 and 703.21).

Foreign Private Issuers—

Listed companies that are foreign private issuers (as such term is defined in Rule 3b–4 under the Exchange Act) are permitted to follow home country practice in lieu of the provisions of this Section 303A, except that such companies are required to comply with the requirements of Sections 303A(6) (including the applicable commentary), (7)(a) and (c), (11) and (12)(b).

Preferred and Debt Listings

Section 303A does not generally apply to companies listing only preferred or debt securities on the Exchange. To the extent required by Rule 10A–3 under the Exchange Act, all companies listing only preferred or debt securities on the NYSE are required to comply with the requirements of Sections 303A(6) (including the applicable commentary), (7)(a) and (c), and (12)(b).

Effective Dates/Transition Periods

Companies that do not already have majority-independent boards will need time to recruit qualified independent directors, and companies with classified boards may need additional time to implement the new standards in a series of director elections. Accordingly, all listed companies will be required to comply with the standards in Sections 303A(1) and (2) no later than eighteen months following publication of SEC approval of these standards in the ***Federal Register****. If a company has a classified board and a change would be required for a director who would not normally stand for election within the 18-month period, the company will have an additional year, or a total of 30 months after publication of SEC approval of Section 303A in the* ***Federal Register****, to effect the change in that director position.*

Companies will have the same 18-month and 30-month periods described above to comply with the new qualification standards applicable to audit, nominating and compensation committee members. As a general matter, the existing audit committee requirements provided for in Section 303 continue to apply to NYSE listed companies pending the transition to the new rules.

Companies listing in conjunction with their initial public offering must comply within 24 months of listing. Companies listing upon transfer from another market have 24 months from the date of transfer in which to comply with any requirement to the extent the market on which they were listed did not have the same requirement. To the extent the other market has a substantially similar requirement but also had a transition period from the effective date of that market's rule, which period had not yet expired, the company will have at least as long a transition period as would have been available to it on the other market.

While the above time periods are needed to recruit directors, the Exchange believes that listed companies, IPOs and transfers can much more quickly implement the other requirements of Section 303A. The provision for a public reprimand letter set out in Section 303A(13) is effective upon publication of SEC approval of Section 303A in the ***Federal Register****. The remaining requirements can also be implemented quickly.*

Accordingly, the following standards are effective six months from publication of SEC approval of Section 303A in the ***Federal Register:***

- *Executive sessions of non-management directors (subsection 3);*
- *Nomination and compensation committees with requisite charters (subsections 4 and 5);*
- *Audit committee with requisite charter (subsection 7);*
- *Corporate governance guidelines and code of business conduct and ethics (subsections 9 and 10);*
- *Foreign private issuer statement of significant differences from NYSE standards (subsection 11); and*
- *CEO certification of compliance with listing standards (subsection 12).*

Once those six months are expired, we expect all newly listed companies, both IPOs and transfers, to have provided for these requirements by the time of listing on the Exchange.

1. Listed companies must have a majority of independent directors.

Commentary: Effective boards of directors exercise independent judgment in carrying out their responsibilities. Requiring a majority of independent directors will increase the quality of board oversight and lessen the possibility of damaging conflicts of interest.

2. In order to tighten the definition of "independent director" for purposes of these standards:

(a) No director qualifies as "independent" unless the board of directors affirmatively determines that the director has no material relationship with the listed company (either directly or as a partner, shareholder or officer of an organization that has a relationship with the company). Companies must disclose these determinations.

Commentary: It is not possible to anticipate, or explicitly to provide for, all circumstances that might signal potential conflicts of interest, or that might bear on the materiality of a director's relationship to a listed company. Accordingly, it is best that boards making "independence" determinations broadly consider all relevant facts and circumstances. In particular, when assessing the materiality of a director's relationship with the company, the board should consider the issue not merely from the standpoint of the director, but also from that of persons or organizations with which the director has an affiliation. Material relationships can include commercial, industrial, banking, consulting, legal, accounting, charitable and familial relationships, among others. However, as the concern is independence from management, the Exchange does not view ownership of even a significant amount of stock, by itself, as a bar to an independence finding. Of course in no event can any current employee of the listed company be deemed independent of management.

The basis for a board determination that a relationship is not material must be disclosed in the company's annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10–K filed with the SEC. In this regard, a board may adopt and disclose categorical standards to assist it in making determinations of independence and may make a general disclosure if a director meets these standards. Any determination of independence for a director who does not meet these standards must be specifically explained. A company must disclose any standard it adopts. It may then make the general statement that the independent directors meet the standards set by the board without detailing particular aspects of the immaterial relationships between individual directors and the company (except where there is a presumption of non-independence, as described in the commentary to Section 303A(2)(b)). In the event that a director with a business or other relationship that does not fit within the disclosed standards is determined to be independent, a board must disclose the basis for its determination in the manner described above. This approach provides investors with an adequate means of assessing the quality of a board's independence and its independence determinations while avoiding excessive disclosure of immaterial relationships.

(b) In addition:

(i) A director who receives, or whose immediate family member receives, more than $100,000 per year in direct compensation from the listed company, other than director and committee fees and pension or other forms of deferred compensation for prior service (provided such compensation is not contingent in any way on continued service), is presumed not to be independent until five years after he or she ceases to receive more than $100,000 per year in such compensation.

Commentary: A listed company's board may negate this presumption with respect to a director if the board determines (and no independent director dissents) that, based upon the relevant facts and circumstances, such compensatory relationship is not material. Any affirmative determination of independence made by the board in these circumstances must be specifically explained in the listed company's proxy statement, or, if the company does not file a proxy statement, in the company's annual report filed on Form 10-K with the SEC, and cannot be covered by a categorical standard adopted in accordance with the commentary to Section 303A(2)(a). Compensation received by a director for former service as an interim Chairman or CEO does not need to be considered as a factor by a board in determining independence under this presumption. If a person who received more than $100,000 per year in direct compensation from a listed company dies or becomes incapacitated, the presumption of non-independence applicable to his or her immediate family members will cease immediately upon such death or determination of incapacity.

(ii) A director who is affiliated with or employed by, or whose immediate family member is affiliated with or employed in a professional capacity by, a present or former internal or external auditor of the company is not "independent" until five years after the end of either the affiliation or the auditing relationship.

(iii) A director who is employed, or whose immediate family member is employed, as an executive officer of another company where any of the listed company's present executives serves on that company's compensation committee is not "independent" until five years after the end of such service or the employment relationship.

(iv) A director who is an executive officer or an employee, or whose immediate family member is an executive officer, of another company (A) that accounts for at least 2% or $1 million, whichever is greater, of the listed company's consolidated gross revenues, or (B) for which the listed company accounts for at least 2% or $1 million, whichever is greater, of such other company's consolidated gross revenues, in each case is not "independent" until five years after falling below such threshold.

General Commentary to Section 303A(2)(b): An "immediate family member" includes a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home.

Transition Rule. During the five years immediately following [insert the effective date of this listing standard], each five year "look back" period referenced in sub-paragraphs (b)(i) through (b)(iv) shall instead be the period since [insert effective date of this listing standard]. For example, if a director received in excess of $100,000 per year in direct compensation from a listed company during the year prior to [insert effective date of this listing standard], there will be no required presumption that the director is not independent unless such compensatory relationship extended past [insert effective date of this listing standard].

3. To empower non-management directors to serve as a more effective check on management, the non-management directors of each company must meet at regularly scheduled executive sessions without management.

Commentary: To promote open discussion among the non-management directors, companies must schedule regular executive sessions in which those directors meet without management participation. "Non-management" directors are all those who are not company officers (as that term is defined in Rule 16a–1(f) under the Securities Act of 1933), and includes such directors who are not independent by virtue of a material relationship, former status or family membership, or for any other reason. Regular scheduling of such meetings is important not only to foster better communication among non-management directors, but also to prevent any negative inference from attaching to the calling of executive sessions. There need not be a single presiding director at all executive

sessions of the non-management directors. If one director is chosen to preside at these meetings, his or her name must be disclosed in the annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10–K filed with the SEC. Alternatively, a company may disclose the procedure by which a presiding director is selected for each executive session. For example, a company may wish to rotate the presiding position among the chairs of board committees. In order that interested parties may be able to make their concerns known to the non-management directors, a company must disclose a method for such parties to communicate directly and confidentially with the presiding director or with the non-management directors as a group. That method can follow the same process established for communications to the audit committee required by Section 303A(7)(c)(ii).

4. (a) Listed companies must have a nominating/corporate governance committee composed entirely of independent directors.

(b) The nominating/corporate governance committee must have a written charter that addresses:

(i) the committee's purpose—which, at minimum, must be to: identify individuals qualified to become board members, and to select, or to recommend that the board select, the director nominees for the next annual meeting of shareholders; and develop and recommend to the board a set of corporate governance principles applicable to the corporation;

(ii) the committee's goals and responsibilities—which must reflect, at minimum, the board's criteria for selecting new directors, and oversight of the evaluation of the board and management; and

(iii) an annual performance evaluation of the committee.

Commentary: A nominating/corporate governance committee is central to the effective functioning of the board. New director and board committee nominations are among a board's most important functions. Placing this responsibility in the hands of an independent nominating/corporate governance committee can enhance the independence and quality of nominees. The committee is also responsible for taking a leadership role in shaping the corporate governance of a corporation.

If a company is legally required by contract or otherwise to provide third parties with the ability to nominate directors (for example, preferred stock rights to elect directors upon a dividend default, shareholder agreements, and management agreements), the selection and nomination of such directors need not be subject to the nominating committee process.

The nominating/corporate governance committee charter should also address the following items: committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to delegate to subcommittees); and committee reporting to the board. In addition, the charter should give the nominating/corporate governance committee sole authority to retain and terminate any search firm to be used to identify director candidates, including sole authority to approve the search firm's fees and other retention terms. Boards may allocate the responsibilities of the nominating/corporate governance committee to committees of their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a published committee charter. To avoid any confusion, note that the audit committee functions specified in Section 303A(7) may not be allocated to a different committee, other than as noted in the General Commentary to Section 303A(7).

5. (a) Listed companies must have a compensation committee composed entirely of independent directors.

(b) The compensation committee must have a written charter that addresses:

(i) the committee's purpose—which, at minimum, must be to discharge the board's responsibilities relating to compensation of the company's executives, and to produce an annual report on executive compensation for inclusion in the company's proxy statement, or, if the company does not file a proxy statement, in the company's annual report filed on Form 10–K with the SEC, in accordance with applicable rules and regulations;

(ii) the committee's duties and responsibilities—which, at minimum, must be to:

(A) review and approve corporate goals and objectives relevant to CEO compensation, evaluate the CEO's performance in light of those goals and objectives, and have sole authority to determine the CEO's compensation level based on this evaluation; and

(B) make recommendations to the board with respect to non-CEO compensation, incentive-compensation plans and equity-based plans; and

(iii) an annual performance evaluation of the compensation committee.

Commentary: In determining the long-term incentive component of CEO compensation, the committee should consider the company's performance and relative shareholder return, the value of similar incentive awards to CEOs at comparable companies, and the awards given to the listed company's CEO in past years. To avoid confusion, note that the compensation committee is not precluded from approving awards (with or without ratification of the board) as may be required to comply with applicable tax laws (i.e., Rule 162(m)).

The compensation committee charter should also address the following items: committee member qualifications; committee member appointment and removal; committee structure and operations (including authority to delegate to subcommittees); and committee reporting to the board.

Additionally, if a compensation consultant is to assist in the evaluation of director, CEO or senior executive compensation, the compensation committee charter should give that committee sole authority to retain and terminate the consulting firm, including sole authority to approve the firm's fees and other retention terms.

Boards may allocate the responsibilities of the compensation committee to committees of their own denomination, provided that the committees are composed entirely of independent directors. Any such committee must have a published committee charter. To avoid any confusion, note that the audit committee functions specified in Section 303A(7) may not be allocated to a different committee, other than as noted in the General Commentary to Section 303A(7).

6. Add to the "independence" requirement for audit committee membership the requirements of Rule 10A–3(b)(1) under the Exchange Act, subject to the exemptions provided for in Rule 10A–3(c).

Commentary Applicable to All Companies: While it is not the audit committee's responsibility to certify the company's financial statements or to guarantee the auditor's report, the committee stands at the crucial intersection of management, independent auditors, internal auditors and the board of directors. The Exchange supports additional directors' fees to compensate audit committee members for the significant time and effort they expend to fulfill their duties as audit committee members, but does not believe that any member of the audit committee should receive any compensation other than such director's fees from the company. If a director satisfies the definition of "independent director" set out in Section 303A(2), then his or her receipt of a pension or other form of deferred compensation from the company for prior service (provided such compensation is not contingent in any way on continued service) will not preclude him or her from satisfying the requirement that director's fees are the only form of compensation he or she receives from the company.

An audit committee member may receive his or her fee in cash and/or company stock or options or other in-kind consideration ordinarily available to directors, as well as all of the regular benefits that other directors receive. Because of the significantly greater commitment of audit committee members, they may receive reasonable compensation greater than that paid to the other directors (as may other directors for other committee work). Disallowed compensation for an audit committee member includes fees paid directly or indirectly for services as a consultant or a legal or financial advisor, regardless of the amount. Disallowed compensation also includes compensation paid to such a director's firm for such consulting or advisory services even if the director is not the actual service provider. Disallowed compensation is not intended to include ordinary compensation paid in another customer or supplier or other business relationship that the board has already determined to be immaterial for purposes of its basic director independence analysis. To avoid any confusion, note that this requirement pertains only to audit committee qualification and not to the independence determinations that the board must make for other directors.

Commentary Applicable to All Companies Other than Foreign Private Issuers: Each member of the committee must be financially literate, as such qualification is interpreted by the company's board in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee. In addition, at least one member of the audit committee must have accounting or related financial management expertise, as the company's board interprets such qualification in its business judgment. A board may presume that a person who satisfies the definition of audit committee financial expert set out in Item 401(e) of Regulation S–K has accounting or related financial management expertise.

Because of the audit committee's demanding role and responsibilities, and the time commitment attendant to committee membership, each prospective audit committee member should evaluate carefully the existing demands on his or her time before accepting this important assignment. Additionally, if an audit committee member simultaneously serves on the audit committee of more than three public companies, and the listed company does not limit the number of audit committees on which its audit committee members serve, then in each case, the board must determine that such simultaneous service would not impair the ability of such member to effectively serve on the listed company's audit committee and disclose such determination in the annual proxy statement or, if the company does not file an annual proxy statement, in the company's annual report on Form 10–K filed with the SEC.

7. (a) Each company is required to have a minimum three person audit committee composed entirely of independent directors that meet the requirements of Section 303A(6).

(b) The audit committee must have a written charter that addresses:

(i) the committee's purpose–which, at minimum, must be to:

(A) assist board oversight of (1) the integrity of the company's financial statements, (2) the company's compliance with legal and regulatory requirements, (3) the independent auditor's qualifications and independence, and (4) the performance of the company's internal audit function and independent auditors; and

(B) prepare the report required by the SEC's proxy rules to be included in the company's annual proxy statement, or, if the company does not file a proxy statement, in the company's annual report filed on Form 10–K with the SEC;

(ii) the duties and responsibilities of the audit committee set out in Section 303A (7)(c) and (d); and

(iii) an annual performance evaluation of the audit committee.

(c) As required by Rule 10A–3(b)(2), (3), (4) and (5) of the Securities Exchange Act of 1934, and subject to the exemptions provided for in Rule 10A–3(c), the audit committee must:

(i) directly appoint, retain, compensate, evaluate and terminate the company's independent auditors;

Commentary: In connection with this requirement, the audit committee must have the sole authority to approve all audit engagement fees and terms, as well as all significant non-audit engagements with the independent auditors. In addition, the independent auditor must report directly to the audit committee. This requirement does not preclude the committee from obtaining the input of management, but these responsibilities may not be delegated to management. The audit committee must be directly responsible for oversight of the independent auditors, including resolution of disagreements between management and the independent auditor and pre-approval of all non-audit services.

(ii) establish procedures for the receipt, retention and treatment of complaints from listed company employees on accounting, internal accounting controls or auditing matters, as well as for confidential, anonymous submissions by listed company employees of concerns regarding questionable accounting or auditing matters;

(iii) obtain advice and assistance from outside legal, accounting or other advisors as the audit committee deems necessary to carry out its duties; and

Commentary: In the course of fulfilling its duties, the audit committee may wish to consult with independent counsel and other advisors. The audit committee must be empowered to retain and compensate these advisors without seeking board approval.

(iv) receive appropriate funding, as determined by the audit committee, from the listed company for payment of compensation to the outside legal, accounting or other advisors employed by the audit committee.

(d) In addition to the duties set out in Section 303(A)(7)(c), the duties of the audit committee must be, at a minimum, to:

(i) at least annually, obtain and review a report by the independent auditor describing: the firm's internal quality-control procedures; any material issues raised by the most recent internal quality-control review, or peer review, of the firm, or by any inquiry or investigation by governmental or professional authorities, within the preceding five years, respecting one or more independent audits carried out by the firm, and any steps taken to deal with any such issues; and (to assess the auditor's independence) all relationships between the independent auditor and the company;

Commentary: After reviewing the foregoing report and the independent auditor's work throughout the year, the audit committee will be in a position to evaluate the auditor's qualifications, performance and independence. This evaluation should include the review and evaluation of the lead partner of the independent auditor. In making its evaluation, the audit committee should take into account the opinions of management and the company's internal auditors (or other personnel responsible

for the internal audit function). In addition to assuring the regular rotation of the lead audit partner as required by law, the audit committee should further consider whether, in order to assure continuing auditor independence, there should be regular rotation of the audit firm itself. The audit committee should present its conclusions with respect to the independent auditor to the full board.

(ii) discuss the annual audited financial statements and quarterly financial statements with management and the independent auditor, including the company's disclosures under "Management's Discussion and Analysis of Financial Condition and Results of Operations;"

(iii) discuss earnings press releases, as well as financial information and earnings guidance provided to analysts and rating agencies;

Commentary: The audit committee's responsibility to discuss earnings releases as well as financial information and earnings guidance may be done generally (*i.e.*, discussion of the types of information to be disclosed and the type of presentation to be made). The audit committee need not discuss in advance each earnings release or each instance in which a company may provide earnings guidance.

(iv) discuss policies with respect to risk assessment and risk management;

Commentary: While it is the job of the CEO and senior management to assess and manage the company's exposure to risk, the audit committee must discuss guidelines and policies to govern the process by which this is handled. The audit committee should discuss the company's major financial risk exposures and the steps management has taken to monitor and control such exposures. The audit committee is not required to be the sole body responsible for risk assessment and management, but, as stated above, the committee must discuss guidelines and policies to govern the process by which risk assessment and management is undertaken. Many companies, particularly financial companies, manage and assess their risk through mechanisms other than the audit committee. The processes these companies have in place should be reviewed in a general manner by the audit committee, but they need not be replaced by the audit committee.

(v) meet separately, periodically, with management, with internal auditors (or other personnel responsible for the internal audit function) and with independent auditors;

Commentary: To perform its oversight functions most effectively, the audit committee must have the benefit of separate sessions with management, the independent auditors and those responsible for the internal audit function. As noted herein, all listed companies must have an internal audit function. These separate sessions may be more productive than joint sessions in surfacing issues warranting committee attention.

(vi) review with the independent auditor any audit problems or difficulties and management's response;

Commentary: The audit committee must regularly review with the independent auditor any difficulties the auditor encountered in the course of the audit work, including any restrictions on the scope of the independent auditor's activities or on access to requested information, and any significant disagreements with management. Among the items the audit committee may want to review with the auditor are: any accounting adjustments that were noted or proposed by the auditor but were "passed" (as immaterial or otherwise); any communications between the audit team and the audit firm's national office respecting auditing or accounting issues presented by the engagement; and any "management" or "internal control" letter issued, or proposed to be issued, by the audit firm to the company. The review should also include discussion of the responsibilities, budget and staffing of the company's internal audit function.

(vii) set clear hiring policies for employees or former employees of the independent auditors; and

Commentary: Employees or former employees of the independent auditor are often valuable additions to corporate management. Such individuals' familiarity with the business, and personal rapport with the employees, may be attractive qualities when filling a key opening. However, the audit committee should set hiring policies taking into account the pressures that may exist for auditors consciously or subconsciously seeking a job with the company they audit.

(viii) report regularly to the board of directors.

Commentary: The audit committee should review with the full board any issues that arise with respect to the quality or integrity of the company's financial statements, the company's compliance with legal or regulatory requirements, the performance and independence of the company's independent auditors, or the performance of the internal audit function.

General Commentary to Section 303A(7)(d): While the fundamental responsibility for the company's financial statements and disclosures rests with management and the independent auditor, the audit committee must review: (A) major issues regarding accounting principles and financial statement presentations, including any significant changes in the company's selection or application of accounting principles, and major issues as to the adequacy of the company's internal controls and any special audit steps adopted in light of material control deficiencies; (B) analyses prepared by management and/or the independent auditor setting forth significant financial reporting issues and judgments made in connection with the preparation of the financial statements, including analyses of the effects of alternative GAAP methods on the financial statements; (C) the effect of regulatory and accounting initiatives, as well as off-balance sheet structures, on the financial statements of the company; and (D) the type and presentation of information to be included in earnings press releases (paying particular attention to any use of "pro forma," or "adjusted" non-GAAP, information), as well as review any financial information and earnings guidance provided to analysts and rating agencies.

General Commentary to Section 303A(7): To avoid any confusion, note that the audit committee functions specified in Section 303A(7) are the sole responsibility of the audit committee and may not be allocated to a different committee.

(e) Each listed company must have an internal audit function.

Commentary: Listed companies must maintain an internal audit function to provide management and the audit committee with ongoing assessments of the company's risk management processes and system of internal control. A company may choose to outsource this function to a firm other than its independent auditor.

8. Reserved.

9. Listed companies must adopt and disclose corporate governance guidelines.

Commentary: No single set of guidelines would be appropriate for every company, but certain key areas of universal importance include director qualifications and responsibilities, responsibilities of key board committees, and director compensation. Given the importance of corporate governance, each listed company's website must include its corporate governance guidelines and the charters of its most important committees (including at least the audit, and if applicable, compensation and nominating committees). Each company's annual report must state that the foregoing information is available on its website, and that the information is available in print to any shareholder who requests it. Making this information publicly available should promote better investor understanding of the company's policies and procedures, as well as more conscientious adherence to them by directors and management.

The following subjects must be addressed in the corporate governance guidelines:

- *Director qualification standards. These standards should, at minimum, reflect the independence requirements set forth in Sections 303A(1) and (2). Companies may also address other substantive qualification requirements, including policies limiting the number of boards on which a director may sit, and director tenure, retirement and succession.*
- *Director responsibilities. These responsibilities should clearly articulate what is expected from a director, including basic duties and responsibilities with respect to attendance at board meetings and advance review of meeting materials.*
- *Director access to management and, as necessary and appropriate, independent advisors.*
- *Director compensation. Director compensation guidelines should include general principles for determining the form and amount of director compensation (and for reviewing those principles, as appropriate). The board should be aware that questions as to directors' independence may be raised when directors' fees and emoluments exceed what is customary. Similar concerns may be raised when the company makes substantial charitable contributions to organizations in which a director is affiliated, or enters into consulting contracts with (or provides other indirect forms of compensation to) a director. The board should critically evaluate each of these matters when determining the form and amount of director compensation, and the independence of a director.*
- *Director orientation and continuing education.*
- *Management succession. Succession planning should include policies and principles for CEO selection and performance review, as well as policies regarding succession in the event of an emergency or the retirement of the CEO.*
- *Annual performance evaluation of the board. The board should conduct a self-evaluation at least annually to determine whether it and its committees are functioning effectively.*

10. Listed companies must adopt and disclose a code of business conduct and ethics for directors, officers and employees, and promptly disclose any waivers of the code for directors or executive officers.

Commentary: No code of business conduct and ethics can replace the thoughtful behavior of an ethical director, officer or employee. However, such a code can focus the board and management on areas of ethical risk, provide guidance to personnel to help them recognize and deal with ethical issues, provide mechanisms to report unethical conduct, and help to foster a culture of honesty and accountability.

Each code of business conduct and ethics must require that any waiver of the code for executive officers or directors may be made only by the board or a board committee and must be promptly disclosed to shareholders. This disclosure requirement should inhibit casual and perhaps questionable waivers, and should help assure that, when warranted, a waiver is accompanied by appropriate controls designed to protect the company. It will also give shareholders the opportunity to evaluate the board's performance in granting waivers.

Each code of business conduct and ethics must also contain compliance standards and procedures that will facilitate the effective operation of the code. These standards should ensure the prompt and consistent action against violations of the code. Each listed company's website must include its code of business conduct and ethics. Each company's annual report must state that the foregoing information is available on its website, and that the information is available in print to any shareholder who requests it.

Each company may determine its own policies, but all listed companies should address the most important topics, including the following:

- *Conflicts of interest. A "conflict of interest" occurs when an individual's private interest interferes in any way—or even appears to interfere—with the interests of the corporation as a whole. A conflict situation can arise when an employee, officer or director takes actions or has interests that may make it difficult to perform his or her company work objectively and effectively. Conflicts of interest also arise when an employee, officer or director, or a member of his or her family, receives improper personal benefits as a result of his or her position in the company. Loans to, or guarantees of obligations of, such persons are of special concern. The company should have a policy prohibiting such conflicts of interest, and providing a means for employees, officers and directors to communicate potential conflicts to the company.*
- *Corporate opportunities. Employees, officers and directors should be prohibited from (a) taking for themselves personally opportunities that are discovered through the use of corporate property, information or position; (b) using corporate property, information, or position for personal gain; and (c) competing with the company. Employees, officers and directors owe a duty to the company to advance its legitimate interests when the opportunity to do so arises.*
- *Confidentiality. Employees, officers and directors should maintain the confidentiality of information entrusted to them by the company or its customers, except when disclosure is authorized or legally mandated. Confidential information includes all non-public information that might be of use to competitors, or harmful to the company or its customers, if disclosed.*
- *Fair dealing. Each employee, officer and director should endeavor to deal fairly with the company's customers, suppliers, competitors and employees. None should take unfair advantage of anyone through manipulation, concealment, abuse of privileged information, misrepresentation of material facts, or any other unfair-dealing practice. Companies may write their codes in a manner that does not alter existing legal rights and obligations of companies and their employees, such as "at will" employment arrangements.*
- *Protection and proper use of company assets. All employees, officers and directors should protect the company's assets and ensure their efficient use. Theft, carelessness and waste have a direct impact on the company's profitability. All company assets should be used for legitimate business purposes.*
- *Compliance with laws, rules and regulations (including insider trading laws). The company should proactively promote compliance with laws, rules and regulations, including insider trading laws. Insider trading is both unethical and illegal, and should be dealt with decisively.*
- *Encouraging the reporting of any illegal or unethical behavior. The company should proactively promote ethical behavior. The company should encourage employees to talk to supervisors, managers or other appropriate personnel when in doubt about the best course of action in a*

particular situation. Additionally, employees should report violations of laws, rules, regulations or the code of business conduct to appropriate personnel. To encourage employees to report such violations, the company must ensure that employees know that the company will not allow retaliation for reports made in good faith.

11. Listed foreign private issuers must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under NYSE listing standards.

Commentary: Foreign private issuers must make their U.S. investors aware of the significant ways in which their home-country practices differ from those followed by domestic companies under NYSE listing standards. However, foreign private issuers are not required to present a detailed, item-by-item analysis of these differences. Such a disclosure would be long and unnecessarily complicated. Moreover, this requirement is not intended to suggest that one country's corporate governance practices are better or more effective than another. The Exchange believes that U.S. shareholders should be aware of the significant ways that the governance of a listed foreign private issuer differs from that of a U.S. listed company. The Exchange underscores that what is required is a brief, general summary of the significant differences, not a cumbersome analysis. Listed foreign private issuers may provide this disclosure either on their web site (provided it is in the English language and accessible from the United States) and/or in their annual report as distributed to shareholders in the United States in accordance with Sections 103.00 and 203.01 of the Listed Company Manual (again, in the English language). If the disclosure is only made available on the web site, the annual report shall so state and provide the web address at which the information may be obtained.

12. (a) Each listed company CEO must certify to the NYSE each year that he or she is not aware of any violation by the company of NYSE corporate governance listing standards.

Commentary: The CEO's annual certification to the NYSE that, as of the date of certification, he or she is unaware of any violation by the company of NYSE corporate governance listing standards will focus the CEO and senior management on the company's compliance with the listing standards. Both this certification to the NYSE, and any CEO/CFO certifications required to be filed with the SEC regarding the quality of the company's public disclosure, must be disclosed in the listed company's annual report to shareholders or, if the company does not prepare an annual report to shareholders, in the company's annual report on Form 10-K filed with the SEC.

(b) Each listed company CEO must promptly notify the NYSE after any executive officer of the listed company becomes aware of any material non-compliance with any applicable provisions of this Section 303(A).

13. The NYSE may issue a public reprimand letter to any listed company that violates a NYSE listing standard.

Commentary: Suspending trading in or delisting a company can be harmful to the very shareholders that the NYSE listing standards seek to protect; the NYSE must therefore use these measures sparingly and judiciously. For this reason it is appropriate for the NYSE to have the ability to apply a lesser sanction to deter companies from violating its corporate governance (or other) listing standards. Accordingly, the NYSE may issue a public reprimand letter to a company that it determines has violated a NYSE listing standard. For companies that repeatedly or flagrantly violate NYSE listing standards, suspension and delisting remain the ultimate penalties. For clarification, this lesser sanction is not intended for use in the case of companies that fall below the financial and other continued listing standards provided in Chapter 8 of the Listed Company Manual. The processes and procedures provided for in Chapter 8 govern the treatment of companies falling below those standards.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE represents that it has long pioneered advances in corporate governance. The NYSE has required companies to comply with listing standards for nearly 150 years, and has periodically amended and supplemented those standards when the evolution of the U.S. capital markets has demanded enhanced governance standards or disclosure. Now, in the aftermath of the "meltdown" of significant companies due to failures of diligence, ethics and controls, the NYSE believes it has the opportunity—and the responsibility—once again to raise corporate governance and disclosure standards.

On February 13, 2002, then-Commission Chairman Harvey Pitt asked the Exchange to review its corporate governance listing standards. In conjunction with that request, the NYSE appointed a Corporate Accountability and Listing Standards Committee ("Committee") to review the NYSE's current listing standards, along with recent proposals for reform, with the goal of enhancing the accountability, integrity and transparency of the Exchange's listed companies.

The Committee believed that the Exchange could best fulfill this goal by building upon the strength of the NYSE and its listed companies in the areas of corporate governance and disclosure. This approach recognizes that new prohibitions and mandates, whether adopted by the NYSE, the Commission, or Congress, cannot guarantee that directors, officers and employees will always give primacy to the ethical pursuit of shareholders' best interests. The system depends upon the competence and integrity of corporate directors, as it is their responsibility to diligently oversee management while adhering to unimpeachable ethical standards. The Exchange now seeks to strengthen checks and balances and give diligent directors better tools to empower them and encourage excellence. The Exchange states that, in seeking to empower and encourage the many good and honest people that serve NYSE-listed companies and their shareholders as directors, officers and employees, it seeks to avoid recommendations that would undermine their energy, autonomy and responsibility.

The NYSE represents that the proposed new corporate governance listing requirements are designed to further the ability of honest and well-intentioned directors, officers and employees to perform their functions effectively. The NYSE believes the resulting proposals will also allow shareholders to more easily and efficiently monitor the performance of companies and directors in order to reduce instances of lax and unethical behavior.

The NYSE represents that, in preparing the recommendations it made to the NYSE Board of Directors ("NYSE Board"), the Committee had the benefit of the testimony of 17 witnesses and written submissions from 21 organizations or interested individuals. The Committee also examined the excellent governance practices that many NYSE-listed companies have long followed. In addition, the Committee reviewed extensive commentary recommending improvement in corporate governance and disclosure, statements by the President of the United States and members of his Cabinet, as well as pending Commission proposals and legislation introduced in Congress.

On June 6, 2002, the Committee submitted its report and initial recommendations to the NYSE Board.[4] The NYSE states that President Bush, then-Commission Chairman Harvey Pitt, members of Congress, CEOs of listed companies, institutional investors and state pension funds, organizations such as the Business Roundtable and the Council of Institutional Investors, and leading academics and commentators expressed strong support for the Committee's initiatives. The Committee also received insightful and practical suggestions for the improvement of its recommendations from experts within the NYSE, listed companies, institutional investors, outside organizations and interested individuals. In addition to many face-to-face meetings and telephone calls, the Exchange received over 300 comment letters.

Many of the commentators argued for, or sought, guidance from the Exchange at a level of detail inconsistent with the role that the Committee was asked to fulfill. However, where appropriate the Committee reflected cogent comments in clarifications and modifications to its recommendations.

Following approval of the NYSE Board of Directors on August 1, 2002, on August 16, 2002, the NYSE filed proposed rule changes to its corporate governance standards with the Commission (the NYSE Corporate Governance Proposals) which reflect the findings of the Committee. The proposals for new corporate governance listing standards for companies listed on the Exchange would be codified in a new Section 303A of the Manual.[5]

Subsequent to the original filing of the NYSE Corporate Governance Proposals, the Commission requested that the NYSE file separately proposed Section 303A(8) (relating to shareholder approval of equity-compensation plans) and the proposed amendment to NYSE Rule 452 (which would prohibit member organizations from giving a proxy to vote on equity-compensation plans absent specific instructions from a beneficial holder). The Exchange made this separate filing with the Commission on October 7, 2002.[6]

Significant Amendments From Original Proposals

In the NYSE Corporate Governance Proposals filed in August 2002, the Exchange proposed to continue its longstanding practice of permitting listed foreign private issuers to follow home country practice in lieu of the standards specified in Section 303A, subject only to the new requirement in proposed Section 303A(11) that such companies must disclose any significant ways in which their corporate governance practices differ from those followed by domestic companies under NYSE listing standards. However, as a result of the Sarbanes-Oxley Act of 2002[7] ("Sarbanes-Oxley Act") and Rule 10A–3 ("Rule 10A–3") under the Act,[8] the Exchange must propose standards that require that all listed companies have an independent audit committee and satisfy certain other requirements. For this reason, among others, the Exchanges proposes to add a section entitled "General Application" to Section 303A to clarify how the proposed standards would apply to different kinds of listed entities.

The NYSE also proposes to include a subsection entitled "Effective Date/Transition Period" in the General Application section of Section 303A. The subsection amends certain of the effective dates originally proposed. NYSE notes, however, that at least certain of those effective dates will require further amendment. Certain of the requirements of proposed Section 303A(6), (7) and (12) reflect the requirements of the Sarbanes-Oxley Act and Rule 10A–3. The Commission's final rules implementing these provisions specify dates by which companies must comply with these requirements.[9] NYSE represents that, of course, listed companies will be required to apply these particular standards in accordance with the transition periods adopted by the Commission, and the rules proposed herein will be amended as necessary to reflect those periods.

Proposed Section 303A(2) Regarding Director Independence

The Exchange has made a number of changes to its originally proposed definition of independence for board membership as a result of comments from the Commission, although not to the general rule that charges the board of directors to affirmatively determine independence.

In addition, the Exchange wishes to point out a matter that arises as a result of the enactment of the Sarbanes-Oxley Act and the Commission's implementing rules thereunder.

Immediate Family

Certain close family relationships preclude independence under the NYSE's proposed rule. The definition of "immediate family" is unchanged from that proposed in the NYSE's original filing, which in turn is the same as that employed in the NYSE's current rule regarding the independent audit committee.[10]

When the Commission proposed its rules implementing Section 301 of the Sarbanes-Oxley Act, it proposed to use a more limited concept of family. The Exchange defines "immediate family" as including "a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than

[4] Report of the NYSE Corporate Accountability and Listing Standards Committee, June 6, 2002.

[5] In its Report to the NYSE Board, the Committee set forth basic principles followed in many cases by explanation and clarification. The Exchange is proposing to adopt the recommendations as standards in substantially the form they were made by the Committee and adopted by the NYSE Board. Accordingly, the format used states a basic principle, with the additional explanation and clarifications included as "commentary". The NYSE advises readers that the words "must" and "should" have been chosen with care when used. The use of the word "must" indicates a standard or practice with which companies would be required to comply. The use of the word "should" indicates a standard or practice that the Exchange believes is appropriate for most if not all companies, but failure to employ or comply with such standard or practice would not constitute a violation of NYSE standards.

While many of the requirements set forth in this new rule are relatively specific, the Exchange notes that it is articulating a philosophy and approach to corporate governance that companies would be expected to carry out as they apply the requirements to the specific facts and circumstances that they confront from time to time. Companies and their boards would be expected to apply the requirements carefully and in good faith, making reasonable interpretations as necessary, and disclosing the interpretations that they make.

[6] *See* Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (October 11, 2002) (SR–NYSE–2002–46).

[7] Pub. L. 107–204, 116 Stat. 745 (2002).

[8] *See* Securities Exchange Act Release No. 47654 (April 9, 2003).

[9] Companies must comply with these provisions by the first annual meeting held after January 15, 2004, but in no event later than October 31, 2004. Foreign private issuers and small business issuers will have until July 31, 2005 to comply.

[10] Section 303.02(A) of the Manual.

employees) who shares such person's home." The Commission's proposal includes only a person's spouse, minor children or stepchildren or children or stepchildren sharing the director's home.

2. Statutory Basis

The Exchange believes that the basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[11] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others[12]

Overview

Widespread Support for the Recommendations. The Exchange indicates that the vast majority of commentators, including listed companies, institutional investors, and other interested organizations and individuals enthusiastically embraced the Committee's recommendations for new corporate governance and listing standards for the NYSE.

Concerns of Smaller Companies. While most large companies, law firms and institutions expressed general support for the proposals, commentators who characterized themselves as smaller businesses voiced concern. All of these companies complained that the recommendations seem to have been structured for a large-company model, without taking into account the disproportionate impact the proposed rules would have on smaller companies. In particular, they argued that the Committee's recommendations for separate nominating and compensation committees, together with its requirement of majority-independent boards, combined to effectively require that smaller companies enlarge their relatively small boards. These constituents were particularly concerned with the increased costs that compliance with the recommendations would entail. They argued that this would cause the diversion of shareholder value to unrelated third parties and the misdirection of board and management time and effort from productive to bureaucratic activities.

Difficulty of Obtaining Independent Directors. Several large companies expressed concern that the new rules would make it more difficult for companies to find quality independent directors because of the increased responsibilities and time commitment that the rules would require of independent directors (especially audit committee members), as well as a perceived increase in such directors' exposure to liability.

Majority-Independent Boards

Many commentators applauded the recommendation that listed companies be required to maintain majority-independent boards. However, numerous constituents, large and small, raised concerns that the requirement would have a variety of adverse consequences.

(a) Controlled Companies

Most prominently, more than half of the commenting companies noted that the majority-independent board requirement would create insuperable difficulties for companies controlled by a shareholder or parent company. They argued that the rule would be inequitable as applied to them in that it would deprive a majority holder of its shareholder rights; unnecessary in that the Committee's other recommendations (in particular the independent committee and disclosure requirements) would adequately protect minority shareholders; and undesirable in that it would reduce access to capital markets by discouraging spin-offs, by inducing some currently public companies to go private rather than lose control of their subsidiary, and by discouraging those who manage buyout funds and venture capital funds from using initial public offerings and NYSE listings as a means for achieving liquidity and raising capital. One company argued that the majority-independent board requirement would vitiate the ability of a parent to effectively manage its subsidiary, in the process denying to shareholders of the parent the benefits associated with its controlling stake in the subsidiary and requiring them instead to transfer control of the subsidiary to third parties.

Similarly, commentators suggested that companies that are majority-owned by officers and directors should be exempt from this recommendation. One such company argued that where corporate insiders own a majority of the stock of a company, the interests of outside minority shareholders can be adequately protected by the proposed requirement of an independent compensation committee. Family-owned companies also expressed concern with the majority-independence requirement because the proposal would limit the families' involvement with the board.

The provision in subsection 1 of Section 303A exempting controlled companies from the requirements to have a majority independent board and independent nominating and compensation committees is intended to address these concerns.

(b) Shareholder Agreements and Multiple Classes of Stock

Companies with multiple classes of securities, some of which have a right of representation on the board, argued that they should not have to meet the majority-independence requirement because doing so would be in direct conflict with their equity structure and the shareholder rights embedded therein.

Companies with multiple classes of stock representing different constituencies also had difficulty with this recommendation. One company that recently gave organized labor the right to appoint a director to the board as part of a collective bargaining agreement requested that the NYSE allow grandfathering of such arrangements. This company noted that compliance with this recommendation would effect a retroactive change in the bargains that brought about these arrangements and might trigger stockholder approval requirements.

The Exchange clarified in subsection 4 of Section 303A that the selection and nomination of such directors need not be subject to the nominating committee process.

Tighter "Independent Director" Definition

Most commentators were in favor of tightening the definition of "independence," with only a quarter advocating the continued use of existing standards. Certain institutional investors praised with particular emphasis the five-year look-back on compensation committee interlocks. However, commentators have raised several general questions, described below, as well as numerous specific questions with respect to materiality determinations.

(a) Share Ownership

Many commentators expressed a desire for additional clarification of the interaction between share ownership and independence.

Several commentators opposed viewing any degree of share ownership as a per se bar to "independence" (absent such other factors as an employment relationship or other financial or personal tie to the company). They argued that directors who own or represent institutions that own very significant economic stakes in the listed companies are often effective guardians of shareholders' interests not only as members of the full board but also of compensation and nominating committees, while directors whose only stake in the membership on the board is the director's fee may be unduly loyal to management. Several venture capitalists raised a similar concern that they would run afoul of the new independence definition, even though venture capitalists, acting as fiduciaries to funds with significant shareholdings, typically have all the qualities that the independent director definition is intended to ensure.

The question of the impact of ownership on independence was particularly vexing to companies with listed subsidiaries. They were concerned that a director who is deemed independent with respect to a parent company may not be considered independent with respect to the parent-controlled subsidiary.

The Exchange has clarified in subsection 2 of Section 303A that, since the concern is independence from management, ownership of even a significant amount of stock, by itself, is not necessarily a bar to an independence finding.

(b) Safe Harbors for Independence Determinations

Several financial institutions specifically applauded the committee's recommendation that non-materiality determinations be made on a case-by-case basis and publicly disclosed and justified. However, a number of companies objected to the affirmative determination requirement, requesting that the NYSE specify a safe harbor for materiality. These companies cited the competing demands on the board's time and attention; the likelihood that the "no material relationship" requirement would unduly shrink the pool of qualified directorship candidates; and the possibility that the fact-specific inquiry required would expose directors to additional scrutiny and potential liability, which they may be unwilling to assume without additional compensation and/or protection.

Many commentators would like to be able to fulfill their affirmative determination requirement through the establishment of their own safe harbors. For example, one commentator attached a detailed safe harbor proposal covering various types of credit transactions. In addition, a vast majority of commenting banks and financial institutions asked for clarification regarding the treatment of loans to directors. In light of the existing regulatory framework that controls relationships between a bank and its directors and affiliated entities, banks desired to establish categorically that arm's-length loans to directors would not negate independence.

Numerous companies and organizations argued that if there are no material relationships, the NYSE should allow the statement of reasons for the board's determination of independence to be omitted from the proxy statement, and suggested that the rules should not require details of each relationship regardless of size.

The Exchange has clarified in subsection 2 of Section 303A that categorical standards are permissible.

(c) Five-Year Cooling-Off Period

More than half of the companies commenting on this issue protested that five years is too long, advocating a two-to-three year period instead. Five companies, reflecting their individual circumstances, requested an exemption for interim CEOs who have served for less than one year. One commentator objected to subjecting all former employees to the cooling-off period, recommending that the prohibition be limited to former executive officers only.

Several commentators agreed with the five-year period for former employees, but found the period too long with respect to compensation committee interlocking directorates. Notably, one company thought that the five-year look-back on interlocking directorates would strain parent-subsidiary relations. Likewise, one parent of a controlled public subsidiary expressed its belief that its executives should be able to sit on the subsidiary's compensation committee to ensure that subsidiary's compensation policies are compatible with those of its parent. In addition, a few companies asked whether the inquiry would end by examining the present and past relationships at companies where directors are currently employed, or if one would be required to search back for possible interlocks at companies that may have since been acquired or dissolved " pointing out that with the immediate family overlay to the rule, the latter inquiry could become extremely cumbersome.

Several financial institutions (along with several smaller companies) took issue with the blanket exclusion of family members for five years. One company argued that when a family member's relationship has terminated, there should be independence. Another commentator recommended that relatives of deceased or disabled former officers be classified as independent as long as they themselves have no financial involvement other than ownership in the company.

The Exchange has clarified several of these issues with specified provisions in subsection 2(b) of Section 303A.

Non-Management Executive Sessions

The great majority of the commentators objected to the executive session requirement, to the requirement to designate and disclose a presiding director for such sessions, or to both. They argued that the sessions (a) were unnecessary because the mandated audit, compensation and nominating committees would provide sufficient checks; (b) would bifurcate the board into two tiers, turning management directors into second-class directors; and (c) would deprive directors of guidance by management. In addition, they argued that mandating such sessions could result in mechanical, pro forma meetings.

The majority of commentators argued that the presiding director requirement would have a divisive effect. In addition, they argued that the requirement would deprive the board of needed flexibility; they would like the NYSE to allow any independent director to preside over a given executive session. Some commentators also complained that the presiding director requirement amounts to the NYSE's mandating separation of the roles of Chairman and CEO. (Conversely, one non-U.S. company urged the NYSE to require the designation of a "lead director", or to mandate separation of these roles.) One organization suggested that the NYSE should instead require that the corporate governance guidelines specify procedures for the selection of a chair for each executive session. Even commentators who did not vigorously object to the recommendation that a presiding director be designated objected to the requirement that such designation be publicly disclosed.

The Exchange has clarified in subsection 3 of Section 303A that no

[11] 15 U.S.C. 78f(b)(5).

[12] For a discussion of comments received with respect to NYSE's proposal regarding shareholder approval of equity-compensation plans which was filed as a separate proposal, *see* Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (October 11, 2002) (SR-NYSE–2002–46).

designation of a "lead director" is intended, and that companies would have some flexibility in how they provide for conduct of the executive sessions.

General Comments on the Committee Requirements

More than half of all commentators thought that boards should have the flexibility to divide responsibilities among committees differently than as contemplated in the Report. In addition, a number of commentators were concerned that the recommendations have a tendency to blur the line between the roles of the board and management, involving the board too deeply in the day-to-day operations of listed companies.

A substantial number of commentators argued that the board as a whole should be allowed to retain its major oversight responsibilities, such as decisions on nominating director candidates, adopting governance guidelines, adopting incentive plans, and hiring outside consultants.

One company suggested that, as with the majority-independent director requirement, there should be a 24-month transition period for the requirements that audit, compensation and nominating committees be comprised entirely of independent directors.

The Exchange has clarified in subsection 4 of Section 303A that the nomination/corporate governance and compensation committee responsibilities could be allocated to other or different committees, as long as they have published charters.

Independent Nomination/Corporate Governance Committee

Approximately one-fifth of the commenting companies thought that nominating committees should not have to consist soiely of independent directors, some arguing that a majority of non-management directors would be sufficient, some requesting that at least one insider be allowed on the nominating committee. Some commentators suggested that a nominating committee is not necessary.

Independent Compensation Committee

There was opposition to this recommendation from several companies. One company argued that the full board should set the salary of the CEO. Similarly, several commentators commented that although the procedure for determining CEO compensation could originate from the compensation committee, the results of the compensation committee's work should be presented to the entire board, with ultimate decision-making responsibility residing in the board as a whole. Another company objected to the committee's exclusive role in evaluation of CEO and senior executive compensation on the ground that management should be free to explore new compensation arrangements with consultants.

Audit Committee Member Qualification

There was a broad call from attorneys, associations and companies alike for clarification on the question of what constitutes "directors' fees." Questions arose in particular with respect to pension and other deferred compensation, long-term incentive awards, and compensation in the form of company products, use of company facilities and participation in plans available generally to the listed company's employees.

Several companies and law firms objected to the recommendation that audit committee members' fees be limited solely to directors' fees, arguing that this would reduce a company's access to its directors' expertise and suggesting instead a more liberal restriction, such as an annual cap on consulting fees.

The Exchange has clarified this issue in commentary to subsection 6 of Section 303A.

Though one institutional investor specifically applauded the 20% ownership ceiling for voting participation in the audit committee, approximately ten commentators objected on the ground that this would disqualify certain types of large shareholders, such as venture capital investors, who may be excellent audit committee members.

The requirement that the chair of the audit committee have accounting or related financial management expertise drew opposition from a number of commentators who felt that it was enough for one member of the committee to have such expertise. Several companies protested that the requirement would unduly limit the number of candidates available to chair the audit committee and unnecessarily dictate which member should be chair.

As noted, the Exchange did not make proposals in these two areas in view of provisions in the recently adopted Sarbanes-Oxley legislation.

Audit Committee Charter

The majority of commentators were concerned about the capacity of the audit committee to handle the list of responsibilities assigned to it by the recommendation. There were also numerous requests for clarification as to whether the recommendation mandates review of all 10–Qs, press releases, and disclosures to analysts on a case-by-case basis, or whether the audit committee's task is rather to set policy with regard to the form of the financials in those releases. Commentators emphasized that the former alternative would be overly burdensome to the audit committee, would tie management's hands to the point where it would not be able to respond to analyst calls without first obtaining approval from the audit committee and would ultimately chill the distribution of information to the public.

The Exchange has clarified this issue in its commentary to subsection 7(b)(ii)(D) of Section 303A.

About a quarter of the commentators objected to the recommendation that sole authority to retain and terminate independent auditors be granted to the audit committee, suggesting that the entire board should be able to act on the recommendation of the audit committee and arguing that this would not pose any governance problems in light of the majority-independence requirement.

Some commentators rejected wholesale the committee's enumeration of minimum duties and responsibilities for the audit committee, arguing, for example, that the board should have the flexibility to allocate responsibility for the oversight of compliance with legal and regulatory requirements as it deems appropriate, and that the audit committee should not be obligated to assist board oversight of such compliance. Several commentators objected to the recommendation's requirement that the audit committee discuss policies with respect to risk assessment and management. For example, one company has a risk committee devoted solely to this purpose and would like the requirement to accommodate such arrangements.

The Exchange has clarified this issue in commentary to subsection 7(b)(ii)(F) of Section 303A.

Some commentators requested that the audit committee be allowed to delegate to a member or subcommittee some of the proposed responsibilities, particularly the review of guidance given to analysts and earnings releases, on the ground that without such delegation the roster of duties would be too burdensome.

A few commentators pointed out that it was unclear whether and to what extent there would be an internal audit requirement.

The Exchange has clarified this matter in subsection 7(c) of Section 303A.

Required Adoption and Disclosure of Corporate Governance Guidelines

A number of commentators argued that companies should have broader discretion in drafting their governance guidelines.

Required Adoption and Disclosure of a Code of Business Conduct and Ethics

Many of those who commented on this recommendation urged that only material waivers of the business ethics policy be required to be disclosed.

Disclosure by Foreign Private Issuers

Two commentators urged tougher treatment of foreign companies, with one suggesting that exemptions from listing requirements for foreign private issuers should be the exception rather than the rule.

CEO Certification

More than half of the commenting companies and organizations opposed this recommendation. The overwhelming majority of comments protested that the requirement would duplicate the recent SEC rules requiring CEO certification for periodic reports. They opposed the expansion of the certification requirement to all statements made by the company to investors and urged the NYSE to defer final action on this subject until the SEC issues a final rule, or to coordinate its action on this issue with the SEC, so as to avoid different standards by different regulatory bodies. Some commentators suggested language enabling the CEO to rely on the CFO, external auditors, internal auditors, the audit committee, inside and outside counsel and other consultants in making his or her certification.

A few commentators expressed concern that the recommendation raised potential for pernicious private litigation and urged the NYSE to make clear that the certification requirement, if adopted, creates no private cause of action.

The Exchange has decided not to require its own CEO certification of financials in light of the certifications required by the Sarbanes-Oxley legislation and SEC rules.

Public Reprimand Letter From NYSE

Several companies stressed the importance of providing offenders with due process through notice and an opportunity to cure prior to any public reprimand.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the amended proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–2002–33 and should be submitted by May 8, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9473 Filed 4–16–03; 8:45 am]

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[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47667; File No. SR–NYSE–2003–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Elimination of the Exception to Rule 123(e) for Exchange-Traded Funds

April 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 9, 2003, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to eliminate the exception to NYSE Rule 123(e), which provided that orders in Exchange-Traded Funds ("ETFs") must be entered into an electronic data base (front end systemic capture, or "FESC") on the Floor within 90 seconds of execution. This amendment originally became effective on a pilot basis for one year.[3] Thereafter the pilot was extended for an additional year, and is set to expire on January 5, 2004.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45246 (January 7, 2002), 67 FR 1527 (January 11, 2002) (SR–NYSE–2001–52), adopting Supplementary Material .23 of NYSE Rule 123(e).

[4] *See* Securities Exchange Act Release No. 46713 (October 23, 2002), 67 FR 66033 (October 29, 2002) (SR–NYSE–2002–48).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Rule 123(e) provides that all orders in any security traded on the Exchange be entered into an electronic database (front end systemic capture, or "FESC") before they can be represented in the Exchange's auction market.

On December 20, 2001, the Exchange filed a proposed rule change (a one-year pilot) to amend Rule 123(e) to provide that orders in ETFs must be entered into FESC within 90 seconds of execution.[5] The pilot was subsequently extended for an additional year and is set to expire on January 5, 2004.[6] The NYSE submitted the proposed rule change to make the pilot effective on the premise that ETF products are derivatively priced, and trade very rapidly in response to changes in the underlying value of fund components and prices of options and futures contracts on the funds. In addition, the proposed rule change was in response to market participants who thought that the FESC requirement might possibly be a disincentive to sending order flow to the Exchange as it may have been perceived as unduly slowing down the trading process and interfering with trading strategies dependent upon speed of execution. Market participants noted that the Exchange is competing for order flow with other market centers that do not have any FESC-type requirements. In the Exchange's experience, however, that rule change did not have a material impact on the Exchange's market share in ETF products. Thus, the Exchange is proposing to remove the exception from NYSE Rule 123(e) at this time .[7] In addition, removal of the exception will aid in the Exchange's ability to surveil for on-Floor trading in ETF products if the Commission approves the Exchange's proposal to allow portable phones on the Floor.[8]

The Exchange believes that requiring orders in ETFs to be first entered into FESC before execution or representation on the Floor will place them on an equal footing with orders in other securities with respect to order entry and recording procedures. The Exchange notes that the same surveillance procedures applicable to trading in all other equities will also apply to ETFs.

By requiring orders to be first entered into FESC before execution or representation on the Floor, the Exchange can track more accurately, via systemic records, the time an order is received on the Floor. Therefore, the Exchange's ability to surveil for anomalous trading situations—such as on-Floor trading and the creation of inaccurate records, frontrunning of orders and improper execution of customers' orders—would be enhanced.

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is the requirement under section 6(b)(5)[9] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date, the proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange requests that the Commission waive the 30-day delayed operative date of Rule 19b–4(f)(6)(iii). Waiver of this period will allow the Exchange to discontinue the exception to FESC under NYSE Rule 123(e) for ETFs. The Exchange believes this will enhance its ability to surveil for anomalous trading situations such as on-Floor trading and the creation of inaccurate records, frontrunning of orders and improper execution of customers' orders. In addition, this will aid the Exchange's ability to surveil the market if the Commission approves the Exchange's proposal to allow Exchange-provided and authorized portable phones on the Floor. The Exchange believes that this is in the public interest.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective as of April 9, 2003.[12] The Commission believes that the elimination of the ETF FESC entry exception to NYSE Rule 123 will enhance the Exchange's ability to meet its surveillance obligations under the Exchange Act and the SEC Order relating to NYSE's floor broker regulatory program.[13] The waiver of the 30-day operative delay will permit the NYSE to implement this change immediately, which should benefit the public, investor protection and improve the NYSE's surveillance capabilities for ETFs.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR–NYSE–2003–09 and should be submitted by May 8, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9474 Filed 4–16–03; 8:45 am]

BILLING CODE 8010–01–P

[5] *See* note 3, *supra.*

[6] *See* note 4, *supra.*

[7] Telephone conversation between Don Siemer, Director, Market Surveillance, NYSE, and Marc McKayle, Special Counsel, Division of Market Regulation, Commission, on April 9, 2003.

[8] *See* File No. SR–NYSE–2002–11. In NYSE–2002–11 the Exchange proposes to authorize the use of and provide portable phones on the Exchange Floor on a six-month pilot basis. Originally under the proposed rule change, the Exchange proposed not to permit portable communications at the point of sale for orders in Investment Company Units (as defined in Section 703.16 of the Listed Company Manual), also known as ETFs, since under an exception to NYSE Rule 123(e) orders in ETFs can first be executed and then entered into an electronic data base (FESC). To implement this facet of the proposal, the Exchange proposed creating technical restraints to block the use of portable phones in the Expanded Blue Room, where ETFs trade. However, due to an inability to develop technical restraints to prevent the use of portable phones where ETFs currently trade, the Exchange amended the filing, in Amendment No. 2 to NYSE–2002–11, to allow the use of portable phones for orders in ETFs in conjunction with this proposal to eliminate the NYSE Rule 123 ETF FESC entry exception.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] *See* In the Matter of New York Stock Exchange, Inc., SEC Release No. 34–41574, June 29, 1999; Administrative Proceeding File No. 3–9925 ("SEC Order").

[14] The Commission emphasizes that when a self-regulatory organization ("SRO") determines that the rationale for an exception to an important regulatory initiative such as FESC order entry is no longer applicable, that SRO is expected to submit a proposed rule change to reflect the change in circumstances as soon as practicable.

[15] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S2 covers the Deputy Commissioner, Operations. Notice is given that Subchapter S2R, the Office of Central Operations, is being amended. The new material and changes are as follows:

Section S2R.10 The Office of Central Operations—(Organization):

C. The Immediate Office of the Associate Commissioner, Office of Central Operations (S2R).

4. The Assistant Associate Commissioner for Management and Operations Support (S2RC).

Retitle:

a. The "Center for Systems and Logistics Support (S2RC1)" to the "Center for Information Technology(S2RC1)"

d. The "Center for Material Resources Support (S2RC4)" to the "Center for Material Resources (S2RC4)"

Section S2R.20 *The Office of Central Operations*—(Functions):

C. The Immediate Office of the Associate Commissioner, OCO (S2R) provides internal operations and management support and assistance to the Associate Commissioner and all OCO components.

4. The Assistant Associate Commissioner for Management and Operations Support (S2RC) is responsible for the direction of six centers which perform systems, management, program, material resources, personnel management services and security and integrity support functions for OCO.

Retitle:

a. The "Center for Systems and Logistics Support (S2RC1)" to the "Center for Information Technology (S2RC1)".

Delete: Number 2.

Renumber: Numbers 3, 4 and 5 to 2, 3 and 4.

Delete: Number 6.

Delete: From Number 10, "health and safety matters, laborer services, transportation, projects concerning the maintenance and performance of capitalized equipment and other property inventories, and provides input to budget submittals for equipment, furniture and supplies"

Renumber: Numbers 7, 8, 9 and 10 to 5, 6, 7 and 8.

b. The Center for Management Support (S2RC2):

1. Provides administrative support to the Associate Commissioner, OCO; and the OCO Assistant Associate Commissioners in such areas as:

Amend as follows:

Delete: "—Performance Management and Recognition." "—Budget Development and Management."

Add: "—Equal Employment Opportunity."

Retitle:

d. The "Center for Material Resources Support (S2RC4)" to the "Center for Material Resources (S2RC4)":

Add:

8. Serves as SSA Liaison with the Department of the Treasury to ensure timely benefit payments.

9. Procures items within the limits of the delegated authorities afforded OCO, essential to the operation.

10. Coordinates health and safety matters, laborer services, transportation, projects concerning the maintenance and performance of capitalized equipments and submittals for equipment, furniture and supplies.

11. Coordinates OCO Budget Development and Management.

e. The Center for Human Resources (S2RC5):

Add: 13. Performance Management and Recognition.

Dated: April 2, 2003.

Reginald F. Wells,

Deputy Commissioner for Human Resources.

[FR Doc. 03–9443 Filed 4–16–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Release Certain Properties From All Terms, Conditions, Reservations and Restrictions of a Grant Agreement Between Palm Beach County and the Federal Aviation Administration for the Palm Beach International Airport, West Palm Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for public comment.

SUMMARY: The FAA hereby provides notice of intent to release certain airport properties (approximately 8.5 acres) at the West Palm Beach International Airport, West Palm Beach, FL from the conditions, reservations, and restrictions as contained in a grant agreement between the FAA and Palm Beach County, dated September 29, 1993, and September 27, 1994. The release of property will allow Palm Beach County to dispose of the property for other than aeronautical purposes. The property is located on the North side of Belvedere Road eastward from the South end of Country Club Drive. The parcel is currently designated as non-aeronautical, revenue generation property. The property will be disposed of for construction of a commercial shopping center.

The fair market value of the property has been determined by appraisal to be

$1,670,000. The airport will receive fair market value for the property, which will be subsequently reinvested in another eligible airport improvement project.

Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Airport Manager's office and the FAA Airports District Office.

SUPPLEMENTARY INFORMATION: Section 125 of the The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR–21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

DATES: May 19, 2003.

ADDRESSES: Documents are available for review at the Airport Manager's office, Palm Beach County Department of Airports, 846 Palm Beach International Airport, West Palm Beach, FL 33406 and the FAA Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822. Written comments on the Sponsor's request must be delivered or mailed to: Matthew J. Thys, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

FOR FURTHER INFORMATION CONTACT: Matthew J. Thys, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, FL 32822–5024.

W. Dean Stringer,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 03–9510 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Six Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the FAA invites public comment on six currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before June 16, 2003.

ADDRESSES: Comments may be mailed or delivered to the FAA at the following address: Ms. Ann Hoffer, Room 612, Federal Aviation Administration, Standards and Information Division, APF–3, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Hoffer at the above address, on (202) 267–3856, or by e-mail at: *ann.hoffer@faa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Therefore, the FAA solicits comments on the following current collections of information. Comments should evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection.

1. 2120–0559, Aviation Research Grants Program. The FAA Aviation Research and Development Grants Program establishes uniform policies and procedures for the award and administration of research grants to colleges, universities, profit and not for profit organizations for security research., The current estimated annual reporting burden is 1,400 hours.

2. 2120–0657, Type Certification Procedures for Changed Products. 14 CFR part 21 with certain exceptions requires that all certification applications for aviation product changes comply with the airworthiness standards outlined in the latest regulations in determining the certification basis for the design changes. This rule requires applicants to comply with the latest regulations in effect on the date of application for amended Type Certificates (TCs) or supplemental TCs for aeronautical products. The current estimated annual reporting burden is 18,815 hours.

3. 2120–0659, Noise Certification Standards for Jet Airplanes and Subsonic Transport Category Large Airplanes. The FAA requires operators of jet and subsonic transport category large airplanes to submit a noise certification compliance report. The noise compliance report is used by the FAA to determine that the aircraft is in compliance with 14 CFR part 36. The current estimated annual reporting burden is 1,350 hours.

4. 2120–0660, Flight Operational Quality Assurance (FOQA) Program. FOQA is a voluntary program for the routine collection and analysis of digital flight data from airplane operations. The purpose is to enable early corrective action for potential threats to safety. The program codifies protection from punitive enforcement action based on FOQA information, and requires participating air carriers to provide aggregate FOQA data to the FAA. The current estimated annual reporting burden is 360 hours.

5. 2120–0661, Competition Plans, Passenger Facility Charges. This information is needed to implement a passenger facility charge as required by section 155 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. The affected public includes public agencies controlling medium or large hub airports at which one or two air carriers control more than 50 percent of the passenger boardings. The current estimated annual reporting burden is 5,945 hours.

6. 2120–0662, Laser operations, Airspace Requests, Miscellaneous Procedures. The FAA requires this information in the interest of aviation safety to protect aircraft operations from the potential hazardous effect of laser emissions. The FAA reviews the information collected for its impact on aviation near the laser activity. On completion of the review of the information the FAA issues a letter of determination to the respondent about their request. The current estimated annual reporting burden is 2,200 hours.

Issued in Washington, DC, on April 10, 2003.

Ann P. Hoffer,

Office of Cost and Performance Management, Special Projects Officer, APF–3.

[FR Doc. 03–9511 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application #03–08–C–00–STL To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lambert-St. Louis International Airport, St. Louis, MO

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 19, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Col. Leonard L. Griggs, Jr., Director of Airports, Lambert-St. Louis International Airport, at the following address: City of St. Louis Airport Authority, P.O. Box 10212, St. Louis, Missouri 63145.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of St. Louis Airport Authority, Lambert-St. Louis International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust, Kansas City, MO 64106, (816) 329–2641. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Lambert-St. Louis International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 10, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of St. Louis Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 17, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: December, 2016.

Proposed charge expiration date: March, 2017.

Total estimated PFC revenue: $14,489,955.

Brief description of proposed project(s): Airport.

Maintenance Facility, Concourse C/D Connector, and Concourse FIS (Federal Inspection Station) Elevators and Stairs.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lambert-St. Louis International Airport.

Issued in Kansas City, Missouri on April 10, 2003.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 03–9509 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cameron & Willacy Counties, TX

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed 2nd Causeway to South Padre Island, Cameron & Willacy Counties, Texas.

FOR FURTHER INFORMATION CONTACT: John Mack, District Engineer, Federal Highway Administration, 300 East 8th Street, Austin, Texas, Telephone: (512) 536–5960.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Texas Department of Transportation will prepare an environmental impact statement (EIS) on a proposal to provide a 2nd Causeway to South Padre Island.

The purpose of the study is to address the transportation, environmental and safety issues of a 2nd access to South Padre Island. A 2nd causeway will enhance the health, safety, security, and the well being of island residents and visitors. The need is heightened in the event of hurricane evacuations, incidents involving the bridge, and during high peak travel periods such as Spring Break and the summer vacation season. The need will be further compounded by the need for future repairs to the existing causeway. The EIS will include construction as well as non-construction alternatives for providing access from the mainland to the island.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the area throughout the development of the EIS. In addition, a public hearing will be held. Public notice will be given with the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. The preliminary interagency coordination meeting was held February 26, 2003.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 2, 2003.

John R. Mack,

District Engineer, Austin, Texas.

[FR Doc. 03–9466 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Applications for TIFIA Credit Assistance

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (U.S. DOT).

ACTION: Notice of availability of funds (NOFA) inviting applications for credit assistance for major surface transportation projects.

SUMMARY: The U.S. DOT's Transportation Infrastructure Finance and Innovation Act (TIFIA) Joint Program Office (JPO) announces the availability of funds to provide credit assistance in the form of secured loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Funding for this program is limited, and the TIFIA JPO will lead U.S. DOT multi-modal teams in evaluating applications for credit assistance based on project merits and satisfaction of the TIFIA statutory criteria. This notice announces the availability of funds and outlines the process that applicants must follow when applying for TIFIA credit assistance.

DATES: Project sponsors may apply for TIFIA assistance at any time if their projects have met the program's threshold requirements. *See* further discussion under the caption "Application and Selection Process" in this notice.

ADDRESSES: Both letters of interest and completed applications should be submitted to the attention of Mr. Duane Callender, TIFIA Joint Program Office, U.S. Department of Transportation, Room 4301, HABF–50, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: TIFIA Joint Program Office staff: Mr. Duane Callender, (202) 366–9644; Ms. Theresa Stoll, (202) 366–9649; and Mr. Mark Sullivan, (202) 366–5785. TIFIA Joint Program Office staff can be contacted at the above address. Hearing- and speech-impaired persons may use TTY by calling the Federal Information Relay Service at 1–800–877–8339. Additional information, including the current edition of the TIFIA Program Guide and application materials, can be obtained from the TIFIA Web site at *http://tifia.fhwa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's Home page at: *http://www.archives.gov* and the Government Printing Office's Web page at *http://www.access.gpo.gov/nara*.

Background

The Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 241, created the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA), authorizing the U.S. Department of Transportation (DOT) to provide credit assistance in the form of secured loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. The TIFIA regulations (49 CFR part 80), as well as the TIFIA Program Guide (above), provide specific guidance on the program requirements. The TIFIA Joint Program Office (TIFIA JPO), within the FHWA, has responsibility for coordinating program implementation.

Since funding for this program is limited, the U.S. DOT will evaluate and select projects based on their merits and satisfaction of the TIFIA statutory criteria. For each selected project the U.S. DOT will issue a term sheet outlining the basic conditions of the credit assistance. Subsequently, the U.S. DOT will negotiate a definitive credit agreement with each selected project sponsor.

Types of Credit Assistance Available

The U.S. DOT may provide credit assistance in the form of secured loans, loan guarantees, and lines of credit. These types of credit assistance are defined in 23 U.S.C. 181 and 49 CFR 80.3.

Program Funding and Limitations on Assistance

The TIFIA establishes annual funding ceilings for both total credit assistance (*i.e.*, the total principal amount that may be committed in the form of direct loans, loan guarantees, or lines of credit) and subsidy costs (*i.e.*, the amount of budget authority available to cover the estimated present value of the Government's expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy costs is provided in the form of budget authority from the Highway Trust Fund (other than the Mass Transit Account).

Total Federal credit assistance authorized for the TIFIA program in FY 2003 is $2.6 billion. This amount will lapse on September 30, 2003, if unused. For FY 2003 the Congress redirected $180 million in budget authority originally authorized for TIFIA credit assistance to other programs administered by the FHWA. Accounting for these sums, the TIFIA program has approximately $72 million in remaining budget authority available to fund subsidy costs in FY 2003. The Congress also has directed the U.S. DOT to use a portion of the available TIFIA budget authority to fund an extension of FHWA's lines of credit with the Transportation Corridor Agencies (TCA) for the San Joaquin Hills and Foothill Eastern toll roads in Orange County, California. Therefore, the ultimate budget authority available for TIFIA in FY 2003 is subject to the cost of extending the TCA line of credit. Any budget authority not obligated in the fiscal year for which it is initially authorized remains available for obligation in subsequent years. In addition, the TIFIA JPO may obligate up to $2 million each year for expenses, such as the services of external financial and legal advisors, associated with program implementation. Credit assistance that may be provided to a project under TIFIA is limited to not more than 33 percent of eligible project costs.

Eligible Projects

Highway, passenger rail, transit, and intermodal projects (including intelligent transportation systems) may receive credit assistance under TIFIA. See the definition of "'project'" in 23 U.S.C. 181(9). For a description of eligible projects, *see* 49 CFR 80.3.

Threshold Requirements

Projects seeking TIFIA credit assistance must meet certain threshold requirements. These eligibility criteria are detailed in 23 U.S.C. 182(a) and 49 CFR 80.13.

Rating Opinions

A project sponsor must submit, with its application, a preliminary rating opinion letter from at least one nationally recognized credit rating agency, as detailed in 23 U.S.C. 182(b)(2)(B) and 49 CFR 80.11. The letter must be current, must address the creditworthiness of both the senior debt obligations funding the project (*i.e.*, those which have a lien senior to that of the TIFIA credit instrument on the pledged security) and the TIFIA credit instrument, and must conclude that there is a reasonable probability for the senior debt obligations to receive an investment grade rating. This preliminary rating opinion letter will be based on the financing structure proposed by the project sponsor. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered for TIFIA credit assistance.

The TIFIA JPO will use the preliminary rating opinion letter to assess the default risk on the requested TIFIA instrument. Therefore, the letter should provide a preliminary assessment of the financial strength of either the overall project or the requested TIFIA instrument, whichever assessment best reflects the rating agency's preliminary evaluation of the default risk on the requested TIFIA instrument.

Once selected for TIFIA credit assistance, each project must obtain an investment grade rating on its senior debt obligations (which may be the TIFIA credit facility) and a revised opinion on the default risk of its TIFIA credit instrument before the FHWA will execute a credit agreement and disburse funds. More detailed information about these TIFIA credit opinions and ratings may be found in the TIFIA Program Guide. The most current version of the TIFIA Program Guide and application materials can be obtained from the TIFIA Web site.

Application and Selection Process

The TIFIA JPO will accept, at any time, letters of interest from potential applicants. Subsequently, for projects that meet all threshold requirements, the TIFIA JPO will invite the project sponsor to apply. Using this application process, potential applicants can match their TIFIA submissions with their project development timetable. Potential TIFIA applicants must follow the process outlined below to be considered for credit assistance:

1. *Letter of Interest.* A potential applicant for TIFIA credit assistance must first submit a detailed letter of interest to the TIFIA JPO. This letter should include a brief project description (including the project's purpose, design features, and estimated capital cost), information about the proposed financing for the project (including a preliminary summary of sources and uses of funds and the type and amount of credit assistance requested), a description of the proposed project participants, and an assessment of the benefit the project sponsor seeks to achieve through use of a TIFIA credit instrument. The letter also should summarize the status of the project's environmental review (*i.e.*, whether the project has received a Categorical Exclusion, Finding of No Significant Impact, or Record of Decision, or, at a minimum, whether a draft Environmental Impact Statement has been circulated). The letter of interest should not exceed ten pages. The TIFIA JPO will lead a review of this preliminary submission to ensure that the project meets the basic program requirements. The TIFIA JPO will then designate an evaluation team for the project (drawing from the U.S. DOT's various offices and operating administrations, as necessary). The U.S. DOT evaluation team will contact the project sponsor within approximately two to four weeks to review the readiness of the project.

2. *Application.* The project sponsor may not submit an application until it has received preliminary confirmation of eligibility from the TIFIA JPO. The project sponsor may then submit its formal application including all required materials (generally described in 49 CFR 80.7 and detailed in the TIFIA application form) to the TIFIA JPO. The TIFIA JPO and the U.S. DOT evaluation teams will not review incomplete applications or applications for projects that do not fully satisfy the TIFIA program requirements.

The most current version of the application form can be obtained from the TIFIA Web site.

3. *Sponsor Presentation.* Each applicant that passes an initial screening of the submitted application for compliance with the TIFIA program requirements will be invited to make a project presentation to the TIFIA JPO and the U.S. DOT evaluation team. The TIFIA JPO will discuss the structure and content of the presentation with the applicant at the time of the invitation.

4. *Project Selection.* Based upon the application, the project presentation and any supplemental submission of information, the TIFIA JPO and the U.S. DOT evaluation teams will score each project according to specific weights assigned to each of the eight statutory selection criteria described in 23 U.S.C. 182(b) and 49 CFR 80.15 as follows: National or regional significance, 20 percent; private participation, 20 percent; environmental benefits, 20 percent; creditworthiness, 12.5 percent; project acceleration, 12.5 percent; use of new technologies, 5 percent; consumption of budget authority, 5 percent; and reduced Federal grant assistance, 5 percent.

The U.S. DOT will not select any project before an environmental Record of Decision (if required, or the equivalent final agency decision) has been issued for that project.

5. *Fees.* Unless otherwise notified in a subsequent NOFA published in the **Federal Register**, the TIFIA JPO will require each applicant to pay a non-refundable application fee of $30,000. This fee is based upon historical costs associated with the U.S. DOT's evaluation of TIFIA applications. Checks should be made payable to the Federal Highway Administration. The project sponsor must submit this payment with the application. No fee is required for a letter of interest. Applicants may not include application fees or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit assistance.

In addition, consistent with 23 U.S.C. 183(b)(7), 183(e)(2), 184(b)(9) and with 49 CFR 80.17, the TIFIA JPO will charge each borrower a credit processing fee equal to a portion of the costs incurred by the TIFIA JPO in negotiating the credit agreement. Each project term sheet will require the borrower to pay at closing, or, in the event no credit agreement is consummated, upon invoicing by the TIFIA JPO, an amount equal to the actual costs incurred by the TIFIA JPO in procuring the assistance of financial advisors and outside legal counsel through execution of the credit agreement(s) and satisfaction of all funding requirements of those agreements. The TIFIA JPO anticipates this fee will typically range from $100,000 to $300,000, depending on the complexity of the financial structure and the length of negotiations. The borrower may not include the credit processing fee among eligible project costs for the purpose of calculating the maximum 33 percent credit assistance.

The TIFIA JPO will continue to charge borrowers a fee of not less than $10,000 per year, which may be adjusted annually, for loan servicing activities associated with each executed TIFIA credit instrument. The borrower may not include the loan servicing fee among eligible project costs for the purpose of calculating the maximum 33 percent credit assistance.

(Authority: 23 U.S.C. 181–189; 49 CFR 1.48(nn)).

Issued on: April 2, 2003.

Mary E. Peters,

Federal Highway Administrator.

[FR Doc. 03–9500 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Applications for TIFIA Credit Assistance

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of availability of funds inviting applications for credit assistance for major surface transportation projects.

SUMMARY: Elsewhere in today's **Federal Register**, the Federal Highway Administration (FHWA) published a notice announcing the availability of Transportation Infrastructure Finance and Innovation Act (TIFIA) assistance and inviting applicants to submit applications for credit assistance for major surface transportation projects. The TIFIA authorizes the Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Highway, passenger rail, transit, and "intermodal" projects (including intelligent transportation systems) may receive credit assistance under the TIFIA. Interested persons should review the FHWA Notice in today's **Federal Register** for further information.

FOR FURTHER INFORMATION CONTACT: Ms. Joanne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493–6390, or Mr. Joseph Pomponio, Office of the Chief Counsel, (202) 493–6051.

(Authority: 23 U.S.C. 181–189; 49 CFR 1.49).

Issued on: April 4, 2003.

Allan Rutter,

Administrator.

[FR Doc. 03–9501 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Supplemental Draft Environmental Impact Statement on the Erie Canal Harbor Project (Formerly the Inner Harbor Development Project)

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare a Supplemental Draft Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and the Niagara Frontier Transportation Authority (NFTA) intend to prepare a Supplemental Draft Environmental Impact Statement (SDEIS) for the Erie Canal Harbor Project (formerly referred to as the Inner Harbor Development Project), in accordance with the National Environmental Policy Act (NEPA). The original Notice of Intent to prepare a DEIS for the Project was issued on November 10, 1997; the final EIS (FEIS) was issued in February 1999; and FTA issued the Record of Decision (ROD) on June 22, 1999. The project is being administered by the New York State Urban Development Corporation doing business as the Empire State Development Corporation (ESDC).

The participation of the general public, interested parties, and agencies is encouraged and will be solicited. A Public Scoping Meeting will be held to discuss the information to be included in the SDEIS, as outlined below.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to Mr. Thomas Blanchard, Director of Planning and Development, Empire State Development—Western New York by May 28, 2003. *Scoping Meeting:* A public scoping meeting will be held on Tuesday, May 13, 2003, at 6 p.m. at the address identified below.

ADDRESSES: *Written comments* on the project scope should be sent to Mr. Blanchard at 420 Main Street, Suite 717, Buffalo, New York 14202. The scoping meeting will be held at the Buffalo Historical Society Auditorium, 25 Nottingham Court, Buffalo, NY 14216.

FOR FURTHER INFORMATION CONTACT: Nancy Danzig, Community Planner, FTA Region II. Telephone (212) 668–2180.

SUPPLEMENTARY INFORMATION: The Project's 1999 Final EIS evaluated a Proposed Action involving the reconfiguration of a portion of the Buffalo River bulkhead and redevelopment of a site within the City's Waterfront Development Project Urban Renewal Area into a new harbor with intermodal transportation components at the foot of Main Street. In addition, the Proposed Action involves the construction of a series of landside improvements to facilitate and enhance public access to the waterfront, connect existing pedestrian and bicycle path systems, and provide opportunities for private development.

In this SDEIS, ESDC will evaluate alternatives for revisions to a portion of the Proposed Action to better interpret archaeological resources encountered on the Project site related to the site's location at the historic terminus of the Erie Canal at the Commercial Slip. Planned construction at the western portion of the Project site as included in the Proposed Action, entailing completion of the naval basin and relocation of the three naval vessels, are currently under construction and anticipated to be completed in the fall of 2003.

Alternatives for revisions to the Proposed Action will be formulated in conjunction with a series of public design workshops and meetings with heritage interpretation groups to be held in the summer of 2003. Although still to be formulated, the alternatives will include consideration of realignment or reconfiguration of the Hamburg Drain to allow for a rewatering of the Commercial Slip along its historic right-of-way; methods to interpret the former location of the Central Wharf; reuse or interpretation of former streets that crossed the Project site; revised methods of using building foundations of former structures on the site as interpretive elements; and redesign and/or reprogramming of the Naval and Military Park's museum building and associated refinements to the configuration of future development parcels associated with these other site elements. All alternatives to be considered will meet the intermodal objectives and include programmatic components of the Proposed Action in the Project's 1999 Final EIS.

The SDEIS will present the benefits and costs, environmental impacts, and proposed mitigation measures associated with the alternatives for revisions to the Proposed Action. Following completion and public review of the SDEIS, anticipated in early 2004, a Final EIS would be prepared.

Issued on: April 11, 2003.

Letitia Thompson,

Regional Administrator.

[FR Doc. 03–9499 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Applications for TIFIA Credit Assistance

AGENCY: Federal Transit Administration, Department of Transportation.

ACTION: Notice of availability of funds inviting applications for credit assistance for major surface transportation projects.

SUMMARY: Elsewhere in today's **Federal Register**, the Federal Highway Administration (FHWA) published a notice announcing the availability of Transportation Infrastructure Finance and Innovation Act (TIFIA) assistance and inviting applicants to submit applications for credit assistance for major surface transportation projects. The TIFIA authorizes the Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. Highway, passenger rail, transit, and "intermodal" projects (including intelligent transportation systems) may receive credit assistance under the TIFIA. Interested persons should review the FHWA Notice in today's **Federal Register** for further information.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Marx, Office of Policy Development, (202) 366–1675, or Ms. Paula Schwach, Office of the Chief Counsel, (816) 329–3935.

(Authority: 23 U.S.C. 181–189; 49 CFR 1.51).

Issued on April 10, 2003.

Jennifer L. Dorn,

Administrator.

[FR Doc. 03–9502 Filed 4–16–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Revocation of Designation of Ukraine as Primary Money Laundering Concern

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Revocation of designation.

SUMMARY: This notice revokes the Department of the Treasury's December 20, 2002, designation of Ukraine as a primary money laundering concern pursuant to section 5318A of title 31, United States Code, as added by section 311 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001 (Pub. L. 107–56).

DATES: The revocation of the designation is effective April 17, 2003.

FOR FURTHER INFORMATION CONTACT: Office of Chief Counsel (FinCEN), (703) 905–3590; Executive Office for Terrorist Financing and Financial Crimes, (202) 622–0400; Office of the General Counsel (Treasury), (202) 622–1927 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: On December 20, 2002, Treasury designated Ukraine as a primary money laundering concern under 31 U.S.C. 5318A, as added by section 311(a) of the USA PATRIOT Act. In a notice published in the **Federal Register** on December 26, 2002,[1] the various factors supporting the designation were outlined. Of particular importance to the decision to designate was the fact that while Ukraine had recently enacted anti-money laundering legislation, it was deficient in several material respects.[2] As noted in the designation, among other things, Ukraine's system for reporting suspicious transactions remained so constrained as to be virtually ineffective, and the ability of its financial intelligence unit to share information with law enforcement and function appropriately was in doubt. Having analyzed the legislation, the Financial Action Task Force (FATF) likewise concluded that the new legislation was inadequate and called on FATF members to take appropriate counter-measures against Ukraine. In the designation, Treasury specifically warned Ukraine that unless it took steps to address the concerns giving rise to its designation, Treasury anticipated imposing one or more special measures that would require U.S. financial institutions to obtain nominal and beneficial ownership information on certain accounts and transactions involving Ukraine.

Since Treasury's designation of Ukraine under section 5318A, Ukraine has taken steps to address the deficiencies. First, Ukraine amended its anti-money laundering law clearly to allow the Ukrainian financial intelligence unit to share information with law enforcement and to lower the suspicious transaction reporting thresholds. Second, the Ukrainian criminal code was amended to criminalize money laundering, the failure to file suspicious transaction reports, and tipping off the subjects of such reports. Finally, the Ukrainian banking and financial services laws were amended to require the full disclosure of beneficial ownership at account opening for all legal entities and natural persons. These new provisions are scheduled to come into force as of June 7, 2003.

As a result of these further legislative enhancements, along with the pledge of aggressive implementation, on February 14, 2003, the FATF rescinded its call for counter-measures against Ukraine.

In light of the further legislative enhancements, the commitment of Ukraine to further efforts to implement its anti-money laundering legislation, and the FATF's decision to rescind the call for counter-measures, Treasury has decided to revoke the designation of Ukraine as a primary money laundering concern under section 5318A.

Significantly, Treasury's revocation of the primary money laundering concern designation should not be construed as an indication that financial transactions involving Ukraine do not continue to present a heightened risk of money laundering. To the contrary, Ukraine's recent legislative enactments are not yet in force and much work remains. Ukraine is still on the FATF's Non-Cooperative Countries and Territories (NCCT) list due to its inadequate anti-money laundering regime. The FATF will require additional progress and effective implementation of the anti-money laundering legislation before considering removing Ukraine from the NCCT list.

Moreover, U.S. financial institutions are reminded that the revocation of the designation does not affect existing guidance issued by FinCEN or obligations arising under the Bank Secrecy Act with respect to accounts and transactions involving Ukraine. For example, the April 2002 FinCEN advisory on transactions involving Ukraine remains in effect, and, due to Ukraine's status as an NCCT jurisdiction, U.S. financial institutions are or will be required by 31 U.S.C. 5318(i), as added by section 312 of the USA PATRIOT Act, to conduct enhanced scrutiny on any correspondent accounts maintained for a foreign bank operating under a license issued by Ukraine.[3]

Revocation of the Designation of Ukraine as a Primary Money Laundering Concern

For the foregoing reasons, the designation of the country of Ukraine as a primary money laundering concern for purposes of section 5318A of title 31, United States Code, is hereby revoked.

Dated: April 10, 2003.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 03–9411 Filed 4–16–03; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3903

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this

[1] 67 FR 78859 (December 26, 2002). In that same Notice, Treasury also designated Nauru as a primary money laundering concern. Published elsewhere in this issue of the **Federal Register** is FinCEN's notice of proposed rulemaking seeking to impose counter-measures against Nauru.

[2] On November 28, 2002, Ukraine's Supreme Council (Parliament) passed a Law on Prevention and Counteraction of the Legalization (Laundering) of the Proceeds from Crime, and the President of Ukraine signed the Law on December 7.

[3] Section 5318(i) requires U.S. financial institutions to conduct enhanced scrutiny when opening or maintaining a correspondent account for a foreign bank operating, among other things, under a banking license issued by a foreign country designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the U.S. representative concurs. Jurisdictions placed on the FATF NCCT list fall into this category.

By its own terms, section 5318(i) became effective on July 23, 2002. On May 30, 2002, FinCEN issued a proposed rule implementing the various provisions of section 5318(i). 67 FR 37736 (May 30, 2002). On July 23, 2002, FinCEN issued an interim rule that temporarily deferred application of section 5318(i) to certain financial institutions, and provided guidance to those subject to the provision pending FinCEN's issuance of a final rule. 67 FR 48348 (July 23, 2002). FinCEN expects that the final rule implementing section 5318(i) will be issued shortly. In the meantime, only U.S. depository institutions must comply with the enhanced scrutiny provisions in the manner set forth in the interim guidance.

opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3903, Moving Expenses.

DATES: Written comments should be received on or before June 16, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Moving Expenses.

OMB Number: 1545–0062.

Form Number: Form 3903.

Abstract: Internal Revenue Code section 217 requires itemization of various allowable moving expenses. Form 3903 is used to compute the moving expense deduction and is filed with Form 1040 by individuals claiming employment related moves. The data is used to help verify that the expenses are deductible and that the deduction is computed correctly.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Indivjduals and households.

Estimated Number of Respondents: 678,678.

Estimated Time Per Respondent: 9 hrs. 8 min.

Estimated Total Annual Burden Hours: 773,693.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 9, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9398 Filed 4–16–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–182–78]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, FI–182–78, Transfers of Securities Under Certain Agreements (Section 1.1058–1(b)).

DATES: Written comments should be received on or before June 16, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*) Internal Revenue Service, Room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Transfers of Securities Under Certain Agreements.

OMB Number: 1545–0770.

Regulation Project Number: FI–182–78.

Abstract: Section 1058 of the Internal Revenue Code provides tax-free treatment for transfers of securities pursuant to a securities lending agreement. The agreement must be in writing and is used by the taxpayer, in a tax audit situation, to justify nonrecognition treatment of gain or loss on the exchange of the securities.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and not-for-profit institutions.

Estimated Number of Respondents: 11,742.

Estimated Time Per Respondent: 50 min.

Estimated Total Annual Burden Hours: 9,781.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9516 Filed 4–16–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 982

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and section 1082 Basis Adjustment).

DATES: Written comments should be received on or before June 16, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, at (202) 622–3179, or *Larnice.Mack@irs.gov*, or Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).

OMB Number: 1545–0046.

Form Number: 982.

Abstract: Internal Revenue Code section 108 allows taxpayers to exclude from gross income amounts attributable to discharge of indebtedness in title 11 cases, insolvency, or a qualified farm indebtedness. Code section 1081(b) allows corporations to exclude from gross income amounts attributable to certain transfers of property. The data is used to verify adjustments to basis of property and reduction of tax attributes.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Responses: 1,000.

Estimated Time Per Response: 9 hrs. 37 min.

Estimated Total Annual Burden Hours: 10,290.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 9, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9517 Filed 4–16–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Renewable Electricity Production Credit, Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 2003

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor and reference prices for calendar year 2003 as required by section 45(d)(2)(A) (26 U.S.C. 45(d)(2)(A)).

SUMMARY: The 2003 inflation adjustment factor and reference prices are used in determining the availability of the renewable electricity production credit under section 45(a).

DATES: The 2003 inflation adjustment factor and reference prices apply to calendar year 2003 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources.

Inflation Adjustment Factor: The inflation adjustment factor for calendar year 2003 is 1.2048.

Reference Prices: The reference prices for calendar year 2003 are 4.85¢ per kilowatt hour for facilities producing electricity from wind and 0¢ per kilowatt hour for facilities producing electricity from closed-loop biomass and poultry waste.

Because the 2003 reference prices for electricity produced from wind, closed-loop biomass, and poultry waste energy resources do not exceed 8¢ multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to electricity sold during calendar year 2003.

Credit Amount: As required by section 45(b)(2), the 1.5¢ amount in section 45(a)(1) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the preceding sentence is not a multiple of 0.1¢, such amount is rounded to the nearest multiple of 0.1¢. Under the calculation required by section 45(b)(2), the renewable electricity production credit for calendar year 2003 under section 45(a) is 1.8¢ per kilowatt hour on the sale of electricity produced from wind, closed-loop biomass, and poultry waste energy resources.

FOR FURTHER INFORMATION CONTACT: David A. Selig, IRS, CC:PSI:5, 1111 Constitution Ave., NW., Washington,

DC 20224, (202) 622–3040 (not a toll-free call).

Heather C. Maloy,

Associate Chief Counsel, (Passthroughs & Special Industries).

[FR Doc. 03–9397 Filed 4–16–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Software Developers Conference

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Software Developers Conference notification.

SUMMARY: The Software Developers Conference will be held on June 5–6, 2003. The conference will be held in the Hyatt Regency Hotel, Crystal City, Arlington, VA. A summary of the agenda along with the planned discussion topics is listed below.

Summarized Agenda for June 5, 2003

8 a.m. Conference Begins;
12 p.m. Break for Lunch;
1 p.m. Conference Resumes;
4:30 p.m. Conference Adjourns.

The planned discussion topics are as follows: Form 1040 e-file Update; Business e-file Returns Update; Privacy/Security; Fraud Prevention; Free File Update.

Summarized Agenda for June 6, 2003

8 a.m. Conference Begins;
12 p.m. Break for Lunch;
1 p.m. Conference Resumes;
4:30 p.m. Conference Adjourns.

The planned discussion topics are as follows: IRS e-file of the Future; Breakout Group Discussions.

Note: Last minute changes to these topics are possible and could prevent advance notice.

DATES: There will be a Software Developers Conference on Thursday and Friday, June 5 and 6, 2003. This conference will be held in a room that accommodates approximately 200 people, including IRS officials.

ADDRESSES: The meeting will be held in the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Registration for the Software Developers Conference may be accessed at *http://www.paintl.com.* Registration should be received by May 14, 2003.

If you need additional information you may contact Aaron R. Welch at 202–283–0298 or *aaron.r.welch@irs.gov* (e-mail).

SUPPLEMENTARY INFORMATION: The IRS Software Developers Conference provides information and dialogue on issues of interest to IRS e-file software developers.

Dated: April 11, 2003.

Terence H. Lutes,

Director, Electronic Tax Administration.

[FR Doc. 03–9518 Filed 4–16–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
April 17, 2003

Part II

Environmental Protection Agency

40 CFR Part 63

National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2002–0057; FRL–7460–1]

RIN 2060–AH75

National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes national emission standards for hazardous air pollutants (NESHAP) for hydrochloric acid (HCl) production facilities, including HCl production at fume silica facilities. The EPA has identified hydrochloric acid production facilities as major sources of hazardous air pollutant (HAP) emissions. These standards will implement section 112(d) of the Clean Air Act (CAA) by requiring all such major sources to meet HAP emission standards and implement work practice standards that reflect the application of maximum achievable control technology (MACT). The primary HAP that will be controlled with this action is hydrochloric acid. This HAP is associated with a variety of adverse health effects including chronic health disorders (for example, effects on the central nervous system, blood, and heart) and acute health disorders (for example, irritation of eyes, throat, and mucous membranes and damage to the liver and kidneys).

EFFECTIVE DATE: The final rule is effective April 17, 2003.

ADDRESSES: *Docket.* All information considered by the EPA in developing the final rule, including public comments on the proposed rule and other information developed by the EPA in addressing those comments since proposal, is located in Public Docket No. OAR–2002–0057 at the following address: Air and Radiation Docket and Information Center, U.S. EPA, 1301 Constitution Avenue, NW., Washington, DC 20460. The docket is located at the above address in Room B102, and may be inspected from 8:00 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations, contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning analyses performed in developing the final rule, contact Mr. William Maxwell, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina, 27711; telephone number (919) 541–5430; fax number (919) 541–5450; electronic mail address: *maxwell.bill@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC[a]	NAICS[b]	Regulated Entities
Industry	2819 2821 2869	325188 325211 325199	Hydrochloric Acid Production.

[a] Standard Industrial Classification.
[b] North American Information Classification System.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.8985 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult your State or local agency (or EPA Regional Office) described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The EPA has established an official public docket for this action under Docket ID No. OAR–2002–0057. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Electronic Access. You may access the **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* An electronic copy of the final rule will also be available on the worldwide web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of the final rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the appropriate docket identification number.

Judicial Review. Under CAA section 307(b), judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before June 16, 2003. Only those objections to the NESHAP which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2)of the CAA, the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Outline. The information in this preamble is organized as follows:

I. Background
A. What Is the Source of Authority for Development of NESHAP?
B. What Criteria Are Used in the Development of NESHAP?
C. How Did the Public Participate in Developing the Final Rule?
II. Summary of the Final Rule

A. Who Is Subject to the Final Rule?
B. What Are the Primary Sources of Emissions, and What Are the Emissions?
C. What Is the Affected Source?
D. What Are the Emission Limitations and Work Practice Standards?
E. What Are the Performance Testing, Initial Compliance, and Continuous Compliance Requirements?
F. What Are the Notification, Recordkeeping, and Reporting Requirements?
III. Significant Comments and Changes Since Proposal
A. What Sources Are Subject to MACT?
B. How Did the EPA Determine MACT?
C. What Are the Performance Testing and Other Compliance Provisions?
IV. Summary of the Environmental, Energy, Cost, and Economic Impacts
A. What Are the Air Quality Impacts?
B. What Are the Non-Air Health, Environmental, and Energy Impacts?
C. What Are the Cost and Economic Impacts?
V. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132, Federalism
F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045, Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Hydrochloric acid production and fume silica production were listed as source categories under the production of inorganic chemicals group on EPA's initial list of major source categories published in the **Federal Register** on July 16, 1992 (57 FR 31576).[1] On September 18, 2001, we combined these two source categories for regulatory purposes under the production of inorganic chemicals group and renamed the source category as HCl production (66 FR 48174). The next revision to the source category list will reflect this change. Major sources of HAP are those that have the potential to emit greater than 9 megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 23 Mg/yr (25 tpy) of any combination of HAP.

[1] Later listing notices (*e.g.*, 66 FR 8220) refer to the source category as "fumed" silica.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, the MACT floor cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory for which the Administrator has emissions information (or the best-performing five sources for which the Administrator has or could reasonably obtain emissions information for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on consideration of the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

C. How Did the Public Participate in Developing the Final Rule?

Prior to proposal, we met with industry representatives once to discuss the data and information used to develop the proposed standards. In addition, these and other potential stakeholders, including equipment vendors, environmental groups, and the general public, had opportunity to comment on the proposed standards.

The proposed rule was published in the **Federal Register** on September 18, 2001 (66 FR 48174). The preamble to the proposed rule discussed the availability of technical support documents, which described in detail the information gathered during the standards development process. Public comments were solicited at proposal.

We received 22 public comment letters on the proposed rule. The commenters represent the following affiliations: HCl producers, industrial trade associations, and one group of citizens. In the post-proposal period, we met with industry representatives to discuss their concerns. Meeting records are found in Docket ID No. OAR–2002–0057. All of the comments have been carefully considered, and, where appropriate, changes have been made for the final rule.

II. Summary of the Final Rule

A. Who Is Subject to the Final Rule?

The final rule covers HCl production located at plant sites that are major sources of HAP emissions. The HCl production facility is the basic unit defined in the final rule. Specifically, the final rule defines an HCl production facility as the collection of unit operations and equipment associated with the production of liquid HCl product. Therefore, a plant site could have several separate and distinct HCl production facilities. However, as discussed more in subsection C of this section, the affected source includes all HCl production facilities at the same site.

There are several characteristics that define an HCl production facility and make the facility subject to the final rule that require explanation. First, the facility must produce a liquid HCl product with a concentration of 30 weight percent or greater during its normal operations. Facilities that produce only low concentration acid, and facilities that produce low concentration acid and only occasionally produce 30 weight percent acid, are not subject. Second, the liquid HCl must be produced by absorbing gaseous HCl into either water or an aqueous HCl solution. Production of an anhydrous HCl product is not covered by the final rule. Also, production of a liquid HCl product by a chemical reaction that occurs in the liquid phase, or any other process that does not involve the absorption of gaseous HCl into water or aqueous HCl, is not covered.

There are numerous types of processes that produce a gaseous stream containing HCl that is the starting point for an HCl facility (including fume silica production). However, the final rule is blind to the type of process that generates the HCl, as an HCl production facility begins at the point where the

stream containing HCl enters the absorber. Accordingly, it does not matter if the gaseous stream containing HCl is a by-product or even a waste-product. If the gaseous stream is used to produce 30 weight percent or greater liquid HCl product, it is a facility that is subject to the final rule.

The final rule clearly defines the boundaries of an HCl production facility. As noted above, an HCl production facility begins at the point where a gaseous stream containing HCl enters the absorber. The HCl production facility includes all HCl storage tanks that contain a liquid HCl product that is produced in the HCl production unit. The HCl production facility also includes all HCl transfer operations that load the HCl product produced in the HCl production unit into a tank truck, rail car, ship, or barge, and for which loading liquid HCl is the predominant use. The predominant use of a transfer rack is the material that is loaded by the transfer rack in the greatest amount. The HCl production facility also includes the piping and other equipment in HCl service used to transfer the liquid HCl product from the HCl production unit to the HCl storage tanks and/or HCl transfer operations. The HCl production facility ends at the point where the liquid HCl product produced in the HCl production unit is loaded into a tank truck, rail car, ship, or barge, at the point the HCl product enters another process on the plant site, or at the point the HCl product leaves the plant site via pipeline.

Please note that what happens to the liquid HCl product after it is produced is not relevant in determining the applicability of the final rule. While there are emission limitations for storage tanks and transfer operations, these operations do not have to be present for an HCl production facility to be subject to the final rule. Whether the HCl produced is used onsite, piped offsite, or loaded into railcars, tank trucks, ships, or barges has no bearing on whether the HCl production facility is subject.

The final rule does exclude HCl production facilities under certain circumstances. First, an HCl production facility is not subject to the final rule if all of the gaseous streams containing HCl and chlorine (Cl_2) from HCl process vents, HCl storage tanks, and HCl transfer operations are recycled or routed to another process prior to being discharged to the atmosphere. Also, an HCl production facility is not subject to the final rule if it produces HCl through the direct synthesis of Cl_2 and hydrogen and is part of a chlor-alkali plant; or if it is a research and development facility.

In addition, the final rule excludes certain HCl production facilities that are part of other source categories where the emissions are subject to one of the following federal standards: Pulp and Paper Industry NESHAP (40 CFR part 63, subpart S), Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants NESHAP (40 CFR part 63, subpart CCC), Pesticide Active Ingredient Production NESHAP (40 CFR part 63, subpart MMM), Hazardous Waste Combustors NESHAP (40 CFR part 63, subpart EEE), Hazardous Waste Treatment, Storage, and Disposal Facilities (40 CFR part 264, subpart O—Incinerators, section 264.343(b)), and Hazardous Waste Management Facilities (40 CFR part 266, subpart H—Boilers and Industrial Furnaces, section 266.107).

Regulatory overlap between the final rule and the Hazardous Organic NESHAP (HON) is slightly more complicated. In general, the HON only covers emissions of organic HAP, which obviously excludes HCl and Cl_2. The exception to this is if a halogenated stream (which is defined as a stream with a mass emission rate of halogen atoms contained in organic compounds of 0.45 kilograms per hour or greater) is routed to an incinerator or other combustion device to control the organic HAP, the halogens leaving the incinerator are required to be reduced by 99 percent. Therefore, if in a HON unit, a chlorinated organic compound is sent to an incinerator and the outlet stream (which would contain HCl) is then routed through an absorber to produce liquid HCl, the resulting HCl emissions from the absorber would be subject to 40 CFR 63.113(c) of the HON, which requires a 99 percent reduction in HCl emissions. These HCl production units are exempted from the HCl Production NESHAP, since the emissions are subject to the HON.

However, HCl gas is often produced as a by-product of an organic chemical in a unit that is subject to the HON. In this situation, the HCl emissions are not covered by the HON because they are not formed in an incinerator burning a halogenated stream. If this vent stream containing HCl is routed to an absorber and liquid HCl is produced, then it is an HCl production facility and is subject to the final rule if it meets the other applicability requirements. Therefore, in this situation the result could be that the same equipment, and even the same emission stream, is subject to two MACT standards (the organic HAP subject to the HON and the HCl and Cl_2 subject to the HCl NESHAP). In other words, where a liquid HCl product is produced as a by-product in a HON unit, the HCl Production NESHAP reaches into the HON unit to require control of the HCl and Cl_2 emissions.

B. What Are the Primary Sources of Emissions, and What Are the Emissions?

The primary HAP known to be released from HCl production is HCl. Chlorine may also be emitted from HCl production. These potential emission sources include process vents, storage tanks, transfer operations, equipment leaks, and wastewater.

1. Types of Emission Sources

Most HCl production processes begin with a gaseous stream containing HCl. The stream can be a by-product stream from another process, an outlet stream from a combustion device that is treating chlorinated organic compounds, or a stream from a direct synthesis reaction furnace where hydrogen and Cl_2 are burned. No matter the origin of the stream containing HCl, the process from that point forward is basically the same. The gaseous stream containing HCl is routed to an HCl recovery absorption column, where the HCl is absorbed into either water or dilute HCl. The liquid leaving this column contains concentrated HCl.

The gaseous stream leaving the absorption column contains HCl that was not absorbed into the liquid in the tower and any Cl_2 present in the inlet stream. This outlet stream may be routed (or recycled) to another process, in which case it is no longer part of the HCl production affected source. However, if the outlet stream is directly discharged to the atmosphere or if it is routed through other recovery/control devices before being discharged to the atmosphere, it is considered an HCl process vent from an HCl production facility.

If the liquid HCl leaving the absorption tower is routed to an HCl storage tank, there is the potential for HCl emissions from the tank. The storage tanks are typically atmospheric storage tanks, and working loss emissions will occur as the tank is filled and emptied. While less significant, there are also breathing losses from atmospheric temperature and pressure changes. There is also the potential for emissions when HCl is loaded from a storage tank to a tank truck, rail car, ship, or barge. Plants often reduce HCl emissions from HCl storage tanks and HCl transfer operations by using a scrubber.

Another potential source of HCl emissions is fugitive losses from equipment leaks. Owners and operators of HCl production processes presumably have an incentive to identify and repair equipment leaks of HCl and Cl_2 because of their highly corrosive nature. The leaks can be easily identified, as the presence of ambient moisture (humidity) results in rapid corrosion on or around leaking equipment components.

The bottoms from scrubbers used to reduce HCl and Cl_2 emissions from HCl process vents, HCl storage vessels, and HCl transfer operations are typically routed to wastewater treatment systems. In most cases, the HCl or Cl_2 has been chemically converted in the scrubber to sodium hypochlorite (bleach). Any residual Cl_2 or HCl would be quite small. We estimate that wastewater emissions represent less than 1 percent of total emissions from the source category. Therefore, we believe that wastewater streams do not represent a significant potential source of emissions.

2. Estimated Emissions

We have calculated the nationwide baseline emissions for each of the HCl production facility emission sources. Hydrochloric acid process vents emit a total of 2,240 Mg/yr (2,470 tpy) of combined HCl (1,600 Mg/yr; 1,770 tpy) and Cl_2 (640 Mg/yr; 700 tpy) emissions. Hydrochloric acid storage tanks emit 230 Mg/yr (260 tpy) of HCl, HCl transfer operations emit 27 Mg/yr (30 tpy) of HCl, leaking equipment emits 410 Mg/yr (450 tpy) of HCl, and wastewater emits 9 Mg/yr (10 tpy) HCl. Total baseline HAP emissions from the industry are 2,910 Mg/yr (3,220 tpy).

C. What Is the Affected Source?

The final rule defines the affected source as the group of one or more HCl production facilities at a plant site that are subject to the final rule, and all associated wastewater operations. The affected source contains emission streams from the following: HCl process vents, HCl storage tanks, HCl transfer operations, leaks from equipment in HCl/Cl_2 service, and HCl wastewater operations. However, there are no emission limitations or other requirements for HCl wastewater operations in the final rule.

D. What Are the Emission Limitations and Work Practice Standards?

Existing affected sources must reduce HCl and Cl_2 emissions from each HCl process vent by 99 percent or to outlet concentrations of 20 parts per million by volume (ppmv) HCl and 100 ppmv Cl_2, determined using EPA Test Method 26A of 40 CFR part 60, appendix A. New sources must reduce HCl and Cl_2 emissions from each HCl process vent by 99.4 and 99.8 percent, respectively, or to outlet concentrations of 12 ppmv HCl and 20 ppmv Cl_2. The final rule also requires that owners or operators establish site-specific operating limits for each control device, based on monitored parameters and levels established during the performance test. For example, if you use a caustic scrubber to meet the emission limits, you must maintain the daily average scrubber inlet liquid flow rate above the minimum value established during the performance test. You also must maintain the daily average scrubber effluent pH within the operating range value established during the performance test.

For each storage tank and transfer operation at an existing affected source, HCl emissions must be reduced by 99 percent or to an outlet concentration of 120 ppmv; the operating limits are the same as for process vents. There are no Cl_2 emissions from these sources. For each storage tank at a new affected source, HCl emissions must be reduced by 99.9 percent or to an outlet concentration of 12 ppmv. For each transfer operation at a new affected source, HCl emissions must be reduced by 99 percent or to an outlet concentration of 120 ppmv. Emission streams from the following types of storage tanks and transfer operations are exempt from these emission limitations: (1) Storage tanks that never store liquid HCl product with a concentration of 30 weight percent or greater, and (2) transfer operations that never load liquid HCl product with a concentration of 30 weight percent or greater.

For leaking equipment, the final rule includes a work practice standard. We require you to prepare, and at all times operate according to, an equipment leak detection and repair (LDAR) plan that describes in detail the measures that will be put in place to control leaking equipment emissions at the facility. You are required to submit the LDAR plan to the Administrator. You are also required to certify in your Notification of Compliance Status that you have developed and implemented the LDAR plan and submitted the plan to the Administrator.

There are no emission limitations or work practice standards for HCl wastewater operations.

E. What Are the Performance Testing, Initial Compliance, and Continuous Compliance Requirements?

For HCl process vents at new and existing affected sources, you are required to demonstrate initial compliance by conducting a performance test that demonstrates that the emission limitations are being met. You are required to conduct subsequent performance tests on the earlier of your title V operating permit renewal or within 5 years of issuance of your title V permit.

You must also establish site-specific operating limits based on control device parameters. These operating limits will be established for each parameter based on monitoring conducted during the performance test. Specifically for water or caustic scrubbers, which we believe will be the most commonly used control device, the final rule requires that you establish operating limits for pH of the scrubber effluent and the scrubber liquid inlet flow rate. For any other type of control device, you are required to establish the operating limits based on a site-specific monitoring plan that identifies appropriate parameters. Continuous compliance will be demonstrated by these monitored parameters staying within the operating limits.

For HCl storage tanks and HCl transfer operations at new and existing affected sources, you are required to demonstrate initial compliance by conducting a performance test that demonstrates that the emission limitations are being met. Alternatively, in lieu of conducting initial or subsequent performance tests for HCl storage tanks and HCl transfer operations that are not routed to a control device that also controls HCl process vent emissions or any other continuous vent stream, you may conduct a design evaluation which demonstrates that the control technology being used achieves the required control efficiency when a liquid HCl product with a concentration of 30 weight percent or greater is being loaded into the storage tank, or a tank truck, rail car, ship, or barge. The schedule for subsequent performance tests and the operating limits for new and existing HCl storage tanks and HCl transfer operations are the same as those for HCl process vents.

F. What Are the Notification, Recordkeeping, and Reporting Requirements?

The final rule requires owners or operators of affected sources to submit the following notifications and reports:

- Initial Notification.
- Notification of Intent to Conduct a Performance Test.
- Notification of Compliance Status (NOCS).
- Compliance Reports.
- Startup, Shutdown, and Malfunction (SSM) Reports.

The final rule requires that each owner or operator maintain records of reported

information and other information necessary to document compliance (for example, records related to malfunctions, records that show continuous compliance with emission limits) for 5 years.

For the Initial Notification, the final rule requires that each owner or operator notify us that his or her facility is subject to the HCl Production NESHAP and that he or she provide specified basic information about their facility. For new or reconstructed sources, this notification (or an application for construction or reconstruction) would be required to be submitted no later than 120 calendar days after the facility becomes subject to this subpart. For existing sources that are operating at this time, the Initial Notification would be due August 15, 2003.

For the Notification of Intent report, the final rule requires that each owner or operator notify us in writing of the intent to conduct a performance test at least 60 days before the performance test is scheduled to begin.

For each new or existing HCl process vent, HCl storage tank, and HCl transfer operation at an affected source, the final rule requires a performance test to demonstrate compliance with the HCl concentration limit. This test must be conducted within 180 days of the compliance date for new and existing sources. The final rule requires that the NOCS report be submitted within 60 days of completion of the performance test. A certified notification of compliance that states the compliance status of the facility, along with supporting information (*e.g.*, performance test methods and results, description of air pollution control equipment, and operating parameter values and ranges), must be submitted as part of the NOCS.

For the Compliance Report, the final rule requires that facilities subject to control requirements under the final rule report on continued compliance with the emission limits and operating limits semi-annually. Specifically, the compliance report must contain the following information:

- Company name and address.
- Statement certifying the truth, accuracy, and completeness of the content of the report.
- Date of report and beginning and ending dates of the reporting period.
- Information on actions taken for any startups, shutdowns, or malfunctions that were consistent with your SSM plan.
- If there are no deviations from any emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period.
- If there were no periods during which the continuous monitoring system (CMS) was out-of-control, as specified in the monitoring plan, a statement that there were no periods during which the CMS was out-of-control during the reporting period.

You will demonstrate initial compliance with the work practice standards for leaking equipment by certifying that you have developed and implemented a LDAR plan and submitted the plan to the Administrator. Your semiannual compliance report will verify your continued use of the plan and contain information on instances where you deviated from the plan and the corrective actions taken.

Finally, you must submit an immediate SSM report if you have taken an action that is not consistent with the facility's SSM plan. This report must describe actions taken for the event and contain the information in 40 CFR 63.10(d)(5)(ii).

III. Significant Comments and Changes Since Proposal

This section includes discussion of significant comments on the proposed rule, particularly where we have made changes to address those comments in the final rule. These changes may be separated into three basic categories: applicability, the MACT determination, and performance testing and compliance. This section is organized according to these three topic areas. For a complete summary of all the comments received on the proposed rule and our responses to them, refer to the "National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Hydrochloric Acid Production Industry: Summary of Public Comments and Responses" in Docket ID No. OAR–2002–0057. The docket also contains the actual comment letters and supporting documentation developed for the final rule.

A. What Sources are Subject to MACT?

The proposed rule indicated that HCl production facilities at major sources were subject to the final rule. An HCl production facility was defined as the "collection of equipment used to produce, store, and transfer for shipping liquid HCl product at a concentration of 10 percent by weight or greater."

There were numerous comments provided on these applicability provisions. First, several commenters were confused by the apparent contradiction between the definition of an HCl production facility in the proposed rule and the description in the preamble. The proposed rule language stated that a facility must produce, store, AND transfer HCl in order to be considered an HCl production facility, while the preamble indicated that production of HCl is the only required element for a collection of equipment be considered an HCl production facility. A few commenters argued that all three elements should be necessary for a process to be an HCl production facility, but most only requested clarification. Our intent was that described in the proposed preamble—that is, a facility only needs to produce liquid HCl product to be considered an HCl production facility. The language in the final rule is clear that processes that produce liquid HCl product are HCl production facilities and subject to the final rule (provided that criteria related to the concentration of HCl in the liquid product and the level of production are met), whether or not they store and transfer the liquid HCl.

As discussed at length in the proposed preamble, it was our intent to separate commercial-level HCl production, which we believe should be subject to the final rule, from incidental production, which we do not believe should be subject. Several comments were received that helped us make this distinction. First, numerous commenters requested that the EPA raise the minimum HCl concentration for an HCl production facility from 10 weight percent to a level that better represents commercial production of HCl. The commenters stated that liquid HCl is commonly produced for commerce at 20° to 22° Baume (Bé) acid strength (31.45 to 35.2 weight percent). However, one commenter's HCl production facility occasionally produces liquid HCl product less that 20 weight percent. Additionally, the commenters made the argument that emissions resulting from a 10 percent HCl product were less, even without controls, than the proposed emission limitations. Specifically, they pointed out that the equilibrium HCl vapor concentration for a 10 weight percent HCl liquid (10.7 ppmv at 25°C) is lower than the proposed emission limitation for process vents, storage tanks, and transfer operations (12 ppmv).

Upon consideration of these comments and the supporting information, we changed the minimum HCl concentration to 30 weight percent. The final rule states that an HCl production facility that produces a liquid HCl product at a concentration of 30 weight percent or greater is subject to the final rule. That means that this unit is subject at all times, even those times when a liquid HCl product of a lower concentration is being produced. Therefore, the final rule will cover facilities like the one pointed out by the commenter that occasionally produce liquid HCl product at concentrations less than 30 percent, even when those lower concentration products are being produced.

However, we wanted to ensure that facilities that primarily produce lower concentration liquid HCl products not be subject to the final rule. Therefore, we added a statement in 40 CFR 63.8985(a) that the final rule does not cover HCl production facilities that only occasionally produce liquid HCl products at a concentration of 30 weight percent or greater. We did not, however, include a specific definition of what constitutes occasional production. If a facility produces liquid HCl with a concentration of 30 weight percent or greater during its normal operations, this would not be considered occasional production.

Commenters also suggested facility-wide exemptions based on *de minimis* annual emissions. Commenters provided several exemption levels based on emissions, from 1.8 kilograms per hour to 10 Mg per year. Other commenters believed that an exemption based on production was the appropriate method to eliminate burdensome compliance requirements for facilities with very low HAP emissions. The recommended exemption production levels ranged from 1 Mg per year to 1 gigagram per year.

We believe that, with the 30 weight percent criteria, the final rule should not cover incidental production of HCl. Consequently, we have not added either an emissions-based exemption or a production-based exemption to the final rule.

Commenters also requested that the we clearly delineate where the HCl production facility ends and HCl consumption begins so as not to include equipment unrelated to the production of HCl. While the proposed rule was not specific as to the beginning of an HCl production facility, the proposed preamble did indicate that an HCl production facility begins at the point where the gaseous stream containing HCl enters the absorber. The commenters agreed with this concept and asked that we directly incorporate it into the final rule, which we did.

Most of the problems cited by commenters related to the end of the HCl production facility were remote storage tanks that are dedicated to another process or to wastewater treatment. There was also concern expressed about whether off-site HCl storage tanks storing HCl produced in a subject unit would be subject to the final rule. One suggestion was that the HCl production facility include only those tanks and transfer operations on the site that are directly connected to the production unit. Another suggestion was to only include the first storage tank after the absorber production unit and the first transfer rack. Other commenters pointed out that the proposed rule would also cover HCl storage tanks and transfer operations that handled purchased HCl that was not even produced in the on-site HCl production facility.

In general, we agree with the commenters on this topic. We believe it is practical that only the primary storage tanks and transfer operations that are storing and loading HCl produced at the site should be subject to the final rule. However, we did not totally agree with either of the suggestions provided by the commenters. In the final rule, we specify that the HCl production facility includes the production unit and all storage tanks that contain liquid HCl product that is produced in the HCl production unit, along with all transfer operations that load HCl product produced in the HCl production unit. Further, it also specifies that the piping and other equipment used to transfer liquid HCl product from the HCl production unit to the storage tanks and/or transfer operations is included in the HCl production facility. The final rule clarifies that the HCl production facility ends at the point that the liquid HCl product produced in the HCl production unit either leaves the plant site via a tank truck, rail car, ship, barge, or pipeline, or enters another process on the plant site. However, we recognized that this still was not totally clear regarding remote storage tanks, so we specifically added exemptions for HCl storage tanks that are dedicated feedstock tanks for other processes and storage tanks which store HCl dedicated for use in wastewater treatment.

Commenters also pointed out that the proposed preamble was clear that the type of process covered by the final rule was one that routes a gaseous stream that contains HCl to an absorber. They asked that this language, which was not included in the proposed rule, be added to the final rule. The commenters acknowledged that there are other methods of producing liquid HCl product, but believe that they should not be covered by the final rule because they were not considered in the final rule development. We agreed and made changes in accordance. These changes include the addition of a definition of HCl production unit that only includes an absorber or other vessel in which a liquid HCl product is manufactured by absorbing gaseous HCl into either water or an aqueous HCl solution and the change cited above related to the beginning of an HCl production facility.

Commenters requested that facilities that produce liquid HCl only for on-site usage be exempted. We certainly support the recycling and re-use of potential waste materials, including HCl. Further, we are aware that much of the HCl produced is used by other processes on the plant site. However, we do not see a distinction between these processes and other processes where the HCl product is truly sold. We believe an exemption for on-site use would unfairly favor large integrated facilities. Consider two similar HCl processes with similar equipment, similar production capacities, and similar emissions potential. We do not believe that distinguishing between these processes based on where the HCl is consumed is warranted.

Even with the extensive discussions in the proposed preamble related to how the applicability is blind to the type of process that generates the anhydrous HCl stream that forms the feed stream for the HCl production facility, some commenters still called for exemptions for processes where HCl is not the primary product. The primary product concept is not relevant to the final rule, as the only processes that are subject to the final rule are those that intentionally manufacture liquid HCl product. There are a variety of types of processes that generate HCl-containing gas streams that provide the feed to the HCl production unit, and we recognized that this gaseous HCl is often a by-product. However, at the point an owner or operator takes this stream and manufactures a commercial level (*i.e.*, 30 weight percent or greater) liquid HCl product, we maintain that HCl is the intended product for that unit. Therefore, the process that creates the anhydrous HCl stream feeding the HCl production facility is not relevant in most situations.

The only time that the up-stream process is relevant is when it is subject to a Federal regulation that also regulates the HCl and Cl_2 emissions from the downstream HCl production facility. At proposal, we identified several of these situations and specifically exempted the HCl production facilities subject to these other standards. While all commenters applauded this concept, they did not feel that we had gone far enough with these exemptions. Some commenters cited other specific regulations that should be listed, while others requested

that we broaden the exemption to include facilities subject to any other NESHAP, whether it is already promulgated or yet to be promulgated, along with any facility that is subject to any federally enforceable permit that requires 95 percent reduction or greater.

Just like the commenters, we are interested in avoiding overlapping situations where a process that produces HCl might be subject to more than one Federal regulation. Based on the comments received, we have added exemptions for processes subject to the Pharmaceutical MACT (40 CFR 63, subpart GGG) and 40 CFR 63.994 of subpart SS. We have also expanded the exemption to include any process required by another rule to comply with 40 CFR 63.113(c) of the HON. In addition, according to our proposed decision not to regulate Cl_2 and HCl emissions from chlorine production (67 FR 44713; July 3, 2002), we consider direct synthesis HCl production units directly associated with chlor-alkali facilities to be part of the chlor-alkali facilities. Therefore, an exemption has been added in the final rule to exempt direct synthesis HCl production processes that are part of chlor-alkali facilities; this exemption does not extend to HCl production facilities that are co-located with chlor-alkali facilities but are not direct synthesis units directly associated with chlor-alkali facilities. So, we exempted all the specific situations raised by commenters. However, we cannot include a generic exemption for any other NESHAP or any federally enforceable permit. The statutory requirements in CAA section 112(d) are prescriptive regarding the level of control required by MACT standards, and we could not be assured that these other requirements would meet the minimum requirements for this source category. We will consider such situations on a case by case (*i.e.*, on a source-specific) basis under a request for an alternative non-opacity emission standard submitted in accordance with 40 CFR 63.6(g).

As part of our consideration of overlapping requirements, we reviewed the situation with the HON. The proposed rule exempted HCl production units located after an incinerator of a HON unit where the HCl and Cl_2 emissions are subject to 40 CFR 63.113(c). However, we did not exempt situations where gaseous HCl is produced as a by-product in a HON unit and then routed to an absorber to produce liquid HCl. In these by-product situations, the HCl and Cl_2 emissions are not covered by the HON. While we agree that the situation where the same equipment and the same emission stream could be subject to both the HON and the HCl Production NESHAP is not ideal, we believe that these inorganic emissions should be addressed under the final rule in the same manner that comparable non-HON units are addressed. Therefore, the final rule continues to reach into the HON to cover those inorganic emissions from liquid HCl production.

Several commenters requested that the EPA exempt storage tanks that are smaller than a certain capacity. The commenters pointed out that the potential emissions from small storage tanks are low while the control costs are very high. Commenters suggestions for a minimum capacity ranged from 15,000 to 20,000 gallons. One commenter further requested an exemption for all portable storage containers (*e.g.*, drums, tank trucks, railcars). Another commenter suggested that tank capacity and HCl vapor pressure be used together to determine which storage tanks should be exempt.

We understand the commenters' concern about the cost of controlling emissions from small storage tanks. However, we believe that small storage tanks are not likely to be covered by the final rule given the other changes that we have made which were based on comments received. We have exempted storage tanks that never store liquid HCl product with a concentration of 30 weight percent or greater. We have also defined the HCl production facility such that storage tanks that store HCl for use in wastewater treatment or as feedstock for another process are not part of the HCl production facility. Therefore, we have not added an exemption for small storage tanks.

B. How Did the EPA Determine MACT?

1. Data Used To Determine MACT

Many commenters stated that the EPA did not use data that was truly representative of the sources in the source category when determining the MACT emission limitations. The commenters believed that the database used to prepare the proposed rule contained facilities that potentially would not be subject to the final rule and did not contain many facilities that potentially would be subject to the final rule. This criticism included the estimate of the number of facilities potentially subject to the final rule, but was more focused on the data used to establish MACT.

Commenters stated the number of sources subject to the final rule would likely be much greater than the 64 plant sites that we identified as potentially subject at proposal. One commenter estimated that the number of plant sites could be as high as 300.

The commenters were especially concerned with the representativeness of the data set used to establish the MACT emission limits. They maintained that the lack of representativeness of the source category resulted in proposed emission limitations that were not adequately justified for the HCl production source category, and that the use of more representative data could change the MACT determination. A few of the commenters specifically requested that we gather data from a more representative group of potentially affected facilities and re-calculate the MACT floor. One commenter even went so far as to state that we should withdraw the proposed rule and re-propose it after properly surveying the industry and re-calculating the MACT floor based on accurate data.

First, we will briefly review the process used to obtain the information for the HCl production source category, followed by responses to the specific issues raised by the commenters.

In creating our list of sources in the HCl production source category, we consulted reliable and well-respected sources of information on the chemical industry. We removed plant sites from the original list that we believed would be subject to other MACT standards or Federal regulations. There were also a few plants that we were aware of through contacts with State agencies that were not on the original list, so they were added. That resulted in the 64 plants identified at proposal. We recognized the special difficulty in identifying all HCl production facilities, since HCl is often produced from by-product streams only for internal uses, and considered that our list may not have been comprehensive. Therefore, during a meeting held on February 28, 2001 with the primary trade organization for the HCl production industry, we specifically requested assistance in improving our initial list of potentially subject plant sites. However, no additional information resulted from this request for assistance.

While commenters claim that there could be potentially two or three times more plant sites subject to the HCl Production NESHAP than we originally estimated, there was little actual information provided to support this claim. Where commenters provided specific plant names and locations, we adjusted the list of plant sites. We also identified a few inconsistencies and overlaps from our original list. The result was that the revised list of potentially subject facilities contains 65 plant sites.

As was documented in several items in the docket, our information gathering approach for this source category was to obtain available information from State/local agencies in States where HCl production facilities are located. That resulted in data for 24 HCl production facilities at 19 plant sites in 5 States. In addition, we had information from site visits to 6 additional HCl production facilities at 5 more plant sites, meaning that the MACT database relied upon for the proposed rule contained information representing 30 HCl production facilities at 24 plant sites in 9 States. We believe that this was a reasonable approach to obtain information for this industry.

Some commenters requested that we distribute a questionnaire under our CAA section 114 authority to accurately reflect the source category. However, the commenters did not provide a list of plants to whom this questionnaire should be sent to ensure that the data were more representative than the data set we obtained from State agency files. Some commenters, however, did offer to provide additional information for their HCl production facilities, which could have resulted in data for a few additional processes. However, we concluded that the original data set was adequate to determine MACT and did not feel it was necessary to burden the industry with a data collection request.

Commenters also complained that many of the plants considered in the MACT floor analysis were actually plants that are not in the source category. These commenters are correct, in part, in that we did utilize data from two plants that we had removed from the original list because we presumed that these HCl production processes were, or would be, subject to another MACT standard. To eliminate this inconsistency, we have removed these two facilities from the MACT analysis. We also adjusted the data set based on all specific comments received. Therefore, the revised MACT floor analysis is based on facilities that, to the best of our knowledge, are in the source category. For example, we have removed from the MACT floor analysis all HCl production facilities that produce HCl via direct synthesis at chlor-alkali facilities, and we have kept in the MACT floor those HCl production facilities that are co-located with chlor-alkali facilities but are not part of a chlor-alkali facility and produce HCl through some other process.

We would point out that while we did not agree with the commenters regarding the representativeness and adequacy of our MACT database, and we did not undertake an additional data gathering effort after proposal, we did revise our MACT analysis to address many of the other issues raised by commenters regarding the determination of the emission limitations. These are discussed in the next sections.

2. MACT Floor Determination

There were a few issues raised related to the MACT floor analysis. First, commenters believed that the floor should have been based on the top 12 percent of the facilities instead of the top 5 facilities, since there are more than 30 facilities in the category. Commenters also believed that the floor should have been calculated based on the mean and not the median. In addition, commenters objected to how we handled control efficiencies reported as >99 percent (in the floor analysis, units that reported >99 percent efficiency were excluded from the floor calculation and the remaining facilities in the top 5 of the reporting facilities were used to determine the floor) and they pointed out that we were inconsistent in this approach (we did consider these >99 reported efficiencies for the floor for transfer operations).

As noted above, we currently estimate that there are 65 facilities in the source category. Therefore, if data were available for all facilities, the MACT floor would be based on the best-performing 12 percent, or 8 facilities. In our re-analysis of the MACT floor, we considered the control achieved by the best-performing eight facilities in our database. We disagree with the opinion regarding use of the average rather than the median. As was stated in the preamble for the proposed rule, we have determined that average means any measure of central tendency, whether it be the arithmetic mean, median, or mode, or some other measure based on the central tendency of a data set. We continue to believe that this determination, which we originally published over 8 years ago (59 FR 29196; June 6, 1994), is sound. For the MACT determination for this source category, which was in the format of a percent emission reduction, we determined that selection of the median value was most appropriate. This ensured that a control efficiency actually being achieved was selected, rather than the mean of values, which would not likely have represented the actual performance of an actual control device.

The commenters were correct in that we were inconsistent in how we considered facilities that reported control efficiencies as >99 percent. For process vents and storage tanks, we did not include data points reported as >99 percent when calculating the MACT floor for the proposed rule, whereas for transfer operations we did include data points reported as >99 percent when calculating the MACT floor because we had only three data points, two of which reported >99 percent. In evaluating this issue, we determined that it was inappropriate to have not considered some of the most effective controls in the source category for process vents and storage tanks simply because their efficiencies were reported as greater than a particular number. Therefore, in our re-analysis of the MACT floor, we assigned a numerical value of 99 percent emission reduction to each control device that reported an efficiency of >99 percent or ≥99 percent. The data points reported as >99 percent or ≥99 percent were obtained from permit applications, and we had no data that indicated more specific control efficiencies in these cases. We believe that rounding these data points down to 99 percent represents the closest actual control efficiency that we are sure these sources could meet consistently.

Due to the comments raised regarding the MACT floor approach and the data used, it was necessary to re-evaluate the MACT floor. As a reminder, the MACT floor addressed HCl emissions from process vents, storage tanks, and transfer operations, and Cl_2 emissions from process vents. Further, the proposed format of the MACT floor for all emission sources was a percent reduction. We determined the MACT floor for existing sources as the median value of the top eight facilities in the data set for each type of emission source.

The revised MACT floors for existing sources are 99 percent emission reduction for HCl emissions from process vents and transfer operations, 99 percent for Cl_2 emissions from process vents, and 98.5 percent for HCl emissions from storage tanks. For consistency, we believe it is appropriate to round the storage tank value to 99 percent. The revised MACT floors for new sources are 99.4 percent emission reduction for HCl emissions from process vents, 99.8 percent emission reduction for Cl_2 emissions from process vents, 99.9 percent emission reduction for HCl emissions from storage tanks, and 99 percent emission reduction for HCl emissions from transfer operations. These new source MACT floors are based on the level of control achieved by the best-controlled source in the category.

3. Emission Limitations and Work Practice Standards

The proposed emission limitations were in the format of an outlet concentration. As outlined in the proposed preamble, we selected this format primarily due to concerns in distinguishing an HCl control device from an HCl production process. There were numerous comments received regarding this format and the data used to establish the emission limit. These proposed limits were developed by applying the MACT floor percent reduction efficiencies to the highest uncontrolled concentrations in the data set. Specifically, these highest uncontrolled concentrations were 2,044 ppmv for HCl and 9,650 ppmv for Cl_2. Commenters stated that we established the concentration equivalents to the MACT floor based on data that do not accurately reflect the variability of sources in the source category. The commenters noted that facilities in the source category often have emission points (with only one exception, all examples raised by the commenters were for storage tanks and transfer operations) that emit much higher concentrations of HCl and Cl_2 or emit at much higher air flow rates than the facilities included in the our database. The commenters stated that emission points with high concentrations would need removal efficiencies greater than the MACT floor levels in order to meet the proposed concentration limits, which we proposed as being equivalent to the MACT floor percent removal efficiencies. Therefore, the commenters maintained that the proposed emission limits were far beyond the MACT floor and not justified.

Alternatively, one commenter stated that the proposed emission limits were not as stringent as they should be. The commenter stated that the MACT floor control efficiencies are appropriate, but that they were inappropriately converted to equivalent concentration limits. The commenter stated that we chose as equivalent to the MACT floor control efficiency the highest concentration from the range of concentrations that are already being achieved and noted that recent court decisions reiterate that we must set the MACT floor at the average already being achieved by the best performing 12 percent of the sources, not at a level at which all sources can easily meet. The commenter urged us to establish emission limits that are appropriately stringent based on the MACT floor control efficiencies.Commenters offered three basic suggestions on how to deal with this perceived problem. Several commenters requested that we collect and examine inlet concentration data from a variety of additional process vents, storage tanks, and transfer operations, and develop emission limits that are more appropriate to the actual inlet concentrations observed in the source category.

In the absence of more data, commenters encouraged us to establish a tiered control efficiency based on flow rate. That would avoid the situation in which already well-controlled scrubbers with high air flow rates incur a high additional cost to achieve the proposed concentration limit. The final suggestion by several commenters was that we allow compliance with either a control efficiency or an emission limit, whichever is less stringent. The commenters stated that such an alternative would relieve the situation where control devices have high removal efficiencies but cannot meet the proposed concentration limits because they have high inlet concentrations.

First, we reject the commenter's opinion that additional data are needed to establish these concentration equivalents. As discussed above, we believe that our data gathering approach was sound and are not convinced that additional data gathering would necessarily result in data that better characterizes the industry.

However, we recognize that none of the data used to establish the concentration equivalents were from storage tanks or transfer operations. We agree that uncontrolled concentrations from storage tanks and transfer operations are likely to be much higher than those for the process vents in our data set because HCl remains in storage tanks and transfer operations long enough for the concentration in the vapor to reach equilibrium with the concentration in the liquid, whereas HCl passes through HCl production units quickly. We would expect that, in many cases, the vapor space in storage tanks and transfer operations will be saturated. As discussed above, we have revised the HCl production facility definition to include production of liquid HCl at a concentration of 30 weight percent or greater. At saturation, the HCl vapor concentration above a 30 weight percent HCl liquid would be around 12,000 ppmv. Applying the existing source MACT floor reduction efficiencies (99 percent for storage tanks and for transfer operations) to this concentration results in an outlet concentration of 120 ppmv. Applying the new source MACT floor reduction efficiencies (99.9 percent for storage vessels and 99 percent for transfer operations) to this concentration results in an outlet concentration of 12 ppmv for storage tanks and 120 ppmv for transfer operations. These are the emission limitations for storage tanks and transfer operations in the final rule.

With one exception, the comments did not indicate that the uncontrolled concentrations used to determine the emission limitations for process vents (2,044 ppmv for HCl and 9,650 ppmv for Cl_2) were inappropriate. Therefore, we applied the revised existing source MACT floor control efficiencies (99 percent for both HCl and Cl_2 emissions from process vents) to these concentrations to obtain 20 ppmv HCl and approximately 100 ppmv Cl_2. Applying the new source MACT floor reduction efficiencies (99.4 percent for HCl emissions from process vents and 99.8 percent for Cl_2 emissions from process vents) to this concentration results in outlet concentrations of 12 ppmv HCl and 20 ppmv Cl_2 (rounded up from 19 ppmv). These are the emission limitations for process vents in the final rule. We believe instances cited by one commenter regarding inlet Cl_2 concentrations in process vents would be addressed by the alternative format in the final rule, which is discussed below.

We disagree with the commenter who believed that the emission limitations were not as stringent as they should be. The percent reduction limits represent the average control level of the best-controlled sources, in accordance with CAA section 112(d)(3). The alternative concentration limits were determined using the appropriate percent reduction limits (which were based on the average of the best-controlled sources) and the available data on control device inlet concentrations. In determining the concentration limits, we made assumptions about these inlet concentrations for each type of emission source (for example, we chose the highest concentration) to consider the variability that will be encountered by the best-performing sources. We strongly disagree that all sources can easily meet these limits, and we believe that significant control measures will be required for facilities to meet the limits.

We do not believe that a tiered control efficiency based on flow rate is appropriate based on the available information, and we did not incorporate such a concept into the final rule. We do recognize, nevertheless, that situations could exist where sources could achieve the MACT floor reduction efficiency but fail to meet the applicable outlet concentration emission limitations. Further, the commenters alleviated our concerns at proposal regarding a percent reduction emission limit. We were concerned that it would be difficult to determine how and where to measure a control efficiency but commenters alleviated this concern by stating that the HCl production unit is distinguishable from the control device, which makes it clear where to measure the control device inlet and outlet in order to calculate a control efficiency over the control device. Therefore, we have incorporated the third suggestion of the commenters (compliance with either a control efficiency or a concentration limit) into the final rule. Owners or operators will have the option of complying with a percent reduction efficiency instead of the outlet concentration limitation. For storage tanks and transfer operations, the percent reduction and concentration limit are equivalent assuming that a 30 weight percent liquid HCl product is stored in the tanks or used in the transfer operations. For process vents, the percent reduction and concentration limits are equivalent assuming process vent outlet concentrations of approximately 2,000 ppmv HCl and 10,000 ppmv Cl_2. These outlet concentrations were assumed in order to take into account the variability of outlet concentrations from HCl process vents. The percent reduction will be measured across the control device, or series of control devices, that follow the absorber production unit, storage tank, or transfer rack. We have added definitions of HCl production unit and control device to ensure that there is no confusion regarding where the percent reduction must be measured.

Comments were received on whether transfer operations and wastewater operations should have emission limitations. We were asked to reconsider the need to set emission limitations for transfer operations because emissions from transfer operations contribute less than one percent of the total emissions from HCl production facilities and because most transfer operations at HCl production facilities are already controlled. There was complete agreement, however, that our decision not to establish emission limits or work practice standards for wastewater treatment operations was appropriate.

We are obligated to set emission limitations at least as stringent as the MACT floor, which we are required to establish based on the average emission limitation achieved by the best-performing existing sources, regardless of the percentage of total emissions attributable to the specific equipment or process. This principle was applied for both transfer operations and wastewater. For transfer operations, the available information is consistent with the commenter's statement that "most transfer operations are already controlled." Therefore, we are required to establish limits requiring control based on the best performing sources. We did not identify any controls for emissions from wastewater, or any process modifications or other pollution prevention type measures that reduce HCl emissions from wastewater. For the reasons discussed in the preamble to the proposed rule, we determined that the new and existing source MACT floors for wastewater were no emissions reductions (66 FR 48181–48182; September 18, 2001). Therefore, the final rule does not require any controls or other measures even though wastewater operations are part of the affected source.

Similarly, in developing the proposed rule, we determined that the MACT floor for leaking equipment is a general plan to detect and repair leaks of HCl because most HCl production facilities are already performing LDAR activities. The response received on these proposed requirements varied.

Several commenters agreed with our basic proposed approach to require the development and implementation of a site-specific plan, rather than to include more formal requirements in the final rule. However, there was great concern regarding the proposed requirement to submit the plan to a permitting authority for review and approval. The commenters stated that they are not aware of any NESHAP that requires LDAR plans to be submitted for approval, and that requiring these plans to be submitted for approval effectively makes them part of a facility's title V operating permit and, consequently, implementation of the initial plan and any changes to the plan would require a formal permit amendment. They claimed that this would be very time consuming and an unnecessary burden. The commenters noted that the proposed rule did not address how the plan is to be approved, and requested that, if the requirement to submit the plan is not eliminated, the EPA provide criteria for permitting authorities to use in reviewing LDAR plans. The commenters asserted that eliminating the requirement to submit LDAR plans alleviates the burdens associated with title V permits and also allows informal or routine maintenance programs to constitute the LDAR plan.

One commenter proposed that we include very simplified requirements in the final rule (*e.g.*, if you detect a leak, repair it within 15 days). Others argued that the EPA should eliminate any and all references to an LDAR plan from the final rule.

First, in light of the fact that most, if not all, HCl production facilities already have programs to reduce emissions from equipment leaks at HCl production facilities, we cannot eliminate the requirement to establish a floor and control emissions from equipment leaks. We also believe it is important that LDAR plans be submitted to the Administrator to facilitate enforcement of the final rule and public access to non-confidential plan requirements, and the final rule retains the proposed requirement for submittal. However, in response to the commenters' concerns, we have eliminated the proposed requirement that LDAR plans be affirmatively approved. Instead, we have clarified that any deficiencies in LDAR plans must be promptly corrected upon request by the Administrator, in order to allow the Administrator to review and approve LDAR plans if the Administrator so chooses.

Moreover, we do not intend that the contents of a LDAR plan itself must be included in a facility's title V permit. Rather, like other requirements of the final rule, the requirements to develop, implement, and submit a LDAR plan to control emissions from equipment leaks—but not the contents of the plan—are applicable requirements under title V and must be reflected in a facility's title V operating permit. We have clarified that you may incorporate by reference into your LDAR plan existing manuals that describe LDAR activities required under other federally enforceable rules, provided that copies of all manuals that are incorporated by reference are submitted to the Administrator. We are also requiring that a current copy of the plan be maintained on site, and that previous versions be maintained on site for a period of 5 years after any revision of the plan.

C. What Are the Performance Testing and Other Compliance Provisions?

Several changes were made in the final rule related to the performance testing and other compliance provisions. First, commenters objected to the proposed annual performance testing requirement. They stated that the initial performance test is sufficient to demonstrate initial compliance and establish operating parameter ranges and that monitoring of those parameters is sufficient to demonstrate continuous compliance. The commenters further stated that performance tests are expensive and provide no additional environmental benefit, and that the cost of annual performance tests was not

accounted for in the cost impact analysis. We agree with the commenters that it is reasonable to perform subsequent performance tests less frequently than annually and have decided to change the requirement for subsequent performance testing from annually to every 5 years or each time a facility's title V permit is renewed, whichever is more frequent.

There was also objection to the proposed requirement that performance testing be conducted and the NOCS submitted before the compliance date, especially since the General Provisions set deadlines for these activities after the compliance date. We have changed the final rule to conform with the General Provisions. The final rule requires the performance test to be completed within 180 days after the compliance date. The final rule does not change the requirement to submit the NOCS within 60 days after completion of the performance test, because this requirement was already consistent with the General Provisions.

Commenters also said that the performance test requirements in the proposed rule are not appropriate for storage tanks and transfer operations, primarily because storage tanks and transfer operations are batch operations that do not operate for long enough time periods to conduct three one-hour sampling runs, which were required by the proposed rule. Further, they cited the relatively high expense of such testing, when compared with the small emissions from those sources. Upon review of these comments and the additional information provided, we decided to allow design evaluations as an alternate means of demonstrating both initial and subsequent compliance for storage tanks and transfer operations that are independently controlled (*e.g.*, not routed to a control device that also controls HCl process vent emissions or any other continuous vent stream). The final rule requires that the design evaluation include documentation demonstrating that the control technique being used achieves the required control efficiency when a liquid HCl product with a concentration of 30 weight percent or greater is being loaded into the storage tank, or a tank truck, rail car, ship, or barge.

For process vents, there were proposed limits for both HCl and Cl_2 emissions. Therefore, there were testing requirements for both pollutants. Several commenters disagreed with the proposed requirement that all affected HCl production facilities must conduct performance tests for Cl_2 from process vents. They maintained that we did not have adequate support to require testing for Cl_2 and that only facilities that burn Cl_2 to produce HCl would have Cl_2 emissions.

First, the docket for the final rule does include numerous supporting references for our assertion that Cl can be emitted from HCl production process vents. Of the 21 facilities for which we had emissions data for HCl production process vents, 16 reported emissions of Cl_2. In fact, 15 of these 16 facilities do not produce HCl in a direct synthesis process. However, we acknowledge that there are a variety of processes that produce HCl, not all of which have the potential to emit Cl_2. Therefore, we have added a provision to the final rule allowing facilities to use process knowledge and previous performance test results to demonstrate that Cl_2 is not likely to be present in a process vent emission stream. That provision allows facilities to be exempted from the requirement to test process vents for Cl_2 provided that the appropriate documentation is submitted with the site-specific test plan.

In response to a request that facilities be allowed to use existing performance test data to demonstrate initial compliance in lieu of conducting an initial performance test, we included an allowance in the final rule allowing facilities to use existing performance test data to demonstrate initial compliance for the emission point on which the test was conducted provided that a three conditions are met. These are: (1) The performance test was conducted within the previous 5-year period; (2) the performance test was conducted using the same test methods required by the final rule; and (3) no modifications have been made to the process or emission point since the previous performance test was conducted or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes.

Several commenters disagreed with the proposed requirement to submit the site-specific monitoring plan for approval, primarily because, the commenters alleged, requiring submission of the plan would result in the details of the plan being included in a facility's title V permit and, the commenters further alleged, would cause a delay in implementation and modification of the plan because of the lengthy time period typical for approval of elements of a title V permit. It was never our intent that the substantive provisions of a site-specific monitoring plan would become part of a facility's title V operating permit. We have changed the final rule to require the site-specific monitoring plan to be developed, implemented, and submitted to the Administrator, but not subject to the Administrator's approval. We also have clarified that any deficiencies in site-specific monitoring plans must be promptly corrected upon request of the Administrator, in order to allow the Administrator to review and approve site-specific monitoring plans if the Administrator chooses to do so. A facility's title V permit must contain the final rule's requirement to develop and implement the plan, which is an applicable requirement under title V, but need not incorporate the substantive provisions of the plan itself, even if the Administrator requests the plan to be submitted. We have also added a requirement that a current copy of the plan be maintained on site, and that previous versions be maintained on site for a period of 5 years after the revision of the plan.

Several commenters stated that the detailed operation, inspection, and maintenance requirements for monitoring devices are unnecessary because the final rule requires facilities to develop their own site-specific monitoring plans and requested that we delete the detailed requirements. We had intended for facilities that monitor pH and liquid flow rate to simply incorporate into their site-specific monitoring plans the specific procedures that we included in the proposed rule rather than develop their own procedures. We included specific procedures in the proposed rule because no performance specification had yet been promulgated for pH or liquid flow monitoring devices. However, we are currently developing performance specifications for continuous monitoring systems that must be followed by owners and operators of all sources subject to standards under 40 CFR part 63. Therefore, we have decided to remove the detailed requirements from 40 CFR 63.9025(b) and (c) of the final rule and wait for the rule that would propose performance specifications for all of 40 CFR part 63. We decided it would be premature to promulgate performance specifications for the final rule when the specifications that would ultimately be promulgated for all of 40 CFR part 63 may be different as a result of possible public comments received on that rulemaking. We did add language in the final rule to require that "all monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately." Therefore, owners and operators will be required by the final rule to follow written performance specifications, but not necessarily the ones that we proposed. In addition, the requirement to develop a site-specific monitoring plan, which must include performance specifications, is retained in the final rule as the mechanism for formalizing the performance specifications.

IV. Summary of the Environmental, Energy, Cost, and Economic Impacts

A. What Are the Air Quality Impacts?

Nationwide baseline emissions are approximately 2,270 Mg/yr (2,520 tpy) of HCl and 640 Mg/yr (700 tpy) of Cl_2. The total annual emissions reductions resulting from the final rule are estimated to be approximately 1,050 Mg/yr (1,155 tpy) of HCl and 390 Mg/yr (430 tpy) of Cl_2.

B. What Are the Non-Air Health, Environmental, and Energy Impacts?

We do not expect that there will be any significant adverse non-air health, environmental, or energy impacts associated with the final standards for HCl production plants. The final rule will result in the generation of additional wastewater from scrubbers. We have calculated this amount to be approximately 103,000 gallons per year per process vent scrubber and 500 gallons per year per storage tank/transfer operation scrubber. We estimate that there are 16 facilities that will install new process vent scrubbers and 32 facilities that will install new storage tank or transfer operation scrubbers.

C. What Are the Cost and Economic Impacts?

The total estimated capital cost of the final rule for HCl production is approximately $23.2 million in the fifth year for new and existing sources. The total estimated annual cost of the final rule is around $8.1 million in the fifth year for new and existing sources, which includes the annualized costs of control and monitoring equipment, other operation and maintenance, and the annual labor to comply with the reporting and recordkeeping requirements of the final rule once the sources are in compliance.

The economic impact analysis, which is a comparison of compliance costs for the affected parent firms with their revenues, shows that the estimated costs associated with the final rule are no more than 1.0 percent of the revenues for any of the 32 affected firms. It is likely that the expected reduction in affected HCl output is no more than 0.01 percent or less from that industry. It should be noted that these results are based on the application of costs from a subset of the affected facilities to the remaining facilities. This is necessary due to incomplete facility-level cost data. Therefore, it is likely that there is no adverse impact expected to HCl producers as a result of implementation of the final rule.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735; October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 2032.2), and a copy may be obtained from Susan Auby by mail at the U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The final information requirements are based on notifications, records, and reports required by the General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized under CAA section 114 (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

According to the ICR, the total 3-year monitoring, reporting, and recordkeeping burden for this collection is 150,156 labor hours, and the annual average burden is 50,052 labor hours. The labor cost over the 3-year period is $6,950,959, or $2,316,986 per year. The annualized capital cost for monitoring equipment is $25,869. Annual operation and maintenance costs are $664,622 over 3 years, averaging $221,541 per year. This estimate includes a one-time plan for demonstrating compliance, annual compliance certification reports, notifications, and recordkeeping.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The OMB control number(s) for the information collection requirements in the final rule will be listed in an amendment to 40 CFR part 9 or 48 CFR chapter 15 in a subsequent **Federal Register** document after OMB approves the ICR.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business whose parent company has a maximum of 1,000 employees according to Small Business Administration (SBA) size standards (NAICS 325181, Alkalies and Chlorine Manufacturing, and NAICS 325188, All Other Basic Inorganic Chemical Manufacturing); (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impact of today's final rule on small entities, I certify that the final rule will not have a significant impact on a substantial number of small entities. In accordance with the RFA, as amended by the SBREFA, 5 U.S.C. 601, *et seq.*, we conducted an assessment of the final rule on small businesses within the industries affected by the final rule. Based on SBA size definitions for the affected industries and reported sales and employment data, we identified 4 affected small businesses out of 32 affected parent businesses (or 13 percent of the total number). In order to estimate impacts to affected small businesses, we conducted a screening analysis that consists of estimates of the annual compliance costs these businesses are expected to occur as compared to their revenues. Since the data are such that costs can only be estimated for a subset of the affected facilities, the available data were used to determine the costs to the facilities outside of this subset. The results of this screening analysis show that all but one of the small businesses are expected to have annual compliance costs of 1 percent or less. For more information, consult the docket for this project.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the final rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative with other than the least costly, most cost-effective, or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, or tribal governments, in the aggregate, or the private sector in any 1 year. The maximum total annual cost of the final rule for any year has been estimated to be approximately $6.2 million. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, we have determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no regulatory requirements that apply to such governments or impose obligations upon them. Therefore, the final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132 (64 FR 43255; August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government, as specified in Executive Order 13132. The standards apply only to HCl producers and do not pre-exempt States from adopting more stringent standards or otherwise regulate State or local governments. Thus, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249; November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045, Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885; April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives that we considered.

The final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

The final rule is not subject to Executive Order 13211 (66 FR 28355; May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards (VCS) in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs us to provide Congress, through annual reports to OMB, with explanations when we do not use available and applicable VCS.

The final rule involves technical standards. We are citing the following methods in the final rule: EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 4, and 26A of 40 CFR part 60, appendix A. Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, and 2G. The search and review results have been documented and are placed in Docket ID No. OAR–2002–0057 for the final rule.

This search for emission measurement procedures identified eight voluntary consensus standards potentially applicable to the final rule. The EPA determined that six of these eight standards were impractical alternatives to EPA test methods for the purposes of the final rule. Therefore, the final rule does not adopt these standards today. The reasons for this determination for the six methods are discussed below.

The standard ISO 10780:1994, "Stationary Source Emissions—Measurement of Velocity and Volume Flowrate of Gas Streams in Ducts," is impractical as an alternative to EPA Method 2 in the final rule. This standard, ISO 10780:1994, recommends the use of L-shaped pitots, which historically have not been recommended by EPA because the S-type design has large openings which are less likely to plug up with dust.

The standard ASTM D3464–96 (2001), "Standard Test Method Average Velocity in a Duct Using a Thermal Anemometer," is impractical as an alternative to EPA Method 2 for the purposes of the final rule primarily because applicability specifications are not clearly defined (*e.g.*, range of gas composition, temperature limits). Also, the lack of supporting quality assurance data for the calibration procedures and specifications, and certain variability issues that are not adequately addressed by the standard limit EPA's ability to make a definitive comparison of the method in these areas.

The European standard EN 1911–1,2,3 (1998), "Stationary Source Emissions—Manual Method of Determination of HCl—Part 1: Sampling of Gases Ratified European Text—Part 2: Gaseous Compounds Absorption Ratified European Text—Part 3: Adsorption Solutions Analysis and Calculation Ratified European Text," is impractical as an alternative to EPA Method 26A. Part 3 of this standard cannot be considered equivalent to EPA Method 26 or 26A because the sample absorbing solution (water) would be expected to capture both HCl and Cl_2 gas, if present, without the ability to distinguish between the two. The EPA Methods 26 and 26A use an acidified absorbing solution to first separate HCl and Cl_2 gas so that they can be selectively absorbed, analyzed, and reported separately. In addition, in EN 1911 the absorption efficiency for Cl_2 gas would be expected to vary as the pH of the water changed during sampling.

Three of the six voluntary consensus standards are impractical alternatives to EPA test methods for the purposes of the final rule because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3154–00, "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," for EPA Methods 1, 2, 2C, and 4; ASTM 3796–90 (1998), "Standard Practice for Calibration of Type S Pitot Tubes," for EPA Method 2; and ASTM E337–84 (1996), "Standard Test Method for Measuring Humidity with a Psychrometer (the Measurement of Wet- and Dry-Bulb Temperatures)," for EPA Method 4.

The following two of the eight voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of the final rule because they are under development by a voluntary consensus body: ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; and ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 1 (and possibly 2).

Section 63.9020 to subpart NNNNN lists the EPA testing methods included in the final rule. Under 40 CFR 63.8 of subpart A, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the final rule must submit a rule report, which includes a copy of the final rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. The final rule is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on April 17, 2003.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: February 28, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63, of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

■ 2. Part 63 is amended by adding subpart NNNNN to read as follows:

Subpart NNNNN—National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

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What This Subpart Covers

§ 63.8980 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) and work practice standards for hazardous air pollutants (HAP) emitted from hydrochloric acid (HCl) production. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations and work practice standards.

§ 63.8985 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate an HCl production facility that produces a liquid HCl product at a concentration of 30 weight percent or greater during its normal operations and is located at, or is part of, a major source of HAP. This does not include HCl production facilities that only produce occasionally liquid HCl product at a concentration of 30 weight percent or greater.

(1) An HCl production facility is the collection of unit operations and equipment associated with the production of liquid HCl product. The HCl production facility begins at the point where a gaseous stream containing HCl enters the HCl production unit. The HCl production facility includes all HCl storage tanks that contain liquid HCl product that is produced in the HCl production unit, with the exceptions noted in paragraph (a)(2) of this section. The HCl production facility also includes all HCl transfer operations that load HCl product produced in the HCl production unit into a tank truck, rail car, ship, or barge, along with the piping and other equipment in HCl service used to transfer liquid HCl product from the HCl production unit to the HCl storage tanks and/or HCl transfer operations. The HCl production facility ends at the point that the liquid HCl product produced in the HCl production unit is loaded into a tank truck, rail car, ship, or barge, at the point the HCl product enters another process on the plant site, or at the point the HCl product leaves the plant site via pipeline.

(2) Storage tanks that are dedicated feedstock tanks for another process and storage tanks that store HCl dedicated for use in wastewater treatment are not considered part of an HCl production facility.

(3) A major source of HAP emissions is any stationary source or group of stationary sources within a contiguous area under common control that emits or has the potential to emit any single HAP at a rate of 9.07 megagrams (10 tons) or more per year or any combination of HAP at a rate of 22.68 megagrams (25 tons) or more per year.

(b) An HCl production facility is not subject to this subpart if it is also subject to NESHAP under one of the subparts listed in paragraphs (b)(1) through (5) of this section.

(1) 40 CFR part 63, subpart S, National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.

(2) 40 CFR part 63, subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling—HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(3) 40 CFR part 63, subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(4) 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors.

(5) 40 CFR part 63, subpart GGG, National Emission Standards for Pharmaceuticals Production.

(c) An HCl production facility is not subject to this subpart if it is located following the incineration of chlorinated waste gas streams, waste liquids, or solid wastes, and the emissions from the HCl production facility are subject to one of the requirements listed in paragraphs (c)(1) through (3) of this section.

(1) Section 63.113(c), subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

(2) Section 264.343(b), Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities (subpart O, Incinerators).

(3) Section 266.107, subpart H, Burning of Hazardous Waste in Boilers and Industrial Furnaces.

(d) An HCl production facility is not subject to this subpart if it produces HCl through the direct synthesis of hydrogen and chlorine and is part of a chlor-alkali facility.

(e) An HCl production facility is not subject to this subpart if it is a research and development facility.

(f) An HCl production facility is not subject to this subpart if all of the gaseous streams containing HCl and chlorine (Cl_2) from HCl process vents, HCl storage tanks, and HCl transfer operations are recycled or routed to another process prior to being discharged to the atmosphere.

§ 63.8990 What parts of my plant does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source at an HCl production facility.

(b) The affected source is the group of one or more HCl production facilities at a plant site that are subject to this subpart, and all associated wastewater operations, which contain the collection of emission streams listed in paragraphs (b)(1) through (5) of this section.

(1) Each emission stream from an HCl process vent.

(2) Each emission stream from an HCl storage tank.

(3) Each emission stream from an HCl transfer operation.

(4) Each emission stream resulting from leaks from equipment in HCl/Cl_2 service.

(5) Each emission stream from HCl wastewater operations. There are no emission limitations or other requirements in this subpart that apply to HCl wastewater operations.

(c) An affected source is a new affected source if you commenced construction of the affected source after September 18, 2001 and you met the applicability criteria of § 63.8985 at the time you commenced construction.

(d) An affected source is reconstructed if you meet the criteria as defined in § 63.2.

(e) An affected source is existing if it is not new or reconstructed.

§ 63.8995 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) or (2) of this section.

(1) If you start up your affected source before April 17, 2003, you must comply with the emission limitations and work practice standards in this subpart no later than April 17, 2003.

(2) If you start up your affected source after April 17, 2003, you must comply with the emission limitations and work practice standards in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission limitations and work practice standards no later than 3 years after April 17, 2003.

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, the provisions in paragraphs (c)(1) and (2) of this section apply.

(1) Any portion of the existing facility that is a new affected source or a new reconstructed source must be in compliance with this subpart upon startup.

(2) All other parts of the source must be in compliance with this subpart no later than the date 3 years after the area source becomes a major source.

(d) You must meet the notification requirements in § 63.9045 according to the schedule in § 63.9045 and in subpart A of this part. Some of the notifications must be submitted before you are required to comply with the emission limitations in this subpart.

Emission Limitations and Work Practice Standards

§ 63.9000 What emission limitations and work practice standards must I meet?

(a) With the exceptions noted in paragraph (c) of this section, you must meet the applicable emission limit and work practice standard in Table 1 to this subpart for each emission stream listed under § 63.8990(b)(1) through (4) that is part of your affected source.

(b) With the exceptions noted in paragraph (c) of this section, you must meet the applicable operating limit in Table 2 to this subpart for each emission stream listed under § 63.8990(b)(1) through (3) that is part of your affected source.

(c) The emission streams listed in paragraphs (c)(1) through (3) of this section are exempt from the emission limitations, work practice standards, and all other requirements of this subpart.

(1) Emission streams from HCl storage tanks that never store liquid HCl product with a concentration of 30 weight percent or greater.

(2) Emission streams from HCl transfer operations that never load liquid HCl product with a concentration of 30 weight percent or greater.

(3) Emission streams from HCl wastewater operations.

General Compliance Requirements

§ 63.9005 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitations and work practice standards in this subpart at all times, except during periods of startup, shutdown, and malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3).

(d) All monitoring equipment shall be installed, calibrated, maintained, and operated according to manufacturer's specifications or other written procedures that provide adequate assurance that the equipment would reasonably be expected to monitor accurately. For each monitoring system required in this section, you must develop, implement, and submit to the Administrator a site-specific monitoring plan that addresses the installation requirements in paragraphs (d)(1) through (3) of this section, the ongoing procedures in paragraphs (d)(4) through (6) of this section, and the requirements in § 63.9025, as applicable. You must submit the plan with your Notification of Compliance Status. Upon request of the Administrator, you must promptly correct any deficiencies in a site-specific monitoring plan and submit the revised plan.

(1) Installation of the continuous monitoring system (CMS) sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device).

(2) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system.

(3) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(4) Ongoing operation and maintenance (O&M) procedures in accordance with the general requirements of §§ 63.8(c)(1), (3), (4)(ii), (7), and (8), and 63.9025.

(5) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d).

(6) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c) and (e)(1) and (2)(i).

Testing and Initial Compliance Requirements

§ 63.9010 By what date must I conduct performance tests?

(a) If you have a new or reconstructed affected source, you must conduct performance tests within 180 calendar days after the compliance date that is specified for your source in § 63.8995(a) and according to the provisions in § 63.7(a)(2).

(b) If you have an existing affected source, you must conduct performance tests within 180 calendar days after the compliance date that is specified for your existing affected source in § 63.8995(b) and according to the provisions in § 63.7(a)(2).

(c) If you commenced construction or reconstruction between September 18, 2001 and April 17, 2003, you must demonstrate initial compliance with either the proposed emission limitation or the promulgated emission limitation no later than 180 calendar days after April 17, 2003 or within 180 calendar days after startup of the source, whichever is later, according to § 63.7(a)(2)(ix).

§ 63.9015 When must I conduct subsequent performance tests?

(a) You must conduct all applicable performance tests according to the procedures in § 63.9020 on the earlier of your title V operating permit renewal or within 5 years of issuance of your title V permit.

(b) You must report the results of subsequent performance tests within 60 days after the completion of the test. This report should also verify that the operating limits for your affected source have not changed or provide documentation of revised operating limits established as specified in Table 2 to this subpart. The reports for all subsequent performance tests should include all applicable information required in § 63.9050.

§ 63.9020 What performance tests and other procedures must I use?

(a) You must conduct each performance test in Table 3 to this subpart that applies to you as directed in paragraphs (a)(1) through (4) of this section, except as noted in paragraphs (b) and (c) of this section.

(1) You must develop a site-specific test plan according to § 63.7(c)(2) and conduct each performance test according to the site-specific test plan.

(2) You must conduct each performance test under representative conditions according to the requirements in § 63.7(e)(1) and under the specific conditions that this subpart specifies in Table 3.

(3) You may not conduct performance tests during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(4) You must conduct at least three separate test runs for each performance test required in this section, as specified in § 63.7(e)(3). Each test run must last at least 1 hour.

(b) If you are complying with a percent reduction emission limitation, you must determine the percent reduction in accordance with paragraphs (b)(1) and (2) of this section.

$$E_i = K_2(C_i M_i)Q_i \quad \text{Equation 1}$$

$$E_o = K_2(C_o M_o)Q_o \quad \text{Equation 2}$$

(1) Calculate the mass rate of either HCl or chlorine using Equations 1 and 2 of this section:

where:

C_i, C_o = Concentration of HCl or Cl_2 in the gas stream at the inlet and outlet of the control device(s), respectively, dry basis, parts per million by volume.

E_i, E_o = Mass rate of HCl or Cl_2 at the inlet and outlet of the control device(s), respectively, dry basis, kilogram per hour.

M_i, M_o = Molecular weight of HCl or Cl_2 at the inlet and outlet of the control device(s), respectively, gram/gram-mole.

Q_i, Q_o = Flow rate of gas stream at the inlet and outlet of the control device(s), respectively, dry standard cubic meter per minute.

K_2 = Constant, 2.494×10^{-6} (parts per million) [1] (gram-mole per standard cubic meter) (kilogram/gram) (minute/hour), where standard temperature (gram-mole per standard cubic meter) is 20°C.

(2) Calculate the percent reduction of HCl or Cl_2 using Equation 3 of this section:

$$R = \frac{E_i - E_o}{E_i}(100) \quad \text{Equation 3}$$

where:

R = Control efficiency of control device(s).

E_i = Mass rate of HCl or Cl_2 to the inlet to the control device(s), kilograms per hour.

E_o = Mass rate of HCl or Cl_2 at the outlet of the control device(s), kilograms per hour.

(c) You may prepare a design evaluation in lieu of conducting a performance test for HCl storage tanks and HCl transfer operations that are not routed to a control device that also controls HCl process vent emissions or any other continuous vent stream. The design evaluation shall include documentation demonstrating that the control technique being used achieves the required control efficiency when a liquid HCl product with a concentration of 30 weight percent or greater is being loaded into the storage tank, or a tank truck, rail car, ship, or barge.

(1) If you use a caustic scrubber control device or a water scrubber control device, the design evaluation shall address the vent stream composition, constituent concentrations, liquid-to-vapor ratio, scrubbing liquid flow rate and concentration, temperature, and the reaction kinetics of the constituents with the scrubbing liquid. The design evaluation shall establish the design exhaust vent concentration level and shall include the additional information in paragraphs (c)(1)(i) and (ii) of this section for trays and a packed column scrubber.

(i) Type and total number of theoretical and actual trays.

(ii) Type and total surface area of packing for entire column and for individual packed sections, if the column contains more than one packed section.

(2) If you use any other control device, the design evaluation shall address the composition and HAP concentration of the vent stream immediately preceding the control device, as well as other parameters necessary to demonstrate that the control technique being used achieves the required control efficiency when a liquid HCl product with a concentration of 30 weight percent or greater is being loaded into the storage tank, or a tank truck, rail car, ship, or barge.

(d) You are not required to conduct a performance test for an emission point for which a performance test was conducted within the previous 5-year period, using the same test methods specified in this section and for which either no deliberate process changes have been made since the test, or the owner or operator can demonstrate that the results of the performance test, with or without adjustments, reliably demonstrate compliance despite process changes. The operating limits reported under the previous performance test shall be sufficient to meet the monitoring requirements in this subpart.

(e) You must establish all operating limits with which you will demonstrate continuous compliance with the applicable emission limits in Table 1 to this subpart as described in paragraphs (e)(1) through (3) of this section.

(1) If you use a caustic scrubber control device or water scrubber control device and you conduct a performance test, you must establish operating limits according to paragraphs (e)(1)(i) and (ii) of this section. If a series of control devices are used, you must establish separate operating limits for each device.

(i) You must establish the minimum value as the operating limit for scrubber inlet liquid or recirculating liquid flow rate, as appropriate. The minimum value shall be based on the scrubber inlet liquid or recirculating liquid flow rate, as appropriate, values measured during the performance test.

(ii) You must establish the minimum and maximum values as the operating limits for scrubber effluent pH. The minimum and maximum values shall be based on the scrubber effluent pH values measured during the performance test.

(2) If you use any other control device and you conduct a performance test, you must establish operating limits according to your site-specific test plan submitted in accordance with § 63.7(c)(2)(i). The operating limits shall be based on the operating parameter values measured during the performance test. If a series of control devices are used, you must establish separate operating limits for each device.

(3) If you do not conduct a performance test for a HCl storage tank or HCl transfer operation, you must use engineering assessments and/or manufacturer's recommendations to establish the operating limits specified in paragraphs (e)(1)(i) and (ii), or (e)(2), of this section.

(4) As needed in applicability determinations, you must use ASTM E224 to determine the HCl concentration in liquid products.

§ 63.9025 What are my monitoring installation, operation, and maintenance requirements?

(a) For each operating parameter that you are required by § 63.9020(d) to monitor, you must install, operate, and maintain each CMS according to the requirements in paragraphs (a)(1) through (6) of this section.

(1) You must operate your CMS and collect data at all times the process is operating.

(2) You must collect data from at least four equally spaced periods each hour.

(3) For at least 75 percent of the operating hours in a 24-hour period, you must have valid data (as defined in your site-specific monitoring plan) for at least 4 equally spaced periods each hour.

(4) For each hour that you have valid data from at least four equally spaced periods, you must calculate the hourly average value using all valid data or, where data are collected from an automated CMS, using at least one measured value per minute if measured more frequently than once per minute.

(5) You must calculate the daily average using all of the hourly averages calculated according to paragraph (a)(4) of this section for the 24-hour period.

(6) You must record the results for each inspection, calibration, and validation check as specified in your site-specific monitoring plan.

(b) For scrubber control devices, you may request approval, in accordance with § 63.8(f), to monitor parameters other than those specified in § 63.9020(e). In accordance with § 63.8(f), you must submit a monitoring plan to the Administrator and the plan must meet the requirements in paragraphs (a) and (b)(1) through (3) of this section. You must conduct monitoring in accordance with the plan submitted to the Administrator unless comments received from the Administrator require an alternate monitoring scheme.

(1) Identify the operating parameter to be monitored to ensure that the control or capture efficiency measured during the initial compliance test is maintained.

(2) Discuss why this parameter is appropriate for demonstrating ongoing compliance.

(3) Identify the specific monitoring procedures.

(c) For any other control device, you must ensure that the CMS is operated according to a monitoring plan submitted to the Administrator as required by § 63.8(f). The monitoring plan must meet the requirements in paragraphs (a) and (c)(1) through (3) of this section. You must conduct monitoring in accordance with the plan submitted to the Administrator, as amended, unless comments received from the Administrator require an alternate monitoring scheme.

(1) Identify the operating parameter to be monitored to ensure that the control or capture efficiency measured during the initial compliance test is maintained.

(2) Discuss why this parameter is appropriate for demonstrating ongoing compliance.

(3) Identify the specific monitoring procedures.

§ 63.9030 How do I demonstrate initial compliance with the emission limitations and work practice standards?

(a) You must demonstrate initial compliance with each emission limit and work practice standard that applies to you according to Table 4 to this subpart.

(b) You must establish each site-specific operating limit in Table 2 to this subpart that applies to you according to the requirements in § 63.9020 and Table 3 to this subpart.

(c) You must submit the Notification of Compliance Status containing the results of the initial compliance demonstration according to the requirements in § 63.9045(e).

Continuous Compliance Requirements

§ 63.9035 How do I monitor and collect data to demonstrate continuous compliance?

(a) You must monitor and collect data according to this section.

(b) If you use a caustic scrubber or a water scrubber/absorber to meet the emission limits in Table 1 to this subpart, you must keep the records specified in paragraphs (b)(1) and (2) of this section to support your compliance demonstration.

(1) Records of daily average scrubber inlet liquid or recirculating liquid flow rate, as appropriate.

(2) Records of the daily average scrubber effluent pH.

(c) If you use any other control device to meet the emission limits in Table 1 to this subpart, you must keep records of the operating parameter values identified in your monitoring plan in § 63.9025(c) to support your compliance demonstration.

(d) Except for monitor malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must monitor continuously (or collect data at all required intervals) at all times that the affected source is operating. This includes periods of startup, shutdown, or malfunction when the affected source is operating. A monitoring malfunction includes, but is not limited to, any sudden, infrequent, not reasonably preventable failure of the monitoring equipment to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(e) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities in data averages and calculations used to report emission or operating levels, nor may

such data be used in fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

§ 63.9040 How do I demonstrate continuous compliance with the emission limitations and work practice standards?

(a) You must demonstrate continuous compliance with each emission limit and work practice standard in Table 1 to this subpart that applies to you according to Table 4 to this subpart.

(b) You must demonstrate continuous compliance with each operating limit in Table 2 of this subpart that applies to you according to Tables 4 and 5 to this subpart.

(c) You must report each instance in which you did not meet an emission limit, work practice standard or operating limit in Table 1 or 2 to this subpart, respectively, that applies to you. This includes periods of startup, shutdown, and malfunction. These instances are deviations from the emission limitations in this subpart. These deviations must be reported according to the requirements in § 63.9050.

(d) During periods of startup, shutdown, or malfunction, you must operate in accordance with the startup, shutdown, and malfunction plan.

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of startup, shutdown, or malfunction are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, or malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.9045 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.7(b) and (c), 63.8(f)(4) and (6), and 63.9 (b) through (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before April 17, 2003, you must submit an Initial Notification not later than 120 calendar days after April 17, 2003.

(c) As specified in § 63.9(b)(4), if you start up your new or reconstructed affected source on or after April 17, 2003, you must submit the application for construction or reconstruction required by § 63.9(b)(1)(iii) in lieu of the initial notification.

(d) You must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin, as required in § 63.7(b)(1).

(e) When you conduct a performance test as specified in Table 3 to this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii).

(f) You must submit the Notification of Compliance Status, including the performance test results, before the close of business on the 60th calendar day following the completion of the performance test according to § 63.10(d)(2).

(g) The Notification of Compliance Status must also include the information in paragraphs (g)(1) through (2) of this section that applies to you.

(1) Each operating parameter value averaged over the full period of the performance test (for example, average pH).

(2) Each operating parameter range within which HAP emissions are reduced to the level corresponding to meeting the applicable emission limits in Table 1 to this subpart.

§ 63.9050 What reports must I submit and when?

(a) You must submit each report in Table 6 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report according to paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8995 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.8995.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.8995.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6 (a)(3)(iii)(A) or 71.6 (a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the following information in paragraphs (c)(1) through (7) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there are no deviations from any emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period.

(6) If there were no periods during which the CMS was out-of-control in accordance with the monitoring plan, a statement that there were no periods during which the CMS was out-of-control during the reporting period.

(7) Verification that you continue to use the equipment LDAR plan and information that explains any periods when the procedures in the plan were not followed and the corrective actions were not taken.

(d) For each deviation from an emission limitation occurring at an affected source where you are using a CMS to comply with the emission limitation in this subpart, you must include the information in paragraphs (c)(1) through (6) of this section and the following information in paragraphs (d)(1) through (9) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(8) A brief description of the process units.

(9) A description of any changes in CMS, processes, or controls since the last reporting period.

(e) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 6 to this subpart along with, or as part of, the semiannual monitoring report required by 40 CFR 70.6(a)(3)(iii)(A) or 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any emission limitation in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permit authority.

(f) For each startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan you must submit an immediate startup, shutdown and malfunction report. Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report according to paragraphs (f)(1) and (2) of this section.

(1) An initial report containing a description of the actions taken for the event must be submitted by fax or telephone within 2 working days after starting actions inconsistent with the plan.

(2) A follow-up report containing the information listed in § 63.10(d)(5)(ii) must be submitted within 7 working days after the end of the event unless you have made alternative reporting arrangements with the permitting authority.

§ 63.9055 What records must I keep?

(a) You must keep a copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, as required in § 63.10(b)(2)(xiv).

(b) You must also keep the following records specified in paragraphs (b)(1) through (5) of this section.

(1) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(2) Records of performance tests as required in § 63.10(b)(2)(viii).

(3) Records of operating parameter values that are consistent with your monitoring plan.

(4) Records of the date and time that each deviation started and stopped and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) Copies of the current versions of the site-specific monitoring plan and the equipment LDAR plan. You also must submit copies of these plans and any revisions or updates to the Administrator for comment only (not for approval).

§ 63.9060 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious inspection and review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site, or readily accessible from on site through a computer or other means, for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records off site for the remaining 3 years. Records may be maintained in hard copy or computer-readable format including, but not limited to, on paper, microfilm, hard disk drive, floppy disk, compact disk, magnetic tape, or microfiche.

(d) You must keep each previous (*i.e.*, superseded) version of the site-specific monitoring plan and the LDAR plan for a period of 5 years after revision of the plan. If, at any time after adoption of a site-specific monitoring plan or an LDAR plan, your affected source ceases operation or is otherwise no longer subject to the provisions of this subpart, you must retain a copy of the most recent plan for 5 years from the date your source ceases operation or is no longer subject to this subpart.

Other Requirements and Information

§ 63.9065 What parts of the General Provisions apply to me?

(a) Table 7 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.9070 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, as well as U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities in paragraphs (c)(1) through (4) of this section that cannot be delegated to State, local, or tribal agencies are as follows.

(1) Approval of alternatives to requirements in §§ 63.8980, 63.8985, 63.8990, 63.8995, and 63.9000.

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9075 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act in 40 CFR 63.2 and in this section as follows:

Caustic scrubber control device means any add-on device that mixes an aqueous stream or slurry containing a caustic substance with the exhaust gases from an HCl process vent, HCl storage

tank, or HCl transfer operation to control emissions of HCl and/or Cl_2.

Chlor-alkali facility means a facility where chlorine and sodium or potassium hydroxide are produced as co-products and hydrogen is produced as a by-product in an electrolytic process using either mercury cells, diaphragm cells, or membrane cells.

Continuous monitoring system, for purposes of the final rule, means liquid flow monitoring devices that meet the performance specifications given in § 63.9025(a); or pH monitoring devices that meet the performance specifications given in § 63.9025(a); or other control devices as mentioned in 63.9025(a) and (b) or § 63.9025(a) and (c).

Control device means an add-on device used to reduce HCl and/or Cl_2 emissions from an HCl process vent, HCl storage tank, or HCl transfer operation at an HCl production facility. An HCl production unit is not a control device.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation or work practice standard;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation or work practice standard in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is permitted by this subpart.

Emission limitation means any emission limit or operating limit.

Emission stream means a gaseous stream from an HCl process vent, an HCl storage tank, an HCl transfer operation, leaking equipment in HCl service, or HCl wastewater operations that is discharged to the atmosphere. Gaseous streams from HCl process vents, HCl storage tanks, and HCl transfer operations that are routed to another process or recycled for reaction or other use (*i.e.*, for pH control) of the HCl and/or Cl_2 are not emission streams. Gaseous streams from HCl transfer operations that are vapor balanced to an HCl storage tank subject to this subpart are not emission streams.

Equipment in HCl service means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system that contains 30 weight percent or greater of liquid HCl or 5 weight percent or greater of gaseous HCl at any time.

HCl process vent means the point of discharge to the atmosphere, or point of entry into a control device, of a gaseous stream that originates from an HCl production unit. The following points of discharge are not HCl process vents:

(1) A leak from equipment in HCl service subject to this subpart.

(2) An exit from a control device used to comply with this subpart.

(3) An HCl storage tank vent or HCl transfer operation vent subject to this subpart.

(4) A HCl wastewater operation vent subject to this subpart.

(5) A point of discharge from a relief valve.

(6) A point of discharge from an analyzer.

HCl production facility is defined in § 63.8985(a)(i).

HCl production unit means an absorber or other vessel in which a liquid HCl product is manufactured by absorbing gaseous HCl into either water or an aqueous HCl solution.

HCl storage tank means a tank or other vessel that is used to store liquid HCl product. Tanks or vessels permanently attached to motor vehicles (such as trucks, railcars, barges, or ships) are not HCl storage tanks.

HCl transfer operation means the loading, into a tank truck, railcar, ship, or barge, of liquid HCl from a transfer (or loading) rack (as defined in this section) for which the predominant use is liquid HCl. The predominant use of a transfer (or loading) rack is the material that is loaded by the transfer (or loading) rack in the greatest amount.

HCl wastewater operation means an operation that handles and processes water containing HCl that is discarded from an HCl production facility.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, or any combination thereof.

Research and development facility means laboratory and pilot plant operations whose primary purpose is to conduct research and development into new processes and products, where the operations are under close supervision of technically trained personnel, and the operations are not engaged in the manufacture of products for commercial sale, except in a *de minimis* manner.

Responsible official means responsible official as defined in 40 CFR 70.2 of this chapter.

Transfer (or loading) rack means the collection of loading arms and loading hoses, at a single loading rack, that are used to fill tank trucks, railcars, ships, and/or barges. Transfer rack includes the associated pumps, meters, shutoff valves, relief valves, and other piping and valves.

Vapor balanced means connected to a piping system that is designed to collect vapors displaced from tank trucks, rail cars, ships, or barges during loading, and to route the collected vapors to the storage vessel from which the liquid being loaded originated, or to another storage vessel connected by a common header.

Vent means the point of discharge to the atmosphere or to a control device from either an HCl process vent, an HCl storage tank, or an HCl transfer operation.

Water scrubber control device means any add-on device that mixes an aqueous stream not containing a caustic substance with the exhaust gases from an HCl process vent, HCl storage tank, or HCl transfer operation to control emissions of HCl and/or Cl_2.

Tables to Subpart NNNNN of Part 63

As stated in § 63.9000(a), you must comply with the following emission limits and work practice standards for each emission stream that is part of an affected source:

TABLE 1 TO SUBPART NNNNN OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS

For each. . .	You must meet the following emission limit and work practice standard.
1. Emission stream from an HCl process vent at an existing source.	a. Reduce HCl emissions by 99 percent or greater or to an outlet concentration of 20 ppm by volume or less; and

TABLE 1 TO SUBPART NNNNN OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

For each. . .	You must meet the following emission limit and work practice standard.
	b. Reduce Cl_2 emissions by 99 percent or greater or to an outlet concentration of 100 ppm by volume or less.
2. Emission stream from an HCl storage tank at an existing source.	Reduce HCl emissions by 99 percent or greater or to an outlet concentration of 120 ppm by volume or less.
3. Emission stream from an HCl transfer operation at an existing source.	Reduce HCl emissions by 99 percent or greater or to an outlet concentration of 120 ppm by volume or less.
4. Emission stream from leaking equipment in HCl/Cl_2 service at existing sources.	a. Prepare and operate at all times according to an equipment LDAR plan that describes in detail the measures that will be put in place to detect leaks and repair them in a timely fashion; and b. Submit the plan to the Administrator *for comment only* with your notification of Compliance Status; and c. You may incorporate by reference in such plan existing manuals that describe the measures in place to control leaking equipment emissions required as part of other federally enforceable requirements, provided that all manuals that are incorporated by reference are submitted to the Administrator.
5. Emission stream from an HCl process vent at a new source.	a. Reduce HCl emissions by 99.4 percent or greater or to an outlet concentration of 12 ppm by volume or less; and b. Reduce Cl_2 emissions by 99.8 percent or greater or to an outlet concentration of 20 ppm by volume or less.
6. Emission stream from an HCl storage tank at a new source.	Reduce HCl emissions by 99.9 percent or greater or to an outlet concentration of 12 ppm by volume or less.
7. Emission stream from an HCl transfer operation at a new source.	Reduce HCl emissions by 99 percent or greater or to an outlet concentration of 120 ppm by volume or less.

As stated in § 63.9000(b), you must comply with the following operating limits for each emission stream that is part of an affected source that is vented to a control device:

TABLE 2 TO SUBPART NNNNN OF PART 63.—OPERATING LIMITS

For each . . .	You must . . .
1. Caustic scrubber or water scrubber/absorber	a. Maintain the daily average scrubber inlet liquid or recirculating liquid flow rate, as appropriate, above the operating limit; and b. Maintain the daily average scrubber effluent pH within the operating limits; or c. Instead of a. and b., maintain your operating parameter(s) within the operating limits established according to your monitoring plan established under § 63.8(f).
2. Other type of control device to which HCl emissions are ducted.	Maintain your operating parameter(s) within the limits established during the performance test and according to your monitoring plan.

As stated in § 63.9020, you must comply with the following requirements for performance tests for HCl production for each affected source:

TABLE 3 TO SUBPART NNNNN OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR HCL PRODUCTION AFFECTED SOURCES

For each HCl process vent and each HCl storage tank and HCl transfer operation for which you are conducting a performance test, you must . . .	Using . . .	Additional Information . . .
1. Select sampling port location(s) and the number of traverse points.	a. Method 1 or 1A in appendix A to 40 CFR part 60 of this chapter.	i. If complying with a percent reduction emission limitation, sampling sites must be located at the inlet and outlet of the control device prior to any releases to the atmosphere (or, if a series of control devices are used, at the inlet of the first control device and at the outlet of the final control device prior to any releases to the atmosphere); or ii. If complying with an outlet concentration emission limitation, the sampling site must be located at the outlet of the final control device and prior to any releases to the atmosphere.

TABLE 3 TO SUBPART NNNNN OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR HCL PRODUCTION AFFECTED SOURCES—Continued

For each HCl process vent and each HCl storage tank and HCl transfer operation for which you are conducting a performance test, you must . . .	Using . . .	Additional Information . . .
2. Determine velocity and volumetric flow rate ..	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 of this chapter.	
3. Determine gas molecular weight	a. Not applicable	i. Assume a molecular weight of 29 (after moisture correction) for calculation purposes.
4. Measure moisture content of the stack gas ...	Method 4 in appendix A to 40 CFR part 60 of this chapter.	
5. Measure HCl concentration and Cl_2 concentration from HCl process vents.	a. Method 26A in Appendix A to 40 CFR part 60 of this chapter.	i. An owner or operator may be exempted from measuring the Cl_2 concentration from an HCl process vent provided that a demonstration that Cl_2 is not likely to be present in the stream is submitted as part of the site-specific test plan required by §63.9020(a)(2). This demonstration may be based on process knowledge, engineering judgement, or previous test results.
6. Establish operating limits with which you will demonstrate continuous compliance with the emission limits in Table 1 to this subpart, in accordance with §63.9020(e)(1) or (2).		

As stated in §63.9030, you must comply with the following requirements to demonstrate initial compliance with the applicable emission limits for each affected source vented to a control device and each work practice standard:

TABLE 4 TO SUBPART NNNNN OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

For each . . .	For the following emission limit or work practice standard . . .	You have demonstrated initial compliance if . . .
1. HCl process vent and each HCl storage tank and HCl transfer operation for which you are conducting a performance test.	a. In Table 1 to this subpart	i. The average percent reduction of HCl and Cl_2 (if applicable), measured over the period of the performance test conducted according to Table 3 of this subpart and determined in accordance with §63.9020(b), is greater than or equal to the applicable percent reduction emission limitation specified in Table 1 of this subpart; or ii. The average HCl and Cl_2 (if applicable) concentration, measured over the period of the performance test conducted according to Table 3 of this subpart, is less than or equal to the applicable concentration emission limitation specified in Table 1 of this subpart.
2. HCl storage tank and HCl transfer operation for which you are preparing a design evaluation in lieu of conducting a performance test.	a. In Table 1 to this subpart	i. The percent reduction of HCl, demonstrated by a design evaluation prepared in accordance with §63.9020(c), is greater than or equal to the applicable percent reduction emission limitation specified in Table 1 of this subpart; or ii. The HCl concentration, demonstrated by a design evaluation prepared in accordance with §63.9020(c), is less than or equal to the applicable concentration emission limitation specified in Table 1 of this subpart.
3. Leaking equipment	a. In Table 1 to this subpart	i. You certify in your Notification of Compliance Status that you have developed and implemented your LDAR plan and submitted it to the Administrator **for comment only.**

As stated in §63.9040, you must comply with the following requirements to demonstrate continuous compliance with the applicable emission limitations for each affected source vented to a control device and each work practice standard:

TABLE 5 TO SUBPART NNNNN OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

For each . . .	For the following emission limitation and work practice standard . . .	You must demonstrate continuous compliance by . . .
1. Affected source using a caustic scrubber or water scrubber/absorber.	a. In Tables 1 and 2 to this subpart	i. Collecting the scrubber inlet liquid or recirculating liquid flow rate, as appropriate, and effluent pH monitoring data according to §63.9025, consistent with your monitoring plan; and ii. Reducing the data to 1-hour and daily block averages according to the requirements in §63.9025; and iii. Maintaining the daily average scrubber inlet liquid or recirculating liquid flow rate, as appropriate, above the operating limit; and iv. Maintaining the daily average scrubber effluent pH within the operating limits.
2. Affected source using any other control device.	a. In Tables 1 and 2 to this subpart	i. Conducting monitoring according to your monitoring plan established under §63.8(f) in accordance with §63.9025(c); and ii. Collecting the parameter data according to your monitoring plan established under §63.8(f); and iii. Reducing the data to 1-hour and daily block averages according to the requirements in §63.9025; and iv. Maintaining the daily average parameter values within the operating limits established according to your monitoring plan established under §63.8(f).
3. Leaking equipment affected source	a. In Table 1 to this subpart	i. Verifying that you continue to use a LDAR plan; and ii. Reporting any instances where you deviated from the plan and the corrective actions taken.

As stated in §63.9050(a), you must submit a compliance report that includes the information in §63.9050(c) through (e) as well as the information in the following table. You must also submit startup, shutdown, and malfunction (SSM) reports according to the requirements in §63.9050(f) and the following:

TABLE 6 TO SUBPART NNNNN OF PART 63.—REQUIREMENTS FOR REPORTS

If...	Then you must submit a report or statement that:
1. There are no deviations from any emission limitations that apply to you.	There were no deviations from any emission limitations that apply to you during the reporting period.
2. There were no periods during which the operating parameter monitoring systems were out-of-control in accordance with the monitoring plan.	There were no periods during which the CMS were out-of-control during the reporting period.
3. There was a deviation from any emission limitation during the reporting period.	Contains the information in §63.9050(d).
4. There were periods during which the operating parameter monitoring systems were out-of-control in accordance with the monitoring plan.	Contains the information in §63.9050(d).
5. There was a SSM during the reporting period that is not consistent with your SSM plan.	Contains the information in §63.9050(f).
6. There were periods when the procedures in the LDAR plan were not followed.	Contains the information in §63.9050(c)(7).

As stated in §63.9065, you must comply with the applicable General Provisions requirements according to the following:

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN

Citation	Requirement	Applies to Subpart NNNNN	Explanation
§ 63.1	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are found in § 63.9075.
§ 63.3	Units and abbreviations	Yes.	
§ 63.4	Prohibited activities; compliance date; circumvention, severability.	Yes.	
§ 63.5	Construction/reconstruction applicability; applications; approvals.	Yes.	
§ 63.6(a)	Compliance with standards and maintenance requirements—applicability.	Yes.	
§ 63.6(b)(1)–(4)	Compliance dates for new or reconstructed sources.	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(b)(5)	Notification if commenced construction or reconstruction after proposal.	Yes.	
§ 63.6(b)(6)	[Reserved]	Yes.	
§ 63.6(b)(7)	Compliance dates for new or reconstructed area sources that become major.	Yes.	§ 63.8995 specifies compliance dates.
§ 63.6(c)(1)–(2)	Compliance dates for existing sources	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(c)(3)–(4)	[Reserved]	Yes.	
§ 63.6(c)(5)	Compliance dates for existing area sources that become major.	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(d)	[Reserved]	Yes.	
§ 63.6(e)(1)–(2)	Operation and maintenance requirements.	Yes.	
§ 63.6(e)(3)	SSM plans	Yes.	
§ 63.6(f)(1)	Compliance except during SSM	Yes.	
§ 63.6(f)(2)–(3)	Methods for determining compliance	Yes.	
§ 63.6(g)	Use of an alternative nonopacity emission standard.	Yes.	
§ 63.6(h)	Compliance with opacity/visible emission standards.	No	Subpart NNNNN does not specify opacity or visible emission standards.
§ 63.6(i)	Extension of compliance with emission standards.	Yes.	
§ 63.6(j)	Presidential compliance exemption	Yes.	
§ 63.7(a)(1)–(2)	Performance test dates	Yes	Except for existing affected sources as specified in § 63.9010(b).
§ 63.7(a)(3)	Administrator's Clean Air Act section 114 authority to require a performance test.	Yes.	
§ 63.7(b)	Notification of performance test and rescheduling.	Yes.	

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—Continued

Citation	Requirement	Applies to Subpart NNNNN	Explanation
§ 63.7(c)	Quality assurance program and site-specific test plans.	Yes.	
§ 63.7(d)	Performance testing facilities	Yes.	
§ 63.7(e)(1)	Conditions for conducting performance tests.	Yes.	
§ 63.7(f)	Use of an alternative test method	Yes.	
§ 63.7(g)	Performance test data analysis, recordkeeping, and reporting.	Yes.	
§ 63.7(h)	Waiver ofperformance tests	Yes.	
§ 63.8(a)(1)–(3)	Applicability of monitoring requirements.	Yes	Additional monitoring requirements are found in § 63.9005(d) and 63.9035.
§ 63.8(a)(4)	Monitoring with flares	No	Subpart NNNNN does not refer directly or indirectly to § 63.11.
§ 63.8(b)	Conduct of monitoring and procedures when there are multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1)–(3)	Continuous monitoring system O&M	Yes	Applies as modified by § 63.9005(d).
§ 63.8(c)(4)	Continuous monitoring system requirements during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	Yes	Applies as modified by § 63.9005(d).
§ 63.8(c)(5)	Continuous opacity monitoring system (COMS) minimum procedures.	No	Subpart NNNNN does not have opacity or visible emmission standards.
§ 63.8(c)(6)	Zero and high level calibration checks	Yes	Applies as modified by § 63.9005(d).
§ 63.8(c)(7)(8)	Out-of-control periods, including reporting.	Yes.	
§ 63.8(d)–(e)	Quality control program and CMS performance evaluation.	No	Applies as modified by § 63.9005(d).
§ 63.8(f)(1)–(5)	Use of an alternative monitoring method.	Yes.	
§ 63.8(f)(6)	Alternative to relative accuracy test	No	Only applies to sources that use continuous emissions monitoring systems (CEMS).
§ 63.8(g)	Data reduction	Yes	Applies as modified by § 63.9005(d).
§ 63.9(a)	Notification requirements—applicability	Yes.	
§ 63.9(b)	Initial notifications	Yes	Except § 63.9045(c) requires new or reconstructed affected sources to submit the application for construction or reconstruction required by § 63.9(b)(1) (iii) in lieu of the initial notification.
§ 63.9(c)	Request for compliance extension	Yes.	
§ 63.9(d)	Notification that a new source is subject to special compliance requirements.	Yes.	
§ 63.9(e)	Notification of performance test	Yes.	

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—Continued

Citation	Requirement	Applies to Subpart NNNNN	Explanation
§63.9(f)	Notification of visible emissions/opacity test.	No	Subpart NNNNN does not have opacity or visible emission standards.
§63.9(g)(1)	Additional CMS notifications—date of CMS performance evaluation.	Yes.	
§63.9(g)(2)	Use of COMS data	No	Subpart NNNNN does not require the use of COMS.
§63.9(g)(3)	Alternative to relative accuracy testing	No	Applies only to sources with CEMS.
§63.9(h)	Notification of compliance status	Yes.	
§63.9(i)	Adjustment of submittal deadlines	Yes.	
§63.9(j)	Change in previous information	Yes.	
§63.10(a)	Recordkeeping/reporting applicability	Yes.	
§63.10(b)(1)	General recordkeeping requirements	Yes	§§63.9055 and 63.9060 specify additional recordkeeping requirements.
§63.10(b)(2)(i)–(xi)	Records related to SSM periods and CMS.	Yes.	
§63.10(b)(2)(xii)	Records when under waiver	Yes.	
§63.10(b)(2)(xiii)	Records when using alternative to relative accuracy test.	No	Applies only to sources with CEMS.
§63.10(b)(2)(xiv)	All documentation supporting initial notification and notification of compliance status.	Yes.	
§63.10(b)(3)	Recordkeeping requirements for applicability determinations.	Yes.	
§63.10(c)	Additional recordkeeping requirements for sources with CMS.	Yes	Applies as modified by §63.9005(d).
§63.10(d)(1)	General reporting requirements	Yes	§63.9050 specifies additional reporting requirements.
§63.10(d)(2)	Performance test results	Yes.	
§63.10(d)(3)	Opacity or visible emissions observations.	No	Subpart NNNNN does not specify opacity or visible emission standards.
§63.10(d)(4)	Progress reports for sources with compliance extensions.	Yes.	
§63.10(d)(5)	SSM reports	Yes.	
§63.10(e)(1)	Additional CMS reports—general	Yes	Applies as modified by §63.9005(d).
§63.10(e)(2)(i)	Results of CMS performance evaluations.	Yes	Applies as modified by §63.9005(d).
§63.10(e)(2)(ii)	Results of COMS performance evaluations.	No	Subpart NNNNN does not require the use of COMS.
§63.10(e)(3)	Excess emissions/CMS performance reports.	Yes.	
§63.10(e)(4)	Continuous opacity monitoring system data reports.	No	Subpart NNNNN does not require the use of COMS.
§63.10(f)	Recordkeeping/reporting waiver	Yes.	

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—Continued

Citation	Requirement	Applies to Subpart NNNNN	Explanation
§63.11	Control device requirements—applicability.	No	Facilities subject to subpart NNNNN do not use flares as control devices.
§63.12	State authority and delegations	Yes	§63.9070 lists those sections of subparts NNNNN and A that are not delegated.
§63.13	Addresses	Yes.	
§63.14	Incorporation by reference	Yes	Subpart NNNNN does not incorporate any material by reference.
§63.15	Availability of information/confidentiality.	Yes.	

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Federal Register

Thursday,
April 17, 2003

Part III

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; Post 1996 Rate-of-Progress Plans and One-Hour Ozone Attainment Demonstrations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DC052–7007, MD143–3102, VA129–5065; FRL–7484–6]

Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, Virginia; Post 1996 Rate-of-Progress Plans and One-Hour Ozone Attainment Demonstrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is conditionally approving the severe ozone nonattainment area State Implementation Plan (SIP) revision for the Metropolitan Washington severe ozone nonattainment area. This SIP revision includes the one-hour severe ozone attainment demonstration, the 1996–1999 portion of the severe area rate-of-progress (ROP) plan and transportation control measures for the Metropolitan Washington DC ozone nonattainment area (the Washington area) submitted by the District of Columbia's Department of Health (DoH), by the Maryland Department of the Environment (MDE) and by the Virginia Department of Environmental Quality (VADEQ). EPA is conditioning approval on commitments submitted by DoH, MDE and VADEQ to submit adopted control measures that qualify as contingency measures to be implemented for failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999 and adopted contingency measures that will be implemented should the area fail to attain by the November 15, 2005 severe ozone attainment deadline or fail to achieve any post-1996 three-percent year emissions reduction requirement. Approval is also conditioned on commitments that require the Washington area jurisdictions to submit a revised rate-of-progress plan that includes emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005, an updated attainment demonstration that reflects revised MOBILE6-based motor vehicle emissions budgets, a revised analysis of reasonably available control measures (RACM) and to revise the attainment demonstration as necessary to reflect the revised budgets and RACM analysis. Approval is also conditioned on the Washington area jurisdictions submitting a SIP revision that meets all of the requirements of a severe area SIP including, but not limited to lower major stationary source thresholds, revised offset ratios, any required transportation control strategies and a fee requirement for major sources should the area fail to attain by 2005.

EFFECTIVE DATE: This final rule is effective on May 19, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; District of Columbia Department of Public Health, Air Quality Division, 51 N Street, NE., Washington, DC 20002; Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Christopher Cripps, (215) 814–2179, or by e-mail at *cripps.christopher.@epa.gov*.

SUPPLEMENTARY INFORMATION: The use of "we," "us," or "our" in this document refers to EPA.

This **SUPPLEMENTARY INFORMATION** section is organized to address the following questions:

I. What Action Is EPA Taking Today?
II. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemakings for the 1996–1999 ROP Plan and Attainment Demonstration?
III. What Comments Were Received on the Proposed Conditional Approvals and How Has EPA Responded to them?
IV. Applicability of Revised Motor Vehicle Emissions Budgets
V. Final Action
VI. Statutory and Executive Order Reviews

I. What Action Is EPA Taking Today?

EPA is taking a final action to conditionally approve the Washington area severe ozone nonattainment SIP. This SIP revision includes previously submitted attainment demonstration and 1996–1999 ROP plan SIPs and contingency measures that now apply to the Washington area as a severe area ozone nonattainment area. EPA is issuing a final conditional approval on the basis that the Washington area jurisdictions must revise and submit a severe area SIP that is consistent with the principle that attainment must be achieved as expeditiously as possible but no later than the severe ozone area attainment deadline of November 15, 2005 and that the previously submitted attainment demonstration and ROP SIPs must include contingency measures, RACM, motor vehicle emissions budgets that are consistent with a severe attainment deadline and all of the remaining severe ozone nonattainment area requirements. On February 3, 2003 (68 FR 5246), EPA proposed to conditionally approve these SIP revisions as a severe area attainment demonstration and only the 1996–1999 portion of the Washington area's ROP obligation in accordance with section 110(k)(4) of the Clean Air Act (CAA), on the basis of commitments from DoH, MDE and VADEQ to remedy these certain limited inadequacies. EPA has since determined that the severe ozone nonattainment requirements in their entirety are inseparable from the overall Washington Area attainment demonstration. EPA is therefore authorized to conditionally approve the attainment demonstration as a whole based on commitments submitted on April 7 and 8, 2003, from Maryland, the District and Virginia, respectively, to submit measures to complete the severe area requirements to revise the previously submitted SIPs listed in Tables 1 and 2 of this notice to be consistent with and to include all of the section 182(d) requirements of a severe ozone nonattainment area SIP. The specific commitments submitted by the Washington area jurisdictions are to:

(A) Revise the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(B) Revise the severe area ROP to provide emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(C) Revise the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(D) Revise the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(E) Update the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(F) Revise the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(G) Revise the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(H) Revise the major stationary source threshold to 25 tons per year.

(I) Revise Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

(J) Revise new source review offset requirements to require an offset ratio of at least 1.3 to 1.

(K) Submit as part of the SIP a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) should the area fail to attain by November 15, 2005.

(L) Submit as part of the SIP a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the ROP requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

Details on EPA's analysis of the previously submitted SIP revisions and their adequacy with respect to the requirements of a severe ozone nonattainment area are explained in detail in the proposal notice and will not be restated here.

Under the CAA, EPA is required to approve or disapprove a State's submission no later than 12 months after the submission is determined or deemed complete. On November 13, 2002, the Sierra Club filed a complaint in the United States District Court for the District of Columbia (District Court) against the EPA (*Sierra Club* v. *Whitman*, No. 1:02CV02235(JR)) claiming, among other things, that the EPA had not issued a final action on several SIP revisions (those listed in Tables 1 and 2 of this document) submitted by the District, Maryland and Virginia for the Washington area. On December 18, 2002, the District Court issued an order directing the EPA to publish, by February 3, 2003, a notice of proposed rulemaking on these SIP revisions and to publish by April 17, 2003, a final rule on these SIP revisions. This final rulemaking action complies with the Court's Order to publish a final action on these SIP revisions by April 17, 2003.

Tables 1 and 2 identify the submittal and amendment dates for the ROP plans and attainment demonstrations for which EPA is taking final action to conditionally approve.

TABLE 1.—1996–1999 ROP PLANS

	DC	MD	VA
Initial submittal dates	November 10, 1997	December 24, 1997	December 19, 1997.
Amendment dates	May 25, 1999	May 20, 1999	May 25, 1999.

TABLE 2.—ATTAINMENT DEMONSTRATIONS

	DC	MD	VA
Initial submittal dates	April 24, 1998	April 29, 1998	April 29, 1998.
Amendment dates	October 27, 1998	August 17, 1998	August 18, 1998.
Supplemental dates	February 16, 2000	February 14, 2000 (MD SIP No. 00–01).	February 9, 2000.
Supplemental dates	March 22, 2000	March 31, 2000 (MD SIP No. 00–02).	March 31, 2000.

II. What Were the Conditions for Approval Provided in the Notice of Proposed Rulemakings for the 1996–1999 ROP Plan and Attainment Demonstration?

Under section 110(k)(4) of the CAA, the EPA "may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval if the State fails to comply with such commitment." In the Notice of Proposed Rulemaking published on February 3, 2003 (68 FR 5246), EPA proposed to conditionally approve the Washington area severe attainment demonstration and 1996–1999 portion of the ROP plan on the basis that the Washington area jurisdictions had committed to submit to EPA by April 17, 2004 revised SIPs that meet the following conditions.

(A) Revise the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(B) Revise the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(C) Update the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(D) Revise the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(E) Revise the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration adopted control measures as necessitated by such analysis.

III. What Comments Were Received on the Proposed Conditional Approvals and How Has EPA Responded to Them?

In EPA's Notice of Proposed Rulemaking published on February 3, 2003 (68 FR 5246) EPA proposed conditional approval of the Washington area's severe area attainment demonstration and the 1996–1999 portion of the severe area ROP obligation. EPA also proposed disapproval in the alternative to preserve the court-ordered schedule to issue a final rule by April 17, 2003 in the event that EPA could not issue a final conditional approval with respect to either or both the attainment demonstration and 1996–1999 ROP plan. EPA received comments from the Virginia Department of Transportation on March 5, 2003 supporting EPA's proposed conditional approval. These comments will not be addressed here. On March 5, 2003 EPA also received comments from the Sierra Club. The Sierra Club's March 5 comments specifically incorporate by reference comments submitted by the Sierra Club and others on February 14, 2000, October 30, 2000, November 15, 2000, November 20, 2000, September 9, 2002, and December 13, 2002.

To the extent that the previously submitted comments are germane to the current action, EPA generally incorporates by reference its prior responses to those comments published at 66 FR 586, January 3, 2001, and 68 FR 5246, February 3, 2003. We respond with particularity to many of the previously submitted comments (1) to the extent that events occurring after publication of EPA's prior responses require that our prior responses be updated and revised or (2) to the extent that we feel that consolidating prior responses helps create a more comprehensive record for the current rulemaking. The following discussion summarizes and responds to particular comments.

A. Comments in the March 5, 2003

1. Conditional Approval

Comment: The commenter argues that EPA cannot conditionally approve the Washington area SIPs for various reasons. First, the commenter alleges that even EPA concedes that it cannot fully approve the SIPs based on various defects noted by the D.C. Circuit court in *Sierra Club* v. *Whitman*, 294 F.3d 155, 163 (D.C. Cir. 2002), therefore, EPA cannot conditionally approve the SIPs. The commenter further alleges that conditional approval cannot be used to circumvent or postpone statutory deadlines, and that conditional approval will prevent the Washington area from attaining the ozone standard as expeditiously as possible, prevent achievement of Post-1999 ROP and prevent timely implementation of contingency measures in the event the area fails to achieve timely rate-of-progress or attainment. The commenter also asserts that conditional approval cannot be used when a state has failed to submit a relevant substantive SIP component at all; that the SIP components at issue were due on November 15, 1994; that the States' commitments do not identify "specific enforceable measures" to be adopted by a date certain; that the commitments are to fix major components not minor details; that conditional approval is not allowable here because EPA has already allow the States to defer submission of various required SIP components for more than one year; and finally, that all of the defects the commenter has identified means any conditional approval would violate section 110(l) of the Act.

Response: The commenter misconstrues the conditional approval mechanism. Conditional approval under section 110(k)(4) is quite different from full approval under section 110(k)(3) of the Act, which the Court of Appeals considered in *Sierra Club*. Conditional approval is a statutory technique that allows EPA to give a limited form of approval to SIPs that do not meet all of the standards for full approval, but where a substantive SIP also includes commitments made by the states to remedy limited, identified deficiencies through the adoption of specific enforceable measures by a date certain. 42 U.S.C. 7410(k)(4). Here, the States have committed to undertake various analyses and ultimately adopt specific enforceable measures as appropriate to remedy the deficiencies in the currently submitted SIP revisions. Based on the fact that the SIP contains most of the substantive components for the required plans as well as commitments to correct limited deficiencies, which EPA received after the court ruling, the statute provides for EPA to conditionally approve the SIPs even though the court found that EPA could not fully approve them. The Court of Appeals did not address whether EPA could conditionally approve the SIPs as the issue of conditional approval was not before the court and the States had not made appropriate commitments at the time of the court ruling.

With respect to the assertion that EPA cannot use the conditional approval mechanism to allow areas to avoid a statutory deadline, and the complaint about SIP submittal deadlines that have long passed, EPA is dealing in this case with a SIP that was submitted by the States, reviewed by EPA and approved by EPA in January 2001 through notice-and-comment rulemaking. EPA's approval was then vacated by the Court of Appeals on July 2, 2002, after judicial review. Whatever the merits of any argument about delays that occurred previously, EPA must now take action on the SIPs under court order based on the submittal before the agency. That submittal consists of the previously submitted SIP and the recently submitted commitments by the States to conduct the appropriate analyses and submit any necessary measures to rectify certain limited defects in the SIPs. EPA believes it is appropriate to conditionally approve the SIPs that the States have recently committed to revise to satisfy deficiencies which were the basis for vacatur by the Court of Appeals. The States could not have been expected to remedy these deficiencies previously as EPA had in fact approved the SIPs without noting any such deficiencies prior to the court ruling. The States have now committed to revise the SIPs on an expeditious schedule that is no later than one year following EPA's final action. Furthermore, EPA notes that there is nothing in the statute that limits the use of conditional approval to SIP revisions that are submitted by the statutory due date. Nor does the statute link the period for conditional approval to the time by which the SIP was due. Finally, EPA has never before conditionally approved these SIPs nor have the States previously made commitments to submit all of these portions of the attainment demonstration within a year. For these reasons, EPA believes it is reasonable to use this tool in this case.

The commenter further claims that a conditional approval will delay timely attainment. However, the commitments are to submit any necessary additional measures by April 2004 while the attainment date for the area is not until November 2005, so all deficiencies will be cured at least 18 months prior to the attainment date and will therefore not delay timely attainment because the States will need to ensure any necessary emission controls are in place by the beginning of the 2005 ozone season. One year should provide sufficient time to implement any necessary controls. To the extent the commenter addresses alleged deficiencies in the 2005 attainment date itself, these comments will be addressed in section III.A.2. of this document responding to comments on the attainment demonstration.

The commenter next claims that EPA cannot use the conditional approval mechanism where states have failed to submit a substantive SIP component at all, alleging that in this case various parts of the attainment demonstration, such as ROP plans, contingency measures and RACM, constitute separate SIP components. EPA had indeed argued in *Sierra Club, supra*, that these were separate SIP requirements and for that reason the attainment demonstration should have been upheld without them. However, the Court of Appeals agreed with the contrary argument, which was actually made by the commenter, and held that ROP plans, RACM and contingency measures are actually parts of the overall Washington Area attainment demonstration and must be included within it. *See Sierra Club* v. *Whitman*, 285 F.3d at 163–64 (D.C. Cir. 2002). The attainment demonstration includes many components in addition to these. The attainment demonstration already demonstrates attainment no later than November 15, 2005, based on photochemical grid modeling and a suite of adopted and SIP approved control measures that reduce local emissions down to the allowable levels established by the photochemical grid modeling. A list of these control measures can be found in the notice of proposed rulemaking for this action. *See* 68 FR at 5252–5253 and at 5255–5256, February 4, 2003. Given that these items to which the States have committed are a part of the overall Washington area attainment demonstration rather than separate SIP components, EPA concludes that it is authorized to conditionally approve an attainment demonstration that contains commitments to submit limited components of the attainment demonstration.

The commenter then argues that these elements of the attainment demonstration are so significant that the SIPs cannot be conditionally approved without them. However, the primary portions of the attainment demonstration are the adopted control measures themselves coupled with the modeling demonstration showing that implementation of these measures will result in attainment by the requisite date. The RACM analysis merely analyzes potential additional measures to determine whether any could advance the attainment date; the post-1999 ROP analysis addresses interim progress prior to the attainment date; and the contingency measures address measures to be implemented in the event rate-of-progress or attainment is not timely achieved. Although all of these elements are important portions of the overall attainment demonstration SIP, EPA does not believe that any of them amount to such a significant portion of the attainment demonstration that the demonstration cannot be conditionally approved based on the States commitment to complete the additional analyses along with adoption of any necessary additional measures in the short term. EPA addresses the commenters specific concerns about the substance of these three SIP portions elsewhere in responding to comments regarding the individual elements of the attainment demonstration.

Further, the commenter alleges that conditional approval is inappropriate in this case because the States have purportedly not made commitments to adopt specific enforceable measures as required by section 110(k)(4). In contrast, EPA believes that the commitments submitted by the States do indeed commit the States to ultimately adopt specific enforceable measures if such measures are determined to be needed based on further analysis. The commitment letters specifically state that the States will submit adopted contingency measures requisite to satisfy the contingency measure requirements for various circumstances relating to ROP and attainment. The States further commit not only to conduct the various RACM and mobile modeling analyses, but also to revise the attainment demonstration itself as appropriate in light of these analyses. EPA believes that there can be no interpretation of these commitment letters other than a conclusion that the States have committed to submit specific enforceable measures to support the revised attainment demonstration if necessary. However, since the States have submitted additional commitment letters for various reasons described elsewhere in this document, the States have clarified in those letters their intent to submit specific measures in support of the demonstrations, if appropriate. It is true that the States have not yet identified the specific measures that could ultimately be adopted, however it would be impossible for them to do so in advance of conducting the requisite RACM and modeling analyses.

The commenter argues that contingency measures should not be the subject of a conditional approval in DC because it is likely that by the summer of 2003 it could be determined that the DC area will fail to attain in 2004 and the contingency measures would then be triggered. However, contingency measures are not required to be implemented under the Act until an area fails to attain by the applicable attainment date. (CAA section 172(c)(a)). The statute does not require implementation of contingency measures prior to the attainment date based on a projection that the area will not attain when the attainment date is reached. Given that the States have committed to submit all necessary contingency measures by April 2004, any needed contingency measures would be available for implementation should EPA make a determination by May 15, 2006 under section 181(b)(2) of the Act that the area failed to attain by November 15, 2005.

We also disagree with the commenters' allegation in comments previously submitted on September 9, 2002 that the motor vehicle emissions budgets (MVEBs) in the attainment demonstration do not reflect the potential to lower the MVEB through transportation related control measures should the area fail to attain or to meet ROP requirements. With respect to those contingency measures that would be triggered by the failure to attain, the attainment year MVEB would never account for these contingency measures because such measures would never be triggered until after the attainment year. Should those contingency measures be triggered, it would be appropriate at that time for the state to revise the budgets to reflect implementation of such measures in future years, but this cannot be done in advance of implementation of the measures as it is unclear whether the measures would ever in fact be implemented.

Similarly, with respect to contingency measures triggered by the failure to meet ROP, the obligation to account for those contingency measures is not triggered until it has been determined that the area has failed to meet its ROP requirements. EPA is allowing the Washington area jurisdictions to demonstrate the first required post-1999 nine percent ROP (which was due under the statute by November 15, 2002), as

expeditiously as practicable, if control measures currently in the SIPs, or already promulgated by EPA, did not achieve the required nine percent reduction by November 15, 2002. (*See* 68 FR 3418). Therefore, the date for fulfilling the first post-1999 ROP requirement lies in the future, and the requirement to implement any needed contingency measures for failure to meet that ROP has not been, and may not ever be, triggered. This is true, too, for the 1999 ROP requirement. It has not yet been determined that the Washington area did, or did not, meet its 1999 ROP requirement and the requirement to implement contingency measures for failure to meet the 1999 ROP requirement has not yet been (and may not ever be) triggered. As with any contingency measures that would be implemented for a future failure to attain, because the obligation to implement contingency measures for failure to meet the post-1999 ROP requirements has not arisen, the area has no obligation to account for these measures in the attainment demonstration MVEB.

Finally, the commenter argues that all the defects it has asserted entail that any conditional approval would violate section 110(l) of the Act, which prohibits EPA from approving a SIP revision that would interfere with any applicable requirement of the Act. However, EPA has concluded that the submitted attainment demonstration, coupled with the commitments the States have made to remedy the deficiencies in their demonstrations, fully satisfy all of the applicable requirements of the Act requisite to support a conditional approval.

2. Attainment Demonstration

a. *RACM and Attainment as Expeditiously as Practicable.*

Comment: The commenter argues that the submitted SIPs do not provide for attainment as expeditiously as practicable, as required by the Act, because the States have not properly analyzed whether any additional RACMs could advance the 2005 attainment date.

Response: EPA acknowledges that the RACM analyses in the SIPs are not sufficient, as noted by the Court of Appeals in *Sierra Club, supra.* However, the attainment demonstration does provide for attainment by 2005, a date consistent with the outside statutory date for attainment for severe ozone nonattainment areas and one that is only two years away. EPA therefore concludes, in light of the States commitments to conduct a RACM analysis and submit any additional measures determined to constitute RACM within a year, that it is appropriate to conditionally approve the attainment demonstration SIPs at this time. Should the RACM analyses determine that there are in fact potential RACM that could advance the attainment date, then EPA could approve an earlier attainment demonstration including such measures. However, in advance of completion of such RACM analyses EPA believes on the basis of the attainment demonstration before it that the SIP does demonstrate attainment as expeditiously as practicable. This preliminary conclusion is neither arbitrary nor capricious given the short period of time until the attainment date. Although no final conclusions can be reached until the RACM analyses are completed, given the time necessary for implementation of measures EPA believes it is unlikely that sufficient measures could be adopted and implemented to allow the Washington area to reach attainment by the 2004 ozone season. Specifically, the state process for developing control requirements in the form of SIP revisions, providing a public hearing, and adopting SIP revisions, typically takes at least a full year. In addition, the state typically allows a period of at least a year, often longer, for sources to implement required controls. Even if these process were significantly accelerated, it is highly unlikely that controls would be implemented by the start of the 2004 ozone season.

b. *Demonstration of Attainment by 2005.*

Comment: We received comments declaring that the attainment demonstration, and EPA's analysis of it, look only at ozone levels in 2005, not 2003 and 2004. The comments assert that to demonstrate attainment by November 15, 2005, the demonstration of attainment must show that no monitor in the nonattainment area will have an average of more than 1.0 expected exceedance per year for the period 2003–2005 but that the demonstration does not address the entire period. The comments cite § 50.9 of 40 CFR part 50.

Response: EPA disagrees with the comment. While EPA does agree that § 50.9 of 40 CFR part 50 establishes the form of the 1-hour ozone standard in terms an annual average number of expected exceedances, EPA's guidance for conducting an attainment demonstration are a reasonable interpretation of the requirements for an attainment demonstration required under section 182(c) of the CAA in light of the form of the ozone NAAQS.

Air quality models do not know what year is being modeled, only the emissions levels and the meteorology. The meteorology component would be the same for any year because historical weather episodes are modeled.

Under EPA's modeling guidance the States are required to model severe episodes corresponding to those weather conditions thought to generate high levels of ground level ozone. In contrast, all monitored exceedances count towards a determination of whether all monitors are actually meeting the standard under the standard set in 40 CFR 50.9 and appendix H to 40 CFR part 50. A monitored value of 0.125 ppm counts as one exceedance to the same extent as a value of 0.150 ppm. Modeling demonstrating that the most severe episodes will yield few or no exceedances will be consistent with elimination of exceedances on less severe weather days.

As EPA stated in the technical support for this rule, the modeling demonstration considered severe episodes: the ozone forming potential rank is very high for one day—July 20, 1991. This is the thirteenth most severe day out of approximately the last 50 years, one that is likely to recur only once every 4 to 5 years on average. This type of day is not likely to occur often enough to be a major causative factor for nonattainment, especially since the emission controls modeled in this plan should eliminate ozone exceedances for all but the most meteorologically severe days.

EPA has concluded that the modeling analysis allows anthropogenic emissions in the Washington area of 360 tons per day of VOC and 538 tons per day of NO_X.

To reduce future year emissions to levels consistent with the modeling demonstration, the attainment demonstration has to provide for enough emission reductions net of growth to reduce emissions down to the levels allowed by the attainment modeling demonstration. Therefore, the attainment demonstration has to provide for emission reductions to accomplish two purposes: first, the plan has to offset growth in emissions due to increases in emissions-related activity to reduce emissions to the base year levels; and, second, the plan has to produce sufficient additional reductions beyond that needed to offset post-1990 growth to reduce emissions to the levels allowed by the attainment modeling demonstration.

When viewed from this perspective, the Post-1996 ROP plan for the 1999 milestone (hereafter "the 1996–1999 ROP plan") had to achieve reductions net of growth of 128.3 tons per day of VOC and 116.2 tons per day of NO_X to make the ROP targets. The plan actually achieved creditable reductions net of growth of 143.7 tons per day VOC and 123.0 tons per day NO_X. The demonstration of ROP for the 1999 milestone year in Post-1996 plan clearly did not rely upon controls beyond reasonably available control technology (RACT) at large NO_X sources. Even though the potential benefits of beyond-RACT controls were calculated, the 1996–1999 ROP plan did not rely upon those controls and did not rely upon Phase II of the RFG program which was implemented in January 2000.

The attainment modeling considered the effects of the OTC Phase II NO_X controls. The benefits for these controls would have been 93 tons per day in 1999. 70 tons per day of reduction were achieved from the District's and Maryland's Phase II NO_X rules which were implemented commencing May 1, 2002.[1] Major further reductions will occur in 2003 from the implementation of the NO_X SIP call rules in Maryland and Virginia and beyond RACT controls on the two major utility sources in Virginia.[2] Thus, by 2003, the local NO_X emissions would be close to the levels required by the local area modeling.

The Phase II RFG program is projected to yield 23.5 tons per day of VOC reductions in 2005 versus a little less than 16 in 1999. Much of this additional benefit would have been achieved in calendar year 2000 when the second phase of the program was implemented to achieve the mandated additional VOC reductions over and above that required by the first phase.

The attainment plan requires reductions net of growth of 148.5 tons per day of VOC and 192.9 tons per day of NO_X to reduce emissions to the levels allowed by the attainment modeling demonstration. These are 4.8 tons per day of VOC and 69.9 tons per day of NO_X lower than the reductions credited to the Post-1996 for the 1999 milestone. The creditable emissions reductions net of growth by 2005 are 151.8 tons per day of VOC and 327.9 tons per day of NO_X. The Post-1999 reductions are mainly used to offset growth in emissions after 1999 once the RFG and Phase II NO_X rules are in place.

The Plan's local emissions levels are very close to that required under the local air quality modeling in 1999 once the RFG and Phase II NO_X rules are considered. Significant reductions in upwind NO_X will not commence sooner than May 31, 2004, under the NO_X SIP call and related federal requirements. EPA believes modeling a 2003 year case would merely show continued exceedances due to transport. For a 2004 year, EPA believes that the resources needed to develop the necessary inventories, process them for incorporation into the air quality model and to perform the actual air quality modeling would not add any value. The emissions levels would be expected to be essentially the same as for 2005 because the 2005 plan is projected to exceed the emission reduction requirements set by the modeling demonstration.

c. *The Ozone Standard.*

Comment: The commenter stated that EPA had based its proposed approval of the attainment demonstration on the assumption that the 1-hour ozone standard is 0.125 ppm, when the actual standard is 0.12 ppm.

Response: The level of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) is defined in 40 CFR 50.9 as 0.12 parts per million (ppm), not 120 parts per billion (ppb) as implied by the commenter. In other words, the 1-hour ozone NAAQS is specified as two significant digits and the data handling approach employed to compare ambient air quality data to the 1-hour ozone standard is to round to two decimal places as per the regulations and guidance referenced above.

Although the 1-hour NAAQS itself includes no discussion of specific data handling conventions, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard. EPA has clearly communicated the data handling conventions for the 1-hour ozone NAAQS in regulation and guidance documents. In the 1990 Amendments to the CAA, Congress expressly provided that "[e]ach regulation, standard, rule, notice, order and guidance promulgated or issued by the Administrator under this Act, as in effect before the date of the enactment of the Clean Air Act Amendments of 1990 shall remain in effect according to its terms * * *" Thus, under the amended CAA, Congress expressly carried forth EPA interpretations set forth in guidance such as the guideline documents interpreting the NAAQS.

As early as 1977, two years before EPA promulgated the 1-hour ozone NAAQS, EPA provided in guidance that the level of the standard dictates the number of significant figures to be used in determining whether the standard was exceeded (see "Guidelines for the Interpretation of Air Quality Standards," OAQPS No. 1.2–008, February 1977). In addition, the regulations governing the reporting of annual summary statistics from ambient monitoring stations for use by EPA in determining national air quality status clearly indicate the rounding convention to be used for 1-hour ozone data (40 CFR part 58, appendix F). In 1979, EPA issued additional guidance specific to ozone in which EPA provided that "the stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of 0.12 ppm means that measurements are to be rounded to two decimal places (.005 rounds up), and, therefore, 0.125 ppm is the lowest concentration value in excess of the level of the standard." *See* "Guideline for the Interpretation of Ozone Air Quality Standards," EPA–450/4–79–003, at p. 6. EPA's guidance on air quality modeling is consistent with those Guidelines. *See, e.g.,* Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, July 1996.

d, *Modeled Demonstration of Attainment.*

Comment 1: The commenter alleges that photochemical grid modeling shows that the Washington area will not attain the ozone standard by the November 2005 attainment date and because the "weight of evidence" (WOE) analysis used by EPA to conclude that the Washington area has demonstrated attainment by November 2005 is not authorized by the Act or by EPA rules. The comments claim that the modeling demonstration and WOE used in the attainment demonstration for the Washington area do not meet requirements of section 182(c) of the CAA and EPA's own regulations for photochemical grid modeling and other analytical methods, that the WOE is an alternative method to photochemical grid modeling which has not been shown to be equally effective to the Urban Airshed Model (UAM), and that WOE is a proscribed rollback method. Also, the commenter claims the most recent modeling guidance is flawed because: it is allegedly a rollback technique; because it allegedly allows the averaging across the three highest air quality sites across a region, whereas EPA's 1991 and 1996 modeling guidance requires that attainment be demonstrated at each site and, thus,

[1] These controls have been approved into the SIPs. *See* 65 FR 78416, December 15, 2000, and 65 FR 80783, December 22, 2000.

[2] These controls have been approved into the SIPs. *See* 66 FR 55099, November 1, 2001, and 66 FR 1866, January 10, 2001; and 65 FR 78100, December 14, 2000

effectively lowers the total emission reduction needed to attain at the highest site; and because of alleged flaws in the techniques for determining the magnitude of additional emission reductions. The commenter therefore asserts that approval of the attainment demonstration would be arbitrary, capricious and contrary to law for reasons set forth in comments submitted on March 5, 2003, as well as those previously submitted to EPA on February 14, 2000. Such comments also included EPA's treatment of over-prediction of ozone levels by the photochemical grid model, EPA's treatment of modeled exceedances over the standard and EPA's treatment of the photochemical grid modeling results prediction of exceedances even over the levels allowed after a downward adjustment under EPA's alternative test. Finally, the commenter asserts that EPA failed to adequately explain certain adjustments made to the photochemical grid modeling for the Washington area.

Response 1:

WOE is consistent with the CAA and EPA regulations.

With respect to the allegation that the WOE analysis used by EPA is not authorized by the Act or EPA rules, EPA consistently has interpreted the CAA to allow for a weight-of-evidence analysis as an interpretive adjunct to the photochemical grid modeling used to show that the Washington area will attain the ozone standard in 2005. *See, e.g.*, 66 FR 634, January 3, 2001; 66 FR 666, January 3, 2001; 66 FR 54143, October 26, 2001; 66 FR 54577, October 29, 2001; 66 FR 54597, October 29, 2001; 66 FR 54666, October 30, 2001; 66 FR 56903, November 13, 2001; 66 FR 56931, November 13, 2001; 66 FR 56944, November 13, 2001; 66 FR 57159, November 14, 2001; 66 FR 63921, December 11, 2001; 67 FR 5151, February 4, 2002; 67 FR 5170, February 4, 2002; 67 FR 30574, May 7, 2002; 67 FR 61786, October 2, 2002; 67 FR 72576, December 6, 2002; and 67 FR 72574, December 6, 2002. Because WOE is an adjunct to photochemical grid modeling, not a separate analysis, the commenter's assertion that the modeling for the Washington area is not consistent with the CAA is a mis-statement.

As described in more detail below, the EPA allows states to supplement their photochemical modeling results with additional evidence designed to account for uncertainties in the photochemical modeling databases and application in order to demonstrate attainment. This approach is consistent with the requirement of section 182(c)(2)(A) that the attainment demonstration "be based on photochemical grid modeling," because the modeling results constitute the principal component of EPA's analysis with supplemental information designed to account for uncertainties in the model. This interpretation and application of the photochemical modeling requirement of section 182(c)(2)(A) finds further justification in the broad deference Congress granted EPA to develop appropriate methods for determining attainment, as indicated in the last phrase of section 182(c)(2)(A).

This interpretation of the Act has been upheld by the Court of Appeals for the Fourth Circuit, which stated "EPA has long recognized that there are uncertainties inherent in available models and in estimating future emissions * * *. EPA thus allows the use of supplemental analysis, including a "weight of evidence" analysis, to demonstrate attainment in cases where the modeling shows ozone levels exceeding the NAAQS." *1000 Friends of Maryland* v. *Browner*, 265 F.3d 216, 234 (4th Cir. 2001)(internal quotation omitted).

The flexibility granted to EPA under section 182(c)(2)(A) is also reflected in the regulations EPA promulgated for modeled attainment demonstrations. These regulations provide, "The adequacy of a control strategy shall be demonstrated by means of applicable air quality models, data bases, and other requirements specified in (40 CFR part 51, appendix W) (Guideline on Air Quality Models)."[3] 40 CFR 51.112(a)(1). The regulations further provide, "Where an air quality model specified in appendix W * * * is inappropriate, the model may be modified or another model substituted [with approval by EPA, and after] notice and opportunity for public comment * * *." Appendix W, in turn, provides that, "The Urban Airshed Model (UAM) is recommended for photochemical or reactive pollutant modeling applications involving entire urban areas," but further refers to EPA's modeling guidance for data requirements and procedures for operating the model. 40 CFR part 51, appendix W, section 6.2.1.a. The modeling guidance discusses the data requirements and operating procedures, as well as interpretation of model results as they relate to the attainment demonstration. This provision references guidance published in 1991; however, EPA envisioned that the guidance would change as we gained experience with model applications, which is why the guidance is referenced, but does not appear, in Appendix W. With updates in 1996 and 1999, the evolution of EPA's guidance has led us to the use of the photochemical grid model, as well, or in conjunction, with additional analytical methods approved by EPA.

EPA's interpretation of the CAA is consistent with the statute's requirement that the attainment demonstration be "based on photochemical grid modeling." Giving the phrase "based on" its ordinary meaning, the statute requires only that an attainment demonstration "arise from" photochemical grid modeling, using the modeling as a "starting point" or "foundation." *See McDaniel* v. *Chevron Corp., 203 F.3d 1099*, 1111 (9th Cir. 2000) (reviewing cases interpreting the phrase "based on"); *United States* v. *United Technologies. Corp.*, 985 F.2d 1148, 1158 (2d Cir. 1993) ("based upon" does not mean "solely"). EPA's weight-of-evidence analysis is consistent with the plain meaning of the statute because photochemical grid modeling is the starting point of the analysis; indeed, the very purpose of the WOE analysis is to determine whether the modeling, in light of all the evidence, demonstrates attainment.

Even if the statutory language is ambiguous, EPA's interpretation is reasonable under *Chevron U.S.A. Inc.* v. *Natural Res. Def. Council*, 467 U.S. 837, 842–45 (1984). The comments apparently are based on the premise that the statute should be read to say an attainment demonstration must be based solely on photochemical grid modeling without reliance on any analytical adjuncts. Even if this were a plausible reading of the statute, EPA's interpretation is equally permissible. *See United Technologies*, 985 F.2d at 1158. Our interpretation adheres to the normal meaning of the statutory language and is supported by the broad discretion that Congress granted to EPA in section 182(c)(2)(A).

Because EPA reasonably determined that WOE analysis is based on photochemical grid modeling, there is no merit to the alternative statutory argument found in the comments. The comments contend that WOE qualifies as an "other analytical method" under section 182(c)(2)(A), requiring the EPA Administrator to determine that weight-of-evidence is "at least as effective" as photochemical grid modeling. As noted, however, weight-of-evidence analysis is "based on photochemical grid modeling"; therefore, EPA did not employ an "other analytical method"

[3] The August 12, 1996 version of "Appendix W ot Part 51—Guideline on Air Quality Models" was the rule in effect for these attainment demonstrations. EPA is proposing updates to this rule which will not be in effect until the new rule is promulgated.

that would have required an effectiveness determination by the Administrator.[4]

Under "Guidance on the Use Of Modeled Results to Demonstrate Attainment of the Ozone NAAQS," EPA–454/B–95–007, June 1996 (hereafter the 1996 Guidance), the modeled attainment test compares model predicted 1-hour daily maximum ozone concentrations in all grid cells for the attainment year to the level of the NAAQS. The results may be interpreted through either of two modeled attainment or exceedance tests: A deterministic test or a statistical test. Under the deterministic test, a predicted concentration above 0.124 parts per million (ppm) ozone indicates that the area is expected to exceed the standard in the attainment year and a prediction at or below 0.124 ppm indicates that the area is expected to not exceed the standard. Under the statistical test, attainment is demonstrated when all predicted (*i.e.*, modeled) 1-hour ozone concentrations inside the modeling domain are at, or below, an acceptable upper limit above the NAAQS permitted under certain conditions (depending on the severity of the episode modeled).

Based upon our experience with application of the models, which we did not have in 1991, EPA issued the 1996 Guidance to update the 1991 guidance referenced in 40 CFR part 50, appendix W, to make the modeled attainment test more closely reflect the form of the NAAQS (*i.e.*, the statistical test described above), and the meteorological conditions accompanying observed exceedances. The 1996 Guidance also allows for consideration of additional evidence to address uncertainties in the modeling databases and application. Therefore, when modeling does not conclusively demonstrate attainment, EPA has concluded that additional analyses may be presented to help determine whether the area will attain the standard. As with other predictive tools, there are inherent uncertainties associated with air quality modeling and its results. The inherent imprecision of the model means that it may be inappropriate to view the specific numerical result of the model as the only determinant of whether the SIP controls are likely to lead to attainment.

EPA's 1996 Guidance recognizes these limitations, and provides a means for considering other evidence to help assess whether attainment of the NAAQS is likely to be achieved. The process by which this is done is called a weight-of-evidence or WOE determination. Under a WOE determination, the state can rely on, and EPA will consider factors such as other modeled output (*e.g.*, changes in the predicted frequency and pervasiveness of 1-hour ozone NAAQS exceedances); actual observed air quality trends (*i.e.*, analyses of monitored air quality data); estimated emissions trends; and the responsiveness of the model predictions to further controls in addition to the results of the modeled attainment test.

In 1999, EPA issued additional guidance (hereafter, the 1999 Guidance)[5] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard (which is 124 ppb). Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard.

Since the form of the 1-hour ozone NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be "no exceedances" in the future model predictions. The method outlined in the 1999 Guidance uses the highest measured design value from all sites in the nonattainment area for each of three years. The three year "design value" represents the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The "design value" calculation accounts for the fact that the NAAQS allows limited exceedances of the ozone standard without a resulting violation. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology.[6] The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (*i.e.*, average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (*i.e.*, average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year.

The use of this analytical adjunct, however, does not mean that a state's attainment demonstration is "based on" something other than photochemical grid modeling, or that WOE is "less effective" than photochemical grid modeling. To the contrary, WOE analysis is used to assess the photochemical grid modeling results; it supplements, but does not replace, the modeling. *See* 1996 Guidance at S–1 ("In a weight of evidence determination, model results are weighed heavily"). It follows that the WOE approach is consistent with the CAA requirement that the attainment demonstration "be based on photochemical grid modeling," because WOE is merely an adjunct for assessing the photochemical grid modeling. In the case of the Washington area demonstration, photochemical grid modeling is the primary basis for the attainment demonstration. *See* 1996 Guidance at S–1.

The 1999 Guidance is reasonable and is not a proportional rollback.

As stated previously, episodic photochemical grid modeling is the primary basis for the attainment demonstration, as it was used to define the majority of the control strategy. However, the modeling and corroborative analyses, which form the basis of the weight of evidence analysis, provide a preponderance of evidence to

[4] For the same reasons, EPA was not required to address whether its 1996 or 1999 Modeling Guidance is a "substitute" for modeling or is an adequate model by itself.

[5] "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711.

[6] The commenter criticized the 1999 Guidance because it allegedly allows the averaging across the three highest air quality sites across a region, whereas EPA's earlier (1991 and 1996) modeling guidance requires that attainment be demonstrated at each site and, thus, effectively lowers the total emission reductions needed to attain at the highest site. The commenter's concern is misplaced. The 1999 Guidance usbs averaging of the worst modeled air quality value across episode days or worst design value across a three year period. Also, the WOE determination, in turn, is intended to be a qualitative assessment of whether additional factors (including the additional emissions reductions not modeled), taken as a whole, indicate that the area is more likely than not to attain.

support EPA's determination that attainment of the 1-hour ozone NAAQS will be achieved in 2005. One of these WOE analyses involved the use of a relative reduction factor (derived from the local model results) to determine if any additional NO_X and VOC emissions reductions are needed to attain. We used the photochemical grid model in a relative sense to determine if the response of ozone concentrations to controls was adequate to predict a future design value below the level of the NAAQS. Inherent in the base design value is the level and form of the NAAQS which allows exceedances in the future.

In contrast to the claims in the adverse comments, EPA did not rely on "proportional" rollback as defined in section 14.0 of 40 CFR part 51, appendix W which defines "rollback" as "a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately." The prohibition regarding proportional modeling in section 6.2.1.e of appendix W (*i.e.*, "Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies") applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. A true proportional rollback model does not rely on any photochemical grid modeling, and it assumes, for example, that a 20 percent decrease in NO_X emissions results in a proportional (*i.e.*, 20 percent) decrease in ozone concentrations. In this case, EPA used a locally derived relative reduction factor as determined by the photochemical grid model to estimate a future design value.

Other comments on the 1999 Guidance are not germane to the Washington area.

The comments alleged flaws in the two techniques for determining the magnitude of additional emission reductions. With respect to comments on these two techniques for determining the magnitude of additional emission reductions contained in the 1999 Guidance, EPA believes these comments do not apply in the case of EPA's analysis of the attainment demonstration for the Washington area.

The first allegation is that these techniques allow averaging the three highest design values across a nonattainment area whereas EPA's modeling guidance requires that attainment be demonstrated at each site. The alleged effect of this averaging technique is that lower air quality concentrations are averaged against higher concentrations thus reducing the total emission reduction needed to attain at the highest site.

The second allegation concerns the assumption that the contribution of VOC versus NO_X emissions to ozone concentrations are the same from site to site in contrast the UAM model which considers the contribution of VOC versus NO_X emissions varies from site to site.

The 1999 Guidance provided a two-step method for evaluating the air quality modeling results. The first step is an assessment of whether attainment is demonstrated by a showing that a future year design value will be 0.124 ppm or less. In the event that the predicted attainment year design value is above the standard, the second step of the 1999 Guidance provides two techniques for identifying additional emission reductions, that were not modeled, and which at a minimum provide an estimated attainment year design value at the level of the standard. The first technique is the use of a "relative reduction factor (RRF)" analysis to estimate a future design value.[7] We used this analytical method to demonstrate that the Washington area will attain the standard. Attainment can be demonstrated by showing that the future year design value will be 0.124 ppm or less. Modeling predicts the peak ozone values in the attainment year, but it cannot predict the future design value for that year due to the limited number of days that can reasonably be modeled. The RRF analysis, however, provides an estimate of future design value based on the principle that a control strategy that reduces ozone peaks will similarly reduce design values. The RRF analysis has two steps. First, the state derives the RRF from the modeled reduction in ozone peaks between the base year and the attainment year. Second, the state applies the RRF to the design value for the base year to estimate the future design value in the attainment year. EPA has concluded that for the Washington area the RRF analysis demonstrates a future year design value of 119.6 ppb which is less than 124 ppb. Using the 1999 Guidance, EPA never needed to go beyond the RRF technique to determine that the Washington area will attain the ozone standard. Therefore, the other comments regarding the techniques for determining the magnitude of such additional reductions are not germane to this rulemaking and are not addressed in this document.

EPA's treatment of over-prediction of ozone levels, of modeled exceedances and downward adjustment of results.

As another element of EPA's WOE analysis, we evaluated the photochemical grid modeling for the Washington area. We analyzed the severity of the episodes modeled for the Washington area and have concluded that these would be adequate for determining the emission reductions needed for attainment in the Washington area. When the emission inventory with the control strategy is modeled, peak ozone concentration is reduced by approximately 22 ppb from the modeled peak concentrations in the 1991 base cases. When the average modeled peak ozone reduction from the base year modeling to the attainment year modeling (22 ppb) is subtracted from the peak measured concentration for July 16 (137 ppb) and July 19 (132 ppb), the resulting concentrations are 115 ppb and 110 ppb respectively. However, when the modeled ozone reduction is applied to the peak monitored level on July 20 (178 ppb), the resulting concentration is 156 ppb. When the day-specific reduction of peak modeled ozone concentration from the base year modeling to the attainment year modeling is subtracted from the peak measured concentrations on July 16th, July 19th, and July 20th, the result is 120 ppb, 103 ppb, and 158 ppb respectively. Both methods (average, day-specific) resulted in two of the three days showing values below the ozone standard indicating attainment for these days. However, both methods resulted in values above the standard for July 20th.[8]

EPA has evaluated the ozone formation potential of the July 20, 1991, episode day and determined that it is 13th most severe day out of approximately the last 50 years with an average reoccurrence of once every 4–5 years; this type of day is not likely to occur often enough to be a major causative factor for nonattainment because the standard allows up to three monitored exceedances in any three year period. Because modeling for the Washington area showed some peak concentrations above 124 ppb, EPA conducted the RRF analysis which is discussed in prior paragraphs of this section to determine what additional emission reductions may be needed to support ozone attainment in the Washington area using EPA's 1999 Guidance. As stated in previous paragraphs of this section, EPA has concluded that the Washington area does not need any additional emission reductions beyond those contained the attainment demonstration for the Washington area to ensure attainment of the ozone NAAQS.

While the modeling results suggest that exceedances may still occur, EPA's 1996 Guidance allows for consideration in the weight-of-evidence analysis of whether the model over-predicts or under-predicts in the base case and consideration of other evidence.

The base case model performance for both of the July 1991 episodes show good alignment of the modeled ozone plume in comparison to monitored ozone values (*e.g.*, the model predicted peak concentrations and monitored peak concentrations are generally paired in space). Therefore, the degree to which the peak predicted values exceed the measured values in the same general vicinity, indicates that the model is systematically over-predicting ozone concentration, while adequately representing the spacial distribution of ozone.

With respect to the assertion that EPA did not explain how adjusting model results to account for model over prediction is consistent with EPA's modeling rule, 40 CFR part 51, appendix W, the modeling rule encourages the assessment of model uncertainty as one of the factors affecting the model results. In EPA's view, model over prediction is only a rough approximation of the extent of modeling uncertainty. Consideration of model performance (specifically, a bias to under- or over-predict ozone levels) is one way to assess modeling uncertainty. For the Washington area, EPA explained how performance was more closely reviewed and used as part of the WOE determination.

As a further part of the WOE analysis to corroborate the likelihood that the Washington area will attain the 1-hour ozone standard by the attainment date of 2005, EPA developed relative reduction factors based on regional scale modeling performed for the NO_X SIP call supplemental notice of proposed rulemaking (NO_X SIP Call SNPR) (*see* 63 FR 25902, May 11, 1998; and *see* 63 FR 57356, October 27, 1998). These relative reduction factors were used to adjust the 1994–1996 area design values for the Washington area. This analysis shows all future predicted design values below the level needed for attainment (124 ppb). To provide additional information, the EPA's relative reduction factors were applied to the 1995–1997 and 1996–1998 Washington area design values, again resulting in all area design values below 124 ppb. This analysis was updated (see the response to comment 2. elsewhere in this section) to include more recent air quality data including data through the 2002 ozone season. The result of this updated analysis still showed all future predicted design values below 124 ppb.[9] A future design value analysis was performed using relative reduction factors from the local photochemical grid modeling results. The outcome of this analysis shows a future predicted area-wide design value of 119.6 ppb.[10]

Based on the results of the local scale modeling along with the additional WOE arguments provided in the attainment demonstration plan, EPA believes that attainment of the 1-hour ozone standard has been successfully demonstrated for the Washington area by the November 2005 attainment date.

Comment 2: In the March 5, 2003, letter the commenter asserted that 2002 ozone levels recorded in the Washington area show that the WOE analysis is flawed. The comments summarize the 2002 data in terms of nine days that the 1-hour standard was exceeded with as many as 8 different monitors recording exceedances on some of those days and claim this number of exceedance days was higher than in any of the preceding 10 years. The comments assert that this data, including a peak ozone value of 0.158 ppm, refutes EPA's WOE analysis. The same commenter cited to pertinent comments previously submitted to EPA on February 14, 2000. In the February 14, 2000 comment letter, we received comments asserting that EPA looks only at those "weights" that favor a finding of attainment and specifically cited 1999 air quality data. The comments assert that the data through 1999 show current violations at 4 different monitoring sites. The comments highlight peak concentrations at various monitors and claim even assuming a 7 ppb reduction in ambient levels from the NO_X SIP call the peak value of 0.141 ppm recorded in 1999 would still be in violation.

Response 2:

Weight of Evidence and Air Quality Generally.

The District, Maryland and Virginia provided WOE arguments in the attainment demonstration to further corroborate that it is likely their attainment demonstrations contained sufficient local measures for the Washington area to attain the 1-hour ozone standard by the statutory date of 1999 but for transport.

In the original plan, the States and the District used EPA-developed relative reduction factors based on regional scale modeling performed for the NO_X SIP Call SNPR. These relative reduction factors were used to adjust the 1996 area design values which considered air quality data for the years 1994, 1995 and 1996. The analysis showed all area future predicted design values below the level consistent with attainment (124 ppb). To supplement the state submittals, we originally applied the same relative reduction factors to the 1997 and 1998 area design values which include air quality data through 1998. Again the results were that all future predicted area design values were below 124 ppb.

Using the more recent air quality data, including that available for 2002, EPA has performed these same evaluations. Once again, the results were that all future predicted design values were below 124 ppb. The detail data and computations have been placed in the docket for this action.

Number of Exceedence Days.

Compliance with the one-hour ozone standard is determined by comparing the monitored annual average number of expected exceedances of the 0.12 parts per million (ppm) with the one-hour standard. The one-hour standard is exceeded in practice when the highest one-hour value for any calendar day is greater than 124 ppm. The standard is set at 0.12 ppm but due to rounding, a value of 0.124 ppm or less rounds down to 0.12 ppm and values of 0.125 ppm or more round up to 0.13 ppm which

[7] 1999 Guidance at 3–4.

[8] The details of this analysis and the method and calculation details by which EPA determined how much the model over-predicts monitored ozone concentrations is explained in "First Amendment to Technical Support Document for Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Post-1996 Rate-of-Progress Plan for the Metropolitan Washington, DC Nonattainment Area" dated April 10, 2003.

[9] Table IV C–2 to "First Amendment to Technical Support Document for Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Post-1996 Rate-of-Progress Plan for the Metropolitan Washington, DC Nonattainment Area", dated April 10 2003.

[10] Under the 1999 Guidance, the base design value is an average of three years of monitored design values that represent the modeled base case emissions. In the case of the Washington area, the model episodes are for 1991, and, thus, the three design values used are those that reflect the 1991 monitoring data, *i.e.*, the design values for 1991, 1992 and 1993. In the case of the Washington area these three design values were 136, 136 and 137 ppb for 1991, 1992 and 1993, respectively. The relative reduction factor (RRF) was 0.88. Whether the RRF is applied to the average design value or the highest design value has no practical effect (0.88 times 137 ppb equals 120.6 ppb). See Attachment 5 "Improving Weight of Evidence Through Identification of Additional Emission Reductions Not Modeled" to "Technical Support Document for the One-Hour Ozone Attainment Demonstrations submitted by the State of Maryland, Commonwealth of Virginia and the District of Columbia for the Metropolitan Washington, D.C. Ozone Nonattainment Area" dated January 24, 2003.

exceeds the 0.12 ppm standard.[11] To account for missing days (monitors may not be operating on some days due to malfunctions, maintenance and calibration, or power outages, etc.) when the monitor is not functioning the procedure in appendix H of 40 CFR part 50 is used to convert the number of actual number measured exceedances for the year to an actual number of expected exceedances.

The form of the ozone NAAQS requires the use of a 3-year period to determine the average number of exceedances per year. In its simplest form, the ozone standard requires that the average number of exceedances over a 3-year period, cannot be greater than 1.0. An area with four exceedances during a 3-year period, therefore, does not meet the ozone standard because four exceedances in 3 years averages out to more than once per year. Because of the form of the ozone NAAQS, data are combined over multiple years but they are not combined from different sites.

The number of expected exceedances for a year is always equal to or greater than the actual number of measured exceedances. The one-hour ozone standard is violated when the annual average number of expected exceedances exceeds 1.0. The standard and the method for converting measured exceedances to expected exceedances is found in 40 CFR 50.9 and appendix H to 40 CFR part 50.

The proper use of the 1999 and 2002 and intervening years of ozone data would be to perform the expected exceedances determination using that data. That the area had "nine exceedance days in 2002" says only that there were nine days in 2002 during which at least one monitor recorded an exceedance. The proper context for the 2002 ozone data would be to compute the average annual number of expected exceedances over the three year period 2000 to 2002.

Therefore, EPA believes that the number of exceedance days is irrelevant when evaluating an attainment demonstration because the number of exceedance days has no bearing on the form of the 1-hour ozone standard. Compliance with the standard is performed on a monitor-by-monitor basis. The peak ozone value for 2002 (or 1999 for that matter) is irrelevant unless placed in context with the remaining data for 2002 as well as the data for 2000 and 2001. A monitor is in full compliance with the standard which allows up to 3.1 expected exceedances under 40 CFR 50.9 and appendix H to 40 CFR part 50. Under appendix H to 40 CFR part 50, a monitor has to record at least a value equal to or greater than 0.125 ppm in order for the number of expected exceedances to be 1.0 or greater for determining exceedances of the one-hour ozone standard. Whether that monitored value is 0.125 ppm or 0.158 ppm does not matter.

Seven Parts Per Billion (ppb) Adjustment to Peak Values.

The commenter stated that even if one assumes that the NO_X SIP call will deliver a 7 ppb ozone reduction in the peak ozone values the peak ozone concentration will still be violating the standard.[12] As stated in the preceding paragraphs, compliance with the standard is not determined using the peak value, but whether the standard is exceeded more than an average of 1.0 times per year when averaged over three years. EPA disagrees that the peak monitored data would be the proper determinant of nonattainment using such a method. EPA believes that to use such a method properly the commenter's assumed adjustment of 7 ppb (0.007 ppm) would have to be subtracted from all the monitored data readings to see if a monitor would record more than three exceedances in any three year period.

One threshold issue with such a method is whether one should assume the same number of daily measurements in future years as in the past in order to compute expected number of exceedances. For example, for the new monitor at the Equestrian Center in Prince George's County, Maryland has provided only 123 days of data for 2002. Because the reported data covers the 123 days for the months of July through October, one could reasonably assume the monitor will be operated over the entire ozone season in the future. But such an assumption does not provide any insight into just how much data capture one should assign to the monitor in the future to compute expected number of exceedances using appendix H to 40 CR part 50. Likewise, assumptions have to be made concerning the number of days assumed less than the standard when computing the number of expected exceedances.

Examination of the ozone data for any time period will show a variation in the number of monitored exceedances at any one monitoring site. For the 1997 to 2002 time period, the only monitors that have recorded exceedances in every year since 1997 are the two in Prince George's County Maryland and both monitors have shown continual improvement since 1997. All other monitors have had years where no exceedances have been recorded and years where one or more have been recorded.

EPA has determined that applying an assumed 7 ppb adjustment to all of the 1997 to 2002 data would yield no monitor, for which complete data is available for the 1997 to 2002 time period, with more than 3 exceedances for the three year period ending in 2002. For those monitors which have data for only one ozone season for the period ending in 2002, EPA notes that the 7 ppb adjustment would result in greater than 1.0 exceedances at the following two monitors: one monitor in Fairfax County, Virginia (monitor ID 510591005–1) and one in Prince George's County, Maryland (monitor ID 240338003–1). However, these monitors have only one year of data. And the monitor in Prince George's County recorded only one exceedance in 2002, but the number of expected exceedances for 2002 is 1.7 after applying the procedures of 40 CFR part 50, appendix H that account for missing days of data.

EPA has determined that applying a 5 ppb adjustment to all of the 1997 to 2002 data would yield only one additional monitor (that in Arlington, Virginia) with more than 3 exceedances for the three year period ending in 2002.

These results are presented in detail in the technical support for this final action.[13] As noted above, EPA believes that monitoring data for one year is not necessarily a good indicator of future year data. For this reason, EPA believes this one scintilla of contrary evidence (which arises from a method that EPA neither proposed nor endorses) does not outweigh the preponderance of evidence supporting EPA's determination that attainment of the 1-hour ozone NAAQS will be achieved in 2005.

Monitor Trends.

With regard to the 1999 data, EPA has determined that the one-hour ozone NAAQS was violated at six monitors with three full years of data for 1997 to 1999 (inclusive) and at one additional monitor with two-years of data for 1998 and 1999, not the four monitors identified in the comments. For the 2002 ozone season, violations were recorded at seven monitors. One of these seven has only one full ozone season (which was 2002) and recorded two exceedances in 2002 (with the design value being the second highest reading which was 137 ppb). Another one of these seven has data for the last 123 days of the ozone season (July 1, 2003, through October 31, 2003 inclusive). This monitor recorded only one exceedance, but due to the adjustment procedure found in 40 CFR part 50, the number of expected exceedances is increased to 1.7.

The worst monitor for 1999 had an annual average of 4.2 expected exceedances and a design value of 0.132 ppm. By the end of the 2002 ozone season this monitor had an annual average of 1.4 expected exceedances and a design value of 0.128 ppm.

In terms of average number of expected exceedances, one monitor had an annual average of 2.7 expected exceedances based upon the 2002 ozone data. For 2002, this monitor had a design value of 0.126 ppm. At the end of the 1999 this monitor had an annual average of 1.3 expected exceedances and a design value of 0.128 ppm.

Since 1999, for the monitors with more than one season of data, the average number of expected exceedances at the worst monitor has dropped from 4.2 to 2.7 and the design value has dropped from 132 ppb to 128 ppb.

Comment 3: The commenter alleges that EPA's refusal to accept UAM results for the attainment demonstration conflicts with longstanding Agency policy, namely, EPA's policy that which requires the use of the UAM to demonstrate eligibility for granting waivers from the NO_X requirements under section 182(f). The commenter quotes a portion section 2.6.1 of the NO_X Supplement to the General Preamble.[14] Section 2.6.1 says that "EPA has determined that, as a technical matter, photochemical grid modeling is the only reliable tool to justify an area-wide exemption from the NO_X requirements (or relaxation of otherwise required NO_X reductions)." *See* 57 FR at 55623 (November 30, 1992). The commenter notes that EPA extended a statutory SIP submittal deadline to enable states to complete crucial UAM modeling. The commenter concludes with an assertion that EPA is being inconsistent by allowing attainment demonstrations to discount UAM results while requiring adherence to UAM before NO_X waivers can be granted to limited groups of sources.

Response 3: EPA disagrees with the comment for several reasons. The comments ignore the overall context in which EPA made this one statement in section 2.6.1, and, specifically, EPA does not agree that the use of the phrase "photochemical grid modeling is the only reliable tool" has the meaning ascribed to it by the commenter when placed in the context of the original guidance and subsequent guidance. The comments also ignore subsequent guidance issued regarding waivers from the NO_X requirements of section 182(f) (NO_X waivers).

In section 2.6.1, of the NO_X Supplement to the General Preamble, EPA stated that EPA has determined that, as a technical matter, photochemical grid modeling is the only reliable tool to justify an area-wide exemption from the NO_X requirements (or relaxation of otherwise required NO_X reductions). We concluded that states must include in such demonstrations photochemical grid modeling analyses that consider various control strategies with and without NO_X reductions. We stated that for a variety of ozone nonattainment areas photochemical grid modeling either has not been utilized previously or, if utilized, has not adequately considered the effects of NO_X emission reductions. We recognized that at that time, while efforts to conduct photochemical grid modeling were underway in many states, the time needed to establish and implement a modeling protocol and to interpret the model results will, in a variety of cases, extend beyond the November 15, 1992 deadline for submission of NO_X rules.

On December 16, 1993, EPA issued "Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f)." In that guidance EPA expounded upon the guidance provided in the NO_X Supplement to the General Preamble. For instance, EPA stated it would allow grid models other than UAM to be used for regional scale modeling needed for the net ozone benefits test in transport regions.[15]

Under the "net air quality test", EPA stated that the primary test should be the effect the exemption would have on attainment of the primary NAAQS for the criteria pollutants and that secondary tests, as needed, can extend to the (qualitative or quantitative) consideration of other air quality impacts that are explicitly recognized in the CAA. Under this test, an area would have to make a showing that the area under consideration clearly does not need NO_X reductions to provide for attainment to attain any NAAQS.[16] This should be based on a comparison of the geographic area exposed to concentrations above the ozone NAAQS with and without NO_X reductions from the sources concerned or where UAM results are available, population exposure to concentrations above or near the NAAQS may be used instead of the geographic area exposure factor.

Under the "contribute to attainment test", EPA stated that the demonstration must show that additional NO_X reductions would not contribute to ozone attainment in the area. The guidance was to model: (1) Substantial VOC reductions; (2) substantial NO_X reductions; and (3) both the VOC and NO_X reductions. If the attainment demonstration has not been completed, such substantial VOC reductions need not be a level showing attainment if such reductions are substantial.[17] If the area-wide predicted maximum 1-hour ozone concentration for each day modeled under scenario (1) is less than or equal to that from scenarios (2) and (3) for the same day, then the area would be eligible for an exemption from the section 182(f) requirements.[18]

Under the "net ozone air quality benefit test", EPA required a comparison of exposures to ozone concentrations resulting from: (1) Substantial VOC reductions; (2) substantial NO_X reductions; and (3) both the VOC and NO_X reductions. If the attainment demonstration has not been completed, such substantial VOC reductions need not be a level showing attainment if such reductions are substantial.[19] The geographic scope was all portions of the ozone transport region in which impacts from NO_X emissions from the area seeking the exemption can be determined by the photochemical grid model. Under the guidance, if the exposure to ozone concentrations from scenario (1) is less than or equal to the exposure to ozone concentrations from scenarios (2) and (3), then the section 182(f) net ozone

[11] While the rounding may seem to increase the standard by four percent (.005 divided by 0.12), the standard was set to include an ample margin of safety as required by section 109(b) of the CAA.

[12] The commenter submitted the 7 ppb adjustment to claim that "[e]ven if one were to assume a 7 ppb reduction in ambient levels from the NO_X SIP call which is near the middle of the 5–10 ppb reduction attributed to the SIP call in the TSD, the Greenbelt monitor would still be in violation."

[13] *See* section IV. "Regarding Comment on Number of Exceedance Days and an Air Quality Adjustment of 7 ppb and Air Quality Trends" to "First Amendment to Technical Support Document for Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; Post-1996 Rate-of-Progress Plan for the Metropolitan Washington, DC Nonattainment Area", dated April 10, 2003.

[14] "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 55620, November 30, 1992.

[15] *See* Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f), December 16, 1993, section 7.3.

[16] *Id.*, Chapter 3.

[17] *Id.*, Chapter 8.

[18] *Id.*, Chapter 4.

[19] *Id.*, Chapter 8.

benefits demonstration could be approved.[20]

The "contribute to attainment" and "net ozone benefit" tests described in preceding paragraphs both require an area-wide or regional analysis. In such area-wide/regional analyses, NO_X emission reductions at a large number of sources are considered. These analyses are appropriate to determine in a directional manner whether or not NO_X reductions are expected to be beneficial with respect to the air quality in the area/region. These analyses may be less precise than an attainment demonstration required under section 182(c).[21]

Regarding the excess emissions reductions test, EPA believes that the excess reductions provision requires a more precise analysis; specifically an analysis which is based on the attainment demonstration. That is, the excess reductions provision must be more than a directional finding on an area-wide basis.[22] As discussed elsewhere in this document in responses to comment, EPA believes that the WOE is not an alternative method or a roll-back analysis, or that the section 182(c) requirements for the attainment demonstrations does not exclude WOE and thus the attainment demonstration needed to support an excess emissions waiver could include the very same WOE analyses used in the Washington area.

When EPA stated that photochemical grid modeling was the only reliable tool we did not mean to confine modeling exclusively to just UAM. Rather, our guidance meant to exclude trajectory based models which lack the necessary treatment of the physical orientation of the NO_X sources, dispersion of their plumes and cannot assess whether NO_X control contributes to attainment in all parts of a nonattainment area because they address a limited number of trajectories.[23]

The General Preamble specified that NO_X waivers would need to be supported by photochemical modeling analyses. The scope of these analyses was refined in subsequent guidance. This subsequent guidance specified the test required under for each of the different categories of NO_X waivers set by statute. Some of the tests needed for NO_X waivers are only directional in that one need to make comparisons in the changes in air pollutant concentrations due to large VOC-only, NO_X-only, and VOC plus NO_X reductions. Some of these comparisons relate to geographic or population exposures to ozone levels. The excess emissions reduction test is tied to the attainment demonstration. With the exception of the excess emissions test, the photochemical analysis for the other tests only has to show that changes in ozone concentrations or net air quality benefits are greater in the absence of specified or substantial NO_X reductions than with such reductions.[24] In all the tests, except those tied to an area's attainment demonstration, results from photochemical modeling one reduction scenario are compared with modeling results from different reduction scenarios. The tests only compare modeling results. For the tests tied to the attainment demonstration, EPA would consider the same WOE analyses as an attainment demonstration not related to an exemption from the section 182(f) requirements.

e. Use of MOBILE6.

Comment: The commenter alleges that it is inappropriate for EPA to conditionally approve the SIPs based on modeling conducted with EPA's MOBILE5 motor vehicle emissions model now that the MOBILE6 model is available for use.

Response: The MOBILE6 model was not available for use at the time these SIPs were developed. The model is now available, and EPA guidance issued with release of the model does indicate that any new SIP modeling should be conducted with the new model. The Washington area jurisdictions had already completed significant SIP modeling efforts prior to release of MOBILE6. EPA's guidance provides that EPA may continue to approve SIPs based on MOBILE5 under these circumstances. *See* the January 18, 2002 Memorandum titled, "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity." As noted in this January 18, 2002 Memorandum, the CAA requires that SIP inventories and control measures be based on the most current information available and applicable when a SIP is developed. *See* section 172(c)(3) of the CAA and 40 CFR 51.112(a)(1). However, as noted in the answer to the first question in this January 18, 2002 Memorandum, "EPA believes that the CAA would not require states that have already submitted SIPs or will submit SIPs shortly after MOBILE6's release to revise these SIPs because a new motor vehicle emissions model is now available." This concept was reiterated in the notice of availability, which was published in the **Federal Register** on January 29, 2002 (67 FR 4254), that announced the approval and availability of MOBILE6 for use in SIPs and conformity determinations. Use of the MOBILE6 model for SIP development was not allowed before the January 29, 2002, notice of availability. Since the Washington area attainment demonstration was submitted in February 2002, and the mobile source modeling was performed prior to that date, MOBILE5 had to be used.

It should also be noted that at the time of the development of the Washington area attainment demonstration changes were being made to the various draft versions of the MOBILE6 model as problems were detected in testing the drafts. Since the MOBILE6 model was not available when the SIPs for the Washington area was developed EPA concludes that it was appropriate to develop the SIP with the MOBILE5 model.

Furthermore, the States have committed not only to conduct further modeling reanalyses with the MOBILE6 model, but also to revise the attainment demonstration as necessary to demonstrate timely attainment with the new model, including any necessary additional control measures. EPA believes that in this case it is appropriate to conditionally approve the SIPs.

With respect to the commenter's criticism of MOBILE5 modeling, we believe that this modeling is not nearly so inaccurate or outdated as the commenter suggests. MOBILE5 modeling provides the best estimate of mobile source emissions that was available at the time the SIPs were developed. Soon the States will be reanalyzing mobile emissions with the improved MOBILE6 model and offsetting any additional emissions projected with the new model as necessary to provide for attainment.

The commenter further argues that because the States had previously committed to update the mobile modeling with MOBILE6 by this past January, it is arbitrary for EPA now to accept commitments from the States to complete this effort by April 2004. However, the SIPs in which the States had committed to complete these reanalyses were vacated by the Court of Appeals in response to litigation initiated by the commenter, and the States reasonably interrupted their work updating the modeling to consider the court's opinion and determine the appropriate route to developing an approvable SIP. Now the States have committed not only to update the mobile modeling as they had previously planned to do by this year, but also to revise the attainment demonstration as a whole, including adoption of any necessary additional control measures to assure timely attainment. As indicated in their commitment letters, the States believe that this much more significant effort will take until April 2004. The commenter correctly points out that the States have already done preliminary new model runs with the MOBILE6 model, and thus that they might not need until April 2004 to complete the new mobile modeling. However, the completed mobile modeling is only preliminary and only includes the mobile model runs with MOBILE6. The States have not even completed preliminary work on revising the attainment demonstration as a whole, nor the adoption of any additional control measures they might ultimately conclude appropriate to provide for timely attainment. All of this additional work is necessary to honor the recent commitments, and the States believe it will take them until April to complete that work.

f. Contingency Measures.

Comment: The commenter asserts that the SIPs do not provide contingency measures to make up for any emission reduction shortfall, either in achievement of ROP milestones or for failure to attain, as required by sections 172(c)(9) and 182(c)(9) of the Clean Air Act.

Response: EPA acknowledges that the SIPs do not yet contain all of the required contingency measures, however, EPA is not fully approving the attainment demonstration and ROP plan for the Washington area. Rather, as discussed previously in this document, EPA is conditionally approving these SIP revisions pursuant to section 110(k)(4) of the CAA which specifically authorizes this action. One of the conditions for approval is submittal of appropriate contingency measures. Section 110(k)(4) specifically allows the approval of commitments under certain circumstances. For the reasons set forth elsewhere in this document including those in response to other comments (including those responses to comments that claim the severe area SIP elements are past due and claim conditional approval is not permissible), EPA believes that a conditional approval including conditions requiring submittal of contingency measures is permissible in this case.

3. Comments Relating to Rate-of-Progress

a. Post-1999 Progress.

Comment: The commenter incorporates by reference previous comments regarding ROP submitted to EPA on December 13, 2002, asserting that section 182(c)(2)(B) of the Act mandates post-1999 ROP even for serious areas and that the submittal deadline for this SIP was November 15, 1994. The commenter then concludes that the EPA has no authority to extend the deadline for the submittal of the post-1999 portion of the ROP plan for an area that is later reclassified to severe because the statutory due date of November 15, 1994 is past. New comments by this same commenter assert that we cannot approve the 1996–1999 plan because the plan lacks the requisite 3 percent reduction per year (averaged over consecutive three-year periods) ROP demonstration for years between 1999 to the attainment date of 2005. Furthermore, the commenter argues that the CAA required serious and above areas to submit a single ROP plan by November 15, 1994 demonstrating a 3 percent reduction per year (averaged over consecutive three-year periods) after November 15, 1996 until the attainment date. The commenter asserts that the Court of Appeals has ruled in *Sierra Club, supra,* that EPA had no authority to approve the SIPs for the Washington area in the absence of the ROP plan covering the period November 15, 1999 through November 15, 2005.

Response: EPA does not agree that the post-1999 portion of the ROP plan is past-due in a serious area once such serious area is reclassified to severe nonattainment. EPA's exercise of discretion under section 182(i) to adjust the submission deadline for the post-1999 portion of the ROP plan requirements, which only became applicable to the Washington area for the first time upon the effective date of the area's reclassification on March 25, 2003, is not arbitrary or capricious, and is in keeping with the terms and purpose of the statute.

Section 182(i) states that the Administrator may adjust applicable deadlines (other than attainment dates) to the extent such adjustment is necessary or appropriate to assure consistency among the required submissions of new requirements applicable to an area which has been reclassified. Where a submission date has passed and is therefore impossible to meet, EPA has concluded that the Administrator may establish a later date. EPA has applied this interpretation in its prior reclassification rulemaking actions. *See* Santa Barbara, California, (62 FR 65025, December 10, 1997); Phoenix, Arizona (62 FR 60001, November 6, 1997); and Dallas-Fort Worth, Texas (63 FR 8128, February 18, 1998).

The structure of the Clean Air Act itself reinforces this interpretation. Under the Act, the original dates for submissions for areas initially classified as serious, severe, and extreme areas was, as the commenter points out, 1994. The attainment date for serious areas is 1999. Thus, the Act does not require EPA to make a determination of whether or not a serious area met its 1999 attainment deadline until more than five years after the original submission date for areas originally classified as severe. Since the original 1992, 1994 and 2000 statutory deadlines have elapsed, it is impossible for EPA to establish any of these as the submission deadline for a newly reclassified area.

EPA has determined that in light of the fact that the original submission dates for severe areas have elapsed prior to the time that we issued the reclassification for the Washington area, it is a reasonable exercise of EPA's discretion to adjust the applicable submission deadlines in order to ensure consistency among the new requirements. Because it is impossible for the States to meet long-expired deadlines, EPA must set new deadlines that will ensure consistency of submissions for requirements that the state is only recently being notified that it must meet. This is entirely in keeping with the discretion that Congress accorded EPA in section 182(i), and with EPA's prior reclassification rulemakings making appropriate adjustments to submission deadlines. Because the States must now meet newly imposed requirements such as post-1999 ROP and additional severe area control requirements, EPA must set prospective submission dates, and has authority under section 182(i) to make these dates consistent.

To interpret the Clean Air Act as the commenter suggests would give the reclassification retroactive effect by holding the States in default of their submission obligations before the event necessary to trigger that obligation (reclassification) has occurred. Until EPA reclassified the Washington area effective March 25, 2003, the States were under no obligation to make the required submissions. To subject them to a lapsed deadline after reclassification would be patently unfair and contrary to the statute's intent.

[20] *Id.*, Chapter 5.
[21] *Id.*, Chapter 6.
[22] *Id.*, Chapter 6.
[23] *Id.*, section 7.1.

[24] In cases where an area outside the ozone transport region actually attained the ozone NAAQS as shown through air quality monitoring data without the NO_X reductions on major stationary sources required by section 182(f) such areas could also obtain a NO_X waiver. For example, refer to section 4.4 of Guideline for Determining the Applicability of Nitrogen Oxides Requirements under Section 182(f), December 16, 1993.

Giving the submission deadlines retroactive effect would also be inconsistent with the Administrative Procedure Act, 5 U.S.C. 553(d), which requires that before a rule takes effect, persons affected will have advance notice of its requirements. A failure to meet an obligation, especially one accompanied by sanctions, cannot occur in advance of the imposition of that obligation. The obligation to submit requirements to meet the severe area classification did not exist for the Washington area prior to the final action that reclassifies the area. Giving retroactive effect to the old SIP submission deadlines would also preclude EPA from exercising the discretion with respect to setting the deadlines for these submissions that is specifically afforded by section 182(i).

In *Sierra Club* v. *Whitman,* 130 F. Supp.2d 78 (D.D.C. 2001), *aff'd,* 285 F.3d 63 (D.C. Cir. 2002), a case involving the reclassification of the St. Louis nonattainment area, the District Court refused to interpret the reclassification provisions as authorizing relief that would treat submission deadlines as having lapsed prior to EPA having issued a reclassification rulemaking. The court stated that such an interpretation "could 'create * * * an injustice at the hands of the court itself.'" 130 F. Supp.2d at 94. Such relief "could throw the [area] into extreme noncompliance." *Id.* The court refused to impose such relief when it "could effectively penalize the state and local entities that are required to comply with EPA findings." *Id.* In the St. Louis case, the Sierra Club demanded not only retroactive reclassification, but also demanded that the district court declare that "the State of Missouri has failed to file a SIP revision that comports with the requirements of section 7511a(c) by the statutory deadline of May 15, 1998," *id.* at 87, a date that had long since passed. The district court refused to do so, recognizing that this would unfairly penalize the States, which are entitled to rely on EPA's actions in anticipating the burdens that will be imposed pursuant to the CAA. Imposition of sanctions would also have unfair adverse consequences for emissions sources.

The Court of Appeals upheld the District Court's ruling. "In any event, what Sierra Club sought—to have the effective date of EPA's court-ordered determination converted to the date the statute envisioned, rather than the actual date of EPA's action—was a form of relief the district court quite properly rejected." *Sierra Club* v. *Whitman,* 285 F.3d 63, 68 (D.C. Cir. 2002). The Court of Appeals continued: "Although EPA failed to make the nonattainment determination within the statutory time frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the States, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time." *Id. See also NRDC* v. *EPA,* 22 F.3d 1125 (D.C. Cir. 1994).

EPA acknowledges that it cannot fully approve an attainment demonstration that has an outside attainment date of November 15, 2005, for the Washington area in the absence of a demonstration of ROP after 1999. *See Sierra Club* v. *Whitman,* 294 F.3d 155, 163 (D.C. Cir. 2002) ("[W]ith an attainment date in 2005, 'the rate-of-progress plan for the Washington area had to demonstrate a 9% reduction in emissions from 1996 to 1999, another 9% from 1999 to 2002, and another 9% from 2002 to 2005'"). However, EPA believes that in the current circumstances where the States for an area that has been recently reclassified to severe have submitted the 1996–1999 ROP plan through the 1999 milestone year and an attainment demonstration for 2005 in advance of the date set forth in the final reclassification rule, EPA can issue a conditional approval of the attainment demonstration if EPA has a commitment from the States to submit the 1999—2005 ROP plan by April 2004. EPA believes this does not contravene the Circuit Court's rulings and does not produce the absurd result of retroactive application of requirements and inconsistencies with the Administrative Procedure Act, 5 U.S.C. 553(d) discussed in the preceding paragraphs. On April 7 and 8, 2003, EPA received commitments from the States to submit by April 17, 2004, all of the elements, including the post-1999 ROP plan, required for a severe area SIP and EPA is conditionally approving the SIP revisions listed in Tables 1 and 2 in section I of this document based upon the conditions that the States submit all the severe area SIP elements. These are the same elements needed to fulfill the new severe area requirements that became applicable to the area when the area was reclassified on March 25, 2003, (68 FR 3210, January 24, 2003).

b. ROP and MOBILE6.

Comment: The commenter asserted that because the 1996–1999 ROP plan does not account for MOBILE6 modeling EPA cannot approve the 1996–1999 ROP plan even with respect to the 1999 milestone year. The commenter claimed that initial MOBILE6 results are significantly higher than that in the plan and that EPA must first evaluate the impact of the MOBILE6 results on the required level of reductions to determine if the plan achieves that level of reduction.[25]

Response: EPA acknowledges that emissions factors, as well as inventory calculation methodologies, are continually being improved. In general, EPA has not required changes to submitted SIPs that result from changes in factors and methodologies that occur after the SIP is submitted. With respect to the 15 percent plan due in November 1993, in section 2.4 of "Guidance on the Adjusted Base Year Emissions Inventory and the 1996 Target for 15 Percent Rate-of-Progress Plans" (EPA–452/R–92–005) EPA stated: "If other significant changes occur in emissions factors or methodologies before which time it is impossible for states to make adjustments to their 15 percent calculations and associated control strategies, then EPA may require states to make corrections to the base year emissions inventory, as well as to the adjusted base year inventory and the 1996 target level of emissions." This guidance discussed the then pending transition from the MOBILE4.1 model to the MOBILE5 model but only prospectively, by requiring that emissions values calculated using MOBILE4.1 would have to be recalculated using MOBILE5 before submittal of the final rate-of-progress plan in November 1993.

Likewise with respect to the 1996–1999 plan, EPA has advised the states when changes in emissions factors or in methodologies for developing emissions inventories would force revisions to the inventories or plans. Changes would be necessary if they occurred before the plan was submitted. "However, if such changes occur after November 15, 1991, but prior to November 15, 1994, a serious or above area may be required to make corrections to the base year inventory and attainment year projection inventory for purposes of developing the 3 percent rate-of-progress demonstration. If such changes occur after November 15, 1994, EPA will advise on when it would be appropriate for the states to make corrections in future supplements to this General Preamble." 57 FR at 13517 (April 16, 1992).

EPA established a policy to require that certain attainment demonstrations

[25] The comments referenced a Meeting Notice for the February 27, 2003 Meeting Notice of the Metropolitan Washington Air Quality Committee and provided the comments solely by reference to its URL (*http://www.mwcog.org/uploads/event-documents/WVk20030227111708.pdf*).

and maintenance plans be revised using the then-forthcoming MOBILE6 model.[26] EPA required states that relied upon benefits from the Tier 2/Sulfur final rule for attainment or maintenance to commit to revise the applicable budgets using MOBILE6 in order for EPA to approve the SIP. However, the 1996–1999 ROP plan for the 1999 milestone year for the Washington area does not take credit for benefits from the Tier 2 motor vehicle standards and thus this guidance is not applicable.

EPA has established policy and guidance for when SIPs must be prepared using MOBILE6.[27] EPA believes that the Clean Air Act would not require states that have already submitted SIPs or will submit SIPs shortly after MOBILE6's release to revise these SIPs simply because a new motor vehicle emissions model is now available. EPA believes that this is supported by existing EPA policies and case law. *See, e.g., Delaney* v. *EPA,* 898 F.2d 687 (9th Cir. 1990). Of course, states can choose to use MOBILE6 in these SIPs, for example, if it is determined that future conformity determinations would be ensured through such a SIP revision.

EPA does not believe that the State's use of MOBILE5 should be an obstacle to EPA approval for reasonable further progress, attainment, or maintenance SIPs that do not include Tier 2 sulfur rule reductions that have been or will soon be submitted based on MOBILE5, assuming that such SIPs are otherwise approvable and significant SIP work has already occurred (*e.g.*, attainment modeling for an attainment SIP has already been completed with MOBILE5). It would be unreasonable to require the States to revise these SIPs with MOBILE6 since significant work has already occurred, and EPA intends to act on these SIPs in a timely manner. The ROP plan for 1999 was prepared and submitted well before MOBILE6 was released. The 1996–1999 ROP plan for the 1999 milestone year was prepared using the most current model, MOBILE5b, available at the time the SIP was prepared.

To act as the commenter suggests would be to purposelessly contradict EPA's long established policies and guidance provided to the states with respect to us of new models.

As explained in a previous response, EPA does not agree that the 1996–1999 ROP plan for the Washington area had to include any post-1999 reductions until after the area was reclassified to severe nonattainment. As explained in the notice of proposed rulemaking for that action, EPA stated that the post-1999 portion of the ROP requirement will be developed using MOBILE6 in accordance with our existing policy[28] for newly developed SIPs. *See* 67 FR at 68611, November 13, 2002. We did not modify this requirement in the final action.

Furthermore, the MOBILE6 model was not available for use at the time these 1996–1999 ROP SIPs were developed. Also, for the same reasons, relating to the availability of the MOBILE6 model in relation to the date the 1996–1999 ROP was submitted, that were presented in section III.A.2e, EPA disagrees with these comments relating to MOBILE6 and the 1996–1999 ROP plan.

4. Severe Area SIP Requirements

Comment: The commenter claims that EPA cannot approve these SIP revisions because these revisions do not cover all of the required severe area SIP components and that EPA must therefore disapprove these SIP revisions.

Response: EPA agrees that we cannot fully approve these SIP revisions. However, EPA believes that to disapprove these SIP revisions because the States did not submit all the severe area SIP elements that became applicable after these SIP revisions were submitted would lead to the same absurd results and problems with retroactivity and to the same conflicts with the Administrative Procedure Act and CAA that were discussed previously with respect to the post-1999 rate-of-progress requirements.

EPA is not fully approving the attainment demonstration and ROP plan for the Washington area. Rather, as discussed previously in this document, EPA is conditionally approving these SIP revisions pursuant to section 110(k)(4) of the CAA which specifically authorizes this action. Section 110(k)(4) specifically allows the approval of commitments under certain circumstances. For the reasons set forth elsewhere in this document including those in response to other comments, EPA believes that a conditional approval is permissible because EPA received commitments on April 7 and 8, 2003 from the Washington area jurisdictions to submit by April 17, 2004 revisions to the SIP that:

(A) Revise the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(B) Revise the severe area ROP to provide emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(C) Revise the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(D) Revise the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(E) Update the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(F) Revise the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(G) Revise the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(H) Revise the major stationary source threshold to 25 tons per year.

(I) Revise Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

[26] Memorandum, "1-Hour Ozone Attainment Demonstrations and Tier 2/Sulfur Rulemaking" from Lydia Wegman, Office of Air Quality Planning and Standards and Merrylin Zaw-Mon, Office of Mobile Sources to the Air Division Directors, Regions I–VI, issued November 8, 1999.

[27] Memorandum from John S. Seitz and Margo Tsirigotis Oge entitled "Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity," issued January 18, 2002.

[28] Memorandum from John S. Seitz and Margo Tsirigotis Oge entitled "Policy Guidance for the Use of MOBILE6 in SIP Development and Transportation Conformity," issued January 18, 2002.

(J) Revise new source review offset requirements to require an offset ratio of at least 1.3 to 1.

(K) Submit as part of the SIP a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) should the area fail to attain by November 15, 2005.

(L) Include as part of the SIP a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the ROP requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

These required submittals are the same elements needed to fulfill the new severe area requirements that became applicable to the area when the area was reclassified on March 25, 2003, (68 FR 3210, January 24, 2003).

5. Alternative Proposal and Protective Finding

Comment: The commenter supports EPA's proposal in the alternative to disapprove attainment demonstration SIPs for the Washington area, but questions the proposal to issue a protective finding under EPA's transportation conformity regulations should EPA proceed with a final disapproval of the SIPs.

Response: EPA has concluded that a conditional approval is appropriate in this case and therefore will not be issuing a final disapproval nor a protective finding on the attainment demonstrations for the Washington area. Therefore, any comments relating to the proposed protective finding are not germane to this final action and EPA will not be responding to any such comments in this final action.

B. Comments Made on the Proposed Reclassification

On March 5, 2003, we received a comment letter submitted by the Sierra Club incorporating by reference their comments submitted on December 13, 2002, relating to the proposed reclassification of the Washington area to severe nonattainment (67 FR 68805, November 13, 2002). To the extent that these comments are germane to the current action we incorporate by reference our responses to the comments on these issues found in our final rule published January 24, 2003 (*see* 68 FR at 3412–3421) as supplemented by the response to comment found in this final rule.

C. Comments Made Regarding Adequacy of Motor Vehicle Emissions Budgets

On March 5, 2003, we received a comment letter submitted by the Sierra Club incorporating by reference their comments submitted on September 9, 2002, and on February 14, 2000, that related to the adequacy of the motor vehicle emissions budgets in the 1996–1999 ROP plan and the attainment demonstration.

Comment: We received a number of comments about the process and substance of EPA's review of the adequacy of motor vehicle emissions budgets for transportation conformity purposes. We also received comments asserting that EPA should not find the budgets adequate because EPA is plainly obligated to disapprove the attainment SIP because: (1) The budgets are based on a 2005 attainment date, rather than the area's then current attainment date of 1999; (2) the budgets do not necessarily reflect all RACM; (3) there are no budgets corresponding to the post-1999 rate-of-progress requirement; (4) the SIP lacks contingency measures; (5) the budgets do not reflect the potential that the budgets will be further tightened as a result of severe area SIP requirements; (6) the attainment demonstration is flawed due to the use of the weight of evidence approach; and (7) the budgets were developed using the MOBILE5 model.

Response: In the notice of proposed rulemaking EPA proposed to conditionally approve the attainment demonstration and ROP SIP revisions and did not propose to find the budgets adequate. EPA is conditionally approving the motor vehicle emissions budgets rather than making an adequacy determination. Therefore, comments relating to adequacy of budgets are not germane to this rulemaking. To the extent comments are germane to conditional approval of the SIPs, EPA addresses them elsewhere in this notice in response to comments on various aspects of the plans.

D. Comments Relating to Supplemental Information To Support Proposed Approvals of One-Hour Ozone Attainment Demonstrations for Serious Ozone Nonattainment Areas

On March 5, 2003, we received a comment letter submitted by the Sierra Club incorporating by reference their comments submitted on November 15, 2000, relating to EPA's proposed "Supplemental Information to Support Proposed Approvals of One-Hour Ozone Attainment Demonstrations for Serious Ozone Nonattainment Areas" (65 FR 61134, October 16, 2000) relating to RACM requirements.

These comments are not germane to this action because EPA is not relying upon the supplemental information to show that the RACM requirement has been fulfilled.

E. Prior Comments on the Approvability of the Attainment and Rate-of-Progress Plans

On March 5, 2003, we received a comment letter submitted by the Sierra Club incorporating by reference their comments submitted on February 14, 2000, October 30, 2000, and November 20, 2000 relating to the approval of the attainment demonstration and ROP plans.

1. Comments Relating to Extension of the Attainment Date to November 15, 2005

We received comments objecting to EPA's attainment date extension policy (a memorandum "Extension of Attainment Dates for Downwind Transport Areas" issued July 16, 1998), and to application of the extension policy to the Washington area. These comments are not germane to this action because EPA is not applying the extension policy to the area but rather has extended the attainment date to November 15, 2005, by reclassifying the area to severe nonattainment (*see* 68 FR 3410, January 24, 2003).

2. Motor Vehicle Emissions Inventory

Comment: We received comments stating that the motor vehicle emissions inventory is not current, particularly with respect to the fleet mix.[29] The comments stated that the fleet mix does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks, which pollute more than conventional cars. In the February 14, 2000 comment letter, we received comments asserting that EPA looks only at those "weights" that favor a finding of attainment and specifically identified the changing fleet mix. We also received comments asserting that the Maryland and Virginia attainment and 1996–1999 ROP plans are flawed because they assume a fleet mix that does not accurately reflect the growing proportion of sport utility vehicles and gasoline trucks. The comments cite data from the Maryland Department of the

[29] These comments were contained in the February 14, 2000, October 30, 2000, and November 20, 2000, letters.

Environment for 1996 and 1999. The comments further assert that EPA and the States have not followed a consistent practice in updating SIP modeling to account for changes in vehicle fleets. The comments also assert that EPA cannot rationally approve SIPs that are based on such materially inaccurate assumptions; that continued use of out-dated assumptions is inconsistent with the duty imposed by Clean Air Act section 182(a)(3) to triennially update the emission inventory; and that if the motor vehicle inventory has not been updated to prepare the current SIP submission, it should be disapproved.

Response: All of the SIPs on which we are taking final action are based on the most recent vehicle registration data available at the time the SIP was prepared. The SIPs use the same vehicle fleet characteristics that were used in the most recent periodic inventory update at the time the SIP was prepared. The Metropolitan Washington, DC Ozone Nonattainment Area SIP is based on vehicle registration data from 1996, which was the most recently available data at the time the SIP was prepared and submitted. Clearly the 1999 data could not have been used in motor vehicle emissions projections prepared in the fall of 1998 as documented in Appendix D of the SIP. EPA requires the most recent available data to be used, but we do not require it to be updated on a specific schedule. Therefore, different SIPs base their fleet mix on different years of data. Our guidance does not suggest that SIPs should be disapproved on this basis. Further, EPA does not require states to go back and re-analyze SIP submissions if new data becomes available shortly before EPA takes final action on the SIP. Nevertheless, we do expect that revisions to these SIPs that will be submitted using MOBILE6 (as required in those cases where the SIP is relying on emissions reductions from the Tier 2 standards) will use updated vehicle registration data appropriate for use with MOBILE6, whether it is updated local data or the updated national default data that will be part of MOBILE6. EPA is requiring the Washington area States to revise the attainment budgets using MOBILE6 pursuant to the commitments for conditional approval submitted by the States. The revised budgets must include the most recently available fleet information at the time the budgets are revised.

In addition, we incorporate by reference our responses to comments on these issues found in section II.H (*see* 66 FR at 614) and in response 20 of section X. (*see* 66 FR at 630) of our final rule published January 3, 2001.

3. Credit for National Measures

Comment 1: We received comments stating that states should not be given credit for measures that are not fully implemented. For example, the States are being given full credit for Federal coating, refinishing and consumer product rules that have allegedly been delayed or weakened.

Response 1: On September 11, 1998, EPA promulgated three major regulations to reduce VOC emissions from covering three major categories of consumer and commercial products. The first rule covers 61 categories of architectural and industrial maintenance (AIM) coatings. The second rule covers 24 consumer product categories such as air fresheners, automotive windshield washer fluid, "household" adhesives, cleaners and polishes, hair care products, cleanser, underarm aerosol antiperspirants, insecticides and charcoal lighting fluids. The third rule covers seven categories of automobile refinishing (autobody refinishing) coatings and coating components; automobile refinishing is the process of coating automobiles or parts thereof, including partial body collision repairs, that is subsequent to the original coating applied at an automobile original equipment manufacturing plant.

Architectural and Industrial Maintenance (AIM) Coatings

On March 22, 1995 EPA issued a memorandum [30] that provided that states could claim a 20 percent reduction in VOC emissions from the AIM coatings category in ROP and attainment plans based on the anticipated promulgation of a national AIM coatings rule. In developing the attainment and ROP SIPs for their nonattainment areas, states relied on this memorandum to estimate emission reductions from the anticipated national AIM rule. EPA promulgated the final AIM rule in September 1998, codified at 40 CFR part 59, subpart D. In the preamble to EPA's final AIM coatings regulation, EPA estimated that the regulation will result in a 20 percent reduction of nationwide VOC emissions from AIM coatings categories (63 FR 48855, September 11, 1998). The estimated VOC reductions from the final AIM rule resulted in the same level as those estimated in the March 1995 EPA policy memorandum. In accordance with EPA's final regulation, States have correctly assumed a 20 percent reduction from AIM coatings source categories in its attainment and ROP plans. The basis for the 20 percent reductions achieved by the final rule is documented in the rulemaking docket for the AIM coatings final rule in a memorandum "VOC Emissions Reductions from the Final National Architectural Coatings Rule" from Chris Sarsony, ERG, to Linda Herring, U.S. EPA, dated July 27, 1998 (docket A–92–18, item number IV–B–2).

In accordance with EPA's final regulation, the States have assumed a 20 percent reduction from AIM coatings source categories in their attainment and ROP plans. AIM coatings manufacturers were required to be in compliance with the final regulation within one year of promulgation, except for certain pesticide formulations which were given an additional year to comply. Thus all manufacturers were required to comply, at the latest, by September 2000. Industry confirmed in comments on the proposed AIM rule that 12 months between the issuance of the final rule and the compliance deadline would be sufficient to "use up existing label stock" and "adjust inventories" to conform to the rule (63 FR 48848, September 11, 1998). In addition, EPA determined that, after the compliance date, the volume of nonconforming products would be very low (less than one percent) and would be withdrawn from retail shelves anyway. Therefore, EPA believes that compliant coatings were in use by the Fall of 1999 with full reductions to be achieved by September 2000 and that it was appropriate for the States to take credit for a 20 percent emission reduction in their SIPs.

Autobody Refinish Coatings Rule

Consistent with a November 27, 1994 EPA policy,[31] many states claimed a 37 percent reduction from this source category based on a proposed rule. However, EPA's final rule, "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings," published on September 11, 1998 (63 FR 48806), did not regulate lacquer topcoats and will result in a smaller emission reduction of around 33 percent overall nationwide. The 37 percent emission reduction from EPA's

[30] "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rules," March 22, 1995, from John S. Seitz, Director, Office of air Quality Planning and Standards to Air Division Directors, Regions I–X.

[31] "Credit for the 15 Percent Rate-of-Progress Plans for Reductions from the Architectural and Industrial Maintenance (AIM) Coating Rule and the Autobody Refinishing Rule," November 29, 1994, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I—X.

proposed rule was an estimate of the total nationwide emission reduction. Since this number is an overall national average, the actual reduction achieved in any particular area could vary depending on the level of control which already existed in the area. For example, in California the reduction from the national rule is zero because California's rules are more stringent than the national rule. In the proposed rule, the estimated percentage reduction for areas that were unregulated before the national rule was about 40 percent. However as a result of the lacquer topcoat exemption added between proposal and final rule, the reduction is now estimated to be 36 percent for previously unregulated areas. Thus, most previously unregulated areas will need to make up the approximately 1 percent difference between the 37 percent estimate of reductions assumed by states, following EPA guidance based on the proposal, and the 36 percent reduction actually achieved by the final rule for previously unregulated areas.

Both the District and Virginia claimed 35.7 percent credit in their attainment and ROP plans while Maryland claimed 45 percent. EPA's final estimate of the reduction potential of the final rule was spelled out in a September 19, 1996 memorandum entitled "Emissions Calculations for the Automobile Refinish Coatings Final Rule" from Mark Morris to Docket No. A–95–18. Since the District and Virginia did not claim more than the reduction provided in the final rule, there is no shortfall in the reductions claimed for this category.

Regarding the basis for approving Maryland's 45 percent reductions from the autobody refinishing rule, we incorporate by reference our responses to the comments on this issue found in response 18 of section II.X of our final rule published January 3, 2001 (*see* 66 FR at 629).

Consumer Products Rule

Consistent with a June 22, 1995 EPA guidance,[32] the states claimed a 20 percent reduction from this source category based on EPA's proposed rule. The final rule, "National Volatile Organic Compound Emission Standards for Consumer Products," (63 FR 48819, September 11, 1998), has resulted in a 20 percent reduction after the December 10, 1998 compliance date. Moreover, these reductions largely occurred by the Fall of 1999. In the consumer products rule, EPA determined, and the consumer products industry concurred, that a significant proportion of subject products have been reformulated in response to state regulations and in anticipation of the final rule (63 FR 48819). That is, industry reformulated the products covered by the consumer products rule in advance of the final rule. Therefore, EPA believes that complying products in accordance with the rule were in use by the Fall of 1999. It was appropriate for the states to take credit for a 20 percent emission reduction for the consumer products rule in their SIPs.

We also incorporate by reference our responses to the comments on these issues found in section II.J. *See* 66 FR at 614, and responses 10 to 15 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 626–628 as supplemented by the response to comment found in this final rule.

Comment 2: We received comments asserting that because the final national rules for autobody refinishing, surface coatings and consumer products allow for exemptions or variances, EPA cannot grant any emission reduction credit at all because the Clean Air Act does not allow EPA to credit state or national measures with emission reductions when emission limits are subject to waiver at any time. The comments further assert that because the tonnage exceptions and exceedance fee provisions or variance provisions in the rules are not limited to a specific tonnage figure at all the rules place no cap on the use of these provisions and thus assert in the absence of such caps, EPA cannot rationally or lawfully grant emission reduction credit for these rules.

Response 2: We incorporate by reference our responses to the comments on these issues found in section II.J. See 66 FR at 614 and response 10 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 626, as supplemented by the response to comment found in this final rule.

Comment 3: We received comments asserting that the proposed rulemakings used estimates from the proposed rather than the final rulemakings for autobody refinishing, consumer products, and architectural and industrial maintenance coatings as a basis for approving the States' reduction claims. The comments allege that the final rules for autobody refinishing, consumer products, and architectural and industrial maintenance coatings are weaker in a number of respects than the proposed rules for autobody refinishing, consumer products, and architectural and industrial maintenance coatings.

Response 3: As stated in response to a prior comment, while it is true that the states in many cases estimated the benefits based upon the proposed rules in some of their SIP revisions, these estimates are fully in line with the benefits that have accrued from the final rules.

We incorporate by reference our responses to the comments on these issues found in section II.J. *See* 66 FR at 614 and response 11 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 626, as supplemented by the response to comment found in this final rule.

Comment 4: We received comments asserting that for the architectural and industrial maintenance (AIM) coatings rule, the limits on a number of coatings were changed between the proposal and final rule either directly, or by establishing new subcategories with higher VOC limits. The comments assert that the effects of these changes and other changes is not documented precisely how those changes justify the claimed emission reduction credit. The comments further state that EPA does not show how the effects of these were reflected in the final percentage reduction estimate EPA is allowing states to claim from the rule.

Response 4: We incorporate by reference our responses to the comments on these issues found in response 12 of section II.X of our final rule published January 3, 2001. *See* 66 FR at 627, supplemented as follows:

The basis for the 20 percent reductions achieved by the final rule is documented in the rulemaking docket for the AIM coatings final rule in a memorandum "VOC Emissions Reductions from the Final National Architectural Coatings Rule" from Chris Sarsony, ERG, to Linda Herring, U.S. EPA, dated July 27, 1998 (docket A–92–18, item number IV–B–2).

Comment 5: We received comments asserting that the estimate of emission reductions from the autobody refinishing rule does not account for establishment of a separate category for multi-colored topcoats in the final rule—a category that has weaker limits than would have applied to the same topcoats under the proposed rule. The comments further assert that EPA has no data on the usage of multi-colored topcoats—data that is required in order to rationally estimate the expected emission reductions from the rule.

Response 5: We incorporate by reference our responses to the comments on these issues found in section II.J. *See* 66 FR at 614 and response 13 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 627 as supplemented by the response to comment found in this final rule.

Regarding the basis for approving Maryland's 45 percent reductions from the autobody refinishing rule, we incorporate by reference our responses to the comments on this issue found in response 18 of section II.X of our final rule published January 3, 2001. *See* 66 FR at 629.

Comment 6: We received comments that assert there is insufficient basis for granting full credit for the AIM rule as of November 15, 1999 because EPA has failed to offer any facts or analyses showing that only compliant products were in use as of November 15, 1999, and the late implementation deadline of September 12, 1999 virtually assures that this was not the case.

Response 6: We incorporate by reference our responses to the comments on this issue found in section II.J. *See* 66 FR at 614, and response 14 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 627, as supplemented by the response to comment found in this final rule.

For the reasons explained in our prior response to comment (66 FR at 614, 627), EPA still believes that with these reductions the area has achieved the 9 percent ROP as expeditiously as practicable and that there is no other reasonable emissions control strategy that would allow the area to achieve the 9 percent ROP for the 1999 milestone any sooner.

4. Enforcement of Control Programs

Comment: The attainment demonstrations do not clearly set out programs for enforcement of the various control strategies relied on for emission reduction credit. We also received comments that assert that the 1996–1999 ROP plan and the attainment plan fail to include a program to provide for the enforcement of the adopted control measures. as required by section 110(a)(2)(C) of the CAA. The comments also assert that these plans must contain a legally enforceable SIP commitment to enforce the various control strategies relied upon for emission reduction credit. The comments assert that EPA review of state enforcement programs in connection with federal grantmaking does not satisfy EPA's duty to ensure that the SIP itself contains the legally required enforcement and funding commitments.

Response: We incorporate by reference our responses to the comments on theses issues found in section II.K. *See* 66 FR at 615 and response 21 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 630.

5. Reliance on Commitments and State Rules Not Yet Adopted

Comment: We received comments that disagreed with the EPA's proposal to approve attainment demonstrations and rate-of-progress plans for the Washington ozone nonattainment area because not all of the emissions reductions credited in the demonstrations or plans are supported by legally enforceable limitations adopted and approved by the States and approved by the EPA as part of the SIP. Commenters also objected to accepting enforceable state commitments to adopt emission reduction control measures in the future in lieu of current adopted measures.

Response: When viewed in the context that this comment was made, this comment is not germane to the proposed action. This comment was made in response to a December 16, 1999, notice of proposed rulemaking (64 FR 70460) for the SIP revisions listed in Tables 1 and 2 of this document. That December 16, 1999, proposed rule contained a proposal to approve attainment demonstrations that contained an enforceable commitment to adopt additional measures to support the WOE that the area will attain.[33] EPA identified the areas where we had concluded that the WOE needed such supporting reductions but the Washington area was not such an area. *See* 64 FR at 70466, December 16, 1999. EPA has concluded that the WOE for the Washington area needs no additional reductions to support the WOE demonstration and is not approving such an enforceable commitment for the Washington area.

Further, EPA is not fully approving the attainment demonstration and ROP plan for the Washington area. Rather, as discussed previously in this document, EPA is conditionally approving these SIP revisions pursuant to section 110(k)(4) of the CAA which specifically authorizes this action. Section 110(k)(4) specifically allows the approval of commitments under certain circumstances. For the reasons set forth elsewhere in this document including those in response to other comments, EPA believes that a conditional approval is permissible. Therefore, EPA believes this comment is not germane to this action.

6. Rate-of-Progress—NO_X Substitution

Comment: We received comments that assert the 9 percent ROP demonstration assumes that a 1 percent reduction in NO_X emissions is equivalent in ozone reducing benefit to a 1 percent reduction in VOC emissions. The commenter asserts that EPA's NO_X Substitution Guidance (December 1993) is flawed under section 182(c)(2)(C) of the Clean Air Act because it allows NO_X substitution without a demonstration that such substitution will in fact provide ozone reductions at least equivalent to that which would result from a 3 percent annual cut in VOC emissions. The commenter claims that such a demonstration requires photochemical grid modeling showing equivalency and that EPA's own guidance (*Guidance on the Post-1996 Rate-of-Progress Plan and Attainment Demonstration* (corrected version as of 2/18/94)) requires such modeling. The States cannot use a 1 percent NO_X for 1 percent VOC substitution without proving that a 1 percent NO_X cut will in fact provide ozone reductions at least equivalent to that resulting from a 1 percent VOC cut.

The commenter further asserts that more recent EPA guidance dated January 10, 2000 for NO_X substitution in out-year conformity budgets requires 1.6 tons in NO_X reductions to offset 1 ton of VOC reductions. The commenter does not disavow other comments that the States must prove the validity of their NO_X substitution ratios as discussed in the summary of the comments in the preceding paragraph but rather claim the 9 percent demonstration fails to use the ratio of 1.6 to 1 required by the more recent EPA guidance.

Additionally, the commenter asserts that substitutions should not be allowed because the plan does not demonstrate timely attainment.

Response: We incorporate by reference our responses to the comments on these issues found in section II.M. of our final rule published January 3, 2001, *see* 66 FR at 616–619, as supplemented by the response to comment found in this final rule:

EPA still disagrees with the assertion that the attainment plan does not demonstrate attainment. The TSD and other documents in the docket support the conclusion that the area will attain, as do our responses to other comments elsewhere in this notice.

In our January 3, 2001, final rule (66 FR 586), EPA placed a document titled "RACM Analysis for Four Serious Areas Designated Nonattainment for 1-hr

[32] "Regulatory Schedule for Consumer and Commercial Products under section 183(e) of the Clean Air Act," June 22, 1995, John S. Seitz, Director OAQPS, to Air Division Directors, Regions I–X.

[33] *See* "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711.

Ozone NAAQS" in the docket to support our conclusion that all RACM have been adopted for the Washington area as well as the model sensitivity analyses found in the attainment demonstration which shows that the Washington area portion of the Baltimore-Washington modeling domain benefits more from NO_X reductions than VOC reductions. For this final rule, EPA has placed Attachment 4 ("Model Sensitivity Study for Metropolitan Washington Area") of "RACM Analysis for Four Serious Areas Designated Nonattainment for 1-hr Ozone NAAQS" in the docket solely for the technical analysis of the model sensitivity analyses found in the attainment demonstration which shows that the Washington area portion of the Baltimore-Washington modeling domain benefits more from NO_X reductions than VOC reductions. A copy of "RACM Analysis for Four Serious Areas Designated Nonattainment for 1-hr Ozone NAAQS" U.S. Environmental Protection Agency; Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, cited in the response to comments portion of the January 3, 2001 final rule can be obtained by contacting the regional office listed under the **ADDRESSES** section of this document.

7. NO_X and VOC Reduction Credits

Comment 1: We received comments that both the attainment and ROP demonstrations are flawed because they rely on emission reductions from control measures that have not been fully approved by EPA as part of the SIP. Specifically, the comments identified NO_X RACT rules for all three Washington area States, NO_X reductions claimed for the beyond RACT NO_X control rules and Virginia's generic non-CTG VOC RACT rule.

Response 1: We incorporate by reference our responses to the comments on these issues found in sections II.N and R, *see* 66 FR at 619 and 66 FR at 620, and responses 3, 4, 8 of section II.X, *see* 66 FR at 623–625, of our final rule published January 3, 2001 as supplemented in this document:

The technical support documents for this action lists the current approval status of control measures in the Washington area.[34] With the exception of the transportation control measures found in the ROP plan, for which we proposed approval on February 3, 2003, all the other measures credited towards the 1999 ROP requirement are in the approved SIP or are rules promulgated by the EPA. These measures were specified under the column labeled "Credited in 1996–1999 ROP plan" in Table 3 "Control Measures in the 1-hour Ozone 1996–1999 ROP Plan and Attainment Plans for the Metropolitan Washington Nonattainment Area" of the notice of proposed rulemaking for this action. *See* 68 FR at 5252, February 3, 2003.

Likewise, with the exception of any remaining RACM, if any, and of the transportation control measures specified in the attainment demonstration plan, all the other measures credited towards the attainment plan requirement are in the approved SIP or are rules promulgated by the EPA. These measures were specified under the column labeled "Credited in attainment plan" in Table 3 of the notice of proposed rulemaking for this action. The States have committed to timely submit any additional RACM, and we are taking final action to approve the TCMs in this notice.

The District's NO_X RACT rule was approved on December 26, 2000 (65 FR 81369), Maryland's on February 8, 2001 (66 FR 9522), and Virginia's on January 2, 2001 (66 FR 8).

The District's rule for beyond RACT control on large stationary sources of NO_X was approved on December 22, 2000 (65 FR 80783) and an additional rule on November 1, 2001 (66 FR 55099), Maryland's rules were approved on December 15, 2000 (65 FR 78416) and January 10, 2001 (66 FR 1866), and Virginia's on December 14, 2000 (65 FR 78100).

The technical support documents for this action lists the basis for the reduction credits from Virginia's non-CTG RACT rule.[35]

Comment 2: We received comments asserting that EPA's reliance on SIP call reductions is particularly unjustified in the D.C. Area, given that Virginia is challenging EPA's authority to require those very reductions and that EPA cannot grant credit for SIP call reductions when the SIP call has been judicially stayed.

Response 2: We incorporate by reference our responses to the comments on these issues found in response 8 of section II.A.2 of our final rule published January 3, 2001, *see* 66 FR at 602, supplemented as follows: The stay of the SIP call has been vacated and the SIP call has been upheld. The court lifted its stay and States are now required to submit SIPs fully addressing the SIP call and if they fail, EPA must promulgate a Federal plan. EPA is fully justified in its reliance on SIP call reductions and in granting credit for them in the areas' attainment demonstrations. *See* 67 FR 21867 (May 1, 2000).

8. Attainment Demonstration and Rate-of-Progress Control Measures Not In SIP

Comment 1: We received comments asserting that both the attainment demonstration and rate-of-progress plan for the Washington area rely on emission reductions from control measures that have not been fully approved by EPA as part of the SIP.

Response 1: We incorporate by reference our responses to the comments on this issue found in response 1 of section II.O of our final rule published January 3, 2001, *see* 66 FR at 619, supplemented by our response elsewhere in this document to other comments under the heading of "NO_X and VOC Reduction Credits."

Comment 2: We received comments stating that there are significant disparities between the projections of 1999 regional emissions found in the most recent 9 percent ROP plan for the Washington area and the EPA's Technical Support Document for the attainment demonstrations. The commenter claims that lower emissions in the TSD for the December 16, 1999 NPR, should not be used unless EPA provides an adequate technical basis.

Response 2: We incorporate by reference our responses to the comments on this issue found in response 2 of section II.O of our final rule published January 3, 2001, *see* 66 FR at 619.

9. Modeling Assumptions

Comment 1: We received comments asserting that the transportation model does not incorporate adequate assumptions about the effects of land development and new road projections on the growth of vehicle travel and citing to an EPA letter from Judith Katz, Director, Air Protection Division, EPA Region III to James Cheatham, Divisional Administrator, Federal Highway Administration, dated August 27, 1998, in which the commenters assert that EPA stated that the plans did not include any information on the rate of land development in the Washington Region and the effect this development will have on the transportation system. The comments discuss the transportation model's land use assumptions, and imply that the Metropolitan Planning Organization (the Metropolitan Washington Council of Governments, MWCOG) (hereafter, "the MPO") has not included the effects of land use in the model and that EPA has known about this issue since 1998.

Response 1: We incorporate by reference our responses to the comments on this issue found in response 1 of section II.P of our final rule published January 3, 2001, *see* 66 FR at 619–620.

Comment 2: We have received comments saying that the temperature assumed in the mobile source modeling inputs was 93 degrees (Fahrenheit), yet the maximum recorded temperatures for those days during which peak ozone values in the 1999 ozone season were recorded were higher (96 to 98 degrees).

Response 2: For two reasons EPA disagrees with the comment that this is a reason to determine that the budgets are not approvable. First, the comments cite peak temperatures for a particular ozone season. This is at odds with EPA's guidance. EPA guidance on projecting all future mobile source emissions inventories requires the States to use the temperatures representative of a "typical ozone season day". *See* section 3.3.5.2 of *Procedures for Emission Inventory Preparation Volume IV: Mobile Sources*, EPA–450/4–81–026d (Revised), 1992, which also sets the procedure for determining the temperature for the base year and all subsequent projection inventories. EPA has updated this guidance for use with the MOBILE6 emissions factor model, but the updated guidance still requires the use of the typical ozone season day.[36] The typical ozone season day conditions are those used when determining the typical daily emissions for the base year emissions inventory. The same typical ozone season day is also used when setting target levels of emissions in ROP plans and all future year projection inventories in ROP plans and the budgets for attainment demonstrations.

EPA believes that the ambient temperature is key to estimating emission rates for highway vehicles with MOBILE6.[37] Temperature inputs were a key input to the MOBILE5 mobile source emission factor model as well.[38] For this reason mobile source emission factors produced by EPA approved mobile source emission factor models are temperature dependant.

Second, if EPA were to require SIPs to be revised periodically on the basis of more recent temperatures, EPA would have to allow revisions and conformity determinations incorporating more recent data that reflect a lower temperature profile, and hence lower mobile source emissions, as well as requiring revisions to incorporate more recent data which includes higher temperatures.

EPA believes it is reasonable to use the same typical ozone season day temperatures used to develop the base year inventory rather than trying to predict actual future year temperatures when projecting future emissions because these projections are made in advance when actual temperatures cannot be known.

10. NO_X RACT Size Cutoff

Comment: We received a comment asserting that all of the States should extend NO_X RACT to 25 ton per year sources. In addition, the SIP must require Virginia to extend VOC RACT to 25 ton per year sources, like Maryland.

Response: EPA agrees that full approval of the Washington area SIP to meet the severe area requirements is precluded in the absence of RACT regulations incorporating the severe area RACT thresholds mandated by the CAA in section 182(d). However, as explained in previous responses, EPA believes conditional approval based upon a commitment to submit these regulations by April 17, 2004 is permissible.

11. List of Control Measures

Comment 1: We received comments claiming that the States have failed to submit lists of potential control measures by December 31, 1999 as required by EPA's December 16, 1999 notice of proposed rulemaking. The comments assert that the States submitted commitments to adopt additional control measures if needed, but did not provide lists from which those measures would be chosen and further state that because the States have failed to meet a condition that EPA itself set as a prerequisite for plan approval EPA must disapprove the Washington area SIP.

Response 1: The list of control measures to which these comments refer has to be viewed in context of the entire December 16, 1999 notice of proposed rulemaking (64 FR 70460). The proposed rulemaking was published at a time when the attainment plan contained no motor vehicle emissions budget for 2005. The list of potential measures was to have been those potential measures needed to allow an adequacy finding under the transportation conformity rule on the requisite 2005 budgets in the event the attainment plan was not supported by fully adopted measures. EPA is now conditionally approving the motor vehicle emissions budgets rather than making an adequacy determination. EPA does not believe a list of potential control measures is necessary here because EPA is conditionally approving the SIPs based upon the States committing to complete all necessary modeling and RACM analyses and to adopt and submit by April 2004 any additional measures necessary to demonstrate attainment.

We also incorporate by reference our responses to the comments on these issues found in response 1 of section II.S of our final rule published January 3, 2001, *see* 66 FR at 620–621, as supplemented by the response to comment found in this final rule.

12. Phase II NO_X Limits Are RACM

Comment: We received a comment asserting that the Phase II NO_X limits agreed to by OTC are also clearly RACM.

Response: As a factual matter, with respect to the OTC MOU Phase II NO_X limits in the Washington nonattainment area, Maryland and the District have adopted programs to implement the Phase II NO_X reduction in the OTC memorandum of understanding. EPA has approved these programs into Maryland's and the District's SIPs. Virginia was not a signatory to the OTC MOU. However, in permits approved into the Virginia SIP, Virginia has imposed beyond RACT requirements on two large point sources of NO_X in the Virginia portion of the Washington area, *see* 65 FR 78100 (December 14, 2000). These permits impose limits of 0.15 pounds of NO_X per million BTU heat input on these two sources. Such limits go beyond the OTC Phase II limits. EPA acknowledges the States must identify which RACM have already been adopted and adopt any which, if any, still remains as the States have committed to do so by April 2004. RACM is discussed in response to other comments.

[34] *See* pages 22 through 35 of "Technical Support Document for the One-Hour Ozone Attainment Demonstrations submitted by the State of Maryland, Commonwealth of Virginia and the District of Columbia for the Metropolitan Washington, D.C. Ozone Nonattainment Area (DC052–7005, MD143–3096, VA152–5062)", dated January 24, 2003.

[35] *See* page 31 of "Technical Support Document for the One-Hour Ozone Attainment Demonstrations submitted by the State of Maryland, Commonwealth of Virginia and the District of Columbia for the Metropolitan Washington, D.C. Ozone Nonattainment Area (DC052–7005, MD143–3096, VA152–5062)", dated January 24, 2003.

[36] See "Technical Guidance on the Use of MOBILE6 for Emission Inventory Preparation," U.S. Environmental Protection Agency, Office of Air and Radiation, Office of Transportation and Air Quality, January 2002.

[37] *Id.*

[38] See Chapter 2, User's Guide to MOBILE5 (Mobile Source Emission Factor Model) EPA–AA–TEB–94–01, September 1996.

13. Additional Comments on the Rate-of-Progress Plan

Comment 1: We received comments asserting that EPA cannot act on the District's, Maryland's and Virginia's 1996–1999 ROP plan in isolation because the 1996–1999 ROP plan for the Washington area was developed using a regional approach. EPA cannot know whether these requirements are met unless it acts on all three plans simultaneously.

Response 1: The comment is moot because EPA is concurrently approving the District's, Maryland's and Virginia's submittals of the 1996–1999 ROP plan for the Washington area in one final action published in the **Federal Register**.

Comment 2: We received comments asserting that modeling does not show that a 1 percent reduction in NO_X emissions provides the same ozone reduction benefit as a 1 percent reduction in VOC emissions, and that these results address post-1999 conditions—not 1996–99 conditions, and that one cannot reliably extrapolate back from the modeled results to the reductions at issue in the 9 percent plan. The comments also assert there must be photochemical grid modeling of the actual substitution being proposed to determine the extent to which NO_X can be substituted for VOC. These comments also note these model results themselves show that NO_X reductions sometimes actually lead to an increase in the number of cells exceeding the ozone standard.

Response 2: We incorporate by reference our responses to the comments on this issue found in response 2 of section II.X of our final rule published January 3, 2001 (*see* 66 FR at 622–623).

Comment 3: We received comments asserting that although the ROP plan cites various rules and programs that have been adopted to reduce emissions, it does not demonstrate that actual compliance with the rules and implementation of necessary programs will be achieved by the deadline or that claimed emission reductions will be fully realized by that date. We received comments asserting that EPA can only credit the ROP plan with reductions actually achieved by November 15, 1999. We also received general comments that the ROP plan cannot be approved because programs on which the area relies for ROP credit were not approved by EPA until after November 15, 1999, thus the programs were not federally enforceable during the 1996–99 ROP period. Finally, the commenters suggest that certain programs may not have achieved the level of reductions for which credit was taken in the ROP plan.

Response 3: We incorporate by reference our responses to the comments on these issues found in response 3 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 623.

Comment 4: We received comments asserting that the reductions from the National Low Emission Vehicle (NLEV) program are not creditable because the District did not submit a SIP revision for the NLEV program and because the NLEV SIPs for Maryland and Virginia were not approved until after the November 15, 1999 milestone date. The comments also assert that emission reductions are creditable toward the ROP requirement only to the extent that they have actually occurred by the November 15, 1999 milestone date. The comments state that if the ROP plan does not get sufficient creditable reductions then the plan cannot be approved.

Response 4: We incorporate by reference our responses to the comments on these issues found in response 4 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 623–624.

Comment 5: We received comments asserting that EPA should not credit reductions from the District's NO_X RACT rule because: (1) EPA has not yet approved the District's NO_X RACT rule and, therefore, it will not become federally enforceable until long after 11/15/99; and (2) the District has not shown actual implementation of NO_X RACT before 11/15/99 by major NO_X sources within the District.

Response 5: We incorporate by reference our responses to the comments on these issues found in response 5 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 624. Further, the District's NO_X RACT rule was approved on December 26, 2000 (65 FR 81369).

Comment 6: We received comments asserting that the NO_X RACT rules include inadequate emission control requirements for various source categories. With respect to Maryland and Virginia NO_X RACT rules, the commenter referenced comments submitted in response to EPA's proposed rulemaking actions on those SIPs. With respect to the District's NO_X RACT rule, the commenter says the District proposed to amend its rule to eliminate deficiencies precluding EPA approval.

Response 6: We incorporate by reference our responses to the comments on these issues found in response 6 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 624.

Comment 7: We received comments asserting that EPA cannot credit reductions because the District has not implemented its NO_X RACT rules. Specifically, the comments state that the District's proposed Title V permit for the Blue Plains Wastewater Treatment Plant contains no NO_X RACT requirements (either as federal or state-only requirements), even though the District has identified the plant as a major NO_X source.

Response 7: We incorporate by reference our responses to the comments on this issue found in response 7 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 624–625.

Comment 8: We received comments asserting that EPA should not credit reductions from Maryland's or Virginia's NO_X RACT rules for the following reasons: (1) EPA has not yet even approved these NO_X RACT rules; (2) even if the rules are approved prior to final action on the ROP plan, the approvals will not become federally enforceable until long after 11/15/99; and (3) Maryland and Virginia have not shown actual implementation of all RACT requirements before 11/15/99.

Response 8: We incorporate by reference our responses to the comments on these issues found in response 8 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 625, supplemented as follows: EPA fully approved Maryland's and Virginia's NO_X RACT rules on February 8, 2001 (66 FR 9522), and on January 2, 2001 (66 FR 8), respectively.

Comment 9: We received comments asserting that EPA can only credit those reductions that the District actually achieved as a result of enhanced vehicle inspection between April 1999 and November 15, 1999. The comments state that only a fraction of the fleet was tested between the April 1999 commencement of the enhanced I/M program and November 15, 1999.

Other comments likewise questioned whether full emission reductions credited from the Maryland and Virginia I/M programs actually occurred by 11/15/99. The latter comments assert that States must demonstrate full implementation including enhanced testing of the entire fleet. These comments also questioned whether the full emission reductions were credited to the enhanced I/M programs in Maryland and Virginia given that final SIP approval did not occur until late 1999.

All comments state if the ROP plan does not get sufficient creditable reductions by November 15, 1999, then the plan cannot be approved.

Response 9: We incorporate by reference our responses to the comments on these issues found in response 9 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 625–626.

Comment 10: We received comments claiming that one EPA analysis indicates some reductions from the AIM rule could be deferred to as late as 2002. The comments cite a Memorandum dated May 30, 2000 from Paul T. Wentworth, EPA, to Administrative Record on the Adequacy findings for the Motor Vehicle Emissions Budgets in the Revised Phase II Ozone Attainment Plans for the Metropolitan Washington D.C. Ozone Nonattainment Area.

Response 10: We incorporate by reference our responses to the comments on this issue found in response 15 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 628, supplemented as follows: For the reasons discussed in responses to other comments, EPA believes the AIM reductions have already occurred. EPA believes that these reductions were achieved as expeditiously as practicable and that no other reasonable emissions control strategy would have allowed the States or EPA to achieve these reductions sooner.

Comment 11: We have received comments saying that the transportation model does not incorporate adequate assumptions about the effects of land development and new road projections on the growth of vehicle travel. In support, the comments cite an EPA letter from Judith Katz, Director, Air Protection Division, EPA Region III to James Cheatham, Divisional Administrator, Federal Highway Administration dated August 27, 1998, in which the commenters assert that EPA stated that the plans did not include any information on the rate of land development in the Washington Region and the effect of this development will have on the transportation system. The comments concern the land use assumptions in the transportation model and allege that the Metropolitan Planning Organization (the Metropolitan Washington Council of Governments, MWCOG) (hereafter, "the MPO") has not included the effects of land use in the model and that EPA has known about this issue since 1998.

Response 11: We incorporate by reference our responses to the comments on this issue found in response 16 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 628.

Comment 12: We received comments asserting that EPA cannot credit the 1996–1999 ROP plan submitted by Virginia and Maryland with reductions from measures credited in the 15 percent plan and cannot count emission reductions to both the 15 percent and 9 percent reduction requirements. That is, according to the comments, reductions from some measures are allegedly being counted towards both the 15 percent and 9 percent reduction requirements.

Response 12: We incorporate by reference our responses to the comments on this issue found in response 17 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 628–629, supplemented as follows:

The same reasoning that allows reductions from measures in the 15 percent plan to count towards achieving the 1999 target level for the 1999 milestone applies to counting such reductions towards achievement of the 2002 target level of emissions.

The last sentence of section 182(c)(2)(B) specifically allows reductions that exceed those needed to achieve the 15 percent amount for the 15 percent plan to count towards the post-1996 ROP requirements.

Comment 13: We received comments asserting that EPA must document its reasons for accepting Maryland's and Virginia's emission reduction claims. The comments cite the example of the reductions from Maryland's and Virginia's open burning program and the 45 percent reduction claimed by Maryland for the Maryland rules applicable to autobody refinishing. The comments state that the States assume an 80 percent compliance with the open burning regulations without documenting the basis for this assertion. The comments claim that the 80 percent compliance assertion is void in the absence of plans or commitments needed for local enforcement.

Response 13: We incorporate by reference our responses to the comments on these issues found in response 18 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 629.

Comment 14: We received comments claiming that open burning emissions were not in the 1990 base year emissions inventory for Maryland and Virginia. The comments assert that EPA cannot credit reductions from emissions that were not included in the 1990 base year emissions inventory.

Response 14: We incorporate by reference our responses to the comments on these issues found in response 19 of section II.X of our final rule published January 3, 2001, *see* 66 FR at 629.

IV. Applicability of Revised Motor Vehicle Emissions Budgets

This final action to conditionally approve the severe ozone nonattainment SIP for the Washington area includes conditional approval of SIP revisions submitted on February 9, 14 and 16, 2000 by Virginia, Maryland and the District, establishing the 2005 motor vehicle emissions budgets. These conditionally approved motor vehicle emissions budgets will apply for conformity purposes only until the revised motor vehicle emissions budgets required by this final action have been submitted and we have found the budgets to be adequate for conformity purposes.

Because the attainment demonstration includes the effects of the Tier 2/sulfur program, EPA is requiring the States to revise and resubmit their motor vehicle emissions budgets after EPA releases the MOBILE6 model. EPA is conditioning approval upon the States revising the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

As we proposed on February 4, 2003, the final conditional approval action we are taking today on the 2005 attainment budgets will be effective for conformity purposes only until revised motor vehicle emissions budgets are submitted and we have found them adequate. In other words, the budgets we are approving today as part of the attainment demonstration will apply for conformity purposes only until there are new, adequate budgets consistent with the States' commitments to revise the budgets. The revised budgets will apply for conformity purposes as soon as we find them adequate.

We are limiting the duration of our approval in this manner because we are only conditionally approving the attainment demonstrations and their budgets because the States have committed to revise them. Therefore, once we have confirmed that the revised budgets are adequate, they will be more appropriate than the budgets we are approving for conformity purposes now.

V. Final Action

EPA is conditionally approving the SIP revisions and amendments identified in Tables 1 and 2 as the severe ozone nonattainment area SIP for

the Washington area contingent on the Washington area jurisdictions satisfying the following conditions. Should the Washington area jurisdictions fail to fulfill these conditions by May 19, 2003, this conditional approval will convert to a disapproval pursuant to CAA section 110(k).

(A) Revise the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(B) Revise the severe area ROP to provide emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(C) Revise the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(D) Revise the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(E) Update the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(F) Revise the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(G) Revise the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(H) Revise the major stationary source threshold to 25 tons per year.

(I) Revise Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

(J) Revise new source review offset requirements to require an offset ratio of at least 1.3 to 1.

(K) Submit as part of the SIP a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) should the area fail to attain by November 15, 2005.

(L) Submit as part of the SIP a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the ROP requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 16, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to conditionally approve the severe ozone nonattainment area SIP revisions for the Metropolitan Washington severe ozone nonattainment area may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Volatile organic compounds.

Dated: April 10, 2003.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart J—District of Columbia

■ 2. Section 52.473 is added to read as follows:

§ 52.473 Conditional approval.

The District of Columbia's severe ozone nonattainment area SIP for the Metropolitan Washington area, which includes the 1996–1999 portion of the rate-of-progress plan submitted on November 3, 1997, and May 25, 1999 and the transportation control measures in Appendix H of the May 25, 1999 submittal, and the severe ozone attainment demonstration submitted on April 24, 1998, October 27, 1998, February 16, 2000 and section 9.1.1.2 of the March 22, 2000 submittal, is conditionally approved contingent on the District submitting a revised SIP by April 17, 2004 that satisfies certain conditions. This conditional approval also establishes motor vehicle emissions budgets for 2005 of 101.8 tons per day of volatile organic compounds (VOC) and 161.8 tons per day of nitrogen oxides (NO_X) to be used in transportation conformity in the Metropolitan Washington, DC serious ozone nonattainment area until revised budgets based upon the MOBILE6 model are submitted and found adequate. The District must submit a revised SIP by April 17, 2004 that satisfies the following conditions.

(1) Revises the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(2) Revises the 1999–2005 portion of the severe area rate-of-progress plan to provide MOBILE6-based mobile source emission budgets and adopted measures sufficient to achieve emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(3) Revises the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(4) Revises the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(5) Revises the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(6) Revises the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(7) Revises the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(8) Revises the major stationary source threshold to 25 tons per year.

(9) Revises Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

(10) Revises new source review offset requirement to require an offset ratio of at least 1.3 to 1.

(11) Includes a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) should the area fail to attain by November 15, 2005.

(12) Includes a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the rate-of-progress requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

Subpart V—Maryland

■ 2. Section 52.1072 is amended by adding paragraph (e) to read as follows:

§ 52.1072 Conditional approval.

* * * * *

(e) Maryland's severe ozone nonattainment area SIP for the Metropolitan Washington area, which includes the 1996–1999 portion of the rate-of-progress plan submitted on December 24, 1997 and May 20, 1999 and the transportation control measures in Appendix H of the May 25, 1999 submittal, and the severe ozone attainment demonstration submitted on April 29, 1998, August 17, 1998, February 14, 2000 and section 9.1.1.2 of the March 22, 2000 submittal and the transportation control measures in Appendix J of the February 9, 2000 submittal, is conditionally approved contingent on Maryland submitting a revised SIP by April 17, 2004 that satisfies certain conditions. This conditional approval also establishes motor vehicle emissions budgets for 2005 of 101.8 tons per day of volatile organic compounds (VOC) and 161.8 tons per day of nitrogen oxides (NO_X) to be used in transportation conformity in the Metropolitan Washington, DC serious ozone nonattainment area until revised budgets based upon the MOBILE6 model are submitted and found adequate. Maryland must submit a revised SIP by April 17, 2004 that satisfies the following conditions.

(1) Revises the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be

implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(2) Revises the 1999–2005 portion of the severe area rate-of-progress plan to provide MOBILE6-based mobile source emission budgets and adopted measures sufficient to achieve emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(3) Revises the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(4) Revises the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(5) Revises the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(6) Revises the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(7) Revises the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(8) Revises the major stationary source threshold to 25 tons per year.

(9) Revises Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

(10) Revises new source review offset requirement to require an offset ratio of at least 1.3 to 1.

(11) Includes a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) should the area fail to attain by November 15, 2005.

(12) Includes a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the rate-of-progress requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

Subpart VV—Virginia

■ 2. Section 52.2450 is amended by adding paragraph (b) to read as follows:

§ 52.2450 Conditional approval.

* * * * *

(b) Virginia's severe ozone nonattainment area SIP for the Metropolitan Washington area, which includes the 1996–1999 portion of the rate-of-progress plan submitted on December 19, 1997 and May 25, 1999 and the transportation control measures in Appendix H of the May 25, 1999 submittal, and the severe ozone attainment demonstration submitted on April 29, 1998, August 18, 1998, February 9, 2000, and section 9.1.1.2 of the March 22, 2000 submittal and the transportation control measures in Appendix J of the February 9, 2000 submittal, is conditionally approved contingent on Virginia submitting a revised SIP by April 17, 2004 that satisfies certain conditions. This conditional approval also establishes motor vehicle emissions budgets for 2005 of 101.8 tons per day of volatile organic compounds (VOC) and 161.8 tons per day of nitrogen oxides (NO_X) to be used in transportation conformity in the Metropolitan Washington, DC serious ozone nonattainment area until revised budgets based upon the MOBILE6 model are submitted and found adequate. Virginia must submit a revised SIP by April 17, 2004 that satisfies the following conditions.

(1) Revises the 1996–1999 portion of the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the required 9 percent rate-of-progress reductions by November 15, 1999.

(2) Revises the 1999–2005 portion of the severe area rate-of-progress plan to provide MOBILE6-based mobile source emission budgets and adopted measures sufficient to achieve emission reductions of ozone precursors of at least 3 percent per year from November 15, 1999 to the November 15, 2005 severe ozone attainment date.

(3) Revises the severe area ROP plan to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented should EPA determine that the Washington area failed to achieve the ROP reductions required for the post-1999 period.

(4) Revises the Washington area severe attainment demonstration to include a contingency plan containing those adopted measures that qualify as contingency measures to be implemented for the failure of the Washington area to attain the one-hour ozone standard for serious areas by November 15, 1999.

(5) Revises the Washington area severe attainment demonstration to reflect revised MOBILE6-based motor vehicle emissions budgets, including revisions to the attainment modeling/weight of evidence demonstration and adopted control measures, as necessary, to show that the SIP continues to demonstrate attainment by November 15, 2005.

(6) Revises the Washington area severe attainment demonstration to include a contingency plan containing those measures to be implemented if the Washington area does not attain the one-hour ozone standard by November 15, 2005.

(7) Revises the Washington area severe attainment demonstration to include a revised RACM analysis and any revisions to the attainment demonstration including adopted control measures, as necessitated by such analysis.

(8) Revises the major stationary source threshold to 25 tons per year.

(9) Revises Reasonably Available Control Technology (RACT) rules to include the lower major source applicability threshold.

(10) Revises new source review offset requirement to require an offset ratio of at least 1.3 to 1.

(11) Includes a fee requirement for major sources of volatile organic compounds (VOC) and nitrogen oxides (NO_X) should the area fail to attain by November 15, 2005.

(12) Includes a revision that identifies and adopts specific enforceable transportation control strategies and transportation control measures to offset any growth in emissions from growth in vehicle miles traveled or number of vehicle trips and to attain reductions in motor vehicle emissions as necessary, in combination with other emission reduction requirements in the Washington area, to comply with the rate-of-progress requirements for severe areas. Measures specified in section 108(f) of the Clean Air Act will be considered and implemented as necessary to demonstrate attainment.

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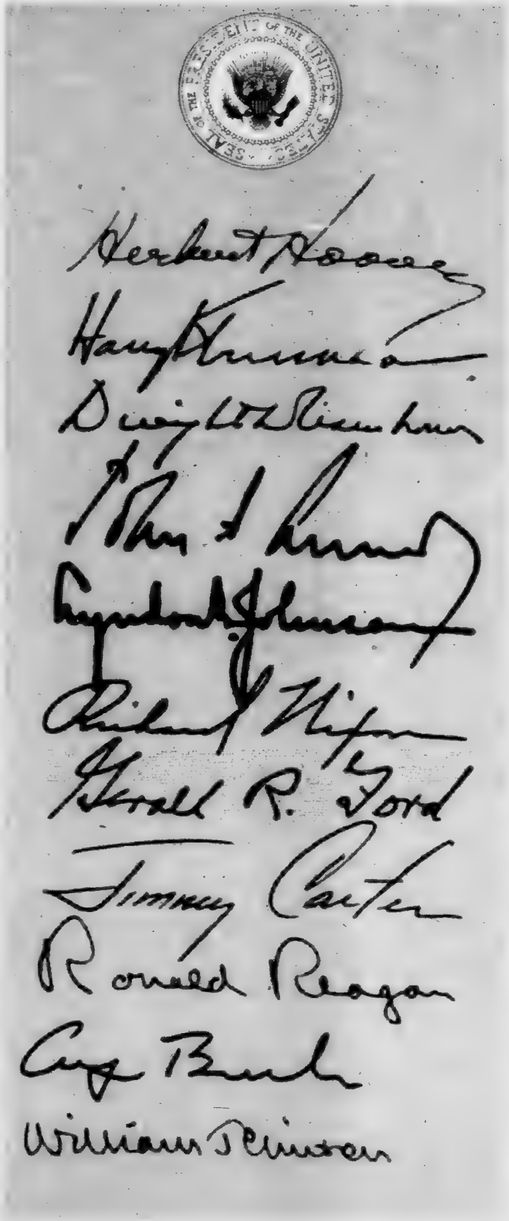
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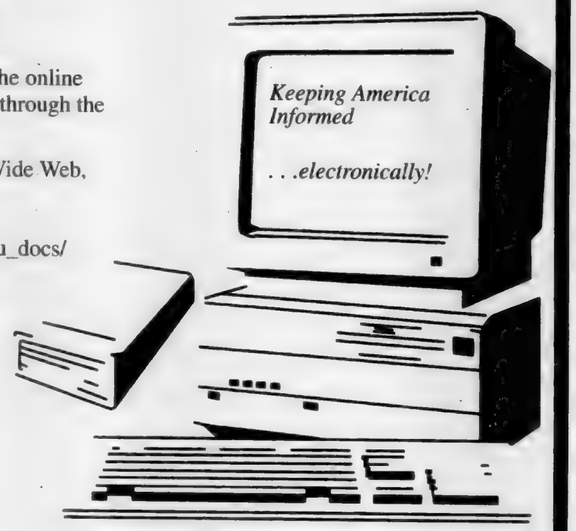
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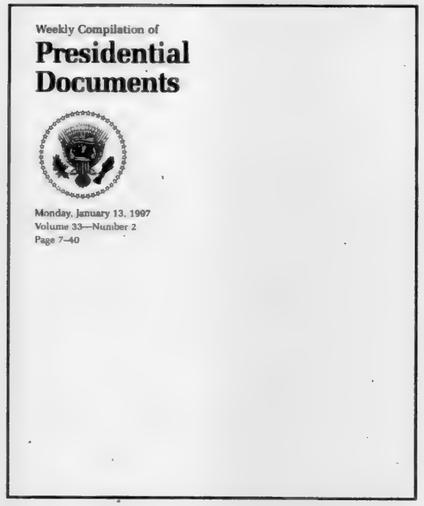
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Friday, April 18, 2003

Presidential Documents

Title 3—

The President

Proclamation 7664 of April 15, 2003

National Fair Housing Month, 2003

By the President of the United States of America

A Proclamation

The Fair Housing Act was signed on April 11, 1968, just one week after the assassination of Dr. Martin Luther King, Jr. This landmark bill, Title VIII of the Civil Rights Act of 1968, resulted from the hard work and leadership of Dr. King and others in the civil rights movement and was an important step toward confronting discrimination against minorities in housing. As we celebrate the 35th anniversary of this historic legislation, we reaffirm our commitment to ensuring that all Americans have equal access to housing.

The Fair Housing Act of 1968 has helped open doors of opportunity for countless families. Since its passage, America has made significant progress in achieving equal housing access for all individuals.

Despite this progress, more work remains in our struggle to achieve equality and racial justice. Prejudice and discriminatory practices in housing still exist in America. A recent lending study showed that minorities continue to receive less information, less assistance, and less favorable terms and conditions than non-minorities while applying for home loans. These practices are wrong. As a Nation, and as individuals, we must be vigilant in responding to discrimination wherever we find it and ensuring that minority families have access to housing. With my minority homeownership initiative and its partnership with the private sector, I have set a goal to increase the number of minority homeowners by 5.5 million by 2010.

All Americans should know their housing rights, and the Department of Housing and Urban Development (HUD) is working to increase public awareness of fair housing laws, including those combating discrimination in mortgage lending. The 2004 budget request for HUD includes $50 million for fair housing—a 9 percent increase over 2003 funding—with a substantial portion specifically allocated for increased education and outreach efforts. The Department is also collaborating with the Federal Deposit Insurance Corporation on a financial education program in minority neighborhoods. In addition, the HUD, Education, and the Treasury Departments are advancing initiatives to educate families about homeownership through counseling programs and financial literacy efforts.

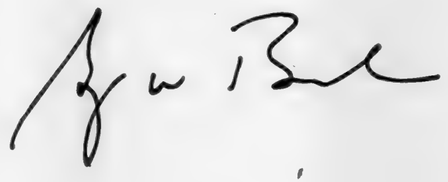
We are also vigilantly enforcing fair housing laws, showing no tolerance for those who discriminate. The Office of Fair Housing and Equal Opportunity at HUD is working with private industry and fair housing and community advocates to promote voluntary compliance and to ensure that consumers are treated in a lawful, respectful manner. When warranted, the Department of Justice takes legal action to protect our citizens from discrimination based on race, color, religion, sex, or national origin.

Finally, we are working to increase the supply of accessible housing for citizens with disabilities. HUD continues to aggressively enforce the law on behalf of people with disabilities, and the Department is working cooperatively with builders, architects, and others to provide technical assistance to help construct more handicapped-accessible housing.

Fair Housing Month provides an opportunity to place special emphasis on our goal to increase homeownership throughout our country. Together, we can advance toward a future where all our citizens have access to a key element of the American Dream—homeownership.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2003 as National Fair Housing Month. I call upon the people of the United States to learn more about their rights and responsibilities under the Fair Housing Act and the roles they can individually and collectively play to combat housing discrimination.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–9822
Filed 4–17–03; 8:45 am]
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

[Docket Number FGIS 2003–003]

RIN 0580–AA76

Exceptions to Geographic Areas for Official Agencies Under the USGSA

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA), USDA.

ACTION: Final rule.

SUMMARY: This rule revises regulations issued under the United States Grain Standards Act (USGSA) to establish criteria to allow more than one designated official agency to inspect or weigh grain within a single geographic area. The rule will enhance the orderly marketing of grain by providing segments of the grain industry with more cost-effective and responsive official grain inspection and weighing services without undermining the integrity of the official system.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Neil Porter, Director, Compliance Division at (202) 720–8262.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Executive Order 12988, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The U.S. Grain Standards Act (USGSA) (7 U.S.C. 71 *et seq.*) provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the USGSA. Otherwise, this rule would not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of Grain Inspection, Packers and Stockyards Administration (GIPSA) has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA conducted a 6-year voluntary pilot program. The pilot program permitted more than one official agency to operate in the same geographic area. There are 58 official agencies (15 States and 43 private agencies) designated under the USGSA. Thirty-six agencies (7 States and 29 private agencies) or 61 percent participated in the pilot program. All 43 private agencies are classified as business services, and all are "small business entities" under the guidelines of the Small Business Administration (SBA). The SBA does not classify States as small or large business entities. Volumes were down for state agencies. Of the 43 private agencies, 29 or 67 percent participated in the pilot program. Fourteen of the 29 saw an increase in service requests and 15 saw a decrease in service requests due to the greater flexibility provided by the pilot program. All increases and decreases in service requests represented inspections of railcars or barges. A 5-year average of official railcar and barge inspections is about 850,000 railcars per year, and about 28,000 barges per year. Less than 2 percent of the total number of railcars and less than 3 percent of the total number of barges were inspected under the pilot program by designated official agencies.

The customers (grain elevators) of the official agencies that requested service under the pilot program represented a mix of both large and small entities as defined for the grain industry by the SBA. GIPSA expects that this would remain the case. Approximately 70 percent of the 128 grain elevators that participated in the pilot program were small entities under the SBA guidelines, and accounted for 82 percent of the service volume for railcars. The 128 elevators that participated in the pilot program represent less than two percent of the estimated 9,695 off-farm storage facilities in the United States that could receive official inspection services.

Fifty-six percent of the volume of railcar inspection services during the pilot program was performed at grain elevators that had not used official services for more than a year. GIPSA believes that the pilot program has enhanced the orderly marketing of grain by providing grain elevators with improved services without undermining the integrity of the USGSA and the official system. At the same time, there has been no significant economic impact on small entity official agencies or grain elevators.

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013. There would be no additional reporting or recordkeeping requirements imposed by this action. The request to GIPSA for approval can be done by telephone. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this rule.

Background

In 1976, the USGSA specified exclusive geographic boundaries for each designated entity performing official inspections. In later years, some grain firms reported delays in getting service due to the distance from the inspection laboratories serving them. Others had difficulty getting service during harvest or other peak demand periods. In April 1993, the General Accounting Office released a study, entitled "Grain Inspection Industry Views on the Decline in Official Inspections and Inspection Costs," which questioned maintaining exclusivity of boundaries.

On November 1, 1995, GIPSA, under the authority of the 1993 Amendments to the USGSA, initiated a pilot program to study the effect of permitting more than one designated agency to inspect or weigh grain in a single geographic area. GIPSA concluded, based on information

gathered from the pilot program, that less restrictive geographic service area requirements on designated official agencies would improve the quality of service provided to the American grain industry and facilitate the marketing of grain without undermining the integrity of the USGSA and the official system. Legislative authority was requested to permit more than one designated official agency to provide official services within a single geographic area.

Congress amended the USGSA in 2000 to give the Department discretion, under certain circumstances, to allow more than one designated official agency to provide official inspection services within a single geographic area. GIPSA is implementing this authority by revising the regulations under the USGSA. Under certain circumstances, more than one designated official agency can provide official inspection services within a single geographic area. This provides segments of the grain industry with more cost-effective and responsive official grain inspection and weighing services.

Comment Review

GIPSA received 3 comments during the 60-day comment period. One was from a private laboratory wanting an opportunity to do business as an official grain inspection agency. GIPSA infers from the private laboratory's comment that they are interested in becoming an official designated agency for the purpose of conducting domestic inspections pursuant to the USGSA. The commenter may apply for such designation, and must meet the statutory criteria under section 7f(1)(a) of the USGSA. The commenter may obtain further information by accessing GIPSA's Web site at: *http://www.usda.gov/gipsa*, or by calling GIPSA at (202) 720–8525.

One comment was from a professional association of official grain inspection and weighing agencies, and one was from a grain trade association, stating membership of 1,000 grain, feed, processing, and grain-related companies, approximately 70 percent of which are small entities. All three supported GIPSA's proposal, however, the trade association supports the proposal with the following comment: "We oppose including the phrase 'due to reasons other than seasonal shipping fluctuations' in proposed § 800.117(b)(2), Nonuse of Service, because it robs industry of its ability to effectively use the *strict 3-month non-use of service* under the Agency's Open Season pilot program * * * to encourage the assigned designated official agency to provide more cost effective and responsive service or possibly lose business to a competing official agency."

GIPSA is clarifying the new section 800.117(b)(2) to more accurately describe its intent. GIPSA has revised the criteria for "Nonuse of Service" to read, "* * * due to reasons other than seasonal ice making waterways unnavigable." The inclusion of the phrase "due to reasons other than seasonal ice making waterways unnavigable" allows GIPSA to accomplish the intent of the nonuse exception program, but reduces the possibility that some official agencies will be at an advantage over others because of climatic conditions. GIPSA continually works to provide for cost-effective and responsive official inspection and weighing service, while implementing the USGSA requirements to provide for uniform official inspection and weighing, and carrying out assigned regulatory and service responsibilities.

Final Action

GIPSA revises the following: 7 CFR 800.81, 800.99, 800.116, 800.117, 800.118, 800.185, and 800.196 to implement changes in the USGSA. The changes allow sampling for official sample-lots, and weighing of sacked grain outside the geographical boundaries assigned to the designated official agency. Program criteria for nonuse of service, timely service, and barge probing is provided. Requests for original services allow qualified applicants to use another agency to provide service. Official personnel may operate outside of the area of responsibility assigned to them. The action allows exceptions to the designated areas of responsibility. The sections regarding certification are combined for a more logical sequence.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure, Grain.

■ For the reasons set out in the preamble, 7 CFR part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

■ 1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

■ 2. Section 800.81 is amended by revising paragraphs (a)(1) and (d) and the information collection parenthetical to read as follows:

§ 800.81 Sample requirements; general.

(a) *Samples for official sample-lot inspection service*—(1) *Original official sample-lot inspection service.* For original sample-lot inspection purposes, an official sample shall be obtained by official personnel; representative of the grain in the lot; and protected from manipulation, substitution, and improper or careless handling.

* * * * *

(d) *Restriction on sampling.* Official personnel shall not perform an original inspection or a reinspection service on an official sample or a warehouseman's sample unless the grain from which the sample was obtained was located within the area of responsibility assigned to the agency or field office at the time of sampling, except as provided for in § 800.117, or on a case-by-case basis as determined by the Administrator.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0013)

■ 3. Section 800.99 is amended by revising paragraph (d) to read as follows:

§ 800.99 Checkweighing sacked grain.

* * * * *

(d) *Restriction on weighing.* No agency shall weigh any lot of sacked grain unless at the time of obtaining the official weight sample the grain from which the sample was obtained was located within the area of responsibility assigned to the agency, except as otherwise provided for in § 800.117, or on a case-by-case basis as determined by the Administrator.

* * * * *

■ 4. Section 800.116 is revised to read as follows:

§ 800.116 How to request original services.

(a) *General.* Except as otherwise provided for in § 800.117, requests for original services shall be filed with an agency or field office authorized to operate in the area in which the original service is to be performed. All requests shall include the information specified in § 800.46. Verbal requests shall be confirmed in writing when requested by official personnel, as specified in § 800.46. Copies of request forms may be obtained from the agency or field office upon request. If the information specified by § 800.46 is not available at the time the request is filed, official personnel may, at their discretion, withhold service pending receipt of the required information. An official certificate shall not be issued unless the information as required by § 800.46 has been submitted, or official personnel determine that sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(b) *Request requirements.* Except as provided for in § 800.117, requests for original services, other than submitted sample inspections, must be made to the agency or field office responsible for the area in which the service will be provided. Requests for submitted sample inspections may be made with any agency, or any field office that provides original inspection service. Requests for inspection or Class X weighing of grain during loading, unloading, or handling must be received in advance of loading so official personnel can be present. All requests will be considered filed when official personnel receive the request. A record shall be maintained for all requests. All requests for service that is to be performed outside normal business hours must be received by 2 p.m. the preceding day.

(Approved by Office of Management and Budget under control number 0580–0013)

■ 5. Section 800.117 is revised to read as follows:

§ 800.117 Who shall perform original services.

(a) *General.* Original services shall be performed by the agency or field office assigned the area in which the service will be provided, except as provided in paragraph (b) of this section.

(b) *Exceptions for official agencies to provide service*—(1) *Timely service.* If the assigned official agency cannot provide service within 6 hours of a request, the service may be provided by another official agency upon approval from the Service.

(2) *Nonuse of service.* If the assigned official agency has not provided official services to an applicant for 90 consecutive days, due to reasons other than seasonal ice making waterways unnavigable, service may be provided by another official agency upon approval from the Service.

(3) *Barge probe service.* Any official agency may provide probe sampling and inspection service for barge-lots of grain with no restrictions due to geographical locations.

(c) *Interim service at other than export port locations.* If the assigned official agency is not available on a regular basis to provide original services, and no official agency within a reasonable proximity is willing to provide such services on an interim basis, the services shall be provided by authorized employees of the Secretary, or other persons licensed by the Secretary, until the services can be provided on a regular basis by an official agency, as provided in § 800.196.

■ 6. Section 800.118 is revised to read as follows:

§ 800.118 Certification.

Official certificates shall be issued according to § 800.160. Upon request, a combination inspection and Class X weighing certificate may be issued when both services are performed in a reasonably continuous operation at the same location by the same agency or field office. An official certificate shall not be issued unless the information as required by § 800.46 has been submitted, or official personnel determine that sufficient information has been made available so as to perform the requested service. A record that sufficient information was made available must be included in the record of the official service.

(Approved by Office of Management and Budget under Control Number 0580–0013)

■ 7. Section 800.185 is amended by revising paragraph (d) and the informational parenthetical to read as follows:

§ 800.185 Duties of official personnel and warehouse samplers.

* * * * *

(d) *Scope of operations.* Official personnel and warehouse samplers shall operate only within the scope of their license or authorization and except as otherwise provided in § 800.117, operate only within the area of responsibility assigned to the official agency, field office, or contractor which employs them. Official personnel and warehouse samplers may perform official inspection or weighing services in a different area of responsibility with the specific consent of the Service.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0013)

■ 8. Section 800.196 is amended by revising paragraph (f)(1) and the information collection parenthetical to read as follows:

§ 800.196 Designations.

* * * * *

(f) *Area of responsibility*—(1) *General.* Each agency shall be assigned an area of responsibility by the Service. Each area shall be identified by geographical boundaries and, in the case of a State or local government, shall not exceed the jurisdictional boundaries of the State or the local government, unless otherwise approved by the Service. The area of responsibility may not include any export elevators at export port locations or any portion of an area of responsibility assigned to another agency that is performing the same functions, except as otherwise provided in § 800.117. A designated agency may perform official services at locations outside its assigned area of responsibility only after obtaining approval from the Service, or in accordance with provisions set forth in § 800.117.

* * * * *

(Approved by the Office of Management and Budget under control number 0580–0013).

Dated: April 15, 2003.

Donna Reifschneider,

Administrator.

[FR Doc. 03–9630 Filed 4–17–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV00–927–3]

Winter Pears Grown in Oregon and Washington; Order Amending Marketing Order No. 927

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the marketing order for winter pears grown in Oregon and Washington (order). Three amendments were proposed by the Winter Pear Control Committee (Committee), which is responsible for local administration of the order. Of these three, only one proposal was favored by winter pear growers in a mail referendum, held July 17 through August 2, 2002. The single amendment to the order will change provisions related to alternate Committee members serving for absent members at Committee meetings. This amendment will improve the operation and functioning of the winter pear marketing order program by ensuring industry representation at Committee meetings. The two amendments that failed to receive grower support in the referendum include authorizing the Committee to recommend maturity regulations, and authorizing the Committee to recommend container or marking requirements. These amendments will not be implemented.

EFFECTIVE DATE: May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Gary D. Olson, Regional Manager, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326–2724 or Fax (503) 326–7440; or Melissa Schmaedick, Agricultural Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, Post Office Box 1035, Moab, Utah 84532; telephone: (435) 259–7988, or Fax: (435) 259–4945.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, Stop 0237, room 2525-S, Washington, DC 20250–0237; telephone (202) 720–2491; Fax (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on November 2, 2000, and published in the November 8, 2000, issue of the **Federal Register** (65 FR 66935); Recommended Decision and Opportunity to File Written Exceptions issued on March 27, 2002, and published in the April 3, 2002, issue of the **Federal Register** (67 FR 15747); Secretary's Decision and Referendum Order issued June 4, 2002, and published in the **Federal Register** on June 10, 2002 (67 FR 39634).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

This final rule was formulated on the record of a public hearing held in Portland, Oregon, on November 29, 2000. Notice of this hearing was published in the **Federal Register** on November 8, 2000. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 927, regulating the handling of winter pears grown in Oregon and Washington. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900). The Notice of Hearing contained three amendment proposals submitted by the Committee, and one proposed by the Agricultural Marketing Service (AMS).

The Committee's proposals included: authorizing the Committee to recommend maturity regulations; authorizing the Committee to recommend container and marking requirements; and changing provisions related to alternate Committee members serving for absent members at Committee meetings.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, so that all of the order's provisions conform with the effectuated amendment. No conforming changes have been deemed necessary.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on March 27, 2002, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by May 3, 2002. No exceptions were filed.

A Secretary's Decision and Referendum Order was issued on June 4, 2002, directing that a referendum be conducted during the period July 17 through August 2, 2002, among growers of winter pears to determine whether they favored the proposed amendments to the order. Ballots representing 522 winter pear producers, or about 34 percent of the producers eligible to vote, were cast. The voters voting in the referendum favored only one of the three amendments proposed by the Committee. This amendment, which will authorize additional alternates to serve when a Committee member and that member's alternates are unable to attend a Committee meeting, received favorable votes representing 87.36 percent of the number of growers and 81.65 percent of the volume of production represented in the referendum. The additional alternate will be required to be from the same group of growers or handlers as the member or alternates they serve in place of.

The other two amendments, which would have authorized container and marking requirements and minimum maturity regulation, failed to obtain the requisite number of votes, in number or in volume, needed to pass. The proposal to authorize container and marking requirements received 65.33 percent of the number of voters, and 51.39 percent of the volume of production, in favor of the amendment. The proposal to authorize maturity regulation received 53.07 percent of the number of voters, and 45.90 percent of the volume, in favor of the amendment. To become effective, the amendments had to be approved by at least two-thirds of those producers voting or by voters representing at least two-thirds of the volume of winter pears represented by voters voting in the referendum.

The amended marketing agreement was subsequently mailed to all winter pear handlers in the production area for their approval. The marketing agreement was not approved by handlers representing at least 50 percent of the volume of winter pears handled by all handlers during the representative period of July 1, 2001, through June 30, 2002.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and amendments thereto are unique in that they are normally brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act are compatible with respect to small entities.

According to the Small Business Administration (13 CFR 121.201), small agricultural producers are those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers, are those having annual receipts of less than $5,000,000.

Of the 1,800 winter pear growers, 80 to 85 percent are estimated to have sales equal to or less than $750,000. There are 90 handlers operating in the production area. The majority of these handlers fit the SBA definition of a small handler. Thus, a majority of the winter pear producers and handlers are considered small under the SBA definition. This action will apply primarily to small entities.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses.

This final rule amends § 927.28 of the order to authorize additional alternates to serve for a Committee member in the event that both that member and that member's alternates are unable to attend a Committee meeting. This action is designed to ensure grower and handler representation at all Committee meetings.

The amendment provides that, in the event that a Committee member and both his or her alternates cannot attend a meeting, the absent Committee member can designate a temporary alternate, provided that the temporary alternate represents the same group (grower or handler) as the absent member. Thus, in the event that all alternates for Committee members in the same group representing a given district are unavailable, selection of a temporary alternate would rely on the availability of other Committee members' alternates from the remaining districts.

This method of selecting a temporary alternate will ensure representation of all growers and handlers (both large and small) at Committee meetings while having little or no increase in Committee administrative costs. Moreover, testimony demonstrated that the authority to temporarily assign alternates would improve representation of the small producers and handlers.

The collection of information under the marketing order will not be affected by this amendment to the marketing order. Current information collection requirements for part 927 are approved by OMB under OMB number 0581–0089.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule. This amendment is designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Committee meetings to discuss the proposals were widely publicized throughout the Oregon and Washington winter pear production area. All interested persons were invited to attend the meetings and the hearing, and participate in Committee deliberations on all issues. All Committee meetings and the hearing were public forums, and all entities, both large and small, were able to express views on these issues.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following Web site: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Civil Justice Reform

The amendment contained in this rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. The amendment will not preempt any State or local laws, regulations, or policies, unless it presents an irreconcilable conflict with the amendment.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Order Amending the Order Regulating the Handling of Winter Pears Grown in Washington and Oregon

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 927 (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing order, as amended, and as hereby further amended, regulates the handling of winter pears grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing order, as amended, and as hereby further amended, is limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing order, as amended, and as hereby further amended, prescribes, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of winter pears grown in the production area; and

(5) All handling of winter pears grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping winter pears covered by the order as hereby amended) who, during the period July 1, 2001, through June 30, 2002, handled 50 percent or more of the volume of such winter pears covered by said order, as hereby amended, have not signed an amended marketing agreement;

(2) The issuance of this amendatory order, further amending the aforesaid order, is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of approval and who, during the period July 1, 2001, through June 30, 2002 (which has been deemed to be a representative period), have been engaged within the production area in the production of such winter pears, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum; and

(3) In the absence of a signed marketing agreement, the issuance of this amendatory order is the only practical means pursuant to the declared policy of the Act of advancing

the interests of producers of winter pears in the production area.

Order Relative to Handling of Winter Pears Grown in Oregon and Washington

It is therefore ordered, That on and after the effective date hereof, all handling of winter pears grown in Oregon and Washington shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby amended as follows:

The provisions to change order language relating to alternate Committee members serving for absent members at Committee meetings contained in USDA's Decision issued by the Administrator on June 4, 2002, and published in the **Federal Register** on June 10, 2002, shall be and are the terms and provisions of this order amending the order and are set forth in full herein.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Revise § 927.28 to read as follows:

§ 927.28 Alternates for members of the Control Committee.

The first alternate for a member shall act in the place and stead of the member for whom he or she is an alternate during such member's absence. In the event of the death, removal, resignation, or disqualification of a member, his or her first alternate shall act as a member until a successor for the member is selected and has qualified. The second alternate for a member shall serve in the place and stead of the member for whom he or she is an alternate whenever both the member and his or her first alternate are unable to serve. In the event that both a member of the Control Committee and that member's alternates are unable to attend a Control Committee meeting, the member may designate any other alternate member from the same group (handler or grower) to serve in that member's place and stead.

* * * * *

Dated: April 14, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–9629 Filed 4–17–03; 8:45 am]

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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Metal-Cored Candlewicks Containing Lead and Candles With Such Wicks

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The Commission is today declaring that metal-cored candlewicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances and is banning such wicks and candles with such wicks.[1] The Commission is issuing this final rule under authority of the Federal Hazardous Substances Act (FHSA).

DATES: This final rule becomes effective on October 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kristina Hatlelid, Ph.D., M.P.H., Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7254.

SUPPLEMENTARY INFORMATION:

A. Background

On February 24, 2000, the U.S. Consumer Product Safety Commission (CPSC or Commission) received a request from Public Citizen that the Commission ban candles with lead-containing wicks and wicks sold for candle-making that contain lead. On February 29, 2000, CPSC received a similar request from the National Apartment Association and the National Multi Housing Council. These requests were docketed collectively under the FHSA (Petition No. HP 00–3) on March 17, 2000.

After analysis of the available data on lead-cored candlewicks and the information provided by the petitioners, the CPSC staff transmitted a briefing package to the Commission recommending that it proceed with a rulemaking that could result in a ban of lead-cored candlewicks and candles with such wicks. The staff recommended that a lead-cored wick be defined as a wick containing a metal core with greater than 0.06 percent lead by weight in the metal, since laboratory test data indicate that burning candles with metal-cored wicks with lead concentrations of 0.06 percent or less by weight does not result in detectable emissions of lead into the air. On February 20, 2001, the Commission voted to grant the petition and commence rulemaking by issuing an advance notice of proposed rulemaking (ANPR) incorporating this criterion. 66 FR 10863. The ANPR was followed in April of 2002 by a notice of proposed rulemaking (NPR) that included requirements for certification, record-keeping, labeling, and tracking of metal-cored candlewicks and candles that comply with the ban. 67 FR 20062.

B. The Product[2]

Lead-cored wicks are candlewicks with a metal wire in the center made of lead or lead alloy. The metal core is used to provide structural rigidity to the wick, *i.e.*, to keep the wick straight during candle production, and to provide an upright wick during burning.

C. The Market

1. Trade Associations

The major trade association that represents candle and wick manufacturers and suppliers is the National Candle Association (NCA). NCA members include about 74 candle manufacturers, 10 of which are foreign. The NCA states that its members produce about 90 percent of the candles made in the U.S. Another U.S. based organization, comprised of craftspersons, is the International Guild of Candle Artisans, with 800 members from around the world.

2. Candle Information

Of 483 firms identified by CPSC staff as U.S. candle manufacturers, all but three firms had fewer than 500 employees and 293 (or 60 percent) had fewer than five employees.

In 2000, the latest year for which factory shipment data are available, U.S. domestic candle shipments totaled approximately $1.5 billion. Imports amounted to $504 million in 2000 with candles from the Far East accounting for almost half of the imports. U.S. exports of candles amounted to about $60.5 million in 2001. The apparent U.S. consumption of candles in 2000 (domestic shipments plus imports, minus exports) was about $2.0 billion.

Retail prices of candles range from about 10 cents for a small tealight candle up to $75.00 for large columnar candles.

There are limited data available concerning use of candles in homes. According to the NCA, candles are used in 70 percent of U.S. households. They are burned one to three times a week by the majority of candle consumers. Half of the consumers burn one or two candles at a time.

3. Candlewick Information

There are three general types of candlewicks. Flat braided wicks, used in taper candles, make up about 50 percent of U.S. wick production. Square wicks, representing less than 10 percent of U.S. production, are used in production of beeswax candles and candles that develop small wax pools when burning. Cored wicks, which account for about 40 percent of wicks used in candles, are rigid and have a central core made of cotton, paper, hemp, metal, or polypropylene, surrounded by wicking material made of paper or fiber. The cores provide rigidity to wicks in candles that produce deep pools of molten wax, and are frequently used in votives, pillars, tealights, and other container candles.

CPSC staff identified three domestic producers of candlewicks. The leading producer accounts for the majority of wicks used by the U.S. candle industry. In addition, there may be several small specialty producers of wicks.

Candlewick manufacturers sell their wicks to wholesalers (candle material suppliers) or large candle manufacturers. Some wholesale wick suppliers repackage wicks supplied by large producers. The CPSC staff has identified 55 wholesale suppliers of candle making materials. Small candle producers usually purchase wick material from wholesale firms.

Small quantities of candlewicks may be purchased by consumers at craft stores. They may be purchased in large quantities from wholesale firms or direct from manufacturers. Wicks are available on reels or precut to desired lengths. Prices vary depending upon how the wick is supplied and the quantities ordered. For example, based on one manufacturer's list prices, pre-waxed wicks on reels were 12 cents per yard and pre-waxed, pre-cut, two-inch wicks were 37 cents per yard. For this manufacturer, price did not depend on wick type.

No specific information is available for domestic shipments or sales of candlewicks. However, based on information provided by the leading domestic candlewick manufacturer in its comments on the NPR, the CPSC staff estimates that total domestic sales of candlewicks could be about four to five million dollars annually. Data on international trade in wicks do not distinguish candlewicks from other types of wicks (*e.g.*, wicks for stoves, lighters, and lamps). Still, imports of all types of wicks, including candlewicks, were about $4.1 million in 2001.

Prior to the granting of the petition, candlewicks with some levels of detectable lead were found in the marketplace. In a non-statistical survey of candles for sale in the Washington, DC area in 1999, the petitioners found that about 30 percent of candles for sale had metal-cored wicks, and about 10 percent of these (or three percent of all candles sampled) had detectable levels (*i.e.*, at least trace levels) of lead in the wick.

According to the NCA, use of lead cored wicks among U.S. manufacturers is negligible. Practically all metal-cored wicks currently produced in the U.S. are made of zinc. According to the NCA, zinc-cored wicks account for about 15 to 20 percent of U.S. production. Zinc-cored wicks have trace amounts of lead, about 0.01 percent, substantially less than the lead limit in the standard finalized today.

D. The Risk of Illness

As a lead-cored wick candle burns, some of the lead may vaporize and be released into the air. This airborne lead may be inhaled. Some of this lead may deposit onto floors, furniture, and other surfaces in the room where children may be exposed to it. One cannot tell by looking at the wick core if it is made of lead, and there is no simple way for a consumer to determine its lead content. The presence of lead in a wick can be determined only by laboratory analysis.

Similarly, one cannot tell if lead is being released from a burning candle by observing smoke or soot; nor can one tell that lead is not being released by the lack of visible emissions. Determination of lead in room air or on surfaces must be done by professionals.

The toxic effects of lead and the risk to consumers, especially children, from exposure to lead emitted from lead-cored wick candles, including neurological damage, delayed mental and physical development, attention and learning deficiencies, and hearing problems, were detailed in the CPSC staff briefing packages on Petition No. HP 00–3. CPSC staff concluded that, under reasonable assumptions, exposure of children to indoor air lead levels from candles emitting 430 micrograms of lead per hour or more could result in elevated blood levels (greater than 10 micrograms of lead per deciliter of blood). Laboratory investigations by CPSC staff and others indicate that lead-cored wick candles can emit more than 3,000 µg of lead per hour during candle burning. Thus, the Commission finds that, under certain expected use conditions, the lead emitted from burning candles with lead-cored wicks presents a risk to consumers of substantial illness from exposure through inhalation of airborne lead. Children may also be exposed to lead that deposits onto surfaces in the room.

E. International Activities

Several countries have acted on this issue. Officials in Canada issued an advisory in January 2001, warning consumers that some candles sold in Canada contained lead-cored wicks, and offering advice on making informed purchasing decisions.[3] Officials in Australia and New Zealand instituted provisional bans on candles with wicks containing any amount of lead as early as 1999.[4] Australia recently announced a permanent ban on sales of candles with wicks containing more than 0.06 percent lead.[5]

Denmark issued a comprehensive order in December 2000 banning a number of products containing lead.[6] Chafing dish candles and other candles are specifically included in the ban. The order defines a lead-containing product as one in which lead represents more than 100 mg/kg (0.01 percent) of the homogeneous components.

F. Statutory Requirements

This proceeding is conducted under provisions of the FHSA. 15 U.S.C. 1261–1278. It involves two actions. First, pursuant to section 3(a) of the FHSA, the Commission is declaring that metal-cored candlewicks containing more than 0.06 percent lead by weight of the metal

[1] The Commissioners voted 3–0 to issue these final rules.

[2] Information presented in this preamble is derived from briefing memoranda to the Commission from Kristina M. Hatlelid, Ph.D., M.P.H., toxicologist, Directorate for Health Sciences, to the Commission, "Petition HP 00–3 to Ban Lead-Cored Candlewicks," December 12, 2000; "Proposal to Ban Lead-Cored Candlewicks," March 18, 2002; and "Briefing Package for Ban on Candles with Lead-containing Wicks for Candle-making that Contain Lead—Final Rule," March 27, 2003. These and other materials for this rulemaking are available on the CPSC world wide Web site at *www.cpsc.gov* and from the CPSC office of the Secretary, Room 502, 4330 East West Highway, Bethesda, Maryland, 20814, (301) 504–7923.

[3] Health Canada Advisory 2001–02, January 2001.

[4] Commonwealth of Australia Consumer Protection Notice No. 11 of 1999 under the Trade Practices Act of 1974, September 1999; New Zealand Ministry of Consumer Affairs Unsafe Goods Notice under the Fair Trading Act 1986, June 2000.

[5] Press Release No. 057, Senator Ian Campbell, Parliamentary Secretary to the Treasury, Commonwealth of Australia, November 1, 2002.

[6] Statutory Order No. 1012 of November 13, 2000, on Prohibition of Import and Marketing of Products Containing Lead, Ministry of Environment and Energy, Danish Environmental Protection Agency.

and candles with such wicks are hazardous substances. 16 CFR 1500.12(a)(2). Second, pursuant to section 2(q)(1)(B) of the FHSA, the Commission is banning such wicks and candles with such wicks. 16 CFR 1500.17(a)(13).

A proceeding to declare a substance to be a "hazardous substance" under section 3(a) of the FHSA is governed by, *inter alia*, sections 701(e), (f), and (g) of the Federal Food, Drug, and Cosmetic Act (FDCA), 21 U.S.C. 371(e)–(g). *See* 15 U.S.C. 1262(a)(2).

The Commission is declaring that metal-cored candlewicks containing more than 0.06 percent lead by weight of the metal and candles with such wicks are "hazardous substances" within the meaning of section 2(f)(1)(A) of the FHSA because they are toxic, and "may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use. * * *" 15 U.S.C. 1261(f)(1)(A). The basis for this declaration is stated in section D. of this preamble, *The Risk of Illness*.

Under section 2(q)(1)(B) of the FHSA, the Commission may classify as a "banned hazardous substance" any hazardous substance intended for household use which, notwithstanding the precautionary labeling required by the FHSA, presents such a hazard that keeping the substance out of interstate commerce is the only adequate means to protect the public health and safety. 15 U.S.C. 1261(q)(1)(B). A proceeding to classify a substance as a banned hazardous substance under section 2(q)(1)(B) of the FHSA is governed by the requirements set forth in section 3(f) of the FHSA, and also by sections 701(e), (f), and (g) of the Federal Food, Drug, and Cosmetic Act (FDCA) (21 U.S.C. 371(e)). *See* 15 U.S.C. 1261(q)(2)and 1262(f).

The CPSC Human Factors staff analysis on the issue of precautionary labeling of individual candles concludes that labeling is not an acceptable strategy for protecting vulnerable populations from lead poisoning that may be caused by burning candles with lead-cored wicks.[7]

That analysis shows that since lead is emitted in unpredictable amounts from a candle with a metal-cored wick containing more than 0.06 percent lead in the metal when the candle is used as intended, the only preventative measures consumers could take to protect themselves against the hazard would be to not burn candles with such wicks. No label or subsequent action by the consumer would prevent the release of lead into the air if the candle were used as intended. The Commission therefore finds that, notwithstanding the precautionary labeling required by the FHSA, metal-cored candlewicks containing more than 0.06 percent lead in the metal and candles with such wicks present a hazard such that keeping them out of interstate commerce is the only adequate means to protect the public health and safety.

In addition to today's final rule banning these wicks and candles, the FHSA requires that the Commission publish a final regulatory analysis that includes: (1) A description of the potential costs and benefits of the rule; (2) a description of alternatives considered by the Commission (including a description of their potential costs and benefits and an explanation of why they were not chosen); and (3) a summary of significant issues raised by comments on the preliminary regulatory analysis published with these proposed rules. 15 U.S.C. 1262(i)(1). The Commission must also find that: (1) Any relevant voluntary standard is unlikely to adequately reduce the risk of injury or substantial compliance with the voluntary standard is unlikely; (2) the expected benefits of the regulation bear a reasonable relationship to expected costs; and (3) the regulation imposes the least burdensome requirement that would adequately reduce the risk of injury. 15 U.S.C. 1262(i)(2).

Procedures established by section 701(e) of the FDCA govern this Commission action to finalize the hazardous substance declaration and the banning rule. 15 U.S.C. 1262(a)(2) and 1261(q)(2). These procedures provide that once the Commission issues a final rule, persons who would be adversely affected by the rule have a period of 30 days in which to file objections stating reasonable grounds therefor, and to request a public hearing on those objections. 21 U.S.C. 371(e). Should valid objections be filed, a hearing to receive evidence concerning the objections would be held and the presiding officer would issue an order after the hearing, based upon substantial evidence. 21 U.S.C. 371(e); 16 CFR part 1502.

G. Response to Comments on the NPR

Six comments were received in response to the NPR. All six comments were in favor of a ban on lead-cored wicks. One commenter expressed interest in allowing the use of lead-cored candlewicks in certain circumstances.

One wick manufacturer (Atkins and Pearce) and two industry groups (Consumer Specialty Products Association, National Candle Association) provided comments. One commenter represented a non-profit information and advocacy group in Australia (Global Lead Advice and Support Service). Two commenters were individual consumers or interested parties.

1. Federal Regulation

Comments: All six commenters support the concept of regulating the use of lead in metal-cored candlewicks, although there was disagreement about the scope of the proposed regulation, and the proposed requirements for testing, certifying, and tracking metal-cored wicks.

Response: The Commission acknowledges the interest among consumers, industry, and advocacy groups in the elimination of candlewicks as a source of lead exposure. Responses to specific questions and comments about the proposed rule are set forth below.

2. Proposed Record-Keeping Requirements

Comments: The rule as proposed included requirements that shipping cartons of metal-cored candlewicks and shipping cartons of candles with such wicks be labeled as complying with the ban and with a lot number or other designation, and that wick and candle manufacturers, importers, and distributors maintain records documenting compliance with the ban for each lot. Representatives from industry expressed concern about the costs and labor that would be involved in the tracking of metal-cored wicks used in specific candles, and the maintenance of records.

These commenters provided some information about the candle-making process to illustrate potential difficulties with the proposed requirements. For example, the commenters described machines that rapidly produce many candles at once, simultaneously drawing candlewick from several different spools. Consequently, a batch of finished candles could contain wicks from different lots or sources. Further, these candles with different wicks would be indistinguishable and would be packaged together at the end of production. Thus, a single shipping carton could contain identical candles with different lots of metal-cored candlewicks. The commenters believe it would be labor intensive and costly to change the current method of production so that individual lots of wicks could be separated and tracked. While not providing alternative estimates of costs, the commenters indicated that the staff may have underestimated the costs of the labeling and record-keeping requirements.

Response: On the basis of comments received and the CPSC staff's further analysis of the complex manufacturing processes described by the commenters and the limited benefits expected, the final rule issued today does not require record-keeping and tracking.

Comment: One commenter, a U.S. wick manufacturer, suggested that tracking could be done in ways other than labeling shipping cartons with a lot number or other identifier. For example, if the wicks in specific lots, made with specific lots of metal-core material (*e.g.*, zinc wire), could be visually distinguished from each other, manufacturers could track candlewick lots without changing current manufacturing processes. One way to distinguish wick lots would be to incorporate unique colors and patterns into the wick braid. Thus, inspecting the wicks in candles from a specified manufacturer would provide visual information about the wick lot. Multiple wick lots could be used at the same time in candle production, and multiple wick lots could end up in the same shipping carton, without losing the ability to obtain records for specific candles or track specific lots of metal-cored wicks. However, additional information provided by this commenter indicated that the use of color-coded tracer threads in the candlewick could result in increased costs associated with testing the performance of the new candlewicks before they could be used in candle production.

Response: The final rule issued today does not require the record-keeping and tracking proposed in the NPR.

3. Effective Date

Comment: One commenter stated that non-complying products should not benefit from an extended sell-through period.

Response: The Commission has no reason to believe that manufacturers, importers, or retailers have, or will, warehouse or stockpile candles made prior to the effective date that would not conform to the rule. Similarly, the Commission has no information that suggests that manufacturers, importers, or retailers will stockpile non-complying candlewicks for the purposes of producing candles between issuance of the final rule and the effective date. Moreover, non-complying candlewick inventory would not be usable after the effective date. The 180-day effective date provides time for manufacturers, distributors, and importers to make any necessary changes to bring their products and shipping containers into compliance with the regulation.

4. Lead-Cored Candlewicks Are Superior for Some Uses

Comment: A commenter stated that candles with lead-cored wicks performed better than candles with other kinds of wicks in a specific application (camping lanterns), and suggested that an exemption be made to allow specific uses of lead-cored candlewicks in candles.

Response: Additional information provided by this commenter indicates that the candles in question do not actually contain lead-cored wicks.

5. All Metals Should Be Banned for Use in Candlewicks

Comment: One commenter, representing an information and advocacy group in Australia, suggested that all metal-cored wicks should be banned for use in candles to avoid any confusion about whether the metal contains unacceptable levels of lead.

Response: As discussed in the CPSC staff briefing memoranda, laboratory test data show that burning candles with metal-cored wicks with lead concentrations of 0.06 percent or less by weight does not result in detectable emissions of lead into the air. Therefore, there is no basis for declaring all metal-cored candlewicks and candles with such wicks to be hazardous substances.

H. Alternatives to the Ban

1. No Action

If the Commission took no action, lead-cored candlewicks could continue to be sold in the U.S. In the mid-1970's the domestic candle industry stopped using lead in wicks, but lead-cored wicks reappeared on the domestic market some time thereafter. While the domestic industry states that it has now voluntarily eliminated lead in wicks, imports may continue to be a source of lead in the absence of a mandatory standard. Under a no action scenario, CPSC enforcement staff would be limited to taking action against lead-containing wicks under the FHSA on a case-by-case basis.

2. Voluntary Standards

In 1974, the Candle Manufacturers Association industry group submitted a statement informing the Commission of an agreement among candle manufacturers to convert to substitutes for lead-cored wicks in candles by the end of the third quarter 1974. They also agreed not to import candles with lead-cored wicks. Further, the major domestic wick manufacturer at that time agreed to discontinue the production of lead-cored wicks.

Despite this agreement, some wick manufacturers resumed producing lead-cored wicks and some candle manufacturers resumed producing and importing candles with lead-cored wicks after 1974.

In May 2000, a task group for candlewicks was formed under the ASTM F15.45 Candle Products Subcommittee to develop a consensus standard to address the lead content of candlewicks. The task group stopped their standards development process in February 2001 in favor of supporting the CPSC mandatory rulemaking process.

During the public comment period on the ANPR, Voices of Safety International (VOSI) proffered a voluntary standard for lead in candlewicks. CPSC technical staff reviewed the standard and noted a number of difficulties. Although the standard stated that a maximum of 0.01 percent lead is required to protect consumer health, no technical or health basis for this level was provided. The CPSC staff maintains that the limit of 0.06 percent lead by weight in the metal is appropriate and supported by the laboratory analyses performed by CPSC staff and others.

The CPSC staff further states that the analytical methodology in the submitted standard is not capable of reliably determining either the presence or concentration of lead in metal-cored candlewicks. The CPSC staff concludes that the tensile strength of a metal alloy would not definitively identify zinc cored wicks with less than the maximum allowable lead content in the metal, but could falsely detect alloys not containing lead, causing them to fail the test and be needlessly prohibited from wick use. The staff states that the metal's lead content, not its physical attributes, is the important characteristic in protecting consumers' health.

The VOSI standard specifies different standards for domestic and imported products. A discriminatory approach to imports with no basis in fact would in all likelihood be a violation of the North American Free Trade Agreement (NAFTA), if not other U.S. treaty obligations.

The Commission believes that membership in standards organizations, such as ASTM, serves, in part, to transmit applicable standards to member firms. VOSI offered no information that its members include candle or wick manufacturers. Nor has it provided any evidence that there would be substantial compliance with the voluntary standard.

[7] *See* footnote 2 for sources for the CPSC staff analyses related to this rulemaking.

Based on the foregoing analysis, the Commission finds that the VOSI standard is technically unsound, and thus would not result in the elimination or adequate reduction of the risk, and that substantial compliance with it is unlikely.

3. Precautionary Labeling

As discussed above in Section F. of this preamble, *Statutory Requirements*, the CPSC Human Factors staff analysis on this issue demonstrates that precautionary labeling of individual candles is not an acceptable strategy for protecting vulnerable populations from lead poisoning that may be caused by burning candles with lead-cored wicks.

I. Regulatory Analysis

1. FHSA Requirement

The Commission is issuing a rule declaring a ban on metal-cored wicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks. Section 3(i) of the FHSA requires that the Commission prepare a final regulatory analysis for this action. 15 U.S.C. 1262(i). The following discussion addresses this requirement.

2. Introduction

The Commission is amending the FHSA regulations to declare that metal-cored wicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances and to ban such wicks and candles. In February 2001, the Commission voted to issue an ANPR that could lead to such a declaration and ban. 66 FR 10863. In April 2002, the Commission issued proposed rules that would declare such wicks and candles with such wicks to be hazardous substances and would ban them. 67 FR 20062.

3. Required Content of the Regulatory Analysis

To issue the ban rule under the FHSA, the Commission must also publish a final regulatory analysis containing a discussion of various factors. These factors include a description of the potential benefits and potential costs of the rule, including any benefits and costs that cannot be quantified in monetary terms, and an identification of those most likely to receive the benefits and bear the costs. The FHSA also requires a description of any reasonable alternatives to the rule, together with a summary description of their costs and benefits, and a brief explanation of why such alternatives were not chosen. 15 U.S.C. 1262(i). In addition, the Commission must address the requirements of the Regulatory Flexibility Act, which considers effects on small firms, and the requirement for review pursuant to the National Environmental Policy Act.

4. Analysis of Hazardous Substance Ban [8]

(a) Benefits

While the benefits to consumers of eliminating lead-cored candlewicks as a source of lead exposure are not quantifiable, they are likely to be small since few lead-cored candlewicks are now produced and/or sold in the U.S. The likely benefits are dependent on individual circumstances of candle use. Laboratory studies indicate that under certain conditions of use exposure to airborne lead from burning candles with lead-cored wicks presents a risk of lead poisoning. Therefore, a ban may result in positive health benefits in individual cases.

In the mid-1970s, the Commission chose to defer to the industry's voluntary agreement to eliminate lead from candlewicks. Since this agreement did not prevent companies from returning to the use of lead-cored wicks in the 1980s and 1990s, a ban on the use of lead in candlewicks will help ensure that lead will not be used in candlewicks in the future.

(b) Costs

The costs of replacing lead-cored candlewicks with non-leaded wicks are expected to be small. The current use of lead in wicks is already small, since none of the NCA members use lead in their wicks beyond the acceptable trace levels found in zinc cores, and information obtained from an industry source indicates that the costs of substitutes for lead-cored wicks are not higher than costs of wicks made with lead.

There may be costs associated with labeling and ensuring conformance. Shipping carton labeling may be done by direct printing onto the carton or by affixing a pre-printed label, such as a sticker. On a per carton basis, direct printing is expected to be less costly than the use of a sticker. Labeling machines may cost as much as $15,000 and individual labels may cost five to 10 cents each. Assuming that 15–20 percent of all candles produced would be affected, and that each shipping carton holds 144 candles, valued at one dollar each, perhaps two to three million shipping cartons would require labeling annually. If labels cost five to 10 cents each, then annual costs would be about $100,000 to $300,000. The costs to candlewick manufacturers to label shipments of metal-cored candlewicks, expected to be substantially less than that of candles, are estimated to be about $80 to $320 per year.

Consistent with the Commission's lead in consumer products guidance policy at 16 CFR 1500.230, domestic producers, distributors, private labelers, importers, and retailers of metal-cored candlewicks and candles with such wicks may wish to test products to ensure compliance with the regulation. Alternatively, firms may wish to obtain assurances from suppliers that the lead content of the metal does not exceed 0.06 percent by weight. This should be relatively straightforward because candlewick manufacturers generally receive chemical analyses from the suppliers of the metal used in their candlewick production.

Finally, there may be costs associated with inventories of non-complying candlewicks held by manufacturers. The rule would apply to candlewicks or candles manufactured on and after the rule's effective date. Therefore, non-complying candlewicks would have to be scrapped under the regulation since they would no longer be usable in candle manufacturing on and after the effective date. It is not anticipated, however, that a large amount of candlewick inventory would be affected.

In summary, while the benefits of a ban of lead in candlewicks are likely to be small, the costs of the ban to the industry are small, and thus bear a reasonable relationship to the benefits. The action will contribute to the gradual reduction in lead exposure in the U.S. population.

5. Alternatives to the Rule

The Commission has considered several other alternatives, including: no action, product labeling, recordkeeping for wick/candle shipments and deferral to a voluntary standard. *See* discussions above at section G., Response to Comments on the NPR, and section H., Alternatives to Proposed Ban.

J. Paperwork Reduction Act

The ban regulation as proposed would have required manufacturers and importers of metal-cored candlewicks and candles with such wicks to perform testing or obtain records of testing, maintain records, and label shipping containers for metal-cored candlewicks and candles with such wicks that they produce or import. For this reason, the proposed rule contained "collection of information requirements," and would have been subject to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520.

As noted above in section G., Response to Comments, the Commission has elected to delete these recordkeeping requirements from the final rule issued today. Accordingly, the rule as finalized is not subject to the PRA.

K. Regulatory Flexibility Act Certification

When an agency issues a final rule such as the ban on lead-cored candlewicks and candles with such wicks, the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 *et seq.*, generally requires the agency to prepare a final regulatory flexibility analysis describing the impact of the rule on small businesses and other small entities. Section 605 of the RFA provides that an agency is not required to prepare a regulatory flexibility analysis if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The Commission's Directorate for Economic Analysis prepared a preliminary assessment of the impact of a rule to declare that metal-cored wicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances and to ban such wicks and candles. A copy of the preliminary analysis is available for inspection in the docket for this rulemaking. That assessment reported that the costs to consumers and candlewick and candle manufacturers were likely to be small.

After analyzing the comments received in response to the NPR, the CPSC staff has concluded that the incremental cost of the rules issued today is likely to be small. Accordingly, it is unlikely that the rules will have a substantial effect on a significant number of small businesses.

Based on the foregoing assessment, the Commission certifies that the rules issued today to declare that metal-cored wicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances and to ban such wicks and candles will not have a significant adverse impact on a substantial number of small businesses or other small entities.

L. Environmental Considerations

Pursuant to the National Environmental Policy Act, and in accordance with Council on Environmental Quality regulations and CPSC procedures for environmental review, the Commission has assessed the possible environmental effects associated with the hazardous substance declaration and ban for metal-cored candlewicks containing more than 0.06 percent lead by weight of the metal and candles with such wicks.

The Commission's regulations at 16 CFR 1021.5(c)(1) state that rules or safety standards to provide design or performance requirements for products normally have little or no potential for affecting the human environment. Assessment of the impact of the rules issued today indicates that they will have no significant effects on the environment. Thus, the Commission concludes that no environmental assessment or environmental impact statement is required in this proceeding.

M. Effective Date

The rule issued today provides an effective date 180 days after publication in the **Federal Register**. The time before that date may be used for depletion of any existing stocks of candlewick material and candles subject to the ban. The ban then applies to any metal-cored candlewick containing more than 0.06 percent lead by weight in the metal, and any candle with such a wick, that is manufactured or imported on or after that date.

N. Executive Order 12988

As provided for in Executive Order 12988 (February 5, 1996), the CPSC states the preemptive effect of these regulations as follows.

The FHSA provides that, generally, if the Commission issues a banning rule under section 2(q) of the FHSA to protect against a risk of illness or injury associated with a hazardous substance, "no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations." 15 U.S.C. 1261n(b)(1)(B). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) provides a higher degree of protection from the risk of injury or illness than the FHSA standard and (2) does not unduly burden interstate commerce. In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical requirement that provides a higher degree of protection than the FHSA requirement for the hazardous substance for the Federal, State or local government's own use. 15 U.S.C. 1261n(b)(2).

Thus, with the exceptions noted above, the rule banning metal-cored candlewicks containing more than 0.06 percent lead by weight of the metal and candles with such wicks preempts non-identical state or local requirements applicable to such wicks and candles designed to protect against the same risk of injury.

O. Conclusion

For the reasons stated in this preamble, the Commission finds that metal-cored candlewicks containing more than 0.06 percent lead by weight in the metal and candles with such wicks are hazardous substances, that cautionary labeling required by the FHSA is not adequate for such wicks and candles, and that, due to the degree and nature of the hazard presented by these items, in order to protect the public health and safety it is necessary to keep them out of commerce.

List of Subjects in 16 CFR Part 1500

Consumer protection, Hazardous materials, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, Reporting and recordkeeping.

■ For the reasons stated in the preamble, the Commission amends title 16 of the Code of Federal Regulation to read as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

■ 1. The authority for part 1500 continues to read as follows:

Authority: 15 U.S.C. 1261–1278.

■ 2. In § 1500.12, add a new paragraph (a)(2) to read as follows:

§ 1500.12 Products declared to be hazardous substances under section 3(a) of the act.

(a) * * *

(2) Metal-cored candlewicks that have a lead content of more than 0.06 percent of the total weight of the metal core, and candles made with such wicks.

* * * * *

■ 3. In § 1500.17, add new paragraphs (a)(13) and (b) to read as follows:

§ 1500.17 Banned hazardous substances.

(a) * * *

[8] The following discussion of costs and benefits is extracted from Memorandum from Mary F. Donaldson, CPSC Directorate for Economic Analysis to Kristina Hatlelid, CPSC Directorate for Health Sciences, "Final Regulatory Analysis of a Proposed Ban of Lead in Candlewicks," March 10, 2003. See footnote 2 for information on the availability of this and other related documents for this rulemaking.

(13)(i) *Candles made with metal-cored wicks.* Candles manufactured or imported on or after October 15, 2003, made with metal-cored candlewicks, unless:

(A) The metal core of each candlewick has a lead content (calculated as the metal) of not more than 0.06 percent of the total weight of the metal core; and

(B) Each outer container or wrapper in which candles subject to paragraph (a)(13)(i)(A) of this section are shipped, including each outer container or wrapper in which such candles are distributed to a retail outlet, is labeled "Conforms to 16 CFR 1500.17(a)(13)." For purposes of this paragraph (B), the term "outer container or wrapper" does not include the immediate container in which candle(s) is/are intended to be displayed at retail or during use in the home, unless that container or wrapper is also the only container or wrapper in which the candle(s) is/are shipped to a retailer.

(ii) *Metal-cored candlewicks.* Metal-cored candlewicks manufactured or imported on or after October 15, 2003, unless:

(A) The metal core of each candlewick has a lead content (calculated as the metal) of not more than 0.06 percent of the total weight of the metal core; and

(B) Each outer container or wrapper in which candlewicks subject to paragraph (a)(13)(ii)(A) of this section is shipped, including each outer container or wrapper of a shipment distributed to a retail outlet, is labeled "Conforms to 16 CFR 1500.17(a)(13)." For purposes of this paragraph (B), the term "outer container or wrapper" does not include the immediate container in which candlewick(s) is/are intended to be displayed or sold at retail, unless that container or wrapper is also the only container or wrapper in which the candlewick(s) is/are shipped to a retailer.

(iii) *Findings*—(A) *General.* To issue a rule under section 2(q)(1) of the FHSA, 15 U.S.C. 1261(q)(1), classifying a substance or article as a banned hazardous substance, the Commission must make certain findings and include them in the regulation. These findings are discussed in paragraphs (a)(13)(iii)(B) through (D) of this section.

(B) *Voluntary Standard.* One alternative to the ban that the Commission considered is to take no mandatory action, and to depend on a voluntary standard. One organization has a standard for candlewicks intended to address the potential for substantial illness posed by such wicks and candles with such wicks. The Commission has found that the standard is technically unsound and that substantial compliance with it is unlikely. Furthermore, there is no evidence that the standard has been adopted and implemented by candlewick or candle manufacturers.

(C) *Relationship of Benefits to Costs.* The Commission estimates that the ban will reduce the potential for exposure to lead and resulting lead poisoning because there is no "safe" level of lead in the blood. The annual cost to the candle/wick industry of the ban is estimated by the Commission to be in the range of $100,000 to $300,000. On a percentage basis these costs represent only 0.005 to 0.015 percent of the overall value of candle shipments in 2000, which was approximately $2 billion. Accordingly, the Commission finds that the benefits from the regulation bear a reasonable relationship to its costs.

(D) *Least burdensome requirement.* The Commission considered the following alternatives: no action; labeling all metal-cored candles with wicks containing more than 0.06 percent lead by weight of the metal; recordkeeping for shipments of wicks containing 0.06 percent or less lead by weight of the metal and of candles with such wicks; and relying on the voluntary standard. Neither no action, nor labeling, nor reliance on the voluntary standard would adequately reduce the risk of illness. Recordkeeping for shipments of wicks and of candles was not the least burdensome requirement that would prevent or adequately reduce the risk of illness. Therefore the Commission finds that a ban on candlewicks containing more than 0.06 percent lead by weight of the metal and candles with such wicks is the least burdensome requirement that would prevent or adequately reduce the risk of illness.

(b) [Reserved].

Dated: April 9, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

Appendix—

List of Relevant Documents

(This Appendix Will Not Appear in the Code of Federal Regulations)

The following documents contain information relevant to this rulemaking, can be accessed on the world-wide web at *www.cpsc.gov*, and are available for inspection at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814:

1. Briefing memorandum from Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health Sciences, to the Commission, "Petition HP 00–3 to Ban Lead-cored Candlewicks," December 12, 2000.
2. Memorandum from K.M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health Sciences, to Mary Ann Danello, Ph.D., Associate Executive Director, Directorate for Health Sciences, "Review of Lead Emissions from Candles," November 15, 2000.
3. Memorandum from Carolyn Meiers, Engineering Psychologist, Human Factors, to Kristina Hatlelid, Ph.D., M.P.H., Directorate for Health Sciences, "Labeling of Candles with Lead-cored Wicks (Petition HP 00–3)," October 18, 2000.
4. Briefing memorandum from Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health Sciences, to the Commission, "Proposal to Ban Lead-Cored Candlewicks," March 18, 2002.
5. Memorandum from Mary F. Donaldson, CPSC Directorate for Economic Analysis to Kristina Hatlelid, CPSC Directorate for Health Sciences, "Preliminary Regulatory Analysis of a Proposed Ban of Lead in Candlewicks," March 5, 2002.
6. "Briefing Package for Ban of Candles with Lead-containing Wicks and Wicks for Candle-making that Contain Lead—Final Rule," Kristina M. Hatlelid, Ph.D., M.P.H., Toxicologist, Directorate for Health Sciences, March 27, 2003.

[FR Doc. 03–9255 Filed 4–17–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 012–2003]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives.

ACTION: Final rule.

SUMMARY: The Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), is exempting five Privacy Act systems of records from the subsections of the Privacy Act listed below. The five systems of records were published in the **Federal Register** on January 24, 2003 (68 FR 3551). As described in this rule, the exemptions are necessary to protect law enforcement and investigatory information and functions of ATF.

EFFECTIVE DATE: This final rule is effective April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Cahill (202) 307–1823.

SUPPLEMENTARY INFORMATION: The exemptions will be applied only to the extent that information in a record is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Pub. L. 107–296, 116 Stat. 2135 (2002). Under Title XI, Subtitle B of the Act, the "authorities, functions, personnel, and assets" of the Bureau of Alcohol, Tobacco, and Firearms are transferred to the Department of Justice, with the exception of certain enumerated authorities that were retained by the Department of the Treasury. The functions retained by the Department of the Treasury are the responsibility of a new Alcohol and Tobacco Tax and Trade Bureau. Section 1111 of the Homeland Security Act further provides that the Bureau will retain its identity as a separate entity within the Department of Justice known as the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). The transfer took effect January 24, 2003.

In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, on January 24, 2003, ATF published its Privacy Act systems of records and converted certain ATF systems of records from Department of the Treasury systems to Department of Justice systems pursuant to the reorganization and transfer of ATF to the Department of Justice. (The publication of these systems of records as Justice systems does not rescind the Treasury/ATF systems of records, as they govern the Alcohol and Tobacco Tax and Trade Bureau within the Department of the Treasury.) There has been no change in the maintenance or operations of the systems of records by ATF, nor has there been a change in the exemptions claimed. Rather, these systems notices were published to reflect the transfer of ATF to the Department of Justice.

Because the transfer of ATF to the Department of Justice was effective on January 24, 2003, it was necessary to immediately establish all appropriate exemptions to the Privacy Act in order to protect law enforcement and investigatory information and functions of ATF. These exemptions needed to be effective on January 24, 2003, the date of the transfer. It would be contrary to the public interest to allow the disclosure of information that could compromise ongoing investigations and law enforcement activities of the ATF. Accordingly, pursuant to the good cause exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3), the Department found that notice and public procedure on this rule were impracticable and contrary to the public interest.

However, comments were requested on or before March 25, 2003. No comments were received. Therefore, the Department of Justice is issuing a final rule.

Regulatory Flexibility Act

This rule relates to individuals, as opposed to small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act 5 U.S.C. 601–612, the rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information, and Privacy.

Accordingly, the interim rule amending 28 CFR part 16 which was published at 68 FR 3392 on January 24, 3003, is adopted as final without change.

Dated: April 9, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 03–9324 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

[BOP–1002–F]

RIN 1120–AA03

Public Works and Community Service Projects

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document finalizes Bureau of Prisons (Bureau) interim rules on volunteer community service projects. Volunteer community service projects provide for the public good. They are developed by local government or by a non-profit charitable organization for Bureau approval. This rule provides for inmates' voluntary participation in a volunteer community service project. We intend this rule to promote the public interest and provide for the security and good order of the institution by reducing inmate idleness.

EFFECTIVE DATE: May 19, 2003.

ADDRESSES: Office of General Counsel, Bureau of Prisons, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307–2105.

SUPPLEMENTARY INFORMATION: In this document, the Bureau finalizes its regulations in 28 CFR part 551, subpart F, on Public Works and Community Service Projects. We published this rule in the **Federal Register** as an interim rule on January 19, 1993 (58 FR 5210).

Under the interim rule, a volunteer community service project provides for the public good, in keeping with the overall goals of the community, such as community-wide beautification and public safety. The project must be developed by local government or by a non-profit charitable organization for Bureau approval. A community service project is not a work assignment. Any inmate who chooses to participate does so voluntarily, and may not receive performance pay for participation in the project.

Existing Bureau regulations provide for inmate monetary contributions to an international, national, or local organization, including political parties, so long as the contribution does not violate any law or regulation (*see* 28 CFR 551.50). This amendment expands this policy by specifying how an inmate may choose to make a contribution of time and effort through participation in an approved volunteer community service project. The charitable activity resulting from participation in a volunteer community service project may not impair contracts for services in the community.

We published this rule as an interim final rule on January 19, 1993 (58 FR 5210). Since we received no comments on this rule, we are publishing it as final, without change.

Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", section 1(b), Principles of Regulation. The Director, Bureau of Prisons has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies

that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 551

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

Accordingly, for the reasons discussed above, we adopt as final the interim final rule published on January 19, 1993 (58 FR 5210), without change.

[FR Doc. 03–9596 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD07–03–041]

RIN 1625–AA08

Special Local Regulations; Miami Beach Super Boat Race, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations for the Miami Beach Super Boat Grand Prix powerboat race. This event will be in the Atlantic Ocean, off Miami Beach, Florida on April 27, 2003. This regulation is necessary to provide for the safety of life on navigable waters during the event.

DATES: 33 CFR 100.730 is suspended from April 1, 2003 until April 30, 2003. Temporary § 100.35T–07–041 is effective from 10 a.m. until 4 p.m. on April 27, 2003.

ADDRESSES: Documents indicated in the preamble are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida, between the hours of 7:30 a.m. and 3 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BM1 D. Vaughn, Coast Guard Group Miami, Florida at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to public safety interests since immediate action is needed to minimize potential danger to the public associated with the large number of vessels expected for this event. Permanent special local regulations similar to this temporary rule have been in place for this event since 1998 effective on the third Sunday in April each year. However, this year the third Sunday in April is Easter Sunday. The race organizers are moving the race date this year to avoid a conflict with the holiday.

For the same reasons, under 5 U.S.C. 553, good cause exists for making this regulation effective in less than 30 days after publication in the **Federal Register**.

Background and Purpose

Super Boat International Productions Inc., is sponsoring a high-speed power boat race that will take place on April 27, 2003 in the Alantic Ocean off Miami Beach, Florida. Approximately 35 race boats, ranging in length from 24 to 50 feet, will participate in the event. There will also be approximately 200 spectator craft in the area. The race boats will be competing at high speeds with numerous spectator vessels on scene, requiring control over vessel traffic in the area.

Discussion of Rule

These regulations create two regulated areas offshore from Miami Beach for this event. The first regulated area surrounds the race course and non-participant vessels are prohibited from entering this area without authorization from the Coast Guard Patrol Commander. The second regulated area establishes a spectator craft viewing area where spectator vessels may enter to watch the race.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary, because non-participant vessels are only prohibited from entering one of the regulated areas for 6 hours on the day of the event. Also, vessels should be able to transit around this one regulated area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, because non-participant vessels are only prohibited from entering one of the regulated areas for 6 hours on the day of the event. Also, vessels should be able to transit around this one regulated area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of $100,000,000 or more in any one year. Although this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order, because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under figure 2–1, paragraph 34(h), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(h), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.

■ 2. From April 1, 2003 until April 30, 2003, temporarily suspend 33 CFR 100.730

■ 3. Add a new temporary § 100.35T–07–041 to read as follows:

§ 100.35T–07–041 Miami Beach Super Boat Race; Miami Beach, Florida.

(a) *Regulated areas.* (1) *Race course.* A regulated area is established by a line joining the following points:

Corner point 1: 25–46.30 N, 080–07.85 W

Corner point 2: 25–46.30 N, 080–06.82 W

Corner point 3: 25–51.30 N, 080–06.20 W

Corner point 4: 25–51.30 N, 080–07.18 W.

All coordinates reference Datum NAD: 83.

(2) *Spectator area.* A regulated area is established in the vicinity of the race course for spectator traffic and is defined by a line joining the following points:

Corner point 1: 25–51.30 N, 080–06.15 W

Corner point 2: 25–51.30 N, 080–05.85 W

Corner point 3: 25–46.30 N, 080–06.55 W

Corner point 4: 25–46.30 N, 080–06.77 W.

All coordinates reference Datum NAD: 83.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Group Miami, Florida.

(c) *Special local regulations.* (1) Non-participant vessels are prohibited from entering the race course regulated area unless authorized by the Coast Guard Patrol Commander.

(2) When notified by the Coast Guard Patrol Commander, after the completion of scheduled races and the departure of participants from the race course regulated area, vessel traffic may resume normal operations. (3) At the discretion of the Coast Guard Patrol Commander, traffic may be permitted to resume normal operations between scheduled racing events.

(d) *Effective date.* This rule is effective from 10 a.m. to 4 p.m. on April 27, 2003.

Dated: April 10, 2003.

F.M. Rosa,

Captain, U.S. Coast Guard, Acting, Commander, Seventh Coast Guard District.

[FR Doc. 03–9647 Filed 4–17–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA91

Title I—Improving the Academic Achievement of the Disadvantaged; Correction

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final regulations; correction.

SUMMARY: The Department published, in the **Federal Register** of December 2, 2002, regulations governing the programs administered under Title I, parts A, C and D of the Elementary and Secondary Education Act (ESEA), as amended. The December 2, 2002 document contained minor errors regarding the Title I, part C, Migrant Education Program. This document corrects the errors.

DATES: January 2, 2003.

FOR FURTHER INFORMATION CONTACT: James English, Office of Migrant Education, Office of Elementary and Secondary Education, 400 Maryland Avenue, Room 3E315, FOB–6, SW., Washington, DC 20202–6135. Telephone: (202) 260–1394 or via the Internet: *james.english@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: In the final regulations published on December 2, 2002 (67 FR 71710), make the following corrections:

PART 200—[CORRECTED]

§ 200.82 [Corrected]

■ 1. On page 71737, in the first column, the introductory text of § 200.82 is corrected by revising the cross-reference from "§ 200.101" to "§ 200.100(b)(4)."

§§ 200.83, 200.84 [Corrected]

■ 2. On page 71737, in the third column, the Office of Management and Budget control number is corrected to be 1810–0662 for §§ 200.83 and 200.84.

§ 200.86 [Corrected]

■ 3. On page 71737, in the third column, the text of § 200.86 is corrected by revising the cross-reference from "§ 200.28(c)(3)(i)" to "§ 200.29(c)(1)."

§ 200.88 [Corrected]

■ 4. On page 71738, in the first column, the Office of Management and Budget control number is corrected to be 1810–0662 for § 200.88.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number 84.011: Title I, Education of Migrant Children)

Dated: April 15, 2003.

Eugene W. Hickok,

Under Secretary of Education.

[FR Doc. 03–9654 Filed 4– 17–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

34 CFR Part 668

Student Assistance General Provisions

CFR Correction

In Title 34 of the Code of Federal Regulations, parts 400 to end, revised as of July 1, 2002, on page 418, § 668.8 is corrected by reinstating paragraph (i) to read as follows:

§ 668.8 Eligible program.

* * * * *

(i) *Flight training.* In addition to satisfying other relevant provisions of this section, for a program of flight training to be an eligible program, it must have a current valid certification from the Federal Aviation Administration.

* * * * *

[FR Doc. 03–55512 Filed 4–17–03; 8:45 am]

BILLING CODE 1505–01–D

POSTAL SERVICE

39 CFR Part 964

Rules of Practice Governing Disposition of Mail Withheld from Delivery Pursuant to 39 U.S.C. 3003, 3004

CFR Correction

In Title 39 of the Code of Federal Regulations, revised as of July 1, 2002, on page 326, § 964.6 is corrected by removing the second sentence.

[FR Doc. 03–55511 Filed 4–17–03; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129, FCC 03–42]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses issues raised in petitions for reconsideration implementing section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. Section 258 prohibits the practice of "slamming," the unauthorized change in a subscriber's selection of a provider of telephone exchange or toll service. Slamming distorts the telecommunications market by enabling companies that engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. We believe that the slamming rules instituted by the Commission will further the Commission's goal of preventing anti-competitive behavior while protecting consumer choice.

DATES: Effective June 2, 2003, except for sections 64.1120, 64.1160, 64.1170 and 64.1180, which contain information collection that have not been approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register**. announcing the effective date of those sections. Written comments by the public on the new and/or modified information collection requirements are due June 2, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection on or before June 17, 2003.

ADDRESSES: Parties who choose to file comment by paper must file an original and four copies to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at *www.fcc.gov/e-file/ecfs.html.* In addition to filing comments with Office of the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson at 202–418–2512, Consumer & Governmental Affairs Bureau. For additional information concerning the information collection(s) contained in this document, contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in CC Docket No. 94–129, FCC 03–42, released March 17, 2003. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

Paperwork Reduction Act: This Reconsideration Order contains modified or revised information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection(s) contained in this Reconsideration Order, as required by the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13.

Synopsis of Order on Reconsideration

1. In this document, the Commission addresses a petition seeking reconsideration of Commission rules prohibiting carriers that effect requests for subscriber carrier changes submitted by other carriers from re-verifying such requests before executing the requested changes. We continue to believe that the Commission's prohibition on executing carrier verification advances and is proportionate to the goal of preventing anti-competitive behavior by executing carriers and protecting consumer choice. The Commission found that executing carrier re-verification could diminish consumer choice and impede competition, and would be expensive, unnecessary and duplicative of the submitting carriers verification.

2. *Use of Carrier Change Information for Marketing Purposes.* The Commission clarifies that, to the extent that the retail arm of an executing carrier obtains carrier change information for marketing purposes through its normal channels in a form available throughout the retail industry, and after the carrier change has been completed, we do not prohibit the use of that information in executing carriers' efforts to gain back that customer. In addition, we note that our decision here is not intended to preclude individual state actions in this area that are consistent with our rules.

I. Verification of Carrier Changes

A. Independent Third Party Verification

3. The Commission recognizes that dropping off a three-way call could potentially be infeasible for carriers in certain specific situations; for example, a carrier may not be able to comply with the drop-off rule because its sales force is located in an area with an exchange that does not employ the technology necessary to support a drop-off. Accordingly, we will exempt from the rule those carriers that certify to the Commission that their sales agents are unable to drop off the sales call after initiating a third party verification. Such carriers will be exempt from the drop-off requirement for a period of two years from the date the certification is received by the Commission. Carriers that wish to extend their exemption from the rule must, at the end of the two year period (and every two years thereafter) re-certify to the Commission as to their continued inability to comply. For any carrier that certifies that it is unable to comply with the drop-off requirement, we emphasize that, in any case, the third party verification must be terminated if the sales agent of an exempted carrier responds to a consumer's inquiries after a verification attempt has begun. A new verification may be initiated only after the sales agent has finished responding to the customer. Consistent with our rules, any neutral, factual information that is provided by a third party verifier should not mirror the carrier's particular marketing pitch, nor should it market the carrier's services or be an extension of the sales call. Instead, it should clearly verify the subscriber's decision to change carriers. Commission rules also require the verification process (*i.e.*, everything the subscriber says and hears during the verification call) to be taped and preserved for a period of two years in order to ensure the availability of a complete and accurate record for investigation of any slamming complaint. If a carrier does not comply with the rule the verification is invalid. We will continue to review third party verification recordings when evaluating slamming complaints and will aggressively enforce our liability rules.

B. 60-Day Limit on the Effectiveness of an LOA

4. In the *Third Report and Order*, the Commission found that a reasonable limitation on the amount of time an LOA should be considered valid is 60 days. The Commission concluded that the 60-day limit applies to submitting carriers rather than executing carriers, because a submitting carrier is an actual party to the contractual agreement with the customer and, as such, is more capable of conforming its behavior to the obligation. AT&T asks that the Commission modify its rule to exempt multi-line and/or multi-location business customers from the 60-day limit. We agree with AT&T that such a limitation would needlessly invalidate these negotiated LOAs and would not confer additional consumer protection benefits upon the parties. Accordingly, upon reconsideration, we will no longer limit the effectiveness of such customers' LOAs to 60 days.

C. Identification of the Subscriber's Current Telecommunications Provider

5. In the *Third Report and Order*, the Commission concluded that a script for third party verification should elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved (*i.e.*, local, in-state toll, out-of-state toll, or international service). AT&T asks the Commission to eliminate the requirement that independent third party verifications elicit from the customer the identity of

the customer's current telecommunications provider. AT&T states that the sole relevant consideration in executing a change order is identification of the carrier to whose service the change is being authorized, not the identity of the carrier being displaced. AT&T asserts that requiring carriers to compile and provide the identity of the customer's current carrier is disruptive, superfluous and burdensome. On reconsideration, we agree that it is unnecessary for a subscriber to identify in an independent third party verification the identity of the displaced carrier. Accordingly, we find that such identification need not be provided by the subscriber, either in LOAs or independent third party verifications

D. Effecting Freeze Lifts and Change Requests in the Same Three-Way Call

6. AT&T asks the Commission to require executing carriers to lift freezes and to process carrier change requests in the same three-way call. We agree that AT&T fails to raise any arguments that were not thoroughly considered in previous orders in this proceeding. In the *Second Report and Order*, the Commission declined to enumerate all acceptable procedures for lifting preferred carrier freezes. Rather, parties were encouraged to develop other methods of accurately confirming a subscriber's identity and intent to lift preferred carrier freezes, in addition to offering written and oral authorization.

E. Registration Requirement

7. In the *Third Report and Order*, the Commission adopted a requirement that all new and existing common carriers providing interexchange telecommunications service must register with the Commission. The Commission further concluded that facilities-based carriers shall have an affirmative duty to ascertain whether a potential carrier-customer (*i.e.*, a reseller) has filed a registration with the Commission prior to providing that carrier-customer with service." WorldCom asks that Commission to clarify that underlying carriers are not under a duty to take any action with regard to carrier-resellers if: (1) the underlying carrier "does not receive a notification of registration from an existing carrier-customer," and/or (2) the underlying carrier's "existing carrier-customer does not appear on the list maintained by the Commission. As noted in the *Third Report and Order*, a facilities-based carrier will not be responsible for the accuracy of the registration information, nor will such a carrier, relying in good faith on the absence of such registration, be liable under section 251 of the Act for withholding service from the unregistered entity. The Commission may, however, after giving appropriate notice and opportunity to respond, impose a fine on carriers that fail to determine the registration status of carrier customers.

II. Liability for Unauthorized Carrier Changes

8. *Customer referral to unauthorized carrier.* In its petition, WorldCom asserts that the Commission should require carriers contacted by a subscriber alleging slamming to inform the subscriber that he or she should contact and seek resolution from the alleged unauthorized carrier, in addition to informing the subscriber of their right to file a complaint if necessary and of their right to absolution. We currently require carriers contacted by a subscriber alleging slamming to inform the subscriber of their right to file a complaint with the appropriate governmental agency. On reconsideration, we will also require carriers to inform the subscriber that he or she may contact and seek resolution from the alleged unauthorized carrier and, in addition, may contact the authorized carrier.

9. *Removal of charges from subscriber bills when a subscriber has not yet paid the charges.* WorldCom also asks the Commission to reconsider its rule requiring alleged unauthorized carriers to remove all charges assessed for the first 30 days of services from a subscriber's bill upon the subscriber's allegation that he or she was slammed. We decline to modify our rule requiring removal by the unauthorized carrier of all charges assessed for the first 30 days of service upon a subscriber's allegation that he or she was slammed.

10. *Amounts owed by unauthorized carriers when the subscriber has paid the unauthorized carrier.* Section 258 mandates that the unauthorized carrier "shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by such subscriber after such violation." The Commission stated that, once a carrier has been found guilty of slamming, the unauthorized carrier shall be required to disgorge to the authorized carrier an amount adequate to satisfy both of these obligations. The Commission found that an approximate proxy for this amount is 150% of the amounts collected by the unauthorized carrier from the subscriber following a slam. Upon receipt of the money, the authorized carrier is required to remit one third (*i.e.*, 50% of what the subscriber paid to the unauthorized carrier) to the injured subscriber. WorldCom asks that the Commission reconsider its requirement that unauthorized carriers pay the subscriber's authorized carrier 150% of all charges paid by such subscriber. We decline to modify our finding that unauthorized carriers must pay the subscriber's authorized carrier 150% of all charges paid by such subscriber and, upon receipt of the money, that the authorized carrier is required to remit one third (*i.e.*, 50% of what the subscriber paid to the unauthorized carrier) to the injured subscriber.

11. *Unauthorized carrier changes resulting from LEC actions.* In their Petitions, Sprint and WorldCom note that subscribers sometimes request carrier changes by communicating directly with LECs. Sprint and WorldCom ask that the Commission reconsider its "apparent decision" to classify as an IXC slam any unauthorized carrier change that occurred as a result of a LEC mistakenly executing a carrier change and informing an IXC that it had gained a customer. We agree with Sprint that it would be unfair to hold IXCs liable for slamming pursuant to section 258 when the unauthorized carrier change was the result of a LEC's action.

III. Other Issues

12. *Toll-Free Service Accounts.* SBC also seeks clarification that the carrier change verification requirements set forth in the *Second Report and Order* do not apply to verifications of Responsible Organization ("RespOrg") changes for toll-free service accounts. A RespOrg is the entity that a consumer seeking to acquire a toll-free number must contact. In a subsequent *Clarification Order*, the Common Carrier Bureau stated that, by requiring "proper written authorization," it did not intend to preclude the current SMS/800 administrator practice of accepting LOAs for RespOrg change requests that contain a subscriber's personal identification number in lieu of the subscriber's signature. Inasmuch as SBC is seeking a requirement that all RespOrg change requests include LOAs with customer signatures, we note that the *Clarification Order* disallows such a result.

13. *New Lines and New Installations.* AT&T asks the Commission to clarify, or in the alternative reconsider and hold, that the slamming rules apply to customers' initial carrier selections for newly installed lines. We decline AT&T's request to clarify, or in the alternative reconsider and hold, that our slamming rules apply to new installations. As noted previously, section 258 of the Act provides that "[n]o telecommunications carrier shall submit or execute a change in subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." We emphasize, however, that the statue does encompass all changes in a subscriber's selection of a provider of telecommunications service, regardless of whether such change occurs at the same time a subscriber changes residences or when a business relocates or expands. It is no less important for carrier change verification to be obtained when a consumer is receiving the service on new lines than when the carrier change occurs without new line installations.

14. *Carrier Reporting of Slamming Allegations (Form 478).* Sprint and WorldCom ask the Commission to reconsider its carrier reporting requirement. According to our rules, carriers providing telephone exchange service and/or telephone toll service must periodically submit to the Commission reports regarding complaints they receive concerning unauthorized carrier changes. In the *Third Report and Order*, the Commission directed each carrier to submit a reporting form (Form 478) identifying the number of slamming complaints received and the number of such complaints that the carrier has investigated and found to be valid. The Commission also required carriers to identify the number of slamming complaints involving local, intrastate, and interstate exchange service, investigated or not, that the carrier has resolved directly with subscribers. Upon reconsideration, we find that the carrier reporting requirement should be eliminated. We therefore remove § 64.1180 of our rules. Our experience since the adoption of the requirement has shown that the information contained in such reports is of limited utility in investigating allegations of slamming; at the same time, it appears that the burdens associated with filing the reports are significant.

15. *More Stringent Verification Requirements.* In its Petition for Reconsideration of the *First Reconsideration Order*, WorldCom asks the Commission to clarify that, when determining whether a change was authorized, the states must use the Commission's definition of subscriber as set forth in the *Third Report and Order*. We confirm that, in the areas in which the states have jurisdiction, federal verification procedures constitute a "floor," and the states may choose to impose more stringent requirements, so long as they are consistent with the federal requirements. WorldCom does not identify a specific state law or laws that it would seek to have preempted, nor does it describe how the particular law(s) conflicts federal law or obstructs federal objectives. In the absence of such evidence, we decline to preempt state laws regarding the definition of "subscriber" in the context of carrier change verification.

16. *Underlying Facilities-Based Carrier Changes.* In the *Second Report and Order*, we have received inquiries from LEC representatives who expressed concern about the risks of "lifting" a customer's preferred carrier freeze in order to permit the customer's preferred carrier, a switchless reseller, to begin using the network of a different facilities-based carrier. Based on our experiences, we clarify here that we do not consider it a lifting of a preferred carrier freeze when a LEC implements the request of a switchless reseller to change its underlying carrier, and makes the technical changes necessary to permit the reseller's customer to retain his or her chosen carrier. Under these circumstances, the subscriber's preferred carrier is the switchless reseller, and the subscriber does not experience a carrier change when the reseller merely makes a change to the underlying facilities it utilizes.

17. *Resolution of Informal Complaints.* In the *First Order on Reconsideration*, we modified our informal complaint rules to better address the adjudication of unauthorized carrier change complaints. The rule modifications were intended to give consumers a wider array of remedies than was available under the former informal complaint rules, which did not provide for the Commission to order monetary payments by carriers to consumers in situations involving unauthorized carrier changes. Our current rules regarding informal complaints filed pursuant to section 258 state that "[t]he Commission will issue a written (or electronic) order informing the complainant, the unauthorized carrier, and the authorized carrier of its finding, and ordering the appropriate remedy, if any, as defined by §§ 64.1160 through 64.1170 of this chapter." Given our experience with the resolution of unauthorized carrier change complaints since the promulgation of these rules, we believe that permitting flexibility as to the form of complaint determinations allows for more efficient use of Commission resources and would speed the resolution of complaints. Accordingly, we clarify that, under the appropriate circumstances, the Commission may issue an order addressing an informal slamming complaint in the form of a letter, written or electronic, containing the information required by our rules.

F. Accessible Formats

18. Accessible formats (computer diskettes, large print, audio recording and Braille) are available to persons with disabilities by contacting Brian Millin of the Consumer & Governmental Affairs Bureau, at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov*.

IV. Procedural Matters

G. Regulatory Flexibility Analysis

19. As required by the Regulatory Flexibility Act, as amended (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the proposals set forth in the Second FNPRM.

H. Paperwork Reduction Act Analysis

20. This *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking* contains either a new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking* as required by the Paperwork Reduction Act of 1995, Public law 104–13. Public and agency comments are due June 17, 2003.

I. *Ex Parte* Presentations

21. This is a permit-but disclose notice and comment rulemaking proceeding. Members of the public are advised that ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed under the Commission's rules.

Supplemental Final Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Third Report and Order and Second Order on Reconsideration*. The Commission sought written public comment on the proposals in the *Third Report and Order*, including comment on the IRFA. A Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *Third Report and Order*. The Commission

received a number of petitions for reconsideration in response to the *Third Report and Order*. Certain comments received are discussed below, including two received in response to the IRFA. The instant *Order* addresses issues raised in those reconsideration petitions and other petitions. This associated Supplemental Final Regulatory Flexibility Analysis (SFRFA) reflects revised or additional information to that contained in the FRFA. This SFRFA is thus limited to matters raised in response to the *Third Report and Order* and addressed in the instant *Order*. This SFRFA conforms to the RFA.

A. Need for and Objectives of This Order and the Rules Adopted Herein

23. Section 258 prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service. This practice, known as "slamming," distorts the telecommunications market by enabling companies that engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. In this *Order*, we address certain issues raised in petitions for reconsideration of the *Second Report and Order and Further Notice of Proposed Rulemaking*, the *First Order on Reconsideration*, and the *Third Report and Order*. Specifically, in this Order we modify the drop-off rule to allow the sales agents of certain carriers to remain on the line during the Third Party Verification (TPV). We also discuss small business concerns with respect to this rule. We exempt "multi-line and/or multi-location business customers" from our rule imposing a 60-day limit on the amount of time an Letter of Agency (LOA) may be considered valid. We decline to hold Interexchange Carriers (IXCs) liable for slamming pursuant to section 258 when the unauthorized carrier change was the result of an LEC mistake, and LECs must verify carrier change requests made by a customer directly to the LEC according to our verification rules. We no longer require carriers that provide telephone exchange service and/or telephone toll service to periodically submit to the Commission allegations of slamming. We do not require a subscriber to identify, either in LOAs or third party verifications, the identity of the displaced carrier. This *Order* also contains a Further Notice of Proposed Rulemaking, in which we propose several additional modifications to our carrier change rules. Specifically, we seek comment on rule modifications with respect to third party verifications.

B. Summary of Significant Issues Concerning Small Entities

24. Two commenters responded directly to the IRFA: Voicelog and SBA. VoiceLog filed a Petition for Partial Stay and Reconsideration of the *Third Report and Order*. VoiceLog argues that that drop-off rule is overbroad, impractical, and unenforceable and is not competitively neutral with respect to other third party verification methods. The SBA argues that the Commission adopted the drop-off rule without raising the issue in an IRFA and that the Commission did not solicit comment on compliance costs and alternatives in either the *Second Report and Order* or the *Third Report and Order*. In response to VoiceLog's arguments, the Commission modified the drop-off requirement to balance the independence of the third party verification with the concerns of those smaller carriers. The Regulatory Flexibility concerns of VoiceLog and SBA are discussed in paragraphs 44–45 of the *Third Report and Order*.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

25. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under Section 3 of the Small Business Act. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations.

26. The definition of "small governmental jurisdiction" is one with populations of fewer than 50,000. There are approximately 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

27. We have included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, wireline telecommunications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

28. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 1,329 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, we estimate that the majority of providers of local exchange services are small entities that may be affected by the rules and policies adopted herein.

29. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific small business size standard for providers of competitive local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of competitive local exchange services are small entities that may be affected by the rules.

30. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a specific size standard for competitive access providers (CAPS). The closest applicable standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 532 CAPs or competitive local exchange carriers and 55 other local exchange carriers reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 competitive access providers and competitive local exchange carriers, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. Of the 55 other local exchange carriers, an estimated 53 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of small entity CAPS and the majority of other local exchange carriers may be affected by the rules.

31. *Local Resellers.* The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 134 companies reported that they were engaged in the provision of local resale services. Of these 134 companies, an estimated 131 have 1,500 or fewer employees and 3 have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers may be affected by the rules.

32. *Toll Resellers.* The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 576 companies reported that they were engaged in the provision of toll resale services. Of these 576 companies, an estimated 538 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

33. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 229 carriers reported that their primary telecommunications service activity was the provision of interexchange services. Of these 229 carriers, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. Consequently, we estimate that a majority of IXCs may be affected by the rules.

34. *Operator Service Providers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 22 companies reported that they were engaged in the provision of operator services. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that a majority of local resellers may be affected by the rules.

35. *Prepaid Calling Card Providers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that a majority of prepaid calling providers may be affected by the rules.

36. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 42 carriers reported that they were engaged in the provision of "Other Toll Services." Of these 42 carriers, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that a majority of "Other Toll Carriers" may be affected by the rules.

D. Summary of Projected Reporting, Recordkeeping, and Other Compliance Requirements

37. Below, we analyze the projected reporting, recordkeeping, and other compliance requirements that may affect small entities.

38. *Verification of Carrier Changes—Independent Third Party Verification.* We modify our rule on third party verification to exempt carriers that certify to the Commission that they are unable to comply with the rule. We are persuaded that compliance with the current drop-off rule may be infeasible for carriers, including smaller carriers, that lack the technical means to comply or for which enabling equipment upgrades are economically infeasible. However, if a sales agent of an exempted carrier responds to a request by the customer for additional information, the third party verification must be terminated. A new third party verification may commence only after the sales agent has finished responding to the customer inquiry. Any third party verification obtained before a carrier's sales representative has finished providing information regarding the carrier change will not be considered valid. The modification, as created here, will therefore likely reduce the costs for upgrading the network and revising internal processes for signing up new customers, and retraining employees on how to use the new network upgrades and internal processes. We were not able to identify alternatives that would have lessened the economic impact on small entities while remaining consistent with the Commission's objectives.

39. *60-Day Limit on the Effectiveness of an LOA.* We exempt multi-line and/or multi-location business customers from the 60-day limit. The Commission concludes that this requirement would not impose significant additional costs or administrative burdens on small carriers.

40. *Unauthorized Carrier Changes Resulting From LEC Actions.* We decline to hold the IXC liable for slamming when the unauthorized carrier change was the result of a LEC mistake. LECs will be liable for unauthorized carrier changes that are the result of the LEC's mistake. LECs will also be required to follow the Commission's series of verification rules when a customer contacts the LEC directly to request a carrier change.

41. *Carrier Reporting of Slamming Allegations (Form 478).* The Commission will no longer require carriers that provide telephone exchange service and/or telephone toll service to periodically submit to the Commission reports regarding complaints they receive alleging unauthorized carrier changes—form 478. The change in the rule will alleviate the administrative burdens associated with filing the reports.

E. Steps Taken To Minimize the Significant Economic Impact of This Order on Small Entities, Including the Significant Alternatives Considered

42. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

43. *Verification of Carrier Changes—Independent Third Party Verification.* The Commission was persuaded by VoiceLog that compliance with the rule as created in the *Third Report and Order* may have been infeasible for some carriers, including smaller carriers, and therefore in order to minimize any adverse impact of the TPV rule on small entities, the Commission modified the TPV rule to allow for an exception for those carriers that certify that they are unable to comply with the drop-off rule. Other alternatives where suggested by VoiceLog and AT&T, including allowing the sales agent to remain on the line and answer questions during verification were rejected because they either compromised the independent nature of the third party verification or were not likely to have an effect on our goals of reducing slams. Self-certification will likely be less costly to a small business than the costs in upgrading the network and revising internal processes for signing up new customers, and retraining employees on how to use the new network upgrades.

44. *60-Day Limit on the Effectiveness of an LOA.* We expect that exemption we create will have no significant economic impact on carriers.

45. *Unauthorized Carrier Changes Resulting from LEC Actions.* The Commission is persuaded that when a LEC has assigned a subscriber to a non-affiliated carrier without authorization, and where the subscriber has paid the non-affiliated carrier the charges for the billed service, the LEC shall reimburse the subscriber for all charges paid by the subscriber to the unauthorized carrier and shall switch the subscriber to the desired carrier at no cost to the subscriber. When the subscriber has not paid the unauthorized carrier, the LEC shall switch the subscriber to the desired carrier at no cost to the subscriber, and shall also secure the removal of the unauthorized charges from the subscriber's bill. In order to deter such actions, we believe that a LEC should be held responsible for unauthorized carrier changes that favor its long distance affiliate, in the same manner that an IXC would be held responsible if it submitted an unauthorized change itself. The alternatives, *i.e.*, holding the customer or the carrier liable for mistakes made by the LEC were rejected as contrary to the slamming portions of the Act and fundamentally unfair. Because LECs will be held responsible for their own mistakes, LECs must also follow our verification rules when contacted directly by a subscriber that requests a carrier change, such that a record of the carrier change request is created and maintained.

46. *Carrier Reporting of Slamming Allegations (Form 478).* In eliminating our rule requiring carriers to submit Form 478, the Commission removed the burdens placed on carriers to provide information that could be misleading and damaging to a carrier; LECs in particular may have great difficulty complying with the requirements in an accurate manner. This change in our rule will likely reduce significantly the administrative burdens on carriers, including those smaller carriers.

47. *Report to Congress:* The Commission will send a copy of the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking (Second Further Notice),* including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *Third Order on Reconsideration,* including this Supplemental FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Third Order on Reconsideration* and Supplemental FRFA (or summaries thereof) will also be published in the **Federal Register**.

V. Ordering Clauses

48. Pursuant to sections 1, 4(i), 4(j), 201, 206–208 and 258 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201, 206–208 and 258 and §§ 1.421 and 1.429 of the Commission's rules, 47 CFR 1.421 and 1.429, that the *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking* in CC Docket No. 94–129 IS ADOPTED, and that part 64 of the Commission's rules, 47 CFR part 64, is amended as set forth in the Rule Changes. The requirements of this *Third Order on Reconsideration* shall become effective June 2, 2003. Sections 64.1120, 64.1150, 64.1160, 64.1170 and 64.1180 contain new or modified information collections that have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

49. The collection of information contained herein is contingent upon approval by the Office of Management and Budget.

50. Pursuant to sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and section 1.429 of the Commission's rules, 47 CFR 1.429, that the petition for partial stay, filed by VoiceLog, LLC, *is denied* AS MOOT.

51. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petition for reconsideration, filed by VoiceLog, LLC, *is granted in part and denied in part,* to the extent indicated herein.

52. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petition for reconsideration, filed by the Rural LECs *is denied.*

53. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules 47 CFR 1.429, that the petition for reconsideration, filed by NTCA, *is denied.*

54. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petition for reconsideration, filed by SBC, *is granted in part and denied in part,* to the extent indicated herein.

55. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petition for reconsideration, filed by AT&T on April 2, 2001, *is granted in part and denied in part,* to the extent indicated herein, and that the petition for reconsideration, filed by AT&T on March 18, 1999, *is denied.*

56. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petitions for reconsideration, filed by WorldCom on April 2, 2001 and September 5, 2000, *are granted in part and denied in part,* to the extent indicated herein.

57. Pursuant to sections 1, 4(i), 4(j), of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and §§ 1.429 of the Commission's rules, 47 CFR 1.429, that the petitions for reconsideration, filed by Sprint on April 2, 2001, and September 5, 2000, *are granted in part and denied in part,* to the extent indicated herein, and the petition for reconsideration, filed by Sprint on March 18, 1999, *is denied.*

58. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Shall Send a copy of this *Third Report and Order and Second Further Notice of Proposed Rulemaking* in CC Docket No. 94–129, including the Initial Regulatory Flexibility Analysis and the Supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble, part 64 of the Commission's Rules and Regulations, Chapter 1 of Title 47 of the Code of Federal Regulations, is amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. The heading of Subpart K is revised to read as follows:

Subpart K—Changes in Preferred Telecommunications Service Providers

* * * * *

■ 3. Section 64.1120 is amended by revising the paragraph (c)(3)(iii) to read as follows:

§ 64.1120 Verification of orders for telecommunications service.

* * * * *

(c) * * *

(3) * * *

(iii) *Requirements for content and format of third party verification.* All third party verification methods shall elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the carrier change; the names of the carriers affected by the change (not including the name of the displaced carrier); the telephone numbers to be switched; and the types of service involved. Third party verifiers may not market the carrier's services by providing additional information, including information regarding preferred carrier freeze procedures.

* * * * *

■ 4. Section 64.1130 is amended by revising paragraph (j) to read as follows:

§ 64.1130 Letter of agency form and content.

* * * * *

(j) A telecommunications carrier shall submit a preferred carrier change order on behalf of a subscriber within no more than 60 days of obtaining a written or electronically signed letter of agency. However, letters of agency for multi-line and/or multi-location business customers that have entered into negotiated agreements with carriers to add presubscribed lines to their business locations during the course of a term agreement shall be valid for the period specified in the term agreement.

■ 5. Section 64.1150 is amended by revising paragraph (b) to read as follows:

§ 64.1150 Procedures for the resolution of unauthorized changes in preferred carriers.

* * * * *

(b) *Referral of Complaint.* Any carrier, executing, authorized, or allegedly unauthorized, that is informed by a subscriber or an executing carrier of an unauthorized carrier change shall direct that subscriber either to the state commission or, where the state commission has not opted to administer these rules, to the Federal Communications Commission's Consumer & Governmental Affairs Bureau, for resolution of the complaint. Carriers shall also inform the subscriber that he or she may contact and seek resolution from the alleged unauthorized carrier and, in addition, may contact the authorized carrier.

* * * * *

■ 6. Section 64.1160 is amended by adding paragraph (g) to read as follows:

§ 64.1160 Absolution procedures where the subscriber has not paid charges.

* * * * *

(g) When a LEC has assigned a subscriber to a carrier without authorization, and where the subscriber has not paid the unauthorized charges, the LEC shall switch the subscriber to the desired carrier at no cost to the subscriber, and shall also secure the removal of the unauthorized charges from the subscriber's bill in accordance with the procedures specified in paragraphs (a) through (f) of this section.

■ 7. Section 64.1170 is amended by adding paragraph (g) to read as follows:

§ 64.1170 Reimbursement procedures where the subscriber has paid charges.

* * * * *

(g) When a LEC has assigned a subscriber to a non-affiliated carrier without authorization, and when a subscriber has paid the non-affiliated carrier the charges for the billed service, the LEC shall reimburse the subscriber for all charges paid by the subscriber to the unauthorized carrier and shall switch the subscriber to the desired carrier at no cost to the subscriber. When a LEC makes an unauthorized carrier change to an affiliated carrier, and when the customer has paid the charges, the LEC must pay to the authorized carrier 150% of the amounts collected from the subscriber in accordance with paragraphs (a) through (f) of this section.

§ 64.1180 [Removed]

■ 8. Section 64.1180 is removed.

[FR Doc. 03–9120 Filed 4–17–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 030227050–3082–02; I.D. 020603D]

RIN 0648–AQ34

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; 2003 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; final specifications.

SUMMARY: NMFS issues final specifications for the 2003 spiny dogfish fishery. This final rule implements a commercial quota and possession limits for the 2003 fishing year to address overfishing of the spiny dogfish resource. The intent of this action is to comply with implementing regulations for the Fishery Management Plan (FMP), which require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of this resource.

DATES: The 2003 final specifications are effective from May 1, 2003, through April 30, 2004.

ADDRESSES: Copies of supporting documents used by the Spiny Dogfish Monitoring Committee; the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA) contained within the RIR, and the Environmental Assessment (EA) are available from the Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/FRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978)281–9259, fax (978)281–9135, e-mail *Eric.Dolin@Noaa.gov*.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published in the **Federal Register** on March 10, 2003, (68 FR 11346). The comment period closed on March 25, 2003.

Background

The spiny dogfish fishery is managed under an FMP developed jointly by the Mid-Atlantic Fishery Management Council and the New England Fishery Management Council (Councils). The implementing regulations for the dogfish fishery are found at 50 CFR part 648, subpart L.

Pursuant to 50 CFR 648.230, the Administrator, Northeast Region, NMFS, (Regional Administrator) implements measures for the 2003 fishing year to assure that the target fishing mortality rate (F), as specified in the FMP, is not exceeded. The target F and management measures (i.e., semi-annual commercial quota and possession limits) are summarized below. Detailed background information regarding the development of the proposed specifications for the 2003 spiny dogfish fishery was provided in the preamble to the proposed rule (68 FR 11346, March 10, 2003) and is not repeated here.

Annual Commercial Quota and Possession Limits

The FMP specifies a target F of 0.03 for 2003 to be attained through a commercial quota, and possibly other management measures. This final rule implements a commercial quota of 4 million lb (1.81 million kg) for the 2003 fishing year that is allocated on a semi-annual basis as follows: Quota Period 1 (May 1–October 31) is allocated 57.9 percent of the 4–million lb (1.81–million kg) quota, or 2,316,000 lbs (1,050,512 kg), and Quota Period 2 (November 1–April 30) is allocated 42.1 percent of the 4–million lb (1.81–million kg) quota, or 1,684,000 lbs (763,849 kg).

This final rule also maintains the existing possession limits of 600 lb (272 kg) and 300 lb (136 kg) for Quota Period 1 and Quota Period 2, respectively, to allow for the retention of spiny dogfish caught incidentally while fishing for other species throughout the entire fishing year.

Comments and Responses

One set of written comments was submitted during the comment period in response to the proposed rule. The comments were prepared by a group of environmental organizations, including The Ocean Conservancy, Natural Resources Defense Council, National Audubon Society, and Environmental Defense.

NMFS considered the organizations' comments in making the decision to issue this final rule.

Comment 1: The environmental organizations supported a quota of no more than the 4–million lb (1.81–million kg) commercial quota, despite urging NMFS to consider a commercial quota lower than 4 million lb (1.81–million kg) for the upcoming fishing season. They also supported the proposed possession limits and strongly opposed higher possession limits, which would result in a directed fishery and potentially derail rebuilding efforts.

Response: NMFS is implementing the 4–million lb (1.81–million kg) commercial quota and 600–lb (272–kg)/300–lb (136–kg) possession limits for Quota Period 1 and 2, respectively, consistent with the Monitoring Committee recommendation to maintain fishing mortality targets and rebuilding objectives of the FMP. The Monitoring Committee did not comment on a lower quota because the 4–million lb (1.81–million kg) commercial quota is consistent with the FMP's fishing mortality target. Any further reduction in landings would have to be considered in light of potential increased spiny dogfish discards.

Changes From the Proposed Rule

The preamble of the proposed rule referenced trip limits, when, in fact, this final rule implements possession limits--defined as the maximum amount that can be landed in any one 24–hr period (calendar day). In contrast, a trip limit is not tied to a specific time interval. Thus, having a trip limit as opposed to a possession limit could encourage a directed fishery consisting of multiple trips per day.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

This action establishes annual quotas and maintains the current possession limits for the spiny dogfish fishery, which are used to control the harvest of spiny dogfish and to restrict landings when quotas are attained. This action must be taken immediately at the start of the 2003 fishing year on May 1, 2003, to conserve this resource. It would be inconsistent with the conservation goals of the FMP to delay implementation of the quota provisions because a hiatus in harvest restrictions represented by the quota would allow for an unrestricted harvest and, if spiny dogfish are congregated in areas where other species are being targeted, or targeted by some vessels, the Period 1 quota will quickly be attained. In the absence of a commercial quota, there would be no ability to close the fishery to prevent further increases in fishing mortality and potential deleterious effects to rebuilding efforts. In addition, because this final rule maintains measures implemented in the 2002 specifications, there is no requirement for participants to come into compliance with any new gear requirements. Therefore, the AA finds good cause under 5 U.S.C. 553(d)(3) to partially waive the 30–day delayed effectiveness period for the implementation of the 2003 Federal spiny dogfish quota.

NMFS and the Mid-Atlantic Council prepared a FRFA for this action. The FRFA includes comments on the Initial Regulatory Flexibility Analysis (IRFA), the discussion and the responses contained in the preamble to this final rule, and a summary of the analyses prepared in support of this action. Copies of the analysis are available from the Regional Administrator (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that entire discussion is not repeated here. A summary of the FRFA follows:

The reason that action is being taken by the agency and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule and are not repeated here. This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules.

Public Comments

The single set of comments received on the measures contained in the proposed rule did not specifically reference the IRFA analyses of the expected impacts of the proposed possession limit levels on small entities.

Number of Small Entities

The small entities considered in the analysis include 280 vessels that have reported spiny dogfish landings to NMFS in 2001 (the most recent year for which there are vessel-specific data). In addition, there are vessels that are not subject to the Federal reporting requirements because they fish exclusively in state waters.

Furthermore, there are a large number of vessels that have been issued Federal spiny dogfish permits, but have not fished for spiny dogfish in recent years (a total of 2,825 vessels were issued the permit in 2001). Because these vessels have obtained spiny dogfish permits, it is presumed that these vessels are interested in the fishery but have chosen not to participate under the restrictive possession limits. If any of these vessels should choose to participate in the upcoming fishing year, they might experience revenue increases associated with landings of spiny dogfish, but those increases cannot be estimated because it is impossible to determine both the number of vessels that would participate and their fishing behavior (e.g., level of effort).

Minimizing Significant Economic Impact on Small Entities

This FRFA summary includes a discussion of minimizing significant economic impacts on small entities. The IRFA analyzed three alternatives: Alternative 1 is implemented by this action (commercial quota of 4 million lb (1.81 million kg) and possession limits of 600 lb (272 kg) and 300 lb (136 kg) for Quota Period 1 and Quota Period 2, respectively); both Alternative 2 (commercial quota of 8.8 million lb (4 million kg) and possession limits of 7,000 lb (3,175 kg) and 5,000 lb (2,273 kg) for quota periods 1 and 2, respectively) and Alternative 3 (no quota or possession limits) would have a lower economic impact on small entities, but neither meets the conservation objectives of the FMP. Alternatives 2 and 3 could not be implemented without amending the FMP to modify the F target specified in the rebuilding program.

The FMP determined that the spiny dogfish stock could not support a directed fishery as would be the case under Alternatives 2 and 3. In the absence of a directed fishery, long-term profitability and solvency issues cannot be computed with a great degree of confidence. The information necessary to perform a profitability assessment is not available. Therefore, we have used changes in gross revenues in lieu of profitability. The potential changes in 2003 revenues under the 4–million lb (1.81–million kg) quota were evaluated relative to landings and revenues derived during 2001: 4.94 million lb (2.25 million kg) of landings, valued at $1,126,000. The analysis is based on the last full fishing year of landings data for 280 vessels. The reduction in gross revenues to the fishery as a whole for 2003 was estimated to be about $214,259, or about $765 per vessel, compared to fishing year 2001. It is only due to the landings for 2001 being in excess of the quota that this quota specification for spiny dogfish is expected to result in a reduction in revenues.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as the small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office, and the guide, i.e., permit holder letter, will be sent to all holders of permits issued for the spiny dogfish fishery. The guide and this final rule will be available upon request (see **ADDRESSES**).

Dated: April 15, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–9633 Filed 4–17–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 75
Friday, April 18, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

Regulatory Analysis Guidelines: Proposed Criteria for the Treatment of Individual Requirements in a Regulatory Analysis

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is making available for public comment proposed criteria for the treatment of individual requirements in a regulatory analysis. The concern is that aggregating or "bundling" different requirements in a single analysis could potentially mask the inclusion of an inappropriate individual requirement. Therefore, the NRC proposes to modify its Regulatory Analysis Guidelines, NUREG/BR–0058, Rev. 3 by adding guidance to address this concern.

DATES: Submit comments on the proposed criteria by July 2, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. ATTN: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays (Telephone 301–415–1678).

You may also provide comments via the NRC's interactive rulemaking Web site at *http://ruleforum.llnl.gov*. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: *CAG@nrc.gov*).

Certain documents related to these proposed criteria, including comments received and the "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," NUREG/BR–0058, Rev. 3, July 2000, may be examined, and/or copied for a fee, at the NRC's Public Document Room, One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The documents listed below are also accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html* under the following ADAMS accession numbers:

Regulatory Guide 1.174: ML003740133.

Regulatory Analysis Guidelines, NUREG/BR–0058, Rev. 3: ML003738939.

Regulations Handbook, NUREG/BR–0053, Rev. 5: ML011010183.

Commission paper, SECY–00–0198: ML003747699.

SRM regarding SECY–00–0198: ML010190405.

Commission paper, SECY–01–0134: ML011970363.

SRM regarding SECY–01–0134: ML012760353.

Commission paper, SECY–01–0162: ML012120024.

SRM regarding SECY–01–0162: ML013650390.

Commission paper, SECY–02–0225: ML023440333.

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference Staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Brian Richter, Office of Nuclear Reactor Regulation, Washington, DC 20555–0001, telephone (301) 415–1978, e-mail *pdr@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

In evaluating a proposed regulatory initiative, the NRC usually performs a regulatory analysis for the entire rule to determine whether or not it is justified. However, bundling different requirements in a single analysis could potentially mask the inclusion of an inappropriate individual requirement. In the case of a rule that provides a voluntary alternative to current requirements, the net benefit from the relaxation of one requirement could potentially support a second requirement that is not cost-justified. Similarly, in the case of other types of rules, including those subject to backfit analysis, the net benefit from one requirement could potentially support another requirement that is not cost-justified.

The issue of bundling different requirements in a single rulemaking has been raised by the Commission and the NRC staff in a number of contexts. In SECY–00–0198, "Status Report on Study of Risk-Informed Changes to the Technical Requirements of 10 CFR part 50 (Option 3) and Recommendations on Risk-Informed Changes to 10 CFR 50.44 (Combustible Gas Control)," dated September 14, 2000, the NRC staff discussed development of a voluntary risk-informed alternative rule. The NRC staff recommended not to allow selective implementation of parts of the voluntary alternative and not to apply the Backfit Rule. In a staff requirements memorandum (SRM) dated January 19, 2001, the Commission agreed that selective implementation of individual elements of a risk-informed alternative should not be permitted. The Commission also agreed that, since implementation of the risk-informed alternative version of 10 CFR 50.44 is voluntary, a backfit analysis of that version is not required. Furthermore, the Commission stated that:

> [A] disciplined, meaningful, and scrutable process needs to be in place to justify any new requirements that are added as a result of the development of risk-informed alternative versions of regulations. Just as any burden reduction must be demonstrated to be of little or no safety significance, any new requirement should be justifiable on some cost-benefit basis. The Commission challenges the staff to establish such a criterion in a manner that adds fairness and equity without adding significant complexity. The staff should develop a proposed resolution for this issue and provide it to the Commission for approval.

This issue once again surfaced in the fitness-for-duty rule. In SECY–01–0134, "Final Rule Amending the Fitness-for-duty Rule," dated July 23, 2001, the NRC staff recommended withdrawing the OMB clearance request for a final rule and developing a new notice of proposed rulemaking. In an SRM dated October 3, 2001, the Commission approved that recommendation. Furthermore, the Commission provided the following specific instructions on the backfit analysis:

> In the new fitness-for-duty rulemaking, the Commission will conduct an aggregate backfit analysis of the entire rulemaking. If there is a reasonable indication that a proposed change imposes costs disproportionate to the safety benefit attributable to that change, as part of the final rule package the Commission will perform an analysis of that proposed change in addition to the aggregate analysis of the entire rulemaking to determine whether this proposed change should be aggregated with the other proposed change for the purposes of the backfit analysis. That analysis will need to show that the individual change is integral to achieving the purpose of the rule, has costs that are justified in view of the benefits that would be provided or qualifies for one of the exceptions in 10 CFR 50.109(a)(4).

In SECY–01–0162, "Staff Plans for Proceeding With the Risk-informed Alternative to the Standards for Combustible Gas Control Systems in Light-Water-Cooled Power Reactors in 10 CFR 50.44," dated August 23, 2001, the NRC staff proposed to identify any revisions that would be needed to existing guidance to put into place a disciplined, meaningful, and scrutable process for assessing any new requirements that could be added by a risk-informed alternative rule. Consistent with past practice and public expectations, the staff indicated that it planned to seek stakeholder input before reporting its recommendations to the Commission. In an SRM dated December 31, 2001, the Commission directed the staff to:

> * * * provide the Commission with recommendations for revising existing guidance in order to implement a disciplined, meaningful, and scrutable methodology for evaluating the value-impact of any new requirements that could be added by a risk-informed alternative rule.

Discussion

In order to obtain stakeholder input before reporting its recommendations to the Commission, the NRC staff published its preliminary proposed criteria on February 13, 2002, (67 FR 6663) and held a public meeting on March 21, 2002. A number of comments and suggestions were received at the meeting. (The complete Response to Comments document can be found as Attachment 3 to SECY–02–0225, which is accessible from ADAMS and at the NRC's Public Document Room as discussed above.) The three most significant issues raised were:

(1) There is concern about the provision that allows the analyst to rely on his or her judgment in determining which individual requirements should be analyzed separately.

In response to this concern, the NRC has expanded the guidance regarding the appropriate level of disaggregation in an analysis. Specifically, this guidance states that a decision on the level of disaggregation needs to be tempered by considerations of reasonableness and practicality, and that a more detailed disaggregation would only be appropriate if it produces substantively different alternatives with potentially meaningful implications on the cost-benefit results. While the NRC agrees that it often makes sense to divide a rule into discrete elements in performing regulatory analyses—and this is how the NRC generally performs these analyses—the NRC does not believe that there should be a general requirement for a separate analysis of each individual requirement of a rule. This could lead to unnecessary complexities. While the decision on the appropriate level of disaggregation is subjective, this decision—as with any regulatory decision—must undergo the agency's extensive internal review process. This typically includes a review by agency staff and management, the Committee to Review Generic Requirements, appropriate advisory committees, the Executive Director for Operations, and the Commission. In addition, the public may comment on the appropriate level of disaggregation in any public comment opportunity provided in accordance with standard NRC procedures for the development of generic requirements.

(2) There should be different guidance for different types of rules, rather than general guidance for any type of rule.

The NRC disagrees with this comment. The current Regulatory Analysis Guidelines consistently present broad policy positions that are designed to be applicable to all regulatory initiatives that are subject to regulatory analysis requirements. Further, the NRC believes that having different guidance for different types of rules may unnecessarily complicate the regulatory analysis process. In addition, it is possible that some rules may fall into more than one category (such as a rule that is both risk-informed and a backfit), in which case it would be unclear which criteria to use when analyzing a rule.

(3) For a risk-informed voluntary alternative to current regulations, an individual requirement should be integral to the purpose of the rule and cost-justified rather than integral to the purpose of the rule or cost-justified.

The NRC maintains that if an individual requirement is integral to the purpose of the rule, then that fact alone is a sufficient basis for its inclusion, and in fact, a decision on its inclusion or exclusion is not discretionary. However, the NRC finds that if a requirement is not deemed integral, it should be included if it is cost-justified. This alone is a sufficient basis because cost-benefit methodology directs one to select the alternative with the largest net benefit. This is clearly stated in OMB guidance and guidance contained elsewhere in NRC's Regulatory Analysis Guidelines. Clearly, if an individual requirement is cost-justified, its inclusion will result in a larger net benefit than an alternative that excludes the individual requirement. (Note, the proposed criteria no longer contain the phrase "integral to the purpose of the rule," but rather use the word "necessary" and provide examples of when a requirement may be deemed necessary.)

Internal NRC comments also raised the question of how to perform analyses of NRC's periodic review and endorsement of new versions of the American Society of Mechanical Engineers (ASME) codes.[1] Such endorsements typically involve numerous individual code provisions that are currently evaluated in the aggregate. The concern here is that these proposed criteria for the treatment of individual requirements in a regulatory analysis may be interpreted as requiring the justification of each code change individually. In response to these comments, the NRC has added specific language which states that while these regulatory actions must be addressed in a regulatory analysis, it is usually not necessary to analyze the individual code provisions endorsed in these regulatory actions, except if these provisions or the action endorsing them constitute backfits. In these regulatory analyses, the major features of the codes should be considered, then aggregated to produce estimates of the overall burdens and benefits in order to determine if the regulatory action is justified. If there are some aspects of these regulatory actions that are backfits, these must be addressed and justified individually (and separately from the analysis of the

[1] The NRC's longstanding policy has been to incorporate new versions of the ASME codes into its regulations. ASME codes are updated on an annual basis to reflect improvements in technology and operating experience. The NRC reviews the updated ASME codes and conducts rulemakings to incorporate the latest versions by reference into 10 CFR 50.55a, subject to any modifications, limitations, or supplementations (*i.e.*, exceptions) that are considered necessary.

remainder of the action) as discussed in the Appendix to the proposed criteria.

The NRC has now developed proposed criteria regarding the treatment of individual requirements in a regulatory analysis and wishes to obtain input from interested members of the public. The NRC intends to review and analyze the comments, develop final criteria, and issue the final criteria if there are no significant changes due to public comments. However, if there are significant changes to the criteria, the staff will submit the recommended revised final criteria for the approval of the Commission.

These proposed criteria address only the treatment of individual requirements in a regulatory analysis, and if approved, the criteria will be added to the Regulatory Analysis Guidelines (NUREG/BR–0058, Rev. 3). These proposed revisions to the Guidelines are not intended to change the application of the Backfit Rule, 10 CFR 50.109. Analysts and decision makers must still apply the requirements of this rule in making analytical and regulatory decisions. In addressing the treatment of individual requirements in a regulatory analysis, these criteria are intended to provide guidance to staff and management in making decisions about which individual requirements may be bundled into a single regulatory analysis.

Proposed Criteria

In evaluating a proposed regulatory initiative, the NRC usually performs a regulatory analysis for the entire rule to determine whether or not it is justified. However, aggregating or "bundling" different requirements in a single analysis could potentially mask the inclusion of an inappropriate individual requirement. In the case of a rule that provides a voluntary alternative to current requirements, the net benefit from the relaxation of one requirement could potentially support a second requirement that is not cost-justified. Similarly, in the case of other types of rules, including those subject to backfit analysis,[2] the net benefit from one requirement could potentially support another requirement that is not cost-justified.[3]

Therefore, when analyzing and making decisions about regulatory initiatives that are composed of individual requirements, the NRC must determine whether or not it is appropriate to include them. Clearly, in certain instances, the inclusion of an individual requirement is necessary. This would be the case, for example, when the individual requirement is needed for the regulatory initiative to resolve the problems and concerns and meet the stated objectives[4] that are the focus of the regulatory initiative. Even though inclusion of individual requirements is necessary in this case, the analyst should obtain separate cost estimates for each requirement, to the extent practical, in deriving the total cost estimate presented for the aggregated requirements.

However, there will also be instances in which the individual requirement is not a necessary component of the regulatory initiative, and thus the NRC will have some discretion regarding its inclusion. In these circumstances, the NRC should follow the following guideline:

> If the individual requirement is related (*i.e.*, supportive but not necessary) to the stated objective of the regulatory initiative, it should be included only if its overall effect is to make the bundled regulatory requirement more cost-beneficial. This would involve a quantitative and/or qualitative evaluation of the costs and benefits of the regulatory initiative with and without the individual requirement included, and a direct comparison of those results.[5]

In applying this guideline, the NRC will need to separate out the discrete requirements in order to evaluate their effect on the cost-benefit results. In theory, each regulatory initiative could include several discretionary individual requirements and each of those discretionary requirements could be comprised of many discrete steps, in which each could be viewed as a distinct individual requirement. This raises the potential for a large number of iterative cost-benefit comparisons, with attendant analytical complexities. Thus, considerable care needs to be given to the level of disaggregation that is required. In general, a decision on the level of disaggregation needs to be tempered by considerations of reasonableness and practicality. For example, more detailed disaggregation is only appropriate if it produces substantively different alternatives with potentially meaningful implications on the cost-benefit results. Alternatively, individual elements that contribute little to the overall costs and benefits and are noncontroversial may not warrant much, if any, consideration. In general, it will not be necessary to provide additional documentation or analysis to explain how this determination is made, although such a finding can certainly be challenged at the public comment stage.[6] For further guidance, the analyst is referred to principles regarding the appropriate level of detail to be included in a regulatory analysis, as discussed in chapter 4 of the "Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission."

In some cases an individual requirement that is being considered for inclusion in a voluntary alternative to current regulations may be justifiable under the backfit criteria. In these cases the individual requirement is both cost-justified and provides a substantial increase in the overall protection of the public health and safety or the common defense and security. If so, the NRC should consider imposing the individual requirement as a backfit (where it would affect all plants to which it applies) rather than merely including it in a voluntary-alternative rule (where it would affect only those plants where the voluntary alternative is adopted).

A special case involves the NRC's periodic review and endorsement of voluntary consensus standards, such as new versions of the American Society of Mechanical Engineers (ASME) codes. These NRC endorsements can typically involve hundreds, if not thousands, of individual provisions. Thus, evaluating the benefits and costs of each individual provision in a regulatory analysis can be a monumental task. Further, the value gained by performing such an exercise appears limited. These voluntary consensus standards tend to be non-controversial and have already undergone extensive external review and been endorsed by industry. Therefore, while regulatory actions endorsing these voluntary consensus standards must be addressed in a regulatory analysis, it is usually not necessary for the regulatory analysis to address the individual provisions of the voluntary consensus standards. The NRC believes this is appropriate for several reasons: (1) It has been longstanding NRC policy to incorporate later versions of the ASME Code into its regulations, and thus licensees know when receiving their operating licenses that such updating is part of the regulatory process; (2) endorsement of the ASME Code is consistent with the National Technology Transfer and Advancement Act, inasmuch as the NRC has determined that there are sound regulatory reasons for establishing regulatory requirements for design, maintenance, inservice inspection and inservice testing by rulemaking; and (3) these voluntary consensus standards undergo significant external review and discussion before being endorsed by the NRC. However, some aspects of these regulatory actions are backfits which must be addressed and justified individually. For example, NRC endorsement (incorporation by reference) of the ASME Boiler and Pressure Vessel Code (BPV) provisions on inservice inspection and inservice testing, and the ASME Operations and Maintenance (OM) Code, are not ordinarily considered backfits, because it has been the NRC's longstanding policy to incorporate later versions of the ASME codes into its regulations. However, under some circumstances NRC's endorsement of a later ASME BPV or OM Code is treated as a backfit. The application of the Backfit Rule to ASME code endorsements is discussed in the Appendix below. Aside from these backfits, these regulatory analyses should include consideration of the major features (*e.g.*, process changes, recordkeeping requirements) of the regulatory action which should then be aggregated to produce qualitative or quantitative estimates of the overall burdens and benefits in order to determine if the remainder of the action is justified.

Dated in Rockville, Maryland, this 14th day of April, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

Appendix—Guidance on Backfitting Related to ASME Codes

Section 50.55a requires nuclear power plant licensees to construct ASME *Boiler and Pressure Vessel Code* (BPV Code) Class 1, 2, and 3 components in accordance with the rules provided in section III, division 1, of the ASME BPV Code; inspect Class 1, 2, 3, Class MC, and Class CC components in accordance with the rules provided in section XI, division 1, of the ASME BPV Code; and test Class 1, 2, and 3 pumps and valves in accordance with the rules provided in the ASME *Code for Operation and Maintenance of Nuclear Power Plants* (OM Code). From time to time the NRC amends 10 CFR 50.55a to incorporate by reference later editions and addenda of: Section III, division 1, of the ASME BPV Code; section XI, division 1, of the ASME BPV Code; and the ASME OM Code.

Section A. Incorporation by Reference of Later Editions and Addenda of Section III, Division 1 of ASME BPV Code

Incorporation by reference of later editions and addenda of section III, division 1, of the ASME BPV Code is prospective in nature. The later editions and addenda do not affect a plant that has received a construction permit or an operating license or a design that has been approved, because the edition and addenda to be used in constructing a plant are, by rule, determined on the basis of the date of the construction permit, and are not changed thereafter, except voluntarily by the licensee. Thus, incorporation by reference of a later edition and addenda of section III, division 1, does not constitute a "backfitting" as defined in § 50.109(a)(1).

Section B. Incorporation by Reference of Later Editions and Addenda of Section XI, Division 1, of the ASME BPV and OM Codes

Incorporation by reference of later editions and addenda of section XI, division 1, of the ASME BPV Code and the ASME OM Code affect the ISI and IST programs of operating reactors. However, the Backfit Rule generally does not apply to incorporation by reference of later editions and addenda of the ASME BPV (section XI) and OM codes for the following reasons—

(1) The NRC's longstanding policy has been to incorporate later versions of the ASME codes into its regulations; thus licensees know when receiving their operating licenses that such updating is part of the regulatory process. This is reflected in § 50.55a which requires licensees to revise their ISI and IST programs every 120 months to the latest edition and addenda of section XI of the ASME BPV Code and the ASME OM Code incorporated by reference into § 50.55a that is in effect 12 months prior to the start of a new 120-month ISI and IST interval. Thus, when the NRC endorses a later version of a code, it is implementing this longstanding policy.

(2) ASME BPV and OM codes are national consensus standards developed by participants with broad and varied interests, in which all interested parties (including the NRC and utilities) participate. This consideration is consistent with both the intent and spirit of the Backfit Rule (*i.e.*, the NRC provides for the protection of the public health and safety, and does not unilaterally impose undue burden on applicants or licensees).

(3) Endorsement of these ASME codes is consistent with the National Technology Transfer and Advancement Act, inasmuch as the NRC has determined that there are sound regulatory reasons for establishing regulatory requirements for design, maintenance, inservice inspection and inservice testing by rulemaking.

Section C. Other Circumstances Where the NRC Does Not Apply the Backfit Rule to the Endorsement of a Later Code

Other circumstances where the NRC does not apply the Backfit Rule to the endorsement of a later code are as follows—

(1) When the NRC takes exception to a later ASME BPV or OM code provision, but merely retains the current existing requirement, prohibits the use of the later code provision, or limits the use of the later code provision, the Backfit Rule does not apply because the NRC is not imposing new requirements. However, the NRC provides the technical and/or policy bases for taking exceptions to the code in the Statement of Considerations for the rule.

(2) When an NRC exception relaxes an existing ASME BPV or OM code provision but does not prohibit a licensee from using the existing code provision.

Section D. Endorsement of Later ASME BPV or OM Codes That Are Considered Backfits

There are some circumstances where the NRC considers it appropriate to treat as a backfit the endorsement of a later ASME BPV or OM code—

(1) When the NRC endorses a later provision of the ASME BPV or OM code that takes a substantially different direction from the currently existing requirements, the action is treated as a backfit. An example was the NRC's initial endorsement of subsections IWE and IWL of section XI, which imposed containment inspection requirements on operating reactors for the first time. The final rule dated August 8, 1996 (61 FR 41303), incorporated by reference in § 50.55a the 1992 Edition with the 1992 Addenda of IWE and IWL of section XI to require that containments be routinely inspected to detect defects that could compromise a containment's structural integrity. This action expanded the scope of § 50.55a to include components that were not considered by the existing regulations to be within the scope of ISI. Since those requirements involved a substantially different direction, they were treated as backfits, and justified in accordance with the standards of 10 CFR 50.109.

(2) When the NRC requires implementation of later ASME BPV or OM code provision on an expedited basis, the action is treated as a backfit. This applies when implementation is required sooner than it would be required if the NRC simply endorsed the Code without any expedited language. An example was the

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[2] "The Regulatory Analysis Guidelines of the U.S. Nuclear Regulatory Commission," (NUREG/BR–0058) have been developed so that a regulatory analysis that conforms to the Guidelines will meet the requirements of the Backfit Rule and the provisions of the CRGR Charter.

[3] This discussion does not apply to backfits that the Commission determines qualify under one of the exceptions in 10 CFR 50.109(a)(4). Those types of backfits require a documented evaluation rather than a backfit analysis, and cost is not a consideration in deciding whether or not they are justified (though costs may be considered in determining how to achieve a certain level of protection).

[4] The stated objectives of the rule are those stated in the preamble (also known as the Statement of Considerations) of the rule.

[5] There may be circumstances in which the analyst considers including an individual requirement that is unrelated to the overall regulatory initiative. For example, an analyst may consider combining certain unrelated requirements as a way to eliminate duplicative rulemaking costs to the NRC and thereby increase regulatory efficiency. Under these circumstances, it would be appropriate to combine these discrete individual requirements if the overall effect is to make the regulatory initiative more cost-beneficial. In those instances in which the individual requirement is a backfit, the requirement must be addressed and justified as a backfit separately. These backfits are not to be included in the overall regulatory analysis of the remainder of the regulatory initiative.

[6] *See* NUREG/BR–0053, Revision 5, March 2001, "U.S. Nuclear Regulatory Commission Regulations Handbook," section 7.9, for discussion of how to treat comments.

final rule dated September 22, 1999 (64 FR 51370), which incorporated by reference the 1989 Addenda through the 1996 Addenda of section III and section XI of the ASME BPV Code, and the 1995 Edition with the 1996 Addenda of the ASME OM Code. The final rule expedited the implementation of the 1995 Edition with the 1996 Addenda of Appendix VIII of section XI of the ASME BPV Code for qualification of personnel and procedures for performing UT examinations. The expedited implementation of Appendix VIII was considered a backfit because licensees were required to implement the new requirements in Appendix VIII prior to the next 120-month ISI program inspection interval update. Another example was the final rule dated August 6, 1992 (57 FR 34666), which incorporated by reference in § 50.55a the 1986 Addenda through the 1989 Edition of section III and section XI of the ASME BPV Code. The final rule added a requirement to expedite the implementation of the revised reactor vessel shell weld examinations in the 1989 Edition of section XI. Imposing these examinations was considered a backfit because licensees were required to implement the examinations prior to the next 120-month ISI program inspection interval update.

(3) When the NRC takes an exception to a ASME BPV or OM code provision and imposes a requirement that is substantially different from the current existing requirement as well as substantially different than the later code.

An example of this is that portion of the final rule dated September 19, 2002, in which the NRC adopted dissimilar metal piping weld ultrasonic (UT) examination coverage requirements.

[FR Doc. 03–9606 Filed 4–17–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF ENERGY

Office of Counterintelligence

10 CFR Part 709

[Docket No. CN–03–RM–01]

RIN 1992–AA33

Polygraph Examination Regulations; Correction

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and opportunity for public comment; correction.

SUMMARY: This document corrects the preamble to a proposed rulemaking published in the **Federal Register** of April 14, 2003, regarding Polygraph Examination Regulations. This correction revises the web address where you may access this notice of proposed rulemaking and other supporting documentation.

FOR FURTHER INFORMATION CONTACT: Douglas Hinckley, U.S. Department of Energy, Office of Counterintelligence, CN–1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–5901; or Lise Howe, U.S. Department of Energy, Office of General Counsel, GC–73, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2906.

Correction

In proposed rule FR Doc. 03–9009, appearing on page 17886, in the issue of Monday, April 14, 2003, the following correction should be made:

In the **ADDRESSES** section, the last sentence is corrected to the following: This notice of proposed rulemaking and supporting documentation is available on DOE's Internet Home Page at the following address: *www.so.doe.gov.*

Issued in Washington, DC on April 14, 2003.

Stephen W. Dillard,

Director, Office of Counterintelligence.

[FR Doc. 03–9631 Filed 4–17–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Tampa 03–060]

RIN 1625–AA00

Security Zones; Tampa Bay, Florida

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish security zones in the waters immediately adjacent to power facilities at Big Bend, and Weedon Island in Tampa Bay, Florida. These zones are needed to ensure public safety and security in the greater Tampa Bay area. Entry into these zones would be prohibited unless authorized by the Captain of the Port, or their designated representative.

DATES: Comments and related material must reach the Coast Guard on or before June 17, 2003.

ADDRESSES: You may mail comments and related material to Marine Safety Office Tampa, U.S. Coast Guard, 155 Columbia Drive, Tampa, Florida 33606. The Operations Department of Marine Safety Office Tampa maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket [COTP Tampa 03–060] and will be available for inspection or copying at Coast Guard Marine Safety Office Tampa between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR David McClellan, Coast Guard Marine Safety Office Tampa, at (813) 228–2189 extension 102.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP Tampa 03–060], indicate the specific section of this document to which each comment applies, and give the reason for each comment. If you submit them by mail and would like to know that they reached the Marine Safety Office, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Coast Guard at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The terrorist attacks of September 11, 2001, killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly those vessels and facilities which are frequented by foreign nationals and are of interest to national security. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. The Captain of the Port of Tampa has determined that these proposed security zones would protect the public, ports, and waterways of the United States from potential subversive acts.

These proposed security zones are similar to the existing temporary security zones established for these waterfront facilities that will soon expire.

On March 7, 2003, the Captain of the Port issued a temporary rule titled "Security Zones; Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, Big Bend, Weedon Island, and Crystal River, FL" that was published in the **Federal Register** on March 25, 2003 (68 FR 14328; correction published April 9, 2003, 68 FR 17291). This temporary final rule created a security zone, from surface to bottom, extending 50 yards from the shore, seawalls and piers around the Big Bend Power Facility, prohibiting persons or vessels from entering the Big Bend Power Facility. The same temporary final rule created a security zone, from surface to bottom, extending 50 yards from the shore, seawalls and piers around the Weedon Island Power Facility, prohibiting persons or vessels from entering the suction and discharge canals at the power facility.

Discussion of Proposed Rule

The Coast Guard proposes to make the following security zones permanent:

(1) Big Bend, Tampa Bay, Florida. All waters of Tampa Bay, from surface to bottom, adjacent to the Big Bend Power Facility, and within an area bounded by a line connecting the following points: 27°47.85′ N, 082°25.02′ W then east and south along the shore and pile to 27°47.63′ N, 082°24.70′ W then north along the shore to 27°48.02′ N, 082°24.70′ W then north and west along a straight line to 27°48.12′ N, 082°24.88′ W then south along the shore and pile to 27°47.85′ N, 082°25.02′ W, closing off entrance to the Big Bend Power Facility.

(2) Weedon Island, Tampa Bay, Florida. All waters of Tampa Bay, from surface to bottom, extending 50 yards from the shore, seawall and piers around the Power Facility at Weedon Island encompassed by a line connecting the following points: 27°51.52′ N, 082°35.82′ W then north and east along the shore to 27°51.54′ N, 082°35.78′ W then north to 27°51.68′ N, 082°35.78′ W then north to 27°51.75′ N, 082°35.78′ W closing off entrance to the canal then north to 27°51.89′ N, 082°35.82′ W then west along the shore to 27°51.89′ N, 082°36.10′ W then west to 27°51.89′ N, 082°36.14′ W closing off entrance to the canal.

Entry into or remaining within these zones would be prohibited unless authorized by the Coast Guard Captain of the Port, Tampa, Florida or that officer's designated representative. Persons desiring to transit the area of the security zone would have to contact the Captain of the Port at telephone number 727–824–7531 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels would need to comply with the instructions of the Captain of the Port or their designated representative.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary because there is ample room for vessels to navigate around the security zones and the Captain of the Port may allow vessels to enter the zones, on a case-by-case basis with the express permission of the Captain of the Port of Tampa or their designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the zones are limited in size and leave ample room for vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and vessels may be allowed to enter the zones, on a case-by-case basis, with the express permission of the Captain of the Port of Tampa or their designated representative.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Although this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

2. Add § 165.764 to read as follows:

§ 165.764 Security Zones; Big Bend and Weedon Island Power Facilities, Tampa Bay, Florida.

(a) *Location.* The following areas, denoted by coordinates fixed using the North American Datum of 1983 (World Geodetic System 1984), are security zones:

(1) *Big Bend; Tampa Bay, Florida.* All waters of Tampa Bay, from surface to bottom, adjacent to the Big Bend Power Facility, and within an area bounded by a line connecting the following points: 27°47.85′ N, 082°25.02′ W then east and south along the shore and pile to 27°47.63′ N, 082°24.70′ W then north along the shore to 27°48.02′ N, 082°24.70′ W then north and west along a straight line to 27°48.12′ N, 082°24.88′ W then south along the shore and pile to 27°47.85′ N, 082°25.02′ W, closing off entrance to the Big Bend Power Facility.

(2) *Weedon Island, Tampa Bay, Florida.* All waters of Tampa Bay, from surface to bottom, extending 50 yards from the shore, seawall and piers around the Power Facility at Weedon Island encompassed by a line connecting the following points: 27°51.52′ N, 082°35.82′ W then north and east along the shore to 27°51.54′ N, 082°35.78′ W then north to 27°51.68′ N, 082°35.78′ W then north to 27°51.75′ N, 082°35.78′ W closing off entrance to the canal then north to 27°51.89′ N, 082°35.82′ W then west along the shore to 27°51.89′ N, 082°36.10′ W then west to 27°51.89′ N, 082°36.14′ W closing off entrance to the canal.

(b) *Regulations.* (1) Entry into or remaining within these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Tampa, Florida or that officer's designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 727–824–7531 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or their designated representative.

(c) **Authority.** In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: April 10, 2003.

James. M. Farley,

Captain, U.S. Coast Guard, Captain of The Port, Tampa, Florida.

[FR Doc. 03–9650 Filed 4–17–03; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1280

RIN 3095–AB17

NARA Facilities; Public Use

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA is proposing to modify its regulations for using NARA facilities. Our existing regulations specify conduct rules on NARA property, which is defined as property under the control of the Archivist. We are proposing to add threats as a prohibited behavior because of the risk to persons and property potentially posed by threats, and because of the increased number of email and telephone threats received in NARA facilities. We are also proposing to specify the types of corrective action NARA imposes for prohibited behavior. This proposed rule specifies the formal procedures that we follow when banning individuals from our facilities and adds appeal procedures for individuals who want to request a reconsideration of the determination. Last, we are proposing to apply these changes to NARA property and to NARA-occupied space in facilities that are under the control of other agencies.

DATES: Comments are due by June 17, 2003.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–837–2902. Electronic comments may be submitted through *Regulations.gov*. You may also comment via e-mail to *comments@nara.gov*. *See* the **SUPPLEMENTARY INFORMATION** for details.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number (301) 837–2902.

SUPPLEMENTARY INFORMATION: NARA's existing regulations specify conduct rules on NARA property. NARA property is defined to mean property under the control of the Archivist of the United States (the National Archives Building, the National Archives Building at College Park, and the Presidential libraries). We are proposing to add threats as a prohibited behavior because of the risk to persons and property potentially posed by threats, and because of the increased number of e-mail and telephone threats received in NARA facilities.

This proposed rule also specifies the types of corrective action that NARA imposes for prohibited behavior. These include any or all of the following:

- Removal from the premises (removal for up to seven calendar days) and possible law enforcement notification;
- Long-term banning (in up to one-year increments that includes automatic revocation of research privileges);
- Arrest for trespass; and
- Any additional corrective action as prescribed by law.

This proposed rule also contains the formal procedures that we follow when banning individuals from our facilities and appeal procedures for those individuals who want to request a reconsideration of the decision.

In addition to property under the control of the Archivist of the United States, NARA also occupies facilities under the control of other agencies (the regional records services facilities, the Washington National Records Center in Suitland, MD, the National Personnel Records Center in St. Louis, Missouri, and the Office of the Federal Register in Washington, DC). In our existing regulations, individuals on property occupied by NARA but controlled by other agencies must follow the conduct rules in the General Services Administration's (GSA) regulations (41 CFR part 102–74, subpart C). Though this remains unchanged, we are proposing to make threats a prohibited behavior at NARA-occupied facilities. We also propose to add removal and banning from the NARA-occupied space in those facilities under the control of other agencies as types of corrective action that NARA imposes for threatening behavior.

Please submit e-mail comments within the body of your e-mail message or attach comments avoiding the use of any form of encryption. Please also include "Attn: 3095–AB17" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your e-mail message, contact the Regulation Comment Desk at (301) 837–2902.

This proposed rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

List of Subjects in 36 CFR Part 1280

Federal buildings and facilities.

For the reasons set forth in the preamble, NARA proposes to amend part 1280 of title 36, Code of Federal Regulations, chapter XII, as follows:

PART 1280—PUBLIC USE OF NARA FACILITIES

1. The authority citation for part 1280 is revised to read as follows:

Authority: 44 U.S.C. 2102 notes, 2104(a), 2112(a)(1)(A)(iii), 2903.

2. Amend § 1280.1 by revising paragraphs (b) and (c) and adding paragraph (d) as follows:

§ 1280.1 What is the purpose of this part?

* * * * *

(b) When you are using other NARA facilities, the General Services Administration (GSA) regulations, Conduct on Federal Property, at 41 CFR part 102–74, subpart C, apply to you. These facilities are the NARA regional records services facilities, the Washington National Records Center in Suitland, MD, the National Personnel Records Center in St. Louis, MO, and the Office of the Federal Register in Washington, DC. The rules in §§ 1280.32(l), 1280.34(a)(1) and (a)(2), and 1280.36 also apply to you. The rules in subpart B of this part also apply to you if you wish to film, take photographs, or make videotapes. The rules in subpart F of this part also apply to you if you wish to use the NARA-assigned conference rooms in those facilities.

(c) If you are using records in a NARA research room in a NARA facility, you must also follow the rules in 36 CFR part 1254. If you violate a rule or regulation in 36 CFR part 1254, you are subject to the types of corrective action set forth in that part, including revocation of research privileges.

(d) If you violate a rule or regulation in this part you are subject to, among other types of corrective action, removal and banning from the facility.

3. Amend § 1280.32 by adding paragraph (l) to read as follows:

§ 1280.32 What other behavior is not permitted?

* * * * *

(l) Threatening directly (*e.g.*, in-person communications or physical gestures) or indirectly (*e.g.*, via regular mail, electronic mail, or phone) any NARA employee, visitor, volunteer, contractor, other building occupants, or property.

4. Add § 1280.34 and § 1280.36 to subpart A to read as follows:

§ 1280.34 What are the types of corrective action NARA imposes for prohibited behavior?

(a) Individuals who violate the provisions of this part are subject to:

(1) Removal from the premises (removal for up to seven calendar days) and possible law enforcement notification;

(2) Banning from property owned or operated by NARA;

(3) Arrest for trespass; and

(4) Any additional types of corrective action prescribed by law.

(b) The regional administrator of the facility (or the director if so designated) has the authority to have the individual immediately removed and denied further access to the premises for up to seven calendar days. During this removal period, the Assistant Archivist for Administrative Services renders a decision on whether the individual should be banned from specific or all NARA facilities permanently or temporarily (in up to one-year increments). Long-term banning under this part includes automatic revocation of research privileges, notwithstanding the time periods set forth in 36 CFR 1254.20. Research privileges remain revoked until the ban is lifted, at which time an application for new privileges may be submitted.

(c) Upon written notification by the Assistant Archivist for Administrative Services, individuals may be banned from all NARA facilities. All NARA facilities will be notified of the banning of individuals.

§ 1280.36 May I file an appeal if I am banned from NARA facilities?

Yes, within 30 calendar days of receiving such notification, an individual may appeal the decision in writing. In the request, the individual must state the reasons for the appeal and mail it to the Deputy Archivist of the United States for reconsideration (address: National Archives and Records Administration (ND), 8601 Adelphi

Road, College Park, MD 20740–6001). The Deputy Archivist has 30 calendar days from receipt of an appeal to make a decision to rescind, modify, or uphold the ban. If the ban is upheld, further requests by the affected individual will not be acted upon if received prior to the expiration of a period of one year from the date of the last request for reconsideration. After one year has passed, a further request for reconsideration will be considered, and the Deputy Archivist will decide, within 30 calendar days of receiving the request, whether the ban remains in place or is rescinded. Notice of the decision will be provided in writing to the affected individual.

5. Revise § 1280.100 to read as follows:

§ 1280.100 What are the rules of conduct at NARA regional records services facilities?

While at any NARA regional records services facility, you are subject to all of the following:

(a) The GSA regulations, Conduct on Federal Property (41 CFR part 102–74, subpart C);

(b) The rules in subparts B and F of this part;

(c) Section 1280.1(b) through (d);

(d) Section 1280.32(l);

(e) Section 1280.34 (a)(1) and (a)(2); and

(f) Section 1280.36.

Dated: April 10, 2003.

John W. Carlin,

Archivist of the United States.

[FR Doc. 03–9585 Filed 4–17–03; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0043; FRL–7176–9]

Pesticide Tolerance Nomenclature Changes; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes minor revisions to the terminology of certain commodity terms listed under 40 CFR part 180, subpart C. EPA is taking this action to establish a uniform listing of commodity terms.

DATES: Comments, identified by docket ID number OPP–2002–0043, must be received on or before June 17, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9368; and e-mail address: *jamerson.hoyt@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0043. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access an electronic copy of the commodity data base entitled *Food and Feed Commodity Vocabulary* go to: *http://www.epa.gov/pesticides/foodfeed/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked late. EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select search, and then key in docket ID number OPP–2002–0043. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2002–0043. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2002–0043.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2002–0043. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

II. Background

A. What Action is the Agency Taking?

EPA's Office of Pesticide Programs (OPP) has developed a commodity vocabulary data base entitled *Food and Feed Commodity Vocabulary*. The data base was developed to consolidate all the major OPP commodity vocabularies into one standardized vocabulary. As a result, all future pesticide tolerances issued under 40 CFR part 180 will use the preferred commodity term as listed in the aforementioned data base. This revision process will establish a uniform presentation of existing commodity terms under 40 CFR part 180. This is the fourth in a series of documents revising the terminology of commodity terms listed under 40 CFR part 180. Two final rules, revising pesticide tolerance nomenclature, were published in the **Federal Register** on June 19, 2002 (67 FR 41802) (FRL–6835–2), and June 21, 2002 (67 FR 42392) (FRL–7180–1). In this document, EPA is reformatting certain tolerance entries that are not in the standard table format and, at the same time, is making changes to the terminology of the commodity terms in 40 CFR part 180 consistent with previous commodity terminology revisions. Refer to Unit II.A. in the two documents listed above for a description of the commodity term revisions.

III. Statutory and Executive Order Reviews

This document proposes technical amendments to the Code of Federal Regulations which have no substantive impact on the underlying regulations, and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical amendment is not a "significant regulatory action" subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045,

entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental organizations. After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action proposes technical amendments to the Code of Federal Regulations which have no substantive impact on the underlying regulations. This technical amendment will not have any negative economic impact on any entities, including small entities. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR part 180

Administrative practice and procedure, Agricultural commodities, Environmental protection, Pesticides and pest, Reporting and recordkeeping requirements.

Dated: April 9, 2003.

James Jones,

Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180, subpart C is proposed to be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 will continue to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. Section 180.113 is revised to read as follows:

§ 180.113 Allethrin (allyl homolog of cinerin I); tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide allethrin (allyl homolog of cinerin I) in or on the following food commodities:

Commodity	Parts per million
Apple, postharvest	4
Barley, grain, postharvest	2
Blackberry, postharvest	4
Blueberry, postharvest	4
Boysenberry, postharvest	4
Cherry, postharvest	4
Corn, grain, postharvest	2
Crabapple, postharvest	4
Currant, postharvest	4
Dewberry, postharvest	4
Fig, postharvest	4
Gooseberry, postharvest	4
Grape, postharvest	4
Guava, postharvest	4
Huckleberry, postharvest	4
Loganberry, postharvest	4
Mango, postharvest	4
Muskmelon, postharvest	4
Oat, grain, postharvest	2
Orange, postharvest	4
Peach, postharvest	4
Pear, postharvest	4
Pineapple, postharvest	4
Plum, postharvest	4
Plum, prune, fresh, postharvest	4
Raspberry, postharvest	4
Rye, grain, postharvest	2
Sorghum, grain, grain, postharvest	2
Tomato, postharvest	4
Wheat, grain, postharvest	2

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

3. Section 180.116 is revised to read as follows:

§ 180.116 Ziram; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide ziram (zinc dimethyldithiocarbamate), calculated as zinc ethylenebisdithiocarbamate, in or on the following food commodities:

Commodity	Parts per million
Almond	0.1
Apple	7[1]
Apricot	7[1]
Bean	7[1]
Beet, garden, roots	7[1]
Beet, garden, tops	7[1]
Blackberry	7[1]
Blueberry	7[1]
Boysenberry	7[1]
Broccoli	7[1]
Brussel sprouts	7[1]
Cabbage	7[1]
Carrot, roots	7[1]
Cauliflower	7[1]
Celery	7[1]
Cherry	7[1]
Collards	7[1]
Cranberry	7[1]
Cucumber	7[1]
Dewberry	7[1]
Eggplant	7[1]
Gooseberry	7[1]
Grape	7[1]
Huckleberry	7[1]
Kale	7[1]
Kohlrabi	7[1]
Lettuce	7[1]
Loganberry	7[1]
Melon	7[1]
Nectarine	7[1]
Onion	7[1]
Pea	7[1]
Peach	7[1]
Peanut	7[1]
Pear	7[1]
Pecan	0.1
Pepper	7[1]
Pumpkin	7[1]
Quince	7[1]
Radish, roots	7[1]
Radish, tops	7[1]
Raspberry	7[1]
Rutabaga, roots	7[1]
Rutabaga, tops	7[1]
Spinach	7[1]
Squash	7[1]
Squash, summer	7[1]
Strawberry	7[1]
Tomato	7[1]
Turnip, greens	7[1]
Turnip, roots	7[1]
Youngberry	7[1]

[1] *See* footnote 1 to § 180.114.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

4. Section 180.133 is revised to read as follows:

§ 180.133 Lindane; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide lindane (gamma isomer of benzene hexachloride) in or on the following food commodities:

Commodity	Parts per million
Apple	1
Apricot	1
Asparagus	1
Avocado	1
Broccoli	1
Brussels sprouts	1
Cabbage	1
Cattle, fat	7
Cauliflower	1
Celery	1
Cherry	1
Collards	1
Cucumber	3
Eggplant	1
Goat, fat	7
Grape	1
Guava	1
Hog, fat	4
Horse, fat	7
Kale	1
Kohlrabi	1
Lettuce	3
Mango	1
Melon	3
Mushroom	3
Mustard greens	1
Nectarine	1
Okra	1
Onion, dry bulb	1
Peach	1
Pear	1
Pecan	0.01(N)
Pepper	1
Pineapple	1
Plum	1
Plum, prune, fresh	1
Pumpkin	3
Quince	1
Sheep, fat	7
Spinach	1
Squash	3
Squash, summer	3
Strawberry	1
Swiss chard	1
Tomato	3

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

5. Section 180.143 is revised to read as follows:

§ 180.143 Dipropyl isocinchomeronate; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide dipropyl isocinchomeronate, resulting from dermal application, in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.1(N)
Cattle, meat	0.1(N)
Cattle, meat byproducts	0.1(N)
Goat, fat	0.1(N)
Goat, meat	0.1(N)
Goat, meat byproducts	0.1(N)
Hog, fat	0.1(N)
Hog, meat	0.1(N)
Hog, meat byproducts	0.1(N)
Horse, fat	0.1(N)
Horse, meat	0.1(N)
Horse, meat byproducts	0.1(N)
Milk	0.004(N)
Sheep, fat	0.1(N)
Sheep, meat	0.1(N)
Sheep, meat byproducts	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

6. Section 180.149 is revised to read as follows:

§ 180.149 Mineral oil; tolerances for residues.

(a) *General.* (1) For the purposes of this section, the insecticide mineral oil is defined as the refined petroleum fraction having the following characteristics:

(i) Minimum flashpoint of 300 °F.

(ii) Gravity of 27 to 34 by the American Petroleum Institute standard method.

(iii) Pour point of 30 °F maximum.

(iv) Color 2 maximum by standards of the American Society for Testing Materials.

(v) Boiling point between 480 °F and 960 °F.

(vi) Viscosity at 100 °F of 100 to 200 seconds Saybolt.

(vii) Unsulfonated residue of 90 percent minimum.

(viii) No sulfur compounds according to the United States Pharmacopeia test under Liquid Petrolatum.

(2) Tolerances for residues of mineral oil as specified in paragraph (a)(1) of this section are established in or on the following food commodities:

Commodity	Parts per million
Corn, grain, postharvest	200
Sorghum, grain, grain, postharvest	200

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

7. Section 180.179 is revised to read as follows:

§ 180.179 Tartar emetic; tolerances for residues.

(a) *General.* Tolerances are established for residues of the insecticide tartar emetic, calculated as combined antimony trioxide, in or on the following food commodities:

Commodity	Parts per million
Fruit, citrus	3.5
Grape	3.5
Onion	3.5

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

8. Section 180.180 is revised to read as follows:

§ 180.180 Orthoarsenic acid; tolerance for residues.

(a) *General.* A tolerance that expires on July 1, 1995, for combined As_2O_3 is established for residues of the defoliant orthoarsenic acid in or on the following food commodity:

Commodity	Parts per million
Cotton, undelinted seed	4

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

9. Section 180.202 is revised to read as follows:

§ 180.202 p-Chlorophenoxyacetic acid; tolerances for residues.

(a) *General.* (1) A tolerance is established for combined residues of the plant regulator *p*-chlorophenoxyacetic acid and its metabolite *p*-chlorophenol in or on the following food commodity:

Commodity	Parts per million
Tomato	0.05

(2) A tolerance is established for combined residues of the plant regulator *p*-chlorophenoxyacetic acid and its metabolite *p*-chlorophenol to inhibit embryonic root development in or on the following food commodity:

Commodity	Parts per million
Bean, mung, sprouts	2

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

10. Section 180.208 is revised to read as follows:

§ 180.208 N-Butyl-N-ethyl-α-α-α-trifluoro-2,6-dinitro-p-toluidine; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide *N*-butyl-*N*-ethyl-α-α-α-trifluoro-2,6-dinitro-*p*-toluidine in or on the following food commodities:

Commodity	Parts per million
Alfalfa, forage	0.05(N)
Alfalfa, hay	0.05(N)
Clover, forage	0.05(N)
Clover, hay	0.05(N)
Lettuce	0.05(N)
Peanut	0.05(N)
Trefoil, birdsfoot, forage	0.05(N)
Trefoil, birdsfoot, hay	0.05(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

11. Section 180.210 is revised to read as follows:

§ 180.210 Bromacil; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide bromacil (5-bromo-3-*sec*-butyl-6-methyluracil) in or on the following food commodities:

Commodity	Parts per million
Fruit, citrus	0.1
Pineapple	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

12. Section 180.212 is revised to read as follows:

§ 180.212 S-Ethyl cyclohexylethylthiocarbamate; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide *S*-ethyl cyclohexylethylthiocarbamate in or on the following food commodities:

Commodity	Parts per million
Beet, garden, roots	0.05(N)
Beet, garden, tops	0.05(N)
Beet, sugar, roots	0.05(N)
Beet, sugar, tops	0.05(N)
Spinach	0.05(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

13. Section 180.228 is revised to read as follows:

§ 180.228 S-Ethyl hexahydro-1H-azepine-1-carbothioate; tolerances for residues.

(a) *General.* Tolerances are established for the herbicide *S*-ethyl hexahydro-1*H*-azepine-1-carbothioate in or on the following food commodities:

Commodity	Parts per million
Rice, grain	0.1(N)
Rice, straw	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

14. Section 180.232 is revised to read as follows:

§ 180.232 Butylate; tolerances for residues.

(a) *General.* Tolerances are established for the herbicide butylate in or on the following food commodities:

Commodity	Parts per million
Corn, field, forage	0.1
Corn, field, grain	0.1
Corn, field, stover	0.1
Corn, pop, forage	0.1
Corn, pop, grain	0.1
Corn, sweet, forage	0.1
Corn, sweet, kernel, plus cob with husks removed	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

15. Section 180.238 is revised to read as follows:

§ 180.238 S-Propyl butylethylthiocarbamate; tolerances for residues.

(a) *General.* Tolerances are established for residues of the herbicide *S*-propyl butylethylthiocarbamate in or on the following food commodities:

Commodity	Parts per million
Beet, sugar, roots	0.1(N)
Beet, sugar, tops	0.1(N)
Tomato	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

16. Section 180.241 is revised to read as follows:

§ 180.241 S-(O,O-Diisopropyl phosphorodithioate) of N-(2-mercaptoethyl) benzenesulfonamide; tolerances for residues.

(a) *General.* Tolerances are established for residues of S-(O,O-diisopropyl phosphorodithioate) of N-(2-mercaptoethyl benzenesulfonamide in or on the following food commodities:

Commodity	Parts per million
Carrot, roots	0.1(N)
Cucurbits	0.1(N)
Onion, dry bulb	0.1(N)
Vegetable, fruiting	0.1(N)
Vegetable, leafy	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

17. Section 180.245 is revised to read as follows:

§ 180.245 Streptomycin; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide streptomycin in or on the following food commodities:

Commodity	Parts per million
Celery	0.25
Fruit, pome	0.25
Pepper	0.25
Potato, from treatment of seed pieces	0.25
Tomato, from treatment of the seedling plants before transplanting	0.25

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

18. Section 180.257 is revised to read as follows:

§ 180.257 Chloroneb; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide chloroneb (1,4-dichloro-2,5-dimethoxybenzene) and its metabolite 2,5-dichloro-4-methoxyphenol (calculated as chloroneb) in or on the following food commodities:

Commodity	Parts per million
Bean	0.1(N)
Bean, forage	2
Beet, sugar, roots	0.1(N)
Beet, sugar, tops	0.1(N)
Cattle, fat	0.2
Cattle, meat	0.2
Cattle, meat by-products	0.2
Cotton, forage	2
Cotton, undelinted seed	0.1(N)
Goat, fat	0.2
Goat, meat	0.2
Goat, meat byproducts	0.2
Hog, fat	0.2
Hog, meat	0.2
Hog, meat byproducts	0.2
Horse, fat	0.2
Horse, meat	0.2
Horse, meat by-products	0.2
Milk	0.05(N)
Sheep, fat	0.2
Sheep, meat	0.2
Sheep, meat by-products	0.2
Soybean	0.1(N)
Soybean, forage	2
Oat, grain	0.1(N)
Oat, hay	0.1(N)
Oat, straw	0.1(N)
Rice, grain	0.1(N)
Rice, straw	0.1(N)
Safflower, seed	0.1(N)
Sorghum, grain, forage	0.1(N)
Sorghum, grain, grain	0.1(N)
Sorghum, grain, stover	0.1(N)
Wheat, forage	0.1(N)
Wheat, grain	0.1(N)
Wheat, hay	0.1(N)
Wheat, straw	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

19. Section 180.288 is revised to read as follows:

§ 180.288 2-(Thiocyanomethylthio)benzothiazole; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide 2-(thiocyanomethylthio)benzothiazole in or on the following food commodities:

Commodity	Parts per million
Barley, grain	0.1(N)
Barley, straw	0.1(N)
Beet, sugar, roots	0.1(N)
Beet, sugar, tops	0.1(N)
Corn, grain	0.1(N)
Corn, forage	0.1(N)
Corn, stover	0.1(N)
Cotton, forage	0.1(N)
Cotton, undelinted seed	0.1(N)
Oat, forage	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

20. Section 180.309 is revised to read as follows:

§ 180.309 α-Naphthaleneacetamide; tolerances for residues.

(a) *General.* Tolerances are established for combined negligible residues of the plant regulator α-naphthaleneacetamide and its metabolite α-naphthaleneacetic acid (calculated as α-naphthaleneacetic acid) in or on the following food commodities:

Commodity	Parts per million
Apple	0.1
Pear	0.1

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

21. Section 180.311 is revised to read as follows:

§ 180.311 Cacodylic acid; tolerances for residues.

(a) *General.* Tolerances are established for residues of the defoliant cacodylic acid (dimethylarsinic acid), expressed as As_2O_3, in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.7
Cattle, kidney	1.4
Cattle, liver	1.4
Cattle, meat	0.7
Cattle, meat by-products, except kidney	0.7
Cattle, meat by-products, except liver	0.7

Commodity	Parts per million
Cotton, undelinted seed	2.8

(b) *Section 18 emergency exemptions.* [Reserved]
(c) *Tolerances with regional registrations.* [Reserved]
(d) *Indirect or inadvertent residues.* [Reserved]

22. Section 180.312 is revised to read as follows:

§ 180.312 4-Aminopyridine; tolerances for residues.

(a) *General.* Tolerances are established for the bird repellent 4-aminopyridine in or on the following food commodities:

Commodity	Parts per million
Corn, forage	0.1(N)
Corn, field, grain	0.1(N)
Corn, pop, grain	0.1(N)
Corn, stover	0.1(N)
Corn, sweet, kernels plus cob with husks removed	0.1(N)
Sunflower, seed	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]
(c) *Tolerances with regional registrations.* [Reserved]
(d) *Indirect or inadvertent residues.* [Reserved]

23. Section 180.316 is revised to read as follows:

§ 180.316 Pyrazon; tolerances for residues.

(a) *General.* Tolerances are established for combined residues of the herbicide pyrazon (5-amino-4-chloro-2-phenyl-3(2H)-pyridazinone) and its metabolites (calculated as pyrazon) in or on the following food commodities:

Commodity	Parts per million
Beet, garden, roots	0.1(N)
Beet, garden, tops	1
Beet, sugar, roots	0.1(N)
Beet, sugar, tops	1
Milk	0.01(N)

(b) *Section 18 emergency exemptions.* [Reserved]
(c) *Tolerances with regional registrations.* [Reserved]
(d) *Indirect or inadvertent residues.* [Reserved]

24. Section 180.318 is revised to read as follows:

§ 180.318 4-(2-Methyl-4-chlorophenoxy) butyric acid; tolerance for residues.

(a) *General.* A tolerance is established for the herbicide 4-(2-methyl-4-chlorophenoxy) butyric acid in or on the following food commodity:

Commodity	Parts per million
Pea	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]
(c) *Tolerances with regional registrations.* [Reserved]
(d) *Indirect or inadvertent residues.* [Reserved]

25. Section 180.344 is revised to read as follows:

§ 180.344 4,6-Dinitro-o-cresol and its sodium salt; tolerance for residues.

(a) *General.* A tolerance is established for residues of the plant regulator 4,6-dinitro-*o*-cresol and its sodium salt, from application to apple trees at the blossom stage as a fruit-thinning agent, in or on the following food commodity:

Commodity	Parts per million
Apple	0.02(N)

(b) *Section 18 emergency exemptions.* [Reserved]
(c) *Tolerances with regional registrations.* [Reserved]
(d) *Indirect or inadvertent residues.* [Reserved]

26. Section 180.360 is revised to read as follows:

§ 180.360 Asulam; tolerance for residues.

(a) *General.* A tolerance is established for residues of the herbicide asulam (methyl sulfanilylcarbamate) in or on the following food commodity:

Commodity	Parts per million
Sugarcane, cane	0.1(N)

(b) *Section 18 emergency exemptions.* [Reserved]
(c) *Tolerances with regional registrations.* [Reserved]
(d) *Indirect or inadvertent residues.* [Reserved]

27. Section 180.488 is revised to read as follows:

§ 180.488 Hexaconazole; tolerance for residues.

(a) *General.* A tolerance is established for residues of the fungicide hexaconazole, [alpha-butyl-alpha-(2,4-dichlorophenyl)-1*H*-1,2,4-triazole-1-ethanol], in or on the following food commodity:

Commodity	Parts per million
Banana[1]	0.7

[1]There are no U.S. registrations as of June 30, 1999.

(b) *Section 18 emergency exemptions.* [Reserved]
(c) *Tolerances with regional registrations.* [Reserved]
(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 03–9484 Filed 4–17–03; 8:45 am]
BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–129, FCC 03–42]

Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996, Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on whether to revise, clarify, or adopt any additional rules in order to more effectively carry out Congress' directives in the Communications Act to combat unauthorized changes in a subscriber's telecommunications providers (also known as "slamming"). In order to maximize the accuracy and efficiency for consumers, carriers, and the Commission, additional minimum requirements for third party verification may be necessary. It is the Commission's experience that additional requirements may address issues that the Commission has seen repeatedly in our enforcement of the slamming rules. Therefore, we seek comment on whether third party verifiers should state the date during the taped verification process. We also seek comment on whether the verifier should be required to make additional statements and whether these additional statements would serve to lessen or heighten customer confusion.

DATES: Comments are due June 2, 2003 and reply comments are due June 17, 2003. Written comments by the public on the proposed information collections are due June 2, 2003. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection on or before June 17, 2003.

ADDRESSES: Parties who choose to file comment by paper must file an original and four copies to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. Comments may also be filed using the Commission's Electronic Filing System, which can be accessed via the Internet at *www.fcc.gov/e-file/ecfs.html*. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Nancy Stevenson at 202–418–2512, Consumer & Governmental Affairs Bureau. For additional information concerning the information collection(s) contained in this document, contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Further Notice of Proposed Rulemaking (NPRM) in CC Docket No. 94–129, FCC 03–42, released March 17, 2003, that is contained in the *Third Order on Reconsideration*. This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection(s) contained in this proceeding. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

Paperwork Reduction Act: This NPRM contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment of the proposed information collection(s) contained in this proceeding. Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the collection techniques or other forms of information technology.

OMB Control Number: 3060–0787.
Title: Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996. Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers.
Form Number: N/A.
Type of Review: New collection.
Number of Respondents: 1772.
Estimated Time Per Response: .010 hours.
Frequency of Response: On occasion.
Total Annual Burden: 17.72 hours.
Total Annual Costs: $163.91.
Needs and Uses: Based on the Commission's experience the need for additional minimum requirements for third party verifications may be necessary in order to maximize their accuracy and efficiency for consumers, carriers, and the Commission.

Synopsis of NPRM

1. *Background.* As noted, in the *Third Report and Order*, the Commission declined to mandate specific language to be used in third party verification calls. However, in order to eliminate uncertainty as to what constitutes necessary and acceptable practices, the Commission adopted minimum content requirements for third party verification. The Commission stated that minimum requirements for such calls would provide useful guidance to the third party verifiers and carriers without locking carriers into using a set script. In addition, the Commission stated that the requirements would also permit more streamlined enforcement by helping the Commission to determine the adequacy of steps taken by independent third parties in the verification process. Accordingly, the Commission concluded that scripts for third party verifications should elicit, at a minimum, the identity of the subscriber; confirmation that the person on the call is authorized to make the carrier change; confirmation that the person on the call wants to make the change; the names of the carriers affected by the change; the telephone numbers to be switched; and the types of service involved (*i.e.*, local, in-state toll, out-of-state toll, or international service). The Commission noted that these content requirements do not differ in substance from the rules regarding LOAs.

2. In addition, the Commission found that the third party verification must be conducted in the same language that was used in the underlying sales transaction, and that the entire third party verification transaction must be recorded. The Commission also reiterated that, consistent with its rules regarding verifications generally, submitting carriers must maintain and preserve the recordings for a minimum period of two years after obtaining such verification. The Commission observed that, if a slamming dispute arises, a recorded verification will help determine whether the subscriber was simply seeking information or was in fact agreeing to change carriers and, if so, which service(s) the subscriber had agreed to change.

3. *Discussion.* Based on our experience since the effective date of the *Third Report and Order*, we seek comment on the need for additional minimum requirements for third party verification calls in order to maximize their accuracy and efficiency for consumers, carriers, and the Commission. These additional possible requirements address issues we have seen repeatedly in our enforcement of the slamming liability rules. First, we seek comment on whether third party verifiers should state the date during the taped verification process. Through our slamming enforcement efforts, we have become aware of situations in which, for example, a carrier may have obtained a valid authorization for a past carrier change, but the customer has since switched away from the carrier and now alleges that he or she was switched back to that carrier without authorization. Without a clearly articulated date on the verification tapes, the carrier could use the former verification tape to defend itself against the subsequent unauthorized change.

4. Next, we seek comment on whether the verifier should explicitly state that, if the customer has additional questions for the carrier's sales representative regarding the carrier change after verification has begun, the verification will be terminated, and further verification proceedings will not be carried out until after the customer has finished speaking with the sales representative. We note that, according to our rules, final verification cannot be obtained until after the carrier's sales representative has ceased speaking to the customer. Accordingly, we seek comment as to whether such a requirement would lessen possible customer confusion in situations in which a verification is terminated because the customer seeks further discussions with the carrier's sales agent. We also seek comment on whether the verifier should convey to the customer that the carrier change can

be effectuated without any further contact with the customer once the verification has been completed in full. We have found that customers may not realize that a carrier cannot in most cases "undo" a PIC change after it has been submitted, even if the subscriber quickly requests cancellation of the change order.

5. We seek comment on whether verifiers should be required to make clear to a customer that he or she is not verifying an intention to retain existing service, but is in fact asking for a carrier change. We have observed instances in which, for example, carriers seeking to obtain customer authorization for a carrier change merely inform customers that they are consenting to an "upgrade" of the customers' service or to bill consolidation. We also note that it can be difficult to ascertain whether a subscriber has fully and knowingly provided an answer to each question posed by a third party verifier if some questions are presented as a group rather than individually. Accordingly, commenters should address whether each piece of information that a third party verifier must gather under our rules should be the subject of a separate and distinct third party verifier inquiry and subscriber response. Finally, we seek comment on whether, when verifying an interLATA service change, the verifier should specify that interLATA service encompasses both international and state-to-state calls, and whether a verifier should define the terms "intraLATA toll" and "interLATA toll" service. We have observed that carriers sometimes use differing terms for these services; for example, a carrier might refer to intraLATA service as "short haul long distance, local toll, local long distance, or long distance calls within your state." Accordingly, we have received numerous complaints from consumers that assert they unknowingly gave up the flat rate for intraLATA service they paid to their LEC when consenting to a carrier change for different services.

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act (RFA), as amended, the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking (Second Further NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the *Second Further NPRM*. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Notice and the IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

2. Section 258 prohibits any telecommunications carrier from submitting or executing an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service. This practice, known as "slamming," distorts the telecommunications market by enabling companies that engage in fraudulent activity to increase their customer and revenue bases at the expense of consumers and law-abiding companies. In this *Order*, we address certain issues raised in petitions for reconsideration of the *Second Report and Order and Further Notice of Proposed Rulemaking*, the *First Order on Reconsideration*, and the *Third Report and Order*. This *Order* also contains a Second Further Notice of Proposed Rulemaking, in which we propose several modifications to our carrier change rules. Specifically, we seek comment on rule modifications with respect to third party verifications.

B. Legal Basis

3. The *Second Further Notice* is adopted pursuant to Sections 1, 4(i), 4(j) of the Communications Act of 1934, as amended, 47 U.S.C.151, 154(i), 154(j), and § 1.429 of the Commission's Rules, 47 CFR 1.429.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

4.The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under section 3 of the Small Business Act. Under the Small business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations.

5. The definition of "small governmental jurisdiction" is one with populations of fewer than 50,000. There are approximately 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules.

6. We have included small incumbent LECs in this RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (*e.g.*, a wireline telecommunications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

7. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific small business size standard for providers of incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 1,329 incumbent local exchange carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, we estimate that the majority of providers of local exchange service are small entitles that may be affected by the rules and policies adopted herein.

8. *Competitive Local Exchange Carriers.* Neither the Commission nor the SBA has developed a specific small business size standard for providers of competitive local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. Consequently, the Commission estimates that the majority of providers of competitive local exchange service are small entities that may be affected by the rules.

9. *Competitive Access Providers.* Neither the Commission nor the SBA has developed a specific size standard for competitive access providers (CAPS). The closest applicable standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 532 CAPs or competitive local exchange carriers and 55 other local exchange carriers reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 532 competitive access providers and competitive local exchange carriers, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. Of the 55 other local exchange carriers, an estimated 53 have 1,500 or fewer employees and 2 have more than 1,500 employees. Consequently, the Commission estimates that the majority of small entity CAPS and the majority of other local exchange carriers may be affected by the rules.

10. *Local Resellers.* The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 134 companies reported that they were engaged in the provision of local resale services. Of these 134 companies, an estimated 131 have 1,500 or fewer employees and 3 have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers may be affected by the rules.

11. *Toll Resellers.* The SBA has developed a specific size standard for small businesses within the category of Telecommunications Resellers. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 576 companies reported that they were engaged in the provision of toll resale services. Of these 576 companies, an estimated 538 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that a majority of toll resellers may be affected by the rules.

12. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 229 carriers reported that their primary telecommunications service activity was the provision of interexchange services. Of these 229 carriers, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. Consequently, we estimate that a majority of IXCs may be affected by the rules.

13. *Operator Service Providers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 22 companies reported that they were engaged in the provision of operator services. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that a majority of local resellers may be affected by the rules.

14. *Prepaid Calling Card Providers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that a majority of prepaid calling providers may be affected by the rules.

15. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a specific size standard for small entities specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. According to the FCC's *Telephone Trends Report* data, 42 carriers reported that they were engaged in the provision of "Other Toll Services." Of these 42 carriers, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that a majority of "Other Toll Carriers" may be affected by the rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

16. As noted, we have sought comment on the need for additional minimum requirements for third party verification calls in order to maximize their accuracy and efficiency for consumers, carriers, and the Commission. These additional possible requirements address issues we have seen repeatedly in our enforcement of the slamming liability rules. We do not believe that adoption of any or all of the proposals would create the need for any additional professional skills beyond those already employed to comply with the current third party verification rules.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

17. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

18. *Third Party Verification.* The Commission is considering additional requirements which would address issues we have seen in the enforcement of our slamming rules, and we therefore seek comment on the need for additional minimum requirements for third party verification calls and of the impact of any additional requirements on small entities. We especially seek information addressing the possible financial impact on smaller carriers.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

19. None.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–9119 Filed 4–17–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[I.D. 040703D]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator) has made a preliminary determination that an application to issue EFPs to six longline and tub trawl vessels, submitted by the Maine Department of Marine Resources (Maine DMR), contains all the information required by the regulations governing exempted experimental fishing under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and, therefore, warrants further consideration. The Regional Administrator has also made a preliminary determination that the activities authorized under these EFPs would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP) and is within the scope of earlier analyses of the impacts. However, further review and consultation may be necessary before a final determination is made to issue six EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs that would allow six commercial longline or tub trawl vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States.

Regulations under the Magnuson-Stevens Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this notification must be received at the appropriate address or fax number (*see* **ADDRESSES**) on or before May 5, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Maine Halibut EFP Proposal." Comments may also be sent via facsimile to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Draft 2003 Supplement to the Environmental Assessment (EA) Prepared for the 2002 Experimental Halibut Fishery in Groundfish Closed Areas in the Eastern Gulf of Maine are available from the Northeast Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Susan Chinn, Fishery Management Specialist, 978–281–9218.

SUPPLEMENTARY INFORMATION: NMFS announces that the Regional Administrator intends to issue EFPs to allow six federally permitted vessels to fish for, land, and possess Atlantic halibut (*Hippoglossus hippoglossus*) in excess of the allowable landing and possession limit specified at 50 CFR 648.86(c) within a portion of the Gulf of Maine Regulated Mesh Area (GOM RMA). The EFPs would also allow these vessels to possess temporarily Atlantic halibut less than the minimum size requirement of 36 inches (91.4 cm) specified at § 648.83(a)(1) for purposes of collecting scientific information. In addition, the EFPs would allow vessels access to GOM Rolling Closure Area IV.

Maine DMR submitted a proposal on December 1, 2002, to conduct an experimental Atlantic halibut fishery in a portion of the GOM RMA. The industry collaborative experiment involves Maine DMR, with consultation provided by the NMFS Northeast Fisheries Science Center (Center). The purpose of the experiment is to continue the collection of data on the distribution, relative abundance, migration, stock definition, mortality rates, stock size, yield, and other significant biological reference points of the Atlantic halibut resource to be used in the long-term management of the species. In addition, the experiment proposes to collect information on age and growth, size and sex composition, and rate and onset of sexual maturity. The proposed experiment is a continuation of experimental fisheries conducted by Maine DMR in 2000, 2001, and 2002.

Maine DMR proposed that the study would occur from April 1 through May 31, 2003, or for 60 consecutive days beginning from the actual start date, and would take place in a portion of the GOM RMA defined by the following coordinates:

Area Point	N. Latitude	W. Longitude
HAL 1	Mainland Maine Coastline	69° 00″
HAL 2	43o 12.3″	69°00″
HAL 3	43° 58.3″	67° 21.5″
HAL 4*	Mainland Maine Coastline and U.S./ Canada Maritime Boundary	Mainland Maine Coastline and U.S./ Canada Maritime Boundary

*Between points HAL 3 and HAL 4, the area follows the U.S./Canada maritime boundary.

A maximum of six traditional longline and tub trawl vessels would be authorized to participate in the experiment at any given time. These vessels would be limited to a maximum number of 700 hooks per boat, and would be restricted to using circle hooks no smaller than 14/0 in size. Each of the six participating vessels would also be limited to a total allowable catch (TAC) of 50 individual halibut, with no possession or landing limit prior to reaching this amount. Once this TAC is reached by an individual vessel, that vessel would be restricted to possessing and landing no more than four legal-sized halibut per day. The maximum number of Atlantic halibut that could be harvested as part of this study would be 500. The maximum harvest for both the 2000 and 2001 experimental fisheries was 1,080 halibut; for the 2002 study, it was reduced to 234 halibut.

Logbooks supplied by Maine DMR would be used to record information on length of all halibut caught, whether retained or released, time and place of all halibut caught, tag number (if applicable), amount of gear used, and bait type. In addition, species identification and length of all species caught as bycatch during the course of the study would be recorded. For all halibut that are retained, participants would be required to preserve stomachs, gonads, and any other biological samples (including scale and otolith samples) requested by scientists from Maine DMR and NMFS for further analyses. All halibut less than 36 inches (91.4 cm) total length would be measured, tagged and released. Only legal-sized halibut would be retained for commercial sale. Training in the procedures for collecting this information would be provided by Maine DMR or Center personnel. In addition, participants would be required to complete a training program in the tagging and release of halibut. Vessels may be required to carry onboard observers as requested by NMFS and Maine DMR. Maine DMR or Center personnel would train observers in the protocols of the experiment.

The 2002 experimental Atlantic halibut fishery took place with six vessels participating from April 1 - May 31, 2002, within the same study area as the proposed 2003 experimental fishery. Over the course of 60 days, 469 Atlantic halibut were caught, of which 234 were kept and 235 were tagged and released. Therefore, the experimental fishery attained the maximum allowable harvest of 234 halibut. Most of the kept halibut were sold for consumption, but 30 were sold live to the University of Maine for use as brood stock. Ten tagged fish were recaptured in 2002: seven from the 2000 experimental fishery, two from the 2001 season and one from the 2002 season. Otolith and gonad samples were taken from all fish retained, except for the 30 fish sold live to the University of Maine.

The 2001 experimental Atlantic halibut fishery took place from April 12–May 31, 2001, within the same study area. Although six vessels were permitted to fish in the 2001 experimental fishery, only four actively participated. Over the course of 50 days, 152 Atlantic halibut were caught, of which 126 were kept and 26 were tagged and released. Most of the kept halibut were sold for consumption, but 45 of the 126 kept halibut were sold live to the University of Maine for use as brood stock. Two of the fish that were caught were recaptured from the 2000 experimental fishery. One of the recaptured fish was re-released, while the other was sold live to the University of Maine. Otolith and gonad samples were taken from all fish retained, except for the 45 fish sold live to the University of Maine.

The 2000 experimental Atlantic halibut fishery took place from April 15 to June 15, 2000. Three vessels participated in this experimental fishery capturing 234 halibut, of which 162 were kept.

With an average weight of 47 lb (21 kg) per halibut, the 2000 experimental fishery landed 7,650 lb (3.5 metric tons (mt)) of halibut, approximately 32 percent of the 11–mt total Atlantic halibut landings from the GOM/Georges Bank (GB) management unit in 2000. Outside of the experimental fishery, vessels were (and continue to be) restricted to a trip limit of one halibut. The 2001 Atlantic halibut experimental fishery landed approximately 2.5 mt, 22 percent less than the 2000 experimental fishery's halibut landings. The 2002 Atlantic halibut experimental fishery landed 4.3 mt, or about 20 percent of the total GOM/GB halibut landings (22 mt) during 2002. Based on the past year's data, if the 2003 experimental fishery harvests the proposed maximum allowable take of 500 halibut, the 2003 landings will be approximately 20,276 lb (9.2 mt). In comparison, the halibut landings from the Canadian Scotian Shelf/Southern Grand Banks management unit totaled about 1,000 mt in 2001, with a total allowable catch of 1,150 mt for that unit in 2002.

Given that the Canadian halibut harvest is more than 100 times the proposed harvest for the 2003 experimental fishery, NMFS believes that the taking of 500 halibut will not significantly impact the halibut resource because halibut appear to be a transboundary resource. If the GOM/GB halibut population is discrete, the impacts of the proposed increase in total allowable harvest from 234 to 500 in the 2003 experimental fishery on the Atlantic halibut resource are unknown, but do not appear to exceed the impact of the U.S. trawl bycatch and Canadian fisheries. NMFS believes the potential negative biological impacts (which are not fully known) from the increased harvest by the experimental fishery would be outweighed by the biological benefits that could be obtained from the study. Furthermore, NMFS would closely monitor the catch rates of vessels participating in this experimental fishery. If NMFS determines that catch rates are declining, indicating a significant impact to the resource, it would have the authority to terminate the experimental fishery.

The EA prepared for the 2002 experimental fishery concluded that the activities conducted under the 2002 EFP were consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan and would have no negative environmental impacts including impacts to Essential Fish Habitat, marine mammals, and protected species. The draft 2003 Supplement to the 2002 EA makes a preliminary determination that the proposed experimental fishery to collect biological and ecological information on Atlantic halibut will not significantly affect the quality of the human environment.

Based on the results of the EFPs, this action may lead to future rulemaking.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 14, 2003.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9636 Filed 4–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030320066–3066–01; I.D. 022103D]

RIN 0648–AQ78

Fisheries of the Exclusive Economic Zone Off Alaska; Delay of Full Retention and Utilization Requirements for Rock Sole and Yellowfin Sole

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 75 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This amendment would delay the effective date of requirements for 100-percent retention and utilization of rock sole and yellowfin sole from January 1, 2003, until June 1, 2004. The purpose of Amendment 75 is to provide the Council and the affected industry with additional time to develop and assess alternatives to address groundfish discards in the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI). An Initial Regulatory Flexibility Analysis (IRFA) was prepared to examine the effects of Amendment 75 on small entities. The purpose of this notice is to provide the affected public an expanded summary of the IRFA so that members of the public may provide more effectively comments on the effects of Amendment 75 on small entities.

DATES: Comments on the IRFA must be received by May 12, 2003.

ADDRESSES: Comments on the IRFA may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Hand delivery or courier delivery of comments may be sent to the NMFS, Alaska Region, 709 West 9th St., Room 453, Juneau, AK, 99801. Comments also may be sent via facsimile (fax) to (907) 586–7557. Comments will not be accepted if submitted via e-mail or the Internet. Copies of Amendment 75 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action are available from NMFS at the above address, or by calling Lori Durall, Alaska Region, NMFS at (907) 586–7228. The EA/RIR/IRFA is also available online at: *http://www.fakr.noaa.gov/analyses/2003.htm*.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The Council prepared an IRFA for Amendment 75 that describes the economic impacts this proposed amendment and implementing regulations, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the proposed rule to implement Amendment 75 (68 FR 15144, March 28, 2003). This proposed rule does not duplicate, overlap, or conflict with other Federal rules. No new reporting or recordkeeping requirements are contained in any of the alternatives considered for this action. A total of 176 small entities (all catcher vessels) and 34 large entities (6 catcher vessels, 24 head and gut catcher/processors, and 4 surimi catcher/processors) are active in the BSAI groundfish fisheries. Because individual vessel costs are not available for these vessels, individual vessel profitability could not be estimated. Therefore, changes in gross revenue of the 176 vessels are used as a proxy for changes in individual vessel profitability. Furthermore, assumptions are made that revenue losses and gains are shared equally among these vessels and that discards represent a displacement of revenue tonnage if hold space is limited. The delay in implementing IR/IU flatfish retention rules for rock sole and yellowfin sole in the BSAI will prevent decreases in the profitability of small vessels while having little impact on the large vessels that participate in these fisheries. A summary of the analysis follows:

The preferred alternative would delay implementation of IR/IU flatfish regulations in the BSAI fisheries through June 2004. The economic impact of the preferred alternative on individual vessels is expected to be minimal. It is expected to provide industry and management agencies an additional 17 months before implementation to develop measures that could meet bycatch reduction goals, while allowing the industry to continue to operate effectively. The Council and NMFS are currently analyzing alternative approaches to IR/IU flatfish regulations that could be implemented in June 2004. The alternatives currently under consideration for future action by the Council are designed to achieve the management objective of reducing bycatch in a less economically burdensome manner.

Alternative 1, which represents a 100 percent retention standard, could lead to decreases in gross revenue for the affected fisheries and could yield substantial decreases in gross revenue associated with rock sole in the Pacific cod fishery. Assuming hold space is limited, the additional flatfish retained would displace fish of higher value, thereby decreasing per trip revenues. Many of the catcher vessels may experience a problem with damaged non-flatfish, such as Pacific cod, by mixing rough-scaled flatfish and soft-fleshed roundfish in the hold. This problem may be avoided if flatfish are segregated in a separate hold. However, most catcher vessels are unlikely to be able to dedicate an entire hold to the relatively small amount of flatfish that are likely to be taken. Furthermore, it is generally reported that many (perhaps most) of these catcher vessels do not have the capacity to sort their catch at sea, under any circumstances.

Historical catches and discards of IR/IU flatfish by trawl catcher vessels are highest in the BSAI Pacific cod fishery, both in terms of volume and percent by weight of retained groundfish. During the 1992–2000 period, discards of rock sole and yellowfin sole were 12.6 percent of the total amount of groundfish retained. Over 75 percent of trawl catcher vessel gross revenue was generated from landings of pollock and 20 percent was generated in Pacific cod fisheries. Only 3 percent of trawl catcher vessel gross revenue was generated from landings of flatfish. Moreover, since 1998, flatfish have accounted for only 1 percent of total gross revenue. Clearly, pollock and Pacific cod are the mainstays of trawl catcher vessels, and because bottom trawling for pollock was prohibited in 1999, IR/IU flatfish regulations are likely to affect only those trawl catcher vessels that participate in Pacific cod fisheries.

Alternative 2 would allow some discards of the IR/IU flatfish species. The percent retention requirement would be set independently for each species and would range from 50 percent to 90 percent. The analysis of the effects of alternative retention requirements on catcher vessels shows that virtually 100 percent of the catch of rock sole and yellowfin sole is discarded in all the fisheries in which rock sole and yellowfin sole are caught. Consequently, any retention requirement for rock sole and yellowfin sole would be expected to result in adverse economic and operational impacts. This measure can be interpreted as a displacement of revenue tonnage. A full retention requirement for rock sole would have the greatest effect, and this requirement would result in less than a five percent displacement in revenue tonnage for all catcher vessel classes.

Alternative 3 would delay implementation of IR/IU flatfish rules for up to 3 years. Delaying implementation will postpone the economic consequences discussed under Alternative 1 and will allow the benefits of the economic activity associated with the operation of these vessels to accrue to vessel operators for the period of the delay. A delay in implementation could also provide time for assessment of the potential for rationalization within the IR/IU flatfish fisheries. These fisheries are characterized by a "race for fish" mode of operation that exacerbates the economic impacts of the IR/IU rules. Rationalization may ease some aspects of the "race for fish", but may not eliminate all aspects because IR/IU flatfish are targeted during specific roe seasons and times of highest quality. However, possibilities for fleet consolidation or cooperative operations that might ease the economic burden of IR/IU flatfish rules could be explored during a delay in implementation. In the past several years, discards of yellowfin sole have been trending downward. Industry sources indicate that they have been doing all that they can to utilize all the IR/IU flatfish that they harvest and are actively attempting to develop markets for smaller fish.

Alternative 4 exempts fisheries from IR/IU flatfish regulations if flatfish discards are less than 5 percent of total groundfish catch. This analysis used two different estimates of the discard rates for determination of the IR/IU exemption. One estimate is based on a weighted average discard rate for 1995–2001, and a second estimate is based on a weighted average discard rate for 1999–2001. Discards exceed 5 percent in most flatfish fisheries and in Pacific cod trawl fisheries in the BSAI. The revenue reductions of this alternative are similar to those of Alternative 1.

Dated: April 15, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–9618 Filed 4–17–03; 4:46 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 75

Friday, April 18, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Carson National Forest, New Mexico, Agua/Caballos Proposed Projects

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to a Final Environmental Impact Statement.

SUMMARY: The Carson National Forest, El Rito Ranger District is preparing a supplement to the Final Environmental Impact Statement (FEIS) to disclose new information relevant to the analysis of proposed projects in the Agua/Caballos analysis area. Proposed projects include the allocation of old growth, harvesting of trees for sawtimber and forest products, prescribed burning, thinning, construction of new roads and reconstruction or closure of existing roads.

A Notice of Intent (NOI) to prepare an environmental impact statement was published in the **Federal Register** on April 22, 1997 (62 FR 195342). A Notice of Availability (NOA) for the Draft Environmental Impact Statement (DEIS) was published in the **Federal Register** on February 19, 1999 (64 FR 8356). An NOI to prepare a supplement to the DEIS was published in the **Federal Register** on December 20, 1999 (64 FR 771101). An NOA for the supplement to the DEIS was published in the **Federal Register** on August 18, 2000 (65 FR 50522).

A Record of Decision was signed on May 9, 2002 and an NOA was subsequently published in the **Federal Register** on July 19, 2002 (67 FR 47538).

The decision was appealed before the Regional Forester of the Southwestern Region on August 20, 2002. The appeal was reviewed in accordance with 36 CFR 215.7. The appeal decision issued on October 1, 2002 reversed the Responsible Official's decision on the Agua/Caballos Proposed Projects, with the following instructions:

(1) Complete the analysis of effects on MIS, considering population and habitat information collected at the forest plan level or at an appropriate geographical scale for a particular species.

(2) Upon completion of this analysis, circulate a Supplemental Environmental Impact Statement for public comment and issue a new decision under 36 CFR 215.

The supplement will disclose additional forest-wide information on management indicator species (MIS) identified in the Forest Plan and relate this supplemental information to the effects analysis of MIS that have potential habitat in the Agua/Caballos analysis area.

DATES: It is estimated that the supplement will be completed and distributed by the end of May 2003. A 45-day comment period will follow. The Final Environmental Impact Statement and record of decision is estimated to be released in August 2003.

ADDRESSES: The supplement will be available upon request from the Carson Forest Supervisor's Office, 208 Cruz Alta Road, Taos, NM 87571, Attn: Planning. Comments related to the supplement can be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Audrey Kuykendall, Forest NEPA Coordinator, Carson Forest Supervisor's Office, 208 Cruz Alta Road, Taos, NM 87571, (505) 758–6200.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action: The supplement is needed to complete the analysis of effects on MIS, considering population and habitat information collected at the forest plan level or at an appropriate geographical scale for a particular species.

Proposed Action: The supplement to the Final Environmental Impact Statement will disclose new information relevant to the analysis of proposed projects in the Agua/Caballos analysis area. Proposed projects include the allocation of old growth, harvesting of trees for sawtimber and forest products, prescribed burning, thinning, construction of new roads and reconstruction or closure of existing roads.

Responsible Official: The Forest Supervisor, Carson National Forest, is the responsible official and will decide whether projects will be implemented by the Forest Service in the Agua/Caballos analysis area. If so, the Forest Supervisor will decide what projects and where, how and when they will be implemented.

Scoping Process: The supplement will be circulated for public comment to those who were on the mailing list for the Record of Decision. Circulation is expected at the end of May, 2003.

Comment Requested: This notice of intent initiates the scoping process which guides the development of the supplemental environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A Draft Environmental Impact Statement will be prepared for comment. The comment period on the Draft Environmental Impact Statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft Environmental Impact Statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft Environmental Impact Statement stage but that are not raised until after completion of the Final Environmental Impact Statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final Environmental Impact Statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the Draft Environmental Impact Statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft Environmental Impact Statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21).

Dated: April 11, 2003.

Martin D. Chavez, Jr.,

Forest Supervisor, Carson National Forest.

[FR Doc. 03–9607 Filed 4–17–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Helena National Forest, Montana Travel Management Plan for the South Belts, Divide, and Blackfoot Project Areas

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: This Notice of Intent (NOI) describes the Helena National Forest's proposal to revise the existing travel management on National Forest System lands in the South Belts, Divide, and Blackfoot project areas. The decisions to be made focus on what routes (both motorized and non-motorized) will be open or restricted depending on other resource needs. Signing or other physical structure will be used to implement the decision to reach chosen management objective. No route obliterations or relocations will be analyzed under this decision.

DATES: Comments concerning the scope of the analysis must be received by May 15, 2003. The draft environmental impact statement is expected late June 2003 and the final environmental impact statement is expected April 2004.

ADDRESSES: Send written comments to Kimberly Delgado-Public Affairs Officer c/o Helena National Forest, 2880 Skyway Drive, Helena, MT 59602.

For further information contact Chuck Neal-Forest Travel Planner or call at (406) 449–5201.

If you prefer, a "scoping" letter is available on the Web at *r1_Helena_webmaster@fs.fed.us.* You can submit comments at this location by typing on the subject line "Attention Public Affairs Officer."

SUPPLEMENTARY INFORMATION:

Background

Forest wide travel management planning update originally was proposed in November 2000. Formal public involvement for that planning effort began with the publication of the NOI to prepare an Environmental Impact Statement in the **Federal Register** in December of 2000. A scoping letter describing that proposal was mailed to over 1,300 individuals and groups and public meetings were held in the communities of Lincoln, Townsend, and Helena in December 2000.

In response to that NOI and scoping effort many letters, postcards, e-mails, petitions, and maps were received commenting on the proposal. A private contractor conducted a content analysis to identify the issues and concerns and grouped them into main categories. This content analysis was completed in March 2001. These responses are retained in the record.

In 2001, a number of factors influenced the Helena National Forest to set aside the 2000 Forest wide travel planning effort. These factors included the requirements to complete a Forest Roads Analysis and the need to place priority on restoration and timber salvage in response to the severe fires of 2000.

An additional change that influenced the complexity of the 2000 Forest wide travel planning effort was the July 2001 off-highway vehicle regulations affecting National Forests and BLM lands in Montana, North Dakota, and portions of South Dakota. This direction applies to all government lands where a site-specific travel plan has not been implemented and restricts wheeled motorized travel to roads and trails where evidence of motorized use existed at that time.

The Forest Wide Travel Plan of 2000 was rescinded in March of 2003 due to elapsed time since the appearance of the NOI in the **Federal Register** and changed scope of the proposal.

Purpose and Need for Action

The purpose for initiating this proposal is to have a network of open roads and trails that addresses the need for a variety of vehicular and non-vehicular use while meeting goals, objectives, and standards for the multiple resources present within the project areas.

The Helena Forest Plan, signed in 1986, did not fully anticipate the growing popularity of ATV's and snowmobiles. Subsequently, off-road travel and user-created routes were increasing until the 2001 OHV decision prohibited cross-country motorized travel. The decision amended the Helena Forest Plan to eliminate this activity and further directed the Forests to prioritize areas for subsequent site-specific travel planning. Therefore, there is a need to update the Forest Travel Plan to address both motorized and non-motorized uses.

The Helena National Forest visitor map displays 23 different time blocks for restrictions. This makes understanding, implementing, and enforcing the travel plan complex both for the users and the Forest Service. Therefore, there is a need for a more clear, simplified travel plan that is easier to understand and enforce.

Proposed Action

The Helena National Forest proposes to implement a travel plan for the South Belts, Divide, and Blackfoot project areas that provides motorized and non-motorized opportunities for both roads and trails. Forest Plan goals, objectives, and standards for other resources were key to the development of this proposed action such as providing adequate seasonal habitat for wildlife and maintaining water quality.

The proposed action is summarized below. Site-specific, route-by-route detail for each project area is available upon request. The proposed action includes the following elements:

1. Motorized and non-motorized roads and trails are identified and include the following four route types:
   * Roads open to vehicles that meet the requirements of state laws,
   * Motorized trails open to vehicles 50 inches wide or less,
   * Non-motorized trails, and
   * Snowmobile routes.
2. Potential "connector" local road or trail locations are identified for possible future decisions.
3. Open and restricted routes and areas for snowmobiles are delineated. Big game winter range areas are not open to snowmobile use; however, designated snowmobile routes through winter range are identified.
4. Vehicle access within 300 feet of an open, designated road is allowed primarily to access dispersed camping sites and other uses as long it does not result in unacceptable resource damage

such as rutting, crossing of wet meadows, or notable noxious weed spread.

To protect resources, the proposed action features the flexibility to restrict motorized use in the 300-foot zone in local situations if unacceptable resource damage occurs.

5. Stream fording by motorized vehicles is not allowed unless it is a part of a designated route (over snow vehicles are excluded from this feature as long as a stream is frozen).

6. Three categories of restrictions have been applied to identified routes. They are:

* October 15–December 1 (big game security),
* December 2–May 15 (winter range protection), and
* Yearlong.

Unique situations generating a need to temporarily modify the travel plan will use special orders or other methods on a case-by-case basis. These may include but are not limited to spring thaw, game retrieval, Grizzly Bear emergence, calving areas, firewood gathering, and non-ambulatory disabled access.

7. Off-route travel with respect to wheeled motorized vehicles is restricted per the 2001 State-wide OHV decision or as otherwise described in this proposed action.

8. Canada lynx conservation strategy has been applied resulting in no net increase in designated and/or groomed over-the-snow routes and snowmobile play areas in lynx habitat (generally higher elevation spruce/fir forest).

9. Access to private land holding within the National Forest Boundary was considered in developing the proposed action.

10. Routes with mixed traffic (street-legal and non-street-legal and licensed and unlicensed drivers) have been identified and typically are short segments. Some of these situations may be a mix of highway vehicles with ORVs or snowmobiles. These potential shared uses are highlighted to heighten the awareness to users of these routes. This shared use will be addressed as an administrative decision and is therefore not appealable within this process.

11. Routes that are open for motorized use, restricted yearlong, or restricted seasonally will be signed accordingly. Sites that have unique concerns or high resource values at risk, such as a bald eagle nest site, will be gated to increase closure effectiveness. Existing gates will continue to be used where appropriate.

12. To guide decisions about access to private lands that are located within the National Forest Boundary, the proposed action includes guidelines that consider private landowner needs as well as protection of resources on the National Forest System lands.

This proposal may not meet all Forest Plan standards such as wildlife security direction. These potential concerns will be fully analyzed in the EIS. If not fully compliant with the Forest Plan, appropriate actions will be taken; *e.g.* modify the alternative or propose site-specific Forest Plan amendments.

Project Area Descriptions

South Belts: The South Belts project area includes federal land administered by the USDA Forest Service from Mt. Boulder-Baldy near Confederate Gulch south to the Dry Creek watershed, west to the Forest boundary to other ownership and east to the Forest boundary to other ownership.

Divide: The Divide project area includes federal lands administered by the USDA Forest Service. It includes those National Forest system lands within the 10-Mile Creek drainage and the Little Blackfoot River drainage. Also included are those Federal lands that lie north of State Highway 12 to the Helena Ranger District-Lincoln Ranger District boundary near Nevada Mountain. The portion of the Helena Ranger District that lies within the Little Prickly Pear drainage is excluded from this analysis.

Blackfoot: The Blackfoot project area includes federal land administered by the USDA Forest Service. It includes the Helena National Forest Boundary north of the Scapegoat Wilderness, south to the Lincoln and Helena Ranger District boundary near Nevada Mountain, west to the Lolo National Forest boundary and east over the Continental Divide.

Responsible Official

The decisionmaker for these three project areas is the Forest Supervisor for the Helena National Forest.

Nature of Decision To Be Made

Incorporated in the following decisions is Forest Plan direction in providing a range of quality recreation, including motorized and non-motorized opportunities while implementing multiple Forest land and resource objectives and visitors' needs. The key decision points will include the following:

* Which roads, trails, and areas are appropriate for which types of public motorized and non-motorized use?
* Which roads, trails, and areas would have seasonal restrictions to protect wildlife or other resources?
* Whether or not a Forest Plan amendment(s) would be required?

The identified travel corridor connectors for local route systems will be evaluated and analyzed for future site-specific decisions.

Scoping Process

There are several options for you and/or your organization to make comments and participate in the process.

1. If you have substantive comments to the proposed action, please request a scoping package where you may fill out the attached Comment Sheet and return it to us. Your substantive comment must be specific to this proposed action to be helpful in this process. If possible, typed comments are most readily scanned for content identification purposes and comments can also be e-mailed, using the same general outline as the comment sheet, to: *r1_helena_webmaster@fs.fed.us.* In the subject line at this site, please include the following: Attention Public Affairs Officer.

2. Information about the Forest Travel Plan, including this scoping statement and the comment sheet, will be posted on the Helena National Forest Web site at *http://www.fs.fed.us/r1/helena/projects.* Information will be on the Web site by April 21, 2003.

3. There will be some public meetings in June and July of 2003. Please contact this office for specifics.

Your substantive response will be included in this analysis process. Your response should be specific and include reasons why you feel it should be considered. The key or significant responses will be used to formulate alternatives, prescribe mitigation measures, or be analyzed in environmental effects.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will begin in July of 2003 from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: April 14, 2003.

Allen L. Christophersen,

Deputy Forest Supervisor.

[FR Doc. 03–9571 Filed 4–17–03; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

EFFECTIVE DATE: May 18, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On June 28, December 27, 2002, and February 14, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 43548, 79044, and 68 FR 7499) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services added to the Procurement List.

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Custodial Service, Naval & Marine Corps Reserve Center, St. Louis, Missouri.
NPA: MGI Services Corporation, St. Louis, Missouri.
Contract Activity: Naval Facilities Engineering Command, Crane, Indiana.
Service Type/Location: Family Housing Maintenance, Sheppard Air Force Base, Texas.
NPA: Work Services Corporation, Wichita Falls, Texas.
Contract Activity: USAF-Air Education and Training Command, Sheppard AFB, Texas.
Service Type/Location: Janitorial/Custodial, Herbert Hoover Library, West Branch, Iowa.
NPA: Goodwill Industries of Southeast Iowa, Iowa City, Iowa.
Contract Activity: National Archives & Records Administration, College Park, Maryland.
Service Type/Location: Mailroom Operation. Social Security Administration, Sam Nunn Federal Building, Atlanta, Georgia.
NPA: Nobis Enterprises, Inc., Marietta, Georgia.
Contract Activity: Social Security Administration, Region IV, Atlanta, Georgia.

Deletions

On February 14, and February 24, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 F.R. 7499, and 8585) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

Accordingly, the following products and services are deleted from the Procurement List:

Products

Product/NSN: Index Sheet Set, Looseleaf Binder, 7530–00–160–8474.
NPA: Louisiana Association for the Blind, Shreveport, Louisiana.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: Seal, Metallic, 5340–00–491–7632, 5340–00–902–0426.
NPA: Michiana Resources, Inc, Michigan City, Indiana.

Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.

Services

Service Type/Location: Commissary Shelf Stocking, Point Mugu Naval Air Station, California.
NPA: Association for Retarded Citizens—Ventura County, Inc., Ventura, California.
Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Commissary Shelf Stocking & Custodial, Fort Shafter, Hawaii.
NPA: Goodwill Industries of Hawaii, Inc., Honolulu, Hawaii.
Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Commissary Shelf Stocking & Custodial. Presidio of San Francisco Commissary, San Francisco, California.
NPA: Calidad Industries, Inc., Oakland, California.
Contract Activity: Defense Commissary Agency, Fort Lee, Virginia.
Service Type/Location: Drill Sharpening, Naval Supply Center, San Diego, California.
NPA: The ARC of San Diego, San Diego, California.
Contract Activity: Department of the Navy, San Diego, California.
Service Type/Location: Janitorial/ Custodial, Mare Island Naval Shipyard, Vallejo, California.
NPA: V-Bar Enterprises, Inc., Suisun City, California.
Contract Activity: Department of the Navy, Vallejo, California.
Service Type/Location: Janitorial/ Custodial, Veterans Affairs Community Based Outpatient Clinic, St. George, Utah.
NPA: Washington County Association for Retarded Citizens, St. George, Utah.
Contract Activity: Department of Veterans Affairs, St. George, Utah.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 03–9627 Filed 4–17–03; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments must be received on or before: May 18, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: Enamel, Aerosol, 8010–01–505–1962,
8010–01–505–1964,
8010–01–505–1966,
8010–01–505–1968,
8010–01–505–1970,
8010–01–505–1971,
8010–01–505–1973.
NPA: Lighthouse for the Blind, St. Louis, Missouri.
Contract Activity: GSA, Hardware & Appliances Center, Kansas City, Missouri.
Product/NSN: Quick Drop Mop Handles,
7920–00–NIB–0401 (Wood),
7920–00–NIB–0402 (Fiberglass),
7920–00–NIB–0403 (Vinyl Coated Metal).
NPA: New York City Industries for the Blind, Brooklyn, New York.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.
Product/NSN: U.S. Air Force Technical Manual Binder, 7510–00–241–4958.
NPA: York County Blind Center, York, Pennsylvania.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Base Supply Center, Maxwell Air Force Base and Gunter Annex, Building G850, Alabama.
NPA: Alabama Industries for the Blind, Talladega, Alabama.
Contract Activity: 42nd CONS/CC, Maxwell AFB, Alabama.
Service Type/Location: Janitorial/ Custodial, Fridley USARC, Covington, Virginia.
NPA: Jackson River Enterprises, Covington, Virginia.
Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.
Service Type/Location: Janitorial/ Custodial, U.S. Marine Corps Reserve Center, Johnstown, Pennsylvania.
NPA: Goodwill Industries of the Conemaugh Valley, Inc., Johnstown, Pennsylvania.
Contract Activity: 99th Regional Support Command, Coraopolis, Pennsylvania.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 03–9628 Filed 4–17–03; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–852]

Creatine Monohydrate from the People's Republic of China: Final Results of Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Antidumping Duty Administrative Review.

SUMMARY: On February 28, 2003, the Department of Commerce published a notice of initiation and preliminary results of its changed circumstances review in creatine monohydrate from the People's Republic of China examining whether Suzhou Sanjian Nutrient and Health Products Co., Ltd. is the successor-in-interest of Suzhou Sanjian Fine Chemical Co. Ltd. We gave interested parties an opportunity to comment on the preliminary results of review but received no comments. The final results do not differ from the preliminary results of review, in which we found that Suzhou Sanjian Nutrient and Health Products Co., Ltd. is the successor-in-interest of Suzhou Sanjian Fine Chemical Co. Ltd.

EFFECTIVE DATE: April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Blanche Ziv or Julie Santoboni, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4207 and (202) 482–4194, respectively.

SUPPLEMENTARY INFORMATION:

Background:

On February 28, 2003, in accordance with Section 751(b) of the Act and 19 CFR 351.216 and 351.221(c)(3), the Department published its preliminary results in the **Federal Register**, preliminarily finding Suzhou Sanjian Nutrient and Health Products Co., Ltd. ("Suzhou Health Products") to be the successor-in-in terest to Suzhou Sanjian Fine Chemical Co. Ltd. ("Suzhou Chemical"). (*See Creatine Monohydrate from the People's Republic of China; Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review*, 68 FR 9635 ("Preliminary Results")). We invited interested parties to comment on these findings. No comments were received.

Scope of the Review

Imports covered by this review are creatine monohydrate, which is commonly referred to as "creatine." The chemical name for creatine monohydrate is N-(aminoiminomethyl)-N-methylgycine monohydrate. The Chemical Abstracts Service ("CAS") registry number for this product is 6020–87–7. Creatine monohydrate in its pure form is a white, tasteless, odorless powder, that is a naturally occurring metabolite found in muscle tissue. Creatine monohydrate is provided for in subheading 2925.20.90 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading and the CAS registry number are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Final Results of Review

Because we received no comments on the preliminary results, for the reasons stated in the *Preliminary Results* and based on the facts on the record, we find Suzhou Health Products to be the successor-in-interest to Suzhou Chemical for antidumping duty cash deposit purposes. In order to make this determination, we examined the management structure of Suzhou Chemical, including, but not limited to, copies of business licenses, financial statements, sales documents and organizational charts. Since the record shows that Suzhou Health Products maintained the same senior management, organizational structure, production facilities, supplier relationships and customers, among other things, we determine that Suzhou Health Products is the successor-in-interest to Suzhou Chemical.

Suzhou Health Products will be assigned the same antidumping duty cash-deposit rate (*i.e.*, a 50.32 percent antidumping duty cash-deposit rate) with respect to the subject merchandise as Suzhou Chemical, its predecessor company. This cash deposit requirement will be effective upon publication of this notice of final results of changed circumstances review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date. This cash deposit rate shall remain in effect until publication of the final results of the next administrative review in which Suzhou Health Products participates.

This determination is issued and published in accordance with sections 751(b)(1) and 777(i)(1) of the Act.

Dated: April 14, 2003.

Joseph A. Spetrini,
Acting Assistant Secretary for Import Administration.
[FR Doc. 03–9637 Filed 4–17–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–809]

Cut-to-Length Carbon Steel Plate from Mexico: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 25, 2002, in response to a request made by Bethlehem Steel Corporation and United States Steel Corporation ("Petitioners"), the Department of Commerce ("the Department") published in the **Federal Register** (67 FR 60210) a notice announcing the initiation of an administrative review of the antidumping duty order on cut-to-length carbon steel plate from Mexico. The review period is August 1, 2001, to July 31, 2002. This review has now been rescinded because Altos Hornos de Mexico, S.A. de C.V. did not have any shipments during the period of review ("POR").

EFFECTIVE DATE: April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–1394.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations are to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (2002).

Scope of the Review

The merchandise under review is cut-to-length carbon steel plate. Although the Harmonized Tariff Schedule of the United States (HTSUS) subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

These products include hot-rolled carbon steel universal mill plates (*i.e.*,

flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X-70 plate.

Background

On August 30, 2002, Petitioners requested that the Department conduct an administrative review of the sales of subject merchandise made by Altos Hornos de Mexico, S.A. de C.V. ("AHMSA") during the period August 1, 2001, to July 31, 2002. On September 25, 2002, the Department published in the **Federal Register** a notice announcing the initiation of an administrative review of the antidumping duty order on cut-to-length carbon steel plate from Mexico (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, (67 FR 60210) September 25, 2002). On October 8, 2002, the Department issued an antidumping questionnaire to AHMSA. On October 17, 2002, AHMSA submitted a letter to the Department stating that neither AHMSA, nor any of its affiliated companies sold, shipped, or entered for consumption cut-to-length carbon steel plate from Mexico into the United States during the POR. AHMSA also requested that the Department rescind the administrative review. In a letter dated October 25, 2002, petitioners requested that the Department investigate the conflict between AHMSA's claim of no entries or sales for consumption during the POR and the U.S. Census Bureau IM-145 data showing that 369 net tons of cut-to-length carbon steel plate from Mexico entered the United States during the POR. Petitioners also surmised that AHMSA is the only producer of cut-to-length carbon steel plate in Mexico. On March 25, 2003, the Department issued a supplemental questionnaire to AHMSA, inquiring whether AHMSA or any of its affiliates exported subject merchandise to the United States during the POR. On April 1, 2002, AHMSA responded to the Department's supplemental questionnaire. AHMSA stated that its only affiliated reseller, National de Acero S.A. de C.V. ("NASA") did not have any exports of Mexican cut-to-length plate to the United States during the POR.

Pursuant to 19 C.F.R. 351.213(d)(3), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period of review, there were no entries, exports, or sales of subject merchandise. The Department performed a U.S. Customs Service query for entries of cut-to-length carbon steel plate from Mexico, classified under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers in the "Scope Under Review" section of this **Federal Register** notice. Additionally, the Department inquired with the U.S. Customs Service whether there were any shipments of cut-to-length carbon steel plate from Mexico. We found no entries or shipments from AHMSA or its affiliated reseller NASA during the POR of Mexican cut-to-length plate to the United States. This review has now been rescinded because AHMSA did not have any shipments during the POR. The Department will issue appropriate instructions to Customs.

This notice is issued and published in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: April 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–9638 Filed 4–17–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030409079–3079–01; 040303A]

RIN 0648–ZB45

Coastal Services Center Financial Assistance for Coastal Observing System Projects

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of federal assistance.

SUMMARY: The NOAA Coastal Services Center is soliciting applications for federal assistance for the Director's Office in Coastal Observing System Support. This announcement provides guidelines which includes details for the evaluation criteria, and selection procedures. Selected recipients will enter into a grant with the Coastal Services Center.

DATES: Applications are due by 5 p.m., e.d.t., May 30, 2003. Applications received after that time will not be reviewed.

ADDRESSES: Send all proposals to NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, South Carolina 29405–2413, Attention Geno Olmi, Room 234A.

FOR FURTHER INFORMATION CONTACT: Administrative questions should be directed to Violet Legette, 843–740–1222 or *Violet.Legette@noaa.gov*. Technical point of contact is Geno Olmi at 843–740–1230 or *Geno.Olmi@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Coastal Services Center is soliciting applications for federal assistance for Coastal Observing System Projects. Recipients will enter into a grant with the Coastal Services Center.

All applicants are required to submit a NOAA Grants application package, budget narrative, curriculum Vitae for each principal investigator, and project proposal. The standard NOAA grants application package includes SF–424, SF–424A, SF–424B, CD–511, CD–512, SF-LLL and CD–346. These forms can be obtained from the NOAA grants Web site at *http://www.rdc.noaa.gov/grants/pdf/*. NOTE: CD–512 is a form that the recipient maintains. DO NOT submit this form to the Coastal Services Center. Also, SF-LLL should only be submitted as part of the grant application, if the recipient is reporting lobbying activities. If applicant is any of the following, a CD–346 is required to be submitted with

grant application: sole proprietor, a partnership, a corporation, a joint venture and a non-profit organization. Other applicants are not required to submit a CD–346 with application.

If recipients have difficulty downloading grant forms, please contact Violet Legette at 843–740–1222 for assistance.

Authority

Statutory authority for this program is 16 U.S.C. 1456c.

CFDA Number: 11.473 Coastal Services Center.

Project Description

The Coastal Services Center seeks proposals for projects that enhance the organization, implementation, and application of regional coastal ocean observing systems. For the purposes of this announcement, coastal ocean observing systems are meant to include the sensors, personnel, and data management that obtain regular and sustained in-situ and/or remote observations of the physical, chemical, and biological environment of Great Lakes, estuaries, and the near shore ocean of the United States. Total available funding under this announcement is expected to not exceed $750,000. The Coastal Services Center desires to fund two types of projects to benefit the development of regional coastal ocean observing systems: (1) projects that facilitate building partnerships and regional organizational structures for regional observing systems, and (2) regional pilot projects.

For the first type of project, Regional Observation System Coordination, the Coastal Services Center seeks to fund projects that will engage stakeholders in a given region to develop collaborative partnerships (Regional Associations) among data collectors, data managers, and users of data and information from coastal ocean observing systems. Proposals should clearly articulate an approach to identify stakeholders, bring them together in a meaningful way, and develop plans for governance and communication, implementation, data management, and product development. The Coastal Services Center believes that it is important to engage end users in the design and implementation of observing systems to maximize the benefits to science and society. Of particular interest to the Coastal Services Center is the utility of such systems for management of coastal and ocean resources and for the benefit of coastal communities. Total available funding for this type of project is anticipated to be between $200,000 to $350,000, subject to the availability of federal appropriations. The Coastal Services Center expects to award two to five grants of $20,000 - $100,000 each under this announcement for Regional Observation System Coordination.

The second type of proposal requested is to support implementation of a Regional Coastal Ocean Observation Pilot Project. Pilot project(s) should demonstrate inter-institutional collaboration within a region for sensor deployment, data management, and creation of information products from the data collected. Projects should emphasize regular and sustained in-situ and/or remote observations of the physical, chemical, and biological coastal ocean environment. The pilot project should demonstrate data documentation and management protocols that meet or exceed national standards (FGDC compliant) and ensure accuracy and interoperability with the developing Integrated Ocean Observing System (IOOS). The pilot project should have a defined set of users and create information products relevant to those users. The Coastal Services Center encourages proposals that demonstrate active involvement of public mission agencies. The Coastal Services Center also encourages proposals that develop or sustain observing systems under the auspices of an established or planned regional association with a defined governance structure. Total available funding for Regional Pilot Project(s)is anticipated to be between $250,000 to $500,000, subject to the availability of federal appropriations. The Coastal Services Center expects to award only one to two grants under this announcement.

Background

The National Oceanic and Atmospheric Administration has a long-standing responsibility to observe, assess and predict conditions in the Nation's oceans and atmosphere. NOAA has a number of operational programs that routinely and systematically measure environmental variables in the atmosphere, open and coastal ocean, estuaries, and the Great Lakes. In addition to its own operational programs, NOAA develops collaborative partnerships with states, universities and for profit and non-profit organizations to increase the scope of its environmental data collection.

Congress has directed the interagency National Ocean Research Leadership Council to develop a plan by which the nation can achieve an Integrated Ocean Observing System. Responsibility for development of this plan has been given to the Ocean.US Office *www.ocean.us*. The Integrated Ocean Observing System is envisioned to consist of a "national backbone" of federally-maintained observations integrated with "regional" systems that contribute to and benefit from the national backbone and also focus on interests of a local/regional nature. Integration of regional and national components into a national coastal observing system will rely on common data management standards that allow data integration to create products that benefit a broad community of users. While the fully mature IOOS is envisioned to be mostly operational in nature, the developmental stages are expected to include research, pilot, pre-operational and operational components.

The Coastal Services Center has a strong interest in working with regional observing systems and partners to achieve integration into a national system. The Coastal Services Center is particularly interested in regional systems that provide timely and appropriate information to public mission agencies. Therefore, the Coastal Services Center anticipates offering grant funds to projects that help achieve these goals.

Project Proposals

The applicant must submit one original and two copies of the proposal(s) by 5 p.m. (Eastern time) on May 30, 2003 to the attention of Geno Olmi, Room 234A at the NOAA Coastal Services Center, 2234 South Hobson Avenue, Charleston, SC 29405–2413. In addition to the proposal(s), the applicant must submit a complete NOAA grant application package (with signed originals). No e-mail or fax copies will be accepted. All project proposals must total no more than 20 pages (double spaced, 12–point font, and exclusive of appendices). Appendices should be limited to materials that directly support the main body of the proposal (e.g., support letters, resumes, lists of data sources, maps). Letters of support may be mailed separately, but must be received by the 30 May 2003, deadline. All appendix material must be unbound. All proposals must include sections on the seven following topics:

1. Background. Provide sufficient background information for reviewers to independently assess the significance of the proposed project. Summarize the problem to be addressed and the status of your ongoing efforts to address the problem.

2. Benefits. Identify specific potential users of the information derived from this work and the benefits that will be achieved to those users as well as society as a whole. Describe how this

information from this project will be delivered to those users.

3. Goal(s) and Objective(s). Describe in the narrative the specific project goals and objectives to be achieved. Describe how these project goals support the broader goals of the Integrated Ocean Observing System.

4. Project Description/Methodology. Provide a general work plan that identifies specific tasks to be accomplished, explains the technical approach (including quality control protocols) needed to accomplish the tasks, identifies the roles of partners and cooperators, and identifies potential obstacles to successful completion of the goals and objectives. Describe how potential users are involved in the planning and design process.

5. Milestone Schedule. Display time lines for major tasks, target milestones for important intermediate and final products, and key project outcomes. The time period (period of performance) for the award may be 1–3 years, but funding is assured for only the first year.

6. Project Budget. Provide a detailed budget description that follows the categories and formats in the NOAA grants package and a brief narrative justification of the budget.

7. Resumes. Provide resumes of the Principal Investigator for the project and for other key personnel critical to the success of the project. Ensure that resumes address qualifications relevant to conducting the proposed work. Please limit to two pages for each.

Evaluation Criteria (with Weights) and Selection Process

A review panel, composed of two NOAA and two non-NOAA reviewers, will be established to evaluate the proposals on the basis of the evaluation criteria listed below. The panelists will provide individual evaluations of proposals, thus there will be no consensus recommendation. All proposals reviewed will be ranked according to the average score and the selecting official (the Center's Director) will use those rankings as the basis for the final funding decisions. The selecting official may also consider the following program policy factors: geographic and institutional balance. Thus proposals with the highest scores may not necessarily be selected for award. Reviewers of the proposal will be asked to judge the merits of the proposal with respect to the following criteria:

1. Significance (25%):

How well does the proposal demonstrate that the project will directly or indirectly address critical national, regional, state or local management needs? Are the goals and objectives clearly articulated and relevant tot he stated management or science need?

2. Approach (20%):

Is the technical approach appropriate for the stated goals and objectives? Are the goals and objectives achievable within the proposed timeframe? Does the proposed approach follow a logical work plan with clearly defined and measurable milestones? Do the proposed approaches incorporate innovative or state of the art methodologies? Does the proposal explicitly address data management practices that meet or exceed FGDC standards and promote interoperability with other components of a national ocean observing system?

3. Project Management (10%):

Does the proposal demonstrate institutional support for the project? Are the principal investigators and the organizational framework and personnel qualified to conduct a project of the nature and scope proposed?

4. Partnerships (15%):

Does the proposed project engage external partners to make effective use of complimentary capabilities and competencies beneficial to this project? Is the user community clearly identified and are members of the identified user community engaged in the design and execution of the project or its products? Is duplication of effort reduced through strategic partnerships?

5. Application of Results (20%):

Does the proposal demonstrate that it will significantly address relevant science and management issues? Does the proposal demonstrate that information generated by the project will reach its target audience and have a positive impact on the users ability to perform their responsibilities? Does the proposal include outreach and education components that will ensure the results are effectively applied to address the identified issues?

6. Cost Efficiency (10%):

Does the proposal demonstrate that the budget is commensurate with project needs?

Selection Schedule

Proposals will be reviewed once during the year. The following schedule lists the dates for the project selection and award process for grants: Proposal Deadline (with completed grant package) May 30, 2003. The review process will take up to three months, and applicants will not be notified of the status of their application until the review process is completed. Earliest Approximate Grant Start Date 1 October 2003. Note: All deadlines are for receipt by close of business (5 p.m. Eastern time) on the dates identified. Receipt of proposal and grant package (with original signatures) will be time stamped. Unsuccessful applications will be destroyed by the Program Manager and not returned to the applicant.

Funding Availability

Total funding available for the Coastal Observing System Projects with the Director's Office is anticipated to be no more than $750,000 and funding will be distributed among multiple Projects. The Coastal Services Center desires to fund two types of projects to benefit the development of regional coastal ocean observing systems: (1) projects that facilitate building partnerships and regional organizational structures for regional observing systems (estimated funding for this type of project is anticipated to be between $200,000 to $350,000 with two to five grants being awarded ranging from $20,000 to $100,000), and (2) regional pilot projects (estimated funding for this type of project is anticipated to be between $250,000 to $500,000 with only one or two grants being awarded). Publication of this document does not obligate NOAA to fund any specific grant or to award all or any parts of the available funds.

Cost Sharing

There is no requirement for cost sharing in response to this program announcement.

Eligibility Criteria

Eligible applicants are institutions of higher education, non-profit and for-profit organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, and state, local and Indian tribal governments. Organizations are encouraged to collaborate in development of multi-institutional proposals, however, funding for such a proposal must be awarded to a single (lead) entity that then has responsibility for administration and execution of any subawards. Federal agencies or institutions are not eligible to receive Federal assistance under this announcement, but may be project partners. Note: Federal agencies or institutions who are project partners must demonstrate that they have legal authority to receive funds from outside sources in excess of their appropriation.

General Information

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 01, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

The recipients must comply with Executive Order 12906 regarding any and all geospatial data collected or produced under grants or cooperative agreements. This includes documenting all geospatial data in accordance with the Federal Geographic Data Committee Content Standard for digital geospatial data.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act (APA) or any other law for this notice concerning grants, cooperative agreements, benefits, and contracts, 5 U.S.C. 533 (a) (2). Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et. seq and has not been prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number. The use of the standard grants application package referred to in this notice involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, SF-LLL, and CD–346 have been approved by OMB under the respective Control Numbers 0348–0043, 0348–0044, 0348–0040, 0348–0046, and 0605–0001.

Dated: April 14, 2003.

Jamison S. Hawkins,

Acting Assistant Administrator for Ocean Services and Coastal Zone Management

[FR Doc. 03–9634 Filed 4–17–03; 8:45 am]

BILLING CODE 3510–JE–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031803B]

Marine Mammals; File No. 116–1697

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Sea World Inc., 7007 Sea World Drive, Orlando, FL 32821, has applied in due form for a permit to take one Guadalupe fur seal (Arctocephalus townsendi) for purposes of enhancement.

DATES: Written or telefaxed comments must be received on or before May 19, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant requests authorization to permanently maintain one non-releaseable rehabilitated juvenile male Guadalupe fur seal at Sea World of California (and other Sea World facilities if relocation is necessary) for enhancement purposes. The animal has recurring grand mal seizures and thus, release of this animal may not be in the best interest for the wild population due to the undetermined cause of the condition and the possibility that it may be hereditary. The animal would be provided with daily husbandry care and treatment for seizures, routine medical procedures and neutering, and would be available for opportunistic research. The applicant has requested a five-year permit.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 14, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–9635 Filed 4–17–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Establishment of the U.S. European Command Senior Advisory Group

AGENCY: Department of Defense.

ACTION: Notice of establishment.

SUMMARY: The U.S. European Command Senior Advisory Group (SAG) is being established in consonance with the public interest and in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act," title 5 U.S.C., appendix 2. The SAG will provide the Commander, U.S. European Command with advice, guidance, and assistance toward fulfilling its mission.

The SAG will be composed of a broad spectrum of nationally renowned civilian and military members able to give diverse and divergent points of

view. The committee will be balanced among military and civilian national security experts, academicians, civilian leaders in public service, and others who will afford this command multiple views on issues affecting strategic planning.

FOR FURTHER INFORMATION CONTACT: COL Timothy C. Touzinsky, USA, at (703) 693–4850.

Dated: April 14, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9580 Filed 4–17–03; 8:45 am]

BILLING CODE 5001–08–M

UNIFORMED SERVICES UNIVERSITY OF THE HEALTH SCIENCES

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Uniformed Services University of the Health Sciences.

TIME AND DATE: 8 a.m. to 4 p.m., May 16, 2003.

PLACE: Uniformed Services University of the Health Sciences, Board of Regents Conference Room (D3001), 4301 Jones Bridge Road, Bethesda, MD 20814–4799.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED: 8 a.m. Meeting—Board of Regents

(1) Approval of Minutes—February 4, 2003.
(2) Faculty Matters.
(3) Departmental Reports.
(4) Financial Report.
(5) Report—President, USUHS.
(6) Report—Dean, School of Medicine.
(7) Report—Dean, Graduate School of Nursing.
(8) Comments—Chairman, Board of Regents.
(9) New Business.

CONTACT PERSON FOR MORE INFORMATION: Mr. Bobby D. Anderson, Executive Secretary, Board of Regents, (301) 295–3116.

Dated: April 15, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9835 Filed 4–16–03; 3:32 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2003.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services invites applications for FY 2003 under the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program. This program is authorized under the Individuals with Disabilities Education Act (IDEA), as amended. This notice provides closing dates, a priority, and other information regarding the transmittal of applications.

Please note that important fiscal information is listed in a table at the end of this notice.

Waiver of Rulemaking

It is generally our practice to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the public comment requirements in the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priority in this notice.

Purpose of Program: This program provides technical assistance and information that (1) support States and local entities in building capacity to improve early intervention, educational, and transitional services and results for children with disabilities and their families; and (2) address goals and priorities for changing State systems that provide early intervention, educational, and transitional services for children with disabilities and their families.

Eligible Applicants: State educational agencies (SEAs) of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, outlying areas and Freely Associated States that have not been awarded grants under this competition (84.326X) in previous years. Eligible applicants are listed in the chart at the end of this notice.

An entity eligible to apply for funding under section 661(b)(1) of IDEA may apply on behalf of an SEA, but the entity must include a signed letter of endorsement from the director of the SEA.

The Assistant Secretary does not fund an application submitted by two agencies or entities on behalf of a single State, but encourages a joint application from an SEA and a State lead agency for part C early intervention services in a State in which the SEA is not the State lead agency. An SEA may endorse the State lead agency as the State's applicant under the conditions in the *Maximum Awards* section of this notice.

Applications Available: April 18, 2003.

Deadline for Transmittal of Applications: June 2, 2003.

Deadline for Intergovernmental Review: August 1, 2003.

Estimated Available Funds: $7 million.

Estimated Range of Awards: The chart at the end of this notice lists the range for State basic grant awards for FY 2003.

Estimated Average Size of Awards: $465,000.

Maximum Awards: The chart at the end of this notice lists the amount of State basic grant awards for FY 2003. An applicant should note that it may apply for awards of differing amounts based on whether its application addresses (1) only the part B program; or (2) both the parts B and C programs.

The amounts for a State basic grant are based on the Office of Special Education Programs (OSEP) assessment that the minimal amounts necessary for a State to address only part B program needs and both parts B and C program needs are $120,000 and $200,000 respectively. Calculation of amounts above the minimum levels was based on the 85 percent population rate and 15 percent poverty rate used in the calculation of part B formula grant awards.

Outlying areas are eligible to receive $104,000 for addressing only part B and $130,000 for addressing both parts B and C.

A State may not propose a budget in its application for the basic grant award that exceeds the amounts in this notice.

We will reject any application that proposes a budget exceeding the maximum amount listed on the chart. The Assistant Secretary may reduce the grant award levels based on available funds.

Other Application Requirements

To be considered for a combined parts B and C award, a proposed project must describe in the application narrative (part III): (1) How the SEA and State lead agency participated in developing the application; and (2) how the project will use the funding to address the needs of both the parts B and C programs.

If an SEA endorses the State lead agency as the State's applicant, the proposed project must describe: (1) How the State lead agency and SEA collaborated to develop the application; and (2) how the State lead agency will use the award to address the needs of both the parts B and C programs (*e.g.*, developing or enhancing a data system that tracks the transition of toddlers from part C to part B services).

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: September 30, 2003—September 30, 2004.

Page Limits: If you are an applicant, part III of an application submitted under this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application.

If your proposed project addresses only part B, you must limit part III to the equivalent of no more than 20 pages for a basic grant. If your proposed project addresses both part B and part C you must limit part III to the equivalent of no more than 30 pages. To determine the number of pages or the equivalent, you must use the following standards:

- A "page" is 8.5" x 11" (on one side only) with one-inch margins (top, bottom, and sides).
- Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger and no smaller than 10 pitch (characters per inch).

The page limit does not apply to part I, the cover sheet; part II, the budget section, including the narrative budget justification; part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in part III.

We will reject any application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Additional Requirements

(a) The projects funded under this competition must make positive efforts to employ and advance in employment in project activities qualified individuals with disabilities (*see* section 606 of IDEA).

(b) Applicants and grant recipients under this competition must involve qualified individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (*see* section 661(f)(1)(A) of IDEA).

(c) The projects funded under this competition must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program—CFDA #84.326X is one of the programs included in the pilot project. If you are an applicant under this program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in this e-Application pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days of submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- Closing Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for The Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail or hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension.

To request this extension you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for The Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-Application pilot project (see Parity Guidelines between Paper and Electronic Applications) in the application package.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) The selection criteria are drawn from the general selection criteria in 34 CFR 75.210. The specific selection criteria for this priority are included in the application package for this competition.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

Priority

Under section 685 of IDEA and 34 CFR 75.105(c)(3) we consider only applications that meet the following absolute priority:

Absolute Priority—IDEA General Supervision Enhancement Grant (84.326X)

Background

Over the past seven years, OSEP has worked with interested parties to modify its monitoring system in a way that will improve results for infants, toddlers, and children with disabilities, and their families. The interested parties OSEP has worked with have included SEAs, local educational agencies, parents and advocates. To ensure States' compliance with IDEA, OSEP has implemented a Continuous Improvement Focused Monitoring System (CIFMS). An in-depth explanation of CIFMS can be found at: *http://dssc.org/frc/monitor.htm.*

Since the implementation of CIFMS, SEAs and State lead agencies have endorsed the concept. All of the States have been involved in some phase of CIFMS. Many States have begun the difficult process of—

(1) Developing CIFMS systems at the State level;

(2) Supporting the development of CIFMS systems at the LEA level;

(3) Developing new data systems to support State and local CIFMS systems; and

(4) Developing or enhancing State systems to identify and disseminate research-based promising practices in education and early intervention.

Providing the States with some initial funds to support their participation in CIFMS, as well as to support unique State solutions and strategies developed in response to State-specific challenges identified through participation in CIFMS will reinforce OSEP's and the States' commitment to CIFMS.

Absolute Priority

To be funded under this priority, a project must address one or more of the following three focus areas.

Focus 1: Developing or Enhancing a Data System To Support the Needs of a CIFMS at the State or Local Level

Background

The collection and use of valid and reliable data are cornerstones of CIFMS. An analysis of State self-assessments has shown that many States, as well as their LEAs and local Part C agencies, lack the capacity to collect sufficient data to determine the impact of special education and early intervention services.

Focus

This focus supports the development or enhancement of a data system that is aligned with the data collection needs of CIFMS and that will provide information about one or more of the following:

(a) Appropriate early intervention services or special education and related services or both.

(b) The effectiveness of the monitoring system of the SEA or State lead agency or both.

(c) The effectiveness of interagency coordination.

(d) The effectiveness of the State's dispute resolution system.

(e) The effectiveness of the State's system to identify children's eligibility for part B or part C services or both.

(f) Personnel shortages, including information related to the retention of qualified teachers and service providers.

(g) The system for exercising the general supervisory authority of the SEA or State lead agency or both.

(h) Efforts to address family needs and enhance families' capacities to meet the developmental needs of their children.

(i) Early intervention services in the natural environment or special education and related services in the least restrictive environment or both.

(j) The transition from part C to part B services.

(k) The involvement of parents.

(l) Transition of youth with disabilities from school to work or postsecondary education, including graduation.

(m) Student achievement and participation and performance on assessments of students with disabilities.

Focus 2: Developing or Enhancing a Process to Conduct Activities To Plan Improvement Based on CIFMS

Background

The process of developing improvement plans is a critical component of CIFMS. If done properly, improvement planning will result in improved special education and related services and early intervention or both. OSEP's analysis of State improvement plans in response to OSEP monitoring reports has shown that many States lack a cohesive data-based approach to developing their improvement plans. Many States have had trouble identifying and addressing the systemic barriers, root causes or factors that contributed to the practice that the State or OSEP has determined needs improvement.

Focus

This focus supports the development or enhancement of a process for planning improvement. The process must be aligned with the improvement planning phase of CIFMS and should result in solutions that, for example —

(a) Identify underlying causes and/or systemic barriers to improved early intervention services or special education and related services or both;

(b) Address the root causes and/or systemic barriers to improved early intervention services or special education and related services or both;

(c) Include an evaluation component that assesses the impact of early intervention services or special education and related services or both;

(d) Include an evaluation component that assesses how changes in staff practice affect the provision of special education and related services or early intervention services or both;

(e) Are aligned or coordinated with the State's initiatives for general education reform; and

(f) Are consistent with and responsive to the findings of OSEP monitoring reports.

Focus 3: Developing or Enhancing State Systems To Identify, Disseminate, and Implement Promising Educational or Early Intervention Practices Based on Research

Background

OSEP has found that, to be fully effective, many improvement plans require a State technical assistance and dissemination structure to identify, disseminate, and implement promising educational or early intervention practices based on research. In many States this structure is either nonexistent or lacks sufficient resources to be effective.

Focus

This focus supports the development or enhancement of a statewide technical assistance system that is consistent with CIFMS that is aligned with the process for planning improvement and that addresses such areas as—

(a) Providing information about intervention and instructional practices based on research;

(b) Supporting the use of research-based approaches in instruction and the delivery of service in local schools and agencies;

(c) Serving as a conduit for the dissemination of research-based information among SEAs, State lead agencies, LEAs and Part C agencies, and national technical assistance centers; and

(d) Improving the efficiency of disseminating information by existing State technical assistance centers.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. If you use a telecommunications device for the deaf (TDD) you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*, or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA 84.326X.

FOR FURTHER INFORMATION CONTACT: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the Grants and Contracts Services Team under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Intergovernmental Review

The program in this notice is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

INDIVIDUALS WITH DISABILITIES EDUCATION ACT APPLICATION NOTICE FOR FISCAL YEAR 2003

CFDA number, name of program and eligible applicants	Maximum award for basic grants (per year)	
84.326X IDEA General Supervision Enhancement Grant	IDEA part B only (dollars)	IDEA parts B & C (dollars)
California	1,204,108	1,498,815
Delaware	180,315	288,420
Georgia	437,899	586,475
Indiana	311,574	444,932
Kentucky	280,131	403,698
Louisiana	329,535	458,181
Michigan	486,570	641,313
Mississippi	254,523	374,812
Missouri	325,206	456,558
Nevada	218,306	332,402
North Carolina	407,088	551,843
North Dakota	176,540	283,572
South Dakota	181,360	289,049
Tennessee	344,487	476,970
Texas	944,500	1,177,426
Washington	337,264	472,348
West Virginia	209,835	321,817
Wisconsin	327,120	455,911
Wyoming	172,591	278,879
Virgin Islands	104,000	130,000

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Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo/nara/index.html.*

Program Authority: 20 U.S.C. 1485.

Dated: April 14, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–9540 Filed 4–17–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–232]

Grand River Dam Authority; Notice Granting Late Interventions

April 14, 2003.

On June 28, 2001, the Commission issued a notice of the application for a non-capacity amendment of license filed by the Grand River Dam Authority for the Pensacola Dam Project No. 1494, located on the Grand (Neosho) River in the Oklahoma Counties of Craig, Delaware, Mayes, and Ottawa. The notice established August 10, 2001, as the deadline for filing motions to intervene in the proceeding.

Late motions to intervene in the proceeding were filed by the following entities and individuals: Mike Brady on September 7, 2001; James P. Freeman, trusteee of the Jeri I. Freeman Trust on November 28, 2001; Cheryl Lenhart on November 4, 2002; and Cheryl Creekmore on November 5, 2002. Granting the late motions to intervene will not unduly delay or disrupt the proceeding, or prejudice other parties to it. Therefore, pursuant to rule 214,[1] the late motions to intervene in the proceeding are granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9557 Filed 4–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6032]

Niagara Mohawk Power Corporation and Fourth Branch Associates (Mechanicville); Notice of Meeting

April 14, 2003.

On August 12, 2002, the Commission issued an order accepting surrender of the license for the Mechanicville Project

[1] 18 CFR 385.214 (2002).

No. 6032.[1] The order required Niagara Mohawk Power Corporation (NIMO) to submit plans and schedules for, among other things, complying with the Commission's regulations concerning dam safety (18 CFR part 12) and for recording historic resources associated with the project prior to the effective date of surrender.

On Tuesday, April 29, 2003, at 11 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, Commission staff will hold a conference to hear a proposed settlement between NIMO and Fourth Branch Associates (Mechanicville) for the disposition of the Mechanicville Project. Parties to the proceeding and all interested persons will be permitted to attend.

Any party or interested person who is planning to attend this meeting should notify Commission staff before 4:30 pm, Thursday, April 24, 2003. Please notify Heather Campbell, Office of Energy Projects, Rm 5J–02, in writing, or by calling at 202–502–6182. If any local, state or federal authorized agency representative is unable to attend but wishes to participate by teleconferencing, please so indicate. Teleconferencing details will be provided later.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9561 Filed 4–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 20–019, 2401–007, and 472–017]

PacifiCorp; Notice Granting Late Intervention

April 14, 2003.

On March 15, 2000, the Commission issued a notice of new major license applications filed by PacifiCorp for the Bear River Hydroelectric Projects—Soda Hydroelectric Project No. 20–019, Grace-Cove Hydroelectric Project No. 2401–007, and Oneida Hydroelectric Project No. 472–017, located on the Bear River in Caribou and Franklin Counties, Idaho. The notice established May 15, 2000, as the deadline for filing motions to intervene in the proceeding.

On April 11, 2002, a late motion to intervene was filed by David Weber. Granting the late motion to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to rule 214,[1] the late motion to intervene filed in this proceeding by David Weber is granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9558 Filed 4–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2897–003, 2931–002, 2932–003, 2941–002 and 2942–005]

S. D. Warren Company; Notice Granting Late Interventions

April 14, 2003.

On April 23, 1999, the Commission issued a "Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests" for the Saccarappa, Gambo, Mallison Falls, Little Falls and Dundee Project Nos. 2897–003, 2931–002, 2932–003, 2941–002 and 2942–005, located on the Presumpscot River in Cumberland County, Maine. The notice established June 21, 1999, as the deadline for filing motions to intervene in the proceeding.

On July 6, 1999, September 7, 1999, September 13, 1999, September 22, 1999 and September 29, 1999, motions to intervene were filed by the United States Environmental Protection Agency, Robert P. Hennick, The Sebago Lake Anglers Association, American Rivers, Inc. and Allan Desjardin. Granting the late motions to intervene will not unduly delay or disrupt the proceeding or prejudice other parties to it. Therefore, pursuant to rule 214,[1] the late motions to intervene filed in this proceeding by the United States Environmental Protection Agency, Robert P. Hennick, the Sebago Lake Anglers Association, American Rivers and Allan Desjardin are granted, subject to the Commission's rules and regulations.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9560 Filed 4–17–03; 8:45 am]

BILLING CODE 6717–01–P

[1] 99 FERC ¶ 61,227 (2002), reh'g denied, 100 FERC ¶ 61,185 (2002), request for reconsideration pending.

[1] 18 CFR 385.214 (2002).

[1] 18 CFR 385.214 (2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–74–000, et al.]

Hanover Power. LLC, et al.; Electric Rate and Corporate Filings

April 10, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Hanover Power, LLC, Fresno Power Investors, L.P., and Harold E. Dittmer

[Docket No. EC03–74–000]

Take notice that on April 2, 2003, Hanover Power, LLC (HP), Harold E. Dittmer (Mr. Dittmer), and Fresno Power Investors, L.P. (FPILP) (collectively, the Applicants), filed with the Federal Energy Regulatory Commission (the Commission) an application pursuant to Section 203 of the Federal Power Act seeking authorization for the transfer of certain jurisdictional facilities whereby Applicants request approval of the transfer of 49% of the upstream membership interests in Wellhead Power Panoche, LLC from HP to Mr. Dittmer and FPILP.

Comment Date: April 23, 2003.

2. Maine Public Service Company and Energy Atlantic, LLC

[Docket No. EC03–75–000]

Take notice that on April 2, 2003, Maine Public Service Company (Maine Public) and its wholly-owned subsidiary, Energy Atlantic LLC (Energy Atlantic), filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization of a proposed intracorporate reorganization whereby Maine Public and Energy Atlantic will become direct, wholly-owned subsidiaries of a newly formed corporation.

Main Public and Energy Atlantic states that copies of this filing were served upon the Maine Public Utilities Commission and the Maine Public Advocate Office.

Comment Date: April 23, 2003.

3. Williams Energy Marketing & Trading Company and Progress Ventures, Inc.

[Docket No. EC03–76–000]

Take notice that on April 4, 2003, Williams Energy Marketing & Trading Company (Williams EMT) and Progress Ventures, Inc.(Progress Ventures) tendered for filing with the Federal Energy Regulatory Commission (Commission), a joint application pursuant to section 203 of the Federal Power Act and a request for expedited approval of a proposed transaction whereby Williams EMT will assign its interest in a Power Supply and Energy Call Agreement between Williams EMT and Jackson Electric Membership Corporation (Jackson EMC) to Progress Ventures.

Williams EMT and Progress Ventures state that copies of the public version of this filing were served upon the Georgia Public Service Commission and Jackson EMC.

Comment Date: April 25, 2003.

4. Aquila Piatt County Power L.L.C.

[Docket No. EG03–58–000]

Take notice that on April 8, 2003, Aquila Piatt County Power L.L.C. (Aquila Piatt) filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission regulations.

Aquila Piatt filed its Application in conjunction with the proposed operation of a newly constructed 480 MW simple cycle merchant power plant consisting of six GE 7EA gas-fired combustion turbines located in Piatt County, Illinois.

Comment Date: May 1, 2003.

5. Pacific Gas and Electric Company

[Docket No. ER02–479–003]

Take notice that on April 7, 2003, Pacific Gas and Electric Company (PG&E) submitted for filing a refund report, as directed by the Commission's Letter Order dated December 26, 2002, and the subsequent notice granting an extension of time, issued on January 27, 2003 in Docket Nos. ER02–250–000, ER02–257–000 and ER02–479–000.

PG&E states that copies of this filing have been served upon the parties of record in Docket Nos. ER02–250–000, ER02–257–000 and ER02–479–000.

Comment Date: April 28, 2003.

6. Bangor Hydro-Electric Company

[Docket No. ER06–635–001]

Take notice that on April 4, 2003, Bangor Hydro-Electric Company (BHE) filed supplemental information concerning the Pre-Construction Agreement between BHE and Brascan Energy Marketing, Inc. (BEMI) for the BHE/Great Northern Paper Company—Millinocket 115 kV Interface Project. BHE requests an effective date of October 25, 2002 for the filing.

Comment Date: April 25, 2003.

7. WPS Canada Generation, Inc.

[Docket No. ER03–689–001]

Take notice that on April 8, 2003, WPS Canada Generation, Inc., (WPS) filed a supplement to its April 1, 2003 filing of rate schedules for its Reactive Supply and Voltage Control from Generation Sources Services (Reactive Power Service).

WPS Canada Generation, Inc., states that copies of the filing were served upon Maine Public Service Company; the Northern Maine Independent System Administrator, Inc.; the Houlton Water Company; Eastern Maine Electric Cooperative; and Van Buren Light and Power District.

Comment Date: April 29, 2003.

8. Consumers Energy Company

[Docket No. ER03–15–003]

Take notice that on April 8, 2003 Consumers Energy Company (Consumers) tendered for filing in this docket a copy of its March 31, 2003 filing in Docket No. ER03–388–001. That March 31, 2003 filing included changes to Sheet No. 23 of Consumers' First Revised Rate Schedule No. 116, pursuant to a February 27, 2002 deficiency letter issued in Docket No. ER03–388–000. By the April 8, 2003 filing, the changes included in the March 31, 2003 filing are bing submitted in Docket No. ER03–15–003.

Consumers states that copies of the filing were served upon those on the official service list.

Comment Date: April 29, 2003.

9. Marina Energy, LLC

[Docket No. ER03–715–000]

Take notice that on April 7, 2003, Marina Energy, LLC (Marina) tendered for filing, Marina Rate Schedule FERC No. 1, under which Marina will engage in wholesale electric power and energy transactions as a marketer. Marina requests an effective date of 60 days from date of filing or upon issuance of the Commission's Order, whichever occurs first.

Comment Date: April 28, 2003.

10. Chehalis Power Generating Limited Partnership

[Docket No. ER03–717–000]

Take notice that on April 7, 2003, Chehalis Power Generating Limited Partnership (Chehalis Power) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Chehalis Power states that it proposes to own and operate a 520 MW gas-fired electric power plant under construction in Lewis County in the State of Washington.

Comment Date: April 28, 2003.

11. PJM Interconnection, L.L.C.

[Docket No. ER03–718–000]

Take notice that on April 7, 2003, PJM Interconnection, L.L.C. (PJM) submitted for filing an Emergency Energy Service Agreement Between Duquesne Light Company and PJM Interconnection, L.L.C. PJM requests waiver of the Commission's notice requirements to permit an effective date of May 1, 2003 for the agreement.

PJM states that copies of this filing were served upon Duquesne Light Company and each state electric utility regulatory commission in the PJM and Duquesne regions.

Comment Date: April 28, 2003.

12. New Athens Generating Company, LLC; New Covert Generating Company, LLC; New Harquahala Generating Company, LLC; New Millennium Power Partners, LLC

[Docket Nos. ER03–719–000; ER03–720–000; ER03–721–000; and ER03–722–000]

Take notice that on April 7, 2003, New Athens Generating Company, LLC, New Covert Generating Company, LLC, New Harquahala Generating Company, LLC and New Millennium Power Partners, LLC, submitted for filing, pursuant to Section 205 of the Federal Power Act, and part 35 of the Commission's regulations, an application for authorization to make sales, as power marketers of capacity, energy, and certain Ancillary Services at market-based rates; to reassign transmission capacity; and to resell firm transmission rights; to waive certain of the Commission's regulations promulgated under the FPA; and to grant certain blanket approvals under other such regulations.

Comment Date: April 28, 2003.

13. Texas-New Mexico Power Company

[Docket No. ER03–723–000]

Take notice that on April 8, 2003, Texas-New Mexico Power Company (TNMP) tendered for filing an Interconnection Agreement (Interconnection Agreement) between TNMP and Tri-State Generation and Transmission Association, Inc., (Tri-State). TNMP requests waiver of the Commission's prior notice requirement so that the Interconnection Agreement is made effective February 4, 2003.

TNMP states that copies of the filing were served upon Tri-State and the New Mexico Public Regulation Commission.

Comment Date: April 29, 2003.

14. Southern California Edison Company

[Docket No. ER03–724–000]

Take notice that on April 8, 2003, Southern California Edison Company (SCE) tendered for filing a Service Agreement for Wholesale Distribution Service under SCE's Wholesale Distribution Access Tariff and an Interconnection Facilities Agreement (Agreements) between SCE and WM Energy Solutions, Inc. (WMES). SCE respectfully requests the Agreements become effective on April 9, 2003.

SCE states that these Agreements specify the terms and conditions under which SCE will interconnect WMES's El Sorbrante Landfill Project (Project) to its electrical system and provide Distribution Service for up to 3.93 MW of power produced by the Project to the California Independent System Operator Controlled Grid.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and WMES.

Comment Date: April 29, 2003.

15. Aquila Piatt County Power L.L.C.

[Docket No. ER03–725–000]

Take notice that on April 8, 2003, Aquila Piatt County Power L.L.C. (Aquila Piatt), an indirect wholly owned subsidiary of Aquila, Inc., tendered for filing a rate schedule to engage in wholesale sales at market-based rates and a petition for waivers and blanket approvals under various regulations of the Commission. Aquila Piatt included in its filing a proposed code of conduct.

Comment Date: April 29, 2003.

16. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–727–000]

Take notice that on April 8, 2003, the Midwest Independent Transmission System Operator, Inc., (Midwest ISO) submitted for filing proposed revisions to the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No.1. The Midwest ISO submits that its proposed revisions are either (i) non-substantive in nature (*i.e.*, correct minor pagination errors and update the table of contents); (ii) viewed as necessary by certain Midwest ISO stakeholders given the fact that the provisions filed in the Resulting Company Tariff will not go into effect; or (iii) being made at the request of the Midwest ISO's Transmission Owners and other stakeholders.The Midwest ISO has requested an effective date of June 7, 2003.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO indicates that it will provide hard copies to any interested parties upon request.

Comment Date: April 29, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9547 Filed 4–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

April 14, 2003.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement agreement.

b. *Project No.:* P–12379.

c. *Date filed:* March 24, 2003.

d. *Applicant:* Lake Dorothy Hydro, Inc.

e. *Name of Project:* Lake Dorothy Hydroelectric Project.

f. *Location:* On 1,804 acres administered by the Tongass National Forest, at Lake Dorothy on Dorothy Creek, near Juneau, Alaska. Township 42S, Range 69E and 70E, Copper River Meridian.

g. *Filed Pursuant to:* Rule 602 of the Commission's rules of practice and procedure, 18 CFR 385.602.

h. *Applicant Contact:* Mr. Corry V. Hildenbrand, President, Lake Dorothy Hydro, Inc., 5601 Tonsgard Court, Juneau, AK 99801–7201, (907) 463–6315; and Ms. Susan Tinney, Licensing Coordinator, S. Tinney Associates, Inc., P.O. Box 985, Lake City, CO 81235, (970) 944–1020.

i. *FERC Contact:* Michael H. Henry, E-mail—*mike.henry@ferc.gov* or telephone (503) 552–2762.

j. *Deadline for filing comments:* May 5, 2003. Reply comments due May 15, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. *Description of Filing:* The Alaska Department of Fish and Game filed the Offer of Settlement on behalf of itself and Lake Dorothy Hydro, Inc.. The purpose of the Offer of Settlement concerns the resolution of project operation, fish passage, instream flow requirements and compensatory mitigation for potential impacts to aquatic resources in the Lake Dorothy watershed. The signatories ask the Commission to accept the Offer of Settlement and incorporate the Compensatory Terms of the Settlement Agreement into any license issued for the project.

l. A copy of the settlement agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9556 Filed 4–17–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2496]

Eugene Water and Electric Board; Notice of Meeting

April 14, 2003.

On Thursday, April 24, 2003, in Leaburg, Oregon, Commission staff will hold an informational meeting on current and future activities at the Leaburg Walterville Project, FERC No. 2496.

Commission staff will discuss the embankment clearing, the pending recreation plan, and other compliance filings. Eugene Water and Electric Board (EWEB) will provide information about its current compliance activities and the status of future compliance filings. Commission and EWEB staff will be available to answer questions.

The informational meeting will take place at the Leaburg, Oregon Community Center from 7–9:30 p.m. on April 24, 2003. All interested persons are encouraged to attend.

Please direct any questions about this meeting to Heather Campbell at 202–502–6182 or June Morgan 202–502–6001.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9559 Filed 4–17–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0083; FRL–7296–1]

Compliance Requirement for Child-Resistant Packaging; Renewal of Pesticide Information Collection Activities and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*) this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): Compliance Requirement for Child-Resistant Packaging (EPA ICR No. 0616.08, OMB Control No. 2070–0052). This is a request to renew an existing ICR that is currently approved and due to expire January 31, 2004. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPP–2003–0083, must be received on or before June 17, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Nancy Vogel, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: vogel.nancy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a pesticide registrant who sells and distributes pesticide products to the general public in the United States. Potentially affected categories and entities may include, but are not limited to:

- Pesticide and other agricultural chemical manufacturing (NAICS 325320), e.g., Pesticide registrants who sell and distribute pesticide products to the general public in the United States.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Copies of this Document and Other Related Information?

A. Docket

EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0083. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

B. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments,

access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit II.A. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

III. How Can I Respond to this Action?

A. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit III.B. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0083. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0083. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit III.A. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0083.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0083. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit II.A.

B. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

C. What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

D. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

IV. What Information Collection Activity or ICR Does This Action Apply to?

EPA is seeking comments on the following ICR:

Title: Compliance Requirement for Child-Resistant Packaging.

ICR numbers: EPA ICR No. 0616.08, OMB Control No. 2070–0052.

ICR status: This ICR is a renewal of an existing ICR that is currently approved by OMB and is due to expire January 31, 2004.

Abstract: This information collection program is designed to provide EPA with assurances that the packaging of pesticide products sold and distributed to the general public in the United States meets standards set forth by the Agency pursuant to FIFRA. Registrants must certify to the Agency that the packaging or device meets these standards. Responses to this collection are required in order to obtain pesticide registration. The authority for this information collection is pursuant to section 25 (c)(3) of FIFRA. Compliance regulations are contained in title 40 of the Code of Federal Regulations (CFR) part 157. CBI submitted to EPA in response to this information collection is protected from disclosure under FIFRA section 10.

V. What Are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this ICR is estimated to be 853.4 hours. The following is a summary of the estimates taken From the ICR:

Respondents/affected entities: Pesticide registrants who sell and distribute pesticide products to the general public in the United States.

Estimated total number of potential respondents: 502.

Frequency of response: Per event.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 853.4.

Estimated total annual burden costs: $58,232.00.

VI. Are There Changes in the Estimates From the Last Approval?

Total respondent costs associated with this program rose from $55,019.20 to $58,232.00. Total Agency costs rose from $213,751.60 to $245,176.80. Changes to total costs associated with this program are due to the increase in labor rates, reflecting the most current estimates.

VII. What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: April 9, 2003.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–9485 Filed 4–17–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0017; FRL–7303–3]

Voluntary Cover Sheet for TSCA Submissions; Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), EPA is seeking public comment on the following Information Collection Request (ICR): Voluntary Cover Sheet for TSCA Submissions, (EPA ICR No. 1780.03, OMB Control No. 2070–0156). This ICR involves a collection activity that is currently approved and scheduled to expire on February 29, 2004. The use of this information collection will enable the Agency more

easily to collect, identify, process, store, retrieve, and disseminate information on health and environmental risks associated with toxic chemicals. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2003–0017, must be received on or before June 17, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Ron Carlson, Information Management Division (7407M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8631; fax number: (202) 564–7480; e-mail address: carlson.ron@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you manufacture, process, use, import, or distribute in commerce chemical substances that are subject to reporting requirements under sections 4, 8(d), or 8(e) of the Toxic Substances Control Act (TSCA). Potentially affected entities may include, but are not limited to:

- Petroleum and Coal Products Manufacturing (NAICS 324), e.g., Petroleum Refineries, Petroleum Lubricating Oil and Grease Manufacturing, Asphalt Paving, Roofing and Saturated Materials Manufacturing, and Other Petroleum and Coal Products Manufacturing.
- Chemical Manufacturing (NAICS 325), e.g., Basic Chemical Manufacturing, Synthetic Dye and Pigment Manufacturing, Inorganic Dye and Pigment Manufacturing, Paint and Coating Manufacturing, and Adhesive Manufacturing.
- Petroleum and Petroleum Products Wholesalers (NAICS 42272), e.g., Petroleum and Petroleum Products Wholesalers (except Bulk Stations and Terminals).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0017. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

i. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2003–0017. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to oppt.ncic@epa.gov, Attention: Docket ID Number OPPT–2003–0017. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0017. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does This Action Apply to?

EPA is seeking comments on the following ICR:

Title: Voluntary Cover Sheet for TSCA Submissions.

ICR numbers: EPA ICR No. 1780.03, OMB Control No. 2070–0156.

ICR status: This ICR is currently scheduled to expire on February 29, 2004.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: TSCA requires industry to submit information and studies for existing chemical substances under sections 4, 6, and 8. Under normal reporting conditions, EPA receives thousands of submissions each year; each submission represents on average three studies. In addition, specific data call-ins can be imposed on industry.

As a follow-up to industry experience with a 1994 TSCA data call-in, the Chemical Manufacturers Association (CMA, now known as the American Chemistry Council (ACC)), the Specialty Organics Chemical Manufacturers Association (SOCMA), and the Chemical Industry Data Exchange (CIDX), in cooperation with EPA, took an interest in pursuing electronic transfer of TSCA summary data and of full submissions to EPA. In particular, ACC developed a standardized cover sheet for voluntary use by industry as a first step to an electronic future and to begin familiarizing companies with standard requirements and concepts of electronic transfer. This form is designed for voluntary use as a cover sheet for submissions of information under TSCA sections 4, 8(d), and 8(e). The cover sheet facilitates submission of information by displaying certain basic data elements, permitting EPA more easily to identify, log, track, distribute, review and index submissions, and to make information publicly available more rapidly and at reduced cost, to the mutual benefit of both the respondents and EPA.

Responses to the collection of information are voluntary. Respondents may claim all or part of a notice CBI. EPA will disclose information that is covered by a CBI claim only to the extent permitted by, and in accordance with, the procedures in 40 CFR part 2.

III. What Are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 0.5 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: 964.

Estimated total number of potential respondents: Unknown.

Frequency of response: On occasion.

Estimated average number of responses for each respondent: 19.

Estimated total annual burden hours: 9,136 hours.

Estimated total annual burden costs: $703,435.

IV. Are There Changes in the Estimates From the Last Approval?

There is an increase of 8,221 hours (from 915 hours to 9,136 hours) in the total estimated respondent burden compared with that identified in the information collection request most recently approved by OMB. This change reflects a net increase in the estimated number of submissions under TSCA sections 4, 8(d), and 8(e) for which the Voluntary TSCA Cover Sheet could be used, in particular a substantial increase in the estimated number of TSCA section 4 submissions. Since the use of the Voluntary TSCA Cover Sheet is a direct reflection of the number of submissions received under TSCA sections 4, 8(d), and 8(e), any change in the estimated numbers of submissions under those requirements will result in a parallel change in the burden hours associated with this information collection. This increase represents an adjustment.

V. What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: April 9, 2003.

Susan B. Hazen,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–9624 Filed 4–17–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6639–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://epa.gov/complianc/nepa/.*

Weekly receipt of Environmental Impact Statements

filed April 7, 2003, through April 11, 2003,

pursuant to 40 CFR 1506.9.

EIS No. 030163, Draft EIS, SFW, CA, Programmatic

EIS—San Francisco Estuary Invasive Spartina Project, Spartina Control Program to Preserve and Restore Ecological Integrity of the Estuary's Intertidal Habitats, Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, CA, comment period ends: June 2, 2003, contact: Mark Littlefield (916) 414–6581.

This document is available on the Internet at: *http://sacramento.fws.gov.*

EIS No. 030164, Final Supplement, COE, FL, PCS Phosphate—White Springs Mine Continuation Mining Operations, Proposes to Discharge Dredged/ Fill Material into 1,858 Acres of Jurisdictional Wetlands, Applications of "Life of Mine" Permits, Hamilton County, FL, wait period ends: May 19, 2003, contact: Richard Legere (352) 331–0732.

EIS No. 030165, Final EIS, COE, ND, Devils Lake Basin North Dakota Study, the Reduction of Flood Damages Related to the Rising Lake Levels and the Flood-Prone Areas Around Devils Lake and to Reduce the Potential for Natural Overflow Event, Sheyenne River and Red River of the North, ND, wait period ends: May 19, 2003, contact: Robert Anfang (651) 290–5268.

EIS No. 030166, Final EIS, FHW, CA, CA–22/West Orange County Connection Project, Transportation Improvements between Interstate 605 and State Route 55, in the cities of Los Alamitos, Seal Beach, Garden Grove, Westminster, Santa Ana, and Orange, Orange County, CA, wait period ends: June 2, 2003, contact: Robert Cady (916) 498–5038.

EIS No. 030167, Final EIS, COE, TX, Corpus Christi Ship Channel Improvements Project, Commercial Navigation Improvements and Ecosystem Restoration, Corpus Christi and Nueces Bays, Nueces and San Patricio Counties, TX, wait period ends: May 19, 2003, contact: Carolyn Murphy (409) 766–3044.

EIS No. 030168, Final EIS, COE, FL, Lee County Beach Erosion Control Project, Shore Protection, Gasparilla and Estero Islands, Lee County, FL, wait period ends: May 19, 2003, contact: Yvonne Harberer (904) 232–1701.

EIS No. 030169, Draft Supplement, NOA, Atlantic Sea Scallop Fishery Management Plan (FMP), Amendment 10 is to Introduce Spatial Management of Adult Scallops, Essential Fish Habitat (EFH), from the Gulf of Maine and Georges Banks to Cape Hatteras, NC, comment period ends: July 16, 2003, contact: Paul J. Howard (978) 465–0492.

EIS No. 030170, Final EIS, AFS, WA, Quartzite Watershed Management Project, Watershed Management Activities including Vegetation Management, Riparian/Wetland Management and Road Management, Colville National Forest, Thomason Sherwood-Cottonwood Creek, Three Rivers Ranger District, Stevens County, WA, wait period ends: May 19, 2003, contact: Sherri Schwenke (509) 738–7000.

This document is available on the Internet at: *http://www.fs.fed.us/r6/colville/forest/projects/quartzite.html.*

EIS No. 030171, Draft EIS, AFS, UT, Prima East Clear Creek Federal No. 22–42 Gas Exploration Well, Application for Permit to Drill and (Surface Use Plan of Operations) Castle Valley Ridge, Ferron/Price Ranger District, Manti-La Sal National Forest, Carbon and Emery Counties, UT, comment period ends: June 2, 2003, contact: Karl Boyer (435) 637–2817.

Amended Notices

EIS No. 020474, Draft EIS, FHW, AK, South Extension of the Coastal Trail Project, To Extend the Existing Tony Knowles Coastal Trail from Kincaid Park through the Project Area to the Potter Weigh Station, COE section 10 and 404 permit, Municipality of Anchorage, Anchorage, Alaska, comment period ends: May 16, 2003, contact: Tim A. Haugh (907) 586–7418. Revision of FR notice published on 11/22/2002: CEQ comment period ending on 3/7/2003 has been extended to 5/16/2003.

EIS No. 030108, Final EIS, GSA, WI, Badger Army Ammunition Plant, Property Disposal, Implementation, Townships of Sumpter and Merrimac, Sauk County, WI, wait period ends: April 28, 2003, contact: Mark N. Lundgren (312) 353–0302. Revision of FR notice published on 3/21/2003: CEQ comment period ending 4/21/2003 has been extended to 4/28/2003.

Dated: April 15, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–9626 Filed 4–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIORNMENTAL PROTECTION AGENCY

[ER–FRL–6639–5]

Notice of Intent To Prepare an Environmental Impact Statement for the Comprehensive Port Improvement Plan Within the Port of New York (NY) and New Jersey (NJ)

AGENCY: U.S. Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (USACE), and Federal Highway Administration (FHWA) acting as Federal co-lead agencies.

ACTION: Federal co-lead agencies submit this Notice of Intent to prepare an Environmental Impact Statement for the Comprehensive Port Improvement Plan (CPIP–EIS) that may be adopted as state or local equivalent documents. The CPIP–EIS will be prepared concurrently with a CPIP Plan (CPIP–Plan) for the Port of NY and NJ (Port); the CPIP–Plan will be prepared by a Consortium, consisting of the Port Authority of NY and NJ, the OMR/NJDOT, NYESDC, and NY City Economic Development Corporation (NYCEDC). The CPIP–Plan and CPIP–EIS will: seek to define economically viable and environmentally sound Port facility and associated transportation network improvement initiatives to the year 2060; consider separate, ongoing, and planned environmental enhancements to natural resources of the Port and associated transportation network; incorporate Green Port principles to the maximum extent practicable; evaluate, avoid, minimize, and mitigate adverse environmental effects.

Schedule: Scoping will begin in April 2003 with interviews and public announcements to encourage a large turnout for subsequent meetings which will follow in June 2003.

Six scoping meetings for the CPIP EIS are planned to solicit comments, to determine the scope of issues, and to identify significant issues related to the proposed action. Formal comments may be given at the scoping meetings and a court reporter will be available to record comments. Scoping will conclude 30 days after the final scoping meeting (about late September 2003).

Services: Meeting locations will be accessible to people with disabilities. People with special disability related needs should contact the NEPA Coordinator for the CPIP at the address or phone number below. Reading materials will be available at meetings and may be obtained in advance by contacting the NEPA Coordinator for the CPIP, or visiting *www.cpiponline.org.*

For further information about Scoping, or the CPIP–EIS process, please contact the NEPA Coordinator for the CPIP at: Lorne LaMonica, NEPA Coordinator for the CPIP, U.S. Environmental Protection Agency, Environmental Review Section, 25th Fl., 290 Broadway NY, NY 10007. Phone: 1–866–877–CPIP (2747); E-mail: *lamonica@cpipeis.com.*

For your information, the Federal Co-Lead agency contacts are listed below:

Dave Carlson, U.S. Environmental Protection Agency, Environmental Review Section, 25th Fl., 290 Broadway, NY, NY 10007.

Nancy J. Brighton, U.S. Army Corps of Engineers, New York District, 26 Federal Plaza, Room 2146, NY, NY 10278–0090.

Richard E. Backlund, Federal Highway Administration, U.S. Department of Transportation, One Bowling Green, Room 428, NY, NY 10004–1415.

Summary Information

Authority—Authority for completion of the CPIP–EIS for each agency can be found at: EPA—Title 40 CFR part 6, FR: October 29, 1998, Number 209; USACE—33 U.S.C. 403, 33 U.S.C. 1344, and 33 U.S.C. 1413; FHWA—Title 23 CFR part 771; OMR/NJDOT—Executive Order (EO) No. 215 of 1989, 23 CFR Part 771.109, NJ CZM Rules, N.J.A.C. 7:7E; NYESDC—6 NYCRR PART 617 SEQR, ECL Sections 3–0301(1)(b), 3–0301(2)(m) and 8–0113.

Estimated Date of Draft EIS Release—Summer of 2004.

Purpose and Need for Action—The NY and NJ Harbor Navigation Study (HNS), prepared by the USACE in 1999, projected a substantial increase in the amount of containerized cargo destined for the Port over the period to 2060. The ability of existing Port facilities to handle future cargo volumes as forecast in the HNS indicates that the Port facilities and associated transportation network may need to make future additional improvements, beyond those currently planned, to efficiently manage projected cargo over that period. Other studies concerning the Port, prepared by various federal, state and local stakeholders, have identified plans to increase Port capacity and have highlighted a number of environmental issues of concern to the Port and regional area. The CPIP-Plan will consider the Port region as a complete system, and will seek to develop a port-wide plan that is economically efficient and environmentally sustainable, and considers environmental restoration efforts in the region; the CPIP–EIS will evaluate potential impacts of various Federal, state, and local port and transportation improvement strategies to achieve this.

Study Area—Study areas for the analysis of impacts of port and transportation improvement alternatives at existing, and potentially new, port facilities will encompass the port sites' premises and vicinities, and, at a minimum, the Port District.

Alternatives—The CPIP–EIS will evaluate a variety of alternatives, including, but not limited to: the no-action alternative; facility productivity and efficiency enhancements and improvements; facility expansion; new terminal facilities sited either in uplands or through placement of fill in waters and wetlands; and combinations of these alternatives. Consideration of alternatives will include identification and evaluation of improvements to the transportation infrastructure serving the Port. The CPIP–EIS will analyze direct, indirect and cumulative impacts of each alternative.

Scoping—Comments should focus on social, economic, or environmental issues to be evaluated; and on identifying the alternatives that may achieve both economic and environmental goals.

Public Involvement—Activities may include stakeholder and community meetings, open houses with technical staff, workgroups/workshops, a web site, and project fact sheets and newsletters.

Issues for Analysis—The CPIP–EIS will evaluate potential changes to the social, economic, and physical environment that would result with the defined project\alternatives, including: land use and zoning; socioeconomics; parklands; historic and archeological resources; aesthetics; traffic and transportation; air quality; noise; navigation; floodplains and hydrology; topography, geology, and soils; wetlands and special aquatic sites; wildlife and waterfowl refuges; water quality; groundwater and sole source aquifers; aquatic and terrestrial ecology; endangered and threatened species; resource contamination and hazardous waste sites; and environmental justice. Impacts will be evaluated both for the construction period and for the long-term operation period of each alternative. Measures to mitigate any significant adverse impacts will be identified.

Responsible Official—

Dated: March 11, 2003.

Anne Norton Miller,

Director, OFA.

[FR Doc. 03–9625 Filed 4–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7485–1]

National and Governmental Advisory Committees to the U.S. Representative to the Commission for Environmental Cooperation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the U.S. Environmental Protection Agency (EPA) gives notice of a meeting of the National Advisory Committee (NAC) and Governmental Advisory Committee (GAC) to the U.S. Representative to the North American Commission for Environmental Cooperation (CEC).

The National and Governmental Advisory Committees advise the Administrator of the EPA in her capacity as the U.S. Representative to the Council of the North American Commission for Environmental Cooperation. The Committees are authorized under Articles 17 and 18 of the North American Agreement on Environmental Cooperation (NAAEC), North American Free Trade Agreement Implementation Act, Pub. L. 103–182 and as directed by Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation." The Committees are responsible for providing advice to the U.S. Representative on a wide range of strategic, scientific, technological, regulatory and economic issues related to implementation and further elaboration of the NAAEC. The National Advisory Committee consists of 12 representatives of environmental groups and non-governmental organizations, business and industry, and educational institutions. The Governmental Advisory Committee consists of 12 representatives from state, local and tribal governments.

The Committees are meeting to develop recommendations to the Administrator of EPA on priority issues that the U.S. should address during the Commission for Environmental Cooperation Council of Ministers Session in June, 2003.

DATES: The Committees will meet on Thursday, May 8, 2003 from 9 a.m. to 6 p.m., and on Friday, May 9, 2003 from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Washington Terrace Hotel, 1515 Rhode Island Avenue NW., Washington, DC. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mr. Oscar Carrillo, Designated Federal Officer, U.S. EPA, Office of Cooperative Environmental Management, at (202) 233–0072.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Oscar Carrillo at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: April 9, 2003.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 03–9623 Filed 4–17–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7485–2]

Arsenic Treatment Demonstrations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) plans to conduct the second phase of a demonstration program on the treatment (reduction and/or removal) of arsenic in drinking water. The notice on the first phase of the program was published on March 28, 2002 (67 FR 14951). The USEPA recently promulgated a standard that limits arsenic concentrations in drinking water to 10 ug/l. Through this demonstration program, the USEPA intends to identify and evaluate the ability of commercially available technologies and engineering or other approaches to cost effectively meet the new standard in small water systems (<10,000 customers). Through this notice, the USEPA is inviting the public at large, governmental and regulatory agencies, public health agencies, and drinking water utilities to identify small water utilities that may be interested in hosting a demonstration at their facility. Such utilities should be those which will require treatment to comply with the new arsenic standard. Unless it is desired to update the information submitted earlier, utilities that responded to the March 28, 2002 Notice do not need to resubmit. Those utilities will be included automatically in the second phase. This notice does not constitute a procurement.

DATES: Please submit the requested information by July 15, 2003.

ADDRESSES: Details on participation in this study can be found at: *http://www.epa.gov/ORD/NRMRL/arsenic/.*

FOR FURTHER INFORMATION CONTACT: Robert Thurnau, National Risk Management Research Laboratory, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, Ohio, 45268, telephone (513) 569–7504.

Dated: April 2, 2003.

Lee A. Mulkey,

Acting Director, National Risk Management Research Laboratory.

[FR Doc. 03–9622 Filed 4–17–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 5, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Jeffrey L. Gerhart, Newman Grove, Nebraska; to acquire voting shares of First Newman Grove Bankshares Corporation, Newman Grove, Nebraska, and thereby indirectly acquire voting shares of The First National Bank of Newman Grove, Newman Grove, Nebraska.

Board of Governors of the Federal Reserve System, April 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–9652 Filed 4–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 15, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Central Georgia Banking Company, Cochran, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of State Bank of Cochran, Cochran, Georgia.

Board of Governors of the Federal Reserve System, April 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–9651 Filed 4–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 5, 2003.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Sleepy Hollow Bancorp, Inc., Sleepy Hollow, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Sleepy Hollow Bank, Sleepy Hollow, New York.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Total Bancshares Corporation, Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of TotalBank, Miami, Florida.

C. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. PNB Bancshares, Inc., Pekin, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Pekin National Bank, Pekin, Illinois.

D. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. The Farmers State Bank of Fort Morgan Colorado Employee Stock Ownership Plan, Fort Morgan, Colorado; to acquire up to 38 percent of the voting shares of F.S.B, Bancorporation of Fort Morgan, Fort Morgan, Colorado, and thereby indirectly acquire voting shares of Farmers State Bank, Fort Morgan, Colorado.

Board of Governors of the Federal Reserve System, April 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–9653 Filed 4–17–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting Notice

TIME AND DATE: 9 a.m. (EDT), April 28, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of minutes of the March 31, 2003, Board member meeting.
2. Executive Director's report, including the following items:
   a. Legislative report,
   b. Investment report, and
   c. Participation information.
3. Presentation of audited financial statements by Ernst and Young.
4. Status of new recordkeeping system.

Parts Closed to the Public

5. Discussion of litigation matters.
6. Discussion of personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–9736 Filed 4–16–03; 2:07 pm]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–242, CMS–1763, CMS–4040–SP, CMS–10069, CMS–R–52, CMS–R–30]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Refinement of RHC Certification and QAPI and Supporting Regulations in 42 CFR 491.8 and 491.11.

Form No.: CMS–R–242 (OMB# 0938–0792).

Use: This collection contains information collection requirements concerning requests for additional waivers of staffing requirements and documentation of quality assessment and performance improvement programs.

Frequency: Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 3,528.

Total Annual Responses: 3,573.

Total Annual Hours: 3,663.

2. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Request for Termination of Premium+Hospital and/or Supplementary Medical Insurance.

Form No.: CMS–1763 (OMB# 0938–0025).

Use: The CMS–1763 is used by beneficiaries to request voluntary termination from Premium Hospital Insurance (premium-HI) and/or Supplementary Medicare Insurance (SMI).

Frequency: One time only.

Affected Public: Individuals or Households, Federal Government, State, local, and tribal government.

Number of Respondents: 14,000.

Total Annual Responses: 14,000.

Total Annual Hours: 5,833.

3. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Request for Enrollment in Supplemental Medicare Insurance and Supporting Regulations in 42 CFR 407.10 and 401.11.

Form No.: CMS–4040 and 4040–SP (OMB# 0938–0245).

Use: The CMS 4040 is used to establish entitlement to Supplemental Medical Insurance (Part B) by beneficiaries not eligible under Part A of the Title XVIII or Title II of the Social Security Act. The CMS–4040SP is also included in this renewal.

Frequency: One time only.

Affected Public: Individuals or Households, Federal Government, State, local, and tribal government.

Number of Respondents: 10,000.

Total Annual Responses: 10,000.

Total Annual Hours: 2,500.

4. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Medicare Waiver Demonstration Application.

Form No.: CMS–10069 (OMB# 0938–0880).

Use: The Medicare Waiver Demonstration Application will be used to collect standard information needed to implement Congressionally mandated and administration high priority demonstrations. The application will be used to gather information about the characteristics of the applicant's organization, benefits, and services they propose to offer, success in operating the model, and evidence that the model is likely to be successful in the Medicare program. The standard application will be used for all waiver demonstrations and will reduce the burden on applicants, provide for consistent and timely information collections across demonstration, and provide a user-friendly format for respondents.

Frequency: On Occasion.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Number of Respondents: 75.

Total Annual Responses: 75.

Total Annual Hours: 1600.

5. *Type of Information Collection Request:* Extension of a currently approved collection.

Title of Information Collection: Conditions of Coverage of Suppliers of End Stage Renal Disease (ESRD).

Form No.: CMS–R–52 (OMB# 0938–0386).

Use: This package is needed to encourage proper distribution and effective utilization of ESRD treatment sources while maintaining and improving the efficient delivery of care by physicians and dialysis facilities.

Frequency: Annually.

Affected Public: Business or other for-profit and Federal Government.

Number of Respondents: 4,297.

Total Annual Responses: 4,297.

Total Annual Hours: 148,785.

6. *Type of Information Collection Request:* Revision of a currently approved collection.

Title of Information Collection: Information Collection Requirements in the Hospice Conditions Coverage. The following regulations are affected: 42 CFR 418.22; 418.24; 418.28; 418.56(b), (e)(1), (e)(3); 418.58; 418.70(e); 418.83; 418.96(b); and 418.100(b).

Form No.: CMS–R–30 (OMB# 0938–0302).

Use: Establishes standards for hospices that wish to participate in the Medicare program. The regulations establish standards for eligibility, reimbursement standards and procedure, and delineate conditions that hospices must meet to be approved for participation in Medicare.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 2,316.

Total Annual Responses: 2,316.

Total Annual Hours: 5,981,427.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 10, 2003.

Dawn Willinghan,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–9548 Filed 4–17–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Tribal Temporary Assistance for Needy Families Quarterly Financial Report.

OMB No.: New Request.

Description: The form provides specific data regarding expenditures and provides a mechanism for Tribes to request grant awards and certify the availability of State matching funds. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress. The following citations should be noted in regards to this collection: 45 CFR 286.255.

Respondents: Tribal TANF Agencies.

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196TT	20	4	2	160

Estimated Total Annual Burden Hours: 160.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 15, 2003.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 03–9639 Filed 4–17–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03E–0031]

Determination of Regulatory Review Period for Purposes of Patent Extension; VFEND

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VFEND and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VFEND (voriconaxole). VFEND is indicated for use in the treatment of the following fungal infections: Invasive *aspergillosis* and serious fungal infections caused by *scedosporium apiospermum* and *fusarium spp.*, including *fusarium solani*, in patients intolerant of or refractory to other therapies. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VFEND (U.S. Patent No. 5,567,817) from Pfizer, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 4, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VFEND represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VFEND is 2,452 days. Of this time, 1,898 days occurred during the testing phase of the regulatory review period, while 554 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective:* September 8, 1995. The applicant claims September 27, 1995, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was September 8, 1995, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act:* November 17, 2000. FDA has verified the applicant's claim that the new drug application (NDA) for VFEND (NDA 21–266) was initially submitted on November 17, 2000.

3. *The date the application was approved:* May 24, 2002. FDA has verified the applicant's claim that NDA 21–266 was approved on May 24, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 945 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written comments and ask for a redetermination by June 17, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 15, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any mailed information to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–9577 Filed 4–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1248]

Determination of Regulatory Review Period for Purposes of Patent Extension; TIKOSYN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for TIKOSYN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product TIKOSYN (methanesulfonamide). TIKOSYN is approved for the following indications: (1) Maintenance of normal sinus rhythm (delay in time to recurrence of atrial fibrillation/atrial flutter (AF/AFl)) in patients with AF/AFl of greater than 1 week duration who have been converted to normal sinus rhythm; and (2) conversion of AF/AFl to normal sinus rhythm. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for TIKOSYN (U.S. Patent No. 4,959,366) from Pfizer, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 26, 2000, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of TIKOSYN represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for TIKOSYN is 3,350 days. Of this time, 2,778 days occurred during the testing phase of the regulatory review period, while 572 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective:* August 1, 1990. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 1, 1990.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act:* March 9, 1998. FDA has verified the applicant's claim that the new drug application (NDA) for TIKOSYN (NDA 20–931) was initially submitted on March 9, 1998.

3. *The date the application was approved:* October 1, 1999. FDA has verified the applicant's claim that NDA 20–931 was approved on October 1, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,827 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments and ask for a redetermination by June 17, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 15, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (see **ADDRESSES**). Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–9578 Filed 4–17–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, In Vitro Antiviral Screening Program Part E: "BK Virus".

Date: May 7, 2003.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Vassil St. Georgiev, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural

Activities, NIAID/NIH/DHHS, Room 2102, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–2550, *vg8q@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9541 Filed 4–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Loan Repayment Proposals.

Date: May 13, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (919) 541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS).

Dated: April 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9542 Filed 4–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, Database for Aging Primate.

Date: April 25, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Arthur D. Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9543 Filed 4–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Interactive Web-Based Networking.

Date: May 9, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Benjamin Xu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6143, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1178, *benxu1@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9544 Filed 4–17–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Use of Hydroxyurea Alone and in Combination with dNTP Competitors for Blocking Reverse Transcriptase Dependent Viruses

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the invention embodied in:

(1) U.S. Patent No. 6,194,390, issued Feb. 27, 2001, entitled "Procedure to block the replication of reverse transcriptase dependent viruses by the use of inhibitors of deoxynucleotides synthesis" (E–157–1993/7);

(2) U.S. Patent No. 6,046,175, issued April 4, 2000, entitled "Procedure to block the replication of reverse transcriptase dependent viruses by the use of inhibitors of deoxynucleotides synthesis" (E–157–1993/1);

(3) U.S. Patent No. 6,093,702, issued July 25, 2000, entitled "Mixtures of dideoxynucleosides and hydroxycarbamide for inhibiting retroviral spread" (E–157–1993/4);

(4) U.S. Patent No. 5,736,526, issued April 7, 1998, entitled "Mixtures of DDI and D4T with hydroxycarbamide for inhibiting retroviral replication" (E–157–1993/5);

(5) U.S. Patent No. 5,521,161, issued May 28, 1996, entitled "Method of treating HIV in humans by administration of ddI and hydroxycarbamide" (E–157–1993/2);

(6) U.S. Patent No. 5,736,527, issued April 08, 1998, entitled "Method of treating HIV in humans by administration of ddI and hydroxycarbamide" (E–157–1993/6);

(7) PCT/US94/05515 filed May 17, 1994, entitled "Procedure to block the replication of reverse transcriptase dependent viruses by the use of inhibitors of deoxynucleotides synthesis" (E–157–1993/1), National Stage filed May 17, 1994: in Canada application No. 2163456, in EPO application No. 94918016.0, in Japan application No. 518466/94, in Australia Patent No. 685128, issued April 30, 1998;

(8) PCT/US95/00153 filed Dec. 20, 1994, entitled "Method of treating HIV in humans by administration of ddI and hydroxycarbamide" (E–157–1993/2), National Stage filed Dec. 20, 1994: in Canada Patent No. 2179627, issued Feb. 22, 2000, in EPO Patent No. 0735890, issued April 17, 2002, in South Africa Patent No. 94/9219, issued Oct. 25, 1995, in Taiwan Patent No. NI–080011, issued Dec. 03, 1996, in Australia Patent No. 718325, issued July 27, 2000, OAIPO Patent Application No. 60849, in Brazil patent application No. PI1100041–4, in Mexico patent application No. 9409706 to Research Institute for Genetic and Human Therapy (RIGHT), having a place of business in Washington, DC. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or application for a license, which are received by the NIH Office of Technology Transfer on or before June 17, 2003 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Sally Hu, Ph.D., M.B.A., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; E-mail: *hus@od.nih.gov;* Telephone: (301) 435–5606; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The subject inventions provide for formulations and methods for inhibiting replication of reverse transcription dependent viruses in animals cells comprising administering a compound that depletes the intracellular pool of deoxyribonucleoside phosphate (e.g. hydroxyurea), and further comprising administering a compound that serves to inhibit replication of the virus by terminating DNA chain elongation (e.g. DDI).

The field of use may be limited to development of drugs of hydroxyurea alone and in combination with dNTP competitors for blocking reverse transcriptase dependent viruses, including HIV.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 10, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–9546 Filed 4–17–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program

The National Toxicology Program (NTP) Center for the Evaluation of Risks to Human Reproduction (CERHR) Announces the Future Evaluations of Fluoxetine Hydrochloride (Prozac®; Sarafen™, CAS RN 54910–89–3) and Acrylamide (CAS RN 79–06–1), Requests Public Comments on These Chemicals, and Solicits the Nominations of Scientists Qualified to Serve on Expert Panels Evaluating Fluoxetine Hydrochloride and Acrylamide.

Summary: The CERHR plans to conduct an expert panel evaluation of fluoxetine hydrochloride and a separate expert panel evaluation of acrylamide. The exact dates for these expert panel meetings are not yet set, but the meetings are tentatively planned for 2003 and early 2004. Fluoxetine hydrochloride will be evaluated first. Additional details about the meetings, including the dates and locations, will be published in future **Federal Register** notices and posted on the NTP Web site (*http://ntp-server.niehs.nih.gov*).

The CERHR will convene expert panels to evaluate the reproductive and developmental toxicities of fluoxetine hydrochloride and acrylamide. For each of these meetings, the expert panel will consist of approximately 12 scientists, selected for their scientific expertise in various aspects of reproductive and developmental toxicology and other relevant areas of science. The expert panel meetings will be open to the public with time scheduled for oral public comment.

Evaluation of Fluoxetine Hydrochloride

Fluoxetine hydrochloride (Prozac®; Sarafem™; CAS RN 54910–89–3), an antidepressant, is a widely prescribed drug in the United States. The CERHR selected fluoxetine hydrochloride for evaluation because of (1) numerous reproductive and developmental studies in laboratory animals and humans, (2) human exposure information, and (3) changing prescription patterns. Fluoxetine hydrochloride, under the name Sarafem™, is now being

prescribed to treat premenstrual dysphoric disorder (PMDD), potentially increasing the number of exposures for women of childbearing age. Further, FDA recently approved Sarafem™ for use in 7–17-year-olds thereby increasing exposures of children. CERHR anticipates holding the expert panel evaluation in late 2003.

Evaluation of Acrylamide

Acrylamide (CAS RN 79–06–1) is used in the production of polyacrylamide, which is used in water treatment, pulp and paper production, and mineral processing. It is used in the synthesis of dyes, adhesives, contact lenses, soil conditioners, and permanent press fabrics and in molecular biology procedures such as electrophoresis. Acrylamide is a neurotoxicant and in animal studies has been shown to be a carcinogen, germ cell mutagen, and reproductive toxicant. The CERHR selected acrylamide for expert panel evaluation because of recent public concern for human exposures through its presence in starchy foods treated at high temperatures, *e.g.*, french fries and potato chips. In addition, recent data are available on occupational exposure, bioavailability, and reproductive toxicity. It is anticipated that the expert panel evaluation on acrylamide will occur in 2004.

Request for Public Input

The CERHR invites input from the public and other interested parties on fluoxetine hydrochloride and acrylamide, including toxicology information from completed and ongoing studies, information on planned studies, and information about current production levels, human exposure, use patterns, and environmental occurrence. Information and comments should be forwarded to the CERHR at P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709 (mail), (919) 541–3455 (phone), (919) 316–4511 (fax), or *shelby@niehs.nih.gov* (e-mail). Information and comments received by July 17, 2003 will be made available to the CERHR staff and the expert panel for consideration in the evaluation and posted on the CERHR Web site.

The CERHR also invites nominations of qualified scientists to serve on the expert panel for the fluoxetine hydrochloride evaluation and the acrylamide evaluation. Panelists are primarily drawn from the CERHR Expert Registry and/or the nomination of other scientists who meet the criteria for listing in that registry that include: formal academic training and experience in a relevant scientific field, publications in peer-reviewed journals, membership in relevant professional societies, certification by an appropriate scientific board or other entities, and participation in similar committee activities. All panel members serve as individual experts in their specific areas of expertise and not as representatives of their employers or other organizations. Scientists on the expert panel will be selected to represent a wide range of expertise, including developmental toxicology, reproductive toxicology, epidemiology, general toxicology, pharmacokinetics, exposure assessment, and biostatistics. Nominations received by July 17, 2003 will be considered for the fluoxetine hydrochloride and acrylamide panels and for inclusion in the CERHR Expert Registry. Nominations should be forwarded to the CERHR at the address given above.

Background Information About the CERHR

The NTP established the NTP CERHR in June 1998 (**Federal Register**, December 14, 1998 (Volume 63, Number 239, page 68782)). The CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with exposure to environmental and/or occupational exposures. Expert panels conduct scientific evaluations of agents selected by the CERHR in public forums.

Information about CERHR and its process for nominating agents for review or scientists for its expert registry can be obtained from its Home page (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (contact information provided above). The CERHR selects chemicals for evaluation based upon several factors, including production volume, extent of human exposure, public concern, and published evidence of reproductive or developmental toxicity.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process was published in the **Federal Register** notice July 16, 2001 (Volume 66, Number 136, pages 37047–37048) and is available on the CERHR Web site under "About CERHR" or in printed copy from the CERHR.

Dated: April 9, 2003.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 03–9545 Filed 4–17–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–03–016]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

DATES: The next meeting of LMRWSAC will be held on Tuesday, May 6, 2003, from 9 a.m. to 12 p.m. This meeting may adjourn early if all business is finished. Requests to make oral presentations or submit written materials for distribution at the meeting should reach the Coast Guard on or before April 30, 2003. Requests to have a copy of your material distributed to each member of the committee in advance of the meeting should reach the Coast Guard on or before April 25, 2003.

ADDRESSES: The meeting will be held in the Crescent City Room Suite 1830 at the World Trade Center Building, 2 Canal Street, New Orleans, Louisiana. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: LTJG Matt Dooris, Committee Administrator, telephone (504) 589–4251, Fax (504) 589–4241.

Written materials and requests to make presentations should be mailed to Commanding Officer, Marine Safety Office New Orleans, Attn: LTJG Dooris, 1615 Poydras Street, New Orleans, LA 70112.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC). The agenda includes the following:

(1) Introduction of committee members.
(2) Remarks by CAPT R. W. Branch, Executive Director.
(3) Approval of the November 12, 2002 minutes.
(4) Old Business:
(a) Captain of the Port status report.
(b) VTS update report.
(c) PORTS update report.
(5) New Business.
(6) Next meeting.
(7) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than April 30, 2003. Written material for distribution at the meeting should reach the Coast Guard no later than April 30, 2003. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Committee Administrator no later than April 25, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under **ADDRESSES** as soon as possible.

Dated: March 8, 2003.

Roy J. Casto,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 03–9649 Filed 4–17–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–14888]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: A subcommittee of the Merchant Marine Personnel Advisory Committee (MERPAC) will meet to discuss a specific task statement relating to the training of merchant-marine personnel. MERPAC advises the Secretary of the Department of Homeland Security on matters relating to the training, qualifications, licensing, certification, and fitness of seamen serving in the U.S. merchant marine. All meetings will be open to the public.

DATES: The MERPAC subcommittee will meet on Wednesday, April 30, 2003, and on Thursday, May 1, 2003, from 9 a.m. to 5 p.m. These meetings may adjourn early if all business is finished. Requests to make oral presentations, written material for distribution, and requests for distribution of this material all should reach the Coast Guard on or before April 23, 2003.

ADDRESSES: MERPAC will meet on both days in Room FOB–90 of the Old Federal Building located at 909 1st Avenue, Seattle, WA 98104. Further directions regarding the location of the Old Federal Building may be obtained by contacting the Property Management Office at (206) 220–5055. Send written material and requests to make oral presentations to Commander Brian J. Peter, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. We request that members of the public who plan to attend this meeting notify Mr. Mark Gould at 202–267–6890 or by e-mail at *mgould@comdt.uscg.mil* so that he may notify building security officials. In order to gain entry to the Old Federal Building, you will be required to show a valid Federal or State picture identification card. This notice is available on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Brian J. Peter, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–6890, fax 202–267–4570, or the e-mail address under **ADDRESSES.**

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Agenda of Meetings on April 30 and May 1, 2003:

The subcommittee will meet to discuss Task Statement 36: Recommendations on a Training Program for Officers in Charge of an Engineering Watch (OICEW) Coming Up Through the Hawsepipe. The subcommittee will develop recommendations and a proposed training program to be used by a mariner entering the maritime industry after August 1, 1998, who participates in an approved program of study, other than a State or Federal maritime academy. The recommendations and proposed training program will be forwarded to the full MERPAC for consideration and possible adoption at the next regular meeting.

Procedural

Both meetings are open to the public. Please note that the meetings may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, your request should reach the Executive Director no later than April 23, 2003. Written material for distribution at a meeting should reach him no later than April 23, 2003. If you would like a copy of your material distributed to each member of the subcommittee in advance of the meeting, please submit 25 copies to him no later than April 23, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Assistant Executive Director as soon as possible.

Dated: April 8, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 03–9648 Filed 4–17–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3185–EM]

Colorado; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of Colorado (FEMA–3185–EM), dated April 9, 2003, and related determinations.

EFFECTIVE DATE: April 9, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated April 9, 2003, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the impact in certain areas of the State of Colorado, resulting from the record/near record snow on March 17–20, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency

Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of Colorado.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide emergency protective measures under the Public Assistance program to save lives, protect public health and safety, and property. Other forms of assistance under title V of the Stafford Act may be added at a later date, as you deem appropriate. You are further authorized to provide this emergency assistance in the affected areas for a period of 72 hours. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for sub-grantees' regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justin Demello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Colorado to have been affected adversely by this declared emergency:

Adams, Arapahoe, Boulder, Broomfield, Clear Creek, Custer, Denver, Douglas, Elbert, El Paso, Fremont, Gilpin, Grand, Huerfano, Jackson, Jefferson, Larimer, Las Animas, Park, Summit, Teller, and Weld Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 72 hours.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9584 Filed 4–17–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3173–EM]

New York; Amendment No. 2 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of New York, (FEMA–3173–EM), dated February 25, 2003, and related determinations.

EFFECTIVE DATE: April 11, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of New York is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 25, 2003:

Broome and Oneida Counties for emergency protective measures (Category B) under the Public Assistance program for an additional 48 hours of assistance (already designated for 48 hours of assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9581 Filed 4–17–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1453–DR]

Ohio; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio, (FEMA–1453–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003:

Ross County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9583 Filed 4–17–03; 8:45 am]

BILLING CODE 6718–02–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1455–DR]

West Virginia; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1455–DR), dated March 14, 2003, and related determinations.

EFFECTIVE DATE: April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 14, 2003:

Brooke, Hancock, Hardy, Marion, Marshall, Monongalia, Ohio, Pendleton, Taylor, and Tucker Counties for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

Harrison County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours (already designated for Individual Assistance).

Wetzel County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Acting Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–9582 Filed 4–17–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–18]

Notice of Submission of Proposed Information Collection to OMB: Pre-Foreclosure Sales Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 19, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0464) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Pre-Foreclosure Sales Program.

OMB Approval Number: 2502–0464.

Form Numbers: HUD–90035, HUD–90036, HUD–90038, HUD–90045, HUD–90041, HUD–90051, HUD–90052.

Description of the Need for the Information and its Proposed Use: The respondents are lenders, counselors, and homeowners who are attempting to sell their properties prior to foreclosure. The information collection is a record of the process, from the borrower's application to participate in the program and the lender's approval, to the Department's review and approval of the specifics of the sale. Homeowner's participating in the program must also receive housing counseling and provide confirmation of that counseling.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting burden	23,000	0.7		0.4		7,000

Total Estimated Burden Hours: 7,000.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 11, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–9553 Filed 4–17–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–16]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: April 10, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–9257 Filed 4–17–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit application.

SUMMARY: The following applicant has applied for a scientific research permit to conduct certain activities with endangered species pursuant to sections 10(a)(1)(A) and 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written comments on this permit application must be received on or before May 19, 2003.

ADDRESSES: Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Fasbender, Regional Permits Coordinator, (612) 713–5343.

SUPPLEMENTARY INFORMATION:

Permit Number TE069282

Applicant: Theresa Sydney Burke

The applicant requests a permit to take (capture, handle, and harass) the Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), and Virginia big-eared bat (*Corynorhinus townsendii viginianus*) throughout the States of Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The scientific research is aimed at enhancement of survival of the species in the wild.

Documents and other information submitted with this application are available for review by any party who requests a copy from the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, *peter_fasbender@fws.gov*, telephone (612) 713–5343, or FAX (612) 713–5292. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents. Please refer to the respective permit number when submitting comments.

Dated: March 31, 2003.

Robert J. Krska,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 03–9572 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Programmatic Environmental Impact Statement/Environmental Impact Report for the San Francisco Estuary Invasive Spartina Project: Spartina Control Program

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Fish and Wildlife Service (Service) announces availability of the Draft Programmatic Environmental Impact Statement/Environmental Impact Report (Draft EIS/R) for the San Francisco Estuary Invasive Spartina Project: Spartina Control Program. The Draft EIS/R will be available for public comment for a period of 45 days after publication of this Notice of Availability in the **Federal Register**. The Service and the California State Coastal Conservancy jointly prepared the Draft EIS/R to address environmental impacts and benefits of alternatives for the Spartina Control Program and provide for early-stage public involvement, as required under the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). The Spartina Control Program would attempt to eradicate four species of non-native, invasive perennial cordgrass (genus *Spartina*) in the San Francisco Bay Estuary (Estuary), including the San Francisco Bay National Wildlife Refuge.

DATES:

Public meetings will be held:

1. April 22, 2003, 6 p.m. to 9 p.m., Fremont, California.
2. April 23, 2003, 6 p.m. to 9 p.m., Oakland, California.

The public comment period for the Draft EIS/R will end June 2, 2003.

ADDRESSES:

Meeting locations are:

1. Don Edwards National Wildlife Refuge, 1 Marshlands Road, Fremont, CA 94536.
2. Association of Bay Area Governments Offices, Room 171, Oakland, CA 94607.

Mail comments and requests for copies of the Draft EIS/R to Mr. Wayne White, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Room W–2605, Sacramento, CA 95825. Copies of the Draft EIS/R can also be downloaded from the Fish and Wildlife Service Web site at *http://sacramento.fws.gov*. Comments and requests can alternatively be sent via electronic mail to *spartina@fws.gov*, or via facsimile to (916) 414–6713.

The California State Coastal Conservancy is located at 1330 Broadway, 11th Floor, Oakland, CA 94612.

FOR FURTHER INFORMATION CONTACT:

NEPA Information: Mr. Mark Littlefield, Sacramento Fish and Wildlife Office, (916) 414–6600.

CEQA Information: Ms. Maxene Spellman, California State Coastal Conservancy, (510) 286–0332.

SUPPLEMENTARY INFORMATION: Comments must be received by the end of the comment period to be considered during preparation of the Final EIS/R and finalization of the Spartina Control Program. All comments, including names and addresses, will become part of the public record.

The programmatic EIS/R analyzes potential effects of implementing Spartina treatment methods at a generalized, region-wide program level rather than a detailed, individual project level. The purpose of the Spartina Control Program is to arrest and reverse the spread of invasive, non-native cordgrasses (*S. alterniflora, S. anglica, S. densiflora,* and *S. patens*) in the Estuary to preserve and restore the ecological integrity of its intertidal habitats and estuarine ecosystem.

The Estuary supports a diverse array of native plants and animals, including several Federal and State listed species. Many non-native species of plants and animals have been introduced to the Estuary, and some now threaten to cause fundamental changes in the structure, function, and ecological value of the Estuary's tidal lands. In recent decades, populations of non-native cordgrasses were introduced to the Estuary and rapidly began to spread. Although valuable in their native settings, these introduced cordgrasses are highly invasive in new environments and frequently become the dominant plant species. In particular, the non-native cordgrass species Atlantic smooth cordgrass (*S. alterniflora*) and its hybrids, formed when this species crosses with native Pacific cordgrass (*S. foliosa*), are now threatening the ecological balance of the Estuary. In the Estuary, Atlantic smooth cordgrass is likely to choke tidal creeks, dominate newly restored tidal marshes, impair thousands of acres of existing shorebird habitat, and eventually cause extinction of the native Pacific cordgrass.

Once established in the Estuary, non-native invasive cordgrass could rapidly spread to other estuaries along the California coast through seed dispersal on the tides. Non-native invasive cordgrasses are spreading rapidly in the Estuary and currently dominate 500 acres of mudflats and tidal marshes on State, Federal, municipal, and private lands. The Spartina Control Program proposes to implement a coordinated, region-wide eradication program, consisting of a number of on-the-ground treatment techniques that should stave off this invasion. The Spartina Control Program will be focused within the nearly 40,000 acres of tidal marsh and 29,000 acres of tidal flats that compose the shoreline areas of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, Sonoma, and Sacramento counties.

At this time, three alternatives have been developed for full analysis: (1) Regional eradication using all available control methods in an integrated vegetation management (IVM) approach, (2) regional eradication using only non-chemical control methods in a program of IVM, and (3) no action (continued limited, regionally uncoordinated treatment). A fourth alternative, no control program at all, did not meet the purpose and need for the action and was removed from further consideration.

Alternatives 1 and 2 would employ a variety of manual and mechanical treatment methods including: (a) Hand-pulling and manual excavation; (b) mechanical excavation and dredging; (c) pruning, burning, and mowing; (d) smothering (blanketing); and (e) drowning and draining cordgrass. In addition to these methods, Alternative 1, the Preferred Alternative, would also employ application of herbicides in suitable situations. Both Alternatives 1 and 2 would incorporate a modified IVM approach by: (a) Using all available information regarding the estuarine ecosystem and cordgrass physiology and ecology; (b) combining this with the awareness of likely economic, ecological, and sociological consequences of the cordgrass invasion; (c) implementing a program that is effective and economical; and (d) protecting public and environmental health.

Because NEPA and CEQA have different requirements for some compliance elements, the Draft EIS/R was prepared to comply with whichever law's requirements were most stringent. The Draft EIS/R also identifies necessary permits and approvals from local, State, and Federal agencies, and includes supporting environmental documentation for the permits. Efforts will be regionally coordinated with appropriate natural resource agencies in order to develop a program that minimizes disturbance to sensitive habitats and species. The Final EIS/R will respond to comments received during public review of the Draft EIS/R and identify the Spartina Control Program alternative to be implemented. A copy of the Final EIS/R will be made available to all who commented on the Draft EIS/R and anyone requesting a copy.

(Authority: National Environmental Policy Act (42 U.S.C. 4321 *et seq.*); Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR 1500–1508)).

Mary Ellen Mueller,

Acting Deputy Manager, California/Nevada Operations Office.

[FR Doc. 03–8196 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Northeast Regional Panel Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force Northeast Regional Panel. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Northeast Regional Panel will meet from 1 p.m. to 5:30 p.m. on Wednesday, May 21, 2003, and 8:30 a.m. to 3:30 p.m., Thursday, May 22, 2003.

ADDRESSES: The Northeast Regional Panel meeting will be held at the Bluenose Inn, 90 Eden Street, Bar Harbor, ME 04609. Phone 207–288–3348.

FOR FURTHER INFORMATION CONTACT: Susan Snow-Cotter, 617–626–1202 or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Northeast Regional Panel. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

The Northeast Regional Panel was established on July 25, 2001 to advise and make recommendations to the Aquatic Nuisance Species Task Force on issues relating to the Northeast region of the United States. Geographically, the Northeast region is defined to include the jurisdictions of the states of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, Connecticut, and New York. The Northeast Regional Panel will discuss several topics at this meeting including: updates of state and provincial ANS Management Plans; review of the rapid response workshop; updates and work plans of the Ballast Water Committee, Communication, Education, and Outreach Committee, the Policy and Legislation Committee; and the Science and Technology Committee: discussion on establishing research priorities for invasive species in the Northeast; discussion on a marine database; updates from the Aquatic Nuisance Species Task Force and National Invasive Species Council on national issues; an update on reauthorization of the National Aquatic Invasive Species Act; an update on pet industry outreach efforts; and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: April 4, 2003.

Jack Arnold,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 03–9609 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Aquatic Nuisance Species Task Force will meet from 8 a.m. to 5:30 p.m., Tuesday, May 13, 2003; and from 8 a.m. to 2:30 p.m., Wednesday, May 14, 2003.

ADDRESSES: The ANS Task Force meeting will be held at the Radisson Hotel New Orleans, 1500 Canal Street, New Orleans, LA. Phone 504–522–4500.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: *sharon_gross@fws.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the ANS Task Force meeting include: a field trip to view local invasive species problems; an update of activities from each of the Task Force's regional panels; status and updates from several other Task Force committees including the Outreach and Education Committee and the Prevention Committee; status of State and Interstate ANS Management Plans; an update on ballast water management activities; an update on the activities of the National Invasive Species Council; a discussion of rapid response planning efforts; a discussion on the National Aquatic Invasive Species Act; approval of the Chinese Mitten Crab Management Plan; and other topics.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 810, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622, and will be available for public inspection during regular business hours, Monday through Friday.

Dated: April 4, 2003.

Jack Arnold,

Acting Co-chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries and Habitat Conservation.

[FR Doc. 03–9610 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1990–EX]

Notice of Availability of Record of Decision for the Betze Project Dewatering, Eureka and Elko Counties, NV

AGENCY: Bureau of Land Management.

ACTION: Notice of availability (NOA) of record of decision.

SUMMARY: Pursuant to section 202 of the National Environmental Policy Act of 1969, a Supplemental Environmental Impact Statement (SEIS) has been prepared, under third party contract, by the Bureau of Land Management (BLM) Elko Field Office. The SEIS was prepared to analyze the impacts of Barrick Goldstrike Inc.'s dewatering program for the Betze Project and determine suitable mitigation measures. The Final SEIS was released to the public on January 31, 2003. The Record of Decision was signed by the Elko Field Manager on March 4, 2003, approving the SEIS and the proposed mitigation measures.

Copies of the ROD can be obtained from the Elko Field Office at 3900 Idaho Street, Elko, Nevada, or by calling (775) 753–0200 and requesting a copy of the document. It may also be downloaded from the Elko Field office Internet site at *www.nv.blm.gov/elko*. Additionally, a copy of the ROD will be mailed to individuals, agencies, or companies that commented during the scoping process, or on the Draft and Final SEIS.

EFFECTIVE DATES: Parties adversely affected by the Record of Decision have 30 days, from the date of publication of this notice, to file a Notice of Appeal in the office which issues this decision (43 CFR 4.411 and 4.413). The decision to approve the mining operation is in full force and effect, effective on the date of signing of the Record of Decision. A petition for a stay of the decision must be filed in accordance with the above cited regulations.

ADDRESSES: A copy of the Record of Decision can be obtained from: Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, Nevada 89801. A Notice of Appeal should be addressed to Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, NV 89801, and a copy to: Office of the Regional Solicitor, Salt Lake City Federal Building, 125 South State Street, Salt Lake City, UT 84138.

FOR FURTHER INFORMATION CONTACT: Kirk Laird, SEIS Coordinator, at Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, NV 89801 or telephone (775) 753–0200.

David Stout,

Associate Field Manager.

[FR Doc. 03–8797 Filed 4–17–03; 8;45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–610–03–1610–DU]

Notice of Intent To Designate Routes of Travel and Prepare an Associated Plan Amendment and Environmental Assessment in a Portion of the Northern and Eastern Mojave Desert (NEMO) Planning Area of the California Desert Conservation Area Plan (CDCA) Managed by the Bureau of Land Management

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent (NOI) to designate Routes of Travel and prepare associated Plan Amendment and Environmental Assessment (EA).

SUMMARY: This document provides notice that the BLM intends to amend the routes of travel designations in the NEMO area of the CDCA Plan area. The planning area is located in Inyo, San Bernardino, and a small portion of Mono Counties, California. This planning activity encompasses approximately 2.75 million acres of public land. The plan will fulfill the needs and obligations set forth by the National Environmental Policy Act (NEPA), the Federal Land Policy and Management Act (FLPMA), BLM planning regulations, and other BLM management policies. The BLM California State Director recently approved the Record of Decision for Northern and Eastern Mojave Desert (NEMO) Management Plan. NEMO designated Routes of Travel within the Shadow, Ivanpah, and Piute-Fenner Valley Desert Tortoise Conservation Areas and conformed Congressional wilderness areas to the CDCA Plan. Route designations will be amended on the remaining BLM lands within the planning area (approximately 2.75 million acres) in the California Desert Conservation Area with the appropriate NEPA analysis and documentation, consistent with the CDCA Plan and BLM planning regulations (43 CFR 1600 *et seq.*). Route designations include "open", "closed" and "limited" and will be in accordance with BLM route designation criteria outlined in 43 CFR 8342.1. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

DATES: This notice initiates the public scoping process. Comments on issues and planning criteria can be submitted in writing to the address listed below and will be accepted throughout the creation of the Draft Routes of Travel designations. All public meetings will be announced through the local news media, newsletters, and the BLM Web site *http://www.ca.blm.gov/cdd/* at least 15 days prior to the event. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify the views they expressed.

Public Participation: Public meetings will be held throughout the plan scoping and preparation period. Early participation is encouraged and will help determine the future management of the California Desert District public lands. Dates of scoping meetings are as follows: Monday, May 5, 2003, 4 p.m.–7 p.m., Yucca Valley, CA; Wednesday, May 7, 2003, 4 p.m.–7 p.m., Las Vegas, NV; Monday, May 12, 2003, 4 p.m.–7 p.m., Tecopa, CA; Tuesday, May 13, 2003, 4 p.m.–7 p.m., Ridgecrest, CA; Thursday, May 15, 2003, 4 p.m.–7 p.m., Independence, CA.

FOR FURTHER INFORMATION CONTACT: Roxie Trost, BLM, 2601 Barstow Road, Barstow, CA 92311; (760) 252–6020.

SUPPLEMENTARY INFORMATION: The NEMO planning process began in 1994. The NEMO Plan was approved on December 20, 2002 with the Record of Decision. The document is also available for review on line at *http://www.ca.blm.gov/cdd/landuseplanning.html*. Within the NEMO planning area, routes of travel were designated for Desert Tortoise Wildlife Management Areas in Shadow, Ivanpah and Piute-Fenner Valleys and surrounding bioregions (about 0.45 million acres). The current plan amendment addresses the remaining area in NEMO. Congressional wilderness areas within the planning area total approximately 1.2 million acres. The remainder of the planning area includes Wilderness Study Areas, the Dumont Dunes Off-Highway Vehicle Open Area and route networks through various multiple-use classes and Areas of Critical Environmental Concern.

Linda Hansen,

District Manager.

[FR Doc. 03–9710 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–310–1820–AE]

Notice of Public Meeting: Northeast California Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U. S. Department of the Interior, Bureau of Land Management (BLM) Northeast California Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held Thursday and Friday, June 5 and 6, 2003, in the Conference Room of the Bureau of Land Management's Alturas Field Office, 708 West 12th St., Alturas, California. On June 5, the meeting begins at 10 a.m. for a field tour on public lands managed by the BLM Alturas Field Office. On June 6, the meeting begins at 8 a.m. Time for public comments has been set aside for 1 p.m. on June 6.

FOR FURTHER INFORMATION CONTACT: Tim Burke, Field Manager, BLM Alturas Field Office, 708 West 12th St., Alturas, CA, (530) 233–4666; or BLM Public Affairs Officer Joseph J. Fontana, telephone (530) 252–5332.

SUPPLEMENTARY INFORMATION: The 15-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Northeast California and Northwest Nevada. At this meeting, agenda topics will include an update on the BLM process to develop new land use plans for the Eagle Lake, Alturas and Surprise field office jurisdictions, and RAC involvement in the process. The council will also hear an update on development of a management strategy for western juniper, and status reports from the managers of the Eagle Lake, Alturas and Surprise field offices. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting will have time allocated for public comments. Depending on the number of persons wishing to speak, and the time available, the time for individual comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM as provided above.

Dated: April 10, 2003.

Joseph J. Fontana,

Public Affairs Officer.

[FR Doc. 03–9549 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[AZ–910–0777–26–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council (RAC).

The business meeting will be held on May 7–8, 2003, at the BLM Arizona Strip Field Office, 345 East Riverside Drive, St. George, Utah. It will begin at 2 p.m. and conclude at 6 p.m. on May 7, and will continue from 8 to 11 a.m. on May 8. (All times are based on Mountain Standard Daylight Savings.) The agenda items to be covered include: Review and approval of the January 27, and March 25, 2003 meeting minutes; BLM State Director's Update on Statewide Issues; Arizona Land Use Planning, "Working Landscapes" Initiative, Wild Horse and Burro Advisory Board and National RAC Meeting Updates; Presentation on Wilderness Areas Proposed in Arizona Land Use Planning Efforts; RAC Questions on Written Reports from BLM Field Office Managers; Update Proposed Field Office Rangeland Resource Teams, Reports by the Standards and Guidelines, Recreation, Public Relations, Land Use Planning, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings. A public comment period will be provided at 5 p.m. on May 7, for any interested persons who wish to address the Council.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222

North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Lonna O'Neil,

Acting Arizona State Director.

[FR Doc. 03–9574 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–054–1020–PG: GP03–0147]

Notice of Public Meeting, John Day/Snake Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) John Day Snake Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held May 16, 2003 at the Geiser Grand Hotel in Baker City, OR beginning at 8 a.m. The public comment period will begin at approximately 1 p.m. and the meeting will adjourn at approximately 3 p.m.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in North East Oregon.

Meeting Topics

National Meeting with RAC Chairs
Subcommittee Updates

Meeting Procedures

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below.

FOR FURTHER INFORMATION CONTACT: Virginia Gibbons at (541) 416–6700, Prineville Bureau of Land Management, 3050 NE Third Street, Prineville, OR, 97754.

Dated: April 14, 2003.

Danny L. Tippy,

Assistant Field Manager, Central Oregon Resource Area.

[FR Doc. 03–9608 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Closure Order Establishing Prohibitions at Folsom Lake, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of closure.

SUMMARY: The Bureau of Reclamation (Reclamation) is prohibiting lakeside access to the concrete gravity section of Folsom Dam.

DATES: The closure will be effective March 31, 2003, and will remain in effect indefinitely.

ADDRESSES: A map is available for inspection at the Bureau of Reclamation's Central California Area Office, located at 7794 Folsom Dam Road, Folsom, California 95630. The map may be viewed between the hours of 8 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bureau of Reclamation, Mid-Pacific Region Public Affairs Office at (916) 978–5100 or the Bureau of Reclamation, Central California Area Office at (916) 988–1707.

SUPPLEMENTARY INFORMATION: This action is being taken under 43 CFR part 423.3 to improve facility security and public safety. Reclamation will be prohibiting lake side access to the concrete structure in an effort to prevent activities that may inadvertently or deliberately cause damage to the structure. The following acts are prohibited within the Folsom Lake closure area:

(a) Operating motorized and/or non-motorized watercraft inside the buoys, which are positioned on the lake and in front of the dam. Exceptions: Operation and Maintenance personnel that have expressed authorization from Reclamation; law enforcement and fire department officers and Reclamation employees acting within the scope of their employment, and any others who have received expressed written authorization from Reclamation to enter the closure areas.

(b) Surface swimming or subsurface diving using any diving mode (Snorkeling, Self Contained Underwater Breathing Apparatus (SCUBA), Surface Supplied Air, Re-breather, *etc.*). Exceptions: Operation and Maintenance personnel that have expressed authorization from Reclamation; law enforcement and fire department officers and Reclamation employees acting within the scope of their employment, and any others who have received expressed written authorization from Reclamation to enter the closure areas.

(c) Vandalism or destroying, injuring, defacing, or damaging property or real property that is not under one's lawful control or possession.

This order is posted in accordance with 43 CFR 423.3(b). Violation of this prohibition or any prohibition listed in 43 CFR part 423 is punishable by fine, or imprisonment for not more than 6 months, or both.

Dated: March 20, 2003.

Thomas J. Aiken,

Area Manager, Central California Area Office, Mid-Pacific Region.

[FR Doc. 03–9575 Filed 4–17–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; FY 2003 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, U.S. Department of Justice.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Justice, Office of Community Oriented Policing Services (COPS) announces the availability of Universal Hiring Programs (UHP) grants to pay up to 75 percent of the entry-level salary and benefits for newly hired, additional sworn officers over a three year grant term for a total of 36 months, up to a maximum of $75,000 per officer, to initiate or enhance community oriented policing. A minimum 25 percent local match, paid with state or local funds, is required. To qualify for funding, officers must be hired on or after the grant award start date. Funding will begin once the new officers have been hired on or after the date of the award, and will be paid over the course of the grant. At the time of application, applicants must agree to plan for the retention of each COPS-funded UHP position awarded with state, local or other non-COPS funds at the conclusion of federal funding for each position, for a minimum of one full local budget cycle. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program. Priority consideration will be given to those applications that demonstrate a use of funds related to terrorism preparedness or response through community policing.

DATES: The application deadline for UHP funding is June 6, 2003. All UHP applications must be postmarked by the deadline date. Applications postmarked after the deadline date will not be considered. All grant awards are subject to the availability of funds. In the event that UHP funding requests exceed available grant funds, applications may be considered in subsequent fiscal years, subject to the availability of funds.

ADDRESSES: To obtain a copy of an application or for additional information, call the U.S. Department of Justice Response Center at 1–800–421–6770. The UHP application kit and information on the COPS Office are also available on the Internet via COPS Online at: *http://www.cops.usdoj.gov.*

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers to increase or enhance community policing on the streets and rural routes of this nation. The Universal Hiring Program (UHP) enables interested agencies to supplement their current sworn forces, or interested jurisdictions to establish a new agency, through federal grants for up to three years.

The *National Strategy for Homeland Security*, the Administration's roadmap for securing the homeland, highlights the key role that state and local governments play in responding to a terrorist attack. Terrorism preparedness and prevention have become key responsibilities for state and local units. As such, while all policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program, priority consideration will be given to those applications that demonstrate a use of funds related to terrorism preparedness or response through community policing.

Grants will be made for up to 75 percent of the entry level salary and benefits for each new officer over a three year grant term for a total of 36 months, up to a maximum of $75,000 per officer, with a required minimum of 25 percent local match to be paid with state or local funds. Funding will begin once the new officers have been hired on or after the date of the award, and will be paid over the course of the grant. Officers must be hired on or after the grant award start date to qualify for grant funding.

Waivers of the non-federal matching requirement may be requested under UHP, but will be granted only upon a demonstration of extraordinary fiscal hardship.

COPS grant funds must not be used to replace funds that agencies otherwise would have used to fund an officer in the absence of the grant. In other words, any hiring under UHP must in addition to, and not in lieu of, officers that otherwise would have been hired with state, local or other non-COPS funds. At the time of application, applicants must also agree to plan for the retention of each additional COPS-funded UHP position with state, local or other non-COPS funds at the conclusion of federal funding, for a minimum of one full local budget cycle. The retention requirement cannot be satisfied through attrition.

An award under the COPS Universal Hiring Program will not affect the consideration of an agency's eligibility for a grant under other COPS programs.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: April 8, 2003.

Carl R. Peed,

Director, Office of Community Oriented Policing Services.

[FR Doc. 03–9550 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

FY 2003 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of funding availability.

SUMMARY: The Department of Justice Office of Community Oriented Policing Services (COPS) announces the availability of funds under the Tribal Resources Grant Program, a program designed to meet the most serious needs of law enforcement in Indian communities through a comprehensive grant program that will offer a variety of funding options including: New, additional police officer positions; basic and/or specialized training for new and existing officers; training in community policing, grants management and computer training; uniforms and basic issue equipment; department-wide technology; and police vehicles. This program, which complements the COPS Office's efforts to fund additional community policing officers and to support innovative community policing, will enhance law enforcement infrastructures and community policing efforts in tribal communities which have limited resources and are affected by high rates of crime and violence. Applications should reflect the department's most serious law enforcement needs and must link these needs to the implementation or enhancement of community policing. In addition, a Retention Plan Certification form outlining how COPS-funded officer positions will be retained after federal funding has ended must be submitted with the grant application.

All Federally Recognized Tribes with established police departments or existing police efforts are eligible to apply. Federally Recognized Tribes that wish to establish police departments and meet specific criteria are eligible to apply. Federally Recognized Tribes may also apply as a consortium with a written partnership agreement that names a lead agency and describes how requested resources will serve the consortium's population. In addition, tribes that are currently served by Bureau of Indian Affairs (BIA) law enforcement may request funding under this grant program to supplement their existing police services. Tribes whose law enforcement services are exclusively provided by local policing agencies through a contract agreement are not eligible under the COPS TRGP program, but may be eligible to apply to the COPS Universal Hiring Program, and/or COPS in Schools program for police officer positions only.

DATES: Applications will be available in late April. Federally Recognized Tribes or villages that wish to apply may request an application from the COPS Office. The deadline for the submission of applications is May 30, 2003.

Applications must be post marked by May 30, 2003, to be considered eligible.

ADDRESSES: To obtain an application or for more information, call the U.S. Department of Justice Response Center at 1–800–421–6770. A copy of the application kit will also be available in April on the COPS Office Web site at: *http://www.cops.usdoj.gov.*

FOR FURTHER INFORMATION CONTACT: The U.S. Department of Justice Response Center, 1–800–421–6770 and ask to speak with your Tribal Grant Program Specialist.

SUPPLEMENTARY INFORMATION:

Overview

The Violent Crime Control and Law Enforcement of 1994 (Pub. L. 103–322) authorizes the Department of Justice to

make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. The Tribal Resources Grant Program was developed to meet the most serious needs of law enforcement in tribal communities through a comprehensive grant program that will offer a variety of funding options.

This program will enhance law enforcement infrastructures and community policing efforts in these tribal communities, many of which have limited resources and are affected by high rates of crime and violence.

The Tribal Resources Grant Program is part of a larger federal initiative which over the last five years has resulted in the Departments of Interior and Justice working in collaboration to improve law enforcement in tribal communities. Funding has been appropriated to several DOJ agencies including the FBI, the Bureau of Justice Assistance (BJA), the Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the COPS Office. COPS is coordinating with these agencies as well as with the Office of Law Enforcement Services of the Bureau of Indian Affairs to ensure that limited resources are not spent on duplicative efforts.

A total of $34.7 million in funding will be available under the Tribal Resources Grant Program. The grant will cover a maximum federal share of 75% of the total project costs. A latch match requirement of at least 25% of the total project costs is included in this program. A waiver of the local match requirement may be requested but will be granted only on the basis of documented demonstrated fiscal hardship. Requests for waivers must be submitted with the application.

Tribes whose law enforcement services are exclusively provided by local policing agencies through contract arrangements are not eligible under this COPS program. However, tribes that do not meet the eligibility requirements for this program may be eligible to apply to the COPS Office Universal Hiring Program and/or COPS in Schools program for police officer positions only.

Receiving an award under the Tribal Resources Grant Program will not preclude grantees from future consideration under other COPS grant programs for which they are eligible.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: April 9, 2003.

Carl R. Reed,

Director, Office of Community Oriented Policing Services.

[FR Doc. 03–9551 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review:

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Dirck Harris, Document Services Branch, Room 3110, 650 Massachusetts Avenue, NW., Washington, EC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* ATF Distribution Center Contractor Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF 1370.4. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* Business or other for-profit. *Other:* Individual or households. The information provided on the form is used to evaluate the ATF Distribution Center contractor and the services it provides the users of ATF forms and publication.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 21,000 respondents will complete a 1 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 168 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 15, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–9597 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review; extension of a currently approved collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scot Thomasson, Chief, Firearms Enforcement Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Manufacturers of Ammunition, Records and Supporting Data of Ammunition Manufactured and Disposed of.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF REC 5000/2. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. These records are used by ATF in criminal investigations and compliance inspections in fulfilling the Bureau's mission to enforce the Gun Control Law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 50 respondents will take 15 minutes per line entry and that 26 entries will be made per year.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 325 annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 15, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–9598 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review; extension of a currently approved collection.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Gary Patterson, Public Safety Branch, 800 K Street, NW., Suite 710, Washington, DC 20001.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Renewal of Explosives License or Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 5400.14/5400.15, Part III. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* Federal government, State, local or tribal government. The information collection activity is used for the renewal of explosives licenses and permits. The short renewal form is used in lieu of a more detailed application.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 2,500 respondents will complete a 20 minute form.

(6) An estimate of the total public burden (in hours) associated with the collection: there is an estimated 1,050

annual total burden hours associated with this collection.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: April 15, 2003.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 03–9599 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–FB–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Annual Determination of Average Cost of Incarceration

AGENCY: Bureau of Prisons, Justice.

ACTION: Notice.

SUMMARY: The fee to cover the average cost of incarceration for Federal inmates in 2001 was $22,174, and in 2002 was $22,517.

EFFECTIVE DATE: April 18, 2003.

ADDRESSES: Office of General Counsel, Federal Bureau of Prisons, 320 First St., NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, (202) 307–2105.

SUPPLEMENTARY INFORMATION: 28 CFR part 505 allows for assessment and collection of a fee to cover the average cost of incarceration for Federal inmates. We calculate this fee by dividing the number representing Bureau facilities' monetary obligation (excluding activation costs) by the number of inmate-days incurred for the preceding fiscal year, and then by multiplying the quotient by 365.

Under § 505.2, the Director of the Bureau of Prisons determined that, based upon fiscal year 2001 and 2002 data, the fee to cover the average cost of incarceration for Federal inmates in 2001 was $22,174 and in 2002 was $22,517.

Harley G. Lappin,

Director, Bureau of Prisons.

[FR Doc. 03–9595 Filed 4–17–03; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) Grants for Small Faith-Based and Community-Based Non-Profit Organizations; Amendment

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; amendment.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of April 4, 2003, concerning the availability of grant funds for small faith-based and community-based non-profit organizations. The document is being amended.

EFFECTIVE DATE: April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Linda Forman, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739.

Amendment to the Federal Register Notice dated: 68 FR No. 65/Friday, April 4, 2003: Legal Rules That Apply to Faith-based Organizations That Receive Government Funds

The government is prohibited from directly funding religious activity.* These grants may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious practices. Neutral, secular criteria that neither favor nor disfavor religion must be employed in the selection of grant and sub-grant recipients. In addition, under the WIA and DOL regulations implementing the Workforce Investment Act, a recipient may not train a participant in religious activities, or permit participants to construct, operate, or maintain any part of a facility that is primarily used or devoted to religious instruction or worship. Under WIA, "no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under Title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief."

*The term "direct" funding is used to describe funds that are provided "directly" by a governmental entity or an intermediate organization with the same duties as a governmental entity, as opposed to funds that an organization receives as the result of the genuine and independent private choice of a beneficiary. In other contexts, the term "direct" funding may be used to refer to those funds that an organization receives directly from the Federal government (also known as "discretionary" funding), as opposed to funding that it receives from a State or local government (also known as "indirect" or "block grant" funding). In this SGA, the term "direct" has the former meaning.

Dated: April 15, 2003.

Signed at Washington, DC, this 15th day of April, 2003.

James W. Stockton,

Grant Officer.

[FR Doc. 03–9588 Filed 4–17–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wage for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their dates of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefits information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The number of the decisions added to the Government Printing Office document entitled "General Wage Determination Issued Under the Davis-Bacon and related Acts" are listed by Volume and States:

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Wisconsin
WI020039 (Apr. 18, 2003)
WI020040 (Apr. 18, 2003)

Withdrawn General Wage Determination Decisions

This is to advise all interest parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determinations as listed below:

WI020049—See WI020039
WI020050—See WI020040

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington DC this 10th day of April, 2003.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–9309 Filed 4–17–03; 8:45 am]

BILLING CODE 4510–27–M

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2004 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Solicitation for proposals for the provision of civil legal services.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering federal funds provided for civil legal services to low-income people.

LSC hereby announces the availability of competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to eligible clients in the service area(s) of the states and territories identified below. The exact amount of congressionally appropriated funds and the date, terms and conditions of their availability for calendar year 2004 have not been determined.

DATES: *See* **SUPPLEMENTARY INFORMATION** section for grants competition dates.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street NE., 10th Floor, Washington, DC 20002–4250. Starting June 2, 2003, the address will be Legal Services Corporation—Competitive Grants, 3333 K Street, NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Office of Program Performance by e-mail at *competition@lsc.gov*, or visit the grants competition Web site at *www.ain.lsc.gov*.

SUPPLEMENTARY INFORMATION: The Request for Proposals (RFP) will be available April 25, 2003. Applicants must file a Notice of Intent to Compete (NIC) to participate in the competitive grants process.

Applicants competing for service areas in Alabama, American Samoa, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Montana, North Carolina, Oklahoma, Pennsylvania, Tennessee, Texas, Wisconsin, and Wyoming must file the NIC by May 23, 2003, 5 p.m. ET. The due date for filing grant proposals for service areas in these states is June 23, 2003, 5 p.m. ET.

Applicants competing for service areas in Mississippi, Missouri, Nevada, and New York must file the NIC by July 11, 2003, 5 p.m. ET. The due date for filing grant proposals for service areas in these states is August 8, 2003, 5 p.m. ET.

LSC is seeking proposals from: (1) Non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) State or local governments; and (5) substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The RFP, containing the NIC and grant application, guidelines, proposal content requirements, service area descriptions, and specific selection criteria, will be available from *http://www.ain.lsc.gov*, by April 25, 2003. LSC will not FAX the RFP to interested parties.

Below are the service areas for which LSC is requesting grant proposals. Service area descriptions will be available from Appendix A of the RFP. Interested parties are asked to visit *http://www.ain.lsc.gov* regularly for updates on the LSC competitive grants process.

State	Service area
Alabama	AL–1, AL–2, AL–3, MAL
American Samoa	AS–1
Arkansas	MAR
California	CA–2, CA–19, CA–26, CA–29, CA–30, CA–31, MCA
Colorado	CO–6, NCO–1, MCO
District of Columbia.	DC–1
Florida	FL–13, FL–14, FL–15, FL–16, FL–17, FL–18, FL–5, MFL
Georgia	GA–1, GA–2, MGA
Illinois	IL–6, MIL
Indiana	IN–5, MIN
Kentucky	MKY
Louisiana	LA–10, LA–11, MLA
Massachusetts	MA–1, MA–2, MA–3, MA–4, MA–5, MA–10
Mississippi	MS–9, MS–10, MMS, NMS–1
Missouri	MO–8, MMO
Montana	MT–1, MMT, NMT–1
Nevada	NV–1, MNV, NNV–1
New York	NY–7, NY–20, NY–21, NY–22, NY–23, NY–24, MNY
North Carolina	NC–5, MNC, NNC–1
Oklahoma	OK–3, MOK
Pennsylvania	PA–1, PA–5, PA–8, PA–11, PA–23, PA–24, PA–25, PA–26, MPA
Tennessee	MTN
Texas	MTX
Wisconsin	WI–2, NWI–1
Wyoming	WY–4, MWY, NWY–1

Dated: April 14, 2003.

Michael A. Genz,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. 03–9465 Filed 4–17–03; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

ERA Requirements Document; Request for Comment

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of document; request for comment.

SUMMARY: NARA is seeking public comment on the draft Electronic Records Archives (ERA) Requirements Document. ERA will be a comprehensive, systematic, and dynamic means for preserving virtually any kind of electronic record, free from dependence on any specific hardware or software. The ERA, when operational, will make it easy for NARA customers to find records they want and easy for NARA to deliver those records in formats suited to customers' needs. The Draft ERA Requirements Document specifies at a high level the capabilities that the ERA must possess. This document is available on the NARA Opportunities for Public Comment Web page at: *http://www.archives.gov/about_us/opportunities_for_comment/opportunities_for_comment.html*. For a paper copy of the document, contact the person listed in **FOR FURTHER INFORMATION CONTACT.**

DATES: Comments must be received by May 23, 2003.

ADDRESSES: Please send your comments by e-mail to *ERA.Program@nara.gov* or by mail to ERA Program (NHE), National Archives at College Park, Room 1540, 8601 Adelphi Rd., College Park, MD 20740–6001.

FOR FURTHER INFORMATION CONTACT: Electronic Records Archives Program at (301) 837–0740.

SUPPLEMENTARY INFORMATION: The ERA system will authentically preserve and provide access to any kind of electronic record. To do this, ideally the system would be able to take any type of record, from any entity in the Federal Government, created using any type of application, on any computing platform, and provide discovery and delivery to anyone with an interest and legal right of access, enabling NARA to carry out its mission into the future. Detailed background information on the ERA program is available at the ERA Web site, *http://www.archives.gov/electronic_records_archives/about_era.html*.

NARA seeks comments on whether the requirements for ERA are complete, comprehensive, consistent, and understandable. Where applicable, comments should be referenced to the numbering within the ERA Requirements Document.

Dated: April 15, 2003.

Nancy Y. Allard,

NARA Federal Register Liaison.

[FR Doc. 03–9587 Filed 4–17–03; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Workshop for Rulemaking and Scoping for Environmental Issues on Controlling the Disposition of Solid Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public workshop.

SUPPLEMENTARY INFORMATION: As discussed in a **Federal Register** Notice (FRN) issued February 28, 2003, the Nuclear Regulatory Commission (NRC) is conducting an enhanced participatory rulemaking on alternatives for controlling the disposition of solid materials that originate in restricted or impacted areas of NRC-licensed facilities, and that have no, or very small amounts of, radioactivity resulting from licensed operations. As noted in that FRN, the NRC is seeking stakeholder participation and involvement in identifying alternatives and their environmental impacts that should be considered as part of the rulemaking. Considerable information collection effort has been conducted in this area and the Commission is building on existing information to focus on potential solutions. The NRC has not made a decision on the scope or details of a regulation and is continuing to develop a solid technical basis for the rulemaking.

To assist in obtaining stakeholder input to this process, the NRC is holding a workshop, on May 21–22, 2003, to solicit new input on the rulemaking alternatives with a focus on the feasibility of alternatives that would limit where the solid material can go. This workshop provides an opportunity to discuss the rulemaking effort as well as to re-open the National Environmental Policy Act (NEPA) scoping process that began in 1999 for the preparation of a generic environmental impact statement (EIS) in support of the control of the disposition of solid materials rulemaking effort. Issues raised in 1999, at public workshops and in public comments will be considered along with any new issues or alternatives identified at this workshop. The workshop will provide an opportunity for stakeholders to offer additional input on the alternatives, with particular focus on the alternatives of conditional use and EPA regulated landfill disposal. Earlier information collection efforts did not result in sufficient information to clearly indicate the viability or economic feasibility of these two alternatives. Thus, the Commission specifically directed the staff to explore and document the feasibility of these alternatives and, in particular, noted that the staff should have discussions with stakeholders with regard to whether the alternatives: (1) Are effective; (2) are reasonably possible to implement; and (3) would increase public confidence in the process.

To assure that a diversity of viewpoints on the alternatives will be presented, we are inviting stakeholders representing the metals and cement industries, citizens groups, Federal and State agencies, licensees, tribal governments, and landfill operators to sit in a roundtable discussion. Although the focus of the meeting will be on the roundtable discussion, there will be opportunities for members of the audience to offer comments and ask questions. To further assist stakeholders, the staff has placed on its Web site an information packet which includes questions for stakeholders on the alternatives and issues, describes how to provide comments to the NRC, and links to other documents. (Go to *http://www.nrc.gov/materials.html* and, under "Key Topics," select "Controlling the Disposition of Solid Materials.") Also, the workshop agenda, which is provided in this FRN, has been included on the Web page.

Workshop Details: This workshop will be held on May 21–22, 2003 from 8:30 a.m.—5:30 p.m. in the NRC Auditorium, 11545 Rockville Pike, Rockville, Maryland 20852.

Agenda

Wednesday, May 21, 2003

8:30 a.m. Opening remarks, participant introductions
Francis "Chip" Cameron, Facilitator
9:15 a.m. Welcome, Workshop Objectives
Martin J. Virgilio, Director, Office of Nuclear Material Safety and Safeguards
9:30 a.m. Background and context
NRC activities and plans—where are we now and how did we get here?
Frank Cardile, Office of Nuclear Material Safety and Safeguards
The NEPA process and potential alternatives for the disposition of solid materials
Phyllis Sobel and Frank Cardile, Office of Nuclear Material Safety and Safeguards
Participant questions
10:10 a.m. Break
10:30 a.m. The international regulatory framework
Gordon Linsley, IAEA
Participant questions
11:00 a.m. Participant discussion on the alternatives being considered on the disposition of solid materials
Perspectives include: paramount issues of concern to participants, updates on participant views on alternatives, other alternatives that have not been identified, and stakeholder participation and involvement in identifying alternatives and their environmental impacts.
12:00 p.m. Audience comments and questions
12:30 p.m. Lunch
1:30 p.m. Continued discussion of participant perspectives on the alternatives
2:30 p.m. The conditional use alternative
Participant discussion
Discussion topics: What criteria should guide the acceptability of conditional use from a public health and safety perspective? What type of conditional use might be acceptable? What is the feasibility of the conditional use alternative, *i.e.*, are there any constraints or impediments to implementing this alternative? What types of regulatory controls may be necessary to ensure that any conditional use program will be effectively implemented? Is there any additional information that must be developed to fully evaluate this alternative?
3:30 p.m. Break
4:00 p.m. Continued discussion of the conditional use alternative
5:00 p.m. Audience comments and questions and review of the next day's agenda and adjourn

Thursday, May 22, 2003

8:30 a.m. Agenda check
8:45 a.m. Recap previous day's discussion
9:30 a.m. The disposal alternative
Participant discussion
Discussion topics: What criteria should guide the acceptability of disposal from a public health and safety perspective? What type of disposal might be acceptable, for example, RCRA Subtitle C or Subtitle D landfills, other types of disposal facilities? What is the feasibility of the disposal alternative, *i.e.*, are there any constraints or impediments to implementing this alternative? What types of regulatory controls may be necessary to ensure that any disposal program will be effectively implemented? Is there any additional information that must be developed to fully evaluate this alternative?
10:30 a.m. Break
11:00 a.m. Continued discussion of the disposal alternative
12:15 p.m. Audience comments and questions
12:30 p.m. Lunch
1:30 p.m. Major recommendations
2:30 p.m. Audience comments and questions
3:00 p.m. Break
3:30 p.m. Major recommendations (continued): Participant discussion
4:45 p.m. Audience questions
5:15 p.m. Wrap up

Notification of Attendance: It is strongly encouraged that prospective participants contact NRC prior to the meeting to expedite the required security processing for NRC visitors. Contact Kim Karcagi, telephone: (301) 415–6701; e-mail: *kxk2@nrc.gov*, or Jayne McCausland, telephone: (301) 415–6219; e-mail: *jmm2@nrc.gov*, or Rose Conn, telephone: (301) 415–7438; e-mail: *rmc@nrc.gov* and submit participant name, affiliated organization, phone number, address, and citizenship status. Also, it is suggested that invited speakers as well as attendees, limit the amount of personal items and electronic devices brought into the building. If hardware from a participant, like a laptop, must be brought in, it has been suggested by security that a typed letter indicating the laptop's make, model, and owner's contact information be given to security staff upon arrival.

Travel Information: NRC Headquarters, where the public workshop will be held, is very accessible by public transportation. It is recommended that participants commute to the workshop via the Metrorail system (Metro). The White Flint Metro stop, along the red line, is adjacent to the One White Flint Building, along Rockville Pike and Marinelli Road. There are limited spaces available in the public meter parking and Metro parking lot along Marinelli Road. Due to security processing upon entrance into the building, it is recommended that attendees allot additional time to arriving at the workshop.

FOR FURTHER INFORMATION CONTACT: Questions on the public meeting process should be directed to Chip Cameron; e-mail: *fxc@nrc.gov*, telephone: (301) 415–1642; Office of the General Counsel, USNRC, Washington, DC 20555–0001. Questions on the rulemaking process should be directed to Frank Cardile, telephone: (301) 415–6185; e-mail: *fpc@nrc.gov*, Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555–0001. Questions on the environmental scoping process should be directed to Phyllis Sobel; e-mail: *pas@nrc.gov*, telephone: (301) 415–6714; Office of Nuclear Material Safety and Safeguards, USNRC, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 11th day of April, 2003.

For the Nuclear Regulatory Commission.

Charles L. Miller,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–9603 Filed 4–17–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Report to Congress on Abnormal Occurrences, Fiscal Year 2002; Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974 (Public Law 93–438) identifies an abnormal occurrence (AO) as an unscheduled incident or event that the U.S. Nuclear Regulatory Commission (NRC) determines is significant from the standpoint of public health or safety. The Federal Reports Elimination and Sunset Act of 1995 (Public Law 104–66) requires that AOs be reported to Congress annually. During fiscal year 2002, 10 events that occurred at facilities licensed or otherwise regulated by the NRC and/or Agreements States were determined to be AOs. The report describes three AOs at facilities licensed by the NRC. One event involved the degradation of the reactor head at a nuclear power plant, the second event involved a gamma stereotactic radiosurgery misadministration and the third event involved an overexposure of a radiopharmacist at a materials facility. The report also discusses seven events at facilities licensed by Agreement States. As required by section 208, the discussion for each event includes the date and place, the nature and probable consequences, the cause or causes, and the action taken to prevent recurrence. Each event is also being described in NUREG–0090, Vol. 25, "Report to Congress on Abnormal Occurrences, Fiscal Year 2002." This report will be available electronically at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/*.

Nuclear Power Plants

02–1 Performance Deficiency Resulting in Reactor Vessel Head Degradation at Davis-Besse Nuclear Power Station in Oak Harbor, Ohio

Date and Place—March 6, 2002; Davis-Besse Nuclear Power Station, a pressurized-water reactor plant designed by Babcock and Wilcox Company, operated by First Energy Nuclear Operating Company and located near Oak Harbor, Ohio.

Nature and Probable Consequences—On February 16, 2002, the Davis-Besse facility began its 13th refueling outage, which included inspections of the control rod drive mechanism (CRDM) nozzles in accordance with NRC Bulletin 2001–01, "Circumferential Cracking of Reactor Pressure Vessel Head Penetration Nozzles," issued on August 3, 2001. These nozzles penetrate through the reactor pressure vessel (RPV) head and are attached by welds. Nozzle cracking was first discovered in the industry in the late 1980s. The concern with cracking is the potential loss of control rod drive function (rod ejection) and the resultant loss of coolant accident (LOCA) should the cracks reach a critical size and orientation. Also of concern is the potential for the reactor coolant to leak through small cracks in CRDM nozzles and cause boric acid corrosion of the RPV head. The RPV head is an integral part of the reactor coolant pressure boundary (Figure 1) and loss of its integrity can likewise result in a LOCA.

On February 27, 2002, the licensee notified the NRC that non-destructive examination of CRDM Nozzles 1, 2 and 3 identified that those nozzles contained small through-wall cracks. The licensee decided to repair these three nozzles plus two other nozzles with identified cracks that did not appear to be through-wall. The repair process included machining away the lower portion of the CRDM nozzle to a point above the cracks in the nozzle material. During this activity, CRDM nozzle 3 loosened in the head and on March 6, 2002, the licensee began an investigation to identify the cause. At the same time, activities were underway to remove boric acid deposits from the top of the RPV head caused by leakage of reactor coolant from the cracks and past leaking CRDM flanges. After removing the boric acid deposits, the licensee identified a large corrosion cavity in the head material adjacent to CRDM Nozzle 3 (Figure 2). The cavity was approximately 6 inches in length and 4 to 5 inches in width. Within this area the 6.63 inch thick low alloy steel head was corroded away leaving only the stainless steel cladding layer on the inside. The remaining cladding layer ranged in thickness from 0.20 to 0.31 inches. Subsequent metallurgical examination of this section of cladding identified a shallow crack approximately ⅜ inch in length. This cladding layer is designed as a corrosion resistant layer and is not specifically designed to retain reactor operating pressure. In addition to the cavity adjacent to Nozzle 3, a comparatively

small cavity was identified adjacent to Nozzle 2. This cavity was approximately 1.75 inches wide, 4 inches long, and 0.25 inches deep. Region III sent an Augmented Inspection Team (AIT) to the site to determine the facts and circumstances of the head degradation, beginning on March 12, 2002, and held a public exit meeting on April 5, 2002. A follow-up inspection identified several apparent violations of Agency regulations. The apparent violations will be processed in accordance with Agency procedure.

On April 8, 2002, prior to discovery of the crack in the cladding, the licensee submitted a safety significance assessment for the degraded RPV head to the NRC. This assessment determined that the as-found stainless steel cladding layer would have remained intact during anticipated operational occurrences and postulated accidents. Further, this assessment determined that had the RPV head failed due to the corrosion: (a) Adequate core cooling could have been established and maintained for the long term, (b) the reactor could have been placed and maintained in a safe shutdown condition, and (c) the integrity of containment would not have been compromised. The NRC staff is performing an independent assessment and reviewing the adequacy of the licensee's assessment. The NRC has not reached a final conclusion on the significance of this condition.

Cause or Causes—On April 18, 2002, the licensee submitted its Root Cause Analysis Report to the NRC. In this report, the licensee concluded that the most probable technical cause of the RPV head degradation was boric acid corrosion resulting from leakage through a crack in the CRDM penetration nozzle attributable to primary water stress corrosion cracking. Further, this corrosion had occurred over a period of several years. Absent more definitive information, the licensee's technical root cause analysis represents a plausible scenario for the degradation.

The licensee has completed a number of activities designed to identify management and human performance issues which contributed to this event. Several management and human performance issues were subsequently identified by both the licensee and NRC. NRC continues to monitor these activities and independently assess the effectiveness of the licensee's efforts in this area.

Actions Taken To Prevent Recurrence

Licensee—The licensee elected to replace the damaged head with one procured from the owners of the canceled Midland nuclear power plant located in Michigan. The licensee has also completed a number of activities designed to identify the management and human performance deficiencies which contributed to the degradation of the reactor vessel head and implemented a series of inspections and evaluations to identify and correct any other potentially problematic plant issues.

NRC—Region III issued Confirmatory Action Letter (CAL) 3–02–001 on March 13, 2002, and Revised CAL 3–02–001A on May 15, 2002, which detailed specific licensee actions to be taken before NRC would consider restart of Davis-Besse. The NRC issued two Information Notices (IN) and two Bulletins to promptly inform the industry of the event: IN 2002–11, "Recent Experience with Degradation of Reactor Pressure Vessel Head"; IN 2002–13, "Possible Indicators of Ongoing Reactor Pressure Vessel Head Degradation"; Bulletin 2002–01, "Reactor Pressure Vessel Head Degradation and Reactor Coolant Pressure Boundary Integrity"; and Bulletin 2002–02, "Reactor Pressure Vessel Head and Vessel Head Penetration Nozzle Inspection Programs."

The NRC placed Davis-Besse under the Inspection Manual Chapter 0350 "Oversight of Operating Reactor Facilities in a Shutdown Condition With Performance Problems" on April 29, 2002. Further inspections and assessment of Davis-Besse performance will be performed before plant restart is considered. The NRC also chartered a Lessons Learned Task Force (LLTF). The objective of this task force was to independently evaluate the NRC's regulatory processes related to assuring RPV head integrity in order to identify and recommend areas for improvement that may be applicable to either the NRC or the nuclear industry. The LLTF completed its evaluation and its conclusions were reviewed by a Senior Management Review Team to determine appropriate Agency actions. The recommendations of the Senior Management Review Team were issued November 26, 2002. A Commission meeting was held on January 14, 2003, to brief the Commission on the Senior Management Review Team recommendations and the Commission approved proceeding with the recommendations.

This event is considered open for the purpose of this report.

Fuel Cycle Facilities (Other Than Nuclear Power Plants)

None of the events that occurred at fuel cycle facilities during this period was significant enough to be reported as an AO.

Other NRC Licensees (Industrial Radiographers, Medical Institutions, etc.)

The NRC determined that the following events which occurred at facilities, licensed or otherwise regulated by the NRC, during this reporting period were significant enough to be reported as AOs:

02–2 Gamma Stereotactic Radiosurgery (Gamma Knife) Misadministration at St. Luke's Medical Center in Milwaukee, Wisconsin

Date and Place—July 10, 2001; St. Luke's Medical Center; Milwaukee, Wisconsin.

Nature and Probable Consequences—A patient undergoing Gamma Stereotactic Radiosurgery (Gamma Knife) was prescribed treatment of 20 Gy (2,000 rad) to a portion of the brain. During the treatment, the licensee completed three of eight treatment fractions and approximately one-half of the fourth fraction when the medical physicist and radiation therapist realized that the administered treatment utilized the treatment parameters for another patient, resulting in a dose of 12.8 Gy (1,280 rad) to an unintended portion of the brain (*i.e.*, wrong treatment site).

For treatment, the licensee's medical physics staff prepared treatment plans for two patients, to be treated on the same day. The treatment plan for Patient A consisted of a prescribed dose of 18 Gy (1,800 rad). Prior to initiating treatment of Patient A, someone on the licensee's staff handed the plan of treatment for Patient B to the licensee's radiation therapist; later, the therapist could not recall who had handed her the plan. Using Patient B's treatment plan, the treatment team set up and delivered the first three fractions to Patient A and began delivery of the fourth fraction. The error was discovered by the medical physicist during delivery of the fourth fraction. Once notified of the error, the radiation oncologist terminated the treatment.

The medical physicist determined that the treatment delivered a dose of 12.8 Gy (1,280 rad) to an unintended region of the patient's brain. The radiation oncologist determined that the location of the unintended site was far enough away from the intended site to proceed with the intended treatment.

The licensee subsequently administered the intended treatment without incident. The radiation oncologist did not anticipate any immediate adverse effects to the patient because of the treatment to the wrong site. He was not certain of the potential for any long-term effects as a result of the misadministration.

The NRC contracted with a medical consultant to evaluate the medical data associated with the July 10, 2001, misadministration and assess any probable deterministic effects to the exposed patient. The consultant agreed with the licensee's assessment. With regard to long-term affects, the NRC's consultant concluded that the misadministration may be at the threshold of late central nervous system injury and may produce symptoms. The consultant further opined that long-term follow up was indicated for the patient and that the patient was eligible for inclusion in the Department of Energy's Office of Epidemiology and Health Surveillance voluntary life-time morbidity study. The licensee conducted medical follow up of the patient to identify and respond to potential adverse medical consequences resulting from the misadministration in December of 2001. However, during an attempt to follow up on the patient in June 2002, the licensee lost contact with the patient.

The licensee notified the patient's referring physician, who was also the attending neurosurgeon, immediately after the event. The radiation oncologist informed the patient of the event the following day and subsequently provided a copy of the report submitted to the NRC.

Cause or Causes—This misadministration was caused by human error, in that the licensee staff failed to verify that the treatment plan used was for the patient being treated. Contributing factors included: (1) The patient's name was not on each page of the computer-generated treatment plan; (2) the clipboard obscured the patient's name on the first page of the treatment plan; and (3) the licensee treated two patients with similar treatment plans.

Actions Taken To Prevent Recurrence

Licensee—Based on the cause and contributing factors of the misadministration, the licensee immediately implemented measures to ensure that patient-specific parameters are confirmed and verified prior to initiation of treatment. The measures included: (1) Independent verification of the treatment plan to ensure that it corresponds to the couch on the Gamma Knife unit; (2) labeling each page of the computer treatment plan with the patient's name; (3) placing the treatment plan in the standard pink-colored patient-specific binder; (4) ensuring that the outside of patient-specific binders have large lettering indicating the patient's name; (5) ensuring that all patient-specific binders contain all medical information for the patient; (6) use of clipboards to hold verification forms that do not cover up the patient's name at the top of the forms; and (7) training of applicable staff regarding the cause and contributing factors of the misadministration and the measures to ensure that patient-specific parameters are confirmed and verified prior to initiation of treatment.

NRC—The licensee was cited for violations that included failure to verify that the treatment parameters implemented were for the patient being treated.

This event is closed for the purpose of this report.

02–3 Extremity Exposure in Excess of Regulatory Limits at Pacific Radiopharmacy, Limited, in Honolulu, Hawaii

Date and Place—March 26, 2002; Pacific Radiopharmacy, Limited, Honolulu, Hawaii.

Nature and Probable Consequences—During a routine, unannounced inspection conducted by the NRC on March 6, 2002, an inspector observed a radiopharmacist drawing 3700 megabecquerels (MBq) (100 millicurie (mCi)) bulk doses of technetium-99m (Tc–99m) utilizing a vial shield without a shielded top. The inspector observed that the radiopharmacist used his left index finger to hold the vial containing the Tc-99m in the shield when he inverted the vial to draw a dose. After questioning the individual, the inspector determined that this was the individual's routine practice. The inspector then informed the licensee that this practice may contribute to unnecessary exposure to the individual's finger and that the licensee should perform an evaluation to determine if the individual's extremity monitor (finger badge) was indicative of the actual dose received as a result of this handling practice. Following the inspection, a licensee consultant calculated the exposure to the individual's left index finger to be 7000 mSv (700 rem) for calendar year 2001. The exposure was reported to the NRC Operations Center on March 26, 2002. In addition, the licensee's consultant calculated the exposure to the individual's left index finger to be 1400 mSv (140 rem) from January 1, 2002, through March 13, 2002. The exposure was reported to the NRC Operations center as a 30 day report on March 28, 2002. The radiopharmacist's extremity exposure was chronic and not acute, occurring over the entire calendar year. The inspector viewed the individual's left index finger and did not identify any visible skin reddening.

Cause or Causes—Licensee management and the Radiation Safety Officer failed to effectively train Pacific Radiopharmacy employees on NRC requirements for the safe handling of radionuclides and failed to provide effective oversight of its radiation safety program.

Actions Taken To Prevent Recurrence

Licensee—The licensee has obtained additional vial shields with shielded tops, placed them at the second drawing station, and has required the radiopharmacist to use them. The licensee also reviewed the adequacy of the radiation safety officer's oversight of the radiation safety program, determined it to be inadequate, and has replaced the radiation safety officer with another individual. The new radiation safety officer conducts unannounced inspections of the radiopharmacy to ensure compliance with their procedures requiring the use of vial shields with shielded tops during dose drawing procedures.

On March 29, 2002, the NRC issued Confirmatory Action Letter (CAL) 4–02–003 to the licensee associated with the extremity exposure in excess of regulatory limits. On April 8, 2002, the licensee responded to the CAL with corrective actions which included: (1) Removing the radiopharmacist from working with radioactive materials throughout the remainder of calendar year 2002; (2) contracting with a local consultant to provide safety training, conduct random unannounced audits, and provide Radiation Safety Officer (RSO) services; and (3) replacing its current RSO with the new consultant and requiring the RSO to attend quarterly board meetings to provide safety reports to the board.

NRC—In addition to issuance of CAL 4–02–003, NRC staff also met with licensee representatives in a Predecisional Enforcement Conference on October 10, 2002, to discuss the inspection findings. Enforcement action is currently pending.

This event is closed for the purpose of this report.

Agreement State Licensees

The NRC determined that the following events, which occurred at Agreement State licensed facilities

during this reporting period, were significant enough for reporting as AOs:

AS 02–1 Loss of Package Integrity and Elevated Radiation Levels Measured at Federal Express Facility in Kenner, Louisiana

Date and Place—January 2, 2002, Federal Express facility at New Orleans International Airport, in Kenner, Louisiana.

Nature and Probable Consequences—A package containing iridium-192 (Ir–192) with elevated surface radiation levels was discovered at the Federal Express facility located at the New Orleans airport. The package was identified as a routine shipment for Source Production and Equipment Company (SPEC), located in St. Rose, Louisiana. After being notified by Federal Express authorities, a representative of SPEC picked up the package from the Federal Express facility. While loading the package, known as the SAFKEG, onto his truck, the individual noticed that his survey meter was offscale and his pocket dosimeter showed a reading of 1.6 mSv (160 mrem). The SAFKEG was transported back to SPEC facilities and entombed in high-density concrete bricks in its secured warehouse. The individual's total exposure during these activities was later determined to be 3.45 mSv (345 mrem).

The SAFKEG was shipped from a Swedish Company, Studsvik AB, and contained three vials loaded with a total of 1078 Ir–192 discs. The total activity was 366 terabecquerels (TBq) (9893 curies (Ci)). Shipping papers accompanying the package indicated that the Ir–192 was solid metal, in a Type B(U) package with a yellow radioactive III label, and a transportation index of 2 (radiation levels of 0.02 mSv/hr (2 mrem/hr) at one meter from the surface). Photographs taken by SPEC personnel, in St Rose, Louisiana, prior to the SAFKEG entombment confirmed that the appropriate U. S. Department of Transportation (DOT) labeling was affixed to the package. Surveys conducted at about the same time at 15 feet from the cask revealed measured radiation levels of 10 mSv/hr (1 rem/hr). The package remained entombed until a hot cell capable of remote inspection was constructed. After the SAFKEG's contents were removed, in the hot cell, and before it's shipment from the St. Rose facility, surveys for radiation levels and leak tests conducted for removable contamination showed no removable contamination.

The SAFKEG was originally shipped by Federal Express. A Health Physicist/Consultant to Federal Express performed dose estimate calculations for personnel exposed to the package during its transit. Personnel monitoring devices were worn by the flight crews for both the flights; specifically, from Sweden to Paris and from Paris to Memphis. The First Officer for the Paris to Memphis flight received 0.05 mSv (5 mrem) for the January–February 2002 monitoring period and 0.39 mSv (39 mrem) for the November–December 2001 period. The consultant concluded that there were no excessive radiation levels from the SAFKEG on either flight. The consultant's calculations estimated the highest dose to any Federal Express employee at 20 mSv (2 rem). The French and Swedish regulatory agencies evaluated the portions of the event that occurred within their jurisdictions.

Cause or Causes—On February 7, 2002, after construction of the hot cell, appropriate SPEC personnel opened the SAFKEG utilizing robotics. The tamper seal was intact; after it was broken, it was sealed in plastic and put aside. The interior shielded pot was removed and placed into a small lead shield. The shielding pot lid is normally secured with six allen head screws; however, one of the six screws was found loose. The plug assembly accessing the cavity containing the three vials of Ir–192 disks was removed, revealing that two of the three vials were open. The screw tops for the vials and a large number of Ir–192 disks were visible along the lip of the inner cavity. It is presumed the screw tops became unscrewed during transportation, resulting in the elevated external radiation levels.

Actions Taken To Prevent Recurrence

Licensee—The licensees involved in this occurrence are the package shipper, Studsvik AB, the package manufacturer, Croft, and the U.S. recipient, SPEC. The shipper and package manufacturer are pursuing corrective actions, but these have not been formalized as of the date of this report.

The inner-shielded pot of the package remained in the hot cell of the SPEC facility at the time of this report. SPEC had no plans to attempt further decontamination of the pot.

DOT—DOT issued a revision to the certificate of compliance (COC) requiring the type of radioactive material transported in the SAFKEG be contained in special form source capsules. This revision prohibits the use of the screw-top type vials that were used during this incident. The revised COC should prevent this type of occurrence in the future. DOT has discussed possible enforcement action as a result of this event.

State Agency—The State of Louisiana had the lead role in the investigation of this event and has concluded its investigation.

This event is closed for the purpose of this report.

AS 02–2 Industrial Radiography Occupational Overexposure at Longview Inspection in Channahon, Illinois

Date and Place—The Illinois Department of Nuclear Safety (the Department) was notified on January 15, 2002, by the licensee's RSO, that in June 2000, a radiographer experienced an overexposure and subsequent injury at a temporary job site near Channahon, Illinois.

Nature and Probable Consequences—On January 15, 2002, the licensee reported a potential overexposure to a radiographer and a subsequent injury that could have resulted from the overexposure. The overexposure occurred in June 2000, and involved a 3.0 TBq (81.2 Ci), Ir-192 source at a temporary job site near Channahon, Illinois. The radiographer, believing that the source was secured following the radiographic exposure, approached the guide tube area and knelt down without looking at his survey meter. The radiographer's alarming rate meter was inoperable because of a low battery. After changing the radiography film for the next shot and unhooking the guide tube, he noticed the source drive cable was still in the guide tube and his survey meter showed an off-scale reading. He immediately cranked the source back into the shielded position. His self-reading pocket dosimeter was off-scale. The radiographer did not inform the licensee of the incident. Approximately 2 weeks after the incident, the radiographer noticed skin redness in a 2-centimeter sized area of his left calf. Over the next year, the wound became ulcerated and would not heal. A physician examined the individual and concluded that it could have resulted from radiation. In January 2002, the licensee's RSO became aware of the condition and reported it to the Department. Prior to commencing an extensive investigation, the Department recommended that the licensee seek immediate assistance from Oak Ridge Radiation Emergency Assistance Center/Training Site (REAC/TS). The REAC/TS concluded that the injury could have resulted from the overexposure in June 2000. The Department performed interviews and extensive time-motion studies and concluded that the incident could have occurred as described by the radiographer. The estimated dose to the individual was 15,000 mSv (1,500 rem) to the extremity. The licensee's radiation monitoring program revealed a whole body dose of 9.1 mSv (0.910 rem) assigned to the radiographer for the month of June 2000. The reading was within the normal range for this individual, based on licensee records.

The radiographer underwent skin grafting on February 26, 2002. Based on the results of the medical treatment, no long-term adverse health effects are expected.

Cause or Causes—The cause was identified as a failure to conduct a lockout survey of the camera after the source was retracted, the failure to conduct radiation surveys and the failure to utilize an operable alarming rate meter due to a low battery.

Actions Taken To Prevent Recurrence

Licensee—The licensee terminated the radiographer's employment and incorporated the event into the annual refresher training at all 31 Longview Inspection offices.

State Agency—The Department conducted an investigation and concluded that the subsequent injury could have resulted from the overexposure. The Department imposed a suspension of the radiographer's certification for one year.

This event is closed for the purpose of this report.

AS 02–3 Industrial Radiography Occupational Overexposure at McShane Industries in Baltimore, Maryland

Date and Place—September 25, 2001, McShane Industries, Baltimore, Maryland. The NRC was informed of this event in September 2001; however, this event was not documented as an AO in the "Report to Congress on Abnormal Occurrences, Fiscal Year 2001" because of its investigation at that time.

Nature and Probable Consequences—On September 25, 2001, a radiographer employed by Accurate Technologies Incorporated (ATI) of Tinton Falls, New Jersey, was overexposed while conducting industrial radiography in Baltimore, Maryland. (On December 20, 2001, the licensee changed its name to United Evaluation Services Incorporated.) The radiographer was using an Amersham 660A radiography exposure device (camera) when the sealed source containing 2.16 TBq (58.4 Ci) of Ir-192 failed to retract into the shielded position inside the camera following the previous radiographic exposure. The radiographer thought that the source was completely retracted into the shielded position when he relocated the camera, crank, guide tube and its extension tube in preparation for next exposure. The radiographer did not use a survey meter and was not wearing a pocket dosimeter, a whole body badge, or an alarming rate meter. The radiographer changed the film and identification, then secured the tip of the guide tube on to a different pipe weld for the next exposure. While attempting to unlock the camera for the next exposure, the radiographer noticed that the self-locking device on the camera was not in the locked position. Using the crank, the radiographer retracted the source into the shielded and secured position inside the camera. On September 29, 2001, the radiographer experienced burning and itching sensations in his fingers. On October 1, 2001, the radiographer notified the RSO and visited a physician. The physician reported that, on October 1, 2001, the radiographer had erythema on his fingers and palms. On October 5, 2001, State Inspectors observed radiation burns and blisters on the radiographer's hands. At the request of the State of Maryland, the United States Department of Defense, Armed Forces Radiobiology Research Institute, analyzed a 30 milliliter blood sample obtained from the radiographer, using cytogenetic biological dosimetry techniques, and reported a mean whole body dose estimation of approximately 2,670 mGy (267 rad). The assistant radiographer on site during this incident was not exposed.

Cause or Causes—The root cause of this radiation injury was identified as a failure by the radiographer to follow licensed radiation safety procedures, to comply with Maryland Regulations regarding radiation safety requirements for industrial radiographic operations, and to properly use required radiation detection and measurement devices. Specifically, the radiographer failed to wear an audible alarming rate meter or any type of dosimetry. He also failed to use a radiation survey meter. He inadvertently entered a very high radiation area caused by the Ir-192 sealed source that did not retract into the shielded position inside the camera. Finally, he failed to ensure that the source was secured in the shielded position prior to relocating the equipment from one location to another.

Actions Taken To Prevent Recurrence

Licensee—On October 4, 2001, the licensee agreed to discontinue all licensed activities until the completion of the Departmental Investigation.

State Agency—The licensee was cited for violations of Maryland Regulations for Control of Radiation. Specifically, the licensee was cited for exceeding occupational exposure limits; failure to conduct radiation surveys; failure to secure the device after the exposure; failure to wear and properly use a pocket dosimeter, alarming rate meter and film badge; failure to notify the Agency of an overexposure; failure to maintain a utilization log; failure to report a bankruptcy to the Agency; failure to notify the Agency before vacating premises; failure to authorize the RSO on the license; and several other associated violations. On October 25, 2001, the Agency issued a Cease and Desist Order to the licensee, prohibiting all industrial radiography activities in Maryland. ATI's Maryland radioactive materials license expired on December 31, 2001, and was terminated. The incident has been referred for escalated enforcement.

This event is closed for the purpose of this report.

AS 02–4 Intra Vascular Brachytherapy Misadministration (IVB) at Rhode Island Hospital, Providence, Rhode Island

Date and Place—January 28, 2002; Rhode Island Hospital, Providence, Rhode Island.

Nature and Probable Consequences—A patient was prescribed a dose of 8 Gy (800 rad) to the coronary artery during a Cordis Checkmate IVB procedure using 10 Ir-192 seeds, 8991 MBq (243 mCi). On January 31, 2002, during a review of dosimetry and physician records, the licensee discovered that the diameter of the artery was used in the treatment plan calculation instead of the radius. This error resulted because the physicians (authorized users) using the CORDIS device were more familiar with the procedures for a NOVOSTE device also in use at this institution. The Novoste device uses the diameter of the artery in the dosimetry calculations whereas the Cordis device uses the radius. The authorized user provided the wrong dimension (diameter instead of radius) which led to an incorrect dose being calculated. As a result the patient received an actual dose of 14.6 Gy (1,460 rad) to the outer coronary artery site instead of the prescribed 8 Gy (800 rad). The licensee indicated that there will probably be no adverse health effect to the patient.

Cause or Causes—As stated, the misadministration occurred due to human error in the use of the diameter of the artery instead of the radius of the vessel as required when using the Cordis system. The physicians' (authorized users) familiarity with the procedures for a Novoste device was a contributing factor.

Actions Taken To Prevent Recurrence

Licensee—The licensee informed the State of Rhode Island the next day by telephone of the potential misadministration and provided a written report of the incident on February 14, 2002. In-service training has been conducted concerning the misadministration. In addition, the prescription form has been modified to indicate if the radius or the diameter of the vessel is being used for the treatment plan.

State Agency—The Agency has been in contact with the licensee concerning this matter and the effectiveness of the corrective measures implemented. The licensee indicated that there will probably be no adverse health effects to the patient. To date there has been no recurrence of the problem.

This event is closed for the purpose of this report.

AS 02–5 Strontium-90 Eye Applicator Brachytherapy at South Broward Hospital District in Hollywood, Florida

Date and Place—January 4, 2002; South Broward Hospital District, Hollywood, Florida.

Nature and Probable Causes—A patient was prescribed radiation treatment for pterygium in his left eye. The patient was to receive a total dose of 30 Gy (3,000 rad) in three 10 Gy (1,000 rad) fractions spaced approximately a week apart. Due to human error, the third and final fraction, given on January 4, 2002, was 24.84 Gy (2,484 rad) instead of the prescribed 10 Gy (1,000 rad).

The prescribed dose was to be administered via a 3M Company Model 6D1A eye applicator using a 973 MBq (26.3 mCi) strontium-90 (Sr-90) source. The written directive called for each fraction to consist of a treatment duration of 44 seconds to deliver a 10 Gy (1,000 rad) dose. The correct fractionated dose was administered as planned on December 20, 2001, and December 28, 2001. A routine administration of the eye applicator required one person to time the event with a stopwatch while the authorized user administered the dose. The nurse and the authorized user became distracted in conversing with the patient and lost track of the time. The stopwatch used was the old style that simply counted time up and the nurse lost focus in trying to make the patient more comfortable and at ease. The authorized user had to remind the patient to gaze in a certain direction to treat the affected area. As a result, the third fractionated treatment time was 109 seconds instead of the prescribed 44 seconds resulting in a dose of 24.84 Gy (2,484 rad).

The patient was counseled about the slight increase in late effects including cataract formation and scleral scar tissue formation.

Cause or Causes—The State found and the licensee agreed that the misadministration occurred due to human error and the failure of staff to attend to details as required in licensee's procedures.

Actions Taken To Prevent Recurrence

Licensee—The licensee has identified and made changes in their procedures for use of the Sr-90 ophthalmic applicator. The facility purchased a digital stopwatch that has a large display, counts time down and not up, audiblizes the time in the last 10 seconds, and alarms at the end of treatment. In addition, the nurse has been counseled and all personnel have received training in the revised procedures using the new stopwatch.

State Agency—The Florida Bureau of Radiation Control performed an on-site investigation on February 7, 2002, to review the licensee's corrective actions, which were found adequate by the State. The State also determined that while the patient was informed verbally of the misadministration, the licensee did not inform the patient in writing as required. The licensee was cited for failure to notify the patient in writing within 15 days.

This event is closed for the purposes of this report.

AS 02–6 Industrial Radiography Occupational Overexposure at Technical Welding Laboratory, Inc. in Houston, Texas

Date and Place—April 10, 2002, Technical Welding Laboratories Inc., Houston, Texas.

Nature and Probable Consequence—On April 10, 2002, a radiographer received an overexposure calculated at 0.70 Sv (70 rem) due to handling his radiographic equipment with the source in an unshielded condition.

The exposure occurred while conducting radiography using an Amersham 660 radiography exposure device (camera) containing a 1.30 TBq (35 Ci) cobalt-60 (Co-60) radiography source. At the conclusion of a radiograph, the radiographer cranked the source to the shielded position without conducting a survey and then repositioned the source guide tube for the next radiograph. When he attempted to crank out the source for the next radiograph, the radiographer realized the source had not been retracted to its fully shielded position and was contained at the end of the guide tube. The radiographer notified the Radiation Safety Officer and returned to the office. The licensee then notified the State of Texas. While being interviewed for the event, the radiographer stated that although the camera's automatic locking mechanism was inoperable while performing radiography, he did not stop work and proceeded to complete the job. Subsequently, the licensee hired a consultant to check the equipment's operability and found no problem. The equipment was placed back in service with no repair necessary.

The radiographer was sent to a doctor, underwent blood tests and participated in a chromosome aberration study. Although the blood tests results were negative, the chromosome aberration study indicated a radiation exposure ranging from 0.70 Sv (70 rem) to 1.52 Sv (152 rem) with a 95-percent confidence level. In addition, due to the radiographer's difficulty in performing a good reenactment, a dose calculation of the exposure was difficult, however a consultant determined that an exposure of 0.70 Sv (70 rem) did occur. Although the radiographer stated that he could have possibly touched the end of the guide tube where the source was located, no erythema or blistering of the hand, as expected with an incident of this type was seen. A second consultant conducted calculations for a possible extremity exposure which resulted, in a possible 2.01 Sv (201 rem) exposure to the right hand.

Cause or Causes—It was determined that the cause of the overexposure involved the radiographer's failure to: (1) Wear his alarming rate meter; and (2) wear a personnel monitoring device.

Actions Taken To Prevent Recurrence

Licensee—The licensee terminated the radiographers employment and reviewed the incident with other radiographers employed by the company. A licensee consultant evaluation of the equipment determined that the camera was functioning properly.

State Agency—The licensee and radiographer were cited for not performing a lockout survey after a radiographic exposure, not using an alarming rate meter during radiographic operations; not using a collimator during radiographic operations and not using an individual monitoring device during radiographic operations. The licensee was also cited for allowing an individual to receive an exposure in excess of regulatory limits.

The licensee has since terminated its license and the radiographer no longer works in the industrial radiography industry.

This event is closed for the purposes of this report.

AS 02–7 Diagnostic Misadministration at Cedars-Sinai Medical Center in Los Angeles, California

Date and Place—May 29, 2002, Cedars-Sinai Medical Center in Los Angeles, California.

Nature and Probable Consequences—A patient was erroneously administered 111 MBq (3 mCi) of iodine-131 (I–131) for a neck scan instead of receiving a diagnostic uptake scan of 7.4 MBq (0.2 mCi) of iodine-123 (I–123). This resulted in a dose of 30.8 Gy (3,087 rad) from the I–131 to the patient's remaining thyroid tissue, rather than 0.07 Gy (7 rad) that would have resulted from the prescribed I–123.

The elderly patient was from another country, had some language difficulties, and had no medical records. The patient had a scar on her neck, and answered affirmatively when the referring physician (who was not an endocrinologist) asked if she had a thyroidectomy. Because there were no medical records, and because she had symptoms indicating a potential thyroid dysfunction, the referring physician ordered a "thyroid scan," and in the referral noted that the patient had a thyroidectomy. A temporary scheduling clerk at the administering hospital noted the thyroidectomy information and, after conferring with a nuclear medicine technologist (NMT), scheduled a dosage of 111 MBq (3 mCi) of I–131 for the patient. When the patient arrived at the licensee's facility, the NMT received confirmation from the patient that a scar on the patient's neck was the result of a thyroidectomy, the NMT proceeded to administer the scheduled neck scan with I–131. Neither the temporary scheduling clerk nor the NMT consulted with the authorized user or the referring physician to confirm their use of 111 Mbq [3 mCi) of I–131 instead of 7.4 MBq (0.2 mCi) of I–123. It was determined later that the patient had only a partial thyroidectomy, with approximately 50 percent of her thyroid mass remaining. The dose to the patient's remaining thyroid tissue 30.87 Gy (3,087 rad) from the I–131, instead of 0.07 Gy (7 rad) had I–123 been administered. Because of a possible reduction of thyroid function, the patient's physician will follow her medical needs.

Cause or Causes—The misadministration occurred due to human errors and inadequate procedures. The patient had language barriers that impeded clear communication with medical providers and licensee staff failed to consult the authorized user to obtain clarification from the referring physician. Finally, training and written instructions were not adequate to have prompted the temporary scheduling clerk or the NMT to seek appropriate assistance to resolve the dosage scheduled and administered.

Actions Taken To Prevent Recurrence

Licensee—Corrective actions taken to prevent recurrence included modifying the Nuclear Medicine Department procedures and ensuring that scheduling for all I–131 administrations, no matter what the activity, are performed by the Thyroid Treatment Coordinator or by the Chief, NMT.

State Agency—The California Department of Health Services has reviewed and approved the licensee's corrective actions. The State is considering enforcement actions.

This event is closed for the purposes of this report.

Dated in Rockville, Maryland, this 14th day of April, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–9605 Filed 4–17–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form F–9; OMB Control No. 3235–0377; SEC File No. 270–333. Form F–10; OMB Control No. 3235–0380; SEC File No. 270–334.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Form F–9 is a registration statement under the Securities Act of 1933 that is used to register investment grade debt or investment grade preferred securities that are offered for cash or in connection with an exchange offer and either non-convertible or not convertible for a period of at least one year from the date of issuance and, except as noted in paragraph (E), are thereafter only convertible into a security of another class of the issuer. The purpose of the information collection is to permit verification of compliance with securities law requirements and to assure the public availability and dissemination of such information. The principal function of the Commission's forms and rules under the securities laws' disclosure provisions is to make information available to the investors. Approximately 18 respondents file Form F–9 annually and at 25 hours per response for a total of 450 annual burden hours. It is estimated that 25% of the 450 annual burden hours (113 burden hours) is prepared by the company. Form F–9 is a public document. All information provided is mandatory. Finally, persons who respond to the collection of information contained in Form F–9 are not required to respond unless the form displays a currently valid control number.

Form F–10 is a registration statement under the Securities Act of 1933 that is used by certain Canadian "substantial issuers"—those issuers with at least 36 calendar months of reporting history with a securities commission in Canada and a market value of common stock of at least $360 million (Canadian) and an aggregate market value of common stock held by non-affiliates of at least $75 million (Canadian). The purpose of the information collection is to facilitate cross-border offerings by specified Canadian issuers. Approximately 25 respondents file Form F–10 annually and at approximately 25 hours per response for a total of 625 annual burden hours. It is estimated that 25% of the 625 total burden hours (156 burden hours) is prepared by the company. Form F–10 is a public document. All information provided is mandatory. Finally, persons who respond to the collection of information contained in Form F–10 are not required to respond unless the form displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 11, 2003.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 03–9589 Filed 4–17–03; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 17848, April 11, 2003].

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Friday, April 11, 2003 at 11 a.m.; Tuesday, April 15, 2003 at 10 a.m.

CHANGE IN THE MEETING: Cancellation/Time Change/Additional Item.

The Closed Meeting scheduled for Friday, April 11, 2003 at 11 a.m. was cancelled.

The Closed Meeting scheduled for Tuesday, April 15, 2003 at 10 a.m. has been changed to Tuesday, April 15, 2003 at 11 a.m.

Commissioner Glassman, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the additional item added to the Closed Meeting of April 15, 2003 will be: Regulatory matter bearing enforcement implications.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: April 14, 2003.
Jonathan G. Katz,
Secretary.
[FR Doc. 03–9670 Filed 4–15–03; 4:12 pm]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 21, 2003: Closed Meetings will be held on Tuesday, April 22, 2003 at 2:30 p.m., and Wednesday, April 23, 2003 at 12 p.m. Open meetings will be held on Wednesday, April 23, 2003 at 10 a.m., in Room 6600 and on Thursday, April 24, 2003 at 10 a.m., in Room 6600.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (5), (7), (8), (9)(B) and (10) and 17 CFR 200.402(a) (5), (7), (8) (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, April 22, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Formal orders of investigation;

The subject matter of the Open Meeting scheduled for Wednesday, April 23, 2003 will be:

1. The Commission will hear oral argument on an appeal by the Division of Enforcement from an initial decision of an administrative law judge. The law judge found that a tender offer conducted by WHX Corporation, a Delaware corporation with its principal place of business in New York City, did not violate Rule 14d–10(a)(1) of the Securities Exchange Act of 1934. Rule 14d–10(a)(1) requires that tender offers be open to all security holders of the class of securities subject to the offer.

The Division contends that WHX Corporation violated Rule 14d–10(a)(1) when it offered to purchase shares of a target company from only shareholders of record with respect to an upcoming shareholders' meeting of the target company or shareholders who had obtained a proxy to vote the shares from a shareholder of record. The Division seeks an order that WHX Corporation cease and desist from committing or causing any violations or future violations of Rule 14d–10(a)(1).

Among the issues likely to be considered are:

a. Whether respondents committed the alleged violations; and

b. If so, whether sanctions should be imposed in the public interest.

2. The Commission will also hear oral argument on an appeal by Wheat First Securities, Inc. f/k/a First Union Capital Markets Corporation ("First Union"), a registered broker-dealer that conducted a municipal securities business, and its former assistant vice-president, Teressa L. Cawley, a registered municipal securities principal.

The law judge found that First Union through Cawley entered into a financial advisory agreement with Broward County, Florida, to assist the County in refunding certain municipal bond issues. As part of the agreement, First Union warranted that it had not retained any person not regularly employed by it to secure the agreement or paid compensation to any person based on the award of the agreement. The law judge found that this warranty was false, and that First Union and Cawley had paid a South Florida lobbyist to obtain the agreement. Nevertheless, the law judge concluded that the five-year statute of limitations in 28 U.S.C. 2462 barred the Division of Enforcement's action for sanctions based on the false warranty. The law judge found further that First Union and Cawley dealt unfairly and deceptively with the County in connection with two of three refundings by purposely failing to disclose payments made to the lobbyist in closing documents filed with the State.

The law judge suspended Cawley from association with any broker, dealer, or municipal securities dealer for three months; ordered First Union and Cawley to cease and desist for a three-year period from committing or causing violations or future violations of MSRB Rule G–17 and Section 15B(c)(1) of the Securities Exchange Act of 1934; assessed civil penalties of $20,000 against First Union and $15,000 against Cawley; and ordered First Union to disgorge $114,493.31.

Among the issues likely to be argued are:

a. Whether MSRB Rule G–17 applies to a municipal securities dealer acting as financial advisor to an issuer;

b. Whether scienter is required to establish an MSRB Rule G–17 violation;

c. Whether cease-and-desist and disgorgement orders are "penalties" within the meaning of 28 U.S.C. § 2462, and thus barred by the statute of limitations;

d. Whether the Commission should impose time-limited cease-and-desist orders; and

e. Whether and to what extent the Commission should order First Union to disgorge its revenues from the refundings.

The subject matter of the Closed Meeting scheduled for Wednesday, April 23, 2003 will be: Post-Argument Discussion.

The subject matter of the Open Meeting scheduled for Thursday, April 24, 2003 will be:

1. The Commission will consider whether to adopt amendments to implement Section 303 of the Sarbanes-Oxley Act of 2002. Section 303(a) prohibits an issuer's officers, directors, and persons acting under the direction of an officer or director, from taking any action to fraudulently influence, coerce, manipulate or mislead the auditor of the issuer's financial statements for the purpose of rendering those financial statements materially misleading.

2. The Commission will consider whether to adopt new rules and rule amendments to implement (a) the mandated electronic filing of reports required to be filed by officers, directors and principal security holders under Section 16(a) of the Securities Exchange Act of 1934; and (b) website posting of such reports by issuers, both of which are required by Section 16(a)(4) of the Exchange Act, as amended by Section 403 of the Sarbanes-Oxley Act of 2002.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: April 15, 2003.
Jonathan G. Katz,
Secretary.
[FR Doc. 03–9703 Filed 4–16–03; 11:27 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47668; File No. SR–Amex–2003–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Transaction Charges for Certain Exchange Traded Funds

April 11, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2003, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the Amex. The Amex filed the proposed rule change as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend the Amex Equity Fee Schedule (1) to provide for customer transaction charges for the iShares S&P 100 Index Fund of $.0015 per share ($.15 per 100 shares), capped at $100 per trade; and (2) to suspend until April 30, 2003 exchange transaction charges in the iShares Lehman 1–3 year Treasury Bond Fund; iShares Lehman 7–10 year Treasury Bond Fund; Treasury 10 FITR ETF; Treasury 5 FITR ETF; Treasury 2 FITR ETF; and Treasury 1 FITR ETF for specialist, Registered Trader and broker-dealer orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Amex has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has suspended customer transaction charges until March 31, 2003 for the iShares S&P 100 Index Fund (Symbol: OEF), an Exchange Traded Fund that the Exchange trades pursuant to unlisted trading privileges.[6] The Exchange proposes to amend the Amex Equity Fee Schedule to provide that the customer transaction charges in OEF will be $.0015 per share ($.15 per 100 shares), capped at $100 per trade. This is one-fourth of the regular customer transaction charge for Index Fund Shares for which customer transaction charges have not been suspended (Index Fund Shares and other securities for which customer transaction charges have been suspended are set forth in Note 3 to the Amex Equity Fee Schedule). The regular charge is $.006 per share ($.60 per 100 shares), capped at $100 per trade. The Exchange believes that this fee level will encourage competition among markets trading OEF and enhance the Exchange's competitiveness in trading this security.

In addition, the Exchange is extending until April 30, 2003 the suspension of transaction charges in iShares Lehman 1–3 year Treasury Bond Fund (Symbol: SHY); iShares Lehman 7–10 year Treasury Bond Fund (Symbol: IEF); Treasury 10 FITR ETF (Symbol: TTE); Treasury 5 FITR ETF (TFI); Treasury 2 FITR ETF (TOU); and Treasury 1 FITR ETF (TFT) for specialist, Registered Trader and broker-dealer orders. The Exchange previously filed a suspension in such charges until November 30, 2002;[7] until December 31, 2002;[8] until January 31, 2003;[9] until February 28, 2003;[10] and until March 31, 2003.[11] The Exchange believes a suspension of fees for these securities is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to Section 19(b)(3)(A) of the Act.[12]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6(b) of the Act[13] in general, and furthers the objectives of section 6(b)(4) of the Act[14] in particular, because it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members,

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A).
[4] 17 CFR 240.19b–4(f)(6).
[5] The Amex provided written notice to the Commission on March 18, 2003, that it intended to file this proposed rule change. The Amex also asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).
[6] *See* Securities Exchange Act Release No. 47455 (March 6, 2003), 67 FR 12111 (March 13, 2003) (SR–Amex–2003–15).
[7] *See* Securities Exchange Act Release No. 46765 (November 1, 2002), 67 FR 68893 (November 13, 2002) (SR–Amex–2002–91).
[8] *See* Securities Exchange Act Release No. 46996 (December 13, 2002), 67 FR 78264 (December 23, 2002) (SR–Amex–2002–98).
[9] *See* Securities Exchange Act Release No. 47141 (January 8, 2003), 68 FR 2090 (January 15, 2003) (SR–Amex–2002–115).
[10] *See* Securities Exchange Act Release No. 47361 (February 13, 2003), 68 FR 8534 (February 21, 2003) (SR–Amex–2003–04).
[11] *See* Securities Exchange Act Release No. 47455 (March 6, 2003), 68 FR 12111 (March 13, 2003) (SR–Amex–2003–15).
[12] 15 U.S.C. 78s(b)(3)(A).
[13] 15 U.S.C. 78f(b).
[14] 15 U.S.C. 78f(b)(4).

issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary in furtherance of the purposes of the Act.

III. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) [15] of the Act and Rule 19b–4(f)(6) [16] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission accelerate the operative date. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will enable the Amex to continue suspension of its exchange transaction charges, and allow for the reinstitution of a previously suspended customer transaction fee at one-fourth its original level as of April 1, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[17]

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2003–22 and should be submitted by May 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9590 Filed 4–17–03; 8:45 am]

BILLING CODE 8010–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47673; File No. SR–Amex–2003–08]

Self-Regulatory Organizations; Order Granting Approval to a Proposed Rule Change by the American Stock Exchange LLC To Increase to Five Hundred Contracts the Maximum Permissible Number of Equity and Index Option Contracts Executable Through Auto-Ex

April 14, 2003.

I. Introduction

On February 10, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase to 500 contracts the maximum permissible number of equity and index option contracts in an order executable through its automatic execution system, Auto-Ex. On March 10, 2003, the proposed rule change was published for public comment in the **Federal Register**.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Description of the Proposal

In 1985, the Exchange implemented the Auto-Ex system, which automatically executes public customer market and marketable limit orders in options at the best bid or offer displayed at the time the order is entered into the Amex Order File ("AOF"). There are, however, limitations on the number of option contracts that can be entered into or executed by these systems. AOF, which handles limit orders routed to the specialist's book as well as orders routed to Auto-Ex, allows for the entry of orders of up to 2500 option contracts.[4] Auto-Ex, however, is only permitted to execute equity option orders and index option orders of up to 250 contracts.[5] As a result, market and marketable limit orders of more than 250 contracts are routed by AOF to the specialist's book.

The Exchange now proposes to increase to 500 contracts the maximum permissible number of equity and index option contracts in an order that can be executed through the Auto-Ex system. It is proposed that this increase to 500 contracts in permissible order size for Auto-Ex be implemented on a case-by-case basis for an individual option class or for all option classes when two floor governors or senior floor officials deem such an increase appropriate. Currently, the Amex posts applicable quote size parameters on its web page and represents that it will continue to do so. The Exchange represents that it has sufficient systems capacity necessary to accommodate implementation of the proposed increase.

Under Commentary .03 to Amex Rule 933,[6] the Exchange is permitted to increase the size of Auto-Ex eligible orders for classes of multiply-traded options to match the automatic execution order size of any other options exchange, provided that the Exchange files with the Commission a proposed rule change pursuant to Section 19(b)(3)(A) of the Act.[7] In April 2002, pursuant to Amex Rule 933, Commentary .03 and Section 19(b)(3)(A) of the Act, the Amex filed a proposed rule change with the Commission to increase its Auto-Ex eligible order size for QQQ options to up to 2,000 contracts for the two near-term expiration months and 1,000 contracts for all other expiration months in order to match Primary Market Makers' size guarantees in QQQ options on the International Securities Exchange, Inc. ("ISE").[8] Since April 29, 2002, the Exchange represents that it has established an Auto-Ex eligible order size of 1,000 contracts for all QQQ options series. The Exchange states that, to date, it is unaware of any increased risks to market participants and the marketplace as a result of the greater Auto-Ex eligible order size for QQQ options.

The Exchange also believes that the current Auto-Ex eligible order size of up to 250 contracts for all other options classes at the Exchange has similarly not created greater financial risks or other known system difficulties. The Exchange has set the Auto-Ex order size to the 250-contract maximum in a number of actively-traded option classes that, the Exchange believes, are the classes with the greatest liquidity and trading interest. The Exchange notes that options in Microsoft Corporation (MSFT) and General Electric Co. (GE) have Auto-Ex order sizes of 250 contracts. The Exchange states that market participants have further indicated that even larger sizes would provide greater benefits to their customers and proprietary trading strategies. The Exchange maintains that an increase in the permissible size of orders executable through Auto-Ex will provide more efficient executions due to the speed of execution obtained by Auto-Ex versus manual handling. The Exchange states that customers and other market participants are increasingly demanding that the Exchange automatically execute larger option order sizes that in the past would have received manual handling. The Exchange believes that an increase in the Auto-Ex eligible order size of up to 500 contracts will meet this demand of the marketplace.

The Exchange's Auto-Ex system provides that all customer and broker-dealer market and marketable limit orders within the appropriate size parameters are executed at the prevailing best bid or offer, with both the specialist and registered options traders ("ROTs") as the contra-party to the transaction. Auto-Ex trades are automatically allocated on a rotating basis to the specialist and to each ROT that has signed on to Auto-Ex.[9] If an Auto-Ex trade is greater than ten contracts, the Auto-Ex system divides the execution into lots of ten or fewer contracts and allocates a lot to each Auto-Ex participant.[10] Accordingly, for actively-traded option classes in large trading crowds, the Auto-Ex allocation of executed contracts into lots of 10 contracts operates so that an Auto-Ex size of 250 contracts would be spread out among several ROTs, thereby significantly reducing the potential financial risk that a single ROT may incur. The Exchange believes that an increase of the Auto-Ex eligible size to 500 contracts will not significantly increase the financial risks of ROTs for such actively-traded option classes.

The Exchange believes that market participants desire and will support an increase in Auto-Ex eligible sizes of up to 500 contracts. The Exchange represents that, as of April 29, 2002, it has established an Auto-Ex size of 1,000 contracts for all QQQ options series. The Amex believes that the proposed increase in Auto-Ex eligible size for all other options is necessary in order for the Exchange to address market demands and for the purpose of competing effectively with other options exchanges that may not be so restricted.

The Amex notes that the Chicago Board Options Exchange, Inc. ("CBOE") has received regulatory approval, with respect to option classes that disseminate quotations with size, to automatically execute orders in such options through its RAES system up to the disseminated size, which may be larger than 250 contracts.[11] Furthermore, the Amex notes that the ISE automatically executes a customer order for the disseminated quote size once such order hits the available option quote.[12] The Amex notes that, as a result, the disseminated size for a particular option quote is the actual size of an order that will be automatically executed. Accordingly, the Amex believes that, based on competitive considerations, an increase in the maximum Auto-Ex eligible order size will provide customers with increased opportunities for better and more efficient executions.

The Exchange represents that Auto-Ex has been successful in enhancing execution and operational efficiencies for certain option classes. The Exchange believes that automatic executions of orders for up to 500 contracts will allow for the quick, efficient execution of public customer orders, as well as broker-dealer orders on a case-by-case basis consistent with the Exchange's recent ability to provide automatic executions of broker-dealer transactions.[13]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act.[14] Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[15]

While increasing the maximum order size limit from 250 contracts to 500 contracts for automatic execution eligibility by itself does not raise concerns under the Act, the Commission believes that this increase

[3] *See* Securities Exchange Act Release No. 47429 (March 3, 2003), 68 FR 11418.

[4] *See* Securities Exchange Act Release No. 44065 (March 12, 2001), 66 FR 15513 (March 19, 2001).

[5] See Securities Exchange Act Release No. 45628 (March 22, 2002), 67 FR 15262 (March 29, 2002). The Amex notes that the Auto-Ex guarantee size for Nasdaq-100 Tracking Stock ("QQQ") options is up to 2,000 contracts for the two near-term expiration months and 1,000 contracts for all other expiration months. *See* Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002).

[6] *See* Amex Rule 933, Commentary .03; *see also* Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] *See* Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002). The Amex rule change with respect to maximum Auto-Ex size for the QQQ options was filed with the Commission as a proposed rule change effective on filing pursuant to Section 19(b)(3)(A) of the Act, 15 U.S.C. 78s(b)(3)(A).

[9] At the start of each trading day, the order in which trades are allocated to the specialist and traders signed on to Auto-Ex is randomly determined.

[10] For example, an option class that allows up to 50 contracts to be executed through Auto-Ex would have a trade of 25 contracts divided into lots of 10, 10 and 5. *See* Securities Exchange Act Release No. 47229 (January 22, 2003), 68 FR 5060 (January 31, 2003) (File No. SR–Amex–00–30).

[11] *See* Securities Exchange Act Release No. 45676 (March 29, 2002), 67 FR 16478 (April 5, 2002) (CBOE File No. 2001–70); *see also* CBOE Rule 6.8 (c)(v) and Commentary .09 to CBOE Rule 6.8.

[12] *See* Securities Exchange Act Release No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000). The ISE operates an electronic marketplace where orders and quotes are entered into a central order book. Trades are then executed automatically when orders and quotes match.

[13] *See* Securities Exchange Act Release No. 46479 (September 10, 2002) 67 FR 58654 (September 17, 2002).

[14] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

raises collateral issues that the Amex will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for Auto-Ex. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed on to the Amex's Auto-Ex system will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price; however, these risks are somewhat offset by the fact that the Exchange's Auto-Ex system allocates executed contracts into lots of 10 contracts among the specialist and any ROTs logged onto Auto-Ex.

In addition, when the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through Auto-Ex, the greater the risk market makers must be willing to accept. The Commission does not believe that, because Amex floor governors or senior floor officials determine to approve orders as large as 500 contracts as eligible for Auto-Ex, Amex floor governors or senior floor officials or Amex staff should disengage Auto-Ex more frequently by, for example, declaring an "unusual market condition." Disengaging Auto-Ex can negatively affect investors by making it slower and less efficient to execute their orders.[16] It is the Commission's view that the Amex, when increasing the maximum size of orders that can be sent through Auto-Ex, should not disadvantage all customers—the vast majority of whom enter orders for less than 500 contracts—by making their automatic execution systems less reliable.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5).[17]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Amex–2003–08) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9593 Filed 4–17–03; 8:45 am]

BILLING CODE 8010–01–P

[16] *See* Amex Rule 933(f)(i), specifying the circumstances in which Auto-Ex may be disengaged or operated in a manner other than the normal manner.

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47664; File No. SR–PCX–2003–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. and Amendment No. 1 Thereto Regarding the Maximum Permissible Number of Nasdaq-100 Tracking Stock ("QQQ") Option Contracts Executable Through the Exchange's Automatic Execution System ("Auto-Ex")

April 10, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 27, 2003, the Pacific Exchange, Inc. ("Exchange" or "PCX") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by the PCX. The proposed rule change has been filed by the PCX as a "non-controversial" rule change under rule 19b–4(f)(6) under the Act.[3] On April 7, 2003, the PCX filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to amend its rules to increase to 2,000 contracts in the first two near term expiration months, and to 1,000 contracts for all other expiration months, the maximum permissible number of QQQ option contracts in an order that can be executed through Auto-Ex.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized.*

* * * * *

Automatic Execution System

Rule 6.87(a)–(b)(5)—No change.

(6) The OFTC or its delegate consisting of two Floor Officials shall determine the size of orders that are eligible to be executed on Auto-Ex. The OFTC or its delegate, two Floor Officials, may approve requests of the Lead Market Makers to execute orders on Auto-Ex in sizes greater than 20 contracts. Although the order size parameter may be changed on an issue-by-issue basis by the OFTC or its delegate, two Floor Officials, the maximum order size for execution through Auto-Ex is as follows:

(A) Equity Options: the maximum order size for execution through Auto-Ex for equity options is 250 contracts *except for options on the Nasdaq-100 Tracking Stock (QQQ) in which case, the maximum order size will be 2,000 contracts in the first two (2) near term expiration months and 1,000 contracts for all other expiration months;*

(B) Index Options: the maximum order size for execution through Auto-Ex is 250 contracts.

(7)—No change.

(c)–(p)—No change.

Commentary .01–.08—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase the maximum order size eligibility for Auto-Ex in the first two near term expiration months in QQQ options to 2,000 contracts and to 1,000 contracts for all other expiration months[5] to match the size of orders in the same options eligible for automatic execution on another options exchange.[6] The Exchange notes that the American Stock Exchange LLC ("Amex") and the Philadelphia Stock Exchange, Inc. ("Phlx") allow automatic executions in QQQ options for a size of up to 2,000 contracts in series in the two near term expiration months, and up to 1,000 contracts in all other expiration months.[7] The Exchange represents that Auto-Ex affords prompt and efficient automatic executions at the disseminated quotation price on the Exchange. Therefore, the Exchange believes that increasing automatic execution levels for eligible orders in QQQ options to 2,000 contracts in the first two near term expiration months, and to 1,000 contracts for all other expiration months should provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchange notes that this increase in automatic execution levels in QQQ options should enable the Exchange to remain competitive for order flow with other exchanges that trade QQQ options.

The Exchange believes that the increase in order size eligibility for Auto-Ex orders in QQQ options should provide customers with quicker executions for a larger number of orders by providing automatic rather than manual executions, thereby reducing the number of orders subject to manual processing. The Exchange also believes that increasing the Auto-Ex maximum order size in QQQ options should not impose a significant burden on the operation or capacity of the Auto-Ex System and will give the Exchange better means of competing with other options exchanges for order flow.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[8] in general, and furthers the objectives of section 6(b)(5) of the Act[9] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to section 19(b)(3)(A)[10] of the Act and rule 19b–4(f)(6)[11] thereunder because the proposal: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[12] The PCX seeks to have the proposed rule change become operative immediately upon filing because it believes that the proposed rule change, as amended, is consistent with the protection of investors and the public interest, and in order to remain competitive with other exchanges with similar rules in effect.[13]

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, operative immediately upon filing to allow the PCX to compete with other options exchanges that currently has a maximum automatic execution eligibility limit in QQQ options of 2,000 contracts in the first two near term expiration months.[14] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–14 and should be submitted by May 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9594 Filed 4–17–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* letter from Mai Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 4, 2003. In Amendment No. 1, PCX amended the proposed rule text of the proposed rule change to reflect the current rule language of PCX rule 6.87.

[5] Currently, the maximum option order size eligible for automatic execution via Auto-Ex is 250 contracts for all equity options including the QQQs.

[6] Exchange rule 6.87(b)(7) provides that the Options Floor Trading Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for Auto-Ex to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Commission pursuant to section 19(b)(3)(A) of the Act.

[7] *See* Securities Exchange Act Release No. 45828 (April 25, 2002), 67 FR 22140 (May 2, 2002) (File No. SR–Amex–2002–30); *see also* Securities Exchange Act Release No. 46531 (September 23, 2002), 67 FR 61370 (September 30, 2002) (File No. SR–Phlx–2002–47).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] As required under rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

[13] *See supra* note 7.

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on April 7, 2003, the date that the Exchange filed Amendment No. 1.

[16] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

AGENCY: U.S. Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: The Small Business Administration (SBA) is notifying the public that it intends to grant the pending applications of 22 existing Small Business Development Centers (SBDCs) for refunding on October 1, 2003, subject to the availability of funds. Five states do not participate in the EO 12372 process; therefore, their addresses are not included. A short description of the SBDC program follows in the supplementary information below.

The SBA is publishing this notice at least 120 days before the expected refunding date. The SBDCs and their mailing addresses are listed below in the address section. A copy of this notice also is being furnished to the respective State single points of contact designated under the Executive Order. Each SBDC application must be consistent with any area-wide small business assistance plan adopted by a State-authorized agency.

DATES: A State single point of contact and other interested State or local entities may submit written comments regarding an SBDC refunding within 30 days from the date of publication of this notice to the SBDC.

ADDRESSES:

Addresses of Relevant SBDC State Directors

Mr. Robert McKinley, Region Director, University of Texas at San Antonio, 145 Duncan Drive, Suite 200, San Antonio, TX 78226, (210) 458–2450.

Mr. Conley Salyer, State Director, West Virginia Development Office, 950 Kanawha Boulevard, East Charleston, WV 25301, (304) 558–2960.

Mr. Clinton Tymes, State Director, University of Delaware, One Innovation Way, Suite 301, Newark, DE 19711, (302) 831–2747.

Ms. Carmen Marti, SBDC Director, Inter American University of Puerto Rico, Ponce de Leon Avenue, #416, Edificio Union Plaza, Seventh Floor, Hato Rey, PR 00918, (787) 763–6811.

Mr. Michael Young, Region Director, University of Houston, 2302 Fannin, Suite 200, Houston, TX 77002, (713) 752–8425.

Ms. Becky Naugle, State Director, University of Kentucky, 225 Gatton College of Business Economics, Lexington, KY 40506–0034, (859) 257–7668.

Ms. Liz Klimback, Region Director, Dallas Community College, 1402 Corinth Street, Dallas, TX 75212, (214) 860–5835.

Ms. Rene Sprow, State Director, University of Maryland at College Park, 7100 Baltimore Avenue, Suite 401, Baltimore, MD 20742–1815, (301) 403–8300.

Mr. Craig Bean, Region Director, Texas Tech University, 2579 South Loop 289, Suite 114, Lubbock, TX 79423–1637, (806) 745–3973.

Ms. Diane Wolverton, State Director, University of Wyoming, P.O. Box 3922, Laramie, WY 82071, (307) 766–3505.

Mr. Max Summers, State Director, University of Missouri, Suite 300, University Place, Columbia, MO 65211, (573) 882–0344.

Mr. Jon Ryan, State Director, Iowa State University, 137 Lynn Avenue, Ames, IA 50010, (515) 292–6351.

Mr. James L. King, State Director, University of New York, SUNY Plaza, S–523, Albany, NY 12246, (518) 443–5398.

Ms. Holly Schick, State Director, Ohio Department of Development, 77 South High Street, Columbus, OH 43226–1001, (614) 466–2711.

Mr. Donald L. Kelpinski, State Director, Vermont Technical College, P.O. Box 188, Randolph Center, VT 05061–0188, (802) 728–9101.

Mr. Warren Bush, SBDC Director, University of the Virgin Islands, 8000 Nisky Center, Suite 720, St. Thomas, U.S. VI 00802–5804, (340) 776–3206.

FOR FURTHER INFORMATION CONTACT: Johnnie L. Albertson, Associate Administrator for SBDCs, U.S. Small Business Administration, 409 Third Street, SW., Sixth Floor, Washington, DC 20416.

SUPPLEMENTARY INFORMATION:

Description of the SBDC Program

A partnership exists between SBA and an SBDC. SBDCs offer training, counseling and other business development assistance to small businesses. Each SBDC provides services under a negotiated Cooperative Agreement with SBA, the general management and oversight of SBA, and a state plan initially approved by the Governor. Non-Federal funds must match Federal funds. An SBDC must operate according to law, the Cooperative Agreement, SBA's regulations, the annual Program Announcement, and program guidance.

Program Objectives

The SBDC program uses Federal funds to leverage the resources of states, academic institutions and the private sector to:

(a) Strengthen the small business community;

(b) Increase economic growth;

(c) Assist more small businesses; and

(d) Broaden the delivery system to more small businesses.

SBDC Program Organization

The lead SBDC operates a statewide or regional network of SBDC service centers. An SBDC must have a full-time Director. SBDCs must use at least 80 percent of the Federal funds to provide services to small businesses. SBDCs use volunteers and other low cost resources as much as possible.

SBDC Services

An SBDC must have a full range of business development and technical assistance services in its area of operations, depending upon local needs, SBA priorities and SBDC program objectives. Services include training and counseling to existing and prospective small business owners in management, marketing, finance, operations, planning, taxes, and any other general or technical area of assistance that supports small business growth.

The SBA district office and the SBDC must agree upon the specific mix of services. They should give particular attention to SBA's priority and special emphasis groups, including veterans, women, exporters, the disabled, and minorities.

SBDC Program Requirements

An SBDC must meet programmatic and financial requirements imposed by statute, regulations or its Cooperative Agreement. The SBDC must:

(a) Locate service centers so that they are as accessible as possible to small businesses;

(b) Open all service centers at least 40 hours per week, or during the normal business hours of its state or academic Host Organization, throughout the year;

(c) Develop working relationships with financial institutions, the investment community, professional associations, private consultants and small business groups; and

(d) Maintain lists of private consultants at each service center.

Dated: April 10, 2003.

Johnnie L. Albertson,

Associate Administrator for Small Business Development Centers.

[FR Doc. 03–9539 Filed 4–17–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Overhead Fiber Optic Groundwire and Ancillary Hardware Components.

SUMMARY: The U. S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Overhead Fiber Optic Groundwire and Ancillary Hardware Components. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before April 28, 2003.

Address comments to: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416, Tel: (202) 619–0422.

FOR FUTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619–0422 FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit coding systems.

The first coding system is the Office of Management and Budget *North American Industry Classification System (NAICS)*. The second is the Product and Service Code established by the Federal Procurement Data System.

The U.S. Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Overhead Fiber Optic Groundwire, NAICS 335921 and Ancillary Hardware Components, NAICS 334417. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 03–9537 Filed 4–17–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for Other Ordnance and Accessories Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a waiver of the Nonmanufacturer Rule for Other Ordnance and Accessories Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and potential source information from interested parties.

DATES: Comments and sources must be submitted on or before April 28, 2003.

ADDRESSES: Address comments to Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW., Washington DC, 20416. Tel: (202) 619–0422.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, (202) 619–0422 FAX (202) 205–7280.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on six digit coding systems.

The first coding system is the Office of Management and Budget *North American Industry Classification System (NAICS)* The second is the Products and Service Code established by the Federal Procurement Data System.

The U.S. Small Business Administration is currently processing a request to waive the Nonmanufacturer Rule for Other Ordnance and Accessories Manufacturing, North American Industry Classification System (NAICS) 332995. The public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for this NAICS code.

Linda G. Williams,

Associate Administrator for Government Contracting.

[FR Doc. 03–9538 Filed 4–17–03; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 4303]

Notice of Meeting of the United States International Telecommunication Advisory Committee To Prepare for ITU Study Group 16 Meeting, May 6, 2003

The Department of State announces that the meeting of the U.S. International Telecommunication Advisory Committee (ITAC), to discuss

the International Telecommunication Union (ITU) Study Group 16 meeting to be held in Geneva from May 20 to May 30, has been changed from April 30th to May 6. The purpose of the ITAC meeting is to advise the Department on policy, technical and operational issues that will be considered by Study Group 16. The time and location of the ITAC meeting will be announced via e-mail. People may join the e-mail broadcast list by sending a request to *YoungLM2@state.gov* or calling (202) 647–2593.

Dated: April 9, 2003.

Anne Jillson,

Foreign Affairs Officer, International Communications and Information Policy, Department of State.

[FR Doc. 03–9632 Filed 4–17–03; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 4304]

Advisory Committee on Labor Diplomacy; Notice of Meeting

The Advisory Committee on Labor Diplomacy (ACLD) will hold a meeting beginning at 9 a.m. on May 2, 2003, in room 1105, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. Committee Chairman Thomas R. Donahue, former President of the AFL–CIO, will chair the meeting.

The ACLD is composed of prominent persons with expertise in the area of international labor policy and labor diplomacy. The ACLD advises the Secretary of State and the President on the resources and policies necessary to implement labor diplomacy programs efficiently, effectively and in a manner that ensures success in promoting the objectives and ideals of U.S. labor policies in the 21st century. The ACLD makes recommendations on how to strengthen the Department of State's ability to respond to the many challenges facing the United States and the federal government in international labor matters. These challenges include the protection of worker rights, the elimination of exploitative child labor, and the prevention of abusive working conditions.

The agenda for the May 2 meeting includes: the Committee's Labor Diplomacy Database Project, opportunities for labor diplomacy to enhance the Human Rights environments in the Arab and Muslim Worlds, discussion of implementation of the recommendations of the Committee's two reports on U.S. Labor Diplomacy, and options for the Committee's future areas of concentration.

Members of the public are welcome to attend the meeting as seating capacity allows. As access to the Department of State is controlled, persons wishing to attend the meeting must be pre-cleared by calling or faxing the following information, by close of business April 30, to Kenneth Audroué at tel. (202) 647–4327, or fax (202) 647–0431, or e-mail *audrouek@state.gov*: name; company or organization affiliation (if any); date of birth; and social security number. Pre-cleared persons should use the C Street entrance to the State Department and have a driver's license with photo, a passport, a U.S. Government ID or other valid photo identification.

Members of the public may, if they wish, submit a brief statement to the Committee in writing. Those wishing further information should contact Mr. Audroué at the phone and fax numbers provided above.

Dated: March 15, 2003.

Lorne Craner,

Assistant Secretary, Bureau of Democracy, Human Rights and Labor, Department of State.

[FR Doc. 03–9760 Filed 4–17–03; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14628]

Extension of Comment Period on Whether Nonconforming 1996 and 1997 Lamborghini Diablo Passenger Cars Are Eligible for Importation; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction to notice of extension of comment period.

SUMMARY: This document corrects a document published on April 1, 2003 (68 FR 15794), notifying the public that NHTSA is extending the comment period on a petition for a decision whether nonconforming 1996 and 1997 Lamborghini Diablo passenger cars are eligible for importation. The document incorrectly stated that the comment period is extended until May 30, 2003. The closing date for comments should have been properly stated as May 2, 2003.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 15, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–9645 Filed 4–17–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2003–14307 (Notice No. 03–3)]

Agency Information Collection Activity Under OMB Review

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comments. The ICRs describe the nature of the information collections and their expected burden. The Federal Register notice soliciting comments on the following collections of information was published with a 60-day comment period on February 5, 2003 [68 FR 5972].

DATES: Comments must be submitted on or before May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, or T. Glenn Foster, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

Title: Rail Carrier and Tank Car Tank Requirements.

OMB Control Number: 2137–0559.

Type of Request: Extension of a currently approved collection.

Abstract: This information collection consolidates and describes the information collection provisions in parts 172, 173, 174, 179, and 180 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) on the transportation of hazardous materials by rail and the manufacture, qualification, maintenance and use of tank cars. The interested reader should refer to the table in 49 CFR 171.6 for a complete listing of sections covered by this information collection. The types of information collected include:

(1) *Approvals of the Association of American Railroads (AAR) Tank Car Committee:* An approval is required from the AAR Tank Car Committee for a tank car to be used for a commodity other than those specified in part 173 and on the certificate of construction. This information is used to ascertain whether a commodity is suitable for transportation in a tank car. AAR approval also is required for an application for approval of designs, materials and construction, conversion or alteration of tank car tanks constructed to a specification in part 179 or an application for construction of tank cars to any new specification. This information is used to ensure that the design, construction or modification of a tank car or the construction of a tank car to a new specification is performed in accordance with the applicable requirements.

(2) *Progress Reports:* Each owner of a tank car subject to the requirements of § 173.31(b) shall submit a progress report to the Federal Railroad Administration (FRA). This information is used by FRA to ensure that all affected tank cars are modified before the regulatory compliance date.

(3) *FRA Approvals:* An approval is required from FRA to transport a bulk packaging (such as a portable tank, IM portable tank, intermediate bulk container, cargo tank, or multi-unit tank car tank) containing a hazardous material in container-on-flat-car or trailer-on-flat-car service other than as authorized by § 174.63. FRA uses this information to ensure that the bulk package is properly secured using an adequate restraint system during transportation. FRA approval is also required for the movement of any tank car that does not conform to the applicable requirements in the HMR. RSPA proposed (September 30, 1999; 64 FR 53169) to broaden this provision to include the movement of covered hopper cars, gondola cars, and other types of railroad equipment when they no longer conform to Federal law but may safely be moved to a repair location. These latter movements are currently being reported under the information collection for exemption applications.

(4) *Manufacturer Reports and Certificate of Construction:* These documents are prepared by tank car manufacturers and are used by owners, users and FRA personnel to verify that rail tank cars conform to the applicable specification.

(5) *Quality Assurance Program:* Facilities that build, repair and ensure the structural integrity of tank cars are required to develop and implement a quality assurance program. This information is used by the facility and DOT compliance personnel to ensure that each tank car is constructed or repaired in accordance with the applicable requirements.

(6) *Inspection Reports:* A written report must be prepared and retained for each tank car that is inspected and tested in accordance with § 180.509 of the HMR. Rail carriers, users, and the FRA use this information to ensure that rail tank cars are properly maintained and in safe condition for transporting hazardous materials.

Affected Public: Manufacturers, owners and rail carriers of tank cars.

Estimated Number of Respondents: 260.

Estimated Number of Responses: 16,640.

Annual Estimated Burden Hours: 2,759.

Frequency of Collection: Annually.

Title: Rulemaking, Exemption, and Preemption Requirements.

OMB Control Number: 2137–0051.

Type of Request: Extension of a currently approved collection.

Abstract: This collection of information applies to rulemaking procedures regarding the HMR. Specific areas covered in this information collection include part 105, subpart B and subpart C, "Hazardous Materials Program Definitions and General Procedures," part 106, subpart B, "Participating in the Rulemaking Process," part 107, subpart B, "Exemptions," part 107, subpart C, "Preemption." The Federal hazardous materials transportation law directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in commerce. RSPA is authorized to accept petitions for rulemaking and appeals, as well as applications for exemptions, preemption determinations and waivers of preemption. The types of information collected include:

(1) *Petitions for Rulemaking:* Any person may petition the Office of Hazardous Materials Standards to add, amend, or delete a regulation in parts 110, 130, 171 through 180, or may petition the Office of the Chief Counsel to add, amend, or delete a regulation in parts 105, 106 or 107.

(2) *Appeals:* Except as provided in § 106.40(e), any person may submit an appeal to RSPA's actions in accordance with the Appeals procedures found in §§ 106.110 through 106.130.

(3) *Application for Exemption:* Any person applying for an exemption must include the citation of the specific regulation from which the applicant seeks relief; specification of the proposed mode or modes of transportation; detailed description of the proposed exemption (*e.g.*, alternative packaging, test procedure or activity), including as appropriate, written descriptions, drawings, flow charts, plans and other supporting documents, *etc.*

(4) *Application for Preemption Determination:* Any person directly affected by any requirement of a State, political subdivision, or Indian tribe may apply to the Associate Administrator for a determination of whether that requirement is preempted under 49 U.S.C. 5125, or regulations issued thereunder. The application must include the text of the State or political subdivision or Indian tribe requirement for which the determination is sought; specify each requirement of the Federal hazardous material transportation law or the regulations issued thereunder with which the applicant seeks the State, political subdivision or Indian tribe requirement to be compared; explanation of why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of § 5125 (*see also* 49 CFR 107.202); and how the applicant is affected by the State or political subdivision or Indian tribe requirements.

(5) *Waivers of Preemption:* With the exception of requirements preempted under 49 U.S.C. 5125(c), any person may apply to the Associate Administrator for a waiver of preemption with respect to any requirement that: (1) The State or political subdivision thereof or an Indian tribe acknowledges to be preempted under the Federal hazardous material transportation law or the regulations issued thereunder, or (2) that has been determined by a court of competent jurisdiction to be so preempted. The Associate Administrator may waive preemption with respect to such requirement upon a determination that such requirement affords an equal or greater level of protection to the public than is afforded by the requirement of the Federal hazardous material transportation law or the regulations issued thereunder, and does not unreasonably burden commerce.

The information collected under these application procedures is used in the review process by RSPA in determining the merits of the petitions for rulemakings and for reconsideration of rulemakings, as well as applications for exemptions, preemption determinations and waivers of preemption to the HMR. The procedures governing these petitions for rulemaking and for reconsideration of rulemakings are covered in subpart B of part 106.

Applications for exemptions, preemption determinations and waivers of preemption are covered under subparts B and C of part 107. Rulemaking procedures enable RSPA to determine if a rule change is necessary, is consistent with public interest, and maintains a level of safety equal to or superior to that of current regulations. Exemption procedures provide the information required for analytical purposes to determine if the requested relief provides for a comparable level of safety as provided by the HMR. Preemption procedures provide information for RSPA to determine whether a requirement of a State, political subdivision, or Indian tribe is preempted under 49 U.S.C. 5125, or regulations issued thereunder, or whether a waiver of preemption should be issued.

Affected Public: Shippers, carriers, packaging manufacturers, and other affected entities.

Estimated Number of Respondents: 3,304.

Estimated Number of Responses: 4,294.

Annual Estimated Burden Hours: 4,219

Frequency of Collection: Periodically.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to Office of Management and Budget, Attention: Desk Officer for RSPA, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on April 11, 2003.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 03–9646 Filed 4–17–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34303]

Dallas, Garland & Northeastern Railroad—Acquisition and Operation Exemption—The Kansas City Southern Railway Company

Dallas, Garland & Northeastern Railroad (DGNO), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate, pursuant to an agreement entered into between The Kansas City Southern Railway Company (KCS) and DGNO, 2.6 miles of rail line of KCS in West Dallas, TX, between milepost 3.0 and milepost 5.6, known as Hale Cement Spur near Dallas.

Because DGNO's projected annual revenues will exceed $5 million, DGNO certified to the Board on December 19, 2002, that it sent the required notice of the transaction to the national offices of all labor unions representing employees on the line and posted a copy of the notice at the workplace of the employees on the affected lines on December 19, 2002. *See* 49 CFR 1150.42(e).

The transaction was scheduled to be consummated on March 28, 2003, the effective date of the exemption (which is more than 60 days after DGNO's certification to the Board that it had complied with the Board's rule at 49 CFR 1150.42(e)).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34303, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Gary A. Laakso, Vice President Regulatory Counsel, 5300 Broken Sound Boulevard, NW., Boca Raton, FL 33487 and Louis E. Gitomer, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 11, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–9463 Filed 4–17–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 227X)]

Norfolk Southern Railway Company—Abandonment Exemption—In Russell County, VA

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 2.9-mile line of railroad between milepost CH–3.6 at Hurricane Junction and milepost CH–6.5 at Clinchfield, Russell County, VA.[1] The line traverses United States Postal Service Zip Code 24266.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports); 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on May 18, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 28, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 8, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, Three Commercial Place, Norfolk, VA 23510–2191.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 23, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1552. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by April 18, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

[1] An exemption allowing NSR's predecessor, Norfolk and Western Railway Company, to discontinue service over this line was granted in 1990. *See Norfolk and Western Railway Company—Discontinuance Exemption—in Russell County, VA*, Docket No. AB–290 (Sub-No. 97X) (ICC served July 16, 1990).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* CFR 1002.2(f)(25).

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: April 8, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–9195 Filed 4–17–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 10, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 19, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0919.

Regulation Project Number: PS–105–75 Final.

Type of Review: Extension.

Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

Description: These regulations require each partner to separately keep records of his share of the adjusted basis of partnership oil and gas property and require each partnership, trusts, estate, and operator to provide information necessary to certain persons to compute depletion with respect to oil and gas.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,500,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1 hour.

OMB Number: 1545–1434.

Regulation Project Number: CO–26–96 Final.

Type of Review: Extension.

Title: Regulations Under Section 382 of the Internal Revenue Code of 1986; Application of Section 382 in Short Taxable Years and with Respect to Controlled Groups.

Description: Section 382 limits the amount of income that can be offset by loss carryovers after an ownership change. These regulations provide rules for applying section 382 in the case of short taxable years and with respect to controlled groups.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 3,500.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 875 hours.

OMB Number: 1545–1502.

Form Number: IRS Forms 5304–SIMPLE and 5305–SIMPLE and Notice 98–4.

Type of Review: Extension.

Title: Form 5304-SIMPLE—Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) (Not for Use With a Designated Financial Institution); Form 5305-SIMPLE—Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—(for Use With a Designated Financial Institution); and Notice 98–4—Simple IRA Plan Guidance.

Description: Form 5304-SIMPLE and 5305-SIMPLE are used by an employer to permit employees to make salary reduction contributions to a savings incentive match plan (SIMPLE IRA) described in Code section 408(p). These forms are not to be filed with IRS, but to be retained in the employers' records as proof of establishing such a plan, thereby justifying a deduction for contributions made to the SIMPLE IRA. The data is used to verify the deduction. Notice 98–4 provides guidance for employers and trustees regarding how they can comply with the requirements of Code section 408(p) in establishing and maintaining a SIMPLE Plan, including information regarding the notification and reporting requirements under Code section 408.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 600,000.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER:

Form/notice	Recordkeeping	Learning about the law or the form	Preparing the form
5304-SIMPLE	3 hr., 37 min	2 hr., 25 min	46 min
5305-SIMPLE	3 hr., 37 min	2 hr., 25 min	46 min
Notice 98–4	15 min.		

Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 2,127,000 hours.
OMB Number: 1545–1539.
Regulation Project Number: REG–208172–91 Final.
Type of Review: Extension.
Title: Basis Reduction Due to Discharge of Indebtedness.
Description:The IRS will use the information provided by taxpayers owning interests in partnerships and owning section 1221(I) real property to verify compliance with sections 1017(b)(3)(C), 1017(b)(3)(E), 1017(b)(3)(F), and 1017(b)(4)(X).
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 2,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 1,000.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 10,000 hours.
Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.
OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,
Departmental Reports Management Officer.
[FR Doc. 03–9614 Filed 4–17–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 14, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 19, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0274.
Form Number: IRS Form 2163(c).
Type of Review: Extension.
Title: Employment—Reference Inquiry.
Description: Form 2163(c) is used by IRS to verify past employment and to question listed and developed references as to the character and integrity of current and potential IRS employees. The information received is incorporated into a report on which a security determination is based.
Respondents: Business or other for-profit, Individual or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
Estimated Number of Respondents: 20,000.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 4,000 hours.
OMB Number: 1545–1520.
Revenue Procedure Numbers: 2003–4, 2003–5, 2003–6 and 2003–8.
Type of Review: Extension.
Title: Revenue Procedure 2003–4: Letter Rulings. Revenue Procedure 2003–5: Technical Advice.
Revenue Procedure 2003–6: Determination Letters.
Revenue Procedure 2003–8: User Fees.
Description: The information requested in Revenue Procedure 2003–4, Revenue Procedure 2003–5, Revenue Procedure 2003–6 and Revenue Procedure 2003–8 is required to enable the Office of the Division Commissioner (Tax Exempt and Government Entities) of the Internal Revenue Service to give advice on filing letter ruling, determination letter, and technical advice requests, to process such requests, and to determine the amount of any user fees.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, State, Local or Tribal Government.
Estimated Number of Respondents: 83,068.
Estimated Burden Hours Per Respondent: 2 hours, 8 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 177,986 hours.
OMB Number: 1545–1535.
Revenue Procedure Number: Revenue Procedure 97–19.
Type of Review: Extension.
Title: Timely Mailing Treated as Timely Filing.
Description: Revenue Procedure 97–19 provides the criteria that will be used by the IRS to determine whether a private delivery service qualifies as a designated Private Delivery Service under section 7502 of the Internal Revenue Code.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 5.
Estimated Burden Hours Per Respondent: 613 hours, 48 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,069 hours.
OMB Number: 1545–1605.
Revenue Ruling Number: Revenue Ruling 2000–8.
Type of Review: Extension.
Title: Negative Elections in Section 401(k) Plans.
Description: Revenue Ruling 2000–8 describes certain criteria that must be met before an employee's compensation can be reduced and contributed to an employer's section 401(k) plan in the absence of an affirmative election by the employee.
Respondents: Business or other for-profit, Not-for-profit institutions.
Estimated Number of Respondents: 1,500.
Estimated Burden Hours Per Respondent: 1 hour, 10 minutes.
Frequency of Response: On occasion, Annually.
Estimated Total Reporting Burden: 1,750 hours.
OMB Number: 1545–1674.
Revenue Procedure Number: Revenue Procedure 2000–20.
Type of Review: Extension.
Title: Master and Prototype Plans.

Description: The master and prototype procedure sets forth the procedures for sponsors of master and prototype pension, profit-sharing and annuity plans to request an opinion letter from the Internal Revenue Service that the form of a master or prototype plan meets the requirements of section 401(a) of the Internal Revenue Code. The information requested in sections 5.14, 9.11, 12.02, 12.03, 15.02, 17.02, 18.06, 19.02 and 19.09 of the master and prototype revenue procedure is in addition to the information required with Forms 4461 (Application for Approval of Master of Prototype Defined Contribution Plan), 4461–A (Application for Approval of Master or Prototype Defined Benefit Plan), 4461–B (Application for approval of Master or Prototype or Plan (Master Submitter Adopting Sponsor)). This information is needed in order to enable the Employee Plans function of the Service's Tax Exempt and Government Entities Division to issue an opinion letter.
Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, State, Local or Tribal Government.
Estimated Number of Respondents: 266,530.
Estimated Burden Hours Per Respondent: 1 hour, 32 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 408,563 hours.
Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.
OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 03–9615 Filed 4–17–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 14, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 19, 2003, to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0060.
Form Number: PD F 2488–1.
Type of Review: Extension.
Title: Certificate By Legal Representative(s) of Decedent's Estate, During Administration, of Authority to Act and Request Payment and/or Make Distribution Where Estate Holds No More Than $1,000 (face amount) U.S. Savings and Retirement Securities, Excluding Checks Representing Interest.
Description: PD F 2488–1 is used by legal representatives of decedent's estate to establish authority to act and to request disposition of securities.
Respondents: Individuals or households.
Estimated Number of Respondents: 6,300.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 1,575 hours.
OMB Number: 1535–0118.
Form Number: PD F 5336.
Type of Review: Extension.
Title: Application for Disposition.
Description: PD F 5336 is used by person(s) entitled to a decedent's estate not being administered to request payment or reissue of Savings Bonds/Notes and/or related checks.
Respondents: Individuals or households.
Estimated Number of Respondents: 80,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden Hours: 40,000 hours.
Clearance Officer: Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328, (304) 480–6553.
OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,
Departmental Reports Management Officer.
[FR Doc. 03–9616 Filed 4–17–03; 8:45 am]
BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

April 11, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officers listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 19, 2003, to be assured of consideration.

Internal Revenue Service (IRS) and Financial Crimes Enforcement Network (FinCEN)

OMB Numbers: 1545–0892 and 1506–0018.
Form Numbers: IRS Form 8300 and FinCEN Form 8300.
Type of Review: Revision.
Title: Report of Cash Payments Over $10,000 Received in a Trade or Business.
Description: Anyone in a trade or business who, in the course of such trade or business, receives more than $10,000 in cash or foreign currency in one or more related transactions must report it to the IRS and provide a statement to the payor. Any transaction which must be reported under title 31 on Form 4789 is exempted from reporting the same transaction on Form 8300.
The USA Patriot Act of 2001 (Pub. L. 107–56) authorized the Financial Crimes Enforcement Network to collect the information reported on Form 8300. In a joint effort to develop a dual use form, IRS and FinCEN worked together to ensure that the transmission of the data collected to FinCEN on Forms 8300 does not violate the provisions of section 6103.
Respondents: Business or other for-profit, farms, Federal government.
Estimated Number of Respondents/Recordkeepers: 70,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 21 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 87,757 hours.
Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–

03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

Clearance Officer: Steve Rudzinski, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, (703) 905–3845.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 03–9617 Filed 4–17–03; 8:45 am]

BILLING CODE 4830–01–P; 4830–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8752

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8752, required Payment or Refund Under Section 7519.

DATES: Written comments should be received on or before June 17, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions this regulation should be directed to Allan Hopkins at (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Required Payment or Refund Under Section 7519.

OMB Number: 1545–1181.

Form Number: 8752.

Abstract: Partnerships and S corporations use Form 8752 to compute and report the payment required under Internal Revenue Code section 7519 or to obtain a refund of net prior year payments. Such payments are required of any partnership or S corporation that has elected under Code section 444 to have a tax year other than a required tax year.

Current Actions: There is no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and farms.

Estimated Number of Respondents: 72,000.

Estimated Time Per Respondent: 7 hr., 52 min.

Estimated Total Annual Burden Hours: 565,920.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 10, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9641 Filed 4–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3520–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3520–A, Annual Information Return of Foreign Trust With a U.S. Owner.

DATES: Written comments should be received on or before June 17, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Annual Information Return of Foreign Trust With a U.S. Owner.

OMB Number: 1545–0160.

Form Number: 3520–A.

Abstract: Internal Revenue Code section 6048(b) requires that foreign trusts with at least on U.S. beneficiary must file an annual information return. Form 8520–A is used to report the income and deductions of the foreign trust and provide statements to the U.S. owners and beneficiaries. IRS uses Form 3820–A to determine if the U.S. owner of the trust has included the net income of the trust in its gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 43 hrs., 24 min.

Estimated Total Annual Burden Hours: 21,700.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9642 Filed 4–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4137

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4137, Social Security and Medicare Tax on Unreported Tip Income.

DATES: Written comments should be received on or before June 17, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Social Security and Medicare Tax on Unreported Tip Income.

OMB Number: 1545–0059.

Form Number: Form 4137.

Abstract: Form 4137 is used to figure the social security and Medicare tax owed on tips received by an employee but not reported to his or her employer, including any allocated tips shown on Form W–2 that must be reported as income. Form 4137 is also used to compute the social security and Medicare tips to be credited to the employee's social security record.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 76,000.

Estimated Time Per Respondent: 1 hr., 20 min.

Estimated Total Annual Burden Hours: 101,080.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9643 Filed 4–17–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4970

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4970, Tax on Accumulation Distributions of Trusts.

DATES: Written comments should be received on or before June 17, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, (202) 622–6665, or through the Internet (*Allan.M.Hopkins@irs.gov*) Internal Revenue Service, Room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax on Accumulation Distribution of Trusts.

OMB Number: 1545–0192.

Form Number: 4970.

Abstract: Form 4970 is used by a beneficiary of a domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. This form is used to verify whether the correct tax has been paid on the accumulation distribution.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Responses: 30,000.

Estimated Time Per Response: 3 hr., 13 min.

Estimated Total Annual Burden Hours: 96,600.

The following paragraph applies to all of the collections of information covered by this notice: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9644 Filed 4–17–03; 8:45 am]

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Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Parts 107, 171, et al.

Hazardous Materials: Requirements for Cargo Tanks; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 177, 178, and 180

[Docket No. RSPA–98–3554 (HM–213)]

RIN 2137–AC90

Hazardous Materials: Requirements for Cargo Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is adopting a number of revisions to the Hazardous Materials Regulations to update and clarify the regulations on the construction and maintenance of cargo tank motor vehicles. This final rule also addresses three National Transportation Safety Board (NTSB) recommendations and several petitions for rulemaking. These revisions will increase the safety of cargo tanks transporting hazardous materials, provide greater flexibility in design and construction of cargo tanks, and reduce operating burdens for owners, operators, and manufacturers of cargo tank motor vehicles.

DATES: *Effective date:* This final rule is effective October 1, 2003.

Voluntary compliance date: Voluntary compliance is authorized 30 days following publication of this final rule.

Incorporation by reference date: The incorporation by reference of publications listed in this final rule has been approved by the Director of the **Federal Register** as of October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Johnsen, Hazardous Materials Division, Federal Motor Carrier Safety Administration (FMCSA), telephone (202) 366–6121; Mr. Philip Olson, Office of Hazardous Materials Technology, RSPA, telephone (202) 366–4504; Ms. Susan Gorsky, Hazardous Materials Standards, RSPA, telephone (202) 366–8553; or Mr. Danny Shelton, Office of Enforcement and Program Delivery, Hazardous Materials Division, Federal Motor Carrier Safety Administration (FMCSA), telephone (202) 366–6121.

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I. Background

On June 12, 1989, the Research and Special Programs Administration (RSPA; we) published a final rule in the **Federal Register** (Docket HM–183, 183A; 54 FR 24982) that revised the Hazardous Materials Regulations (HMR; 49 CFR Parts 171 through 180) pertaining to cargo tank motor vehicles. We further revised the regulations each year from 1990 through 1995 under dockets HM–183, HM–183A, and HM–183C. Several of these dockets made significant changes to the cargo tank regulations to improve safety; other revisions corrected mistakes and made minor changes. Dockets HM–183 and 183A established the DOT 400 series cargo tank specifications, as well as certification requirements for cargo tank manufacturers. Docket HM–183C contained a number of miscellaneous items that clarified and relaxed certain requirements for the manufacture, qualification, and maintenance of cargo tank motor vehicles.

Under 49 CFR 1.73(d), the Federal Motor Carrier Safety Administration (FMCSA) is delegated authority to enforce the Hazardous Materials Requirements (HMR), with particular emphasis on highway transportation, including regulations for construction and maintenance of cargo tank motor vehicles (CTMVs). FMCSA and RSPA work closely with the regulated industry through educational assistance activities and FMCSA's compliance and enforcement program. As a result of these activities, we identified several areas in the current regulations that need updating or clarification. The Cargo Tank Technical Assistant Group, comprised of state enforcement officials along with members of FMCSA and RSPA, also identified areas where cargo tank regulations could be improved for safety or clarified to facilitate compliance. In addition, we received requests for clarification of the regulations and petitions for rulemaking. The National Transportation Safety Board (NTSB) has also made several safety recommendations concerning cargo tanks.

On December 4, 2001, we published a Notice of Proposed Rulemaking (NPRM; 66 FR 63096), proposing revisions that would apply to all cargo tanks and revisions that would apply to certain specification cargo tanks or cargo tanks used to transport certain ladings. This final rule adopts changes proposed in the NPRM as explained in detail below.

II. Revisions Applicable to All Cargo Tanks

Under Docket HM–183, we adopted a number of definitions for DOT 400-series specification CTMVs. The definitions apply to all specification CTMVs used to transport hazardous materials. In the NPRM we proposed to combine the definitions currently in § 178.345–1(c) with the definitions in § 173.320 (a) and make them applicable to all specification CTMVs. We received comments on the following issues:

A. Definitions

Cargo Tank. In the NPRM, we proposed in § 171.8 to add Intermediate Bulk Containers (IBCs) to the list of specifications that are not considered cargo tanks. The North American Transportation Consultants, Inc. (NATC) submitted comments expressing concern that the proposed definition would encourage the use of IBCs as vehicle delivery systems for bulk shipments. NATC asserts that the proposed revisions would permit IBCs to be loaded and unloaded without first being removed from the transport vehicle. NATC asks us to delay adding IBCs to the list of specifications that are not considered cargo tanks until after a safety review of IBC unloading operations permitted under exemption.

NATC is not correct. Section 177.834(h) prohibits discharge of any contents of any container, other than a cargo tank or IM portable tank, prior to the removal from the motor vehicle. The proposed definition does not change this prohibition. Thus, unless authorized under exemption, IBCs may not be loaded or unloaded without first being removed from the transport vehicle. In this final rule, we are adopting the revised definition, as proposed.

Design Certifying Engineer and *Registered Inspector.* We proposed to change the requirements for Design Certifying Engineers (DCEs) or Registered Inspectors (RIs) to allow experienced persons to act as DCEs or RIs even if they had not registered by the grandfather clause date of December 31, 1995. DCEs and RIs must still meet the registration requirements in Subpart F of Part 107, which include familiarity with all current regulatory requirements and certification. In addition, the proposed definitions for both a DCE and an RI specify that a DCE and RI must have the knowledge and ability to determine whether a cargo tank design and construction meets the applicable specification.

The National Tank Truck Carriers (NTTC) proposed relaxing the RI requirements even further and eliminating the three-year requirement. We disagree. The functions performed by an RI are sufficiently complex that three years' work experience is necessary to assure that an RI has acquired essential knowledge and experience. In this final rule, we are adopting the definitions as proposed, with the addition of language to specify that the work experience requirements refer to cargo tank testing and inspection.

Corroded/abraded. Commenters generally support our proposal in the NPRM to clarify the term "corroded or abraded." However, several commenters suggest that this definition does not provide sufficient clarification and could lead to enforcement problems. Baltimore Cargo Tank comments that enforcement personnel "* * *will be compelled to deem any kind of surface mark on the cargo tank wall* * *" as meeting the definition as proposed. The American Trucking Associations suggests citations may be issued as a result of paint scratches and other cosmetic blemishes.

The use of the term "corroded or abraded" relates primarily to a requirement to perform an inspection or test, such as those requirements in § 180.407(e) that require that, if a corroded or abraded area is observed by a visual inspection, it must be thickness tested. In this final rule, we are adopting a definition for "corroded or abraded," to address commenters' concerns. Thus, in this final rule, "corroded or abraded" is defined to mean any visible reduction in the material thickness of the cargo tank wall or valve due to pitting, flaking, gouging, or chemical reaction to the material surface that affects the safety or serviceability of the cargo tank. The term does not include cosmetic or minor surface degradation that does not affect the safety or serviceability of the cargo tank.

Corrosive to the tank/valve. We proposed to revise the definition of "corrosive to the tank/valve" because of the many requests for clarification that we have received. The regulations require additional and more frequent inspections (internal inspection, thickness testing, upper coupler removal and inspection) for CTMVs transporting a lading that may adversely affect tanks or valves, causing leaks and other safety hazards. The reference to § 173.136 (definition of a Class 8 material) in the current definition has caused confusion. We did not intend that lading designated as "corrosive to the tank/valve" would be limited to Class 8 materials or to materials that cause corrosion at a rate of 6.25 mm or more per year. Our intent was to include any lading, not just Class 8 materials, that corrodes a tank or valve.

Only two commenters addressed this proposal, and both supported the change. Thus, RSPA will adopt the proposed change to the definition of "corrosive to the tank/valve" to specify that test data and experience must be used to determine if a specific lading is corrosive to the cargo tank wall or valve. The removal of the reference to § 173.136 is intended to clarify that "corrosive to the tank/valve" is not limited to materials with a corrosion rate of 6.25 mm or more per year. Any test data or experience that indicates any amount of corrosion is sufficient to meet the definition.

Maximum allowable working pressure (MAWP). The Truck Trailer Manufacturers Association (TTMA) submitted a petition for rulemaking (P–1272) suggesting that a cargo tank's MAWP should be dependent on the physical characteristics of the cargo tank rather than the lading carried in the cargo tank or the method of loading or unloading the cargo tank. In its petition, TTMA notes that a cargo tank manufacturer will not always know the characteristics of the lading that will be transported in the cargo tank and that a manufacturer will not always know the pressure at which the tank will be loaded or unloaded.

In its petition, TTMA also asserts that the current regulations have resulted in confusion in the regulated industry as to whether the static head of lading should be included in the MAWP. TTMA notes that § 178.345–1(k) defines MAWP as the largest of: (1) The pressure prescribed for the lading in part 173; (2) the vapor pressure of the most volatile lading at 115° F plus the maximum static pressure exerted by the lading at the maximum lading density plus any pressure exerted by a gas padding; or (3) the maximum pressure in the cargo tank during loading or unloading. TTMA states that it is not clear if the static head is included in the lading pressure prescribed in Part 173 or the loading/unloading pressure.

We agree with TTMA that there should be no ambiguity in the HMR as to the meaning of MAWP. We agree that the MAWP should be based on a cargo tank's physical characteristics, but we believe MAWP should also be linked to the requirements of § 173.33 for use by shippers and carriers. The proper matching of the maximum lading pressure conditions defined in § 173.33(c) with the MAWP of a cargo tank by shippers and carriers is critical to providing safety in cargo tank operations. The maximum lading pressure addresses many factors critical to matching a lading to a cargo tank MAWP, including the static head (pressure) generated by a specific lading or the maximum pressure in a tank during loading or unloading.

For example, § 173.33(c)(iv) requires the sum of the vapor pressure of the lading at 115° F, plus the tank static head exerted by the lading, plus any pressure exerted by a gas padding, including air, in the tank to be less than or equal to the MAWP of the cargo tank. The pressure defined by this summation is the pressure exerted at the bottom of the tank. When a cargo tank is inverted in a rollover, this pressure is applied to the pressure relief devices installed on the top of the cargo tank. Particularly for large diameter tanks and high-density ladings, this resultant pressure could be sufficient to open the cargo tank's pressure relief devices and release the contents of the tank, even if the tank were undamaged.

Thus, it is critical for shippers and carriers to determine that the MAWP of a cargo tank is greater than or equal to maximum lading pressure derived from the conditions specified in § 173.33. Similarly, cargo tank manufacturers should be familiar with the requirements of § 173.33 in order to provide a cargo tank with an MAWP sufficient to meet the needs of shippers and carriers. To strengthen the linkage between § 173.33 and cargo tank MAWP, the NPRM proposed to revise the definition for MAWP to require the MAWP to be greater than or equal to the maximum lading pressure condition prescribed in § 173.33 for each material. The proposal is adopted without change in this final rule.

Minimum thickness. We proposed to add in § 178.320 a definition for

"minimum thickness" to clarify how the minimum head and shell thickness for specification cargo tanks must be determined. The proposal defined "minimum thickness" to mean the least of: (1) The thickness required by the original specification; (2) the thickness required to satisfy the structural integrity and accident damage requirements; or (3) the thickness required to satisfy the requirements of the American Society of Mechanical Engineers (ASME) Code, if applicable. This proposal was intended to eliminate confusion as to whether the minimum thickness tables in § 180.407(i) are the governing factor in determining minimum thickness.

In consultation with members of the Cargo Tank Technical Assistance Group, coordinated through FMCSA, we determined that the proposed definition did not clearly correlate the minimum thickness of the tank with the tank specification requirements. Therefore, in this final rule, we further clarified the definition to read as follows:

Minimum thickness means the minimum required shell and head (and baffle and bulkhead when used as tank reinforcement) thickness needed to meet the specification. The minimum thickness is the *greatest* of the following values:

(1)(i) For MC 330, MC 331, and MC 338 cargo tanks, the specified minimum thickness found in the applicable specification(s) for construction; or

(ii) For DOT 406, DOT 407 and DOT 412 cargo tanks, the specified minimum thickness found in Tables I and II of the applicable specification(s); or

(iii) For MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 cargo tanks, the in-service minimum thickness prescribed in Tables I and II of § 180.407(i)(5), of this subchapter, for the minimum thickness specified by Tables I and II of the applicable specification(s);

(2) The thickness necessary to meet with the structural integrity and accident damage requirements of the applicable specification(s); or

(3) The thickness as computed per the ASME Code requirements (if applicable).

In addition, adding minimum thickness determination criteria for MC 331 and 400 series cargo tanks to § 180.407(i) will increase understanding of the requirements by placing all information concerning the thickness of any cargo tank in one section. Thus, new paragraphs (i)(9) and (i)(10) will be added as follows:

(i)(9) For MC 331 cargo tanks constructed before the date of this final rule, minimum thickness shall be determined by the thickness indicated on the ASME form U1A minus any corrosion allowance. For tanks constructed after the date of this final rule, the minimum thickness will be that which is indicated on the specification plate. If no corrosion allowance is indicated on the ASME form U1A, then the thickness of the cargo tank shall be the thickness of the material of construction indicated on the form, with no corrosion allowance.

(i)(10) For 400-series cargo tanks, minimum thickness is calculated according to tables in each applicable section for that specification: § 178.346–2 for DOT 406 cargo tanks, § 178.347–2 for DOT 407 cargo tanks, and § 178.348–2 for DOT 412 cargo tanks.

Cargo tank design includes calculations using the thickness of the tank shell and heads to determine if the tank would meet the minimum structural design requirements less any corrosion allowance. These calculations include a safety factor of 4 that must be maintained throughout the life of the tank. If corrosion is discovered on the tank and the ASME form U1A of the ASME code indicates the shell is .225 inches thick with no corrosion allowance indicated on the ASME form U1A, then any areas on the tank below that thickness must be repaired prior to placing the tank back in service. Clarifying this will provide test and inspection facilities a specific number to determine the thickness of the tank and should simplify calculating corrosion allowances (if any allowance is indicated).

We had also proposed to make a separate paragraph (d) for the definition of "minimum thickness." We determined that this is not necessary; in this final rule, the definition appears after the term as it is listed in the section. In addition, the wording in § 178.337–3(e) should note that the minimum metal thickness of 0.187 inches for steel and 0.270 inches for aluminum is for tanks with a design pressure of 100 psig. This section outlines regulations for minimum thickness on MC 331 cargo tanks, which are primarily used for the transportation of compressed gasses. Further, we are clarifying that the minimum thickness of the tank shell and heads must be determined using structural design requirements in Section VIII of the ASME Code, or 25% of the tensile strength of the material.

B. Marking of Emergency Shutoff Devices

In response to NTSB recommendation H–93–34, we proposed to amend the HMR in § 172.328 to require all manually activated on-truck remote shutoff devices for closure of the internal valve to be marked "Emergency Shutoff." The requirement would be effective two years after the publication date of a final rule.

Several commenters suggest that we reconsider the size requirement for the marking. TTMA and NTTC recommended that the minimum lettering size should be 0.75″ instead of the proposed 1.5″ height due to the size the overall marking would assume if each letter were 1.5″ high. We agree that the 0.75″ minimum letter height is adequate to communicate the presence of the emergency shutoff. Therefore, this final rule requires the emergency shutoff device marking to be a minimum 0.75″ height.

C. Recertification to Original Specification

There appears to be confusion in the regulated industry as to whether cargo tanks that have been modified for specialized or non-hazardous materials service may be re-certified for hazardous materials service. In the NPRM, we proposed to allow for the re-certification of a cargo tank to its original specification, provided specific requirements are met. These requirements include documentation to verify that the cargo tank was originally manufactured to a DOT specification, verification by a Registered Inspector that the cargo tank is in compliance with the requirements of the specification, and certification that the cargo tank successfully passed all required tests and inspections. In addition, any repairs performed on MC 306, MC 307, or MC 312 cargo tanks after June 30, 1992, must have been performed in accordance with requirements in § 180.413.

An example is an MC 306 cargo tank that has had its internal self-closing stop valve removed so that the cargo tank can be used to transport asphalt. As proposed in the NPRM, § 180.405(b), the cargo tank may be re-certified to its original specification provided an internal shutoff valve is reinstalled, the CTMV meets all other requirements of the specification, and the cargo tank motor vehicle has successfully passed the inspections and tests required in § 180.407(c).

NATC, whose comments are supported by several other commenters, opposes allowing the recertification of cargo tanks. NATC suggests that the proposed change could result in an increase in unsafe cargo tanks and confusion on the part of enforcement personnel who would be unable to verify the cargo tank certifications. In addition, NATC expressed concern that the proposal is unfair to companies that requalified cargo tanks prior to August 31, 1995.

We do not agree that permitting cargo tanks to be re-certified to their original specifications would lead to an increase in unsafe cargo tanks. However, in this final rule we are adding additional language to clarify and ensure a DCE or RI verifies that the cargo tank conforms to all applicable requirements of the specification in effect at the time the tank was originally constructed and the additional requirements proposed in § 180.405(b)(2).

Neither do we agree that enforcement personnel will be unable to verify the cargo tank certification. A cargo tank that is re-certified to the original specification will have records of the work performed on the tank, certifications from appropriate inspectors, and specification plates on the cargo tank that would reflect the same testing and certification data that a newly constructed cargo tank would have.

The August 31, 1995 date was placed in the regulations in § 180.405 during the rulemaking process under docket HM–183. This was the cut-off date for the manufacture of MC 307, MC 312, MC 331, and MC 338 specification cargo tanks. This date had been extended several times in the rulemaking process in response to petitions and requests by a number of cargo tank industry representatives who stated that the extra years were needed to complete the transition from the older MC specification cargo tanks to the 400 series specifications HM–183 required. None of the companies that commented on the HM–183 time line suggested that removing this date requirement presented an unfair situation. These companies were in the process of manufacturing new cargo tank motor vehicles, and through the HM–183 rulemaking process, we addressed their concerns by extending the compliance date. Removing this date extension in this rule addresses a different concern and does not create an unfair situation.

NATC recommends that RSPA include a provision in § 180.405 to allow a cargo tank to be removed from hazmat service without requiring the de-certification of the cargo tank. A specification cargo tank may be used for non-specification service and remain a specification cargo tank. The plate must be covered or removed only if tests or inspections expire. We do not see a need to further clarify the use of specification cargo tanks outside hazardous materials service.

D. Cargo Tank Qualification and Maintenance

To reduce confusion in the regulated industry, we proposed a number of clarifications to the requirements in Part 180 for cargo tank qualification and maintenance. We have reviewed the comments that we received concerning the variety of proposals under this topic below.

Test and inspection criteria. We proposed to clarify in § 180.407(b) the tests and inspections that must be performed when a cargo tank shows evidence of dents, corroded or abraded areas, or leakage; has sustained damage to an extent that may adversely affect its lading retention capability; or has any other condition that could render it unsafe for the transportation of hazardous materials. Several commenters suggested that this language was too ambiguous and could lead to excessive or unnecessary enforcement. In this final rule, we addressed many of these concerns by further modifying the definition of "corroded or abraded" (see discussion under "Definitions" above). The proposed language in § 180.407, in conjunction with our revised definition of "corroded or abraded," adds more clarity than the previous language in these sections. This final rule adopts the proposed language for test and inspection criteria.

Thickness testing of ring stiffeners and appurtenances. Consistent with an NTSB recommendation (H–95–14), we proposed to revise § 180.407(d)(1) to require thickness testing of ring stiffeners and appurtenances on cargo tanks that are constructed of mild steel, high-strength, low-alloy steel, or aluminum, when the ring stiffeners and appurtenances are installed in a manner that precludes an external visual inspection. NTSB investigated two catastrophic cargo tank failures where thickness testing of the cargo tanks' ring stiffeners might have detected the corrosion that caused the failures. In this final rule, we are adopting this proposal without modification. NATC and the commenters that supported NATC's comments, asked us to clarify how an RI should determine minimum thickness of the ring stiffener since there is no ready reference. The regulatory text describes this procedure.

Testing normal vents. We proposed changes to the testing of pressure relief devices in § 180.407(g)(1)(ii) to require self-closing pressure relief valves first to open at the required set pressure and, second, to close and seat to a leak-tight condition when the pressure has dropped to 90 percent of the set-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification. Several comments asked us to better define the test requirements for a normal vent that is a self-closing pressure relief device, but is not an emergency relief device that would be tested at the above criteria. In response, we have clarified that normal vents must be tested accordance with the testing criteria established by the valve manufacturer. This assures testing accuracy because the valves will be tested to the specification to which they were built.

Repair, modification, stretching, and rebarrelling. The NPRM proposed to clarify § 180.413 requirements for repair, modification, stretching, or rebarrelling of cargo tanks. We proposed to require facilities to perform repairs, modifications, stretching, or rebarrelling of cargo tanks in conformance with the National Board Inspection Code (NBIC). The NBIC establishes procedures for repairing or modifying pressure vessels. Prior to 1995, the NBIC applied only to tanks with a maximum allowable working pressure (MAWP) of 15 psi or greater. However, in 1995 the applicability of the NBIC was extended to all pressure vessels. In this final rule, we are adopting the clarifications as proposed. Adopting the NBIC requirements for all cargo tank repairs, modifications, stretching, and rebarrelling will provide clarity, consistency, and a greater level of safety. Note, however, that we did not propose and are not adopting requirements for certification by an NBIC Authorized Inspector, completion of the R–1 form, and stamping tanks with the "R" stamp for non-ASME cargo tanks.

In the NPRM, we proposed to clarify that modification, stretching, or rebarrelling must be inspected and certified by a DCE. We proposed to change the requirements in § 180.413(d)(1) to require the design of the modified, stretched, or rebarrelled cargo tank motor vehicle be certified in writing by a DCE as meeting the structural integrity and accident damage protection requirements of the applicable specification. Baltimore Cargo Tank comments that the proposal may be too restrictive because it appears that a DCE would be required to sign off on small changes. However, the definition of "modification" includes only those changes that affect a cargo tank or cargo tank motor vehicle's structural integrity or lading retention capability. Such modifications should be approved by a DCE.

Supplemental specification plate. We proposed to revise specification plate requirements to reflect the modification, stretching, or rebarrelling of a cargo tank. We proposed to require a supplemental specification plate to be installed adjacent to the original specification plate. Changes to the original specification plate would not be allowed. The information on the original specification plate should be permanent and not altered, even if modifications are performed by the

original manufacturer. This final rule adopts the revisions as proposed.

Hose testing. We proposed, in § 180.413(c)(1), to require leak testing when any pipe, valve, hose, or fitting on a cargo tank is repaired or replaced in a process that does not involve welding. We proposed that the test must be done in accordance with § 180.407(g)(1). As noted by the National Propane Gas Association (NPGA), the proposal did not take into account existing exceptions from hose maintenance requirements for cargo tanks in dedicated compressed gas (except for carbon dioxide) service. In this final rule, we revised the proposal to include exceptions for cargo tanks in dedicated compressed gas (except for carbon dioxide) service, requiring them to be tested in accordance with the new or repaired delivery hose assemblies requirements in § 180.416(f), since any repair or replacement falling under § 180.413(c)(1) would also fall under this section.

Cleaning and purging before repairs. Because persons have suffered severe injuries or death while performing repairs to cargo tanks that were not properly cleaned and purged, we also proposed in § 180.413(a)(2) to clarify and emphasize that the entire CTMV, including void spaces, piping, and vapor recovery systems, must be cleaned and purged before doing repairs, modifications, stretchings, rebarrellings, or mountings on cargo tanks that transport toxic or flammable lading. NPGA suggests that we specify such cleaning and purging would apply only for welded repairs, not for repairs such as replacement of a valve or fitting located downstream of the primary valves or fittings. Replacing a fitting that does not require welding is not a repair as defined in § 180.403 and therefore would not, under this section, require cleaning and purging of the cargo tank. We are adopting our proposal without changes.

NTTC asks us to clarify the terms "cleaned" and Apurged." This terminology is taken from § 173.29(b)(2)(ii) which discusses conditions that may make a packaging "empty." In this final rule, we added the wording from this paragraph to § 180.413(a)(2) to clarify that all hazardous material must be removed from the cargo tank before repairs are performed.

III. Revisions Applicable to DOT 400-Series Cargo Tanks

In the NPRM, we proposed several revisions to the specifications applicable to the DOT 400-series cargo tanks. These proposals included revisions to: (1) Structural integrity requirements; (2) manhole marking requirements; (3) road clearance allowances; (4) bottom accident protection; (5) specification plate marking; (6) leak testing alternatives; and (7) weld joints. In addition to these changes, which are described below, we also proposed revisions to the DOT 400-series specifications to make the requirements easier to understand and follow.

A. Structural Integrity Requirements

In the NPRM, we proposed to add structural support members to the list of attachments to which the structural integrity requirements apply for new construction of DOT–400-series CTMVs in § 178.345–3(f). In addition, the proposal included requiring mounting pads for the installation of structural members, attachments and appurtenances.

We received a number of comments on this proposal, with most commenters suggesting that the proposal would impose significant costs on the industry without significantly enhancing safety. Additionally, several commenters note that excessive welding could damage the tank wall, and that there is no indication that lightweight appurtenances account for accident situations that breach the cargo tank wall.

TTMA states that there is no data showing lightweight attachments to be a concern for shell damage, and that "* * * a typical aluminum DOT 406 cargo tank trailer would require over 5,000 inches of additional welding * * *" and would increase vehicle weight "* * * by approximately 350 lbs." In addition, TTMA cites several safety issues that could result from excessive welding, including creating cavities that could trap hazardous ladings, creating more heat-affected zones, and possible distortion of the cargo tank wall.

We have considered the commenters concerns and are not adding structural support members to the list of attachments to which the structural integrity requirements apply. However, this final rule does include minor editorial clarifications that otherwise do not change the requirements in this section.

B. Manhole Marking

Under § 178.345–5, the HMR currently require manhole covers to be permanently marked with the manufacturer's name, the test pressure, and a certification that the manhole cover meets HMR requirements. This marking enables cargo tank owners, RIs, and enforcement personnel to verify that the manhole conforms to applicable regulatory requirements. In the NPRM, we proposed to require manhole assemblies to be marked on the outside, where the marking can be seen without opening the manhole cover or fill opening and exposing persons to hazardous materials inside the cargo tank.

Two commenters addressed the topic, the Fertilizer Institute and Farmland Industries, Inc. Both supported the proposal. This final rule adopts the proposal as presented in the NPRM. This requirement will become effective one year after the effective date of this final rule. The revised marking requirements apply to newly manufactured cargo tanks and to replacement manhole assemblies on existing cargo tanks.

C. Road Clearance

In a petition for rulemaking (P–1325), TTMA requested that we lower the minimum road clearance requirements in § 178.345–8 to permit greater flexibility in the design of landing gear, tire carriers, cabinets, and other components near axles. TTMA suggested that such a revision would permit lowering the center of gravity for some CTMVs, which would improve dynamic stability. TTMA stated that it is aware of no situations in which a landing gear failure has punctured a cargo tank.

We agreed with TTMA that reducing the center of gravity for CTMVs would be beneficial. Thus, in the NPRM, we proposed to revise the requirements for minimum road clearance for landing gear within 10 feet of an axle to be no less than 10 inches. We proposed to maintain the current clearance requirements for the middle area between axles. The proposed revision would allow landing gear to be lowered by two inches, but would not compromise clearances in the area of a CTMV most vulnerable to contact with the ground—that is, the area midway between a tractor's rear axle and the CTMV rear suspension.

In its comments on this issue, TTMA suggests that the ten-inch clearance should be measured when there is no lading in the cargo tank. We disagree, because we are identifying the minimum road clearance. This final rule adopts a ten-inch road clearance, and requires it to be calculated when the tank is fully loaded with its maximum lading.

D. MAWP Specification Plate Marking

In a petition for rulemaking (P–1212), TTMA asked us to eliminate the maximum loading and unloading pressure marking on the specification plate. We included the proposal in the NPRM. TTMA noted that the volume change of liquids transported in DOT 406, DOT 407, and DOT 412 cargo tanks is small and that the maximum loading and unloading rate is calculated in the design of the cargo tank and identified on the specification plate. We agree that the maximum loading and unloading pressure marking is unnecessary because the maximum loading/unloading pressure is reflected in the MAWP. However, in no situation can the actual pressure in the tank exceed the MAWP. This final rule adopts the provision as proposed.

In addition, in § 180.405(k), we proposed to require owners of MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 and MC 312 cargo tanks that have a pressure relief system set at 3 psig to mark or remark the cargo tank with an MAWP or design pressure of not less than 3 psig. NATC says that its field staff found approximately 11% of the MC 306 cargo tanks inspected at one location had no design pressure marked on the specification plates. This revision to the marking requirements will help reduce the number of cargo tanks without a marked design pressure.

E. Leak Testing Using EPA Method 27

In the NPRM, we proposed to clarify the parameters in § 178.346–5, 180.407(h)(2), and 180.415(b)(3) for testing and marking cargo tanks used to transport petroleum distillate fuels and equipped with vapor recovery equipment. Such cargo tanks may be tested in accordance with the Environmental Protection Agency (EPA) "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test" as set forth in Appendix A to 40 CFR part 60. This annual certification test includes both the Method 27 test for vapor tightness of a cargo tank and a pressure test of the tank's internal vapor valve. The revision proposed in the NPRM specified that cargo tanks equipped with vapor collection equipment that are used to transport petroleum distillate fuels may be tested in accordance with 40 CFR 63.425(e) instead of the annual leakage test required under § 180.407 of the HMR. In addition, we proposed that, if the EPA annual certification test in 40 CFR 63.425(e) is used to satisfy the annual leak test requirement, the Method 27 test must be conducted using air. Performing the test using liquid, an alternative allowed by EPA, may mask leakage below the liquid level at the pressure level specified for the test. The EPA Method 27 air test will more accurately detect small leaks in a cargo tank. Therefore, we proposed to prohibit use of alternative procedures in section 6 of Method 27 that allow the use of water.

We proposed a special marking to designate cargo tanks that have been tested in conformance with EPA's annual certification test for cargo tanks equipped with vapor recovery equipment and used to transport petroleum distillate fuels. The proposed marking is "K–EPA27." The marking would replace the "K" marking on a cargo tank if the EPA vapor tightness test methods and procedures as set forth in 40 CFR 63.425(e) are used in place of the leak test. If a cargo tank is tested using both the leak test specified in the HMR and the vapor tightness tests specified in the EPA regulations, it would be marked with both "K" and "K–EPA27." This proposal would establish a national, uniform marking requirement for cargo tanks tested for vapor tightness in accordance with EPA regulations instead of, or in addition to, the leak test procedures specified in the HMR. This marking would be applied to cargo tanks that are tested for vapor tightness under EPA procedures beginning one year after the effective date of the final rule.

Several commenters addressed this proposal. Baltimore Cargo Tank asks why the test would only be permitted for petroleum products. The Method 27 test is performed at 0.6 psig for gasoline cargo tanks. The test pressure is not sufficient to detect leaks on a cargo tank used to transport other types of hazardous materials. We will consider allowing the EPA Method 27 test for other cargo tank ladings that are subject to EPA vapor recovery system requirements in a future rulemaking.

In addition, several commenters question the need for a special marking. The marking requirement will allow an inspector to know the tank was tested using the EPA Method 27 test and also standardize the marking for tanks undergoing this test throughout the United States. RSPA's marking requirement will preempt state marking requirements for cargo tanks tested with the EPA Method 27 test, eliminating possible confusion by enforcement personnel attempting to verify that a cargo tank has met the HMR leak test requirements.

A representative of Tank Truck Service suggests we omit the provision since the EPA requirements are less stringent than the DOT leakage test. The HMR already permit the test. This final rule clarifies that the test may be used only for petroleum fuel service. Further, this final rule specifies that the test may not be performed using liquid, but must be performed with air. This provision strengthens the EPA Method 27 test as an alternative to the leakage test. This final rule adopts the EPA Method 27 test provisions as proposed in the NPRM.

F. Weld Joints on DOT 407 Cargo Tanks

In a petition (P–1333), TTMA requested that we adopt a weld joint efficiency of 0.85 for head seams in bulkheads on DOT 407 cargo tanks. Based on a review of the TTMA petition and additional information, we proposed that the strength of a weld seam in a bulkhead without radiographic examination of the weld must be 0.85 of the strength of the bulkhead. The welded seam must be a full penetration butt weld, no more than one seam may be used per bulkhead, and the welded seam must be completed before forming the dish radius and knuckle radius.

In its petition, TTMA also requested that we permit spot radiographic examination of weld joints every six months as an alternative to the periodic test. We do not agree with TTMA on this issue. Instead, we proposed that two test specimens of the same material and thickness and joined by the same welding procedures as those to be used in manufacturing the bulkhead must be tested to failure in tension. The ratio of the actual tensile stress of the weld joint to the actual tensile strength of the adjacent material of both samples must be greater than 0.85. Under the proposal, the test specimens may represent all the tanks that are manufactured in the same facility within six months after the tests are completed.

In its comments to the NPRM, TTMA agrees with the provisional 85% weld joint efficiency for DOT 407 heads with butt-welded seams. However, TTMA suggests that we include the requirements of Part UW–12 of the ASME Code to the list of excepted requirements in § 178.347–1(d)(8). We agree. In this final rule, we are adding Part UW–12 of the ASME Code to the list of excepted requirements.

IV. Revisions Applicable to MC 331 and MC 338 Cargo Tanks

The NPRM proposed several revisions to the HMR specifications applicable to MC 331 and MC 338 cargo tanks. The proposals include: (1) Revisions to make the specifications consistent with the DOT 400-series cargo tank specification requirements; (2) retrofit requirements for cargo tanks not currently equipped with remote shutoff devices; (3) a new requirement for thermal activation devices on MC 338 CTMVs; (4) revisions

to the internal inspection requirements; and (5) revisions to leakage test requirements for cargo tanks in anhydrous ammonia service. In addition to these changes, which are discussed below, we are also adopting revisions to the MC 331 and MC 338 specifications to make the requirements easier to understand and follow.

A. Consistency With DOT 400-Series Specification

We proposed a number of changes to the MC 331 and MC 338 specifications to make them consistent with specifications applicable to DOT 400-series CTMVs. The DOT 400-series cargo tank specifications are more contemporary regulations that reflect current industry practices. In addition, the DOT 400-series specifications are performance standards, and, thus, provide greater flexibility to cargo tank designers and manufacturers to meet the DOT requirements. As proposed in the NPRM, we are not imposing additional requirements for MC 331 and MC 338 CTMVs; rather we are increasing flexibility in meeting the requirements by proposing performance standards and additional alternatives.

General design, construction and installation requirements. Under Docket HM–183C (60 FR 17398), we modified the structural integrity requirements for MC 331 and MC 338 CTMVs to conform with the DOT 400-series specification requirements. At that time, however, the related requirements for attachments were not changed. Thus, in the NPRM we proposed to make requirements for the design, construction, and installation of attachments, appurtenances, structural support members, or accident protection devices on MC 331 and MC 338 CTMVs consistent with the requirements for DOT 400-series CTMVs.

In Section IIA of this preamble, we discuss the proposal in the NPRM that required mounting pads for structural support members. A number of commenters opposed this addition in the structural integrity requirements for the DOT 400-series cargo tank requirements. In light of the comments received, we reconsidered this proposal and are not adopting requirements for mounting pads for structural supports. Similarly, the requirements adopted in this final rule for the MC 331 and MC 338 CTMVs will not include requirements for mounting pads for structural supports. This final rule does include minor editorial clarifications that otherwise do not change the requirements in this section.

Rear-end tank protection. The NPRM proposed to revise long-standing requirements for rear-end tank protection devices on MC 331 and MC 338 CTMVs (in §§ 178.337–10 and 178.338–10, respectively) to authorize the DOT 400-series rear-end tank protection provisions as an alternative to the current requirements for both MC 331 and MC 338 CTMVs. As several commenters note, the NPRM included regulatory language that differed from the original MC 331 and MC 338 rear-end tank protection requirements. Apart from the reorganization and editorial clarifications, the original MC 331 and MC 338 rear-end tank protection requirements have been preserved in this final rule, and we are adding a provision to allow rear-end tank protection devices to conform with § 178.345–8(d) if desired.

Support and anchoring. We also proposed changes to the MC 331 and MC 338 specifications for cargo tank support and anchoring for consistency with the DOT 400-series requirements. When the structural integrity requirements for the MC 331 and MC 338 CTMVs were modified under HM–183, the closely related requirements for support and anchoring were not changed. This was an inadvertent error that we proposed to correct. This would apply to newly constructed MC 331 and MC 338 CTMVs. We did not receive any comments on this proposal; they are adopted in this final rule as they appear in the NPRM.

Name and specification plate markings. In the NPRM, we proposed to require essential information (required in § 178.337–17 and § 178.338–18) to be marked on metal specification and name plates on MC 331 and MC 338 CTMVs, respectively, to be consistent with requirements for DOT 400-series CTMVs found in section § 178.345–14. We proposed to require that all of the information be marked on a single plate. In an effort to be more flexible and to prevent the replacement of existing name and specification plates, in this final rule we are clarifying that the marking requirements for name plates and specification plates may be on either two separate plates or on a single plate. Thus, the name and specification plate can be one single plate. We will also allow the specification plate to be attached to the cargo tank motor vehicle chassis, with additional marking requirements, to allow the specification plate to be attached without welding directly to the cargo tank wall.

In addition, based on comments submitted by the National Propane Gas Association, we are clarifying that any information marked on a plate required by the ASME code that is also required on either the name or specification plate need not be marked twice on the tank.

Further, this final rule clarifies that the cargo tank motor vehicle certification date (CTMV cert. date) is the date used to determine subsequent maintenance testing time periods. There has been confusion as to whether testing requirements start from the original test date (Orig. Test Date), the cargo tank certification date (CT cert. date) or the cargo tank motor vehicle certification date (CTMV cert. date).

For MC 331 and MC 338 cargo tanks, the name plate must display the following information:

(1) DOT-specification number MC 331 or MC 338 (DOT MC 331 or DOT MC 338).
(2) Original test date (Orig, Test Date).
(3) MAWP in psig.
(4) Cargo tank test pressure (Test P), in psig.
(5) Cargo tank design temperature (Design Temp. Range) ____%F to ____%F.
(6) Nominal capacity (Water Cap.), in pounds.
(7) Maximum design density of lading (Max. Lading density), in pounds per gallon.
(8) Material specification number—shell (Shell matl, yyy* * *), where "yyy" is replaced by the alloy designation and "* * *" is replaced by the alloy type.
(9) Material specification number—heads (Head matl. Yyy* * *), where ";yyy" is replaced by the alloy designation and "* * *" by the alloy type. NOTE: When the shell and heads materials are the same thickness, they may be combined, (Shell&head matl, yyy* * *).
(10) Weld material (Weld matl.).
(11) Minimum Thickness—shell (Min. Shell-thick), in inches. When minimum shell thicknesses are not the same for different areas, show (top ____, side ____, bottom ____, in inches).
(12) Minimum thickness—heads (Min heads thick.), in inches.
(13) Manufactured thickness—shell (Mfd. Shell thick.), top ____, side ____, bottom ____, in inches. (Required when additional thickness is provided for corrosion allowance.)
(14) Manufactured thickness—heads (Mfd. Heads thick.), in inches. (Required when additional thickness is provided for corrosion allowance.)
(15) Exposed surface area, in square feet.

The specification plate on MC 331 cargo tanks must contain the following information:

(1) Cargo tank motor vehicle manufacturer (CTMV mfr.).
(2) Cargo tank motor vehicle certification date (CTMV cert. date).
(3) Cargo tank manufacturer (CT mfr.).
(4) Cargo tank date of manufacture (CT date of mfr.), month and year.
(5) Maximum weight of lading (Max. Payload), in pounds
(6) Maximum loading rate in gallons per minute (Max. Load rate, GPM), at maximum unloading pressure ____ psig.
(7) Maximum unloading rate in gallons per minute (Max. Unload rate, GPM), at maximum unloading pressure ____ psig.
(8) Lining materials (Lining), if applicable.
(9) Heating system design pressure (Heating sys, press.), in psig, if applicable.
(10) Heating system design temperature (Heating sys, temp.), in °F, if applicable.
(11) Cargo tank serial number, assigned by cargo tank manufacturer (CT serial), if applicable.

The specification plate on MC 338 cargo tanks would contain the following information:

(1) Cargo tank motor vehicle manufacturer (CTMV mfr.).
(2) Cargo tank motor vehicle certification date (CTMV cert. date).
(3) Cargo tank manufacturer (CT mfr.).
(4) Cargo tank date of manufacture (CT date of mfr.), month and year.
(5) Maximum weight of lading (Max. Payload), in pounds
(6) Maximum loading rate in gallons per minute (Max. Load rate, GPM), at maximum unloading pressure ____ psig.
(7) Maximum unloading rate in gallons per minute (Max. Unload rate, GPM), at maximum unloading pressure ____ psig.
(8) Lining materials (Lining), if applicable.
(9) "Insulated for Oxygen Service" or "Not Authorized for Oxygen Service," as appropriate.
(10) Marked rated holding time for at least one cryogenic liquid, in hours, and the name of that cryogenic liquid (MRHT ____ hrs, name of cryogenic liquid). MRHT marking for additional cryogenic liquids may be displayed on or adjacent to the specification plate.
(11) Cargo tank serial number, assigned by the cargo tank manufacturer (CT serial), if applicable.

This requirement would apply to new construction and changes on these CTMVs.

Shortages. For MC 331 CTMVs, we proposed to require certificates for a CTMV that is manufactured in two or more stages. We proposed that each manufacturer who performs a manufacturing function on the incomplete CTMV must provide the succeeding manufacturer with a certificate that states the function that was performed and must also provide certificates received from previous manufacturers, Registered Inspectors, and Design Certifying Engineers. Further, we proposed to clarify the roles of the original manufacturer of a cargo tank and the assembler of a CTMV in documenting on the certificate those areas of the specification that are not met or specification shortages, including valves, piping, and fittings. The person who installs the components that bring the CTMV into full compliance with the specification would be required to stamp the certification date on the specification plate and issue a Certificate of Compliance. We are adopting the proposals without change in this final rule.

B. Remote Shutoffs

On December 28, 1988, in Ashland, Virginia, a pipe fitting on an MC 331 cargo tank transporting sulfur dioxide failed during a delivery operation. The driver of the CTMV suffered a fatal injury while attempting to close the cargo tank's internal valve. The CTMV was not equipped with a remote mechanical means to close the internal valve. As a result of its investigation, NTSB recommended that RSPA require MC 330, MC 331, and MC 338 CTMVs to be equipped with on-truck remote mechanical means to close the internal valve (NTSB # H–90–91).

In a final rule published November 3, 1994 (HM–183C; 50 FR 55162), we adopted a requirement for MC 331 and MC 338 CTMVs constructed after January 1, 1995, to be equipped with on-truck remote shutoff devices. For CTMVs constructed prior to January 1, 1995, we required each MC 330 and MC 331 CTMV used to transport flammable gas; flammable liquid; hydrogen chloride, refrigerated liquid; or anhydrous ammonia, and each MC 338 CTMV used to transport flammable ladings to be retrofitted with an on-truck remote shutoff device. These requirements are found in § 178.338–11. The NPRM proposed two revisions to these requirements, as discussed below.

On-truck remote mechanical shut-off. In the NPRM, we proposed to require all MC 330, MC 331, and MC 338 CTMVs to be retrofitted with an on-truck remote mechanical shutoff device that meets the requirements for the applicable specification. Under the proposal, the retrofit would be accomplished within three years from the effective date of a final rule. Under this proposal, CTMVs used to transport only argon, carbon dioxide, helium, krypton, neon, nitrogen, or xenon or mixtures thereof are excepted from the requirement for on-truck remote shutoff. The Compressed Gas Association (CGA) requested that we maintain the original grandfather clause excepting cargo tank motor vehicles certified before January 1, 1995, unless intended for use to transport flammable ladings. We agree with the NTSB recommendation setting out the safety concerns for the proposed retrofit, and therefore, adopt the proposal in this final rule.

Thermal activation self-closing stop valve. The NPRM proposed to require MC 338 CTMVs to be equipped with a means of thermal activation for closing the internal self-closing stop valve. On June 4, 1998 (63 FR 30572), RSPA established a negotiated rulemaking committee under Docket RSPA–97–2718 (HM 225A). During the negotiated rulemaking process, the committee discussed the safety benefits of fusible elements, which provide a heat-activated means for closing a valve. Fusible elements melt when subjected to sufficiently high temperatures, thereby closing the valve to which they are affixed. The HMR currently require installation of on-truck remote closures with a means of thermal activation on MC 331 cargo tanks. Consistent with the committee's recommendation, we proposed that internal self-closing stop valves be equipped with a means of thermal activation on all MC 338 cargo tanks. This requirement would not apply to tanks transporting only argon, carbon dioxide, helium, krypton, neon, nitrogen, or xenon. Commenters did not address this proposal. It is adopted without change in this final rule.

C. Inlet and Outlet Fittings on MC 331 Cargo Tanks

Currently, § 178.337–9 of the HMR requires the use of malleable metals for the construction of valves and fittings on MC 331 cargo tanks. NPGA petitioned for a change to § 178.337–9 to require liquid filling and vapor equalization fittings on MC 331 cargo tanks to be constructed of malleable steel or ductile iron only (P–0935). In its petition, NPGA stated that this change would help to prevent the occurrence of piping failures when fittings made of soft metals, such as brass or copper, are struck by an outside force. We agreed, and proposed to require new or replacement primary valves and fittings used in liquid filling or vapor equalization on MC 331 cargo tanks to be constructed of malleable steel or ductile iron. This proposal is consistent with the National Fire Protection Association (NFPA) Standard 58 and is currently the standard industry practice.

We received two comments on this proposal from NPGA. NPGA asked for an exception from this requirement for

sacrificial devices to be consistent with existing regulations applicable to sacrificial devices. We agree and made that change in this final rule.

NPGA also suggested that we add stainless steel to the materials that are authorized for new or replacement primary valves or fittings. In addition, NPGA asks that we clarify that these metals are to comprise the body of the valve and not internal components such as shutoff disks, springs, etc. We agree that stainless steel should be added and will clarify that the requirement is for the body of the valve and does not apply to internal components.

D. Internal Visual Inspections of Insulated Tanks

The HMR provide an exception for insulated MC 330 and MC 331 cargo tanks from the requirement to undergo an internal visual inspection in conjunction with the annual external visual inspection. The exception was included in the HMR to facilitate inspection of insulated MC 330 and MC 331 cargo tanks that did not have manholes or inspection openings, making it impossible to enter the cargo tank to perform an internal visual inspection. Because insulation precludes a visual inspection of the exterior of the cargo tank, and there is no means to inspect the interior of the tank we determined that the only way to verify the structural integrity of the cargo tank was to subject it to a hydrostatic or pneumatic pressure test at one-year intervals.

The exception applies to insulated MC 330 and MC 331 cargo tanks, irrespective of whether the cargo tank is equipped with a manhole or inspection opening. However, many of these cargo tanks are, in fact, equipped with manholes or inspection openings. We believe that operators should be permitted the option of verifying the structural integrity of these cargo tanks with an internal visual inspection rather than a more costly pressure test. Therefore, we proposed to permit the owner of an insulated cargo tank that is equipped with manholes or inspection openings to perform either an internal visual inspection in conjunction with the external visual inspection or a hydrostatic or pneumatic pressure-test of the cargo tank. As appropriate, these tanks would continue to be required to undergo a complete internal visual inspection and pressure test at the intervals specified in § 180.407(c).

In its comments, CGA requests that we permit MC 330 and MC 331 cargo tanks in carbon dioxide or nitrous oxide service and all MC 338 cargo tanks to be hydrostatically or pneumatically tested in place of an internal visual inspection, even if there is access to the inside of the tank. We disagree with this suggestion because an internal visual inspection provides a higher level of safety. However, we agree with CGA that in § 180.407(d)(2)(i), language should be added to clarify how the exception from an external inspection requirement should be applied. In this final rule, we are adding language to clarify that those items on the cargo tank that can be externally inspected must be inspected and noted in a written report.

E. Leakage Tests for Cargo Tanks in Anhydrous Ammonia Service

The Fertilizer Institute (TFI) filed a petition (P–1255) requesting that we allow anhydrous ammonia cargo tanks to be included in the exception for MC 330 and MC 331 cargo tanks in liquefied petroleum gas (LPG) service that permits them to be leakage tested at not less than 414 kPa (60 psig) in § 180.407(h). TFI stated that, because changes in ambient temperatures result in substantial changes in the normal operating pressure for cargo tanks in anhydrous ammonia service, a cargo tank in anhydrous ammonia service would need to be leakage tested on the hottest day of each year to ensure that it is not operated at pressures exceeding the leakage test pressure. TFI stated that this causes "extreme hardship" for companies transporting anhydrous ammonia in cargo tanks. TFI further stated that anhydrous ammonia is a compressed gas with properties that are similar to those of LPG.

RSPA recognized the difficulty described by TFI and, on August 23, 1996, granted an exemption, DOT E–11551, to allow cargo tanks in anhydrous ammonia service to be leakage tested at a lower pressure. However, due to differences in the vapor pressures of LPG and anhydrous ammonia, the exemption permits leakage testing of cargo tanks in dedicated anhydrous ammonia service at not less than 483 kPa (70 psig), rather than 414 kPa (60 psig) as is currently permitted for LPG.

In the NPRM we proposed to incorporate the provisions of DOT E–11551 into the HMR. Farmland Industries, Inc. and TFI, the only commenters addressing this issue, both support this proposal. It is adopted without change in this final rule.

V. Section-by-Section Review

Part 107

In this final rule, we are revising the title of Subpart F to clarify that the registration requirements apply to cargo tank facilities that test, inspect, and repair cargo tanks, and to manufacturers, assemblers, and Design Certifying Engineers.

Section 107.502

This final rule revises the definition of "assembly" to include the installation of linings or coatings to the inside wall of a cargo tank wall and the installation of equipment or components during the manufacturing process that are necessary to conform to the specification requirements. This definition clarifies that the term "assembler" is not limited to a person who mounts cargo tanks on motor vehicle suspension parts, but also includes a person who installs equipment or components during the manufacturing process.

In addition, RSPA is changing the address to which persons submit cargo tank registration statements in accordance with 49 CFR Part 107, subpart F. Persons subject to the cargo tank registration requirements in this part will now submit these statements to the Federal Motor Carrier Safety Administration's Hazardous Material Division.

Section 107.503

In this final rule, we are adopting a requirement for information on the registration statement for cargo tank manufacturing, assembling, and repair facilities to indicate whether a facility is conducting tests and inspections at a location other than the address listed in the registration form. The purpose of this provision is to identify registered facilities that are using mobile inspection/testing equipment.

Part 171

Section 171.7

This final rule incorporates by reference the June 1, 1998 edition of Truck Trailer Manufacturers Association (TTMA) RP No. 61–98 "Performance of Manhole and/or Fill Opening Assemblies on MC 306, DOT 406, Non-ASME MC 312 and Non-ASME DOT 412 Cargo Tanks;" the July 1, 1997 edition of TTMA RP No. 81–97 "Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, MC 312, DOT 406, DOT 407, and DOT 412 Tanks;" and the June 1, 1998 edition of TTMA TB No. 107, "Procedure for Testing In-Service Unmarked, and/or Uncertified MC 306 and Non-ASME MC 312 Type Cargo Tank Manhole Covers." In addition, this final rule incorporates by reference the American Petroleum Institute Recommended Practice 1604 "Closure of Underground Petroleum Storage Tanks," Third Edition, dated March 1996.

Section 171.8

This final rule revises the definition of "Cargo tank" to include intermediate bulk containers (IBCs) in the list of specifications that are not considered cargo tanks. In addition, we are revising the definition of "Maximum Allowable Working Pressure" to include a new section reference.

This final rule also revises the definitions of "Design Certifying Engineer (DCE)" and "Registered Inspector (RI)" to permit an individual who does not meet the educational requirements in the definitions to be recognized as a DCE or RI if the person was performing those functions for three years prior to September 1, 1991, and meets all other qualifications. In addition, this final rule eliminates a requirement for an individual to have registered with the DOT before December 31, 1995.

Part 172

Section 172.101

This final rule modifies the Hazardous Materials Table by adding a new Special Provision 144 in Column (7) for the following proper shipping names: Diesel fuel; Fuel, aviation, turbine engine; Fuel oil (no. 1, 2, 4, 5, or 6); Gas oil; Gasohol gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol; Gasoline; Hydrocarbons, liquid, n.o.s.; Kerosene; Petroleum crude oil; Petroleum distillates, n.o.s. or Petroleum products, n.o.s; and Petroleum oil. Special Provision 144 clarifies that underground storage tanks (USTs) may be shipped as unregulated materials if they meet the definition of "empty" in § 173.29 or if they are cleaned, purged, or made inert in accordance with the American Petroleum Institute Standard 1604 for USTs.

Section 172.102

We are revising paragraph (c)(1) to add Special Provision 144 concerning the transportation of empty USTs, as detailed above.

Section 172.328

In this final rule, we are adding new paragraph (d) to require all manually activated, on-vehicle remote shutoff devices for closure of a cargo tank's internal shutoff valve to be marked "Emergency Shutoff." This requirement is effective two years after the effective date of this final rule. The marking must be at least 0.75" high.

Part 173

Section 173.33

The minimum design requirements for cargo tanks used to transport Packing Group I and II liquid ladings in current paragraph (g) are re-designated as new paragraph (c)(6) and paragraph (h) is re-designated as paragraph (g). Paragraph headings are added for new paragraphs (c)(6) and new paragraph (g).

Section 173.150

We are removing the references to §§ 173.21, 173.24, 173.24a, and §§ 173.24b in paragraph (f)(3)(viii). Current paragraph (f)(3)(vii) requires compliance with Subpart B of part 173, so these references are redundant.

We are also revising paragraph (f)(3) by adding a new paragraph (ix) to clarify that hazardous materials (HM) training requirements apply to persons involved with the transportation of a combustible liquid that is either in a bulk package or is also a hazardous substance, a hazardous waste, or a marine pollutant in any packaging. In 1992, RSPA reviewed the costs and safety benefits of the training requirement (Docket HM–126F; 57 FR 20952) and found HM training to be justified. However, the training requirement was inadvertently omitted from this section.

Part 177

Section 177.817

A final rule under Docket HM–207B (67 FR 46123; 07/12/2002) revised § 177.817(a). In that final rule, we changed § 177.817(a) to read; "A carrier may not transport a hazardous material unless it is accompanied by a shipping paper prepared in accordance with part 172 of this subchapter." This revision inadvertently eliminated the shipper's certification exception for carriers consolidating multiple shipments of hazardous materials. In this final rule, we are revising paragraph (a) to clarify that only the initial carrier of a hazardous materials shipment is required to have a shipping paper that includes the shipper certification.

Section 177.834

This final rule revises paragraph (j) of this section that specifies that all manhole closures must be closed and secured on cargo tanks containing hazardous materials or residues of hazardous materials to add a reference that cargo tanks that have been cleaned and purged may be transported with open manhole closures.

Part 178

Section 178.320

We are revising paragraph (a) to add definitions applicable to cargo tanks that are currently in § 178.345–1(c). In addition, we are revising and moving the definition of "maximum allowable working pressure (MAWP)" from § 178.345–1(k) to paragraph (a). Finally, we are replacing the term "stop-valve" with "stop valve" in paragraph (a) each place it appears.

In addition, we are revising paragraph (b) to state specifically that accident damage protection devices must be certified by a DCE. FMCSA has found that there is a misunderstanding among assemblers installing cargo tanks onto a motor vehicle chassis as to whether the rear-end tank protection devices must be certified by a DCE. Because rear-end tank protection devices are required by the specification to meet specific structural integrity requirements, the design of these devices must be certified by a DCE.

We had proposed to create a new paragraph (d) for the definition of "minimum thickness." Instead of creating a separate paragraph for this term, we are including this definition in the listing of other definitions in this section.

Section 178.337–3

We are making an editorial change in paragraph (b) by breaking this paragraph into two paragraphs. In order to further clarify the minimum thickness definition and requirements, in this final rule we are altering the wording in paragraph (e) to indicate that the minimum metal thickness of 0.187 inches for steel and 0.270 inches for aluminum is for tanks with a design pressure of at least 100 psig. In addition, this final rule clarifies that, in all cases, the minimum thickness of the tank shell and head shall be determined using structural design requirements in Section VIII of the ASME Code or 25% of the tensile strength of the material used.

This final rule revises paragraph (g) as follows: (1) Groups all requirements for mounting pads in § 178.337–3(g)(2); (2) deletes an unnecessary requirement that mounting pads be the same material as the cargo tank and, instead, allows the pad material to be selected by the DCE; (3) achieves conformity with relevant requirements for DOT 400-series cargo tanks in § 178.345–3; and (4) eliminates the exception for a small gap in the continuous weld around mounting pads while permitting continued use of weep holes or telltale holes as currently allowed.

Section 178.337–8

We are revising paragraph (a)(5)(iii) to remove an expired compliance date.

Section 178.337–9

In paragraph (b)(2), we proposed a revision to require the use of malleable steel or ductile iron in the construction of inlet and outlet fittings on MC 331 cargo tanks. The proposal is adopted in this final rule and we have added stainless steel. Sacrificial devices are excepted from this requirement.

For clarity, we are moving paragraph (b)(5), which addresses requirements for grouping piping and fittings, to § 178.337–10 as new paragraph (e). This change consolidates all of the requirements for accident damage protection into one section.

Section 178.337–10

This final rule revises the section heading from "Protection of fittings" to "Accident damage protection." In addition, we are re-designating chlorine tank requirements in current paragraph (c) as paragraph (d) and re-designating the rear-end tank protection requirements in current paragraph (d) as paragraph (c). Redesignated paragraph (c) has been revised to incorporate the requirements for MC 338 cargo tanks and authorize the DOT 400 series rear-end tank protection provisions as an alternative to existing requirements for MC 331 cargo tank motor vehicles.

In addition, this final rule re-designates § 178.337–9(b)(5) as new § 178.337–10(e) and moves requirements concerning shear sections in current " 178.337–12 to new § 178.337–10(f).

Section 178.337–12

This section is removed and reserved. The current requirements are designated as new paragraph (f) in § 178.337–10, thereby consolidating all accident damage protection requirements in one section.

Section 178.337–13

In this final rule, we are revising this section to be more consistent with the DOT 400-series requirements for cargo tank support and anchoring. In addition, we are modifying the requirement for mounting pads to be the same material as the cargo tank material of construction by allowing the pad material to be selected by the DCE. This is achieved by referencing requirements in § 178.337–3.

Section 178.337–17

This final rule revises paragraph (a) to require essential information marked on MC 331 CTMV metal identification plates to be consistent with the requirements for DOT 400-series CTMVs. The information may be displayed on either a separate name and specification plate, or on a single plate that would serve as both the name and specification plate to allow for maximum flexibility. In addition, the specification plate may be attached to the chassis rail so that cargo tank motor vehicles assembled without welding will not require welding the specification plate onto the cargo tank. If this option is chosen, however, the cargo tank serial number, assigned by the cargo tank manufacturer, must appear on the specification plate. The same information that is required on 400 series tanks, in the same order, is required on MC 331 cargo tanks, in addition to information specific to MC 331 cargo tank motor vehicles. This requirement becomes effective one year from the date of publication of this final rule and is applicable to new construction only.

Section 178.337–18

We are re-designating paragraphs (a)(3) and (a)(4) as (a)(5) and (a)(6), respectively. We are adding new paragraphs (a)(3) and (a)(4) detailing requirements for certifying cargo tanks manufactured in stages by two or more manufacturers.

Section 178.338–2

We are revising paragraph (c) to except certain steel alloys from impact test requirements for consistency with exceptions allowed in the ASME Code. Section 178.338–1(c) states that each tank must be designed and constructed to the ASME Code. Therefore, because the HMR specify that these tanks should be constructed of materials authorized by the ASME Code, exceptions in the ASME Code from impact testing for certain steel alloys should also be recognized in the HMR.

Section 178.338–3

We are revising this section to incorporate more flexible, performance language consistent with structural integrity requirements permitted for DOT 400-series CTMVs. In addition, we are making an editorial change to paragraph (b) by breaking this paragraph into two paragraphs for clarity.

Section 178.338–10

This final rule revises the section heading to read "Accident damage protection" instead of "Collision damage protection." In addition, we are revising paragraph (c) to authorize the DOT 400-series cargo tank rear-end protection provisions as an alternative to existing requirements for MC 338 cargo tank motor vehicles.

Section 178.338–11

In this final rule, we are revising paragraph (c) to require internal self-closing stop valves to be equipped with a means of thermal activation or other remote closure method. Additional editorial revisions are made for clarity.

Section 178.338–13

This section incorporates requirements for supports and anchoring that are consistent with requirements of the DOT 400-series cargo tanks. In addition, we are revising this section to permit material used for mounting pads to be selected by the Design Certifying Engineer. This is achieved by referencing requirements in § 178.337–3.

We are deleting current paragraph (a) and re-designating current paragraphs (b) and (c) as paragraphs (a) and (b), respectively. References to "Appendix G" in each of these paragraphs are revised to read: "[* * * Appendix G of Section VIII, Division 1 of the ASME Code)."

Section 178.338–18

Paragraph (a) is revised to require essential information marked on MC 338 CTMV metal identification plates to be consistent with the requirements for DOT 400-series CTMVs so that this essential information is readily available to operators and enforcement officials. The information may be displayed on either a separate name and specification plate, or on a single plate that would serve as both the name and specification plates. In addition, the specification plate may be attached to the chassis rail so that cargo tank motor vehicles assembled without welding will not require welding the specification plate onto the cargo tank. If this option is chosen, however, the cargo tank serial number, assigned by the cargo tank manufacturer, must appear on the specification plate. The same information that is required on 400 series tanks, in the same order, will be required on MC 338 cargo tanks, plus information specific to MC 338 tanks. This requirement becomes effective one year from the date of publication of final rule and is applicable to new construction only.

Section 178.345–1

For consistency, we are revising paragraph (c) by removing the definitions and placing them in alphabetical order in § 178.320(a). In addition, we are removing paragraph (k) and moving the definition of "maximum allowable working pressure" to § 178.320(a).

Section 178.345–2

We revised paragraph (b) to address the requirements for minimum thickness as specified in § 178.320(a).

Section 178.345–3

Paragraph (b) is revised by adding a new paragraph (b)(3) to require that all cargo tank designers and manufacturers must consider all conditions specified in § 173.33(c) when matching the performance characteristic of the cargo tank to the characteristics of the lading being transported.

We are revising paragraph (f) for clarity and consistency. In addition, in paragraph (f)(3), the references to paragraphs (g)(1) and (g)(2) are corrected to read (f)(1) and (f)(2).

Section 178.345–5

In this final rule, we are revising paragraph (e) to specify that manhole markings must be placed on the outside of the manhole assembly where they can be seen without opening the manhole cover or fill opening.

Section 178.345–8

This final rule revises paragraph (a)(5) to specify minimum road clearance requirements for landing gear within 10 feet of an axle. In paragraph (d), we are clarifying that manufacturers must comply with applicable requirements in the Federal Motor Carrier Safety Regulations at 49 CFR 393.86 and with paragraph (b) of this section.

Section 178.345–10

In paragraph (a), we are adding a sentence to clarify that pressure relief vents are not required to conform to the ASME Code. The requirement for a cargo tank to be "constructed in accordance with the ASME Code" or "constructed and certified in conformance with the ASME Code" applies to the construction of the cargo tank walls and closure devices. Certification to the ASME Code may be done without the installation of pressure relief devices. Sections 178.345–10, 178.346–3, 178.347–4, and 178.348–4 set forth requirements for pressure relief systems for DOT 400-series cargo tanks. These requirements are different from and supersede the ASME Code venting requirements.

Section 178.345–13

In § 178.345–13, we are correcting out-of-date section references.

Section 178.345–14

This final rule revises paragraph (b)(1) to require that the words "See variable specification plate" be added to the name plate on cargo tanks built to more than one specification. This requirement is consistent with industry practice.

We are also revising paragraphs (c)(6) and (c)(7) to eliminate the maximum loading and unloading pressure marking requirement from the specification plate.

Section 178.346–1

In paragraph (d)(6), the reference "§ 178.345–10" is corrected to read "§ 178.346–3"; and in paragraph (d)(7) the reference "§ 178.345–13 is corrected to read "§ 178.346–5."

Section 178.346–2

We are revising the text and table titles to be consistent with the minimum thickness requirements in § 178.320(a).

Section 178.346–5

This final rule revises paragraph (c) to clarify the parameters for testing cargo tanks that are used to transport petroleum distillate fuels and are equipped with vapor recovery equipment. These cargo tanks may be tested in accordance with EPA's annual certification test requirements as set forth in 40 CFR 63.425(e). To satisfy the leakage test requirements, however, the Method 27 test must be performed using air and not liquid.

Section 178.347–1

We are making a minor editorial correction in paragraph (c) to change the word "accordance" to "conformance." We are also adding paragraph (d)(9) to provide for a weld joint efficiency of 0.85 for head seams in bulkheads on DOT 407 CTMVs.

In paragraph (d)(5) the reference to "§§ 178.345–5 and 178.347–5," is revised to read "§ 178.347–3." In addition, in paragraph (d)(6) the reference to "§ 178.345–10," and the reference in paragraph (d)(7) to "§ 178.345–13," are revised to read "§ 178.347–4" and "§ 178.347–5," respectively.

Section 178.347–2

Paragraph (a) and the table titles are revised for consistency with the minimum thickness requirements in § 178.320(a).

Section 178.348–1

We are removing the reference to "§ 178.348–5," in paragraph (e)(2)(v). We are also changing the reference to "§ 178.348–10," in paragraph (e)(2)(vi), to read "§ 178.348–4." In addition, the second reference to "§ 178.348–13," in paragraph (e)(2)(vii), is revised to read "§ 178.348–5."

Section 178.348–2

Paragraph (a) and the table titles are revised for consistency with the minimum thickness requirements in § 178.320(a).

Part 180

Section 180.403

We are revising the term "corroded or abraded" to mean any visible reduction in the material thickness of the cargo tank wall or valve due to pitting, flaking, gouging, or chemical reaction to the material surface. In addition, we are modifying the definition of "corrosive to the tank or valve" to clarify its meaning that the lading has been shown through experience or test data to reduce the thickness of the tank wall or valve.

Section 180.405

We are revising paragraph (b) to allow a cargo tank motor vehicle that was originally built to a standard authorized by an exemption to be marked and certified to the applicable MC 306, MC 307, MC 312, MC 331, or MC 338 specification after August 31, 1995. Although the cargo tanks should have been marked and certified before August 31, 1995, we believe there may be a number of cargo tanks in operation that have not been certified to the appropriate specification. The practice of certifying these cargo tanks to the applicable MC 300-series specification was previously authorized. Continuing to permit these tanks to be marked and certified does not decrease the current level of safety. This change does not authorize these tanks to be used in DOT-specification service, after the expiration of the exemption under which they were manufactured, unless the necessary changes have been made and the tank is certified.

In addition, we are allowing a cargo tank manufactured to the MC 306, MC 307, or MC 312 specification, and that has not been stretched, rebarrelled, or modified, to be re-certified to its original specification. A set of criteria must be met to assure that re-certified cargo tanks conform to all applicable standards and maintain the same level of safety required of a new or continually maintained cargo tank.

Paragraph (g)(3) is removed. The period for retrofitting manholes has expired and the regulation is obsolete.

This final rule revises paragraph (k) to require MC 300-series cargo tanks that have a pressure relief system set at 3 psig and that have no MAWP or design pressure marked on the specification plate, or that have an MAWP or design pressure of less than 3 psig marked on the specification plate, to be marked or

re-marked with an MAWP or design pressure of not less than 3 psig. This provision is currently allowed, but not required.

We are revising paragraph (l)(2)(iii), which prescribes the load that a rear-end tank protection device or rear bumper is required to withstand, to be consistent with the requirements for rear-end tank protection devices in § 178.345–8(d)(3). The change requires the rear bumper or rear-end tank protection device to withstand the horizontal load at an angle not exceeding 10 degrees to the longitudinal axis of the vehicle. This change aligns the angle of load application with the rear-end damage protection devices installed on new DOT 400-series CTMVs, as revised on November 3, 1994 (Docket HM–183C; 59 FR 55167).

We are adding a new paragraph (o) to require MC 330, MC 331, and MC 338 cargo tanks that are not equipped with on-truck remote shutoff devices to be retrofitted with on-truck remote shutoff devices that meet the requirements of the applicable specification. Existing cargo tanks not equipped with an on-truck remote shutoff feature must be retrofitted. We are allowing three years for completion of this retrofit.

Section 180.407

Paragraph (a)(2) is revised to remove the phrase "or during loading or unloading" to limit the maximum pressure in the tank to the MAWP, except when the tank is undergoing a pressure test only.

We are revising paragraphs (b)(1) and (b)(2) to clarify the tests and inspections that must be conducted when a cargo tank shows evidence of dents, corroded or abraded areas, leakage, has sustained damage to an extent that may adversely affect its lading retention capabilities, or any other condition that might render it unsafe for transportation in hazardous materials service.

In addition, paragraph (b)(4) is removed because the inspection and testing requirements for cargo tanks that have been modified from their original design specifications are currently outlined in § 180.413 and are redundant in this section.

We are adding language to paragraph (c) to clarify that the testing interval starts from the CTMV certification date. In addition, we are adding Note 4 to the chart to allow insulated cargo tanks with manholes or inspection openings to perform either a visual internal inspection in conjunctions with the external visual inspection or a hydrostatic or pneumatic pressure-test of the cargo tank.

We are revising paragraph (d)(1) to provide the correct references for hydrostatic and pneumatic testing of cargo tanks where a visual inspection is precluded because the cargo tank is lined, coated, insulated or designed so as to prevent access for external inspection.

In response to NTSB recommendation H–95–14, we are revising paragraph (d)(4) to require thickness testing of ring stiffeners and appurtenances on cargo tanks constructed of mild steel or high-strength, low-alloy steel and aluminum that are installed in a manner that precludes an external visual inspection of the cargo tank.

We are revising paragraph (g) to replace the term "re-closing pressure relief valve" with "self-closing pressure relief valve." This change clarifies that loading and unloading vents that open and close mechanically during loading and unloading operations are not subject to the bench testing requirements. The revision specifies that self-closing pressure relief devices, such as normal vents (1 psig vents) installed on MC 306 and DOT 406 cargo tanks and emergency relief vents, must be removed from the cargo tank for inspection and testing or replaced in conjunction with the pressure test. However, normal vents are to be tested in according to criteria established by the vent manufacturer, while we specify in this section the test for emergency relief vents. As well, we are revising paragraph (g)(1)(iv) to clarify that, during required pressure tests, a cargo tank may not be subjected to pressures that exceed those identified in the table in paragraph (g)(1)(iv). In addition, paragraph (g)(1)(v) is removed because the 5-year phase in period has expired.

We are revising paragraph (g)(4) as requested in petitions (P–1199) and (P–1262) from NTTC and TTMA, respectively. NTTC members who own and operate DOT-specification CTMVs with external heating systems have found that these systems often cannot withstand 1.5 times the design pressure as currently specified in paragraph (g)(4). The most vulnerable parts of the typical external heating system are the flexible connectors (rubber or elastomeric) that are used to interconnect heat exchanger panels. Because these heating systems are covered with insulation, a test failure can cause expensive, time-consuming repairs. Evidently, before the adoption of Part 180 periodic testing, system designers made no provision for testing at 1.5 times operational conditions, a level that is routinely recognized in the design of conventional piping systems. For these reasons, NTTC and TTMA asked RSPA to reduce the test pressure to the maximum operating pressure of each system.

We are revising paragraph (h)(1) to require internal and external self-closing stop valves to be tested during the leak test, adjacent tanks in a multi-compartment CTMV to be separately tested, and cargo tanks in liquefied compressed gas service to be externally inspected for leaks during leakage tests by a means other than using a pressure gauge.

This final rule adds paragraph (h)(1)(iv) to require MC 330 or MC 331 cargo tanks in dedicated service for anhydrous ammonia to be leakage tested at not less than 414 kPa (60 psig). In addition, we are adding paragraph (h)(1)(v) to require non-specification cargo tanks subject to testing under § 173.8(d)(6) to be leak tested at a pressure of 16.5 kPa (2.4 psig). Section 173.8 requires non-specification cargo tanks authorized by that section to be tested and inspected in the same manner as required for an MC 306 CTMV. Many non-specification cargo tanks are not marked with a MAWP or design pressure. This requirement ensures that these cargo tanks are leakage tested in the same manner as MC 306 CTMVs.

We are revising paragraph (h)(2) to clarify the parameters for testing cargo tanks used to transport petroleum distillate fuels that are equipped with vapor recovery systems. These cargo tanks may be tested in accordance with EPA's annual certification test requirements as set forth in 40 CFR 63.425(e). To satisfy the leakage test requirements, however, the Method 27 test must be performed using air. We believe that the pneumatic test is a better test method for detecting leaks in low pressure tests.

We are revising paragraph (i) and the titles of the tables in § 180.407(i)(5) by adding wording that is consistent with the proposed minimum thickness requirements in § 178.320(a).

Also, this final rule revises paragraph (i)(6) to change the wording "maximum lading density" to "maximum weight of lading or reduced maximum working pressure, or combinations thereof," and to make other relevant editorial revisions. This change is consistent with cargo tank design practices that evaluate both the weight of lading carried by the cargo tank and the pressure on the cargo tank wall as determining factors for minimum in-service thickness.

To clarify the minimum thickness requirements, we are adding paragraphs (i)(9) and (i)(10). Paragraph (i)(9) specifies the minimum thickness for MC 331 cargo tanks and paragraph (i)(10) references the minimum thickness tables for DOT 400 series CTMVs to clarify the correct test criteria.

Section 180.409

We are revising paragraph (a) to add a reference to the definition of "Registered Inspector" in § 171.8 to clarify that a person must meet the minimum qualifications set forth in the definition in order to be qualified to perform tests and inspections required by § 180.407(c).

Section 180.413

This final rule revises paragraph (a) requirements for performing repairs, modifications, stretching, rebarrelling, or remounting a cargo tank to explicitly state that a facility repairing any specification cargo tanks must adhere to the quality control procedures (*e.g.* welder qualifications and approved welding procedures) in the National Board Inspection Code (NBIC) except requirements for inspection by an Authorized Inspector, preparation of an R–1 Form, or stamping of the "R" stamp on the cargo tank. This was our intent in 1989 when, under Docket HM–183, we changed the regulations to require that repair facilities hold either a valid National Board Certificate of Authorization for use of the National Board "R" stamp or a valid ASME Certificate of Authorization for use of the ASME "U" stamp. FMCSA has discovered numerous instances where, although a facility holds a valid "U" or "R" stamp, the quality control procedures used to obtain the stamp were not utilized during the repair. One example is the use of "lap patches," which are prohibited under the NBIC. This revision will prohibit this and other un-safe practices being discovered during repairs of non-ASME stamped cargo tanks.

The cleaning and purging requirements are moved from paragraphs (b)(4) and (d)(8) to paragraph (a)(2). The cleaning and purging requirements have been clarified to emphasize the requirements for cargo tanks to be empty and safely purged before repairs. In addition, we are revising paragraph (b) for clarity.

In paragraph (c), we require leak testing for non-welded repairs or the replacement of hoses, pipes, valves, or fittings. In response to comments from NPGA, we also include provisions for cargo tanks in liquefied compressed gas service to be tested in accordance with applicable regulations in § 180.416(f).

In paragraph (d), we are revising the requirements for stretching, modifying, or rebarrelling a cargo tank to clarify the intent of the regulation. Specifically, we are eliminating the need for testing in accordance with § 180.407, which is currently required by § 180.413(d)(4)(iv). Testing the adequacy of a modification, stretching, or rebarrelling must be accomplished by performing the tests specified in paragraph (d)(3)(iv) of this section (formerly § 180.413(d)(10)). In paragraph (d), we are clarifying that a modification, stretching, or rebarrelling must be certified by a DCE.

We are revising paragraph (d)(3)(v), to require a supplemental specification plate to be installed adjacent to the original specification plate. This change eliminates the provision that currently allows changes to the original specification plate. In addition, paragraph (d)(4), in its entirety, is re-designated as paragraph (d)(3). The provisions of paragraph (d)(5) are re-worded and moved to (d)(4).

The provisions contained in paragraphs (d)(6) and (7) to a new paragraph (e) are moved to eliminate confusion about what is required when a cargo tank is re-mounted onto a new chassis. New paragraph (e) is based on a petition (P–1322) from TTMA and clarifies requirements for certification of mounting by a DCE and supervision of the mounting by a Registered Inspector. Current paragraph (e) is re-designated as paragraph (f).

Section 180.415

We are revising paragraph (b)(3)(vi) to require a special marking, "K–EPA27," on cargo tanks that have been tested in accordance with EPA requirements for testing cargo tank vapor tightness. This change provides a nationally uniform marking for cargo tanks that pass the annual certification test in accordance with EPA requirements.

Section 180.417

This final rule requires additional information to be provided on inspection and test reports to enable owners and operators of cargo tanks to more effectively review the results of the test or inspection. The information required by the revised paragraph (b)(1) provides important data about the cargo tank and its service that may affect the type and method of test to be performed. The cargo tank owner or carrier must provide this information to the re-qualification or maintenance facility. In addition, current paragraph (b)(2) is re-designated as paragraph (b)(3).

We are revising paragraph (d) to clarify what documents must accompany the cargo tank when ownership changes. This change would consolidate these requirements into one section.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. We have prepared a Regulatory Evaluation assessing potential costs, benefits and savings of the revisions adopted in the final rule. The Regulatory Evaluation is available for review in the public docket on the DOT Docket Management System Web site, *http://dms.dot.gov.*

In assessing how best to update and clarify the construction and maintenance requirements for CTMVs, we considered three alternatives: (1) Taking no regulatory action; (2) clarifying and updating the regulations, responding to several petitions for rulemaking, and addressing three NTSB recommendations; and (3) responding to NTSB recommendations only. We chose Alternative 2 because it increases safety, reduces compliance costs, and provides greater flexibility in design and construction of cargo tanks.

We estimate the total annual cost savings to the industry resulting from implementation of this final rule would be $3,230,400 per year. At the same time the industry would incur increased costs of compliance totaling $3,136,770 the first year and $1,449,270 each following year. The overall net benefits are $93,630 the first year and $2,081,130 each subsequent year.

Increasing clarity and, therefore, understanding of the regulations, facilitates compliance, and reduces risks to the public and environment. While provisions of this final rule result in costs and safety benefits, others would result in savings while not sacrificing safety. Overall, the estimated savings that will result from this final rule are greater than the estimated costs. The provisions with the highest associated costs are based on safety concerns and NTSB recommendations, that are based serious accidents. The provisions in this final rule will reduce risks to people, property, and the environment.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts state, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various

levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject item (5) above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption is 90 days from the date of publication of this final rule.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply and a tribal summary impact statement is not required.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. Based on the assessment in the regulatory evaluation, and information generally available on the number and size of potentially affected entities, we find that:

- All small entities that engage in the manufacture, operation, testing or inspection of certain DOT specification cargo tank motor vehicles would be subject to some or all of the provisions of this final rule;
- In each instance where regulatory provisions require a new or increased cost to a regulated party, the cost is a modest $100 or less per cargo tank; and
- Small entities will be able to take advantage of the relaxations in the final rule, resulting in a net reduction of regulatory costs.

We estimate that most of the approximately 3,700 interstate and 5,500 intrastate motor carriers that would be subject to the requirements of this rule are small businesses. There are also approximately 7,000 cargo tank inspection/testing facilities subject to the requirements that are estimated to be small businesses. We estimate that operators of existing fleets of cargo tank motor vehicles would incur costs of approximately $75 per year for each of the approximately 5,000 affected series 307, 312, 407 and 412 cargo tank motor vehicles in corrosive material service, and $100 every two years for thickness testing of appurtenances on the estimated 15,000 cargo tanks in that same series. In neither case is the additional cost likely to have a significant economic impact on the operator's net income or ability to remain competitive.

Although there are other provisions in this rule that would present an added cost to these small businesses, there are also safety benefits that have the potential to save money and protect the viability of small businesses by lowering the risk of a catastrophic accident. Most of the provisions of the rule are directed toward individual cargo tanks. Since small businesses operate fewer cargo tanks, most of the cost of this final rule would affect larger businesses.

The final rule includes several provisions that will provide savings to small businesses by allowing experienced Registered Inspectors and Design Certifying Engineers to continue to perform functions for which they were previously qualified, allowing recertification of certain cargo tanks to their original specification, and relaxing requirements for leakage testing of cargo tanks in anhydrous ammonia service that are operated almost exclusively by entities that are small businesses (including small farms).

In addition, a number of other provisions of this final rule allow for a potential net reduction in regulatory costs. For example, owners of cargo tanks may re-certify their cargo tanks to the original specification. Manufacturers of MC 338 cargo tanks may take advantage of the relaxation of mounting requirements, which will save engineering and construction costs. Likewise, the revisions for bottom damage protection devices create further possible reductions in compliance costs. These and other relaxations offset the additional requirements, while maintaining current safety standards.

In consideration of the above, while the final rule applies to a substantial number of small entities, I certify that the economic impact on those small entities is not significant.

E. Paperwork Reduction Act

RSPA has a current information collection approval under OMB No. 2137–0014, Cargo Tank Specification Requirements, with 102,021 burden hours and $4,088,350 annual costs, which includes $1,595,000 in one-time start-up costs. This final rule identifies information collection that RSPA submitted to OMB for approval based on the requirements in the proposed rule. OMB approved the information collection on January 10, 2002. The approved information collection and recordkeeping burden is as follows:

OMB No.: 2137–0014.
Number of Respondents: 41,366.
Total Annual Responses: 132,600.
Total Annual Burden Hours: 102,021.
Total Annual Burden Cost: $4,088,350.
One Time Start Up Cost: $1,595,000.

Requests for a copy of the information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8102, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either state, local, or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires that Federal agencies consider the consequences of major federal actions and that they prepare a detailed statement on actions significantly affecting the quality of the human environment. RPSA has prepared an Environmental Assessment that is available for review in the public docket on the DOT Docket Management System Web site, *http://dms.dot.gov*. Based on the assessment, RSPA has determined that this final rule does not have any significant negative impacts to the environment and may result in a small net benefit from the proposal to allow the recertification of cargo tanks that allows older cargo tanks to be used rather than discarded. Therefore, we find that there are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, packaging and containers, Radioactive materials, reporting and recordkeeping requirements, Uranium.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are amending 49 CFR Chapter I as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Section 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.45, 1.53.

■ 2. The title of Subpart F is revised to read as follows:

Subpart F—Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers, Assemblers, Repairers, Inspectors, Testers, and Design Certifying Engineers

* * * * *

■ 3. In § 107.502, paragraphs (a)(1) and (d) are revised to read as follows:

§ 107.502 General registration requirements.

(a) * * *

(1) *Assembly* means the performance of any of the following functions when the function does not involve welding on the cargo tank wall:

(i) The mounting of one or more tanks or cargo tanks on a motor vehicle or to a motor vehicle suspension component;

(ii) The installation of equipment or components necessary to meet the specification requirements prior to the certification of the cargo tank motor vehicle; or

(iii) The installation of linings, coatings, or other materials to the inside of a cargo tank wall.

* * * * *

(d) Registration statements must be in English, contain all of the information required by this subpart, and be submitted to: FMCSA Hazardous Materials Division—MC-ECH, Room 8310, 400 7th Street SW, Washington, DC 20590.

* * * * *

■ 4. In § 107.503, paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) are redesignated as paragraphs (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8) respectively, and new paragraph (a)(3) is added to read as follows:

§ 107.503 Registration statement.

(a) * * *

(3) A statement indicating whether the facility uses mobile testing/inspection equipment to perform inspections, tests, or repairs at a location other than the address listed in paragraph (a)(2) of this section.

* * * * *

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 5. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 6. In § 171.7, in paragraph (a)(3), a new entry for "American Petroleum Institute" is added in appropriate alphabetical order and under "Truck Trailer Manufacturers Association," the entries "TTMA TB No. 81" and "TTMA RP No. 61–94" are removed, the entry "TTMA TB No. 107" is revised and two new entries are added in appropriate alpha-numeric order, to read as follows:

§ 171.7 Reference material.

(a) * * *

* * * * * *

(3) * * *

Source and name of material	49 CFR reference
. . . . .	
American Petroleum Institute, 1220 L Street, NW, Washington, D.C. 20005–4070:	
API Recommended Practice 1604 Closures of Underground Petroleum Storage Tanks, 3rd Edition, March 1996	172.102

Source and name of material	49 CFR reference
TTMA RP No. 61–98, Performance of manhole and/or Fill Opening Assemblies on MC 306, DOT 406, Non-ASME MC 312 and Non-ASME DOT 412 Cargo Tanks, June 1, 1998	180.405(g)
TTMA RP No. 81–97, Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, MC 312, DOT 406, DOT 407, and DOT 412 Tanks, July 1, 1997 Edition	178.345–10
TTMA TB No. 107, Procedure for Testing In-Service Unmarked and/or Uncertified MC 306 and Non-ASME MC 312 Type Cargo Tank Manhole Covers, June 1, 1998. Edition	180.405(g)

* * * * *

7. In § 171.8, the definitions for "Cargo tank, "Design Certifying Engineer", and "Registered Inspector" are revised and the definition for "MAWP" is removed and a definition for "Maximum allowable working pressure or MAWP" is added in it's place to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Cargo tank means a bulk packaging that:

(1) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings, and closures (for the definition of a tank, *see* 49 CFR 178.320, 178.337–1, or 178.338–1, as applicable);

(2) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but which, by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle; and

(3) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank car tanks, portable tanks, or tank cars.

* * * * *

Design Certifying Engineer means a person registered with the Department in accordance with subpart F of part 107 of this chapter who has the knowledge and ability to perform stress analysis of pressure vessels and otherwise determine whether a cargo tank design and construction meets the applicable DOT specification. A *Design Certifying Engineer* meets the knowledge and ability requirements of this section by meeting any one of the following requirements:

(1) Has an engineering degree and one year of work experience in cargo tank structural or mechanical design;

(2) Is currently registered as a professional engineer by appropriate authority of a state of the United States or a province of Canada; or

(3) Has at least three years' experience in performing the duties of a Design Certifying Engineer prior to September 1, 1991.

* * * * *

Maximum allowable working pressure or *MAWP:* For DOT specification cargo tanks used to transport liquid hazardous materials, *see* § 178.320(c) of this subchapter.

* * * * *

Registered Inspector means a person registered with the Department in accordance with subpart F of part 107 of this chapter who has the knowledge and ability to determine whether a cargo tank conforms to the applicable DOT specification. A *Registered Inspector* meets the knowledge and ability requirements of this section by meeting any one of the following requirements:

(1) Has an engineering degree and one year of work experience relating to the testing and inspection of cargo tanks;

(2) Has an associate degree in engineering and two years of work experience relating to the testing and inspection of cargo tanks;

(3) Has a high school diploma (or General Equivalency Diploma) and three years of work experience relating to the testing and inspection of cargo tanks; or

(4) Has at least three years' experience performing the duties of a Registered Inspector prior to September 1, 1991.

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

■ 8. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 9. In the § 172.101 Hazardous Materials Table, the following entries are revised to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
D	Diesel fuel	3	NA1993	III	None	144, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A	
I	Diesel fuel	3	UN 1202	III	3	144, B1, IB3, T2, TP1	150	203	242	60 L	220 L	A	
	Fuel, aviation, turbine engine.	3	UN1863	I	3	144, T11, TP1, TP8	150	210	243	1 L	30 L	E	
				II		144, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
D	Fuel Oil (*No. 1, 2, 4, 5, or 6*).	3	NA 1993	III	3	144, B1, IB3, T2, TP1	150	203	242	60 L	220 L	A	
				III		144, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A	
	Gas oil	3	UN1203	III	3	144, B1, IB3, T2, TP2	150	203	242	60 L	220 L	A	
D	Gasohol *gasoline mixed with ethyl alcohol, with not more than 20 percent alcohol.*	3	NA1203	I	3	144, T11, TP1, TP8	None	201	243	1 L	30 L	E	
						144, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
	Gasoline	3	UN1203	II	3	144, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A	
				III		144, B33, IB2, T4, TP1.	150	202	242	5 L	60 L	3	
	Hydrocarbons, liquid, n.o.s.	3	UN3295	I	3	144, T11, TP1, TP8	150	201	243	1 L	30 L	E	
		3	UN3295	II	3	144, IB2, T7, TP1, TP8, TP28	150	202	242	5 L	60 L	B	
		3	UN3295	III	3	144, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A	
	Kerosene	3	UN1223	III	3	144, B1, IB3, T2, TP2	150	203	242	60 L	220 L	A	
	Petroleum crude oil	3	UN1267	I	3	144, T11, TP1, TP8	None	201	243	1 L	30 L	E	
				II		144, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B	
	Petroleum distillates, n.o.s. or Petroleum products, n.o.s.	3	UN1268	III	3	144, B1, IB3, T2, TP1	150	203	242	60 L	220 L	A	
				I		144, T11, TP1, TP8	150	201	243	1 L	30 L	E	
				II		144, IB2, T7, TP1, TP8, TP28.	150	202	242	5 L	60 L	B	
				III		144, B1, IB3, T4, TF1, TP29.	150	203	242	60 L	220 L	A	
D	Petroleum oil	3	NA1270	I	3	144, T11, TP1, TP9	None	201	243	1 L	30 L	E	
				II		144, IB2, T7, TP1, TP8, TP28	150	202	242	5 L	60 L	B	

§ 172.101 HAZARDOUS MATERIALS TABLE—Continued

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.***) Exceptions	(8) Packaging (§ 173.***) Non-bulk	(8) Packaging (§ 173.***) Bulk	(9) Quantity limitations Passenger aircraft/rail	(9) Quantity limitations Cargo aircraft only	(10) Vessel stowage Location	(10) Vessel stowage Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
				III	3	144, B1, IB3, T4, TP1, TP29.	150	203	242	60 L	220 L	A	

■ 10. In § 172.102, in paragraph (c)(1), special provision 144 is added in numerical order to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * * *

144 If transported as a residue in an underground storage tank (UST), as defined in 40 CFR 180.12, that has been cleaned and purged or rendered inert according to the American Petroleum Institute (API) Standard 1604 (incorporated by reference; see § 171.7 of this subchapter), then the tank and this material are not subject to any other requirements of this subchapter. However, sediments remaining in the tank that meet the definition for a hazardous material are subject to the applicable regulations of this subchapter.

* * * * *

■ 11. In § 172.328, a new paragraph (d) is added to read as follows:

§ 172.328 Cargo tanks.

* * * * *

(d) After October 3, 2005, each on-vehicle manually-activated remote shutoff device for closure of the internal self-closing stop valve must be identified by marking "Emergency Shutoff" in letters at least 0.75 inches in height, in a color that contrasts with its background, and located in an area immediately adjacent to the means of closure.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

■ 12. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

■ 13. In § 173.33, paragraphs (g) and (h) are redesignated as paragraphs (c)(6) and (g), respectively, and paragraph headings for new paragraph (c)(6) and redesignated paragraph (g) are added to read as follows:

§ 173.33 Hazardous materials in cargo tank motor vehicles.

* * * * *

(c) * * *

(6) *Substitute packagings.* * * *

* * * * *

(g) *Remote control of self-closing stop valves—MC 330, MC 331 and MC 338 cargo tanks.* * * *.

■ 14. In § 173.150, paragraphs (f)(3)(vii) and (f)(3)(viii) are revised and paragraph (f)(3)(ix) is added to read as follows:

§ 173.150 Exceptions for Class 3 (flammable) and combustible liquids.

* * * * *

(f) * * *

(3) * * *

(vii) Packaging requirements of subpart B of this part and, in addition, non-bulk packagings must conform to the requirements of § 173.203;

(viii) The requirements of §§ 173.1, 174.1, 177.804, 177.817, and 177.834 of this subchapter, except § 177.834(i)(3); and

(ix) The training requirements of subpart H of part 172 of this subchapter.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

■ 15. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 16. In § 177.817, paragraph (a) is revised to read as follows:

§ 177.817 Shipping papers.

(a) *General requirements.* A person may not accept a hazardous material for transportation or transport a hazardous material by highway unless that person has received a shipping paper prepared in accordance with part 172 of this subchapter or the material is excepted from shipping paper requirements under this subchapter. A subsequent carrier may not transport a hazardous material unless it is accompanied by a shipping paper prepared in accordance with part 172 of this subchapter, except for § 172.204, which is not required.

* * * * *

■ 17. In § 177.834, paragraph (j) introductory text is revised to read as follows:

§ 177.834 General requirements.

* * * * *

(j) Except for a cargo tank conforming to § 173.29(b)(2) of this subchapter, a person may not drive a cargo tank motor vehicle containing a hazardous material regardless of quantity unless:

* * * * *

PART 178—SPECIFICATIONS FOR PACKAGINGS

■ 18. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 19. In § 178.320, paragraphs (a) and (b)(1) are revised to read as follows:

§ 178.320 General requirements applicable to all DOT-specification cargo tank motor vehicles.

(a) *Definitions.* For the purpose of this subchapter:

Appurtenance means any attachment to a cargo tank that has no lading retention or containment function and provides no structural support to the cargo tank.

Baffle means a non-liquid-tight transverse partition device that deflects, checks or regulates fluid motion in a tank.

Bulkhead means a liquid-tight transverse closure at the ends of or between cargo tanks.

Cargo tank means a bulk packaging that:

(1) Is a tank intended primarily for the carriage of liquids or gases and includes appurtenances, reinforcements, fittings and closures (for *tank*, *see* §§ 178.345–1(c), 178.337–1, or 178.338–1, as applicable);

(2) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle, but that, by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle; and

(3) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank car tanks, portable tanks, or tank cars.

Cargo tank motor vehicle means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle.

Cargo tank wall means those parts of the cargo tank that make up the primary lading retention structure, including shell, bulkheads, and fittings and, when closed, yield the minimum volume of the cargo tank assembly.

Charging line means a hose, tube, pipe, or a similar device used to pressurize a tank with material other than the lading.

Companion flange means one of two mating flanges where the flange faces are in contact or separated only by a thin leak-sealing gasket and are secured to one another by bolts or clamps.

Connecting structure means the structure joining two cargo tanks.

Constructed and certified in accordance with the ASME Code means a cargo tank is constructed and stamped in accordance with the ASME Code, and is inspected and certified by an Authorized Inspector.

Constructed in accordance with the ASME Code means a cargo tank is

constructed in accordance with the ASME Code with authorized exceptions (see §§ 178.346, 178.347, and 178.348) and is inspected and certified by a Registered Inspector.

Design type means one or more cargo tanks that are made—

(1) To the same specification;

(2) By the same manufacturer;

(3) To the same engineering drawings and calculations, except for minor variations in piping that do not affect the lading retention capability of the cargo tank;

(4) Of the same materials of construction;

(5) To the same cross-sectional dimensions;

(6) To a length varying by no more than 5 percent;

(7) With the volume varying by no more than 5 percent (due to a change in length only); and

(8) For the purposes of § 178.338 only, with the same insulation system.

External self-closing stop valve means a self-closing stop valve designed so that the self-stored energy source is located outside the cargo tank and the welded flange.

Extreme dynamic loading means the maximum loading a cargo tank motor vehicle may experience during its expected life, excluding accident loadings resulting from an accident, such as overturn or collision.

Flange means the structural ring for guiding or attachment of a pipe or fitting with another flange (companion flange), pipe, fitting or other attachment.

Inspection pressure means the pressure used to determine leak tightness of the cargo tank when testing with pneumatic pressure.

Internal self-closing stop valve means a self-closing stop valve designed so that the self-stored energy source is located inside the cargo tank or cargo tank sump, or within the welded flange, and the valve seat is located within the cargo tank or within one inch of the external face of the welded flange or sump of the cargo tank.

Lading means the hazardous material contained in a cargo tank.

Loading/unloading connection means the fitting in the loading/unloading line farthest from the loading/unloading outlet to which the loading/unloading hose, pipe, or device is attached.

Loading/unloading outlet means a cargo tank outlet used for normal loading/unloading operations.

Loading/unloading stop valve means the stop valve farthest from the cargo tank loading/unloading outlet to which the loading/unloading connection is attached.

Maximum allowable working pressure or *MAWP* means the maximum pressure allowed at the top of the tank in its normal operating position. The *MAWP* must be calculated as prescribed in Section VIII, Division 1 of the ASME Code (incorporated by reference; see § 171.7 of this subchapter). In use, the *MAWP* must be greater than or equal to the maximum lading pressure conditions prescribed in § 173.33 of this subchapter for each material transported.

Maximum lading pressure. See § 173.33(c).

Minimum thickness means the minimum required shell and head (and baffle and bulkhead when used as tank reinforcement) thickness needed to meet the specification. The minimum thickness is the *greatest* of the following values: (1)(i) For MC 330, MC 331, and MC 338 cargo tanks, the specified minimum thickness found the applicable specification(s); or

(ii) For DOT 406, DOT 407 and DOT 412 cargo tanks, the specified minimum thickness found in Tables I and II of the applicable specification(s); or

(iii) For MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 cargo tanks, the in-service minimum thickness prescribed in Tables I and II of § 180.407(i)(5) of this subchapter, for the minimum thickness specified by Tables I and II of the applicable specification(s); or

(2) The thickness necessary to meet with the structural integrity and accident damage requirements of the applicable specification(s); or

(3) The thickness as computed per the ASME Code requirements (if applicable).

Multi-specification cargo tank motor vehicle means a cargo tank motor vehicle equipped with two or more cargo tanks fabricated to more than one cargo tank specification.

Normal operating loading means the loading a cargo tank motor vehicle may be expected to experience routinely in operation.

Nozzle means a subassembly consisting of a pipe or tubular section with or without a welded or forged flange on one end.

Outlet means any opening in the shell or head of a cargo tank, (including the means for attaching a closure), except that the following are not *outlets:* a threaded opening securely closed during transportation with a threaded plug or a threaded cap, a flanged opening securely closed during transportation with a bolted or welded blank flange, a manhole, a gauging device, a thermometer well, or a pressure relief device.

Outlet stop valve means the stop valve at a cargo tank loading or unloading outlet.

Pipe coupling means a fitting with internal threads on both ends.

Rear bumper means the structure designed to prevent a vehicle or object from under-riding the rear of another motor vehicle. *See* § 393.86 of this title.

Rear-end tank protection device means the structure designed to protect a cargo tank and any lading retention piping or devices in case of a rear end collision.

Sacrificial device means an element, such as a shear section, designed to fail under a load in order to prevent damage to any lading retention part or device. The device must break under strain at no more than 70 percent of the strength of the weakest piping element between the cargo tank and the sacrificial device. Operation of the *sacrificial device* must leave the remaining piping and its attachment to the cargo tank intact and capable of retaining lading.

Self-closing stop valve means a stop valve held in the closed position by means of self-stored energy, that opens only by application of an external force and that closes when the external force is removed.

Shear section means a sacrificial device fabricated in such a manner as to abruptly reduce the wall thickness of the adjacent piping or valve material by at least 30 percent.

Shell means the circumferential portion of a cargo tank defined by the basic design radius or radii excluding the bulkheads.

Stop valve means a valve that stops the flow of lading.

Sump means a protrusion from the bottom of a cargo tank shell designed to facilitate complete loading and unloading of lading.

Tank means a container, consisting of a shell and heads, that forms a pressure tight vessel having openings designed to accept pressure tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

Test pressure means the pressure to which a tank is subjected to determine structural integrity.

Toughness of material means the capability of a material to absorb energy represented by the area under a stress strain curve (indicating the energy absorbed per unit volume of the material) up to the point of rupture.

Vacuum cargo tank means a cargo tank that is loaded by reducing the pressure in the cargo tank to below atmospheric pressure.

Variable specification cargo tank means a cargo tank that is constructed in accordance with one specification,

but that may be altered to meet another specification by changing relief device, closures, lading discharge devices, and other lading retention devices.

Void means the space between tank heads or bulkheads and a connecting structure.

Welded flange means a flange attached to the tank by a weld joining the tank shell to the cylindrical outer surface of the flange, or by a fillet weld joining the tank shell to a flange shaped to fit the shell contour.

(b) * * * (1) Each cargo tank or cargo tank motor vehicle design type and each accident damage protection device design must be certified to be in conformance with the specification requirements by a Design Certifying Engineer who is registered in accordance with subpart F of part 107 of this title.

* * * * *

■ 20. In § 178.337–3, paragraphs (b), (e) and (g) are revised to read as follows:

§ 178.337–3 Structural integrity.

* * * * *

(b) *Static design and construction.* (1) The static design and construction of each cargo tank must be in accordance with Section VIII, Division 1 of the ASME Code (incorporated by reference; *see* § 171.7 of thus subchapter). The cargo tank design must include calculation of stresses generated by design pressure, the weight of lading, the weight of structure supported by the cargo tank wall, and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be used in calculation of thermal stresses.

(2) Stress concentrations in tension, bending, and torsion that occur at pads, cradles, or supports must be considered in accordance with Appendix G of Section VIII, Division 1 of the ASME Code.

* * * * *

(e) The minimum metal thickness for the shell and heads on tanks with a design pressure of 100 psig or more must be 4.75 mm (0.187 inch) for steel and 6.86 mm (0.270 inch) for aluminum, except for chlorine and sulfur dioxide tanks. In all cases, the minimum thickness of the tank shell and head shall be determined using structural design requirements in Section VIII of the ASME Code or 25% of the tensile strength of the material used. For a cargo tank used in chlorine or sulfur dioxide service, the cargo tank must be made of steel. A corrosion allowance of 20 percent or 2.54 mm (0.10 inch), whichever is less, must be added to the thickness otherwise required for sulfur dioxide and chlorine tank material. In chlorine cargo tanks, the wall thickness must be at least 1.59 cm (0.625 inch), including corrosion allowance.

* * * * *

(g) The design, construction, and installation of an attachment, appurtenance to the cargo tank, structural support member between the cargo tank and the vehicle or suspension component, or accident protection device must conform to the following requirements:

(1) Structural members, the suspension sub-frame, accident protection structures, and external circumferential reinforcement devices must be used as sites for attachment of appurtenances and other accessories to the cargo tank, when practicable.

(2) A lightweight attachment to the cargo tank wall such as a conduit clip, brake line clip, skirting structure, lamp mounting bracket, or placard holder must be of a construction having lesser strength than the cargo tank wall materials and may not be more than 72 percent of the thickness of the material to which it is attached. The lightweight attachment may be secured directly to the cargo tank wall if the device is designed and installed in such a manner that, if damaged, it will not affect the lading retention integrity of the tank. A lightweight attachment must be secured to the cargo tank shell or head by a continuous weld or in such a manner as to preclude formation of pockets which may become sites for corrosion. Attachments meeting the requirements of this paragraph are not authorized for cargo tanks constructed under part UHT, Section VIII, Division 1 of the ASME Code.

(3) Except as prescribed in paragraphs (g)(1) and (g)(2) of this section, the welding of any appurtenance to the cargo tank wall must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the cargo tank if any force less than that prescribed in paragraph (b)(1) of this section is applied from any direction. The thickness of the mounting pad may not be less than that of the shell wall or head wall to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad with a minimum thickness of 0.25 inch may be used when the shell or head thickness is over 0.25 inch. If weep holes or telltale holes are used, the pad must be drilled or punched at the lowest point before it is welded to the tank. Each pad must—

(i) Be fabricated from material determined to be suitable for welding to both the cargo tank material and the material of the appurtenance or structural support member; a Design Certifying Engineer must make this determination considering chemical and physical properties of the materials and must specify filler material conforming to the requirements of the ASME Code (incorporated by reference; see § 171.7 of this subchapter).

(ii) Be preformed to an inside radius no greater than the outside radius of the cargo tank at the attachment location.

(iii) Extend at least 2 inches in each direction from any point of attachment of an appurtenance or structural support member. This dimension may be measured from the center of the attached structural member.

(iv) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head.

(v) Be attached by continuous fillet welding. Any fillet weld discontinuity may only be for the purpose of preventing an intersection between the fillet weld and a tank or jacket seam weld.

21. In § 178.337–8, paragraph (a)(5)(iii) is revised to read as follows:

§ 178.337–8 Openings, inlets, and outlets.

(a) * * *

(5) * * *

(iii) A cargo tank motor vehicle used to transport refrigerated liquids such as argon, carbon dioxide, helium, krypton, neon, nitrogen, and xenon, or mixtures thereof.

* * * * * *

■ 22. In § 178.337–9, (b)(2) is revised and paragraph (b)(5) is removed and reserved, to read as follows:

§ 178.337–9 Pressure relief devices, piping, valves, hoses, and fittings.

* * * * * *

(b) * * *

(2) Pipe joints must be threaded, welded, or flanged. If threaded pipe is used, the pipe and fittings must be Schedule 80 weight or heavier. Except for sacrificial devices, malleable steel, stainless steel, or ductile iron must be used in the construction of primary valves and fittings used in liquid filling or vapor equalization; however, stainless steel may not be used for internal components such as shutoff discs and springs. Where copper tubing is permitted, joints must be brazed or be of equally strong metal union type. The melting point of the brazing material may not be lower than 538 °C (1000 °F). The method of joining tubing may not reduce the strength of the tubing.

* * * * * *

(5) [Reserved]

* * * * *

■ 23. In § 178.337–10, the section heading and paragraphs (c) and (d) are revised, and paragraphs (e) and (f) are added, to read as follows:

§ 178.337–10 Accident damage protection.

* * * * *

(c) *Rear-end tank protection.* Rear-end tank protection devices must:

(1) Consist of at least one rear bumper designed to protect the cargo tank and piping in the event of a rear end collision. The bumper design must transmit the force of the collision directly to the chassis of the vehicle. The rear bumper and its attachments to the chassis must be designed to withstand a load equal to twice the weight of the loaded cargo tank and attachments, using a safety factor of four based on the tensile strength of the materials used, with such load being applied horizontally and parallel to the major axis of the cargo tank. The rear bumper dimensions must meet the requirements of § 393.86 of this title and extend vertically to a height adequate to protect all valves and fittings located at the rear of the cargo tank from damage that could result in loss of lading; or

(2) Conform to the requirements of § 178.345–8.

(d) *Chlorine tanks.* A chlorine tank must be equipped with a protective housing and a manway cover to permit the use of standard emergency kits for controlling leaks in fittings on the dome cover plate. The housing and manway cover must conform to the Chlorine Institute's standards as follows:

(1) Tanks manufactured on or before December 31, 1974: Dwg. 137–1, dated November 7, 1962, or Dwg. 137–2, dated September 1, 1971.

(2) Tanks manufactured on or after January 1, 1975: Dwg. 137–2, dated September 1, 1971.

(e) *Piping and fittings.* Piping and fittings must be grouped in the smallest practicable space and protected from damage as required in this section.

(f) *Shear section.* Shear sections or sacrificial devices are required on the following attachments:

(1) A section that will break under undue strain must be provided adjacent to or outboard of each valve specified in § 178.337–8(a)(3) and (4).

(2) Internal self-closing stop valves, excess flow valves and check valves must be protected by a shear section or other sacrificial device. The sacrificial device must be located in the piping system outboard of the stop valve and within the accident damage protection to prevent any accidental loss of lading. The device must break at no more than 70 percent of the load that would be required to cause the failure of the protected lading retention device, part or cargo tank wall. The failure of the sacrificial device must leave the protected lading retention device and its attachment to the cargo tank wall intact and capable of retaining product.

§ 178.337–12 [Removed and reserved]

■ 24. Section 178.337–12 is removed and reserved.

■ 25. Section 178.337–13 is revised to read as follows:

§ 178.337–13 Supporting and anchoring.

(a) A cargo tank that is not permanently attached to or integral with a vehicle chassis must be secured by the use of restraining devices designed to prevent relative motion between the cargo tank and the vehicle chassis when the vehicle is in operation. Such restraining devices must be readily accessible for inspection and maintenance.

(b) On a cargo tank motor vehicle designed and constructed so that the cargo tank constitutes in whole or in part the structural member used in place of a motor vehicle frame, the cargo tank must be supported by external cradles. A cargo tank mounted on a motor vehicle frame must be supported by external cradles or longitudinal members. Where used, the cradles must subtend at least 120 degrees of the shell circumference.

(c) The design calculations of the support elements must satisfy the requirements of § 178.337–3, (a), (b), (c), and (d).

(d) Where any cargo tank support is attached to any part of a cargo tank head, the stresses imposed upon the head must be provided for as required in paragraph (c) of this section.

■ 26. Section 178.337–17, is revised to read as follows:

§ 178.337–17 Marking.

(a) *General.* Each cargo tank certified after October 1, 2004 must have a corrosion-resistant metal name plate (ASME Plate) and specification plate permanently attached to the cargo tank by brazing, welding, or other suitable means on the left side near the front, in a place accessible for inspection. If the specification plate is attached directly to the cargo tank wall by welding, it must be welded to the tank before the cargo tank is postweld heat treated.

(1) The plates must be legibly marked by stamping, embossing, or other means of forming letters into the metal of the plate, with the information required in paragraphs (b) and (c) of this section, in addition to that required by the ASME Code, in characters at least 3/16 inch high (parenthetical abbreviations may be used). All plates must be maintained in a legible condition.

(2) Each insulated cargo tank must have additional plates, as described, attached to the jacket in the location specified unless the specification plate is attached to the chassis and has the information required in paragraphs (b) and (c) of this section.

(3) The information required for both the name and specification plate may be displayed on a single plate. If the information required by this section is displayed on a plate required by the ASME, the information need not be repeated on the name and specification plates.

(4) The specification plate may be attached to the cargo tank motor vehicle chassis rail by brazing, welding, or other suitable means on the left side near the front head, in a place accessible for inspection. If the specification plate is attached to the chassis rail, then the cargo tank serial number assigned by the cargo tank manufacturer must be included on the plate.

(b) *Name plate.* The following information must be marked on the name plate in accordance with this section:

(1) DOT-specification number MC 331 (DOT MC 331).

(2) Original test date (Orig. Test Date).

(3) MAWP in psig.

(4) Cargo tank test pressure (Test P), in psig.

(5) Cargo tank design temperature (Design Temp. Range) ____ °F to ____ °F.

(6) Nominal capacity (Water Cap.), in pounds.

(7) Maximum design density of lading (Max. Lading density), in pounds per gallon.

(8) Material specification number-shell (Shell matl, yyy * * *), where "yyy" is replaced by the alloy designation and "* * *" is replaced by the alloy type.

(9) Material specification number-heads (Head matl. Yyy * * *), where "yyy" is replaced by the alloy designation and "* * *" by the alloy type.

Note: When the shell and heads materials are the same thickness, they may be combined, (Shell & head matl, yyy * * *).

(10) Weld material (Weld matl.).

(11) Minimum Thickness-shell (Min. Shell-thick), in inches. When minimum shell thicknesses are not the same for different areas, show (top ____, side ____, bottom ____, in inches).

(12) Minimum thickness-heads (Min heads thick.), in inches.

(13) Manufactured thickness-shell (Mfd. Shell thick.), top ____, side ____, bottom ____, in inches. (Required when additional thickness is provided for corrosion allowance.)

(14) Manufactured thicknessBheads (Mfd. Heads thick.), in inches. (Required when additional thickness is provided for corrosion allowance.)

(15) Exposed surface area, in square feet.

(c) *Specification plate.* The following information must be marked on the specification plate in accordance with this section:

(1) Cargo tank motor vehicle manufacturer (CTMV mfr.).

(2) Cargo tank motor vehicle certification date (CTMV cert. date).

(3) Cargo tank manufacturer (CT mfr.).

(4) Cargo tank date of manufacture (CT date of mfr.), month and year.

(5) Maximum weight of lading (Max. Payload), in pounds

(6) Maximum loading rate in gallons per minute (Max. Load rate, GPM).

(7) Maximum unloading rate in gallons per minute (Max Unload rate, GPM).

(8) Lining materials (Lining), if applicable.

(9) Heating system design pressure (Heating sys, press.), in psig, if applicable.

(10) Heating system design temperature (Heating sys, temp.), in °F, if applicable.

(11) Cargo tank serial number, assigned by cargo tank manufacturer (CT serial), if applicable.

Note 1 to paragraph (c): See " 173.315(a) of this chapter regarding water capacity.

Note 2 to paragraph (c): When the shell and head materials are the same thickness, they may be combined (Shell & head matl, yyy * * *).

(d) The design weight of lading used in determining the loading in §§ 178.337(3)(b), 178.337–10(b) and (c), and 178.337–13(a) and (b) must be shown as the maximum weight of lading marking required by paragraph (c) of this section.

■ 27. In § 178.337–18, paragraphs (a)(3) and (a)(4) are redesignated as paragraphs (a)(5) and (a)(6) respectively, and new paragraphs (a)(3) and (a)(4) are added to read as follows:

§ 178.337–18 Certification.

(a) * * *

(3) When a cargo tank motor vehicle is manufactured in two or more stages, each manufacturer who performs a manufacturing function or portion thereof on the incomplete cargo tank motor vehicle must provide to the succeeding manufacturer, at or before the time of delivery, a certificate that states the function performed by the manufacturer, including any certificates received from previous manufacturers, Registered Inspectors, and Design Certifying Engineers.

(4) *Specification shortages.* When a cargo tank motor vehicle is manufactured in two or more stages, the manufacturer of the cargo tank must attach the name plate and specification plate as required by § 178.337–17(a) and (b) without the original date of certification stamped on the specification plate. Prior manufacturers must list the specification requirements that are not completed on the Certificate of Compliance. When the cargo tank motor vehicle is brought into full compliance with the applicable specification, the cargo tank motor vehicle manufacturer must have a Registered Inspector stamp the date of certification on the specification plate and issue a Certificate of Compliance to the owner of the cargo tank motor vehicle. The Certificate of Compliance must list the actions taken to bring the cargo tank motor vehicle into full compliance. In addition, the certificate must include the date of certification and the person (manufacturer, carrier or repair organization) accomplishing compliance.

* * * * *

■ 28. In § 178.338–2, paragraph (c) is revised to read as follows:

§ 178.338–2 Material.

* * * * *

(c) Impact tests are required on all tank materials, except materials that are excepted from impact testing by the ASME Code, and must be performed using the procedure prescribed in the ASME Code (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

■ 29. In § 178.338–3, paragraphs (b) and (g) are revised to read as follows:

§ 178.338–3 Structural integrity.

* * * * *

(b) *Static design and construction.* (1) The static design and construction of each tank must be in accordance with Appendix G of Section VII, Division 1 of the ASME Code (incorporated by reference; see § 171.7 of this subchapter). The tank design must include calculation of stress due to the design pressure, the weight of lading, the weight of structures supported by the tank wall, and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be used in calculation of the thermal stresses.

(2) Stress concentrations in tension, bending, and torsion which occur at pads, cradles, or other supports must be considered in accordance with Appendix G of Section VII, Division 1 of the ASME Code.

* * * * *

(g) The design, construction and installation of an attachment, appurtenance to the cargo tank or structural support member between the cargo tank and the vehicle or suspension component or accident protection device must conform to the following requirements:

(1) Structural members, the suspension subframe, accident protection structures and external circumferential reinforcement devices must be used as sites for attachment of appurtenances and other accessories to the cargo tank, when practicable.

(2) A lightweight attachment to the cargo tank wall such as a conduit clip, brakeline clip, skirting structure, lamp mounting bracket, or placard holder must be of a construction having lesser strength than the cargo tank wall materials and may not be more than 72 percent of the thickness of the material to which it is attached. The lightweight attachment may be secured directly to the cargo tank wall if the device is designed and installed in such a manner that, if damaged, it will not affect the lading retention integrity of the tank. A lightweight attachment must be secured to the cargo tank shell or head by a continuous weld or in such a manner as to preclude formation of pockets that may become sites for corrosion. Attachments meeting the requirements of this paragraph are not authorized for cargo tanks constructed under part UHT, Section VIII, Division 1 of the ASME Code.

(3) Except as prescribed in paragraphs (g)(1) and (g)(2) of this section, the welding of any appurtenance the cargo tank wall must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the cargo tank if any force less than that prescribed in paragraph (b)(1) of this section is applied from any direction. The thickness of the mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad with a minimum thickness of 0.187 inch may be used when the shell or head thickness is over 0.187 inch. If weep holes or tell-tale holes are used, the pad must be drilled

or punched at the lowest point before it is welded to the tank. Each pad must:

(i) Be fabricated from material determined to be suitable for welding to both the cargo tank material and the material of the appurtenance or structural support member; a Design Certifying Engineer must make this determination considering chemical and physical properties of the materials and must specify filler material conforming to the requirements of the ASME Code (incorporated by reference; see § 171.7 of this subchapter).

(ii) Be preformed to an inside radius no greater than the outside radius of the cargo tank at the attachment location.

(iii) Extend at least 2 inches in each direction from any point of attachment of an appurtenance or structural support member. This dimension may be measured from the center of the attached structural member.

(iv) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head.

(v) Be attached by continuous fillet welding. Any fillet weld discontinuity may only be for the purpose of preventing an intersection between the fillet weld and a tank or jacket seam weld.

■ 30. In § 178.338–10, the section heading and paragraph (c) are revised to read as follows:

§ 178.338–10 Accident damage protection.

* * * * *

(c) *Rear-end tank protection.* Rear-end tank protections devices must:

(1) Consist of at least one rear bumper designed to protect the cargo tank and piping in the event of a rear-end collision. The rear-end tank protection device design must transmit the force of the collision directly to the chassis of the vehicle. The rear-end tank protection device and its attachments to the chassis must be designed to withstand a load equal to twice the weight of the loaded cargo tank and attachments, using a safety factor of four based on the tensile strength of the materials used, with such load being applied horizontally and parallel to the major axis of the cargo tank. The rear-end tank protection device dimensions must meet the requirements of § 393.86 of this title and extend vertically to a height adequate to protect all valves and fittings located at the rear of the cargo tank from damage that could result in loss of lading; or

(2) Conform to the requirements of § 178.345–8.

* * * * *

■ 31. In § 178.338–11, paragraph (c) is revised as follows:

§ 178.338–11 Discharge control devices.

* * * * *

(c) Except for a cargo tank that is used to transport argon, carbon dioxide, helium, krypton, neon, nitrogen, xenon, or mixtures thereof, each liquid filling and liquid discharge line must be provided with an on-vehicle remotely controlled self-closing shutoff valve.

(1) If pressure from a reservoir or from an engine-driven pump or compressor is used to open this valve, the control must be of fail-safe design and spring-biased to stop the admission of such pressure into the cargo tank. If the jacket is not evacuated, the seat of the valve must be inside the tank, in the opening nozzle or flange, or in a companion flange bolted to the nozzle. If the jacket is evacuated, the remotely controlled valve must be located as close to the tank as practicable.

(2) Each remotely controlled shut off valve must be provided with on-vehicle remote means of automatic closure, both mechanical and thermal. One means may be used to close more than one remotely controlled valve. Cable linkage between closures and remote operators must be corrosion resistant and effective in all types of environment and weather. The thermal means must consist of fusible elements actuated at a temperature not exceeding 121 °C (250 °F), or equivalent devices. The loading/unloading connection area is where hoses are connected to the permanent metal piping. The number and location of remote operators and thermal devices shall be as follows:

(i) On a cargo tank motor vehicle over 3,500 gallons water capacity, remote means of automatic closure must be installed at the ends of the cargo tank in at least two diagonally opposite locations. If the loading/unloading connection at the cargo tank is not in the general vicinity of one of these locations, at least one additional thermal device must be installed so that heat from a fire in the loading/unloading connection area will activate the emergency control system.

(ii) On a cargo tank motor vehicle of 3,500 gallons water capacity or less, at least one remote means of automatic closure must be installed on the end of the cargo tank farthest away from the loading/unloading connection area. At least one thermal device must be installed so that heat from a fire in the loading/unloading connection area will activate the emergency control system.

■ 32. Section 178.338–13 is revised to read as follows:

§ 178.338–13 Supporting and anchoring.

(a) On a cargo tank motor vehicle designed and constructed so that the cargo tank constitutes in whole or in part the structural member used in place of a motor vehicle frame, the cargo tank or the jacket must be supported by external cradles or by load rings. For a cargo tank mounted on a motor vehicle frame, the tank or jacket must be supported by external cradles, load rings, or longitudinal members. If cradles are used, they must subtend at least 120 degrees of the cargo tank circumference. The design calculations for the supports and load-bearing tank or jacket, and the support attachments must include beam stress, shear stress, torsion stress, bending moment, and acceleration stress for the loaded vehicle as a unit, using a safety factor of four, based on the tensile strength of the material, and static loading that uses the weight of the cargo tank and its attachments when filled to the design weight of the lading (see Appendix G of Section VIII, Division 1 of the ASME Code), multiplied by the following factors. The effects of fatigue must also be considered in the calculations. Minimum static loadings must be as follows:

(1) For a vacuum-insulated cargo tank—

(i) Vertically downward of 2;

(ii) Vertically upward of 2;

(iii) Longitudinally of 2; and

(iv) Laterally of 2.

(2) For any other insulated cargo tank—

(i) Vertically downward of 3;

(ii) Vertically upward of 2;

(iii) Longitudinally of 2; and

(iv) Laterally of 2.

(b) When a loaded tank is supported within the vacuum jacket by structural members, the design calculations for the tank and its structural members must be based on a safety factor of four and the tensile strength of the material at ambient temperature. The enhanced tensile strength of the material at actual operating temperature may be substituted for the tensile strength at ambient temperature to the extent recognized in the ASME Code for static loadings. Static loadings must take into consideration the weight of the tank and the structural members when the tank is filled to the design weight of lading (see Appendix G of Section VIII, Division 1 of the ASME Code), multiplied by the following factors. When load rings in the jacket are used for supporting the tank, they must be designed to carry the fully loaded tank at the specified static loadings, and external pressure. Minimum static loadings must be as follows:

(1) Vertically downward of 2;

(2) Vertically upward of 1½;

(3) Longitudinally of 1½; and, (4) Laterally of 1½.

■ 33. Section 178.338–18, is revised to read as follows:

§ 178.338–18 Marking.

(a) *General.* Each cargo tank certified after October 1, 2004 must have a corrosion-resistant metal name plate (ASME Plate) and specification plate permanently attached to the cargo tank by brazing, welding, or other suitable means on the left side near the front, in a place accessible for inspection. If the specification plate is attached directly to the cargo tank wall by welding, it must be welded to the tank before the cargo tank is postweld heat treated.

(1) The plates must be legibly marked by stamping, embossing, or other means of forming letters into the metal of the plate, with the information required in paragraphs (b) and (c) of this section, in addition to that required by the ASME Code (incorporated by reference; see § 171.7 of this subchapter), in characters at least 3/16 inch high (parenthetical abbreviations may be used). All plates must be maintained in a legible condition.

(2) Each insulated cargo tank must have additional plates, as described, attached to the jacket in the location specified unless the specification plate is attached to the chassis and has the information required in paragraphs (b) and (c) of this section.

(3) The information required for both the name and specification plate may be displayed on a single plate. If the information required by this section is displayed on a plate required by the ASME Code, the information need not be repeated on the name and specification plates.

(4) The specification plate may be attached to the cargo tank motor vehicle chassis rail by brazing, welding, or other suitable means on the left side near the front head, in a place accessible for inspection. If the specification plate is attached to the chassis rail, then the cargo tank serial number assigned by the cargo tank manufacturer must be included on the plate.

(b) *Name plate.* The following information must be marked on the name plate in accordance with this section:

(1) DOT-specification number MC 338 (DOT MC 338).

(2) Original test date (Orig, Test Date).

(3) MAWP in psig.

(4) Cargo tank test pressure (Test P), in psig.

(5) Cargo tank design temperature (Design Temp. Range) ____ °F to ____ °F.

(6) Nominal capacity (Water Cap.), in pounds.

(7) Maximum design density of lading (Max. Lading density), in pounds per gallon.

(8) Material specification number—shell (Shell matl, yyy * * *), where "yyy" is replaced by the alloy designation and "* * *" is replaced by the alloy type.

(9) Material specification number—heads (Head matl. yyy * * *), where "yyy" is replaced by the alloy designation and "* * *" by the alloy type.

Note: When the shell and heads materials are the same thickness, they may be combined, (Shell & head matl, yyy * * *).

(10) Weld material (Weld matl.).

(11) Minimum Thickness-shell (Min. Shell-thick), in inches. When minimum shell thicknesses are not the same for different areas, show (top ____, side ____, bottom ____, in inches).

(12) Minimum thickness-heads (Min heads thick.), in inches.

(13) Manufactured thickness-shell (Mfd. Shell thick.), top ____, side ____, bottom ____, in inches. (Required when additional thickness is provided for corrosion allowance.)

(14) Manufactured thickness-heads (Mfd. Heads thick.), in inches. (Required when additional thickness is provided for corrosion allowance.)

(15) Exposed surface area, in square feet.

(c) *Specification plate.* The following information must be marked on the specification plate in accordance with this section:

(1) Cargo tank motor vehicle manufacturer (CTMV mfr.).

(2) Cargo tank motor vehicle certification date (CTMV cert. date).

(3) Cargo tank manufacturer (CT mfr.).

(4) Cargo tank date of manufacture (CT date of mfr.), month and year.

(5) Maximum weight of lading (Max. Payload), in pounds.

(6) Maximum loading rate in gallons per minute (Max. Load rate, GPM).

(7) Maximum unloading rate in gallons per minute (Max Unload rate).

(8) Lining materials (Lining), if applicable.

(9) "Insulated for oxygen service" or "Not insulated for oxygen service" as appropriate.

(10) Marked rated holding time for at least one cryogenic liquid, in hours, and the name of that cryogenic liquid (MRHT ____ hrs, name of cryogenic liquid). Marked rated holding marking for additional cryogenic liquids may be displayed on or adjacent to the specification plate.

(11) Cargo tank serial number (CT serial), as assigned by cargo tank manufacturer, if applicable.

Note 1 to paragraph (c): See § 173.315(a) of this chapter regarding water capacity.

Note 2 to paragraph (c): When the shell and head materials are the same thickness, they may be combined (Shell & head matl, yyy***).

(d) The design weight of lading used in determining the loading in §§ 178.338–3(b), 178.338–10(b) and (c), and 178.338–13(b) and (c) must be shown as the maximum weight of lading marking required by paragraph (c) of this section.

* * * * *

■ 34. In § 178.345–1, paragraph (c) is revised and paragraph (k) is removed, to read as follows:

§ 178.345–1 General requirements.

* * * * *

(c) *Definitions.* See § 178.320(a) for the definition of certain terms used in §§ 178.345, 178.346, 178.347 and 178.348.

* * * * *

■ 35. In § 178.345–2, paragraph (b) is revised to read as follows:

§ 178.345–2 Material and material thickness.

* * * * *

(b) *Minimum thickness.* The minimum thickness for the shell and heads (or baffles and bulkheads when used as tank reinforcement) must be no less than that determined under criteria for minimum thickness specified in § 178.320(a).

* * * * *

■ 36. In § 178.345–3, paragraph (b)(3) is added and paragraph (f) is revised to read as follows:

§ 178.345–3 Structural integrity.

* * * * *

(b) * * *

(3) Cargo tank designers and manufacturers must consider all of the conditions specified in § 173.33(c) of this subchapter when matching a cargo tank's performance characteristic to the characteristic of each lading transported.

* * * * *

(f) The design, construction, and installation of an attachment, appurtenance to a cargo tank, structural support member between the cargo tank and the vehicle or suspension component must conform to the following requirements:

(1) Structural members, the suspension sub-frame, accident protection structures and external circumferential reinforcement devices must be used as sites for attachment of appurtenances and other accessories to the cargo tank, when practicable.

(2) A lightweight attachment to a cargo tank wall such as a conduit clip, brake line clip, skirting structure, lamp mounting bracket, or placard holder must be of a construction having lesser strength than the cargo tank wall materials and may not be more than 72 percent of the thickness of the material to which it is attached. The lightweight attachment may be secured directly to the cargo tank wall if the device is designed and installed in such a manner that, if damaged, it will not affect the lading retention integrity of the tank. A lightweight attachment must be secured to the cargo tank shell or head by continuous weld or in such a manner as to preclude formation of pockets which may become sites for corrosion.

(3) Except as prescribed in paragraphs (f)(1) and (f)(2) of this section, the welding of any appurtenance to the cargo tank wall must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the cargo tank if any force less than that prescribed in paragraph (b)(1) of this section is applied from any direction. The thickness of the mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad with a minimum thickness of 0.187 inch may be used when the shell or head thickness is over 0.187 inch. If weep holes or tell-tale holes are used, the pad must be drilled or punched at the lowest point before it is welded to the tank. Each pad must:

(i) Be fabricated from material determined to be suitable for welding to both the cargo tank material and the material of the appurtenance or structural support member; a Design Certifying Engineer must make this determination considering chemical and physical properties of the materials and must specify filler material conforming to the requirements of the ASME Code (incorporated by reference; see § 171.7 of this subchapter).

(ii) Be preformed to an inside radius no greater than the outside radius of the cargo tank at the attachment location.

(iii) Extend at least 2 inches in each direction from any point of attachment of an appurtenance or structural support member. This dimension may be measured from the center of the structural member attached.

(iv) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head.

(v) Be attached by continuous fillet welding. Any fillet weld discontinuity may only be for the purpose of preventing an intersection between the fillet weld and the tank or jacket seam weld.

■ 37. In § 178.345–5, paragraph (e) introductory text is revised to read as follows:

§ 178.345–5 Manhole assemblies.

* * * * *

(e) On cargo tank motor vehicles manufactured after October 1, 2004, each manhole assembly must be permanently marked on the outside by stamping or other means in a location visible without opening the manhole assembly or fill opening, with:

* * * * *

■ 38. In ✖§ 178.345–8, paragraphs (a)(5), and (d) introductory text are revised to read as follows:

§§ 178.345–8 Accident damage protection.

(a) * * *

(5) *Minimum road clearance.* The minimum road clearance of any cargo tank motor vehicle component or protection device located between any two adjacent axles on a vehicle or vehicle combination must be at least one-half inch for each foot separating the component or device from the nearest axle of the adjacent pair, but in no case less than twelve (12) inches, except that the minimum road clearance for landing gear or other attachments within ten (10) feet of an axle must be no less than ten (10) inches. These measurements must be calculated at the gross vehicle weight rating of the cargo tank motor vehicle.

* * * * *

(d) *Rear-end tank protection.* Each cargo tank motor vehicle must be provided with a rear-end tank protection device to protect the cargo tank and piping in the event of a rear-end collision and reduce the likelihood of damage that could result in the loss of lading. Nothing in this paragraph relieves the manufacturer of responsibility for complying with the requirements of § 393.86 of this title and, if applicable, paragraph (b) of this section. The rear-end tank protection device must conform to the following requirements:

* * * * *

■ 39. In § 178.345–10, paragraph (a) and the last sentence in paragraph (b)(3)(i) are revised to read as follows:

§ 178.345–10 Pressure relief.

(a) Each cargo tank must be equipped to relieve pressure and vacuum conditions in conformance with this section and the applicable individual specification. The pressure and vacuum relief system must be designed to operate and have sufficient capacity to prevent cargo tank rupture or collapse due to over-pressurization or vacuum resulting from loading, unloading, or from heating and cooling of lading. Pressure relief systems are not required to conform to the ASME Code.

(b) * * *

(3) * * *

(i) * * *. An acceptable method is outlined in TTMA RP No. 81–97 "Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, MC 312, DOT 406, DOT 407, and DOT 412 Tanks" (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

■ 40. In § 178.345–13, paragraph (a) is revised to read as follows:

§ 178.345–13 Pressure and leakage tests.

(a) Each cargo tank must be pressure and leakage tested in accordance with this section and §§ 178.346–5, 178.347–5, or 178.348–5.

* * * * *

■ 41. In § 178.345–14, paragraphs (b)(1) and (c)(1) through (10) are revised to read as follows:

§ 178.345–14 Marking.

* * * * *

(b) * * *

(1) DOT-specification number DOT XXX (DOT XXX) where "XXX" is replaced with the applicable specification number. For cargo tanks having a variable specification plate, the DOT-specification number is replaced with the words "See variable specification plate."

* * * * *

(c) * * *

(1) Cargo tank motor vehicle manufacturer (CTMV mfr.).

(2) Cargo tank motor vehicle certification date (CTMV cert. date), if different from the cargo tank certification date.

(3) Cargo tank manufacturer (CT mfr.).

(4) Cargo tank date of manufacture (CT date if mfr.), month and year.

(5) Maximum weight of lading (Max. Payload), in pounds.

(6) Maximum loading rate in gallons per minute (Max. Load rate, GPM).

(7) Maximum unloading rate in gallons per minute (Max Unload rate).

(8) Lining material (Lining), if applicable.

(9) Heating system design pressure (Heating sys. press.), in psig, if applicable.

(10) Heating system design temperature (Heating sys. temp.), in °F, if applicable.

* * * * *

§ 178.346–1 [Amended]

■ 42. In § 178.346–1, the following changes are made:

(a) In paragraph (d)(6), the reference to "§ 178.345–10" is revised to read "§ 178.346–3."

(b) In paragraph (d)(7), the reference to "§ 178.345–13" is revised to read "§ 178.346–5."

■ 43. In § 178.346–2, the introductory text and the titles to Table I and Table II are revised to read as follows:

§ 178.346–2 Material and thickness of material.

The type and thickness of material for DOT 406 specification cargo tanks must conform to § 178.345–2, but in no case may the thickness be less than that determined by the minimum thickness requirements in § 178.320(a). The following Tables I and II identify the specified minimum thickness values to be employed in that determination.

Table I.—Specified Minimum Thickness of Heads (or Bulkheads and Baffles When Used as Tank Reinforcement) Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

Table II.—Specified Minimum Thickness of Shell Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming[1]

* * * * *

[1] Maximum distance between bulkheads, baffles, or ring stiffeners shall not exceed 60 inches.

■ 44. In § 178.346–5, paragraph (c) is revised to read as follows:

§ 178.346–5 Pressure and leakage tests.

* * * * *

(c) *Leakage test.* A cargo tank used to transport a petroleum distillate fuel that is equipped with vapor recovery equipment may be leakage tested in accordance with 40 CFR 63.425(e). To satisfy the leakage test requirements of this paragraph, the test specified in 40 CFR 63.425(e)(1) must be conducted using air. The hydrostatic test alternative permitted under Appendix A to 40 CFR Part 60 ("Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test") may not be used to satisfy the leakage test requirements of this paragraph. A cargo tank tested in accordance with 40 CFR 63.425(e) may be marked as specified in § 180.415 of this subchapter.

■ 45. In § 178.347–1, the following changes are made:

a. Paragraph (c) is revised.

b. In paragraph (d)(5), the reference to "§§ 178.345–5 and 178.347–5" is revised to read "§ 178.347–3".

c. In paragraph (d)(6), the reference to "§ 178.345–10" is revised to read "§ 178.347-4".

d. In paragraph (d)(7), the reference to "§ 178.345–13" is revised to read "§ 178.347-5".

e. Paragraph (d)(9) is added.

The additions and revisions read as follows:

§ 178.347–1 General requirements.

* * * * *

(c) Any cargo tank built to this specification with a MAWP greater than 35 psig and each tank designed to be loaded by vacuum must be constructed and certified in conformance with the ASME Code (incorporated by reference; see § 171.7 of this subchapter). The external design pressure for a cargo tank loaded by vacuum must be at least 15 psi.

(d) * * *

(9) The strength of a weld seam in a bulkhead that has not been radiographically examined shall be 0.85 of the strength of the bulkhead under the following conditions:

(i) The welded seam must be a full penetration butt weld.

(ii) No more than one seam may be used per bulkhead.

(iii) The welded seam must be completed before forming the dish radius and knuckle radius.

(iv) Compliance test: Two test specimens of materials representative of those to be used in the manufacture of a cargo tank bulkhead must be tested to failure in tension. The test specimen must be of the same thickness and joined by the same welding procedure. The test specimens may represent all the tanks that are made in the same facility within 6 months after the tests are completed. Before welding, the fit-up of the joints on the test specimens must represent production conditions that would result in the least joint strength. Evidence of joint fit-up and test results must be retained at the manufacturers' facility for at least 5 years.

(v) Acceptance criteria: The ratio of the actual tensile stress at failure to the actual tensile strength of the adjacent material of all samples of a test lot must be greater than 0.85.

■ 46. In § 178.347–2, paragraph (a) introductory text and the titles to Table I and Table II are revised to read as follows:

§ 178.347–2 Material and thickness of material.

(a) The type and thickness of material for DOT 407 specification cargo tanks must conform to § 178.345–2, but in no case may the thickness be less than that determined by the minimum thickness requirements in § 178.320(a). Tables I and II identify the specified minimum thickness values to be employed in that the determination:

Table I.—Specified Minimum Thickness of Heads (or Bulkheads and Baffles When Used as Tank Reinforcement) Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

Table II.—Specified Minimum Thickness of Shell Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

§ 178.348–1 [Amended]

■ 47. In § 178.348–1(e), the following changes are made:

(a) In paragraph (e)(2)(v), the reference to "§§ 178.345–5 and 178.348–5" is revised to read "§ 178.345–5".

(b) In paragraph (e)(2)(vi), the reference to "§ 178.345–10" is revised to read "§ 178.348–4".

(c) In paragraph (e)(2)(vii), the reference to "§ 178.345–13" is revised to read "§ 178.348–5".

■ 48. In § 178.348–2, paragraph (a) introductory text and the titles to Table I and Table II are revised to read as follows:

§ 178.348–2 Material and thickness of material.

(a) The type and thickness of material for DOT 412 specification cargo tanks must conform to § 178.345–2, but in no case may the thickness be less than that determined by the minimum thickness requirements in § 178.320(a). The following Tables I and II identify the "Specified Minimum Thickness" values to be employed in that determination.

Table I.—Specified Minimum Thickness of Heads (or Bulkheads and Baffles When Used as Tank Reinforcement) Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

Table II.—Specified Minimum Thickness of Shell Using Mild Steel (MS), High Strength Low Alloy Steel (HSLA), Austenitic Stainless Steel (SS), or Aluminum (AL)—Expressed in Decimals of an Inch After Forming

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

■ 49. The authority citation for part 180 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 50. In § 180.403, the definition for "Corrosive to the tank/valve" is removed and new definitions for "Corroded or abraded" and "Corrosive to the tank or valve" are added to read as follows:

§ 180.403 Definitions.

* * * * *

Corroded or abraded means any visible reduction in the material thickness of the cargo tank wall or valve due to pitting, flaking, gouging, or chemical reaction to the material surface that effects the safety or serviceability of the cargo tank. The term does not include cosmetic or minor surface degradation that does not effect the safety or serviceability of the cargo tank

Corrosive to the tank or valve means that the lading has been shown through experience or test data to reduce the thickness of the material of construction of the tank wall or valve.

* * * * *

■ 51. In § 180.405 paragraph (g)(3) is removed and reserved, paragraphs (b), (g)(2)(i), (k), and (l)(2)(iii) are revised, and a new paragraph (o) is added, to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(b) *Cargo tank specifications.*

(1) To qualify as an authorized packaging, each cargo tank must conform to this subpart, the applicable requirements specified in part 173 of this subchapter for the specific lading, and where a DOT specification cargo tank is required, an applicable specification in effect on the date initial construction began: MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330, MC 331, MC 338, DOT 406, DOT 407, or DOT 412 (§§ 178.337, 178.338, 178.345, 178.346, 178.347, 178.348 of this subchapter). However, except as provided in paragraphs (b)(2), (d), (e), (f)(5), and (f)(6) of this section, no cargo tank may be marked or certified after August 31, 1995, to the applicable MC 306, MC 307, MC 312, MC 331, or MC 338 specification in effect on December 30, 1990.

(2) *Exception.* A cargo tank originally manufactured to the MC 306, MC 307, or MC 312 specification that has not been stretched, rebarrelled, or modified may be re-certified to the original specification provided:

(i) Sufficient records are available verifying the cargo tank was originally manufactured to the specification;

(ii) A Design Certifying Engineer or Registered Inspector verifies the cargo tank conforms to all applicable requirements of the original specification and furnishes to the owner written documentation which verifies the tank complies with the original structural design requirements in effect at the time the tank was originally constructed;

(iii) The cargo tank meets all applicable tests and inspections required by § 180.407(c); and

(iv) The cargo tank is re-certified to the original specification in accordance with the reporting and record retention provisions of § 180.417. The certification documents required by § 180.417(a)(3) must include both the date the cargo tank was originally certified to the specification, and the date it was re-certified. The specification plate on the cargo tank or cargo tank motor vehicle must display the date the cargo tank was originally certified to the specification.

* * * * *

(g) * * *

(2) * * *

(i) Manhole assemblies on MC 300, MC 301, MC 302, MC 303, MC 305, MC 306, MC 310, MC 311, and MC 312 cargo tanks that are marked or certified in writing as conforming to § 178.345–5 of this subchapter or TTMA RP No. 61–98 (incorporated by reference; see § 171.7 of this subchapter), or are tested and certified in accordance with TTMA TB No. 107 (incorporated by reference; see § 171.7 of this subchapter).

* * * * *

(k) *DOT-specification cargo tank with no marked design pressure or a marked design pressure of less than 3 psig.* The owner of an MC 300, MC 301, MC 302, MC 303, MC 305, MC 306, or MC 312 cargo tank with a pressure relief system set at 3 psig, must mark or remark the cargo tank with an MAWP or design pressure of not less than 3 psig.

(l) * * *

(2) * * *

(iii) The structure of the bumper must be designed in accordance with § 178.345–8(d)(3) of this subchapter.

* * * * *

(o) *On-truck remote control of self-closing stop valves—MC 330, MC 331, and MC 338.* On or before October 2, 2006—

(1) Each owner of an MC 330 or MC 331 cargo tank motor vehicle marked or certified before January 1, 1995, must equip the cargo tank with an on-vehicle remote means of closure of the internal self-closing stop valve in conformance with § 178.337–8(a)(4) of this subchapter. This requirement does not apply to cargo tanks used only for carbon dioxide and marked "For carbon dioxide only" or intended for use in chlorine service only.

(2) Each owner of an MC 338 cargo tank motor vehicle marked or certified before January 1, 1995, must equip each remotely controlled shutoff valve with an on-vehicle remote means of automatic closure in conformance with § 178.338–11(c) of this subchapter. This requirement does not apply to cargo tanks used for the transportation of argon, carbon dioxide, helium, krypton, neon, nitrogen, or xenon, or mixtures thereof.

■ 52. In § 180.407, the following changes are made:

■ (a) Paragraphs (b)(4) and (g)(1)(v) are removed and reserved.

■ (b) Paragraphs (d)(4), (d)(5), and (d)(6) are redesignated as (d)(5), (d)(6), and (d)(7) respectively.

■ (c) Paragraphs (a)(2), (b)(1), (b)(2), (c), (d)(1), (g)(1)(ii), , (g)(1)(iv) introductory text, (g)(4), (h)(1) introductory text, (i)(5) introductory text, titles and column headings to Tables I and II in (i)(5), and (i)(6) are revised.

■ (d) In the table in paragraph (c), the entry under "Internal Visual Inspection" for "All insulated cargo tanks, except MC 330, MC 331, MC 338" is revised and a New Note 4 to the table is added.

■ (e) Paragraphs (d) introductory text, (d)(4), (h) introductory text, (h)(1)(iv), (h)(1)(v), (i)(9), and (i)(10) are added.

The additions and revisions read as follows:

§ 180.407 Requirements for test and inspection of specification cargo tanks.

(a) * * *

(2) Except during a pressure test, a cargo tank may not be subjected to a pressure greater than its design pressure or MAWP.

* * * * *

(b) * * *

(1) The cargo tank shows evidence of dents, cuts, gouges, corroded or abraded areas, leakage, or any other condition that might render it unsafe for hazardous materials service. At a minimum, any area of a cargo tank showing evidence of dents, cuts, digs, gouges, or corroded or abraded areas must be thickness tested in accordance with the procedures set forth in paragraphs (i)(2), (i)(3), (i)(5), and (i)(6) of this section and evaluated in accordance with the criteria prescribed in § 180.411. Any signs of leakage must be repaired in accordance with § 180.413. The suitability of any repair affecting the structural integrity of the cargo tank must be determined either by the testing required in the applicable manufacturing specification or in paragraph (g)(1)(iv) of this section.

(2) The cargo tank has sustained damage to an extent that may adversely affect its lading retention capability. A damaged cargo tank must be pressure tested in accordance with the procedures set forth in paragraph (g) of this section.

* * * * *

(c) *Periodic test and inspection.* Each specification cargo tank must be tested and inspected as specified in the following table by an inspector meeting the qualifications in § 180.409. The retest date shall be determined from the specified interval identified in the following table from the most recent inspection or the CTMV certification date.

COMPLIANCE DATES—INSPECTIONS AND TEST UNDER § 180.407(C)

Test or inspection (cargo tank specification, configuration, and service)	Date by which first test must be completed (see Note 1)	Interval period after first test
Internal Visual Inspection: All insulated cargo tanks, except MC 330, MC 331, MC 338 (see Note 4).	September 1,1991	1 year.

* * * * *

Note 4: Insulated cargo tanks equipped with manholes or inspection openings may perform either an internal visual inspection in conjunction with the external visual inspection or a hydrostatic or pneumatic pressure-test of the cargo tank.

* * * * *

(d) *External visual inspection and testing.* The following applies to the external visual inspection and testing of cargo tanks:

(1) Where insulation precludes a complete external visual inspection as required by paragraphs (d)(2) through (d)(6) of this section, the cargo tank also must be given an internal visual inspection in accordance with paragraph (e) of this section. If external visual inspection is precluded because any part of the cargo tank wall is externally lined, coated, or designed to prevent an external visual inspection, those areas of the cargo tank must be internally inspected. If internal visual inspection is precluded because the cargo tank is lined, coated, or designed so as to prevent access for internal inspection, the tank must be hydrostatically or pneumatically tested in accordance with paragraph (g)(1)(iv) of this section. Those items able to be externally inspected must be externally inspected and noted in the inspection report.

* * * * *

(4) Ring stiffeners or other appurtenances, installed on cargo tanks constructed of mild steel or high-strength, low-alloy steel, that create air cavities adjacent to the tank shell that do not allow for external visual inspection must be thickness tested in accordance with paragraphs (i)(2) and (i)(3) of this section, at least once every 2 years. At least four symmetrically distributed readings must be taken to establish an average thickness for the ring stiffener or appurtenance. If any thickness reading is less than the average thickness by more than 10%, thickness testing in accordance with paragraphs (i)(2) and (i)(3) of this section must be conducted from the inside of the cargo tank on the area of the tank wall covered by the appurtenance or ring stiffener.

* * * * *

(g) * * *

(1) * * *

(ii) All self-closing pressure relief valves, including emergency relief vents and normal vents, must be removed from the cargo tank for inspection and testing.

(A) Each self-closing pressure relief valve that is an emergency relief vent must open at the required set pressure and seat to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification.

(B) Normal vents (1 psig vents) must be tested according to the testing criteria established by the valve manufacturer.

(C) Self-closing pressure relief devices not tested or failing the tests in this paragraph (g)(1)(ii) must be repaired or replaced.

* * * * *

(iv) Each cargo tank must be tested hydrostatically or pneumatically to the internal pressure specified in the following table. At no time during the pressure test may a cargo tank be subject to pressures that exceed those identified in the following table:

* * * * *

(4) All pressure bearing portions of a cargo tank heating system employing a medium such as, but not limited to, steam or hot water for heating the lading must be hydrostatically pressure tested at least once every 5 years. The test pressure must be at least the maximum system design operating pressure and must be maintained for five minutes. A heating system employing flues for heating the lading must be tested to ensure against lading leakage into the flues or into the atmosphere.

* * * * *

(h) *Leakage test.* The following requirements apply to cargo tanks requiring a leakage test:

(1) Each cargo tank must be tested for leaks in accordance with paragraph (c) of this section. The leakage test must include testing product piping with all valves and accessories in place and operative, except that any venting devices set to discharge at less than the leakage test pressure must be removed or rendered inoperative during the test. All internal or external self-closing stop valves must be tested for leak tightness. Each cargo tank of a multi-cargo tank motor vehicle must be tested with adjacent cargo tanks empty and at atmospheric pressure. Test pressure must be maintained for at least 5 minutes. Cargo tanks in liquefied compressed gas service must be externally inspected for leaks during the leakage test. Suitable safeguards must be provided to protect personnel should a failure occur. Cargo tanks may be leakage tested with hazardous materials contained in the cargo tank during the test. Leakage test pressure must be no less than 80% of MAWP marked on the specification plate except as follows:

* * * * *

(iv) An MC 330 or MC 331 cargo tank in dedicated service for anhydrous ammonia may be leakage tested at not less than 414 kPa (60 psig).

(v) A non-specification cargo tank required by § 173.8(d) of this subchapter to be leakage tested, must be leakage tested at not less than 16.6 kPa (2.4

psig), or as specified in paragraph (h)(2) of this section.

(2) Cargo tanks used to transport petroleum distillate fuels that are equipped with vapor collection equipment may be leak tested in accordance with the Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," as set forth in Appendix A to 40 CFR part 60. Test methods and procedures and maximum allowable pressure and vacuum changes are in 40 CFR 63.425(e)(1). The hydrostatic test alternative, using liquid in Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," may not be used to satisfy the leak testing requirements of this paragraph. The test must be conducted using air.

* * * * *

(i) * * *

(5) Minimum thicknesses for MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 cargo tanks are determined based on the definition of minimum thickness found in § 178.320(a) of this subchapter. The following Tables I and II identify the "In-Service Minimum Thickness" values to be used to determine the minimum thickness for the referenced cargo tanks. The column headed "Minimum Manufactured Thickness" indicates the minimum values required for new construction of DOT 400 series cargo tanks, found in Tables I and II of §§ 178.346–2, 178.347–2, and 178.348–2 of this subchapter. In-Service Minimum Thicknesses for MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, and MC 312 cargo tanks are based on 90 percent of the manufactured thickness specified in the DOT specification, rounded to three places.

TABLE I.—IN-SERVICE MINIMUM THICKNESS FOR MC 300, MC 303, MC 304, MC 306, MC 307, MC 310, MC 311, AND MC 312 SPECIFICATION CARGO TANK CONSTRUCTED OF STEEL AND STEEL ALLOYS

Minimum manufactured thickness (US gauge or inches)	Nominal decimal equivalent for (inches)	In-service minimum thickness reference (inches)

* * * * *

TABLE II.—IN-SERVUCE MINIMUM THICKNESS FOR MC 301, MC 302, MC 304, MC 305, MC 306, MC 307, MC 311, AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF ALUMINUM AND ALUMINUM ALLOYS

Minimum manufactured thickness	In-service minimum thickness (inches)

* * * * *

(6) An owner of a cargo tank that no longer conforms to the minimum thickness prescribed for the design as manufactured may use the cargo tank to transport authorized materials at reduced maximum weight of lading or reduced maximum working pressure, or combinations thereof, provided the following conditions are met:

(i) A Design Certifying Engineer must certify that the cargo tank design and thickness are appropriate for the reduced loading conditions by issuance of a revised manufacturer's certificate, and

(ii) The cargo tank motor vehicle's nameplate must reflect the revised service limits.

* * * * *

(9) For MC 331 cargo tanks constructed before October 1, 2003, minimum thickness shall be determined by the thickness indicated on the U1A form minus any corrosion allowance. For MC 331 cargo tanks constructed after October 1, 2003, the minimum thickness will be the value indicated on the specification plate. If no corrosion allowance is indicated on the U1A form then the thickness of the tank shall be the thickness of the material of construction indicated on the UIA form with no corrosion allowance.

(10) For 400-series cargo tanks, minimum thickness is calculated according to tables in each applicable section of this subchapter for that specification: § 178.346–2 for DOT 406 cargo tanks, § 178.347–2 for DOT 407 cargo tanks, and § 178.348–2 for DOT 412 cargo tanks.

■ 53. In § 180.409, paragraphs (a)(1) and (a)(2) are revised, and paragraph (a)(3)is added to read as follows:

§ 180.409 Minimum qualifications for inspectors and testers.

(a) * * *

(1) Be registered with the Federal Motor Carrier Safety Administration in accordance with part 107, subpart F of this chapter,

(2) Be familiar with DOT-specification cargo tanks and trained and experienced in use of the inspection and testing equipment needed, and

(3) Have the training and experience required to meet the definition of "Registered Inspector" in § 171.8 of this chapter.

* * * * *

■ 54. Section 180.413 is revised to read as follows:

§ 180.413 Repair, modification, stretching, rebarrelling, or mounting of specification cargo tanks.

(a) *General.* Any repair, modification, stretching, rebarrelling, or mounting of a cargo tank must be performed in conformance with the requirements of this section.

(1) Except as otherwise provided in this section, each repair, modification, stretching, or rebarrelling of a specification cargo tank must be performed by a repair facility holding a valid National Board Certificate of Authorization for use of the National Board "R" stamp and must be made in accordance with the edition of the National Board Inspection Code in effect at the time the work is performed.

(i) Repairs, modifications, stretchings, and rebarrellings performed on non-ASME stamped specification cargo tanks may be performed by:

(A) A cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME "U" stamp using the quality control procedures used to obtain the Certificate of Authorization; or

(B) A repair facility holding a valid National Board Certificate of Authorization for use of the National Board "R" stamp using the quality control procedures used to obtain the Certificate of Authorization.

(ii) A repair, modification, stretching, or rebarrelling of a non-ASME stamped cargo tank may be done without certification by an Authorized Inspector, completion of the R–1 form, or being stamped with the "R" stamp.

(2) Prior to each repair, modification, stretching, rebarrelling, or mounting, the cargo tank motor vehicle must be emptied of any hazardous material lading. In addition, cargo tank motor vehicles used to transport flammable or toxic lading must be sufficiently cleaned of residue and purged of vapors so any potential hazard is removed, including void spaces between double bulkheads, piping and vapor recovery systems.

(3) Each person performing a repair, modification, stretching, rebarrelling or mounting of a DOT specification cargo tank must be registered in accordance with subpart F of part 107 of this chapter.

(b) *Repair.* The suitability of each repair affecting the structural integrity or lading retention capability of the cargo tank must be determined by the testing required either in the applicable manufacturing specification or in § 180.407(g)(1)(iv). Each repair of a cargo tank involving welding on the shell or head must be certified by a Registered Inspector. The following provisions apply to specific cargo tank repairs:

(1) DOT 406, DOT 407, and DOT 412 cargo tanks must be repaired in accordance with the specification requirements in effect at the time of repair;

(2) MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306 cargo tanks must be repaired in accordance with either the most recent revision of the original specification or with the DOT 406 specification in effect at the time of repair;

(3) MC 304 and MC 307 cargo tanks must be repaired in accordance with either the most recent revision of the original specification or with the DOT 407 specification in effect at the time of repair;

(4) MC 310, MC 311, and MC 312 cargo tanks must be repaired in accordance with either the most recent revision of the original specification or with the DOT 412 specification in effect at the time of repair;

(5) MC 338 cargo tanks must be repaired in accordance with the specification requirements in effect at the time of repair; and

(6) MC 330 and MC 331 cargo tanks must be repaired in accordance with the repair procedures described in CGA Technical Bulletin TB–2 and the National Board Inspection Code (see § 171.1 of this subchapter). Each cargo tank having cracks or other defects requiring welded repairs must meet all inspection, test, and heat treatment requirements in § 178.337–16 of this subchapter in effect at the time of the repair, except that postweld heat treatment after minor weld repairs is not required. When a repair is made of defects revealed by the wet fluorescent magnetic particle inspection, including those repaired by grinding, the affected area of the cargo tank must again be examined by the wet fluorescent magnetic particle method after hydrostatic testing to assure that all defects have been removed.

(c) *Maintenance or replacement of piping, valves, hoses, or fittings.* After each repair, maintenance or replacement of a pipe, valve, hose, or fitting on a cargo tank, that component must be installed in accordance with the provisions of the applicable specification before the cargo tank is returned to service.

(1) After maintenance or replacement that does not involve welding on the cargo tank wall, the repaired or replaced piping, valve, hose or fitting must be tested for leaks. This requirement is met when the piping, valve, hose or fitting is tested after installation at not less than 80 percent of the design pressure marked on the cargo tank. A hose may be tested before or after installation on the cargo tank.

(2) After repair or replacement of piping, valves, or fittings that involves welding on the cargo tank wall, the cargo tank must be pressure tested in accordance with the applicable manufacturing specification or § 180.407(g)(1)(iv). In addition, the affected piping, valve, or fitting must be tested in accordance with paragraph (c)(1) of this section.

(3) Hoses on cargo tanks in dedicated liquefied compressed gas, except carbon dioxide, service are excepted from these testing requirements, but must be tested in accordance with § 180.416(f).

(d) *Modification, stretching, or rebarrelling.* Modification, stretching or rebarrelling of a cargo tank motor vehicle must conform to the following provisions:

(1) The design of the modified, stretched, or rebarrelled cargo tank motor vehicle must be certified in writing by a Design Certifying Engineer as meeting the structural integrity and accident damage protection requirements of the applicable specification.

(2) Except as provided in paragraph (d)(2)(v) of this section, all new material and equipment affected by modification, stretching, or rebarrelling must meet the requirements of the specification in effect at the time such work is performed, and all applicable structural integrity requirements (§ 178.337–3, § 178.338–3, or § 178.345–3 of this subchapter). The work must conform to the requirements of the applicable specification as follows:

(i) For specification MC 300, MC 301, MC 302, MC 303, MC 305 and MC 306 cargo tanks, the provisions of either specification MC 306 or DOT 406 until August 31, 1995 and, thereafter to specification DOT 406 only;

(ii) For specification MC 304 and MC 307 cargo tanks, the provisions of either specification MC 307 or DOT 407 until August 31, 1995 and, thereafter to specification DOT 407 only;

(iii) For specification MC 310, MC 311, and MC 312 cargo tanks, the provisions of either specification MC 312 or DOT 412 until August 31, 1995 and, thereafter to specification DOT 412 only;

(iv) For specification MC 330 cargo tanks, the provisions of specification MC 331; and

(v) For specification MC 338 cargo tanks, the provisions of specification MC 338. However, structural modifications to MC 338 cargo tanks authorized under § 180.405(d) may conform to applicable provisions of the ASME Code instead of specification MC 338, provided the structural integrity of the modified cargo tank is at least equivalent to that of the original cargo tank.

(3) The person performing the modification, stretching, or rebarrelling must:

(i) Have knowledge of the original design concept, particularly with respect to structural design analysis, material and welding procedures.

(ii) Assure compliance of the rebuilt cargo tank's structural integrity, venting, and accident damage protection with the applicable specification requirements.

(iii) Assure compliance with all applicable Federal Motor Carrier Safety Regulations for all newly installed safety equipment.

(iv) Assure the suitability of each modification, stretching and rebarrelling that affects the lading retention capability of the cargo tank by performing the tests required in the applicable specification or § 180.407(g)(1)(iv).

(v) Any modification that changes information displayed on the specification plate requires the installation of a supplemental specification plate, nameplate, or both containing the information that reflects the cargo tank as modified, stretched or rebarrelled. The plate must include the name of the person or facility doing the work, DOT registration number, date work is completed, retest information, and any other information that differs from the original plate. The supplemental plates must be installed immediately adjacent to the existing plate or plates.

(vi) On a variable specification cargo tank, install a supplemental or new variable specification plate, and replace the specification listed on the original specification plate with the words "see variable specification plate."

(4) A Registered Inspector must certify that the modified, stretched, or rebarrelled cargo tank conforms to the requirements of this section and the applicable specification by issuing a supplemental certificate of compliance. The registration number of the Registered Inspector must be entered on the certificate.

(e) *Mounting of cargo tanks.* Mounting a cargo tank on a cargo tank motor vehicle must be:

(1) Performed as required by paragraph (d)(2) of this section and certified by a Design Certifying Engineer if the mounting of a cargo tank on a motor vehicle chassis involves welding on the cargo tank head or shell or any change or modification of the methods of attachment; or

(2) In accordance with the original specification for attachment to the chassis or the specification for attachment to the chassis in effect at the time of the mounting, and performed under the supervision of a Registered Inspector if the mounting of a cargo tank on a motor vehicle chassis does not involve welding on the cargo tank head or shell or a change or modification of the methods of attachment.

(f) *Records.* Each owner of a cargo tank motor vehicle must retain at the owner's principal place of business all records of repair, modification, stretching, or rebarrelling, including notation of any tests conducted to verify the suitability of the repair, modification, stretching, or rebarrelling made to each cargo tank during the time the cargo tank motor vehicle is in service and for one year thereafter. Copies of these records must be retained by a motor carrier, if not the owner of the cargo tank motor vehicle, at its principal place of business during the period the cargo tank motor vehicle is in the carrier's service.

■ 55. In § 180.415, paragraph (b) is revised to read as follows:

§ 180.415 Test and inspection markings.

* * * * *

(b) Each cargo tank must be durably and legibly marked, in English, with the date (month and year) and the type of test or inspection performed, subject to the following provisions:

(1) The date must be readily identifiable with the applicable test or inspection.

(2) The markings must be in letters and numbers at least 32 mm (1.25 inches) high, near the specification plate or anywhere on the front head.

(3) The type of test or inspection may be abbreviated as follows:

(i) V for external visual inspection and test;

(ii) I for internal visual inspection;

(iii) P for pressure test;

(iv) L for lining inspection;

(v) T for thickness test; and

(vi) K for leakage test for a cargo tank tested under § 180.407, except § 180.407(h)(2); and

(vii) K-EPA27 for a cargo tank tested under § 180.407(h)(2) after October 1, 2004.

Examples to paragraph (b). The markings "10–99 P, V, L" represent that in October 1999, a cargo tank passed the prescribed pressure test, external visual inspection and test, and the lining inspection. The markings "2–00 K–EPA" represent that in February 2000, a cargo tank passed the leakage test under § 180.407(h)(2). The markings "2–00 K, K–EPA" represent that in February 2000, a cargo tank passed the leakage test under both § 180.407(h)(1) and under EPA Method 27 under § 180.407(h)(2).

* * * * *

■ 55. In § 180.417, paragraphs (b) and (d) are revised to read as follows:

§ 180.417 Reporting and record retention requirements.

* * * * *

(b) *Test or inspection reporting.* Each person performing a test or inspection as specified in § 180.407 must prepare a written report, in English, in accordance with this paragraph.

(1) Each test or inspection report must include the following information:

(i) Owner's and manufacturer's unique serial number for the cargo tank;

(ii) Name of cargo tank manufacturer;

(iii) Cargo tank DOT or MC specification number;

(iv) MAWP of the cargo tank;

(v) Minimum thickness of the cargo tank shell and heads;

(vi) Indication of whether the cargo tank is lined, insulated, or both; and

(vii) Indication of special service of the cargo tank (*e.g.*, transports material corrosive to the tank, dedicated service, etc.)

(2) Each test or inspection report must include the following specific information as appropriate for each individual type of test or inspection:

(i) Type of test or inspection performed;

(ii) Date of test or inspection (month and year);

(iii) Listing of all items tested or inspected, including information about pressure relief devices that are removed, inspected and tested or replaced, when applicable (type of device, set to discharge pressure, pressure at which device opened, pressure at which device re-seated, and a statement of disposition of the device (*e.g.*, reinstalled, repaired, or replaced)); information regarding the inspection of upper coupler assemblies, when applicable (visually examined in place, or removed for examination); and, information regarding leakage and pressure testing, when applicable (pneumatic or hydrostatic testing method, identification of the fluid used for the test, test pressure, and holding time of test);

(iv) Location of defects found and method of repair;

(v) ASME or National Board number of person performing repairs, if applicable;

(vi) Name and address of person performing test;

(vii) Registration number of the facility or person performing the test;

(viii) Continued qualification statement, such as Acargo tank meets the requirements of the DOT-specification identified on this report" or "cargo tank fails to meet the requirements of the DOT-specification identified on this report";

(ix) DOT registration number of the registered inspector; and

(x) Dated signature of the registered inspector and the cargo tank owner.

(3) The owner and the motor carrier, if not the owner, must each retain a copy of the test and inspection reports until the next test or inspection of the same type is successfully completed. This requirement does not apply to a motor carrier leasing a cargo tank for fewer than 30 days.

(c) * * *

(d) *Supplying certificates and reports.* Each person offering a DOT-specification cargo tank for sale or lease must provide the purchaser or lessee a copy of the cargo tank certificate of compliance, records of repair, modification, stretching, or rebarrelling; and the most recent inspection and test reports made under this section. Copies of such reports must be provided to the lessee if the cargo tank is leased for more than 30 days.

Issued in Washington, DC on April 7, 2003, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 03–9070 Filed 4–17–03; 8:45 am]

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Federal Register

Friday,
April 18, 2003

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 8 and 38

Federal Acquisition Regulation; Federal Supply Schedules Services and Blanket Purchase Agreements (BPAs); Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 38

[FAR Case 1999–603]

RIN 9000–AJ63

Federal Acquisition Regulation; Federal Supply Schedules Services and Blanket Purchase Agreements (BPAs)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to incorporate policies for services and to strengthen the procedures for establishing Blanket Purchase Agreements under the Federal Supply Schedules.

DATES: Interested parties should submit comments in writing on or before June 17, 2003 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.1999–603@gsa.gov*.

Please submit comments only and cite FAR case 1999–603 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 1999–603.

SUPPLEMENTARY INFORMATION:

A. Background

The Multiple Award Schedules (MAS) program, directed and managed by the General Services Administration (GSA), provides Federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying. For much of its history, the MAS focused on the sale of products. In recent years, however, GSA has sought to facilitate broad access to service contractors. This general transformation of the schedules program has coincided with a trend in Federal procurement towards acquiring managed solutions from the marketplace. The amount of services acquisition from the MAS has grown steadily as agencies increasingly turn to schedule contractors to meet their needs.

To assist its customers, GSA developed "special ordering procedures" that address the acquisition of services.

However, because FAR subpart 8.4 has remained primarily geared towards products, agencies have been inconsistent in adhering to certain basic acquisition requirements when buying services off the MAS, such as in their use of statements of work, effective pricing of orders, application of competition, and proper documentation of award decisions.

The FAR Council seeks to significantly improve the application of acquisition basics on MAS purchases for services and reinforce sound MAS practices generally. To achieve this result, the Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are proposing numerous amendments to FAR subpart 8.4. In developing these changes, the CAAC and DARC, in coordination with the FAR Council, carefully considered the findings and recommendations made by the General Accounting Office in its report no. GAO–01–125, Contract Management: Not Following Procedures Undermines Best Pricing Under GSA's Schedule.

Accordingly, the rule proposes to amend FAR subpart 8.4 to—

- Add new coverage on use of statements of work when acquiring services from the schedules;
- Clarify and strengthen the procedures for establishing Blanket Purchase Agreements against the schedules;
- Reinforce documentation requirements generally and address the documentation of sole source orders in particular;
- Highlight the availability of "e-Buy," GSA's electronic quote system, to encourage greater transparency through use of electronic media;
- Add new coverage to allow agencies to make payment for oral or written orders by any authorized means, including the Governmentwide commercial purchase card;
- Clarify the procedures for termination for cause and convenience; and
- Reorganize and revise the subpart text for ease of use.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule addresses internal Government administrative procedures and does not impose any additional requirements on Government offerors or contractors. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR parts 8 and 38 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–603), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8 and 38

Government procurement.

Dated: April 14, 2003.

Cecelia L. Davis,

Acting Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 8 and 38 as set forth below:

1. The authority citation for 48 CFR parts 8 and 38 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Amend section 8.401 by revising paragraphs (a), (b), and (c); and by removing from the introductory text of paragraph (d) and (d)(2) the word "office" and adding in its place. The revised text reads as follows:

8.401 General.

(a) The Federal Supply Schedule program, directed and managed by the General Services Administration (GSA), provides Federal agencies with a simplified process for obtaining commercial supplies and services at prices associated with volume buying (also *see* 8.002). Indefinite delivery contracts are awarded with commercial firms to provide supplies and services at stated prices for given periods of time. The Department of Defense manages a similar system of schedule-type contracting for military items. The Department of Defense systems are not covered by this subpart.

(b) The GSA schedule contracting office issues Federal Supply Schedules publications containing the information necessary for placing delivery or task orders with schedule contractors. Ordering offices issue orders directly to the schedule contractors. Ordering offices may request copies of schedules by completing GSA Form 457, FSS Publications Mailing List Application, and mailing it to the—

GSA Centralized Mailing List Service (7CAFL), PO Box 6477, Fort Worth, TX 76115.

Copies of GSA Form 457 also may be obtained from this address.

(c) GSA offers an on-line shopping service called "GSA Advantage!." It enables ordering offices to search specific information (*i.e.*, national stock number, part number, common name), review delivery options, place orders directly with contractors (or ask GSA to place orders on the agency's behalf), and pay contractors for orders using the Governmentwide commercial purchase card (or pay GSA). Ordering offices may access the "GSA Advantage!" shopping service at *http://www.gsaadvantage.gov*. GSA's electronic quote system, "e-Buy," which may be accessed through GSA Advantage!, provides a medium for transmitting notice to contractors of the ordering office's needs. For more information or assistance, contact GSA at Internet e-mail address: *gsa.advantage@gsa.gov*.

* * * * *

3. Revise section 8.402 to read as follows:

8.402 Applicability.

Procedures in this subpart apply to orders placed against Federal Supply Schedules. GSA may have established special ordering procedures for a particular schedule in which case that schedule will specify those special ordering procedures.

4. Add section 8.403 to read as follows:

§ 8.403 Use of Federal Supply Schedules.

(a) *General.* Parts 13, except 13.303–2(c)(3), 15, and 19 do not apply to orders placed against Federal Supply Schedules (*see* 8.404–5). Orders and Blanket Purchase Agreements placed against a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued using full and open competition (*see* 6.102(d)(3)). Therefore, when establishing a Blanket Purchase Agreement or placing orders under Federal Supply Schedules using the procedures of 8.404, ordering offices need not seek further competition, synopsize the requirement, or consider small business programs.

(b) *Acquisition planning.* Orders placed under a Federal Supply Schedule contract are not exempt from the development of acquisition plans (*see* subpart 7.1), and an information technology acquisition strategy (*see* Part 39).

(c) *Pricing.* Supplies offered on the schedule are listed at fixed prices. Services offered on the schedule are priced either at hourly rates or at a fixed price for performance of a specific task (*e.g.*, installation, maintenance, and repair). GSA has already determined the prices of supplies and fixed-price services and rates for services offered at hourly rates under schedule contracts to be fair and reasonable. Therefore, ordering offices are not required to make a separate determination of fair and reasonable pricing except for a price evaluation as required by 8.404–2(c)(3). By placing an order against a schedule contract using the procedures in 8.404, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

5. Revise section 8.404 and the section heading to read as follows:

§ 8.404 Ordering procedures for Federal Supply Schedules.

Ordering offices shall use the ordering procedures of this section when placing an order or establishing a Blanket Purchase Agreement (BPA) for supplies or services. The procedures in this section, other than those in 8.404–8, apply to all optional and mandatory use schedules. The procedures in 8.404–8 apply only to mandatory use schedules.

6. Add sections 8.404–1 and 8.404–2 to read as follows:

§ 8.404–1 Ordering procedures for supplies and fixed-price services.

(a) Ordering offices shall use the procedures of this subsection for ordering supplies and for ordering services that are listed in the schedule contracts as a fixed price for the performance of a specific task (*e.g.*, installation, maintenance and repair).

(b) *Orders at or below the micro-purchase threshold.* Ordering offices may place orders at or below the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency's needs.

(c) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* Place orders with the schedule contractor that can provide the supply or service that represents the best value. Before placing an order, an ordering office shall consider reasonably available information about the supply or service offered under MAS contracts by using the GSA Advantage! on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (*see* 8.404–5). Select the delivery and other options available under the schedule that offers the best value to meet the agency's needs. The ordering office may consider among other factors—

(1) Special features of the supply or service required for effective program performance;

(2) Trade-in considerations;

(3) Probable life of the item selected as compared with that of a comparable item;

(4) Warranty considerations;

(5) Maintenance availability;

(6) Past performance; and

(7) Environmental and energy efficiency considerations.

(d) *Orders exceeding the maximum order threshold.* Each schedule contract has an established maximum order threshold. This threshold represents the point where it is advantageous for the ordering office to seek a price reduction. In addition to following the procedures in paragraph (c) of this section and before placing an order that exceeds the maximum order threshold or establishing a Blanket Purchase Agreement (BPA) (*see* 8.404–3), ordering offices shall—

(1) Review an appropriate number of additional schedule contractors' catalogs or pricelists, or use the GSA Advantage! on-line shopping service;

(2) Based upon the initial evaluation, seek price reductions from the schedule contractor(s) considered to offer the best value (*see* 8.403); and

(3) After seeking price reductions, place the order with the schedule contractor that provides the best value (*see* 8.403). If further price reductions are not offered, an order may still be placed.

§ 8.404–2 Ordering procedures for services using a statement of work.

(a) Ordering offices shall use the procedures in this subsection when ordering services priced at hourly rates in the schedule contracts. The applicable services will be identified in the Federal Supply Schedule publications and the contractor's catalogs/pricelists.

(b) *Orders at or below the micro-purchase threshold.* Ordering offices may place orders at or below the micro-purchase threshold with any Federal Supply Schedule contractor that can meet the agency's needs.

(c) *For orders exceeding the micro-purchase threshold.* The ordering office shall develop a statement of work. All statements of work shall include the work to be performed, location of work, period of performance, deliverable schedule, applicable standards, and any special requirements (*e.g.*, security clearances, travel, special knowledge).

(1) Agencies shall use performance-based statements of work to the maximum extent practicable. When preparing statements of work, ordering offices shall, to the maximum extent practicable—

(i) Describe the requirements in terms of results required rather than the methods of performance of the work;

(ii) Rely on the use of measurable performance standards and financial incentives to encourage innovative and cost effective methods of performing the work; and

(iii) Develop a quality assurance surveillance plan that will be used to monitor performance.

(2)(i) For proposed orders not expected to exceed the maximum order threshold, the ordering office must provide the statement of work, and selection criteria (*e.g.*, experience and past performance) to at least three schedule contractors. Schedule contractors should be requested to submit firm-fixed prices to perform the services identified in the statement of work.

(ii) For proposed orders exceeding the maximum order threshold or for establishing a BPA (*see* 8.404–3), the ordering office shall, in addition to meeting the requirements of paragraph (c)(2)(i), provide the statement of work and selection criteria to an appropriate number of additional schedule contractors that offer services that will meet the agency needs.

(iii) The ordering office shall provide the statement of work and selection criteria to any schedule contractor who requests a copy of it.

(3) The ordering office shall evaluate responses received against the selection criteria provided to the schedule contractors. The ordering office is responsible for considering the level of effort and mix of labor proposed to perform a specific task being ordered and for making a determination that the total price is reasonable. Place the order or establish the BPA with the schedule contractor that represents the best value (*see* 8.403).

(4) To the maximum extent practicable, ordering offices shall develop quality assurance surveillance plans (*see* 37.602–2) when using a performance-based statement of work. These plans shall recognize the responsibility of the contractor (*see* 46.105) to carry out its quality control obligations and shall contain measurable inspection and acceptance criteria corresponding to the performance standards contained in the statement of work. The quality assurance surveillance plans shall focus on the level of performance required by the statement of work, rather than the methodology used by the contractor to achieve that level of performance.

7. Revise section 8.404–3 and the section heading to read as follows:

8.404–3 Blanket purchase agreements (BPAs).

(a)(1) *Establishment.* Ordering offices may establish BPAs under any schedule contract to fill repetitive needs for supplies or services. BPAs may be established with one or more schedule contractors. The number of BPAs to be awarded is within the discretion of the office establishing the BPA. The number of BPA awards should be based on a strategy that is expected to maximize the effectiveness of the BPA(s). In determining how many BPAs to award, consider—

(i) The scope and complexity of the requirement(s);

(ii) The technical qualifications of the Schedule contractor(s);

(iii) The administrative costs of BPAs; and

(iv) The need to periodically compare multiple technical approaches or prices.

(2) Award of a single BPA or multiple BPAs shall be made using the procedures of 8.404–1 or 8.404–2. BPAs shall address the frequency of ordering, invoicing, discounts, requirements (*e.g.* estimated quantities, work to be performed), delivery locations, and time. In addition, multiple BPAs shall specify the procedures for placing orders under the BPA.

(3) Establishment of a multi-agency BPA against a Federal Supply Schedule is permitted if all participating agencies are signatories to the BPA.

(b) *Ordering from blanket purchase agreements (BPAs)—(1) Single award BPA.* If the ordering office awards one BPA, authorized users may place the order directly under the established BPA when the need for the supply or service arises.

(2) *Multiple BPAs.* If the ordering office awards multiple BPAs, before placing an order exceeding $2,500, the ordering office shall—

(i) Forward the requirement or statement of work along with the selection criteria to the number of BPA holders according to the procedures provided in the BPA;

(ii) Evaluate the responses received and make a best value determination (see 8.403); and

(iii) Award the order to the schedule contractor that represents the best value.

(3) If the BPA is for hourly rate services, the ordering office shall develop a statement of work for requirements covered by the BPA, unless the BPA contains fixed prices for specific tasks. All orders under the BPA shall specify a price for the performance of the specific task identified in the statement of work.

(c) *Review of BPAs.* Ordering offices shall review BPAs at least once a year. The purpose of the review is to determine whether the BPA still represents the best value (*see* 8.403). During the annual review, agencies shall consider whether additional price reductions could be obtained if estimated quantities/amounts have been exceeded and seek price reductions where possible.

8. Add sections 8.404–4, 8.404–5, 8.404–6, 8.404–7, and 8.404–8 to read as follows:

8.404–4 Price reductions.

In addition to the circumstances in paragraph 8.404–1(d), there may be other reasons to request a price reduction. For example, ordering offices should seek a price reduction when the supply or service is available elsewhere at a lower price or when establishing a BPA to fill recurring requirements. The potential volume of orders under BPAs, regardless of the size of the individual order, offers the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order.

8.404–5 Small business.

When conducting evaluations or establishing a BPA and before placing an order, consider including, if available, one or more small business, veteran-owned small business, service-disabled veteran-owned small, HUBZone small business, women-owned small business, or small disadvantaged business schedule contractor(s). Orders placed against the schedules may be credited toward the ordering agency's small business goals. For orders exceeding the micro-purchase threshold, ordering offices should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement. Ordering offices should survey GSA Advantage! and the Schedules e-Library at *http://www.fss.gsa.gov* for specific size status information for all schedule contractors.

8.404–6 Documentation.

(a) The ordering office shall document, at a minimum—

(1) The number and identity of the contracts reviewed and considered and the contractor from whom the supply or service was purchased;

(2) The supply or service purchased;

(3) The amount paid; and

(4) The circumstances and rationale for restricting consideration of schedule contractors to less than that required in 8.404–1 or 8.404–2, such as—

(i) Only one source is capable of responding due to the unique or specialized nature of the work;

(ii) The new work is a logical follow-on to an existing order provided that the original order was awarded in accordance with 8.404–1 or 8.404–2; or

(iii) An item peculiar to one manufacturer. A brand name item available on various schedule contracts is an item peculiar to one manufacturer.

(5) *Sole source requirements.* (i) Orders placed under the Federal Supply Schedules are exempt from the requirements in Part 6. However, ordering offices shall—

(A) Conduct sole source requirements, as defined in 2.101, under this subpart only if the need to do so is justified in writing and approved at the levels specified in paragraph (a)(5)(ii) of this section; and

(B) Prepare sole source justifications using the format at 6.303–2, modified to reflect an acquisition under the authority of Section 201 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 501).

(ii) Justifications and approvals are required only for sole source requirements.

(A) For proposed orders exceeding $100,000, but not exceeding $500,000, the contracting officer's certification that the justification is accurate and complete to the best of the contracting officer's knowledge and belief will serve as approval, unless a higher approval level is established in accordance with agency procedures.

(B) For a proposed order exceeding $500,000, but not exceeding $10,000,000, the competition advocate for the procuring activity, designated pursuant to 6.501, or an official described in 6.304(a)(3) or (a)(4) must approve the justification and approval. This authority is not delegable.

(C) For a proposed order exceeding $10,000,000 but not exceeding $50,000,000, the head of the ordering agency or the official described in 6.304(a)(3) and (a)(4) shall approve the justification and approval. This authority is not delegable.

(D) For a proposed order exceeding $50,000,000, the official described in 6.304(a)(4) shall approve the justification and approval. This authority is not delegable, except as provided in 6.304(a)(4).

(b) Additionally, for services acquired using the procedures at 8.404–2, the ordering office shall also document, at a minimum—

(1) The evaluation methodology used in selecting the contractor for award;

(2) The rationale for any tradeoffs in making the award decision;

(3) The price reasonableness determination required by 8.404–2(c)(3); and

(4) The rationale for using other than—

(i) A firm-fixed price order; or

(ii) A performance-based order.

8.404–7 Payment.

Agencies may make payments for oral or written orders by any authorized means, including the Governmentwide commercial purchase card.

8.404–8 Ordering procedures for mandatory use schedules.

(a) This subsection applies only to orders against schedule contracts with mandatory users. When ordering from multiple-award schedules, mandatory users shall also follow the procedures provided in this section for optional use schedules, as appropriate.

(b) Ordering offices shall not solicit bids, proposals, quotations, or otherwise test the market solely for the purpose of seeking alternative sources to Federal Supply Schedules.

(c) Schedules identify executive agencies required to use them as mandatory sources of supply. The single-award schedule shall be used as a primary source and the multiple-award schedule as a secondary source. Mandatory use of schedules is not a requirement if—

(1) The schedule contractor is unable to satisfy the ordering office's urgent delivery requirement;

(2) The order is below the minimum order thresholds;

(3) The order is above the maximum order limitation;

(4) The consignee is located outside the area of geographical coverage stated in the schedule; and

(5) A lower price for an identical item (*i.e.*, same make and model) is available from another source.

(d) After any consultation required by the schedule, ordering offices are not required to forego or postpone their legitimate needs pending the award or renewal of any schedule contract.

(e)(1) When an ordering office that is a mandatory user under a schedule determines that supplies or services available from the schedule will not meet its specific needs, but similar supplies or services from another source will, it shall submit a request for waiver to the—Commissioner, Federal Supply Service (F), GSA, Washington, DC 20406.

(2) Ordering offices shall not initiate action to acquire similar supplies or services from nonschedule sources until a request for waiver is approved by the Commissioner of the Federal Supply Service, except as otherwise provided in inter-agency agreements. Requests shall contain the following information:

(i) A complete description of the required supply or service, whenever possible; *e.g.*, descriptive literature such as cuts, illustrations, drawings, and brochures that explain the characteristics and/or construction.

(ii) A comparison of prices and the technical differences between the requested supply or service and the schedule supply or service, identifying as a minimum the—

(A) Inadequacies of the schedule supply or service to perform required functions; and

(B) Technical, economic, or other advantages of the supply or service requested.

(iii) Quantity required.

(iv) Estimated annual usage or a statement that the requirement is nonrecurrent or unpredictable.

9. Amend section 8.405–2 by revising the introductory paragraph; and by removing from paragraph (h) "must" and adding "shall" in its place. The revised text reads as follows:

8.405–2 Order placement.

Ordering offices may place orders orally or use Optional Form 347, an agency-prescribed form, or an established electronic communications format to order supplies or services from schedules. The ordering office shall place orders directly with the contractor within the limitations specified in each

schedule. Orders shall include the following information in addition to any information required by the schedule:

* * * * *

10. Revise sections 8.405–3 and 8.405–4, 8.405–5, and 8.405–6 and their section headings to read as follows:

8.405–3 Inspection and acceptance.

(a) *Supplies.* (1) Consignees shall inspect supplies at destination except when—

(i) The schedule indicates that mandatory source inspection is required by the schedule contracting agency; or

(ii) A schedule item is covered by a product description, and the ordering office determines that the schedule contracting agency's inspection assistance is needed (based on the ordering volume, the complexity of supplies, or the past performance of the supplier).

(2) When the schedule contracting agency performs the inspection, the ordering office will provide two copies of the order specifying source inspection to the schedule contracting agency. The schedule contracting agency will notify the ordering office of acceptance or rejection of the supplies.

(3) Material inspected at source by the schedule contracting agency, and determined to conform with the product description of the schedule, shall not be reinspected for the same purpose. The consignee shall limit inspection to quantity and condition on receipt.

(4) Unless otherwise provided in the schedule, acceptance is conclusive, except as regards for latent defects, fraud, or gross mistakes as that amount to fraud.

(b) *Services.* (1) The ordering office has the right to inspect and test all services called for by the order, to the extent practicable, at all times and places during the period of the order. The ordering office shall perform inspections and tests as specified in the quality assurance surveillance plan in a manner that will not unduly delay the work.

(2) If the ordering office performs inspections or tests on the premises of the contractor or a subcontractor, the contractor shall furnish, and shall require subcontractors to furnish, at no increase in order price, all reasonable facilities and assistance for the safe and convenient performance of these duties.

8.405–4 Remedies for inadequate performance.

(a) If the contractor fails to perform an order, the ordering office may terminate for cause or modify the order to establish a new delivery date (after obtaining consideration, as appropriate).

(b) If a contractor delivers a supply or service, but it does not conform to the order requirements, the ordering office may require the contractor to correct the defect by reperformance, at no increase in order price.

(c) If reperformance will not correct the defects or is not possible, the ordering office may require the contractor to ensure that future performance conforms to order requirements and may reduce the order price to reflect its reduced value.

(d) If the contractor does not promptly perform or does not take action to ensure conformity for future performance, the ordering office may terminate the order for cause. Ordering offices shall follow the procedures at 8.405–5 when terminating an order for cause.

8.405–5 Termination for cause.

(a) An ordering agency contracting officer may terminate individual orders for cause. Terminations for cause shall comply with FAR 12.403. (b)(1) The schedule contracting office shall be notified of all cases where an ordering agency contracting officer has terminated an individual order by a Federal Supply Schedule contractor for cause or if fraud is suspected.

(2) If the contractor claims that the failure was excusable, the ordering agency contracting officer shall consider the question of the failure to be a contract dispute (*see* 8.405–7). If the contractor does not claim that the failure was excusable, the ordering office may charge the terminated contractor with excess costs resulting from repurchase.

(3) Any repurchase shall be made at as low a price as reasonable considering the quality required by the Government, delivery requirement, and administrative expenses. Copies of all repurchase orders, except the copy furnished to the contractor or any other commercial concern, shall include the notation:

Repurchase against the account of _____ [insert contractor's name] under Order _____ [insert number] under Contract _____ [insert number].

(4) When excess costs are anticipated, the ordering office may withhold funds due the contractor as offset security. Ordering offices shall minimize excess costs to be charged against the contractor and collect or setoff any excess costs owed.

(5) If an ordering agency contracting officer is unable to collect excess repurchase costs, it shall notify the schedule contracting office after final payment to the repurchase contractor.

(i) The notice shall include the following information about the terminated order:

(A) Name and address of the contractor.

(B) Schedule, contract, and order number.

(C) National stock or special item number(s), and a brief description of the item(s).

(D) Cost of schedule items involved.

(E) Excess costs to be collected.

(F) Other pertinent data.

(ii) The notice shall also include the following information about the repurchase contract:

(A) Name and address of the contractor.

(B) Item repurchase cost.

(C) Repurchase order number and date of payment.

(D) Contract number, if any.

(E) Other pertinent data.

(c) Only the schedule contracting officer may terminate for cause any or all supplies or services covered by the schedule contract. If the schedule contracting officer has terminated any items covered by the schedule contract, no further orders may be placed for those items. Orders placed prior to termination for cause shall be fulfilled by the contractor unless terminated for the convenience of the Government by the ordering agency contracting officer.

8.405–6 Termination for the Government's convenience.

(a) Ordering agency contracting officer may terminate individual orders for the convenience of the Government. Terminations for convenience shall comply with FAR 12.403.

(b) Only the schedule contracting officer may terminate any or all supplies or services covered by the schedule contract for the convenience of the Government.

(c) Before terminating orders for convenience, the ordering agency contracting officer shall endeavor to enter into a "no cost" settlement agreement with the contractor.

8.405–7 [Amended]

11. Amend section 8.405–7 by removing from the introductory text of paragraph (a)(1) and paragraphs (a)(2) and (b) the word "office" and adding "agency" in its place.

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

12. Revise section 38.000 to read as follows:

38.000 Scope of part.

This part prescribes policies and procedures for contracting for supplies and services under the Federal Supply Schedule program, which is directed and managed by the General Services Administration (*see* Subpart 8.4, Federal Supply Schedules, for additional information). The Department of Defense manages a similar system of schedule contracting for military items. The Department of Defense systems are not a part of the Federal Supply Schedule program.

38.101 [Amended]

13. Amend section 38.101 in the first sentence of paragraph (a) by removing "commonly used" and adding "commercial" in its place; in the second sentence by removing the parenthetical "(including requirements contracts)"; and in the last sentence of paragraph (e) by removing "(see 8.404)" and adding "(see 8.403)" in its place.

[FR Doc. 03–9554 Filed 4–17–03; 8:45 am]

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Federal Register

Friday,
April 18, 2003

Part IV

Department of the Treasury

31 CFR Part 50
Terrorism Risk Insurance Program;
Interim Final Rule and Proposed Rules

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AA98

Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury (Treasury) is issuing this interim final rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). The Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This interim final rule incorporates and clarifies statutory conditions for federal payment under the Program that require insurers to make certain disclosures to policyholders. The rule also incorporates and clarifies statutory requirements that insurers "make available," in their commercial property and casualty insurance policies, terrorism risk coverage for insured losses under the Program. The interim final rule generally incorporates interim guidance previously issued by Treasury in this area, but with some modifications. This is the second in a series of regulations that Treasury will issue to implement the Act.

DATES: This interim final rule is effective April 18, 2003. Written comments on this interim final rule may be submitted on or before May 19, 2003.

ADDRESSES: Submit comments (if hard copy, preferably an original and two copies) to Office of Financial Institutions Policy, Attention: Terrorism Risk Insurance Program Public Comment Record, Room 3160 Annex, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted by electronic mail to: *triacomments@do.treas.gov*. All comments should be captioned with "April 18, 2003 Interim Final Rule TRIA Comments." Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730, or Martha Ellett or Cynthia Reese, Attorney-Advisors, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. Terrorism Risk Insurance Act of 2002

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107–297, 116 Stat. 2322). The Act was effective immediately. Title I of the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism as defined in the Act and certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, including the prescription of regulations and procedures. The Program will sunset on December 31, 2005.

The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

The amount of federal payment for an insured loss resulting from an act of terrorism is to be determined based upon the insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act. Thus, the Program provides a federal reinsurance backstop for a temporary period of time. The Act also provides Treasury with authority to recoup federal payments made under the Program through policyholder surcharges, up to a maximum annual limit.

Each entity that meets the definition of "insurer" (well over 2000 firms) must participate in the Program. From the date of enactment of the Act through the last day of Program Year 2 (December 31, 2004), insurers under the Program must "make available" terrorism risk insurance in their commercial property and casualty insurance policies and the coverage must not differ materially from the terms, amounts and other coverage limitations applicable to commercial property and casualty losses arising from events other than acts of terrorism. The Act permits Treasury to extend the "make available" requirement into Program Year 3, based on an analysis of factors referenced in the study required by section 108(d)(1) of the Act, and not later than September 1, 2004.

An insurer's deductible increases each year of the Program, thereby reducing the Federal Government's involvement prior to sunset of the Program. An insurer's deductible is based on "direct earned premiums" over a statutory Transition Period (now expired) and the three Program Years. Once an insurer has met its deductible, the federal payments cover 90 percent of insured losses above the deductible, subject to an aggregate annual cap of $100 billion. The Act prohibits duplicative payments for insured losses that are covered under any other federal program.

As conditions for federal payment under the Program, insurers must provide clear and conspicuous disclosure to the policyholders of the premium charged for insured losses covered by the Program, and must submit a claim and certain certifications to Treasury. Treasury will be prescribing claims procedures at a later date.

The Act also contains specific provisions designed to manage litigation arising from or relating to a certified act of terrorism. Section 107 creates an exclusive federal cause of action, provides for claims consolidation in federal court and contains a prohibition on federal payments for punitive damages under the Program. This section also provides the United States with the right of subrogation with respect to any payment or claim paid by the United States under the Program. As part of the claims process, and as directed by the President, Treasury will be issuing regulations addressing Treasury's role in the approval of settlements.

B. Previously Issued Interim Guidance

To assist insurers, policyholders and other interested parties in complying with immediately applicable and time-sensitive requirements of the Act prior to the issuance of regulations, Treasury issued interim guidance in four separate notices. Treasury publicly released these interim guidance notices on its Program Web site, *http://www.treasury.gov/trip* and published each notice in the **Federal Register**.

Treasury released the first notice of Interim Guidance on December 3, 2002, within a week of the Act's enactment (Interim Guidance I). Interim Guidance I was published at 67 FR 76206 on December 11, 2002, and addressed several issues pertaining to immediately applicable provisions of the Act, including statutory disclosure obligations of insurers as conditions for federal payment under the Program and the requirement that an insurer "make available" terrorism risk insurance. The disclosure guidance in Interim Guidance I references certain model forms of the National Association of Insurance Commissioners (NAIC) and provides a safe harbor for those insurers that make use of such forms prior to the issuance of regulations, but Interim Guidance I stated that these forms are not the exclusive means by which insurers could comply with the disclosure conditions prior to the issuance of regulations. Interim Guidance I also provided guidance concerning the "direct earned premium" on lines of property and casualty insurance to enable insurers to calculate their "insurer deductibles" and enable insurers to price and disclose premiums for terrorism risk insurance to policyholders within statutory time periods.

On December 18, 2002, Treasury issued a second notice of interim guidance. This interim guidance was published at 67 FR 78864 on December 26, 2002 (Interim Guidance II). Interim Guidance II addressed the statutory categories of "insurers" that are required to participate in the Program, including their "affiliates;" provided clarification on the scope of "insured loss" covered by the Program and provided additional guidance to enable eligible surplus line carriers listed on the Quarterly Listing of Alien Insurers of the NAIC or federally approved insurers to calculate their insurer deductibles for purposes of the Program.

On January 22, 2003, Treasury issued a third notice of interim guidance, published at 68 FR 4544 on January 29, 2003 (Interim Guidance III). Interim Guidance III further clarified certain disclosure and certification questions, issues for non-U.S. insurers, and the scope of the term "insured loss" under the Act.

On March 25, 2003, Treasury issued a fourth interim guidance published at 68 FR 15039 on March 27, 2003 (Interim Guidance IV). Interim Guidance IV provided insurers a procedure by which they could seek to rebut a presumption of control established in Treasury's first set of interim final regulations. See Previously Issued Regulations in section C below and Treasury's Web site at *http://www.treasury.gov/trip*.

In issuing each notice of Interim Guidance, Treasury stated that the Interim Guidance may be relied upon by insurers until superseded by regulations or a subsequent notice. Treasury provided safe harbors for actions by those insurers taken in accordance with, and in reliance on, the interim guidance for the time period prior to the issuance of regulations.

C. Previously Issued Regulations

Treasury published the first regulation implementing the Act on February 28, 2003 (68 FR 9804) as an interim final rule together with a proposed rule. Both request comments by March 31, 2003. The first regulation, which is subpart A of new part 50 in title 31 of the CFR, covers the purpose and scope of the Program, key definitions, and certain general provisions.

II. Analysis of the Interim Final Rule

This interim final rule incorporates and clarifies statutory conditions for federal payment that require insurers to make certain disclosures to policyholders within specified time limits. The interim final rule also incorporates and clarifies statutory requirements that insurers must "make available" in all of their commercial property and casualty insurance policies, coverage for insured losses resulting from an act of terrorism as defined by the Act. The Act requires insurers to make such terrorism risk coverage available at terms, amounts, and other coverage limitations that do not differ materially from those applicable to losses arising from events other than acts of terrorism. The interim final rule generally incorporates interim guidance previously issued by Treasury, except as described in this preamble. In accordance with section 104(c) of the Act, Treasury has consulted with the National Association of Insurance Commissioners on this rule. Treasury is also issuing a companion proposed rule with request for comment.

Although Treasury is issuing these requirements in as an interim final rule, we are soliciting comments on all aspects of the interim final rule from all interested parties. Published elsewhere in this separate part of this issue of the **Federal Register** is a notice of proposed rulemaking proposing to adopt the provisions of this interim final rule as a final rule.

A. Disclosures

One of the conditions for federal payments under section 103(b) of the Act is that the insurer provide "clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the federal share of compensation for insured losses under the Program." The Act provides that in the case of any policy that is issued before the date of enactment of the Act (November 26, 2002), this disclosure must occur not later than 90 days thereafter (February 24, 2003). In the case of any policy that is issued within 90 days of the date of enactment, the disclosure must be made "at the time of offer, purchase, and renewal of the policy." In the case of any policy that is issued more than 90 days after the date of enactment, disclosure must be made "on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy."

The disclosure requirements are key provisions of the Act, both in terms of being a condition for payment and a mechanism to effectuate the other purposes of the Act. The Conference Report accompanying the Act states, in part:

> Before receiving Federal assistance under this Act, an insurer must certify its claim for payment of insured losses, that a policyholder (or person acting on the policyholder's behalf) has filed a claim for such loss, and the insurer's compliance with the Act. The Secretary may not reimburse an insurer for such losses unless the insurer has provided clear and conspicuous disclosure to the policyholder of the premium charged for terrorism coverage and the Federal share of compensation. * * *
> The Conferees intend this disclosure to enhance the competitiveness of the marketplace by better enabling consumers to comparison shop for terrorism insurance coverage, and to make policyholders better aware that the Federal government will be sharing the costs of such coverage with the insurers, thereby reducing the insurers's (sic) exposure. * * * H.R. Conf. Rep. No. 107–779 (2002).

Section 50.12 of the interim final rule deals generally with disclosure requirements. Section 50.12(a) contains a new provision stating that whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances. Treasury is not specifying an exclusive form or means of satisfying the statutory disclosure requirements, and Treasury does not intend to adopt a practice of prescribing particular language or forms. However, in order to provide guidance to insurers, Treasury in previous interim guidance has deemed certain NAIC model forms to be acceptable in terms of satisfying the disclosure requirement and has stated that insurers may modify the forms to meet individual circumstances, or use other forms. This interim guidance has been incorporated into the interim final rule and provides a safe harbor (see section 50.17 of the interim final rule) for policies that were in force

on the date of enactment or were issued within 90 days of enactment. For policies issued more than 90 days after enactment, section 50.17 (c) provides that insurers may continue to use certain NAIC model forms if appropriate or develop other disclosures that meet the requirements of sections 50.10(a) and 50.14.

Treasury stated in Interim Guidance II that an insurer may communicate the premium for insured losses in a manner that is consistent with standard business practice, which in some cases may be as a percentage of the overall policy premium. This interim final rule incorporates this guidance and also contains a provision in section 50.12(b) stating that an insurer may not describe the premium in a manner that is misleading in the context of the Program, such as by characterizing the premium as a "surcharge." It is inappropriate to use the term "surcharge" in the disclosures, because that term is used in the Act and the Program only in connection with the statutory recoupment procedure that requires certain surcharges to repay the federal financial assistance. Pursuant to the Act's recoupment provisions, any amount established by the Secretary as a terrorism loss risk-spreading premium is to be imposed as a policyholder premium "surcharge" on property and casualty insurance policies in force at that time. See sections 103(e)(7) and (8) of the Act.

In Interim Guidance III, Treasury indicated that the disclosures can be communicated by the use of channels, methods and forms of communication normally used to communicate similar policyholder information. This interim final rule incorporates that principle in section 50.12(c). In some contexts there may be a question about who is the "policyholder" with whom the insurer normally communicates. For example, a surety insurance company may normally deal with purchasers of surety bonds and communicate to them policyholder information similar to disclosures, although the bonds run in favor of other parties who would be paid in the event of loss. In such cases where there is some ambiguity as to who the policyholder is, insurance companies should rely on normal business practices in determining what parties should be provided disclosures.

Section 50.12(d) of the interim final rule reiterates guidance previously issued (see Interim Guidance I) to the effect that an insurer may communicate disclosures through an insurance broker or other intermediary acting as agent for the insurer if the insurer normally communicates with a policyholder in this fashion. The insurer remains responsible for ensuring that the disclosures are provided to policyholders.

Section 50.12(e) of the interim final rule states that an insurer may demonstrate that it has complied with the disclosure requirement through use of appropriate systems and normal business practices that demonstrate a practice of compliance. As stated in Interim Guidance II, compliance with the disclosure provisions may be evidenced in a variety of ways, including a proof of mailing process and other methods consistent with normal forms of communication with policyholders. Treasury has taken this approach to enable insurers to utilize their normal business practices and risk management procedures as much as possible to minimize the administrative burden to insurers in implementing the Act.

In Interim Guidance III, Treasury stated that it expected to propose regulations that would require an insurer to certify that it complied with the required disclosure(s) to the policyholder on the underlying claim or claims submitted by the insurer for federal payment under the Program. This provision does not in any way impact the calculation of an insurer's direct earned premium as specified in section 50.5(d) (see the first interim final rule, 68 FR 9804), or the statutory recoupment provisions. Section 50.12(f) of this interim final rule clarifies that an insurer will only be required to certify with respect to those policies that form the basis for its claims, *i.e.*, not all other policies that are written by an insurance company. "Basis" means all policies used by an insurer to calculate its total insured loss.

Sections 50.13 and 50.14 of the interim final rule incorporate guidance previously issued (see Interim Guidance III) on what constitutes "offer, purchase, and renewal" and a "separate line item" for purposes of this provision of the Act. An insurer is deemed to be in compliance with the requirement of providing disclosure at the time of "offer, purchase, and renewal" of the policy if the insurer makes the disclosure when the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder, and makes clear and conspicuous reference back to that disclosure, as well as the final terms of terrorism insurance coverage, when the transaction is completed. An insurer is deemed to be in compliance with the "separate line item" requirement if the insurer makes the disclosure: on the declarations page of the policy; elsewhere within the policy itself; or in any rider or endorsement that is made a part of the policy. Taken together, sections 50.13 and 50.14 allow for an insurer to make the required disclosure when the insurer first formally offers to provide coverage, and then to refer back to that disclosure using any of the options that qualify a separate line item.

Section 50.17 incorporates the safe harbors provided in interim guidance for certain NAIC model forms. These forms may be found on the NAIC Internet Web site at *http://www.naic.org/pressroom/releases/disclose_one_final.pdf* and *http://www.naic.org/pressroom/releases/disclose_two_final.pdf*. These forms are also accessible from the Treasury Web site at *http://www.treasury.gov/trip*. As noted above, these forms are only examples and are not the exclusive means for an insurer to comply with the disclosure requirements.

Section 50.18 of the interim final rule reiterates the disclosure requirements in section 105(c) of the Act for reinstatement of any preexisting terrorism exclusion. Section 50.19 is merely a cross-reference to the regulations in subpart D, which will be issued separately and will cover State residual market insurance entities and State workers' compensation funds.

The Act specifies certain time limits for disclosures to policyholders. Treasury will be evaluating whether an insurer has materially complied with these and other conditions for payment with respect to any claim. In so doing, Treasury expects to consider applicable facts and circumstances, including good faith efforts of the insurer to meet applicable time limits after enactment of the Act, and during the duration of the Program.

B. Mandatory Availability

Section 103(c) of the Act requires each entity that meets the definition of an insurer under the Act to (1) make available, in all of its property and casualty insurance policies, coverage for insured losses; and (2) make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. These requirements apply from the date of enactment (November 26, 2002) through the last day of Program Year 2 (December 31, 2004). The Secretary is required to determine, not later than September 1, 2004, based on the factors in section 108(d)(1) of the Act, whether the make available requirements should be extended through Program Year 3 (December 31, 2005). The Conference Report accompanying the Act states, with respect to this provision, that "the Secretary has discretion to extend this requirement to the third year of the Program, to preserve this important option for policyholders." H.R. Conf. Rep. No. 107–779 (2002).

Section 50.20 of the interim final rule incorporates the general statutory requirements as described above.

Section 50.21 of the interim final rule covers general matters of applicable time periods, initial offers of coverage versus subsequent negotiations, and how an insurer may demonstrate compliance. Section 50.21(a) makes clear that the make available requirements apply to policies in existence on November 26, 2002, new policies issued, and renewals of existing policies through the end of Program Year 2 (unless extended by the Secretary). The make available requirements are not one-time requirements. For example, if an insurer has satisfied the make available requirements in Program Year 1 in its offer to a policyholder, but the coverage offered is declined, the insurer must still satisfy the make available requirements again when the policy is renewed in Program Year 2.

Section 50.21(a) also states, consistent with Interim Guidance I, that the make available requirements apply at the time an insurer makes the initial offer of coverage, as distinguished from changes negotiated by the insurer thereafter as part of the process of agreeing on a contract of insurance. Section 50.21(b)(1) addresses a situation in which an insurer makes an initial bona fide offer of terrorism risk coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism; the policyholder then declines the offer, and the insurer subsequently negotiates terrorism risk coverage of the policyholder for insured losses at a lower amount of terrorism risk coverage than initially offered. In such a situation, under the interim final rule, the make available requirements would have been satisfied by the initial offer, and therefore an offer of a lower amount of terrorism risk coverage is deemed permissible, if allowed under any applicable State law. Although a subsequent lower offer as described is permissible, neither the Act nor the Program require an insurer to offer partial coverage if the policyholder declines full coverage in an initial offer. (See the discussion below of section 50.24, which deals with the applicability of State law requirements.)

Section 50.21(c) addresses the demonstration of compliance by an insurer with the make available requirement. Treasury has audit and investigative authority under the Act and insurers should be prepared to demonstrate compliance with the make available requirements. Treasury is not prescribing any new recordkeeping requirement. With regard to an insurer's current insurance policies, records related to the make available requirements are likely to be included and retained as part of standard policy documents in the normal course of business. In this regard, however, if an insurer makes an offer of insurance but no contract of insurance is purchased or renewed (*i.e.* no insurance contract is finalized), the insurer may demonstrate that it has satisfied the make available requirements through its routine adherence to normal risk management systems (*e.g.*, company policies, use of internal controls and audits) and normal business practices (*e.g.* sample forms routinely used to solicit business) during the relevant time period that evidence its practice of compliance.

Section 50.23 of the interim final rule addresses the language "terms, amounts, and coverage limitations" in the make available requirements. Sections 50.23(a) and (b) of the interim final rule incorporate guidance previously issued by Treasury (Interim Guidance I). Section 50.23(a) states that an insurer must offer coverage for insured losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations (including deductibles) applicable to losses from other perils. "Terms" excludes price for purposes of this requirement. This means the requirement to offer coverage for insured losses that does not differ materially from the terms, amounts and other coverage limitations applicable to losses arising from events other than acts of terrorism does not apply to the price of the coverage. As noted in Interim Guidance I, however, Treasury will be monitoring the pricing and availability of terrorism risk insurance coverage as part of the Act's requirements that Treasury study the effectiveness of the Program (section 108(d)(1)).

Section 50.23(b) provides that if an insurer does not cover all types of risks, then it is not required to cover the excluded risks in satisfying the requirement to make available coverage for losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. If an insurer does not cover all types of risks, either because the insurer is outside of direct State regulatory oversight, or because a State permits certain exclusions for certain types of losses, such as nuclear, biological, or chemical events, then the insurer is not required to make such coverage available.

Section 50.24 of the interim final rule addresses the interrelationship of federal and State law requirements and confirms the continued applicability of State law requirements, consistent with Interim Guidance I. (See also the discussion of section 50.21(b), above.) After satisfying the requirement to make available coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, if coverage is rejected, an insurer may then offer coverage that is on different terms, amounts, or coverage limitations, as long as such an offer does not violate any applicable State law requirements. For example, if an insurer subject to State regulation first satisfies the requirement to make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, and the State has a requirement that an insurer offer full coverage without any exclusion, then the requirement would continue to apply and the insurer may not subsequently offer less than full coverage or coverage with exclusions. If such an insurer first satisfies the make available requirement but the State permits certain exclusions or allows for other limitations (or an insurance policy is not governed by State law requirements), then the insurer may subsequently offer limited coverage or coverage with exclusions.

III. Procedural Requirements

The Act established a Program to provide for loss sharing payments by the Federal Government for insured losses resulting from certified acts of terrorism. The Act became effective immediately upon the date of enactment (November 26, 2002). Preemptions of terrorism risk exclusions in policies, mandatory participation provisions, disclosure and other requirements and conditions for federal payment contained in the Act applied immediately to those entities that come within the Act's definition of "insurer."

The disclosure requirements are statutory conditions for federal payment under the Program. The disclosure

requirements were effective immediately upon enactment and remain ongoing requirements that apply to new and renewed policies throughout the life of the Program. In the event of an act of terrorism resulting in insured losses under the Program, insurers must certify, and Treasury must ascertain, that these disclosure requirements have been met before federal payment is made. Similarly, the make available requirements are critical elements of the Act. These requirements were effective immediately upon enactment and applied to policies in effect at that time. They will continue to apply to new and renewed policies through the end of 2004 (and if the requirements are extended by the Secretary, through 2005). Given the significance of the disclosure and make available requirements to policyholders and insurers, there is an urgent need to issue immediately effective regulations that incorporate and clarify interim guidance with regard to these requirements.

For the above reasons, pursuant to 5 U.S.C. 553(b)(B), Treasury has determined that it would be contrary to the public interest to delay the publication of this rule in final form during the pendency of an opportunity for public comment. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for the interim final rule to become effective immediately upon publication. While this regulation is effective immediately upon publication, Treasury is seeking public comment on the regulation and will consider all comments in developing a final rule.

This interim final rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty policyholders and spreading the risk of insured loss resulting from an act of terrorism.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

■ For the reasons stated above, 31 CFR part 50 is amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for 31 CFR part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C. 6701 note).

■ 2. Subpart B of 31 CFR part 50 is amended by adding §§ 50.10 through 50.14 and 50.17 through 50.19 to read as follows:

§ 50.10 General disclosure requirements.

(a) *All policies.* As a condition for federal payments under section 103(b) of the Act, the Act requires that an insurer provide clear and conspicuous disclosure to the policyholder of:

(1) The premium charged for insured losses covered by the Program; and

(2) The federal share of compensation for insured losses under the Program.

(b) *Policies in force on the date of enactment.* For policies issued before November 26, 2002, the disclosure required by the Act must be provided within 90 days of November 26, 2002 (no later than February 24, 2003).

(c) *Policies issued within 90 days of the date of enactment.* For policies issued within the 90-day period beginning on November 26, 2002 through February 24, 2003, the disclosure required by the Act must be provided at the time of offer, purchase, and renewal of the policy.

(d) *Policies issued more than 90 days after the date of enactment.* For policies issued on or after February 25, 2003, the disclosure required by the Act must be made on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy.

§ 50.11 Definition.

Except as provided in § 50.18, for purposes of this subpart the term "disclosure" or "disclosures" refers to the disclosures described in section 103(b)(2) of the Act and § 50.10.

§ 50.12 Clear and conspicuous disclosure.

(a) *General.* Whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances of the disclosure. See § 50.17 for model forms.

(b) *Description of premium.* An insurer may describe the premium charged for insured losses covered by the Program as a portion or percentage of an annual premium, if consistent with standard business practice. An insurer may not describe the premium in a manner that is misleading in the context of the Program, such as by characterizing the premium as a "surcharge."

(c) *Method of disclosure.* An insurer may provide disclosures using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders.

(d) *Use of agent.* If an insurer normally communicates with a policyholder through an insurance broker or other intermediary acting as agent for the insurer, an insurer may provide disclosures through such an agent. The insurer remains responsible for ensuring that disclosures are provided to policyholders in accordance with the Act.

(e) *Demonstration of compliance.* An insurer may demonstrate that it has satisfied the requirement to provide clear and conspicuous disclosure as described in § 50.10 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

(f) *Certification of compliance.* An insurer must certify that it has complied with the requirement to provide disclosure to the policyholder on all policies that form the basis for any claim that is submitted by an insurer for federal payment under the Program.

§ 50.13 Offer, purchase, and renewal.

An insurer is deemed to be in compliance with the requirement of providing disclosure "at the time of offer, purchase, and renewal of the policy" under § 50.10(c) and (d) if the insurer:

(a) Makes the disclosure no later than the time the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder; and

(b) Makes clear and conspicuous reference back to that disclosure, as well as the final terms of terrorism insurance coverage, at the time the transaction is completed.

§ 50.14 Separate line item.

An insurer is deemed to be in compliance with the requirement of providing disclosure on a "separate line item in the policy" under § 50.10(d) if the insurer makes the disclosure:

(a) On the declarations page of the policy;

(b) Elsewhere within the policy itself; or

(c) In any rider or endorsement that is made a part of the policy.

§ 50.17 Use of model forms.

(a) *Policies in force on the date of enactment.* (1) An insurer that is required to make the disclosure under § 50.10(b) and that makes no change in the existing premium, is deemed to be in compliance with the disclosure requirement if it uses NAIC Model Disclosure Form No. 2.

(2) An insurer that is required to make the disclosure under § 50.10(b) and that makes a change in the existing premium, is deemed to be in compliance with the disclosure requirement if it uses NAIC Model Disclosure Form No. 1. Such an insurer may also use the same NAIC Model Disclosure Form No. 1 to comply with the disclosure requirement of section 105(c) of the Act. *See* § 50.18.

(b) *Policies issued within 90 days of the date of enactment.* An insurer that is required to make the disclosure under § 50.10(c) is deemed to be in compliance with the disclosure requirement if it uses either NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2, as long as the form used is modified as appropriate for the particular policy.

(c) *Policies issued more than 90 days after the date of enactment.* An insurer that is required to make the disclosure under § 50.10(d) may continue to use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2 if appropriate, or other disclosures that meet the requirements of §§ 50.10(a) and 50.14 may be developed.

(d) *Not exclusive means of compliance.* An insurer is not required to use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2 to satisfy the disclosure requirement. An insurer may use other means to comply with the disclosure requirement, as long as the disclosure comports with the requirements of the Act.

(e) *Definitions.* For purposes of this section, references to NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2 refer to such forms as were in existence on April 18, 2003. These forms may be found on the Treasury Web site at *http://www.treasury.gov/trip.*

§ 50.18 Disclosure required by reinstatement provision.

(a) *Nullification of terrorism exclusion.* Any terrorism exclusion in a contract for property and casualty insurance that was in force on November 26, 2002, is void to the extent it excludes losses that would otherwise be insured losses.

(b) *Reinstatement of terrorism exclusion.* Notwithstanding paragraph (a) of this section, an insurer may reinstate a preexisting provision in a contract for property and casualty insurance that was in force on November 26, 2002, and that excludes coverage for an act of terrorism only if:

(1) The insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or

(2) The insured provided notice at least 30 days before any such reinstatement of the increased premium for such terrorism coverage and the rights of the insured with respect to such coverage, including the date upon which the exclusion would be reinstated if no payment is received, and the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage.

§ 50.19 Disclosure by State residual market insurance entities and State workers' compensation funds [Reserved]

■ 3. Subpart C of 31 CFR part 50 is amended by adding §§ 50.20, 50.21, 50.23 and 50.24 to read as follows:

§ 50.20 General mandatory availability requirements.

(a) *Transition Period and Program Years 1 and 2—period ending December 31, 2004.* Under section 103(c) of the Act (unless the time is extended by the Secretary as provided in that section) during the period beginning on November 26, 2002 and ending on December 31, 2004 (the last day of Program Year 2), an insurer must:

(1) Make available, in all of its property and casualty insurance policies, coverage for insured losses; and

(2) Make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(b) *Program Year 3—calendar year 2005.* [Reserved]

§ 50.21 Make available.

(a) *General.* The requirement to make available coverage as provided in § 50.20 applies to policies in existence on November 26, 2002, new policies issued and renewals of existing policies during the period beginning on November 26, 2002 and ending on December 31, 2004 (the last day of Program Year 2), and if the requirement is extended by the Secretary, to new policies issued and renewals of existing policies in Program Year 3 (calendar year 2005). The requirement applies at the time an insurer makes the initial offer of coverage.

(b) *Changes negotiated subsequent to initial offer.* If an insurer satisfies the requirement to "make available" coverage as described in § 50.20 by first making an offer with coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, which the policyholder declines, the insurer may negotiate with the policyholder an option of partial coverage for insured losses at a lower amount of coverage if permitted by any applicable State law. An insurer is not required by the Act to offer partial coverage if the policyholder declines full coverage. See § 50.24.

(c) *Demonstration of compliance.* If an insurer makes an offer of insurance but no contract of insurance is concluded, the insurer may demonstrate that it has satisfied the requirement to make available coverage as described in § 50.20 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

§ 50.23 No material difference from other coverage.

(a) *Terms, amounts, and other coverage limitations.* As provided in § 50.20(a)(2), an insurer must offer coverage for insured losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations (including deductibles) applicable to losses from other perils. For purposes of this requirement, "terms" excludes price.

(b) *Limitations on types of risk.* If an insurer does not cover all types of risks, then it is not required to cover the excluded risks in satisfying the requirement to make available coverage for losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. For example, if an insurer does not cover all types of risks, either because the insurer is outside of direct State regulatory oversight, or because a State permits certain exclusions for certain types of losses, such as nuclear, biological, or chemical events, then the insurer is not required to make such coverage available.

§ 50.24 Applicability of State law requirements.

(a) *General.* After satisfying the requirement to make available coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, if coverage is rejected an insurer may then offer coverage that is on different terms, amounts, or

coverage limitations, as long as such an offer does not violate any applicable State law requirements.

(b) *Examples.* (1) If an insurer subject to State regulation first makes available coverage in accordance with § 50.20 and the State has a requirement that an insurer offer full coverage without any exclusion, then the requirement would continue to apply and the insurer may not subsequently offer less than full coverage or coverage with exclusions.

(2) If an insurer subject to State regulation first makes available coverage in accordance with § 50.20 and the State permits certain exclusions or allows for other limitations, or an insurance policy is not governed by State law requirements, then the insurer may subsequently offer limited coverage or coverage with exclusions.

Dated: April 11, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–9611 Filed 4–17–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AA98

Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to interim final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this proposed rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (the Act). That Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This rule incorporates and clarifies statutory conditions for federal payment under the Program that require insurers to make certain disclosures to policyholders. The rule also incorporates and clarifies statutory requirements that insurers "make available," in their commercial property and casualty insurance policies, terrorism risk coverage for insured losses under the Program. The rule generally incorporates interim guidance previously issued by Treasury in this area, but with some modifications. This proposed rule, together with the interim final rule published elsewhere in this separate part of the **Federal Register**, are the second in a series of regulations Treasury will issue to implement the Act.

DATES: Written comments may be submitted on or before May 19, 2003.

ADDRESSES: Submit comments (if hard copy, preferably an original and two copies) to Office of Financial Institutions Policy, Attention: Terrorism Risk Insurance Program Public Comment Record, Room 3160 Annex, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted by electronic mail to: *triacomments@do.treas.gov*. All comments should be captioned with "April 18, 2003 TRIA Interim Final Rule Comments." Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730, or Martha Ellett or Cynthia Reese, Attorney-Advisors, Office of the Assistant General Counsel (Banking & Finance), (202).622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. The Proposed Rule

Published elsewhere in this separate part of the **Federal Register** is an interim final rule adding Subparts B and C to 31 CFR part 50, which comprises Treasury's regulations implementing the Act. The preamble to the interim final rule explains these provisions of the proposed rule in detail, and the text of the interim final rule serves as the text for this proposed rule.

II. Procedural Requirements

This proposed rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Act requires all licensed or admitted insurers to participate in the Program. This includes all insurers regardless of size or sophistication. The Act also defines property and casualty insurance to mean commercial lines without any reference to the size or scope of the commercial entity. The disclosure and make available requirements are required by the Act. The proposed rule allows all insurers, whether large or small, to use existing systems and business practices to demonstrate compliance. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed rule. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty insurance policyholders and spreading the risk of insured loss resulting from an act of terrorism.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

For the reasons set forth above, the Department of the Treasury proposes to adopt as a final rule the interim final rule adding subparts B and C to 31 CFR part 50, as follows:

The text of proposed subparts B and C to 31 CFR part 50 is the same as the text of subparts B and C to 31 CFR part 50 in the interim final rule published elsewhere in this separate part of this issue of the **Federal Register**.

Dated: April 11, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–9612 Filed 4–17–03; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AA99

Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (Treasury) is issuing this proposed rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). The Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This notice of proposed rulemaking would apply provisions of the Act to State residual market insurance entities and State workers' compensation funds which are insurers under the Program. This is the third in a series of regulations that Treasury will issue to implement the Act.

DATES: Written comments may be submitted on or before May 19, 2003.

ADDRESSES: Submit comments (if hard copy, preferably an original and two copies) to Office of Financial Institutions Policy, Attention: Terrorism Risk Insurance Program Public Comment Record, Room 3160 Annex, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted by electronic mail to: *triacomments@do.treas.gov*. All comments should be captioned with "April 18, 2003 NPRM TRIA Comments." Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library.

To make appointments, call (202) 622–0990 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730, or Martha Ellett or Cynthia Reese, Attorney-Advisors, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. Terrorism Risk Insurance Act of 2002

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (Public Law 107–297, 116 Stat. 2322). The Act was effective immediately. Title I of the Act establishes a temporary Federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism as defined in the Act and certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, including the prescription of regulations and procedures. The Program will sunset on December 31, 2005.

The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk and to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

The amount of Federal payment for an insured loss resulting from an act of terrorism is to be determined based upon the insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act. Thus, the Program provides a Federal reinsurance backstop for a temporary period of time. The Act also provides Treasury with authority to recoup Federal payments made under the Program through policyholder surcharges, up to a maximum annual limit.

Each entity that meets the definition of "insurer" (well over 2000 firms) must participate in the Program. The Act includes State residual market insurance entities and State workers compensation funds in the definition of insurer but requires Treasury to issue regulations as soon as practicable to apply the provisions of the Act to these insurers.

From the date of enactment of the Act through the last day of Program Year 2 (December 31, 2004), insurers under the Program must "make available" terrorism risk insurance in their commercial property and casualty insurance policies and the coverage must not differ materially from the terms, amounts and other coverage limitations applicable to commercial property and casualty losses arising from events other than acts of terrorism. The Act permits Treasury to extend the "make available" requirement into Program Year 3, based on an analysis of factors referenced in the study required by section 108(d)(1) of the Act, and not later than September 1, 2004.

An insurer's deductible increases each year of the Program, thereby reducing the Federal Government's involvement prior to sunset of the Program. An insurer's deductible is based on "direct earned premiums" over a statutory Transition Period (now expired) and the three Program Years. Once an insurer has met its deductible, the Federal payments cover 90 percent of insured losses above the deductible, subject to an aggregate annual cap of $100 billion. The Act prohibits duplicative payments for insured losses that are covered under any other Federal program.

As conditions for Federal payment under the Program, insurers must provide clear and conspicuous disclosure to the policyholders of the premium charged for insured losses covered by the Program, and must submit a claim and certain certifications to Treasury. Treasury will be prescribing claims procedures at a later date.

The Act also contains specific provisions designed to manage litigation arising from or relating to a certified act of terrorism. Section 107 creates an exclusive Federal cause of action, provides for claims consolidation in Federal court and contains a prohibition on Federal payments for punitive damages under the Program. This section also provides the United States with the right of subrogation with respect to any payment or claim paid by the United States under the Program. As part of the claims process, and as directed by the President, Treasury will be issuing regulations addressing Treasury's role in the approval of settlements.

B. Previously Issued Interim Guidance

To assist insurers, policyholders and other interested parties in complying with immediately applicable and time-sensitive requirements of the Act prior to the issuance of regulations, Treasury issued interim guidance in four separate notices. Treasury publicly released these interim guidance notices on its Program Web site, *http://www.treasury.gov/trip* and published each notice in the **Federal Register**.

Treasury released the first notice of Interim Guidance on December 3, 2002, within a week of the Act's enactment (Interim Guidance I). Interim Guidance I was published at 67 FR 76206 on December 11, 2002, and addressed several issues pertaining to immediately applicable provisions of the Act, including statutory disclosure obligations of insurers as conditions for Federal payment under the Program and the requirement that an insurer "make available" terrorism risk insurance. The disclosure guidance in Interim Guidance I references certain model forms of the National Association of Insurance Commissioners (NAIC) and provides a safe harbor for those insurers that make use of such forms prior to the issuance of regulations, but Interim Guidance I stated that these forms are not the exclusive means by which insurers could comply with the disclosure conditions prior to the issuance of regulations. Interim Guidance I also provided guidance concerning the "direct earned premium" on lines of property and casualty insurance to enable insurers to calculate their "insurer deductibles" and enable insurers to price and disclose premiums for terrorism risk insurance to policyholders within statutory time periods.

On December 18, 2002, Treasury issued a second notice of interim guidance. This interim guidance was published at 67 FR 78864 on December 26, 2002 (Interim Guidance II). Interim Guidance II addressed the statutory categories of "insurers" that are required to participate in the Program, including their "affiliates"; provided clarification on the scope of "insured loss" covered by the Program and provided additional guidance to enable eligible surplus line carriers listed on the Quarterly Listing of Alien Insurers of the NAIC or Federally approved insurers to calculate their insurer deductibles for purposes of the Program.

On January 22, 2003, Treasury issued a third notice of interim guidance, published at 68 FR 4544 on January 29, 2003 (Interim Guidance III). Interim Guidance III further clarified certain disclosure and certification questions, issues for non-U.S. insurers, and the scope of the term "insured loss" under the Act.

On March 25, 2003 Treasury issued a fourth interim guidance published at 68 FR 15039 on March 27, 2003 (Interim Guidance IV). Interim Guidance IV provided insurers a procedure by which they could seek to rebut a presumption of control established in Treasury's first set of interim final regulations. See Previously Issued Regulations in section C below and Treasury's Web site at *http://www.treasury.gov/trip*.

In issuing each notice of Interim Guidance, Treasury stated that the Interim Guidance may be relied upon by insurers until superseded by regulations or a subsequent notice. Treasury provided safe harbors for actions by those insurers taken in accordance with, and in reliance on, the interim guidance for the time period prior to the issuance of regulations.

C. Previously Issued Regulations

Treasury published the first regulation implementing the Act on February 28, 2003 (68 FR 9804) as an interim final rule together with a proposed rule. Both request comments by March 31, 2003. The first regulation, which is subpart A of new part 50 in Title 31 of the CFR, covers the purpose and scope of the Program, key definitions, and certain general provisions.

In addition, Treasury has published an interim final rule on requirements concerning disclosures that insurers must make to policyholders as a condition for federal payment under the Act, and requirements that insurers make available, in their commercial property and casualty insurance policies, terrorism risk coverage for insured losses under the Program. (*See* Subparts B and C of 31 CFR Part 50).

II. The Proposed Rule

Section 102(6) of the Act includes State residual market insurance entities and State workers' compensation funds as insurers that are required to participate in the Program. Section 103(d) of the Act requires Treasury to "issue regulations, as soon as practicable after the date of enactment of this Act, that apply the provisions of this title [Title I] to State residual market insurance entities and State workers' compensation funds." Pursuant to this statutory directive, Treasury is issuing this notice of proposed rulemaking.

A. Mandatory Participation as an "Insurer"

State residual market insurance entities and State workers' compensation funds have been established to provide insurance coverage where private insurance companies are unwilling or unable to provide coverage. Private insurance companies may be unwilling or unable to provide coverage because of the policyholder's risk profile or because the economics of a particular transaction are not consistent with the types of risk the insurer is willing or able to underwrite. In some cases a residual market entity shares the risks of its underlying policies with insurance companies that provide certain types of coverage within the state, and in other cases a residual market entity operates on a stand alone basis.

All entities that meet the definition of "insurer" in section 102(6)(A) and (B) and, if prescribed by Treasury, criteria in 102(6)(C), of the Act are required to participate in the Program. Section 102(6)(A)(iv) includes State residual market insurance entities and State workers' compensation funds in the definition of insurer for purposes of the Program. Treasury considers the term State residual market insurance entity to encompass all such residual market entities that arrange for or provide commercial property and casualty insurance coverage. This includes residual market entities associated with the provision of commercial property, liability, workers' compensation, and automobile (including State automobile funds) coverage. Section 102(6)(B) provides an exception to the direct earned premium requirement for State residual market entities and State workers' compensation funds. Treasury has issued no regulatory criteria under section 102(6)(C). Therefore, State residual market insurance entities and State workers' compensation funds are insurers covered by the Program and required to participate in the Program. Section 103(d) of the Act requires Treasury to issue regulations as soon as practicable to apply the provisions of the Act to these types of insurers.

Following consultation with the NAIC, Treasury identified a group of entities that falls within the category of State residual market insurance entities and State workers compensation funds. Treasury included this list as part of its Interim Guidance II (67 FR 78864). In that notice of interim guidance, Treasury also requested that any State residual market insurance entity or State workers' compensation fund, not included on the list, notify Treasury. In response, Treasury received additional information and a number of suggestions concerning the State residual market entities and State workers' compensation funds on the list. After consideration of this additional information and further consultation with the NAIC, Treasury has updated and expanded the initial list in the interim guidance of State residual market insurance entities and State workers' compensation funds. This revised list will be updated as necessary, and publicly available at *http://www.treasury.gov/trip*.

B. Treatment or Allocation of Premium

Section 103(d)(2) of the Act divides State residual market insurance entities into two broad classes for purposes of their treatment as insurers under the Program: (1) Entities that *do not* share profits and losses with private sector insurance companies; and (2) entities that *do* share profits and losses with private sector insurance companies. Section 103(d)(2)(A) provides that "a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer." For State residual market insurance entities that fall under section 103(d)(2)(A) or for State workers' compensation funds Treasury is proposing that these entities follow the regulatory guidelines set forth in 31 CFR 50.5(d)(1) or 50.5(d)(2) for the purposes of calculating the appropriate measure of direct earned premium.

Section 103(d)(2)(B) of the Act provides that "a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer's insured losses." Section 103(d)(3) further provides that "any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations of premiums any premiums distributed to the insurer by the State residual market insurance entity." A significant number of State residual market entities share their profits and losses with private sector insurance companies, including entities that arrange for commercial automobile, property, and workers' compensation coverages. In addition, some State residual insurance market entities contract with private sector insurance companies, which act as servicing carriers. In a servicing carrier arrangement, a private sector insurance company issues and services the residual market entity's policies in exchange for a servicing fee. The servicing carrier does not bear the ultimate risk of such policies, but rather that risk is shared by all the insurance companies that participate in the residual market. However, other residual market entities (*e.g.*, most property plans) do not use servicing

carriers but, instead, issue and service their policies directly.

As mentioned in Interim Guidance II, Treasury has consulted with the NAIC to develop a proposed allocation methodology that is in accord with statutory requirements. In order to implement the requirements of section 103(d)(2)(B) (no separate treatment) and 103(d)(3) (inclusion of premium income) for State residual market insurance entities that share profits and losses with private sector insurers, Treasury is proposing the following methodology for allocating direct earned premiums across all insurance companies that participate in the residual market mechanism.

First, premiums written by a servicing carrier, on behalf of a State residual market insurance entity and ceded to such an entity shall not be included as "Direct Earned Premium" for purposes of calculation of that servicing carrier's deductible.

Second, premium distributed to or assumed by State residual market participants, whether directly from the State residual market insurance entity or as quota share insurers of risks written by servicing carriers, is included in "Direct Earned Premium" for purposes of calculation of each pool participant's deductible.

These two proposed provisions would allocate risk within a State residual market mechanism to the ultimate risk bearers. Because servicing carriers do not hold the entire risk for the policies that they service for the State residual market insurance entity, the premium from those policies should not fully accrue to the servicing carrier. The servicing carrier does absorb risk within the State residual market mechanism, and the appropriate portion of such risk would be allocated back to the servicing carrier and other residual market participants in the second step. The net effect of these offsetting exclusions and inclusions will be no change in total industry-wide "Direct Earned Premium," but rather a reallocation to account for the unique nature of State residual market insurance entities.

The following provides an illustration as to how insurers that participate in State residual market insurance mechanisms should calculate their "direct earned premium" for purposes of calculating an "insurer deductible" as defined in section 102(7):

(1) Start with the appropriate measure of direct earned premium as specified in 31 CFR 50.5(d)(1) or 50.5(d)(2). That measure would include appropriate adjustments for personal insurance coverage as described in section 50.5(d)(1).

(2) Subtract the value of direct earned premium earned by servicing carriers and ceded to State residual market insurance entities if those direct earned premiums are reported in step 1.

(3) Add direct earned premium assumed from or distributed by State residual market insurance entities to insurers participating in the State residual market mechanism.

Although no report or information is requested or proposed at this time, Treasury may later request that the administrator of a qualifying State residual market entity provide Treasury with certified information about the aggregate premium and losses, and participant allocation information that it provides to participating insurance companies if, and to the extent, deemed to be needed by Treasury to verify insurers' "deductible" calculations.

C. Other State Residual Market Insurer Issues

Treasury has not yet issued regulations regarding the federal share of insured losses as described in section 103(e)(1)(A) of the Act; however, consistent with the treatment of premium income described above, Treasury is considering proposing that insured losses arising from policies insured through State residual market insurance entities described in section 103(d)(2)(B) be calculated for each residual market insurance participant based on each such insurer's share of the insured losses of the State residual market entity as allocated to the insurer by the residual market entity. Treasury is also considering proposing that the State residual market insurance entity provide an allocation of insured losses to each participant and other information related to the sharing of insured losses among residual market participants as part of regulations issued under the claims verification process. Treasury specifically solicits comment in these areas.

As regulations regarding the Federal share of insured loss and the claims verification process are developed, Treasury will also be considering the general issue of how the insolvency of insurers under the Program will be addressed, and in particular how the insolvency of a residual market participant or a servicing carrier affects the allocation of insured losses among residual market participants. Although Treasury has no specific proposal, Treasury also solicits comment on these issues.

D. Disclosure

In Interim Guidance II, Treasury did not require disclosures under section 103(b)(2) of the Act by insurers that fall under section 102(6)(A)(iv), if such State residual market and workers' compensation fund insurers did not have sufficient information to make such disclosures under section 103(b)(2), pending issuance of final regulations. Treasury is still evaluating the applicability of the disclosure requirement on certain insurers in this category and solicits information on this issue.

III. Procedural Requirements

This proposed rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Act itself requires State residual market insurance entities and State workers' compensation funds to participate in the Program, and these entities or funds are generally not small entities.

The Act itself requires all licensed or admitted insurers to participate in the Program. This includes all insurers regardless of size or sophistication. Although insurers that participate in sharing profits and losses of a State residual market insurance entity or State workers' compensation fund may include small entities, the proposed rule is based on existing business practices of residual market entities in determining the impact on participating insurers. The Act also defines property and casualty insurance to mean commercial lines without any reference to the size or scope of the commercial entity. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed rule. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty insurance policyholders and spreading the risk of insured loss resulting from an act of terrorism. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

For the reasons set forth above, 31 CFR part 50 is proposed to be amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C 6701 note).

2. Subpart D of part 50 is proposed to be amended by adding §§ 50.30, 50.33, 50.35 and 50.36 to read as follows:

§ 50.30 General participation requirements.

(a) *Insurers.* As defined in § 50.5(f), all State residual market insurance entities and State workers' compensation funds are insurers under the Program even if such entities do not receive direct earned premiums.

(b) *Mandatory participation.* State residual market insurance entities and State workers'compensation funds that meet the requirements of § 50.5(f) are mandatory participants in the Program subject to the rules issued in this subpart.

(c) *Identification.* Treasury will release and maintain a list of State residual market insurance entities and State workers' compensation funds at *www.treasury.gov/trip.* Procedures for providing comments and updates to that list will be posted with the list.

§ 50.33 Entities that do not share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State workers' compensation fund that does not share profits and losses with a private sector insurer is deemed to be a separate insurer under the Program.

(b) *Premium calculation.* A State residual market insurance entity or a State workers' compensation fund that is deemed to be a separate insurer should follow the guidelines specified in § 50.5(d)(1) or 50.5(d)(2) for the purposes of calculating the appropriate measure of direct earned premium.

§ 50.35 Entities that share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State workers' compensation fund that shares profits and losses with a private sector insurer is not deemed to be a separate insurer under the Program.

(b) *Premium and loss calculation.* A State residual market insurance entity or a State workers' compensation fund that is not deemed to be a separate insurer should continue to report, in accordance with normal business practices, to each participant insurer its share of premium income and insured losses, which shall then be included respectively in the participant insurer's direct earned premium or insured loss calculations.

§ 50.36 Allocation of premium income associated with entities that do share profits and losses with private sector insurers.

(a) *Servicing carriers.* For purposes of this subpart, a servicing carrier is an insurer that enters into an agreement to place and service insurance contracts for a State residual market insurance entity or a State workers' compensation fund and to cede premiums associated with such insurance contracts to the State residual market insurance entity or State workers' compensation fund. Premiums written by a servicing carrier on behalf of a State residual market insurance entity or State workers' compensation fund that are ceded to such an entity or fund shall not be included as direct earned premium (as described in § 50.5(d)(1) or 50.5(d)(2)) of the servicing carrier.

(b) *Participant insurers.* For purposes of this subpart, a participant insurer is an insurer that shares in the profits and losses of a State residual market insurance entity or a State workers' compensation fund. Premium income that is distributed to or assumed by participant insurers in a State residual market insurance entity or State workers' compensation fund (whether directly or as quota share insurers of risks written by servicing carriers), shall be included in direct earned premium (as described in § 50.5(d)(1) or 50.5(d)(2)) of the participant insurer.

Dated: April 11, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–9613 Filed 4–17–03; 8:45 am]

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Federal Register

Friday,
April 18, 2003

Part V

Environmental Protection Agency

40 CFR Part 52

Approval and Promulgation of State Implementation Plans: California; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–274–0371; FRL–7473–3]

Approval and Promulgation of State Implementation Plans; California—South Coast

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve state implementation plan (SIP) revisions submitted by the State of California to provide for attainment of the particulate matter (PM–10) national ambient air quality standards (NAAQS) in the Los Angeles-South Coast Air Basin Area and to establish emissions budgets for purposes of transportation conformity. EPA is also granting the State's request for an extension of the PM–10 attainment deadline to December 31, 2006.

EFFECTIVE DATE: This rule is effective on May 19, 2003.

ADDRESSES: You can inspect copies of the docket for this action during normal business hours at EPA's Region IX office. You can inspect copies of the submitted SIP materials at the following locations:

U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

California Air Resources Board, 1001 I Street, Sacramento, California, 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California, 91765–0932.

Most of the plan materials are also electronically available at: *http://www.aqmd.gov/aqmp/.*

FOR FURTHER INFORMATION CONTACT: Dave Jesson, EPA Region IX, (415) 972–3957, or *jesson.david@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us," and "our" refer to EPA.

I. Proposed Action

On December 17, 2002 (67 FR 77212), we proposed to approve the serious area PM–10 SIP submittals by California for the South Coast Air Basin (or "South Coast"), including the motor vehicle emissions budgets, and to grant the State's request that we extend the attainment date from December 31, 2001 to December 31, 2006, in accordance with Clean Air Act (CAA) section 188(e).

Our proposed approval was based on the following SIP submittals by the State of California:

(1) That portion of the 1994 Air Quality Management Plan (AQMP, or "1994 plan"), adopted by the South Coast Air Quality Management District (SCAQMD) on September 9, 1994, and submitted by the California Air Resources Board (CARB) on November 15, 1994, that addresses the CAA provisions on control measures and best available control measure (BACM);

(2) the 1997 AQMP ("1997 plan") adopted by the SCAQMD on November 15, 1996, and submitted by CARB on February 5, 1997, addressing the CAA provisions for emissions inventories, control measures and BACM, reasonable further progress, contingency measures, attainment demonstration, motor vehicle emissions budgets, and attainment date extension;

(3) the 1998 amendment to the 1997 plan ("1998 amendment"), adopted by the SCAQMD on April 10, 1998, and submitted by CARB on April 22, 1998, establishing motor vehicle emission budgets;

(4) the 1999 amendment to the 1997 plan ("1999 amendment"), adopted by the SCAQMD on December 10, 1999, and submitted by CARB on February 4, 2000, addressing the CAA provisions for control measures and BACM; and

(5) the 2002 status report adopted by SCAQMD on June 7, 2002, and submitted by CARB on November 18, 2002, addressing the CAA provisions for control measures and BACM, reasonable further progress, and motor vehicle emissions budgets for purposes of transportation conformity.

The proposal contains detailed information on these SIP submittals and our evaluation of the submittals against applicable CAA provisions and EPA policies relating to serious area PM–10 SIPs.

II. Public Comments

We received one public comment from an individual asking that EPA specify the statutes relied upon to grant an extension of time to attain the NAAQS. The commenter further asked EPA to take a second look at policies to extend attainment dates if adequate legal authority does not exist.

As discussed in our proposed rule (67 FR 77217), CAA section 188(e) allows states to apply for up to a 5-year extension of the PM–10 serious area attainment deadline of December 31, 2001. CAA section 188(e) provides us with explicit authority to grant the extension if the state makes a showing that: (1) The plan for the area includes the most stringent measures that are included in the SIP of any state or are achieved in practice in any state, and can feasibly be implemented in the area, (2) the state complied with all requirements and commitments pertaining to the area in the implementation plan for the area, and (3) attainment by 2001 would be impracticable. In the proposed action, we show how the State's submittals satisfy each of these criteria. The commenter provided no evidence that the prerequisites to approval of the extension had not been satisfied. We continue to conclude that the State has met the applicable statutory provisions and we are therefore finalizing our attainment date extension.

Under our policy for reviewing the adequacy of motor vehicle emissions budget submissions, these budgets were posted on our transportation conformity Web site (*http://www.epa.gov/oms/traq*) for public comment. We received no comments on the budgets.

III. EPA Action

In this document, we are finalizing the following actions on the PM–10 SIP submittals for the South Coast. For each action, we indicate the page on which the element is discussed in our proposal.

(1) Approval of the baseline and projected emissions inventories of the 1997 plan (Appendix III and Appendix V, Chapter 2) under CAA section 172(c)(3)—67 FR 77214–5.

(2) Approval of the control measures in the 1997 plan (Chapter 4, Appendix IV–A), 1999 amendment (Appendix B), and 2002 status report (Attachment D), under CAA section 110(k)(3) as meeting the provisions of CAA sections 110(a), 188(e), and 189(b)(1)(B)—67 FR 77215 (Table 1).

(3) Approval of the contingency measures in the 1997 plan (Appendix IV–A), under CAA section 110(k)(3) as meeting the provisions of CAA section 172(c)(9)—67 FR 77216.

(4) Approval of the reasonable further progress provisions of the 1997 plan (Chapters 4 and 6; Appendix III; Appendix V, Chapter 2) and 2002 status report under CAA section 189(c)—67 FR 77216–7 (Table 2).

(5) Approval of the demonstration of attainment in the 1997 plan (Chapter 5, Appendix V) under CAA section 189(b)(1)(A)—67 FR 77217.

(6) Approval of the attainment deadline extension to December 31, 2006 in the 1997 plan (Chapters 5 and 6; Appendix V, Chapter 2), under CAA section 188(e)—67 FR 77217–8.

(7) Approval of the motor vehicle emission budgets for purposes of transportation conformity for 2003, 2006, 2010, and 2020, under CAA section 176(c)(2)(A)—67 FR 77218–9 (Table 3). As proposed, we are limiting this approval to last only until the effective date of our adequacy findings for new replacement budgets. For further discussion of the rationale for, and effect of, this limitation, please see our recent promulgation of a limitation on motor vehicle emission budgets associated with various California SIPs, at 67 FR 69139 (November 15, 2002).

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 27, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2: Section 52.220 is amended by adding paragraphs (c)(247)(i)(A)*(4)*, (c)(272)(i)(A)*(2)*, and (c)(309)to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(247) * * *

(i) * * *

(A) * * *

(4) Baseline and projected emissions inventories, SCAQMD commitment to adopt and implement control measures, reasonable further progress, contingency measures, attainment demonstration, PM–10 attainment date extension request to December 31, 2006, as contained in the South Coast 1997 Air Quality Management Plan, with respect to PM–10.

* * * * *

(272) * * *

(i) * * *

(A) * * *

(2) SCAQMD commitment to adopt and implement control measures, as contained in the 1999 Amendment to the South Coast Air Quality Management Plan, with respect to PM–10.

* * * * *

(309) New and amended plan for the following agency was submitted on November 18, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District (SCAQMD).

(1) SCAQMD commitment to adopt and implement control measures, and reasonable further progress, as contained in the Implementation Status of the PM–10 Portion of the 1997 AQMP and PM–10 Emissions Budgets for Transportation Conformity use (2002 status report) adopted by SCAQMD on June 7, 2002.

* * * * *

■ 3. Section 52.244 is amended by adding paragraph (e) to read as follows:

§ 52.244 Motor vehicle emissions budgets.

* * * * *

(e) Approval of the motor vehicle emissions budgets for the following PM–10 reasonable further progress and attainment SIPs will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and EPA has found the budgets to be adequate for conformity purposes.

(1) South Coast, approved April 18, 2003.

[FR Doc. 03–9478 Filed 4–17–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–274–0372; FRL–7473–4]

Approval and Promulgation of State Implementation Plans and Designation of Areas for Air Quality Planning Purposes; California—Coachella Valley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve state implementation plan (SIP) revisions submitted by the State of California to provide for attainment of the particulate matter (PM–10) national ambient air quality standard (NAAQS) in the Coachella Valley area and to establish emissions budgets for use in transportation conformity determinations. EPA is also granting the State's request for an extension of the PM–10 attainment deadline to December 31, 2006.

EFFECTIVE DATE: This action is effective May 19, 2003.

ADDRESSES: You can inspect copies of the docket for this action during normal business hours at the EPA Region IX office. You can inspect copies of the submitted SIP materials at the following locations.

California Air Resources Board, 1001 I Street, Sacramento, California, 95814.
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, California, 91765–0932.

The 2002 plan is electronically available at: *http://www.aqmd.gov/aqmp/*.

FOR FURTHER INFORMATION CONTACT: Eleanor Kaplan, Air Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 947–4147 or e-mail: *kaplan.eleanor@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document "we", "us", and "our" means EPA.

I. Proposed Actions

On December 17, 2002 (67 FR 77212), we proposed to approve the serious area PM–10 SIP submittals by California for the Coachella Valley (Valley) including the motor vehicle emissions budgets, and to grant the State's request that we extend the attainment date from December 31, 2001 to December 31, 2006, in accordance with Clean Air Act (CAA) section 188(e).

We proposed to approve specific portions of the following submittals:

(1) 1994 plan: The South Coast Air Quality Management District (SCAQMD), which has jurisdiction over the Valley, adopted the 1994 BACM SIP for the Valley on July 8, 1994 and the California Air Resources Board (CARB) submitted the plan to us on August 16, 1994. The 1994 plan, in accordance with the provisions of CAA section 189(1)(B), identified the Best Available Control Measures (BACM) that were required for this serious PM–10 nonattainment area and committed to implementation of these measures by February 8, 1997.

(2) 1996 Plan: The SCAQMD adopted a Redesignation and Maintenance Plan on December 13, 1996 and submitted the plan to us on February 5, 1997. The 1996 plan addressed the remaining plan provisions for serious PM–10 nonattainment areas, as specified in the CAA sections 188 and 189. However, before EPA acted on the 1996 plan, the area recorded a violation of the annual PM–10 NAAQS during the period from 1999 through 2001 and was therefore unable to meets its attainment date of December 31, 2001.

(3) 2002 Plan: On June 21, 2002 and September 13, 2002 the SCAQMD adopted amendments to the 1996 plan and CARB submitted the 2002 plan to us on November 18, 2002. The 2002 plan addresses the CAA provisions for emissions inventories, control measures and BACM, reasonable further progress, contingency measures, attainment demonstration, attainment date extension and motor vehicle emissions budgets.

Our proposal on this action contains detailed information on these SIP submittals and our evaluation of the submittals against applicable CAA provisions and EPA policies relating to serious area PM–10 SIPs.

II. Public Comments

Under EPA's policy for reviewing the adequacy of motor vehicle emissions budget submissions, these budgets were posted on the EPA Web site for public comment.[1] The public comment period was open for thirty days. No comments were received by EPA during the 30 day adequacy comment period nor did EPA receive any comments on our December 17, 2002 proposal.

III. Summary of Final Action

In this document, we are finalizing the following actions on the PM–10 SIP submittals for the Coachella Valley. For each action, we indicate the page on which the element is discussed in our proposal.

(1) Approval of the baseline and projected emissions inventories of the 2002 plan (Chapter 3) under CAA section 172(c)(3)—67 FR 77206–77207.

(2) Approval of the control measures in the 1994 plan (Chapter 4), 1996 plan (Chapter 4), and the 2002 plan (Chapters 4 and 5) under CAA section 110(k)(3) as meeting the provisions of CAA sections 110(a), 188(e), and 189(b)(1)(B)—67 FR 77207–77209.

(3) Approval of the contingency measures in the 2002 plan, under CAA section 110(k)(3) as meeting the provisions of CAA section 172(c)(9)—67 FR 77209.

(4) Approval of the reasonable further progress provisions of the 2002 plan (Appendix E–3, Table E–2)—67 FR 77216–7 (Table 2).

(5) Approval of the demonstration of attainment in the 1997 plan (Chapter 5, Appendix V) under CAA section 189(b)(1)(A)—67 FR 77209.

(6) Approval of the attainment deadline extension to December 31, 2006 in the 2002 plan (Chapter 8)under CAA section 188(e)—67 FR 77210.

(7) Approval of the motor vehicle emission budgets for use in transportation conformity determinations for the years 2003 and 2006 under CAA section 176(c)(2)(A)—67 FR 77211 (Table E–3). As proposed, we are limiting this approval to last only until the effective date of our adequacy findings for new replacement budgets. For further discussion of the rationale for, and effect of, this limitation, please see our recent promulgation of a limitation on motor vehicle emission budgets associated with various California SIPs, at 67 FR 69139 (November 15, 2002).

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 17, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 27, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(247) (i)(A)(*5*), and (c)(309)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(247) * * *

(i) * * *

(A) * * *

(*5*) SCAQMD commitment to adopt and implement control measures, as contained in the Coachella Request for Redesignation and Maintenance Plan for PM–10.

* * * * *

(309) * * *

(i) * * *

(A) * * *

(*2*) Baseline and projected emissions inventories, SCAQMD commitment to adopt and implement control measures, reasonable further progress, contingency measures, attainment demonstration, PM–10 attainment date extension, and motor vehicle emissions budgets, as contained in Chapters 3, 4, 5, 6 and 8 of the 2002 Coachella Valley PM–10 SIP adopted by SCAQMD on June 21, 2002, and the 2002 Coachella Valley PM–10 SIP Addendum (Appendix E) adopted by SCAQMD on September 13, 2002.

* * * * *

■ 3. Section 52.244 is amended by adding paragraph (e)(2) to read as follows:

§ 52.244 Motor vehicle emissions budgets.

* * * * *

(e) * * *

(2) Coachella Valley, approved April 18, 2003.

[FR Doc. 03–9479 Filed 4–17–03; 8:45 am]
BILLING CODE 6560–50–P

[1] The e-mail address for EPA's conformity Web site is *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

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Federal Register
Vol. 68, No. 76
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

RIN 3150–AH08

Medical Use of Byproduct Material: Clarifying and Minor Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations regarding the medical use of byproduct material. The direct final rule will clarify the definitions of authorized users, authorized medical physicists, authorized nuclear pharmacists, and radiation safety officers; clarify the notification requirements if the patient is in a medical emergency or dies; clarify the recordkeeping requirements for calibration of brachytherapy sources; correct the title for the National Institute of Standards and Technology; clarify that prior to October 24, 2004, individuals who meet the training and experience requirements in Subpart J may undertake responsibilities specified in certain sections in Subparts B and D–H; and eliminate a restriction that training for ophthalmic use of strontium-90 can only be conducted in medical institutions. These amendments are necessary to clarify certain inconsistencies within the regulations and to allow training in ophthalmic treatment to be conducted in eye clinics or private practices, in addition to medical institutions.

DATES: The final rule is effective on July 7, 2003 unless significant adverse comments are received by May 21, 2003.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH08) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; email *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6233, e-mail: *ant@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Procedural Information

Because NRC considers this action to be noncontroversial, the NRC is using the direct final rule process for this rule. The amendments in this rule will become effective on July 7, 2003. However, if the NRC receives significant adverse comments on this direct final rule by May 21, 2003, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published elsewhere in this **Federal Register**. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when—

(A) The comment causes the staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the staff.

(2) The comment proposes a change or an addition to the rule and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

Background

The NRC published in the **Federal Register** a final rule amending 10 CFR part 35 regarding medical use of byproduct material on April 24, 2002 (67 FR 20249) (final rule). Subsequently, the NRC staff (staff) identified typographical and editorial errors as well as inconsistencies in the Part 35 final rule. The staff published a document correcting the typographical

and editorial errors on October 9, 2002 (67 FR 62872). Both the final rule and the correction became effective on October 24, 2002. This amendment addresses certain inconsistencies that have been identified in the Part 35 final rule and implements a minor change to eliminate a restriction that training for ophthalmic use of strontium-90 can only be conducted in a medical institution.

Section-by-Section Analysis

(1) Section 35.2, Definitions. In this section, "Authorized medical physicist" (AMP), "Authorized nuclear pharmacist" (ANP), "Authorized user" (AU), and "Radiation Safety Officer" (RSO) are defined as individuals who meet the criteria in certain referenced sections of this final rule. However, the staff has specifically reinserted subpart J (as contained in the proposed rule (63 FR 43516; August 13, 1998)) for a two-year transition period. Therefore, until October 24, 2004, individuals certified by medical boards listed in that subpart are also qualified as authorized users. It is inconsistent to recognize as authorized users individuals who meet Subpart J requirements, but not include them in the relevant definitions in § 35.2.

The definition of AU is therefore amended to include individuals qualified under §§ 35.910(a), 35.920(a), 35.930(a), 35.940(a), 35.950(a) and 35.960(a), until October 24, 2004. Similarly, the definitions of AMP, ANP, and RSO are amended to include individuals authorized pursuant to §§ 35.961(a) and (b), 35.980(a), and 35.900(a), respectively.

(2) Section 35.51, Training for an authorized medical physicist. The second sentence in paragraph (b)(2) states: "The written certification must be signed by a preceptor authorized medical physicist who meets the requirements in § 35.51 or equivalent Agreement State requirements. * * *" However, during the two-year transition period, an individual who meets the requirements of § 35.961 in Subpart J is also qualified to be a preceptor authorized medical physicist. Therefore, this sentence is amended by replacing the phrase "in § 35.51 or equivalent Agreement State requirement" with the phrase "in § 35.51, or, before October 24, 2004, § 35.961, or equivalent Agreement State requirements. * * *"

The following additional sections reflect similar inconsistencies: §§ 35.190(b), (c)(1)(ii), (c)(2); 35.290(b), (c)(1)(ii), (c)(2); 35.390(b)(1)(ii), (b)(2); 35.392(b), (c)(2), (c)(3); 35.394(b), (c)(2), (c)(3); 35.490(b)(1)(ii), (b)(2), (b)(3); 35.491(a), (b)(3); and 35.690(b)(1)(ii), (b)(2), (b)(3). Therefore, these sections are also amended to include the corresponding sections from subpart J.

(3) Section 35.100, Use of unsealed byproduct material for uptake, dilution, and excretion studies for which a written directive is not required. Paragraph (b) states: "Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in §§ 35.290 or 35.390, or an individual under the supervision of either as specified in § 35.27." However, during the two-year transition period, an authorized user who meets the requirements of § 35.920 in Subpart J is also qualified to prepare unsealed byproduct material for medical use. Therefore, this sentence is amended by replacing the phrase "in §§ 35.290 or 35.390" with the phrase "in §§ 35.290 or 35.390, or, before October 24, 2004, § 35.920." In addition, the format of this paragraph has been modified to clearly identify the three categories of persons who can prepare unsealed byproduct material for medical use for uptake, dilution, or excretion.

The following additional sections reflect similar inconsistencies: §§ 35.200(b) and 35.300(b). Therefore, these sections are also amended to include § 35.920.

(4) Section 35.310, Safety instruction. Paragraph (a)(5) provides that a licensee must notify "the" AU if the patient has a medical emergency or dies. However, corresponding sections for brachytherapy and external beam therapy (*i.e.*, §§ 35.410(a)(5), 35.415(c), and 35.615(f)(4)) require that "an" AU, instead of "the" AU, be notified. Section III of the Supplementary Information in the April 24, 2002, final rule states: "Therefore, because of the type of dosages that are administered under § 35.300, we believe it is important that an AU be available to be contacted in case of a medical emergency or death." Notifying "an" AU should meet this requirement because "the" AU who treats the patient may be unavailable when the patient has a medical emergency or dies. This section is revised to replace the words "the" AU with the words "an" AU.

(5) Section 35.315, Safety precautions. Paragraph (b) provides that a licensee must notify the RSO, or his or her designee, and "the" AU if the patient has a medical emergency or dies. This section is modified to replace the words "the" AU with the words "an" AU for the reasons explained in (4), above.

(6) Section 35.432, Calibration measurements of brachytherapy sources. Paragraph (a) provides in part that a licensee shall determine the source output and source positioning accuracy. Paragraph (b) states that a licensee may use measurements provided by the source manufacturer or by a calibration laboratory. However, it is not clear that the licensee may perform its own measurement or, as an alternative, use measurements from manufacturer or calibration laboratory. For clarification, this section is therefore revised to add a phrase to the beginning of paragraph (b) to read as follows: "Instead of a licensee making its own measurements as required in (a), the licensee may use measurements provided by * * *."

(7) Section 35.491, Training for ophthalmic use of strontium-90. Paragraph (b)(2) currently provides in part that an authorized user of strontium-90 for ophthalmic radiotherapy must have completed supervised clinical training under the supervision of an authorized user at a medical institution that includes the use of strontium-90 for the ophthalmic treatment of five individuals. This current requirement unnecessarily excludes authorized users at eye clinics and private practices from being allowed to provide training. This restriction should be eliminated because many authorized users for ophthalmic treatment work in clinics or private practices. This section is therefore revised to add "clinic or private practice" to "medical institution" as acceptable locations where the requisite supervised clinical training may be provided.

(8) Section 35.630. Paragraph (a)(1) states: "The system must have been calibrated using a system or source traceable to the National Institute of Science and Technology (NIST) and * * *." The title of NIST is "National Institute of Standards and Technology." Thus, the word "Science" is replaced by the word "Standards."

(9) Section 35.2432, Records of calibration measurements of brachytherapy sources. This section provides that a licensee must maintain a record of the calibration of brachytherapy sources required by § 35.432. Paragraph 35.2432(b)(5) requires that the record must include the signature of the authorized medical physicist (AMP). Section 35.432, Calibration measurements of brachytherapy sources, requires that a licensee shall have a brachytherapy source calibrated or the licensee may use measurements provided by the source manufacturer or by a calibration laboratory. However, § 35.432 does not specify that an AMP must perform the calibration. Thus, it is inconsistent to require a record of the signature of the AMP in § 35.2432 without a requirement for the AMP to perform the calibration in § 35.432.

In the proposed rule (63 FR 43516; August 13, 1998), § 35.2432 would have provided that the record of calibration must contain "the name of the individual or the source manufacturer who performed the calibration." This language was consistent with the language of proposed § 35.432.

In the final rule, (67 FR 20249; April 24, 2002), § 35.432 was changed from that in the proposed rule to allow the licensee to rely on measurements provided by a calibration laboratory, in addition to those provided by a manufacturer. The language in § 35.2432 was also changed but was not consistent with § 35.432.

The Supplementary Information to the final rule includes a discussion of the changes made to § 35.2432 between the proposed rule and the final rule. That discussion does not include any rationale for changing the proposed rule language requiring "the name of the individual or the source manufacturer who performed the calibration" to the final rule language requiring "the signature of the authorized medical physicist." Section 35.2432(b)(5) is therefore modified to replace the phrase "the signature of the authorized medical physicist" with the phrase "the name of the individual, the source manufacturer, or the calibration laboratory who performed the calibration." This modification resolves inconsistency between § 35.2432 and § 35.432.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this direct final rule is a matter of compatibility between NRC and the Agreement States, thereby providing consistency among Agreement State and NRC requirements. A Compatibility Category "B" designation means the requirement has significant direct transboundary implications. Compatibility Category "B" designated Agreement State requirements should be essentially identical to those of NRC. A Compatibility Category "D" designation means the requirement does not need to be adopted by an Agreement State for purposes of compatibility. The Compatibility Category Health and Safety (H&S) identifies requirements that are not required for compatibility, but which have particular health and safety significance. Agreement States should adopt the essential objectives of such requirements in order to maintain an adequate program.

The Compatibility Categories for the sections amended in this direct final rule are the same as the sections in the current regulations. The revisions to §§ 35.2, 35.51, 35.190, 35.290, 35.390, 35.392, 35.394, 35.490, 35.491, and 35.690 are classified as Category B. The revisions to §§ 35.100, 35.200, 35.300, 35.310(a), 35.315, and 35.630 are classified as Category H&S. The revision to § 35.2432 is classified as Category D.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, NRC is amending 10 CFR part 35 to clarify certain inconsistencies with the regulations and to allow training in ophthalmic treatment to be conducted in eye clinics or private practices, in addition to medical institutions. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Environmental Impact: Categorical Exclusion

The Commission has determined that this direct final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this direct final rule.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). However, the rule makes a technical change to correct an error in a record requirement that appeared in the Part 35 final rule. Existing requirements were approved by the Office of Management and Budget, approval number 3150–0010.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

A regulatory analysis has not been prepared for this direct final rule. The clarifying amendments are for ease of understanding of certain aspects of part 35. The minor amendment on ophthalmic treatment is to provide flexibility that clinical training can be conducted under supervision of an authorized user in clinics or private practices, in addition to medical institutions. This flexibility could potentially result in a small reduction in burden for an individual who is undertaking the clinic training.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), NRC certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This direct final rule simply amends present regulations to clarify certain inconsistencies with the regulations and to allow training in ophthalmic treatment to be conducted in eye clinics or private practices, in addition to medical institutions. The companies that own these facilities do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the size standards adopted by NRC (10 CFR 2.810).

Backfit Analysis

NRC has determined that the backfit rule does not apply to this direct final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter 1.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects in 10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

■ For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; NRC is adopting the following amendments to 10 CFR part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

■ 1. The authority citation for Part 35 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

■ 2. In § 35.2, the definitions for *authorized medical physicist, authorized nuclear pharmacist, authorized user,* and *radiation safety officer,* are amended by revising paragraph (1) of each definition to read as follows:

§ 35.2 Definitions.

* * * * *

Authorized medical physicist means an individual who—

(1) Meets the requirements in §§ 35.51(a) and 35.59; or, before October 24, 2004, meets the requirements in §§ 35.961(a), or (b), and 35.59; or

* * * * *

Authorized nuclear pharmacist means a pharmacist who—

(1) Meets the requirements in §§ 35.55(a) and 35.59; or, before October 24, 2004, meets the requirements in §§ 35.980(a) and 35.59; or

* * * * *

Authorized user means a physician, dentist, or podiatrist who—

(1) Meets the requirements in §§ 35.59 and 35.190(a), 35.290(a), 35.390(a), 35.392(a), 35.394(a), 35.490(a), 35.590(a), or 35.690(a); or, before October 24, 2004, meets the requirements in §§ 35.910(a), 35.920(a), 35.930(a), 35.940(a), 35.950(a), or 35.960(a) and 35.59; or

* * * * *

Radiation Safety Officer means an individual who—

(1) Meets the requirements in §§ 35.50(a) and 35.59; or, before October 24, 2004, meets the requirements in §§ 35.900(a) and 35.59; or

* * * * *

■ 3. In § 35.51, the second sentence of paragraph (b)(2) is revised to read as follows:

§ 35.51 Training for an authorized medical physicist.

* * * * *

(b) * * *

(2) * * * The written certification must be signed by a preceptor authorized medical physicist who meets the requirements in § 35.51, or, before October 24, 2004, § 35.961, or equivalent Agreement State requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status.

■ 4. In § 35.100, paragraph (b) is revised to read as follows:

§ 35.100 Use of unsealed byproduct material for uptake, dilution, and excretion studies for which a written directive is not required.

* * * * *

(b) Prepared by:

(1) An authorized nuclear pharmacist;

(2) A physician who is an authorized user and who meets the requirements specified in §§ 35.290, 35.390, or, before October 24, 2004, § 35.920; or

(3) An individual under the supervision, as specified in § 35.27, of the authorized nuclear pharmacist in paragraph (b)(1) of this section or the physician who is an authorized user in paragraph (b)(2) of this section; or

* * * * *

■ 5. In § 35.190, paragraph (b), the introductory text of paragraph (c)(1)(ii), and paragraph (c)(2) are revised to read as follows:

§ 35.190 Training for uptake, dilution, and excretion studies.

* * * * *

(b) Is an authorized user under §§ 35.290, 35.390, or, before October 24, 2004, §§ 35.910, 35.920, or 35.930, or equivalent Agreement State requirements; or

* * * * *

(c) * * *

(1) * * *

(ii) Work experience, under the supervision of an authorized user who meets the requirements in §§ 35.190, 35.290, 35.390, or, before October 24, 2004, §§ 35.910, 35.920, or 35.930, or equivalent Agreement State requirements, involving—

* * * * *

(2) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in §§ 35.190, 35.290, 35.390, or, before October 24, 2004, §§ 35.910, 35.920, or 35.930, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraph (c)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under § 35.100.

■ 6. In § 35.200, paragraph (b) is revised to read as follows:

§ 35.200 Use of unsealed byproduct material for imaging and localization studies for which a written directive is not required.

* * * * *

(b) Prepared by:

(1) An authorized nuclear pharmacist;

(2) A physician who is an authorized user and who meets the requirements specified in §§ 35.290, 35.390, or, before October 24, 2004, § 35.920; or

(3) An individual under the supervision, as specified in § 35.27, of the authorized nuclear pharmacist in paragraph (b)(1) of this section or the physician who is an authorized user in paragraph (b)(2) of this section;

* * * * *

■ 7. In § 35.290, paragraph (b), the introductory text of paragraph (c)(1)(ii), and paragraph (c)(2) are revised to read as follows:

§ 35.290 Training for imaging and localization studies.

* * * * *

(b) Is an authorized user under § 35.390, or, before October 24, 2004, § 35.920, or equivalent Agreement State requirements; or

(c) * * *

(1) * * *

(ii) Work experience, under the supervision of an authorized user, who meets the requirements in §§ 35.290, 35.390, or, before October 24, 2004, § 35.920, or equivalent Agreement State requirements, involving—

* * * * *

(2) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in §§ 35.290, 35.390, or, before October 24, 2004, § 35.920, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraph (c)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under §§ 35.100 and 35.200.

■ 8. In § 35.300, paragraph (b) is revised to read as follows:

§ 35.300 Use of unsealed byproduct material for which a written directive is required.

* * * * *

(b) Prepared by:

(1) An authorized nuclear pharmacist;

(2) A physician who is an authorized user and who meets the requirements specified in §§ 35.290, 35.390, or, before October 24, 2004, § 35.920; or

(3) An individual under the supervision, as specified in § 35.27, of the authorized nuclear pharmacist in paragraph (b)(1) of this section or the physician who is an authorized user in paragraph (b)(2) of this section; or

* * * * *

■ 9. In § 35.310, paragraph (a)(5) is revised to read as follows:

§ 35.310 Safety instruction.

(a) * * *

(5) Notification of the Radiation Safety Officer, or his or her designee, and an authorized user if the patient or the human research subject has a medical emergency or dies.

* * * * *

■ 10. In § 35.315, paragraph (b) is revised to read as follows:

§ 35.315 Safety precautions.

* * * * *

(b) A licensee shall notify the Radiation Safety Officer, or his or her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

■ 11. In § 35.390, the introductory text of paragraph (b)(1)(ii) and paragraph (b)(2) are revised to read as follows:

§ 35.390 Training for use of unsealed byproduct material for which a written directive is required.

(b) * * *

(1) * * *

(ii) Work experience, under the supervision of an authorized user who meets the requirements in §§ 35.390(a), 35.390(b), or, before October 24, 2004, § 35.930, or equivalent Agreement State requirements. A supervising authorized user, who meets the requirements in § 35.390(b) or, before October 24, 2004, § 35.930(b), must also have experience in administering dosages in the same dosage category or categories (*i.e.*, § 35.390(b)(1)(ii)(G)(*1*), (*2*), (*3*), or (*4*)) as the individual requesting authorized user status. The work experience must involve—

* * * * *

(2) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraph (b)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under § 35.300. The written certification must be signed by a preceptor authorized user who meets the requirements in §§ 35.390(a), 35.390(b), or, before October 24, 2004, § 35.930, or equivalent Agreement State requirements. The preceptor authorized user, who meets the requirements in § 35.390(b) or, before October 24, 2004, § 35.930(b), must also have experience in administering dosages in the same dosage category or categories (*i.e.*, § 35.390(b)(1)(ii)(G)(*1*), (*2*), (*3*), or (*4*)) as the individual requesting authorized user status.

■ 12. In § 35.392, paragraph (b), the introductory text of paragraph (c)(2), and paragraph (c)(3) are revised to read as follows:

§ 35.392 Training for the oral administration of sodium iodide I–131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquerels (33 millicuries).

* * * * *

(b) Is an authorized user under §§ 35.390(a), 35.390(b) for uses listed in § 35.390(b)(1)(ii)(G)(*1*) or (*2*), § 35.394, or, before October 24, 2004, §§ 35.930, 35.932, or 35.934, or equivalent Agreement State requirements; or

(c) * * *

(2) Has work experience, under the supervision of an authorized user who meets the requirements in §§ 35.390(a), 35.390(b), 35.392, 35.394, or, before October 24, 2004, §§ 35.930, 35.932, or 35.934, or equivalent Agreement State requirements. A supervising authorized user who meets the requirements in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(*1*) or (*2*). The work experience must involve—

* * * * *

(3) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraphs (c)(1) and (c)(2) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under § 35.300. The written certification must be signed by a preceptor authorized user who meets the requirements in §§ 35.390(a), 35.390(b), 35.392, 35.394, or, before October 24, 2004, §§ 35.930, 35.932, or 35.934, or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirement in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(*1*) or (*2*).

■ 13. In § 35.394, paragraph (b), the introductory text of paragraph (c)(2), and paragraph (c)(3) are revised to read as follows:

§ 35.394 Training for the oral administration of sodium iodide I–131 requiring a written directive in quantities greater than 1.22 Gigabecquerels (33 millicuries).

* * * * *

(b) Is an authorized user under §§ 35.390(a), 35.390(b) for uses listed in § 35.390(b)(1)(ii)(G)(*2*), or, before October 24, 2004, §§ 35.930 or 35.934, or equivalent Agreement State requirements; or

(c) * * *

(2) Has work experience, under the supervision of an authorized user who meets the requirements in §§ 35.390(a), 35.390(b), 35.394, or, before October 24, 2004, §§ 35.930 or 35.934, or equivalent Agreement State requirements. A supervising authorized user, who meets the requirements in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(*2*). The work experience must involve—

* * * * *

(3) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraphs (c)(1) and (c)(2) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under § 35.300. The written certification must be signed by a preceptor authorized user who meets the requirements in §§ 35.390(a), 35.390(b), 35.394, or, before October 24, 2004, §§ 35.930 or 35.934, or equivalent Agreement State requirements. A supervising authorized user, who meets the requirements in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(*2*). The work experience must involve—

* * * * *

(3) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraphs (c)(1) and (c)(2) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under § 35.300. The written certification must be signed by a preceptor authorized user who meets the requirements in §§ 35.390(a), 35.390(b), 35.394, or, before October 24, 2004, §§ 35.930 or 35.934, or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirements in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(*2*).

■ 14. In § 35.432, paragraph (b) is revised to read as follows:

§ 35.432 Calibration measurements of brachytherapy sources.

* * * * *

(b) Instead of a licensee making its own measurements as required in paragraph (a) of this section, the licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine that are made in accordance with paragraph (a) of this section.

* * * * *

■ 15. In § 35.490, the introductory text of paragraph (b)(1)(ii), paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 35.490 Training for use of manual brachytherapy sources.

* * * * *

(b) * * *

(1) * * *

(ii) 500 hours of work experience, under the supervision of an authorized user who meets the requirements in § 35.490, or, before October 24, 2004, § 35.940, or equivalent Agreement State requirements at a medical institution, involving—

* * * * *

(2) Has obtained 3 years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in § 35.490, or, before October 24, 2004, § 35.940, or

equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (b)(1)(ii) of this section; and

(3) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in § 35.490, or, before October 24, 2004, § 35.940, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraphs (b)(1) and (b)(2) of this section and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under § 35.400.

■ 16. In § 35.491, paragraph (a), the introductory text of paragraph (b)(2), and paragraph (b)(3) are revised to read as follows:

§ 35.491 Training for ophthalmic use of strontium-90.

* * * * *

(a) Is an authorized user under § 35.490, or, before October 24, 2004, §§ 35.940 or 35.941, or equivalent Agreement State requirements; or

(b) * * *

(2) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five individuals. This supervised clinical training must involve—

* * * * *

(3) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in §§ 35.490, 35.491, or, before October 24, 2004, §§ 35.940 or 35.941, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraphs (a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

■ 17. In § 35.630, paragraph (a)(1) is revised to read as follows:

§ 35.630 Dosimetry equipment.

(a) * * *

(1) The system must have been calibrated using a system or source traceable to the National Institute of Standards and Technology (NIST) and published protocols accepted by nationally recognized bodies; or by a calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration must have been performed within the previous 2 years and after any servicing that may have affected system calibration; or

* * * * *

■ 18. In § 35.690, the introductory text of paragraph (b)(1)(ii), and paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 35.690 Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.

* * * * *

(b) * * *

(1) * * *

(ii) 500 hours of work experience, under the supervision of an authorized user who meets the requirements in § 35.690, or, before October 24, 2004, § 35.960, or equivalent Agreement State requirements at a medical institution, involving—

* * * * *

(2) Has completed 3 years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in § 35.690, or, before October 24, 2004, § 35.960, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (b)(1)(ii) of this section; and

(3) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraphs (b)(1) and (b)(2) of this section and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written certification must be signed by a preceptor authorized user who meets the requirements in § 35.690, or, before October 24, 2004, § 35.960, or equivalent Agreement State requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status.

■ 19. In § 35.2432, paragraph (b)(5) is revised to read as follows:

§ 35.2432 Records of calibration measurements of brachytherapy sources.

* * * * *

(b) * * *

(5) The name of the individual, the source manufacturer, or the calibration laboratory that performed the calibration.

Dated at Rockville, Maryland, this 31st day of March, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–9601 Filed 4–18–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–73–AD; Amendment 39–13122; AD 2003–08–10]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–500 Series Airplanes, and Model ATR72–102, –202, –212, and –212A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–500 series airplanes, and Model ATR72–102, –202, –212, and –212A series airplanes, that requires replacement of insulation blankets constructed of metallized polyethyleneteraphthalate (MPET) located from sections 11 through 16 of the fuselage with new insulation blankets constructed of Terul 18™. This amendment is prompted by reports of in-flight and ground fires on certain airplanes manufactured with insulation blankets constructed of MPET, which may contribute to the spread of a fire when ignition occurs from small ignition sources such as electrical arcing or sparking. The actions specified by this AD are intended to ensure that insulation blankets constructed of MPET are removed from the fuselage. Such insulation blankets could propagate a small fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire. This action is intended to address the identified unsafe condition.

DATES: Effective May 27, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–500 series airplanes, and Model ATR72–102, –202, –212, and –212A series airplanes, was published in the **Federal Register** on December 13, 2002 (67 FR 76704). That action proposed to require replacement of insulation blankets constructed of metallized polyethyleneteraphthalate (MPET) located from sections 11 through 16 of the fuselage with new insulation blankets constructed of.Terul 18™.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Ne comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 2 Aerospatiale Model ATR42–500 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 500 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $50,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of Model ATR42–500 series airplanes is estimated to be $160,000, or $80,000 per airplane.

The FAA estimates that 19 Aerospatiale Model ATR72–102, –202, –212, and –212A series airplanes of U.S. registry will be affected by this AD, that it will take approximately 500 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will cost approximately $60,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators of Model ATR72–102, –202, –212, and –212A series airplanes is estimated to be $1,710,000, or $90,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–08–10—Aerospatiale: Amendment 39–13122. Docket 2002–NM–73–AD.

Applicability: Model ATR42–500 series airplanes, and Model ATR72–102, –202, –212, and –212A series airplanes; certificated in any category; except those airplanes on which ATR Modification 5117 or 5322 (reference Avions de Transport Regional Service Bulletin ATR42–25–0134, dated January 24, 2002; or Avions de Transport Regional Service Bulletin ATR72–25–1074, dated January 24, 2002; as applicable) has been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that insulation blankets constructed of metallized polyethyleneteraphthalate (MPET) are removed from the fuselage, to prevent propagation of a fire that is the result of an otherwise harmless electrical arc and could lead to a much larger fire, accomplish the following:

Insulation Blanket Replacement

(a) Within 5 years after the effective date of this AD, replace insulation blankets located from sections 11 through 16 inclusive of the fuselage with new, improved insulation blankets constructed of Terul 18™, in accordance with the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–25–0134 (for Model ATR42–500 series airplanes); or ATR72–25–1074 (for Model ATR72–102, –202, –212, –212A series airplanes); both dated January 24, 2002; as applicable.

Note 2: Although paragraph (a) of this AD allows up to 5 years for the required replacement, the FAA encourages operators to review their airplanes to assess their individual needs for materials and plan accordingly. The FAA anticipates that operators will accomplish the requirements of this AD at the earliest practicable maintenance opportunity to lessen the burden toward the end of the compliance time.

Part Installation

(b) As of the effective date of this AD, no person shall install an insulation blanket constructed of MPET on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with Avions de Transport Regional Service Bulletin ATR42–25–0134, dated January 24, 2002; or Aviöns de Transport Regional Service Bulletin ATR72–25–1074, dated January 24, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directives 2001–635–061(B) and 2001–636–088(B), both dated December 26, 2001.

Effective Date

(f) This amendment becomes effective on May 27, 2003.

Issued in Renton, Washington, on April 11, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9431 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–88–AD; Amendment 39–13121; AD 2003–06–51]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2003–06–51 that was sent previously to all known U.S. owners and operators of certain Learjet Model 45 airplanes by individual notices. This AD requires an inspection to determine the part number of the horizontal stabilizer actuator assembly (A66), and replacement of any suspect horizontal stabilizer actuator assembly (A66) with a new or serviceable actuator assembly (A66). This action is prompted by a report of severe vibration followed by a rapid nose down pitch change on a Learjet Model 45 airplane. The actions specified by this AD are intended to prevent structural failure of the horizontal stabilizer actuator assembly, which could result in possible loss of control of the airplane.

DATES: Effective April 28, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2003–06–51, issued on March 20, 2003, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 28, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 20, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–88–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–88–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 for Windows or ASCII text.

The applicable service information may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Hirt, Aerospace Engineer, Systems and Equipment Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4156; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: On March 20, 2003, the FAA issued emergency airworthiness directive (AD) 2003–06–51, which is applicable to certain Learjet Model 45 airplanes.

Background

The FAA has received a report of severe vibration followed by a rapid nose down pitch change on a Learjet Model 45 airplane. Investigation revealed that the acme screw of the horizontal stabilizer actuator assembly was fractured. The actuator features a dual load path. The actuator assembly's primary load path, the acme screw, failed. Loads should have been retained by the secondary internal retaining rod. However, the threaded nut on the secondary internal retaining rod had worked completely off, either latently before the fracture or from the effects of the fractured screw. The cause of such failure has not been determined.

There have been no previous reports of fractured acme screws of the horizontal stabilizer actuator assembly. However, there have been reports of cracks in the acme screw. As a result of these reports, the acme screw design was changed in February 2000 to reduce the probability of crack initiation. The fractured acme screw was an early design that did not have the design improvements incorporated to reduce the probability of crack initiation.

Structural failure of the horizontal stabilizer actuator assembly could result in possible loss of control of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Bombardier Learjet Alert Service Bulletin SB A45–27–15, dated March 20, 2003, including Service Bulletin Compliance Response, which describes procedures for performing an inspection to determine the part number (P/N) of the horizontal stabilizer actuator assembly (A66), and replacing any horizontal stabilizer actuator assembly (A66) having P/N 6627401000–001 or P/N 2A9200F with a new or serviceable actuator assembly (A66) having P/N 6627401000–005. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2003–06–51 to prevent structural failure of the horizontal stabilizer actuator assembly, which could result in possible loss of control of the airplane. The AD requires an inspection to determine the P/N of the horizontal stabilizer actuator assembly (A66), and replacement of any horizontal stabilizer actuator assembly (A66) having P/N 6627401000–001 or P/N 2A9200F with a new or serviceable actuator assembly (A66) having P/N 6627401000–005. The actions are required to be accomplished in accordance with the alert service bulletin described previously.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material is included in part 39. However, as amended, part 39 provides for the FAA to add special requirements for operating an airplane to a repair facility to do the work required by an AD. For purposes of this emergency AD, we have determined that such a special flight permit is permitted, but with certain limitations.

Determination of Rule's Effective Date

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on March 20, 2003, to all known U.S. owners and operators of certain Learjet Model 45 airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–88–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–06–51 Learjet: Amendment 39–13121. Docket 2003–NM–88–AD.

Applicability: Model 45 airplanes, serial numbers 45–001 through 45–232 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure of the horizontal stabilizer actuator assembly, which could result in possible loss of control of the airplane, accomplish the following:

Inspection

(a) Before further flight, do an inspection to determine the part number (P/N) of the horizontal stabilizer actuator assembly (A66), per paragraph 2., "Accomplishment Instructions," of Bombardier Learjet Alert Service Bulletin SB A45–27–15, dated March 20, 2003, excluding Service Bulletin Compliance Response.

Corrective Action

(b) If a horizontal stabilizer actuator assembly (A66) having P/N 6627401000–001 or P/N 2A9200F is found installed during the inspection required by paragraph (a) of this

AD, before further flight, replace the horizontal stabilizer actuator assembly (A66) with a new or serviceable actuator assembly (A66) having P/N 6627401000–005, per paragraph 2., "Accomplishment Instructions," of Bombardier Learjet Alert Service Bulletin SB A45–27–15, dated March 20, 2003, excluding Service Bulletin Compliance Response.

Parts Installation

(c) As of the effective date of this AD, no person shall install any horizontal stabilizer actuator assembly (A66) having P/N 6627401000–001 or P/N 2A9200F, on any airplane.

Special Flight Permit

(d) Special flights may be issued for flights limited to required flight crew only, per sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Alternative Methods of Compliance

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Alternative methods of compliance for this emergency AD will be approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Contact David Hirt, Wichita ACO, FAA, for information about previously approved alternative methods of compliance.

Incorporation by Reference

(f) The actions shall be done in accordance with Bombardier Learjet Alert Service Bulletin SB A45–27–15, dated March 20, 2003, excluding Service Bulletin Compliance Response. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on April 28, 2003, to all persons except those persons to whom it was made immediately effective by emergency AD 2003–06–51, issued on March 20, 2003, which contained the requirements of this amendment.

Issued in Renton, Washington, on April 11, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9430 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–52–AD; Amendment 39–13119; AD 2003–08–08]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, that currently requires, among other actions, a one-time inspection to detect discrepancies at certain areas around the entry light connector of the sliding ceiling panel above the forward passenger doors; repair, if necessary; and installation or modification of a flapper door ramp deflector on the forward entry drop ceiling structure. That AD also currently requires an inspection of the wire assembly support installation above the entry door (L1) sliding panel for chafing, and repair, if necessary. This amendment requires the existing requirements and requires replacing the wire support bracket with new support clip assemblies. The actions specified by this AD are intended to prevent chafing of electrical wire assemblies above the forward passenger doors and above the entry door (L1) sliding panel of the forward drop ceiling on the passenger compartment, which could result in electrical arcing, and consequent electrical fire in the passenger compartment. This action is intended to address the identified unsafe condition.

DATES: Effective May 27, 2003.

The incorporation by reference of Boeing Alert Service Bulletin MD11–24A068, Revision 02, dated May 16, 2001; and Boeing Alert Service Bulletin MD11–25A194, Revision 07, dated January 9, 2002; as listed in the regulations, is approved by the Director of the Federal Register as of May 27, 2003.

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999, as listed in the regulations, was previously approved by the Director of the Federal Register as of March 23, 2000 (65 FR 8034, February 17, 2000).

The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000, as listed in the regulations, was previously approved by the Director of the Federal Register as of January 8, 2001 (65 FR 75612, December 4, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–24–11, amendment 39–12018 (65 FR 75612, December 4, 2000), which is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, was published in the **Federal Register** on August 29, 2002 (67 FR 55368). The action proposed to continue to require, among other actions, a one-time inspection to detect discrepancies at certain areas around the entry light connector of the sliding ceiling panel above the forward passenger doors; repair, if necessary; and installation or modification of a flapper door ramp deflector on the forward entry drop ceiling structure. The action also proposed to continue to require an inspection of the wire assembly support installation above the entry door (L1) sliding panel for chafing, and repair, if necessary. The action also proposed to require replacement of the wire support bracket with new support clip assemblies.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Revise the Applicability

One commenter states that it is exempt from the requirements of Boeing Alert Service Bulletin MD11–24A068, Revision 02, dated May 16, 2001 (which is referenced in the notice of proposed rulemaking (NPRM) as an appropriate source of service information for accomplishing certain proposed actions), because of the statement in the note in paragraph 1., "Planning Information" of the service bulletin. The note states, "Airplanes that have been modified from passenger to freighter and have had the entry door (L1) sliding panel described in this service bulletin removed are not affected." The commenter further states that its fleet has had all sliding panels removed.

From this comment, the FAA infers that the commenter is requesting that we revise the applicability of the NPRM to exclude those airplanes mentioned by the commenter. No change to the final rule is necessary because the third column of Table 1—Applicability of this AD already excludes affected airplanes "modified from a passenger to a freighter configuration on which the entry door (L1) sliding panel described in Boeing Alert Service Bulletin MD11–24A068, Revision 02, dated May 16, 2001, has been removed."

The same commenter notes that in Table 1—Applicability, the first service bulletin listed is McDonnell Douglas Alert Service Bulletin MD11–24A194, Revision 06, dated January 27, 2000. The commenter believes the service bulletin should be MD11–25A194. The commenter notes that Service Bulletin MD11–24A194, original issue, dated January 29, 2002, describes procedures for an inspection of the overhead flight compartment, not the L1 entry door.

From this comment, we infer that the commenter is requesting that the correct service bulletin be referenced in the applicability. We agree. It was our intent, as noted elsewhere in the NPRM, to specify McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000, in Table 1—Applicability of this AD. Therefore, we have revised that table accordingly.

Request To Reference Latest Service Bulletin

The same commenter notes that McDonnell Douglas Alert Service Bulletin MD11–25A194 is now up to Revision 07, dated January 9, 2002.

From this comment, we infer that the commenter is requesting that the NPRM be revised to reference that revision as an additional source of service information for accomplishing the proposed installation and modification. We agree. We have reviewed and approved Revision 07 of Boeing Alert Service Bulletin MD11–25A194, Revision 07, among other editorial changes, deletes fuselage number 0450 from the service bulletin effectivity. Therefore, we have revised the final rule to reference that revision as an appropriate source of service information for determining the applicability of the AD and for accomplishing the required installation and modification. In addition, we have revised the Cost Impact figures accordingly.

Explanation of Change to Notes

Since the language in Notes 3 and 5 of the NPRM are regulatory in nature, we have redesignated those notes as paragraphs in this final rule and have renumbered subsequent paragraphs and notes accordingly.

Explanation of Change to Inspection Definitions

We have changed all references to a "detailed visual inspection" in the existing AD (requirements are restated in paragraphs (a) through (f) of this final rule) to "detailed inspection" in this final rule to correspond with the terminology in MSG–3. For clarification purposes, we also have revised the definition of a "detailed inspection" in Note 2 of this final rule and a "general visual inspection" in Note 3 of this final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

1. Actions Currently Required by AD 2000–24–11 and Retained in This AD

There are approximately 110 airplanes of the affected design in the worldwide fleet that are affected by the actions currently required by AD 2000–24–11 and retained in this AD. Of these 110 airplanes, the FAA estimates that 21 airplanes of U.S. registry will be affected by this AD.

The inspection to detect discrepancies around the entry light connector of the slide ceiling panel above the forward passenger doors takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this currently required inspection on U.S. operators is estimated to be $2,520, or $120 per airplane.

For Group 1 airplanes as specified in Boeing Alert Service Bulletin MD11–25A194, Revision 07 (approximately 16 airplanes of U.S. registry), the installation of the flapper door ramp deflector takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $455 per airplane. Based on these figures, the cost impact of this currently required installation on U.S. operators of Group 1 airplanes is estimated to be $14,960, or $935 per airplane.

For Group 2 airplanes as specified in Boeing Alert Service Bulletin MD11–25A194, Revision 07 (approximately 8 airplanes of U.S. registry), the installation of the flapper door ramp deflector takes approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $890 per airplane. Based on these figures, the cost impact of this currently required installation on U.S. operators of Group 2 airplanes is estimated to be $10,960, or $1,370 per airplane.

For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A068, Revision 01, dated March 8, 1999 (approximately 21 airplanes of U.S. registry), the inspection of the wire assembly support installation takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this currently required inspection on U.S. operators is estimated to be $1,260, or $60 per airplane.

For airplanes in Groups 1 and 3 as specified in Boeing Alert Service Bulletin MD11–25A194, Revision 07 (approximately 18 airplanes of U.S. registry), the modification of the ramp deflector assembly support bracket takes approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this currently required modification on U.S. operators is estimated to be $2,160, or $120 per airplane.

2. New Actions Required by This AD

There are approximately 194 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet that are affected by the actions required by this AD. Of these 194 airplanes, the FAA estimates that 64 airplanes of U.S. registry will be affected by this AD.

The new actions required by paragraph (g) of this AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $294 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $30,336, or $474 per airplane.

3. Cost Estimate Calculation Information

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12018 (65 FR 75612, December 4, 2000), and by adding a new airworthiness directive (AD), amendment 39–13119, to read as follows:

2003–08–08 McDonnell Douglas: Amendment 39–13119. Docket 2001–NM–62–AD. Supersedes AD 2000–24–11, Amendment 39–12018.

Applicability: The following airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

Model	As listed in—	Excluding airplanes—
MD–11 and MD–11F airplanes	Boeing Alert Service Bulletin MD11–25A194, Revision 07, dated January 9, 2002.	None.
MD–11 and MD–11F airplanes	Boeing Alert Service Bulletin MD11–24A068, Revision 02, dated May 16, 2001.	Modified from a passenger to a freighter configuration on which the entry door (L1) sliding panel described in Boeing Alert Service Bulletin MD11–24A068, Revision 02, dated May 16, 2001, has been removed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of electrical wire assemblies above the forward passenger doors and above the entry door (L1) sliding panel of the forward drop ceiling on the passenger compartment, which could result in electrical arcing, and consequent electrical fire in the passenger compartment, accomplish the following:

Requirements of AD 2000–24–11

Detailed Inspection

(a) For airplanes listed in McDonnell Douglas Alert Service Bulletins MD11–25A194, Revision 05, dated June 21, 1999; and MD11–24A068, Revision 01, dated March 8, 1999: Within 10 days after December 28, 1998 (the effective date of AD 98–25–11 R1, amendment 39–10988), perform a detailed inspection of the aircraft wiring to detect discrepancies that include but are not limited to frayed, chafed, or nicked wires and wire insulation in the areas specified in paragraphs (a)(1) and (a)(2) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) At the area of the forward drop ceiling just outboard of mod block S3–735, and forward and inboard of the light ballast for the entry light on the sliding ceiling panel above the forward left passenger door (1L) at station location x = 24.75, y = 435, and z = 64.5.

(2) At the area above the forward right passenger door (1R) at station location x = −30, y = 430, and z = 70 in the ramp deflector assembly part number 4223570–501.

Corrective Action

(b) If any discrepancy is detected during the detailed inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with Chapter 20, Standard Wiring Practices of the MD–11 Wiring Diagram Manual, dated January 1, 1998, or April 1, 1998.

Inspection, Installation, and Modification

(c) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; or MD11–24A068, Revision 01, dated March 8, 1999: Within 6 months after March 23, 2000 (the effective date of AD 2000–03–10, amendment 39–11569), accomplish the actions specified in paragraphs (c)(1), (c)(2), (c)(4), and (c)(5) of this AD, as applicable.

(1) For Group 1 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999: Install a ramp deflector assembly on the right side forward entry drop ceiling structure in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000; or Boeing Alert Service Bulletin MD11–25A194, Revision 07, dated January 9, 2002. After the effective date of this AD, only Revision 07 of the alert service bulletin shall be used.

(2) For Group 2 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999: Install a ramp deflector assembly on the right side forward entry drop ceiling structure in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000; or Boeing Alert Service Bulletin MD11–25A194, Revision 07, dated January 9, 2002. After the effective date of this AD, only Revision 07 of the alert service bulletin shall be used.

(3) Installation of a ramp deflector assembly in accordance with McDonnell Douglas Service Bulletin MD11–25–194, dated March 15, 1996; Revision 01, dated May 1, 1996; Revision 02, dated July 12, 1996; Revision 03, dated December 12, 1996; or Revision 04, dated March 8, 1999; is acceptable for compliance with the requirements of paragraph (c)(2) of this AD.

(4) For Group 3 airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999: Modify the previously installed ramp deflector assembly bracket in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000; or Boeing Alert Service Bulletin MD11–25A194, Revision 07, dated January 9, 2002. After the effective date of this AD, only Revision 07 of the alert service bulletin shall be used.

(5) For airplanes listed in McDonnell Douglas Alert Service Bulletin MD11–24A068, Revision 01, dated March 8, 1999: Perform a general visual inspection of the wire assembly support installation for evidence of chafing, in accordance with the service bulletin. If any chafing is detected, prior to further flight, repair or replace any discrepant part with a new part in accordance with the service bulletin.

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

One-Time Inspection

(d) For airplanes other than those identified in paragraph (a) of this AD: Within 10 days after January 8, 2001 (the effective date of AD 2000–24–11, amendment 39–12018), perform a detailed inspection of the aircraft wiring to detect discrepancies that include but are not limited to frayed, chafed, or nicked wires and wire insulation in the areas specified in paragraphs (a)(1) and (a)(2) of this AD. If any discrepancy is found, prior to further flight, repair in accordance with the requirements of paragraph (b) of this AD.

(e) Accomplishment of the inspection required by paragraph (a) of AD 98–25–11 R1, amendment 39–10988, prior to the effective date of this AD, is acceptable for compliance with paragraph (d) of this AD.

Modification

(f) For airplanes listed in Group 3 of McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000: Within 6 months after January 8, 2001, modify the ramp deflector assembly support bracket on the right side forward entry door drop ceiling structure, in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000; or Boeing Alert Service Bulletin MD11–25A194, Revision 07, dated January 9, 2002. After the effective date of this AD, only Revision 07 of the alert service bulletin shall be used.

New Actions Required by This AD

Inspection, Corrective Action, if Necessary, and Replacement

(g) For airplanes listed in Groups 1 and 2 in Boeing Alert Service Bulletin MD11–24A068, Revision 02, dated May 16, 2001: Within 6 months after the effective date of this AD, do the actions specified in paragraphs (g)(1) and (g)(2) of this AD.

(1) Do a general visual inspection of the wire assembly support installation above the entry door (L1) sliding panel of the forward drop ceiling of the passenger compartment for chafing per the service bulletin. If any chafing is found, before further flight, repair per the service bulletin.

(2) Replace the wire support bracket with new support clip assemblies and ensure adequate clearance exists for all parts of the wire assembly, including breakouts to module blacks and grounds, per the service bulletin.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Unless otherwise specified in this AD, the actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999; McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000; Boeing Alert Service Bulletin MD11–25A194, Revision 07, dated January 9, 2002; and Boeing Alert Service Bulletin MD11–24A068, Revision 02, dated May 16, 2001; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin MD11–24A068, Revision 02, dated May 16, 2001; and Boeing Alert Service Bulletin MD11–25A194, Revision 07, dated January 9, 2002; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 05, dated June 21, 1999, was previously approved by the Director of the Federal Register as of March 23, 2000 (65 FR 8034, February 17, 2000).

(3) The incorporation by reference of McDonnell Douglas Alert Service Bulletin MD11–25A194, Revision 06, dated January 27, 2000, was previously approved by the Director of the Federal Register as of January 8, 2001 (65 FR 75612, December 4, 2000).

(4) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective on May 27, 2003.

Issued in Renton, Washington, on April 10, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9429 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–56–AD; Amendment 39–13120; AD 2003–08–09]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and -11F airplanes, that currently requires a one-time detailed inspection to detect discrepancies of all electrical wiring installations in various areas of the airplane; and corrective actions, if necessary. This amendment requires another identical inspection in additional fuselage stations, and corrective actions, if necessary. This amendment is prompted by a report from the airplane manufacturer that it failed to include 41 inches of fuselage in the previously required inspection. The actions specified by this AD are intended to prevent electrical arcing and/or heat damaged wires due to improper wire installations during manufacture and/or maintenance of the airplane, and consequent fire and smoke in various areas of the airplane.

DATES: Effective May 27, 2003.

The incorporation by reference of Boeing Service Bulletin MD11–24–165, Revision 02, dated March 8, 2001, excluding Evaluation Form, as listed in the regulations, is approved by the Director of the Federal Register as of May 27, 2003.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of January 8, 2001 (65 FR 75620).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–24–15, amendment 39–12022 (65 FR 75620, December 4, 2000), which is applicable to certain McDonnell Douglas Model MD–11 and -11F airplanes, was published in the **Federal Register** on August 29, 2002 (67 FR 55365). The action proposed to continue to require a one-time detailed inspection to detect discrepancies of all electrical wiring installations in various areas of the airplane; and corrective actions, if necessary. The action also proposed to require another identical inspection in additional fuselage stations, and corrective actions, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters request that the compliance time for the proposed one-time detailed inspection to detect discrepancies of all electrical wiring installations in the forward passenger compartment from stations Y=1501.000 to Y=5–10.000 be extended from five years to six years. The commenters state that this will allow the inspection to be accomplished during a routine maintenance visit.

The FAA agrees. On May 19, 2000, we issued AD 2000–11–02, amendment 39–11750 (65 FR 34341, May 26, 2000), applicable to certain McDonnell Douglas Model DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, and DC–10–40 series airplanes, and Model MD–11 and –11F airplanes. That AD requires a determination be made of whether, and at what locations, metallized polyethyleneteraphthalate (MPET) insulation blankets are installed, and replacement of MPET insulation blankets with new insulation blankets. The compliance time is within five years after June 30, 2000. Therefore, within approximately three years, the fire and smoke hazard in various areas of those airplanes due to possible ignition of MPET insulation blankets will be significantly reduced.

In light of this factor, we have determined that extending the compliance time of the inspection required by paragraph (b) of this AD by one year will not adversely affect safety, and will allow the inspection to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. Therefore, we have revised paragraph (b) of the final rule to specify a compliance time of within six years after the effective date of this AD.

Explanation of Editorial Change

We have changed the citation for Boeing Service Bulletin MD11–24–165, Revision 02, dated March 8, 2001, throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the airplane manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.)

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 182 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. We estimate that 60 airplanes of U.S. registry will be affected by this AD.

Each of the six inspections required by paragraphs (a)(1) through (a)(6) of this AD, which are currently required by AD 2000–24–15, require approximately 10 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of these currently required actions on U.S. operators is estimated to be $216,000, or $3,600 per airplane.

The inspection required by paragraph (a)(7) of this AD, which is currently required by AD 2000–24–15, takes approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this currently required action on U.S. operators is estimated to be $18,000, or $300 per airplane.

The inspection required by paragraph (a)(8) of this AD, which is currently required by AD 2000–24–15, takes approximately 12 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this currently required action on U.S. operators is estimated to be $43,200, or $720 per airplane.

The new inspection required by paragraph (b) of this AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection of this AD on U.S. operators is estimated to be $3,600, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12022 (65 FR 75620, December 4, 2000), and by adding a new airworthiness directive (AD), amendment 39–13120, to read as follows:

2003–08–09 McDonnell Douglas: Amendment 39–13120. Docket 2001–NM–56–AD. Supersedes AD 2000–24–15, Amendment 39–12022.

Applicability: Model MD–11 and –11F airplanes, manufacturer's fuselage numbers 0447 through 0449 inclusive, 0451 through 0464 inclusive, 0466 through 0489 inclusive, 0491 through 0517 inclusive, 0519 through 0552 inclusive, 0554 through 0556 inclusive, 0557, 0558 through 0633 inclusive, and 0635; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: The FAA recommends that the actions required by this AD be accomplished immediately after accomplishing the replacement of metallized polyethyleneteraphthalate (MPET) insulation blankets, as required by AD 2000–11–02, amendment 39–11750 (65 FR 34341, May 26, 2000).

To prevent electrical arcing and/or heat damaged wires due to improper wire installations during manufacture and/or maintenance of the airplane, and consequent fire and smoke in various areas of the airplane, accomplish the following:

Restatement of Certain Requirements of AD 2000–24–15

One-Time Detailed Inspection

(a) Within 5 years after January 8, 2001 (the effective date of AD 2000–24–15, amendment 39–12022), accomplish the actions specified in paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8) of this AD, as applicable.

(1) *For all airplanes:* Perform a one-time detailed inspection to detect discrepancies of all electrical wiring installations in the center and aft cargo compartments from stations Y=1521.000 to Y=2007.000, in accordance with paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–171, dated April 4, 2000; or Revision 01, dated November 6, 2000.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(2) *For all airplanes:* Perform a one-time detailed inspection to detect discrepancies of all electrical wiring installations in the forward cargo compartment from stations Y=595.000 to Y=6–73.500, in accordance with paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–170, dated April 12, 2000; or Revision 01, dated November 6, 2000.

(3) *For all airplanes:* Perform a one-time detailed inspection to detect discrepancies of all electrical wiring installations in the forward passenger compartment from stations Y=5–11.000 to Y=2007.000, in accordance with paragraph 3.B., "Work Instructions," of

the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–167, dated April 4, 2000; or Boeing Service Bulletin MD11–24–167, Revision 01, including Appendix 1, dated November 6, 2000.

(4) *For all airplanes:* Perform a one-time detailed inspection to detect discrepancies of all electrical wiring installations in the forward passenger compartment from stations Y=756.000 to Y=1501.000, in accordance with paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–165, dated April 4, 2000; or Boeing Service Bulletin MD11–24–165, Revision 01, including Appendix, dated November 6, 2000; or Revision 02, including Appendix, dated March 8, 2001, excluding Evaluation Form.

(5) *For all airplanes:* Perform a one-time detailed inspection to detect discrepancies of all electrical wiring installations in the forward passenger compartment from stations Y=465.000 to Y=755.000, in accordance with paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–163; dated April 4, 2000; or Boeing Service Bulletin MD11–24–163, Revision 01, including Appendix 1, dated November 6, 2000.

(6) *For all airplanes:* Perform a one-time detailed inspection to detect discrepancies of all electrical wiring installations in the flight compartment and forward drop ceilings areas from stations Y=275.000 to Y=464.000, in accordance with paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–188, dated April 28, 2000; or Revision 01, dated November 6, 2000.

(7) For airplanes having manufacturer's fuselage numbers 0447 through 0449 inclusive, 0451 through 0464 inclusive, 0466 through 0489 inclusive, 0491 through 0517 inclusive, 0519 through 0552 inclusive, 0554 through 0556 inclusive, 0557, and 0558 through 0633 inclusive: Perform a one-time detailed inspection to detect discrepancies of all electrical wiring installations in the center accessory compartment from stations Y=6–50.000 to Y=1179.000, in accordance with paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–161, dated April 10, 2000; or Revision 01, dated November 6, 2000.

(8) For airplanes having manufacturer's fuselage numbers 0447 through 0449 inclusive, 0451 through 0464 inclusive, 0466 through 0489 inclusive, 0491 through 0517 inclusive, 0519 through 0552 inclusive, 0554 through 0556 inclusive, 0557, and 0558 through 0633 inclusive: Perform a one-time detailed inspection to detect discrepancies of all electrical wiring installations in the main avionics compartment from stations Y=275.000 to Y=464.000, in accordance with paragraph 3.B., "Work Instructions," of the Accomplishment Instructions of McDonnell Douglas Service Bulletin MD11–24–162, dated April 10, 2000; or Revision 01, dated November 6, 2000.

New Actions Required by This AD

One-Time Detailed Inspection

(b) For Group 2 airplanes identified in Boeing Service Bulletin MD11–24–165, Revision 02, including Appendix, dated March 8, 2001, excluding Evaluation Form: Within 6 years after the effective date of this AD, perform a one-time detailed inspection to detect discrepancies of all electrical wiring installations in the forward passenger compartment from stations Y=1501.000 to Y=5–10.000, in accordance with paragraph 3.B., "Work Instructions," "Group 2," of the Accomplishment Instructions of Boeing Service Bulletin MD11–24–165, Revision 02, dated March 8, 2001, excluding Evaluation Form.

Corrective Action

(c) If any discrepancy is detected during the inspection required by paragraphs (a)(1) through (a)(8) of this AD or paragraph (b) of this AD, before further flight, accomplish the applicable corrective action(s) in accordance with the Accomplishment Instructions of the following applicable service bulletins, except as provided in paragraphs (d) and (e) of this AD, as applicable:

(1) McDonnell Douglas Service Bulletin MD11–24–171, dated April 4, 2000; or Revision 01, dated November 6, 2000;

(2) McDonnell Douglas Service Bulletin MD11–24–170, dated April 12, 2000; or Revision 01, dated November 6, 2000;

(3) McDonnell Douglas Service Bulletin MD11–24–167, dated April 4, 2000;

(4) Boeing Service Bulletin MD11–24–167, dated April 4, 2000; or Revision 01, including Appendix, dated November 6, 2000;

(5) McDonnell Douglas Service Bulletin MD11–24–165, dated April 4, 2000;

(6) Boeing Service Bulletin MD11–24–165, Revision 01, including Appendix, dated November 6, 2000;

(7) McDonnell Douglas Service Bulletin MD11–24–163, dated April 4, 2000;

(8) Boeing Service Bulletin MD11–24–163, Revision 01, including Appendix 1, dated November 6, 2000;

(9) McDonnell Douglas Service Bulletin MD11–24–188, dated April 28, 2000; or Revision 01, dated November 6, 2000;

(10) McDonnell Douglas Service Bulletin MD11–24–161, dated April 10, 2000; or Revision 01, dated November 6, 2000; or

(11) McDonnell Douglas Service Bulletin MD11–24–162, dated April 10, 2000; or Revision 01, dated November 6, 2000;

(12) Boeing Service Bulletin MD11–24–165, Revision 02, including Appendix, dated March 8, 2001, excluding Evaluation Form.

Note 4: Where there are differences between the AD and the referenced service bulletins, the AD prevails.

(d) If no gap between the wire bundle and blanket can be seen where the wiring is routed over the structural frames when pressure is applied to the blanket, before further flight, reposition wires or clamps so that a gap can be seen when pressure is applied to the blanket.

(e) If any screw terminal of the flag lug bus bar is loose, before further flight, retorque to 10 to 11 inch-pounds.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–24–15, amendment 39–12022, are approved as alternative methods of compliance with this AD.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Unless otherwise specified in this AD, the actions shall be done in accordance with the applicable service bulletins listed in the following table:

TABLE.—APPLICABLE SERVICE BULLETINS

Service bulletin	Revision level	Date
Boeing Service Bulletin MD11–24–163, including Appendix	Revision 01	November 6, 2000.
Boeing Service Bulletin MD11–24–165, including Appendix 1	Revision 01	November 6, 2000.
Boeing Service Bulletin MD11–24–165, including Appendix, excluding Evaluation Form	Revision 02	March 8, 2001.
Boeing Service Bulletin MD11–24–167, including Appendix	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–161	Original	April 10, 2000.
McDonnell Douglas Service Bulletin MD11–24–161	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–162	Original	April 10, 2000.
McDonnell Douglas Service Bulletin MD11–24–162	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–163	Original	April 4, 2000.
McDonnell Douglas Service Bulletin MD11–24–165	Original	April 4, 2000.
McDonnell Douglas Service Bulletin MD11–24–167	Original	April 4, 2000.
McDonnell Douglas Service Bulletin MD11–24–170	Original	April 12, 2000.
McDonnell Douglas Service Bulletin MD11–24–170	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–171	Original	April 4, 2000.
McDonnell Douglas Service Bulletin MD11–24–171	Revision 01	November 6, 2000.
McDonnell Douglas Service Bulletin MD11–24–188	Original	April 28, 2000.
McDonnell Douglas Service Bulletin MD11–24–188	Revision 01	November 6, 2000.

(1) The incorporation by reference of Boeing Service Bulletin MD11–24–165, Revision 02, including Appendix, dated March 8, 2001, excluding Evaluation Form, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of the following service bulletins labeled original, MD11–24–161, MD11–24–162, MD11–24–163, MD11–24–165, MD11–24–167, MD11–24–170, MD11–24–171, and MD11–24–188; and labeled Revision 1, MD11–24–163 including Appendix, MD11–24–165 including Appendix 1, MD11–24–167 including Appendix, MD11–24–162, MD11–24–161, MD11–24–170, MD11–24–171, and MD11–24–188; as stated in the table above; were approved previously by the Director of the Federal Register as of January 8, 2001 (65 FR 75620, December 4, 2000).

(3) Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on May 27, 2003.

Issued in Renton, Washington, on April 10, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9428 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–166–AD; Amendment 39–13066; AD 2003–04–17]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and MD–11F airplanes, that requires an inspection to detect damage of the wiring/bundles routed to the wire support bar of the circuit breaker panel and to the circuit breakers, and an inspection of the wiring/bundles for correct routing. This amendment also requires installation of protective sleeving, spacers, and sta-straps; and corrective/follow-on actions, if necessary. The actions specified by this AD are necessary to prevent chafing and consequent arcing or loss of electrical power to associated avionics buses in the upper avionics circuit breaker panel of the main observer's station, which could result in smoke and/or fire in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Effective May 27; 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address:

sandi.carli@faa.gov. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11F airplanes was published in the **Federal Register** on August 29, 2002 (67 FR 55372). That action proposed to require an inspection to detect damage of the wiring/bundles routed to the wire support bar of the circuit breaker panel and to the circuit breakers, and an inspection of the wiring/bundles for correct routing. That action also proposed to require installation of protective sleeving, spacers, and sta-straps; and corrective/follow-on actions, if necessary.

Explanation of Editorial Change

We have changed the service bulletin citation throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.)

Opportunity To Comment

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 195 Model MD–11 and MD–11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 72 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,960, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–04–17 McDonnell Douglas: Amendment 39–13066. Docket 2001–NM–166–AD.

Applicability: Model MD–11 and MD–11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A179, Revision 02, dated December 19, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing and consequent arcing or loss of electrical power to associated avionics buses in the upper avionics circuit breaker panel, which could result in smoke and/or fire in the cockpit, accomplish the following:

Inspection, Corrective Actions, Modification, and Installation

(a) Within 6 months after the effective date of this AD, do the actions specified in paragraphs (a)(1) through (a)(3) of this AD, per Boeing Alert Service Bulletin MD11–24A179, Revision 02, dated December 19, 2001, excluding Evaluation Form.

(1) Do a detailed inspection to detect damage of the wiring/bundles routed to the wire support bar of the circuit breaker panel and to the circuit breakers.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Do a general visual inspection of the wiring/bundles for correct routing. Make sure ABS9108 (16-gauge power feeders) routing provides adequate stress relief from the support bar to bus termination points.

Note 3: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(3) Install protective sleeving, spacers, and sta-straps.

Corrective/Follow-On Actions, If Necessary

(b) Before further flight after doing the inspections required by paragraphs (a)(1) and (a)(2) of this AD, do the applicable corrective/follow-on action(s) specified in "Table-Corrective/Follow-On Actions" of this AD per Boeing Alert Service Bulletin MD11–24A179, Revision 02, dated December 19, 2001, excluding Evaluation Form. Table—Corrective/Follow-On Actions is as follows:

TABLE.—CORRECTIVE/FOLLOW-ON ACTIONS

If—	Then—
(1) Any damaged wiring/bundle is detected	Repair or replace any damaged wiring/bundle with new wiring.
(2) Correct routing is detected	Replace the wire clamp located on the support bar of the circuit breaker panel with a new clamp.
(3) Incorrect routing is detected	Modify wire routing, and replace the wire clamp located on the support bar of the circuit breaker panel with a new clamp.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11–24A179, Revision 02, dated December 19, 2001, excluding Evaluation Form. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on May 27, 2003.

Issued in Renton, Washington, on April 10, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9427 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–160–AD; Amendment 39–13065; AD 2003–04–16]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and MD–11F airplanes that requires an inspection to detect chafed wires in the avionics equipment compartment, and repair, if necessary. This amendment also requires replacement of the existing cover of the avionics cooling fan with a new cover, and installation of a new placard on the cover. Additionally, this amendment specifies which previously accomplished actions are acceptable for compliance with certain requirements of this AD; and clarifies the applicability, a part number, and the inspection definition. The actions specified by this AD are intended to ensure that the cover of the avionics cooling fans is removed only for fan maintenance, and to prevent smoke and/or fire in the avionics equipment compartment due to chafing and arcing as a result of maintenance personnel lying against the removed cover and/or insulation blankets that cover wire harnesses. This action is intended to address the identified unsafe condition.

DATES: Effective May 27, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Writer/Editor; telephone (425) 687–4243, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas MD–11 and MD–11F airplanes was published in the **Federal Register** on August 29, 2002 (67 FR 55362). That action proposed to require an inspection to detect chafed wires in the avionics equipment compartment, and repair, if necessary. That action also proposed to require replacement of the existing cover of the avionics cooling fan with a new cover, and installation of a new

placard on the cover. Additionally, that action proposed to specify which previously accomplished actions are acceptable for compliance with certain requirements of that proposed AD; and clarify the applicability, a part number, and the inspection definition.

Since the Issuance of the NPRM

The manufacturer has released Revision 02 of Boeing Alert Service Bulletin (ASB) MD11–21A033, dated December 4, 2002. Revision 02 of the ASB made certain editorial and cost information changes, but states that no more work is necessary on airplanes on which Revision 01 has been accomplished. We have determined that accomplishing the actions specified in Revision 02 of the ASB is an adequate method of compliance to the requirements of the final rule, and have revised the final rule accordingly.

Explanation of Editorial Change

We have changed the citation for Boeing Alert Service Bulletin MD11–21A033, Revision 01, dated April 30, 2001, throughout this final rule to exclude the Evaluation Form. (The form is intended to be completed by operators and submitted to the manufacturer to provide input on the quality of the service bulletin; however, this AD does not include such a requirement.)

Opportunity To Comment

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 80 Model MD–11 and MD–11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 33 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,991 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $73,623, or $2,231 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–04–16 McDonnell Douglas: Amendment 39–13065. *Docket 2001–NM–160–AD.*

Applicability: Model MD–11 and MD–11F airplanes, as listed in Boeing Alert Service Bulletin MD11–21A033, Revision 01, dated April 30, 2001; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the cover of the avionics cooling fans is removed only for fan maintenance, and to prevent smoke and/or fire in the avionics equipment compartment due to chafing and arcing as a result of maintenance personnel lying against the removed cover and/or insulation blankets that cover wire harnesses, accomplish the following:

Inspection and Repair if Necessary

(a) Within 18 months after the effective date of this AD, do a general visual inspection to detect chafed wires in the area of the avionics cooling fans inside the avionics equipment compartment, per Boeing Alert Service Bulletin MD11–21A033, Revision 01, dated April 30, 2001, excluding Evaluation Form or Revision 02, dated December 4, 2002, excluding Evaluation Form. If any chafed wiring is detected, before further flight, repair per the service bulletin.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Replacement of a Cover and Installation of a New Placard

(b) Within 18 months after the effective date of this AD, replace the existing cover of the avionics cooling fan with a new cover, and install a new placard on the cover, per Boeing Alert Service Bulletin MD11–21A033, Revision 01, dated April 30, 2001, excluding Evaluation Form or Revision 02, dated December 4, 2002. The replacement must be done with part numbers that are specified in View C–C, Figure 1, of the service bulletin.

(c) Accomplishment of the actions specified in McDonnell Douglas Service Bulletin MD11–21–033, dated May 1, 1992, before the effective date of this AD, is considered acceptable for compliance with the requirements of paragraph (b) of this AD.

Spares

(d) As of the effective date of this AD, no person shall install a cover assembly, part number ABM7569–1, on any airplane.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Unless otherwise specified by this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin MD11–21A033, Revision 01, dated April 30, 2001, excluding Evaluation Form or Boeing Alert Service Bulletin MD11–21A033, Revision 02, dated December 4, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on May 27, 2003.

Issued in Renton, Washington, on April 10, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9426 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–50–AD; Amendment 39–13123; AD 2001–13–03 R1]

RIN 2120–AA64

Airworthiness Directives; Kaman Aerospace Corporation Model K–1200 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD) for Kaman Aerospace Corporation (Kaman) Model K–1200 helicopters that currently requires reducing the life limit of the rotor shaft and teeter pin assembly and establishing a life limit for the flap clevis. This amendment retains those requirements but removes a flap clevis part number from the applicability and, as a result of a comment, changes the application of the life limit from the flap clevis to the flap clevis assembly. This amendment is prompted by the determination after an analysis of testing results that a certain flap clevis assembly should have an unlimited life. The actions specified by this revision are intended to remove the life limit for a specified flap clevis assembly. The actions specified by this AD are intended to prevent fatigue failure of the rotor shaft, teeter pin assembly, and flap clevis assembly, and subsequent loss of control of the helicopter.

DATES: Effective May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Noll, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7160, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 by revising AD 2001–13–03, Amendment 39–12283 (66 FR 34102, June 27, 2001), for 1 Kaman Model K–1200 helicopters, was published in the **Federal Register** on May 13, 2002 (67 FR 31992). The action proposed retaining the existing life limit for each rotor shaft, teeter pin assembly, and flap clevis, except flap clevis, part number (P/N) K911049–021. That action was prompted by the determination after an analysis of testing results that flap clevis, P/N K911049–021, should have an unlimited life.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received. The one commenter, the manufacturer, states that the flap clevis assembly part numbers should be identified instead of the flap clevis part numbers to be consistent with actual current maintenance practices. The FAA agrees because we have approved a revision to the Airworthiness Limitations of the Kaman Model K–1200 helicopter maintenance manual that imposes the life limit on the flap clevis assembly part numbers not the flap clevis part numbers. The proposed change will make this AD consistent with the Airworthiness Limitations section. Additionally, two part numbers for the flap clevis were incorrectly stated in paragraph (b) of the proposed AD; however, this change to flap clevis assembly parts number also corrects that error.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require adopting the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that this AD will affect nine helicopters of U.S. registry. No additional costs will be incurred to accomplish the proposed actions because it would relieve a previously-imposed AD life limit for flap clevis, P/N K911049–021.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory

Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–12283 (66 FR 34102, June 27, 2001), and by adding a new airworthiness directive (AD), Amendment 39–13123, to read as follows:

2001–13–03 R1 Kaman Aerospace Corporation: Amendment 39–13123. Docket No. 2000–SW–50–AD. Revises AD 2001–13–03, Amendment 39–12283, Docket No. 2000–SW–50–AD.

Applicability: Model K–1200 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rotor shaft, teeter pin assembly, or flap clevis due to fatigue cracks, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, remove any rotor shaft, part number (P/N) K974112–001, –003, –005, –007, –009, or –101, that has 3,750 or more hours time-in-service (TIS) and replace it with an airworthy part. Remove any teeter pin assembly, P/N K910005–007 or –009, that has 550 or more hours TIS and replace it with an airworthy part. Remove any flap clevis assembly, P/N K911049–001, –003, or –005, that has 640 or more hours TIS, and replace it with an airworthy part.

(b) This AD revises the Limitations section of the maintenance manual by removing the life limit of 640 hours TIS established for the flap clevis, P/N K911049–021. The life limit for each rotor shaft, P/N K974112–001, –003, –005, –007, –009, and –101 remains at 3,750 hours TIS; the life limit for each teeter pin assembly, P/N K910005–007 and –009, remains at 550 hours TIS; and the life limit for each flap clevis assembly, P/N K911049–001, –003, and –005 remains at 640 hours TIS.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits will not be issued.

(e) This amendment becomes effective on May 27, 2003.

Issued in Fort Worth, Texas, on April 9, 2003.

Michele M. Owsley,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–9576 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14044; Airspace Docket No. 02–AGL–22]

Establishment of Class E Airspace; Cavelier, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Cavelier, ND. An area Navigation (RNAV) Standard Instrument Approach procedure (SIAP) has been developed for Cavelier Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action establishes controlled airspace for Cavelier Municipal Airport.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, January 17, 2003, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Cavelier, ND (68 FR 2460). The proposal was to establish controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Cavelier, ND, to accommodate aircraft executing instrument flight procedures into and out of Cavelier Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1. of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Cavelier, ND [New]

Cavelier, Cavelier Municipal Airport, ND
(Lat. 48°47′02″N., long. 97°37′55″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Cavelier Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on April 1, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–9728 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14047; Airspace Docket No. 02–AGL–20]

Establishment of Class E Airspace; Berrien Springs, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Berrien Springs, MI. An area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) has been developed for Andrews University Airpark, Berrien Springs, MI. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action establishes controlled airspace for Andrews University Airpark.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, January 17, 2003, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Berrien Springs, MI (68 FR 2461). The proposal was to establish controlled airspace extending upward from 700 feet or more above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Berrien Springs, MI, to accommodate aircraft executing instrument flight procedures into and out of Andrews University Airpark. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING; POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 Feet or more above the surface of the earth.

* * * * *

AGL MI E5 Berrien Springs, MI [New]

Berrien Springs, Andrews University Airpark, MI
(Lat. 41°57′06″ N., long. 86°22′04″ W.)

That airspace extending upward from 700 feet above the surface within a 8.1-mile radius of Andrews University Airpark, excluding that airspace within the South Bend, IN, Benton Harbor, MI, and Dowagiac, MI, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on April 1, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–9727 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–14180; Airspace Docket No. 02–AGL–17]

Modification of Class E Airspace; Saginaw, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Saginaw, MI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPS) have been developed for Jack Barstow Airport, Midland, MI. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the area of the existing controlled airspace at Jack Barstow Airport.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, January 17, 2003, the FAA proposed to amend 14 CFR part 71 to modify class E airspace at Saginaw, MI (68 FR 2463). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the order.

The Rule

This amendment to 14 CFR part 71 modified Class E airspace at Saginaw, MI, to accommodate aircraft executing instrument flight procedures into and out of Jack Barstow Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulation action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Saginaw, MI [Revised]

MBS International Airport, MI
(Lat. 43°31′58″ N., long. 84°04′47″ W.)
Saginaw County H.W. Browne Airport, MI
(Lat. 43°26′00″ N., long. 83°51′45″ W.)
Bay City, James Clements Municipal Airport, MI
(Lat. 43°32′49″ N., long. 83°53′44″ W.)
Midland, Jack Barstow Airport, MI
(Lat. 43°39′46″ N., long. 84°15′41″ W.)
Saint Mary's Hospital, MI
Point in Space Coordinates
(Lat. 43°24′54″ N., long. 83°56′27″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of MBS International Airport, within a 6.5-mile radius of Saginaw County H.W. Browne Airport, within a 6.4-mile radius of James Clements Municipal Airport, within a 6.4-mile radius of Jack Barstow Airport, and within a 6-mile radius of the Point in Space serving Saint Mary's Hospital.

* * * * *

Issued in Des Plaines, Illinois on April 1, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–9726 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN 1219–AA98 (Phase 6)

Seat Belts for Off-Road Work Machines and Wheeled Agricultural Tractors at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Direct final rule; request for comments.

SUMMARY: MSHA is issuing a direct final rule that updates the Agency's requirements for operator restraint systems (seat belts) for off-road work machines and wheeled agricultural tractors at metal and nonmetal mines. The existing standards require seat belts for off-road work machines to meet the requirements of the Society of Automotive Engineers' (SAE) consensus standard SAE J386–1985, and seat belts for wheeled agricultural tractors to meet the requirements of SAE J1194–1983. Since MSHA promulgated these standards, however, the SAE has revised them to reflect technological advances in seat belt design and materials. Seat belts meeting the specifications of earlier versions of these SAE standards are no longer routinely installed by manufacturers. The direct final rule will permit seat belts to meet the requirements of the more recent revisions of the SAE J386 and SAE J1194 standards.

DATES: This direct final rule is effective June 20, 2003, without further notice, unless we receive significant adverse comments by May 21, 2003. If we receive such comments, we will publish a timely withdrawal of this direct final rule in the **Federal Register**.

The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of June 20, 2003.

ADDRESSES: Clearly identify comments as such and submit them either electronically to *comments@msha.gov;* by facsimile to 202–693–9441; or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939. Comments are posted for public viewing at *www.msha.gov/currentcomments.*

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; Phone: 202–693–9442; FAX: 202–693–9441; E-mail: *nichols-marvin@msha.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Copies of the SAE publications incorporated by reference may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209–3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096–0001.

This direct final rule only updates §§ 56/57.14130, paragraph (h), *Seat belts construction.* MSHA is not updating §§ 56/57.14130, paragraph (b)(2), which also incorporates by reference SAE J1194–1983, because paragraph (b)(2) addresses the construction of roll-over protective structures (ROPS), not seat belts. The construction of ROPS is beyond the scope of this rulemaking.

A. Direct Final Rule and Significant Adverse Comments

MSHA has determined that this rulemaking is suitable for a direct final rule because we do not expect that updating the metal and nonmetal seat belt standards, to include the revised SAE consensus standards, will elicit any significant adverse comments. A significant adverse comment is one that explains (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach, or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, we will consider whether it warrants a substantive response in a notice and comment process.

Elsewhere in this issue of the **Federal Register**, we are publishing a companion proposed rule under § 553 of the Administrative Procedure Act to speed notice and comment rulemaking should we withdraw this direct final rule. The companion proposed rule and this direct final rule are substantively identical. All interested parties should comment by May 21, 2003, because we will not initiate an additional comment period.

B. Regulatory History

Existing standards §§ 56/57.14130 derived from standards promulgated by MSHA's predecessor, the Mining Enforcement and Safety Administration (MESA) in 1977. Like these existing standards, the standards under MESA required seat belts to meet specific SAE requirements that were incorporated by reference. MSHA's requirements for seat belts at metal and nonmetal mines remained substantively unchanged until 1988.

In 1984, MSHA issued a proposed rule (49 FR 49201) revising the loading, hauling, and dumping standards at metal and nonmetal mines. MSHA had considered removing the incorporation by reference provisions relating to seat belts and accompanying roll-over protective structures (ROPS) on equipment and replace them with performance criteria (49 FR 49201 and 49203). At that time, however, commenters urged MSHA to retain the incorporation by reference and update it.

In 1988, MSHA promulgated final §§ 56/57.14130 for ROPS and seat belts for certain off-road work machines. The final rule (53 FR 32496 and 32524) updated the references to SAE J386–1985 and SAE J1194–1983 to reflect the most current revision. The final rule also added a provision, §§ 56/57.14131, requiring that seat belts on haulage trucks meet the same SAE requirements as MSHA required for seat belts on off-road work machines.

II. Discussion of Seat Belt Requirements

Existing standards §§ 56/57.14130(h) and 56/57.14131(c) require that seat belts for off-road work machines meet the requirements set forth in the Society of Automotive Engineers' (SAE) consensus standard J386–1985. Existing standards §§ 56/57.14130(h) also require that seat belts for agricultural tractors meet SAE consensus standard J1194–1983. These SAE consensus standards are incorporated by reference. Paragraphs §§ 56/57.14130(j) and 56/57.14131(d) contain the required information about the Federal Register's approval of the incorporation by reference and the addresses for examining or obtaining copies.

Compliance Difficulties. MSHA enforcement of its seat belt standards relies on the labeling of seat belts in accordance with the SAE standards. For example, SAE J386–1985 states—

> 4.1.5 Marking (Labeling)—Each seat belt assembly and/or each section of belt assembly shall be permanently and legibly labeled with year of manufacture, model or style number, and name or trademark of manufacturer or importer, and shall state compliance with SAE J386 JUN85, Part II.

Since 1988, however, SAE has updated SAE J386 twice and SAE J1194 three times, each time reaffirming the previous version or incorporating advances in safety technology. Seat belts and assemblies currently manufactured for off-road work machines and haulage trucks comply with SAE J386–1997 and those currently manufactured for tractors comply with SAE J1194–1999. Seat belts meeting the superceded SAE J386–1985 or SAE J1194–1983 standards are no longer available, except through special orders at considerable cost. Consequently, because manufacturers no longer construct or label seat belts in accordance with the outdated SAE standards, mine operators have difficulty complying with MSHA's existing standards.

Equivalent Protection. MSHA bases its requirements for roll-over protective structures (ROPS) and operator restraint systems (seat belts) on technical documents developed by the SAE, a nationally and internationally recognized consensus standards-setting organization. ROPS and seat belts provide a predictable level of performance when their construction meets the specifications of SAE's consensus standards. For example, SAE's testing of seat belt assemblies verifies that the strength and construction under the 1993 and 1997 revisions of SAE J386 meet the minimum requirements set forth by the society. Engineers and safety professionals agree that SAE J386 performance and test requirements provide a safe operator restraint system for off-road work machines commonly used in mining. The direct final rule expands compliance alternatives to accommodate advances in seat belt technology without reducing protection for miners.

Expanded Compliance Alternatives. Newly manufactured replacement seat belts for off-road work machines and

wheeled agricultural tractors, as well as those installed on new off-road machines or tractors, meet the specifications in the most recent SAE consensus standards. The immediate availability of replacement seat belts "off-the-shelf," as opposed to those requiring a special order, speeds replacement, minimizing equipment down time and the enticement to use off-road work machines without compliant seat belts. Also, allowing the use of seat belts meeting other revisions of the SAE standards, rather than only the most recent, allows mine operators to use the supply of replacement seat belts they already have on hand.

Enhanced Safety. The direct final rule improves safety by updating MSHA's standards to allow the use of advances in seat belt technology addressed in the newer industry consensus standards. Many safeguards and improved engineering are integral design features on new products. For example, these revisions address developments, such as tether straps and three and four point systems, which are not included in the 1983 or 1985 revisions. Up-to-date standards are consistent with the goals of the Federal Mine Safety and Health Act of 1977, Executive Order 12866, and the Regulatory Flexibility Act.

III. The Regulatory Flexibility Act, Executive Order 12866, and the Small Business Regulatory Enforcement Fairness Act

In accordance with Executive Order (E.O.) 12866, we have analyzed the estimated costs and benefits associated with this direct final rule, and have included our Regulatory Economic Analysis (REA) in this preamble. This direct final rule is not an economically significant regulatory action under § 3(f)(1) of E.O. 12866.

In accordance with § 605 of the Regulatory Flexibility Act (RFA), we certify that this direct final rule does not have a significant economic impact on a substantial number of small entities. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, we must include the factual basis for this certification in the direct final rule. Accordingly, we are publishing the factual basis for our regulatory flexibility certification statement in the **Federal Register**, as part of this preamble, and are providing a copy to the Small Business Administration (SBA), Office of Advocacy. We also will mail a copy of the direct final rule, including the preamble and certification statement, to metal and nonmetal mine operators and miners' representatives and post it on our Internet Home Page at *www.msha.gov*.

Factual basis for certification. This direct final rule provides at least the same level of protection for miners at a lower cost for mine operators. It affects all 11,641 metal and nonmetal mines, 85.3% (9,928) of which employ fewer than 20 miners and 99.8% (11,618) of which employ 500 or fewer miners (PEIR, CY 2001). It includes no additional costs and has no adverse economic impact on the metal and nonmetal mining industry. To the contrary, there are cost savings associated with not having to special order discontinued, older seat belts and not having to replace those seat belts already installed. The direct final rule also eliminates the burden of preparing and responding to petitions for modification. The advantage of being able to obtain seat belts "off-the-shelf" allows mine operators to replace damaged seat belts more quickly, thus reducing machinery and equipment down time which could result in lost production.

IV. Other Regulatory Considerations

A. Paperwork Reduction Act

This direct final rule contains no information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Although the SAE requires seat belts to have a label indicating compliance with a specific SAE consensus standard, these labels are prepared and attached by the seat belt manufacturer. Both mine operators and MSHA use these labels to determine whether the seat belts comply with the appropriate SAE consensus standard.

B. Unfunded Mandates Reform Act of 1995

This direct final rule affects about 220 small metal and nonmetal mines operated by governmental jurisdictions mostly to provide aggregates for the construction and repair of highways and roads. We have determined, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, that this direct final rule does not include any Federal mandate that may result in increased expenditures by state, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. We also determined, for purposes of § 203, that this direct final rule does not significantly or uniquely affect these entities.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This direct final rule is not subject to Executive Order 12630 because it would not involve implementation of a policy with "takings" implications.

D. Executive Order 12988: Civil Justice Reform

In accordance with Executive Order 12988, we have determined that this direct final rule will not unduly burden the Federal court system. We wrote the direct final rule to provide a clear legal standard for affected conduct and have reviewed it to eliminate drafting errors and ambiguities.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of this direct final rule and have determined that it has no adverse effects on children.

F. Executive Order 13132: Federalism

In accordance with Executive Order 13132, we have reviewed this direct final rule and have determined that it does not have "federalism" implications.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we certify that this direct final rule does not impose substantial direct compliance costs on Indian tribal governments.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, we have reviewed this direct final rule and have determined that it has no significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action are necessary.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the direct final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed previously in this preamble, MSHA has determined that the direct final rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects

30 CFR Part 56

Incorporation by reference, Mine safety and health, Surface mining.

30 CFR Part 57

Incorporation by reference, Mine safety and health, Underground mining.

Dated: April 14, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, MSHA is amending chapter I, parts 56 and 57 of title 30 of the Code of Federal Regulations as follows:

PART 56—[AMENDED]

■ 1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 2. Section 56.14130 is amended by revising paragraphs (h) and (j) to read as follows:

§ 56.14130 Roll-over protective structures (ROPS) and seat belts.

* * * * *

(h) *Seat belts construction.* Seat belts required under this section shall meet the requirement of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985, 1993, or 1997), or SAE J1194, "Roll-Over Protective Structures (ROPS) for Wheeled Agricultural Tractors" (1983, 1989, 1994, or 1999), as applicable, which are incorporated by reference.

* * * * *

(j) *Publications.* The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209–3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096–0001.

■ 3. Section 56.14131 is amended by revising paragraphs (c) and (d) to read as follows:

§ 56.14131 Seat belts for haulage trucks.

* * * * *

(c) Seat belts required under this section shall meet the requirements of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985, 1993, or 1997), which are incorporated by reference.

(d) The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209–3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096–0001.

PART 57—[AMENDED]

■ 4. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 5. Section 57.14130 is amended by revising paragraphs (h) and (j) to read as follows:

§ 57.14130 Roll-over protective structures (ROPS) and seat belts for surface equipment.

* * * * *

(h) *Seat belts construction.* Seat belts required under this section shall meet the requirement of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985, 1993, or 1997), or SAE J1194, "Roll-Over Protective Structures (ROPS) for Wheeled Agricultural Tractors" (1983, 1989, 1994, or 1999), as applicable, which are incorporated by reference.

* * * * *

(j) *Publications.* The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209–3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096–0001.

■ 6. Section 57.14131 is amended by revising paragraphs (c) and (d) to read as follows:

§ 57.14131 Seat belts for surface haulage trucks.

* * * * *

(c) Seat belts required under this section shall meet the requirements of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985, 1993, or 1997), which are incorporated by reference.

(d) The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209–3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096–0001.

[FR Doc. 03–9657 Filed 4–18–03; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 71 and 75

RIN: 1219–AA98 (Phase 9)

Standards for Sanitary Toilets in Coal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Direct final rule; request for comments.

SUMMARY: MSHA is removing an application and approval requirement from existing mandatory standards. Currently, MSHA must approve sanitary toilets for use in underground coal mines, and MSHA and the National Institute for Occupational Safety and Health (NIOSH) must jointly approve sanitary toilets for use in surface coal mines. MSHA and NIOSH base their approval on criteria drawn from the American National Standard Institute's (ANSI's) *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements.* MSHA is amending its regulations to state which sanitary toilets meet the standard in order to eliminate the need for an application for

approval and its associated paperwork burden. This action also directly informs manufacturers, mine operators, miners, and miners' representatives about which sanitary toilets meet the standard. Removing the application requirements has no substantive effect on the sanitation standards.

DATES: This direct final rule is effective June 20, 2003 without further notice, unless MSHA receives significant adverse comment by May 21, 2003. If MSHA receives such comment, the Agency will publish a timely withdrawal of this direct final rule in the **Federal Register.**

ADDRESSES: Clearly identify comments as such and submit them either electronically to *comments@msha.gov;* by facsimile to 202–693–9441; or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.htm.*

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; Phone: 202–693–9442; FAX: 202–693–9441; E-mail: *nichols-marvin@msha.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction.

The Office of Management and Budget's (OMB's) current approval for §§ 71.500 and 75.1712–6 under control number 1219–0101 expires on November 30, 2003. OMB approval was contingent on MSHA initiating rulemaking "to update and simplify this standard with the goal of eliminating unnecessary requirements and reducing the unnecessary burdens." In response to OMB concerns, MSHA developed this direct final rule to eliminate the need for applications for approval of sanitary toilets and their associated paperwork burden. This direct final rule does not address any other aspect of MSHA's standards for sanitary facilities at coal mines. Sanitary toilet facilities for surface work areas of underground mines remain subject to the provisions of 30 CFR 75.1712–3, which is unchanged.

Direct Final Rule and Significant Adverse Comments

MSHA has determined that this rulemaking is suitable for a direct final rule because we do not expect to receive any significant adverse comments. A significant adverse comment is one that explains (1) why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach, or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, MSHA will consider whether it warrants a substantive response in a notice and comment process.

Elsewhere in this issue of the **Federal Register,** we are publishing a companion proposed rule under § 553 of the Administrative Procedure Act to speed notice and comment rulemaking should we withdraw this direct final rule. The companion proposed rule and this direct final rule are substantively identical. All interested parties should comment by May 21, 2003 because we will not initiate an additional comment period.

II. Background Discussion of Existing Standards

A. Regulatory History

MSHA originally promulgated sanitation standards under the Federal Coal Mine Health and Safety Act of 1969. The Mining Enforcement and Safety Administration (MESA), MSHA's predecessor, promulgated 30 CFR 75.1712–6 on November 20, 1970 (35 FR 17890) and 30 CFR 71.500 on March 28, 1972 (37 FR 6368). No substantive changes have been made to either provision since that time.

Under existing standards, MSHA approves sanitary toilets for installation and use on an industry-wide basis, not on a mine-by-mine basis. MSHA issues three types of approvals: for surface work sites only, for underground work sites only, or for both surface and underground work sites. Once granted, the approval does not expire. Although some of the manufacturers and distributors of approved sanitary toilets are no longer in business, MSHA accepts these approved sanitary toilets as long as they are properly maintained.

B. Existing Application for Approval Process

The existing standards' requirements for an application for approval of a sanitary toilet can pose an unnecessary burden on manufacturers and mine operators. To effectively evaluate a sanitary toilet for use at a coal mine, MSHA requires that the application for approval contain—

Information about the unit and its manufacturer;

Instructions for operation and maintenance;

Technical or performance test data; and

Other information that may help in evaluating the unit's practicality for use in coal mining, such as information about the appropriateness and durability of the sanitary toilet for use underground.

C. MSHA and MSHA/NIOSH Approval Criteria

When reviewing the application for approval, MSHA and NIOSH review and evaluate the sanitary features of each toilet for the use intended. Currently, MSHA and NIOSH use portions of the American National Standard Institute's (ANSI's) *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements,* ANSI Z4.3–1987 (Reaffirmed 1995), as the criteria for evaluating these sanitary features. At a minimum, MSHA and NIOSH use the definitions for the various types of toilets and components of the toilet facility in Section 2; the general requirements for auxiliary features in Sections 3.7, 3.8, and 3.9; and the specific design criteria in Section 7.

Exceptions. Although a privy is listed in ANSI Z4.3–1987 (Reaffirmed 1995), MSHA does not approve the use of a privy at any coal mine because sewage could seep through the earth walls and contaminate ground water, earth walls could fail under the harsh conditions at a coal mine, and rain and run-off could flood the privy causing it to overflow and contaminate the mine. MSHA does not approve combustion or incinerating toilets underground because they can create a fire hazard by introducing an ignition source. MSHA does not require a toilet paper holder on unenclosed sanitary toilets underground because it is impractical.

D. Types of Approved Sanitary Toilets

The following table contains excerpts from ANSI Z4.3–1987 (Reaffirmed 1995) for those types of sanitary toilets that are approved for use in coal mines. MSHA will consider any toilet facility that is one of the types of toilets listed in the Agency's revised standards and meets these same criteria, to be in compliance.

Definitions (ANSI Z4.3 Section 2)	Types of toilet facilities (ANSI Z4.3 Section 7)
2.2.2 A vault toilet facility is one wherein the waste is deposited without flushing in a permanently installed, watertight, below-ground container.	7.1.1. The vault-toilet tank shall be durable and corrosion-resistant and shall provide a minimum capacity of 378 L (100 gal) per seat. 7.1.2. Where a caustic chemical issued, the charge per seat shall be a minimum of 11.3 kg (25 lbs.) of caustic dissolved in 37.5 L (10 gal) of water. 7.1.3. The chemical shall be drained and the receptacle recharged every 6 months when in continuous use, or at least at the beginning of each season of operation when in intermittent use, or when three-fourths full, whichever occurs first. 7.1.4. Tanks shall be vented to the outside with a minimum nominal venting area of 45 cm^2 (7 in^2). 7.1.5. The tank shall be equipped with a manhole external to the structure for cleaning and for removal of caustic chemicals. The manhole shall be covered so as to prevent escape of gases and odors.
Sealed-Bag Toilet	
2.2.3 A sealed-bag toilet facility is one wherein the waste of each user is deposited, without flushing, into a bag, generally plastic, which is then sealed for later disposal. The structure housing a sealed-bag-toilet facility may be permanent or portable.	7.2.1. All materials and fittings shall be corrosion resistant. 7.2.2. The bag shall be made of material of sufficient strength so as not to leak and, once sealed, so as to retain the waste until such time as the bag is removed from the toilet for disposal.
Combustion or Incinerating Toilet	
2.3 A combustion- or incinerating-toilet facility is one wherein the waste is deposited, with or without flushing, into a combustion chamber, where it is incinerated. The structure housing a combustion- or incinerating-toilet facility may be permanent or portable.	7.3.1 All external surfaces, including bowl and hopper, shall be easy to clean. 7.3.2. The residue of combustion or incineration shall be sterile and inert. 7.3.3. The flue effluents shall be free of viable bacteria. 7.3.4. The combustion system and all fuel and electrical parts shall be safe and in compliance with applicable gas and electrical codes of local authorities. Where such codes do not exist, the installation shall comply with American National Standard National Electrical Code, ANSI/NFPA 70–1987, or with American National Standard for Gas-Fired Toilets, ANSI Z21.61–1983, and American National Standard National Fuel Gas Code, ANSI Z223.1–1984 and ANSI Z223.1a–1987.
Chemical Toilet and Biological Toilet	
2.2.1 A chemical-toilet facility is a nonflush-toilet facility wherein the waste is deposited directly into a container containing a solution of water and chemical. It may be housed in a permanent or portable structure. 2.4 A biological-toilet facility is one wherein the waste is deposited, with or without flushing, into a waste container integral to the toilet facility, where it is treated by means of biological agents or aeration.	7.4.1. Waste containers shall be fabricated from nonabsorbent, watertight materials. 7.4.2. Portable chemical and biological toilets and urinals that are free-standing and not installed in a toilet room do not require a ventilation system. 7.4.3. Chemicals or biological agents, if used in the waste container, shall be in accordance with applicable federal, state, and local provisions.
Nonwater-Flush Toilet	
2.1.2 A nonwater-flush-toilet facility is one wherein the waste is flushed from the bowl and the bowl cleansed by a fluid other than water, with the fluid deposited in a container or receptacle, or treated and recirculated as in 2.1.1; such facilities include, but are not limited to, oil-flush-toilet facilities.	7.5.1. All materials such as bowl, piping, and fittings that are in contact with waste and chemicals shall be nonabsorbent and corrosion-resistant. 7.5.2. Waste passages shall have smooth surfaces and shall be free of obstructions, recesses, or chambers that would permit fouling. 7.5.3. Flushing shall be accomplished by controls operable without special knowledge. Upon flushing, fluid shall enter the bowl and pass through with a vigorous flow sufficient to carry the waste from the bowl into the waste container. 7.5.4. Chemicals, if used in the waste container, shall be in accordance with applicable local, state, and federal provisions.
Water-Flush Toilet	
2.1.1 A water-flush-toilet facility is one wherein the waste is carried from the bowl and the bowl cleansed by water, and the combined water and waste is deposited into a container or receptacle, or recirculated by a closed system for flushing purposes; such facilities include, but are not limited to, vacuum-toilet facilities.	7.6.1. All materials such as bowl, piping, and fittings that are in contact with waste and chemicals shall be nonabsorbent and corrosion-resistant. 7.6.2. Waste passages shall have smooth surfaces and shall be free of obstructions, recesses, or chambers that would permit fouling. 7.6.3. Flushing shall be accomplished by controls operable without special knowledge. 7.6.4. Chemicals, if used, shall be in accordance with applicable local, state, and federal provisions.

Source: American National Standard Institute (ANSI), *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements,* (ANSI Z4.3–1987) (Reaffirmed 1995).

III. Section-by-Section Discussion

The following section-by-section discussion explains the direct final rule's revisions to the existing standards. The direct final rule provides the same level of protection for miners as the existing standards because it guarantees that sanitary toilets meet the same requirements as those which were approved through the existing application process. It has no substantive effect on the sanitation standards at coal mines.

A. 30 CFR 71.500 for Surface Coal Mines

Existing § 71.500 requires all surface coal mine operators' to provide at least one approved sanitary toilet at a location convenient to each surface work site and one additional approved sanitary toilet for each 10 miners working at a location. MSHA and NIOSH jointly approve sanitary toilets for use at surface mines.

The direct final rule eliminates the application for approval requirement and its associated paperwork burden, and provides notice of which types of sanitary toilets may be used by listing them directly in the standard. The direct final rule also requires sanitary toilets to have a toilet paper holder with an adequate supply of toilet paper and a toilet seat with a hinged lid, as is required in Section 3 of ANSI Z4.3–1987 (Reaffirmed 1995); and prohibits the use of privies.

NIOSH has reviewed this direct final rule and concurs that the application for approval requirements can be removed without reducing protection for miners. NIOSH also agrees that the direct final rule does not change the criteria for the sanitary toilets. MSHA has incorporated NIOSH's comments in this regulatory action.

B. 30 CFR 75.1712–6 for Underground Coal Mines

Existing § 75.1712–6 requires all underground coal mine operators to provide and maintain one approved sanitary toilet in a dry location under protected roof within 500 feet of each working place where miners regularly work. Under the existing standard, MSHA must approve sanitary toilets for use at underground locations.

The direct final rule eliminates the application requirement and its associated paperwork burden, and provides notice of which types of sanitary toilets may be used by listing them directly in the standard. The direct final rule also requires sanitary toilets to have a toilet paper holder with an adequate supply of toilet paper and a toilet seat with a hinged lid, as is required in Section 3 of ANSI Z4.3–1987 (Reaffirmed 1995); prohibits privies and combustion or incinerating toilets underground; and removes the obsolete December 30, 1970, effective date.

IV. The Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and Executive Order 12866

In accordance with Executive Order (E.O.) 12866, MSHA has analyzed the estimated costs and benefits associated with this direct final rule, and has included its Regulatory Economic Analysis (REA) in this preamble. This direct final rule includes no additional costs for the mining industry and eliminates the costs associated with filing an application for approval. This direct final rule is not an economically significant regulatory action under § 3(f)(1) of E.O. 12866.

In accordance with § 605 of the Regulatory Flexibility Act (RFA), MSHA certifies that this direct final rule does not have a significant economic impact on a substantial number of small entities. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, the Agency must include the factual basis for this certification in the direct final rule. Accordingly, the Agency is publishing the factual basis for its regulatory flexibility certification statement in the **Federal Register**, as part of this preamble, and is providing a copy to the Small Business Administration (SBA), Office of Advocacy. MSHA also will mail a copy of the direct final rule, including the preamble and certification statement, to coal mine operators and miners' representatives and post it on the Agency's Internet Home Page at *http://www.msha.gov*.

Factual basis for certification.

MSHA is issuing a direct final rule amending 30 CFR parts 71 and 75, concerning applications for approval of sanitary toilets. The Agency is amending its regulations to state which sanitary toilets meet the standard in order to eliminate the need for underground and surface coal mines to file an application for approval and to avoid the associated cost and paperwork burden.

Manufacturers are the primary applicants for MSHA or MSHA/NIOSH approval of sanitary toilets. In the last four years, seven manufacturers of portable toilets filed applications to request approval of sanitary toilets. During this same period, only one mine operator filed an application to request approval of sanitary toilets. MSHA expects that the number and distribution of applications over the past four years is representative of future applications in the absence of this direct final rule. MSHA therefore estimates that, on average, in the absence of the direct final rule, portable toilet manufacturers will file 1.75 applications each year, and mine operators will file 0.25 applications each year.

Traditionally, MSHA has considered a small mine to be one with fewer than 20 employees. Based on MSHA's definition, the mine operator is considered large because it employs 20 or more workers. The Small Business Administration (SBA) definition for a small business in the mining industry is one with 500 or fewer employees. The mine operator that filed the application is considered a small business by SBA's definition in that it employs fewer than 500 workers. Based on SBA's definition, manufacturers of portable toilets (plastics), NAICS Code 326191 (SIC Code 3088), are defined as small if they have fewer than 500 employees. All of the portable toilet manufacturers are small businesses, according to SBA, because each employs fewer than 500 workers.[1]

Compliance Costs

Cost savings from this direct final rule accrue to sanitary toilet manufacturers and mine operators because they will no longer have to file an application for approval of sanitary toilets. Cost savings from this rule are estimated at $407 annually. The cost savings are based upon the elimination of the filing of an average of 1.75 applications per year by manufacturers and 0.25 applications per year by mine operators. For the manufacturers, cost savings will be $296 annually. For the mine operator, cost savings will be $111 annually.

The annual cost savings of $296 for manufacturers is derived in the following manner. On average, a first-line supervisor at a toilet manufacturing facility, earning $20.82 per hour,[2] takes 8 hours to prepare an application (1.75 applications × 8 hours × $20.82 per hour = $291.48). In addition, a clerical worker, earning $12.66 per hour,[3] takes 0.1 hour to copy and mail an application (1.75 applications × 0.1 hour × $12.66 per hour = $2.22). Furthermore, MSHA estimates that, on average, each application is two pages long, photocopying costs are $0.15 per page, and postage is $1 [1.75 applications × ((2 pages × $0.15 per page) + $1) = $ 2.28].

The annual cost savings of $111 for the mine operator is derived in the following manner. On average, a mine supervisor, earning $54.92 per hour, takes 8 hours to prepare an application (0.25 application × 8 hours × $54.92 per hour = $109.84). In addition, a clerical worker, earning $19.58 per hour, takes 0.1 hour to copy and mail an application (0.25 application × $0.1 hour × $19.58 per hour = $ 0.49). Furthermore, MSHA estimates that, on average, each application is two pages long, photocopying costs are $0.15 per page, and postage is $1 [0.25 application × ((2 pages × $0.15 per page) + $1) = $0.33].

This direct final rule eliminates the application process and provides simple compliance information directly to the public, thus eliminating the annual cost burden.

[1] Small Business Administration, Small Business Size Standards Matched to North American Industry Classification System (NAICS), Effective July 1, 2002. *(http://www.sba.gov/size/sizetable.html).*

[2] U.S. Department of Labor, Bureau of Labor Statistics, Career Guide to Industries—Chemicals Manufacturing, Except Drugs. *(http://www.bls.gov/oco/cgs/cgs008.htm).*

[3] U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics—2001 National Occupational Employment and Wage Estimates. *(http://www.bls.gov/oes/2001/oes433021.htm).*

V. Paperwork Reduction Act.

This direct final rule contains no additional information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Consequently, the information collection currently approved by OMB under control number 1219–0101 will no longer be necessary and will be withdrawn.

This direct final rule will result in 16 annual burden hour savings and associated annual burden cost savings of $404 related to elimination of 2 applications annually for sanitary toilets. Of this total, for the 1.75 portable toilet manufacturers, there will be 14 burden hours savings annually and associated annual burden costs savings of $294. For the 0.25 mine operators, there will be 2 burden hours savings annually and associated annual burden cost savings of $110.

The annual reduction of 14 burden hours and the $294 annual burden costs savings for the 1.75 portable sanitary toilet manufacturers are derived in the following manner. On average, a first-line supervisor at a toilet manufacturing facility, takes 8 hours to prepare an application (1.75 applications × 8 hours = 14 hours). In addition, a clerical worker takes 0.1 hour (or 6 minutes) to copy and mail an application (1.75 applications × 0.1 hour = 0.18 hours). The hourly wage rate for a first-line supervisor at a portable toilet manufacturing facility is $20.82 ($20.82 × 14 burden hours = $291.48). The hourly wage rate for a clerical worker (billing and posting clerks) is $12.66 ($12.66 × 0.18 burden hours = $2.28).

The annual reduction of 2 burden hours and the $110 annual burden costs savings for the 0.25 mines are derived in the following manner. On average, a mine supervisor takes 8 hours to prepare an application (0.25 applications × 8 hours = 2 hours). In addition, a clerical worker takes 0.1 hour (or 6 minutes) to copy and mail an application (0.25 applications × 0.1 hour = 0.03 hour). The hourly wage rate for a mine supervisor is $54.92 ($54.92 × 2 hours = $109.84). The hourly wage rate for a clerical worker is $19.58 ($19.58 × 0.03 hours = $0.58).

This direct final rule removes this burden by eliminating the application process and providing information directly to the public.

VI. Other Regulatory Considerations

A. The National Environmental Policy Act of 1969

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires each Federal agency to consider the environmental effects of its actions. This direct final rule has no environmental impact because it has no substantive effect on the existing standards.

B. Unfunded Mandates Reform Act of 1995

We have determined, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, that this direct final rule does not include any Federal mandate that may result in increased expenditures by state, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. We also determined, for purposes of § 203, that this direct final rule does not significantly or uniquely affect these entities.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This direct final rule is not subject to Executive Order 12630 because it would not involve implementation of a policy with "takings" implications.

D. Executive Order 12988: Civil Justice Reform

In accordance with Executive Order 12988, we have determined that this direct final rule will not unduly burden the Federal court system. We wrote the direct final rule to provide a clear legal standard for affected conduct and have reviewed it to eliminate drafting errors and ambiguities.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of this direct final rule and have determined that it has no adverse effects on children.

F. Executive Order 13132: Federalism

In accordance with Executive Order 13132, we have reviewed this direct final rule and have determined that it does not have "federalism" implications.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we certify that this direct final rule does not impose substantial direct compliance costs on Indian tribal governments.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, we have reviewed this direct final rule and have determined that it has no effect on the production or price of coal. Consequently, it has no significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action are necessary.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the direct final rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed previously in this preamble, MSHA has determined that the direct final rule does not have a significant economic impact on a substantial number of small entities.

List of Subjects

30 CFR Part 71

Coal mines, Mine safety and health, Surface mining.

30 CFR Part 75

Coal mines, Mine safety and health, Underground mining.

Dated: April 15, 2003.

John R. Correll,

Deputy Assistant Secretary for Mine Safety and Health.

■ For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, MSHA is amending chapter I, parts 71 and 75, of title 30 of the Code of Federal Regulations as follows:

PART 71—[AMENDED]

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 30 U.S.C. 811, 951, 957.

■ 2. Section 71.500 is revised to read as follows:

§ 71.500 Sanitary toilet facilities at surface work sites; installation requirements.

(a) Each operator of a surface coal mine shall provide and install at least one sanitary toilet in a location convenient to each surface work site. A single sanitary toilet may serve two or more surface work sites in the same surface mine where the sanitary toilet is convenient to each such work site.

(b) Where 10 or more miners use such toilet facilities, sufficient toilets shall be furnished to provide approximately one sanitary toilet for each 10 miners.

(c) Sanitary toilets shall have an attached toilet seat with a hinged lid and a toilet paper holder together with an adequate supply of toilet tissue.

(d) Only flush or nonflush chemical or biological toilets, combustion or incinerating toilets, sealed bag toilets, and vault toilets meet the requirements of this section. Privies are prohibited.

(**Note to § 71.500:** Sanitary toilet facilities for surface work areas of underground mines are subject to the provisions of § 75.1712–3 of this chapter.)

PART 75—[AMENDED]

■ 3. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 4. Section 75.1712–6 is revised to read as follows:

§ 75.1712–6 Underground sanitary facilities; installation and maintenance.

(a) Except as provided in § 75.1712–7, each operator of an underground coal mine shall provide and maintain one sanitary toilet in a dry location under protected roof, within 500 feet of each working place in the mine where miners are regularly employed during the mining cycle. A single sanitary toilet may serve two or more working places in the same mine, if it is located within 500 feet of each such working place.

(b) Sanitary toilets shall have an attached toilet seat with a hinged lid and a toilet paper holder together with an adequate supply of toilet tissue, except that a toilet paper holder is not required for an unenclosed toilet facility.

(c) Only flush or nonflush chemical or biological toilets, sealed bag toilets, and vault toilets meet the requirements of this section. Privies and combustion or incinerating toilets are prohibited underground.

[FR Doc. 03–9655 Filed 4–18–03; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AD03

Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS), Document Incorporated by Reference for Fixed Platforms

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is publishing this final rule to incorporate by reference into our regulations the 21st edition of American Petroleum Institute Recommended Practice 2A (API RP 2A), "Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms—Working Stress Design." The updated document, 21st edition, will replace the 19th and 20th editions of API RP 2A, which are already incorporated by reference into MMS regulations.

EFFECTIVE DATE: This rule becomes effective on May 21, 2003. The incorporation by reference of the publication listed in the regulation is approved by the Director of the Federal Register as of May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Carl Anderson, Physical Scientist, at (703) 787–1608; or Joseph Levine, Chief, Operations Analysis Branch, at (703) 787–1033 or FAX (703) 787–1555.

SUPPLEMENTARY INFORMATION: The updated document, 21st edition, was published as part of a proposed rule. In that rule, MMS proposed to amend Subpart I of 30 CFR Part 250 and to incorporate into our regulations nine industry standards pertaining primarily to floating production platforms. MMS believes it is important to expedite incorporating by reference the 21st edition of API RP 2A ahead before the other standards since the overwhelming majority of platforms on the OCS are fixed platforms. Thus, we are preparing a separate final rule to update the document incorporated by reference relating to fixed platforms under the RIN 1010–AD03, and will publish a final rule incorporating the other eight standards on floating production platforms under the RIN 1010–AC85. Incorporating the 21st edition will immediately correct the deficiencies that the API workgroup identified in the 19th and 20th editions of API RP 2A. This will streamline the permitting of all fixed platforms so that OCS lessees and operators and MMS engineers will not have to continue to perform the corrective calculations and procedures called for in NTL No. 98–1N and NTL No. 98–4N.

Additional immediate benefits of adopting the 21st edition of API RP 2A are that it (1) greatly strengthens the Section 2 design criteria analysis methods and Section 3 structural steel analysis requirements; (2) strengthens procedures for analyzing minimum and special structures in Section 16 with respect to the Section 2 design criteria analysis methods; (3) reinforces the connection between Section 16 design loads and analyses for minimum and special structures with respect to Section 5 fatigue analysis methods; and (4) contains assessment procedures in Section 17 for existing platforms. Neither the 19th edition nor the 20th edition of API RP 2A included assessment procedures for existing platforms. The December 1996 Supplement 1 to the 20th edition of API RP 2A included Section 17, Assessment of Existing Platforms, and has been used by industry since that time.

The 21st edition provided the rationale for revising much of Subpart I—Platforms and Structures—that was described in the proposed rulemaking of December 27, 2001 (66 FR 66851–66865). The API RP 2A deals with bottom-founded structures which, until the proposed rulemaking, have been the primary focus of Subpart I. After publishing this rule, MMS will cancel two National Notices to Lessees and Operators (NTLs) related to the 19th and 20th editions of API RP 2A, NTL No. 98–1N, "Interim Guidance for Applying Platform Design Criteria"; and NTL No. 98–4N "Interim Guidance 'Simplified Fatigue Analysis' Procedure."

The two NTLs to be cancelled were published in cooperation with the API RP 2A industry workgroup to provide guidance on either applying or recalculating certain design criteria specified in the 19th and 20th editions of API RP 2A. There were certain insufficient or erroneous design criteria in both the 19th and 20th editions of API RP 2A related to various structures and the water depths and wind conditions in which they were to operate. Once the 21st edition of API RP 2A is incorporated into the regulations, the NTLs will not be necessary.

Discussion and Analysis of Comments

Eight organizations submitted nine comments on the proposed rulemaking. Commenters included the American Bureau of Shipping (ABS); the Offshore Operator's Committee (OOC); Shell Exploration & Production Company (Shell), which commented twice; the Independent Petroleum Association of America (IPAA); the National Ocean Industries Association (NOIA); ChevronTexaco; Newfield Exploration Company (Newfield); and ATP Oil & Gas Corporation (ATP). In all, MMS identified 22 issues raised by these respondents. Nearly all are either related to adoption of the other eight industry standards covered in the December 27, 2001, NPR; the approval procedures for floating production platforms; or the proposed rewrite of Subpart I. All of these comments will be discussed in a separate final rule.

Industry has had years of experience applying API RP 2A on the OCS, and no respondent objected to the adoption of the 21st edition of API RP 2A. The ABS raised one technical issue related to its adoption, as follows:

> The document adopts the API–RP2A–WSD [working stress design]. Is the API–RP2A–LRFD [load and resistance factors design] not acceptable at this time for any application? Some of the requirements in API–RP2A–LRFD, such as hydrostatic collapse of tubular members for deepwater applications, may be more reasonable than those in WSD. If acceptable, guidance in the regulations should specify load and resistance factors.

Since the early 1980s, MMS has followed the policy currently outlined in §§ 250.141 and 250.142 of our operating regulations, whereby we promote the use of technology or innovative practices that are not necessarily covered in our regulations. For example, § 250.141 tells the lessee or operator that "You may use alternate procedures or equipment after receiving approval as described in this section." The approval must be in writing from either the MMS District or Regional Supervisor. Paragraph (a) of § 250.141 requires that "Any alternate procedures or equipment that you propose to use must provide a level of safety and environmental protection that equals or surpasses current MMS requirements." Paragraph (c) of § 250.141 requires that the lessee or operator submit information or provide an oral presentation to describe the site-specific applications, performance characteristics, and safety features of the alternate procedures or equipment. Also, under § 250.142, the lessee or operator may submit a written request to the District or Regional Supervisor for an approval to depart from current MMS operating regulations.

Thus, if a lessee or operator believes that the load and resistance factor design (LRFD) version of API RP 2A is more appropriate for its proposed platform than the working stress design (WSD) version, the lessee or operator may submit its arguments to use the former under §§ 250.141 and 250.142 of MMS operating regulations.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by OMB under Executive Order 12866.

(1) The rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The overall effect of the rule will not create an adverse effect upon the ability of the United States offshore oil and gas industry to compete in the world marketplace, nor will the rule adversely affect investment or employment factors locally. The economic analysis for this rule is available from the Department of the Interior; Minerals Management Service; Operations Analysis Branch; Mail Stop 4022; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Carl W. Anderson.

(2) This rule will not create inconsistencies with other agencies' actions. This rule does not change the relationships of the OCS oil and gas leasing program with other agencies' actions. These relationships are all encompassed in agreements and memorandums of understanding that will not change with this rule.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues. There are precedents for actions of this type under past lease stipulations and regulations dealing with safety provisions under the OCS Lands Act.

Regulatory Flexibility (RF Act)

The Department of the Interior certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*). This rule applies to all lessees that operate on the OCS. Small lessees that operate under this rule would fall under the Small Business Administration's (SBA) North American Industry Classification System Codes 211111, Crude Petroleum and Natural Gas Extraction and 213111, Drilling Oil and Gas Wells. For the purposes of this section, the "small entity" is considered to be an individual, limited partnership, or small company, considered to be at "arm's length" from the control of any parent company, with fewer than 500 employees. Mid-size and large corporations and partnerships under their direct control have access to lines of credit and internal corporate cash flows that are not available to the "small entity." Some of the operators MMS regulates under the OCS oil and gas leasing program are considered small entities. We estimate that of the 130 lessees that explore for and produce oil and gas on the OCS, approximately 90 are small businesses (70 percent). The 21st edition of API RP 2A will reduce the costs of new platforms to these lessees, because the 21st edition allows lower-cost design criteria for platforms that have lower "consequences of failure." Thus, an unmanned platform can be built with lower-cost design criteria than a manned platform. Under the 19th and 20th editions of API RP 2A, both unmanned and manned platforms had to be built under high-cost design criteria. Therefore, MMS concludes that this final rule will have a beneficial effect on small operators.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under (5 U.S.C. 804(2)), SBREFA. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or ability of United States-based enterprises to compete with foreign-based enterprises. The 21st edition of API RP 2A will reduce the costs of new platforms to these lessees, because it allows lower-cost design criteria for platforms that have lower "consequences of failure." Thus, an unmanned platform can be built with lower-cost design criteria than a manned platform. Under the 19th and 20th editions of API RP 2A, both unmanned and manned platforms had to be built under high-cost design criteria. Therefore, MMS concludes that the rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act (PRA) of 1995

The revision to a section of Subparts A and I of 30 CFR 250 will simplify, to a modest degree, the information collection (IC) aspects of MMS regulations. These are currently approved under OMB control numbers 1010–0114 (Subpart A) and 1010–0058 (Subpart I). For purposes of only incorporating by reference the 21st edition of API RP 2A into MMS regulations, MMS did not submit an information collection request (ICR) to OMB for these sections.

This final rule incorporates by reference into MMS regulations the 21st edition of API RP 2A in place of the 19th and 20th editions and a supplement to the 20th edition that are currently listed in § 250.198(e). By incorporating the 21st edition, MMS will actually reduce the paperwork burden for lessees and operators, because they will no longer have to refer to NTLs No. 98–1N and 98–4N to correct the deficiencies that API has acknowledged exist in the 19th and 20th editions of API RP 2A.

Potential respondents are approximately 130 Federal OCS lessees and operators and Certified Verification Agents or other third-party reviewers of fixed and floating platforms. Responses are mandatory. The frequency of response varies by section, but is primarily on occasion or annually. The IC does not include questions of a sensitive nature. MMS will protect information considered proprietary according to 30 CFR 250.196 (Data and information to be made available to the public) and 30 CFR part 252 (OCS Oil and Gas Information Program).

MMS will use the information collected and records maintained under current Subpart I regulations to determine the structural integrity of all fixed platforms and to ensure that such integrity will be maintained throughout the useful life of these structures. The information is necessary to determine that platforms and structures are sound and safe for their intended purpose and the safety of personnel and pollution prevention. As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden in this final rule. You may submit your comments directly to the Office of Information and Regulatory Affairs, OMB. Please send a copy of your comments to MMS so that MMS can use them in future paperwork burden analyses of our regulations. Refer to the **ADDRESSES** section for mailing instructions.

The current OMB control numbers are 1010–0114 (subpart A) and 1010–0058 (subpart I).

a. MMS specifically solicits comments on the following questions:

(1) Is the collection of information necessary for MMS to properly perform its functions, and will it be useful?

(2) Are the estimates of the burden hours of the collection reasonable?

(3) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(4) Is there a way to minimize the information collection burden on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

b. In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping "non-hour" cost burden resulting from the collection of information. MMS has not identified any and solicits your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) The total capital and startup cost component, and (2) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased before October 1, 1995, to comply with requirements not associated with the information collection, for reasons other than to provide information or keep records for the Government, or as part of a usual and customary business or private practice.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implications Assessment (Executive Order 12630)

According to Executive Order 12630, the rule does not have significant Takings implications. A Takings Implication Assessment is not required. Based on our Paperwork Burden analysis and our economic analysis for this rule, which will incorporate by reference the 21st edition of API RP 2A into MMS regulations, the annual incremental cost of complying with this regulation for approximately 98 businesses will be negligible. These businesses are already complying with the requirements of the 19th and 20th editions of API RP 2A, and upgrading to the 21st edition will only simplify the requirements. Therefore, this rule will not result in any takings, and the Department of the Interior does not need to prepare a Takings Implication Assessment under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. The rule will not take away or restrict a lessee's right to develop an OCS oil and gas lease according to the lease terms.

Federalism (Executive Order 13132)

According to Executive Order 13132, this rule does not have Federalism implications. This rule will not substantially or directly affect the relationship between the Federal and State governments because it deals strictly with technical standards that the offshore oil and gas industry must use in designing, fabricating, and installing

fixed offshore facilities. This rule will not impose costs on States or localities, nor will it require any action on the part of States or localities.

Civil Justice Reform (Executive Order 12988)

According to Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act (NEPA)

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. MMS has analyzed this rule under the criteria of the NEPA and 516 Departmental Manual 6, Appendix 10.4C(1). MMS completed a Categorical Exclusion Review for this action on November 20, 2000, and concluded that "the rulemaking does not represent an exception to the established criteria for categorical exclusion; therefore, preparation of an environmental analysis or environmental impact statement will not be required."

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, this rule does not have tribal implications that impose substantial direct compliance costs on Indian tribal governments.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: April 8, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

■ For the reasons stated in the preamble, Minerals Management Service (MMS) amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

■ 2. In § 250.198, in the table in paragraph (e), the following changes are made:

■ A. Remove entries for API RP 2A, 19th Edition; API RP 2A, 20th Edition; and API RP 2A, 20th Edition, Supplement 1.

■ B. Add the entry for API RP 2A, 21st Edition, as follows:

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of document	Incorporated by reference at
. . . . .	
API RP 2A–WSD, Recommended Practice for Planning, Designing and Constructing Fixed Offshore Platforms—Working Stress Design; Twenty-first Edition, December 2000 (API Order No. G2AWSD).	§ 250.900(g); § 250.912(a).
. . . . .	

■ 3. In § 250.900, revise paragraph (g) to read as follows:

§ 250.900 General requirements.

* * * * *

(g) In addition to the requirements of this subpart, platform design, fabrication, and installation shall conform to API RP 2A–WSD "Recommended Practice For Planning, Designing, And Constructing Fixed Offshore Platforms—Working Stress Design," (incorporated by reference, see § 250.198), or American Concrete Institute (ACI) 357R, "Guide for the Design and Construction of Fixed Offshore Concrete Structures," (incorporated by reference, see § 250.198), as appropriate. Alternative codes or rules may be utilized with approval of the Regional Supervisor. The requirements contained in these documents (API RP 2A–WSD and ACI 327R) are incorporated by reference in this part, see § 250.198.

■ 4. In § 250.912(a), revise the first sentence to read as follows:

§ 250.912 Periodic inspection and maintenance.

(a) All platforms installed in the OVS shall be inspected periodically in accordance with the provisions of section 14, Surveys of API RP 2A–WSD (incorporated by reference, see § 250.198). * * *

* * * * *

[FR Doc. 03–9669 Filed 4–18–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–03–019]

RIN 1625–AA00

Safety Zone; Wiscasset, ME, Maine Yankee Reactor Pressure Vessel Removal

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones in the waters of the Back River, Montsweag Bay, between Bailey Point and Foxbird Island in Wiscasset, Maine, and around the transport barge during its transit to sea. These safety zones are needed to protect persons, facilities, vessels and others in the maritime community from the safety hazards associated with the handling, loading, and transportation of a major component of the Decommissioned Maine Yankee Nuclear Plant that is classified as Class 7 Hazardous Waste. Entry into these safety zones will be prohibited unless authorized by the Captain of the Port, Portland, Maine.

DATES: This rule is effective from 12 a.m. e.d.t. on April 15, 2003, until 12 a.m. e.d.t. on June 30, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–03–019 and are available for inspection or copying at Marine Safety Office

Portland, 27 Pearl Street, Portland, ME 04101 between the hours of 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. F. Pigeon, Port Operations Department, Marine Safety Office Portland at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Request for Comments

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to unpredictable water level changes in the Savannah River at the destination port and the effect of those changes on the transport's barge ability to transit in the Savannah River, the transport barge is now scheduled to arrive much earlier than the Coast Guard initially anticipated. Given these recently changed navigational conditions, the Coast Guard was unable to publish a NPRM in sufficient time before this rulemaking takes effect.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. As previously stated, recent and unpredictable changes in the water levels in the Savannah River would effect the safe transit of the transport barge from the Maine Yankee Barge Slip in Wiscasset, Maine to its final destination at the Savannah River Site Boat Dock (mile 158). Due to these unpredictable changes in the river's navigability, and the barge's arrival occurring earlier than previously scheduled, the Coast Guard finds that good cause exists for making this temporary rule effective in less than 30 days after publication in the **Federal Register**.

Background and Purpose

Beginning on approximately May 1, 2003, Duratek/Chem Nuclear, Inc., the decommissioning contractor, will load and transport a reactor pressure vessel from the Decommissioned Maine Yankee Nuclear Plant onto a transport barge at the Maine Yankee barge slip in Wiscasset, Maine for shipment to the Savannah River Site Boat Dock (mile 158). The transport barge is scheduled to arrive at the Maine Yankee barge slip on approximately April 15, 2003. Once loaded, the barge will transit the Back River, Sheepscot River and Sheepscot Bay bound for sea. The departure date for the barge is expected to be approximately May 8, 2003.

These safety zones will be needed to ensure the safety of persons, facilities, vessels and others in the maritime community, including workers involved with the project, from the hazards associated with the handling, loading and transportation of a major component containing Class 7 hazardous waste from a decommissioned nuclear power plant onto a barge in this small cove. The Back River and Sheepscot River are narrow waterways and the tug and barge will require space to be able to maneuver safely. This moving safety zone will allow the barge adequate room to maneuver and freely transit outbound to sea with this hazardous cargo.

Dates for this project are subject to change based on conditions of navigation in the Savannah River necessary to transport the barge to its final destination.

Discussion of Rule

This rule establishes a temporary safety zone in the waters of the Back River, Montsweag Bay, within 250 yards of the transport barge moored at the Maine Yankee Barge Slip located in the cove between Bailey Point and Foxbird Island effective on the date of arrival of the barge and expiring upon the barge's departure. The tentative dates for arrival and departure are April 15, 2003, and May 8, 2003, respectively. This rule has an effective date until June 30, 2003, due to the possibility of additional changes in departure schedules.

This rule also establishes a safety zone 250 yards ahead and astern, and 100 yards aside (or to the edge of the navigable channel, whichever is less), of the transport barge during its transit outbound to sea. Entry into these safety zones will be prohibited unless authorized by the Captain of the Port, Portland, Maine.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DHS is unnecessary. The effect of this rule will not be significant for several reasons: there will be minimal impact on the navigational channel, there is ample room to navigate around the zone, delays, if any, will be minimal, and broadcast notifications will be made to the maritime community advising them of the boundaries of the zone. During the outbound transit vessels will be able to arrange safe passage with the tug and transport barge via VHF radio.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit through the safety zones between the dates of April 15, 2003, and June 30, 2003. However, these safety zones will not have a significant economic impact on a substantial number of small entities for the following reasons. There is ample room to navigate safely around the zones, delays, if any, would be minimal, and broadcast notifications will be made to the maritime community advising them of the boundaries of the zones.

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211..

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of the categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.

■ 2. Add temporary § 165.T01–019 to read as follows:

§ 165.T01–019 Safety Zone; Wiscassett, ME, Maine Yankee Reactor Pressure Vessel Removal.

(a) *Locations.* The following areas are designated as safety zones:

(1) All waters of the Back River, Montsweag Bay, within 250 yards of the transport barge moored at the Maine Yankee Barge Slip located in the cove between Bailey Point and Foxbird Island.

(2) All waters 250 yards ahead and astern, and 100 yards aside (or to the edge of the navigable channel, whichever is less) of the transport barge during its transit from the Maine Yankee Barge Slip to sea. Specifically, this zone will be enforced until the barge passes abeam of Hendricks Head Light on Southport Island.

(b) *Effective date.* This section is effective from 12 a.m. EDT on April 15, 2003 until 12 a.m. EDT on June 30, 2003.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port (COTP), Portland, Maine or his designated representative.

(2) All persons and vessels shall comply with the instructions of the COTP, or the designated on-scene U.S. Coast Guard representative. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

Dated: April 7, 2003.

Wyman W. Briggs,

Commander, U. S. Coast Guard, Captain of the Port, Portland, Maine, Acting.

[FR Doc. 03–9722 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Part 203

RIN 0710–AA47

Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: The Corps is promulgating a final rule to revise 33 CFR part 203. Today's final rule completes the rulemaking process initiated on 26 February 2002 with publication of the proposed rule to revise 33 CFR part 203, which implements Public Law 84–99. The revisions are necessary to reflect current policy, add features required by the Water Resources Development Act of 1996 (WRDA 96) and streamline certain procedures concerning Corps authority addressing disaster preparedness, response, and recovery activities. WRDA 96 additions include the option to provide nonstructural alternatives in lieu of structural repairs to levees damaged by flood events, and the provision of a levee owner's manual. Other significant changes include expansion of investigation ability for potential Advance Measures work, and a streamlined approach for requests for assistance from Native American tribes and Alaska Native Corporations.

DATES: This rule is effective May 21, 2003.

FOR FURTHER ASSISTANCE CONTACT: Mr. Jeffrey D. Jensen, Headquarters, U.S. Army Corps of Engineers, Civil Emergency Management Branch, CECW–OE, at (202) 761–4561.

SUPPLEMENTARY INFORMATION:

I. Background. Pursuant to its authorities in 33 U.S.C. 701n (commonly and hereinafter referred to

as Public Law 84–99), the Corps is revising 33 CFR part 203, which implements Public Law 84–99. A notice of proposed rulemaking was published in the **Federal Register** on February 26, 2002 (67 FR 8748). Public Law 84–99 authorizes the Corps to undertake preparedness, response, and recovery activities for natural disasters. The Water Resources Development Act of 1996 amended Public Law 84–99 to add the authority to provide, at the option of the non-Federal sponsor, nonstructural alternatives in lieu of structural repairs to levees damaged by flood events, and also added the requirement to provide a levee owner's manual. Other significant changes include expansion of investigation ability for potential Advance Measures activities, and a streamlined approach for requests for assistance from federally recognized Native American Tribes and Alaska Native Corporations. In addition, these changes modify and streamline policy involving the Corps policy concerning assistance for ice jams, and the Corps policy requiring reimbursement in kind or in cash for certain loaned supplies and materials. Subpart D clarifies the definition and inspection of "Active" flood control works (*i.e.*, those flood control works eligible for consideration to receive Corps assistance when damaged in a flood, hurricane, or coastal storm), provides clarification concerning Corps inspections of non-Federal flood control works, and adds a new section that addresses inspections and rehabilitation of Federal flood control works that merely incorporates existing Corps policy. A new section (§ 203.49) incorporates existing Corps policy on the use of Public Law 84–99 funds for rehabilitation of Hurricane/Shore Protection Projects, and, when undertaking such a rehabilitation effort, requires incorporation of the existing Project Cooperation Agreement to have the project sponsor cost share the renourishment/repair effort. In addition, Corps policy is revised to specify that, during droughts, water is provided for human consumption only, not for livestock. The revised rule will go into effect 30 days after publication of the final rule in the **Federal Register**, except that all requests for assistance received by the Corps, for emergencies declared by the appropriate District Engineer prior to the effective date of the final rule, will be "grandfathered" under the previous rule for any assistance provided if this is more advantageous to the non-Federal entity involved and in accordance with prior Corps policy.

Electronic Access and Filing Addresses. You may submit comments by E-mail to *Jeffrey.D.Jensen@usace.army.mil.* Comments should be in one of the following formats: Word, WordPerfect, or ASCII. The subject line for submission of comments should begin with "33CFR203 Final Rule Comments from (insert name of agency, organization, or individual)."

Procedural Requirements

a. *Review under the National Environmental Policy Act.* This revision is not a major Federal action. There are no significant changes to any aspects of this regulation that may impact on the human environment. When a specific action (*e.g.*, a proposal to rehabilitate a damaged levee) occurs, appropriate environmental documentation, to include an Environmental Assessment/Environmental Impact Statement when required, is prepared by the Corps.

b. *Unfunded Mandates Act.* This proposed rule does not impose an enforceable duty among the private sector and therefore, is not a Federal private sector mandate, and is not subject to the requirements of section 202 or 205 of the Unfunded Mandates Act. The Corps has also found, under section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

Comments

Interested parties have been afforded the opportunity to participate in the making of this rule. Due consideration has been given to the comments received.

Cost Sharing

Over ninety percent of the commenters addressed the proposal to change the cost share provisions for rehabilitation of damaged flood control works, both Federal and non-Federal. We agree with the commenters. The Corps will maintain the status quo for cost sharing rehabilitation of damaged flood control works. Therefore, rehabilitation of Federal flood control works will remain at 100 percent Federal cost, and rehabilitation of non-Federal flood control works will remain at 80 percent Federal cost and 20% local cost.

Non-Structural Alternative Projects

WRDA 96 added the statutory authority to undertake Non-Structural Alternative Projects in lieu of structural levee rehabilitation efforts. Several commenters complimented the Corps for its implementation policy. Several commenters opposed the implementation of any policy for non-structural alternative projects.

Because of the statutory language amending Public Law 84–99, including the provision that any nonstructural alternative project would be undertaken solely at the request of the affected project sponsor, we disagree that this policy should not be implemented. Every project sponsor maintains the ability to request or decide against a nonstructural alternative Project, which effectively gives the commenters against the policy the same capabilities as they would have if the policy were not implemented.

Scope of Levee Rehabilitation Projects

One commenter suggested that Section 203.15(g) be changed to add language saying that projects should be rehabilitated to their original design level of protection rather than the level of protection that existed prior to the storm or flood causing the damage. The commenter states that such work should not be considered a "betterment" for which the sponsor is responsible.

We do not agree with the commenter on this point. The affected section is almost verbatim taken from statutory language. The effort necessary to preserve the design level of protection is not a betterment; it is maintenance, regardless of when it is undertaken. Congress and the Corps have long recognized that sponsors are responsible for operations and maintenance of flood control projects, and long term settlement/erosion that may affect the current day level of protection has historically been considered sponsor maintenance.

Work in Kind

Several commenters submitted comments about credit for work in kind being undertaken by the local sponsor. The actual commenters' references were to several different sections. Specifically, the commenters wanted the Corps to be more liberal in allowing local sponsors to pay the local cost share using work in kind, to include work traditionally done by the Corps.

We disagree with this idea. Because of the emergency nature of most work undertaken under Public Law 84–99, the generally lower cost of the emergency work (compared to that work done by the Corps for specifically authorized projects under other authorities), and the principle that work by the Corps is intended to supplement State and local efforts, no change in the final rule was made. There was no work in kind allowance change deemed to be, in the net, more cost effective for the Corps and less expensive for the local sponsors.

Flood Fighting on Agricultural Levees

Several commenters stated that the Corps should undertake flood fights on levees that protect strictly agricultural lands. They stated that there were costs (beyond levee rehabilitation costs) associated with overtopped or breached agricultural levees.

The Corps disagrees with the commenter's intent while recognizing their concerns. It is acknowledged that flood control systems in place in the United States are not an absolutely ideal system. When a flood reaches a magnitude to start breaching or overtopping agricultural levees, then there are generally residential, commercial, and industrial areas that are also threatened, with a consequent higher threat for loss of human life as well as potentially higher costs for property damages. Historically, the total cost (borne not only by the Federal government but by State and local governments, insurance companies, and property owners) of a breached agricultural levee is less than that of a breached nonagricultural levee. In certain conditions the flood waters will not remain contained in the floodway and will inundate some protected areas. The Corps policy thus reflects an optimum approach to minimizing overall costs and preventing greater amounts of loss of life.

Rehabilitation for Damages Not Caused by a Flood Event

One commenter took issue with the statement that only damages related to floods should be addressed by rehabilitation work. The commenter wanted damages caused by use of navigation channels to be covered by Public Law 84–99.

The Corps disagrees with the commenter. Repair of damages not related to flood and coastal storm events is beyond the scope of assistance authorized by Public Law 84–99. Navigation projects operated by the Corps are funded by separate appropriations. Any damages to a flood control project related to operation of a navigation project are appropriately addressed with navigation funds.

Use of Benefit to Cost Ratios

One commenter stated that any Active project damaged by a flood or coastal storm should not be subject to any benefit to cost ratio.

The Corps disagrees with the comment. Statutorily, Public Law 84–99 rehabilitation projects must undergo a benefit to cost assessment. Following Congressional intent contained in other Corps authorities for a benefit to cost ratio greater than 1.0 for new projects to be authorized, it is only logical to extend this approach to Public Law 84–99 projects so that proper stewardship of funds is exercised.

List of Subjects in 33 CFR Part 203

Disaster assistance, Flood control, Technical assistance, Water resources.

Dated: March 31, 2003.

Lawrence A. Lang,

Acting Chief, Operations Division, Directorate of Civil Works.

Accordingly, 33 CFR Part 203 is revised as follows:

PART 203—EMERGENCY EMPLOYMENT OF ARMY AND OTHER RESOURCES, NATURAL DISASTER PROCEDURES

Subpart A—Introduction

Sec.
203.11 Purpose.
203.12 Authority.
203.13 Available assistance.
203.14 Responsibilities of non-Federal interests.
203.15 Definitions.
203.16 Federally recognized Indian Tribes and the Alaska Native Corporations.

Subpart B—Disaster Preparedness

203.21 Disaster preparedness responsibilities of non-Federal interests.

Subpart C—Emergency Operations

203.31 Authority.
203.32 Policy.

Subpart D—Rehabilitation Assistance for Flood Control Works Damaged by Flood or Coastal Storm: The Corps Rehabilitation and Inspection Program

203.41 General.
203.42 Inspection of non-Federal Flood Control Works.
203.43 Inspection of Federal Flood Control Works.
203.44 Rehabilitation of non-Federal Flood Control Works.
203.45 Rehabilitation of Federal Flood Control Works.
203.46 Restrictions.
203.47 Modifications to non-Federal Flood Control Works.
203.48 Inspection guidelines for non-Federal Flood Control Works.
203.49 Rehabilitation of Hurricane and Shore Protection Projects.
203.50 Nonstructural alternatives to rehabilitation of Flood Control Works.
203.51 Levee owner's manual.
203.52 (Reserved).

Subpart E—Emergency Water Supplies: Contaminated Water Sources and Drought Assistance

203.61 Emergency water supplies due to contaminated water sources.
203.62 Drought assistance.

Subpart F—Advance Measures

203.71 Policy.
203.72 Eligibility criteria and procedures.

Subpart G—Local Interests/Cooperation Agreements

203.81 General.
203.82 Requirements of local cooperation.
203.83 Additional requirements.
203.84 Forms of local participation—cost share.
203.85 Rehabilitation of Federal Flood Control Projects.
203.86 Transfer of completed work to local interests.

Authority: 33 U.S.C. 701n.

Subpart A—Introduction

§ 203.11 Purpose.

This part prescribes administrative policies, guidance, and operating procedures for natural disaster preparedness, response, and recovery activities of the United States Army Corps of Engineers.

§ 203.12 Authority.

Section 5 of the Flood Control Act of 1941, as amended, (33 U.S.C. 701n) (69 Stat. 186), commonly and hereinafter referred to as Public Law 84–99, authorizes an emergency fund to be expended at the discretion of the Chief of Engineers for: preparation for natural disasters; flood fighting and rescue operations; repair or restoration of flood control works threatened, damaged, or destroyed by flood, or nonstructural alternatives thereto; emergency protection of federally authorized hurricane or shore protection projects which are threatened, when such protection is warranted to protect against imminent and substantial loss to life and property; and repair and restoration of federally authorized hurricane or shore protection projects damaged or destroyed by wind, wave, or water of other than ordinary nature. The law includes provision of emergency supplies of clean water when a contaminated source threatens the public health and welfare of a locality, and activities necessary to protect life and improved property from a threat resulting from a major flood or coastal storm. This law authorizes the Secretary of the Army (Secretary) to construct wells and to transport water within areas determined by the Secretary to be drought-distressed. The Secretary of the Army has delegated the authority vested in the Secretary under Public Law 84–99 through the Assistant Secretary of the Army (Civil Works) to the Chief of Engineers, subject to such further direction as the Secretary may provide.

§ 203.13 Available assistance.

Corps assistance provided under authority of Public Law 84–99 is intended to be supplemental to State and local efforts. The principal assistance programs and activities of the Corps are described in this section.

(a) *Disaster preparedness.* Technical assistance for many types of disasters is available to State and local interests. Primary Corps efforts are focused on technical assistance for, and inspections of, flood control works, and related flood fight preparedness and training activities. Technical assistance for specialized studies, project development, and related activities, and requirements for long term assistance, are normally beyond the scope of disaster preparedness assistance, and are appropriately addressed by other Corps authorities and programs. Subpart B addresses disaster preparedness responsibilities and activities.

(b) *Emergency operations.* Emergency operations, consisting of Flood Response (flood fight and rescue operations) and Post Flood Response assistance, may be provided to supplement State and local emergency operations efforts. Subpart C of this part addresses emergency operations assistance.

(c) *Rehabilitation.* The Corps may rehabilitate flood control works damaged or destroyed by floods and coastal storms. The Corps Rehabilitation and Inspection Program (RIP) incorporates both disaster preparedness activities and Rehabilitation Assistance. The RIP consists of a process to inspect flood control works; a status determination, *i.e.*, an inspection-based determination of qualification for future potential Rehabilitation Assistance; and the provision of Rehabilitation Assistance to those projects with Active status that are damaged in a flood or coastal storm event. Subpart D addresses Rehabilitation Assistance and the RIP.

(d) *Emergency water supplies due to contaminated water source.* The Corps may provide emergency supplies of clean water to any locality confronted with a source of contaminated water causing, or likely to cause, a substantial threat to the public health and welfare of the inhabitants of the locality. Subpart E addresses emergency water supply assistance.

(e) *Drought assistance.* Corps assistance may be provided to drought-distressed areas (as declared by the Secretary of the Army or his delegated nominee) to construct wells and to transport water for human consumption. Subpart E addresses drought assistance.

(f) *Advance Measures.* Advance Measures assistance may be provided to protect against imminent threats of predicted, but unusual, floods. Advance Measures projects must be justified from an engineering and economic standpoint, and must be capable of completion in a timely manner. Advance Measures assistance may be provided only to protect against loss of life and/or significant damages to improved property due to flooding. Subpart F of this part addresses Advance Measures assistance.

§ 203.14 Responsibilities of non-Federal interests.

Non-Federal interests, which include State, county and local governments; federally recognized Indian Tribes; and Alaska Native Corporations, are required to make full use of their own resources before Federal assistance can be furnished. The National Guard, as part of the State's resources when it is under State control, must be fully utilized as part of the non-Federal response. Non-Federal responsibilities include the following:

(a) *Disaster preparedness.* Disaster preparedness is a basic tenet of State and local responsibility. Disaster preparedness responsibilities of non-Federal interests include:

(1) Operation and maintenance of flood control works;

(2) Procurement and stockpiling of sandbags, pumps, and/or other materials or equipment that might be needed during flood situations;

(3) Training personnel to operate, maintain, and patrol projects during crisis situations, and preparation of plans to address emergency situations;

(4) Taking those actions necessary for flood control works to gain and maintain an Active status in the Corps Rehabilitation and Inspection Program (RIP), as detailed in subpart D of this part; and,

(5) Responsible regulation, management, and use of floodplain areas.

(b) *Emergency operations.* During emergency operations, non-Federal interests must commit available resources, to include work force, supplies, equipment, and funds. Requests for Corps emergency operations assistance will be in writing from the appropriate State, tribal, or local official. For flood fight direct assistance and Post Flood Response assistance, non-Federal interests must furnish formal written assurances of local cooperation by entering into Cooperation Agreements (CA's), as detailed in subpart G of this regulation. (For Corps work authorized under Public Law 84–99, the term "Cooperation Agreement" is used to differentiate this agreement from a Project Cooperation Agreement (PCA) that addresses the original construction of a project.) Following Flood Response or Post Flood Response assistance, it is a non-Federal responsibility to remove expedient flood control structures and similar works installed by the Corps under Public Law 84–99.

(c) *Rehabilitation of non-Federal flood control projects.* Prior to Corps rehabilitation of non-Federal flood control projects, non-Federal interests must furnish formal written assurances of local cooperation by entering into a CA, as detailed in subpart G of this part. Requirements of local participation include such items as provision of lands, easements, rights-of-way, relocations, and suitable borrow and dredged or excavated material disposal areas (LERRD's), applicable cost-sharing, and costs attributable to deficient and/or deferred maintenance.

(d) *Rehabilitation of Federal flood control projects.* Sponsors of Federal flood control projects are usually not required to furnish written assurances of local cooperation, if the PCA for the original construction of the project is sufficient. (**Note:** The PCA may also be referred to as a local cooperation agreement (LCA), cooperation and participation agreement (C&P), or similar terms.) In lieu of a new PCA, the Corps will notify the sponsor of the sponsor's standing requirements, including such items as LERRD's, costs attributable to deficient or deferred maintenance, removal of temporary works, relocations, and any cost-sharing requirements contained in subpart G of § 203.82. Modifications to the existing Operation and Maintenance Manual may be required based on the Rehabilitation Assistance required.

(e) *Emergency water supplies due to contaminated water source.* Except for federally recognized Indian Tribes or Alaska Native Corporations, Non-Federal interests must first seek emergency water assistance through the Governor of the affected State. If the State is unable to provide the needed assistance, then the Governor or his or her authorized representative must request Corps assistance in writing. Similarly, requests for Corps assistance for Indian Tribes or Alaska Native Corporations must be submitted in writing. A CA (see subpart G of this part) is required prior to assistance being rendered. Requests for assistance must include information concerning the criteria prescribed by subpart E of this part.

(f) *Drought assistance.* Except for federally recognized Indian Tribes or Alaska Native Corporations, non-Federal interests must first seek emergency drinking water assistance through the Governor of the affected State. Requests for Corps assistance will be in writing from the Governor or his or her authorized representative. Similarly, requests for Corps assistance for Indian Tribes or Alaska Native Corporations must be submitted in writing. A CA (see subpart G of this part) is required prior to assistance being rendered. Assistance can be provided to those drought-distressed areas (as declared by the Secretary of the Army) to construct wells and to transport water for human consumption. Requests for assistance must include information concerning the criteria prescribed by subpart E of this part.

(g) *Advance Measures.* Advance Measures assistance should complement the maximum non-Federal capability. Requests for assistance must be made by the Governor of the affected State, except requests for assistance on tribal lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted directly by the affected Federally recognized Indian Tribe or Alaska Native Corporation, or through the regional representative of the Bureau of Indian Affairs, or through the Governor of the State in which the lands are located. A CA (see subpart G of this part) is required prior to assistance being rendered. Non-Federal participation may include either financial contribution or commitment of non-Federal physical resources, or both.

§ 203.15 Definitions.

The following definitions are applicable throughout this part:

Federal Project. A project constructed by the Corps, and subsequently turned over to a local sponsor for operations and maintenance responsibility. This definition also includes any project specifically designated as a Federal project by an Act of Congress.

Flood Control Project: A project designed and constructed to have appreciable and dependable effects in preventing damage from irregular and unusual rises in water level. For a multipurpose project, only those components that are necessary for the flood control function are considered eligible for Rehabilitation Assistance.

Governor. All references in part 203 to the Governor of a State also refer to: the Governors of United States commonwealths, territories, and possessions; and the Mayor of Washington, D.C.

Hurricane/Shore Protection Project (HSPP). A flood control project designed and constructed to have appreciable and predictable effects in preventing damage to developed areas from the impacts of hurricanes, tsunamis, and coastal storms. These effects are primarily to protect against wave action, storm surge, wind, and the complicating factors of extraordinary high tides. HSPP's include projects known as shore protection projects, shore protection structures, periodic nourishment projects, shore enhancement projects, and similar terms. Components of an HSPP may include both hard (permanent construction) and soft (sacrificial, *i.e.*, sand) features.

Non-Federal Project. A project constructed with non-Federal funds, or a project constructed by tribal, State, local, or private interests, or a component of such a project. A project constructed under Federal emergency disaster authorities, such as Public Law 84–99 or the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5121, *et seq.*) (hereinafter referred to as the Stafford Act), is a non-Federal project unless it repairs or replaces an existing Federal project. Works Progress Administration (WPA) projects, and projects funded completely or partially by other (non-Corps) Federal agencies, are considered non-Federal projects for the application of Public Law 84–99 authority.

Non-Federal sponsor. A non-Federal sponsor is a public entity that is a legally constituted public body with full authority and capability to perform the terms of its agreement as the non-Federal partner of the Corps for a project, and able to pay damages, if necessary, in the event of its failure to perform. A non-Federal sponsor may be a State, County, City, Town, Federally recognized Indian Tribe or tribal organization, Alaska Native Corporation, or any political subpart of a State or group of states that has the legal and financial authority and capability to provide the necessary cash contributions and LERRD's necessary for the project.

Repair and rehabilitation. The term "repair and rehabilitation" means the repair or rebuilding of a flood control structure, after the structure has been damaged by a flood, hurricane, or coastal storm, to the level of protection provided by the structure prior to the flood, hurricane, or coastal storm. "Repair and rehabilitation" does not include improvements (betterments) to the structure, nor does "repair and rehabilitation" include any repair or rebuilding of a flood control structure that, in the normal course of usage, has become structurally unsound and is no longer fit to provide the level of protection for which it was designed.

§ 203.16 Federally recognized Indian Tribes and the Alaska Native Corporations.

Requests for Public Law 84–99 assistance on tribal lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted to the Corps directly by the affected federally recognized Indian Tribe or Alaska Native Corporation, or through the appropriate regional representative of the Bureau of Indian Affairs, or through the Governor of the State.

Subpart B—Disaster Preparedness

§ 203.21 Disaster preparedness responsibilities of non-Federal interests.

Disaster preparedness is a basic tenet of State and local responsibility. Assistance provided under authority of Public Law 84–99 is intended to be supplemental to the maximum efforts of State and local interests. Assistance under Public Law 84–99 will not be provided when non-Federal interests have made insufficient efforts to address the situation for which assistance is requested. Assistance under Public Law 84–99 will not be provided when a request for such assistance is based entirely on a lack of fiscal resources with which to address the situation. Non-Federal interests' responsibilities are addressed in detail as follows:

(a) *Operation and maintenance of flood control works.* Flood control works must be operated and maintained by non-Federal interests. Maintenance includes both short-term activities (normally done on an annual cycle, or more frequently) such as vegetation control and control of burrowing animals, and longer term activities such as repair or replacement of structural components (*e.g.*, culverts) of the project.

(b) *Procurement/stockpiling.* Procurement and stockpiling of sandbags, pumps, and/or other materials or equipment that might be needed during flood situations is a non-Federal responsibility. The Corps is normally a last resort option for obtaining such materials. Local interests should request such materials from State assets prior to seeking Corps assistance. Local interests are responsible for reimbursing (either in kind or in cash) the Corps for expendable flood fight supplies and materials, and returning items such as pumps. When a flood is of sufficient magnitude to receive a Stafford Act emergency or disaster declaration, then the District Engineer may waive reimbursement of expendable supplies.

(c) *Training and plans.* Training personnel to operate, maintain, and patrol flood control projects during crisis situations is a non-Federal responsibility. Specific plans should be developed and in place to address known problem areas. For instance, the non-Federal sponsor of a levee reach prone to boils should have personnel specifically trained in flood fighting boils. In addition, contingency plans must be made when needed to address short term situations. For instance, if a culvert through a levee is being replaced, then the contingency plan should address all actions needed should a flood event occur during the construction period when levee integrity is lacking.

(d) *Corps Rehabilitation and Inspection Program for Flood Control Works.* To be eligible for Rehabilitation Assistance under Public Law 84–99, it is a non-Federal responsibility to take those actions necessary for flood control works to gain and maintain an Active status in the Corps Rehabilitation and Inspection Program (RIP), as detailed in subpart D of this part.

Subpart C—Emergency Operations

§ 203.31 Authority.

Emergency operations under Public Law 84–99 apply to Flood Response and Post Flood Response activities. Flood Response activities include flood fighting, rescue operations, and protection of Corps-constructed hurricane/shore protection projects. Post Flood Response activities include certain limited activities intended to prevent imminent loss of life or significant public property, or to protect against significant threats to public health and welfare, and are intended to bridge the time frame between the occurrence of a disaster and the provision of disaster relief efforts under authority of The Stafford Act.

(a) *Flood Response.* Flood Response measures are applicable to any flood control work where assistance is supplemental to tribal, State, and local efforts, except that Corps assistance is not appropriate to protect flood control works constructed, previously repaired, and/or maintained by other Federal agencies, where such agencies have emergency flood fighting authority. Further, Flood Response measures (except technical assistance) are not appropriate for flood control works protecting strictly agricultural lands. Corps assistance in support of other Federal agencies, or State and local interests, may include the following: technical advice and assistance; lending of flood fight supplies, *e.g.*, sandbags, lumber, polyethylene sheeting, or stone; lending of Corps-owned equipment; hiring of equipment and operators for flood operations; emergency contracting; and similar measures.

(b) *Post Flood Response.* The Corps may furnish Post Flood Response assistance for a period not to exceed 10 days (the statutory limitation) from the date of the Governor's request to the Federal Emergency Management Agency for an emergency or disaster declaration under authority of the Stafford Act. Requests for Post Flood Response assistance must be made by the Governor of the affected State, except that requests for assistance on lands held in trust by the United States, or on lands of the Alaska Natives, may be submitted directly by the affected federally recognized Indian Tribe or Alaska Native Corporation, or through the appropriate regional representative of the Bureau of Indian Affairs, or through the Governor of the State in which the lands are located. Assistance from the Corps may include the following: provision of technical advice and assistance; cleaning of drainage channels, bridge openings, or structures blocked by debris deposited during a flood event, where the immediate threat of flooding of or damage to public facilities has not abated; removal of debris blockages of critical water supply intakes, sewer outfalls, etc.; clearance of the minimum amounts of debris necessary to reopen critical transportation routes or public services/facilities; other assistance required to prevent imminent loss of life or significant damage to public property, or to protect against significant threats to public health and welfare. Post Flood Response assistance is supplemental to the maximum efforts of non-Federal interests.

§ 203.32 Policy.

Prior to, during, or immediately following flood or coastal storm activity, emergency operations may be undertaken to supplement State and local activities. Corps assistance is limited to the preservation of life and property, *i.e.*, residential/commercial/industrial developments, and public facilities/services. Direct assistance to individual homeowners, individual property owners, or businesses is not permitted. Assistance will be temporary to meet the immediate threat, and is not intended to provide permanent solutions. All Corps activities will be coordinated with the State Emergency Management Agency or equivalent. Reimbursement of State or local emergency costs is not authorized. The local assurances required for the provision of Corps assistance apply only to the work performed under Public Law 84–99, and will not prevent State or local governments from receiving other Federal assistance for which they are eligible.

(a) *Flood Response.* Requests for Corps assistance will be in writing from the appropriate requesting official, or his or her authorized representative. When time does not permit a written request, a verbal request from a responsible tribal, State, or local official will be accepted, followed by a written confirmation.

(1) Corps assistance may include operational control of flood response activities, if requested by the responsible tribal, State, or local official. However, legal responsibility always remains with the tribal, State, and local officials.

(2) Corps assistance will be terminated when the flood waters recede below bankfull, absent a short term threat (*e.g.*, a significant storm front expected to arrive within a day or two) likely to cause additional flooding.

(3) Removal of ice jams is a local responsibility. Corps technical advice and assistance, as well as assistance with flood fight operations, can be provided to supplement State and local efforts. The Corps will not perform ice jam blasting operations for local interests.

(b) *Post Flood Response.* A written request from the Governor is required to receive Corps assistance. Corps assistance will be limited to major floods or coastal storm disasters resulting in life threatening situations. The Governor's request will include verification that the Federal Emergency Management Agency (FEMA) has been requested to make an emergency or disaster declaration; a statement that the assistance required is beyond the State's capability; specific damage locations; and the extent of Corps assistance required to supplement State and local efforts. Corps assistance is limited to 10 days following receipt of the Governor's written request, or on assumption of activities by State and local interests, whichever is earlier. After a Governor's request has triggered the 10-day period, subsequent request(s) for additional assistance resulting from the same flood or coastal storm event will not extend the 10-day period, or trigger a new 10-day period. The Corps will deny any Governor's request for Post Flood Response if it is received subsequent to a Stafford Act Presidential disaster declaration, or denial of such a declaration. Shoreline or beach erosion damage reduction/prevention actions under Post Flood Response will normally not be undertaken unless there is an immediate threat to life or critical public facilities.

(c) *Loan or issue of supplies and equipment.* (1) Issuance of Government-owned equipment or materials to non-Federal interests is authorized only after local resources have been fully committed.

(2) Equipment that is lent will be returned to the Corps immediately after the flood operation ceases, in a fully maintained condition, or with funds to pay for such maintenance. The Corps may waive the non-Federal interest's responsibility to pay for or perform maintenance if a Stafford Act Presidential emergency or disaster declaration has already been made for the affected locality, and the waiver is considered feasible and reasonable.

(3) Expendable supplies that are lent, such as sandbags, will be replaced in kind, or paid for by local interests. The Corps may waive the local interest's replacement/payment if a Stafford Act Presidential disaster declaration has been made for the affected locality, and the waiver is considered feasible and reasonable. All unused expendable supplies will be returned to the Corps when the operation is terminated.

Subpart D—Rehabilitation Assistance for Flood Control Works Damaged by Flood or Coastal Storm: The Corps Rehabilitation and Inspection Program

§ 203.41 General.

(a) *Authority.* Public Law 84–99 authorizes repair and restoration of the following types of projects to ensure their continued function:

(1) Flood control projects.

(2) Federally authorized and constructed hurricane/shore protection projects.

(b) *Implementation of authority.* The Rehabilitation and Inspection Program (RIP) implements Public Law 84–99 authority to repair and rehabilitate flood control projects damaged by floods and coastal storm events. The RIP consists of a process to inspect flood control work; a status determination, *i.e.*, an inspection-based determination of qualification for future Rehabilitation Assistance; and the provision of Rehabilitation Assistance to those projects with Active status that are damaged in a flood or coastal storm event.

(c) *Active status.* In order for a flood control work to be eligible for Rehabilitation Assistance, it must be in an Active status at the time of damage from a flood or coastal storm event. To gain an Active status, a non-Federal flood control work must meet certain engineering, maintenance, and qualification criteria, as determined by the Corps during an Initial Eligibility Inspection (IEI). To retain an Active status, Federal and non-Federal flood control works must continue to meet inspection criteria set by the Corps, as determined by the Corps during a Continuing Eligibility Inspection (CEI). All flood control works not in an Active status are considered to be Inactive, regardless of whether or not they have previously received a Corps inspection, or Corps assistance.

(d) *Modification of flood control projects.* Modification of a flood control project to increase the level of protection, or to provide protection to a larger area, is beyond the scope of Public Law 84–99 assistance. Such modifications to Federal projects are normally accomplished under congressional authorization and appropriation, or under Continuing Authorities Programs of the Corps. Such modifications to non-Federal projects are normally accomplished by the non-Federal sponsor and local interests. Modifications necessary to preserve the structural integrity of an existing non-Federal flood control project may be funded by the RIP, but such work must meet the criteria established in § 203.47 to be eligible for funding under Public Law 84–99.

§ 203.42 Inspection of non-Federal Flood Control Works.

(a) *Required inspections.* The Corps will conduct inspections of non-Federal flood control works. These inspections are IEI's and CEI's. Conduct of IEI's and CEI's will be as provided for in § 203.48.

(1) Corps involvement with any non-Federal flood control work normally begins when the sponsor requests an IEI. The Corps will conduct an IEI to determine if the flood control work meets minimum engineering and maintenance standards and is capable of providing the intended degree of flood protection. An Acceptable or Minimally Acceptable rating (see § 203.48) on the IEI is required to allow the project to gain an Active status in the RIP.

(2) CEI's are conducted periodically to ensure that projects Active in the RIP continue to meet Corps standards, and to determine if the sponsor's maintenance program is adequate. A rating of Acceptable or Minimally Acceptable (see § 203.48) on a CEI is required in order to retain an Active status in the RIP.

(b) Advice and reporting. Information on the results of IEI and CEI inspections will be furnished in writing to non-Federal sponsors, and will be maintained in Corps district offices.

(1) Non-Federal sponsors will be informed that an IEI rating of Unacceptable will cause the flood control work to remain in an Inactive status, and ineligible for Rehabilitation Assistance.

(2) Non-Federal sponsors will be informed that a CEI rating of Unacceptable will cause the flood control work to be placed in an Inactive status, and ineligible for Rehabilitation Assistance.

(3) Non-Federal sponsors will be informed that maintenance deficiencies found during CEI's may negatively impact on eligibility of future Rehabilitation Assistance, and the degree of local cost-sharing participation in any proposed work. Follow-up inspections can be made by the Corps to monitor progress in correcting deficiencies when warranted.

§ 203.43 Inspection of Federal Flood Control Works.

(a) *Required inspections.* A completed Federal flood control project, or completed functional portions thereof, is granted Active status in the RIP upon transfer of the operation and maintenance of the project (or functional portion thereof) to the non-Federal sponsor. Federal flood control works will be periodically inspected in accordance with 33 CFR 208.10 and Engineer Regulation (ER) 1130–2–530, Flood Control Operations and Maintenance Policies. These periodic inspections of Federal flood control works are also, for simplicity, known as CEI's. If a Federal project is found to be inadequately maintained on a CEI, then it will be placed in an Inactive status in the RIP. [**Note:** This is a separate and distinct action from project deauthorization, which is not within the scope of PL 84–99 activities.] A Federal project will remain in an Inactive status until such time as an adequate maintenance program is restored, and the project is determined by the Corps to be adequately maintained.

(b) *Advice and reporting.* Information on the results of CEI inspections will be furnished in writing to non-Federal sponsors, and will be maintained in Corps district offices. Non-Federal sponsors will be informed that a CEI rating of Unacceptable will cause the flood control work to be placed in an Inactive status, and not eligible for Rehabilitation Assistance. Non-Federal sponsors will be informed that maintenance deficiencies found during CEI's may negatively impact on eligibility of future Rehabilitation Assistance, and the degree of local cost-sharing participation in any proposed work. Follow-up inspections can be

made by the Corps to monitor progress in correcting deficiencies when warranted.

§ 203.44 Rehabilitation of non-Federal Flood Control Works.

(a) *Scope of work.* The Corps will provide assistance in the rehabilitation of non-Federal projects only when repairs are clearly beyond the normal physical and financial capabilities of the project sponsor. The urgency of the work required will be considered in determining the sponsor's capability.

(b) *Eligibility for Rehabilitation Assistance.* A flood control project is eligible for Rehabilitation Assistance provided that the project is in an Active status at the time of the flood event, the damage was caused by the flood event, the work can be economically justified, and the work is not otherwise prohibited by this subpart D.

(c) *Work at non-Federal expense.* At the earliest opportunity prior to commencement of or during authorized rehabilitation work, the Corps will inform the project sponsor of any work that must be accomplished at non-Federal cost. This includes costs to correct maintenance deficiencies, and any modifications that are necessary to preserve the integrity of the project.

(d) *Nonconforming works.* Any non-Federal project constructed or modified without the appropriate local, State, tribal, and/or Federal permits, or waivers thereof, will not be rehabilitated under Public Law 84–99.

(e) *Cooperation Agreements.* A Cooperation Agreement is required in accordance with subpart G of this part.

§ 203.45 Rehabilitation of Federal Flood Control Works.

Rehabilitation of Federal flood control projects will be identical to rehabilitation of non-Federal projects (§ 203.44), except for those conditions contained in subpart G of this part concerning cooperation agreements, when the original PCA for the Federal project is sufficient. Additional requirements for Hurricane/Shore Protection Projects are covered in § 203.49.

§ 203.46 Restrictions.

(a) Restrictions to flood control works. Flood control works are designed and constructed to have appreciable and dependable protection in preventing damage from irregular and unusual rises in water levels. Structures built primarily for the purposes of channel alignment, navigation, recreation, fish and wildlife enhancement, land reclamation, habitat restoration, drainage, bank protection, or erosion protection are generally ineligible for Public Law 84–99 Rehabilitation Assistance.

(b) *Non-flood related rehabilitation.* Rehabilitation of flood control structures damaged by occurrences other than floods, hurricanes, or coastal storms will generally not be provided under Public Law 84–99.

(c) *Maintenance and deterioration deficiencies.* Rehabilitation under Public Law 84–99 will not be provided for either Federal or non-Federal flood control projects that, as a result of poor maintenance or deterioration, require substantial reconstruction. All deficient or deferred maintenance existing when flood damage occurs will be accomplished by, or at the expense of, the non-Federal sponsor, either prior to or concurrently with authorized rehabilitation work. When work accomplished by the Corps corrects deferred or deficient maintenance, the estimated deferred or deficient maintenance cost will not be included as contributed non-Federal funds, and will be in addition to cost-sharing requirements addressed in § 203.82. Failure of project sponsors to correct deficiencies noted during Continuing Eligibility Inspections may result in ineligibility to receive Rehabilitation Assistance under Public Law 84–99.

(d) *Economic justification.* No flood control work will be rehabilitated unless the work required satisfies Corps criteria for a favorable benefit-to-cost ratio, and the construction cost of the work required exceeds $15,000. Construction costs greater than $15,000 do not preclude the Corps from making a determination that the required work is a maintenance responsibility of the non-Federal sponsor, and not eligible for Corps Rehabilitation Assistance.

§ 203.47 Modifications to non-Federal Flood Control Works.

Modifications necessary to preserve the structural integrity of existing non-Federal projects may be constructed at additional Federal and non-Federal expense in conjunction with approved rehabilitation work. The additional Federal cost will be limited to not more than one-third of the estimated Federal construction cost of rehabilitation to preflood level of protection, or $100,000, whichever is less. The modification work must be economically justified. Non-Federal interests are required to contribute a minimum of 25% of the total construction costs of the modification, LERRD's, and any additional funds necessary to support the remaining cost of the modification beyond what the Corps can provide. Engineering and design costs will be at Corps cost.

(a) *Cash contributions.* Non-Federal contributions will be only in cash. In-kind services are not permitted for modification work.

(b) *Protection of additional areas.* Modifications designed to provide protection to additional area are not authorized.

§ 203.48 Inspection guidelines for non-Federal Flood Control Works.

(a) *Intent.* The intent of these guidelines is to facilitate inspections of the design, construction, and maintenance of non-Federal flood control works. The guidelines are not intended to establish design standards for non-Federal flood control works, but to provide uniform procedures within the Corps for conducting required inspections. The results of these inspections determine Active status in the RIP, and thus determine eligibility for Rehabilitation Assistance. The contents of this section are applicable to both IEI's and CEI's.

(b) *Level of detail.* Evaluations of non-Federal flood control works will be made through on site inspections and technical analyses by Corps technical personnel. The level of detail required in an inspection will be commensurate with the complexity of the inspected project, the potential for catastrophic failure to cause significant loss of life, the economic benefits of the area protected, and other special circumstances that may occur. Technical evaluation procedures are intended to establish the general capability of a non-Federal flood control work to provide reliable flood protection.

(c) *Purposes.* The IEI assesses the integrity and reliability of the flood control work. In addition, other essential information required to help determine the Federal interest in future repairs/rehabilitation to the flood control work will be obtained. The IEI will establish the estimated level of protection and structural reliability of the existing flood control work. Subsequent CEI's will seek to detect changed project conditions that may have an impact on the reliability of the flood protection provided by the flood control work, to include the level of maintenance being performed on the flood control work.

(d) *Inspection Components.* (1) *Hydrologic/hydraulic analyses.* The level of protection provided by a non-Federal flood control work will be evaluated and expressed in terms of exceedence frequency (e.g., a 20% chance of a levee being overtopped in any given year). These analyses also include an evaluation of existing or needed erosion control features for portions of a project that may be threatened by stream flows, overland flows, or wind generated waves.

(2) *Geotechnical analyses.* The Geotechnical evaluation will be based primarily on a detailed visual inspection. As a minimum, for levees, the IEI will identify critical sections where levee stability appears weakest and will document the location, reach, and cross-section at these points.

(3) *Maintenance.* Project maintenance analysis will evaluate the maintenance performance of the non-Federal sponsor, and deficiencies of the project. This evaluation should reflect the level of maintenance needed to assure the intended degree of flood protection, and assess the performance of recent maintenance on the project. The effects of structures on, over, or under the flood control work, such as buried fiber optic cables, gas pipelines, etc., will be evaluated for impact on the stability of the structure.

(4) *Other Structural Features.* Other features that may be present, such as pump stations, culverts, closure structures, etc., will be evaluated.

(e) *Ratings.* Inspected flood control works will receive a rating in accordance with the table below. The table below provides the general assessment parameters used in assigning a rating to the inspected flood control work.

Rating	Assessment
A—Acceptable	No immediate work required, other than routine maintenance. The flood control project will function as designed and intended, and necessary cyclic maintenance is being adequately performed.
M—Minimally Acceptable	One or more deficient conditions exist in the flood control project that need to be improved/corrected. However, the project will essentially function as designed and intended.
U—Unacceptable	One or more deficient conditions exist which can reasonably be foreseen to prevent the project from functioning as designed, intended, or required.

(f) *Sponsor reclama.* If the results of a Corps evaluation are not acceptable to the project sponsor, the sponsor may choose, at its own expense, to provide a detailed engineering study, preferably certified by a qualified Professional Engineer, as a reclama to attempt to change the Corps evaluation.

§ 203.49 Rehabilitation of Hurricane and Shore Protection Projects.

(a) *Authority.* The Chief of Engineers is authorized to rehabilitate any Federally authorized hurricane or shore protection structure damaged or destroyed by wind, wave, or water action of an other than ordinary nature when, in the discretion of the Chief of Engineers, such rehabilitation is warranted for the adequate functioning of the project.

(b) *Policies.* (1) Rehabilitation of HSPP's is limited to the repair/restoration of the HSPP to a pre-storm condition that allows for the adequate functioning of the project, provided that the damage was caused by an extraordinary storm.

(2) To be eligible for Rehabilitation Assistance, HSPP's must be:

(i) A completed element of a Federally authorized project; or,

(ii) A portion of a Federally authorized project constructed by non-Federal interests when approval of such construction was obtained from the Commander, Headquarters, U.S. Army Corps of Engineers (HQUSACE), or his designated representative; or,

(iii) A portion of a Federally authorized project constructed by non-Federal interests and designated by an Act of Congress as a Federal project; and

(3) Rehabilitation Assistance for sacrificial features will be limited to that necessary to reduce the immediate threat to life and property, or restoration to pre-storm conditions, whichever is less.

(4) To be eligible for rehabilitation, the sacrificial features of an HSPP must be substantially eroded by wind, wave, or water action of an other than ordinary nature. The determination of whether a storm qualifies as extraordinary will be made by the Director of Civil Works, and may be delegated to the Chief, Operations Division, Directorate of Civil Works.

(5) Rehabilitation will not be provided for uncompleted HSPP's. An HSPP (or separable portion thereof) is considered completed when transferred to the non-Federal sponsor for operation and maintenance.

(6) *Definition of extraordinary storm.* An extraordinary storm is a storm that, due to prolongation or severity, creates weather conditions that cause significant amounts of damage to a Hurricane/Shore Protection Project. "Prolongation or severity" means a Category 3 or higher hurricane as measured on the Saffir-Simpson scale, or a storm that has an exceedance frequency equal to or greater than the design storm of the project. "Significant amounts of damage" have occurred when:

(i) The cost of the construction effort to effect repair of the HSPP or separable element thereof (exclusive of dredge mobilization and demobilization costs) exceeds $1 million and is greater than two percent of the original construction cost (expressed in current day dollars) of the HSPP or separable element thereof; or,

(ii) The cost of the construction effort to effect repair of the HSPP or separable element thereof (exclusive of dredge mobilization and demobilization costs) exceeds $6 million; or,

(iii) More than one-third of the planned or historically placed sand for renourishment efforts for the HSPP (or separable element thereof) is lost.

(c) *Procedural requirements.* Rehabilitation of HSPP'S will be done in accordance with § 203.45, except as modified by this section.

(d) *Combined Rehabilitation and Periodic Nourishment.* In some cases, the non-Federal sponsor may wish to fully restore the sacrificial features of a project where only a partial restoration is justifiable as Rehabilitation Assistance. In these cases, a cost allocation between Rehabilitation Assistance and periodic nourishment under the terms of the project PCA will be determined by the Director of Civil Works.

§ 203.50 Nonstructural alternatives to rehabilitation of Flood Control Works.

(a) *Authority.* Under Public Law 84–99, the Chief of Engineers is authorized, when requested by the non-Federal sponsor, to implement nonstructural alternatives (NSA's) to the rehabilitation, repair, or restoration of flood control works damaged by floods or coastal storms.

(b) *Policy.* (1) The option of implementing an NSA project (NSAP) in lieu of a structural repair or restoration is available only to non-Federal sponsors of flood control works eligible for Rehabilitation Assistance in

accordance with this regulation, and only upon the request of such non-Federal sponsors.

(2) A sponsor is required for implementation of an NSAP. The NSAP sponsor must be either a non-Federal sponsor as defined in § 203.15, or another Federal agency. The NSAP sponsor must demonstrate that it has the legal authority and financial capability to provide for the required items of local cooperation.

(3) The Corps shall not be responsible for the operation, maintenance, or management of any NSAP implemented in accordance with this section.

(4) The Corps may, in its sole discretion, reject any request for an NSA that would:

(i) Lead to significantly increased flood protection expenses or flood fighting expenses for public agencies, flood control works sponsors, public utilities, or the Federal Government; or,

(ii) Threaten or have a significant adverse impact on the integrity, stability, or level of protection of adjacent or nearby flood control works; or,

(iii) Lead to increased risk of loss of life or property during flood events.

(5) The principal purposes of an NSAP are for:

(i) Floodplain restoration;

(ii) Provision or restoration of floodways; and,

Note to paragraphs (b)(5)(i) and (ii): Habitat restoration is recognized as being a significant benefit that can be achieved with an NSAP, and may be a significant component of an NSAP, but is not considered to be a principal purpose under PL 84–99 authority.

(iii) Reduction of future flood damages and associated flood control works repair costs.

(c) *Limitation on Corps Expenditures.* Exclusive of the costs of investigation, report preparation, engineering and design work, and related costs, Corps expenditures for implementation of an NSAP are limited to the lesser of the Federal share of rehabilitation construction costs of the project were the flood control work to be structurally rehabilitated in accordance with subpart D of this part, or the Federal share of computed benefits which would be derived from such structural rehabilitation. This limitation on Corps expenditures may be waived by the Director of Civil Works or the Chief, Operations Division, Directorate of Civil Works when compelling reasons exist.

(d) *Responsibilities of the NSAP non-Federal sponsor:*

(1) Operate and maintain the NSAP;

(2) Provide, or arrange for and obtain, all funding required to implement the NSAP in excess of the limitation established in paragraph (c) of this section.

(3) Accept the transfer of ownership of any lands or interests in lands acquired by the Corps and determined by the Corps to be necessary to implement the NSAP.

(e) *Responsibilities of other Federal agencies acting as NSAP sponsor.* The Corps may participate with one or more Federal agencies in NSAP's. If the Corps is the lead Federal agency, based on mutual agreement of the Federal agencies, then a non-Federal NSAP sponsor is required. (*See* paragraph (d) of this section.) If another Federal agency is the lead Federal agency, then Corps participation in the NSAP will be based on the content of this section, with appropriate allowances for effecting an NSAP in accordance with the authority and ultimate goal of the lead Federal agency. In such cases, a Memorandum of Agreement between the Corps and the lead Federal agency is required, in accordance with paragraph (1) of this section.

(f) *Responsibilities of the requesting flood control work project sponsor.* (1) The flood control work project sponsor must request the Corps undertake an NSA project in lieu of rehabilitation of the flood control work, in accordance with the sponsor's applicable laws, ordinances, rules, and regulations.

(2) If not also the NSAP sponsor, the flood control work project sponsor must:

(i) Divest itself of responsibility to operate and maintain the flood control work involved in the NSAP; and

(ii) Provide to the NSAP sponsor such lands or interests in lands as it may have which the Corps determines are necessary to implement the NSAP.

(g) *Allowable Public Law 84–99 expenses for NSAP's.* (1) Acquisition of land or interests in land.

(2) Removal of structures, including manufactured homes, for salvage and/or reuse purposes.

(3) Demolition and removal of structures, including utility connections and related items.

(4) Debris removal and debris reduction.

(5) Removal, protection, and/or relocation of highways, roads, utilities, cemeteries, and railroads.

(6) Construction to promote, enhance, control, or modify water flows into, out of, through, or around the nonstructural project area.

(7) Nonstructural habitat restoration, to include select planting of native and desirable plant species, native species nesting site enhancements, *etc.*

(8) Total or partial removal or razing of existing reaches of levee, to include removal of bank protection features and/or riprap.

(9) Protection/floodproofing of essential structures and facilities.

(10) Supervision, administrative, and contract administration costs of other expenses allowed in this subparagraph.

(h) *Time limitation.* Corps participation in development and implementation of an NSAP may cease, at the sole discretion of the Corps, one year after the date of approval of rehabilitation of the damaged flood control work or the date of receipt of the flood control work public sponsor's request for an NSAP, whichever is earlier, if insufficient progress is being made to develop and implement the NSAP for reasons beyond the control of the Corps. In such circumstances, the Corps may, at its sole discretion, determine that Rehabilitation Assistance for the damaged flood control project may also be denied.

(i) *Participation and involvement of other Federal, State, tribal, local, and private agencies.* Nothing in this section shall be construed to limit the participation of other Federal, State, tribal, local, and private agencies in the development, implementation, or future operations and maintenance of an NSAP under this section, subject to the limitations of such participating agency's authorities and regulations.

(j) *Future assistance.* After transfer of NSAP operation and maintenance responsibility to the NSAP sponsor or the lead Federal agency, flood-related assistance pursuant to Public Law 84–99 will not be provided anywhere within the formerly protected area of the flood control work, except for rescue operations provided in accordance with § 203.13(b). As an exception, on a case-by-case basis, certain structural flood control works (or elements thereof) repaired or set back as part of the implementation of an NSAP having a non-Federal sponsor may be considered for future flood-related assistance.

(k) *Environmental considerations.* NSAP's are subject to the same environmental requirements, restrictions, and limitations as are structural rehabilitation projects.

(l) *Requirements for Cooperation Agreement (CA)/Items of Local Cooperation.* (1) Requirement for Local Cooperation. In order to clearly define the obligations of the Corps and of non-Federal interests, a CA with the NSAP non-Federal sponsor is required. Requirements are addressed in paragraphs (l)(2) through (10) of this section. When another Federal agency is the lead Federal agency, a Memorandum of Agreement (MOA) between the Corps and that agency is required. Wording of MOA's will be similar to, and consistent with, requirements detailed in paragraphs (l)(2) through (10) of this section for CA's, with appropriate modifications based on the other Federal agencies' authorized expenditures and programs.

(2) The CA requirements of subpart G of this part are not applicable to NSAP's.

(3) Items of Local Cooperation. For NSAP's, non-Federal interests shall:

(i) Provide without cost to the United States all borrow sites and dredged or excavated material disposal areas necessary for the project;

(ii) Hold and save the United States free from damages due to the project, except for damages due to the fault or negligence of the United States or its contractor; and

(iii) Maintain and operate the project after completion in a manner satisfactory to the Chief of Engineers.

(4) *Cost sharing.* The Corps may assume up to 100 percent of the costs of implementing an NSAP, subject to the limitations set forth in paragraph (c) of this section.

(5) *Eligibility under other Federal programs.* NSAP CA's shall not prohibit non-Federal interests from accepting funding from other Federal agencies, so long as the provision of such other Federal agency funding is not prohibited by statute.

(6) *Contributed funds.* Contributed funds may be accepted without further approval by the Chief of Engineers upon execution of the CA by all parties. The required certificate of the district commander will cite 33 U.S.C. 701h as the pertinent authority.

(7) *Obligation of contributed funds.* In accordance with OMB Circular A–34, all contributed funds must be received in cash and deposited with the Treasury before any obligations can be made against such funds.

(8) *Prohibition of future assistance.* The prohibition of future assistance described in paragraph (j) of this section must be included in the NSAP CA.

(9) *Assurance of compliance with Executive Order 11988.* NSAP CA's shall include acknowledgment of, and a statement of planned adherence to, Executive Order 11988, Floodplain Management, 3 CFR 117 (1977 Compilation), or as it may be revised in the future, by the NSAP sponsor.

(10) The CA must include a statement of legal restrictions placed on formerly protected lands that would preclude future use and/or development of such lands in a fashion incompatible with the purposes of the NSAP.

(m) *Acquisition of LERRD's.* (1) For the acquisition of LERRD's, reimbursement may be made to the non-Federal sponsor of an NSAP. Such reimbursements are subject to the normal Corps land acquisition process, funding caps set forth in (c) of this section, and availability of appropriations.

(2) For the acquisition of LERRD's, Corps funding may be combined with the funding of other Federal agencies, absent specific statutory language or principle prohibiting such combinations, under the terms of the MOA with other Federal agencies.

§ 203.51 Levee owner's manual.

(a) *Authority.* In accordance with section 202(f) of Public Law 104–303, the Corps will provide a levee owner's manual to the non-Federal sponsor of all flood control works in an Active status in the RIP.

(b) *Policies.* (1) *Active non-Federal projects.* A levee owner's manual developed and distributed by the Corps will be provided to all sponsors of Active non-Federal projects. The levee owner's manual will include the standards that must be met to maintain an Active status in the Rehabilitation and Inspection Program. Levee owner's manuals will also be provided, upon request, to sponsors of Inactive non-Federal projects so that the sponsors may evaluate their projects and prepare for an IEI to gain an Active status in the RIP.

(2) *Federal projects.* The Operation and Maintenance Manual specified by 33 CFR 208.10(a)(10) will fulfill the requirement of providing a levee owner's manual if the Corps has not provided a separate levee owner's manual to the sponsor of a Federal project.

(c) *Procedural requirements.* Levee Owner's Manuals will be initially provided to non-Federal sponsors of Active flood control works during scheduled CEI's and IEI's. Sponsors of Inactive projects and private levee owners will be provided manuals upon written request to the responsible Corps district.

§ 203.52 [Reserved]

Subpart E—Emergency Water Supplies: Contaminated Water Sources and Drought Assistance

§ 203.61 Emergency water supplies due to contaminated water source.

(a) *Authority.* The Chief of Engineers is authorized to provide emergency supplies of clean water to any locality confronted with a source of contaminated water causing, or likely to cause, a substantial threat to the public health and welfare of the inhabitants of the locality.

(b) *Policies.* (1) Any locality faced with a threat to public health and welfare from a contaminated source of drinking water is eligible for assistance.

(2) Eligibility for assistance will be based on one or more of the following factors:

(i) The maximum contaminant level *or* treatment technique for a contaminant, as established by the Environmental Protection Agency pursuant to the Safe Drinking Water Act (*see* 40 CFR 141), is exceeded.

(ii) The water supply has been identified as a source of illness by a tribal, State, or Federal public health official. The specific contaminant does not have to be identified.

(iii) An emergency (*e.g.*, a flood or chemical spill) has occurred that has resulted in either: one or more contaminants entering the source on a sufficient scale to endanger health; or, the emergency has made inoperable the equipment necessary to remove known contaminants.

(iv) The presence of a contaminant is indicated on the basis of other information available.

(3) Corps assistance will be directed toward the provision of the minimum amount of water required to maintain the health and welfare requirements of the affected population. The quantity of water and the means of distribution will be at the discretion of the responsible Corps official, who will consider the needs of the individual situation, the needs of the affected community, and the cost effectiveness of providing water by various methods.

(4) If a locality has multiple sources of water, assistance will be furnished only to the extent that the remaining sources, with reasonable conservation measures, cannot provide adequate supplies of drinking water.

(5) Loss of water supply is not a basis for assistance under this authority.

(6) Water will not be furnished for commercial processes, except as incidental to the use of existing distribution systems. This does not prohibit the furnishing of water for drinking by employees and on-site customers. Water for preparing retail meals and similar personal needs may be provided to the extent it would be furnished to individuals.

(7) The permanent restoration of a safe supply of drinking water is the responsibility of local interests.

(8) Corps assistance is limited to 30 days, and requires the local interests to provide assurances of cooperation in a CA. (*See* subpart G of this part.)

Extension of this 30-day period requires agreement (as an amendment to the previously signed CA) between the State and the Corps. This agreement must cover specified services and responsibilities of each party, and provision of a firm schedule for local interests to provide normal supplies of water.

(9) State, tribal, and local governments must make full use of their own resources, including National Guard capabilities.

(c) *Governor's request.* A letter signed by the Governor, or his or her authorized representative, requesting Corps assistance and addressing the State's commitments and capabilities in response to the emergency situation, is required. All requests should identify the following information:

(1) Describe the local and State efforts undertaken. Verify that all reasonably available resources have been committed.

(2) Identify the specific needs of the State, and the required Corps assistance.

(3) Identify additional commitments to be accomplished by the State.

(4) Identify the project sponsor(s).

(d) *Non-Federal responsibilities.* Non-Federal interests are responsible for restoration of the routine supply of clean drinking water, including correcting any situations that cause contamination. If assistance is furnished by the Corps, local interests must furnish the basic requirements of local cooperation as detailed in the Cooperation Agreement. In all cases, reasonable water conservation measures must be implemented. Local interests will be required to operate and maintain any loaned equipment, and to remove and return such equipment to Federal interests, in a fully maintained condition, after the situation is resolved.

§ 203.62 Drought assistance.

(a) *Authority.* The Chief of Engineers, acting for the Secretary of the Army, has the authority under certain statutory conditions to construct wells for farmers, ranchers, political subdivisions, and to transport water to political subdivisions, within areas determined to be drought-distressed.

(b) *General policy.* (1) It is a non-Federal responsibility for providing an adequate supply of water to local inhabitants. Corps assistance to provide emergency water supplies will only be considered when non-Federal interests have exhausted reasonable means for securing necessary water supplies, including assistance and support from other Federal agencies.

(2) Before Corps assistance is considered under this authority, the applicability of other Federal assistance authorities must be evaluated. If these programs cannot provide the needed assistance, then maximum coordination should be made with appropriate agencies in implementing Corps assistance.

(c) *Governor's request.* A letter signed by the Governor, requesting Corps assistance and addressing the State's commitments and capabilities with response to the emergency situation, is required. All requests should identify the following information:

(1) A description of local and State efforts undertaken. A verification that all available resources have been committed, to include National Guard assets.

(2) Identification of the specific needs of the State, and the required Corps assistance.

(3) Identification of the additional commitments to be accomplished by the State.

(4) Identification of the project sponsor(s).

(d) *Definitions applicable to this section:*

(1) *Construction.* This term includes initial construction, reconstruction, or repair.

(2) *Drought-distressed area.* An area that the Secretary of the Army determines, due to drought conditions, has an inadequate water supply that is causing, or is likely to cause, a substantial threat to the health and welfare of the inhabitants of the impacted area, including the threat of damage or loss of property.

(3) *Eligible applicant.* Any rancher, farmer or political subdivision within a designated drought-distressed area that is experiencing an inadequate supply of water due to drought.

(4) *Farmer or rancher.* An individual who realizes at least one-third of his or her gross annual income from agricultural sources, and is recognized in the community as a farmer or rancher. A farming partnership, corporation, or similar entity engaged in farming or ranching, which receives its majority income from such activity, is also considered to be a farmer or rancher, and thus an eligible applicant.

(5) *Political subdivision.* A city, town, borough, county, parish, district, association, or other public body created by, or pursuant to, Federal or State law, having jurisdiction over the water supply of such public body.

(6) *Reasonable cost.* In connection with the Corps construction of a well, means the lesser of:

(i) The cost of the Chief of Engineers to construct a well in accordance with these regulations, exclusive of:

(A) The cost of transporting equipment used in the construction of wells; and

(B) The cost of investigation and report preparation to determine the suitability to construct a well; or

(ii) The cost to a private business of constructing such a well.

(7) *State.* Any State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Marianas Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(d) *Guidance*—construction of wells. (1) Assistance to an eligible applicant for the construction of a well may be provided on a cost-reimbursable basis if:

(i) It is in response to a written request by a farmer, rancher, or political subdivision for construction of a well under Public Law 84–99.

(ii) The applicant is located within an area that the Secretary of the Army has determined to be drought-distressed.

(iii) The Secretary of the Army has made a determination that:

(A) The applicant, as a result of the drought, has an inadequate supply of water.

(B) An adequate supply of water can be made available to the applicant through the construction of a well.

(C) As a result of the drought, a private business could not construct the well within a reasonable time.

(iv) The applicant has secured the necessary funding for well construction from commercial or other sources, or has entered into a contract to pay to the United States the reasonable cost of such construction with interest over a period of years, not to exceed 30, as the Secretary of the Army deems appropriate.

(v) The applicant has obtained all necessary Federal, State and local permits.

(2) The financing of the cost of construction of a well by the Corps under this authority should be secured by the project applicant.

(3) The project applicant will provide the necessary assurances of local cooperation by signing a Cooperation Agreement (subpart G of this part) prior to the start of Corps work under this authority.

(4) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to drill wells, but can only be used when commercial firms cannot provide comparable service within the time needed to prevent the applicant from suffering significantly increased hardships from the effects of an inadequate water supply.

(e) *Guidance-transport of water.* (1) Assistance to an applicant in the

transportation of water may be provided if:

(i) It is in response to a written request by a political subdivision for transportation of water.

(ii) The applicant is located within an area that the Secretary of the Army has determined to be drought-distressed.

(iii) The Secretary of the Army has made a determination that, as a result of the drought, the applicant has an inadequate supply of water for human consumption, and the applicant cannot obtain water.

(2) Transportation of water by vehicles, small diameter pipe line, or other means will be at 100 percent Federal cost.

(3) Corps assistance in the transportation of emergency water supplies will be provided only in connection with water needed for human consumption. Assistance will not be provided in connection with water needed for irrigation, recreation, or other non-life supporting purposes, or livestock consumption.

(4) Corps assistance will not include the purchase of water, nor the cost of loading or discharging the water into or from any Government conveyance, to include Government-leased conveyance.

(5) Equipment owned by the United States will be utilized to the maximum extent possible in exercising the authority to transport water, consistent with lowest total Federal cost.

(f) *Request for assistance.* A written request must be made to the district commander with Civil Works responsibility for the affected area. Upon receipt of a written request, the appropriate State and Federal agencies will be notified, and coordination will continue as appropriate throughout the assistance.

Subpart F—Advance Measures

§ 203.71 Policy.

Advance Measures consists of those activities performed prior to a flood event, or potential flood event, to protect against loss of life and/or significant damages to improved property from flooding. Emergency work under this authority will be considered when requested by the Governor of a State confronted with an imminent threat of unusual flooding. Corps assistance will be to complement the maximum efforts of tribal, State, and local authorities. Projects will be designed for the specific threat, normally of expedient-type construction, and typically temporary in nature.

§ 203.72 Eligibility criteria and procedures.

(a) *Threat of flooding.* An *imminent* threat of *unusual* flooding must exist before Advance Measures projects can be approved. The threat may be established by National Weather Service predictions, or by Corps of Engineers determinations of unusual flooding from adverse or unusual conditions. The threat must be clearly defined to the extent that it is readily apparent that damages will be incurred if preventive action is not taken immediately.

(b) *Governor's request.* A letter signed by the Governor, requesting Corps assistance and addressing the State's commitments and capabilities with response to the emergency situation, is required. All requests should identify the following information:

(1) Describe the non-Federal efforts undertaken. Verify that all available resources have been committed.

(2) Identify the specific needs, and the required Corps assistance.

(3) Identify additional commitments to be accomplished by the non-Federal interests.

(4) Identify the non-Federal sponsor(s).

(c) *Feasibility.* The proposed work should be temporary in nature, technically feasible, designed to deal effectively and efficiently with the specific threat, and capable of construction in time to prevent anticipated damages.

(d) *Economic justification.* All work undertaken under this category must have a favorable benefit-to-cost ratio, under Corps of Engineers economic guidelines.

(e) *Local cooperation/responsibilities.* Subpart G of this part provides requirements for a Cooperation Agreement needed to provide local assurances. The project sponsor must remove temporary works constructed by the Corps when the operation is over, at no cost to the Corps.

(f) *Contingency planning efforts for potential Advance Measures activities.* Occasionally weather phenomena occur which produce a much higher than normal probability or threat of flooding which may be predicted several months in advance of occurrence or significant impact. Impacts on specific locations may be unpredictable, but regional impacts may have a high likelihood of occurrence. In such situations, the Corps may provide technical and contingency planning assistance to tribal, State, and local agencies, commensurate with the predicted weather phenomenon, based on requests for assistance from such tribal, State, and local agencies. Specific Advance Measures projects must be addressed as specified in paragraph (b) of this section.

(g) *Definitions.*

(1) *Immihent threat.* A subjective statistical evaluation of how quickly a threat scenario can develop, and how likely that threat is to develop in a given geographical location. Implicit in the timing aspect can be considerations of available time (when the next flood or storm event is likely to occur), season (*e.g.*, a snowpack that will melt in the coming spring runoff), or of known cyclical activities.

(2) *Unusual flooding.* A subjective determination that considers potential ability to approach an area's flood of record, a catastrophic level of flooding, or a greater than 50-year level of flooding.

Subpart G—Local Interests/ Cooperation Agreements

§ 203.81 General.

(a) *Requirements for Cooperation Agreements.* In order to maintain a firm understanding between the Corps and non-Federal interests concerning the responsibilities of each party in responding to or recovering from a natural disaster, division or district commanders shall negotiate a cooperation agreement (CA) with a non-Federal sponsor whenever assistance (other than short term technical assistance) is furnished. CA's do not require approval by HQUSACE unless they contain special or unusual conditions. For assistance to other than a public entity, a public agency is required to be the non-Federal sponsor, co-sign the agreement, and be responsible, from the Corps perspective, for accomplishment of all work and conditions required in the CA. Project sponsors must meet the definition contained in § 203.15.

(b) *Request for assistance.* (1) For urgent situations involving Flood Response activities, division/district commanders may respond to oral requests from responsible representatives of local interests. However, all oral requests must be confirmed in writing. Assistance can be furnished before the written statement is received.

(2) Before furnishing assistance (other than short term technical assistance) under Advance Measures, or under Emergency Water Supplies, the district/division commander must receive a request, signed by the Governor (or the Governor's representative for Emergency Water assistance due to a contaminated source), identifying the problem, verifying that all available State and

local resources have been committed, and requesting Federal assistance.

§ 203.82 Requirements of local cooperation.

It is Corps policy that provision of assistance under Public Law 84–99 will, insofar as feasible, require local interests to: provide without cost to the United States all LERRD's necessary for the authorized work; hold and save the United States free from damages due to the authorized work, exclusive of damages due to the fault or negligence of the United States or its contractor; maintain and operate, in a manner satisfactory to the Chief of Engineers, all the works after completion. When assistance includes the construction of temporary protective works, the maintain and operate clause is modified by adding (or substituting, as applicable) the requirement for local interests to remove any temporary works constructed by the Corps under Public Law 84–99. If any permanent works are constructed, then the sponsor is required to operate and maintain the project in accordance with requirements determined by the Corps.

(a) *Furnishing of LERRD's.* This item provides for sites of structures, for borrow and disposal areas, and for access. It also provides for all other rights in, upon, through, or over private property as needed by the United States in connection with the authorized work. Performance by the local interests under their assurance to furnish LERRD's will normally not be considered a contribution. If more advantageous to the Federal Government, borrow and disposal areas may be assumed as a Federal responsibility. Easements must be provided for future Federal inspection of maintenance or removal. If a public agency sponsors a project for a non-public applicant, the applicant must provide an easement to the sponsor for future maintenance or removal, as well as for Federal inspection. Easements should extend to the life of the project.

(b) *Hold and save clause.* This clause serves as legal protection of the government. Where property concerned is under tenancy, both the property owner and the tenant should acknowledge the non-Federal sponsor's signed CA.

(c) *Maintain and operate clause.* This item is intended to protect the investment of government resources and provide proper stewardship of resources entrusted to the Corps. This clause must include: "It is understood that the foregoing maintenance and operation requirement extends to interrelated features of all protective work under the control of (insert name of sponsor, and owner if appropriate)."

(d) *Removal of temporary works.* Local interests are responsible for the removal of all temporary works constructed by the Corps, which are unsuitable for upgrade to permanent structures. Structures may be deemed unsuitable due to inherent health, access, or safety problems that could result from their location. The wording of this clause must not preclude the use of other Federal assistance programs to fund removal.

(e) *Request for retention of temporary flood control works.* Local interests may ask to retain a temporary structure for protection from future floods. This will not be approved by the Corps unless the works are upgraded to meet all Corps criteria for permanent projects. Public Law 84–99 funds will not be used to upgrade the structure. An upgraded project must comply with permitting, environmental, and other regulatory and legal requirements. Unless upgraded, such projects are not eligible for rehabilitation, and must be removed in accordance with paragraph (d) of this section. Unless upgraded, temporary projects which are not removed by the local sponsor will cause all projects with the same sponsor to lose eligibility for Public Law 84–99 assistance. Local interests must initiate action to upgrade or remove the temporary works within 30 days after the flood threat has passed.

(f) *Cost sharing.* (1) The Federal Government may assume up to 80 percent of the eligible construction costs for rehabilitation of non-Federal flood control projects, and up to 100 percent of the eligible construction costs for rehabilitation of Federal flood control projects. The Federal Government may assume up to 100 percent of the eligible construction costs for rehabilitation of HSPP's. Sponsors will provide their share of costs as provided for in § 203.84. The sponsor's share is in addition to providing costs for LERRD's, and any costs for correction of any deferred/deficient maintenance. The Corps will determine the dollar value of any in-kind services provided by the local sponsor.

(2) For those unusual occasions where permanent construction (vice the temporary standard) for Advance Measures projects is employed, the local sponsor will normally be required to provide 25 percent of the project cost, in addition to LERRD's.

§ 203.83 Additional requirements.

(a) *Maintenance deficiencies.* Rehabilitation, Emergency Water, Post Flood Response, and Advance Measures authorities may not be used to correct deferred or deficient maintenance. Such correction must be accomplished by, or at the expense of, local interests. This may include restoring normal levee or dune height after subsidence, replacement of deteriorated components such as outlet structures and pipes, removal of debris, and new construction items such as protection against erosion. This restriction on use of these authorities does not preclude furnishing flood fight assistance during an emergency.

(b) *Areas of minor damage, flood control works.* Separable areas with minor damage will be included in the maintenance program of local interests.

(c) *Minor completion items.* Local interests should be responsible for minor completion items, such as dressing fills, placing sod, or seeding completed work.

(d) *Adequacy of requirements of local cooperation.* In determining the adequacy of the pledge of local cooperation, district/division commanders must consider the local sponsor's performance capability, taking into account any shortcomings in meeting prior commitments. Local sponsors should make provisions to establish and provide resources for a "Contingency Fund" to meet future maintenance requirements if apparent inadequacies of protective works indicate maintenance costs will be unusually high. Local sponsors should make provisions to establish and provide resources for a "Capital Improvement Fund" to meet future costs of capital improvement projects such as replacement of culverts in levees, pump station equipment, *etc.*

(e) *Eligibility under other Federal programs.* The Cooperation Agreement must be worded to allow local interests to accept funding from other Federal programs for meeting the local responsibility. For example, removal of temporary works will be without cost under Corps Public Law 84–99 assistance, but will not be "at no cost to the United States." Use of another Federal agency's funds is contingent upon that agency providing the Corps written assurance that such usage does not violate any existing laws or rules concerning the usage or expenditure of such funds.

§ 203.84 Forms of local participation—cost sharing.

In addition to the standard requirements of local cooperation and according to the circumstances, local participation in project work may be in the form of: contributed funds; the furnishing of materials, equipment, or services; and/or accomplishment of work either concurrently or within a specified reasonable period of time. The final terms agreed upon will be set forth in writing and made a part of the CA before commencement of work.

(a) *Contributed funds.* Contributed funds may be accepted, or refunded, without further reference or approval by the Chief of Engineers. The required certificate of the district commander will cite 33 U.S.C. 701h as the pertinent authority.

(b) *Obligation of contributed funds.* Per OMB Circular A–34, all contributed funds must be received in cash and deposited with the Treasury before any obligations can be made against such funds. Public Law 84–99 assistance for well construction is exempted from this requirement because financing is specifically authorized. However, the CA for such well construction assistance (*see* subpart G of this part) must be signed in advance of any obligations. To reduce administrative problems, CA terms for well construction should be for no longer a period than that which will allow for payments within the means of the applicant. Public Law 84–99 limits the term to a maximum of 30 years.

(c) *Provision of work or services in kind.* To the extent practicable, local interests should be allowed to minimize the amount of contributed funds by providing equivalent work or services in kind. Such services do not include LERRD's.

§ 203.85 Rehabilitation of Federal Flood Control Projects.

Some sponsors of Federal flood control projects are not required to furnish written assurances of local cooperation, when such assurances already exist from the PCA of the original construction of the project. In lieu of a new PCA, the Corps will notify the sponsor, in writing, of the sponsor's standing requirements. These requirements include such items as LERRD's, costs attributable to deficient or deferred maintenance, removal of temporary works, cost-sharing requirements, and any other requirements contained in § 203.82. The project sponsor must acknowledge its responsibilities prior to the provision of Rehabilitation Assistance. If the existing PCA does not adequately address responsibilities, then a CA will be required.

§ 203.86 Transfer of completed work to local interests.

Responsibility for operation and maintenance of a project for which emergency work under Public Law 84–99 is undertaken will always remain with the non-Federal sponsor throughout the process, and thereafter. The Corps will notify the non-Federal sponsor by letter when repair/rehabilitation/work efforts are completed. Detailed instructions, and suggestions relative to proper maintenance and operation, may be furnished as an enclosure to this letter. The letter will remind the local interests that they are responsible for satisfactory maintenance of the flood control works in accordance with the terms of the PCA or CA. In appropriate cases for Federal projects, refer to the "Flood Control Regulation for Maintenance and Operation of Flood Control Works: (33 CFR 208)" or the project's Operation and Maintenance Manual. Reporting requirements placed on the non-Federal sponsor will vary according to organization and other circumstances.

[FR Doc. 03–9008 Filed 4–18–03; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No.: 2003–P–011]

Correspondence With the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule; correction.

SUMMARY: The United States Patent and Trademark Office (Office) published in the **Federal Register** of March 25, 2003 (68 FR 14332) a final rule revising the rules of practice to change the mailing address for certain correspondence with the Office, and to change the titles of certain Office officials. This document corrects an error in the zip code set forth in the address for mailing trademark-related correspondence.

EFFECTIVE DATE: Effective on May 1, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Hannon, Office of the Commissioner for Trademarks, by telephone at (703) 308–8910, ext. 137; by e-mail to *mary.hannon@uspto.gov;* by facsimile transmission addressed to her at (703) 872–9280; or by mail marked to her attention and addressed to Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3514.

SUPPLEMENTARY INFORMATION: The Office published in the **Federal Register** of March 25, 2003 (68 FR 14332) a final rule that changed the mailing address for certain correspondence with the Office. This document amends § 1.1(a)(2) to correct the zip code in the address for mailing trademark-related documents (other than documents sent to the Assignment Services Division for recordation and requests for copies of trademark documents). Specifically, 37 CFR 1.1(a)(2) is amended to refer to "22202–3514" rather than "22202–3513."

In FR Doc. 03–6971, published on March 25, 2003 (68 FR 14332), make the following correction.

PART 37—[Corrected]

§ 1.1 [Corrected].

■ 1. On page 14335, in the third column, in § 1.1(a)(2), line 10, correct "22202–3513" to read "22202–3514."

Dated: April 15, 2003.

Lynne G. Beresford,

Deputy Commissioner for Trademark Examination Policy.

[FR Doc. 03–9696 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–7485–3]

Prevention of Significant Deterioration; Notice of Withdrawal of Delegation of Authority; Bay Area Air Quality Management District; Kern County Air Pollution Control District; Nevada Division of Environmental Protection; San Diego County Air Pollution Control District; Santa Barbara County Air Pollution Control District; Shasta County Air Quality Management District; South Coast Air Quality Management District; and Washoe County District Health Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of withdrawal of delegation of PSD permitting authority.

SUMMARY: This document is to inform interested parties that, by letters dated March 3, 2003, the Regional Administrator of EPA, Region 9, has rescinded the Region's delegations of authority to issue federal Prevention of Significant Deterioration (PSD) permits to the following agencies in California and Nevada: Bay Area Air Quality Management District; Kern County Air Pollution Control District; Nevada Division of Environmental Protection; San Diego County Air Pollution Control

District; Santa Barbara County Air Pollution Control District; Shasta County Air Quality Management District; South Coast Air Quality Management District; and Washoe County District Health Department.

DATES: The letters withdrawing delegation to these jurisdictions specify that the rescission of the PSD delegations is effective on March 3, 2003.

ADDRESSES: You can inspect copies of the delegation agreements and Region 9's letters rescinding each delegation agreement at our Region IX office during normal business hours. Due to security procedures, please call Curt Taipale at 415–972–3966 at least one day in advance of inspecting these documents at our office: Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You may also see copies of the pertinent delegation agreement and rescission letter at the following locations:

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301–2370.

Nevada Division of Environmental Protection, Bureau of Air Pollution Control, 333 West Nye Lane, Carson City, NV 89706.

San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117.

Shasta County Air Quality Management District, 1855 Placer Street, Suite 101, Redding, CA 96001–1759.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

Washoe County District Health Department, Air Quality Management Division, 401 Ryland Street, Suite 331, Reno, Nevada 89502.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region IX, (415) 972–3974, or send e-mail to *rios.gerardo@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

In 1978, EPA published final regulations at 40 CFR 52.21, implementing the PSD program required under Part C of the Clean Air Act, 42 U.S.C. 7475–7479. *See* 43 FR 26403 (June 19, 1978). The PSD regulations provide authority to EPA to delegate the responsibility for conducting PSD source review to a State or local air pollution control agency. 40 CFR 52.21(u). In general, delegations are implemented through agreements between EPA Regions and state or local air pollution control agencies. These agreements are in essence contracts between the Agency and permitting agencies, setting out the responsibilities of each in carrying out the federal PSD program for that jurisdiction. The specific elements of delegation agreements vary to take into consideration particular circumstances, such as legal restrictions that may apply in a specific jurisdiction.

Pursuant to its authority under § 52.21(u), Region 9 entered into delegation agreements with the following permitting agencies on the date specified: Bay Area Air Quality Management District—April 23, 1986; Kern County Air Pollution Control District—August 12, 1999; Nevada Division of Environmental Protection—May 27, 1983; San Diego County Air Pollution Control District—November 21, 1985; Santa Barbara County Air Pollution Control District—August 21, 1985; Shasta County Air Quality Management District—July 8, 1985; South Coast Air Quality Management District—January 15, 1997; and Washoe County District Health Department—April 9, 1985. Region 9 published notices of the delegation agreements in the **Federal Register** at various dates.

On December 31, 2002, EPA published its Final Rule significantly revising 40 CFR 52.21. 67 FR 80186 (Dec. 31, 2002). The revised rules were effective on March 3, 2003.

Since publication of the revised PSD rules, Region 9 has consulted with each of the California permitting agencies that implemented 40 CFR 52.21 pursuant to a delegation agreement and with the California Air Resources Board (CARB). The permitting agencies and CARB have informed Region 9 that they are unable to implement 40 CFR 52.21 as revised without making changes to California law and/or local regulations. Region 9 has also discussed the issue with the Nevada Division of Environmental Protection, who indicated that changes to Nevada law would be necessary for either NDEP or the Washoe County District Health Department to implement the revisions to 40 CFR 52.21.

As the California and Nevada permitting agencies identified above did not believe that their current law would allow them to implement revised 40 CFR 52.21, Region 9 will resume issuing federal PSD permits as of the date the revisions to 40 CFR 52.21 take effect. Region 9 has issued a letter to each permitting agency in the Region that is implementing 40 CFR 52.21 pursuant to a delegation agreement, advising the permitting agencies that the delegation of federal PSD permitting authority would be rescinded effective March 3, 2003. A copy of each letter rescinding the PSD delegation of authority is available for inspection and copying at the addresses provided above.

EPA's withdrawal of authority to implement the federal PSD permitting program does not affect permitting requirements under state or local law. Companies should continue to work with their state or local permitting agencies to ensure that state or local permitting requirements are met.

II. EPA Action

We have written letters rescinding the delegation agreements to implement the regulations at 40 CFR 52.21 for the following California permitting agencies: Bay Area Air Quality Management District; Kern County Air Pollution Control District; San Diego County Air Pollution Control District; Santa Barbara County Air Pollution Control District; Shasta County Air Quality Management District; and South Coast Air Quality Management District. We have written a letter rescinding the delegation agreements to implement the regulations at 40 CFR 52.21 for the following Nevada permitting agencies: Nevada Division of Environmental Protection; Washoe County District Health Department.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Reporting and recordkeeping requirements.

Dated: April 2, 2003.

Alexis Strauss,

Acting, Regional Administrator, Region IX.

[FR Doc. 03–9621 Filed 4–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–56–1–7491a; FRL–7485–6]

Approval and Promulgation of Implementation Plans; Louisiana: Revision to the Ozone Maintenance Plans for Beauregard, St. Mary, Lafayette, and Grant Parishes and the New Orleans Consolidated Metropolitan Statistical Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to approve a revision to the Louisiana SIP for Beauregard, St. Mary, Lafayette, and Grant Parishes and the New Orleans Consolidated Metropolitan Statistical Area (CMSA) ozone maintenance areas, submitted by the State of Louisiana on December 4, 2000. The revision involves changes to the approved contingency plans. This rulemaking action is being taken under sections 110, 301 and part D of the Clean Air Act (CAA).

DATES: This rule is effective on June 20, 2003 without further notice, unless we receive adverse comment by May 21, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi, at (214) 665–7186.

SUPPLEMENTARY INFORMATION: Throughout this document "we," "us," and "our" refers to EPA.

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VI. What regulatory assessment requirements apply for this action?

I. What Is the Background on This Action?

The CAA, as amended in 1977, required areas that were designated nonattainment based on a failure to meet the ozone National Ambient Air Quality Standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. Beauregard, St. Mary, Lafayette, and Grant Parishes and the New Orleans CMSA were designated under section 107 of the 1977 CAA as nonattainment with respect to the ozone NAAQS on September 11, 1978 (40 CFR 81.319). As required by part D and section 110 of the 1977 CAA, the State of Louisiana submitted an ozone SIP. The EPA fully approved this ozone SIP on October 29, 1981 (46 FR 53412).

On November 15, 1990, the CAA Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). The ozone nonattainment designation for these areas continued by operation of law according to section 107(d)(1)(C)(i) of the CAA, as amended in 1990 (56 FR 56694, November 6, 1991). For Beauregard, St. Mary, Lafayette, and Grant Parishes, the State had not yet collected the required three years of ambient air quality data necessary to petition for redesignation to attainment, so these Parishes were classified as unclassifiable-incomplete data for ozone. For the New Orleans CMSA, the State collected the required three years of ambient air quality data necessary to petition for redesignation to attainment, and these data demonstrated that the ozone standard had not been violated, so the New Orleans CMSA was designated as transitional for ozone. The Louisiana Department of Environmental Quality (LDEQ) then collected more than 3 years of ambient monitoring data that showed no violations of the one-hour ozone NAAQS of 0.12 parts per million. A violation of the ozone standard occurs if data show four or more exceedances during a consecutive 3-year period.

On April 23, 1993, Louisiana requested the redesignation to NAAQS ozone attainment for the New Orleans CMSA. On May 25, 1993, the State requested redesignation for Grant and Lafayette Parishes; and on June 14, 1993, for Beauregard and St. Mary Parishes. These requests were accompanied by an ozone maintenance SIP. Certain approvability issues were raised, and the State submitted revised redesignation requests and maintenance plans. All areas were redesignated to attainment on October 17, 1995, except for the New Orleans CMSA which was redesignated on December 1, 1995.[1]

The technical evaluation that follows includes a review of the revised contingency plan. We have also reviewed LDEQ's approach to ensure that this action is consistent with actions taken elsewhere in the nation.

II. What Features Are in the Current Contingency Plans for These Areas?

The approved contingency plans for Beauregard, St. Mary, Lafayette, and Grant Parishes and the New Orleans CMSA, include measures to be adopted and implemented if future air quality conditions warrant such action. The State intended to review any future ozone exceedance to determine whether the episode was due to local emissions. If the ozone exceedance was a result of local conditions, then the contingency measure corresponding to that particular exceedance would be triggered, and the State would begin the rulemaking process to adopt the triggered measure into the State's regulations. Through this action, the LDEQ now revises its contingency plans for Beauregard, St. Mary, Lafayette, and Grant Parishes and the New Orleans CMSA to make them consistent with contingency plans elsewhere in the State and the Nation.

III. What Are the State's Changes to These Contingency Plans?

The revision to the ozone SIP for Beauregard, St. Mary, Lafayette, and Grant Parishes and the New Orleans CMSA consists of a change to the contingency plan triggering event. Currently, a second or third exceedance of the one-hour ozone standard results in a triggering event. This revision to the SIP would change the triggering event to be an actual violation of the one-hour ozone standard, which occurs upon the fourth exceedance in any consecutive three-year period. Also, this revision to the SIP clarifies the narrative portion of the contingency plan, which discusses the State's procedures for evaluation of whether a triggering event has occurred.

Section 175A of the CAA requires that an ozone maintenance plan include contingency provisions as necessary, to promptly correct any violation of the

[1] For detailed information concerning the ozone redesignation and SIP approval process and the applicable Federal guidance, please *see* 60 FR 472280 September 12, 1995. This action concerned the approval of the maintenance plan for St. James Parish and its redesignation to attainment for ozone.

one-hour ozone standard that occurs after redesignation of the area to attainment. The existing contingency plans for Beauregard, St. Mary, Lafayette, and Grant Parishes and the New Orleans Consolidated Metropolitan Statistical Area (CMSA) include measures to be adopted prior to a recorded violation of the one-hour ozone standard. This approach identified VOC offsets and applicable Reasonably Available Control Technology (RACT) regulations to be adopted, based on two and three recorded ozone exceedances, respectively.

The existing contingency plan requires a review of the exceedance to determine whether the cause is due to local emissions. If the source of the exceedance is local, then appropriate measures are identified for implementation.

The LDEQ has revised its existing contingency plan to base the triggering event on a localized violation of the one-hour ozone standard (four exceedances in a consecutive three-year period). Additionally, the revised contingency plan identifies a menu of one or more contingency measures to be adopted if a future violation is recorded and determined to be due to local conditions. The menu includes:

1. Limiting VOC emissions from the filling of gasoline storage vessels;
2. Limiting VOC emissions from graphic arts for rotogravure and flexographic processes;
3. Limiting VOC emissions for synthetic organic chemical manufacturing industry reactor processes and distillation operations;
4. Limiting VOC emissions from batch processing;
5. Limiting VOC emission from cleanup solvent processing;
6. Limiting VOC emissions from industrial wastewater; and/or,
7. Implementing a 1.1 to 1 offset ratio for permits.

If, within 120 days after the recorded violation, it is determined that the recorded violation is due to local conditions, the Secretary of the LDEQ then has six months to select an appropriate measure, and an additional 20 months for implementation of that contingency measure to be completed. The selected contingency measure, therefore, will be implemented within 30 months of the recorded violation.

IV. What Is the Rulemaking Action?

The EPA has reviewed the SIP submittal for consistency with the Act, applicable EPA regulations and EPA policy. The contingency measures and the schedule for implementation described above satisfy the requirements of section 175A(d) of the Act, and EPA is approving this December 4, 2000, SIP submittal to revise the ozone maintenance plan for Beauregard, St. Mary, Lafayette, and Grant Parishes and the New Orleans CMSA under sections 110(k)(3), 301(a), and part D of the Act.

V. Why Is This a "Final Action?"

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the revisions to the contingency plans if adverse comments are received. This rule will be effective on June 20, 2003 without further notice unless we receive adverse comment by May 21, 2003. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

VI. What Regulatory Assessment Requirements Apply for This Action?

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 20, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*See* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 10, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart T—Louisiana

■ 2. Section 52.975 is amended by adding paragraph (g) to read as follows:

§ 52.975 Redesignations and maintenance plans; ozone.

* * * * *

(g) Approval.—The Louisiana Department of Environmental Quality (LDEQ) submitted to the EPA a request on December 4, 2000, to revise the Louisiana SIP for Beauregard, St. Mary, Lafayette, and Grant Parishes and the New Orleans Consolidated Metropolitan Statistical Area ozone maintenance area. The revision involves changes to the approved contingency plans. The contingency measures and the schedule for implementation satisfy the requirements of section 175A(d) of the Act. The EPA therefore approved this request on June 20, 2003.

[FR Doc. 03–9619 Filed 4–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[OAR–2003–0003; FRL–7461–7]

RIN 2060–AE79

National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emissions standards for hazardous air pollutants (NESHAP) for new and existing reinforced plastic composites production facilities. The NESHAP regulate production and ancillary processes used to manufacture products with thermoset resins and gel coats. Reinforced plastic composites production facilities emit hazardous air pollutants (HAP), such as styrene, methyl methacrylate (MMA), and methylene chloride (dichloromethane). These HAP have adverse health effects including headache, fatigue, depression, irritation of skin, eyes, and mucous membranes. Methylene chloride has been classified as a probable human carcinogen. The NESHAP will implement section 112(d) of the Clean Air Act (CAA) by requiring all major sources in this category to meet HAP emissions standards reflecting the application of the maximum achievable control technology (MACT). We estimate the final NESHAP will reduce nationwide emissions of HAP from these facilities by approximately 7,682 tons per year (tpy) (43 percent).

EFFECTIVE DATE: April 21, 2003.

ADDRESSES: *Docket.* Docket ID No. OAR–2003–0003 (formerly Docket No. A–94–52) contains supporting information used in developing the standards. The docket is available for public viewing at the Office of Air and Radiation Docket and Information Center (Air Docket) in the EPA Docket Center, EPA West, Room B108, 1301 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. For information concerning the analyses performed in developing the NESHAP, contact Keith Barnett, U.S. EPA, Emission Standards Division, Minerals and Inorganic Chemicals Group, C504–05, Research Triangle Park, North Carolina 27711, (919) 541–5605, *barnett.keith@epa.gov.*

SUPPLEMENTARY INFORMATION: *Docket.* We have established an official public docket for this action under Docket ID No. OAR–2003–0003 (formerly Docket No. A–94–52). The docket is an organized and complete file of the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket, excluding interagency review materials, will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 566–1742. A reasonable fee may be charged for copying docket materials.

Electronic Docket Access. You may access the final rule electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility in the above paragraph entitled "Docket." Once in the system, select "search," then key in the appropriate docket identification number.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final NESHAP will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the NESHAP will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS code	SIC code	Examples of regulated entities
Industry	325211	2821	Reinforced plastic composites production facilities that manufacture intermediate and/or final products using styrene containing thermoset resins and gel coats.
	326122	3084	
	325991	3087	
	326191	3088	
		3089	
	327991	3281	
	327993	3296	
	332998	3431	
	33312	3531	
	33651	3531	
	335311	3612	
	335313	3613	
	335312	3621	
	33422	3663	
	336211	3711	
	336112	3711	
	336211	3713	
	33651		
	33653	3714	
	336399	3714	
	33612	3716	
	336213	3728	
	336413	3743	
	336214	3792	
		3999	
Federal Government			Federally owned facilities that manufacture intermediate and/or final products using styrene containing thermoset resins and gel coats.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in §§ 63.5785 and 63.5787 of the final NESHAP. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review. The NESHAP for Reinforced Plastic Composites Manufacturing were proposed on August 2, 2001 (66 FR 40324). This action announces EPA's final decisions on the NESHAP. Under section 307(b)(1) of the CAA, judicial review of the final NESHAP is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 20, 2003. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final rule may not be challenged separately in any civil or criminal proceeding brought to enforce these requirements.

Outline. The information presented in this preamble is organized as follows:

I. Introduction
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I. Introduction

A. What Is the Purpose of NESHAP?

The purpose of the final NESHAP is to protect the public health by reducing emissions of HAP from Reinforced Plastic Composite Manufacturing facilities.

B. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Reinforced Plastic Composites Production was included on the initial list of source categories published on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit 10 tpy or more of any one HAP or 25 tpy or more of any combination of HAP.

The CAA requires NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP. This concept appears in section 112(d)(3) of the CAA. For new sources, the MACT floor cannot be less stringent than the HAP emissions control that is achieved in practice by the best-controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average HAP emissions limitation achieved by the best-performing 12 percent of existing sources in the category or subcategory (or the best-performing five sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the HAP emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

C. What Processes and Operations Are Included in the Reinforced Plastic Composites Production Source Category?

The Reinforced Plastic Composites Production source category involves the production of plastic products from cross-linking resins, usually in combination with reinforcing materials and inorganic fillers. These products may have an outer surface produced with a styrene-containing gel coat. The production of products that do not contain reinforcing materials is also included in this category, as well as the production of intermediate compounds that are later used to make the final plastic products. These non-reinforced products were included because they are produced using the same types of resins, have similar HAP emissions characteristics, and would use similar HAP emissions controls. This source category is limited to those resins and gel coats which contain styrene, either by itself or with a combination of other monomers or solvents.

There are a wide variety of operations that use styrene-containing resins to make thermoset plastics. Such manufacturing operations include manual resin application, mechanical resin application, filament application, gel coat application, compression/injection molding, resin transfer molding, centrifugal casting, continuous lamination/casting, polymer casting, pultrusion, bulk molding compound (BMC) manufacturing, and sheet molding compound (SMC) manufacturing. There are also ancillary operations such as cleaning, mixing, repair, and HAP-containing materials storage, that occur in conjunction with these manufacturing operations. Many facilities will use multiple operations in manufacturing their products.

This source category also includes some repair operations that take place at a manufacturing facility, such as repairs of parts or products that are manufactured at the same facility that must be repaired due to defects or damage that occur during manufacturing, or repairs of parts that were originally manufactured at that location and have been returned for repair due to defects in the original manufacture or damage in shipment. No other types of repair operations are included in this source category. Facilities that perform non-routine manufacture of reinforced plastic composites parts solely to replace parts of a reinforced plastic composite product that has been in use are not considered to be manufacturing facilities, and repair operations at these types of facilities are not part of this source category. See § 63.5935 of the final rule for the definition of non-routine manufacture. We believe that repair operations that are collocated with manufacturing operations that originally produce the reinforced plastic composites being repaired use the same materials as the manufacturing processes. Repair operations that are not collocated may use different materials and application techniques.

II. Summary of the Final NESHAP

A. What Source Categories and Subcategories Are Affected by the Final NESHAP?

Today's final rule applies to the Reinforced Plastic Composites Production source category. We developed subcategories based on size (*i.e.*, tpy of HAP emitted) in defining the new source MACT floors. These subcategories are sources that emit 100 tpy or more from open molding, pultrusion, centrifugal casting, continuous lamination/casting, SMC and BMC manufacturing, and mixing operations; and all other new sources. The new source MACT floors incorporate add-on controls for sources in the first subcategory, except for facilities producing large parts, and pollution prevention for other new sources.

The floors for existing sources are mainly based on pollution prevention, not add-on controls. Where floors are based mainly on pollution-prevention control techniques, we did not subcategorize by size. However, we did segregate existing sources by resin application technique, resin type, and final products, and developed separate floors for each process/product grouping.

B. What Are the Primary Sources of HAP Emissions and What Are the Emissions?

The primary source of HAP emissions from the Reinforced Plastic Composites Production source category is the evaporation of styrene and other organic liquid HAP contained in the resin during the application and/or curing of the resin. Since styrene participates in the curing reaction, not all of it is emitted. Organic HAP emissions also occur during ancillary operations such as cleaning, mixing, repair, and HAP containing materials storage. Although some gel coats or resins may contain inorganic HAP, such as lead, in resin solids or pigments, we have no data to

indicate the inorganic HAP are emitted from the production process. Therefore, only organic HAP are addressed by the final NESHAP.

Total baseline HAP emissions from the Reinforced Plastic Composites Production source category are approximately 18,000 tpy. The HAP emissions from spray lay-up and gel coating constitute approximately 52 percent and 23 percent of the total baseline HAP emissions, respectively. The remaining HAP emissions are primarily from hand lay-up/bucket and tool application, compression molding/injection molding, filament application, SMC manufacturing, and centrifugal casting.

C. What Is the Affected Source?

The affected source is the combination of all operations regulated under these standards at a reinforced plastic composites production facility. The following regulated operations are typically performed at reinforced plastic composites production facilities and are part of the affected source: open molding, closed molding, centrifugal casting, continuous lamination/casting, polymer casting, pultrusion, SMC manufacturing, equipment cleaning, mixing, BMC manufacturing, repair, and storage of HAP-containing materials. Repair operations are also included as part of the affected source if the repair is made to a part manufactured at that location.

D. What Are the HAP Emissions Limits, Operating Limits, and Other Standards?

We are promulgating the requirements of the final NESHAP in the form of HAP emissions limits (*i.e.*, HAP emissions factors, mass rate, or percent reduction), operating limits, and work practice standards. Work practice standards include design, equipment, work practices, and operational standards.

The final NESHAP contain a HAP emissions threshold that distinguishes between sources that typically can meet the HAP emissions limits using pollution prevention, and those that must use add-on controls. This threshold is called the "100 tpy threshold." For existing sources, you determine if you are below, above, or equal to the 100 tpy threshold by summing all HAP emissions from centrifugal casting and continuous lamination/casting operations at the source. In determining HAP emissions from centrifugal casting operations, only HAP emissions from venting of the centrifugal casting mold during spinning and/or curing are considered. The HAP emissions that occur from application of resin or gel coat to an open centrifugal casting mold are considered to be open molding HAP emissions. The HAP emissions from other operations or processes are not included because the 100 tpy threshold does not apply to other operations or processes.

For new sources, you determine if you are below, above, or equal to the 100 tpy threshold by summing all HAP emissions from open molding, pultrusion, SMC and BMC manufacturing, centrifugal casting, continuous lamination/casting, and mixing operations at the source. The HAP emissions from closed molding, cleaning, repair and HAP-containing materials storage are not used in threshold determinations. In determining HAP emissions from centrifugal casting operations, only HAP emissions from venting of the centrifugal casting mold are included. The HAP emissions that occur from application of resin or gel coat to an open centrifugal casting mold are considered to be open molding HAP emissions.

The requirements for new and existing sources that are below the 100 tpy threshold are based on the MACT floor level of control. These requirements are summarized in the following table:

TABLE 1.—SUMMARY FOR EXISTING SOURCES, AND NEW SOURCES BELOW THE 100 TPY HAP EMISSIONS THRESHOLD

If your operation type is . . .	And you use . . .	MACT for existing facilities and new facilities that are below the 100 tpy threshold is . . .
1. Open molding—corrosion-resistant and/or high strength (CR/HS).	a. mechanical resin application	112 lb/ton.
	b. filament application	171 lb/ton.
	c. manual resin application	123 lb/ton.
2. Open molding—non-CR/HS	a. mechanical resin application	87 lb/ton.
	b. filament application	188 lb/ton.
	c. manual resin application	87 lb/ton.
3. Open molding—tooling	a. mechanical resin application	254 lb/ton.
	b. manual resin application	157 lb/ton.
4. Open molding—low-flame spread/low-smoke products.	a. mechanical resin application	497 lb/ton.
	b. filament application	270 lb/ton.
	c. manual resin application	238 lb/ton.
5. Open molding—shrinkage controlled resin	a. mechanical resin application	354 lb/ton.
	b. filament application	215 lb/ton.
	c. manual resin application	180 lb/ton.
6. Open molding—gel coat[b]	a. tooling gel coating	437 lb/ton.
	b. white/off white pigmented gel coating	267 lb/ton.
	c. all other pigmented gel coating	377 lb/ton.
	d. CR/HS or high performance gel coat	605 lb/ton.
	e. fire retardant gel coat	854 lb/ton.
	f. clear production gel coat	522 lb/ton.
7. Centrifugal casting—CR/HS[c]	N/A	25 lb/ton.
8. Centrifugal casting—non-CR/HS[c]	N/A	20 lb/ton.
9. Pultrusion[d]	N/A	Reduce total HAP emissions by at least 60 weight percent.
10. Continuous lamination/casting	N/A	Reduce total HAP emissions by at least 58.5 weight percent or not exceed a HAP emissions limit of 15.7 lbs of HAP per ton of neat resin plus and neat gel coat plus.

TABLE 1.—SUMMARY FOR EXISTING SOURCES, AND NEW SOURCES BELOW THE 100 TPY HAP EMISSIONS THRESHOLD—Continued

If your operation type is . . .	And you use . . .	MACT for existing facilities and new facilities that are below the 100 tpy threshold is . . .
11. A closed molding operation using compression/injection molding.		Uncover, unwrap or expose only one charge per mold cycle per compression/injection molding machine. For machines with multiple molds, one charge means sufficient material to fill all molds for one cycle. For machines with robotic loaders, no more than one charge may be exposed prior to the loader. For machines fed by hoppers, sufficient material may be uncovered to fill the hopper. Hoppers must be closed when not adding materials. Materials may be uncovered to feed to slitting machines. Materials must be recovered after slitting.
12. A cleaning operation		Do not use cleaning solvents that contain HAP, except that HAP containing materials may be used in closed systems, and to clean cured resin from application equipment. Application equipment includes any equipment that directly contacts resin between storage and applying resin to the mold or reinforcement.
13. A HAP-containing materials storage operation.		Keep containers that store HAP-containing materials closed or covered except during the addition or removal of materials. Bulk HAP-containing materials storage tanks may be vented as necessary for safety.
14. A SMC manufacturing operation		Close or cover the resin delivery system to the doctor box on each SMC manufacturing machine. The doctor box itself may be open.
15. A SMC manufacturing operation		Use a nylon containing film or a film with an equal or lower permeability to styrene compared to a nylon containing film to enclose SMC.
16. A mixing or BMC manufacturing operation[d]		Use mixer covers with no visible gaps present in the mixer covers. Gaps of up to 1 inch are permissible around mixer shafts and any required instrumentation.
17. A mixing or BMC manufacturing operation[e]		Do not actively vent mixers to the atmosphere while the mixing agitator is turning.
18. A mixing or BMC manufacturing operation[e]		Keep the mixer covers closed during mixing except when adding materials to the mixing vessels.
19. A new or existing pultrusion operation manufacturing parts with 1000 or more reinforcements and a cross section area of 60 square inches or more that is not subject to the 95 percent HAP emissions requirement.		i. not allow vents from the building ventilation system, or local or portable fans to blow directly on or across the wet-out area(s). ii. not permit point suction of ambient air in the wet-out area(s) unless that air is directed to a control device. iii. use devices such as deflectors, baffles, and curtains when practical to reduce air flow velocity across the wet-out area(s). iv. direct any compressed air exhausts away from resin and wet-out area(s). v. convey resin collected from drip-off pans or other devices to reservoirs, tanks, or sumps via covered troughs, pipes, or other covered conveyance that shields the resin from the ambient air. vi. cover all reservoirs, tanks, sumps, or HAP-containing materials storage vessels except when they are being charged or filled. vii. cover or shield from ambient air resin delivery systems to the wet-out area(s) from reservoirs, tanks, or sumps where practical.

[a] HAP emissions limits for open molding and centrifugal casting expressed as lb/ton are calculated using the equations shown in Table 1 to subpart WWWW of part 63. You must be at or below these values based on a 12-month rolling average.

[b] These limits are for spray application of gel coat. Manual gel coat application may be included as part of spray gel coat application for compliance purposes using the same HAP emissions factor equation and HAP emissions limit.

[c] Centrifugal casting operations where the resin is injected into the mold and the mold is completely closed during spinning and curing may be treated as closed molding operations.
[d] Pultrusion machines that produce parts with 1000 or more reinforcements and a cross sectional area of 60 inches or more are not subject to this requirement. Their requirement is the work practice of air flow management reduction.
[e] Containers of 5 gallons or less may be open when active mixing is taking place, or during periods when they are in process (*i.e.*, they are actively being used to apply resin). For polymer casting mixing operations, containers with a surface area of 500 square inches or less may be open while active mixing is taking place.

For existing sources that are equal to or above the 100 tpy HAP emissions threshold, centrifugal casting and continuous lamination/casting operations meet an above-the-floor requirement based on 95 percent control of HAP emissions.

The requirements for new sources that are equal to or above the 100 tpy HAP emissions threshold are also based on the floor level of control. The floor level of control for these sources is a 95 percent reduction of HAP emissions for open molding, pultrusion, SMC and BMC manufacturing, centrifugal casting, continuous lamination/casting, and mixing operations with one exception. For open molding and pultrusion operations at new sources that produce large parts, the floor level of control is the same as existing sources shown in the previous table. All other operations meet the requirements shown in the previous table.

In developing final requirements for reinforced plastic composites affected sources, we have provided an alternative format where possible. For example, a facility meeting a 95 percent HAP emissions reduction requirement for open molding processes can alternatively meet a HAP emissions limit. We have also provided alternatives for meeting the limits for continuous lamination/casting and SMC manufacturing operations.

E. What Are the HAP Emissions Factor Equations in Table 1 to Subpart WWWW of Part 63, and How Are They Used in the Final NESHAP?

Table 1 to subpart WWWW of part 63 presents a series of HAP emissions factor equations for open molding and centrifugal casting operations. These equations are specific to the type of resin and gel application and HAP emissions reduction technique used. These equations allow you to calculate HAP emissions factors based on HAP content and application method for each material that you use. These HAP emissions factors are then averaged and compared to limits in the final standards to determine if your open molding and centrifugal casting operations are in compliance.

The HAP emissions factor equations for open molding are identical to HAP emissions equations developed by the composites industry called the Unified Emissions Factors (UEF) as they existed at the time of final rule development. These equations can also be combined with resin and gel coat use to determine HAP emissions rates. It should be noted that although the equations are identical to the UEF at the time the rule is finalized, for purposes of compliance, only the equations actually contained in Table 1 to subpart WWWW of part 63 may be used.

F. When Would I Need To Comply With the Final NESHAP?

We are requiring that all existing sources comply by April 21, 2006. Any source that commenced construction after August 2, 2001, at a site where there were no existing reinforced plastic composite operations is a new source. New affected sources that are now in operation must be in compliance on April 21, 2003. New affected sources that startup after April 21, 2003 must comply upon startup. Existing area sources that increase their HAP emissions or their potential to emit such that they become a major source of HAP must be in compliance within 3 years of the date they become a major source. New area sources that become major sources of HAP must comply upon becoming a major source. All open molding and centrifugal casting operations that comply by meeting a specified HAP emissions limit on a 12-month rolling average will have 1 year from the compliance date to demonstrate compliance.

We are allowing new and existing facilities 3 years to comply from the time their HAP emissions reach or exceed the applicability thresholds which require the installation of add-on controls, if these HAP emissions increases occur after their initial compliance date.

In addition, we have added a one-time exemption for facilities that exceed the 100 tpy threshold due to unusual circumstances. Facilities that apply for this exemption and subsequently exceed the threshold the next year, must comply within 3 years from the time their HAP emissions first exceeded the threshold. Because this is a one-time exemption, an exceedance in any future years would result in a requirement for compliance within 3 years of the subsequent exceedance.

G. What Are the Options for Demonstrating Compliance?

Today's final NESHAP provide several options for compliance for certain operations. We are providing these options to afford industry the flexibility to decide which method is best suited for each particular situation. Operations not listed in this section have only one option for demonstrating compliance.

For open molding and centrifugal casting operations, you determine compliance with the HAP emissions limits by determining HAP emissions factors for the operations at your facility, and comparing your HAP emissions factors to the appropriate HAP emission limits for each open molding and centrifugal casting operation. To determine your HAP emissions factor you may use the HAP emissions factor equations in Table 1 to subpart WWWW, or HAP emissions factors based on facility HAP emissions testing. For open molding operations at existing and new sources, the final rule allows you to choose to comply by meeting the individual HAP emissions limits shown in Table 3 to subpart WWWW of part 63 for each operation at your affected source, or by meeting the weighted average HAP emissions limit for all open molding operations at your affected source. In addition, if you produce parts with any combination of manual resin application, mechanical resin application, filament application, or centrifugal casting operations at your affected source, you can comply using the an alternative method shown in Table 7 to subpart WWWW of part 63. You determine the highest allowable HAP resin for each individual operation from Table 3 to subpart WWWW of part 63. This same resin can then be used in all open molding and centrifugal casting operations as shown in Table 7 to subpart WWWW of part 63.

For open molding and centrifugal casting operations where the rule would require you to meet a percent reduction, you could use an add-on control device to achieve the required reduction, or you may choose to meet a HAP emissions limit that corresponds to that particular operation's percent reduction.

For continuous lamination/casting operations at existing and new sources, we are allowing you to demonstrate that each continuous casting line and each continuous lamination line meets the appropriate standard in Table 3 to subpart WWWW of part 63, or § 63.5805(b) or (d) of the final rule. Alternatively, you can average all your continuous casting and continuous lamination lines together and demonstrate that they meet the appropriate standard. An additional alternative for sources that emit less than the 100 tpy threshold would be to capture your HAP emissions from your wet-out area in a permanent total enclosure that meets EPA's criteria, as specified in Method 204 of appendix M of 40 CFR part 51, and vent the captured wet-out HAP emissions through a closed vent system to a control device achieving 95 percent reduction of HAP emissions. Under the final rule, these alternatives can be used in combination to demonstrate compliance.

The standards for continuous lamination/casting operations are expressed as a percent reduction of HAP emissions. As an alternative, facilities can elect to meet a HAP emissions limit.

For existing and new pultrusion operations, you can capture and vent your HAP emissions to a control device that achieves the required percent reduction of HAP emissions. For all existing sources and for new sources that emit less than the 100 tpy threshold, you may use a wet-area enclosure with a resin drip collection system, direct die injection or preform injection systems that meet the criteria specified in § 63.5830 of the final rule to meet the 60 percent HAP emissions reduction requirement. For pultrusion machines that produce parts with 1000 or more reinforcements and a cross sectional area of 60 inches or more, you must implement the work practice standards in Table 4 to subpart WWWW of part 63.

For SMC manufacturing operations at new sources that exceed the 100 tpy threshold, we allow facilities to meet a 95 percent HAP emissions reduction requirement, or the HAP emissions limit specified in Table 5 to subpart WWWW of part 63.

H. What Are the Testing and Initial Compliance Requirements?

We are requiring you to conduct an initial performance test using specified EPA test methods on all affected sources which use a control device to achieve compliance. You must test at the inlet and outlet of the control device and using these results, calculate a percent reduction.

We are also requiring you to conduct a design evaluation, as specified by EPA Method 204 of appendix M of 40 CFR part 51, if you use permanent total enclosures to capture HAP emissions. If your enclosure does not meet the requirements for a permanent total enclosure, you must test the enclosure to determine the capture efficiency by EPA Methods 204B through E of appendix M of 40 CFR part 51 or an alternative method that meets the data quality objectives and lower confidence limit approaches contained in 40 CFR part 63, subpart KK. Test runs for EPA Methods 204B through E or alternative test methods must be at least 3 hours.

Prior to the initial performance test, owners and operators of affected sources would be required to install the parameter monitoring equipment to be used to demonstrate compliance with the operating limits. During the initial performance test, the owners and operators would use the parameter monitoring equipment to establish operating parameter limits.

I. What Are the Continuous Compliance Requirements?

If you use an add-on control device, we are requiring that you monitor and record the operating parameters established during the initial performance test, and calculate average operating parameter values averaged over the period of time specified in the final NESHAP to demonstrate continuous compliance with the operating limits.

If you use the HAP emissions equations in Table 1 to subpart WWWW of part 63 to demonstrate that you are maintaining a HAP emissions factor less than or equal to the appropriate HAP emissions limit listed in the final NESHAP, we are requiring that you calculate the HAP emissions factor one time if the resins or gel coats used in the operation remain the same, or if all the resins and gel coats used individually meet the applicable HAP emissions limit. You are required to calculate HAP emissions factors on a 12-month rolling average each month if the resin or gel coat varies between operations or varies over time, and not all resins or gel coats taken individually meet the required HAP emissions limit.

If you are complying with work practice standards, we are requiring that you demonstrate compliance with the work practice standards in the final NESHAP by performing the necessary work practices and by keeping a record certifying that you are in compliance with the work practices.

J. What Are the Notification, Reporting, and Recordkeeping Requirements?

We are requiring that you submit Initial Notification, Notification of Performance Tests, and Notification of Compliance Status reports by the specified dates in the final NESHAP, which may vary depending on whether the affected source is new or existing.

You are also required to submit semiannual compliance reports. If you take action that is inconsistent with your approved startup, shutdown, and malfunction (SSM) plan, then you would need to submit SSM reports within 2 days of starting such action, and within 7 days of ending such action.

We are requiring that you keep a copy of each notification and report, along with supporting documentation for 5 years. Of this time, the 2 most recent years must be on-site. You must keep records related to SSM, records of performance tests, and records for each continuous parameter monitoring system. Under the final rule, if you must comply with the work practice standards, you also need to keep records certifying that you are in compliance with the work practices for 5 years. If you use the HAP emissions factor equations to demonstrate compliance, you must keep all data, assumptions, and calculations used to determine your HAP emissions factors. For new and existing continuous lamination/casting operations, you also must keep the following records when complying with the percent reduction or pound per ton requirements: All data, assumptions, and calculations used to determine the percent reduction or pounds per ton, as applicable; a brief description of the rationale for the assignment of an equation or factor to each formula; all data, assumptions, and calculations used to derive facility-specific HAP emissions estimations and factors; identification and rationale for the worst-case scenario; and documentation that the appropriate regulatory agency has approved all HAP emissions estimation equations and factors.

III. Summary of Environmental, Energy, and Economic Impacts

A. What Facilities Are Affected by the Final NESHAP?

There are approximately 435 existing facilities manufacturing reinforced plastic composites that are major sources and subject to the final NESHAP. The rate of growth for the reinforced plastic composites industry is estimated to be 84 new facilities over the next 5 years.

B. What Are the Air Quality Impacts?

The 1997 baseline HAP emissions from the reinforced plastic composites industry are approximately 18,000 tpy. The final NESHAP will reduce HAP

from existing sources by 7,682 tpy, a reduction of 43 percent.

The final NESHAP will result in small increases in other air pollution emissions from combustion devices that will be installed in the next 5 years to comply with today's final rule. These increases result both from the combustion device directly, and from the electrical generating plants used to generate the electricity necessary to operate the add-on controls and associated air handling equipment. These emissions are estimated to be 2.3 tpy of sulfur oxides (SOx), 3.0 tpy of nitrogen oxides (NO_X), 4.9 tpy of carbon monoxide (CO), and 0.1 tpy of particulate matter (PM) emissions.

C. What Are the Water Quality Impacts?

We estimate that the final NESHAP will have no adverse water quality impacts. We do not expect anyone to comply by using add-on control devices or process modifications that would generate wastewater.

D. What Are the Solid and Hazardous Waste Impacts?

We estimate that the final NESHAP will decrease the amount of solid waste generated by the reinforced plastic composites industry by approximately 2,650 tpy. The decrease in solid waste is directly related to switching to nonatomized resin application equipment (*i.e.*, flowcoaters and resin rollers). Switching to nonatomized resin application equipment results in a decrease in overspray because of a greater transfer efficiency of resin to the part being manufactured. A decrease in resin overspray consequently reduces the amount of waste from disposable floor coverings, cured resin waste, and personal protective equipment (PPE) for workers. Disposable floor coverings are replaced on a periodic basis to prevent resin buildup on the floor. We estimate that solid waste generation of floor coverings will decrease by approximately 620 tpy, and that cured resin solid waste will decrease by approximately 2,030 tpy.

We project that the decreased overspray from nonatomized resin application equipment will result in a decreased usage of PPE, which also consequently reduces the amount of solid waste. When using nonatomized resin application equipment, workers typically wear less PPE than when using atomized spray guns because of the reduced presence of resin aerosols and lower styrene levels in the workplace. Because we did not have information on the many different types of PPE currently used, we did not estimate this decrease in solid waste.

Some facilities that switch from atomized to nonatomized spray guns may have a small increase of hazardous waste from the used nonatomized spray gun cleaning solvents. However, most facilities would not see an increase under the final rule, and the overall impact on the industry will be small relative to the solid waste reductions. Nearly all nonatomized spray guns require resin and catalyst to be mixed inside the gun (internal-mix) and must be flushed when work is stopped for more than a few minutes. External-mix spray guns do not need to be flushed because resin is mixed with catalyst outside the gun. Facilities that switch from external-mix to nonatomized spray guns will use more solvent. Solvent usage should not change at facilities switching from internal-mix spray guns to nonatomized spray guns. The most common flushing solvents are acetone and water-based emulsifiers. Only a couple of ounces of solvent are typically needed to flush the mixing chamber and nozzle of internal-mix spray guns.

We do not have adequate data to predict the potential solvent waste impact from switching to nonatomized spray guns. The magnitude of the impact depends on the type of gun currently used (internal- or external-mix), the frequency of flushing, and the type of solvent used. However, because of the small amount of solvent used, and since most is allowed to evaporate, we believe the overall solvent waste increase will be small compared to the solid waste reductions.

E. What Are the Energy Impacts?

Energy impacts result from the final NESHAP because some facilities will be required to install add-on controls to meet certain HAP emissions limits or percent reduction requirements. We anticipate that these controls will be concentrator/oxidizer systems or thermal oxidizers. These controls increase energy requirements in two ways. First, all reinforced plastic composites facilities must ventilate work areas to maintain worker styrene exposure within acceptable limits. The ventilation systems typically exhaust air directly to the atmosphere. When an add-on control device is added to control HAP emissions, it creates an additional pressure drop for the ventilation system which, in turn, means that more electricity is required to operate system fans and to operate the control device itself. Second, fuel (usually natural gas) is required to supplement the oxidizer combustion process.

We determined that the overall energy demand for operations in the Reinforced Plastic Composites Production source category could increase by 10 million standard cubic feet per year of natural gas, and 0.6 million kilowatt hours of electricity per year as a result of the final rule. We determined this net increase based on the additional energy demand for control devices installed to meet the final standards. No information for comparison is available on the baseline energy consumption for this source category.

F. What Are the Cost Impacts?

We have estimated the industrywide capital costs for HAP emissions control equipment, including equipment such as open container covers, resin bath enclosures, capture systems, and control devices as $12.6 million for the 435 existing sources and $22.8 million for the 84 new sources. The capital costs include the costs to purchase and install the control equipment.

We have estimated the industrywide annual costs of the final rule are $21.5 million per year for the 435 existing sources and $7.7 million for the 84 new sources. Annual costs include fixed annual costs, such as reporting, recordkeeping and capital amortization, and variable annual costs such as natural gas. The estimated average cost of the final rule is $2,800 per ton of HAP emissions reductions for existing sources and $5,560 per ton of HAP emissions reductions for new sources.

G. What Are the Economic Impacts?

We conducted a detailed economic impact analysis to determine the market- and industry-level impacts associated with the final rule. We expect the aggregate price increase for reinforced plastic composites would be only 0.7 percent, or $0.03 per pound, as a result of the final rule. We project that directly affected producers would reduce total production by 1.7 percent, while producers not directly affected would increase their production by 0.7 percent. Markets for reinforced plastic composites used in corrosion-resistant products are expected to be more heavily impacted with price increases of roughly 1.6 percent and reductions in directly affected domestic production of almost 5 percent. The reason for more significant impacts in the corrosion-resistant market is that facilities in this market have higher average per-unit variable compliance costs. Corrosion-resistant product variable compliance costs are $0.13 per pound of product versus an industry average of $0.06 per pound.

In terms of industry impacts, we analyzed impacts for captive producers and merchant producers. Captive producers make composites for use by another part of their company in a larger product. Merchant producers sell their products on the open market, either to consumers or other businesses.

In our analysis, captive producers of reinforced plastic composites are expected to fully absorb their compliance costs, which is a conservative approach. We assess impacts as if captive producers are viewed as a profit center like a merchant producer but unable to pass on costs. This is done in lieu of an analysis attempting to estimate cost-pass through for the myriad of final products that use reinforced plastics. We assume merchant producers will attempt to pass through costs to their customers.

Through the market impacts described above, the final NESHAP create both gainers and losers within the merchant segment. Some merchant facilities are projected to experience profit increases with the final rule; however, the majority that continue operating are projected to lose profits. The economic impact analysis indicates that 36 out of 301 merchant facilities (12 percent) and 89 out of 466 product lines (19 percent) at these facilities are at risk of closure because of the final NESHAP. These facilities are believed to be small businesses. Note that this number is slightly higher than the estimate of facility closure at proposal, which was 10 percent. This change is not due to any change in stringency of the final rule as applied to small businesses. It is due the reduction in stringency of the final rule for large sources. More information on the measures we have taken to minimize the small business impacts may be found in the Regulatory Flexibility Act discussion in this preamble. Furthermore, the analysis indicates that ten of the 133 captive facilities (7.5 percent) may be at risk of closure if unable to pass on costs to their customers.

Based on the market analysis, the annual social costs of the final rule are projected to be $19.9 million. The social costs are slightly less than the engineering cost estimate of $21.5 million because producers pass on a portion of these costs to consumers through price increases in an effort to reduce their regulatory burden. These costs are distributed across the many consumers and producers of reinforced plastic composites. Directly affected producers, in aggregate, are expected to lose $6.2 million annually in profits, with those not subject to the final NESHAP gaining $18 million. The consumers of reinforced plastic composites are expected to lose $31.7 million due to higher prices and lower consumption levels associated with the final NESHAP. For more information on the economic analysis, consult the final economic impacts analysis document in the docket for this project.

IV. Summary of Changes Since Proposal

A. Above-the-Floor Capture and Control Requirements for Existing Sources

In the proposed rule, existing facilities that are a small business as defined by the Small Business Administration (SBA) regulations at 13 CFR 121.201, and that emitted 250 tpy or more of HAP, or existing facilities that are not a small business and emitted 100 tpy or more of HAP, from the combination of all open molding, centrifugal casting, continuous lamination/casting, pultrusion, SMC manufacturing, mixing, and BMC manufacturing operations, were required to reduce the total HAP emissions from these operations by at least 95 percent by weight. In the final rule, this requirement now only applies to centrifugal casting and continuous lamination/casting operations, and the threshold has been changed to 100 tpy for both large and small businesses. This reduced the number of facilities we estimated would have to meet an above-the-floor requirement from 34 to 3, reduced the industry annualized costs of the final NESHAP from $26.0 million per year to $21.5 million per year, and reduced the HAP emissions reduction estimate from 14,500 to 7,700 tpy. In addition, for centrifugal casting, the percent reduction requirement only applies to HAP emissions that are vented from the closed centrifugal casting mold. It does not apply to HAP emissions that occur from other operations such as pouring or spraying resin into a centrifugal casting mold while it is open.

B. Replacing the Point Value Equations With HAP Emissions Factor Equations Based on the Unified Emissions Factors, and Changes to Centrifugal Casting HAP Emissions Factors

In the proposed rule, we used a group of equations called point value equations to determine surrogate HAP emissions factors. These factors were then used to rank existing facilities to determine existing source MACT floors for open molding operations. However, we specified that the point value equations were not considered HAP emissions factors and, therefore, should not be used for HAP emissions reporting. This resulted in the potential for facilities to have to use two different sets of equations for HAP emissions reporting and MACT compliance determinations.

In the final rule, we have eliminated the point value equations and replaced them with HAP emissions factor equations that are identical to HAP emissions factor equations that are being used in this industry for HAP emissions calculations, called the Unified Emissions Factors. Therefore, facilities now will have the same equations for MACT compliance determinations and HAP emissions calculations for HAP emissions reports.

For centrifugal casting, we have retained the HAP emissions factor equation in the proposed rule for sources that blow heated air through the mold during spinning and curing. For other centrifugal casters, we have created a new HAP emissions factor equation based on more recent information. This new HAP emissions factor significantly changes the numerical value of the floor (pounds of HAP emissions per ton of resin used) from the value in the proposed rule. However, it did not change the floor facility or the level of control a facility would need to meet the floor.

These new HAP emissions factor equations were also used to re-rank existing facilities to establish the floor level of control for existing sources. Though this change did result in different floor values in lb/ton, it did not change the level of control actually required to meet the floor. However, as discussed below, our reanalysis did result in changes to some floors for other reasons.

C. MACT Floors for Existing Sources

There are several changes to the MACT floors for existing sources, and for new sources that emit less than 100 tpy for the combination of all open molding, centrifugal casting, pultrusion, SMC and BMC manufacturing, mixing, and continuous lamination/casting operations. These changes were a result of facilities submitting additional data that indicated our original analysis of their facility HAP emissions factors were in error, or out of date.

For noncorrosion-resistant resins applied using mechanical application, the proposed rule had different floors for filled and unfilled resins. The reason for separating filled and unfilled resins was that at the time of proposal, nonatomized resin application techniques were not available for filled resins. Since proposal, filled resins now can be applied using nonatomized spray. Therefore, we now have combined the two process/product groupings into one. Also, several facilities in this process/product

grouping provided revised data. As a result, the floor level of control for noncorrosion-resistant resins using mechanical application is a HAP emissions limit of 87 lb/ton. This limit requires a resin with no more than 38.4 percent HAP applied using nonatomized mechanical resin application techniques. At proposal, facilities could use a 42.8 percent resin (filled) or a 38 percent HAP (unfilled) resin and nonatomized mechanical resin application.

For mechanical corrosion-resistant resin application, the revised floor is a HAP emissions limit of 112 lb/ton. This limit requires a resin with no more that 46.2 percent HAP and nonatomized mechanical resin application. At proposal, a resin HAP content of up to 48.3 percent was allowed if nonatomized mechanical resin application was used.

For manual application of tooling resin, the revised floor is 157 lb/ton. This allows a resin HAP content of 45.9 percent or less. At proposal, the maximum allowable HAP content was 39.9 percent.

For tooling gel coat the revised floor is 437 lb/ton. This limits gel coat HAP content to 40 percent of less. At proposal, the limit was 38 percent or less.

For SMC manufacturing, the work practices required in the proposed rule were use of nylon film, folding the edges of the film, and covering the doctor box. In the final rule, the requirements are a covered resin transport system to the doctor box and the use of nylon-containing film.

For pultrusion operations producing parts with 1000 or more reinforcements and a cross sectional area of 60 inches or more, we have changed the floor from 60 percent HAP emissions reduction to a work practice of air flow management.

In addition, we established three new floors for speciality resins and gel coats. These are shrinkage-controlled resins, fire retardant gel coats, and high performance gel coats. These speciality products were identified from comments received on the proposed rule. The new floors are shown in Table 3 to subpart WWWW of part 63.

D. Cleaning

In the proposed rule, we required that cleaning materials contain no HAP unless cleaning cured resin from application equipment. In the final rule, we have modified that requirement to allow HAP-containing cleaners to be used in closed systems such as closed tanks, and resin and gel coat delivery systems.

E. Compression/Injection Molding

In the proposed rule, we required that only one resin charge be uncovered at a time. We have clarified this requirement for the final rule to reflect that one charge may actually have to fill multiple molds. Also, we added a provision to allow the use of automated loaders and slitters. We also clarified that paste added to the mold and in-mold surface coatings are considered part of the closed molding operation.

F. Averaging Provisions

In the proposed rule, we allowed facilities to average across all open molding operations and all centrifugal casting operations. The average was based on a 12-month rolling average calculated monthly. In determining compliance, the average for each month was calculated and then the monthly averages were averaged over a 12-month period. In the final rule, the 12-month average is based on a weighted HAP emissions factor calculated from total resin and gel coat use over the 12-month period. This method will provide a more accurate value for the actual HAP emissions, in lb/ton, that the facility produced in the previous 12 months.

In the proposed rule, we did not allow pultrusion lines to average; each pultrusion machine had to meet the 60 percent reduction requirement for existing sources. In the final rule, we allow facilities to over control some lines, and under control (or leave uncontrolled) others, as long as the average reduction for all lines combined is 60 percent weighted by resin use. Also, we are allowing facilities to average the time that wet area enclosure covers are open across lines.

G. Pultrusion Compliance Options

In the proposed rule, we allowed pultrusion operations to use direct die injection as a compliance alternative to meet the 95 percent capture and control requirement. In the final rule, we are removing direct die injection as a compliance alternative because, based on industry data, it does not achieve 95 percent HAP emissions reduction. We still allow direct die injection as a compliance option to meet the 60 percent HAP emissions reduction requirement. We have also added another compliance option, preform injection, to meet a 60 percent HAP emissions reduction. We have also added another compliance option, airflow management work practices, for pultrusion machines that produce large parts as set forth in Table 4 to subpart WWWW of part 63.

H. Applicability

We made a number of changes dealing with rule applicability. First, we expanded the list of specific operations that are part of the source category, but are not subject to any control, reporting, or recordkeeping requirements. These operations include application of mold sealing and release agents, mold stripping and cleaning, repair of previously manufactured parts that is unrelated to collocated manufacturing operations, personal activities that are not part of the manufacturing operations (such as hobby shops on military bases), prepreg materials as defined in § 63.5935 of the final rule, non-gel coat surface coatings, repair or production materials that do not contain resin or gel coat, and research and development (R&D) operations as defined in section 112(c)(7) of the CAA. In addition, we exempted any facility that uses less than 1.2 tpy of resin and gel coat, and R&D facilities and operations at manufacturing facilities. The rationale for these changes is discussed in the responses to major comments section.

I. Potential Overlap With the Boat Manufacturing NESHAP (40 CFR Part 63, Subpart VVVV)

In the proposed rule, we were silent concerning situations where a facility could be subject to both the Boat Manufacturing NESHAP, 40 CFR part 63, subpart VVVV, and the Reinforced Plastic Composites NESHAP. In today's final rule, we have added § 63.5787 to clarify which subpart applies. In general, if your facility makes boat hulls and decks, or molds for boat hulls and decks, then 40 CFR part 63, subpart VVVV, applies to you. If 40 CFR part 63, subpart VVVV, does not apply to you, and you meet the applicability criteria in § 63.5785 of the final rule, then the Reinforced Plastics Composites NESHAP apply. If you are subject to 40 CFR part 63, subpart VVVV, and also make reinforced plastic composite parts that are not used in boat manufacture, then both 40 CFR part 63, subpart VVVV, and the Reinforced Plastic Composites NESHAP may apply. See § 63.5787 in the final NESHAP for more detail.

J. Determination of Resin and Gel Coat HAP Content

In the proposed rule, we stated that facilities could determine resin and gel coat HAP content using material safety data sheets (MSDS) or resin specification sheets. In the final rule, we have included § 63.5797, which describes in more detail how to determine resin and gel coat HAP content. This new section also clarifies that only organic HAP are included in determining HAP content. The reason is that we have no data to indicate that any other HAP, such as inorganic HAP potentially present in pigments or resin solids, are emitted from the production process. We also now include a provision to account for normal manufacturing tolerances that occur in resin and gel coat manufacture.

K. New Source MACT Floors

In the proposed rule, the MACT floor for all open molding and pultrusion operations located at new sources above a 100 tpy HAP emission threshold was a 95 percent weight reduction in HAP emissions. In the final rule, we have subcategorized open molding and pultrusion operations by part size. For open molding and pultrusion operations that produce large parts the floor level of control is now the same as for existing sources. Large parts are defined in § 63.5805 (d)(2). All other new source MACT floors are unchanged.

V. Summary of Responses to Major Comments

This section presents a summary of significant public comments and responses. A summary of all the public comments that were received and our responses to those comments can be found in Docket ID No. OAR–2003–0003 (formerly Docket No. A–94–52).

Comment: We received numerous comments on the above-the-floor requirements for existing sources. First, commenters stated that EPA had significantly underestimated the costs of add-on controls. They stated that industry estimates were, in some cases, ten times higher than our estimates. They stated that we had overestimated the HAP concentrations in the exhaust streams, underestimated the exhaust flows, and omitted costs for continuous monitors.

Second, the commenters claimed that we had not established that 95 percent capture and control was technically feasible for this diverse industry, and that only two facilities out of 433 actually had achieved the 100 percent capture that is required to meet an overall capture and control level of 95 percent. They also stated that these two facilities were atypical of the industry as a whole because they also had collocated coating operations that were also routed to the same control device. They further stated that the criteria of EPA Method 204 of appendix M of 40 CFR part 51 are not feasible for most facilities in this industry. For these reasons, the commenters recommended that the above-the-floor requirement be removed.

Response: As a result of these comments, we reviewed the costing methodology for the above-the-floor requirements in the proposed rule and made changes to our costing methodology for add-on controls. Some of the major changes were lowering the default inlet concentration to the control device from 100 parts per million volume (ppmv) to 50 ppmv, revising the fan power equation, and using 2,000 operating hours per year, rather than 6,000 hours per year, as a default value in the absence of actual yearly operating information.

Based on these new costs, the cost per ton of HAP emissions reduction of the above-the-floor requirement significantly increased for most process/product groupings. As a result, we have removed the above-the-floor control requirements for all process/product groupings except centrifugal casting and continuous lamination/casting. It should be noted that the comments discussed above were based on open molding operations. We received no comments specifically on the above-the-floor requirements as applied to centrifugal casting and continuous lamination/casting.

Comment: One commenter opposed allowing control requirements for new sources emitting less than 100 tpy to be the same as those for existing sources because a new site has the opportunity to design and incorporate pollution prevention and control strategies that would be cost-prohibitive for existing sources to implement. The commenter recommended that EPA consider more stringent requirements for new sources, including smaller sources, through generally available control technology or other approaches that would not be overly burdensome.

Another commenter adds that EPA's analysis indicates that the best controlled facilities have reduced HAP by only 95 percent, and 95 percent is most likely the maximum extent of historic regulatory requirements. The commenter notes that EPA looked at the experience of existing facilities to achieve greater than 95 percent control through add-on control in conjunction with pollution prevention and did not find facilities achieving greater control than that. While the assessment may be correct for what EPA looked at, the commenter states that examining past experience that lacks regulatory drivers for greater control is not the same as examining the present and future potential for control opportunities. The commenter believes that the proposal dismisses the potential for these two control techniques (add-on control and pollution prevention) to be applied to new sources.

Response: We agree that new facilities can more easily incorporate pollution prevention and add-on controls. This is the reason we set the new source floor at 95 percent control for most new sources that emit over 100 tpy, and not at the same level as existing source floors.

Facilities that have incorporated add-on controls tend to be larger facilities. New facilities in this industry can be small operations that operate a limited number of hours and still be major sources. These small sources cannot reliably meet 95 percent capture and control given their limited operating schedules and their potential lack of on-site technical expertise. Therefore, we are not requiring a source emitting less than 100 tpy to meet the 95 percent capture and control level.

We examined whether or not we could specify some other level of control for small sources, but we could not determine what would be an appropriate level of capture and control below 95 percent. We also considered basing new source MACT floors for facilities that emit less then 100 tpy on the single best facility that incorporated pollution prevention. However, as discussed in the preamble of the proposed rule, we believed that using one facility that had the lowest HAP content resins and gel coats was unworkable, unless we could show that all new plants would build the same products as the plants that had the lowest HAP content resins and gel coats.

Given this, we had to determine a threshold value above which 95 percent capture and control is feasible for all new plants, given the diversity of this industry. We selected 100 tpy of actual HAP emissions because above this level facilities tend to operate more hours per year and are better equipped to maintain capture and control systems. Also, at the time we proposed the rule, the smallest facility in the open molding process/product grouping that was permitted at 95 percent capture and control emitted approximately 100 tpy. Therefore, we chose this number as the threshold at which 95 percent capture and control is required.

This was not the only approach we could have taken to subcategorize new sources, nor is 100 tpy the only threshold we could have chosen. For example, we could have subcategorized by annual hours of operation. However, depending on the threshold we set, this could result in large, new HAP emissions sources avoiding the 95 percent capture and control

requirements simply by building a larger facility and reducing hours of operation. By tying the requirement directly to HAP emissions, we believe we have taken the most logical approach from an environmental standpoint and an enforcement standpoint. Also, the 100 tpy threshold is a reasonable choice that means that all new large facilities in most of the process/product groupings will have to meet the most stringent HAP emissions control levels.

Comment: We received numerous comments on the new source MACT floor for facilities with open molding, pultrusion, SMC manufacturing, mixing, and BMC manufacturing that emit 100 tpy or more of HAP from these operations. The commenters stated that the 95 percent capture and control requirements of the floor were technically infeasible and too costly. They also stated that 95 percent capture and control does not represent the best HAP emissions control approach when all environmental impacts, such as increases in emissions of criteria pollutant and greenhouse gases, are considered. The commenters note that the CAA states that the best controlled similar source must be the basis of the new source MACT floor; therefore, EPA is only authorized to apply the 95 percent capture and control requirements to facilities that are similar. The sources cited by EPA make uniformly-sized parts in high volume, employ mechanical resin application, and operate three shifts a day. However, they differ from other facilities in the industry. One of the sources is primarily a metal fabrication operation and sends significant amounts of emissions from a painting operation to the control device, making an unusually rich combustion stream. They also claimed that the facility had not been proven to meet the requirements of EPA Method 204 of appendix M of 40 CFR part 51. The other facility employs an unusual molding operation, and the ability of this facility to actually meet the 95 percent capture and control requirement is open to question. Neither of these sources are similar to any other composites open molding operation.

Response: Our available information continues to support that the appropriate new source floor for facilities that emit 100 tpy or more of combined HAP from their open molding, pultrusion, SMC manufacturing, BMC manufacturing, mixing, centrifugal casting, continuous lamination, and continuous casting operations is 95 percent capture and control for several reasons. First, the term "best control" means best control of HAP emissions. The only other control techniques mentioned by the commenters were the pollution-prevention techniques that make up the existing source floors. The commenters claim that when other environmental impacts of add-on controls are considered, pollution-prevention control techniques are actually superior. They provided examples that showed HAP emissions reductions from pollution-prevention techniques for some facilities of up to approximately 70 percent; however, the actual HAP emissions reductions a facility will achieve based on pollution-prevention techniques will be highly site specific. Also, the highest pollution-prevention HAP emissions reduction examples assume facilities could reduce HAP emissions by enhanced process monitoring, which would reduce materials used. The HAP emissions reductions based on materials-use reductions assumes facilities are not currently using materials as efficiently as they could. There are no data to support this assumption, and the potential for HAP emissions reduction of this type could vary widely. The second example presented by one commenter assumes facilities would use nonatomized gel coat application. However, the same commenter has stated emphatically that nonatomized gel coat application cannot be used at every facility. Therefore, this example cannot be considered to fairly represent the HAP emissions reductions achievable for the industry as a whole.

Our overall estimate of the HAP emissions reduction that would occur with only pollution-prevention techniques is approximately 41 percent for open molding, compared to the significantly higher 95 percent HAP emissions reductions possible with capture and control. The CAA indicates that "best control" in the context of setting floors is the control that achieves the best HAP emissions reduction. Based on this, 95 percent capture and control represents best control for this industry.

Even if we were to consider other environmental impacts of capture and control, 95 percent control would still be considered best control. Calculations provided by one commenter indicates that a total of only 0.15 tons of criteria pollutants are generated per ton of styrene reduction; however, this number appears to be based on one of the three actual operating facilities using add-on controls shown in the commenter's example. Data from another facility using a concentrator/oxidizer system in the same report showed criteria pollutant emissions of 0.06 tons per ton of styrene emissions reduction. Our estimate at proposal was that, on average, this figure is closer to 0.04 tons of criteria pollutants per ton of HAP emissions reduction. Regardless of which number is used, the amount of HAP emissions reduction is significantly higher than any resulting criteria pollutant emissions. The commenters also cite greenhouse gas effects. They state that 30 tons of greenhouse gases are produced for every ton of styrene emissions reduction.

We reviewed the information that formed the basis of the estimate of greenhouse gas estimates. Based on our analysis, we believe that the estimate of 30 tons of greenhouse gases are produced for every ton of styrene emissions reduction is an overestimate because it is based on examples where the HAP emissions reduction varies between 77 to 84 percent. The final rule will require 95 percent HAP emissions reduction. Also, we believe the air flows used in the examples provided by the commenter are higher than will be required for new facilities. Higher air flows result in increased use of natural gas and higher greenhouse gas emissions. We believe a more accurate number would be approximately 20 tons of greenhouse gases produced for every ton of styrene emissions reduction.

Second, regardless of which number is the most accurate, any contribution of the final rule to global greenhouse gas emissions is insignificant. The total greenhouse gas emissions in the United States exceed 6 trillion tons from fossil fuel combustion alone. However, the difference between emissions of styrene from a facility controlled to the 95 percent level and one controlled using only pollution prevention is significant to the populations living near an affected facility.

The commenters also stated that the facilities that formed the basis of the new source floor are not "similar sources." We disagree because there are actually three sources within this source category that meet the criteria to set a 95 percent capture and control floor. The commenters point out that three is a small number compared to the 433 facilities in the database at proposal. However, the CAA requires the new source floor to be based on the single best performing similar source. Therefore, only one source is sufficient to set a new source floor as long as we determine it is similar. The commenters stated that the source setting the floors operates three shifts (they shut down on weekends). However, we subcategorized new sources by annual HAP emissions. The reason was that larger sources are more likely to operate more than one shift. Also, since this floor only applies to new sources, the facility can be designed to meet the necessary production rate with three shift operation if the operator desires to minimize control device startups and shutdowns.

The commenters stated that in two cases, the floor facilities have collocated surface coating operations. Our evaluation of these facilities was based only on the reinforced plastic composites portion of the facility. During site visits to these facilities, we determined that these facilities were required to apply 95 percent capture and control to all major processes due to State regulations. That requirement would apply regardless of whether or not the facility had collocated surface coating operations. Also, the presence of the surface coating operation does not result in a more concentrated exhaust stream compared to facilities without surface coating operations. Thus, there is no technical basis to say these facilities are not similar based on the presence of surface coating operations.

We also reviewed the commenters claim that the facilities that set the new source floor do not actually meet the requirements of EPA Method 204 of appendix M of 40 CFR part 51. Part of that claim was based on the fact that the floor facilities had doors in the PTE that were opened to move parts and materials in and out of the PTE.

One criteria of EPA Method 204 of appendix M of 40 CFR part 51 is as follows: "All access doors and windows that are not treated as natural draft openings shall be closed during routine operation of the process". This criteria is not intended to require that these doors be closed at all times. It means that doors must be closed any time that you are not actually moving parts or equipment through them. Therefore, the fact that the floor facilities open doors to move parts in and out of the PTE does not mean they do not meet the requirements of EPA Method 204.

In addition, we reviewed the compliance determinations for two of the floor facilities. Our review did not reveal any conditions that would indicate that the requirements of EPA Method 204 of appendix M of 40 CFR part 51 are not being met.

Comment: The commenters stated that the facilities that manufacture large parts using open molding or pultrusion are not similar to the floor facilities that are the basis of the capture and control requirements for the new source floors. They stated that the facilities used to set the 95 percent capture and control requirement only manufacture small parts and, therefore, should not be used to set a capture and control floor requirement for facilities making large parts. They also stated that achieving 100 percent capture is not feasible for large parts sources in these process groups. Though EPA had cited facilities that coated large parts in permanent total enclosures (PTE), coating operations cannot be considered similar to the manufacture of reinforced plastic composites. They suggested that any part with any dimension that exceeds 12 feet be considered a large part and be exempt from capture and control requirements.

Response: After reviewing the comments and available data, we have determined that the facilities currently achieving 95 percent capture and control are not similar to sources producing large parts. At proposal, we noted that we had not identified any facilities in the reinforced plastic composites industry where processes producing large parts, such as storage tanks and swimming pools, have applied 100 percent efficient capture systems, but stated our belief that such PTE were technically feasible based on large PTE in other industries. We reviewed available data on the facilities in our database and found that facilities producing parts over a certain size presented different technical issues from facilities that have successfully incorporated 95 percent capture and control. As noted in the preamble to the proposed rule, one of these facilities has a PTE large enough to produce large parts. However, the air flows and HAP concentrations exiting the PTE at this facility are not the same as would be expected from a facility using a similar sized PTE to capture and control emissions from large parts production.

We also noted in the preamble to the proposed rule that surface coating operations for very large parts (as large as ocean going ships) had successfully applied PTE. However, we agree that coating operations and reinforced plastic composites operations are not similar sources. Reinforced plastic composites production typically requires more workers per part due to the necessity to both apply and roll-out the resin. Also, large parts are continuously laminated until completion rather than coated in sections.

This difference in sources, while applicable to evaluating floors based on capture and control, does not exist in the case of floors based on pollution-prevention technologies such as the use of low-HAP materials and nonatomized resin application. For that reason, we did not differentiate between large and small parts when setting floors based on pollution-prevention control techniques for either new or existing sources.

Because we determined that capture and control was not the appropriate floor for large parts manufacture, the floors for these specific operations are now the same as the floors for existing operation, which are emission limits based on the use of low-HAP materials and nonatomized resin application.

However, we do not agree with the commenter's suggested definition of large parts, because it would exempt parts from capture and control requirements where those requirements have already been demonstrated. The largest part produced at a facility where 95 percent capture and control is demonstrated has a volume of 250 cubic feet. If this part were placed in a rectangular six-sided box, the largest side of the box would be 50 square feet. Therefore we chose these criteria as the definition of a large part for open molding. For pultrusion, the largest part produced by a facility with 95 percent capture and control was 2 inches high, 10 inches wide, and had approximately 350 reinforcements. Therefore, we choose these criteria as the definition for large pultruded parts.

Comment: Several commenters stated that capture and control requirements would make it difficult for facilities to meet Occupational Safety and Health Administration (OSHA) worker health and safety requirements. Process enclosures at current facilities are designed and operated to provide safe and efficient production of composite products. The primary purpose of enclosures in this industry is to remove contaminated air from the workplace to achieve OSHA requirements for limiting occupational exposures. Enclosures must also allow enough cool air to enter the workplace so that workers are not subject to excessive heat stress. One commenter provided a study that stated that if process enclosure exhaust flows were reduced to increase exhaust concentrations being routed to the control device, worker exposure to contaminants and heat would be increased to unacceptable levels.

Response: The use of PTE for capture of HAP emissions should not result in increased worker exposure to contaminants or heat stress if appropriate precautions are taken. As previously noted, one solution is to design the spray enclosures based on meeting worker exposure requirements, and then enclosing the entire lamination area in a PTE. The facilities currently using PTE do not exceed OSHA exposure guidelines. Experience in the printing and publishing industry shows that use of PTE, in many cases, results

in reduced worker exposure to both contaminants and heat stress. In high heat and humidity areas, it is likely that some type of air cooling will be required during summer. However, this issue is present even without the requirement for capture and control.

Comment: Five commenters stated that the limit of tooling gel coats (38 percent HAP) is not achievable. One commenter claimed that we set this limit based on one infrequently used product that is not representative of the industry as a whole. The commenter's products represent 70 percent of the tooling gel coat market and the maximum HAP contents range from 42 to 50 percent HAP. Their lower HAP gel coat has not gained a significant market acceptance. They have performed 2 years of research and development efforts aimed at developing a lower-HAP gel coat that would meet the requirements of the proposed rule and have been unsuccessful. They stated we had not independently tested the product on which the standard is based, so there has been no demonstration of the product's quality or suitability for broad use in the industry. The commenter also stated that setting the standard at 38 percent would have the effect of encouraging manufacturers of tooling gel coats to use para methyl styrene, which is not regulated as a HAP, as a substitute. Also, lower-HAP gel coats may be less durable than products currently on the market, which would result in reduced mold life. Therefore, more molds would have to be built to produce the same amount of product. This would result in the standard actually causing a HAP emissions increase. This commenter requested a tooling gel coat HAP limit of 52 percent HAP for clear gel coats and 49 percent for pigmented gel coats.

A second commenter asked that EPA consider tooling gel coats as speciality gel coats exempt from HAP limits similar to the speciality coating exemption contained in the Aerospace Coating MACT standards (40 CFR part 63, subpart GG). This commenter stated there is a strong possibility they will discontinue manufacturing tooling gel coats if the standard is not changed.

Another commenter stated that we must allow higher HAP limits for tooling applications in vacuum resin infusion, compression, and resin transfer molding composite tool applications, where high exotherms and heated tools are required. Durability of the mold surface is essential to the longevity of the mold. Thermal stability is a key element that requires higher-HAP content. Repeated high exotherms during the cure cycles can greatly reduce the life of low-HAP gel coats. Greater porosity found in the low-HAP materials can also create mold surface problems. Ironically, these are closed-molding processes, which result in much lower HAP emissions and employee exposures than open molding processes. Closed molding facilities will not be able to offset the small amounts of high-HAP tooling gel coat used in tool production with large amounts of low-HAP general purpose open molding resins using facility averaging. The commenter recommends that the final MACT standards allow up to 48 percent HAP content for pigmented tooling gel coats.

Response: We have received additional data since proposal. Based on these data, we increased the floor for tooling gel coats to 40 percent. We obtained very little data from industry on tooling gel coats in the original data requests and in additional efforts to obtain additional tooling gel coat data. To supplement the limited data, we looked at the tooling gel coat data used in developing the Boat Manufacturing MACT (40 CFR part 63, subpart VVVV). This is a reasonable approach because gel coat manufacturers stated that they sold the same tooling gel coats in both the reinforced plastic composites and boat manufacturing industries. The revised HAP content limit of 40 percent is the same as the Boat Manufacturing NESHAP HAP content limit for tooling gel coats.

We considered the issue raised by the commenters that a low limit in tooling gel coats would actually increase HAP emissions. While we agree that more frequent replacement of inferior molds would lead to increased HAP emissions, the factual data do not indicate that a 40 percent HAP content limit results in inferior molds. Facilities in the field (both reinforced plastic composite manufacturers and boat manufacturers) are building molds with 40 percent HAP tooling gel coat. We have no data to indicate that these facilities are producing lower quality molds than average, and none of the commenters has been able to provide objective data to substantiate that reduced mold life is inevitable with low-HAP gel coats. The information provided was based on assumed reduction in mold life. Also, the fact that one of the commenters covers 70 percent of the market is irrelevant, because MACT floors are set based on best control, not market share. In the absence of objective data that the facilities that use low-HAP tooling gel coats produce inferior molds with shorter mold lives compared to the rest of the industry, the MACT floor must be set based on the best performing facilities. In this case, that results in a floor of 40 percent HAP.

Comment: One commenter stated that although clear cultured marble gel coats have been formulated with HAP levels as low as 40 percent, the tolerance for thermal shock and water resistance are lowered with lower-HAP levels. According to the commenter, 48 percent HAP-clear coat is required for manufacturers to maintain current warranties and many have switched back to the high-HAP clear gel coats due to the poor performance of the lower-HAP clear gel coats. The commenter suggests that "clear gel coats for cultured marble" should be defined as "those used for products subject to ANSI Z124 testing" and the rule should limit the HAP content of these materials to 48 percent. A second commenter also stated that a 48 percent HAP content is necessary to meet desired gel coat performance. The commenter claims that the proposed limit of 44 percent does not take into account the entire spectrum of uses and does not satisfy the requirements of their applications.

Response: We are bound by the statutory requirements of the CAA to set MACT floors based on the average of the best performing sources as illustrated in the available data. In the absence of specific data to support the request, we have no basis to change the floor.

In developing different process product grouping for gel coats, we did consider the different performance characteristics of different types of gel coat. These types were tooling gel coat, clear gel coat, pigmented gel coat (white/off white), pigmented gel coat (all colors except white/off white), fire retardant gel coat, and corrosion resistant/high strength gel coat. Based on information provided by industry, we determined that these different gel coat types had sufficiently different characteristics that they should be considered separately for floor determinations. However, we do not have data to demonstrate that it would be appropriate to further subcategorize clear gel coats based on each gel coat's performance characteristics.

Comment: One commenter states that only the white/off-white and some pastels can meet a floor of 30 percent HAP because of the titanium dioxide and inert filler loading. Most solid colors require a HAP content of 38 to 40 percent. Higher performance pigmented gel coats that require high molecular weights would, therefore, need a higher monomer content to achieve workable viscosities and would probably no longer be available to the market place.

Response: White/off-white gel coats will be defined as those containing 10 percent or more by weight titanium dioxide. As proposed, these gel coats will be subject to a HAP limit of 30 percent by weight, and all other pigmented gel coats will be subject to a HAP limit of 37 percent by weight.

At the time we developed the proposed rule, we had no data on pigmented gel coats other than white/off-white and some reds. Based on industry comments, we split pigmented gel coat into two groupings, white/off-white and other colors due to the fact that white/off-white gel coats contain titanium dioxide, which is a heavy pigment, while other colors do not. At the time we created this new grouping, we requested data from the industry concerning the HAP contents of pigmented gel coats. The industry representatives indicated that these gel coats typically have 37 percent HAP. Because non-white pigmented gel coats comprise a very small part of the total industry, we elected to accept the 37 percent number rather than attempt to gather additional data. The commenter provided no data to support their request. In the absence of new data, we have no basis to change this floor.

Comment: Two commenters request that the category of fire retardant gel coats be exempt from HAP limits. Both commenters note that fire retardant gel coats are used in manufacturing transportation parts, building products, trains, airplane parts, and theaters. One commenter stated that these are all critical areas of applications and require various Underwriter Laboratory (UL), American Society for Testing and Materials (ASTM), and Fire Rating Certifications. It was suggested that fire retardant gel coats be defined as "those used for products for which low-flame/low-smoke resin is used."

Response: We have added a process/product grouping for fire retardant gel coats. These gel coats are defined as gel coats used in low-flame spread/low-smoke product applications. We have established a HAP emissions limit of 854 lb/ton which is equivalent to gel coats with a maximum HAP content of 60 percent using atomized application.

Comment: Four commenters stated that we need to establish a separate process/product grouping for corrosion-resistant gel coats. The commenters stated that gel coats used in specific corrosion protection applications must meet the same requirements as corrosion-resistant resin. One commenter added that gel coats requiring chemical resistance to a wide range of chemicals including acids, bases, and solvents are often based on the resins similar to those that make up the structural part of the composite and provide the necessary corrosion resistance. For this reason, the commenters believe that the HAP limitation for corrosion-resistant gel coats should be 48 percent, the same as it was in the proposed rule for lamination resins used to make corrosion-resistant composites. It was suggested that "corrosion-resistant gel coats" be defined as "those used for products made with corrosion-resistant resin" and that the rule limit the HAP content of these materials to 48 percent.

Response: We agree that there are technical limitations for corrosion-resistant applications that warrant a separate limit for corrosion-resistant gel coats, similar to the separate limits established for other specialty resins and coatings.

In the final rule, we established a separate HAP content limit of 48 percent for corrosion-resistant gel coats and defined them as "those gel coats used to manufacture products made from corrosion-resistant resin." We believe 48 percent HAP is the appropriate number because the highest HAP content level allowed in all the corrosion-resistant resin process/product groupings is 48 percent.

Comment: Several commenters stated that we need an additional process/product grouping for low-shrink resins. These resins have special shrinkage control properties that are unique and cannot be obtained in any other way. These resins were not identified when EPA surveyed the industry. One commenter stated that a specialty process group is needed for high molecular weight, low-shrink resins used in wind turbine blade manufacturing. The resin currently in use is 42 percent HAP unfilled. The facility would be unable to gain any relief by facility averaging because the facility predominantly uses zero-HAP epoxy resin, rather than a low-HAP production resin. Commenters requested that EPA create a subcategory for these resins with a maximum HAP level of 48 to 52 percent.

Response: Our understanding is that these low-shrink resins are highly filled resins with special chemistry that allows them to cure at room temperature with significantly less shrinkage than a typical resin. Given the unique properties of this resin, we agree that a separate process/product grouping is appropriate. The resin manufacturer indicated that the maximum HAP content of the resin is 50 percent. Therefore, we have set HAP emissions limits for shrinkage-controlled resins that allow up to 50 percent HAP. This specialty resin costs significantly more than other resins, which provides a deterrent for facilities using the resin where its special properties are not necessary.

Comment: One commenter believes higher HAP limits are needed for the filament application of corrosion-resistant products. The commenter claims that the rule, as proposed, will eliminate use of certain types of corrosion-resistant resins that impart required properties to certain applications. The commenter noted that the proposed limit for corrosion-resistant filament application resins was lower than for noncorrosion-resistant filament application resins. The commenter believes that the HAP emissions limit for all categories of filament application should be 178 lb/ton, and stated that this change will have insignificant impact on EPA's total HAP emissions reductions target, with the difference in HAP emissions reductions being 3 tpy.

Another commenter states that the proposed MACT of 42 percent HAP cannot be met with an isophthalic resin without some compromise to the physical properties of the cured resin. The commenter requested EPA to consider the 48 percent HAP limit found in South Coast Air Quality Management District (SCAQMD) Rule 1162.

Response: While we acknowledge the commenters concerns, we developed the floor for this process/product grouping in the same manner as floors for other process/product groupings in open molding. We gathered data from industry and ranked the performance of the facilities in the corrosion-resistant process group and set the MACT floor based on the average of the best 12 percent, as required by law.

Though we are not changing the floor for filament application, we are retaining a provision included in the proposed rule that allows facilities to use the same resin in multiple processes. The rationale for this provision is, while our floor development ranking procedure is correct, we also realize it does not account for the fact that some facilities use multiple operations to produce components of the final product, and the resins used in the subcomponents must be compatible. This provision will allow most facilities the flexibility to use the necessary level of HAP in corrosion-resistant applications because mechanical operations have a higher-HAP content limit.

Comment: One commenter recommended that the model point value for corrosion-resistant manual resin application be changed from 124 to 190 to reflect the use of the same

percent HAP used in mechanical resin application. The commenter notes that the facility that sets the floor using a 40 percent HAP resin is not typical of a true corrosion-resistant (CR) company because that facility uses only manual application, while true CR companies use both manual and mechanical application techniques. A second commenter requested that the MACT floor for manual corrosion-resistant resin be changed so that it is the same as the floor for mechanical corrosion-resistant resin.

Response: As discussed in the previous response, the floor is based on the data available for this process/product grouping. However, as with filament application, the provision allowing facilities to use the same resin in multiple operations should allow enough flexibility for facilities to meet rule requirements, but still produce products with the necessary properties. Therefore, facilities that produce corrosion-resistant and noncorrosion-resistant products using both manual and mechanical resin application will be able to use the same resin in both operations.

Comment: One commenter stated that the proposed MACT of 35.5 percent HAP for noncorrosion-resistant centrifugal casting would result in a resin too high in viscosity, which may create air release problems. The commenter states that lower molecular weight resins would cause some limitations in physical property requirements.

Response: We received new data that changed the floor for centrifugal casting to 37.5 percent HAP. With less than 30 facilities in the process group for which we have data, the MACT floor must represent the average performance of the top five facilities. We have no data to support raising the floor any further.

Comment: One commenter stated that they believe that new operations should be subject to new source MACT even if they are added to an existing source. The commenter understands that there are cases in which the new equipment may be incorporated within an existing manufacturing line, making it difficult to employ separate controls (*e.g.*, if all the equipment is controlled at a later end point). The commenter suggests, however, that separate and more specific provisions can be included in the rule to govern such cases.

Response: This comment is only applicable to new source MACT for specified processes that emit over 100 tpy, because below that level, new source and existing source MACT are the same. We believe that, for this particular industry, the ability of a facility to incorporate the capture and control requirements of new source MACT for larger facilities is closely related to the structure housing the process, because the size and shape of the existing building affects the layout of the production line. Even if there are significant process changes, this by itself would not indicate that the building housing the process has been changed, thereby making retrofit of capture and control systems unfairly difficult compared to a new greenfield facility. We believe that attempting to develop a detailed set of requirements that could cover every situation would be unrealistic.

We agree that this provision may result in small facilities being able to grow significantly without becoming new sources. However, it should be noted that in the final rule, we have overridden the portion of the general provisions in 40 CFR part 63 which states that facilities that move are still considered existing. Because we believe the cost and technical feasibility of capture and control are closely related to the building housing the process, we believe that a facility that moves should be considered a new source because they can plan for capture and control prior to erecting or selecting a new building. Therefore, facilities that would be considered existing sources under the general provisions will be considered to be new sources under the final rule. Therefore, in this aspect, the final NESHAP are more stringent.

Comment: Several commenters requested clarification in this rule on which operations at a reinforced plastics composites facility and which operations at a boat building facility will be covered by this rule and which will be covered by 40 CFR part 63, subpart VVVV (Boat Manufacturing NESHAP).

It was noted that neither the preamble nor the proposed rule explicitly states whether this rule applies to manufacturing of boats or boat components and requested that language be added to the final rule clarifying that this rule does not apply to any processes or operations subject to 40 CFR part 63, subpart VVVV. One commenter stated that boat building plants routinely produce non-boat parts and presumed that such facilities will be required to meet the composites rule when producing composite parts that are not associated with the manufacture of boats. The commenter also points out that some composite plants produce boat parts that are then used to build boats, such as when producing barge covers that are related to the manufacture of river barges.

Response: We have added § 63.5787 to the final rule to specifically address this issue. A facility must produce boat hulls and decks, or molds for boat hulls and decks, to be covered by the Boat Manufacturing NESHAP (40 CFR part 63, subpart VVVV). If it produces reinforced plastic composites, as defined in the final rule, and is not covered by the Boat Manufacturing NESHAP, then it is covered by the Reinforced Plastic Composites NESHAP, regardless of the final use of the parts.

In the case where a facility is subject to the Boat Manufacturing NESHAP (40 CFR part 63, subpart VVVV), but the facility also makes parts that are not a component of their boats, then the non-boat parts are covered by the Reinforced Plastic Composites NESHAP. However, only resins and gel coats actually used to make parts covered by the Reinforced Plastic Composites NESHAP are considered in determining compliance.

In addition, in order to simplify compliance, we are allowing facilities that are subject to the Boat Manufacturing NESHAP (40 CFR part 63, subpart VVVV) and that also make parts subject to the Reinforced Plastic Composites NESHAP, to elect to make all their manufacturing operations subject to the Boat Manufacturing NESHAP if they can demonstrate, through the appropriate HAP emissions calculations, that this will not result in any HAP emissions increases over what would occur if they complied with the Reinforced Plastic Composites NESHAP for non-boat part production. We also clarify that HAP emissions from activities covered by the Boat Manufacturing NESHAP are not considered when calculating HAP emissions thresholds to determine the applicability of add-on controls.

Comment: One commenter requested that the rule explain what happens in instances where the 100 tpy threshold is exceeded even by a little, temporarily. Does this require that add-on controls be installed?

Response: It is our intent that unusual circumstances result in a facility having to add and operate add-on controls. We have included clarifying language in the final rule that allows a one-time exemption to the 95 percent capture and control requirements for facilities that were below the 100 tpy threshold and exceed the threshold due to unusual circumstances. This exemption allows facilities to average annual HAP emissions over 3 years to determine if they exceed the threshold. However, facilities are also required to document the unusual circumstances that caused the exceedance, and why they expect to remain below the threshold in the future. If they exceed the threshold a second time, then the exemption is immediately withdrawn and they must comply with the 95 percent capture and control requirements within 3 years from when they originally exceeded the threshold.

Comment: Two commenters requested clarification of several issues related to repair work. They are assuming the proposed rule is intended to cover manufacturing operations only. Repair processes conducted in a manufacturing facility are also covered because they are likely to use the same materials. If the processes conducted are re-manufacturing, refurbishment, repair, or maintenance, it will be considered repair for the final NESHAP. The exception would be if the repair is a part which frequently needs replacement and is made in an assembly-line type process. They also asked that since there is no de-minimums level, if any manufacturing is done, would it be covered? They noted that at some of the commenter's facilities, some minor manufacturing may occur. The repair work that may also be done at the same facility is not related to the manufacturing processes (and would be using different resin and reinforcing materials.) The commenter believes that as the rule is currently written, both the manufacturing and repair operations would be covered. The commenter does not believe that is EPA's intent and asked if we could develop language to correct that.

One commenter stated that definitions of repair and manufacturing should be added to clarify the types of repair and manufacturing covered by the rule. The preamble and rule should be consistent in stating that the facilities that only repair composites are not affected. The commenter also feels that repair operations collocated with unrelated manufacturing operations should not be covered either. In a related comment, several commenters asked that a low-use cutoff be established so that facilities that use small amounts of resin and gel coat are not subject to the rule, especially since those uses may be incidental to a completely different manufacturing operation.

Response: The final rule has been written to make explicit what repair operations are and are not covered. Specifically, facilities at which only repair occurs are not covered by the final rule. In addition, repair of previously manufactured reinforced plastic composites unrelated to the reinforced plastic composites manufactured at the facility are also not covered by the final rule. Repair processes on parts that are manufactured at the same location are covered by the final rule. In addition, we have added a low-use cutoff exemption to the final rule. We reviewed our entire database and determined that we had no data for facilities that use less than 1.2 tpy of resin and gel coat combined. Therefore, we believe that, in the absence of any available data, facilities that use less than 1.2 tpy of resin and gel coat to produce reinforced plastic composite products or components should be exempt from the final rule.

Comment: Many commenters requested that the rule incorporate an exemption for R&D facilities, and for R&D operations collocated with manufacturing operations. The materials used in R&D operation may be significantly different from those used in manufacturing.

Response: We have written the final rule to exempt R&D facilities and R&D operations. The definition of R&D is the same as contained in section 112(c)(7) of the CAA.

Comment: Several commenters stated that they believe the EPA cannot set different standards for small and large businesses based on the size of the business, rather than the size of the source. They believe that because the CAA clearly identifies "major source" by the level of HAP emissions, MACT floors must depend on the average HAP emissions reductions by the best sources without regard to cost factors of business size. They stated that this distinction was unfair because two facilities that emit the same amount of HAP would potentially have different requirements solely on the basis of their ownership. The commenter also believes that EPA did not adequately support the determination that large businesses have better access to capital than small businesses. They stated that this is not necessarily true.

Response: Based on the revised cost analysis, we have determined that it is no longer necessary to distinguish between small and large businesses. However, we still believe the use of different thresholds in the proposed rule was appropriate because this distinction only applied to the above-the-floor regulatory option. The CAA specifically states that when we go above the floor, we must consider costs.

Comment: One commenter states that the small business threshold of 250 tpy should apply to both existing and new sources. New capital funding to build a new facility would require due diligence on the part of the lending institution. The new facility would have to generate enough cash flow to meet the added debt load. Adding a capture and control system to the debt load would significantly reduce the cash flow available to pay back the lender's note on a new facility because the capture and control system is a non-value added asset. The lending institution would discern this and deny the loan.

Response: For new sources, the proposed (and final standard) is the MACT floor, not an above-the-floor option. We do not have the flexibility to create small and large business distinctions when the standard is set at the MACT floor. Therefore, the final rule for new sources does not incorporate a small and large business distinction.

Comment: Several commenters stated that a method to establish percent reduction and HAP emissions factors is needed to foster the development of new products and equipment to serve the affected industry. They recommended that EPA establish a protocol to allow the smooth introduction of equipment, products, and other technologies into the final rule.

Response: Allowing facilities to use site-specific HAP emissions factors, and the procedure in the general provisions in 40 CFR part 63, subpart A, that allows facilities to demonstrate equivalent HAP emissions reductions, adequately address the incorporation of new HAP emissions reduction technologies. However, we have added § 63.5798 to the final rule that discusses how to obtain approval for new technologies.

Comment: Two commenters requested that EPA change the averaging provisions to allow a facility that changes some processes to non-styrene containing resins to average these resins with the styrene-containing resins to demonstrate compliance.

Response: We do not believe it would be appropriate to allow the use of non-styrene containing resins and gel coats to be included in the calculation of compliance. The MACT floors were developed only considering resins and gel coats that contain styrene (and other organic HAP, such as MMA) used at the facilities in our database. We did not consider non-styrene resins and gel coats used at our database facilities. Given the basis for developing the standards, it is inconsistent to allow non-styrene containing resins and gel coats to be used in the compliance calculations. Therefore, we have not added this request to the final rule.

Comment: Numerous commenters recommended replacing the point value system with the Composite Manufacturers Association (CFA) UEF

table. The composites industry is already using these HAP emissions factors to calculate annual HAP emissions. It would simplify reporting and recordkeeping if one set of HAP emissions factor equations were used. Another commenter stated that if EPA uses the UEF, all HAP should be treated as styrene because this is how EPA developed the MACT floors. They noted that these factors are used by industry for toxic release inventory reporting and obtaining permits. According to the commenters, use of these factors for MACT will reduce the paperwork burden for small manufacturers.

Response: We reviewed the UEF and the basis for their development. Based on this review, we believe that these equations are acceptable for estimating both HAP emissions factors for compliance purposes and HAP emissions.

As a result, in the final rule we have written the HAP emissions factor equations in Table 1 to subpart WWWW of part 63 to be identical to their equivalent UEF equations. Therefore, facilities will have one set of identical factors for both compliance and HAP emissions estimation purposes.

Because of this change, it was necessary to recalculate the floor values by recalculating HAP emissions factors using the new HAP emissions factor equations for the facilities in our database and reranking the facilities based on the new calculations. Therefore, both the numerical values of the floors (lb/ton) and the equations used to calculate compliance changed. Note the floors themselves did not change significantly because when we reranked facilities using the new HAP emissions factors, the ranking order did not change with two exceptions. In those cases, the new equations caused two facilities to switch places and changed the floor slightly. However, these changes were minor compared to the changes that resulted from other comments we received and additional data we gathered.

In addition, we have added to the final rule equations for the nonatomized gel coat application and for the mechanical atomized controlled spraying of resins. We have incorporated the latter UEF equation in the final rule so that it is applicable only where the controlled spray is achieved through automated or robotic, not manual, spraying.

Finally, we are incorporating only the UEF equations developed for styrene and not those developed for MMA. We are doing this because the data analysis forming the basis of the standards assumed all organic HAP to be styrene. This is a reasonable assumption as the amount of MMA used is a very small percentage of the total HAP monomer used.

Comment: One commenter noted that the proposed rule does not provide for manual application of gel coats. Many gel coats are applied manually as exterior coatings when the major component part is made. The rule should require that for HAP emissions calculations from manual application, gel coat should be considered as a resin with the stated HAP content and the appropriate point value equation should be used. Companies where manual gel coat application is less than 2 percent of the total gel coat usage should be exempt from maintaining records of manual application.

Response: We agree with the commenter that the proposed rule did not provide an equation to estimate HAP emissions from the manual application of gel coats and that the rule needs to address this. In the final rule, we have addressed this issue by allowing two options. First, the facility may elect to simply include manually-applied gel coat with spray gel coat application for compliance and HAP emissions estimation purposes. Alternatively, they can elect to treat the gel coat as spray for compliance purposes, but use the manual resin application HAP emissions factor to estimate HAP emissions.

We believe the changes discussed above are sufficient to simplify reporting and recordkeeping for manual gel coat application. Therefore, we have not added an exemption for maintaining records for manual gel coat application.

Comment: Several commenters requested that sources be allowed to use HAP emissions factors in approved title V permits to estimate HAP emissions. It was noted that the use of such factors will reduce the administrative burden for sources and regulators and will likely improve HAP emissions estimates. One commenter suggested that such factors also be allowed to be used for compliance determinations.

Response: We agree with this comment and believe that § 63.5798(a)(1) and (2) of the final rule already allow for the use of facility-specific HAP emissions factors. Section 63.5798(a)(1) states, in part, that "you may use any organic HAP emissions factor approved by us such as factors from the Compilation of Air Pollutant Emissions Factors, Volume I: Stationary Point and Area Sources (AP–42)." Section 63.5798(a)(1) was not intended to limit organic HAP emissions factors only to the AP–42. Paragraph (a)(2) of § 63.5789 allows the development of facility-specific organic HAP emissions factors through performance testing. If a facility has facility-specific factors that have been approved for use in title V operating permits, then those factors can be used to determine whether or not the facility is a major source under section 112 of the CAA. In addition, a facility can use facility-specific factors for comparison against applicable HAP emissions limits. We have written the language in § 63.5798 of the final rule to clarify the use of such facility-specific factors and have added the provision that such factors must be supported by test data.

Comment: One commenter notes that the alternative point values in Table 5 to subpart WWWW of part 63 do not provide a realistic alternative to 95 percent capture and control. In an example calculation for 35 percent styrene resin in open molding, the point value calculation is equivalent to 96 percent control, which is more stringent than the add-on control requirement.

Response: While the values may not appear realistic for some facilities, Table 5 to subpart WWWW of part 63 does present the opportunity to meet the final standards using alternative means. We believe that the values in Table 5 to subpart WWWW of part 63 provide incentive to continue to pursue lower-HAP resins and gel coats and other pollution-prevention opportunities and that even if only one facility can use the values, then their inclusion is worthwhile. For these reasons, we have retained Table 5 to subpart WWWW of part 63. However, we have made minor modifications to this table. For process/product groupings where there is an operating facility that currently meets the 95 percent control requirement, we changed the value in Table 5 to subpart WWWW of part 63 to reflect the highest actual calculated HAP emissions factors for operating facilities.

Comment: One commenter stated that the weighted-average point values should be calculated as a weighted average of resin used. The commenter pointed out that the equation in the current proposal gives equal weight to each month instead of each quantity of resin or gel coat processed. Another commenter asked for clarification on how the "weighted average floor" is calculated.

Response: We agree with the commenter that 12-month rolling average point values should be calculated using a weighted average based on the amount of resins, rather than using an average based on monthly values, as was proposed. Therefore, the final rule incorporates the commenters' suggestion. Also, we have changed the terminology for the averaging calculations. We now use the term "emissions factor" when discussing values calculated using actual resin and gel coat HAP contents, and "emissions limit" when discussing average values calculated from the required floor limits. This change should clarify how to calculate the weighted average floor.

Comment: Several commenters asked that EPA include a test method to determine the effectiveness of vapor suppressants. They suggested that the CFA-developed vapor suppressant test method be used.

Response: We agree with the commenter that the final rule should incorporate a test method applicable to vapor suppressants, which are effective at reducing HAP emissions for many resin applications. The effectiveness of vapor suppressants varies depending on the resin and the application technique used. Thus, a single effectiveness value cannot be assigned. The final rule, therefore, incorporates a test method to determine the effectiveness of vapor suppressants for facility-specific applications. This test method is being published as appendix A to subpart WWWW of 40 CFR part 63.

Comment: One commenter states that the proposed rule is vague or silent on key issues including continuous monitoring of the preconcentrator control performance. The commenter states that the question of the practical long-term efficiency of the preconcentrator system is particularly disturbing because the proposed rule is silent on the issue of compliance assurance. Unfortunately, compliance assurance will present three problems: no available parametric measure will work to monitor absorber efficiency; continuous or semi-continuous flame ionization detectors (FID) are the only practical alternative, but are unreliable; and automated FID equipment is very expensive and prone to periods of malfunction.

The commenter also states that the only feasible available continuous emissions monitor (CEM) system that can measure styrene is an automated sampling device based on an equivalent FID sensor as described in EPA Method 25A of appendix A–7 to 40 CFR part 60 that has an annual cost of $78,200 per year. The additional cost of this necessary compliance monitoring equipment was not included in the EPA cost analysis.

Response: We have reviewed the information on those facilities using add-on control devices with carbon adsorbers within the reinforced plastic composites industry and have found none that are using FID. These facilities are able to demonstrate compliance with 95 percent reduction. Therefore, we do not believe it is necessary to require use of FID under the final rule and have not included the cost of such devices in our cost analysis.

Comment: One commenter notes that the requirements for sources to determine the HAP content should be the same as those in the Boat Manufacturing NESHAP (40 CFR part 63, subpart VVVV). The commenter points out that the boat rule allows sources to use information from the supplier or manufacturer and requires the use of the upper limit of a range if a range is provided and allows use of supplier information as long as a measured value does not exceed the provided value by more than 2 percentage points. The commenter notes that suppliers provide many of the same resins and gel coats to boat manufacturers and composites manufacturers.

Response: We agree with the commenter and the final rule has been written in line with the HAP content determination provisions found in the Boat Manufacturing NESHAP, which in part allow up to a plus or minus 2 percent allowance.

Comment: One commenter stated that the rule should allow composites manufacturers to change compliance options and should provide guidance on notification and record keeping requirements if affected sources need to switch compliance options.

Response: We agree with the commenter and have included language in the final rule making it clear that changes in the selected compliance option are allowed.

Comment: One commenter opposed capture and control for pultrusion sources based on worker safety. The commenter notes that the EPA analysis assumes an inlet concentration of 100 ppmv, but their measured concentrations are about 12 ppmv. At that concentration, according to the commenter, capture and control is not viable. The commenter claims that efforts to increase the inlet concentration lead to OSHA and industrial hygiene concerns and that any changes increasing the concentration to over 20 ppmv would exceed American Congress of Governmental Industrial Hygienists recommended maximums. Further, the commenter states that levels approaching 50 ppmv require installation of engineering controls (ventilation or HAP prevention) and exposure to these levels would meet with serious union objections. The commenter notes that these considerations result in higher capture and control costs. The commenter requests that health related issues be fully addressed before the proposed above-the-floor capture and control is implemented. Another commenter stated that pultrusion products requiring constant attention would have to have an enclosure large enough for the operator to be inside, and this would increase health risks due to styrene exposures.

Response: As noted in previous responses, the above-the-floor requirement for 95 percent HAP emissions reduction is no longer required for pultrusion operations at existing sources and, therefore, capture and control is no longer an issue for existing facilities. We also note that our revised cost analysis now uses a target maximum inlet concentration of 50 ppmv rather than 100 ppmv. The 50 ppmv target is the same as the current OSHA 8-hour time weighted average limit for styrene.

We have not changed our position on capture and control for new sources, except, as discussed above, with respect to large parts made by pultrusion (and open molding) sources. New facilities can be designed with the appropriate measures in place to avoid worker exposure in excess of OSHA requirements. As previously discussed, facilities that have incorporated capture and control meet current OSHA requirements for worker safety.

Comment: Several commenters requested that preform injection, a technique that applies resin to the reinforcements in a closed box, be an allowed control technology because it is a more viable and readily attainable control technology than either add-on control or direct-die injection. One commenter stated that preform injection should qualify for a 90 percent HAP emissions reduction, and the CFA proposed definition and requirements should be used as the criteria for preform injection. A second commenter stated that although it falls short of 95 percent reduction, reduction rates of 90 percent are attainable and an excellent trade off given the applicability, capital requirements, and operating costs associated with preform injection.

Response: We agree with the commenters that preform injection is a viable control technology for reducing HAP emissions from pultrusion operations. Preform injection is included in the final rule as an option for meeting the 60 percent HAP emissions reduction requirement for existing pultrusion sources. However, as stated by the commenters, preform injection (and direct die injection) do

not meet the 95 percent HAP emissions reduction requirement, which is the new source MACT floor. The CAA does not allow us to be less stringent than the floor. Therefore, we cannot allow preform injection, or direct die injection, to be a compliance option to meet the 95 percent HAP emissions reduction requirement. We also included a definition for preform injection in the final rule that is based on the commenter's suggested language.

Comment: Several commenters requested a 12-month averaging period for compliance for pultrusion. The commenters stated that pultruders should be able to use a combination of preform injection, wet area enclosures, direct die injection, and "no control" to meet the 60 percent HAP emissions reduction requirement for existing sources. The commenters pointed out that HAP emissions credits could be earned to offset the processing of products with an open bath and "no control." According to the commenters, without averaging, facilities will be forced to discontinue manufacturing products that require constant open access (for example, certain complex profiles) or to shut down any processing line when there is an extended period of processing adjustments (which require open access to the line).

Response: We agree that averaging will add some flexibility for you to comply with the final rule without increasing HAP emissions. Therefore, for existing sources we have included an averaging option. For purposes of averaging, we have assigned wet area enclosures a 60 percent HAP emissions reduction, and direct die injection and preform injection a 90 percent HAP emissions reduction.

Comment: Several commenters requested that the 60 percent emission reduction requirement for existing sources, which is based in the use of a wet area enclosure, be replaced with a work practice standard of air flow management. They stated it was impossible to apply wet area enclosures to these large parts because of accessibility concerns. Large parts require almost constant access because they are extremely complex. The other control options for existing sources, preform injection and direct die injection, have also not been demonstrated on these large parts. They suggested a definition for large parts, which was parts with 1,000 or more reinforcements and at least a 60 square inch cross sectional area.

Response: We agree that wet area enclosures, which form the basis of the existing source floor, are not feasible for large parts as defined in the comment. Therefore, we developed a separate existing source MACT floor for large pultruded parts. A review of the available data indicates air flow management (as described in more detail in Table 4 to subpart WWWW of part 63) has been used to control emissions from this process group. Therefore, the existing source MACT floor is air flow management. The final rule has been written to reflect the new floor.

Comment: Many commenters requested that the limit on wet enclosure open times of 30 minutes per shift be changed to 90 minutes per day to allow for necessary repairs, start-ups, and shutdowns.

Response: We evaluated the commenters' request. The facilities that actually set the floor for pultrusion are limited to 30 minutes per 8 hour shift or 45 minutes per 12 hour shift. In addition, the facility may average over all pultrusion lines. We have included averaging provisions across lines in the final rule. We have also allowed a facility to have the doors and covers open 90 minutes per day providing the machine is operated three 8-hour shifts or two 12-hour shifts.

Comment: Three commenters claimed that the height restriction on wet area enclosures is not practical because it does not allow room above the highest part to make adjustments to the process or equipment. According to the commenters, the actual height of the wet area enclosure has no impact on HAP emissions because the puller window is the controlling factor, and styrene emissions will remain near the bath without air flow. The commenters, therefore, requested that the restriction be removed.

Response: We have no data to suggest that limiting the height of the enclosure affects the amount of HAP emissions reduction. Therefore, we did not include the height restrictions on the wet area enclosures in the final rule.

Comment: Commenters requested that capture and control not be required for sources engaged in SMC manufacturing. The commenter stated that EPA's proposal for control is based on one source and, according to the commenter, that source has found that they cannot operate the SMC operation and comply with EPA Method 204 of appendix M of 40 CFR part 51.

A second commenter stated that their SMC operation is permitted by Ohio EPA as a PTE with all HAP emissions vented to a thermal oxidizer. They have found it expensive to maintain the PTE and control device and may be required to install additional monitors at great expense.

Response: For existing sources, the final rule does not require capture and control for SMC manufacturing. For new sources, however, the floor is 95 percent reduction and we do not have the flexibility to change the floor. Most of the comments raised by the commenters relate to the cost of PTE and thermal oxidizers. However, costs may not be considered in setting the floor. Additionally, the problems with compliance noted by one commenter do not, in themselves, indicate that new sources cannot be designed and operated to meet the 95 percent control requirement. For example, the facility states that they must open a large overhead door to operate their second SMC machine. In a new facility, the plant layout can be designed where large doors are not required to be continually open. Therefore, the final rule retains the requirement of 95 percent capture and control for SMC manufacturing at new sources that exceed the 100 tpy of HAP emissions threshold.

Comment: One commenter noted that an alternative to meeting the 95 percent HAP emissions reduction requirement is provided for some operations and requests that an alternate HAP emissions limit be provided for SMC manufacturing. An alternative HAP emissions limit allows SMC manufacturers to utilize pollution-prevention efforts that have already been implemented and encourages the use of future pollution-prevention efforts.

Response: For SMC manufacturing, we have incorporated a HAP emissions limit of 2.4 lb/ton as a compliance alternative to the 95 percent control requirement in the final rule.

Comment: A number of commenters expressed concerns about the floor level of control for SMC manufacturing that is based on several work practices. They stated that the requirement to cover doctor boxes should be deleted because the boxes have to be open for machine operators to monitor paste levels. They also mentioned that folding the edges of the SMC had proved to create problems for some facilities that had tried the practice. Finally, they stated that the requirement to enclose the SMC in nylon film should actually say nylon-containing film.

Response: We evaluated the basis for the MACT floor by reviewing all of the data available prior to proposal and contained in the public comment letters. On the basis of this review, we discovered that the MACT floor at proposal did not accurately reflect the actual work practices currently being used. Therefore, we changed the floor to

for both new and existing sources to cover or enclose the resin transport system up to the doctor box and use nylon-containing film to enclose the SMC. Based on the practices at the best controlled similar source, these work practices also apply to new sources that are above the 100 tpy threshold.

Comment: Several commenters requested that the requirement for "no visible gaps in mixer covers" be revised to allow reasonable and necessary openings. In general, they stated that mixing vessels must have some opening or vents to allow air to enter or leave the vessel when materials are added or removed, or when the contained material expands or contracts due to changes in temperature. Commenters also noted necessary clearance for mixing shafts and other instrumentation are essential and suggested allowing a gap of one inch. An additional commenter stated that they have several holding tanks that are continuously agitated to prevent settling. They requested that we add clarifying language to the definition of mixers to exclude tanks that are only agitated to prevent settling.

Response: Based on our review of the available data on the current industry control on mixing tanks, we found that the proposed rule is more stringent than the floor and that to allow some visible gaps around shafts, etc., is consistent with the data available to set the floor. Therefore, we have written the final rule to allow no more than one inch of visible gap around mixing shafts and any required instrumentation.

With regard to the request to exempt tanks that are agitated only to prevent settling, concern was that the mixing shafts required clearance. Because we have added a provision to allow up to a one inch clearance around the agitator shafts, this concern has been addressed and the suggested exemption for these specific types of mixers is not warranted. Therefore, the final rule does not include an exemption for tanks that agitate only to prevent settling.

Comment: Several commenters requested that the rule allow active venting under three conditions: when adding filler; when using nitrogen blanketing; and prior to opening a mixer. Several commenters stated that when powders are added to mixing tanks, vent gases are directed to a dust collector to protect employees. One commenter stated that you cannot capture dust without actively venting. The commenter suggests that the proposed rule allow active venting as part of the material addition process. Two commenters actively vent covered mixers at very low flow through a dust collector. The active flow results from nitrogen flowing through the air space for safety reasons (to prevent vapor buildup). Based on stack test results, HAP emissions under these conditions were found to be very low (0.000292 lb styrene/lb styrene available). For these reasons, active venting for safety reasons, using an inert gas purge, and at low flow, should be allowed for covered mixers. Another commenter stated that some mixing operations use nitrogen blanketing for safety (to prevent formation of flammable atmospheres). These sources have an incentive to limit use of nitrogen blanketing because of cost; so, HAP emissions will be negligible. Two commenters also requested that the rule allow venting just before adding materials to clear out vapors prior to opening covers and to allow venting just after adding powders to capture residual dust in the vapor space. One commenter also asked that the term "active venting" be defined in the rule.

Response: We believe that most HAP emissions that result from mixing operations occur when active mixing is taking place. Also, based on the data used to set the MACT floor, the facilities that responded that mixers have no active venting meant that the mixer was covered and not vented during mixing. As a result, we have written the rule requirement to read "close any mixer vents when actual mixing is occurring, except that venting is allowed during addition of materials, or as necessary prior to adding materials or opening the cover for safety." Because we have removed the term "active venting," no definition of this term is required.

Comment: One commenter believes that covers should be required instead of add-on control for larger mixing operations. According to the commenter, covers can reduce HAP emissions by 84.8 percent to 96 percent. The commenter then maintains that the incremental HAP emissions reduction from oxidation cannot justify the cost and energy use of control when compared to covers. The commenter notes that there are some facilities in EPA's database that use add-on controls for mixing. However, according to the commenter, the control in all cases is incidental to the use of the add-on control for other operations in the facility. Therefore, the commenter believes that add-on control is not the best control for mixing, and the final rule should require covers instead of add-on controls for all mixing operations.

Response: The reasons for why HAP emissions are being controlled is usually not considered in the setting of MACT standards. Further, we disagree with the commenter's characterization of the control of mixing HAP emissions as "incidental." We do not agree that the data provided support the claim of 85 to 96 percent control using covers. Therefore, we have not written the rule as requested by the commenter. New sources that exceed the 100 tpy HAP emissions threshold will still have to cover the mixing tanks and control their HAP emissions from mixing by 95 percent, which is the new source floor level of control.

Comment: Two commenters suggested that the definition of compression molding be changed to include a process where resin paste is added to the reinforcement at the press and to include the use of in-mold coating (IMC). According to the commenters, the resin paste process is similar to the use of SMC and BMC because there is no exposure of HAP-containing material, except where the charge is being prepared and placed in the mold. The controls for this process are the same as those available for SMC and BMC (*i.e.* limiting the quantity of exposed materials to that which is required for one press cycle). In-mold coating is a process where HAP-containing materials are mixed with catalyst and then injected into the mold cavity after the molding cycle has started. The IMC reduces the need for post-mold coating (painting) operations. The controls available for IMC are the same as those generally available for mixing operations.

Response: We have modified the definition of closed molding to include these processes.

Comment: Several commenters requested that the work practice standard requiring closed molding operations to uncover, unwrap, or expose only one charge per mold cycle per machine be revised so that a charge is defined as the amount of materials required to charge the mold(s) for each machine cycle. Some machines have more than one mold, and limiting the amount of material would cause a bottleneck in production capacity. One commenter added that the rule should allow multiple charges to be loaded into the hopper, provided the hopper is kept covered between loading operations and that the unlimited use of slitting machines to unwrap, cut, and prepare charges should be permitted, provided that the charges are then covered or placed in a closed container prior to use at the press.

Response: We agree that where multiple charges are required for a single mold cycle, the rule should allow them to be prepared at the same time

and held in a closed container prior to use. Therefore, we have written the final rule to define "charge" per the commenter's suggestion and to require that multiple charges be kept covered, as for single charges, until used. We have also written the final rule to allow the use of hoppers, robotic loaders, and slitters.

Comment: Many commenters noted in the proposed rule that polymer casting mixing operations in containers of 21 gallons or less may be open while active mixing occurs and requested that this exemption be increased. The commenters note that many are using 350 lb containers, which is equivalent to 21.6 gallons. According to the commenters, the mixing process uses an electric mixer and requires frequent manual scraping of the sides, and a requirement to cover the mixer would present a productivity disadvantage.

Response: Changing the volume exemption from 21 to 21.6 gallons would be consistent with the intent of the proposed exemption. The surface area of exempt mixers is a more important parameter because it is directly related to the amount of HAP emissions that would occur. Therefore, we have included this exemption in the final rule but have changed the exemption parameter to 500 square inches of surface area. This change should allow the 21.6 gallon mixers, commonly used in this industry, to be exempt from the requirement to cover the mixer.

Comment: One commenter noted that worker safety, fire prevention, and product quality requirements necessitate limited active venting of HAP-containing materials storage vessels, covered mixers, and material conveyance enclosures. Some facilities store resins in bulk tanks with passive atmospheric venting. Problems arise from resin contact with the water vapor in the atmosphere. Polymerization occurs on side walls, vents, and transfer pipes. Vents, especially conservation vents, can plug, threatening the tank's structural integrity. Nitrogen blanketing is used by some facilities to solve these problems. Nitrogen blanketing is also used to inert the head space in bulk HAP-containing materials storage tanks for fire prevention.

Another commenter requested clarifying language to allow passive vents for bulk HAP-containing materials storage tanks. The vents are small to allow for breathing of the tanks as they are filled and emptied. These vents are required under OSHA to prevent pressure build-up and to reduce the chances of explosions and major leaks or spills. The annual breathing losses from all eight of this commenter's tanks are less than 1 tpy. A third commenter suggested that the rule be changed to allow venting from HAP-containing materials storage vessels.

Response: We did not intend to prohibit bulk HAP-containing materials storage tanks from venting to the atmosphere for safety. The final rule has been written to clarify this. However, it is not our intent to allow venting from all HAP-containing materials storage vessels because the safety concerns commenters raised are limited to bulk HAP-containing materials storage vessels. Thus, the final rule prohibits venting from HAP-containing materials storage vessels other than bulk storage tanks.

Comment: One commenter noted that the proposed rule would require that HAP-containing materials storage containers be kept closed or covered, except when adding or removing materials. The commenter claims this provision is not workable.

Response: We believe that covering HAP-containing materials storage containers is a simple and cost-effective way to reduce styrene evaporation. We also note that over 200 facilities that reported information on storage stated that HAP-containing materials storage containers are covered or closed. This provision has been written in the final rule.

Comment: Several commenters requested that HAP cleaners be allowed when used in a closed system or covered tank. The reasons were that aggressive cleaners were necessary due to the presence of cured resin on some surfaces, and that it was important to use a cleaner that would not cause contamination problems. They stated that HAP emissions from these closed systems were minimal, and in many cases, the styrene used for cleaning was recycled to the process as a raw material.

Response: The proposed rule allowed the use of HAP cleaners to remove cured resin from application equipment because of the difficulty associated with removing the cured resin. One commenter in particular identified other equipment used in the process on which cured resin may occur. We note, as the commenters have, that styrene is the main HAP used in the reinforced plastic composites industry and can be reused in the process without contaminating the end products. Therefore, we believe that the commenters' requests are reasonable and have written the final rule to expand the definition of "application equipment" and to allow the use of HAP-containing cleaners in closed systems (including covered tanks).

VI. Relationship of the Final NESHAP to Other NESHAP and the CAA Operating Permits Program

A. National Emissions Standards for Closed Vent Systems, Control Devices, Recovery Devices, and Routing to a Fuel Gas System or a Process (40 CFR Part 63, Subpart SS)

If you use an add-on control device(s) to control HAP emissions, you will need to comply with certain provisions in 40 CFR part 63, subpart SS, for add-on controls. The standards in subpart SS, cited by the final Reinforced Plastic Composites NESHAP, are applicable to most sources using an add-on control device. The final Reinforced Plastic Composites NESHAP cite these sections in subpart SS rather than repeating them in the regulatory text.

B. NESHAP for Boat Manufacturing (40 CFR Part 63, Subpart VVVV)

The final NESHAP for Boat Manufacturing were published on August 22, 2001 (66 FR 44218). There is a potential overlap between facilities that produce reinforced plastic composites if they also produce boat hulls, boat decks, or molds for boat hulls and decks. We have included provisions in the Reinforced Plastic Composites NESHAP to clarify where the Reinforced Plastic Composites NESHAP apply, and where the Boat Manufacturing NESHAP (40 CFR part 63, subpart VVVV) apply.

C. NESHAP for Plastic Parts and Products (Surface Coating)

There are currently NESHAP under development for proposal that will regulate coating of plastic parts and products. The Small Business Advocacy Review Panel, convened for the Reinforced Plastic Composites NESHAP, recommended that we consider the interaction of the Reinforced Plastic Composites NESHAP and the Plastic Parts and Products NESHAP. The Plastic Parts and Products NESHAP may potentially affect facilities that produce reinforced plastic parts and then apply a coating to the finished parts. We have coordinated with this project and have determined that there should be no overlap (*i.e.*, specific operations covered by today's final NESHAP should not also be covered in the Plastic Parts and Products NESHAP). We have not determined any requirements of today's final NESHAP that would overlap, conflict, or cause a duplication of effort.

D. Operating Permit Program

Under the operating permit program codified at 40 CFR part 70 and 40 CFR part 71, all major sources subject to standards under section 111 or 112 of the CAA must obtain an operating permit (*See* §§ 70.3(a)(1) and 71.3(a)(1)). Therefore, all major sources subject to the final NESHAP must obtain an operating permit.

Some reinforced plastic composites production facilities may be major sources based solely on their potential to emit, even though their actual HAP emissions are below the major source level. These facilities may choose to obtain a federally enforceable limit on their potential to emit so that they are no longer considered major sources subject to the final NESHAP. Sources that opt to limit their potential to emit (*e.g.*, limits on operating hours or amount of material used) are referred to by the EPA as "synthetic area" sources. To become a synthetic area source, you must contact your local permitting authority to obtain an operating permit with the appropriate operating limits. These limits must be obtained prior to the compliance date for existing sources, which is April 21, 2006. These operating limits will then be federally enforceable under 40 CFR 70.6(b).

VII. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB notified EPA at proposal that it considered this rulemaking a "significant regulatory action" within the meaning of the Executive Order. The EPA submitted the proposed rule to OMB for review. Changes made in response to suggestions or recommendations from OMB are documented and included in the public record. The OMB has informed EPA that it no longer considers this action significant. Therefore, it is not subject to further OMB review. The OMB did request a copy of the final regulation and preamble prior to publication. However, they did not request any changes in the final rule.

B. Paperwork Reduction Act

The information collection requirements in the final rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An information collection request (ICR) document has been prepared by EPA (ICR No. 1976.01) and a copy may be obtained from Susan Auby by mail at the Office of Environmental Information, Collection Strategies Division (2822), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at "*auby.susan@epa.gov*," or by calling (202) 566–1672. A copy may also be downloaded from the internet at *http://www.epa.gov/icr*. The information requirements are not enforceable until OMB approves them.

The final rule contains monitoring, reporting, and recordkeeping requirements. These notices and reports are the minimum needed by us to determine if you are subject to the NESHAP and whether you are in compliance. These recordkeeping requirements are the minimum necessary to determine initial and ongoing compliance. Based on reported information, we would decide which reinforced plastic composites facilities and what records or processes should be inspected. The recordkeeping and reporting requirements are consistent with the General Provisions of 40 CFR part 63.

These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to us for which a claim of confidentiality is made will be safeguarded according to our policies in 40 CFR part 2, subpart B.

We expect the final rule to affect a total of approximately 488 facilities over the first 3 years. This includes 435 existing facilities, and 53 new reinforced plastic composites facilities that will become subject to the final NESHAP during the first 3 years.

The estimated average annual burden for the first 3 years after promulgation of the final NESHAP for industry and the implementing agency is outlined below. You can find the details of this information collection in the "Standard Form 83 Supporting Statement for ICR No. 1976.01," in Docket ID No. OAR–2003–0003 (formerly Docket No. A–94–52).

Affected entity	Total hours	Labor costs	Total annual O&M costs	Total costs
Industry	13,785	$613,623	$15,807	$629,431
Implementing agency	11,120	444,047	NA	444,047

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. Control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. When the OMB approves the information collection requirements of the final rule, the EPA will amend the table in 40 CFR

part 9 of currently approved ICR control numbers issued by OMB for various regulations.

C. Regulatory Flexibility Analysis

The EPA has prepared a Final Regulatory Flexibility Analysis (FRFA) in connection with the final rule. For purposes of assessing the impacts of today's final rule on small entities, small entity is defined as: (1) A small business ranging from 500 to 1,000 employees as defined by the Small Business Administration's size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. The table below presents the size threshold for small businesses by NAICS Codes.

Category	NAICS codes	Maximum number of employees to be considered a small business
Manufacturing	335312 336211 336112 33612 336213 336413 33651	1000
	325211 327993 332998 33312 33651 335311 335313 33422 33653 336399	750
	All other identified NAICS Codes in this source category	500

In accordance with section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) for the proposed rule and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the regulated small entities in accordance with section 609(b) of the RFA (*see* 66 FR 40324). A detailed discussion of the Panel's advice and recommendations is found in Docket ID No. OAR–2003–0003 (formerly Docket No. A–94–52). A summary of the panel's recommendations is presented below.

We have also prepared a FRFA for today's rule. The FRFA addresses the issues raised by public comments on the IRFA. The FRFA is available in the docket and is summarized below.

Section 112 of the CAA requires us to list categories and subcategories of major sources and, in some cases, area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The Reinforced Plastic Composites Production source category (major sources only) was included on the initial list of source categories published on July 16, 1992 (57 FR 31576). Major sources of HAP are those that have the potential to emit greater than 10 tpy of any one HAP or 25 tpy of any combination of HAP.

The objective of the final rule is to apply standards based on MACT to all major sources in this source category. The criteria used to establish MACT are contained in section 112(d) of the CAA.

We received several comments on the economic analysis for the proposed rule. However, these comments related to the general analysis methodology and were mainly focused on the above-the-floor requirements. These requirements did not impact any small businesses in our analysis. We had no comments specifically in the IRFA.

Based on SBA size definitions and reported sales and employment data, we identified 279 of the 357 companies owning reinforced plastic composites facilities as small businesses. Although small businesses represent almost 80 percent of the companies within the source category, they are expected to incur 53 percent of the total industry compliance costs of $21.5 million. The average total annual compliance cost is projected to be $40,000 per small company, compared to the industry average of $60,000 per company. Under the final standards, the mean annual compliance cost, as a share of sales, for small businesses is 0.8 percent, and the median is 0.5 percent, with a range of 0.01 to 9.6 percent. We estimate that 24 percent of small businesses (or 67 firms) may experience an impact greater than 1 percent of sales, and 5 percent of small businesses (or 14 firms) may experience an impact greater than 3 percent of sales.

We also performed an economic impact analysis (EIA) that accounted for firm behavior to provide an estimate of the facility and market impacts of the final rule. This industry is characterized by profit margins of 3 to 4 percent. Small businesses were found to have higher per-unit production costs under baseline conditions and incur slightly higher per-unit compliance costs. As a result of these factors, the economic analysis indicates that 12 percent of facilities owned by small business are at risk of closure because of the final rule. Note that this number is slightly higher then the estimate at proposal, which was 10 percent. This change is not due to any change in stringency of the rule as applied to small businesses. It is due to the reduction in stringency of the rule for large businesses.

Although any facility closures are cause for concern, the number of facilities at risk for closure would be the same if the final rule required only the MACT floor level of control for all facilities. The MACT floor is the least stringent level allowed by statute.

The proposed rule contained significant accommodations for small businesses where requirements were more stringent then the MACT floor for existing sources. Since these above-the-floor requirements for existing sources have been eliminated in the final rule for all process/product groupings except centrifugal casting and continuous lamination/casting, these accommodations for small business are no longer necessary.

Other accommodations originally included to aid small businesses were extended to all businesses at proposal and have been retained in the final NESHAP.

In the proposed rule, there were different HAP emissions thresholds above which an existing facility had to comply with more stringent above-the-floor requirements of 95 percent capture and control. This threshold was 250 tpy of HAP emissions for small businesses and 100 tpy for large businesses. In the final rule, we have removed the above-the-floor capture and control requirements for existing sources, except for those with centrifugal casting or continuous lamination/casting, and we have established a single threshold of 100 tpy for these existing sources, whether they are small or large businesses. Based on our analysis, setting the threshold at 100 tpy for these sources, rather than retaining the proposed 100 tpy for large businesses and 250 tpy for small businesses, does not result in any additional impacts on small businesses. This is because we have no facilities that emit over 100 tpy, but less than 250 tpy, of HAP from centrifugal casting or continuous lamination/casting processes, and are small businesses.

The reporting and recordkeeping requirements for these small businesses include initial notifications, startup notifications and compliance reports. These requirements were discussed in more detail under the discussion of the Paperwork Reduction Act above. We estimate that 301 existing facilities owned by small businesses will be impacted by these requirements, and 53 new facilities owned by small businesses will be impacted in the first 3 years. The professional skills required to complete these reports include the ability to calculate HAP emissions and resin use and read and follow report format guidance. All facilities impacted by the final rule are predicted to have personnel with the necessary skills because they would need these skills to comply with other regulatory requirements, such as Toxic Release Inventory (TRI) reporting.

Provisions to minimize the reporting and recordkeeping requirements on small business have been incorporated into the final rule. These provisions include allowing the facility to substantiate resin and gel coat HAP contents using MSDS rather than requiring testing of each resin and gel coat; use of resin purchase records to determine resin use; and exemption of facilities that can demonstrate that all their resin and gel coats comply with the required HAP content limits from the requirement to keep records of resin use and calculate HAP emissions factor averages. These provisions have also been extended to all companies subject to today's final NESHAP.

These facilities may also be subject to the NESHAP being developed for plastic parts and products. There should be no duplication of effort as a result of the Reinforced Plastic Composites NESHAP and the Plastic Parts and Products NESHAP being developed because the Reinforced Plastic Composites NESHAP will cover different operations. Facilities subject to the final rule are also subject to HAP emissions estimate reporting under the TRI requirements. In the final rule, we could determine no ways to combine TRI and the reporting requirements of the NESHAP because the objectives and statutory authorities of these requirements are different.

As indicated above, we have incorporated significant alternatives into the final rule to minimize the impact on small businesses but still meet the objectives of the CAA.

As required by section 609(b) of the RFA, EPA conducted outreach to small entities and convened a SBAR panel to review advice and recommendations from representatives of the small entities that potentially would be subject to the proposed rule requirements.

Consistent with RFA/SBREFA requirements, the panel evaluated the assembled materials and small-entity comments on issues related to the elements of the IRFA. A copy of the panel report is included in the docket.

The panel considered numerous regulatory flexibility options in response to concerns raised by the small entity representatives. The major concerns included the affordability and technical feasibility of add-on controls, the resin and gel coat HAP contents required to meet some of the MACT floors, and the regulatory treatment of specialty products.

These are the major panel recommendations and EPA's response in today's final rule:

• Recommend setting higher thresholds for small businesses than EPA had initially considered for requirements to use add-on controls.

Response: In today's action, EPA has removed the requirements for add-on controls for open molding, pultrusion, SMC and BMC manufacturing, and mixing operations at existing sources. We are retaining this above-the-floor requirement for centrifugal casting and continuous lamination/casting operations at existing sources and setting a single threshold of 100 tpy applicable to both small and large businesses. Setting a common threshold at 100 tpy does not increase the impacts on any small business because we identified no small-business owned sources that are impacted as the result of the decision to set a single threshold. Also, the original reason for setting different existing source thresholds for small versus large businesses were the impacts of the capital cost of add-on controls for open molding, pultrusion, SMC and BMC manufacturing, and mixing. Because existing sources that have these operations are no longer subject to any above-the-floor add-on control requirements, the original reason for having the different thresholds no longer exists.

The following recommendations were developed for small businesses, but were extended to both large and small business in the proposed rule and in the final rule.

• Recommend setting the new source floor for small-owned sources at the level of the existing source floor.

Response: Today's final rule includes this provision.

• Recommend establishing separate floors for specialty products.

Response: Today's final rule includes provisions for special products.

• Explore pollution-prevention alternatives to add-on controls.

Response: The EPA did explore this possibility with industry sources. We could not devise a workable pollution-prevention alternative to include in the proposed rule and requested comment. The only comments received on a pollution-prevention alternative were for the pultrusion process/product grouping. In the final rule, we have incorporated a new pollution-prevention technology recommended in the comments as a compliance alternative for pultrusion operations.

• Recommend allowing individual facilities to use the same resin in all resin application processes.

Response: Today's final rule includes this provision.

• Reconsider the resin HAP content requirement for tooling resins.

Response: We requested additional information on tooling resins

subsequent to proposal. Based on information we received, the floor for manual application of tooling resins was made less stringent. The available data still indicate that the floor for mechanical tooling resins in the proposed rule was appropriate.

• Recommend separate floors for white/off-white gel coats and other pigmented gel coats.

Response: Today's final rule includes this provision.

• Reconsider the Agency's estimates of the cost of add-on controls.

Response: We conducted a thorough review of our costs for add-on controls and made significant revisions to the cost estimates. As a result, the add-on control requirements have been removed for open molding, pultrusion, SMC and BMC manufacturing and mixing operations at existing sources.

• Recommend grouping high-strength applications with corrosion-resistant operations.

Response: Today's final rule includes this provision.

As contemplated by Section 212 of SBREFA, EPA is also preparing a small entity compliance guide to help small entities comply with this rule. This guide will be made available on EPA's air toxics website, *http://www.epa.gov/ttn/atw/* by April 21, 2004.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total cost to the private sector is approximately $21.5 million per year for existing sources and $7.7 million per year for new sources. The final rule contains no mandates affecting State, local, or Tribal governments. Thus, today's final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In adopting the final rule, we have chosen regulatory alternatives that are the minimum mandated by the CAA with one exception. For existing centrifugal casting and continuous lamination/casting operations that emit over 100 tpy from these operations, we have chosen a regulatory alternative of 95 percent capture and control, rather than the minimum level of control required under the CAA. We choose this alternative because it results in additional HAP emissions reductions from these processes with a cost per ton of HAP reductions we consider to be reasonable.

We have determined that the final rule contains no regulatory requirements that might significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. No reinforced plastic composites production facilities subject to the final NESHAP are owned by State or local governments. Therefore, State and local governments will not have any direct compliance costs resulting from the final rule. Furthermore, the final NESHAP do not require these governments to take on any new responsibilities. Therefore, Executive Order 13132 does not apply to the final rule.

F. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final rule does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, because we are not aware of any Indian tribal governments or communities affected by the final rule. Thus, Executive Order 13175 does not apply to the final rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. We determined that the overall energy demand for operations in the Reinforced Plastic Composites Production source category could increase by 10 million standard cubic feet per year of natural gas, and 0.6 million kilowatt hours of electricity per year as a result of the final rule. These are not significant adverse effects under the Executive Order.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer Advancement Act (NTTAA) of 1995 (Pub. L. No. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This rulemaking involves technical standards. The EPA cites in this rule the EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 18, 25, 25A, 204, and 204B, C, D, E. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, 204, 204B–E. The search and review results have been documented and are placed in Docket ID No. OAR–2003–0003 (formerly Docket No. A–94–52).

Three voluntary consensus standards were identified as acceptable alternatives to EPA test methods for the purposes of this rule.

The voluntary consensus standard ASME PTC 19.10–1981–Part 10, "Flue and Exhaust Gas Analyses," is cited in this rule for its manual method for measuring the oxygen, carbon dioxide, and carbon monoxide content of exhaust gas. This part of ASME PTC 19.10–1981–Part 10 is an acceptable alternative to Method 3B.

The voluntary consensus standard, ASTM D6420–99, "Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS)," is appropriate in the cases described below for inclusion in the final rule, in addition to the currently available EPA Method 18, codified at 40 CFR part 60, appendix A.

Similar to EPA's performance-based Method 18, ASTM D6420–99 is also a performance-based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99 is a suitable alternative to Method 18 only where the target compound(s) are those listed in Section 1.1 of ASTM D6420–99, and the target concentration is between 150 parts per billion volume and 100 ppmv.

For target compound(s) not listed in Section 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the regulation specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report even if there is no moisture condenser used or the compound is not considered water soluble. For target compound(s) not listed in Section 1.1 of ASTM D6420–99, and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

As a result, EPA is citing ASTM D6420–99 in subpart WWWW of part 63. The EPA will also cite Method 18 as a gas chromatography (GC) option in addition to ASTM D6420–99. This will allow the continued use of GC configurations other than GC/MS.

The EPA requested comments on proposed compliance demonstration requirements in the proposed rule, and specifically invited the public to identify potentially applicable voluntary consensus standards. The only comment we received on voluntary consensus standards was that we should allow the use of the vapor suppressant effectiveness test protocol developed by the CFA to determine vapor suppressant effectiveness. We have reviewed the information supplied by the commenter and have incorporated this test method; "Vapor Suppressant Effectiveness Test Protocol," into the final rule as appendix A to subpart WWWW of 40 CFR part 63.

The search for emissions measurement procedures identified 13 additional voluntary consensus standards potentially applicable to the final rule. The EPA determined that 11 of these 13 standards were impractical alternatives to EPA test methods for the purposes of this rulemaking. Therefore, EPA will not adopt these standards today. The reasons for this determination for the 11 methods are in the docket.

The following two voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of this rulemaking because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2.

Section 63.5850 and Table 6 to subpart WWWW of part 63 list the EPA testing methods included in the final rule. Under §§ 63.7(f) and 63.8(f) of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the SBREFA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is

published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). The final rule will be effective on April 21, 2003.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Incorporation by reference, Reporting and recordkeeping requirements, and Volatile organic compounds.

Dated: February 28, 2003.

Christine Todd Whitman,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 63.14 is amended by adding paragraph (b)(29) to read as follows:

§ 63.14 Incorporations by reference.

* * * * *

(b) * * *

(29) ASTM D6420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry, IBR approved for §§ 63.5799 and 63.5850.

* * * * *

■ 3. Part 63 is amended by adding subpart WWWW to read as follows:

Subpart WWWW—National Emissions Standards for Hazardous Air Pollutants: Reinforced Plastic Composites Production

Sec.

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What This Subpart Covers

§ 63.5780 What is the purpose of this subpart?

This subpart establishes national emissions standards for hazardous air pollutants (NESHAP) for reinforced plastic composites production. This subpart also establishes requirements to demonstrate initial and continuous compliance with the hazardous air pollutants (HAP) emissions standards.

§ 63.5785 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a reinforced plastic composites production facility that is located at a major source of HAP emissions. Reinforced plastic composites production is limited to operations in which reinforced and/or nonreinforced plastic composites or plastic molding compounds are manufactured using thermoset resins and/or gel coats that contain styrene to produce plastic composites. The resins and gel coats may also contain materials designed to enhance the chemical, physical, and/or thermal properties of the product. Reinforced plastic composites production also includes cleaning, mixing, HAP-containing materials storage, and repair operations associated with the production of plastic composites.

(b) You are not subject to this subpart if your facility only repairs reinforced plastic composites. Repair includes the non-routine manufacture of individual components or parts intended to repair a larger item as defined in § 63.5935

(c) You are not subject to this subpart if your facility is a research and development facility as defined in section 112(c)(7) of the Clean Air Act (CAA).

(d) You are not subject to this subpart if your reinforced plastic composites operations use less than 1.2 tons per year (tpy) of thermoset resins and gel coats that contain styrene combined.

§ 63.5787 What if I also manufacture fiberglass boats or boat parts?

(a) If your source meets the applicability criteria in § 63.5785, and is not subject to the Boat Manufacturing NESHAP (40 CFR part 63, subpart VVVV), you are subject to this subpart regardless of the final use of the parts you manufacture.

(b) If your source is subject to 40 CFR part 63, subpart VVVV, and all the reinforced plastic composites you manufacture are used in manufacturing your boats, you are not subject to this subpart.

(c) If you are subject to 40 CFR part 63, subpart VVVV, and meet the applicability criteria in § 63.5785, and produce reinforced plastic composites that are not used in fiberglass boat manufacture at your facility, all operations associated with the manufacture of the reinforced plastic composites parts that are not used in fiberglass boat manufacture at your facility are subject to this subpart, except as noted in paragraph (d) of this section.

(d) Facilities potentially subject to both this subpart and 40 CFR part 63, subpart VVVV may elect to have the operations in paragraph (c) of this section covered by 40 CFR part 63, subpart VVVV, in lieu of this subpart, if they can demonstrate that this will not result in any organic HAP emissions increase compared to complying with this subpart.

§ 63.5790 What parts of my plant does this subpart cover?

(a) This subpart applies to each new or existing affected source at reinforced plastic composites production facilities.

(b) The affected source consists of all parts of your facility engaged in the following operations: Open molding, closed molding, centrifugal casting, continuous lamination, continuous casting, polymer casting, pultrusion, sheet molding compound (SMC) manufacturing, bulk molding compound (BMC) manufacturing, mixing, cleaning of equipment used in reinforced plastic composites manufacture, HAP-containing materials storage, and repair operations on parts you also manufacture.

(c) The following operations are specifically excluded from any requirements in this subpart: Application of mold sealing and release agents, mold stripping and cleaning, repair of parts that you did not manufacture, including non-routine manufacturing of parts, personal activities that are not part of the manufacturing operations (such as hobby shops on military bases), prepreg materials as defined in § 63.5935, non-gel coat surface coatings, repair or production materials that do not contain resin or gel coat, and research and development operations as defined in section 112(c)(7) of the CAA.

(d) Production resins that must meet military specifications are allowed to meet the organic HAP limit contained in that specification. In order for this exemption to be used, you must supply to the permitting authority the specifications certified as accurate by the military procurement officer, and those specifications must state a requirement for a specific resin, or a specific resin HAP content. Production resins for which this exemption is used must be applied with nonatomizing resin application equipment unless you can demonstrate this is infeasible. You must keep a record of the resins for which you are using this exemption.

§ 63.5795 How do I know if my reinforced plastic composites production facility is a new affected source or an existing affected source?

(a) A reinforced plastic composites production facility is a new affected source if it meets all the criteria in paragraphs (a)(1) and (2) of this section.

(1) You commence construction of the affected source after August 2, 2001.

(2) You commence construction, and no other reinforced plastic composites production affected source exists at that site.

(b) For the purposes of this subpart, an existing affected source is any affected source that is not a new affected source.

Calculating Organic HAP Emissions Factors for Open Molding and Centrifugal Casting

§ 63.5796 What are the organic HAP emissions factor equations in Table 1 to this subpart, and how are they used in this subpart?

Emissions factors are used in this subpart to determine compliance with certain organic HAP emissions limits in Tables 3 and 5 to this subpart. You may use the equations in Table 1 to this subpart to calculate your emissions factors. Equations are available for each open molding operation and centrifugal casting operation and have units of pounds of organic HAP emitted per ton (lb/ton) of resin or gel coat applied. These equations are intended to provide a method for you to demonstrate compliance without the need to conduct for a HAP emissions test. In lieu of these equations, you can elect to use site-specific organic HAP emissions factors to demonstrate compliance provided your site-specific organic HAP

emissions factors are incorporated in the facility's air emissions permit and are based on actual facility HAP emissions test data. You may also use the organic HAP emissions factors calculated using the equations in Table 1 to this subpart, combined with resin and gel coat use data, to calculate your organic HAP emissions.

63.5797 How do I determine the organic HAP content of my resins and gel coats?

In order to determine the organic HAP content of resins and gel coats, you may rely on information provided by the material manufacturer, such as manufacturer's formulation data and material safety data sheets (MSDS), using the procedures specified in paragraphs (a) through (c) of this section, as applicable.

(a) Include in the organic HAP total each organic HAP that is present at 0.1 percent by mass or more for Occupational Safety and Health Administration-defined carcinogens, as specified in 29 CFR 1910.1200(d)(4) and at 1.0 percent by mass or more for other organic HAP compounds.

(b) If the organic HAP content is provided by the material supplier or manufacturer as a range, you must use the upper limit of the range for determining compliance. If a separate measurement of the total organic HAP content, such as an analysis of the material by EPA Method 311 of appendix A to 40 CFR part 63, exceeds the upper limit of the range of the total organic HAP content provided by the material supplier or manufacturer, then you must use the measured organic HAP content to determine compliance.

(c) If the organic HAP content is provided as a single value, you may use that value to determine compliance. If a separate measurement of the total organic HAP content is made and is less than 2 percentage points higher than the value for total organic HAP content provided by the material supplier or manufacturer, then you still may use the provided value to demonstrate compliance. If the measured total organic HAP content exceeds the provided value by 2 percentage points or more, then you must use the measured organic HAP content to determine compliance.

§ 63.5798 What if I want to use, or I manufacture, an application technology (new or existing) whose organic HAP emissions characteristics are not represented by the equations in Table 1 to this subpart?

If you wish to use a resin or gel coat application technology (new or existing), whose emission characteristics are not represented by the equations in Table 1 to this subpart, you may use the procedures in paragraphs (a) or (b) of this section to establish an organic HAP emissions factor. This organic HAP emissions factor may then be used to determine compliance with the emission limits in this subpart, and to calculate facility organic HAP emissions.

(a) Perform a organic HAP emissions test to determine a site-specific organic HAP emissions factor using the test procedures in § 63.5850.

(b) Submit a petition to the Administrator for administrative review of this subpart. This petition must contain a description of the resin or gel coat application technology and supporting organic HAP emissions test data obtained using EPA test methods or their equivalent. The emission test data should be obtained using a range of resin or gel coat HAP contents to demonstrate the effectiveness of the technology under the different conditions, and to demonstrate that the technology will be effective at different sites. We will review the submitted data, and, if appropriate, update the equations in Table 1 to this subpart.

§ 63.5799 How do I calculate my facility's organic HAP emissions on a tpy basis for purposes of determining which paragraphs of § 63.5805 apply?

To calculate your facility's organic HAP emissions in tpy for purposes of determining which paragraphs in § 63.5805 apply to you, you must use the procedures in either paragraph (a) of this section for new facilities prior to startup, or paragraph (b) of this section for existing facilities and new facilities after startup. You are not required to calculate or report emissions under this section if you are an existing facility that does not have centrifugal casting or continuous lamination/casting operations, or a new facility that does not have any of the following operations: Open molding, centrifugal casting, continuous lamination/casting, pultrusion, SMC and BMC manufacturing, and mixing. Emissions calculation and emission reporting procedures in other sections of this subpart still apply. Calculate organic HAP emissions prior to any add-on control device, and do not include organic HAP emissions from any resin or gel coat used in operations subject to the Boat Manufacturing NESHAP, 40 CFR part 63, subpart VVVV, or from the manufacture of large parts as defined in § 63.5805(d)(2). For centrifugal casting operations at existing facilities, do not include any organic HAP emissions where resin or gel coat is applied to an open centrifugal mold using open molding application techniques. Table 1 and the Table 1 footnotes to this subpart present more information on calculating centrifugal casting organic HAP emissions. The timing and reporting of these calculations is discussed in paragraph (c) of this section.

(a) For new facilities prior to startup, calculate a weighted average organic HAP emissions factor for the operations specified in § 63.5805(b) and (d) on a lbs/ton of resin and gel coat basis. Base the weighted average on your projected operation for the 12 months subsequent to facility startup. Multiply the weighted average organic HAP emissions factor by projected resin use over the same period. You may calculate your organic HAP emissions factor based on the factors in Table 1 to this subpart, or you may use any HAP emissions factor approved by us, such as factors from the Compilation of Air Pollutant Emissions Factors, Volume I: Stationary Point and Area Sources (AP–42), or organic HAP emissions test data from similar facilities.

(b) For existing facilities and new facilities after startup, you may use the procedures in either paragraph (b)(1) or (2) of this section. If the emission factors for an existing facility have changed over the period of time prior to their initial compliance date due to incorporation of pollution-prevention control techniques, existing facilities may base the average emission factor on their operations as they exist on the compliance date. If an existing facility has accepted an enforceable permit limit of less than 100 tons per year of HAP, and can demonstrate that they will operate at that level subsequent to the compliance date, the they can be deemed to be below the 100 tpy threshold.

(1) *Use a calculated emission factor.* Calculate a weighted average organic HAP emissions factor on a lbs/ton of resin and gel coat basis. Base the weighted average on the prior 12 months of operation. Multiply the weighted average organic HAP emissions factor by resin and gel coat use over the same period. You may calculate this organic HAP emissions factor based on the equations in Table 1 to this subpart, or you may use any organic HAP emissions factor approved by us, such as factors from AP–42, or site-specific organic HAP emissions factors if they are supported by HAP emissions test data.

(2) *Conduct performance testing.* Conduct performance testing using the test procedures in § 63.5850 to determine a site-specific organic HAP emissions factor in units of lbs/ton of resin and gel coat used. Conduct the test under conditions expected to result in the highest possible organic HAP emissions. Multiply this factor by annual resin and gel coat use to determine annual organic HAP emissions. This calculation must be repeated and reported annually.

(c) Existing facilities must initially perform this calculation based on their 12 months of operation prior to April 21, 2003, and include this information with their initial notification report. Existing facilities must repeat the calculation based on their resin and gel coat use in the 12 months prior to their initial compliance date, and submit this information with their initial compliance report. After their initial compliance date, existing and new facilities must recalculate organic HAP emissions over the 12-month period ending June 30 or December 31, whichever date is the first date following their compliance date specified in § 63.5800. Subsequent calculations should cover the periods in the semiannual compliance reports.

Compliance Dates and Standards

§ 63.5800 When do I have to comply with this subpart?

You must comply with the standards in this subpart by the dates specified in Table 2 to this subpart. Facilities meeting a organic HAP emissions standard based on a 12-month rolling average must begin collecting data on the compliance date in order to demonstrate compliance.

§ 63.5805 What standards must I meet to comply with this subpart?

You must meet the requirements of paragraphs (a) through (h) of this section that apply to you. You may elect to comply using any options to meeting these standards described in §§ 63.5810 through 63.5830. Use the procedures in § 63.5799 to determine if you meet or exceed the 100 tpy threshold.

(a) If you have an existing facility that does not have any centrifugal casting or continuous lamination/casting operations, or an existing facility that does have centrifugal casting or continuous lamination/casting operations, but the combination of all centrifugal casting and continuous lamination/casting operations emit less than 100 tpy of HAP, you must meet the annual average organic HAP emissions limits in Table 3 to this subpart and the work practice standards in Table 4 to this subpart that apply to you.

(b) If you have an existing facility that emits 100 tpy or more of HAP from the combination of all centrifugal casting and continuous lamination/casting operations, you must reduce the total organic HAP emissions from these operations by at least 95 percent by weight and meet any applicable work practice standards in Table 4 to this subpart that apply to you. Operations other than centrifugal casting, and continuous lamination/casting, must meet the requirements in Tables 3 and 4 to this subpart. As an alternative to meeting 95 percent by weight, you may meet the organic HAP emissions limits in Table 5 to this subpart. If you have a continuous lamination/casting operation, that operation may alternatively meet a organic HAP emissions limit of 1.47 lbs/ton of neat resin plus and neat gel coat plus applied. For centrifugal casting, the percent reduction requirement does not apply to organic HAP emissions that occur during resin application onto an open centrifugal casting mold using open molding application techniques.

(c) If you have a new facility that emits less than 100 tpy of HAP from the combination of all open molding, centrifugal casting, continuous lamination/casting, pultrusion, SMC manufacturing, mixing, and BMC manufacturing, you must meet the annual average organic HAP emissions limits in Table 3 to this subpart and the work practice standards in Table 4 to this subpart that apply to you.

(d)(1) Except as provided in paragraph (d)(2) of this section, if you have a new facility that emits 100 tpy or more of HAP from the combination of all open molding, centrifugal casting, continuous lamination/casting, pultrusion, SMC manufacturing, mixing, and BMC manufacturing, you must reduce the total organic HAP emissions from these operations by at least 95 percent by weight and meet any applicable work practice standards in Table 4 to this subpart that apply to you. As an alternative to meeting 95 percent by weight, you may meet the organic HAP emissions limits in Table 5 to this subpart. If you have a continuous lamination/casting operation, that operation may alternatively meet a organic HAP emissions limit of 1.47 lbs/ton of neat resin plus and neat gel coat plus applied.

(2)(i) If your new facility manufactures large reinforced plastic composites parts using open molding or pultrusion operations, the specific open molding and pultrusion operations used to produce large parts are not required to reduce HAP emissions by 95 weight percent, but must meet the emission limits in Table 3 to this subpart.

(ii) A large open molding part is defined as a part that, when the final finished part is enclosed in the smallest rectangular six-sided box into which the part can fit, the total interior volume of the box exceeds 250 cubic feet, or any interior sides of the box exceed 50 square feet.

(iii) A large pultruded part is a part that exceeds an outside perimeter of 24 inches or has more than 350 reinforcements.

(e) If you have a new or existing facility subject to paragraphs (a) or (c) of this section at their initial compliance date, that subsequently meets or exceeds the 100 tpy threshold in any calendar year, you must notify your permitting authority in your compliance report. You may at the same time request a one-time exemption from the requirements of paragraphs (b) or (d) of this section in your compliance report if you can demonstrate all of the following:

(1) The exceedance of the threshold was due to circumstances that will not to be repeated.

(2) The average annual organic HAP emissions from the potentially affected operations for the last 3 years were below 100 tpy.

(3) Projected organic HAP emissions for the next calendar year are below 100 tpy, based on projected resin and gel coat use and the HAP emission factors calculated according to the procedures in § 63.5799

(f) If you apply for an exemption in paragraph (e) of this section, and subsequently exceed the HAP emission thresholds specified in paragraphs (a) or (c) of this section over the next 12-month period, you must notify the permitting authority in your semi-annual report, the exemption is removed, and your facility must comply with paragraphs (b) or (d) of this section within 3 years from the time your organic HAP emissions first exceeded the threshold.

(g) If you have repair operations subject to this subpart as defined in § 63.5785, these repair operations must meet the requirements in Tables 3 and 4 to this subpart, and are not required to meet the 95 percent organic HAP emissions reduction requirements in paragraphs (b) or (d) of this section.

(h) If you use an add-on control device to comply with this subpart, you must meet all requirements contained in 40 CFR part 63, subpart SS.

Options for Meeting Standards

§ 63.5810 What are my options for meeting the standards for open molding and centrifugal casting operations at new and existing sources?

You must use one of the following methods in paragraphs (a) through (d) of this section to meet the standards in § 63.5805. When you are complying with an emission limit in Tables 3 or 5

to this subpart, you may use any control method that reduces organic HAP emissions, including reducing resin and gel coat organic HAP content, changing to nonatomized mechanical application, covered curing techniques, and routing part or all of your emissions to an add-on control. The necessary calculations must be completed within 30 days after the end of each month. You may switch between the compliance options in paragraphs (a) through (d) of this section. When you change to an option based on a 12-month rolling average, you must base the average on the previous 12 months of data calculated using the compliance option you are currently using unless you were using the compliant materials option in paragraph (d) of this section. In this case, you must immediately begin collecting resin and gel coat use data and demonstrate compliance 12 months after changing options.

(a) *Meet the individual organic HAP emissions limits for each operation.* Demonstrate that you meet the individual organic HAP emissions limits for each open molding operation and for each centrifugal casting operation type in Tables 3, or 5 to this subpart that apply to you. This is done in two steps. First, determine an organic HAP factor for each individual resin and gel coat, application method, and control method you use in a particular operation. Second, calculate, for each particular operation type, a weighted average of those organic HAP emissions factors based on resin and gel coat use. Your calculated organic HAP emissions factor must either be at or below the applicable organic HAP emissions limit in Tables 3 or 5 to this subpart based on a 12-month rolling average. Use the procedures described in paragraphs (a)(1) through (3) of this section to calculate average organic HAP emissions factors for each of your operations.

(1) Calculate your actual organic HAP emissions factor for each different process stream within each operation type. A process stream is defined as each individual combination of resin or gel coat, application technique, and control technique. Process streams within operations types are considered different from each other if any of the following three characteristics vary: The neat resin plus or neat gel coat plus organic HAP content, the application technique, or the control technique. You must calculate organic HAP emissions factors for each different process stream by using the appropriate equations in Table 1 to this subpart for open molding and for centrifugal casting, or site-specific organic HAP emissions factors discussed in § 63.5796. If you want to use vapor suppressants to meet the organic HAP emissions limit for open molding, you must determine the vapor suppressant effectiveness by conducting testing according to the procedures specified of appendix A to subpart WWWW of 40 CFR part 63. If you want to use an add-on control device to meet the organic HAP emissions limit, you must determine the add-on control factor by conducting capture and control efficiency testing, using the procedures specified in § 63.5850. The organic HAP emissions factor calculated from the equations in Table 1 to this subpart, or site-specific emissions factors, is multiplied by the add-on control factor to calculate the organic HAP emissions factor after control. Use Equation 1 of this section to calculate the add-on control factor used in the organic HAP emissions factor equations.

$$\text{Add-on Control Factor} = 1 - \frac{\text{\% Control Efficiency}}{100} \quad \text{(Eq. 1)}$$

Where:

Percent Control Efficiency=a value calculated from organic HAP emissions test measurements made according to the requirements of § 63.5850 to this subpart

(2) Calculate your actual operation organic HAP emissions factor for the last 12 months for each open molding operation type and for each centrifugal casting operation type by calculating the weighted average of the individual process stream organic HAP emissions factors within each respective operation. To do this, sum the product of each individual organic HAP emissions factor calculated in paragraph (a)(1) of this section and the amount of neat resin plus and neat gel coat plus usage that correspond to the individual factors and divide the numerator by the total amount of neat resin plus and neat gel coat plus used in that operation type. Use Equation 2 of this section to calculate your actual organic HAP emissions factor for each open molding operation type and each centrifugal casting operation type.

$$\text{Actual Operation Organic HAP Emissions Factor} = \frac{\sum_{i=1}^{n}(\text{Actual Process Stream EF}_i * \text{Material}_i)}{\sum_{i=1}^{n}\text{Material}_i} \quad \text{(Eq. 2)}$$

Where:

Actual Process Stream EF_i=actual organic HAP emissions factor for process stream i, lbs/ton

$Material_i$=neat resin plus or neat gel coat plus used during the last 12 calendar months for process stream i, tons

n=number of process streams where you calculated an organic HAP emissions factor

(3) Compare each organic HAP emissions factor calculated in paragraph (b)(2) of this section with its corresponding organic HAP emissions limit in Tables 3 or 5 to this subpart. If all emissions factors are equal to or less than their corresponding emission limits, then you are in compliance.

(b) *HAP Emissions factor averaging option.* Demonstrate each month that you meet each weighted average of the organic HAP emissions limits in Tables 3 or 5 to this subpart that apply to you. When using this option, you must demonstrate compliance with the weighted average organic HAP emissions limit for all your open molding operations, and then separately demonstrate compliance with the weighted average organic HAP emissions limit for all your centrifugal casting operations. Open molding operations and centrifugal casting operations may not be averaged with each other.

(1) Each month calculate the weighted average organic HAP emissions limit for all open molding operations and the weighted average organic HAP emissions limit for all centrifugal casting operations for your facility for the last 12-month period to determine the organic HAP emissions limit you must meet. To do this, multiply the individual organic HAP emissions limits in Tables 3 or 5 to this subpart for each open molding (centrifugal casting) operation type by the amount of neat resin plus or neat gel coat plus used in the last 12 months for each open molding (centrifugal casting) operation type, sum these results, and then divide this sum by the total amount of neat resin plus and neat gel coat plus used in open molding (centrifugal casting) over the last 12 months. Use Equation 3 of this section to calculate the weighted average organic HAP emissions limit for all open molding operations and separately for all centrifugal casting operations.

$$\text{Weighted Average Emission Limit} = \frac{\sum_{i=1}^{n}(EL_i * \text{Material}_i)}{\sum_{i=1}^{n}\text{Material}_i} \quad \text{(Eq. 3)}$$

Where:

EL_i=organic HAP emissions limit for operation type i, lbs/ton from Tables 3, 5 or 7 to this subpart

$Material_i$=neat resin plus or neat gel coat plus used during the last 12-month period for operation type i, tons

n=number of operations

(2) Each month calculate your actual weighted average organic HAP emissions factor for open molding and centrifugal casting. To do this, multiply your actual open molding (centrifugal casting) operation organic HAP emissions factors and the amount of neat resin plus and neat gel coat plus used in each open molding (centrifugal casting) operation type, sum the results, and divide this sum by the total amount of neat resin plus and neat gel coat plus used in open molding (centrifugal casting) operations. You must calculate your actual individual HAP emissions factors for each operation type as described in paragraphs (a)(1) and (2) of this section. Use Equation 4 of this section to calculate your actual weighted average organic HAP emissions factor.

$$\text{Actual Weighted Average Organic HAP Emissions Factor} = \frac{\sum_{i=1}^{n}(\text{Actual Operation EF}_i * \text{Material}_i)}{\sum_{i=1}^{n}\text{Material}_i} \quad \text{(Eq. 4)}$$

Where:

Actual Individual EF_i=Actual organic HAP emissions factor for operation type i, lbs/ton

$Material_i$=neat resin plus or neat gel coat plus used during the last 12 calendar months for operation type i, tons

n=number of operations

(3) Compare the values calculated in paragraphs (b)(1) and (2) of this section. If each 12-month rolling average organic HAP emissions factor is less than or equal to the corresponding 12-month rolling average organic HAP emissions limit, then you are in compliance.

(c) *If you have multiple operation types, meet the organic HAP emissions limit for one operation type, and use the same resin(s) for all operations of that resin type.* If you have more than one operation type, you may meet the emission limit for one of those operations, and use the same resin(s) in all other open molding and centrifugal casting operations.

(1) This option is limited to resins of the same type. The resin types for which this option may be used are noncorrosion-resistant, corrosion-resistant and/or high strength, and tooling.

(2) For any combination of manual resin application, mechanical resin application, filament application, or centrifugal casting, you may elect to meet the organic HAP emissions limit for any one of these operations and use that operation's same resin in all of the resin operations listed in this paragraph. Table 7 to this subpart presents the possible combinations based on a facility selecting the application process that results in the highest allowable organic HAP content resin. If your resin organic HAP content is below the applicable values shown in Table 7 to this subpart, you are in compliance.

(3) You may also use a weighted average organic HAP content for each operation described in paragraph (c)(2) of this section. Calculate the weighted average organic HAP content monthly. Use Equation 2 in § 63.5810(a)(2) except substitute organic HAP content for organic HAP emissions factor. You are in compliance if the weighted average organic HAP content based on the last 12 months of resin use is less than or equal to the applicable organic HAP contents in Table 7 to this subpart.

(4) You may simultaneously use the averaging provisions in paragraph (b) of this section to demonstrate compliance for any operations and/or resins you do not include in your compliance demonstrations is paragraphs (c)(2) and (3) of this section. However, any resins for which you claim compliance under the option in paragraphs (c)(2) and (3) of this section may not be included in any of the averaging calculations described in paragraphs (a) or (b) of this section used for resins for which you are not claiming compliance under this option.

(d) Use resins and gel coats that do not exceed the maximum organic HAP contents shown in Table 3 to this subpart.

§ 63.5820 What are my options for meeting the standards for continuous lamination/casting operations?

You must use one or more of the options in paragraphs (a) through (d) of this section to meet the standards in § 63.5805. Use the calculation

procedures in §§ 63.5865 through 63.5890.

(a) *Compliant line option.* Demonstrate that each continuous lamination line and each continuous casting line complies with the applicable standard.

(b) *Averaging option.* Demonstrate that all continuous lamination and continuous casting lines combined, comply with the applicable standard.

(c) *Add-on control device option.* If your operation must meet the 58.5 weight percent organic HAP emissions reduction limit in Table 3 to this subpart, you have the option of demonstrating that you achieve 95 percent reduction of all wet-out area organic HAP emissions.

(d) *Combination option.* Use any combination of options in paragraphs (a) and (b) of this section or, for affected sources at existing facilities, any combination of options in paragraphs (a), (b), and (c) of this section (in which one or more lines meet the standards on their own, two or more lines averaged together meet the standards, and one or more lines have their wet-out areas controlled to a level of 95 percent).

§ 63.5830 What are my options for meeting the standards for pultrusion operations subject to the 60 weight percent organic HAP emissions reductions requirement?

You must use one-or more of the options in paragraphs (a) through (e) of this section to meet the 60 weight percent organic HAP emissions limit in Table 3 to this subpart, as required in § 63.5805.

(a) Achieve an overall reduction in organic HAP emissions of 60 weight percent by capturing the organic HAP emissions and venting them to a control device or any combination of control devices. Conduct capture and destruction efficiency testing as specified in 63.5850 to this subpart to determine the percent organic HAP emissions reduction.

(b) Design, install, and operate wet area enclosures and resin drip collection systems on pultrusion machines that meet the criteria in paragraphs (b)(1) through (10) of this section.

(1) The enclosure must cover and enclose the open resin bath and the forming area in which reinforcements are pre-wet or wet-out and moving toward the die(s). The surfaces of the enclosure must be closed except for openings to allow material to enter and exit the enclosure.

(2) For open bath pultrusion machines with a radio frequency pre-heat unit, the enclosure must extend from the beginning of the resin bath to within 12.5 inches or less of the entrance of the radio frequency pre-heat unit. If the stock that is within 12.5 inches or less of the entrance to the radio frequency pre-heat unit has any drip, it must be enclosed. The stock exiting the radio frequency pre-heat unit is not required to be in an enclosure if the stock has no drip between the exit of the radio frequency pre-heat unit to within 0.5 inches of the entrance of the die.

(3) For open bath pultrusion machines without a radio frequency pre-heat unit, the enclosure must extend from the beginning of the resin bath to within 0.5 inches or less of the die entrance.

(4) For pultrusion lines with a pre-wet area prior to direct die injection, the enclosure must extend from the point at which the resin is applied to the reinforcement to within 12.5 inches or less of the entrance of the die(s). If the stock that is within 12.5 inches or less of the entrance to the die has any drip, it must be enclosed.

(5) The total open area of the enclosure must not exceed two times the cross sectional area of the puller window(s) and must comply with the requirements in paragraphs (b)(5)(i) through (iii) of this section.

(i) All areas that are open need to be included in the total open area calculation with the exception of access panels, doors, and/or hatches that are part of the enclosure.

(ii) The area that is displaced by entering reinforcement or exiting product is considered open.

(iii) Areas that are covered by brush covers are considered closed.

(6) Open areas for level control devices, monitoring devices, agitation shafts, and fill hoses must have no more than 1.0 inch clearance.

(7) The access panels, doors, and/or hatches that are part of the enclosure must close tightly. Damaged access panels, doors, and/or hatches that do not close tightly must be replaced.

(8) The enclosure may not be removed from the pultrusion line, and access panels, doors, and/or hatches that are part of the enclosure must remain closed whenever resin is in the bath, except for the time period discussed in paragraph (b)(9) of this section.

(9) The maximum length of time the enclosure may be removed from the pultrusion line or the access panels, doors, and/or hatches and may be open, is 30 minutes per 8 hour shift, 45 minutes per 12 hour shift, or 90 minutes per day if the machine is operated for 24 hours in a day. The time restrictions do not apply if the open doors or panels do not cause the limit of two times the puller window area to be exceeded. Facilities may average the times that access panels, doors, and/or hatches are open across all operating lines. In that case the average must not exceed the times shown in this paragraph (b)(9). All lines included in the average must have operated the entire time period being averaged.

(10) No fans, blowers, and/or air lines may be allowed within the enclosure. The enclosure must not be ventilated.

(c) Use direct die injection pultrusion machines with resin drip collection systems that meet all the criteria specified in paragraphs (c)(1) through (3) of this section.

(1) All the resin that is applied to the reinforcement is delivered directly to the die.

(2) No exposed resin is present, except at the face of the die.

(3) Resin drip is captured in closed piping and recycled directly to the resin injection chamber.

(d) Use a preform injection system that meets the definition in § 63.5935

(e) Use any combination of options in paragraphs (a) through (d) of this section in which different pultrusion lines comply with different options described in paragraphs (a) through (d) of this section, and

(1) Each individual pultrusion machine meets the 60 percent reduction requirement, or

(2) The weighted average reduction based on resin throughout of all machines combined is 60 percent. For purposes of the average percent reduction calculation, wet area enclosures reduce organic HAP emissions by 60 percent, and direct die injection and preform injection reduce organic HAP emissions by 90 percent.

General Compliance Requirements

§ 63.5835 What are my general requirements for complying with this subpart?

(a) You must be in compliance at all times with the work practice standards in Table 4 to this subpart, as well as the organic HAP emissions limits in Tables 3, or 5, or the organic HAP content limits in Table 7 to this subpart, as applicable, that you are meeting without the use of add-on controls.

(b) You must be in compliance with all organic HAP emissions limits in this subpart that you meet using add-on controls, except during periods of startup, shutdown, and malfunction.

(c) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(d) You must develop and implement a written startup, shutdown, and malfunction plan according to the provisions in § 63.6(e)(3) for any organic

HAP emissions limits you meet using an add-on control.

Testing and Initial Compliance Requirements

§ 63.5840 By what date must I conduct a performance test or other initial compliance demonstration?

You must conduct performance tests, performance evaluations, design evaluations, capture efficiency testing, and other initial compliance demonstrations by the compliance date specified in Table 2 to this subpart, with three exceptions. Open molding and centrifugal casting operations that elect to meet a organic HAP emissions limit on a 12-month rolling average must initiate collection of the required data on the compliance date, and demonstrate compliance 1 year after the compliance date. New sources that use add-on controls to initially meet compliance must demonstrate compliance within 180 days after their compliance date.

§ 63.5845 When must I conduct subsequentperformance tests?

You must conduct a performance test every 5 years following the initial performance test for any standard you meet with an add-on control device.

§ 63.5850 How do I conduct performance tests, performance evaluations, and design evaluations?

(a) If you are using any add-on controls to meet a organic HAP emissions limit in this subpart, you must conduct each performance test, performance evaluation, and design evaluation in 40 CFR part 63, subpart SS, that applies to you. The basic requirements for performance tests, performance evaluations, and design evaluations are presented in Table 6 to this subpart.

(b) Each performance test must be conducted according to the requirements in § 63.7(e)(1) and under the specific conditions that 40 CFR part 63, subpart SS, specifies.

(c) Each performance evaluation must be conducted according to the requirements in § 63.8(e) as applicable and under the specific conditions that 40 CFR part 63, subpart SS, specifies.

(d) You may not conduct performance tests or performance evaluations during periods of startup, shutdown, or malfunction, as specified in § 63.7(e)(1).

(e) You must conduct the control device performance test using the emission measurement methods specified in paragraphs (e)(1) through (5) of this section.

(1) Use either Method 1 or 1A of appendix A to 40 CFR part 60, as appropriate, to select the sampling sites.

(2) Use Method 2, 2A, 2C, 2D, 2F or 2G of appendix A to 40 CFR part 60, as appropriate, to measure gas volumetric flow rate.

(3) Use Method 18 of appendix A to 40 CFR part 60 to measure organic HAP emissions or use Method 25A of appendix A to 40 CFR part 60 to measure total gaseous organic emissions as a surrogate for total organic HAP emissions. If you use Method 25A, you must assume that all gaseous organic emissions measured as carbon are organic HAP emissions. If you use Method 18 and the number of organic HAP in the exhaust stream exceeds five, you must take into account the use of multiple chromatographic columns and analytical techniques to get an accurate measure of at least 90 percent of the total organic HAP mass emissions. Do not use Method 18 to measure organic HAP emissions from a combustion device; use instead Method 25A and assume that all gaseous organic mass emissions measured as carbon are organic HAP emissions.

(4) You may use American Society for Testing and Materials (ASTM) D6420–99 (available for purchase from at least one of the following addresses: 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.) in lieu of Method 18 of 40 CFR part 60, appendix A, under the conditions specified in paragraphs (c)(4)(i) through (iii) of this section.

(i) If the target compound(s) is listed in Section 1.1 of ASTM D6420–99 and the target concentration is between 150 parts per billion by volume and 100 parts per million by volume.

(ii) If the target compound(s) is not listed in Section 1.1 of ASTM D6420–99, but is potentially detected by mass spectrometry, an additional system continuing calibration check after each run, as detailed in Section 10.5.3 of ASTM D6420–99, must be followed, met, documented, and submitted with the performance test report even if you do not use a moisture condenser or the compound is not considered soluble.

(iii) If a minimum of one sample/analysis cycle is completed at least every 15 minutes.

(5) Use the procedures in EPA Method 3B of appendix A to 40 CFR part 60 to determine an oxygen correction factor if required by § 63.997(e)(2)(iii)(C). You may use American Society of Mechanical Engineers (ASME) PTC 19–10–1981–Part 10 (available for purchase from ASME, P.O. Box 2900, 22 Law Drive, Fairfield, New Jersey, 07007–2900, or online at *www.asme.org/catalog*) as an alternative to EPA Method 3B of appendix A to 40 CFR part 60.

(f) The control device performance test must consist of three runs and each run must last at least 1 hour. The production conditions during the test runs must represent normal production conditions with respect to the types of parts being made and material application methods. The production conditions during the test must also represent maximum potential emissions with respect to the organic HAP content of the materials being applied and the material application rates.

(g) If you are using a concentrator/oxidizer control device, you must test the combined flow upstream of the concentrator, and the combined outlet flow from both the oxidizer and the concentrator to determine the overall control device efficiency. If the outlet flow from the concentrator and oxidizer are exhausted in separate stacks, you must test both stacks simultaneously with the inlet to the concentrator to determine the overall control device efficiency.

(h) During the test, you must also monitor and record separately the amounts of production resin, tooling resin, pigmented gel coat, clear gel coat, and tooling gel coat applied inside the enclosure that is vented to the control device.

§ 63.5855 What are my monitor installation and operation requirements?

You must monitor and operate all add-on control devices according to the procedures in 40 CFR part 63, subpart SS.

§ 63.5860 How do I demonstrate initial compliance with the standards?

(a) You demonstrate initial compliance with each organic HAP emissions standard in paragraphs (a) through (h) of § 63.5805 that applies to you by using the procedures shown in Tables 8 and 9 to this subpart.

(b) If using an add-on control device to demonstrate compliance, you must also establish each control device operating limit in 40 CFR part 63, subpart SS, that applies to you.

Emission Factor, Percent Reduction, and Capture Efficiency Calculation Procedures for Continuous Lamination/Casting Operations

§ 63.5865 What data must I generate to demonstrate compliance with the standards for continuous lamination/casting operations?

(a) For continuous lamination/casting affected sources complying with a percent reduction requirement, you must generate the data identified in

Tables 10 and 11 to this subpart for each data requirement that applies to your facility.

(b) For continuous lamination/casting affected sources complying with a lbs/ton limit, you must generate the data identified in Tables 11 and 12 to this subpart for each data requirement that applies to your facility.

§ 63.5870 How do I calculate annual uncontrolled and controlled organic HAP emissions from my wet-out area(s) and from my oven(s) for continuous lamination/casting operations?

To calculate your annual uncontrolled and controlled organic HAP emissions from your wet-out areas and from your ovens, you must develop uncontrolled and controlled wet-out area and uncontrolled and controlled oven organic HAP emissions estimation equations or factors to apply to each formula applied on each line, determine how much of each formula for each end product is applied each year on each line, and assign uncontrolled and controlled wet-out area and uncontrolled and controlled oven organic HAP emissions estimation equations or factors to each formula. You must determine the overall capture efficiency using the procedures in § 63.5850 to this subpart.

(a) To develop uncontrolled and controlled organic HAP emissions estimation equations and factors, you must, at a minimum, do the following, as specified in paragraphs (a)(1) through (6) of this section:

(1) Identify each end product and the thickness of each end product produced on the line. Separate end products into the following end product groupings, as applicable: corrosion-resistant gel coated end products, noncorrosion-resistant gel coated end products, corrosion-resistant nongel coated end products, and noncorrosion-resistant nongel coated end products. This step creates end product/thickness combinations.

(2) Identify each formula used on the line to produce each end product/thickness combination. Identify the amount of each such formula applied per year. Rank each formula used to produce each end product/thickness combination according to usage within each end product/thickness combination.

(3) For each end product/thickness combination being produced, select the formula with the highest usage rate for testing.

(4) If not already selected, also select the worst-case formula (likely to be associated with the formula with the highest organic HAP content, type of HAP, application of gel coat, thin product, low line speed, higher resin table temperature) amongst all formulae. (You may use the results of the worst-case formula test for all formulae if desired to limit the amount of testing required.)

(5) For each formula selected for testing, conduct at least one test (consisting of three runs). During the test, track information on organic HAP content and type of HAP, end product thickness, line speed, and resin temperature on the wet-out area table.

(6) Using the test results, develop uncontrolled and controlled organic HAP emissions estimation equations (or factors) or series of equations (or factors) that best fit the results for estimating uncontrolled and controlled organic HAP emissions, taking into account the organic HAP content and type of HAP, end product thickness, line speed, and resin temperature on the wet-out area table.

(b) In lieu of using the method specified in paragraph (a) of this section for developing uncontrolled and controlled organic HAP emissions estimation equations and factors, you may either method specified in paragraphs (b)(1) and (2) of this section, as applicable.

(1) For either uncontrolled or controlled organic HAP emissions estimates, you may use previously established, facility-specific organic HAP emissions equations or factors, provided they allow estimation of both wet-out area and oven organic HAP emissions, where necessary, and have been approved by your permitting authority. If a previously established equation or factor is specific to the wet-out area only, or to the oven only, then you must develop the corresponding uncontrolled or controlled equation or factor for the other organic HAP emissions source.

(2) For uncontrolled (controlled) organic HAP emissions estimates, you may use controlled (uncontrolled) organic HAP emissions estimates and control device destruction efficiency to calculate your uncontrolled (controlled) organic HAP emissions provided the control device destruction efficiency was calculated at the same time you collected the data to develop your facility's controlled (uncontrolled) organic HAP emissions estimation equations and factors.

(c) Assign to each formula an uncontrolled organic HAP emissions estimation equation or factor based on the end product/thickness combination for which that formula is used.

(d)(1) To calculate your annual uncontrolled organic HAP emissions from wet-out areas that do not have any capture and control and from wet-out areas that are captured by an enclosure but are vented to the atmosphere and not to a control device, multiply each formula's annual usage by its appropriate organic HAP emissions estimation equation or factor and sum the individual results.

(2) To calculate your annual uncontrolled organic HAP emissions that escape from the enclosure on the wet-out area, multiply each formula's annual usage by its appropriate uncontrolled organic HAP emissions estimation equation or factor, sum the individual results, and multiply the summation by 1 minus the percent capture (expressed as a fraction).

(3) To calculate your annual uncontrolled oven organic HAP emissions, multiply each formula's annual usage by its appropriate uncontrolled organic HAP emissions estimation equation or factor and sum the individual results.

(4) To calculate your annual controlled organic HAP emissions, multiply each formula's annual usage by its appropriate organic HAP emissions estimation equation or factor and sum the individual results to obtain total annual controlled organic HAP emissions.

(e) Where a facility is calculating both uncontrolled and controlled organic HAP emissions estimation equations and factors, you must test the same formulae. In addition, you must develop both sets of equations and factors from the same tests.

§ 63.5875 How do I determine the capture efficiency of the enclosure on my wet-out area and the capture efficiency of my oven(s) for continuous lamination/casting operations?

(a) The capture efficiency of a wet-out area enclosure is assumed to be 100 percent if it meets the design and operation requirements for a permanent total enclosure (PTE) specified in EPA Method 204 of appendix M to 40 CFR part 51. If a PTE does not exist, then a temporary total enclosure must be constructed and verified using EPA Method 204, and capture efficiency testing must be determined using EPA Methods 204B through E of appendix M to 40 CFR part 51.

(b) The capture efficiency of an oven is to be considered 100 percent, provided the oven is operated under negative pressure.

§ 63.5880 How do I determine how much neat resin plus is applied to the line and how much neat gel coat plus is applied to the line for continuous lamination/casting operations?

Use the following procedures to determine how much neat resin plus and neat gel coat plus is applied to the line each year.

(a) Track formula usage by end product/thickness combinations.

(b) Use in-house records to show usage. This may be either from automated systems or manual records.

(c) Record daily the usage of each formula/end product combination on each line. This is to be recorded at the end of each run (*i.e.*, when a changeover in formula or product is made) and at the end of each shift.

(d) Sum the amounts from the daily records to calculate annual usage of each formula/end product combination by line.

§ 63.5885 How do I calculate percent reduction to demonstrate compliance for Continuous Lamination/Casting Operations?

You may calculate percent reduction using any of the methods in paragraphs (a) through (d) of this section.

(a) *Compliant line option.* If all of your wet-out areas have PTE that meet the requirements of EPA Method 204 of appendix M of 40 CFR part 51, and all of your wet-out area organic HAP emissions and oven organic HAP emissions are vented to an add-on control device, use Equation 1 of this section to demonstrate compliance. In all other situations, use Equation 2 of this section to demonstrate compliance.

$$PR = \frac{(Inlet) - (Outlet)}{(Inlet)} \times 100 \qquad \text{(Eq. 1)}$$

Where:

PR=percent reduction

Inlet=HAP emissions entering the control device, lbs per year

Outlet=HAP emissions exiting the control device to the atmosphere, lbs per year

$$PR = \frac{(WAE_u + O_u) - (WAE_c + O_c)}{(WAE_u + O_u)} \times 100 \qquad \text{(Eq. 2)}$$

Where:

PR=percent reduction

WAE_u=uncontrolled wet-out area organic HAP emissions, lbs per year

O_u=uncontrolled oven organic HAP emissions, lbs per year

WAE_c=controlled wet-out area organic HAP emissions, lbs per year

O_c=controlled oven organic HAP emissions, lbs per year

(b) *Averaging option.* Use Equation 3 of this section to calculate percent reduction.

$$PR = \frac{\left(\sum_{i=1}^{m} WAE_{ui} + \sum_{j=1}^{n} O_{uj}\right) - \left(\sum_{i=1}^{o} WAE_{ci} + \sum_{j=1}^{p} O_{cj}\right)}{\left(\sum_{i=1}^{m} WAE_{ui} + \sum_{j=1}^{n} O_{uj}\right)} \times 100 \qquad \text{(Eq. 3)}$$

Where:

PR=percent reduction

WAE_{ui}=uncontrolled organic HAP emissions from wet-out area i, lbs per year

O_{uj}=uncontrolled organic HAP emissions from oven j, lbs per year

WAE_{ci}=controlled organic HAP emissions from wet-out area i, lbs per year

O_{cj}=controlled organic HAP emissions from oven j, lbs per year

i=number of wet-out areas

j=number of ovens

m=number of wet-out areas uncontrolled

n=number of ovens uncontrolled

o=number of wet-out areas controlled

p=number of ovens controlled

(c) *Add-on control device option.* Use Equation 1 of this section to calculate percent reduction.

$$E = \frac{WAE_u + WAE_c + O_u + O_c}{(R + G)} \qquad \text{(Eq. 1)}$$

Where:

E=HAP emissions factor in lbs/ton of resin and gel coat

WAE_u=uncontrolled wet-out area organic HAP emissions, lbs per year

WAE_c=controlled wet-out area organic HAP emissions, lbs per year

O_u=uncontrolled oven organic HAP emissions, lbs per year

O_c=controlled oven organic HAP emissions, lbs per year

R=total usage of neat resin plus, tpy

G=total usage of neat gel coat plus, tpy

(b) *Averaging option.* Use Equation 2 of this section to demonstrate compliance.

(d) *Combination option.* Use Equations 1 through 3 of this section, as applicable, to calculate percent reduction.

§ 63.5890 How do I calculate a organic HAP emissions factor to demonstrate compliance for continuous lamination/casting operations?

(a) *Compliant line option.* Use Equation 1 of this section to calculate a organic HAP emissions factor in lbs/ton.

$$E = \frac{\sum_{i=1}^{m} WAE_{ui} + \sum_{i=1}^{o} WAE_{ci} + \sum_{j=1}^{n} O_{uj} + \sum_{j=1}^{p} O_{cj}}{(R+G)} \quad \text{(Eq. 2)}$$

Where:
E=HAP emissions factor in lbs/ton of resin and gel coat
WAE_{ui}=uncontrolled organic HAP emissions from wet-out area i, lbs per year
WAE_{ci}=controlled organic HAP emissions from wet-out area i, lbs per year
O_{uj}=uncontrolled organic HAP emissions from oven j, lbs per year
O_{cj}=controlled organic HAP emissions from oven j, lbs per year
i=number of wet-out areas
j=number of ovens
m=number of wet-out areas uncontrolled
n=number of ovens uncontrolled
o=number of wet-out areas controlled
p=number of ovens controlled
R=total usage of neat resin plus, tpy
G=total usage of neat gel coat plus, tpy

(c) *Combination option.* Use Equations 1 and 2 of this section, as applicable, to demonstrate compliance.

Continuous Compliance Requirements

§ 63.5895 How do I monitor and collect data to demonstrate continuous compliance?

(a) During production, you must collect and keep a record of data as indicated in 40 CFR part 63, subpart SS, if you are using an add-on control device.

(b) You must monitor and collect data as specified in paragraphs (b)(1) through (4) of this section.

(1) Except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments), you must conduct all monitoring in continuous operation (or collect data at all required intervals) at all times that the affected source is operating.

(2) You may not use data recorded during monitoring malfunctions, associated repairs, and required quality assurance or control activities for purposes to this subpart, including data averages and calculations, or fulfilling a minimum data availability requirement, if applicable. You must use all the data collected during all other periods in assessing the operation of the control device and associated control system.

(3) At all times, you must maintain necessary parts for routine repairs of the monitoring equipment.

(4) A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring equipment to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(c) You must collect and keep records of resin and gel coat use, organic HAP content, and operation where the resin is used if you are meeting any organic HAP emissions limits based on an organic HAP emissions limit in Tables 3 or 5 to this subpart. You must collect and keep records of resin and gel coat use, organic HAP content, and operation where the resin is used if you are meeting any organic HAP content limits in Table 7 to this subpart if you are averaging organic HAP contents. Resin use records may be based on purchase records if you can reasonably estimate how the resin is applied. The organic HAP content records may be based on MSDS or on resin specifications supplied by the resin supplier.

(d) If you initially demonstrate that all resins and gel coats individually meet the applicable organic HAP emissions limits, or organic HAP content limits, then resin and gel coat use records are not required. However, you must include a statement in each compliance report that all resins and gel coats still meet the organic HAP limits for compliant resins and gel coats shown in Tables 3 or 7 to this subpart. If after this initial demonstration, you change to a higher organic HAP resin or gel coat, or increase the resin or gel coat organic HAP content, or change to a higher-emitting resin or gel coat application method, then you must either again demonstrate that all resins and gel coats still meet the applicable organic HAP emissions limits, or begin collecting resin and gel coat use records and calculate compliance on a 12-month rolling average.

(e) For each of your pultrusion machines, you must record all times that wet area enclosures doors or covers are open and there is resin present in the resin bath.

§ 63.5900 How do I demonstrate continuous compliance with the standards?

(a) You must demonstrate continuous compliance with each standard in § 63.5805 that applies to you according to the methods specified in paragraphs (a)(1) through (3) of this section.

(1) Compliance with organic HAP emissions limits for sources using add-on control devices is demonstrated following the procedures in 40 CFR part 63, subpart SS. Sources using add-on controls may also use continuous emissions monitors to demonstrate continuous compliance as an alternative to control parameter monitoring.

(2) Compliance with organic HAP emissions limits is demonstrated by maintaining a organic HAP emissions factor value less than or equal to the appropriate organic HAP emissions limit listed in Tables 3, or 5 to this subpart, on a 12-month rolling average, or by including in each compliance report a statement that all resins and gel coats meet the appropriate organic HAP emissions limits, as discussed in § 63.5895(d).

(3) Compliance with organic HAP content limits in Table 7 to this subpart is demonstrated by maintaining an average organic HAP content value less than or equal to the appropriate organic HAP contents listed in Table 7 to this subpart, on a 12-month rolling average, or by including in each compliance report a statement that all resins and gel coats individually meet the appropriate organic HAP content limits, as discussed in § 63.5895(d).

(4) Compliance with the work practice standards in Table 4 to this subpart is demonstrated by performing the work practice required for your operation.

(b) You must report each deviation from each standard in § 63.5805 that applies to you. The deviations must be reported according to the requirements in § 63.5910.

(c) Except as provided in paragraph (d) of this section, during periods of startup, shutdown or malfunction, you must meet the organic HAP emissions limits and work practice standards that apply to you.

(d) When you use an add-on control device to meet standards in § 63.5805, you are not required to meet those standards during periods of startup, shutdown, or malfunction, but you must operate your affected source in accordance with the startup, shutdown, and malfunction plan.

(e) Consistent with §§ 63.6(e) and 63.7(e)(1), deviations that occur during a period of malfunction for those affected sources and standards specified in paragraph (d) of this section are not violations if you demonstrate to the Administrator's satisfaction that you were operating in accordance with the startup, shutdown, and malfunction plan. The Administrator will determine whether deviations that occur during a period of startup, shutdown, and malfunction are violations, according to the provisions in § 63.6(e).

Notifications, Reports, and Records

§ 63.5905 What notifications must I submit and when?

(a) You must submit all of the notifications in Table 13 to this subpart that apply to you by the dates specified in Table 13 to this subpart. The notifications are described more fully in 40 CFR part 63, subpart A, referenced in Table 13 to this subpart.

(b) If you change any information submitted in any notification, you must submit the changes in writing to the Administrator within 15 calendar days after the change.

§ 63.5910 What reports must I submit and when?

(a) You must submit each report in Table 14 to this subpart that applies to you.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date specified in Table 14 to this subpart and according to paragraphs (b)(1) through (5) of this section.

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.5800 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date that is specified for your source in § 63.5800.

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.5800.

(3) Each subsequent compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting requirements pursuant to 40 CFR part 70 or 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to § 70.6 (a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The compliance report must contain the information in paragraphs (c)(1) through (6) of this section:

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of the report and beginning and ending dates of the reporting period.

(4) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your startup, shutdown, and malfunction plan, the compliance report must include the information in § 63.10(d)(5)(i).

(5) If there are no deviations from any organic HAP emissions limitations (emissions limit and operating limit) that apply to you, and there are no deviations from the requirements for work practice standards in Table 4 to this subpart, a statement that there were no deviations from the organic HAP emissions limitations or work practice standards during the reporting period.

(6) If there were no periods during which the continuous monitoring system (CMS), including a continuous emissions monitoring system (CEMS) and an operating parameter monitoring system were out of control, as specified in § 63.8(c)(7), a statement that there were no periods during which the CMS was out of control during the reporting period.

(d) For each deviation from a organic HAP emissions limitation (*i.e.,* emissions limit and operating limit) and for each deviation from the requirements for work practice standards that occurs at an affected source where you are not using a CMS to comply with the organic HAP emissions limitations or work practice standards in this subpart, the compliance report must contain the information in paragraphs (c)(1) through (4) of this section and in paragraphs (d)(1) and (2) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable), as applicable, and the corrective action taken.

(e) For each deviation from a organic HAP emissions limitation (*i.e.,* emissions limit and operating limit) occurring at an affected source where you are using a CMS to comply with the organic HAP emissions limitation in this subpart, you must include the information in paragraphs (c)(1) through (4) of this section and in paragraphs (e)(1) through (12) of this section. This includes periods of startup, shutdown, and malfunction.

(1) The date and time that each malfunction started and stopped.

(2) The date and time that each CMS was inoperative, except for zero (low-level) and high-level checks.

(3) The date, time, and duration that each CMS was out of control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

(5) A summary of the total duration of the deviation during the reporting period and the total duration as a percent of the total source operating time during that reporting period.

(6) A breakdown of the total duration of the deviations during the reporting period into those that are due to startup, shutdown, control equipment problems, process problems, other known causes, and other unknown causes.

(7) A summary of the total duration of CMS downtime during the reporting period and the total duration of CMS downtime as a percent of the total source operating time during that reporting period.

(8) An identification of each organic HAP that was monitored at the affected source.

(9) A brief description of the process units.

(10) A brief description of the CMS.

(11) The date of the latest CMS certification or audit.

(12) A description of any changes in CMS, processes, or controls since the last reporting period.

(f) You must report if you have exceeded the 100 tpy organic HAP emissions threshold if that exceedance would make your facility subject to § 63.5805(b) or (d). Include with this report any request for an exemption under § 63.5805(e). If you receive an exemption under § 63.5805(e) and subsequently exceed the 100 tpy organic HAP emissions threshold, you must report this exceedance as required in § 63.5805(f).

(g) Each affected source that has obtained a title V operating permit pursuant to 40 CFR part 70 or 71 must report all deviations as defined in this subpart in the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A). If an affected source submits a compliance report pursuant to Table 14 to this subpart along with, or as part of, the semiannual monitoring report required by § 70.6(a)(3)(iii)(A) or § 71.6(a)(3)(iii)(A), and the compliance report includes all required information concerning deviations from any organic HAP emissions limitation (including any operating limit) or work practice requirement in this subpart, submission of the compliance report shall be deemed to satisfy any obligation to report the same deviations in the semiannual monitoring report. However, submission of a compliance report shall not otherwise affect any obligation the affected source may have to report deviations from permit requirements to the permitting authority.

(h) Submit compliance reports and startup, shutdown, and malfunction reports based on the requirements in Table 14 to this subpart, and not based on the requirements in § 63.999.

§ 63.5915 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunction.

(3) Records of performance tests, design, and performance evaluations as required in § 63.10(b)(2).

(b) If you use an add-on control device, you must keep all records required in 40 CFR part 63, subpart SS, to show continuous compliance with this subpart.

(c) You must keep all data, assumptions, and calculations used to determine organic HAP emissions factors or average organic HAP contents for operations listed in Tables 3, 5, and 7 to this subpart.

(d) You must keep a certified statement that you are in compliance with the work practice requirements in Table 4 to this subpart, as applicable.

(e) For a new or existing continuous lamination/casting operation, you must keep the records listed in paragraphs (e)(1) through (4) of this section, when complying with the percent reduction and/or lbs/ton requirements specified in paragraphs (a) through (d) of § 63.5805.

(1) You must keep all data, assumptions, and calculations used to determine percent reduction and/or lbs/ton as applicable;

(2) You must keep a brief description of the rationale for the assignment of an equation or factor to each formula;

(3) When using facility-specific organic HAP emissions estimation equations or factors, you must keep all data, assumptions, and calculations used to derive the organic HAP emissions estimation equations and factors and identification and rationale for the worst-case formula; and

(4) For all organic HAP emissions estimation equations and organic HAP emissions factors, you must keep documentation that the appropriate permitting authority has approved them.

§ 63.5920 In what form and how long must I keep my records?

(a) You must maintain all applicable records in such a manner that they can be readily accessed and are suitable for inspection according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record onsite for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

(d) You may keep records in hard copy or computer readable form including, but not limited to, paper, microfilm, computer floppy disk, magnetic tape, or microfiche.

Other Requirements and Information

§ 63.5925 What parts of the General Provisions apply to me?

Table 15 to this subpart shows which parts of the General Provisions in §§ 63.1 through 63.15 apply to you.

§ 63.5930 Who implements and enforces this subpart?

(a) This subpart can be administered by us, the EPA, or a delegated authority such as your State, local, or tribal agency. If the EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to administer and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are not delegated.

(c) The authorities that will not be delegated to State, local, or tribal agencies are listed in paragraphs (c)(1) through (4) of this section:

(1) Approval of alternatives to the organic HAP emissions standards in § 63.5805 under § 63.6(g).

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.5935 What definitions apply to this subpart?

Terms used in this subpart are defined in the CAA, in 40 CFR 63.2, and in this section as follows:

Atomized mechanical application means application of resin or gel coat with spray equipment that separates the liquid into a fine mist. This fine mist may be created by forcing the liquid under high pressure through an elliptical orifice, bombarding a liquid stream with directed air jets, or a combination of these techniques.

Bulk molding compound (BMC) means a putty-like molding compound containing resin(s) in a form that is ready to mold. In addition to resins, BMC may contain catalysts, fillers, and reinforcements. Bulk molding compound can be used in compression molding and injection molding operations to manufacture reinforced plastic composites products.

BMC manufacturing means a process that involves the preparation of BMC.

Centrifugal casting means a process for fabricating cylindrical composites, such as pipes, in which composite materials are positioned inside a rotating hollow mandrel and held in place by centrifugal forces until the part is sufficiently cured to maintain its physical shape.

Charge means the amount of SMC or BMC that is placed into a compression or injection mold necessary to complete one mold cycle.

Cleaning means removal of composite materials, such as cured and uncured resin from equipment, finished surfaces, floors, hands of employees, or any other surfaces.

Clear production gel coat means an unpigmented, quick-setting resin used to improve the surface appearance and/or performance of composites. It can be used to form the surface layer of any composites other than those used for molds in tooling operations.

Closed molding means a grouping of processes for fabricating composites in a way that HAP-containing materials are not exposed to the atmosphere except during the material loading stage (*e.g.*, compression molding, injection molding, and resin transfer molding). Processes where the mold is covered with plastic (or equivalent material) prior to resin application, and the resin is injected into the covered mold are also considered closed molding.

Composite means a shaped and cured part produced by using composite materials.

Composite materials means the raw materials used to make composites. The raw materials include styrene containing resins. They may also include gel coat, monomer, catalyst, pigment, filler, and reinforcement.

Compression molding means a closed molding process for fabricating composites in which composite materials are placed inside matched dies that are used to cure the materials under heat and pressure without exposure to the atmosphere. The addition of mold paste or in-mold coating is considered part of the closed molding process. The composite materials used in this process are generally SMC or BMC.

Compression/injection molding means a grouping of processes that involves the use of compression molding and/or injection molding.

Continuous casting means a continuous process for fabricating composites in which composite materials are placed on an in-line conveyor belt to produce cast sheets that are cured in an oven.

Continuous lamination means a continuous process for fabricating composites in which composite materials are typically sandwiched between plastic films, pulled through compaction rollers, and cured in an oven. This process is generally used to produce flat or corrugated products on an in-line conveyor.

Continuous lamination/casting means a grouping of processes that involves the use of continuous lamination and/or continuous casting.

Controlled emissions means those organic HAP emissions that are vented from a control device to the atmosphere.

Corrosion-resistant gel coat means a gel coat used on a product made with a corrosion-resistant resin that has a corrosion-resistant end-use application.

Corrosion-resistant end-use applications means applications where the product is manufactured specifically for an application that requires a level of chemical inertness or resistance to chemical attack above that required for typical reinforced plastic composites products. These applications include, but are not limited to, chemical processing and storage; pulp and paper production; sewer and wastewater treatment; power generation; potable water transfer and storage; food and drug processing; pollution or odor control; metals production and plating; semiconductor manufacturing; petroleum production, refining, and storage; mining; textile production; nuclear materials storage; swimming pools; and cosmetic production, as well as end-use applications that require high strength resins.

Corrosion-resistant industry standard includes the following standards: ASME RTP–1 or Sect. X; ASTM D5364, D3299, D4097, D2996, D2997, D3262, D3517, D3754, D3840, D4024, D4160, D4161, D4162, D4184, D3982, or D3839; ANSI/AWWA C950; UL 215, 1316 or 1746, IAPMO PS–199, or written customer requirements for resistance to specified chemical environments.

Corrosion-resistant product means a product made with a corrosion-resistant resin and is manufactured to a corrosion-resistant industry standard, or a food contact industry standard, or is manufactured for corrosion-resistant end-use applications involving continuous or temporary chemical exposures.

Corrosion-resistant resin means a resin that either:

(1) Displays substantial retention of mechanical properties when undergoing ASTM C–581 coupon testing, where the resin is exposed for 6 months or more to one of the following materials: Material with a pH ≥ 12.0 or ≤ 3.0, oxidizing or reducing agents, organic solvents, or fuels or additives as defined in 40 CFR 79.2. In the coupon testing, the exposed resin needs to demonstrate a minimum of 50 percent retention of the relevant mechanical property compared to the same resin in unexposed condition. In addition, the exposed resin needs to demonstrate an increased retention of the relevant mechanical property of at least 20 percentage points when compared to a similarly exposed general-purpose resin. For example, if the general-purpose resin retains 45 percent of the relevant property when tested as specified above, then a corrosion-resistant resin needs to retain at least 65 percent (45 percent plus 20 percent) of its property. The general-purpose resin used in the test needs to have an average molecular weight of greater than 1,000, be formulated with a 1:2 ratio of maleic anhydride to phthalic anhydride and 100 percent diethylene glycol, and a styrene content between 43 to 48 percent; or

(2) Complies with industry standards that require specific exposure testing to corrosive media, such as UL 1316, UL 1746, or ASTM F–1216.

Doctor box means the box or trough on an SMC machine into which the liquid resin paste is delivered before it is metered onto the carrier film.

Filament application means an open molding process for fabricating composites in which reinforcements are fed through a resin bath and wound onto a rotating mandrel. The materials on the mandrel may be rolled out or worked by using nonmechanical tools prior to curing. Resin application to the reinforcement on the mandrel by means other than the resin bath, such as spray guns, pressure-fed rollers, flow coaters, or brushes is not considered filament application.

Filled Resin means that fillers have been added to a resin such that the amount of inert substances is at least 10 percent by weight of the total resin plus filler mixture. Filler putty made from a resin is considered a filled resin.

Fillers means inert substances dispersed throughout a resin, such as calcium carbonate, alumina trihydrate, hydrous aluminum silicate, mica, feldspar, wollastonite, silica, and talc. Materials that are not considered to be fillers are glass fibers or any type of reinforcement and microspheres.

Fire retardant gel coat means a gel coat used for products for which low-flame spread/low-smoke resin is used.

Fluid impingement technology means a spray gun that produces an expanding non-misting curtain of liquid by the impingement of low-pressure uninterrupted liquid streams.

Food contact industry standard means a standard related to food contact application contained in Food and Drug Administration's regulations at 21 CFR 177.2420.

Gel Coat means a quick-setting resin used to improve surface appearance and/or performance of composites. It can be used to form the surface layer of any composites other than those used for molds in tooling operations.

Gel coat application means a process where either clear production, pigmented production, white/off-white or tooling gel coat is applied.

HAP-containing materials storage means an ancillary process which involves keeping HAP-containing materials, such as resins, gel coats, catalysts, monomers, and cleaners, in containers or bulk storage tanks for any

length of time. Containers may include small tanks, totes, vessels, and buckets.

High Performance gel coat means a gel coat used on products for which National Science Foundation, United States Department of Agriculture, ASTM, durability, or other property testing is required.

High strength gel coat means a gel coat applied to a product that requires high strength resin.

High strength resins means polyester resins which have a casting tensile strength of 10,000 pounds per square inch or more and which are used for manufacturing products that have high strength requirements such as structural members and utility poles.

Injection molding means a closed molding process for fabricating composites in which composite materials are injected under pressure into a heated mold cavity that represents the exact shape of the product. The composite materials are cured in the heated mold cavity.

Low Flame Spread/Low Smoke Products means products that meet the following requirements. The products must meet both the applicable flame spread requirements and the applicable smoke requirements. Interior or exterior building application products must meet an ASTM E–84 Flame Spread Index of less than or equal to 25, and Smoke Developed Index of less than or equal to 450, or pass National Fire Protection Association 286 Room Corner Burn Test with no flash over and total smoke released not exceeding 1000 meters square. Mass transit application products must meet an ASTM E–162 Flame Spread Index of less than or equal to 35 and ASTM E662 Smoke Density Ds @ 1.5 minutes less than or equal to 100 and Ds @ 4 minutes less than to equal to 200. Duct application products must meet ASTM E084 Flame Spread Index less than or equal to 25 and Smoke Developed Index less than or equal to 50 on the interior and/or exterior of the duct.

Manual resin application means an open molding process for fabricating composites in which composite materials are applied to the mold by pouring or by using hands and nonmechanical tools, such as brushes and rollers. Materials are rolled out or worked by using nonmechanical tools prior to curing. The use of pressure-fed rollers and flow coaters to apply resin is not considered manual resin application.

Mechanical resin application means an open molding process for fabricating composites in which composite materials (except gel coat) are applied to the mold by using mechanical tools such as spray guns, pressure-fed rollers, and flow coaters. Materials are rolled out or worked by using nonmechanical tools prior to curing.

Mixing means the blending or agitation of any HAP-containing materials in vessels that are 5.00 gallons (18.9 liters) or larger. Mixing may involve the blending of resin, gel coat, filler, reinforcement, pigments, catalysts, monomers, and any other additives.

Mold means a cavity or matrix into or onto which the composite materials are placed and from which the product takes its form.

Neat gel coat means the resin as purchased for the supplier, but not including any inert fillers.

Neat gel coat plus means neat gel coat plus any organic HAP-containing materials that are added to the gel coat by the supplier or the facility, excluding catalysts and promoters. Neat gel coat plus does include any additions of styrene or methyl methacrylate monomer in any form, including in catalysts and promoters.

Neat resin means the resin as purchased from the supplier, but not including any inert fillers.

Neat resin plus means neat resin plus any organic HAP-containing materials that are added to the resin by the supplier or the facility. Neat resin plus does not include any added filler, reinforcements, catalysts, or promoters. Neat resin does include any additions of styrene or methyl methacrylate monomer in any form, including in catalysts and promoters.

Nonatomized mechanical application means the use of application tools other than brushes to apply resin and gel coat where the application tool has documentation provided by its manufacturer or user that this design of the application tool has been organic HAP emissions tested, and the test results showed that use of this application tool results in organic HAP emissions that are no greater than the organic HAP emissions predicted by the applicable nonatomized application equation(s) in Table 1 to this subpart. In addition, the device must be operated according to the manufacturer's directions, including instructions to prevent the operation of the device at excessive spray pressures. Examples of nonatomized application include flow coaters, pressure fed rollers, and fluid impingement spray guns.

Noncorrosion-resistant resin means any resin other than a corrosion-resistant resin or a tooling resin.

Noncorrosion-resistant product means any product other than a corrosion-resistant product or a mold.

Non-routine manufacture means that you manufacture parts to replace worn or damaged parts of a reinforced plastic composites product, or a product containing reinforced plastic composite parts, that was originally manufactured in another facility. For a part to qualify as non-routine manufacture, it must be used for repair or replacement, and the manufacturing schedule must be based on the current or anticipated repair needs of the reinforced plastic composites product, or a product containing reinforced plastic composite parts.

Operation means a specific process typically found at a reinforced plastic composites facility. Examples of operations are noncorrosion-resistant manual resin application, corrosion-resistant mechanical resin application, pigmented gel coat application, mixing and HAP-containing materials storage.

Operation group means a grouping of individual operations based primarily on mold type. Examples are open molding, closed molding, and centrifugal casting.

Open molding means a process for fabricating composites in a way that HAP-containing materials are exposed to the atmosphere. Open molding includes processes such as manual resin application, mechanical resin application, filament application, and gel coat application. Open molding also includes application of resins and gel coats to parts that have been removed from the open mold.

Pigmented gel coat means a gel coat that has a color, but does not contain 10 percent of more titanium dioxide by weight. It can be used to form the surface layer of any composites other than those used for molds in tooling operations.

Polymer casting means a process for fabricating composites in which composite materials are ejected from a casting machine or poured into an open, partially open, or closed mold and cured. After the composite materials are poured into the mold, they are not rolled out or worked while the mold is open. The composite materials may or may not include reinforcements. Products produced by the polymer casting process include cultured marble products and polymer concrete.

Preform Injection means a form of pultrusion where liquid resin is injected to saturate reinforcements in an enclosed system containing one or more chambers with openings only large enough to admit reinforcements. Resin, which drips out of the chamber(s) during the process, is collected in closed piping or covered troughs and then into a covered reservoir for recycle. Resin storage vessels, reservoirs, transfer systems, and collection systems are covered or shielded from the ambient air. Preform injection differs from direct die injection in that the injection chambers are not directly attached to the die.

Prepreg materials means reinforcing fabric received precoated with resin which is usually cured through the addition of heat.

Pultrusion means a continuous process for manufacturing composites that have a uniform cross-sectional shape. The process consists of pulling a fiber-reinforcing material through a resin impregnation chamber or bath and through a shaping die, where the resin is subsequently cured. There are several types of pultrusion equipment, such as open bath, resin injection, and direct die injection equipment.

Repair means application of resin or gel coat to a part to correct a defect, where the resin or gel coat application occurs after the part has gone through all the steps of its typical production process, or the application occurs outside the normal production area. For purposes of this subpart, rerouting a part back through the normal production line, or part of the normal production line, is not considered repair.

Resin transfer molding means a process for manufacturing composites whereby catalyzed resin is transferred or injected into a closed mold in which fiberglass reinforcement has been placed.

Sheet molding compound (SMC) means a ready-to-mold putty-like molding compound that contains resin(s) processed into sheet form. The molding compound is sandwiched between a top and a bottom film. In addition to resin(s), it may also contain catalysts, fillers, chemical thickeners, mold release agents, reinforcements, and other ingredients. Sheet molding compound can be used in compression molding to manufacture reinforced plastic composites products.

Shrinkage controlled resin means a resin that when promoted, catalyzed, and filled according to the resin manufacturer's recommendations demonstrates less than 0.3 percent linear shrinkage when tested according to ASTM D2566.

SMC manufacturing means a process which involves the preparation of SMC.

Tooling gel coat means a gel coat that is used to form the surface layer of molds. Tooling gel coats generally have high heat distortion temperatures, low shrinkage, high barcol hardness, and high dimensional stability.

Tooling resin means a resin that is used to produce molds. Tooling resins generally have high heat distortion temperatures, low shrinkage, high barcol hardness, and high dimensional stability.

Uncontrolled oven organic HAP emissions means those organic HAP emissions emitted from the oven through closed vent systems to the atmosphere and not to a control device. These organic HAP emissions do not include organic HAP emissions that may escape into the workplace through the opening of panels or doors on the ovens or other similar fugitive organic HAP emissions in the workplace.

Uncontrolled wet-out area organic HAP emissions means any or all of the following: Organic HAP emissions from wet-out areas that do not have any capture and control, organic HAP emissions that escape from wet-out area enclosures, and organic HAP emissions from wet-out areas that are captured by an enclosure but are vented to the atmosphere and not to an add-on control device.

Unfilled means that there has been no addition of fillers to a resin or that less than 10 percent of fillers by weight of the total resin plus filler mixture has been added.

Vapor suppressant means an additive, typically a wax, that migrates to the surface of the resin during curing and forms a barrier to seal in the styrene and reduce styrene emissions.

Vapor-suppressed resin means a resin containing a vapor suppressant added for the purpose of reducing styrene emissions during curing.

White and off-white gel coat means a gel coat that contains 10 percent of more titanium dioxide by weight.

TABLE 1 TO SUBPART WWWW OF PART 63—EQUATIONS TO CALCULATE ORGANIC HAP EMISSIONS FACTORS FOR SPECIFIC OPEN MOLDING AND CENTRIFUGAL CASTING PROCESS STREAMS

[As required in §§ 63.5796, 63.5799(a)(1) and (b), and 63.5810(a)(1), to calculate organic HAP emissions factors for specific open molding and centrifugal casting process streams you must use the equations in the following table:]

If your operation type is a new or existing . . .	And you use . . .	With . . .	Use this organic HAP Emissions Factor (EF) Equation for materials with less than 33 percent organic HAP (19 percent organic HAP for nonatomized gel coat) [1 2 3] . . .	Use this organic HAP Emissions Factor (EF) Equation for materials with 33 percent or more organic HAP (19 percent for nonatomized gel coat) [1 2 3] . . .
1. Open molding operation	a. Manual resin application	i. Nonvapor-suppressed resin.	EF = 0.126 × % HAP × 2000.	EF = ((0.286 × %HAP) − 0.0529) × 2000
		ii. Vapor-suppressed resin	EF = 0.126 × % HAP × 2000 × (1 − (0.5 × VSE factor)).	EF = ((0.286 × %HAP) − 0.0529) × 2000 × (1 − (0.5 × VSE factor))
		iii. Vacuum bagging/closed-mold curing with roll out.	EF = 0.126 × % HAP × 2000 × 0.8.	EF = ((0.286 × %HAP) − 0.0529) × 2000 × 0.8
		iv. Vacuum bagging/closed-mold curing without roll-out.	EF = (0.126 × % HAP × 2000 × 0.5.	EF = ((0.286 × %HAP) − 0.0529) × 2000 × 0.5
	b. Atomized mechanical resin application.	i. Nonvapor-suppressed resin.	EF = 0.169 × %HAP × 2000.	EF = ((0.714 × %HAP) − 0.18) × 2000
		ii. Vapor-suppressed resin	EF = 0.169 × %HAP × 2000 × (1 − (0.45 × VSE factor)).	EF = ((0.714 × %HAP) − 0.18) × 2000 × (1 − (0.45 × VSE factor))

TABLE 1 TO SUBPART WWWW OF PART 63—EQUATIONS TO CALCULATE ORGANIC HAP EMISSIONS FACTORS FOR SPECIFIC OPEN MOLDING AND CENTRIFUGAL CASTING PROCESS STREAMS—Continued

[As required in §§ 63.5796, 63.5799(a)(1) and (b), and 63.5810(a)(1), to calculate organic HAP emissions factors for specific open molding and centrifugal casting process streams you must use the equations in the following table:]

If your operation type is a new or existing . . .	And you use . . .	With . . .	Use this organic HAP Emissions Factor (EF) Equation for materials with less than 33 percent organic HAP (19 percent organic HAP for nonatomized gel coat) [1 2 3] . . .	Use this organic HAP Emissions Factor (EF) Equation for materials with 33 percent or more organic HAP (19 percent for nonatomized gel coat) [1 2 3] . . .
		iii. Vacuum bagging/closed-mold curing with roll-out.	EF = 0.169 × %HAP × 2000 × 0.85.	EF = ((0.714 × %HAP) − 0.18) × 2000 × 0.85
		iv. Vacuum bagging/closed-mold curing without roll-out.	EF = 0.169 × %HAP × 2000 × 0.55.	EF = ((0.714 × %HAP) − 0.18) × 2000 × 0.55
	c. Nonatomized mechanical resin application.	v. Nonvapor-suppressed resin.	EF = 0.107 × %HAP × 2000.	EF = ((0.157 × %HAP) − 0.0165) × 2000
		vi. Vapor-suppressed resin	EF = 0.107 × %HAP × 2000 × (1 − (0.45 × VSE factor)).	EF = ((0.157 × %HAP) − 0.0165) × 2000 × (1 − (0.45 × VSE factor))
		vii. Closed-mold curing with roll-out.	EF = 0.107 × %HAP × 2000 × 0.85.	EF = ((0.157 × %HAP) − 0.0165) × 2000 × 0.85
		viii. Vacuum bagging/closed-mold curing without roll-out.	EF = 0.107 × %HAP × 2000 × 0.55.	EF = ((0.157 × %HAP) − 0.0165) × 2000 × 0.55
	d. Atomized mechanical resin application with robotic or automated spray control [4].	Nonvapor-suppressed resin.	EF = 0.169 × %HAP × 2000 × 0.77.	EF = 0.77 × ((0.714 × %HAP) − 0.18) × 2000
	e. Filament application [5]	i. Nonvapor-suppressed resin.	EF = 0.184 × %HAP × 2000.	EF = ((0.2746 × %HAP) − 0.0298) × 2000
		ii. Vapor-suppressed resin	EF = 0.12 × %HAP × 2000	EF = ((0.2746 × %HAP) − 0.0298) × 2000 × 0.65
	f. Atomized spray gel coat application.	Nonvapor-suppressed gel coat.	EF = 0.446 × %HAP × 2000.	EF = ((1.03646 × %HAP) − 0.195) × 2000.
	g. Nonatomized spray gel coat application.	Nonvapor-suppressed gel coat.	EF = 0.185 × %HAP × 2000.	EF = ((0.4506 × %HAP) − 0.0505) × 2000.
	h. Manual gel coat application [6].	Nonvapor-suppressed gel coat.	EF = 0.126 × % HAP × 2000 (for emissions estimation only, see footnote 6).	EF = ((0.286 × %HAP) − 0.0529) × 2000 (for emissions estimation only, see footnote 6)
2. Centrifugal casting operations. [7 8].	Heated air blown through molds.	Nonvapor-suppressed resin.	EF = 0.558 × (%HAP) × 2000.	EF = 0.558 × (%HAP) × 2000.
	Vented molds, but air vented through the molds is not heated.	Nonvapor-suppressed resin.	EF = 0.026 × (%HAP) × 2000.	EF = 0.026 × (%HAP) × 2000.

Footnotes to Table 1

[1] To obtain the organic HAP emissions factor value for an operation with an add-on control device multiply the EF above by the add-on control factor calculated using Equation 1 of §63.5810. The organic HAP emissions factors have units of lbs of organic HAP per ton of resin or gel coat applied.

[2] Percent HAP means total weight percent of organic HAP (styrene, methyl methacrylate, and any other organic HAP) in the resin or gel coat prior to the addition of fillers, catalyst, and promoters. Input the percent HAP as a decimal, *i.e.* 33 percent HAP should be input as 0.33, not 33.

[3] The VSE factor means the percent reduction in organic HAP emissions expressed as a decimal measured by the VSE test method of appendix A to this subpart.

[4] This equation is based on a organic HAP emissions factor equation developed for mechanical atomized controlled spray. It may only be used for automated or robotic spray systems with atomized spray. All spray operations using hand held spray guns must use the appropriate mechanical atomized or mechanical nonatomized organic HAP emissions factor equation. Automated or robotic spray systems using nonatomized spray should use the appropriate nonatomized mechanical resin application equation.

[5] Applies only to filament application using an open resin bath. If resin is applied manually or with a spray gun, use the appropriate manual or mechanical application organic HAP emissions factor equation.

[6] Do not use this equation for determining compliance with emission limits in Tables 3 or 5 to this subpart. To determine compliance with emission limits you must treat all gel coat as if it were applied as part of your gel coat spray application operations. If you apply gel coat by manual techniques only, you must treat the gel coat as if it were applied with atomized spray and use Equation 1.f. to determine compliance with the appropriate emission limits in Tables 3 or 5 to this subpart. To estimate emissions from manually applied gel coat, you may either include the gel coat quantities you apply manually with the quantities applied using spray, or use this equation to estimate emissions from the manually applied portion of your gel coat.

[7] These equations are for centrifugal casting operations where the mold is vented during spinning. Centrifugal casting operations where the mold is completely sealed after resin injection are considered to be closed molding operations.

[8] If a centrifugal casting operation uses mechanical or manual resin application techniques to apply resin to an open centrifugal casting mold, use the appropriate open molding equation with covered cure and no rollout to determine an emission factor for operations prior to the closing of the centrifugal casting mold. If the closed centrifugal casting mold is vented during spinning, use the appropriate centrifugal casting equation to calculate an emission factor for the portion of the process where spinning and cure occur. If a centrifugal casting operation uses mechanical or manual resin application techniques to apply resin to an open centrifugal casting mold, and the mold is then closed and is not vented, treat the entire operation as open molding with covered cure and no rollout to determine emission factors.

TABLE 2 TO SUBPART WWWW OF PART 63.—COMPLIANCE DATES FOR NEW AND EXISTING REINFORCED PLASTIC COMPOSITES FACILITIES

[As required in §§ 63.5800 and 63.5840 you must demonstrate compliance with the standards by the dates in the following table:]

If your facility is . . .	And . . .	Then you must comply by this date . . .
1. An existing source	a. Is a major source on or before the publication date of this subpart.	i. April 21, 2006, or ii. You must accept and meet an enforceable HAP emissions limit below the major source threshold prior to April 21, 2006.
2. An existing source that is an area source	Becomes a major source after the publication date of this subpart.	3 years after becoming a major source or April 21, 2006, whichever is later.
3. An existing source, and emits less than 100 tpy of organic HAP from the combination of all centrifugal casting and continuous lamination/casting operations at the time of initial compliance with this subpart.	Subsequently increases its actual organic HAP emissions to 100 tpy or more from these operations, which requires that the facility must now comply with the standards in §63.5805(b).	3 years of the date your semi-annual compliance report indicates your facility meets or exceeds the 100 tpy threshold.
4. A new source	Is a major source at startup	Upon startup or April 21, 2003, whichever is later.
5. A new source	Is an area source at startup and becomes a major source.	Immediately upon becoming a major source.
6. A new source, and emits less than 100 tpy of organic HAP from the combination of all open molding, centrifugal casting, continuous lamination/casting, pultrusion, SMC and BMC manufacturing, and mixing operations at the time of initial compliance with this subpart.	Subsequently increases its actual organic HAP emissions to 100 tpy or more from the combination of these operations, which requires that the facility must now meet the standards in §63.5805(d).	3 years from the date that your semi-annual compliance report indicates your facility meets or exceeds the 100 tpy threshold.

TABLE 3 TO SUBPART WWWW OF PART 63.—ORGANIC HAP EMISSIONS LIMITS FOR EXISTING OPEN MOLDING SOURCES, NEW OPEN MOLDING SOURCES EMITTING LESS THAN 100 TPY OF HAP, AND NEW AND EXISTING CENTRIFUGAL CASTING AND CONTINUOUS LAMINATION/CASTING SOURCES THAT EMIT LESS THAN 100 TPY OF HAP

[As required in §§ 63.5796, 63.5805 (a) through (c) and (g), 63.5810(a), (b), and (d), 63.5820(c), 63.5830, 63.5835(a), 63.5895(c) and (d), 63.5900(a)(2), and 63.5915(c), you must meet the appropriate organic HAP emissions limits in the following table:]

If your operation type is . . .	And you use . . .	Your organic HAP emissions limit is [1] . . .	And the highest organic HAP content for a compliant resin or gel coat is [2] . . .
1. Open molding—corrosion-resistant and/or high strength (CR/HS).	a. Mechanical resin application	112 lb/ton	46.2 with nonatomized resin application.
	b. Filament application	171 lb/ton	42.0.
	c. Manual resin application	123 lb/ton	40.0.
2. Open molding—non-CR/HS	a. Mechanical resin application	87 lb/ton	38.4 with nonatomized resin application.
	b. Filament application	188 lb/ton	45.0.
	c. Manual resin application	87 lb/ton	33.6.
3. Open molding—tooling	a. Mechanical resin application	254 lb/ton	43.0 with atomized application, 91.4 with nonatomized application.
	b. Manual resin application	157 lb/ton	45.9.
4. Open molding—low-flame spread/low-smoke products.	a. Mechanical resin application	497 lb/ton	60.0.
	b. Filament application	270 lb/ton	60.0.
	c. Manual resin application	238 lb/ton	60.0.
5. Open molding—shrinkage controlled resins.	a. Mechanical resin application	354 lb/ton	50.0.
	b. Filament application	215 lb/ton	50.0.
	c. Manual resin application	180 lb/ton	50.0.
6. Open molding—gel coat [3]	a. Tooling gel coating	437 lb/ton	40.0.
	b. White/off white pigmented gel coating.	267 lb/ton	30.0.
	c. All other pigmented gel coating	377 lb/ton	37.0.
	d. CR/HS or high performance gel coat.	605 lb/ton	48.0.
	e. Fire retardant gel coat	854 lb/ton	60.0.
	f. Clear production gel coat	522 lb/ton	44.0.

TABLE 3 TO SUBPART WWWW OF PART 63.—ORGANIC HAP EMISSIONS LIMITS FOR EXISTING OPEN MOLDING SOURCES, NEW OPEN MOLDING SOURCES EMITTING LESS THAN 100 TPY OF HAP, AND NEW AND EXISTING CENTRIFUGAL CASTING AND CONTINUOUS LAMINATION/CASTING SOURCES THAT EMIT LESS THAN 100 TPY OF HAP—Continued

[As required in §§ 63.5796, 63.5805 (a) through (c) and (g), 63.5810(a), (b), and (d), 63.5820(c), 63.5830, 63.5835(a), 63.5895(c) and (d), 63.5900(a)(2), and 63.5915(c), you must meet the appropriate organic HAP emissions limits in the following table:]

If your operation type is . . .	And you use . . .	Your organic HAP emissions limit is [1] . . .	And the highest organic HAP content for a compliant resin or gel coat is [2] . . .
7. Centrifugal casting—CR/HS [4] [5] ..	N/A	25 lb/ton	48.0.
8. Centrifugal casting—non-CR/HS [4] [5].	N/A	20 lb/ton	37.5.
9. Pultrusion [6]	N/A	Reduce total organic HAP emissions by at least 60 weight percent.	NA.
10. Continuous lamination/casting	N/A	Reduce total organic HAP emissions by at least 58.5 weight percent or not exceed a organic HAP emissions limit of 15.7 lbs of organic HAP per ton of neat resin plus and neat gel coat plus.	NA.

Footnotes to Table 3

[1] Organic HAP emissions limits for open molding and centrifugal casting are expressed as lb/ton. You must be at or below these values based on a 12-month rolling average.

[2] A compliant resin or gel coat means that if its organic HAP content is used to calculate an organic HAP emissions factor, the factor calculated does not exceed the appropriate organic HAP emissions limit shown in the table.

[3] These limits are for spray application of gel coat. Manual gel coat application must be included as part of spray gel coat application for compliance purposes using the same organic HAP emissions factor equation and organic HAP emissions limit. If you only apply gel coat with manual application, treat the manually applied gel coat as if it were applied with atomized spray for compliance determinations.

[4] Centrifugal casting operations where the mold is not vented during spinning and cure are considered to be closed molding and are not subject to any emissions limit. Centrifugal casting operations where the mold is not vented during spinning and cure, and the resin is applied to the open centrifugal casting mold using mechanical or manual open molding resin application techniques are considered to be open molding operations and the appropriate open molding emission limits apply.

[5] Centrifugal casting operations where the mold is vented during spinning and the resin is applied to the open centrifugal casting mold using mechanical or manual open molding resin application techniques, use the appropriate centrifugal casting emission limit to determine compliance. Calculate your emission factor using the appropriate centrifugal casting emission factor in Table 1 to this subpart, or a site specific emission factor as discussed in § 63.5796.

[6] Pultrusion machines that produce parts with 1000 or more reinforcements and a cross sectional area of 60 inches or more are not subject to this requirement. Their requirement is the work practice of air flow management which is described in Table 4 to this subpart.

TABLE 4 TO SUBPART WWWW OF PART 63.—WORK PRACTICE STANDARDS

[As required in §§ 63.5805 (a) through (d) and (g), 63.5835(a), 63.5900(a)(3), 63.5910(c)(5), and 63.5915(d), you must meet the appropriate work practice standards in the following table:]

For . . .	You must . . .
1. A new or existing closed molding operation using compression/injection molding.	Uncover, unwrap or expose only one charge per mold cycle per compression/injection molding machine. For machines with multiple molds, one charge means sufficient material to fill all molds for one cycle. For machines with robotic loaders, no more than one charge may be exposed prior to the loader. For machines fed by hoppers, sufficient material may be uncovered to fill the hopper. Hoppers must be closed when not adding materials. Materials may be uncovered to feed to slitting machines. Materials must be recovered after slitting.
2. A new or existing cleaning operation	Not use cleaning solvents that contain HAP, except that styrene may be used as a cleaner in closed systems, and organic HAP containing cleaners may be used to clean cured resin from application equipment. Application equipment includes any equipment that directly contacts resin.
3. A new or existing materials HAP-containing materials storage operation.	Keep containers that store HAP-containing materials closed or covered except during the addition or removal of materials. Bulk HAP-containing materials storage tanks may be vented as necessary for safety.
4. An existing or new SMC manufacturing operation.	Close or cover the resin delivery system to the doctor box on each SMC manufacturing machine. The doctor box itself may be open.
5. An existing or new SMC manufacturing operation.	Use a nylon containing film to enclose SMC.
6. An existing or new mixing or BMC manufacturing operation.	Use mixer covers with no visible gaps present in the mixer covers, except that gaps of up to 1 inch are permissible around mixer shafts and any required instrumentation.
7. An existing mixing or BMC manufacturing operation.	Close any mixer vents when actual mixing is occurring, except that venting is allowed during addition of materials, or as necessary prior to adding materials or opening the cover for safety.
8. A new or existing mixing or BMC manufacturing operation [1].	Keep the mixer covers closed while actual mixing is occurring except when adding materials or changing covers to the mixing vessels.

TABLE 4 TO SUBPART WWWW OF PART 63.—WORK PRACTICE STANDARDS—Continued

[As required in §§ 63.5805 (a) through (d) and (g), 63.5835(a), 63.5900(a)(3), 63.5910(c)(5), and 63.5915(d), you must meet the appropriate work practice standards in the following table:]

For . . .	You must . . .
9. A new or existing pultrusion operation manufacturing parts with 1,000 or more reinforcements and a cross section area of 60 square inches or more that is not subject to the 95 percent organic HAP emission reduction requirement.	i. Not allow vents from the building ventilation system, or local or portable fans to blow directly on or across the wet-out area(s), ii. Not permit point suction of ambient air in the wet-out area(s) unless that air is directed to a control device, iii. Use devices such as deflectors, baffles, and curtains when practical to reduce air flow velocity across the wet-out area(s), iv. Direct any compressed air exhausts away from resin and wet-out area(s), v. convey resin collected from drip-off pans or other devices to reservoirs, tanks, or sumps via covered troughs, pipes, or other covered conveyance that shields the resin from the ambient air, vi. Cover all reservoirs, tanks, sumps, or HAP-containing materials storage vessels except when they are being charged or filled, and vii. Cover or shield from ambient air resin delivery systems to the wet-out area(s) from reservoirs, tanks, or sumps where practical.

[1] Containers of 5 gallons or less may be open when active mixing is taking place, or during periods when they are in process (*i.e.*, they are actively being used to apply resin). For polymer casting mixing operations, containers with a surface area of 500 square inches or less may be open while active mixing is taking place.

TABLE 5 TO SUBPART WWWW OF PART 63.—ALTERNATIVE ORGANIC HAP EMISSIONS LIMITS FOR OPEN MOLDING, CENTRIFUGAL CASTING, AND SMC MANUFACTURING OPERATIONS WHERE THE STANDARD IS BASED ON A 95 PERCENT REDUCTION REQUIREMENT

[As specified in §§ 63.5796, 63.5805(b) and (d), 63.5810(a) and (b), 63.5835(a), 63.5895(c), 63.5900(a)(2), and 63.5915(c), as an alternative to the 95 percent organic HAP emissions reductions requirement, you may meet the appropriate organic HAP emissions limits in the following table:]

If your operation type is . . .	And you use . . .	LYour organic HAP emissions limit is a [1] . . .
1. Open molding—corrosion-resistant and/or high strength (CR/HS).	a. Mechanical resin application	6 lb/ton.
	b. Filament application	9 lb/ton.
	c. Manual resin application	7 lb/ton.
2. Open molding—non-CR/HS	a. mechanical resin application	13 lb/ton.
	b. Filament application	10 lb/ton.
	c. Manual resin application	5 lb/ton.
3. Open molding—tooling	a. Mechanical resin application	13 lb/ton.
	b. Manual resin application	8 lb/ton.
4. Open molding—low flame spread/low smoke products	a. Mechanical resin application	25 lb/ton.
	b. Filament application	14 lb/ton.
	c. Manual resin application	12 lb/ton.
5. Open molding—shrinkage controlled resins	a. Mechanical resin application	18 lb/ton.
	b. Filament application	11 lb/ton.
	c. Manual resin application	9 lb/ton.
6. Open molding—gel coat [2]	a. Tooling gel coating	22 lb/ton.
	b. White/off white pigmented gel coating	22 lb/ton.
	c. All other pigmented gel coating	19 lb/ton.
	d. CR/HS or high performance gel coat	31 lb/ton.
	e. Fire retardant gel coat	43 lb/ton.
	f. Clear production gel coat	27 lb/ton.
7. Centrifugal casting—CR/HS [3] [4]	A vent system that moves heated air through the mold	27 lb/ton.
8. Centrifugal casting—non-CR/HS [3] [4]	A vent system that moves heated air through the mold	21 lb/ton.
7. Centrifugal casting—CR/HS [3] [4]	A vent system that moves ambient air through the mold	2 lb/ton.
8. Centrifugal casting—non-CR/HS [3] [4]	A vent system that moves ambient air through the mold	1 lb/ton.
9. SMC Manufacturing	N/A	2.4 lb/ton.

[1] Organic HAP emissions limits for open molding and centrifugal casting expressed as lb/ton are calculated using the equations shown in Table 1 to this subpart. You must be at or below these values based on a 12-month rolling average.

[2] These limits are for spray application of gel coat. Manual gel coat application must be included as part of spray gel coat application for compliance purposes using the same organic HAP emissions factor equation and organic HAP emissions limit. If you only apply gel coat with manual application, treat the manually applied gel coat as if it were applied with atomized spray for compliance determinations.

[3] Centrifugal casting operations where the mold is not vented during spinning and cure are considered to be closed molding and are not subject to any emissions limit. Centrifugal casting operations where the mold is not vented during spinning and cure, and the resin is applied to the open centrifugal casting mold using mechanical or manual open molding resin application techniques are considered to be open molding operations and the appropriate open molding emission limits apply.

[4] Centrifugal casting operations where the mold is vented during spinning and the resin is applied to the open centrifugal casting mold using mechanical or manual open molding resin application techniques, use the appropriate centrifugal casting emission limit to determine compliance. Calculate your emission factor using the appropriate centrifugal casting emission factor in Table 1 to this subpart, or a site specific emission factor as discussed in § 63.5796.

TABLE 6 TO SUBPART WWWW OF PART 63—BASIC REQUIREMENTS FOR PERFORMANCE TESTS, PERFORMANCE EVALUATIONS, AND DESIGN EVALUATIONS FOR NEW AND EXISTING SOURCES USING ADD-ON CONTROL DEVICES

[As required in § 63.5850 you must conduct performance tests, performance evaluations, and design evaluation according to the requirements in the following table:]

For . . .	You must . . .	Using . . .	According to the following requirements . . .
1. Each enclosure used to collect and route organic HAP emissions to an add-on control device that is a PTE.	Meet the requirements for a PTE	EPA method 204 of appendix M of 40 CFR part 51.	Enclosures that meet the requirements of EPA Method 204 of appendix M of 40 CFR part 51 for a PTE are assumed to have a capture efficiency of 100%. Note that the criteria that all access doors and windows that are not treated as natural draft openings shall be closed during routine operation of the process is not intended to require that these doors and windows be closed at all times. It means that doors and windows must be closed any time that you are not actually moving parts or equipment through them. Also, any styrene retained in hollow parts and liberated outside the PTE is not considered to be a violation of the EPA Method 204 criteria.
2. Each enclosure used to collect and route organic HAP emissions to an add-on control device that is not a PTE.	a. Determine the capture efficiency of each enclosure used to capture organic HAP emissions sent to an add-on control device.	i. EPA methods 204B through E of appendix M of 40 CFR part 51, or	(1) Enclosures that do not meet the requirements for a PTE must determine the capture efficiency by constructing a temporary total enclosure according to the requirements of EPA Method 204 of appendix M of 40 CFR part 51 and measuring the mass flow rates of the organic HAP in the exhaust streams going to the atmosphere and to the control device. Test runs for EPA Methods 204B through E of appendix M of 40 CFR part 51 must be at least 3 hours.
		ii. An alternative test method that meets the requirements in 40 CFR part 51, appendix M.	(1) The alternative test method must the data quality objectives and lower confidence limit approaches for alternative capture efficiency protocols requirements contained in 40 CFR part 63 subpart KK, appendix A.
3. Each control device used to comply with a percent reduction requirement, or a organic HAP emissions limit.	Determine the control efficiency of each control device used to control organic HAP emissions.	The test methods specified in § 63.5850 to this subpart.	Testing and evaluation requirements are contained in 40 CFR part 63, subpart SS, and § 63.5850 to this subpart.
4. Determining organic HAP emission factors for any operation.	Determine the mass organic HAP emissions rate.	The test methods specified in § 63.5850 to this subpart.	Testing and evaluation requirements are contained in 40 CFR part 63, subpart SS, and § 63.5850 to this subpart.

TABLE 7 TO SUBPART WWWW OF PART 63.—OPTIONS ALLOWING USE OF THE SAME RESIN ACROSS DIFFERENT OPERATIONS THAT USE THE SAME RESIN TYPE

[As required in §§ 63.5810(a) through (d), 63.5835(a), 63.5895(c), and 63.5900(a)(2), when electing to use the same resin(s) for multiple resin application methods you may use any resin(s) with an organic HAP contents less than or equal to the values shown in the following table, or any combination of resins whose weighted average organic HAP content based on a 12-month rolling average is less than or equal to the values shown the following table:]

If your facility has the following resin type and application method . . .	The highest resin weight percent organic HAP content, or weighted average weight percent organic HAP content, you can use for . . .	Is . . .
1. CR/HS resins, centrifugal casting	a. CR/HS mechanical	48.0
	b. CR/HS filament application	48.0
	c. CR/HS manual	48.0
2. CR/HS resins, nonatomized mechanical	a. CR/HS filament application	46.2
	b. CR/HS manual	46.2
3. CR/HS resins, filament application	CR/HS manual	42.0
4. Non-CR/HS resins, filament application	a. non-CR/HS mechanical	45.0
	b. non-CR/HS manual	45.0
	c. non-CR/HS centrifugal casting	45.0
5. Non-CR/HS resins, nonatomized mechanical	a. Non-CR/HS manual	38.4
	b. non-CR/HS centrifugal casting	38.4
6. Non-CR/HS resins, centrifugal casting	Non-CR/HS manual	37.5
7. Tooling resins, nonatomized mechanical	Tooling manual	91.4
8. Tooling resins, manual	Tooling atomized mechanical	45.9

TABLE 8 TO SUBPART WWWW OF PART 63.—INITIAL COMPLIANCE WITH ORGANIC HAP EMISSIONS LIMITS

[As required in § 63.5860(a), you must demonstrate initial compliance with organic HAP emissions limits as specified in the following table:]

For . . .	That must meet the following organic HAP emissions limit . . .	You have demonstrated initial compliance if . . .
1. Open molding and centrifugal casting operations.	a. An organic HAP emissions limit shown in Tables 3 or 5 to this subpart, or an organic HAP content limit shown in Table 7 to this subpart.	i. You have met the appropriate organic HAP emissions limits for these operations as calculated using the procedures in § 63.5810 on a 12-month rolling average 1 year after the appropriate compliance date, or ii. You demonstrate by using the appropriate values in Tables 3, or 7 to this subpart that all resins and gel coats considered individually meet the appropriate organic HAP contents, or iii. You demonstrate by using the appropriate values in Table 7 to this subpart that the weighted average of all resins and gel coats for each resin type and application method meet the appropriate organic HAP contents.
2. Open molding, centrifugal casting, continuous lamination/casting, SMC and BMC manufacturing, and mixing operations.	a. Reduce total organic HAP emissions, by at least 95 percent by weight.	Total organic HAP emissions, based on the results of the capture efficiency and destruction efficiency testing specified in Table 6 to this subpart, are reduced by at least 95 percent by weight.
3. Continuous lamination/casting operations	a. Reduce total organic HAP emissions by at least 58.5 weight percent, or.	Total organic HAP emissions, based on the results of the capture efficiency and destruction efficiency testing specified in Table 6 to this subpart and the calculation procedures specified in §§ 63.5865 through 63.5890, are reduced by at least 58.5 percent by weight.
	b. Not exceed an HAP emissions limit of 15.7 lbs of organic HAP per ton of neat resin plus and neat gel coat plus.	Total organic HAP emissions, based on the results of the capture efficiency and destruction efficiency testing specified in Table 6 to this subpart and the calculation procedures specified in §§ 63.5865 through 63.5890, do not exceed 15.7 lbs of organic HAP per ton of neat resin plus and neat gel coat plus.

TABLE 8 TO SUBPART WWWW OF PART 63.—INITIAL COMPLIANCE WITH ORGANIC HAP EMISSIONS LIMITS—Continued

[As required in § 63.5860(a), you must demonstrate initial compliance with organic HAP emissions limits as specified in the following table:]

For . . .	That must meet the following organic HAP emissions limit . . .	You have demonstrated initial compliance if . . .
4. Continuous lamination/casting operations	a. Reduce total organic HAP emissions by at least 95 weight percent or	Total organic HAP emissions, based on the results of the capture efficiency and destruction efficiency testing specified in Table 6 to this subpart, and the calculation procedures specified in §§ 63.5865 through 63.5890, are reduced by at least 95 percent by weight.
	b. Not exceed an organic HAP emissions limit of 1.47 lbs of organic HAP per ton of neat resin plus and neat gel coat plus.	Total organic HAP emissions, based on the results of the capture efficiency and destruction efficiency testing specified in Table 6 and the calculation procedures specified in §§ 63.5865 through 63.5890, do not exceed 1.47 lbs of organic HAP per ton of neat resin plus and neat gel coat plus.
5. Pultrusion operations	a. Reduce total organic HAP emissions by at least 60 percent by weight.	i. Total organic HAP emissions, based on the results of the capture efficiency and add-on control device destruction efficiency testing specified in Table 6 to this subpart, are reduced by at least 60 percent by weight and ii. As part of the notification of initial compliance status, the owner/operator submits a certified statement that all pultrusion lines not controlled with an add-on control device are using direct die injection, preform injection, and/or wet-area enclosures that meet the criteria of § 63.5830.
6. Pultrusion operations	a. Reduce total organic HAP emissions by at least 95 percent by weight.	i. Total organic HAP emissions, based on the results of the capture efficiency and add-on control device destruction efficiency testing specified in Table 6 to this subpart, are reduced by at least 95 percent by weight.

TABLE 9 TO SUBPART WWWW OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS

[As required in § 63.5860(a), you must demonstrate initial compliance with work practice standards as specified in the following table:]

For . . .	That must meet the following standard . . .	You have demonstrated initial compliance if . . .
1. A new or existing closed or molding operation using compression/injection molding.	Uncover, unwrap or expose only one charge per mold cycle per compression/injection molding machine. For machines with multiple molds, one charge means sufficient material to fill all molds for one cycle. For machines with robotic loaders, no more than one charge may be exposed prior to the loader. For machines fed by hoppers, sufficient material may be uncovered to fill the hopper. Hoppers must be closed when not adding materials. Materials may be uncovered to feed to slitting machines. Materials must be recovered after slitting.	The owner operator submits a certified statement in the notice of compliance status that only one charge is uncovered, unwrapped or exposed per mold cycle per compression/injection molding machine, or prior to the loader, hoppers are closed except when adding materials, and materials are recovered after slitting.
2. A new or existing cleaning operation	Not use cleaning solvents that contain HAP, except that styrene may be used in closed systems, and organic HAP containing materials may be used to clean cured resin from application equipment. Application equipment includes any equipment that directly contacts resin between storage and applying resin to the mold or reinforcement.	The owner or operator submits a certified statement in the notice of compliance status that all cleaning materials, except styrene contained in closed systems, or materials used to clean cured resin from application equipment contain no HAP.
3. A new or existing materials HAP-containing materials storage operation.	Keep containers that store HAP-containing materials closed or covered except during the addition or removal of materials. Bulk HAP-containing materials storage tanks may be vented as necessary for safety.	The owner or operator submits a certified statement in the notice of compliance status that all HAP-containing storage containers are kept closed or covered except when adding or removing materials, and that any bulk storage tanks are vented only as necessary for safety.

TABLE 9 TO SUBPART WWWW OF PART 63.—INITIAL COMPLIANCE WITH WORK PRACTICE STANDARDS—Continued

[As required in § 63.5860(a), you must demonstrate initial compliance with work practice standards as specified in the following table:]

For . . .	That must meet the following standard . . .	You have demonstrated initial compliance if . . .
4. An existing or new SMC manufacturing operation.	Close or cover the resin delivery system to the doctor box on each SMC manufacturing machine. The doctor box itself may be open.	The owner or operator submits a certified statement in the notice of compliance status that the resin delivery system is closed or covered.
5. An existing or new SMC manufacturing operation.	Use a nylon containing film to enclose SMC.	The owner or operator submits a certified statement in the notice of compliance status that a nylon-containing film is used to enclose SMC.
6. An existing or new mixing or BMC manufacturing operation.	Use mixer covers with no visible gaps present in the mixer covers, except that gaps of up to 1 inch are permissible around mixer shafts and any required instrumentation.	The owner or operator submits a certified statement in the notice of compliance status that mixer covers are closed during mixing except when adding materials to the mixers, and that gaps around mixer shafts and required instrumentation are less than 1 inch.
7. An existing mixing or BMC manufacturing operation.	Not actively vent mixers to the atmosphere while the mixing agitator is turning, except that venting is allowed during addition of materials, or as necessary prior to adding materials for safety.	The owner or operator submits a certified statement in the notice of compliance status that mixers are not actively vented to the atmosphere when the agitator is turning, except when adding materials or as necessary for safety.
8. A new or existing mixing or BMC manufacturing operation.	Keep the mixer covers closed during mixing except when adding materials to the mixing vessels.	The owner or operator submits a certified statement in the notice of compliance status that mixers closed except when adding materials to the mixing vessels.
9. A new or existing pultrusion operation manufacturing parts with 1000 or more reinforcements and a cross section area of 60 square inches or more that is not subject to the 95 percent organic HAP emission reduction requirement.	i. Not allow vents from the building ventilation system, or local or portable fans to blow directly on or across the wet-out area(s), ii. not permit point suction of ambient air in the wet-out area(s) unless that air is directed to a control device, iii. use devices such as deflectors, baffles, and curtains when practical to reduce air flow velocity across wet-out area(s), iv. direct any compressed air exhausts away from resin and wet-out area(s), v. convey resin collected from drip-off pans or other devices to reservoirs, tanks, or sumps via covered troughs, pipes, or other covered conveyance that shields the resin from the ambient air, vi. cover all reservoirs, tanks, sumps, or HAP-containing materials storage vessels except when they are being charged or filled, and vii. cover or shield from ambient air resin delivery systems to the wet-out area(s) from reservoirs, tanks, or sumps where practical.	The owner or operator submits a certified statement in the notice of compliance status that they have complied with all the requirements listed in the 9.i through 9.vii.

TABLE 10 TO SUBPART WWWW OF PART 63.—DATA REQUIREMENTS FOR NEW AND EXISTING CONTINUOUS LAMINATION LINES AND CONTINUOUS CASTING LINES COMPLYING WITH A PERCENT REDUCTION LIMIT ON A PER LINE BASIS

[As required in § 63.5865(a), in order to comply with a percent reduction limit for continuous lamination lines and continuous casting lines you must determine the data in the following table:]

For each line where the wet-out area . . .	And the oven . . .	You must determine . . .
1. Has an enclosure that is not a permanent total enclosure (PTE) and the captured organic HAP emissions are controlled by an add-on control device.	a. Is uncontrolled	i. Annual uncontrolled wet-out area organic HAP emissions, ii. Annual controlled wet-out area organic HAP emissions, iii. Annual uncontrolled oven organic HAP emissions, iv. The capture efficiency of the wet-out area enclosure, v. The destruction efficiency of the add-on control device, and vi. The amount of neat resin plus and neat gel coat plus applied.

TABLE 10 TO SUBPART WWWW OF PART 63.—DATA REQUIREMENTS FOR NEW AND EXISTING CONTINUOUS LAMINATION LINES AND CONTINUOUS CASTING LINES COMPLYING WITH A PERCENT REDUCTION LIMIT ON A PER LINE BASIS—Continued

[As required in § 63.5865(a), in order to comply with a percent reduction limit for continuous lamination lines and continuous casting lines you must determine the data in the following table:]

For each line where the wet-out area . . .	And the oven . . .	You must determine . . .
2. Has an enclosure that is a PTE and the captured organic HAP emissions are controlled by an add-on control device.	a. Is uncontrolled	i. Annual uncontrolled wet-out area organic HAP emissions, ii. Annual controlled wet-out area organic HAP emissions, iii. Annual uncontrolled oven organic HAP emissions, iv. That the wet-out area enclosure meets the requirements of EPA Method 204 of appendix M to 40 CFR part 51 for a PTE, v. The destruction efficiency of the add-on control device, and vi. The amount of neat resin plus and neat gel coat plus applied.
3. Is uncontrolled	a. Is controlled by an add-on control device	i. Annual uncontrolled wet-out area organic HAP emissions, ii. Annual uncontrolled oven organic HAP emissions, iii. Annual controlled oven organic HAP emissions, iv. The capture efficiency of the oven, v. the destruction efficiency of the add-on control device, and vi. the amount of neat resin plus and neat gel coat plus applied.
4. Has an enclosure that is not a PTE and the captured organic HAP emissions are controlled by an add-on control device.	a. Is controlled by an add-on control device	i. Annual uncontrolled wet-out area organic HAP emissions, ii. Annual controlled wet-out area organic HAP emissions, iii. Annual uncontrolled oven organic HAP emissions, iv. Annual controlled oven organic HAP emissions; v. The capture efficiency of the wet-out area enclosure, vi. Inlet organic HAP emissions to the add-on control device, vii. Outlet organic HAP emissions from the add-on control device, and viii. The amount of neat resin plus and neat gel coat plus applied.
5. Has an enclosure that is a PTE and the captured organic HAP emissions are controlled by an add-on control device.	a. Is controlled by an add-on control device	i. That the wet-out area enclosure meets the requirements of EPA Method 204 of appendix M to 40 CFR part 51 for a PTE, ii. The capture efficiency of the oven, and iii. The destruction efficiency of the add-on control device.

TABLE 11 TO SUBPART WWWW OF PART 63.—DATA REQUIREMENTS FOR NEW AND EXISTING CONTINUOUS LAMINATION AND CONTINUOUS CASTING LINES COMPLYING WITH A PERCENT REDUCTION LIMIT OR A LBS/TON LIMIT ON AN AVERAGING BASIS

[As required in § 63.5865, in order to comply with a percent reduction limit or a lbs/ton limit on an averaging basis for continuous lamination lines and continuous casting lines you must determine the data in the following table:]

For each . . .	That . . .	You must determine . . .
1. Wet-out area	Is uncontrolled	Annual uncontrolled wet-out area organic HAP emissions.
2. Wet-out area	a. Has an enclosure that is not a PTE	i. The capture efficiency of the enclosure, and ii. Annual organic HAP emissions that escape the enclosure.
3. Wet-out area	Has an enclosure that is a PTE	That the enclosure meets the requirements of EPA Method 204 of appendix M to 40 CFR part 51 for a PTE.
4. Oven	Is uncontrolled	Annual uncontrolled oven organic HAP emissions.

TABLE 11 TO SUBPART WWWW OF PART 63.—DATA REQUIREMENTS FOR NEW AND EXISTING CONTINUOUS LAMINATION AND CONTINUOUS CASTING LINES COMPLYING WITH A PERCENT REDUCTION LIMIT OR A LBS/TON LIMIT ON AN AVERAGING BASIS—Continued

[As required in § 63.5865, in order to comply with a percent reduction limit or a lbs/ton limit on an averaging basis for continuous lamination lines and continuous casting lines you must determine the data in the following table:]

For each . . .	That . . .	You must determine . . .
5. Line	a. Is controlled or uncontrolled	i. The amount of neat resin plus applied, and ii. The amount of neat gel coat plus applied.
6. Add-on control device		i. Total annual inlet organic HAP emissions, and total annual outlet organic HAP. emissions.

TABLE 12 TO SUBPART WWWW OF PART 63.—DATA REQUIREMENTS FOR NEW AND EXISTING CONTINUOUS LAMINATION LINES AND CONTINUOUS CASTING LINES COMPLYING WITH A LBS/TON ORGANIC HAP EMISSIONS LIMIT ON A PER LINE BASIS

[As required in § 63.5865(b), in order to comply with a lbs/ton organic HAP emissions limit for continuous lamination lines and continuous casting lines you must determine the data in the following table:]

For each line where the wet- out area . . .	And the oven . . .	You must determine . . .
1. Is uncontrolled	a. Is uncontrolled	i. Annual uncontrolled wet-out area organic HAP emissions, ii. Annual uncontrolled oven organic HAP emissions, and iii. Annual neat resin plus and neat gel coat plus applied.
2. Has an enclosure that is not a PTE and the captured organic HAP emissions are controlled by an add-on control device.	a. Is uncontrolled	i. Annual uncontrolled wet-out area organic HAP emissions, ii. Annual controlled wet-out area organic HAP emissions, iii. Annual uncontrolled oven organic HAP emissions, iv. The capture efficiency of the wet-out area enclosure, v. The destruction efficiency of the add-on control device, and vi. The amount of neat resin plus and neat gel coat plus applied.
3. Has an enclosure that is a PTE, and the captured organic HAP emissions are controlled by an add-on control device.	a. Is uncontrolled	i. Annual uncontrolled wet-out area organic HAP emissions, ii. Annual controlled wet-out area organic HAP emissions, iii. Annual uncontrolled oven organic HAP emissions, iv. That the wet-out area enclosure meets the requirements of EPA Method 204 of appendix M to 40 CFR part 51 for a PTE, v. The destruction efficiency of the add-on control device, and vi. The amount of neat resin plus and neat gel coat plus applied.
4. Is uncontrolled	a. Is controlled by an add-on control device	i. Annual uncontrolled wet-out area organic HAP emissions, ii. Annual uncontrolled oven organic HAP emissions, iii. Annual controlled oven organic HAP emissions, iv. The capture efficiency of the oven, v. The destruction efficiency of the add-on control device, and vi. The amount of neat resin plus and neat gel coat plus applied.
5. Has an enclosure that is not a PTE and the captured organic HAP emissions are controlled by an add-on control device.	a. Is controlled by an add-on control device	i. Annual uncontrolled wet-out area organic HAP emissions, ii. Annual controlled wet-out area organic HAP emissions, iii. Annual uncontrolled oven organic HAP emissions,

TABLE 12 TO SUBPART WWWW OF PART 63.—DATA REQUIREMENTS FOR NEW AND EXISTING CONTINUOUS LAMINATION LINES AND CONTINUOUS CASTING LINES COMPLYING WITH A LBS/TON ORGANIC HAP EMISSIONS LIMIT ON A PER LINE BASIS—Continued

[As required in § 63.5865(b), in order to comply with a lbs/ton organic HAP emissions limit for continuous lamination lines and continuous casting lines you must determine the data in the following table:]

For each line where the wet- out area . . .	And the oven . . .	You must determine . . .
		iv. Annual controlled oven organic HAP emissions, v. The capture efficiency of the wet-out area enclosure, vi. The capture efficiency of the oven, vii. The destruction efficiency of the add-on control device, and viii. The amount of neat resin plus and neat gel coat plus applied.
6. Has an enclosure that is a PTE, and the captured organic HAP emissions are controlled by add-on control device.	a. Is controlled by an add-on control device ...	i. That the wet-out area enclosure meets the requirements of EPA Method 204 of appendix M to 40 CFR part 51 for a PTE, ii. The capture efficiency of the oven, iii. Inlet organic HAP emissions to the an add-on control device, and iv. Outlet organic HAP emissions from the add-on control device.

TABLE 13 TO SUBPART WWWW OF PART 63.—APPLICABILITY AND TIMING OF NOTIFICATIONS

[As required in § 63.5905(a), you must determine the applicable notifications and submit them by the dates shown in the following table:]

If your facility . . .	You must submit . . .	By this date . . .
1. Is an existing source subject to this subpart	An Initial Notification containing the information specified in § 63.9(b)(2).	No later than the dates specified in § 63.9(b)(2).
2. Is a new source subject to this subpart	The notifications specified in § 63.9(b)(4) and (5).	No later than the dates specified § 63.9(b)(4) and (5).
3. Qualifies for a compliance extension as specified in § 63.9(c).	A request for a compliance extension as specified in § 63.9(c).	No later than the dates specified in § 63.6(i).
4. Is complying with organic HAP emissions limit averaging provisions.	A Notification of Compliance Status as specified in § 63.9(h).	No later than 1 year plus 30 days after your facility's compliance date.
5. Is complying with organic HAP content limits, application equipment requirements, or organic HAP emissions limit other than organic HAP emissions limit averaging.	A Notification of Compliance Status as specified in § 63.9(h).	No later than 30 calendar days after your facility's compliance date.
6. Is complying by using an add-on control device.	a. A notification of intent to conduct a performance test as specified in § 63.9(e).	No later than the date specified in § 63.9(e).
	b. A notification of the date for the CMS performance evaluation as specified in § 63.9(g).	The date of submission of notification of intent to conduct a performance test.
	c. A Notification of Compliance Status as specified in § 63.9(h).	No later than 60 calendar days after the completion of the add-on control device performance test and CMS performance evaluation.

TABLE 14 TO SUBPART WWWW OF PART 63.—REQUIREMENTS FOR REPORTS

[As required in § 63.5910(a), (b), (g), and (h), you must submit reports on the schedule shown in the following table:]

You must submit a(n)	The report must contain . . .	You must submit the report . . .
1. Compliance report	a. A statement that there were no deviations during that reporting period if there were no deviations from any emission limitations (emission limit, operating limit, opacity limit, and visible emission limit) that apply to you and there were no deviations from the requirements for work practice standards in Table 4 to this subpart that apply to you. If there were no periods during which the CMS, including CEMS, and operating parameter monitoring systems, was out of control as specified in § 63.8(c)(7), the report must also contain a statement that there were no periods during which the CMS was out of control during the reporting period.	Semiannually according to the requirements in § 63.5910(b).

TABLE 14 TO SUBPART WWWW OF PART 63.—REQUIREMENTS FOR REPORTS—Continued

[As required in § 63.5910(a), (b), (g), and (h), you must submit reports on the schedule shown in the following table:]

You must submit a(n)	The report must contain . . .	You must submit the report . . .
	b. The information in § 63.5910(d) if you have a deviation from any emission limitation (emission limit, operating limit, or work practice standard) during the reporting period. If there were periods during which the CMS, including CEMS, and operating parameter monitoring systems, was out of control, as specified in § 63.8(c)(7), the report must contain the information in § 63.5910(e).	Semiannually according to the requirements in § 63.5910(b).
	c. The information in § 63.10(d)(5)(i) if you had a startup, shutdown or malfunction during the reporting period, and you took actions consistent with your startup, shutdown, and malfunction plan.	
2. An immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your startup, shutdown, and malfunction plan.	a. Actions taken for the event	By fax or telephone within 2 working days after starting actions inconsistent with the plan.
	b. The information in § 63.10(d)(5)(ii)	By letter within 7 working days after the end of the event unless you have made alternative arrangements with the permitting authority. (§ 63.10(d)(5)(ii)).

TABLE 15 TO SUBPART WWWW OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART WWWW OF PART 63

[As specified in § 63.5925, the parts of the General Provisions which apply to you are shown in the following table:]

The general provisions reference . . .	That addresses . . .	And applies to subpart WWWW of part 63 . . .	Subject to the following additional information . . .
§ 63.1(a)(1)	General applicability of the general provisions.	Yes	Additional terms defined in subpart WWWW of Part 63, when overlap between subparts A and WWWW of Part 63 of this part, subpart WWWW of Part 63 takes precedence.
§ 63.1(a)(2) through (4)	General applicability of the general provisions.	Yes.	
§ 63.1(a)(5)	Reserved	No.	
§ 63.1(a)(6)	General applicability of the general provisions.	Yes.	
§ 63.1(a)(7) through (9)	Reserved	No.	
§ 63.1(a)(10) through (14) ...	General applicability of the general provisions.	Yes.	
§ 63.1(b)(1)	Initial applicability determination	Yes	Subpart WWWW of Part 63 clarifies the applicability in§§ 63.5780 and 63.5785.
§ 63.1(b)(2)	Reserved	No..	
§ 63.1(b)(3)	Record of the applicability determination	Yes.	
§ 63.1(c)(1)	Applicability of this part after a relevant standard has been set under this part.	Yes	Subpart WWWW of Part 63 clarifies the applicability of each paragraph of subpart A to sources subject to subpart WWWW of Part 63.
§ 63.1(c)(2)	Title V operating permit requirement	Yes	All major affected sources are required to obtain a title V operating permit. Area sources are not subject to subpart WWWW of Part 63.
§ 63.1(c)(3) and (4)	Reserved	No.	
§ 63.1(c)(5)	Notification requirements for an area source that increases HAP emissions to major source levels.	Yes.	
§ 63.1(d)	Reserved	No.	
§ 63.1(e)	Applicability of permit program before a relevant standard has been set under this part.	Yes.	
§ 63.2	Definitions	Yes	Subpart WWWW of Part 63 defines terms in § 63.5935. When overlap between subparts A and WWWW of Part 63 occurs, you must comply with the subpart WWWW of Part 63 definitions, which take precedence over the subpart A definitions.

TABLE 15 TO SUBPART WWWW OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART WWWW OF PART 63—Continued

[As specified in § 63.5925, the parts of the General Provisions which apply to you are shown in the following table:]

The general provisions reference . . .	That addresses . . .	And applies to subpart WWWW of part 63 . . .	Subject to the following additional information . . .
§ 63.3	Units and abbreviations	Yes	Other units and abbreviations used in subpart WWWW of Part 63 are defined in subpart WWWW of Part 63.
§ 63.4	Prohibited activities and circumvention	Yes	§ 63.4(a)(3) through (5) is reserved and does not apply.
§ 63.5(a)(1) and (2)	Applicability of construction and reconstruction.	Yes	Existing facilities do not become reconstructed under subpart WWWW of Part 63.
§ 63.5(b)(1)	Relevant standards for new sources upon construction.	Yes	Existing facilities do not become reconstructed under subpart WWWW of Part 63.
§ 63.5(b)(2)	Reserved	No.	
§ 63.5(b)(3)	New construction/reconstruction	Yes	Existing facilities do not become reconstructed under subpart WWWW of Part 63.
§ 63.5(b)(4)	Construction/reconstruction notification	Yes	Existing facilities do not become reconstructed under subpart WWWW of Part 63.
§ 63.5(b)(5)	Reserved	No.	
§ 63.5(b)(6)	Equipment addition or process change	Yes	Existing facilities do not become reconstructed under subpart WWWW of Part 63.
§ 63.5(c)	Reserved	No.	
§ 63.5(d)(1)	General application for approval of construction or reconstruction.	Yes	Existing facilities do not become reconstructed under subpart WWWW of Part 63.
§ 63.5(d)(2)	Application for approval of construction	Yes.	
§ 63.5(d)(3)	Application for approval of reconstruction	No.	
§ 63.5(d)(4)	Additional information	Yes.	
§ 63.5(e)(1) through (5)	Approval of construction or reconstruction.	Yes.	
§ 63.5(f)(1) and (2)	Approval of construction or reconstruction based on prior State preconstruction review.	Yes.	
§ 63.6(a)(1)	Applicability of compliance with standards and maintenance requirements.	Yes.	
§ 63.6(a)(2)	Applicability of area sources that increase HAP emissions to become major sources.	Yes.	
§ 63.6(b)(1) through (5)	Compliance dates for new and reconstructed sources.	Yes	Subpart WWWW of Part 63 clarifies compliance dates in § 63.5800.
§ 63.6(b)(6)	Reserved	No.	
§ 63.6(b)(7)	Compliance dates for new operations or equipment that cause an area source to become a major source.	Yes	New operations at an existing facility are not subject to new source standards.
§ 63.6(c)(1) and (2)	Compliance dates for existing sources	Yes	Subpart WWWW of Part 63 clarifies compliance dates in § 63.5800.
§ 63.6(c)(3) and (4)	Reserved	No.	
§ 63.6(c)(5)	Compliance dates for existing area sources that become major.	Yes	Subpart WWWW of Part 63 clarifies compliance dates in § 63.5800.
§ 63.6(d)	Reserved	No.	
§ 63.6(e)(1) and (2)	Operation & maintenance requirements	Yes.	
§ 63.6(e)(3)	Startup, shutdown, and malfunction plan and recordkeeping.	Yes	Subpart WWWW of Part 63 requires a startup, shutdown, and malfunction plan only for sources using add-on controls.
§ 63.6(f)(1)	Compliance except during periods of startup, shutdown, and malfunction.	No	Subpart WWWW of Part 63 requires compliance during periods of startup, shutdown, and malfunction, except startup, shutdown, and malfunctions for sources using add-on controls.
§ 63.6(f)(2) and (3)	Methods for determining compliance	Yes.	
§ 63.6(g)(1) through (3)	Alternative standard	Yes.	
§ 63.6(h)	Opacity and visible emission Standards	No	Subpart WWWW of Part 63 does not contain opacity or visible emission standards.
§ 63.6(i)(1) through (14)	Compliance extensions	Yes.	

TABLE 15 TO SUBPART WWWW OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART WWWW OF PART 63—Continued

[As specified in § 63.5925, the parts of the General Provisions which apply to you are shown in the following table:]

The general provisions reference . . .	That addresses . . .	And applies to subpart WWWW of part 63 . . .	Subject to the following additional information . . .
§ 63.6(i)(15)	Reserved	No.	
§ 63.6(i)(16)	Compliance extensions	Yes.	
§ 63.6(j)	Presidential compliance exemption	Yes.	
§ 63.7(a)(1)	Applicability of performance testing requirements.	Yes.	
§ 63.7(a)(2)	Performance test dates	No	Subpart WWWW of Part 63initial compliance requirements are in § 63.5840.
§ 63.7(a)(3)	CAA Section 114 authority	Yes.	
§ 63.7(b)(1)	Notification of performance test	Yes.	
§ 63.7(b)(2)	Notification rescheduled performance test.	Yes.	
§ 63.7(c)	Quality assurance program, including test plan.	Yes	Except that the test plan must be submitted with the notification of the performance test.
§ 63.7(d)	Performance testing facilities	Yes.	
§ 63.7(e)	Conditions for conducting performance tests.	Yes	Performance test requirements are contained in § 63.5850. Additional requirements for conducting performance tests for continuous lamination/casting are included in § 63.5870.
§ 63.7(f)	Use of alternative test method	Yes.	
§ 63.7(g)	Performance test data analysis, recordkeeping, and reporting.	Yes.	
§ 63.7(h)	Waiver of performance tests	Yes.	
§ 63.8(a)(1) and (2)	Applicability of monitoring requirements	Yes.	
§ 63.8(a)(3)	Reserved	No.	
§ 63.8(a)(4)	Monitoring requirements when using flares.	Yes.	
§ 63.8(b)(1)	Conduct of monitoring exceptions	Yes.	
§ 63.8(b)(2) and (3)	Multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1)	Compliance with CMS operation and maintenance requirements.	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(c)(2) and (3)	Monitoring system installation	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(c)(4)	CMS requirements	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(c)(5)	Continuous Opacity Monitoring System (COMS) minimum procedures.	No	Subpart WWWW of Part 63 does not contain opacity standards.
§ 63.8(c)(6) through (8)	CMS calibration and periods CMS is out of control.	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(d)	CMS quality control program, including test plan and all previous versions.	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(e)(1)	Performance evaluation of CMS	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(e)(2)	Notification of performance evaluation	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(e)(3) and (4)	CMS requirements/alternatives	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(e)(5)(i)	Reporting performance evaluation results	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§ 63.8(e)(5)(ii)	Results of COMS performance evaluation.	No	Subpart WWWW of Part 63 does not contain opacity standards.
§ 63.8(f)(1) through (3)	Use of an alternative monitoring method	Yes.	
§ 63.8(f)(4)	Request to use an alternative monitoring method.	Yes.	
§ 63.8(f)(5)	Approval of request to use an alternative monitoring method.	Yes.	

TABLE 15 TO SUBPART WWWW OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART WWWW OF PART 63—Continued

[As specified in §63.5925, the parts of the General Provisions which apply to you are shown in the following table:]

The general provisions reference . . .	That addresses . . .	And applies to subpart WWWW of part 63 . . .	Subject to the following additional information . . .
§63.8(f)(6)	Request for alternative to relative accuracy test and associated records.	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§63.8(g)(1) through (5)	Data reduction	Yes.	
§63.9(a)(1) through (4)	Notification requirements and general information.	Yes.	
§63.9(b)(1)	Initial notification applicability	Yes.	
§63.9(b)(2)	Notification for affected source with initial startup before effective date of standard.	Yes.	
§63.9(b)(3)	Reserved	No.	
§63.9(b)(4)(i)	Notification for a new or reconstructed major affected source with initial startup after effective date for which an application for approval of construction or reconstruction is required.	Yes.	
§63.9(b)(4)(ii) through (iv)	Reserved	No.	
§63.9(b)(4)(v)	Notification for a new or reconstructed major affected source with initial startup after effective date for which an application for approval of construction or reconstruction is required.	Yes	Existing facilities do not become reconstructed under subpart WWWW of Part 63.
§63.9(b)(5)	Notification that you are subject to this subpart for new or reconstructed affected source with initial startup after effective date and for which an application for approval of construction or reconstruction is not required.	Yes	Existing facilities do not become reconstructed under subpart WWWW of Part 63.
§63.9(c)	Request for compliance extension	Yes.	
§63.9(d)	Notification of special compliance requirements for new source.	Yes.	
§63.9(e)	Notification of performance test	Yes.	
§63.9(f)	Notification of opacity and visible emissions observations.	No	Subpart WWWW of Part 63 does not contain opacity or visible emission standards.
§63.9(g)(1)	Additional notification requirements for sources using CMS.	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§63.9(g)(2)	Notification of compliance with opacity emission standard.	No	Subpart WWWW of Part 63 does not contain opacity emission standards.
§63.9(g)(3)	Notification that criterion to continue use of alternative to relative accuracy testing has been exceeded.	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§63.9(h)(1) through (3)	Notification of compliance status	Yes.	
§63.9(h)(4)	Reserved	No.	
§63.9(h)(5) and (6)	Notification of compliance status	Yes.	
§63.9(i)	Adjustment of submittal deadlines	Yes.	
§63.9(j)	Change in information provided	Yes.	
§63.10(a)	Applicability of recordkeeping and reporting.	Yes.	
§63.10(b)(1)	Records retention	Yes.	
§63.10(b)(2)(i) through (v)	Records related to startup, shutdown, and malfunction.	Yes	Only applies to facilities that use an add-on control device.
§63.10(b)(2)(vi) through (xi)	CMS records, data on performance tests, CMS performance evaluations, measurements necessary to determine conditions of performance tests, and performance evaluations.	Yes.	
§63.10(b)(2)(xii)	Record of waiver of recordkeeping and reporting.	Yes.	
§63.10(b)(2)(xiii)	Record for alternative to the relative accuracy test.	Yes.	
§63.10(b)(2)(xiv)	Records supporting initial notification and notification of compliance status.	Yes.	
§63.10(b)(3)	Records for applicability determinations	Yes.	
§63.10(c)(1)	CMS records	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.

TABLE 15 TO SUBPART WWWW OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS (SUBPART A) TO SUBPART WWWW OF PART 63—Continued

[As specified in §63.5925, the parts of the General Provisions which apply to you are shown in the following table:]

The general provisions reference . . .	That addresses . . .	And applies to subpart WWWW of part 63 . . .	Subject to the following additional information . . .
§63.10(c)(2) through (4)	Reserved	No.	
§63.10(c)(5) through (8)	CMS records	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§63.10(c)(9)	Reserved	No.	
§63.10(c)(10) through (15)	CMS records	Yes	This section applies if you elect to use a CMS to demonstrate continuous compliance with an emission limit.
§63.10(d)(1)	General reporting requirements	Yes.	
§63.10(d)(2)	Report of performance test results	Yes.	
§63.10(d)(3)	Reporting results of opacity or visible emission observations.	No	Subpart WWWW of Part 63 does not contain opacity or visible emission standards.
§63.10(d)(4)	Progress reports as part of extension of compliance.	Yes.	
§63.10(d)(5)	Startup, shutdown, and malfunction reports.	Yes	Only applies if you use an add-on control device.
§63.10(e)(1) through (3)	Additional reporting requirements for CMS.	Yes	This section applies if you have an add-on control device and elect to use a CEM to demonstrate continuous compliance with an emission limit.
§63.10(e)(4)	Reporting COMS data	No	Subpart WWWW of Part 63 does not contain opacity standards.
§63.10(f)	Waiver for recordkeeping or reporting	Yes.	
§63.11	Control device requirements	Yes	Only applies if you elect to use a flare as a control device.
§63.12	State authority and delegations	Yes.	
§63.13	Addresses of State air pollution control agencies and EPA Regional Offices.	Yes.	
§63.14	Incorporations by reference	Yes.	
§63.15	Availability of information and confidentiality.	Yes.	

Appendix A to Subpart WWWW—Test Method for Determining Vapor Suppressant Effectiveness

1. Scope and Application

1.1 *Applicability.* If a facility is using vapor suppressants to reduce hazardous air pollutant (HAP) emissions, the organic HAP emission factor equations in Table 1 to this subpart require that the vapor suppressant effectiveness factor be determined. The vapor suppressant effectiveness factor is then used as one of the inputs into the appropriate organic HAP emission factor equation. The vapor suppressant effectiveness factor test is not intended to quantify overall volatile emissions from a resin, nor to be used as a stand-alone test for emissions determination. This test is designed to evaluate the performance of film forming vapor suppressant resin additives. The results of this test are used only in combination with the organic HAP emissions factor equations in Table 1 to this subpart to generate emission factors.

1.1.1 The open molding process consists of application of resin and reinforcements to the mold surface, followed by a manual rollout process to consolidate the laminate, and the curing stage where the laminate surface is not disturbed. Emission studies have shown that approximately 50 percent to 55 percent of the emissions occur while the resin is being applied to the mold. Vapor suppressants have little effect during this portion of the lamination process, but can have a significant effect during the curing stage. Therefore, if a suppressant is 100 percent effective, the overall emissions from the process would be reduced by 45 percent to 50 percent, representing the emissions generated during the curing stage. In actual practice, vapor suppressant effectiveness will be less than 100 percent and the test results determine the specific effectiveness in terms of the vapor suppressant effectiveness factor. This factor represents the effectiveness of a specific combination of suppressant additive and resin formulation.

1.1.2 A resin manufacturer may supply a molder with a vapor-suppressed resin, and employ this test to provide the molder with the vapor suppressant effectiveness factor for that combination of resin and vapor suppressant. The factor qualifies the effectiveness of the vapor suppressant when the resin is tested in the specific formulation supplied to the molder. The addition of fillers or other diluents by the molder may impact the effectiveness of the vapor suppressant. The formulation, including resin/glass ratio and filler content, used in the test should be similar to the formulation to be used in production. The premise of this method is to compare laminate samples made with vapor suppressant additive and made without the additive. The difference in emissions between the two yields the vapor suppressant effectiveness factor.

1.1.3 The method uses a mass balance determination to establish the relative loss of the volatile component from unsaturated polyester or vinyl ester resins, with and without vapor suppressant additives. The effectiveness of a specific vapor suppressant and resin mixture is determined by comparing the relative volatile weight losses from vapor suppressed and non-suppressed resins. The volatile species are not separately analyzed. While the species contained in the volatile component are not determined, an extended listing of potential monomer that may be contained in unsaturated polyester or vinyl ester resins is provided in Table 1.1. However, most polyester and vinyl ester resin formulations presently used by the composites industry only contain styrene monomer.

TABLE 1.1.—LIST OF MONOMERS POTENTIALLY PRESENT IN UNSATURATED POLYESTER/VINYL ESTER RESINS

Monomer	CAS No.
Styrene	100–42–5.
Vinyl toluene	25013–15–4.
Methyl methacrylate	80–62–6.
Alpha methyl styrene	98–83–9.

TABLE 1.1.—LIST OF MONOMERS POTENTIALLY PRESENT IN UNSATURATED POLYESTER/VINYL ESTER RESINS—Continued

Monomer	CAS No.
Para methyl styrene	Vinyl toluene isomer.
Chlorostyrene	1331–28–8.
Diallyl phthalate	131–17–9.
Other volatile monomers	Various.

2. Summary of Method

2.1 Differences in specific resin and suppressant additive chemistry affect the performance of a vapor suppressant. The purpose of this method is to quantify the effectiveness of a specific combination of vapor suppressant and unsaturated polyester or vinyl ester resin as they are to be used in production. This comparative test quantifies the loss of volatiles from a fiberglass reinforced laminate during the roll-out and curing emission phases, for resins formulated with and without a suppressant additive. A criterion for this method is the testing of a non-vapor suppressed resin system and testing the same resin with a vapor suppressant. The two resins are as identical as possible with the exception of the addition of the suppressant to one. The exact formulation used for the test will be determined by the in-use production requirements. Each formulation of resin, glass, fillers, and additives is developed to meet particular customer and or performance specifications.

2.2 The result of this test is used as an input factor in the organic HAP emissions factor equations in Table 1 to this subpart, which allows these equations to predict emissions from a specific combination of resin and suppressant. This test does not provide an emission rate for the entire lamination process.

3. Definitions and Acronyms

3.1 Definitions

3.1.1 *Vapor suppressant.* An additive that inhibits the evaporation of volatile components in unsaturated polyester or vinyl ester resins.

3.1.2 *Unsaturated polyester resin.* A thermosetting resin commonly used in composites molding.

3.1.3 *Unsaturated vinyl ester resin.* A thermosetting resin used in composites molding for corrosion resistant and high performance applications.

3.1.4 *Laminate.* A combination of fiber reinforcement and a thermoset resin.

3.1.5 *Chopped strand mat.* Glass fiber reinforcement with random fiber orientation.

3.1.6 *Initiator.* A curing agent added to an unsaturated polyester or vinyl ester resin.

3.1.7 *Resin application roller.* A tool used to saturate and compact a wet laminate.

3.1.8 *Gel time.* The time from the addition of initiator to a resin to the state of resin gelation.

3.1.9 *Filled resin system.* A resin, which includes the addition of inert organic or inorganic materials to modify the resin properties, extend the volume and to lower the cost. Fillers include, but are not limited to; mineral particulates; microspheres; or organic particulates. This test is not intended to be used to determine the vapor suppressant effectiveness of a filler.

3.1.10 *Material safety data sheet.* Data supplied by the manufacturer of a chemical product, listing hazardous chemical components, safety precautions, and required personal protection equipment for a specific product.

3.1.11 *Tare(ed).* Reset a balance to zero after a container or object is placed on the balance; that is to subtract the weight of a container or object from the balance reading so as to weigh only the material placed in the container or on the object.

3.1.12 *Percent glass.* The specified glass fiber weight content in a laminate. It is usually determined by engineering requirements for the laminate.

3.2 Acronyms:

3.2.1 *VS*—vapor suppressed or vapor suppressant.

3.2.2 *NVS*—non-vapor suppressed.

3.2.3 *VSE*—vapor suppressant effectiveness.

3.2.4 *VSE Factor*—vapor suppressant effectiveness, factor used in the equations in Table 1 to this subpart.

3.2.5 *CSM*—chopped strand mat.

3.2.6 *MSDS*—material safety data sheet.

4. Interferences

There are no identified interferences which affect the results of this test.

5. Safety

Standard laboratory safety procedures should be used when conducting this test. Refer to specific MSDS for handling precautions.

6. Equipment and Supplies

Note: Mention of trade names or specific products or suppliers does not constitute an endorsement by the Environmental Protection Agency.

6.1 Required Equipment.

6.1.1 Balance enclosure.[1]

6.1.2 Two (2) laboratory balances—accurate to ±0.01g.[2]

6.1.3 Stop watch or balance data recording output to data logger with accuracy ±1 second.[3]

6.1.4 Thermometer—accurate to ±2.0°F(±1.0°C).[4]

6.1.5 A lipped pan large enough to hold the cut glass without coming into contact with the vertical sides, *e.g.* a pizza pan.[5]

6.1.6 Mylar film sufficient to cover the bottom of the pan.[6]

6.1.7 Tape to keep the Mylar from shifting in the bottom of the pan.[7]

6.1.8 Plastic tri-corner beakers of equivalent—250 ml to 400 ml capacity.[8]

6.1.9 Eye dropper or pipette.[9]

6.1.10 Disposable resin application roller, 3/16"–3/4" diameter × 3"–6" roller length.[10]

6.1.11 Hygrometer or psychrometer[11] accurate to ±5 percent

6.1.12 Insulating board, (Teflon, cardboard, foam board etc.) to prevent the balance from becoming a heat sink.[12]

6.2 Optional Equipment.

6.2.1 Laboratory balance—accurate to ±.01g with digital output, such as an RS–232 bi-directional interface[13] for use with automatic data recording devices.

6.2.2 Computer with recording software configured to link to balance digital output. Must be programmed to record data at the minimum intervals required for manual data acquisition.

6.3 Supplies.

6.3.1 Chopped strand mat—1.5 oz/ft.[2] [14]

7. Reagents and Standards

7.1 *Initiator.* The initiator type, brand, and concentration will be specified by resin manufacturer, or as required by production operation.

7.2 Polyester or vinyl ester resin.

7.3 Vapor suppressant additive.

8. Sample Collection, Preservation, and Storage

This test method involves the immediate recording of data during the roll out and curing phases of the lamination process during each test run. Samples are neither collected, preserved, nor stored.

9. Quality Control

Careful attention to the prescribed test procedure, routing equipment calibration, and replicate testing are the quality control activities for this test method. Refer to the procedures in section 11. A minimum of six test runs of a resin system without a suppressant and six test runs of the same resin with a suppressant shall be performed for each resin and suppressant test combination.

10. Calibration and Standardization

10.1 The laboratory balances, stopwatch, hygrometer and thermometer shall be maintained in a state of calibration prior to testing and thereafter on a scheduled basis as determined by the testing laboratory. This shall be accomplished by using certified calibration standards.

10.2 Calibration records shall be maintained for a period of 3 years.

11. Test Procedure

11.1 Test Set-up.

11.1.1 The laboratory balance is located in an enclosure to prevent fluctuations in balance readings due to localized air movement. The front of enclosure is open to permit work activity, but positioned so that local airflow will not effect balance readings. The ambient temperature is determined by suspending the thermometer at a point inside the enclosure.

11.1.2 The bottom of the aluminum pan is covered with the Mylar film. The film is held in position with tape or by friction between the pan and the film.

11.1.3 The resin and pan are brought to room temperature. This test temperature must be between 70°F and 80°F. The testing temperature cannot vary more than ±2°F during the measurement of test runs. Temperature shall be recorded at the same time weight is recorded on suppressed and non-suppressed test data sheets, shown in Table 17.1.

11.1.4 The relative humidity may not change more than ±15 percent during the test runs. This is determined by recording the relative humidity in the vicinity of the test chamber at the beginning and end of an individual test run. This data is recorded on the test data sheets shown in Table 17.1.

11.1.5 Two plies of nominal 1.5 oz/ft[2] chopped strand mat (CSM) are cut into a square or rectangle with the minimum surface area of 60 square inches (*i.e.* a square with a side dimension of 7.75 inches).

11.1.6 The appropriate resin application roller is readily available.

11.2 Resin Gel Time/Initiator Percentage

11.2.1 Previous testing has indicated that resin gel time influences the emissions from composite production. The testing indicated that longer the gel times led to higher emissions. There are a number of factors that influence gel time including initiator type, initiator brand, initiator level, temperature and resin additives. Under actual usage conditions a molder will adjust the initiator to meet a gel time requirement. In this test procedure, the vapor suppressed and non-vapor suppressed resin systems will be adjusted to the same gel time by selecting the appropriate initiator level for each.

11.2.2 All test runs within a test will be processed in a manner that produces the same resin gel time ±2 minutes. To facilitate the resin mixing procedure, master batches of resin and resin plus vapor suppressant of resin are prepared. These resin master batches will have all of the required ingredients except initiator; this includes filler for filled systems. The gel times for the tests are conducted using the master batch and adjustments to meet gel time requirements shall be made to the master batch before emission testing is conducted. Test temperatures must be maintained within the required range, during gel time testing. Further gel time testing is not required after the non-vapor suppressed and vapor suppressed master batches are established with gel times within ±2 minutes. A sufficient quantity of each resin should be prepared to allow for additional test specimens in the event one or more test fails to meet the data acceptance criteria discussed in Section 11.5 and shown in Table 17.2.

11.2.3 The specific brand of initiator and the nominal percentage level recommended by the resin manufacturer will be indicated on the resin certificate of analysis[15]; or, if a unique gel time is required in a production laminate, initiator brand and percentage will be determined by that specific requirement.

11.2.4 Examples:

11.2.4.1 The resin for a test run is specified as having a 15-minute cup gel time at 77°F using Brand X initiator at 1.5 percent by weight. The non-suppressed control resin has a 15-minute gel time. The suppressed resin has a gel time of 17-minutes. An initiator level of 1.5 percent would be selected for the both the non-suppressed and the suppressed test samples.

11.2.4.2 Based on a specific production requirement, a resin is processed in production using 2.25 percent of Brand Y initiator, which produces a 20-minute gel time. This initiator at level of 2.25 percent produces a 20 minute gel time for the non-suppressed control resin, but yields a 25-minute gel time for the suppressed resin sample. The suppressed resin is retested at 2.50 percent initiator and produces a 21-minute gel time. The initiator levels of 2.25 percent and 2.50 percent respectively would yield gel times within ±2 minutes.

11.3 Test Run Procedure for Unfilled Resin (see the data sheet shown in Table 17.1).

11.3.1 The insulating board is placed on the balance.

11.3.2 The aluminum pan with attached Mylar film is placed on the balance, and the balance is tared (weight reading set to zero with the plate on the balance.)

11.3.3 Place two plies of 1.5 oz. CSM on the balance and record the weight (glass weight).

11.3.4 The resin beaker and stirring rod are put on the second balance and tared.

11.3.5 The required resin weight and initiator weight are calculated (refer to calculation formulas in 12.2).

11.3.6 The disposable resin application roller is placed on the edge of the plate.

11.3.7 The balance is tared, with the aluminum pan, Mylar film, glass mat, and resin application roller on the balance pan.

11.3.8 Resin is weighed into a beaker, as calculated, using the second balance. The mixing stick should be tared with the beaker weight.

11.3.9 Initiator is weighed into the resin, as calculated, using an eyedropper or a pipette, and the combination is mixed.

11.3.10 Initiated resin is poured on chopped strand mat in a pe-determined pattern (see Figure 11.6).

11.3.11 A stopwatch is started from zero.

11.3.12 The initial laminate weight is recorded.

11.3.13 The plate is removed from balance to enable roll-out of the laminate.

11.3.14 The wet laminate is rolled with the resin application roller to completely distribute the resin, saturate the chopped strand mat, and eliminate air voids. Roll-out time should be in the range of 2 to 3[16] minutes and vary less than ±10 percent of the average time required for the complete set of six suppressed and six non-suppressed runs.

11.3.15 Record the rollout end time (time from start to completion of rollout).

11.3.16 Place the resin application roller on the edge of the plate when rollout is completed.

11.3.17 Place the plate back on the balance pan. Immediately record the weight.

11.3.18 For the first test in a series of six tests, weight is recorded every 5-minute interval (suppressed and non-suppressed). The end of the test occurs when three consecutive equal weights are recorded or a weight gain is observed (the last weight before the increased weight is the end of test weight). For the remaining five tests in the series, after the initial weights are taken, the next weight is recorded 30 minutes before the end of the test, as suggested by the results from the first test. It is likely that the time to reach the end point of a suppressed resin test will be shorter than the time required to complete a non-suppressed test. Therefore, the time to start taking data manually may be different for suppressed and non-suppressed resins.

11.4 Test Run Procedures for Filled Resin Systems[17] Note that the procedure for filled systems differs from the procedure for unfilled systems. With filled systems, resin is applied to one ply of the CSM and the second ply is placed on top of the resin.

11.4.1 The insulating board is placed on the balance.

11.4.2 The aluminum pan with attached Mylar film is placed on the balance, and the balance is tared (weight reading set to zero with the plate on the balance.)

11.4.3 Place two plies of 1.5 oz. CSM on the balance and record the weight (glass weight).

11.4.4 Remove the top ply of fiberglass and record its weight (weight of 1st layer of glass).

11.4.5 The required resin weight and initiator weight are calculated (refer to calculation formulas in 12.2). Calculate the weight of filled resin and initiator based on the 2 layers of fiberglass.

11.4.6 The resin beaker and stirring rod are put on the second balance and tared.

11.4.7 A disposable resin application roller is placed on the edge of the plate.

11.4.8 The balance is tared, with the aluminum pan, Mylar film, glass mat, and resin application roller on the balance pan.

11.4.9 Resin is weighed into the beaker, as calculated, using the second balance. The mixing stick should be tared with the beaker weight.

11.4.10 Initiator is weighed into the resin, as calculated, using an eyedropper or a pipette, and the combination is mixed.

11.4.11 Initiated resin is poured on the single ply of CSM in a pre-determined pattern. Refer to Figure 11.6.

11.4.12 A stopwatch is started from zero.

11.4.13 Record the weight of the resin ans single ply of CSM (L_1). The initial laminate weight equals L_1 plus the weight of second glass layer.

11.4.14 Replace the second layer of fiberglass.

11.4.15 Remove the plate from the balance to allow roll-out of the laminate.

11.4.16 Roll the wet laminate with the resin application roller to completely distribute the resin, saturate the chopped strand mat, and eliminate air voids. Roll-out time should be in the range of 2 to 3[16] minutes and vary less than ± 10 percent of the average time required for the complete set of six suppressed and six non-suppressed runs.

11.4.17 Record the roll-out end time (time from start to completion of rollout).

11.4.18 Place the resin application roller on the edge of the plate when rollout is completed.

11.4.19 Place the plate back on the balance pan. The initial weight is recorded immediately.

11.4.20 For the first test run in a series of six, weight is recorded at every 5-minute interval (suppressed and non-suppressed). The end of the test occurs when three consecutive equal weights are recorded or a weight gain is observed (the last weight before the increased weight is the end of test weight). For the remaining five tests in the series, after the initial weights are taken, the next weight is recorded 30 minutes before the end of the test, as suggested by the results from the first test. It is likely that the time to reach the end point of a suppressed resin

test will be shorter than the time required to complete a non-suppressed test. Therefore, the time to start taking data manually may be different for suppressed and non-suppressed resins.

11.5 Data Acceptance Criteria:

11.5.1 A test set is designed as twelve individual test runs using the same resin, initiator, and gel time, six of the test runs use the resin non-vapor suppressed and the other six use it vapor suppressed.

11.5.2 If a test run falls outside any of the time, temperature, weight or humidity variation requirements, it must be discarded and run again.

11.5.3 The laminate roll out time for each individual test run must vary less than ± 10 percent of the average time required for the complete set of six suppressed and six non-suppressed runs.

11.5.4 Test temperature for each test run must be maintained within ±2°F and the average must be between 70° and 80°F. Refer to 11.1.3.

11.5.5 The difference in the amount of resin for each run must be within ±10 percent of the average weight for the complete set of six suppressed and six non-suppressed runs.

11.5.6 The relative humidity from each test run must be within ±15 percent of the average humidity for the complete set of six suppressed and six non-suppressed tests. Refer to 11.1.4

11.5.7 The glass content for each test set must be within ±10 percent of the average resin-to-/glass ratio for the complete set of six suppressed and six non-suppressed runs. Refer to 12.2).

11.5.8 The filler content for each test of a test set must be within ±5 percent of the average filler content for the complete set of six suppressed and six non-suppressed runs. Refer to 12.2.

11.6 Resin Application Pour Pattern:

11.6.1 To facilitate the distribution of resin across the chopped strand mat, and to provide consistency from test to test, a uniform pour pattern should be used. A typical pour pattern is shown below:

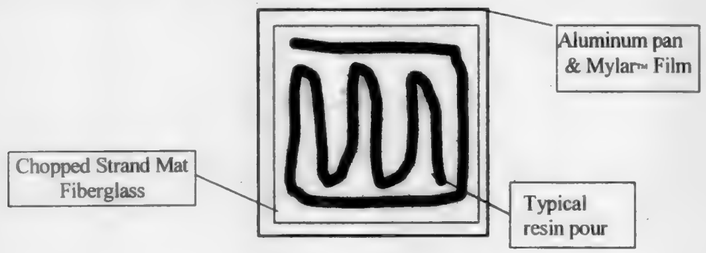


Figure 11.6 Resin Distribution Diagram

11.6.2 The resin is to be evenly distributed across the entire surface of the chopped strand mat using the resin application roller to achieve a wet look across the surface of the laminate. Pushing excess resin off the reinforcement and onto the Mylar sheet should be avoided. No resin is to be pushed more than ½ inch beyond the edge of the glass mat. If excess resin is pushed further from the glass mat, it will void the test run. As part of this process, typical visible air voids are to be eliminated by the rollout process. If the pour pattern is different from the above, it must be recorded and attached to test data sheet 17.1.

12. Data Analysis and Calculations

12.1 Data Analysis:

This test method requires a simple mass balance calculation, no special data analysis is necessary.

12.2 Calculations:

12.2.1 The target glass content (percent) for unfilled resin systems is determined from the specific production parameters being evaluated. In absence of any specific production requirements the target may be set at the tester's discretion.

12.2.2 Glass content determination (expressed as a per cent):

% Glass = Glass wt(g)/(Glass wt(g) + Resin weight (g))

12.2.3 Weight of resin required:

Resin weight required = (Glass wt (g)/% glass)—Glass wt (g)

12.2.4 Filled resin formulation determination for filled resin systems (*e.g.* >30 percent filler by weight for a particulate filler, or >1 percent by weight for a lightweight filler, such as hollow microspheres):

% Resin content = resin weight(g)/(resin weight(g) + glass weight(g) + filler weight(g))

% Glass content = glass weight(g)/(resin weight(g) + glass weight(g) + filler weight(g))

Filler content = filler weight(g)/(resin weight(g) + glass weight(g) + filler weight(g))

12.2.5 Initiator weight determination:

Initiator weight (g) = Resin weight(g) × Initiator %

12.2.6 Emission weight loss determination:

Emissions weight loss (g) = Initial resin weight (g) − Final resin weight (g)

12.2.7 % Emission weight loss:

% Emission Weight Loss = (Emission weight loss (g) Initial resin weight (g) × 100

12.2.8 Average % Emission Weight Loss (assuming six test runs):

$$\text{Average \% Emission Weight Loss} = \sum_{i}^{N=6}(\text{\% Emission Weight Loss}_i)/6$$

12.2.9 VSE Factor calculation:

VSE Factor = 1 − (Average % VS Emission Weight Loss/Average NVS Emission Weight Loss)

TABLE 12.1.—EXAMPLE CALCULATION

Test #	% VS weight loss	% NVS weight loss
1	6.87	10.86
2	6.76	11.23
3	5.80	12.02
4	5.34	11.70
5	6.11	11.91
6	6.61	10.63
Average Weight Loss	6.25	11.39
VSE Factor	.....	0.4

VSE Factor = 0.45

VSE Factor is used as input into the appropriate equation in Table 1 to this subpart.

Example from Table 1 to this subpart:

Manual Resin Application, 35 percent HAP resin, VSE Factor of 0.45

HAP Emissions with vapor suppresants = ((0.286 × %HAP) − 0.0529) × 2000 × (1−(0.5 × VSE factor))

HAP Emissions with vapor suppresants = ((0.286 × .35) − 0.0529) × 2000 × (1 − (0.5 × .45))

HAP Emissions with vapor suppresants = 73 pounds of HAP emissions per ton of resin.

13. Method Performance

13.1 Bias:

The bias of this test method has not been determined.

13.2 Precision Testing

13.2.1 Subsequent to the initial development of this test protocol by the Composites Fabricators Association, a series of tests were conducted in three different laboratory facilities. The purpose of this round robin testing was to verify the precision of the test method in various laboratories. Each laboratory received a sample of an orthophthalic polyester resin from the same production batch, containing 48 per cent styrene by weight. Each testing site was also provided with the same vapor suppressant additive. The suppressant manufacturer specified the percentage level of suppressant additive. The resin manufacturer specified the type and level of initiator required to produce a 20 minute gel time. The target glass content was 30 percent by weight.

13.2.2 Each laboratory independently conducted the VSE test according to this method. A summary of the results is included in Table 13.1.

TABLE 13.1.—ROUND ROBIN TESTING RESULTS

	Test Lab 1		Test Lab 2		Test Lab 3	
	NVS	VS	NVS	S	NVS	VS
Average percent WT Loss	4.24	1.15	4.69	1.84	5.73	1.61
Standard Deviation	0.095	0.060	0.002	0.002	0.020	0.003
VSE Factor	.....	0.730	.....	0.607	.....	0.720

13.3 Comparison to EPA Reference Methods This test has no corresponding EPA reference method.

14. Pollution Prevention

The sample size used in this method produces a negligible emission of HAP, and has an insignificant impact upon the atmosphere.

15. Waste Management

The spent and waste materials generated during this test are disposed according to required facility procedures, and waste management recommendations on the corresponding material safety data sheets.

16. References and footnotes

16.1 Footnotes:

[1] Balance Enclosure—The purpose of the balance enclosure is to prevent localized airflow from adversely affecting the laboratory balance. The enclosure may be a simple three-sided box with a top and an open face. The configuration of the enclosure is secondary to the purpose of providing a stable and steady balance reading, free from the effects of airflow, for accurate measurements. The enclosure can be fabricated locally. A typical enclosure is shown in Figure 17.1.

[2] Laboratory Balance—Ohaus Precision Standard Series P/N TS400D or equivalent—Paul N. Gardner Co. 316 NE 1st St. Pompano Beach, FL 33060 or other suppliers.

[3] Stop Watch—Local supply.

[4] Thermometer—Mercury thermometer—ASTM No. 21C or equivalent; Digital thermometer—P/N TH–33033 or equivalent—Paul N. Gardner Co. 316 NE 1st St. Pompano Beach, FL 33060 or other suppliers.

[5] Aluminum Pan—Local supply.

[6] Mylar—Local supply.

[7] Double Sided Tape—3M Double Stick Tape or equivalent, local supply.

[8] Laboratory Beakers—250 to 400ml capacity—Local laboratory supply.

[9] Eye Dropper or Pipette—Local laboratory supply.

[10] Disposable Resin Application Roller Source—Wire Handle Roller P/N 205–050–300 or Plastic Handle Roller P/N 215–050–300 or equivalent; ES Manufacturing Inc., 2500 26st Ave. North, St. Petersburg, FL 33713, *www.esmfg.com*, or other source. Refer to Figure 17.3.

[11] Hygrometer or Psychrometer—Model# THWD–1, or equivalent—Part # 975765 by Amprobe Instrument, 630 Merrick Road, P.O. Box 329, Lynbrook, NY 11563, 516–593–5600

[12] Insulating Board (Teflon, cardboard, foam board etc.)—Local supply.

[13] Laboratory Balance With Digital Output—Ohaus Precision Standard Series P/N TS120S or equivalent—Paul N. Gardner Co. 316 NE 1st St. Pompano Beach, FL 33060 or other suppliers.

[14] Chopped Strand Mat—1.5 oz/ft [2] Sources: Owens Corning Fiberglas—Fiberglas M–723; PPG Industries—ABM HTX; Vetrotex America—M–127 or equivalent.

[15] Certificate of Analysis: Resin gel time, as recorded on the resin certificate of analysis, is measured using a laboratory standard gel time procedure. This procedure typically uses a 100 gram cup sample at 77°F (25°C), a specific type of initiator and a specified percentage.

[16] Roll-out times may vary with resin viscosity or resin additive. The important aspect of this step is to produce the same roll-out time for both the suppressed and non-suppressed samples.

[17] While this test can be used with filled resin systems, the test is not designed to determine the effect of the filler on emissions, but rather to measure the effect of the suppressant additive in the resin system. When evaluating a filled system both the non-vapor suppressed and vapor suppressed samples should be formulated with the same type and level of filler.

16.2 References

1. Phase 1—Baseline Study Hand Lay-up, CFA, 1996

2. CFA Vapor Suppressant Effectiveness Test Development, 4/3/98, correspondence with Dr. Madeleine Strum, EPA, OAQPS

3. CFA Vapor Suppressant Effectiveness Screening Tests, 4/4/98

4. Styrene Suppressant Systems Study, Reichhold Chemical, 11/30/98

5. Evaluation of the CFA's New Proposed Vapor Suppressant Effectiveness Test, Technical Service Request #: ED–01–98, BYK Chemie, 6/3/98

6. Second Evaluation of the CFA's New Proposed Vapor Suppressant Effectiveness Test, Technical Service Request #: ED–02–98, BYK Chemie, 1/26/99

17. Data Sheets and Figures

17.1 This data sheet, or a similar data sheet, is used to record the test data for filled, unfilled, suppressed and non-suppressed tests. If additional time is required, the data sheet may be extended.

BILLING CODE 6560–50–U

Table 17.1 Test Data Sheet

Test Number			Test Type		
			VS (_____)		NVS (____)
Resin			Filled (____)		Unfilled (___)
Initiator				Initiator, %	_____
Vapor Suppressant				VS, %	_____
Weight of 2 layers of glass, g	_____	Weight of 1st glass layer, g	_____	Weight of 2nd glass layer, g	_____
Initial Resin Weight, (g)			Time (Min.)	Weight g	Temp ^{0}F
Glass content, (%)			55		
Initial Temperature ^{0}F:			60		
Initial Humidity %			65		
Resin Initiator Level, %			70		
Resin gel time, (min.)			75		
Resin filler content, %			80		
Roll out time, (min.)			85		
Time, (min.)	Weight, g	Temp, ^{0}F	90		

Initial			95		
			100		
0			105		
5			110		
10			115		
15			120		
20			125		
25			130		
30			135		
35			140		
40			145		
45			150		
50			155		
Final Time, min.	Final Weight, g.		Final Temp, ^{0}F	Final Humidity, %	

17.2 Data Acceptance Criteria Worksheet: The following worksheet is used to determine the quality of collected data (*i.e.* insure the data collected all meets acceptance criteria)

TABLE 17.2.—DATA ACCEPTANCE CRITERIA WORKSHEET

Test No.	Temperature			Laminate roll out time, min	Relative humidity, %		Resin weight, (g)	Glass content, %	Resin distribution	Meets criteria Y/N
	Min	Max	Delta		Initial	Final				
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										

TABLE 17.2.—DATA ACCEPTANCE CRITERIA WORKSHEET—Continued

Test No.	Temperature			Laminate roll out time, min	Relative humidity, %		Resin weight, (g)	Glass content, %	Resin distribution	Meets criteria Y/N
	Min	Max	Delta		Initial	Final				
12										
Criteria Average			± 2°F	±10% of Average	± 15 of Average	± 15 of Average	± 10% of Avg.	± 10% of Avg.	<½ inch off mat	All Y

17.3 VSE Factor Calculation

TABLE 17.3.—CALCULATIONS WORKSHEET

Vapor suppressed		Non-vapor suppressed	
Test #	% Weight loss	Test #	% Weight loss
Average Weight Loss			
VSE Factor			

VSE Factor = 1—(% Average Weight Loss $_{VS}$/ % Average Weight Loss$_{NVS}$)

17.4 Figures

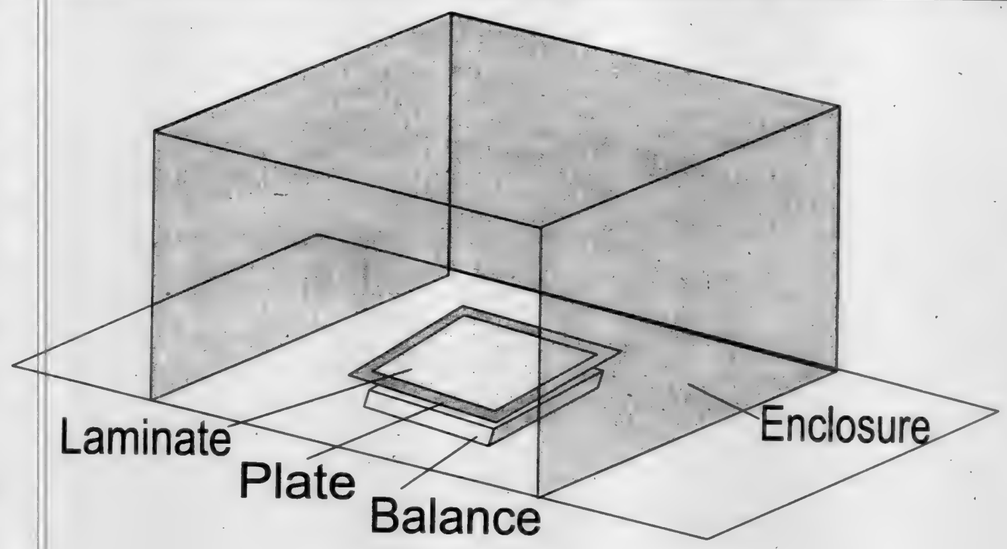


Figure 17.1. Typical Balance Enclosure

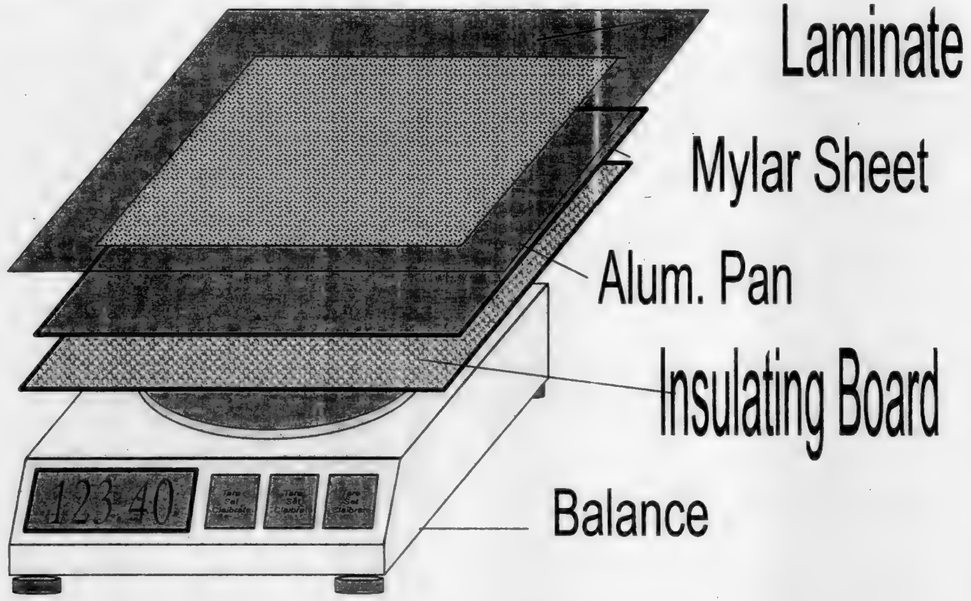
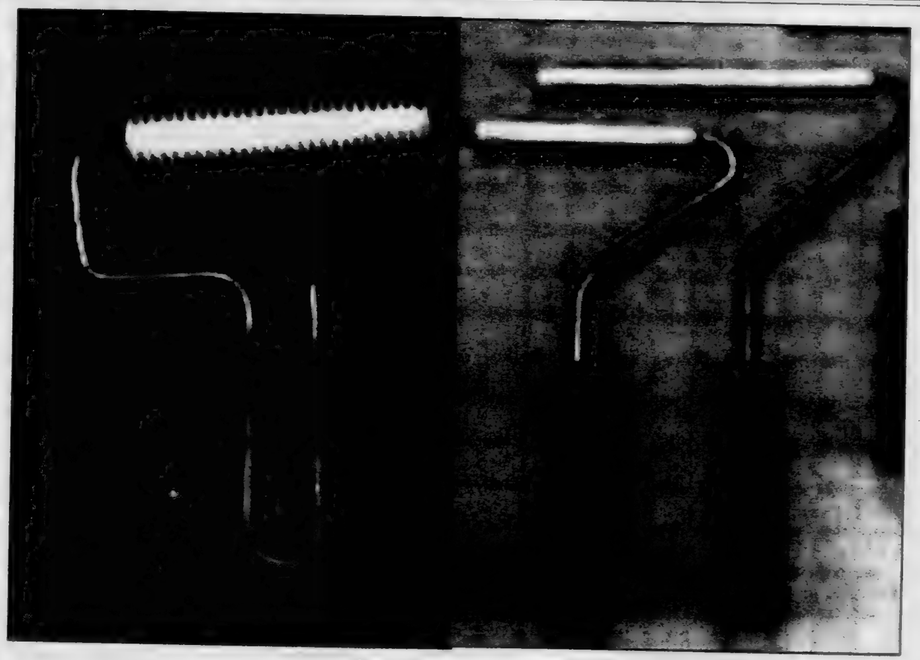


Figure 17.2. Scale, Plate, Insulating Board, Mylar, Laminate Order



FRP Rollers

Figure 17.3. Typical FRP Rollers

[FR Doc. 03–5615 Filed 4–18–03; 8:45 am]
BILLING CODE 6560–50–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7486–1]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion for the Industrial Latex Corp. Superfund Site from the National Priorities List.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region II Office announces the deletion of the Industrial Latex Corp. Superfund Site from the National Priorities List (NPL). The Industrial Latex site is located in the Borough of Wallington, Bergen County, New Jersey. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of New Jersey, through the Department of Environmental Protection, have determined that all appropriate remedial actions have been completed at the Industrial Latex site and no further fund-financed remedial action is appropriate under CERCLA. In addition, EPA and the State of New Jersey have determined that the remedial actions taken at the Industrial Latex site protect public health and the environment without any further monitoring or restriction.

EFFECTIVE DATE: April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Stephanie Vaughn, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway, 19th Floor, New York, New York 10007–1866, (212) 637–3914.

SUPPLEMENTARY INFORMATION: To be deleted from the NPL is: the Industrial Latex Corp. Superfund Site, Borough of Wallington, Bergen County, New Jersey.

A Notice of Intent to Delete for the Industrial Latex Corp. Site was published in the **Federal Register** on December 9; 2002 (67 FR 72888). The closing date for comments on the Notice of Intent to Delete was March 1, 2003. EPA received no comments regarding this action. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. As described in 300.425(e)(3) of the NCP, any site or portion thereof deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Superfund, Water pollution control, Water supply.

William J. Muszynski,

Acting Regional Administrator—Region II.

■ For the reasons set out in the preamble, part 300, chapter I of title 40 of the Code of Federal Regulations, is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR., 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to part 300 is amended by removing the "Industrial Latex Corp., Wallington Borough, New Jersey."

[FR Doc. 03–9745 Filed 4–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 01–146; RM–9966; FCC 03–35]

Applications and Licensing of Low Power Operations in the Private Land Mobile Radio 450–470 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC) divides low power channels in the 450–470 MHz band into five groups. Each group of frequencies is intended for a different market. Collectively, they address the diversity of low power operations in the 450–470 MHz band. The FCC believes that the plan adopted will accommodate a broad range of potential low power users while maximizing efficient and flexible use of the band.

DATES: Effective May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Marenco, Electronics Engineer, *bmarenco@fcc.gov*, or Genevieve Augustin, Esquire, *gaugusti@fcc.gov*, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Report and Order, FCC 03–35, adopted on February 14, 2003, and released on March 11, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In this Report and Order, the FCC:

• Designates forty-nine 12.5 kHz 450–470 MHz Industrial/Business channel pairs and one unpaired frequency for low power coordinated use. Thirty-nine of the channel pairs and the unpaired frequency will be available for full power at least 50 miles outside of the top 100 urban areas. These channels will be referred to as "Group A."

• Raises power limits for base/fixed operations on the Group A channels to 20 watts effective radiated power.

• Designates ten 12.5 kHz 450–470 MHz channel pairs for low power non-voice coordinated use nationwide, with voice operations allowed on a secondary basis. These channels will be referred to as "Group B."

• Designates twenty-one 12.5 kHz 450–470 MHz channel pairs and four unpaired frequencies for low power non-coordinated use nationwide. These channels will be referred to as "Group C." Although the majority of these channels are immediately available, ten Group C frequencies will become available only after completion of the medical telemetry migration deadline.

• Converts power limits for mobile operations on the Group A, B and C frequencies to 6 watts effective radiated power.

• Designates five 12.5 kHz 450–470 MHz channel pairs for low power coordinated use, reserved for central station alarm operations, as under current rules. These channels will be referred to as "Group D."

• Designates fourteen 12.5 kHz channels pairs for low power use in the Public Safety Pool. These channels will be referred to as the "Public Safety Group."

• "Grandfathers" high power operations currently licensed on the low power channels.

2. The FCC believes that the plan it adopts will accommodate a broad range of potential low power users while maximizing efficient and flexible use of the band.

Procedural Matters

A. Regulatory Flexibility Act Analyses

3. As required by Section 604 of the Regulatory Flexibility Act, 5 U.S.C. 604, the FCC has prepared a Final Regulatory Flexibility Analysis (FRFA) of the expected impact on small entities of the rule changes implemented in this document. The FRFA is set forth further.

B. Paperwork Reduction Act of 1995 Analysis

4. The actions taken in the Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law Number 104–13, and found to impose no new or modified recordkeeping requirements or burdens on the public.

Final Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act (RFA) of 1980, as amended, an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM. The FCC sought written public comment on the proposals in the Notice of Proposed Rule Making (NPRM), including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of the Final Rules

6. The rule changes implemented by this decision are needed in order to facilitate the viability of important low power operations in the 450–470 MHz band. Previously, low power operators were licensed on channels that were 12.5 kHz removed from regularly assignable channels in this band ("12.5 kHz offset channels"). These offset channels, however, were reclassified by the FCC for high power operation. Because of the continuing need for low power channels, the FCC believes that the rule changes contained in its decision are in the public interest.

7. The FCC's objective, the implementation of a low power plan that would suit the needs of low power users, was realized in the following manner. The FCC tasked the private land mobile radio (PLMR) frequency coordinators with developing a plan for low power operations, through industry consensus, on what was formerly known as the 450–470 MHz low power offset channels. On June 4, 1997, the Land Mobile Communications Council (LMCC) filed the requested plan (Consensus Plan).

Because the LMCC's Consensus Plan required changes to the FCC's Rules, on September 11, 2000, the LMCC filed with the FCC a Petition for Rule Making seeking the appropriate amendments. On July 24, 2001, the FCC released a Notice of Proposed Rule Making, proposing amendments to Part 90 of its rules in order to effectuate the changes suggested in the Consensus Plan. The resulting Report and Order implements many of the proposed changes. Among the major rules adopted are: designation of forty-nine 12.5 kHz 450–470 MHz Industrial/Business channel pairs and one unpaired frequency for low power coordinated use, of which 39 channel pairs and one unpaired frequency will be available for full power at least 50 miles outside of the top 100 urban areas; raising of power limits for base/fixed operations on the Group A channels to 20 watts effective radiated power; designation of ten 12.5 kHz 450–470 MHz channel pairs for low power non-voice coordinated use nationwide, with voice operations allowed on a secondary basis; designation of twenty-five 12.5 kHz 450–470 MHz channel pairs for low power non-coordinated use nationwide; conversion of power limits for mobile operations on frequencies in the Public Safety Group and Industrial/Business Groups A, B and C, to 6 watts effective radiated power; designation of five 12.5 kHz 450–470 MHz channel pairs for low power, coordinated use (primarily central station alarm); designation of fourteen 12.5 kHz channels pairs for low power use in the Public Safety Pool; and the grandfathering of high power operations currently licensed on the low power channels.

B. Legal Basis

8. Authority for the amendments included in the Report and Order is contained in Sections 4(i), 303(f), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i), 303(f), 303(r), and 332.

C. Description and Estimate of the Number of Small Entities to Which the Final Rules Will Apply

9. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as "small business concern" under the Small Business Act. A "small business concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

10. *Governmental Entities.* "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the FCC estimates that 81,600 (ninety-one percent) are small entities. Below, the FCC further describes and estimates the number of small entity licensees and regulatees that may be affected by the rule changes adopted herein.

11. *Public Safety Radio Services.* As a general matter, Public Safety Radio Pool licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for small radiotelephone (wireless) companies, which encompasses business entities engaged in radiotelephone communications employing no more that 1,500 persons. There are a total of approximately 127,540 licensees within these services. With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, the FCC includes under public safety services the number of government entities afflicted.

12. *PLMR Licensees.* Private land mobile radio systems serve an essential role in a vast range of industrial, business, land transportation, and public safety activities. These radios are

used by companies of all sizes operating in all U.S. business categories. Because of the vast array of PLMR users, the FCC has not developed a definition of small entities specifically applicable to PLMR users, nor has the SBA developed any such definition. The SBA rules do, however, contain a definition for small radiotelephone (wireless) companies. Included in this definition are business entities engaged in radiotelephone communications employing no more that 1,500 persons. According to the Bureau of the Census, only twelve radiotelephone firms of a total of 1,178 such firms which operated during 1992 had 1,500 or more employees. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The FCC's fiscal year 1994 annual report indicates that, at the end of fiscal year 1994, there were 1,101,711 licensees operating 12,882,623 transmitters in the PLMR bands below 512 MHz.

13. *Wireless Communications Equipment Manufacturers.* The FCC anticipates that manufacturers of wireless radio equipment will be affected by our decisions in this proceeding. According to the SBA's regulations, radio and television broadcasting and communications equipment manufacturers must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicate that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would therefore be classified as small entities.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

14. No new reporting, recordkeeping, or other compliance requirements would be imposed on applicants or licensees as a result of the rules adopted in this proceeding.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

15. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule or any part thereof, for such small entities.

16. Regarding FCC rule changes increasing the power limits and antenna height for low power users operating on the 49 channel pairs and one unpaired frequency in Group A, although increasing the power and antenna height limits for low power users on these channels could decrease the number of operators possible in a given area, the FCC believes that the need, as demonstrated in the Low Power Plan, for higher power and greater antenna height on these channels, outweighs the potential for reduction of the number of licensees. An alternative to this amendment would have been to maintain the current power restriction of 2 watts output power and 7 meters antenna height, or impose power limitations less than 20 watts for base stations and 5 watts for mobile/portable stations and less than 23 meters antenna height above ground level. These alternatives, however, would not address the need, especially in hostile radio environments, for more than 2 watts output power and/or antenna heights of more than 7 meters. Moreover, since many operators in hostile radio environments are smaller entities, the rules adopted in the Report and Order are especially beneficial to those entities.

17. In addition, regarding the FCC's rule changes which designate 25 channels for low power, itinerant use in Group C, incumbent licensees, some of which may be small entities, could face interference from itinerant users that will not be required to coordinate their operations through a certified frequency coordinator. Despite the possibility of potential interference, the need for itinerant operations in the PLMR services is substantiated enough to justify the risk of some increase in interference. In this connection, the FCC notes that small businesses that require itinerant operations, whether new entrants or incumbents, will be eligible for these channels and may benefit from our proposal.

18. Regarding the FCC's rule change allowing 5 watts ERP for the fourteen channels in the Public Safety Pool, there will be no significant adverse impact on small entities. An alternative to this change would have been to maintain the current limitation of 2 watts output power or to have imposed a power limitation of less than 5 watts ERP. Neither of these alternatives, however, would be sufficient to promote flexibility for Public Safety Pool licensees that require more than 2 watts output power for their operations.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Final Rules

19. None.

20. *Report to Congress:* The FCC will send a copy of this Report and Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the FCC will send a copy of this Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

21. Pursuant to Sections 4(i), 303(f), 303(r), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 303(r) and 332, this Report and Order is adopted.

22. Part 90 of the FCC's Rules is amended as specified in rule changes, effective May 21, 2003.

23. The FCC's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 90

FCC equipment, Radio, Reporting and Recordkeeping requirements.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons discussed in the preamble the FCC amends 47 CFR part 90 as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 2. Section 90.20 is amended by adding limitations to the following frequencies to the table in paragraph (c)(3) and adding a new paragraph (d)(84) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(c) * * *

(3) * * *

PUBLIC SAFETY POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
453.03125	Base or mobile	44, 59, 60, 61, 62, 84	PM.
453.0375	do	27, 59, 60, 61, 62, 84	PX.
453.04375	do	44, 59, 60, 61, 62, 84	PM.
453.05625	do	44, 84	PX.
453.0625	do	27, 84	PX.
453.06875	do	44, 84	PX.
453.08125	Base or mobile	44, 59, 60, 61, 62, 84	PM.
453.0875	do	27, 59, 60, 61, 62, 84	PX.
453.09375	do	44, 59, 60, 61, 62, 84	PM.
453.10625	do	44, 84	PX.
453.1125	do	27, 84	PX.
453.11875	do	44, 84	PX.
453.13125	Base or mobile	44, 59, 60, 61, 62, 84	PM.
453.1375	do	27, 59, 60, 61, 62, 84	PX.
453.14375	do	44, 59, 60, 61, 62, 84	PM.
453.88125	do	44, 84	PX.
453.8875	do	27, 84	PX.
453.89375	do	44, 84	PX.
453.90625	do	44, 84	PX.
453.9125	do	27, 84	PX.
453.91875	do	44, 84	PX.
453.93125	do	44, 84	PX.
453.9375	do	27, 84	PX.
453.94375	do	44, 84	PX
453.95625	do	44, 84	PX.
453.9625	do	27, 84	PX.
453.96875	do	44, 84	PX.
453.98125	do	44, 84	PX.
453.9875	do	27, 84	PX.
453.99375	do	44, 84	PX.
458.03125	Mobile	44, 59, 61, 62, 84	PM.
458.0375	do	27, 59, 61, 62, 84	PX.
458.04375	do	44, 59, 61, 62, 84	PM.
458.05625	do	44, 84	PX.
458.0625	do	27, 84	PX.
458.06875	do	44, 84	PX.
458.08125	Mobile	44, 59, 61, 62, 84	PM.
458.0875	do	27, 59, 61, 62, 84	PX.
458.09375	do	44, 59, 61, 62, 84	PM.
458.10625	do	44, 84	PX.
458.1125	do	27, 84	PX.
458.11875	do	44, 84	PX.
458.13125	Mobile	44, 59, 61, 62, 84	PM.

PUBLIC SAFETY POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
458.1375	....do	27, 59, 61, 62, 84	PX.
458.14375	....do	44, 59, 61, 62, 84	PM.
* * * * * * *			
458.88125	....do	44, 84	PX.
458.8875	....do	27, 84	PX.
458.89375	....do	44, 84	PX.
* * * * * * *			
458.90625	....do	44, 84	PX.
458.9125	....do	27, 84	PX.
458.91875	....do	44, 84	PX.
* * * * * * *			
458.93125	....do	44, 84	PX.
458.9375	....do	27, 84	PX.
458.94375	....do	44, 84	PX.
* * * * * * *			
458.95625	....do	44, 84	PX.
458.9625	....do	27, 84	PX.
458.96875	....do	44, 84	PX.
* * * * * * *			
458.98125	....do	44, 84	PX.
458.9875	....do	27, 84	PX.
458.99375	....do	44, 84	PX.
* * * * * * *			
460.48125	....do	44, 84	PP.
460.4875	....do	27, 84	PP.
460.49375	....do	44, 84	PP.
* * * * * * *			
460.50625	....do	44, 84	PP.
460.5125	....do	27, 84	PP.
460.51875	....do	44, 84	PP.
* * * * * * *			
460.53125	....do	44, 84	PP, PF, PM.
460.5375	....do	27, 84	OO, PF, PM.
460.54375	....do	44, 84	PP, PF, PM.
* * * * * * *			
460.55625	....do	44, 84	PP, PF, PM.
460.5625	....do	27, 84	PP, PF, PM.
460.56875	....do	44, 84	PP, PF, PM.
* * * * * * *			
465.48125	....do	44, 84	PP.
465.4875	....do	27, 84	PP.
465.49375	....do	44, 84	PP.
* * * * * * *			
465.50625	....do	44, 84	PP.
465.5125	....do	27, 84	PP.
465.51875	....do	44, 84	PP.
* * * * * * *			
465.53125	....do	44, 84	PP, PF, PM.
465.5375	....do	27, 84	PP, PF, PM.
465.54375	....do	44, 84	PP, PF, PM.
* * * * * * *			
465.55625	....do	44, 84	PP, PF, PM.
465.5625	....do	27, 84	PP, PF, PM.
465.56875	....do	44, 84	PP, PF, PM.
* * * * * * *			

(d) * * *

(84) Operation on this frequency is subject to the low power provisions of § 90.267. This frequency is assigned to the Public Safety Group in the low power pool.

* * * * *

■ 3. Section 90.35 is amended by adding limitations to the following frequencies to the table in paragraph (b)(3), revising paragraph (c)(67) and adding new paragraphs (c)(83), (c)(84), (c)(85), (c)(86) and (c)(87) to read as follows:

§ 90.35 Industrial/Business Pool.

* * * * *

(b) * * *

(3) * * *

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * * * * *			
451.18125	....do	33, 84.	
451.1875	....do	83, 84.	
451.19375	....do	33, 84.	
* * * * * * *			
451.23125	....do	33, 84.	
451.2375	....do	83, 84.	
451.24375	....do	33, 84.	
* * * * * * *			
451.28125	....do	33, 84.	
451.2875	....do	83, 84.	
451.29375	....do	33, 84.	
* * * * * * *			
451.30625	....do	33, 84.	
451.3125	....do	83, 84.	
451.31875	....do	33, 84.	
* * * * * * *			
451.33125	....do	33, 84.	
451.3375	....do	83, 84.	
451.34375	....do	33, 84.	
* * * * * * *			
451.35625	....do	33, 84.	
451.3625	....do	83, 84.	
451.36875	....do	33, 84.	
* * * * * * *			
451.38125	....do	33, 84.	
451.3875	....do	83, 84.	
451.39375	....do	33, 84.	
* * * * * * *			
451.40625	....do	33, 84.	
451.4125	....do	83, 84.	
451.41875	....do	33, 84.	
* * * * * * *			
451.43125	....do	33, 84.	
451.4375	....do	83, 84.	
451.44375	....do	33, 84.	
* * * * * * *			
451.45625	....do	33, 84.	
451.4625	....do	83, 84.	
451.46875	....do	33, 84.	
* * * * * * *			
451.48125	....do	33, 84.	
451.4875	....do	83, 84.	
451.49375	....do	33, 84.	
* * * * * * *			
451.50625	....do	33, 84.	
451.5125	....do	83, 84.	
451.51875	....do	33, 84.	
* * * * * * *			
451.53125	....do	33, 84.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
451.5375	do	83, 84.	
451.54375	do	33, 84.	
* * * * * * *			
451.55625	do	4, 7, 33, 84.	
451.5625	do	4, 7, 83, 84.	
451.56875	do	4, 7, 33, 84.	
* * * * * * *			
451.58125	do	33, 84.	
451.5875	do	63, 84.	
451.59375	do	33, 84.	
* * * * * * *			
451.60625	do	4, 7, 33, 84.	
451.6125	do	4, 7, 83, 84.	
451.61875	do	4, 7, 33, 84.	
* * * * * * *			
451.63125	do	33, 84.	
451.6375	do	83, 84.	
451.64375	do	33, 84.	
* * * * * * *			
451.65625	do	4, 7, 33, 84.	
451.6625	do	4, 7, 83, 84.	
451.66875	do	4, 7, 33, 84.	
* * * * * * *			
451.68125	do	33, 84.	
451.6875	do	83, 84.	
451.69375	do	33, 84.	
* * * * * * *			
451.70625	do	4, 7, 33, 84.	
451.7125	do	4, 7, 83, 84.	
451.71875	do	4, 7, 33, 84.	
* * * * * * *			
451.73125	do	33, 84.	
451.7375	do	83, 84.	
451.74375	do	33, 84.	
* * * * * * *			
451.75625	do	4, 7, 33, 84.	
451.7625	do	4, 7, 83, 84.	
451.76875	do	4, 7, 33, 84.	
* * * * * * *			
452.03125	do	33, 84.	
452.0375	do	83, 84.	
452.04375	do	33, 84.	
* * * * * * *			
452.05625	do	33, 84.	
452.0625	do	83, 84.	
452.06875	do	33, 84.	
* * * * * * *			
452.08125	do	33, 84.	
452.0875	do	83, 84.	
452.09375	do	33, 84.	
* * * * * * *			
452.10625	do	33, 84.	
452.1125	do	83, 84.	
452.11875	do	33, 84.	
* * * * * * *			
452.13125	do	33, 84.	
452.1375	do	83, 84.	
452.14375	do	33, 84.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * * * * *			
452.15625	do	33, 84.	
452.1625	do	83, 84.	
452.16875	do	33, 84.	
* * * * * * *			
452.18125	do	33, 84.	
452.1875	do	83, 84.	
452.19375	do	33, 84.	
* * * * * * *			
452.28125	do	33, 84.	
452.2875	do	83, 84.	
452.29375	do	33, 84.	
* * * * * * *			
452.30625	do	33, 84.	
452.3125	do	83, 84.	
452.31875	do	33, 84.	
* * * * * * *			
452.40625	do	33, 84.	
452.4125	do	83, 84.	
452.41875	do	33, 84.	
* * * * * * *			
452.48125	do	33, 84.	
452.4875	do	83, 84.	
452.49375	do	33, 84.	
* * * * * * *			
452.50625	do	33, 84.	
452.5125	do	83, 84.	
452.51875	do	33, 84.	
* * * * * * *			
452.53125	do	33, 84	LA
452.5375	do	83, 84	LA
452.54375	do	33, 84	LA
* * * * * * *			
452.63125	do	33, 84.	
452.6375	do	83, 84.	
452.64375	do	33, 84.	
* * * * * * *			
452.65625	do	33, 84.	
452.6625	do	83, 84.	
452.66875	do	33, 84.	
* * * * * * *			
452.68125	do	33, 84.	
452.6875	do	83, 84.	
452.69375	do	33, 84.	
* * * * * * *			
452.70625	do	33, 84.	
452.7125	do	83, 84.	
452.71875	do	33, 84.	
* * * * * * *			
452.75625	do	33, 84.	
452.7625	do	83, 84.	
452.76875	do	33, 84.	
* * * * * * *			
452.78125	do	33, 84.	
452.7875	do	83, 84.	
452.79375	do	33, 84.	
* * * * * * *			
452.80625	do	33, 84.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
452.8125	do	83, 84.	
452.81875	do	33, 84.	
* * * * * * *			
452.83125	do	33, 84.	
452.8375	do	83, 84.	
452.84375	do	33, 84.	
* * * * * * *			
452.85625	do	33, 84.	
452.8625	do	83, 84.	
452.86875	do	33, 84.	
* * * * * * *			
452.88125	do	33, 84.	
452.8875	do	83, 84.	
452.89375	do	33, 84.	
* * * * * * *			
452.98125	do	33, 84.	
452.9875	do	83, 84.	
452.99375	do	33, 84.	
* * * * * * *			
456.18125	do	33, 84.	
456.1875	do	83, 84.	
456.19375	do	33, 84.	
* * * * * * *			
456.23125	do	33, 84.	
456.2375	do	83, 84.	
456.24375	do	33, 84.	
* * * * * * *			
456.281125	do	33, 84.	
456.2875	do	83, 84.	
456.29375	do	33, 84.	
* * * * * * *			
456.30625	do	33, 84.	
456.3125	do	83, 84.	
456.31875	do	33, 84.	
* * * * * * *			
456.33125	do	33, 84.	
456.3375	do	83, 84.	
456.34375	do	33, 84.	
* * * * * * *			
456.35625	do	33, 84.	
456.3625	do	83, 84.	
456.36875	do	33, 84.	
* * * * * * *			
456.38125	do	33, 84.	
456.3875	do	83, 84.	
456.39375	do	33, 84.	
* * * * * * *			
456.40625	do	33, 84.	
456.4125	do	83, 84.	
456.41875	do	33, 84.	
* * * * * * *			
456.43125	do	33, 84.	
456.4375	do	83, 84.	
456.44375	do	33, 84.	
* * * * * * *			
456.45625	do	33, 84.	
456.4625	do	83, 84.	
456.46875	do	33, 84.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
* * * * * * *			
456.48125	do	33, 84.	
456.4875	do	83, 84.	
456.49375	do	33, 84.	
* * * * * * *			
456.50625	do	33, 84.	
456.5125	do	83, 84.	
456.51875	do	33, 84.	
* * * * * * *			
456.53125	do	33, 84.	
456.5375	do	83, 84.	
456.54375	do	33, 84.	
* * * * * * *			
456.55625	do	33, 84.	
456.5625	do	83, 84.	
456.56875	do	33, 84.	
* * * * * * *			
456.58125	do	33, 84.	
456.5875	do	83, 84.	
456.59375	do	33, 84.	
* * * * * * *			
456.60625	do	33, 84.	
456.6125	do	83, 84.	
456.61875	do	33, 84.	
* * * * * * *			
456.63125	do	33, 84.	
456.6375	do	83, 84.	
456.64375	do	33, 84.	
* * * * * * *			
456.65625	do	33, 84.	
456.6625	do	83, 84.	
456.66875	do	33, 84.	
* * * * * * *			
456.68125	do	33, 84.	
456.6875	do	83, 84.	
456.69375	do	33, 84.	
* * * * * * *			
456.70625	do	33, 84.	
456.7125	do	83, 84.	
456.71875	do	33, 84.	
* * * * * * *			
456.73125	do	33, 84.	
456.7375	do	83, 84.	
456.74375	do	33, 84.	
* * * * * * *			
456.75625	do	33, 84.	
456.7625	do	83, 84.	
456.76875	do	33, 84.	
* * * * * * *			
457.03125	do	33, 84.	
457.0375	do	83, 84.	
457.04375	do	33, 84.	
* * * * * * *			
457.05625	do	33, 84.	
457.0625	do	83, 84.	
457.06875	do	33, 84.	
* * * * * * *			
457.08125	do	33, 84.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
457.0875	do	83, 84.	
457.09375	do	33, 84.	
457.10625	do	33, 84.	
457.1125	do	83, 84.	
457.11875	do	33, 84.	
457.13125	do	33, 84.	
457.1375	do	38, 84.	
457.14375	do	33, 84.	
457.15625	do	33, 84.	
457.1625	do	83, 84.	
457.16875	do	33,84.	
457.18125	do	33,84.	
457.1875	do	83,84.	
457.19375	do	33,84.	
457.28125	do	33,84.	
457.2875	do	33,84.	
457.29375	do	33,84.	
457.30625	do	33,84.	
457.3125	do	83,84.	
457.31875	do	33,84.	
457.40625	do	33,84.	
457.4125	do	83,84.	
457.41875	do	33,84.	
457.48125	do	33,84.	
457.4875	do	83,84.	
457.49375	do	33,84.	
457.50625	do	33,84.	
457.5125	do	83,84.	
457.51875	do	33,84.	
457.63125	do	33,84.	
457.6375	do	83,84.	
457.64375	do	33,84.	
457.65625	do	33,84.	
457.6625	do	83,84.	
457.66875	do	33,84.	
457.68125	do	33,84.	
457.6875	do	83,84.	
457.69375	do	33,84.	
457.70625	do	33,84.	
457.7125	do	83,84.	
457.71875	do	33,84.	
457.78125	do	33,84.	
457.7875	do	83,84.	
457.79375	do	33,84.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
457.80625	do	33,84.	
457.8125	do	83,84.	
457.81875	do	33,84.	
457.83125	do	33,84.	
457.8375	do	83,84.	
457.84375	do	33,84.	
457.85625	do	33,84.	
457.8625	do	83,84.	
457.86875	do	33,84.	
457.88125	do	33,84.	
457.8875	do	83,84.	
457.89375	do	33,84.	
457.98125	do	33,84.	
457.9875	do	83,84.	
457.99375	do	33,84.	
460.90625	do	33, 63, 65, 87.	
460.9125	do	63, 65, 83, 87.	
460.91875	do	33, 63, 65, 87.	
460.93125	do	33, 63, 65, 87.	
460.9375	do	63, 65, 83, 87.	
460.94375	do	33, 63, 65, 87.	
460.95625	do	33, 63, 65, 87.	
460.9625	do	63, 65, 83, 87.	
460.96875	do	33, 63, 65, 87.	
460.98125	do	33, 65, 66, 87.	
460.9875	do	65, 66, 83, 87.	
460.99375	do	33, 65, 66, 87.	
461.00625	do	33, 65, 66, 87.	
461.0125	do	65, 66, 83, 87.	
461.01875	do	33, 65, 66, 87.	
461.03125	Mobile	33, 86.	
461.0375	do	83, 86.	
461.04375	do	33, 86.	
461.050	Base or mobile	62.	
461.05625	Mobile	33, 86.	
461.0625	do	83, 86.	
461.06875	do	33, 86.	
461.075	Base or mobile	62.	
461.08125	Mobile	33, 86.	
461.0875	do	83, 86.	
461.09375	do	33, 86.	
461.100	Base or mobile	62.	
461.10625	Mobile	33, 86.	
461.1125	do	83, 86.	
461.11875	do	33, 86.	
461.125	Base or mobile	62.	
461.13125	Mobile	33, 86.	
461.1375	do	83, 86.	
461.14375	do	33, 86.	
461.150	Base or mobile	62.	
461.15625	Mobile	33, 86.	
461.1625	do	83, 86.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
461.16875	.....do	33, 86.	
461.175	Base or mobile	62.	
461.18125	Mobile	33, 86.	
461.1875	.....do	83, 86.	
461.19375	.....do	33, 86.	
461.200	Base or mobile	62.	
461.20625	Mobile	33, 86.	
461.2125	.....do	83, 86.	
461.21875	.....do	33, 86.	
461.225	Base or mobile	62.	
461.23125	Mobile	33, 86.	
461.2375	.....do	83, 86.	
461.24375	.....do	33, 86.	
461.250	Base or mobile	62.	
461.25625	Mobile	33, 86.	
461.2625	.....do	83, 86.	
461.26875	.....do	33, 86.	
461.275	Base or mobile	62.	
461.28125	Mobile	33, 86.	
461.2875	.....do	83, 86.	
461.29375	.....do	33, 86.	
461.300	Base or mobile	62.	
461.30625	Mobile	33, 86.	
461.3125	.....do	83, 86.	
461.31875	.....do	33, 86.	
461.325	Base or mobile	62.	
461.33125	Mobile	33, 86.	
461.3375	.....do	83, 86.	
461.34375	.....do	33, 86.	
461.350	Base or mobile	62.	
461.35625	Mobile	33, 86.	
461.3625	.....do	83, 86.	
461.36875	.....do	33, 86.	
461.375	Base or mobile	62.	
* * * * * * *			
462.18125	.....do	33, 84.	
462.1875	.....do	83, 84.	
462.19375	.....do	33, 84.	
* * * * * * *			
462.20625	.....do	33, 85.	
462.2125	.....do	83, 85.	
462.21875	.....do	33, 85.	
* * * * * * *			
462.23152	.....do	33, 85.	
462.2375	.....do	83, 85.	
462.24375	.....do	33, 85.	
* * * * * * *			
462.25625	.....do	33, 85.	
462.2625	.....do	83, 85.	
462.26875	.....do	33, 85.	
* * * * * * *			
462.28125	.....do	33, 85.	
462.2875	.....do	83, 85.	
462.29375	.....do	33, 85.	
* * * * * * *			
462.30625	.....do	33, 85.	
462.3125	.....do	83, 85.	
462.31875	.....do	33, 85.	
* * * * * * *			
462.33125	.....do	33, 85.	
462.33125	.....do	83, 85.	
462.34375	.....do	33, 85.	
* * * * * * *			
462.35625	.....do	33, 85.	
462.3625	.....do	83, 85.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
462.36875	.....do	33, 85.	
* * * * * * *			
462.38125	.....do	33, 85.	
462.3875	.....do	83, 85.	
462.39375	.....do	33, 85.	
* * * * * * *			
462.40625	.....do	33, 85.	
462.4125	.....do	83, 85.	
462.41875	.....do	33, 85.	
* * * * * * *			
462.43125	.....do	33, 85.	
462.4375	.....do	83, 85.	
462.44375	.....do	33, 85.	
* * * * * * *			
462.45625	.....do	33, 84.	
462.4625	.....do	83, 84.	
462.46875	.....do	33, 84.	
* * * * * * *			
462.48125	.....do	33, 84.	
462.4875	.....do	83, 84.	
462.49375	.....do	33, 84.	
* * * * * * *			
462.50625	.....do	33, 84.	
462.5125	.....do	83, 84.	
462.51875	.....do	33, 84.	
* * * * * * *			
462.7625	Mobile	67, 86.	
* * * * * * *			
462.7875	Mobile	67, 86.	
* * * * * * *			
462.8125	Mobile	67, 86.	
* * * * * * *			
462.8375	Mobile	67, 86.	
* * * * * * *			
462.8625	Mobile	67, 86.	
* * * * * * *			
462.8875	Mobile	67, 86.	
* * * * * * *			
462.9125	Mobile	67, 86.	
* * * * * * *			
462.9375	Mobile	86.	
* * * * * * *			
464.48125	Mobile	33, 86.	
464.4875	.....do	83, 86.	
464.500	Base or mobile	10, 34.	
464.5125	Mobile	83, 86.	
464.51875	.....do	33, 86.	
464.525	Base or mobile	62.	
464.53125	Mobile	33, 86.	
464.5375	.....do	83, 86.	
464.550	Base or mobile	10, 34.	
464.5625	Mobile	83, 86.	
464.56875	.....do	33, 86.	
* * * * * * *			
464.9875	Mobile		

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
465.0125	Mobile	88.	
465.90625	do	33, 63, 87.	
465.9125	do	63, 83, 87.	
465.91875	do	33, 63, 87.	
465.93125	do	33, 63, 87.	
465.9375	do	63, 83, 87.	
465.94375	do	33, 63, 87.	
465.95625	do	33, 63, 87.	
465.9625	do	63, 83, 87.	
465.96875	do	33, 63, 87.	
465.98125	do	33, 66, 87.	
465.9875	do	66, 83, 87.	
465.99375	do	33, 66, 87.	
466.00625	do	33, 66, 87.	
466.0125	do	66, 69, 83, 87.	
466.01875	do	33, 66, 87.	
466.03125	do	33, 86.	
466.0375	do	83, 86.	
466.04375	do	33, 86.	
466.05625	do	33, 86.	
466.0625	do	83, 86.	
466.06875	do	33, 86.	
466.08125	do	33, 86.	
466.0875	do	83, 86.	
466.09375	do	33, 86.	
466.10625	do	33, 86.	
466.1125	do	83, 86.	
466.11875	do	33, 86.	
466.13125	do	33, 86.	
466.1375	do	83, 86.	
466.14375	do	33, 86.	
466.15625	do	33, 86.	
466.1625	do	83, 86.	
466.16875	do	33, 86.	
466.18125	do	33, 86.	
466.1875	do	83, 86.	
466.19375	do	33, 86.	
466.20625	do	33, 86.	
466.2125	do	83, 86.	
466.21875	do	33, 86.	
466.23125	do	33, 86.	
466.2375	do	83, 86.	
466.24375	do	33, 86.	
466.25625	do	33, 86.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
466.2625	do	83, 86.	
466.26875	do	33, 86.	
466.28125	do	33, 86.	
466.2875	do	83, 86.	
466.29375	do	33, 86.	
466.30625	do	33, 86.	
466.3125	do	83, 86.	
466.31875	do	33, 86.	
466.33125	do	33, 86.	
466.3375	do	83, 86.	
466.34375	do	33, 86.	
466.35625	do	33, 86.	
466.3625	do	83, 86.	
466.36875	do	33, 86.	
467.18125	do	33, 84.	
467.1875	do	83, 84.	
467.19375	do	33, 84.	
467.20625	do	33, 85.	
467.2125	do	83, 85.	
467.21875	do	33, 85.	
467.23152	do	33, 85.	
467.2375	do	83, 85.	
467.24375	do	33, 85.	
467.25625	do	33, 85.	
467.2625	do	83, 85.	
467.26875	do	33, 85.	
467.28125	do	33, 85.	
467.2875	do	83, 85.	
467.29375	do	33, 85.	
467.30625	do	33, 85.	
467.3125	do	83, 85.	
467.31875	do	33, 85.	
467.33125	do	33, 85.	
467.3375	do	83, 85.	
467.34375	do	33, 85.	
467.35625	do	33, 85.	
467.3625	do	83, 85.	
467.36875	do	33, 85.	
467.38125	do	33, 85.	
467.3875	do	83, 85.	
467.39375	do	33, 85.	
467.40625	do	33, 85.	
467.4125	do	83, 85.	
467.41875	do	33, 85.	

INDUSTRIAL/BUSINESS POOL FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations	Coordinator
467.43125	do	33, 85.	
467.4375	do	83, 85.	
467.44375	do	33, 85.	
467.45625	do	33, 84.	
467.4625	do	83, 84.	
467.46875	do	33, 84.	
467.48125	do	33, 84.	
467.4875	do	83, 84.	
467.49375	do	33, 84.	
467.50625	do	33, 84.	
467.5125	do	83, 84.	
467.51875	do	33, 84.	
467.8625	do	67, 86.	
467.8875	do	67, 86.	
467.9125	do	67, 86.	
467.9375	do	88.	
469.48125	do	33, 86.	
469.4875	do	83, 86.	
469.5125	do	83, 86.	
469.51875	do	33, 86.	
469.53125	do	33, 86.	
469.5375	do	83, 86.	
469.5625	do	83, 86.	
469.56875	do	33, 86.	

(c) * * *

(67) Medical telemetry operations are authorized on this frequency on a secondary basis. Medical telemetry operations are subject to the provisions of § 90.267(h)(2). Itinerant operations on this frequency will be prohibited until the end of the freeze on the filing of high power applications for 12.5 kHz offset channels in the 460–470 MHz band.

* * * * *

(83) Telemetry operations on this frequency will be authorized pursuant to § 90.267.

(84) Operation on this frequency is subject to the low power provisions of § 90.267. This frequency is assigned to Group A in the low power pool.

(85) Operation on this frequency is subject to the low power provisions of § 90.267. This frequency is assigned to Group B in the low power pool.

(86) Operation on this frequency is subject to the low power provisions of § 90.267. This frequency is assigned to Group C in the low power pool.

(87) Operation on this frequency is subject to the low power provisions of § 90.267. This frequency is assigned to Group D in the low power pool.

(88) Use of this frequency is on a secondary basis limited to 2 watts output power and subject to the provisions of § 90.267(h)(1), (h)(2), (h)(3) and (h)(4).

* * * * *

■ 4. Section 90.238 is amended by revising paragraphs (g) and (i) to read as follows:

§ 90.238 Telemetry operations.

* * * * *

(g) 450–470 MHz band (as available for secondary fixed operations in accordance with § 90.261 and for low power operations in accordance with § 90.267).

* * * * *

(i) For Industrial/Business frequencies which are not governed by paragraphs (a) through (h), on frequencies available for operations up to 2 watts.

■ 5. Section 90.261 is amended by revising paragraph (f) introductory text to read as follows:

§ 90.261 Assignment and use of the frequencies in the band 450–470 MHz for fixed operation.

* * * * *

(f) Secondary fixed operations pursuant to paragraph (a) of this section will not be authorized on the following frequencies or on frequencies subject to § 90.267:

* * * * *

■ 6. Section 90.267 is revised to read as follows:

§ 90.267 Assignment and use of frequencies in the 450–470 MHz band for low power use.

(a) The following frequencies between 450–470 MHz are designated for low-power use subject to the provisions of this section. For purposes of this section these frequencies are referred to as "low power frequencies." Pairs are shown but single frequencies are available for simplex operations.

(b) *Group A1 Frequencies.* The Industrial/Business Pool frequencies in Group A1 are available on a coordinated basis, pursuant to § 90.35(b)(2) and § 90.175(b), as follows:

(1) Group A1 frequencies are available for voice and non-voice operations on a co-primary basis. Base, mobile and operational fixed stations will be authorized on Group A1 frequencies. Fixed stations may be licensed as mobile.

(2) Within 80 kilometers (50 miles) of the specified coordinates of the top 100 urban areas listed in § 90.741 of this chapter ("80 km circles") only low power operation will be authorized. The coordinates of an operational fixed or base station and the geographic center (latitude and longitude) of a mobile area of operation determine whether a station is within an "80 km circle."

(i) The maximum ERP for low power operation on Group A1 frequencies is as follows:

Operation	Low side of frequency pair (watts)	High side of frequency pair (watts)
Operational Fixed or Base	20	6
Mobile	6	6
Portable	2	2

(ii) The maximum antenna height for low power fixed stations on Group A1 frequencies will be 23 meters (75 feet) above ground.

(3) Outside the "80 km circles" defined in paragraph (b)(2), full-power operational fixed, base, or mobile stations will be authorized as follows:

(i) Power and antenna height limits are governed by § 90.205 of this chapter;

(ii) For any operational fixed, base or mobile station exceeding the low power or antenna height limits listed in paragraph (b)(2), the 21 dBu F(50,10) contour may not overlap any portion of an "80 km circle;" and,

(iii) Wide area operations will not be permitted. The area of normal day-to-day operations will be described in the application in terms of maximum distance from a geographic center (latitude and longitude).

(4) The Industrial/Business Pool Group A1 Low Power Frequencies are as follows:

451/456.18125	451/456.58125	452/457.10625	452/457.70625
451/456.1875	451/456.5875	452/457.1125	452/457.7125
451/456.19375	451/456.59375	452/457.11875	452/457.71875
451/456.28125	451/456.60625	452/457.13125	452/457.78125
451/456.2875	451/456.6125	452/457.1375	452/457.7875
451/456.29375	451/456.61875	452/457.14375	452/457.79375
451/456.30625	451/456.65625	452/457.15625	452/457.80625
451/456.3125	451/456.6625	452/457.1625	452/457.8125
451/456.31875	451/456.66875	452/457.16875	452/457.81875
451/456.35625	451/456.68125	452/457.18125	452/457.83125
451/456.3625	451/456.6875	452/457.1875	452/457.8375
451/456.36875	451/456.69375	452/457.19375	452/457.84375
451/456.38125	451/456.70625	452/457.28125	452/457.88125
451/456.3875	451/456.7125	452/457.2875	452/457.8875
451/456.39375	451/456.71875	452/457.29375	452/457.89375
451/456.40625	451/456.73125	452/457.48125	452/457.98125
451/456.4125	451/456.7375	452/457.4875	452/457.9875
451/456.41875	451/456.74375	452/457.49375	452/457.99375
451/456.45625	451/456.75625	452.53125 (unpaired)	462/467.18125
451/456.4625	451/456.7625	452.5375 (unpaired)	462/467.1875
451/456.46875	451/456.76875	452.54375 (unpaired)	462/467.19375
451/456.48125	452/457.03125	452/457.63125	462/467.45625
451/456.4875	452/457.0375	452/457.6375	462/467.4625
451/456.49375	452/457.04375	452/457.64375	462/467.46875
451/456.50625	452/457.05625	452/457.65625	462/467.48125
451/456.5125	452/457.0625	452/457.6625	462/467.4875
451/456.51875	452/457.06875	452/457.66875	462/467.49375
451/456.55625	452/457.08125	452/457.68125	462/467.50625
451/456.5625	452/457.0875	452/457.6875	462/467.5125
451/456.56875	452/457.09375	452/457.69375	462/467.51875

(c) *Group A2 Frequencies.* The Industrial/Business Pool frequencies in Group A2 are available nationwide on a coordinated basis, pursuant § 90.35(b)(2) and § 90.175(b) as follows:

(1) Group A2 frequencies are available for voice and non-voice operations on a co-primary basis. Base, mobile or

operational fixed stations will be authorized on Group A2 frequencies. Fixed stations may be licensed as mobile.

(2) Low power operation will be authorized nationwide on Group A2 frequencies.

(i) The maximum ERP for low power operation on these frequencies is as follows:

Operation	Low side of frequency pair	High side of frequency pair (watts)
Operational Fixed or Base	20	6
Mobile	6	6
Portable	2	2

(ii) The maximum antenna height for low power fixed stations will be 23 meters (75 feet) above ground.

(3) The Industrial/Business Pool Group A2 Low Power Frequencies are as follows:

451/456.23125	451/456.53125	452/457.40625	452/457.85625
451/456.2375	451/456.5375	452/457.4125	452/457.8625
451/456.24375	451/456.54375	452/457.41875	452/457.86875
451/456.33125	451/456.63125	452/457.50625	
451/456.3375	451/456.6375	452/457.5125	
451/456.34375	451/456.64375	452/457.51875	
451/456.43125	452/457.30625	452/457.75625	
451/456.4375	452/457.3125	452/457.7625	
451/456.44375	452/457.31875	452/457.76875	

(d) *Group B Frequencies.* The Industrial/Business Pool frequencies in Group B are available nationwide on a coordinated basis, pursuant to § 90.35(b)(2) and § 90.175(b) as follows:

(1) Group B frequencies are available for non-voice operations on a primary basis. Voice operations will be permitted on a secondary basis. Base, mobile or operational fixed stations will be authorized on Group B frequencies. Fixed stations may be licensed as mobile.

(2) Operation on these frequencies is limited to 6 watts ERP for base, mobile or operational fixed stations and 2 watts ERP for portable units. A maximum antenna height of 23 meters (75 feet) above ground is authorized for fixed stations.

(3) The Industrial/Business Pool Group B Frequencies are as follows:

462/467.20625	462/467.28125	462/467.35625	462/467.43125
462/467.2125	462/467.2875	462/467.3625	462/467.4375
462/467.21875	462/467.29375	462/467.36875	462/467.44375
462/467.23152	462/467.30625	462/467.38125	
462/467.2375	462/467.3125	462/467.3875	
462/467.24375	462/467.31875	462/467.39375	
462/467.25625	462/467.33125	462/467.40625	
462/467.2625	462/467.3375	462/467.4125	
462/467.26875	462/467.34375	462/467.41875	

(e) *Group C Frequencies.* The Industrial/Business Pool frequencies in Group C are available nationwide for non-coordinated itinerant use as follows.

(1) Group C frequencies are available for voice and non-voice operations on a co-primary basis. Only mobile operations will be authorized on Group C frequencies. Stations may operate at fixed locations for a temporary period of time. No stations operating at a permanent fixed location will be authorized on Group C frequencies.

(2) Operation on these frequencies is limited to 6 watts effective radiated power for fixed or mobile units and 2 watts ERP for portable units. Stations operating at fixed locations for a temporary period of time will be limited to an antenna height of 7 meters (20 feet) above ground.

(3) The frequencies in Group C that are subject to the provisions of § 90.35(b)(67) will not be available for itinerant use until the end of the freeze on the filing of high power applications for 12.5 kHz offset channels in the 460–470 MHz band.

(4) The Industrial/Business Pool Group C Low Power Frequencies are as follows:

461/466.03125	461/466.15625	461/466.28125	462.8125
461/466.0375	461/466.1625	461/466.2875	462.8375 (unpaired)
461/466.04375	461/466.16875	461/466.29375	462/467.8625
461/466.05625	461/466.18125	461/466.30625	462/467.8875
461/466.0625	461/466.1875	461/466.3125	462/467.9125
461/466.06875	461/466.19375	461/466.31875	464/469.48125
461/466.08125	461/466.20625	461/466.33125	464/469.4875
461/466.0875	461/466.2125	461/466.3375	464/469.5125
461/466.09375	461/466.21875	461/466.34375	464/469.51875
461/466.10625	461/466.23125	461/466.35625	464/469.53125
461/466.1125	461/466.2375	461/466.3625	464/469.5375
461/466.11875	461/466.24375	461/466.36875	464/469.5625
461/466.13125	461/466.25625	462.7625 (unpaired)	464/469.56875
461/466.1375	461/466.2625	462.7875 (unpaired)	

461/466.14375	461/466.26875	462.8125 (unpaired)

(f) *Group D Frequencies.* The Industrial/Business Pool frequencies in Group D are available for central station alarm operations on a coordinated basis, pursuant to § 90.35(b)(2) and § 90.175(b).

(1) Base, mobile or operational fixed stations will be authorized on Group D frequencies. Fixed stations may be licensed as mobile.

(2) Group D frequencies subject to § 90.35(c)(63) are limited to central station alarm use within the urban areas described in § 90.35(c)(63). Outside the urban areas described in § 90.35(c)(63), Group D frequencies subject to § 90.35(c)(63) are available for general Industrial/Business use on a coordinated basis, pursuant to § 90.35(b)(2) and § 90.175(b).

(3) Group D frequencies subject to § 90.35(c)(66) are limited to central station alarm use nationwide.

(4) Operation on Group D frequencies is limited to 2 watts output power for mobile, base or operational fixed stations. Fixed stations used for central station alarm operations may utilize antennas mounted not more than 7 meters (20 feet) above a man-made supporting structure, including antenna structure.

(5) The Industrial/Business Pool Group D Low Power Frequencies are as follows:

460/465.90625	460/465.95625	461/466.00625
460/465.9125	460/465.9625	461/466.0125
460/466.91875	460/465.96875	461/466.01875
460/465.93125	460/465.98125	
460/465.9375	460/465.9875	
460/465.94375	460/465.99375	

(g) *Low Power Public Safety Frequencies.* The frequencies in the Public Safety Pool Low Power Group are available nationwide on a coordinated basis, pursuant to § 90.20(c)(2) and § 90.175(b).

(1) Base, mobile or operational fixed stations will be authorized on Public Safety Low Power frequencies. Fixed stations may be licensed as mobile.

(2) Operation on these frequencies is limited to 6 watts effective radiated power for base, mobile or operational fixed stations and 2 watts ERP for portable units. A maximum antenna height of 7 meters (20 feet) above ground is authorized for fixed stations.

(3) The Public Safety Pool Low Power Frequencies are as follows:

453/458.03125	453/458.13125	453/458.95625	460/465.53125
453/458.0375	453/458.1375	453/458.9625	460/465.5375
453/458.04375	453/458.14375	453/458.96875	460/465.54375
453/458.05625	453/458.88125	453/458.98125	460/465.55625
453/458.0625	453/458.8875	453/458.9875	460/465.5625
453/458.06875	453/458.89375	453/458.99375	460/465.56875
453/458.08125	453/458.90625	460/465.48125	
453/458.0875	453/458.9125	460/465.4875	
453/458.09375	453/458.91875	460/465.49375	
453/458.10625	453/458.93125	460/465.50625	
453/458.1125	453/458.9375	460/465.5125	
453/458.11875	453/458.94375	460/465.51875	

(h) Unless otherwise noted, the following conditions apply to all low power frequencies:

(1) Except for itinerant operations on Group C, wide area operations will not be authorized. The area of normal day-to-day operations will be described in the application in terms of maximum distance from a geographic center (latitude and longitude).

(2) A hospital or health care institution holding a license to operate a radio station under this part may operate a medical radio telemetry device with an output power not to exceed 20 milliwatts without specific authorization from the Commission. All licensees operating under this authority must comply with the requirements and limitations set forth in this section.

(3) No limit shall be placed on the length or height above ground level of any commercially manufactured radiating transmission line when the transmission line is terminated in a non-radiating load and is routed at least 7 meters (20 feet) interior to the edge of any structure or is routed below ground level.

(4) Sea-based stations may utilize antennas mounted not more than 7 meters (20 feet) above a man-made supporting structure, including antenna structures.

(5) Continuous carrier operations are prohibited on these frequencies.

(6) Unless specified elsewhere in this part, licensees as of August 5, 1999, licensed for operations with an emission designator wider than 11.25 kHz on low power frequencies that are subject to an authorized bandwidth of 11.25 kHz, may obtain primary status with respect to co-channel licensees by supplying their coordinates to the Commission. These licensees will continue to operate on a secondary basis with respect to adjacent channel licensees. Additionally, these licensees may continue to operate with an authorized bandwidth wider than 11.25 kHz on such low power frequencies, subject to the provisions of § 90.209(b) of this chapter.

(7) Unless specified elsewhere in this part, licensees as of August 5, 1999, licensed for operations with an emission designator wider than 11.25 kHz on frequencies that are subject to an authorized bandwidth of 11.25 kHz, which are not low power frequencies, may obtain primary status with respect to co-channel licensees by modifying their license to low power frequencies, supplying their coordinates to the Commission, and otherwise complying with the conditions of paragraphs (b) through (g) of this section. These licensees will continue to operate on a

secondary basis with respect to adjacent channel licensees. Additionally, these licensees may continue to operate with an authorized bandwidth wider than 11.25 kHz on such low power frequencies, subject to the provisions of § 90.209(b) of this chapter.

(8) Applicants proposing to operate with an authorized bandwidth wider than 11.25 kHz, on low power frequencies that are subject to an authorized bandwidth of 11.25 kHz, may be licensed on a secondary, non-interference basis. Such applicants are subject to the conditions of paragraphs (b) through (g) of this section and the provisions of § 90.209(b) of this chapter.

[FR Doc. 03–9667 Filed 4–18–03; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030414084–3084–01; I.D. 021202A]

RIN 0648–AR02

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; technical amendment.

SUMMARY: NMFS issues a correction to final rules implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP) in order to correct unintended errors from the preamble and regulatory text in the final rules published in the **Federal Register** on February 16, 1999 and September 23, 2002. This technical amendment clarifies the requirements for shark gillnet gear in the southeast U.S. and corrects an error regarding fisheries affected by the final rules.

DATES: Effective April 21, 2003.

ADDRESSES: Copies of the Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Regulatory Flexibility Act (RFA) analysis for the final rules that are being corrected are available from Protected Resources Division, NMFS/Southeast Region, 9721 Executive Center Dr. North, St. Petersburg, FL 33702–2432. The ALWTRP Compliance guide, Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and a progress report on implementation of the ALWTRP may be obtained by writing to Diane Borggaard, NMFS/Northeast Region, 1 Blackburn Dr., Gloucester, MA 01930 or to Katie Moore, NMFS/Southeast Region, 9721 Executive Center Dr., St. Petersburg, FL 33702–2432. Copies of the EA, the RIR, and the RFA analysis may also be obtained from the ALWTRP web site listed (See Electronic Access).

FOR FURTHER INFORMATION CONTACT: Katie Moore, NMFS, Southeast Region, 727–570–5312; Diane Borggaard, NMFS, Northeast Region, 978–281–9145; or Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for this technical amendment and the take reduction planning process may be obtained from the ALWTRP web site: *http://www.nero.nmfs.gov/whaletrp/*. Copies of the most recent Stock Assessment Reports may be downloaded from the Internet at *http://www.nefsc.nmfs.gov/psb/assesspdfs.htm*. Information on disentanglement events is available on the web page of NMFS' whale disentanglement contractor, the Center for Coastal Studies, *http://www.coastalstudies.org/*.

Background

NMFS published a final rule (67 FR 59471, September 23, 2002) implementing approved modifications in the ALWTRP recommended by the ALWTRT to satisfy the requirements of the Endangered Species Act and the Marine Mammal Protection Act (MMPA). Details concerning the justification for and development of the rule were provided in the preamble to the proposed rule (67 FR 14690, March 27, 2002) and are not repeated here.

This technical amendment clarifies and corrects the preamble to the final rule. By truncating the definition of the Southeast Atlantic gillnet fishery and misstating a word, the rule incorrectly defined the fisheries affected. On page 59472, column 1, the first paragraph, second sentence under *Changes Proposed for the ALWTRP for Gillnet Gear* in the preamble should read: "This final rule regulates the MMPA's List of Fisheries (LOF) definition for the Southeast Atlantic gillnet fishery which includes any type of gillnet gear for any species (except shark gillnetting effort using 5–inch (12.7–cm) or greater stretched mesh south of the South Carolina/Georgia border) in waters south of a line extending due east from the North Carolina/South Carolina border and south and east of the fishery management council demarcation line between the Atlantic Ocean and the Gulf of Mexico (50 CFR 600.105)."

Fishing for sharks with strikenet gear is exempt from restrictions detailed in 50 CFR 229.32(f)(4) if the fishers adhere to a list of requirements. All of the requirements must be met in order for this exemption to apply. For clarity, NMFS is adding the term "and" before the last requirement of the list. The term "and" was included in the proposed rule (62 FR 16519, April 7, 1997), the interim final rule's comments and responses (62 FR 29157, July 22, 1997, comment 67), but was inadvertently omitted from the interim final rule and the final rule (64 FR 7529, February 16, 1999) regulatory text.

This final rule will also correct an error in the regulatory text of the February 16, 1999 final rule (64 FR 7529) by deleting the reference to minke whales. Two of the requirements necessary to obtain an exemption, as discussed in the previous paragraph of this preamble, specifically relate to a list of whale species included in that regulatory provision. Minke whale was not in this list of species in the proposed rule (April 7, 1997, 62 FR 16519) or the interim final rule (62 FR 39157, July 22, 1997). However, minke whale was included in this list of species in the regulatory text of final rule (64 FR 7529, February 16, 1999) without explanation and NMFS did not intend to include it.

Classification

The Assistant Administrator (AA) finds that good cause exists to waive the requirement to provide prior notice and the opportunity for comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be unnecessary. Prior notice and opportunity for comment are unnecessary because the technical amendments merely correct the preamble and inadvertent changes to regulatory text and will have a de minimis effect, if any, on the regulated community. The corrections do not increase the scope of the regulated community nor add new requirements. Because this portion of the rule corrects and clarifies provisions and makes non-substantive or de minimis changes to the ALWTRP regulations, good cause exists under 5 U.S.C. 553(d) not to delay the effective date of this final rule for 30 days.

In addition, in regard to removing minke whales from the regulatory text, NMFS did not intend to change the regulatory text to include minke whales and had no authority to do so; therefore, NMFS has no discretion in the decision to correct the provision. Because this portion of the rule relieves a restriction, it is not subject to a 30–day delay in effective date.

Because a general notice of proposed rulemaking is not required for this final rule under 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, and Marine mammals.

Dated: April 15, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, the National Marine Fisheries Service amends 50 CFR part 229 as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1371 *et seq.*

■ 2. In § 229.32, paragraph (f)(4)(iv) is revised to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(f) * * *

(4) * * *

(iv) *Special provision for strikenets.* Fishing for sharks with strikenet gear is exempt from the restrictions under paragraphs (f)(4)(ii) and (f)(4)(iii) of this section if:

(A) No nets are set at night or when visibility is less than 500 yards (460m);

(B) Each set is made under the observation of a spotter plane;

(C) No net is set within 3 nautical miles of a right, humpback or fin whale; and

(D) If a right, humpback or fin whale moves within 3 nautical miles of the set gear, the gear is removed immediately from the water.

* * * * *

[FR Doc. 03–9786 Filed 4–18–03; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 041503A]

Fisheries of the Exclusive Economic Zone off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the second seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 17, 2003, through 1200 hrs, May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The second seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI is 195 metric tons as established by the final 2003 harvest specifications for Groundfish of the BSAI (68 FR 9907, March 3, 2003).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the amount of the second seasonal apportionment of the halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI will be caught. Consequently, NMFS is closing directed fishing for species in the yellowfin sole fishery category by vessels using trawl gear in the BSAI.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the second seasonal apportionment of the halibut bycatch allowance specified, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 15, 2003.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9751 Filed 4–16–03;1:53 pm]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 76
Monday, April 21, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV03–916–3]

Nectarines and Peaches Grown in California; Announcement of Public Meeting To Review Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: Notice is hereby given that a public meeting will be held to provide information to the U. S. Department of Agriculture (USDA) on whether the Federal marketing order programs for California nectarines and peaches should be continued, modified or terminated. Growers, handlers, and other interested persons are invited to submit written comments to USDA and/or present oral comments at the meeting with respect to the continued operations of the marketing order programs.

DATES: The public meeting will begin at 8:30 a.m. P.D.T. on May 20, 2003, and continue until 5 p.m. The meeting will continue on May 21, 2003, from 8:30 a.m. to 12 p.m., if necessary. The meeting will be held at the Dinuba Memorial Building, 249 South Alta Avenue, Dinuba, California; telephone: 559–591–2223. Written comments will be received through June 20, 2003.

ADDRESSES: Written comments should be sent to California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, 2202 Monterey Street, Suite 102B, Fresno, California 93721, Attention: Kurt Kimmel; telephone: (559) 487–5901, Fax: (559) 487–5906 or E-mail: *moab.docketclerk@usda.gov*. All written comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the California Marketing Field Office during regular business hours or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Written comments received before the meeting will also be available for public inspection at the meeting.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: Continuance referenda were held from January 6 through January 31, 2003, to determine whether the marketing order programs for nectarines, pears and peaches grown in California should be continued. Results of the pear continuance referendum demonstrated support for the pear program to be continued. However, in the nectarine and peach referenda, fewer than two-thirds of those voting supported continuation of the programs. This notice announces a meeting to provide additional information for USDA on the marketing order programs for nectarines (M.O. 916) and peaches (M.O. 917) to evaluate the future of these programs.

On March 27, 2003, USDA announced it would hold listening sessions in the production area. The meeting will provide an opportunity for those in the industry to present detailed information on the present performance of the two marketing order programs. Information regarding present performance may include an analysis of the programs' cost effectiveness with regard to administration, research and advertising. USDA also seeks comments on whether amendment of some of the regulatory aspects of the two programs would make the programs more effective and create more support among growers and handlers. Finally, USDA seeks views on whether the orders for nectarines and peaches should be terminated. Interested persons are encouraged to send written comments to USDA and/or present oral comments at the meeting. Because we do not intend to transcribe the oral comments at the meeting, oral commenters are encouraged to submit their comments also in writing for best consideration.

Written comments, views, opinions, and other information regarding the nectarine, pear, and peach marketing orders' impact on small businesses are invited.

Dated: April 15, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–9672 Filed 4–18–03; 8:45 am]
BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

RIN 3150–AH08

Medical Use of Byproduct Material: Clarifying and Minor Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations regarding the medical use of byproduct material. This action would clarify the definitions of authorized users, authorized medical physicists, authorized nuclear pharmacists, and radiation safety officers; clarify the notification requirements if the patient is in a medical emergency or dies; clarify the recordkeeping requirements for calibration of brachytherapy sources; correct the title for the National Institute of Standards and Technology; clarify that prior to October 24, 2004, individuals who meet the training and experience requirements in Subpart J may undertake responsibilities specified in certain sections in Subparts B and D–H; and eliminate a restriction that training for ophthalmic use of strontium-90 can only be conducted in medical institutions. These amendments are necessary to clarify certain inconsistencies within the regulations and to allow training in ophthalmic treatment to be conducted in eye clinics or private practices, in addition to medical institutions.

DATES: Comments on the proposed rule must be received on or before May 21, 2003.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150-AHO8) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; email *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, (301) 415–4737 or by email to *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6233, email: *ant@nrc.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Because the NRC considers this action noncontroversial and routine, we are publishing this proposed rule concurrently as a direct final rule. The direct final rule will become effective on July 7, 2003. However, if the NRC receives significant adverse comments on the direct final rule, by May 21, 2003, the NRC will publish a document that withdraws the direct final rule. If the direct final rule is withdrawn, the NRC will address the comments received in response to the proposed revisions in a subsequent final rule. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period for this action if the direct final rule is withdrawn.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when—

(A) The comment causes the staff to reevaluate (or reconsider) its position or conduct additional analysis;

(B) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(C) The comment raises a relevant issue that was not previously addressed or considered by the staff.

(2) The comment proposes a change or an addition to the rule and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the staff to make a change (other than editorial) to the rule.

List of Subjects in 10 CFR Part 35

Byproduct material, Criminal penalties, Drugs, Health facilities, Health professions, Medical devices, Nuclear materials, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements.

For reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 35.

PART 35—MEDICAL USE OF BYPRODUCT MATERIAL

1. The authority citation for part 35 continues to read as follows:

Authority: Secs. 61, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. In § 35.2, the definitions for *authorized medical physicist*, *authorized nuclear pharmacist*, *authorized user*, and *radiation safety officer*, are amended by revising paragraph (1) of each definition to read as follows:

§ 35.2 Definitions.

* * * * *

Authorized medical physicist means an individual who—

(1) Meets the requirements in §§ 35.51(a) and 35.59; or, before October 24, 2004, meets the requirements in §§ 35.961(a), or (b), and 35.59; or

* * * * *

Authorized nuclear pharmacist means a pharmacist who—

(1) Meets the requirements in §§ 35.55(a) and 35.59; or, before October 24, 2004, meets the requirements in §§ 35.980(a) and 35.59; or

* * * * *

Authorized user means a physician, dentist, or podiatrist who—

(1) Meets the requirements in §§ 35.59 and 35.190(a), 35.290(a), 35.390(a), 35.392(a), 35.394(a), 35.490(a), 35.590(a), or 35.690(a); or, before October 24, 2004, meets the requirements in §§ 35.910(a), 35.920(a), 35.930(a), 35.940(a), 35.950(a), or 35.960(a) and 35.59; or

* * * * *

Radiation Safety Officer means an individual who—

(1) Meets the requirements in §§ 35.50(a) and 35.59; or, before October 24, 2004, meets the requirements in §§ 35.900(a) and 35.59; or

* * * * *

3. In § 35.51, the second sentence of paragraph (b)(2) is revised to read as follows:

§ 35.51 Training for an authorized medical physicist.

* * * * *

(b) * * *

(2) * * * The written certification must be signed by a preceptor authorized medical physicist who meets the requirements in § 35.51, or, before October 24, 2004, § 35.961, or equivalent Agreement State requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status.

4. In § 35.100, paragraph (b) is revised to read as follows:

§ 35.100 Use of unsealed byproduct material for uptake, dilution, and excretion studies for which a written directive is not required.

* * * * *

(b) Prepared by:

(1) An authorized nuclear pharmacist;

(2) A physician who is an authorized user and who meets the requirements specified in §§ 35.290, 35.390, or, before October 24, 2004, § 35.920; or

(3) An individual under the supervision, as specified in § 35.27, of the authorized nuclear pharmacist in paragraph (b)(1) of this section or the physician who is an authorized user in paragraph (b)(2) of this section; or

* * * * *

5. In § 35.190, paragraph (b), the introductory text of paragraph (c)(1)(ii), and paragraph (c)(2) are revised to read as follows:

§ 35.190 Training for uptake, dilution, and excretion studies.

* * * * *

(b) Is an authorized user under §§ 35.290, 35.390, or, before October 24, 2004, §§ 35.910, 35.920, or 35.930, or equivalent Agreement State requirements; or

* * * * *

(c) * * *

(1) * * *

(ii) Work experience, under the supervision of an authorized user who meets the requirements in §§ 35.190, 35.290, 35.390, or, before October 24, 2004, §§ 35.910, 35.920, or 35.930, or equivalent Agreement State requirements, involving—

* * * * *

(2) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in §§ 35.190, 35.290, 35.390, or, before October 24, 2004, §§ 35.910, 35.920, or 35.930, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraph (c)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under § 35.100.

6. In § 35.200, paragraph (b) is revised to read as follows:

§ 35.200 Use of unsealed byproduct material for imaging and localization studies for which a written directive is not required.

* * * * *

(b) Prepared by:

(1) An authorized nuclear pharmacist;

(2) A physician who is an authorized user and who meets the requirements specified in §§ 35.290, 35.390, or, before October 24, 2004, § 35.920; or

(3) An individual under the supervision, as specified in § 35.27, of the authorized nuclear pharmacist in paragraph (b)(1) of this section or the physician who is an authorized user in paragraph (b)(2) of this section; or

* * * * *

7. In § 35.290, paragraph (b), the introductory text of paragraph (c)(1)(ii), and paragraph (c)(2) are revised to read as follows:

§ 35.290 Training for imaging and localization studies.

* * * * *

(b) Is an authorized user under § 35.390, or, before October 24, 2004, § 35.920, or equivalent Agreement State requirements; or

(c) * * *

(1) * * *

(ii) Work experience, under the supervision of an authorized user, who meets the requirements in §§ 35.290, 35.390, or, before October 24, 2004, § 35.920, or equivalent Agreement State requirements, involving —

* * * * *

(2) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in §§ 35.290, 35.390, or, before October 24, 2004, § 35.920, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraph (c)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under §§ 35.100 and 35.200.

8. In § 35.300, paragraph (b) is revised to read as follows:

§ 35.300 Use of unsealed byproduct material for which a written directive is required.

* * * * *

(b) Prepared by:

(1) An authorized nuclear pharmacist;

(2) A physician who is an authorized user and who meets the requirements specified in §§ 35.290, 35.390, or, before October 24, 2004, § 35.920; or

(3) An individual under the supervision, as specified in § 35.27, of the authorized nuclear pharmacist in paragraph (b)(1) of this section or the physician who is an authorized user in paragraph (b)(2) of this section; or

* * * * *

9. In § 35.310, paragraph (a)(5) is revised to read as follows:

§ 35.310 Safety instruction.

(a) * * *

(5) Notification of the Radiation Safety Officer, or his or her designee, and an authorized user if the patient or the human research subject has a medical emergency or dies.

* * * * *

10. In § 35.315, paragraph (b) is revised to read as follows:

§ 35.315 Safety precautions.

* * * * *

(b) A licensee shall notify the Radiation Safety Officer, or his or her designee, and an authorized user as soon as possible if the patient or human research subject has a medical emergency or dies.

11. In § 35.390, the introductory text of paragraph (b)(1)(ii) and paragraph (b)(2) are revised to read as follows:

§ 35.390 Training for use of unsealed byproduct material for which a written directive is required

(b) * * *

(1) * * *

(ii) Work experience, under the supervision of an authorized user who meets the requirements in §§ 35.390(a), 35.390(b), or, before October 24, 2004, § 35.930, or equivalent Agreement State requirements. A supervising authorized user, who meets the requirements in § 35.390(b) or, before October 24, 2004, § 35.930(b), must also have experience in administering dosages in the same dosage category or categories (*i.e.*, § 35.390(b)(1)(ii)(G)(*1*), (*2*), (*3*), or (*4*)) as the individual requesting authorized user status. The work experience must involve—

* * * * *

(2) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraph (b)(1) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under § 35.300. The written certification must be signed by a preceptor authorized user who meets the requirements in §§ 35.390(a), 35.390(b), or, before October 24, 2004, § 35.930, or equivalent Agreement State requirements. The preceptor authorized user, who meets the requirements in § 35.390(b) or, before October 24, 2004, § 35.930(b), must also have experience in administering dosages in the same dosage category or categories (*i.e.*, § 35.390(b)(1)(ii)(G)(*1*), (*2*), (*3*), or (*4*)) as the individual requesting authorized user status.

12. In § 35.392, paragraph (b), the introductory text of paragraph (c)(2), and paragraph (c)(3) are revised to read as follows:

§ 35.392 Training for the oral administration of sodium iodide I–131 requiring a written directive in quantities less than or equal to 1.22 Gigabecquereis (33 millicuries).

* * * * *

(b) Is an authorized user under §§ 35.390(a), 35.390(b) for uses listed in § 35.390(b)(1)(ii)(G)(*1*) or (*2*), § 35.394, or, before October 24, 2004, §§ 35.930, 35.932, or 35.934, or equivalent Agreement State requirements; or

(c) * * *

(2) Has work experience, under the supervision of an authorized user who meets the requirements in §§ 35.390(a), 35.390(b), 35.392, 35.394, or, before October 24, 2004, §§ 35.930, 35.932, or 35.934, or equivalent Agreement State requirements. A supervising authorized user who meets the requirements in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(*1*) or (*2*). The work experience must involve—

* * * * *

(3) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraphs (c)(1) and (c)(2) of this section and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under § 35.300. The written certification must be signed by a preceptor authorized user who meets the requirements in §§ 35.390(a), 35.390(b), 35.392, 35.394, or, before October 24, 2004, §§ 35.930, 35.932, or 35.934, or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirement in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(*1*) or (*2*).

13. In § 35.394, paragraph (b), the introductory text of paragraph (c)(2), and paragraph (c)(3) are revised to read as follows:

§ 35.394 Training for the oral administration of sodium iodide I–131 requiring a written directive in quantities greater than 1.22 Gigabecquereis (33 millicuries).

* * * * *

(b) Is an authorized user under §§ 35.390(a), 35.390(b) for uses listed in § 35.390(b)(1)(ii)(G)(*2*), or, before October 24, 2004, §§ 35.930 or 35.934, or equivalent Agreement State requirements; or

(c) * * *

(2) Has work experience, under the supervision of an authorized user who meets the requirements in §§ 35.390(a), 35.390(b), 35.394, or, before October 24, 2004, §§ 35.930 or 35.934, or equivalent Agreement State requirements. A supervising authorized user, who meets the requirements in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(*2*). The work experience must involve—

* * * * *

(3) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraphs (c)(1) and (c)(2) of this section and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under § 35.300. The written certification must be signed by a preceptor authorized user who meets the requirements in §§ 35.390(a), 35.390(b), 35.394, or, before October 24, 2004, §§ 35.930 or 35.934, or equivalent Agreement State requirements. A preceptor authorized user, who meets the requirements in § 35.390(b), must also have experience in administering dosages as specified in § 35.390(b)(1)(ii)(G)(*2*).

14. In § 35.432, paragraph (b) is revised to read as follows:

§ 35.432 Calibration measurements of brachytherapy sources.

* * * * *

(b) Instead of a licensee making its own measurements as required in paragraph (a) of this section, the licensee may use measurements provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine that are made in accordance with paragraph (a) of this section.

* * * * *

15. In § 35.490, the introductory text of paragraph (b)(1)(ii), paragraphs (b)(2), and (b)(3) are revised to read as follows:

§ 35.490 Training for use of manual brachytherapy sources.

* * * * *

(b) * * *

(1) * * *

(ii) 500 hours of work experience, under the supervision of an authorized user who meets the requirements in § 35.490, or, before October 24, 2004, § 35.940, or equivalent Agreement State requirements at a medical institution, involving—

* * * * *

(2) Has obtained 3 years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in § 35.490, or, before October 24, 2004, § 35.940, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (b)(1)(ii) of this section; and

(3) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in § 35.490, or, before October 24, 2004, § 35.940, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraphs (b)(1) and (b)(2) of this section and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses authorized under § 35.400.

16. In § 35.491, paragraph (a), the introductory text of paragraph (b)(2), and paragraph (b)(3) are revised to read as follows:

§ 35.491 Training for ophthalmic use of strontium-90.

* * * * *

(a) Is an authorized user under § 35.490, or, before October 24, 2004, §§ 35.940 or 35.941, or equivalent Agreement State requirements; or

(b) * * *

(2) Supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five individuals. This supervised clinical training must involve—

* * * * *

(3) Has obtained written certification, signed by a preceptor authorized user who meets the requirements in §§ 35.490, 35.491, or, before October 24, 2004, §§ 35.940 or 35.941, or equivalent Agreement State requirements, that the individual has satisfactorily completed the requirements in paragraphs (a) and (b) of this section and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

17. In § 35.630, paragraph (a)(1) is revised to read as follows:

§ 35.630 Dosimetry equipment.

(a) * * *

(1) The system must have been calibrated using a system or source traceable to the National Institute of Standards and Technology (NIST) and published protocols accepted by nationally recognized bodies; or by a

calibration laboratory accredited by the American Association of Physicists in Medicine (AAPM). The calibration must have been performed within the previous 2 years and after any servicing that may have affected system calibration; or

* * * * *

18. In § 35.690, the introductory text of paragraph (b)(1)(ii), and paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 35.690 Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.

* * * * *

(b) * * *

(1) * * *

(ii) 500 hours of work experience, under the supervision of an authorized user who meets the requirements in § 35.690, or, before October 24, 2004, § 35.960, or equivalent Agreement State requirements at a medical institution, involving—

* * * * *

(2) Has completed 3 years of supervised clinical experience in radiation oncology, under an authorized user who meets the requirements in § 35.690, or, before October 24, 2004, § 35.960, or equivalent Agreement State requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by paragraph (b)(1)(ii) of this section; and

(3) Has obtained written certification that the individual has satisfactorily completed the requirements in paragraphs (b)(1) and (b)(2) of this section and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written certification must be signed by a preceptor authorized user who meets the requirements in § 35.690, or, before October 24, 2004, § 35.960, or equivalent Agreement State requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status.

19. In § 35.2432, paragraph (b)(5) is revised to read as follows:

§ 35.2432 Records of calibration measurements of brachytherapy sources.

* * * * *

(b) * * *

(5) The name of the individual, the source manufacturer, or the calibration laboratory that performed the calibration.

Dated at Rockville, Maryland, this 31st day of March, 2003.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 03–9602 Filed 4–18–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA– 2003–14693; Airspace Docket No. 03–AGL–03]

Proposed Modification of Class E Airspace; South Bend, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class E airspace at South Bend, IN. Standard Instrument Approach Procedures (SIAPS) have been developed for South Bend Regional Airport, South Bend, IN. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action would increase the area of the existing controlled airspace for South Bend Regional Airport.

DATES: Comments must be received on or before June 16, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2003–14693/ Airspace Docket No. 03–AGL–03, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14693/Airspace Docket No. 03–AGL–03." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at South Bend, IN, for South Bend Regional Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 South Bend, IN [Revised]

South Bend, South Bend Regional Airport, IN
(Lat. 41°42′31″ N., long. 86°19′02″ W.)
Niles, Jerry Tyler Memorial Airport, MI
(Lat. 41°50′09″ N., long. 86°13′31″ W.)
Gipper VORTAC
(Lat. 41°46′07″ N., long. 86°19′06″ W.)

That airspace extending upward from 700 feet above the surface within an 8.0-mile radius of South Bend Regional Airport and within 4.4 miles south and 7 miles north of the South Bend ILS localizer east course, extending from South Bend Regional Airport to 10.5 miles east of the ILS outer marker and within 4.4 miles west and 7 miles east of the Gipper VORTAC 001° radial, extending from the South Bend Regional Airport to 10.5 miles north of the VOR and within a 6.4-mile radius of the Jerry Tyler Memorial Airport, excluding that airspace within the Dowagiac, MI, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on April 1, 2003.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 03–9729 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 111 and 112

RIN 0910–AB88

[Docket No. 96N–0417]

Dietary Supplements; Current Good Manufacturing Practice Proposed Regulation; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; satellite downlink public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting (via satellite downlink) to discuss the proposed rule on current good manufacturing practice in manufacturing, packing, or holding dietary ingredients and dietary supplements that published in the **Federal Register** of March 13, 2003. This satellite downlink public meeting is intended to provide clarification of the proposed rule and to explain how to submit comments on the proposed rule. This meeting will provide stakeholders, including small business, an opportunity to ask questions about the proposed rule by telephone, e-mail, or FAX. Questions also may be submitted in advance of the satellite downlink public meeting until the day before the downlink (see **FOR FURTHER INFORMATION CONTACT** section of this document).

DATES: The public meeting via satellite downlink will be held on May 9, 2003, from 12:30 p.m. to 3:30 p.m. eastern daylight time.

ADDRESSES: Downlink sites for the public meeting will be Food and Drug Administration District and Regional Offices for FDA employees. Small businesses wishing to view the satellite downlink should contact their Regional Small Business Representative. Regional representatives are listed at the Office of Regulatory Affairs' Web site at: *http://www.fda.gov/ora/fed_state/Small_business/sb_guide/smbusrep.htm*, or go to *http://www.fda.gov/ora/fed_state/events/default.htm* for a list of public viewing sites.

State and local counterparts who wish to participate may consider any local viewing location that has access to a C-band steerable dish.

Viewers with access to a steerable dish capable of receiving a C-band satellite signal may wish to tune this meeting in themselves. Tuning coordinates and course materials will be

placed on the Center for Food Safety and Applied Nutrition (CFSAN) Web site at: *http://www.cfsan.fda.gov/~dms/supplmnt.html* when available.

FOR FURTHER INFORMATION CONTACT: Bradford W. Williams, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, telephone: 301–436–1440, FAX: 301–436–2636, e-mail: *Brad.Williams@cfsan.fda.gov* for general questions about the downlink and submission of advance questions.

SUPPLEMENTARY INFORMATION:

I. Background

The Dietary Supplement Health and Education Act of 1994 (DSHEA) (Public Law 103–417) amended the Federal Food, Drug, and Cosmetic Act to, among other things, provide FDA with express statutory authority to prescribe current good manufacturing practice (CGMP) regulations for dietary supplements (21 U.S.C. 342(g)). In the **Federal Register** of March 13, 2003 (68 FR 12157), FDA published a proposed rule entitled "Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements" to establish CGMPs that include provisions on manufacturing, packaging, labeling, testing, quality control, releasing for distribution, and holding of dietary ingredients and dietary supplements. The proposed CGMPs are intended to help ensure that manufacturing, packing, and holding practices will not result in an adulterated or misbranded dietary supplement.

This downlink meeting will provide an opportunity to brief stakeholders on the proposed rule and allow them to ask questions about the proposed rule. It is also intended to fulfill part of the outreach requirements of the Small Business Regulatory Enforcement Fairness Act of 1996. The half-day meeting will focus on information for manufacturers, both large and small, with an emphasis on assistance to small firms. Small firms are encouraged to view and participate in this downlink meeting.

II. Agenda

The agenda will include an overview of the proposed rule with the following specific topics: (1) Personnel, (2) physical plant, (3) equipment and utensils, (4) production and process controls, (5) holding and distribution, (6) consumer complaints, and (7) recordkeeping. In addition to explaining the content of the proposed rule, we will instruct participants on the process for submitting comments. We also will discuss the types of comments and supporting information that would be most helpful to the agency in developing a final rule. Lastly, the meeting will describe how the Small Business Administration (SBA) can help small firms that might be affected by the proposed rule.

The primary intended audience is dietary ingredient and dietary supplement manufacturers, packagers, distributors, and holders, including small businesses, their representatives and consultants; Federal, State and local representatives; and FDA small business representatives and other interested FDA staff. Viewers are encouraged to watch the satellite program and participate in the question and answer periods. Any interested parties with access to a satellite dish may view the downlink directly. For specific technical details, including tuning coordinates, check the CFSAN Web site at: *http://www.cfsan.fda.gov/~dms/supplmnt.html* under "Recent Announcements" before the meeting.

Before the broadcast, we suggest that interested parties read the section in the March 13, 2003 (68 FR 12157), proposed rule entitled "Proposal Highlights and Request for Comments," as well as the background document, fact sheet and the guidance for small businesses that are located at the CFSAN Web site noted above. In addition, a promotional flyer and specific technical tuning instructions will be added to the CFSAN Web site in the near future.

Questions may be submitted in advance of the satellite downlink public meeting until the day before the meeting (see the **FOR FURTHER INFORMATION CONTACT** section of this document).

III. Transcripts

A transcript of the program and all questions/answers will be added to docket 96N–0417 and may be examined at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday, as well as on the CFSAN Web site. You may request a transcript of the public meeting from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 3 weeks after the meeting at a cost of 10 cents per page. In addition, a videotape of the satellite downlink public meeting will be available for viewing after the broadcast at the FDA Dockets Management Branch.

IV. Comments

To submit written comments on the proposed rule that published in the **Federal Register** of March 13, 2003, please follow the instructions in the "Request for Comment" section of that document (68 FR 12157 at 12248), a copy of which may be found at CFSAN's Web site at: *http://www.cfsan.fda.gov/~dms/supplmnt.html*.

Dated: April 15, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9660 Filed 4–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1915, and 1926

[Docket No. S–778–A]

RIN 1218–AB 81

Standards Improvement Project—Phase II

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule; notice of hearing.

SUMMARY: On October 31, 2002, OSHA published a proposed rule entitled "Standards Improvement Project—Phase II". OSHA will convene an informal public hearing to receive testimony and documentary evidence relevant to the issues raised in the proposal. This action is in response to the interested parties who have requested the convening of a hearing.

DATES: *Informal public hearing.* The Agency will hold an informal public hearing beginning in Washington, DC, on July 8 to July 9, 2003. The hearing will commence at 10 a.m. on the first day, and at 9 a.m. on the second day and subsequent days if they prove necessary; however, the exact daily schedule is at the discretion of the presiding administrative law judge.

Notice of intention to appear to provide testimony at the informal public hearing. Interested parties who intend to present testimony at the informal public hearing must notify OSHA of their intention to do so no later than June 5, 2003.

Hearing testimony and documentary evidence. Interested parties who will be requesting more than 10 minutes to present their testimony, or who will be submitting documentary evidence at the hearing, must provide the Agency with copies of their full testimony and all documentary evidence they plan to present by June 5, 2003. Parties who provided this material in response to the notice of proposed rulemaking do not have to resubmit their comments and documentary evidence submitted with their comments, but should refer to them in their notice of intention to appear.

ADDRESSES: *Informal public hearing.* The informal public hearing to be held in Washington, DC will be located in the Auditorium on the plaza level of the Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

Notice of intention to appear at the hearing. Notices of intention to appear at the informal public hearing should be submitted in triplicate to the Docket Office, Docket No. S–778–A, Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Notices may also be faxed to the Docket Office at 202–693–1648 or submitted electronically at *http://ecomments.osha.gov*. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

Hearing testimony and documentary evidence. Interested parties who will be requesting more than 10 minutes to present their testimony, or who will be submitting documentary evidence at the informal public hearing must mail three copies of the testimony and the documentary evidence to the Docket Office at the above address. Testimony may also be faxed to the Docket Office at 202–693–1647. Additional information for submitting testimony and evidence is found under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION: For general information and press inquiries, contact Ms. Bonnie Friedman, Director, OSHA Office of Public Affairs, Room N–3647, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone: (202) 693–1999). For technical inquiries, contact Mr. Robert Manware, Office of Physical Hazards, Room N–3718, (telephone (202) 693–2299; fax: (202) 693–1678) and for hearing information contact Ms. Veneta Chatmon, Office of Information (telephone 202–693–1999) at the above address. For additional copies of this **Federal Register** notice, contact the Office of Publications, Room N–3103, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (telephone (202) 693–1888). Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Home page at *http://www.osha.gov*.

SUPPLEMENTARY INFORMATION: In 1995, the Agency identified a number of provisions in its regulations and standards that were inconsistent, duplicative, outdated, or in need of being rewritten in plain language. In 1998, as part of the process of correcting such provisions, OSHA made several substantive revisions to its health and safety standards that reduced the regulatory obligations of employers while maintaining the safety and health protection afforded to employees (63 FR 33450, June 18, 1998). During and after this rulemaking, the Agency identified several other regulatory provisions in its safety and health standards involving notification of use, frequency of exposure monitoring and medical surveillance, and similar provisions that it believed could be modified to improve the efficiency of compliance and consistency among standards while maintaining health protection for employees. OSHA proposed to make substantive revisions to a number of the health standard provisions identified in this process on October 31, 2002 (67 FR 66494). The period for filing public comment on the proposal was to end on December 30, 2002. Interested parties requested an extension of the deadline for submitting comments based on the need for additional time to provide a thorough review and response to the substantive provisions proposed for revision in the notice. In response to these requests, OSHA extended the period for submitting comments until January 30, 2003 (*see* 68 FR 1023, January 8, 2003). In addition, a number of commenters (Exs. 3–2, 3–16) requested that an informal public hearing be convened on the issues raised in the proposal. OSHA has granted that request and has scheduled an informal public hearing commencing July 8, 2003.

Public Participation—Comments and Hearings

OSHA encourages members of the public to participate in this rulemaking by providing oral testimony and documentary evidence at the informal public hearing that the Agency will convene. In this regard, the Agency invites interested parties having knowledge or experience with respect to the issues raised in the proposal to participate in this process, and welcomes any pertinent data that will provide it with the best available evidence on which to develop the final regulatory requirements.

This section describes the procedures the public must use to schedule an opportunity to deliver oral testimony and provide documentary evidence at the informal public hearing. Notices of intention to appear, hearing testimony and documentary evidence will be available for inspection and copying at the OSHA Docket Office.

Pursuant to section 6(b)(3) of the Act, members of the public will have an opportunity at an informal public hearing to provide oral testimony concerning the issues raised in this proposal. The hearings will commence at 10 a.m. on the first day. At that time, the presiding administrative law judge (ALJ) will resolve any procedural matters relating to the proceeding. The hearings will reconvene on subsequent days at 9 a.m., if necessary.

The legislative history of section 6 of the OSHA Act, as well as OSHA's regulation governing public hearings (29 CFR 1911.15), establish the purpose and procedures of informal public hearings. Although the presiding officer of such hearing is an ALJ, and questions by interested parties is allowed on crucial issues, the proceeding is informal and legislative in purpose. Therefore, the hearing provides interested parties with an opportunity to make effective and expeditious oral presentations in the absence of procedural restraints or rigid procedures that could impede or protract the rulemaking process. In addition, the hearing is an informal administrative proceeding, rather than adjudicative one in which the technical rules of evidence would apply, because its primary purpose is to gather and clarify information. The regulations that govern public hearings, and the pre-hearing guidelines issued for this hearing, will ensure participants fairness and due process, and also will facilitate the development of a clear, accurate and complete record. Accordingly, application of these rules and guidelines will be such that questions of relevance, procedures, and participation generally will favor development of the record.

Conduct of the hearing will conform to the provisions of 29 CFR part 1911, "Rules of Procedure for Promulgating, Modifying, or Revoking Occupational Safety and Health Standards." The regulation at 29 CFR 1911.4 "Additional or Alternative Procedural Requirements," specifies that the Assistant Secretary may, on reasonable notice, issue alternative procedures to expedite proceedings or for other good causes. Although the ALJs who preside over these hearings make no decision or recommendation on the merits of OSHA's proposal, they do have the

responsibility and authority to ensure that the hearing progresses at a reasonable pace and in an orderly manner.

To ensure that interested parties receive a full and fair informal hearing as specified by 29 CFR part 1911, the ALJ has the authority and power to: Regulate the course of the proceedings; dispose of procedural requests, objections, and comparable matters; confine the presentations to matters pertinent to the issues raised; use appropriate means to regulate the conduct of the parties who are present at the hearing; question witnesses, and permit others to question witnesses; and limit the time for such questions. At the close of the hearing, the ALJ will establish a post-hearing comment period for parties who participated in the hearing. During the first part of this period, the participants may submit additional data and information to OSHA, while during the second part of this period, they may submit briefs, arguments, and summations.

Notice of Intention to Appear to Provide Testimony at the Informal Public Hearings. Interested parties who intend to provide oral testimony at the informal public hearings must file a notice of intention to appear by using the procedures specified above in the sections titled **DATES** and **ADDRESSES**. This notice must provide the: Name, address, and telephone number of each individual who will provide testimony; capacity (*e.g.*, name of the establishment/organization the individual is representing; the individual's occupational title and position) in which each individual will testify; approximate amount of time required for each individual's testimony; specific issues each individual will address, including a brief statement of the position that the individual will take with respect to each of these issues; and any documentary evidence the individual will present, including a brief summary of the evidence.

OSHA emphasizes that the hearings are open to the public, and that interested parties are welcome to attend. However, only a party who files a proper notice of intention to appear may ask questions and participate fully in the proceedings. While a party who did not file a notice of intention to appear may be allowed to testify at the hearing if time permits, this determination is at the discretion of the presiding ALJ.

Hearing Testimony and Documentary Evidence. Any party requesting more than 10 minutes to testify at the informal public hearing, or who intends to submit documentary evidence at the hearing, must, unless already having done so, provide the complete text of the testimony and the documentary evidence as specified above in the sections titled **DATE** and **ADDRESSES**. The Agency will review each submission and determine if the information it contains warrants the amount of time requested. If OSHA believes the requested time is excessive, it will allocate an appropriate amount of time to the presentation, and will notify the participant of this action, and the reasons for the action, prior to the hearing. The Agency may limit to 10 minutes the presentation of any participant who fails to comply substantially with these procedural requirements; in such instances, OSHA may request the participant to return for questions at a later time.

Please note that you may not attach materials such as studies or journal articles to testimony or documentary evidence faxes if they are more than 10 pages long. If you wish to include such materials, you must submit three copies to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your comments by name, date, Docket Number, and subject so that we can attach the materials to your faxed or mailed comments.

Certification of the Record and Final Determination After the Informal Public Hearing. Following the close of the hearing and post-hearing comment period, the presiding ALJ will certify the record to the Assistant Secretary of Labor for Occupational Safety and Health; the record will consist of all of the written comments, oral testimony, and documentary evidence received during the proceeding. However, the ALJ does not make or recommend any decisions as to the content of the final standard. Following certification of the record, OSHA will review the proposed provisions in light of all the evidence received as part of the record, and then will issue the final determinations based on the entire record.

Authority

John L Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this document. It is issued under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 5–2002 (67 FR 65008) and 29 CFR part 1911.

Signed in Washington, DC on April 16, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–9697 Filed 4–18–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56 and 57

RIN: 1219–AA98 (Phase 6)

Seat Belts for Off-Road Work Machines and Wheeled Agricultural Tractors at Metal and Nonmetal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: MSHA is issuing a proposed rule that would update the Agency's requirements for operator restraint systems (seat belts) for off-road work machines and wheeled agricultural tractors at metal and nonmetal mines. The existing standards require seat belts for off-road work machines to meet the requirements of the Society of Automotive Engineers' (SAE) consensus standard SAE J386–1985, and seat belts for wheeled agricultural tractors to meet the requirements of SAE J1194–1983. Since MSHA promulgated these standards, however, the SAE has revised them to reflect technological advances in seat belt design and materials. Seat belts meeting the specifications of earlier versions of these SAE standards are no longer routinely installed by manufacturers. The proposed rule would permit seat belts to meet the requirements of the more recent revisions of the SAE J386 and SAE J1194 standards.

DATES: Submit comments by May 21, 2003.

The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of the effective date of the final rule.

ADDRESSES: Clearly identify comments as such and submit them either electronically to ; by facsimile to 202–693–9441; or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2352, Arlington, Virginia 22209–3939. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.*

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; Phone: 202–693–9442; FAX: 202–693–9441; E-mail: *nichols-marvin@msha.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

Copies of the SAE publications incorporated by reference may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209–3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096–0001.

This proposed rule would only update §§ 56/57.14130, paragraph (h), *Seat belts construction.* MSHA is not updating §§ 56/57.14130, paragraph (b)(2), which also incorporates by reference SAE J1194–1983, because paragraph (b)(2) addresses the construction of roll-over protective structures (ROPS), not seat belts. The construction of ROPS is beyond the scope of this rulemaking.

A. Proposed Rule, Direct Final Rule, and Significant Adverse Comments

Elsewhere in this issue of the **Federal Register**, we are publishing a direct final rule that is substantively identical to this proposed rule. We are publishing this companion proposed rule under § 553 of the Administrative Procedure Act to speed notice and comment rulemaking should we withdraw the direct final rule.

MSHA has determined that this rulemaking is suitable for a direct final rule because we do not expect that updating the metal and nonmetal seat belt standards, to include the revised SAE consensus standards, will elicit any significant adverse comments. A significant adverse comment is one that explains (1) why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach, or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of the direct final rule, we would consider whether the comment warrants a substantive response in a notice and comment process.

All interested parties should comment by May 21, 2003, because we will not initiate an additional comment period.

B. Regulatory History

Existing standards §§ 56/57.14130 derived from standards promulgated by MSHA's predecessor, the Mining Enforcement and Safety Administration (MESA) in 1977. Like these existing standards, the standards under MESA required seat belts to meet specific SAE requirements that were incorporated by reference. MSHA's requirements for seat belts at metal and nonmetal mines remained substantively unchanged until 1988.

In 1984, MSHA issued a proposed rule (49 FR 49201) revising the loading, hauling, and dumping standards at metal and nonmetal mines. MSHA had considered removing the incorporation by reference provisions relating to seat belts and accompanying roll-over protective structures (ROPS) on equipment and replace them with performance criteria (49 FR 49201 and 49203). At that time, however, commenters urged MSHA to retain the incorporation by reference and update it.

In 1988, MSHA promulgated final §§ 56/57.14130 for ROPS and seat belts for certain off-road work machines. The final rule (53 FR 32496 and 32524) updated the references to SAE J386–1985 and SAE J1194–1983 to reflect the most current revision. The final rule also added a provision, §§ 56/57.14131, requiring that seat belts on haulage trucks meet the same SAE requirements as MSHA required for seat belts on off-road work machines.

II. Discussion of Seat Belt Requirements

Existing standards §§ 56/57.14130(h) and 56/57.14131(c) require that seat belts for off-road work machines meet the requirements set forth in the Society of Automotive Engineers' (SAE) consensus standard J386–1985. Existing standards §§ 56/57.14130(h) also require that seat belts for agricultural tractors meet SAE consensus standard J1194–1983. These SAE consensus standards are incorporated by reference. Paragraphs §§ 56/57.14130(j) and 56/57.14131(d) contain the required information about the Federal Register's approval of the incorporation by reference and the addresses for examining or obtaining copies.

Compliance Difficulties. MSHA enforcement of its seat belt standards relies on the labeling of seat belts in accordance with the SAE standards. For example, SAE J386–1985 states

> 4.1.5 Marking (Labeling) Each seat belt assembly and/or each section of belt assembly shall be permanently and legibly labeled with year of manufacture, model or style number, and name or trademark of manufacturer or importer, and shall state compliance with SAE J386 JUN85, Part II.

Since 1988, however, SAE has updated SAE J386 twice and SAE J1194 three times, each time reaffirming the previous version or incorporating advances in safety technology. Seat belts and assemblies currently manufactured for off-road work machines and haulage trucks comply with SAE J386–1997 and those currently manufactured for tractors comply with SAE J1194–1999. Seat belts meeting the superceded SAE J386–1985 or SAE J1194–1983 standards are no longer available, except through special orders at considerable cost. Consequently, because manufacturers no longer construct or label seat belts in accordance with the outdated SAE standards, mine operators have difficulty complying with MSHA's existing standards.

Equivalent Protection. MSHA bases its requirements for roll-over protective structures (ROPS) and operator restraint systems (seat belts) on technical documents developed by the SAE, a nationally and internationally recognized consensus standards setting organization. ROPS and seat belts provide a predictable level of performance when their construction meets the specifications of SAE's consensus standards. For example, SAE's testing of seat belt assemblies verifies that the strength and construction under the 1993 and 1997 revisions of SAE J386 meet the minimum requirements set forth by the society. Engineers and safety professionals agree that SAE J386 performance and test requirements provide a safe operator restraint system for off-road work machines commonly used in mining. This proposed rule would expand compliance alternatives to accommodate advances in seat belt technology without reducing protection for miners.

Expanded Compliance Alternatives. Newly manufactured replacement seat belts for off-road work machines and wheeled agricultural tractors, as well as those installed on new off-road machines or tractors, meet the specifications in the most recent SAE consensus standards. The immediate availability of replacement seat belts "off-the-shelf," as opposed to those requiring a special order, speeds replacement, minimizing equipment down time and the enticement to use off-road work machines without compliant seat belts. Also, allowing the use of seat belts meeting other revisions of the SAE standards, rather than only the most recent, would allow mine operators to use the supply of

replacement seat belts they already have on hand.

Enhanced Safety. The proposed rule would improve safety by updating MSHA's standards to allow the use of advances in seat belt technology addressed in the newer industry consensus standards. Many safeguards and improved engineering are integral design features on new products. For example, the more recent revisions of the SAE consensus standards address developments, such as tether straps and three and four point systems, which are not included in the 1983 or 1985 revisions. Up-to-date standards are consistent with the goals of the Federal Mine Safety and Health Act of 1977, Executive Order 12866, and the Regulatory Flexibility Act.

III. The Regulatory Flexibility Act, Executive Order 12866, and the Small Business Regulatory Enforcement Fairness Act

In accordance with Executive Order (E.O.) 12866, we have analyzed the estimated costs and benefits associated with this proposed rule, and have included our Preliminary Regulatory Economic Analysis (PREA) in this preamble. This proposed rule would not be an economically significant regulatory action under § 3(f)(1) of E.O. 12866.

In accordance with § 605 of the Regulatory Flexibility Act (RFA), we certify that this proposed rule would not have a significant economic impact on a substantial number of small entities. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, we must include the factual basis for this certification in the proposed rule. Accordingly, we are publishing the factual basis for our preliminary regulatory flexibility certification statement in the **Federal Register**, as part of this preamble, and are providing a copy to the Small Business Administration (SBA), Office of Advocacy. We also will mail a copy of the proposed rule, including the preamble and certification statement, to metal and nonmetal mine operators and miners' representatives and post it on our Internet Home Page at *www.msha.gov.*

Factual basis for certification. This proposed rule would provide at least the same level of protection for miners at a lower cost for mine operators. It would affect all 11,641 metal and nonmetal mines, 85.3% (9,928) of which employ fewer than 20 miners and 99.8% (11,618) of which employ 500 or fewer miners (PEIR, CY 2001). It would not include any additional costs and would have no adverse economic impact on the metal and nonmetal mining industry. To the contrary, cost savings would be associated with not having to special order discontinued, older seat belts and not having to replace those seat belts already installed. The proposed rule also would eliminate the burden of preparing and responding to petitions for modification. The advantage of being able to obtain seat belts "off-the-shelf" would allow mine operators to replace damaged seat belts more quickly, thus reducing machinery and equipment down time which could result in lost production.

IV. Other Regulatory Considerations

A. Paperwork Reduction Act

This proposed rule would not contain any information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Although the SAE requires seat belts to have a label indicating compliance with a specific SAE consensus standard, these labels are prepared and attached by the seat belt manufacturer. Both mine operators and MSHA use these labels to determine whether the seat belts comply with the appropriate SAE consensus standard.

B. Unfunded Mandates Reform Act of 1995

This proposed rule would affect about 220 small metal and nonmetal mines operated by governmental jurisdictions mostly to provide aggregates for the construction and repair of highways and roads. We have determined, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, that this proposed rule would not include any Federal mandate that may result in increased expenditures by state, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. We also determined, for purposes of § 203, that this proposed rule would not significantly or uniquely affect these entities.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This proposed rule would not be subject to Executive Order 12630 because it would not involve implementation of a policy with "takings" implications.

D. Executive Order 12988: Civil Justice Reform

In accordance with Executive Order 12988, we have determined that this proposed rule would not unduly burden the Federal court system. We wrote the proposed rule to provide a clear legal standard for affected conduct and have reviewed it to eliminate drafting errors and ambiguities.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of this proposed rule and have determined that it would have no adverse effects on children.

F. Executive Order 13132: Federalism

In accordance with Executive Order 13132, we have reviewed this proposed rule and have determined that it would not have "federalism" implications.

G. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we certify that this proposed rule would not impose substantial direct compliance costs on Indian tribal governments.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, we have reviewed this proposed rule and have determined that it would not have a significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action would be necessary.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed previously in this preamble, MSHA has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

30 CFR Part 56

Incorporation by reference, Mine safety and health, Surface mining.

30 CFR Part 57

Incorporation by reference, Mine safety and health, Underground mining.

Dated: April 14, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, MSHA is proposing to amend chapter I, parts 56 and 57 of title 30 of the Code of Federal Regulations as follows:

PART 56—[AMENDED]

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

2. Section 56.14130 is amended by revising paragraphs (h) and (j) to read as follows:

§ 56.14130 Roll-over protective structures (ROPS) and seat belts.

* * * * *

(h) *Seat belts construction.* Seat belts required under this section shall meet the requirement of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985, 1993, or 1997), or SAE J1194, "Roll-Over Protective Structures (ROPS) for Wheeled Agricultural Tractors" (1983, 1989, 1994, or 1999), as applicable, which are incorporated by reference.

* * * * *

(j) *Publications.* The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209–3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096–0001.

3. Section 56.14131 as amended by revising paragraphs (c) and (d) to read as follows:

§ 56.14131 Seat belts for haulage trucks.

* * * * *

(c) Seat belts required under this section shall meet the requirements of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985, 1993, or 1997), which are incorporated by reference.

(d) The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209–3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096–0001.

PART 57—[AMENDED]

4. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

5. Section 57.14130 is amended by revising paragraphs (h) and (j) to read as follows:

§ 57.14130 Roll-over protective structures (ROPS) and seat belts for surface equipment.

* * * * *

(h) *Seat belts construction.* Seat belts required under this section shall meet the requirement of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985, 1993, or 1997), or SAE J1194, "Roll-Over Protective Structure (ROPS) for Wheeled Agricultural Tractors" (1983, 1989, 1994, or 1999), as applicable, which are incorporated by reference.

* * * * *

(j) *Publications.* The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209–3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096–0001.

6. Section 57.14131 is amended by revising paragraphs (c) and (d) to read as follows:

§ 57.14131 Seat belts for surface haulage trucks.

* * * * *

(c) Seat belts required under this section shall meet the requirements of SAE J386, "Operator Restraint System for Off-Road Work Machines" (1985, 1993, or 1997), which are incorporated by reference.

(d) The incorporation by reference of these publications is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these may be examined at any Metal and Nonmetal Mine Safety and Health District Office; at MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209–3939; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies may be purchased from the Society of Automotive Engineers, 400 Commonwealth Drive, Warrendale, Pennsylvania 15096–0001.

[FR Doc. 03–9658 Filed 4–18–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 71 and 75

RIN 1219–AA96 (Phase 9)

Standards for Sanitary Toilets in Coal Mines

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: MSHA is proposing to remove an application and approval requirement from existing mandatory standards. Currently, MSHA must approve sanitary toilets for use in underground coal mines, and MSHA and the National Institute for Occupational Safety and Health (NIOSH) must jointly approve sanitary toilets for use in surface coal mines. MSHA and NIOSH base their approval on criteria drawn from the American National Standard Institute's (ANSI's) *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements.* MSHA is proposing to amend its standards to state which sanitary toilets meet the standard in order to eliminate the need for an application for approval and its associated paperwork burden. This action would also directly inform manufacturers, mine operators, miners, and miners' representatives about which sanitary toilets meet the standard. Removing the application requirements would have no substantive effect on the sanitation standards.

DATES: Submit comments by May 21, 2003.

ADDRESSES: Clearly identify comments as such and submit them either electronically to *comments@msha.gov;* by facsimile to (202) 693–9441; or by regular mail or hand delivery to MSHA, Office of Standards, Regulations, and Variances, 1100 Wilson Blvd., Room 2313, Arlington, Virginia 22209–3939. Comments are posted for public viewing at *http://www.msha.gov/currentcomments.htm.*

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Director; Office of Standards, Regulations, and Variances, MSHA; Phone: 202–693–9442; FAX: 202–693–9441; E-mail: *nichols-marvin@msha.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction.

The Office of Management and Budget's (OMB's) current approval for §§ 71.500 and 75.1712–6 under control number 1219–0101 expires on November 30, 2003. OMB approval was contingent on MSHA initiating rulemaking "to update and simplify this standard with the goal of eliminating unnecessary requirements and reducing the unnecessary burdens." In response to OMB concerns, MSHA developed this proposed rule to eliminate the need for applications for approval of sanitary toilets and their associated paperwork burden. This proposed rule would not address any other aspect of MSHA's standards for sanitary facilities at coal mines. Sanitary toilet facilities for surface work areas of underground mines would remain subject to the provisions of 30 CFR 75.1712–3, which is unchanged.

Proposed Rule, Direct Final Rule, and Significant Adverse Comments

Elsewhere in this issue of the **Federal Register**, we are publishing a direct final rule which is substantively identical to this companion proposed rule. MSHA has determined that this rulemaking is suitable for a direct final rule because we do not expect to receive any significant adverse comments. A significant adverse comment is one that explains (1) why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach, or (2) why the direct final rule would be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of the direct final rule, MSHA would consider whether it warrants a substantive response in a notice and comment process.

We are publishing this companion proposed rule under section 553 of the Administrative Procedure Act to speed notice and comment rulemaking should we withdraw the direct final rule. All interested parties should comment by May 21, 2003 because we will not initiate an additional comment period.

II. Background Discussion of Existing Standards

A. Regulatory History

MSHA originally promulgated sanitation standards under the Federal Coal Mine Health and Safety Act of 1969. The Mining Enforcement and Safety Administration (MESA), MSHA's predecessor, promulgated 30 CFR 75.1712–6 on November 20, 1970 (35 FR 17890) and 30 CFR 71.500 on March 28, 1972 (37 FR 6368). No substantive changes have been made to either provision since that time.

Under existing standards, MSHA approves sanitary toilets for installation and use on an industry-wide basis, not on a mine-by-mine basis. MSHA issues three types of approvals: for surface work sites only, for underground work sites only, or for both surface and underground work sites. Once granted, the approval does not expire. Although some of the manufacturers and distributors of approved sanitary toilets are no longer in business, MSHA accepts these approved sanitary toilets as long as they are properly maintained.

B. Existing Application for Approval Process

The existing standards' requirements for an application for approval of a sanitary toilet can pose an unnecessary burden on manufacturers and mine operators. To effectively evaluate a sanitary toilet for use at a coal mine, MSHA requires that the application for approval contain—

- Information about the unit and its manufacturer;
- Instructions for operation and maintenance;
- Technical or performance test data; and
- Other information that may help in evaluating the unit's practicality for use in coal mining, such as information about the appropriateness and durability of the sanitary toilet for use underground.

C. MSHA and MSHA/NIOSH Approval Criteria

When reviewing the application for approval, MSHA and NIOSH review and evaluate the sanitary features of each toilet for the use intended. Currently, MSHA and NIOSH use portions of the American National Standard Institute's (ANSI's) *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements,* ANSI Z4.3–1987 (Reaffirmed 1995), as the criteria for evaluating these sanitary features. At a minimum, MSHA and NIOSH use the definitions for the various types of toilets and components of the toilet facility in Section 2; the general requirements for auxiliary features in Sections 3.7, 3.8, and 3.9; and the specific design criteria in Section 7.

Exceptions. Although a privy is listed in ANSI Z4.3–1987 (Reaffirmed 1995), MSHA does not approve the use of a privy at any coal mine because sewage could seep through the earth walls and contaminate ground water, earth walls could fail under the harsh conditions at a coal mine, and rain and run-off could flood the privy causing it to overflow and contaminate the mine. MSHA does not approve combustion or incinerating toilets underground because they can create a fire hazard by introducing an ignition source. MSHA does not require a toilet paper holder on unenclosed sanitary toilets underground because it is impractical.

D. Types of Approved Sanitary Toilets

The following table contains excerpts from ANSI Z4.3–1987 (Reaffirmed 1995) for those types of sanitary toilets that are approved for use in coal mines. MSHA will consider any toilet facility that is one of the types of toilets listed in the Agency's revised standards and meets these same criteria, to be in compliance.

Definitions (ANSI Z4.3 Section 2)	Types of toilet facilities (ANSI Z4.3 Section 7)
Vault Toilet	
2.2.2—A vault toilet facility is one wherein the waste is deposited without flushing in a permanently installed, watertight, below-ground container.	7.1.1. The vault-toilet tank shall be durable and corrosion-resistant and shall provide a minimum capacity of 378 L (100 gal) per seat. 7.1.2. Where a caustic chemical issued, the charge per seat shall be a minimum of 11.3 kg (25 lbs.) of caustic dissolved in 37.5 L (10 gal) of water. 7.1.3. The chemical shall be drained and the receptacle recharged every 6 months when in continuous use, or at least at the beginning of each season of operation when in intermittent use, or when three-fourths full, whichever occurs first. 7.1.4. Tanks shall be vented to the outside with a minimum nominal venting area of 45 cm2 (7 in2). 7.1.5. The tank shall be equipped with a manhole external to the structure for cleaning and for removal of caustic chemicals. The manhole shall be covered so as to prevent escape of gases and odors.
Sealed-Bag Toilet	
2.2.3—A sealed-bag toilet facility is one wherein the waste of each user is deposited, without flushing, into a bag, generally plastic, which is then sealed for later disposal. The structure housing a sealed-bag-toilet facility may be permanent or portable.	7.2.1. All materials and fittings shall be corrosion resistant. 7.2.2. The bag shall be made of material of sufficient strength so as not to leak and, once sealed, so as to retain the waste until such time as the bag is removed from the toilet for disposal.
Combustion or Incinerating Toilet	
2.3—A combustion- or incinerating-toilet facility is one wherein the waste is deposited, with or without flushing, into a combustion chamber, where it is incinerated. The structure housing a combustion- or incinerating-toilet facility may be permanent or portable.	7.3.1. All external surfaces, including bowl and hopper, shall be easy to clean. 7.3.2. The residue of combustion or incineration shall be sterile and inert. 7.3.3. The flue effluents shall be free of viable bacteria. 7.3.4. The combustion system and all fuel and electrical parts shall be safe and in compliance with applicable gas and electrical codes of local authorities. Where such codes do not exist, the installation shall comply with American National Standard National Electrical Code, ANSI/NFPA 70–1987, or with American National Standard for Gas-Fired Toilets, ANSI Z21.61–1983, and American National Standard National Fuel Gas Code, ANSI Z223.1–1984 and ANSI Z223.1a–1987.
Chemical Toilet and Biological Toilet	
2.2.1—A chemical-toilet facility is a nonflush-toilet facility wherein the waste is deposited directly into a container containing a solution of water and chemical. It may be housed in a permanent or portable structure.. 2.4—A biological-toilet facility is one wherein the waste is deposited, with or without flushing, into a waste container integral to the toilet facility, where it is treated by means of biological agents or aeration.	7.4.1. Waste containers shall be fabricated from nonabsorbent, watertight materials. 7.4.2. Portable chemical and biological toilets and urinals that are free-standing and not installed in a toilet room do not require a ventilation system. 7.4.3. Chemicals or biological agents, if used in the waste container, shall be in accordance with applicable federal, state, and local provisions.
Nonwater-Flush Toilet	
2.1.2—A nonwater-flush-toilet facility is one wherein the waste is flushed from the bowl and the bowl cleansed by a fluid other than water, with the fluid deposited in a container or receptacle, or treated and recirculated as in 2.1.1; such facilities include, but are not limited to, oil-flush-toilet facilities.	7.5.1. All materials such as bowl, piping, and fittings that are in contact with waste and chemicals shall be nonabsorbent and corrosion-resistant. 7.5.2. Waste passages shall have smooth surfaces and shall be free of obstructions, recesses, or chambers that would permit fouling. 7.5.3. Flushing shall be accomplished by controls operable without special knowledge. Upon flushing, fluid shall enter the bowl and pass through with a vigorous flow sufficient to carry the waste from the bowl into the waste container. 7.5.4. Chemicals, if used in the waste container, shall be in accordance with applicable local, state, and federal provisions.

Definitions (ANSI Z4.3 Section 2)	Types of toilet facilities (ANSI Z4.3 Section 7)
Water-Flush Toilet	
2.1.1—A water-flush-toilet facility is one wherein the waste is carried from the bowl and the bowl cleansed by water, and the combined water and waste is deposited into a container or receptacle, or recirculated by a closed system for flushing purposes; such facilities include, but are not limited to, vacuum-toilet facilities.	7.6.1. All materials such as bowl, piping, and fittings that are in contact with waste and chemicals shall be nonabsorbent and corrosion-resistant. 7.6.2. Waste passages shall have smooth surfaces and shall be free of obstructions, recesses, or chambers that would permit fouling. 7.6.3. Flushing shall be accomplished by controls operable without special knowledge. 7.6.4. Chemicals, if used, shall be in accordance with applicable local, state, and federal provisions.

Source: American National Standard Institute (ANSI), *American National Standard for Sanitation—Nonsewered Waste-Disposal Systems—Minimum Requirements,* (ANSI Z4.3–1987 (Reaffirmed 1995).

III. Section-by-Section Discussion

The following section-by-section discussion explains the proposed rule's revisions to the existing standards. The proposed rule would provide the same level of protection for miners as the existing standards because it would guarantee that sanitary toilets meet the same requirements as those which were approved through the existing application process. The proposed rule would have no substantive effect on the sanitation standards at coal mines.

A. 30 CFR 71.500 for Surface Coal Mines

Existing § 71.500 requires all surface coal mine operators to provide at least one approved sanitary toilet at a location convenient to each surface work site and one additional approved sanitary toilet for each 10 miners working at a location. MSHA and NIOSH jointly approve sanitary toilets for use at surface mines.

The proposed rule would eliminate the application for approval requirement and its associated paperwork burden, and provide notice of which types of sanitary toilets may be used by listing them directly in the standard. The proposed rule also would require sanitary toilets to have a toilet paper holder with an adequate supply of toilet paper and a toilet seat with a hinged lid, as is required in Section 3 of ANSI Z4.3–1987 (Reaffirmed 1995); and would prohibit the use of privies.

NIOSH has reviewed this regulatory action and concurs that the application for approval requirements can be removed without reducing protection for miners. NIOSH also agrees that the regulatory action would not change the criteria for the sanitary toilets. MSHA has incorporated NIOSH's comments in this regulatory action.

B. 30 CFR 75.1712–6 for Underground Coal Mines

Existing § 75.1712–6 requires all underground coal mine operators to provide and maintain one approved sanitary toilet in a dry location under protected roof within 500 feet of each working place where miners regularly work. Under the existing standard, MSHA must approve sanitary toilets for use at underground locations.

The proposed rule would eliminate the application requirement and its associated paperwork burden, and provide notice of which types of sanitary toilets may be used by listing them directly in the standard. The proposed rule also would require sanitary toilets to have a toilet paper holder with an adequate supply of toilet paper and a toilet seat with a hinged lid, as is required in Section 3 of ANSI Z4.3–1987 (Reaffirmed 1995); would prohibit privies and combustion or incinerating toilets underground; and would remove the obsolete December 30, 1970, effective date.

IV. The Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act, and Executive Order 12866

In accordance with Executive Order (E.O.) 12866, MSHA has analyzed the estimated costs and benefits associated with this proposed rule, and has included its Preliminary Regulatory Economic Analysis (PREA) in this preamble. This proposed rule would not include any additional costs for the mining industry and would eliminate the costs associated with filing an application for approval. This proposed rule would not be an economically significant regulatory action under § 3(f)(1) of E.O. 12866.

In accordance with § 605 of the Regulatory Flexibility Act (RFA), MSHA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the RFA, the Agency must include the factual basis for this certification in the proposed rule. Accordingly, the Agency is publishing the factual basis for its regulatory flexibility certification statement in the **Federal Register**, as part of this preamble, and is providing a copy to the Small Business Administration (SBA), Office of Advocacy. MSHA also will mail a copy of the proposed rule, including the preamble and certification statement, to coal mine operators and miners' representatives and post it on the Agency's Internet Home Page at *www.msha.gov*.

Factual Basis for Certification.

MSHA is issuing a proposed rule amending 30 CFR parts 71 and 75, concerning applications for approval of sanitary toilets. The Agency is amending its regulations to state which sanitary toilets meet the standard in order to eliminate the need for underground and surface coal mines to file an application for approval and to avoid the associated cost and paperwork burden.

Manufacturers are the primary applicants for MSHA or MSHA/NIOSH approval of sanitary toilets. In the last four years, seven manufacturers of portable toilets filed applications to request approval of sanitary toilets. During this same period, only one mine operator filed an application to request approval of sanitary toilets. MSHA expects that the number and distribution of applications over the last four years is representative of future applications in the absence of this proposed rule. MSHA therefore estimates that, on average, in the absence of the proposed rule, portable toilet manufacturers would file 1.75 applications each year, and mine operators would file 0.25 applications each year.

Traditionally, MSHA has considered a small mine to be one with fewer than 20 employees. Based on MSHA's definition, the mine operator is considered large because it employs 20 or more workers. The Small Business Administration (SBA) definition for a small business in the mining industry is one with 500 or fewer employees. The mine operator that filed the application is considered a small business by SBA's definition in that it employs fewer than 500 workers. Based on SBA's definition, manufacturers of portable toilets (plastics), NAICS Code 326191 (SIC Code 3088), are defined as small if they have fewer than 500 employees. All of the portable toilet manufacturers are small businesses, according to SBA, because each employs fewer than 500 workers.[1]

Compliance Costs

Cost savings from this proposed rule would accrue to sanitary toilet manufacturers and mine operators because they would no longer have to file an application for approval of sanitary toilets. Cost savings from this rule are estimated at $407 annually. The cost savings are based upon the elimination of the filing of an average of 1.75 applications per year by manufacturers and 0.25 applications per year by mine operators. For the manufacturers, cost savings would be $296 annually. For the mine operator, cost savings would be $111 annually.

The annual cost savings of $296 for manufacturers is derived in the following manner. On average, a first-line supervisor at a toilet manufacturing facility, earning $20.82 per hour,[2] takes 8 hours to prepare an application (1.75 applications × 8 hours × $20.82 per hour = $291.48). In addition, a clerical worker, earning $12.66 per hour,[3] takes 0.1 hour to copy and mail an application (1.75 applications × 0.1 hour × $12.66 per hour = $2.22). Furthermore, MSHA estimates that, on average, each application is two pages long, photocopying costs are $0.15 per page, and postage is $1 [1.75 applications × ((2 pages × $0.15 per page) × $1) = $ 2.28].

The annual cost savings of $111 for the mine operator is derived in the following manner. On average, a mine supervisor, earning $54.92 per hour, takes 8 hours to prepare an application (0.25 application × 8 hours × $54.92 per hour = $109.84). In addition, a clerical worker, earning $19.58 per hour, takes 0.1 hour to copy and mail an application (0.25 application × $0.1 hour × $19.58 per hour = $0.49). Furthermore, MSHA estimates that, on average, each application is two pages long, photocopying costs are $0.15 per page, and postage is $1 [0.25 application × ((2 pages × $0.15 per page) + $1) = $0.33].

This proposed rule would eliminate the application process and provide simple compliance information directly to the public, thus eliminating the annual cost burden.

V. Paperwork Reduction Act

This proposed rule would not contain any additional information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. Consequently, the information collection currently approved by OMB under control number 1219–0101 would no longer be necessary and would be withdrawn.

This proposed rule would result in 16 annual burden hour savings and associated annual burden cost savings of $404 related to elimination of 2 applications annually for sanitary toilets. Of this total, for the 1.75 portable toilet manufacturers, there would be 14 burden hours savings annually and associated annual burden costs savings of $294. For the 0.25 mine operators, there would be 2 burden hours savings annually and associated annual burden cost savings of $110.

The annual reduction of 14 burden hours and the $294 annual burden costs savings for the 1.75 portable sanitary toilet manufacturers are derived in the following manner. On average, a first-line supervisor at a toilet manufacturing facility, takes 8 hours to prepare an application (1.75 applications × 8 hours = 14 hours). In addition, a clerical worker takes 0.1 hour (or 6 minutes) to copy and mail an application (1.75 applications × 0.1 hour = 0.18 hours). The hourly wage rate for a first-line supervisor at a portable toilet manufacturing facility is $20.82 ($20.82 × 14 burden hours = $291.48). The hourly wage rate for a clerical worker (billing and posting clerks) is $12.66 ($12.66 × 0.18 burden hours = $2.28).

The annual reduction of 2 burden hours and the $110 annual burden costs savings for the 0.25 mines are derived in the following manner. On average, a mine supervisor takes 8 hours to prepare an application (0.25 applications × 8 hours = 2 hours). In addition, a clerical worker takes 0.1 hour (or 6 minutes) to copy and mail an application (0.25 applications × 0.1 hour = 0.03 hour). The hourly wage rate for a mine supervisor is $54.92 ($54.92 × 2 hours = $109.84). The hourly wage rate for a clerical worker is $19.58 ($19.58 × 0.03 hours = $0.58).

This proposed rule would remove this burden by eliminating the application process and providing information directly to the public.

VI. Other Regulatory Considerations

A. The National Environmental Policy Act of 1969

The National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) requires each Federal agency to consider the environmental effects of its actions. This proposed rule would have no adverse environmental impact because it has no substantive effect on the existing standards.

B. Unfunded Mandates Reform Act of 1995

We have determined, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, that this proposed rule would not include any Federal mandate that may result in increased expenditures by state, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. We also determined, for purposes of § 203, that this proposed rule would not significantly or uniquely affect these entities.

C. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This proposed rule would not be subject to Executive Order 12630 because it would not involve implementation of a policy with "takings" implications.

D. Executive Order 12988: Civil Justice Reform

In accordance with Executive Order 12988, we have determined that this proposed rule would not unduly burden the Federal court system. We wrote the proposed rule to provide a clear legal standard for affected conduct and have reviewed it to eliminate drafting errors and ambiguities.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of this proposed rule and have

[1] Small Business Administration, Small Business Size Standards Matched to North American Industry Classification System (NAICS), Effective July 1, 2002. (*http://www.sba.gov/size/sizetable.html*).

[2] U.S. Department of Labor, Bureau of Labor Statistics, Career Guide to Industries—Chemicals Manufacturing, Except Drugs. (*http://www.bls.gov/oco/cgs/cgs008.htm*).

[3] U.S. Department of Labor, Bureau of Labor Statistics, Occupational Employment Statistics—2001 National Occupational Employment and Wage Estimates. (*http://www.bls.gov/oes/2001/oes433021.htm*).

determined that it would have no adverse effects on children.

F. Executive Order 13132: Federalism

In accordance with Executive Order 13132, we have reviewed this proposed rule and have determined that it would not have "federalism" implications.

G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175, we certify that this proposed rule would not impose substantial direct compliance costs on Indian tribal governments.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, we have reviewed this proposed rule and have determined that it would have no effect on the production or price of coal. Consequently, it would have no significant adverse effect on the supply, distribution, or use of energy, and no reasonable alternatives to this action would be necessary.

I. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the proposed rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed previously in this preamble, MSHA has determined that the proposed rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

30 CFR Part 71

Coal mines, Mine safety and health, Surface mining.

30 CFR Part 75

Coal mines, Mine safety and health, Underground mining.

Dated: April 15, 2003.

John R. Correll,

Deputy Assistant Secretary for Mine Safety and Health.

For the reasons set out in the preamble, and under the authority of the Federal Mine Safety and Health Act of 1977, MSHA is amending chapter I, parts 71 and 75, of title 30 of the Code of Federal Regulations as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 30 U.S.C. 811, 951, 957.

2. Section 71.500 is revised to read as follows:

§ 71.500 Sanitary toilet facilities at surface work sites; installation requirements.

(a) Each operator of a surface coal mine shall provide and install at least one sanitary toilet in a location convenient to each surface work site. A single sanitary toilet may serve two or more surface work sites in the same surface mine where the sanitary toilet is convenient to each such work site.

(b) Where 10 or more miners use such toilet facilities, sufficient toilets shall be furnished to provide approximately one sanitary toilet for each 10 miners.

(c) Sanitary toilets shall have an attached toilet seat with a hinged lid and a toilet paper holder together with an adequate supply of toilet tissue.

(d) Only flush or nonflush chemical or biological toilets, combustion or incinerating toilets, sealed bag toilets, and vault toilets meet the requirements of this section. Privies are prohibited.

Note to § 71.500: Sanitary toilet facilities for surface work areas of underground mines are subject to the provisions of § 75.1712–3 of this chapter.)

PART 75—[AMENDED]

3. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

4. Section 75.1712–6 is revised to read as follows:

§ 75.1712–6 Underground sanitary facilities; installation and maintenance.

(a) Except as provided in § 75.1712–7, each operator of an underground coal mine shall provide and maintain one sanitary toilet in a dry location under protected roof, within 500 feet of each working place in the mine where miners are regularly employed during the mining cycle. A single sanitary toilet may serve two or more working places in the same mine, if it is located within 500 feet of each such working place.

(b) Sanitary toilets shall have an attached toilet seat with a hinged lid and a toilet paper holder together with an adequate supply of toilet tissue, except that a toilet paper holder is not required for an unenclosed toilet facility.

(c) Only flush or nonflush chemical or biological toilets, sealed bag toilets, and vault toilets meet the requirements of this section. Privies and combustion or incinerating toilets are prohibited underground.

[FR Doc. 03–9656 Filed 4–18–03; 8:45 am]

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 260

[Docket No. 96–5 CARP DSTRA]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office is publishing for public comment proposed rules that will govern SoundExchange, an unincorporated division of the Recording Industry Association of America, Inc., when it functions as the designated agent for the purpose of receiving royalty payments and statements of accounts from nonexempt subscription digital transmission services which make digital transmissions of sound recordings under a statutory license.

DATES: Comments are due no later than May 21, 2003.

ADDRESSES: An original and five copies of any comment shall be delivered by hand to: Office of the General Counsel, Copyright Office, James Madison Building, Room LM–403, First and Independence Avenue, SE., Washington, DC; or mailed to: Copyright Arbitration Royalty Panel (CARP), PO Box 70977, Southwest Station, Washington, DC 20024–0977.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Section 106(6) of the Copyright Act, title 17 of the United States Code, gives copyright owners of sound recordings an exclusive right to perform their copyrighted work publicly by means of a digital audio transmission. This right is limited by section 114(d), which allows certain noninteractive digital audio services to transmit sound recordings under a compulsory license, provided that the services pay a reasonable royalty fee and comply with the terms of the statutory license. Among the categories of services that may use the section 114 license are preexisting subscription services [1] of which there are only three: Digital Cable Radio Associates, now known as Music Choice; DMX Music, Inc. ("DMX"); and Muzak, L.P. ("Muzak").

Rates and terms for this license are established in one of two ways. Interested parties may either negotiate rates and terms which, if approved through a notice and public comment proceeding, become the final rules for the relevant license period. Alternatively, if industry representatives cannot reach a voluntary settlement, the Librarian of Congress convenes a three-person Copyright Arbitration Royalty Panel ("CARP") for the purpose of determining the applicable rates and terms.

In 1995, the Librarian of Congress initiated the first rate adjustment proceeding for the purpose of setting rates and terms of payment for use of sound recordings by the preexisting services pursuant to the section 114 license. The three preexisting subscription services and the Recording Industry Association of America ("RIAA") participated in this proceeding which concluded with the issuance of a final rule and order by the Librarian of Congress. *See* 63 FR 25394 (May 8, 1998).

In that proceeding, the parties proposed, and the CARP adopted, a term which gave the RIAA the responsibility for collecting and distributing the royalty fees to all copyright owners. *Id.* at 25397. The Librarian adopted this term, then crafted additional regulations that afforded copyright owners a means to verify the accuracy of the royalty payments made by the RIAA collective,[2] established the value of each performance, specified the nature of the costs that RIAA may deduct from the royalty fees prior to distribution, and set forth a procedure for handling royalty fees in the case where the collective is unable to identify or locate a copyright owner who is entitled to receive royalties collected under the statutory license.

RIAA appealed both the rate set by the Librarian and the additional conditions imposed on the RIAA collective in its capacity as the collection agent for copyright owners. *See, Recording Industry Ass'n* v. *Librarian of Congress*, 176 F.3d 528 (D.C. Cir. 1999). The United States Court of Appeals for the District of Columbia Circuit upheld the rate set by the Librarian and found that the Librarian has the authority to impose terms on copyright owners or their agents. However, it remanded for further consideration certain terms imposed on RIAA under 37 CFR 260.2(d), 260.3(d), 260.6(b), and 260.7, because the CARP had not considered these issues, leaving the record devoid of any evidence upon which to fashion any terms concerning the collection and distribution of the royalty fees. *Id.* at 536.

On February 13, 2001, the Copyright Office initiated a new proceeding to consider the terms remanded by the court with the issuance of a scheduling order, directing the parties to this proceeding to file their direct cases with the Office on April 17, 2001. *See*, Order in Docket No. 96–5 CARP DSTRA (February 13, 2001). However, instead of filing a direct case on April 17, RIAA filed a petition to establish terms governing the RIAA collective and to suspend the scheduled proceeding. No party to the original proceeding objected to the proposed terms. In fact, Music Choice had already informed the Office by letter dated February 26, 2001, of its intent not to participate further in this proceeding and that it did not object to the terms to be proposed by RIAA.

Subsequently, RIAA revised these terms to remove a reference to the section 112 statutory license for the making of ephemeral copies and to make clear that membership in the collective is open only to those copyright owners whose works are subject to statutory licensing and thus generate the funds to be distributed by the collective. RIAA also asked the Copyright Office to publish the revised terms pursuant to § 251.63(b). This provision allows the Librarian of Congress to adopt proposed terms that are the result of settlement negotiations, provided that no person with a substantial interest and an intent to participate in a CARP proceeding files an objection. This procedure to adopt negotiated rates and terms in the case where an agreement has been reached has been specifically endorsed by Congress.

If an agreement as to rates and terms is reached and there is no controversy as to these matters, it would make no sense to subject the interested parties to the needless expense of an arbitration proceeding conducted under (section 114(f)(2) (1995)). Thus, it is the Committee's intention that in such a case, as under the Copyright Office's current regulations concerning rate adjustment proceedings, the Librarian of Congress should notify the public of the proposed agreement in a notice-and-comment proceeding and, if no opposing comment is received from a party with a substantial interest and an intent to participate in an arbitration proceeding, the Librarian of Congress should adopt the rates embodied in the agreement without convening an arbitration panel.

S. Rep. No. 104–128, at 29 (1995)(citations omitted).

Accordingly, the Copyright Office published the proposed terms in the **Federal Register** and requested public comment. 66 FR 38226 (July 23, 2001). In response to this notice, the American Federation of Musicians ("AFM") and the American Federation of Television and Radio Artists ("AFTRA") filed a Notice of Intent to Participate and objections to certain of the proposed terms. Shortly thereafter, RIAA began discussions with AFTRA and AFM, regarding their objections, and the matter has been held in abeyance.

Since that time, a significant event has occurred that bears directly on the resolution of this proceeding. In December of 2002, Congress passed the Small Webcaster Settlement Act of 2002 ("SWSA"), Public Law 107–321, 116 Stat. 2780. Among other things, the SWSA amended 17 U.S.C. 114(g) in two important ways which address specific issues which are the subject of this proceeding. First, the SWSA provides for direct payment to featured recording artists and to the administrators of the escrow accounts provided for in 17 U.S.C. 114(g)(2)(B)&(C). Second, the act allows a designated agent, prior to the distribution of the royalty receipts, to deduct reasonable costs incurred by that agent in the administration of those receipts, including, but not limited to, costs associated with the collection and distribution of the royalty fees and the costs incurred in the participation of negotiations or arbitration proceedings under sections 112 and 114.

Because of these changes in the law, RIAA has again revised its proposed amendments to 37 CFR 260 to conform the terms in dispute to the new law and, in doing so, it has addressed the concerns of AFM and AFTRA. Consequently, AFM and AFTRA have withdrawn their objections to the proposed terms and their Notice of Intent to Participate in a CARP

[1] A "preexisting subscription service" is defined as: A service that performs sound recordings by means of noninteractive audio-only subscription digital audio transmissions, which was in existence and was making such transmissions to the public for a fee on or before July 31, 1998, and may include a number of limited number of sample channels representative of the subscription service that are made available on a nonsubscription basis in order to promote the subscription service. 17 U.S.C. 114(j)(11).

[2] In November 2000, RIAA formed "SoundExchange," an unincorporated division of RIAA, to administer statutory licenses, including its responsibilities under the Librarian's May 8 Order. *See*, Revised RIAA Petition to Establish Terms Governing SoundExchange at 1 n.1.

proceeding. At this juncture, § 251.63(b) requires the publication of the proposed rules to provide those persons with a substantial interest in the proceeding with an opportunity to comment on the rules. Provided that no party who is entitled to participate in a CARP on remand of this proceeding and who has a substantial interest in the rules files an objection and a Notice of Intent to Participate in a CARP proceeding to resolve an objection within the scope of this proceeding, the proposed rules will be adopted as final regulations.

The proposed terms shall govern SoundExchange, the collecting rights entity that was formed from the designated RIAA collective, in its capacity as the sole agent designated to receive royalty payments from the three subscription services that were parties to this proceeding. Terms governing the administrative functions of any future collective or the designation of alternative agents shall be decided in future rate adjustment proceedings either through negotiations or after a hearing before a CARP based upon a fully developed written record. *See, e.g.*, 67 FR 45239 (July 8, 2002). For this reason, parties must limit their comments to the terms offered in the context of the proceeding to set rates and terms for the three subscription services—Music Choice, DMX, and Muzak—for the period October 28, 1998 (the effective date of the Digital Millennium Copyright Act) through December 31, 2001, the remand order, and the law as amended by the SWSA.

Should a person object to the proposed terms, he or she must file a written objection with the Copyright Office and an accompanying Notice of Intent to Participate. Any proceeding convened to consider these terms would be a continuation of the prior CARP proceeding, Docket No. 96–5 CARP DSTRA, on remand from the United States Court of Appeals for the District of Columbia Circuit. *See*, 17 U.S.C. 802(g). Therefore, the content of the written challenge must include a statement explaining the basis of the person's substantial interest in that proceeding and entitlement to participate in that proceeding, the proposed rule the person finds objectionable, and the reasons for the challenge. If no comments are received, the regulations shall become final upon publication of a final rule.

List of Subjects in 37 CFR Part 260

Copyright, Digital Audio Transmissions, Performance Right, Sound Recordings.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes amending part 260 of 37 CFR as follows:

PART 260—USE OF SOUND RECORDINGS IN A DIGITAL PERFORMANCE

1. The authority citation for part 260 continues to read as follows:

Authority: 17 U.S.C. 114, 801(b)(1).

§ 260.2 [Amended]

2. In § 260.2, remove paragraph (d).

3. Section 260.3 is amended by revising paragraphs (c), (d), and (e) to read as follows:

§ 260.3 Terms for making payments of royalty fees.

* * * * *

(c) The agent designated to receive the royalty payments and the statements of account shall have the responsibility of making further distribution of these payments to those parties entitled to receive such payments according to the provisions set forth at 17 U.S.C. 114(g)(2); Provided that the designated agent shall only be responsible for making distributions to those parties who provide the designated agent with such information as is necessary to identify and pay the correct recipient for such payments. The agent shall distribute royalty payments on a reasonable basis that values all performances by a Licensee equally based upon the information provided by the Licensee pursuant to the regulations governing records of use of performances by Licensees; Provided, however, that parties who have designated the agent may agree to allocate their shares of the royalty payments made by any Licensee among themselves on an alternative basis. Parties entitled to receive payments under 17 U.S.C. 114(g)(2) may agree with the designated agent upon payment protocols to be used by the designated agent that provide for alternative arrangements for the payment of royalties consistent with the percentages in 17 U.S.C. 114(g)(2).

(d) The designated agent may deduct from the payments made by Licensees under § 260.2, prior to the distribution of such payments to any person or entity entitled thereto, all incurred costs permitted to be deducted under 17 U.S.C. 114(g)(3); Provided, however, that any party entitled to receive royalty payments according to 17 U.S.C. 114(g)(2) may agree to permit the designated agent to deduct any additional costs.

(e) Commencing June 1, 1998, and until such time as a new designation is made, SoundExchange, which currently is an unincorporated division of the Recording Industry Association of America, Inc., shall be the agent that receives royalty payments and statements of account under this part 260 and shall continue to be designated as such if it should be separately incorporated.

4. Section 260.6 is revised to read as follows:

§ 260.6 Verification of royalty payments.

(a) *General.* This section prescribes general rules pertaining to the method of verification of the payment of royalty fees by the designated agent to interested parties; Provided, however, that the designated agent and any interested person may agree as to an alternative method of verification.

(b) *Frequency of verification.* Interested parties may conduct a single audit of the designated agent during any given calendar year and no calendar year shall be subject to audit more than once.

(c) *Notice of intent to audit.* Interested parties must file with the Copyright Office a notice of intent to audit the designated agent. Such notice of intent shall also be served at the same time on the designated agent to be audited. Within 30 days of the filing of the notice of intent, the Copyright Office shall publish in the **Federal Register** a notice announcing such filing.

(d) *Retention of records.* The interested party requesting the verification procedure shall retain the report of the verification for a period of three years.

(e) *Acceptable verification procedure.* An audit, including underlying paperwork, which was performed in the ordinary course of business according to generally accepted auditing standards by an independent auditor, shall serve as an acceptable verification procedure for all interested parties.

(f) *Costs of the verification procedure.* The interested parties requesting the verification procedure shall pay for the cost of the verification procedure, unless an independent auditor concludes that there was an underpayment of five (5) percent or more, in which case, the designated agent shall bear the costs of the verification procedure.

(g) *Interested parties.* For purposes of this section, interested parties are those individuals or entities who are entitled to receive royalty payments pursuant to 17 U.S.C. 114(g)(2), or their designated agents.

5. Section 260.7 is amended by removing the word "collecting" after the phrase "If the designated"; by removing the word "collecting" each place it appears and adding the word "designated" in its place; and in the last sentence, by removing the word "fees" and adding the word "payments" in its place.

Dated: April 15, 2003.

David O. Carson,

General Counsel.

[FR Doc. 03–9783 Filed 4–18–03; 8:45 am]

BILLING CODE 1410–33–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–56–1–7491b; FRL–7485–7]

Approval and Promulgation of Implementation Plans; Louisiana: Revision to the Ozone Maintenance Plans for Beauregard, St. Mary, Lafayette, and Grant Parishes and the New Orleans Consolidated Metropolitan Statistical Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We, the EPA, are proposing to take direct final action to approve a revision to the Louisiana SIP for Beauregard, St. Mary, Lafayette, and Grant Parishes and the New Orleans Consolidated Metropolitan Statistical Area (CMSA) ozone maintenance areas. The revision involves changes to the approved contingency plans.

DATES: Written comments must be received by May 21, 2003.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD-L), at the EPA Region 6 Office listed below. Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD-L), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Louisiana Department of Environmental Quality, Air Quality Division, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Joe Kordzi of the EPA Region 6 Air Planning Section, at (214) 665–7186 and at the Region 6 address above.

SUPPLEMENTARY INFORMATION: In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no relevant adverse comment, EPA will not take further action on this proposed rule. If EPA receives relevant adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

For additional information, see the direct final rule located in the "Rules and Regulations" section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 10, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 03–9620 Filed 4–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 02–380; DA 03–1022]

Unlicensed Devices

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the deadline for filing comments on the proposal to make additional spectrum available for unlicensed devices to enable interested parties to submit information that will be beneficial to the record in this proceeding.

DATES: Comments are due April 17, 2003, and reply comments are due May 16, 2003.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW-A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506, TTY (202) 418–2989, e-mail: *hvantuyl@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order*, ET Docket No. 02–380, DA 03–1022, adopted March 28, 2003, and released March 31, 2003. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the FCC Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY).

Summary of the Order

1. On March 24, 2003, the Association for Maximum Service Television, Inc. (MSTV) submitted a motion to the Commission to extend the comment and reply comment deadlines in the above captioned proceeding by 10 days, from April 7, 2003, and May 6, 2003, to April 17, 2003, and May 16, 2003, respectively. MSTV states that additional time is required to permit review and discussion of its comments by its board of directors before they can be approved and filed with the Commission.

2. The Commission does not routinely grant extensions of time in rule making proceedings. However, we find MSTV's circumstances compelling and we believe that providing more time will enable MSTV to submit information that will be beneficial to the record in this proceeding. In addition, such a brief extension will not cause undue delay. Therefore, we agree to extend the comment and reply comment deadlines by 10 days.

3. The deadline for filing comments in the above captioned proceeding is extended to April 17, 2003, and that the deadline for filing reply comments in the above captioned proceeding is extended to May 16, 2003.

4. This action is taken pursuant to the authority found in section 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303; and pursuant to §§ 0.31, 0.241 and 1.46 of the Commission's rules, 47 CFR 0.31, 0.241 and 1.46.

List of Subjects in 47 CFR Part 15

Communications equipment, Labeling, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–9688 Filed 4–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1110, MB Docket No. 03–97, RM–10683]

Digital Television Broadcast Service; Juneau, AK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Capital Community Broadcasting, Inc., licensee of noncommercial educational station KTOO–TV, Juneau, Alaska, proposing the substitution of DTV channel *10 for DTV channel *6 at Juneau. DTV Channel *10 can be allotted to Juneau, Alaska, at reference coordinates 58–18–04 N. and 134–25–21 W. with a power of 0.748, a height above average terrain HAAT of 320.3 meters. Since the community of Juneau is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before June 5, 2003, and reply comments on or before June 20, 2003.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lawrence M. Miller, Schwartz, Woods & Miller, 1350 Connecticut Avenue, NW., Suite 300, Washington, DC 20036–1717 (Counsel for Capital Community Broadcasting, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–97, adopted April 4, 2003, and released April 14, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Alaska is amended by removing DTV channel *6 and adding DTV channel *10, Juneau.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–9666 Filed 4–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[ET Docket No. 98–206; RM–9147; RM–9245; FCC 03–85]

Permit Operation of NGSO FSS Systems Co-Frequency With GSO and Terrestrial Systems in the Ku-Band Frequency Range

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission seeks comment on the appropriate service area definition for the Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band (12 GHz band). This action is taken in response to comments received in response to a January 30, 2003, auction public notice which sought comment on an MVDDS auction based on either CEAs or DMAs. Given that we are revisiting the service area definition, we also take this opportunity to explore whether the current build out requirement sufficiently promotes expeditious deployment of service. By these actions, we seek to deploy the new MVDDS in a manner that most efficiently and effectively allows for flexible use of the spectrum.

DATES: Comments are due on or before April 28, 2003, and reply comments are due on or before May 5, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Jennifer Burton, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418–0680, e-mail *jburton@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Further Notice of Proposed Rulemaking, FCC 03–85, adopted on April 10, 2003, and released on April 15, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. In this Second Further Notice of Proposed Rulemaking (*NPRM*), we seek further comment on the appropriate service area definition for the Multichannel Video Distribution and Data Service (MVDDS) in the 12.2–12.7 GHz band (12 GHz band). Specifically, we seek comment on the most appropriate service area definition for the geographic licensing of MVDDS. We also seek comment on whether Designated Market Areas (DMAs) will facilitate delivery of advanced wireless services, such as video and data broadband services, to a wide range of populations, including those areas that are unserved and underserved. In addition, we seek comment on whether we should modify the MVDDS build out requirement as a means to foster expeditious deployment of advanced wireless services, such as video and data broadband services, to these communities as well.

Procedural Matters

Initial Regulatory Flexibility Analysis

2. As required by section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. Below contains the IRFA. We request written public comments on the IRFA. In order to fulfill the mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions regarding the prevalence of small businesses in the affected industries.

3. Interested parties must file comments in accordance with the same filing deadlines as comments filed in this *NPRM*, but they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act.

Ex Parte Rules—Permit-But-Disclose Proceedings

4. This is a permit-but-disclose notice and comment rule making proceeding. Our rules permit *ex parte* presentations, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.2306(a).

Comment Dates

5. Pursuant to §§ 1.415 and 1.419 of our rules, interested parties may file comments on or before 7 days from the date of publication in the **Federal Register** and reply comments on or before 14 days from the date of publication in the **Federal Register**. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), *http://www.fcc.gov/e-file/ecfs.html*, or by filing paper copies.

6. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should including the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

7. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rule making number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commissioner's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., TW–A325, Washington, DC 20554. All filings must be addressed to the Commissioner's Secretary, Office of the Secretary, Federal Communications Commission.

8. Parties who choose to file by paper should also submit their comments on diskette. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word or compatible software. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleading, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contract, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

9. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365 or via e-mail to *bmillin@fcc.gov*. This *NPRM* can also be downloaded at *http://www.fcc.gov/wtb*.

Further Information

10. The World Wide Web addresses/URLs that we give here were correct at the time this document was prepared but may change over time. They are included herein in addition to the

conventional citations as a convenience to readers. We are unable to update these URLs after adoption of this *NPRM*, and readers may find some URLs to be out of date as time progresses. We also advise readers that the only definitive text of FCC documents is the one that is published in the FCC Record. In case of discrepancy between the electronic documents cited here and the FCC Record, the version in the FCC Record is definitive.

Initial Regulatory Flexibility Analysis

11. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Second Further Notice of Proposed Rulemaking (*NPRM*). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided in paragraph 124 of the item. The Commission will send a copy of this *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rule

12. In this *NPRM*, we revisit the issues of the geographic licensing scheme for MVDDS and build-out requirements. In the Second Report and Order, the Commission adopted geographic license service areas for MVDDS on the basis of Component Economic Areas (CEAs). Based on the previously-established record in this proceeding, and on subsequent discussions between Commission staff and Nielsen representatives which indicate that, although Nielsen remains unable to enter into a formal agreement to allow the Commission to use its Designated Market Area (DMA) designation for the MVDDS service areas, Nielsen does not object to the Commission's use of DMAs in this manner, subject to certain parameters. Specifically, in a letter received on March 26, 2003, it appears that Nielsen would agree to extend a perpetual, royalty-free license to the Commission, without the right to sublicense, to its DMA mark and regions, provided that the Commission:

(i) Agrees, and continues to communicate to prospective MVDDS suppliers, that a territorial license from the Commission to supply MVDDS does not confer the right to use Nielsen Media Research's DMA mark, regions or data, and that such right must be obtained from Nielsen Media Research on such terms as may be mutually acceptable to Nielsen Media Research and the supplier, in their sole and respective discretion, and (ii) does not republish DMA regions or data in any statute, regulation or rule or otherwise.

13. We are concerned that Nielsen's conditions on the use of DMAs may unduly limit the business plans and opportunities for MVDDS licensees. By its most recent letter, Nielsen makes it clear that it is unwilling to consent to allowing the Commission's MVDDS licensees use the DMA mark, regions or data in their MVDDS business without an individual license from Nielsen. Thus, it does not appear that the license Nielsen described would give Commission licensees sufficient flexibility to make practical use of the DMA designation in connection with their MVDDS operations. Additionally, although the Commission could cross-reference DMAs in its rules, Nielsen's limitations may interfere with our enforcement flexibility, since Nielsen does not want us to "republish DMA regions or data in any statute, regulation or rule or otherwise." We seek comment on whether the conditions described by Nielsen are so restrictive that use of DMAs would be of limited utility to small businesses. We also request comment on the potential impact on small business plans if we change the service area designation.

14. Given that we are revisiting the service area definition, we also take this opportunity to explore whether the current build out requirement sufficiently promotes expeditious deployment of service, particularly for those communities that are traditionally unserved or underserved. As indicated earlier, the Second R&O establishes a ten-year build out requirement for the MVDDS licensees based on substantial service as a basis for a renewal expectancy. MDS America has expressed concern that a ten-year build out period for MVDDS licenses was too long given the potential for anti-competitive warehousing of spectrum in this service and the great demand for rural broadband service. MDS America supports a five-year build out period, a requirement advocated by other commenters in this record.

15. We seek limited comment on the timing of whether a 10-year build out requirement is optimal for fostering expeditious delivery of advanced wireless services to all communities, in particular communities that are traditionally unserved or underserved. In addition, we seek comment on whether a shorter build out requirement will facilitate more effective deployment of these services as well as the appropriate benchmark for a buildout requirement. Finally, we seek comment on the potential impact on small business plans if we change the build out requirement.

16. We seek comment on the following issues under consideration in this *NPRM*:

- The appropriate service area designation for MVDDS.
- The appropriate buildout requirement for MVDDS.

Legal Basis

17. The proposed action is authorized under the Administrative Procedure Act, 5 U.S.C. 553; and sections 1.4(i), 7, 301, 303, 308 and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157, 301, 303, 308 and 309(j).

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

18. The RFA directs agencies to provide a description of, and, where feasible an estimate of, the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

19. Small Multichannel Video Programming Distributors (MVPDs). SBA has developed a definition of small entities for cable, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators and DBS services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below each service individually to provide a more precise estimate of small entities.

20. Cable Services. The Commission has developed, with SBA's approval, our own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving 400,000 or fewer subscribers nationwide. We last estimated that there were 1439 cable operators that qualified as small cable companies. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, using this definition, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted in the Second Report and Order.

21. The Communications Act defines a small cable system operator as "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator under the Communications Act definition, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

22. DBS Service. Because DBS provides subscription services, DBS falls within the SBA definition of Cable Networks (NAIC 513210) and Cable and Other Program Distribution (NAIC 513220). This definition provides that a small entity is expressed as one with $11 million or less in annual receipts. The operational licensees of DBS services in the United States are governed by part 100 of the Commission's Rules. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees meeting this definition that could be impacted by these rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business by the SBA, if independently owned and operated.

23. Auxiliary, Special Broadcast and other program distribution services. This service involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the station). The Commission has not developed a definition of small entities applicable to broadcast auxiliary licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radio networks (NAICS 513111), radio stations (NAICS 513112), and television broadcasting (NAICS 513120). These definitions provide, respectively, that a small entity is one with either $5 million or less in annual receipts or $10.5 million in annual receipts. The numbers of these stations are very small. The Commission does not collect financial information on these auxiliary broadcast facilities. We continue to believe, however, that most, if not all, of these auxiliary facilities could be classified as small businesses by themselves. We also recognize that most of these types of services are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (as noted, either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the SBA's definition of a "small business concern" because they are not independently owned and operated.

24. Private Operational Fixed Service. Incumbent microwave services in the 12.2–12.7 GHz bands include common carrier, private operational fixed (POF), and BAS services. Presently, there are approximately 22,015 common carrier licensees, and approximately 61,670 POF licensees and broadcast auxiliary radio licensees in the microwave service. Inasmuch as the Commission has not yet defined a small business with respect to these incumbent microwave services, we utilized the SBA's definition applicable to cellular and other wireless telecommunications companies (NAICS 513322); *i.e.*, an entity with no more than 1500 persons. We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

25. The rules set forth in the Second Report and Order will affect all entities that intend to provide terrestrial MVDDS operations in the 12.2–12.7 GHz band. In the Second Report and Order, the Commission stated that licensees are permitted to use MVDDS spectrum for, among other things, fixed one-way direct-to-home/business video and data services.

26. Additionally, in the Second Report and Order, the Commission adopted definitions for three tiers of small businesses for the purpose of providing bidding credits to small entities. Specifically, we defined the three tiers of small business as: (a) An "entrepreneur" is an entity with average annual gross revenues not exceeding $40 million for the preceding three years; (b) a "small business" is an entity with average annual gross revenues not exceeding $15 million for the preceding three years; and (c) a "very small business" is an entity with average annual gross revenues not exceeding $3 million for the preceding three years. We will not know how many auction participants or licensees will qualify under these definitions as entrepreneurs, small businesses, or very small businesses until an auction is held. However, upon reviewing the record in the MVDDS proceeding, we assume that, for purposes of our evaluations and conclusions in the FRFA, a number of the prospective licensees will be entrepreneurs, small businesses, or very small businesses under our adopted definitions.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

27. This *NPRM* imposes no new reporting, recordkeeping or other compliance requirements not previously adopted in this proceeding Paperwork Reduction Act of 1995, Pub. L. No. 104–13.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

28. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from

coverage of the rule, or any part thereof, for small entities.

29. With respect to its decision to use CEAs as the basis for the MVDDS service, the Commission noted that adopting CEAs would provide similar benefits as DMAs but would better promote its objectives and address commenters' concerns. Specifically, the Commission premised its decision on three factors. First, the smaller CEA service areas would better track actual deployment of fixed services. Second, CEAs would encourage rapid service deployment to less populated and rural regions because they will permit additional opportunities for small businesses to provide MVDDS. Third, the use of CEAs would encourage the meaningful participation of small businesses better than a nationwide or regional geographic licensing approach because the smaller areas would likely require a lower minimum investment. Further, the Commission noted that for those seeking a regional or national footprint, the use of CEAs would not prevent them from aggregating areas to create such larger networks.

30. While we do not prejudge the type of services licensees will offer in the 12 GHz band, we nonetheless believe that it is appropriate to adopt a service area definition that will afford MVDSS licensees the opportunity to provide a wide array of services. Based on the record in this proceeding, we believe that utilizing DMAs may be more effective in this regard. DMAs, as compared to CEAs, provide a better method to delineate television markets based on viewing patterns. Consequently, for those MVDDS licensees seeking to provide MVPD service offerings involving the retransmission of broadcast programming, the use of DMAs could provide additional economic benefits. For example, MVDDS licensees with service offerings involving the delivery of television programming may find the use of DMAs to be administratively easier due to the close nexus between the television viewer market areas as determined by the DMA delineation and the proposed use of the service.

31. As to other uses, including fixed services, we believe that DMAs and CEAs are equally advantageous because they are both local in nature. While we recognize that CEAs are smaller than DMAs, we continue to believe that DMAs, which are county-based, provide a viable option in facilitating local access to cable, non-cable, and MVDDS service offerings. Consequently, we believe that both DMAs and CEAs would encourage rapid service deployment in unserved or underserved areas and encourage meaningful participation by small businesses. Additionally, entities desiring a national footprint, may aggregate either DMAs or CEAs to create such larger networks.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

32. None.

Ordering Clauses

33. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Second Further Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a).

34. Pursuant to the authority contained in sections 4, 4(i), 7, 303, 303(g), 303(r), 307 and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154, 154(i), 157, 303, 303(g), 303(r), 307, this Second Further Notice of Proposed Rulemaking is adopted.

List of Subjects in 47 CFR Part 101

Communication equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

For the reasons discussed in the preamble the FCC proposes to amend 47 CFR part 101 as follows:

PART 101—FIXED MICROWAVE SERVICES

1. The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

2. Section 101.1401 is revised to read as follows:

§ 101.1401 Service areas.

Multichannel Video Distribution and Data Service (MVDDS) is licensed on the basis of Designated Market Areas (DMAs). The 214 DMA service areas are based on the 210 Designated Market Areas delineated by Nielsen Media Research and published in its pamphlet entitled U.S. Television Household Estimates, September 2002, plus four FCC-defined DMA-like service areas:

(a) Alaska—Balance of State (all geographic areas of Alaska not included in Nielsen's three DMAs for the state: Anchorage, Fairbanks, and Juneau);

(b) Guam and the Northern Mariana Islands;

(c) Puerto Rico and the United States Virgin Islands; and

(d) American Samoa.

3. Section 101.1421 is amended by revising paragraphs (b) and (c) to read as follows:

§ 101.1421 Coordination of adjacent area MVDDS stations and incumbent public safety POFS stations.

* * * * *

(b) Harmful interference to public safety stations, co-channel MVDDS stations operating in adjacent geographic areas, and stations operating on adjacent channels to MVDDS stations is prohibited. In areas where the DMAs are in close proximity, careful consideration should be given to power requirements and to the location, height, and radiation pattern of the transmitting and receiving antennas. Licensees are expected to cooperate fully in attempting to resolve problems of potential interference before bringing the matter to the attention of the Commission.

(c) Licensees shall coordinate their facilities whenever the facilities have optical line-of-sight into other licensees' areas or are within the same geographic area. Licensees are encouraged to develop operational agreements with relevant licensees in the adjacent geographic areas. Incumbent public safety POFS licensee(s) shall retain exclusive rights to its channel(s) within the relevant geographical areas and must be protected in accordance with the procedures in § 101.103 of this part. A list of public safety incumbents is attached to the released Memorandum Opinion and Order and Second Report and Order, Docket 98–206 released May 23, 2002. Please check with the Commission for any updates to that list.

[FR Doc. 03–9681 Filed 4–18–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 68, No. 76

Monday, April 21, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before June 20, 2003.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0011.

Form No.: AID 1010–2.

Title: Application for Assistance—American Schools and Hospitals Abroad.

Type of Review: Renewal of Information Collection.

Purpose: USAID finances grant assistance to U.S. founders or sponsors who apply for grant assistance from ASHA on behalf of their institutions overseas. ASHA is a competitive grants program. The office of ASHA is charged with judging which applicants may be eligible for consideration and receive what amounts of funding for what purposes. To aid in such determination, the office of ASHA has established guidelines as the basis for deciding upon the eligibility of the applicants and the resolution on annual grant awards. These guidelines are published in the **Federal Register**, Doc 79–36221.

Annual Reporting Burden:

Respondents: 85.

Total annual responses: 85.

Total annual hours requested: 1,020 hours.

Dated: April 10, 2003.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services Bureau for Management.

[FR Doc. 03–9705 Filed 4–16–03; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before June 20, 2003.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No: OMB 0412–0035.

Form No.: AID 1550–2.

Title: Private and Voluntary Organization Annual Return

Type of Review: Renewal of Information Collection.

Purpose: USAID is required to collect information regarding the financial support of private and voluntary organizations registered with the Agency. The information is used to determine the eligibility of PVOs to receive USAID funding.

Annual Reporting Burden:

Respondents: 459.

Total annual responses: 442.

Total annual hours requested: 1,320 hours

Dated: April 11, 2003.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 03–9706 Filed 4–18–03; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV03–916–610 Review]

Nectarines, Pears, and Peaches Grown in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of review and request for comments.

SUMMARY: This notice announces that the Agricultural Marketing Service (AMS) plans to review Marketing Orders 916 and 917 for nectarines, pears, and peaches grown in California, under the criteria contained in section 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments on this notice must be received by June 20, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice of review.

Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or may be viewed at *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, CA 93721; telephone: (559) 487–5901; Fax: (559) 487–5906; E-mail: *Kurt.Kimmel@usda.gov;* or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237;: (202) 720–8938, or E-mail: *George.Kelhart@usda.gov*.

SUPPLEMENTARY INFORMATION: Marketing Orders No. 916 and 917, as amended (7 CFR parts 916 and 917), regulate the handling of nectarines, pears, and peaches grown in California. The marketing orders are effective under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674). The pear provisions and regulations have been suspended since 1994.

AMS initially published in the **Federal Register** (63 FR 8014; February 18, 1999), its plan to review certain regulations, including Marketing Orders No. 916 and 917, under criteria contained in section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612). An updated plan was published in the **Federal Register** on January 4, 2002 (67 FR 525). Because many AMS regulations impact small entities, AMS has decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review.

The purpose of the review will be to determine whether the marketing orders for nectarines and peaches grown in California should be continued without change, amended, or rescinded (consistent with the objectives of the AMAA) to minimize the impacts on small entities. For pears, the purpose of the review will be to determine whether the marketing order for pears should be reactivated without change, amended, or rescinded. In conducting this review, AMS will consider the following factors: (1) The continued need for the marketing orders; (2) the nature of complaints or comments received from the public concerning the marketing orders; (3) the complexity of the marketing orders; (4) the extent to which the marketing orders overlap, duplicate, or conflict with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the marketing orders have been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the marketing orders.

An official of USDA will preside over the meeting. Those wishing to make oral comments will be asked to register with the official at the meeting. A time limitation of ten minutes for each commenter may be imposed. Questions to participants from the audience will not be permitted.

Authority: 7 U.S.C. 601–674.

Dated: April 15, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–9673 Filed 4–18–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Food Distribution Programs and Associated Forms

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection for reporting and recordkeeping burdens associated with the Food Distribution Programs and their associated forms. The proposed collection is an extension of collections currently approved under OMB No. 0584–0293.

DATES: Written and faxed comments must be received on or before June 20, 2003.

ADDRESSES: Comments may be mailed or faxed to Rosalind Cleveland, Chief, Program Support Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302. The fax number is 703–305–1410. Comments may also be e-mailed to: *fdd-pst@fns.usda.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia 22302, Room 508.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Rosalind Cleveland at 703–305–2888.

SUPPLEMENTARY INFORMATION: Title: Food Distribution Programs.

OMB Number: 0584–0293.

Forms Information: See chart below.

Expiration Date: June 30, 2003.

Type of Request: Revision of Currently Approved Information Collection.

Abstract: Food and Nutrition Service regulations under 7 CFR 240 require recordkeeping for Cash in Lieu of Donated Foods; under 7 CFR 247 require reporting (Form FNS–153) and recordkeeping for the Commodity Supplemental Food Program; under 7 CFR 250 require reporting (Forms FNS–7, FNS–57, FNS–663, FNS–155, FNS–52, FNS–53, FNS–519A—Discontinued, FNS–519B—Discontinued, FNS–586A—Discontinued, FNS–586B—Discontinued) for Food Distribution Programs; under 7 CFR 251 require reporting (Form FNS–667) and recordkeeping for the Emergency Food Assistance Program; under 7 CFR 253/254 require reporting (Forms FNS–152, FNS–57) and recordkeeping for the Food Distribution Program on Indian Reservations. See the following chart for a listing of forms and burden hours.

Respondents: 7 CFR Section 240: School Food Authorities, State Agencies; 7 CFR Section 247: Local Agencies, State Agencies; 7 CFR Section 250: School Food Authorities, State Agencies, Food Processing Industry; 7 CFR Section 251: Local Agencies, State Agencies; 7 CFR Section 252: Local Agencies, ITOs.

Estimated Number of Respondents: 396,893 (See chart).

Number of Responses per Respondent: 2.3 (See chart).

Estimated Total Annual Responses: 918,862 (See chart).

Estimated Time per Response: 1.25607 hours (See chart).

Estimated Total Annual Burden on Respondents: 1,154,152 (See chart).

FDD OMB BURDEN INVENTORY

Section of regulations	Aggregate totals by regulation	Respondents	Annual responses	Total Manhours
240	Recordkeeping	15,662	187,944	46,956
247	Reporting—no forms	1,675	685,660	349,300
247	Reporting—forms	20	240	1,512
247	Recordkeeping	140	1,680	84
250	Reporting—no forms	16,360	18,131	12,219
	Reporting—forms	5,245	18,804	37,606
	Recordkeeping	234,016		18,908
251	251 Reporting—forms	270	564	2,254
	Recordkeeping	3,482		672,439
252	Recordkeeping			
253&254	253&254	4,597	4,524	2,323
		247	1,314	2,948
		86,809		7,573
	Grand Total	396,893	918,862	1,154,152
	Est. Number of Responses per Respondent	2.3		
	Burden Hours per Response	1.25607		

Changes:

7 CFR Part 250—Changes in the Older American Act Amendments of 2000 eliminating the need to report the number of meals served in the program during the current year. The meal count report forms, FNS–586A and FNS–586B, were discontinued	−1,415
7 CFR Part 250—Requirement to report TEFAP participation data on the FNS–155 has been discontinued	−28
7 CFR Part 251—Reduction in the number of State review reports submitted to EFAs by lowering the number of reviews required and the number of reports of findings to EFAs	−672
7 CFR Part 251—Incorporate activities from ICB #0584–0385, TEFAP Admin Costs and Form FNS–667, into comprehensive FDD package.	+963
7 CFR Part 252—The National Commodity Processing (NCP) program was discontinued in FY1995, although authorized through 2002. The reporting burden was eliminated with the last ICB renewal. Now that the 3 year recordkeeping requirement has passed, the burden hours under this part will be eliminated	−2,306
7 CFR Part 253/254—Requires documentation of child support and Medicare Part B payments during FDPIR certification process.	+79
7 CFR Part 253/254—Prime Vendor Pilot—testing ways to streamline commodity ordering and delivery to ITOs participating in FDPIR	+23
Total	−3,356

Dated: April 14, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–9712 Filed 4–18–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Federal Claims Collection Methods for Food Stamp Program Recipient Claims

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this Notice invites the general public and other public agencies to comment on proposed information collections. This Notice of Proposed Information Collection announces the intent of the Food and Nutrition Service to revise and extend the information collection requirements associated with initiating and conducting Federal collection actions against households with delinquent food stamp recipient debts.

DATES: Written comments must be submitted on or before June 20, 2003 to be assured consideration.

ADDRESSES: Send comments to Barbara Hallman, Chief, State Administration Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 820, Alexandria, Virginia, 22302.

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate, automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Contact Leslie Byrd at (703) 305–2383 for further information.

SUPPLEMENTARY INFORMATION:

Title: Federal Claims Collection Methods for Food Stamp Program Recipient Claims.

OMB Number: 0584–0446.

Form Number: None.

Expiration Date: April 30, 2003.

Type of Request: Revision of a currently approved collection.

Abstract: Section 13(b) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2022(b)), and Food Stamp Program (FSP) regulations at 7 CFR 273.18 require State agencies to refer debtors with food stamp recipient debts that have been delinquent for 180 days or more to the Treasury Offset Program (TOP). This program intercepts Federal income tax refunds, Federal salaries and other Federal payments earmarked for these delinquent debtors. Also, the referral of delinquent debtors to TOP is required by the Debt Collection Improvement Act of 1996.

TOP places a burden on States agencies and/or the general public in three areas: 60-day notices; State-level submissions; and automated data processing (ADP).

TOP 60-Day Notice Proposed Burden

The proposed burden associated with the 60-day notice involves both the debtors and the general public. The 60-day notice notifies the debtor of the referral to TOP and provides the right for appeal. The State agency needs to prepare and mail the notices as well as respond to inquiries and appeals. The debtor, in turn, receives and reads the notice and then may make an inquiry or appeal the impending action if the debtor believes that the impending action is incorrect. Based on calendar year 2002 totals, we estimate that State agencies will send out and that debtors will read 276,366 notices. In addition, we estimate that the debtors will submit and State agencies will respond to about 2,700 inquiries and appeals. The total number of responses being proposed for the 60-day notice portion of the proposed burden is 279,066 respondents (276,366 notices + 2,700 follow-up inquiries and appeals) per year resulting in an annual reporting and recordkeeping burden of 39,549 hours. The existing burden for activity relating to the 60-day notice is 58,177 hours based on 369,045 respondents. The net reduction of 18,628 hours (58,177 hours − 39,549 hours) is due to the fact that State agencies are no longer required to send a 60-day notice to every delinquent debtor every year.

TOP State-level Submissions

The TOP offsets themselves are conducted by Treasury with FNS acting as an intermediary between the State agency and Treasury. While conducting this Operation State agencies must submit specified documents and/or information to FNS. The first such document is an annual letter to FNS certifying that all of the debts submitted by the State agency to TOP are legally enforceable and collectible. The second document certifies that Internal Revenue Service (IRS) information is safeguarded in accordance with IRS instructions. Lastly, State agencies report TOP collections on the FNS–209 Status of Claims Against Households report. (The burden for the remainder of the FNS–209 report is already covered under OMB burden number 0584–0069.)

FNS estimates that it will take State agencies a total of 135 hours per year for these State submissions. This is 1,381 hours less than the corresponding existing reporting and recordkeeping burden of 1515 hours. The reason for the decrease is the elimination of several reporting requirements and submissions including the pre-certification estimate, voluntary payment report and the State-level activity relating to Federal salary offset. These submission requirements have been eliminated, as they are no longer necessary for TOP.

TOP ADP Proposed Burden

The proposed burden for ADP includes weekly file processing, monthly address requests and system maintenance. Weekly file processing includes adding and maintaining debts in TOP, correcting errors on unprocessable records, and posting weekly collection files. Much of this activity is completed using automation and involves nearly 400,000 annual responses. FNS estimates that this activity takes 9,710 annual reporting and recordkeeping burden hours.

State agencies use an automated process to request and receive up-to-date addresses for the purpose of sending out 60-day notices. FNS is estimating that this activity will take about 5,457 reporting and recordkeeping burden hours per year. The last ADP activity associated with this burden is system maintenance. FNS estimates that this activity will take 1,272 burden hours per year.

The total proposed annual reporting and recordkeeping burden for ADP activity is 16,439 hours. This is an increase of 4,329 hours over the previously approved burden associated with ADP activity. The primary reason for the increase is the additional work associated with the monthly address requests. FNS believes that this activity is necessary to assure that 60-day notices are being sent to the correct addresses.

Summary of Estimated Burden

The net aggregate change from the existing to the proposed annual burden for this entire Proposed Collection is a decrease of 15,680 hours. For the activity relating to the 60-day notice, we are reducing the estimated annual burden for State agencies and households from 58,177 hours to 39,549 hours to reflect the fact that there is no longer a need to send a notice to every household every year. The State-level submissions portion of the reporting and recordkeeping burden is being reduced from 1,515 to 135 hours as several reports and submissions have been eliminated. The annual ADP portion of this burden package is being increased from 12,110 to 16,439 hours primarily to reflect the processing associated with monthly address requests.

Affected Public: State and local government, and food stamp households.

Estimated Number of Respondents: 279,119.

Number of Responses per Respondent: from 1 to 52.

Total Number of Annual Responses: 996,682.

Estimated Time per Response: from 1 minute to 8 hours.

Estimated Total Annual Burden: 56,123 hours.

Dated: April 14, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–9717 Filed 4–18–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Census Bureau

Current Population Survey (CPS)—School Enrollment/Computer Use/and Cell Phone Use Supplement

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 20, 2003.

ADDRESSES: Direct all written comments to Diana Hyneck, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHyneck@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Woods, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, (301) 763–3806.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau plans to request clearance for the collection of data concerning three combined supplements to be conducted in conjunction with the October 2003 CPS. The three combined supplements are: the School Enrollment Supplement, the Computer Use Supplement, and the Cell Phone Use Supplement. Title 13, United States Code, Section 182, and Title 29, United States Code, Sections 1–9, authorize the collection of the CPS information.

The *School Enrollment Supplement* is jointly sponsored by the Census Bureau and the Bureau of Labor Statistics. The basic school enrollment questions have been collected annually in the CPS for 30 years. This survey is the only source of national data on the age distribution and family characteristics of college students and the only source of demographic data on preprimary school enrollment. As part of the federal government's effort to collect data and provide timely information to local governments for policymaking decisions, the survey provides national trends in enrollment and progress in school.

The *Computer Use Supplement* is jointly sponsored by the National Telecommunications and Information Administration, the Economics and Statistics Administration, the National Center for Education Statistics, and the Bureau of Labor Statistics. This survey will provide a source of national and state level data on the demographic, social, and economic characteristics of Internet users and non-users. The development of statistical profiles of disadvantaged groups and specific geographic areas will permit public-private partnerships to target assistance to those that are most in need. It will provide information on where users access the Internet (at home, work, school, or other facility), the features used, and the reasons for nonuse of the Internet.

The *Cell Phone Use Supplement* is jointly sponsored by the Bureau of Labor Statistics and the Census Bureau. This survey will provide a source of national and state level data on the demographic, social, and economic characteristics of cell phone users and nonusers. These data will help federal data collection agencies to determine if primary cell phone users constitute a new source of nonresponse in telephone surveys. The supplement data also will make it possible to study general nonresponse bias in telephone surveys.

II. Method of Collection

The combined school enrollment, computer use, and cell phone use information will be collected by both personal visit and telephone interviews in conjunction with the regular October CPS interviewing. All interviews are conducted using computer-assisted interviewing.

III. Data

OMB Number: 0607–0464.

Form Number: There are no forms. We conduct all interviews on computers.

Type of Review: Regular.

Affected Public: Households.

Estimated Number of Respondents: 57,000.

Estimated Time Per Response: 12 minutes.

Estimated Total Annual Burden Hours: 11,400.

Estimated Total Annual Cost: The only cost to respondents is that of their time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13, U.S.C., Section 182, and Title 29, U.S.C., Sections 1–9.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for the Office of Management and Budget approval of this information collection; they also will become a matter of public record.

Dated: April 15, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–9676 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

Census Bureau

The 2004 Overseas Enumeration Test

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(A)).

DATES: Written comments must be submitted on or before June 20, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *DHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Idabelle Hovland, U.S. Census Bureau, Building 2, Room 2108, Washington, DC 20233–9200, 301–763–8443.

SUPPLEMENTARY INFORMATION:

I. Abstract

In the 1990 and 2000 Censuses, only federal civilian employees, U.S. military, and their dependents living overseas were included in the census. Counts of these people by state were obtained from administrative records and were included in the state

populations for the purpose of determining the apportionment of seats in the U.S. House of Representatives. No characteristics were collected for this population, and they were not included in any other tabulations or decennial census data products.

Leading up to the 2000 Census, some Members of Congress, responding to concerns from groups representing overseas Americans, expressed an interest in expanding the census to include all Americans living overseas—private U.S. citizens as well as the federally affiliated. The Bureau informed interested stakeholders that it was too late to pursue an expanded overseas enumeration for 2000, but would investigate the feasibility for the 2010 Census.

In December 2000, as part of the Census Bureau's appropriations bill for FY 2001, the Congress directed that the Census Bureau submit by September 30, 2001, a report on any methodological, logistical, or other issues associated with the inclusion of Americans living abroad in future decennial censuses. The Census Bureau submitted its report September 28, 2001. In the report, the Census Bureau outlined various policy, conceptual, and methodological issues that would have to be addressed during research and testing for the 2010 Census. The report indicated that a conference would be held with stakeholders in the near future and cited plans to conduct a test in 2004.

In November 2001, the Census Bureau held the "Conference on an Enumeration of Americans Overseas in the 2010 Census," attended by more than two dozen stakeholders, to begin to address issues identified in the September report and obtain input.

In January 2002, the Census Bureau convened the 2010 Overseas Enumeration Research and Planning Group to address policy issues and develop and test a prototype system for collecting data from all Americans living overseas. The feasibility of such an enumeration will be assessed based on the information obtained from the testing cycle.

In preparation for the 2010 Census, the Census Bureau plans to conduct the 2004 Overseas Enumeration Test as part of a research and testing program designed to determine the feasibility, quality, and cost of enumerating Americans living overseas during the 2010 Census. The results of the 2004 Test will be used to provide information and recommendations to inform a test in 2006. If the Census Bureau and the Congress decide to include an expanded overseas enumeration in the 2010 census, a "dress rehearsal" would be conducted in 2008.

The 2004 Test will include U.S. citizens living in France, Kuwait, and Mexico, regardless of how long they have resided abroad (this does not include those on vacations or short business trips). People who are not U.S. citizens will not be included in the counts.

The Census Bureau selected France, Kuwait, and Mexico as test sites based on several criteria. For example, we wanted to have geographic diversity, significant numbers of U.S. citizens, and estimates from administrative records that could be compared to the test census counts for evaluation purposes.

The objectives of the 2004 Overseas Enumeration Test are to determine the feasibility, quality and cost of collecting data from U.S. citizens living overseas.

II. Method of Collection

The Census Bureau will develop a communications strategy to inform and motivate respondents living in the test countries to answer the census. Using this communications strategy, overseas Americans in these test countries will be made aware of the Census Bureau's methodology to enumerate them in the 2004 Test.

To enumerate overseas Americans in the test countries, the Census Bureau will employ three enumeration modes. The Census Bureau will develop a mailing list from persons responding to the "Request for a Questionnaire" (RFQ) form. These RFQ forms will be made available at embassies, consulates and organizations that serve overseas Americans, as well as the Internet. Using the United States Postal Service, the Census Bureau will mail a questionnaire to those respondents in the test countries using the mailing list created from the RFQ operation. The second enumeration mode entails the provision of questionnaires to U.S. citizens at embassies, consulates and organizations that serve overseas Americans. Lastly, the questionnaires also will be available on the Internet for respondents who wish to answer using a computer. The web site for the Internet responses will contain a questionnaire similar to the paper questionnaire. The Census Bureau will evaluate the effectiveness, response rate, and cost of each mode of enumeration.

The Census Bureau will launch a promotional campaign for the RFQ, consisting of different promotional materials to promote and motivate overseas Americans to answer the census. The promotional materials will be sent to the different test countries with instructions in the handling of these materials. Subsequently, the Census Bureau will use advertising materials (magazines and newspapers) to promote and motivate persons to answer the census. The Bureau will evaluate the effectiveness of the plan in reaching the U.S. citizens in the test countries, the cost, and which of the different strategies worked best.

The Census Bureau is designing a unique questionnaire for the overseas enumeration that will contain the same "short form" questions asked stateside for everyone in the household (*i.e.* name, relationship to others in the household, age, sex, race, and Hispanic origin). Additionally, for every person in the household, we are also asking for citizenship, stateside address, telephone number, social security number, passport number and the person's primary activity. The respondent completing the questionnaire for the household is also asked to provide the foreign address and telephone number for the household residence and to indicate the number of persons living in the residence as of April 1, 2004.

The RFQ form contains six questions to be completed by the head of household. The questions include respondent name, country in which currently residing, mailing address of current residence, social security number, U.S. passport number and number of persons residing at address. "Census Day," the reference date for enumerating respondents, will be April 1, 2004.

On October 1, 2003 through December 31, 2003, overseas Americans may request questionnaires to be mailed to them. In February 2004, the Census Bureau will begin to mail the census test questionnaires to those who requested them. In March 2004, the questionnaires also will be available at the embassies, consulates, and the various organizations that serve overseas Americans. From March 2004 through July 2004, overseas Americans also may complete and submit their questionnaire via the Internet.

Responses from paper mail returns and the Internet will be data captured in order to analyze, among other things, the demographic characteristics of respondents and patterns of item nonresponse. The results of the test will help shape the data collection strategy for the next census.

III. Data

OMB Number: Not available.
Form Number(s): DO–1, DO–14.
Type of Review: Regular.
Affected Public: Individuals or households.
Estimated Number of Respondents: 450,000.
Estimated Time Per Response: 10 minutes.
Estimated Total Annual Burden Hours: 75,000 hours.
Estimated Total Annual Cost: We estimate the total cost to respondents for postage in mailing back their completed questionnaires to be $150,840. Respondents who reply via the internet will incur no cost.
Respondent Obligation: Mandatory.
Legal Authority: Title 13 of the United States Code, Sections 141 and 193.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 15, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–9677 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Residential Alterations and Repairs

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 20, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Tamara Cole, U.S. Census Bureau, Room 2123, Building 4, Washington, DC 20233–1912, (301) 763–4665 (or via the Internet at *tamara.a.cole@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau is the preeminent collector and provider of timely, relevant, and quality data about the people and economy of the United States. Economic data are the Census Bureau's primary program commitment during nondecennial census years. The Census Bureau conducts surveys to estimate expenditures for residential improvement, including alterations and repairs. This segment of the economy amounted to more than $157 billion in 2001. Work done to rental or vacant residential properties is collected on the Survey of Residential Alterations and Repairs (SORAR) report form. The Consumer Expenditures Survey collects data for improvement and repairs to owner-occupied residential properties.

The Census Bureau publishes estimates from these two sources in the C50 Series, *Expenditures for Residential Improvements and Repairs.* These estimates are used by a variety of private businesses and trade associations for marketing studies, economic forecasts, and assessments of the remodeling and construction industries. They also help governments evaluate economic policy. For example, the Bureau of Economic Analysis uses these statistics to develop the structures component of gross private domestic investment in the national income and product accounts.

In an effort to make our data dissemination more timely, the survey will begin monthly data collection for the January 2004 survey month. Currently the survey is conducted quarterly. At the same time, to improve the scope of the survey, we will begin to collect expenditures for wall-to-wall carpeting and kitchen appliances. To reduce some of the respondent burden, we expect to decrease the number of improvement queries on the monthly form. For example, siding work done as an "alteration" and siding work done as a "major replacement" may be combined into one siding improvement category.

II. Method of Collection

The universe for this survey is the owners or designated representatives of the more than 40 million rental and vacant housing units in the United States. A sample of these owners, as identified in the Consumer Expenditure Survey, is mailed the SORAR–705 form. They are asked to report detailed alterations, improvement, and repair expenditures for their entire property.

When the survey begins monthly data collection, approximately 2,800 owners will be sampled each month. The sample design uses a rotation procedure which will bring one-twelfth of the sample (about 230 properties) into the survey each month and, conversely, take one-twelfth out each month. The data collected will continue to be adjusted for unreturned or unusable forms by region and metropolitan statistical area (MSA). The weights are adjusted so that sample counts of renter occupied and vacant housing units agree with independently derived controls from the Current Population Survey.

III. Data

OMB Number: 0607–0130.
Form Number: SORAR–705.
Type of Review: Regular Review.
Affected Public: Individuals or households, Businesses or Other for Profit, and State or Local Governments.
Estimated Number of Respondents: 2,800.
Estimated Time Per Response: .25 hours per month.
Estimated Total Annual Burden Hours: 8,400.
Estimated Total Annual Cost: The cost to the respondents is estimated to be $84,000.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, U.S.C. section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 15, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–9678 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 19–2003]

Foreign-Trade Zone 82—Mobile, AL; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board), by the City of Mobile, Alabama, grantee of Foreign-Trade Zone 82, requesting authority to expand its zone in Mobile, Alabama, within the Mobile Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 11, 2003.

FTZ 82 was approved on February 24, 1983 (Board Order 208, 48 FR 9052, 3/3/83) and expanded on February 27, 1990 (Board Order 464, 55 FR 8159, 3/7/90). The general-purpose zone currently consists of one site (1,035 acres) at the Brookley Complex and Brookley Airport in Mobile.

The applicant is now requesting authority for a major expansion of the zone as described below. The proposal requests authority to expand Site 1 to include additional areas and to include 12 additional sites along the Mobile Bay industrial corridor.

Existing Site1—Brookley Complex and Brookley Airport (1,035 acres)—expand to include an additional 908 acres within the entire 4,636-acre Mobile port and riverfront industrial complex (new total: 1,943 acres);

Proposed Site 2—3,169 acres within the 5,051-acre LeMoyne Industrial Park, located on US Highway 43 in North Mobile County;

Proposed Site 3—70 acres within the 289-acre Mobile River Industrial Park, located immediately adjacent to the U.S. Highway 43, City of Saraland;

Proposed Site 4—34 acres at the Frisco Industrial Park, located on Craft Highway, Cities of Mobile and Prichard;

Proposed Site 5—120 acres at the Wolf Ridge Industrial Park, located near the intersection of U.S. Highway 43 and Interstate 65, City of Prichard;

Proposed Site 6—300 acres at the Mobile Commerce Park, located on State Highway 193 in Mobile County;

Proposed Site 7—3,364 acres within the 5,458-acre Theodore Industrial Complex, located on the western shore of Mobile Bay;

Proposed Site 8—247 acres within the 673-acre Bayou la Batre Waterfront Complex, located within the city limits of Bayou la Batre;

Proposed Site 9—221 acres within the 357-acre Loxley Industrial Park, located near County Highway 49, City of Loxley;

Proposed Site 10—103 acres within the 108-acre Robertsdale Industrial Park, located just east of State Highway 59 and south of County Highway 54, Robertsdale;

Proposed Site 11—171 acres within the 616-acre Fairhope Industrial Complex, located immediately adjacent to U.S. Highway 98, Fairhope;

Proposed Site 12—106 acres within the 110-acre Gulf Shores Industrial Park, located immediately adjacent to the Jack Edwards Airport, City of Gulf Shores; and,

Proposed Site 13—27 acres within the 53-acre Foley-Gopher Hill Commerce Park, located on County Road 24, Foley.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses below:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street NW., Washington, DC 20005; or

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW., Washington, DC 20230.

The closing period for their receipt is June 20, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 7, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Office of the City Clerk, City of Mobile, 9th Floor, South Tower, Government Plaza, 205 Government Street, Mobile, AL 36602.

Dated: April 15, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–9743 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–96]

Foreign-Trade Zone 202–Los Angeles, CA; Withdrawal of Application for Subzone Status for California Steel Industries, Inc.; Steel Mill Products Manufacturing Facilities in Fontana, CA

Notice is hereby given of the withdrawal of the application submitted by the Board of Harbor Commissioners of the City of Los Angeles, California, grantee of FTZ 202, requesting special-purpose subzone status for the manufacturing facilities (steel mill products) of California Steel Industries, Inc., in Fontana, Califórnia. The application was filed on May 24, 1996 (61 FR 14157, 6/6/96). The application has now been withdrawn by the applicant, and the case has been closed without prejudice.

Dated: April 10, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–9742 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with March anniversary dates.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than March 31, 2004.

	Period to be reviewed
Antidumping duty proceedings	
Germany: Stainless Steel Bar, A–428–830	8/2/01–2/28/03
BGH Edelstahl Freital GmbH/BGH, Edelstahl Lippendorf GmbH/BGH, Edelstahl Lugau GmbH/BGH, Edelstahl Siegen GmbH	
Italy: Stainless Steel Bar, A–475–829	8/2/01–2/28/03
Foroni S.p.A.	
Ugine-Savoie Imphy	
Thailand: Circular Welded Carbon Steel Pipes & Tubes A–549–502	3/1/02–2/28/03
Saha Thai Steel Pipe Company, Ltd.	
United Kingdom: Stainless Steel Bar, A–412–822	8/2/01–2/28/03
Corus Engineering Steels Limited	
Firth Rixson Special Steels Limited	
Countervailing Duty Proceedings	
Iran: In-Shell Raw Pistachios, C–507–501	1/1/02–12/31/02
Rafsanjan Pistachio Producers Cooperative	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: April 16, 2003.

Thomas F. Futtner,

Acting Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 03–9741 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–824]

Preliminary Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Anti-Circumvention Review of Antidumping Order: Corrosion-Resistant Carbon Steel Flat Products from Japan.

SUMMARY: As a result of our inquiry, we preliminarily determine that respondents' exports of boron-added corrosion-resistant carbon steel flat ("CRS") products from Japan to the United States are not circumventing the antidumping duty order on corrosion-resistant carbon steel flat products from Japan.

EFFECTIVE DATE: April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or James Doyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone: (202) 482–3207 and(202) 482–0159, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 11, 1998, petitioner USS-POSCO Industries ("UPI") requested that the Department conduct an anti-circumvention inquiry pursuant to section 781(c) of the Tariff Act of 1930, as amended ("the Act") to determine whether imports of boron-added CRS products, falling within the physical dimensions outlined in the scope of the order, are circumventing the antidumping duty order on corrosion-resistant carbon steel sheet from Japan. *See Antidumping Duty Orders; Certain Corrosion Resistant Carbon Steel Flat Products from Japan*, 58 FR 44163 (August 19, 1993). Specifically, petitioner alleges that Japanese exporters have been circumventing the order by exporting hot-dipped and electrolytically zinc coated sheet to which small amounts of boron (*e.g.*, 0.0020 and 0.0025 percent by weight based on laboratory tests of

two samples) have been added. Carbon steel sheet, as defined by the HTSUS, has a maximum boron content of less than 0.0008% by weight. If the boron content exceeds that level, the products enter the United States as a hot-dipped or electrolytic alloy rather than carbon steel sheet, and are thus not required to pay antidumping duties.

Petitioner argues that import statistics indicate that imports of hot-dipped and electrolytic alloy sheet to West Coast ports rose from 25,256 NT in 1996 to 50,478 NT for the first 6 months of 1998, while imports of the carbon sheet equivalent decreased from 16,013 NT in 1996 to 5,975 NT for the first six months of 1998.[1]

In addition, petitioner alleges that the addition of boron is generally immaterial (if not detrimental) to the performance characteristics of the merchandise, and that other than the addition of boron, the overall characteristics of the alloy vis-a-vis the carbon product are virtually identical. In fact, petitioner claims that, in some circumstances, the addition of boron could hamper the product's formability.[2]

On October 30, 1998, the Department initiated this anti-circumvention inquiry in response to petitioner's request. *See Notice of Initiation of Anti-circumvention Inquiry on Antidumping Duty Order: Corrosion-Resistant Carbon Steel Flat Products from Japan*, 63 FR 58364 (October 30, 1998). The Court of International Trade ("CIT") enjoined the case by a temporary restraining order on October 30, 1998, which was lifted on October 18, 2000, following a decision by the U.S. Court of Appeals for the Federal Circuit ("CAFC"). On December 4, 2000, the Department sent a first round of questionnaires to Nippon Steel Corporation ("NSC"), NKK Steel Corporation ("NKK"), Nisshin Steel Company Limited ("Nisshin"), Kobe Steel Company Limited ("Kobe"), Sumitomo Steel Corporation ("Sumitomo"), and Kawasaki Steel Corporation ("Kawasaki"). Nisshin did not respond to any of the Department's communications. A supplemental questionnaire was issued on February 6, 2001, after which Kawasaki and Sumitomo informed the Department by letter on February 22 and 20, 2001, respectively, that they would not be participating in this inquiry. The remaining three companies submitted their supplemental responses on February 27, 2001. The Department issued a second supplemental to NSC and NKK on March 13 and March 15, 2001, respectively. In addition, the Department sent questionnaires to two of NSC's trading companies and to one of NKK's traders. Department officials conducted verifications of NKK, one of its traders and NSC from April 23 through April 27, 2001. On August 8, 2001, the Department issued a third supplemental to NSC and NKK and a second supplemental to Kobe. On February 19, 2003, the Department issued a fourth supplemental questionnaire to NSC and NKK.

[1] The HTS does not provide a separate designation for boron-added CRS products. As a result, UPI has relied on the broader "alloy" category designated by the relevant HTS numbers, as these are the HTS numbers under which boron-added CRS products would properly be entered.

[2] *Formability*: the relative ease with which a metal can be shaped through plastic deformation. *Plastic deformation*: deformation that does or will remain permanent after removal of the load that caused it. *Metals Handbook*, 1985, edited by Howard E. Boyer and Timothy L. Gall.

Scope of the Order

The scope of this order is as follows: the products covered by the antidumping duty order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges.

Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating.

Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness.

Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Also excluded from this order are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Also excluded from this order are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Also excluded from this order are doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900 - 990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron.

Also excluded from this order are products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also, excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet.

Also excluded from this order are products meeting the following specifications: (1) diffusion annealed, non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet ("CRBG") with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004" (0.10mm) to 0.030" (0.762mm) and conforming to the following chemical specifications (%): C ≤ 0.08; Mn ≤ 0.45; P ≤ 0.02; S ≤ 0.02; Al ≤ 0.15; and Si ≤ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32 - 55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85 - 150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than +/- 0.2; Lankford value = ≥ 1.2.; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers, nickel-graphite layer only > 0.2 micrometers, and bottom side: nickel layer ≥ 1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; nickel-graphite layer ≥ 0.5 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer ≥ 1.0 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed

to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer ≥ 1.0 micrometers; nickel-phosphorous layer ≥ 0.1 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel-tin-nickel combination layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer ≥ 1 micrometer; tin layer alone ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometer.

Also excluded from this order are products meeting the following specifications: (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate.

ANALYSIS

In anti-circumvention cases we have historically analyzed several matters in determining if circumvention of the order is taking place. As part of our analysis, we look to the claims made in the circumvention inquiry request, and if during the review we find that those claims are not supported by the information on the record, then the existence of circumvention is called into question.

In the *Preliminary Determination of Circumvention of Antidumping Order; Cut-to-Length Carbon Steel Plate from Canada*, the Department found that the order was being circumvented through the addition of boron. *See Preliminary Determination of Circumvention of Antidumping Order; Cut-to-Length Carbon Steel Plate from Canada* 65 FR 64926 (October 31, 2000) ("*Canadian Plate*"). Although this current anti-circumvention review also involves the addition of boron to merchandise which is subject to the order, each anti-circumvention review is highly dependent on the facts on the record, and must be analyzed in light of those specific facts. As we did in *Canadian Plate*, in this case we looked at the circumstances surrounding the products allegedly circumventing the order, including the timing of those entries during the review period and the total quantity of the merchandise entering the United States in determining whether the claims made in the circumvention inquiry request are correct. *See Canadian Plate*, 65 FR at 64930. In addition, in the case of an allegation of a "minor alteration" claim under 781(c) of the Act, it is the Department's practice to look to five specific factors (*see* the *Minor Alterations Factors* section below) to determine if circumvention exists in a particular case. *See Brass Sheet and Strip from Germany; Negative Preliminary Determination of Circumvention of Antidumping Duty Order*, ("Brass Sheet") 55 FR 32655, 32657 (August 10, 1990) and *Electrical Conductor Aluminum Redraw Rod from Venezuela; Final Affirmative Scope Ruling*, ("*Electrical Conductor*") 56 FR 42310, 42310 (August 27, 1991). After reviewing the allegations made in the circumvention inquiry request, the "minor alteration" factors and the information on the record, the Department has preliminarily determined that no circumvention of the order exists in this case.

Allegations in the Circumvention Inquiry Request

Petitioner made several allegations in its request regarding the subject merchandise and the respondents' conduct. Petitioner alleged that the Japanese manufacturers of CRS added the allegedly "immaterial" element, boron, to their product for the sole purpose of circumventing the antidumping duty order. *See* Petitioner's Circumvention Inquiry Request dated September 11, 1998 ("Request") at page 7. Petitioner also claimed there were no metallurgical reasons for adding boron to CRS. *See* Request at page 10. Furthermore, petitioner alleged that imports into the United States of CRS to which boron had been added increased rapidly and substantially since the publication of the order. *See* Request at page 4.

During the course of the review, the Department found that there are commercially and metallurgically viable reasons for the addition of boron in the context of the Continuous Annealing Process ("CAP"). In the production of CRS, there are essentially two types of annealing processes - batch annealing and the CAP. For the CRS producers which use the CAP, the addition of boron is not "immaterial" to the performance characteristics of the final product. This contrasts with our findings in *Canadian Plate*, in which the parties did not use the CAP or claim any benefit from the addition of boron with respect to the annealing process. Moreover, at verification the Department found nothing on the record inconsistent with a respondent's statement that the addition of boron helps the product be "more consistent" throughout the length and width of the coil, and also results in a more formable product, when used specifically in the CAP. *See* NSC's Verification Report at page 4. As such, the Department found commercially and metallurgically viable reasons for the addition of boron to CRS.

Furthermore, the Department found that there were imports to the United States of boron-added CRS at the time the scope of the order was drafted and published by the Department. Also, the Department found that the decision by some respondents for using the CAP and adding boron to that process was made in the 1970s and the 1980s due to the CAP's shorter processing time. In addition, the Department found that, while other respondents determined that the addition of boron was beneficial following the publication of the order, such determinations were based upon scientific research and development. All of the respondents' research and development information which we reviewed showed that the addition of boron assisted the CAP, and therefore may have led to a more efficient production process. *See, e.g.*, Exhibit 9 of NSC's Verification Report dated June 7, 2001.

Petitioner also alleged, using data available to them through 1998, that the amount of CRS to which boron was added increased between 1996 and June 1998. Petitioner projected that this rapid increase in alloy imports would continue into the foreseeable future. *See* Request at page 4. In order to evaluate petitioner's allegation, we analyzed a broader historical view of the trade pattern and found that the increase of CRS boron-added imports was temporary. Additionally, data on the record shows that there was also an increase during the same time period for sales in the home market and third country markets, which suggests that the increase alleged by petitioner was unrelated to the existence of the CRS Order. The information on the record also reflects that currently only very small amounts of CRS boron-added imports are entering the Unites States from the two largest exporters of boron-added CRS. *See* February 26, 2003, submission from NSC and NKK. The information on the record demonstrates that when viewed over the relevant time period, increases in CRS boron-added imports are not consistent with petitioner's allegation that circumvention of the order is taking place.

The Minor Alterations Factors

The Department's standard practice in analyzing a claim of the existence of circumvention under section 781(c) of the Act is to review the following factors to determine if an article has been altered in form or appearance in minor respects so as to result in circumvention of the order: 1) overall physical characteristics; 2) expectations of the ultimate users; 3) use of the merchandise; 4) channels of marketing; and 5) cost of modification. *See Brass Sheet*, 55 FR 32657, *Electrical Conductor*, 56 FR 42310, and *Canadian Plate*, 65 FR 64926. In this case, we applied the factors and found that, for companies that use the CAP, the addition of boron is not a minor alteration.

During the course of this inquiry the Department found that there are commercially and metallurgically viable reasons for the addition of boron when used in the CAP. The information on the record demonstrates that boron is beneficial to the overall physical characteristics of the final product. Additionally, the boron-added material performed better than the non-boron added CRS and was better able to meet specific expectations of the ultimate user. Although the cost of adding boron was not "in and of itself" significant, when taken into consideration with the research and development costs these companies expended to determine the benefits of adding boron to the CAP, the overall cost was significant. Finally, for the factor "channels of marketing," we believe the boron-added products move in the same general channel as the subject merchandise of the order, however that has been the case since the inception of the CAP as boron was introduced to the product through the development of the CAP methodology. In this case, showing the same channels of marketing were used does not support a finding of circumvention. Also, the information on the record, including trade statistics, shows that the trade flow of these products was not altered by the order, as discussed above. Thus, taking all of these factors together, the Department has determined that there was no circumvention of the order by the companies reviewed in this case.

THE DEPARTMENT'S PRELIMINARY DECISION

As shown by the analysis above, there are several factors that the Department may review to determine if an alteration is "minor", and therefore if circumvention exists. Notably, in every anti-circumvention case the Department investigates, the facts are different and some factors may appear to support a finding that an alteration is "minor," while others may not. Because anti-circumvention cases are extremely fact-specific, the Federal Circuit noted in this case that this inquiry would "probably involve subtle distinctions and difficult economic issues relating to the nature of, the reason for and the effect of the changes NSC Steel made in its steel products." *Nippon Steel Corporation, NKK, et al. v. United States*, 219 F.3d 1348, 1354 (July 26, 2000).

In this case, the Department initiated the minor alteration inquiry based on information available to, and provided by, the petitioner at that time it filed its Request. After development of the record and consideration of all the information on the record, we preliminarily determine that many of the allegations made in the Request are not supported by the record. We have made this determination based on reviewing the information on the record regarding NSC, NKK, and Kobe, and also on the verification of NSC and NKK. NSC and NKK are the two largest exporters of this merchandise, use the CAP, and provided scientific, commercial, and historical explanations for the addition of boron to the CRS.

The vast majority of merchandise which the Department reviewed in this case was boron-added CRS which was used in conjunction with the CAP. Kobe did not report to the Department exporting boron- added merchandise which had gone though the CAP. However, it did report a limited number of sales to one customer of batch annealed, boron-added CRS. Kobe's sales were limited in number and also did not reflect the surge alleged in the Request. Accordingly, we did not find circumvention with respect to any of the merchandise reviewed in this case. To the extent that the other Japanese producers of CRS have added boron to CRS, exclusive of the CAP, we have no evidence of such usage on the record.

Additionally, after reviewing the data provided by five of the six respondents, we conclude that the universe of boron-added CRS from Japan has been fully reported. With respect to the volumes provided by petitioner in filing its request, the total reported data from all the responding companies exceeds the import volumes of the merchandise which petitioner identified in its request as problematic for 1996[3] and 1998 and virtually all of these imports of boron-added CRS to the United States were produced by NSC and NKK, which were verified by the Department. Therefore, there is little likelihood of any significant volumes of relevant imports existing which have not been reported by other companies. Thus, for purposes of this review we have found no circumvention of CRS from Japan.

PRELIMINARY DETERMINATION

As a result of our inquiry, we have preliminarily determined that exports of boron-added corrosion-resistant carbon steel flat products from Japan are not circumventing the antidumping duty

[3] The volume reported by respondents for 1997 exceeded the amount the petitioner reported in its Request for that year. Petitioner's data for 1998 was only though June 1998, however when doubling that data, NKK and NSC combined imports still exceeded petitioner's estimate.

order on corrosion-resistant carbon steel flat products from Japan.

The evidence on the record of this inquiry, taken as a whole, leads to our preliminary determination that the United States imports of boron-added corrosion-resistant carbon steel flat products from the respondents were not minor alterations of the subject merchandise, within the meaning of section 781(c) of the Act. Pursuant to the Department's analysis, we believe these boron-added products have commercially and metallurgically viable reasons for the addition of boron.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties to the proceedings may request a hearing within 14 days of publication. Any hearing, if requested, will be held no later than two days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Pursuant to 19 CFR 351.309(d)(1), rebuttal briefs and rebuttals to written comments, limited to the issues raised in those comments, may be filed not later than five days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with 19 C.F.R. 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 C.F.R. 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing.

This determination is issued and published in accordance with section 781(c) of the Act and section 351.225(i) of the Department's regulations.

Dated: April 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–9734 Filed 4–18–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–848]

Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On October 16, 2002, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 67 FR 63877 (October 16, 2002) (*Preliminary Results*). The administrative review covers the period September 1, 2000, through August 31, 2001.

Based on our analysis of the comments received, we have made changes to our analysis. Therefore, the final results differ from the *Preliminary Results*. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Doug Campau, Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0197 or (202) 482–1395, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 16, 2002, the Department published the preliminary results of its administrative review of the antidumping duty order on freshwater crawfish tail meat from the PRC. *See Preliminary Results*. The administrative review covers the period September 1, 2000, through August 31, 2001. The review covers the following companies: China Kingdom Import & Export Co., Ltd. (China Kingdom); Fujian Pelagic Fishery Group Co. (Fujian Pelagic); Qingdao Rirong Foodstuff Co., Ltd., aka Qingdao Rirong Foodstuffs (Qingdao Rirong); Qingdao Zhengri Seafood Co., Ltd./Yancheng Yaou Seafood Co., Ltd. (Qingdao Zhengri/Yancheng Yaou); Shantou SEZ Yangfeng Marine Products Co. (Shantou SEZ); Suqian Foreign Trade Corp., aka Suqian Foreign Trading (Suqian Foreign Trade); Yancheng Foreign Trade Corp., aka Yancheng Foreign Trading, aka Yang Cheng Foreign Trading (Yancheng Foreign Trade); and Yangzhou Lakebest Foods Co., Ltd. (Yangzhou Lakebest).

Since the publication of the *Preliminary Results*, the following events have occurred. Based on new information obtained by the Department through public sources, the Department issued an additional supplemental questionnaire to Qingdao Rirong on October 24, 2002. Qingdao Rirong responded to the Department's questionnaire on November 4, 2002. On November 15, 2002, we received timely filed case briefs from the Crawfish Processors Alliance, its members (together with the Louisiana Department of Agriculture and Forestry, Bob Odom, Commissioner), and the Domestic Parties (collectively, the Domestic Interested Parties); and China Kingdom and Qingdao Zhengri/Yancheng Yaou, and on November 20, 2002, we received timely filed rebuttal briefs from the Domestic Interested Parties with respect to China Kingdom and Qingdao Zhengri/Yancheng Yaou, and from Qingdao Rirong. On December 31, 2002, the Department released to the interested parties for comment the *Memorandum from Elfi Blum and Scot Fullerton, Case Analysts, through Maureen Flannery, Program Manager, Office of AD/CVD Enforcement VII, to Barbara Tillman, Director, Office of AD/CVD Enforcement VII: Freshwater Crawfish Tail Meat from the People's Republic of China for the period of September 1, 2000, through August 31, 2001 (A-570–848): Analysis of Relationship between Qingdao Rirong Foodstuff Co., Ltd., and Y&Z International Trade Inc.*, dated December 31, 2002 (*Affiliation Memo*). We received comments on the & from Qingdao Rirong on January 14, 2003 and, after approving an extension for rebuttal comments, we received rebuttal comments from the Domestic Interested Parties on January 27, 2003.

On February 7, 2003, the Department extended the time limit for the completion of these final results to April 14, 2003. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Extension of Time Limit for Final Results of Administrative Antidumping Review*, 68 FR 7345 (February 13, 2002). The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Due to issues concerning the proprietary treatment of information placed on the record of this review by the Department and in response to that information submitted by Qingdao Rirong, and concerning new factual information submitted in the Domestic Interested Parties' case brief, the Department requested the Domestic Interested Parties to re-file their case brief with respect to Qingdao Rirong, and Qingdao Rirong to re-file its rebuttal brief. In addition, the Department requested that both parties re-file their comments to the *Affiliation Memo*. Further, due to issues concerning new factual information submitted in China Kingdom's case brief, the Department requested China Kingdom to re-file its case brief. Final corrected versions of the case briefs from the Domestic Interested Parties with respect to Qingdao Rirong, and from China Kingdom were received on April 10, 2003 and February 20, 2003, respectively. A final corrected version of Qingdao Rirong's rebuttal brief was filed on April 10, 2003. A final corrected version of the comments to the Affiliation Memo from Domestic Interested Parties was received on April 10, 2003, and amendments to Qingdao Rirong's comments were received on January 24 and February 3, 2003.

Scope of the Antidumping Duty Order

The product covered by the antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10, 1605.40.10.90, 0306.19.00.10 and 0306.29.00.00. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Duty Absorption

On November 26, 2001, the Crawfish Processors Alliance timely requested that the Department determine whether antidumping duties had been absorbed during the period of review (POR), in accordance with section 751(a)(4) of the Act, and section 351.213(j)(1) of the Department's regulations. Section 751(a)(4) of the Act provides that, upon request during an administrative review initiated two or four years after the publication of the order, the Department must determine whether antidumping duties have been absorbed by a foreign producer or exporter, if the subject merchandise is sold in the United States through an affiliated importer. Because this review was initiated four years after the publication of the antidumping duty order, and a duty absorption determination was requested by the Crawfish Processors Alliance, we analyzed duty absorption in this segment of the proceeding.

On January 10, 2003, the Department requested the remaining eight companies subject to this review to place on the record evidence that unaffiliated purchasers will ultimately pay the antidumping duties to be assessed on entries during the review period. On January 21, 2003, six of these eight companies responded: Suqian Foreign Trade, Yangzhou Lakebest, Qingdao Zhengri/Yancheng Yaou, Qingdao Rirong, Fujian Pelagic, and China Kingdom. Suqian Foreign Trade, Yangzhou Lakebest, Qingdao Zhengri/Yancheng Yaou and Qingdao Rirong stated that they were not affiliated with their importer of record during the POR and thus had reported export price (EP) sales. Suqian Foreign Trade and Yangzhou Lakebest responded to the Department's initial questionnaire, but then failed to respond to the Department's supplemental questionnaires. Therefore, we are applying adverse facts available (AFA) to these two companies, as discussed in greater detail below in the "Application of Facts Available" section. Qingdao Zhengri/Yancheng Yaou refused to participate in the verification of Qingdao Zhengri, and we applied AFA to the combined entity. See "Application of Facts Available" section below. We have determined that Qingdao Rirong sold to the United States through an importer that is affiliated within the meaning of section 771(33) of the Act, and have applied AFA to Qingdao Rirong. *See Memorandum from Doug Campau to Barbara E. Tillman, Freshwater Crawfish Tail Meat from the People's Republic of China (PRC): Treatment of Qingdao Rirong Foodstuff Co., Ltd. in the Final Results of the Administrative Review for the Period 9/1/00 - 8/31/01*, dated April 9, 2003 (*Qingdao Rirong Memo*).

Two companies, China Kingdom and Fujian Pelagic, stated that they were affiliated with their importer of record during the POR. One of these companies, China Kingdom, reported constructed export price (CEP) sales in its response to the Department. Because China Kingdom failed to provide total production and factors of production for the relevant POR, we are applying AFA to the company, as discussed below in the "Application of Facts Available" section. Fujian Pelagic did not respond to any other of the Department's requests for information besides the duty absorption inquiry; we therefore are applying AFA to Fujian Pelagic, as discussed below in the "Application of Facts Available" section. On January 22, 2003, one company, Yancheng Foreign Trade, which did not respond at all in this proceeding except to the Department's duty absorption inquiry, stated that it had no shipments. For one company, Shantou SEZ, the Department's request was undeliverable. Yancheng Foreign Trade and Shantou SEZ did not respond to the Department's questionnaires during the POR, and we are applying AFA to both companies, as discussed below in the "Application of Facts Available" section.

None of these companies provided any evidence, nor is there any other evidence on the record, that the unaffiliated purchasers of subject merchandise will ultimately pay the antidumping duties. We are applying AFA to all companies, as explained in the "Application of Facts Available" section below. Accordingly, based on the record, we cannot conclude that the unaffiliated purchaser in the United States will ultimately pay the assessed duty. Therefore, with respect to Qingdao Rirong, China Kingdom, and all exporters that are part of the PRC entity, we conclude that antidumping duties have been absorbed by the producer or exporter during the POR.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum from Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III, to Joseph A. Spetrini, Acting Assistant Secretary for Import Administration: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China: September 1, 2000 through August 31, 2001*, dated April 14, 2003 (*Decision Memo*), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo*, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this

review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099 of the main Commerce Building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at http://ia.ita.doc.gov. The paper copy and electronic version of the *Decision Memo* are identical in content.

Changes Since the Preliminary Results

Based on our analysis of information obtained after the *Preliminary Results* from public sources and memorialized in the *Affiliation Memo*, comments thereon, information received from interested parties, and briefs and rebuttal briefs submitted by interested parties in response to the *Preliminary Results*, we have changed the margin for Qingdao Rirong. For these final results, we are basing the margin for Qingdao Rirong on AFA. For a discussion of this issue, refer to the *Qingdao Rirong* section under *Application of Facts Available*, below.

Application of Facts Available

• Fujian Pelagic, Shantou SEZ, Suqian Foreign Trade, Yancheng Foreign Trade, and Yangzhou Lakebest

The Department received no comments on its preliminary determination to apply facts available to Fujian Pelagic, Shantou SEZ, Suqian Foreign Trade, Yancheng Foreign Trade, and Yangzhou Lakebest. Therefore, we have not altered our decision to apply total AFA to these companies for these final results, in accordance with sections 776(a)(2)(A) and (B), as well as section 776(b) of the Act. For a complete discussion of the Department's decision to apply total AFA, *see Preliminary Results*. Furthermore, Fujian Pelagic, Shantou SEZ, Suqian Foreign Trade, Yancheng Foreign Trade, and Yangzhou Lakebest did not establish that they are eligible for separate rates. As AFA, the Department is assigning these companies the PRC-wide rate of 223.01 percent the highest rate determined in any segment of this proceeding. *See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002). As discussed below, this rate has been corroborated.

• China Kingdom

In the *Preliminary Results*, we applied facts available to China Kingdom pursuant to sections 776(a)(2)(A) and (B) of the Act because it failed to provide total production and factors of production for the relevant POR in a timely manner. Furthermore, we used an adverse inference and applied AFA pursuant to section 776(b) of the Act because we determined that China Kingdom did not act to the best of its ability to comply with the Department's request for information and demonstrated a pattern of non-compliance by reporting figures for total tail meat production and eight factors of production for the wrong production period in *all* of its responses to the Department's questionnaires. For further details, see the *Memorandum to Joseph A. Spetrini: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC): Application of Total Adverse Facts Available for China Kingdom Import & Export Co., Ltd. in the Preliminary Results of the Administrative Review for the Period 9/1/00 - 8/31/01* (September 30, 2002) (*China Kingdom AFA Memo*). However, China Kingdom received a separate rate in the *Preliminary Results*, and this determination remains unchanged for these final results. After analyzing the comments received, we continue to find that the use of AFA is warranted for exports of subject merchandise to the United States by China Kingdom in these final results. For a complete discussion, see the *Decision Memo*, at Comment 7. As adverse facts available, the Department is assigning China Kingdom the rate of 223.01 percent the highest rate determined in any segment of this proceeding. As discussed further below, this rate has been corroborated.

• Qingdao Zhengri/Yancheng Yaou

In the *Preliminary Results*, we applied facts available to Qingdao Zhengri/Yancheng Yaou pursuant to section 776(a)(2)(D) of the Act because this entity refused to participate fully in verification. Furthermore, we applied AFA pursuant to section 776(b) of the Act because we determined that Qingdao Zhengri/Yancheng Yaou did not act to the best of its ability to comply with the Department's request to verify, because of contradictory responses submitted to the Department, and because it provided certifications that the Department determined to be inaccurate. For further details, see the *Memorandum from Jacqueline Arrowsmith to Joseph A. Spetrini: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC): Application of Total Adverse Facts Available for Qingdao Zhengri Seafood Co., Ltd. and Yancheng Yaou Seafood Co., Ltd. in the Preliminary Results of the Administrative Review for the Period September 1, 2000 through August 31, 2001*, dated September 23, 2002. After analyzing the comments received, we continue to apply AFA to Qingdao Zhengri/Yancheng Yaou in these final results. For details, see the *Decision Memo* at Comment 6. Furthermore, because the respondent refused to participate fully in verification, the Department did not have an opportunity to verify separate rate information submitted by Qingdao Zhengri/Yancheng Yaou. Consequently, Qingdao Zhengri/Yancheng Yaou is not entitled to a separate rate in these final results. As adverse facts available, the Department is assigning Qingdao Zhengri/Yancheng Yaou the rate of 223.01 percent the highest rate determined in any segment of this proceeding. As discussed further below, this rate has been corroborated.

• Qingdao Rirong

As discussed in detail in the *Qingdao Rirong Memo*, we determine that, in accordance with section 776(a)(2)(A), the use of facts otherwise available is warranted in reaching these final results. Furthermore, in accordance with section 776(b) of the Act, and for the reasons discussed below, the Department is applying an inference that is adverse to the interests of Qingdao Rirong in selecting from among the facts otherwise available.

Throughout the course of this administrative review, Qingdao Rirong reported that it made U.S. sales, on an EP basis, to an unaffiliated U.S. importer. In the *Preliminary Results*, the Department treated all of Qingdao Rirong's U.S. sales as EP sales.

Subsequent to the publication of its *Preliminary Results*, the Department continued to examine the issue of a possible relationship between Qingdao Rirong and its importer. Through research into public records, the Department found previously unreported information concerning the relationship between Qingdao Rirong and Y&Z. Much of this information conflicted with information previously reported to the Department by Qingdao Rirong. This prompted the Department to issue another supplemental questionnaire to Qingdao Rirong on October 24, 2002, and to perform further research on its own. After an analysis of all information on the record concerning the relationship between Qingdao Rirong and Y&Z, the Department determined that, at least through December 16, 2002, Qingdao Rirong was affiliated with its importer, under section 771(33) of the Act. *See Affiliation Memo*. On January 2, 2003, the Department released the *Affiliation Memo* to all parties, along with a cover letter in which the Department took the additional step of soliciting, from all parties, initial and rebuttal comments on the information and findings contained within the *Affiliation Memo*. Subsequently, the Department took the extraordinary step of accepting new information from Qingdao Rirong, rebutting or clarifying the information and findings contained within the *Affiliation Memo*, as well as new information from the Domestic Interested Parties, rebutting information contained within Qingdao Rirong's comments on *Affiliation Memo*.

After further analysis and consideration of all evidence on the record, the Department has concluded that there is substantial evidence demonstrating Qingdao Rirong and its importer are affiliated in accordance with section 771(33) of the Act. Furthermore, the Department has concluded that the evidence of affiliation on the record outweighs the evidence and arguments provided by Qingdao Rirong in support of its argument that it is not affiliated with its importer. *See Qingdao Rirong Memo*. The Department therefore continues to find that Qingdao Rirong and its importer were both owned and controlled by a common party, and as such, are "affiliated persons" within the meaning of section 771(33) of the Act, through the POR of this administrative review, and at least until December 16, 2002.

Section 776(a)(2)(A) of the Act provides for the use of facts available when an interested party withholds information that has been requested by the Department. As discussed in detail in the *Qingdao Rirong Memo*, Qingdao Rirong withheld essential information concerning the relationship between itself and its importer. Because of this, Qingdao Rirong made it impossible for the Department to perform a timely analysis of the nature of the relationship between Qingdao Rirong and its importer.

Section 782(d) of the Act provides that if the Department determines that a response to a request for information does not comply with the request, the Department shall promptly inform the person submitting the response of the nature of the deficiency, and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the administrative review. Accordingly, and despite the time constraints prescribed by section 351.213(h)(1) of the Department's regulations, when the Department discovered, through its own independent research, that Qingdao Rirong's responses were deficient with respect to information concerning the relationship between Qingdao Rirong and its importer, the Department issued another supplemental questionnaire on October 24, 2002, affording Qingdao Rirong an opportunity to explain the deficiency. The Department also gave Qingdao Rirong an opportunity to respond to its December 31, 2002 *Affiliation Memo*.

In accordance with section 776(b) of the Act, we find that an adverse inference is warranted because Qingdao Rirong failed to cooperate to the best of its ability in complying with the Department's requests for information. Again, Qingdao Rirong withheld essential information concerning the relationship between itself and its importer, making it impossible for the Department to perform a timely analysis of the nature of the relationship between Qingdao Rirong and its importer, and similarly impossible for the Department to timely determine whether its dumping analysis should have been based on a comparison of NV to EP or CEP.

Information concerning the relationship between an exporter and its importer is fundamental to the Department's antidumping analysis. In order to determine whether dumping has occurred, an EP or CEP (as defined in section 772 of the Act and section 351.401 of the Department's regulations) is compared to an NV (as defined in section 773 of the Act and section 351.401 of the Department's regulations). EP means "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States," while CEP means "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter . . .." *See* sections 772(a) and (b) of the Act. Thus, to determine whether its dumping analysis should be based on a comparison of NV to EP, or NV to CEP, the Department must first determine whether Qingdao Rirong and Y&Z are affiliated under section 771(33) of the Act.

Since the Department has not been provided with complete U.S. sales information concerning Qingdao Rirong's sales to the first unaffiliated purchaser, the Department is precluded from calculating an accurate dumping margin. Since Qingdao Rirong only reported data concerning its transactions with its importer, the Department does not possess data necessary for calculating an accurate dumping margin. This data includes the sales prices to Qingdao Rirong's first unaffiliated purchaser(s), and may include numerous other U.S. expenses (*e.g.*, U.S. inland shipping, insurance, and re-packing costs). The Department has no way of knowing what the prices to the first unaffiliated customers were, what expenses were incurred, nor even who Qingdao Rirong's first unaffiliated customers were.

Given that this is the third time Qingdao Rirong has been reviewed, the company should have been able to comply with the Department's requests for information in an accurate and timely manner. Furthermore, given that the owner of Qingdao Rirong was also the incorporator, president, chief executive officer, and an owner of the importer, information concerning the sales of each company, the history and ownership of these two companies, as well as the history of the owner's involvement with each company, would have been readily available to both the owner and his company, Qingdao Rirong. Finally, Qingdao Rirong never indicated that it was having any difficulty obtaining any requested information, or in understanding the Department's requests.

Qingdao Rirong gave insufficient attention to its statutory duties, beyond mere inadvertence, by virtue of its failure to provide requested information that is essential to the Department's dumping analysis. As noted above, this is the third review of Qingdao Rirong; as such, the company should have been fully aware of its statutory duties in this regard. Furthermore, the Department requested information relevant to the relationship between Qingdao Rirong and Y&Z in several different questionnaires, issued both prior and subsequent to the *Preliminary Results*. Thus, Qingdao Rirong had multiple opportunities to fulfill its statutory duty to provide such information. Finally, we note that, if a respondent has any question as to the scope of what may be relevant to the Department's analysis of the relationship between a seller and purchaser, that respondent need only contact the Department for clarification, or review the definition of "affiliated persons," contained in Appendix I to the Department's initial questionnaire issued at the beginning of each review. In light of the aforementioned facts, Qingdao Rirong's failures to provide

complete information concerning the relationship between Qingdao Rirong and Y&Z, amount to a pattern of behavior of repeatedly withholding information requested by the Department.

For the reasons described above and in further detail in the *Qingdao Rirong Memo*, we conclude that Qingdao Rirong failed to cooperate to the best of its ability within the meaning of 776(b) of the Act, and that the application of total adverse facts available for Qingdao Rirong is warranted. Qingdao Rirong received a separate rate in the *Preliminary Results*, and this determination remains unchanged for these final results. As adverse facts available, the Department is assigning Qingdao Rirong the rate of 223.01 percent the highest rate determined in any segment of this proceeding. *See Qingdao Rirong Memo*. As discussed further below, this rate has been corroborated.

Corroboration of Secondary Information Used As AFA

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on "secondary information," the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The *Statement of Administrative Action*, H.R. Doc. 103–316 (SAA), states that "corroborate" means to determine that the information used has probative value. *See* SAA at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.

With respect to Qingdao Rirong, China Kingdom, Fujian Pelagic, Qingdao Zhengri/Yancheng Yaou, Shantou SEZ, Suqian Foreign Trade, Yancheng Foreign Trade, and Yangzhou Lakebest, we are applying as AFA the highest rate from any segment of this administrative proceeding, which is a rate calculated in the 1999–2000 review. *See Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002). However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See, e.g., Grain-Oriented Electrical Steel From Italy; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996). With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. For example, in *Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review*, 61 FR 6812 (February 22, 1996), the Department disregarded the highest margin in that case as adverse best information available (the predecessor to facts available) because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin. Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here.

Accordingly, we determine that the highest rate from any segment of this administrative proceeding (*i.e.*, the calculated rate of 223.01 percent, which is the current PRC-wide rate) is in accord with section 776(c)'s requirement that secondary information be corroborated (*i.e.*, that it have probative value). The information used in calculating this margin was based on sales and production data of a respondent in a prior review, together with the most appropriate surrogate value information available to the Department, chosen from submissions by the parties in that review, as well as gathered by the Department itself. Furthermore, the calculation of this margin was subject to comment from interested parties in the proceeding. *See Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review, and Final Partial Rescission of Antidumping Duty Administrative Review*, 67 FR 19546 (April 22, 2002). Moreover, as there is no information on the record of this review that demonstrates that this rate is not appropriately used as adverse facts available for Qingdao Rirong, China Kingdom, Fujian Pelagic, Qingdao Zhengri/Yancheng Yaou, Shantou SEZ, Suqian Foreign Trade, Yancheng Foreign Trade, and Yangzhou Lakebest, we determine that this rate has probative value.

Final Results of Review

For these final results we determine that the following dumping margins exist:

Manufacturer/Exporter	Time Period	Margin (percent)
Qingdao Rirong	9/1/00–8/31/01	223.01
China Kingdom	9/1/00–8/31/01	223.01
PRC-Wide Rate[1]	9/1/00–8/31/01	223.01

[1] Fujian Pelagic, Qingdao Zhengri/Yancheng Yaou, Shantou SEZ, Suqian Foreign Trade, Yancheng Foreign Trade, and Yangzhou Lakebest are included in the PRC-wide rate.

Assessment of Antidumping Duties

Upon completion of this administrative review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. For assessment purposes, for China Kingdom, Qingdao Rirong, and all exporters subject to the PRC-wide rate, we will direct Customs to assess the *ad valorem* rates against the entered value of each entry of the subject merchandise during the POR. The Department will issue appropriate assessment instructions directly to the Customs Service within 15 days of publication of the final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of these final results for this administrative review for all shipments of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate established above; (2) for previously-reviewed PRC and non-PRC exporters with separate rates, the cash deposit rate will be the company-specific rate established for the most recent period; (3) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate, 223.01 percent; and (4) for all other non-PRC exporters of the subject merchandise, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

APPENDIX

List of Issues

Comment 1: Valuation of the raw crawfish input
Comment 2: Cash deposit rates for producing and non-producing supplier combinations (Combination Rates)
Comment 3: Application of facts available to Qingdao Rirong Foodstuff Co., Ltd. (Qingdao Rirong) because it withheld information concerning its corporate affiliations
Comment 4: Application of facts available to Qingdao Rirong because it engaged in a pattern of noncompliance with regulations governing business proprietary information (BPI)
Comment 5: If Qingdao Rirong's margin is not based on adverse facts available, what should be used as partial facts available in calculating Qingdao Rirong's margin
Comment 6: Whether the Department improperly applied facts available to Yancheng Yaou Seafood Co., Ltd.
Comment 7: Application of Adverse Facts Available to China Kingdom Import & Export Co., Ltd. (China Kingdom)

[FR Doc. 03–9739 Filed 4–18–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–836]

Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Patrick Connolly at (202) 482–0629 or (202) 482–1779, respectively, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

FINAL DETERMINATION:

We determine that polyvinyl alcohol (PVA) from Germany is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Background

The preliminary determination in this investigation was issued on February 12, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Germany*, 68 FR 7980 (Feb. 19, 2003) (*Preliminary Determination*).

Since the preliminary determination, the following events have occurred. On March 3, 2003, the petitioners agreed to revise the scope of the companion case on PVA from Japan to exclude certain types of PVA covalently bonded with diacetoneacrylamide. The petitioners' submission was made in response to a request by Japan VAM and POVAL Co., Ltd., one of the mandatory respondents in the companion Japanese case.

Because these comments relate to PVA in general, we find that they are applicable to this proceeding. Accordingly, as we did in the preliminary determination, we have modified the scope to conform to that set forth in the companion Japanese proceeding, as described below. *See the Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan*, published in the **Federal Register** concurrently with this notice.

Scope of Investigation

The merchandise covered by this investigation is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

(1) PVA in fiber form.

(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The POI is July 1, 2001, through June 30, 2002. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2002).

Facts Available

In the preliminary determination, we based the dumping margin for the two mandatory respondents in this case, Clariant GMBH (Clariant) and Kuraray Specialties Europe GMBH (Kuraray Europe), on adverse facts available pursuant to section 776(b) of the Act. The use of adverse facts available was warranted because Clariant and Kuraray Europe, as mandatory respondents, failed to supply the information requested in the antidumping duty questionnaires issued to them. Therefore, we found that Clariant and Kuraray Europe failed to cooperate by not acting to the best of their ability. As a result, pursuant to section 776(b) of the Act, we used an adverse inference in selecting from the facts available. Specifically, we assigned Clariant and Kuraray Europe the highest margin stated in the notice of initiation (*i.e.*, 19.05 percent). We continue to find this margin corroborated, pursuant to section 776(c) of the Act. A complete explanation of both the selection and application of facts available can be found in the *Preliminary Determination*, 68 FR at 7981–82.

No interested parties have commented on the use of adverse facts available for Clariant and Kuraray Europe in this investigation, or to the choice of the facts available margin. Accordingly, for the final determination, we are continuing to use the highest margin stated in the notice of initiation for both Clariant and Kuraray Europe. *See* the *Preliminary Determination*, 68 FR at 7983.

We have left unchanged from the preliminary determination the "All Others Rate" in this investigation. *See* the *Preliminary Determination*, 68 FR at 7983.

Analysis of Comments Received

We received no comments from interested parties in response to our preliminary determination. We did not hold a hearing because none was requested.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend all entries of PVA from Germany, that are entered, or withdrawn from warehouse, for consumption on or after February 19, 2003, the date of publication of our preliminary determination. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These instructions suspending liquidation will remain in effect until further notice.

The dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
Clariant GMBH	19.05
Kuraray Specialties Europe GMBH	19.05
All Others	10.75

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: April 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–9735 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–861]

Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Mike Strollo or Gregory E. Kalbaugh at (202) 482–0629 or (202) 482–3693, respectively, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

FINAL DETERMINATION:

We determine that polyvinyl alcohol (PVA) from Japan is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Background

The preliminary determination in this investigation was issued on February 12, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol from Japan*, 68 FR 8203 (Feb. 20, 2003) (*Preliminary Determination*).

Since the preliminary determination, the following events have occurred. On February 21, 2003, the Nippon Synthetic Chemical Industry Co., Ltd. (Nippon Gohsei), one of the mandatory respondents in this investigation, notified the Department that it would no longer participate in this investigation, and it requested that the Department remove its business proprietary information from the record of this proceeding. On February 27, 2003, the Department destroyed Nippon Gohsei's submissions containing business proprietary information and notified Nippon Gohsei of this action. For further discussion, see the "Facts Available (FA)" section of this notice.

On March 3, 2003, the petitioners agreed to revise the scope to exclude certain types of PVA covalently bonded with diacetoneacrylamide, pursuant to a request by one of the mandatory respondents in this case, Japan VAM and POVAL Co., Ltd. (Japan VAM & POVAL). For a description of this merchandise, see the "Scope of the Investigation" section below. There were no case or rebuttal briefs submitted. A public hearing was not requested.[1]

Scope of Investigation

The merchandise covered by this investigation is PVA. This product consists of all PVA hydrolyzed in excess of 80 percent, whether or not mixed or diluted with commercial levels of defoamer or boric acid, except as noted below.

The following products are specifically excluded from the scope of this investigation:

(1) PVA in fiber form.

(2) PVA with hydrolysis less than 83 mole percent and certified not for use in the production of textiles.

(3) PVA with hydrolysis greater than 85 percent and viscosity greater than or equal to 90 cps.

(4) PVA with a hydrolysis greater than 85 percent, viscosity greater than or equal to 80 cps but less than 90 cps, certified for use in an ink jet application.

(5) PVA for use in the manufacture of an excipient or as an excipient in the manufacture of film coating systems which are components of a drug or dietary supplement, and accompanied by an end-use certification.

(6) PVA covalently bonded with cationic monomer uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(7) PVA covalently bonded with carboxylic acid uniformly present on all polymer chains in a concentration equal to or greater than two mole percent, certified for use in a paper application.

(8) PVA covalently bonded with thiol uniformly present on all polymer chains, certified for use in emulsion polymerization of non-vinyl acetic material.

(9) PVA covalently bonded with paraffin uniformly present on all polymer chains in a concentration equal to or greater than one mole percent.

(10) PVA covalently bonded with silan uniformly present on all polymer chains certified for use in paper coating applications.

(11) PVA covalently bonded with sulfonic acid uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(12) PVA covalently bonded with acetoacetylate uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(13) PVA covalently bonded with polyethylene oxide uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(14) PVA covalently bonded with quaternary amine uniformly present on all polymer chains in a concentration level equal to or greater than one mole percent.

(15) PVA covalently bonded with diacetoneacrylamide uniformly present on all polymer chains in a concentration level greater than three mole percent, certified for use in a paper application.

The merchandise under investigation is currently classifiable under subheading 3905.30.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is July 1, 2001, through June 30, 2002. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2002).

Facts Available (FA)

In the preliminary determination, we based the dumping margin for three of the four mandatory respondents in this case, Denki Kagaku Kogyo Kabushiki Kaisha (Denki Kagaku), Japan VAM & POVAL, and Kuraray Co., Ltd. (Kuraray), on adverse facts available pursuant to section 776(b) of the Act. The use of adverse facts available was warranted because Denki Kagaku, Japan VAM & POVAL, and Kuraray, as mandatory respondents, failed to supply the information requested in the antidumping duty questionnaires issued to them. Therefore, we found that Denki Kagaku, Japan VAM & POVAL, and Kuraray failed to cooperate by not acting to the best of their ability. As a result, pursuant to section 776(b) of the Act, we used an adverse inference in selecting from the facts available. Specifically, we assigned Denki Kagaku, Japan VAM & POVAL, and Kuraray the highest margin alleged in the notice of initiation. A complete explanation of both the selection and application of facts available can be found in the *Preliminary Determination*, 68 FR at 8205. We have done a new corroboration analysis which is discussed below.

No interested parties have commented on the use of adverse facts available for Denki Kagaku, Japan VAM & POVAL, and Kuraray in this investigation, or to the choice of the facts available margin. Accordingly, for the final determination, we are continuing to use the highest margin alleged in the notice of initiation for Denki Kagaku, Japan VAM & POVAL, and Kuraray. *See* the *Preliminary Determination*, 68 FR at 8209. Moreover, we continue to find that the data on which this margin is based has probative value, as discussed below in the "Corroboration of Information" section of this notice.

Regarding the fourth mandatory respondent, Nippon Gohsei, on February 21, 2003, this company notified the Department that it would no longer participate in the investigation. Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the

[1] Normally, when the Department issues a final determination, the Federal Register notice is accompanied by a separate Issues and Decision Memorandum. Since no briefs were filed in this case, we have not issued a separate memorandum.

form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. Because Nippon Gohsei provided information to the Department but subsequently withdrew that information from the record of this case, we have applied FA to calculate its dumping margin, pursuant to section 776(a)(2)(C) of the Act.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information. *See, e.g., Notice of Final Determination of Sales of Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794–96 (Aug. 30, 2002). Nippon Gohsei was notified in the Department's original and supplemental questionnaires that failure to submit the requested information by the dates specified might result in use of FA. After the Department issued its preliminary determination, Nippon Gohsei: 1) notified the Department that it would no longer participate in this investigation; and 2) withdrew its submissions containing business proprietary information from the record. Without Nippon Gohsei's data, we are unable to calculate a dumping margin for Nippon Gohsei. As a consequence, we find that Nippon Gohsei has failed to cooperate to the best of its ability. As Nippon Gohsei failed to cooperate to the best of its ability, we are applying an adverse inference pursuant to section 776(b) of the Act.

Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. *See* the SAA at 870. The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *Id.*

In the preliminary determination, we corroborated the margins in the petition using information submitted by Nippon Gohsei. However, because Nippon Gohsei has withdrawn this information from the record of this case, we have re-examined the issue of corroboration for the final determination.

Therefore, in order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined additional evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see* the September 25, 2002, Initiation Checklist, on file in the Central Records Unit, Room B-099, of the Main Commerce Department building, for a discussion of the margin calculations in the petition). In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based.

Export Price

With respect to the margins in the petition, EP was based on POI price quotes for the sale of PVA produced by Kuraray to customers in the United States. The petitioners calculated net U.S. prices for PVA by deducting a distributor mark-up, where applicable, and certain movement charges.

For purposes of corroborating the price-to-price calculations in the petition, we compared these prices to U.S. customs data. Using U.S. customs data, we calculated the average U.S. price of imports from all mandatory respondents. We found that the petitioners' price quotes were comparable to the U.S. Customs information. Therefore, we find that the petitioners' information for U.S. price continues to have probative value.

For further discussion, see the April 28, 2003, memorandum to the file from the team entitled "Corroboration of Data Contained in the Petition for Assigning Facts Available Rates" (Corroboration Memo).

Normal Value

The petitioners based NV on home market price quotes from Kuraray for PVA of a comparable grade to the products exported to the United States. These price quotes were contemporaneous with the U.S. price quotes used as the basis for EP. In addition, the petitioners alleged that sales of PVA products in the home market were made at prices below the fully absorbed cost of production (COP), within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we found reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated a country-wide cost investigation. Pursuant to section 773(b)(3) of the Act, COP consisted of the cost of manufacture (COM), selling, general and administrative (SG&A) expenses, and packing. The petitioners calculated COP based on the experience of a U.S. PVA producer during the 2001 fiscal year, adjusted for known differences between costs incurred to manufacture PVA in the United States and Japan.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, the petitioners based NV for sales in Japan on constructed value (CV). The petitioners calculated CV using the same COM, SG&A and financial expense figures used to compute the COP. Consistent with section 773(e)(2) of the Act, the petitioners included in CV an amount for profit. For profit, the petitioners relied upon the amount reported in Kuraray's 2001 financial statements. The petitioners made a circumstance-of-sale adjustment for credit expenses.

The Department was provided with no useful information by the respondents or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition. Specifically, we attempted to locate both home market prices through publicly available sources and U.S. producer costs upon which CV was based, but we were unable to do so. *See* the Corroboration Memo.

It is worth noting that the implementing regulation for section 776 of the Act states, "(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using secondary information in question. " *See* 19 CFR 351.308(d). Additionally, the SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance," the Department need not prove that the facts available are the best alternative information.

Therefore, based on our efforts, described above, to corroborate information contained in the petition, and in accordance with 776(c) of the Act, we consider the margins in the petition to be corroborated to the extent practicable for purposes of this final determination. *See* the Corroboration Memo.

Accordingly, in selecting AFA with respect to Denki Kagaku, Japan VAM & POVAL, Kuraray, and Nippon Gohsei, we have applied the margin rate of 144.16 percent, which is the highest estimated dumping margin set forth in the notice of initiation. *See* the *Initiation Notice*, 67 FR at 61593.

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "All Others" rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than zero, *de minimis*, and FA margins to establish the "All Others" rate. Where the data do not permit weight-averaging such rates, the SAA provides that we may use other reasonable methods. *See* SAA at 873. Because the petition contained four estimated dumping margins, we have used these four estimated dumping margins, as adjusted per the notice of initiation, to create an "All Others" rate based on a simple average. Therefore, we have calculated the margin of 76.78 percent as the "All Others" rate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value and Final Affirmative Finding of Critical Circumstances: Elastic Rubber Tape from India*, 64 FR 19123, 19124 (Apr. 19, 1999).

Analysis of Comments Received

We received no comments from interested parties in response to our preliminary determination. We did not hold a hearing because none was requested.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to suspend all entries of PVA from Japan, that are entered, or withdrawn from warehouse, for consumption on or after February 20, 2003, the date of publication of our preliminary determination. The Customs Service shall continue to require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These instructions suspending liquidation will remain in effect until further notice.

The dumping margins are provided below:

Manufacturer/exporter	Margin (percent)
Denki Kagaku Kogyo Kabushiki Kaisha	144.16
Japan VAM & POVAL Co., Ltd.	144.16
Kuraray Co., Ltd.	144.16
The Nippon Synthetic Chemical Industry Co., Ltd.	144.16
All Others	76.78

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing the Customs Service to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: April 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–9738 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–809]

Stainless Steel Butt-Weld Pipe Fittings from Malaysia: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Rescission of the antidumping duty administrative review for the period February 1, 2002 through January 31, 2003.

SUMMARY: On March 25, 2003, in response to a request made by Schulz (Mfg.) Sdn. Bhd. ("Schulz"), a producer and exporter of the subject merchandise in Malaysia, the Department of Commerce ("Department") published a notice of initiation of an antidumping duty administrative review on stainless steel butt-weld pipe fittings ("SSBWPF") from Malaysia, for the period February 1, 2002 through January 31, 2003. Because Schulz has withdrawn its request for review, and there were no other requests for review for this time period, the Department is rescinding this review in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATE: April 21, 2003.

FOR FURTHER INFORMATION CONTACT: James C. Doyle, Enforcement Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230; telephone: 202–482–0159.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 2003, Schulz, a producer and exporter of the subject merchandise in Malaysia, requested the Department to conduct an administrative review of its sales for the period February 1, 2002 through January 31, 2003. Schultz was the only interested party to request a review for this time period. On March 25, 2003, the Department published a notice of initiation of the antidumping administrative review on SSBWPF from Malaysia, in accordance with 19 CFR 351.221(c)(1)(i). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part*, 68 FR 14394 (March 25, 2003). On March 31, 2003, Schulz withdrew its request for review.

Rescission of Review

Pursuant to the Department's regulations, the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." *See* 19 CFR 351.213(d)(1). Schultz, the only interested party to request an administrative review for this time period, withdrew its request for this review within the 90–day time limit; accordingly, we are rescinding the administrative review for the period February 1, 2002 through January 31, 2003, and will issue appropriate assessment instructions to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation. This determination is issued in accordance with 19 CFR 351.213(d)(4) and section 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: April 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. 03–9740 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041503B]

Proposed Information Collection; Comment Request; NOAA Coastal Ocean Program Grants Proposal Application Package

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 20, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Leslie McDonald, 301–713–3338, ext. 155, or *Leslie.McDonald@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Oceanic and Atmospheric Administration's Coastal Ocean Program (COP) provides direct financial assistance through grants and cooperative agreements for research supporting the management of coastal ecosystems. In addition to standard government application requirements, applicants for financial assistance are required to submit a summary proposal budget form and a project summary form. Applicants are also requested to submit 20 copies of applications to expedite the review process. Recipients are required to file annual progress reports and a project final report using COP formats. All of these requirements are needed for better evaluation of proposals and monitoring of awards.

II. Method of Collection

Paper forms and documents are submitted to the COP. The option of electronic submission is being explored. NOAA COP will participate in the government-wide E-Grants electronic application process once it has been completed. NOAA COP is also participating in the NOAA-wide Grants Online effort, which will allow COP staff the ability to accept electronic proposals, conduct the peer-review process electronically, and process awards for recipients. However, both of these electronic options are not yet available. It is anticipated that the E-grants electronic option to receive proposals will be made available throughout NOAA in late 2004.

III. Data

OMB Number: 0648–0384.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Not-for-profit institutions (universities, colleges, junior colleges, technical schools, laboratories); State, Local, or Tribal Government.
Estimated Number of Respondents: 300.
Estimated Time Per Response: 30 minutes for a budget form; 30 minutes for a project summary; 5 hours for an annual report; 10 hours for a final report; and 10 minutes to provide the extra copies required.
Estimated Total Annual Burden Hours: 1,100.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 14, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–9788 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–JS–S

DEPARTMENT OF COMMERCE

[I.D. 041503D]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).
Title: Capital Construction Fund Deposit/Withdrawal Report.
Form Number(s): NOAA Form 38–42.
OMB Approval Number: 0648–0041.
Type of Request: Regular submission.
Burden Hours: 1,200.
Number of Respondents: 3,600.
Average Hours Per Response: 20 minutes.
Needs and Uses: The respondents to this collection will be commercial fishing industry individuals, partnerships, and corporations which entered into Capital Construction Fund agreements with the Secretary of Commerce allowing deferral of Federal taxation on fishing vessel income deposited into the fund for use in the acquisition, construction, or reconstruction of fishing vessels. Deferred taxes are recaptured by reducing an agreement vessel's basis for depreciation by the amount withdrawn from the fund for its acquisition, construction, or reconstruction. The deposit/withdrawal information collected from agreement holders is required pursuant to 50 CFR Part 259.35 and P.L. 99–514 (The Tax Reform Act, 1986). The information collected is required to ensure that agreement holders are complying with fund deposit/withdrawal requirements established in program regulations and properly accounting for fund activity on their Federal income tax returns. The information collected must also be reported annually to the Secretary of Treasury in accordance with the Tax Reform Act, 1986.

The information will be collected on the Capital Construction Fund Deposit/Withdrawal Report form, which agreement holders are required to submit at the end of their tax year.

Affected Public: Business or other for-profit organizations.
Frequency: Annually.
Respondent's Obligation: Mandatory.
OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: April 14, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–9789 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041403D]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings of the Technical Review Panel, the User Review Panel, and the Standing Scientific and Statistical Committee (SSC) from May 5, 2003 through May 7, 2003.

DATES: The Council's Technical Review Panel, User Review Panel, and Standing SSC will convene in separate meetings at 1 p.m. on Monday, May 5, 2003 and will conclude by 4 p.m. on Wednesday, May 7, 2003.

ADDRESSES: The meetings will be held at the DoubleTree Hotel Tampa Westshore, 4500 West Cypress Street, Tampa, FL; telephone: (813) 879–4800.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The Technical Review Panel will review final draft of the essential fish habitat environmental impact statement (EFH EIS) and provide the Council and contractor with suggestions for technical revisions. In addition the Technical Review Panel members serve as contract monitors.

The User Review Panel will review the final draft of the EFH EIS and provide the Council and contractor with suggestions for revisions. In addition the User Review Panel members are asked to provide their comments on whether the documents properly address the issues of each user group represented. The User Review Panel is comprised of representatives from the following sectors: recreational, charter, commercial, environmental, oil and gas industry, and wetlands owners.

The Standing Scientific and Statistical Committee will review the final draft of the EFH EIS and provide the Council and contractor with an evaluation of the scientific completeness and possible suggestions for revisions. The SSC will also review and comment on a proposed Amendment 21 to the Reef Fish Fishery Management Plan to extend the time period for the Madison/Swanson and Steamboat Lumps marine reserves beyond their June 16, 2004 expiration date.

The Council will review these panels comments at a special Council meeting scheduled for June 5–6, 2003 at the New Orleans Airport Plaza Hotel and Conference Center. Final action to approve the EFH EIS is scheduled at the Council's July 14–18, 2003 meeting in Naples, FL.

Although non-emergency issues not contained in the agendas may come before the Technical and User Review Panels and the SSC for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the MSFCMA, provided the public has been notified of the Council's intent to take final action to address the emergency.

Copies of the agendas of these meetings can be obtained by calling the Council office at 813–228–2815 (toll-free 888–833–1844).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 28, 2003.

Dated: April 15, 2003.

Matteo J. Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9791 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041003A]

Marine Fisheries Advisory Committee; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC) from May 13 through 15, 2003.

DATES: The meetings are scheduled as follows:

May 13, 2003, 9 a.m. – 5:30 p.m.
May 14, 2003, 8:30 a.m. – 5:30 p.m.
May 15, 2003, 10 a.m. – 1 p.m.

ADDRESSES: The meetings will be held at Paradise Point Resort, 1404 Vacation Road, San Diego, CA. Requests for special accommodations may be directed to MAFAC, Office of Constituent Services, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Laurel Bryant, Designated Federal Official; telephone: (301) 713–9501 ext. 171.

SUPPLEMENTARY INFORMATION: As required by section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of meetings of MAFAC. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1972, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of the Nation are adequate to meet the needs of commercial and recreational fisheries, and of environmental, state, consumer, academic, tribal, and other national interests.

Matters to Be Considered

May 13, 20003

Overview and updates on the status of various management initiatives and issues including regulatory streamlining initiative, and results of the five year review of implementing the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fisheries Conservation and Management Act, annual Status of Stocks report and national standard 1 guidelines.

May 14, 2003

Update on national bycatch strategy and discussion of various science and technology management issues and initiatives. MAFAC will then review a final draft of the MAFAC Ecosystem Task Force report for final submission to the National Marine Fisheries Service, and discuss the status of essential fish habitat in the fisheries management process.

May 15, 2003

Committee willmake final reports to NOAA Fisheries, discuss next meeting agenda, locations and dates for 2004, and adjourn.

Time will be set aside for public comment on agenda items.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to MAFAC (see **ADDRESSES**).

Dated: April 15, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–9787 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041003C]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Trawl Survey Advisory Committee, composed of representatives from the Northeast Fisheries Science Center (NEFSC), the MAFMC, the New England Fishery Management Council (NEFMC), and several independent scientific researchers, will hold a public meeting.

DATES: The meeting will be held on Monday, May 5th, from 1 p.m. to 6 p.m. and Tuesday, May 6th, from 8 a.m. until noon.

ADDRESSES: This meeting will be held at the Crowne Plaza Meadowlands, Two Harmon Plaza, Secaucus, NJ; telephone: 201–348–6900.

Council address: Mid-Atlantic Fishery Management Council, Room 2115, 300 S. New Street, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to prioritize goals and objectives in order to provide important advice and feedback to the NEFSC on its trawl surveys.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: April 15, 2003.

Matteo J. Milazzo

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9790 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041403F]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Essential Fish Habitat (EFH) Committee will hold a public meeting.

DATES: The meeting will be held on May 5–6, 2003.

ADDRESSES: The meeting will be held at NMFS Alaska Region, 709 W. 9th Street, Room 150, Juneau, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Cathy Coon, Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Committee will meeting from noon to 6 p.m. on Monday, May 5, and from 8 a.m. to 5 p.m. on Tuesday, May 6. The Committee will continue working on a process for identifying and evaluating potential habitat areas of particular concern. Committee recommendations will be presented to the North Pacific Fishery Management Council in June.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: April 15, 2003.

Matteo J. Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9793 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041403G]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Information and Education Committee and a joint meeting of the Committee and Information and Education Advisory Panel in Charleston, SC.

DATES: The meeting will be held on May 13–15, 2003. SEE SUPPLEMENTARY INFORMATION for specific dates and times.

ADDRESSES: The meeting will be held at the Town & Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (843) 571–1000; fax: (843) 766–9444.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer,; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520.

SUPPLEMENTARY INFORMATION: The Information and Education Committee will meet from 10 a.m. until 12 noon on May 13, 2003. The Committee will meet jointly with the Information and Education Advisory Panel from 1:30 p.m. until 5 p.m. on May 13, 2003, from 8:30 a.m. until 5 p.m. on May 14, 2003, and from 8:30 a.m. until 12 noon on May 15, 2003.

The Information and Education Committee will meet to review and discuss issues to be addressed during the joint meeting relative to outreach and public affairs. During the joint meeting, the Advisory Panel will receive an overview of the South Atlantic Fishery Management Council's current Information and Education program. The Advisory Panel will review and make recommendations regarding a draft strategic management plan for the program. In addition, members will review and make recommendations concerning the Council's Information and Education program including outreach efforts, working with the media, networking with state and federal partners and program evaluation. The Advisory Panel and Committee will develop a list of recommendations and priorities for the Council to consider.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the council office (see **ADDRESSES**) by May 12, 2003.

Dated: April 15, 2003.

Matteo J. Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9795 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041403E]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The 83rd meeting of the Western Pacific Fishery Council's Scientific and Statistical Committee (SSC) will convene in Honolulu, HI.

DATES: The meeting will be held on May 6–8, 2003. The SSC meeting will be held from 9 a.m. to 5 p.m. on May 6, 2003 and from 8:30 a.m. to 5 p.m. on May, 7–8 2003.

ADDRESSES: The 83rd SSC meeting will be held at the Council office conference room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808–522–8220).

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on the agenda items below. The order in which agenda items will be addressed can change.

Tuesday, May 6, 2003, 9 a.m.

1. Bottomfish

a. 2002 Annual Report
b. Overfishing/Maximum Sustainable Yield
i. Status of the stocks based on new control rule
ii Genetic research
iii. Main Hawaiian Islands (MHI) area closure monitoring
iv. Rebuilding options for stocks
c. Guam offshore fishery management
d. Plan Team report

2. Protected Species

a. Status of Sea Turtle Recovery Team and Recovery Plans

b. Report on Monk Seal Recovery Team Meeting (15–17 April, 2003)

3. Crustaceans Fisheries

a. Status of the fishery
b. Report on Northwestern Hawaiian Islands (NWHI) lobster research
i. Report on MULTIFAN-CL stock assessment analyses
ii. Report on slipper lobster tagging research
iii. Report on analyses of outstanding lobster cruise data
c. NMFS annual lobster research cruise plan
d. MHI lobster stock assessment
e. Plan Team report

4. Precious Corals

Plan Team report

Wednesday, May 7, 2003, 8:30 a.m.

5. Quantitative assessment of capacity in Hawaii's fisheries.

6. Pelagic Fisheries

a. 2002 Annual Report
b. Report on American Samoa scientific data collection program
c. Report on phase two of chute trials for Seabird conservation
d. Turtle/Fishery conservation alternatives
e. Marlin management
f. Status of Environmental Impact Statements (EISs)
i. Supplemental Pelagic EIS
ii. MHI Turtle EIS
g. International Meetings and Issues
i. Food & Agriculture Organization Committee on Fisheries (COFI) meeting
ii. NMFS Turtle bycatch meeting
iii. 23rd Turtle symposium
h. Plan Team report

Thursday, May 8, 2003, 8:30 a.m.

7. Taape (blue lined snapper) interactions with reef fish

8. Ecosystem and Habitat

a. NOS NWHI Reserve Science Workshop
b. NMFS/Council NWHI Symposium
c. Report from Council Marine Protected Area Working Group
d. Report on Secretariat of the Pacific Community Coastal Fishery Management Meeting
e. Report on Plan Team meeting

9. Other Business

Report from the Social Science Research CommitteeAlthough non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: April 15, 2003.

Matteo J. Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9792 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[ID. 040703E]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of an exempted fishing permit application; request for comments.

SUMMARY: NMFS announces the receipt of an exempted fishing permit (EFP) application for a cooperative project between the Oregon State Department of Fish and Wildlife (ODFW), and the NMFS Northwest Fishery Science Center. If awarded, this EFP would allow qualifying vessels to harvest and retain federally managed groundfish in closed rockfish conservation areas and to retain federally managed groundfish species in excess of cumulative trip limits. These activities are otherwise prohibited. Vessels fishing under these EFPs will be required to carry a Federal fisheries observer while conducting EFP fishing. This EFP proposal is intended to promote the objectives of the Pacific Coast Groundfish Fishery Management Plan (FMP) by assessing the effectiveness of a fishing gear configuration that was designed to harvest flatfish stocks while reducing the incidental catch of low abundance rockfish species.

DATES: Comments must be received by May 6, 2003.

ADDRESSES: Copies of the EFP application are available from Becky Renko Northwest Region, NMFS, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko (206)526–6110 or Carrie Nordeen (206) 526–6144.

SUPPLEMENTARY INFORMATION: This action is authorized by the FMP and implementing regulations at 50 CFR 600.745 and 50 CFR 660.350.

Dover sole, petrale sole, English sole, rex sole, and arrowtooth flounder are abundant and important flatfish species in the Pacific Coast groundfish fishery. These flatfish species have historically been caught by vessels using trawl gear in depths of 50–150 fathoms (91–274 meters). Beginning in 2003, many of the areas where these flatfish species have historically been harvested are within the Trawl Rockfish Conservation Area (RCA) where fishing with bottom trawl gear is prohibited. Rockfish conservation areas are gear-specific, large-scale depth-related areas where low abundance (overfished) rockfish species are commonly found. It was necessary to define these areas to restrict fishing so the 2003 optimum yield (OY) levels for the overfished rockfish species are not exceeded.

The purpose of the exempted fishing activity is to measure the rate at which un-targeted species, particularly canary, darkblotched, yelloweye and widow rockfish, are taken by commercial fishers using an experimental trawl net. This experimental net was specifically designed to be more selective in the harvest of flatfish species than the trawl net configurations that are currently used in the fishery.

In 2001 and 2002, ODFW chartered commercial fishing vessels to develop and test new trawl net designs. Testing was conducted to compare the new net design with trawl net configurations that are typically used in the fishery. During the initial testing, significant reductions in the catch of overfished rockfish species relative to flatfish catch were observed. ODFW believes that this gear design, which meets the requirements of small footrope bottom trawl gear as defined by regulations at 50 CFR 660, could become an effective way for fishery participants to reduce rockfish bycatch in the flatfish fishery.

To encourage fishers to use this gear, increased trip limits for flatfish would be available to vessels that are willing to modify their existing gear or purchase new gear that is consistent with the design requirements, as defined by ODFW, and who are willing to carry an observer on board their vessel during all EFP fishing. The information gathered through this EFP may lead to changes in the management measures and future rulemakings.

An EFP is needed to allow for vessel to retain and land fish in excess of the trip limits announced in the **Federal Register** and to use the experimental trawl gear to directly harvest Dover sole, petrale sole, English sole, rex sole, and arrowtooth flounder in an RCA, where these flatfish species are most abundant. These activities are otherwise prohibited by Federal regulations. The information gathered through this EFP may lead to future rulemakings.

If issued, approximately eight vessels from various ports along the coast of Oregon, that have historically harvested Petrale and English sole, will fish under this EFP between May 1 and October 31, 2003. Vessels would be required to retain all rockfish and the proceeds from the sale of rockfish in excess of current trip limits would be abandoned to NMFS or the state of landing. During the effective dates of the EFP, participating vessels must carry a Federal fishery observer whenever they: (1) fish in a RCA; (2) use the experimental trawl gear specified in this EFP whether or not the vessel is used to fish within an RCA; or (3) take, retain, possess or land fish in excess of the current trip limits published in the **Federal Register**. Participation under this EFP does not exempt a vessel from Federal observer coverage requirements at 50 CFR 660.360. A participating vessel may also be required to carry a Federal observer throughout the cumulative period.

In addition to the cumulative trip limits announced in the **Federal Register**, each participating vessel will be permitted to take 1,500 lb (680 kg) of "other flatfish" and petrale sole per month, and 7,000 lb (3175 kg) of Dover sole per month. The total amount (discard plus retained) of Dover sole allowed to be taken under this EFP will not exceed 305 metric tons (mt) and total amount (discard plus retained) of petrale sole and "other flatfish" combined will not exceed 65 mt. The EFP fishing will be constrained by the following EFP limits for overfished species: yelloweye rockfish 1.2 mt, canary rockfish 2.7 mt, and widow rockfish 1.0 mt, darkblotched rockfish 2.1 mt, and Pacific ocean perch P >0.5 mt. If the EFP limits for any one of these overfished species is reached, the EFP will be terminated for the remainder of the 2003 fishing year. All EFP harvests are expected to be within set asides for 2003 EFP harvests and, therefore, no OY is expected to be exceeded.

This EFP requires that the participating vessels carry a Federal groundfish observer provided by NMFS. Observers will collect data from vessels which incidental catch rates and total catch of various species and species groups can be estimated. Observers may also collect and retain specimens of otherwise prohibited fish caught by the vessel.

At the Pacific Fishery Management Councils (Council) November 2002, meeting in Foster City, CA, the applicants presented this EFP application to the Council. The Council considered the application and recommended that NMFS issue the EFP for the proposed activity. Data collected during this project are expected to benefit the management of the groundfish fishery by providing much needed information on how effectively unintended species can be selected against by using a trawl gear design that is based on behavioral differences between species. Copies of the applications are available for review from NMFS (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 16, 2003.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries , National Marine Fisheries Service.

[FR Doc. 03–9794 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. 2003–C–016]

Notice of Publication of the 2002 Annual Index to the Electronic Official Gazette of the Patent and Trademark Office—Patents (eOG:P)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Patent and Trademark Office (USPTO) has published the 2002 Annual Index to the *Electronic Official Gazette of the United States Patent and Trademark Office—Patents (eOG:P).* This annual index is published on DVD-ROM.

DATES: The 2002 Annual Index to the *eOG:P* is now available.

SUPPLEMENTARY INFORMATION: The United States Patent and Trademark Office has announced that the 2002 *Annual Index to the Electronic Official Gazette of the United States Patent and Trademark Office " Patents (eOG:P)* is now available. This electronic annual index is unique from previous paper annual indexes in that the indexes and bibliographic records for the year are now included in this one source. The 2002 Annual Index provides all records contained in the weekly issues of the *eOG:P* for 2002, including January through June, which were previously not available electronically.

The *eOG:P* records contain bibliographic information, including classification, inventor and assignee, as well as a representative claim and drawing (if applicable). Consistent with the weekly *eOG:P* issues, patents are indexed and browsable by classification and type of patent (utility, plant, etc.), as well as by patentee name and geographical location of the inventor. Links are provided from all indexes to the *eOG:P* record for that patent.

The *Official Gazette Notices*, covering both patents and trademarks, are included as is the *Consolidated Listing of Official Gazette Notices Re—Patent and Trademark Office Practices and Procedures.* This publication is a compilation of the most important notices and rule changes which have been published in the Official Gazette from July 1, 1964, through December 21, 2002. Appendices include a summary of the number of Patents, Defensive Publications, and Statutory Invention Registrations issued from 1836 through 2002 and a listing of Patent and Trademark Depository Libraries (PTDLs).

Due to the large amount of data, the 2002 *Annual Index to the eOG:P* is published on one DVD–ROM disc, not on CD–ROM. The price of the index is $300.00 and is not included in the annual subscription price of the *eOG:P.*

The *Index of Patents Issued From the United States Patent and Trademark Office* will continue to be published in a paper format through 2002 to coincide with the paper publication of the *Official Gazette —Patents*, which ceased publication as of September 24, 2002. This publication will continue to be supplied by the Superintendent of Documents, U.S. Government Printing Office (GPO). For more information, please visit the GPO Web site at: *http://www.access.gpo.gov/su_docs/.*

FOR FURTHER INFORMATION CONTACT: Office of Electronic Information Products, Crystal Park 3, Suite 441, Washington, DC 20231, Phone: (703) 306–2600/ Fax: (703) 306–2737, e-mail: *cassis@uspto.gov*

Dated: April 14, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–9659 Filed 4–18–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.305P]

Institute of Education Sciences; English Language Acquisition Evaluation Program; Notice of Applicable Program Regulations

The following Education Department General Administrative Regulations apply to this program: 34 CFR parts 74, 77, 80, 81, 82, 85, 86 (part 86 applies only to Institutions of Higher Education), 97, 98, and 99. In addition 34 CFR part 75 is applicable, except for the provisions in 34 CFR 75.100, 75.101(b), 75.102, 75.103, 75.105, 75.109(a), 75.200, 75.201, 75.209, 75.210, 75.217, 75.219 (except that the Department may select an application for funding without following the applicable procedures if the application was evaluated under the preceding competition of the program; the application rated high enough to deserve selection; and the application was not selected for funding because the application was mishandled by the Department), 75.220 and 75.230.

FOR FURTHER INFORMATION CONTACT: Susan Sanchez, U.S. Department of Education, 80 F Street, NW., Washington, DC 20208–5501. Telephone: (202) 208–7061, or via Internet: *Susan.Sanchez@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 9501 *et seq.* (the "Education Sciences Reform Act of 2002", Title I of Public Law 107–279, November 5, 2002).

Dated: April 16, 2003.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 03–9708 Filed 4–18–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.336B and 84.336D]

Office of Postsecondary Education; Teacher Quality Enhancement Grants Program—Partnership Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2003

Purpose of Program: To provide grants to promote improvements in the quality of new teachers, with the ultimate goal of increasing student achievement in the nation's K–12 classrooms. Partnership grants are designed to promote significant improvements in teacher education by strengthening the vital role of K–12 educators in the design and implementation of effective teacher education programs, and by increasing collaboration among these educators and institutions of higher education, and departments of arts and sciences.

Eligible Applicants: Partnerships which include, at a minimum:

1. An institution of higher education with an eligible teacher preparation program;
2. A school of arts and sciences; and
3. A high-need local educational agency (LEA).

A partnership may include additional entities, as defined in the Higher Education Act of 1965, as amended (HEA), title II, part A, section 203(b). Terms 2 and 3 are defined in section 201 of the HEA and in the application package.

Note: A partnership that received a previous grant under this program is not eligible for a FY 2003 grant.

Applications Available: April 30, 2003.

Deadline for Transmittal of Applications: June 2, 2003, for pre-applications; August 8, 2003, for full applications.

Note: The Department will invite full applications from those partnerships whose pre-applications ranked highly enough to be competitive at the full application stage. Only those partnerships who are invited to submit a full application will be eligible to receive a grant award.

Deadline for Intergovernmental Review: August 4, 2003.

Available Funds: $4,234,000.

Estimated Range of Awards: $750,000–$1,250,000 per year.

Estimated Average Size of Awards: $1.058 million per year.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: Pre-applications: The application narrative is where you, the applicant, address the selection criteria reviewers use to evaluate your application.

If you are submitting a pre-application for a Partnership grant, you must limit your narrative to the equivalent of no more than 10 pages and your estimated budget information to the equivalent of no more than three pages.

For the pre-application narrative and budget information the following standards apply:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text, including titles, headings, quotations, references, and captions.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- For tables, charts, or graphs also use a font that is either 12-point or larger or no smaller than 10 pitch.

Our reviewers will not read any of the specified sections of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Full Applications: You must limit your narrative to the equivalent of no more than 50 pages. In addition, you must limit your accompanying work plan to the equivalent of no more than 10 pages, your budget narrative to the equivalent of no more than 10 pages, and your evaluation plan to the equivalent of no more than 5 pages.

For the full application narrative, budget narrative, work plan, and evaluation plan the following standards apply:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text, including titles, headings, quotations, references, and captions.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).
- For tables, charts, or graphs also use a font that is either 12-point or larger or no smaller than 10 pitch.

Our reviewers will not read any of the specified sections of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98 and 99. (b) The regulations for this program in 34 CFR part 611.

Priority: This competition focuses on projects designed to meet the priority in the regulations for this program (34 CFR 611.25).

The Secretary provides a competitive preference on the basis of how well the project includes a significant role for private business in the design and implementation of the project.

Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application, depending on how well the application meets this priority.

Special Funding Considerations: The program regulations (34 CFR part 611.3(c)) provide that when two or more applicants are ranked equally for the last available award, the Secretary selects the applicant whose activities will focus (or have most impact) on LEAs and schools located in one (or more) of the Nation's Empowerment Zones and Enterprise Communities.

For Applications and Further Information Contact: Luretha Kelley, Teacher Quality Program, Office of Postsecondary Education, U.S. Department of Education, 1990 K Street, NW., Room 7101, Washington, DC 20006–8525. Telephone: (202) 502–7878, Fax: (202) 502–7864 or via Internet: *Luretha.Kelley@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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Program Authority: 20 U.S.C. 1021 *et seq.*

Dated: April 15, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–9709 Filed 4–18–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Request for Information

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of request for information on the department's plan to implement FutureGen.

SUMMARY: On February 27, 2003, President Bush announced that the United States would sponsor a $1 billion, 10-year demonstration project to create the world's first coal-based, zero emissions power plant to produce electricity and hydrogen. As part of this announcement, Secretary of Energy Spencer Abraham unveiled plans for FutureGen—one of the boldest steps our Nation has taken toward a pollution-free energy future. This project will establish the technical and economic feasibility of producing electricity and hydrogen from coal—our lowest cost and most abundant domestic energy resource—while capturing and sequestering the carbon dioxide generated in the process. FutureGen will showcase cutting-edge technologies that can virtually eliminate environmental concerns associated with coal utilization. The ultimate success of FutureGen depends on acceptance of the concept of sequestration by the industries that will be most heavily impacted by potential future limitations on carbon emissions. Thus, the Department plans to noncompetitively enter into a cooperative agreement with a Consortium led by the coal-fired electric power industry and the coal production industry. Under the guidance of a Government Steering Committee, this Consortium will be responsible for the design, construction and operation of the FutureGen plant, and for the monitoring, measuring, and verifying of carbon dioxide sequestration. The members of the Consortium shall collectively own and produce at least one-third of the Nation's coal and at least one-fifth of its coal-fueled electricity. In addition to collectively owning and producing a large fraction of the Nation's coal and electricity, the Consortium is expected to: (a) Be geographically diverse by including both eastern and western domestic coal producers and coal-fueled electricity generators; and, (b) be resource diverse by including producers and users of the full range of coal types. The public's interest is best served by having this broad cross section of the coal and coal-fueled electricity industries involved in this project. The Department will require that the Consortium use fair and open competition to select the host site; engineering, design, and construction services; and major equipment modules.

DATES: Comments shall be received no later than June 16, 2003 at the address below. Confidential information contained within a submission should be identified and marked accordingly. The Department will protect confidential information to the extent permitted by law.

ADDRESSES: The Department seeks public comment regarding its plans for implementing FutureGen. Groups who collectively own and produce at least one-third of the Nation's coal and one-fifth of its coal-based electricity, and who are interested in establishing a Consortium, are invited to submit comments of no more than ten pages that include the group's (a) name, telephone number, mailing address, and e-mail address; (b) interest in participating in FutureGen; and, (c) technical and financial ability and commitment to pursue the FutureGen project including qualifications of key team members.

In addition, any other interested party is invited to submit no more than five

pages of comments on any aspect of the Government's proposed plans (as described herein) to implement FutureGen. Such submissions should include the party's name, telephone number, mailing address, and e-mail address. In formulating the path forward for implementing FutureGen, the Department will consider all comments received. It will also prepare a report containing a synopsis of comments. The report will be posted on the Fossil Energy Web site.

Interested parties may submit their comments by e-mail or by regular mail to: Keith R. Miles, U.S. Department of Energy, National Energy Technology Laboratory, PO Box 10940, MS 921–107, Pittsburgh, PA 15236, E-mail Address: *miles@netl.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Keith R. Miles, U.S. Department of Energy, National Energy Technology Laboratory, PO Box 10940, MS 921–107, Pittsburgh, PA 15236, E-mail Address: *miles@netl.doe.gov.*

SUPPLEMENTARY INFORMATION: An affordable, reliable, and environmentally sound supply of electricity is critical to our Nation's future. Coal provides over half of our Nation's electricity. However, coal-fired power plants also emit one-third of the U.S. anthropogenic carbon dioxide emissions. As a key step towards making significant reductions in these emissions, and preserve the security and cost benefits of using coal to produce electricity for our Nation, it is necessary to validate the engineering, economic, and environmental viability of coal-based systems to produce electricity with zero emissions. This is one of the key objectives of FutureGen.

Another FutureGen objective is to produce coal-based hydrogen with zero emissions. The production of hydrogen supports the President's Hydrogen Initiative. Using our abundant, readily available, low-cost coal to produce hydrogen—an environmentally superior transportation fuel—would help ensure America's energy security. Thus, FutureGen will also provide a zero emissions technology option for the transportation sector—a sector that accounts for another one-third of our Nation's anthropogenic carbon dioxide emissions.

The Department envisions that the FutureGen project will employ coal gasification technology to co-produce electricity and hydrogen. The size of the plant will nominally be 275 MW equivalent electricity output.

Power generation and hydrogen production will be integrated with the capture of carbon dioxide and its sequestration in deep underground geologic formation(s). The project will seek to sequester carbon dioxide emissions at an operating rate of one million metric tons (or more) of carbon dioxide sequestered per year. The project will also work with the appropriate domestic and international communities to establish standardized technologies and protocols for carbon dioxide measuring, monitoring, and verification. The Department anticipates placing separate contracts to independently validate carbon dioxide sequestration.

In addition, the plant will virtually eliminate environmental emissions associated with coal use, specifically nitrogen and sulfur oxides, particulate matter, and mercury. The plant will showcase cutting-edge technologies that can virtually eliminate environmental concerns associated with coal use. This includes establishing beneficial uses for coal utilization by-products from the plant.

The initial FutureGen plant configuration will incorporate cutting edge technologies to address scaling and integration issues for coal-based, zero emissions energy plants. The plant will also be operated as a research facility—it will test and validate additional advanced technologies as they emerge from research programs. These advanced technologies will offer the promise of clean environmental performance, at a reduced cost and increased reliability. Thus, FutureGen will be designed and constructed with the flexibility to conduct both full scale and slipstream tests of such advanced technology over the entire operational phase of the project. The large scale of FutureGen is driven by the need to adequately validate the engineering, economic, and environmental viability of coal-based, zero emissions technologies.

Global acceptance of the concept of coal-based systems integrated with sequestration technology is a key goal of FutureGen. Broad involvement in the FutureGen project is required to achieve this goal. Although membership of the Consortium will be limited to coal and coal-fueled electricity generation owners and producers, and while equipment and service vendors may participate through a competitive selection process for their goods and services, the Department expects the Consortium to encourage and provide mechanisms for future participation in the project, as appropriate, of interested parties such as state governments, regulators, and the environmental community. The Department also expects the Consortium to be an "open" consortium—working to expand its initial membership to one that is inclusive and open to other coal and coal-fueled electricity owners and producers.

The Consortium will be expected to contribute at least a 20 percent industry cost share. Terms and conditions of inclusion of additional domestic and foreign industrial coal producers and coal-fueled electricity generators will be determined by the Consortium. Foreign government participation in FutureGen will be subject to negotiations that are not contrary to the Department's terms and conditions established in its cooperative agreement with the Consortium.

Disclaimer: This Request for Information shall not be construed as a commitment by the Government to award a cooperative agreement at this time.

Issued in Pittsburgh, PA, on April 11, 2003.

Randolph Kesling,

Senior Management and Technical Advisor, Office of Business Logistics.

[FR Doc. 03–9704 Filed 4–18–03; 8:45 am]

BILLING CODE 5450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–18–001, et al.]

Athens Generating Company, L.P., et al.; Electric Rate and Corporate Filings

April 14, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Athens Generating Company, L.P.; Covert Generating Company, LLC; Harquahala Generating Company, LLC; Millennium Power Partners, L.P.; New GenHoldings

[Docket No. EC03–18–001]

Take notice that on April 10, 2003, Athens Generating Company, L.P., Covert Generating Company, LLC, Harquahala Generating Company, LLC, and Millennium Power Partners, L.P., (collectively, the NEG Companies) each of which is an indirect, wholly-owned subsidiary of PG&E National Energy Group, Inc. (PG&E NEG), and New GenHoldings (which may be referred to hereafter individually as Applicant or jointly as Applicants) tendered for filing, pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b, and part 33 of the Commission's regulations, 18 CFR part 33, an amended and restated application for authorization to dispose of jurisdictional facilities. The Applicants state that more specifically, PG&E NEG seeks approval to effectuate an internal corporate reorganization with respect to some or all of the NEG Companies and then transfer all of its ownership interests in the NEG Companies to New GenHoldings that are direct, or indirect, wholly-owned subsidiaries of the lenders to the NEG Companies and/or to their upstream owners.

Comment Date: May 1, 2003.

2. Northern Indiana Public Service Company

[Docket No. ER96–399–004]

Take notice that on April 10, 2003, Northern Indiana Public Service Company (Northern Indiana) filed a revised tariff sheet as part of its FERC Electric Tariff, First Revised Volume No. 5. Northern Indiana states that the revised tariff sheet is submitted to clarify the filing that it made on March 17, 2003, in compliance with the Order issued by the Commission on December 30, 2002.

Northern Indiana states that copies of this filing have been sent to all parties on the Commission's official service list.

Comment Date: May 1, 2003.

3. GenWest, LLC

[Docket No. ER03–352–001]

Take notice that on April 10, 2003, GenWest, LLC, filed an amendment to its application for authority to sell power at market-based rates.

Comment Date: May 1, 2003.

4. Duke Energy Corporation

[Docket No. ER03–481–001]

Take notice that on April 10, 2003, Duke Energy Corporation, on behalf of Duke Electric Transmission, (collectively, Duke) tendered for filing the revised First Amended and Restated Generation Interconnection and Operating Agreement (Restated IOA) between Duke and Rowan County Power, LLC, as the successor in interest to Carolina Power and Light Company in compliance with the Commission's March 1, 2003 letter order.

Comment Date: May 1, 2003.

5. Portland General Electric Company

[Docket No. ER03–733–000]

Take notice that on April 10, 2003, Portland General Electric Company (PGE) tendered for filing an executed Facility Interconnection and Operation Agreement between PGE and SP Newsprint Co., (SP Newsprint). PGE states that the agreement is pursuant to PGE's Open Access Transmission Tariff (OATT), Attachment K, section 6, effective April 2, 2001.

PGE requests a waiver of the Commission's 60-day notice requirement and an effective date of May 12, 2003. PGE also states that a copy of the filing was served upon SP Newsprint and the Oregon Public Utility Commission.

Comment Date: May 1, 2003.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–732–000]

Take notice that on April 10, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to section 205 of the Federal Power Act, submitted for filing an Interconnection and Operating Agreement among Otter Tail Power Company (Transmission Side) and Otter Tail Power Company (Generation Side).

Midwest ISO states that a copy of this filing was sent to Otter Tail Power Company (Transmission Side) and Otter Tail Power Company (Generation Side).

Comment Date: May 1, 2003.

7. Westar Energy, Inc.

[Docket No. ER03–734–000]

Take notice that on April 10, 2003, Westar Energy, Inc. (Westar) submitted for filing revisions to Sheet No. 133 through Sheet No. 135 of the Open Access Transmission Tariff, FERC Electric Tariff Second Revised Volume No. 5.

Westar states that it proposes to update Schedule 4—Energy Imbalance Service to clarify how customers will be billed or credited when there is a difference between a customer's scheduled and delivered energy. Westar also states that it proposes to set a minimum price of $100 per MWh whenever a customer is billed for service under this schedule.

Westar states that a copy of the filing was served upon the Kansas Corporation Commission.

Comment Date: May 1, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9679 Filed 4–18–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–59–000, et al.]

Ely Wind Company, LLC, et al.; Electric Rate and Corporate Filings

April 11, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Ely Wind Company, LLC

[Docket No. EG03–59–000]

Take notice that on April 9, 2003, Ely Wind Company, LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations.

Applicant states that it is developing a wind-powered eligible facility with a capacity of 50 megawatts, which will be located in Ruth, Nevada.

Comment Date: May 2, 2003.

2. Southwestern Electric Power Company

[Docket No. ER02–2313–002]

Take notice that on April 9, 2003, Southwestern Electric Power Company tendered for filing a refund report in compliance with the Commission's Order dated February 25, 2003.

Comment Date: April 30, 2003.

3. American Electric Power Service Corporation

[Docket No. ER03–400–001]

Take notice that on April 7, 2003, the American Electric Power Service Corporation (AEPSC), on behalf of Ohio Power Company (an operating copany of the American Electric Power System), tendered for filing an Amended Interconnection and Operation Agreement between Ohio Power Company and DPC Northeast Power, LLC. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Third Revised Volume No. 6, effective July 31, 2001.

AEP requests an effective date of March 11, 2003. AEPSC states that a copy of the filing was served upon the Public Utilities Commission of Ohio.

Comment Date: April 28, 2003.

4. American Electric Power Service Corporation

[Docket No. ER03–403–001]

Take notice that on April 7, 2003, American Electric Power Service Corporation (AEPSC), on behalf of Indiana Michigan Power Copany (Indiana Michigan), submitted for filing an Amended Interconnection and Operation Agreement between Indiana Michigan Power Company (Indiana Michigan) and South Shore Power, L.L.C., in compliance with the Commission's March 11, 2003, Order, Conditionally Accepting Interconnection Agreement for Filing and Ordering Compliance Filing. The agreement is pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT) that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff, Third Revised Volume No. 6, effective July 31, 2001.

Indiana Michigan requests an effective date of March 14, 2003. AEPSC states that copies of the filing have been served upon the Indiana Utility Regulatory Commission and Michigan Public Service Commission.

Comment Date: April 28, 2003.

5. Public Service Company of New Mexico

[Docket No. ER03–711–000]

Take notice that on April 7, 2003, Public Service Company of New Mexico (PNM) submitted for filing several revised sheets to the PNM Open Access Transmission Tariff (FERC Electric Tariff Second Revised Volume No. 4) to incorporate changes and/or updates to reflect current operating conditions and requirements. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

PNM states that copies of the filing have been sent to all PNM Tariff customers, the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: April 28, 2003.

6. Southern Power Company

[Docket No. ER03–713–000]

Take notice that on April 7, 2003, Southern Power Company (Southern Power) tendered for filing seeking acceptance of two market-based Purchased Power Agreements by and between: (i) Georgia Power Company (Georgia Power) and Southern Power for Plant McIntosh Units 10 and 11, dated June 3, 2002 (the McIntosh-Georgia Power PPA), and (ii) Savannah Electric and Power Company (Savannah Electric) and Southern Power for Plant McIntosh Units 10 and 11, also dated June 3, 2002 (the McIntosh-Savannah PPA) (collectively referred to as the McIntosh PPAs). The Agreements provide the general terms and conditions for capacity and associated energy sales from Southern Power to Georgia Power and from Southern Power to Savannah Electric commencing June 1, 2005.

Comment Date: April 28, 2003.

7. Ameren Services Company

[Docket No. ER03–714–000]

Take notice that on April 7, 2003, Ameren Services Company (ASC) tendered for filing an executed Service Agreement for Firm Point-to-Point Transmission Service between ASC and Ameren Energy, Inc. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Ameren Energy, Inc., pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: April 28, 2003.

8. Avista Corporation

[Docket No. ER03–728–000]

Take notice that on April 9, 2003, Avista Corporation (Avista) submitted Notices of Cancellation of the following rate schedules all of which are netting agreements:

Reliant Energy Services, Inc. (formally NorAm), Rate Schedule No. 252, ConAgra Energy Services, Inc., Rate Schedule No. 253; Chelan County PUD No. 1, Rate Schedule No. 254; Salt River Project, Rate Schedule No. 256; Hafslund Energy Trading, LLC, Rate Schedule No. 258; Tractebel Energy Marketing, LLC, Rate Schedule No. 259; PG&E Trading Power, LP, Rate Schedule No. 261; Idaho Power Company, Rate Schedule No. 262; Statoil Energy Trading, Inc., Rate Schedule No. 264; Duke Energy Trading and Marketing, LLC, Rate Schedule No. 266; City of Santa Clara d/b/a Silicon Valley Power, Rate Schedule No. 273; Benton County PUD, Rate Schedule No. 274; Public Service Company of Colorado, Rate Schedule No. 279; Puget Sound Energy, Inc., Rate Schedule No. 283; PPL Montana, LLC, Rate Schedule No. 284; MIECO, Inc., Rate Schedule No. 285; TransAlta Energy Marketing (US) Inc., Rate Schedule No. 291; Sacramento Municipal Utility District, Rate Schedule No. 292.

Avista seeks all waivers necessary to allow the cancellations to be effective as of March 31, 2003. Avista also states that copies of the filing have been provided to all of the rate schedule Counterparties.

Comment Date: April 30, 2003.

9. Avista Corporation

[Docket No. ER03–729–000]

Take notice that on April 9, 2003, Avista Corporation (Avista) submitted Notices of Cancellation of the following rate schedules all of which are netting agreements: Coral Energy, LLP, Rate Schedule No. 269; American Electric Power Rate Schedule No. 270 Service Corporation, British Columbia Power Rate Schedule No. 280; Exchange Corporation (Powerex), IDACORP Energy, LP, Rate Schedule No. 289.

Avista seeks all waivers necessary to allow the cancellations to be effective as of April 6, 2003. Avista also states that copies of the filing have been provided to all of the rate schedule Counterparties.

Comment Date: April 30, 2003.

10. Southern Company Services, Inc.

[Docket No.ER03–730–000]

Take notice that on April 9, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed one transmission service agreement under the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5 (Tariff)). Specifically, the agreement is a long-term firm point-to-point transmission service agreement for service with Southern Company Generation and Energy Marketing (regarding OASIS Request No. 322721) (Service Agreement No. 462).

Comment Date: April 30, 2003.

11. PPL Electric Utilities Corporation

[Docket No. ER03–731–000]

Take notice that on April 9, 2003, PPL Electric Utilities Corporation (PPL Electric) filed a Notice of Cancellation of PPL Electric's FERC Electric Tariff Original Volume No. 1, Original Sheets Nos. 1–34 (Tariff) and all service agreements thereunder. PPL Electric requests that the termination be effective on June 7, 2003.

PPL Electric states that Notice of Cancellation has been served on each of the parties to the service agreements under the Tariff.

Comment Date: April 30, 2003.

12. International Transmission Company

[Docket No. OA03–3–000]

Take notice that on April 4, 2003, International Transmission Company tendered for filing with the Federal Energy Regulatory Commission (Commission) its implementation procedures for the standards of conduct pursuant to section 37.4(c) of the Commission's regulations, 18 CFR 37.4(c).

Comment Date: May 6, 2003.

13. Mirant Las Vegas, LLC; Duke Energy Moapa, LLC; GenWest, LLC; Las Vegas Cogeneration II, LLC; Reliant Energy Bighorn, LLC

[Docket No. TX03–1–001]

Take notice that on April 7, 2003, Mirant Las Vegas, LLC, Duke Energy Moapa, LLC, GenWest, LLC, Las Vegas Cogeneration II, LLC and Reliant Energy Bighorn, LLC (collectively, Applicants) tendered for filing a supplement to their application for an order directing the establishment of physical interconnection of facilities pursuant to sections 210 and 212 of the Federal Power Act, 16 U.S.C. 824(i) and (k), and rules 204 and 206 of the Commission's rules of practice and procedure, 18 CFR 385.204 and 385.206 (Supplemental Application).

Applicants request that the Commission issue an order directing the Los Angeles Department of Water and Power (LADWP), Nevada Power Company, the Salt River Project Agricultural Improvement and Power District, and the United States Department of the Interior, Bureau of Reclamation, as co-owners of the McCullough Substation located in southern Nevada, to establish an interconnection, on reasonable terms and conditions, between their transmission systems and the Applicants via a physical connection with the Nevada Power transmission system at the McCullough Substation, and to provide Applicants with transmission credits, or other appropriate compensation, associated with upgrades to the McCullough Substation. The Applicants also request that the Commission consolidate the Application with proceedings in Docket Nos. ER02–1741–000 and ER02–1742–000.

Comment Date: May 1, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9680 Filed 4–18–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7485–9]

Mobile Source Outreach Assistance Competition Fiscal Years 2003/2004: Solicitation Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Today's notice announces the availability of funding and solicits proposals from State, local, and tribal air pollution control agencies for mobile source-related public education and outreach projects. The funding will be allocated by EPA's Office of Transportation and Air Quality (OTAQ) to the EPA regions for award through the competitive process described in this notice. In order for EPA to streamline its internal processing of selected proposals, this competition will select proposals for both Fiscal Year 2003 and Fiscal Year 2004.

DATES: The deadline for Final Proposals is Monday, July 7, 2003. To allow for efficient management of the competitive process, OTAQ is requesting agencies to submit an informal "Intent to Apply" by Monday, May 26, 2003. (Instructions for submitting final proposals and informal "Intents to Apply" are found in section X. below.)

ADDRESSES: Addresses for submitting final proposals can be found in section X. below.

FOR FURTHER INFORMATION CONTACT: Susan Bullard, Director of Outreach, USEPA Office of Transportation and Air Quality (OTAQ), 1200 Pennsylvania Avenue, NW., (mail code 6406J), Washington, DC, 20460. Telephone (202) 564–9856; Fax (202) 565–2085. Or e-mail *bullard.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

Contents by Section

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II. Eligible Organizations
III. Funding Issues
IV. Program Emphasis
V. Selection Criteria
VI. Proposal Evaluation and Selection
VII. Proposals
VIII. OTAQ/Section 105 Funded Outreach Projects
IX. Other Items of Interest
X. How to Apply
XI. EPA Regional Section 105 Grant Coordinators
XII. OTAQ Program Contact

This solicitation can also be found on the following EPA Web pages: *www.epa.gov/otaq/rfp* or *www.epa.gov/air/grants_funding.html*.

Deadline for informal "Intent to Apply"—Monday, May 26, 2003.
Deadline for Receipt of Final Proposal—Monday, July 7, 2003.

Mobile Source Outreach Assistance: Competition 2003/2004: Request for Proposals

Section I. Overview and Deadlines

A. *Overview:* Over the past six years, EPA's Office of Transportation and Air Quality (OTAQ) and EPA's Regional offices have entered into agreements and established partnerships with a number of organizations to (1) provide national support for community-based mobile source public education efforts supporting implementation of the Clean Air Act and the Transportation Equity Act for the 21st Century, (2) encourage responsible choices for organizational and individual actions through public education. OTAQ/Section 105-Funded Outreach Projects are listed on the OTAQ Web site *www.epa.gov/otaq/rfp.htm* and emphasize transportation choices to reduce vehicle miles traveled; education of vehicle owners and drivers of the future; particulate matter related to mobile sources; alternative fuels; car care and the role of the automotive technician; outreach to ethnic populations; environmental justice; and, related projects such as ozone mapping and small engines. EPA's Office of Transportation and Air Quality receives set-aside funds from the State and Tribal Assistance Grants (STAG) account to provide support to community-based mobile source-related outreach projects. This notice solicits proposals for public education and outreach projects which directly support State, local and tribal air management organizations in their efforts to improve air quality from mobile sources. Proposals will be accepted from State, local, and tribal air management agencies which are identified as such under section 302(b) of the Clean Air Act. (*See* definition in section II below.) Interested persons can also obtain copies of this solicitation at no charge by accessing the OTAQ Web site at *www.epa.gov/OTAQ/rfp.htm* or *www.epa.gov/air/grants_funding.html*.

B. What are the deadlines for this competition? In order to efficiently manage the selection process, the Office of Transportation and Air Quality requests that an informal "Intent to Apply" be submitted by Monday, May 26, 2003. (Please provide project title or subject and e-mail address for project contact.) An "Intent to Apply" simply states in the form of e-mail, phone, or fax that your organization intends to submit a proposal to be received by the deadline. Submitting an "Intent to Apply" does not commit an organization to submit a final proposal. Those not submitting an "Intent to Apply" may still apply by the deadline. *The deadline for final proposals (original and six copies) is midnight on Monday, July 7, 2003.* The Office of Transportation and Air Quality intends to complete the Evaluation/Selection process in September 2003.

Section II. Eligible Organizations

Who is eligible to submit proposals? According to funding policies associated with the State and Tribal Assistance Grants regulations (STAG funds), proposals can be accepted only from air pollution control agencies as defined under section 302(b) of the Clean Air Act, (for projects to be undertaken which will have replicability to other communities nationally). OTAQ has no discretion over this requirement. Section 302(b) of the Clean Air Act defines "air pollution control agencies" as any of the following:

(1) A single State agency designated by the Governor of that State as the single air pollution control agency for purposes of the Act.

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(3) A city, county, or other local government health authority, or, in the case of any city, county or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution.

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(5) An agency of an Indian tribe.

As Project Managers for these cooperative agreements, EPA's Regional Offices are responsible for confirming that a submitting agency is eligible under the legal definition. Interested air management, non-governmental or related organizations which are *not* air pollution control agencies as defined under section 302(b) of the Clean Air Act are encouraged to create partnerships with eligible organizations. In that situation, the eligible organization would be required to submit the final proposal and serve as the funding recipient if selected.

Section III. Funding Issues

A. What is the amount of available funding? A minimum of $550K. Total funding available will reflect STAG set-aside funds for both FY03 ($550K) and FY 04 (amount to be determined prior to competition selection).

B. How will funds be allocated? The competition process will be managed by OTAQ and selected cooperative agreements will be awarded and managed by EPA's Regional offices and funded through section 105 authority (State and local air pollution control agencies). OTAQ has no discretion over this requirement.

C. Is there a maximum amount for award? Funding from this competition may not exceed $100,000 for the entire project period of the selected proposal. (This amount does *not* include any match which may be required or generated by the eligible organization.)

D. Are matching funds required? Possibly. The Clean Air Act's section 105 grant program contains a cost-sharing requirement for a minimum 40 percent match for the recipient's overall approved section 105 work program costs. If an applicant to this competition is selected to receive an outreach grant, the Federal funds to be awarded should be added to the Federal share of the applicant's existing section 105 grant. If addition of these funds increases the Federal percentage of the new overall section 105 grant amount to greater than 60 percent, then the applicant, in order to receive the outreach assistance, must increase its non-Federal contribution in order to restore the required 40 percent non-Federal minimum contribution. If addition of the outreach funds does not increase the Federal share above 60 percent, then an additional non-Federal match is not required. An air pollution control agency which submits a proposal must include a statement in their proposal indicating that the match could and would be met if their proposal is selected and such a match is required. Organizations unable to meet a required match must be considered ineligible. Organizations unclear as to their matching status are recommended to contact their EPA Regional Grant Coordinator (*see* section XII below).

E. Can funding be used to acquire services or fund partnerships? Yes—subgrants and other procurement services are allowed, provided the recipient follows applicable procurement and sub-grant procedures. Please note that EPA will not be a party to these transactions. Approval of a funding proposal does not relieve recipients of their obligations to compete service contracts, conduct cost and price analyses, and use subgrants only for financial assistance purposes in accordance with subpart B, section .210 of OMB Circular A–133. Please indicate any intent to enter into such agreements in the proposal.

Section IV. Program Emphasis .

This program is designed to provide seed money to initiate new projects or advance existing projects that are new in some way (*e.g.* new audiences, new locations, new approaches) rather than grow ongoing projects.

Program Emphasis

—Voluntary measures.
—Particulate matter projects related to mobile sources.
—Commuter choice/best workplaces for commuters initiatives.
—Transportation choices.
—Environmental justice.
—Car care (testing, repair, maintenance).
—On Board Diagnostics (OBD).
—Alternative fuels.
—Involving youth in mobile source issues/environmental education.
—Other mobile source issues (including but not limited to: diesel, heavy duty engines; nonroad engines; air quality index).

Section V. Selection Criteria

A. Primary Project Criteria

—Clearly addresses environmental goals of improved air quality from mobile sources.
—Indicates some level of funding for replication and transfer to other communities.
—Links air quality, public health and calls to action.
—Demonstrates effectiveness of delivery mechanism to reach targeted audience.
—Exhibits clearly-stated and appropriate levels of funding.
—Highlights effectiveness of collaborative activities and partnerships with other stakeholders needed to effectively develop or implement the project.
—Demonstrates national or regional applicability/transferability.
—Indicates how success will be measured and benefits will be demonstrated.
—Reflects potential for sustainability.

B. Other Factors to be Considered

—Innovation.
—Integration with existing/ongoing programs.
—Willingness to coordinate with other OTAQ-funded outreach activities.
—Demonstrated capability of candidate organization to accomplish the goals presented.

C. Proposal Presentation Criteria

—Fully addresses each of the components outlined in section VII (A).
—Action-oriented.
—Clearly-states goals and objectives.
—Reflects reasonable time frames and budget.

Section VI. Proposal Evaluation and Selection

The Evaluation Team is chosen to represent a full range of mobile source and EPA program expertise. In addition, each EPA Regional office is given the opportunity to review those proposals generated by eligible organizations within that Region. The Evaluation Team will base its evaluation solely on the criteria referenced in this notice. Completed evaluations will be forwarded for further consideration to a Selection Committee representing OTAQ senior managers and Regional representatives who are responsible for final selection. To ensure equity and objectivity throughout the process, the OTAQ Program Contact (listed below) and staff who facilitate the process and participate in pre-application assistance, do not serve as members of either the Evaluation Team or the Selection Committee.

Section VII. Proposals

A. What must be included in the proposal? Proposals should be approximately 5–7 pages in length, not including the cover letter (*please do not include binders or spiral binding*) and must include the following. (It is recommended that the proposal conform to the outline below to ensure that all components are addressed.) *A copy of the cover letter should be attached to each copy to be submitted.*

(1) Project contact(s) (*must provide name, organization, phone, fax, and e-mail*) An e-mail address is essential in order to ensure OTAQ's ability to quickly reach all applicants with important and timely information.

(2) Clear and accurate statement of amount being requested. (No project will receive funding from this competition in an amount to exceed $100,000.)

(3) Brief statement that the candidate organization is defined as an air pollution control agency under section 302(b) of the Clean Air Act.

(4) Statement that any required match will be met.

(5) Statement of project background/objectives highlighting relationship to improving air quality from mobile sources.

(6) Detailed project summary—description of specific actions to be undertaken.

(7) Projected time frame for project from initiation through completion.

(8) Associated deliverables to be developed and funded through the agreement.

(9) Explanation of project benefits.

(10) Detailed explanation of how project outcomes will be designed and funded for replication in other communities.

(11) Description of collaborative activities and partnerships with other stakeholders.

(12) Description of measures of program/project success.

(13) Detailed budget estimate. (Clearly explain how funds will be used, including estimated cost for each primary task. It is helpful if the requested amount is presented in round numbers.) Budget estimates must reflect funding for participation in the annual Communities in Motion Workshop.

B. Will 2-year proposals be considered? Yes. If a proposal with a 2-year project period is submitted, OTAQ requires that the budget and cost estimate be designed to indicate what will be accomplished in each of the first and second years. The total for the funding from this competition is not to exceed a total of $100,000, even if the project will be undertaken over a 2-year period.

C. May an eligible organization submit more than one proposal? An organization may submit more than one proposal *only if* the proposals are for different projects.

D. May an eligible organization resubmit a proposal which was previously submitted to the Mobile Source Outreach Assistance Competition, but was not selected? Yes. The proposals received by OTAQ in previous competitions were generally of very high quality. Clearly, all proposals of merit could not be selected due to limited resources available.

E. May an eligible organization submit a proposal for this fiscal year, even if it were previously awarded funding under this program? Yes. Applicants awarded funding in previous competitions may submit new proposals to fund a different project. This program is intended to provide seed money to initiate new projects or advance existing projects that are new in some way (*e.g.*, new audiences, new locations, new approaches).

F. Does this funding expire? No. State and Tribal Assistance Grants (STAG) for environmental programs remain available until expended ("no-year money").

G. Ineligible proposals. Proposals will be determined to be ineligible if:

(1) The candidate organization is not currently defined as an air pollution control agency under section 302(b) of the Clean Air Act; (2) a required match could not be met; (3) the proposal is incomplete (proposals must address each and every component outlined in section VII (N); or (4) the proposal is received after the deadline.

Section VIII. OTAQ/Section 105 Funded Outreach Projects

Since this competition is designed to fund new projects (rather than duplicating or growing existing programs), potential candidate organizations are recommended to visit the OTAQ web site to identify representative projects already being funded. The item, entitled "OTAQ/Section 105 Funded Outreach Projects," can be found at *www.epa.gov/otaq/*. Click on "Recent Additions" to find a brief sketch of representative projects funded to date through the Office of Transportation and Air Quality, either with section 105 funding (indicated by year of funding) or projects that are intended to be national in scope, supported by OTAQ program funding (indicated by an asterisk "*").

Note: Some Web sites listed by funded organizations provide helpful information on a variety of air quality efforts being undertaken by the funded organization.

Section IX. Other Items of Interest

Is there other information I should have before applying? Yes.

—Submission of an Intent to Apply or a final proposal does not guarantee funding.
—Supplementary information, including letters of recommendation, will be retained in the files, but will not be reviewed by the evaluators.
—Only those organizations *selected* will be required to submit a complete "Application for Federal Assistance and Budget Information" (SF 424 and SF 424A) to the appropriate EPA Regional office.

Section X. How To Apply

How do I apply?

Informal "Intents to Apply" may take the form of e-mail, fax or phone call to the EPA Program Contact listed below. Include organization, contact, phone, e-mail and project title/subject (if known at time of Intent). *Please submit informal "Intents To Apply" by Monday, May 26, 2003.*

To be considered eligible, completed original proposals must be date-stamped (postmarked or dated by overnight express) on or before midnight, Monday, July 7, 2003. (Original + 6, including cover letters on copies—no binders, spiral binding or supplemental materials please!)

Please pay special attention to the distinction in addresses for regular mail and overnight or in-person delivery.

Via regular mail to: Susan Bullard, Director of Outreach, U.S. EPA Office of Transportation and Air Quality, 1200 Pennsylvania Avenue, NW., Mail Code 6406J, Washington, DC 20460.

(Please note that, in the face of circumstances beyond the agency's control in Washington, DC, it may take significantly longer than expected for regular mail to reach the Office of Transportation and Air Quality.)

Express mail which is to be delivered in-person (FedEx, UPS, Airborne, etc.) must leave the sender and be dated by no later than midnight on Monday, July 7, 2003, and should be delivered to the following address: Susan Bullard, Director of Outreach, U.S. EPA Office of Transportation and Air Quality, 501 Third Street, NW., Room 5304D, Washington, DC 20001, (202) 564–9856, (202) 564–8991 (backup number for expressed proposals only).

Note: Proposals e-mailed or faxed *will serve only as a placeholder,* and *must* be followed by a hard copy original and 6 copies postmarked/date stamped no later than the deadline. If no original is received which meets the deadline, the proposal will not be considered.

Deadline for Completed Final Proposals

Date stamped (postmarked or express mail dated) no later than midnight on Monday, July 7, 2003.

SECTION XI. EPA REGIONAL SECTION 105 GRANT COORDINATORS

Region 1 (Boston)	Paul Bryan	617–918–1673
Region 2 (New York)	Marlon Gonzales	212–637–3769
Region 3 (Philadelphia)	Russ Bowen	215–814–2057
Region 4 (Atlanta)	Todd Rinck	404–562–9062
Region 5 (Chicago)	Robert Miller	312–353–0396
	Diane Nelson	312–886–2929
Region 6 (Dallas)	Rexene Hanes	214–665–2726
Region 7 (Kansas City)	Mark Smith	913–551–7876
Region 8 (Denver)	Marisa Mcphilliamy	303–312–6965
Region 9 (San Francisco)	Valerie Cooper	415–947–4103
Region 10 (Seattle)	David Debruyn	206–553–4218

Section XII. OTAQ Program Contact

Susan Bullard, Director of Outreach, EPA Office of Transportation and Air Quality (OTAQ), 1200 Pennsylvania Avenue, NW., (Mail Code 6406J), Washington, DC 20460, (Phone) 202/564–9856, (Fax) 202/565–2085, *bullard.susan@epa.gov.*

Margo Tsirigotis Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 03–9744 Filed 4–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0119; FRL–7301–6]

Cyprodinil; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0119, must be received on or before May 21, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing and pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *EPA Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0119. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only on printed paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0119. The system is an "anonymous access" system, which means EPA will not

know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2003–0119. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0119.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID number OPP–2003–0119. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 15, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions was prepared by Interregional Research Project Number (IR-4) and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interrgional Research Project Number (IR-4)

Syngenta Crop Protection, Inc.

PP 2E6447, 2E6461, 2E6485, 3E6529, and 3E6530

EPA has received pesticide petitions (2E6447, 2E6461, 2E6485, 3E6529, 3E6530) from Interregional Research Project Number (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180, by establishing tolerances for residues of cyprodinil in or on the following raw agricultural commodities:

1. PP 2E6447 proposes the establishment of a tolerance for lychee, longan, rambutan, pulasan, and Spanish lime at 2.0 parts per million (ppm).

2. PP 2E6461 proposes the establishment of a tolerance for carrot at 0.5 ppm.

3. PP 2E6485 proposes the establishment of a tolerance for Brassica, head and stem subgroup 5A at 2.0 ppm, Brassica, leafy greens subgroup 5B at 10.0 ppm, and turnip, greens at 10.0 ppm.

4. PP 3E6529 proposes the establishment of a tolerance for herb subgroup 19A at 10 ppm.

5. PP 2E6530 proposes the establishment of a tolerance for almond, hulls at 8.0 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of the petitions prepared by Syngenta Crop Protection, Inc., Greensboro, NC 27409,

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cyprodinil is adequately understood for the purpose of the proposed tolerances.

2. *Analytical method.* Syngenta has developed and validated analytical methodology for enforcement purposes. This method (Syngenta Crop Protection Method AG–631B) has passed an Agency petition method validation for several commodities and is currently the enforcement method for cyprodinil. An extensive data base of method validation data using this method on various crop commodities is available.

3. *Magnitude of residues.* Complete residue data to support the requested tolerances for almond, hulls, Brassica, head and stem (Subgroup 5A), Brassica, leafy greens (Subgroup 5B), turnip, greens, herbs (Subgroup 19A), and lychee, longan, rambutan, pulasan, and Spanish lime have been submitted. The requested tolerances are adequately supported.

B. Toxicological Profile

An assessment of toxic effects caused by cyprodinil is discussed in Unit III.A. and Unit III.B. of the **Federal Register** dated June 22, 2001 (66 FR 33478) (FRL–6778–7).

1. *Animal metabolism.* The metabolism of cyprodinil in rats is adequately understood.

2. *Metabolite toxicology.* The residues of concern for tolerance setting purposes is the parent compound. Based on structural similarities to genotoxic nucleotide analogs, there was concern that the pryimidine metabolites (CGA–249287, NOA–422054) may be more toxic than the parent compound. However, EPA's review indicates similar results in acute oral and mutagenicity studies with both the parent compound and the CGA–249287 metabolite. EPA concluded that the toxicity of the CGA–249287 and NOA–422054 metabolites is no greater than that of the parent, conditional on submission and review of confirmatory data of an acute oral toxicity study and bacterial reverse mutation assay for the NOA–422054 metabolite. Although, the metabolites CGA–232449 and CGA–263208 were determined to be of potential toxicological concern, there are not expected to be more toxic than cyprodinil per se.

3. *Endocrine disruption.* Cyprodinil does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. Developmental toxicity studies in rats and rabbits and a reproduction study in rats gave no indication that cyprodinil might have any effects on endocrine function related to development and reproduction. The chronic studies also showed no evidence of a long-term effect related to the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure.* A Tier III acute and chronic dietary exposure evaluation was made using the Dietary Exposure Evaluation Model (DEEM™), version 7.76 from exponent. All consumption data for these assessments were taken from the USDA's Continuing Survey of Food Intake by Individuals (CSFII) with the 1994–96 consumption data base and the Supplemental CSFII children's survey (1998) consumption data base. These exposure assessments included all registered uses and pending uses on watercress, bushberries, caneberries, juneberries, ligonberries, pistachios, and salal.

i. *Food—a. Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. EPA has not conducted an acute dietary risk assessment since no toxicological endpoint of concern was identified during the review of the available data.

b. *Chronic exposure.* Percent of crop treated values were estimated based upon economic, pest and competitive pressures. The values used in these assessments were: (Almonds, pome fruits, stone fruits and grapes), 100%; onions 9%; strawberries 42%; watercress, 95%; berries, 13%; pistachios, herbs, 80%; crop group 5A and 5B, carrots, turnip, greens, lychee, longan and Spanish lime, 10%.

ii. *Drinking water.* Estimated Environmental Concentrations (EECs) of cyprodinil in drinking water were determined by EPA. EPA groundwater model Screening Concentration in Groundwater (SCI-GROW) was used to determine acute and chronic estimated environmental concentrations in ground water and the Agency's surface water model, EPA's pesticide root zone model/exposure analysis modeling system (PRZM/EXAMS) was used to determine acute and chronic EECs estimated environmental concentrations in surface water. Based on the model outputs, the EEC cyprodinil are 0.04 parts per billion (ppb) for acute and chronic exposure to ground water and 32 ppb and 6 ppb for acute and chronic exposure, respectively, to surface water.

2. *Non-dietary exposure.* There is a potential residential post-application exposure to adults and children entering residential areas treated with cyprodinil. Since the Agency did not select a short-term endpoint for dermal exposure, only intermediate dermal exposures were considered. Based on the residential use pattern, no long-term post-application residential exposure is expected.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." EPA does not have, at this time, available data to determine whether cyprodinil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. For the purposes of this tolerance action, EPA has not assumed that cyprodinil has a common mechanism of toxicity with other substances.

E. Safety Determination

The chronic dietary exposure analysis (food only) showed that exposure from all established and proposed cyprodinil uses would be 7.48% of the chronic reference dose (cRfD) for the most sensitive subpopulation, children 1–2 years old. EPA has determined that reliable data support using the standard margin of exposure (MOE) and uncertainty factor (100 for combined interspecies and intraspecies variability) for cyprodinil and that an additional safety factor of 10 is not necessary to be protective of infants and children.

Acute Drinking Water Levels of Comparison (DWLOC) were calculated based on an acute populated adjusted dose (aPAD) of 1.5 milligrams/kilogram/day. For the acute assessment, the females (13–50 years) subpopulation generated an acute DWLOC of approximately 44,600 ppb. The acute EEC of 32 ppb is considerably less than 44,600 ppb. For the chronic assessment, the children 1–2 years old subpopulation generated the lowest chronic DWLOC of approximately 280 ppb. Thus, the chronic DWLOC of 280 ppb is considerably higher than the chronic EEC of 6 ppb.

Syngenta has considered the potential aggregate exposure from food, water and non-occupational exposure routes and concluded that aggregate exposure is not expected to exceed 100% of the chronic reference dose and that there is a reasonable certainty that no harm will result to infants and children from the aggregate exposure to cyprodinil.

F. International Tolerances

There are no Codex maximum residue levels established for cyprodinil.

[FR Doc. 03–9750 Filed 4–18–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0019; FRL–7304–2]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 11, 2003 to March 28, 2003, consists of the PMNs and the TMEs both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2003–0019 and the specific PMN number or TME number, must be received on or before May 21, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0019. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2003–0019. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov,* Attention: Docket ID Number OPPT–2003–0019 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0019 and PMN number or TME number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why Is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 11, 2003 to March 28, 2003, consists of the PMNs and the TMEs both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs and TMEs

This status report identifies the PMNs and TMEs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 112 PREMANUFACTURE NOTICES RECEIVED FROM: 02/11/03 TO 03/28/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0335	02/11/03	05/12/03	Solutia	(S) Resin for industrial ultraviolet coatings	(G) Acrylate and urethane modified polyether
P–03–0340	02/13/03	05/14/03	Crompton Corporation	(G) Catalyst	(G) Transition metal complex
P–03–0341	02/13/03	05/14/03	CBI	(G) Base resin for ultraviolet light and electron beam cuarable formulations	(G) Functional alcohol, polymer with ipdi, 2-hydroxyethyl acrylate-blocked
P–03–0342	02/13/03	05/14/03	CBI	(G) Base resin for ultraviolet light and electron beam curable formulations	(G) Functional alcohol, polymer with tdi, 2-hydroxymethyl acrylate-blocked
P–03–0343	02/13/03	05/14/03	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer
P–03–0344	02/13/03	05/14/03	CBI	(G) Open, non-dispersive use	(G) Acrylic polymer
P–03–0345	02/13/03	05/14/03	CBI	(G) Petroleum prouct additive	(G) C_4 by-products fraction
P–03–0346	02/13/03	05/14/03	CBI	(G) Petroleum prouct additive	(G) $C_4$4 by-products fraction
P–03–0347	02/13/03	05/14/03	CBI	(G) Petroleum product additive	(G) $C_4$4 by-products fraction
P–03–0348	02/14/03	05/15/03	CBI	(G) Additive for polymer formulations	(G) Condensation polymer of anhydride and polyol
P–03–0349	02/14/03	05/15/03	CBI	(G) Additive for polymer formulations	(G) Condensation polymer of anhydride and polyol
P–03–0350	02/14/03	05/15/03	CBI	(G) Additive for polymer formulations	(G) Condensation polymer of anhydride and polyol
P–03–0351	02/14/03	05/15/03	CBI	(G) Additive for polymer formulations	(G) Condensation polymer of anhydride and polyol
P–03–0352	02/14/03	05/15/03	CBI	(G) Additive for polymer formulations	(G) Condensation polymer of anhydride and polyol
P–03–0353	02/14/03	05/15/03	CBI	(G) Additive for polymer formulations	(G) Condensation polymer of anhydride and polyol
P–03–0354	02/13/03	05/14/03	CBI	(G) Open non-dispersive	(G) Phenylaldol
P–03–0355	02/14/03	05/15/03	CBI	(G) Lubricant additive	(G) Fatty acid triester
P–03–0356	02/21/03	05/22/03	Dow Agro Sciences	(G) Process intermediate	(G) Halogenated substituted mercaptophenyl alkyl ether
P–03–0357	02/19/03	05/20/03	CBI	(G) Polymer catalyst (contained use)	(G) Transition metal complex
P–03–0358	02/19/03	05/20/03	Aceto Corporation	(S) Photopolymerisation initiator for for free radical ultraviolet radiation uring sytems; photopolymerisation sensitizer for cationic ultraviolet radiation-curing systems	(S) 1-Chloro-4-propoxy thioxanthone
P–03–0359	02/21/03	05/22/03	UCB Chemicals Corporation	(S) Resin for industrial ultraviolet coatings	(G) Modified epoxy acrylate
P–03–0360	02/21/03	05/22/03	CBI	(S) Clear coating for wood (diy); industrial wood coating	(G) Polyester polyurethane dispersion
P–03–0361	02/21/03	05/22/03	International Specialty Products	(S) Component of coatings for digital printing paper	(S) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with n-[3-(dimethylamino)propyl]-2-methyl-2-propenamide and 1-ethenylhexahydro-2h-azepin-2-one, 2,2′-azobis[2-methylbutanenitrile]-initiated
P–03–0362	02/21/03	05/22/03	Cytec Industries - Toxicology and Product Regulatory Compliance Department	(G) Sulfide mineral processing reagent	(G) Thionocarbamate derivative or modified thionocarbamate
P–03–0363	02/21/03	05/22/03	Dow Agro Sciences	(G) Process intermediate	(G) Substituted aminotriazolopyrimidine
P–03–0364	02/21/03	05/22/03	Dow Agro Sciences	(G) Process intermediate	(G) Halogenated substituted mercaptophenol
P–03–0365	02/21/03	05/22/03	Dow Agro Sciences	(G) Process intermediate	(G) Halogenated substituted benzenesulfonyl chloride
P–03–0366	02/21/03	05/22/03	BASF Corporation	(S) Gasoline additive	(G) Alkoxylated aliphatic alcohol
P–03–0367	02/21/03	05/22/03	CBI	(G) Oxidation catalyst	(G) Amino ketal
P–03–0368	02/25/03	05/26/03	CBI	(S) Paper colorant	(G) Copper phthalocyanine complex

I. 112 PREMANUFACTURE NOTICES RECEIVED FROM: 02/11/03 TO 03/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0369	02/24/03	05/25/03	WSP Chemicals And Technology, LLC	(S) Oilfield down hole cement fluid loss additive	(S) 1-propanesulfonic acid, 2-methyl-2-[(1-Oxo-2-propenyl)amino]-, monosodium salt, polymer with *N,N*-dimethyl-2-propenamide and 2-propenamide
P–03–0370	02/24/03	05/25/03	CBI	(G) PH Control agent in textile applications	(G) Polyol ester
P–03–0371	02/26/03	05/27/03	CBI	(G) Dyestuff for ink	(G) Substituted naphthalenedisulfonic acid azo dye, metal salt
P–03–0372	02/27/03	05/28/03	Crompton Corporation	(G) Site limited raw material	(G) Alkyl hydroperoxide
P–03–0373	02/24/03	05/25/03	CBI	(G) Component of a coating	(G) Poluyurea isocyanate prepolymer
P–03–0374	02/24/03	05/25/03	CBI	(G) Component of a coating	(G) Polyurea isocyanate prepolymer
P–03–0375	02/13/03	05/14/03	CBI	(G) Lubricant additive	(G) Substituted imidoalkylcarboxylic acid
P–03–0376	02/13/03	05/14/03	CBI	(G) Lubricant additive	(G) Substituted imidoalkylcarboxylic acid
P–03–0377	02/13/03	05/14/03	CBI	(G) Lubricant additive	(G) Substituted imidoalkylcarboxylic acid
P–03–0378	02/14/03	05/15/03	CBI	(S) Polyurethane adhesive	(G) Polurethane
P–03–0379	02/27/03	05/28/03	Johnson Polymer	(G) Polymeric coating vehicle	(G) Styrene acrylic copolymer
P–03–0380	02/27/03	05/28/03	Johnson Polymer	(G) Polymeric coating vehicle	(G) Styrene acrylic copolymer
P–03–0381	02/27/03	05/28/03	Johnson polymer	(G) Polymeric coating vehicle	(G) Styrene acrylic copolymer
P–03–0382	02/27/03	05/28/03	Johnson Polymer	(G) Polymeric coating vehicle	(G) Styrene acrylic copolymer
P–03–0383	02/27/03	05/28/03	Johnson Polymer	(G) Polymeric coating vehicle	(G) Styrene acrylic copolymer
P–03–0384	02/27/03	05/28/03	Johnson Polymer	(G) Polymeric coating vehicle	(G) Styrene acrylic copolymer
P–03–0385	03/04/03	06/02/03	Eastman Kodak Company	(G) Chemical intermediate, destructive use	(G) Cyano substituted phenyl sulfonamide
P–03–0386	03/04/03	06/02/03	CBI	(G) Siloxane resin crosslinker additive	(G) Organofunctional polysiloxane
P–03–0387	03/04/03	06/02/03	CBI	(G) Automotive coating	(G) Phthalic polyester
P–03–0388	03/04/03	06/02/03	CBI	(G) Paint and coating additive	(G) Fatty acid amides
P–03–0389	03/04/03	06/02/03	BASF Corporation	(G) Internal mold release	(G) Sorbitan ester with polyisobutenyl carbonic acids and fatty acid esters
P–03–0390	03/04/03	06/02/03	CBI	(S) Spray applied automotive coatings	(G) Amine salt of polyurethane resin
P–03–0391	03/04/03	06/02/03	CBI	(S) Spray applied automotive coatings	(G) Amine salt of polyurethane resin
P–03–0392	03/06/03	06/04/03	CBI	(S) Luminiscent pigment for security printing inks	(G) Anthranilic acid derivative
P–03–0393	03/06/03	06/04/03	UCB Chemicals Corporation	(S) Hardener for water-thinnable paints	(G) Aliphatic polyamine
P–03–0394	03/07/03	06/05/03	CBI	(S) Polymer stabilizer	(S) 1,3,2-dioxaphosphorinane, 2-[2,4-bis(1,1-dimethylethyl)phenoxy]-5-butyl-5-ethyl-
P–03–0395	03/07/03	06/05/03	BASF Corporation	(S) Ultraviolet absorber in thermoplastics	(G) Steric hindered amine, oligomer
P–03–0396	03/07/03	06/05/03	CBI	(G) Dyestuff for ink	(G) Metal complexes of substituted benensulfulfonic acid derivatives
P–03–0397	03/10/03	06/08/03	CBI	(G) Open, non-dispersive (intermediate)	(G) Sulfonyl chloride
P–03–0398	03/10/03	06/08/03	CBI	(G) Material used in fabricating electronic articles; destructive use	(G) Modified hydrocarbylpolysilicate
P–03–0399	03/10/03	06/08/03	CBI	(G) Open, non-dispersive (intermediate)	(G) Dimethoxy pyrimidine
P–03–0400	03/10/03	06/08/03	CBI	(G) Raw material used in the manufacture of products sold for semiconductor applications	(G) Substituted anthracene ester
P–03–0401	03/10/03	06/08/03	Syntroleum Corporation	(S) Synthetic diesel fuel	(S) Fuels, diesel, C_8–$_{28}$-alkane branched and linear
P–03–0402	03/10/03	06/08/03	Syntroleum Corporation	(S) Synthetic diesel fuel	(S) Naphtha, gasoline-range, C_4–$_9$-alkane branched and linear
P–03–0403	03/10/03	06/08/03	Syntroleum Corporation	(S) Fischer-tropsch naphtha	(S) Fuels, jet aircraft, C_7–C_{18}-alkane branched and linear
P–03–0404	03/10/03	06/08/03	Syntroleum Corporation	(S) Fischer-tropsch naphtha	(S) Alkanes, C_5–$_{20}$-branched and linear
P–03–0405	03/11/03	06/09/03	CBI	(S) Polyurethane coating	(G) Aqueous polyurethane dispersion
P–03–0406	03/11/03	06/09/03	CBI	(G) Dyestuff for ink	(G) Potassium sodium salt of substituted thiazolesulfonic acid
P–03–0407	03/11/03	06/09/03	CBI	(S) Polyurethane intermediate	(G) Urethane diol
P–03–0408	03/11/03	06/09/03	CBI	(G) Destructive use	(G) Substituted fulvene

I. 112 PREMANUFACTURE NOTICES RECEIVED FROM: 02/11/03 TO 03/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0409	03/12/03	06/10/03	Color Resources International, Co.	(S) Dye for paper cellulosic fiber application used by paper mills only as sold by Crompton and Knowles (sensient) in U.S.A.	(G) Trisodium salt azo direct dye
P–03–0410	03/14/03	06/12/03	Johnson Polymer	(G) Polymeric coating vehicle	(G) Styrene acrylic copolymer
P–03–0411	03/14/03	06/12/03	Johnson Polymer	(G) Polymeric coating vehicle	(G) Styrene acrylic copolymer
P–03–0412	03/14/03	06/12/03	CBI	(G) Photoresist additive	(G) Halogenated acrylic copolymer
P–03–0413	03/14/03	06/12/03	CBI	(G) Photoresist additive	(G) Halogenated acrylic copolymer
P–03–0414	03/14/03	06/12/03	CBI	(G) Photoresist additive	(G) Halogenated acrylic copolymer
P–03–0415	03/14/03	06/12/03	CBI	(G) Photoresist additive	(G) Halogenated acrylic copolymer
P–03–0416	03/18/03	06/16/03	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Dimethyl-oxo-carboxylic acid
P–03–0417	03/18/03	06/16/03	CBI	(S) Pvc to pvc bonding	(G) Polyester isocyanate polymer
P–03–0418	03/18/03	06/16/03	CBI	(S) Pvc to pvc bonding	(G) Polyester isocyanate polymer
P–03–0419	03/19/03	06/17/03	CBI	(G) Textile colorant	(G) Substituted cuprate [triazin-hydroxy-alpha o][[(hydroxy-Alpha O) sulphenyl]azo- alpha n1]-methoxyphenyl]azo-alpha n1] naphthalenedisulfonato-, sodium salt
P–03–0420	03/19/03	06/17/03	Algroup Lonza - Lonza Inc.	(S) Polymer additive/adjuvant for: -polymer extrusion; -polymer film formation; anistatic agent for: -polymer films	(G) *N,N*-alkenebis-*N*-fatty acid amide
P–03–0421	03/19/03	06/17/03	OM Group, Inc.	(S) Polyurethane rubber catalyst; pvc heat stabilizer	(S) 9-octadecenoic acid (9z)-, bismuth(3+) salt
P–03–0422	03/19/03	06/17/03	CBI	(S) Resin for spray applied coatings	(G) Olefin-based block copolymer
P–03–0423	03/17/03	06/15/03	PPG Industries, Inc.	(G) Component of coating with open use	(G) Modified polyol
P–03–0424	03/19/03	06/17/03	CBI	(G) Cross-linking agent for thermo-setting resin	(G) Amines adduct of epoxy resin
P–03–0425	03/21/03	06/19/03	Crompton Corporation	(G) Catalyst	(G) Transition metal complex
P–03–0426	03/21/03	06/19/03	CBI	(S) Coatings applications	(S) Fatty acids, C_{6-12}, polymers with hexahydro-1,3-isobenzofurandione and trimethylolpropane
P–03–0427	03/21/03	06/19/03	CBI	(G) Unsaturated polyester resin	(G) Dicyclopentadiene polymer with phtalic anhydride, maleic anhydride, ethylene glycol, diethylene glycol, monopropylene glycol
P–03–0428	03/21/03	06/19/03	The Dow Chemical Company	(G) Rigid polyurethane foam for spray construction application rigid polyurethane foam for building panel production	(G) mannich based polyether polyol
P–03–0429	03/21/03	06/19/03	CBI	(G) Unsaturated polyester resin	(G) Epoxy acrylate urethane modified polymer with maliec anhydrid
P–03–0430	03/21/03	06/19/03	CBI	(G) Coating component	(G) Polymer of methylene diphenyl diisocyanate, polyether polyol and a polyester polyol
P–03–0431	03/19/03	06/17/03	CBI	(G) Rubber elastomer for tires, wheels, rolls and other specialty urethane applications	(G) PPD/Polyester prepolymer
P–03–0432	03/25/03	06/23/03	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–03–0433	03/25/03	06/23/03	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–03–0434	03/25/03	06/23/03	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–03–0435	03/25/03	06/23/03	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–03–0436	03/25/03	06/23/03	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–03–0437	03/25/03	06/23/03	CBI	(S) Binder/tackifier for inks	(G) Hydrocarbon resin
P–03–0438	03/19/03	06/17/03	CBI	(G) Additive, open, non-dispersive use	(G) Polyether modified polyurethane urea
P–03–0439	03/19/03	06/17/03	CBI	(G) Additive, open, non-dispersive use	(G) Polyether modified polyurethane urea
P–03–0440	03/26/03	06/24/03	CBI	(G) Open, non-dispersive (resin)	(G) Urethane acrylate resin
P–03–0441	03/26/03	06/24/03	Shell Chemical Company	(G) Components of brake fluid formulation	(S) Oxirane, methyl-, polymer with oxirane, monoethyl ether
P–03–0442	03/26/03	06/24/03	CBI	(S) Coating material, non-dispersive use	(G) Polysiloxazane
P–03–0443	03/26/03	06/24/03	CBI	(G) ADhesive component	(G) Polymeric mdi prepolymer
P–03–0444	03/26/03	06/24/03	CBI	(G) Adhesive component	(G) Polymeric mdi prepolymer

I. 112 PREMANUFACTURE NOTICES RECEIVED FROM: 02/11/03 TO 03/28/03—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0445	03/28/03	06/26/03	CBI	(G) Destructive end-use	(G) 2,5-Furandione, polymer with (substituted)-propene and octadecene (substituted) ester
P–03–0446	03/28/03	06/26/03	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylate, acrylonitrile, butadiene rubber-extended tetra epoxy resin
P–03–0447	03/28/03	06/26/03	CBI	(G) Theromoset polymer component, open nondispersive use	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin
P–03–0448	03/28/03	06/23/03	CBI	(G) Theromoset polymer component, open nondispersive use	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin
P–03–0449	03/28/03	06/23/03	CBI	(G) Thermoset polymer component, open nondispersive use	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin
P–03–0450	03/28/03	06/23/03	CBI	(G) Thermostat polymer component, open nondispersive use	(G) Acrylate, acrylonitrile, butadiene rubber-extended epoxy resin

In table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICES RECEIVED FROM: 02/11/03 TO 03/28/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–03–01	03/17/03	06/15/03	PPG Industries Inc.	(G) Component of coating with open use	(G) Modified polyol

In Table III of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 61 NOTICES OF COMMENCEMENT FROM: 02/11/03 TO 03/28/03

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0042	03/04/03	05/18/01	(G) N-alkyl-4 alkylaminonaphthalimide
P–00–0043	03/04/03	05/18/01	(G) N-alkyl-4 alkylaminonaphthalimide
P–00–0044	03/04/03	05/18/01	(G) N-alkyl-4 alkylaminonaphthalimide
P–00–1078	02/21/03	01/31/03	(G) Potassium sulfonate
P–01–0298	03/07/03	02/07/03	(G) Substituted propane
P–01–0392	02/25/03	01/24/03	(G) Polyacrylate polymer
P–01–0394	03/04/03	02/10/03	(G) Polyacrylate polymer
P–01–0659	02/13/03	01/30/03	(G) Substituted alkyl ester acid
P–01–0732	02/11/03	01/16/03	(G) Phosphate methacrylate
P–01–0764	02/26/03	02/06/03	(S) Magnesium potassium titanium oxide
P–01–0802	02/27/03	02/18/03	(G) Pyrimidinetrione derivative
P–02–0114	02/21/03	02/07/03	(G) Polymer of alkyl substituted propenoic acid and propenamide with alkyl acrylate
P–02–0217	03/04/03	02/21/03	(G) Fatty acid modified polyester
P–02–0408	03/13/03	02/28/03	(G) Acetamide, substituted alkylamino phenyl azo substituted isoindole
P–02–0409	03/13/03	02/28/03	(G) Acetamide, substituted methoxyalkylamino phenyl azo substituted isoindole
P–02–0413	03/13/03	02/28/03	(G) Substituted alkylamino phenyl azo substituted isoindole
P–02–0457	02/21/03	02/03/03	(G) Oxyalkylpropanoic acid, polymer with dimethylcarbonate, 1,2-ethanediamine, 1,6-hexanediol and 1,1′-methylenebis[4-isocyanatocyclohexane]
P–02–0461	02/26/03	12/16/02	(S) Hexanoic acid, 2-ethyl-, compound with guanidine (1:1)
P–02–0544	02/21/03	10/10/02	(S) Oxirane, methyl-, polymer with alpha-hydro-omega-hydroxypoly[oxy(methyl-1,2-ethanediyl)], 5-isocyanato-1-(isocyanatomethyl)-1,3,3-trimethylcyclohexane and oxirane
P–02–0550	03/19/03	01/29/03	(G) Imidazolium salt
P–02–0622	03/18/03	03/04/03	(G) Branched alkenoate
P–02–0629	02/26/03	02/05/03	(G) Substituted amino acid
P–02–0678	03/13/03	02/24/03	(G) Urethane diol
P–02–0705	03/11/03	02/27/03	(S) Sulfuric acid, diethyl ester, compound with nu-[3-(dimethylamino)propyl]-2-methyl-2-propenamide polymer with 1-ethenyl-2-pyrrolidinone, sulfate
P–02–0741	02/11/03	01/21/03	(S) Piperazine, polymer with 1,6-dichlorohexane

III. 61 NOTICES OF COMMENCEMENT FROM: 02/11/03 TO 03/28/03—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–02–0826	02/21/03	12/16/02	(S) Octadecanoic acid, compound with guanidine (1:1)
P–02–0831	03/28/03	02/25/03	(G) Crosslinked alkyl silicone
P–02–0889	03/26/03	03/13/03	(S) Formaldehyde, polymer with 6-phenyl-1,3,5-triazine-2,4-diamine, isobutylated
P–02–0895	03/03/03	02/20/03	(G) Amine salt of carboxylated epoxy ester polymer, with fatty acids and alkyloxylated alkyl ester
P–02–0896	02/19/03	01/30/03	(G) Polyester polyol
P–02–0904	02/21/03	02/06/03	(G) Substituted alkenone
P–02–0909	03/27/03	02/28/03	(G) Aromatic polyester polyol
P–02–0910	03/27/03	02/27/03	(G) Aromatic polyester polyol
P–02–0931	03/05/03	02/17/03	(G) Sodium sulfonate
P–02–0933	03/05/03	02/10/03	(G) Calcium sulfonate
P–02–0935	02/21/03	01/03/03	(G) Polyglycolether-polycarboxylate
P–02–0974	03/13/03	03/06/03	(S) 3-octen-1-ol,propanoate, (3z)-
P–02–0997	02/11/03	01/24/03	(G) Alkaline epoxide amine adduct
P–02–1006	03/19/03	03/03/03	(G) Polyurethane crosslinker
P–02–1026	02/11/03	01/09/03	(G) Modified alkyd resin
P–02–1027	03/13/03	02/26/03	(G) Silylated polyester
P–02–1037	03/05/03	02/12/03	(G) Polyamine acrylate
P–02–1052	03/21/03	03/10/03	(G) Substituted acrylate polymer
P–02–1076	02/27/03	02/05/03	(G) Corn byproduct
P–02–1077	02/27/03	02/01/03	(G) Corn byproduct
P–02–1079	03/28/03	03/24/03	(G) Modified mannich base polyamine
P–02–1088	03/05/03	02/19/03	(G) Alkylphenol mannich
P–03–0003	03/04/03	02/20/03	(S) Soybean oil, reaction products with hydrogenated soybean oil and triethanolamine, di-et sulfate-quaternized
P–03–0038	03/26/03	03/05/03	(G) Copper(11) Complex of sulfonated azo dye
P–03–0040	03/25/03	03/12/03	(G) Polyamidoamine resin grafted with aziridine
P–03–0048	03/05/03	02/07/03	(G) Modified styrenated acrylated methacrylate polymer
P–03–0058	02/27/03	02/19/03	(G) Aromatic polycarbodiimide
P–03–0068	03/13/03	02/16/03	(G) Polyester polyurethane dispersion
P–03–0087	03/05/03	02/24/03	(G) Amines, polyethylenepoly-, reaction products with 5 (or 6)-carboxy-4-hexyl-2-cyclohexene-1-octanoic acid, pentaethylenehexamine and substituted ethyleneamines
P–03–0095	03/12/03	03/07/03	(G) Alkyl methacrylate copolymer
P–03–0097	03/12/03	03/07/03	(G) Alkyl methacrylate copolymer
P–03–0106	03/18/03	02/19/03	(G) Fluoropolyether derivative fluoronated payurethane resin
P–03–0107	03/14/03	03/06/03	(S) 2-propenoic acid, 2-methyl-, polymer with butyl 2-propenoate and ethenylbenzene, sodium salt
P–03–0118	03/27/03	03/09/03	(G) Epoxy modified alkyd resin
P–03–0128	03/11/03	02/24/03	(G) Semiconducting light emitting polyfluorene copolymer
P–03–0142	03/26/03	03/18/03	(G) Metallocene fluoride complex
P–03–0145	03/19/03	03/05/03	(G) Polyurethane
P–94–2209	03/11/03	02/25/03	(G) Fatty acid, ammonium salt
P–96–1626	02/11/03	01/10/03	(S) Mix of: 3-hexene, 1-(1-methoxypropoxy)-(e), 3-hexene, 1-(1-methoxypropoxy)-,(z)
P–97–1039	03/10/03	02/10/03	(G) Modified perfluorinated copolymer
P–98–0899	02/21/03	01/28/03	(S) Fatty acids, C_{18}-unsaturated, dimers, polymers with adipic acid, ethylenediamine, piperazine and polypropylene glycol diamine
P–99–0301	02/28/03	02/13/03	(G) Organotin compound
P–99–0646	02/11/03	01/28/03	(G) Pentaerythritol, mixed esters with fatty acids, C_{8-9}, branched
P–99–1353	03/11/03	02/25/03	(G) Racemic substituted dimethyl zironocene
P–99–1358	02/21/03	02/07/03	(G) Lithium salt of substituted indene
P–99–1359	02/25/03	02/10/03	(G) Substituted bis-indenylsilane
P–99–1360	03/03/03	02/17/03	(G) Lithium salt of substituted bis-indenylsilane
P–99–1361	03/03/03	02/19/03	(G) Substituted zirconocene dichloride, rac and meso isomer mixture

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: April 14, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–9749 Filed 4–18–03; 8:45 am]

BILLING CODE 6560–50–S

FARM CREDIT ADMINISTRATION

RIN 3052–AC13

Loan Policies and Operations; Loan Syndication Transactions

AGENCY: Farm Credit Administration.

ACTION: Notice; extension of comment period.

SUMMARY: The Farm Credit Administration (FCA, we, or us) is extending the comment period on our notice concerning loan syndication transactions by Farm Credit System (System) institutions so all interested parties have more time to respond to our questions.

DATES: Please send your comments to the FCA by June 20, 2003.

ADDRESSES: We encourage you to send comments by electronic mail to *reg-comm@fca.gov* or through the Pending Regulations section of FCA's Web site, *http://www.fca.gov*. You may also send comments to Robert E. Donnelly, Acting Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. You may review copies of all comments we receive at our office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Dennis K. Carpenter, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434.

or

Richard A. Katz, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: On January 17, 2003, we published a notice in the **Federal Register** seeking public comment on the treatment of loan syndication transactions by Farm Credit System (System) banks and associations. The comment period expired on February 18, 2003. *See* 68 FR 2540, January 17, 2003. We subsequently reopened the comment period until April 21, 2003, to provide interested parties an additional 60 days to comment on this issue. *See* 68 FR 8764, February 20, 2003.

A member of the public has now requested us to extend the comment period for an additional 60 days, until June 20, 2003. In response to this request, we are extending the comment period until June 20, 2003, so all interested parties have more time to respond to our questions. The FCA supports public involvement and participation in its regulatory and policy process and invites all interested parties to review and provide comments on our notice.

Dated: April 16, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–9732 Filed 4–18–03; 8:45 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Market Access Agreement

AGENCY: Farm Credit Administration (FCA).

ACTION: Notice of approval of the draft amended and restated market access agreement.

SUMMARY: The Farm Credit Administration (FCA) announces it has approved the Draft Amended and Restated Market Access Agreement (Draft Restated MAA) proposed to be entered into by all of the banks of the Farm Credit System (System) and the Federal Farm Credit Banks Funding Corporation (Funding Corporation). The Draft Restated MAA sets forth the rights and responsibilities of each of the parties when the condition of a bank falls below pre-established financial performance thresholds.

FOR FURTHER INFORMATION CONTACT:

Samuel R. Coleman, CFA, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434,

or

James M. Morris, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: The FCA published the Draft Restated MAA in the **Federal Register** on January 15, 2003 (68 FR 2037) with a request for public comment. No public comments were received on the Draft Restated MAA.

The Draft Restated MAA is an update to the original Market Access Agreement (MAA) approved by the FCA on August 17, 1994, and published in the **Federal Register** on August 23, 1994 (59 FR 43344). The Draft Restated MAA provides that it will go into effect after certain conditions precedent have been satisfied, including FCA's approval of, and the Farm Credit System Insurance Corporation's (FCSIC) expression of its support for, the Draft Restated MAA. The FCA announces it has approved the Draft Restated MAA.

System banks and the Funding Corporation entered into the original MAA on September 1, 1994, to help control the risk by outlining each party's respective rights and responsibilities in the event the condition of a System bank fell below certain financial performance thresholds. As part of the original MAA, System banks and the Funding Corporation agreed to periodic reviews of the terms of the MAA to consider whether any amendments were appropriate. The Draft Restated MAA updates the original MAA and provides for more stringent financial performance thresholds on each System bank. Both the original MAA and Draft Restated MAA establish financial performance thresholds at which conditions are placed on the activities of a bank or a bank's access to participation in Systemwide and consolidated obligations is restricted.

FCA published the Draft Restated MAA in the **Federal Register** on January 15, 2003, with a request for public comments by February 14, 2003. No comments were received. Having given the public notice and the opportunity to comment, the FCA Board hereby approves the Draft Restated MAA pursuant to sections 4.2(c), 4.2(d) and 4.9(b)(2) of the Farm Credit Act of 1971, as amended. The FCA's approval of the Draft Restated MAA is conditioned on the board of directors of each bank and the Funding Corporation approving the Draft Restated MAA. Neither the Draft Restated MAA, when it becomes effective, nor FCA approval of it shall in any way restrict or qualify the authority of the FCA or the FCSIC to exercise any of the powers, rights, or duties granted by law to the FCA or the FCSIC. Finally, the FCA retains the right to modify or revoke its approval of the Draft Restated MAA at any time.

Dated: April 15, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–9711 Filed 4–18–03; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 03–96; FCC 03–75]

NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership ("NOS/ANI" or "the Companies"), Order To Show Cause and Notice of Opportunity for Hearing

AGENCY: Federal Communications Commission.

ACTION: Notice; order to show cause and opportunity for hearing.

SUMMARY: This document is an order for NOS/ANI to show cause and give the Companies the opportunity for a hearing before the Commission. The Commission has found that an evidentiary hearing is required to determine whether: (1) The Commission should revoke the operating authority of the Companies, (2) NOS/ANI and its principal should be ordered to cease and desist from any future provision of interstate common carrier services without the prior consent of the Commission, and (3) a forfeiture against

NOS/ANI is warranted and, if so, the amount of the forfeiture.

DATES: Effective April 21, 2003.

FOR FURTHER INFORMATION CONTACT: Donna Cyrus, Attorney Advisor for Telecommunications Consumers Division, Enforcement Bureau (202) 418–7325.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's document regarding EB Docket No. 03–96, released on April 7, 2003. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW., CY–A257, Washington, DC, 20554, and also may be purchased from the Commission's copy contractor, Qualex International, 445 12th SW., CY–B402, Washington, DC, 20554, (202) 863–2893. It is also available on the Commission's Web site at *http://www.fcc.gov/Daily_Releases/Daily_Business/2003/db0407/FCC–03–68A1.pdf.*

Synopsis

A. Background

1. NOS/ANI are switchless resellers of MCI long distance service. Their customers are primarily small and medium-sized companies. NOS/ANI operates as a common carrier subject to Title II of the Communications Act of 1934, as amended (the "Act"). Specifically, NOS/ANI currently provides or has provided resale interstate long distance telecommunications services to consumers in numerous states. Under the regulatory scheme established by the Act and the Commission's rules, NOS/ANI is classified as a nondominant interexchange carrier. As such, it is considered to have "blanket" authority to operate domestic common carrier facilities within the meaning of section 214 of the Act..

2. It appears that NOS/ANI may have willfully or repeatedly violated sections 201(b) of the Act, by conducting a misleading marketing campaign (the "Winback Campaign") apparently designed to improperly induce former customers into authorizing switches back to NOS/ANI. These improper inducements apparently included the Companies contacting their former customers and describing "problems" that the customers' chosen carriers were allegedly having in completing the customers' requests to establish new service. NOS/ANI apparently threatened their former customers with loss of service unless they agreed to retain NOS/ANI services as a "temporary measure." Under coercion, some of these customers signed Letters of Agency ("LOAs") that authorized the Companies to be their preferred carriers, believing that doing so was necessary to keep receiving service while their new preferred carriers completed their switches. The representations of NOS/ANI to their former customers appear to be knowingly false. In reality, the consumers had already been switched to their new preferred carriers and the Companies' marketing campaign was an apparently misleading scheme to trick consumers into returning to the Companies' services.

3. The Enforcement Bureau (the "Bureau") initiated this investigation against NOS/ANI after receiving information about the Companies' marketing campaign from Mr. Robert Faulkner, a former NOS/ANI employee. Based upon the information provided by Mr. Faulkner, the Bureau contacted numerous consumers to investigate the allegations. All of the consumers who form the basis of this Order have signed declarations under penalty of perjury stating that NOS/ANI contacted them after they switched to new carriers and told them that their new carriers had not picked up all of their lines, and that as result, their lines were still billing with NOS/ANI. The consumers also state that they were threatened with service disruption if they did not sign new LOAs, which they were told were temporary, but necessary to keep their service running. Some of the consumers were induced into signing the LOAs with the assurance that it was only temporary, while others refused to sign.

4. The Companies' Winback Campaign apparently began in December 2001. As alleged by the consumers, and reflected in audiotapes, the conversations between consumers and NOS/ANI representatives followed a similar script, during which NOS/ANI apparently made numerous false representations to the consumers to induce them to switch their services back to NOS/ANI. NOS/ANI representatives also represented to these consumers that their lines were still billing with the Companies because their new carrier had not yet switched over the services. During the calls made in this marketing campaign, NOS/ANI representatives also advised the consumers that they needed to execute new LOAs until the consumers' new carriers picked up their lines, to ensure continuity of service. Consumers were incorrectly informed that once they signed an LOA with another company to switch their services from NOS/ANI, even though their lines were still being billed by NOS/ANI, NOS/ANI did not "have authorization to carry the traffic anymore." NOS/ANI representatives apparently told consumers that once they signed the Companies' allegedly standard, FCC-approved LOA, with a notation to "See attached addendum," the consumers' service would continue, and all ties with NOS/ANI would be severed as soon as the new carriers picked up their lines.

5. The apparent pattern of these conversations NOS/ANI had with former customers bears a remarkable similarity to a "Winback Script" provided by Mr. Faulkner, who attested that the Companies originated the script in December 2001, with top management handing down the script to branch managers and sales representatives in the Winback/Quality Assurance Department. Under the script, the LOA is described as providing temporary authority for NOS/ANI to keep their former customers' service running "til the new carrier picks them up."

B. Discussion

6. The consumer complaints and information from a former company executive all suggest a continuous telemarketing campaign, apparently intended for the sole purpose of tricking and threatening former customers into signing new LOAs to switch their services back to NOS/ANI. This practice depicts a callous disregard for the requirements of the Communications Act and section 201(b) in particular. Section 201(b) of the Act, states, in pertinent part, that "[a]ll charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful." Based upon our review of the evidence before us, we find that NOS/ANI's apparent telemarketing campaign evidences apparently willful or repeated violations of section 201(b) of the Act. The Companies' apparent Winback Campaign involving misleading representations to consumers regarding the switch status of their services and threats of service disruption to scare consumers into signing LOAs appears to constitute an "unjust and unreasonable practice" within the meaning of section 201(b).

7. Further, there is nothing in the Act or in our rules which supports NOS/ANI's statements to consumers that NOS/ANI would lose authority to carry a consumer's lines once the consumer signs a new LOA with another carrier. In fact, this interpretation of our rules would provide absurd results, as it often is the case that a preferred carrier change is not executed until days after the consumer has requested the change and the request has been submitted to the local carrier and executed. Under NOS/ANI's theory, every carrier would be providing service without authorization if it did not immediately obtain "transitional" or "temporary" LOAs from consumers switching from their service to another carrier the moment those consumers requested the change or signed new LOAs with the other carriers. Further, administration in such an event would be nearly impossible, as most consumers do not even contact the old carrier when requesting a change to a different carrier. They simply give authorization to the new carrier. Given that carriers are only notified of lost accounts from the local carriers after the switches have been complete, the old carriers would have no way of knowing from whom to request these temporary LOAs.

8. It necessarily follows, therefore, that an old carrier loses authorization when the carrier change has been completed, and not when the consumer signs a new LOA or otherwise requests a carrier change. That said, NOS/ANI's statements to consumers that new LOAs are needed because consumers' new carriers did not pick up all of their lines are apparently false and misleading and not based upon any reasonable interpretation of the Act or our rules. In the unlikely event that a new carrier does not pick up all of a consumer's lines, NOS/ANI would continue to be the authorized carrier until the lines were switched over notwithstanding the Companies' dubious policy against partial accounts.

9. It appears that NOS/ANI engaged in an unjust and unreasonable marketing practice in apparent violation of the Act. It thus appears that the continued operation of NOS/ANI as a common carrier may not serve the public convenience and necessity within the meaning of section 214 of the Act. We therefore direct the ALJ to determine whether the NOS/ANI blanket section 214 authorization should be revoked. Further, in light of the egregious nature of NOS/ANI's apparently unlawful activities, we direct the ALJ to determine whether specific Commission authorization should be required for NOS/ANI, or the principal or principals of NOS/ANI, to provide any interstate common carrier services in the future.

C. Conclusion

10. In light of the totality of the information now before us, an evidentiary hearing is warranted to determine whether the continued operation of NOS/ANI as a common carrier would serve the public convenience and necessity within the meaning of section 214 of the Act. Further, due to the egregious nature of NOS/ANI's apparently unlawful activities, NOS/ANI will be required to show cause why an order to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission should not be issued. In addition, consistent with our practice in revocation proceedings, the hearing will also address whether a forfeiture should be levied against NOS/ANI for willful and repeated violation of section 201(b) of the Act.

Ordering Clauses

11. Pursuant to sections 4(i) and 214 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 214, the principal or principals of NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership *are directed to show cause* why the operating authority bestowed on NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership pursuant to section 214 of the Communications Act of 1934, as amended, should not be revoked.

12. Pursuant to section 312(b) of the Communications Act of 1934, as amended, 47 U.S.C. 312(b), the principal or principals of NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership *are directed to show cause* why an order directing them to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission should not be issued.

13. The hearing shall be held at a time and location to be specified by the Chief Administrative Law Judge in a subsequent order. The ALJ shall apply the conclusions of law set forth in this Order to the findings that he makes in that hearing, upon the following issues:

(a) To determine whether NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership engaged in a misleading and continuous telemarketing campaign in apparent willful and repeated violation of section 201(b) of the Act's prohibition against unjust and unreasonable practices;

(b) To determine, in light of all the foregoing, whether NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership authorization pursuant to section 214 of the Act to operate as common carriers should be revoked;

(c) To determine whether, in light of all the foregoing, NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership and/or their principals should be ordered to cease and desist from the provision of any interstate common carrier services without the prior consent of the Commission.

14. The Chief, Enforcement Bureau, shall be a party to the designated hearing. Pursuant to section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding and the burden of proof shall be upon the Enforcement Bureau as to issues (a) through (c) inclusive.

15. To avail themselves of the opportunity to be heard, the principal or principals of NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership, pursuant to section 1.91(c) of the Commission's rules, *shall file* with the Commission within 30 days of the mailing of this Order to Show Cause and Notice of Opportunity for Hearing a *written appearance* stating that a principal or other legal representative from NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership will appear at the hearing and present evidence on the matters specified in the Show Cause Order. If NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership fail to file a written appearance within the time specified, NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership's right to a hearing *shall be deemed to be waived.* In the event that the right to a hearing is waived, the Presiding Judge, or the Chief, Administrative Law Judge if no Presiding Judge has been designated, *shall terminate* the hearing proceeding as to that entity and *certify* this case to the Commission in the regular course of business, and an appropriate order shall be entered.

16. If it is determined that NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership have willfully or repeatedly violated any provision of the Act or the Commission's rules cited in this Order to Show Cause and Notice of Opportunity for Hearing, it shall be further determined whether an Order for Forfeiture shall be issued pursuant to section 503(b) of the Communications Act of 1934, as amended, for the maximum forfeiture amount of $120,000 per day for more than ten (10) days up to the statutory maximum of $1,200,000.

17. This document constitutes a *notice of opportunity for hearing* pursuant to section 503(b)(3)(A) of the Communications Act of 1934, as amended, 47 U.S.C. 503(b)(A), for the

potential forfeiture liability outlined above.

18. A copy of this *order to show cause and notice of opportunity for hearing* shall be sent by certified mail, return receipt requested, to NOS Communications, Inc., Affinity Network Incorporated, and NOSVA Limited Partnership at:

NOS Communications, Inc., 6110 Executive Boulevard, Ste. 508, Rockville, MD 20852.
Affinity Network, Inc., 4380 Boulder Highway, Las Vegas, NV 89121.
NOSVA Limited Partnership, 6701 Democracy Boulevard, Ste. 811, Bethesda, MD 20817.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–9687 Filed 4–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket No. 03–84; DA 03–867]

The Bundling of Local Telephone Service With Long Distance Service

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission seeks comments on a petition for declaratory ruling concerning the bundling of local telephone service with long distance service.

DATES: Comments are due on June 5, 2003, and reply comments are due June 20, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC. 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Calvin Osborne, Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–2512.

SUPPLEMENTARY INFORMATION: A public notice was released on March 27, 2003, regarding a petitioner who filed a Petition for Declaratory Ruling with the Federal Communications Commission on August 9, 2002. The petitioner's petition was filed pursuant to an Order by the United States District Court for the Middle District of Florida which referred several questions to the Commission under the doctrine of primary jurisdiction. The petitioner requests that the Commission issue a ruling on the following issues: (1) Whether the state claims set forth by petitioner in the complaint are preempted by the Communications Act giving exclusive jurisdiction to the Commission; (2) whether local telephone service providers may provide local service only to their customers, or must, by virtue of their filed tariff rates or otherwise, bundle local service with long distance service, even where a customer has no need for long distance service; and (3) if long distance service is not required to be bundled with local service in all events, if the practice of bundling these services is a violation of the Communications Act.

The Commission seeks comment on the three issues outlined in the filing. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 5, 2003, and reply comments on or before June 20, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs/*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form". A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–9686 Filed 4–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Foreign Branch Report of Condition, (2) Certification of Eligibility under the Affordable Housing Program, and (3) Mutual-to-Stock Conversions of State Savings Banks.

DATES: Comments must be submitted on or before June 20, 2003.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Consumer and Compliance Unit), (202) 898–7453, Legal Division, Room MB–3109, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. (Internet address: *comments@fdic.gov*).

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Foreign Branch Report of Condition.
OMB Number: 3064–0011.
Form Number: FFIEC 030.
Frequency of Response: Quarterly/annually.
Affected Public: Foreign branches of insured banks.
Estimated Number of Respondents: 15.
Estimated Time per Response: 3.9 hours.
Total Annual Burden: 58.5 hours.
General Description of Collection: The Foreign Branch Report of Condition, Form FFIEC 030, contains asset and liability information along with data on certain off balance sheet items for foreign branches of insured banks.

2. *Title:* Certification of Eligibility Under the Affordable Housing Program.
OMB Number: 3064–0116.
Frequency of Response: On occasion.
Affected Public: All financial institutions.
Estimated Number of Respondents: 12.
Estimated Time per Response: 1 hour.
Total Annual Burden: 12 hours.
General Description of Collection: The collection of information certifies income eligibility under the affordable housing program. This certification assists the FDIC in determining an individual's eligibility for purchasing affordable housing properties from the FDIC.

3. *Title:* Mutual-to-Stock Conversions of State Savings Banks.
OMB Number: 3064–0117.
Frequency of Response: On occasion.
Affected Public: State savings banks.
Estimated Number of Respondents: 10.
Estimated Time per Response: 50 hours.
Total Annual Burden: 500 hours.
General Description of Collection: 12 CFR 303.161 and 333.4 require state savings banks that are not members of the Federal Reserve System to file with the FDIC a notice of intent to convert to stock form and provide copies of documents filed with State and Federal banking and or securities regulators in connection with the proposed conversion.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated in Washington, DC, this 16th day of April, 2003.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 03–9692 Filed 4–18–03; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Notices Required of Government Securities Dealers or Brokers (Insured State Nonmember Banks), (2) Foreign Banks, (3) Notification of Changes in Insured Status, and (4) Applicant Background Questionnaire.

DATES: Comments must be submitted on or before June 20, 2003.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Consumer and Compliance Unit), (202) 898–7453, Legal Division, Room MB–3109, Attention: Comments/Legal, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [Internet address: *comments@fdic.gov*].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10236, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

1. *Title:* Notices Required of Government Securities Dealers or Brokers (Insured State Nonmember Banks).
OMB Number: 3064–0093.
Form Number: G–FIN, G–FINW, G–FIN–4, G–FIN–5.
Frequency of Response: On occasion.
Affected Public: All financial institutions acting as government securities brokers and dealers.
Estimated Number of Respondents: 180.
Estimated Time per Response: 1 hour.
Total Annual Burden: 180 hours.
General Description of Collection: The Government Securities Act of 1986 requires all financial institutions acting as government securities brokers and dealers to notify their federal regulatory agencies of their broker-dealer activities, unless exempted from the notice requirement by Treasury Department regulation.

2. *Title:* Foreign Banks.
OMB Number: 3064–0114.
Frequency of Response: On occasion.
Affected Public: Insured branches of foreign banks in the United States.
Estimated Number of Respondents: 418.
Estimated Time per Response: ranges from ¼ hour to 120 hours.

Total Annual Burden: 4,398 hours.

General Description of Collection: The collection of information consists of (a) applications to operate as a noninsured state-licensed branch of a foreign bank; (b) applications from an insured state licensed branch of a foreign bank to conduct activities which are not permissible for a federally-licensed branch; (c) internal recordkeeping by insured branches of foreign banks; and (d) reporting requirements relating to an insured branch's pledge of assets to the FDIC.

3. Title: Notification of Changes in Insured Status.

OMB Number: 3064–0124.

Frequency of Response: On occasion.

Affected Public: Insured depository institutions.

Estimated Number of Respondents: 943.

Estimated Time per Response: ¼ hour.

Total Annual Burden: 236 hours.

General Description of Collection: 12 U.S.C. 1818(q) requires an insured depository institution to provide the FDIC with a certification when it partially or completely assumes deposit liabilities from another insured depository institution.

4. Title: Applicant Background Questionnaire.

OMB Number: 3064–0138.

Form Number: 2100/14.

Frequency of Response: On occasion.

Affected Public: Potential FDIC employment applicants.

Estimated Number of Respondents: 10,000.

Estimated Time per Response: 3 minutes.

Total Annual Burden: 500 hours.

General Description of Collection: The FDIC Applicant Background Questionnaire is completed voluntarily by FDIC job applicants who are not current FDIC employees. Responses to questions on the survey provide information on gender, age, disability, race/national origin, and the applicant's source of vacancy announcement information. Data is used by the Office of Diversity and Economic Opportunity and the Personnel Services Branch to evaluate the effectiveness of various recruitment methods used by the FDIC to ensure that the agency meets workforce diversity objectives.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 16th day of April, 2003.

Federal Deposit Insurance Corporation.

Valerie Best,

Assistant Executive Secretary.

[FR Doc. 03–9693 Filed 4–18–03; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following workgroup meeting:

Name: Dose Reconstruction Workgroup, Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Time and date: 9 a.m.–12 p.m., April 30, 2003.

Place: National Institute for Occupational Safety and Health, Hamilton Building, 5555 Ridge Avenue, Conference Room C, Cincinnati, Ohio 45213, telephone 513/841–4498, fax 513/458–7125.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 55 people.

Background

The Advisory Board on Radiation and Worker Health ("the Board") was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by NIOSH for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was signed on August 3, 2001, and the President has completed the appointment of members to the Board to ensure a balanced representation on the Board.

Purpose

This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed

Agenda will focus on a "Pre-Bidders" meeting regarding the scope of work for the solicitation titled, "Technical Support for the Advisory Board on Radiation and Worker Health Review of the NIOSH Dose Reconstruction Program."

Agenda items are subject to change as priorities dictate.

As provided under 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the meeting be held prior to the first available date for publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/841–4498, fax 513/458–7125.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 15, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–9689 Filed 4–18–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0282]

Agency Information Collection Activities; Announcement of OMB Approval; Notice of Participation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Notice of Participation" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 30, 2002 (67 FR 79639), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0191. The approval expires on April 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: April 14, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9662 Filed 4–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03N–0142]

Agency Information Collection Activities: Proposed Collection; Comment Request; Guidance for Industry on Submitting and Reviewing Complete Responses to Clinical Holds

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information contained in a guidance for industry entitled "Guidance for Industry on Submitting and Reviewing Complete Responses to Clinical Holds." The guidance describes how to submit a complete response if an investigational new drug (IND) application is placed on clinical hold by FDA.

DATES: Submit written or electronic comments on the collection of information by June 20, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm.* Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Guidance for Industry on Submitting and Reviewing Complete Responses to Clinical Holds

Section 117 of the Food and Drug Administration Modernization Act (Public Law 105–115), signed into law by President Clinton on November 21, 1997, provides that a written request to FDA from the applicant of an investigation that a clinical hold be removed shall receive a decision in writing, specifying the reasons for that decision, within 30 days after receipt of such request. A clinical hold is an order issued by FDA to the applicant to delay a proposed clinical investigation or to suspend an ongoing investigation for a drug or biologic. An applicant may respond to a clinical hold.

Under section 505(i)(3)(C) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 505(i)(3)(C)), any written request to FDA from the sponsor of an investigation that a clinical hold be removed must receive a decision, in writing and specifying the reasons, within 30 days after receipt of the request. The request must include

sufficient information to support the removal of the clinical hold.

In the **Federal Register** of May 14, 1998 (63 FR 26809), FDA published a notice of availability of a guidance that described how applicants should submit responses to clinical holds so that they may be identified as complete responses and the agency can track the time to respond. FDA issued a revised guidance in October 2000.

The revised guidance states that FDA will respond in writing within 30 calendar days of receipt of a sponsor's request to release a clinical hold and a complete response to the issue(s) that led to the clinical hold. An applicant's complete response to an IND clinical hold is a response in which all clinical hold issues identified in the clinical hold letter have been addressed.

The guidance requests that applicants type in large, bold letters at the top of the cover letter of the complete response "Clinical Hold Complete Response" to expedite review of the response. The guidance also requests that applicants submit the complete response letter in triplicate to the IND and that they fax a copy of the cover letter to the FDA contact person listed in the clinical hold letter who is responsible for the IND. The guidance requests more than an original and two copies of the cover letter in order to ensure that the submission is received and handled in a timely manner.

Based on data concerning the number of complete responses to clinical holds received by the Center for Drug Evaluation and Research (CDER) in fiscal years 2001 and 2002, CDER estimates that approximately 41 responses are submitted annually from approximately 29 applicants, and that it takes approximately 284 hours to prepare and submit each response to CDER.

Based on data concerning the number of complete responses to clinical holds received by the Center for Biologics Evaluation and Research (CBER) in fiscal years 2001 and 2002, CBER estimates that approximately 123 responses are submitted annually from approximately 78 applicants, and that it takes approximately 284 hours to prepare and submit each response to CBER.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Complete Responses to Clinical Holds	Number of Respondents	Number of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
CDER	29	approx. 1	41	284	11,644
CBER	78	1.58	123	284	34,932
Total					46,576

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 14, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9664 Filed 4–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03E–0032]

Determination of Regulatory Review Period for Purposes of Patent Extension; IMAGENT

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for IMAGENT and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov.dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product IMAGENT (perfluorohexane and DMPC). IMAGENT is indicated for use in subjects with suboptimal echocardiograms to opacify the left ventricular chamber and to improve the delineation of the left venricular endocardiol border. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for IMAGENT (U.S. Patent No. 5,639,443) from Alliance Pharmaceutical Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 4, 2003, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of IMAGENT represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for IMAGENT is 2,264 days. Of this time, 1,303 days occurred during the testing phase of the regulatory review period, while 961 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: March 21, 1996. The applicant claims February 20, 1996, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 21, 1996, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: October 14, 1999. The applicant claims October 11, 1999, as the date the new drug application (NDA) for IMAGENT (NDA 21–191) was initially submitted. However, FDA records indicate that NDA 21–191 was submitted on October 14, 1999.

3. *The date the application was approved*: May 31, 2002. FDA has verified the applicant's claim that NDA 21–191 was approved on May 31, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 423 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (*see* **ADDRESSES**) written or electronic comments and ask for a redetermination by June 20, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 20, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (*see* **ADDRESSES**). Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–9809 Filed 4–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0405]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Medical Device Reporting: Manufacturer Reporting, Importer Reporting, User Facility Reporting, and Distributor Reporting" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 9, 2003 (68 FR 1187), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0437. The approval expires on April 30, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: April 14, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9810 Filed 4–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02E–0343]

Determination of Regulatory Review Period for Purposes of Patent Extension; ZEVALIN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ZEVALIN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written or electronic comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov.dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human

biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product ZEVALIN (CD20 Monoclonal Antibody). ZEVALIN is indicated for treatment of patients with relapsed or refractory low-grade, follicular, or transformed B-cell non-Hodgkin's lymphoma, including patients with Rituximab (Rituxan) refractory follicular non-Hodgkin's lymphoma; the therapeutic regimen includes Rituximab, Indium–111 Ibritumomab Tiuxetan, and Yttrium–90 Ibritumomab Tiuxetan. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ZEVALIN (U.S. Patent No. 5,776,456) from IDEC Pharmaceuticals Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 3, 2003, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of ZEVALIN represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ZEVALIN is 3,363 days. Of this time, 2,887 days occurred during the testing phase of the regulatory review period, while 476 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: December 7, 1992. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on December 7, 1992.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (41 U.S.C. 262)*: November 1, 2000. FDA has verified the applicant's claim that the biologics license application (BLA) for ZEVALIN (BLA 1250190) was initially submitted on November 1, 2000.

3. *The date the application was approved*: February 19, 2002. FDA has verified the applicant's claim that BLA 1250190 was approved on February 19, 2002.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 227 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (*see* **ADDRESSES**) written or electronic comments and ask for a redetermination by June 20, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 20, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (*see* **ADDRESSES**). Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–9694 Filed 4–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01E–0031]

Determination of Regulatory Review Period for Purposes of Patent Extension; EXELON

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for EXELON and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov.dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Claudia Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3460.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product EXELON (rivastigmine tartrate). EXELON is indicated for the treatment of mild to moderate dementia of the Alzheimer's type. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for EXELON (U.S. Patent No. 4,948,807) from Novartis, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 2, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of EXELON represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for EXELON is 3,424 days. Of this time, 2,313 days occurred during the testing phase of the regulatory review period, while 1,111 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: December 8, 1990. The applicant claims November 7, 1990, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 8, 1990, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: April 7, 1997. FDA has verified the applicant's claim that the new drug application (NDA) for EXELON (NDA 20–823) was initially submitted on April 7, 1997.

3. *The date the application was approved*: April 21, 2000. FDA has verified the applicant's claim that NDA 20–823 was approved on April 21, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (*see* **ADDRESSES**) written or electronic comments and ask for a redetermination by June 20, 2003. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by October 20, 2003. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (*See* H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (*see* **ADDRESSES**). Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 31, 2003.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 03–9663 Filed 4–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0120]

Medical Devices: Draft Guidance for Industry and FDA Reviewers; Multiplex Tests for Heritable DNA Markers, Mutations, and Expression Patterns; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance for industry entitled "Multiplex Tests for Heritable DNA Markers, Mutations, and Expression Patterns." FDA has received many inquiries pertaining to multiplex test submissions (including microarray submissions). This draft guidance document represents the Center for Devices and Radiological Health's (CDRH) attempt to continue the dialogue with stakeholders regarding the basic framework for the types of data that should be included in a submission. FDA is anxious to provide the best guidance possible to assist sponsors in developing multiplex text submissions that will support timely review and marketing of safe and effective products using this technology. This draft guidance document is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on this draft guidance document by July 21, 2003.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Multiplex Tests for Heritable DNA Markers, Mutations, and Expression Patterns" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request or fax your request to 301–443–8818. *See* the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance document.

Submit written comments on this draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Mansfield or Michele Schoonmaker, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION:

I. Background

FDA anticipates that multiplex tests, including such as microarrays, using DNA and ribonuclei acid samples will are anticipated to have a number of clinical purposes, including genotyping, haplotype analysis, and categorization by expression profile, etc. FDA has received many inquiries pertaining to possible regulatory strategies for submitting and reviewing data from assays yielding multiple, simultaneous results. Over the past 24 months, FDA has participated in a number of seminars and workshops with representatives from the drug and

device industries, professional societies, laboratory professionals, healthcare providers, and other stakeholders, which discussed the criteria that are important in the analytical and clinical validation of multiplex assays. These discussions also explore the kind of information the industry might submit to the agency to achieve the least burdensome means of demonstrating substantial equivalence or evaluating effectiveness. FDA is issuing the draft guidance document in an effort to continue this dialogue. FDA believes the draft guidance document represents a summary of the discussions that have taken place.

FDA recognizes, however, that the discussions to this point have been introductory. Therefore, following review of the comments we receive on this draft guidance document, FDA intends to issue a new draft guidance document for additional discussion. FDA is taking this approach because we believe the public health will benefit from dialogue with the industry about appropriate ways to review this new and important technology.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on "Multiplex Tests for Heritable DNA Markers, Mutations, and Expression Patterns." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if the approach satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance document contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA). The collections of information addressed in the draft guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB Control Number 0910–0120 and/or premarket approval applications (21 CFR part 814, OMB Control Number 0910–0231)).

IV. Comments

Interested persons may submit to the Dockets Management Branch (*see* **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit two hard copies of any mailed comments. Identify comments with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Dockets Management Branch Internet site at *http://www.fda.gov/ohrms/dockets*.

To receive a copy of "Multiplex Tests for Heritable DNA Markers, Mutations, and Expression Patterns" by fax, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1210) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance document may also do so by using the Internet. CDRH maintains a site on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information.

Dated: April 3, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–9661 Filed 4–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Organ Procurement and Transplantation Network

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Meeting of the Advisory Committee on Organ Transplantation.

SUMMARY: Pursuant to Pub. L. 92–463, the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the fourth meeting of the Advisory Committee on Organ Transplantation (ACOT), Department of Health and Human Services (HHS). The meeting will be held from approximately 9 a.m. to 5:30 p.m. on May 22, 2003, and from 9 a.m. to 5 p.m. on May 23, 2003, at the Marriott Washington, 1221 22nd Street NW., Washington, DC 20037. The meeting will be open to the public; however, seating is limited and pre-registration is encouraged (*see* below).

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. Section 217a, Section 222 of the Public Health Service Act, as amended, and 42 CFR 121.12 (2000), the ACOT was established to assist the Secretary in enhancing organ donation, ensuring that the system of organ transplantation is grounded in the best available medical science, and assuring the public that the system is as effective and equitable as possible, and, thereby, increasing public confidence in the integrity and effectiveness of the transplantation system. The ACOT is composed of 41 members, including the Chair. Members are serving as Special Government Employees and have diverse backgrounds in fields such as organ donation, health care public policy, transplantation medicine and surgery, critical care medicine and other medical specialties involved in the identification and referral of donors, non-physician transplant professions, nursing, epidemiology, immunology, law and bioethics, behavioral sciences, economics and statistics, as well as representatives of transplant candidates, transplant recipients, organ donors, and family members.

The ACOT will hear and discuss reports from the following ACOT subcommittees: Organ Supply Concerns, Recipient Concerns, Public Concerns, and Allocation Concerns.

The draft meeting agenda will be available on May 1 on the Division of Transplantation's Web site *http://www.hrsa.gov/osp/dot/whatsnew.htm* or the Department's donation Web site at *http://www.organdonor.gov/acot.html*.

A registration form is available on the Division of Transplantation's Web site: *http://www.hrsa.gov/osp/dot/whatsnew.htm* or the Department's donation Web site at *http://www.organdonor.gov/acot.html*. The completed registration form should be submitted by facsimile to McFarland and Associates, Inc., the logistical support contractor for the meeting, at Fax number (301) 589–2567. Individuals without access to the Internet who wish to register may call Paulette Wiggins with McFarland and Associates, Inc., at 301–562–5337. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the ACOT Executive Director, Jack Kress, in advance of the meeting. Mr. Kress may be reached by telephone at 301–443–8653, by e-mail at: *jkress2@hrsa.gov*, or in writing at the address of the Division of Transplantation provided below. Management and support services for ACOT functions are provided by the Division of Transplantation, Office of Special Programs, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, Room 16C–17, Rockville, Maryland 20857; telephone number 301–443–7577.

After the presentation of the subcommittee reports, members of the public will have an opportunity to provide comments on the subcommittee reports. Because of the Committee's full agenda and the time frame in which to cover the agenda topics, public comment will be limited. All public comments will be included in the record of the ACOT meeting.

Dated: April 10, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–9665 Filed 4–18–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Information Collection; Request for Comments

AGENCY: Indian Health Service, HHS.

ACTION: Request for public comment: 30-day proposed information collection: "IHS Forms to Implement the Privacy Rule (45 CFR parts 160 and 164).

SUMMARY: The Indian Health Service (IHS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. As required by section 3507(a)(1)(D) of the Act, the proposed information collection has been submitted to the Office of Management and Budget (OMB) for review and approval. The IHS received comments in response to the 60-day **Federal Register** notice (67 FR 67411) published on November 5, 2002. The public comments received in response to the notice and the Agency responses are summarized and addressed below.

Comment: One comment questioned the readability of the forms. The commentor suggested that the Flesch Reading Ease score be raised to 50–75 percent from the 27.9 percent–47.3 percent readability score that the forms received. The commentor also noted that the Flesch-Kincaid Grade level for the forms required a reading level of 11½ to 12 years of education. The commentor also suggested decreasing the required education level for the forms.

Agency Response: The data collection instruments were field tested at the Fort Duchesne IHS Health Center, Fort Duchesne, Utah to determine whether the data collection instruments and instructions were clear and user friendly. They were found to be user friendly, clear and understandable. Changes suggested during the field testing were incorporated into the forms. Since the forms are generally filled in by the patient at an IHS facility, questions regarding understandability will be answered by IHS staff who will be trained on the correct and proper use of each form.

Comment: The only other comment received concerned the proposed IHS Form 911 (renumbered 917), the Request for Correction/Amendment of Protected Health Information. The commentor requested that the IHS eliminate the word "Correction" from the title and the word "corrected" in the body of the form. The commentor believed that the word "correction" implies a deletion of information. The commentor points out that the word "correction" was deleted from § 164.526 of the Privacy Rule for the same reason. In addition the commentor also states that the Privacy Act of 1974 (5 USC 552a) in section (d)(2) Access to Records does not reference "correction/amendment." This last point is not correct. If one continues to read section (d)(2) further to subsection (d)(2)(B)(i) the Privacy Act states that the agency is required to "make any correction of any portion thereof which the individual believes is not accurate, relevant, timely or complete; * * *" The Privacy Act clearly uses the word "correction" regarding the corrective action that the Agency is required to take. Furthermore, the Department of Health and Human Services (DHHS) Privacy Regulations at 45 CFR 5 b.7 and 5 b.8 also use the terms "correction or amendment" in either the titles of the subsections or in the body of the subsection. Section 5 b.7 is titled "Procedures for correction or amendment of records" and § 5 b.8 is titled "Appeals of refusals to correct or amend records." Furthermore, the DHHS Privacy Regulation also clearly states in section 5 b.7 when an actual deletion would occur. Section 5 b.7 states that "The record will be deleted without regard to its accuracy, if the record is not relevant or necessary to accomplish the Department functions for which the record was provided or is maintained." Therefore we believe that the Privacy Act and the DHHS regulations in this regard are quite clear. As an added note, the IHS Manual at Chapter 3–3.14(c)(6) describes the method for correcting entries in a medical record. The manual states that no erasure or other obliteration shall be made and also required that incorrect data shall be lined out with a single line.

Therefore, the IHS has decided not to follow the suggestions submitted by the commentor.

The purpose of this notice is to allow an additional 30 days for public comment to be submitted directly to OMB.

Proposed Collection: Title: 09–17–NEW, "IHS Forms to implement the Privacy Rule (45 CFR parts 160 and 164)". *Type of Information Collection Request:* New collection. *Form Number(s):* IHS–810 Authorization for Use or Disclosure of Health Information, IHS–917 Request for Correction/Amendment of Protected Health Information, IHS–912–I Request for Restriction(s), IHS 912–2 Terminating a Restriction, and IHS 913 Request For an Accounting of Disclosures. *Need and Use of Information Collection:* This collection of information is made necessary by the Department of Health

and Human Services Rule entitled "Standards for Privacy of Individually Identifiable Health Information" ("Privacy Rule") (45 CFR parts 160 and 164). The Privacy Rule implements the privacy requirements of the Administrative Simplification subtitle of the Health Information Portability and Accountability Act of 1996 and creates national standards to protect an individual's personal health information and gives patients increased access to their medical records. Sections, 45 CFR 164.508, 552, 526 and 528 of the Rule require the collection of information to implement these protection standards and access requirements. The IHS will use the following data collection instruments to implement the information collection requirements contained in the Rule.

45 CFR 164.508: This provision requires covered entities to obtain or receive a valid authorization for its use or disclosure of protected health information for uses other than for treatment, payment and healthcare operations. Under the provision, individuals may initiate a written authorization permitting covered entites to release their protected health information to entities of their choosing. The "IHS–810 Authorization for Use or Disclosure of Health Information" form will be used to document an individual's authorization to use or disclose their protected health information.

45 CFR 164.522: Section 164.522(a)(1) requires a covered entity to permit individuals to request that the covered entity restrict the use and disclosure of their protected health information. The covered entity may or may not agree to the restriction. The "IHS–912–1 Request for Restriction(s)" form will be used to document an individual's request for restriction of their protected health information and whether IHS agreed or disagreed with the restriction. Section 164.522(a)(2)(1) permits a covered entity to terminate its agreement to a restriction if the individual agrees to or requests the termination in writing. The "IHS–912–2 Request for Revocation of Restriction(s)" form will be used to document the agency's or the individual's request to terminate a formerly agreed to restriction regarding the use and disclosure of protected health information.

45 CFR 164.526: This provision requires covered entities to permit an individual to request that the covered entity amend protected health information. If the covered entity accepts the requested amendment, in whole or in part, the covered entity must inform the individual that the amendment is accepted and obtain the individual's identification of and agreement to have the covered entity notify the relevant persons with whom the amendment needs to be shared. If the covered entity denies the requested amendment, in whole or in part, the covered entity must provide the individual with a written denial. The "IHS–917 Request for Correction/ Amendment of Protected Health Information" form will be used to document an individual's request to amend their protected health information and the agency's decision to accept or deny the request.

45 CFR 164.528: This provision requires covered entities to permit an individual to request that the covered entity provide an accounting of disclosures of protected health information made by the covered entity. The "IHS 913 Request for an Accounting of Disclosures" form will be used to document an individual's request for an accounting of disclosures of their protected health information and the agency's handling of the request. Completed forms used in this collection of information are filed in the medical record.

Affected Public: Individuals and households. *Type of Respondents:* Individuals. *Burden Hours:* The table below provides the estimated burden hours for this information collection:

ESTIMATED ANNUAL BURDEN HOURS

45 CFR section/IHS form	Number of respondents	Responses per respondent	Burden per response [1] (minutes)	Total annual burden
164.508 IHS–810	500,000	1	20	166,667.
164.522(a)(1) IHS–912–I	15,000	1	10	2,500.
164.522(a)(2) IHS–912–2	5,000	1	10	833.
164.526 IHS–917	7,500	1	15	1,875
164.528 IHS–913	15,000	1	10	2,500.
Total Annual Burden		5		174,375.

[1] For ease of understanding, burden hours are provided in actual minutes.

The total estimated burden for this collection of information is 174,375 hours.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to respondents to report.

Request for Comments

Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the agency processes the information collected in a useful and timely fashion; (c) the accuracy of public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether the methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility; and clarity of the information being collected; and (f) ways to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Allison Eydt, Desk Officer for IHS. Send request for more information, on the proposed collection or to obtain a copy of the data collection instrument(s) and instructions to: Ms. Christine Ingersoll, IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601, call non-toll free (301) 443–1116, send via facsimile to (301) 443–2316, or send your E-mail requests, comments, and return address to: *cingersoll@hqe.ihs.gov.*

FOR FURTHER INFORMATION CONTACT: For questions directly pertaining to the proposed data collection instruments and/or the process, please contact Godwin Odia, RHIA, The Reyes Building, 801 Thompson Avenue, Suite 322, Rockville, MD 20852–1627, telephone (301) 443–1479.

Comment Due Date: Your comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: February 3, 2003.

Charles W. Grim,

Assistant Surgeon General, Interim Director, Indian Health Service.

[FR Doc. 03–9436 Filed 4–18–03; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–14360]

Information Collection Under Review by the Office of Management and Budget (OMB): 1625–0073 (Formerly 2115–0141), Alteration of Unreasonably Obstructive Bridges

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded one Information Collection Report (ICR), on Alteration of Unreasonably Obstructive Bridges, to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICR describes the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before May 21, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket (USCG 2003–14360) more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard. Caution: Because of recent delays in the delivery of mail, your comments may reach the Facility more quickly if you choose one of the means described below.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a) above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at 202–493–2251 and (b) OIRA at 202–395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov* attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a Web Site on which you can post your comments.

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the complete ICR are available for inspection and copying in public dockets. They are available in docket USCG 2003–14360 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street, SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Beard, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–5149, for questions on the docket.

SUPPLEMENTARY INFORMATION

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published (68 FR 5328 (February 3, 2003)) the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collection of information to determine whether the collection is necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collection; (2) the accuracy of the Department's estimated burden of the collection; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collection; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2003–14360. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

Title: Alteration of Unreasonably Obstructive Bridges.

OMB Control Number: 1625–0073.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners of certain bridges.

Form: This collection of information does not require the public to fill out forms, but does require the owner of an unreasonably obstructive bridge to submit information to determine the apportionment of cost between the U.S. and the owner for alteration of that bridge.

Abstract: The collection of information requires the owner of a bridge that the Coast Guard has found to be an unreasonable obstruction to navigation to prepare, and submit to the Coast Guard, general plans and specifications of that bridge.

Annual Estimated Burden Hours: The estimated burden is 120 hours a year.

Dated: April 11, 2003.

Clifford I. Pearson,

Director of Information and Technology.

[FR Doc. 03–9723 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Foreign Assembler's Declaration (With Endorsement by Importer)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Foreign Assembler's Declaration (with Endorsement by Importer). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Foreign Assembler's Declaration (with Endorsement by Importer).

OMB Number: 1651–0031.

Form Number: N/A.

Abstract: The Foreign Assembler's Declaration with Importer's Endorsement is used by CBP to substantiate a claim for duty free treatment of U.S. fabricated components sent abroad for assembly and subsequently returned to the United States.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, individuals.

Estimated Number of Respondents: 2,730.

Estimated Time Per Respondent: 50 minutes.

Estimated Total Annual Burden Hours: 302,402.

Estimated Total Annualized Cost on the Public: $3,860,608.00.

Dated: April 14, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–9759 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Application for Foreign Trade Zone Admission and/or Status Transaction, Application for Foreign Trade Zone Activity Report

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, The Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application for Foreign Trade Zone Admission and/or Status Transaction, Application for Foreign Trade Zone Activity Report. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Branch, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application for Foreign Trade Zone Admission and/or Status Transaction, Application for Foreign Trade Zone Activity Report.

OMB Number: 1651–0029.

Form Number: Forms 214, 214A, 214B, 214C, and 216.

Abstract: Forms 214, 214A, 214B, and 214C, Application for Foreign-Trade Zone Admission and/or Status Designation, are used by business firms which bring merchandise into a foreign trade zone, to register the admission of such merchandise to zones and to apply for the appropriate zone status.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, individuals, institutions.

Estimated Number of Respondents: 10,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 79,500.

Estimated Total Annualized Cost on the Public: $2,000,000.

Dated: April 14, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–9761 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Crew Members Declaration

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Crew Members Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Room 3.2.C, 1300 Pennsylvanja Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Crew Members Declaration.

OMB Number: 1651–0021.

Form Number: Form 5129.

Abstract: This document is used to accept and record importations of merchandise by crew members, and to enforce agricultural quarantines, the currency reporting laws, and the revenue collection laws.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals.

Estimated Number of Respondents: 5,968,351.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 298,418.

Estimated Total Annualized Cost on the Public: $5,968,360.

Dated: March 14, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–9762 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Protest

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Protest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Protest.

OMB Number: 1651–0017.

Form Number: Form 19.

Abstract: This collection is used by an importer, filer, or any party at interest to petition CBP, or Protest, any action or charge, made by the port director on or against any; imported merchandise,

merchandise excluded from entry, or merchandise entered into or withdrawn from a bonded warehouse.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, individuals, institutions.

Estimated Number of Respondents: 3,750.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 67,995.

Estimated Total Annualized Cost on the Public: $1,167,247.

Dated: April 14, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–9763 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Customs Service

Proposed Collection; Comment Request; Application/Permit/Special License, Unlading/Lading Overtime Service

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application/Permit/Special License, Unlading/Lading Overtime Service. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Branch, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application/Permit/Special License, Unlading/Lading Overtime Service.

OMB Number: 1651–0005.

Form Number: Form 3171.

Abstract: Form 3171, is used by commercial carriers and importers as a request for permission to unlade imported merchandise, baggage, or passengers and for overtime services of CBP officers in connection with lading or unlading of merchandise, or the entry or clearance of a vessel, including the boarding of a vessel for preliminary supplies, ship's stores, sea stores, or equipment not to be reladen, which is subject to free or duty-paid entry.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 1,500.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 39,900.

Estimated Total Annualized Cost on the Public: $438,900.

Dated: April 14, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 03–9765 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request

Importers Declaration/Shippers Declaration

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Importers Declaration/Shippers Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address:(1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Importer's Declaration/ Shipper's Declaration.

OMB Number: 1651–0068.

Form Number: N/A.

Abstract: These declarations are related to the legal requirements and procedures which must be followed in order to obtain duty-free treatment on articles imported into the Customs territory of the United States from the insular possession.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 310.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 31.

Estimated Total Annualized Cost on the Public: $410.00.

Dated: April 14, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–9766 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request, Petroleum Refineries in Foreign Trade Subzones

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning Petroleum Refineries in Foreign Trade Subzones. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency' s estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Petroleum Refineries in Foreign Trade Subzones.

OMB Number: 1651–0063.

Form Number: None.

Abstract: The Petroleum Refineries in Foreign Trade Subzones is a rule that amended the regulations by adding special procedures and requirements governing the operations of crude petroleum and refineries approved as foreign trade zones.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 18.

Estimated Time Per Respondent: 732.

Estimated Total Annual Burden Hours: 13,176.

Estimated Total Annualized Cost on the Public: $329,400.

Dated: April 14, 2003.

Tracey Denning,

Information Services Group.

[FR Doc. 03–9767 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Exportation of Used Self-Propelled Vehicles

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Exportation of Used Self-Propelled Vehicles. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the

collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document, the CBP is soliciting comments concerning the following information collection:

Title: Exportation of Used-Propelled Vehicles.

OMB Number: 1651–0054.

Form Number: None.

Abstract: The Exportation of Used-Propelled Vehicles requires the submission of documents verifying vehicle ownership of exporters for exportation of vehicles in the United States.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, Businesses.

Estimated Number of Respondents: 600,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 100,000.

Estimated Total Annualized Cost on the Public: $1,700,000.

Dated: April 14, 2003.

Tracey Denning,

Information Services Group.

[FR Doc. 03–9768 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Serially Numbered Substantial Holders or Containers

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Serially Numbered Substantial Holders or Containers. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Serially Numbered Substantial Holders or Containers.

OMB Number: 1651–0035.

Form Number: N/A.

Abstract: The marking is used to provide for duty free entry of holders or containers which were manufactured in the United States and exported and returned without having been advanced in value or improved in condition by any process or manufacture. The regulations provide for duty free entry of holders or containers of foreign manufacture if duty has been paid before.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Institutions.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 4.5 hours.

Estimated Total Annual Burden Hours: 90.

Estimated Total Annualized Cost on the Public: $1,080.

Dated: April 14, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–9769 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Certificate of Registration

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Certificate of Registration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Border of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Certificate of Registration.

OMB Number: 1651–0010.

Form Number: Forms 4455 and 4457.

Abstract: The Certificate of Registration is used to expedite free entry or entry at a reduced rate on foreign made personal articles which are taken abroad. The articles are dutiable each time they are brought into the United States unless there is acceptable proof of prior possession.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Individuals, travelers.

Estimated Number of Respondents: 200,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 10,000.

Estimated Total Annualized Cost on the Public: $104,500.

Dated: April 14, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–9772 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Application To Establish Centralized Examination Station

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Application to Establish Centralized Examination Station. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Application to Establish Centralized Examination Station.

OMB Number: 1651–0061.

Form Number: N/A.

Abstract: If a port director decides their port needs one or more Centralized Examination Stations (CES), they solicit applications to operate a CES. The information contained in the application will be used to determine the suitability of the applicant's facility, the fairness of his fee structure, his knowledge of cargo handling operations and his knowledge of CBP procedures.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 2 hours (120 minutes).

Estimated Total Annual Burden Hours: 100.

Estimated Total Annualized Cost on the Public: $1,450.

Dated: April 14, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–9773 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Importers ID Input Record

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the

general public and other Federal agencies to comment on an information collection requirement concerning the Importers ID Input Record. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Importers ID Input Record.

OMB Number: 1651–0064.

Form Number: Form 5106.

Abstract: This document is filed with the first formal entry which is submitted or the first request for services that will result in the issuance of a bill or a refund check upon adjustment of a cash collection.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses/ Institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 100.

Estimated Total Annualized Cost on the Public: $13,750.

Dated: April 14, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–9774 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Delivery Ticket

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Delivery Ticket (Form 6043). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Delivery Ticket (Form 6043).

OMB Number: 1651–0081.

Form Number: Form 6043.

Abstract: This collection is intended to cover a warehouse proprietor's receipt of transport to the warehouse from custody of the arriving carrier.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses/ Institutions.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 6,600.

Estimated Total Annualized Cost on the Public: $82,500.

Dated: April 14, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–9775 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Administrative Rulings

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Administrative Rulings. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before June 20, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, Room 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Administrative Rulings.

OMB Number: 1651–0085.

Form Number: N/A.

Abstract: This collection is necessary in order for CBP to respond to requests by importers and other interested persons for the issuance of administrative rulings regarding the interpretation of CBP laws with respect to prospective and current transactions.

Current Actions: There are no changes to the information collection. This submission is to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses/ Institutions.

Estimated Number of Respondents: 12,200.

Estimated Time Per Respondent: 10 hours.

Estimated Total Annual Burden Hours: 128,000.

Estimated Total Annualized Cost on the Public: $12,800,000.

Dated: April 14, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–9776 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following individual Customs broker license and any and all associated permits have been cancelled due to the death of the broker:

Name	License No.	Port name
George Douglas Cunningham	2970	Mobile.
Ravi D. Phadnis	13452	Seattle.
Stanley C. McKenny	3141	Detroit.

Dated: April 14, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–9753 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Retraction of Revocation Notice

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: The following Customs broker licenses were erroneously included in a list of revoked Customs broker licenses.

Name	License	Port name
Lindsey Forwarders, Inc.	14223	Portland, OR.
Judith Demeron	9637	Chicago.

Customs broker license Nos. 14223 and 9637 remain valid.

Dated: April 14, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–9756 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled without prejudice:

Name	License No.	Issuing port
San Jose Customs Brokers, Inc.	11895	San Francisco.
Stein Customs Consulting Services, Inc.	13849	Seattle.
Tania McCormack	5302	San Francisco.
Larry D. Tonsager	4196	Portland, OR.
Alton H. Ward	4595	Portland, ME.

Dated: April 14, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–9754 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled without prejudice.

Name	License No.	Issuing port
Transoceanic Shipping Co.	4675	Houston.
Richard M. Nakamoto	5234	San Francisco.

These brokers hold multiple Customs broker licenses. They continue to hold other valid Customs broker licenses.

Dated: April 14, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–9755 Filed 4–18–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–19]

Notice of Proposed Information Collection: Comment Request; Manufactured Housing Production and Fee Reporting

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* June 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410, or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: William W. Matchneer III, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–6401 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required, by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35 as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Manufactured Housing Production and Fee Reporting.

OMB Control Number: 2502–0233.

Description of the need for the information and proposed use: The Department of Housing and Urban Development uses these information collection to calculate and collect monitoring fees for manufactured housing units and to track the request, approval, and application of authorized certification labels.

Agency form numbers, if applicable: HUD–101, HUD–202, HUD–203B, HUD–301, HUD–302, HUD–303, HUD–304.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 5,208; the total number of respondents is 256 generating 7,536 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the responses is from one half hour to one hour.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 14, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–9800 Filed 4–18–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–18]

Notice of Proposed Information Collection: Comment Request; Request for Approval of Advance of Escrow Funds

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Papework Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the pubic and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, pertaining electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Approval of Advance of Escrow Funds.

OMB Control Number, if applicable: 2502–0018.

Description of the need for the information and proposed use: The information needed from the "Request for Approval of Advance of Escrow Funds" form is to ensure that escrowed funds are disposed accurately for completion of offsite improvements, construction changes, non-critical repairs pending completion or not paid at final endorsement, or mortgagor's unpaid construction cost at final endorsement. The mortgagor to request withdrawal of escrowed funds also uses the information collection.

Agency form numbers, if applicable: HUD–92464.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 1,050; the number of respondents is 525 generating approximately 525 annual responses; the frequency of response is on occasion; and the estimated time needed to prepared the response is 2 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 14, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–9801 Filed 4–18–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–17]

Notice of Proposed Information Collection: Comment Request; Lender Qualifications for Multifamily Accelerated Processing (MAP)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Michael L. McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond: including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Lender Qualifications for Multifamily Accelerated Processing (MAP) and Changes to the MAP Program.

OMB Control Number, if applicable: 2502–0541.

Description of the need for the information and proposed use: Multifamily Accelerated Processing (MAP) is a procedure that permits approved lenders to prepare, process, and submit loan applications for Federal Housing Administration (FHA) multifamily mortgage insurance. In May 2000, MAP replaced existing "fast-track" procedures with a single national process for all multifamily offices of the U.S. Department of Housing and Urban Development (HUD). Changes are being implemented to improve monitoring and maintaining the integrity of the MAP procedures in part as a result of a General Accounting Office (GAO) audit of MAP's implementation. MAP underwriters and construction loan administrators will be tracked as they move from lender to lender. This will be accomplished through a registry of approved MAP underwriters and construction loan administrators. HUD Headquarters, Lender Qualifications and Monitoring Division (LQMD) will make the initial approval of the MAP Lender's underwriters and construction loan administrators. This will insure a uniform review standard as opposed to the individual field offices doing the initial approval. MAP Lenders will be required to notify HUD Headquarters (LQMD) immediately when there is any change in the MAP underwriting staff, construction loan administrators, and persons authorized to bind the lender on MAP loan applications. MAP Lenders will be required to annually provide a certification listing the names of the lender's approved MAP underwriters, construction loan administrators and persons authorized to bind the lender on MAP loan applications. All MAP Lenders must submit either a pre-application package or Firm Commitment application within 6 months of the latter of the date of the Mortgagee Letter (Changes to the MAP Program) or the date of their approval as a MAP Lender and every 18 months thereafter. Failure to do so will be a basis for removal as an approved MAP Lender. Lenders losing their MAP designation will still be able to use traditional application processing. This requirement is being imposed to keep lenders active and prevent a loss of MAP underwriting skills. MAP Lenders will be required to provide HUD Headquarters (LQMD) with either an electronic mailbox or an individual's e-mail address. Maintaining multiple e-mail addresses for an individual lender has become an unmanageable task. HUD will use the electronic address to continue to notify MAP Lenders of program changes and other items of interest.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents is 25 for new MAP Lender approval applications and 130 for the Mortgagee Letter information request, the frequency of response is 1, the hours per response is 10 hours for the MAP Lender application, 1 hour for the Mortgagee Letter information request, and the total estimated annual burden hours is 380.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 11, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–9802 Filed 4–18–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–16]

Notice of Proposed Information Collection: Comment Request; Mortgagee's Certificate

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Michael McCullough, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1142, (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Mortgagee's Certificate.

OMB Control Number, if applicable: 2502–0468.

Description of the need for the information and proposed use: HUD requires the mortgagee to submit Form HUD 2434, Mortgagee's Certificate, to assure that fees are within acceptable limits and the required escrows will be collected. HUD determines the reasonableness of the fees and uses the information in calculating the financial requirement for closing. The information is also used to determine allowable fees that will be collected from the mortgagor at closing.

Agency form numbers, if applicable: HUD–2434.

Estimation of the total numbers of hours needed to prepare the information collection based on the number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 825; the number of respondents is 1,100 generating approximately 1,100 annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response is 45 minutes.

Status of the proposed information collection: Reinstatement, without change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 10, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 03–9803 Filed 4–18–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4849–N–01]

Notice of Proposed Information Collection: Comment Requested; Semi-annual Enforcement Report

AGENCY: Office of Departmental Operations and Coordination, Office of Labor Relations, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 800a, Washington, DC 20410 or *Wayne_Eddins@HUD.gov.*

FOR FURTHER INFORMATION CONTACT: Jade Banks, Senior Policy Advisor, Office of Labor Relations, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; *Jade_M._Banks@hud.gov;* telephone (202) 708–0370 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Semi-annual Enforcement Report.

OMB Control Number, if applicable: None.

Description of the need for the information and proposed use: Federal agencies administering programs subject to Davis-Bacon wage provisions are required by Department of Labor regulations to submit a report of all new covered contracts/projects and all enforcement activities each six months. In order for HUD to comply with this requirement, it must collect contract and enforcement information from local agencies that administer HUD-assisted programs subject to Davis-Bacon requirements.

Agency form numbers, if applicable: To be assigned.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total numbers of hours needed to prepare the information collection is 9,000, number of respondents is 4,500,

frequency of response is semi-annually, and the hours per response is 2. Recordkeeping requirements will add an additional 2,250 hours for a total of 11,250 hours per year.

Status of the proposed information collection: Existing collection in use without an OMB control number.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 9, 2003.

Frank L. Davis,

Director, Office of Departmental Operations and Coordination.

[FR Doc. 03–9804 Filed 4–18–03; 8:45 am]

BILLING CODE 7210–18–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4849–N–02]

Notice of Proposed Information Collection: Comment Requested; Report of Additional Classification and Wage Rate

AGENCY: Office of Departmental Operations and Coordination, Office of Labor Relations, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 800a, Washington, DC 20410 or *Wayne_Eddins@HUD.gov.*

FOR FURTHER INFORMATION CONTACT: Jade Banks, Senior Policy Advisor, Office of Labor Relations, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; *Jade_M._Banks@hud.gov;* telephone (202) 708–0370 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Report of Additional Classification and Wage Rate.

OMB Control Number, if applicable: 2501–0011.

Description of the need for the information and proposed use: Contractors and subcontractors engaged on HUD-assisted construction projects subject to Davis-Bacon wage requirements must pay no less than the wages determined to be prevailing by the Secretary of Labor to all laborers and mechanics engaged in the construction work. Occasionally, the Davis-Bacon wage determination applicable to the construction work does not contain a prevailing wage rate for all classifications of work needed to complete the work. In such cases, the contractor or subcontractor that will employ the classification(s) missing from the wage determination must propose a wage rate for such classification(s) for the consideration of the Department of Labor (DOL) with respect to that construction work. HUD and local agencies that administer HUD-assisted programs use the form HUD–4230A to record and submit the contractor or subcontractor's additional classification and wage rate request to the DOL. The contractor or subcontractor may itself complete the form HUD–4230A or may submit its request in writing to HUD or the local agency involved; HUD or the local agency will transcribe the request to the form for submission to the DOL. HUD is modifying the form to better identify the applicable Davis-Bacon wage determination and the construction work involved. The modifications will not affect the amount of time required to complete the information collection.

Agency form numbers, if applicable: HUD–4230A.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: An estimation of the total numbers of hours needed to prepare the information collection is 1,000, number of respondents is 500, frequency of response is on occasion, and the hours per response is 2. Recordkeeping requirements will add an additional hour for a total of 1,500 hours per year.

Status of the proposed information collection: Reinstatement with change of previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 9, 2003.

Frank L. Davis,

Director, Office of Departmental Operations and Coordination.

[FR Doc. 03–9805 Filed 4–18–03; 8:45 am]

BILLING CODE 4210–18–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4849–N–03]

Notice of Proposed Information Collection: Comment Requested; Employee Questionnaire

AGENCY: Office of Departmental Operations and Coordination, Office of Labor Relations, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 800a, Washington, DC 20410. or *Wayne_Eddins@HUD.gov.*

FOR FURTHER INFORMATION CONTACT: Jade Banks, Senior Policy Advisor, Office of Labor Relations, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; *Jade_M._Banks@hud.gov;* telephone (202) 708–0370 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Employee Questionnaire.

OMB Control Number, if applicable: None.

Description of the need for the information and proposed use: HUD and local agencies administering HUD-assisted programs must enforce Federal wage and reporting requirements on covered HUD-assisted construction and maintenance work. Enforcement activities include contacting laborers and mechanics and requesting information about their employment on covered projects. In addition, HUD and local agencies may be contacted by the workers or by others who wish to file a complaint of labor standards violation(s). HUD and local agencies have used many formats to collect worker information and to record complainant information. HUD proposes to standardize and institute two forms for these collections: an employee questionnaire and a complaint intake form. The questionnaire may be mailed to employees or may be otherwise provided to them to complete and return to HUD or the local agency. Complaint intake forms will be used by HUD and local agency personnel to record information provided by complainants about the nature of the alleged violation(s). Both forms may be supplemented with additional pages, as needed. Responses and the provision of supplemental information is voluntary on the part of questionnaire respondents. Questionnaire responses and complaint intake forms must be retained by the HUD and local agencies to document the sufficiency of enforcement efforts.

Agency form numbers, if applicable: To be assigned.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Item	Number of respondents	Amount of time required (in hrs.)	Total time required (in hrs.)/ annum
Questionnaires	10,000	.25–.5	2,500–5,000
Complaint Intake Form	2,000	.25–.5	500–1,000
Recordkeeping	12,000	.25–.5	3,000–6,000
Total Annual Burden			6,000–12,000

Status of the proposed information collection: Existing collection in use without an OMB control number.

Authority: section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 9, 2003.

Frank L. Davis,

Director, Office of Departmental Operations and Coordination.

[FR Doc. 03–9806 Filed 4–18–03; 8:45 am]

BILLING CODE 4210–18–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4849–N–04]

Notice of Proposed Information Collection: Comment Requested; Maintenance Wage Rate Recommendation, Certification, and Survey

AGENCY: Office of Departmental Operations and Coordination, Office of Labor Relations, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 800a, Washington, DC 20410 or *Wayne_Eddins@HUD.gov.*

FOR FURTHER INFORMATION CONTACT: Jade Banks, Senior Policy Advisor, Office of Labor Relations, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410 or *JadeM.Banks@hud.gov,* (202) 708–0370 (this is not a toll-free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the

burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Maintenance Wage Rate Recommendation, Certification and Survey.

OMB Control Number, if applicable: None.

Description of the need for the information and proposed use: Public housing agencies (PHAs) and Tribally-Designated Housing Entities (TDHEs) are required to ensure that maintenance laborers and mechanics are paid no less than prevailing wages that are determined or adopted by HUD (section 12(a), U.S. Housing Act of 1937, as amended; section 104(b), Native American Housing Assistance and Self-Determination Act of 1996, as amended). Except that, TDHEs may, at their discretion, implement tribally-determined prevailing maintenance wage rates which would apply in place of HUD-determined or -adopted wage rates.

HUD determines or adopts a schedule of prevailing maintenance wage rates for each PHA and TDHE (except for those TDHEs that implement tribally-determined prevailing wage rates), annually, coinciding with the agency's fiscal year. In order to ensure that the wage rates are reflective of current economic conditions, HUD requests each PHA and TDHE to submit a recommendation of prevailing wage rates for HUD consideration. PHA and TDHE recommendations may be based on a wide variety of economic indicators including, at the discretion of the PHA or TDHE, the results of a wage survey that the PHA or TDHE may conduct of maintenance employers in their operating jurisdiction. In addition, HUD may conduct a maintenance wage rate survey in the absence of a PHA/TDHE recommendation or to evaluate a recommendation that has been provided by a PHA or TDHE.

In order to assist PHAs and TDHEs to submit prevailing wage recommendations and, if they choose, to conduct and evaluate the results of a maintenance wage survey, and to assist HUD personnel in the conduct and evaluation of a maintenance wage survey, HUD proposes to institute three forms: a Maintenance Wage Rate Recommendation and Certification; a Maintenance Wage Rate Survey Summary; and a Survey of Maintenance Wage Rates. PHA or TDHE submission of a recommendation is highly encouraged by HUD. In the absence of an agency recommendation, HUD will issue a prevailing wage rate schedule based upon its own actions which may include a maintenance wage survey conducted by HUD. Participation in any maintenance wage survey conducted by a PHA, TDHE or HUD, is voluntary on the part of maintenance employers. Maintenance wage rate recommendations, survey summaries and survey responses must be retained by PHAs, TDHEs and HUD to document compliance with the statutory labor standards provisions.

Agency form numbers, if applicable: To be assigned.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Item	Number of respondents	Amount of time required (hours)	Total time required/annum (hours)
Maintenance Wage Rate Recommendation	3,240	4	12,960
Survey Summary	1,640	4	6,560
Survey Form Agency Evaluation	41,000	8	328,000
Survey Form Employer Response	41,000	4	164,000
Record Keeping	3,240	1	3,240
Total Annual Burden			514,760

Status of the proposed information collection: Existing collection in use without an OMB control number.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 9, 2003.

Frank L. Davis,

Director, Office Departmental Operations and Coordination.

[FR Doc. 03–9807 Filed 4–18–03; 8:45 am]

BILLING CODE 4210–18–P

Department of Housing and Urban Development

[Docket No. FR–4815–N–19]

Notice of Submission of Proposed Information Collection to OMB: American Housing Survey (AHS)—2003 National Sample

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 21, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0017) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg_omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: American Housing Survey (AHS)—2003 National Sample.

OMB Approval Number: 2528–0017.

Form Numbers: AHS–26, AHS–27, AHS–28.

Description of the Need for the Information and its Proposed Use: The 2003 AHS–N is a longitudinal study that provides a periodic measure on the quality, availability, and cost of housing for the nation. The study also provides information on demographic and other characteristics of the occupants. Federal and local agencies use AHS data to evaluate housing issues.

Respondents: Individuals or households.

Frequency of Submission: On-occasion, Biannually, Reinterview.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	63,387	0.8		0.6		35,169

Total Estimated Burden Hours: 35,169.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 11, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–9808 Filed 4–18–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 5-Year Review of the Marbled Murrelet and the Northern Spotted Owl

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce a 5-year review of the marbled murrelet (*Brachyramphus marmoratus marmoratus*) and the northern spotted owl (*Strix occidentalis caurina*) under section 4(c)(2)(A) of the Endangered Species Act of 1973, as amended (Act). The purpose of the review is to ensure that the classification of species' as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants (List) are accurate.

The 5-year review is an assessment of the best scientific and commercial data available at the time of the review. Therefore, we are requesting submission of any new information (best scientific and commercial data) on the marbled murrelet and the northern spotted owl since their original listings in 1992 and 1990, respectively. If the present classification of these species is not consistent with the best scientific and commercial information available, we may, at the conclusion of this review, initiate a separate action to propose changes to the List accordingly.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than June 20, 2003. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit information to the Field Office Supervisor, Attention Owl and Murrelet 5-year Review, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266. Information received in response to this notice and review results will be available for public inspection by appointment, during normal business hours, at the above address. New information regarding the northern spotted owl may be sent electronically to *owl_information@r1.fws.gov.* New information regarding the marbled murrelet may be sent electronically to *murrelet_information@r1.fws.gov.*

FOR FURTHER INFORMATION CONTACT: For the marbled murrelet, contact Lee Folliard at the above address, or at 503/231–6179. For the northern spotted owl, contact Robin Bown at the above address, or at 503/231–6179.

SUPPLEMENTARY INFORMATION:

Why Is a 5-year Review Conducted?

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B) and the provisions of subsection (a) and (b), to determine, on the basis of such a review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the marbled murrelet and northern spotted owl.

The 5-year review considers all new information available at the time of the review. This review will consider the best scientific and commercial data that has become available since the current listing determination or most recent status review, such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, and demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends (see five factors under heading "How do we determine whether a species is endangered or threatened?");

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Why Is the Review Being Conducted for the Owl and Murrelet at This Time?

Conducting a 5-year review for these two species at this time was agreed to in connection with proposed settlement of two lawsuits, *Western Council of Industrial Workers* v. *Secretary of the Interior*, Civil No. 02–6100—AA (D. Or.) and *American Forest Resource Council* v. *Secretary of the Interior*, Civil No. 02–6087–AA (D. Or.). These settlement agreements are currently pending consideration by the District Court in Oregon. The 5-year review will consider each species' population status, and the threats to each species. The review will consider information that has become available since the original listing determination, such as: population and demographic trend data; studies of dispersal and habitat use; genetics and species competition investigations; surveys of habitat amount, quality, and distribution; adequacy of existing regulatory mechanisms; and management and conservation planning information. The 5-year review will assess: (a) Whether new information suggests that the species' population is increasing, declining, or stable; (b) whether existing threats are increasing, the same, reduced, or eliminated; (c) if there are any new threats; and (d) if new information or analysis calls into question any of the conclusions in the original listing determination as to the species' status. The review will also apply this new information to consideration of the appropriate application of the Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722) to the listed entity, if applicable.

How Are the Marbled Murrelet and the Northern Spotted Owl Currently Listed?

The List is found in 50 CFR 17.11 (wildlife) and 17.12 (plants). However, amendments to the List through final rules are published in the **Federal Register**. The List is also available on our Internet site at *http://endangered.fws.gov/wildlife.html#Species*. In Table 1 below, we provide a summary of the listing information for the marbled murrelet and the northern spotted owl.

TABLE 1.—SUMMARY OF THE LISTING INFORMATION FOR THE MARBLED MURRELET AND THE NORTHERN SPOTTED OWL

Common name	Scientific name	Status	Where listed	Final listing rule
Murrelet, marbled	*Brachyramphus marmoratus marmoratus.*	Threatened	U.S.A. (CA, OR, WA)	57 FR 45328 (01–Oct–92).
Owl, northern spotted	*Strix occidentalis caurina*	Threatened	All populations throughout range.	55 FR 26114 (26–Jun–90).

Definitions Related to This Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature.

B. *Distinct Population Segment* is defined in our February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment endangered or threatened?). Distinct population segments of vertebrate species, as well as subspecies of all listed species, may be proposed for separate reclassification or for removal from the list. Any distinct population segment of a vertebrate taxon that was listed prior to the implementation of this policy will be reevaluated on a case-by-case basis as recommendations are made to change the listing status for that distinct population segment. The appropriate application of the policy will also be considered in the 5-year reviews of the status of listed species required by section 4(c)(2) of the Act.

C. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

D. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the following five factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence. In summary, our determination required under section 4(b)(1) of the Act shall be made on the basis of the best scientific and commercial data available.

What Could Happen As a Result of This Review?

If we find that there is new information concerning the marbled murrelet or northern spotted owl indicating a change in classification is warranted, we may propose new rules that could do one of the following: (a) Reclassify the species from threatened to endangered; or (b) remove the species from the List.

Any Distinct Population Segment (DPS) of a vertebrate taxon that was listed prior to implementation of the DPS policy will be reevaluated on a case-by-case basis as recommendations are made to change the listing status for that distinct population segment. The appropriate application of the DPS policy will also be considered in the 5-year reviews of the status of listed species required by section 4(c)(2) of the Act.

What Will Happen if No New Information Is Submitted for the Species Under Review?

No changes will be made to the classification of the marbled murrelet or northern spotted owl as a result of this review unless we find that there is new information indicating that such action is warranted. However, we are not limited to reviewing listed species only during a 5-year review. We may review a species at any time, and may initiate reclassification or delisting whenever the best available scientific and commercial information indicates that such action is warranted.

Public Solicitation of New Information:

We request any new information concerning the status of the northern spotted owl and marbled murrelet. New information is considered to be scientific and commercial data that has become available since the time of the species current listing determination or most recent status review. In particular, we are seeking information such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends (see five factors under heading "How do we determine whether a species is endangered or threatened?");

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

Specifically for the owl and murrelet we are interested in new information, analyses, and/or reports for these species that summarize and interpret: demographic or population trends; genetics and competition; habitat amount, use, and distribution; and adequacy of existing regulatory mechanisms, management, and conservation planning. We request this information for all applicable land ownerships within the range of both species.

Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Authority

This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: April 2, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–9671 Filed 4–18–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[CO–934–5700; COC63737]

Notice of Proposed Reinstatement of Terminated Oil and Gas Leases

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease COC 63737 for lands in Weld county, Colorado, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at the rate of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease COC 63737 effective June 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Beverly A. Derringer,

Chief, Fluid Minerals Adjudication.

[FR Doc. 03–9715 Filed 4–18–03; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–03–1310–LAES 47736]

Proposed Reinstatement of Terminated Oil and Gas Lease, Louisiana

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed reinstatement of terminated oil and gas lease.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease, LAES 47736, Cameron Parish, Louisiana, was timely filed and accompanied by all required rentals and royalties. No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rental and royalties at rates of $10 per acre and 12⅔ percent. Payment of $500 in administrative fees and a $158 publication fee has been made.

FOR FURTHER INFORMATION, CONTACT: Gina Goodwin, Land Law Examiner, BLM Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153 at (703) 440–1534.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management is proposing to reinstate the lease effective the date of termination, June 1, 2002, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above. This is in accordance with section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188 (d) and (e)).

Dated: March 6, 2003.

Michael D. Nedd,

State Director.

[FR Doc. 03–9716 Filed 4–18–03; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–01–5410–EQ–B172; CACA 43937]

Conveyance of Mineral Interests in California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of segregation.

SUMMARY: The mineral interests owned by the United States in the land described in this notice, aggregating 160 acres, are segregated and made unavailable for filings under the general mining laws and the mineral leasing laws to determine the suitability for conveyance of the reserved mineral interest pursuant to section 209 of the Federal Land Policy and Management Act of October 21, 1976. The mineral interests may be conveyed in whole or in part upon favorable mineral examination. The purpose is to allow consolidation of surface and subsurface of minerals ownership where there are no known mineral values or in those instances where the reservation interferes with or precludes appropriate non-mineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Kathy Gary, California State Office, Federal Office Building, 2800 Cottage Way, Room W–1834, Sacramento, California 95825, (916) 978–4677.

Serial No. CACA 4393757

T. 31 N., R. 11 W., Mount Diablo Meridian
Sec. 4, NW¼
County—Trinity.

Minerals Reservation—All coal and other minerals.

Upon publication of this notice of segregation in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests owned by the United States in the private lands covered by the application shall be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate by publication of an opening order in the **Federal Register** specifying the date and time of opening; upon issuance of a patent or other document of conveyance to such mineral interest; or two years from the date of publication of this notice, whichever occurs first.

Howard K. Stark,

Chief, Branch of Land Management.

[FR Doc. 03–9714 Filed 4–18–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–03–1420–BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

Indian Meridian, Oklahoma

T. 26 N., R. 25 E., approved December 10, 2002, for Group 72 OK;
T. 17 N., R. 23 E., approved March 14, 2003, for Group 91 OK;
T. 14 N., R. 24 E., approved March 10, 2003, for Group 96 OK;

New Mexico Principal Meridian, New Mexico

T. 31 N., R. 13 W., approved January 29, 2003, for Group 989 NM;
T. 30 N., R. 13 W., approved December 19, 2002, for Group 989 NM;
T. 24 N., R. 11 E., approved March 10, 2003, for Group 997 NM;
Antoine Leroux Grant & Antonio Martinez or Lucero De Godoi Grant, approved September 26, 2002, for Group 968 NM.

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of a protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, PO Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: April 3, 2003.

Stephen W. Beyerlein,

Acting Chief Cadastral Surveyor.

[FR Doc. 03–9707 Filed 4–18–03; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–030–2640–BH; AZA 30192]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 80 acres for a period of 20 years to protect the Tyro Mill Site Reclamation Project. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to mineral and geothermal leasing and material sales.

DATES: Comments should be received on or before July 21, 2003.

ADDRESSES: Comments should be sent to the Kingman Field Office Manager, BLM, 2475 Beverly Avenue, Kingman, AZ 86401.

FOR FURTHER INFORMATION CONTACT: Art Smith, Kingman Field Office, BLM, 2475 Beverly Avenue, Kingman, AZ 86401, 928–692–4433.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management has filed an application to withdraw the following described land from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

T. 21 N., R. 20 W.,
Sec. 7, N½NW¼.

The area described contains 80 acres in Mohave County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing, by the date specified above, to Kingman Field Office Manager.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Kingman Field Office Manager, within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** and a newspaper at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Dated: April 14, 2003.

Michael A. Taylor,

Deputy State Director, Resources Division.

[FR Doc. 03–9713 Filed 4–18–03; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0071).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval.

The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 203, "Relief or Reduction in Royalty Rates."

DATES: Submit written comments by June 20, 2003.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov*. Reference "Information Collection 1010–0071" in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team, (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 203, Relief or Reduction in Royalty Rates.

OMB Control Number: 1010–0071.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended by Public Law 104–58, Deep Water Royalty Relief Act (DWRRA), gives the Secretary of the Interior (Secretary) the authority to reduce or eliminate royalty or any net profit share specified in OCS oil and gas leases to promote increased production. The DWRRA also authorized the Secretary to suspend royalties when necessary to promote development or recovery of marginal resources on producing or non-producing leases in the Gulf of Mexico (GOM) west of 87 degrees, 30 minutes West longitude.

Section 302 of the DWRRA provides that new production from a lease in existence on November 28, 1995, in a water depth of at least 200 meters, and in the GOM west of 87 degrees, 30 minutes West longitude qualifies for royalty suspension in certain situations. To grant a royalty suspension, the Secretary must determine that the new production or development would not be economic without royalty relief. The Secretary must then determine the volume of production on which no royalty would be due in order to make the new production from the lease economically viable. This determination must be done on a case-by-case basis. By regulation published January 15, 2002, (67 FR 1862) production from leases in the same water depth and area issued after November 28, 2000, also can qualify for royalty suspension in addition to any that may be included in their lease terms.

In addition, Federal policy and statute require us to recover the cost of services that confer special benefits to identifiable non-Federal recipients. The Independent Offices Appropriation Act (31 U.S.C. 9701), OMB Circular A–25, and the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996) authorize MMS to collect these fees to reimburse us for the cost to process applications or assessments.

Regulations at 30 CFR part 203 implement these statutes and policy and require respondents to pay a fee to request royalty relief. Section 30 CFR 203.3 states that, "We will specify the necessary fees for each of the types of royalty-relief applications and possible MMS audits in a Notice to Lessees. We will periodically update the fees to reflect changes in costs as well as provide other information necessary to administer royalty relief."

The MMS use the information to make decisions on the economic viability of leases requesting a suspension or elimination of royalty or net profit share. These decisions have enormous monetary impacts to both the lessee and the Federal government. Royalty relief can lead to increased production of natural gas and oil, creating profits for lessees and royalty and tax revenues for the government that they might not otherwise receive. We could not make an informed decision without the collection of information required by 30 CFR part 203.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2) and 30 CFR 203.63(b) and 30 CFR 250.196. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

Frequency: On occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 8,650 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Reporting or recordkeeping requirement 30 CFR part 203	Application/Audit Fees		
	Average No. annual responses	Hour burden	Annual burden hours
OCS Lands Act Reporting			
Application—leases that generate earnings that cannot sustain continued production (end-of-life lease).	2 Applications	100	200
	Application 2 × $12,000 = $24,000 * Audit 1 × $10,000 = $10,000		
Application—apart from formal programs for royalty relief for marginal producing lease (expect < 1 per year).	1 Application	250	250
	Application 1 × $15,000 = $15,000 * Audit 1 × $10,000 = $10,000		
§ 203.55 Renounce relief arrangement (seldom, if ever will be used; minimal burden to prepare letter).	1 Letter	1	1
§ 203.81, 203.83 through 203.89 Required reports	Burden included with applications		0
OCS Lands Act Reporting Subtotal	4 responses	N/A	451

Reporting or recordkeeping requirement 30 CFR part 203	Application/Audit Fees		
	Average No. annual responses	Hour burden	Annual burden hours
	Processing Fees = $59,000		
DWRAA Reporting			
Application—leases in designated areas of GOM deep water acquired in lease sale before 11/28/95 or after 11/28/00 and are producing (deep water expansion project).	1 Application	2,000	2,000
	Application 1 × $39,000 = $39,000 No Audit		
Application—leases in designated areas of deep water GOM, acquired in lease sale before 11/28/95 or after 11/28/00, that have not produced (pre-Act or post-2000 deep water leases).	1 Application	2,000	2,000
	Application 1 × $49,000 = $49,000 * Audit 1 × $25,000 = $25,000		
Application—short form to add or assign pre-Act lease	1 Application	40	40
	Application 1 × $1,000 = $1,000 No Audit		
Application—preview assessment (seldom if ever will be used as applicants generally opt for binding determination by MMS instead).	1 Application	900	900
	Application 1 × $46,600 = $46,600 No Audit		
Application—apart from formal programs for royalty relief for marginal expansion project or marginal non-producing lease (expect < 1 per year).	1 Application	1,000	1,000
	Application 1 × $49,000 = $49,000 Audit 1 × $20,000 = $20,000		
Redetermination	1 Redetermination	500	500
	Application 1 × $32,000 = $32,000 * Audit 1 × $25,000 = $25,000		
§ 203.70, 203.81, 203.90, 203.91 Submit fabricator's confirmation report	2 Reports	20	40
§ 203.70, 203.81, 203.90, 203.92 Submit post-production development report	2 Reports *	50	100
§ 203.77 Renounce relief arrangement (seldom, if ever will be used; minimal burden to prepare letter).	1 Letter	1	1
§ 203.79(a) Request reconsideration of MMS field designation	4 Requests	400	1,600
§ 203.79(c) Request extension of deadline to start construction	1 Request	2	2
§ 203.81, 203.83 through 203.89 Required reports	Burden included with applications		0
DWRRA Reporting Subtotal	16 Reponses	N/A	8,183
	Processing Fees = $286,600		
Recordkeeping Burden			
§ 203.91 Retain cost records for post-production development/fabrication reports (records retained as usual/customary business practice; minimal burden to make available at MMS request).	2 Recordkeepers	8	16
Total Annual Burden	22 Responses	N/A	8,650

* CPA certification expense burden also imposed on applicant.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: There are two non-hour costs associated with this information collection. The currently approved non-hour cost burden is $661,000. This estimate is based on:

(a) Application and audit fees. The total annual estimated cost burden for these fees is $345,600 (refer to burden chart).

(b) Cost of reports prepared by independent certified public accountants. Under § 203.81, a report prepared by an independent certified public accountant (CPA) must accompany the application and post-production report (expansion project, short form, and preview assessment applications are excluded). The OCS Lands Act applications will require this report only once; the DWRRA applications will require this report at two stages—with the application and post-production development report for successful applicants. We estimate approximately seven submissions each year at an average cost of $45,000 per report, for a total estimated annual cost burden of $315,000.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency " * * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: April 9, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–9695 Filed 4–18–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0139).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) is titled "30 CFR Part 216, Production Accounting; Subpart A, General Provisions; and Subpart B, Oil and Gas, General."

DATES: Submit written comments on or before June 20, 2003.

ADDRESSES: Submit written comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, PO Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation we have received your email, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, telephone (303) 231–3211, FAX (303) 231–3385 or email *sharron.gebhardt@mms.gov*.

SUPPLEMENTARY INFORMATION:

Title: "30 CFR Part 216, Production Accounting; Subpart A, General Provisions; and Subpart B, Oil and Gas, General."

OMB Control Number: 1010–0139.

Bureau Form Number: Forms MMS–4054 and MMS–4058.

Abstract: The Secretary of the U.S. Department of the Interior (DOI) is responsible for collecting royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage mineral resources production on Federal and Indian lands, collect the royalties due, and distribute the funds in accordance with those laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

The financial accounting system is an integrated computer system that includes production reports submitted by lease/agreement operators and is designed to track minerals produced from Federal and Indian lands from the point of production to the point of disposition, or royalty determination, and/or point of sale. The financial accounting system also includes payment and sales volumes and values as reported by payors. The production and royalty volumes are compared to verify that proper royalties are received for the minerals produced.

The production reports provide MMS with ongoing information on lease, unit, or communitization agreement (lease/agreement) and facility production, sales volumes, and inventories. The reports summarize all operations on a lease/agreement or facility during a

reporting period. They identify production by the American Petroleum Institute well number and sales by product. Data collected are used as a method of cross-checking reported production with reported sales. Failure to collect this information will prevent MMS from ensuring that all royalties owed on lease production are paid. Additionally, the data is shared electronically with the Bureau of Land Management, MMS's Offshore Minerals Management, Bureau of Indian Affairs, and tribal and State governments so they can perform their lease management responsibilities.

Form MMS–4054, Oil and Gas Operations Report (OGOR), is a three-part form that identifies all oil and gas lease production and dispositions. The form is used for all production reporting for offshore Outer Continental Shelf and onshore Federal and Indian lands. Monthly production information is compared with monthly sales and royalty data submitted on Form MMS–2014, Report of Sales and Royalty Remittance, (OMB Control Number 1010–0140) to ensure proper royalties are paid on the oil and gas production reported to MMS. MMS uses the information from parts A, B, and C of the OGOR to track all oil and gas from the point of production to the point of first sale or other disposition. To streamline preparation of modified reports, the operator has the option of modifying the reporting line (delete/add by detail line) or replacing (overlaying) the previous report.

OGOR, Part A, Well Production: All operators submit part A, Well Production; for each lease or agreement with active wells until such wells are abandoned and inventories are disposed. Each line identifies a well/producing interval combination showing well status; days on production; volumes of oil, gas, and water produced; and any volumes injected during the report month.

OGOR, Part B, Product Disposition: For any month with production volumes, operators submit part B, Product Disposition, to identify the sales, transfers, and lease use of production reported on part A. A separate line for each disposition shows: (1) The volume of oil, gas, or water; (2) the sales meter or other meter identifier; (3) the gas plant for instances where gas was processed prior to royalty determination; and (4) the quality of production sold.

OGOR, Part C, Product Sales From Facility: The lease operators who store their production before selling it must submit part C, Product Sales From Facility. Separate lines for each product identify the storage facility, sales meter if applicable, quality of production sold, beginning and ending storage inventory, volume of sales, and volumes of other gains and losses to inventory.

Form MMS–4058, Production Allocation Schedule Report (PASR), is submitted monthly by operators of the facilities and measurement points where production from an offshore lease or metering point is commingled with production from other sources before it is measured for royalty determination. MMS uses the data to determine whether sales reported by the lessee are reasonable. Each line identifies a lease or metering point and allocated sales or transfer volumes. Delivered production volumes are no longer reported. Space has been provided on each detail line for the operator's property name (area/block), and a column has been added for indicating whether the operator is injecting oil, gas, or both into the pipeline system. Beginning and ending inventory are no longer reported. To streamline preparation of modified reports, the operator has the option of modifying (delete/add by detail line) or replacing (overlaying) the previous report.

No proprietary information will be submitted to MMS under this collection. No items of a sensitive nature are collected. The requirement to respond is mandatory.

We have also changed the title of this ICR from "Production Accounting and Auditing System Oil and Gas Reports (Forms MMS–4054, MMS–4055, MMS–4056, and MMS–4058)" to "30 CFR Part 216, Production Accounting; Subpart A, General Provisions; and Subpart B, Oil and Gas, General" to clarify the regulatory language we are covering under 30 CFR part 216.

Frequency of Response: Monthly and as required.

Estimated Number and Description of Respondents: 2,500 industry operators.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 76,630 hours.

The burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The following chart shows the breakdown of the estimated burden hours by CFR section and paragraph:

RESPONDENT ANNUAL BURDEN HOUR CHART

30 CFR part 216 subparts A and B	Reporting requirement	Burden hours per response	Annual Number of responses	Annual burden hours
216.11; 216.16(a); 216.21; 216.40(d); 216.53(a), (b), and (c).	You must submit your Oil and Gas Operations Report, Form MMS–4054, in accordance with electronic reporting requirements * * * All reporting forms * * * should be mailed to the Minerals Management Service, Minerals Revenue Management, * * * The reporter shall submit accurately, completely, and timely, * * * all information forms and other information required by MMS. * * * The reporter shall have the burden of proving that a reporting problem was unavoidable. You must file an Oil and Gas Operations Report, Form MMS–4054, * * * You must submit a Form MMS–4054 for each well for each calendar month * * * MMS must receive your completed Form MMS–4054 * * * Electronically * * * Other than electronically * * *.	.25 hour (Electronic) .25 hour (Manual) ...	294,000 6,000	73,500 1,500
216.56(a), (b), and (c)	Any operator of an offshore Facility Measurement Point * * * must file a Production Allocation Schedule Report (Form MMS–4058). You must submit a Production Allocation Schedule Report, Form MMS–4058, for each calendar month * * * MMS must receive your Form MMS–4058 * * * Electronically * * * Other than electronically * * *.	.1167 hour (Electronic). .25 hour (Manual) ...	7,280 33,120	850 780

RESPONDENT ANNUAL BURDEN HOUR CHART—Continued

30 CFR part 216 subparts A and B	Reporting requirement	Burden hours per response	Annual Number of responses	Annual burden hours
216.57	Operators who have been granted a reduced royalty rate(s) by BLM must submit a Stripper Royalty Rate Reduction Notification (Form MMS–4377) to MMS * * *	Burden covered under OMB Control Number 1010–0090.		
Total			310,400	76,630

Estimated Annual Reporting and Recordkeeping "Non-hour Cost" Burden: We have identified no "non-hour" cost burdens.

Comments: The PRA (44 U.S.C. 3501, *et seq.*) provides an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our ICR submission for OMB approval, including appropriate adjustments to the estimated burden. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.* We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: April 16, 2003.

Cathy J. Hamilton,

Acting Associate Director for Minerals Revenue Management.

[FR Doc. 03–9784 Filed 4–18–03; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–434 and 731–TA–1030–1032 (Preliminary)]

4,4'-Diamino-2,2'-Stilbenedisulfonic Acid and Stilbenic Fluorescent Whitening Agents from China, Germany, and India

AGENCY: International Trade Commission.

ACTION: Notice of withdrawal of petition in countervailing duty and antidumping investigations.

SUMMARY: On April 10, 2003, the Department of Commerce and the Commission received a letter from petitioner in the subject investigations (Ciba Specialty Chemicals Corporation, Tarrytown, NY) withdrawing its petition. Commerce has not initiated investigations as provided for in sections 702(c) and 732(c) of the Tariff Act of 1930 (19 U.S.C. 1671a(c)/1673a(c)). Accordingly, the Commission gives notice that its countervailing duty and antidumping investigations concerning 4,4'-diamino-2,2'-stilbenedisulfonic acid and stilbenic fluorescent whitening agents from China, Germany, and India (investigations Nos. 701–TA–434 and 731–TA–1030–1032 (Preliminary)) are discontinued.

EFFECTIVE DATE: April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on

the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

By order of the Commission.
Issued: April 15, 2003.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. 03–9685 Filed 4–18–03; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–204–10]

Certain Circular Welded Carbon Quality Line Pipe:[1] Evaluation of the Effectiveness of Import Relief

AGENCY: International Trade Commission.

ACTION: Institution of an investigation and scheduling of a hearing under section 204(d) of the Trade Act of 1974 (19 U.S.C. 2254(d)) (the Act).

SUMMARY: Pursuant to section 204(d) of the Act, the Commission has instituted investigation No. TA–204–10, Certain Circular Welded Carbon Quality Line Pipe: Evaluation of the Effectiveness of Import Relief, for the purpose evaluating the effectiveness of the relief action imposed by the President on imports of certain circular welded carbon quality line pipe under section 203 of the Act, which terminated on March 1, 2003.

Background

The President imposed the relief action on March 1, 2000, in the form of a tariff following receipt of an affirmative injury determination and relief recommendation from the Commission in December 1999. The relief was imposed for a period of 3 years and 1 day. *See* Proclamation 7274 of February 18, 2000 (65 FR 9193), as modified by Proclamation 7585 of August 28, 2002 (67 FR 56207). Section 204(d) of the Act requires the Commission, following termination of a relief action, to evaluate the effectiveness of the action in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b) of the Act. The Commission is required to submit a report on the evaluation to the President and the Congress no later than 180 days after the day on which the relief action terminated.

[1] Certain circular welded carbon quality line pipe is provided for in subheadings 7306.10.10 and 7306.10.50 of the Harmonized Tariff Schedule of the United States (HTS).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, subparts A through and E), and part 206, subparts A and F (19 CFR part 206, subparts A and F).

EFFECTIVE DATE: April 11, 2003.

FOR FURTHER INFORMATION CONTACT: Karen Taylor (202–708–4101) or Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 14 days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Public hearing.—As required by statute, the Commission has scheduled a hearing in connection with this investigation. The hearing will be held beginning at 9:30 a.m. on June 25, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 18, 2003. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 23, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is June 18, 2003. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is July 2, 2003. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement concerning the matters to be addressed in the report on or before July 2, 2003. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The report that the Commission sends to the President may include confidential business information. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 204(d) of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.
Issued: April 15, 2003.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. 03–9684 Filed 4–18–03; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–204–11]

Certain Steel Wire Rod:[1] Evaluation of the Effectiveness of Import Relief

AGENCY: United States International Trade Commission.

[1] Certain steel wire rod is provided for in subheadings 7213.91, 7213.99, 7227.20, and 7227.90.60 of the Harmonized Tariff Schedule of the United States (HTS).

ACTION: Institution of an investigation and scheduling of a hearing under section 204(d) of the Trade Act of 1974 (19 U.S.C. 2254(d)) (the Act).

SUMMARY: Pursuant to section 204(d) of the Act, the Commission has instituted investigation No. TA–204–11, Certain Steel Wire Rod: Evaluation of the Effectiveness of Import Relief, for the purpose of evaluating the effectiveness of the relief action imposed by the President on imports of certain steel wire rod under section 203 of the Act, which terminated on March 1, 2003.

Background

The President imposed the relief action on March 1, 2000, in the form of a tariff-rate quota following receipt of an affirmative injury determination and relief recommendation from the Commission on July 12, 1999. The relief was imposed for a period of 3 years and 1 day. *See* Proclamation 7273 of February 16, 2000 (65 FR 8621), as modified by Proclamation 7205 of November 21, 2001 (66 FR 59353). Section 204(d) of the Act requires the Commission, following termination of a relief action, to evaluate the effectiveness of the action in facilitating positive adjustment by the domestic industry to import competition, consistent with the reasons set out by the President in the report submitted to the Congress under section 203(b) of the Act. The Commission is required to submit a report on the evaluation to the President and the Congress no later than 180 days after the day on which the relief action terminated 203(b) of the Act.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, subparts A through and E), and part 206, subparts A and F (19 CFR part 206, subparts A and F).

EFFECTIVE DATE: April 11, 2003.

FOR FURTHER INFORMATION CONTACT: Karen Taylor (202) 708–4101) or Jim McClure ((202) 205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION:

Participation in the investigation and service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 14 days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Public hearing.—As required by statute, the Commission has scheduled a hearing in connection with this investigation. The hearing will be held beginning at 9:30 a.m. on June 26, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 19, 2003. All persons desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on June 23, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs is June 19, 2003. Parties may also file posthearing briefs. The deadline for filing posthearing briefs is July 3, 2003. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement concerning the matters to be addressed in the report on or before July 3, 2003. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The report that the Commission sends to the President may include confidential business information. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 204(d) of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

By order of the Commission.
Issued: April 15, 2003.

Marilyn R. Abbott,
Secretary to the Commission.

[FR Doc. 03–9683 Filed 4–18–03; 8:45 am]
BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Request for Information Concerning Labor Rights in Morocco and Its Laws Governing Exploitative Child Labor

AGENCIES: Office of the Secretary, Labor; Office of the United States Trade Representative and Department of State.

ACTION: Request for public comments.

SUMMARY: This notice is a request for public comments to assist the Secretary of Labor, the United States Trade Representative, and the Secretary of State in preparing reports regarding labor rights in Morocco and describing the extent to which Morocco has in effect laws governing exploitative child labor. The Trade Act of 2002 requires reports on these issues and others when the President intends to use trade promotion authority procedures in connection with legislation approving and implementing a trade agreement. On October 1, 2002, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative (USTR), Ambassador Robert B. Zoellick, notified the Congress of the President's intent to enter into trade negotiations with Morocco. The interagency Trade Policy Staff Committee (TPSC) invited the public to provide written comments and/or oral testimony at a public hearing conducted on November 21, 2002, to assist USTR in formulating positions and proposals

with respect to all aspects of the negotiations (67 FR 63954) (Oct. 16, 2002). The first round of the U.S.-Morocco FTA negotiations took place January 20–24 in Washington, DC, and a second round took place in Geneva, Switzerland March 24–28. A third round is scheduled for June, with negotiations expected to be completed by the end of 2003. An agreement resulting from these negotiations will be subject to trade promotion authority procedures. The President assigned the functions of preparing reports regarding labor rights and the existence of laws governing exploitative child labor to the Secretary of Labor, in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor further assigned these functions to the Secretary of State and the United States Trade Representative.

DATES: Public comments should be received no later than 5 p.m. June 5, 2003.

ADDRESSES: Persons submitting comments are strongly advised to make such submissions by electronic mail to the following address: *FRFTAMorocco@dol.gov*. Submissions by facsimile may be sent to: Betsy White at the Office of International Economic Affairs, Bureau of International Labor Affairs (202) 693–4851.

FOR FURTHER INFORMATION CONTACT: For procedural questions regarding the submissions, please contact Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, at (202) 693–4919, facsimile (202) 693–4851. These are not toll-free numbers. Substantive questions concerning the labor rights report and/or the report on Morocco's laws governing exploitative child labor should be addressed to Jorge Perez-Lopez, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883.

SUPPLEMENTARY INFORMATION:

I. Background

The Trade Act of 2002 (Pub.L. 107–210) (the Trade Act) sets forth special procedures (Trade Promotion Authority) for approval and implementation of Agreements subject to meeting conditions and requirements in the Act. Division B of the Trade Act, entitled the Bipartisan Trade Promotion Authority Act of 2002. The Trade Act includes negotiating objectives and a listing of priorities for the President to promote in order to "address and maintain United States competitiveness in the global economy" in pursuing future trade agreements 19 U.S.C. 3802(a)–(c). The President delegated several of the functions in section 3802(c) to the Secretary of Labor. (E.O. 13277). These include the functions set forth in section 2102(c)(8), which requires that the President "in connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating" and the function in section 2102(c)(9), which requires that the President "with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor." The notification letters to the Congress regarding the President's intent to enter into trade negotiations with Morocco be found on the USTR Web site at *http://www.ustr.gov/releases/2002/2002–10–01-morocco-house.PDF* and *http://www.ustr.gov/releases/2002/2002–10–01-morocco-senate.PDF*.

II. Information Sought

Interested parties are invited to submit written information as specified below to be taken into account in drafting the required reports. Materials submitted should be confined to the specific topics of the reports. In particular, agencies are seeking written submissions on the following topics:

1. Morocco's labor laws, including laws governing exploitative child labor, and Morocco's implementation and enforcement of such laws and regulations;
2. The situation in Morocco with respect to core labor standards;
3. Steps taken by Morocco to comply with International Labor Organization Convention 182 on the worst forms of child labor; and
4. The nature and extent, if any, of exploitative child labor in Morocco.

Section 2113(6) of the Trade Act defines "core labor standards" as:

(A) The right of association;

(B) The right to organize and bargain collectively;

(C) A prohibition on the use of any form of forced or compulsory labor;

(D) A minimum age for the employment of children; and

(E) Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

III. Requirements for Submissions

This document is a request for facts or opinions submitted in response to a general solicitation of comments from the public. To ensure prompt and full consideration of submissions, we strongly recommend that interested persons submit comments by electronic mail to the following e-mail address: *FRFTAMorocco@dol.gov*. Persons making submissions by e-mail should use the following subject line: "Morocco: Labor Rights and Child Labor Reports." Documents should be submitted in WordPerfect, MSWord, or text (.TXT) format. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. Written comments will be placed in a file open to public inspection at the Department of Labor, Room S–5317, 200 Constitution Avenue, NW., Washington DC and in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW, Washington, DC 20508. An appointment to review the file at the Department of Labor may be made by contacting Betsy White at (202) 693–4919. An appointment to review the file at USTR may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.—12 noon and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Signed at Washington, DC, this 16th of April 2003.

Thomas B. Moorhead,

Deputy Under Secretary for International Affairs.

[FR Doc. 03–9796 Filed 4–18–03; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; Request for Information Concerning Labor Rights in Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua and Their Laws Governing Exploitative Child Labor

AGENCIES: Office of the Secretary, Labor; Office of the United States Trade Representative and Department of State.

ACTION: Request for public comments.

SUMMARY: This notice is a request for public comments to assist the Secretary of Labor, the United States Trade Representative, and the Secretary of State in preparing reports regarding labor rights in the five member countries of the Central American Economic Integrations System (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua) and describing the extent to which they have in effect laws governing exploitative child labor. The Trade Act of 2002 requires reports on these issues and others when the President intends to use trade promotion authority procedures in connection with legislation approving and implementing a trade agreement. On October 1, 2002, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative (USTR) notified the Congress of the President's intent to enter into trade negotiations with these five countries of Central America. The interagency Trade Policy Staff Committee (TPSC) invited the public to provide written comments and/or oral testimony at a public hearing conducted on November 19, 2002 to assist USTR in formulating positions and proposals with respect to all aspects of the negotiations (67 FR 63187) (Oct. 10, 2002). The first round of the U.S.—Central America FTA negotiations took place January 27–31 in Costa Rica, a the second round took place February 24–28 in Cincinnati, Ohio, and a third round took place March 31—April 4 in El Salvador. A fourth round is scheduled for May 12th in Guatemala, and negotiations are expected to be completed by the end of 2003. Any agreement resulting from these negotiations will be subject to trade promotion authority procedures. The President assigned the functions of preparing reports regarding labor rights and the existence of laws governing exploitative child labor to the Secretary of Labor, in consultation with the Secretary of State and the United States Trade Representative. The Secretary of Labor further assigned these functions to the Secretary of State and the United States Trade Representative.

DATES: Public comments should be received no later than 5 p.m. June 5, 2003.

ADDRESSES: Persons submitting comments are strongly advised to make such submissions by electronic mail to the following address: *FRFTACAFTA@dol.gov*. Submissions by facsimile may be sent to: Betsy White at the Office of International Economic Affairs, Bureau of International Labor Affairs (202) 693–4851.

FOR FURTHER INFORMATION CONTACT: For procedural questions regarding the submissions, please contact Betsy White, Office of International Economic Affairs, Bureau of International Labor Affairs, at (202) 693–4919, facsimile (202) 693–4851. These are not toll-free numbers. Substantive questions concerning the labor rights report and/or the report on Central America's laws governing exploitative child labor should be addressed to Jorge Perez-Lopez, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–4883.

SUPPLEMENTARY INFORMATION:

I. Background

The Trade Act of 2002 (Pub. L. 107–210) (the Trade Act) sets forth special procedures (Trade Promotion Authority) for approval and implementation of Agreements subject to meeting conditions and requirements in the Act. Division B of the Trade Act, entitled the Bipartisan Trade Promotion Authority Act of 2002. The Trade Act includes negotiating objectives and a listing of priorities for the President to promote in order to "address and maintain United States competitiveness in the global economy" in pursuing future trade agreements. 19 U.S.C. 3802(a)-(c). The President delegated several of the functions in section 3802(c) to the Secretary of Labor. (E.O. 13277). These include the functions set forth in section 2102(c)(8), which requires that the President "in connection with any trade negotiations entered into under this Act, submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a meaningful labor rights report of the country, or countries, with respect to which the President is negotiating" and the function in section 2102(c)(9), which requires that the President "with respect to any trade agreement which the President seeks to implement under trade authorities procedures, submit to the Congress a report describing the extent to which the country or countries that are parties to the agreement have in effect laws governing exploitative child labor." The notification letters to the Congress regarding the President's intent to enter into trade negotiations with Central America can be found on the USTR Web site at *http://www.ustr.gov/releases/2002/2002–10–01-centralamerica-house.PDF* and *http://www.ustr.gov/releases/2002/2002–10–01-centralamerica-senate.PDF*.

II. Information Sought

Interested parties are invited to submit written information as specified below to be taken into account in drafting the required reports. Materials submitted should be confined to the specific topics of the reports. In particular, agencies are seeking written submissions on the following topics:

1. Labor laws, including laws governing exploitative child labor, of the five Central American countries that are participating in the negotiations and each country's implementation and enforcement of its labor laws and regulations;
2. The situation in these five countries of Central America with respect to core labor standards;
3. Steps taken by the five countries to comply with International Labor Organization Convention 182 on the worst forms of child labor; and
4. The nature and extent, if any, of exploitative child labor in each of these five countries of Central America.

Section 2113(6) of the Trade Act defines "core labor standards" as:

(A) The right of association;

(B) The right to organize and bargain collectively;

(C) A prohibition on the use of any form of forced or compulsory labor;

(D) A minimum age for the employment of children; and

(E) Acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health.

III. Requirements for Submissions

This document is a request for facts or opinions submitted in response to a general solicitation of comments from the public. To ensure prompt and full consideration of submissions, we strongly recommend that interested persons submit comments by electronic mail to the following e-mail address: *FRFTACAFTA@dol.gov*. Persons making submissions by e-mail should use the following subject line: "Central America: Labor Rights and Child Labor Reports." Documents should be submitted in WordPerfect, MSWord, or text (.TXT) format. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the

same file as the submission itself, and not as separate files. Written comments will be placed in a file open to public inspection at the Department of Labor, Room S–5317, 200 Constitution Avenue, NW., Washington DC and in the USTR Reading Room in Room 3 of the annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file at the Department of Labor may be made by contacting Betsy White at (202) 693–4919. An appointment to review the file at USTR may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Signed at Washington, DC, this 16th of April 2003.

Thomas B. Moorhead,

Deputy Under Secretary for International Affairs.

[FR Doc. 03–9797 Filed 4–18–03; 8:45 am]

BILLING CODE 4510–28–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

Time and Date: 10 a.m., Thursday, April 24, 2003.

Place: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

Status: Open.

Matters to be Considered:

1. Quarterly Insurance Fund Report.
2. Request from a Federal Credit Union to Expand its Community Charter.
3. Requests from two (2) Federal Credit Unions to Convert to Community Charters.
4. Final Rule: Part 741 of NCUA's Rules and Regulations, Overseas Branching by Federally Insured Credit Unions.
5. Final Rule: Part 740 of NCUA's Rules and Regulations, Advertising.
6. Final Rule: Section 701.19 of NCUA's Rules and Regulations, Retirement Benefits for Federal Credit Union Employees.

For Further Information Contact: Becky Baker, Secretary of the Board, Telephone: 703–518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–9927 Filed 4–17–03; 12:49 pm]

BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Extend and Revise a Current Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewal of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Written comments on this notice must be received by June 20, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR ADDITIONAL INFORMATION OR COMMENTS: Contact Teresa R. Pierce, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7555; or send email to *tpierce@nsf.gov*. You also may obtain a copy of the data collection instrument and instructions from Ms. Pierce.

SUPPLEMENTARY INFORMATION:

Title of Collection: Academic Research and Development Survey Expenditures at Universities and Colleges, FY 2003 through FY 2006; OMB Control Number 3145–0100.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Renewal Project: Separately budgeted current fund expenditures on research and development in the sciences and engineering performed by universities and colleges and federally funded research and development centers—A web survey, the Survey of Scientific and Engineering Expenditures at Universities and Colleges, originated in fiscal year (FY) 1954 and has been conducted annually since FY 1972. The survey is the academic expenditure component of the NSF statistical program that seeks to provide a "central clearinghouse for the collection, interpretation, and analysis of data on the availability of, and the current and projected need for, scientific and technical resources in the United States, and to provide a source of information for policy formulation by other agencies of the Federal government," as mandated in the National Science Foundation Act of 1950.

Use of the Information: The proposed project will continue the current survey cycle for three to five years. The Academic R&D Survey will be a census of the full population of an expected 646 institutions (610 universities or colleges plus 36 federally funded research and development centers—FFRDCs) for academic years 2003 through FY 2006. These institutions account for over 95 percent of the Nation's academic R&D funds. The survey has provided continuity of statistics on R&D expenditures by source of funds and by science & engineering (S&E) field, with separate data requested on current fund expenditures for research equipment by S&E field. Further breakdowns are collected on passed through funds to subrecipients and received as a subrecipient. Additional measures on current fund expenditures for separately budgeted research and developoment by field of science and engineering are requested as being part of the core survey on select Federal Government agency sources. Data are published in NSF's annual publication series Academic Science and Engineering R&D Expenditures and are available electronically on the World Wide Web.

The survey is a fully automated web data collection effort and is handled primarily by the administrators at the Institutional Research Offices. To minimize burden, institutions are provided with an abundance of guidance and help menus on the web, in addition to printing and responding via paper copy if necessary. Each record is pre-loaded with the institutions 2 previous year's data and a complete program for editing and trend checking. Response to this voluntary survey in FY 2001 was 95.4 percent. Burden estimates are as follows: [1]

* * * * *

[1] Average burden hours for institutions responding to burden item.

Total number of institutions	Doctorate-granting burden hours	Masters-granting burden hours	Bachelors degree burden hours	FFRDC's burden hours
FY 1999 480	20.8	13.0	7.5	9.4
FY 2000 700	21.0	12.0	10.5	9.2
FY 2001 625	30.2	11.9	9.0	12.1

Dated: April 15, 2003.

Teresa R. Pierce,

Reports Clearance Officer.

[FR Doc. 03–9682 Filed 4–18–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on May 8–9, 2003, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 20, 2002 (67 FR 70094).

Thursday, May 8, 2003

8:30 a.m.–8:35 a.m.: Opening Statement by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10:30 a.m.: Vessel Head Penetration Cracking and Degradation (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and industry regarding industry responses to NRC Bulletin 2002–02, "Reactor Pressure Vessel Head Degradation and Reactor Coolant Pressure Boundary Integrity," Electric Power Research Institute's Materials Reliability Program's proposed inspection program, wastage research, and related matters.

10:45 a.m.–12:15 p.m.: Proposed Revisions to Regulatory Guide 1.178 and Standard Review Plan Section 3.9.8 for Risk-Informed Inservice Inspection of Piping (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed revisions to Regulatory Guide 1.178, "An Approach for Plant-Specific, Risk-Informed Decisionmaking: Inservice Inspection of Piping," and to Standard Review Plan Section 3.9.8, "Standard Review Plan for the Review of Risk-Informed Inservice Inspection Applications."

1:15 p.m.–2:15 p.m.: Operating Experience Program Effectiveness (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding ongoing efforts to improve the agency's Reactor Operating Experience Program.

2:15 p.m.–3:15 p.m.: Draft Commission Paper on ACRS Self Assessment (Open)—The Committee will discuss a draft Commission Paper regarding ACRS Self Assessment.

3:30 p.m.–7 p.m.: Proposed ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters considered during this meeting, as well as a proposed ACRS report on Advancement of PRA Technology to Improve Risk-Informed Decisionmaking. In addition, the Committee will consider a proposed ACRS report on Safeguards and Security (Closed). *The discussion of the Safeguards and Security report will be held in Room T–8E8.*

Friday, May 9, 2003

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9 a.m.: Subcommittee Report on the Revised Mixed Oxide (MOX) Fuel Fabrication Facility Application (Open)—Report by the Chairman of the ACRS Subcommittee on Reactor Fuels regarding the revised construction authorization application for the MOX Fuel Fabrication Facility and the staff's proposed Safety Evaluation Report.

9 a.m.–9:15 a.m.: Subcommittee Report on the Integrated Industry Initiating Event Performance Indicator (Open)—Report by the Chairman of the Reliability and PRA Subcommittee regarding the integrated industry initiating event performance indicator which is part of the Industry Trends Program.

9:15 a.m.–10:15 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

10:15 a.m.–10:30 a.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

10:45 a.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

6:30 p.m.–7 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63460). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director if such

rescheduling would result in major inconvenience.

In accordance with subsection 10(d) Pub. L. 92–463, I have determined that it is necessary to close a portion of this meeting noted above to discuss and protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support ((301) 415–0138), between 7:30 a.m. and 4:15 p.m., ET.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician ((301) 415–8066), between 7:30 a.m. and 3:45 p.m., ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: April 15, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–9718 Filed 4–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards

Meeting of the Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on May 7, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, May 7, 2003—2 p.m. Until the Conclusion of Business

The purpose of this meeting is to review the integrated industry initiating event indicator as a part of the Industry Trends Program. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Ms. Maggalean W. Weston (telephone (301) 415–3151) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 8 a.m. and 5:30 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: April 15, 2003.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–9719 Filed 4–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 7, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, May 7, 2003—11 a.m.–1 p.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Sam Duraiswamy (telephone: (301) 415–7364) between 7:30 a.m. and 4:15 p.m. (ET) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: April 15, 2003.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–9720 Filed 4–18–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 15g–3, SEC File No. 270–346, OMB Control No. 3235–0392

Rule 15g–4, SEC File No. 270–347, OMB Control No. 3235–0393

Rule 15g–5, SEC File No. 270–348, OMB Control No. 3235–0394

Rules 17Ad–6 and 17Ad–7, SEC File No. 270–151, OMB Control No. 3235–0291

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

• Rule 15g–3 Broker or Dealer Disclosure of Quotations and other Information Relating to the Penny Stock Market.

Rule 15g–3 under the Securities Exchange Act of 1934 (the "Exchange Act") requires that brokers and dealers disclose to customers current quotation prices or similar market information in connection with transactions in penny stocks. It is estimated that approximately 270 respondents incur an average burden of 100 hours annually to comply with the rule.

• Rule 15g–4 Disclosure of compensation to brokers or dealers.

Rule 15g–4 under the Exchange Act requires brokers and dealers effecting transactions in penny stocks for or with customers to disclose the amount of compensation received by the broker-dealer in connection with the transaction. It is estimated that approximately 270 respondents incur an average of 100 hours annually to comply with the rule.

• Rule 15g–5 Disclosure of compensation of associated persons in connection with penny stock transactions.

Rule 15g–5 under the Exchange Act requires brokers and dealers to disclose to customers the amount of compensation to be received by their sales agents in connection with penny stock transactions. This rule was adopted by the Commission to increase the level of disclosure to investors concerning penny stocks generally and specific penny stock transactions. It is estimated that approximately 270 respondents incur an average burden of 100 hours annually to comply with the rule. The total annual reporting and recordkeeping burden will be 27,000 burden hours.

• Rules 17Ad–6 and 17Ad–7 Recordkeeping requirements for transfer agents

Rule 17Ad–6 under the Exchange Act requires every registered transfer agent to make and keep current records about a variety of information, such as: (1) Specific operational data regarding the time taken to perform transfer agent activities (to ensure compliance with the minimum performance standards in Rule 17Ad–2 (17 CFR 240.17Ad–2)); (2) written inquiries and requests by shareholders and broker-dealers and response time thereto; (3) resolutions, contracts or other supporting documents concerning the appointment or termination of the transfer agent; (4) stop orders or notices of adverse claims to the securities; and (5) all canceled registered securities certificates.

Rule 17Ad–7 under the Exchange Act requires each registered transfer agent to retain the records specified in Rule 17Ad–6 in an easily accessible place for a period of six months to six years, depending on the type of record or document. Rule 17Ad–7 also specifies the manner in which records may be maintained using electronic, microfilm, and microfiche storage methods.

These recordkeeping requirements ensure that all registered transfer agents are maintaining the records necessary to monitor and keep control over their own performance and for the Commission to adequately examine registered transfer agents on an historical basis for compliance with applicable rules.

We estimate that approximately 1,000 registered transfer agents will spend a total of 500,000 hours per year complying with Rules 17Ad–6 and 17Ad–7. Based on average cost per hour of $50, the total cost of compliance with Rule 17Ad–6 is $25,000,000.

The retention period for the recordkeeping requirements under Rule 17Ad–6 is six months to one year. In addition, such records must be retained for a total of two to six years or for one year after termination of the transfer agency, depending on the particular record or document. The recordkeeping requirements under Rules 17Ad–6 and 17Ad–7 are mandatory to assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule. This rule does not involve the collection of confidential information.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 14, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9674 Filed 4–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 204–3, SEC File No. 270–42, OMB Control No. 3235–0047

Rule 203–2 and Form ADV–W, SEC File No. 270–40, OMB Control No. 3235–0313

Rule 203–3 and Form ADV–H, SEC File No. 270–481, OMB Control No. 3235–0538

Rule 0–2 and Form ADV–NR, SEC File No. 270–241, OMB Control No. 3235–0240

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

The title for the collection of information is "Rule 204–3 under the Investment Advisers Act of 1940." Rule 204–3, the "brochure rule," currently requires an investment adviser to deliver, or offer, to prospective clients a disclosure statement containing specified information as to the business practices and background of the adviser. The brochure assists the client in determining whether to retain, or continue employing, the adviser. Rule 204–3 also currently requires that an investment adviser deliver, or offer, its brochure on an annual basis to existing clients in order to provide them with current information about the adviser. On April 5, 2000, the Commission proposed amendments to rule 204–3 in conjunction with amendments to Form ADV. The proposed amendments to rule 204–3 would require SEC-registered advisers to deliver their brochure and appropriate brochure supplements at the start of the advisory relationship, and to offer to deliver the brochure and brochure supplements annually. The proposed rule amendments also would require that advisers deliver updates to the brochure and brochure supplements to clients whenever information in the brochure becomes materially inaccurate. The updates could take the form of a reprinted brochure or a "sticker" containing the updated information.

The respondents to this information collection would be each investment

adviser registered with the Commission. The Commission has estimated that compliance with proposed rule 204–3 would impose a burden of approximately 694 hours annually based on an average adviser having 670 clients. Based on this figure, the Commission estimates a total annual burden of 5,412,643 hours for this collection of information.

Rule 204–3 does not require recordkeeping or record retention. The collection of information requirements under the rule are mandatory. The information collected pursuant to the rule are not filed with the Commission, but rather take the form of disclosures to clients. Accordingly, these filings are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The title for the collection of information is "Rule 203–2 and Form ADV–W under the Investment Advisers Act of 1940." Rule 203–2 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to withdraw its registration with the Commission. Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W electronically on the Investment Adviser Registration Depository ("IARD"). The purpose of the information collection is to notify the Commission and the public when an investment adviser withdraws its pending or approved SEC registration. Typically, an investment adviser files a Form ADV–W when it ceases doing business or when it is ineligible to remain registered with the Commission.

The respondents to the collection of information are all investment advisers that are registered with the Commission or have applications pending for registration. The Commission has estimated that compliance with the requirement to complete Form ADV–W imposes a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. Based on historical filings, the Commission estimates that there are approximately 500 respondents annually filing for full withdrawal and approximately 500 respondents annually filing for partial withdrawal. Based on these estimates, the total estimated annual burden would be 500 hours ((500 respondents × .75 hours) + (500 respondents × .25 hours)).

Rule 203–2 and Form ADV–W do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–W are filings with the Commission. These filings are not kept confidential.

The title for the collection of information is "Rule 203–3 and Form ADV–H under the Investment Advisers Act of 1940." Rule 203–3 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to obtain a hardship exemption from the electronic filing requirements of the Investment Advisers Act. Rule 203–3 requires every person requesting a hardship exemption to file Form ADV–H with the Commission. The purpose of this collection of information is to permit advisers to obtain a hardship exemption, on a permanent or temporary basis, to not complete an electronic filing. The temporary hardship exemption permits advisers to make late filings due to unforeseen computer or software problems, while the continuing hardship exemption permits advisers to submit all required electronic filings on hard copy for data entry by the operator of the IARD.

The respondents to the collection of information are all investment advisers that are registered with the Commission. The Commission has estimated that compliance with the requirement to complete Form ADV–H imposes a total burden of approximately 1 hour for an adviser. Based on our experience with hardship filings, we estimate that we will receive 10 Form ADV–H filings annually. Based on the 60 minute per respondent estimate, the Commission estimates a total annual burden of 10 hours for this collection of information.

Rule 203–3 and Form ADV–H do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–H are filings with the Commission. These filings are not kept confidential.

The title for the collection of information is "Rule 0–2 and Form ADV–NR under the Investment Advisers Act of 1940." Rule 0–2 and Form ADV–NR facilitate service of process to non-resident investment advisers and their non-resident general partners or non-resident managing agents. The Form requires these persons to designate the Commission as agent for service of process. The purpose of this collection of information is to enable the commencement of legal and/or regulatory actions against investment advisers that are doing business in the United States, but are not residents.

The respondents to this information collection would be each non-resident general partner or managing agent of an SEC-registered adviser. The Commission has estimated that compliance with the requirement to complete Form ADV–NR imposes a total burden of approximately 1 hour for an adviser. Based on our experience with these filings, we estimate that we will receive 15 Form ADV–NR filings annually. Based on the 60 minute per respondent estimate, the Commission estimates a total annual burden of 15 hours for this collection of information.

Rule 0–2 and Form ADV–NR do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–NR are filings with the Commission. These filings are not kept confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 14, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9700 Filed 4–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form U–3A–2, SEC File No. 270–83, OMB Control No. 3235–0161

Form U–13–60, SEC File No. 270–79, OMB Control No. 3235–0153

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") requests for extension to the previously approved collections of information discussed below.

Part 259.402 (17 CFR 259.402) under the Public Utility Holding Company Act of 1935, as amended ("Act"), 15 U.S.C. 79, *et seq.*, requires that public utility holding companies that are exempt from regulation under the Act file an annual financial report on Form U–3A–2.

Rule 2 under the Act, which implements section 3 of the Act, requires the information collection prescribed by Form U–3A–2. The Commission estimates that the total annual reporting and recordkeeping burden of collections for Form U–3A–2 is 227.5 hours (91 responses × 2.5 hours = 227.5 hours).

Part 259.313 (17 CFR 259.313) under the Act generally mandates standardized accounting and record keeping for mutual and subsidiary service companies of registered holding companies and the filing of annual financial reports on Form U–13–60.

Rules 93 and 94 under the Act, which implement Section 13 of the Act, requires the information collection prescribed by Form U–13–60. The Commission estimates that the total annual reporting and recordkeeping burden of collections for Form U–13–60 is 877.5 hours (65 responses × 13.5 hours = 877.5 hours).

The estimate of average burden hours are made for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or representative survey or study of the costs of complying with the requirements of Commission rules and forms.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 14, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9701 Filed 4–16–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form N–23C–1, SEC File No. 270–230, OMB Control No. 3235–0230

Rule 19a–1, SEC File No. 270–240, OMB Control No. 3235–0216

Rule 22d–1, SEC File No. 270–275, OMB Control No. 3235–0310

Rule 30b2–1, SEC File No. 270–213, OMB Control No. 3235–0220

Form ADV–E, SEC File No. 270–318, OMB Control No. 3235–0361

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Section 23(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–23(c)) ("Investment Company Act" or "Act") prohibits a registered closed-end investment company ("closed-end fund" or "fund") from purchasing any security it issues except on a securities exchange, pursuant to tender offers, or under such other circumstances as the Commission may permit by rules or orders designed to ensure that purchases are made in a manner that does not unfairly discriminate against any holders of the securities to be purchased. Rule 23c–1 (17 CFR 270.23c–1) under the Act permits a closed-end fund that meets certain requirements to repurchase its securities other than on an exchange or pursuant to a tender.

A registered closed-end fund that relies on Rule 23c–1 may purchase its securities for cash if, among other conditions set forth in the rule, certain conditions are met: (i) Payment of the purchase price is accompanied or preceded by a written confirmation of the purchase; (ii) the purchase is made at a price not above the market value, if any, or the asset value of the security, whichever is lower, at the time of the purchase; and (iii) if the security is stock, the issuer has, within the preceding six months, informed stockholders of its intention to purchase stock of the class by letter or report addressed to all the stockholders of the class.

In addition, the issuer must file with the Commission, on or before the tenth day of the month following the date in which the purchase occurs, two copies of Form N–23C–1. The form requires the issuer to report all purchases it has made during the month, together with a copy of any written solicitation to purchase securities under Rule 23c–1 sent or given during the month by or on behalf of the issuer to ten or more persons.

The purpose of Rule 23c–1 is to protect shareholders of closed-end funds from fraud in connection with the repurchase by funds of their own securities. The purpose of the rule's requirement that the fund file Form N–23C–1 with the Commission is to allow the Commission to monitor funds' repurchase of securities as well as any written solicitation used by the fund to effect those repurchases, and to make that information available to the public. Investors may seek this information when determining whether to invest in certain funds.

The requirement to file Form N–23C–1 applies to a closed-end fund only when the fund has repurchased its securities. If the information provided in the form were collected less frequently than a month after repurchases occur, the Commission and investing public would lack current information about closed-end funds that repurchase their own securities.

Commission staff estimates that each year approximately 30 closed-end funds use the repurchase procedures under Rule 23c–1, and that these funds file a total of 180 forms each year. The number of forms filed by each fund ranges from 1 to 12 depending on the number of months in which the fund repurchases its securities under Rule 23c–1. Commission staff estimates that each response requires 1 burden hour to prepare and file Form N–23C–1 with a copy of any written solicitation to purchase securities under the rule (if necessary).[1] The total annual burden of the rule's paperwork requirements is estimated to be 180 hours.

Section 19(a) (15 U.S.C. 80a–19(a)) of the Investment Company Act makes it unlawful for any registered investment company to pay any dividend or similar distribution from any source other than the company's net income, unless the payment is accompanied by a written statement to the company's shareholders which adequately discloses the sources of the payment.

[1] The burden hour estimates are based upon consultation with lawyers and accountants familiar with the practices of fund boards and the staff of investment advisers.

Section 19(a) authorizes the Commission to prescribe the form of the statement by rule.

Rule 19a–1 (17 CFR 270.19a–1) under the Act is entitled: "Written Statement to Accompany Dividend Payments by Management Companies." Rule 19a–1 sets forth specific requirements for the information that must be included in statements made under section 19(a) by registered investment companies. The rule requires that the statements indicate what portions of the payment are made from net income, net profits and paid-in capital.[2] When any part of the payment is made from net profits, the rule requires that the statement disclose certain other information relating to the appreciation or depreciation of portfolio securities. If an estimated portion of the payment is subsequently determined to be significantly inaccurate, a correction must be made on a statement made under section 19(a) or in the first report to shareholders following the discovery of the inaccuracy. The purpose of Rule 19a–1 is to afford fund shareholders adequate disclosure of the sources from which dividend payments are made.

The Commission staff estimates that approximately 8,400 portfolios of management companies may be subject to Rule 19a–1 each year.[3] The total average annual burden for Rule 19a–1 per portfolio is estimated to be approximately 30 minutes.[4] The total annual burden for all portfolios therefore is estimated to be approximately 4,200 burden hours.

Compliance with the collection of information required by Rule 19a–1 is mandatory for management companies that make written statements to shareholders pursuant to section 19(a) of the Act. Responses will not be kept confidential.

Rule 22d–1 (17 CFR 270.22d–1) under the Investment Company Act provides registered investment companies that issue redeemable securities an exemption from section 22(d) of the Investment Company Act to the extent necessary to permit scheduled variations in or elimination of the sales load on fund securities for particular classes of investors or transactions, provided certain conditions are met. The rule imposes an annual burden per series of a fund of approximately 15 minutes, so that the total annual burden for the approximately 6,100 series of funds that might rely on the rule is estimated to be 1,525 hours. The collection of information required by Rule 22d–1 is mandatory. Responses will not be kept confidential.

Rule 30b2–1 under the Investment Company Act (17 CFR 270.30b2–1) requires the filing of four copies of every periodic or interim report transmitted by or on behalf of any registered investment company to its stockholders.[5] This requirement ensures that the Commission has information in its files to perform its regulatory functions and to apprise investors of the operational and financial condition of a registered investment companies.[6]

It is estimated that approximately 3,700 registered management investment companies are required to send reports to stockholders at least twice annually. In addition, under recently proposed amendments to Rule 30b2–1, if adopted, each registered investment company would be required to file with the Commission new form N–CSR, certifying the financial statements. The annual burden of filing the reports is included in the burden estimate for Form N–CSR.

The collection of information under Rule 30b2–1 is mandatory. The information provided by Rule 30b2–1 is not kept confidential.

Form ADV–E (17 CFR 279.8) is the cover sheet for accountant examination certificates filed pursuant to Rule 206(4)–2 under the Investment Advisers Act by investment advisers retaining custody of client securities or funds. The annual burden is approximately three minutes per respondent.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 14, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9702 Filed 4–18–03; 8:45 am]

BILLING CODE 8010–01–P

[2] Rule 19a–1 requires, among other things, that every written statement made under Section 19 of the Act by or on behalf of a management company clearly indicate what portion of the payment per share is made from the following sources: net income for the current or preceding fiscal year, or accumulated undistributed net income, or both, not including in either case profits or losses from the sale of securities or other properties; accumulated undistributed net profits from the sale of securities or other properties; and paid-in surplus or other capital source.

[3] The Commission staff estimates that there are approximately 3,800 registered investment companies that are "management companies" as defined by the Act, and each may have one or more separate portfolios that report dividends to shareholders. The Commission's records indicate that those 3,800 management companies have approximately 8,200 portfolios that report paying dividends, and so may be subject to Rule 19a–1.

[4] According to respondents, no more than approximately 15 minutes is needed to make the determinations required by the rule and include the required information in the shareholders' dividend statements. The Commission staff estimates that, on average, each portfolio mails two notices per year to meet the requirements of the rule, for an average total annual burden of approximately 30 minutes.

[5] Most filings are made via the Commission's electronic filing system; therefore, paper filings under Rule 30b2–1 occur only in exceptional circumstances. Electronic filing eliminates the need for multiple copies of filings.

[6] Annual and periodic reports to the Commission become part of its public files and, therefore, are available for use by prospective investors and stockholders.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47659; File No. SR–CBOE–2002–36]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Regarding Closing-Only Transactions

April 10, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on June 27, 2002, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On April 2, 2003, the CBOE filed Amendment No. 1 that entirely replaced the original rule filing.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Andrew Spiwak, Director Legal Division and Chief Enforcement Attorney, CBOE, to John Roeser, Special Counsel, Division of Market Regulation, Commission, dated April 1, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to address certain issues regarding closing-only transactions. Below is the text of the proposed rule change. Additions are *italicized*.

* * * * *

Chapter V Securities Dealt in Designation of Securities

* * * * *

Withdrawal of Approval of Underlying Securities

Rule 5.4. Whenever the Exchange determines that an underlying security previously approved for Exchange option transactions does not meet the then current requirements for continuance of such approval or for any other reason should no longer be approved, the Exchange will not open for trading any additional series of options of the class covering that underlying security and therefore *two floor officials, in consultation with a designated senior executive officer of the Exchange,* may prohibit any opening purchase transactions in series of options of that class previously opened *(except that (i) opening transactions by market-makers executed to accommodate closing transactions of other market participants and (ii) opening transactions by CBOE member organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with CBOE Rule 6.74(b) or (d) may be permitted),* to the extent it deems such action necessary or appropriate; provided, however, that where exceptional circumstances have caused an underlying security not to comply with the Exchange's current approval maintenance requirements, regarding number of publicly held shares or publicly held principal amount, number of shareholders, trading volume or market price, *the Exchange,* in the interest of maintaining a fair and orderly market or for the protection of investors, may determine to continue to open additional series of option contracts of the class covering that underlying security. When all option contracts in respect of any underlying security that is no longer approved have expired, *the Exchange* may make application to the Securities and Exchange Commission to strike from trading and listing all such option contracts.

* * * Interpretations and Policies:

* * * * *

.05 If prior to the delisting of a class of option contracts covering an underlying security which has been found not to meet the Exchange's requirements for continued approval, the Exchange shall determine that the underlying security again meets the Exchange's requirements for such underlying security, the Exchange, may open for trading additional series of options of that class, and *two floor officials, in consultation with a designated senior executive officer of the Exchange,* may lift any restriction on opening purchase transactions imposed under this Rule.

* * * * *

.08 Securities consisting of shares or other securities ("Units") that represent interests in registered investment companies (or series thereof) organized as open-end management investment companies, unit investment trusts or similar entities that were initially approved for options trading pursuant to Interpretation and Policy .06 under Rule 5.3 shall be deemed not to meet the Exchange's requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Units, in accordance with the terms of paragraph (f) of Interpretation and Policy .01 of this Rule 5.4. In addition, *two floor officials, in consultation with a designated senior executive officer of the Exchange,* shall consider the suspension of opening transactions in any series of options of the class covering Units in any of the following circumstances:

(a) In the case of options covering Units approved pursuant to clause (D)(x) under Interpretation and policy .06 of Rule 5.3, in accordance with the terms of paragraphs (a), (b), (c) and (d) of Interpretation and Policy .01 of this Rule 5.4;

(b) In the case of options covering Units approved pursuant to clause (D)(y) under Interpretation and Policy .06 of Rule 5.3, following the initial twelve-month period beginning upon the commencement of trading in the Units on a national securities exchange or as NMS securities through the facilities of a national securities association there are fewer than 50 record and/or beneficial holders of such Units for 30 or more consecutive trading days; or

(c) The value of the index or portfolio of securities on which the Units are based is no longer calculated or available.

.09 Absent exceptional circumstances, securities initially approved for options trading pursuant to Interpretation and Policy .07 under Rule 5.3 (such securities are defined and referred to in that Interpretation and Policy as "Trust Issued Receipts") shall not be deemed to meet the Exchange's requirements for continued approval, and the Exchange shall not open for trading any additional series of option contracts of the class covering such Trust Issued Receipts, whenever the Trust Issued Receipts are delisted and trading in the Receipts is suspended on a national securities exchange, or the Trust Issued Receipts are no longer traded as national market securities through the facilities of a national securities association. In addition, *two floor officials, in consultation with a designated senior executive officer of the Exchange,* shall consider the suspension of opening transactions in any series of options of the class covering Trust Issued Receipts in any of the following circumstances:

(1) In accordance with the terms of paragraphs (a) through (g) of Interpretation and Policy .01 of this Rule 5.4 in the case of options covering Trust Issued Receipts when such options were approved pursuant to paragraph (a)(i) of Interpretation and Policy .07 under Rule 5.3;

(2) The Trust has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days;

(3) The trust has fewer than 50,000 receipts issued and outstanding;

(4) The market value of all receipts issued and outstanding is less than $1,000,000; or

(5) Such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

* * * * *

Chapter VIII Market-Makers, Trading Crowds and Modified Trading Systems

* * * * *

Section B: Trading Crowds

* * * * *

Firm Disseminated Market Quotes

Rule 8.51

* * * * *

Interpretations and Policies:

.11 If, pursuant to paragraph (e) of this Rule, non-firm mode applies to an options class because the security underlying such options class has been delisted and is subsequently traded on

the OTC Bulletin Board, Pink Sheets or similar trading system, and opening transactions have been prohibited pursuant to CBOE Rule 5.4, the Exchange shall monitor the activity or condition of the market and paragraph (e)(4) of this Rule shall not apply.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend CBOE Rule 5.4 and add an interpretation to CBOE Rule 8.51 to address certain issues dealing with options that have closing-only restrictions. The proposed change to CBOE Rule 5.4 would give two floor officials, in consultation with a designated senior executive officer of *the Exchange*, the authority to prohibit opening purchase transactions for equity options whenever the Exchange has determined that an underlying security previously approved for Exchange option transactions does not meet the current requirements for continuance of such approval. For example, the proposed rule change would be applicable when a security underlying an option has been delisted and is subsequently traded on the OTC Bulletin Board, Pink Sheets or similar trading system. In the aforementioned situation, the rule would also permit certain types of opening transactions by members to accommodate the closing transactions of other market participants. Specifically, in these situations, the rule would permit: (i) Opening transactions by market-makers executed to accommodate closing transactions of other market participants and (ii) opening transactions by CBOE member organizations to facilitate the closing transactions of public customers executed as crosses pursuant to and in accordance with CBOE Rule 6.74(b) or (d) (Crossing Orders). Similar changes are proposed to Interpretations and Policies .05 (to lift restrictions on opening transactions if the underlying security, which previously did not meet the Exchange's listing standards, again meets the Exchange's listing standards), .08 (for securities consisting of shares or other securities that represent interests in registered investment companies organized as open-end management investment companies, unit investment trusts or similar entities) and .09 (for Trust Issued Receipts). Currently, the Exchange has the authority to prohibit an opening purchase transaction in an option, but must seek approval through the Office of the Chairman. This proposed rule change to grant this authority to two floor officials and a senior executive officer of the Exchange would make CBOE Rule 5.4 consistent with other CBOE rules involving trading halts and similar types of actions for index options and provides for greater efficiency when invoking a restriction or prohibition in a delisted or restricted option class.[4]

The proposed change to Interpretation and Policy .11 under CBOE Rule 8.51 deals with the implementation of non-firm mode for options that are restricted to closing-only transactions. Currently, CBOE Rule 8.51(e)(4) requires that when a series or class of option is in non-firm mode for purposes of the firm quote rule, the DPM and floor officials must review and reaffirm the condition of the market every 30 minutes. The proposed change to the interpretation and policies of CBOE Rule 8.51 sets forth that in situations in which opening transactions have been prohibited in an option where the underlying security has been delisted and is subsequently traded on the OTC Bulletin Board, Pink Sheets or a similar trading system, and the Exchange has invoked that only closing transactions may occur, as set forth above, the Exchange would monitor the activity or condition of the market. However, the DPM and floor officials would not be required to review and reaffirm the market conditions causing the non-firm mode designation every 30 minutes. The Exchange believes it is necessary to invoke non-firm mode pursuant to Exchange Rule 8.51(e) when a security is no longer listed on a national securities exchange or traded through a national securities association and reported as a national market system security, due to the fact that the Exchange is unable to directly receive an electronic quotation feed from the OTC Bulletin Board or Pink Sheets. The Exchange believes that in these specific situations, the Exchange is incapable of collecting quotations in the underlying security that accurately reflect the true state of the market. For these options, the market conditions that caused the non-firm mode designation will not change. Therefore, the Exchange believes that the need to review market conditions every 30 minutes is not necessary.[5] In addition, the Exchange would be required to notify investors of the non-firm mode through the dissemination of a message code via OPRA. Furthermore, the Exchange would issue a Regulatory Circular to its members reflecting trading restrictions as described above.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(5)[7] in particular in that it promotes just and equitable principles of trade and protects investors and the public interest. Further, the Exchange believes that the proposed rule change to CBOE Rule 5.4 promotes just and equitable principles of trade by granting floor officials authority along with a senior executive officer of the Exchange, which is consistent with authority granted to floor officials and a senior executive officer of the Exchange in other Exchange rules dealing with similar situations, such as trading halts and those applicable to index options.

The proposed change to the Interpretation and Policy .11 of CBOE Rule 8.51 is designed to protect investors and the public interest. Since the market conditions for options that are subject to closing-only restrictions are not likely to change, the need to review and reaffirm the market conditions every 30 minutes is not necessary in a closing transaction only restriction situation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[4] *See* Exchange Rules 6.3 Trading Halts and Rule 24.7 Trading Halts, Suspensions, or Primary Market Closure.

[5] The Exchange represents, and the proposed rule would require, that the Exchange would monitor the market conditions, as is required by Rule 11Ac1–1 under the Act. 17 CFR 240.11Ac1–1.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2002–36 and should be submitted by May 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9699 Filed 4–18–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47675; File No. SR–NQLX–2003–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by Nasdaq Liffe Markets, LLC To Amend Its Initial Listing Standards and Maintenance Standards for Single Stock Futures

April 14, 2003.

Pursuant to section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on January 27, 2003, Nasdaq Liffe Markets, LLC ("NQLX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in items I, II, and III below, which Items have been prepared by the NQLX. On April 4, 2003, NQLX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proprosed rule changes, as amended, from interested persons.

On January 27, 2003, NQLX submitted the proposed rule change to the Commodities Futures Trading Commission ("CFTC") for approval. On April 3, 2003, NQLX submitted the Amendment No. 1 to proposed rule change to the CFTC for approval. Under section 19(b)(7)(B) of the Act,[4] the proposed rule change may take effect upon approval by the CFTC.

I. Self-Regulatory Organization's Description of the Proposed Rule Change

NQLX proposed to amend both its initial and maintenance listing standards (NQLX Rules 902 and 903) as they relate to the pricing criteria for securities that underlie security futures products offered by NQLX. Currently NQLX Rule 902(b)(8) requires that he market price per share of any underlying security must be at least $7.50 for the majority of trading days during the three calendar months before listing of the security futures contact, as measured by the lowest closing price reported in any market in which the underlying security traded on each of the subject days.

In addition to meeting the current listing requirements of NQLX Rule 902(b), NQLX proposes adding a new rule provision, NQLX Rule 902(b)(8)(i), that would allow the listing of a security futures product if the underlying securities are "covered securities," as defined under Section 18(b)(1)(A) of the Securities Act of 1933 ("1933 Act") ("covered securities"),[5] and have reported at least a $3.00 per share closing price on their primary for the five previous consecutive trading days before the initial listing of the product. For initial listings of security future products with underlying securities that are not covered securities, NQLX Rule 90218(b)(8)(ii) will continue to require those underlying securities to trade at $7.50 or above for the majority of trading days during the three calendar months before listing of the security futures contract.

NQLX also proposes to add NQLX Rule 902(b)(8)(iii) to allow the initial listing of a security futures contract if the underlying security (1) meets the requirements under NQLX Rule 903(c); (2) underlies a security futures contract that already trades on at least one other registered national securities exchange; and (3) underlies a security futures contract that has had average daily trading volume of at least 5,000 contracts during the three calendar months immediately before the date of listing. NQLX represents that this proposed change is consistent with similar initial listing standards in place at several options exchanges.[6]

As to maintenance listing standards, in addition to meeting the current listing requirements of NQLX rule 903(c), NQLX proposes to amend NQLX Rule 903(c)(6) to allow the listing of a new delivery months for a security futures product if the underlying securities have reported at least a $3.00 per share closing price on their primary market on the trading day immediately before the listings of the new delivery month.[7] NQLX represents that this

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

[3] On April 4, 2003, NQLX filed Form 19b–7, which completely replaces the initial filing in its entirety. Telephone conversation between Kathleen Hamm, Senior Vice President, Regulation and Compliance, NQLX, and Christopher Solgan, Attorney, Division of Market Regulation ("Division"), Commission, on April 8, 2003.

[4] 15 U.S.C. 78s(b)(7)(B).

[5] Section 18(b0(11)(A) of the 1933 Act provides that, "[a] security is a covered security if such security is—listed, or authorized for listing, on the New York Stock Exchange or the American Stock Exchange, or listed, or authorized for listing, on the National Market system of the Nasdaq Stock Market (or any successor to such entities). * * *" 15 U.S.C. 77r(b)(1)(A). The term "covered security" would not include those securities defined under section 18(b)(1)(B) of the 1933 Act. 15 U.S.C. 77r(b)(1)(B).

[6] *See, e.g.*, Commentary .01(4) to American Stock Exchange LLC ("Amex") Rule 916; International Securities Exchange, Inc. ("ISE") Rule 502(b)(5)(ii); Pacific Exchange, Inc. ("PCX") Rule 3.6(a)(4).

[7] Currently, NQLX does not anticipate adding additional series intra-day. However, if NQLX ever

Continued

change is consistent with the maintenance listing standards of the Chicago Board Options Exchange, Inc. ("CBOE").[8]

The text of the proposed rule change appears below. New text is in *italics*. Deleted text is in brackets.[9]

Rule 902 Initial Listing Standards: Physically-Settled Security Futures Contracts.

(a) (1)–(2) No change.

(b) Initial Listing Standards-Underlying Securities are Single Securities: To initially list a physically-settled Security Futures Contract with an underlying single security, the single security must:

(1)–(7) No change.

(8) *(i) have a market price per security of at least $3.00 (calculated by the closing price reported on the primary market on which the underlying security trades) for the previous five consecutive trading days before listing if the underlying security is a "covered security" as defined by section 18(b)(1)(A) of the Securities Act of 1933 ("Covered Security"); or*

(ii) have a market price per security of at least $7.50 (calculated by the lowest closing price reported in any market on which the underlying security traded) for the majority of trading days during the three calendar months before listing *if the underlying security is not a "covered security" as defined by section 18(b)(1)(A) of the Securities Act of 1933 ("Uncovered Security"); or*

(iii) (A) meet the requirement of Rule 903(c), and

(B) underlie a securities futures contract that (i) trades on at least one other registered national securities exchange and (ii) has had an average daily trading volume of at least 5,000 contracts during the three calendar months immediately before the date of listing; and

(9) No change.

(c)–(d) No change.

(e) Initial Listing Standards-Underlying Securities are Restructure Securities: For a Restructure Security the requirements of Rule 902(b) apply, except that:

(1)–(4) No change.

(5) Restructure Securities Issued in Public Offering or Rights Distribution: To determine whether Rule 902(b)(8) is deemed satisfied for a Restructure Security that is distributed pursuant to a public offering or a rights distribution, NQLX may look back at the market price history of the Original Security if:

(i) the Look-Back Test of Rule 902(e)(3) is satisfied; and

(ii) the Restructure Security

(A) trades "regular way" on an exchange or automatic quotation system for at least five trading days immediately before the date that NQLX selects the Restructure Security as an underlying security for a Security Futures Contract, and

(B) closes trading on each of those five previous trading days, and opens trading on the day of selection, at least at *(i) $3.00 if the Restructure Security is a Covered Security (as defined by Rule 902(b)(8)(i)) or (ii) $7.50 if the Restructure Security is an Uncovered Security (as defined by Rule 902(b)(8)(ii)).*

Rule 9031 Maintenance Listing Standards: Physically-Settled Security Futures Contracts:

(a) (1)–(5) No change.

(b) No change.

(c) Maintenance Standards—Underlying Securities are Single Securities Other than Shares of Exchange-Traded Funds, Shares of Registered Closed-End Management Investment Companies, or Trust-Issued Receipts: When the underlying of a physically-settled Security Futures Contract is a single security other than shares of exchange-traded funds, shares of registered closed-end management investment companies, or trust-issued receipts, to list a new delivery month of the Security Futures Contract, the single security must:

(1)–(5) No change.

(6)](i)] *have a market price per security of at least $3.00 (calculated by the closing price reported on the primary market on which the underlying security trades) on the trading day immediately before listing a new delivery month* [if the underlying security is a Covered Security (as defined by Rule 902(b)(8)(i)), or] *and*

[(ii) have a market price per security of at least $5.00 for an Uncovered Security (as defined by Rule 902(b)(8)(ii)) on a majority of the trading days during the past six calendar months (measured by the highest closing price reported for the underlying security in any market trading the underlying); provided, however, that NQLX may waive this requirement and open for trading a new delivery month of the Security Futures Contract, if:

(*A*) the open interest by Customers (on a two-sided basis) equals or exceeds 4,000 contract for all delivery months;

(*B*) the aggregate market value of the underlying security equals or exceeds $50 million;

(*C*) the average daily trading volume in the underlying security (in all markets that trade the underlying) has been at least 109,000 shares or receipts evidencing the underlying security in each of the prior 12 months; and

(*D*) the market price per share of or receipts evidencing the underlying security:

(*i*) has closed at $3.00 or above on a majority of trading days during the past six calendar months, as measured by the highest closing price for the underlying security reported in any market that trades the underlying security, and

(*ii*) is at least $3.00 on the day NQLX lists the new delivery month for trading;]

(7) No change.

(d)–(f) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NQLX has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NQLX proposes to adopt revisions to its current listing standards, which it believes are no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association,[10] because the options listing and maintenance standards of the Amex, CBOE, ISE, and PCX contain similar provisions.[11] NQLX believes that adoption of the current proposal would provide investors with security futures products that are useful and in demand as tools to manage the risks of their investment portfolios.

NQLX believes that its proposed rule changes comply with the requirements under section 6(h)(3) of the Act[12] and the criteria under section 2(a)(1)(D)(i) of the CEA,[13] as modified by joint orders of the Commission and the CFTC, and that its listing standards are no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association.[14]

2. Statutory Basis

NQLX files this proposed rule change pursuant to section 19(b)(7) of the Act.[15] NQLX believes that this proposed rule change is consistent with the requirements of the Commodity Futures Modernization Act of 2000,[16] including the requirement that trading in a listed security futures is not readily susceptible to manipulation of its price nor to causing or being used to manipulate the price of the underlying security, options on the security, or options on a group or index including the security.[17] NQLX further believes that its proposed rule change complies with the requirements under section 6(h)(3) of the Act[18] and the criteria under Section 2(a)(1)(D)(i) of the CEA,[19] as modified by joint orders of the Commission and the CFTC. In addition, NQLX believes that its proposed rule change is consistent with the provisions of section 6 of the Act.[20] in general, and section 6(b)(5) of the Act,[21] in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

NQLX does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

NQLX neither solicited nor received written comment on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective on January 27, 2003, except that the changes made in Amendment No. 1 have become effective on April 4, 2003. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of section 19(b)(1) of the Act.[22]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of NQLX. All submissions should refer to File No. SR–NQLX–2003–03 and should be submitted by May 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9675 Filed 4–18–03; 8:45 am]

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determines it appropriate to add a new series intra-day, NQLX will submit a proposed rule change to the Commission and CFTC to use the price per share of the last reported trade on the primary market on which the underlying security trades at the time NQLX determines to add the new series.

[8] *See* Interpretations and Policies .01 and .02 to CBOE Rule 5.4. *See also* Securities Exchange Act Release No. 44964 (October 19, 2001), 66 FR 54599 (October 29, 2001).

[9] NQLX authorized technical corrections to the proposed rule text during a telephone conversion between Kathleen Hamm, Senior Vice President, Regulation and Compliance, NQLX, and Christopher Solgan, Attorney, Division, Commission, on April 8, 2003.

[10] 15 U.S.C. 78f(h)(3)(C).

[11] *See* Securities Exchange Act Release No. 34–47190 (January 15, 2003), 68 FR 3072 (January 22, 2003) (approving SR–CBOE–2002–62). *See, e.g.*, ISE Rule 502(b)(5)(ii); PCX Rule 3.6(a)(4); Interpretations and Policies .01 and .02 to CBOE Rule 5.4; and Commentary .01(4) to Amex Rule 916.

[12] 15 U.S.C. 78f(h)(3).

[13] 7 U.S.C. 2(a)(1)(D)(i).

[14] 15 U.S.C. 78f(h)(3)(C).

[15] 15 U.S.C. 78s(b)(7).

[16] P.L. 106–554, 114 Stat. 2763 (2000).

[17] 15 U.S.C. 78f(h)(3)(H).

[18] 15 U.S.C. 78f(h)(3).

[19] 7 U.S.C. 2(a)(1)(D)(i).

[20] 15 U.S.C. 78f.

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(1).

[23] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47679; File No. SR–NASD–2003–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify the Display Charge Associated With the Use of the Nasdaq Workstation II Service by Persons That Are Not NASD Members

April 15, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 21, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the display charge paid by persons that are not NASD members for use of the Nasdaq Workstation II ("NWII") Service.[3] Nasdaq will implement the proposed rule change as soon as practicable following approval by the Commission.

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

* * * * *

7000. Charges for Services and Equipment

7010. System Services

(a)–(e) No change.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On March 21, 2003, Nasdaq also submitted a proposed rule change to modify this charge for NASD members. *See* Securities Exchange Act Release No. 47637 (April 7, 2003), 68 FR 17849 (April 11, 2003) (File No. SR–NASD–2003–47).

(f) Nasdaq Workstation™ Service

(1) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq Workstation II Service:

Service Charge	[$1,875/month per service delivery platform ("SDP") from December 1, 2000 through February 28, 2001] $2,035/month per *service delivery platform ("SDP")* [beginning March 1, 2001].
Display Charge	$525/month per [presentation device ("PD")] *logon for the first 150 logons $200/month for each additional logon.*
Additional Circuit/SDP Charge	[$3,075 per month from December 1, 2000 through February 28, 2001, and] $3,235/month [beginning March 1, 2001][8].
Maintenance	$55/[SDP or] *presentation device ("PD")* logon *or SDP*/month.

A subscriber that accesses Nasdaq Workstation II Service via an application programming interface ("API") shall be assessed the Service Charge for each of the subscriber's SDPs and shall be assessed the Display Charge for each of the subscriber's [API linkages] *logons*, including *logons of* an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit /SDP Charge.

(2) No change.

• A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight [PDs and/or API servers] *logons* on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP(s) (*i.e.*, the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its *logons* [PDs and/or API servers], assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing eighteen SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming an eighteen-to-one ratio.

(g)–(s) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NWII service allows market participants to access the Nasdaq Stock Market and other Nasdaq facilities through Nasdaq's Enterprise Wide Network II ("EWN II"). To use the NWII service, each subscriber location has at least one service delivery platform ("SDP") that connects to the EWN II by a dedicated T1 circuit pair. The subscriber then connects the workstations used by its employees to the SDP. Thus, the SDP functions as the gateway from the subscriber's workstations to the EWN II.

Different subscribers use different types of workstations. A subscriber may use either an "NWII presentation device" (a workstation and associated software provided by Nasdaq) or its own workstation and software (often referred to as an "application programming interface" device, or an "NWII substitute"), and many subscribers use both options. Each workstation, however, is associated with a particular "logon,"[4] the code that a user enters to identify himself or herself as an authorized NWII user and thereby gain access to the NWII service. Nasdaq currently assesses a "display charge" of $525 per month for each logon.[5]

Nasdaq represents that, as part of an ongoing effort to reduce costs incurred by Nasdaq's market participants to use its systems and services, Nasdaq is proposing to modify the display charge to reflect the economies of scale realized when providing subscribers with a large number of logons. Specifically, Nasdaq asserts that if a subscriber has more than 150 logons, the per logon average cost to provide NWII service to that subscriber will decrease over a substantial range of additional logons. Moreover, Nasdaq represents that the average costs associated with subscriber support also decrease as the number of logons increases. Accordingly, Nasdaq believes that it is reasonable to offer a discount on additional logons to subscribers with more than 150 logons, to reflect the lower average costs associated with providing this volume of logons.[6] A subscriber will pay the current display charge of $525 per month per logon for its first 150 logons, and a reduced charge of $200 per month for each additional logon.[7] Nasdaq believes that this reduction will also make it more economical for subscribers to install systems with redundancy, which will enable them to remain fully operational even if they experience equipment failures or an unexpected increase in demand.

In determining the number of logons used by a particular subscriber, Nasdaq will permit a particular corporate entity to aggregate its logons with those used by its wholly owned subsidiaries, parent corporations of which it is a wholly owned subsidiary, or affiliated corporations that are wholly owned by a common parent. A subscriber that wishes to aggregate its logons with those of its affiliates in this manner will be required to provide supporting information about its corporate structure to Nasdaq.

[4] Nasdaq represents that the term "logon" as used throughout the proposed rule change refers to a logon ID (or logon identifier) and not a logon event. Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq, and Frank N. Genco, Attorney, Division of Market Regulation ("Division"), Commission, on March 28, 2003.

[5] Nasdaq notes that NASD rule 7010(f)(1), as in effect prior to the amendments made by this proposed rule change, uses a variety of terms to refer to the concept reflected in the term "logon." As a part of this proposed rule change, Nasdaq is clarifying the rule by using the term "logon" throughout, and is also removing language describing fees in effect prior to March 1, 2001.

[6] Telephone conversation between John M. Yetter, Assistant General Counsel, Nasdaq, and Hong-Anh Tran, Special Counsel, Division, Commission, on April 1, 2003.

[7] Nasdaq represents that a change to its Tools Plus SDP pricing is not warranted at this time. *See also* Securities Exchange Act Release No. 46973 (December 9, 2002), 67 FR 77305 (December 17, 2002) (File No. SR–NASD–2002–164).

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] in general, and section 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the NASD consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–48 and should be submitted by May 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9698 Filed 4–18–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster No. P007, Amdt. No. 1]

State of Tennessee

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective April 14, 2003, the above numbered declaration is hereby amended to include Hardin and Lauderdale Counties in the State of Tennessee as disaster areas due to damages caused by severe storms and flooding occurring from February 14, 2003 and continuing through February 26, 2003.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is May 19, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: April 15, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–9798 Filed 4–18–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region II Buffalo District Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council located in the geographical area of Buffalo, New York, will hold a public meeting at 10 a.m. eastern time on Wednesday, April 23, 2003 at the Transit Valley Country Club, 8920 Transit Road, East Amherst, New York to discuss such matters that may be presented by members, and staff of the U.S. Small Business Administration; or others present. Anyone wishing to make an oral presentation to the Board must contact Franklin J. Sciortino, District Director, in writing by letter or by fax no later than Monday, April, 21, 2003, in order to be put on the agenda. Franklin J. Sciortino, District Director, U.S. Small Business Administration, 1311 Federal Building, 111 West Huron Street, Buffalo, NY 14202. Telephone (716) 551–4301 or Fax (716) 551–4418.

Candace H. Stoltz,

Director Advisory Councils.

[FR Doc. 03–9799 Filed 4–18–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4338]

30-Day Notice of Proposed Information Collection: Form DS–2038, Application for Certificate of International Educational Character; OMB Control Number 1405–0122

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement of previously approved collection whose approval has expired.

Originating Office: Bureau of Educational and Cultural Affairs (ECA–IIP/EX/PR).

Title of Information Collection: Application for Certificate of International Educational Character.

Frequency: Occasionally.

Form Number: DS–2038.

Respondents: Members of the public who seek a certificate of international educational character for audiovisual material.

Estimated Number of Respondents: 6.

Average Hours Per Response: 25 minutes.

Total Estimated Burden: 25 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Leslie M. Nolan, U.S. Department of State, Bureau of Educational and Cultural Affairs, 301 4th Street, SW., Room 534, Washington, DC 20547. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: March 31, 2003.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–9777 Filed 4–18–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2002–14223]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The FMCSA announces its decision to exempt 21 individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs). The exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: April 21, 2003.

FOR FURTHER INFORMATION CONTACT: For information about the vision exemptions in this notice, you may contact Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Background

On March 4, 2003, the FMCSA published a Notice of its receipt of applications from 21 individuals, and requested comments from the public (68 FR 10301). The 21 individuals petitioned the FMCSA for exemptions from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. They are: Gordon L. Apple, Stanley E. Bernard, John D. Bolding, Jr., Ronald B. Brown, Michael P. Curtin, Albion C. Doe, James M. Eads, Richard L. Elyard, Michael R. Forschino, John C. Gadomski, Richard H. Hammann, Carl M. Hill, David A. Hiller, Billy L. Johnson, Christopher J. Kane, Jack E. Kettner, Wallace F. Mahan, Sr., James R. Petre, William E. Reveal, Robert P. Sanderson, and Janusz Tyrpien.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the 21 applications on their merits and made a determination to grant the exemptions to all of them. The comment period closed on April 3, 2003. One comment was received, and its contents were carefully considered by the FMCSA in reaching the final decision to grant the exemptions.

Vision and Driving Experience of the Applicants

The vision requirement in the FMCSRs provides:

A person is physically qualified to drive a commercial motor vehicle if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber (49 CFR 391.41(b)(10)).

Since 1992, the Federal Highway Administration (FHWA) has undertaken studies to determine if this vision standard should be amended. The final report from our medical panel recommends changing the field of vision standard from 70° to 120°, while leaving the visual acuity standard unchanged. (*See* Frank C. Berson, M.D., Mark C. Kuperwaser, M.D., Lloyd Paul Aiello, M.D., and James W. Rosenberg, M.D., "Visual Requirements and Commercial Drivers," October 16, 1998, filed in the docket, FHWA–98–4334.) The panel's conclusion supported the FMCSA's (and previously the FHWA's) view that the present standard is reasonable and necessary as a general standard to ensure highway safety. The FMCSA also recognizes that some drivers do not meet the vision standard, but have adapted their driving to accommodate their vision limitation and demonstrated their ability to drive safely.

The 21 applicants fall into this category. They are unable to meet the vision standard in one eye for various reasons, including amblyopia, retinal and macular scars, and loss of an eye due to trauma. In most cases, their eye conditions were not recently developed. All but eight of the applicants were either born with their vision impairments or have had them since childhood. The eight individuals who sustained their vision conditions as adults have had them for periods ranging from 5 to 30 years.

Although each applicant has one eye which does not meet the vision standard in 49 CFR 391.41(b)(10), each has at least 20/40 corrected vision in the other eye and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV. The doctors' opinions are supported by the applicants' possession of valid commercial driver's licenses (CDLs) or non-CDLs to operate CMVs. Before issuing CDLs, States subject drivers to knowledge and performance tests designed to evaluate their qualifications to operate a CMV. All these applicants satisfied the testing standards for their State of residence. By meeting State licensing requirements, the applicants demonstrated their ability to operate a commercial vehicle, with their limited vision, to the satisfaction of the State. The Federal interstate qualification standards, *i.e.* the FMCSRs, however, require more.

While possessing a valid CDL or non-CDL, these 21 drivers have been authorized to drive a CMV in intrastate commerce, even though their vision disqualifies them from driving in interstate commerce. They have driven CMVs with their limited vision for careers ranging from 3 to 44 years. In the past 3 years, one of the drivers has had a conviction for two traffic violations—speeding and "failure to obey traffic control device/sign." None of the drivers was involved in an accident.

The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the March 4, 2003 notice (68 FR 10301). Since there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here. Our summary analysis of the applicants is supported by the information published at 68 FR 10301.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption from the vision standard in 49 CFR 391.41(b)(10) if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. Without the exemption, applicants will continue to be restricted to intrastate driving. With the exemption, applicants can drive in interstate commerce. Thus, our analysis focuses on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce.

To evaluate the effect of these exemptions on safety, the FMCSA considered not only the medical reports about the applicants' vision, but also their driving records and experience with the vision deficiency. To qualify for an exemption from the vision standard, the FMCSA requires a person to present verifiable evidence that he or she has driven a commercial vehicle safely with the vision deficiency for 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of accidents and traffic violations. Copies of the studies have been added to the docket. (FHWA–98–3637)

We believe we can properly apply the principle to monocular drivers, because data from the vision waiver program clearly demonstrates that the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively. (*See* 61 FR 13338, 13345, March 26, 1996.) The fact that experienced monocular drivers with good driving records in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that accident rates for the same individual exposed to certain risks for two different time periods vary only slightly. (*See* Bates and Neyman, University of California Publications in Statistics, April 1952.) Other studies demonstrated theories of predicting accident proneness from accident history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future accidents. (*See* Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971.) A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall accident predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

Applying principles from these studies to the past 3-year record of the 21 applicants receiving an exemption, we note that the applicants have had no accidents and two traffic violations in the last 3 years. The applicants achieved this record of safety while driving with their vision impairment, demonstrating the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, the FMCSA concludes their ability to drive safely can be projected into the future.

We believe the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances are more compact than on highways. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions. The veteran drivers in this proceeding have operated CMVs safely under those conditions for at least 3 years, most for much longer. Their experience and driving records lead us to believe that each applicant is capable of operating in interstate commerce as safely as he or she has been performing in intrastate commerce. Consequently, the FMCSA finds that exempting these applicants from the vision standard in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption. For this reason, the agency will grant the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to the 21 applicants listed in the March 4, 2003 notice (68 FR 10301).

We recognize that the vision of an applicant may change and affect his/her ability to operate a commercial vehicle as safely as in the past. As a condition of the exemption, therefore, the FMCSA will impose requirements on the 21 individuals consistent with the grandfathering provisions applied to drivers who participated in the agency's vision waiver program.

Those requirements are found at 49 CFR 391.64(b) and include the following: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

Discussion of Comments

The FMCSA received one comment in this proceeding. The comment was considered and is discussed below.

Advocates for Highway and Auto Safety (Advocates) expresses continued opposition to the FMCSA's policy to grant exemptions from the Federal Motor Carrier Safety Regulations, including the driver qualification standards. Specifically, Advocates: (1) Objects to the manner in which the FMCSA presents driver information to the public and makes safety determinations; (2) objects to the agency's reliance on conclusions drawn from the vision waiver program; (3) claims the agency has misinterpreted statutory language on the granting of exemptions (49 U.S.C. 31315 and 31136(e)); and finally (4) suggests that a recent Supreme Court decision affects the legal validity of vision exemptions.

The issues raised by Advocates were addressed at length in 64 FR 51568 (September 23, 1999), 64 FR 66962 (November 30, 1999), 64 FR 69586 (December 13, 1999), 65 FR 159 (January 3, 2000), 65 FR 57230 (September 21, 2000), and 66 FR 13825 (March 7, 2001). We will not address these points again here, but refer interested parties to those earlier discussions.

Conclusion

After considering the comments to the docket and based upon its evaluation of the 21 exemption applications, the FMCSA exempts Gordon L. Apple, Stanley E. Bernard, John D. Bolding, Jr., Ronald B. Brown, Michael P. Curtin, Albion C. Doe, James M. Eads, Richard L. Elyard, Michael R. Forschino, John C. Gadomski, Richard H. Hammann, Carl M. Hill, David A. Hiller, Billy L. Johnson, Christopher J. Kane, Jack E. Kettner, Wallace F. Mahan, Sr., James R. Petre, William E. Reveal, Robert P. Sanderson, and Janusz Tyrpien from the vision requirement in 49 CFR 391.41(b)(10), subject to the following conditions: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving, so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

Issued on: April 15, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy, Plans and Regulation.

[FR Doc. 03–9730 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–14504]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 29 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before May 21, 2003.

ADDRESSES: You can mail or deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. You can also submit comments at *http://dms.dot.gov*. Please include the docket number that appears in the heading of this document. You can examine and copy this document and all comments received at the same Internet address or at the Dockets Management Facility from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. The 29 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety.

Qualifications of Applicants

1. Michael C. Boyne

Mr. Boyne, 52, has retinopathy of prematurity in his right eye. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/20. His ophthalmologist examined him in 2002 and stated, "Based upon these findings, this individual has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Boyne submitted that he has driven tractor-trailer combinations for 9 years, accumulating 1.0 million miles. He holds a Class A commercial driver's license (CDL) from Florida. His driving record for the last 3 years shows one accident and no convictions for moving violations in a CMV. According to the police report, another driver moved into Mr. Boyne's lane, striking his vehicle. The report indicated that the other driver contributed to the accident by "failure to keep in proper lane." Mr. Boyne was not cited.

2. Clifford D. Carpenter

Mr. Carpenter, 59, lost his right eye due to an injury 17 years ago. His best-corrected visual acuity in the left eye is 20/20. Following an examination in 2002, his optometrist certified, "It is my medical opinion that Mr. Carpenter meets the conditions for consideration for the vision exemption program, and has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Carpenter reported that he has driven straight trucks for 41 years, accumulating 717,000 miles, and tractor-trailer combinations for 39 years, accumulating 390,000 miles. He holds a Class A CDL from Missouri. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

3. Bobby R. Carter, Sr.

Mr. Carter, 55, has had optic nerve atrophy in his left eye since 1998. His best-corrected visual acuity in the right eye is 20/20 and in the left, light perception. Following an examination in 2002, his optometrist certified, "His vision is sufficient for operating a commercial vehicle: distance acuity is clear, peripheral vision is full and adequate for him to see all the mirrors." Mr. Carter reported that he has driven tractor-trailer combinations for 12 years, accumulating 900,000 miles. He holds a Class CA CDL from Michigan. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

4. Darryl D. Cassatt

Mr. Cassatt, 46, has a congenital cataract in his right eye. His best-corrected visual acuity is 20/400 in the right eye and 20/20 in the left. Following an examination in 2002, his optometrist certified, "In my expert medical opinion, I feel Darryl Cassatt has sufficient vision to operate a commercial vehicle." Mr. Cassatt submitted that he has driven straight trucks for 3 years, accumulating 234,000 miles, and tractor-trailer combinations for 4 years, accumulating 468,000 miles. He holds a Class AM CDL from Iowa. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

5. Timothy H. Dubois

Mr. Dubois, 41, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/300. Following an examination in 2002, his optometrist certified, "In my medical opinion, I believe that Tim Dubois has sufficient vision required to operate a commercial vehicle." Mr. Dubois reported that he has driven straight trucks for 11 years, accumulating 440,000 miles, and tractor-trailer combinations for 11 years, accumulating 55,000 miles. He holds a Class A CDL from Minnesota. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

6. Robert E. Ezell, Jr.

Mr. Ezell, 43, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/90 in the left. Following an examination in 2002, his optometrist certified, "Mr. Ezell has had this condition (amblyopia) since he was a child, and it is my medical opinion that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Ezell reported that he has driven straight trucks for 15 years, accumulating 45,000 miles, and tractor-trailer combinations for 6 years, accumulating 750,000 miles. He holds a driver's license from the State of Washington. His driving record shows one accident and no convictions for moving violations in a CMV. According to the police report, Mr. Ezell's vehicle struck an unoccupied vehicle that rolled out of a parking lot into his travel lane. The owner was cited for "no proof of insurance." Mr. Ezell was not cited.

7. Orasio Garcia

Mr. Garcia, 46, has amblyopia in his left eye. The visual acuity in his right eye is 20/20 and in the left, hand motions. Following an examination in 2002, his ophthalmologist certified, "I am not familiar with the criteria of vision requirements of a commercial vehicle driver, but he has been doing this line of work all his life with stable ophthalmologic condition, and I feel reasonably certain that Mr. Garcia should be able to continue commercial operation as he has done in the past." Mr. Garcia submitted that he has driven straight trucks for 5 years, accumulating 20,000 miles, and tractor-trailer combinations for 3 years, accumulating 300,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows one accident and no convictions for moving violations in a CMV during the last 3 years.

8. Reginal Gillis

Mr. Gillis, 39, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/100 and in the left, 20/20. His ophthalmologist examined him in 2002 and stated, "There is no evidence with your current eye condition that will prevent you from operating any type of commercial motor vehicle." Mr. Gillis submitted that he has driven straight trucks for 15 years, accumulating 7,000 miles. He holds a Class B CDL from Florida. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

9. Raymond D. Gromley

Mr. Gromley, 58, lost the vision in his left eye due to trauma in 1992. His best-corrected visual acuity in the right eye is 20/20. Following an examination in 2002, his ophthalmologist stated, "In my opinion, Raymond's vision in his remaining eye is satisfactory for him to perform driving tasks required to operate a commercial vehicle." Mr. Gromley submitted that he has driven straight trucks for 42 years, accumulating 420,000 miles, and tractor-trailer combinations for 16 years, accumulating 560,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 11 mph.

10. Dennis K. Harris

Mr. Harris, 41, lost his right eye due to an accident in 1982. The visual acuity in his left eye is 20/15. An ophthalmologist examined him in 2002 and stated, "He appears well-adapted to being one-eyed. He has a totally normal left eye with excellent vision without any correction, and he should be able to drive using this eye. Specifically, he should be able to drive a commercial vehicle for the tasks required of him by his employer." Mr. Harris submitted that he has driven straight trucks for 17 years, accumulating 527,000 miles. He holds a Class CM driver's license from Georgia. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

11. Donald E. Howell

Mr. Howell, 61, has count fingers vision in his left eye due to toxoplasmosis chorioretinitis in 1975. His best-corrected visual acuity in the right eye is 20/20. Following an examination in 2002, his ophthalmologist stated, "In my opinion, you have more than enough vision to perform all driving tasks required of a commercial driver in a large commercial vehicle." Mr. Howell reported that he has driven straight trucks for 40 years, accumulating 80,000 miles, and tractor-trailer combinations for 38 years, accumulating 3.0 million miles. He holds a Class A CDL from Pennsylvania. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

12. Tommy T. Hudson

Mr. Hudson, 49, has a retinal scar in his right eye due to histoplasmosis. The visual acuity in his right eye is light perception and in the left, 20/20. His optometrist examined him in 2002 and certified, "In my opinion, I believe the patient has sufficient vision in both eyes to operate a commercial vehicle." Mr. Hudson reported that he has driven tractor-trailer combinations for 30 years, accumulating 2.3 million miles. He holds a Class AM CDL from Virginia. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

13. William D. Johnson

Mr. Johnson, 53, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/400. An optometrist examined him in 2002 and stated, "In my professional opinion, Mr. Johnson has sufficient vision to perform driving tasks that he has performed for the past 35 years. Anyone that has an amblyopic eye since birth has learned to compensate for their deficiency, and is very capable of continuing driving until he starts to have a decrease in visual acuity in his right eye." Mr. Johnson submitted that he has driven tractor-trailer combinations for 35 years, accumulating 1.9 million miles. He holds a Class A CDL from Oklahoma. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

14. Raymond T. Jones, Jr.

Mr. Jones, 46, has a macular scar in his right eye due to an injury at the age of 13. His best-corrected visual acuity is 20/70 in the right eye and 20/20 in the left. Following an examination in 2002, his ophthalmologist certified, "Mr. Jones has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Jones reported that he has driven tractor-trailer combinations for 21 years, accumulating 1.9 million miles. He holds a Class A CDL from North Carolina. His driving record shows one accident and no convictions for moving violations in a CMV. According to the police report, Mr. Jones collided with a vehicle that swerved into his lane after being sideswiped by a hit and run driver. The report indicated that the driver of the hit and run vehicle was not known, and none of the drivers was charged.

15. Edward J. Kasper

Mr. Kasper, 66, has reduced vision in his left eye due to an accident 60 years ago. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. An ophthalmologist examined him in 2002 and certified, "The patient has more than sufficient vision to perform the tasks required to operate a commercial vehicle." Mr. Kasper reported that he has driven buses for 5 years, accumulating 225,000 miles. He holds a Class B CDL from Delaware. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 10 mph.

16. Jimme D. Kline

Mr. Kline, 44, has amblyopia in his left eye. The visual acuity in his right eye is 20/20 and in the left, 20/400. An ophthalmologist examined him in 2002 and stated, "Jimme Kline's uncorrected vision is sufficient for driving commercial vehicles." Mr. Kline submitted that he has driven straight trucks for 25 years, accumulating 625,000 miles, and tractor-trailer combinations for 4 years, accumulating 400,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

17. Phillip L. Mangen

Mr. Mangen, 37, has amblyopia in his left eye. His best-corrected visual acuity is 20/15 in the right eye and 20/60 in the left. An optometrist examined him in 2002 and stated, "I feel Phillip Mangen has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Mangen submitted that he has driven tractor-trailer combinations for 15 years, accumulating 1.5 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

18. Paul V. Mattingly

Mr. Mattingly, 47, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/15. His optometrist examined him in 2002 and stated, "Mr. Mattingly has sufficient visual performance to operate a commercial vehicle." Mr. Mattingly reported that he has driven straight trucks for 27 years, accumulating 891,000 miles. He holds a Class B driver's license from Illinois. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

19. Steven M. Montalbo

Mr. Montalbo, 45, lost his left eye due to injury 36 years ago. His best-corrected visual acuity in the right eye is 20/15. Following an examination in 2002, his optometrist certified, "Based upon these findings, we feel that the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Montalbo submitted that he has driven straight trucks for 7 years, accumulating 698,000 miles, and tractor-trailer combinations for 25 years, accumulating 624,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

20. Bernard E. Roche

Mr. Roche, 65, has had scarring of the retina in his right eye due to injury since 1995. His corrected visual acuity is 20/20 in the right eye and 20/100 in the left. Following an examination in 2002, his optometrist commented, "In my opinion, Mr. Roche has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Roche submitted that he has driven straight trucks for 42 years, accumulating 840,000 miles. He holds a Class A CDL from Virginia. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

21. Charles J. Rowsey

Mr. Rowsey, 39, lost his right eye due to injury 18 years ago. The visual acuity in his left eye is 20/15. Following an examination in 2002, his optometrist certified, "In my professional opinion, Charles Rowsey has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Rowsey reported that he has driven tractor-trailer combinations for 16 years, accumulating 1.0 million miles. He holds a Class A CDL from North Carolina. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

22. Vincent Rubino

Mr. Rubino, 33, has amblyopia in his right eye. His best-corrected visual acuity is counting fingers in the right eye and 20/20 in the left. His ophthalmologist examined him in 2002 and stated, "Based on my exam and Mr. Rubino's past history, I feel he has sufficient vision to perform the tasks required to operate a commercial vehicle." Mr. Rubino reported that he has driven straight trucks for 4 years, accumulating 200,000 miles, and tractor-trailer combinations for 10 years, accumulating 550,000 miles. He holds a Class A CDL from New Jersey. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

23. Randy G. Spilman

Mr. Spilman, 47, has amblyopia in his right eye. His best-corrected visual acuity is 20/50 in the right eye and 20/20 in the left. His optometrist examined him in 2002 and stated, "It is my medical opinion that Mr. Spilman's vision is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. Spilman submitted that he has driven tractor-trailer combinations for 16 years, accumulating 1.9 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

24. Wyatt W. Thayer, Jr.

Mr. Thayer, 63, has had open angle glaucoma and iritis in his right eye since 1997. His best-corrected visual acuity is 20/40–2 in the right eye and 20/20 in the left. His optometrist examined him in 2002 and stated, "In my medical opinion, Mr. Thayer has more than sufficient vision to perform the driving tasks of a commercial vehicle." Mr. Thayer reported that he has driven tractor-trailer combinations for 16 years, accumulating 974,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

25. Thomas S. Thompson

Mr. Thompson, 61, is blind in his left eye due to trauma in 1974. His best-corrected visual acuity in the right eye is 20/20. His optometrist examined him in 2002 and certified, "It is my opinion that this individual has sufficient vision to perform the driving tasks of operating a commercial vehicle as he has done previously for the past 25 years without incident." Mr. Thompson submitted that he has driven tractor-trailer combinations for 28 years, accumulating 2.1 million miles. Mr. Thompson holds a Class A CDL from Nebraska. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

26. Robert A. Wegner

Mr. Wegner, 38, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2002, his optometrist certified, "The condition of amblyopia is one that Robert has compensated for his entire life and, in my opinion, will not impair his ability to safely operate any motor vehicle." Mr. Wegner submitted that he has driven tractor-trailer combinations for 7 years, accumulating 390,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no accidents and one conviction for a moving violation in a CMV. Mr. Wegner failed to obey a stop sign.

27. John E. Wertz

Mr. Wertz, 48, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/60 and in the left, 20/20. His optometrist examined him in 2002 and certified, "In my medical opinion, I feel John is capable of performing the driving tasks necessary to operate a commercial vehicle." Mr. Wertz reported that he has driven tractor-trailer combinations for 14 years, accumulating 1.7 million miles. He holds a Class A CDL from Pennsylvania. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

28. John W. Williams

Mr. Williams, 56, lost his left eye due to trauma in childhood. The visual acuity in his right eye is 20/20. An optometrist examined him in 2002 and certified, "His visual capacity should be sufficient to perform commercial vehicle operation." Mr. Williams reported that he has driven straight trucks for 20 years, accumulating 322,000 miles, and tractor-trailer combinations for 12 years, accumulating 1.2 million miles. He holds a Class AM CDL from Illinois. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

29. Christopher D. Yates

Mr. Yates, 31, has amblyopia in his left eye. His best-corrected visual acuity is 20/20 in the right eye and 20/60 in the left. Following an examination in 2002, his optometrist certified, "Chris has sufficient vision to operate a commercial vehicle safely." Mr. Yates reported that he has driven straight trucks for 3 years, accumulating 60,000 miles. He holds a Class DC operator's license/CDL from Kentucky. His driving record shows no accidents and one conviction for a moving violation—"disregarding a stop sign"—in a CMV during the last 3 years.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption applications described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: April 15, 2003.

Pamela Pelcouits,

Acting Associate Administrator, Policy, Plans and Regulation.

[FR Doc. 03–9731 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Norfolk Southern Corporation (Docket Number FRA–2002–11896)

Norfolk Southern Corporation (NS) seeks to modify existing waiver FRA–2002–11896, which is a conditional waiver of compliance from certain provisions of the Safety Appliances Standards, 49 CFR part 231, and Power Brakes and Drawbars regulations, 49 CFR part 232, concerning the operation of RoadRailer equipment in Triple Crown Service over their railroad system. Specifically, NS requests that FRA modify the existing waiver to incorporate the use of the new "RoadRailer® Drawbar Connector" in its RoadRailer operations.

NS would like to undertake the introduction of the new " RoadRailer Drawbar" technology in a two-phase

program. In Phase I, NS would operate a limited commercial test of the Drawbar. The intent is to gain experience with the new technology under controlled conditions in order to refine operating techniques and to develop and provide additional data to the FRA to support the use of this technology on a permanent basis. NS envisions that such a test would run for a period of approximately 90 days using two train sets. Train #262 from Calumet (Chicago, Illinois) to Piqua (Ft. Wayne, Indiana), approximately 190 miles, and Train # 253, from Oakwood (Detroit, Michigan) to Piqua (Ft. Wayne, Indiana), approximately 185 miles. The drawbar would be installed/removed only in Triple Crown terminals by RoadRailer personnel using a forklift. All affected personnel would be trained and the training will be documented.

Upon satisfactory completion of Phase I, all of the data collected will be submitted to FRA's Railroad Safety Board for consideration of modifying waiver FRA–2002–11896 to permanently authorize use of the new Drawbar in all aspects across the NS Triple Crown system. NS would like FRA to grant approval to operate the equipment, to include the following aspects: (1) The use of the drawbar to permit bi-directional operation of RoadRailer equipment in main-line service; (2) the use of the drawbar to permit the addition/subtraction of blocks of RoadRailer trailers at intermediate locations using the train crew, provided that the block is equipped with knuckle couplers at each end of the block; (3) removal of the restriction against backing RoadRailer equipment, provided that the backing move is protected by a CouplerMate bogie at the rear, that is equipped with appropriate safety appliances. Thus, Phase II would begin only if FRA approves the modification of the existing waiver.

NS requests the following amendments to the existing waiver: (1) Modify condition #8 to include the following exception: "RoadRailer units in blocks containing a drawbar connector and having standard couplers on both ends of the block have no restrictions on where the blocks may be picked-up or set-out"; (2) Modify condition #12 with the insertion of the word "shove"; where "reverse movement" would become "reverse shove movement"; (3) reset the five-year expiration date on condition # 27; and (4) insert a new condition to permit the use of the RoadRailer drawbar for bi-directional operation of RoadRailer equipment.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2002–11896) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC, 20590–0001. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC, on April 14, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–9721 Filed 4–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34324]

City of Childersburg Local Redevelopment Authority—Acquisition Exemption—Rail Line of the United States Government

The City of Childersburg Local Redevelopment Authority (City), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 12.68 miles of rail line from the United States Government, together with named facilities, located at the Alabama Army Ammunition Plant (AAAP), in Talladega County, AL. The United States Army (U.S. Army) is currently in the process of transferring AAAP from federal ownership to the City, which is the recipient of the property under the Base Realignment and Closure Act (BRAC). The line is currently being utilized under lease by the Central of Georgia Railway Company (CGRC), Norfolk Southern Railway Company (NS), and CSX Transportation, Inc. (CSXT).[1] The City will not be performing any operations over the line, but plans to continue the lease arrangements with the current lessees.

The parties intend to consummate the transaction no later than April 24, 2003.[2] The effective date of the exemption was March 31, 2003 (7 days after the notice was filed).

The City certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier and will not result in the creation of a Class II or Class I rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34324, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on B. J. Meeks, Mayor, 118 6th Avenue, SW., Childersburg, AL 35044.

Board decisions and notices are available on our website at *http://www.stb.dot.gov.*

Decided: April 11, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–9464 Filed 4–18–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The track is located approximately at milepost P401.0 by CGRC designation, approximately at milepost 102.1N by NS designation, and approximately at a wye track that runs south 8,716 feet from marker ANJ926 by CSXT designation. The rail line serves as a connector between two points of lessees' railways.

[2] By amendment filed April 11, 2003, the City states that it has been informed by the U.S. Army Corps of Engineers that the U.S. Army expects to transfer ownership of the rail line no later than April 24, 2003.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Electronic Sales Kit: Interview Guide

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning the Electronic Sales Kit: Interview Guide.

DATES: Written comments should be received on or before June 20, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of information collection should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Electronic Sales Kit: Interview Guide.

OMB Number: To be assigned later.

Abstract: A guide used by IRS Wage & Investment Division (W&I)—Stakeholder Partnerships, Education and Communication (SPEC) and Small Business/Self-Employed Division (SB/SE)—Taxpayer Education and Communication (TEC) Field employees containing suggested questions to ask during in-person visitations and/or telemarketing calls with tax professionals to better direct a conversation leading to encouraging the tax professional to e-file.

Current Actions: This is a new collection of information.

Type of Review: New OMB Approval.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 3,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 14, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9781 Filed 4–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 14411

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 14411, Systemic Advocacy Issue Submission Form.

DATES: Written comments should be received on or before June 20, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Systemic Advocacy Issue Submission Form.

OMB Number: 1545–1832.

Form Number: Form 14411.

Abstract: Form 14411, Systemic Advocacy Issue Submission Form, is an optional use form for taxpayers (individual and business), tax professionals, trade and business associations, etc. to submit systemic problems. These problems may pertain to experiences with the Internal Revenue Service's processes, procedures or make legislative recommendations.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, Federal, State, Local or Tribal governments.

Estimated Number of Respondents: 420.

Estimated Time Per Response: 48 minutes.

Estimated Total Annual Burden Hours: 336.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All

comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 15, 2003.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9782 Filed 4–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Low Income Taxpayer Clinic Grant Program; Availability of 2004 Grant Application Package

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document contains a Notice that the IRS has made available the grant application package (Publication 3319) for parties interested in applying for a Low Income Taxpayer Clinic Grant for the 2004 grant cycle. The IRS will award a total of up to $6,000,000 or the amount appropriated by Congress to qualifying organizations.

DATES: Grant applications for the 2004 grant cycle must be received by the IRS (not postmarked) by July 1, 2003. Applications may be transmitted by mail or electronically.

ADDRESSES: Send completed grant applications to: Internal Revenue Service, Taxpayer Advocate Service, LITC Program Office Mail Stop 211–D, 401 W. Peachtree St. NW., Atlanta, GA 30308. To transmit an application electronically, go to *www.irs.gov/advocate*. Copies of the grant application package (IRS Publication 3319) can be downloaded from the IRS Internet site at: *www.irs.gov/advocate* or ordered by calling 1–800–829–3676.

FOR FURTHER INFORMATION CONTACT: The LITC Program Office at 404–338–7185 (not a toll-free number) or by email at *LITCProgramOffice@irs.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 7526 of the Internal Revenue Code authorizes the IRS, subject to the availability of appropriated funds, to award organizations matching grants of up to $100,000 for the development, expansion, or continuation of qualified low income taxpayer clinics. Section 7526 authorizes the IRS to provide grants to qualified organizations that represent low income taxpayers in controversies with the IRS and/or inform individuals for whom English is a second language of their tax rights and responsibilities. The IRS may award grants to qualifying organizations to fund one-year, two-year or three-year project periods.

The 2004 LITC Application Package and Guidelines, Publication 3319, includes several changes that are being planned to improve IRS's understanding of and involvement with the technical components of the LITC Program. Among the changes, IRS is planning to work with clinics to establish issue committees, develop more comprehensive program standards, improve communications, and increase the emphasis on education and outreach programs to taxpayers for whom English is a second language. In addition, the package provides an explanation of "ancillary" as it relates to tax return preparation.

The costs of preparing and submitting an application are the responsibility of each applicant. Each application will be given due consideration and the LITC Program Office will main notification letters to each applicant.

Selection Criteria

Applications that pass the eligibility screening process will be numerically ranked in each of the areas listed below based on the information contained in their proposed program plan. Each criterion reflects the maximum number of points that may be assigned. In assigning numerical points, the IRS will evaluate the program plan based on how it will assist in accomplishment of the IRS mission and goals and meeting the LITC statutory requirements as stated elsewhere in the application package. Organizations can receive a maximum of 100 points. If you are applying for more than one qualifying activity (*i.e.*, representation, referral, ESL, or combination thereof) each type of program will be evaluated separately. The ranking points will be assigned as follows:

A. Quality of programs offered to assist low income taxpayers or individuals for whom English is a second language, including (Maximum 75 points)—

1. Qualifications of administrators and qualified representatives;
2. qualifications and tax expertise of qualified representatives;
3. comprehensiveness of services to be provided;
4. the amount of time devoted to the program by clinic staff;
5. training clinic participants will be provided;
6. plans for supervising clinic participants;
7. procedures for ensuring the confidentiality of taxpayer information;
8. publicity of clinic operations; and
9. the dates and days and hours of clinic operation.

B. Experience in sponsoring a tax clinic where individuals with tax controversies with the IRS were represented; or

Experience in sponsoring a tax clinic where individuals with tax controversies with the IRS were referred; or

Experience in providing a program to inform individuals for whom English is a second language about their rights and responsibilities. (Maximum 10 points)

C. Quality of grant administration and internal accounting procedures. (Maximum 10 points)

D. Number of low income and ESL taxpayers in geographical area. (Maximum 5 points)

Other Considerations

Please note that the IRS Volunteer Income Tax Assistance (VITA) Program is a separate and distinct program from the LITC grant program. Organizations currently participating in the VITA Program may be eligible to apply for a LITC grant if they meet the criteria and qualifications outlined in the LITC Grant Application Package & Guidelines (Publication 3319). Organizations that seek to operate both VITA and LITC programs must maintain separate and distinct programs to ensure proper cost allocation for LITC grant funds and adherence to both VITA and LITC program rules and regulations. In addition to the foregoing criteria, to foster parity regarding clinic availability and accessibility for taxpayers nationwide, the IRS will consider the geographic area of applicants as part of the decision making process. The IRS will also seek to attain a proper balance of academic and non-profit organizations as well as a proper balance of start-up and existing clinics.

Comments

Interested parties are encouraged to provide comments on the IRS's administration of the grant program on an ongoing basis.

Nina E. Olson,

National Taxpayer Advocate, Internal Revenue Service.

[FR Doc. 03–9780 Filed 4–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, May 7, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Wednesday, May 7, 2003, from 11 a.m. central time to Noon Central daylight time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 15, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9778 Filed 4–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted in Atlanta, Georgia.

DATES: The meeting will be held Wednesday, May 7 and Thursday, May 8, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, May 7 and Thursday, May 8, 2003 from 9 a.m. to 4 p.m. EST in Atlanta, GA. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Marisa Knispel. Mrs. Knispel may be reached at 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 15, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9779 Filed 4–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0018]

Agency Information Collection Activities Under OMB Review

AGENCY: Office of General Counsel, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Office of General Counsel (OGC), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments mut be submitted on or before May 21, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0018."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0018" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Application for Accreditation as Service Organization Representative, VA Form 21.

b. Appointment of individuals as Claimant's Representative, VA Form 22a.

OMB Control Number: 2900–0018.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21 is used to obtain basic information necessary to determine whether an individual may be accredited as a service organization representative for the purposes of representation of claimants before the VA. The information is used to evaluate qualifications, ensure against conflicts of interest, and allow appropriate organization officials to certify the character and qualifications applicants. It is designed to ensure that regulatory standards for accreditation have been met so that claimants for VA benefits have available a pool of qualified claims representatives to assist them in the preparation, presentation, and prosecution of their claims.

VA Form 22a is used by a claimant for VA benefits to confer power of attorney upon an attorney, agent, or individual service organization representative in order that the attorney, agent, or individual representative may represent

the claimant in proceedings before VA. Generally, this power of attorney permits VA to release to the attorney, agent, or individual representative records pertinent to the benefit claim. The form contains a release to be completed by the claimant, which permits the claimant to authorize or prohibit VA from disclosing medical records specifically protected by 38 U.S.C. 7332.

An agency may not conducted or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on December 17, 2002, at page 77320.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden:

a. VA Form 21—600 hours.

b. VA Form 22a—1,600 hours.

Estimated Average Burden Per Respondent:

a. VA Form 21—15 minutes.

b. VA Form 22a—15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Form 21—2,400.

b. VA Form 22a—6,400.

Dated: April 7, 2003.

By direction of the Secretary:

Loise Russell,

Acting Director, Records Management Service.

[FR Doc. 03–9359 Filed 4–18–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

Federal Register

Vol. 68, No. 76

Monday, April 21, 2003

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 16, 141, 157

[Docket No. RM03–6–000]

Amendments to Conform Regulations with Order No. 630 (Critical Energy Infrastructure Information Final Rule)

April 9, 2003.

Correction

Proposed Rule document 03–9267 was inadvertently published in the Rules and Regulations section of the issue of Wednesday, April 16, 2003 beginning on page 18538. It should have appeared in the Proposed Rules section.

[FR Doc. C3–9267 Filed 4–18–03; 8:45 am]

BILLING CODE 1505–01–D

INTER-AMERICAN FOUNDATION

Sunshine Act Meeting; Inter-American Foundation Meeting of the Board of Directors and Advisory Council

Correction

In notice document 03–8246 appearing on page 16304 in the issue of Thursday, April 3, 2003, make the following correction:

On page 16304, in the first column, under the heading **TIME AND DATE:**, in the first line, "April 24, 2003" should read " April 25, 2003".

[FR Doc. C3–8246 Filed 4–18–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
April 21, 2003

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 35, et al.

Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 101, 154, 201, 346, and 352

[Docket No. RM02–7–000, Order No. 631]

Accounting, Financial Reporting, and Rate Filing Requirements for Asset Retirement Obligations

Issued April 9, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to update the accounting and financial reporting requirements for asset retirement obligations under its Uniform Systems of Accounts for public utilities and licensees, natural gas and oil pipeline companies.

The Commission is establishing uniform accounting and financial reporting for the recognition and measurement of liabilities arising from retirement and decommissioning obligations of tangible long-lived assets, and related costs. More specifically, the Commission is adding new balance sheet accounts to record the liability and the related asset, new income statement accounts to record the accretion of the liability and the depreciation of the related asset, adding and revising as necessary the definitions, general and plant instructions contained in the Uniform Systems of Accounts. The Commission is also revising the following Annual Reports: FERC Form Nos. 1, 1–F, 2, 2–A, and 6 to include the new accounts contained in the Final Rule. Finally, the Commission is revising its rate filing requirements to address the above-mentioned changes.

An important objective of the rule is to provide sound and uniform accounting and financial reporting for the above types of transactions and events. The new accounts and changes to the FERC Forms will add visibility, completeness and consistency of the accounting and reporting of liabilities for asset retirement obligations and the related asset retirement costs, the accretion expense on the liability and the depreciation expense on the capitalized asset retirement costs.

EFFECTIVE DATE: The rule will become effective May 21, 2003.

FOR FURTHER INFORMATION CONTACT:
Mark Klose (Project Manager), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8283.
Raymond Reid (Technical Information), Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6125.
Robert T. Catlin (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8754.
Julia A. Lake (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8370.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Background
III. Discussion
A. Accounting for the Cumulative Effect Adjustment
B. Recognition of Regulatory Assets and Liabilities
C. Authority To Adjust Accumulated Depreciation (Accounts 108 and 110)
D. Accounting for Cost of Removal That Does Not Constitute a Legal Obligation
E. Accounts Established for Recording Accretion of Asset Retirement Obligations and Depreciation of Asset Retirement Costs
F. Accounts for Recording Asset Retirement Costs
G. Accounting for Gains and Losses for the Settlement of Asset Retirement Obligations Related to Electric and Gas Utility Plant
H. Accounting for Gains and Losses for the Settlement of Asset Retirement Obligations Related to Nonutility Plant
I. Other Accounting Matters
J. Tariff Filing Requirements
1. Tariff Filing Requirements Under 18 CFR part 35 and 18 CFR part 154
2. Tariff Filing Requirements Under 18 CFR part 346
K. Implementation for Accounting and Reporting Purposes
IV. FERC Annual Report Forms
V. Regulatory Flexibility Act Certification
VI. Environmental Impact Statement
VII. Information Collection Statement
VIII. Document Availability
IX. Effective Date and Congressional Notification
Regulatory Text
Appendix A—List of Commenters
Appendix B—Summary of Changes to Schedules for Forms 1, 1–F, 2, 2–A, and 6
Appendix C—Revised Schedules for Forms 1, 1–F, 2, 2–A, and 6

I. Introduction

1. The Federal Energy Regulatory Commission (Commission) is revising its regulations to update the accounting, reporting and rate filing requirements. In a Notice of Proposed Rulemaking (NOPR) issued on October 30, 2002,[1] the Commission proposed to revise its Uniform Systems of Accounts[2] for public utilities and licensees,[3] natural gas companies[4] and oil pipeline companies[5] by establishing uniform accounting requirements for the recognition of liabilities for legal obligations associated with the retirement of tangible long-lived assets and the associated capitalization of these amounts as part of the cost of the asset giving rise to the obligation.

2. An asset retirement obligation is a liability resulting from a legal obligation to retire or decommission a plant asset. The types of work activities typically include removing or dismantling the asset. For example, public utilities have a legal liability to decommission nuclear plants under certain Nuclear Regulatory Commission (NRC) regulations. The type of activities may include the dismantlement and removal of the reactor vessel and the related contaminated facilities.

3. After carefully considering the comments received, the Commission has determined that a Final Rule revising its accounting regulations, Annual Report Forms (FERC Form Nos. 1, 1–F, 2, 2–A and 6), and rate filing requirements for asset retirement obligations should be issued.

4. The purpose of this Final Rule is to improve the usefulness and transparency of financial information provided to the Commission and other users of the FERC Forms by establishing uniform accounting and reporting requirements for legal obligations associated with the retirement of tangible long-lived assets. The Commission is of the view that such

[1] 67 FR 69816 (Nov. 19, 2002) and 67 FR 70890 (Nov. 27, 2002), IV FERC Stats. & Regs. ¶ 32,565 (Oct. 30, 2002).

[2] Section 301(a) of the Federal Power Act (FPA), 16 U.S.C. 825(a), section 8 of the Natural Gas Act (NGA), 15 U.S.C. 717g and section 20 of the Interstate Commerce Act (ICA) 49 App.U.S.C. 20 (1988), authorize the Commission to prescribe rules and regulations concerning accounts, records and memoranda as necessary or appropriate for the purposes of administering the FPA, NGA and the ICA. The Commission may prescribe a system of accounts for jurisdictional entities and, after notice and opportunity for hearing, may determine the accounts in which particular outlays and receipts will be entered, charged or credited.

[3] Part 101 Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act. *See* 18 CFR part 101 (2002).

[4] Part 201 Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act. *See* 18 CFR part 201 (2002).

[5] Part 352 Uniform System of Accounts Prescribed for Oil Pipeline Companies Subject to the Provisions of the Interstate Commerce Act. *See* 18 CFR part 352 (2002).

requirements are needed because these types of transactions and events are not clearly or consistently reported. This rule is part of the Commission's ongoing effort to address emerging accounting developments within the context of the Uniform Systems of Accounts.

5. The accounting for asset retirement obligations in this rule is consistent with the accounting and reporting requirements that jurisdictional entities will use in their general purpose financial statements provided to shareholders and the Securities Exchange Commission (*e.g.*, companies will separately account and report the liability for the asset retirement obligations, capitalize the asset retirement costs, charge earnings for depreciation of the asset and charge operating expense for the accretion of the liability).

6. The Commission is also revising its rate filing requirements to accommodate the above-mentioned changes. In that regard, the accounting for asset retirement obligations will not affect jurisdictional entities' ability to seek recovery of costs arising from asset retirement obligations in rates. However, if billings under formula rate tariffs are affected by the adoption of these accounting requirements, the jurisdictional entity must obtain approval from the Commission prior to implementing the change for tariff billing purposes.

7. Finally, the Commission is revising the following Annual Reports: FERC Form No. 1, Annual Report of Major Public Utilities, Licensees and Others (Form 1); FERC Form No. 1–F, Annual Report of Nonmajor Public Utilities and Licensees (Form 1–F); FERC Form No. 2, Annual Report of Major Natural Gas Companies (Form 2); FERC Form No. 2–A, Annual Report of Nonmajor Natural Gas Companies (Form 2–A); and FERC Form No. 6, Annual Report of Oil Pipeline Companies (Form 6) to include the new accounts and the revised schedules.[6]

II. Background

8. The recognition and measurement of legal liabilities associated with the retirement and decommissioning of long-lived assets by various entities, including Commission jurisdictional entities, have been inconsistent over the years. Some jurisdictional entities do not recognize asset retirement obligations in their accounts while other jurisdictional entities only recognize the amounts included in the rate setting process as a component of accumulated depreciation. The Commission, in an effort to eliminate the inconsistencies in accounting practices by jurisdictional entities for asset retirement obligations, issued its October 30, 2002 Notice of Proposed Rulemaking to revise the accounting regulations, FERC Annual Report Forms and rate filing requirements for asset retirement obligations.[7]

9. The scope of the NOPR covered certain legal obligations associated with the future retirement of long-lived assets. These obligations, generally referred to as asset retirement obligations, are legal obligations associated with the retirement of a tangible long-lived asset that an entity is required to settle as a result of an existing enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel.[8]

10. In the NOPR, the Commission broadly set forth the proposed accounting framework for asset retirement obligations as follows:

11. An entity essentially recognizes a liability for the fair value of an asset retirement obligation at the time the asset is constructed, acquired, or when a change in the law creates a legal obligation to perform the retirement activities. Upon initial recognition of that liability, an entity also increases the cost of the related asset that gives rise to the legal obligation by the same amount. The liability is increased over time until the actual retirement activity commences. Additionally, the asset retirement cost capitalized is depreciated over the same life of the related asset giving rise to the obligation. An entity is required to re-measure the liability due to the passage of time and certain other changes in the estimate of the liability.

12. Entities will be required to recognize the liabilities for asset retirement obligations and the related costs as if the new standard had been in effect for all prior periods. The difference between the amounts at the date of adoption and the amounts previously recorded for these items are to be included in net income unless the criteria for recognition of regulatory assets or liabilities are met under Order No. 552.[9]

III. Discussion

13. The Commission received 16 comments concerning various aspects of the proposed rule.[10] The majority of the commenters were generally supportive of the Commission's effort to provide interpretative guidance on the application of generally accepted accounting principles to jurisdictional entities that presently file financial information with the Commission in Annual Report Forms 1, 1–F, 2, 2–A, and 6.[11]

14. After careful consideration of the comments received, the Commission is adopting the changes and revisions as proposed with certain modifications and clarifications as discussed below.

A. Accounting for the Cumulative Effect Adjustment

15. Upon initial implementation of the new accounting requirements for asset retirement obligations the Commission proposed that jurisdictional entities establish in their accounts all of the amounts that would have been recorded therein had these new requirements always been in effect. The NOPR referred to the accounting entries required to implement this part of the proposal as "transition adjustments." In certain instances, the transition adjustments could result in a charge or credit to net income. This charge or credit is referred to as the "cumulative effect adjustment" because it represents the cumulative difference between all amounts charged to net income for asset retirement obligations in past periods under the prior accounting method and what would have been charged to net income in those periods had these new accounting requirements set forth in the NOPR always been in effect. For rate regulated entities the cumulative effect adjustment amounts will be recognized as a regulatory asset or liability if the requirements of Commission Order No. 552 are met.[12]

16. The Commission proposed to record the cumulative effect adjustment

[6] The FERC Annual Reports bear the following OMB approval control numbers: Form 1 has OMB approval number 1902–0021; Form 1–F has OMB approval number 1902–0029; Form 2 has OMB approval number 1902–0028; Form 2–A has OMB approval number 1902–0030; and Form 6 has OMB approval number 1902–0022.

[7] *See supra* note 1.

[8] *See* Financial Accounting Standards Statement (FAS) No. 143, Accounting for Asset Retirement Obligations, issued in June 2001. The accounting publication may be obtained from FASB at *http://www.fasb.org/*. Appendix A, paragraphs A2 through A5, contains a discussion of legal obligations.

[9] *See* Order No. 552, 58 FR 17982 (Apr. 7, 1993), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 30,967 at pp. 30,823–26 (Mar. 31, 1993) for guidance on the recognition of regulatory assets and regulatory liabilities when certain conditions are met.

[10] *See* Appendix A for Listing of Commenters.

[11] *See* Arkansas PSC at p. 2, Deloitte & Touche at p. 1, FirstEnergy at p. 2, NASUCA at pp. 2–3, NRECA at pp. 3–4, Progress Energy at p. 1 and Southern at p. 1.

[12] *See* Order No. 552, *supra* note 9, for guidance on the recognition of regulatory assets and regulatory liabilities when certain conditions are met.

in two separate amounts. The first portion of the cumulative effect adjustment assumes that all amounts included in the accumulated depreciation accounts for previously recognized legal retirement obligations will be considered depreciation of the asset retirement costs capitalized under the proposed rule. The difference between the amount included in the accumulated depreciation for previously recognized legal retirement obligations and the accumulated depreciation on the capitalized asset retirement costs recognized under the new accounting requirements will be charged or credited, as appropriate, to net income or recognized as a regulatory asset or liability if the requirements of Order No. 552 are met. The second portion of the cumulative effect adjustment assumes that all amounts related to the accretion of the liability for the asset retirement obligation under the new requirements would be charged to net income or recognized as a regulatory asset if the requirements of Order No. 552 are met.

Comments Received

17. Two commenters assert that the NOPR was unclear as to the initial implementation details of the proposed accounting rules and seek clarification of this matter in the final rule.[13] The commenters request the Commission to clarify the components included in the cumulative effect adjustment. FirstEnergy asserts that the components of the cumulative effect adjustment may consist of the net of the cumulative accretion on the asset retirement obligation, the accumulated depreciation on the related capitalized asset retirement cost, and the reversal of any previously accrued legal retirement obligation.

18. FirstEnergy notes that the NOPR only addresses amounts included in accumulated depreciation for accruals of previously recognized legal retirement obligations of long-lived assets. The commenter submits that the Commission has permitted amounts related to legal liabilities associated with the retirement of assets to be recorded in a deferred credit or liability account rather than in accumulated depreciation. The commenter asserts further that accruals of previously recognized legal retirement obligations that were recorded in a deferred credit or in a liability account should be included in the computation of the cumulative effect adjustment in the final rule.

[13] *See* FirstEnergy at p. 2 and Progress Energy at p. 2.

Commission Response

19. The proposal to establish the cumulative effect adjustment was intended to simplify implementation of the accounting for asset retirement obligations. However, based on the comments received the Commission recognizes that the implementation proposal may have been confusing because the steps were somewhat different than the ones contained in FAS 143. However, the Commission notes that the cumulative effect determination under FAS 143 and this final rule will result in the use of the same components and produce the same cumulative effect adjustment amount.

20. The Commission finds that since both approaches produce the same cumulative effect adjustment for asset retirement obligations, jurisdictional entities may recognize the initial application of the new accounting rules for the cumulative effect adjustment as the difference between the amounts of previously accrued accumulated legal obligations associated with the retirement of the asset recognized in the balance sheet prior to adopting the new accounting requirements and the amount that will be recognized on the balance sheet under the new accounting requirements. The Commission also finds that in order to properly determine the proper cumulative effect adjustment, jurisdictional entities must include the amounts of previously accrued accumulated legal obligations associated with the retirement of assets recorded in other deferred credits accounts or other liability accounts in the computation of the cumulative effect adjustment.

B. Recognition of Regulatory Assets and Liabilities

21. The Commission proposed that public utilities, licensees and natural gas companies recognize regulatory assets and liabilities related to asset retirement obligations if the accounting requirements under Order No. 552 are met.[14]

Comments Received

22. Several commenters request that the Commission clarify in the final rule the accounting for the recognition of regulatory assets and liabilities for the effects on financial operations related to the initial implementation and the period-to-period accounting for any difference between amounts charged to net income for expenses related to asset retirement obligations and the amounts recovered in rates for asset retirement obligation costs.[15] The commenters assert that the proposed accounting for the recognition of the debit cumulative effect adjustment in account 182.3, Other regulatory assets, as a regulatory asset is not consistent with the accounting for the recognition of the credit cumulative effect adjustment as a regulatory liability in account 254, Other regulatory liabilities.[16] The commenters suggest that inconsistency arises because the Commission required that a credit cumulative effect adjustment must be recorded as a regulatory liability in account 254, Other regulatory liabilities, while a debit cumulative effect adjustment must be charged to net income in account 435, Extraordinary deductions, or recorded as a regulatory asset in account 182.3, Other regulatory assets, for part or all of the cumulative effect adjustment if the requirements of Order No. 552 are met. One commenter suggests that the Commission should provide for the recording of regulatory assets for debit cumulative effect adjustments as being probable of recovery as a general rule consistent with the Commission's proposed treatment of recording credit cumulative effect adjustments as regulatory liabilities.

23. Additionally, one commenter recommends that the Commission incorporate the accounting for the recognition of regulatory assets and liabilities for the initial adoption and the period-to-period accounting for asset retirement obligations in the requirements of the Uniform Systems of Accounts under Parts 101 and 201.[17]

Commission Response

24. The Commission declines to adopt the commenter's recommendation to amend the Uniform System of Accounts under part 101 and part 201 of the Commission regulations to include specific accounting instructions for the recognition of regulatory assets and liabilities for the initial adoption and the period-to-period accounting for asset retirement obligations. The accounting instruction for regulatory assets and liabilities as prescribed in the Uniform Systems of Accounts in part 101 and part 201 adequately addresses the requirements for regulatory assets or liabilities related to differences in the timing of recognition of asset retirement obligation expenses for financial accounting purposes and their recovery in rates.

[14] *See* Order No. 552, *supra* note 9, for guidance on the recognition of regulatory assets and regulatory liabilities when certain conditions are met.

[15] *See* Deloitte & Touche at p. 1, EEI at pp. 3–4, Progress Energy at p. 2, and RUS at p. 3.

[16] *See* Deloitte & Touche at p. 1, EEI at pp. 3–4, Progress Energy at p. 2, and RUS at p. 3.

[17] *See* EEI at p. 6.

25. The Commission established the accounting requirements for recording regulatory assets and liabilities as set forth in the Uniform Systems of Accounts in part 101 and part 201 pursuant to Commission Order No. 552.[18] Under these requirements regulatory assets and liabilities are defined as assets and liabilities that result from ratemaking actions of regulators.[19] Regulatory assets and liabilities generally arise from specific revenues, expenses, gains, or losses that would have been included in net income determinations in one period under the general requirements of the Uniform System of Accounts but for it being probable they will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services or in the case of regulatory liabilities, for refunds to customers, not provided for in other accounts, that will be required.[20] The term "probable," as used in Order No. 552 for the definition of regulatory assets or regulatory liabilities, refers to that which can be reasonably be expected or believed on the basis of available evidence or logic but is neither certain nor proved.[21]

26. Jurisdictional entities will initially recognize a cumulative effect adjustment and thereafter record the depreciation of the asset retirement costs in account 403.1, Depreciation expense for asset retirement costs, and the accretion of the liability for the asset retirement obligations in account 411.10, Accretion expense. The amounts for depreciation and accretion expense that will be recognized under the general requirements of the Uniform Systems of Accounts and the amount of asset retirement obligation costs included in cost of service for ratemaking purposes may be different. Recognition of such differences as regulatory assets and liabilities may be appropriate in some instances, but not in others. This determination however cannot be made in a generic accounting rulemaking proceeding. It must instead be made by each individual entity taking into consideration the jurisdictional entity's rate setting bodies, the specific agreements entered into between the jurisdictional entity and certain customers regarding the manner in which costs will be allocated among the parties or other relevant evidence. Therefore, if the requirements of Order No. 552 are met, a jurisdictional entity must recognize regulatory assets and liabilities for the cumulative effect adjustment and any differences between the recognition of asset retirement obligation expenses for financial accounting purposes and their recovery in rates.

C. Authority To Adjust Accumulated Depreciation (Accounts 108 and 110)

27. The Commission proposed granting public utilities, licensees and natural gas companies the requisite authority to remove any excess amounts[22] from accounts 108 and 110 provided that the amounts were transferred to account 254, Other regulatory liabilities.[23]

Comments Received

28. Certain commenters request that the Commission clarify the authority granted to jurisdictional entities to adjust the balances in accounts 108 and 110 for existing long-lived assets with legal retirement obligations.[24] However, one commenter requests that the Commission provide explicit authority to remove all of the previously accrued amounts for legal obligations to retire or dispose of the long-lived assets recorded in accounts 108 and 110. Another commenter requests the Commission allow transferring from accounts 108 and 110 to the new proposed account 230, Asset retirement obligations, any remaining amounts for previously accrued legal obligations to retire or dispose of the long-lived assets.

29. Another commenter agrees with the Commission's pregranting authority to public utilities, licensees and natural gas companies for the removal of amounts from accumulated depreciation accounts associated with asset retirement obligations. However, the commenter asserts that the Commission should still require public utilities, licensees and natural gas companies to notify the Commission by submitting a description and journal entries related to such adjustments to the Commission for amounts transferred from accounts 108 and 110 to account 254, Other regulatory liabilities, related to any existing asset with a legal retirement obligation.[25]

Commission Response

30. After considering the comments, the Commission will grant jurisdictional entities the authority to adjust accounts 108, 110 and 253 to properly recognize and record the liabilities for legal retirement obligations for existing assets, the asset retirement costs and related accumulated depreciation on the capitalized costs when the amounts that would otherwise be included in net income determinations meet the criteria for recognition as regulatory asset or liability.

31. The Commission notes that there may be instances where adjustments to accounts 108, 110 and 253 may be required as a result of this final rule but the criteria for the recognition of a regulatory asset or liability for the net income effect is not met. While we permit jurisdictional entities to make such adjustments our actions here should not be construed as approval.[26] Therefore, the Commission will require that jurisdictional entities file with the Commission their journal entries along with supporting information to record any adjustment that affects net income within 60 days of the effective date of this final rule. The filing must include a description and explanation of the full particulars for including the amounts in net income.

32. The filing must also include a statement by the public utility, licensee or natural gas company of the facts and circumstances and the explicit determinations made by the jurisdictional entity demonstrating that the amounts credited to net income are not required to be refunded to customers or required to be recorded as a regulatory liability and must be credited to net income and not included in account 254, Other regulatory liabilities.

[18] *See* Order No. 552, *supra* note 9, for guidance on the recognition of regulatory assets and regulatory liabilities when certain conditions are met.

[19] *See* paragraph A of account 182.3, Other regulatory assets, and paragraph A of account 254, Other regulatory liabilities, in 18 CFR part 101 (Public Utilities and Licensees), and paragraph A of account 182.3, Other regulatory assets, and paragraph A of account 254, Other regulatory liabilities, in 18 CFR part 201 (Natural Gas Companies).

[20] *See* Definition 30 in 18 CFR part 101 (Public Utilities and Licensees), and Definition 30 in 18 CFR part 201 (Natural Gas Companies).

[21] *See* FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 30,967 at 30,826 (1993).

[22] This excess amount results when the amount of accumulated depreciation recognized for prior accrued legal retirement obligations is greater than the accumulated depreciation recognized on the capitalized asset retirement costs under the new requirements.

[23] *See* paragraph E to account 108, Accumulated provision for depreciation of electric utility plant (Major only), and paragraph E to account 110, Accumulated provision for depreciation and amortization of electric utility plant (Nonmajor only), in 18 CFR part 101 (Public Utilities and Licensees).

[24] *See* EEI at pp. 2–3 and Progress Energy at p. 2.

[25] *See* MoPSC at p. 6.

[26] The income accounts used to record the cumulative effect adjustments are account 434, Extraordinary income, and account 435, Extraordinary deductions.

D. Accounting for Cost of Removal That Does Not Constitute a Legal Obligation

33. The Commission did not propose to change its accounting under parts 101, 201 and 352 for the cost of removal for amounts that result from other than asset retirement obligations.

Comments Received

34. Several commenters request that the Commission specify in the final rule that any cost of removal for non-legal retirement obligations remain in accumulated depreciation.[27] Certain other commenters suggest that the Commission should make certain modifications to the Uniforms Systems of Accounts under part 101 and part 201 to include the amount of cost of removal for non-legal obligations as regulatory liabilities in account 254, Other regulatory liabilities, instead of accumulated depreciation for public utilities, licensees and natural gas companies.[28]

35. One commenter recommends that the Commission exclude the cost of removal that does not qualify as a legal retirement obligation from the depreciation accrual and instead capitalize any removal costs related to the asset replaced as part of the costs of replacing the utility plant and if no replacement of the asset occurs, the cost of removal for non-legal retirement obligations should be expensed in the income statement.[29]

Commission Response

36. As proposed in the NOPR, the rule applies to legal obligations associated with the retirement of tangible long-lived assets. Under the existing requirements of the Uniform Systems of Accounts removal costs that are not asset retirement obligations are included as a component of the depreciation expense and recorded in accumulated depreciation.[30] The Commission notes that certain jurisdictional entities may have been receiving specific allowances for cost of removal for non-legal retirement obligations as a specific component in their rates approved by their regulators. The Commission did not propose any changes to its existing accounting requirements for cost of removal for non-legal retirement obligations. Accordingly, jurisdictional entities are accounting for such costs consistent with the requirements of the Uniform Systems of Accounts under part 101 for public utilities and licensees, part 201 for natural gas companies and part 352 for oil pipeline companies.

37. The purpose of this rule is to establish uniform accounting requirements for the recognition of liabilities for legal obligations associated with the retirement of tangible long-lived assets. The accounting for removal costs that do not qualify as legal retirement obligations falls outside the scope of this rule. The Commission is aware that there is an ongoing discussion in the accounting community as to whether the cost of removal should be considered as a component of depreciation. However, this issue is beyond the scope of this rule and we are not convinced that there is a need to fundamentally change accounting concepts at this time.

38. Instead we will require jurisdictional entities to maintain separate subsidiary records for cost of removal for non-legal retirement obligations that are included as specific identifiable allowances recorded in accumulated depreciation in order to separately identify such information to facilitate external reporting and for regulatory analysis, and rate setting purposes. Therefore, the Commission is amending the instructions of accounts 108 and 110 in parts 101, 201 and account 31, Accrued depreciation—Carrier property, in part 352 to require jurisdictional entities to maintain separate subsidiary records for the purpose of identifying the amount of specific allowances collected in rates for non-legal retirement obligations included in the depreciation accruals.

39. Jurisdictional entities must identify and quantify in separate subsidiary records the amounts, if any, of previous and current accrued accumulated removal costs for other than legal retirement obligations recorded as part of the depreciation accrual in accounts 108 and 110 for public utilities and licensees, account 108 for natural gas companies, and account 31 for oil pipeline companies. If jurisdictional entities do not have the required records to separately identify such prior accruals for specific identifiable allowances collected in rates for non-legal asset retirement obligations recorded in accumulated depreciation, the Commission will require that the jurisdictional entities separately identify and quantify prospectively the amount of current accruals for specific allowances collected in rates for non-legal retirement obligations.

E. Accounts Established for Recording Accretion of Asset Retirement Obligations and Depreciation of Asset Retirement Costs

40. The Commission proposed to add a new income statement account entitled account 411.10, Accretion expense, in the Uniform Systems of Accounts in part 101 and part 201 to record the accretion of the liability for the asset retirement obligation. The Commission also proposed to add a new income statement account entitled account 403.1, Depreciation expense for asset retirement costs, in part 101 and part 201 to identify the depreciation expense recorded for capitalized asset retirement costs.

Comments Received

41. Certain commenters recommend that the Commission's proposed new account 411.10, Accretion expense, should be renumbered as either account 411.11 or an account number within the range of account 405, Amortization of other electric plant, through account 407, Amortization of property losses, unrecovered plant and regulatory study costs, which relate to the amortization of utility plant.

42. Two commenters suggest that the Commission renumber its proposed new account 403.1 because it is already being used in the Rural Utilities Service's (RUS) Uniform System of Accounts.[31] The commenters suggest that the Commission use account 403.9 to accommodate the Uniform System of Accounts of RUS for its electric cooperatives.[32]

Commission Response

43. The Commission will not renumber the chart of accounts. The accounting structure of the Uniform Systems of Accounts in part 101 and part 201 is designed to meet the accounting and reporting needs of this Commission. Users are permitted to adapt the Commission's Uniforms Systems of Accounts for their own needs by allowing them to create new accounts and subaccounts. Such company generated accounts however, must be reconciled if and when the Commission subsequently determines to use that account number for its regulatory purposes. Therefore, jurisdictional entities must reconcile their account numbers accordingly, to the account numbers established by this rule.[33]

F. Accounts for Recording Asset Retirement Costs

44. The Commission proposed to add new primary plant accounts within each plant function to record the asset retirement costs.

Comments Received

45. Certain commenters object to the Commission's proposed new primary plant accounts within account 101 in part 101 and part 201[34] One commenter suggests the Commission create a new separate asset group called "Asset Retirement Costs" that separately identifies asset retirement costs in financial statements and would facilitate the exclusion of the asset retirement costs from the rate base in a rate change filing.

46. Another commenter suggests that capitalizing asset retirement costs in the new primary plant accounts could result in increasing personal property taxes for three of its utility operating companies that operate in one state. The commenter recommends that the asset retirement costs should be recorded as an intangible cost within account 101 under part 101 and part 201 in primary plant account 303, Miscellaneous intangible plant. As an alternative, the commenter also recommends that the Commission include the word "intangible" in the account instructions of the new asset retirement cost primary plant accounts proposed by the Commission.

47. One commenter suggests that the Commission's proposed new primary plant accounts entitled account 359.1, Asset retirement costs for transmission plant, and account 399.1, Asset retirement costs for general plant, should be renumbered to avoid leading users to expect these are subaccounts of account 359, Roads and trails, under the transmission plant function and 399, Other intangible plant, under the general plant function in part 101.[35] The commenter suggests that the Commission use account 351 which is currently a reserved account in the list of accounts for the transmission plant function. The commenter also suggests that the Commission use account 388 which is currently not an account used in the list of accounts for the general plant function.

Commission Response

48. The Commission finds that these recommendations are not consistent with the view that asset retirement costs are considered an integral part of the costs of the particular asset that gives rise to the asset retirement obligations, rather than separate and distinct assets.

49. The Commission notes that commenters' suggestions will not result in properly classifying asset retirement costs within the utility plant function associated with the actual plant assets that give rise to the legal retirement obligations. This result would be at odds with one of the objectives of the final rule, which is to provide proper accounting for legal obligations associated with the retirement costs.

G. Accounting for Gains and Losses for the Settlement of Asset Retirement Obligations Related to Electric and Gas Utility Plant

50. The Commission proposed to record gains or losses resulting from the settlement of asset retirement obligations for electric and gas utility plant in account 411.6, Gains from disposition of utility plant, and the account 411.7, Losses from disposition of utility plant, respectively.

Comments Received

51. Many of the commenters did not object the Commission's proposed treatment for gains and losses resulting from the settlement of asset retirement obligations for electric and gas utility plant.[36] Two commenters believe that the Commission's proposed treatment is inappropriate in the situation in which a jurisdictional entity has recorded, at the date of adoption of the final rule, a regulatory asset or liability for the full difference (including third party risk factor) between the asset retirement obligation determined for accounting purposes and the asset retirement obligation allowed for ratemaking purposes.[37] In this situation the commenters assert it is appropriate to offset any remaining regulatory asset or liability balance associated with the specific asset retirement obligation against the remaining asset retirement obligation liability balance before recording a gain or loss.

Commission Response

52. The Commission notes that the offsetting of any remaining regulatory asset or liability balance associated with the specific asset retirement obligation against the remaining associated asset retirement obligation liability balance before recording a gain or loss on the settlement is not appropriate because each of these transactions is a separate and distinct accounting transaction, and accordingly, should be accounted for as such. Therefore, the Commission will adopt the accounting as provided for in the NOPR.

H. Accounting for Gains and Losses for the Settlement of Asset Retirement Obligations Related to Nonutility Plant

53. The Commission proposed that any gains or losses relating to the settlement of asset retirement obligations for nonutility plant must be recorded directly in account 421, Miscellaneous nonoperating income, and account 426.5, Other deductions, respectively. The Commission also proposed to revise the text of accounts 421 and 426.5 in part 101 and part 201 of the Commission's regulations.

Comments Received

54. One commenter suggests that, although the use of these accounts are not necessarily objectionable, it would be more appropriate to record a gain or loss resulting from the settlement of asset retirement obligations for nonutility plant directly in account 421.1, Gain on disposition of property, or account 421.2, Loss on disposition of property, respectively.[38]

Commission Response

55. The instructions to Accounts 421.1 and 421.2 provide for gains or losses on the sale, conveyance, exchange, or transfer of utility or other property to another.[39] The settlement of an asset retirement obligation related to nonutility property does not result in the sale, conveyance, exchange, or transfer of such property to another party. Therefore, the Commission is of the view that the accounting for gains or losses resulting in the settlement of asset retirement obligations for nonutility property should be accounted for in accounts 421 and 426.5 as provided for in the NOPR.

I. Other Accounting Matters

56. Certain commenters raised concerns or seek Commission guidance concerning the use of group depreciation for asset retirement

[27] *See* EEI at p. 3 and Southern at p. 2.

[28] *See* Deloitte & Touche at p. 2 and NASUCA at pp. 2–3.

[29] *See* NASUCA at pp. 15–17.

[30] *See* Definition 10 in 18 CFR part 101 (Public Utilities and Licensees), Definition 10 in 18 CFR part 201 (Natural Gas Companies), and Definition 12 in 18 CFR part 352 (Oil Pipeline Companies).

[31] *See* RUS at p. 2 and NRECA at p. 6.

[32] *See* Rural Utilities Service of the United States Department of Agriculture (RUS) Uniform System of Accounts, 7 CFR part 1767, Accounting Requirements for RUS Electric Borrowers.

[33] *See* General Instruction 3.C, Account Numbering System, in 18 CFR part 101 (Public Utilities and Licensees) and 18 CFR part 201 (Natural Gas Companies).

[34] *See* FirstEnergy at p. 1, MoPSC at pp. 4–5 and RUS at p. 2.

[35] *See* RUS at p. 2.

[36] *See* EEI at p. 6 and Southern at p. 2.

[37] *See* FAS 143, paragraph A20, for a discussion of third party risk.

[38] *See* EEI at p. 6.

[39] *See* account 421.1, Gain on disposition of property, or account 421.2, Loss on disposition of property, in 18 CFR part 101 (Public Utilities and Licensees) and 18 CFR part 201 (Natural Gas Companies).

obligations, and on how a jurisdictional entity should estimate a credit-adjusted risk-free rate where an entity has not found a need to obtain a credit rating.[40]

57. The Commission will not make policy calls in this final rule concerning the above matters. These matters are better resolved on a case-by-case basis based on the facts and circumstances of each jurisdictional entity. Additionally, jurisdictional entities may seek clarification from the Commission's Chief Accountant concerning the proper application or implementation of any accounting standard under the Commission's regulations.[41]

58. Finally, one commenter suggests that the NOPR does not address the current accounting for realized earnings from trust funds that have been established for the purpose of ultimately discharging the liability for asset retirement obligations.[42] The commenter notes that jurisdictional entities currently account for realized earnings on trust funds by crediting account 419, Interest and dividend income. The commenter recommends that the realized earnings on trust funds should be recorded to an appropriate above-the-line account.

59. The Commission notes that under certain circumstances jurisdictional entities have placed in a special fund amounts deposited with a trustee for future activities such as the decommissioning of a nuclear plant. Amounts placed in a special fund for this type of activity are recorded in account 128, Other special funds. Additionally, under the requirements of the Uniform Systems of Accounts, interest revenues on securities, special deposits, and all other interest bearing assets included in other special fund accounts are recorded in Account 419, Interest and dividend income. Realized earnings on trust funds are nonoperating in nature and are properly included in account 419. Therefore, the Commission declines to amend the Uniform Systems of Accounts.

J. Tariff Filing Requirements

1. Tariff Filing Requirements Under 18 CFR Part 35 and 18 CFR Part 154

60. In the NOPR, the Commission stated that the proposed rule will require public utilities, licensees or natural gas companies for accounting purposes to recognize asset retirement obligations. The Commission is not requiring jurisdictional entities with stated rate tariffs to make any tariff filings with the Commission due to this final rule at this time. However, public utilities, licensees and natural gas companies with formula rate tariffs must not include any cost components related to asset retirement obligations in their formula rate billing tariffs for automatic recovery in their billing determinations without obtaining Commission approval.

61. Various commenters have expressed support and concerns or asked for Commission decisions with respect to issues concerning the possible rate impact of the proposed rule. Two commenters state their support for the Commission's proposed rate treatment of asset retirement obligations.[43] Other commenters raised concerns or seek Commission policy calls concerning regulatory certainty for disposition of transition costs, external funds for amounts collected in rates for asset retirement obligations, adjustments to book depreciation rates for companies collecting cost of removal through current depreciation rates, the exclusion of accumulated depreciation and accretion for asset retirement obligations from rate base, recognizing previously established negative salvage allowances whether or not these retirement costs are recognized as asset retirement obligations, and the requirement of a detailed study in support of tariff filings reflecting asset retirement obligations.[44]

62. The Commission finds that the issue of whether, and to what extent, a particular asset retirement cost must be recovered through jurisdictional rates should be addressed on a case-by-case basis in the individual rate change filed by public utilities, licensees, and natural gas companies. To ensure that all rate base amounts related to asset retirement obligations can be identified and excluded from the rate base calculation in a rate change filing, the Commission adds §§ 35.18 and 154.315 to its rate change filing requirements. These new regulations require that public utilities, licensees, and natural gas companies who have recorded an asset retirement obligation on their books in accordance with this rule must, as part of any initial rate filing or general rate change filing, provide a schedule identifying all cost components related to the asset retirement obligation that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. In addition, the regulations require that all asset retirement obligations related rate base items be removed from the rate base computation through an adjustment. If the public utility, licensee or natural gas company is seeking recovery of an asset retirement obligation in rates, it must also provide a detailed study supporting the amounts proposed to be collected in rates. If the public utility, licensee or natural gas company is not seeking recovery of the asset retirement obligation in rates, then it must remove all asset retirement obligation related cost components from its cost of service.

63. For natural gas companies currently collecting a negative salvage allowance in jurisdictional rates, negative salvage allowances that are not established due to an asset retirement obligation must be identified for rate making purposes separately from asset retirement obligation allowances. The current rate change filing requirement for natural gas companies at § 154.312(d), Statement D, requires that any authorized negative salvage must be maintained in a separate subaccount of account 108, Accumulated provision for depreciation of gas utility plant. The Commission is amending this section to ensure that this subaccount does not include any amounts related to asset retirement obligations.

64. The Commission will decline to make policy calls concerning regulatory certainty for disposition of transition costs, external funds for amounts collected in rates for asset retirement obligations, adjustments to book depreciation rates, and the exclusion of accumulated depreciation and accretion for asset retirement obligations from rate base are matters that are not subject to a one size fits all approach and are better resolved on a case-by-case basis in rate proceedings. The Commission is of the view that utilities will have the opportunity to seek recovery of qualified costs for asset retirement obligations in individual rate proceedings. This rule should not be construed as pregranted authority for rate recovery in a rate proceeding.

65. Finally this rule requires nothing new and nothing more with respect to the requirement for a detailed study. Complex depreciation and negative salvage studies are routinely filed or otherwise made available for review in rate proceedings. When utilities perform depreciation studies, a certain amount of detail is expected. It is incumbent upon the utility to provide sufficient detail to support depreciation rates, cost

[40] *See* Ferguson at p. 5 and NRECA at p. 6.

[41] *See* General Instruction 5, Submittal of Questions, in 18 CFR part 101 (Public Utilities and Licensees), General Instruction 5, Submittal of Questions, in 18 CFR part 201 (Natural Gas Companies), and General Instruction 1–11, Interpretation of rules, in 18 CFR part 352 (Oil Pipeline Companies).

[42] *See* EEI at p. 5.

[43] *See* MoPSC at p. 4 and NRECA at p. 7.

[44] *See* Northern Natural at pp. 1–2, MoPSC at p. 5, Deloitte & Touche at pp. 1–2, EEI at p. 9, Southern at pp. 2–3, and Ferguson at pp. 5 and 8.

of removal, and salvage estimates included in rates.[45] To the extent a utility believes materials are entitled to be non-public, protective orders are available to preserve confidentiality.

2. Tariff Filing Requirements Under 18 CFR Part 346

66. No comments were received objecting to the Commission's proposal to add a new § 346.3 to cost-of-service filing requirements for oil pipelines. Therefore, the Commission is implementing the provisions as noticed in the NOPR.

K. Implementation for Accounting and Reporting Purposes

67. The Commission proposed to implement the rule January 1, 2003, for accounting and reporting purposes for public utilities, licensees, natural gas companies and oil pipeline companies. This is the date jurisdictional entities that file FERC Forms 1, 1–F, 2, 2–A and 6, will measure the transition amounts for the asset retirement obligations.[46] The Commission also proposed that the reporting will be implemented for the FERC Forms 1, 1–F, 2, 2–A and 6 for the reporting year 2003.[47]

Comments Received

68. The majority of the commenters did not object to the Commission's proposed implementation date of January 1, 2003, for accounting and reporting purposes for public utilities, licensees, natural gas companies and oil pipeline companies. Two commenters assert that their fiscal year begins on April 1, 2003, rather than January 1, 2003. The commenters request the Commission clarify this requirement given that their fiscal year does not coincide with the calendar year, which they use for FERC reporting purposes. Both commenters request that the Commission consider allowing them to implement the proposed rule for accounting and reporting purposes on April 1, 2003, rather than the earlier date of January 1, 2003. The commenters assert that this would avoid the issue of retroactively applying the accounting rule to fiscal years prior to January 1, 2003.

69. One commenter recommends that the Commission allow jurisdictional entities to determine the differential in amounts between the two implementation dates, January 1, 2003 and the start of their fiscal year for FERC reporting purposes and footnote the difference in their FERC Annual Report.

Commission Response

70. The Commission is adopting the provisions in the NOPR for implementing the final rule for accounting and reporting purposes on January 1, 2003, except as clarified below for jurisdictional entities whose fiscal year begins after January 1, 2003. Upon considering the comments on this issue, the Commission will permit a jurisdictional entity for whose fiscal year begins after January 1, 2003, to apply the final rule on the first day of their fiscal year rather than on January 1, 2003 for accounting purposes and reporting in the FERC Forms 1, 1–F, 2, 2–A and 6 for the reporting year 2003. In adopting this provision, the Commission will require jurisdictional entities to determine the differential in amounts between the two implementation dates, January 1, 2003 and the jurisdictional entity's first day of their fiscal year of the adoption of the final rule in calendar year 2003 for accounting and FERC reporting purposes and footnote the difference in the FERC Annual Report for the reporting year 2003. Jurisdictional entities with fiscal years will continue to report to the Commission in FERC Annual Reports on a calendar year basis.

IV. FERC Annual Report Forms

71. The Commission proposed changes revising the existing schedules in the FERC Forms 1, 1–F, 2, 2–A, and 6 filed with the Commission. A table summarizing the changes to the various schedules is shown in Appendix B. The Commission also proposed that jurisdictional entities include certain disclosure for asset retirement obligations in the "Notes to Financial Statements" in the FERC Forms 1, 1–F, 2, 2–A and 6.[48]

72. No commenters object to the Commission's proposed revisions to the existing schedules in the FERC Annual Report and the proposed disclosure for asset retirement obligations in the "Notes to Financial Statements" in FERC Annual Reports. Therefore, the Commission will adopt the provisions as noticed.

V. Regulatory Flexibility Act Certification

73. The Regulatory Flexibility Act (RFA) requires agencies to prepare certain statements, descriptions, and analyses of rules that will have a significant economic impact on a substantial number of small entities.[49] The Commission is not required to make such analyses if a rule would not have such an effect.

74. The Commission does not believe that this rule will have such an impact on small entities. Most filing companies regulated by the Commission do not fall within the RFA's definition of a small entity.[50] Further, the Commission concludes that this reporting would not be a significant burden because the information jurisdictional entities will be required to report to the Commission specifically focuses on the activities of the jurisdictional entities that will be captured in their accounting systems and generally be reported to their shareholders and others at a company, or at a consolidated business level. Therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

75. However, if the reporting requirements represent an undue burden on small businesses, the entity affected may seek a waiver of the disclosure requirements from the Commission.

VI. Environmental Impact Statement

76. Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[51] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or does not substantially change the effect of legislation or regulation being amended,[52] and also

[45] When an electric utility files for a change in its jurisdictional rates, the Commission requires detailed studies in support of changes in annual depreciation rates if they are different from those supporting the utility's prior approved jurisdictional rate. (18 CFR 35.13(h)(10)(iv)).

[46] On February 20, 2002, the Commission's Chief Accountant issued interim guidance stating that jurisdictional entities may not adopt FAS 143 for financial accounting and reporting to the Commission before Commission action on this matter. *See* All Jurisdictional Public Utilities, Licensees, Natural Gas Companies, and Oil Pipeline Companies, 98 FERC ¶ 62,222 (2002).

[47] The FERC Forms 1–F and 2–A and 6 annual reports for the year 2003 are due on or before March 31, 2004. The FERC Forms 1 and 2 annual reports for the year 2003 are due on or before April 30, 2004.

[48] *See* the instructions to the Notes to Financial Statements schedule for FERC Forms 1, 1–F, 2, 2–A and 6 that requires respondents to report important notes and information related to the financial statements.

[49] 5 U.S.C. 601–612.

[50] 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632. Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

[51] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[52] 18 CFR 380.4(a)(2)(ii).

for information gathering, analysis, and dissemination.[53] The rule updates the Parts 35, 101, 154, 201, 346 and 352 of the Commission's regulations, and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. In addition, the final rule involves information gathering, analysis and dissemination. Therefore, this final rule falls within categorical exemptions provided in the Commission's regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.

VII. Information Collection Statement

77. The Office of Management and Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

78. The final rule will affect the following current data collections: FERC Form(s) 1, 1–F, 2, 2–A and 6, FERC–516 and FERC–545. In accordance with Section 3507(d) of the Paperwork Reduction Act of 1995,[54] the data requirements in the subject rule have been submitted to OMB for review.

Public Reporting Burden: The Commission provided burden estimates in order to implement the proposed requirements. Of the 16 commenters who responded to the NOPR, only one made specific comment concerning the Commission's burden estimates. This one commenter has misconstrued the intent of the rule to impose more time consuming requirements (*e.g.*, group depreciation method) than the final rule actually imposes. The Commission's responses to these comments are being addressed elsewhere in the final rule. The proposed requirements coincide with procedures already established by FAS 143 for companies to recognize a liability at fair value on their financial statements for a retirement obligation when it has occurred. The Commission is merely adjusting these industry standards to coordinate with its Uniform Systems of Accounts.

Data collection	No. of respondents	No. of responses per respondent	Hours per response	Total annual hours
Form 1	216	216	17	3,672
Form 1–F	27	27	8	216
Form 2	57	57	13	741
Form 2–A	53	53	8	424
Form 6	159	159	10	1,590
Totals	512	512		6,643

The total annual hours for these collections is 6,643 hours.

Information Collection Costs: The Commission is projecting only the costs associated with implementing the requirements of this rule.

Annualized Capital/Startup Costs: 6,643 hours ÷ 2,080 hours × $117,041 = $373,800.

Annualized Costs (Operations & Maintenance): It should be noted that the burden and corresponding costs of this final rule are to be implemented by jurisdictional entities to comply with the Commission's Uniform System of Accounts. These entities must already maintain much of this information in order to implement generally accepted accounting principles. The burden and corresponding costs are to account for only where there are differences between the generally accepted accounting principles and the Uniform System of Accounts.

79. FERC Information Collections FERC–516 and FERC–545 are also referenced because jurisdictional entities will be required to provide supporting documentation for the amounts to be collected in their rates when an asset retirement obligation has been recorded. This documentation is no different than jurisdictional entities already prepare in their detailed studies as currently required by the Commission to support changes in annual depreciation rates. The Commission is not requiring additional information as jurisdictional entities already prepare this information when quantifying studies and analyses on the cost of removal of an asset retirement obligation. Therefore, the Commission does anticipate that additional burden will be imposed under these two information collections.

80. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

Title: FERC Form 1 "Annual Report of Major Electric Utilities, Licensees and Others"; FERC Form 1–F "Annual Report of Nonmajor Public Utilities and Licensees"; FERC Form 2 "Annual Report of Major Natural Gas Companies"; FERC Form 2–A "Annual Report of Nonmajor Natural Gas Companies"; FERC Form 6 "Annual Report of Oil Pipeline Companies"; FERC–516 "Electric Rate Schedule Filings"; FERC–545 "Gas Pipeline Rates: Rate Change."

Action: Proposed data collections.

OMB Control Nos.: 1902–0021; 1902–0029; 1902–0028; 1902–0030; 1902–0022, 1902–0016 and 1902–0154.

Respondents: Public Utilities; Natural Gas Companies; oil pipeline companies (Business or other for profit, including small businesses).

Frequency of the information: Annually.

Necessity of the Information: The final rule amends the Commission's regulations to revise parts 35, 101, 154, 201, 346 and 352 of its regulations. The final rule amends the Commission's Uniform System of Accounts to revise or create definitions, instructions, balance sheet and income statement accounts. The addition of new accounts and changes to FERC Forms will add visibility, completeness and consistency of the accounting and reporting of liabilities for asset retirement obligations and the related asset retirement costs capitalized. The implementation of these requirements will enable the Commission to carry out its responsibilities under the FPA, NGA and ICA to ensure the protection of ratepayers. The Commission is of the view that such requirements are needed because the disclosures of these lack uniformity. For example, jurisdictional entities subject to the Commission's requirements use different approaches for accounting for retirement costs. Public utilities perform depreciation studies to support changes in their rates for the decommissioning of a nuclear facility as periodic depreciation expense while oil pipeline companies have used depletion rates for abandonment and removal of offshore facilities. The final rule will improve the consistency in the accounting and reporting of legal obligations to retire tangible long-lived assets by requiring entities to recognize at the onset the fair value of the liability. This information will provide a more transparent financial statement disclosure of the costs related to the legal obligation in the FERC Annual Reports.

81. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, ED–30, (202) 502–8415, or *michael.miller@ferc.gov*] or by sending comments on the collections of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW., Washington, DC 20503. The Desk Officer can also be reached at (202) 395–7856, or fax: (202) 395–7285.

VIII. Document Availability

82. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m., to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

83. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number of this document, excluding the last three digits in the docket number field. User assistance is available for FERRIS and the FERC's Web site during normal business hours from FERC Online Support at *FERCOnLineSupport@FERC.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659.

IX. Effective Date and Congressional Notification

84. This Final Rule will take effect May 21, 2003. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[55] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.[56]

List of Subjects

18 CFR Part 35

Electric power rates, Electric utilities, Electricity, Reporting and recordkeeping requirements.

18 CFR Part 101

Electric power, Electric utilities, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 154

Alaska, Natural gas, Natural gas companies, Pipelines, Rate schedules and tariffs, Reporting and recordkeeping requirements.

18 CFR Part 201

Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 346

Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 352

Pipelines, Reporting and recordkeeping requirements, Uniform System of Accounts.

By the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission amends parts 35, 101, 154, 201, 346 and 352, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

Regulatory Text

PART 35—FILING OF RATE SCHEDULES

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Section 35.18 is added to read as follows:

§ 35.18 Asset retirement obligations.

(a) A public utility that files a rate schedule under § 35.12 or § 35.13 and has recorded an asset retirement obligation on its books must provide a schedule, as part of the supporting work papers, identifying all cost components related to the asset retirement obligations that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. However, all cost components related to asset retirement obligations that would impact the calculation of rate base, such as electric plant and related accumulated depreciation and accumulated deferred income taxes, may not be reflected in rates and must be removed from the rate base calculation through a single adjustment.

(b) A public utility seeking to recover nonrate base costs related to asset retirement costs in rates must provide, with its filing under § 35.12 or § 35.13, a detailed study supporting the amounts proposed to be collected in rates.

(c) A public utility that has recorded asset retirement obligations on its books, but is not seeking recovery of the asset retirement costs in rates, must remove all asset-retirement-obligations-related cost components from the cost of service supporting its proposed rates.

PART 101—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR PUBLIC UTILITIES AND LICENSEES SUBJECT TO THE PROVISIONS OF THE FEDERAL POWER ACT

■ 3. The authority citation for part 101 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352, 7651–7651o.

■ 4. In Definitions, Definition 10 is revised to read as follows:

Definitions

* * * * *

10. *Cost of removal* means the cost of demolishing, dismantling, tearing down or otherwise removing electric plant, including the cost of transportation and handling incidental thereto. It does not include the cost of removal activities associated with asset retirement obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation. (*See* General Instruction 25).

* * * * *

[53] 18 CFR 380.4(a)(5).

[54] 44 U.S.C. 3507(d).

[55] 5 U.S.C. 804(2).

[56] 5 U.S.C. 801(a)(1)(A).

■ 5. In General Instructions, Instruction 20, paragraphs C. and D. are redesignated as paragraphs D. and E. and new paragraph C. is added; and a new Instruction 25 is added to read as follows:

General Instructions

* * * * *

20. *Accounting for leases.*

* * * * *

C. The utility, as a lessee, shall recognize an asset retirement obligation (*See* General Instruction 25) arising from the plant under a capital lease unless the obligation is recorded as an asset and liability under a capital lease. The utility shall record the asset retirement cost by debiting account 101.1, Property under capital leases, or account 120.6, Nuclear fuel under capital leases, or account 121, Nonutility property, as appropriate, and crediting the liability for the asset retirement obligation in account 230, Asset retirement obligations. Asset retirement costs recorded in account 101.1, account 120.6, or account 121 shall be amortized by charging rent expense (*See* Operating Expense Instruction 3), or account 518, Nuclear fuel expense (Major only), or account 421, Miscellaneous nonoperating income, as appropriate, and crediting a separate subaccount of the account in which the asset retirement costs are recorded. Charges for the periodic accretion of the liability in account 230, Asset retirement obligations, shall be recorded by a charge to account 411.10, Accretion expense, for electric utility plant, and account 421, Miscellaneous nonoperating income, for nonutility plant and a credit to account 230, Asset retirement obligations.

* * * * *

25. *Accounting for asset retirement obligations.*

A. An *asset retirement obligation* represents a liability for the legal obligation associated with the retirement of a tangible long-lived asset that a company is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel. An *asset retirement cost* represents the amount capitalized when the liability is recognized for the long-lived asset that gives rise to the legal obligation. The amount recognized for the liability and an associated asset retirement cost shall be stated at the fair value of the asset retirement obligation in the period in which the obligation is incurred.

B. The utility shall initially record a liability for an asset retirement obligation in account 230, Asset retirement obligations, and charge the associated asset retirement costs to electric utility plant (including accounts 101.1 and 120.6), and nonutility plant, as appropriate, related to the plant that gives rise to the legal obligation. The asset retirement cost shall be depreciated over the useful life of the related asset that gives rise to the obligations. For periods subsequent to the initial recording of the asset retirement obligation, a utility shall recognize the period to period changes of the asset retirement obligation that result from the passage of time due to the accretion of the liability and any subsequent measurement changes to the initial liability for the legal obligation recorded in account 230, Asset retirement obligations, as follows:

(1) The utility shall record the accretion of the liability by debiting account 411.10, Accretion expense, for electric utility plant, account 413, Expenses of electric plant leased to others, for electric plant leased to others, and account 421, Miscellaneous nonoperating income, for nonutility plant and crediting account 230, Asset retirement obligations; and

(2) The utility shall recognize any subsequent measurement changes of the liability initially recorded in account 230, Asset retirement obligations, for each specific asset retirement obligation as an adjustment of that liability in account 230 with the corresponding adjustment to electric utility plant, electric plant leased to others, and nonutility plant, as appropriate. The utility shall on a timely basis monitor any measurement changes of the asset retirement obligations.

C. Gains or losses resulting from the settlement of asset retirement obligations associated with utility plant resulting from the difference between the amount of the liability for the asset retirement obligation included in account 230, Asset retirement obligations, and the actual amount paid to settle the obligation shall be accounted for as follows:

(1) Gains shall be credited to account 411.6, Gains from disposition of utility plant, and;

(2) Losses shall be charged to account 411.7, Losses from disposition of utility plant.

D. Gains or losses on the settlement of asset retirement obligations associated with nonutility plant resulting from the difference between the amount of the liability for the asset retirement obligation in account 230, Asset retirement obligations, and the amount paid to settle the obligation, shall be accounted for as follows:

(1) Gains shall be credited to account 421, Miscellaneous nonoperating income, and;

(2) Losses shall be charged to account 426.5, Other deductions.

E. Separate subsidiary records shall be maintained for each asset retirement obligation showing the initial liability and associated asset retirement cost, any incremental amounts of the liability incurred in subsequent reporting periods for additional layers of the original liability and related asset retirement cost, the accretion of the liability, the subsequent measurement changes to the asset retirement obligation, the depreciation and amortization of the asset retirement costs and related accumulated depreciation, and the settlement date and actual amount paid to settle the obligation. For purposes of analyses a utility shall maintain supporting documentation so as to be able to furnish accurately and expeditiously with respect to each asset retirement obligation the full details of the identity and nature of the legal obligation, the year incurred, the identity of the plant giving rise to the obligation, the full particulars relating to each component and supporting computations related to the measurement of the asset retirement obligation.

* * * * *

■ 6. In Electric Plant Instructions, paragraph 3.A.(17)(a) the W element is revised; and a new paragraph 3.A.(21) is added to read as follows:

Electric Plant Instructions

* * * * *

3. *Components of construction cost.*

A. * * *

(17) * * *

(a) * * *

W = Average balance in construction work in progress plus nuclear fuel in process of refinement, conversion, enrichment and fabrication, less asset retirement costs (See General Instruction 25) related to plant under construction.

* * * * *

(21) *Asset retirement costs.* The costs recognized as a result of asset retirement obligations incurred during the construction and testing of utility plant shall constitute a component of construction costs.

* * * * *

■ 7. Balance Sheet Accounts are amended as follows:

■ (a) Account 101.1 is amended by adding a sentence to the end of paragraph C.;

■ (b) Account 103 paragraph C. is revised;

■ (c) Account 108 paragraph A.(2) through A.(7) are redesignated as paragraphs A.(3) through A.(8), a new paragraph A.(2) is added, and paragraph C. is amended by adding a sentence to the end of the paragraph;

■ (d) Account 110 paragraph A.(2) through A.(4) are redesignated as paragraphs A.(3) through A.(5), a new paragraph A.(2) is added, and paragraph C. is amended by adding a sentence to the end of the paragraph;

■ (e) Account 121, paragraph A. is amended by adding a sentence to the end of the paragraph; and

■ (f) Account 230 is added.

The revision and additions read as follows:

Balance Sheet Accounts

* * * * *

101.1 Property under capital leases.

* * * * *

C. * * * Records shall also be maintained for plant under a lease, to identify the asset retirement obligation and cost originally recognized for each lease and the periodic charges and credits made to the asset retirement obligations and asset retirement costs.

* * * * *

103 Experimental electric plant unclassified (Major only).

* * * * *

C. The depreciation on plant in this account shall be charged to account 403, Depreciation expense, and account 403.1, Depreciation expense for asset retirement costs, as appropriate, and credited to account 108, Accumulated provision for depreciation of electric utility plant (Major only). The amounts herein shall be depreciated over a period which corresponds to the estimated useful life of the relevant project considering the characteristics involved. However, when projects are transferred to account 101, Electric plant in service, a new depreciation rate based on the remaining service life and undepreciated amounts, will be established.

* * * * *

108 Accumulated provision for depreciation of electric utility plant (Major only).

A. * * *

(2) Amounts charged to account 403.1, Depreciation expense for asset retirement costs, for current depreciation expense related to asset retirement costs in electric plant in service in a separate subaccount.

* * * * *

C. * * * Separate subsidiary records shall be maintained for the amount of accrued cost of removal other than legal obligations for the retirement of plant recorded in account 108, Accumulated provision for depreciation of electric utility plant (Major only).

* * * * *

110 Accumulated provision for depreciation and amortization of electric utility plant (Nonmajor only).

A. * * *

(2) Amounts charged to account 403.1, Depreciation expense for asset retirement costs, in electric utility plant in service in a separate subaccount.

* * * * *

C. * * * Separate subsidiary records shall be maintained for the amount of accrued cost of removal other than legal obligations for the retirement of plant recorded in account 110, Accumulated provision for depreciation of electric utility plant (Nonmajor only).

* * * * *

121 Nonutility property.

A. * * * This account shall also include, where applicable, amounts recorded for asset retirement costs associated with nonutility plant.

* * * * *

230 Asset retirement obligations.

A. This account shall include the amount of liabilities for the recognition of asset retirement obligations related to electric utility plant and nonutility plant that gives rise to the obligations. This account shall be credited for the amount of the liabilities for asset retirement obligations with amounts charged to the appropriate electric utility plant accounts or nonutility plant account to record the related asset retirement costs.

B. The utility shall charge the accretion expense to account 411.10, Accretion expense, for electric utility plant, account 413, Expenses of electric plant leased to others, for electric plant leased to others, or account 421, Miscellaneous nonoperating income, for nonutility plant, as appropriate, and credit account 230, Asset retirement obligations.

C. This account shall be debited with amounts paid to settle the asset retirement obligations recorded herein.

D. The utility shall clear from this account any gains or losses resulting from the settlement of asset retirement obligations in accordance with the instructions prescribed in General Instruction 25.

* * * * *

■ 8. In Electric Plant Accounts, new primary plant accounts, 317, 326, 337, 347, 359.1, 374, and 399.1 are added to read as follows:

Electric Plant Accounts

* * * * *

317 Asset retirement costs for steam production plant.

This account shall include asset retirement costs on plant included in the steam production function.

* * * * *

326 Asset retirement costs for nuclear production plant (Major only).

This account shall include asset retirement costs on plant included in the nuclear production function.

* * * * *

337 Asset retirement costs for hydraulic production plant.

This account shall include asset retirement costs on plant included in the hydraulic production function.

* * * * *

347 Asset retirement costs for other production plant.

This account shall include asset retirement costs on plant included in the other production function.

* * * * *

359.1 Asset retirement costs for transmission plant.

This account shall include asset retirement costs on plant included in the transmission plant function.

* * * * *

374 Asset retirement costs for distribution plant.

This account shall include asset retirement costs on plant included in the distribution plant function.

* * * * *

399.1 Asset retirement costs for general plant.

This account shall include asset retirement costs on plant included in the general plant function.

* * * * *

■ 9. Amend Income Accounts as follows:

■ a. Account 403.1 is added,

■ b. Accounts 411.6 and 411.7 are amended by designating the current paragraph as A., and adding a new paragraph B.,

■ c. Account 411.10 is added,

■ d. In account 421, paragraphs 4. through 6. are added, and

■ e. In account 426.5 paragraph 6 is added.

The additions read as follows:

Income Accounts

* * * * *

403.1 Depreciation expense for asset retirement costs.

This account shall include the depreciation expense for asset retirement costs included in electric utility plant in service.

* * * * *

411.6 Gains from disposition of utility property.

A. * * *

B. The utility shall record in this account gains resulting from the settlement of asset retirement obligations related to utility plant in accordance with the accounting prescribed in General Instruction 25.

* * * * *

411.7 Losses from disposition of utility property.

A. * * *

B. The utility shall record in this account losses resulting from the settlement of asset retirement obligations related to utility plant in accordance with the accounting prescribed in General Instruction 25.

* * * * *

411.10 Accretion expense.

This account shall be charged for accretion expense on the liabilities associated with asset retirement obligations included in account 230, Asset retirement obligations, related to electric utility plant.

* * * * *

421 Miscellaneous nonoperating income.

* * * * *

4. This account shall include the accretion expense on the liability for an asset retirement obligation included in account 230, Asset retirement obligations, related to nonutility plant.

5. This account shall include the depreciation expense for asset retirement costs related to nonutility plant.

6. The utility shall record in this account gains resulting from the settlement of asset retirement obligations related to nonutility plant in accordance with the accounting prescribed in General Instruction 25.

* * * * *

426.5 Other deductions.

* * * * *

6. The utility shall record in this account losses resulting from the settlement of asset retirement obligations related to nonutility plant in accordance with the accounting prescribed in General Instruction 25.

* * * * *

PART 154—RATE SCHEDULES AND TARIFFS

■ 10. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

■ 11. In § 154.312 paragraph (d), introductory text, is amended by removing the sentence "Any authorized negative salvage must be maintained in a separate subaccount of account 108," and adding in its place the following sentence to read as follows:

§ 154.312 Composition of Statements.

* * * * *

(d)* * * Any authorized negative salvage must be maintained in a separate subaccount of account 108, and shall not include any amounts related to asset retirement obligations. * * *

* * * * *

■ 12. Section 154.315 is added to subpart D to read as follows:

§ 154.315 Asset retirement obligations.

(a) A natural gas company that files a tariff change under this part and has recorded an asset retirement obligation on its books must provide a schedule, as part of the supporting workpapers, identifying all cost components related to the asset retirement obligations that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. However, all cost components related to asset retirement obligations that would impact the calculation of rate base, such as gas plant and related accumulated depreciation and accumulated deferred income taxes, may not be reflected in rates and must be removed from the rate base calculation through a single adjustment.

(b) A natural gas company seeking to recover nonrate base costs related to asset retirement obligations in rates must provide, with its filing under § 154.312 or § 154.313, a detailed study supporting the amounts proposed to be collected in rates.

(c) A natural gas company who has recorded asset retirement obligations on its books but is not seeking recovery of the asset retirement costs in rates, must remove all asset retirement obligations related cost components from the cost of service supporting its proposed rates.

PART 201—UNIFORM SYSTEM OF ACCOUNTS PRESCRIBED FOR NATURAL GAS COMPANIES SUBJECT TO THE PROVISIONS OF THE NATURAL GAS ACT

■ 13. The authority citation for part 201 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352, 7651–7651o.

■ 14. In Definitions, Definition 10 is revised to read as follows:

Definitions

* * * * *

10. *Cost of removal* means the cost of demolishing, dismantling, tearing down or otherwise removing gas plant, including the cost of transportation and handling incidental thereto. It does not include the cost of removal activities associated with asset retirement obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation. (See General Instruction 24).

* * * * *

■ 15. In General Instructions, Instruction 20 paragraphs C. and D. are redesignated as paragraphs D. and E. and a new paragraph C. is added; and a new Instruction 24 is added to read as follows:

General Instructions

* * * * *

20. *Accounting for leases.*

* * * * *

C. The utility, as a lessee, shall recognize an asset retirement obligation (See General Instruction 24) arising from the plant under a capital lease unless the obligation is recorded as an asset and liability under a capital lease. The utility shall record the asset retirement cost by debiting account 101.1, Property under capital leases, or account 121, Nonutility property, as appropriate, and crediting the liability for the asset retirement obligation in account 230, Asset retirement obligations. Asset retirement costs recorded in account 101.1 or account 121 shall be amortized by charging rent expense (See Operating Expense Instruction 3) or account 421, Miscellaneous nonoperating income, as appropriate, and crediting a separate subaccount of the account in which the asset retirement costs are recorded. Charges for the periodic accretion of the liability in account 230, Asset retirement obligations, shall be recorded by a charge to account 411.10, Accretion expense, for gas utility plant, and account 421, Miscellaneous nonoperating income, for nonutility plant and a credit to account 230, Asset retirement obligations.

* * * * *

24. *Accounting for asset retirement obligations.*

A. An *asset retirement obligation* represents a liability for the legal obligation associated with the retirement of a tangible long-lived asset that a utility is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel. An *asset retirement cost* represents the amount capitalized when the liability is recognized for the long-lived asset that gives rise to the legal obligation. The amount recognized for the liability and an associated asset retirement cost shall be stated at the fair value of the asset retirement obligation in the period in which the obligation is incurred.

B. The utility shall initially record a liability for an asset retirement obligation in account 230, Asset retirement obligations, and charge the associated asset retirement costs to gas utility plant and nonutility plant, as appropriate, related to the plant that gives rise to the legal obligation. The asset retirement cost shall be depreciated over the useful life of the related asset that gives rise to the obligations. For periods subsequent to the initial recording of the asset retirement obligation, a utility shall recognize the period to period changes of the asset retirement obligation that result from the passage of time due to the accretion of the liability and any subsequent measurement changes to the initial liability for the legal obligation recorded in account 230, Asset retirement obligations, as follows:

(1) The utility shall record the accretion of the liability by debiting account 411.10, Accretion expense, for gas utility plant, account 413, Expenses of gas plant leased to others, for gas plants leased to others, and account 421, Miscellaneous nonoperating income, for nonutility plant and crediting account 230, Asset retirement obligations; and

(2) The utility shall recognize any subsequent measurement changes of the liability initially recorded in account 230, Asset retirement obligations, for each specific asset retirement obligation as an adjustment of that liability in account 230 with the corresponding adjustment to gas utility plant, gas plant leased to others, and nonutility plant, as appropriate. The utility shall on a timely basis monitor any measurement changes of the asset retirement obligations.

C. Gains or losses resulting from the settlement of asset retirement obligations associated with utility plant resulting from the difference between the amount of the liability for the asset retirement obligation included in account 230, Asset retirement obligations, and the actual amount paid to settle the obligation shall be accounted for as follows:

(1) Gains shall be credited to account 411.6, Gains from disposition of utility plant, and;

(2) Losses shall be charged to account 411.7, Losses from disposition of utility plant.

D. Gains or losses on the settlement of the asset retirement obligations associated with nonutility plant resulting from the difference between the amount of the liability for the asset retirement obligation in account 230, Asset retirement obligations, and the amount paid to settle the obligation, shall be accounted for as follows:

(1) Gains shall be credited to account 421, Miscellaneous nonoperating income, and;

(2) Losses shall be charged to account 426.5, Other deductions.

E. Separate subsidiary records shall be maintained for each asset retirement obligation showing the initial liability and associated asset retirement cost, any incremental amounts of the liability incurred in subsequent reporting periods for additional layers of the original liability and related asset retirement cost, the accretion of the liability, the subsequent measurement changes to the asset retirement obligation, the depreciation and amortization of the asset retirement costs and related accumulated depreciation, and the settlement date and actual amount paid to settle the obligation. For purposes of analyses a utility shall maintain supporting documentation so as to be able to furnish accurately and expeditiously with respect to each asset retirement obligation the full details of the identity and nature of the legal obligation, the year incurred, the identity of the plant giving rise to the obligation, the full particulars relating to each component and supporting computations related to the measurement of the asset retirement obligation.

* * * * *

■ 16. In Gas Plant Instructions, paragraph 3.A.(17)(a) the W element is revised; and new paragraph 3.A.(23) is added to read as follows:

Gas Plant Instructions

* * * * *

3. *Components of construction cost.*

A. * * *

(17) * * *

(a) * * *

W = Average balance in construction work in progress less asset retirement costs (See General Instruction 24) related to plant under construction.

* * * * *

(23) "Asset retirement costs." The costs recognized as a result of asset retirement obligations incurred during the construction and testing of utility plant shall constitute a component of construction costs.

* * * * *

■ 17. Balance Sheet Accounts are amended as follows:

■ (a) Account 101.1, is amended by adding a sentence to the end of paragraph C.;

■ (b) Account 103, paragraph C. is revised;

■ (c) Account 108, paragraphs A.(2) through A.(7) are redesignated as paragraphs A.(3) through A.(8), a new paragraph A.(2) is added, and paragraph C. is amended by adding a sentence to the end of the paragraph;

■ (d) Account 121, paragraph A. is amended by adding a sentence to the end of the paragraph; and

■ (e) Account 230 is added.

The additions and revisions read as follows:

Balance Sheet Accounts

* * * * *

101.1 Property under capital leases.

* * * * *

C. * * * Records shall also be maintained for plant under a lease, to identify the asset retirement obligation and cost originally recognized for each lease and the periodic charges and credits made to the asset retirement obligations and asset retirement costs.

* * * * *

103 Experimental gas plant unclassified.

* * * * *

C. The depreciation on plant in this account shall be charged to account 403, Depreciation expense, and account 403.1, Depreciation expense for asset retirement costs, as appropriate, and credited to account 108, Accumulated provision for depreciation of gas utility plant. The amounts herein shall be depreciated over a period which corresponds to the estimated useful life of the relevant project considering the characteristics involved. However, when projects are transferred to account 101, Gas plant in service, a new depreciation rate based on the remaining service life and undepreciated amounts, will be established.

* * * * *

108 Accumulated provision for depreciation of gas utility plant.

A. * * *

(2) Amounts charged to account 403.1, Depreciation expense for asset retirement costs, for current

depreciation expense related to asset retirement costs in gas plant in service in a separate subaccount.

* * * * *

C. * * * Separate subsidiary records shall be maintained for the amount of accrued cost of removal other than legal obligations for the retirement of plant recorded in account 108, Accumulated provision for depreciation of gas utility plant.

* * * * *

121 Nonutility property.

A. * * * This account shall also include, where applicable, amounts recorded for asset retirement costs associated with nonutility plant.

* * * * *

230 Asset retirement obligations.

A. This account shall include the amount of liabilities for the recognition of asset retirement obligations related to gas utility plant and nonutility plant that gives rise to the obligations. This account shall be credited for the amount of the liabilities for asset retirement obligations with amounts charged to the appropriate gas utility plant accounts or nonutility plant accounts to record the related asset retirement costs.

B. This account shall also include the period to period changes for the accretion of the liabilities in account 230, Asset retirement obligations. The utility shall charge the accretion expense to account 411.10, Accretion expense, for gas utility plant, account 413, Expenses of gas plant leased to others, for gas plant leased to others, or account 421, Miscellaneous nonoperating income, for nonutility plant, as appropriate, and credit account 230, Asset retirement obligations.

C. This account shall be debited with amounts paid to settle the asset retirement obligations recorded herein.

D. The utility shall clear from this account any gains or losses resulting from the settlement of asset retirement obligations in accordance with the instructions prescribed in General Instruction 24.

* * * * *

■ 18. In Gas Plant Accounts, new primary plant accounts, 321, 339, 348, 358, 363.6, 372, 388, and 399.1 are added to read as follows:

Gas Plant Accounts

* * * * *

321 Asset retirement costs for manufactured gas production plant.

This account shall include asset retirement costs on plant included in the manufactured gas production plant function.

* * * * *

339 Asset retirement costs for natural gas production and gathering plant.

This account shall include asset retirement costs on plant included in the natural gas production and gathering plant function.

* * * * *

348 Asset retirement costs for products extraction plant.

This account shall include asset retirement costs on plant included in the products extraction plant function.

* * * * *

358 Asset retirement costs for underground storage plant.

This account shall include asset retirement costs on plant included in the underground storage plant function.

* * * * *

363.6 Asset retirement costs for other storage plant.

This account shall include asset retirement costs on plant included in the other storage plant function.

* * * * *

372 Asset retirement costs for transmission plant.

This account shall include asset retirement costs on plant included in the transmission plant function.

* * * * *

388 Asset retirement costs for distribution plant.

This account shall include asset retirement costs on plant included in the distribution plant function.

* * * * *

399.1 Asset retirement costs for general plant.

This account shall include asset retirement costs on plant included in the general plant function.

* * * * *

■ 19. Income Accounts are amended as follows:

■ a. Account 403.1 is added,

■ b. Accounts 411.6 and 411.7 are amended by designating the current paragraph as A. and adding a new paragraph B.,

■ c. Account 411.10 is added,

■ d. In Account 421, paragraphs 4. through 6. are added, and

■ e. In Account 426.5 paragraph 6. is added.

The additions read as follows:

Income Accounts

* * * * *

403.1 Depreciation expense for asset retirement costs.

This account shall include the depreciation expense for asset retirement costs included in gas utility plant in service.

* * * * *

411.6 Gains from disposition of utility property.

A. * * *

B. The utility shall record in this account gains resulting from the settlement of asset retirement obligations related to utility plant in accordance with the accounting prescribed in General Instruction 24.

* * * * *

411.7 Losses from disposition of utility property.

A. * * *

B. The utility shall record in this account losses resulting from the settlement of asset retirement obligations related to utility plant in accordance with the accounting prescribed in General Instruction 24.

* * * * *

411.10 Accretion expense.

This account shall be charged for accretion expense on the liabilities associated with asset retirement obligations included in account 230, Asset retirement obligations, related to gas utility plant.

* * * * *

421 Miscellaneous nonoperating income.

* * * * *

4. This account shall include the accretion expense on the liability for an asset retirement obligation included in account 230, Asset retirement obligations, related to nonutility plant.

5. This account shall include the depreciation expense for asset retirement costs related to nonutility plant.

6. The utility shall record in this account gains resulting from the settlement of asset retirement obligations related to nonutility plant in accordance with the accounting prescribed in General Instruction 24.

* * * * *

426.5 Other deductions.

* * * * *

6. The utility shall record in this account losses resulting from the settlement of asset retirement obligations related to nonutility plant in accordance with the accounting prescribed in General Instruction 24.

* * * * *

PART 346—OIL PIPELINE COST-OF-SERVICE FILING REQUIREMENTS

■ 20. The authority citation for part 346 continues to read as follows:

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

■ 21. Section 346.3 is added to read as follows:

§ 346.3 Asset retirement obligations.

(a) A carrier that files material in support of initial rates or change in rates under § 346.2 and has recorded asset retirement obligations on its books must provide a schedule, as part of the supporting workpapers, identifying all cost components related to the asset retirement obligations that are included in the book balances of all accounts reflected in the cost of service computation supporting the proposed rates. However, all cost components related to asset retirement obligations that would impact the calculation of rate base, such as carrier property and related accumulated depreciation and accumulated deferred income taxes, may not be reflected in rates and must be removed from the rate base calculation through a single adjustment.

(b) A carrier seeking to recover nonrate base costs related to asset retirement costs in rates must provide, with its filing under § 346.2 of this part, a detailed study supporting the amounts proposed to be collected in rates.

(c) A carrier who has recorded asset retirement obligations on its books but is not seeking recovery of the asset retirement costs in rates, must remove all asset retirement obligations related cost components from the cost of service supporting its proposed rates.

PART 352—UNIFORM SYSTEMS OF ACCOUNTS PRESCRIBED FOR OIL PIPELINE COMPANIES SUBJECT TO THE PROVISIONS OF THE INTERSTATE COMMERCE ACT

■ 22. The authority citation for part 352 continues to read as follows:

Authority: 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 23. In List of Instructions and Accounts, under Definitions, Definition 12 is revised to read as follows:

Definitions. * * *

12. *Cost of removal* means cost of demolishing, dismantling, tearing down, or otherwise removing property including costs of handling and transportation. It does not include the cost of removal activities associated with asset retirement obligations that are capitalized as part of the tangible long-lived assets that give rise to the obligation. (*See* General Instruction 1–19).

* * * * *

■ 24. In General Instructions, paragraph 1–19 is added to read as follows:

General Instructions

* * * * *

1–19 *Accounting for asset retirement obligations.*

(a) An *asset retirement obligation* represents a liability for the legal obligation associated with the retirement of a tangible long-lived asset that a utility is required to settle as a result of an existing or enacted law, statute, ordinance, or written or oral contract or by legal construction of a contract under the doctrine of promissory estoppel. An *asset retirement cost* represents the amount capitalized when the liability is recognized for the long-lived asset that gives rise to the legal obligation. The amount recognized for the liability and an associated asset retirement cost shall be stated at the fair value of the asset retirement obligation in the period in which the obligation is incurred.

(b) The carrier shall initially record a liability for an asset retirement obligation in account 67, Asset retirement obligations, and charge the associated asset retirement costs to account 30, Carrier property, and account 34, Noncarrier property, as appropriate, related to the property that gives rise to the legal obligation. The asset retirement cost shall be depreciated over the useful life of the related asset that gives rise to the obligations. For periods subsequent to the initial recording of the asset retirement obligation, a carrier shall recognize the period to period changes of the asset retirement obligation that result from the passage of time due to the accretion of the liability and any subsequent measurement revisions to the initial liability for the legal obligation recorded in account 67, Asset retirement obligations, as follows:

(1) The carrier shall record the accretion of the liability by debiting account 591, Accretion expense, for carrier property, account 620, Income (net) from noncarrier property, for noncarrier property and crediting account 67, Asset retirement obligations; and

(2) The carrier shall recognize any subsequent measurement changes of the liability initially recorded in account 67, Asset retirement obligations, for each specific asset retirement obligation as an adjustment of that liability in account 67 with the corresponding adjustment to carrier property and noncarrier property accounts, as appropriate. The utility shall on a timely basis monitor any measurement changes of the asset retirement obligations.

(c) Gains or losses resulting from the final settlement of asset retirement obligations for carrier plant resulting from the difference between the amount of the liability for the asset retirement obligation in account 67, Asset retirement obligations, and the actual amount to settle the obligation, shall be recorded in account 592, Gains or losses on asset retirement obligations.

(d) Gains or losses resulting from the final settlement of asset retirement obligations for noncarrier plant resulting from the difference between the amount of the liability for the asset retirement obligation in account 67, Asset retirement obligations, and the actual amount to settle the obligation, shall be recorded in account 620, Income (net) from noncarrier property.

(e) Separate subsidiary records shall be maintained for each asset retirement obligation showing the initial liability and associated asset retirement cost, any incremental amounts of the liability incurred in subsequent reporting periods for additional layers of the original liability and related asset retirement cost, the accretion of the liability, the subsequent measurement changes to the asset retirement obligation, the depreciation and amortization of the asset retirement costs and related accumulated depreciation, and the settlement date and actual amount paid to settle the obligation. For purposes of analyses a carrier shall maintain supporting documentation so as to be able to furnish accurately and expeditiously with respect to each asset retirement obligation the full details of the identity and nature of the legal obligation, the year incurred, the identity of the plant giving rise to the obligation, the full particulars relating to each component and supporting computations related to the measurement of the asset retirement obligation.

* * * * *

■ 25. In Instructions for Carrier Property Accounts, Instruction 3–3, paragraph (11)(iii) and paragraph (13) are added to read as follows:

Instructions for Carrier Property Accounts

* * * * *

3–3 *Cost of property constructed.*

* * *

(11) * * *

(iii) Interest during construction shall not be recognized on the asset retirement costs incurred during the construction of carrier and noncarrier property.

* * * * *

(13) Asset retirement costs that are recognized as a result of asset retirement obligations incurred during construction shall be included in the cost of construction costs.

* * * * *

■ 26. In Balance Sheet Accounts, account 31 is amended by adding a sentence to the end of paragraph, account 34 is amended by adding a sentence to the end of paragraph and account 67 is added to read as follows:

Balance Sheet Accounts

* * * * *

31 * * * Separate subsidiary records shall be maintained for the amount of accrued cost of removal other than legal obligations for the retirement of property recorded in account 31, Accrued depreciation—Carrier property.

* * * * *

34 * * * This account shall also include, amounts recorded for asset retirement costs associated with noncarrier property.

* * * * *

67 Asset retirement obligations.

(a) This account shall include liabilities arising from the recognition of asset retirement obligations. The carrier shall credit account 67, Asset retirement obligations, for the liabilities for asset retirement obligations and charge the appropriate carrier property accounts or noncarrier property accounts to record the related asset retirement costs.

(b) This account shall also include the period to period changes for the accretion of the liabilities in account 67, Asset retirement obligations. The carrier shall charge the accretion expense to account 591, Accretion expense, for carrier property, and account 620, Income (net) from noncarrier property, for noncarrier property, as appropriate, and credit account 67, Asset retirement obligations.

(c) This account shall be debited with amounts paid to settle the asset retirement obligations recorded herein.

(d) The utility shall clear from this account any gains or losses resulting from the settlement of asset retirement obligations in accordance with the instructions prescribed in General Instruction 1–19.

* * * * *

■ 27. In Carrier Property Accounts, accounts 117, 167, and 186.1 are added to read as follows:

Carrier Property Accounts

* * * * *

117, 167, 186.1 *Asset retirement costs.*

This account shall include asset retirement costs on plans included in carrier property.

* * * * *

■ 28. In Operating Expenses, accounts 541, 591 and 592 are added to read as follows:

Operating Expenses

* * * * *

541 Depreciation expense for asset retirement costs.

This account shall include charges for the depreciation of asset retirement costs related to transportation property.

* * * * *

591 Accretion expense.

This account shall be charged for accretion expense on the liabilities associated with asset retirement obligations included in account 67, Asset retirement obligations. The carrier shall record in this account the settlement amounts for asset retirement obligations related to carrier property in accordance with the accounting prescribed in General Instruction 1–19.

592 Gains or losses on asset retirement obligations.

The carrier shall record in this account gains or losses resulting from the settlement amounts for asset retirement obligations related to carrier property plant. (*See* General Instruction 1–19).

* * * * *

Note: The following appendices will not be published in the Code of Federal Regulations.

APPENDIX A

LIST OF COMMENTERS

Respondent	Abbreviation
1. Arkansas Public Service Commission.	Arkansas PSC.
2. Don Bjerke	Bjerke.
3. Deloitte & Touche LLP.	Deloitte & Touche.
4. Edison Electric Institute.	EEI.
5. FirstEnergy Corp.	FirstEnergy.
6. John S. Ferguson	Ferguson.
7. K. C. Martin	K.C. Martin.
8. Missouri Public Service Commission.	MoPSC.
9. National Association of State Utility Consumer Advocates.	NASUCA.
10. National Grid USA.	National Grid.
11. National Rural Electric Cooperative Assn..	NRECA.
12. Northern Natural Gas Company.	Northern Natural.
13. PacifiCorp	PacifiCorp.
14. Progress Energy, Inc..	Progress Energy.
15. Rural Utilities Service.	RUS.
16. Southern Company.	Southern.

Appendix B

SUMMARY OF CHANGES TO SCHEDULES FOR FORMS 1, 1–F, 2, 2–A AND 6

Schedule title	Forms 1 and 1–F public utilities and licensees	Forms 2 and 2A natural gas companies	Form 6 oil pipeline companies
1 List of Schedules	Revise to show schedule changes.	Same as Public Utilities and Licensees.	Same as Public Utilities and Licensees.
2 Comparative Balance Sheet	Add new account 230 to report asset retirement obligations.	Same as Public Utilities and Licensees.	Add account 67 to report asset retirement obligations.
3 Statement of Income for the Year	Add new accounts 403.1, to report depreciation expense and 411.10, to report accretion expense.	Same as Public Utilities and Licensees.	Add accounts 541, to report depreciation expense, 591, to report accretion expense, and 592, to report gains or losses on asset retirement obligations.

SUMMARY OF CHANGES TO SCHEDULES FOR FORMS 1, 1–F, 2, 2–A AND 6—Continued

Schedule title	Forms 1 and 1–F public utilities and licensees	Forms 2 and 2A natural gas companies	Form 6 oil pipeline companies
4 Plant in Service	Add new Instruction 4. For revisions to the amount of initial asset retirement costs capitalized, included by primary plant account, increases in column (c) addition and reductions in column (e) adjustments.	Same as Public Utilities and Licensees.	N/A
	Add new primary asset retirement accounts, 317, 326, 337, 347, 359.1, 374 and 399.1, for each plant function.	Add new primary asset retirement accounts, 339, 348, 358, 363.6, 364.9, 372, 388, 399.1, for each plant function.	N/A
5 Undivided Joint Interest Property	N/A	N/A	Add new primary asset retirement accounts, 117, 167, and 186.1, for each carrier property account function.
6 Accumulated Provision for Depreciation of Utility Plant	Added lines to report "403.1 Depreciation Expense for Asset Retirement Costs" and "Book Cost of Asset Retirement Costs Retired."	Same as Public Utilities and Licensees.	N/A
7 Accrued Depreciation—Carrier Property	N/A	N/A	Add new primary asset retirement accounts, 117, 167, and 186.1, for each carrier property account function and revise column (c) to read Debits to Accounts 540 and 541 of USofA (in dollars).
8 Accrued Depreciation—Undivided Joint Interest Property	N/A	N/A	Same as above for Accrued Depreciation—Carrier Property.
9 Depreciation and Amortization of Plant (Except Amortization of Acquisition Adjustments)	Add new Column (c), Depreciation Expense for Asset Retirement Costs (403.1).	Same as Public Utilities and Licenses. Form 2–A N/A	N/A
10 Amortization Base and Reserve	N/A	N/A	Revise header over columns (b), (c), (d) and (e) to read (Base 540 and 541).
11 Steam-Electric Generating Plant Statistics (Large Plants)	Form 1—Revise to report Asset Retirement Costs. Form 1–F N/A	N/A	N/A
12 Hydroelectric Generating Plant Statistics (Large Plants)	Form 1—Revise to report Asset Retirement Costs. Form 1–F N/A	N/A	N/A
13 Pumped Storage Generating Plant Statistics (Large Plants)	Form 1—Revise to report Asset Retirement Costs. Form 1–F N/A	N/A	N/A
14 Generating Plant Statistics (Small Plants) (Continued)	Form 1—Revise Column (g), to read "Plant Cost (Including Asset Retirement Costs) Per MW Installed Capacity." Form 1–F N/A	N/A	N/A
15 Transmission Lines Added During the Year	Form 1—Add column (o) "Asset Retirement Costs" to report asset retirement costs as part of line cost. Form 1–F N/A	N/A	N/A

BILLING CODE 6717–01–P

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

LIST OF SCHEDULES (Electric Utility)

Enter in column (d) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the respondents are "none," "not applicable," or "NA".

Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
General Information	101	Ed. 12-87	
Control Over Respondent	102	Ed. 12-96	
Corporations Controlled by Respondent	103	Ed. 12-96	
Officers	104	Ed. 12-96	
Directors	105	Ed. 12-95	
Security Holders and Voting Powers	106-107	Ed. 12-96	
Important Changes During the Year	108-109	Ed. 12-96	
Comparative Balance Sheet	110-113	Rev. 12-02	
Statement of Income for the Year	114-117	Rev. 12-02	
Statement of Retained Earnings for the Year	118-119	Ed. 12-96	
Statement of Cash Flows	120-121	Ed. 12-96	
Statement of Accumulated Comprehensive Income and Hedging Activities	122 (a) (b)	New 12-02	
Notes to Financial Statements	123	Ed. 12-02	
BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debits)			
Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization, and Depletion	200-201	Ed. 12-89	
Nuclear Fuel Materials	202-203	Ed. 12-89	
Electric Plant in Service	204-207	Rev. 12-02	
Electric Plant Leased to Others	213	Rev. 12-95	
Electric Plant Held for Future Use	214	Ed. 12-89	
Construction work in Progress -- Electric	216	Ed. 12-87	
Construction Overheads -- Electric	217	Ed. 12-89	
General Description of Construction Overhead Procedure	218	Ed. 12-88	
Accumulated Provision for Depreciation of Electric Utility Plant.	219	Ed. 12-02	
Nonutility Property	221	Rev. 12-95	
investment in Subsidiary Companies	224-225	Ed. 12-89	
Materials and Supplies	227	Ed. 12-87	
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Other Regulatory Assets	232	Ed. 12-95	
Miscellaneous Deferred Debits	233	Ed. 12-94	
Accumulated Deferred Income Taxes (Account 190)	234	Ed. 12-88	
BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
Capital Stock	250-251	Ed. 12-91	
Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock, and installments Received on Capital Stock	252	Rev. 12-95	
Other Paid-in Capital	253	Ed. 12-87	
Discount on Capital Stock	254	Ed. 12-87	
Capital Stock Expense	254	Ed. 12-86	
Long-Term Debt	256-257	Ed. 12-96	

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

LIST OF SCHEDULES (Electric Utility) (Continued)

Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits) (Continued)			
Reconciliation of Reported Net Income with for Federal Income Taxes	261	Ed. 12-96	
Taxes Accrued, Prepaid and Charged During Year	262 - 263	Ed. 12-96	
Accumulated Deferred Investment Tax Credits	266 - 267	Ed. 12-89	
Other Deferred Credits	269	Ed. 12-88	
Accumulated Deferred Income Taxes -- Accelerated Amortization Property	272 - 273	Ed. 12-96	
Accumulated Deferred Income Taxes -- Other Property	274 - 275	Ed. 12-96	
Accumulated Deferred Income Taxes Other	276 - 277	Ed. 12-96	
Other Regulatory Liabilities	278	Ed. 12-94	
INCOME ACCOUNT SUPPORTING SCHEDULES			
Electric Operating Revenues	300 - 301	Ed. 12-96	
Sales of Electricity by Rate Schedules	304	Ed. 12-95	
Sales of Resale	310 - 311	Ed. 12-88	
Electric Operation and Maintenance Expenses	320 - 323	Ed. 12-95	
Number of Electric Department Employees	323	Ed. 12-93	
Purchased Power	326 - 327	Ed. 12-95	
Transmission of Electricity for Others	328 - 330	Ed. 12-90	
Transmission of Electricity by Others	332	Ed. 12-90	
Miscellaneous General Expenses -- Electric	335	Ed. 12-94	
Depreciation and Amortization of Electric-- Plant	336 - 337	Rev. 12-02	
Particulars Concerning Certain Income Deduction and Interest Charges Account	340	Ed. 12 - 87	
COMMON SECTION			
Regulatory Commission Expenses	350 - 351	Ed. 12-96	
Research, Development and Demonstration Activities	352 - 353	Ed. 12-87	
Distribution of Salaries and Wages	354 - 355	Ed. 12-88	
Common Utility Plant and Expenses	356	Ed. 12-87	
ELECTRIC PLANT STATISTICAL DATA			
Electric Energy Account	401	Rev. 12-90	
Monthly Peaks and Output	401	Rev. 12-90	
Steam-Electric Generating Plant Statistics (Large Plants)	402 - 403	Rev. 12-02	
Hydroelectric Generating Plant Statistics (large Plants)	406 - 407	Ed. 12-02	
Pumped Storage Generating Plant Statistics (Large Plants)	408 - 409	Ed. 12-02	
Generating Plant Statistics (Small Plants)	410 - 411	Ed. 12-02	

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -89-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

LIST OF SCHEDULES (Electric Utility) (Continued)

Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
ELECTRIC PLANT STATISTICAL DATA (Continued)			
Transmission Lines Statistics	422-423	Ed. 12-87	
Transmission Lines Added During Year	424-425	Ed. 12-02	
Substations	426-427	Ed. 12-96	
Electric Distribution Meters and Line Transformers	429	Ed. 12-88	
Environmental protection Facilities	430	Ed. 12-88	
Environmental Protection Expenses	431	Ed. 12-88	
Footnote Data	450	Ed. 12-87	
Stockholders' Reports Check appropriate box:			
[ ] Four copies will be submitted.			
[ ] No annual report to stockholders is prepared.			

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -90-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No	Title of Account (a)	Ref. Page No. (b)	Balance at Beginning of year (c)	Balance at End of Year (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid in Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	(Less) Discount on Capital Stock (213)	254		
10	(Less) Capital Stock expense (214)	254		
11	Retained Earnings (215, 215.1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)	118-119		
13	(Less) Reacquired Capital Stock (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	122 (a) (b)		
15	TOTAL Proprietary Capital (Enter Total of Lines 2 thru 14)	-		
16	LONG-TERM DEBT			
17	Bonds (221)	256-257		
18	(Less) Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	-		
22	(Less) Unamortized Discount on Long-Term Debt-Debit (226)	-		
23	TOTAL Long-Term Debt (Enter Total of Lines 16 thru 21)	-		
24	OTHER NONCURRENT LIABILITIES			
25	Obligations Under Capital Leases-Noncurrent (227)	-		
26	Accumulated Provision for Property Insurance (228.1)	-		
27	Accumulated Provision for Injuries and damages (228.2)	-		
28	Accumulated Provision for Pensions and Benefits (228.3)	-		
29	Accumulated Miscellaneous Operating Provision (228.4)	-		
30	Accumulated Provision for Rate Refunds (229)	-		
31	Asset Retirement Obligations (230)	-		
32	TOTAL OTHER Noncurrent Liabilities (Enter Total of Lines 24 thru 30)	-		
33	CURRENT AND ACCRUED LIABILITIES			
34	Notes Payable (231)	-		
35	Accounts Payable (232)	-		
36	Notes Payable to Associated Companies (233)	-		
37	Account Payable to Associated Companies (234)	-		
38	Customer Deposits (235)	-		
39	Taxes Accrued (236)	262-263		
40	Interest Accrued (237)	-		
41	Dividends Declared (238)	-		
42	Matured Long-Term Debt (239)	-		
43	Matured Interests (240)	-		
44	Tax Collections Payable (241)	-		
45	Miscellaneous Current and Accrued Liabilities(242)	-		
46	Obligations Under Capital Leases-Current (243)			

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -91-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No	Title of Account (a)	Ref. Page No. (b)	Balance at Beginning of year (c)	Balance at End of Year (d)
47	Derivative Instrument Liabilities (244)			
48	Derivative Instrument Liabilities - Hedging (245)			
49	TOTAL Current and Accrued Liabilities (Enter Total of Lines 34 thru 48)			
50	DEFERRED CREDITS			
51	Customer Advances for Construction (252)			
52	Accumulate Deferred Investment Tax Credits (255)	266-267		
53	Deferred Gains from Disposition of Utility Plant (256)			
54	Other Deferred Credits (253)	269		
55	Other Regulatory Liabilities (254)	278		
56	Unamortized Gain on Reacquired Debt (257)	269		
57	Accumulated Deferred Income Taxes (281-283)	272-277		
58	TOTAL Deferred Credits (Enter Total of Lines 48 thru 54)			
59				
60				
61				
62				
63				
64				
65				
66				
67				
68				
69				
70				
	TOTAL Liabilities and Other Credits (Enter Total of Lines 15, 23, 32,49 and 57)			

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -92-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR

1. Report amounts for accounts 412 and 413, Revenue and Expenses from Utility Plant Leased to Others, in another Utility column (i,k,m,o) in a similar manner to a utility department. Spread the amount(s) over Lines 02 thru 24 as appropriate. include these amounts in columns (c) and (d) totals.

2. Report amounts in account 414, Other Utility Operating income, in the same manner as accounts 412 and 413 above.

3. Report data for lines 8, 10, and 11 for Natural Gas companies using accounts 404.1, 404.2, 404.3, 407.1 and 407.2.

4. Use page 123 for important notes regarding the statement of income or any account thereof.

5. Give concise explanations concerning unsettled rate proceedings where a contingency exists such that refunds of a material amount may need to be made to the utility's customers or which may result in a material refund to the utility with respect to power or gas purchases. State for each year affected the gross revenues or costs to which the contingency relates and the tax effects together with an explanation of the major factors which affect the rights of the utility to retain such revenues or recover amounts paid with respect to power and gas purchases.

6. Give concise explanations concerning significant amounts of any refunds made or received during the year.

Line No	Title of Account (a)	Ref. Page No. (b)	Balance at Beginning of year (c)	Balance at End of Year (d)
1	UTILITY OPERATING INCOME			
2	Operating Revenues (400)	300-301		
3	Operating Expenses			
4	Operation Expenses (401)	320-323		
5	Maintenance Expenses (402)	320-323		
6	Depreciation Expenses (403)	336-337		
7	Depreciation Expense for Asset Retirement Costs (403.1)	336-337		
8	Amortization. & Depletion of Utility Plant (404-405)	336-337		
9	Amortization of Utility Plant Acquisition Adjustment (406)	336-337		
10	Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs (407)			
11	Amortization of Conversion Expenses (407)			
12	Regulatory Debits (407.3)			
13	(Less) Regulatory Credits (407.4)			
14	Taxes Other than Income Taxes (408.1)	262-263		
15	Income Taxes - Federal (409.1)	262-263		
16	- Other (409.1)	262-263		
17	Provision for deferred Income Taxes (410.1)	234,272-277		
18	(Less) Provision for Deferred Income Taxes - Cr. (411.1)	234,272-277		
19	Investment Tax Credit Adj. - Net (411.4)	266		
20	(Less) Gains from Disp. Of Utility Plant (411.6)			
21	Losses from Disp. Of Utility Plant (411.7)			
22	(Less) Gains from Disposition of Allowances (411.8)			
23	Losses from Disposition of Allowances (411.9)			
24	Accretion Expense (411.10)			
25	TOTAL Utility Operating Expenses (Enter Total of Lines 4 thru 24)			
26	Net Utility Operating Income (Enter Total of line 2 less 25) (Carry forward to page 117, line 25)			

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -93-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR (Continued)

resulting from settlement of any rate proceeding affecting revenues received or costs incurred for power or gas purchases, and a summary of the adjustments made to balance sheet, income, and expense accounts.

7. If any notes appearing in the report to stockholders are applicable to this Statement of Income, such notes should be included on page 123.

8. Enter on page 123 a concise explanation of only those changes in accounting methods made during the year which had an effect on net income, including the basis of allocations and apportionments from those used in the preceding year. Also give the approximate dollar effect of such changes.

9. Explain in a footnote if the previous year's figures are different from that reported in prior reports.

10. If the columns are insufficient for reporting additional utility departments, supply the appropriate account titles, lines 2 to 23, and report the information on page.123 or in a footnote.

ELECTRIC UTILITY		GAS UTILITY		OTHER UTILITY		Line No.
Current Year (e)	Previous Year (f)	Current Year (g)	Previous Year (h)	Current Year (i)	Previous Year (j)	
						1
						2
						3
						4
						5
						6
						7
						8
						9
						10
						11
						12
						13
						14
						15
						16
						17
						18
						19
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						21
						22
						23
						24
						25
						26

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -94-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR (Continued)

	OTHER UTILITY		OTHER UTILITY		OTHER UTILITY	
Line No.	Current Year (k)	Previous Year (l)	Current Year (m)	Previous Year (n)	Current Yar (o)	Previous Year (p)
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						
11						
12						
13						
14						
15						
16						
17						
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19						
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22						
23						
24						
25						
26						

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -95-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR (Continued)

Line No	Account (a)	(Ref.) Page No. (b)	TOTAL Current Year (c)	TOTAL Previous Year (d)
27	Net Utility Operating Income (Carried forward from page 114)	–		
28	Other Income and Deductions			
29	Other Income			
30	Nonutility Operating Income			
31	Revenues From Merchandising, Jobbing and Contract Work (415)			
32	(Less) Costs and Exp. Of Merchandising, Job & Contract Work (416)			
33	Revenues From Nonutility Operations (417)			
34	(Less) Expenses of Nonutility Operations (417.1)			
35	Nonoperating Rental Income (418)			
36	Equity in Earnings of Subsidiary Companies (418.1)	119		
37	Interest and Dividend Income (419)			
38	Allowance for Other Funds Used During Construction (419.1)			
39	Miscellaneous Nonoperating Income (421)			
40	Gain on Disposition of Property (421.2)			
41	TOTAL Other Income (Enter Total of Lines 31 thru 40)			
42	Other Income Deductions			
43	Loss on Disposition of Property (421.2)			
44	Miscellaneous Amortization (425)	340		
45	Miscellaneous Income Deductions (426.1-426.5)	340		
46	TOTAL Other Income Deductions (Total of Lines 43 thru 45)			
47	Taxes Applicable To Other Income and Deductions			
48	Taxes Other than Income Taxes (408.2)	262-263		
49	Income Taxes - Federal (409.2)	262-263		
50	Income Taxes - Other (409.2)	262-263		
51	Provision for Deferred Inc. Taxes (410.2)	234,272-277		
52	(Less) Provision for Deferred Income Taxes - Credit (411.2)	234,272-277		
53	Investment Tax Credit Adj. - Net (411.5)			
54	(Less) Investment Tax Credits (420)			
55	TOTAL Taxes on Other Income and Deductions (Total of 48 thru 54)			
56	Net Other Income and Deductions (Enter Total of Lines 41, 46, 55)			
57	Interest Charges			
58	Interest on Long-Term Debt (427)			
59	Amort. Of Debt Disc. And Expense (428)			
60	Amortization of Loss on Reacquired Debt (428.1)			
61	(Less) Amort. Of Premium on Debt - credit (429)			
62	(Less) Amortization of Gain on Reacquired Debt - Credit (429.1)			
63	Interest on Debt to Assoc. Companies (430)	340		
64	Other Interest Expense (431)	340		
65	(Less) Allowance for Borrowed Funds Used During Construction-Cr. (432)			
66	Net Interest Charges (Enter Total of Liens 58 thru 65)			
67	Income Before Extraordinary Items (Total of Lines 27, 56 and 66)			
68	Extraordinary Items			
69	Extraordinary Income (434)			
70	(Less) Extraordinary Deductions (435)			
71	Net Extraordinary Items (Enter Total of Line 69 less Line 70)			
72	Income Taxes-Federal and Other (409.3)	262-263		
73	Extraordinary Items After Taxes (Enter Total of Line 71 less Line 72)			
74	Net Income (Enter Total of Lines 67 and 73)			

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -96-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106)

1. Report below the original cost of electric plant in service according to the prescribed accounts.
2. In addition to Account 101, Electric Plant in Service (Classified), this page and the next include Account 102, Electric Plant Purchased or Sold; Account 103, Experimental Electric Plant Unclassified; and Account 106, Completed Construction Not Classified-Electric.
3. Include in column (c) or (d), as appropriate, corrections of additions and retirements for the current or preceding year.
4. For revisions to the amount of initial asset retirement costs capitalized, included by primary plant account, increases in column (c) additions and reductions in column (e) adjustments.
5. Enclose in parentheses credit adjustments of plant accounts to indicate the negative effect of such accounts.
6. Classify Account 106 according to prescribed ac- counts, on an estimated basis if necessary, and include the entries in column (c). Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b). Likewise, if the respondent has a significant amount of plant retirements which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirements, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision. Include also in

Line No	Account (a)	Balance at Beginning of year (b)	Addition (c)
1	1. INTANGIBLE PLANT		
2	(301) Organization		
3	(302) Franchises and Consents		
4	(303) Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of Lines 2, 3, and 4)		
6	2. PRODUCTION PLANT		
7	A. Steam Production Plant		
8	(310) Land and Land Rights		
9	(311) Structures and Improvements		
10	(312) Boiler Plant Equipment		
11	(313) Engines and Engine-Driven Generators		
12	(314) Tubogenerator Units		
13	(315) Accessory Electric Equipment		
14	(316) Misc. Power Plant Equipment		
15	(317) Asset Retirement Costs for Steam Production		
16	TOTAL Steam Production Plant (Enter Total of Lines 8 thru 15)		
17	B. Nuclear Production Plant		
18	(320) Land and Land Rights		
19	(321) Structures and Improvements		
20	(322) Reactor Plant Equipment		
21	(323) Turbo generator Units		
22	(324) Accessory Electric Equipment		
23	(325) Misc. Power Plant Equipment		
24	(326) Asset Retirement Costs for Nuclear Production		
25	TOTAL Nuclear Production Plant (Enter Total of Lines 18 thru 24)		
26	C. Hydraulic Production Plant		
27	(330) Land and Land Rights		
28	(331) Structures and Improvements		
29	(332) Reservoirs, Dams, and Waterways		
30	(333) Water Wheels, Turbines, and Generators		
31	(334) Accessory Electric Equipment		
32	(335) Misc. Power Plant Equipment		
33	(336) Roads, Railroad, and Bridges		
34	(337) Asset Retirement Costs for Hydraulic Production		
35	TOTAL Hydraulic Production Plant (Enter Total of Lines 27 thru 34)		
36	D. Other Production Plant		
37	(340) Land and Land Rights		
38	(341) Structures and Improvements		
39	(342) Fuel Holders, Products, and Accessories		
40	(343) Prime Movers		
41	(344) Generators		
42	(345) Accessory Electric Equipment		

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -97-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106) (Continued)

column (d) reversals of tentative distributions of prior year of unclassified retirements. Show in a footnote the account distributions of these tentative classifications in columns (c) and (d), including the reversals of the prior years tentative account distributions of these amounts. Careful observance of the above instructions and the texts of Accounts 101 and 106 will avoid serious omissions of the reported amount of respondent's plant actually in service at end of year.

7. Show in column (f) reclassifications or transfers within utility plant accounts. Include also in column (f) the additions or reductions of primary account classifications arising from distribution of amounts initially recorded in Account 102, include in column (e)

the amounts with respect to accumulated provision for depreciation, acquisition adjustments, etc., and show in column(f) only the offset to the debits or credits distributed in column (f) to primary account classifications.

8. For Account 399, state the nature and use of plant included in this account and if substantial in amount submit a supplementary statement showing subaccount classification of such plant conforming to the requirement of these pages.

9. For each amount comprising the reported balance and changes in Account 102, state the property purchased or sold, name of vendor or purchase, and date of transaction. If proposed journal entries have been filed with the Commission as required by the Uniform System of Accounts, give also date of such filing.

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)		Line No.
					1
				(301)	2
				(302)	3
				(303)	4
					5
					6
					7
				(310)	8
				(311)	9
				(312)	10
				(313)	11
				(314)	12
				(315)	13
				(316)	14
				(317)	15
					16
					17
				(320)	18
				(321)	19
				(322)	20
				(323)	21
				(324)	22
				(325)	23
				(326)	24
					25
					26
				(330)	27
				(331)	28
				(332)	29
				(333)	30
				(334)	31
				(335)	32
				(336)	33
				(337)	34
					35
					36
				(340)	37
				(341)	38
				(342)	39
				(343)	40
				(344)	41
				(345)	42

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -98-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106)

Line No	Account (a)	Balance at Beginning of year (b)	Addition (c)
43	(346) Misc. Power Plant Equipment		
44	(347) Asset Retirement Costs for Other Production		
45	TOTAL Other Prod. Plant (Enter Total of Lines 37 thru 44)		
46	TOTAL Prod. Plant (Enter Total of Lines 16, 25, 35, and 45)		
47	3. TRANSMISSION PLANT		
48	(350) land and Land Rights		
49	(352) Structures and Improvements		
50	(353)Station Equipment		
51	(354)Towers and Fixtures		
52	(355)Poles and Fixtures		
53	(356) Overhead Conductors and Devices		
54	(357) Underground conduit		
55	(358) Underground Conductors and Devices		
56	(359) Roads and Trails		
57	(359.1) Asset Retirement Costs for Transmission Plant		
58	TOTAL Transmission Plant (Enter Total of Lines 44 thru 52)		
59	4. DISTRIBUTION PLANT		
60	(360) Land and Land Rights		
61	(361) Structures and Improvements		
62	(362) Station Equipment		
63	(363) Storage Battery Equipment		
64	(364) Poles, Towers, and Fixtures		
65	(365) Overhead Conductors and Devices		
66	(366) Underground Conduit		
67	(367) Underground Conductors and Devices		
68	(368) Line Transformers		
69	(369) Services		
70	(370) Meters		
71	(371) Installations on Customer Premises		
72	(372) Leased Property on Customer Premises		
73	(373) Street Lighting and Signal Systems		
74	(374) Asset Retirement Costs for Distribution Plant		
75	Total Distribution Plant (Enter Total of Lines 60 thru 74)		
76	5. GENERAL PLANT		
77	(389) Land and Land Rights		
78	(390) Structures and Improvements		
79	(391) Office Furniture and Equipment		
80	(392) Transportation Equipment		
81	(393) Stores Equipment		
82	(394) Tools, Shop and Garage Equipment		
83	(395) Laboratory, Equipment		
84	(396)Power Operated Equipment		
85	(397) Communication Equipment		
86	(398) Miscellaneous Equipment		
87	SUBTOTAL (Enter Total of Lines 77 thru 86)		
88	(399) Other Tangible Property		
89	(399.1) Asset Retirement Costs for General Plant		
90	TOTAL General Plant (Enter Total of Lines 87, 88, and 89)		
91	TOTAL (Accounts 101 and 106) (Lines 5, 16, 25, 35, 45, 58, 75,90)		
92	(102) Electric Plant Purchased (See Instr. 8)		
93	(Less) (102) Electric Plant Sold (See Instr. 8)		
94	(103) Experimental Plant Unclassified		
95	TOTAL Electric Plant in Service (Enter Total of Lines 91 thru 94)		

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -99-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106) (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)		Line No.
				(346)	43
				(347)	44
					45
					46
					47
				(350)	48
				(352)	49
				(353)	50
				(354)	51
				(355)	52
				(356)	53
				(357)	54
				(358)	55
				(359)	56
				(359.1)	57
					58
					59
				(360)	60
				(361)	61
				(362)	62
				(363)	63
				(364)	64
				(365)	65
				(366)	66
				(367)	67
				(368)	68
				(369)	69
				(370)	70
				(371)	71
				(372)	72
				(373)	73
				(374)	74
					75
					76
				(389)	77
				(390)	78
				(391)	79
				(392)	80
				(393)	81
				(394)	82
				(395)	83
				(396)	84
				(397)	85
				(398)	86
					87
				(399)	88
				(399.1)	89
					90
					91
				(102)	92
					93
				(103)	94
					95

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -100-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC UTILITY PLANT (Account 108)

1. Explain in a footnote any important adjustments during year.
2. Explain in a footnote any difference between the amount for book cost of plant retired, Line 11, column (c), and that reported for electric plant in service, pages 204-207, column (d), excluding retirements of nondepreciable property.
3. The provisions of Account 108 in the Uniform System of Accounts require that retirements of depreciable plant be recorded when such plant is removed from service.

If the respondent has a significant amount of plant retired at year end which has not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired. In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications.

4. Show separately interest credits under a sinking fund or similar method of depreciation accounting.

Section A. Balances and Changes During Year

Line No	Item (a)	Total (c+d+e) (b)	Electric Plant in Service (c)	Electric Plant Held for Future Use (d)	Electric Plant Leased to Others (e)
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to:				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Expense of Electric Plant Leased to Others				
6	Transportation Expenses-Clearing				
7	Other Clearing Accounts				
8	Other Accounts (Specify):				
9					
10	Total Depreciation, Provision For Year (Enter Total of Lines 3 thru 9)				
11	Net Charges for Plant Retired:				
12	Book Cost of Plant Retired				
13	Cost of Removal				
14	Salvage (Credit)				
15	TOTAL Net Charges For Plant Retired (Enter Total of Lines 12 thru 14)				
16	Other Debit or Credit Items (Describe):				
17					
18	Book Cost of Asset Retirement Costs Retired				
19	Balance End of Year (Enter Total of lines 1, 10, 15, 16 and 18)				

Section B. Balances at End of Year According to Functional Classifications

20	Steam Production				
21	Nuclear Production				
22	Hydraulic Production-Conventional				
23	Hydraulic Production-Pumped Storage				
24	Other Production				
25	Transmission				
26	Distribution				
27	General				
28	TOTAL (Enter Total of Lines 20 thru 27)				

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -101-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

DEPRECIATION AND AMORTIZATION OF ELECTRIC PLANT (Accounts 403, 403.1, 404, 405)
(Except Amortization of Acquisition Adjustments)

1. Report in Section A for the year the amounts for: (a) Depreciation Expense (Account 403); (b) Amortization of Limited-Term Electric Plant (Account 404); and (c) Amortization of Other Electric Plant (Account 405).
2. Report in section B the rates used to compute amortization charges for electric plant (Accounts 404 and 405). State the basis used to compute charges and whether any changes have been made in the basis or rates used from the preceding report year.
3. Report all available information called for in section C every fifth year beginning with report year 1971, reporting annually only changes to columns (c) through (g) from the complete report of the preceding year.

Unless composite depreciation accounting for total depreciable plant is followed, list numerically in column (a) each plant subaccount, account or functional classification, as appropriate, to which a rate is applied. Identify at the bottom of section C the type of plant included in any subaccount used.

In column (b) report all depreciable plant balances to which rates are applied showing subtotals by functional Classifications and showing composite total. Indicate at the bottom of section C the manner in which column balances are obtained. If average balances, state the method of averaging used.

For columns (c), (d), and (e) report available information for each plant subaccount, account or functional classification Listed in column (a). If plant mortality studies are prepared to assist in estimating average service Lives, show in column (f) the type mortality curve selected as most appropriate for the account and in column (g), if available, the weighted average remaining life of surviving plant.

If composite depreciation accounting is used, report available information called for in columns (b) through (g) on this basis.

4. If provisions for depreciation were made during the year in addition to depreciation provided by application of reported rates, state at the bottom of section C the amounts and nature of. the provisions and the plant items to which related.

A. Summary of depreciation and Amortization Charges

Line No	Functional Classification (a)	Depreciation Expense (Account 403) (b)	Depreciation Expense for Asset Retirement Costs (Account 403.1) (c)	Amortization of Limited-Term Electric Plant (Account 404) (d)	Amortization of Other Electric Plant (Account 405) (e)	Total (f)
1	Intangible Plant					
2	Steam Production Plant					
3	Nuclear Production Plant					
4	Hydraulic Production Plant -- Conventional					
5	Hydraulic Production Plant -- Pumped Storage					
6	Other Production Plant					
7	Transmission Plant					
8	Distribution Plant					
9	General Plant					
10	Common Plant -- Electric					
11	TOTAL					

B. Basis for Amortization Charges

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -102-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STEAM-ELECTRIC GENERATING PLANT STATISTICS (Large Plants)

1. Report data for plant in Service only.
2. Large plants are steam plants with installed capacity (name plate rating) of 25,000 Kw or more. Report in this page gas-turbine and internal combustion plants of 10,000 KW or more, and nuclear plants.
3. Indicate by a footnote any plant leased or operated as a joint facility.
4. If net peak demand for 60 minutes is not available. Give data which is available, specifying period.
5. If any employees attend more than one plant, report on line 11 the approximate average number of employees assignable to each plant
6. If gas is used and purchased on a therm basis report the Btu content of the gas and the quantity of fuel burned converted to Mct.
7. Quantities of fuel burned (line 38) and average cost per unit of fuel burned (line 41) must be consistent with charges to expense accounts 501 and 547 (line 42) as show on line 20.
8. If more than one fuel is burned in a plant furnish only the composite heat rate for all fuels burned.

Line No	Item (a)	Plant Name: (b)	Plant Name: (c)
1	Kind of Plant (Steam, Internal Combustion, Gas Turbine or Nuclear)		
2	Type of Plant Construction (Convention, Outdoor Boiler, Full Outdoor, Etc.)		
3	Year Originally Constructed		
4	Year Last Unit was Installed		
5	Total Installed Capacity (Maximum Generator Name Plate Ratings in MW)		
6	Next Peak Demand on Plant – MW (60 minutes)		
7	Plant Hours Connected to Load		
8	Net Continuous Plant Capability (Megawatts)		
9	When not Limited by Condenser Water		
10	When Limited by Condenser Water		
11	Average Number of Employees		
12	Net Generation, Exclusive of Plant Use –KWh		
13	Cost of Plant: Land and Land Rights		
14	Structures and Improvements		
15	Equipment Costs		
16	Asset Retirement Costs		
17	Total Cost		
18	Cost per KW of Installed Capacity (Line 17/ Line 5) including Asset Retirement Costs		
19	Production Expenses: Oper. Supv. & Engr.		
20	Fuel		
21	Coolants and Water (Nuclear Plants Only)		
22	Steam Expenses		
23	Steam From Other Sources		
24	Steam Transferred (Cr.)		
25	Electric Expenses		
26	Misc. Steam (or Nuclear) Power Expenses		
27	Rents		
28	Allowances		
29	Maintenance Supervision and Engineering		
30	Maintenance of Structures		
31	Maintenance of Boiler (Or Reactor) Plant		
32	Maintenance of Electric Plant		
33	Maintenance Misc. Steam (or Nuclear) Plant		
34	Total Production Expenses		
35	Expenses per Net KWh		
36	Fuel: Kind (Coal, Gas, Oil, or Nuclear)		
37	Unit: (Coal-tons of 2,000 lb.) (Oil-barrels of 42 gals.) (Gas=Mcf) (Nuclear-indicate)		
38	Quantity (Units) of Fuel Burned		
39	Avg. Heat Cont. Of Fuel Burned (Btu per lb. Of coal per gal. Of oil or per Mcf of gas) (Give unit if nuclear)		
40	Average Cost of Fuel per Unit, as Delivered f. o. b. Plant During Year		
41	Average Cost of Fuel per Unit Burned		
42	Avg. Cost of Fuel Burned per Million Btu		
43	Avg. Cost of Fuel Burned per Kwh Net Generation		
44	Average Btu per Kwh Net Generation		

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -103-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report. (Mo, Da, Yr)	Year of Report Dec 31, ____

STEAM-ELECTRIC GENERATING PLANT STATISTICS (Large Plants) (Continued)

9. Items under Cost of Plant are based on U.S. of A. Accounts. Production expenses do not include Purchased Power, System Control and Load Dispatching, and Other Expenses Classified as Other Power Supply Expenses.
10. For IC and GT plants, report Operating Expenses, Account Nos. 547 and 549 on line 25 "Electric Expenses," and Maintenance Account Nos. 553 and 554 on line 32. "Maintenance of Electric Plant." Indicate plants designed for peak load service. Designate automatically operated plants.
11. For a plant equipped with combinations of fossil fuel steam, nuclear steam, hydro, internal combustion or gas-turbine equipment, report each as a separate plant. However, if a gas -turbine unit functions in a combined cycle operation with a conventional steam unit, include the gas-turbine with the steam plant.
12. If a nuclear power generating plat, briefly explain by footnote (a) accounting method for cost of power generated including any excess costs attributed to research and development; (b) types of cost units used for the various components of fuel cost; and (c) any other informative data concerning plant type fuel used, fuel enrichment type and quantity for the report period and other physical and operating characteristics of plant.

Plant Name: (d)	Plant Name: (e)	Plant Name: (f)	Line No.
			1
			2
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Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -104-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

HYDROELECTRIC GENERATING PLANT STATISTICS (Large Plants)

1. Large plants are hydro plants of 10,000 Kw or more of installed capacity (name plate ratings).
2. If any plant is leased, operated under a license from the Federal Energy Regulatory Commission, or operated as a joint facility, indicate such facts in a footnote. If licensed project, give project number.
3. If net peak demand for 60 minutes is not available, give that which is available specifying period.
4. If a group of employees attends more than one generating plan, report on line 11 the approximate average number of employees assignable to each plant.

Line No	Item (a)	FERC Licensed Project No. Plant Name: (b)	FERC Licensed Project No. Plant Name: (c)
1	Kind of Plant (Run-of-River or Storage)		
2	Type of Plant Construction (Conventional or Outdoor)		
3	Year Originally Constructed		
4	Year Last Unit was Installed		
5	Total Installed Capacity (Generator Name Plate Rating in MW)		
6	Net Peak Demand on Plant-Megawatts (60 minutes)		
7	Plant Hours Connected to Load		
8	Net Plant Capability (in megawatts)		
9	(a) Under the Most Favorable Operating Conditions		
10	(b) Under the Most Adverse Operating Conditions		
11	Average Number of Employees		
12	Net Generation, Exclusive of Plant Use-KWh		
13	Cost of Plant:		
14	Land and Land Rights		
15	Structures and Improvements		
16	Reservoirs, Dams, and Waterways		
17	Equipments Costs		
18	Roads, Railroads, and Bridges		
19	Asset Retirement Costs		
20	TOTAL Cost (Enter Total of Lines 14 thru 19)		
21	Cost per KW of Installed Capacity (Line 5) including Asset Retirement Costs		
22	Production Expenses:		
23	Operation Supervision and Engineering		
24	Water for Power		
25	Hydraulic Expenses		
26	Electric Expenses		
27	Misc. Hydraulic Power Generation Expenses		
28	Rents		
29	Maintenance Supervision and Engineering		
30	Maintenance of Structures		
31	Maintenance of Reservoirs, Dams, and Waterways		
32	Maintenance of Electric Plant		
33	Maintenance of Misc. Hydraulic Plant		
34	Total Production Expenses (Total lines 23 thru 33)		
35	Expenses per net KWh		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

HYDROELECTRIC GENERATING PLANT STATISTICS (large Plants) (Continued)

5. The items under Cost of Plant represent accounts or combinations of accounts prescribed by the uniform System of Accounts. Production Expenses do not include Purchased Power, System control and Load Dispatching, and Other Expenses classified as "Other Power Supply Expenses."

6. Report as a separate plant any plant equipped with combinations of steam, hydro, internal combustion engine, or gas turbine equipment.

FERC Licensed Project No. Plant Name: (d)	FERC Licensed Project No. Plant Name: (e)	FERC Licensed Project No. Plant Name: (f)	Line No
			1
			2
			3
			4
			5
			6
			7
			8
			9
			10
			11
			12
			13
			14
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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PUMPED STORAGE GENERATING PLANT STATISTICS (Large Plants)

1. Large plants and pumped storage plants of 10,000 Kw or more of installed capacity (name plate ratings).
2. If any plant is leased, operating under a license from the Federal Energy Regulatory Commission, or operated as a joint facility, indicate such facts in a footnote. Give project number.
3. If net peak demand for 60 minutes is not available, give the which is available, specifying period.
4. If a group of employees attends more than one generating plant, report on line 8 the approximate average number of employees assignable to each plant.
5. The items under Cost of Plant represent accounts or combinations of accounts prescribed by the Uniform System of Accounts. Production Expenses do not include Purchased Power System Control and Load Dispatching, and Other Expenses classified as "Other Power Supply Expenses."

Line No	Item (a)	FERC Licensed Project No. Plant Name: (b)
1	Type of Plant Construction (Conventional or Outdoor)	
2	Year Originally Constructed	
3	Year Last Unit was Installed	
4	Total Installed Capacity (Generator Name Plate Ratings in MW)	
5	Net Peak Demand on Plant-Megawatts (60 minutes)	
6	Plant Hours Connected to Load While Generating	
7	Net Plant Capability (In megawatts):	
8	Average Number of Employees	
9	Generation Exclusive of Plant Use-KWh	
10	Energy Used for Pumping-KWH	
11	Net Output for Load (Line 9 minus Line 10)-KWh	
12	Cost of Plant	
13	Land and Land Rights	
14	Structures and Improvements	
15	Reservoirs, Dams, and Waterways	
16	Water Wheels, Turbines, and Generators	
17	Accessory Electric Equipment	
18	Miscellaneous Powerplants Equipment	
19	Roads, Railroads, and Bridges	
20	Asset Retirement Costs	
21	TOTAL Cost (Enter Total of Lines 13 thru 20)	
22	Cost per KW of installed Capacity (Line 21 ÷ Line 4) including Asset Retirement Costs	
23	Production Expenses	
24	Operation Supervision and Engineering	
25	Water for Power	
26	Pumped Storage Expenses	
27	Electric Expenses	
28	Misc. Pumped Storage Power Generation Expenses	
29	Rents	
30	Maintenance Supervision and Engineering	
31	Maintenance of Structures	
32	Maintenance of Reservoirs, Dams, and Waterways	
33	Maintenance of Electric Plant	
34	Maintenance of Misc. Pumped Storage Plant	
35	Production Exp. Before Pumping Exp. (Enter Total of Lines 24 thru 34)	
36	Pumping Expenses	
37	Total Production Expenses (Enter Total of Lines 35 and 36)	
38	Expenses per Kwh (Enter result of line 37 divided by Line 9)	

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PUMPED STORAGE GENERATING PLANT STATISTICS (Large Plants) (Continued)

6. Pumping energy (line 10) is that energy measured as input to the-plant for pumping purposes.
7. Include on line 35 the cost of energy used in pumping into the storage reservoir. When this item cannot be accurately computed leave Lines 35, 36 and 37 blank and footnote the company's principal sources of pumping power, the estimated amounts of energy from each station or other source that individually provides more than 10 percent of the total energy used for pumping; and production expenses per net MWH as reported herein for each source described. Group together stations and other resources which individually provide less than 10 percent of total pumping energy. If contracts are made with others to purchase power for pumping, give the supplier contract number, and date of contract.

FERC Licensed Project No. Plant Name: (d)	FERC Licensed Project No. Plant Name: (e)	FERC Licensed Project No. Plant Name: (f)	Line No
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			4
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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GENERATING PLANT STATISTICS (Small Plants) (Continued)

3. List plants appropriately under subheadings for steam, hydro, nuclear, internal combustion and gas turbine plants. For nuclear, see instruction 11, page 403:
4. If net peak demand for 60 minutes is not available, give the which is available, specifying period.
5. If any plant is equipped with combinations of steam, hydro internal combustion or gas turbine equipment, report each as a separate plant. However, If the exhaust heat from the gas turbine is utilized in a steam turbine regenerative feed water cycle, or for preheated combustion air in a boiler, report as one plant.

Plant Cost (Including Asset Retirement Costs) Per MW Installed Capacity (g)	Operation Excluding Fuel (h)	Production Expenses		Kind of Fuel (k)	Fuel Cost (in cents per million Btu) (l)	Line No
		Fuel (i)	Maintenance (j)			
						1
						2
						3
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						46

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

TRANSMISSION LINES ADDED DURING YEAR

7. Report below the information called for concerning Transmission lines added or altered during the year. It is not necessary to report minor revisions of lines.
2. Provide separate subheadings for overhead and underground construction and show each transmission line separately. If actual costs of competed construction are not readily available for reporting columns (l) to (p), it is permissible to report in these columns the estimated final completion.

Line No	LINE DESIGNATION From (a)	LINE DESIGNATION To (b)	Line Length in Miles (c)	SUPPORTING STRUCTURE Type (d)	SUPPORTING STRUCTURE Average Number Per Miles (e)	CIRCUITS PER STRUCTURE Present (f)	CIRCUITS PER STRUCTURE Ultimate (g)
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3							
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42							
43							
44	TOTAL						

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

TRANSMISSION LINES ADDED DURING YEAR (Continued)

costs. Designate, however, if estimated amounts are reported. Include costs of Clearing Land and Rights-of-Way, and Roads and Trails, in column (l) with appropriate footnote, and costs of Underground Conduit in column (m)

3. If design voltage differs from operating voltage, indicate such fact by footnote; also where line is other than 60 cycle, 3 phase, indicate such other characteristic.

CONDUCTORS Size (h)	CONDUCTORS Specification (i)	CONDUCTORS Configuration and Spacing (j)	Voltage KV (Operating) (k)	LINE COST Land and Land Rights (l)	LINE COST Poles, Towers and Fixtures (m)	LINE COST Conductors and Device (n)	LINE COST Asset Retirement Costs (o)	LINE COST Total (p)	Line No.
									1
									2
									3
									4
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Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PART III: COMPARATIVE BALANCE SHEET (Continued)

	Liabilities and Other Credits (a)	Balance at Beginning of year (b)	Balance at End of Year (c)
01	Common Stock Issued (201)		
02	Preferred Stock Issued (204)		
03	Miscellaneous Paid-in Capital (211)		
04	Installments Received on Capital Stock (212)		
05	Discount on Capital Stock - Debit (213)		
06	Capital Stock Expenses - Debit (214)		
07	Retained Earnings (215-216)		
08	Reacquired Capital Stock - Debit (217)		
09	Noncorporate Proprietorship (218)		
10	Accumulated Other Comprehensive Income (219)		
11	TOTAL PROPRIETARY CAPITAL (Enter total of lines 01 thru 10)		
12	Bonds (221)		
13	Advances From Associated Companies (223)		
14	Other Long-term Debt (Specify in footnote) (224)		
15	Unamortized Premium on Long-term Debt (225)		
16	Unamortized Discount on Long-term Debt - Debit (226)		
17	TOTAL LONG-TERM DEBT (Enter total of lines 12 thru 16)		
18	Other Noncurrent Liabilities:		
19	Obligations Under Capital Leases - Noncurrent (227)		
20	Accumulated Provision for Property Insurance (228, 1)		
21	Accumulated Provision for Injuries and Damages (228.2)		
22	Accumulated Provision for Pensions and Benefits (228.3)		
23	Accumulated Miscellaneous Operating Provisions (228.4)		
24	Accumulated Provision for Rate Refunds (229)		
25	Asset Retirement Obligations (230)		
26	TOTAL OTHER NONCURRENT LIABILITIES (Enter Total of Lines 19 thru 25)		
27	Current and Accrued Liabilities:		
28	Notes and Accounts Payable (Report amounts applicable to associated companies in a footnote) (231 to 234)		
29	Customer Debits (235)		
30	Taxes Accrued (236)		
31	Interest Accrued (237)		
32	Miscellaneous Current and Accrued Liabilities (242)		
33	Obligations Under Capital Leases-Current (243)		
34	Derivative Instrument Liabilities (244)		
35	Derivative Instrument Liabilities - Hedges (245)		
36	TOTAL CURRENT AND ACCRUED LIABILITIES (Enter total of lines 28 thru 35)		
37	Deferred Credits:		
38	Customer Advances for Construction (252)		
39	Other Deferred Credits (253)		
40	Other Regulatory Liabilities (254)		
41	Accumulated Deferred Investment Tax Credits (255)		
42	Deferred Gains from Disposition of Utility Plant (256)		
43	Unamortized Gain on Reacquired Debt (257)		
44	Accumulated Deferred Income Taxes (281-283)		
45	TOTAL DEFERRED CREDITS (Enter total of lines 38 thru 44)		
46	TOTAL LIABILITIES AND OTHER CREDITS (Enter total of lines 11, 17, 26, 36 and 45)		

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PART IV: STATEMENT OF INCOME FOR THE YEAR (Continued)

1. Report amounts for accounts 412 and 413, Revenues and expenses from Utility Plant Leased to Others, in the Other Utility column (h, I or j, k) in a similar manner to a utility department. Spread the amount(s) over lines 01 to 22 as appropriate. Include these amounts in column (b) and (c) totals.
2. Report amounts for account 414, Other Utility Operating Income, in the same manner as accounts 412 and 413.
3. Provide an explanation in Part VII. Notes to Financial Statements, of such unsettled rate proceedings where a contingency exists that refunds of a material amount may need to be made to the utility's customers or which may result in a material refund to the utility with respect to power or gas purchases. State for each year affected the gross revenues or costs to which the contingency relates and the tax effects; include an explanation for the major factors which affect the rights of the utility to retain such revenues or to recover amounts paid with respect to power or gas purchases.

	Account (a)	Total (d to k) Current Year (b)	Total (d to k) Change From Previous Year (c)	Electric Utility Current Year (d)	Electric Utility Change From previous Year (e)
01	UTILITY OPERATING INCOME				
02	Operating Revenues (400)				
03	Operating Expenses:				
04	Operating Expenses (401)				
05	Maintenance Expense (402)				
06	Depreciation Expense (403)				
07	Depreciation Expense for Asset Retirement Costs (403.1)				
08	Amortization Expense (Specify by account)				
09					
10	Regulatory Debits (407.3)				
11	(Less) Regulatory Credits (407.4)				
12	Taxes Other Than Income Taxes (408.1)				
13	Federal Income Taxes (409.1)				
14	Other Income Taxes (409. 1)				
15	Provision For Deferred Income Taxes (410.1)				
16	Provision For Deferred Income Taxes - Credit (411.1)				
17	Investment Tax Credit Adjustments - Net (411.4)				
18	Gains From Disposition of Utility Plant (411.6)				
19	Losses From Disposition of Utility Plant (411.7)				
20	Gains From Disposition of Allowances (411.8)				
21	Losses From Disposition of Allowances (411.9)				
22	Accretion Expense (411.10)				
23	TOTAL UTILITY OPERATING EXPENSES (Enter total of lines 04 thru 22)				
24	Net Utility Operating Income (Enter total of line 02 less 23)				

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PART IV: STATEMENT OF INCOME FOR THE YEAR (Continued)

4. Provide an explanation in Part VII, Notes to Financial Statements, of significant amounts of any refunds made or received during the year resulting from settlement of any rate proceeding affecting revenued received for costs incurred for power or gas purchases and a summary of the adjustment made to balance sheet, income, and expense accounts.
5. If any note appearing in the report to stockholders are applicable to the statement of income, either include such note in an attachment, or enter such data in Part VII.

6. Provide an explanation in Part VII, Notes to Financial Statements of only those changes in account methods made during the year which had an effect on net income, including the basis of allocations and apportionments from those used in the preceding year. Also, give the approximate dollar effects of such changes.

Gas Utility		Other Utility		Other utility		Account	
Current Year (f)	Change From Previous Year (g)	Current Year (h)	Change From Previous Year (i)	Current Year (j)	Change From Previous Year (k)		
							01
						(400)	02
							03
						(401)	04
						(402)	05
						(403)	06
						(403.1)	07
							08
							09
						(407.3)	10
						(407.4	11
						(408.1)	12
						(409.1)	13
						(409.1)	14
						(410.1)	15
						(411.1)	16
						(411.4)	17
						(411.6)	18
						(411.7)	19
						(411.8)	20
						(411.9)	21
						(411.10)	22
						TOTAL	23
						NET	24

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PART IV: STATEMENT OF INCOME FOR THE YEAR (Continued)

	Account (a)	Total Current Year (b)	Total Change From Previous Year (c)
24	Net Utility Operating Income *(Carrier Forward from line 24, page 6)*		
25	OTHER INCOME AND DEDUCTIONS		
26	Other Income:		
27	Nonutility Operating Income *(415-418)*		
28	Interest and Dividend Income *(419)*		
29	Allowance for Other Funds Used During Construction *(419.1)*		
30	Miscellaneous Nonoperating Income *(421)*		
31	Gain on Disposition of Property *(415-418)*		
32	TOTAL OTHER INCOME *(Enter Total of lines 27 thru 31)*		
33	Other Income Deductions:		
34	Loss on Disposition of Property *(421.2)*		
35	Miscellaneous Amortization *(425)*		
36	Miscellaneous Income Deductions *(426.1 - 426.5)*		
37	TOTAL OTHER INCOME DEDUCTIONS *(Enter total of lines 34 thru 36)*		
38	Taxes Applicable to Other Income and Deductions:		
39	Taxes Applicable to Other Income and Deductions:		
40	Federal Income Taxes *(409.2)*		
41	Other Income Taxes *(409.2)*		
42	Provision for Deferred Income Taxes *(410.2)*		
43	Provision for Deferred Income *(411.2)*		
44	Investment Tax Credit Adjustments - Net *(411.5)*		
45	Investment Tax Credits *(420)*		
46	TOTAL TAXES APPLICABLE TO OTHER INCOME AND DEDUCTIONS *(Enter total of lines 40 thru 45)*		
47	Net Other Income and Deductions *(Enter total of line 32 less 37 and 46)*		
48	INTEREST CHARGES		
49	Interest on Long-term Debt *(427)*		
50	Amortization of Debt Discount and Expense *(428)*		
51	Amortization of Loss on Reacquired Debt *(428.1)*		
52	Amortization of Premium on Debt - Credit *(429)*		
53	Amortization of Gain on Reacquired Debt - Credit *(429. 1)*		
54	Interest on Debt to Associated Companies *(430)*		
55	Other Interest Expense *(431)*		
56	Allowance For Borrowed Funds Used During Construction - Credit *(432)*		
57	Net Interest Charge *(Enter total of lines 49 thru 56)*		
58	Income Before Extraordinary Items *(Enter total of lines 24 and 47, less 57)*		
59	EXTRAORDINARY ITEMS		
60	Extraordinary Income *(434)*		
61	Extraordinary Deduction - Debit *(435)*		
62	Net Extraordinary Items *(Enter total of line 60 less 61)*		
63	Income Taxes - *(409.3)*		
64	Extraordinary Items After Taxes *(Enter total of line 62 less 63)*		
65	Net Income *(Enter total of lines 58 and 64)*		

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -115-

(SUBSTITUTE PAGE FOR PART III)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Ref Page No. (b)	Balance at Beginning of Year (c)	Balance at End of Year (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	(Less) Discount on Capital Stock (213)	254		
10	(Less) Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215.1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)	118-119		
13	(Less) Reacquired Capital Stock (217)	250-251		
14	Accumulated Other Comprehensive Income *(219)*	122 (a) (b)		
15	TOTAL Proprietary Capital *(Enter Total of* lines 2 *thru 14)*	-		
16	LONG-TERM DEBT			
17	Bonds (221)	256-257		
18	(Less) Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	-		
22	(Less) Unamortized Discount on Long-Term Debt-Debit (226)	-		
23	TOTAL Long-Term Debt (Enter Total *of* lines 17 thru 22)	-		
24	OTHER NONCURRENT LIABILITIES			
25	Obligations Under Capital Leases - Noncurrent (227)	-		
26	Accumulated Provision for Property Insurance (228.1)	-		
27	Accumulated Provision for Injuries and Damages (228.2)	-		
28	Accumulated Provision for Pensions and Benefits (228.3)	-		
29	Accumulated Miscellaneous Operating Provisions (228.4)	-		
30	Accumulated Provision for Rate Refunds (229)	-		
31	Asset Retirement Obligations (230)	-		
32	TOTAL Other Noncurrent Liabilities (Enter Total *of* lines 25 thru 31)			
33	CURRENT AND ACCRUED LIABILITIES			
34	Notes Payable (231)	-		
35	Accounts Payable (232)	-		
36	Notes Payable to Associated Companies (233)	-		
37	Accounts Payable to Associated Companies (234)	-		
38	Customer Deposits (235)	-		
39	Taxes Accrued (236)	262-263		
40	Interest Accrued (237)	-		
41	Dividends Declared (238)	-		
42	Matured Long-Term Debt (239)	-		
43	Matured Interest (240)	-		
44	Tax Collections Payable (241)	-		
45	Miscellaneous Current and Accrued Liabilities (242)	-		
46	Obligations Under Capital Leases-Current (243)	-		

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -116-

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No.	Title of Account (a)	Ref Page No. (b)	Balance at Beginning of Year (c)	Balance at End of Year (d)
47	Derivative Instrument Liabilities (244)			
48	Derivative Instrument Liabilities - Hedging (245)			
49	TOTAL Current and Accrued Liabilities *(Enter Total of* lines 34 *thru 48)*			
50	DEFERRED CREDITS			
51	Customer Advances for Construction (252)			
52	Accumulated Deferred Investment Tax Credits (255)	266-267		
53	Deferred Gains from Disposition of Utility Plant (256)			
54	Other Deferred Credits (253)	269		
55	Other Regulatory Liabilities (254)	278		
56	Unamortized Gain on Reacquired Debt (257)			
57	Accumulated Deferred Income Taxes (281-283)	272-277		
58	TOTAL Deferred Credits *(Enter Total of lines 51 thru 57)*			
59				
60				
61				
62				
63				
64				
65				
66				
67				
68				
69				
70				
71				
72	TOTAL Liabilities and Other Credits *(Enter Total of lines 15, 23, 32, 49 and 58)*			

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -117-

(SUBSTITUTE PAGE FOR PART IV)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR

1. Report amounts for accounts *412* and *413, Revenue and Expenses from Utility Plant Leased* to Others, in another utility column (l, k, m, o) in a similar manner to a utility department. Spread the amount(s) over lines *02* thru *24* as appropriate. Include these amounts in columns (c) and (d) totals.
2. Report amounts in account *414*, Other *Utility* Operating Income, in the same manner as accounts *412* and *413* above.
3. Report data for lines 8, 10, and 11 for Natural Gas companies using accounts *404.1, 404.2, 404.3, 407. 1,* and *407.2.*
4. *Use* page *122* for important notes regarding the statement of income or any account thereof.
5. Give concise explanations concerning unsettled rate proceedings where a contingency exists such that refunds of a material amount may need to be made to the utility's customers or which may result in a material refund to the utility with respect to power or gas purchases. State for each year affected the gross revenues or costs to which the contingency relates and the tax effects together with an explanation of the major factors which affect the rights of the utility to retain such revenues or recover amounts paid with respect to power and gas purchases.
6. Give concise explanations concerning significant amounts of any refunds made or received during the year.

Line No.	Title of Account (a)	Ref Page No (b)	TOTAL Current Year (c)	TOTAL Previous Year (d)
1	UTILITY OPERATING INCOME			
2	Operating Revenues (400)	300-301		
3	Operating Expenses			
4	Operation Expenses (401)	320-325		
5	Maintenance Expenses (402)	320-325		
6	Depreciation Expense (403)	336-338		
7	Depreciation Expense for Asset Retirement Costs (403.1)	336-338		
8	Amortization & Depletion of Utility Plant (404-405)	336-338		
9	Amortization of Utility Plant Acquisition Adjustment (406)	336-338		
10	Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs (407)			
11	Amortization of Conversion Expenses (407)			
12	Regulatory Debits (407-3)			
13	(Less) Regulatory Credits (407.4)			
14	Taxes Other Than Income Taxes (408.1)	262-263		
15	Income Taxes - Federal (409.1)	262-263		
16	- Other (409.1)	262-263		
17	Provision for Deferred Income Taxes (410.1)	234, 272-277		
18	(Less) Provision for Deferred Income Taxes-Cr. (411.1)	234, 272-277		
19	Investment Tax Credit Adjustment - Net (411.4)	266		
20	(Less) Gains from Disp. of Utility Plant (411.6)			
21	Losses from Disp. of Utility Plant (411.7)			
22	(Less) Gains from Disposition of Allowances (411.8)			
23	Losses from Disposition of Allowances (411.9)			
24	Accretion Expense (411.10)			
25	TOTAL Utility Operating Expenses (Enter Total of lines 4 thru 24)			
26	Net Utility Operating Income (Enter Total of line 2 less 25) (Carry forward to page 117, line 27)			

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -118-

(SUBSTITUTE PAGE FOR PART IV)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR (Continued)

Line No.	Title of Account (a)	Ref Page No. (b)	TOTAL Current Year (c)	TOTAL Previous Year (d)
27	Net Utility Operating Income *(Carried forward from page 114)*			
28	Other Income and Deductions			
29	Other Income			
30	Nonutiity Operating Income			
31	Revenues From Merchandising, Jobbing and Contract Work (415)			
32	(Less) Costs and Expenses of Merchandising, Jobbing & Contract Work (416)			
33	Revenues From Nonutility Operations (417)			
34	(Less) Expenses of Nonutility operations (417.1,)			
35	Nonoperating Rental Income (418)			
36	Equity in Earnings of Subsidiary Companies (418.1)	119		
38	Interest and Dividend Income (419)			
39	Allowance for Other Funds Used During Construction (411.1)			
40	Gain on Disposition of Property (421.1)			
41	TOTAL Other income *(Enter Total of lines 31 thru 40)*			
42	Other Income Deductions			
43	Loss on Disposition of Property (421.2)			
44	Miscellaneous Amortization (425)	340		
45	Miscellaneous Income Deductions (426.1 thru 426.5)	340		
46	TOTAL Other Income Deductions(Total of lines 43 thru 45)			
47	Taxes Applicable to Other Income and Deductions			
48	Taxes Other Than income Taxes (408.2)	262-263		
49	Income Taxes-Federal (409.2)	262-263		
50	Income Taxes-Other (409.2)	262-263		
51	Provision for Deferred Inc. Taxes (410.2)	234,272-277		
52	(Less) Provision for Deferred Income Taxes–Cr. (411.2)	234,272-277		
53	Investment Tax Credit Adjustment - Net (411.5)			
54	(Less) Investment Tax Credits (420)			
55	TOTAL Taxes on Other Income and Deductions (Enter Total of 48 thru 54)			
56	Net Other Income and Deductions (Enter Total of lines 41, 46, 55)			
57	Interest Charges			
58	Interest on Long-Term Debt (427)			
59	Amort. of Debt Disc. and Expense (428)			
60	Amortization of Loss on Reacquired Debt (428.1)			
61	(Less) Amortization of Premium on Debt-Credit (429)			
62	(Less) Amortization of Gain on Reacquired Debt-Credit (429.1)			
63	Interest on Debt to Assoc. Companies (430)	340		
64	Other Interest Expense (431)	340		
65	(Less) Allowance for Borrowed Funds Used During Construction–Cr. (432)			
66	Net Interest Charges (Enter Total of lines 58 thru 65)			
67	Income Before Extraordinary Items (Enter Total of lines 27, 56 and 66)			
68	Extraordinary Items			
69	Extraordinary income (434)			
70	(Less) Extraordinary Deductions (435)			
71	Net Extraordinary Items (Enter Total of line 69 less line 70)			
72	Income Taxes-Federal and Other (409.3)	262-263		
73	Extraordinary Items After Taxes (Enter Total *of line 71* less line 72)			
74	Net Income *(Enter Total of lines 67 and 73)*			

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -119

(SUBSTITUTE PAGE FOR PART XX)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106)

1. Report below the original cost of electric plant in service according to the prescribed accounts.
2. In addition to Account 101, Electric Plant in Service (Classified), this page and the next include Account 102, Electric Plant Purchased or Sold; Account 103, Experimental Electric Plant Unclassified; and Account 106, Completed Construction Not Classified-Electric.
3. Include in column (c) or (d), as appropriate, corrections of additions and retirements for the current or preceding year.
4. For revisions to the amount of initial asset retirement costs capitalized, included by primary plant account, increases in column (c) additions and reductions in column (e) adjustments 5. Enclose in parentheses credit adjustments of plant accounts to indicate the negative effect of such accounts.
5. Classify Account 106 according to prescribed accounts, on an estimated basis if necessary, and include the entries in column (c). Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b). Likewise, if the respondent has a significant amount of plant retirements which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirements, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision. Include also in column (d) reversals of tentative distributions of prior year of unclassified retirements.

Line No	Account (a)	Balance at Beginning of year (b)	Addition (c)
1	1. INTANGIBLE PLANT		
2	(301) Organization		
3	(302) Franchises and Consents		
4	(303) Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of Lines 2, 3, and 4)		
6	2. PRODUCTION PLANT		
7	A. Steam Production Plant		
8	(310) Land and Land Rights		
9	(311) Structures and Improvements		
10	(312) Boiler Plant Equipment		
11	(313) Engines and Engine-Driven Generators		
12	(314) Turbogenerator Units		
13	(315) Accessory Electric Equipment		
14	(316) Misc. Power Plant Equipment		
15	(317) Asset Retirement Costs for Steam Production		
16	TOTAL Steam Production Plant (Enter Total of Lines 8 thru 15)		
17	B. Nuclear Production Plant		
18	(320) Land and Land Rights		
19	(321) Structures and Improvements		
20	(322) Reactor Plant Equipment		
21	(323) Turbo generator Units		
22	(324) Accessory Electric Equipment		
23	(325) Misc. Power Plant Equipment		
24	(326) Asset Retirement Costs for Nuclear Production		
25	TOTAL Nuclear Production Plant (Enter Total of Lines 18 thru 24)		
26	C. Hydraulic Production Plant		
27	(330) Land and Land Rights		
28	(331) Structures and Improvements		
29	(332) Reservoirs, Dams, and Waterways		
30	(333) Water Wheels, Turbines, and Generators		
31	(334) Accessory Electric Equipment		
32	(335) Misc. Power Plant Equipment		
33	(336) Roads, Railroad, and Bridges		
34	(337) Asset Retirement Costs for Hydraulic Production		
35	TOTAL Hydraulic Production Plant (Enter Total of Lines 27 thru 34)		
36	D. Other Production Plant		
37	(340) Land and Land Rights		
38	(341) Structures and Improvements		
39	(342) Fuel Holders, Products, and Accessories		
40	(343) Prime Movers		
41	(344) Generators		
42	(345) Accessory Electric Equipment		

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -120

(SUBSTITUTE PAGE FOR PART XX)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106) (Continued)

Show in a footnote the account distributions of these tentative classifications in columns (c) and (d), including the reversals of the prior years tentative account distributions of these amounts. Careful observance of the above instructions and the texts of Accounts 101 and 106 will avoid serious omissions of the reported amount of respondent's plant actually in service at end of year.

7. Show in column (f) reclassifications or transfers within utility plant accounts. Include also in column (f) the additions or reductions of primary account classifications arising from distribution of amounts initially recorded in Account 102, include in column (e) the amounts with respect to accumulated provision for depreciation, acquisition adjustments, etc., and show in column (f) only the offset to the debits or credits distributed in column (f) to primary account classifications.

8. For Account 399, state the nature and use of plant included in this account and if substantial in amount, footnote and provide a supplementary statement showing subaccount classification of such plant conforming to the requirement of these pages.

9. For each amount comprising the reported balance and changes in Account 102, state the property purchased or sold, name of vendor or purchase, and date of transaction. If proposed journal entries have been filed with the Commission as required by the Uniform System of Accounts, give also date of such filing.

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)		Line No.
					1
				(301)	2
				(302)	3
				(303)	4
					5
					6
					7
				(310)	8
				(311)	9
				(312)	10
				(313)	11
				(314)	12
				(315)	13
				(316)	14
				(317)	15
					16
					17
				(320)	18
				(321)	19
				(322)	20
				(323)	21
				(324)	22
				(325)	23
				(326)	24
					25
					26
				(330)	27
				(331)	28
				(332)	29
				(333)	30
				(334)	31
				(335)	32
				(336)	33
				(337)	34
					35
					36
				(340)	37
				(341)	38
				(342)	39
				(343)	40
				(344)	41
				(345)	42

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -121-

(SUBSTITUTE PAGE FOR PART XX)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106)

Line No	Account (a)	Balance at Beginning of year (b)	Addition (c)
43	(346) Misc. Power Plant Equipment		
44	(347) Asset Retirement Costs for Other Production		
45	TOTAL Other Production Plant (Enter Total of Lines 37 thru 44)		
46	TOTAL Production Plant (Enter Total of Lines 16, 25, 35, and 45)		
47	3. TRANSMISSION PLANT		
48	(350) Land and Land Rights		
49	(352) Structures and Improvements		
50	(353) Station Equipment		
51	(354) Towers and Fixtures		
52	(355) Poles and Fixtures		
53	(356) Overhead Conductors and Devices		
54	(357) Underground conduit		
55	(358) Underground Conductors and Devices		
56	(359) Roads and Trails		
57	(359.1) Asset Retirement Costs for Transmission Plant		
58	TOTAL Transmission Plant (Enter Total of Lines 48 thru 57)		
59	4. DISTRIBUTION PLANT		
60	(360) Land and Land Rights		
61	(361) Structures and Improvements		
62	(362) Station Equipment		
63	(363) Storage Battery Equipment		
64	(364) Poles, Towers, and Fixtures		
65	(365) Overhead Conductors and Devices		
66	(366) Underground Conduit		
67	(367) Underground Conductors and Devices		
68	(368) Line Transformers		
69	(369) Services		
70	(370) Meters		
71	(371) Installations on Customer Premises		
72	(372) Leased Property on Customer Premises		
73	(373) Street Lighting and Signal Systems		
74	(374) Asset Retirement Costs for Distribution Plant		
75	Total Distribution Plant (Enter Total of lines 60 thru 75)		
76	5. GENERAL PLANT		
77	(389) Land and Land Rights		
78	(390) Structures and Improvements		
79	(391) Office Furniture and Equipment		
80	(392) Transportation Equipment		
81	(393) Stores Equipment		
82	(394) Tools, Shop and Garage Equipment		
83	(395) Laboratory, Equipment		
84	(396)Power Operated Equipment		
85	(397) Communication Equipment		
86	(398) Miscellaneous Equipment		
87	SUBTOTAL (Enter Total of Lines 77 thru 86)		
88	(399) Other Tangible Property		
89	(399.1) Asset Retirement Costs for General Plant		
90	TOTAL General Plant (Enter Total of Lines 87, 88, and 89)		
91	TOTAL (Accounts 101 and 106) (Lines 5, 16, 25, 35, 45, 58, 75, and 90)		
92	(102) Electric Plant Purchased (See Instr. 8)		
93	(Less) (102) Electric Plant Sold (See Instr. 8)		
94	(103) Experimental Plant Unclassified		
95	TOTAL Electric Plant in Service (Enter Total of Lines 91 thru 94)		

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -122-

(SUBSTITUTE PAGE FOR PART XX)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ELECTRIC PLANT IN SERVICE (Accounts 101, 102, 103, and 106) (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)		Line No.
				(346)	43
				(347)	44
					45
					46
					47
				(350)	48
				(352)	49
				(353)	50
				(354)	51
				(355)	52
				(356)	53
				(357)	54
				(358)	55
				(359)	56
				(359.1)	57
					58
					59
				(360)	60
				(361)	61
				(362)	62
				(363)	63
				(364)	64
				(365)	65
				(366)	66
				(367)	67
				(368)	68
				(369)	69
				(370)	70
				(371)	71
				(372)	72
				(373)	73
				(374)	74
					75
					76
				(389)	77
				(390)	78
				(391)	79
				(392)	80
				(393)	81
				(394)	82
				(395)	83
				(396)	84
				(397)	85
				(398)	86
					87
				(399)	88
				(399.1)	89
					90
					91
				(102)	92
					93
				(103)	94
					95

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -123-

(SUBSTITUTE PAGE FOR PART XII)

Name of Respondent	This Report is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ACCUMULATED PROVISION FOR DEPRECIATION OF ELECTRIC UTILITY PLANT (Account 108)

1. Explain in a footnote any important adjustments during year.
2. Explain in a footnote any difference between the amount for book cost of plant retired, Line 11, column (c), and that reported for electric plant in service, pages 204-207, column 9d), excluding retirements of nondepreciable property.
3. The provisions of Account 108 in the Uniform System of accounts require that retirements of depreciable plant be recorded when such plant is removed from service.

If the respondent has a significant amount of plant retired at year end which has not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired. In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications.
4. Show separately interest credits under a sinking fund or similar method of depreciation accounting.

Section A. Balances and Changes During Year

Line No	Item (a)	Total (c+d+e) (b)	Electric Plant in Service (c)	Electric Plant Held for Future Use (d)	Electric Plant leased to Others (e)
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Expenses of Electric Plant Leased to Others				
6	Transportation Expenses - Clearing				
7	Other Clearing Accounts				
8	Other Accounts (Specify):				
9					
10	Total Depreciation Provision For Year (Enter Total of Lines 3 thru 9)				
11	Net Charges for Plant Retired:				
12	Book Cost of Plant Retired				
13	Cost of Removal				
14	Salvage (Credit)				
15	TOTAL Net Charges For Plant Retired (Enter Total of Lines 12 thru 14)				
16	Other Debit or Credit Items (Describe):				
17					
18	Book Cost of Asset Retirement Costs				
19	Balance End of Year (Enter Total of lines 1, 10, 15, 16, and 18)				

Section B. Balances at End of Year According to Functional Classifications

20	Steam Production				
21	Nuclear Production				
22	Hydraulic Production-Conventional				
23	Hydraulic Production-Pumped Storage				
24	Other Production				
25	Transmission				
26	Distribution				
27	General				
28	TOTAL (Enter Total of Lines 20 thru 27)				

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -124-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

LIST OF SCHEDULES (Natural Gas Company)

Enter in column (d) the terms "none," "not applicable," or "NA" as appropriate, where no information or amounts have been reported for certain pages Omit pages where the responses are "none," "not applicable," or "NA

Line No	Title of Schedule	Reference Page No (b)	Date Revised (c)	Remarks (d)
	GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
1	General Information	101		
2	Control Over Respondent	102		
3	Corporations Controlled by Respondent	103		
4	Security Holders and Voting Powers	107		
5	Important Changes During the Year	108		
6	Comparative Balance Sheet	110-113		
7	Statement of Income for the Year	114-116		
8	Statement of Accumulated Comprehensive Income and Hedging Activities	117(a)(b)		
9	Statement of Retained Earnings for the Year	118-119		
10	Statements of Cash Flows	120-121		
11	Notes to Financial Statements	122		
	BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debits)			
12	Summary of Utility Plant and Accumulated Provisions for Depreciation, Amortization, and Depletion	200-201		
13	Gas Plant in Service	204-209		
14	Gas Property and Capacity Leased from Others	212		
15	Gas Property and Capacity Leased to Others	213		
16	Gas Plant Held for Future Use	214		
17	Construction Work in Progress-Gas	216		
18	General Description of Construction Overhead Procedure	218		
19	Accumulated Provision for Depreciation of Gas Utility Plant	219		
20	Gas Stored	220		
21	Investments	222-223		
22	Investments in Subsidiary Companies	224-225		
23	Prepayment	230		
24	Extraordinary Property Losses	230		
25	Unrecovered Plant and Regulatory Study Costs	230		
26	Other Regulatory Assets	232		
27	Miscellaneous Deferred Debits	233		
28	Accumulated Deferred Income Taxes	234-235		
	BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
29	Capital Stock	230-251		
30	Capital Stock Subscribed, Capital Stock Liability for Conversion, Premium on Capital Stock, and Installments Received on Capital Stock	252		
31	Other Paid-in Capital	253		
32	Discount on Capital Stock	254		
33	Capital Stock Expense	254		
34	Securities issued or Assumed and Securities Refunded or Retired During the Year	255		
35	Long-Term Debt	256-257		
36	Unamortized Debt Expense, Premium, and Discount on Long-Term Debt	258-259		
37	Unamortized Loss and Gain on Reacquired Debt	260		
38	Reconciliation of Reported Net Income with Taxable Income for Federal Income Taxes	261		

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -125-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

LIST OF SCHEDULES (Natural Gas Company)

Enter in column (d) the terms "none," "not applicable," or "NA" as appropriate, where no information or amounts have been reported for certain pages Omit pages where the responses are "none," "not applicable," or "NA

Line No	Title of Schedule	Reference Page No (b)	Date Revised (c)	Remarks (d)
	BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits) (Continued)			
39	Taxes Accrued, Prepaid, and Charged During Year	262-263		
40	Miscellaneous Current and Accrued Liabilities	268		
41	Other Deferred Credits	269		
42	Accumulated Deferred Income Taxes-Other Property	274-275		
43	Accumulated Deferred Income Taxes-Other	276-277		
44	Other Regulatory Liabilities	278		
	INCOME ACCOUNT SUPPORTING SCHEDULES			
45	Gas Operating Revenues	300-301		
46	Revenues from Transportation of Gas of Others Through Gathering Facilities	302-303		
47	Revenues from Transportation of Gas of Others Through Transmission Facilities	304-305		
48	Revenues from Storage Gas of Others			
49	Other Gas Revenues	306-307		
50	Gas Operation and Maintenance Expenses	308		
51	Exchange and Imbalance Transactions	317-325		
52	Gas Used in Utility Operations	328		
53	Transmission and Compression of Gas by Others	331		
54	Other Gas Supply Expenses	332		
55	Miscellaneous General Expenses-Gas	334		
56	Depreciation, Depletion, and Amortization of Gas Plant	335		
57	Particulars Concerning Certain income Deduction and Interest Charges Accounts	336-338 340		
	COMMON SECTION			
58	Regulatory Commission Expenses			
59	Distribution of Salaries and Wages	350-351		
60	Charges for Outside Professional and Other Consultative Services	354-355 357		
	GAS PLANT STATISTICAL DATA			
61	Compressor Stations	508-509		
62	Gas Storage Projects	512-513		
63	Transmission Lines	514		
64	Transmission System Peak Deliveries	518		
65	Auxiliary Peaking Facilities	519		
66	Gas Account-Natural Gas	520		
67	System Map	522		
68	Footnote Reference	551		
69	Footnote Text	552		
70	Stockholders' Reports (check appropriate box)			

☐ Four copies will be submitted

☐ No annual report to stockholders is prepared

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -126-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	*(Less)* Discount on Capital Stock (213)	254		
10	*(Less)* Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215 1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)	118-119		
13	*(Less)* Reacquired Capital (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	118 (a) (b)		
15	TOTAL Proprietary Capital (Total of line 2 thru 14)			
16	LONG TERM DEBT			
17	Bonds (221)	256-257		
18	*(Less)* Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	258-259		
22	(Less) Unamortized Discount on Long-Term Debt-Dr (226)	258-259		
23	(Less) Current Portion of Long-Term Debt			
24	TOTAL Long-Term Debt (Total of lines 17 thru 23)			
25	OTHER NONCURRENT LIABILITIES			
26	Obligations Under Capital Leases -- Noncurrent (227)			
27	Accumulated Provision for Property Insurance (228 1)			
28	Accumulated provision for Injuries and Damages (228 2)			
29	Accumulated Provision for Pensions and Benefits (228 3)			
30	Accumulated Miscellaneous Operating Provision (228 4)			
31	Accumulated Provision for Rate Refunds (229)			
32	Asset Retirement Obligations (230)			
33	TOTAL Other Noncurrent Liabilities (total of lines 26 thru 32)			

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -127-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (ASSETS AND OTHER DEBITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
34	CURRENT AND ACCRUED LIABILITIES			
35	Current Portion of Long-Term Debt			
36	Notes Payable (231)			
37	Accounts Payable (232)			
38	Notes Payable to Associated Companies (233)			
39	Accounts Payable to Associated Companies (234)			
40	Customer Deposits (235)			
41	Taxes Accrued (236)	262-263		
42	Interest Accrued (237)			
43	Dividends Declared (238)			
44	Matured Long-Term Debt (239)			
45	Matured Interest (240)			
46	Tax Collections Payable (241)			
47	Miscellaneous Current and Accrued Liabilities (242)	268		
48	Obligations Under Capital Leases – Current (243)			
49	Derivative Instrument Liabilities (244)			
50	Derivative Instrument Liabilities - Hedges (245)			
51	TOTAL Current and Accrued Liabilities (Total of lines 35 thru 50)			
52	DEFERRED CREDITS			
53	Customer Advances for Construction (252)			
54	Accumulated Deferred Investment Tax Credits (255)			
55	Deferred Gains from Disposition of Utility Plant (256)			
56	Other Deferred Credits (253)	269		
57	Other Regulatory Liabilities (254)	278		
58	Unamortized Gain on Reacquired Debt (257)	260		
59	Accumulated Deferred Income Taxes (281-283)			
60	TOTAL Deferred Credits (Total of lines 53 thru 59)			
61	TOTAL Liabilities and Other Credits (Total of lines 15, 24, 33, 51, and 60)			

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -128-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR

1 Report amounts for accounts 412 and 413, *Revenue and Expenses from Utility Plant Leased to Others*, in another utility column (i,j) in a similar manner to a utility department Spread the amount(s) over lines 2 thru 24 as appropriate Include these amounts in columns (c) and (d) totals

2 Report amounts in discount 414, *Other Utility Operating Income*, in the same manner as accounts 412 and 413 above

3 Report data for lines 7, 9, and 10 for Natural Gas companies using accounts 404.1, 404.2, 404.3, 407 1, and 407. 2

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	UTILITY OPERATING INCOME			
2	Gas Operating Revenues (400)	300-301		
3	Operating Expenses			
4	Operation Expenses (401)	317-325		
5	Maintenance Expenses (402)	317-325		
6	Depreciation Expenses (403)	336-338		
7	Depreciation Expense for Asset Retirement Costs (403.1)	336-338		
8	Amortization and Depletion of Utility Plant (404-405)	336-338		
9	Amortization of Utility Plant Acu Adjustment (406)	336-338		
10	Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs (407.1)			
11	Amortization of Conversion Expenses (407.2)			
12	Regulatory Debits (407.3)			
13	(Less) Regulatory Credits (407.4)			
14	Taxes Other than Income Taxes (408.1)	262-263		
15	Income Taxes – Federal (409.1)	262-263		
16	Income Taxes – Other (409.1)	262-263		
17	Provision of Deferred Income Taxes (410.1)	234-235		
18	(Less) Provision for Deferred Income Taxes – Credit (411.1)	234-235		
19	Investment Tax Credit Adjustment – Net (411.4)			
20	(Less) Gains from Disposition of Utility Plant (411.6)			
21	Losses from Disposition of Utility Plant (411.7)			
22	(Less) Gains from Disposition of Allowances (411.8)			
23	Losses from Disposition of Allowances (411.9)			
24	Accretion Expense (411.10)			
25	TOTAL Utility Operating Expenses (Total of lines 4 thru 24)			
26	Net Utility Operating Income (Total of lines 2 less 24) (Carry forward to page 116, line 27)			

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
27	Net Utility Operating Income (Carrier forward from page 114)			
28	OTHER INCOME AND DEDUCTIONS			
29	Other Income			
30	Nonutility Operating Income			
31	Revenues form Merchandising, Jobbing and Contract Work (415)			
32	*(Less)* Costs and Expenses of Merchandising, Jobbing & Contract Work (416)			
33	Revenues from Nonutility Operations (417)			
34	*(Less)* Expenses of Nonutility Operations (417.1)			
35	Nonoperating Rental Income			
36	Equity in Earnings of Subsidiary Companies (418.1)	119		
37	Interest and Dividend Income (419)			
38	Allowance for Other Funds Used During Construction (419.1)			
39	Miscellaneous Nonoperating Income (421)			
40	Gain on Disposition of Property (421.1)			
41	TOTAL Other Income (Total of lines 31 thru 40)			
42	Other Income Deductions			
43	Loss on Disposition of Property (421.2)			
44	Miscellaneous Amortization (425)			
45	Miscellaneous Income Deductions (426.1 thru 426.5)	340		
46	TOTAL Other Income Deductions (Total of lines 43 thru 45)	340		
47	Taxes Applicable to Other Income and Deductions			
48	Taxes Other than Income Taxes (406.2)	262-263		
49	Income Taxes -- Federal (409.2)	262-263		
50	Income Taxes -- Other (409.2)	262-263		
51	Provision for Deferred Income Taxes (410.2)	234-235		
52	*(Less)* Provision for Deferred Income Taxes- Credit (411.2)	234-235		
53	Investment Tax Credit Adjustments--Net (411.5)			
54	*(Less)* Investment Tax Credits (420)			
55	TOTAL Taxes on Other Income and Deductions (Total of lines 48-54)			
56	Net Other Income and Deductions (Total of lines 41, 46, and 55)			
57	INTEREST CHARGES			
58	Interest on Long-Term Debt (427)			
59	Amortization of Debt Discount and Expense (428)	258-259		
60	Amortization of Loss on Reacquired Debt (428.1)			
61	*(Less)* Amortization of Premium on Debt-Credit (429)	258-259		
62	*(Less)* Amortization of Gain on Reacquired Debt- Credit (429.1)			
63	Interest on Debt to Associated Companies (430)	340		
64	Other Interest Expense (431)	340		
65	(Less) Allowance for Borrowed Funds Used During Construction-Credit (432)			
66	Net Interest Charges (Total of lines 58 thru 65)			
67	Income Before Extraordinary Items (Total of lines 27, 56 and 66)			
68	EXTRAORDINARY ITEMS			
69	Extraordinary Income (434)			
70	*(Less)* Extraordinary Deductions (435)			
71	Net Extraordinary Items (Total of line 69 less 70)			
72	Income Taxes--Federal and Other (409.3)	262-263		
73	Extraordinary Items after Taxes (Total of line 71 less line 72)			
74	Net Income (Total of lines 67 and 73)			

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106)

1. Report below the original cost of gas plant in service according to the prescribed accounts
2. In addition to Account 101, *Gas Plant in Service (Classified)*, this page and the next include Account 102, Gas Plant Purchased or Sold, Account 103, Experimental Gas Plant Unclassified, and Account 106, Complete Construction Not Classified-Gas
3. Include in column © and (d), as appropriate corrections of additions and retirements for the current or preceding year
4. Include subsequent measurement revisions to the asset retirement costs capitalized in column (e) adjustments
5. Enclose in parenthesis credit adjustments of plant accounts to indicate the negative effect of such accounts
6. Classify Account 106 according to prescribed accounts, on an estimated basis if necessary, and include the entries in column (c) Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b) Like wise, if the respondent has a significant amount of plant retirement which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirement, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision Include also in column (d) reversals of tentative distributions of prior year's unclassified retirement Attach supplemental statement showing the account distributions of these tentative classifications in column (c) and (d),

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
1	INTANGIBLE PLANT		
2	301 Organization		
3	302 Franchises and Consents		
4	303 Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of lines 2 thru 4)		
6	PRODUCTION PLANT		
7	Natural Gas Production and Gathering Plant		
8	325.1 Producing Lands		
9	325.2 Producing Leaseholds		
10	325.3 Gas Rights		
11	325.4 Rights-of-Way		
12	325.5 Other Land and Land Rights		
13	326 Gas Well Structures		
14	327 Field Compressor Station Structures		
15	328 Field Measuring and Regulating Station Equipment		
16	329 Other Structures		
17	330 Producing Gas Wells-Well Construction		
18	331 Producing Gas Wells-Well Equipment		
19	332 Field Lines		
20	333 Field Compressor Station Equipment		
21	334 Field Measuring and Regulating Station Equipment		
22	335 Drilling and Cleaning Equipment		
23	336 Purification Equipment		
24	337 Other Equipment		
25	338 Unsuccessful Exploration and Development Costs		
26	339 Asset Retirement Costs for Natural Gas Production and Gathering Plant		
27	TOTAL Production and Gathering Plant (Enter Total of lines 8 thru 26)		
28	PRODUCTS EXTRACTION PLANT		
29	340 Land and Land Rights		
30	341 Structures and Improvements		
31	342 Extraction and Refining Equipment		
32	343 Pipe Lines		
33	344 Extracted Products Storage Equipment		
34	345 Compressor Equipment		

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -131-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
35	346 Gas Measuring and Regulating Equipment		
36	347 Other Equipment		
37	348 Asset Retirement Costs for Products Extraction Plant		
38	TOTAL Products Extraction Plant (Enter Total of lines 29 thru 37)		
39	TOTAL Natural Gas Production Plant (Enter Total of lines 27 and 38)		
40	Manufactured Gas Production Plant *(Submit Supplementary Statement)*		
41	TOTAL Production Plant (Enter Total of lines 39 and 40)		
42	NATURAL GAS STORAGE AND PROCESSING PLANT		
43	Underground Storage Plant		
44	350.1 Land		
45	350.2 Rights-of-Way		
46	351 Structures and Improvements		
47	352 Wells		
48	352.1 Storage Leaseholds and Rights		
49	352.2 Reservoirs		
50	352.3 Non-recoverable Natural Gas		
51	353 Lines		
52	354 Compressor Station Equipment		
53	355 Measuring and Regulating Equipment		
54	356 Purification Equipment		
55	357 Other Equipment		
56	358 Asset Retirement Costs for Underground Storage Plant		
57	TOTAL Underground Storage Plant (Enter Total of lines 43 thru 56)		
58	359 Other Storage Plant		
59	360 Land and Land Rights		
60	361 Structures and Improvements		
61	362 Gas Holders		
62	363 Purification Equipment		
63	363.1 Liquefaction Equipment		
64	363.2 Vaporizing Equipment		
65	363.2 Compressor Equipment		
66	363.4 Measuring and Regulating Equipment		
67	363.5 Other Equipment		
68	363.6 Asset Retirement Costs for Other Storage Plant		
69	TOTAL Other Storage Plant (Enter Total of lines 58 thru 68)		
70	Base Load Liquefied Natural Gas Terminaling and Processing Plant		
71	364.1 Land and Land Rights		
72	364.2 Structures and Improvements		
73	364.3 LNG Processing Terminal Equipment		
74	364.4 LNG Transportation Equipment		
75	364.5 Measuring and Regulating Equipment		
76	364.6 Compressor Station Equipment		
77	364.7 Communications Equipment		
78	364.8 Other Equipment		
79	364.9 Asset Retirement Costs for Base Load Liquefied Natural Gas Terminaling and Processing Plant		
80	TOTAL Base Load Liquefied Natural Gas Terminaling and Processing Plant (Lines 71 thru 79)		
81	TOTAL Natural Gas Storage and Processing Plant (Total of lines 57, 69 and 80)		
82	TRANSMISSION PLANT		
83	365.1 Land and Land Rights		
84	365.2 Right-of-Way		
85	366 Structures and Improvements		

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -132-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
86	367 Mains		
87	368 Compressor Station Equipment		
88	369 Measuring and Regulating Station Equipment		
89	370 Communication Equipment		
90	371 Other Equipment		
91	372 Asset Retirement Costs for Transmission Plant		
92	TOTAL Transmission Plant (Enter Totals of lines 83 thru 91)		
93	DISTRIBUTION PLANT		
94	374 Land and Land Rights		
95	375 Structures and Improvements		
96	376 Mains		
97	377 Compressor Station Equipment		
98	378 Measuring and Regulating Station Equipment-General		
99	379 Measuring and Regulating Station Equipment-City Gate		
100	380 Services		
101	381 Meters		
102	382 Meter Installations		
103	383 House Regulators		
104	384 House Regulator Installations		
105	385 Industrial Measuring and Regulating Station Equipment		
106	386 Other Property on Customers' Premises		
107	387 Other Equipment		
108	388 Asset Retirement Costs for Distribution Plant		
109	TOTAL Distribution Plant (Enter Total of lines 94 thru 108)		
1110	GENERAL PLANT		
111	389 Land and Land Rights		
112	390 Structures and Improvements		
113	391 Office Furniture and Equipment		
114	392 transportation Equipment		
115	393 Stores Equipment		
116	394 Tools, Shop, and Garage Equipment		
117	395 Laboratory Equipment		
118	396 Power Operated Equipment		
119	397 Communication Equipment		
120	398 Miscellaneous Equipment		
121	Subtotal (Enter Total of lines 111 thru 120)		
122	399 Other Tangible Property		
123	399.1 Asset Retirement Costs for General Plant		
124	TOTAL General Plant (Enter Total of lines 121, 122 and 123)		
125	TOTAL (Accounts 101 and 106)		
126	Gas Plant Purchased (See Instruction 8)		
127	*(Less)* Gas Plant Sold (See Instruction 8)		
128	Experimental Gas Plant Unclassified		
129	TOTAL Gas Plant in Service (Enter Total of lines 125 thru 128)		

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -133-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ACCUMULATED PROVISION FOR DEPRECIATION OF GAS UTILITY PLANT (ACCOUNT 108)

1 Explain in a footnote any important adjustments during year
2 Explain in a footnote any difference between the amount for book cost of plant retired, line 11, column (c), and that reported for gas plant in service, page 204-209, column (d), excluding retirements of nondepreciable property
3 The provisions of Account 108 in the Uniform System of Accounts require that retirements of depreciable plant be recorded when such plant is removed from service If the respondent has a significant amount of plant retired at year end which had not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications
4 Show separately interest credits under a sinking fund or similar method of depreciation accounting
5 At lines 8 and 15, add rows as necessary to report all data Additional rows should be numbered in sequence, e g, 8. 01, 8.02, etc.

Line No	Item (a)	Total (c + d + e) (b)	Gas Plant in Service (c)	Gas Plant Held for Future Use (d)	Gas Plant Leased to Others (e)
	Section A. BALANCES AND CHANGES DURING YEAR				
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Expense of Gas Plant Leased to Others				
6	Transportation Expenses - Clearing				
7	Other Clearing Accounts				
8	Other Clearing (Specify):				
8.01					
9	TOTAL Depreciation Provision For Year (Total of Lines 3 thru 8)				
10	Net Charges for Plant Retired:				
11	Book Cost of Plant Retired				
12	Cost of Removal				
13	Salvage (Credit)				
14	TOTAL Net Charges for Plant Retirements (Total of Lines 11 thru13)				
15	Other Debit or Credit Items (Describe):				
15.01					
16	Book Cost of Asset Retirement Costs				
17	Balance End of Year (Total of lines 1, 9, 14, 15, and16)				
	Section B. BALANCES AT END OF YEAR ACCORDING TO FUNCTIONAL CLASSIFICATIONS				
18	Productions-Manufactured Gas				
19	Production and Gathering -Natural Gas				
20	Products Extraction-Natural Gas				
21	Underground Gas Storage				
22	Other Storage Plant				
23	Base Load LNG Terminating and Processing Plant				
24	Transmission				
25	Distribution				
26	General				
27	TOTAL (Total of lines 18 thru 26)				

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -134-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

DEPRECIATION, DEPLETION, AND AMORTIZATION OF GAS PLANT (ACCOUNTS 403, 403.1, 404 1, 404 2, 404 3, 405) *(Except Amortization of Acquisition Adjustments)*

1 Report in Section A the amounts of depreciation expense depletion and amortization for the accounts indicated and classified according to the plant functional groups shown
2 Report in Section B, column (b) all depreciable or amortizable plant balances to which rates are applied and show a composite total (if more desirable, report by plant account, subaccount or functional classifications other than those pre-printed in column (a) Indicate in a footnote the manner in which column (b) balances are

Section A. Summary of Depreciation, Depletion, and Amortization Charges

Line No	Functional Classification (a)	Depreciation Expense (Account 403) (b)	Depreciation Expense for Asset Retirement Costs (Account 403.1) (c)	Amortization and Depletion of Production Natural Gas Land and Land Rights (Account 404.1) (d)	Amortization of Underground Storage Land and Land Rights (Account 404.2) (e)
1	Intangible plant				
2	Production plant, manufactured gas				
3	Production and gathering plant, natural gas				
4	Products extraction plant				
5	Underground gas storage plant				
6	Other storage plant				
7	Base load LNG terminaling and processing plant				
8	Transmission plant				
9	Distribution plant				
10	General plant				
11	Common plant-gas				
12	TOTAL				

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -135-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

DEPRECIATION, DEPLETION, AND AMORTIZATION OF GAS PLANT (ACCOUNTS 403, 403.1 404 1, 404 2, 404 3, 405) *(Except Amortization of Acquisition Adjustments)* (Continued)

obtained If average balances are used, state the method of averaging used For column (c) report available information for each plant functional classification listed in column (a) If composite depreciation accounting is used, report available information called for in columns (b) and (d) on this basis Where the unit-of-production method is used

to determine depreciation charges, shown in a footnote any revisions made to estimated gas reserves.
3 If provisions for depreciation were made during the year in addition to depreciation provided by application of reported rates, state in a footnote the amounts and nature of the provisions and the plant items to which related.

Section A. Summary of Depreciation, Depletion, and Amortization Charges

Amortization of Other Limited-term Gas Plant (Account 404 3) (f)	Amortization of Other Gas Plant (Account 405) (g)	Total (b to g) (h)	Functional Classification (a)	Line No
			Intangible plant	1
			Production plant, manufactured gas	2
			Production and gathering plant, natural gas	3
			Products extraction plant	4
			Underground gas storage plant	5
			Other storage plant	6
			Base Load LNG terminaling and processing plant	7
			Transmission plant	8
			Distribution plant	9
			General plant	10
			Common plant-gas	11
			TOTAL	12

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -136-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of R eport (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	PROPRIETARY CAPITAL			
2	Common Stock Issued (201)	250-251		
3	Preferred Stock Issued (204)	250-251		
4	Capital Stock Subscribed (202, 205)	252		
5	Stock Liability for Conversion (203, 206)	252		
6	Premium on Capital Stock (207)	252		
7	Other Paid-In Capital (208-211)	253		
8	Installments Received on Capital Stock (212)	252		
9	*(Less)* Discount on Capital Stock (213)	254		
10	*(Less)* Capital Stock Expense (214)	254		
11	Retained Earnings (215, 215 1, 216)	118-119		
12	Unappropriated Undistributed Subsidiary Earnings (216.1)	118-119		
13	*(Less)* Reacquired Capital (217)	250-251		
14	Accumulated Other Comprehensive Income (219)	117		
15	TOTAL Proprietary Capital (Total of line 2 thru 14)			
16	LONG TERM DEBT			
17	Bonds (221)	256-257		
18	*(Less)* Reacquired Bonds (222)	256-257		
19	Advances from Associated Companies (223)	256-257		
20	Other Long-Term Debt (224)	256-257		
21	Unamortized Premium on Long-Term Debt (225)	258-259		
22	(Less) Unamortized Discount on Long-Term Debt-Dr (226)	258-259		
23	(Less) Current Portion of Long-Term Debt			
24	TOTAL Long-Term Debt (Total of lines 17 thru 23)			
25	OTHER NONCURRENT LIABILITIES			
26	Obligations Under Capital Leases – Noncurrent (227)			
27	Accumulated Provision for Property Insurance (228.1)			
28	Accumulated provision for Injuries and Damages (228.2)			
29	Accumulated Provision for Pensions and Benefits (228.3)			
30	Accumulated Miscellaneous Operating Provision (228.4)			
31	Accumulated Provision for Rate Refunds (229)			
32	Asset Retirement Obligations (230)			
33	TOTAL Other Noncurrent Liabilities (Total of lines 26 thru 32)			

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

COMPARATIVE BALANCE SHEET (LIABILITIES AND OTHER CREDITS) (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
34	CURRENT AND ACCRUED LIABILITIES			
35	Current Portion of Long-Term Debt			
36	Notes Payable (231)			
37	Accounts Payable (232)			
38	Notes Payable to Associated Companies (233)			
39	Accounts Payable to Associated Companies (234)			
40	Customer Deposits (235)			
41	Taxes Accrued (236)	262-263		
42	Interest Accrued (237)			
43	Dividends Declared (238)			
44	Matured Long-Term Debt (239)			
45	Matured Interest (240)			
46	Tax Collections Payable (241)			
47	Miscellaneous Current and Accrued Liabilities (242)	268		
48	Obligations Under Capital Leases – Current (243)			
49	Derivative Instrument Liabilities (244)			
50	Derivative Instrument Liabilities - Hedges (245)			
51	TOTAL Current and Accrued Liabilities (Total of lines 35 thru 50)			
52	DEFERRED CREDITS			
53	Customer Advances for Construction (252)			
54	Accumulated Deferred Investment Tax Credits (255)			
55	Deferred Gains from Disposition of Utility Plant (256)			
56	Other Deferred Credits (253)	269		
57	Other Regulatory Liabilities (254)	278		
58	Unamortized Gain on Reacquired Debt (257)	260		
59	Accumulated Deferred Income Taxes (281-283)			
60	TOTAL Deferred Credits (Total of lines 53 thru 59)			
61	TOTAL Liabilities and Other Credits (Total of lines 15, 24, 33, 51, and 60)			

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR

1 Report amounts for accounts 412 and 413, *Revenue and Expenses from Utility Plant Leased to Others*, in another utility column (i,j) in a similar manner to a utility department. Spread the amount(s) over lines 2 thru 26 as appropriate. Include these amounts in columns (c) and (d) totals

2 Report amounts in discount 414, *Other Utility Operating Income*, in the same manner as accounts 412 and 413 above

3 Report data for lines 8, 10, and 11 for Natural Gas companies using accounts 404 1, 404 2, 404.3, 407.1, and 407.2

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
1	UTILITY OPERATING INCOME			
2	Gas Operating Revenues (400)	300-301		
3	Operating Expenses			
4	Operation Expenses (401)	317-325		
5	Maintenance Expenses (402)	317-325		
6	Depreciation Expense (403)	336-338		
7	Depreciation Expense for Asset Retirement Costs (403.1)	336-338		
8	Amortization and Depletion of Utility Plant (404-405)	336-338		
9	Amortization of Utility Plant Acquisition Adjustment (406)	336-338		
10	Amort of Prop Losses, Unrecovered Plant and Reg Study Costs (407.1)			
11	Amortization of Conversion Expenses (407.2)			
12	Regulatory Debits (407.3)			
13	(Less) Regulatory Credits (407.4)			
14	Taxes Other than Income Taxes (408.1)	262-263		
15	Income Taxes – Federal (409.1)	262-263		
16	Income Taxes – Other (409.1)	262-263		
17	Provision of Deferred Income Taxes (410.1)	234-235		
18	(Less) Provision for Deferred Income Taxes – Credit (411.1)	234-235		
19	Investment Tax Credit Adjustment – Net (411.4)			
20	(Less) Gains from Disposition of Utility Plant (411.6)			
21	Losses from Disposition of Utility Plant (411.7)			
22	(Less) Gains from Disposition of Allowances (411.8)			
23	Losses from Disposition of Allowances (411.9)			
24	Accretion Expense (411.10)			
25	TOTAL Utility Operating Expenses (Total of lines 4 thru 24)			
26	Net Utility Operating Income (Total of lines 2 less 25) (Carry forward to page 116, line 27)			

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -139-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR (Continued)

4 Explain in a footnote if the previous year's figures are different from those reported in prior reports

5 If the columns are insufficient for reporting additional utility departments, supply the appropriate account titles, lines 2 to 26, and report the information on page 122 or in a supplemental statement.

Electric Utility Current Yea (in dollars)	Electric Utility Previous Year (in dollars)	Gas Utility Current Year (In dollars)	Gas Utility Current Year (in dollars)	Other Utility Current Tear (in dollars)	Other Utility Previous Year (in dollars)	
						1
						2
						3
						4
						5
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Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -140-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

STATEMENT OF INCOME FOR THE YEAR (Continued)

Line No.	Title of Account (a)	Reference Page Number (b)	Balance at End of Current Year (in dollars) (c)	Balance at End of Previous Year (in dollars) (d)
27	Net Utility Operating Income (Carrier forward from page 114)			
28	OTHER INCOME AND DEDUCTIONS			
29	Other Income			
30	Nonutility Operating Income			
31	Revenues form Merchandising, Jobbing and Contract Work (415)			
32	*(Less)* Costs and Expense of Merchandising, Job & Contract Work (415.1)			
33	Revenues from Nonutility Operations (417)			
34	*(Less)* Expenses of Nonutility Operations (417.1)			
35	Nonoperating Rental Income			
36	Equity in Earnings of Subsidiary Companies (418.1)	119		
37	Interest and Dividend Income (419)			
38	Allowance for Other Funds Used During Construction (419.1)			
39	Miscellaneous Nonoperating Income (421)			
40	Gain on Disposition of Property (421.1)			
41	TOTAL Other Income (Total of lines 29 thru 40)			
42	Other Income Deductions			
43	Loss on Disposition of Property (421 2)			
44	Miscellaneous Amortization (425)			
45	Miscellaneous Income Deductions (426.1 thru 426.5)	340		
46	TOTAL Other Income Deductions (Total of lines 43 thru 45)	340		
47	Taxes Applicable to Other Income and Deductions			
48	Taxes Other than Income Taxes (406.2)	262-263		
49	Income Taxes -- Federal (409.2)	262-263		
50	Income Taxes -- Other (409.2)	262-263		
51	Provision for Deferred Income Taxes (410.2)	234-235		
52	*(Less)* Provision for Deferred Income Taxes-Credit (410. 2)	234-235		
53	Investment Tax Credit Adjustments--Net (411.5)			
54	*(Less)* Investment Tax Credits (420)			
55	TOTAL Taxes on Other Income and Deductions (Total of lines 48-54)			
56	Net Other Income and Deductions (Total of lines 41, 46, and 55)			
57	INTEREST CHARGES			
58	Interest on Long-Term Debt (427)			
59	Amortization of Debt Disc and Expense (428)	258-259		
60	Amortization of Loss on Reacquired Debt (428.1)			
61	*(Less)* Amortization of Premium on Debt-Credit (429)	258-259		
62	*(Less)* Amortization of Gain on Reacquired Debt-Credit (429.1)			
63	Interest on Debt to Associated Companies (430)	340		
64	Other Interest Expense (431)	340		
65	(Less) Allowance for Borrowed Funds Used During Construction- Credit			
66	Net Interest Charges (Total of lines 58 thru 65)			
67	Income Before Extraordinary Items (Total of lines 27, 56 and 66)			
68	EXTRAORDINARY ITEMS			
69	Extraordinary Income (434)			
70	*(Less)* Extraordinary Deductions (435)			
71	Net Extraordinary Items (Total of line 69 less 70)			
72	Income Taxes--Federal and Other (409.3)	262-263		
73	Extraordinary Items after Taxes (Total of line 71 less line 72)			
74	Net Income (Total of lines 67and 73)			

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106)

1 Report below the original cost of gas plant in service according to the prescribed accounts.
2 In addition to Account 101, *Gas Plant in Service (Classified)*, this page and the next include Account 102, Gas Plant Purchased or Sold, Account 103, Experimental Gas Plant Unclassified, and Account 106, Completed Construction Not Classified-Gas.
3 Include in column (c) and (d), as appropriate corrections of additions and retirements for the current or preceding year
4. For subsequent measurement revisions to initial asset retirement costs capitalized include any net increase or net decrease amount by primary plant account for the asset retirement costs in column (c) additions.
4 Enclose in parenthesis credit adjustments of plant accounts to indicate the negative effect of such accounts

5 Classify Account 106 according to prescribed accounts, on an estimated basis if necessary, and include the entries in column (c) Also to be included in column (c) are entries for reversals of tentative distributions of prior year reported in column (b) Like wise, if the respondent has a significant amount of plant retirement which have not been classified to primary accounts at the end of the year, include in column (d) a tentative distribution of such retirement, on an estimated basis, with appropriate contra entry to the account for accumulated depreciation provision Include also in column (d) reversals of tentative distributions of prior year's unclassified retirement Attach supplemental statement showing the account distributions of these tentative classifications in column (c) and (d),

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
1	INTANGIBLE PLANT		
2	301 Organization		
3	302 Franchises and Consents		
4	303 Miscellaneous Intangible Plant		
5	TOTAL Intangible Plant (Enter Total of lines 2 thru 4)		
6	PRODUCTION PLANT		
7	Natural Gas Production and Gathering Plant		
8	325.1 Producing Lands		
9	325.2 Producing Leaseholds		
10	325.3 Gas Rights		
11	325.4 Rights-of-Way		
12	325.5 Other Land and Land Rights		
13	326 Gas Well Structures		
14	327 Field Compressor Station Structures		
15	328 Field Measuring and Regulating Station Equipment		
16	329 Other Structures		
17	330 Producing Gas Wells-Well Construction		
18	331 Producing Gas Wells-Well Equipment		
19	332 Field Lines		
20	333 Field Compressor Station Equipment		
21	334 Field Measuring and Regulating Station Equipment		
22	335 Drilling and Cleaning Equipment		
23	336 Purification Equipment		
24	337 Other Equipment		
25	338 Unsuccessful Exploration and Development Costs		
26	339 Asset Retirement Costs for Natural Gas Production & Gathering Plant		
27	TOTAL Production and Gathering Plant (Enter Total of lines 8 thru 26)		
28	PRODUCTS EXTRACTION PLANT		
29	340 Land and Land Rights		
30	341 Structures and Improvements		
31	342 Extraction and Refining Equipment		
32	343 Pipe Lines		
33	344 Extracted Products Storage Equipment		
34	345 Compressor Equipment		

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106 (Continued)

including the reversals of the prior years tentative account distributions of these amounts Careful observance of the above instructions and the texts of Account 101 and 106 will avoid serious omissions of respondent's reported amount for plant actually in service at end of year.
7 Show in column (f) reclassifications or transfers within utility plant accounts Include also in column (f) the additions or reductions of primary account classifications arising from distribution of amounts initially recorded in Account 102. In showing the clearance of Account 102, include in column (e) the amounts with respect to accumulated provision for depreciation, acquisition adjustments, etc.,

And show in column (f) only the offset to the debits or credits to primary account classifications
8. For Account 399, state the nature and use of plant included in this account and if substantial in amount submit a supplementary statement showing subaccount classification of such plant conforming to the requirements of these pages
9. For each amount comprising the reported balance and changes in Account 102, state the property purchased or sold, name of vendor or purchaser, and date of transaction If proposed journal entries have been filed with the commission as required by the Uniform System of Accounts, give date of such filing.

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No
				1
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				3
				4
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Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -143-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
35	346 Gas Measuring and Regulating Equipment		
36	347 Other Equipment		
37	348 Asset Retirement Costs for Products Extraction Plant		
38	TOTAL Products Extraction Plant (Enter Total of lines 29 thru 37)		
39	TOTAL Natural Gas Production Plant (Enter Total of lines 27 and 38)		
40	Manufactured Gas Production Plant *(Submit Supplementary Statement)*		
41	TOTAL Production Plant (Enter Total of lines 39 and 40)		
42	NATURAL GAS STORAGE AND PROCESSING PLANT		
43	Underground Storage Plant		
44	350.1 Land		
45	350.2 Rights-of-Way		
46	351 Structures and Improvements		
47	352 Wells		
48	352.1 Storage Leaseholds and Rights		
49	352.2 Reservoirs		
50	352.3 Non-recoverable Natural Gas		
51	353 Lines		
52	354 Compressor Station Equipment		
53	355 Measuring and Regulating Equipment		
54	356 Purification Equipment		
55	357 Other Equipment		
56	358 Asset Retirement Costs for Underground Storage Plant		
57	TOTAL Underground Storage Plant (Enter Total of lines 44 thru 56)		
58	Other Storage Plant		
59	360 Land and Land Rights		
60	361 Structures and Improvements		
61	362 Gas Holders		
62	363 Purification Equipment		
63	363.1 Liquefaction Equipment		
64	363.2 Vaporizing Equipment		
65	363.2 Compressor Equipment		
66	363.4 Measuring and Regulating Equipment		
67	363.5 Other Equipment		
68	363.6 Asset Retirement Costs for Other Storage Plant		
69	TOTAL Other Storage Plant (Enter Total of lines 59 thru 68)		
70	Base Load Liquefied Natural Gas Terminating and Processing Plant		
71	364.1 Land and Land Rights		
72	364.2 Structures and Improvements		
73	364.3 LNG Processing Terminal Equipment		
74	364.4 LNG Transportation Equipment		
75	364.5 Measuring and Regulating Equipment		
76	364.6 Compressor Station Equipment		
77	364.7 Communications Equipment		
78	364.8 Other Equipment		
79	364.9 Asset Retirement Costs for Base Load Liquefied Natural Gas Terminating and Processing Plant		
80	TOTAL Base Load Liquefied Natural Gas, Terminating and Processing Plant (Lines 71 thru 79)		
81	TOTAL Natural Gas Storage and Processing Plant (Total of lines 57, 69 and 80)		
82	TRANSMISSION PLANT		
83	365.1 Land and Land Rights		
84	365.2 Rights-of-Way		
85	366 Structures and Improvements		

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -144-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No
				35
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				40
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Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -145-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106) (Continued)

Line No	Account (a)	Balance at Beginning of Year (b)	Additions (c)
86	367 Mains		
87	368 Compressor Station Equipment		
88	369 Measuring and Regulating Station Equipment		
89	370 Communication Equipment		
90	371 Other Equipment		
91	372 Asset Retirement Costs for Transmission Plant		
92	TOTAL Transmission Plant (Enter Totals of lines 83 thru 91)		
93	DISTRIBUTION PLANT		
94	374 Land and Land Rights		
95	375 Structures and Improvements		
96	376 Mains		
97	377 Compressor Station Equipment		
98	378 Measuring and Regulating Station Equipment-General		
99	379 Measuring and Regulating Station Equipment-City Gate		
100	380 Services		
101	381 Meters		
102	382 Meter Installations		
103	383 House Regulators		
104	384 House Regulator Installations		
105	385 Industrial Measuring and Regulating Station Equipment		
106	386 Other Property on Customers' Premises		
107	387 Other Equipment		
108	388 Asset Retirement Costs for Distribution Plant		
109	TOTAL Distribution Plant (Enter Total of lines 94 thru 108)		
110	GENERAL PLANT		
111	389 Land and Land Rights		
112	390 Structures and Improvements		
113	391 Office Furniture and Equipment		
114	392 transportation Equipment		
115	393 Stores Equipment		
116	394 Tools, Shop, and Garage Equipment		
117	395 Laboratory Equipment		
118	396 Power Operated Equipment		
119	397 Communication Equipment		
120	398 Miscellaneous Equipment		
121	Subtotal (Enter Total of lines 111 thru 120)		
122	399 Other Tangible Property		
123	399.1 Asset Retirement Costs for General Plant		
124	TOTAL General Plant (Enter Total of lines 121, 122 and 123)		
125	TOTAL (Accounts 101 and 106)		
126	Gas Plant Purchased (See Instruction 8)		
127	*(Less)* Gas Plant Sold (See Instruction 8)		
128	Experimental Gas Plant Unclassified		
129	TOTAL Gas Plant in Service (Enter Total of lines 125 thru 128)		

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -146-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

GAS PLANT IN SERVICE (ACCOUNTS 101, 102, 103, AND 106 (Continued)

Retirements (d)	Adjustments (e)	Transfers (f)	Balance at End of Year (g)	Line No
				86
				87
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				129

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -147-

Name of Respondent	This Report is: ☐ An Original ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec 31, ____

ACCUMULATED PROVISION FOR DEPRECIATION OF GAS UTILITY PLANT (ACCOUNT 108)

1 Explain in a footnote any important adjustments during year 2 Explain in a footnote any difference between the amount for book cost of plant retired, line 11, column (c), and that reported for gas plant in service, page 204-209, column (d), excluding retirements of nondepreciable property. 3 The provisions of Account 108 in the Uniform System of Accounts require that retirements of depreciable plant be recorded when such plant is removed from service If the respondent has a significant amount of plant retired at year end which had not been recorded and/or classified to the various reserve functional classifications, make preliminary closing entries to tentatively functionalize the book cost of the plant retired In addition, include all costs included in retirement work in progress at year end in the appropriate functional classifications 4 Show separately interest credits under a sinking fund or similar method of depreciation accounting 5 At lines 8 and 15, add rows as necessary to report all data Additional rows should be numbered in sequence, e g, 8.01, 8.02, etc.

Line No	Item (a)	Total (c + d + e) (b)	Gas Plant in Service (c)	Gas Plant Held for Future Use (d)	Gas Plant Leased to Others (e)
	Section A. BALANCES AND CHANGES DURING YEAR				
1	Balance Beginning of Year				
2	Depreciation Provisions for Year, Charged to				
3	(403) Depreciation Expense				
4	(403.1) Depreciation Expense for Asset Retirement Costs				
5	(413) Expense of Gas Plant Leased to Others				
6	Transportation Expenses - Clearing				
7	Other Clearing Accounts				
8	Other Clearing (Specify):				
8.01					
9	TOTAL Depreciation Provision For Year (Total of lines 3 thru 7)				
10	Net Charges for Plant Retired:				
11	Book Cost of Plant Retired				
12	Cost of Removal				
13	Salvage (Credit)				
14	TOTAL Net Charges for Plant Ret. (Total of lines 11 thru 13)				
15	Other Debit or Credit Items (Describe):				
15.01					
16	Book Cost of Asset Retirement Costs Retired				
17	Balance End of Year (Total of lines 1, 9, 14, 15 and 16)				
	Section B. BALANCES AT END OF YEAR ACCORDING TO FUNCTIONAL CLASSIFICATIONS				
18	Productions-Manufactured Gas				
19	Production and Gathering -Natural Gas				
20	Products Extraction-Natural Gas				
21	Underground Gas Storage				
22	Other Storage Plant				
23	Base Load LNG Terminating and Processing Plant				
24	Transmission				
25	Distribution				
26	General				
27	TOTAL (Total of lines 18 thru 26)				

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -148-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

LIST OF SCHEDULES

Enter in column (d) the terms "none," "not applicable," or "NA," as appropriate, where no information or amounts have been reported for certain pages. Omit pages where the responses are "none," "not applicable," or "NA."

Title of Schedule (a)	Reference Page No. (b)	Date Revised (c)	Remarks (d)
GENERAL CORPORATE INFORMATION AND FINANCIAL STATEMENTS			
General Information	101	ED 12-91	
Control Over Respondent	102	REV 12-95	
Companies Controlled by Respondent	103	NEW 12-95	
Principal General Officers	104	ED 12-91	
Directors	105	REV 12-95	
Important Changes During the Year	108-109	REV 12-95	
Comparative Balance Sheet Statement	110-113	REV 12-02	
Income Statement	114	REV 12-02	
Statement of Accumulated Comprehensive Income and Hedging Activities	115 (a) (b)	NEW 12-02	
Appropriated Retained Income	118	REV 12-95	
Unappropriated Retained Income Statement	119	REV 12-95	
Dividend Appropriations of Retained Income	119	REV 12-95	
Statement of Cash Flows	120-121	REV 12-95	
Notes to Financial Statements	122-123	REV 12-95	
BALANCE SHEET SUPPORTING SCHEDULES (Assets and Other Debts)			
Receivables From Affiliated Companies	200	REV 12-00	
General Instructions Concerning Schedules 202 thru 205	201	REV 12-95	
Investments in Affiliated Companies	202-203	ED 12-91	
Investments in Common Stocks of Affiliated Companies	204-205	ED 12-91	
Companies Controlled Directly by Respondent Other Than Through Title to Securities	204-205	ED 12-02	
Instructions for Schedules 212 Thru 217	211	REV 12-00	
Carrier Property	212-213	REV 12-02	
Undivided Joint Interest Property	214-215	REV 12-02	
Accrued Depreciation-Carrier Property	216	REV 12-02	
Accrued Depreciation-Undivided Joint Interest Property	217	REV 12-02	
Amortization Base and Reserve	218-219	REV 12-02	
Noncarrier Property	220	REV 12-00	
Other Deferred Charges	221	REV 12-00	
BALANCE SHEET SUPPORTING SCHEDULES (Liabilities and Other Credits)			
Payables to Affiliated Companies	225	REV 12-00	
Long-Term Debt	226-227	ED 12-00	
Analysis of Federal Income and Other Taxes Deferred	230-231	REV 12-00	
Capital Stock	250-251	REV 12-95	
Capital Stock Changes During the Year	252-253	ED 12-91	
Additional Paid-in Capital	254	ED 12-87	

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

COMPARATIVE BALANCE SHEET STATEMENT - LIABILITIES (Continued)

For instructions covering this schedule, see the text and instructions pertaining to Balance Sheet Accounts in the USofA. The entries in this balance sheet should be consistent with those in the supporting schedules on the pages indicated.

Line No.	Item (a)	Reference Page No. (b)	Balance at End of Current Year (In dollars) (c)	Balance at End of Previous Year (In dollars) (d)
	CURRENT LIABILITIES			
47	Notes Payable (50)			
48	Payables to Affiliated Companies (51)			
49	Accounts Payable (52)			
50	Salaries and Wages Payable (53)			
51	Interest Payable (54)			
52	Dividends Payable (55)			
53	Taxes Payable (56)			
54	Long - Term Debt - Payable Within One Year (57)	226-227		
55	Other Current Liabilities (58)			
56	Deferred Income Tax Liabilities (59)	230-231		
57	TOTAL Current Liabilities *(Total of lines 47 thru 56)*			
	NONCURRENT LIABILITIES			
58	Long-Term Debt - Payable After One Year (60)	226-227		
59	Unamortized Premium on Long-Term Debt (61)			
60	(Less) Unamortized Discount on Long-Term Debt-Dr. (62)			
61	Other Noncurrent Liabilities (63)			
62	Accumulated Deferred Income Tax Liabilities (64)	230-231		
63	Derivative Instrument Liabilities (65)			
64	Derivative Instrument Liabilities - Hedges (66)			
65	Asset Retirement Obligations (67)			
66	TOTAL Noncurrent Liabilities *(Total of lines 58 thru 65)*			
67	TOTAL Liabilities *(Total of lines 57 and 66)*			
	STOCKHOLDERS' EQUITY			
68	Capital Stock (70)	250-251		
69	Premiums on Capital Stock (71)			
70	Capital Stock Subscriptions (72)			
71	Additional Paid-In Capital (73)	254		
72	Appropriated Retained Income (74)	118		
73	Unappropriated Retained Income (75)	119		
74	(Less) Unrealized Loss on Noncarrier Marketable Equity-Securities (75.5)			
75	(Less) Treasury Stock (76)			
76	TOTAL Stockholders' Equity *(Total of lines 68 thru 75)*			
77	TOTAL Liabilities and Stockholders' Equity (*Total of lines 67 and 76)*			

INSTRUCTIONS FOR SCHEDULES 212-213

1.) Give an analysis of changes during the year in Account No. 30, *Carrier Property*, by carrier property accounts, excluding investments in undivided joint interest property reported on pages 214 and 215. The total carrier property reported on page 213 (column i, line 44) and the total undivided joint interest property reported on all pages 215 (column i, line 44) should represent all carrier property owned by the reporting entity at year end.

2.) Enter in column (c) the cost of newly constructed property, additions, and improvements made to existing property. Include amounts distributed to carrier property accounts during the year which were previously charged to Account No. 187, *Construction Work in Progress*. In column (d) enter expenditures for existing pipeline property purchased or otherwise acquired. Enter in column (e) - property sold, abandoned, or otherwise retired during the year. This will generally be a positive number, so that the calculation in column (f) works properly.

3.) If pipeline operating property was acquired from or sold to some other company during the year, footnote the acquisition or sale if it exceeded $250,000. Include the following in the footnote: the name of the company the property was acquired from or sold to, the mileage acquired or sold, and the date of acquisition or sale. Include termini, the original cost of property acquired from an affiliate or other common carrier (see Instruction 3-1, Property acquired, Instructions for Carrier Property Accounts in Uniform System of Accounts), and the cost of the property to the respondent. Also give the amount debited or credited to each company account representing such property acquired or disposed of.

4.) Enter in column (g) for each account the net of all other accounting adjustments, transfers, and clearances applicable to prior years' accounting.

5.) Explain fully each adjustment, clearance, or transfer in excess of $500,000 in a footnote. Explain transfers to or from Account No. 34, *Noncarrier Property*, in Schedule 219.

6.) Indicate in parenthesis any entry in columns (f), (g), or (h) which represents an excess of credits over debits.

INSTRUCTIONS FOR SCHEDULES 214-215

1.) Give an analysis of changes during the year in Account No. 30, *Carrier Property*, by carrier property accounts, for investments in undivided joint interest property. The respondent will only report its portion of the carrier property of any undivided joint interest pipeline in which it has an interest. If the respondent owns an interest in multiple undivided joint interest pipelines, prepare and submit a separate schedule 214-215 for each undivided joint interest pipeline in which it has an interest. If multiple schedules 214-215 are submitted, number all schedules subsequent to the first with a number and letter page designator (For example ... 214, 215; 214a, 215a; 214b, 215b; etc...).

2.) Enter in column (c) the cost of newly constructed property, additions, and improvements made to existing property. Include amounts distributed to carrier property accounts during the year which were previously charged to Account No. 187*Construction Work in Progress*. In column (d) enter expenditures for existing pipeline property purchased or otherwise acquired. Enter in column (e) property sold, abandoned, or otherwise retired during the year. This will generally be a positive number so that the calculation in column (f) works properly.

3.) If pipeline operating property was acquired from or sold to some other company during the year, footnote the acquisition or sale if it exceeded $250,000. Include the following in the footnote: the name of the company the property was acquired from or sold to, the mileage acquired or sold, and the date of acquisition or sale. Include termini, the original cost of property acquired from an affiliate or other common carrier (see Instruction 3-1, Property acquired, Instructions for Carrier Property Accounts in Uniform System of Accounts), and the cost of the property to the respondent. Also give the amount debited or credited to each company account representing such property acquired or disposed of.

4.) Enter in column (g) for each account the net of all other accounting adjustments, transfers, and clearances applicable to prior years' accounting.

5.) Explain fully each adjustment, clearance, or transfer in excess of $500,000 in a footnote. Explain transfers to or from Account No. 34, *Noncarrier Property*, in Schedule 219.

6.) Indicate in parenthesis any entry in columns (f), (g), or (h) which represents an excess of credits over debits.

INSTRUCTIONS FOR SCHEDULES 216-217

1.) On schedule 216, give an analysis of changes during the year in Account No. 31, *Accrued Depreciation - Carrier Property*, by carrier property accounts, excluding depreciation on undivided joint interest property reported on page 217.

On schedule 217, give an analysis of changes during the year in Account No. 31, *Accrued Depreciation - Carrier Property*, by carrier property accounts for property owned as part of an undivided joint interest pipeline. If the respondent owns an interest in multiple undivided joint interest pipelines, prepare and submit a separate schedule 217 for each undivided joint interest pipeline in which it has an interest. If multiple schedules 217 are submitted, number all schedules subsequent to the first with a number and letter page designator (For example ... 217, 217a, 217b, etc...).

2.) In column (c), enter debits by carrier property account to Account No. 540, *Depreciation and Amortization*, and 541, *Depreciation Expense for Asset Retirement Costs* , during the year.

3.) In column (d), enter all debits to Account No. 31, *Accrued Depreciation - Carrier Property*, during the year resulting from the retirement of carrier property.

4.) In column (e), enter the net of any other debits and credits made to Account No. 31, *Accrued Depreciation - Carrier Property*, during the year.

5.) If composite annual depreciation rates are prescribed, enter those in effect at the end of the year in column (g). If component rates are prescribed, the composite rates entered in column (g) should be computed from the charges developed for December by using the prescribed component rates. Whether component or composite rates are prescribed, the entries on lines 17, 34, 42, and 43 of column (g) should be computed from December depreciation charges.

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -151-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

CARRIER PROPERTY

Line No.	Account (a)	Balance at Beginning of Year (In dollars) (b)	PROPERTY CHANGES DURING THE YEAR (In dollars) Expenditures for New Construction, Additions, and Improvements (c)	Expenditures for Existing Property Purchased or Otherwise Acquired (d)
	GATHERING LINES			
1	Land (101)			
2	Right of Way (102)			
3	Line Pipe (103)			
4	Line Pipe Fittings (104)			
5	Pipeline Construction (105)			
6	Buildings (106)			
7	Boilers (107)			
8	Pumping Equipment (108)			
9	Machine Tools and Machinery (109)			
10	Other Station Equipment (110)			
11	Oil Tanks (111)			
12	Delivery Facilities (112)			
13	Communication Systems (113)			
14	Office Furniture and Equipment (114)			
15	Vehicles and Other Work Equipment (115)			
16	Other Property (116)			
17	Asset Retirement Costs for Gathering Lines (117)			
18	TOTAL *(Lines 1 thru 17)*			
	TRUNK LINES			
19	Land (151)			
20	Right of Way (152)			
21	Line Pipe (153)			
22	Line Pipe Fittings (154)			
23	Pipeline Construction (155)			
24	Buildings (156)			
25	Boilers (157)			
26	Pumping Equipment (158)			
27	Machine Tools and Machinery (159)			
28	Other Station Equipment (160)			
29	Oil Tanks (161)			
30	Delivery Facilities (162)			
31	Communication Systems (163)			
32	Office Furniture and Equipment (164)			
33	Vehicles and Other Work Equipment (165)			
34	Other Property (166)			
35	Asset Retirement Costs for Trunk Lines (167)			
36	TOTAL *(Lines 19 thru 35)*			
	GENERAL			
37	Land (171)			
38	Buildings (176)			
39	Machine Tools and Machinery (179)			
40	Communication Systems (183)			
41	Office Furniture and Equipment (184)			
42	Vehicles and Other Work Equipment (185)			
43	Other Property (186)			
44	Asset Retirement Costs for General Property (186.1)			
45	Construction Work in Progress (187)			
46	TOTAL (Lines 37 thru 45)			
47	GRAND TOTAL (Lines 18, 36 and 46)			

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -152-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

CARRIER PROPERTY (Continued)

PROPERTY CHANGES DURING					
Property Sold, Abandoned, or Otherwise Retired During the Year (e)	Net (c + d - e) (f)	Other Adjustments, Transfers and Clearances (In dollars) (g)	Increase or Decrease During the Year (f ± g) (In dollars) (h)	Balance at End of Year (b ± h) (In dollars) (i)	Line No.
					1
					2
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					7
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Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -153-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

UNDIVIDED JOINT INTEREST PROPERTY

Name of Undivided Joint Interest Pipeline:

Line No.	Account (a)	Balance at Beginning of Year (in dollars) (b)	PROPERTY CHANGES DURING THE YEAR (In dollars) Expenditures for New Construction, Additions, and Improvements (c)	Expenditures for Existing Property Purchased or Otherwise Acquired (d)
	GATHERING LINES			
1	Land (101)			
2	Right of Way (102)			
3	Line Pipe (103)			
4	Line Pipe Fittings (104)			
5	Pipeline Construction (105)			
6	Buildings (106)			
7	Boilers (107)			
8	Pumping Equipment (108)			
9	Machine Tools and Machinery (109)			
10	Other Station Equipment (110)			
11	Oil Tanks (111)			
12	Delivery Facilities (112)			
13	Communication Systems (113)			
14	Office Furniture and Equipment (114)			
15	Vehicles and Other Work Equipment (115)			
16	Other Property (116)			
17	Asset Retirement Costs for Gathering Lines (117)			
18	TOTAL *(Lines 1 thru 17)*			
	TRUNK LINES			
19	Land (151)			
20	Right of Way (152)			
21	Line Pipe (153)			
22	Line Pipe Fittings (154)			
23	Pipeline Construction (155)			
24	Buildings (156)			
25	Boilers (157)			
26	Pumping Equipment (158)			
27	Machine Tools and Machinery (159)			
28	Other Station Equipment (160)			
29	Oil Tanks (161)			
30	Delivery Facilities (162)			
31	Communication Systems (163)			
32	Office Furniture and Equipment (164)			
33	Vehicles and Other Work Equipment (165)			
34	Other Property (166)			
35	Asset Retirement Costs for Trunk Lines (167)			
36	TOTALS *(Lines 19 thru 35)*			
	GENERAL			
37	Land (171)			
38	Buildings (176)			
39	Machine Tools and Machinery (179)			
40	Communication Systems (183)			
41	Office Furniture and Equipment (184)			
42	Vehicles and Other Work Equipment (185)			
43	Other Property (186)			
44	Asset Retirement Costs for General Property (186.1)			
45	Construction Work in Progress (187)			
46	TOTAL *(Lines 37 thru 45)*			
47	GRAND TOTAL *(Lines 18, 36, and 46)*			

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -154-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

UNDIVIDED JOINT INTEREST PROPERTY (Continued)

PROPERTY CHANGES DURING THE YEAR (In dollars) Property Sold, Abandoned, or Otherwise Retired During the Year (e)	Net (c+d-e) (f)	Other Adjustments, Transfers, and Clearances (In dollars) (g)	Increase or Decrease During the Year (f ± g) (In dollars) (h)	Balance at End of Year (b ± h) (In dollars) (i)	Line No.
					1
					2
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Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -155-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

ACCRUED DEPRECIATION - CARRIER PROPERTY
(EXCLUSIVE OF DEPRECIATION ON UNDIVIDED JOINT INTEREST PROPERTY REPORTED IN SCHEDULE 217)

Give particulars (details) of the credits and debits to Account No. 31, *Accrued Depreciation - Carrier Property*, during the year.

Line No.	Account (a)	Balance at Beginning of Year (In dollars) (b)	Debits to Accounts No. 540 and 541 of USofA (In dollars) (c)	Net Debit From Retirement of Carrier Property (In dollars) (d)	Other Debits and Credits-Net (In dollars) (e)	Balance at End of Year (b + c + d + e) (In dollars) (f)	Annual Composite/ Component Rates (In percent) (g)
	GATHERING LINES						
1	Right of Way (102)						
2	Line Pipe (103)						
3	Line Pipe Fittings (104)						
4	Pipeline Construction (105)						
5	Buildings (106)						
6	Boilers (107)						
7	Pumping Equipment (108)						
8	Machine Tools and Machinery (109)						
9	Other Station Equipment (110)						
10	Oil Tanks (111)						
11	Delivery Facilities (112)						
12	Communication Systems (113)						
13	Office Furniture and Equip (114)						
14	Vehicles and Other Work Equip (115)						
15	Other Property (116)						
16	Asset Retirement Costs for Gathering Lines (117)						
17	TOTAL *(Lines 1 thru 16)*						
	TRUNK LINES						
18	Right of Way (152)						
19	Line Pipe (153)						
20	Line Pipe Fittings (154)						
21	Pipeline Construction (155)						
22	Buildings (156)						
23	Boilers (157)						
24	Pumping Equipment (158)						
25	Machine Tools and Machinery (159)						
26	Other Station Equipment (160)						
27	Oil Tanks (161)						
28	Delivery Facilities (162)						
29	Communication Systems (163)						
30	Office Furniture and Equip (164)						
31	Vehicles and Other Work Equip (165)						
32	Other Property (166)						
33	Asset Retirement Costs for Trunk Lines (167)						
34	TOTAL *(Lines 18 thru 33)*						
	GENERAL						
35	Buildings (176)						
36	Machine Tools and Machinery (179)						
37	Communication Systems (183)						
38	Office Furniture and Equip (184)						
39	Vehicles and Other Work Equip (185)						
40	Other Property (186)						
41	Asset Retirement Costs for General Property (186.1)						
42	TOTAL *(Lines 35 thru 41)*						
43	GRAND TOTAL *(Lines 17, 34, 42)*						

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -156-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

ACCRUED DEPRECIATION - UNDIVIDED JOINT INTEREST PROPERTY

Give particulars (details) of the credits and debits to Account No. 31, *Accrued Depreciation - Carrier Property*, during the year.

Name of Undivided Joint Interest Pipeline:

Line No.	Account (a)	Balance at Beginning of Year (In dollars) (b)	Debits to Accounts No. 540 and 541 of USofA (In dollars) (c)	Net Debit From Retirement of Carrier Property (In dollars) (d)	Other Debits and Credits-Net (In dollars) (e)	Balance at End of Year (b + c + d + e) (In dollars) (f)	Annual Composite/ Component Rates (In percent) (g)
	GATHERING LINES						
1	Right of Way (102)						
2	Line Pipe (103)						
3	Line Pipe Fittings (104)						
4	Pipeline Construction (105)						
5	Buildings (106)						
6	Boilers (107)						
7	Pumping Equipment (108)						
8	Machine Tools and Machinery (109)						
9	Other Station Equipment (110)						
10	Oil Tanks (111)						
11	Delivery Facilities (112)						
12	Communication Systems (113)						
13	Office Furniture and Equip. (114)						
14	Vehicles and Other Work Equip. (115)						
15	Other Property (116)						
16	Asset Retirement Costs for Gathering Lines (117)						
17	TOTAL *(Lines 1 thru 16)*						
	TRUNK LINES						
18	Right of Way (152)						
19	Line Pipe (153)						
20	Line Pipe Fittings (154)						
21	Pipeline Construction (155)						
22	Buildings (156)						
23	Boilers (157)						
24	Pumping Equipment (158)						
25	Machine Tools and Machinery (159)						
26	Other Station Equipment (160)						
27	Oil Tanks (161)						
28	Delivery Facilities (162)						
29	Communication Systems (163)						
30	Office Furniture and Equip. (164)						
31	Vehicles and Other Work Equip. (165)						
32	Other Property (166)						
33	Asset Retirement Costs for Trunk Lines (167)						
34	TOTAL (Lines 18 thru 33)						
	GENERAL						
35	Buildings (176)						
36	Machine Tools and Machinery (179)						
37	Communication Systems (183)						
38	Office Furniture and Equip. (184)						
39	Vehicles and Other Work Equip. (185)						
40	Other Property (186)						
41	Asset Retirement Costs for General Property (186.1)						
42	TOTAL (Lines 35 thru 41)						
43	GRAND TOTAL *(Lines 17, 34, 42)*						

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -157-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

AMORTIZATION BASE AND RESERVE

1.) Enter in columns (b) thru (e) the cost of pipeline property used as the base in computing amortization charges included in Account 540, *Depreciation and Amortization*, and Account 541, *Depreciation Expense for Asset Retirement Costs* of the accounting company.
2.) Enter in columns (f) thru (i) the balances at the beginning and end of the year and the total credits and debits during the year in Account No. 32, *Accrued Amortization - Carrier Property*.
3.) The information requested for columns (b) thru (i) may be shown by projects or for totals only.
4.) If reporting by project, briefly describe in a footnote each project amounting to $100,000 or more. Reference the kind of property reported; do not include location. Items less than $100,000 may be combined in a single entry titled Minor items, each less than $100,000.
5.) If the amounts in column (g) do not correspond to the amounts actually charged to Account No. 540 and/or 541, explain such differences in a footnote.
6.) Explain in a footnote adjustments included in column (h) that affect operating expenses.

Line No.	Items (a)	BASE (540 and 541) Balance at Beginning of Year (In dollars) (b)	Debits During Year (In dollars) (c)	Credits During Year (In dollars) (d)	Balance at End of Year (In dollars) (e)
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					
11					
12					
13					
14					
15					
16					
17					
18					
19					
20					
21					
22					
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29					
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39					
40					
41					
42					
43					
44					
45					
46					
47	TOTAL				

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -158-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

AMORTIZATION BASE AND RESERVE (Continued)

RESERVE (32) Balance at Beginning of Year (In dollars) (f)	Credits During Year (In dollars) (g)	Debits During Year (In dollars) (h)	Balance at End of Year (In dollars) (i)	Line No.
				1
				2
				3
				4
				5
				6
				7
				8
				9
				10
				11
				12
				13
				14
				15
				16
				17
				18
				19
				20
				21
				22
				23
				24
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				26
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				30
				31
				32
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				45
				46
				47

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -159-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

OPERATING EXPENSE ACCOUNTS (Account 610)

Report the respondent's pipeline operating expenses for the year, classifying them in accordance with the USofA.

Line No.	Operating Expense Accounts (a)	CRUDE OIL (In dollars) Gathering (b)	Trunk (c)	Delivery (d)	Total (b + c + d) (e)
	OPERATIONS and MAINTENANCE				
1	Salaries and Wages (300)				
2	Materials and Supplies (310)				
3	Outside Services (320)				
4	Operating Fuel and Power (330)				
5	Oil Losses and Shortages (340)				
6	Rentals (350)				
7	Other Expenses (390)				
8	TOTAL Operations and Maintenance Expenses				
	GENERAL				
9	Salaries and Wages (500)				
10	Materials and Supplies (510)				
11	Outside Services (520)				
12	Rentals (530)				
13	Depreciation and Amortization (540)				
14	Depreciation Expense for Asset Retirement Costs (541)				
15	Employee Benefits (550)				
16	Insurance (560)				
17	Casualty and Other Losses (570)				
18	Pipeline Taxes (580)				
19	Other Expenses (590)				
20	Accretion Expense (591)				
21	Gains or losses on Asset Retirement Obligations (592)				
22	TOTAL General Expenses				
23	GRAND TOTALS				

Appendix C Revised Schedules for FERC Forms 1, 1-F, 2, 2-A, and 6 -160-

Name of Respondent	This Report Is: (1) ☐ An Original (2) ☐ A Resubmission	Date of Report (Mo, Da, Yr)	Year of Report Dec. 31, 20___

OPERATING EXPENSE ACCOUNTS (Continued)

Line No.	Products (in dollars) Trunk (f)	Delivery (g)	Total (f+g) (h)	Grand Total (e+h) (i)
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
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Federal Register

Monday,
April 21, 2003

Part III

The President

Memorandum of April 17, 2003—
Authority to Hold Harmless and
Indemnify in Certain Circumstances
Under One Contract

Federal Register
Vol. 68, No. 76
Monday, April 21, 2003

Presidential Documents

Title 3—

The President

Memorandum of April 17, 2003

Authority to Hold Harmless and Indemnify in Certain Circumstances Under One Contract

Memorandum for the Administrator of the United States Agency for International Development

1. You are authorized for the United States Agency for International Development (USAID) to exercise authority under Public Law 85–804, as amended (50 U.S.C. 1431 *et seq.*), to the same extent and subject to the same conditions and limitations as the head of a department or agency listed in section 21 of Executive Order 10789 of November 14, 1958, as amended, with respect to one contract identified in subparagraph (a) of this memorandum and solely for the purpose identified in subparagraph (b).

(a) The contract is for repair and reconstruction in Iraq and is awarded on or before September 30, 2003.

(b) The purpose is to hold harmless and indemnify with respect to claims, losses, or damage arising out of or resulting from exposure, in the course of performance of the contract to which subparagraph (a) refers, to:

(i) chemical, biological, radiological, or nuclear weapons, agents, or materials;

(ii) land or sea mines or similar explosive devices; or

(iii) unexploded ordnance.

2. The function performed by USAID in awarding the contract to which paragraph 1 refers is a function connected with the national defense. There are currently national emergencies that have been declared by the President in accordance with applicable law. I deem that the authorization provided by paragraph 1 and actions taken pursuant to that authorization would facilitate the national defense.

3. You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, April 17, 2003.

[FR Doc. 03–9988
Filed 4–18–03; 10:33 am]
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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 1559/P.L. 108–11

Emergency Wartime Supplemental Appropriations Act, 2003 (Apr. 16, 2003; 117 Stat. 559)

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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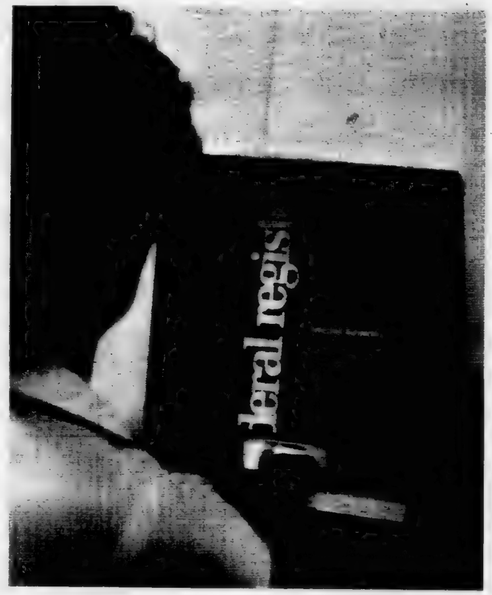
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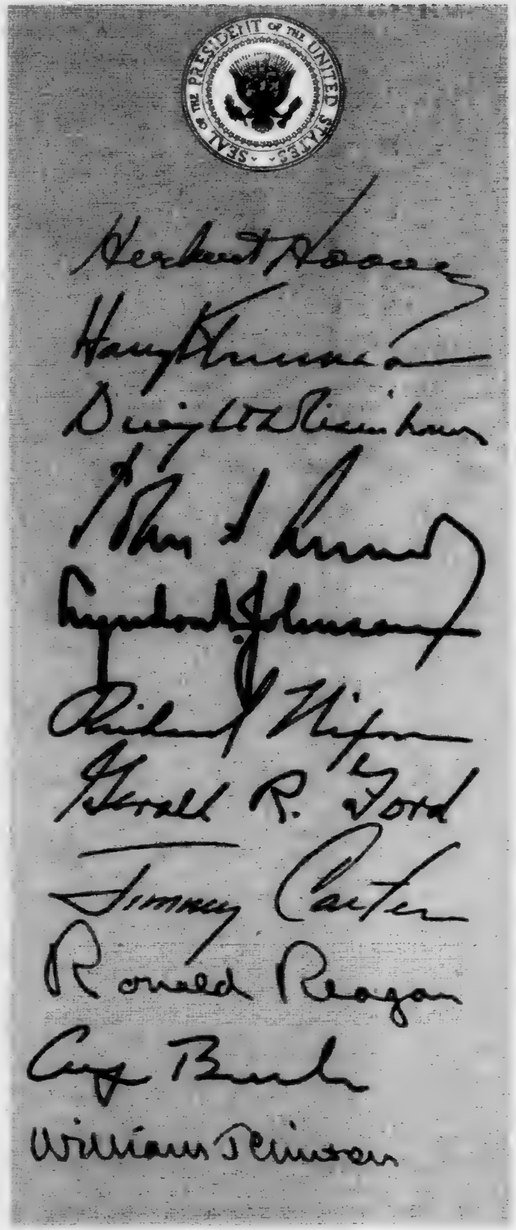
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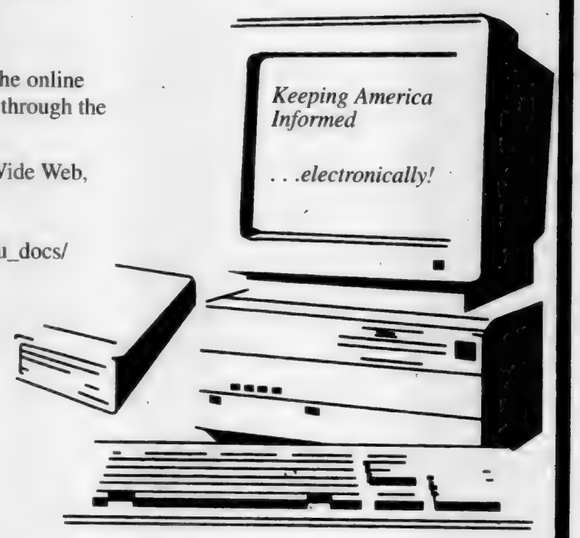
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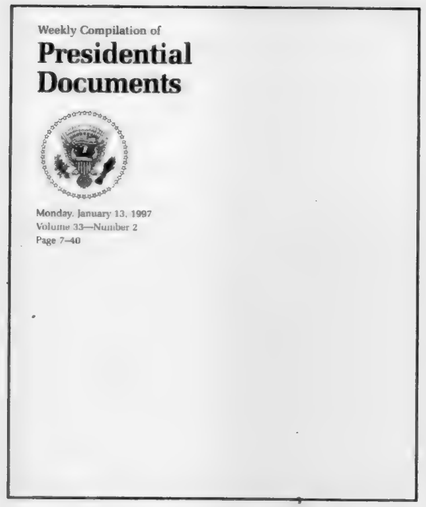
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Rules and Regulations

Federal Register
Vol. 68, No. 77
Tuesday, April 22, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AJ62

Locality Pay Areas

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing final regulations on behalf of the President's Pay Agent to tie the metropolitan area portion of locality pay area boundaries to the geographic scope of Metropolitan Statistical Area and Consolidated Metropolitan Statistical Area definitions that are contained in the attachments to Office of Management and Budget Bulletin 99–04.

EFFECTIVE DATE: These regulations will become effective on May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Allan Hearne, (202) 606–2838; FAX: (202) 606–4264; e-mail: *payleave@opm.gov*.

SUPPLEMENTARY INFORMATION: Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to determine appropriate pay localities. The Pay Agent must give thorough consideration to the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Federal Salary Council, who submit annual recommendations to the President's Pay Agent about the locality pay program for General Schedule employees. The establishment or modification of locality pay area boundaries must conform with the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553).

Based on the Council's recommendations in 1993, the Pay Agent approved using Metropolitan Statistical Area (MSA) and Consolidated Metropolitan Statistical Area (CMSA) definitions as the basis for defining locality pay areas. OMB defines MSAs and CMSAs based on population size, population density, and commuting patterns. The Council also recommended and the Pay Agent approved criteria for adding adjoining areas to locality pay areas that are not already part of the MSA or CMSA as defined by OMB. Under our current regulations, the metropolitan area portion of locality pay areas changes automatically when OMB revises its metropolitan area definitions.

In October 2000, the Federal Salary Council recommended that the Pay Agent revise the regulations to hold the current MSA or CMSA portion of locality pay areas constant until the Pay Agent and the Federal Salary Council have had an opportunity to review new metropolitan area definitions and new commuting patterns and other data from the 2000 census. OMB plans to revise its metropolitan area definitions substantially in 2003 based on new census data and new criteria. The Council also recommended that the Pay Agent continue to monitor counties adjacent to locality pay areas during this period and make minor adjustments in locality pay area boundaries if a particularly egregious situation justifies such action.

Under the final rule, locality pay areas will no longer change automatically if OMB changes metropolitan area definitions. The new reference to the "geographic scope" of an MSA or CMSA is designed to make certain that locality pay area boundaries are not affected by county name changes or changes in the geographic boundaries of counties within the original geographic scope of the MSA. Dade County, FL, changed its name to Miami-Dade County, and the County of Broomfield, CO, recently was created out of portions of Adams, Boulder, Jefferson, and Weld Counties. All of these areas were already within the geographic scope of the Miami or Denver CMSA, as listed in attachments to OMB Bulletin 99–04, and remain covered by the existing locality pay areas.

A full listing of locality pay areas is at *http://opm.gov/oca/02tables/locdef.asp*. The change to hold constant the metropolitan area portion of locality pay areas will have no effect on current locality pay area boundaries or locality rates.

We received two comments on the proposal. One comment from a Federal agency concurred with the proposed rule and the other comment from a Federal employee was outside the scope of the proposal.

E.O. 12866, Regulatory Review

The Office of Management and Budget has reviewed this rule in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is amending 5 CFR part 531 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for Part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224;

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of FEPCA, Pub.

L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart F—Locality-Based Comparability Payments

■ 2. In § 531.602, the definitions of *CMSA* and *MSA* are revised to read as follows:

§ 531.602 Definitions.

* * * * *

CMSA means the geographic scope of a Consolidated Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB) in List II of the attachments to OMB Bulletin 99–04.

* * * * *

MSA means the geographic scope of a Metropolitan Statistical Area, as defined by the Office of Management and Budget (OMB) in List I of the attachments to OMB Bulletin 99–04.

* * * * *

■ 3. In § 531.606, paragraph (g) is revised to read as follows:

§ 531.606 Administration of locality rates of pay.

* * * * *

(g) In the event of a change in the geographic coverage of a locality pay area, the effective date of the change in an employee's entitlement to a locality rate of pay under this subpart is the first day of the first applicable pay period beginning on or after the date on which the change in geographic coverage becomes effective.

* * * * *

[FR Doc. 03–9831 Filed 4–21–03; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ64

Prevailing Rate Systems; Redefinition of the Scranton-Wilkes-Barre, PA, Appropriated Fund Wage Area; Correction

AGENCY: Office of Personnel Management.

ACTION: Correction to final rule.

SUMMARY: The Office of Personnel Management inadvertently omitted a county from the area of application for the State of Pennsylvania in the Scranton-Wilkes-Barre Federal Wage System wage area. Columbia County should have been listed immediately following Carbon County. This document corrects this error.

EFFECTIVE DATE: February 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mark A. Allen at (202) 606–2838; FAX at (202) 606–4264; or e-mail at *maallen@opm.gov*.

SUPPLEMENTARY INFORMATION: In rule FR Doc. 03–215 published on January 6, 2003 (68 FR 459) make the following corrections. On page 460, in the first column, correct appendix C to subpart B of part 532 by adding "Columbia" in between "Carbon" and "Lycoming" under the area of application for the State of Pennsylvania.

Office of Personnel Management.

Jacquline Carter,

Federal Regulations Liaison Officer.

[FR Doc. 03–9830 Filed 4–21–03; 8:45 am]

BILLING CODE 6325–39–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 925

[Docket No. FV03–925–2 IFR]

Grapes Grown in a Designated Area of Southeastern California; Establishment of Safeguards and Procedures for Suspension of Packing Holidays

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes safeguards and procedures for the suspension of packing holidays prescribed under the California grape marketing order (order). The order regulates the handling of grapes grown in a designated area of Southeastern California and is administered locally by the California Desert Grape Administrative Committee (Committee). The procedures and safeguards will be used by the Committee when considering and making decisions on packing holiday suspension requests. Additionally, this rule clarifies existing maturity requirements for Flame Seedless variety grapes and corrects errors in the regulatory text regarding references to the California Code of Regulations (CCR).

DATES: *Effective date:* April 23, 2003; *Comment period:* comments received by June 23, 2003, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 925 (7 CFR part 925), regulating the handling of grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule establishes safeguards and procedures for suspension of packing holidays prescribed under the California grape order. The explicitly stated procedures and safeguards will be used for all requests received to suspend packing holidays. Additionally, this rule clarifies existing maturity requirements for Flame Seedless variety grapes and corrects errors in the regulatory text regarding references to the CCR.

Establishment of Safeguards and Procedures for Suspension of Packing Holidays

Section 925.52(a)(5) of the grape order provides authority to establish holidays by prohibiting the packing of all varieties of grapes during a specified period or periods.

Section 925.304(e) of the order's rules and regulations provides that the Committee may suspend the prohibition against packing or repacking grapes on any Saturday, Sunday, or on the Memorial Day or Independence Day holidays of each year, to permit the handling of grapes provided such handling complies with procedures and safeguards specified by the Committee.

A decision by an Administrative Law Judge on November 7, 2002, invalidated the authority for the Committee to suspend or modify packing holidays, because there were no safeguards or procedures established for the Committee to follow when it makes its decisions on whether to suspend packing holidays.

As a result, the Committee met on December 12, 2002, and recommended specifying the following safeguards and procedures for the suspension of packing holidays to § 925.304(e) of the order's rules and regulations: (1) All requests for suspension of a packing holiday shall be in writing, shall state the reasons the suspension is being requested, and shall be submitted to the Committee manager by noon on Wednesday or at least 3 days prior to the requested suspension date; (2) upon receipt of a written request, the Committee manager shall promptly give reasonable notice to producers and handlers and to USDA that an assembled Committee meeting will be held to discuss the request(s). A USDA representative shall attend the Committee meeting via speakerphone or in person, and all votes of the Committee members shall be cast in person; (3) the Committee members shall consider marketing conditions (*i.e.*, supplies of competing commodities including quantities in inventory, the expected demand conditions for grapes in different markets, and any pertinent documents which provide data on market conditions), weather conditions, labor shortages, the size of the crop remaining to be marketed, and other pertinent factors in reaching a decision on whether or not to suspend packing holidays; (4) once a vote is taken, any documents utilized during the meeting will be forwarded immediately to the USDA representative and a summary of the Committee's action and reasons for recommending approval or disapproval will be prepared and also forwarded by the Committee; and (5) the USDA representative shall notify the Committee manager of approval or disapproval of the request prior to commencement of the suspended packing holiday and the Committee manager shall notify handlers and producers of USDA's decision.

In previous seasons, the Committee used informal safeguards and procedures when processing and considering requests to suspend packing holidays. The established safeguards and procedures are intended to address the concerns expressed in the administrative action. The specific safeguards and procedures will be added to § 925.304(e) of the order's administrative rules and regulations. The Committee vote was 8 in favor, 0 opposed, and 1 abstained. These revisions do not impact the grape import regulation.

Clarification/Removal of Section Numbers

Section 925.52(a)(2) of the grape order provides authority to limit the handling of any grade, size, quality, maturity, or pack of grapes differently for different varieties, or any combination of the foregoing during any period or periods.

Section 925.304(a)(2) of the grape order's administrative rules and regulations provides that grapes of the Flame Seedless variety shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of the CCR. These provisions do not, but should, specify that this variety of grapes also is considered mature under the grape marketing order if the juice meets or exceeds 16.5 percent soluble solids. To correct this oversight, this rule adds language to § 925.304(a)(2) indicating that Flame Seedless variety grapes shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids.

Section 925.304(b)(4) of the grape order's rules and regulations requires containers of grapes to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, and specifies that such requirement shall not apply to containers in the center tier of a 3 box by 3 box pallet configuration, as provided in §§ 1460.30 and 1359 of the CCR. The references to §§ 1460.30 and 1359 were incorrectly added to § 925.304(b)(4) on August 23, 2002 (67 FR 54567). This rule removes these references from § 925.304(b)(4) and adds references to §§ 1436.30 and 1359 of the CCR to § 925.304(b)(3), as should have been done last August.

Section 925.304(f) states that certain container and pack requirements cited in the grape order are specified in the CCR and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California grapes who are subject to regulation under the order and about 50 producers of grapes in the production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those having annual receipts of less than $5,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000.

Eight of the 20 handlers subject to regulation have annual grape sales of $5,000,000. In addition, 10 of the 50 producers have annual sales of at least $750,000. Therefore, a majority of handlers and producers are classified as small entities.

This rule establishes safeguards and procedures for suspension of packing holidays prescribed under the California grape order. The specification of procedures and safeguards for suspending packing holidays are expected to facilitate the Committee's discussions and decision-making on such requests received from handlers. Additionally, this rule clarifies existing maturity requirements for Flame Seedless variety grapes and corrects errors in regulatory text regarding references to the CCR.

Establishment of Safeguards and Procedures for Suspension of Packing Holidays

Section 925.304(e) of the order's rules and regulations provides that the Committee may suspend the prohibition against packing or repacking grapes on any Saturday, or Sunday, or on the Memorial Day or Independence Day holidays of each year, to permit the handling of grapes provided such handling complies with procedures and safeguards specified by the Committee.

A decision issued by an Administrative Law Judge on November 7, 2002, invalidated the authority for the Committee to suspend or modify packing holidays, because there were no safeguards or procedures established for the Committee to follow when it makes its decisions on whether to suspend packing holidays.

As a result, the Committee met on December 12, 2002, and recommended specifying the following safeguards and procedures for suspension of packing holidays to § 925.304(e) of the order's rules and regulations to the handling of such requests: (1) All requests for suspension of a packing holiday shall be in writing, shall state the reasons the suspension is being requested, and shall be submitted to the Committee manager by noon on Wednesday or at least 3 days prior to the requested suspension date; (2) upon receipt of a written request, the Committee manager shall promptly give reasonable notice to producers and handlers and to USDA that an assembled Committee meeting will be held to discuss the request(s). A USDA representative shall attend via speakerphone or in person, and all votes of the Committee members on whether or not to approve the request shall be cast in person; (3) the Committee members shall consider marketing conditions (*i.e.*, supplies of competing commodities including quantities in inventory, the expected demand conditions for grapes in different markets, and any pertinent documents which provide data on market conditions), weather conditions, labor shortages, the size of the crop remaining to be marketed, and other pertinent factors in reaching a decision to suspend or not suspend packing holidays; (4) once a vote is taken, any documents utilized during the meeting will be forwarded immediately to the USDA representative and a summary of the Committee's action and reasons for recommending approval or disapproval will be prepared and also forwarded by the Committee; and (5) the USDA representative shall notify the Committee manager of approval or disapproval of the requested prior to commencement of the suspended packing holiday and the Committee manager shall notify handlers and producers of USDA's decision.

In previous seasons, the Committee used informal safeguards and procedures when processing and considering requests to suspend packing holidays. The established safeguards and procedures are intended to address the concerns expressed in the administrative action. The specific safeguards and procedures will be specified in § 925.304(e) of the order's administrative rules and regulations.

The Committee discussed alternatives to this change, including not making any changes, but determined that safeguards and procedures were needed to address the concerns expressed in the administrative action and to facilitate the handling of packing holiday suspension requests. The Committee vote was 8 in favor, 0 opposed, and 1 abstained. Imported grapes will not be affected by this action.

Clarification/Removal of Section Numbers

Section 925.52(a)(2) of the grape order provides authority to limit the handling of any grade, size, quality, maturity, or pack of grapes differently for different varieties, or any combination of the foregoing during any period or periods.

Section 925.304(a)(2) of the grape order's administrative rules and regulations provides that grapes of the Flame Seedless variety shall be considered mature if the juice contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in the juice in accordance with applicable sampling and testing procedures specified in §§ 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of the title 3: California Code of Regulations (CCR). These provisions do not, but should, specify that this variety of grapes also is considered mature under the grape marketing order if the juice meets or exceeds 16.5 percent soluble solids. To correct this oversight, this rule adds language to § 925.304(a)(2) indicating that Flame Seedless variety grapes shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids.

Section 925.304(b)(4) of the grape order's rules and regulations requires containers of grapes to be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, and specifies that such requirement shall not apply to containers in the center tier of a 3 box by 3 box pallet configuration, as provided in §§ 1460.30 and 1359 of the CCR. The references to §§ 1460.30 and 1359 were incorrectly added to § 925.304(b)(4) on August 23, 2002 (67 FR 54567). This rule removes these references from § 925.304(b)(4) and adds references to §§ 1436.30 and 1359 of the CCR to § 925.304(b)(3), as should have been done last August.

Section 925.304(f) states that certain container and pack requirements cited in the grape order are specified in the CCR and are incorporated by reference and that a notice of any change in these materials will be published in the **Federal Register**.

This rule is in the interest of handlers, producers and consumers. These revisions do not impact the grape import regulation.

The information collection requirements for the safeguards and procedures for the suspension of packing holidays have been previously approved by the Office of Management and Budget (OMB) under OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the grape industry and all interested persons were invited to attend the meetings and participate in the Committee's deliberations. Like all Committee meetings, the November 14, 2002, and the December 12, 2002, meetings were public meetings and all entities, both large and small, were able to express their views on these issues.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rules invites comments on the addition of safeguards and procedures for suspensions of packing holidays, and clarification/removal of section numbers currently prescribed under the California grape order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This action explicitly states safeguards and procedures to facilitate Committee discussions on packing holiday suspension requests; (2) the Committee unanimously recommended the safeguards and procedures at a public meeting and interested parties had an opportunity to provide input; (3) California grape shipments begin approximately April 20, 2003, and this rule should be in effect as soon as possible; and (4) this rule provides for a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 925

Grapes, Marketing agreements and orders, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 925 is amended as follows:

PART 925—GRAPES GROWN IN A DESIGNATED AREA OF SOUTHEASTERN CALIFORNIA

■ 1. The authority citation for 7 CFR part 925 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 925.304, paragraphs (a)(2), (b)(3), (b)(4), and (e) are revised to read as follows:

§ 925.304 California Desert Grape Regulation 6.

* * * * *

(a) * * *

(2) Grapes of the Flame Seedless variety shall meet the minimum berry size requirement of ten-sixteenths of an inch and shall be considered mature if the juice meets or exceeds 16.5 percent soluble solids, or contains not less than 15 percent soluble solids and the soluble solids are equal to or in excess of 20 parts to every part acid contained in juice in accordance with applicable sampling and testing procedures specified in sections 1436.3, 1436.5, 1436.6, 1436.7, 1436.12, and 1436.17 of Article 25 of Title 3: California Code of Regulations (CCR).

(b) * * *

(3) Such containers of grapes shall be plainly marked with the minimum net weight of grapes contained therein (with numbers and letters at least one-fourth inch in height), the name of the variety of the grapes and the name of the shipper, as provided in §§ 1436.30 and 1359 of Title 3: California Code of Regulations.

(4) Such containers of grapes shall be plainly marked with the lot stamp number corresponding to the lot inspection conducted by an authorized inspector, except that such requirement shall not apply to containers in the center tier of a lot palletized in a 3 box by 3 box pallet configuration: *Provided*, That pallets of reusable plastic containers shall have the lot stamp number stamped on two USDA-approved pallet tags, each affixed to opposite sides of the pallet of containers, in addition to other required information on the cards of the individual containers.

* * * * *

(e) *Suspension of packing holidays.* Upon recommendation of the committee and approval of the Secretary, the prohibition against packing or repacking grapes on any Saturday, Sunday or on Memorial Day or Independence Day holidays of each year, may be modified or suspended to permit the handling of grapes provided such handling complies with procedures and safeguards specified by the committee as follows:

(1) All requests for suspension of a packing holiday shall be in writing, shall state the reasons the suspension is being requested, and shall be submitted to the Committee manager by noon on Wednesday or at least 3 days prior to the requested suspension date;

(2) Upon receipt of a written request, the Committee manager shall promptly give reasonable notice to producers and handlers and to the Secretary that an assembled Committee meeting will be held to discuss the request(s). The representative of the Secretary shall attend the meeting via speakerphone or in person, and all votes of the Committee members shall be cast in person;

(3) The Committee members shall consider marketing conditions (*i.e.*, supplies of competing commodities to include quantities in inventory, the expected demand conditions for grapes in different markets, and any pertinent documents which provide data on market conditions), weather conditions, labor shortages, the size of the crop remaining to be marketed, and other pertinent factors in reaching a decision to suspend packing holidays;

(4) Once a vote is taken, any documents utilized during the meeting will be forwarded immediately to the Secretary's representative and a summary of the Committee's action and reasons for recommending approval or disapproval will be prepared and also forwarded by the committee; and

(5) The Secretary's representative shall notify the Committee manager of approval or disapproval of the request prior to commencement of the suspended packing holiday and the Committee manager shall notify handlers and producers accordingly.

* * * * *

Dated: April 16, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–9843 Filed 4–21–03; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 20, and 50

RIN 3150–AG56

Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to standardize the process for allowing a power reactor licensee to release part of its facility or site for unrestricted use before the NRC

approves the license termination plan (LTP). This type of release is termed a "partial site release." The final rule identifies the criteria and regulatory framework that a licensee will use to request NRC approval for a partial site release and provides additional assurance that residual radioactivity will meet the radiological criteria for license termination, even if parts of the site were released before license termination. The final rule also clarifies that the radiological criteria for unrestricted use apply to a partial site release.

EFFECTIVE DATE: November 18, 2003, for § 50.75(g)(4). All remaining sections will be effective on May 22, 2003.

ADDRESSES: The final rule is available on the NRC's rulemaking Web site *(http://ruleforum.llnl.gov/)*. For information about the interactive rulemaking Web site, contact Carol Gallagher, 301–415–5905 (electronic mail: *cag@nrc.gov*). Copies of certain documents related to this rulemaking may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Documents are also available electronically at the NRC's Public Electronic Reading Room on the Internet *(http://www.nrc.gov/reading-rm.html)*. From this site, the public can gain entry into the NRC's Agency Document Access and Management System (ADAMS) that provides text and image files of the NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 301–415–4737 or toll-free at 1–800–397–4209, or by e-mail at *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3092; or by e-mail to *hst@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Compliance with the decommissioning and license termination rules of 10 CFR parts 20 and 50 ensures adequate protection of the public and the environment from any radioactivity remaining in the facility and site when the reactor license is terminated. The NRC staff makes its determination that the licensee has met the license termination criteria using information submitted by the licensee in its license termination plan (LTP) and final radiation survey. The LTP is required no later than 2 years before the anticipated date of license termination. The license termination radiation survey is required after the licensee completes its decontamination activities. These requirements were based on the NRC's anticipation that reactor licensees would permanently cease operations and then perform the decommissioning and license termination of the site as one project. However, in 1999, a licensee informed the NRC staff that it intended to sell parts of its facility and site before it permanently ceased operations. As a result, the staff was faced with the need to evaluate the adequacy of the licensee's proposed action before the licensee was required to submit the information required by the license termination rule (LTR) and the final radiation survey.

In evaluating the NRC staff's response to the proposed sale of parts of the licensee's facility and site, a number of actions specific to the case were taken to ensure that the property would meet the radiological release criteria for unrestricted use in 10 CFR part 20, subpart E.

However, the NRC recognized that the current regulations in 10 CFR part 50 do not specifically address the release of part of a reactor facility or site for unrestricted use. Thus, there is no specific guidance as to the release criteria under 10 CFR part 20, subpart E, for a partial site release.

The purpose of the License Termination Rule (LTR) (61 FR 39301; July 29, 1996, as amended at 62 FR 39091; July 21, 1997) and 10 CFR 50.82 is to ensure that the residual radioactivity for the licensed activity is within the criteria of the LTR. To avoid licensees taking a piecemeal approach to license termination, this rule provides that the LTP must consider the entire site as defined in the original license, along with subsequent modifications to the licensed site, to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E, at the time the license is terminated. This approach is consistent with the intent of the LTR to consider the whole site for application of the release criteria. The rule clarifies this intent and does not establish new policies or standards. Although no further surveys of previously released areas are anticipated, the dose assessment in the LTP must account for possible dose contributions associated with previously released areas in order to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E, (0.25 mSv/yr (25 mrem/yr) reduced to as low as reasonably achievable (ALARA)) at the time the license is terminated. The requirement that licensees maintain records of property line changes and the radiological conditions of partial site releases ensures that these potential dose contributions can be adequately considered at the time of any subsequent partial releases and at the time of license termination. Draft NUREG–1757, Volume II, "Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria," was published for public comment on September 26, 2002. When finalized, this document will provide guidance that may assist licensees in identifying and accounting for these potential dose contributions.

Therefore, the rule provides adequate assurance that residual radioactivity from licensed activities that remains in areas released for unrestricted use will meet the radiological criteria for license termination. It should increase public confidence in decisions to release parts of reactor sites and make more efficient use of NRC and licensee resources.

Discussion

This rulemaking is applicable to power reactor licensees in order to be responsive to current industry needs, while also protecting the health and safety of the public. A separate rulemaking would be needed to address the wide variety of materials sites, many of which are technically more complex from a decommissioning perspective than reactor sites, to provide a uniform and consistent agency approach to partial site release. The rule requires NRC approval for a partial site release for unrestricted use at a reactor site before NRC approval of the licensee's LTP. Partial releases for restricted use are not permitted prior to LTP approval. Partial releases following LTP approval would be governed by the LTP or changes thereto.

The approval process by which the property is released depends on the potential for residual radioactivity from plant operations remaining in the area to be released. First, for proposed release areas classified as non-impacted and, therefore, having no reasonable potential for residual radioactivity, the licensee would be allowed to submit a letter request for approval of the release containing specific information for NRC approval. In this case, because there is no reasonable potential for residual radioactivity, the NRC would approve the release of the property by letter upon determining that the licensee has otherwise met the criteria of the rule, provided that a change to a license or technical specifications description of the site is not necessary. Guidance for demonstrating that a proposed release area is non-impacted is contained in NUREG–1575, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)." However, the NRC would generally not perform radiological surveys and sampling of a non-impacted area. The NRC will determine whether the licensee's classification of any release areas as non-impacted is adequately justified. If the NRC should determine that confirmatory surveys and sampling are needed, such surveys and sampling would be performed as part of the NRC's inspection process.

Second, for areas classified as impacted and, therefore, having some reasonable potential for residual radioactivity, the licensee will submit the required information in the form of a license amendment for NRC approval. The license amendment application will also include the licensee's demonstration of compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402. In both cases, public participation requirements and additional recordkeeping are addressed.

In contrast to the license termination process, the rule does not require a license amendment to release property for unrestricted use in all cases. The NRC believes this difference is justified for the following reasons. First, the license termination process was created to deal with the facility or site as a whole, which inevitably involves handling residual radioactivity, such as that found in plant systems. The rule preserves the license amendment approach for those cases when the potential exists for residual radioactivity and requires that the area meets the radiological criteria for unrestricted use. Second, for cases when the change does not adversely affect reactor safety and it is demonstrated that the area is non-impacted and, therefore, there is no reasonable potential for residual radioactivity, a license amendment is not required to adequately protect the public health and safety. The rule with its clearly defined criteria would be sufficient for the NRC to confirm a licensee's compliance with the partial site release rule. The NRC's oversight role in these cases is to ensure that the licensee meets the relevant criteria.

The rule amends 10 CFR part 2 to provide an opportunity for a Subpart L hearing if the release involves an amendment. The hearing, if conducted, must be completed before the property is released for use. However, for cases where it is demonstrated that the area is non-impacted and, therefore, there is no reasonable potential for residual radioactivity, a license amendment is not required by the rule. A review of a licensee's proposed partial site release in such cases is essentially a compliance review to determine if the release would otherwise meet the defined criteria of the regulation. Assuming the partial site release does not result in a change to an existing license, the approval of the partial site release under these circumstances does not require a license amendment (*see* Cleveland Electric Illuminating, *et al.* (Perry Nuclear Power Plant, Unit 1), CLI–96–13, 44 NRC 315, 328 (1996)). In these cases, the opportunity to comment on the licensee's proposal for a partial site release and the required public meeting held before the release approval is granted will serve as forums for public comment on the proposed release.

In some cases, a reactor or site-specific Independent Spent Fuel Storage Installation (ISFSI) license may contain license conditions or technical specifications that define the licensed site in detail, such as a site map. In these cases, if the partial site release would change the licensed site as described, a reactor licensee would be required to submit a license amendment application for the release regardless of the potential for residual radioactivity in the area to be released. However, under current regulations, a licensee could amend its license to remove the licensed site definition without reference to a partial site release and then proceed to perform the release, without obtaining NRC approval. The rule requires NRC approval for a partial release from the licensed site regardless of the amount of detail defining the site in the operating license.

The rule provides for public participation. The NRC will notice receipt of a licensee's proposal for a partial site release regardless of the potential for residual radioactivity and make it available for public comment. Notwithstanding the opportunity for a hearing if a license amendment is involved, the NRC also will hold a public meeting in the vicinity of the site to discuss the licensee's request for letter approval or license amendment application, as applicable, and obtain comments before approving the release. The NRC has issued a policy statement, "Policy on Enhancing Public Participation in NRC Meetings" (67 FR 36920; May 28, 2002). This policy statement provides a revised policy that the NRC will follow in opening meetings to public observation and participation. The revised policy is discussed in the Comments on the Proposed Rule.

Some commenters have expressed concern that a licensee could use a series of partial site releases to avoid applying the criteria of the license termination rule. Members of the public are concerned that the lack of a specific regulation for partial site releases could result in inconsistent application of safety standards and insufficient regulatory oversight of licensee actions. They also note that the public participation requirements of the license termination rule do not specifically apply to a partial site release. The rule addresses these concerns.

The rule does not permit a partial site release under restricted conditions prior to NRC approval of the LTP, nor has any reactor licensee expressed interest in releasing property for restricted use. Any partial release for restricted use would be handled on a case-by-case basis through application of an exemption process.

The partial site release rule makes the following changes to 10 CFR part 50:

1. Adds a new section, separate from the license termination process of § 50.82, to address the release of part of a reactor facility or site for unrestricted use before the LTP is approved.
2. Prohibits release for restricted use prior to LTP approval.
3. Specifies criteria for the licensee to fulfill to obtain NRC approval of a partial site release.
4. Allows a written request for release approval and does not require a license amendment for releases of property if the licensee demonstrates that the area is non-impacted and, therefore, there is no reasonable potential for residual radioactivity in the area to be released. The release would be approved upon NRC determination that the licensee has met the criteria of the rule.
5. Requires a license amendment that contains the licensee's demonstration of compliance with the radiological criteria for unrestricted use (0.25 mSv/yr (25 mrem/yr) and ALARA) for releases of property when the area is classified as impacted and, therefore, some reasonable potential for residual radioactivity in the area to be released exists.
6. Revises the LTP requirements to account for previously released property in demonstrating compliance with the radiological release criteria.
7. Requires the NRC to hold a public meeting to inform the public of the partial site release request and receive public comments before acting on the request.
8. Incorporates into the recordkeeping important to decommissioning the records of property subject to the release criteria.
9. Adds supporting definitions of key terms.

The partial site release rule makes the following changes to 10 CFR part 20:

1. Includes releasing part of a facility or site within the scope of the radiological criteria for license termination.

2. Includes releasing part of a facility or site for unrestricted use within the scope of the criteria by which the NRC may require additional cleanup on receiving new information following the release.

The partial site release rule makes the following change to 10 CFR part 2:.

1. Provides for informal hearings in accordance with subpart L for amendments associated with partial site releases.

Comments on the Proposed Rule

This analysis presents a summary of the comments received on the proposed rule, the NRC's response to the comments, and changes made to the final rule as a result of these comments.

The NRC received 11 comment letters. Three were from States (Connecticut, Illinois, and Washington), seven from the industry including six power reactor licensees and the Nuclear Energy Institute (NEI), and one from the Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM) Workgroup.

The Commission sought input from stakeholders on seven specific issues associated with partial site release. The stakeholder input and the NRC responses to these issues follow.

1. Support for the Proposed Rule

Comment: None of the commenters were opposed to the idea of a process for releasing part of a site or facility. Six of the 11 commenters provided specific comments in general support of the concept of the proposed rule. The NEI, representing the industry, stated that recent industry experience with decommissioning power reactors indicates that this rule will provide real value to the reactor licensee and the host community. In addition, operating reactor facilities and their host communities will have the option to use property that does not directly support plant operations. Industry supports this needed regulatory action.

Response: The NRC is not making any changes to the final rule that the NRC believes would negate the general support for this rulemaking.

2. Partial Releases Following NRC Approval of the LTP

Comment: One reactor licensee and the NEI disagreed with the statement in the proposed rule that, once an LTP has been approved, there is no longer any need for a separate regulatory mechanism for partial releases. They noted that a significant length of time may pass between approval of the LTP and license termination, and that licensees should retain the opportunity to pursue a partial site release, even after the LTP has been approved, without having to revise the LTP by amendment with its potential for a hearing process.

Response: The purpose of the statement in the proposed rule that there is no longer any need for a separate regulatory mechanism for partial site releases once the LTP is approved was to clarify the difference between the partial site release process and the LTP change process. This rule only applies to partial site releases that take place prior to approval of a licensee's LTP. After the LTP has been approved, partial site releases (as subsequent revisions to the LTP), would require NRC approval by license amendment unless the LTP itself contained a sufficient change process or described staged releases of the property prior to license termination. Therefore, no changes to the final rule have been made in response to this comment.

3. Site Boundary Definition

Comment: Two reactor licensees and the NEI commented that the definition of Site Boundary in 10 CFR 20.1003 must be changed and clarifications added to the Statements of Consideration on the uses of "site" and "site boundary." The definition of site boundary in § 20.1003 is "that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee." In general, the commenters stated that licensees may own, lease or control property, including property contiguous with their existing site, which is not associated with licensed activities and which should not be subject to the radiological release criteria of Part 20. The NEI commented that, in practical terms, the LTR should apply to all properties directly associated with the use of licensed materials.

Additionally, one reactor licensee commented that, in such cases when the licensee owns, leases, or controls property that is contiguous to the facility but is not for the purpose of receiving, possessing, or using licensed materials, the rule should permit the licensee to make changes to the site boundary under 10 CFR 50.59. Also, when such property is acquired, it should not be required to be incorporated into the site boundary.

Response: The Commission disagrees with the commenter's suggestion that the definition of "site boundary" in 10 CFR 20.1003 must be changed but agrees that clarification of this issue is needed. "Site boundary," as defined in 10 CFR 20.1003 is not the area to be considered in demonstrating compliance with the radiological release criteria for all licensees. As one commenter accurately pointed out, the definition of site boundary was incorporated into 10 CFR part 20 to support the concept of a controlled area. The terms "site" and "site boundary" are used in a number of contexts by licensees and in the Commission's regulations. In the context of 10 CFR part 50, the term site boundary is typically applied for emergency planning purposes to define the point when offsite dose consequences are to be estimated for purposes of defining emergency action classes and making protective action measure recommendations. The site boundary is also often referred to in reactor plant technical specifications for the purpose of defining the point when effluents must meet the dose and concentration limits of part 20.

Because the radiological release criteria provided in 10 CFR part 20, subpart E, does not use the term "site boundary", the NRC does not believe the "site boundary" definition in § 20.1003 requires amending in order to describe the site area which must be considered in demonstrating compliance with the release criteria. Rather, for the purpose of partial site release, the focus is on the current and historic licensed site, meaning the site area as described in the original NRC license application, plus any acquisition of property outside the originally licensed site boundary added for the purpose of receiving, possessing, or using licensed material at any time during the term of the license.

This clarification will apply to the majority of release situations, including those at multi-unit sites. One commenter pointed out, however, that the clarification may complicate terminating the license in the case in which a part of the originally licensed site became part of the licensed site for another licensee at some time in the past, and the originally licensed site is no longer clearly delineated. The partial site release rule is not amended to address these unique license termination issues. A determination of what property must be considered in demonstrating compliance with the release criteria in these circumstances will necessarily be addressed on a case-by-case basis.

Sales or other dispositions of property from within the licensed site area by a power reactor licensee prior to NRC approval of the LTP requires NRC preapproval under the partial site release rule. Acquisitions, as well as subsequent dispositions, of property located outside of the licensed site area can be made pursuant to 10 CFR 50.59 and NRC pre-approval of these transactions is not required as long as a licensing action is not otherwise required as a result of any regulations impacted as a result of the acquisition or disposition. Depending on the specific site circumstances, acquired property may become part of the several site boundaries established by licensees such as the exclusion area, emergency planning zone, effluent release compliance boundary, restricted area, controlled area, etc., and are therefore subject to applicable regulatory requirements.

In clarifying the area subject to the radiological release criteria, the recordkeeping requirements in 10 CFR 50.75(g) have been revised to require that licensees maintain records of the current and historic licensed site area as well as records associated with partial releases from the licensed site made prior to license termination. By maintaining these records, potential dose contributions from residual radioactivity in the entire area, including any areas previously released, can be assessed in demonstrating compliance with the radiological release criteria when performing a partial site release and when terminating the license. In order to prevent confusion with the site boundary definition in § 20.1003, the term "site boundary" has been changed to "licensed site" in the recordkeeping requirements added to 10 CFR 50.75(g) in the final rule.

4. Dose Contribution of Residual Material to the Environmental Protection Agency's (EPA) Environmental Radiation Standard

Comment: One reactor licensee and the NEI commented that the language in the section-by-section analysis of the proposed rule clarifying the relationship between radiation exposure limits associated with 10 CFR part 20 subpart D, subpart E, and the EPA's limits specified in 40 CFR part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations," establishes a new policy position as written and constitutes a backfit if incorporated into the final rule. The commenters believe that the exposures due to residual radioactivity associated with a terminated 10 CFR part 50 license are outside the scope of EPA's limits under 40 CFR part 190 and that it is not necessary to reduce the 10 CFR part 20, subpart E, standard to account for additional exposures that originate from the operation of nearby uranium fuel cycle facilities. The commenters stated that if this interpretation were to hold it would have significant impact not only on licensees considering partial site release but also on licensees currently proceeding to terminate their part 50 licenses with an onsite ISFSI.

Additionally, a commenter stated that the existence of other sources of exposure to the critical group is already accounted for in the construction of the 0.25 mSv/yr (25 mrem/yr) radiological release criteria for unrestricted use in 10 CFR part 20, subpart E. The commenter also stated that, after a portion of the site is released, it no longer meets the definition of "uranium fuel cycle operation," and therefore takes exception to the statements in the proposed rule that the dose caused by residual material associated with a partial site release is to be considered in combination with the other public doses from fuel cycle facilities.

Response: The NRC disagrees with the commenters' assertion that the section-by-section discussion clarifying the relationship between 10 CFR part 20, subparts D and E, and EPA's requirements in 40 CFR part 190 constitutes a new policy position and, therefore, requires a backfit analysis. As discussed in the Background section of these Statements of Consideration, the purpose of the LTR was to ensure that the residual radioactivity for the licensed activity is within the criteria of the LTR. To avoid licensees taking a piecemeal approach to license termination, the LTP must consider the entire site as defined in the original license, along with subsequent modifications to the license, to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E, at the time the license is terminated. This partial site release rule is consistent with the intent of the LTR and establishes no new policies or standards. The dose contributions associated with previously released areas meet the radiological release requirements of 10 CFR part 20, subpart E, at the time the license is terminated. Draft NUREG–1757, Volume II, "Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria," when finalized, will provide guidance to licensees on how to identify and account for these potential dose contributors. The discussion in the section-by-section analysis represents the NRC's views on the application of existing requirements in 10 CFR part 20 to the new circumstance of partial site releases. However, power reactor licensees should appreciate that they are subject to 40 CFR part 190 requirements and that site boundaries may need to be reconsidered as a result of a partial site release for purposes of compliance with 40 CFR part 190. In addition, the NRC is reminding licensees that for the purposes of 40 CFR part 190, they must consider all doses from the operating uranium fuel cycle and that doses from portions of sites released may have come from radioactive material released time from an operating uranium fuel cycle facility. This partial site release rule does not amend or reinterpret 40 CFR part 190 or 10 CFR 20.1301(d), which requires certain licensees, including power reactor licensees, to comply with 40 CFR part 190. The NRC staff is developing guidance to implement 10 CFR 20.1301(d) for partial site releases, which will be incorporated into NUREG–1757, Volume II. Except for the information collection requirements in 10 CFR 50.75(g), which are not backfits, the requirements in this final rulemaking arise from the voluntary action of the licensee to seek partial site release and thus do not impose a backfit as defined in 10 CFR 50.109(a). Therefore, the NRC finds that the proposed rule discussion of the relationship between 10 CFR part 20, subparts D and E, and EPA's requirements in 40 CFR part 190 does not constitute a backfit, and that a backfit analysis is not required.

Additionally, the NRC believes that its interpretation of the applicability of EPA's regulations in 40 CFR part 190 is correct and consistent with past NRC regulatory concepts. Neither commenter demonstrated that the NRC's discussion was inconsistent with NRC regulatory concepts as articulated in the past, or inconsistent with past NRC practice with respect to license terminations in general. A review of the Statements of Consideration for the final 40 CFR part 190 rule did not disclose any discussion that supports the commenters' contention (*see* 42 FR 2850, January 13, 1977). On the contrary, the NRC believes that its discussion is entirely consistent with the underlying objective of the EPA requirements in 40 CFR part 190, viz., that the dose to the relevant receptor be based upon the contribution of all radioactive materials/sources attributable to the nuclear fuel cycle operations, regardless of the licensing status of the radioactive materials or the land on which they are located.

The NRC also disagrees that a partially released area no longer meets the definition for "uranium fuel cycle operation," and therefore, the dose contribution attributable to residual

material on the partially released site is not required to be considered in determining compliance with the standards of 40 CFR part 190. It is true that, once a portion of the site is released, it is no longer an active part of a uranium fuel cycle operation. However, as noted above, it is residual material resulting from previous operation of the facility, introduced into the general environment as a result of the licensee's action to release the property for unrestricted use, that contributes to the public exposures within the scope of EPA's regulations at 40 CFR part 190. With respect to the definition of "uranium fuel cycle," the Commission notes that neither the LTR, nor this rulemaking, redefine or limit the definition of uranium fuel cycle. Residual radioactivity does not lose its original pedigree by the NRC's action to terminate a license. The dose from this residual material must be considered in combination with other uranium fuel cycle exposures under 40 CFR part 190. The commenters' position would be true only if the EPA regulation had a temporal component, *i.e.*, they were intended to cover only current and/or future operations at the site. The regulations contain no temporal limitation and simply state that the dose equivalent must consider exposures "from uranium fuel cycle operations." Moreover, the definition of "uranium fuel cycle" in 40 CFR 190.02 covers activities which are sequential in time (*i.e.*, for any given site they may not occur simultaneously). Nonetheless, under 40 CFR 190.10(a) the total contribution must be considered in determining compliance with the 40 CFR part 190 dose standards when releasing radiologically impacted property for unrestricted use. Assuming that the criterion is intended to integrate the instantaneous dose attributable to radioactive materials whose genesis is directly attributable to uranium fuel cycle operations, it is irrelevant that the radioactive materials happen to be located on a site that is no longer used for uranium fuel cycle operations. For these reasons, the NRC continues to believe that its discussion of the applicability of 40 CFR part 190 in the section-by-section analysis is correct.

Comment: Section 50.83(a)(1)(i) requires that licensees seeking NRC approval of a partial site release evaluate the effect of releasing the property to ensure that the dose to individual members of the public from the portion of the facility or site remaining under the license does not exceed the limits of 10 CFR part 20, subpart D. One reactor licensee and the NEI commented that the term "portion of the facility or site remaining under the license" be changed to "portion of the facility or site that has not been released for unrestricted use."

Response: As described above, when evaluating compliance with the public dose limits and standards, the dose from a proposed partial site release must be combined with the dose from other fuel cycle sources, which would include the portion of a site or facility remaining under the license as well as residual material from previously released impacted property. However, the proposed rule inappropriately limited the dose to be considered to that associated with the portion of the site remaining under the license. Section 50.83(a)(1)(i) has been changed in the final rule to require licensees to evaluate the effect of releasing the property to ensure all applicable doses are considered with regard to the limits and standards of 10 CFR part 20, subpart D. The evaluation would include consideration of all applicable exposure sources, including relevant fuel cycle sources pursuant to compliance with the EPA's environmental radiation standards incorporated at 10 CFR 20.1301(d). Consequently, rather than adopting the commenter's suggested language, the Commission has adopted broader, more accurate language in the final rule.

5. Use of Distinguishability From Background as a Release Criterion for Impacted Areas

Comment: The partial site release rule, as originally envisioned, proposed that radiologically impacted but remediated areas could be released using the same approval process as a non-impacted area if it could be demonstrated that the radioactivity is not distinguishable from the background radioactivity. Prior to publishing the proposed rule, however, the NRC staff concluded that a technical basis for such a criterion has not been established, and the criterion was not incorporated.

One reactor licensee stated that the rule should preserve, as an alternative, the ability to release an impacted area if it can be demonstrated that there is no residual radioactivity distinguishable from the background present. The release process should then follow the same process as that for a non-impacted area, approval by letter as opposed to a license amendment. Additionally, the commenter stated that the burden in this alternative is to develop and present strong reference background radiation data to support and defend the validity of its use, that the appropriate criterion for indistinguishability from background does exist, and that a potential criterion corresponding to the current free release criterion could be used by licensees.

Additionally, a State commenter suggested that the rule incorporate the MARSSIM approach to include a comparison of statistical distributions (survey *vs.* background) used to determine if radiation levels in the area surveyed are indistinguishable from background.

Response: A distinguishability-from-background release criterion cannot be incorporated into the regulations even as an alternative. In order to demonstrate that a given level of radiation is distinguishable from background, the statistical process for determining the radiation dose or concentration would require the specification of exactly "how hard to look" in order to "see" a difference from the background dose or concentration. Specifying how hard to look would, in effect, be the same as specifying an allowable difference from background that is not statistically important to detect. This would amount to specifying an allowable increment above background. As stated in the proposed rule, because no such increment has been endorsed, the criterion cannot be incorporated into the Commission's regulations.

Comment: A State commenter disagreed with the NRC's reasoning for deletion of distinguishability-from-background as a release criterion because for an unrestricted release, the ALARA requirements of 10 CFR 20.1402 may dictate clean up to levels indistinguishable from natural background.

The commenter also stated that, although it is recognized that proper definition of background is problematic because it is not a single value but rather a statistical distribution of values that varies widely with geographic location and other factors, it is a statistical entity (mean +/− (sd × n)) that can be empirically determined on a case-by-case basis. As a result, the "minimum value above mean background against which to compare survey results," which the NRC has stated is a value which is not endorsed, can be established by setting a reasonable value for "n" in the foregoing expression.

Response: The Commission disagrees with this comment. There is no connection between ALARA requirements associated with the cleanup of an impacted area and the Commission's decision to delete distinguishability-from-background as a release criterion. The ALARA requirements dictate clean up to levels which are as low as reasonably achievable. There are no requirements to cleanup an area to "levels indistinguishable from natural background."

Although measurement of background radioactivity is related to the statistical entity referred to by the commenter, the process of setting a reasonable value for "n" would present the same issue as choosing an increment above background for use in establishing a distinguishability criterion. Such a "reasonable value" would have to be established and has no current endorsement as a release criterion.

6. Recordkeeping

Comment: The NEI recommended that the rule be clarified to acknowledge that reactor licensees may maintain the records associated with acquisition and disposition of property along with the other records required under 10 CFR 50.75(g) in a distributed fashion. Records would not necessarily reside in a specific file folder, but would be maintained within the overall record management system.

Response: The NRC recognizes that licensees may maintain these records in a distributed fashion within the overall record management system. As stated in 10 CFR 50.75(g), if records of relevant information are kept for other purposes, references to these records and their location may be used.

Comment: One reactor licensee commented that, for property added over time, it would make sense to place the current site boundary in the decommissioning records at the time of rule implementation, rather than research and separately locate each record of acquisition in the past. Since the goal is to ensure the site boundary is known, and that any dispositions or release of property are known, there is no real benefit in locating and placing records of past individual acquisitions into the decommissioning records.

The commenter also stated that records of licensed activities on property acquired since original licensing should not need to be maintained as separate decommissioning records if the acquired property is assimilated into the licensed site. Acquired property should be treated no differently than originally owned property from a decommissioning record perspective. The existing requirements for decommissioning records should apply to the site equally, regardless of whether the portion of the site was purchased after original licensing or before.

In addition, the commenter stated that the cost portion of the regulatory analysis should also include the costs of researching site history and property additions, and use of the portion of the property that was added, if the requirement for this data to be maintained as separate decommissioning records is retained.

Response: It is not the intent of the recordkeeping requirements added at 10 CFR 50.75(g) to require licensees to research and separately locate each record of acquisition made in the past. The recordkeeping in the proposed rule listed the records of the originally licensed site and those of subsequent acquisitions separately in order to clarify that the entire licensed site area (past and present) is subject to the release criteria and must be accounted for in the recordkeeping.

However, because recordkeeping associated with the current licensed site area may not account for releases of property from the licensed site made prior to the partial site release rulemaking, and may not account for all relevant additions to the licensed site, licensees are cautioned that simply placing the information associated with the current licensed site into the decommissioning records may result in a record inventory which, in aggregate, does not meet the intent of the recordkeeping for records which must be assessed at the time of partial site releases and at the time of license termination.

The listing of records of the originally licensed site and those of subsequent acquisitions added to the recordkeeping requirements at 10 CFR 50.75(g) have been combined in the final rule to avoid the implication that these records must be researched and maintained separately. The cost portion of the regulatory analysis associated with the rule did not assume the maintenance of separate records and, therefore, does not require a revision as a result of this clarification.

Comment: One reactor licensee commented that because establishing the records added to 10 CFR 50.75(g) may be time consuming, depending on the site's history, the final rule needs to allow implementation time.

Response: Although, as stated by the NEI, licensees are already maintaining these property records in order to be able to comply with the LTR at the time of license termination, the NRC agrees that some period for implementation may be needed by some licensees. Therefore, the implementation date for the changes made to the recordkeeping requirements at 10 CFR 50.75(g)(4) has been modified to provide a 6-month implementation period.

7. Lack of Clearance Standards

Comment: One reactor licensee commented that, for either partial site release without a license termination plan or license termination for the entire site under existing rules, residual radioactivity may remain as long as the exposure criterion of 10 CFR part 20, subpart E, is satisfied. However, prior to license termination, this same residual radioactivity is treated as licensed material—regardless of how little the amount, concentration, or dose significance—and can only be disposed of by transport to a licensed radwaste disposal facility. The commenter stated that this double standard poses an incentive to retain radioactive material onsite to be later abandoned in order to avoid potentially excessive costs for radwaste disposal, while creating a longer term risk for additional site cleanup required by other regulatory authority or a court of law. The commenter further noted that the NRC is seeking to resolve this discrepancy through a study by the National Academy of Sciences and further agency deliberation, a process that may take several years. Prolonged delay contributes to the erosion in public understanding and confidence in government policy as well as the lack of finality for licensees. Public policy is needed to define the quantitative dose and radionuclide characteristics that have no discernible public health consequences.

The commenter stated that the NRC should recognize that post-license termination requirements imposed by other Federal, State or local agencies can prevent the actual release of a site for unrestricted use—in contravention to the purposes of the LTR. Therefore, the NRC should act to assert its authority in matters of radiation protection and management of radioactive materials. This will require definitive clearance standards that establish allowable quantities and concentrations of radionuclides for materials. Such standards, which are fully protective of public health and safety and are in the public interest, can be created.

Response: Although the comments are not directly related to the partial site release rulemaking, the NRC is appreciative of the issues raised. The Commission has approved the development of a proposed rule to address the control of solid materials, including whether it is appropriate to set a standard in this area that would apply to all licensees. The points raised

in the comments will be considered as part of the Commission's review of alternative approaches.

8. Finality of Releases

Comment: A reactor licensee commented that, after the Commission has released the property, its jurisdiction should end. The commenter recommended that in order to incorporate the doctrine of finality, 10 CFR 20.1401(c) should be changed to state that after a site has been decommissioned and the license terminated, or after part of a facility or site has been released for unrestricted use, the Commission will not require additional cleanup.

Response: The Commission disagrees with this comment. The NRC believes that the desired finality of a release is not adversely impacted by the provisions in 10 CFR 20.1401(c). Eliminating the provisions for additional cleanup where a significant public risk may exist could have a negative impact on public health and safety and would degrade public confidence in the license termination process. One reactor licensee concurred with the provisions in § 20.1401(c) by stating these provisions are important in providing for adequate protection of the public if the need for additional cleanup has been identified, but at the same time offering a standard that must be met to ensure that only clear and substantiated conditions exist that would warrant such actions.

It should be noted that there is a low probability that additional cleanup would be required. The Statements of Consideration for the license termination rule (61 FR 39301; July 29, 1996, as amended at 62 FR 39091; July 21, 1997) point out that, under the provisions of the rule, a licensee is allowed to demonstrate compliance with the dose criteria through use of several screening and modeling approaches. Each approach has a degree of conservatism associated with the relationship of the measurable level of a contaminant in the environment to the dose criterion. Because of the surveys performed by the licensee and confirmatory surveys routinely performed by NRC, the chances of discovering previously unidentified contamination exceeding the dose criteria would be very small.

9. State Regulatory Agency Participation

Comment: A State commenter noted that the proposed rule is silent with regard to participation by State regulatory agencies. Although there are general provisions for stakeholder input and public participation, notification, meetings and hearings, there is no explicit provision for "hands-on" involvement by State regulators. The commenter suggested the rule be amended to include explicit provisions for State participation. The commenter also stated that, in their experience, the role of the State in Federally regulated site clearance processes has historically been that of "independent verification." This role assures that the site release process is in compliance with applicable State regulations and lends additional credibility to a process that is inherently predisposed to intense public scrutiny. Participation by the State is also important in the event that portions of the property to be released would be transferred to State ownership and/or control. For these reasons, amending the rule to provide for independent verification by State regulators makes good sense.

Response: The Commission has published the policy statement "Cooperation With States at Commercial Nuclear Production or Utilization Facilities" (54 FR 7530; February 22, 1989, as amended at 57 FR 6462; February 25, 1992) which the NRC believes provides an adequate mechanism for State regulatory agencies to participate in the release process. The policy statement is intended to provide a uniform basis for NRC/State cooperation as it relates to the regulatory oversight of commercial nuclear power plants and other nuclear production or utilization facilities. The policy statement allows State officials of host and adjacent States to accompany the NRC on inspections and, under certain circumstances, enables States to enter into instruments of cooperation which could allow States to directly participate in the NRC inspection activities at operating facilities as well as at those undergoing decommissioning.

The interest of the States with regard to the scope of the partial site release rule is expected to be primarily concerned with licensee demonstrations of compliance with the radiological release criteria for unrestricted use. In addition to any direct or independent participation agreed to between the State and the NRC, or between the State and the licensee, it is anticipated that the States will continue to participate in the public meetings held prior to NRC approval of partial site releases, and will continue to coordinate with licensees and the NRC in evaluating proposed partial site releases with regard to the release criteria. Therefore, explicit provisions for direct State participation are not being incorporated into the partial site release rule.

10. Radiological Surveys of Non-Impacted Sites

Comment: A State commenter stated that, rather than require the performance of radiological surveys for non-impacted areas, the rule defers to the guidance contained in MARSSIM for demonstrating that a proposed release area is non-impacted. The MARSSIM guidance calls for the performance of a historical site assessment (HSA). The HSA is an investigation to collect information describing a site's complete history from the start of site activities to the present time. Information collected will typically include site files, monitoring data, and event investigations, as well as interviews with current or previous employees to collect firsthand information. The assessment results in a classification of areas according to their potential for containing residual radioactivity. Areas that have no reasonable potential for residual radioactivity in excess of natural background or fallout levels are classified as non-impacted areas, and no surveys are required. The commenter feels that relying on a historical site assessment without the benefit of an up-to-date-radiation survey leads to results which are less reliable and more difficult to defend, and is contrary to the rule's stated purposes related to the assurance of meeting the radiological release criteria and of increasing public confidence.

Additionally, the commenter stated that the NRC supports its position that the rule should not require surveys for non-impacted areas by noting that surveying a truly non-impacted area necessarily involves demonstrating that the radioactivity from any residual contamination is indistinguishable from natural background radioactivity. The commenter also states that the NRC has further supported this position in the Statements of Consideration by stating that, because it has not established a minimum value above mean background to compare survey results, surveying these areas is not feasible.

Response: The NRC believes that the rule should not specifically require the performance of radiological surveys for non-impacted areas. However, the rule does not preclude the collection and use of such surveys by the licensee. The MARSSIM provides adequate guidance acceptable to the NRC for determining when additional surveys are appropriate, and for demonstrating that a proposed release area is non-impacted. The MARSSIM approach in evaluating HSA data for the purposes of classifying an area prescribes that process knowledge of events or conditions which may have led to residual contamination be used in combination with historical analytical information such as survey data. MARSSIM section 3.6, "Evaluation of Historical Site Assessment Data" states that if process knowledge suggests that no residual contamination should be present and the historical analytical data also suggests that no residual contamination is present, the process knowledge provides an additional level of confidence and supports classifying the area as non-impacted. MARSSIM specifically cautions however, that existing radiation data must be examined carefully because previous survey and sampling efforts may not be compatible with the objectives of the HSA, may not be extensive enough to sufficiently characterize the facility or site, and because conditions may have changed since the site was last sampled.

NRC Regulatory Issue Summary 2002–02, "Lessons Learned Related to Recently Submitted Decommissioning Plans And License Termination Plans," states that old records may be inadequate or inaccurate for the purpose of developing either the HSA or site characterization, and suggests that these records not be relied on as the sole source of information for the HSA or site characterization. Interviews with current and former staff and contractors play an essential role in formulating the HSA, but may yield information as inadequate or inaccurate as old records. Experience has shown that old records and results of operational surveys and post-shutdown scoping surveys have been submitted as substitutes for characterization surveys. For example, the results of operational surveys may represent radiological status, describing conditions over a limited time span, or may have been conducted to address specific events (*i.e.*, post-spill cleanup assessment). In a few instances, the results of personnel interviews and information, which can only be considered as anecdotal, have been presented in the HSA. It could not be determined whether this information, in fact, was part of an unbroken chronological history of the site or contained time gaps when operational milestones or occurrences were missing. Although the NRC encourages licensees to review old records and conduct personnel interviews (past and current employees and key contractors), there is a need to present the information obtained in its proper context and qualify its usefulness and how it might be supplemented by additional data searches or characterization surveys.

Paragraphs 50.83(c)(2) and 50.83(d)(2) of the proposed rule stated that, after receiving an approval request or license amendment application from the licensee, the NRC will determine whether the licensee's historical site assessment is adequate. To avoid the implication that the classification of release areas as non-impacted is based solely on historical process knowledge of events or conditions, these sections have been modified in the final rule to state that the NRC will determine if the licensee's classification of any release areas as non-impacted is adequately justified. Such a determination would require a review of the licensee's use of both analytical data as well as process knowledge of events and conditions in accordance with the MARSSIM guidance.

The NRC maintains its position that the rule should not require surveys of non-impacted areas. However, licensees may choose to survey these areas on their own initiative. The question of whether surveys of non-impacted areas should be performed is solely concerned with whether the HSAs and the site characterization process are adequate bases to conclude that there is no reasonable potential for residual radioactivity.

11. Final Radiation Survey and Associated Documentation

Comment: Section 50.82(a)(11)(ii) provides the criteria for license termination with regard to the terminal or final radiation survey and its documentation. One reactor licensee and the NEI commented that adding the phrase "including any parts released for use before approval of the license termination plan" as suggested in the proposed rule implies that final surveys at license termination apply to previously released property and might force a licensee to perform remediation or conduct surveys on land which has been previously released for use when not otherwise required. One of the commenters also stated that the phrase "released for use" should be changed to "released for unrestricted use." Additionally, a commenter stated that the phrase "are suitable for release" with regard to the property being released should more appropriately be changed to indicate that the release meets the applicable release criteria.

Response: As stated in the proposed rule, the NRC does not anticipate further surveys of a previously released area, but rather is seeking to account for, in the radiation survey and associated documentation demonstrating compliance with the release criteria, potential dose contributions associated with previously released areas. The language at 10 CFR 50.82(a)(11)(ii) in the final rule has therefore been modified to indicate that the final radiation survey and associated documentation is to include an assessment of dose contributions associated with any parts previously released for use in demonstrating that the facility and site meet the radiological release criteria. The term "released for use" is retained because the intent is that the documentation assess dose contributions from previously released parts of the facility or site whether they were released for restricted or unrestricted use. Additionally, the phrase "are suitable for release" is changed to "have met the applicable criteria."

12. Question From the "Issues for Public Comment" Section of the Proposed Rule: Are There Rulemaking Alternatives to This Proposed Rule That Were Not Considered in the Regulatory Analysis for This Proposed Rule?

Comment: The NEI and one reactor licensee commented that some licensees have expressed a desire to have the option to use the license amendment approach even for non-impacted lands to provide additional assurance to future owners, and that this option should be included in the proposed rule.

Response: The Commission disagrees with this comment. There is no need to provide this option because the staff has determined that this approval is not an amendment to a license pursuant to the analysis in *Cleveland Electric Illuminating, et al.* (Perry Nuclear Power Plant, Unit 1), CLI–96–13, 44 NRC 315, 328 (1996). The NRC's oversight role in these cases is essentially a confirmation to ensure that the licensee complies with the clearly defined criteria found in the rule. This is in contrast to an impacted area where the staff must analyze and evaluate the information and survey documentation provided by the licensee in order to determine if release of the impacted area poses a threat to public health and safety. For these cases, the license amendment process is appropriate. Allowing a licensee to seek a license amendment for release of non-impacted areas would also decrease the efficiency and effectiveness of the staff's review process. The staff believes that a letter approval of a release will be sufficient to provide future property owners with assurance that the land poses no risk to public health and safety. Moreover, the rule established a process for the NRC to obtain public comments before making a decision to approve a release.

13. Question From the "Issues for Public Comment" Section of the Proposed Rule: Are the Proposed Definitions in § 50.2 Clear?

Comment: The MARSSIM Workgroup commented that the definitions of impacted and non-impacted areas proposed for incorporation into 10 CFR 50.2 are inconsistent with MARSSIM. The workgroup recommends that the definitions be taken verbatim from the MARSSIM glossary as follows:

> Impacted Area—Any area that is not classified as non-impacted. Areas with a possibility of containing residual radioactivity in excess of natural background or fallout levels.
>
> Non-Impacted Area—Areas where there is no reasonable possibility (extremely low probability) of residual contamination. Non-impacted areas are typically located off-site and may be used as background reference areas.

Response: The definitions of impacted and non-impacted areas being added to 10 CFR 50.2 will remain as presented in the proposed rule. These definitions were not taken from the MARSSIM glossary but were, for the most part, taken from the definitions provided in section 2.2 of the MARSSIM text, titled "Understanding Key MARSSIM Technology." The text in section 2.2 states that areas that have no reasonable potential for residual contamination are classified as non-impacted areas, and that areas with some potential for residual contamination are classified as impacted areas.

In the definitions of impacted and non-impacted areas incorporated into the rule, the term "residual contamination" found in the MARSSIM text was replaced with the term "residual radioactivity" for consistency with the definition of residual radioactivity found in 10 CFR 20.1003. For clarity, the definitions also specify that the radioactivity referred to is that which is in excess of natural background or fallout levels.

In addition, the word "reasonable" was added to the definition of impacted areas in order for the definitions of impacted and non-impacted areas to be mutually exclusive. Without the opposition between the two definitions, an area could conceivably meet both definitions. The MARSSIM glossary definition of impacted area states that it is an area not classified as non-impacted. Therefore, this change is consistent with the MARSSIM intent that the definitions be mutually exclusive. Also, non-impacted areas are defined in the MARSSIM glossary as those areas with no reasonable possibility of residual contamination. Impacted areas are defined as those areas with a possibility for residual radioactivity—meaning no matter how slight a possibility, because the word "reasonable" is omitted. Because the word "reasonable" is omitted from the MARSSIM glossary definition of impacted areas, the two glossary definitions are not mutually exclusive as intended.

Finally, the statement in the MARSSIM glossary definition that non-impacted areas are typically located off-site and may be used as background reference areas is irrelevant to the determination of whether an area is non-impacted and is therefore inappropriate for incorporation into the definition.

Comment: One reactor licensee and the NEI recommended that the definitions for Historical Site Assessment, Impacted areas, and Non-impacted areas be incorporated into 10 CFR 50.2 and be changed to specify that the residual material or radioactivity is that from licensed activities.

Response: The radioactivity referred to in the definition of Historical Site Assessment cannot be limited to that resulting from licensed activities and the definition is not revised. Residual radioactivity is a defined term in 10 CFR 20.1003 referring to radioactivity at a site resulting from any activities under the licensee's control, and includes radioactivity from both licensed and unlicensed sources.

14. Question From the "Issues for Public Comment" Section of the Proposed Rule: Is Public Involvement Adequately Considered?

Comment: The NEI commented that the rule adequately considers public involvement. A State commenter stated, however, that there is no mechanism described in the proposed rule that addresses how or if stakeholders can challenge the "non-impacted designation" by a licensee. Though the proposed rule states that it provides for public participation through a public meeting, a public meeting to inform stakeholders of NRC decisions is not a participatory process. It gives no right of intervention, no right of appeal, and no right of a meaningful review. How does a public meeting address a material dispute in fact? The NRC is not bound to consider any information brought forward during the public meeting. At the very least a mandatory public hearing is needed.

Response: The Commission disagrees with this comment and believes that the public will have ample opportunity to be involved with partial site release issues. The partial site release rule provides for public participation through review and comment on a licensee's proposed release plans and through participation in a public meeting whether or not an amendment is involved. This process enables the public to collect information, to comment on and question the actions at the site with regard to the proposed release, and to discuss relevant issues among stakeholders. The NRC will consider any information or concerns brought forward by members of the public during the public review and comment period or during the public meeting.

The NRC has issued a policy statement, "Policy on Enhancing Public Participation in NRC Meetings" (67 FR 36920, May 28, 2002). This policy statement articulates the NRC's revised policy concerning opening meetings to public observation and participation. It defines three categories of public meeting, each with an increasing level of public participation. The public meeting required by the partial site release rule will be classified as a Category 3 meeting with the highest level of public participation. In these meetings, public participation is actively sought. The meetings are specifically tailored for the public to discuss relevant issues with the NRC and other stakeholders, to make comments, and ask questions throughout the meeting. Questions or concerns that cannot be resolved at the meeting will be assigned to a designated NRC staff person for action.

Although there is no mandatory public hearing provided for in this rule, there are ways in which the public may participate in hearings on partial site release issues. First, in the event that a license amendment associated with a partial site release is challenged, there will be the opportunity for a hearing on the license amendment. Second, NRC regulations in 10 CFR 2.206, "Requests for Action under this Subpart," allow any member of the public to raise potential health and safety concerns and petition the NRC to take specific actions to resolve a dispute identified in the petition. The NRC believes that a mandatory hearing is not warranted in light of the many opportunities for public participation. Consequently, no change has been made to the final rule in response to this comment.

15. Question From the "Issues for Public Comment" Section of the Proposed Rule: Should the License Amendment Process Be Required for All Partial Site Release Approvals, Regardless of Whether the Site Has Been Classified as Non-Impacted?

Comment: The NEI commented that requiring the license amendment process for NRC approval of partial site releases of non-impacted lands is not justified. The comment states, however, that some licensees have expressed a desire to have the option to use the license amendment approach even for non-impacted lands and recommends that this approach be offered as an option.

Response: The NRC agrees that requiring its approval for the release of a non-impacted area should not require a license amendment when an amendment is not otherwise required as a result of any regulations, license conditions, or technical specifications impacted as a result of the change.

16. Question From the "Issues for Public Comment" Section of the Proposed Rule: Does the Proposed Rule Make it Adequately Clear That When Performing Partial Site Releases and When Releasing the Entire Site at License Termination, Licensees Must Consider Potential Dose Contributions From Previous Partial Releases in Demonstrating Compliance With the Radiological Release Criteria?

Comment: The NEI stated that the rule makes this issue adequately clear and also stated that the guidance promised in the proposed rule for assessing potential dose contributions will help identify how consideration of potential dose contributions can best be accomplished. The comment further stated that the guidance is needed before the final rule is issued to ensure that the partial site release process and the ultimate license termination can be accomplished practically as envisioned.

Response: The NRC agrees that the rule makes this issue adequately clear. The NRC recognizes that licensees seeking partial site releases will require guidance as to how to account for dose contributions from previous releases. In order to provide this guidance, on September 26, 2002, the NRC published a notice of availability of draft NUREG–1757, Volume II, "Consolidated NMSS Decommissioning Guidance: Characterization, Survey, and Determination of Radiological Criteria," in the **Federal Register** for public comment and expects to publish it as a final document upon resolution of the public comments.

Comment: A State commenter questioned how the partial site release rule addresses issues when, following release, contamination is found in an area classified and released as non-impacted, or where contamination is found to be in excess of the criteria established in the LTP, or, in the above conditions, when the property was transferred to another entity. Additionally, the commenter questioned what rights a potential purchaser would have against the licensee if contamination is found following the release.

Response: Although the partial release removes the property from the license and activities conducted on the property are no longer under NRC jurisdiction, the rule amends 10 CFR 20.1401(c) to bring partial site releases within the scope of the criteria by which the Commission may require additional cleanup on the basis of new information received following the release. As stated in 10 CFR 20.1401(c), additional cleanup would only be required if the new information reveals that the radiological release requirements of 10 CFR part 20, subpart E, were not met and there continues to be a significant threat to public health and safety from residual radioactivity. The rule does not address any other matters of a commercial nature which may be associated with released property, including issues related to contamination found on released property, the magnitude of which falls short of the additional cleanup criteria in 10 CFR 20.1401(c).

17. Question From the "Issues for Public Comment" Section of the Proposed Rule: Is There a Reason To Limit the Size or Number of Partial Site Releases?

Comment: The NEI and a reactor licensee stated that there is no reason to limit the size or number of partial site releases. They stated that as long as the final license termination addresses the entire site, the intent of the license termination rule is met.

Response: The NRC agrees that there is no reason to limit the size or number of partial site releases. Partial releases performed prior to license termination require a demonstration of compliance with the radiological release criteria at 10 CFR part 20, subpart E, as well as a demonstration of compliance with other regulatory requirements that may be impacted as a result of changing site boundaries. Additionally, the dose contributions from residual radioactivity in previously released impacted areas are considered with respect to the release criteria when performing subsequent partial releases and when releasing the entire site at license termination.

18. Question From the "Issues for Public Comment" Section of the Proposed Rule: Are There Other Potential Impacts on Continued Operation or Decommissioning Activities as a Result of Partial Site Releases That Should Specifically Be Considered in the Rule?

Comment: A State commenter stated that the impact of future operation or use of the area released under a partial site release must be considered with regard to potential threats to the storage of spent nuclear fuel or operation of the nuclear power plant prior to allowing control of the released area to be transferred to a non-licensee. The commenter referred to a situation in which a licensee proposes a partial site release with the intent to sell the released property for development of a gas fired electrical generating plant in close proximity to spent fuel stored on the remainder of the site. If no safety analysis is performed in advance of the release, future threats to the nuclear fuel will not be addressed. The commenter states that placing requirements on an existing licensee only after threats are identified as a result of future activities on a released area is not an acceptable mechanism for protecting public health and safety.

Response: The NRC believes that consideration of the potential hazards associated with the future or end use of property proposed for partial site release should not be incorporated into the partial site release rule. Future use of property as an approval criteria based on expectations existing at the time of the release request holds little practical value because the actual future use of property released for unrestricted use cannot be anticipated and could, in any event, change following the release.

As part of its application for a construction permit and operating license for a power reactor facility, the licensee is required to perform an analysis of the effects the reactor facility will have on the environment, including the effects from nearby industrial facilities and transportation under the siting criteria at 10 CFR part 100. The partial site release rulemaking specifically requires licensees requesting a partial site release to evaluate their continued compliance with these siting criteria.

Additionally, the licensee must continue to ensure that its bases and conclusions as presented in the Final Safety Analysis Report which form part of the basis for its operating license remain valid under 10 CFR 50.71. Therefore, the licensee must ensure that

the licensed facility is adequately protected and that operations can be conducted with an acceptable degree of safety with respect to offsite activities as they are identified. The NRC would review any necessary changes to the nuclear plant license or changes to the plant licensing basis that evolve from the licensee's evaluation. To the extent that the future use of the property to be released is known, these reviews and evaluations would be performed as part of the licensee's overall assessment of the viability of obtaining NRC approval for a partial site release.

The NRC recognizes that a non-licensed third party may elect to locate potentially hazardous facilities, or engage in hazardous activities, on property adjacent to a licensed site, including property released for unrestricted use. Although the NRC has no authority to regulate activities that are outside the scope of the NRC's jurisdiction of non-licensed third parties or to prevent third parties from constructing facilities or engaging in such activities which present a potential hazard to the licensee's plant, the NRC does have authority to take action against the licensee. Assuming that the potential hazard is such that the NRG would not have allowed the siting of the plant if the conditions were known, then under section 186 of the Atomic Energy Act, the NRC could revoke the license to prevent the hazard. Since the license can be revoked, lesser actions can be taken as well—such as suspending the license, issuing an order, or issuing a demand for information, depending on the circumstances.

19. Rule Language Comments

Comment: One reactor licensee and the NEI commented that the language contained in § 50.75(g)(4) is not consistent with existing § 50.75(g) which states "Information the Commission considers important to decommissioning consist of * * * (4) Licensees shall maintain property records containing the following information: * * *" The term "Licensees shall maintain" should be deleted.

Response: The NRC agrees with the commenters and the final wording in § 50.75(g) reflects the comment.

Comment: One reactor licensee and the NEI commented on the wording in § 50.75(g)(4)(iv) of the proposed rule, stating that the word "disposition" should be changed to "release and final disposition" the first time it appears, and change "disposition" to "release" the second time it appears.

Response: The NRC agrees with the commenters and the final wording in § 50.75(g) reflects the comment.

Comment: One reactor licensee and the NEI commented on the wording in § 50.82(a)(9)(ii)(H) of the proposed rule, stating that the term "released for use" should be changed to "released for unrestricted use."

Response: The comment is not incorporated. The intent of the wording in § 50.82(a)(9)(ii)(H) is that the LTP identify previously released parts of the facility or site whether they were released for restricted or unrestricted use.

Comment: One reactor licensee and the NEI commented that §§ 50.83(c) and 50.83(e) should include references to the satisfaction of the public meeting requirements specified in § 50.83(f).

Response: The NRC believes that including references to the public meeting requirement in §§ 50.83(c) and 50.83(e) is redundant and unnecessary. The requirement to hold a public meeting described in § 50.83(f) applies, as stated, to either an approval request for a partial site release or a license amendment application and, therefore applies to the submittals described in §§ 50.83(c) and 50.83(e).

Comment: One reactor licensee and the NEI commented that for a release of impacted areas under the proposed partial release rule, 10 CFR 50.59 will not apply because a license amendment would be required. Therefore, the wording in § 50.83 should be modified to delete the reference to complete a 10 CFR 50.59 evaluation for these release requests.

Response: The NRC agrees with the commenters. § 50.83(b) has been modified in the final rule to only require a § 50.59 evaluation for the case when a written release request is submitted.

Section-by-Section Analysis

This final rule amends the NRC's requirements in 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings," 10 CFR part 20, "Standards for Radiation Protection," and 10 CFR part 50, "Domestic Licensing of Production and Utilization Facilities," as follows:

1. 10 CFR 2.1201

This final rule amends 10 CFR 2.1201 by adding a new paragraph (a)(4) which permits the use of informal hearing procedures for amendments associated with partial site releases at nuclear power reactors. This change is needed in order to provide an opportunity for a hearing on a license amendment request for a partial site release. The staff believes that informal hearings are appropriate in this situation since the issues would be similar to the materials licensing issues that are currently subject to subpart L under § 2.1201(a)(1). It should be noted that the rule does not provide for license amendments to authorize partial site releases when there is no reasonable potential for residual radioactivity in the area to be released. Because there are no license amendments in these cases, there are no corresponding opportunities for hearings. However, the NRC will notice receipt of a licensee's proposal for a partial site release and make it available for public comment. The NRC will also hold a public meeting in the vicinity of the site to discuss the licensee's release approval request or license amendment application, as applicable.

2. 10 CFR 20.1401

Paragraphs 20.1401(a) and (c) have been revised to expand the scope of radiological criteria for license termination to include the release of part of a facility or site for unrestricted use in accordance with § 50.83. In 10 CFR part 20, the NRC provides standards for protection against radiation. These modifications are necessary because the NRC's regulations did not address cases when part of a facility or site is to be released for unrestricted use. The expansion in scope pursuant to §§ 20.1401 is related to the radiation dose limits to individual members of the public and to radiological criteria for license termination which are specified in 10 CFR part 20, subparts D and E, respectively.

With respect to 10 CFR part 20, subpart D, the requirements specified set the annual dose limit for an individual member of the public at 1.0 mSv/yr (100 mrem/yr). However, there are a number of more stringent dose standards applicable to power reactor licensees that must also be considered. These standards include the EPA environmental radiation standards incorporated in § 20.1301(d), the subpart D compliance standards in § 20.1302(b), the radiological effluent release objectives to maintain effluents ALARA in Appendix I to 10 CFR part 50, and any dose standards that may be established by special license conditions.

A licensee performing a partial site release must continue to comply with the public dose limits and standards as they pertain to the area remaining under the license. In addition, the licensee must comply with the public dose limits for effluents entering the released portion of the site. A licensee must demonstrate that moving its site boundary closer to the operating facility would not result in a dose to a member of the public that exceeds these criteria. If residual radioactivity exists in the area to be released for unrestricted use, the dose caused by the release must be considered along with that from the licensee's facility, as well as, in the case of the EPA's environmental radiation standard (40 CFR part 190) incorporated in § 20.1301(d), that from any other uranium fuel cycle operation in the area, for example, a facility licensed under 10 CFR part 72, to determine compliance with the above standards. As a consequence, a partial site release for unrestricted use that contains residual radioactivity may have to meet a standard less stringent than the radiological criteria of 10 CFR part 20, subpart E, because the combined dose from the partial site release and the dose from these other sources must meet the public dose limits and standards described above.

With respect to 10 CFR part 20, subpart E, the scope applies to decommissioning reactor facilities. However, as currently written, it does not specifically apply to operating reactors. The reactor remains "operating" until a licensee submits the certifications of permanent cessation of operations specified in § 50.82(a)(1), when its status changes to "decommissioning."

Radiological criteria for license termination at 10 CFR part 20, subpart E, limit radiation exposure to the "average member of the critical group." The limit applicable to release for unrestricted use is 0.25 mSv/yr (25 mrem/yr) total effective dose equivalent (TEDE), with additional reductions consistent with the ALARA principle. The determination of ALARA in these cases explicitly requires balancing reduction in radiation risk with the increase from other health and safety risks resulting from decontamination activities, such as adverse health impacts from transportation accidents that might occur if larger amounts of waste soil are shipped for disposal. The standard applies to doses resulting from "residual radioactivity distinguishable from background radiation" and includes doses from ground water sources of drinking water. The standard for unrestricted use at 10 CFR part 20, subpart E, does not include doses from effluents or direct radiation from continuing operations. However, as noted in the above section on public dose limits, the dose from these sources must be considered when demonstrating compliance with the radiological release criteria.

Section 20.1401(c) limits additional cleanup following the NRC's termination of the license. Additional cleanup would only be required if new information reveals that the requirements of subpart E were not met and a significant threat to public health and safety remains from residual radioactivity. Similarly, the rule applies to portions of the site released for use within the scope of the criteria by which the Commission may require additional cleanup on the basis of new information received following the release.

The rule is intended to apply subpart E to power reactor licensees, both operating and decommissioning, that have not received approval of the LTP. Because an LTP is required for license termination under restricted conditions (§ 20.1403(d)) or alternate criteria (§ 20.1404(a)(4)), only the "unrestricted use" option would be available to licensees for a partial site release before they receive approval of the LTP.

Section 20.1402 specifies the radiological criteria to be used to determine that a site is acceptable for unrestricted use. This final rule does not require an analysis to demonstrate that the area to be released meets the criteria of § 20.1402 for cases when the licensee is able to demonstrate that there is no reasonable potential for residual radioactivity in the area to be released. In these cases, compliance with § 20.1402 is demonstrated by providing documentation of an evaluation of the site to identify areas of potential or known sources of radioactive material. The evaluation must conclude that the area is non-impacted and there is no reasonable potential for residual radioactivity. Acceptable guidance describing the performance of this demonstration is contained in draft NUREG–1575, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)."

For areas classified as impacted, the rule requires a license amendment that includes a demonstration of compliance with § 20.1402 for the area that is released for unrestricted use.

This amendment to part 20, subpart E, revises §§ 20.1401(a) and (c) and adds the release of part of a facility or site for unrestricted use to the provisions and scope of 10 CFR part 20, subpart E.

3. 10 CFR 50.2

Paragraph § 50.2 is amended to add definitions of "Historical Site Assessment," "Impacted Areas," and "Non-impacted Areas." Clear definitions of these terms, which are also defined in draft NUREG–1575, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)," are critical to implementing the amended regulations.

In order for a licensee to adequately demonstrate compliance with the radiological criteria for license termination in 10 CFR part 20, subpart E, the licensee must evaluate its site to identify areas of potential or known sources of radioactive material and classify those areas according to the potential for radioactive contamination. The evaluation is known as a historical site assessment. The historical site assessment is an investigation to collect information describing a site's complete history from the start of site activities to the present time. Information collected will typically include site files, monitoring data, and event investigations, as well as interviews with current or previous employees to collect firsthand information.

The MARSSIM approach in evaluating HSA data for the purposes of classifying an area prescribes that process knowledge of events or conditions that may have led to residual contamination be used in combination with analytical information such as survey data. This approach is discussed in the "Comments on the Proposed Rule" section of this notice. The HSA assessment process results in classifying areas according to the potential for containing residual radioactivity. Areas that have no reasonable potential for residual radioactivity in excess of natural background or fallout levels are classified as non-impacted areas. Areas with some reasonable potential for residual radioactivity in excess of natural background or fallout levels are classified as impacted areas. Further discussion regarding the meaning and use of these terms is contained in NUREG–1575, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)."

4. 10 CFR 50.75

This final rule amends § 50.75 to add a new paragraph (g)(4). The recordkeeping requirements in § 50.75(g)(4) are necessary to ensure that potential dose contributions associated with partial site releases can be adequately considered at the time of any subsequent partial releases and at the time of license termination. Records to be retained include the licensed site area (including property acquired or used for the purpose of receiving, possessing, or using licensed materials), licensed activities carried out on the property acquired or used, and information demonstrating licensee compliance with the radiological release

criteria at the time of the partial site release.

In § 50.75(c), the NRC defines the amount of financial assurance required for decommissioning power reactors. There is no provision to adjust the amount to account for the costs of a partial site release. While a partial site release may reduce the cost of decommissioning for the remainder of the site, the NRC is not reducing the required amount for the following reasons. Costs incurred for purposes other than reduction of residual radioactivity to permit release of the property and termination of the license are not included in the amount required for decommissioning financial assurance. A partial site release may incur costs that do not fit the definition of decommissioning. Therefore, an evaluation of the costs would be necessary to determine what adjustment, if any, is appropriate. In addition, the cost of a partial site release is expected to be a small fraction of the cost of decommissioning. Such a small adjustment can be considered within the uncertainty of the amount specified in § 50.75(c) and does not provide a compelling reason to undertake the technical justification of adding a generically applicable adjustment factor to the requirement.

In § 50.75(g), the NRC requires keeping records of information important to decommissioning. Currently, there are three categories of information required: (1) Spills resulting in significant contamination after cleanup; (2) as-built drawings of structures and equipment in restricted areas; and (3) cost estimates and funding methods. Information on structures and land that were included as part of the site is also important to decommissioning in order to ensure that the dose effects from partial releases are adequately accounted for when the license is terminated.

Records relevant to decommissioning must be retained until the license is terminated. The rule requires a licensee to identify its licensed facility and site, as defined in the original license application, to include a map, and to record any additions to or deletions from the licensed site after original licensing, along with records of the radiological conditions of any partial site releases. As previously noted, these records will ensure that potential dose contributions associated with partial site releases can be adequately considered at the time of any subsequent partial releases and at the time of license termination. As a result of comments received on the proposed rule, the implementation date for the changes made to the recordkeeping requirements at 10 CFR 50.75(g)(4) has been modified in the final rule to provide a 6-month implementation period.

The purpose of the License Termination Rule (LTR) (61 FR 39301, July 29, 1996, as amended at 62 FR 39091, July 21, 1997) and 10 CFR 50.82 is to ensure that any residual radioactivity associated with licensed activity is within the radiological release requirements of 10 CFR part 20, subpart E, at the time the license is terminated. Although not previously codified, the requirement to maintain records of the entire licensed site as defined in the original license, along with subsequent modifications to the licensed site, clarifies the intent of the LTR and is necessary to ensure that potential dose contributions from the entire area can be adequately considered in demonstrating compliance with the release criteria. The recordkeeping applies to all licensees, including those who modify the licensed site by releasing a part of their site prior to license termination. It is expected that licensees are maintaining property records in order to comply with the LTR at the time of license termination and, therefore, these recordkeeping requirements do not establish new policies, standards, or requirements not already inherent to compliance with the radiological release criteria of the LTR.

5. 10 CFR 50.82

With respect to section 50.82(a)(9)(ii) a new subparagraph (H) is added to include the identification of parts of the site previously released for use with the information listed in the LTP. Section 50.82(a)(9) requires the submittal of an application for license termination that includes an LTP. Section 50.82(a)(11) requires that the NRC make a determination that the final survey and associated documentation provided by a licensee demonstrates that the site is suitable for release at the time the license is terminated. These sections codify the NRC's views that certain information is required to evaluate the adequacy of a licensee's compliance with the radiological criteria for license termination in 10 CFR part 20, subpart E, and the license termination criteria are applicable to the entire site. However, because the LTP is not required until 2 years before the anticipated date of license termination, a licensee may perform a partial site release before it submits the necessary information. The information required when the LTP is submitted refers to the "site." It is not clear that a licensee could be required to include the areas released because they no longer are part of the "site." The NRC is concerned that a licensee could adopt partial site releases as a piecemeal approach to relinquish responsibility for a part of its site without going through the license termination process and without ensuring that the release criteria of 10 CFR part 20, subpart E, are met.

With respect to section 50.82(a)(11)(ii), this final rule clarifies that the final radiation survey shall include an assessment of the dose contribution associated with portions of the site that have been released before approval of the license termination plan. The objective is to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E (0.25 mSv/yr(25 mrem/yr) reduced to ALARA) at the time the license is terminated. This amendment to § 50.82(a)(11)(ii) requires that the final radiation survey and associated documentation include an assessment of dose contributions associated with any parts previously released for use in demonstrating that the facility and site meet the radiological release criteria in accordance with 10 CFR part 20, subpart E. Although no further surveys of previously released areas are anticipated, the dose assessment must account for possible dose contributions associated with previous releases in order to ensure that the entire area meets the radiological release requirements of 10 CFR part 20, subpart E (0.25 mSv/yr (25 mrem/yr) reduced to ALARA) at the time the license is terminated.

6. 10 CFR 50.83

This rule adds a new section § 50.83, separate from the current decommissioning and license termination rules, that identifies the criteria and regulatory framework for power reactor licensees that seek to release part of a facility or site for unrestricted use at any time before NRC approval of its LTP. This section is also required because NRC regulations do not address cases in which the NRC may release portions of the site or facility before the approval of the license termination plan.

The rule requires NRC approval for a partial site release. The approval process under which the property will be released depends on the potential for residual radioactivity from plant operations remaining in the area to be released. First, for proposed release areas classified as non-impacted and, therefore, having no reasonable potential for residual radioactivity, the licensee will be allowed to submit a letter containing specific information and requesting approval of the release. Because there is no reasonable potential for residual radioactivity in these cases, the NRC will approve the release of the property by letter after determining that the licensee has met the criteria of the rule. Guidance for demonstrating that a proposed release area is non-impacted is contained in NUREG–1575, "Multi-Agency Radiation Survey and Site Investigation Manual (MARSSIM)." The NRC would generally not perform radiological surveys and sampling of a non-impacted area. However, if the NRC determines that surveys and sampling are needed to verify that a proposed release area is properly classified as "non-impacted," they would be performed as part of NRC's inspection process. Second, for areas classified as impacted and having some reasonable potential for residual radioactivity, the licensee will submit the required information in the form of a license amendment for NRC approval. The proposed amendment will also include the licensee's demonstration of compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402.

Licensees may find it beneficial to review their survey plans and design with the NRC staff before performing the surveys. As warranted, the NRC will conduct parallel and/or confirmatory radiation surveys and sampling to ensure that the licensee's conclusions are adequate.

Because an LTP is required for license termination under restricted conditions (§ 20.1403(d)) or alternate criteria (§ 20.1404(a)(4)), only the "unrestricted use" option is available to licensees for a partial site release prior to LTP approval.

The rule also requires a licensee to evaluate the effect of releasing the property to ensure that the licensee will continue to comply with all other applicable statutory and regulatory requirements that may be impacted by the release of property and changes to the site boundary. This includes, for example, regulations in 10 CFR parts 20, 50, 72, and 100. In those instances involving license amendments, licensees are also required to provide a supplement to the existing environmental report to address the planned release. This requirement is similar to the requirement of 10 CFR 50.82(a)(9)(ii)(G).

The rule provides for public participation. The NRC will notice receipt of a licensee's proposal for a partial site release, regardless of the amount of residual radioactivity involved, and make it available for public comment. The NRC also will hold a public meeting in the vicinity of the site to discuss the licensee's release approval request or license amendment application, as applicable.

Referenced Documents

Copies of NUREG–1575 and NUREG–1757 may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. These documents are also accessible on the NRC Web site (*http://www.nrc.gov*).

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. In this final rule, the NRC standardizes the process for allowing a licensee to release part of its reactor facility or site for unrestricted use before the NRC approves the LTP. This action does not constitute the establishment of a standard that establishes generally applicable requirements, and the use of a voluntary consensus standard is not applicable.

Finding of No Significant Environmental Impact: Availability

The Commission has determined that under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51 that this rule is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required.

There are no significant radiological environmental impacts associated with this action. This action does not involve non-radiological plant effluents and has no other environmental impact. Therefore, the NRC expects that no significant environmental impact will result from this rule.

The Environmental Assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the Environmental Assessment and the finding of no significant impact are available from Harry Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3092.

Paperwork Reduction Act Statement

This final rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0011.

The burden to the public for these information collections is estimated to average 582 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of this information collection, including suggestions for reducing the burden, to the Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, or by e-mail to *INFOCOLLECTS@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington DC, 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

The Commission has prepared a Regulatory Analysis on this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the Regulatory Analysis are available from Harry Tovmassian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3092.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in 10 CFR 2.810.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this rule; and therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

Section 50.75(g) of the final rule, which specifies new information collection and reporting requirements is not subject to the backfit rule, 10 CFR 50.109, inasmuch as information collection and reporting requirements are not within the purview of the backfit rule. The remaining requirements in this rule are voluntary and pertain only to licensees choosing to request a partial site release prior to approval of their license termination plan and are also not subject to the provisions of the backfit rule.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 20

Byproduct material, Criminal penalties, Licensed material, Nuclear material, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2, 20, and 50.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

■ 1. The authority citation for Part 2 continues to read as follows:

Authority: Secs.161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat.1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)); sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (i), (o), 2236, 2282); sec. 206, 88 Stat 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. In § 2.1201, paragraph (a)(4) is added to read as follows:

§ 2.1201 Scope of subpart.

(a) * * *

(4) The amendment of a Part 50 license to release part of a power reactor facility or site for unrestricted use in accordance with § 50.83. Subpart L hearings for the partial site release plan, if conducted, must be complete before the property is released for use.

* * * * *

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

■ 3. The authority citation for Part 20 continues to read as follows:

Authority: Secs. 53, 63, 65, 81, 103, 104, 161, 182, 186, 68 Stat. 930, 933, 935, 936, 937, 948, 953, 955, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2073, 2093, 2095, 2111, 2133, 2134, 2201, 2232, 2236, 2297f), secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

■ 4. In § 20.1401, paragraphs (a) and (c) are revised to read as follows:

§ 20.1401 General provisions and scope.

(a) The criteria in this subpart apply to the decommissioning of facilities licensed under Parts 30, 40, 50, 60, 61, 63, 70, and 72 of this chapter, and release of part of a facility or site for unrestricted use in accordance with § 50.83 of this chapter, as well as other facilities subject to the Commission's jurisdiction under the Atomic Energy Act of 1954, as amended, and the Energy Reorganization Act of 1974, as amended. For high-level and low-level waste disposal facilities (10 CFR Parts 60, 61, 63), the criteria apply only to ancillary surface facilities that support radioactive waste disposal activities. The criteria do not apply to uranium and thorium recovery facilities already subject to Appendix A to 10 CFR Part 40 or to uranium solution extraction facilities.

* * * * *

(c) After a site has been decommissioned and the license terminated in accordance with the criteria in this subpart, or after part of a facility or site has been released for unrestricted use in accordance with § 50.83 of this chapter and in accordance with the criteria in this subpart, the Commission will require additional cleanup only, if based on new information, it determines that the criteria of this subpart were not met and residual radioactivity remaining at the site could result in significant threat to public health and safety.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

■ 5. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

■ 6. Section 50.2 is amended by adding "Historical site assessment," "Impacted areas," and "Non-impacted areas" in alphabetical order to read as follows:

§ 50.2 Definitions.

* * * * *

Historical site assessment means the identification of potential, likely, or known sources of radioactive material and radioactive contamination based on existing or derived information for the purpose of classifying a facility or site, or parts thereof, as impacted or non-impacted.

Impacted areas mean the areas with some reasonable potential for residual radioactivity in excess of natural background or fallout levels.

* * * * *

Non-impacted areas mean the areas with no reasonable potential for residual radioactivity in excess of natural background or fallout levels.

* * * * *

■ 7. In § 50.8, paragraph (b) is revised to read as follows:

§ 50.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 50.30, 50.33, 50.33a, 50.34, 50.34a, 50.35, 50.36, 50.36a, 50.36b, 50.44, 50.46, 50.47, 50.48, 50.49, 50.54, 50.55, 50.55a, 50.59, 50.60, 50.61, 50.62, 50.63, 50.64, 50.65, 50.66, 50.68, 50.71, 50.72, 50.74, 50.75, 50.80, 50.82, 50.83, 50.90, 50.91, 50.120, and Appendices A, B, E, G, H, I, J, K, M, N, O, Q, R, and S to this part.

* * * * *

■ 8. In § 50.75, paragraph (g)(4) is added to read as follows:

§ 50.75 Reporting and recordkeeping for decommissioning planning.

* * * * *

(g) * * *

(4) Records of:

(i) The licensed site area, as originally licensed, which must include a site map and any acquisition or use of property outside the originally licensed site area for the purpose of receiving, possessing, or using licensed materials;

(ii) The licensed activities carried out on the acquired or used property; and

(iii) The release and final disposition of any property recorded in paragraph (g)(4)(i) of this section, the historical site assessment performed for the release, radiation surveys performed to support release of the property, submittals to the NRC made in accordance with § 50.83, and the methods employed to ensure that the property met the radiological criteria of 10 CFR Part 20, Subpart E, at the time the property was released.

■ 9. In § 50.82, paragraph (a)(9)(ii)(H) is added and paragraph (a)(11)(ii) is revised to read as follows:

§ 50.82 Termination of license.

* * * * *

(a) * * *

(9) * * *

(ii) * * *

(H) Identification of parts, if any, of the facility or site that were released for use before approval of the license termination plan.

* * * * *

(11) * * *

(ii) The final radiation survey and associated documentation, including an assessment of dose contributions associated with parts released for use before approval of the license termination plan, demonstrate that the facility and site have met the criteria for decommissioning in 10 CFR part 20, subpart E.

* * * * *

■ 10. A new § 50.83 is added to read as follows:

§ 50.83 Release of part of a power reactor facility or site for unrestricted use.

(a) Prior written NRC approval is required to release part of a facility or site for unrestricted use at any time before receiving approval of a license termination plan. Section 50.75 specifies recordkeeping requirements associated with partial release. Nuclear power reactor licensees seeking NRC approval shall—

(1) Evaluate the effect of releasing the property to ensure that—

(i) The dose to individual members of the public does not exceed the limits and standards of 10 CFR Part 20, Subpart D;

(ii) There is no reduction in the effectiveness of emergency planning or physical security;

(iii) Effluent releases remain within license conditions;

(iv) The environmental monitoring program and offsite dose calculation manual are revised to account for the changes;

(v) The siting criteria of 10 CFR Part 100 continue to be met; and

(vi) All other applicable statutory and regulatory requirements continue to be met.

(2) Perform a historical site assessment of the part of the facility or site to be released; and

(3) Perform surveys adequate to demonstrate compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402 for impacted areas.

(b) For release of non-impacted areas, the licensee may submit a written request for NRC approval of the release if a license amendment is not otherwise required. The request submittal must include—

(1) The results of the evaluations performed in accordance with paragraphs (a)(1) and (a)(2) of this section;

(2) A description of the part of the facility or site to be released;

(3) The schedule for release of the property;

(4) The results of the evaluations performed in accordance with § 50.59; and

(5) A discussion that provides the reasons for concluding that the environmental impacts associated with the licensee's proposed release of the property will be bounded by appropriate previously issued environmental impact statements.

(c) After receiving an approval request from the licensee for the release of a non-impacted area, the NRC shall—

(1) Determine whether the licensee has adequately evaluated the effect of releasing the property as required by paragraph (a)(1) of this section;

(2) Determine whether the licensee's classification of any release areas as non-impacted is adequately justified; and

(3) Upon determining that the licensee's submittal is adequate, inform the licensee in writing that the release is approved.

(d) For release of impacted areas, the licensee shall submit an application for amendment of its license for the release of the property. The application must include—

(1) The information specified in paragraphs (b)(1) through (b)(3) of this section;

(2) The methods used for and results obtained from the radiation surveys required to demonstrate compliance with the radiological criteria for unrestricted use specified in 10 CFR 20.1402; and

(3) A supplement to the environmental report, under § 51.53, describing any new information or significant environmental change associated with the licensee's proposed release of the property.

(e) After receiving a license amendment application from the licensee for the release of an impacted area, the NRC shall—

(1) Determine whether the licensee has adequately evaluated the effect of releasing the property as required by paragraph (a)(1) of this section;

(2) Determine whether the licensee's classification of any release areas as non-impacted is adequately justified;

(3) Determine whether the licensee's radiation survey for an impacted area is adequate; and

(4) Upon determining that the licensee's submittal is adequate, approve the licensee's amendment application.

(f) The NRC shall notice receipt of the release approval request or license amendment application and make the approval request or license amendment application available for public comment. Before acting on an approval request or license amendment application submitted in accordance with this section, the NRC shall conduct a public meeting in the vicinity of the licensee's facility for the purpose of obtaining public comments on the proposed release of part of the facility or site. The NRC shall publish a document in the **Federal Register** and in a forum, such as local newspapers, which is readily accessible to individuals in the vicinity of the site, announcing the date, time, and location of the meeting, along with a brief description of the purpose of the meeting.

Dated in Rockville, Maryland, this 14th day of April, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–9866 Filed 4–21–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–23–AD; Amendment 39–13126; AD 2003–08–13]

RIN 2120–AA64

Airworthiness Directives; Various Surplus Military Airplanes Manufactured by Consolidated, Consolidated Vultee, and Convair

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to various surplus military airplanes manufactured by Consolidated, Consolidated Vultee, and Convair. This action requires repetitive inspections to find fatigue cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings; repair or replacement of any cracked part with a new part; and follow-on inspections at new intervals. This action is necessary to find and fix fatigue cracking, which could result in structural failure of the wings and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 7, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 23, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–23–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–23–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5228; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On July 18, 2002, while dropping retardant on a fire near Lyons, Colorado, a United States Department of Agriculture (USDA) Forest Service Model P4Y–2 airplane was involved in an accident, resulting from the structural failure of the center wing. Investigation revealed fatigue cracking in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings. The fatigue cracking has been attributed to the age, time-in-service, and flight cycles of the airplane. Such fatigue cracking, if not found and fixed in a timely manner, could result in structural failure of the wings and consequent loss of control of the airplane.

FAA's Determination

We have determined that high-cycle fatigue cracks in the area of the lower rear cap of the wing front spar, front spar web, and lower skin of the wings are likely to occur on various surplus military airplanes. Repetitive inspections of these areas are necessary to ensure that fatigue cracks will be found in a timely manner, and corrective action taken, to preclude crack growth to a size that would create an unacceptable risk of structural failure. While inspection methodologies exist that can be used to find cracks, we are currently unaware of any for the subject airplanes. Therefore, owners and operators must submit inspection procedures and repetitive inspection intervals to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, for approval. The inspection procedures must be sufficiently reliable to determine the location, size, and orientation of cracks that are very small, so that the crack will not grow to a critical length at limit load before the next scheduled inspection.

If any crack is found during any inspection, operators must replace the cracked part with a new part; or repair and inspect at new intervals per a method approved by the FAA.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other surplus military airplanes of the same type design, this AD is being issued to find and fix fatigue cracking of the wings, which could result in structural failure of the wings and consequent loss of control of the airplane. This AD requires repetitive inspections to find cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings; and repair or replacement of any cracked part with a new part; and follow-on inspections at new intervals.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–23–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–08–13 Various surplus military airplanes manufactured by Consolidated, Consolidated Vultee, and Convair: Amendment 39–13126. Docket 2003–NM–23–AD.

Applicability: Including, but not limited to, all of the following surplus military airplanes, certificated in any category:

Consolidated Vultee Model PB4Y–1, P4Y–2, and LB–30 airplanes;

Consolidated and Convair Model B–24 airplanes; and

Consolidated Model C–109 and C–87 airplanes.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings, which could result in structural failure of the wings and consequent loss of control of the airplane, accomplish the following:

Initial & Repetitive Inspections

(a) Within 30 days after the effective date of this AD, do the actions specified in paragraphs (a)(1) and (a)(2) of this AD per a method approved by the Manager, Los Angeles Certification Office (ACO), FAA.

(1) Do an inspection (between 39 and 63 inches outboard of the airplane center line on both the left and right sides of the wings) to find cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings localized under the front spar lower cap. Special detailed inspection procedures must be sufficiently reliable to determine the location, size, and orientation of the cracks.

(2) Develop repetitive inspection intervals that prevent crack growth from exceeding the minimum residual strength required to support limit load on the affected structure. The repetitive inspection intervals must be approved by the Manager, Los Angeles ACO. Thereafter, do the inspection approved per paragraph (a)(1) of this AD at the intervals approved per this paragraph.

(b) If any crack is found during any inspection required by this AD, before further flight, do the action(s) specified in paragraphs (b)(1) and (b)(2) of this AD per a method approved by the Manager, Los Angeles ACO.

(1) Repair or replace the cracked part or structure.

(2) Repeat the inspection required by paragraph (a)(1) of this AD at reduced intervals approved by the Manager, Los Angeles ACO to find cracks before the growth is critical and exceeds the minimum residual strength required to support limit load on the affected structure.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(e) This amendment becomes effective on May 7, 2003.

Issued in Renton, Washington, on April 16, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9861 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 77

[Docket No. FAA–2003–14973; Special Federal Aviation Regulation No. 98]

RIN 2120–AH83

Construction or Alteration in the Vicinity of the Private Residence of the President of the United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This action requires that notice be filed with the FAA for the construction or alteration of any object that exceeds 50 feet above ground level (AGL) and is within the existing prohibited airspace surrounding the private residence of the President of the United States (P–49). Due to national security interests and the unique operating requirements of the United States Marine Corps (USMC) and the Secret Service Presidential Protective Division (SSPPD), this rule provides that any object within the designated area that exceeds the obstruction standard will be deemed a hazard to air navigation unless the FAA concludes, based upon submitted information and in consultation with the USMC and the SSPPD, that the construction or alteration will not adversely affect safety and would not result in a hazard to air navigation. This rule is adopted for purposes of national defense and will assist in protecting the President of the United States. This rule does not apply to prior construction or alteration of objects and will terminate at the end of the President's term in office.

DATES: This final rule is effective April 22, 2003. Comments must be submitted on or before June 23, 2003.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14973 at the beginning of your comments, and you should submit two copies of your comments.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett-Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA is adopting this final rule without prior notice and prior public comment. The Regulatory Policies and Procedures of the Department of Transportation (DOT) (44 FR 1134; February 26, 1979), however, provide that, to the maximum extent possible, operating administrations for the DOT should provide an opportunity for public comment on regulations issued without prior notice. Accordingly, we invite interested persons to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. We also invite comments relating to environmental, energy, federalism, or international trade impacts that might result from this amendment. Please include the regulatory docket or amendment number and send two copies to the address above. We will file all comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, in the public docket. The docket is available for public inspection before and after the comment closing date.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

The FAA will consider all comments received on or before the closing date for comments. We will consider late comments to the extent practicable. We may amend this final rule in light of the comments received.

Commenters who want the FAA to acknowledge receipt of their comments submitted in response to this final rule must include a preaddressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–2003–14973." The postcard will be date-stamped by the FAA and mailed to the commenter.

Availability of Final Rule

You can get an electronic copy using the Internet by:

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*)

(2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT.** You can find out more about SBREFA on the Internet at our site, *http://www.gov/avr/arm/sbrefa.htm*. For more information on SBREFA, e-mail us *9–AWA–SBREFA@faa.gov*.

Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

Background

On March 26, 2001, the FAA published a final rule in the **Federal Register** establishing prohibited airspace (P–49) over the private residence of the President in Crawford, Texas (66 FR 16391). [The FAA subsequently modified P–49 by relocating the center of the prohibited area approximately one-half mile east, southeast (68 FR 7917; February 19, 2003.)] This airspace designation is necessary to enhance security in the immediate vicinity of the presidential residence and assist the SSPPD in accomplishing its mission of providing security for the President of the United States. While that rule prohibits unauthorized aircraft from flying within the designated airspace, it does not address certain flight safety and national security issues concerning the transport of the President.

The USMC and the SSPPD provide transportation for the President and presidential personnel. The USMC and SSPPD devise various operational plans to accommodate the unique circumstances involved in transporting the President. The special operating procedures used by the USMC and the SSPPD include the concurrent operation of multiple aircraft, a variety of non-standard flight techniques for security purposes, and other special security provisions to ensure the secure transport of the President and his party during various weather and threat conditions. Flexibility in choosing altitude and direction of flight is essential for optimal use of these special procedures by the USMC and SSPPD, especially in the event of an unanticipated threat to the security of the President.

The Rule

The President's private residence in Crawford, Texas, has several landing areas for presidential aircraft. Each landing area must be accessible by flying several different approaches, depending upon the weather, threat conditions, the aircraft being used, and departure location. Also, the special operating procedures used by the USMC and the SSPPD, including the use of multiple aircraft, non-standard flight techniques and other special security provisions, require the airspace surrounding the landing areas to be clear of obstructions that could affect these operating procedures and the safety of the President. Obstructions above 50 feet above ground level (AGL) in certain locations within the designated area could inhibit the flexibility of these special operating procedures and could compromise the safe transportation and the security of the President, particularly in emergency situations.

In order to provide for the safe operations of the presidential helicopters and to accommodate the inherent national security interests involved in transporting the President, the FAA is requiring that any person constructing or altering any object that would exceed 50 feet AGL within a three nautical mile (NM) radius of the President's private residence must file notice with the FAA. This geographic area covers the same surface area that is designated as P–49. The FAA will consider objects that exceed 50 feet AGL within the designated area as obstructions to air navigation. Objects that exceed the above standard could become obstacles for the USMC and the SSPPD during certain operations and result in the inability to follow specified operating procedures and hinder the safety of the entire operations. It is critical for the USMC and SSPPD to have maximum flexibility in devising procedures that uniquely accommodate safely transporting the President. Limiting the construction of new obstructions or alteration of existing structures within the P–49 area will allow optimum operating procedures that are necessary to the safety of the entire operation.

Due to the unique operating requirements of the USMC and the SSPPD previously discussed, the aircraft conducting these operations must have the ability to take off, land or perform various flight maneuvers in virtually every direction of the landing areas within the designated area. Consequently, it is critical that this area is clear of objects that may adversely affect the operations. Therefore, any new construction or alteration of an object that exceeds the obstruction standard within the designate area is presumed a hazard to air navigation and to compromise the safety of the operations conducted herein.

Certain new construction or alteration to existing structures that would exceed 50 feet AGL may be compatible with the safe and secure transport of the President. The proponent of the construction/alteration must submit detailed information regarding the proposed construction/alteration. Only where the FAA, in consultation with the USMC and the SSPPD, determines that it would not adversely affect safety and not result in a hazard to air navigation, would the FAA issue a Determination of No Hazard. Because the decision of the Administrator may be based upon classified or otherwise sensitive information regarding the security of the President, the Administrator need not provide or disclose the basis for such determination

New construction or alterations to existing structures above 50 feet AGL, outside of the P–49 area, may still pose a danger to the safe transportation and protection of the President. Nothing in this rule, however, precludes the FAA or another federal agency from determining that a new construction or alteration to an existing object outside the designated area is a danger to the safe transportation and protection of the President. Such objects outside the designated area, however, will be addressed by other legal authorities.

Prior Construction and Alterations

The provisions of this rule do not apply to any construction or alteration that occurred before the effective date of this rule.

Duration of the Rule

This rule shall be in effect only for the duration of President George W. Bush's term of office. The FAA recognizes that all Presidents' private residences raise safety and national security concerns regarding the safe ingress and egress of the President and his party. However, the protections necessary to ensure the safe ingress and egress may vary substantially depending upon the nature and location of each President's residence. Therefore, the FAA anticipates that similar rules, tailored to the security concerns of the Presidential residence, may be needed at other locations to protect the transportation of future Presidents.

Justification for Immediate Adoption

We find that the important national security interests of protecting the President and his party during flight operations renders notice and public procedure under 5 U.S.C. 553(b) impracticable and contrary to the public interest. Furthermore, good cause exists under 5 U.S.C. 553(d) to make this rule effective immediately upon publication in the **Federal Register** so as to prevent the commencement of any construction

or alteration in the affected area between the issuance of the rule and the effective date of the rule that could affect the safe transport of the President and his party.

Paperwork Reduction Act

Information collection requirements in the amendment to 14 CFR part 77 previously have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0001.

An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking action is taken under an emergency situation within the meaning of section 6(a)(3)(D) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is a significant rule within the meaning of the Executive Order and DOT's policies and procedures. No regulatory analysis or evaluation accompanies this rule. Because this final rule is being issued with no prior notice, the FAA is not required to assess whether this rule will have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended, and we have not performed such an assessment.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, aren't considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA accordingly has assessed the potential effect of this rule to be minimal and therefore has determined that this rule will not result in an impact on international trade.

Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this rulemaking and has determined that it will impose the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act) requires each Federal agency, to the exfent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. The Act requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local and tribal governments on a proposed "significant intergovernmental mandate." Under the Act, a "significant intergovernmental mandate" is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals.

This rule does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this rule would not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. We determined that this rule, therefore, would not have federalism implications.

Energy Impact

We assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 77

Administrative practice and procedure, Airports, Airspace, Aviation safety, Navigation (air), Reporting and recordkeeping requirements.

The Amendment

■ For the reasons set forth above, the Federal Aviation Administration amends part 77 of Title 14 of the Code of Federal Regulations as follows:

PART 77—OBJECTS AFFECTING NAVIGABLE AIRSPACE

■ 1. The authority citation for part 77 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113–40114, 44502, 44701, 44718, 46101–46102, 46104.

■ 2. Add Special Federal Aviation Regulation (SFAR) No. 98 to read as follows:

SFAR No. 98—Construction or Alteration in the Vicinity of the Private Residence of the President of the United States

Section 1. *Construction or alteration near the private residence of the President.* This section applies to:

(a) Any object of natural growth, terrain, or permanent or temporary construction or alteration, including appurtenances and equipment or materials used therein.

(b) Any apparatus of a permanent or temporary character.

Section 2. *Notice of Construction/Alteration.* Proponents proposing construction or alteration of any object described in Section 1 that would exceed 50 feet AGL and is within 3 NM radius of lat. 31°43′45 N, long. 97°32′00 W shall notify the Administrator in the form and manner prescribed in 14 CFR 77.17.

Section 3. *Obstruction Standard.*

(a) Any object described in Section 1 that would exceed 50 feet AGL and is within 3 NM radius of lat. 31°43′45N, long. 97°32′00W is an obstruction and is presumed to adversely affect aviation safety and therefore is a hazard to air navigation.

(b) A Determination of No Hazard will be issued only when the FAA determines, based upon submitted information and in consultation with the USMC and the SSPPD, that the construction or alteration will not adversely affect safety and would not result in a hazard to air navigation.

Section 4. *Termination.* This rule will terminate at the end of President George W. Bush's term in office.

Issued in Washington, DC on April 16, 2003.

Marion C. Blakely,

Administrator.

[FR Doc. 03–9886 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30363; Amdt. No. 3053]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 22, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 22, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. The amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on April 11, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective May 15, 2003

Akron, CO, Colorado Plains Regional, RNAV (GPS) RWY 11, Orig
Akron, CO, Colorado Plains Regional, RNAV (GPS) RWY 29, Orig
Akron, CO, Colorado Plains Regional, GPS RWY 11, Orig, (CANCELLED)
Akron, CO, Colorado Plains Regional, GPS RWY 29, Orig, (CANCELLED)
Agana, Guam, Guam International, RNAV (GPS) RWY 6L, Orig
Gibson City, IL, Schertz Field, VOR OR GPS–A, Amdt 4 (CANCELLED)
Caruthersville, MO, Caruthersville Mem, VOR/DME RWY 18, Orig
Caruthersville, MO, Caruthersville Mem, RNAV (GPS) RWY 18, Orig
Caruthersville, MO, Caruthersville Mem, RNAV (GPS) RWY 36, Orig
Glen Falls, NY, Floyd Bennett Memorial, VOR/DME or GPS RWY 19, AMDT 6B (CANCELLED)
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 1, ORIG
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 12, ORIG
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 19, ORIG
Glen Falls, NY, Floyd Bennett Memorial, RNAV (GPS) RWY 30, ORIG
Kinston, NC, Kinston Rgnl Jetport at Stallings Fld, RNAV (GPS) RWY 23, Amdt 1
Bellefontaine, OH, Bellefontaine Muni, VOR/DME RNAV RWY 22, Amdt 5A, (CANCELLED)
Bellefontaine, OH, Bellefontaine Muni, NDB OR GPS RWY 22, Amdt 6, (CANCELLED)
Salt Lake City, UT, Salt Lake City Intl, ILS RWY 16R, Amdt 1B
Salt Lake City, UT, Salt Lake City Intl, ILS RWY 34R, Amdt 1B

Effective June 12, 2003

Anahuac, TX, Chambers County, NDB RWY 12, Amdt 2

** * * Effective July 10, 2003*

Aurora, NE, Aurora Muni, NDB RWY 16, Amdt 3A (CANCELLED)
Crete, NE, Crete Muni, NDB RWY 17, Amdt 2A (CANCELLED)
Crete, NE, Crete Muni, NDB RWY 35, Amdt 2A (CANCELLED)

The FAA published the following procedures in Docket No. 30359; Amdt. No. 3049 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 54, Page 13622; dated Friday, March 20, 2003) under section 97.33 effective May 15, 2003 which are hereby rescinded:

Akron, CO, Colorado Springs Regional, RNAV (GPS) RWY 11, Orig
Akron, CO, Colorado Springs Regional, RNAV (GPS) RWY 29, Orig
Akron, CO, Colorado Springs Regional, GPS RWY 11, Orig, (CANCELLED)
Akron, CO, Colorado Springs Regional, GPS RWY 29, Orig, (CANCELLED)

The FAA published the following procedures in Docket No. 30360; Amdt. No. 3051 to Part 97 of the Federal Aviation Regulations (Vol. 68, FR No. 65, Page 16413; dated Friday, April 4, 2003) under section 97.33 effective May 15, 2003 which are hereby rescinded:

Agana, Guam, Guam International, RNAV (GPS) Y RWY 6L, Orig
Agana, Guam, Guam International, RNAV (GPS) Z RWY 6L, Orig

[FR Doc. 03–9724 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No.30364; Amdt. No. 3054]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective April 22, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 22, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on April 11, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§ 97.23, § 97.25, § 97.27, § 97.29, § 97.31, § 97.33 and § 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	Subject
03/26/03	OK	Sand Springs	William R. Pogue Muni	3/2388	NDB Rwy 35, Amdt 2B
03/27/03	IL	Chicago	Chicago Midway	3/2415	ILS Rwy 4R, Amdt 9B
03/27/03	GA	Newnan	Newnan Coweta County	3/2432	GPS Rwy 32, Orig
03/28/03	CO	Denver	Centennial	3/2448	VOR/DME RNAV Rwy 28, Amdt 1
03/28/03	WY	Riverton	Riverton Regional	3/2465	VOR Rwy 10, Amdt 5A
03/31/03	OH	Bellefontaine	Bellefontaine Regional	3/2499	RNAV (GPS) Rwy 25, Orig
03/31/03	OK	Sand Springs	William R. Pogue Muni	3/2504	GPS Rwy 35, Orig-A
04/01/03	LA	Lake Charles	Chennault Intl	3/2534	ILS Rwy 15, Amdt 4B
04/02/03	WV	Bluefield	Mercer County	3/2571	VOR Rwy 23, Amdt 8A
04/02/03	WV	Bluefield	Mercer County	3/2572	VOR/DME or GPS Rwy 23, Amdt 4A
04/02/03	WV	Bluefield	Mercer County	3/2573	ILS Rwy 23, Amdt 14D
04/02/03	IL	Decatur	Decatur	3/2577	NDB Rwy 6, Amdt 6

FDC date	State	City	Airport	FDC No.	Subject
04/02/03	IL	Decatur	Decatur	3/2578	LOC BC Rwy 24, Amdt 10
04/02/03	IL	Decatur	Decatur	3/2581	ILS Rwy 6, Amdt 13A
04/02/03	IL	Decatur	Decatur	3/2582	VOR Rwy 36, Amdt 15
04/02/03	TX	San Antonio	San Antonio Intl	3/2595	ILS Rwy 12R (Cat I, II), Amdt 13
04/03/03	OH	Cleveland	Cleveland-Hopkins Intl	3/2609	ILS Rwy 6L, Orig-B
04/04/03	NY	Newburgh	Newburgh/Stewart Intl	3/2641	VOR Rwy 27, Amdt 4A
04/04/03	PA	Franklin	Venango Regional	3/2654	ILS Rwy 20, Amdt 4B
04/07/03	VT	Burlington	Burlington Intl	3/2624	ILS/DME Rwy 33, Orig-D
04/09/03	SC	Myrtle Beach	Myrtle Beach Intl	3/2735	RADAR–1, Amdt 1
04/09/03	SC	Myrtle Beach	Myrtle Beach Intl	3/2736	ILS Rwy 18, Amdt 1C
04/09/03	SC	Myrtle Beach	Myrtle Beach Intl	3/2737	RNAV (GPS) Rwy 18, Amdt 1
04/09/03	TN	Dickson	Dickson Muni	3/2754	VOR/DME Rwy 17, Amdt 4B
04/09/03	TN	Dickson	Dickson Muni	03/2755	RNAV (GPS) Rwy 17, Orig
04/09/03	TN	Dickson	Dickson Muni	3/2756	NDB Rwy 17, Amdt 2A

[1] Replaces 3/2370.

[FR Doc. 03–9725 Filed 4–21–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 02P–0494]

Medical Devices; Exemption From Premarket Notification; Class II Devices; Optical Impression Systems for Computer Assisted Design and Manufacturing

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing an order granting a petition requesting exemption from the premarket notification requirements for data acquisition units for ceramic dental restoration systems. This rule exempts from premarket notification data acquisition units for ceramic dental restoration systems and establishes a guidance document as a special control for this device. FDA is publishing this order in accordance with the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: This rule is effective April 22, 2003.

FOR FURTHER INFORMATION CONTACT: Kevin Mulry, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, ext 185.

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, Class II, or Class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (the 1976 amendments (Public Law 94–295)), as amended by the Safe Medical Devices Act of 1990 (the SMDA (Public Law 101–629)), devices are to be classified into Class I (general controls) if there is information showing that the general controls of the act are sufficient to assure safety and effectiveness; into Class II (special controls), if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into Class III (premarket approval), if there is insufficient information to support classifying a device into Class I or Class II and the device is a life-sustaining or life-supporting device or is for a use that is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices), are classified through the premarket notification process under section 510(k) of the act (21 U.S.C. 360(k)). Section 510(k) of the act and the implementing regulations (21 CFR part 807) require persons who intend to market a new device to submit a premarket notification report (510(k)) containing information that allows FDA to determine whether the new device is "substantially equivalent" within the meaning of section 513(i) of the act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Public Law 105–115). Section 206 of FDAMA, in part, added a new section 510(m) to the act. Section 510(m)(1) of the act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of Class II device that does not require a report under section 510(k) of the act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the act provides that 1 day after date of publication of the list under section 510(m)(1) of the act, FDA may exempt a device on its own initiative, or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a Class II device. These factors are discussed in the guidance that the agency issued on February 19, 1998, entitled "Procedures for Class II Device Exemptions From Premarket Notification, Guidance for Industry and CDRH Staff." That guidance can be obtained through the Internet on the CDRH home page at *http://www.fda.gov/cdrh.guidance.html* or by facsimile through CDRH Facts-on-Demand at 1–800–899–0381 or 301–827–0111. Specify "159" when prompted for the document shelf number.

III. Petition

On October 25, 2002, FDA received a petition requesting an exemption from premarket notification for data acquisition units for ceramic dental restoration systems. These devices are currently classified under § 872.3660 *Impression material* (21 CFR 872.3660) as an accessory. In the **Federal Register** of January 30, 2003 (67 FR 2787), FDA published a notice announcing that this petition had been received and provided opportunity for interested persons to submit comments on the petition by March 3, 2003. FDA did not receive any comments.

FDA has determined that maintaining classification of the data acquisition units in Class II and exempting them from the premarket notification requirements, with the guidance document as a special control, will provide reasonable assurance of the safety and effectiveness of these devices and, therefore, they meet the criteria for exemption from the premarket notification requirements. For precision and clarity, FDA is: (1) Designating these devices as "optical impression systems for computer assisted design and manufacturing (CAD/CAM);" (2) placing them in new § 872.3661; (3) exempting them from the premarket notification requirements; and (4) establishing the guidance document entitled "Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA" as the special control for these devices. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of this guidance document. Following the effective date of this final rule any firm submitting a 510(k) premarket notification for an optical impression system for CAD/CAM will need to address the issues covered in the special control guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness. All other devices classified under § 872.3660 will continue to be classified in that section and subject to the same regulatory requirements as before.

For the benefit of the reader, FDA is also adding a § 872.1(e) to direct the reader to the Web site for guidance documents.

IV. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule will relieve a burden and simplify the marketing of these devices. The guidance document is based on existing review practices and will not impose any new burdens on these devices. The agency, therefore, certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 872

Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 872 is amended as follows:

PART 872—DENTAL DEVICES

■ 1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 872.1 is amended by adding paragraph (e) to read as follows:

§ 872.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at *http://www.fda.gov/cdrh.guidance.html.*

■ 3. Section 872.3660 is amended by revising paragraph (b) to read as follows:

§ 872.3660 Impression material.

* * * * *

(b) *Classification.* Class II (Special Controls).

■ 4. Section 872.3661 is added to subpart D to read as follows:

§ 872.3661 Optical impression Systems for CAD/CAM.

(a) *Identification.* An optical impression system for computer assisted design and manufacturing (CAD/CAM) is a device used to record the topographical characteristics of teeth, dental impressions, or stone models by analog or digital methods for use in the computer-assisted design and manufacturing of dental restorative prosthetic devices. Such systems may consist of a camera, scanner, or equivalent type of sensor and a computer with software.

(b) *Classification.* Class II (Special Controls). The device is exempt from the premarket notification procedures in subpart E of part 807 of the chapter subject to the limitations in § 872.9. The special control for these devices is the FDA guidance document entitled "Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA." For the availability of this guidance document, see § 872.1(e).

Dated: April 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9869 Filed 4–21–03; 8:45 am]

BILLING CODE 4160–01–S

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 810

[CSOSA–0002–F]

RIN 3225–AA00

Community Supervision: Administrative Sanctions

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Final rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA") is finalizing its interim rule on administrative sanctions which may be imposed on offenders under CSOSA's supervision who violate the general or specific conditions of their release. The purpose of imposing sanctions is to enable CSOSA staff to respond as swiftly, certainly, and consistently as practicable to non-compliant behavior. Using sanctions will reduce the number of violation reports sent to the releasing authority (for example, the sentencing court or the United States Parole Commission). CSOSA staff will be able to refer offenders back to the releasing authority having demonstrated that CSOSA has exhausted the range of options at its disposal to change the offender's non-compliant behavior. The releasing authority may then concentrate on those referrals which fully merit scrutiny. The purpose of the regulations is to prevent crime, reduce recidivism, and support the fair administration of justice through the promotion of effective community supervision.

EFFECTIVE DATE: April 22, 2003.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov*).

SUPPLEMENTARY INFORMATION: CSOSA is finalizing its interim regulations on administrative sanctions which may be imposed on offenders under CSOSA's supervision who violate the general or specific conditions of their release. These interim regulations were published in the **Federal Register** on September 20, 2001 (66 FR 48336).

CSOSA is responsible for the supervision of adults on probation, parole, or supervised release in the District of Columbia. A critical factor in such supervision is the ability to introduce an accountability structure into the supervision process and to provide swift, certain, and consistent responses to non-compliant behavior. Under traditional procedures, when offenders under CSOSA supervision violate the general or specific conditions of their release, CSOSA staff must refer the matter to the releasing authority. In most cases, the releasing authority is the sentencing court (usually the Superior Court of the District of Columbia) or the United States Parole Commission ("USPC"). The releasing authority, however, may include any of the jurisdictions participating in the Interstate Compact. The referrals necessarily increase the workload for the releasing authority. The response and response time between a reported violation and a hearing is consequently uncertain.

Regulations issued by the USPC (*see* 28 CFR 2.85(a)(15)) authorize CSOSA's community supervision officers to impose graduated sanctions if a parolee has tested positive for illegal drugs or has committed any non-criminal violation of the conditions of parole. The USPC retains the authority to override an imposed sanction and issue a warrant or summons if it finds that the parolee is a risk to public safety or is not complying in good faith with the sanction. The Superior Court of the District of Columbia typically includes authorization for a program of graduated sanctions in connection with illicit drug use or other violation of conditions of probation as part of the offender's general conditions of probation. By issuing these interim regulations on the imposition of administrative sanctions, CSOSA intended to ensure the consistency, certainty, and timeliness of imposed sanctions for all offenders (parolees, probationers, and supervised releasees) under its supervision.

Under these interim regulations, CSOSA established a supervision level and minimum contact requirements for the individual offender (*see* § 810.1). CSOSA uses an accountability contract (*see* § 810.2) between the offender and CSOSA to define non-compliant behavior. The accountability contract outlines the expectations for behavior and the consequences (that is, the sanctions) for failing to comply. The sanctions present the community supervision officer with a range of corrective actions (*see* § 810.3) which can be applied short of court or USPC approval. The goal of these sanctions is to change offender behavior. Imposing the sanctions quickly and consistently may prevent escalation of the offender's non-compliant behavior.

The accountability contract identifies a schedule for imposing sanctions which is keyed to the recurrence of violations. The accountability contract also provides for positive reinforcements for compliant behavior (*see* § 810.3(d)).

Administrative sanctions accordingly are a component of effective supervision. When CSOSA does make a referral to the court or to the USPC, it will be able to demonstrate that it has exhausted the range of options at its disposal with respect to the offender's non-compliant behavior or that the violation is so severe immediate action by the releasing authority may be necessary to revoke the offender's liberty in the community.

Matters of Regulatory Procedure

Administrative Procedure Act

The implementation of these regulations as interim regulations, with provision for post-promulgation public comments and without any delay in its effectiveness, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The anticipated benefits of the rulemaking include an increase in the public safety of the community, relief to the courts and the USPC, and responsive supervision for offenders who may be at risk for continued non-compliant behavior.

Accordingly, CSOSA issued interim regulations to allow for public comment during the implementation of its procedures for the imposition of administrative sanctions. CSOSA received one comment on the interim regulations. The commenter, the Director of Corrections for Volunteers of America, a national, nonprofit organization, expressed support for the interim regulations. The commenter, citing previous technical violation pilot projects and guides produced by the Center for Effective Public Policy and the National Institute of Corrections, stated that CSOSA's interim regulations were what community corrections needs nationwide to effectively empower community supervision staff and reduce unnecessary paperwork and downtime for judges/judicial staff, parole commission and staff, and supervising agency staff. CSOSA is therefore adopting the interim regulations as final without any change.

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 810

Probation and Parole.

PART 810—COMMUNITY SUPERVISION: ADMINISTRATIVE SANCTIONS

■ Accordingly, CSOSA adopts the interim rule published at 66 FR 48336 which added part 810 to chapter VIII, title 28 of the Code of Federal Regulations as a final rule without change.

Paul A. Quander, Jr.,

Director.

[FR Doc. 03–9932 Filed 4–21–03; 8:45 am]

BILLING CODE 3129–01–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 811

[CSOSA–0005–F]

RIN 3225–AA03

District of Columbia Sex Offender Registration

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Final rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA") is finalizing its interim rule that set forth procedures and requirements relating to the registration in the District of Columbia of sex offenders, the verification of the information maintained on registered sex offenders, and the reporting of changes in that information. These regulations carry out responsibilities of CSOSA under Federal and District of Columbia law.

EFFECTIVE DATE: April 22, 2003.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov*).

SUPPLEMENTARY INFORMATION: CSOSA is finalizing its interim regulations on the registration of sex offenders in the District of Columbia (28 CFR part 811) which were published in the **Federal Register** on August 21, 2002 (67 FR 54093).

Under the Sex Offender Registration Act of 1999 ("SORA" or "Act", D.C. Law 13–137, D.C. Official Code 22–4001 *et seq.*), and section 166(a) of the Consolidated Appropriations Act, 2000 (Pub. L. 106–113 § 166(a), 113 Stat. 1530; D.C. Official Code § 24–133(c)(5)), CSOSA is responsible for carrying out sex offender registration functions in the District of Columbia, including maintaining and operating the sex offender registry. The sex offender registry contains information about sex offenders who live, reside, work, or attend school in the District of Columbia. Information about sex offenders and photographs, fingerprints, and supporting documents are provided by CSOSA to the Metropolitan Police Department, which is responsible for disclosing information about registered sex offenders to the public in

conformity with District of Columbia laws and regulations. Appropriate information is also transmitted to the FBI, which operates the National Sex Offender Registry, and to sex offender registration authorities in other jurisdictions. This system is designed to further public safety by facilitating effective law enforcement, enabling members of the public to take lawful measures to protect themselves and their families, and reducing offenders' exposure to temptation to commit more crimes.

Matters of Regulatory Procedure

Administrative Procedure Act

CSOSA implemented its sex offender registration functions as interim regulations, with provision for post-promulgation public comments, based on the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The regulations implement, in part, section 166(a) of the Consolidated Appropriations Act, 2000 (Pub. L. 106–113 § 166(a), 113 Stat. 1530; D.C. Official Code § 24–133(c)(5)), which directs CSOSA to carry out sex offender registration functions in the District of Columbia, and various provisions of District of Columbia law and regulations, including sections 3, 8, 9 and 10 of the Sex Offender Registration Act of 1999 (D.C. Official Code §§ 22–4002, 4007, 4008 & 4009) and 6A DCMR §§ 405.1, 409.1, 409.2, 410.1, which grant CSOSA the authority to make certain decisions and to adopt procedures and requirements relating to sex offender registration in the District of Columbia.

As stated in the report of the District of Columbia Council's Judiciary Committee for the District's Sex Offender Registration Act, "[a] sex offender registration and notification program, if appropriately designed and effectively implemented, can promote public safety in at least three ways: by facilitating effective law enforcement; by enabling members of the public to take direct measures of a lawful nature for the protection of themselves and their families; and by reducing registered offenders' exposure to temptation to commit more offenses." Committee on the Judiciary, Report on Bill 13–250, The Sex Offender Registration Act of 1999, at 3 (November 15, 1999). Given the importance of having accurate, complete, and up-to-date information about sex offenders available to both law enforcement officials and to the public, and the fact that the formulation of implementing regulations closely follows the statutory framework and existing District of Columbia regulations, it is impracticable and unnecessary to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d). Moreover, as noted, the collection of sex offender registration information and its release to law enforcement and other agencies and the public pursuant to the Sex Offender Registration Act of 1999 furthers important public safety interests by facilitating the solution and prevention of crime by law enforcement, enabling lawful community self-protection measures, and reducing the temptation for recidivism. Delay in the full implementation of the law—including the ability to prosecute and take other actions in relation to sex offenders who fail to comply with its requirements—would thwart or delay the realization of these public safety benefits. Therefore, it would be contrary to the public interest to adopt these regulations with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d).

Accordingly, CSOSA issued interim regulations to allow for public comment during the implementation of the sex offender registration functions. CSOSA did not receive any public comment on the interim regulations. CSOSA is therefore adopting the interim regulations as final without any change.

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 811

Incorporation by Reference, Probation and Parole.

PART 811—SEX OFFENDER REGISTRATION

■ Accordingly, CSOSA adopts the interim rule published at 67 FR 54093 which added part 811 to chapter VIII, Title 28 of the Code of Federal Regulations as a final rule without change.

Paul A. Quander, Jr.,

Director.

[FR Doc. 03–9930 Filed 4–21–03; 8:45 am]

BILLING CODE 3129–01–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 812

[CSOSA–0006–F]

RIN 3225–AA04

Collection and Use of DNA Information

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Final rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia ("CSOSA") is finalizing its interim rule which implemented section 4 of the DNA Analysis Backlog Elimination Act of 2000, in conjunction with District of Columbia laws enacted pursuant to that Act which specify qualifying District of Columbia offenses for purposes of DNA sample collection. The interim regulations set forth the responsibilities of CSOSA for collecting DNA samples from individuals under its supervision who have been convicted of specific offenses identified by District of Columbia statute. The regulations specify that DNA samples are to be collected, handled, preserved, and submitted to the Federal Bureau of Investigation ("FBI") in accordance with FBI guidelines for inclusion in the Combined DNA Index System ("CODIS"), a national database of DNA profiles from convicted offenders, unsolved crime scenes, and missing persons. The regulations also specify that CSOSA will cooperate with the Federal Bureau of Prisons to ensure that unnecessary samples will not be collected; establish a standard for what constitutes an individual's refusal to cooperate in the collection of a DNA sample; and define what steps CSOSA deems to be reasonably necessary to take when an individual refuses to cooperate. The regulations identify in an appendix the offenses which qualify for DNA collection, as they appear in the District of Columbia public laws, in the District of Columbia Code (1981 ed.), and in the District of Columbia Official Code (2001 ed.).

EFFECTIVE DATE: April 22, 2003.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov*).

SUPPLEMENTARY INFORMATION: CSOSA is finalizing its interim regulations on the collection and use of DNA information (28 CFR part 812) which were published in the **Federal Register** on August 21, 2002 (67 FR 54098).

Matters of Regulatory Procedure

Administrative Procedure Act

The implementation of these regulations as interim regulations, with provision for post-promulgation public comments, is based on the "good cause" exceptions found at 5 U.S.C. 553(b)(3)(B) and (d)(3). The rule implements section 4 of Public Law 106–546 (42 U.S.C. 14135b), which requires the Director of CSOSA to "collect a DNA sample from each individual under the supervision of the Agency who is on supervised release, parole, or probation who is, or has been, convicted of a qualifying District of Columbia offense" and requires collection of DNA samples to commence not later than 180 days after the effective date of the Act. Given that section 4(d) authorizes the government of the District of Columbia to "determine those offenses under the District of Columbia Code that shall be treated * * * as qualifying District of Columbia offenses," Congress must have been aware that it would not be feasible within a 180-day time period to enact the required District of Columbia legislation, publish a proposed regulation for notice and comment, as well as a subsequent final rule, and for the period of the final rule's delayed effective date to have run. Public Law 106–546, in conjunction with the District of Columbia legislation, is explicit and comprehensive concerning the types of offenses that will be treated as qualifying District of Columbia offenses and concerning the responsibilities of CSOSA in collecting DNA samples. In light of the short statutory time frame for the implementation of this law and the fact that the formulation of implementing regulations involves the exercise of relatively little discretion, it is impracticable and unnecessary to adopt this rule with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d).

Moreover, the collection, analysis, and indexing of DNA samples as required by Public Law 106–546 furthers important public safety interests by facilitating the solution and prevention of crime, *see* H.R. Rep. No. 900, 106th Cong., 2d Sess. 8–11 (2000) (House Judiciary Committee Report). Delay in the full implementation of the law—including the absence of a specification of what constitutes a refusal to cooperate in DNA sample collection and what measures are to be taken in response to such a refusal, as set forth in these regulations—would thwart or delay the realization of these public safety benefits. Dangerous offenders who might be successfully identified through DNA matching may reach the end of supervision before DNA sample collection can be carried out, thereby remaining at large to engage in further crimes against the public. Furthermore, delay in collecting, analyzing, and indexing DNA samples, and hence in the identification of offenders, may foreclose prosecution due to the running of statutes of limitations. Failure to identify, or delay in identifying, offenders as the perpetrators of crimes through DNA matching also increases the risk that innocent persons may be wrongfully suspected, accused, or convicted of such crimes. Therefore, it would be contrary to the public interest to adopt these regulations with the prior notice and comment period normally required under 5 U.S.C. 553(b) or with the delayed effective date normally required under 5 U.S.C. 553(d).

Accordingly, CSOSA issued interim regulations to allow for public comment during the implementation of its procedures for DNA collection and use. CSOSA did not receive any public comment on the interim regulations. CSOSA is therefore adopting the interim regulations as final. In adopting the interim regulations as final, CSOSA is making two editorial amendments to correct typographical errors.

Executive Order 12866

This rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule

and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call the Records Manager (Roy Nanovic) at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 812

Probation and parole.

■ Accordingly, CSOSA adopts the interim rule published at 67 FR 54098 which added part 812 to chapter VIII, title 28 of the Code of Federal Regulations as a final rule with the following editorial amendments.

Paul A. Quander, Jr.,

Director.

PART 812—COLLECTION AND USE OF DNA INFORMATION

■ 1. The authority citation for part 812 continues to read as follows:

Authority: 5 U.S.C. 301; Pub. L. 106–546 (114 Stat. 2726).

§ 812.4 [Amended]

■ 2. In paragraph (b)(3) of § 812.4, remove the word "provided" and insert the word "provide" in its place.

Appendix A to Part 812 [Amended]

■ 3. In item (9) of Table 1 of Appendix A to part 812, remove the word "act" and insert the word "Act" in its place.

[FR Doc. 03–9931 Filed 4–21–03; 8:45 am]

BILLING CODE 3129–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–139–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are announcing the removal of a required amendment to the Pennsylvania regulatory program (the "Pennsylvania program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). We are removing the required amendment because the Federal regulation upon which the required amendment was based no longer exists.

EFFECTIVE DATE: April 22, 2003.

FOR FURTHER INFORMATION CONTACT: George Rieger, Telephone: (717) 782–4036. Email: *grieger@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Proposed Amendment

In the January 7, 2003, **Federal Register** (68 FR 721), we announced our proposal to remove the required amendment to Pennsylvania's program found at 30 CFR 938.16(ss). OSM proposed to remove the required amendment because the Federal regulation upon which the required amendment was based no longer exists. In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendments adequacy. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on February 6, 2003. We did not receive any comments.

III. OSM's Findings

Following are the findings we made concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

At 30 CFR 938.16(ss), OSM required Pennsylvania to submit a change to its regulations under the ownership and control provisions concerning an applicant's eligibility for receiving a permit when outstanding violations are present. Specifically, it mandates that Pennsylvania amend 25 Pa. Code 86.37(a)(8) and (11) to require a permit applicant to submit proof that a violation has been corrected or is in the process of being satisfactorily corrected within 30 days of the initial judicial review affirming the violation.

The Federal provision corresponding to the required amendment at 938.16(ss) was formerly located at 30 CFR 773.15(b)(1)(ii). However, on December 19, 2000, we made changes to the Federal rules regarding ownership and control that eliminated this provision (65 FR 79582). In discussing the rule change at 30 CFR 773.15(b)(1)(ii), we noted:

> Under the previous rule at § 773.15(b)(1)(ii), the permittee had 30 days from the date that the initial judicial review decision affirmed the validity of the violation to submit proof that the violation was being corrected to the satisfaction of the agency with jurisdiction over the violation. In contrast, final § 773.14(c) requires that the regulatory authority initiate action to suspend or revoke the permit as improvidently issued if the disposition of challenges or administrative or judicial appeals affirms the violation or ownership or control listing or finding. We made this change to ensure prompt implementation of the section 510(c) permit block sanction once the validity of a violation or ownership or control listing or finding is affirmed on appeal. (The previous rule did not specify what action the regulatory authority must take if the permittee did not submit the required proof within 30 days.) 65 FR at 79623.

Because the required amendment at 30 CFR 938.16(ss) required the State to comply with the previous regulations found at 30 CFR 773.15(b)(1)(ii) rather than new Federal regulations found at 30 CFR 773.14(c), it is now unnecessary and we are therefore removing it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment in a January 7, 2003, **Federal Register** notice (68 FR 721) but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. 844.06).

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). We did not seek EPA concurrence on this amendment because we determined that it contains no such provisions.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On March 1, 2002, we requested comments on Pennsylvania's amendment (Administrative Record No. 844.06), but neither the SHPO nor the ACHP responded to our request.

V. OSM's Decision

Based on the above findings, we are removing the required amendment. To implement this decision, we are amending the Federal regulations at 30 CFR part 938, which codify decisions concerning the Pennsylvania program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the Pennsylvania program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications because we have removed the counterpart Federal regulation upon which the required amendment was based. Therefore, we are requiring no action by the State.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. The basis for this determination is that our decision is on a State regulatory program and does not involve a Federal program involving Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that

require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The removal of the required amendment, which is the subject of this rule, will have no significant economic impact upon a substantial number of small entities. We made this determination because we are not requiring action by the State but removing a required amendment concerning the counterpart Federal regulation which no longer exists.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. We made this determination because we are not requiring action by the State but removing a required amendment concerning the counterpart Federal regulation which no longer exists.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. We made this determination because we are not requiring action by the State but removing a required amendment concerning the counterpart Federal regulation which no longer exists.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 11, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

■ 1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 938.16 [Amended]

■ 2. Section 938.16 is amended by removing and reserving paragraph (ss).

[FR Doc. 03–9841 Filed 4–21–03; 8:45 am]
BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7486–4]

Minnesota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is granting Minnesota final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Minnesota has submitted these changes so that it may implement the EPA approved U.S. Filter Recovery Services (USFRS) XL project. The Agency published a proposed rule on September 9, 2002, and provided for public comment. The public comment period ended on October 9, 2002. We received no comments. No further opportunity for comment will be provided. EPA has determined that Minnesota's revisions satisfy all the requirements needed to qualify for final authorization, and is authorizing the State's changes through this final action.

EFFECTIVE DATES: This final authorization will be effective on April 22, 2003, and will expire automatically 5 years after the State of Minnesota modifies its USFRS RCRA hazardous waste permit to incorporate the requirements necessary to implement this project.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Minnesota Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, telephone number (312) 886–7450, or Nathan Cooley, Minnesota Pollution Control Agency, 520 Lafayette Road, North, St. Paul, Minnesota 55155, telephone number (651) 297–7544.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Minnesota's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we propose to grant Minnesota final authorization to operate its hazardous waste program with the changes described in the authorization application. Minnesota has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized states before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Minnesota, including issuing permits, until the state is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is to allow Minnesota to carry out the requirements outlined in the U.S. Filter Recovery Services XL Project promulgated in the May 22, 2001 **Federal Register** (66 FR 28066). On May 23, 1995 (60 FR 27282), U.S. EPA issued guidance for XL projects, with the goal of reducing regulatory burden and promoting economic growth, while achieving better environmental and public health protection. XL Projects are required to provide alternative pollution reduction strategies pursuant to eight criteria.

These criteria were met and approved in the May 22, 2001 **Federal Register**. This action merely allows Minnesota to carry out the requirements approved in the May 22, 2001 **Federal Register**.

Minnesota has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports
- Enforce RCRA requirements and suspend or revoke permits

This action does not impose additional requirements on the regulated community. U.S. EPA believes that this project will result in cost savings and a reduction in the paperwork burden for generators. For more details please see the May 22, 2001 **Federal Register** (66 FR 28066).

D. Proposed Rule

On September 9, 2002 (67 FR 57191) EPA published a proposed rule. In that rule we proposed granting authorization of changes to Minnesota's hazardous waste program and opened our decision to public comment. The Agency received no comments on this proposal.

E. What Has Minnesota Previously Been Authorized for?

Minnesota initially received final authorization on January 28, 1985, effective February 11, 1985 (50 FR 3756) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 20, 1987, effective September 18, 1987 (52 FR 27199); on April 24, 1989, effective June 23, 1989 (54 FR 16361) amended June 28, 1989 (54 FR 27170); on June 15, 1990, effective August 14, 1990 (55 FR 24232); on June 24, 1991, effective August 23, 1991 (56 FR 28709); on March 19, 1992, effective May 18, 1992 (57 FR 9501); on March 17, 1993, effective May 17, 1993 (58 FR 14321); on January 20, 1994, effective March 21, 1994 (59 FR 2998); and on May 25, 2000, effective August 23, 2000 (65 FR 33774).

F. What Changes Are We Authorizing With Today's Action?

On April 17, 2002, Minnesota submitted a final complete program revision application, seeking authorization of its changes in accordance with 40 CFR 271.21. We now make a final decision, that Minnesota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we propose to grant Minnesota final authorization for the following program changes:

Description of Federal requirement (include checklist #, if relevant)	FEDERAL REGISTER date and page (and/or RCRA statutory authority)	Analogous State authority
Project XL Site-Specific Rulemaking for U.S. Filter Recovery Services, Roseville, Minnesota and Generators and Transporters of USFRS XL Waste.	May 22, 2001, 66 FR 28066	Minnesota Statutes sections 114C.10 through 114C.14 Effective 1996; and USFRS permit, and MPCA generator and transporter standards based on these Statutes.

G. Where Are the Revised State Rules Different From the Federal Rules?

In the changes currently being made to Minnesota's program, there are no regulations more stringent than the Federal requirements. There are no broader-in-scope provisions in these changes, either. These changes are unique to Minnesota due to the nature of Project XL as a site specific program. The changes are found in 40 CFR part 266, subpart O (§§ 266.400 through 266.422).

H. Who Handles Permits After the Authorization Takes Effect?

Minnesota will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to implement and issue permits for HSWA requirements for which Minnesota is not yet authorized. As the XL project involves new permits, Minnesota will issue any new permits or new portions of permits for the provisions listed in the Table above. EPA or Minnesota may enforce compliance with those permits.

I. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Minnesota?

Minnesota is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes:

1. All lands within the exterior boundaries of Indian Reservations within or abutting the State of Minnesota, including:
   a. Bois Forte Indian Reservation
   b. Fond Du Lac Indian Reservation
   c. Grand Portage Indian Reservation
   d. Leech Lake Indian Reservation
   e. Lower Sioux Indian Reservation
   f. Mille Lacs Indian Reservation
   g. Prairie Island Indian Reservation
   h. Red Lake Indian Reservation
   i. Shakopee Mdewankanton Indian Reservation
   j. Upper Sioux Indian Reservation
   k. White Earth Indian Reservation
2. Any land held in trust by the U.S. for an Indian tribe, and
3. Any other land, whether on or off a reservation that qualifies as Indian country.

Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

J. What Is Codification and Is EPA Codifying Minnesota's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart Y for this authorization of Minnesota's program changes until a later date.

K. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA section 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This action also does not have Tribal implications within the

meaning of Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes state requirements as part of the state RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866. This action does not include environmental justice issues that require consideration under Executive Order 12898 (59 FR 7629, February 16, 1994).

Under RCRA section 3006(b), EPA grants a state's application for authorization as long as the state meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a state authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the Executive Order. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 4, 2003.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 03–9909 Filed 4–21–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 98–153; FCC 03–33]

Ultra-Wideband Transmission Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document responds to fourteen petitions for reconsideration that were filed in response to the regulations for unlicensed ultra-wideband ("UWB") operation. In general, this document does not make any significant changes to the existing UWB parameters.

DATES: Effective May 22, 2003 except § 15.525 which contains information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date for that section. Written comments by the public on the new and/or modified information collection(s) are due June 23, 2003.

ADDRESSES: A copy of any comments on the information collection(s) contained herein should be submitted to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to Leslie.Smith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: John Reed (202) 418–2455, Policy and Rules Division, Office of Engineering and Technology. For additional information concerning the information collection(s) contained in this document, contact Les Smith at (202) 418–0217, or via the Internet at Leslie.Smith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Memorandum Opinion and Order portion of the Commission's *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, FCC 03–33, adopted February 13, 2003, and released March 12, 2003. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of Memorandum Opinion and Order

1. On February 14, 2002, the Commission adopted a *First Report and Order* implementing regulations to permit the unlicensed operation of ultra-wideband transmission systems. Fourteen petitions for reconsideration were filed in response to that Order. In general, this Memorandum Opinion and Order ("MO&O") does not make any significant changes to the existing UWB technical parameters as the Commission is reluctant to do so until it has more experience with UWB devices. The Commission also believes that any major changes to the rules for existing UWB product categories at this early stage would be disruptive to current industry product development efforts.

2. The Commission reviewed the requests from the petitioners and granted those that will not increase the interference potential of UWB devices. It denied those requests that sought, without factual support, further restrictions on UWB operations. The Commission believes that the next 12 to 18 months should allow the introduction of UWB devices under its recently adopted rules. It also hopes that additional tests using commercially available UWB devices will have been completed within that time frame. Such tests currently are being contemplated by the National Aeronautics and Space Administration (NASA), the Department of Transportation (DOT), by the Department of Defense, and by commercial entities. As these steps occur, the Commission intends to continue its review of the UWB standards to determine where additional changes warrant consideration.

3. The petitions for reconsideration can be divided into three general categories: those from developers of UWB devices that seek to expand on the UWB standards to permit or facilitate a particular type of operation; those from organizations representing authorized radio services that seek additional attenuation of UWB emissions in the frequency bands used by their devices; and those seeking changes to the Part 15 rules for non-UWB operation. The UWB developers consist of Time Domain, Inc., American Gas Association and American Public Gas Association (AGA and AGPA), Ground Penetrating Radar Industry Coalition (GPRIC), GPR Service Providers Coalition (GPR Providers), and National Utilities Contractors Association (NUCA), Multispectral Solutions, Inc. (MSSI), Siemens VDO, and Kohler Co. The organizations representing authorized radio services consist of Cingular Wireless LLC, Qualcomm, Sprint Corp., Sirius Satellite Radio Inc. and XM Radio Inc., Satellite Industry Association (SIA), and Aeronautical Radio, Inc., and Air Transport Association of America (ARINC and ATA). In addition, MSSI requests that we amend our peak power limits on non-UWB part 15 devices.

4. The UWB rules require through-wall imaging systems to operate with their –10 dB bandwidth located below 960 MHz or between 1.99–10.6 GHz. Imaging systems may not be used in conjunction with tag identifiers used to locate personnel nor may imaging systems be used to transmit voice or data information. Communications systems are required to operate with their –10 dB bandwidth located between 3.1–10.6 GHz. Through-wall systems are required to attenuate emissions in the GPS band by 10 dB below the part 15 general emission limits, *i.e.*, to –51.3 dBm/MHz, in the 1610–1990 MHz band and by 12 dB below the part 15 general emission limits, *i.e.*, to –53.3 dBm/MHz, in the 960–1610 MHz band. Other UWB devices are subject to even greater attenuation of emissions in these bands.

5. In response to the petition from Time Domain, Inc., the Commission amended its rules to permit the operation of a through-wall imaging system with a center frequency above 1990 MHz at the Part 15 general emission limits. This equipment may be used only by law enforcement officers, emergency rescue personnel and firefighters operating under the authority of a local or state government. Further, the operators of these systems must be licensed by the Commission under Part 90 of its regulations. The grant of a Part 90 license for operation of a land mobile station will automatically convey authority to operate this through-wall imaging system. The license may be held by the organization under which the UWB operator is employed. The Commission also required that this equipment be operated only for law enforcement applications, the providing of emergency services, and necessary training operations. Because of the possibility that some training areas may be located near public access areas where receiving equipment may not be under the immediate control of the UWB device public safety operator, at the request of NTIA the Commission requested that during training exercises through-wall imaging systems operating above 1990 MHz be encompassed by a 50 meter perimeter within which public access is restricted. Finally, the Commission required that the UWB public safety communication system transmitter operate with its center frequency, as defined in 47 CFR 15.503(b), between 1990 MHz and 10.6 GHz. The frequency at which the highest radiated emission occurs must be located in the 1.99 GHz to 10.6 GHz band and must not exceed an average root-mean-square (RMS) EIRP of –41.3 dBm/MHz. In addition, broadband emissions between 960 MHz and 1610 MHz must not exceed an average (RMS) EIRP of –46.3 dBm/MHz, when measured using a resolution bandwidth of at least 1 MHz, and narrowband emissions in the GPS bands must be attenuated so that they do not exceed an RMS EIRP of –56.3 dBm, when measured using a resolution bandwidth of no less than 1 kHz. Emissions appearing below 960 MHz may not exceed the part 15 general emission limits and any emissions above 10.6 GHz may not exceed an RMS EIRP of –51.3 dBm/MHz. Coordination is not required prior to operation nor is there any requirement that these devices be equipped with a manual transmission switch.

6. Ground penetrating radars (GPRs) and wall imaging systems must be operated by law enforcement, fire and emergency rescue organizations, by scientific research institutes, by commercial mining companies or by construction companies. The operation of these devices is subject to the requirement that the operator coordinate the operational location with the Commission. A dead man switch is required to ensure that the UWB device ceases to operate within 10 seconds of being released by the operator. These products must operate with their –10 dB bandwidth below 960 MHz or between 3.1–10.6 GHz and may operate within those bands at the part 15 general emission limits. Emissions within the 960–3100 MHz band are required to be attenuated below the part 15 general emission limits by 10 to 24 dB, depending on the frequency.

7. In response to petitions from AGA and APGA, the GPRIC, the GPR Providers, and the NUCA, the Commission eliminated the requirement that GPRs and wall imaging systems operate with their –10 dB bandwidths below 960 MHz or above 3.1 GHz; clarified the limitations on who may operate ground penetrating radar (GPR) systems and wall imaging systems and for what purposes; eliminated the requirement for non-hand held GPRs to employ a dead man switch; and clarified the coordination requirements for imaging devices.

8. UWB consumer devices are required to operate with their –10 dB bandwidth in the 3.1–10.6 GHz band and are limited to indoor-only and hand held systems. These systems must comply with the UWB definition by operating with a minimum fractional bandwidth of 0.20 or with a minimum –10 dB bandwidth of 500 MHz. The Commission denied MSSI requests that any type of UWB device, *e.g.*, a vehicle radar system, be permitted to operate in the 3.1–10.6 GHz band provided it employs a low PRF; and that devices be prohibited from operating under the UWB regulations if they achieve their wide bandwidth due to high data rates, *i.e.*, where the bandwidth is modulation dependent. The Commission agreed with MSSI requests that the emission charts that accompanied the February 14, 2002, News Release announcing the adoption of the UWB regulations did not correctly reflect the emission limits below 960 MHz.

9. The UWB regulations permit the operation of vehicular radar systems in the 22–29 GHz band. In the R&O, the Commission specifically precluded the operation of swept frequency systems and frequency hopping systems under

the UWB rules unless the transmissions comply with the minimum bandwidth requirement when measured with the sweep or hopping sequence stopped. The Commission indicated that this was necessary as no measurement procedure had been established to permit the emission levels from such devices to be determined while sweeping or hopping. The Commission expressed similar concerns in the Notice of Proposed Rule Making in this proceeding, 65 FR 37332 (June 14, 200), and declined to include transmitters employing swept frequency and similar modulation types from consideration as UWB devices. For these reasons, it denied the petition from Siemens VDO to permit pulsed frequency hopping vehicle radars to be included under the definition of a UWB device by permitting such transmitters to occupy the minimum required bandwidth within any 10 millisecond period rather than at any point in time.

10. The rules permit UWB devices to be operated indoors for any purpose provided the –10 dB bandwidth is within the 3.1–10.6 GHz band. These systems are permitted to operate at the part 15 general emission limits, –41.3 dBm in the subject band, and are required to attenuate their emissions outside of this band. Within the 960–1610 MHz band, the emissions may not exceed –75.3 dBm, a level 34 dB below the part 15 general emission limits. The Commission denied the petition from Kohler to increase the emission limit in the 960–1610 MHz band for indoor devices

11. The Cellular Radiotelephone Service operates at 824–849 MHz and 869–894 MHz; the PCS operates at 1850–1910 MHz and 1930–1990 MHz. UWB devices do not operate with their –10 dB bandwidths located within the PCS bands. However, like many other radio transmission systems, they may place unwanted emissions within that spectrum. The Commission denied the petitions from Cingular, Qualcomm and Sprint to decrease the emission levels permitted from UWB devices in the cellular, PCS and GPS frequency bands. It added that there was no basis for Sprint's and Cingular's claim that cellular or PCS exclusivity prohibits the Commission from providing for the operation of new radio services, including the operation of UWB devices that could place emissions within these bands. Further, the Commission denied the petitions to modify the transmission acknowledgement requirement for UWB systems, to amend the rules limiting certain UWB devices to indoor-only operation, or to amend the standards for imaging systems.

12. The Satellite Digital Audio Radio Service (SDARS) operates in the frequency bands 2320–2332.5 MHz and 2332.5–2345 MHz. Sirius, which operates under the name Satellite CD Radio Inc., uses the lower band, and XM uses the upper band. Through-wall imaging systems and surveillance systems, the only UWB devices permitted to operate in the SDARS bands, must not exceed an emission level of –41.3 dBm/MHz in the SDARS spectrum. All other UWB devices are required to attenuate any emissions that appear in the SDARS bands, as follows: (1) GPRs, wall imaging systems, low frequency through-wall imaging systems, medical imaging systems, and indoor UWB devices must attenuate emissions in the SDARS bands to at least –51.3 dBm/MHz; (2) vehicular radar systems and hand held UWB devices must attenuate their emissions in the SDARS bands to at least –61.3 dBm/MHz; and (3) the new public safety imaging systems must attenuate their emissions in the SDARS bands to at least –41.3 dBm/MHz. The Commission denied the petitions from Sirius and XM to reduce the limits on emissions in the SDARS bands from UWB devices.

13. The Fixed Satellite Service (FSS) operates in the 3.7–4.2 GHz band. UWB devices are permitted to operate in this band at an emission level not to exceed –41.3 dBm/MHz. The Commission rejected the petition of SIA requesting that the emissions from outdoor UWB devices be reduced in the FSS band. The Commission also supplied additional clarification as to how it performed the interference calculations employed in the First Report and Order.

14. Except for vehicular radar systems, all UWB non-imaging devices operate in the 3.1–10.6 GHz band at an emission level not to exceed –41.3 dBm/MHz. The Commission denied the joint petition from ARINC and ATA requesting that all UWB operations, except for coordinated terrestrial imaging systems, be located above 5.5 GHz; that the average power limits between 3.1–5.5 GHz be reduced to –51.3 dBm for indoor UWB devices and to –61.3 dBm for handheld UWB device; that the coordination information for UWB imaging systems be posted on the Internet to permit quick access by licensees and users of licensed services, including GPS users, to enable enforcement of the non-interference requirements; and that all UWB devices, particularly consumer-oriented indoor and handheld devices, be labelled "Warning: Not for use on aircraft" with similar warnings to be placed in the operating manuals.

15. Multipoint Distribution Service (MDS) and Instructional Television Fixed Services (ITFS) systems are permitted to operate in the 2150–2162 MHz and 2500–2690 MHz bands. UWB through-wall imaging systems and surveillance systems are permitted to operate in these bands at an emission level not to exceed –41.3 dBm/MHz. Emissions from all other UWB devices must be attenuated to –51.3 dBm/MHz or to –61.3 dBm/MHz, depending on the specific UWB equipment. The Commission denied the petition from WCA to reduce the emissions in the 2150–2162 MHz and 2500–2690 MHz bands from UWB devices to the same limits as those adopted for the PCS bands.

16. Under the non-UWB rules, emissions below 1000 MHz from most Part 15 devices are measured using a CISPR quasi-peak detector. When an average emission limit is specified, the rules also specify a limit on the permitted amount of peak power equal to 20 dB more than the average limit. In some cases, a pulse desensitization correction factor (PDCF) must be applied to the measurement of a peak level obtained from a spectrum analyzer in order to compensate for the analyzer's inability to respond fast enough to pulse widths narrower than the inverse of the resolution bandwidth. The PDCF can considerably increase the measured peak emission level. This standard was employed when Part 15 devices used narrowband emissions, and unfairly penalizes transmission systems that use a wide bandwidth. However, the Commission denied as outside the scope of this proceeding the petition from MSSI to permit peak measurements of non-UWB devices to be performed using a 1 MHz resolution bandwidth and without the use of a PDCF.

17. The Commission also used this *Memorandum Opinion and Order* as a vehicle to present a summary and discussion of comments filed in response to the measurement program, undertaken in April 2002 by the Technical Research Branch (TRB) of the OET Laboratory Division, to examine the existing levels of ambient RF signal energy present in the frequency bands used by GPS and Aeronautical Radionavigation systems. In addition, spurious emissions generated by common electronic/electrical devices were also measured within the GPS frequency bands. This measurement effort represented a "first step" toward collecting the data necessary to perform an objective evaluation of assumptions inherent in the link budget analysis used to calculate the UWB emissions limit.

18. Because of the filing of an Application for Review of a grant of certification issued to Time Domain for its UWB transmitter along with an associated Request for Declaratory Ruling addressing the regulations regarding emissions from digital circuitry contained within UWB devices, the Commission clarified the regulation regarding limits on emissions produced by digital circuitry used within UWB devices. This clarification more closely comport with the text of the *First Report and Order*.

Administrative Provisions

19. *Paperwork Reduction Act:* This Memorandum Opinion and Order (MO&O) contains a modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this MO&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due June 23, 2003.

20. *Final Regulatory Flexibility Certification:* The Regulatory Flexibility Act of 1980, as amended (RFA)[1] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings, unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities."[2] The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5]

21. In this Memorandum Opinion and Order, we are responding to fourteen petitions for reconsideration regarding new rules adopted to permit the marketing and operation of new products incorporating ultra-wideband ("UWB") technology. UWB devices operate by employing very narrow or short duration pulses that result in very large or wideband transmission bandwidths. With appropriate technical standards, UWB devices can operate on spectrum occupied by existing radio services without causing interference, thereby permitting scarce spectrum resources to be used more efficiently. Further, as noted in the text we have continued to apply conservative limits to the standards applicable for UWB operation, until such time as we gain additional experience, to ensure that harmful interference would not be caused to other radio spectrum users. Further, the changes adopted in this proceeding will not affect any party legally manufacturing or marketing UWB devices. Thus, we expect that our actions do not amount to a significant economic impact. Accordingly, we certify that the rules being adopted in this Memorandum Opinion and Order will not have a significant economic impact on a substantial number of small entities.

22. We will send a copy of the Memorandum Opinion and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act.[6] In addition, the Memorandum Opinion and Order and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register**.[7]

23. *Ordering Clauses:* The Petitions for Reconsideration from MSSI, Siemens VDO, Time Domain, AGA and APGA, GPRIC, GPR Providers, and NUCA are granted to the extent described above. The Petitions for Reconsideration from Kohler, MSSI, Siemens, GPRIC, GPR Providers, Cingular, Qualcomm, Sprint, Sirius and XM, ARINC and ATA, and SIA are denied to the extent described above. Part 15 of the Commission's Rules and Regulations is amended as specified in the rule changes, effective May 22, 2003, except § 15.525 which contains information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date for that section. This action is taken pursuant to Sections 4(i), 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 302, 303(e), 303(f), 303(r), 304 and 307.

24. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Memorandum Opinion and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements, Security measures.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, title 47 of the Code of Federal Regulations, part 15, is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for Part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336 and 544A.

■ 2. Section 15.509 is revised to read as follows:

§ 15.509 Technical requirements for ground penetrating radars and wall imaging systems.

(a) The UWB bandwidth of an imaging system operating under the provisions of this section must be below 10.6 GHz.

(b) Operation under the provisions of this section is limited to GPRs and wall imaging systems operated for purposes associated with law enforcement, fire fighting, emergency rescue, scientific research, commercial mining, or construction.

(1) Parties operating this equipment must be eligible for licensing under the provisions of part 90 of this chapter.

(2) The operation of imaging systems under this section requires coordination, as detailed in § 15.525.

(c) A GPR that is designed to be operated while being hand held and a wall imaging system shall contain a manually operated switch that causes the transmitter to cease operation within 10 seconds of being released by the operator. In lieu of a switch located on the imaging system, it is permissible to

[1] The RFA, *see* 5 U.S.C. § 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Pub. L. 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

[3] 5 U.S.C. 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[5] Small Business Act, 15 U.S.C. 632.

[6] *See* 5 U.S.C. 801(a)(1)(A).

[7] *See* 5 U.S.C. 605(b).

operate an imaging system by remote control provided the imaging system ceases transmission within 10 seconds of the remote switch being released by the operator.

(d) The radiated emissions at or below 960 MHz from a device operating under the provisions of this section shall not exceed the emission levels in § 15.209. The radiated emissions above 960 MHz from a device operating under the provisions of this section shall not exceed the following average limits when measured using a resolution bandwidth of 1 MHz:

Frequency in MHz	EIRP in dBm
960–1610	–65.3
1610–1990	–53.3
1990–3100	–51.3
3100–10600	–41.3
Above 10600	–51.3

(e) In addition to the radiated emission limits specified in the table in paragraph (d) of this section, UWB transmitters operating under the provisions of this section shall not exceed the following average limits when measured using a resolution bandwidth of no less than 1 kHz:

Frequency in MHz	EIRP in dBm
1164–1240	–75.3
1559–1610	–75.3

(f) For UWB devices where the frequency at which the highest radiated emission occurs, f_M, is above 960 MHz, there is a limit on the peak level of the emissions contained within a 50 MHz bandwidth centered on f_M. That limit is 0 dBm EIRP. It is acceptable to employ a different resolution bandwidth, and a correspondingly different peak emission limit, following the procedures described in § 15.521.

■ 3. Section 15.510 is added to read as follows:

§ 15.510 Technical requirements for through D-wall imaging systems.

(a) The UWB bandwidth of an imaging system operating under the provisions of this section must be below 960 MHz or the center frequency, f_C, and the frequency at which the highest radiated emission occurs, f_M, must be contained between 1990 MHz and 10600 MHz.

(b) Operation under the provisions of this section is limited to through-wall imaging systems operated by law enforcement, emergency rescue or firefighting organizations that are under the authority of a local or state government.

(c) For through-wall imaging systems operating with the UWB bandwidth below 960 MHz:

(1) Parties operating this equipment must be eligible for licensing under the provisions of part 90 of this chapter.

(2) The operation of these imaging systems requires coordination, as detailed in § 15.525.

(3) The imaging system shall contain a manually operated switch that causes the transmitter to cease operation within 10 seconds of being released by the operator. In lieu of a switch located on the imaging system, it is permissible to operate an imaging system by remote control provided the imaging system ceases transmission within 10 seconds of the remote switch being released by the operator.

(4) The radiated emissions at or below 960 MHz shall not exceed the emission levels in § 15.209. The radiated emissions above 960 MHz shall not exceed the following average limits when measured using a resolution bandwidth of 1 MHz:

Frequency in MHz	EIRP in dBm
960–1610	–65.3
1610–1990	–53.3
Above 1990	–51.3

(5) In addition to the radiated emission limits specified in the table in paragraph (c)(4) of this section, emissions from these imaging systems shall not exceed the following average limits when measured using a resolution bandwidth of no less than 1 kHz:

Frequency in MHz	EIRP in dBm
1164–1240	–75.3
1559–1610	–75.3

(d) For equipment operating with f_C and f_M between 1990 MHz and 10600 MHz:

(1) Parties operating this equipment must hold a license issued by the Federal Communications Commission to operate a transmitter in the Public Safety Radio Pool under part 90 of this chapter. The license may be held by the organization for which the UWB operator works on a paid or volunteer basis.

(2) This equipment may be operated only for law enforcement applications, the providing of emergency services, and necessary training operations.

(3) The radiated emissions at or below 960 MHz shall not exceed the emission levels in § 15.209 of this chapter. The radiated emissions above 960 MHz shall not exceed the following average limits when measured using a resolution bandwidth of 1 MHz:

Frequency in MHz	EIRP in dBm
960–1610	–46.3
1610–10600	–41.3
Above 10600	–51.3

(4) In addition to the radiated emission limits specified in the paragraph (d)(3) of this section, emissions from these imaging systems shall not exceed the following average limits when measured using a resolution bandwidth of no less than 1 kHz:

Frequency in MHz	EIRP in dBm
1164–1240	–56.3
1559–1610	–56.3

(5) There is a limit on the peak level of the emissions contained within a 50 MHz bandwidth centered on the frequency at which the highest radiated emission occurs, f_M. That limit is 0 dBm EIRP. It is acceptable to employ a different resolution bandwidth, and a correspondingly different peak emission limit, following the procedures described in § 15.521.

(e) Through-wall imaging systems operating under the provisions of this section shall bear the following or similar statement in a conspicuous location on the device: "Operation of this device is restricted to law enforcement, emergency rescue and firefighter personnel. Operation by any other party is a violation of 47 U.S.C. 301 and could subject the operator to serious legal penalties."

■ 4. Section 15.511 is revised to read as follows:

§ 15.511 Technical requirements for surveillance systems.

(a) The UWB bandwidth of an imaging system operating under the provisions of this section must be contained between 1990 MHz and 10,600 MHz.

(b) Operation under the provisions of this section is limited to fixed surveillance systems operated by law enforcement, fire or emergency rescue organizations or by manufacturers licensees, petroleum licensees or power licensees as defined in § 90.7 of this chapter.

(1) Parties operating under the provisions of this section must be eligible for licensing under the provisions of part 90 of this chapter.

(2) The operation of imaging systems under this section requires coordination, as detailed in § 15.525.

(c) The radiated emissions at or below 960 MHz from a device operating under the provisions of this section shall not exceed the emission levels in § 15.209. The radiated emissions above 960 MHz from a device operating under the provisions of this section shall not exceed the following average limits when measured using a resolution bandwidth of 1 MHz:

Frequency in MHz	EIRP in dBm
960–1610	–53.3
1610–1990	–51.3
1990–10600	–41.3
Above 10600	–51.3

(d) In addition to the radiated emission limits specified in the table in paragraph (c) of this section, UWB transmitters operating under the provisions of this section shall not exceed the following average limits when measured using a resolution bandwidth of no less than 1 kHz:

Frequency in MHz	EIRP in dBm
1164–1240	–63.3
1559–1610	–63.3

(e) There is a limit on the peak level of the emissions contained within a 50 MHz bandwidth centered on the frequency at which the highest radiated emission occurs, f_M. That limit is 0 dBm EIRP. It is acceptable to employ a different resolution bandwidth, and a correspondingly different peak emission limit, following the procedures described in § 15.521.

(f) Imaging systems operating under the provisions of this section shall bear the following or similar statement in a conspicuous location on the device: "Operation of this device is restricted to law enforcement, fire and rescue officials, public utilities, and industrial entities. Operation by any other party is a violation of 47 U.S.C. 301 and could subject the operator to serious legal penalties."

■ 5. Section 15.513 is revised to read as follows:

§ 15.513 Technical requirements for medical imaging systems.

(a) The UWB bandwidth of an imaging system operating under the provisions of this section must be contained between 3100 MHz and 10,600 MHz.

(b) Operation under the provisions of this section is limited to medical imaging systems used at the direction of, or under the supervision of, a licensed health care practitioner. The operation of imaging systems under this section requires coordination, as detailed in § 15.525.

(c) A medical imaging system shall contain a manually operated switch that causes the transmitter to cease operation within 10 seconds of being released by the operator. In lieu of a switch located on the imaging system, it is permissible to operate an imaging system by remote control provided the imaging system ceases transmission within 10 seconds of the remote switch being released by the operator.

(d) The radiated emissions at or below 960 MHz from a device operating under the provisions of this section shall not exceed the emission levels in § 15.209. The radiated emissions above 960 MHz from a device operating under the provisions of this section shall not exceed the following average limits when measured using a resolution bandwidth of 1 MHz:

Frequency in MHz	EIRP in dBm
960–1610	–65.3
1610–1990	–53.3
011990–3100	–51.3
3100–10600	–41.3
Above 10600	–51.3

(e) In addition to the radiated emission limits specified in the table in paragraph (d) of this section, UWB transmitters operating under the provisions of this section shall not exceed the following average limits when measured using a resolution bandwidth of no less than 1 kHz:

Frequency in MHz	EIRP in dBm
1164–1240	–75.3
1559–1610	–53.3

(f) There is a limit on the peak level of the emissions contained within a 50 MHz bandwidth centered on the frequency at which the highest radiated emission occurs, f_M. That limit is 0 dBm EIRP. It is acceptable to employ a different resolution bandwidth, and a correspondingly different peak emission limit, following the procedures described in § 15.521.

6. Section 15.521 is amended by revising paragraph (c) to read as follows:

§ 15.521 Technical requirements applicable to all UWB devices.

* * * * *

(c) Emissions from digital circuitry used to enable the operation of the UWB transmitter shall comply with the limits in § 15.209, rather than the limits specified in this subpart, provided it can be clearly demonstrated that those emissions from the UWB device are due solely to emissions from digital circuitry contained within the transmitter and that the emissions are not intended to be radiated from the transmitter's antenna. Emissions from associated digital devices, as defined in § 15.3(k), *e.g.*, emissions from digital circuitry used to control additional functions or capabilities other than the UWB transmission, are subject to the limits contained in Subpart B of this part.

* * * * *

7. Section 15.525 is amended by revising paragraphs (b) and (e) to read as follows:

§ 15.525 Coordination requirements.

* * * * *

(b) The users of UWB imaging devices shall supply operational areas to the FCC Office of Engineering and Technology, which shall coordinate this information with the Federal Government through the National Telecommunications and Information Administration. The information provided by the UWB operator shall include the name, address and other pertinent contact information of the user, the desired geographical area(s) of operation, and the FCC ID number and other nomenclature of the UWB device. If the imaging device is intended to be used for mobile applications, the geographical area(s) of operation may be the state(s) or county(ies) in which the equipment will be operated. The operator of an imaging system used for fixed operation shall supply a specific geographical location or the address at which the equipment will be operated. This material shall be submitted to Frequency Coordination Branch, OET, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554, Attn: UWB Coordination.

* * * * *

(e) The FCC/NTIA coordination report shall identify those geographical areas within which the operation of an imaging system requires additional coordination or within which the operation of an imaging system is prohibited. If additional coordination is required for operation within specific geographical areas, a local coordination contact will be provided. Except for operation within these designated areas, once the information requested on the UWB imaging system is submitted to the FCC no additional coordination with the FCC is required provided the reported areas of operation do not change. If the area of operation changes, updated information shall be submitted to the

FCC following the procedure in paragraph (b) of this section.

* * * * *

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BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–99–5157]

RIN 2127–AH03

Federal Motor Vehicle Safety Standards; Bus Emergency Exits and Window Retention and Release

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; delay of effective date.

SUMMARY: On April 19, 2002, NHTSA published a final rule that amended the Federal motor vehicle safety standard on bus emergency exits and window retention and release, and specified an effective date of April 21, 2003 for the amendments made by the rule. Petitions for reconsideration of the rule were submitted to the agency. This document delays the effective date of the final rule one year to allow the agency more time to respond to those petitions.

DATES: Effective April 18, 2003 the effective date of the final rule published on April 19, 2002 (67 FR 19343) is delayed until April 21, 2004.

Any petitions for reconsideration of this final rule must be received by NHTSA not later than June 6, 2003

ADDRESSES: Petitions for reconsideration should refer to the docket number for this action and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues you may call: Mr. Charles Hott, Office of Crashworthiness Standards, at (202) 366–0247. Mr. Hott's FAX number is: (202) 493–2739.

For legal issues, you may call Ms. Dorothy Nakama, Office of the Chief Counsel, at (202) 366–2992. Her FAX number is: (202) 366–3820.

You may send mail to both of these officials at the National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Federal Motor Vehicle Safety Standard No. 217, *Bus emergency exits and window retention and release,* (49 CFR § 571.217) (FMVSS No. 217), specifies requirements for the retention of windows other than windshields in buses, and for operating forces, opening dimensions, and markings for bus emergency exits. The purpose of FMVSS No. 217 is to minimize the likelihood of occupants being thrown from the bus in a crash and to provide a means of readily accessible emergency egress.

Final Rule

On April 19, 2002 (67 FR 19343)(DMS Docket No. NHTSA–99–5157), NHTSA published a final rule amending FMVSS No. 217 to reduce the likelihood that wheelchair securement anchorages in new school buses will be installed in locations that permit wheelchairs to be secured where they would block access to emergency exit doors. For side emergency exit door, the final rule restricts wheelchair securement anchorages from being placed in an area bounded by transverse vertical planes 305 mm (12 inches) forward and rearward of the center of the door aisle. For a rear emergency exit door, the final rule restricts wheelchair securement anchorages from being placed in an area bounded by a horizontal plane 1,145 mm (45 inches) above the bus floor and a transverse vertical plane either 305 mm (12 inches) forward of the bottom edge of the door opening within the bus occupant space (for school buses with a gross vehicle weight rating (GVWR) over 4,536 kg (10,000 lb)) or 150 mm (6 inches) forward of the bottom edge of the door opening within the bus occupant space (for school buses with a GVWR of 4,536 kg or less).

The final rule also provides that emergency exit doors and emergency exit windows currently required to be labeled as an "Emergency Door" or "Emergency Exit" must also bear a label saying "DO NOT BLOCK". The agency said that access to these doors and exits should never be blocked with wheelchairs or other items, such as book bags, knapsacks, sports equipment or band equipment.

The final rule specified an effective date of April 21, 2003 for these amendments.

Petitions for Reconsideration

In late May 2002, NHTSA received petitions for reconsideration of the April 19, 2002 final rule from three school bus manufacturers: Thomas Built Buses, American Transportation Corporation (now known as IC Corporation), and Blue Bird Body Company. The three petitioners requested reconsideration of the final rule's use of transverse vertical and horizontal planes to define the volumes around the side and rear emergency exit doors where wheelchair anchorages may not be located. All three companies stated that the volumes should instead be defined using "the rectangular parallelepiped fixture."

The petitioners also raised other issues for reconsideration. They requested clarification of whether the warning label specified in the final rule is required for both emergency exit doors and emergency exit windows or emergency exit doors only. They asked whether the warning, "DO NOT BLOCK," is intended to refer to wheelchairs only or other items as well, such as child restraint systems. In addition, Thomas Built asked NHTSA to revise Figure 6C to clarify whether emergency exits not required by FMVSS No. 217 must meet FMVSS No. 217 emergency exit requirements.

Finally, Thomas Built also asked about the ellipsoid used for assessing the area of unobstructed openings through windows.[1] With respect to the final rule's reference to the "ellipsoid generated by rotating about its minor axis an ellipse having a major axis of 50 centimeters and a minor axis of 33 centimeters," Thomas Built asked whether *any* major axis of the ellipse could be held in a horizontal position.

Request for Delay of Effective Date

In a letter dated January 29, 2003, Blue Bird Body Corporation asked for the agency's interpretation of several requirements adopted in the final rule. Blue Bird also requested NHTSA to delay the effective date of the rule by a year. Blue Bird asked for a one-year delay to give NHTSA an additional six months to respond to the petitions for reconsideration and to provide the school bus industry at least six months lead time to implement the changes.

Agency Decision to Delay Effective Date

The agency is in the process of responding to the petitions for reconsideration. If the effective date were not delayed, some school bus manufacturers might have to redesign some of their vehicles to meet the requirements of the April 2002 final rule. If we respond to the petitions for reconsideration by amending that final rule's method of determining the areas on a school bus where wheelchair securement anchorages can be installed, that amendment could again affect the design and manufacture of school buses. Some manufacturers might find,

[1] The final rule did not add, remove or other amend language regarding the use of an ellipsoid for assessing the area of unobstructed openings through windows.

depending on the nature of the amendments, that the redesign they had implemented to meet the April 2002 final rule was unnecessary. This outcome is not desirable. The benefits from the April 2002 rulemaking cannot be quantified, and are likely not significant.

We anticipate issuing the response to petitions for reconsideration later this year. A one-year delay of the effective date, to April 21, 2004, preserves the status quo and avoids what may turn out to be unnecessary manufacturing changes to meet the requirements of the April 2002 final rule.

Effective Date of This Document

Because the April 21, 2003 effective date for the final rule is fast approaching, NHTSA finds for good cause that this action delaying the effective date must take effect immediately. Today's final rule makes no substantive change to the standard, but delays the effective date of the April 19, 2002 final rule for one year while the agency responds to the petitions for reconsideration of the rule. If the effective date is not delayed, the availability of school buses could be reduced and costs of some vehicles could increase.

Rulemaking Analyses and Notices

A. Executive Order 12866, Regulatory Planning and Review, and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 Fed. Reg. 51735; October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." Further, we have determined that this action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979).

This final rule delays the effective date of an April 19, 2002 final rule. There are no additional costs associated with today's final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) provides that whenever an agency is required to publish a notice of rulemaking for any proposed or final rule it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

In the April 19, 2002 final rule, the agency certified that that rule would not have a significant economic impact on a substantial number of small entities. Accordingly, I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certify that this final rule, which delays the effective date of that earlier final rule, will not have a significant economic impact on a substantial number of small entities. There are no additional costs associated with this final rule.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)(PRA), a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Since it only delays the effective date of a final rule, this final rule does not impose any new collections of information requirements for which a 5 CFR part 1320 clearance must be obtained.

D. National Environmental Policy Act

We have analyzed this final rule for the purposes of the National Environmental Policy Act. We have determined that implementation of this action will not have any significant impact on the quality of the human environment.

E. Executive Order 13132, Federalism

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, we may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or unless we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation with Federalism implications and that preempts State law unless we consult with State and local officials early in the process of developing the proposed regulation.

This final rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The reason is that this final rule applies to manufacturers of school buses and to school buses, and not to the States or local governments. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

F. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103(b), whenever a Federal motor vehicle safety standard is in effect, a state or political subdivision may prescribe or continue in effect a standard applicable to the same aspect

of performance of a motor vehicle only if the standard is identical to the Federal standard. However, the United States Government, a state or political subdivision of a state may prescribe a standard for a motor vehicle or motor vehicle equipment obtained for its own use that imposes a higher performance requirement than that required by the Federal standard. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. A petition for reconsideration or other administrative proceedings is not required before parties may file suit in court.

G. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This final rule will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

H. Executive Order 13045—Economically Significant Rules Disporportionately Affecting Children

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental, health or safety effects of the rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued on: April 17, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–10040 Filed 4–18–03; 2:04 pm]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 68, No. 77
Tuesday, April 22, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV03–985–2PR]

Spearmint Oil Produced in the Far West; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Spearmint Oil Administrative Committee (Committee) for the 2003–2004 and subsequent marketing years from $0.09 to $0.10 per pound of spearmint oil handled. The Committee locally administers the marketing order, which regulates the handling of spearmint oil produced in the Far West. Authorization to assess spearmint oil handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The marketing year begins June 1 and ends May 31. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by May 12, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Ave, Suite 385, Portland, OR 97204; Phone: (503) 326–2724; Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Far West spearmint oil handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable spearmint oil beginning on June 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2003–2004 and subsequent marketing years from $0.09 to $0.10 per pound of spearmint oil handled.

The Far West spearmint oil marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of Far West spearmint oil. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–2001 and subsequent marketing years, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on February 26, 2003, and unanimously recommended 2003–2004 expenditures of $173,700 and an assessment rate of $0.10 per pound of spearmint oil handled. In comparison, last year's budgeted expenditures were $191,300. The recommended assessment rate is $0.01 higher than the $0.09 per pound rate currently in effect. Because spearmint oil assessable poundage and assessment income have been lower than estimated

the last two marketing years, the Committee has had to use reserve funds to cover its budgeted expenses. To keep its reserve fund at an acceptable level, the Committee recommended the $0.01 increase and reduced its expenses for 2003–2004.

The major expenditures recommended by the Committee for the 2003–2004 marketing year include $138,400 for committee expenses, $23,300 for administrative expenses, and $12,000 for market research and promotion expenses. Budgeted expenses for these items in 2002–2003 were $164,200, $23,100, and $4,000, respectively.

The Committee estimates that spearmint oil sales for the 2003–2004 marketing year will be approximately 1,697,200 pounds, which should provide $169,720 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. The Committee estimates that its monetary reserve will be approximately $72,394 at the beginning of the 2003–2004 marketing year. It is not anticipated that the reserve fund will exceed the maximum permitted by the order of approximately one marketing year's operational expenses (§ 985.42).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent marketing years would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 7 spearmint oil handlers subject to regulation under the marketing order, and approximately 98 producers of Class 1 (Scotch) spearmint oil and approximately 100 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA)(13 CFR 121.201) as those whose annual receipts are less than $5,000,000, and small agricultural producers are defined as those having annual receipts less than $750,000.

Based on SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 11 of the 98 Scotch spearmint oil producers and 13 of the 100 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. A typical spearmint oil producing operation has enough acreage for rotation such that the total acreage required to produce the crop is about one-third spearmint and two-thirds rotational crops. Thus, the typical spearmint oil producer has to have considerably more acreage than is planted to spearmint during any given season. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil-producing farms fall into the SBA category of large businesses.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2003–2004 and subsequent marketing years from $0.09 to $0.10 per pound of spearmint oil handled. The Committee unanimously recommended 2003–2004 expenditures of $173,700 and an assessment rate of $0.10 per pound. The proposed assessment rate is $0.01 higher than the $0.09 per pound rate currently in effect. The quantity of assessable spearmint oil for the 2003–2004 marketing year is estimated at 1,697,200 pounds. Thus, the $0.10 rate should provide $169,720 in assessment income. This, along with interest income and funds from the Committee's authorized reserve, would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–2004 marketing year include $138,400 for committee expenses, $23,300 for administrative expenses, and $12,000 for market research and promotion expenses. Budgeted expenses for these items in 2002–2003 were $164,200, $23,100, and $4,000, respectively.

The Committee reviewed and unanimously recommended 2003–2004 expenditures of $173,700, which included a decrease to committee expenses, and increases in administrative and market research and promotion expenses. Prior to arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee and the current marketing year's actual and anticipated expenditures. The proposed budget includes an expenditure reduction of $17,600 and no further alternative expenditure levels were discussed. The Committee estimates that spearmint oil sales for the 2003–2004 marketing year will be approximately 1,697,200 pounds, which should provide $169,720 in assessment income. This, together with interest and other income, is approximately $280 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming 2003–2004 marketing year indicates that the producer price for the 2003–2004 marketing year could be about $9.13 per pound. Therefore, the estimated assessment revenue for the 2003–2004 marketing year as a percentage of total producer revenue could be about 1.1 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Far West spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 26, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Far West spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 20-day comment period is provided to allow interested persons to respond to this proposed rule. Twenty days is deemed appropriate because: (1) The 2003–2004 marketing year begins on June 1, 2003, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable spearmint oil handled during such marketing year; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is proposed to be amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 985.141 is revised to read as follows:

§ 985.141 Assessment rate.

On and after June 1, 2003, an assessment rate of $0.10 per pound is established for Far West spearmint oil. Unexpended funds may be carried over as a reserve.

Dated: April 16, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–9844 Filed 4–21–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–17–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS 350B3, SA–365N, N1, AS–365N2, AS 365N3, and EC 155B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Eurocopter France (Eurocopter) AS 350B3, SA–365N, N1, AS–365N2, AS 365N3, and EC 155B helicopters. This proposal would require modifying the SIREN cargo hook and inspecting the cargo hook locking catch (locking catch) for corrosion. This proposal is prompted by the discovery of internal corrosion on a Siren locking catch that may weaken the locking catch. The actions specified by this proposed AD are intended to detect internal corrosion of the locking catch, which can cause the locking catch to return to an incomplete locking position, undetectable by the operator, and result in an unexpected cargo load release.

DATES: Comments must be received on or before June 23, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2002–SW–17–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2002–SW–17–AD." The postcard will be date stamped and returned to the commenter.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS 350 B3, AS–365N, N1, AS 365N2, AS 365N3, and EC 155 B helicopters fitted with Siren cargo hooks, part number (P/N) AS–21–5–7. The DGAC advises that corrosion was discovered on a locking catch, which might lead to untimely load release.

Eurocopter has issued Alert Telexes No. 05.00.39, for Model AS 350B3 helicopters; No. 05.00.41, for Model AS 365N, N1, AS 365N2, and AS 365N3 helicopters; and No. 05A002, for Model EC 155B helicopters; all dated December 20, 2001, which specify an initial corrosion check, and verification of Amendment B to prevent any risk of untimely load release due to locking catch corrosion combined with in-flight vibrations. Amendment B requires marking a permanent reference line across the rotating bolt and stationery cover plate for the cargo hook, affixing a placard to the cover plate, and marking the letter "B" on the amendment identification plate of the release unit and on the equipment log card. The DGAC classified these alert telexes as mandatory and issued AD No. 2002–044(A), dated January 23, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

The proposed paragraph (a) action of this proposed AD for cargo hook, P/N AS–21–5–7, with Amendment B incorporated, may be performed by an owner/operator (pilot), and must be entered into the helicopter records showing compliance with that paragraph in accordance with 14 CFR 43.11 and 91.417(a)(2)(v). This proposed AD would allow a pilot to perform these actions because they involve only manipulating the manual cargo release and checking the reference line for continuity, and can be performed equally well by a pilot or a mechanic. For cargo hook, P/N AS–21–5–7, without Amendment B incorporated, a mechanic must incorporate Amendment B in accordance with the applicable alert telex.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require incorporating Amendment B, if not accomplished previously, and checking for corrosion on the locking catch before the first use of the cargo hook each day that the cargo hook is used. Incorporating Amendment B would be required to be accomplished in accordance with the alert telexes described previously.

The FAA estimates that of the 60 helicopters of U.S. registry, 6 helicopters would have the Siren cargo hook installed and would be affected by this proposed AD. The FAA also estimates that it would take approximately 3 work hours per helicopter to incorporate Amendment B and .25 work hour to conduct and record the pilot check with 60 pilot checks performed per year, and that the average labor rate is $60 per work hour. Required parts to incorporate Amendment B would cost $4.00 for each label. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,504.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2002–SW–17–AD.

Applicability: Model AS 350B3, SA–365N, N1, AS–365N2, AS 365N3, and EC 155B helicopters, with an optional Siren load release unit cargo hook, part number (P/N) AS–21–5–7, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect internal corrosion of the Siren cargo hook locking catch (locking catch), which can cause the locking catch to return to an incomplete locking position, undetectable by the operator, and result in an unexpected cargo load release, accomplish the following:

(a) For cargo hook, P/N AS–21–5–7, with Amendment B incorporated, before the first use of the cargo hook on each day that the cargo hook is used, check for corrosion on the locking catch as follows. Amendment B has been incorporated if the letter "B" is marked on the amendment identification plate of the release unit of the cargo hook and placard "G" is installed on the release unit cover plate "D" and reference line "B" is marked over the nut and cover plate as depicted in Figure 1 of this AD. The identification plate is located on cover plate "D", on the opposite side of the electrical connector. See Figure 1:

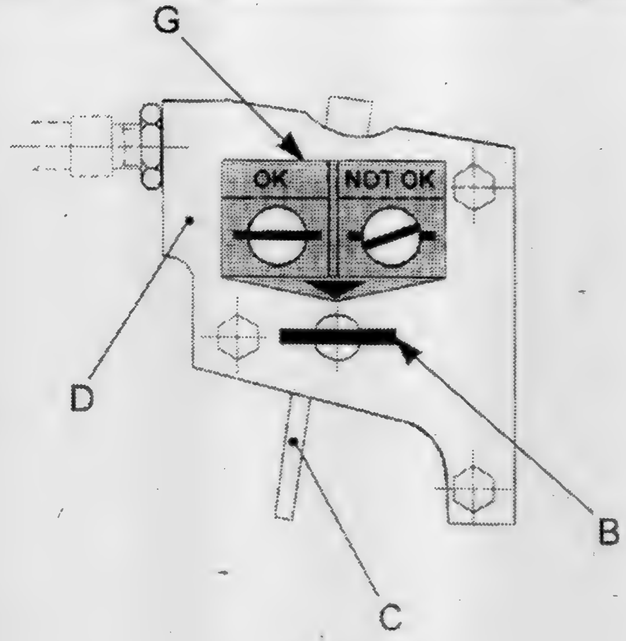


Figure 1

(1) With the cargo hook installed, cycle the red manual release control lever several times over its travel range.

(2) Return the red manual release control lever to the initial position.

(3) Determine whether the section of reference line (B) marked on the bolt (A) and the section of reference line (B) marked on the cover plate (D) form a straight line.

(i) If the reference line is straight, the cargo hook is considered airworthy.

(ii) If the reference line is not straight, the cargo hook is unairworthy and may not be used.

(b) The requirements of paragraphs (a) through (a)(ii) may be performed by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with paragraphs (a) through (a)(ii) of this AD in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

(c) For cargo hook, P/N AS–21–5–7, without Amendment B, before the next sling load flight, incorporate Amendment B to the cargo hook in accordance with the Accomplishment Instructions, paragraphs 2.A.2.(a) and 2.A.2.(b), of Alert No. 05.00.39, for Model AS 350B3 helicopters; No. 05.00.41, for Model SA–365N, N1, AS–365N2, and AS 365N3 helicopters; and No. 05A002, for Model EC 155B helicopters; all dated December 20, 2001, as applicable.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits will not be issued allowing use of the cargo hook until the requirements of this AD are accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–044(A), dated January 23, 2002.

Issued in Fort Worth, Texas, on April 15, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–9864 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–02–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, B1, B2, B3, BA, and D Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the specified model Eurocopter France (ECF) helicopters. This proposal would require replacing the main gearbox (MGB) opening neoprene

cowling seals (seals) with airworthy glass/silicone seals. This proposal is prompted by the discovery that neoprene seals currently installed on the MGB opening cowlings do not provide the fire protection required by the airworthiness standards. The actions specified by this proposed AD are intended to require installation of fire-resistant seals to prevent a fire in the engine compartment from reaching the MGB compartment that contains parts that are not fire resistant and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 23, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–02–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ed Cuevas, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5355, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003–SW–02–AD." The postcard will be date stamped and returned to the commenter.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on the specified ECF Model helicopters delivered before July 1, 2002. The DGAC advises that neoprene seals bonded to the MGB mobile cowlings have low fire resistance, which does not meet the certification criteria. In the event of an uncontrolled fire in the engine compartment, the fire could spread to the MGB compartment.

ECF has issued Alert Service Bulletin No. 53.00.31, dated July 11, 2002 (ASB), which specifies replacing the MGB neoprene seals with glass/silicone seals that have increased fire-resistance. The DGAC classified this ASB as mandatory and issued AD 2002–537–094(A), dated October 30, 2002, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This unsafe condition is likely to exist or develop on other helicopters of the same type designs registered in the United States. Therefore, the proposed AD would require, within 200 hours time-in-service, replacing the neoprene seals with glass/silicone seals, which is terminating action for the requirements of this AD. The actions would be required to be accomplished in accordance with the ASB described previously.

The FAA estimates that this AD would affect 583 helicopters of U.S. registry, that it would take approximately 2 work hours per helicopter to install the seals, and that the average labor rate is $60 per work hour. Required parts would cost approximately $98. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $127,094.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2003–SW–02–AD.

Applicability: Model AS350B, B1, B2, B3, BA, and D helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 200 hours time-in-service, unless accomplished previously.

To prevent a fire in the engine compartment from reaching the main gearbox (MGB) compartment that contains parts that are not fire resistant and subsequent loss of control of the helicopter, accomplish the following:

(a) Replace the MGB opening neoprene cowling seals with glass/silicone seals in accordance with the Accomplishment Instructions, paragraph 2.B., of Eurocopter Alert Service Bulletin No. 53.00.31, dated July 11, 2002.

(b) Replacing the MGB opening neoprene cowling seals with glass/silicone seals is terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France), AD 2002–537–094(A), dated October 30, 2002.

Issued in Fort Worth, Texas, on April 15, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–9863 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–12–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, B1, B2, B3, BA, C, D, D1, and AS355E, F, F1, F2, and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD) for the specified Eurocopter France (ECF) model helicopters that proposed a daily inspection of the tail rotor pitch control rod (control rod) outboard spherical bearing (bearing), a radial and axial play limit, a revised AD compliance interval, and adding the ECF Model AS350B3 helicopter and an additional control rod to the applicability. That proposal was prompted by two comments received and the FAA determination that the AD inspection interval should coincide with the normal maintenance interval and that the AD should apply to the ECF Model AS350B3 helicopter. This action retains the original proposals but changes the daily inspection to a daily check and makes other editorial changes for clarification. The actions specified by the proposed AD are intended to prevent separation of the bearing ball from its outer race, rubbing of the body of the control rod against the tail rotor blade pitch horn clevis, failure of the control rod, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before June 23, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–12–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–12–AD." The postcard will be date stamped and returned to the commenter.

Discussion

On November 19, 1998, the FAA issued AD 98–24–35, Amendment 39–10921, Docket 98–SW–41–AD (63 FR 66418, December 2, 1998), to require measuring the control rod bearing radial and axial play every 50 hours time-in-service (TIS). That action was prompted by an accident and an incident involving ECF Model AS350B2 helicopters. There were two other unconfirmed incidents cited by the National Transportation Safety Board (based on manufacturer's reports) involving the same control rod, part number (P/N) 350A33–2145–00.

After issuing AD 98–24–35, ECF issued Service Letter No. 1367–64–98, dated January 12, 1999, to provide operators with an easy way to determine the looseness of the bearing by adding an axial play limit of 0.016 inch and a daily check. When the FAA issued AD 98–24–35, neither the Direction Generale De L'Aviation Civile nor the manufacturer had issued any service information addressing this unsafe condition.

Subsequently, the FAA received comments from two commenters, the manufacturer and an operator, stating that a larger axial play limit and a 30-hour time-in-service (TIS) visual check would provide a satisfactory degree of safety for this control rod and an adequate inspection interval.

The FAA agreed and issued a proposal to amend 14 CFR part 39, published as an NPRM in the **Federal Register** on April 9, 2001 (66 FR 18416), to supersede AD 98–24–35. The NPRM

proposed adding ECF Model AS350B3 helicopters and control rod, P/N 350A33–3145–00, to the applicability; increasing the frequency of the inspection interval from every 50 hours TIS to every 30 hours TIS; establishing a daily inspection of the control rod bearing; and establishing an axial play limit of 0.016-inch. The actions of that proposed AD were intended to prevent separation of the bearing ball from its outer race, rubbing of the body of the control rod against the tail rotor blade pitch horn clevis, failure of the control rod, and subsequent loss of control of the helicopter.

Since issuing that NPRM, the FAA has received various comments from 12 commenters.

Three commenters state that the proposed daily inspection of the bearing should be deleted because the requirement already exists in the maintenance work cards and in the preflight checklist in the rotorcraft flight manual (RFM). In addition, another commenter states that the daily inspection should be changed to a daily check and that a trained pilot should do the check. The FAA agrees that a pilot can do the check but believes that due to the accidents caused by failure of the control rods and because the RFM and the maintenance work cards are unclear a daily check should be required. However, we are revising our proposal to allow an owner/operator (pilot) to perform the daily check of the bearing for movement because no tools are required and the check can be accomplished by observation and feel. However, the pilot must enter compliance with those requirements into the helicopter maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

One commenter, the manufacturer, states that the control rod P/N is incorrectly stated in three places. Also, in its Service Letter No. 1367–64–98, which details the most effective checking conditions, the term "easy" is more suitable than the term "accurate" as used in the proposed AD. The FAA agrees and has made those changes as requested.

The manufacturer requests that the proposed Figures 1 and 2, relating to the axial and radial play measurements, be replaced with three clearer figures provided by them. The FAA agrees. Published Figure 1 gives the method only for a visual check. Published Figure 2 shows the complete assembly of the control rod and makes it appear that the measurements can be made without removing the control rod from the helicopter. Therefore, the FAA is inserting the three clearer figures in the proposal to clearly depict the measurement of radial and axial play and is including references in the text accordingly.

Seven commenters state that the inspection interval of the bearing should be changed from the proposed 30 to 100 hours TIS. One commenter states that the inspection interval should not be less than 50 hours TIS. The FAA mistakenly proposed an inspection of all affected control rods at intervals not to exceed 30 hours TIS. The 30-hour TIS inspection interval was intended to apply only to the control rods that were removed from the helicopter because play was detected, not to newly installed or in-service control rods. Therefore, we have changed the proposed paragraph numbering and added the word "thereafter" to clearly indicate that the 30-hour TIS inspection interval applies to control rods in which play has been detected. We do not agree that the inspection interval for these control rods should be extended above 30 hours TIS.

The manufacturer further states that the compliance time in paragraph (a) should be changed from "before the first flight" (BFF) to "after the last flight" (ALF) of the day. The commenter states that if maintenance is required for operational reasons, ALF is preferable to BFF because the mechanic has more time to do the work and states that the ALF visit is longer and a more important daily visit compared with the BFF. The FAA does not agree. The intent is to check the helicopter for safety of flight in accordance with the requirements of this AD regardless of whether it is done ALF or BFF.

The manufacturer further states that we should add a requirement that if the ball shows evidence of scoring and/or discoloration, the control rod should be replaced with an airworthy control rod before further flight. The FAA agrees and has changed the wording of the proposed AD to state that if discoloration or scoring on the bearing is found, the bearing is unairworthy.

Another commenter with 20 years of experience with these helicopters states that neither the current AD nor this proposed AD is needed. The FAA disagrees. The FAA has determined that an AD is required based on the occurrence of accidents due to failure of these control rods.

One commenter fully agrees with the proposal and suggests adding a warning to the RFM alerting pilots that violent vibration due to a pitch control rod failure will result in separation of the tail boom. The FAA disagrees. The RFM Emergency Procedures address the tail rotor malfunction including tail rotor control failure. The daily check should preclude any impending failure of the control rod based on the conditions addressed by this AD.

Other commenters agree with the proposal to increase the axial play from .008 inch to .016 inch; however, one commenter asks if leaving the allowable play at .008 inch would not be safer. The FAA believes that a sufficient margin of safety is provided if the play is increased to .016 inch.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD. Therefore, Notes 1 and 2 and paragraph (c) as published in AD 98–24–35 and the NPRM in this action are not included in this supplemental notice of proposed rulemaking. However, a revised paragraph (c) is added to the proposed action.

Some of these changes expand the scope of the originally proposed rule. Therefore, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

The FAA estimates that the AD would affect 610 helicopters of U.S. registry, that it would take approximately 1 work hour per helicopter to accomplish the inspections, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,224 for two control rods per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $783,240.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2000–SW–12–AD.

Applicability: Eurocopter France Model AS350B, B1, B2, B3, BA, C, D, D1, and AS355E, F, F1, F2, and N helicopters, with tail rotor pitch control rod (control rod), part number (P/N) 350A33–2145–00 or 350A33–2145–01, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the control rod outboard spherical bearing (bearing) ball from its outer race, rubbing of the body of the control rod against the tail rotor blade pitch horn clevis, failure of the control rod, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before the first flight of each day, place the tail rotor pedals in the neutral position. If the helicopter is fitted with a tail rotor load compensator, discharge the accumulator as described in the rotorcraft flight manual. Check the bearing for play on the helicopter, by observation and feel, by slightly moving the tail rotor blade in the flapping axis while monitoring the bearing for movement. *See* the following Figure 1 of this AD:

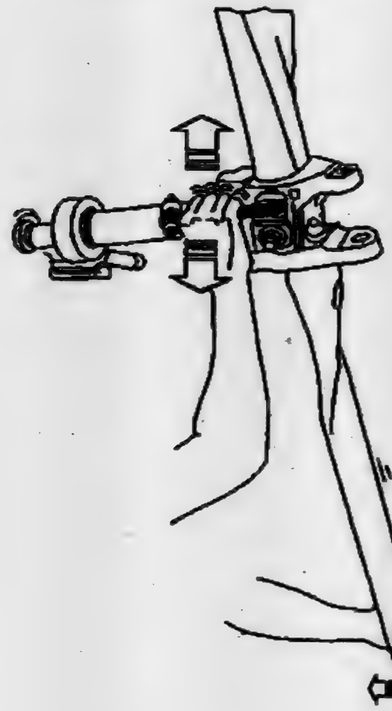


Figure 1: Manual Check for Play of the Tail Rotor Pitch Control Rod

(1) If the Teflon cloth is coming out of its normal position within the bearing, totally or partially, or if there is discoloration or scoring on the bearing, the bearing is unairworthy.

(2) An owner/operator (pilot) holding at least a private pilot certificate may perform this check and must enter compliance into the aircraft maintenance records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v).

(b) If a pilot or mechanic detects play, a mechanic must remove the control rod from the helicopter, and using a dial indicator, measure the bearing wear according to the following and as shown in Figures 2 and 3 of this AD:

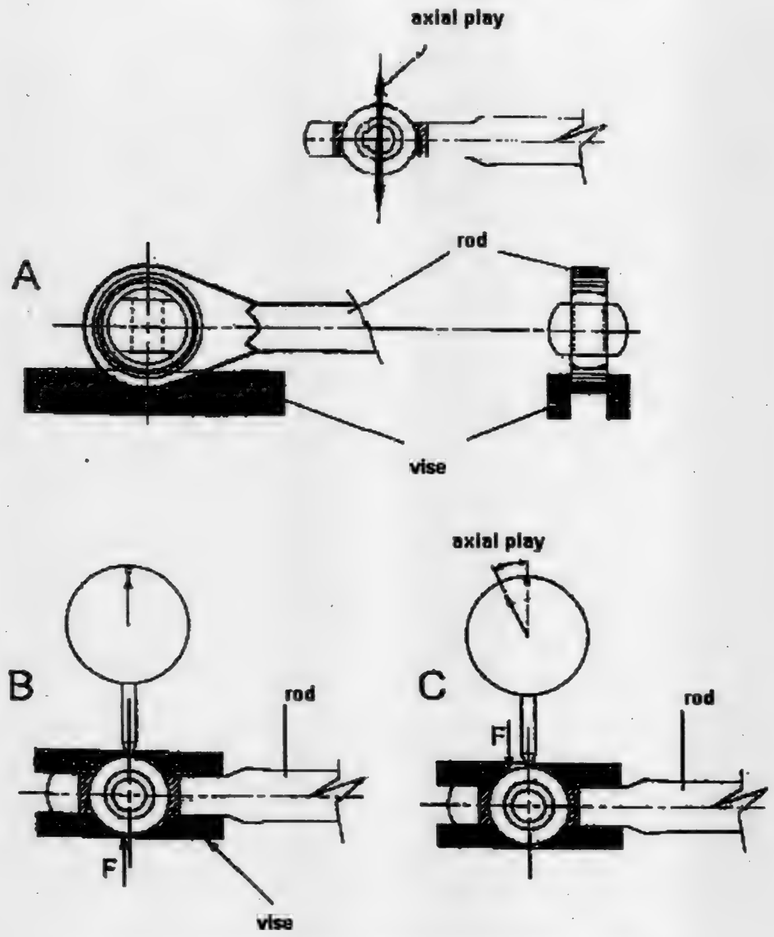


Figure 2: Measurement of the Axial Play (A) of the Bearing

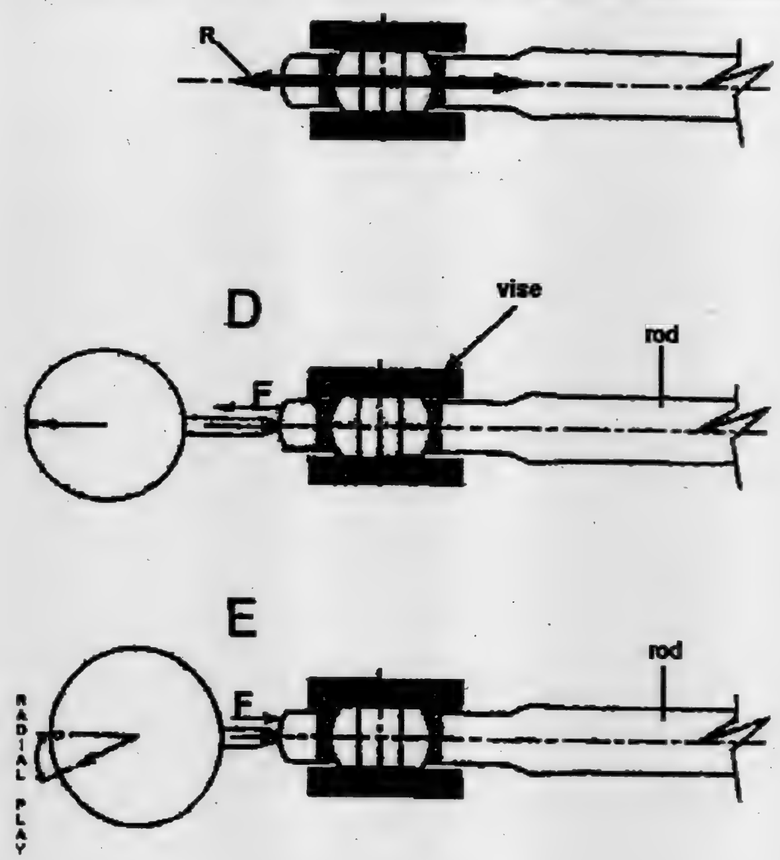


Figure 3: Measurement of the Radial Play (R) of the Bearing

(1) Remove the control rod from the helicopter.

(2) Mount the control rod in a vise as shown in Figure 2 of this AD.

(3) Using a dial indicator, take axial play readings by moving the spherical bearing in the direction F (up and down) as shown in Figure 2 of this AD.

(4) Install a bolt washer and nut to secure the bearing after removing it from the vise.

(5) Mount the bearing in a vise as shown in Figure 3 of this AD.

(6) Using a dial indicator, take radial play measurements by moving the control rod in the direction F as shown in Figure 3 of this AD.

(7) Record the hours of operation on each control rod.

(8) If the radial play exceeds 0.008 inch or axial play exceeds 0.016 inch, replace the control rod with an airworthy control rod before further flight.

(9) If the radial and axial play are within limits, reinstall the control rod.

(10) Thereafter, at intervals not to exceed 30 hours TIS, remove the control rod and again measure the bearing play with a dial indicator in accordance with this paragraph.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR

39.19. Contact the Manager, Regulations Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on April 15, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–9862 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. 02N–0434]

Withdrawal of Certain Proposed Rules and Other Proposed Actions; Notice of Intent

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of intent.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intent to withdraw certain advance notice of proposed rulemakings (ANPRMs), proposed rules, and other proposed actions that published in the **Federal Register** more than 5 years ago. These proposals rules are no longer considered viable candidates for final action at this time. FDA is taking this action to reduce its regulatory backlog and focus its resources on current public health issues. The FDA's actions are part of an overall regulatory reform strategy initiated by HHS Secretary Tommy G. Thompson.

DATES: Submit written or electronic comments by July 21, 2003.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Lisa M. Helmanis, Regulations Policy and Management Staff (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3480.

SUPPLEMENTARY INFORMATION: On June 8, 2001, Secretary Thompson announced his regulatory reform initiative designed to reduce regulatory burdens in health care and respond faster to the concerns of health care providers, State, and local governments and individual Americans who are affected by HHS rules. In December of 2001 the Secretary announced the membership of his Regulatory Reform Committee designed to carry out his initiative. In November of 2002 the Committee released its final report with over 255 specific recommendations for simplifying, streamlining and generally reducing the regulatory burden while continuing to require accountability by those doing business with HHS and its agencies. Over 25 of the recommendations have been adopted and the Secretary charged the Office of the Assistant Secretary for Planning and Evaluation to continue the efforts of the Regulatory Reform Committee. FDA's continuing efforts to withdraw regulations that have been proposed but not finalized are part of this overall initiative.

I. Background

In 1990, FDA began a comprehensive review of its regulations process that included a review of the backlog of advance notices of proposed rulemaking, notices of proposed rulemaking, and other notices for which no final action or withdrawal notice had been issued. In the **Federal Register** of August 28, 1991 (56 FR 42668), FDA announced its intent to withdraw 115 proposed rules published before December 31, 1985, that had never been finalized and invited comment on its intent. In the **Federal Register** of December 30, 1991 (56 FR 67440), FDA issued its first notice withdrawing 89 of those outstanding proposed rules. Again, in the **Federal Register** of January 19, 1993 (58 FR 4953), FDA announced its intent to withdraw 10 proposed rules that had never been finalized and invited comment on its intent. In the **Federal Register** of January 20, 1994 (59 FR 3042), the agency withdrew an additional 9 outstanding proposed rules.

Once again, FDA has reviewed its pending proposed rules and other notices that published in the **Federal Register** more than 5 years ago, and for which no final rule or notice of withdrawal has been issued. The agency has identified 84 such proposed rules and other actions that should be formally withdrawn. Included in this current list are 19 proposed rules that were included in the original 1991 list, but at that time, the agency decided to defer its decision to withdraw or finalize them until a later date. As with the other proposals it intends to withdraw, FDA believes that it is no longer appropriate to continue these rulemakings. These 19 proposed rules are identified in table 1 of this document.

As with the 1991 review, the agency undertook this most recent review because it believes that the backlog of pending proposals dilutes its ability to concentrate on higher priority regulations that are mandated by statute or necessary to address current public health issues. Because of the agency's limited resources and changing priorities, FDA has been unable to consider, in a timely manner, the issues raised by the comments on these proposals and either complete the action on them or withdraw the proposals. Additionally, because many of the proposals have become outdated in the time that has elapsed since their publication, the agency would need to obtain further comment on them before proceeding to final action. FDA has determined that the proposals identified in this document are lower in priority than those on the Unified Agenda and the Regulatory Plan. It is unlikely that the agency will have sufficient resources in the foreseeable future to further consider or prioritize these proposed rules. Although not required to do so by the Administrative Procedure Act or by regulations of the Office of the Federal Register, the agency believes the public interest is best served by withdrawing these 84 proposals. In some instances, the agency has already completed action on alternatives, e.g., the issuance of guidance or inclusion of provisions in related regulations, that have obviated the need to complete the proposed action.

If the agency does withdraw these proposals, that action would not preclude the agency from reinstituting proceedings to issue rules concerning the issues addressed in the proposals listed in table 1 of this document. Should FDA decide to undertake such a rulemaking sometime in the future, it will re-propose the actions and provide new opportunities for comment. For some proposals, the agency already has plans to institute new proceedings. Further, interested persons may submit a citizen petition requesting that the agency initiate rulemaking on any of the issues covered by the proposed rules that FDA intends to withdraw.

The agency advises that in some cases the preambles of these proposals may still reflect the current position of FDA on the matter addressed. In addition, withdrawal of a proposal is not intended to affect whatever utility the preamble statements may currently have as indications of FDA's position on a matter at the time the proposal was published.

Therefore, for the reasons set forth previously, and under the Federal Food, Drug, and Cosmetic Act, the agency

announces its intent to withdraw the following documents, published in the **Federal Register** on the dates indicated in table 1:

TABLE 1.

Title	Docket No.	FR publication date and cite
Radioactive Drugs, Including Biological Products	75N–0069	July 25, 1975, 40 FR 31314
Conditions for Use of Methadone	75N–0125	April 29, 1976, 41 FR 17922
Pasteurized Milk Ordinance and Interstate Milk Shippers	75N–0243	May 5, 1975, 40 FR 19513
Oral Contraceptive Drug Products; Physician and Patient Labeling	75N–0304	December 7, 1976, 41 FR 53633
Penicillin Streptomycin Powder; Penicillin—Dihydrostreptomycin Powder; Proposed Revocation of Certification Provision	75N–0374	July 9, 1976, 41 FR 28313
Conditions for Use of Methadone; Physiologic Dependence, Staffing, and Urine Testing Requirements	76N–0098	April 29, 1976, 41 FR 17926
Sorbic Acid and Its Salts; Proposed Affirmation and Deletion of GRAS Status	77G–0379[1]	March 10, 1978, 43 FR 9823
Butylated Hydroxytoluene; Use Restrictions	77N–0003[1]	May 31, 1977, 42 FR 27603
Color Additives; Proposed Use of Abbreviations for Labeling Foods, Drugs, Cosmetics, and Medical Devices	77N–0009 and 78P–0164	June 6, 1985, 50 FR 23815
Brown and Yellow Mustard and Their Derivatives; Proposed Affirmation of GRAS Status as Direct Human Food Ingredients	77N–0033[1]	August 26, 1977, 42 FR 43092
Acrylonitrile Copolymers Intended for Use in Contact With Food; Proposed Rulemaking	77N–0078	March 11, 1977, 42 FR 13562
Gelatin; Affirmation of GRAS Status as a Direct and Indirect Human Food Ingredient	77N–0232[1]	November 11, 1977, 42 FR 58763 and May 12, 1993, 58 FR 27959 (Tentative final rule)
New Animal Drugs for Use in Animal Feeds; Animal Feeds Containing Penicillin and Tetracycline	77N–0318	January 20, 1978, 43 FR 3032
Ethylene Oxide, Ethylene Chlorohydrin, and Ethylene Glycol; Proposed Maximum Residue Limits and Maximun Daily Levels of Exposure	77N–0424[1]	June 23, 1978, 43 FR 27474
Label Designation of Ingredients in Cheese and Cheese Products	77P–0146	July 19, 1984, 49 FR 29242
Food Chemicals Codex Monographs; Opportunity for Public Comment on Revisions	78N–0072	April 18, 1978, 43 FR 16413
Cellulose Derivatives; Affirmation of GRAS Status	78N–0144[1]	February 23, 1979, 44 FR 10751
Tocopherols and Derivatives; Proposed Affirmation of GRAS Status for Certain Tocopherols and Removal of Certain Others From GRAS Status as Direct Human Food Ingredients	78N–0213[1]	October 27, 1978, 43 FR 50193
Chlortetracycline-Sulfamethazine Tablets	78N–0247	September 22, 1978, 43 FR 43036
Phosphates; Proposed Affirmation of and Deletion From GRAS Status as Direct and Human Food Ingredients	78N–0272	December 18, 1979, 44 FR 74845
Biotin; Proposed Affirmation of GRAS Status	78N–0308[1]	January 14, 1983, 48 FR 1739
Lard and Lard Oil; Proposed Affirmation of GRAS Status as Indirect Human Food Ingredients	78N–0336[1]	May 18, 1979, 44 FR 29102
Glycerin; Affirmation of GRAS Status as a Direct Human Food Ingredient	78N–0348[1]	February 8, 1983, 48 FR 5758
Medical Devices; Sponges for Internal Use	78N–1074	November 28, 1976, 43 FR 55697
Medical Devices; Classification of Powered Myoelectric Biofeedback Equipment	78N–1183	August 28, 1979, 44 FR 50464
Porcine burn dressing	78N–2670	January 19, 1982, 47 FR 2828
Food Ingredient Labeling, Emulsifiers, and Stabilizers (Carob Bean Gum); Exemptions	78P–0052	April 17, 1985, 50 FR 15177

TABLE 1.—Continued

Title	Docket No.	FR publication date and cite
Sodium Dithionite and Zinc Dithionite; Proposed Affirmation of GRAS Status	79N–0095[1]	January 25, 1980, 45 FR 6117 and September 17, 1982, 47 FR 41137 (Tentative final rule)
Current Good Manufacturing Practice in Manufacture Processing, Packing, or Holding; Proposed Exemption From Active Ingredient Identity and Strength Testing for Homoeopathic Drug Products	79P–0265	April 1, 1983, 48 FR 14003
Hydrochloric Acid; Proposed Affirmation of GRAS Status as a Direct Human Food Ingredient	80N–0148[1]	April 26, 1984, 49 FR 17966
Cheeses and Related Cheese Products; General Standard of Identity for "Certain Other Cheeses"	80N–0373	April 23, 1984, 49 FR 17018
Caffeine; Deletion of GRAS Status, Proposed Declaration That No Prior Sanction Exists, and Use on an Interim Basis Pending Additional Study	80N–0418[1]	October 21, 1980, 45 FR 69817
Policy for Regulating Carcinogenic Chemicals in Food and Color Additives; Advance Notice of Proposed Rulemaking	81N–0281	April 2, 1982, 47 FR 14464
Magnesium Gluconate, Potassium Gluconate, Sodium Gluconate, Zinc Gluconate, and Gluconic Acid; Proposed GRAS Status as Direct and Indirect Human Food Ingredients	81N–0382	October 29, 1982, 47 FR 49028
Protein Hydrolysates and Enzymatically Hydrolyzed Animal (Milk Casein) Protein; Proposed GRAS Status	82N–0006[1]	December 8, 1983, 48 FR 54990
Zinc Salts; Proposed Affirmation of GRAS Status	82N–0167[1]	October 26, 1982, 47 FR 47441
Regenerated Collagen; Proposed GRAS Status as a Direct Human Food Ingredient	82N–0219[1]	April 26, 1983, 48 FR 18833
Ascorbic Acid and Its Sodium and Calcium Salts, Erythorbic Acid and Its Sodium Salt, and Ascorbyl Palmitate; Proposed Affirmation of GRAS Status and Removal of Calcium Ascorbate From the List of GRAS Ingredients	82N–0246[1]	January 14, 1983, 48 FR 1735
Caffeine in Nonalcoholic Carbonated Beverages	82N–0318	May 20, 1987, 52 FR 18923
Common or Usual Names for Nonstandardized Foods; Diluted Fruit or Vegetable Juice Beverages	82N–0389	June 1, 1984, 49 FR 22831
Reclassification of Electroconvulsive Therapy	82P–0316	September 5, 1990, 55 FR 36578
New Drug and Antibiotic Application Review; Proposed User Charge	84N–0101	August 6, 1985, 50 FR 31726
Proposed Uses of Vinyl Chloride Polymers	84N–0334	February 3, 1986, 51 FR 4177
Unmodified Food Starches and Acid-Modified Starches; Proposed Affirmation of GRAS Status as Direct and Indirect Food Ingredients	84N–0341[1]	April 1, 1985, 50 FR 12821
Use of Acrylonitrile Copolymers	85N–0145	March 8, 1990, 55 FR 8476
Hematology and Pathology Devices; Premarket Approval of the Automated Blood Cell Separator Intended for Routine Collection of Blood and Blood Components	85N–0241	February 19, 1988, 53 FR 5108
New Drugs for Human Use: Proposed Clarification of Requirements for Application Supplements	86N–0077	June 4, 1986, 51 FR 20310
Quality Standard for Foods With No Identity Standards; Bottled Water	86N–0445	September 16, 1988, 53 FR 36063
Pineapple Juice; Proposal to Amend U.S. Standards of Identity and Quality	86P–0338	May 21, 1987, 52 FR 19169
New Animal Drug Regulations	88N–0058	December 17, 1991, 56 FR 65544
Current Good Manufacturing Practices for Blood and Blood Components; Proficiency Testing Requirements	88N–0413	June 6, 1989, 54 FR 24296
Canned Pineapple; Proposal to Amend Standards of Identity and Quality	88P–0224	March 24, 1989, 54 FR 12237
Shellac and Shellac Wax; Proposed Affirmation of GRAS Status With Specific Limitations as Direct Human Food Ingredients	89N–0106	July 26, 1989, 54 FR 31055

TABLE 1.—Continued

Title	Docket No.	FR publication date and cite
Erythromycin Capsules; Proposed Amendment of Dissolution Standard of Erythromycin Capsules	89N–0378[1]	October 26, 1989, 54 FR 43592
Yogurt Products; Frozen Yogurt, Frozen Lowfat Yogurt, and Frozen Nonfat Yogurt; Petitions to Establish Standards of Indentity and to Amend the Existing Standards	89P–0208 and 89P–0444	May 31, 1991, 56 FR 24760
Exemption From Preemption of State and Local Hearing Aid Requirements; Vermont	89P–0314	October 30, 1990, 55 FR 45615
Amend Animal Care Regulations	89P–0320	July 3, 1990, 55 FR 27476
Food Labeling; Declaration of Ingredients; Common or Usual Name Declaration for Protein Hydrolysates and Vegetable Broth in Canned Tuna; "and/or" Labeling for Soft Drinks	90N–361M	January 6, 1993, 58 FR 2950
Use of Aseptic Processing and Terminal Sterilization in the Preparation of Sterile Pharmaceuticals for Human and Veterinary Use	91N–0074	October 11, 1991, 56 FR 51354
Cosmetic Products Containing Certain Hormone Ingredients; Notice of Proposed Rulemaking	91N–0245	September 9, 1993, 58 FR 47611
Substances in Food-Contact Articles in the Household, Food Service Establishments, and Food Dispensing Equipment	91N–0313	April 12, 1974, 39 FR 13285
Drug Listing Compliance Verification Reports	92N–0291	September 2, 1993, 58 FR 46587
Food Labeling; Metric Labeling Requirements	92N–0406	May 21, 1993, 58 FR 29716
Food Labeling; Net Quantity of Contents; Compliance	92P–0441	March 4, 1997, 62 FR 9826
Cardiovascular Devices; Effective Date of Requirement for PMA of Nonroller-Type Cardiopulmonary Bypass Blood Pump	93M–0150	July 6, 1993, 58 FR 36290
Amendment of Performance Standards; Laser Products	93N–0044	March 24, 1999, 64 FR 14180
Quality Standards for Foods With No Identity Standards; Bottled Water	93N–0200	October 6, 1993, 58 FR 52042
Metric Labeling; Quantity of Contents Labeling Requirement for Foods, Human and Animal Drugs, Animal Foods, Cosmetics, and Medical Devices	92N–0406 and 93N–0226	December 21, 1993, 58 FR 67444
Lead in Food and Color Additives and GRAS Ingredients; Request for Data	93N–0348	February 4, 1994, 59 FR 5363
Substances Prohibited From Use in Animal Food or Feed; Specified Offal From Adult Sheep and Goats Prohibited in Ruminant Feed; Scrapie	93N–0467	August 29, 1994, 59 FR 44584
Dental Devices; Effective Date of Requirement for Premarket Approval of Over-the-Counter (OTC) Denture Cushions or Pads and OTC Denture Repair Kits	95N–0034	July 11, 1995, 60 FR 35713
Food Labeling; Nutrient Content Claims and Health Claims; Special Requirements	95N–0103	February 2, 1996, 61 FR 3885
Maltodextrin; Food Chemicals Codex Specifications	95N–0189	September 21, 1995, 60 FR 48939
Beverages: Bottled Water	95N–0203	November 13, 1995, 60 FR 57132
Dental Devices; Effective Date of Requirement for Premarket Approval of Partially Fabricated Denture Kits	95N–0298	November 29, 1995, 60 FR 61232
Yogurt; Low Fat And Non-Fat, Revocation	95P–0250	November 9, 1995, 60 FR 56541
Food Standards; Reinvention of Regulations Needing Revisions; Request for Comments on Certain Existing Regulations	96N–0149	June 12, 1996, 61 FR 29701
Reinvention of Certain Food Additive Regulations	96N–0177	June 12, 1996, 61 FR 29711
Food Labeling; Declaration of Free Glutamate in Food	96N–0244	September 12, 1996, 61 FR 48102
Regulation of Medical Foods	96N–0364	November 29, 1996, 61 FR 60661
Food Labeling: Nutrient Content Claims Pertaining to the Available Fat Content of Food	96N–0421 and 94P–0453/CP1	December 20, 1996, 61 FR 67243

TABLE 1.—Continued

Title	Docket No.	FR publication date and cite
Food Labeling; Serving Sizes; Reference Amounts for Candies	96P–0023 and 96P–0179	January 8, 1998, 63 FR 1078

[1]Denotes documents that were included in the December 1991 withdrawal notice, but were not withdrawn at that time.

II. Submission of Comments

Interested persons may submit to the Dockets Management Branch (*see* **ADDRESSES**) written or electronic comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 10, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9865 Filed 4–21–03; 8:45 am]

BILLING CODE 4160–01–S

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 803

[CSOSA–0007–P]

RIN 3225–AA05

Agency Seal

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Proposed rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (CSOSA or Agency) proposes to adopt regulations on the use of its official seal and the official seal for the District of Columbia Pretrial Services Agency (PSA or Agency), an independent entity within CSOSA. Use by any person or organization may be made only with CSOSA's or PSA's prior written approval. Wrongful use of an official seal is subject to administrative action and/or criminal penalty.

DATES: Comments due by June 23, 2003.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov*).

SUPPLEMENTARY INFORMATION: CSOSA is proposing to adopt regulations (28 CFR part 803) on the use of its official seal and the official seal for PSA, an independent entity within CSOSA.

CSOSA and PSA have each developed a seal which signifies the authoritativeness of the item or document to which it is affixed as an official endorsement of the Agency. The seals are to be used for official Agency business or as approved under CSOSA's regulations.

Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing or by e-mailing the agency at the addresses given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. We will not be holding oral hearings on this proceeding.

Executive Order 12866

This interim rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make CSOSA's documents easy to read and understand. If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call Roy Nanovic at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 803

Probation and parole; Seals and insignia.

Paul A. Quander, Jr.,

Director.

Accordingly, we propose to amend chapter VIII, Title 28 of the Code of Federal Regulations by adding a new part 803 as set forth below.

PART 803—AGENCY SEAL

Sec.
803.1 Description.
803.2 Authority to affix seal.
803.3 Use of the seal.

Authority: 5 U.S.C. 301; Pub. L. 105–33, 111 Stat. 251, 712 (D.C. Code 24–1232, 24–1233).

§ 803.1 Description.

(a) The Agency seal of the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA or Agency) is described as follows: General George Washington's coat of arms in red and white bounded by an outline of the District of Columbia and superimposed upon a blue field together with the dome of the United States Capitol building in gold; encircled by a banner with the words "Community, Accountability, and Justice" and gold laurel branches, with gold edges bearing the inscription "COURT SERVICES AND OFFENDER SUPERVISION AGENCY" above three stars at either side of the words "DISTRICT OF COLUMBIA" in smaller letters in the base; letters and stars in gold. A reproduction of the Agency seal in black and white appears as follows:



(b) The Agency seal of the District of Columbia Pretrial Services Agency (PSA or Agency) is described as follows: General George Washington's coat of arms in red and white bounded by an outline of the District of Columbia and superimposed upon a blue field together with the dome of the United States Capitol building in gold; encircled by a banner with the words "Community, Accountability, and Justice" and gold laurel branches, with gold edges bearing the inscription "DISTRICT OF COLUMBIA PRETRIAL SERVICES AGENCY"; letters in gold. A reproduction of the Agency seal in black and white appears as follows:



§ 803.2 Authority to affix seal.

The Director of CSOSA or PSA (as appropriate) and the Director's designees are authorized to affix the Agency seal (including replicas and reproductions) to appropriate documents, certifications, and other materials for all purposes authorized by this part.

§ 803.3 Use of the seal.

(a) The Agency seal is used by Agency staff for official agency business as approved by the appropriate Director or designee.

(b) Use of the Agency seal by any person or organization outside of the Agency may be made only with the appropriate prior written approval.

(1) Any request for such use must be made in writing to the Office of the General Counsel, Court Services and Offender Supervision Agency for the District of Columbia, 633 Indiana Avenue, NW., Washington, DC 20004, and must specify, in detail, the exact use to be made. Any permission granted by the appropriate Director or designee applies only to the specific use for which it was granted and is not to be construed as permission for any other use.

(2) The decision whether to grant such a request is made on a case-by-case basis, with consideration of all relevant factors, which may include: The benefit or cost to the government of granting the request; the unintended appearance of endorsement or authentication by the Agency; the potential for misuse; the effect upon Agency security; the reputability of the use; the extent of the control by the Agency over the ultimate use; and the extent of control by the Agency over distribution of any products or publications bearing the Agency seal.

(c) Falsely making, forging, counterfeiting, mutilating, or altering the Agency seal or reproduction, or knowingly using or possessing with fraudulent intent an altered Agency seal or reproduction is punishable under 18 U.S.C. 506.

(d) Any person using the Agency seal or reproduction in a manner inconsistent with the provisions of this part is subject to the provisions of 18 U.S.C. 1017, which states penalties for the wrongful use of an Agency seal, and other provisions of law as applicable.

[FR Doc. 03–9936 Filed 4–21–03; 8:45 am]

BILLING CODE 3129–01–P

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Part 804

[CSOSA–0008–P]

RIN 3225–AA06

Acceptance of Gifts

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Proposed rule.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) proposes to adopt regulations on the acceptance or use of gifts by itself and by the District of Columbia Pretrial Services Agency (PSA), an independent entity within CSOSA. In accordance with specific statutory authority, CSOSA and PSA may accept and use gifts in the form of in-kind contributions of space and hospitality for the purpose of supporting offender and defendant programs and of equipment and vocational training services to educate and train offenders and defendants. These regulations delegate authority to the Director of PSA with respect to gifts supporting defendant programs and vocational training services, establish procedures for the public to follow when offering a gift, establish criteria for accepting and using gifts, and establish procedures for audit and public inspection of records pertaining to the acceptance and use of gifts. These regulations are intended to enhance CSOSA's ability to provide appropriate treatment and support services that can assist defendants and offenders in reintegrating into the community.

DATES: Comments due by June 23, 2003.

ADDRESSES: Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager (telephone: (202) 220–5359; e-mail: *roy.nanovic@csosa.gov*).

SUPPLEMENTARY INFORMATION: CSOSA proposes to adopt regulations (28 CFR part 804) on the acceptance of use of gifts by itself and by PSA, an independent entity within CSOSA.

Generally speaking, federal agencies are prohibited from accepting or soliciting gifts, donations, contributions, and similar items from the public. CSOSA's Director, however, has been granted specific authority by Congress to accept and use gifts in the form of in-kind contributions of space and hospitality to support offender and defendant programs and to enable the Agency to provide vocational training services to educate and train offenders and defendants (District of Columbia Appropriations Act of 2002, Public Law 107–96, 115 Stat. 923, 931).

These implementing regulations delegate authority to the Director of PSA with respect to gifts supporting defendant programs and vocational training services. The regulations also establish procedures for the public to follow when offering a gift, criteria for accepting and using gifts, and procedures for audit and public inspection of records pertaining to the acceptance and use of gifts. In establishing such procedures, CSOSA seeks to ensure that Agency employees may process requests for donations and remain in compliance with the general federal prohibition on solicitation of gifts.

Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing or by e-mailing the agency at the addresses given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. We will not be holding oral hearings on this proceeding.

Executive Order 12866

This interim rule has been determined to be significant under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, the Director of CSOSA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of CSOSA, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule and by approving it certifies that this rule will not have a significant economic impact upon a substantial number of small entities. This rule pertains to agency management, and its economic impact is limited to the agency's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, the Director of CSOSA has determined that no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We want to make CSOSA's documents easy to read and understand. If you have suggestions on how to improve the clarity of these regulations, write, e-mail, or call Roy Nanovic at the address or telephone number given above in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** captions.

List of Subjects in 28 CFR Part 804

Authority delegations (Government agencies); Government Property; Probation and Parole.

Paul A. Quander, Jr.,
Director.

Accordingly, we propose to amend chapter VIII, Title 28 of the Code of Federal Regulations by adding a new part 804 as set forth below.

PART 804—ACCEPTANCE OF GIFTS

Sec.
804.1 Purpose.
804.2 Delegation of authority.
804.3 Restrictions.
804.4 Submission and approval.
804.5 Audit and public inspection.

Authority: 5 U.S.C. 301; Public Law 107–96, 115 Stat. 923, 931.

§ 804.1 Purpose.

By statute, the Director of the Court Services and Offender Supervision Agency (CSOSA or Agency) is authorized to accept and use gifts in the form of in-kind contributions of space and hospitality to support offender and defendant programs, and of equipment and vocational training services to educate and train offenders and defendants. The purpose of this part is to:

(a) Inform the public of the procedures to follow when offering a gift;

(b) Establish criteria for accepting and using gifts;

(c) Establish procedures for audit and public inspection of records pertaining to the acceptance and use of gifts; and

(d) Delegate gift acceptance authority to the Director of the Pretrial Services Agency (PSA or Agency).

§ 804.2 Delegation of authority.

The Director of CSOSA hereby delegates to the Director of PSA the authority to accept and use gifts in the form of in-kind contributions of space and hospitality to support defendant programs, and of equipment and vocational training services to educate and train defendants in accordance with the requirements of this part. This delegation of authority may not be further delegated.

§ 804.3 Restrictions.

(a) The Agency is not authorized to accept gifts of money, stock, bonds, personal or real property, or devises or bequests of such items, except as provided in this part.

(b) Agency employees may not solicit any type of gift to the Agency.

§ 804.4 Submission and approval.

(a) *Offender programs and equipment and vocational training services.* (1) Any person or organization wishing to donate as a gift in-kind contributions of space or hospitality to support offender programs, or equipment or vocational training services to educate and train offenders may submit the following information in writing to the Agency's Ethics Officer in the Office of the General Counsel:

(i) The name of the person or organization offering the gift;

(ii) A description of the gift;

(iii) The estimated value of the gift;

(iv) Any restrictions on the gift placed by the donor; and

(v) A signed statement that the gift is unsolicited.

(2) The Director, after consultation with the Agency's Ethics Officer, shall determine whether to accept or reject the gift.

(3) CSOSA staff shall advise the person offering the gift of the Agency's determination, including, if applicable, the reason for rejection. Reasons for rejecting a gift include findings that:

(i) There is a conflict of interest in accepting the gift;

(ii) Acceptance of the gift is otherwise unlawful or would create the appearance of impropriety;

(iii) Acceptance of the gift would obligate the Agency to an unbudgeted expenditure of funds; or

(iv) Operation of the program, equipment, or vocational training services would not be practicable.

(b) *Defendant programs and equipment and vocational training services.* (1) Any person or organization wishing to donate as a gift in-kind contributions of space or hospitality to support defendant programs, or equipment or vocational training services to educate and train defendants may submit the following information in writing to the Agency's Ethics Officer in the Office of the General Counsel:

(i) The name of the person or organization offering the gift;

(ii) A description of the gift;

(iii) The estimated value of the gift;

(iv) Any restrictions on the gift placed by the donor; and

(v) A signed statement that the gift is unsolicited.

(2) The General Counsel shall forward the request to PSA's Director with a recommendation whether to accept or reject the gift.

(3) PSA staff shall advise the person offering the gift of the Agency's determination, including the reason for rejection. Reasons for rejecting a gift include findings that:

(i) There is a conflict of interest in accepting the gift;

(ii) Acceptance of the gift is otherwise unlawful or would create the appearance of impropriety;

(iii) Acceptance of the gift would obligate the Agency to an unbudgeted expenditure of funds; or

(iv) Operation of the program, equipment, or vocational training services would not be practicable.

§ 804.5 Audit and public inspection.

(a) Records regarding the acceptance and use of gifts shall be made available for Federal Government audit.

(b) Public inspection of records regarding the acceptance and use of gifts shall be afforded through Freedom of Information Act requests (*see* 28 CFR part 802).

[FR Doc. 03–9937 Filed 4–21–03; 8:45 am]
BILLING CODE 3129–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 98–153; FCC 03–33]

Ultra-Wideband Transmission Systems

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Fourteen petitions for reconsideration were filed in response to the regulations for unlicensed ultra-wideband ("UWB") operation. Some of the petitions addressed matters that were outside of the scope of this proceeding, resulting in the Commission issuing a Further Notice of Proposed Rule Making to address the issues raised.

DATES: Comments due July 21, 2003. Reply Comments due August 20, 2003.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of Secretary, Federal Communications Commission, 445 12th Street, SW., TW–B204, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: John Reed (202) 418–2455, Policy and Rules Division, Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: This is a summary of the Further Notice of Proposed Rule Making portion of the Commission's *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, FCC 03–33, adopted February 13, 2003, and released March 12, 2003. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of Further Notice of Proposed Rule Making

1. On February 14, 2002, the Commission adopted a *First Report and Order* implementing regulations to permit the unlicensed operation of ultra-wideband transmission systems. Fourteen petitions for reconsideration were filed in response to that Order. New rules were proposed to address issues raised by MSSI and by Siemens regarding the operation of low pulse repetition frequency (PRF) UWB systems, including vehicular radars, in the 3.1–10.6 GHz band; and the operation of frequency hopping vehicular radars in the 22–29 GHz band as UWB devices. The Commission also proposed new rules that would establish new peak power limits for wideband Part 15 devices that do not operate as UWB devices and proposed to eliminate the definition of a UWB device.

2. *Proposed changes to the UWB standards to accommodate the MSSI radar system.* Comments are requested on allowing UWB systems that employ a pulse repetition frequency (PRF) no greater than 200 kHz to be used for any type of application in the 3.1 GHz to 10.6 GHz band. MSSI specifically mentioned vehicular radar systems as an example of such equipment. The emission standards limit the interference potential of low PRF emitters. As the PRF decreases below a certain level, depending on the RBW used to measure the peak emission, the peak limit becomes the defining standard and the average emission level generated in a 1 MHz RBW decreases below the limit specified in the regulations. Accordingly, UWB devices employing a low PRF are limited in their output levels by the standard on peak emission levels, not by the standard on average emission levels. Comments are requested on whether a different PRF limit should be employed, if any other changes to the standards, including changes to the emission limits, are necessary to incorporate this addition to the type of UWB devices permitted to operate outdoors, or if the addition to the operation of outdoor UWB devices should be expanded only to include low PRF vehicular radar systems. Specific technical analyses supporting the comments are requested.

3. *Proposed changes to the UWB standards to accommodate the Siemens VDO radar system.* Siemens requested an amendment of the rules to permit the operation vehicular radar systems in the 22–29 GHz band using frequency

hopping modulation to comply with the UWB definition and bandwidth requirements, provided the measurements are averaged over a 10 millisecond period. Siemens VDO also requested that vehicular radar systems be permitted to comply with the RMS average emission limits based on averaging over a 10 millisecond time period. The Commission agrees that public comment should be obtained on Siemens VDO's proposal. This proposal is limited solely to vehicle radar systems operating in the 22–29 GHz band. Further, no changes are proposed to the emission limits applied to UWB vehicular radar systems. Rather, we are proposing new measurement techniques that may accommodate frequency hopping systems as UWB vehicular radars. We propose to permit frequency hopping systems to operate under the provisions for UWB vehicular radar systems provided the minimum UWB bandwidth is achieved in no greater than 10 milliseconds and the transmitter complies with all other technical standards for UWB operation in the 22–29 GHz band. Compliance with the average emission limit would be based on measurement using a one megahertz resolution bandwidth (RBW), a video bandwidth equal to or greater than the RBW, an RMS detector function, and a maximum 10 millisecond averaging time. The peak measurement would be required to be performed as currently specified in the rules using a peak hold detector and shall be performed over a sufficiently long period that the peak levels being measured cease increasing.

4. Comments are requested on whether the higher instantaneous power delivered by a frequency hopping system would cause harmful interference to these systems. Comments also are requested on the proposed measurement procedures. For example, should the peak measurement be performed with the hopping sequence stopped; should a different averaging time be employed; should the averaging time be based on the number of hops and the dwell time of the hops; and should a maximum time be specified within which all hopping channels must be used? Comments also are sought on the measurement procedure that would be used to demonstrate compliance with the UWB bandwidth limit. Siemens requests that the bandwidth be measured based on two different possible procedures described in the appendix to its petition. Both of the procedures suggested by Siemens are performed with the frequency hopping system active. However, we are concerned that those procedures may not indicate the actual bandwidth employed by the system and the corresponding distribution of RF energy, depending on various technical parameters of the actual hopping system, *e.g.*, the distribution of the hopping channels, the dwell times for the hops, the number of hopping channels, the separation of the channels, the bandwidth of a single hopping channel, the number of hops in a specified time period, etc. Thus, we propose that the bandwidth be measured by first measuring the −10 dB bandwidth of a single hopping channel based on use of a peak hold detector and a 1 MHz resolution bandwidth, determining how many non-overlapping hops occur within a 10 millisecond period and multiplying the two values. Comments are requested on this proposed measurement procedure as well as the procedures described by the petitioner. Comments also are requested on any interference concerns that arise from this new modulation type or its method of measurement. The comments should address specific interference concerns such as possible interference to Amateur Radio Service operations, including amateur satellite systems, to EESS operation, and to police radar operations and should include a technical justification. Comments are requested on whether the compliance measurement procedure proposed by the petitioner is applicable only to systems that are similar to its vehicular radar system or if they are applicable to vehicular radar systems in general. Do the various system parameters need to be limited to a specific range of values for the measurements to be meaningful? If so, what is the range of parameters over which the limits are to be applied? Can a general measurement procedure be developed that is applicable for a full range of system parameters? If so, what is this measurement procedure? The measurement procedure proposed by the petitioner involves a power measurement over a 10 millisecond averaging time period. Comments are requested as to whether these time averaged measurements should be made using a spectrum analyzer in a swept frequency mode or should the spectrum analyzer be stepped across the frequency band of interest in discrete steps with a defined dwell time at each step. Comments also are requested on the adequacy of the measurement results for the purpose of quantifying the impact to systems that could receive interference from the frequency hopping vehicular radar systems. Comments also are requested on any limits that should be applied to the number of hopping channels, the maximum occupancy time permitted for a hopping channel during any full hopping sequence, the maximum time it takes to complete a full hopping sequence, and any other pertinent technical characteristics.

5. *Proposed changes to the non-UWB standards to accommodate wideband Part 15 transmitters.* The peak emission limit specified in 47 CFR 15.35(b) was established based on the operation of narrowband transmission systems and may unfairly penalize some wideband operations. A limit similar to that adopted in the R&O for UWB systems is proposed to eliminate the bias under the part 15 regulations towards narrowband operation. Under the UWB regulations, the EIRP limit on peak emissions is 0 dBm based on the use of a 50 MHz resolution bandwidth (RBW). A lower RBW may be employed, down to as low as 1 MHz, provided the peak limit is similarly reduced to the level 20 log (RBW/50) dBm EIRP, where RBW is the resolution bandwidth in megahertz. UWB systems also must operate with a −10 dB fractional bandwidth of at least 0.2 or have a −10 dB bandwidth of at least 500 MHz, whichever is less. Below 2.5 GHz, the fractional bandwidth is dominant and above 2.5 GHz the 500 MHz bandwidth limit dominates. Because we appear to be dealing primarily with systems operating above 2.5 GHz, we will employ the 500 MHz minimum UWB bandwidth as a guideline for simplicity. Thus, the maximum resolution bandwidth that is used to measure peak limit for UWB emitters is one-tenth of the minimum UWB bandwidth. Accordingly, it appears that a peak limit, equivalent to the UWB standards, can be established for conventional part 15 devices based on a limit of 20 log (RBW/50) dBm EIRP where RBW is the resolution bandwidth of the measurement instrument in megahertz and where RBW must not be greater than one-tenth of the −10 dB bandwidth of the emission being measured.

6. We propose to amend 47 CFR 15.35(b) to clarify the existing requirements as requested by MSSI, and to provide an alternative standard for peak emission limits for wideband Part 15 transmission systems. The specific proposed changes to this rule paragraph are shown in the rules section at the end of this summary. Comments are requested on this proposal. Comments also are requested on the alternative proposal presented by MSSI, namely should the rules be amended to permit devices operating above 1000 MHz under the part 15 general emission standards in 47 CFR 15.209 to comply with a peak emission limit of 5000 uV/m at 3 meters based on a measurement using a peak detector, a 1 MHz resolution bandwidth and a video bandwidth no less than 1 MHz? We request comments on any changes to the interference potential of wideband part 15 devices that may occur as a result of these proposals. Technical support is requested for comments arguing interference concerns.

7. *UWB definition.* The minimum UWB bandwidth requirement could cause a manufacturer to design transmitters that occupy more bandwidth than is operationally necessary or transmitters that inject noise to increase the occupied bandwidth simply to permit operation under the UWB regulations. Such systems would place greater energy in frequency bands where operation is not necessary for the system to function. Thus, a minimum bandwidth standard can be counterproductive to reducing the potential for harmful interference. For this reason, we are proposing to eliminate the definition of an ultra-wideband transmitter in 47 CFR 15.503(d). In its place, we would permit the operation of any transmission system, regardless of its bandwidth, as long as it complies with the standards for UWB operation set forth in Subpart F of 47 CFR 15. We also propose to change the limit on peak power to the same limit we proposed above for non-UWB operation. This will ensure that excessive peak power levels are not permitted from narrowband systems. Comments are requested on this proposal. We request comments on any potential increase or decrease in interference potential to authorized radio services that could be caused by the adoption of this proposal. The comments should address the interference potential from narrowband systems operating under the UWB regulations. The comments also should address whether additional standards, such as a spectral power density limit based on a bandwidth narrower than 1 MHz, are needed. All comments should be based on a technical analysis of the interference potential.

Administrative Provisions

8. *Initial Regulatory Flexibility Analysis.* As required by Section 603 of the Regulatory Flexibility Act,[1] the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rule Making ("Further Notice"). Written public comments are requested on the IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice provided in paragraph 175 of the item. The Commission shall send a copy of this Further Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. In addition, the Further Notice and the IRFA (or summaries thereof) will be published in the **Federal Register**.[2]

[1] 5 U.S.C. 603.

A. Reason for Action

This rulemaking proposal is initiated to obtain comments regarding proposed changes to the regulations for radio frequency devices that do not require a license to operate. The Commission seeks to determine if its standards should be amended to permit the operation of vehicular radar and other low-pulse repetition frequency outdoor UWB devices in the 3.1–10.6 GHz band and to permit the operation of frequency hopping vehicular radar systems in the 22–29 GHz band under the UWB regulations. It also seeks to amend the peak power limit on non-UWB unlicensed devices.

B. Legal Basis

The proposed action is taken pursuant to sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act 10 1934, as amended, 47 U.S.C. sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304, and 307.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[3] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[6]

A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[7] Nationwide, as of 1992, there were approximately 275,801 small organizations.[8] "Small governmental jurisdiction"[9] generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[10] As of 1992, there were approximately 85,006 governmental entities, total, in the United States.[11] This number includes 38,978 cities, counties, and towns; of these, 37,566, or 96%, have populations of fewer than 50,000.[12] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (96%) are small entities. Nationwide, as of 1992, there were 4.44 million small business firms, according to SBA data.[13]

The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging[14] and Cellular and Other Wireless Telecommunications.[15] Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1320 firms in this category, total, that operated for the entire year.[16] Of this total, 1303 firms

[2] 5 U.S.C. 603(a).

[3] 5 U.S.C. 603(b)(3).

[4] 5 U.S.C. 601(6).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[6] 15 U.S.C. 632.

[7] 5 U.S.C. 601(4).

[8] U.S. Department of Commerce, Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[9] 47 CFR 1.1162.

[10] 5 U.S.C. 601(5).

[11] U.S. Department of Commerce, Bureau of the Census, 1992 Census of Governments.

[12] U.S. Department of Commerce, Bureau of the Census, 1992 Census of Governments.

[13] U.S. Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities, UC 92–S–1, Subject Series, Establishment and Firm Size, Table 2D, Employment Size of Firms.

[14] 13 CFR 121.201, NAICS code 513321 (changed to 517211 in October 2002).

[15] 13 CFR 121.201, NAICS code 513322 (changed to 517212 in October 2002).

[16] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of

Continued

had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more.[17] Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year.[18] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[19] Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

The SBA has established a small business size standard for *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* Under this standard, firms are considered small if they have 750 or fewer employees.[20] Census Bureau data for 1997 indicate that, for that year, there were a total of 1,215 establishments in this category.[21] Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. Thus, under this size standard, the majority of establishments can be considered small.

Satellite Telecommunications. The SBA has developed a small business size standard for Satellite Telecommunications Carriers, which consists of all such companies having $12.5 million or less in annual receipts.[22] In addition, a second SBA size standard for Other Telecommunications includes "facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems,"[23] and also has a size standard of annual receipts of $12.5 million or less. According to Census Bureau data for 1997, there were 324 firms in the category Satellite Telecommunications, total, that operated for the entire year.[24] Of this total, 273 firms had annual receipts of $5 million to $9,999,999 and an additional 24 firms had annual receipts of $10 million to $24,999,990.[25] Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 1997, there were 439 firms in the category Satellite Telecommunications, total, that operated for the entire year.[26] Of this total, 424 firms had annual receipts of $5 million to $9,999,999 and an additional 6 firms had annual receipts of $10 million to $24,999,990.[27] Thus, under this second size standard, the majority of firms can be considered small.

As no party currently is permitted to market or operate the proposed UWB standards, there will not be any impact on any small entities. On the other hand, the proposed change in the limit on peak power levels may relax the current emission limit for wideband transmission systems. The Commission does not have an estimated number for the small entities that may produce such products but believes that there are only a few in existence.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements for Small Entities

Part 15 transmitters are already required to be authorized under the Commission's certification procedure as a prerequisite to marketing and importation. The reporting and recordkeeping requirements associated with these equipment authorizations would not be changed by the proposals contained in this Notice. These changes to the regulations would permit the introduction of an entirely new category of radio transmitters. The change in the method of measuring peak power for wideband transmitters will result in a slight relaxation of the peak power limit standard on these devices.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): "(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[28]

The standards proposed in this proceeding are based on equipment performance and not on equipment design. As no party currently is permitted to market or operate the proposed UWB standards, there will not be any impact on any small entities. On the other hand, the proposed change in the limit on peak power levels may relax the current emission limit for wideband transmission systems.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

None.

9. *Request for Comments:* This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.2306(a).

10. Pursuant to §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before July 21, 2003, and reply comments on or before August 20, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), *http://www.fcc.gov/e-file/ecfs.html*, or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 23121 (1998).

11. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should including the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

12. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center of the Federal Communications Commission, Room TW–A306, 445 12th Street, SW., Washington, DC 20554.

13. The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(r), 304, and 307.

List of Subjects in 47 CFR Part 15

Communications equipment, Radio, Reporting and recordkeeping requirements, Security measures.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, title 47 of the Code of Federal Regulations, part 15, is proposed to be amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336 and 544A.

2. Section 15.35 is amended by revising paragraph (b) to read as follows:

§ 15.35 Measurement detector functions and bandwidths.

* * * * *

(b) Unless otherwise specified, on any frequency or frequencies above 1000 MHz, the radiated emission limits are based on the use of measurement instrumentation employing an average detector function. Unless otherwise specified, average measurements above 1000 MHz shall be performed using a minimum resolution bandwidth of 1 MHz. When average radiated emission measurements are specified in this part, including emission measurements below 1000 MHz, there also is a limit on the peak radio frequency emissions. UWB devices operating under subpart F of this part shall comply with the peak limits specified in that subpart. For all other part 15 devices subject to limits based on average radiated emissions, the peak level shall comply with one of the following two levels, at the option of the responsible party:

(1) Unless a different peak limit is specified in the rules, *e.g., see* § 15.255 of this chapter, the total peak power shall not exceed by more than 20 dB the average limit permitted at the frequency being investigated. Note that a pulse desensitization correction factor may be required to measure the total peak emission level.

(2) The peak power shall not exceed an EIRP of 20 log (RBW/50) dBm where RBW is the resolution bandwidth in MHz employed by the measurement instrument. The RBW may not be lower than 1 MHz or greater than 50 MHz. Further, the RBW used in the measurement instrument shall not be greater than one-tenth of the −10 dB bandwidth of the device under test.

* * * * *

[FR Doc. 03–9880 Filed 4–21–03; 8:45 am]

BILLING CODE 6712–01–P

Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513321 (issued Oct. 2000).

[17] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[18] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 513322 (issued Oct. 2000).

[19] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

[20] 13 CFR 121.201, NAICS code 334220.

[21] U.S. Census Bureau, 1977 Economic Census, Industry Series: Manufacturing, "Industry Statistics by Employment Size," Table 4, NAICS code 334220 (issued August 1999).

[22] 13 CFR 121.201, North American Industry Classification System (NAICS) code 517410 (formerly 513340).

[23] *Id.* NAICS code 517910 (formerly 513390).

[24] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Receipt Size of Firms Subject to Federal Income Tax: 1997," Table 4, NAICS code 517410 (issued Oct. 2000).

[25] *Id.*

[26] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Receipt Size of Firms Subject to Federal Income Tax: 1997," Table 4, NAICS code 517910 (issued Oct. 2000).

[27] *Id.*

[28] 5 U.S.C. 603(c)(1) through (c)(4).

Notices

Federal Register

Vol. 68, No. 77

Tuesday, April 22, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Federal-State Special Supplemental Nutrition Program Agreement

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces FNS' intention to request OMB approval of the Federal-State Special Supplemental Nutrition Program Agreement.

DATES: Comments on this notice must be received by June 23, 2003.

ADDRESSES: Send comments and requests for copies of this information collection to: Patricia Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Patricia Daniels, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Title: Federal-State Special Supplemental Nutrition Program Agreement.

OMB Number: 0584–0332.

Expiration Date: 05/31/2003.

Type of Request: Extension of a currently approved collection.

Abstract: The Agreement is the contract between USDA and Special Supplemental Nutrition Program for Women, Infants and Children (WIC) State agencies which empowers the Department to release funds to the States for the administration of the WIC Program in the jurisdiction of the State in accordance with the provisions of 7 CFR part 246.

The Agreement requires the signature of the agency official and includes a certification/assurance regarding drug-free workplace, a certification regarding lobbying and a disclosure of lobbying activities.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: The Chief Health Officer of the State agency.

Estimated Number of Respondents: 88 respondents.

Estimated Number of Responses per Respondent: One.

Estimated Time per Response: .25.

Estimated Total Annual Burden on Respondents: 22 hours.

Dated: April 14, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–9848 Filed 4–21–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Georgia Transmission Corporation; Notice of Finding of No Significant Impact

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) has made a finding of no significant impact (FONSI) with respect to a request from Georgia Transmission Corporation for assistance from RUS to finance the construction of a 115 kV electric substation in Ben Hills County, Georgia.

FOR FURTHER INFORMATION CONTACT: Bob Quigel, Environmental Protection Specialist, Engineering and Environmental Staff, RUS, Stop 1571, 1400 Independence Avenue, SW., Washington, DC 20250–1571, telephone (202) 720–0468, e-mail at *bquigel@rus.usda.gov.*

SUPPLEMENTARY INFORMATION: Georgia Transmission Corporation proposes to construct a 115 kV substation approximately 2 miles south of the City of Fitzgerald in southwest Ben Hill County. The proposed substation site is approximately 1,200 feet east of Perry House Road along an existing 115 kV electric transmission line. The proposed substation is to be identified as the Lake Beatrice Station. The property where the substation is to be located is approximately 24.5 acres of which approximately 8 acres will be disturbed for construction of the substation.

Copies of the FONSI are available for review at, or can be obtained from, RUS at the address provided herein or from Mr. John Lasseter, Georgia Transmission Corporation, 2100 East Exchange Place, Tucker, Georgia 30085–2088, telephone (770) 270–7710. Mr. Lasseter's e-mail address is *john.lasseter@gatrans.com.*

Dated: April 16, 2003.

Blaine D. Stockton,

Assistant Administrator, Electric Program.

[FR Doc. 03–9881 Filed 4–21–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 20–2003]

Foreign-Trade Zone 191—Palmdale, CA, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Palmdale, California, grantee of Foreign-Trade Zone 191, requesting authority to expand FTZ 191 in the Palmdale, California, area, adjacent to the Los Angeles-Long Beach Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 16, 2003.

FTZ 191 was approved on January 15, 1993 (Board Order 628, 58 FR 6614, 2/1/93), and expanded on November 4, 2002 (Board Order 1252, 67 FR 69715, 11/19/02). The zone project currently consists of the following ten sites in the Palmdale area: Site 1 (800 acres)—3 parcels within the 1,297 acre Lockheed Martin Aeronautics Industrial Park, Palmdale; Site 2 (87 acres)—Antelope Valley Business Park, Palmdale; Site 3 (30 acres)—Freeway Business Center, Palmdale; Site 4 (70 acres)—Palmdale Trade & Commerce Center, Palmdale; Site 5 (120 acres)—Fairway Business Park, Palmdale; Site 6 (140 acres)—Sierra Gateway Center, Palmdale; Site 7 (15 acres)—Pacific Business Park, Palmdale; Site 8 (20 acres)—Winnell Industrial Park, Palmdale; Site 9 (33 acres)—Park One Industrial Center, Palmdale; and, Site 10 (40 acres)—California City Airport Industrial Park, California City.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site at the Mojave Airport (*Proposed Site 11*—12 parcels, 91 acres) located at 1434 Flight Line, Mojave, California. The site is owned by the East Kern Airport District and includes airport jet fuel storage/distribution facilities. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses below:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is June 23, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 7, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the City of Palmdale's Office of Economic Development, 38250 N. Sierra Highway, Palmdale, California 93550.

Dated: April 16, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–9935 Filed 4–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

A-570–881

Notice of Preliminary Determination of Critical Circumstances: Certain Malleable Iron Pipe Fittings From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: April 22, 2003.

ACTION: Notice of preliminary determination of critical circumstances in the less than fair value investigation of certain malleable iron pipe fittings from the People's Republic of China.

SUMMARY: The Department of Commerce has preliminarily determined that critical circumstances exist for imports of certain malleable iron pipe fittings from the People's Republic of China.

FOR FURTHER INFORMATION CONTACT: Anya Naschak, Ann Barnett-Dahl or Helen Kramer at (202) 482–6375, (202) 482–3833, or (202) 482–0405, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Section 351 (2002).

Background

On November 19, 2002, the Department initiated an investigation to determine whether imports of malleable iron pipé fittings (MPF) from the People's Republic of China (PRC) are being, or are likely to be, sold in the United States at less-than-fair-value (LTFV). *See Notice of Initiation of Antidumping Duty Investigation: Certain Malleable Iron Pipe Fittings from the People's Republic of China*, 67 FR 70579 (November 25, 2002) (Initiation Notice). On December 16, 2002, the International Trade Commission (ITC) published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of MPF from the PRC. *See Malleable Iron Pipe Fittings from the People's Republic of China*, International Trade Commission, Investigation No. 731-TA-1021 (Preliminary), USITC Publication 3568 (ITC Preliminary Determination). On February 28, 2003, the petitioners in this investigation, Ward Manufacturing, Inc. and Anvil International, Inc. (collectively, petitioners) alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigation of MPF from the PRC.

In accordance with 19 C.F.R. 351.206(c)(2)(i), because the petitioners submitted their critical circumstances allegations 20 days or more before the scheduled date of the preliminary determination, the Department must issue the preliminary critical circumstances finding not later than the date of the preliminary determination. In Policy Bulletin 98/4, issued on October 8, 1998, the Department stated that it may issue a preliminary critical circumstances determination prior to the date of the preliminary determination of sales at less than fair value, assuming sufficient evidence of critical circumstances is available (*see Policy Bulletin 98/4: Timing of Issuance of Critical Circumstances Determinations* (63 FR 55364)). In accordance with this policy, at this time we are issuing the preliminary critical circumstances decision in the investigation of MPF from the PRC for the reasons discussed below and in the concurrent decision memorandum. *See* Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration from Richard

Weible, Director, Office 9: Antidumping Duty Investigation of Certain Malleable Pipe Fittings from the People's Republic of China Preliminary Affirmative and Negative Determinations of Critical Circumstances, dated April 14, 2003 (*Critical Circumstances Memorandum*), on file in Import Administration's Central Records Unit (CRU), Room B-099, of the Department of Commerce building.

Critical Circumstances

Section 733(e)(1) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and, (B) there have been massive imports of the subject merchandise over a relatively short period. Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that an increase in imports of 15 percent during the "relatively short period" of time may be considered "massive." Section 351.206(i) of the Department's regulations defines "relatively short period" as normally being the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. Section 351.206(i) further provides that if the Department finds that importers, exporters, or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, the Department may consider a period of not less than three months from that earlier time.

In determining whether the relevant statutory criteria have been satisfied, we considered: (i) the evidence presented by the petitioners in their February 28, 2003 letter; (ii) exporter-specific shipment data requested by the Department on March 7, 2003; and (iii) U.S. ITC DataWeb import statistics.

History of Dumping

To determine whether there is a history of injurious dumping of the merchandise under investigation, in accordance with section 733(e)(1)(A)(i) of the Act, the Department normally considers evidence of an existing antidumping duty order on the subject merchandise in the United States or elsewhere to be sufficient. *See Preliminary Determination of Critical Circumstances: Steel Concrete Reinforcing Bars From Ukraine and Moldova*, 65 FR 70696 (November 27, 2000). With regard to existing antidumping orders, the petitioners note that the European Community (EC) currently imposes a 49.4 percent duty on MPF from the PRC. Therefore, pursuant to section 733(e)(1)(A)(i) of the Act, the Department finds a history of injurious dumping of MPF from the PRC. Additionally, as the Department finds a history of injurious dumping of MPF from the PRC, and under section 733(e)(1) of the Act a history of injurious dumping is sufficient basis to determine that critical circumstances exist, we have not addressed the issue of importer knowledge.

Massive Imports

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.*, the "comparison period"). However, as stated in section 351.206(i) of the Department's regulations, "if the Secretary finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time." Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. *See* Section 351.206(h)(2).

For the reasons set forth in the Critical Circumstances Memorandum, we find no reason to believe that importers, exporters, or producers had reason to believe a proceeding was likely, prior to the filing of the petition. The Department requested from the respondents in this investigation monthly shipment data for October 2000 through April 2003, and obtained data through February 2003. In addition, we obtained U.S. import data for subject merchandise for October 2000 through January 2003 from the U.S. ITC DataWeb. Accordingly, because the Department has four months of data, from the date of the filing of the petition, available for respondents, we determined that July 2002 through October 2002 should serve as the "base period," while November 2002 through February 2003 should serve as the "comparison period," in determining whether or not imports have been massive over a relatively short period for respondents.

According to 19 C.F.R. 351.206(i), the comparison period normally should be at least three months; however, if we determine that importers, exporters or producers had reason to believe that a proceeding was likely, then the Department may consider a longer period. In this case, we have chosen a period of four months as the period for comparison in preliminarily determining whether imports of the subject merchandise have been massive because respondents provided data inclusive of February 2003, and because choosing a four-month period in general properly reflects the "relatively short period" commanded by the statute for determining whether imports have been massive. *See* Section 733(e)(1)(B) of the Act.

We have determined that November 2002 is the month in which importers, exporters or producers knew or should have known an antidumping duty investigation was likely, because the petition was filed on nearly the last day of October 2002. Therefore, in applying the four-month period, we used a comparison period of November 2002 to February 2003, and a base period of July 2002 to October 2002. The Department requested from the respondents in this investigation monthly shipment data for October 2000 through April 2003. To date, the Department has received from respondents data inclusive of February 2003. In addition, we obtained U.S. import data for subject merchandise for October 2000 through January 2003 from the U.S. ITC DataWeb.

Pursuant to 19 C.F.R. 351.206(h)(2), we found imports of MPF from the PRC increased by more than 15 percent in the comparison period; accordingly, we find that imports have been massive. With regard to the issue of massive imports, in accordance with our current practice (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon-Quality Steel Products From Brazil*, 65 FR 5554, 5561 (February 4, 2000)), we first considered the shipment data reported by the mandatory and non-selected respondents for the base and comparison periods (July 2002 through October 2002 and November 2002 to February 2003, respectively). We found massive imports for one of the mandatory respondents, Jinan Meide Casting Co. (JMC), and one of the non-selected respondents, SCE Co., Ltd. (SCE), based on an increase in imports exceeding the required 15 percent, but no massive imports for the other mandatory respondents, Langfang Pannext Pipe Fitting Co., Ltd. (Pannext); and Beijing Sai Lin Ke (SLK), and the other non-selected respondents Myland Industrial Co., Ltd. (Myland) and Chengde Malleable Iron General Factory (Chengde). In addition, we find that imports of subject merchandise were massive in the three-month comparison period for the PRC-wide entity for which data is available. *See* Critical Circumstances Memorandum for more detailed information.

Conclusion

Given the analysis summarized above, and described in more detail in the Critical Circumstances Memorandum, we preliminarily determine that critical circumstances exist for imports of MPF from the PRC exist for JMC and SCE and for the PRC-wide entity, but not for Pannext, SLK, Myland or Chengde.

Suspension of Liquidation

In accordance with section 733(e)(2) of the Act, if the Department issues an affirmative preliminary determination of sales at LTFV in the investigation with respect to JMC, SCE, or the PRC-wide entity, the Department, at that time, will direct Customs to suspend liquidation of all entries of MPF from the PRC from these exporters that are entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date of publication in the **Federal Register** of our preliminary determination of sales at LTFV. Customs shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, if any, reflected in the preliminary determination of sales at LTFV published in the **Federal Register**. Any suspension of liquidation issued after our preliminary determination of sales at LTFV will remain in effect until further notice.

Final Critical Circumstances Determinations

We will make final determinations concerning critical circumstances for the PRC when we make our final dumping determinations in this investigation, which will be 75 days (unless extended) after issuance of the preliminary LTFV determinations.

ITC Notification

In accordance with section 733(f) of the Act, we will notify the Commission of our determinations.

We are issuing and publishing these results and notice in accordance with section 777(i) of the Act.

Dated: April 14, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–9933 Filed 4–21–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–506]

Notice of Rescission of Antidumping Duty Administrative Review: Porcelain-on-Steel Cooking Ware From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On January 22, 2003, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on porcelain-on-steel (POS) cooking ware from the People's Republic of China (PRC) for one manufacturer/exporter of the subject merchandise, Clover Enamelware Enterprise, Ltd. of China (Clover), and its Hong Kong affiliated reseller, Lucky Enamelware Factory Ltd. (Lucky), collectively referred to as Lucky/Clover, for the period December 1, 2001 through November 30, 2002. This review has now been rescinded due to timely withdrawal of requests for an administrative review from both Columbian Home Products, LLC, a domestic interested party,[1] and the respondent.[2]

EFFECTIVE DATE: April 22, 2003.

FOR FURTHER INFORMATION CONTACT: George McMahon, Office of AD/CVD Enforcement IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230;telephone (202) 482–1167.

SUPPLEMENTARY INFORMATION:

Background

On December 31, 2002, Columbian Home Products, LLC, a domestic interested party, requested that the Department conduct an administrative review of Lucky/Clover, manufacturer and/or reseller of the subject merchandise in the PRC for the period, December 1, 2001 through November 30, 2002. Respondent also requested an administrative review on January 2, 2003. On January 22, 2003, the Department published in the **Federal Register** a notice of initiation of an administrative review with respect to Lucky/Clover for the period December 1, 2001 through November 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 3009 (January 22, 2003). On February 19, 2003, respondent withdrew its request for an administrative review, and also stated that in the event that this review is rescinded, they also withdraw their request that the Department revoke this antidumping order with respect to Lucky/Clover. On February 24, 2003, the domestic interested party also withdrew its request for an administrative review.

Scope of the Review

Imports covered by this review are shipments of POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses.

As a result of the Department's prior scope exclusion determinations, the following products are excluded from the scope of the order of POS cooking ware: barbeque grill basket, Delux Grill Topper, Porcelain Coated Grill Topper, and Wok Topper.

The merchandise is currently classifiable under item 7323.94.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Rescission of Review

Within 90 days of the January 22, 2003 notice of initiation, the domestic interested party and respondent withdrew their requests for the above referenced administrative review. *See*

[1] Pursuant to 771(9)(A) of the Act, Columbian Home Products, LLC is a domestic interested party in this case because they are a domestic manufacturer of subject merchandise.

[2] The respondent in this case is Clover Enamelware Enterprises Ltd. (Clover) and Lucky Enamelware Factory Ltd. (Lucky), and the U.S. importer, CGS International, Inc., collectively referred to as Lucky/Clover.

Letter from respondent to the Department dated February 19, 2003, and Letter from domestic interested party to the Department dated February 24, 2003, on file in the Central Records unit, Room B-099, Main Building of the Department of Commerce.

In accordance with the Department's regulations, and consistent with its practice, the Department hereby rescinds the administrative review of POS cooking ware from the PRC for the period December 1, 2001 to November 30, 2002. *See* 19 CFR section 351.213(d)(1), which states in pertinent part, "The Secretary will rescind an administrative review under this section, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review."

This notice is in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended, and section 351.213(d) of the Department's regulations.

Dated: April 15, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary Import Administration, Group II.

[FR Doc. 03–9934 Filed 4–21–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of issuance of an Export Trade Certificate of Review, Application No. 02–00005.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the Virginia Apple Growers Association Inc., ("VAGA"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number), or by E-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (2002).

The Office of Export Trading Company Affairs (AOETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the Certificate in the **Federal Register**. Under section 305 (a) of the Act and 15 CFR 325.11 (a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

I. Export Trade

A. Products

1. *Fresh Apples:* Any variety of apples intended for human consumption including but not limited to: Red Delicious, Golden Delicious, Rome, Stayman, York, Winesap, Granny Smith, Jonathan, Red, Gala, Empire McIntosh, Fuji, Ginger Gold, Braebur, and Cortland.

2. *Processed Apples:* Includes a variety of apple products used for human consumption; mainly apple juice, apple cider, applesauce and apple butter.

B. Export Trade Facilitation Services (as They Relate to the Export of Products)

All export-related services, including, but not limited to, international market research, marketing, advertising, sales promotion, brokering, handling, transportation, common marking and identification, communication and processing of foreign orders to and for Members, financing, export licensing and other trade documentation, warehousing, shipping, legal assistance, foreign exchange and taking title to goods.

II. Export Market

The Export Markets include all parts of the world except the United States (the fifty States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

III. Members (Within the Meaning of Section 325.(1) of the Regulations)

Bowman Fruit Sales, L.L.C.,

Timberville, Virginia; Crown Orchard Company, LLP, Batesville, Virginia; Flippin-Seaman, Inc., Tyro, Virginia; and Fred L. Glaize, L.C., Winchester, Virginia.

IV. Export Trade Activities and Methods of Operation

With respect to export trade activities, VAGA and/or one or more of its members may on behalf of and with the advice and assistance of its Members:

1. Participate in negotiations and enter into agreements with foreign buyers (including governments and private persons) regarding:

a. The quantities, time periods, prices and terms and conditions in connection with actual or potential bona fide export opportunities, and

b. Non-tariff trade barriers in the Export Markets;

2. Establish export prices and allocate export sales among its Members, in connection with actual or potential bona fide export opportunities;

3. Enter into agreements with non-Members, whether or not exclusive, to provide Export Trade Facilitation Services;

4. Negotiate and enter into agreements with providers of transportation services for the export of Products;

5. Advise and cooperate with the United States and foreign governments in:

a. Establishing procedures regulating the export of the Products, and

b. Fulfilling the phytosanitary and/or funding requirements imposed by foreign governments for export of the Products;

6. Establish and operate fumigation facilities and administer phytosanitary protocols to qualify the Products for Export Markets;

7. Communicate and process export orders;

8. Conduct direct sales;

9. Broker or take title to Products acquired from non-Member producers whenever necessary to fulfill specific sales obligations;

10. Operate foreign sales and distribution offices and companies to facilitate the sales and distribution of the Products in the Export Markets;

11. Refuse to deal with or provide quotations to other Export Intermediaries for sales of the Members' Products into the Export Markets;

12. Retain the option for VAGA to be the exporter of record with regard to sales conducted by and through VAGA;

13. Develop internal operational procedures and disseminate information to Members to assist the membership in meeting the criteria necessary for exporting;

14. VAGA, through employees or agents of VAGA who are not also employees of a Member, may receive and each Member may supply to such employees or agents of VAGA, information as to such Member's actual or intended total export shipments of certified products in any previous or future growing season or seasons, provided that such information is not disclosed by VAGA to any other Member;

15. Exchange information with and among the Members as necessary to carry out the Export Trade Facilitation Services, Export Trade Activities and Methods of Operation;

16. Provide Export Market entry and development assistance to its Members, including:

a. Designing and executing foreign marketing strategies for VAGA's Export Markets,

b. Designing, developing and marketing generic corporate labels, and

c. Other related administrative and promotional services;

17. Solicit non-Members to become Members;

18. Recover administrative expenses and costs through fees and assessments allocated to each Member on a pro-rata share basis or any other non-discriminatory method. Any Member objecting to the method of allocating expenses and costs will be charged based on actual expenses incurred;

19. Apply for and utilize export assistance and incentive programs, as well as arrange financing through bank holding companies, governmental programs, and other arrangements; and

20. Bill and collect from foreign buyers and provide accounting, tax, legal and consulting assistance and services.

V. Definition

"Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent, broker, or who performs similar functions including providing or arranging for the provision of Export Trade Facilitation Services.

VI. Terms and Conditions of Certificate

1. In engaging in Export Trade Activities and Methods of Operation, neither VAGA, nor any Member, shall intentionally disclose, directly or indirectly, to any Member (including parent companies, subsidiaries, or other entities related to any Member) any information regarding any other Member's costs, production, inventories, domestic prices, domestic sales, domestic customers, capacity to produce apples for domestic sale, domestic orders, terms of domestic marketing or sale, or U.S. business plans, strategies, or methods, unless such information is already generally available to the trade or public.

2. VAGA and its Members will comply with requests made by the Secretary of Commerce on behalf of the Secretary or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of section 303(a) of the Act.

VII. Protection Provided by Certificate

This Certificate protects VAGA, its Members, and directors, officers, and employees acting on behalf of VAGA and its Members from private treble damage actions and government criminal and civil suits under U.S. federal and state antitrust laws for the export conduct specified in the Certificate and carried out during its effective period in compliance with its terms and conditions.

VIII. Effective Period of Certificate

This Certificate continues in effect from the effective date indicated below until it is relinquished, modified, or revoked as provided in the Act and the Regulations.

IX. Other Conduct

Nothing in this Certificate prohibits VAGA and its Members from engaging in conduct not specified in this Certificate, but such conduct is subject to the normal application of U.S. antitrust laws.

X. Disclaimer

The issuance of this Certificate of Review to VAGA by the Secretary of Commerce with the concurrence of the Attorney General under the provisions of the Act does not constitute, explicitly or implicitly, an endorsement or opinion by the Secretary of Commerce or the Attorney General concerning either (a) the viability or quality of the business plans of VAGA or its Members or (b) the legality of such business plans of VAGA or its Members under the laws of the United States (other than as provided in the Act) or under the laws of any foreign country.

The application of this Certificate to conduct in Export Trade where the United States Government is the buyer or where the United States Government bears more than half the cost of the transaction is subject to the limitations set forth in Section V.(D.) of the "Guidelines for the Issuance of Export Trade Certificates of Review (Second Edition)," 50 FR 1786 (January 11, 1985).

In accordance with the authority granted under the Act and the Regulations, this Certificate of Review is hereby issued to the Virginia Apple Growers Association, Inc.

The effective date of the Certificate is April 4, 2003. A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: April 16, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–9833 Filed 4–21–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Manufacturing Extension Partnership National Advisory Board (MEPNAB), National Institute of Standards and Technology (NIST), will meet Thursday, May 8, 2003, from 8 a.m. to 3:30 p.m. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was established to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by state, federal, and local partnerships. The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to update the board on the latest program developments at MEP including the 360vu National Accounts initiative. Discussions scheduled to begin at 8 a.m. and to end at 12 p.m. on May 8, 2003, on MEP budget issues will be closed. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in

order to be admitted. Please submit your name, time of arrival, email address and phone number to Carolyn Peters no later than Tuesday, May 6, 2003, and she will provide you with instructions for admittance. Ms. Peter's e-mail address is *carolyn.peters@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene May 8, 2003 at 8 a.m. and will adjourn at 3:30 p.m. on May 8, 2003.

ADDRESSES: The meeting will be held in the Employees' Lounge, Administration Building, at NIST, Gaithersburg, Maryland 20899. Please note admittance instructions under the **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carrie Hines, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–4800, telephone number (301) 975–3360.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 11, 2003, that portions of the meeting which involve discussion of proposed funding of the MEP may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because that portion will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of the meeting which involve discussion of the staffing of positions in MEP may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in that portion of the meeting is likely to reveal information of a personal nature, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: April 14, 2003.

Karen H. Brown,

Deputy Director.

[FR Doc. 03–9867 Filed 4–21–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 030411083–3083–01]

RIN 0648–ZB40

Call for Proposals for Research in the Area of Climate and Weather Impacts on Society and the Environment

AGENCIES: National Climatic Data Center and Coastal Services Center, National Oceanic and Atmospheric Administration (NOAA); Department of Commerce.

ACTION: Notice of availability of Federal assistance.

SUMMARY: NOAA invites applications to establish a cooperative agreement with two of NOAA's centers, the National Climatic Data Center (NCDC) and the Coastal Services Center (CSC). In general terms, the agreement will be established to provide a collaborative environment between the National Climatic Data Center, the Coastal Services Center, and the recipient, within which a broad-based research program will be conducted that links climate and weather processes, the formation of severe events, and the impacts of these events for the region of the South Atlantic Bight, including the coastal ocean to the mountain environment. This announcement provides guidelines for the proposed cooperative agreement, and includes details for the technical program, proposal development, evaluation criteria, and competitive selection procedures. NOAA will collaborate on cooperative research and development activities and provide financial support to enhance the public benefits to be derived from the research results, including practical applications for the needs of coastal and inland communities. The selected applicant and NOAA will work together to engage the support of both the science and management communities, and ensure that a broad group of constituents will benefit from the products as well as contribute to their design and use. The agreement will be established based on ease and effectiveness of interaction and collaboration with the National Climatic Data Center and the Coastal Services Center, and/or expertise in areas related to the missions of NOAA, particularly the National Climatic Data Center and the Coastal Services Center. The selected applicant will also be expected to identify, and as appropriate, establish relationships with other NOAA program offices that may benefit from, or collaborate in, the work conducted under the cooperative agreement.

DATES: Complete applications must be received by the National Climatic Data Center no later than 4 p.m. May 22, 2003. Final selection is anticipated to be completed by approximately June 15, 2003. The anticipated start date is September 1, 2003.

ADDRESSES: Signed proposals, with two copies, should be submitted to: National Climatic Data Center; 151 Patton Avenue, Room 476, Asheville, NC 28801–5001. Proposals should cite this Notice and be sent to the attention of Linda Statler.

FOR FURTHER INFORMATION CONTACT: Administrative questions, Linda Statler, (828) 271–4657, *Linda.S.Statler@noaa.gov*. Technical point of contact is Marc Plantico, (828) 271–4765, *Marc.Plantico@noaa.gov*.

SUPPLEMENTARY INFORMATION: *Funding Instrument:* The selected recipient will enter into a 4-year cooperative agreement to support the development of a cooperative research program with NOAA's National Climatic Data Center and Coastal Services Center in the area of climate and weather impacts on society and the environment (including severe climate weather impacts in North and South Carolina).

Authority: Statutory authority for these programs is provided under 49 U.S.C. 44720; 33 U.S.C. 883d; 15 U.S.C. 2907; 16 U.S.C. 1451 *et seq.*; the Global Change Research Act, 15 U.S.C. 2921–2961; and the National Climate Program Act, 15 U.S.C. 2901–2908.

Catalog of Federal Domestic Assistance (CFDA): This program is listed in the Catalog of Federal Domestic Assistance under the Number 11.440, Environmental Sciences, Applications, Data, and Education.

Funding Availability: Funding for the first year (FY 2003) is anticipated to be approximately $375,000. Each additional year is anticipated to be approximately $400,000 per year thereafter for the term of the agreement. However, funding is contingent upon availability of appropriations and is at the sole discretion of NOAA. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to NOAA are not available under this announcement.

Cost Sharing: Applicant will be required to contribute at least 5 percent (from non-Federal funds) of the total amount contributed by NOAA each year if the application is approved. This should be shown in the budget.

Eligibility Criteria

Eligible organizations are limited to U.S. institutions. Eligible organizations are universities, non-profit organizations, for-profit organizations, State and local governments, and Indian Tribes. Multiple organizations may collaborate in submitting a single proposal, but the award will be made to a single organization with the primary responsibility for administration and execution of the agreement.

Program Description

The primary purpose of establishing a cooperative agreement is to bring together the resources of a research-oriented university or institution, the National Climatic Data Center, and the Coastal Services Center to collaborate on cooperative research and applications activities and to enhance the public benefits to be derived from these activities. NOAA envisions a sharing of expertise between the National Climatic Data Center, the Coastal Services Center, and the recipient in the areas of climate system variability impacts on regional scales; advanced observing and modeling of regional coastal ecosystem processes that are influenced by climate and weather; and the response of natural, economic, and social systems to climate variability. The geographic area for impacts is the region bordering the South Atlantic Bight, from the coastal areas to the mountain environment.

Program Priorities

Primary collaboration will be with the National Climatic Data Center located in Asheville, NC, and the Coastal Services Center located in Charleston, SC. Proposals should respond to the following research priorities:

(1) Climate System Variability Impacts on Regional Scales: Including, but not limited to, detecting global climate modes, trends, and variability; understanding downscaling, mechanisms and forcing of regional climate variability, particularly in coastal and near-coastal areas; and predicting protracted and abrupt coastal climate changes and the associated development of extreme events; improving the understanding of climate and weather influences on severe events; and helping to identify the data sets and tools needed for management applications to address these impacts in order to improve the resilience of coastal and in-land communities.

(2) Advanced Observing and Modeling of Regional Coastal Ecosystem Processes Influenced by Climate and Weather: Including, but not limited to, developing new measurement, data assimilation and management, and modeling techniques to characterize the state of the coastal ocean and atmosphere; advancing the understanding of the coastal zone processes that modulate regional climate and weather; and providing input for the prediction of severe events such as hurricanes, land-falling winter storms, and coastal storm surge and inland flooding.

(3) Response of Natural, Economic, and Social Systems to Climate and Weather Variability: Including, but not limited to, developing new tools to accurately measure indicators of change; creating new prognostic models capable of forecasting the response of ecosystems, such as mountains, piedmont lakes, estuaries, and coastal communities to climate variability and severe weather events; and developing new tools to enhance the resilience of natural, economic, and social systems to perturbations. Identify and design applications and models that improve the use and visualization of spatial and time-series data for the purpose of enhancing the delivery, utility, and content of information needed by emergency managers, coastal resource managers, business interests, and other users.

The cooperative agreement is meant to be an integral component in a coordinated research effort to produce the best possible deterministic and probabilistic information and projections of climate and weather variability and change, and related impacts on the environment and human systems. Research results will provide quality information that is socially and economically useful to decision makers at local, State and regional levels, both private and public. The cooperative agreement will promote and support research efforts designed to understand and apply learning in: (1) Atmospheric weather and climate systems and all associated parameters, *e.g.*, surface air temperature and pressure, precipitation amount and type, relative humidity, wind speed and direction, and cloud cover; (2) coastal oceanic weather and climate systems parameters, *e.g.*, sea surface temperature, ocean satellite altimetry, incident radiation, ocean satellite color (phytoplankton biomass, suspended material and colored dissolved material), scatterometer winds, phytoplankton primary productivity, coastal sea level, living marine resources, and nutrients; (3) terrestrial weather and climate systems parameters, *e.g.*, soils, soil moisture content, distribution of habitat (vegetation type, terrain type, elevation and percent water), hydrology, including lake water levels and river discharge, nutrients, and topography; and (4) socioeconomic impact data, *e.g.*, direct losses to human life, property, agricultural products, cleanup and response costs, disruptions to energy and transportation, and indirect losses due to temporary unemployment and business disruptions resulting from physical damage.

The applicant should identify a primary user base for the activities to be pursued, and the results to be obtained, under the agreement. The applicant should identify how members of this user community will be engaged, as appropriate, in the determination of research priorities, the communication of results, and the design and use of products.

Application Requirement

Standard Forms—Original Signed Copy
- SF–424—Application for Federal Assistance
- SF–424A—Budget Information—Non-Construction Program
- SF–424B—Assurances—Non-Construction Program
- CD–511—Certification Regarding Debarment, Suspension, and Other Responsibility Matters: Drug-Free Workplace Requirements and Lobbying
- SF-LLL—Disclosure of Lobbying Activities (submit only if engaged in lobbying activities)

These forms and additional information are available on the NOAA Grants Homepage: *http://www.ofa.noaa.gov/~grants/index.html*.

Proposal Format: The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines will result in proposals not being considered.

Proposals, a signed original and two copies, must be received by the National Climatic Data Center at the address identified in the **ADDRESSES** section of this notice no later than the time and date indicated in the **DATES** section of this Notice. Facsimile transmissions and electronic mail submissions will not be accepted. Late applications will not be considered. All proposals must include the sections identified below and total no more than 50 pages, including the title page, detailed budget, investigator(s) curriculum vitae, and all appendices. Appended information may not be used to circumvent the page length limit. Federally mandated forms are not included within the page count. Proposals should be submitted in double-space, 12-point format.

Proposals should provide a concise description of the proposed work. Proposals should provide a detailed description of the resources and capabilities of the host institution, specifically scientific expertise, specialized facilities, ongoing research activities, cost sharing abilities, and educational and training programs. The proposal should include the following elements:

(1) *Signed Title Page.* Cooperative Agreement for Climate and Weather Impacts on Society and the Environment (CWISE) (suggested name), the lead Principal Investigator, Partner names(s) (if any) and their respective affiliations, complete addresses, telephone, FAX, and e-mail information. The title page will also provide the total proposed cost, broken down on an

annual basis for the four-year period. The title page should be signed by the Principal Investigators (PI(s)) and the institutional representative of the PI's organization.

(2) *Goals and Objectives:* Identify broad research goals and their relevance to the Program Priorities listed above, and a general description of how the applicant proposes to achieve those goals.

(3) *Technical Approach:* Describe the specific approach the applicant proposes to accomplish the identified purposes of the agreement. Describe plans to ensure ease and effectiveness of communication between applicant and NOAA partners.

(4) Project Partners and Co-Investigators: Identify project partners and/or co-investigators, their respective roles, and their contributions and/or relationships to the proposed effort. Outline the respective roles of the applicant and NOAA.

(5) Milestones, Time Lines, Outcomes, and Beneficiaries: List target milestones, time lines, and desired outcomes (in multi-year proposed efforts, by year). Identify the intended beneficiaries of the work, with specificity, and show the potential value of the proposed work to the needs of the targeted audience. Identify any obstacles to accomplishing the milestones and outcomes.

(6) Qualifications and Relevant Experience: Identify the qualifications and relevant experience of the applicant (and partners) that relate to accomplishing the Program Priorities listed above.

(7) Vitae: An abbreviated Curriculum Vitae for the PI and any co-investigators should be included. Reference lists should be limited to all publications in the last three years with up to five other relevant papers.

(8) Summary of the applicant's relevant current or recently completed (limit to past five years) research activities that should be considered in the selection process.

(9) Detailed Statement of Work: The proposal should provide a detailed four-year plan for climate and weather research and applications conducted to understand, and provide the basis for, improved public and private assessment of environmental, economic, and social impacts. The following areas must be addressed:

(a) Statement of the problem and the needed research.

(b) Proposed methodology and justification for the development and implementation of appropriate research needed to accomplish the goals and address the Program Priorities. Identify the expected results, including products and applications from the work, how the proposed work will significantly address identified science and management needs, and the benefits of the proposed work to the general public, the scientific community, coastal managers, and the decision makers.

(c) Procedures for dissemination and presentation of research results to the intended beneficiaries, and any training needed for users to make full use of the results.

(d) Measures to track research and applications performance.

In addition, the applicant should document: The readiness of needed infrastructure; the nature, ease, and effectiveness of interaction with scientists at the National Climatic Data Center and the Coastal Services Center, and other NOAA programs as appropriate; the status of any ongoing efforts by the applicant and partners to address the proposed scientific goals and objectives; and the results from related projects previously and presently supported by NOAA.

(10) Budget: Applicants must submit a budget description and a brief narrative justification of the budget. The budget should be prepared using the Standard Form 424A, Budget Information—Non-Construction Programs. The form is included in the standard NOAA application kit. Provide a detailed budget breakdown and a brief narrative to provide the basis for the budget and the contribution of the applicant.

(11) Current and Pending Federal Support: Each investigator should submit a list that includes project title, supporting agency with grant number, investigator months, dollar value and duration. Requested values should be listed for pending Federal support.

Evaluation Criteria (With Weights)

Consideration for financial assistance will be given to those proposals that address the Program Priorities listed above and meet the following evaluation criteria. All proposals will be scored according to the following criteria:

(1) Scientific Merit (25 Points): Does the proposal document the intrinsic and exceptional scientific value of the proposed research, and applicability to the NCDC and the CSC as described in the Program Description and Program Priorities sections? Does the proposal show the ability to collaborate on research activities in the area of climate system variability impacts on regional scales; advanced observing and modeling of regional coastal ecosystem process; and response of natural and social systems to climate variability? Does the proposal show research abilities that will result in providing quality climate information that is socially and economically useful to decision makers at local, state, and regional levels, both public and private?

(2) Research Goals and Projects and Technical Approach (25 Points): Are the goals and objectives clearly articulated, relevant to the stated science and management need, and achievable within the proposed time frame? Are the research objectives quantifiable? Does the proposal describe how the applicant proposes to achieve the goals? Does the proposal display a sound methodology for both the research and applications agenda? Are the proposed specific research areas of exceptional scientific merit? What is the intrinsic scientific value of the proposed research?

(3) Ability to Build Coalitions and Partnerships (20 points): Does the proposal show the ability to build coalitions and partnerships with critical organizations and individuals (such as distinguished scientists, as well as potential researchers-in-training, universities, colleges, research institutions, state and local governments, and other public and private nonprofit organizations) and to facilitate collaboration and coordination to assure the accomplishment of the research goals? Does the proposal identify project partners, their respective roles, and their contributions/relationships to the proposed effort?

(4) Milestones, Time Lines, Outcomes, and Beneficiaries (15 Points): Does the proposal address target milestones, time lines, and desired outcomes? Is a user community clearly identified, and are members of the identified user community engaged in the design and execution of the project or its products? Does the proposal include an outreach and education component that will ensure the results are effectively applied to address the identified issues? Are there clear procedures for dissemination and presentation of the research results to the intended beneficiaries, including any training needed for users to make full use of the results? Does the proposal document the respective roles and responsibilities of the NCDC, the CSC, and the applicant for outreach and capacity building efforts?

(5) Budget (5 Points): Reasonableness of the proposed budget and time frame for the projects in relating to the work proposed. Does the proposal provide a detailed budget breakdown and a brief narrative to provide the basis for the budget?

(6) Qualifications and Relevant Experience (5 Points): Does the proposal identify the qualifications and relevant experience of the applicant (and partners) that relate to the Program Priorities? Are the proposers capable of conducting a project of the scope and scale proposed (*i.e.*, scientific, professional, facility, and resources/capabilities)? Will appropriate partnerships be employed to achieve the highest quality content and maximum efficiency?

(7) Innovation (5 Points): Does the collaborator propose to develop novel concepts, approaches, measures or methods in basic research that will address the Program Priorities? Are they original and innovative?

Selection Procedures

All proposals will be evaluated in accordance with the above evaluation criteria by an independent peer review panel which may consist of both NOAA and non-NOAA Federal experts. The panel will review and discuss each proposal and make a consensus recommendation of the most meritorious and relevant proposal to the Selecting Officials.. The selecting officials are the Directors of the National Climatic Data Center and the Coastal Services Center.

The Selecting Officials may accept the proposal recommended by the review panel, or may select another proposal based on the following program policy factors: (a) Duplication of on-going Federal support; (b) ease and effectiveness of interaction with applicant; (c) history of institutional commitment to related endeavors. The successful proposal will be forwarded to the NOAA Grants Officer for action. The final budget may be negotiated after selection is made.

Other Requirements/Information

(1) Disposition of Unsuccessful Proposals. Proposals will be held in the Program Office until an award is made to the selected applicant and then destroyed.

(2) Federal Policies and Procedures Applicable to this announcement:

(a) The Department of Commerce Pre-Award Notification of Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), is applicable to this solicitation.

(b) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin, or disability shall be excluded from participation in, denied benefits of, or be subjected to discrimination under any program or activity receiving financial assistance. Telephone Device for the Deaf (TDD) capabilities are available through the National Climatic Data Center at 828–271–4010 between the hours of 8:30 a.m. and 5 p.m., Monday through Friday.

Paperwork Reduction Act

This notice contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL has been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0340, and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid Office of Management and Budget control number.

Executive Orders 12866 and 12372

This notice has been determined to be not significant for purposes of E.O. 12866. Applications under this program are not subject to E.O. 12372, "Intergovernmental Review of Federal Programs."

Administrative Procedure Act/ Regulatory Flexibility Act

Notice and comment are not required under 5 U.S.C. 553(a)(2), or any other law, for rules relating to public property, loans, grants, benefits or contracts. Because notice and comment are not required, a Regulatory Flexibility Analysis, 5 U.S.C. 601 *et seq.*, is not required and has not been prepared for this notice.

Dated: April 15, 2003.

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 03–9857 Filed 4–21–03; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Public Meeting

SUMMARY: The Advisory Committee on Commercial Remote Sensing (ACCRES) will meet May 16, 2003.

DATES AND TIMES: The meeting is scheduled as follows: May 16, 2003, 9 a.m.–12 p.m. The first part of this meeting will be closed to the public. The public portion of the meeting will begin at 10:30 a.m.

ADDRESSES: The meeting will be held in Room 4527 of Silver Spring Metro Center Building III (SSMC III) in Silver Spring, Maryland. SSMC III is located at 1315 East-West Highway. It is located near the Silver Spring Metro Station on the Red Line. While open to the public, seating capacity may be limited.

SUPPLEMENTARY INFORMATION: As required by section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of the meeting of ACCRES. ACCRES was established by the Secretary of Commerce (Secretary) on May 21, 2002, to advise the Secretary through the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for the licensing of commercial remote sensing satellite systems.

Matters To Be Considered

The first part of the meeting will be closed to the public pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App. 2, as amended by section 5(c) of the Government in Sunshine Act, Public Law 94–409 and in accordance with section 552b(c)(1) of Title 5, United States Code, that the portions of this meeting which involve briefings on the ongoing review and implementation of commercial space policy relating to the National Security Presidential Directive-15 and the national security and foreign policy considerations for NOAA's licensing decisions may be closed to the public. These briefings are likely to disclose matters that are specifically authorized under criteria established by Executive Order 12958 to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such *Executive Order.*

All other portions of the meeting will be open to the public. During the open portion of the meeting, the Committee will discuss initial findings, the development of its work plan, and will receive public comments on its activities.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed to ACCRES, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910.

Additional Information and Public Comments

Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact

Timothy Stryker, Designated Federal Officer for ACCRES, NOAA/NESDIS International and Interagency Affairs Office, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910. Copies of the draft meeting agenda can be obtained from Tahara Moreno at (301) 713–2024 ext. 202, fax (301) 713–2032, or e-mail *Tahara.Moreno@noaa.gov*.

The ACCRES expects that public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. In general, each individual or group making an oral presentation may be limited to a total time of five minutes. Written comments (please provide at least 13 copies) received in the NOAA/NESDIS International and Interagency Affairs Office on or before May 12, 2003, will be provided to Committee members in advance of the meeting. Comments received too close to the meeting date will normally be provided to Committee members at the meeting.

FOR FURTHER INFORMATION CONTACT: Timothy Stryker, NOAA/NESDIS International and Interagency Affairs, 1335 East-West Highway, Room 7311, Silver Spring, Maryland 20910; telephone (301) 713–2024 x205, fax (301) 713–2032, e-mail *Timothy.Stryker@noaa.gov*, or Douglas Brauer at telephone (301) 713–2024 x213, e-mail *Douglas.Brauer@noaa.gov*.

Gregory W. Withee,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 03–9856 Filed 4–21–03; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041603B]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (MAFMC) and its Ad-Hoc Magnuson-Stevens Act Reauthorization Act Committee; Executive Committee; Squid, Mackerel, Butterfish Committee, and its Demersal Species Committee meeting as a Council Committee of the Whole will hold a public meeting.

DATES: The meetings will be held on Tuesday, May 6, through Thursday, May 8, 2003. *See* **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Westin Hotel New York at Times Square, 270 West 43rd Street, New York, NY; telephone: 212–201–2700.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, May 6, the Ad-Hoc Magnuson-Stevens Act Reauthorization Committee will meet from 1 p.m. to 4 p.m. The Executive Committee will meet from 4 p.m. to 5 p.m. On Wednesday, May 7, the Squid, Mackerel, Butterfish Committee will meet from 8 a.m. to 9:30 a.m. The MAFMC will meet from 9:30 a.m. until 5 p.m. On Thursday, May 8, the MAFMC will meet from 8 a.m. until 1 p.m.

Agenda items for the Council's committees and the Council itself are: review most recent Council Chairmen's position on Magnuson-Stevens Act, review most recent MAFMC's position on Magnuson-Stevens Act, review input received on Magnuson-Stevens Act; the Executive Committee will review status of Council Request for Proposal (RFP) re audit of 1999, 2000, and 2001 operations; the Squid, Mackerel, Butterfish Committee will discuss implications of limited access in herring fishery, discuss limited access system for Atlantic mackerel, discuss possible coordination mechanisms for joint approach to limited access; the Council will review staff's recommendations regarding adoption of public hearing document for Amendment 9 to the Squid, Mackerel, Butterfish Fishery Management Plan (FMP), and approve public hearing document for adoption of Amendment 9; presentation of NOAA Environmental Hero Award to Phil Ruhle; discuss and approve actions to be included in Framework 3 to the Summer Flounder, Scup, and Black Sea Bass FMP, discuss Amendment 14 possibilities, discuss and develop a MAFMC position regarding the Atlantic States Marine Fisheries Commission's (ASMFC) Addendum VIII, and discuss previous Council motion regarding vessel/power upgrade; hear a presentation on the NMFS Northeast Fisheries Science Center Observer Program; receive and discuss organizational and committee reports including Protected Resources, Executive Committee actions, New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting; South Atlantic Council's report; and, Highly Migratory Species (HMS) issues. Act on any continuing and/or new business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (*see* **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: April 16, 2003.

Matteo J. Milazzo,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9929 Filed 4–21–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Designations Under the Textile and Apparel Commercial Availability Provisions of the United States-Caribbean Basin Trade Partnership Act (CBTPA)

April 16, 2003.

AGENCY: The Committee for the Implementation of Textile Agreements (CITA).

ACTION: Determination.

SUMMARY: The Committee for the Implementation of Textile Agreements (Committee) has determined that certain knitted outer fusible material with a fold line that is knitted into the fabric (as described in the attached Annex I, item (1 and a knitted inner fusible material with an adhesive (thermoplastic resin) coating (as described in the attached Annex I, item (2, both classified under item 5903.90.2500 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner. The Committee hereby designates apparel articles from these fabrics as eligible for quota-free and duty-free treatment under the textile and apparel commercial availability provisions of the CBTPA and eligible under HTSUS subheadings 9819.11.24 or 9820.11.27, to enter free of quota and duties, provided that all other fabrics are wholly in the United States from yarns wholly formed in the United States.

FOR FURTHER INFORMATION CONTACT: Richard P. Stetson, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 211 of the Caribbean Basin Trade Partnership Act (CBTPA), amending Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act (CBERA); Presidential Proclamation 7351 of October 2, 2000; Executive Order No. 13191 of January 17, 2001.

BACKGROUND:

The commercial availability provision of the CBTPA provides for duty-free and quota-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary CBTPA country from fabric or yarn that is not formed in the United States or a beneficiary CBTPA country if it has been determined that such yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner and certain procedural requirements have been met. In Presidential Proclamation 7351, the President proclaimed that this treatment would apply to apparel articles from fabrics or yarn designated by the appropriate U.S. government authority in the Federal Register. In Executive Order 13191, the President authorized the Committee to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner.

On December 12, 2002 the Chairman of the Committee received a petition from Levi Strauss and Co. alleging that the waistband fabrics described in Annex I, for use in apparel articles, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics. On December 19, 2002, the Committee requested public comments on the petition (67 FR 244). On January 5, 2003, the Committee and the U.S. Trade Representative (USTR) sought the advice of the Industry Sector Advisory Committee for Wholesaling and Retailing and the Industry Sector Advisory Committee for Textiles and Apparel. On January 5, 2003, the Committee and USTR offered to hold consultations with the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. On January 23, 2003, the U.S. International Trade Commission provided advice on the petition. Based on the information and advice received and its understanding of the industry, the Committee determined that the fabric set forth in the petition cannot be supplied by the domestic industry in commercial quantities in a timely manner. On February 10, 2003, the Committee and USTR submitted a report to the Congressional Committees that set forth the action proposed, the reasons for such action, and advice obtained. A period of 60 calendar days since this report was submitted has expired.

The Committee hereby designates as eligible for preferential treatment under HTSUS subheading 9820.11.27, apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more eligible CBTPA beneficiary countries, from a knitted outer-fusible material with a fold line that is knitted into the fabric (as described in the attached Annex I, item1) and a knitted inner-fusible material with an adhesive (thermoplastic resin) coating (as described in the attached Annex I, item2), both classified under HTSUS subheading 5903.90.2500, not formed in the United States, provided that all other fabrics are wholly formed in the United States from yarns wholly formed in the United States, and that such articles are imported directly into the customs territory of the United States from an eligible CBTPA beneficiary country. An "eligible CBTPA beneficiary country" means a country which the President has designated as a CBTPA beneficiary country under section 213(b)(5)(B) of the CBERA (19 U.S.C. 2703(b)(5)(B)) and which has been the subject of a finding, published in the Federal Register, that the country has satisfied the requirements of section 213(b)(4)(A)(ii) of the CBERA (19 U.S.C. 2703(b)(4)(A)(ii)) and resulting in the enumeration of such country in U.S. note 1 to subchapter XX of Chapter 98 of the HTSUS.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

ANNEX I

1. A knitted outer-fusible material with a fold line that is knitted into the fabric. The fabric is a 45mm wide base substrate, knitted in narrow width, synthetic fiber based (made of 49% polyester / 43% elastomeric filament / 8% nylon with a weight of 4.4 oz., a 110/110 stretch, and a dull yarn), stretch elastomeric material with an adhesive (thermoplastic resin) coating. The 45mm width is divided as follows: 34mm solid, followed by a 3mm seam allowing it to fold over, followed by 8mm of solid.
2. A knitted inner-fusible material with an adhesive (thermoplastic resin) coating that is applied after going through a finishing process to remove all shrinkage from the product. The fabric is a 40mm synthetic fiber based stretch elastomeric fusible consisting of 80% nylon type 6/20% elastomeric filament with a weight of 4.4 oz., a 110/110 stretch, and a dull yarn.

[FR Doc.03–9824 Filed 4–21–03; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Commission Agenda and Priorities/ Government Performance and Results Act (GPRA); Public Hearing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public hearing.

SUMMARY: The Commission will conduct a public hearing to receive views from all interested parties about its agenda and priorities for Commission attention during fiscal year 2005, which begins October 1, 2004, and about its draft strategic plan, to be submitted to Congress September 30, 2003, pursuant to the Government Performance and Results Act (GPRA). Participation by members of the public is invited. Written comments and oral presentations concerning the Commission's agenda and priorities for fiscal year 2005, and strategic plan will become part of the public record.

DATES: The hearing will begin at 10 a.m. on June 9, 2003. Written comments and requests from members of the public desiring to make oral presentations must be received by the Office of the Secretary not later than May 27, 2003. Persons desiring to make oral presentations at this hearing must submit a written text of their

presentations not later than June 2, 2003.

ADDRESSES: The hearing will be in room 420 of the Bethesda Towers Building, 4330 East-West Highway, Bethesda, Maryland 20814. Written comments, requests to make oral presentations, and texts of oral presentations should be captioned "Agenda, Priorities and Strategic Plan" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: For information about the hearing, a copy of the strategic plan (available May 5, 2003), or to request an opportunity to make an oral presentation, call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833; telefax (301) 504–0127.

SUPPLEMENTARY INFORMATION: Section 4(j) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2053(j)) requires the Commission to establish an agenda for action under the laws it administers, and, to the extent feasible, to select priorities for action at least 30 days before the beginning of each fiscal year. Section 4(j) of the CPSA provides further that before establishing its agenda and priorities, the Commission shall conduct a public hearing and provide an opportunity for the submission of comments. In addition, section 306(d) of the Government Performance and Results Act (GPRA) (5.U.S.C. 306(d)) requires the Commission to seek comments from interested parties on the agency's proposed strategic plan. The strategic plan is a GPRA requirement. The plan will provide an overall guide to the formulation of future agency actions and budget requests.

The Office of Management and Budget requires all Federal agencies to submit their budget requests 13 months before the beginning of each fiscal year. The Commission is formulating its budget request for fiscal year 2005, which begins on October 1, 2004. This budget request must reflect the contents of the agency's strategic plan developed under GPRA.

Accordingly, the Commission will conduct a public hearing on June 9, 2003 to receive comments from the public concerning its draft GPRA strategic plan, and agenda and priorities for fiscal year 2005. The Commissioners desire to obtain the views of a wide range of interested persons including consumers; manufacturers, importers, distributors, and retailers of consumer products; members of the academic community; consumer advocates; and health and safety officers of state and local governments.

The Commission is charged by Congress with protecting the public from unreasonable risks of injury associated with consumer products. The Commission enforces and administers the Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*); the Federal Hazardous Substances Act (15 U.S.C. 1261 *et seq.*); the Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*); the Poison Prevention Packaging Act (15 U.S.C. 1471 *et seq.*); and the Refrigerator Safety Act (15 U.S.C. 1211 *et seq.*). Standards and regulations issued under provisions of those statutes are codified in the Code of Federal Regulations, title 16, chapter II.

While the Commission has broad jurisdiction over products used by consumers, its staff and budget are limited. Section 4(j) of the CPSA expresses Congressional direction to the Commission to establish an agenda for action each fiscal year and, if feasible, to select from that agenda some of those projects for priority attention. These priorities are reflected in the draft strategic plan developed under GPRA.

Persons who desire to make oral presentations at the hearing on June 9, 2003, should call or write Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–6833, telefax (301) 504–0127, not later than May 27, 2003. Persons who desire a copy of the draft strategic plan (available May 5, 2003) may call or write Rockelle Hammond, Office of the Secretary CPSC, Washington, DC 20207, telephone (301) 504–6833, telefax (301) 504–0127, e-mail: *rhammond@cpsc.gov*, or *cpsc-os@cpsc.gov*.

Presentations should be limited to approximately ten minutes. Persons desiring to make presentations must submit the written text of their presentations to the Office of the Secretary not later than June 2, 2003. The Commission reserves the right to impose further time limitations on all presentations and further restrictions to avoid duplication of presentations. The hearing will begin at 10 a.m. on June 9, 2003 and will conclude the same day.

Written comments on the Commission's draft strategic plan, and agenda and priorities for fiscal year 2005, should be received in the Office of the Secretary not later than May 27, 2003.

Dated: April 17, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–9954 Filed 4–21–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by May 22, 2003.

Title and OMB Number: Office of Priority Telecommunications Customer Satisfaction Survey; OMB Number 0704–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 100.

Responses per Respondent: 1.

Annual Response: 100.

Average Burden Per Response: 15 minutes.

Average Burden Hours: 25.

Needs and Uses: The National Communications Service (NCS), Office of Priority Telecommunications, is proposing to conduct surveys to better understand customer expectations and preferences regarding the NCS Telecommunications Service Priority (TSP) program. An electronic survey will be used in the data collection. Two subsets of customers will be surveyed, vendors and users. Vendors represent telecommunications organization that provide TSP services. Users represent organizations that support either a national security or emergency preparedness mission, including Federal users and non-Federal users, such as State and local governments, foreign governments, and private industry.

Affected Public: Business or other for-profit; Federal Government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 15, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9836 Filed 4–21–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Code Committee Meeting

ACTION: Notice of public meeting.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 146(a), Uniform Code of Military Justice, 10 U.S.C. 946(a), to be held at the Courthouse of the United States Court of Appeals for the Armed Forces, 450 E Street, NW., Washington, DC 20442–0001, at 10 a.m. on Thursday, May 15, 2003. The agenda for this meeting will include consideration of proposed changes to the Uniform Code of Military Justice and the Manual for Courts-Martial, United States, and other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Forces.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20422–0001, telephone (202) 761–1448.

Dated: April 15, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9837 Filed 4–21–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Closed Meeting of the DIA Joint Military Intelligence College Board of Visitors

AGENCY: Defense Intelligence Agency, Joint Military Intelligence College, DOD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

DATES: Tuesday, June 3, 2003, 8 a.m. to 5 p.m.; and Wednesday, June 4, 2003, 8 a.m. to 12 p.m.

ADDRESSES: Joint Military Intelligence College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/231–3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: April 15, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9838 Filed 4–21–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On April 14, 2003, the Department of Education published an emergency and 30-day public comment period notice in the **Federal Register** (page 17928, column 1) for the information collection, "Preparing Tomorrow's Teachers to Use Technology." The abstract has been amended to read, "PT3 grants will be awarded for three years to prepare future teachers to use advanced learning technologies. These grants will use funds for two specific activities, while also permitting some project-specific activities. Funds must be used for projects that: (1) Create one or two programs that prepare prospective teachers to use advanced technology to prepare all students to meet challenging state and local academic content and student academic achievement standards; (2) evaluate the effectiveness of the projects; and (3) provide project-specific activities that support the purposes of the program to ensure equal access to advanced technology and qualified teachers for all students." The Leader, Regulatory Management Group, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov*.

Dated: April 16, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

[FR Doc. 03–9846 Filed 4–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 23, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is

this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 16, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.

Title: Federal Family Education Loan Program Federal Consolidation Loan Application and Promissory Note.

Frequency: One time.

Affected Public: Individuals or household; businesses or other for-profit; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 263,000.

Burden Hours: 263,000.

Abstract: This application form and promissory note is the means by which a borrower applies for a Federal Consolidation Loan and promises to repay the loan, and a lender or guaranty agency certifies the borrower's eligibility to receive a Consolidation Loan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2265. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his e-mail *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–9847 Filed 4–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 22, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: April 17, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of English Language Acquisitions.

Type of Review: Revision.

Title: Application for Grants under English Language Acquisition: National Professional Development Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 25.

Burden Hours: 2,550.

Abstract: The Department needs and uses this information to make grants. The respondents are institutions of higher education and are required to provide this information in applying for grants.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2264. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–9878 Filed 4–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

The International Research and Studies Program

AGENCY: Department of Education.

ACTION: Publication of the year 2002 annual report.

SUMMARY: The Secretary announces the publication of the annual report listing the books and research materials produced with assistance provided under Section 605 of the Higher Education Act of 1965, as amended (HEA).

SUPPLEMENTARY INFORMATION: Section 605 of the HEA authorizes the International Research and Studies Program. Under this program, the Secretary awards grants and contracts for—

(a) Studies and surveys to determine the needs for increased or improved instruction in modern foreign languages, area studies, or other international fields, including the demand for foreign language, area, and other international specialists in government, education, and the private sector;

(b) Studies and surveys to assess the use of graduates of programs supported under Title VI of the HEA by governmental, educational, and private sector organizations and other studies assessing the outcomes and effectiveness of programs so supported;

(c) Evaluation of the extent to which programs assisted under Title VI that address national needs would not otherwise be offered;

(d) Comparative studies of the effectiveness of strategies to provide international capabilities at institutions of higher education;

(e) Research on more effective methods of providing instruction and achieving competency in foreign languages, area studies, or other international fields;

(f) The development and publication of specialized materials for use in foreign language, area studies, and other international fields, or for training foreign language, area, and other international specialists;

(g) Studies and surveys of the uses of technology in foreign language, area studies, and international studies programs;

(h) Studies and evaluations of effective practices in the dissemination of international information, materials, research, teaching strategies, and testing techniques throughout the education community, including elementary and secondary schools; and

(i) Research on applying performance tests and standards across all areas of foreign language instruction and classroom use.

2002 Program Activities

In fiscal year 2002, 20 new grants ($2,421,480) and 22 continuation grants ($2,782,520) were awarded under the International Research and Studies Program. These grants are active currently and will be monitored through progress reports submitted by grantees. Grantees have 90 days after the expiration of the grant to submit the products resulting from their research to the Department of Education for review and acceptance.

Completed Research

A number of completed research projects resulting from grants made during prior fiscal years have been received during the past year. These are:

Title	Author/location
The Language Without Borders: Developing the U.S. National Business Spanish Examination.	Steven Loughrin-Sacco, San Diego State University, 5250 Campanille Drive, San Diego, CA 92182–1934.
A Humanities Approach to Chinese History: A Three-Unit Curriculum Package for Secondary and Community Colleges.	Linda S. Wojtan, Social Science Education Consortium, 1965 North 57th Court, Suite 106—P.O. Box 21270, Boulder, CO 80308–4270.
Nahuatl Learning Environment Dictionary, Reference Grammar and Structured Database Lexicon and Hypertext Search for Online Presentation.	Jonathan D. Amith, Yale University, Council on Latin American and Iberian Studies, P.O. Box 208206, New Haven, CT 06520–8206.
A National Survey of Assessments of Foreign Language Teachers	D. Kenyon and V. Malabonga, Center for Applied Linguistics, 4646 40th Street, NW., Washington, DC 20016.
Computer-Assisted Polish Pronunciation Tutor	Waldemar Walczynski, Center for Applied Linguistics, 4646 40th Street, NW., Washington, DC 20016.
The Making of Modern Burma CD–ROM	Michael Aung-Thwin, University of Hawaii at Manoa, School of Hawaiian, Asian And Pacific Studies, Monroe Hall 416, 1890 East-West Road, Honolulu, HI 96822.
Communicating in Khmer: An Interactive Intermediate Level Khmer Course.	Chhany Sak-Humphry, University of Hawaii at Manoa, Center for Southeast Asian Studies—Sakamaki D200, 2530 Dole Street, Honolulu, HI 96822.
Emerging Economies Teaching Website	Michael Radnor, Northwestern University, Kellogg Graduate School of Management, 633 Clark Street, Evanston, IL 60208–1110.
Building a New Europe: Political and Economic Reconstruction After the Cold War.	Lowell Turner, Schools of Industrial and Labor Relations, Cornell University, Ithaca, NY 14853–3901.
Assessing a Japanese Program Over Time: Preparation and Articulation.	G. Richard Tucker, Carnegie Mellon University, Department of Modern Languages, Baker Hall 160, Pittsburgh, PA 15213–3890.

To obtain a copy of a completed study, contact the author at the given address.

FOR FURTHER INFORMATION CONTACT: For a copy of the 2002 annual report and further information regarding the International Research and Studies Program, write to Jose L. Martinez, Program Officer, International Education and Graduate Programs Service, U.S. Department of Education, 1990 K Street, NW., Washington, DC 20006–8521. Telephone: (202) 502–7635.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document or the 2002 annual report referred to in this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**

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You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet

at the following site: *http://www.ed./gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO); toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1125.

Dated: April 17, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–9882 Filed 4–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.345A]

Office of Postsecondary Education—Underground Railroad Educational and Cultural Program; Notice Inviting Applications for Grants for New Awards for Fiscal Year (FY) 2003

Purpose of Program: The Underground Railroad Educational and Cultural program will provide grants to nonprofit educational organizations that are established to research, display, interpret, and collect artifacts relating to the history of the Underground Railroad.

Eligible Applicants: Nonprofit educational organizations that are established to research, display, interpret, and collect artifacts relating to the history of the Underground Railroad.

Applications Available: April 22, 2003.

Deadline for Transmittal of Applications: June 2, 2003.

Deadline for Intergovernmental Review: August 1, 2003.

Available Funds: $2,235,375.

Estimated Range of Awards: $100,000 to $750,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 2–4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Statute and Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 82, 85, 86, 97, 98 and 99 and

(b) Other activities as required by section 841 of the Higher Education Amendments of 1998, Public Law 105–244, 20 U.S.C 1153.

Special Requirements: Each nonprofit educational organization awarded a grant under this program must enter into an agreement with the Department. Each agreement must require the organization—

(1) To establish a facility to house, display, and interpret the artifacts related to the history of the Underground Railroad, and to make the interpretive efforts available to institutions of higher education that award a baccalaureate or graduate degree;

(2) To demonstrate substantial private support for the facility through the implementation of a public-private partnership between a State or local public entity and a private entity for the support of the facility. The private entity must provide matching funds for the support of the facility in an amount equal to 4 times the amount of the contribution of the State or local public entity, except that not more than 20 percent of the matching funds may be provided by the Federal Government;

(3) To create an endowment to fund any and all shortfalls in the costs of the on-going operations of the facility;

(4) To establish a network of satellite centers throughout the United States to help disseminate information regarding the Underground Railroad throughout the United States, if these satellite centers raise 80 percent of the funds required to establish the satellite centers from non-Federal public and private sources;

(5) To establish the capability to electronically link the facility with other local and regional facilities that have collections and programs that interpret the history of the Underground Railroad; and

(6) To submit, for each fiscal year for which the organization receives funding under this program, a report to the Department that contains—

(a) A description of the programs and activities supported by the funding;

(b) The audited financial statement of the organization for the preceding fiscal year;

(c) A plan for the programs and activities to be supported by the funding, as the Secretary may require; and

(a) An evaluation of the programs and activities supported by the funding, as the Secretary may require.

For Applications and Further Information Contact: Jay Donahue, U.S. Department of Education, 6th Floor, 1990 K Street, NW., room 6162, Washington, DC 20006–8544. Telephone: (202) 502–7507 or via Internet: *Jay.Donahue@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice or the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under *For Applications and Further Information Contact*.

However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/fedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: Section 841 of the Higher Education Amendments of 1998, Pub. L. 105–244, 20 U.S.C. 1153.

Dated: April 16, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–9883 Filed 4–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from October 1, 2002 through December 31, 2002.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: Melisande Lee or JoLeta Reynolds. Telephone: (202) 205–5507.

If you use a telecommunications device for the deaf (TDD), you may call (202) 205–5637 or the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this notice in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Format Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued from October 1, 2002 through December 31, 2002.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part B

Assistance for Education of All Children With Disabilities, Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Section 619—Preschool Grants

Topic Addressed: Distribution of Funds Provided to the Secretary of the Interior

• Letter dated December 17, 2002 to Washington Department of Social and Health Services Indian Policy Advisory Committee Chair Marilyn M. Scott, clarifying that under current law the State and the Bureau of Indian Affairs each have certain responsibilities regarding the provision of early intervention and special education and related services to Native American children with disabilities residing on reservations.

Topic Addressed: Use of funds

• Letter dated November 7, 2002 to Minnesota Department of Education Director of Accountability and Compliance Norena Hale, listing regulations that apply to the use of State set-aside funds under sections 611 and 619 for monitoring.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

• Letter dated October 9, 2002 to Beth L. Sims, Esq., clarifying that the IDEA, as amended, and its implementing regulations do not obligate a school district receiving a special education student from another State to accept the evaluation results, eligibility determinations, and individualized education program (IEP) decisions made in another State, but do obligate a local educational agency (LEA) to provide a free appropriate public education (FAPE), in accordance with State education standards, to all eligible students.

Topic Addressed: State Educational Agency General Supervisory Authority

• Letter dated October 17, 2002 to Florida Bureau of Instructional Support and Community Services Chief Shan Goff, regarding improvement activities required to address areas of noncompliance in the provision of speech-language services as a related service to children with disabilities, identified during the Office of Special Education Program's monitoring activities.

Topic Addressed: Methods of Ensuring Services

• Letter dated November 6, 2002 to South Carolina Department of Education Director of Programs for Exceptional Children Susan D. Durant, regarding requirements to obtain parent consent under Part B of the IDEA and the Family Educational Rights and Privacy Act (FERPA) in order to access Medicaid or public insurance benefits.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Eligibility Determinations

• Letter dated October 9, 2002 to Minneapolis Public Schools Executive Director of Special Education Colleen Baumtrog, regarding requirements for evaluating and identifying children with specific learning disabilities and clarifying that neither the IDEA nor the Part B regulations require the use of intelligence quotient tests as part of an initial evaluation or a reevaluation.

Topic Addressed: Individualized Education Programs

• Letter dated November 21, 2002 to U.S. Congressman Dennis Moore, regarding issues related to the graduation of a student with a disability, including transition planning, transition services, reevaluations and procedural safeguards.

Section 615—Procedural Safeguards.

Topic Addressed: Independent Educational Evaluations

• Letter dated October 9, 2002 to individual, (personally identifiable information redacted), clarifying that to avoid unreasonable charges for independent educational evaluations (IEEs) a school district may establish maximum allowable charges, but the school district must allow parents the opportunity to demonstrate that unique circumstances justify an IEE that is more expensive; and if the school district disagrees with the parents' justification, it must bring a hearing to demonstrate that the IEE did not meet the agency's cost criteria and that unique circumstances do not justify the higher rate.

Topic Addressed: Notice to Parents

• Letter dated October 9, 2002 to NEA Professional Associate for Special Needs Patti Ralabate, clarifying (1) that if an IEP meeting does not result in a proposal or refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of a FAPE to their child, prior notice is not required, (2) that one method public agencies could use to meet the requirement for reporting the information on IEP goals required by 34 CFR 300.347(a)(7)(ii)(A) and (B) to parents would be to include that information on the periodic report cards that report grading information to all students, and (3) how the language needs of a child with a disability who has limited English proficiency must be addressed in the child's IEP based on the individual needs of the child.

Part C

Infants and Toddlers With Disabilities

Section 637—State Application and Assurances

Topic Addressed: Prohibition Against Supplanting

• Letter dated November 12, 2002 to Louisiana Department of Education Assistant Superintendent Rodney Watson, discussing the non-supplanting

requirements for Part C funds and indicating that the total State and local expenditures should be considered, and not just lead agency funds.

Section 643—Allocation of Funds.

Topic Addressed: Administration of Part C Funds

• Letter dated November 20, 2002 to New Mexico Department of Health Program Manager Andrew Gomm, clarifying that the Education Department General Administrative Regulations require recipients of IDEA part C Federal grant awards to have a restricted indirect cost rate.

Other Letters Relevant to the Administration of Idea Programs

Topic Addressed: Child with a Disability

• Letter dated November 8, 2002 to U.S. Congressman Ken Lucas, regarding the circumstances under which a child with asthma may be eligible under the IDEA or under section 504 of the Rehabilitation Act of 1973 or both.

Topic Addressed: Applicability of Regulations

• Letter dated October 29, 2002 to Dr. Perry A. Zirkel regarding application of the requirements of the IDEA, section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act to overseas schools.

Topic Addressed: Free Appropriate Public Education

• Letter dated October 22, 2002 to Chief State School Officers, regarding implementation of the No Child Left Behind Act and the importance of identifying schools in need of improvement to ensure that every child learns.

Topic Addressed: Procedural Safeguards

• Letter dated November 19, 2002 to Dr. Perry A Zirkel clarifying that neither the IDEA nor its implementing regulations address interlocutory appeals and that whether these appeals are allowed is a State decision subject to the timeline provisions of 34 CFR 300.512.

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: April 17, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–9941 Filed 4–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5044]

Avondale Mills, Inc.; Notice of Authorization for Continued Project Operation

April 16, 2003.

On April 2, 2001, Avondale Mills, Inc., licensee for the Sibley Mill Project No. 5044, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 5044 is located on the Augusta Canal in the City of Augusta, Richmond County, Georgia.

The license for Project No. 5044 was issued for a period ending March 31, 2003. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 5044 is issued to Avondale Mills, Inc. for a period effective April 1, 2003, through March 31, 2004, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 1, 2004, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Avondale Mills, Inc. is authorized to continue operation of the Sibley Mill Project No. 5044 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9899 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–100]

CenterPoint Energy Gas Transmission Company; Notice of Negotiated Rates

April 16, 2003.

Take notice that on April 1, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective April 1, 2003:

First Revised Sheet No. 859
First Revised Sheet No. 860
First Revised Sheet No. 862
First Revised Sheet No. 864
First Revised Sheet No. 883
Original Sheet No. 891

CEGT states that the purpose of this filing is to reflect implementation of a new negotiated rate transaction, and terminated or expired existing negotiated rate transactions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Ddte: April 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9907 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–149–001]

CMS Trunkline Gas Company, LLC; Notice of Compliance Filing

April 15, 2003.

Take notice that on April 9, 2003, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 223A, proposed to be effective May 9, 2003.

Trunkline states that this filing is being made to comply with the Commission's Letter Order dated March 25, 2003, in Docket No. RP03–149–000 which directed Trunkline to file actual tariff sheets, consistent with the pro forma tariff sheet filed on November 27, 2002, in the subject docket.

Trunkline states that copies of this filing are being served on all jurisdictional customers, interested state regulatory agencies and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 21, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9816 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–341–000]

Dominion Cove Point LNG, LP; Notice of Proposed Changes to FERC Gas Tariff

April 16, 2003.

Take notice that on April 14, 2003, Dominion Cove Point LNG, LP (Dominion Cove Point), formerly Cove Point LNG Limited Partnership, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets attached as Appendix A to the filing, to become effective May 1, 2003 and June 1, 2003.

Dominion Cove Point states that the purpose of the filing is to reflect Dominion Cove Point's name change.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9904 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–11–000]

Enbridge Pipelines (Louisiana Intrastate) L.L.C.; Notice of Extension of Time

April 16, 2003.

On April 10, 2003, Enbridge Pipelines (Louisiana Intrastate) L.L.C. (Louisiana Intrastate) filed a motion for an extension of time for the filing of comments, protests, and interventions, in the above-docketed proceeding. The proceeding concerns a Louisiana Intrastate petition for rate approval under Section 311 of the Natural Gas Act and the Commission's rules. The petition was filed on March 19, 2003. Louisiana Intrastate's current motion for extension of time states that certain cost information contained in that filing was incorrect or incomplete and that an amendment containing new information will be filed that will supercede the petition currently on file. The motion also states that requiring parties to review and respond to a flawed and incomplete filing would be a waste of resources. Further, the motion states that an extension of time will allow for a more efficient administration of this proceeding.

Upon consideration, notice is hereby given that the extension of time for filing comments, interventions, or protests is granted. The new deadline for the filing of comments, interventions, or protests will be established in a subsequent Notice of

Revised Filing to be issued when Louisiana Intrastate amends its March 19, 2003 filing.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9901 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–256–002]

Honeoye Storage Corporation; Notice of Compliance Filing

April 16, 2003.

Take notice that on April 11, 2003, Honeoye Storage Corporation (Honeoye) tendered for filing as part of its FERC Gas Tariff, First Revised Volume 1A, Third Revised Sheet No. 96 and First Revised Sheet No. 96A, with an effective date of April 1, 2003.

Honeoye states that this filing is being made in response to a letter order dated March 28, 2003, which was issued by the Commission in Honeoye Storage Corporation's Docket Nos. RP03–256–000 and RP03–256–001. In that letter order, the Commission stated that it would accept Honeoye's proposed tariff modifications subject to the condition that Honeoye's right to impose carrier liens on defaulting shippers' gas in storage is limited by applicable law.

Honeoye states that its revised tariff sheet, Third Revised Sheet 96 conditions Honeoye's right to impose carrier liens in accordance with the letter order, and First Revised Sheet 96A makes a pagination change.

Honeoye states that copies of the filing are being mailed to Honeoye's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9902 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–084]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

April 15, 2003.

Take notice that on April 11, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to be effective June 1, 2003:

First Revised Sheet No. 26P
Third Revised Sheet No. 26).01
First Revised Sheet No. 26P.02

Natural states that the purpose of this filing is to terminate, effective June 1, 2003, an existing negotiated rate transaction between Natural and Dynegy Marketing and Trade, Inc. under Natural's Rate Schedule FTS pursuant to section 49 of the General Terms and Conditions of Natural's Tariff.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9820 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA97–237–013]

New England Power Pool; Notice of Filing

April 14, 2003.

Take notice that on April 7, 2003, the New England Power Pool (NEPOOL) Participants Committee (NPC) and ISO New England Inc. (ISO–NE) jointly filed for acceptance revisions to a report of an audit previously filed Docket No. OA97–237–012 on April 24, 2002. NPC and ISO–NE state that the audit report is submitted in compliance with the requirement of a settlement agreement approved by the Commission by Order dated July 30, 1999, 88 FERC •161,140, that an audit of the charges for regional network service (RNS) under the formula rate provisions of the NEPOOL Tariff for charges in effect for the NEPOOL rate years June 1, 1997, through May 31, 2000, be performed by or under the direction of ISO–NE, and that the results of the audit be submitted to the Commission as an informational filing. NPC and ISO–NE indicate that the revised report reflects the outcome of efforts to resolve certain disputes regarding the initial audit report.

The NPC states that copies of these materials were sent to the New England state governors and regulatory commissions, the NEPOOL Participants, the parties to the settlement agreement and the intervenors as identified in this subdocket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: May 7, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9812 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–343–000]

Northern Natural Gas Company; Notice of Proposed Changes In FERC. Gas Tariff

April 16, 2003.

Take notice that on April 14, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on May 14, 2003:

Seventh Revised Sheet No. 252
Third Revised Sheet No. 253
First Sheet No. 253A
Fourth Revised Sheet No. 297

Northern is proposing changes to Section 26 (Request for Throughput Service) and Section 52 (Right of First Refusal) of the General Terms and Conditions of its tariff to establish a provision regarding the reservation of capacity for future expansion projects and extension rights for interim shippers.

Northern states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9906 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–12–000]

Overland Trail Transmission, LLC.; Notice of Petition for Rate Approval

April 15, 2003.

Take notice that on April 1, 2003, Overland Trail Transmission, LLC (OTTCO) filed pursuant to section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve the proposed rates as fair and equitable for transportation services performed under section 311 of the Natural Gas Policy Act of 1978 (NGPA).

OTTCO requests that the Commission approve as fair and equitable a maximum System-wide transportation rate of $0.4574 per MMBtu plus pro rata fuel, effective April 1, 2003. In addition, OTTCO requests approval of its new Wapiti Service transportation rate of $0.0591 per MMBtu plus pro rata fuel. OTTCO will offer both System-wide Service and Wapiti Service on both a firm and interruptible basis. Furthermore, OTTCO requests an effective date for its respective firm service options of May 1, 2003, for transportation services performed under section 311(a)(2) of the NGPA.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 30, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–9814 Filed 4–21–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–87–000]

Overthrust Pipeline Company; Notice of Application

April 15, 2003.

Take notice that on April 7, 2003, Overthrust Pipeline Company, (Overthrust) tendered for filing an abbreviated application pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and 18 CFR 157.7 and 157.18, requesting authority to: (1) Abandon the firm service obligation to transport 42,000 Dth per day for Colorado Interstate Gas Company (CIG) and 98,600 Dth per day for Natural Gas Pipeline Company of America (NGPL) and (2) abandon Overthrust's Original Volume No. 1 FERC Gas Tariff effective January 1, 2003.

Overthrust indicates that, by letters dated December 7, 2001, and November 5, 2001, CIG and NGPL, respectively, gave notice of their election to terminate all rights and obligations under their Rate Schedule T service agreements with Overthrust effective January 1, 2003, and requested that Overthrust seek abandonment authority from the Commission.

Overthrust requests authority to abandon the firm-transportation service obligations of CIG and NGPL established pursuant to their service agreements. Since all service under Original Volume No. 1 is proposed to be abandoned, Overthrust will no longer provide service under this tariff.

Overthrust further requests the Commission make its approval to abandon Overthrust's Original Volume No. 1 FERC Gas Tariff effective January 1, 2003.

Overthrust states that it does not propose to abandon, retire or modify any facilities as a result of the Commission granting the requested abandonment authorization.

Overthrust states that it will continue to provide transportation service under its First Revised Volume No. 1–A FERC Gas Tariff as approved by the Commission pursuant to 18 CFR part 284, subparts B and G.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 6, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–9811 Filed 4–21–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–039]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

April 15, 2003.

Take notice that on April 11, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Eighth Revised Sheet No. 15 and Original Sheet No. 21B, with an effective date of April 11, 2003.

GTN states that these sheets are being filed to reflect the implementation of one Negotiated Rate Agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 23, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–9821 Filed 4–21–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–342–000]

Questar Pipeline Company; Notice of Tariff Filing

April 16, 2003.

Take notice that on April 14, 2003, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective May 12, 2003:

Fifth Revised Sheet No. 84
Second Revised Sheet No. 85
Second Revised Sheet No. 86
Fourth Revised Sheet No. 87
Third Revised Sheet No. 88
Second Revised Sheet No. 88A
Original Sheet No. 88B
Original Sheet No. 88C

Questar states that its filing updates the Measurement section of its tariff to comport with current industry measurement standards and practices.

Questar further states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 28, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–9905 Filed 4–21–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR03–13–000]

Saltville Gas Storage Company, L.L.C.; Notice of Petition for Rate Approval

April 15, 2003.

Take notice that on April 4, 2003, Saltville Gas Storage Company, L.L.C. (Saltville) filed, pursuant to section 284.123(b)(2) of the Commission's regulations and its blanket certificate, a petition for rate approval for storage services rendered pursuant to section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Saltville states that it proposes to offer a menu of firm service options, interruptible storage, and park and loan service. Saltville further states that it is an intrastate pipeline company.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed with the Secretary of the Commission on or before the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–8222 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 30, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–9815 Filed 4–21–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–324–001]

Southern Star Central Gas Pipeline, Inc.; Notice of Tariff Filing

April 15, 2003.

Take notice that on April 10, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star Central) tendered for filing as part of its FERC Gas Tariff Original Volume No. 1, Substitute Original Sheet No. 6 through 9, containing system maps as required by 18 CFR 154.160 of the Commission's Regulations, to become effective April 30, 2003.

Southern Star Central states that this filing is a supplement to the filing it made on March 31, 2003 in Docket No. RP03–324–000 where Southern Star Central filed a complete new tariff under its new name. Southern Star Central states that the instant filing includes system maps that were not available in time for the March 31, 2003 filing. Southern Star Central has marked each tariff sheet found in Appendix A as "Non-Internet Public" in accordance with guidelines related to the Final Rule on Critical Energy Infrastructure (CEII). An April 30, 2003, effective date is requested in order to allow all tariff sheets in the FERC Gas Tariff, Original Volume No. 1 to go into effect concurrently with the tariff filed on March 31, 2003.

Southern Star Central further states that only copies of the transmittal letter excluding Appendix A are being mailed to Southern Star Central's jurisdictional customers and interested State commissions at this time.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 22, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–9817 Filed 4–21–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–339–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Tariff Filing

April 16, 2003.

Take notice that on April 11, 2003 Southern Star Central Gas Pipeline, Inc.

(Southern Star Central) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 214 to become effective May 15, 2003.

Southern Star Central states that the purpose of this filing is to apply right-of-first-refusal provisions to maximum rate service agreements and to remove the five-year term matching cap from the right-of-first-refusal provisions of the Southern Star Central Gas Pipeline, LLC Tariff consistent with the Commission's Order on Remand in Docket No. RM98–10–011.

Southern Star Central further states that copies of the transmittal letter and appendices are being mailed to Southern Star's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.314 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9903 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–340–000]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

April 15, 2003.

Take notice that on March 31, 2003 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 40P, Original Sheet No. 40P.01, Original Sheet No. 40P.02, Original Sheet No. 40P.03 and Original Sheet No. 40Q, with an effective date of May 1, 2003.

Transco states that the purpose of the instant filing is to set forth under Rate Schedule FT the incremental recourse rates for Phase I of the Momentum firm transportation service anticipated to commence May 1, 2003.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed by the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov)* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9818 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–288–030]

Transwestern Pipeline Company; Notice of Refund Report

April 15, 2003.

Take notice that on April 9, 2003, Transwestern Pipeline Company (Transwestern) tendered for filing a compliance refund report.

Transwestern states that it filed a stipulation and agreement (Settlement) in the above referenced dockets resolving all issues pending in these proceedings. Transwestern further explains that the Federal Energy Regulatory Commission (Commission) issued a letter order dated January 31, 2003 (Order) accepting the Settlement as fair and reasonable and in the public interest. Transwestern states that the Order directed Transwestern to make refunds consistent with the Settlement, and to file with the Commission a compliance refund report within thirty days of making such refund.

Transwestern states that it made the refunds to shippers in accordance with the Settlement on March 14, 2003, and that it is filing the compliance refund report pursuant to the Commission's January 31 order.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9819 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–1523–076, et al.]

New York Independent System Operator, Inc., et al. Electric Rate and Corporate Filings

April 16, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York Independent System Operator, Inc.

[Docket Nos. ER97–1523–076, OA97–470–068 and ER97–4234–066]

Take notice that on April 14, 2003, the New York Independent System Operator, Inc. (NYISO) filed with the Federal Energy Regulatory Commission (Commission) a compliance report, pursuant to the Commission's March 13, 2003 Order issued in the above-captioned proceedings, describing the steps it intends to take to ensure that Thunderstorm Alert-related costs are directly assigned to load serving entities in the New York City area.

The NYISO states that it has served a copy of this filing upon all parties listed on the official service lists in the above-captioned proceedings and on all market participants that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or its Market Administration and Control Area Services Tariff, and to the electric utility regulatory agencies in New York, New Jersey, and Pennsylvania.

Comment Date: May 5, 2003.

2. Entergy Services, Inc.

[Docket No. ER02–2014–014]

Take notice that on April 14, 2003, Entergy Services, Inc., on behalf of the Entergy Operating Companies, Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively Entergy), filed a compliance filing in response to the Commission's March 13, 2003, Order On Amended Generator Operating Limits Filing (March 13 Order) Entergy Servs., Inc., 102 FERC § 61,281. Entergy states that the compliance filing implements revisions to Attachment Q to the Entergy Open Access Transmission Tariff that were required by the March 13 Order and contains Entergy's status report on implementation of Attachment Q.

Comment Date: May 5, 2003.

3. PJM Interconnection, L.L.C.

[Docket No. ER03–404–002]

Take notice that on April 14, 2003, PJM Interconnection, L.L.C. (PJM) submitted for filing amendments to the provisions of PJM Open Access Transmission Tariff filed January 10, 2003, in Docket No. ER03–404–000 providing standard terms and conditions for independent system companies to operate within PJM in compliance with the Commission's March 14, 2003 Order.

PJM states that copies of this filing were served upon all parties of the Commission's Service List, all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: May 5, 2003.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–323–002]

Take notice that on April 14, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) tendered for filing proposed revisions to the Midwest ISO Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's March 13, 2003, Order Accepting Mitigation Measures Subject to Modifications and Ordering Technical Conference (March 13 Order), 102 FERC § 61,210. The Midwest ISO has requested an effective date on the later of December 1, 2003 or the first operation day of the Midwest ISO's "Day 2," Day-Ahead Energy Markets consistent with the Commission's March 13 Order.

In addition, the Midwest ISO has indicated that it has electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, Midwest ISO states that the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO states it will provide hard copies to any interested parties upon request.

Comment Date: May 5, 2003.

5. Florida Power & Light Company

[Docket No: ER03–735–000]

Take notice that on April 11, 2003 Florida Power & Light Company (FPL) tendered for filing a Notice of Termination of an Interconnection & Operation Agreement (IOA) between FPL and CPV Gulfcoast, Ltd. (CPVG). FPL states that Termination of the IOA has been mutually agreed to by FPL and CPVG. FPL requests that the termination be made effective March 14, 2003, as mutually agreed by the parties.

FPL states that is has served copies of this filing to CPVG, the Florida Public Service Commission and the Commission's Service List.

Comment Date: May 2, 2003.

6. CAM Energy Products, LP

[Docket No. ER03–736–000]

Take notice that on April 11, 2003, CAM Energy Products, LP (CAM Energy) petitioned the Commission for acceptance of CAM Energy's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

CAM Energy states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. CAM Energy also states that it is not in the business of generating or transmitting electric power. CAM Energy indicates that it is an independent electricity marketer with a sole purpose of buying and selling electricity in the wholesale electricity market.

Comment Date: May 2, 2003

7. Allegheny Power

[Docket No. ER03–738–000]

Take notice that on April 11, 2003, The Allegheny Power System Operating Companies: Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, all doing business as Allegheny Power; Atlantic City Electric Company; Delmarva Power & Light Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; PECO Energy Company; PPL Electric Utilities Corporation; Potomac Electric Power Company; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc., (PJM Transmission Owners) tendered for filing pursuant to Section 205 of the Federal Power Act a new Schedule 12 to the PJM Open Access

Transmission Tariff (PJM Tariff), providing for the collection of charges that are established to recover costs of transmission enhancements or expansions ordered pursuant to PJM's Regional Transmission Expansion Planning Protocol (RTEPP).

The PJM Transmission Owners state that this filing is a necessary complement to PJM's March 20, 2003 compliance filing in Docket RT01–2–006, intended to incorporate economic upgrades into the PJM regional transmission expansion planning process and to create a cost recovery vehicle for all RTEPP-ordered enhancements under the PJM Tariff. The filing by the PJM Transmission Owners state that the filing provides the transmission rate component for the PJM Tariff mechanism. The PJM Transmission Owners are requesting an effective date 60 days after the date of filing, on June 10, 2003.

The PJM Transmission Owners states that copies of the filing have been served on PJM, all members of PJM, and all state electric utility regulatory commissions in the PJM region.

Comment Date: May 2, 2003.

8. El Dorado Irrigation District

[Docket No. ER03–739–000]

Take notice that on April 14, 2003, the El Dorado Irrigation District (EID) tendered for filing pursuant to 18 CFR 385.205, an Application for Order Accepting Rate Schedule, Granting Authorizations and Blanket Authority and Waving Certain Requirements.

EID states that it intends to engage in wholesale electric power and energy sales as a marketer. EID also states that it is a California Irrigation District providing water, wastewater and recycled water services within its service area located in the western slope of the Sierra Nevada in the county of El Dorado.

Comment Date: May 5, 2003.

9. PSEG Energy Technologies Inc.

[Docket ER03–740–000]

Take notice that on April 14, 2003, PSEG Energy Technologies Inc., (PSEG ET), filed with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation of its market-based rate tariff currently on file with the Commission and a request to waive any Commission regulations necessary to permit the cancellation to take effect immediately. PSEG ET states that it wishes to discontinue sales of power at market-based rates in interstate commerce.

Comment Date: May 5, 2003.

10. Northwestern Wisconsin Electric Company

[Docket No. ER03–741–000]

Take notice that on April 14, 2003, Northwestern Wisconsin Electric Company (NWEC), tendered for filing proposed changes in its Transmission Use Charge, Rate Schedule FERC No. 2. NWEC states that the proposed changes would decrease revenues from jurisdictional sales by $8,139.78 based on the 12 month period ending April 30, 2003. NWEC states it is proposing this rate schedule change to more accurately reflect the actual cost of transmitting energy from one utility to another based on current cost data. NWEC indicates that the service agreement for which this rate is calculated calls for the Transmission Use Charge to be reviewed annually and revised on May 1. NWEC requests this Rate Schedule Change become effective May 1, 2003.

NWEC states that copies of this filing have been provided to the respective parties and to the Public Service Commission of Wisconsin.

Comment Date: May 5, 2003.

11. RMKG, LLC

[Docket No. ER03–742–000]

Take notice that on April 14, 2003, RMKG, LLC, submitted for filing a Petition for Acceptance of Initial Rate Schedule, FERC No. 1. RMKG states it will engage in wholesale electric power and energy transactions as a marketer. RMKG requests that the rate schedule be effective sixty days after filing, or the date the Commission issues an order accepting the rate schedule, whichever occurs first.

Comment Date: May 5, 2003.

12. Virginia Electric and Power Company

[Docket No. ER03–743–000]

Take notice that on April 14, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing a revised Generator Interconnection and Operating Agreement (Revised Interconnection Agreement) between Dominion Virginia Power and CPV Cunningham Creek LLC (CPV) modifying certain definitions and the milestone dates in Appendices F and G. Dominion Virginia Power respectfully requests that the Commission accept the Revised Interconnection Agreement to allow it to become effective on April 15, 2003, the day after filing.

Dominion Virginia Power states that copies of the filing were served upon CPV and the Virginia State Corporation Commission.

Comment Date: May 5, 2003

13. Entergy Services, Inc.

[Docket No. ER03–744–000]

Take notice that on April 14, 2003, Entergy Services, Inc., on behalf of Entergy Operating Companies (Operating Companies) submitted a filing seeking approval of two life-of-unit power purchase agreements (the subject PPSs) between Entergy Louisiana, Inc., (ELI) as purchaser and Entergy Arkansas, Inc., (EAI) and Entergy Gulf States, Inc., (EGSI) as sellers.

Entergy Operating Companies states that copies of this filing have been served on the Arkansas Public Service Commission, the Mississippi Public Service Commission, the Louisiana Public Service Commission, the Public Utility Commission of Texas, and the Council of the City of New Orleans.

Comment Date: May 5, 2003.

14. Reliant Energy Bighorn, LLC

[Docket No. ER03–745–000]

Take notice that on April 14, 2003, Reliant Energy Bighorn, LLC (Reliant Bighorn) petitioned the Federal Energy Regulatory Commission (Commission) to grant certain blanket authorizations, to waive certain of the Commission's Regulations and to issue an order accepting Reliant Bighorn's FERC Electric Rate Schedule No. 1. Reliant Bighorn requested that the Commission approve its application on an expedited basis by May 21, 2003.

Comment Date: May 5, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9896 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–121–004, et al.]

Occidental Chemical Corporation., et al.; Electric Rate and Corporate Filings

April 15, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Occidental Chemical Corporation v. PJM Interconnection, L.L.C. and Delmarva Power & Light Company

[Docket No. EL02–121–004]

Take notice that on April 11, 2003, PJM Interconnection, L.L.C. (PJM) submitted revisions to the PJM Open Access Transmission Tariff to comply with the directives issued by the Federal Energy Regulatory Commission in its March 12, 2003 order in this proceeding (Occidental Chem. Corp. v. PJM Interconnection, L.L.C., 102 FERC § 61,274 (2003)).

PJM states that copies of this compliance filing were served upon each person designated on the official service list compiled by the Secretary in this proceeding, all members of PJM, and each state electric utility regulatory commission in the PJM region.

Comment Date: May 12, 2003

2. Arizona Public Service Company, Pinnacle West Capital Corporation, Pinnacle West Energy Company, APS Energy Services

[Docket Nos. ER99–4124–001, ER00–2268–003, ER00–3312–002 and ER99–4122–004]

Take notice that on April 11, 2003, Arizona Public Service Company (APS) tendered for filing a revised Market Power Study for: APS FERC Electric Tariff, Volume No. 3; Pinnacle West Capital Corporation under Rate Schedule FERC No. 1; Pinnacle West Energy Corporation under PWEC FERC Electric Tariff Volume No. 1; and APS Energy Services under Rate Schedule FERC No. 1.

APS states that a copy of this filing has been served to all parties on the Service List attached to the April 11, 2003 filing.

Comment Date: May 2, 2003.

3. PJM Interconnection, L.L.C.

[Docket No. ER03–405–002]

Take notice that on April 11, 2003, PJM Interconnection, L.L.C., (PJM) tendered for filing a revised page of the PJM Open Access Transmission Tariff (PJM Tariff). PJM states that the proposed change is submitted to comply with the Commission's Order in this proceeding dated March 12, 2003.

PJM states that copies of this filing were served on all parties, as well as on all PJM Members and the state electric utility regulatory commissions in the PJM region.

Comment Date: May 2, 2003.

4. PJM Interconnection, L.L.C.

[Docket No. ER03–406–002]

Take notice that on April 11, 2003, PJM Interconnection, L.L.C., (PJM) submitted for filing in compliance with the Commission's Order of March 12, 2003, revisions to certain provisions of the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement relating to PJM's annual Financial Transmission Right auction process.

PJM states that copies of this filing were served upon each person designated on the official service list of the Commission in this proceeding, all PJM members, and each state electric utility commission in the PJM region.

Comment Date: May 2, 2003.

5. California Independent System Operator Corporation

[Docket No. ER03–407–002]

Take notice that on April 11, 2003, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's March 12, 2003 "Order Conditionally Accepting Tariff Amendment For Filing, as Modified, Granting Waiver of Notice, and Directing Compliance Filing," 102 FERC § 61,268 issued in Docket No. ER03–407–000.

The ISO states that copies of this filing have been served upon all entities that are on the official service list for Docket No. ER03–407–000.

Comment Date: May 2, 2003.

6. Florida Power & Light Company

[Docket No. ER03–716–001]

Take notice that on April 11, 2003 Florida Power & Light Company (FPL) tendered for filing a Notice of Withdrawal of FPL's March 28, 2003 filing of: (1) A Notice of Termination of an Interconnection & Operation Agreement (IOA) between FPL and CPV Gulfcoast, Ltd. (CPVG); and (2) a Notice of Withdrawal of a revised IOA filed on February 14, 2003, in Docket No. ER03–535–000. FPL states that the Notice of Withdrawal has been mutually agreed to by FPL and CPVG.

FPL states that this filing has been served upon CPVG, the Florida Public Service Commission and all parties on the Commission's Service List.

Comment Date: May 2, 2003.

7. Phelps Dodge Energy Services, LLC

[Docket No. ER03–568–001]

Take notice that on April 11, 2003, Phelps Dodge Energy Services, LLC filed additional information to supplement and amend its February 27, 2003 request to amend its market-based rate tariff, FERC Electric Rate Schedule No. 1, and its Code of Conduct to permit sales to its affiliates without making a separate filing under Section 205 under the Federal Power Act.

Comment Date: May 2, 2003.

8. Florida Power & Light Company

[Docket No. ER03–726–000]

Take notice that on April 11, 2003 Florida Power & Light Company (FPL) tendered fer filing fully executed, revised service agreements with Duke Energy Trading and Marketing, L.L.C., for Long-Term Firm Transmission Service under FPL's OATT. FPL requests that these service agreements become effective on June 1, 2003.

FPL states that it has served this filing to Duke, the Florida Public Serivce Commission and the Commission's Service List.

Comment Date: May 2, 2003.

9. Texas-New Mexico Power Company

[Docket No. ES03–33–000]

Take notice that on April 8, 2003, Texas-New Mexico Power Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue long-term, unsecured debt in an amount not to exceed $100 million.

Comment Date: May 6, 2003.

10. Portland General Electric Company

[Docket No. ES03–34–000]

Take notice that on April 11, 2003, Portland General Electric Company submitted an application pursuant to

section 204 of the Federal Power Act seeking authorization to issue short-term debt securities in an amount not to exceed $550 million.

Comment Date: May 6, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9895 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 233–081]

Pacific Gas and Electric Company, California; Notice of Public Meetings for Discussion of the Draft Environmental Impact Statement for the Pit 3, 4, 5 Project

April 15, 2003.

On March 14, 2003, the Commission staff mailed the Pit 3, 4, 5 Hydroelectric Project Draft Environmental Impact Statement (DEIS) to the Environmental Protection Agency, resource and land management agencies, and interested organizations and individuals.

The DEIS was noticed in the **Federal Register** on March 21, 2003 (68 FR 13911), and comments are due by May 21, 2003. The DEIS evaluates the environmental consequences of the relicensing and subsequent operation of the existing 325-megawatt Pit 3, 4, 5 Project located on the Pit River, in Shasta County, California. The project occupies 746 acres of land of the United States administered by the Forest Supervisors of the Shasta-Trinity and Lassen National Forests. It also evaluates the environmental effects of implementing the applicant's proposals, agency and NGO recommendations, staff's recommendations, and the no-action alternative.

The Commission will hold three public meetings on the DEIS. At these meetings, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS. The meetings will be recorded by a stenographer and all comments and recommendations received will become part of the formal record for this Commission proceeding. We invite all interested agencies, non-governmental organizations, Native American tribes, and individuals to attend one or more of the meetings. The meetings will be held as follows.

Date	Time	Location
April 29, 2003	10 a.m.–noon.	Holiday Inn, 1900 Hilltop Drive, Redding, California.
April 29, 2003	7–9 p.m.	Burney Community Center, 37477 Main Street, Burney, California.
April 30, 2003	1–3 p.m.	Veterans Hall, 508 South Main Street, Alturas, California.

For further information, please contact John Mudre, at (202) 502–8902, or *john.mudre@ferc.gov*, Federal Energy Regulatory Commission, Office of Energy Projects, 888 First St., NE., Washington, DC 20426.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9813 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–57–000]

El Paso Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Bondad Expansion Project and Request for Comments on Environmental Issues

April 16, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of a proposal by El Paso Natural Gas Company (El Paso) to replace certain facilities at its Bondad Compressor Station in La Plata County, Colorado.[1] These facilities consist of the replacement of 3 gas-fired turbines with increased horsepower units, installation of a new boiler and modifications to related equipment at the facility. All work and modifications would take place within the existing facility and no additional land would be necessary. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

El Paso proposes to replace certain compression facilities at its Bondad Compressor Station, located in Township 33 North, Range 9 West, La Plata County, Colorado. El Paso is seeking to replace 3 existing Solar Centaur simple cycle gas turbine engines at the Bondad Compressor Station with a combined horsepower of 10,740 with two Solar Centaur 50–T6100L simple cycle gas turbine engines and one Solar Centaur 50S–T6100 simple cycle gas turbine engine, with appurtenances, which have a combined horsepower rating of 18,390 (ISO). The Solar Centaur 50S–T6100 simple cycle gas turbine engine is equipped with air emission-lowering SoloNox technology. El Paso would also restage the 3 existing compressor units at the Bondad Compressor Station. The compressors would be disassembled and the single stage aerodynamic assembly of each compressor would be removed and exchanged with a two stage assembly.

Minor modifications to the station skids, panel units, and inlet air systems would be required in order to accommodate the new turbines. Project activities would also include upgrading existing lube oil cooler units associated with each turbine to accommodate increased oil heat load and upgrading discharge aftergas cooling system. Additionally, El Paso would install a new 0.25 million British thermal units per hour natural gas-fired fuel heater and associated miscellaneous plant yard piping.

All work would take place within the existing Bondad Compressor Station. No nonjurisdicitonal facilities are involved.

Land Requirements for Construction

The project area encompasses a total of approximately 2.8 acres of land within the existing fenced area of the Bondad Compressor Station. This fenced area was previously disturbed by leveling, grading, and excavation associated with construction of the existing facilities. The project would not affect previously undisturbed areas and no access roads will be constructed to complete the proposed project.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires the Commission to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the proposed abandonment project under these general headings:

1. Soils
2. Cultural Resources
3. Air Quality and Noise
4. Public Safety

We will not discuss impacts to the following resource areas since they are not present in the project area, or would not be affected by the proposed facilities:

- Water resources, fisheries, and wetlands,
- Vegetation and wildlife,
- Geology,
- Socioeconomics,
- Hazardous waste & PCB contamination, and
- Land use.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP03–57–000
- Mail your comments so that they will be received in Washington, DC on or before May 16, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

We might mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervener

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "Intervener." Interveners play a more formal role in the process. Among other things, Interveners have the right to receive copies of case-related Commission documents and filings by other Interveners. Likewise, each Intervener must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an Intervener you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* Appendix 1).[2] Only Interveners have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted Intervener status upon showing good cause by stating that they have a clear and direct interest in this proceeding

[1] El Paso's application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

which would not be adequately represented by any other parties. You do not need Intervener status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all residents adjacent to the proposed facilities. By this notice we are also asking governmental agencies, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of the application and supplemental filings by El Paso, and formal documents issued by the Commission, such as orders, notices, and rulemakings.

Please *see* directions for eSubscription (Appendix 2).

Magalie R. Salas,

Secretary.

[FR Doc. 03–9894 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 16, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands.

b. *Project No:* 1025–054.

c. *Date filed:* March 14, 2003.

d. *Applicant:* Safe Harbor Water Power Corporation.

e. *Name of Project:* Safe Harbor Hydroelectric Project.

f. *Location:* The project is located on the Susquehanna River, in Lancaster and York Counties, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Marshall Kaiser, 1 Powerhouse Rd., Contestoga, PA 17516, (717) 872–5441.

i. *FERC Contact:* Hillary Berlin at 202–502–8915.

j. *Deadline for filing comments, motions to intervene and protest:* May 16, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* The licensee is requesting authorization for the York Water Company to withdraw 12 million gallons-per-day from Lake Clarke on the Susquehanna River for a municipal water supply. The proposal includes constructing intake and pumping facilities in York County within the project boundary, approximately 7 miles upstream from the Safe Harbor Dam. The licensee has consulted with the appropriate resource agencies, and their application includes approvals from the Pennsylvania Department of Environmental Protection and the Susquehanna River Basin Commission, and comments from the U.S. Fish and Wildlife Service.

l. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9897 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1988–040]

Notice of Application for Amending Minimum Flow Requirement at Dinkey Creek and Soliciting Comments, Motions To Intervene, and Protests

April 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request to amend article 402 minimum flow requirement.

b. *Project No.:* 1988–040.

c. *Date Filed:* February 28, 2003.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Haas-King Project.

f. *Location:* North Fork Kings River near the towns of Centerville, Fresno, and Sanger, in Fresno County, California. The project occupies about 113 acres of Federal lands, a portion of which are within the Sierra National Forest.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Steve Nevares, Pacific Gas and Electric Company, Mail Code: N11D, P.O. Box 770000, San Francisco, CA 94177.

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon, (202) 502–8887, or e-mail address: diana.shannon@ferc.gov

j. *Deadline for filing motions to intervene, protests, comments:* May 16, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

k. *Description of Proposed Action:* The applicant seeks approval to change the required minimum flow release from the Dinkey Creek Siphon to a release of 10 cfs from June 1 through October 31. Article 402 of the license requires a minimum flow of 10 cfs from June 1 through November 30 and 15 cfs from December 1 through May 31 during normal and wet years, and 15 cfs year round during dry years. The licensee has consulted with the resource agencies and the U.S. Forest Service and the California Department of Fish and Game have concurred with the licensee's proposal.

l. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "Ferris" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene-Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents-Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the project number (P–1988–040) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings. All documents (original and eight copies) should be filed with: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments-Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9898 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8535–038]

Notice of Application for Transfer of License and Solicitation of Comments, Motions to Intervene, and Protests

April 16, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 8535–038.

c. *Date Filed:* March 18, 2003.

d. *Applicants:* Virginia Hydrogeneration and Historical Society, LC (VHHS) and Greenwood Hydro, LC (Greenwood).

e. *Name of Project:* Battersea Dam.

f. *Location:* On the Appomattox River in Chesterfield and Dinwiddie Counties, Virginia. The project does not utilize federal or tribal lands.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contacts:* Chriswell Perkins, c/o Bryan Brothers, Inc., 1802 Bayberry Court, Suite 301, Richmond, VA 23226 (VHHS) and Joshua Greenwood, 8606 Pine Glade Lane, Richmond, VA 23237 (Greenwood).

i. *FERC Contact:* Tom Papsidero, (202) 502–6002.

j. *Deadline for filing comments and/or motions:* May 16, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer:* VHHS requests approval to transfer its project license to Greenwood.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the applicants' addresses in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant(s) specified in the particular application.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicants. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicants' representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9900 Filed 4–21–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2002–0063; FRL–7486–3]

Agency Information Collection Activities; Submission of EPA ICR No. 0168.08 (OMB No. 2040–0057) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NPDES and Sewage Sludge Management State Programs. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 22, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Water Permits Division, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0768; fax number: (202) 564–6431; e-mail address: *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 10, 2003, (68 FR 1454), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2002–0063, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to OW–*Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NPDES and Sewage Sludge Management State Programs (OMB Control Number 2040–0057, EPA ICR Number 0168.08). This is a request to renew an existing approved collection that is scheduled to expire on April 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: Under the NPDES program, States, Federally Recognized Indian Tribes, and U.S. Territories, hereafter referred to as States, may acquire the authority to issue permits. These governments have the option of acquiring authority to issue general permits (permits that cover a category or categories of similar discharges). States with existing NPDES programs must submit requests for program modifications to add Federal facilities, or general permit authority. In addition, as federal statutes and regulations are modified, States must submit program modifications to ensure that their program continues to meet Federal requirements.

States have the option of obtaining a sludge management program. This program may be a component of a State NPDES Program, or it may be administered as a separate program. To obtain a NPDES or sludge program, a State must submit an application that includes a program description, an Attorney General's Statement, draft Memorandum of Agreement (MOA) with the EPA Region, and copies of the State's statutes and regulations.

Once a State obtains authority for an NPDES or sludge program, it becomes responsible for implementing the program in that jurisdiction.

The State must retain records on the permittees and perform inspections. In addition, when a State obtains NPDES or sludge authority, EPA must oversee the program. Thus, States must submit permit information and compliance reports to the EPA.

When EPA issues a permit in an unauthorized State, that State must certify that the permit requirements comply with State water laws. According to the Clean Water Act (CWA) (section 510), States may adopt discharge requirements that are equal to or more stringent than requirements in the CWA or Federal regulations.

There are three categories of reporting requirements that are covered by this ICR. The first category, "State Program Requests," includes the activities States must complete to request a new NPDES or sludge program, or to modify an existing program. The second category, "State Program Implementation," includes the activities that approved States must complete to implement an existing program, such as certification of EPA-issued permits by non-NPDES States. The third category, "State Program Oversight," includes activities required of NPDES States so that EPA may satisfy its statutory requirements for state program oversight.

The information collected by EPA is used to evaluate the adequacy of a State's NPDES or sludge program and to provide EPA with the information necessary to fulfill its statutory oversight functions over State program performance and individual permit actions. EPA will use this information to evaluate State requests for full or partial program approval and program modifications. In order to evaluate the adequacy of a State's proposed program, appropriate information must be provided to ensure that proper procedures, regulations, and statutes are in place and consistent with the CWA requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 50.3 hours per response for each state activity. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States, Territories, and American Indian Tribal Entities.

Estimated Number of Respondents: 613.

Frequency of Response: Semi-annually, quarterly, on occasion, every 5 years, on-going.

Estimated Total Annual Hour Burden: 966,966 hours.

Estimated Total Annual Cost: $30,169,349, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 173,828 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in the applicant respondent and NPDES-authorized state burden is due primarily to a significant cleanup of the database used to track NPDES permittees.

Dated: April 10, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–9912 Filed 4–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7485–4]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption—Notice of Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA today, pursuant to section 209(b) of the Clean Air Act (Act), 42 U.S.C. 7543(b), is granting California its request for a waiver of federal preemption for its Low-Emission Vehicle amendments (LEV II Amendments) to its Low-Emission Vehicle (LEV) program. By letter dated May 30, 2001, the California Air Resources Board (CARB) requested that EPA grant California a waiver of federal preemption for its LEV II Amendments and its 1999 zero-emission vehicle amendments (1999 ZEV Amendments), which primarily: Impose more stringent passenger car exhaust emission standards on most sport utility vehicles, pick-up trucks, and mini-vans; create lower tailpipe standards for all light- and medium-duty vehicles; establish more stringent requirements for phasing in cleaner vehicles; establish more stringent evaporative emission standards; and include new mechanisms for the generation of ZEV credits. CARB submitted subsequent letters to EPA which initially requested EPA to confirm CARB's determination that its 1999 and 2001 ZEV amendments are within the scope of waivers EPA had previously granted; ultimately CARB withdrew its requests regarding the 1999 and 2001 ZEV amendments. Today's decision does not address CARB's 1999 or 2001 ZEV amendments.

ADDRESSES: The Agency's Decision Document, containing an explanation of the Assistant Administrator's decision, as well as all documents relied upon in making that decision, including those submitted to EPA by CARB, are available at the EPA's Air and Radiation Docket and Information Center (Air Docket). Materials relevant to this rulemaking are contained in Docket No. A–2002–11. The docket is located at The Air Docket, room B–108, 1301 Constitution Avenue, NW., Washington,

DC 20460, and may be viewed between 8 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 566–1742. A reasonable fee may be charged by EPA for copying docket material.

Electronic copies of this Notice and the accompanying Decision Document are available via the Internet on the Office of Transportation and Air Quality (OTAQ) Web site (*http://www.epa.gov/OTAQ*). Users can find these documents by accessing the OTAQ website and looking at the path entitled, "Regulations." This service is free of charge, except for any cost you already incur for Internet connectivity. The electronic **Federal Register** version of the Notice is made available on the day of publication on the primary Web site (*http://www.epa.gov/docs/fedrgstr/EPA-AIR*).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, etc., may occur.

FOR FURTHER INFORMATION CONTACT: David J. Dickinson, Certification and Compliance Division, U.S. Environmental Protection Agency, Ariel Rios Building (6405J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: (202) 564–9256. Fax: (202) 565–2057. E-Mail address: *Dickinson.David@epa.gov*.

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of federal preemption pursuant to section 209(b) of the Act for the LEV II Amendments [1] to its LEV program. As explained further in EPA's Decision Document for today's decision, CARB had originally submitted a request for a waiver of federal preemption for amendments made to its ZEV program (1999 ZEV Amendments). CARB subsequently sought a "within the scope of previous waivers" confirmation from EPA for its 1999 ZEV Amendments. Subsequently, CARB also initially sought a within the scope of previous waivers confirmation for its 2001 ZEV Amendments when they were adopted. As explained in EPA's notice dated September 26, 2002 (67 FR 60680), CARB withdrew its requests for any EPA consideration of its 1999 and 2001 ZEV Amendments. By today's decision EPA makes no findings regarding such Amendments.

Section 209(b) of the Act provides that, if certain criteria are met, the Administrator shall waive federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards; whether California needs State standards to meet compelling and extraordinary conditions; and whether California's amendments are consistent with section 202(a) of the Act.

CARB determined that its LEV II Amendments do not cause California's standards, in the aggregate, to be less protective of public health and welfare than the applicable Federal standards. No information has been submitted to demonstrate that California's standards, in the aggregate, are less protective of public health and welfare than the applicable Federal standards. Thus, EPA cannot make a finding that CARB's determination, that its LEV II Amendments are, in the aggregate, at least as protective of public health and welfare, is arbitrary and capricious.

CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject LEV II Amendments. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

CARB has submitted information that the requirements of its LEV II Amendments are technologically feasible and present no inconsistency with federal requirements and are, therefore, consistent with section 202(a) of the Act. No information has been presented to demonstrate that CARB's requirements are inconsistent with section 202(a) of the Act, nor does EPA have any other reason to believe that CARB's requirements are inconsistent with section 202(a). Thus, I cannot find that California's LEV II Amendments are inconsistent with section 202(a) of the Act. Accordingly, I hereby grant the waiver requested by California.

This decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability.

Under section 307(b)(1) of the Act, judicial review of this final action may be sought only in the United States Court of Appeal for the District of Columbia Circuit. Petitions for review must be filed by June 23, 2003. Under section 307(b)(2) of the Act, judicial review of this final action may not be obtained in subsequent enforcement proceedings.

As with past waiver decisions, this action is not a rule as defined by Executive Order 12866. Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12866.

In addition, this action is not a rule as defined in the Regulatory Flexibility Act, 5 U.S.C. sec. 601(2). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Finally, the Administrator has delegated the authority to make determinations regarding waivers of Federal preemption under section 209(b) of the Act to the Assistant Administrator for Air and Radiation.

Dated: April 11, 2003.

Robert Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 03–9910 Filed 4–21–03; 8:45 am]

BILLING CODE 6560–50–P

[1] As set forth in the August 5, 1999 adoption of or amendments to Title 13, California Code of Regulations (CCR), section 1961, the incorporated "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles," and, with respect to HEVs (hybrid-electric vehicles), the incorporated "California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles and 2001 and Subsequent Model Hybrid Electric Vehicles in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes" (all portions of this incorporated document that may pertain to ZEVs only are not considered by EPA in this determination and all portions of this incorporated document that pertain to both ZEVs and HEVs or to other types of vehicles are only considered to the extent they do not pertain to ZEVs); section 1900; section 1960.1 (with the exceptions noted in CARB's letter to David Dickinson, EPA, dated August 16, 2002), the incorporated "California Non-Methane Organic Gas Test Procedures," "California Exhaust Emission Standards and Test Procedures for 1988 through 2000 Model Year Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" and "California Non-Methane Organic Gas Test Procedures" (with the exceptions noted in CARB's letter to David Dickinson, EPA, dated August 16, 2002), and, with respect to HEVs, "California Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Zero-Emission Vehicles and 2001 and Subsequent Model Hybrid Electric Vehicles in the Passenger Car, Light-Duty Truck and Medium-Duty Vehicle Classes" (all portions of this incorporated document that may pertain to ZEVs only are not considered by EPA in this determination and all portions of this incorporated document that pertain to both ZEVs and HEVs or to other types of vehicles are only considered to the extent they do not pertain to ZEVs); section 1965 and the incorporated "California Motor Vehicle Emission Control and Smog Index Label Specifications"; section 1968.1; 1976 and the incorporated "California Evaporative Emission Standards and Test Procedures for 1978 through 2000 Model Motor Vehicles" and the new "California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles" (EPA's decision applies to CARB's evaporative emission standards and test procedures only for 2004 and later model years); sections 2037, 2038, 2062 and the incorporated "California Assembly-Line Test Procedures for 1998 through 2000 Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles" and "California Assembly-Line Test Procedures for 2001 and Subsequent Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles"; section 2101 and the incorporated "California New Vehicle Compliance Test Procedures"; and sections 2106, 2107, 2110, 2112, 2114, 2119, 2130, 2137–2140, and 2143–2148. EPA also includes CARB's "LEV II follow-up amendments" in today's waiver determination. These amendments, adopted December 27, 2000, were to section 1961 and the "California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-Duty Trucks, and Medium-Duty Vehicles" and as explained below, have the effect of not allowing a manufacturer to certify a "California-only" vehicle family to California exhaust emission standards that are less stringent than the federal standards to which an equivalent federal model is certified—in such case the model sold in California must meet the federal exhaust emission standards to which the federal model is certified. CARB's waiver request did not include nor does today's waiver determination include other provisions of the LEV II follow-up amendments such as the California emission standards for heavy-duty Otto-Cycle engines that were harmonized with standards adopted by EPA and are found at section 1956.8.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7486–5]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 311(c); Request for Applications (RFA)—Grants

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: On April 22, 2003, the Environmental Protection Agency (EPA) will begin to accept proposals from non-profit organizations and educational institutions for grants to support research on improving meaningful non-Federal stakeholder involvement in decisions concerning the cleanup of hazardous waste at Federal facilities. EPA believes meaningful stakeholder involvement in the cleanup decision making process has resulted in significantly reducing costs, increasing effectiveness, and promoting decisions which reflect the diverse interests of those responsible for or affected by Federal facilities.

DATES: Please submit applications on or before June 23, 2003.

ADDRESSES: U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (mailing address); Crystal Gateway (1st Floor), 1235 Jefferson Davis Highway, Arlington, VA 22202 (building address); *http://epa.gov/swerffrr/index.htm* (Web site address).

FOR FURTHER INFORMATION CONTACT: Sean M. Flynn with EPA's Office of Solid Waste and Emergency Response, Federal Facilities Restoration and Reuse Office: (703) 603–0080 or *flynn.sean@epa.gov*.

SUPPLEMENTARY INFORMATION:

Instructions for Submitting a Proposal (See *http://www.epa.gov/ogd/grants/how_to_apply.htm*.)

EPA will accept proposals either postmarked or received by EPA via registered or tracked mail by 12 PM (Eastern) on (60 days after date of publication). Copies of Standard Form 424 (SF 424), Application for Federal Assistance may be obtained by following the links to standard forms on the following Web site: *http://www.gsa.gov/forms*. Applicants should send one (1) original (clearly labeled as such) and five (5) copies of their proposal to Sean M. Flynn, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (5106G), Washington, DC 20460, RE: RFA #03–OSWER–001.

Applicants must clearly mark any information in their proposal that they consider confidential. EPA will make final confidentiality decisions in accordance with Agency regulations found at 40 CFR part 2, subpart B.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 311(c) authorizes EPA to use appropriated Superfund money to fund research projects for the conduct and dissemination of scientific, socioeconomic, institutional, and public policy related to the effects, risks, and detection of hazardous substances in the environment, including that found on current or former Federal facilities.

As required by statute, all research must relate to hazardous substances. Furthermore, available funding is restricted to "research" as defined at 40 Code of Federal Regulations (CFR) 30.2(dd). EPA has interpreted "research" under CERCLA section 311(c) to include study that extends to socioeconomic, institutional, and public policy issues, as well as the "natural" sciences.

Background: This solicitation is targeted at non-profit organizations and educational institutions interested in researching ways to improve meaningful non-Federal stakeholder participation in the discussion and resolution of issues concerning hazardous waste contamination caused, generated, or managed by Federal agencies and departments. Historically, most of EPA's work in the Federal facilities program has been focused on addressing hazardous waste contamination at DoD and DOE sites on the National Priorities List (NPL) and at Base Realignment and Closure (BRAC) properties. Greater attention, however, is increasingly being given to contamination at other Federal agency/department sites, including properties formerly owned or operated by the Federal government.

In order to promote citizen involvement, EPA's Federal Facilities Restoration and Reuse Office (FFRRO) collaborates with States and tribes, local governments, environmental and community groups, labor organizations, and universities to provide the maximum possible level of stakeholder involvement in decision making and priority setting for the cleanup of Federal facilities. This collaboration is often accomplished via the award of grants and cooperative agreements to outside parties. Such is the purpose of this solicitation.

The research grants resulting from this solicitation will directly benefit non-Federal stakeholders in the Federal facility cleanup process. The research is not meant to directly benefit EPA or other Federal agencies, although EPA and other Federal agencies may derive indirect benefits. Grants, unlike cooperative agreements, provide for little or no involvement on the part of the Federal government. By awarding a grant, EPA does not expect to have any substantial involvement in the research process. Nevertheless, EPA will be in contact with the grant recipients periodically via phone, e-mail, and, as appropriate, site visits.

For Federal fiscal year '04, EPA anticipates awarding between one and three grants and will consider funding requests up to a maximum of $150,000 per grant. Furthermore, the anticipated project period is September 2003—August 2004.

Eligibility for Funding: Interested non-profit organizations and educational institutions must structure their research in a way that generates recommendations for use by non-Federal stakeholders, rather than by EPA, DoD, DOE, or another Federal agency or department. Projects which provide services for the direct use or

benefit of Federal agencies are not eligible for funding.

The term "non-profit" is defined in U.S. Office of Management and Budget (OMB) Circular A–122, while "educational institution" refers to colleges and universities subject to OMB Circular A–21. Groups of two or more eligible applicants may choose to form a coalition and submit a single application in response to this solicitation. However, one applicant will be accountable to EPA for proper expenditure of funds. Furthermore, any financial transactions between coalition members must comply with 40 CFR part 30.

Per section 501(c)(4) of the Internal Revenue Code, non-profit organizations that engage in lobbying activities—as defined in Section 3 of the Lobbying Disclosure Act of 1995—are not eligible to apply for or be part of a coalition. Non-profit organizations and educational institutions are not required to provide matching funds for grants awarded under section 311(c).

Evaluation of Proposals: EPA will conduct the competition consistent with EPA Order 5700.5, Policy on Competition for Assistance Agreements (9/12/02). EPA will assemble a review panel consisting of members familiar with the Federal facilities program and non-Federal stakeholder involvement in the cleanup process. The review panel will use a point system to rank applications and make recommendations to FFRRO's Office Director, who will then make the final selections.

Successful and unsuccessful applicants will be notified of their award status in writing. Disputes will be resolved in accordance with 40 CFR 30.63. EPA anticipates awarding grants within sixty (60) calendar days of the application deadline.

EPA reserves the right to reject all applications and make no awards.

Proposal Contents: Proposals must be clear and decisive, strictly follow the specified criteria, and provide sufficient detail in order for the panel members to compare the merits of each and decide which proposal best supports the intent of the research. Vague descriptions and unnecessary redundancy may reduce the chance of a favorable rating. Proposals providing the best evidence of a quality project and appropriate use of funds will have the greatest chance of being recommended by the panel. Each proposal must include the following sections, all of which are described in detail further below:

Cover page (1 page)
Overview (1page)
Budget (1 page)
Responses to Threshold Criterion (½ page)
  Eligibility
Responses to Evaluation Criteria (up to 12 pages)
  Familiarity with Subject Matter
  Technical Approach
  Past Performance on Other Grants
  Leveraging Other Resources

To ensure fair and equitable evaluation of the proposals, do not exceed the single-sided page limitations referenced above. There is no guarantee that pages submitted beyond the limitations will be reviewed by the evaluation panel. In addition, all materials included in the proposal (including attachments) must be printed on letter-sized paper with font sizes no smaller than 12 points. Furthermore, all materials must be printed double-sided on paper with a minimum recycled content of at least 35%.

Cover Page: This page is intended to introduce the applicant and identify a primary point of contact for communication with EPA. The cover page should be a single page and include the following information. Applicants are free to use any format they choose:

- Applicant identification—the name of the main implementor of the project.
- Contact—the name of the person who is responsible for the proposal.
- Mailing address/telephone/fax/e-mail of the point of contact for the proposal.
- Submittal date.

Overview: Briefly summarize your approach to undertaking the necessary research and how you envision the findings will be applied.

Budget: Present a clear and detailed budget for the project. The following budget categories may be useful: salaries, fringe benefits, indirects, other direct, travel, equipment, supplies, printing, administrative, and contracts. EPA defines "equipment" as any item which costs $5,000 or more. Items less than $5,000 are considered supplies. Allowable expenses include direct costs related to the research and any indirect costs authorized under the applicable OMB Circular.

Threshold Criterion: The applicant must satisfy the following threshold criterion in order for the proposal to be considered:

- Eligibility: All applicants must demonstrate that they are either an eligible non-profit organization or an educational institution.

Evaluation Criteria: An applicant's response to each of the following criteria will be the primary basis upon which EPA rates the proposal. The evaluation panel will review each proposal carefully and assess the responses based on how well they address the criteria. A point system will be used to evaluate the proposals. Listed next to the title of each evaluation factor below is the maximum number of points that can be earned for that particular criterion (out of a maximum possible score of 100).

1. Familiarity With Subject Matter (35 Points)

- Describe your experience with environmental cleanups, especially those conducted at Federal facilities (*e.g.*, Former Used Defense Sites (FUDS), BRAC sites, NPL sites).
- Describe your experience with public participation, especially with regard to Federal programs.
- Describe your experience conducting research and disseminating the results.
- What do you consider to be the greatest challenge(s) currently facing the Federal facilities cleanup program, and how would enhanced non-Federal stakeholder involvement better assist the process?
- What do you consider to be "meaningful" stakeholder involvement?

2. Technical Approach (35 Points)

- What, specifically, do you propose to research (*e.g.*, certain issues, certain sites, etc.) and why?
- Describe which research methods you propose to use and why.
- What difficulties do you expect to encounter and how might they be overcome?
- What will be the deliverables/end products?
- How and to whom will the findings be disseminated?
- How do you envision the findings will be applied?
- What measures will you use to determine the success of the project?
- What role will environmental justice play in your research?

3. Past Performance on Other Grants (25 Points)

- Describe your performance history administering grants or cooperative agreements for EPA, other Federal agencies, and/or state/local/tribal regulatory agencies; provide contact information so that the evaluation panel members can obtain additional information as necessary.
- You must also demonstrate satisfactory past performance conducting research; you may include evaluation results from previous projects, as well as letters of commendation.

4. Leveraging Other Resources (5 Points)

- Although EPA does not require cost sharing for CERCLA section 311(c) research proposals submitted in response to a solicitation, describe any plans you have to obtain additional financial or in-kind support for your efforts in performing this research.

Pre-application Assistance: EPA will offer pre-application assistance by answering all questions posted on the following Web site: *http://clu-in.org/fracrock/proposal.* All questions and answers will be posted.

Terms and Reporting: Grants will include programmatic and administrative terms and conditions. These terms and conditions will describe what is expected from the grant recipient.

The grantee will be required to submit quarterly progress reports. The grantee should only report on activities funded (in whole or in part) via the grant. The narrative should include descriptions of all action items resulting from meetings, site visits, and other activities, as well as milestones achieved and any challenges encountered. The reports should include lists of action items and corresponding milestone dates (*e.g.*, a toolkit to be developed, a letter sent to DoD, or a meeting scheduled to address citizen concerns). In addition, all quarterly reports must be internally reviewed and approved for quality assurance purposes prior to submission. Costs incurred in complying with reporting requirements are an eligible expense under CERCLA section 311(c).

Dated: April 14, 2003.

James E. Woolford,

Director, Federal Facilities Restoration and Reuse Office, Office of Solid Waste and Emergency Response.

[FR Doc. 03–9911 Filed 4–21–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 7, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 22, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at (202) 418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0066.

Title: Application for Renewal of Instruction Television Fixed Station (ITFS) and/or Response Station(s) and Low Power Relay Station(s) License.

Form No: FCC Form 330–R.

Type of Review: Extension of a currently approved collection.

Respondents: Not-for-profit institutions, state, local or tribal government.

Number of Respondents: 75.

Estimated Time Per Response: 3 hours.

Frequency of Response: Upon renewal—every 10 years.

Total Annual Burden: 225 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 330–R is used by licensees of Instruction Television Fixed (ITFS), Response, and Low Power Relay Stations to file for renewal of their licenses. The Commission is amending the form to include the FCC Registration Number (FRN) which is approved under OMB Control Number 3060–0728. The data is used by FCC staff to ensure that the licensee continues to meet basic Commission policies and rules, as well as statutory requirements to remain a licensee of an ITFS station. The information submitted on channel mapping/loading will permit the Commission to verify that programming aired outside the traditional school day is, in fact, directed to legitimate educational needs.

OMB Control No.: 3060–0994.

Title: Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band.

Form No: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 151.

Estimated Time Per Response: .50–50 hours.

Frequency of Response: On occasion, one-time, and annual reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 1,193 hours.

Total Annual Cost: $140,000.

Needs and Uses: On February 5, 2003, the Commission released a Report and Order (R&O) and Notice of Proposed Rulemaking (NPRM) in IB Docket No. 01–185 and 02–364, FCC 03–15. The decisions adopted in the R&O result in new and modified information collection requirements that are necessary to facilitate the Commission's rules addressed in parts 2 and 25 of 47 CFR. The purposes of the new or modified information collections are for the Commission to license commercial satellite services in the U.S.; obtain the legal and technical information required to facilitate the integration of Ancillary Terrestrial Components (ATCs) into the MSS networks in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands; and to ensure that the licensees meet the Commission's legal and technical requirements to develop and maintain MSS networks while conserving limited spectrum for other telecommunications services.

OMB Control No.: 3060–0850.

Title: Quick Form Application for Authorization in the Ship, Amateur, Restricted and Commercial Operator, and General Mobile Radio Services.

Form No: FCC Form 605.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 175,000.
Estimated Time Per Response: .44 hours.
Frequency of Response: On occasion, every five and ten years reporting requirements, recordkeeping requirement, and third party disclosure requirement.
Total Annual Burden: 77,000 hours.
Total Annual Cost: $2,538,000.
Needs and Uses: The FCC Form 605 is a multi-purpose form used to apply for an authorization to operate radio stations and perform a variety of other miscellaneous tasks in the Ship, Aircraft, Amateur, Restricted and Commercial Radio Operators, and General Mobile Radio Services. The form is being revised to incorporate additional data fields in accordance with the recommendation in International Maritime Organization (IMO) Assembly Resolution A.887(21) submitted by the National GMDSS Implementation Task Force (charted by the United States Coast Guard); to change certain certification statements into questions giving applicants the option to clarify if a license is required; and to clarify existing instructions for the general public. The Commission uses the information on the form to determine whether the applicant is legally, technically, and financially qualified to obtain a license. Information on the form will also be used to update the database and to provide for proper use of the frequency spectrum as well as enforcement purposes.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 03–9827 Filed 4–21–03; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 9, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 23, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:
OMB Control Number: 3060–0483.
Title: Section 73.687, Transmission System Requirements.
Form Number: N/A.
Type of Review: Extension of currently approved collection.
Respondents: Business or other for-profit entities.
Number of Respondents: 6.
Estimated time per response: 1.0 hours.
Total annual burden: 6 hours.
Total annual costs: $0.
Needs and Uses: 47 CFR 73.687(e)(3) requires TV broadcast stations operating on Channels 14 and 69 to take special precautions to avoid interference to adjacent spectrum land mobile operations. This requirement applies to all new Channel 14 and 69 TV broadcast stations and those authorized to change channel, increase effective radiated power (ERP), change directional antenna characteristics such that ERP increases in any azimuth direction or change location, involving an existing or proposed channel 14 or 69 assignment. Section 73.687(e)(4) requires these stations to submit evidence to the FCC that no interference is being caused before they will be permitted to transmit programming on the new facilities. FCC uses the data to ensure proper precautions have been taken to protect land mobile stations from interference. It will also both increase and improve service to the public by broadcasters and land mobile services operating in certain parts of the spectrum.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 03–9829 Filed 4–21–03; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–03–54–A (Auction No. 54); DA 03–1128]

Closed Broadcast Auction Scheduled for July 23, 2003; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures

AGENCY: Federal Communications Commission.
ACTION: Notice.

SUMMARY: This document announces the auction of construction permits for Auction No. 54 scheduled to begin on July 23, 2003. This document also seeks comment on reserve prices or minimum opening bids and other auction procedures.

DATES: Comments are due on or before April 25, 2003 and reply comments are due on or before May 2, 2003.

ADDRESSES: Comments and reply comments must be sent by electronic mail to the following address: *auction54@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: *Auctions and Industry Analysis Division:* Kenneth Burnley, Legal Branch at (202) 418–0660, Lyle Ishida, Operations Branch at (202) 418–0660 or Linda Sanderson, Operations Branch at (717) 338–2888. *Audio Division:* Lisa Scanlan at (202) 418–2700. *Video Division:* Shaun Maher at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 54 Comment Public Notice* released on April 11, 2003. The complete text of the *Auction No. 54 Comment Public Notice*, including the attachments, is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 54 Comment Public Notice* may also be purchased from the Commission's duplicating contractor,

Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

I. General Information

1. By the *Auction No. 54 Comment Public Notice*, the Media Bureau ("MB") and the Wireless Telecommunications Bureau ("WTB") (collectively, the "Bureaus") announce the auction of construction permits for one full power television (TV), two low power television (LPTV), and four FM stations (Auction No. 54) scheduled to commence on July 23, 2003. A list of the locations of these stations is included as Attachment A of the *Auction No. 54 Comment Public Notice.* These new broadcast stations are the subject of pending, mutually exclusive applications for construction permits for the referenced broadcast services, for which the Commission has not approved a settlement agreement that obviates the need for an auction. Pursuant to the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), participation in Auction No. 54 will be limited to those applicants identified in Attachment A of the *Auction No. 54 Comment Public Notice.* Applicants will be eligible to bid on only those construction permits selected on their previously filed FCC Form 301 or 346.

2. Attachment A of the *Auction No. 54 Comment Public Notice* sets forth all mutually exclusive applicant groups ("MX Groups") on a service-by-service basis, accompanied by their respective minimum opening bids and upfront payments. All MX Groups identified in Attachment A of the *Auction No. 54 Comment Public Notice* have been subject to competition through the opening and closing of the relevant period for filing competing applications, either through two-step cut-off list procedures or through an application filing window. All applications within an identified MX Group are directly mutually exclusive with one another, and therefore a single construction permit will be auctioned for each MX Group identified in Attachment A of the *Auction No. 54 Comment Public Notice.*

3. The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *." The Bureaus therefore seek comment on the following issues relating to Auction No. 54.

II. Auction Structure

A. Simultaneous Multiple Round (SMR) Auction Design

4. The Bureaus propose to award all construction permits included in Auction No. 54 in a simultaneous multiple round auction. This methodology offers every construction permit for bid at the same time with successive bidding rounds in which bidders may place bids. The Bureaus seek comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

5. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each construction permit being auctioned, taking into account such factors as the efficiency of the auction and the value of similar spectrum. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on permits. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind for Auction No. 54, the Bureaus propose to make the upfront payments equal to the minimum opening bids, which, as described in section III.B, are established based on various factors related to the efficiency of the auction and the potential value of the spectrum. The specific upfront payment for each construction permit is set forth in Attachment A of the *Auction No. 54 Comment Public Notice.* The Bureaus seek comment on this proposal.

6. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine the number of bidding units on which a bidder may place bids. This limit is a bidder's "maximum initial eligibility." Each construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 54 Comment Public Notice*, on a bidding unit per dollar basis. This number does not change as prices rise during the auction. A bidder may place bids on multiple construction permits, if those construction permits were selected on its previously filed FCC Form 301 or 346, as long as the total number of bidding units associated with those construction permits does not exceed the bidder's eligibility. Eligibility cannot be increased during the auction. In order to bid on a construction permit, qualified bidders must have an eligibility level that meets the number of bidding units assigned to that permit. Thus, in calculating its upfront payment amount, an applicant should determine the maximum number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. The Bureaus seek comment on this proposal.

C. Activity Rules

7. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their current bidding eligibility during each round of the auction rather than waiting until the end to participate.

8. The Bureaus propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. A bidder's activity will be the sum of the bidding units associated with the construction permit upon which it places a bid during the current round, or the construction permit upon which it is the standing high bidder. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's bidding eligibility, possibly eliminating it from the auction. The Bureaus seek comment on this proposal.

D. Activity Rule Waivers and Reducing Eligibility

9. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

Note: Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

10. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding

round in which a bidder's activity level is below the minimum required unless: (i) There are no activity rule waivers remaining; or (ii) bidders eligible to bid on more than one construction permit override the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder that is eligible to bid on only one construction permit has no activity rule waivers available, the bidder's eligibility will be reduced, eliminating it from the auction. If a bidder that is eligible to bid on more than one construction permit has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from the auction.

11. A bidder that is eligible to bid on more than one construction permit and has insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the "reduce eligibility" function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

12. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

13. The Bureaus propose that each bidder in Auction No. 54 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

E. Information Relating to Auction Delay, Suspension, or Cancellation

14. For Auction No. 54, the Bureaus propose that, by public notice or by announcement during the auction, it may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely within its discretion, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureaus seek comment on this proposal.

III. Bidding Procedures

A. Round Structure

15. The Commission will conduct Auction No. 54 over the Internet. Telephonic Bidding will also be available, and the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection will be provided in the public notice announcing details of auction procedures.

16. The initial bidding schedule will be announced in a public notice listing the qualified bidders, which is released approximately 10 days before the start of the auction. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will also be included in the qualified bidders public notice.

17. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureaus seek comment on this proposal.

B. Reserve Price or Minimum Opening Bid

18. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses or construction permits are subject to auction, unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

19. In light of the Balanced Budget Act's requirements, the Bureaus propose to establish minimum opening bids for Auction No. 54. For Auction No. 54, the proposed minimum opening bid prices were determined by taking into account various factors related to the efficiency of the auction and the potential value of the spectrum, including the type of service, proposed population coverage, market size, industry cash flow data and recent broadcast transactions. The specific minimum opening bid for each construction permit available in Auction No. 54 is set forth in Attachment A of the *Auction No. 54 Comment Public Notice*. Comment is sought on this proposal.

20. If commenters believe that these minimum opening bids will result in unsold construction permits, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Acceptable Bids and Bid Increments

21. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts. The FCC Automated Auction System interface will list the nine acceptable bid amounts for each construction permit. Until a bid has been placed on a construction permit, the minimum acceptable bid for that permit will be equal to its minimum opening bid. In the rounds after an acceptable bid is placed on a construction permit, the minimum acceptable bid for that permit will be equal to the standing high bid plus the bid increment.

22. Once there is a standing high bid on the construction permit, the FCC Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round. The difference between the minimum acceptable bid and the standing high bid for each construction permit will define the bid increment. The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

23. For Auction No. 54, the Bureaus propose to use a 10 percent bid increment. This means that the minimum acceptable bid for a construction permit will be approximately 10 percent greater than the previous standing high bid received on the construction permit. The minimum acceptable bid amount will be calculated by multiplying the standing high bid times one plus the increment percentage—*i.e.*, (standing high bid) * (1.10). The Bureaus will round the result using our standard rounding procedure for minimum acceptable bid calculations: results above $10,000 are rounded to the nearest $1,000; results below $10,000 but above $1,000 are rounded to the nearest $100; and results below $1,000 are rounded to the nearest $10.

24. The Bureaus retain the discretion to change the minimum acceptable bids and bid increments if they determine the circumstances so dictate. The Bureaus seek comment on these proposals.

25. Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the percentage increment, rounded, and the minimum opening bid. That is, the increment used to calculate additional bid amounts = (minimum opening bid)(1 + percentage increment)[rounded]—(minimum opening bid). Therefore, when the percentage increment equals 0.1 (*i.e.*, 10%), the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent higher; the third, thirty percent higher; etc.

26. The Bureaus retain the discretion to change the minimum acceptable bids and bid increments if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Automated Auction System. The Bureaus seek comment on these proposals.

D. High Bids

27. At the end of a bidding round, the high bids will be determined based on the highest gross bid amount received for each construction permit. A high bid from a previous round is sometimes referred to as a "standing high bid." A "standing high bid" will remain the high bid until there is a higher bid on the same construction permit at the close of a subsequent round. Bidders are reminded that standing high bids confer bidding activity.

28. In the event of identical high bids on a construction permit in a given round (*i.e.*, tied bids), the Bureaus propose to use a random number generator to select a high bid from among the tied bids. The remaining bidders, as well as the high bidder, will be able to submit a higher bid in a subsequent round. If no bidder submits a higher bid in a subsequent round, the high bid from the previous round will win the construction permit. If any bids are received on the construction permit in a subsequent round, the high bid again will be determined by the highest gross bid amount received for the construction permit.

E. Information Regarding Bid Withdrawal and Bid Removal

29. For Auction No. 54, the Bureaus propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By removing selected bids in the bidding system, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid. The Bureaus seek comment on this bid removal procedure.

30. In the *Part 1 Third Report and Order*, 63 FR 770 (January 7, 1998), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and construction permits and the pursuit of efficient backup strategies as information becomes available during the course of an auction. In Auction No. 54, however, aggregation of construction permits will not be possible because of the pre-established MX Groups. Accordingly, for this auction, the Bureaus propose that bidders not be permitted to withdraw bids in any round. The Bureaus seek comment on this proposal.

F. Stopping Rule

31. The Bureaus have the discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." For Auction No. 54, the Bureaus propose to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain open until bidding closes simultaneously on all construction permits.

32. Bidding will close simultaneously on all construction permits after the first round in which no new acceptable bids or proactive waivers are received. Thus, unless circumstances dictate otherwise, bidding will remain open on all construction permits until bidding stops on every construction permit.

33. However, the Bureaus propose to retain the discretion to exercise any of the following options during Auction No. 54:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, or a new bid on any construction permit on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

ii. Keep the auction open even if no new acceptable bids or proactive waivers are submitted. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) only for construction permits on which the high bid increased in at least one of the preceding specified number of rounds.

34. The Bureaus propose to exercise these options only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example,

increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity. The Bureaus seek comment on these proposals.

IV. Due Diligence

35. Potential bidders are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

36. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 54 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 54 are strongly encouraged to continue such research during the auction.

37. Potential bidders for the new television facility should note that, in November 1999, Congress enacted the Community Broadcasters Protection Act of 1999 (CBPA) which established a new Class A television service. In response to the enactment of the CBPA, the Commission adopted rules to establish the new Class A television service. In the *Class A Report and Order*, 65 FR 29985 (May 10, 2000), the Commission adopted rules to provide interference protection for eligible Class A television stations from new full power television stations. Given the Commission's ruling in the *Class A Report and Order*, the winning bidder in Auction No. 54, upon submission of its long-form application (FCC Form 301), will have to provide interference protection to qualified Class A television stations. Therefore, potential bidders are encouraged to perform engineering studies to determine the existence of Class A television stations and their effect on the ability to operate the full power television station proposed in this auction. Information about the identity and location of Class A television stations is available from the Media Bureau's Consolidated Database System (CDBS) (public access available at: *http://www.fcc.gov/mb)* and on the Media Bureau's Class A television web page: *http://www.fcc.gov/mb/video/files/classa.html*.

38. Potential bidders for the new television facility are also reminded that full service television stations are in the process of converting from analog to digital operation and that stations may have pending applications to construct and operate digital television facilities, construction permits and/or licenses for such digital facilities. Bidders should investigate the impact such applications, permits and licenses may have on their ability to operate the facilities proposed in this auction.

V. Conclusion

39. Comments are due on or before April 25, 2003, and reply comments are due on or before May 2, 2003. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureaus require that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction54@fcc.gov*. The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 54 Comments. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

40. In addition, the Bureaus request that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

41. This proceeding has been designated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

Margaret Wiener,

Chief, Auctions and Industry Analysis Division, WTB.

[FR Doc. 03–10000 Filed 4–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 03–10; FCC 03–80]

Application by SBC Communications Inc., Nevada Bell Telephone Company, and Southwestern Bell Communications Services, Inc., for Authorization To Provide In-Region, InterLATA Service in Nevada

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In the document, the Federal Communications Commission (Commission) grants the section 271 application of SBC Communications Inc., Nevada Bell Telephone Company, and Southwestern Bell Communications Services, Inc., (Nevada Bell) for authority to enter the interLATA telecommunications market in Nevada. The Commission grants Nevada Bell's application based on its conclusion that it has satisfied all of the statutory requirements for entry and opened its local exchange markets to full competition.

DATES: Effective April 25, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Arluk, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–1471 or via the Internet at *parluk@fcc.gov*. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 03–10, FCC 03–80, adopted April 14, 2003, and released April 14, 2003. The full text of this order may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. It is also available on the Commission's Web site at *http://www.fcc.gov/Bureaus/Wireline_Competition/in-region_applications*.

Synopsis of the Order

1. *History of the Application*. On January 14, 2003, Nevada Bell filed an application pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service in the state of Nevada.

2. *The State Commission's Evaluation*. The Nevada Public Utilities Commission (Nevada Commission), following an extensive review process, advised the Commission that Nevada Bell has taken the statutorily required steps to open its local markets to competition. Consequently, the Nevada Commission recommended that the Commission approve Nevada Bell's in-region, interLATA entry in their evaluation and comments in this proceeding.

3. *The Department of Justice's Evaluation*. The Department of Justice filed its evaluation on February 21, 2003, recommending approval of the Nevada Bell application. The Department of Justice concludes that opportunities are available for competitive carriers to serve business customers, and also concludes that Nevada Bell has fulfilled its obligations to open its markets to residential competition. Accordingly, the Department of Justice recommends approval of Nevada Bell's application for section 271 authority in Nevada.

Primary Issues in Dispute

4. *Complete-As-Filed Waiver*. The Commission's "complete-as-filed" requirement provides that when an applicant files new information after the comment date, the Commission reserves the right to start the 90-day review period again or to accord such information no weight in determining section 271 compliance. The Commission waives the complete-as-filed requirement pursuant to Nevada Bell's request to consider its late-filed Track A evidence. The Applicant submitted additional evidence to respond quickly and positively to concerns raised in the record as to whether Cricket Communications' broadband Personal Communications Service (PCS) offering satisfied the requirements of Track A. Because the evidence was filed on day 31, the Bureau had sufficient time to place the evidence on public notice and request comments specific to the evidence submitted. Under these circumstances, the Commission believes that consideration of Nevada Bell's additional evidence better serves the Commission's interest in ensuring a fair and orderly 271 process than restarting the 90-day clock, and that a grant of this waiver will serve the public interest.

5. *Compliance with Section 271(c)(1)(A)*. The Commission concludes that Nevada Bell demonstrates that it satisfies the requirements of section 271(c)(1)(A) based on the interconnection agreements it has implemented with competing carriers in Nevada. The record shows that Nevada Bell relies on interconnection agreements with Advanced Telecom Group, WorldCom, and Cricket Communications in support of this showing. The Commission finds that Advanced Telecom Group and WorldCom each serve more than a de minimis number of business end users predominantly over their own facilities and represent "actual commercial alternatives" to Nevada Bell for business telephone exchange services. The Commission further finds that, Cricket Communications, a PCS provider, serves more than a de minimis number of residential users over its own facilities and, for purposes of section 271 compliance, represents an actual commercial alternative to Nevada Bell for residential telephone exchange services.

6. First, the Commission determines that Cricket Communications' residential broadband PCS offering in Nevada is a "telephone exchange service" for purposes of Track A. The Commission further concludes that the evidence submitted by Nevada Bell adequately demonstrates that more than a de minimis number of Cricket customers use their service in lieu of wireline telephone service. The evidence shows that Cricket's marketing efforts stress that its product is a substitute for residential local telephone service. In addition, the Commission concludes that Nevada Bell's survey also demonstrates that Cricket customers use Cricket service in lieu of wireline telephone service. The Commission finds that the survey was random, and contains statistical analysis of sufficient quality to allow the Commission to rely on it for the purpose of showing compliance with Track A.

7. *Checklist Item 2—Unbundled Network Elements*. Based on the record, the Commission finds that Nevada Bell has provided "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act in compliance with checklist item 2.

8. *Pricing of Unbundled Network Elements*. Based on the record, the Commission finds that Nevada Bell's UNE rates in Nevada are just, reasonable, and nondiscriminatory as required by section 251(d)(1). The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if either "basic TELRIC principles are violated or the state commission makes clear errors in the actual findings on matters so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce." The Nevada Commission conducted extensive pricing proceedings to establish wholesale rates for UNEs. It approved recurring rates by using a Nevada specific version of the HAI model advocated by AT&T. Competitive LECs agreed to the vast majority of the nonrecurring rates. The Nevada Commission concluded that Nevada Bell's UNE rates are just, reasonable, and nondiscriminatory as required by section 251(c)(3), and satisfy the requirements of checklist item two. No party alleges that Nevada Bell's rates are inconsistent with TELRIC, or that the Nevada Commission committed TELRIC errors. Based on this record, the Commission finds that Nevada Bell has met its burden to show that its prices for UNEs satisfy the statutory mandate.

9. *Operations Support Systems (OSS)*. Based on the record, the Commission finds that Nevada Bell provides "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act in compliance with checklist item 2. The Commission further finds that Nevada Bell provides persuasive evidence that the OSS in California are substantially the same as the OSS in Nevada and, therefore, evidence concerning the OSS in California is relevant and should be considered in our evaluation of the OSS in Nevada. Accordingly, when volumes in Nevada are too low to yield meaningful information concerning Nevada Bell's compliance with the competitive checklist, the Commission examines data reflecting Pacific Bell's performance in California.

10. Pursuant to its analysis, the Commission finds that Nevada Bell provides non-discriminatory access to its OSS—the systems, databases, and personnel necessary to support network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with Nevada Bell regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that, for each of the primary OSS functions (pre-ordering, ordering,

provisioning, maintenance and repair, and billing, as well as change management), Nevada Bell provides access to its OSS in a manner that enables competing carriers to perform the functions in substantially the same time and manner as Nevada Bell does or, if no appropriate retail analogue exists within Nevada Bell's systems, in a manner that permits competitors a meaningful opportunity to compete. In addition, regarding specific areas where the Commission identifies issues with Nevada Bell's or Pacific Bell's OSS performance, these problems are not sufficient to warrant a finding of checklist noncompliance.

Other Checklist Items

11. *Checklist Item 4—Unbundled Local Loops.* Based on the evidence in the record, the Commission concludes that Nevada Bell provides unbundled local loops in accordance with the requirements of section 271 and our rules. The Commission also notes that no commenter challenges Nevada Bell's showing on this checklist item or the California evidence that it relies upon. The Commission's conclusion is based on Nevada Bell's performance (and Pacific Bell's performance in California where Nevada volumes are low) for all loop types, which include, as in past section 271 orders, voice grade loops, hot cut provisioning, xDSL-capable loops, digital loops, high capacity loops, as well as our review of Nevada Bell's processes for line sharing and line splitting.

12. *Checklist Item 1—Interconnection.* Based on the Commission's review of the record, it concludes that Nevada Bell complies with the requirements of checklist item 1. In reaching this conclusion, the Commission examined Nevada Bell's performance with respect to collocation and interconnection trunks, as the Commission has done in prior section 271 proceedings. For the one performance measure that the Commission noted that Nevada Bell failed four of the five-month data period, the failures were not sufficient to warrant a finding of checklist noncompliance.

13. *Remaining Checklist Items (3, 5–14).* In addition to showing that it is in compliance with the requirements discussed above, an application under section 271 must demonstrate that it complies with checklist item 3 (access to poles, ducts, and conduits), item 5 (unbundled transport), item 6 (local switching unbundled from transport), item 7 (911/E911 access and directory assistance/operator services), item 8 (white pages directory listings), item 9 (numbering administration), item 10 (databases and associated signaling), item 11 (number portability), item 12 (local dialing parity), item 13 (reciprocal compensation), and item 14 (resale). Based on the evidence in the record, the Commission concludes that Nevada Bell demonstrates that it is in compliance with these checklist items in Nevada. It notes that no party objects to Nevada Bell's compliance with these checklist items.

14. *Section 272 Compliance.* Based on the record, the Commission concludes that Nevada Bell has demonstrated that it will comply with the requirements of section 272. Significantly, Nevada Bell provides evidence that it maintains the same structural separation and nondiscrimination safeguards in Nevada as it does in California.

15. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. From its extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, the Commission finds that barriers to competitive entry in the local exchange markets have been removed and the local exchange markets in Nevada today are open to competition. The Commission further finds that the record confirms our view, as noted in prior section 271 orders, that BOC entry into the long distance market will benefit consumers and competition if the relevant local exchange market is open to competition consistent with the competitive checklist.

16. *Section 271(d)(6) Enforcement Authority.* Working with the Nevada Commission, the Commission intends to closely monitor Nevada Bell's post-approval compliance to ensure that Nevada Bell continues to meet the conditions required for section 271 approval. It stands ready to exercise its various statutory enforcement powers quickly and decisively in appropriate circumstances to ensure that the local market remains open in Nevada.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–9825 Filed 4–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–1089]

Audit of Operational Status of Certain 220–222 MHz Band Licenses

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document the Wireless Telecommunications Bureau (Bureau) announces a license audit of the operational status of certain site-specific licenses operating in three commercial radio services in the 220–222 MHz band. To prepare for the audit, the Bureau is encouraging licensees to verify their mailing addresses on record for each license held and, where appropriate, update the information. In addition, the Bureau is asking each licensee to ensure it has registered with the Commission Registration System (CORES) to receive its FCC Registration Number (FRN) and has associated with the FRN with each license held. The purpose of the audit is to promote intensive use of the spectrum in 220 MHz.

FOR FURTHER INFORMATION CONTACT: Denise D. Walter, Commercial Wireless Division, at 202–418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Public Notice*, DA 03–1089, released on April 9, 2003. The full text of this document is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Federal Communications Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *http://wireless.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

1. The Federal Communications Commission's (FCC) Wireless Telecommunications Bureau (Bureau) will be conducting a license audit of the operational status of certain licenses operating in the 220–222 MHz (220 MHz) band in the following radio services: "QT"—non-nationwide 5-channel trunked systems, "QD"—non-nationwide data, and "QO"—non-nationwide other. Every licensee in these radio services must respond to the audit letter and certify that its authorized station(s) has not discontinued operations for one year or more. The Bureau is performing the audit to promote intensive use of the radio spectrum by updating and increasing the accuracy of the Commission's licensing database.

2. To prepare for the audit, the Bureau strongly encourages licensees in these three radio services to verify the mailing address for each license held prior to May 9, 2003. Licensees can verify the accuracy of the Commission's information by accessing the *License Search* function in the Universal Licensing System (ULS) at *http://wireless.fcc.gov/uls*. If the information is incorrect, the licensee should use ULS to electronically file an *Administrative Update* application.

3. Another important step a licensee should take to prepare for the audit is to ensure that it has registered in CORES, received an FRN, and associated the FRN with all licenses held. This should be done by May 9, 2003.

4. The Bureau will send letters to all licensees operating in the QT, QD, and QO radio services inquiring about the operational status of each license held. The letters will be mailed during the week of May 12, 2003. Each letter will include the call signs of the licensee's authorizations involved in this audit and will be directed to each licensee at its address of record. A licensee will receive only one audit letter if the licensee has, by May 9, 2003, verified the address is listed correctly in ULS, obtained its FRN, and associated its call signs with the FRN. If the licensee has not performed these activities by May 9, 2003, the Bureau will attempt to include all of a licensee's call signs subject to this audit in one letter, but may issue more than one letter for an entity due to slight variations in licensee name or address in the Commission's licensing records. If a licensee receives multiple letters, the licensee must respond to each letter in order to account for all its call signs that are part of this audit. If a licensee holds authorizations in one of these radio services and does not receive an audit letter, the licensee may still be required to respond to the audit. In order to determine if a particular license is a part of the audit, licensees should use Audit Search at *http://wireless.fcc.gov/licensing/audits/220* after the audit letters have been mailed (scheduled for the week of May 12, 2003). If the search shows an audit letter was mailed, the licensee is required to respond to the audit using the audit reference number. For instructions on how to proceed in this instance, licensees can call the Commission at 717–338–2888 or 888–CALLFCC (888–225–5322) and select option 2.

5. A response to the audit letter is mandatory. The process for responding to the audit and the internet site will be included in the audit letter. Each licensee is required to submit its response electronically within thirty (30) calendar days of the date on the audit letter. Failure to provide a timely response may result in the Commission presuming that the station has been non-operational for one year or more, and thus the license may be presumed to have automatically cancelled. Failure to provide a timely response may also result in an enforcement action, including monetary forfeiture, pursuant to section 503(b)(1)(B) of the Communications Act and 47 CFR 1.80(a)(2).

Federal Communications Commission.

William W. Kunze,

Chief, Commercial Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 03–9828 Filed 4–21–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–785]

Media Bureau Implements New Equal Employment Opportunity Forms, Mandatory Electronic Filing of FCC Form 396–A

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the mandatory electronic filing of the FCC broadcast Equal Employment Opportunity Form 396–A. The Commission suspended the previous version of this form and adopted the current version with a new EEO rule. Paper version of the form will not be accepted after deadline date unless accompanied by request for waiver.

FOR FURTHER INFORMATION CONTACT: Roy Boyce, Policy Division, Media Bureau, (202) 418–1450.

SUPPLEMENTARY INFORMATION: This is a summary of the Media Bureau's Public Notice (*"PN"*), DA 03–785, adopted and released March 18, 2003. The complete text of this *PN* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC and may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B–402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

Synopsis of Public Notice

1. By this *PN* the Media Bureau announces mandatory electronic filing for FCC Form 396–A, Broadcast Equal Employment Opportunity Model Program Report (February, 2003 Edition).

2. Mandatory electronic filing commenced on March 10, 2003. Paper versions of these forms will not be accepted for filing after March 10, 2003, unless accompanied by an appropriate request for waiver of the electronic filing requirement. Users can access the electronic filing system *via* the Internet from the Media Bureau's Web site at: *http://www.fcc.gov/mb*.

3. Pursuant to the *1998 Biennial Regulatory Review—Streamlining of Mass Media Applications, Rules and Processes* (63 FR 70040, December 18, 1998), Report and Order (*"R&O"*), mandatory electronic filing was to commence six-months after a given form was made available for electronic use. The then Mass Media Bureau made FCC Form 396–A available for electronic use more than six months ago. The form was made available in connection with a broadcast Equal Employment Opportunity ("EEO") rule adopted in February 2000 that was subsequently vacated as a result of a Court order. As a result of the Court's action, the Commission suspended the prior version of Form 396–A in January, 2001. The current version was adopted by the 2nd *R&O* (68 FR 00670, January 7, 2003), and Third Notice of Proposed Rule Making (3rd *NPRM*), (67 FR 77374, December 17, 2002), in MM Docket No. 98–204, which adopted a new broadcast EEO rule. It is substantially similar to the version adopted in February 2000 and is used in conjunction with other forms (*e.g.*, FCC Forms 301, 314, 315, and 340) that are already subject to mandatory electronic filing.

4. In the Streamlining *R&O*, which announced the Commission's electronic filing requirement, the Commission recognized the need for limited waivers of this requirement in light of the "burden that electronic filing could place upon some licensees who are seeking to serve the public interest, with limited resources, and succeed in a highly competitive local environment." Such waivers will not be routinely granted and the applicant must plead with particularity the facts and circumstances warranting relief.

5. Instructions for use of the electronic filing system are available in the CDBS User's Guide which can be accessed from the electronic filing Web site. Special attention should be given to the details of the applicant account registration function, form filing function, and the fee form handling procedures, if a fee is required. Failure to follow the procedures in the User's Guide may result in an application

being dismissed, returned, or not considered as officially filed.

6. Internet access to the CDBS public access system at the Commission's Web site requires a user to have a browser such as Netscape version 3.04 or Internet Explorer version 3.51, or later.

7. For technical assistance using the system or to report problems, please contact the CDBS Help Desk at (202) 418–2MMB. To request additional information concerning specific broadcast applications, please call (202) 418–2700 (radio forms) or (202) 418–1600 (television forms).

8. The (2nd *R&O*) also adopted three other EEO forms—FCC Forms 396 (Broadcast EEO Program Report), 396–C (Multi-Channel Video Program Distributor EEO Program Annual Report), and 397 (Broadcast Mid-Term Report). These forms have been approved by the Office of Management and Budget (68 FR 10015, March 3, 2003) and were effective March 10, 2003. They are, however, not yet available for electronic filing because there is no immediate need to file them. An announcement will be made when they are available.

FCC Notice Required by the Paperwork Reduction Act

9. On February 14, 2003, the Commission received approval for the information collection contained herein pursuant to the "emergency processing" provisions of the Paperwork Reduction Act of 1995 (5 CFR 1320.13). The OMB Control Number for the FCC Form 396–A is 3060–0120. The annual reporting burdens for this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the required data and completing and reviewing the collection of information, are estimated to be: 5,000 respondents, 1 hour per response per annum, for a total annual burden of 5000 hours; there are no annual costs. If you have any comments on this burden estimate, or how we can improve the collection and reduce the burden it causes you, please write to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554. Please include the OMB Control Number: 3060–0120, in your correspondence. We will also accept your comments regarding the Paperwork Reduction Act aspects of this collection via the Internet if you send them to *lesmith@fcc.gov* or call (202) 418–0217.

10. Under 5 CFR 1320, an agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. The OMB Control Number for this collection is 3060–0120. The forgoing Notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, 44 U.S.C. 3507.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–9826 Filed 4–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Sunshine Act; Meeting

TIME AND DATE: 10 a.m.—May 6, 2003.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Fact Finding Investigation No. 25—Practices of Transpacific Stabilization Agreement Members Covering the 2002–2003 Service Contract Season.

CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–10041 Filed 4–18–03; 2:25 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 16, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Centra Ventures, Inc., St. Cloud, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Falcon National Bank, Foley, Minnesota, a *de novo* bank.

B. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bank of the San Juans Bancorporation, Durango, Colorado; to become a bank holding company by acquiring up to 100 percent of the voting shares of Bank of the San Juans, Durango, Colorado.

Board of Governors of the Federal Reserve System, April 16, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–9834 Filed 4–21–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Board of Governors of the Federal Reserve System

Government in the Sunshine; Meeting

TIME AND DATE: 11 a.m., Monday, April 28, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: April 18, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–10073 Filed 4–18–03; 3:50 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The FTC intends to conduct consumer research to examine: (1) How consumers search for and choose mortgages; (2) how consumers use and understand information about mortgages, including required disclosures; and (3) whether more effective disclosures are feasible. This research will be conducted to further the FTC's mission of protecting consumers and competition in the mortgage market. Before gathering this information, the FTC is seeking public comments on its proposed consumer research. Comments will be considered before the FTC submits a request for Office of Management and Budget (OMB) review under the Paperwork Reduction Act (PRA).

DATES: Comments must be submitted on or before June 23, 2003.

ADDRESSES: Send written comments to Secretary, Federal Trade Commission, Room H–159, 1600 Pennsylvania Avenue, NW., Washington, DC 20580, or by e-mail to; *MortgageDS@ftc.gov* as; prescribed below. The submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All submissions should be captioned "Mortgage Disclosure Study—FTC File No. P025505."

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Janis K. Pappalardo, Economist, Bureau of Economics, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326–3387; e-mail *jpappalardo@ftc.gov*.

SUPPLEMENTARY INFORMATION: Recent deceptive lending cases at the FTC and elsewhere suggests that consumers who do not understand the terms of their mortgages can be subject to deception, that deception can occur even when consumers receive the disclosures required by the Truth-in-Lending Act, 15 U.S.C. 1601 *et seq.* (TILA), and that deception about mortgage terms can result in substantial consumer injury.

Despite a long history of mortgage disclosure requirements and many new legislative and regulatory proposals regarding disclosures, little empirical evidence exists to document the effect of current disclosures on consumer understanding of mortgage terms, consumer mortgage shopping behavior, or consumer mortgage choice.

The FTC proposes a research program designed to learn more about how consumers search for mortgages, what consumers understand or misunderstand about mortgage agreements, and how changes in the disclosure process might improve consumer understanding, consumer mortgage shopping, and consumers' ability to avoid deception. The research also may assist the targeting of the FTC's enforcement actions by identifying areas most prone to consumer misunderstanding and lender deception and may help refine disclosure remedies imposed on deceptive lenders.

The FTC invites comments on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collections of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The FTC will submit the proposed information collection requirements to OMB for review, as required by the PRA (44 U.S.C. chapter 35, as amended).

If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *MortgageDS@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's rules of practice, 16 CFR section 4.9(b)(6)(ii).

1. Description of the Collection of Information and Proposed Use

The FTC proposes to conduct this study in two phases: (1) A qualitative research phase; and (2) a quantitative research phase. The qualitative research phase will include focus groups and in-depth interviews. The quantitative research will include copy tests of current and alternative disclosures. Results from the first phase will be used to refine the design of the second phase.

The project will begin with 2 focus groups. Each group will include 8–10 consumers who completed a mortgage transaction within the previous year. One group will be comprised of subprime borrowers. The second group will be comprised of prime borrowers. The purpose of the focus groups is to examine how well consumers understand mortgage terms, how consumers shop for mortgages, if consumers recognize features of a mortgage offer that may significantly increase the cost of the loan, and whether consumers use and understand required disclosures. Subprime and prime borrowers will be examined separately to examine possible differences between these groups of consumers.

The focus group research will be followed by a series of approximately 36 individual, in-depth interviews with a different group of borrowers. Respondents will have completed a mortgage transaction within the previous two months and will be asked to bring their loan documents to the interview. The purpose of the interviews is to gain in-depth knowledge of the extent to which consumers use, search for, and understand mortgage information—including information about their own recent loans.

The last phase of the study will consist of copy test interviews of 800 consumers who entered into a mortgage transaction within the previous year. If possible, approximately half of the respondents will be subprime borrowers and half will be prime borrowers. The

purpose of the copy tests will be to examine whether alternative disclosures can improve consumer understanding of mortgage terms and help to reduce potential deception about mortgage offers. The findings from the focus groups and interviews will be used in developing the alternative disclosures used in the copy tests.

All information will be collected on a voluntary basis and consumers will receive usual and customary compensation for their participation. For the qualitative research the FTC has contracted with a consumer research firm to locate eligible borrowers, recruit respondents, moderate the focus groups, conduct the interviews, and write a report of the findings. For the quantitative research the FTC has also contracted with a consumer research firm to locate eligible borrowers and recruit respondents as well as to conduct the copy tests and write a brief methodological report. The results will assist the FTC in determining how required disclosures and other information affects consumers' ability to understand the cost and features of mortgages. This understanding will further the FTC's mission of protecting consumers and competition in this important market.

2. Estimated Hours Burden

Qualitative Research

The contractor will recruit 12 consumers for each focus group, with the expectation that each group will be comprised of 8–10 participants. Each focus group will take two hours. Thus, the focus group research will impose a burden of up to 40 hours (2 groups × 10 participants per group × 2 hours per participant). Approximately 36-one-hour long, in-depth interviews will be conducted. If all respondents are single decision makers, this would amount to a 36-hour burden. However, some of the interviews may include couples. Assuming that half of the interviews include couples (the upper bound offered by the contractor), the hours burden for the in-depth interviews would increase to 54 hours ((18 × 2 hours) + (18 × 1 hour)). The cumulative burden for the qualitative research will range from 76 hours to 94 hours.

Quantitative Research

Approximately 800 consumers who engaged in a mortgage transaction during the previous year will participate in the quantitative phase of the research. Each copy test interview will take roughly 20–30 minutes. The estimated hours burden for the quantitative research ranges from 267 hours (800 respondents × ⅓ hour per respondent) to 400 hours (800 respondents × ½ hour per respondent).

Total

The total estimated hours burden for both phases of the study ranges from 343 hours (76 hours + 267 hours) to 494 hours (94 hours + 400 hours).

3. Estimated Cost Burden

Participants will be compensated financially for their participation, as recommended and budgeted for by the contractor. Participation is voluntary and will not require start-up, capital, or labor expenditures by respondents.

By direction of the Commission.

C. Landis Plummer,

Acting Secretary.

[FR Doc. 03–9852 Filed 4–21–03; 8:45 am]

BILLING CODE 0750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—03/24/2003			
20030458	Fiserv, Inc	Bruce Christensen	Precision Computer Systems, Inc.
20030462	General Atlantic Partners 76, L.P	SSA Investor, LLC	SSA Global Technologies, Inc.
20030469	Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A.	Southeast Timber, Inc	Southeast Timber, Inc.
20030470	International Paper Company	Southeast Timber, Inc	Southeast Timber, Inc.
Transactions Granted Early Termination—03/25/2003			
20030421	Johnson & Johnson	Grunenthal Pharma GmbH & Co. KG	Gruenthal GmbH.
20030448	Philadelphia Suburban Corporation	DQE, Inc	AcquaSource Development Company. Aqua Source Operations, Inc. AquaSource Utility, Inc. The Reynolds Group, Inc.
Transactions Granted Early Termination—03/26/2003			
20021081	A. Jerrold Perenchio	Hispanic Broadcasting Corporation	Hispanic Broadcasting Corporation. Univision Communications, Inc.
20030419	Behrman Capital III, L.P	ILC Industries, Inc	ILC Industries, Inc.
20030457	Artal Group S.A	Florine Mark	The WW Group, Inc.

Trans #	Acquiring	Acquired	Entities
Transactions Granted Early Termination—03/27/2003			
20030375	L–3 Communications Holdings, Inc	Goodrich Corporation	Goodrich Aerospace Component Overhaul & Repair, Inc. Goodrich Avionics Systems, Inc. Goodrich FlightSystems, Inc.
Transactions Granted Early Termination—03/28/2003			
20030484	The Riverside Company	VS&A Communications Partners II, L.P	ExpoExchange, LLC.
20030488	MidMark Equity Partners II, L.P	Davis Industries, Inc	Davis Industries, Inc.
Transactions Granted Early Termination—04/01/2003			
20030471	Perry Ellis International, Inc	Salant Corporation	Salant Corporation.
20030475	Citigroup Inc	Worldspan, L.P	Worldspan, L.P
Transactions Granted Early Termination—04/02/2003			
20030452	Taylor & Francis Group plc	Information Holdings Inc	CRC Press (UK) LLC. CRC Press LLC. The Parthenon Publishing Group Inc.
20030459	Societe Wallonne de Gestion et de Participations, S.A.	Duferco Participation Holding Limited	Duferco U.S. Investment Corp.
20030464	Johnson & Johnson	Scios Inc	Scios Inc.
20030472	CBRE Holding, Inc	Insignia Financial Group, Inc	Insignia Financial Group, Inc.
20030476	Liz Claiborne, Inc	Pamela Skaist-Levy and Jeffrey Levy	Travis Jeans, Inc.
20030480	Blum Strategic Partners, L.P	CBRE Holding, Inc	CBRE Holding, Inc.
20030481	Blum Strategic Partners II, L.P	CBRE Holding, Inc	CBRE Holding, Inc.

For Further Information Contact: Sandra M. Peay, Contact Representative or Renee Hallman, Legal Technician, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–9853 Filed 4–21–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 021 0192]

Pfizer Inc. and Pharmacia Corporation; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 14, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments filed in electronic form should be directed to: consentagreement@ftc.gov, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Jex, FTC, Bureau of Competition, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–3273.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 14, 2003), on the World Wide Web, at "http://www.ftc.gov/os/2003/04/index.htm." A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: consentagreement@ftc.gov. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Pfizer Inc. ("Pfizer") and Pharmacia Corporation ("Pharmacia") which is designed to remedy the anticompetitive effects of the acquisition of Pharmacia by Pfizer. Under the terms of the proposed

Consent Agreement, the companies would be required to: (1) divest all of Pfizer's worldwide rights and assets relating to its overactive bladder drug, darifenacin, to Novartis AG; (2) divest Pfizer's worldwide rights and assets relating to its combination hormone replacement therapy, femhrt, to Galen Holdings plc; (3) return to Nastech Pharmaceutical Company, Inc. all rights to make, use, and sell Nastech's intranasal apomorphine product ("IN APO") for the treatment of erectile dysfunction; (4) divest all of Pharmacia's rights and assets in the field of sexual dysfunction relating to its D2 dopamine receptor agonist, PNU–142,774, to Neurocrine Biosciences, Inc.; (5) renegotiate a 1999 license and supply agreement between Pharmacia and Novartis for Deramaxx, Novartis's canine arthritis drug, to enable Novartis to operate as an independent competitor, rather than a partner, of the merged entity; (6) divest all of Pfizer's U.S. rights and assets relating to its lactating cow and dry cow mastitis products to Schering-Plough Corporation; (7) divest all of Pharmacia's worldwide rights and assets relating to its over-the-counter hydrocortisone-based cream, Cortaid, to Johnson & Johnson ("J&J"); (8) divest all of Pfizer's U.S. and Puerto Rican rights and assets relating to its over-the-counter motion sickness product, Bonine, to Insight Pharmaceuticals Corporation; and (9) divest all of Pfizer's worldwide rights and assets relating to its Halls over-the-counter cough drop business to Cadbury Schweppes plc.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the proposed Consent Agreement and the comments received, and will decide whether it should withdraw from the proposed Consent Agreement or make final the Decision and Order ("Order").

Pursuant to an Agreement and Plan of Merger dated July 13, 2002, between Pfizer and Pharmacia, Pfizer proposes to acquire 100 percent of the issued and outstanding shares of Pharmacia in a stock-for-stock transaction valued at approximately $60 billion. The Commission's Complaint alleges that the proposed acquisition, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45, in the markets for: (1) extended release treatments for overactive bladder; (2) combination hormone replacement therapy products; (3) treatments for erectile dysfunction; (4) treatments for canine arthritis; (5) treatments for lactating cow mastitis; (6) treatments for dry cow mastitis; (7) over-the-counter hydrocortisone creams and ointments; (8) over-the-counter motion sickness medications; and (9) over-the-counter cough drops. The proposed Consent Agreement will remedy the alleged violations by replacing the lost competition that would result from the merger in each of these markets.

Extended Release Treatments for Overactive Bladder

Extended release drugs for the treatment of overactive bladder ("OAB") are used by over 2.4 million Americans. Extended release OAB drugs help to reduce or eliminate the three primary symptoms of OAB frequency, urgency, and urge incontinence to enable OAB patients to live normal, active lives. Extended release products, dosed at once or twice-a-day, offer a more convenient dosing schedule and fewer side effects than older, generic products that must be taken three-times-a-day. Annual sales of extended release OAB products total $760 million in the United States, and the market is growing rapidly.

The U.S. market for extended release OAB products is a duopoly. Pharmacia markets Detrol and Detrol LA, twice and once-a-day products, respectively. J&J markets Ditropan XL, the only other extended release OAB product available in the United States. Pfizer is seeking approval from the Food and Drug Administration ("FDA") to market its own extended release product, darifenacin, and is one of the two best-positioned firms seeking to enter the market.

Entry into the market for extended release OAB products is difficult, time-consuming, and costly. De novo entry is estimated to take at least eight years and cost upwards of $375 million. Pfizer, along with one other company, Yamanouchi Pharma America ("Yamanouchi"), are the only two firms well-positioned to enter the market within the next two years. Other firms that have undertaken efforts to develop an extended release OAB product are well behind Pfizer and Yamanouchi.

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for extended release OAB products by eliminating potential competition between Pfizer and Pharmacia. With only two firms currently marketing extended release OAB products to customers in this market (Pharmacia and J&J), the entry of Pfizer and Yamanouchi would likely increase competition and reduce prices for extended release OAB products. Accordingly, allowing Pfizer to control both the Pharmacia extended release OAB products and its own competing product would reduce the number of rivals in the future from four to three and likely force customers to pay higher prices for extended release OAB products. The proposed acquisition would also reduce competition in the research and development of extended release OAB products.

The proposed Consent Agreement therefore requires the parties to divest Pfizer's extended release OAB product, darifenacin, to Novartis AG no later than ten business days after the Pharmacia acquisition is consummated. Novartis is well-positioned to continue Pfizer's development efforts and poses no separate competitive concerns as an acquirer of the darifenacin assets. If the Commission determines that Novartis is not an acceptable purchaser, or if the manner of the divestiture is not acceptable, Pfizer and Pharmacia must divest the darifenacin assets to a Commission-approved buyer no later than six months from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the darifenacin assets.

The proposed Consent Agreement contains several provisions designed to ensure that the divestiture is successful. Pfizer and Pharmacia are required to provide transitional services to the darifenacin buyer relating to regulatory approvals and manufacturing of darifenacin. Pfizer is required to continue contract manufacturing darifenacin until Novartis obtains the FDA approvals necessary to manufacture darifenacin independently from Pfizer. The proposed Consent Agreement also requires Pfizer and Pharmacia to provide incentives to certain employees to continue in their positions until the divestiture is accomplished. For a period of 18 months from the date the assets are divested, Pfizer and Pharmacia will provide the darifenacin buyer an opportunity to enter into employment contracts with individuals who have experience relating to darifenacin. Pfizer and Pharmacia are also required to provide incentives to these individuals to accept employment with the darifenacin acquirer. For a period of one year following the divestiture date, Pfizer and Pharmacia are prohibited from hiring any employees of the acquirer of the darifenacin assets who have responsibility related to darifenacin. Finally, Pfizer and Pharmacia must take steps to maintain the confidentiality of certain information related to darifenacin.

Combination Hormone Replacement Therapies

Combination hormone replacement therapies ("HRT"), which consist of both estrogen and progestin, are used by women with intact uteri to control moderate to severe menopausal symptoms. Although recent safety concerns have been raised by the National Institutes of Health ("NIH") about long term use of HRT, there are no effective substitute products available to control menopausal symptoms. Total sales of combination HRT products in the United States in 2002 were approximately $807 million.

The market for combination HRT is highly concentrated. There are three significant competitors in the combination HRT market: Wyeth, Pfizer, and Pharmacia. Post-acquisition, the top two competitors Wyeth and Pfizer would control almost 94 percent of the combination HRT market.

Entry into the market for combination HRT products is difficult, time-consuming, and costly. Additionally, because of the safety concerns raised by the NIH's Women's Health Initiative study, a new entrant into the combination HRT market may need to meet higher standards to receive FDA approval. The expected entry of generic competitors for combination HRT products is more than two years away.

The proposed acquisition would further concentrate the market for combination HRT products and eliminate competition between Pfizer and Pharmacia. The loss of Pharmacia as an independent competitor in the combination HRT market would likely result in higher prices and fewer product choices for consumers.

The proposed Consent Agreement preserves competition in the combination HRT market by requiring the parties to divest Pfizer's combination HRT product, femhrt, to Galen Holdings plc no later than ten business days after the Pharmacia acquisition is consummated. Galen is well-positioned to market femhrt because it is a company that specializes in marketing women's health products, including an oral contraceptive and an estrogen-only HRT product. However, if the Commission determines that Galen is not an acceptable purchaser, or if the manner of the divestiture is not acceptable, Pfizer and Pharmacia must divest the femhrt assets to a Commission-approved buyer no later than six months from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the femhrt assets.

The proposed Consent Agreement contains several provisions designed to ensure that the divestiture of femhrt is successful by requiring the parties to divest all of Pfizer's rights and assets relating to femhrt, including all historical research and development data, sales and marketing materials, and intellectual property. For a period of six months from the date the assets are divested, Pfizer and Pharmacia will provide the femhrt buyer an opportunity to enter into employment contracts with individuals who have experience relating to femhrt. For a period of one year following the divestiture date, Pfizer and Pharmacia are prohibited from hiring any employees of the acquirer of the femhrt assets who have responsibility related to femhrt. Pfizer and Pharmacia must also take steps to maintain the confidentiality of certain information related to femhrt. Finally, Pfizer would continue to package femhrt at its Puerto Rico facility until another packager is brought online by the acquirer of the femhrt assets.

Treatments for Erectile Dysfunction

Erectile dysfunction ("ED") affects 30 million men in the United States and half of the male population between the ages of 40 and 70. Approximately 4 million men take prescription drugs to treat ED. The U.S. market for drugs to treat ED is valued at over $1 billion today and is expected to exceed $1.5 billion by 2005 as the population ages and as awareness of the condition increases.

Pfizer dominates the ED market with its well-known product, Viagra. Pfizer has a market share in the United States in excess of 95 percent. Pfizer also has a second-generation Viagra-like product in development for ED. Pharmacia currently has two products in clinical development for ED: IN APO and PNU–142,774.

With the exception of Pharmacia's two products in development, entry into the market for drugs to treat ED is unlikely. Pfizer owns an extensive patent portfolio which protects Viagra. Patent litigation initiated by Pfizer with the most significant potential entrants is likely to prevent entry in the next two years.

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for drugs to treat ED by eliminating potential competition between Pfizer and Pharmacia. Given Pfizer's position as a monopolist in the ED market, entry by Pharmacia would increase competition and reduce prices in the market. Accordingly, allowing Pfizer to acquire Pharmacia's two ED products in development would preserve Pfizer's monopoly in the ED market in the future.

The proposed Consent Agreement therefore requires Pharmacia to return all of its rights in one of its products, IN APO, to Nastech Pharmaceutical Company, Inc. and to divest all of its rights and interests in its other product, PNU–142,774, for the field of human sexual dysfunction to Neurocrine Biosciences, Inc., within ten business days after the Pharmacia acquisition is consummated. Both Nastech and Neurocrine have sufficient research and development expertise to continue development of the products that each is obtaining from Pharmacia.

The proposed Consent Agreement requires Pfizer and Pharmacia to ensure that the divestitures to Nastech and Neurocrine are successful. Pfizer and Pharmacia are required to provide Nastech and Neurocrine the opportunity to enter into employment contracts with individuals who have experience relating to IN APO or PNU–142,774. For a period of one year following the divestiture date, Pfizer and Pharmacia are prohibited from hiring any employees of the acquirers of the IN APO or PNU–142,774 assets who have responsibility related to the products. Pfizer and Pharmacia must also take steps to maintain the confidentiality of certain information related to IN APO or PNU–142–774.

Treatments for Canine Arthritis

Canine arthritis affects an estimated 8.5 million of all dogs in the United States. Approximately 1.8 million arthritic dogs are treated with prescription canine arthritis drugs. Sales for prescription canine arthritis drugs in the United States in 2001 totaled approximately $81 million, and the U.S. market is expected to grow to over $110 million by the end of 2003.

The market for prescription canine arthritis drugs is highly concentrated. Pfizer markets Rimadyl, the leading product in the U.S. market that held a 70 percent market share in 2001. Wyeth, through its Fort Dodge Animal Health division, markets EtoGesic. Through a license and supply agreement with Pharmacia, Novartis launched its own canine arthritis product, Deramaxx, in February 2003.

Entry into the market of drugs to treat canine arthritis is difficult, costly, and time-consuming. Besides the safety and efficacy testing required for FDA approval of canine arthritis drugs, firms entering the market must develop palatable dosing formulations for use at home. Achieving a palatable delivery

mechanism for dogs is a difficult task and, if not done successfully, can compromise the success of a new drug.

Likely and timely entry is only possible by companies already in late stages of clinical development or awaiting regulatory approval. There are only two entities, Schering-Plough Corporation and a joint venture of Boehringer Ingelheim GmbH and Merial, that have prescription canine products approved in Europe and in late clinical development in the United States and are expected to enter in the U.S. market in the near future. Customers have stated that entry by these firms within the next year will not be sufficient to counter the anticompetitive effects posed by the acquisition of Pharmacia by Pfizer.

The proposed acquisition is likely to result in anticompetitive harm in the U.S. market for drugs to control the pain and inflammation associated with canine arthritis. Because of the license and supply agreement with Novartis, Pfizer, the leading company in the market, would have undue control over the supply of product needed by Novartis, and access to the competitively sensitive information of its competitor. As a result, Pfizer would be in a position to undermine the competitive position of one of only two competitors in the market for prescription drugs to treat canine arthritis.

The proposed Consent Agreement preserves competition in the market for prescription canine arthritis drugs by requiring Pharmacia to renegotiate its pre-existing license and supply agreement with Novartis to allow Novartis to operate as an independent competitor rather than a business partner. Specifically, the proposed Consent Agreement: (1) eliminates the control that Pfizer would have over Novartis's product; (2) restricts the type of information Pfizer would be able to obtain about Deramaxx; and (3) allows Novartis to compete with Pfizer in the development of a second generation canine arthritis product.

Treatments for Lactating Cow and Dry Cow Mastitis

Bovine mastitis, an infection of the udder of the cow, costs the U.S. dairy industry $2 billion annually. There are two different types of contagious bovine mastitis: (1) lactating cow mastitis; and (2) dry cow mastitis. Lactating cow mastitis occurs when the cow is producing milk, while dry cow mastitis occurs when the cow is not producing milk. Antibiotics used to treat lactating cow mastitis are different from those used to treat dry cow mastitis, and strict FDA regulations preclude the use of one product to treat the other type of infection. In the United States, $27 million worth of lactating cow mastitis antibiotic products and $25.5 million worth of dry cow mastitis antibiotic products are sold annually.

The U.S. market for bovine mastitis treatments is highly concentrated. There are only three significant competitors in the markets for lactating cow and dry cow mastitis antibiotics products Pharmacia, Wyeth, and Pfizer. Post-acquisition, Pfizer would account for 50 percent of the sales of lactating cow mastitis products and 55 percent of the sales of dry cow mastitis products. Wyeth would be the only other significant competitor in the markets for bovine mastitis treatments.

Entry into the markets for treatments for bovine mastitis is difficult, expensive, and time-consuming. Besides FDA approval of the drug, successful entry requires: (1) the ability to offer both lactating cow and dry cow products; (2) a dedicated veterinarian sales force experienced in selling and supporting dairy products; (3) a broad line of bovine health products other than mastitis treatments, such as parasiticides, vaccines, reproductive products, and antibiotics to treat other infections; and (4) a good reputation within the dairy community. Consequently, successful new entry into the market for bovine mastitis antibiotics treatments is not likely to occur in a timely fashion, if at all.

The proposed acquisition would further concentrate the market for antibiotics for the treatment of bovine mastitis in the United States. Post-acquisition, Pfizer and Wyeth would be the only significant suppliers. This is likely to lead to higher prices for drugs used to treat bovine mastitis.

The proposed Consent Agreement preserves competition in the market for antibiotics for the treatment of bovine mastitis by requiring Pfizer to divest all of its U.S. rights to its bovine mastitis antibiotic products to Schering-Plough Corporation no later than ten business days after the Pharmacia acquisition is consummated. Schering-Plough is well-positioned to replace Pfizer in the bovine mastitis treatment market because it is the fifth largest animal health company in the United States, has a veterinarian sales and support system, and already has established a good reputation in the dairy community. However, if the Commission determines that Schering-Plough is not an acceptable purchaser, or if the manner of the divestiture is not acceptable, Pfizer and Pharmacia must divest Pfizer's bovine mastitis assets to a Commission-approved buyer no later than six months from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the assets.

Over-the-Counter Hydrocortisone Creams and Ointments

Creams and ointments containing the active ingredient hydrocortisone are used to treat a variety of skin conditions, including chronic dry skin, seborrheic dermatitis, eczema, and psoriasis. Annual sales of over-the-counter ("OTC") hydrocortisone creams and ointments in the United States are approximately $160 million.

The U.S. market for OTC hydrocortisone creams and ointments is highly concentrated. There are only two branded competitors in the market: (1) Pfizer, with its Cortizone brand; and (2) Pharmacia, with its Cortaid brand. Although private label OTC hydrocortisone creams and ointments also account for a significant share of the market, these products have limited competitive significance and virtually no impact on the pricing of the products sold by Pfizer and Pharmacia. Post-acquisition, Pfizer would account for 55 percent of the OTC sales of hydrocortisone creams and ointments, and would be left with no significant branded competitor in this market.

Entry into the market for OTC hydrocortisone creams and ointments is unlikely to deter or counteract the effects the proposed transaction will have on competition. A new entrant would have to invest a significant amount of time and money to achieve any meaningful competitive presence in this market. Because of the limited sales opportunities and the difficult task of convincing retailers to take shelf space away from established brands, it is unlikely that a new entrant could enter the market and achieve any significant market impact within two years.

The proposed acquisition would cause significant anticompetitive harm in the U.S. market for OTC hydrocortisone creams and ointments by eliminating competition between Pfizer and Pharmacia. The loss of Pharmacia as an independent competitor in this market would likely result in higher prices for consumers.

The proposed Consent Agreement preserves competition in the market for OTC hydrocortisone creams and ointments by requiring Pharmacia to divest its Cortaid business to J&J no later than ten business days after the Pharmacia acquisition is consummated. J&J is a well-positioned purchaser because it currently markets many other well-known OTC products and has established relationships with customers. However, if the Commission determines that J&J is not an acceptable purchaser, or if the manner of the divestiture is not acceptable, Pfizer and Pharmacia must divest Pharmacia's Cortaid business to a Commission-approved buyer no later than six months from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the assets.

Over-the-Counter Motion Sickness Medications

Motion sickness is an ailment that occurs when the components of the brain that gauge motion, such as the inner ear and the eyes, send conflicting messages to the brain. When this occurs, symptoms such as dizziness, headache, sweating, and vomiting can occur. OTC motion sickness medications treat this ailment by using certain antihistamines to block the conflicting messages sent to the brain. Annual sales of OTC motion sickness medications total approximately $45 million in the United States.

The U.S. market for OTC motion sickness medications is highly concentrated. Pfizer, with its Bonine product, and Pharmacia, with its Dramamine product, are the two leading suppliers in this market, with a combined market share of 77 percent. Even after several years on the market, the third leading brand name product, Marezine, has less than 5 percent of the market. The remainder of the market is accounted for by private label products that do not constrain the pricing of the branded products.

New entry into the market for OTC motion sickness medications is unlikely to be sufficient to counteract the anticompetitive effects of the proposed acquisition. The small size of the market, coupled with the significant investment needed to market and sell the products, make it unlikely that a new competitor will enter the market in the next two years.

Pfizer's proposed acquisition of Pharmacia would cause significant anticompetitive harm in the U.S. market for OTC motion sickness medications. The combined entity would account for 77 percent of all sales of OTC motion sickness medications, and the proposed acquisition is likely to lead to higher prices in this market.

The proposed Consent Agreement effectively remedies the proposed acquisition's anticompetitive harm in the U.S. market for OTC motion sickness medications by requiring Pfizer to divest its U.S. and Puerto Rican Bonine assets to Insight Pharmaceuticals Corporation no later than ten business days after the Pharmacia acquisition is consummated. Insight is a well-positioned purchaser of the Bonine assets because it already has a portfolio of more than fifteen OTC consumer healthcare products, including Allerest, Sucrets, Cepastat, Caldecort, Fiberall, N'Ice, and Nostrilla. Through these other brands, Insight already has significant experience in selling OTC medications and has strong relationships with drugstores, food stores, and mass merchandisers. However, if the Commission determines that Insight is not an acceptable purchaser, or if the manner of the divestiture is not acceptable, Pfizer and Pharmacia must divest the Bonine assets to a Commission-approved buyer no later than six months from the date the Order becomes final. Should they fail to do so, the Commission may appoint a trustee to divest the Bonine assets.

Over-the-Counter Cough Drops

Millions of people in the United States use cough drops to treat the coughing associated with colds or other ailments. Cough drops are hard, candy-like confectionary products that contain medications such as menthol or dextromethorphan. Annual sales of cough drops in the United States are about $240 million.

The OTC cough drop market is highly concentrated, with only two significant competitors with brand name products: (1) Pfizer, with its Halls brand; and (2) Pharmacia, with its Ludens brand. Private label products, once again, have little competitive significance and do not constrain the pricing of the branded products. After the acquisition, Pfizer would account for approximately 63 percent of the OTC cough drop market.

Entry into the market for the manufacture and sale of OTC cough drops is unlikely to occur. Entry requires the investment of extremely high sunk costs which would be difficult to justify given the relatively limited sales opportunities. Thus, entry is not likely to deter or counteract the effect of the proposed acquisition.

The proposed acquisition would eliminate competition between Pfizer and Pharmacia in the U.S. market for OTC cough drops. The loss of Pharmacia as an independent competitor in the OTC cough drop market is likely to lead to higher prices for consumers.

The proposed Consent Agreement effectively remedies the acquisition's anticompetitive effects in the U.S. market for OTC cough drops by requiring Pfizer to divest its Halls cough drop business to Cadbury Schweppes no later than ten business days after the Pharmacia acquisition is consummated. Cadbury is acquiring Pfizer's entire Adams Division, which markets Halls cough drops, as well as many other confectionary products. Cadbury is one of the world's leading beverage and confectionary companies and as such, is well-positioned to market the Halls brand of cough drops.

Interim Monitor

The Commission has appointed Francis J. Civille as Interim Monitor to oversee the asset transfers and to ensure Pfizer and Pharmacia's compliance with all of the provisions of the proposed Consent Agreement. Mr. Civille has over 33 years of experience in the pharmaceutical industry and is well-respected in the industry. In order to ensure that the Commission remains informed about the status of the proposed divestitures and the transfers of assets, the proposed Consent Agreement requires Pfizer and Pharmacia to file reports with the Commission periodically until the divestitures and transfers are accomplished.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Consent Agreement or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 03–9855 Filed 4–21–03; 8:45 am]

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FEDERAL TRADE COMMISSION

[File No. 022 3247]

Snore Formula, Inc., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 15, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments filed in electronic form should be directed to: consentagreement@ftc.gov, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Jonathan Cowen or Jock Chung, FTC, Bureau of Consumer Protection, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–2533 or 326–2984.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 15, 2003), on the World Wide Web, at "http://www.ftc.gov/os/2003/04/index.htm." A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: consentagreement@ftc.gov. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from Snore Formula, Inc., its officers Dennis H. Harris, M.D., and Ronald General, and Gerald L. "Jerry" Harris, also doing business as KJ Enterprises ("proposed respondents"). Proposed respondents market "Dr. Harris' Original Snore Formula" tablets, which are advertised to be taken by persons who snore.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint charges that proposed respondents failed to have a reasonable basis for claims they made about Dr. Harris' Original Snore Formula tablets' efficacy in (1) preventing sleep apnea in adult and child users of the product who would otherwise develop sleep apnea, (2) treating the "early stages" of sleep apnea, and (3) eliminating, preventing, or significantly reducing snoring. Proposed respondents are also charged with failing to disclose or failing to disclose adequately that persons who have symptoms of sleep apnea should consult a physician because sleep apnea is a potentially life-threatening condition. Proposed respondents are further charged with making false claims that scientific testing establishes that the product can eliminate, prevent, or significantly reduce snoring in 86% of users. The complaint also alleges that Snore Formula, Inc., and its named officers provided the means and instrumentalities to others to disseminate false or deceptive claims about the product. Finally, the complaint alleges that Dr. Dennis H. Harris, M.D., misrepresented, by acting as an expert endorser for the product, that he had exercised his represented expertise in snoring treatment, in the form of an examination or testing of the product at least as extensive as an expert in the field would normally conduct.

Part I of the consent order requires that proposed respondents possess competent and reliable scientific evidence to substantiate representations that Dr. Harris' Original Snore Formula tablets or any other food, drug, device, service, or dietary supplement prevents sleep apnea in adult or child users who would otherwise develop sleep apnea; treats sleep apnea; or eliminates, prevents, or reduces snoring. It further requires that Dennis H. Harris, M.D., posses and rely upon competent and reliable scientific evidence and an actual exercise of his represented expertise to substantiate representations he makes as an expert endorser.

Part II of the order requires that, for any product or service that has not been shown to be effective in the treatment of sleep apnea, proposed respondents must affirmatively disclose, whenever they represent that a product is effective in eliminating, preventing, or reducing snoring, a warning statement about sleep apnea and the need for consultation with a physician or a specialist in sleep medicine.

Part III of the order requires scientific substantiation for any future claim about the effect of any food, drug, device, service, or dietary supplement on any disease, or about the effect of any food, drug, device, service, or dietary supplement on the structure or function of the human body, or about any other health benefit, or the safety, of any covered product or service. It further requires that Dennis H. Harris, M.D., posses and rely upon competent and reliable scientific evidence and an actual exercise of his represented expertise to substantiate representations he makes as an expert endorser.

Part IV prohibits Snore Formula, Inc., and its named officers from providing to any person or entity "means and instrumentalities" that contain any claim about the benefits, performance, efficacy, or safety of any food, drug, device, service, or dietary supplement, unless such claim is true and substantiated by competent and reliable scientific evidence. "Means and instrumentalities" is defined as any information, including but not necessarily limited to any advertising, labeling, or promotional materials, for use by distributors in their marketing or sale of Dr. Harris' Original Snore Formula or any other food, drug, device, service, or dietary supplement covered under the order.

Part V prohibits false claims about scientific support for any product or service.

Part VI requires Snore Formula, Inc., and its named officers to disseminate a notice ("Attachment A") about the order to distributors who have purchased Dr. Harris' Original Snore Formula tablets from respondents or from one of respondents' other distributors on or after January 1, 2001. This notice indicates that Snore Formula, Inc., has agreed to cease making challenged representations, and warns distributors that they may be terminated if they do not conform their representations to the requirements placed on Snore Formula, Inc. Part VII of the order requires dissemination of Attachment A to future distributors, and that Snore Formula, Inc., monitor their distributors, and terminate sales to distributors who make representations prohibited by the order.

The remainder of the proposed order contains standard requirements that proposed respondents maintain advertising and any materials relied upon as substantiation for any representation covered by substantiation requirements of the order; distribute copies of the order to certain company officials and employees; notify the Commission of any change in the corporation that may affect compliance under the order; notify the Commission of any change in employment by the individual proposed respondents, and file one or more reports detailing their compliance with the order. Part XIV of the proposed order is a provision whereby the order, absent certain circumstances, terminates twenty years from the date of issuance.

This proposed order, if issued in final form, will resolve the claims alleged in the complaint against the named respondents. It is not the Commission's intent that acceptance of this consent agreement and issuance of a final decision and order will release any claims against any unnamed persons or entities associated with the conduct described in the complaint.

The purpose of this analysis is to facilitate public comment on the proposed order, and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark

Secretary

[FR Doc. 03–9854 Filed 4–21–03; 8:45 am]

BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–40–03]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project: Application for Training (OMB No. 0920–0017)—Revision—The Public Health Practice Program Office (PHPPO), in conjunction with the Public Health Training, offers self-study, computer-based training, satellite broadcasts, video courses, webcasts, instructor-led field courses, and lab courses related to public health professionals worldwide. Employees of hospitals, universities, medical centers, laboratories, state and federal agencies, and state and local health departments apply for training in an effort to learn up-to-date public health procedures. The "Application for Training" forms are the official applications used for all training activities conducted by the CDC. The Continuing Education (CE) Program includes CDC's accreditation to provide Continuing Medical Education (CME), Continuing Nurse Education (CNE), Certified Health Education Specialist (CHES), and Continuing Education Unit (CEU) for almost all training activities.

The estimated annualized burden is 2,548 hours.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)
National Laboratory Training Network Registration Form, Training Form 32.1	8,500	1	5/60
Registration for Training and Continuing Education, Form 36.5	20,000	1	5/60
Management for International Public Health Course Application Form	25	1	15/60
Student Information Form	5,000	1	2/60

Dated: April 16, 2003.

Thomas A. Bartenfeld,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–9858 Filed 4–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Plan for States/Territories.

OMB No.: 0970–0114.

Description: The Child Care and Development Fund (CCDF) Plan for States and Territories is required from the Child Care Lead Agency by section 658E of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508), 42 U.S.C. 9858. The implementing regulations fior the statutorily required Plan are at 45 CFR 98.10 through 98.18. The Plan, submitted on the ACF–118, is required biennially and remains in effect for two years. This Plan, provides ACF and the public with a description of, and assurance about, the State's child care program. The ACF–118 is approved through February 29, 2004 making it available to States and Territories needing to submit Amendments through the end of the FY 2003 Plan Period. However, in July 2003, States and Territories will be required to submit their FY 2004–2005 Plans. Consistent with the statute and regulations, ACF requests extension of the ACF–118 with minor corrections and modifications. The Tribal Plan (ACF–118A) is not affected by this notice.

Respondents: State and Territorial Lead Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–118	56	.5	162.57	4,552

Estimated Total Annual Burden Hours: 4,552.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, 370 L' Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: April 15, 2003.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 03–9832 Filed 4–21–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0141]

Guidance for Industry and FDA; Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA." This guidance document describes a means by which optical impression systems for the computer assisted design and manufacturing CAD/CAM of dental restorations may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to exempt the type device from premarket notification requirements and establish this guidance document as the special control for the type device. This guidance document is immediately in effect as the special control for optical impression systems for CAD/CAM, but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

DATES: Submit written or electronic comments on this guidance at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments concerning this guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments. Comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Kevin Mulry, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–5283, ext. 185.

SUPPLEMENTARY INFORMATION:

I. Background

The guidance provides FDA's recommendations to manufacturers for evaluating and labeling optical impression systems for CAD/CAM of dental restorations. An optical impression system for CAD/CAM of dental restorations is a device used to record the topographical characteristics of teeth, dental impressions, or stone models by analog or digital methods for use in the computer assisted design and manufacturing of dental restorative prosthetic devices. Such systems may consist of a camera, scanner or equivalent type of sensor and a computer with software.

Following the effective date of the final rule exempting this type of device, manufacturers of optical impression systems for CAD/CAM of dental restorations will need to address the issues covered in this special control guidance. However, the manufacturer need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurances of safety and effectiveness.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule exempting optical impression systems for CAD/CAM of dental restorations from the premarket notification requirements under section 510(m) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360(m)) and establishing this guidance document as the special control for the device.

Section 510(m)(2) of the act provides that 1 day after the date of publication of the list under section 510(m)(1) of the act, FDA may exempt a device on its own initiative, or upon petition of an interested person, if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

Because of the limited timeframes established by section 510(m) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance as a final guidance document. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs regulation (21 CFR 10.115). The guidance represents the agency's current thinking on optical impression systems for CAD/CAM. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). The labeling provisions addressed in the guidance have been approved by OMB under the PRA under OMB control number 0910–0485.

V. Electronic Access

To receive a copy of "Class II Special Controls Guidance Document: Optical Impression Systems for Computer Assisted Design and Manufacturing (CAD/CAM) of Dental Restorations; Guidance for Industry and FDA" by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1203) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at http://www.fda.gov/cdrh. A search capability for all CDRH guidance documents is available at http://www.fda.gov/cdrh/guidance.html. Guidance documents are also available on the Dockets Management Branch Internet site at http://www.fda.gov/ohrms/dockets.

Dated: April 16, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9870 Filed 4–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

[HRSA–03–088]

Rural Access to Emergency Devices (RAED) Grant Program

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that of approximately $12,500,000 for fiscal year (FY) 2003 to provide grants for the purchase, placement and training in the use of automated external defibrillators (AEDs) and related activities in eligible rural areas. HRSA estimates that approximately 50 awards will be made to community partnerships, in collaboration with State Offices of Emergency Medical Services, for FY 2003. This is assuming one award per State. The project period will consist of three years, to include two non-competitive continuations for years two and three. All funding is subject to the availability of funds. These grants will be awarded under the authority of Pub. L. 106–505, Title IV—Cardiac Arrest Survival, Subtitle B—Rural Access to Emergency Devices, 42 U.S.C. 254c, note. The Office of Rural Health Policy will administer the Rural Access to Emergency Devices (RAED) Grant Program.

DATES: Applicants interested in applying for funding under this program are requested to fax or mail a letter of intent to the Office of Rural Health Policy by May 5, 2003, at fax number (301) 443–2803. Mailed letters of intent should be sent to Evan Mayfield, Office of Rural Health Policy, HRSA, Room 9A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. A copy of this letter of intent should also be faxed or mailed to the appropriate State Office of Emergency Medical Services by this same date. The letter of intent need only include the lead applicant's organizational name, proposed number of AEDs requested and a proposed listing of those in their community partnership. The deadline for receipt of applications is June 18, 2003: Applications will be considered on time if they are either received on or before the deadline date in the HRSA Grants Application Center or postmarked on or before the deadline date.

ADDRESSES: To receive an application kit, applicants may telephone the HRSA Grants Application Center at (877) 477–2123 (877–HRSA–123) or the application forms can be downloaded via the Web at *http://www.ruralhealth.hrsa.gov/funding.htm*. The instructions for preparing the applications will be included with the grant guidance as part of the grant application kit. The RAED Grant Program uses PHS Forms 424 and 5161 for applications. Applicants must use the administrative code "RAED," Catalog of Federal Domestic Assistance number 93.259 and HRSA Program Announcement number HRSA03–088 when requesting applications. The CFDA is a Government-wide compendium of enumerated Federal programs, projects, services and activities that provide assistance. All applications must be mailed or delivered to the Grants Management Officer, Office of Rural Health: HRSA Grants Application Center, 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879: telephone (877) 477–2123.

FOR FURTHER INFORMATION CONTACT: Evan Mayfield, Office of Rural Health Policy, HRSA, email address *ruralems@hrsa.gov*, telephone number

(301) 443–0835 and fax number (301) 443–2803.

SUPPLEMENTARY INFORMATION:

(1) Program Background and Objectives

The Rural Access to Emergency Devices Act, 42 U.S.C. 254c, note, authorizes grants to community partnerships to provide for the purchase, placement and training in the use of automated external defibrillators (AEDs) and related activities in eligible rural areas. An applicant must be a multi-county, regional or State-wide consortium of rural community organizations applying as a community partnership. Each community partnership must have a designated lead applicant to apply as the grantee of record and act as a fiscal agent for the partnership. Funding preference will be granted to applications that are State-wide in scope. Preference moves those approved applicants carrying the preference ahead of approved applicants without the preference. A funding priority will be given to State-wide community partnerships that identify their State Office of Emergency Medical Services as the lead applicant and include as partners emergency first response entities (*e.g.*, EMS, law enforcement and fire departments) that are currently operating without AEDs. Priority gives an application additional points during the scoring process of approved applications. In order to qualify as a State-wide community partnership, not every eligible county within the State need apply. However, a State-level office must be the lead applicant. Selected locations for AED placement around the State should be identified by the lead applicant to achieve fair geographical, organizational (*e.g.*, first response versus public access placement) and resource allocation.

The State Office of Emergency Medical Services is a logical lead applicant to administer funding to individual entities within the partnership, given its role in medical direction and regulation. Other State-level offices eligible to accept these Federal grant funds include the State Office of Rural Health or a division within the Department of Health. The State Office of Rural Health is a valuable resource for consulting in public access AED placement for those areas that lack EMS services, or are located too far away to be of practical benefit to a community. Community partnerships that apply without their State Office of Emergency Medical Services as the lead applicant are required to work with the State Office of Emergency Medical Services on issues related to medical direction and integration and placement of AEDs into existing EMS systems. Furthermore, such community partnerships must still demonstrate how they are State-wide in scope.

(2) Eligible Applicants

Applicants must apply in the form of a community partnership. Interested eligible entities are encouraged to collaborate with a wide range of other providers in developing a broad-based consortium that will make up their community partnerships. These partnerships will include local first response entities (*e.g.*, EMS, law enforcement and fire departments). In addition, local for- and non-profit entities that have a demonstrated concern about cardiac arrest survival rates may be included such as, but not limited to, community hospitals or clinics, nursing homes and senior citizen day care facilities, governmental facilities, athletic facilities, faith based and community based organizations and schools.

All services provided by the community partnership must be provided in an eligible rural county or Rural-Urban Commuting Area zip codes. Each State-level office, acting on behalf of the community partnership(s) within its State, will be required to demonstrate how its services will be directed to the eligible rural areas. A complete listing of these eligible rural areas is available on the Web. Eligible rural counties can be found at *http://www.ruralhealth.hrsa.gov/ruralcol.htm* and Rural-Urban Commuting Area zip codes can be found at *http://www.ruralhealth.hrsa.gov/ruralcoZIPII.htm*. Each is sorted by State.

(3) Review Criteria

Applications should be no longer than 40 pages. Incomplete applications, applications in excess of the page limitation, or applications otherwise non-responsive will be returned without further review. Applications that are responsive will be evaluated for technical merit by an objective review panel convened specifically for this solicitation and in accordance with HRSA grants management policies and procedures. Applications will be assessed using the following criteria:

(a) Need for AED equipment and training with documentation using any local standard enumerating average response and transport times (or include a plan on how these times will be recorded if there are no pre-existing records of such) noting mileage to stabilizing and/or definitive care and cardiovascular mortality prevalence rates for the proposed response area(s);

(b) Plan for a need-based placement of AEDs and accessibility plan for those AEDs;

(c) Reasonableness of the proposed budget, including estimated AED purchasing, training and maintenance costs (include maintenance schedule);

(d) How the grant award will be distributed within the community partnership, with identified names of who will receive funding for each entity within the partnership;

(e) A listing of identified and approved CPR and AED training entities;

(f) A listing of who will use the AEDs, and a reference to State laws regulating AED usage;

(g) Integration into local EMS systems ensuring medical direction for documented protocols of care and legal oversight; and

(h) A well-defined data collection and reporting mechanism via their State Office of Emergency Medical Services or the State Office of Rural Health should the former be unable to participate.

A further explanation of these criteria will be included in the grant application guidance.

Use of Funds: RAED grant program funding shall be used to: (1) Purchase automated external defibrillators that have been approved, or cleared for marketing, by the Food and Drug Administration; and (2), provide defibrillator and basic life support training in automated external defibrillator usage through the American Heart Association, the American Red Cross, or other nationally recognized training courses.

Paperwork Reduction Act: The application form for the RAED Grant Program has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (Form–424). Should any of the data collection activities associated with this fall under the purview of the Paperwork Reduction Act of 1995, OMB clearance will be sought.

Public Health System Impact Statement: This program is subject to the Public Health System Reporting Requirements (approved under OMB No. 0937–0195). Under these requirements, the community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprized of proposed health services grant applications submitted by community-based organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit the following information to their local or State health authority, or State Office of Emergency Medical Services as appropriate, no later than the Federal application receipt due date of June 18, 2003:

(a) A copy of the face page of the application (SF 424)

(b) An abstract of the project not to exceed one page, which provides:

(1) A description of the population to be served,

(2) The proposed number of AEDs to be purchased and how many people will be trained within the community partnership,

(3) A description of the coordination planned with the appropriate State agencies (ranging from required notification of AED placement to such agency agreeing to being the lead applicant and/or fiscal agent of a State-wide community partnership should they choose to).

Executive Order 12372

This grant program is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate State and local officials as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which will be included in the application kit, as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. All SPOC recommendations should be submitted to Darren Buckner, Office of Grants Management, HIV/AIDS Bureau, 5600 Fishers Lane, Room 11A–16, Rockville, Maryland 20857, (301) 443–1913. The due date for State process recommendations is 60 days after the application deadline of June 18, 2003, for competing applications for the RAED Grant Program. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date. See part 148 of the PHS Grants Administration Manual, Intergovernmental Review of PHS Programs under Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.

Dated: February 4, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–9872 Filed 4–21–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Practitioner Data Bank: Change in User Fees

AGENCY: Health Resources and Services Administration, DHHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA), Department of Health and Human Services (DHHS), is announcing a seventy-five cent decrease in the fee charged to entities authorized to request information from the National Practitioner Data Bank (NPDB) for all queries. The new fee will be $4.25. There will be no change to the $10.00 self-query fee.

DATES: The new fee is effective on July 1, 2003.

FOR FURTHER INFORMATION CONTACT: John Heyob, Director, Division of Practitioner Data Banks, Bureau of Health Professions, Health Resources and Services Administration, 7519 Standish Place, Suite 300, Rockville, Maryland 20857. Tel: (301) 443–2300. Email: *policyanalysis@hrsa.gov*.

SUPPLEMENTARY INFORMATION: The current fee structure ($5.00 per name) was announced in the **Federal Register** on July 11, 2001 (66 FR 36289) and became effective October 1, 2001. All entity queries are submitted and query responses received through the NPDB's Integrated Query and Reporting Service (IQRS) and paid via an electronic funds transfer or credit card.

The NPDB is authorized by the Health Care Quality Improvement Act of 1986 (the Act), Title IV of Pub. L. 99–660, as amended (42 U.S.C. 11101 *et seq.*). Section 427(b)(4) of the Act authorizes the establishment of fees for the costs of processing requests for disclosure and of providing such information.

Final regulations at 45 CFR part 60 set forth the criteria and procedures for information to be reported to and disclosed by the NPDB. Section 60.3 of these regulations defines the terms used in this announcement.

In determining any changes in the amount of the user fee, the Department uses the criteria set forth in § 60.12 (b) of the regulations, as well as allowable costs pursuant to Title II, Division G, Labor, Health and Human Services, Education, and Related Agencies Appropriation of the Consolidated Appropriations Resolution, 2003, Pub. L. 108–7, enacted on February 20, 2003. This Act requires that the Department recover the full costs of operating the Data Bank through user fees. Paragraph (b) of the regulations states:

"The amount of each fee will be determined based on the following criteria:

(1) Use of electronic data processing equipment to obtain information—the actual cost for the service, including computer search time, runs, printouts, and time of computer programmers and operators, or other employees, (2) Photocopying or other forms of reproduction, such as magnetic tapes—actual cost of the operator's time, plus the cost of the machine time and the materials used, (3) Postage—actual cost, and (4) Sending information by special methods requested by the applicant, such as express mail or electronic transfer—the actual cost of the special service."

Based on analysis of the comparative costs of the various methods for filing and paying for queries, the Department is reducing all the entity query fees by $0.75 per name. The practitioner self-query fee remains at $10. This price decrease is justified after an evaluation of the Data Bank's operational costs. The implementation of the Data Bank's all-electronic process for querying, reporting, and payment, the Web-based IQRS system, has resulted in a decrease in the Data Bank operating expenditures. In keeping with the Act, and pursuant to the requirements of § 60.2 of the regulations, there are sufficient funds to recover the full costs of operating the Data Bank with a decrease in the user fee.

When a query is for information on one or more physicians, dentists, or other health care practitioners, the appropriate fee will be $4.25 multiplied by the number of individuals about whom information is being requested. For examples, see the table below.

Query method	Fee per name in query	Examples
Entity query (Via Internet with electronic payment)	$4.25	10 names in query. 10 × $4.25 = $42.50.
Practitioner self-query	10.00	One self-query = $10.00.

The Department will continue to review the user fee periodically, and will revise it as necessary. Any changes in the fee and their effective date will be announced in the **Federal Register**.

Dated: April 9, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–9871 Filed 4–21–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Healthcare Integrity and Protection Data Bank: Change in User Fees

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: In accordance with final regulations at 45 CFR part 61, implementing the Healthcare Integrity and Protection Data Bank (HIPDB), the department is authorized to assess a fee on all requests for information, except requests from Federal agencies. In accordance with § 61.13 of the HIPDB regulations, the department is announcing an adjustment from $5 to $4.25 in the fee charged for each query submitted by authorized entities to access the data bank. There will be no change to the current $10 self-query fee.

EFFECTIVE DATE: July 1, 2003.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Counsel to the Inspector General, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

User Fee Amount

Section 1128E(d)(2) of the Social Security Act (the Act), as added by section 221(a) of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, specifically authorizes the establishment of fees for the costs of processing requests for disclosure and for providing information from the Healthcare Integrity and Protection Data Bank (HIPDB). Final regulations at 45 CFR part 61 set forth the criteria and procedures for information to be reported to and disclosed by the HIPDB. The Act also requires that the department recover the full costs of operating the HIPDB through such user fees. In determining any changes in the amount of the user fee, the department employs the criteria set forth in § 61.13(b) of the HIPDB regulations.

Specifically, § 61.13(b) states that the amount of each fee will be determined based on the following criteria:

- Direct and indirect personnel costs;
- Physical overhead, consulting, and other indirect costs including rent and depreciation on land, buildings and equipment;
- Agency management and supervisory costs;
- Costs of enforcement, research and establishment of regulations and guidance;
- Use of electronic data processing equipment to collect and maintain information, *i.e.*, the actual cost of the service, including computer search time, runs and printouts; and
- Any other direct or indirect costs related to the provision of services.

The current fee structure of $5 for each separate query submitted by authorized entities was announced in a **Federal Register** notice on June 11, 2001 (66 FR 31245), and became effective on October 1, 2001. Based on the above criteria and our analysis of operational costs and the comparative costs of the various methods for filing and paying for queries, the department is now lowering the fee by 75 cents for each query submitted by authorized entities—from $5 to $4.25.[1]

When an authorized entity query is submitted for information on one or more health care practitioners, providers or suppliers, the appropriate total fee will be $4.25 multiplied by the number of individuals or organizations about whom information is being requested.

In order to minimize administrative costs, the department will accept queries submitted by authorized entities by credit card or electronic funds transfer. The department will continue to accept payment for self-queries only by credit card. The HIPDB accepts Visa, MasterCard, and Discover. To submit queries, registered entities (including law enforcement agencies) must use the HIPDB Web site at *www.npdb-hipdb.com*.

The department will continue to review the user fee periodically, and will revise it as necessary. Any future changes in the fee and its effective date will be announced through notice in the **Federal Register**.

Examples

Query method	Fee per name in query, by method of payment	Examples
Authorized Entity query	$4.25	10 names in query: 10 × $4.25 = $42.50.
Self-query	$10.00	10 self-queries: 10 × 10 = $100.

[1] As part of its obligations under the Privacy Act, the department previously announced a $10 fee for health care practitioners, providers or suppliers to self-query (64 FR 58851; November 1, 1999). The practitioner self-query fee will continue to remain at $10.

Dated: March 27, 2003.

Dennis J. Duquette,

Acting Principal Deputy Inspector General.

[FR Doc. 03–9873 Filed 4–21–03; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Demonstration and Education Research.

Date: July 28, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: Patricia A. Haggerty, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9921 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Functional Heterogeneity of the Peripheral Pulmonary and Lymphatic Vessels.

Date: June 10–11, 2003.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: David A. Wilson, PhD., Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7204, MSC 7924, Bethesda, MD 20892, (301) 435–0929.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9922 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Food and Nutrient Systems for Research.

Date: June 3, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Suite 7200, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Patricia A. Haggerty, PhD., Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9923 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Loan Repayment Program—MRDD.

Date: May 8, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9913 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: May 15–16, 2003.

Closed: May 15, 2003, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building 45, Conference Rooms E1, and E2, Bethesda, MD 20892.

Open: May 15, 2003, 10:30 a.m. to 5 p.m.

Agenda: For discussion of program policies and issues, opening remarks, report of the Director, NIGMS, new potential opportunities and other business of the council.

Place: National Institutes of Health, Natcher Building 45, Conference Rooms E1, and E2, Bethesda, MD 20892.

Closed: May 16, 2003, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building 45, Conference Rooms E1 and E2, Bethesda, MD 20892.

Contact Person: Norka Ruiz Bravo, PhD, Associate Director for Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24G, Bethesda, MD 20892, (301) 594–4499.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.nigms.nih.gov/about/advisory_council.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: April 15, 2003.

LaVerna Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9914 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: May 20–21, 2003.

Closed: May 20, 2003, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31/Conference Room 10, Bethesda, MD 20892.

Open: May 21, 2003, 8 a.m. to 2 p.m.

Agenda: Call to Order, Task Force on Minority Aging Research Report; Working Group on Program/Clinical Investigators Working Group/NNA Program Review reports; and HIPAA presentation.

Place: National Institutes of Health, Building 31/Conference Room 10, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, (301) 496–9322.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *www.nih.gov/nia/naca/*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: April 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9916 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering.

Date: May 29–30, 2003.

Closed: May 29, 2003, 8:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D, Rockville, MD 20852.

Open: May 29, 2003, 1 p.m. to 4:30 p.m.

Agenda: The council will discuss various training concepts.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C/D, Rockville, MD 20852.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, (301) 451–4776, *harmonj@nibib.nih.gov.*

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering Training and Career Development Subcommittee.

Date: May 30, 2003.

Open: 8 a.m. to adjournment.

Agenda: Discussion of training and career development objectives.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room C, Rockville, MD 20852.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, (301) 451–4776, *harmonj@nibib.nih.gov.*

Name of Committee: National Advisory Council for Biomedical Imaging and Bioengineering Strategic Plan Development Subcommittee.

Date: May 30, 2003.

Open: 8 a.m. to adjournment.

Agenda: The subcommittee will discuss the strategic plan development.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room D, Rockville, MD 20852.

Contact Person: Joan T. Harmon, Director, Division of Extramural Activities, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Blvd., Suite 200, Bethesda, MD 20892, (301) 451–4776, *harmonj@nibib.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Dated: April 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9917 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: May 19, 2003.

Open: 8:30 a.m. to 2 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: 2 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Anne P Sassaman, Ph.D, Director, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233, Research Triangle, Park, NC 27709, (919) 541–7723.

Information is also available on the Institute's/Center's Home page: *www.niehs.nih.gov/dert/c-agenda.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9918 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Infrastructure, Neuroinformatics, and Computational Neuroscience Subcommittee.

Date: May 22, 2003.

Open: 8 a.m. to 9:15 a.m.

Agenda: To discuss research mechanisms and infrastructure needs.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F, Bethesda, MD 20892.

Closed: 9:15 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F, Bethesda, MD 20892.

Contact Person: Robert Baughman, MD, Associate Director for Technology Development, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2137, MSC 9527, Bethesda, MD 20892–9527, (301) 496–1779.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Clinical Trials Subcommittee.

Date: May 22, 2003.

Open: 8 a.m. to 8:30 a.m.

Agenda: To discuss clinical trials policy.

Place: National Institutes of Health, Natcher Building, 45 Center Drive Conference Room E1/E2, Bethesda, MD 20892.

Closed: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: May 22–23, 2003.

Open: May 22, 2003, 10:30 a.m. to 5 p.m.

Agenda: Report by the Acting Director, NINDS; Report by the Director, Division of Extramural Research and other administrative and program developments.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: May 23, 2003, 8 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders, 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9919 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting of the National Advisory Neurological Disorders and Stroke Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Training Subcommittee.

Date: May 21, 2003.

Time: 8 p.m. to 10 p.m.

Agenda: To discuss the training programs of the Institute.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Information is also available on the Institute's/Center's Home page: *www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 11, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–9920 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Library and Informatics Review Committee.

Date: June 18–19, 2003.

Time: June 18, 2003, 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 38, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Time: June 19, 2003, 8 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 38, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Merlyn M. Rodrigues, MD, PhD, Scientific Review Adm., National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institues of Health, HHS.)

Dated: April 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Fedearl Advisory Committee Policy.

[FR Doc. 03–9915 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Use of the Domain-Swapped Dimer of Cyanovirin (deltaQ50–CVN) in a Topical Microbicide To Prevent the Transmission of HIV and Other Sexually Transmitted Diseases

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in:

U.S. Patent Application, S/N 60/359,360, filed: 2/25/2002, entitled "An Obligate Domain-Swapped Dimer of Cyanovirin with Enhanced Anti-viral Activity" (PHS Reference No. E–096–2002)

to Biosyn, Inc., of Philadelphia, PA. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before June 23, 2003, will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Sally Hu, Ph.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5606; Facsimile: (301) 402–0220, e-mail: *hus@od.nih.gov*.

SUPPLEMENTARY INFORMATION: The patent application describes a novel protein, obligate domain-swapped dimer of Cyanovirin-N (CVN), discovered by Dr. Carole A. Bewley at the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK). The obligate domain-swapped dimer of Cyanovirin-N (CVN) displays enhanced anti-HIV activity relative to the wild-type CVN monomer and offers a great advantage over wild-type CVN because it is extremely easy to purify large quantities to greater than 98% homogeneity. So, it may open the possibility that an effective drug treatment for the human immunodeficiency virus (HIV) could reach underdeveloped countries.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to compositions, devices and methods for the prevention of infection by HIV and other sexually transmitted pathogens, topically, but not systemically, utilizing the obligate domain-swapped dimer cyanovirin-N, anti-HIV mutants of the obligate domain-swapped dimer cyanovirin-N, and anti-HIV fragments of both, but excluding pegylated the domain-swapped dimer cyanovirin-N, pegylated anti-HIV mutants of the dimer cyanovirin-N and pegylated anti-HIV fragments of both.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 11, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–9925 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: The Systemic In Vivo Use of the Domain-Swapped Dimer of Cyanovirin (DeltaQ50–CVN) as a Prophylactic or Therapeutic Against HIV and Enveloped Viruses That Cause Hemorrhagic Fever; the Ex Vivo Use of the Domain-Swapped Dimer of Cyanovirin (DeltaQ50–CVN) To Remove or Inactivate HIV in Fluid Samples

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in:

U.S. Patent Application, S/N 60/359,360, filed: 2/25/2002, entitled "An Obligate Domain-swapped Dimer of Cyanovirin with Enhanced Anti-viral Activity" (PHS Reference No. E–096–2002)

to OmniViral Therapeutics LLC, of Germantown, MD. The patent rights in this invention have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before June 23, 2003 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Sally Hu, Ph.D., M.B.A.,

Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 435–5606; Facsimile: (301) 402–0220, e-mail: *hus@od.nih.gov*.

SUPPLEMENTARY INFORMATION: The patent application describes a novel protein, obligate domain-swapped dimer of Cyanovirin-N (CVN), discovered by Dr. Carole A. Bewley at the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK). The obligate domain-swapped dimer of Cyanovirin-N (CVN) displays enhanced anti-HIV activity relative to the wild-type CVN monomer and offers a great advantage over wild-type CVN because it is extremely easy to purify large quantities to greater than 98% homogeneity. So, it may open the possibility that an effective drug treatment for the human immunodeficiency virus (HIV) could reach underdeveloped countries.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to:

1. Compositions, devices and methods for the prevention and treatment of HIV infection and infections caused by enveloped viruses causing hemorrhagic fever, systemically, but not topically, utilizing obligate domain-swapped dimer of Cyanovirin-N, anti-HIV mutants of obligate domain-swapped dimer of Cyanovirin-N, and anti-HIV fragments of both;

2. Compositions, devices and methods for the ex vivo removal or inactivation of HIV from fluid samples, utilizing obligate domain-swapped dimer of Cyanovirin-N, anti-HIV mutants of obligate domain-swapped dimer of Cyanovirin-N, and anti-HIV fragments of both;

but excluding pegylated obligate domain-swapped dimer of Cyanovirin-N, pegylated anti-HIV mutants of obligate domain-swapped dimer of Cyanovirin-N and pegylated anti-HIV fragments of both.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 11, 2003.

Steven M. Ferguson,

Acting Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 03–9924 Filed 4–21–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting, Advisory Committee for the National Urban Search and Rescue Response System

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate (EP&R), Department of Homeland Security.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App.), we, EP&R, announce the following committee meeting:

Name: National Urban Search and Rescue Response System Advisory Committee.

Date of Meeting: April 30–May 1, 2003.

Place: Holiday Inn Capital, 550 C Street, Apollo Room, Washington, DC 20024.

Time: April 30: 8 a.m.–4 p.m.
May 1: 8 a.m.–4 p.m.

Proposed Agenda: The Committee will receive a program update that will address the status of ongoing program activities, including recent training and exercises. The committee will consider current and future program requirements and will make recommendations for budget allocations and requests for Fiscal Years 2004 and 2005. The Committee will also discuss urban search and rescue task force operational status and transportation issues. The Committee will review the current status of proposed urban search and rescue regulations and system documentation revisions. Finally, the committee will review priorities for its subordinate working groups for the remainder of Fiscal Year 2003.

The meeting will be open to the public, with approximately 20 seats available on a first-come, first-served basis. All members of the public interested in attending should contact Michael Tamillow at 202–646–3498.

We will prepare minutes of the meeting and will make them available for public viewing at the Emergency Preparedness and Response Directorate, Preparedness Division, Urban Search and Rescue (US&R), 500 C Street, SW., Room 326, Washington, DC 20472. Copies of the minutes will be available upon request 30 days after the meeting.

Dated: April 15, 2003.

Michael D. Brown,

Undersecretary, Emergency Preparedness and Response.

[FR Doc. 03–9868 Filed 4–21–03; 8:45 am]

BILLING CODE 6718–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Agency Draft Recovery Plan for Five Freshwater Mussels—Cumberland Elktoe (*Alasmidonta atropurpurea*), Oyster Mussel (*Epioblasma capsaeformis*), Cumberlandian Combshell (*Epioblasma brevidens*), Purple Bean (*Villosa perpurpurea*), and Rough Rabbitsfoot (*Quadrula cylindrica strigillata*)—for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of the agency draft recovery plan for five freshwater mussels—Cumberland elktoe (*Alasmidonta atropurpurea*), oyster mussel (*Epioblasma capsaeformis*), Cumberlandian combshell (*Epioblasma brevidens*), purple bean (*Villosa perpurpurea*), and rough rabbitsfoot (*Quadrula cylindrica strigillata*). These species are endemic to the Cumberland and Tennessee River systems in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. Recent research has greatly increased our understanding of the ecology of these species. The agency draft recovery plan includes specific recovery objectives and criteria to be met in order to downlist these mussels to threatened status or delist them under the Endangered Species Act of 1973, as amended (Act). We solicit review and comment on this agency draft recovery plan from local, State, and Federal agencies, and the public.

DATES: In order to be considered, we must receive comments on the draft recovery plan on or before June 23, 2003.

ADDRESSES: If you wish to review this agency draft recovery plan, you may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 828/258–3939), or by visiting our recovery plan Web site at *http://endangered.fws.gov/recovery/index.html #plans*. If you wish to comment, you may submit your comments by any one of several methods:

1. You may submit written comments and materials to the State Supervisor, at the above address.

2. You may hand-deliver written comments to our Asheville Field Office, at the above address, or fax your comments to (828)258–5330.

3. You may send comments by e-mail to *bob_butler@fws.gov*. For directions on how to submit electronic filing of comments, *see* the "Public Comments Solicited" section.

Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Bob Butler at the above address (Telephone 828/258–3939, Ext. 235).

SUPPLEMENTARY INFORMATION:

Background

We listed these five mussels as endangered species under the Act, on January 10, 1997. The five freshwater mussels are restricted to either the Cumberland River system (Cumberland elktoe), the Tennessee River system (purple bean and rough rabbitsfoot), or both of these river systems (oyster mussel and Cumberlandian combshell). They once existed in hundreds of stream miles and now survive in only a few relatively small, isolated populations in Alabama, Kentucky, Mississippi, Tennessee, and Virginia. Currently they are found in the Clinch River (Tennessee and Virginia), Duck River (Tennessee), Nolichucky River (Tennessee), Powell River (Tennessee and Virginia), Bear Creek (Alabama and Mississippi), Beech Creek (Tennessee), Buck Creek (Kentucky), Copper Creek (Virginia), Indian Creek (Virginia), Marsh Creek (Kentucky), Sinking Creek (Kentucky), Laurel Fork (Kentucky), Big South Fork (Kentucky and Tennessee), and several tributaries in the Big South Fork drainage (Rock Creek, in Kentucky; and the New River, Clear Fork, North Prong Clear Fork, Bone Camp Creek, Crooked Creek, North White Oak Creek, and White Oak Creek, all in Tennessee).

Habitat alteration continues to be the major threat to the continued existence of these species. This includes the negative effects of impoundments, channelization, mining, pollutants, sedimentation, and construction activities. Alien species (*e.g.*, the zebra mussel, *Dreissena polymorpha*) and genetic factors associated with increasingly small and isolated populations are also factors contributing to the continued imperilment of these five mussels.

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the endangered species program. To help guide the recovery effort, we are preparing recovery plans for most listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for downlisting or delisting, and estimate time and cost for implementing recovery measures.

The Endangered Species Act of 1973, as amended (16 U.S.C. *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires us to provide a public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

We developed a technical draft of this recovery plan and released it for review by the professional community in 1998. We incorporated received comments where appropriate into this subsequent agency draft recovery plan, which we are now making available for review by all interested agencies and parties, including the general public.

The objective of this draft plan is to provide a framework for the recovery of these five species so that protection under the Act is no longer necessary. As recovery criteria are met, the status of the species will be reviewed and they will be considered for removal from the *Federal List of Endangered and Threatened Wildlife and Plants* (50 CFR part 17).

Public Comments Solicited

We solicit written comments on the recovery plan described. We will consider all comments received by the date specified above prior to final approval of the plan.

Please submit electronic comments as an ASCII file format and avoid the use of special characters and encryption. Please also include your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Asheville Field Office (*see* **ADDRESSES** section).

Our practice is to make all comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. In some circumstances, we would withhold also from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: April 4, 2003.

J. Mitch King,

Deputy Regional Director, Southeast Region, Fish and Wildlife Service.

[FR Doc. 03–9859 Filed 4–21–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Office of the Special Trustee for American Indians

Working Group on Land Consolidation Program: Call for Nominations

AGENCIES: Bureau of Indian Affairs, Interior, Office of the Special Trustee for American Indians, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) and the Office of the Special Trustee for American Indians (OST) in the Department of the Interior intend to assemble a working group to address the rapidly increasing fractionation of

ownership of Indian land. This fractionation is due to the system of allotments established by the General Allotment Act of 1887. The President's fiscal year (FY) 2004 Budget, which is now before Congress, incorporates a request for a significant increase for the Indian Land Consolidation program aimed at reducing the number of individual owners in parcels of Indian lands allotted to individuals. This notice serves as a call for nominations of Tribal officials to participate in a working group to discuss the issue of fractionation, problems caused by fractionation, and the universe of possible solutions.

DATES: All nominations must be postmarked within 30 days of the date of publication in the **Federal Register**. Final selections will be made by and served at the discretion of the Deputy Commissioner for Indian Affairs and the Special Trustee for American Indians.

FOR FURTHER INFORMATION CONTACT: You can obtain information and a copy of the Call for Nominations at the following offices: ATTN: Terry Virden, Deputy Commissioner for Indian Affairs, Bureau of Indian Affairs, Room 4160, 1849 C Street, NW., Washington, DC 20240, or ATTN: Donna Erwin, Acting Special Trustee, Office of the Special Trustee for American Indians, Room 5140, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The allotment of Indian lands—dividing tribal lands into small parcels and allocating those parcels to individual Indians—became Federal policy in 1887 with the enactment of the General Allotment Act. By the 1930s, however, it was widely accepted that the policy was a failure and, in 1934, it was ended with passage of the first Indian Reorganization Act. Interests in these allotted lands started to "fractionate" as interests divided among the heirs of the original allottees, expanding rapidly with every generation.

Today, there are approximately four million owner interests in the 10 million acres of individually-owned trust lands, and these four million interests could expand to 11 million interests by 2030. Moreover, there are an estimated 1.4 million fractional interests of 2 percent or less involving 58,000 tracks of individually-owned trust and restricted lands. There are now single pieces of property with ownership interests that are less than 0.000002 percent of the whole interest.

Addressing this issue is critical to improving the management of trust assets. The Department of the Interior, the Department in which the BIA and OST are located, is bound by its trust obligations to manage each owner's interest, regardless of size. Reduction of fractional interests will increase the likelihood of more productive economic use of the land, reduce record keeping and large numbers of small dollar financial transactions, and decrease the number of interests subject to probate.

Starting in 2004, the BIA will oversee the National Indian Land Consolidation Program. The BIA and OST are now establishing a working group that will consist of Tribal leaders and Departmental personnel to discuss fractionation, the problems associated with fractionation, and possible solutions to problems. The BIA and OST are interested in receiving nominations of Tribal officials from Tribes with highly fractionated lands or other Tribal officials having a strong interest in resolving the problem of fractionation who would participate in this working group. Participants should be prepared to engage in serious dialog on all matters relating to the problem of fractionation of Indian lands. Nominees should be committed to spending a significant amount of time reviewing existing statutes and programs, discussing the issues within a diverse working group, and exploring creative solutions to the problems discussed. Participation should plan to meet approximately once per month from June through August 2003. Travel and per diem expenses will be provided.

Tribal officials who have been nominated to serve as a member of this working group must complete and submit the following information to the BIA or OST at the address listed above in the section titled **ADDRESSES AND FOR FURTHER INFORMATION CONTACT** within 30 days of publication of this Notice in the **Federal Register**:

A. Nominee's Full Name:
B. Business Address:
C. Business Phone:
D. Home Address:
E. Home Phone:
F. Title/Position in Tribe:
G. Qualifications (*e.g.*, education, experience, or whether you are a Tribal official owning lands with fractionated interests):
H. Nominated by: Include Nominator's Name, Address and Telephone Number(s).
I. Date of Nomination.
J. A minimum of Two Letters of Reference.
K. A brief Summary or Explanation of Specific Methods, Conceptions, or Proposals That You Will be Prepared to Discuss With the Working Group Regarding Potential Solutions to Fractionation and Problems Associated with Fractionation.

Groups may nominate more than one person. If nominating more than one person, please indicate your preferred order of appointment selection.

Dated: April 11, 2003.

Richard V. Fitzgerald,

Trust Policy Manager.

Dated: April 15, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–9840 Filed 4–21–03; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Working Group on the Re-Engineering ("To-Be") Process and Fiduciary Trust Improvement Efforts: Call for Nominations

AGENCIES: Bureau of Indian Affairs and Office of the Special Trustee for American Indians, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) and the Office of the Special Trustee for American Indians (OST) in the Department of the Interior (Department) are seeking to assemble a working group to provide input and comment on the re-engineering process and fiduciary trust improvement efforts. The department has worked extensively on examining the current fiduciary trust management practices and ways to improve and change how the Department manages the Indian fiduciary trust. The Trust Business Process Modeling Team completed numerous regional workshops allowing for the BIA, OST, Minerals Management Service, Bureau of Land Management, Office of Hearings and Appeals and Tribal entities to document their current fiduciary trust management practices ("As-Is" process). During these workshop discussions, a baseline model for each core trust business process was closely reviewed, analyzed and commented on by Interior and Tribal staff responsible for performing the fiduciary trust functions. The information collected from these discussions will serve as the foundation for re-engineering the management of trust assets ("To-Be" process). This notice serves as a call for nominations of Tribal officials to participate in a working group to discuss the processes and provide input and comments on potential alternatives on how the fiduciary trust process should be improved and administered.

DATES: All nominations must be postmarked within 30 days of the date of publication in the **Federal Register**. Final selections will be made by and served at the discretion of the Deputy Commissioner for Indian Affairs and the special Trustee for American Indians.

FOR FURTHER INFORMATION CONTACT: You can obtain information and a copy of the Call for Nominations at the following offices: ATTN: Terry Virden, Deputy Commissioner for Indian Affairs, Bureau of Indian Affairs, Room 4160, 1849 C Street, NW., Washington, DC 20240; or ATTN: Donna Erwin, Acting Special Trustee, Office of the Special Trustee for American Indians, Room 5140, 1849 C Street, NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The Electronic Data Systems (EDS) Corporation, in its January 2002 Trust Reform Report, recommended that the Department develop an accurate, current state model to include business processes, internal controls, and associated information technology. The Department has been working extensively on documenting the business processes currently employed in managing the Indian fiduciary trust. Through this process, the Department established a comprehensive understanding of current trust business operations, identified needs and opportunities for improvement, and was able to understand the variances among geographic regions, and their causes.

After completing the "As-Is" phase review, detailed recommendations will be developed for adjusting business processes, where appropriate. The Department will integrate the final "To-Be" model porcesses with universal support and operational functions, and these reengineered business processes will be documented with appropriate policies, procedures, guidelines and handbooks.

The Department, through the BIA and OST, is now establishing a working group that will consist of Tribal officials and Departmental personnel to discuss the re-engineered processes. The working group will provide input and comment on potential alternatives on how the fiduciary trust process could be improved and administered. Participants should be prepared to engage in serious dialogue on all matters relating to the fiduciary trust management process. Nominees should be committed to spending a significant amount of time reviewing existing statutes and programs, discussing the issues within a diverse working group, and exploring creative solutions to the problems discussed. Participants should plan to meet approximately once per month from June through August 2003. Travel and per diem expenses will be provided.

Tribal officials who have been nominated to serve to this working group must complete and submit the following information to the BIA or OST at the address listed above in the section titled **FOR FURTHER INFORMATION CONTACT** within 30 days of publication of this Notice in the **Federal Register:**

A. Nominee's Full Name:
B. Business Address:
C. Business Phone:
D. Home Address:
E. Home Phone:
F. Title/Position in Tribe:
G. Qualifications (*e.g.*, education, experience, or whether you are an individual or tribal account holder):
H. Nominated by: Include Nominator's name, address and telephone number(s).
I. Date of nomination:
J. Two or three Letters of Reference:
K. A brief summary or explanation of areas of expertise that you or your nominee will be prepared to discuss with the working group regarding fiduciary trust improvement efforts.

Groups may nominate more than one person. If nominating more than one nominee, please indicate your preferred order of appointment selection.

Dated: April 11, 2003.

Richard V. Fitzgerald,

Trust Policy Manager.

Dated: April 15, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–9839 Filed 4–21–03; 8:45 am]

BILLING CODE 4310–02–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–227]

Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers and Beneficiary Countries

AGENCY: International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with the 2002 biennial report.

EFFECTIVE DATE: April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Walker Pollard (202–205–3228), Country and Regional Analysis Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background: Section 215(a) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)), as amended, requires that the Commission submit biennial reports to the Congress and the President regarding the economic impact of the Act on U.S. industries and consumers, and on beneficiary countries. Section 215(b)(1) requires that the reports include, but not be limited to, an assessment regarding:

(1) The actual effect of CBERA on the U.S. economy generally as well as on specific domestic industries which produce articles that are like, or directly competitive with, articles being imported from beneficiary countries under the Act; and

(2) The probable future effect of CBERA on the U.S. economy generally and on such domestic industries.

Notice of institution of the investigation and the schedule for such reports was published in the **Federal Register** of May 14, 1986 (51 FR 17678). The 16th report, covering calendar year 2002, is to be submitted by September 30, 2003.

Written Submissions: The Commission does not plan to hold a public hearing in connection with the preparation of this 16th report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than the close of business on June 30, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E St., SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (Nov. 8, 2002).

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202)

205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

Issued: April 16, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9851 Filed 4–21–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–462]

Certain Compact Disc and DVD Holders; Notice of Commission Decision Not To Review an Initial Determination Finding the Two Remaining Respondents in Default, and Request for Submissions on Remedy, the Public Interest, and Bonding

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission ("the Commission") has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") finding respondents Wah-De Electron Co., Ltd ("Wah-De") and Dragon Star Magnetics, Inc. ("Dragon Star") in default. In connection with final disposition of the investigation, the Commission is requesting briefing on remedy, the public interest, and the appropriate bond during the period of Presidential review.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3105. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on October 22, 2002, based on a complaint filed by DuBois Limited of the United Kingdom ("DuBois") against eight respondents, including Wah-De and Dragon Star. The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation, sale for importation, or sale within the United States after importation of certain compact discs and DVD holders by reason of infringement of U.S. Design Patent No. D441,212. In previously-issued IDs (Orders Nos. 10 and 11), which the Commission determined not to review, the ALJ terminated the investigation as to the other six respondents in the investigation.

Neither Wah-De nor Dragon Star filed responses to the complaint, the notice of investigation, the ALJ's discovery order or the discovery requests from DuBois and the Commission investigative attorney (IA). On February 12, 2003, DuBois moved pursuant to section 337(g) and Commission rule 210.16(b) for issuance of an order directing those respondents to show cause why they should not be found in default. DuBois' motion also requested that, upon their failure to show cause, an ID be issued finding Wah-De and Dragon Star in default, and that a limited exclusion order be entered immediately against those respondents. On March 7, 2003, the IA filed a response supporting the request for a show cause order, and the entry of default findings if Wah-De and Dragon Star failed to respond to an order to show cause. On March 7, 2003, the ALJ issued Order No. 12, which ordered Wah-De and Dragon Star to show cause by March 18, 2003, why they should not be found in default. Wah-De and Dragon Star did not respond to the order to show cause. On March 21, 2003, the ALJ issued the subject ID finding Wah-De and Dragon Star in default. No petitions for review of the ID were filed.

Under Commission rule 210.16(b)(3), 19 CFR 210.16(b)(3), Wah-De and Dragon Star are deemed to have waived their right to appear, to be served with documents, and to contest the allegations at issue in this investigation. Section 337(g)(1), 19 U.S.C. 1337(g)(1) and Commission rule 210.16(c), 19 CFR 210.16(c), authorize the Commission to order limited relief against a respondent found in default unless, after consideration of public interest factors, it finds that such relief should not issue. In this investigation, Wah-De and Dragon Star have been found in default and DuBois has requested issuance of a limited exclusion order that would deny entry to certain compact disc and DVD holders imported by Wah-De and Dragon Star. If the Commission decides to issue a limited exclusion order against Wah-De and Dragon Star, it must consider what the amount of the bond should be during the Presidential review period.

In connection with the final disposition of this investigation, the only potential remedy is the issuance of a limited exclusion order that could result in the exclusion from entry into the United States of certain compact disc and DVD holders imported by Wah-De and Dragon Star. Accordingly, the Commission is interested in receiving written submissions that address whether such an order should be issued against either or both respondents. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, it should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, *see* Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

If the Commission contemplates a remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that a remedial order would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission issues a limited exclusion order against Wah-De and/or Dragon Star, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under bonds in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bonds that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested parties are encouraged to file written submissions on remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit a proposed limited exclusion order for the Commission's consideration. The written submissions and proposed limited exclusion order must be filed no later than close of business on May 6, 2003. Reply submissions, if any, must be filed no later than the close of business on May 13, 2003. No further submissions on these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file with the Office of the Secretary the original document and 14 true copies thereof on or before the deadlines stated above. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* section 201.6 of the Commission's rules of practice and procedure, 19 CFR 201.6. Documents for which confidential treatment by the Commission is sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and sections 210.16 and 210.42 of the Commission's rules of practice and procedure, 19 CFR 210.16 and 210.42.

Issued: April 16, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9849 Filed 4–21–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1033 (Preliminary)]

Hydraulic Magnetic Circuit Breakers From South Africa

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1033 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from hydraulic magnetic circuit breakers from South Africa, provided for in subheadings 8535.21.00, 8535.29.00, and 8536.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by May 29, 2003. The Commission's views are due at Commerce within five business days thereafter, or by June 5, 2003.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted in response to a petition filed on April 14, 2003, by Airpax Corp., Cambridge, MD.

Participation in the investigation and public service list.—Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on May 5, 2003, at the U.S. International Trade Commission Building, 500 E Street, SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187) not later than May 1, 2003, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has

testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 8, 2003, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: April 16, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–9850 Filed 4–21–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed extension of "General Inquiries to State Agency Contacts." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 23, 2003.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Labor Statistics (BLS) awards funds to State agencies in the 50 States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, and American Samoa (hereinafter referred to as the "States") in order to jointly conduct BLS/State Labor Market Information and Occupational Safety and Health Statistics cooperative statistical programs, which themselves have been approved by OMB separately, as follows:

Current Employment Statistics—1220–0011
Local Area Unemployment Statistics—1220–0017
Occupational Employment Statistics—1220–0042
Employment and Wages Report—1220–0012
Annual Refiling Survey—1220–0032
Multiple Worksite Report—1220–0134
Mass Layoff Statistics—1220–0090
Annual Survey of Occupational Injuries & Illnesses—1220–0045
Census of Fatal Occupational Injuries—1220–0133

(This list of BLS/State cooperative statistical programs may change over time.)

To ensure the timely flow of data and to be able to evaluate and improve the programs, it is necessary to conduct ongoing communications between BLS and its State partners. Whether information requests deal with program deliverables, program enhancements, or administrative issues, questions and dialogue are crucial to the successful implementation of these programs.

II. Desired Focus of Comments

The BLS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g., permitting electronic submissions of responses.*

III. Current Action

Office of Management and Budget (OMB) clearance is being sought for General Inquiries to State Agency Contacts. Information collected under this clearance is used to support the administrative and programmatic needs of jointly conducted BLS/State Labor Market Information and Occupational Safety and Health Statistics cooperative statistical programs.

Type of Review: Extension of a currently approved collection.

Agency: Bureau of Labor Statistics.

Title: General Inquiries to State Agency Contacts.

OMB Number: 1220–0168.

Affected Public: State, local, or tribal government.

Total Respondents: 55.

Frequency: As needed.

Total Responses: 23,890.

Average Time Per Response: 40 minutes.

Estimated Total Burden Hours: 15,762 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they also will become a matter of public record.

Signed in Washington, DC, this 7th day of April, 2003.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 03–9876 Filed 4–21–03; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term AFR Notice" appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. Contact Barbara Barron at 202–693–9447.

Dated in Arlington, Virginia this 16th day of April, 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–2002–003–C.
FR Notice: 67 FR 11717.
Petitioner: Knott County Mining Company.
Regulation Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal is to use contactors to obtain under-voltage protection instead of using circuit breakers and to train all qualified persons who perform work on the equipment and circuits on safe maintenance procedures. This is considered an acceptable alternative method for the Mallet Branch Mine. MSHA grants the petition for modification to allow the use of contactors to provide under-voltage, grounded phase, and monitor the grounding conductors for low voltage power circuits serving three-phase alternating current equipment, other than portable and mobile equipment, located at the Mallet Branch Mine with conditions.

Docket No.: M–2002–005–C.
FR Notice: 67 FR 11718.
Petitioner: Cannelton Industries, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a spring-loaded device on battery plug connectors on mobile battery-powered machines in lieu of a padlock to prevent the plug connector from accidentally disengaging while under load and provide a warning tag that states "Do Not Disengage Under Load" on all battery plug connectors. This is considered an acceptable alternative method for the Mine No. 130 and Shadrick Mine. MSHA grants the petition for modification for use at the Mine No. 130 and Shadrick Mine with conditions.

Docket No.: M–2002–006–C.
FR Notice: 67 FR 11718.
Petitioner: Point Mining, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a threaded ring and a spring-loaded device on battery plug connectors on mobile battery-powered machines instead of using padlocks to prevent the plug connector from accidentally disengaging while under load, and to provide instructions to all persons who operate or maintain the battery-powered machines on the safe practices and provisions for complying with the alternative method. This is considered an acceptable alternative method for the Campbells Creek No. 4 Mine. MSHA grants the petition for modification for use at the Campbells Creek No. 4 Mine with conditions.

Docket No.: M–2002–007–C.
FR Notice: 67 FR 13196.
Petitioner: Solid Rock Construction, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed, spring-loaded locking devices to secure battery plugs on mobile battery-powered machines to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that use of padlocks to secure battery plugs would result in a diminution of safety to the miners. This is considered an acceptable alternative method for the No. 1 Mine. MSHA grants the petition for modification for use at the No. 1 Mine with conditions.

Docket No.: M–2002–008–C.
FR Notice: 67 FR 13196.
Petitioner: Aaron Coal Company, LLC.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed, spring-loaded locking devices to secure battery plugs on mobile battery-powered machines to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that using padlocks would result in a diminution of safety to the miners. This is considered an acceptable alternative method for the No. 2 Mine. MSHA grants the petition for modification to permit the use of a spring-loaded device with specific fastening characteristics in lieu of a padlock to secure plugs and electrical type connectors to batteries and to the permissible mobile battery-powered equipment for use at the No. 2 Mine with conditions.

Docket No.: M–2002–019–C.
Petitioner: White County Coal, LLC.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a round, eye-bolt snap spring-loaded locking device to secure screw caps in place on battery plugs of battery operated scoops and tractors in lieu of using its presently approved bolt

and nut padlock. This is considered an acceptable alternative method for the Pattiki II Mine. MSHA grants the petition for modification to permit the use of a round eye-bolt snap spring-loaded locking device with specific fastening characteristics in lieu of a padlock to secure plugs and electrical type connectors to batteries and to the permissible mobile battery-powered equipment for use at the Pattiki II Mine with conditions.

Docket No.: M–2002–027–C.
FR Notice: 67 FR 14978.
Petitioner: Dakota Mining, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to replace a low-voltage continuous miner with a 2,400-volt Joy 12CM27 machine. This is considered an acceptable alternative method for use at the No. 2 Mine. MSHA grants the petition for modification for the 2,400-volt continuous miners used throughout the No. 2 Mine with conditions.

Docket No.: M–2002–035–C.
FR Notice: 67 FR 19285.
Petitioner: Drummond Company, Inc.
Regulation Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal is to interrupt the low and medium voltage circuits by using under-voltage and grounded phase relays used in conjunction with fully rated contactors in lieu of using circuit breakers. The petitioner asserts that using this circuit arrangement on low and medium voltage power distribution circuits is necessary for belt conveyor operation. This is considered an acceptable alternative method for use at the Shoal Creek Mine. MSHA grants the petition for modification to allow the use of contactors to provide under-voltage, grounded phase, and monitor the grounding conductors for low and medium voltage power circuits serving three-phase alternating current equipment located in the Shoal Creek Mine with conditions.

Docket No.: M–2002–041–C.
FR Notice: 67 FR 31835.
Petitioner: Independence Coal Company, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to transfer 2,400-volt high-voltage equipment from one mine to another mine within the company. This is considered an acceptable alternative method for the White Oak Mine. MSHA grants the petition for modification for use at the White Oak Mine with conditions.

Docket No.: M–2002–042–C.
FR Notice: 67 FR 37443.
Petitioner: Rivers Edge Mining, Inc., (was Eastern Associated Coal Corp.).
Regulation Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal is to use contactors instead of circuit breakers to provide under-voltage protection, ground fault, and ground monitor protection. This is considered an acceptable alternative method for the Rivers Edge Mine. MSHA grants the petition for modification to allow the use of contactors to provide under-voltage, grounded phase, and monitor the grounding conductors for low and medium-voltage power circuits serving three-phase alternating current equipment located in the Rivers Edge Mine with conditions.

Docket No.: M–2002–047–C.
FR Notice: 67 FR 45553.
Petitioner: Husky Coal Company, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed, spring-loaded device on mobile battery-powered machine plug connectors, in lieu of a padlock, to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate the hazards associated with the difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Mine No. 12. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plug and receptacle-type connectors for mobile battery-powered equipment at the Mine No. 12 with conditions.

Docket No.: M–2002–056–C.
FR Notice: 67 FR 49966.
Petitioner: Highland Mining Company.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use air from the belt haulage entries to ventilate active working places by installing a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. This is considered an acceptable alternative method for the Highland 9 Mine. MSHA grants the petition for modification for the use of air coursed through conveyor belt haulage entries to ventilate active working places at the Highland 9 Mine with conditions.

Docket No.: M–2002–063–C.
FR Notice: 67 FR 54675.
Petitioner: Buck Mountain Coal Company.
Regulation Affected: 30 CFR 75.1100–2(a).
Summary of Findings: Petitioner's proposal is to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage equipped with three (3) 10-quart pails is not practical. The petitioner proposes to use two (2) fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection at the Buck Mountain Slope Mine. This is considered an acceptable alternative method for the Buck Mountain Slope Mine. MSHA grants the petition for modification for use of firefighting equipment in the working section at the Buck Mountain Slope Mine with conditions.

Docket No.: M–2002–064–C.
FR Notice: 67 FR 54675.
Petitioner: Buck Mountain Coal Company.
Regulation Affected: 30 CFR 75.1200(d) and (i).
Summary of Findings: Petitioner's proposal is to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the vein being mined. This is considered an acceptable alternative method for the Buck Mountain Slope. MSHA grants the petition for modification for the Buck Mountain Slope with conditions.

Docket No.: M–2002–065–C.
FR Notice: 67 FR 54675.
Petitioner: Buck Mountain Coal Company.
Regulation Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal is to revise and supplement mine maps annually instead of every 6 months as currently required, and to update maps daily by hand notations. This is considered an acceptable alternative method for the Buck Mountain Slope. MSHA grants the petition for modification for the Buck Mountain Slope with conditions.

Docket No.: M–2002–067–C.
FR Notice: 67 FR 54676.
Petitioner: Border Mining, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is use permanently installed, spring-loaded locking devices with specific fastening characteristics, in lieu of padlocks, with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile battery-powered equipment the batteries serve. The purpose of the locking device is to

prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery-powered equipment. This is considered an acceptable alternative method for the No. 2 Mine. MSHA grants the petition for modification for use at the No. 2 Mine with conditions.

Docket No.: M–2002–075–C.
FR Notice: 67 FR 63166.
Petitioner: Knott County Mining Company.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed, spring-loaded locking devices with specific fastening characteristics, in lieu of padlocks, with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile battery-powered equipment the batteries serve. The purpose of the locking device is to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery-powered equipment. This is considered an acceptable alternative method for the Mallet Branch Mine, Hollybush Mine, and Mine No. 582. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plug and receptacle-type connectors for mobile battery-powered equipment at the Mallet Branch Mine, Hollybush Mine, and Mine No. 582 with conditions.

Docket No.: M–2002–076–C.
FR Notice: 67 FR 63166.
Petitioner: Coemont Construction, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices with specific fastening characteristics, in lieu of padlocks, with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile batter-powered equipment the batteries serve. The purpose of the locking device is to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery-powered equipment. This is considered an acceptable alternative method for the Coemont No. 1 Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plug and receptacle-type connectors for mobile battery-powered equipment at the Coemont No. 1 Mine with conditions.

Docket No.: M–2002–080–C.
FR Notice: 67 FR 63166.
Petitioner: Kentucky May Mining.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices with specific fastening characteristics, in lieu of padlocks, with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile batter-powered equipment the batteries serve. The purpose of the locking device is to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery-powered equipment. This is considered an acceptable alternative method for the Lakeview Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plug and receptacle-type connectors for mobile battery-powered equipment at the Lakeview Mine with conditions.

Docket No.: M–2002–083–C.
FR Notice: 67 FR 63167.
Petitioner: Debra Lynn Coals, Inc.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal is to construct a refuse pile over abandoned underground mine works in the Harlan coal bed, and to de-water rock drains from two existing mine adits within the abandoned mine works. Coarse refuse at the Johns Branch Refuse Area will cover the two sealed drift mine openings into the old Golden Glow Coals, Inc. mine in the Harlan coal seam, which dips toward the existing refuse site. This is considered an acceptable alternative method for the Liggett Preparation Plant and Johns Branch Refuse Area, I.D. No. 1211–KY07–07139–01. MSHA grants the petition for modification for the Liggett Preparation Plant and the Johns Branch Refuse Area with conditions.

Docket No.: M–2002–084–C.
FR Notice: 67 FR 66168.
Petitioner: H & M Coal Co.
Regulation Affected: 30 CFR 75.1400(c).
Summary of Findings: Petitioner's proposal is to use increased rope strength and secondary safety rope connections on a slope conveyance (gunboat) for transporting persons in lieu of using catches or other no less effective devices. This is considered an acceptable alternative method for the Rocky Top Mine. MSHA grants the petition for modification for the use of the hoist conveyance (gunboat) without safety catches at the Rocky Top Mine with conditions.

Docket No.: M–2002–088–C.
FR Notice: 67 FR 66169.
Petitioner: Coastal Coal Company, LLC.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal is to construction a refuse pile over abandon mine openings, and to use an existing mine pit as a location for disposal of mine scalp rock. The related refuse are in the Calendonia Pit and the refuse from both the VICC #3 and VICC #8 Coastal Coal Company Mines will be used to fill the pit and reclaim the area that contains two abandoned Eastover Mine Company openings into the Jawbone coal seam. This is considered an acceptable alternative method for the VICC #3 Mine and VICC #8 Mine. MSHA grants the petition for modification for the VICC #3 Mine and VICC #8 Mine with conditions.

Docket No.: M–2002–102–C.
FR Notice: 67 FR 78821.
Petitioner: Mallie Coal Company, Inc.
Regulation Affected: 30 CFR 75.380(f)(4).
Summary of Findings: Petitioner's proposal is to use one ten pound or two five pound portable chemical fire extinguishers on each Mescher Jeep used for traveling in the primary escapeway at the Mine No. 6. This is considered an acceptable alternative method for the Mine No. 6. MSHA grants the petition for modification for Mescher three wheel tractors to be operated in the primary intake escapeway at the Mine No. 6 with conditions.

Docket No.: M–2002–103–C.
FR Notice: 67 FR 78822.
Petitioner: Mallie Coal Company, Inc.
Regulation Affected: 30 CFR 75.342.
Summary of Findings: Petitioner's proposal is to use a hand-held continuous multi-gas detector, which detects oxygen, methane, and carbon monoxide in lieu of a machine mounted methane monitor on three-wheel tractors used to load and haul coal from the mine faces. This is considered an acceptable alternative method for the Mine No. 6. MSHA grants the petition for modification for use at the Mine No. 6 with conditions.

Docket No.: M–2002–105–C.
FR Notice: 67 FR 78822.
Petitioner: Mears Enterprises, Inc.
Regulation Affected: 30 CFR 75.1000–2(e)(2).
Summary of Findings: Petitioner's proposal is to use two fire extinguishers at all temporary electrical installations in lieu of using one portable fire extinguisher and 240 pounds of rock dust. This is considered an acceptable

alternative method for the Dora 8 Mine. MSHA grants the petition for modification for the temporary electrical installations, provided the petitioner maintains two portable fire extinguishers having at least the minimum capacity specified for a portable fire extinguisher in 30 CFR 75.1100–1(e), or one portable fire extinguisher with twice the minimum capacity specified in 75.1100–1(e) at each of the temporary electrical installations at the Dora 8 Mine.

Docket No.: M–2002–106–C and M–2002–107–C.
FR Notice: 67 FR 78822.
Petitioner: Highland Mining Company.
Regulation Affected: 30 CFR 75.1101–1(b).
Summary of Findings: Petitioner's proposal is to conduct weekly examinations and functional testing of the deluge fire suppression systems as an alternative to complying with the standard. This is considered an acceptable alternative method for the Highland No. 9 and Highland No. 11 Mines. MSHA grants the petition for modification for the use of deluge-type water spray systems installed at belt-conveyor drives in lieu of blow-off dust covers for nozzles at the Highland No. 9 and Highland No. 11 Mines with conditions.

Docket No.: M–2002–110–C.
FR Notice: 67 FR 78823.
Petitioner: Coastal Coal-West Virginia, LLC.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use continuous mining machines with nominal voltage of the power circuits not to exceed 2,400 volts at the Upper Mercer Mine. This is considered an acceptable alternative method for the Upper Mercer Mine. MSHA grants the petition for modification for the use of 2,400-volt continuous miners at the Upper Mercer Mine with conditions.

Docket No.: M–2002–111–C and M–2002–112–C.
FR Notice: 67 FR 78823.
Petitioner: Black Energy Coal, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices with specific fastening characteristics, in lieu of padlocks, with its fastening configuration to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve. The purpose of the locking device is to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the Mine #2 and Mine #3. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plug and receptacle-type connectors for mobile battery-powered equipment at the Mine #2 and Mine #3, with conditions.

Docket No.: M–2001–078–C.
FR Notice: 66 FR 41891
Petitioner: Black Beauty Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage 2,400-volt cables inby the last open crosscut at the working continuous miner section(s). This is considered an acceptable alternative method for the Vermillion Grove Mine. MSHA grants the petition for modification for the use at the Vermillion Grove Mine with conditions.

Docket No.: M–2001–093–C.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.364(b)(4).
Summary of Findings: Petitioner's proposal is to establish designated check points and have a certified person examine the check points on a daily basis to monitor for methane and to ensure safe air passage in the six seals in 1 South of the intake air course where roof and rib conditions are deterioriating and unsafe to travel. This is considered an acceptable alternative method for the Shoemaker Mine. MSHA grants the petition for modification for the use at the Shoemaker Mine with conditions.

Docket No.: M–2001–095–C.
FR Notice: 66 FR 52156.
Petitioner: Leeco, Inc.
Regulation Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal is to use a maximum nominal voltage of the belt conveyor drive and water pump circuit(s) not to exceed 995-volts for under-voltage protection, a nominal voltage of belt conveyor drive control and water pump control circuit(s) not to exceed 120-volts, vacuum contactors built into or permanently affixed to the transformer enclosure and properly separated and isolated from the other components of the unit, and provide under-voltage protection for belt drive(s) and water pump motors greater than 5 horsepower for vacuum contactors that have associated protective relays. This is considered an acceptable alternative method for the No. 68 and No. 78 Mines. MSHA grants the petition for modification for the use of contactors to provide under-voltage, grounded phase, and overload protection. This would also allow the petitioner to monitor the grounding conductors for 995-volt belt conveyor drive motors and water pump motors greater than 5 horsepower located in the No. 68 and No. 78 Mines with conditions.

Docket No.: M–2001–096–C.
FR Notice: 66 FR 52156.
Petitioner: Leeco, Inc.
Regulation Affected: 30 CFR 77.214(a).
Summary of Findings: Petitioner's proposal is to place refuse over previously abandoned and reclaimed mines. The petitioner amended its petition for modification on August 26, 2002, to clarify its alternate method concerning what method and material would be used and put in place to cover the mine openings. It was determined that the material that will be used to reclaim portal openings at the No. 7, and 5A seams has a permeability of 6.25×10^{-6} cm/sec so that it will be relatively impermeable and will prevent air flow from the mine. In addition, spoil that is at least 2 feet deep by 50 feet wide will be placed on top of, and in front of the mine openings. The spoil will be compacted to 90%. When compacted to 90%, the refuse will not spontaneously combust because the density and the compactness of the refuse will prevent infiltration of sufficient oxygen to result in spontaneous combustion. Further, since the No. 7 and No. 5 coal seams dip away from the refuse pile, the small valley where the coal seams are located will be completely filled in front of the mine openings so that the closest distance between the face of the slope of fill and the deep mine openings will be approximately 400 feet. At this distance, the water from the deep mine openings will not affect the stability of the pile. This is considered an acceptable alternative method for the No. 64 Mine. MSHA grants the petition for modification for the No. 64 Mine with conditions.

Docket No.: M–2001–105–C.
FR Notice: 66 FR 64993.
Petitioner: Oxbow Mining, Inc.
Regulation Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal is to use a No. 16 A.W.G. ground check conductor in a high-voltage cable. These cables would be flame-resistant Anaconda Type SHD+GC, Pirelli Type SHD-Center-GC, Tiger Brand Type SHD–CGC, and other brands of cable of identical construction, and used on high-voltage system(s). This is considered an acceptable alternative method for the Elk Creek Mine. MSHA grants the petition for modification for the use at the Elk Creek Mine with conditions.

Docket No.: M–2001–110–C.
FR Notice: 66 FR 67550.
Petitioner: Apollo Coal Company.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices with specific fastening characteristics to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve. The permanently installed spring-loaded locking devices would be used in lieu of padlocks to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the No. 3 Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plug and receptacle-type connectors for mobile battery-powered equipment at the No. 3 Mine with conditions.

Docket No.: M–2001–111–C.
FR Notice: 66 FR 67551.
Petitioner: Straight Fork Mining, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices with specific fastening characteristics to secure plugs and electrical type connectors to batteries and to the permissible mobile powered equipment the batteries serve. The permanently installed spring-loaded locking devices would be used in lieu of padlocks to prevent accidental separation of the battery plugs from their receptacles during normal operation of the battery equipment. This is considered an acceptable alternative method for the No. 3 Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plug and receptacle-type connectors for mobile battery-powered equipment at the No. 3 Mine with conditions.

Docket No.: M–2001–114–C.
FR Notice: 66 FR 67551.
Petitioner: Centralia Mining.
Regulation Affected: 30 CFR 75.1100–2(a)(2).
Summary of Findings: Petitioner's proposal is to use two (2) portable fire extinguishers near the slope bottom and an additional portable fire extinguisher within 500 feet of the working face for equivalent fire protection for the Skidmore Slope Mine. The use of these fire extinguishers would replace existing requirements where rock dust, water cars, and other water storage equipped with three, 10-quart pails is not practical. This is considered an acceptable alternative method for the Skidmore Slope Mine. MSHA grants the petition for modification for firefighting equipment in the working section at the Skidmore Slope Mine with conditions.

Docket No.: M–2000–024–C.
FR Notice: 65 FR 19928.
Petitioner: Webster County Coal, LLC.
Regulation Affected: 30 CFR 75.333.
Summary of Findings: Petitioner's proposal is to use a temporary stopping in the return stopping line, outby the section tailpiece, for a short period of time prior to the section moving from entries to rooms in lieu of using a permanent type stopping. This is considered an acceptable alternative method for the Dotiki Mine. MSHA grants the petition for modification for use at the Dotiki Mine with conditions.

Docket No.: M–2000–109–C.
FR Notice: 65 FR 58819.
Petitioner: The American Coal Company.
Regulation Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal is to use a combination of suitable sized fuses or non-under-voltage release circuit breaker contactor, ground fault device, and three phase under-voltage relay, serving a three-phase low- or medium-voltage alternating current circuit. This modification is to apply to any or all low- or medium-voltage circuits. This is considered an acceptable alternative method for the Galatia Mine. MSHA has determined that the proposed alternative method would apply only to stationary belt drive power centers, stationary water pump power centers, and longwall hydraulic pump power centers. MSHA has limited the modification to those applications. In addition, MSHA determined that future power centers and dedicated electrical installation, may be safely designed and constructed to produce higher low or medium output voltages by using the same basic modification. MSHA grants the petition for modification for the use at the Galatia Mine with conditions.

[FR Doc. 03–9842 Filed 4–21–03; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL2–97]

Detroit Testing Laboratory, Inc. (DTL), Expiration of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.
ACTION: Notice.

SUMMARY: This notice announces that Detroit Testing Laboratory, Inc., recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7, will expire on April 28, 2003.

FOR FURTHER INFORMATION CONTACT: Sherrey Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Room N3653, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Application

The Occupational Safety and Health Administration (OSHA) hereby gives notice that Detroit Testing Laboratory, Inc. (DTL), has voluntarily decided not to renew its recognition as a Nationally Recognized Testing Laboratory (NRTL). OSHA's current scope of recognition for DTL may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/dtl.html.*

The only **Federal Register** notices published by OSHA for DTL's recognition covered its recognition as an NRTL, which became effective on April 27, 1998 (63 FR 20661).

The current address of the DTL facility (site) already recognized by OSHA is: Detroit Testing Laboratory, Inc., 7111 E. Eleven Mile, Warren, Michigan 48092.

General Background on the Expiration of Recognition

Appendix A to 29 CFR 1910.7 stipulates that a recognized NRTL may renew its recognition by filing a renewal request not less than nine months, nor more than one year, before the expiration date of its current recognition.

On June 18, 2002, OSHA sent DTL a reminder indicating that OSHA's recognition of Detroit Testing Lab, Inc. (DTL), as a Nationally Recognized Testing Laboratory (NRTL) would expire on April 28, 2003. DTL did not submit a renewal request within the stipulated time frame of less than nine months

before the expiration date of its current recognition. On July 29, 2002, DTL indicated it will not be renewing its recognition as an NRTL. DTL's recognition will expire on April 28, 2003.

In accordance with OSHA policy pertaining to expiration of recognition, the Agency only publishes one **Federal Register** notice without a comment period to note the expiration of DTL's recognition as an NRTL.

Signed in Washington, DC this 11th day of April, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–9874 Filed 4–21–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–2001]

TUV Product Services GmbH, Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of TUV Product Services GmbH for expansion of its recognition as a Nationally Recognized Testing Laboratory under 29 CFR 1910.7. Also, eight standards are granted interim approval subject to review.

DATES: You may submit comments in response to this notice, or any request for extension of the time to comment, by (1) regular mail, (2) express or overnight delivery service, (3) hand delivery, (4) messenger service, or (5) FAX transmission (facsimile). Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Comments (or any request for extension of the time to comment) must be submitted by the following dates:

Regular mail and express delivery service: Your comments must be postmarked by May 7, 2003.

Hand delivery and messenger service: Your comments must be received in the OSHA Docket Office by May 7, 2003. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m.

Facsimile and electronic transmission: Your comments must be sent by May 7, 2003.

ADDRESSES: *Regular mail, express delivery, hand-delivery, and messenger service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket NRTL2–92, Room N–2625, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC, 20210. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this notice, Docket NRTL2–92, in your comments.

Internet access to comments and submissions: OSHA will place comments and submissions in response to this notice on the OSHA Web page *www.osha.gov*. Accordingly, OSHA cautions you about submitting information of a personal nature (*e.g.*, social security number, date of birth). There may be a lag time between when comments and submissions are received and when they are placed on the Web page. Please contact the OSHA Docket Office at (202) 693–2350 for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions. Comments and submissions will also be available for inspection and copying at the OSHA Docket Office at the address above.

Extension of Comment Period: Submit requests for extensions concerning this notice to: Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3653, 200 Constitution Avenue, NW., Washington, DC 20210. Or fax to (202) 693–1644.

EFFECTIVE DATE: This recognition becomes effective on April 22, 2003, and, unless modified in accordance with 29 CFR 1910.7, continues in effect while TUVPSG remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Sherrey Nicolas, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of TUV Product Services GmbH (TUVPSG) as a Nationally Recognized Testing Laboratory (NRTL). TUVPSG's expansion covers the use of additional test standards. OSHA's current scope of recognition for TUVPSG may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/tuvpsg.html*.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in § 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

TUVPSG submitted its application to expand its recognition to use 46 additional test standards on June 28, 2002 (*see* Exhibit 7), and submitted an amended application on August 1, 2002 (*see* Exhibit 7–1), which added 11 more test standards to its original request. In the preliminary notice, we inadvertently identified the August 1 amendment as the original application but omitted the additional standards. We have included them as explained below. The NRTL Program staff determined that 2 of the 46 test standards originally requested could not be included in the expansion because they are not "appropriate test standards," within the meaning of 29 CFR 1910.7(c). The staff makes similar determinations in processing expansion requests from any NRTL. Therefore, OSHA is approving 44 of those test standards for the expansion, which are listed below. One of the test standards requested by TUVPSG, UL 3101–2–20, is listed below using its current designation, UL 61010A–2–020.

For purposes of the application, OSHA performed an onsite review of the NRTL in June 2002, in conjunction with OSHA's regular audit of TUVPSG. In a memo, dated July 31, 2002 (*see* Exhibit 8), the OSHA assessor recommended granting the expansion request. OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on January 24, 2003 (68 FR 3564). The notice requested submission of any public comments by February 10, 2003. OSHA did not receive any comments pertaining to the application.

The previous notice published by OSHA for TUVPSG's recognition covered its initial recognition, which became effective on July 20, 2001 (66 FR 38032).

You may obtain or review copies of all public documents pertaining to the TUVPSG application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL1–2001, the permanent record of public information on the TUVPSG recognition.

The current address of the facility (site) that OSHA recognizes for TUVPSG is: TUV Product Services GmbH, Ridlerstrasse 65, D–80339, Munich, Germany.

Interim Approval Subject to Review

As mentioned above, TUVPSG submitted an amendment to the expansion request to use 11 additional test standards. Three of the standards requested by TUVPSG were not "appropriate" because the standards developing organization (SDO) had withdrawn the standards. Therefore, OSHA is expanding the recognition of TUVPSG to include the 8 standards listed below, which require the same type of capabilities as other test standards approved for the expansion. This brings the total to 52 test standards approved for the expansion.

UL 298 Portable Electric Hand Lamps
UL 588 Christmas-Tree and decorative Lighting Outfits
UL 676 Underwater Lighting Fixtures
UL 1230 Amateur Movie Lights
UL 1573 Stage and Studio Lighting Units
UL 1574 Track Lighting Systems
UL 1598 Luminaries
UL 1786 Nightlights

Since these 8 standards were not included in the preliminary notice, the Agency will provide interested parties an opportunity to comment. Comments submitted by interested parties must be received no later than May 7, 2003. If we receive comments, OSHA will determine whether additional procedures are necessary.

Existing Condition

Currently, OSHA imposes a special condition on its recognition of TUVPSG. This condition is listed first under the "Conditions" section, which is the last section of this notice, and applies also to this expansion for additional test standards. As mentioned in previous notices, such a special condition applies solely to TUVPSG's NRTL operations, and it is in addition to any other condition that OSHA normally imposes in its recognition of any organization as an NRTL.

The condition makes reference to TUV America, Inc. (TUVAM), which is another NRTL organization recognized by OSHA.

Final Decision and Order

The NRTL Program staff has examined the applications, the assessor's report, and other pertinent information. Based upon this examination and the assessor's recommendation, OSHA finds that TUV Product Services GmbH has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the additional test standards subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of TUVPSG, subject to this limitation and these conditions.

Limitation

OSHA limits the expansion to testing and certification of products for demonstration of conformance to the following 52 test standards, and OSHA has determined the standards are "appropriate," within the meaning of 29 CFR 1910.7(c).

UL 197 Commercial Electric Cooking Appliances
UL 250 Household Refrigerators and Freezers
UL 298 Portable Electric Hand Lamps
UL 429 Electrically Operated Valves
UL 474 Dehumidifiers
UL 484 Room Air Conditioners
UL 499 Electric Heating Appliances
UL 588 Christmas-Tree and decorative Lighting Outfits
UL 676 Underwater Lighting Fixtures
UL 749 Household Dishwashers
UL 859 Household Electric Personal Grooming Appliance
UL 873 Temperature-Indicating and -Regulating Equipment
UL 921 Commercial Electric Dishwashers
UL 923 Microwave Cooking Appliances
UL 935 Fluorescent-Lamp Ballasts
UL 982 Motor-Operated Household Food Preparing Machines
UL 998 Humidifiers
UL 1004 Electric Motors
UL 1005 Electric Flatirons
UL 1026 Electric Household Cooking and Food Serving Appliances
UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
UL 1083 Household Electric Skillets and Frying-Type Appliances
UL 1230 Amateur Movie Lights
UL 1278 Movable and Wall-or Ceiling-Hung Electric Room Heaters
UL 1310 Class 2 Power Units
UL 1411 Transformers and Motor Transformers for Use In Audio-, Radio-, and Television-Type Appliances
UL 1431 Personal Hygiene and Health Care Appliances
UL 1492 Audio-Video Products and Accessories
UL 1573 Stage and Studio Lighting Units
UL 1574 Track Lighting Systems
UL 1594 Sewing and Cutting Machines
UL 1598 Luminaries
UL 1647 Motor-Operated Massage and Exercise Machines
UL 1786 Nightlights
UL 1993 Self-Ballasted Lamps and Lamp Adapters
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1; General Requirements
UL 60335–2–8 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Shavers, Hair Clippers, and Similar Appliances
UL 60335–2–34 Household and Similar Electrical Appliances, Part 2; Particular Requirements for Motor-Compressors
UL 60730–1A Automatic Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 60730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 60730–2–10A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Motor Starting Relays
UL 60730–2–11A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Door Locks
UL 60730–2–13A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–14 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electric Actuators
UL 60730–2–16A Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automatic Electrical Water Level Controls
UL 61010A–2–010 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for the Heating of Materials
UL 61010A–2–020 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Centrifuges
UL 61010A–2–041 Electrical Equipment for

Laboratory Use; Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials and for Laboratory Processes
UL 61010A–2–051 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for Mixing and Stirring
UL 61010A–2–061 Electrical Equipment for Laboratory Use; Part 2: Laboratory Atomic Spectrometers with Thermal Atomization and Ionization

OSHA's recognition of TUVPSG, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

Many of the test standards listed above, are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we often use the designation of the standards developing organization (*e.g.*, UL 1026) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 1026). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact "NSSN" (*http://www.nssn.org*), an organization partially sponsored by ANSI, to find out whether or not a test standard is currently ANSI-approved.

Conditions

TUVPSG must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

Only TUV America, Inc. (TUVAM), or TUV Product Services GmbH (TUVPSG) may authorize the U.S. registered certification mark currently owned by TUV America, Inc. TUVPSG may authorize the use of this mark only at the facility recognized by OSHA;

OSHA must be allowed access to TUVPSG's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If TUVPSG has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

TUVPSG must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, TUVPSG agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

TUVPSG must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

TUVPSG will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

TUVPSG will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed in Washington, DC this 11th day of April, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–9875 Filed 4–21–03; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Notice of Intent to Award—Grant Awards for the Provision of Civil Legal Services to Eligible Low-Income Clients, for Service Area OH–19 in Ohio, Beginning July 1, 2003

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to make FY 2003 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, for service area OH–19 in Ohio, beginning July 1, 2003.

DATES: All comments and recommendations must be received on or before the close of business on May 22, 2003.

ADDRESSES: Legal Services Corporation—Competitive Grants, Legal Services Corporation, 750 First Street, NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Reginald Haley, Office of Program Performance, (202) 336–8827.

SUPPLEMENTARY INFORMATION: Pursuant to LSC's announcement of funding availability on January 13, 2003 (68 FR 8), LSC will award funds to Legal Services of Northwest Ohio, Inc. The grant amount is estimated to be $611,832 for the period July 1, 2003, through December 31, 2003. The funding amount is based on the 2000 census data as discussed in LSC Program Letter 02–8, and is subject to change.

This grant will be awarded under the authority conferred on LSC by the Legal Services Corporation Act, as amended (42 U.S.C. 2996e(a)(1)). An award will be made so that the service area is served, although the listed organization is not guaranteed an award or contract. This public notice is issued pursuant to the LSC Act (42 U.S.C. 2996f(f)), with a request for comments and recommendations concerning the potential grantee within a period of thirty (30) days from the date of publication of this notice. Grants will become effective and grant funds will be distributed on or about July 1, 2003.

Dated: April 16, 2003.

Michael A. Genz,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. 03–9877 Filed 4–21–03; 8:45 am]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet April 25, 2003, from 10 a.m. until 12:30 p.m. and continue on April 26, 2003, at 9:30 a.m. until conclusion of the Board's agenda.

LOCATION: The Bishop's Lodge, Bishop's Lodge Road, Santa Fe, New Mexico.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act (5 U.S.C. 552b(c) (10)) and the corresponding provisions of the Legal Services Corporation's implementing regulation (45 CFR 1622.5(h)). A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Election of Temporary Chair and Vice Chair.
3. Update by Randi Youells, LSC Vice President for Programs, on LSC's Performance Measurement Activities: The State Planning Evaluation Instrument and Activities to Assess the Desirability of Developing a System to Measure Outcomes for Clients.
4. Presentation by Randi Youells on LSC Reports on the Rural Issues and Delivery Conference, the Technology Initiative Grant Program, and the Trainer Training for the LSC Diversity Initiative.
5. Delivery of Legal Services in New Mexico: Panel presentation with Sarah Singleton, former co-chair of the State Bar of New Mexico's Legal Services & Programs Committee; John Arango, Executive Director, New Mexico Legal Aid; Olga Pedroza, Supervising Attorney, Migrant Program, New Mexico Legal Aid; Kathleen Brockel, Executive Director, Law Access; Felicia Sanchez, Intern Paralegal and former client, New Mexico Legal Aid; and Ann Burnham, Client Volunteer, New Mexico Legal Aid Santa Fe Office.
6. Serving the Navajo Nation in New Mexico: Presentation by Anna Marie Johnson, Executive Director, DNA-People's Legal Services.
7. Approval of the minutes of the Board's meeting of February 1, 2003.
8. Approval of the minutes of the Executive Session of the Board's meeting of February 1, 2003.
9. Approval of the minutes of the Board's telephonic meeting of March 10, 2003.
10. Approval of the minutes of the Board's 2002 Annual Performance Reviews Committee's meeting of January 31, 2003.
11. Approval of the minutes of the Provision for the Delivery of Legal Services Committee's meeting of January 31, 2003.
12. Approval of the minutes of the Operations & Regulations Committee's meeting minutes of January 31, 2003.
13. Approval of the minutes of the Finance Committee's meeting of January 23, 2003.
14. Approval of the minutes of the Finance Committee's meeting of January 31, 2003.
15. Remarks by Special Guests: Representative Tom Udall, U.S. House of Representatives; Justice Pamela B. Minzer, Supreme Court of New Mexico; Joyce Pullen, Office of Senator Pete Domenici; John D. Robb, Of Counsel, Rodey, Dickason, Sloan, Akin & Robb, P.A.; Sarah Singleton, former co-chair of the State Bar of New Mexico's Legal Services & Program Committee; and Representatives from DNA-People's Legal Services' Board of Directors.
16. Chairman's Report.
17. Members' Report.
18. Acting Inspector General's Report.
19. President's Report.
20. Report by Mauricio Vivero, LSC Vice President for Governmental Relations & Public Affairs.
21. Report on LSC's Temporary Operating Budget, Expenses, and Other Funds Available through February 28, 2003.
22. Consider and act on the President's recommendation for FY 2003 Consolidated Operating Budget.
23. Comments of L. Jonathan Ross, Chairman of the ABA Standing Committee on Legal Aid and Indigent Defendants.
24. Consider and act on the Board's 2003 meeting schedule.

Closed Session

25. Briefing [1] by the Inspector General on the activities of the Office of Inspector General.
26. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

27. Consider and act on other business.
28. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 336–8800.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 336–8800.

Dated: April 18, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–10065 Filed 4–18–03; 2:25 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). *See also* 45 CFR 1622.2 & 1622.3.

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meetings

DATE: Weeks of April 21, 28, May 5, 12, 19, 26, 2003.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of April 21, 2003

There are no meetings scheduled for the Week of April 21, 2003.

Week of April 28, 2003—Tentative

There are no meetings scheduled for the Week of April 28, 2003.

Week of May 5, 2003—Tentative

There are no meetings scheduled for the Week of May 5, 2003.

Week of May 12, 2003—Tentative

Thursday, May 15, 2003

9:30 a.m. Briefing on Results of Agency Action Review Meeting (Public Meeting) (Contact: Robert Pascarelli, 301–415–1245).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of May 19, 2003—Tentative

There are no meetings scheduled for the Week of May 19, 2003.

Week of May 26, 2003—Tentative

Wednesday, May 28, 2003

9:30 a.m. Meeting with Advisory Committee on the Medical Uses of Isotopes (ACMUI) (Public Meeting) (Contact: Angela Williamson, 301–415–5030).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, May 29, 2003

9:30 a.m. Briefing on Status of Revisions to the Regulatory Framework for Steam Generator Tube Integrity (Public Meeting) (Contact: Louise Lund, 301–415–3248).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

2 p.m. Briefing on Equal Employment Opportunity Program (Public Meeting) (Contact: Corenthis Kelley, 301–415–7380).

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet

at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: April 17, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–10008 Filed 4–18–03; 12:01 am]

BILLING CODE 759–01–M

NUCLEAR REGULATORY COMMISSION

State of Wisconsin: NRC Staff Draft Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Wisconsin

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed agreement with the State of Wisconsin.

SUMMARY: By letter dated August 21, 2002, former Governor Scott McCallum of Wisconsin requested that the U. S. Nuclear Regulatory Commission (NRC) enter into an Agreement with the State as authorized by section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would relinquish, and Wisconsin would assume, portions of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing the summary of a draft assessment by the NRC staff of the Wisconsin regulatory program. Comments are requested on the proposed Agreement and the staff's draft assessment which finds the Program adequate to protect public health and safety and compatible with NRC's program for regulation of Agreement material.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Wisconsin from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150.

DATES: The comment period expires May 8th, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Comments may be submitted electronically at *nrcrep@nrc.gov.*

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr@nrc.gov.*

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of Wisconsin including all information and documentation submitted in support of the request, and copies of the full text of the NRC Staff Draft Assessment are also available for public inspection in the NRC's Public Document Room—ADAMS Accession Numbers: ML030160104 and ML030900662.

FOR FURTHER INFORMATION CONTACT: Lloyd A. Bolling, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2327 or e-mail *LAB@nrc.gov.*

SUPPLEMENTARY INFORMATION: Since section 274 of the Act was added in 1959, the Commission has entered into Agreements with 32 States. The Agreement States currently regulate approximately 16,250 agreement material licenses, while NRC regulates approximately 4,900 licenses. Under the proposed Agreement, approximately 260 NRC licenses will transfer to Wisconsin. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This Notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials.

In a letter dated August 21, 2002, former Governor McCallum certified that the State of Wisconsin has a program for the control of radiation hazards that is adequate to protect public health and safety within Wisconsin for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this Notice.

The radioactive materials and activities (which together are usually referred to as the "categories of materials") which the State of Wisconsin requests authority over are: (1) The possession and use of byproduct materials as defined in section 11e. (1) of the Act; (2) the possession and use of source materials; and (3) the possession and use of special nuclear materials in quantities not sufficient to form a critical mass, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

—Specify the materials and activities over which authority is transferred;
—Specify the activities over which the Commission will retain regulatory authority;
—Continue the authority of the Commission to safeguard nuclear materials and restricted data;
—Commit the State of Wisconsin and NRC to exchange information as necessary to maintain coordinated and compatible programs;
—Provide for the reciprocal recognition of licenses;
—Provide for the suspension or termination of the Agreement; and
—Specify the effective date of the proposed Agreement.

[1] The radioactive materials are: (a) Byproduct materials as defined in section 11e.(1) of the Act; (b) byproduct materials as defined in section 11e.(2) of the Act; (c) source materials as defined in section 11z. of the Act; and (d) special nuclear materials as defined in section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Wisconsin.

(c) Wisconsin currently registers users of naturally-occurring and accelerator-produced radioactive materials. The regulatory program is authorized by law in section 3145, Subsection 254.34 of the revised Wisconsin Statutes. Subsection 254.335(1) provides the authority for the Governor to enter into an Agreement with the Commission. Wisconsin law (Subsection 254.335(2)) contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Wisconsin licenses until the licenses expire or are replaced by State-issued licenses.

(d) The NRC staff draft assessment finds that the Wisconsin program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

II. Summary of the NRC Staff Draft Assessment of the Wisconsin Program for the Control of Agreement Materials

NRC staff has examined the Wisconsin request for an Agreement with respect to the ability of the Wisconsin radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (referred to herein as the "NRC criteria"), (46 FR 7540; January 23, 1981, as amended by policy statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983).

(a) *Organization and Personnel.* The agreement materials program will be located within the existing Radiation Protection Section (Program) of the Wisconsin Department of Health and Family Services. The Program will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the Program staff members are specified in the Wisconsin State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection. Supervisory level staff have more than ten years working experience each, in radiation protection.

The Program currently has one staff vacancy, which they are actively recruiting to fill. The Program performed, and NRC staff reviewed, an analysis of the expected Program workload under the proposed Agreement. Based on the NRC staff review of the State's staff analysis, Wisconsin has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The Program will employ a staff of 9.5 full-time professional/technical and administrative employees for the agreement materials program. The distribution of the qualifications of the individual staff members will be balanced to the distribution of categories of licensees transferred from NRC. Each individual on the staff is qualified in accordance with the Program's training and qualification procedure to function in the areas of responsibility to which the individual is assigned.

(b) *Legislation and Regulations.* The Wisconsin Department of Health and Family Services (DHFS) is designated by law in Chapter 254 of the Wisconsin Revised Statutes to be the radiation control agency. The law provides the DHFS the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The DHFS is authorized to promulgate regulations.

The law requires the DHFS to adopt rules that are compatible with equivalent NRC regulations and that are equally stringent to the equivalent NRC regulations. Wisconsin has adopted HFS 157 Radiation Protection Code effective August 1, 2002. The NRC staff reviewed and forwarded comments on these regulations to the Wisconsin staff. The NRC staff review verified that, with the comments incorporated, the Wisconsin rules (and legally binding requirements) contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The DHFS has extended the effect of the rules, where appropriate, to apply to naturally occurring radioactive materials and to radioactive materials produced in particle accelerators, in addition to agreement materials. The NRC staff also concludes that Wisconsin will not attempt to enforce regulatory matters reserved to the Commission.

Wisconsin regulations are different from the NRC regulations with respect to the termination of the license. Current NRC regulations permit a license to be terminated when the facility has been decommissioned, *i.e.*, cleaned of radioactive contamination, such that the residual radiation will not cause a total effective dose equivalent greater than 25 millirem per year to an average member of the group of individuals reasonably expected to receive the greatest exposure. Normally, the NRC regulations require that the 25 millirem dose constraint be met without imposing any restrictions regarding the future use of the land or buildings of the facility ("unrestricted release"). Under certain circumstances, NRC regulations in 10 CFR part 20, subpart E, allow a license to be terminated if the 25 millirem dose constraint is met with restrictions on the future use ("restricted release"). Wisconsin law does not allow a license to be terminated under restricted release conditions. Wisconsin will instead issue a special "decommissioning-possession only" license as an alternate to license termination under restricted release. NRC staff has concluded that this approach is compatible with NRC regulations.

(c) *Storage and Disposal.* Wisconsin has also adopted NRC compatible requirements for the handling and storage of radioactive material. Wisconsin will not seek authority to regulate the land disposal of radioactive material as waste. The Wisconsin waste disposal requirements cover the preparation, classification and manifesting of radioactive waste, generated by Wisconsin licensees, for transfer for disposal to an authorized waste disposal site or broker.

(d) *Transportation of Radioactive Material.* Wisconsin has adopted regulations compatible with NRC regulations in 10 CFR part 71. Part 71 contains the requirements that licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Wisconsin will not attempt to enforce portions of the regulations related to activities, such as

approving packaging designs, which are reserved to NRC.

(e) *Recordkeeping and Incident Reporting.* Wisconsin has adopted the sections compatible with the NRC regulations which specify requirements for licensees to keep records, and to report incidents, accidents, or events involving materials.

(f) *Evaluation of License Applications.* Wisconsin has adopted regulations compatible with the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Wisconsin has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the Program staff when evaluating license applications.

(g) *Inspections and Enforcement.* The Wisconsin radiation control program has adopted a schedule providing for the inspection of licensees as frequently as the inspection schedule used by NRC. The Program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the reporting of inspection results to the licensees. The Program has also adopted, by rule based on the Wisconsin Revised Statutes, procedures for the enforcement of regulatory requirements.

(h) *Regulatory Administration.* The Wisconsin Department of Health and Family Services is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The Program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Wisconsin law prescribes standards of ethical conduct for State employees.

(i) *Cooperation with Other Agencies.* Wisconsin law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Wisconsin. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier.

Wisconsin also provides for "timely renewal." This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The Wisconsin Radiation Protection Code provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits Wisconsin to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that Wisconsin's program will continue to be compatible with the Commission's program for the regulation of agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Wisconsin to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its draft assessment, the NRC staff concludes that the State of Wisconsin meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

NRC will continue the formal processing of the proposed Agreement which includes publication of this Notice once a week for four consecutive weeks for public review and comment.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 2nd day of April, 2003.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

Appendix A

Agreement Between the United States Nuclear Regulatory Commission and the State of Wisconsin for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of the State of Wisconsin providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and section 161 of the Act with respect to byproduct materials as defined in sections 11e. (1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Wisconsin is authorized under s. 254.335 (1), Wisconsin Statutes, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Wisconsin certified on August 21, 2002, that the State of Wisconsin (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory authority for such materials; and,

Whereas, The Commission found on **[date]** that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for, protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under chapters 6, 7, and 8, and section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in section 11e. (1) of the Act;

B. Source materials;

C. Special nuclear materials in quantities not sufficient to form a critical mass.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

A. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

B. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

C. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear material wastes as defined in the regulations or orders of the Commission;

D. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission;

E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;

F. The regulation of the land disposal of byproduct, source, or special nuclear material waste received from other persons;

G. The extraction or concentration of source material from source material ore and the management and disposal of the resulting byproduct material.

Article III

With the exception of those activities identified in Article II, paragraphs A through D, this Agreement may be amended, upon application by the State and approval by the Commission, to include the additional areas specified in Article II, paragraphs E, F and G, whereby the State can exert regulatory authority and responsibility with respect to those activities and materials.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and will assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other agreement state. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of section 274 of the Act. The Commission may also, pursuant to section 274j of the Act, temporarily suspend all or part of this agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review this Agreement and actions taken by the State under this Agreement to ensure compliance with section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by the Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on July 1, 2003, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Madison, Wisconsin this ** day of June, 2003.

For the United States Nuclear Regulatory Commission.

Nils J. Diaz,

Chairman.

For the State of Wisconsin.

Jim Doyle,

Governor.

[FR Doc. 03–9604 Filed 4–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting; Yucca Mountain, NV

Board Meeting: May 13–14, 2003—Washington, DC: The Nuclear Waste Technical Review Board will meet to discuss thermal aspects of the Department of Energy's regulatory design for Yucca Mountain, corrosion research, geophysical and hydrogeologic investigations of the Yucca Mountain site, performance confirmation plans, and a report by the Igneous Consequences Peer Review Panel.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, on Tuesday, May 13, and on Wednesday morning, May 14, 2003, the U.S. Nuclear Waste Technical Review Board (Board) will meet in Washington, DC, to discuss how heat from the radioactive decay of nuclear waste will affect the U.S. Department of Energy's (DOE) design of a repository for disposing of spent nuclear fuel and high-level radioactive waste at Yucca Mountain in Nevada. Other technical and scientific issues related to the potential performance of such a repository also will be discussed. The meeting is open to the public, and opportunities for public comment will be provided. The Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to managing the disposal of the nation's spent nuclear fuel and high-level radioactive waste.

The Board meeting will be held at the Watergate Hotel; 2650 Virginia Avenue, NW.; Washington, DC 20037. The telephone number is 202–965–2300; the fax number is 202–337–7915. The

meeting sessions will begin at 8 a.m. on both days.

On Tuesday, the meeting will focus on the DOE's planned repository design and operating mode for Yucca Mountain. The Board has invited the DOE to describe clearly the thermal aspects of the repository design and operating mode, how the thermal aspects of the design and operating mode were analyzed for waste isolation, and the results of the analyses.

The half-day meeting on Wednesday will include discussions of other scientific issues related to a Yucca Mountain repository, including a presentation on corrosion research by a representative of the Center for Nuclear Waste Regulatory Analyses; a presentation on geophysical and hydrogeologic investigations by a representative of Inyo County, California; an update on the Yucca Mountain science and technology program; and a presentation by a representative of the Igneous Consequences Peer Review Panel. The session also will include a discussion of the DOE's performance confirmation plans.

Opportunities for public comment will be provided before adjournment on both days. Those wanting to speak during the public comment periods are encouraged to sign the "Public Comment Register" at the check-in table. A time limit may have to be set on individual remarks, but written comments of any length may be submitted for the record. Interested parties also will have the opportunity to submit questions in writing to the Board. If time permits, the questions will be addressed during the meeting.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at *http://www.nwtrb.gov*. Beginning on June 16, 2003, transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff.

A block of rooms has been reserved at the Watergate Hotel. A meeting rate is available for reservations made by April 21, 2003. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting. For more information, contact the NWTRB; Karyn Severson, External Affairs; 2300 Clarendon Boulevard, Suite 1300; Arlington, VA 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495.

Dated: April 17, 2003.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 03–9908 Filed 4–21–03; 8:45 am]

BILLING CODE 6820–AM–M

SECURITIES AND EXCHANGE COMMISSION

[Securities Exchange Act of 1934: Release No. 47683 and International Series Release No. 1268]

Order Regarding the Collateral Broker-Dealers Must Pledge When Borrowing Customer Securities

April 16, 2003.

Section 36 of the Securities Exchange Act of 1934 ("Exchange Act") authorizes the Securities and Exchange Commission ("Commission"), by rule, regulation, or order, to conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities, or transactions from any provision or provisions of the Exchange Act or any rule or regulation thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.

By this Order, the Commission will allow broker-dealers that borrow fully-paid [1] and excess margin [2] securities from customers to pledge a wider range of collateral than is currently permitted under paragraph (b)(3) of rule 15c3–3 (17 CFR 240.15c3–3). Most of the categories of permissible collateral added by this Order were selected based on their high quality and liquidity. The remaining categories, certain sovereign debt securities and foreign currencies, are being added because they may be pledged only when borrowing non-equity securities issued by entities (including the sovereign entity) from the same sovereign jurisdiction or denominated in the same currency, respectively. In these cases, market declines affecting the pledged collateral should be expected to have a related affect on the borrowed securities. By adding only highly liquid collateral or, with respect to two categories, collateral that is restricted in its use, the Order is consistent with the objectives of paragraph (b)(3) of rule 15c3–3, which is designed to ensure borrowings from customers remain fully collateralized.

The Commission took into account several considerations in deciding whether to provide this exemptive relief and designate additional categories of permissible collateral. For example, the Commission considered whether the risks of customer losses associated with permitting a new category of collateral were sufficiently small relative to the benefits the additional kinds of collateral will provide. Those benefits include adding liquidity to the securities lending markets and lowering borrowing costs for broker-dealers. In issuing this Order, the Commission is drawing on its experience in assessing the liquidity of markets in a variety of contexts including, for example, the net capital requirements for broker-dealers.

The rule currently requires that the collateral provided by a broker-dealer fully collateralize its obligation to a customer, and that the value of the loaned securities and the collateral be marked to market on a daily basis to meet this requirement. The Order requires, in addition to the rule's requirements, over-collateralization when the collateral is denominated in a different currency than the borrowed securities. The daily marking to market and over-collateralization should serve to buffer fluctuations in value.

The Commission finds that this exemption is appropriate in the public interest, and consistent with the protection of investors. The exemption will add liquidity to the securities lending markets and lower borrowing costs while maintaining the customer protection objectives of rule 15c3–3.

Accordingly, *it is ordered*, pursuant to section 36 of the Exchange Act, that, broker-dealers may pledge, in accordance with all applicable conditions set forth below and in paragraph (b)(3) of rule 15c3–3, the following types of collateral (in addition to those permitted under paragraph (b)(3) of rule 15c3–3) when borrowing fully paid and excess margin securities from customers:[3]

1. "Government securities" as defined in section 3(a)(42)(A) and (B) of the Exchange Act may be pledged when borrowing any securities.

2. "Government securities" as defined in section 3(a)(42)(C) of the Exchange Act issued or guaranteed as to principal or interest by the following corporations may be pledged when borrowing any securities: (i) The Federal Home Loan Mortgage Corporation, (ii) the Federal National Mortgage Association, (iii) the Student Loan Marketing Association, and (iv) the Financing Corporation.

3. Securities issued by, or guaranteed as to principal and interest by, the following Multilateral Development Banks—the obligations of which are backed by the participating countries, including the U.S.—may be pledged when borrowing any securities: (i) The International Bank for Reconstruction and Development, (ii) the Inter-American Development Bank, (iii) the Asian Development Bank, (iv) the African Development Bank, (v) the European Bank for Reconstruction and Development, and (vi) the International Finance Corporation.

4. Mortgage-backed securities meeting the definition of a "mortgage related security" set forth in section 3(a)(41) of the Exchange Act may be pledged when borrowing any securities.

5. Negotiable certificates of deposit and bankers acceptances issued by a "bank" as that term is defined in section 3(a)(6) of the Exchange Act, and which are payable in the United States and deemed to have a "ready market" as that term is defined in 17 CFR 240.15c3–1 ("rule 15c3–1"),[4] may be pledged when borrowing any securities.

6. Foreign sovereign debt securities may be pledged when borrowing any securities, *provided* that, (i) at least one nationally recognized statistical rating organization ("NRSRO") has rated in one of its two highest rating categories either the issue, the issuer or guarantor, or other outstanding unsecured long-term debt securities issued or guaranteed by the issuer or guarantor; and (ii) if the securities pledged are denominated in a different currency than those borrowed,[5] the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of rule 15c3–3 (100%) by 1% when the collateral is denominated in the Euro, British pound, Swiss franc, Canadian dollar or Japanese yen, or by 5% when it is denominated in another currency.

7. Foreign sovereign debt securities that do not meet the NRSRO rating condition set forth in item 6 above may be pledged only when borrowing non-equity securities issued by a person organized or incorporated in the same jurisdiction (including other debt securities issued by the foreign sovereign); *provided* that, if such foreign sovereign debt securities have been assigned a rating lower than the securities borrowed, such foreign sovereign debt securities must be rated in one of the four highest rating categories by at least one NRSRO. If the securities pledged are denominated in a different currency than those borrowed, the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of rule 15c3–3 by 1% when the collateral is denominated in the Euro, British pound, Swiss franc, Canadian dollar or Japanese yen, or by 5% when it is denominated in another currency.

8. The Euro, British pound, Swiss franc, Canadian dollar or Japanese yen may be pledged when borrowing any securities, *provided* that, when the securities borrowed are denominated in a different currency than that pledged, the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of rule 15c3–3 by 1%. Any other foreign currency may be pledged when borrowing any non-equity securities denominated in the same currency.

9. Non-governmental debt securities may be pledged when borrowing any securities, *provided* that, in the relevant cash market they are not traded flat or in default as to principal or interest, and are rated in one of the two highest rating categories by at least one NRSRO. If such securities are not denominated in U.S. dollars or in the currency of the securities being borrowed, the broker-dealer shall provide collateral in an amount that exceeds the minimum collateralization requirement in paragraph (b)(3) of rule 15c3–3 by 1% when the securities pledged are denominated in the Euro, British pound, Swiss franc, Canadian dollar or Japanese yen, or by 5% when they are denominated in any other currency.

The categories of permissible collateral identified above do not include securities that (i) have no principal component, or (ii) accrue interest at the time of the pledge at a stated rate equal to or greater than 100% per annum (expressed as a percentage of the actual principal amount of the security).

Broker-dealers pledging any of the securities set forth above must, in addition to satisfying the notice requirements already contained in paragraph (b)(3) of rule 15c3–3, include in the written agreement with the customer a notice that some of the securities being provided by the borrower as collateral under the agreement may not be guaranteed by the United States.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47676; File No. SR–CBOE–2002–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Introduction of the CBOE Hybrid System

April 14, 2003

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 18, 2002, April 2, 2002, May 17, 2002, January 16, 2003, and April 7, 2003, respectively, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change, and Amendments No. 1, 2, 3, and 4 to the proposed rule change,[3] as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to implement the CBOE Hybrid System, a revolutionary options trading platform that combines the best features of both open outcry and electronic trading systems. When operational, the CBOE Hybrid System will offer automatic executions of eligible electronic orders and still provide an open-outcry trading

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[1] As defined in rule 15c3–3, "fully paid" securities are securities carried by a broker-dealer for which the customer has paid the full purchase price in cash. 17 CFR 240.15c3–3(a)(3).

[2] As defined in rule 15c3–3, "excess margin" securities are securities carried by a broker-dealer that have a market value in excess of 140% of the amount the customer owes the broker-dealer. 17 CFR 240.15c3–3(a)(5).

[3] All prior staff interpretations and no-action positions concerning the types of collateral that may be pledged under paragraph (b)(3) of rule 15c3–3 are herewith withdrawn.

[4] Certificates of deposit and bankers acceptances are deemed to have a "ready market" under rule 15c3–1 if, among other things, they are issued by a bank as defined in section 3(a)(6) of the Exchange Act that is (i) subject to supervision by a federal banking authority, and (ii) rated investment grade by at least two nationally recognized statistical rating organizations or, if not so rated, has shareholders' equity of at least $400 million.

[5] For the purposes of this Order, equity securities will be deemed to be denominated in the currency of the jurisdiction in which the issuer of such securities has its principal place of business.

[1] 15 U.S.C. 78(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 4 supersedes the original filing and Amendments No. 1, 2, and 3 in their entirety.

environment for trades to occur on the floor of the Exchange. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes the introduction of the CBOE Hybrid System ("Hybrid" or "Hybrid System"), a revolutionary trading platform that will alter the fundamental way in which the Exchange conducts business. When operational, Hybrid will combine the features of electronic trading with the benefits of open outcry, auction market principles to form the most dynamic trading platform in the options industry.

Hybrid merges the electronic and open outcry trading models while at the same time it offers market participants the ability to stream electronically their own quotes. Today, CBOE's disseminated quote represents, for the most part, the DPM's autoquote price and market makers are able to affect changes to that quote in open outcry (or by putting up manual quotes). Hybrid will offer market participants (which are defined as in-crowd market makers, in-crowd DPMs, and in-crowd floor brokers) the opportunity to submit their own firm disseminated market quotes that represent their own trading interest.[4] Whereas there currently is only one autoquote price comprising the CBOE disseminated quote, Hybrid will allow for the introduction of multiple quotes in the quoting equation. Market makers will have the ability to stream quotes that reflect their individualized trading interest.

Incoming electronic orders from public customers and certain types of broker-dealers that execute against market participants' quotes will be allocated to the best quoters pursuant to a novel and unique trading algorithm. This "Ultimate Matching Algorithm" ("UMA" or the "Algorithm") retains public customer priority and rewards those market participants pursuant to a formula that balances the concepts of quoting at the best price with providing liquidity at the best price. The result will be substantially enhanced incentives for market participants to quote competitively and substantially reduced disincentives to quote competitively.[5] Indeed, the ability to stream electronic quotes combined with the ability to receive electronic and instantaneous allocations of incoming orders will reward market participants that quote at the best price. The Exchange believes that Hybrid, with its ability to allow multiple quotes and instantaneous allocations, may have the attendant benefit of tightening the Exchange's best disseminated quote. Whereas the Exchange's current disseminated quote, which is comprised of only one electronic input, may be replaced by a disseminated quote that reflects multiple inputs, the Exchange expects that spread widths may decline and liquidity may increase.

Hybrid also retains the benefits inherent in a floor-based, open outcry exchange. Order entry firms will continue to have the ability to have their floor brokers walk into a trading crowd and request markets on behalf of their customers. Trading crowds, as is the case today, may continue to offer price improvement to orders of size, complex orders, and other orders that are exposed to the open outcry, auction market environment. The opportunity for market participants to offer price improvement is a concept that exists only in extremely limited instances on all-electronic exchanges. The CBOE Hybrid System will enhance the ability of order entry firms to satisfy their due diligence and best-execution obligations by providing them with a trading platform that provides efficient and instantaneous electronic executions when CBOE is the NBBO, along with the opportunity for price improvement.

Hybrid will also offer improved access to the broker-dealer community. In this respect, non-market maker broker-dealers will have the same access to the electronic execution feature of Hybrid that public customers will enjoy in designated classes. This will allow eligible broker-dealers to receive more automatic executions of the orders they route to CBOE. Additionally, the Hybrid rules for the first time allow for the "opening of the book" to certain types of broker-dealer orders. Accordingly, these broker-dealer orders will be eligible for placement into the electronic book against which they may be executed electronically. Finally, Hybrid also allows for the opportunity for broker-dealers to electronically access the limit order book (*i.e.*, buy or sell the book) in eligible classes. This feature will allow for the automatic execution of broker-dealer orders against resting limit orders in the book, whether they are public customer or broker-dealer orders in the book. Taken together, these features greatly enhance the handling of broker-dealer orders, thereby making the Exchange more broker-dealer friendly.

To implement Hybrid the Exchange proposes the adoption of several new rules (most notably CBOE Rules 6.13 and 6.45A) and the amendment of several existing rules. New CBOE Rule 6.13 replaces the Exchange's RAES Rule 6.8 for those classes in which Hybrid is operational and will govern the automatic execution of incoming electronic orders. Proposed CBOE Rule 6.45A is the new priority and allocation rule and codifies UMA. Together, these rules form the backbone of a trading system that will provide investors with deeper and more liquid markets, will provide market participants with substantially enhanced incentives to quote competitively, will greatly expand broker-dealer access, and will provide order entry firms with a trading platform CBOE believes is most conducive to satisfying their best execution and due diligence obligations.

This proposal will only apply to equity options. Accordingly, the Exchange proposes a rollout schedule that will see the introduction of equity option classes trading on Hybrid by May 30, 2003. New equity option classes will continue to be rolled out gradually as the Exchange and its membership become more familiar and acquainted with the operation of the system. The determination of which classes to roll out, and when to roll them out, will be made by the Equity Floor Procedures Committee. The Exchange hopes to expand the rollout to the Top 200 classes by January 2004 and by the fourth quarter of 2004, to expand the rollout to the 500 most active equity options. The Exchange intends to implement Hybrid floor-wide in all classes by the fourth quarter of 2006.

Non-Hybrid Classes

For classes in which Hybrid is not yet operational, market makers will continue to be able to input manual quotes and receive allocations of incoming orders that execute against those quotes, as prescribed by existing CBOE Rule 6.8(d)(vi). Following is a descriptive summary of the new rules and the amended rules for the new Hybrid System.

Rule 6.13 CBOE Hybrid System's Automatic Execution Feature

This rule governs the automatic execution of incoming electronic customer and certain broker-dealer ("BD") orders. Just as CBOE Rule 6.8 has no application to classes trading on Hybrid, this Rule is only applicable to classes trading on Hybrid. The allocation of electronically executed orders in Hybrid shall be pursuant to new CBOE Rule 6.45A.

Proposed section (b) governs aspects of the automatic execution feature, including defining eligible orders and eligible order size, the process for automatic execution, split price executions, and executions against orders in the electronic book.

Eligible Orders and Order Size

This section clarifies that eligible orders may be automatically executed in accordance with the provisions of this Rule. Hybrid creates two broad categories of orders that will be eligible for automatic execution. First, orders from non-broker-dealer public customers and non-market maker broker-dealers will be eligible for automatic execution for the same number of contracts. Second, consistent with current CBOE Rule 6.8.01, the appropriate floor procedure committee ("FPC") may determine that orders from market makers and specialists may be eligible for automatic execution. Orders not eligible for automatic execution instead will route to PAR, BART, or to the order entry firm's booth printer.[6] All BD orders of a particular origin code will be routed to the same location (*e.g.*, all orders designated by the "N" origin code (non-CBOE market makers) will route to the firm's booth). Any changes to the routing parameters of non-auto-ex eligible BD orders will be made by the appropriate FPC and announced to the membership via regulatory circular.

As is the case today, the appropriate FPC shall determine on a class-by-class basis the maximum size of orders entitled to receive automatic execution through Hybrid. If the eligible order size exceeds the disseminated size, incoming eligible orders shall be entitled to receive an automatic execution up to the disseminated size. Similarly, if the appropriate FPC determines to allow market makers to access the automatic execution feature of Hybrid, it may also determine to establish the maximum order size eligibility for such orders at a level lower than the maximum order size eligibility for non-broker-dealer public customers and non-market-maker broker-dealers.

Split-Price Executions

Eligible orders will be automatically executed. Eligible orders for a size greater than the disseminated size will be automatically executed in part, up to the disseminated size. The balance of the order if marketable will execute automatically at the revised disseminated price up to the revised disseminated size (provided it does not violate NBBO, in which case it will route to PAR or BART).[7] If not marketable, the balance of the order will book electronically.

Automatic Executions at Prices Inferior to NBBO

When CBOE is not the NBBO, eligible orders will not automatically execute and instead, shall route to the DPM's PAR terminal for non-automated handling. Alternatively, order entry firms will have the ability, at their discretion, to have these orders route to the firm's booth instead of PAR. Eligible orders received while the CBOE market is locked (*e.g.*, $1.00 bid—$1.00 offered) shall be eligible for automatic execution on CBOE at the disseminated quote, provided that CBOE's disseminated quote is not inferior to the NBBO, in which case the order will either route to the DPM's PAR terminal or the firm's booth.

Users, Order Entry Firms, and Prohibited Practices

CBOE Rule 6.13(c) defines "User" as any person or firm that obtains electronic access to the automatic execution feature of the CBOE Hybrid System through an Order Entry Firm. The term "Order Entry Firm" ("OEF") means a member organization of the Exchange that is able to route orders to the Exchange's Order Routing System.

Order Entry Firms are required to comply with all applicable CBOE options trading rules and procedures. They are required to provide written notice to all Users regarding the proper use of the CBOE Hybrid System, including any automated execution features. The Rule also requires OEFs to Maintain adequate procedures and controls that will permit the OEF to effectively monitor and supervise the entry of electronic orders by all Users. OEFs must monitor and supervise the entry of orders by Users to prevent the prohibited practices set forth below. These requirements are identical to those contained in CBOE Rule 6.8(e).

This section also incorporates the provisions found in current CBOE Rules 6.8 and 6.8A regarding prohibited practices. In this respect, prohibited practices include but are not limited to the following:

1. Dividing an order into multiple smaller orders for the purpose of meeting the eligible order size requirements for automatic execution ("unbundling").

2. The electronic generation and communication of orders (and cancellations) in violation of CBOE Rule 6.8A by non-trading crowd participants.

3. Effecting transactions that constitute manipulation as provided in CBOE Rule 4.7 and Rule 10b–5 under the Act.

Trade Nullification Procedure

A trade executed on the CBOE Hybrid System may be nullified if the parties to the trade agree to the nullification. When all parties to a trade have agreed to a trade nullification, one party must contact the Help Desk, which will confirm the agreement and disseminate cancellation information in prescribed OPRA format.

Removal of Unreliable Quotes

The Exchange incorporates from existing CBOE Rule 6.8.02 language pertaining to the removal of unreliable quotes or markets from NBBO calculation. To summarize, floor officials may remove unreliable quotes in one or more options classes upon: (1) Direct communication from the affected market or the dissemination through OPRA of a message indicating that disseminated quotes are not firm; or (2) direct communication from the affected market that it is experiencing systems or

[4] In this respect, in-crowd floor brokers may represent orders on behalf of members, broker-dealers, public customers, and the firm's proprietary account. Pursuant to Rule 6.75, floor brokers generally may not execute any orders for which they have been vested with the discretion to choose: the class of options to buy/sell, the number of contracts to buy/sell, or whether the transaction shall be one to buy or sell. Floor brokers may not stream quotes.

[5] Subparagraph IV.B.h(i)(aa) of the Commission's September 11, 2000 Order ("Order") requires the Exchange to "adopt new, or amend existing, rules concerning its automated quotation and execution systems which substantially enhance incentives to quote competitively and substantially reduce disincentives for market participants to act competitively." Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions. Securities Exchange Act Release No. 43268 (September 11, 2000).

[6] BART is the Booth Automated Routing Terminal that enables firms to maintain orders in electronic format. Orders routed to the firm's booth, as opposed to BART, will print at the booth and must be handled by the firm manually.

[7] The balance of the order will only route to BART if the order entry firm so requests.

other problems affecting the reliability of its disseminated quotes. Any decision to remove a market or its quotes from NBBO calculation will be promptly communicated to the affected market and duly recorded by the Exchange.

Rule 6.45A Priority and Allocation of Trades for CBOE Hybrid System

This rule establishes the priority principles applicable to Hybrid and provides for the allocation of trades. The rules of priority and order allocation procedures set forth in this rule shall apply only to option classes designated by the Exchange for trading on the CBOE Hybrid System. For those classes not trading on the Hybrid System, CBOE Rule 6.45 will govern. This section has four main parts:

- Allocation of Incoming Electronic Orders
- Allocation of Orders Represented in the Trading Crowd
- Interaction of Market Participant's Quotes and/or Orders with Orders in Electronic Book
- Quotes Interacting with Quotes

A. Allocation of Incoming Electronic Orders

Electronic orders will be allocated using UMA, the Exchange's Ultimate Matching Algorithm. In UMA, any market participant (defined as an in-crowd market maker, in-crowd floor broker, or DPM for the class) who enters a quotation that is represented in the disseminated CBOE best bid or offer ("BBO") shall be eligible to receive allocations of incoming electronic orders for up to the size of its quote. If the number of contracts represented in the disseminated quote is less than the number of contracts in an incoming electronic order(s), the incoming electronic order(s) shall only be entitled to receive a number of contracts up to the size of the disseminated quote. The balance of the electronic order will be eligible to be filled at the refreshed quote either electronically or manually and, as such, may receive a split price execution (as provided in CBOE Rule 6.13).

Priority of Orders in the Electronic Book

Public customer orders in the electronic book have priority. Multiple public customer orders in the electronic book at the same price are ranked based on time priority. If a public customer order(s) in the electronic book matches, or is matched by, a market participant quote, the public customer order(s) shall have priority and, the balance of the electronic order, if any, will be allocated via UMA.

If pursuant to CBOE Rule 7.4(a) the appropriate FPC determines to allow certain types of broker-dealer orders to be placed in the electronic book, then for purposes of this rule, the cumulative number of broker-dealer orders in the electronic book at the best price shall be deemed one "market participant" regardless of the number of broker-dealer orders in the book. The allocation due the broker-dealer orders in the electronic book by virtue of their being deemed a "market participant" shall be distributed among each broker-dealer order comprising the "market participant" via UMA. For example, if there were five BD orders in the book for a cumulative 100 contracts, those five BD orders would be deemed "one market participant" for 100 contracts. The allocation of incoming orders among the five BD orders in the book would be done pursuant to UMA.

Operation of the Allocation Algorithm

When a market participant is quoting alone at the disseminated CBOE BBO and is not subsequently matched in the quote by other market participants prior to execution, it will be entitled to receive incoming electronic order(s) up to the size of its quote. In this respect, market participants quoting alone at the BBO have priority.

When more than one market participant is quoting at the BBO, inbound electronic orders shall be allocated pursuant to UMA. UMA is an algorithm that allocates orders based on two separate yet important aspects: parity (*i.e.*, multiple participants quoting at the best price) and depth of liquidity (*i.e.*, relative size of each market participant's quote).[8] Each of these components is described in greater detail below.

The UMA formula is as follows:

Allocation Algorithm

$$\text{Incoming Order Size} * \frac{\text{(Equal Percentage based on number of market participants quoting at BBO) (Component A)} + \text{(Pro-rata Percentage based on size of market participants quotes) (Component B)}}{2}$$

Component A: This is the parity component of UMA. In this component, UMA treats as equal all market participants quoting at the relevant best bid or best offer (or both). Accordingly, the percentage used for Component A is an equal percentage, derived by dividing 100 by the number of market participants quoting at the best price. For instance, if there were four market participants quoting at the best price, each is assigned 25% for Component A (or 100/4). This component rewards and incents market participants that quote at a better price than do their counterparts even if they quote for a smaller size.

Component B: This size pro-rata component is designed to reward and incent market participants to quote with size. As such, the percentage used for Component B of the Allocation Algorithm formula is that percentage that the size of each market participant's quote at the best price represents relative to the total number of contracts in the disseminated quote. For example, if the disseminated quote represents the quotes of market makers X, Y, and Z who quote for 20, 30, and 50 contracts respectively, then the percentages assigned under Component B are 20% for X, 30% for Y, and 50% for Z.

Final Weighting: The final weighting, which shall be determined by the appropriate FPC, shall be a weighted average of the percentages derived for Components A and B multiplied by the size of the incoming order. Initially, the weighting of components A and B shall be equal, represented mathematically by the formula: ((Component A Percentage +Component B Percentage)/2) * incoming order size. The final weighting shall apply uniformly across all options under the jurisdiction of the appropriate FPC.[9] Changes made to the weighting of Components A and B shall be announced to the membership in advance of implementation via Regulatory Circular.

DPM's Participation Entitlement

By virtue of their performance of additional obligations, DPMs generally are entitled to receive a participation entitlement for transactions that occur at the DPM's quote.[10] If a DPM is eligible for an allocation pursuant to the operation of the Algorithm described above, its allocation shall be either: [11]

(1) The greater of the amount it would be entitled to pursuant to the DPM participation right established pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder) or the amount it would otherwise receive pursuant to the operation of the Algorithm described above; or

(2) The amount it would be entitled to pursuant to the DPM participation right established pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder).

The appropriate FPC shall determine which of the above two formulas will be applicable to all classes over which it has jurisdiction.[12] Each pronouncement regarding which formula to be used will be made via Regulatory Circular.

B. Allocation of Orders Represented in the Trading Crowd

This section governs the allocation of orders that are represented in the trading crowd by floor brokers (including DPMs acting as agent under CBOE Rule 8.85(b)).

Priority of Orders in the Electronic Book

As an initial matter, public customer orders in the electronic book have priority. Multiple public customer orders in the electronic book at the same price are ranked based on time priority. If a public customer order(s) in the electronic book matches, or is matched by, an oral bid or offer provided by a member of the trading crowd, the public customer order(s) shall have priority and the balance of the order, if any, will be allocated in open outcry, as described below.

If pursuant to CBOE Rule 7.4(a) the appropriate FPC determines to allow broker-dealer orders to be placed in the electronic book, then for purposes of this rule, the cumulative number of broker-dealer orders in the electronic book at the best price shall be deemed one "book market participant" (or "BMP") regardless of the number of broker-dealer orders in the book. Any allocation due the broker-dealer orders in the electronic book by virtue of their being deemed a "book market participant" shall be distributed among each broker-dealer order comprising the BMP in accordance with UMA.

Allocation

The method for allocating orders that are represented in the trading crowd by floor brokers is dependent upon whether there are any book market participants quoting at the prevailing price.

1. *No BMP Present at the Prevailing Price.* If there is no BMP present at the prevailing price, allocation of open outcry orders shall be pursuant to existing CBOE Rule 6.45(a) and (b).

2. *BMP is Present at the Prevailing Price.* In an effort to ensure that BMPs receive at least partial allocations of orders received in open outcry, CBOE proposes to adopt an allocation rule that will limit market participants in the crowd to a predetermined percentage. If two or more bids (offers) represent the best price, priority shall continue to be afforded in the sequence in which the bids (offers) were made subject to the restriction that the first market participant to respond shall be entitled to 70% of the order. The second market participant to respond (if ascertainable) shall be entitled to 70% of the remainder of the order (*i.e.*, 70% of 30%). The balance of the order shall be apportioned equally among the remaining market participants bidding (offering) at the same price and the BMP. The portion allocated to the BMP shall be distributed amongst each book market participant pursuant to the allocation algorithm described in CBOE Rule 6.45A(a)(i)(B)(2) above.

If at any point the order in which market participants respond is not ascertainable, the balance of the incoming order, if any, shall be apportioned equally among the remaining market participants bidding (offering) at the same price and, if applicable, the book market participant. If a market participant declines to accept any portion of the available contracts, any remaining contracts shall be apportioned equally among the other participants who bid (offered) at the best price (including the book market participant, if applicable) at the time the market was established until all contracts have been apportioned.

Complex Order Exception

The CBOE Hybrid System will continue to utilize the exception to the general priority rules for complex orders. As such, the Exchange incorporates existing Rule 6.45(e). CBOE, however, takes this opportunity to shorten it considerably. The revisions do not change the substance of the rule.

C. Interaction of Market Participant's Quotes and/or Orders With Orders in Electronic Book

Under proposed CBOE Rule 6.45A(c), market participants may also submit orders electronically to trade with orders in the electronic book. If only one market participant submits an electronic order or quote to trade with an order in the electronic book, that market participant shall be entitled to receive an allocation of the order in the electronic book up to the size of the market participant's order. If, however, more than one market participant submits an order to trade with the book, each market participant that submits an order or quote to buy (sell) an order in the electronic book within a period of time not to exceed 5 seconds [13] of the first market participant to submit an order ("N-second group") shall be entitled to receive an allocation of the order in the electronic book pursuant to the following allocation algorithm:

Allocation Algorithm

[8] UMA operates electronically and, as such, only market participants that are represented in the disseminated quote will participate in the allocation of incoming electronic orders. Multiple incoming orders will execute in accordance with CBOE Rule 8.51, Firm Disseminated Market Quotes.

[9] While the initial weighting of Components A and B will be equal, the rule allows the appropriate FPC to adjust the weighting percentages, which it would do if it believed such modifications would further enhance market participants' incentives to quote competitively or reduce disincentives to quote competitively, in accordance with the terms of the Order.

[10] Among the obligations, which are codified in CBOE Rule 8.85, are: The requirement to quote continuously, the obligation to make legal width markets; the obligation to book eligible orders; the requirement to represent orders routed to the PAR station; the obligation under Linkage to handle all inbound linkage orders and to send satisfaction orders on behalf of customer orders in CBOE's book.

[11] In either case, the DPM's entitlement cannot exceed the size of the DPM's quote.

[12] Due to a systems limitation, the Exchange initially will use method two and set the DPM's participation entitlement at the amount it would be entitled to pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder).

[13] This N-second period is configurable by the appropriate FPC but shall never exceed 5-seconds. Any reduction of this N-second period (or subsequent increase) shall be announced to the membership in advance of implementation via Regulatory Circular. Furthermore, this time period shall apply uniformly among all classes under the FPC's jurisdiction.

$$\text{Electronic Book Order(s) Size} * \frac{\text{(Equal percentage based on number of members of "N-second group") (Component A)} + \text{(Size pro-rata percentage based on size of orders of N-second group members) (Component B)}}{2}$$

Component A: The percentage to be used for Component A shall be an equal percentage derived by dividing 100 by the number of market participants in the "N-second group."

Component B: Size Pro-rata Allocation: The percentage to be used for Component B of the Allocation Algorithm formula is that percentage that each participant of the "N-second group's" quote at the best price represents relative to the total number of contracts of all market participants of the "N-second group."[14]

Final Weighting: The final weighting, which shall be determined by the appropriate FPC, shall be a weighted average of the percentages derived for Components A and B, multiplied by the size of the order(s) in the electronic book. Initially, the weighting of components A and B shall be equal, represented mathematically by the formula: {(Component A Percentage + Component B Percentage)/2} * electronic book order size.

If a DPM is eligible for an allocation by virtue of being a member of the "N-second group" as described in paragraph (C)(2) above, the DPM shall be entitled to receive an allocation equal to the amount it would be entitled to pursuant to the DPM participation right established pursuant to CBOE Rule 8.87 (and Regulatory Circulars issued thereunder). The DPM's entitlement percentage is expressed as a percentage of the remaining quantity after all public customer orders in the electronic book have been executed.

The Exchange believes this process whereby all members of the "N-second group" receive an allocation of orders in the book will enhance competition. As discussed above, this process only applies when market participants attempt to access orders resting in the electronic book (*i.e.*, liquidity-taking). As such, this process has no effect on a market participant's liquidity-providing activities where he receives allocation of incoming orders. Thus, market makers will always have an incentive to quote competitively (provide liquidity). Second, this process ensures that the market-making organization with the deepest pockets and fastest technology does not monopolize every order in the electronic book. This "arms race" scenario would create a situation where the fastest machine wins every time, even if it was faster by a number as miniscule as a few milliseconds.[15] This in turn would create a disincentive to other market participants who would be unable to interact with orders in the book. Creation of an "N-second group," conversely, gives these market participants an incentive to continue to submit orders and hence more of an incentive to remain on the floor of the exchange making markets, providing crucial liquidity.

D. Quotes Interacting With Quotes (Proposed Rule 6.45A(d))

Because Hybrid allows the simultaneous entry of quotes by multiple market makers,[16] there may be instances where quotes may become locked. If an in-crowd market maker's (including the DPM) disseminated quote interacts with the disseminated quote(s) of another in-crowd market maker (including the DPM), resulting in the dissemination of a "locked" quote (*e.g.*, $1.00 bid " 1.00 offer), the following shall occur:

(A) The Exchange will disseminate the locked market and both quotes will be deemed "firm" disseminated market quotes.

(B) The market makers whose quotes are locked will receive a quote update notification advising that their quotes are locked.

(C) A "counting period" will begin during which market makers whose quotes are locked may eliminate the locked market. Provided, however, that in accordance with subparagraph (A) above a market maker will be obligated to execute customer and broker-dealer orders eligible for automatic execution pursuant to CBOE Rule 6.13 at his disseminated quote in accordance with CBOE Rule 8.51. During the "counting period" market makers will continue to be obligated for one contract in open outcry to other market makers, in accordance with CBOE Rules 8.51 and 6.48. If at the end of the counting period the quotes remain locked, the locked quotes will automatically execute against each other in accordance with the allocation algorithm described above in CBOE Rule 6.45A(a).

For the first 60 days after a class begins trading on the Hybrid System, the length of the "counting period" for that particular class may not exceed ten seconds. For the next 60 days thereafter (*i.e.*, days 61–120) the length of the "counting period" may not exceed seven seconds in that class. Commencing on the 121st day after a class begins trading on the Hybrid System, the length of the "counting period" may not exceed four seconds in that class. Beginning April 1, 2004, all classes trading on Hybrid will be subject to a counting period not to exceed four seconds. The appropriate FPC may shorten the duration of the "counting period."

The Exchange notes that the Hybrid System will not disseminate an internally crossed market (*i.e.*, the CBOE Bid is higher than the CBOE offer—$1.10 bid × $1.00 offer). If a market maker submits an incoming quote that would cross an existing quote, the Exchange will alter the incoming such that it locks the existing quote, at which point the locked quotes will be treated in accordance with the procedures described above. Correspondingly, the Exchange will notify the second market maker that its quote has been changed.[17]

The Exchange adds new Interpretations .01 and .02 to clarify that order entry firms may not bypass the crossing (CBOE Rule 6.74) and solicitation (CBOE Rule 6.9) rules without exposing orders they represent as agent for at least 30 seconds prior to electronically executing against those orders through the auto-ex feature of Hybrid.

Rule 8.7. Obligations of Market Makers

CBOE Rule 8.7 governs market maker obligations. Market Makers on the CBOE Hybrid System will continue to be subject to the obligations imposed by this rule, as amended.

The proposed change to section (b)(ii) of CBOE Rule 8.7 clarifies that market makers will be obligated to honor their quotes for up to their disseminated size, in accordance with the Quote Rule. Under Hybrid, market makers will be deemed the "responsible broker or dealer" for quotes they cause to be disseminated. Currently, the entire trading crowd is considered the "responsible broker or dealer." This represents a fundamental change and will also be reflected in CBOE Rule 8.51.

The proposed change to section (b)(iii) of CBOE Rule 8.7 imposes upon market makers an obligation to ensure that their quotes are accurate. This section also provides guidance as to the permissible methods by which market makers may quote. Under Hybrid, market makers will be able to quote verbally by open outcry in response to a request for a market or they may quote electronically (or submit orders electronically) by use of an exchange-approved quoting device. This rule also clarifies that market makers must be physically present in the trading crowd to quote and submit orders. This is designed to prevent remote market making.

The Exchange proposes to adopt new paragraph (d) to CBOE Rule 8.7 to govern market maker obligations in Hybrid classes. The proposed obligations in paragraph (d) will only apply to market makers trading classes on the CBOE Hybrid System and only in those Hybrid classes. As such, this section has no applicability to non-Hybrid classes. Proposed paragraph (d) to CBOE Rule 8.7 clarifies that unless otherwise provided in this Rule, market makers on the Hybrid System are subject to all obligations imposed by CBOE Rule 8.7. To the extent another obligation contained elsewhere in CBOE Rule 8.7 is inconsistent with an obligation contained in paragraph (d) of Rule 8.7, paragraph (d) shall govern.

The Exchange proposes an introductory rollout period with respect to the obligations contained in paragraph (d). Accordingly, for a period of ninety (90) days commencing immediately after a class begins trading on the Hybrid System, the provisions of proposed paragraph (d)(i) shall govern trading in that class. Upon completion of this 90-day rollout period, a market maker's electronic trading volume will determine whether (d)(i) or (d)(ii) shall govern his trading activities, as described more fully below.

The Exchange notes that the requirements in proposed paragraph (d) to CBOE Rule 8.7 will be applicable on a per class basis depending upon the percentage of volume a market maker transacts electronically versus in open outcry. In making this determination, the Exchange will monitor market makers' trading activity every calendar quarter to determine whether they exceed the thresholds established below in paragraph (d)(i). If a market maker exceeds the threshold established below, the obligations contained in (d)(ii) will be effective the next calendar quarter.

Proposed Rule 8.7(d)(i) Market Maker Trades Less Than 20% Volume Electronically

If a market maker on the CBOE Hybrid System transacts 20% or less of his contract volume electronically in an appointed Hybrid class during any calendar quarter, the following provisions shall apply to that market maker in that class:

(A) Quote Widths: With respect to electronic quoting, the market maker will not be required to comply with the quote width requirements of CBOE Rule 8.7(b)(iv).

(B) Continuous Electronic Quoting Obligation: The market maker will not be obligated to quote electronically in any designated percentage of series within that class. If a market maker quotes electronically, its undecremented quote must be for at least ten contracts.

(C) Continuous Open Outcry Quoting Obligation: In response to any request for quote by a floor broker or DPM representing an order as agent, market makers must provide a two-sided market complying with the current quote width requirements contained in CBOE Rule 8.7(b)(iv) for a minimum of ten contracts.

(D) In-Person Quoting Requirement: Any volume transacted electronically will not count towards the market maker's in-person requirement contained in CBOE Rule 8.7.03(B).

Proposed Rule 8.7(d)(ii) Market Maker Trades More Than 20% Volume Electronically

If a market maker on the CBOE Hybrid System transacts more than 20% of his contract volume electronically in an appointed Hybrid class during any calendar quarter, beginning the next calendar quarter he will be subject to the following quoting obligations in that class for as long as he remains in that class:

(A) Quote Widths: The market maker must comply with the quote width requirements contained in Rule 8.7(b)(iv).

(B) Continuous Quoting Obligation: A market maker will be required to maintain continuous two-sided quotes for at least ten contracts (undecremented size) in a designated percentage of series within the class, in accordance with the schedule below:

% of Overall Class Volume Transacted on CBOE During the Previous Quarter that was Transacted Electronically	Electronic Quoting % Requirement (Percentage of series)
50% or Below	*20*
51–75%	*40*
Above 75%	*50*

The Exchange will monitor on a calendar quarter basis the percentage of business transacted electronically on CBOE in each particular class for the purpose of adjusting the applicable electronic quoting percentage during the next succeeding calendar quarter. For example, if during the preceding calendar quarter 83% of the volume transacted on CBOE in a particular class is done electronically, market makers subject to paragraph (d)(ii) of CBOE Rule 8.7 will have an obligation to make continuous markets in 50% of the series trading in that class.

(C) Continuous Open Outcry Quoting Obligation: In response to any request for quote by a floor broker or DPM representing an order as agent, market makers must provide a two-sided market complying with the current quote width requirements contained in Rule 8.7(b)(iv) for a minimum of ten contracts.

The Exchange proposes minor non-substantive wording changes to Interpretation .02 to CBOE Rule 8.7. First, in Interpretation .02, the Exchange removes the first six words of the sentence "although each pricing decision has many elements" as they are superfluous.

The change to Interpretation .05 imposes a minimum quote size obligation upon market makers. Specifically, market maker quotes may not be for less than ten contracts. The Exchange notes that this size obligation only applies to a market maker's initial undecremented quote. Accordingly, if a market maker puts up a quote for 20 contracts and an incoming order executes against 15 of those contracts causing the market maker's disseminated size to decline to five

[14] As noted in Rule 6.45A(c)(ii), the appropriate FPC may determine that the maximum quote size to be used for each market participant in the Component B calculation shall be no greater than the cumulative size of orders resident in the electronic book at the best price at which market participants are attempting to buy (sell). This would prevent a market participant from "sizing out" competing market participants by, for example, submitting an order for 1,000 contracts to buy a book order for 10 contracts.

[15] The Exchange notes that customers or anyone else eligible to submit orders electronically may access the book ahead of market participants. In this instance, customers would have absolute priority and would not be required to share the order allocation with members of the N-second group.

[16] At the Exchange's request, the term "market participant" has been replaced with the term "market maker" throughout the discussion of proposed CBOE Rule 6.45A(d). Telephone conversation between Stephen Youhn, Senior Attorney, CBOE and Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, on April 7, 2003.

[17] During the lock period, if the existing quote is cancelled subsequent to the changing of the incoming quote, the incoming quote will be restored to its original value. For example, assume MM A quotes 1.00–1.20 (which is the CBOE's disseminated quote) and MM B submits a 1.25–1.40 quote. Because MM B's quote would invert MM A's disseminated quote, MM B's quote will be changed to 1.20–1.40 and the disseminated quote will be 1.20–1.20. If during the lock period, MM A cancels its quote, MM B's quote (which is currently 1.20–1.40) will revert to its original value of 1.25–1.40.

contracts, the market maker will not be in violation of any exchange rule. The CBOE Hybrid System will not accept any market maker quotes without an attached size. Closely related to this change is the proposed change to Interpretation .06 to CBOE Rule 8.7. Because the Hybrid System will not accept one-sided quotes, the current rule would have no applicability to electronic quotes. Accordingly, Interpretation .06 will now only apply to open outcry quotes.

The proposed change to Interpretation .07 to CBOE Rule 8.7 clarifies that this provision only applies in classes in which Hybrid is not operational. Because market makers will have the ability to submit their own quotes, this rule will not have any applicability.

The Exchange proposes to amend Interpretation .11 to clarify its applicability to different systems. New section (a) will only apply to classes on RAES while section (b) will apply to Hybrid classes. Section (b) for the most part is identical to section (a) except for the elimination of the reference to RAES, an elimination necessitated by the fact that RAES will not exist in the Hybrid environment.

Amendment of Additional Rules

The Exchange notes that to accommodate the introduction of Hybrid, it must amend numerous of its existing rules. While CBOE does not believe that the changes to these rules are as substantive as those made to the rules described above, they nevertheless are described below.

Rule 6.2 Trading Rotations

The Exchange amends existing CBOE Rule 6.2 to specifically reference the Hybrid Opening System ("HOSS") in order to indicate that trading rotations may occur via HOSS. The amendment to CBOE Rule 6.2.05 clarifies that the automatic execution feature of Hybrid may be disengaged during any closing rotation.

Rule 6.2A Rapid Opening System

The Exchange amends its ROS rule to clarify it has no applicability to series trading on the CBOE Hybrid Opening System.

Rule 6.2B Hybrid Opening System

This rule governs the opening procedures for the CBOE Hybrid System. HOSS is the Exchange's automated system for initiating trading at the beginning of each trading day. For each class of options contracts that has been approved for Hybrid trading, the System shall conduct an opening rotation, which shall be held promptly following the opening of the underlying security in the primary market in accordance with the procedures contained in CBOE Rule 6.2B.

Rule 6.7 Exchange Liability

The Exchange amends this rule to clarify its applicability to Hybrid.

Rule 6.8 RAES Operations

The amendment clarifies that the RAES rule has no applicability to options classes traded on the CBOE Hybrid System. For classes not trading on Hybrid, Rule 6.8 will continue to be applicable.

Rule 6.20 Admission to and Conduct on the Trading Floor; Member Education

The Exchange proposes to amend Interpretations .04, .05 and .09 to make them applicable to Hybrid. In this respect, CBOE eliminates in Interpretation .04(i) the reference to CBOE Rule 6.43 as Hybrid allows market participants to effect transactions electronically. Thus, the prohibition against effecting a transaction without public outcry no longer violates CBOE Rule 6.43. The Exchange does not amend that portion of the rule referencing CBOE Rule 6.74.

The change to Interpretation .05 provides Floor Officials with the same authority to nullify transactions occurring in violation of proposed CBOE Rule 6.45A that they currently have with respect to CBOE Rule 6.45 (*i.e.*, non-Hybrid trades).

Current Interpretation .09 provides that Market Performance Committee members have Floor Official responsibilities with respect to enforcing rules relating to RAES. This amendment simply extends that authority to Hybrid.

Rule 6.43 Manner of Bidding and Offering

The proposed amendment to CBOE Rule 6.43(a) gives market participants the ability to enter quotes and orders electronically via Exchange-approved quoting devices. Previously, CBOE Rule 6.43(a) allowed only those bids and offers entered via open outcry. Proposed Rule 6.43(b) preserves the ability of trading crowd members to enter manual quotes in non-Hybrid classes. In classes trading on Hybrid, trading crowd members may enter their own quotes or orders through their own handhelds.[18]

[18] An individual market maker may use the same handheld quoting device to enter both quotes and orders.

Rule 6.45 Priority of Bids and Offers—Allocation of Trades

The Exchange proposes two changes to CBOE Rule 6.45. The first change clarifies that the rules of priority in CBOE Rules 6.13 and 6.45A shall operate independent of the priority rules contained in CBOE Rule 6.45. Second, the Exchange amends CBOE Rule 6.45(e) for the purpose of making it easier to read. This section, as amended, is identical to proposed CBOE Rule 6.45A(b)(iii).

Rule 6.47 Priority on Split Price Transactions Occurring in Open Outcry

The changes to CBOE Rule 6.47 clarify that split price priority only applies to those transactions effected in open outcry. There will be no split price priority for electronic transactions.

Rule 6.54 Accommodation Liquidations

The Exchange proposes to add new Section (b) to allow for accommodation liquidations to occur in Hybrid. Given current system limitations, cabinet trades may only occur in open outcry trading and thus will not be eligible for placement into the limit order book.

Rule 7.4 Obligations for Orders

The Exchange proposes to amend CBOE Rule 7.4(a) to expand the types of orders eligible for entry into the electronic book.[19] Proposed paragraph (a)(1) gives the appropriate FPC the ability to determine the categories of orders eligible for entry into the book. This paragraph authorizes market participants to place orders in the book (in those classes in which Hybrid is operational.)[20] Additionally, this section enables the FPC to allow all BD orders to be book eligible or, as with current RAES access rules for BDs, to allow orders from those BDs that are not market makers or specialists to enter the book. Both methods substantially enhance book access for non-customers.

This proposed rule also preserves that section of the current rule that allows the FPC to determine the manner and form in which orders are submitted.[21] Similarly, the Exchange deletes the last sentence of current CBOE Rule 7.4(a)(2) regarding the non-eligibility of BD orders for entry into the book.

[19] Currently only public customer orders are eligible for entry in the book.

[20] In this respect, market participants may place orders in the book. Regarding the entry of orders into the book from market participants in non-designated classes, they will not have "market participant" status and thus will be eligible for book entry only if the FPC has determined that all BD orders are eligible for book entry in that particular class.

[21] This, for example, would allow the FPC to require orders be submitted electronically into the book.

The changes to proposed section (b) clarify that orders from market participants may be placed in the book (whether the order first routes to the OBO or directly into the book). The Exchange proposes to limit the applicability of paragraph (g) to non-Hybrid classes because "live ammo" functionality will not be available in Hybrid.

The Exchange proposes to delete existing Interpretation .05 to CBOE Rule 7.4 as obsolete. The Order Support System has been absent from the Exchange for more than ten years. Finally, the Exchange amends current Interpretation .07 by renumbering it as .06 and by adding reference to the automatic execution provisions of new CBOE Rules 6.13 and 6.45A.

Rule 7.7 Displaying Bids and Offers in the Book

The exchange also amends CBOE Rule 7.7 regarding the display of orders in the book. Specifically, the Exchange removes as obsolete the section of the rule that allows the OBO to display indications of book size when the book contains orders for at least 25 contracts. Because the Exchange currently disseminates the actual size of orders in the book, this section is obsolete. The Exchange also deletes Interpretation .01 in its entirety as obsolete.[22]

Rule 8.51 Firm Disseminated Market Quotes

The Exchange proposes to amend CBOE Rule 8.51(a)(1) to clarify that in Hybrid classes, the market participant who submits a quote that is disseminated shall be the responsible broker or dealer for that quote. In paragraph (c)(1), the Exchange removes the sentence indicating it will periodically publish the firm quote requirement for both BD and public customer orders. In this respect, the Exchange notes that in new subparagraph (c)(1(a)(i) to CBOE Rule 8.51 the firm quote requirement for customer orders shall be the size disseminated to vendors. In subparagraph (a)(ii), the Exchange clarifies that the firm quote requirement for BD orders will be the lesser of the size it disseminates to vendors or publishes in a different manner. This is almost identical to the current rule except that it provides flexibility to allow the Exchange to disseminate its BD firm quote size (rather than publish it).

The Exchange also strikes existing Rule 8.51(c)(2)(a) as obsolete. In this respect, the Exchange disseminates actual size regardless of whether that size represents autoquote, an order in the book, or both. In any instance, the Exchange is firm for its disseminated size, as required by proposed CBOE Rule 8.51(c)(1)(a)(i).

The Exchange proposes to delete current Interpretation .01 and replace it with the definition of "Responsible broker or dealer"contained in Rule 11Ac1–1(a)(21) under the Act. The Exchange deletes the existing portion of Interpretation .01 as obsolete. In this respect, the Exchange disseminates the actual size of its firm quote obligation that, intuitively, can never be less than the disseminated size. The Exchange also amends Interpretation .02 to replace reference to the terms floor broker, DPM, or OBO with the term market participant. Because under Hybrid, the market participant will be the responsible broker or dealer, it will be responsible for removing its quote.

The proposed amendment to Interpretation .08 does not change the intent of the rule: that the responsible broker or dealer not be required to honor quotes that are erroneous as the result of a third party. Because the trading crowd will not be the responsible broker or dealer in Hybrid, however, the Exchange amends the rule to remove reference to the trading crowd.

Finally, CBOE proposes a change to Interpretation .10 to clarify the timing of when firm quote obligations attach. Currently, firm quote obligations attach to an order received on a PAR station at the time the order is received on PAR. This interpretation remains intact for non-Hybrid classes. For Hybrid classes, firm quote obligations will attach to an order received on a PAR station depending upon who is the responsible broker or dealer. If the responsible broker or dealer is not the DPM, firm quote will attach when the order is announced to the trading crowd. If, however, the DPM is a responsible broker or dealer for that order, firm quote obligations attach at the time of receipt of that order on PAR. The Exchange notes that in instances when an order is received on PAR when the disseminated quote represents the DPM and other market makers, there will be two separate firm quote obligations: the DPM's firm quote obligation will attach at the time the order is received on PAR while the market makers' firm quote obligations will attach when the order is announced to the crowd.[23]

Rule 8.85 DPM Obligations

To accommodate Hybrid, the Exchange proposes to amend CBOE Rule 8.85 regarding DPM obligations. First, the Exchange proposes to amend CBOE Rule 8.85(a)(i) to indicate that a DPM has a continuous quoting obligation with respect to its assigned classes. This ensures the DPM will quote at all times. Second, the Exchange clarifies subsection (ii) to indicate that the DPM must assure that each of its quotations is honored in accordance with the requirements of the Quote Rule. This change clarifies that DPMs must ensure their own compliance with the Quote Rule. Finally, the Exchange restricts the applicability of subparagraph (x) to non-Hybrid classes. In Hybrid, all market participants will have their own proprietary quoting systems. It would be anticompetitive to require the DPM to disclose its pricing formula to other members. In non-Hybrid classes, because there is only one autoquote that binds the entire crowd, this requirement remains.

2. Statutory Basis

The CBOE Hybrid System will provide investors with deeper and more liquid markets, will provide market participants with substantially enhanced incentives to quote competitively, and will provide order entry firms with a trading platform the exchange believes is most conducive to satisfying their best execution and due diligence obligations. For these reasons, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[24] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[25] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative

[22] Exchange quote display systems automatically incorporate into the disseminated market quote all booked orders that improve the market (price or size). For this reason, the OBO does not have any ability to display the full (or less than full) size of an order.

[23] Market makers in the crowd have no control over PAR and no access to PAR. They will be completely unaware that an order resides on PAR until that order is announced to them. Contrast this to the present situation where even though a market maker may be unaware of the receipt of an order on PAR, because the disseminated quote represents the entire trading crowd, the entire crowd is deemed to receive the order upon receipt of the order on PAR. In Hybrid, each quote represents a completely different entity and not the crowd.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has engaged in a substantial and extensive educational program to apprise members of the features of the CBOE Hybrid System. During this two-month long process, members and staff of the Exchange conducted weekly seminars for CBOE members to provide guidance as to how the CBOE Hybrid System would operate. To date, the Exchange received one comment letter.[26] The Arciero Letter primarily expressed concern regarding the future of the trading floor in the hybrid environment when the Exchange allows electronic quoting. The Arciero Letter indicated that largely capitalized market making organizations would have sufficient competitive advantages in Hybrid by virtue of their larger capitalization structures. In response to the Arciero Letter, the Exchange scheduled additional educational seminars identical to those previously conducted during September and October of this year. The Exchange notes that most, if not all, of the Arciero Letter concerns were addressed in those educational seminars.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[26] Letter from Tony Arciero, CBOE Member, to Ed Tilly, Chairman, Equity Floor Procedure Committee, CBOE, dated November 7, 2002 ("Arciero Letter").

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2002–05 and should be submitted by May 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

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[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47680; File No. SR–CHX–2003–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. To Amend Its Membership Dues and Fees Schedule To Confirm the Amount of Consolidated Tape Association Credits Available to Its Members

April 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2003, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b-4(f)(2) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Exchange amended the proposal on April 14, 2003.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule ("Schedule") to confirm the amount of Consolidated Tape Association ("CTA") credits available to members. The text of the proposed rule change is available upon request from the Office of the Secretary, the Commission, and the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change to the Schedule is to clarify the amount of CTA credits available to CHX member firms. The Exchange, like other national securities exchanges, receives CTA revenue from transactions in listed securities under the terms of the CTA Plan ("Plan"). In past years, the Securities Industry Automation Corporation ("SIAC"), which administers the collection and distribution of market data under the Plan, and the Plan Administrators, which administer, among other things, the accompanying revenue distribution to Plan participants, worked together so that all of the Plan costs were deducted from the total tape revenue pool, with each Plan participant then receiving the remaining portion of the revenues allocable to that participant. These methods are now changing and, beginning in 2003, the Plan Administrators will divide up the total revenue pool according to the Plan's terms and distribute the allocable revenues to each participant (less the Administrators' costs), and SIAC will then bill each participant for its portion of the SIAC costs.

The Exchange proposes to amend to its Schedule to ensure that the change in Plan billing methods does not have an inadvertent impact on the current method for providing tape-based credits to the Exchange's specialists, floor brokers and lead market makers. The Exchange's Schedule currently provides, for example, that the credits available to specialists are based on the "applicable percentage of CHX tape revenue from the Consolidated Tape Association generated by a particular stock." The Exchange proposes to amend this text—and the text describing the Exchange's other tape credit programs—that confirms that the revenues shared with Exchange members are those calculated after the deduction of Plan costs.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited or received any written comments on this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and Rule 19b-4(f)(2) thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CHX–2003–10 and should be submitted by May 13, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–9884 Filed 4–21–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

[5] *See* letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Joseph P. Morra, Special Counsel, Division of Market Regulation, Commission, dated April 10, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a revised Exhibit A, which replaced in its entirety, the Exhibit A submitted with the initial filing. Specifically, in the revised Exhibit A, the Exchange made technical corrections to the proposed rule text contained in the Exhibit A submitted with the initial filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on April 14, 2003, the date the Exchange filed Amendment No. 1. 15 U.S.C. 78s(b)(3)(C).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Delegation of Authority 257]

Delegation by the Assistant Secretary of State for Educational and Cultural Affairs to the Principal Deputy Assistant Secretary for Educational and Cultural Affairs, and to the Deputy Assistant Secretary for Professional and Cultural Exchanges, of Immunity From Judicial Seizure Authorities

By virtue of the authority vested in me as the Assistant Secretary of State for Educational and Cultural Affairs by law, including by Delegation of Authority No. 236–3 (August 28, 2000), and to the extent permitted by law, I hereby delegate to the Principal Deputy Assistant Secretary for Educational and Cultural Affairs, and to the Deputy Assistant Secretary for Professional and Cultural Exchanges, the functions in Pub. L. 89–259 (79 Stat. 985) (22 U.S.C. 2459), providing for immunity from judicial seizure for cultural objects imported into the United States for temporary exhibition.

Notwithstanding any other provision of this delegation, the Assistant Secretary of State for Educational and Cultural Affairs retains, and may at any time exercise, any function or authority delegated herein.

Any reference in this delegation of authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

This delegation shall be published in the **Federal Register**.

Dated: April 15, 2003.

Patricia S. Harrison,

Assistant Secretary of State for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–9938 Filed 4–21–03; 8:45 am]

BILLING CODE 4710–05–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: TVA will convene a meeting of the Regional Resource Stewardship Council (Regional Council) to obtain views and advice on the topic of TVA involvement in water quantity management. Under the TVA Act, TVA is charged with the proper use and conservation of natural resources for the purpose of fostering the orderly and proper physical, economic and social

development of the Tennessee Valley region. The Regional Council was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following:

(1) Overview of current TVA role in water quantity management and water supply.

(2) Review of water quantity management questions to be addressed by the Regional Council.

(3) National perspective on water quantity management and water supply.

(4) Regional, state, and local viewpoints on TVA's role with regard to water quantity management and water supply.

(5) Public comments on the topic of water quantity management and water supply.

(6) Regional Council discussion on the topic of water quantity management and water supply.

The Regional Council will hear opinions and views of citizens by providing a public comment session. The Public Comment session will be held from 10:30 a.m. to Noon EDT on May 9, 2003. Citizens who wish to express views and opinions on the topic of TVA water quantity management and water supply may do so during the Public Comment portion of the agenda. Public Comments participation is available on a first-come, first-served basis. Speakers addressing the Regional Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak are requested to register at the door and are then called on by the Regional Council Chair during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Thursday, May 8, 2003, from 8 a.m. to 4:30 p.m. and on Friday, May 9, 2003, from 8 a.m. to 3 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held in the auditorium at the Tennessee Valley Authority headquarters, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L. Hill, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902, (865) 632–2333.

Dated: April 15, 2003.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 03–9860 Filed 4–21–03; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–20]

Petition for Exemption; Disposition of Petition Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of disposition of a prior petition.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of a petition previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: Mike Brown, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–7653.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 16, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Disposition of Petition

Docket No.: FAA–2003–14324.

Petitioner: West Air Incorporated.

Section of 14 CFR Affected: 14 CFR 21.197(c)(2) and 135.411(b).

Description of Relief Sought/Disposition: To allow West Air Incorporated to ferry aircraft from their fleet of Cessna Caravans, as needed, without first filing a Form 8130–6 with the FAA.

Denial, 4/9/2003, Exemption No. 8024

[FR Doc. 03–9888 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–19]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before May 12, 2003.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2000–XXXX at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on April 16, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–13928

Petitioner: Winona Steamboat Days Festival Association

Section of 14 CFR Affected: 14 CFR 103.15

Description of Relief Sought: To permit Winona Steamboat Days Festival Association to fly up to four powered parachutes over the 56th Annual Winona Steamboat Days Grande Parade route on June 22, 2003, before the start of the parade. Each powered parachute would make two round trip passes over the parade route in a single-file formation at an altitude of not less than 100 feet above the surface.

[FR Doc. 03–9889 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee—Open Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Open Meeting. Important. Please note that the meeting date has changed from Thursday, May 22nd to Wednesday, May 21st.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), notice is hereby given of a meeting of the Commercial Space Transportation Advisory Committee (COMSTAC). The meeting will take place on Wednesday, May 21, 2003, from 8 a.m. to 5 p.m. at the Federal Aviation Administration Headquarters Building, 800 Independence Avenue SW., Washington, DC, in the Bessie Coleman Conference Center, 2nd Floor. This will be the thirty-seventh meeting of the COMSTAC.

The agenda for the meeting will include a briefing on legislative strategies for space, and an activities report from FAA's Associate Administrator for Commercial Space Transportation (formerly the Office of Commercial Space Transportation [60 FR 62762, December 7, 1995]), including an update on the newly-established FAA Commercial Space Transportation Safety office at Patrick Air Force Base. Meetings of the COMSTAC Working Groups (Technology and Innovation, Reusable Launch Vehicle, Risk Management, and Launch Operations and Support) will be held on Tuesday, May 20, 2003. For specific information concerning the times and locations of these meetings, contact the Contact Person listed below.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should inform the Contact Person listed below in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST–200), Office of the Associate Administrator for Commercial Space Transportation (AST), 800 Independence Avenue SW., Room 331, Washington, DC 20591, telephone (202) 385–4713; E-mail *brenda.parker@faa.dot.gov*.

Issued in Washington, DC, April 11, 2003.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 03–9887 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 202: Portable Electronic Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 202 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 202: Portable Electronic Devices.

DATES: The meeting will be held on May 6–7, 2003 from 9 am to 5 pm.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 202 meeting. RTCA is establishing Special Committee (SC) 202 at the request of the Federal Aviation Administration. The SC–202 task is two-phased: (1) A Near-Term Portable Electronic Device (PED) Technology Assessment of the current PED environment and (2) a Longer-Term Assessment of emerging PED technologies. The initial document is scheduled for completion by November 2003. The agenda will include:

- May 6–7:
  - Opening Session (Welcome, Introductory and Administrative Remarks, Review Federal Advisory Committee Act and RTCA procedures, Review Agenda, Review Terms of Reference)
  - Previous PED Committee History
  - Current Committee Scope, Discussion, Recommendations
  - Organization of Work, Assign Tasks and Workgroups Presentation, Discussion, Recommendations Assignment of Responsibilities
  - Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 14, 2003.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 03–9892 Filed 4–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In March 2003, there were five applications approved. This notice also includes information on one application, approved in February 2003, inadvertently left off the February 2003 notice. Additionally, seven approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of

1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Texarkana Airport Authority, Texarkana, Arkansas.
Application Number: 03–05–C–00–TXK.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in this Decision: $98,250.
Earliest Charge Effective Date: October 1, 2005.
Estimated Charge Expiration Date: August 1, 2006.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Project Approved for Collection and Use: Rehabilitate runway 13/31 and taxiway C.
Decision Date: February 3, 2003.
For Further Information Contact: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: City of Tyler, Texas.
Application Number: 03–04–C–00–TYR.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in this Decision: $2,140,662.
Earliest Charge Effective Date: April 1, 2008.
Estimated Charge Expiration Date: February 1, 2017.
Class of Air Carriers Not Required to Collect PFC's: None.
Brief Description of Project Approved for Collection and Use:
Acquire and install one passenger loading bridge.
Construct terminal apron and install security fencing.
Terminal site work and utilities.
Construct terminal building.
Seal coat runway 4/22.
PFC application and administrative fees.
Decision Date: March 4, 2003.
For Further Information Contact: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

Public Agency: Charlottesville-Albemarle Airport Authority, Charlottesville, Virginia.
Application Number: 03–15–C–00–CHO.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in this Decision: $850,000.
Earliest Charge Effective Date: July 1, 2006.
Estimated Charge Expiration Date: January 1, 2008.
Class of Air Carriers Not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Charlottesville-Albemarle Airport.
Brief Description of Project Approved for Collection and Use:
Terminal building modifications.
Upgrade multi-user flight information display system.
Extend runway 3 safety area, phase IV.
PFC project administration fees.
Decision Date: March 5, 2003.
For Further Information Contact: Arthur Winder, Washington Airports District Office, (703) 661–1363.

Public Agency: Town of Islip, New York.
Application Number: 03–05–C–00–ISP.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in this Decision: $493,001.
Earliest Charge Effective Date: August 1, 2005.
Estimated Charge Expiration Date: October 1, 2005.
Class of Air Carriers Not Required to Collect PFC's: Non-scheduled/on demand air carriers filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Long Island MacArthur Airport.
Brief Description of Project Approved for Collection and Use:
Rehabilitation of runway 6/24.
Wildlife hazard management assessment and wildlife hazard management plan.
Acquire two snow removal brooms.
Purchase one passenger boarding assistance device.
Airport security enhancement items.
Decision Date: March 7, 2003.
For Further Information Contact: Dan Vornea, New York Airports District Office, (516) 227–3812.

Public Agency: Jackson Municipal Airport Authority, Jackson, Mississippi.
Application Number: 03–04–C–00–JAN.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in this Decision: $5,101,722.
Earliest Charge Effective Date: February 1, 2007.
Estimated Charge Expiration Date: June 1, 2010.
Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Jackson Municipal Airport.
Brief Description of Projects Approved for Collection and Use:
Runway sweeper.
Tricherator.
Local share and engineering west parallel lights.
Local share and engineering west taxiway overlay.
Local share air cargo road.
Local share air cargo apron/taxiway.
Meets and bounds survey.
Rehabilitate International Drive.
Brief Description of Projects Disapproved for Collection and Use:
Hawkins Field environment assessment.
Determination: The proposed project was for a study of pre- and post-World War II underground storage tank locations. The public agency offered no evidence that the responsible federal agency, the Department of Defense, had been contacted to fund at least a portion of the cleanup. Therefore, the FAA determined that the project was not adequately justified.
Surfact Transportation System.
Determination: The public agency provided no evidence that the proposed project was for exclusive airport use. Therefore, it is not PFC eligible.
Decision Date: March 24, 2003.
For Further Information Contact: David Shumate, Jackson Airports District Office, (601) 664–9882.

Public Agency: City of Farmington, New Mexico.
Application Number: 03–01–C–00–FMN.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in this Decision: $661,102.
Earliest Charge Effective Date: June 1, 2003.
Estimated Charge Expiration Date: May 1, 2011.
Class of Air Carriers not Required to Collect PFC's: Part 135 air taxi/commercial operators filing FAA Form 1800–31.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Four Corners Regional Airport.
Brief Description of Projects Approved for Collection and Use:
Runway improvements
Taxiway improvements.
Apron improvements.
Drainage improvements.
Airfield improvements.
Airfield electrical improvements.
Security improvements.
Terminal improvements.
Non-revenue parking improvements.
Acquire safety equipment.
Conduct planning studies.
Service road improvements.
PFC application and administrative fees.
Decision Date: March 28, 2003.
For Further Information Contact: G. Thomas Wade, Southwest Region Airports Division, (817) 222–5613.

AMENDMENTS TO PFC APPROVALS

Amendment No. City, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
97–03–C–02–GEG, Spokane, WA*	01/24/03	$32,063,332	$35,859,822	06/01/05	05/01/05
01–04–C–01–HDN, Hayden, CO	02/19/03	150,833	163,842	08/01/05	08/01/05
96–02–C–01–PBI, West Palm Beach, FL	03/12/03	21,997,000	21,863,704	04/01/02	04/01/02
00–02–C–01–CEC, Crescent City, CA*	03/14/03	447,048	447,048	07/01/13	03/01/11
00–03–C–02–BHM, Birmingham, AL	03/20/03	13,500,000	15,100,000	06/01/03	11/01/03
93–01–C–02–OTH, North Bend, OR	03/25/03	162,044	139,785	01/01/98	01/01/98
96–02–C–OTH, North Bend, OR	03/25/03	68,731	95,984	04/01/99	04/01/99

Note: The amendments denoted by an asterisk (*) include a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Spokane, WA, this change is effective on April 1, 2003. For Crescent City, CA, this change is effective on June 1, 2003.

Issued in Washington, DC, on April 15, 2003.

Barry Molar,
Manager, Airports Financial Assistance Division.

[FR Doc. 03–9891 Filed 4–21–03; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–14374]

Rotor Manufacturing Induced Anomaly Database

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Order designating voluntarily submitted information as protected from disclosure.

SUMMARY: By this Order the FAA designates the information and data submitted to create the Rotor Manufacturing Induced Anomaly Database (known as the "ROMAN Database") as protected from disclosure under 14 CFR part 193, Protection of voluntarily submitted information. This designation requires the FAA to protect the information from disclosure under the Freedom of Information Act (5 U.S.C. 552) and other laws. The FAA makes this designation to encourage production approval holders and suppliers that manufacture high energy rotating gas turbine engine components to voluntarily submit information for inclusion into the ROMAN database.

Authority: 49 U.S. 40123; and 14 CFR part 193.

DATES: Effective April 14, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Kerman, Aviation Safety Inspector-Manufacturing Process Specialist, Manufacturing Inspection Office, ANE–180, Engine and Propeller Directorate, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, MA 01802, telephone 781–238–7195; fax (781) 238–7898.

SUPPLEMENTARY INFORMATION: On February 4, 2003, the FAA issued a Notice proposing to designate information submitted to it to create the Rotor Manufacturing Induced Anomaly Database (known as the "ROMAN Database") as protected from disclosure under 14 CFR part 193 (68 FR 6790, February 10, 2003). No comments were received on the proposal.

Findings under CFR Part 193

The FAA finds:

(1) *The information will be provided voluntarily.* The FAA finds that the information will be provided voluntarily. Note that the information provided by the participants is beyond the scope of that required by the type certification mandatory reporting rules, and that the participants may withdraw from the program at any time. The ROMAN database will provide production approval holders (PAH) and suppliers of critical rotating parts with an opportunity to benefit from each other's adverse experiences and lessons learned that is not available without the protection of 14 CFR part 193. The identification of trends and the establishment of the shortfalls with the base manufacturing processes as a result of the ROMAN database will provide economic benefit to the submitters.

(2) *The information is safety or security related.* The FAA finds that the information is safety related. The ROMAN database will contain comprehensive information on manufacturing-induced anomalies on critical rotating engine components. These anomalies are of the kind that are known to initiate disk fracture and fatigue failure resulting in aircraft accidents. Also, important background information will be used to relate those anomalies to specific manufacturing methods and materials. The database will be instrumental in identifying manufacturing process and material shortfalls that will assist the industry and the FAA in improving the integrity and safety of rotating parts of jet engines.

(3) *The disclosure of the information would inhibit the voluntary provision of that type of information.* The FAA finds that the disclosure of the information would inhibit persons from voluntarily providing of that type of information. The information submitted for the ROMAN database would be highly sensitive and commercially valuable information. One of the reasons why such a database does not already exist is the reluctance of each participant to share its data and lessons learned with the FAA as well as each other without the assurances of protection from public disclosure.

(4) *The receipt of this type of information aids in fulfilling the FAA's safety and security responsibilities.* The

receipt of information for the ROMAN database will aid the FAA in improving overall engine rotor integrity and decreasing the occurrence and severity of engine rotor failures. Reducing the number of aircraft accidents attributable to the failure of rotating parts in engines is an important part of the FAA's Safer Skies Program. The ROMAN database provides a way to identify manufacturing trends and precursors before they result in anomalies that might cause rotating part failures and aircraft accidents.

(5) *Withholding such information from disclosure, under the circumstances provided in this part, is consistent with the FAA's safety and security responsibilities.* Withholding the information submitted to the FAA to form the ROMAN database from public disclosure is consistent with the FAA's safety responsibilities. The ROMAN database will provide a key method to improving safety in air commerce by identifying manufacturing trends that may contribute to the presence of anomalies in the rotating parts in aircraft engines that could potentially cause those parts to fail. Identifying these trends will lead to improvements in manufacturing processes as well as design practices to eliminate and account for the anomalies in future production and the removal of parts already in service before the actual failure occurs.

The FAA will withhold and release information submitted under this program as specified in 14 CFR 193.9.

The FAA may release activity reports that include the number of PAHs and suppliers who are participating and the number of manufacturing trends identified as a result. Activity reports will not include the names of the PAH's and suppliers who participate, or numbers or details of the anomalies that have been disclosed under this program.

(6) *Summary of how the FAA will distinguish information protected under this program from information the FAA receives from other sources.* The FAA routinely receives data and information aircraft engine PAHs as part of its regulatory oversight of approved engine designs. The data received for the ROMAN database will be maintained separately by having the ROMAN database managed by a contractor. The ROMAN database will include only information received under this program. Information that is received under this program, and reports generated ROMAN database, will be clearly marked as having been received under this program as follows:

WARNING: The Information in this Document Is Protected from Disclosure under 14 CFR part 193. This Information Shall Not Be Released Except With Written Permission of the Associate Administrator for Regulation and Certification.

Designation

Accordingly, the Federal Aviation Administration hereby designates the information submitted under this program to be protected under 49 U.S.C. 40123 and 14 CFR part 193.

Issued in Washington, DC on April 14, 2003.

Nicholas A. Sabatini,

Associate Administrator for Regulation and Certification.

[FR Doc. 03–9890 Filed 4–2–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 6198

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6198, At-Risk Limitations.

DATES: Written comments should be received on or before June 23, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, Room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: At-Risk Limitations.

OMB Number: 1545–0712.

Form Number: Form 6198.

Abstract: Internal Revenue Code section 465 requires taxpayers to limit their at-risk loss to the lesser of the loss or their amount at risk. Form 6198 is used by taxpayers to determine their deductible loss and by IRS to verify the amount deducted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals, not-for-profit institutions, and farms.

Estimated Number of Respondents: 185,167.

Estimated Time Per Respondent: 3 hrs. 58 min.

Estimated Total Annual Burden Hours: 735,113.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9952 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–79–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–79–93 (TD 8633), Grantor Trust Reporting Requirements (§ 1.671–4).

DATES: Written comments should be received on or before June 23, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Larnice Mack at Internal Revenue Service, Room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3179, or through the internet at *Larnice.Mack@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Grantor Trust Reporting Requirements.

OMB Number: 1545–1442.

Regulation Project Number: PS–79–93.

Abstract: The information required by these regulations is used by the Internal Revenue Service to ensure that items of income, deduction, and credit of a trust treated as owned by the grantor or another person are properly reported.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 1,840,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 920,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 15, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–9953 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, May 21, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227, or 718–488–3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, May 21, 2003 from 2 p.m. EST to 3 p.m. EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 Metrotech Center, 625 Fulton Street, Brooklyn, NY 11021, or post comments to the Web site: *www.improveirs.org*. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 15, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9944 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Thursday, May 8, 2003, at 2 p.m., Central daylight time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, May 8, 2003, from 2 p.m. to 3 p.m. Central daylight time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and

suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 15, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9945 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Friday, May 16 and 17, 2003.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, May 16, 2003, from 3 p.m. EST to 7 p.m. EDT and May 17, 2003, from 8:30 a.m. EDT to 12:30 p.m. EDT at the Marriott Century Center, 2000 Century Boulevard NE, Atlanta, GA 30345. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited space, notification of intent to participate in the meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 15, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9946 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Tuesday, June 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or (206) 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be held Tuesday, June 10, 2003 from 2 p.m. EST to 3 p.m. EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 16, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9947 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, May 12, 2003, at 2:30 p.m., Central Standard Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, May 12, 2003, from 2:30 to 3:30 p.m. Central standard time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for more information.

The agenda will include the following: Various IRS issues

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 15, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9948 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Thursday, June 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mary O'Brien at 1–888–912–1227, or (206) 220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Payroll Tax Committee of the Taxpayer Advocacy Panel will be held Thursday, June 5, 2003 from 3 pm EST to 4 pm EST via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or (206) 220–6096, or write to Mary O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or (206) 220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 16, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9949 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference.

DATES: The meeting will be held Tuesday, May 20, 2003, at 1:30 p.m., Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Tuesday, May 20, 2003, from 1:30 to 3 pm EST via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy. Ms. Toy can be reached at 1–888–912–1227 or 414–297–1611, or FAX 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report and discussion of next meeting.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 15, 2003.

Deryle Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9950 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Monday, May 19, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Monday, May 19, 2003 from 2 pm PDT to 4 pm PDT via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider an oral or written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 16, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–9951 Filed 4–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Homeless Veterans will be held from Wednesday, May 7, 2003, through Thursday, May 8, 2003, at the Wyndham City Center Hotel, 1143 New Hampshire Avenue, NW., Dupont Room, Washington, DC 20037. The meeting sessions are scheduled from 2 p.m. until 4:30 p.m. on May 7 and from 8:30 until 4 p.m. on May 8. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs with an on-going assessment of the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide on-going advice on the most appropriate

means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On May 7, the Committee will visit the Access Housing—Southeast Veterans Service Center, 820 Chesapeake Street, SE., Washington, DC. On May 8, the Committee will review information about efforts to coordinate services and increase veterans access to homeless services from VA and other health and benefits programs and review new draft recommendations to assist veterans.

Those wishing to attend the meeting should contact Mr. Peter Dougherty, Department of Veterans Affairs, at (202) 273–5764. No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: April 14, 2003.

By Direction of the Secretary.

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. 03–9823 Filed 4–21–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 77

Tuesday, April 22, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[Docket ID No. OAR–2002–0085; FRL–7462–3]

RIN 2060–AH55

National Emission Standards for Hazardous Air Pollutants for Coke Ovens: Pushing, Quenching, and Battery Stacks

Correction

In rule document 03–5625 beginning on page 18008 in the issue of Monday, April 14, 2003 make the following corrections:

1. On page 18012, in the third column, the fourth line from the bottom, after "April 14, 2003", add the words, "must comply by April 14, 2003.".

§ 63.7283 [Corrected]

2. On page 18026, in the second column, under § 63.7283, in paragraph (b), in the eigth line, "2006" should read "2003".

[FR Doc. C3–5625 Filed 4–21–03; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

Correction

In notice document 03–9264 beginning on page 18653 in the issue of Wednesday, April 16, 2003, make the following correction:

On page 18653, in the second column, under the heading **DATES**, in the second and third lines, "[insert date 60 days from publication in the Federal Register]" should read "June 16, 2003".

[FR Doc. C3–9264 Filed 4–21–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14843; Airspace Docket No. 03–ACE–28]

Modification of Class E Airspace; Rock Rapids, IA

Correction

In rule document 03–9179 beginning on page 18115 in the issue of Tuesday, April 15, 2003, make the following corrections:

1. On page 18116, in the first column, under the **ADDRESSES** heading, in the eighth line, "03–ACD–28" should read "03–ACE–28".

§71.1 [Corrected]

2. On the same page, in the third column, in §71.1, under the heading **ACE IA E5 Rock Rapids, IA**, in the fourth line, "6.2" should read "6.3".

[FR Doc. C3–9179 Filed 4–21–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14844; Airspace Docket No. 03–ACE–29]

Modification of Class E Airspace; New Madrid, MO

Correction

In rule document 03–9178 beginning on page 18117 in the issue of Tuesday, April 15, 2003, make the following corrections:

1. On page 18117, in the first column, under the **SUMMARY** heading, in the second paragraph, in the first line "is not" should read "is".

2. On the same page, in the same column, under the **ADDRESSES** heading, in the eigth line, "03–AC–29" should read "03–ACE–29".

§ 71.1 [Corrected]

3. On page 18118, in the first column, in §71.1, under the heading **ACE MO E5 New Madrid, MO**, in the fourth line, "(Lat. 36°33′17″ N.," should read "(Lat. 36°33′18″ N.,".

[FR Doc. C3–9178 Filed 4–21–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
April 22, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the San Diego Fairy Shrimp (Branchinecta sandiegonensis); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI71

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the San Diego Fairy Shrimp (*Branchinecta sandiegonensis*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate new critical habitat units pursuant to the Endangered Species Act of 1973, as amended (Act), for the San Diego fairy shrimp (*Branchinecta sandiegonensis*). The San Diego fairy shrimp is listed as an endangered species under the Act. A total of approximately 2,468 hectares (6,098 acres) of land within Orange and San Diego counties, California, are within the boundaries of proposed critical habitat.

Critical habitat receives protection from destruction or adverse modification through consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

We are soliciting data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation, and our approaches for handling any future habitat conservation plans and Department of Defense installations. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

The drafting and review of this proposed rule revealed a number of difficult and complex issues regarding which public comment would be particularly helpful, especially given the strict court-ordered deadline pursuant to which this proposal is being published. Therefore, in addition to the general comments requested above, we are requesting public comment either in support of or opposition to a number of specific issues associated with this proposal to assist in development of a final rule.

DATES: We will accept comments until June 23, 2003. Public hearing requests must be received by June 6, 2003.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92009.

(2) You may also send comments by electronic mail (e-mail) to *FW1SDFS@r1.fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

(3) You may hand-deliver comments to our Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92009.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone 760/431–9440; facsimile 760/431–9618).

SUPPLEMENTARY INFORMATION:

Background

The San Diego fairy shrimp (*Branchinecta sandiegonensis*) is a small aquatic crustacean in the order, Anostraca, restricted to vernal pools in coastal southern California and south to northwestern Baja California, Mexico. Vernal pools contain water in the winter months which drains and evaporates giving way to a vernal display of wildflowers. The San Diego fairy shrimp is a habitat specialist found in smaller, shallow vernal pools and ephemeral (lasting a short time) basins that range in depth from approximately 5 to 30 centimeters (cm) (2 to 12 inches (in)) (Simovich and Fugate 1992; Hathaway and Simovich 1996). Water chemistry is also an important factor in determining fairy shrimp distribution (Belk 1977; Gonzales *et al.* 1996). This species does not occur in riverine or marine waters. All known localities are below 701 meters (m) (2,300 feet (ft)) and are within 64 kilometers (km) (40 miles (mi)) of the Pacific Ocean.

San Diego fairy shrimp is one of several *Branchinecta* species that occur in southern California (Simovich and Fugate 1992). Other species of *Branchinecta* in southern California include the nonlisted versatile fairy shrimp (*B. lindahli*) and the federally threatened vernal pool fairy shrimp (*B. lynchi*). Male San Diego fairy shrimp are distinguished from males of other species of *Branchinecta* by differences found at the distal (located far from the point of attachment) tip of the second antennae. Females are distinguishable from females of other species of *Branchinecta* by the shape and length of the brood sac, the length of the ovary, and by the presence of paired dorsolateral (located on the sides, toward the back) spines on five of the abdominal segments (Fugate 1993).

Mature individuals lack a carapace (hard outer covering of the head and thorax) and have a delicate elongate body, large stalked compound eyes, and 11 pairs of swimming legs. They swim or glide gracefully upside down by means of complex wavelike beating movements of the legs that pass from front to back. Adult male San Diego fairy shrimp range in size from 9 to 16 millimeters (mm) (0.35 to 0.63 in); adult females are 8 to 14 mm (0.31 to 0.55 in.) long. The second pair of antennae in males are greatly enlarged and specialized for clasping the females during copulation, while the second pair of antennae in the females are cylindrical and elongate. The females carry their eggs in an oval or elongate ventral brood sac (Eriksen and Belk 1999). Fairy shrimp are presumed to feed on algae, bacteria, protozoa, rotifers, and bits of organic matter (Pennak 1989; Eng *et al.* 1990; Parsick 2002).

Adult San Diego fairy shrimp are usually observed from January to March; however, in years with early or late rainfall, the hatching period may be extended. The species hatches and matures within 7 to 14 days, depending on water temperature (Hathaway and Simovich 1996; Simovich and Hathaway 1997). San Diego fairy shrimp may no longer be visible after about a month, but animals will continue to hatch if subsequent rains result in additional water or refilling of the vernal pools (Branchiopod Research Group 1996). The eggs are either dropped to the pool bottom or remain in the brood sac until the female dies and sinks. The "resting eggs," or "cysts," are capable of withstanding temperature extremes and prolonged drying. When the pools refill in the same or subsequent rainy seasons, some but not all of the eggs may hatch. Fairy shrimp egg banks in the soil may be composed of the eggs from several years of breeding (Donald 1983; Simovich and Hathaway 1997). Simovich and Hathaway (1997) found that vernal pools and ephemeral wetlands that support anostracans, small aquatic crustaceans like the San Diego fairy shrimp, and occur in areas with variable weather conditions or filling periods, may hatch only a fraction of the total

cyst (organisms in a resting stage) bank in any given year. Thus, the San Diego fairy shrimp is adapted to highly variable environments .

San Diego fairy shrimp require functioning vernal pools for their conservation (Belk 1998). Both the pool basin and the surrounding watershed are essential for a functioning vernal pool system (Hanes and Stromberg 1998). Loss of upland vegetation, increased overland flow due to urban runoff, and alteration of the micro-topography can all alter the narrow physiological parameters that the San Diego fairy shrimp requires for survival.

The maintenance of genetic variability is crucial to the survival of a species with declining populations and a limited range, such as the San Diego fairy shrimp (Gilpin and Soulé 1986; Lesica and Allendorf 1995). Vernal pool complexes throughout the range of the San Diego fairy shrimp are critical for the conservation of this species. Likewise, the pools within a multi-pool complex are also important for the local population of San Diego fairy shrimp to remain viable. Vernal pool complexes identified as necessary in the Recovery Plan for Vernal Pools in Southern California must be secured in a configuration that maintains habitat function and viability. There are several reasons for this. Each vernal pool complex is unique in soil type, species composition, and hydrology (Service 1998). This high degree of variability in habitat combined with the unpredictability of winter rains (pool filling events) has given rise to a genetic structure between pool complexes (Davies 1996; Davies *et al.* 1997). This means that San Diego fairy shrimp living in one pool complex may not be adapted to a pool complex elsewhere in the species range. This research also revealed that within pool complexes there was a low degree of genetic variability. The genetic structure and low genetic variability suggests that there is a low degree of gene exchange between different pool complexes. This research indicates that pool complexes throughout the range contain unique genetic traits necessary for the conservation of San Diego fairy shrimp.

The life cycle of the San Diego fairy shrimp is such that in any single breeding event there may be individuals present from multiple generations. This has the effect of dampening the effects of genetic drift and inbreeding that are normally associated with a small population size. In particular this makes the preservation of existing vernal pools a high priority for critical habitat designation because of the cyst banks that are present in natural pools (Belk 1998). Creation of vernal pools has not been successfully implemented as a viable measure to compensate for impacts to vernal pools. Restoration of vernal pools has been successfully completed; however, restoration must be carefully pursued. Restored pools may lack the multi-generational cyst bank. In the event that soils are transported from existing vernal pools to a restoration site, soils may be mixed, compacted, or otherwise mistreated so that the cyst bank can no longer function (Hathaway *et al.* 1996). Thus, restored pools may not exhibit the necessary genetic dynamics of natural pools and may not contribute as significantly as natural vernal pools.

Vernal pools have a discontinuous occurrence in several regions of California (Keeler-Wolf *et al.* 1995), from as far north as the Modoc Plateau in Modoc County, south through San Diego County to the international border with Mexico. Vernal pools form in regions with Mediterranean climates, where shallow depressions fill with water during fall and winter rains and then evaporate in the spring (Collie and Lathrop 1976; Holland 1976, 1988; Holland and Jain 1977, 1988; Thorne 1984; Zedler 1987; Simovich and Hathaway 1997). The presence of the surrounding watershed is a vital component of a vernal pool ecosystem. The term "watershed" is commonly associated with riverine drainages, however, in the context of this discussion the term "watershed" refers to the land surrounding a single vernal pool or vernal pool complex that contributes to the hydrology of the vernal pools. These watersheds can vary in size from a few hundred meters to much larger areas around the vernal pools.

In years of high precipitation, overbank flooding from intermittent streams may augment the amount of water in some vernal pools (Hanes *et al.* 1990). Vernal pool studies conducted in the Sacramento Valley indicate that the contribution of subsurface or overland flows is significant only in years of high precipitation when pools are already saturated (Hanes and Stromberg 1996). Downward percolation of water in vernal pool basins is prevented by the presence of an impervious subsurface layer, such as a claypan, hardpan, or volcanic stratum (Holland 1976, 1988). The integrity of both the vernal pool and the surrounding watershed is crucial to the long term survival and conservation of the San Diego fairy shrimp.

Researchers have found that vernal pools located in San Diego County are associated with five soil series types: Huerheuero, Olivenhain, Placentia, Redding, and Stockpen (Bauder and McMillan 1998). These soil types have a nearly impermeable surface or subsurface soil layer with a flat or gently sloping topography (Service 1998). Due to local topography and geology, the pools are usually clustered into pool complexes (Bauder 1986; Holland and Jain 1977). Pools within a complex are typically separated by distances on the order of meters, and may form dense, interconnected mosaics of small pools or a more sparse scattering of larger pools.

Vernal pool systems are often characterized by different landscape features including mima mound (miniature mounds) microtopography, varied pool basin size and depth, and vernal swales (low tract of marshy land). Vernal pool complexes that support one to many distinct vernal pools are often interconnected by a shared watershed. Chemistry, geophysiology, and hydrology influenced by watershed characteristics determine the distribution of vernal pool species (Dehoney and Lavigne 1984; Eng *et al.*, 1990, Branchiopod Research Group 1996), therefore ecosystems on which the San Diego fairy shrimp and its vernal pool habitat depend are best described from a watershed perspective (see Recovery Criteria 1 and 2 in the Recovery Plan for Vernal Pools of Southern California, Service 1998). California's vernal pools begin to fill with the fall and winter rains. Before ponding occurs, there is a period during which the soil is wetted and the local water table may rise. Some pools in a complex have a substantial watershed that contributes to water input; others may fill almost entirely from rain falling directly into the pool (Hanes and Stromberg, 1998). Even in pools filled primarily by direct precipitation, subsurface inflows from surrounding soils can help dampen water level fluctuations during late winter and early spring (Hanes and Stromberg 1998).

Vernal pools exhibit four major phases—the wetting phase, when vernal pool soils become saturated; the aquatic phase, when a perched water table develops within the watershed and the vernal pool contains water; a waterlogged drying phase, when the vernal pool begins losing water as a result of evaporation and loss to the surrounding soils but soil moisture remains high; and the dry phase, when the vernal pool and underlying soils are completely dry (Keeley and Zedler 1998). Upland areas within vernal pool watersheds are also an important source of nutrients to vernal pool organisms. Vernal pool habitats derive most of their nutrients from detritus, which is

washed into the pool from adjacent uplands, and these nutrients provide the foundation for the vernal pool aquatic community food chain (Eriksen and Belk 1999).

San Diego County supports the largest number of remaining vernal pools occupied by the San Diego fairy shrimp. Scientists estimated that, historically, vernal pool soils covered 51,800 hectares (ha) (200 square miles (mi.^{2})) in San Diego County (Bauder and McMillan 1998). The majority of these pools were destroyed prior to 1990. On the basis of available information to us at the time the species was listed, we estimated that fewer than 81 ha (200 acres (ac)) of occupied vernal pool habitat remained. This calculation was based on the area of the specific vernal pool basins that contained San Diego fairy shrimp, and did not include the acreage of the surrounding watersheds. Keeler-Wolf *et al.* (1995) concluded that the greatest recent losses of vernal pool habitat in San Diego County have occurred in Mira Mesa, Rancho Penasquitos, and Kearny Mesa, which accounted for 73 percent of all the pools destroyed in the region during the 7-year period between 1979 and 1986. Other substantial losses have occurred in the Otay Mesa area, where over 40 percent of the vernal pools were destroyed between 1979 and 1990. Similar to San Diego County, vernal pool habitat was once extensive on the coastal plain of Los Angeles and Orange counties (Mattoni and Longcore 1997). Unfortunately, there has been a near-total loss of vernal pool habitat in these areas (Ferren and Pritchett 1988; Keeler-Wolf *et al.* 1995). It is estimated that 70 percent of existing vernal pools occurs on lands managed by the Department of Defense (Bauder and Weir 1991).

Urban and water development; flood control, highway, and utility projects; and conversion of wildlands to agricultural use have eliminated vernal pools and their watersheds in southern California (Jones and Stokes Associates 1987). Changes in hydrologic patterns, overgrazing, and off-road vehicle use also impact vernal pools. The flora and fauna in vernal pools or swales can change if the hydrologic regime is altered (Bauder 1986). Human activities that reduce the extent of the watershed or that alter runoff patterns (*i.e.*, amounts and seasonal distribution of water) may eliminate San Diego fairy shrimp, reduce their population sizes or reproductive success, or shift the location of sites inhabited by this species. The California Department of Fish and Game's Natural Diversity Data Base ranks the vernal pool habitat type in priority class G1–S1, which denotes natural communities in the State of California that occur over fewer than 809 ha (2,000 ac) globally.

Previous Federal Action

The San Diego Biodiversity Project in Julian, California; Our Lady of the Lake University in San Antonio, Texas; and the Biodiversity Legal Foundation submitted a petition to us, dated March 16, 1992, to list the San Diego fairy shrimp as an endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). We received the petition on March 24, 1992. On August 4, 1994, we published a proposed rule in the **Federal Register** (59 FR 39874) to list the San Diego fairy shrimp as an endangered species. The proposed rule was the first Federal action on the San Diego fairy shrimp, and also constituted the 12-month petition finding, as required by section 4(b)(3)(B) of the Act. On February 3, 1997, we published a final rule determining the San Diego fairy shrimp to be an endangered species (62 FR 4925). The Vernal Pool Recovery Plan, which included recovery planning for this species, was published in 1998.

At the time of listing, we concluded that designation of critical habitat for the San Diego fairy shrimp was not prudent because such designation would not benefit the species. We were also concerned that critical habitat designation would likely increase the degree of threat from vandalism or other human-induced impacts. We were aware of several instances of apparently intentional habitat destruction that had occurred during the listing process.

On October 14, 1998, the Southwest Center for Biological Diversity filed a lawsuit in the U.S. District Court for the Southern District of California challenging our decision not to designate critical habitat for the San Diego fairy shrimp. On September 16, 1999, the court ordered that "[O]n or before February 29, 2000, the Service shall submit for publication in the **Federal Register**, a proposal to withdraw the existing not prudent critical habitat determination together with a new proposed critical habitat determination for the San Diego fairy shrimp" (*Southwest Center for Biodiversity* v. *United States Department of the Interior et al.*, CV 98–1866) (S.D. Cal.).

After reviewing our not-prudent determination, we concluded that the threats to this species and its habitat from specific instances of habitat destruction did not outweigh the broader educational, potential regulatory, and other benefits that designation of critical habitat would provide for this species. We determined that a designation of critical habitat would provide educational benefits by formally identifying those areas essential to the conservation of the species, and the areas likely to be the focus of our recovery efforts for the San Diego fairy shrimp. Therefore, we concluded that the benefits of designating critical habitat on lands essential for the conservation of the San Diego fairy shrimp would not increase incidences of vandalism above current levels for this species.

On March 8, 2000, we published our determination that critical habitat for the San Diego fairy shrimp was prudent and a concurrent proposed rule to designate critical habitat for the San Diego fairy shrimp on approximately 14,771 ha (36,501 ac) of land in Orange and San Diego counties, California (65 FR 12181). The public comment period was open for 60 days. On August 21, 2000, we published a notice of availability for the draft economic analysis and reopening of the comment period for the proposed critical habitat designation for the San Diego fairy shrimp (65 FR 50672). The second comment period closed on September 5, 2000. On October 23, 2000, we published a final rule designating approximately 1,629 ha (4,025 ac) of critical habitat for the San Diego fairy shrimp in Orange and San Diego counties, California (65 FR 63438).

On January 17, 2001, a lawsuit challenging the designation of critical habitat for the San Diego fairy shrimp and coastal California gnatcatcher was filed by multiple parties including Building Industry Association of Southern California, National Association of Home Builders, and Foothill/Eastern Transportation Corridor (*Building Industry Association of Southern California et al.* v. *Norton, CV 01–7028*). The lawsuit was filed in the U.S. District Court for the District of Columbia.

The U.S. District Court for the District of Columbia issued an order on July 3, 2001, transferring this lawsuit and another lawsuit challenging the designation of critical habitat for the coastal California gnatcatcher to the U.S. District Court for the Central District of California (*Rancho Mission Viejo L.L.C.* v. *Babbitt*, CV 01–8412).

On June 11, 2002, the U.S. District Court for the Central District of California granted the Service's request for a remand of the San Diego fairy shrimp critical habitat designation so that we may reconsider the economic impact associated with designating any particular area as critical habitat. The Court ordered us to complete a new proposed rule on or before April 11, 2003. In a subsequent order the Court held that the critical habitat designated for the San Diego fairy shrimp on October 23, 2000 (65 FR 63438) should remain in place until such time as a new, final regulation becomes effective.

This proposal for critical habitat for the San Diego fairy shrimp differs from the current designation of critical habitat with respect to the mapping grid size and changes of locations of critical habitat due to new survey data. In the preparation of this proposed critical habitat we were able to reduce the minimum mapping unit from a 250 meter UTM grid to a 100 meter UTM grid. This allowed for the grid to more closely follow the watershed boundaries. Through new surveys for the San Diego fairy shrimp, the presence of San Diego fairy shrimp was confirmed in four additional vernal pool complexes in Orange County. The presence of the San Diego fairy shrimp was also reported from the Naval Radio Receiving Facility (NRRF) in Southern San Diego County and vernal pools in the City of San Marcos. However, NRRF is not proposed because of a completed and approved INRMP. Besides these additional confirmations, surveys at the Palomar Airport pools, an area previously designated as critical habitat, found the pools to be unoccupied by the San Diego fairy shrimp, thus they are no longer proposed as critical habitat. This proposal is consistent with the previous designation of critical habitat. Exclusions under 3(5)(A) and 4(b)(2) are similar to the exclusions in the existing critical habitat.

Critical Habitat

Section 3 defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat.

To be included in a critical habitat designation, habitat must be either a specific areas within the geographic area occupied by the species on which are found those physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)) and which require special management considerations or protections, or be specific areas outside of the geographic area occupied by the species which are determined to be essential to the conservation of the species. Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species unless the best available scientific and commercial data demonstrate that unoccupied areas are essential for the conservation needs of the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat on the basis of what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support newly discovered populations in the future, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9(a)(2) prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Relationship to Sections 3(5)(A) and 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection. As such, for an area to be designated as critical habitat for a species it must meet both provisions of the definition. In those cases where an area does not provide those physical and biological features essential to the conservation of the species, it has been our policy to not include these specific areas in designated critical habitat. Likewise, if we believe, based on an

analysis, that an area determined to be biologically essential has an adequate conservation management plan that covers the species and provides for adaptive management sufficient to conserve the species, then special management and protection are already being provided, and then those areas do not meet the second provision of the definition and are also not proposed as critical habitat.

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined, following an analysis, that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from designated critical habitat based on economic impacts, or other relevant impacts such as preservation of conservation partnerships and national security, if, we determine, the benefits of excluding an area from critical habitat outweigh the benefits from including the area in critical habitat, providing the action of excluding the area will not result in the extinction of the species.

In our critical habitat designations we have used both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that are proposed for designation as critical habitat and those areas which are subsequently finalized (*i.e.*, designated). On the basis of these provisions, it has been our policy to not include in proposed critical habitat, or exclude from designated critical habitat, those areas: (1) Not biologically essential to the conservation of a species, (2) covered by a legally operative individual (project-specific) or regional habitat conservation plans (HCPs) that cover the subject species, (3) covered by a completed and approved Integrated Natural Resource Management Plans (INRMPs) for specific Department of Defense (DoD) installations, or (4) covered by an adequate conservation management plan or agreement.

Relationship to Habitat Conservation Plans

Individual Habitat Conservation Plans

In general, we believe that lands essential to the conservation of San Diego fairy shrimp that are protected in reserves established in individual HCPs and for which adaptive management and protections are in place do not require special management and protections because their value for conservation has been addressed by the existing protective measures and actions from the provisions of the HCP. Consequently, reserve areas defined in these individual HCPs do not meet the definition of critical habitat. Further, to the extent that these areas do meet the definition of critical habitat as defined in 3(5)(A)(i)(II), it is additionally appropriate to exclude these areas from critical habitat pursuant to the "other relevant impacts" provisions of section 4(b)(2). Therefore, individual HCPs that cover the San Diego fairy shrimp are not being proposed as critical habitat for the species.

Regional Habitat Conservation Plans

We have considered, but have not proposed as critical habitat those preserve, reserve, or other conservation lands within the boundaries of approved and legally operative regional HCPs that provide coverage for the San Diego fairy shrimp. On the basis of the Secretary of the Interior's authority under section 4(b)(2) of the Act we believe the benefits of excluding these lands outweigh the benefits of including them. Unlike individual HCPs significant portions of the lands to be conserved and managed under these regional plans when they are fully implemented, are not currently receiving special management or protections. Therefore, these lands meet the definition of critical habitat as outlined in section 3(5)(A) of the Act in that they are "essential to the conservation of the species" and "may require special management considerations or protection." This is because, in contrast to fully implemented individual HCPs, the assembly of reserve lands and establishment of protection and special management for reserve lands in these regional HCPs occurs over decades as the conservation program is put into place. Thus lands that are designated for inclusion in a reserve once the plan is fully implemented still may require special management or protection until such inclusion occurs. In addition, in many cases, vernal pools and their surrounding habitats are not within the boundaries of designated or targeted reserve lands in these regional plans, which typically have focused reserve lands and boundaries around the species that occupy the coastal sage scrub habitat community rather than the vernal pool ecosystem.

Development of an HCP is a prerequisite for the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act and represents a large investment in a conservation partnership. HCPs vary in size and complexity. They may provide incidental take coverage and conservation management for one, several, or many federally listed species. Additionally, there may be one or more than one applicant participating in the development and implementation of an HCP.

Large, regional HCPs expand upon the basic requirements set forth in section 10(a)(1)(B) of the Act because they reflect a voluntary, cooperative approach to large-scale habitat and species conservation planning. Many large, regional HCPs in southern California have been, or are being, developed to provide for the conservation of numerous federally listed and unlisted sensitive species and the habitats that provide for their respective biological needs. These HCPs are designed to proactively implement conservation actions to address projects that are proposed to occur within the planning area of the HCP; however, given the broad scope of these regional HCPs, not all projects envisioned to potentially occur within the planning area of a regional HCP may actually take place.

In the case of approved regional HCPs (*i.e.*, those sponsored by cities, counties or other local jurisdictions) that provide coverage for the San Diego fairy shrimp, a primary goal is to provide for the protection and management of habitat areas essential to the conservation of the species while accommodating economic development. The regional HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by the San Diego fairy shrimp. The process also enables us to conduct detailed evaluations of the importance of such lands to the long-term survival of the species in the context of constructing a system of interlinked habitat blocks that provide for the biological needs of the species.

Approved HCPs and their accompanying implementation agreements outline appropriate management measures and protections for covered species for the purpose of protecting, restoring, and enhancing the value of habitat for the conservation of the San Diego fairy shrimp. These measures, which include explicit standards to avoid to the maximum extent practicable and minimize impacts to the species and its habitat resulting from urban development for vernal pools, are designed to ensure the continued value of vernal pools that are both within and outside of the preserve boundaries as suitable habitat for the San Diego fairy shrimp. HCPs provide for active conservation actions that positively benefit the affected species, while the maximum requirement that results from critical habitat designation is that parties subject to a Federal nexus refrain from undertaking actions that adversely modify the designated area. Active conservation measures are of greater benefit to the species than mere avoidance of harm. These measures cannot be compelled under a critical habitat designation, but must be volunteered by the parties to the HCP.

Pursuant to the terms of implementation agreements signed by the Service and permit holders in connection with approved HCPs and their associated incidental take permits, once the protection and management required under the HCPs are in place and assuming the established HCPs are functioning properly, no additional mitigation in the form of land or financial compensation may be required of the permit holders and certain identified third parties except as provided under the terms of the individual HCP. Similar assurances will be extended to future permit holders in accordance with our Habitat Conservation Plan Assurance ("No Surprises") rule codified at 50 CFR 17.22(b)(5) and (6), and 17.32(b)(5) and (6).

In light of the intensive investigation and analysis, public comment, and internal section 7 consultations undertaken prior to approval of regional and other Habitat Conservation Plans, we are confident that individual HCPs identify, protect, and provide beneficial adaptive management for essential vernal pool habitat within the boundary of HCPs. Similarly, regional HCPs also identify and will, as the plans are implemented over the life of the permits, protect and provide beneficial adaptive management for essential vernal pool habitat within their boundaries. Therefore, we have considered, but have not proposed critical habitat for the San Diego fairy shrimp within these approved HCPs pursuant to Section 4(b)(2) of the Act. We are soliciting additional public review and comment on these conclusions.

We are proposing to exclude currently proposed HCPs that cover the San Diego fairy shrimp if, prior to publication of a final rule designating critical habitat for the San Diego fairy shrimp, the plans are completed, approved, and legally operative. We will evaluate the exclusion of these lands on the basis of the best scientific and commercial data available, and after taking into consideration the economic and any other relevant impact of designating critical habitat. Following is our preliminary analysis of the benefits of including lands within approved HCPs versus excluding such lands from critical habitat designation.

(1) Benefits of Inclusion

Critical habitat designation is anticipated to provide little additional benefit to the San Diego fairy shrimp within the boundaries of approved HCPs. The primary benefit of any critical habitat is that activities that require Federal funding, permitting, or authorization and which may affect critical habitat require consultation pursuant to section 7 of the Act to ensure the activity will not destroy or adversely modify designated critical habitat. Consultations would also include the associated vernal pool watershed that are designated as critical habitat. However, as a result of the United States Supreme Court decision in *Solid Waste Agency of Northern Cook County* v. *U.S. Army Corps of Engineers*, 531 U.S. 159 (2001) (*SWANCC*), there may be limited opportunities to consult with the U.S. Army Corps of Engineers on activities that may affect vernal pools.

Currently approved and permitted HCPs are already designed to ensure the conservation of covered species within the plan area. Additionally, an HCP application must itself be consulted upon pursuant to section 7 of the Act. All HCPs address land use within the plan boundaries, and habitat issues as they relate to land use will have been addressed within the HCP through our consultation on the HCP.

Furthermore, regional HCPs typically provide greater conservation benefits to covered species than independent, project-by-project section 7 consultations because HCPs assure the long-term protection and special management needs for these species and their habitats, and the funding for such management and protections through the standards found in the 5-Point Policy for HCPs (65 FR 35242, June 1, 2000) and the HCP No Surprises regulation (63 FR 8859, February 23, 1998). These types of assurances are typically not provided by individual, project-by-project section 7 consultations because such consultations do not always commit the project proponent to long-term special management or protections; therefore, a consultation may not accord the lands it covers the extensive benefit a regional HCP provides. It is also important to note that an HCP does not preclude the requirement for Federal agencies to consult under section 7 of the Act for projects that are proposed to occur within the plan area of HCPs, even if the proposed action is a covered activity.

Development and implementation of HCPs provide other important conservation benefits, including the development of biological information to guide conservation efforts and assist in species' recovery, and the creation of innovative solutions to conserve species while allowing for continued economic development.

The educational benefits of critical habitat, including informing the public of areas that are important to the conservation of listed species, are essentially the same as those that would occur during the process of approving an HCP. Specifically, an HCP involves public participation through public notices and public comment periods, prior to being approved. For these reasons, we believe that designation of critical habitat typically provides little additional benefit in areas covered by approved HCPs.

(2) Benefits of Exclusion

We have determined that the benefits of excluding lands within approved HCPs from critical habitat designation may be more substantial. The benefits of excluding lands within HCPs from critical habitat designation include relieving landowners, communities and counties of any additional regulatory burden that may result from such designation. Many HCPs, particularly large, regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery objectives for listed species that are covered within the plan area. Additionally, many of these HCPs provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review after an HCP is completed solely on the basis of critical habitat designation may jeopardize conservation efforts and partnerships in many areas, and could be viewed as a disincentive to those entities developing HCPs.

A related benefit of excluding lands within HCPs from critical habitat designation is the continued ability to seek new partnerships with future HCP participants including the State of California, counties, local jurisdictions, conservation organizations, and private landowners, that together can implement conservation actions that we would be unable to accomplish

otherwise. If lands within HCP plan areas are designated as critical habitat, it would likely have a chilling effect on our ability to establish new partnerships to develop HCPs, particularly large, regional HCPs that involve numerous participants and address landscape-level conservation of species and habitats. By considering excluding these lands, we preserve our current partnerships and, we believe, set the stage for additional conservation actions in the future.

In addition to the conservation benefits HCPs provide to covered species within the plan areas, many of these HCPs, particularly large, regional HCPs, also address landscape-level conservation of native habitats. The Natural Communities Conservation Planning Act of 1991 (NCCP) provides a framework for conserving listed and other sensitive species at a regional or ecosystem scale. The pilot program of the NCCP focuses on conservation of native coastal sage scrub communities throughout a 6,000-square-mile area in southern California that includes parts of Los Angeles, Orange, San Diego, Riverside, and San Bernardino counties. The NCCP program complements the objectives of regional HCP planning efforts. In southern California, several regional conservation planning efforts that incorporate the dual objectives of NCCP/HCP have already been approved.

In southwestern San Diego County, the Multiple Species Conservation Program (MSCP) effort encompasses more than 236,000 ha (582,000 ac) and reflects the potential participation of more than 12 local jurisdictions. The MSCP provides for the establishment over the permit term of approximately 69,573 ha (171,000 ac) of preserve areas to provide conservation benefits for 85 federally listed and sensitive species. Under the broad umbrella of the MSCP, each participating jurisdiction prepares a Subarea Plan that complements the goals of the MSCP. Each Subarea Plan is consulted on under section 7 of the Act to ensure the Subarea Plans are consistent with the aims of the MSCP.

The MSCP provides for avoidance of impacts to vernal pool habitat for the San Diego fairy shrimp both within and outside of existing and targeted reserve areas. In addition, the incidental take permits issued to the City and County of San Diego under the MSCP limits take of San Diego fairy shrimp to areas outside of jurisdictional waters of the United States, as that term was understood at the time the permits were issued prior to the *SWANCC* decision. In other words, take of San Diego fairy shrimp under the approved subarea plans is limited to situations where the species occurs outside of its natural vernal pool habitat. The subarea plans also contemplated individualized review of projects impacting vernal pool habitat of the San Diego fairy shrimp under Section 404 of the Clean Water Act and Section 7 of the ESA to insure compliance with the Environmental Protection Agency Clean Water Act, 404(b)(1) guidelines and the Federal policy of "no net loss of wetland function and values"; however, that review may not occur because of the intervening *SWANCC* decision. Even without that additional Section 7 review, however, the commitment by the City and County to avoid impacts to vernal pool habitat both within and outside reserve areas to the maximum extent practicable remains in place. The plans also commit the jurisdictions to affirmatively monitor and adaptively manage vernal pool habitats and species. Those measures combined with the restrictive incidental take authorized under the City and County incidental take permits, will ensure the conservation of the San Diego fairy shrimp and its vernal pool habitat within the approved MSCP subarea plan areas.

The Central-Coastal NCCP/HCP in Orange County was developed in cooperation with numerous State and local jurisdictions, agencies, and participating landowners including the cities of Anaheim, Costa Mesa, Irvine, Orange, and San Juan Capistrano; Southern California Edison, the Transportation Corridor Agencies, The Irvine Company, California Department of Parks and Recreation, Metropolitan Water District of Southern California, and the County of Orange. Approved in 1996, the Central-Coastal NCCP/HCP provides for the establishment of approximately 15,677 ha (38,738 ac) of reserve lands for 39 Federal or State listed and unlisted and sensitive species.

There are three known locations of vernal pools occupied by San Diego fairy shrimp within the Central-Coastal NCCP/HCP boundaries: Fairview Regional Park, Newport-Banning Ranch, and the North Ranch Policy Plan Area. The vernal pool complex at Fairview Regional park occurs within a city that is not a participating jurisdiction under the Central-Coastal NCCP/HCP. The Newport Banning Ranch is designated as an "existing use" habitat area in the Central-Coastal NCCP/HCP and is not covered for the take of any federally listed species, including the San Diego fairy shrimp. San Diego fairy shrimp known from the North Ranch Policy Plan area occur in a non-degraded, natural vernal pool. There is currently a Nature Conservancy conservation easement over the portion of the North Ranch Policy Plan area containing vernal pool habitat and a management endowment for the easement, but a conservation management plan has not yet been completed for the area. Under the Central-Coastal NCCP/HCP, SDFS occurring within these three vernal pool areas are not covered by the plan.

Several regional NCCP/HCP efforts are currently under way in southern California that have not yet been completed but which, upon approval, should provide conservation benefits to the San Diego fairy shrimp.

The Multiple Habitat Conservation Program (MHCP) in northwestern San Diego County encompasses approximately 45,300 ha (175 mi.^{2}) within the study area, including vernal pool habitat. Currently, seven cities are participating in the development of the MHCP.

The proposed Southern Subregion NCCP/HCP in Orange County encompasses approximately 51,800 ha (200 mi.^{2}) in its planning area, including vernal pool habitat for the San Diego fairy shrimp. Jurisdictions and private landowners within the study area include the cities of Rancho Santa Margarita, Mission Viejo, San Juan Capistrano, San Clemente, and Rancho Mission Viejo.

In general, we find that the benefits of critical habitat designation on lands within approved HCPs that cover those species are small, while the benefits of excluding such lands from designation of critical habitat are substantial. After weighing the small benefits of including these lands against the much greater benefits derived from exclusion, including encouragement for the pursuit of additional conservation partnerships, we have considered, but have not proposed critical habitat on reserve, preserve, or other lands targeted for conservation within the boundaries of approved HCPs that include the San Diego fairy shrimp as a covered species.

In the event that future HCPs covering the San Diego fairy shrimp are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the species. We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the San Diego fairy shrimp and appropriate management for those lands. The take minimization and mitigation measures provided under these HCPs are expected to protect the essential lands that are proposed as critical habitat in this rule. If an HCP that addresses the San Diego fairy shrimp as a covered species is ultimately approved, the Service can reassess the critical habitat boundaries in light of the HCP. The Service would seek to undertake this review when the HCP is approved, but funding constraints may influence the timing of such a review.

Relationship to Department of Defense Lands

Marine Corps Air Station, Miramar and Naval Radio Receiving Facility

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, as they already provide special management or protection. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP must be complete and provide a conservation benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions (adaptive management) as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the second provision of the definition of critical habitat pursuant to section 3(5)(A)(i)(II) and consequently not proposed as critical habitat for the covered species.

Marine Corps Air Station, Miramar (MCAS, Miramar) has completed a final INRMP in May 2000 that provides for sufficient conservation management and protection for the San Diego fairy shrimp. We have reviewed this plan and have determined that it addresses and meets the three criteria discussed above. Therefore, lands on MCAS, Miramar that are biologically essential to the San Diego fairy shrimp do not meet the second provision of the definition of critical habitat pursuant to section 3(5)(A)(i)(II) as they have currently have special management and protection. Consequently, these lands essential to the San Diego fairy shrimp have not been included in the proposed designation of critical habitat for the species. Further, to the extent that the areas biologically essential to the San Diego fairy shrimp on MCAS, Miramar may meet the definition of critical habitat as defined in 3(5)(A)(i)(II), it is additionally appropriate to exclude these areas from critical habitat pursuant to the "other relevant impacts" provisions of section 4(b)(2) as discussed below.

Similar to MCAS, Miramar, the U.S. Navy's Naval Radio Receiving Facility (NRRF) in Coronado also has a completed and approved final INRMP that provides for the conservation of the San Diego fairy shrimp. Therefore, lands on NRRF that are biologically essential to the San Diego fairy shrimp do not meet the second provision of the definition of critical habitat pursuant to section 3(5)(A)(i)(II) as they have currently have special management and protection. Consequently, these lands essential to the San Diego fairy shrimp have not been included in the proposed designation of critical habitat for the species. Further, to the extent that the areas biologically essential to the San Diego fairy shrimp on NRRF may meet the definition of critical habitat as defined in 3(5)(A)(i)(II), it is additionally appropriate to exclude these areas from critical habitat pursuant to the "other relevant impacts" provisions of section 4(b)(2) as discussed below.

The primary benefit of proposing critical habitat is to identify lands essential to the conservation of the species which, if critical habitat was designated, would require consultation with us to ensure activities would not adversely modify critical habitat or jeopardize the continued existence of the species. As previously discussed MCAS, Miramar and NRRF have completed final INRMPs that provide for sufficient conservation management and protection for the San Diego fairy shrimp. Therefore, we do not believe that designation of areas on MCAS, Miramar and on NRRF as critical habitat will appreciably benefit the San Diego fairy shrimp beyond the protection already afforded the species under the Act and the completed INRMPs. Exclusion of these lands would not result in the extinction of the species.

However, even if the lands on MCAS, Miramar and NRRF did require special management and thus meet the definition of critical habitat, there would be appreciable benefits to excluding these areas from critical habitat pursuant to section 4(b)(2). If critical habitat were to be designated, these facilities would be compelled to consult under section 7 of the Act on any activity that may affect designated critical habitat. Given the INRMPs, the additional burden of consulting could unnecessarily impair their ability to conduct activities. Similarly, including these areas in the proposed critical habitat rule would require these facilities to conference with us on any activities that might adversely modify or destroy proposed critical habitat. This could result in unnecessary delays and disruption of base's activities and potentially impair our Nation's military readiness. In light of our country's national security interest, we have considered, but have not proposed critical habitat on MCAS, Miramar or NRRF.

Marine Corps Base, Camp Pendleton

Critical habitat is being proposed for the San Diego fairy shrimp on Department of Defense (DoD) lands including lands that are not mission-essential training areas on Marine Corps Base, Camp Pendleton (Camp Pendleton); and on lands leased to the State of California by Camp Pendleton. Areas proposed as critical habitat for the San Diego fairy shrimp on Camp Pendleton meet the definition of critical habitat pursuant to section 3(5)(A) in that they are "essential to the conservation of the species" and "may require special management or protections."

Under 4(b)(2) of the Act, we have considered, but have not proposed critical habitat on mission-essential training areas on Camp Pendleton. Camp Pendleton operates an amphibious training base that promotes the combat readiness of military forces and is the only West Coast Marine Corps facility where amphibious operations can be combined with air, sea, and ground assault training activities year-round. Currently, the Marine Corps has no alternative installation available for the types of training that occur on Camp Pendleton.

The Marine Corps consults with us under section 7 of the Act for activities that may affect federally threatened or endangered species on Camp Pendleton. On March 30, 2000, at the request of the Marine Corps, we initiated a formal consultation regarding Marine Corps activities on upland areas of Camp Pendleton. The consultation covers approximately 60,703 ha (150,000 ac) of land within the upland areas of Camp Pendleton, including combat readiness operations, air operations, vehicle operations, facility maintenance and operations, fire management, recreation activities, and housing. The upland consultation that addresses vernal pool habitat, the San Diego fairy shrimp, and other species is not yet completed. We are currently working cooperatively with Camp Pendleton to facilitate the completion of this upland consultation.

In order to continue its critical training mission pending completion of the consultation, the Marine Corps has implemented measures the Corps believes will avoid jeopardy to the continued existence of the San Diego fairy shrimp and other listed species within the uplands area and comply with section 7(d) of the Act. In particular, the Marine Corps is implementing a set of "programmatic instructions" to avoid adverse effects to the San Diego fairy shrimp.

The primary benefit of proposing critical habitat is to identify lands essential to the conservation of the species which, if critical habitat was designated, would require consultation with us to ensure activities would not adversely modify critical habitat or jeopardize the continued existence of the species. We are already in formal consultation with the Marine Corps on their upland activities to ensure current and proposed actions will not jeopardize the species' continued existence. Therefore, we do not believe that designation of mission-essential training areas on Camp Pendleton as critical habitat will appreciably benefit the San Diego fairy shrimp beyond the protection already afforded the species under the Act. Exclusion of these lands will not result in the extinction of the species.

In contrast to the absence of an appreciable benefit resulting from designation of Camp Pendleton training areas, there are substantial benefits to excluding these areas from critical habitat. If critical habitat were to be designated within the training areas, the Marine Corps would be compelled to consult under section 7 of the Act on any activity that may affect designated critical habitat. The additional burden of consulting on activities within mission-essential training could delay and impair the ability of the Marine Corps to conduct training activities, thus, limiting Camp Pendleton's utility as a military training installation. Similarly, including these areas in the proposed critical habitat rule would require the Marine Corps to conference with us on any activities that might adversely modify or destroy proposed critical habitat. This would result in similar delays and disruption of base's military training mission and impairment of our Nation's military readiness.

In light of our country's national security interest in ensuring Camp Pendleton's ability to maintain a high level of readiness and fighting capabilities; and the disruption to the Marine Corps' training mission, we have considered, but have not proposed critical habitat on lands identified as mission-essential training areas.

We are soliciting public review and comment on our decision to consider, but not propose critical habitat for the San Diego fairy shrimp on mission-essential training areas of Camp Pendleton, based on section 4(b)(2) of the Act. Maps delineating habitat for the San Diego fairy shrimp, overlaid with mission-essential training areas on Camp Pendleton, are available for public review and comment at the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section) or on the Internet at *http://carlsbad.fws.gov*. Additionally, maps showing lands essential to the conservation of the San Diego fairy shrimp, but not included in proposed critical habitat based and the provisions of section 3(5)(A)(i)(II), are available for viewing at the Carlsbad Fish and Wildlife Office (see Addresses section). These maps are provided to allow the public to adequately comment on these exclusions.

Methods

In determining areas that are essential to conserve the San Diego fairy shrimp, we used the best scientific and commercial data available. This included data from research and survey observations published in peer-reviewed articles, recovery criteria outlined in the Recovery Plan for Vernal Pools of Southern California (Recovery Plan) (Service 1998), regional Geographic Information System (GIS) vegetation and species coverages (including vegetation layers for Orange and San Diego counties), data collected on Camp Pendleton and MCAS, Miramar, data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits, and comments received on the March 8, 2000, proposed rule to designate critical habitat for the San Diego fairy shrimp (65 FR 12181) and the August 21, 2000, draft economic analysis (65 FR 50672). In an effort to map areas essential to the conservation of the species, we used data on known San Diego fairy shrimp locations and those vernal pools and vernal pool complexes that we identified in the Recovery Plan as essential for the stabilization and reclassification of the species.

Primary Constituent Elements

In accordance with sections 3(5)(A)(i) and 4(b)(2) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available. We consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth, and for normal behavior; food, water, or other nutritional or physiological requirements; cover or shelter; sites for breeding and reproduction; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The primary constituent elements for the San Diego fairy shrimp are those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, cyst (egg) dormancy, dispersal, and genetic exchange. The primary constituent elements are found in those areas that support vernal pools or other ephemeral depressional wetlands. Primary constituent elements include the vernal pool basins and associated watersheds, and include, but are not limited to: small to large vernal pools with shallow to moderate depths that hold water for sufficient lengths of time necessary for San Diego fairy shrimp incubation and reproduction, but not necessarily every year; associated watershed(s) and hydrology for vernal pool basins and their related vernal pool complexes; ephemeral depressional wetlands, flat or gently sloping topography, and any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat. The associated watersheds are essential in maintaining the hydrology of vernal pools necessary to support San Diego fairy shrimp.

The first constituent element necessary for vernal pools to form are soils with an underlying claypan or hardpan layer that restricts water drainage. These soils include, but are not limited to: Huerheuero, Olivenhain, Placentia, Redding, and Stockpen (Bauder and McMillan 1998). The second primary constituent element is the possibility that a cyst bank exists in the soil. Dormant fairy shrimp cysts are viable for several years (Donald 1983; Belk 1998). In some cases vernal pool areas that appear degraded still maintain a viable source of fairy shrimp cysts. These cyst banks are similar to the seed banks of flowering plants. These areas are indicated by historical records of vernal pools, the presence of plants or animals associated with ephemeral wetlands, or the occasional pooling of water. The third constituent element relates to the topography of areas supporting the San Diego fairy shrimp. Vernal pool topography is such that the vernal pool fills directly from rain fall or in other cases the topography is such that the pool forms through the subsurface or overland waterflow from the surrounding watershed. The topography does not need to facilitate pooling water every year.

The long-term conservation of vernal pools that are essential for the recovery of the San Djego fairy shrimp include the protection and management of their associated watersheds. Primary constituent elements are found in all the areas proposed as critical habitat.

Criteria Used To Identify Critical Habitat

The long-term conservation of the San Diego fairy shrimp depends upon the protection and management of vernal pools within each management area as described in the Recovery Plan for Vernal Pools in Southern California. Eight distinct management areas were identified in the Recovery Plan based on plant and animal distribution, soil types, and climatic variables. Further, the management area for the conservation of the San Diego fairy shrimp includes vernal pools and complexes that are known to be or are likely occupied by this species and are needed to retain local genetic differentiation, reduce the risk of losing individual species or pool types, buffer environmental variation, and provide for the opportunity for re-establishment of populations (Service 1998). We evaluated those areas based on the hydrology, watershed and topographic features. On the basis of this evaluation of vernal pools identified as essential for the recovery of the San Diego fairy shrimp, we overlaid a 100 m (330 ft) Universal Transverse Mercator (UTM) (North American Datum 1927 (NAD 27)) grid on top of those essential vernal pool complexes and their associated essential watersheds. In those cases where occupied vernal pools were not identified in the Recovery Plan, we relied on recent scientific data to update the map coverage for Orange County where essential vernal pools have been identified since the publication of the recovery plan.

Secondly, after determining those specific areas that are biologically essential to the San Diego fairy shrimp, we evaluated the areas relative to approved and legally operative individual and regional HCPs, completed and approved INRMPs for DoD lands, and other adequate conservation management plans or agreements. This comparison was conducted to ascertain the extent to which these conservation measures precluded the need to designate critical habitat on those lands based on the management provisions and protections afforded the San Diego fairy shrimp and its habitat. As previously discussed, we are not proposing as critical habitat, pursuant to sections 3(5)(A) and 4(B)(2), on lands covered by: (1) A legally operative and fully implemented HCP that covers the San Diego fairy shrimp, (2) a completed and approved INRMP that adequately address the San Diego fairy shrimp and its habitat, and (3) other appropriate conservation management plans or agreements. Consequently, lands within the boundaries of fully implemented HCPs, and Miramar are not proposed as critical habitat for the San Diego fairy shrimp based on the provisions of section 3(5)(A)(i)(II). Maps showing lands essential to the conservation of the San Diego fairy shrimp, but not included in proposed critical habitat based on the basis of Secton 3(5)(A)(i)(II) are available for viewing at the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES**). We have also considered but are not proposing as critical habitat lands within the Central-Coastal Orange County Subregional NCCP/HCP boundaries with the exception of the three vernal pool areas identified under Regional HCPs, lands within approved subareas under the MSCP, and certain military lands on Camp Pendlton based on our evaluation under section 4(b)(2) of the relatively greater benefits that would result from exclusion of these lands from proposed critical habitat. Miramar and NRRF have also been considered and excluded from proposed critical habitat based on sections 3(5)(A) and 4(b)(2). Maps showing the all essential areas considered, but not proposed, are available for public review and comment at the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section) or on the Internet at *http://carlsbad.fws.gov*. Additionally, these maps are provided to allow the public to adequately comment on these exclusions.

In defining critical habitat boundaries, we made an effort to avoid mapping developed areas that are unlikely to contribute to San Diego fairy shrimp conservation. However, the minimum mapping unit that we used did not allow us to avoid mapping of all developed areas unlikely to contain the primary constituent elements essential for conservation of the San Diego fairy shrimp. Existing features and structures within the boundaries of the mapped units, such as buildings, roads, aqueducts, railroads, airports, other paved areas, lawns, landscaped areas, and other urban areas, will not contain one or more of the primary constituent elements. Federal actions limited to those areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat. The complexes of vernal pools and their associated watersheds within the proposed critical habitat area are within the geographical area occupied by San Diego fairy shrimp.

In summary, in determining areas that are essential to conserve San Diego fairy shrimp, we used the best scientific information available to us. The critical habitat areas described below constitute our best assessment of areas needed for the species' conservation and recovery.

Critical Habitat Designation

The approximate area of proposed critical habitat by county and land ownership is shown in Table 1. Critical habitat includes San Diego fairy shrimp habitat throughout the species' range in the United States (*i.e.*, Orange and San Diego counties, California). Areas proposed for critical habitat are under Federal, State, local, and private ownership. Areas proposed for critical habitat exclude some of the essential areas for this species; the exclusions are summarized in Table 2. Some of the areas proposed as critical habitat are within HCPs. Table 3 shows the total area that each of these plans cover and the preserve area for each. Only the San Diego MSCP represents a completed plan that covers the San Diego fairy shrimp. Areas proposed as critical habitat are divided into five Critical Habitat Units which are based on the recovery units in the Recovery Plan (Service 1998). The units are generally based on geographical location of the vernal pools, soil types, associated

watersheds, and local variation of topographic position (*i.e.*, coastal mesas, inland valley). A brief description of each unit and the reasons for designating it as critical habitat are presented below.

TABLE 1.—APPROXIMATE AREA ENCOMPASSING DESIGNATED CRITICAL HABITAT IN HECTARES (HA) (ACRES (AC)) BY COUNTY AND LAND OWNERSHIP

Orange	N/A	30 ha (74 ac)	117 ha (289 ac)	147 ha (363 ac).
San Diego	530 ha (1,309 ac)	228 ha (564 ac)	1,563 ha (3,862 ac)	2,321 ha (5,735 ac).
Total	530 ha (1,309 ac)	258 ha (638 ac)	1,680 ha (4,151 ac)	2,468 ha (6,098 ac).

[1] Includes Department of Defense and U.S. Fish and Wildlife Service lands.

TABLE 2.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA (HA (AC)), ESSENTIAL AREA, AND EXCLUDED AREA

Area considered essential	8,100 ha (20,015 ac).
Area not included under 3(5)(A) (MCAS Miramar, NRRF, individual HCPs*)	1,036 ha (2,561 ac).
Area excluded under 4(b)(2) (Camp Pendleton and preserve lands under the San Diego MSCP)	4,596 ha (11,356 ac).
Proposed Critical Habitat	2,468 ha (6,098 ac).

* Acreage for individual HCPs are not available.

TABLE 3.—NCCP/HCPS WITHIN THE GENERAL AREA WHICH CONTAIN THE PROPOSED CRITICAL HABITAT

NCCP/HCP	Planning area	Preserve area
San Diego MSCP	236,000 ha (582,000 ac)	69,573 ha (171,000 ac).
Central/Coastal Orange County NCCP/HCP	84,463 ha (208,713 ac)	15,677 ha (38,738 ac).
Proposed MSCP North County Subarea	142,854 ha (353,000 ac)	Information not available.
Proposed Northwestern San Diego MHCP	45,288 ha (111,908 ac)	8,064 ha (19,928 ac).
Proposed Southern Subregion NCCP/HCP Orange County (pending)	51,800 ha (128,000 ac)	5,666 ha (14,000 ac).

Areas proposed as critical habitat do not include all of the vernal pools where the San Diego fairy shrimp are found. All of the vernal pools included in the critical habitat were surveyed and are considered to be occupied by the San Diego fairy shrimp. Vernal pools can be measured by different methods: (1) Area of pool basins, (2) soil types, or (3) the associated watersheds. These differences make estimating the historical and current extent of vernal pool habitat in Southern California difficult. In delineating areas essential for the conservation of the San Diego fairy shrimp, we used the area of the associated vernal pool watersheds. Depending on the topography of the area and the adjacent land use, the size of the associated vernal pool watersheds vary between pool complexes.

The five Critical Habitat Units are based on the Management Areas outlined in the Recovery Plan for Vernal Pools of Southern California (Service 1998). The units represent those vernal pools, their associated watersheds, and include populations of the San Diego fairy shrimp throughout its range. The critical habitat units occur on the various soil types and vegetation classes associated with vernal pools. Each contains the primary constituent elements for the San Diego fairy shrimp. We are proposing 2,468 ha (6,098 ac) as critical habitat for this species. Some of the pools within proposed critical habitat are in a degraded state and will benefit from restoration and enhancement work, which will contribute to recovery of the San Diego fairy shrimp.

Unit 1: Orange County

Unit 1 encompasses approximately 147 ha (363 ac) in Orange County within the Los Angeles Basin/Orange Management Area as outlined in the Recovery Plan. The majority of vernal pools in this management area were extirpated prior to 1950 and only a small number of vernal pools remain in Los Angeles and Orange counties (Service 1998). This unit represents the northern extent of this species' currently known distribution in southern California and includes vernal pools that have been identified as essential to the recovery of the San Diego fairy shrimp in order to stabilizing populations and habitat loss. The vernal pools that are proposed as critical habitat are relatively isolated and are the only known remaining vernal pools in Orange County that support the San Diego fairy shrimp. The pools in this unit include examples of the historic distribution of coastal terrace vernal pools at Fairview Regional Park and Newport-Banning Ranch, vernal pool-like ephemeral ponds formed by landslides and fault activity on Rancho Mission Viejo, and the only known rock pool in southern California. This rock pool is located in the North Ranch Policy Plan Area. As discussed in the Recovery Plan (Service, 1998), preservation of vernal pools must be on a geographical scale for individual species and habitats. For species like the San Diego fairy shrimp with declining populations and limited distribution, maintenance of genetic variability is crucial for its survival. The high degree of variability in habitat combined with the unpredictability of winter rains has resulted in genetic structure be tween pool complexes. Moreover, there is a low degree of genetic variability within pool complexes. Thus, to conserve the genetic structure and variability of this species, vernal pools supporting San Diego fairy shrimp need to conserved throughout the range of this species, including the northern end of the distribution. This northernmost unit is essential to the conservation of the San Diego fairy shrimp because it maintains the ecological distribution and genetic variability of this species on a broad geographical scale. The restricted distribution and isolation of the vernal pools also suggest that they may contain genetic diversity important for the long-term survival of the San Diego fairy shrimp.

Unit 2: San Diego: North Coastal Mesa

Unit 2 encompasses approximately 357 ha (882 ac) in San Diego County within the North Coastal Mesa Management Area, as outlined in the Recovery Plan. This unit includes a small portion of Camp Pendleton (nontraining areas) and an area within the City of Carlsbad. The area proposed on Camp Pendleton includes lands leased by the Marine Corps to the California Department of Parks and Recreation and private interests; Cockleburr preserve; and nontraining lands around the Wire Mountain housing area. These pools represent some of the best examples of coastal pools still remaining in San Diego County. The other vernal pools on Camp Pendleton that occur within mission-essential training areas have been excluded from proposed critical habitat under section 4(b)(2) of the Act, but are considered essential for the recovery of the San Diego fairy shrimp. Within the jurisdiction of the City of Carlsbad, the vernal pool complex located in the vicinity of Palomar Airport is currently designated as critical habitat. However, based on recent surveys, we have determined that this vernal pool complex is not essential for the San Diego fairy shrimp. The pool complex at Poinsettia Lane train station, in the City of Carlsbad, is proposed as critical habitat. The Poinsettia Lane pools represent the most coastal location where the San Diego fairy shrimp and the endangered Riverside fairy shrimp co-occur. The Recovery Plan identifies these vernal pools as essential for recovery of the San Diego fairy shrimp because of their role in stabilizing populations and preventing habitat loss. As discussed in the Recovery Plan (Service 1998), vernal pools must be conserved on a geographical scale and these examples represent coastal terrace vernal pools found in northern San Diego County. Given the rarity of San Diego fairy shrimp and the limited amount of remaining vernal pool habitat, this unit is essential to the conservation of this species because of need to conserve vernal pools throughout the range of the species in order to meet the overall recovery of this species, and its role in maintaining the genetic diversity and population stability of the San Diego fairy shrimp.

Unit 3: San Diego: Inland Valley

Unit 3 encompasses 1,225 ha (3,027 ac) in San Diego County within the San Diego Inland Valley Management Area, as outlined in the Recovery Plan. Lands proposed as critical habitat for the San Diego fairy shrimp contain vernal pool complexes within the jurisdiction of the City of San Marcos and the community of Ramona. In the community of Ramona, one of the complexes is within the boundaries of Ramona Airport. These vernal pool complexes are generally isolated from maritime influence (greater than 10 km (6 mi) from the coast) and are representative of vernal pools associated with alluvial or volcanic type soils. The vernal pools in San Marcos are associated with native grassland and a unique association of multiple species of Brodiaea. The Recovery Plan specifically identifies these vernal pools as essential for recovery of the San Diego fairy shrimp because of their role in stabilizing populations and preventing habitat loss. Protection of these areas will help meet the Recovery Plan goal of reclassifying this species in a future downlisting/delisting action. This unit includes vernal pools within the easternmost edge of the geographical distribution of the species. Conservation of vernal pools in this unit will help maintain the diversity of vernal pool habitats and their unique geological substrates, and will retain the genetic diversity of these geographically distinct populations.

Unit 4: San Diego: Central Coastal Mesa

Unit 4 encompasses 73 ha (181 ac) in San Diego County within the San Diego Central Coastal Mesa Management Area, as outlined in the Recovery Plan. Lands considered for this critical habitat unit contain vernal pool complexes within the jurisdiction of the City of San Diego, State of California, Service, Navy, and private lands. The Recovery Plan specifically identifies these vernal pools as essential for the recovery of the San Diego fairy shrimp because of their role in stabilizing populations and preventing habitat loss. These vernal pool complexes are associated with coastal terraces and mesas found south of the San Dieguito River to San Diego Bay. While many of the vernal pool complexes in this unit have been destroyed or fragmented, these complexes represent some of the best remaining vernal pools in San Diego County.

On MCAS, Miramar, vernal pools identified in the Recovery Plan are considered to be essential for the conservation of the San Diego fairy shrimp. MCAS, Miramar is successfully implementing its INRMP and the majority of these pools are considered to be of the highest quality and irreplaceable. These pools are encompassed within Level 1 Management Areas under the installation's INRMP. We have considered, but have not proposed critical habitat designation under 3(5)(A) of the Act for MCAS, Miramar based on the INRMP. Further, to the extent that these areas do meet the definition of critical habitat as defined in 3(5)(A)(i)(II), it is additionally appropriate to exclude these areas from critical habitat pursuant to the "other relevant impacts" provisions of section 4(b)(2). Therefore, MCAS, Miramar lands are not being proposed as critical habitat for this species.

Many of the vernal pools considered for this unit receive conservation protection by virtue of their land ownership and management. These pools represent the some of the best opportunities for long-term protection for the San Diego fairy shrimp. Many of these vernal pools are within the MSCP. We have considered, but have not proposed as critical habitat those vernal pools within approved HCPs (MSCP) where the San Diego fairy shrimp is a covered species. Vernal pools that are included in this critical habitat unit consist of four subunits that are federally owned. This unit includes pools that occur on Del Mar Mesa that are within the San Diego National Wildlife Refuge. This unit also includes land owned by the Department of Defense which meet the definition of critical habitat at Tierrasanta South and at Chollas Heights. This unit provides for the conservation of the San Diego fairy shrimp by protecting vernal pools essential for the future reclassification (downlisting/delisting actions) of this species. It includes vernal pools within the center of this species' geographical distribution, and retains the genetic diversity of these geographically distinct populations.

Unit 5: San Diego: Southern Coastal Mesa

Unit 5 encompasses 666 ha (1,645 ac) in San Diego County within the San Diego Southern Coastal Mesa Management Area, as outlined in the Recovery Plan. Essential habitat for the San Diego fairy shrimp occurs in vernal pool complexes within the jurisdiction of the Service, the Cities of San Diego and Chula Vista, County of San Diego, U.S. Immigration and Naturalization Service (INS), other DoD lands, and private lands within unit 5. These vernal pool complexes are associated with coastal mesas from the Sweetwater River south to the international border with Mexico. We have considered, but have not proposed as critical habitat those vernal pools within approved HCPs (MSCP) where the San Diego fairy shrimp is a covered species. We have considered, but have not proposed critical habitat designation under 3(5)(a) of the Act for NRRF based on their INRMP. The remaining lands identified as essential in the recovery plan are proposed as critical habitat. These vernal pool complexes occur on Federal lands and lands included in the Major Amendment areas of San Diego County. These pools represent the southern most

occurrences of the San Diego fairy shrimp. Due to rapid urbanization in the on both sides of the United States and Mexican border the preservation of these pools is essential for the survival of the San Diego fairy shrimp. The pools proposed for critical habitat in subunit A contain the endangered Otay mesa-mint (*Pogogyne nudiuscula*); subunit D also supports the endangered Riverside fairy shrimp (*Streptocephalus woottoni*); and subunit F include the endangered Orcutt's grass (*Orcuttia californica*) and represent vernal pools with high biological diversity. The Recovery Plan specifically identifies these vernal pools as essential for recovery of the San Diego fairy shrimp because of their role in stabilizing populations and habitat loss and in reclassifying these species in future downlisting/delisting actions. This southernmost unit is essential to the conservation of the San Diego fairy shrimp because it maintains the ecological distribution and genetic diversity of this species. Many of these vernal pools are within the MSCP, and as previously stated in this rule, we have considered, but have not proposed those vernal pools in reserve, preserve, or other lands targeted for conservation areas within approved HCPs, pursuant to section 4(b)(2) of the Act.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent that it appreciably diminishes the value of critical habitat for the conservation of the species. Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, F.3d 434), the Court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is designated or proposed. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist Federal agencies in eliminating conflicts that may be caused by their proposed actions. The conservation measures in a conference report are advisory.

We may issue a formal conference report, if requested by the Federal action agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the Federal action agency would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid the likelihood of jeopardizing the continued existence of listed species, or resulting in the destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiating of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and require that a section 7 consultation be conducted include, but are not limited to:

(1) Any activity that results in discharge of dredged or fill material, excavation, or mechanized land clearing of ephemeral and/or vernal pool basins (*e.g.*, road and fence construction and maintenance, right-of-way designation, airport improvement activities, and regulation of agricultural activities) that constitutes jurisdictional waters of the United States under the Clean Water Act;

(2) Any activity that alters the watershed, water quality, or water quantity to an extent that water quality becomes unsuitable to support San Diego fairy shrimp, or any activity that significantly affects the natural hydrologic function of the vernal pool system; and

(3) Activities that could lead to the introduction of exotic species into San Diego fairy shrimp habitat.

Activities that may destroy or adversely modify critical habitat include those that alter the primary constituent elements to an extent that the value of critical habitat for both the survival and recovery of the San Diego fairy shrimp is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species.

We recognize that the proposed designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, we want to ensure that the public is aware that critical habitat designations do not signal that habitat outside the proposed designation is unimportant or may not be required for recovery. Areas outside the proposed critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the prohibitions of section 9 of the Act. Critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of the San Diego fairy shrimp is appreciably reduced. We note that such activities may also jeopardize the continued existence of the species. Those activities that involve Federal action that may destroy or modify critical habitat are listed above in our discussion of Section 7(a)(2).

If you have questions regarding whether specific activities will constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Branch of Endangered Species, 911 N.E. 11th Ave, Portland, Oregon 97232 (telephone 503/231–2063; facsimile 503/231–6243).

All lands proposed as critical habitat are within the geographical area occupied by the species and are necessary to preserve functioning vernal pool habitat for the San Diego fairy shrimp. Federal agencies already consult with us on activities in areas currently occupied by the species, or if the species may be affected by the action, to ensure that their actions do not jeopardize the continued existence of the species. Thus, we do not anticipate substantial additional regulatory protection will result from critical habitat designation, although there may be consultations that result from Federal actions within critical habitat in the watersheds associated with vernal pools.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species.

An analysis of the economic impacts of proposing critical habitat for the San Diego fairy shrimp is being prepared. We will announcing the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment at that time. Copies may be obtained from the Carlsbad Fish and Wildlife Office's Internet Web site at *http://carlsbad.fws.gov*, or by contacting the Carlsbad Fish and Wildlife Office directly (*see* **ADDRESSES** section)

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Based on public comment, the final rule could find areas not essential, appropriate for exclusion under either 3(5)(A) or 4(b)(2), or not appropriate for exclusion, in which case, they would be made part of the designation. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of designation will outweigh any threats to the species that would result from the designation;

(2) Specific information on the amount and distribution of San Diego fairy shrimp and vernal pool habitat, and what habitat is essential to the conservation of the species and why;

(3) Land use designations and current or planned activities in the areas proposed as critical habitat and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or families;

(5) Economic and other values associated with designating critical habitat for the San Diego fairy shrimp such as those derived from nonconsumptive uses (*e.g.*, hiking, camping, birdwatching, enhanced watershed protection, improved air quality, increased soil retention, "existence values," and reductions in administrative costs);

(6) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments; and

(7) We have considered, but have not proposed the following areas as critical habitat: mission-essential training areas on Camp Pendleton, lands on MCAS Miramar, lands on the U.S. Navy's NRRF, and lands in the San Diego Multiple Species Conservation Program because we believe that: (1) Their value for conservation has been addressed by existing protective actions, or (2) they are appropriate for exclusion pursuant to the "other relevant factor" provisions of section 4(b)(2). We specifically solicit comment, however, on the inclusion or exclusion of such areas and (a) whether these areas are essential; (b) whether these areas warrant exclusion; and (c) the basis for not designating these areas as critical habitat (section 3(5)(A) or section 4(b)(2)).

(8) The benefits of including or excluding from this critical habitat designation lands within approved Habitat Conservation Plans.

(9) Are "associated watersheds" of these vernal pools essential for the conservation of the species? If so, does the term need to be defined and how should it be defined?

(10) The majority of area proposed as critical habitat consists of upland areas that contain "associated watersheds" which may be needed to preserve vernal pool hydrology. Does the extent of the upland areas around the complexes of vernal pools proposed to be designated as critical habitat comply with the regulatory requirement at 50 CFR 484.12(d)? Do these areas comprise "a small local area" within the meaning of the example found in that provision,

and if not, what weight should be given to that example in the final rule?

(11) Should all lands at Camp Pendleton be excluded from critical habitat in light of the INRMP process, the formal consultation under section 7 of the Act for upland species now underway, and possible future needs to utilize different areas for military training?

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods: (1) You may mail comments to the Field Supervisor at the address provided in the **ADDRESSES** section above; (2) You may also comment via the internet to *FW1SDFS@r1.fws.gov*. Please submit internet comments as an ASCII file and avoid the use of special characters or any form of encryption. Please also include "Attn: RIN–1018–AI71" in your e-mail subject header and your name and return address in your internet message. If you do not receive a confirmation from the system that we have received your internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number 760–431–9440. Please note that the internet address "*FW1SDFS@r1.fws.gov*" will be closed out at the termination of the public comment period; or (3) You may hand-deliver comments to our Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section above).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule as we prepare our final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (*see* **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). The Service is preparing a draft economic analysis of this proposed action. The Service will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of the San Diego fairy shrimp. This analysis will be made available for public review and comment. Copies may be obtained from the Carlsbad Fish and Wildlife Office's Internet website at *http://carlsbad.fws.gov* or by contacting the Carlsbad Fish and Wildlife Office directly (*see* **ADDRESSES** section)

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the Regulatory Flexibility Act to require a certification statement. In this proposed rule, we are certifying that it will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (*http://www.sba.gov/size/*). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack a Federal nexus. In areas where the species is present, Federal agencies funding, permitting, or implementing activities are already required to avoid jeopardizing the continued existence of the San Diego fairy shrimp through consultation with us under section 7 of the Act. If this critical habitat designation is finalized, Federal agencies must also ensure that their activities do not destroy or adversely modify designated critical habitat through consultation with us. However, we do not believe this will result in any significant additional regulatory burden on Federal agencies or their applicants where the species may be present, because consultation would already be required because of the presence of a listed species.

In unoccupied areas, or areas of uncertain occupancy, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the areas designated as critical habitat that are considered unoccupied, such as the watersheds associated with occupied vernal pools, would result from the critical habitat designation. Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the species or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

On non-Federal lands, activities that do not require Federal involvement would not be affected by the critical habitat designation. Activities of an economic nature that are likely to occur on non-Federal lands in the area encompassed by this proposed designation are primarily commercial or residential development. None of the developments recently approved by the local jurisdictions in these areas have any Federal involvement, and we are not aware of a substantial number of future activities on any of the proposed units that would require Federal permitting or authorization; therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

In general, two different mechanisms in section 7 consultations could result in project modifications. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, are economically and technologically feasible, and would avoid jeopardizing the continued existence of listed species or resulting in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless it could obtain an exemption, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternatives.

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through nondiscretionary terms and conditions. However, the Act does not require terms and conditions to minimize adverse effect to critical habitat. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. The kinds of actions that may be included in future reasonable and prudent alternatives include avoidance, conservation set-asides, management of competing non-native species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

As required under section 4(b)(2) of the Act, we will conduct an analysis of

the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing this designation. However, court deadlines require us to publish this proposed rule before the economic analysis can be completed.

In summary, we have concluded that this proposed rule would not result in a significant economic effect on a substantial number of small entities. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. Even if a small entity is affected, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. The kinds of measures we anticipate we would recommend can usually be implemented at low cost. Therefore, we are certifying that the proposed designation of critical habitat for the San Diego fairy shrimp will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effect may be modified prior to final rulemaking based upon development and review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2))

In the draft economic analysis, we will determine whether designation of critical habitat will cause (a) any effect on the economy of $100 million or more, (b) any increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (c) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this proposed rule to designate critical habitat for the San Diego fairy shrimp is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

The Service will use the economic analysis to evaluate consistency with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing to designate approximately 2,468 ha (6,098 ac) of lands in Orange and San Diego counties, California, as critical habitat for the San Diego fairy shrimp in a takings implications assessment. This preliminary assessment concludes that this proposed rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from and coordinated development of this proposed critical habitat designation with appropriate State resource agencies in California. The proposed designation of critical habitat in areas currently occupied by the San Diego fairy shrimp imposes no additional significant restrictions beyond those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The proposed designation of critical habitat in unoccupied areas may require a conference under section 7 of the Act on non-Federal lands (where a Federal nexus occurs) that might otherwise not have occurred.

The proposed designation of critical habitat may have some benefit to the State and local resource agencies in that the areas essential to the conservation of this species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of this species are specifically identified. While this definition and identification does not alter where and what Federally sponsored activities may occur, it may assist local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the San Diego fairy shrimp.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of the San Diego fairy shrimp because they do not support populations or suitable vernal pool habitat. Therefore, critical habitat for the San Diego fairy shrimp has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary authors of this notice are the Carlsbad Fish and Wildlife Office staff (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.95 revise the entry for the San Diego fairy shrimp (*Branchinecta sandiegonensis*) under paragraph (h) as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(h) *Crustaceans.*

* * * * *

San Diego fairy shrimp (*Branchinecta sandiegonensis*).

(1) Critical habitat units are depicted for Orange and San Diego counties, California, on the maps below.

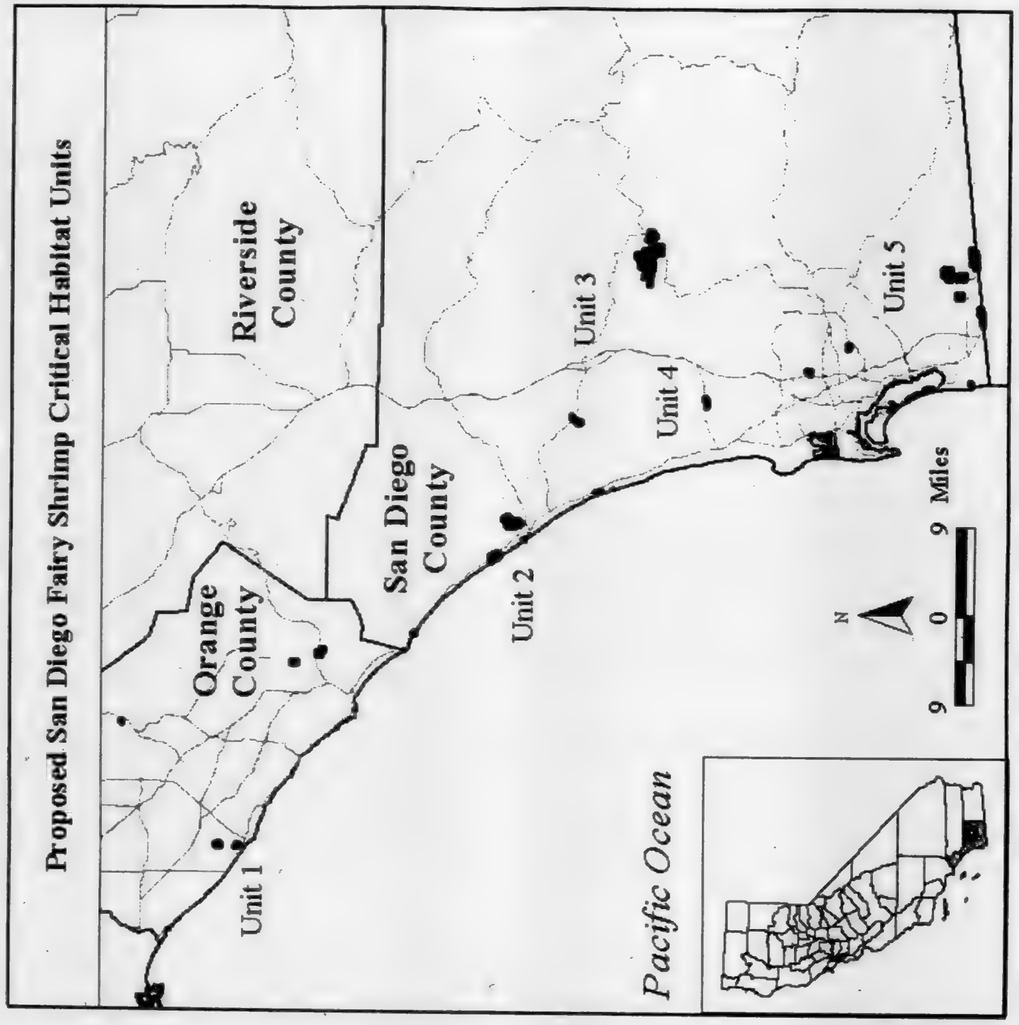
(2) Critical habitat includes vernal pool basins and vernal pool complexes indicated on the maps below and their associated watersheds and hydrologic regime.

(3) Within these areas, the primary constituent elements include, but are not limited to, those habitat components that are essential for the primary biological needs of foraging, sheltering, reproduction, and dispersal. The primary constituent elements are found in those areas that support vernal pools or other ephemeral depressional wetlands. Within these seasonal wetlands, specific associations that are essential to the primary biological needs of the San Diego fairy shrimp include, but are not limited to: Small to large vernal pools with shallow to moderate depths that hold water for sufficient lengths of time necessary for San Diego fairy shrimp incubation and reproduction, but not necessarily every year; entire watershed(s) and hydrology for vernal pool basins and their associated vernal pool complexes, ephemeral depressional wetlands, flat or gently sloping topography, and any soil type with a clay component and/or an impermeable surface or subsurface layer known to support vernal pool habitat.

(4) Existing features and structures, such as buildings, roads, railroads, urban development, and other features not containing primary constituent elements, are not considered critical habitat. In addition, critical habitat does not include non-Federal lands covered by a legally operative habitat conservation plan for the San Diego fairy shrimp issued under section 10(a)(1)(B) of the Act on or before April 22, 2003.

(5) Index map of critical habitat units for San Diego fairy shrimp follows:

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BILLING CODE 4310–55–C

(6) Map Unit 1: Orange County, Orange County, California. From USGS 1:24,000 quadrangle maps Black Star Canyon, Newport Beach, and Canada Gobernadora, California.

(i) Unit 1a: lands bounded by the following UTM NAD27 coordinates (E,N): 432400, 3740900; 432700, 3740900; 432700, 3740600; 432400, 3740600; 432400, 3740700; 432300, 3740700; 432300, 3740800; 432400, 3740800; 432400, 3740900.

(ii) Unit 1b: lands bounded by the following UTM NAD27 coordinates (E,N): 412700, 3725200; 412900, 3725200; 412900, 3725100; 413000, 3725100; 413000, 3724800; 413100, 3724800; 413100, 3724600; 412900, 3724600; 412900, 3724400; 412600, 3724400; 412600, 3725100; 412700, 3725100; 412700, 3725200.

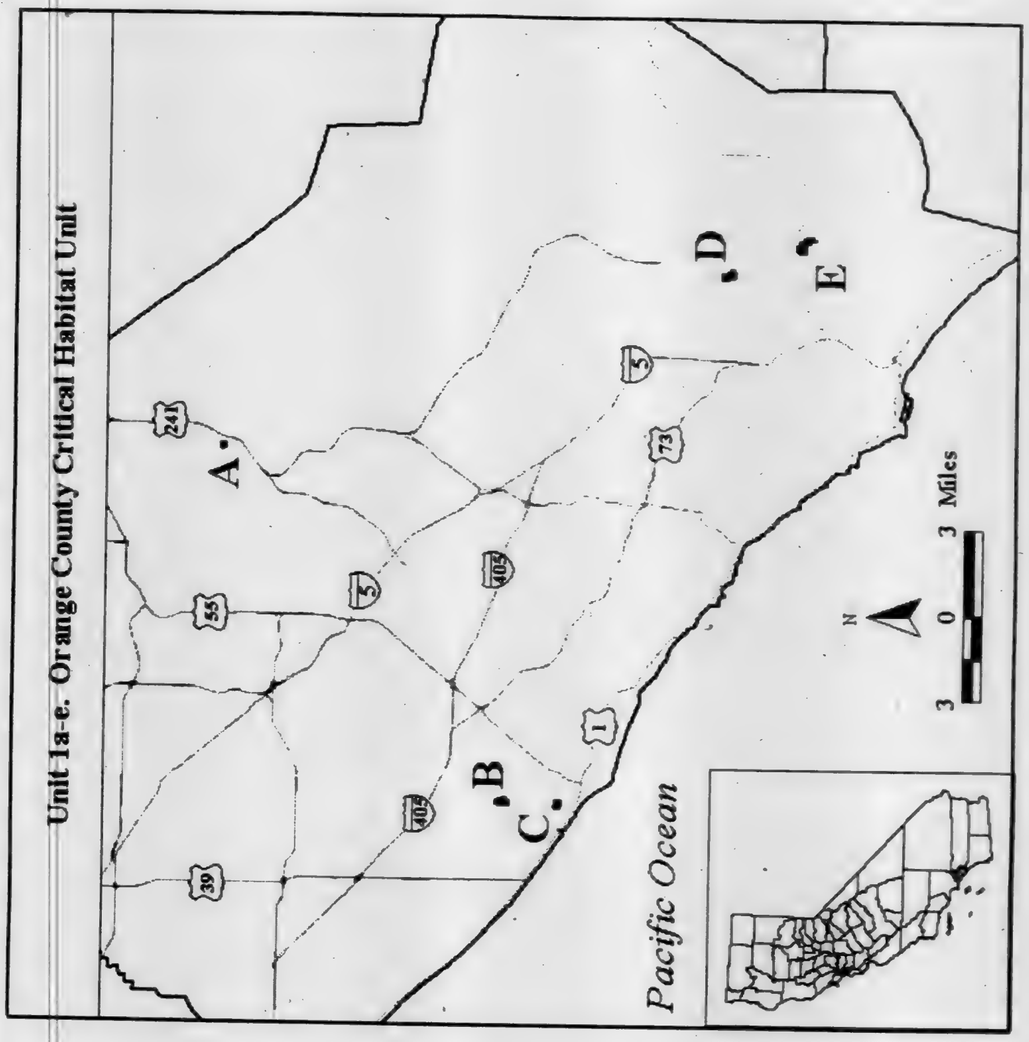
(iii) Unit 1c: lands bounded by the following UTM NAD27 coordinates (E,N): 412500, 3722000; 412600, 3722000; 412600, 3721900; 412900, 3721900; 412900, 3721500; 412600, 3721500; 412600, 3721600; 412400, 3721600; 412400, 3721900; 412500, 3721900; 412500, 3722000.

(iv) Unit 1d: lands bounded by the following UTM NAD27 coordinates (E,N): 442100, 3712800; 442500, 3712800; 442500, 3712500; 442600, 3712500; 442600, 3712300; 442700, 3712300; 442700, 3712100; 442600, 3712100; 442600, 3712000; 442300, 3712000; 442300, 3712100; 442200, 3712100; 442200, 3712400; 442100, 3712400; 442100, 3712800.

(v) Unit 1e: lands bounded by the following UTM NAD27 coordinates (E,N): 443800, 3708700; 444100, 3708700; 444100, 3708500; 444300, 3708500; 444300, 3708300; 444500, 3708300; 444500, 3708100; 444600, 3708100; 444600, 3707700; 444400, 3707700; 444400, 3707600; 444300, 3707600; 444300, 3707900; 444200, 3707900; 444200, 3708100; 443600, 3708100; 443600, 3708500; 443700, 3708500; 443700, 3708600; 443800, 3708600; 443800, 3708700.

(vi) Map of Unit 1a–e follows:

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BILLING CODE 4310–55–C

(7) Map Unit 2: San Diego: North Coastal Mesa, San Diego County, California. From USGS 1:24,000 quadrangle maps San Clemente, San Onofre Bluff, Las Pulgas Canyon, Oceanside, San Luis Rey, and Encinitas, California.

(i) Unit 2a: lands bounded by the following UTM NAD27 coordinates (E,N): 447100, 3693100; 447500, 3693100; 447500, 3693000; 447600, 3693000; 447600, 3692800; 447500, 3692800; 447500, 3692700; 447300, 3692700; 447300, 3692800; 447100, 3692800; 447100, 3693100, excluding the Pacific Ocean.

(ii) Unit 2b: lands bounded by the following UTM NAD27 coordinates (E,N): 459500, 3680600; 459900, 3680600; 459900, 3680500; 460000, 3680500; 460000, 3680300; 459800, 3680300; 459800, 3680400; 459700, 3680400; 459700, 3680300; 459600, 3680300; 459600, 3680200; 459500, 3680200; 459500, 3680000; 459300,

3680000; 459300, 3679900; 459200, 3679900; 459200, 3680000; 459100, 3680000; 459100, 3680100; 459000, 3680100; 459000, 3680300; 459300, 3680300; 459300, 3680500; 459500, 3680500; 459500, 3680600, excluding the Pacific Ocean.

(iii) Unit 2c: lands bounded by the following UTM NAD27 coordinates (E,N): 460000, 3680000; 460200, 3680000; 460200, 3679900; 460300, 3679900; 460300, 3679600; 460500, 3679600; 460500, 3679500; 460600, 3679500; 460600, 3679200; 460500, 3679200; 460500, 3679100; 460400, 3679100; 460400, 3679000; 460300, 3679000; 460300, 3679100; 460100, 3679100; 460100, 3679000; 459800, 3679000; 459800, 3679100; 459700, 3679100; 459700, 3679200; 459600, 3679200; 459600, 3679400; 459500, 3679400; 459500, 3679500; 459400, 3679500; 459400, 3679700; 459300, 3679700; 459300, 3679800; 459800, 3679800; 459800, 3679700; 460000, 3679700; 460000, 3680000, excluding the Pacific Ocean.

(iv) Unit 2d: lands bounded by the following UTM NAD27 coordinates (E,N): 465800, 3678400; 466100, 3678400; 466100, 3678300; 466200, 3678300; 466200, 3677800; 466400, 3677800; 466400, 3677500; 466300, 3677500; 466300, 3677400; 466100, 3677400; 466100, 3677200; 466000, 3677200; 466000, 3677100; 465700, 3677100; 465700, 3677200; 465600, 3677200; 465600, 3677300; 465500, 3677300; 465500, 3677400; 465400, 3677400; 465400, 3677500; 465200, 3677500; 465200, 3677400; 465100, 3677400; 465100, 3677500; 465000, 3677500; 465000, 3677300; 464900, 3677300; 464900, 3677200; 464700, 3677200; 464700, 3677500; 464600, 3677800; 464800, 3677800; 464800, 3677700; 464900, 3677700; 464900, 3677600; 465000, 3677600; 465000, 3678000; 465200, 3678000; 465200, 3677900; 465400, 3677900; 465400, 3677800; 465600, 3677800; 465600, 3677700; 465900, 3677700; 465900, 3677800; 465700, 3677800; 465700, 3678200; 465800, 3678200; 465800, 3678400.

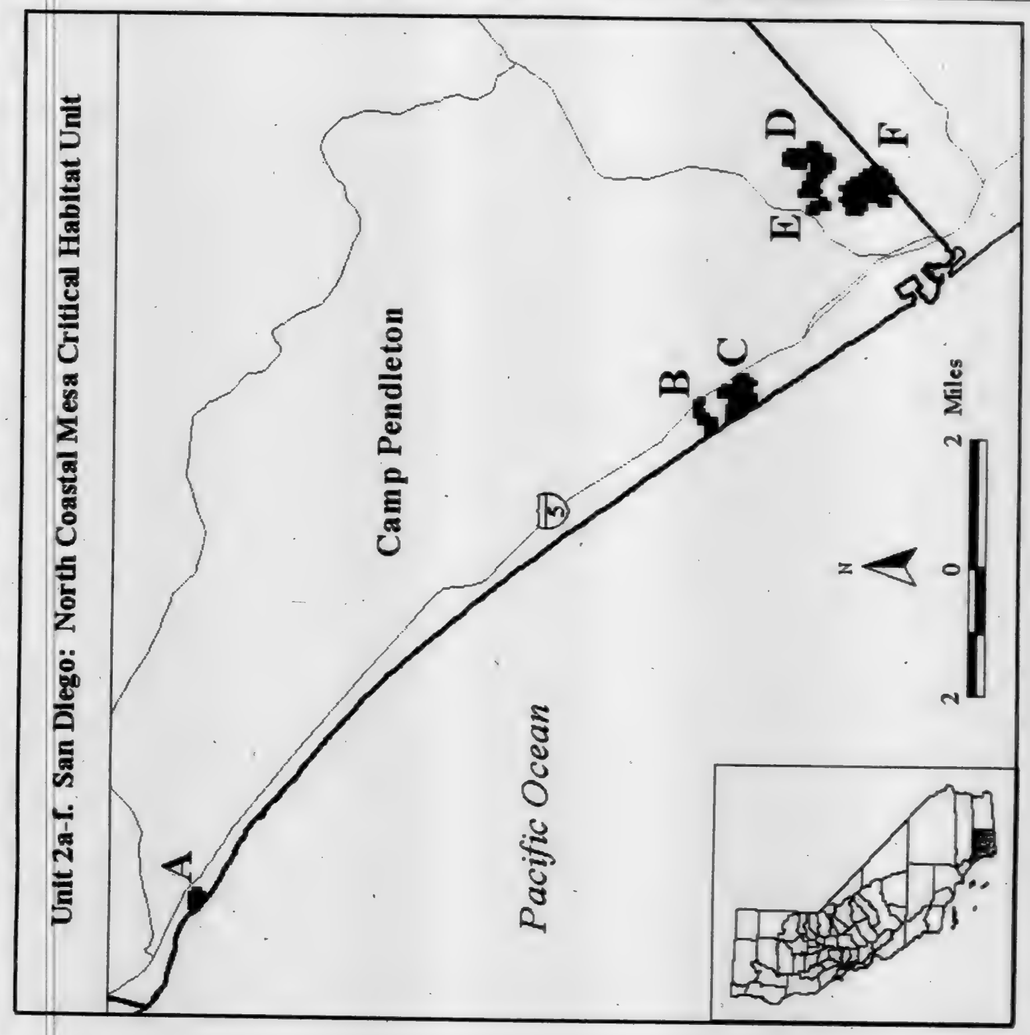
(v) Unit 2e: lands bounded by the following UTM NAD27 coordinates (E,N): 464600,3677800; 464800,3677800; 464800,3677700; 464900,3677700; 464900,3677500; 465000,3677500; 465000,3677300; 464900,3677300; 464900,3677200; 464700,3677200; 464700,3677500; 464600,3677500; 464600,3677800.

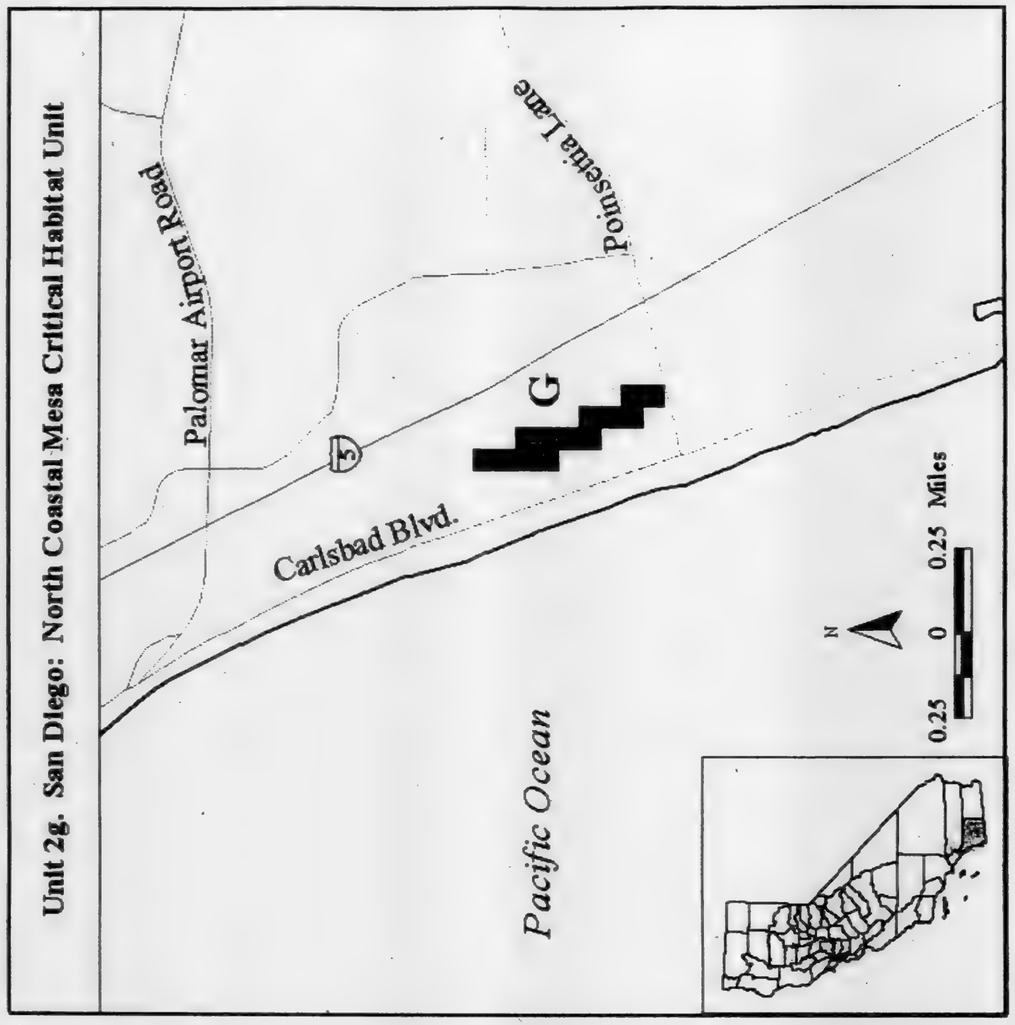
(vi) Unit 2f: lands bounded by the following UTM NAD27 coordinates (E,N): 464900,3677000; 465000,3677000; 465000,3676900; 465200,3676900; 465200,3677000; 465300,3677000; 465300,3676800; 465400,3676800; 465400,3676700; 465500,3676700; 465500,3676500; 465600,3676500; 465600,3676400; 465700,3676400; 465700,3676200; 465800,3676200; 465800,3675900; 465700,3675900; 465700,3675800; 465600,3675800; 465600,3675700; 465500,3675700; 465500,3675600; 465300,3675600; 465300,3675500; 465100,3675500; 465100,3675800; 465000,3675800; 465000,3675700; 464800,3675700; 464800,3676000; 464900,3676000; 464900,3676300; 464700,3676300; 464700,3676400; 464600,3676400; 464600,3676800; 464800,3676800; 464800,3676900; 464900,3676900; 464900,3677000.

(vii) Unit 2g: lands bounded by the following UTM NAD27 coordinates (E,N): 470300,3663400; 470400,3663400; 470400,3663200; 470500,3663200; 470500,3662900; 470600,3662900; 470600,3662700; 470700,3662700; 470700,3662500; 470600,3662500; 470600,3662600; 470500,3662600; 470500,3662800; 470400,3662800; 470400,3663000; 470300,3663000; 470300,3663400.

(viii) Maps of Unit 2 follow:

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(8) Map Unit 3: San Diego: Inland Valley, San Diego County, California. From USGS 1:24,000 quadrangle maps San Marcos, San Pasqual, and Ramona, California.

(i) Unit 3a: lands bounded by the following UTM NAD27 coordinates (E,N): 482500,3667500; 482800,3667500; 482800,3667300; 482600,3667300; 482600,3667100; 482400,3667100; 482400,3667000; 482200,3667000; 482200,3667200; 482300,3667200; 482300,3667400; 482500,3667400; 482500,3667500.

(ii) Unit 3b: lands bounded by the following UTM NAD27 coordinates (E,N): 481800,3667300; 482000,3667300; 482000,3667100; 481800,3667100; 481800,3667300.

(iii) Unit 3c: lands bounded by the following UTM NAD27 coordinates (E,N): 481600,3666800; 481900,3666800; 481900,3666700; 482100,3666700; 482100,3666500; 482000,3666500; 482000,3666300; 481900,3666300; 481900,3666100; 482000,3666100; 482000,3665900; 481900,3665900; 481900,3665800; 481700,3665800; 481700,3665900; 481600,3665900; 481600,3666100; 481400,3666100; 481400,3666300; 481800,3666300; 481800,3666400; 481600,3666400; 481600,3666500; 481500,3666500; 481500,3666600; 481600,3666600; 481600,3666800.

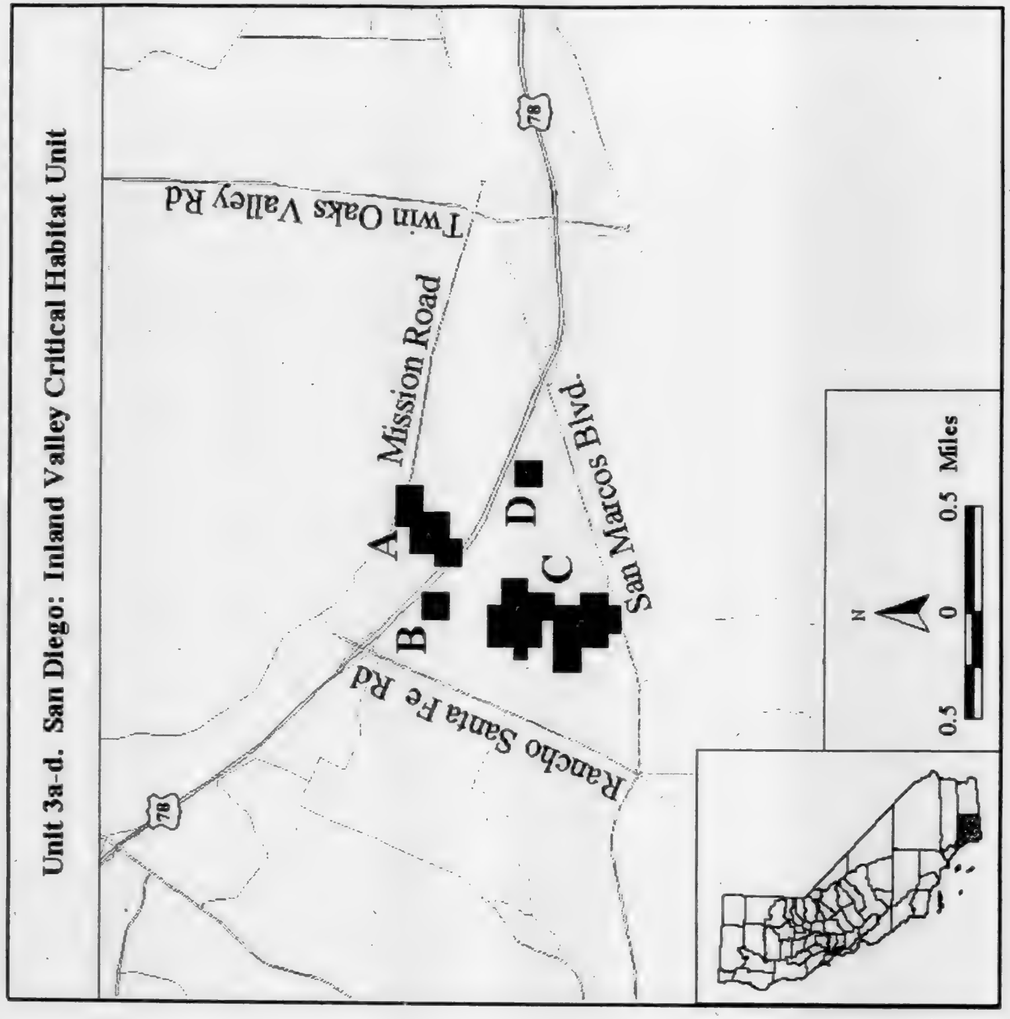
(iv) Unit 3d: lands bounded by the following UTM NAD27 coordinates (E,N): 482800,3666600; 483000,3666600; 483000,3666400; 482800,3666400; 482800,3666600.

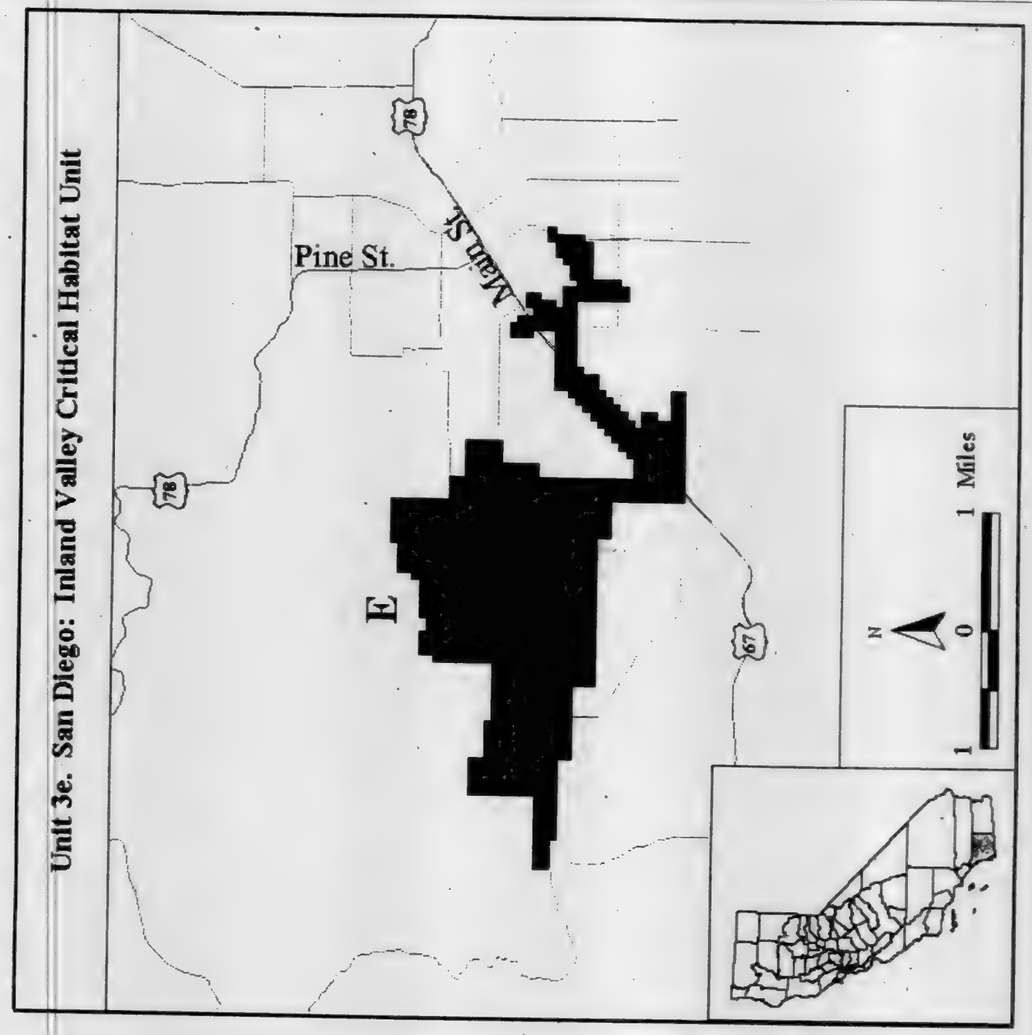
(v) Unit 3e: lands bounded by the following UTM NAD27 coordinates

(E,N): 508400,3657000; 509000,3657000; 509000,3656200; 509300,3656200; 509300,3656000; 509800,3656000; 509800,3655500; 509500,3655500; 509500,3655000; 509300,3655000; 509300,3653700; 509600,3653700; 509600,3653800; 509700,3653800; 509700,3653900; 509800,3653900; 509800,3654000; 509900,3654000; 509900,3654100; 510000,3654100; 510000,3654200; 510100,3654200; 510100,3654300; 510200,3654300; 510200,3654400; 510300,3654400; 510300,3654500; 510400,3654500; 510400,3654600; 510500,3654600; 510500,3654800; 511300,3654800; 511300,3655100; 511200,3655100; 511200,3655400; 511400,3655400; 511400,3655300; 511500,3655300; 511500,3655100; 511600,3655100; 511600,3655200; 511800,3655200; 511800,3655000; 511700,3655000; 511700,3654800; 511600,3654800; 511600,3654700; 511900,3654700; 511900,3654500; 512000,3654500; 512000,3654600; 512200,3654600; 512200,3654700; 512300,3654700; 512300,3654800; 512500,3654800; 512500,3654900; 512700,3654900; 512700,3654800; 512600,3654800; 512600,3654400; 512500,3654400; 512500,3654300; 512000,3654300; 512000,3653900; 511900,3653900; 511900,3653800; 511700,3653800; 511700,3654500; 510800,3654500; 510800,3654400; 510700,3654400; 510700,3654200; 510500,3654200; 510500,3654100; 510400,3654100; 510400,3654000; 510300,3654000; 510300,3653900; 510200,3653900; 510200,3653800; 510100,3653800; 510100,3653700; 510000,3653700; 510000,3653600; 510200,3653600; 510200,3653400; 510100,3653400; 510100,3653200; 510500,3653200; 510500,3653000; 509000,3653000; 509000,3654000; 508500,3654000; 508500,3654200; 506500,3654200; 506500,3654500; 505500,3654500; 505500,3654700; 504400,3654700; 504400,3654800; 504000,3654800; 504000,3655000; 505000,3655000; 505000,3655900; 505500,3655900; 505500,3655700; 506000,3655700; 506000,3655600; 506800,3655600; 506800,3656400; 506900,3656400; 506900,3656600; 507200,3656600; 507200,3656500; 507400,3656500; 507400,3656600; 507900,3656600; 507900,3656700; 508000,3656700; 508000,3656900; 508400,3656900; 508400,3657000.

(vi) Maps of Unit 3 follow:

BILLING CODE 4310-55-P





BILLING CODE 4310-55-C

(9) Map Unit 4: San Diego: Central Coastal Mesa, San Diego County, California. From USGS 1:24,000 quadrangle maps Del Mar, La Mesa, and National City, California.

(i) Unit 4a: lands bounded by the following UTM NAD27 coordinates (E,N): 485400, 3645900; 485900, 3645900; 485900, 3645500; 485600, 3645500; 485600, 3645400; 485400, 3645400; 485400, 3645900.

(ii) Unit 4b: lands bounded by the following UTM NAD27 coordinates (E,N): 484300, 3645600; 484600, 3645600; 484600, 3645500; 484700, 3645500; 484700, 3645300; 484400, 3645300; 484400, 3645500; 484300, 3645500; 484300, 3645600.

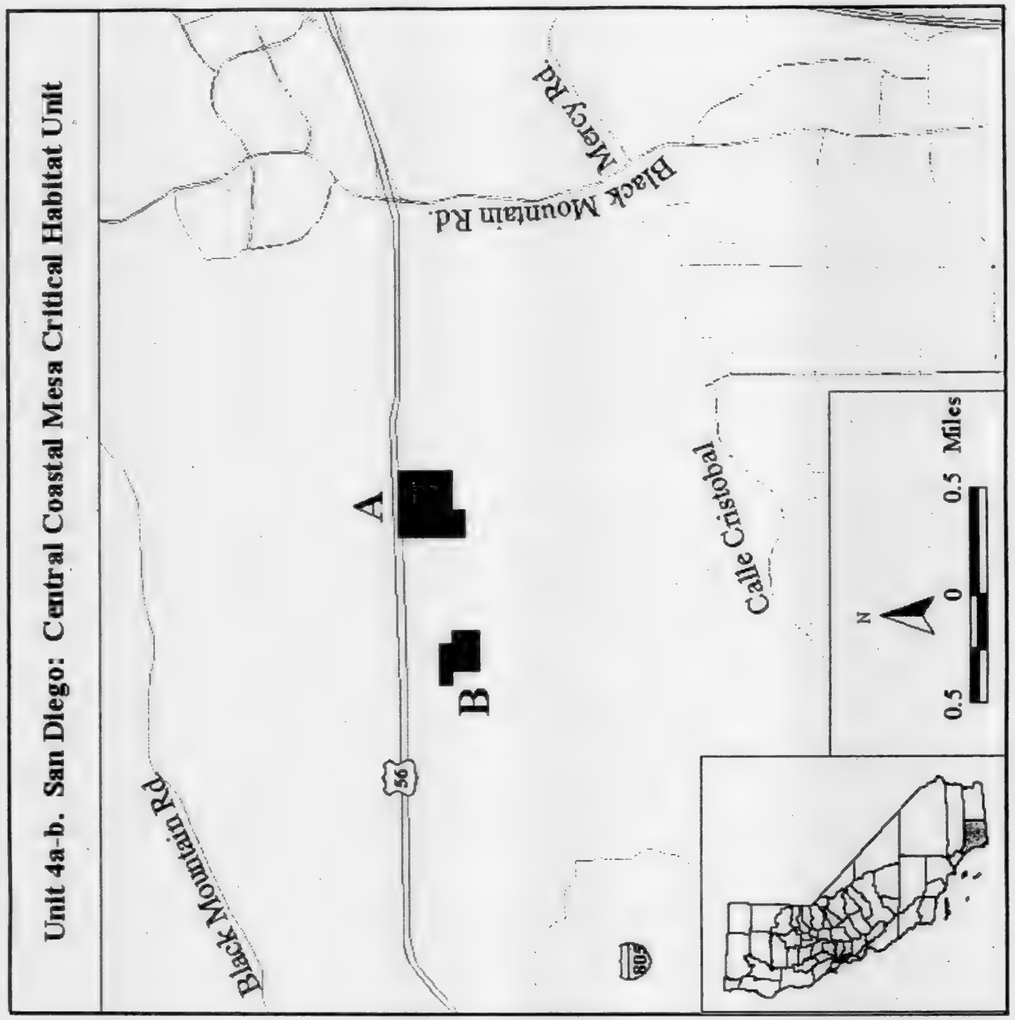
(iii) Unit 4c: lands bounded by the following UTM NAD27 coordinates (E,N): 490200, 3629300; 490400, 3629300; 490400, 3629200; 490500, 3629200; 490500, 3629100; 490400, 3629100; 490400, 3628700; 490300, 3628700; 490300, 3628600; 490200, 3628600; 490200, 3628500; 490100, 3628500; 490100, 3628600; 490000, 3628600; 490000, 3628500; 489700, 3628500; 489700, 3628700; 489800, 3628700; 489800, 3628800; 490100, 3628800; 490100, 3629000; 490200, 3629000; 490200, 3629100; 490300, 3629100; 490300, 3629200; 490200, 3629200; 490200, 3629300.

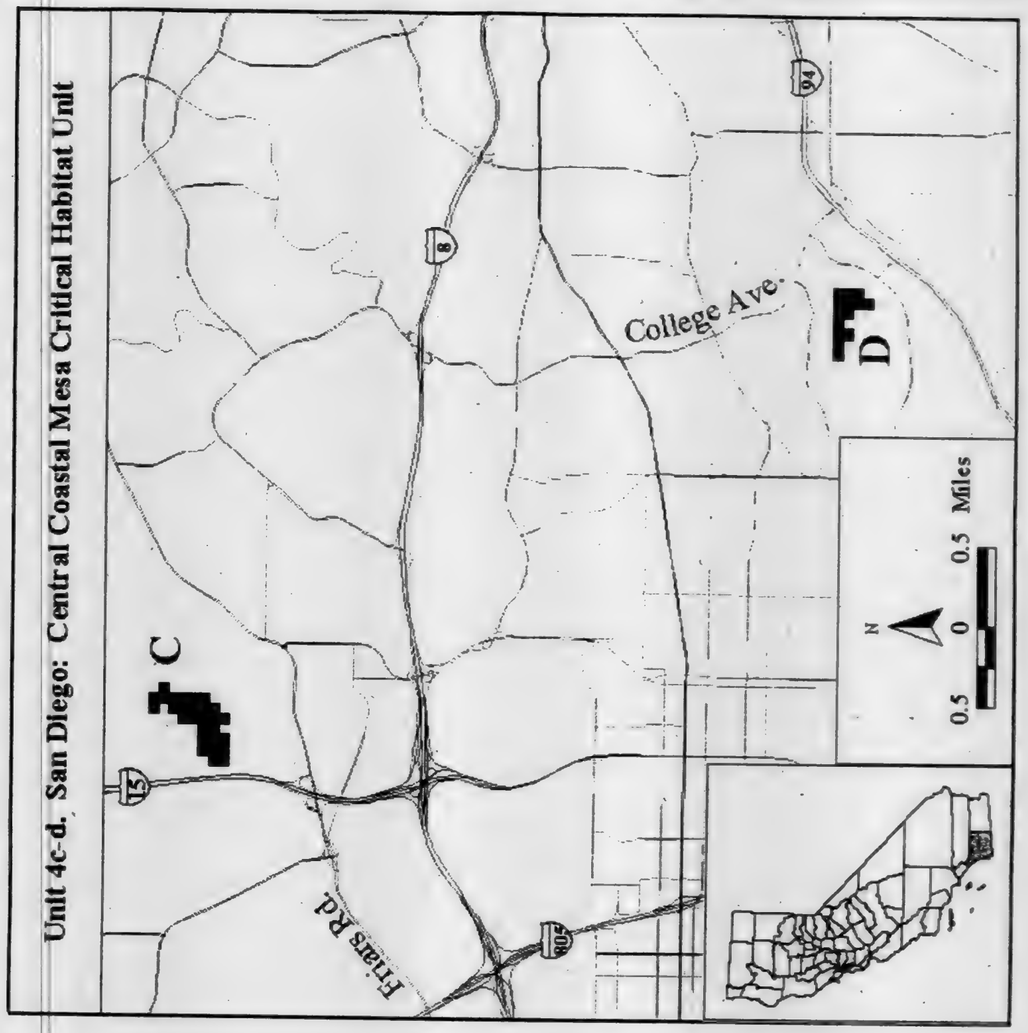
(iv) Unit 4d: lands bounded by the following UTM NAD27 coordinates (E,N): 493800, 3622500; 494500, 3622500; 494500, 3622200; 494400, 3622200; 494400, 3622100; 494300, 3622100; 494300, 3622300; 494200, 3622300; 494200, 3622400; 494100, 3622400; 494100, 3622300; 494000,

3622300; 494000, 3622400; 493800, 3622400; 493800, 3622500.

(v) Maps of Unit 4 follow:

BILLING CODE 4310-55-P





BILLING CODE 4310-55-C

(10) Map Unit 5: San Diego: Southern Coastal Mesa, San Diego County, California. From USGS 1:24,000 quadrangle maps Imperial Beach and Otay Mesa, California.

(i) Unit 5a: lands bounded by the following UTM NAD27 coordinates (E,N): 506000, 3607300; 506600, 3607300; 506600, 3607100; 506700, 3607100; 506700, 3606900; 506900, 3606900; 506900, 3606500; 507000, 3606500; 507000, 3606000; 506900, 3606000; 506900, 3605800; 506800, 3605800; 506800, 3605900; 506400, 3605900; 506400, 3606200; 506800, 3606200; 506800, 3606400; 506300, 3606400; 506300, 3606300; 506000, 3606300; 506000, 3606200; 505700, 3606200; 505700, 3606100; 505400, 3606100; 505400, 3606000; 505100, 3606000; 505100, 3605900; 505000, 3605900; 505000, 3606400; 505100, 3606400; 505100, 3606500; 505400, 3606500; 505400, 3606600; 505600, 3606600; 505600, 3606700; 506000, 3606700; 506000, 3607000; 505900, 3607000; 505900, 3607200; 506000, 3607200; 506000, 3607300.

(ii) Unit 5b: lands bounded by the following UTM NAD27 coordinates (E,N): 502000, 3604900; 502800, 3604900; 502800, 3603900; 502600, 3603900; 502600, 3604000; 502000, 3604000; 502000, 3604900.

(iii) Unit 5c: lands bounded by the following UTM NAD27 coordinates (E,N): 505200, 3604800; 505700, 3604800; 505700, 3604400; 506100, 3604400; 506100, 3603500; 505200, 3603500; 505200, 3604800.

(iv) Unit 5d: lands bounded by the following UTM NAD27 coordinates (E,N): 509600, 3602700; 510000,

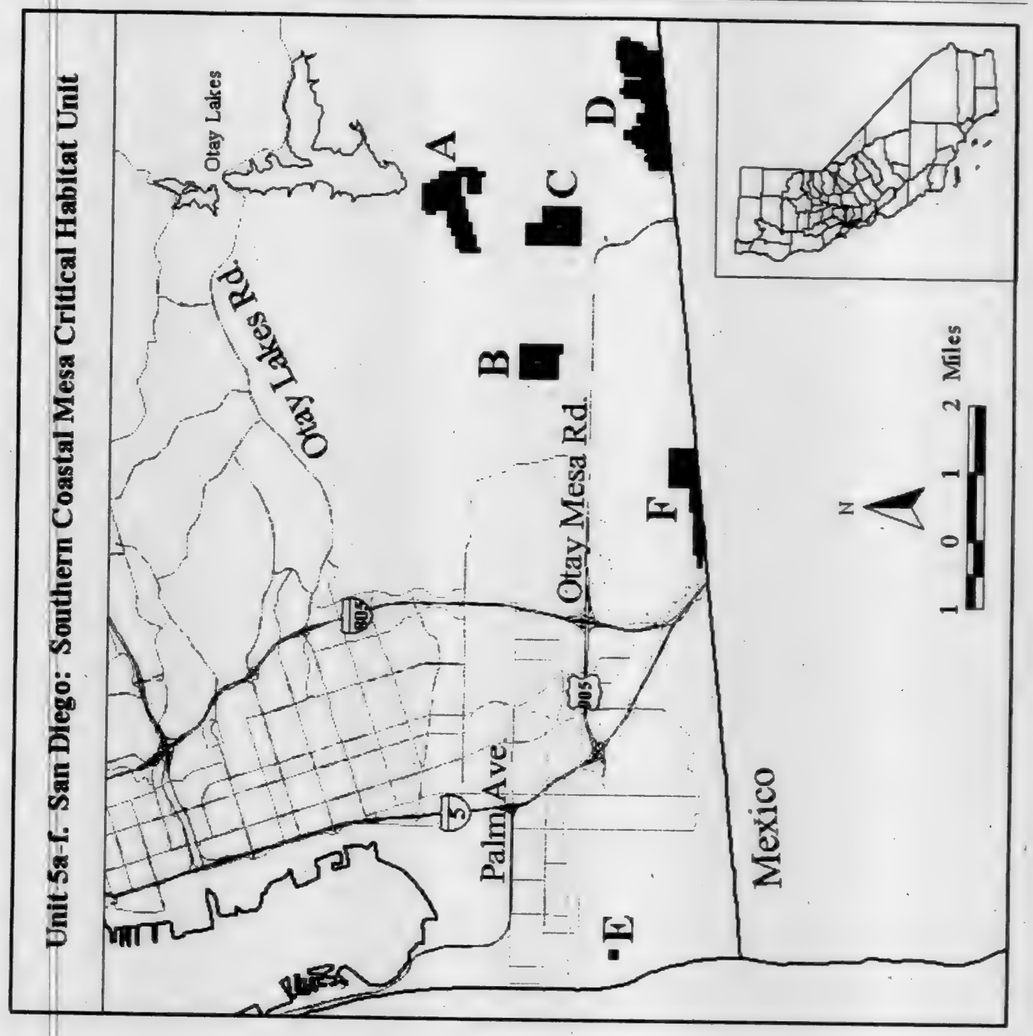
3602700; 510000, 3602600; 510100, 3602600; 510100, 3602400; 510000, 3602400; 510000, 3602100; 509900, 3602100; 509900, 3602000; 509800, 3602000; 509800, 3601600; 509500, 3601600; 509500, 3601500; 508500, 3601500; 508500, 3601400; 507500, 3601400; 507500, 3601300; 507000, 3601300; 507000, 3601900; 507200, 3601900; 507200, 3602000; 507300, 3602000; 507300, 3601900; 507400, 3601900; 507400, 3602000; 507500, 3602000; 507500, 3602200; 507600, 3602200; 507600, 3602300; 507700, 3602300; 507700, 3602500; 507900, 3602500; 507900, 3602300; 508000, 3602300; 508000, 3602100; 508100, 3602100; 508100, 3602200; 508300, 3602200; 508300, 3602000; 508600, 3602000; 508600, 3602100; 508700, 3602100; 508700, 3602500; 508800, 3602500; 508800, 3602600; 508900, 3602600; 508900, 3602500; 509100, 3602500; 509100, 3602100; 509200, 3602100; 509200, 3602500; 509300, 3602500; 509300, 3602600; 509600, 3602600; 509600, 3602700, excluding Mexico.

(v) Unit 5e: lands bounded by the following UTM NAD27 coordinates (E,N): 488300, 3602600; 488500, 3602600; 488500, 3602400; 488300, 3602400; 488300, 3602600.

(vi) Unit 5f: lands bounded by the following UTM NAD27 coordinates (E,N): 499500, 3601300; 500400, 3601300; 500400, 3600600; 499500, 3600600; 499500, 3600500; 498400, 3600500; 498400, 3600400; 497900, 3600400; 497900, 3600500; 497600, 3600500; 497600, 3600600; 497900, 3600600; 497900, 3600700; 498900, 3600700; 498900, 3600800; 499500, 3600800; 499500, 3601300, excluding Mexico.

(vii) Maps of Unit 5 follow:

BILLING CODE 4310–55–P



BILLING CODE 4310–55–C

* * * * *

Dated: April 10, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–9434 Filed 4–21–03; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Tuesday,
April 22, 2003

Part III

General Services Administration

Federal Management Regulation; Federal Property Profile; Notice

GENERAL SERVICES ADMINISTRATION

[FMR Bulletin 2003–B2]

Federal Management Regulation; Federal Property Profile

AGENCY: General Services Administration.

ACTION: Notice of a bulletin.

SUMMARY: The attached bulletin announces the availability of the new Federal Real Property Profile, which provides an overview of the United States Government's owned and leased real property. This report represents a yearlong effort to improve the accuracy and usefulness of the former Worldwide Inventory report.

EFFECTIVE DATE: This bulletin is effective April 22, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Stanley C. Langfeld, General Services Administration, Real Property Policy Division, (MPR), Washington, DC 20405; *stanley.langfeld@gsa.gov*, (202) 501-1737. Please cite FMR Bulletin 2003–B2.

SUPPLEMENTARY INFORMATION: The Federal Real Property Profile is a summary report of the Federal Government's real property assets, as reported to the General Services Administration's (GSA's) Federal Real Property Profile (FRPP) reporting system. It provides an overview of Federal real property assets categorized in three major areas—buildings, land, and structures. The FRPP reporting system is a redesign of the former Worldwide Inventory data collection and reporting system.

Dated: April 2, 2003.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

General Service Administration

[FMR Bulletin 2003–B2]

Real Property

To: Heads of Federal Agencies.
Subject: Federal Real Property Profile.

1. *What is the purpose of this bulletin?* This bulletin announces the availability of the new Federal Real Property Profile, which provides an overview of the United States Government's owned and leased real property. This report represents a yearlong effort to improve the accuracy and usefulness of the former Worldwide Inventory report.

2. *What is the effective date of this bulletin?* This bulletin is effective April 22, 2003.

3. *When does this bulletin expire?* This bulletin will remain in effect indefinitely until specifically cancelled.

4. *What is the background?*

a. This publication is a summary report of the Federal Government's real property assets, as reported to the General Services Administration's (GSA's) Federal Real Property Profile (FRPP) reporting system. It provides an overview of Federal real property assets categorized in three major areas—buildings, land, and structures. Descriptions of specific use classifications are located in the Appendix of the report.

b. The detailed information for this summary report is held in a password-protected Web-based database. This database allows agency representatives to update data on-line in real time, and to produce ad hoc reports. The FRPP reporting system provides information regarding Federal real property holdings to stakeholders including the Congress, the Federal community and the public. Its purpose is to assist Federal asset managers with their stewardship responsibilities by offering a real-time environment for on-line updates.

c. The FRPP reporting system is a redesign of the former Worldwide Inventory data collection and reporting system. GSA and the System Design Focus Group, comprised of representatives from the majority of Federal agencies with landholding authority, gathered user input and defined system and data requirements for the improved system design.

d. To ensure accuracy, GSA requested that agencies confirm their FY 2002 data summary figures prior to publication of the FRPP. Most agencies provided data based on their real property holdings as of September 30, 2002. In a few instances, data provided in previous years has been used where updated information was unavailable. This is noted on the list of contributing agencies. The agency list and status of updates and confirmations is provided as part of the Federal Real Property Profile.

5. *Who uses the Federal Real Property Profile?* The Federal Real Property Profile, managed by the GSA, constitutes a centralized source of information for the Congress, Office of Management and Budget, General Services Administration, and other Federal agencies, as well as universities, libraries, trade associations, the press, the private sector and the general public.

6. *How does the Federal Government benefit from the Federal Real Property Profile?* The Federal Government uses the real property profile, in combination with other available data, in: Planning space needs, promoting fuller utilization management and property accounting surveys, evaluating funding requests for acquisition of real property, and facilitating on-site inspection activities.

7. *When is the Federal Real Property Profile published?* It is published every year and reflects real property data submitted by landholding agencies as of the last day of the fiscal year (September 30).

8. *How can we obtain a copy of the Federal Real Property Profile?* You will find the Federal Real Property Profile for FY 2002 on the GSA Web site at *http://www.gsa.gov/realpropertyprofile*. There you will be able to read, print or download this report. You can also obtain a copy from the Real Property Policy Division (MPR), General Services Administration, 1800 F Street, NW., Washington, DC 20405.

9. *Who should we contact for further information regarding the Federal Real Property Profile?* For further information, contact Stanley C. Langfeld, Director, Real Property Policy Division, Office of Governmentwide Policy, General Services Administration, by phone (202) 501–1737 or by e-mail at *stanley.langfeld@gsa.gov*.

[FR Doc. 03–9926 Filed 4–21–03; 8:45 am]
BILLING CODE 6820–RH–P

Federal Register

Tuesday,
April 22, 2003

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research-Rehabilitation Engineering Research Centers (RERCs) Program; Invitation for Applications for Fiscal Year (FY) 2003 and Notice of Final Priorities; Notices

DEPARTMENT OF EDUCATION

Final Priorities Notice

AGENCY: National Institute on Disability and Rehabilitation Research (NIDRR), Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces final priorities under the Rehabilitation Engineering Research Centers (RERCs) program for up to nine awards for the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years (FYs) 2003 and later years. We take this action to focus research attention on areas of national need. We intend these priorities to improve the rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities are effective May 22, 2003.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov*.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Description of Rehabilitation Engineering Research Centers

RERCs carry out research or demonstration activities by:

(a) Developing and disseminating innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to (1) solve rehabilitation problems and remove environmental barriers and (2) study and evaluate new or emerging technologies, products, or environments and their effectiveness and benefits; or

(b) Demonstrating and disseminating (1) innovative models for the delivery of cost-effective rehabilitation technology services to rural and urban areas and (2) other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities; or

(c) Facilitating service delivery systems change through (1) the development, evaluation, and dissemination of consumer-responsive and individual and family-centered innovative models for the delivery to both rural and urban areas of innovative cost-effective rehabilitation technology services and (2) other scientific research to assist in meeting the employment and independence needs of individuals with severe disabilities.

Each RERC must provide training opportunities, in conjunction with institutions of higher education and nonprofit organizations, to assist individuals, including individuals with disabilities, to become rehabilitation technology researchers and practitioners.

We make awards for up to 60 months through grants or cooperative agreements to public and private agencies and organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. An RERC must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

General RERC Requirements

The following requirements apply to each RERC pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these requirements will be assessed using applicable selection criteria in the peer review process.

Each RERC must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings. Each RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.

Each RERC must develop and implement in the first three months of the grant a plan that describes how the center will include, as appropriate, individuals with disabilities or their representatives in all phases of center activities including research, development, training, dissemination, and evaluation.

Each RERC must develop and implement in the first year of the grant, in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate the RERC's research results to persons with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties.

Each RERC must develop and implement in the first year of the grant, in consultation with the NIDRR-funded RERC on Technology Transfer or other entities as appropriate, a plan for ensuring that all new and improved technologies developed by this RERC are successfully transferred to the marketplace.

Each RERC must conduct a state-of-the-science conference on its respective area of research in the third year of the grant and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant.

Each RERC will be expected to coordinate on research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer.

Centers of Excellence

RERCs are expected to function as Centers of Excellence, which are defined by their degree of accountability, level of productivity, integrity of internal activities, and the quality and relevance of outputs and outcomes. The NIDRR Centers of Excellence Model identifies four major areas of activity; these are: (1) Excellence in administration and evaluation; (2) excellence in scientific research and development; (3) excellence in capacity building and training for research and development and practice; and (4) excellence in relevance and productivity (including dissemination). Within these areas of activity, RERCs must develop consumer and industrial partnerships to ensure the relevance and appropriateness of research directions and to transfer research-generated knowledge into commercial products. Each RERC must operate as part of a national network and extend beyond the boundaries of their programmatic objectives to become leaders in their field, attract new research dollars, and significantly impact the education of professionals, consumers, and manufacturers. For information about NIDRR's Centers of Excellence Model, applicants are invited to visit the following Web site: *http://www.cessi.net/pr/RERC/Summative/CoEmodel.html*.

Program Review

RERCs are required to participate in NIDRR's program review process. Program review is a key element in NIDRR's quality assurance, performance monitoring, and evaluation systems, providing an opportunity for staff and

key stakeholders to interact with grantees and provide feedback on center activities. As part of this evaluation system, NIDRR conducts both formative (early in the five-year funding cycle) and summative (toward the end of the fourth year) reviews. The overall goal of the formative review is to support grantees in achieving their planned results and becoming centers of excellence across the four major areas of activity. The overall goal of the summative review is to evaluate the quality, relevance, and productivity of each center's results and accomplishments. For more information about NIDRR's program review process, applicants are invited to visit the following Web site: *http://www.cessi.net/pr*).

In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

These priorities reflect issues discussed in the New Freedom Initiative (NFI) and NIDRR's Long-Range Plan (the Plan). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominiative.html*.

The Plan can be accessed on the Internet at: *http://www.ed.gov/offices/OSERS/NIDRR/Products*.

We published a notice of proposed priorities for the Rehabilitation Engineering Research Centers (RERC) Program in the **Federal Register** on January 10, 2003 (67 FR 51744).

Except for minor revisions there are no significant differences between the notice of proposed priorities and this notice of final priorities.

Generally, we do not address technical and other minor changes and suggested changes the law does not authorize us to make under the applicable statutory authority.

In response to our invitation in the notice of proposed priorities 13 parties submitted comments. We fully explain changes made as a result of these comments in the Analysis of Comments and Changes published as an appendix to this notice.

Note: This notice does not solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. A notice inviting applications for FY 2003 awards is published elsewhere in this issue of the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Background

The Background statement for the following priorities was published in the notice of proposed priorities on January 10, 2003 (67 FR 1446).

Priorities

NIDRR intends to fund up to nine new RERCs in FY 2003. Applicants must select one of the following priority topic areas: (a) Hearing enhancement; (b) prosthetics and orthotics; (c) communication enhancement; (d) measurement and monitoring of functional performance; (e) technology access for land mine survivors; (f) universal interface and information technologies; (g) telerehabilitation; (h) accessible public transportation; (i) wheeled mobility; (j) cognitive technologies; and (k) technology transfer. Applicants are allowed to submit more than one proposal as long as each proposal addresses only one RERC topic area.

Letters of Intent

Due to the open nature of this competition, NIDRR is requiring all potential applicants to submit a Letter of Intent (LOI). Each LOI must be limited to a maximum of four pages and must include the following information:

(1) The title of the proposed RERC, the name of the host institution, the name of the Principal Investigator (PI), and the names of partner institutions and entities; (2) a brief statement of the vision, goals, and objectives of the proposed RERC and a description of its research and development activities at a sufficient level of detail to allow potential peer reviewers to be selected; (3) a list of proposed RERC staff including the center Director and key personnel; and (4) a list of individuals whose selection as a peer reviewer might constitute a conflict of interest due to involvement in proposal development, selection as an advisory board member, co-PI relationships, etc.

Submission of an LOI is a prerequisite for eligibility to submit an application. The signed, original LOI, or with prior approval an e-mail or facsimile copy, must be received by NIDRR no later than May 22, 2003. Applicants that submit e-mail or facsimile copies must follow up by sending to NIDRR the signed original copy as soon as possible. All communications pertaining to the LOI must be sent to: William Peterson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3425, Switzer Building, Washington, DC 20202–2645. For further information regarding the LOI requirement, contact William Peterson at (202) 205–9192 or by e-mail at: *william.peterson@ed.gov*.

Priorities

The Assistant Secretary intends to fund up to nine RERCs that will focus on innovative technological solutions, new knowledge, and concepts to promote the health, safety, independence, employment, active engagement in daily activities, and quality of life of persons with disabilities. Each RERC must:

(1) Contribute substantially to the technical and scientific knowledge-base relevant to its respective subject area;

(2) Research, develop, and evaluate innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to its respective subject area;

(3) Identify, implement, and evaluate, in collaboration with the relevant industry, professional associations, and institutions of higher education, innovative approaches to expand research capacity in its respective field of study;

(4) Monitor trends and evolving product concepts that represent and signify future directions for technologies in its respective area of research; and

(5) Provide technical assistance to public and private organizations responsible for developing policies, guidelines, and standards that affect its respective area of research.

(6) Each RERC must focus on one of the following priority topic areas:

(a) *Hearing Enhancement:* This center must research and develop methods, systems, and technologies that will assist hearing professionals with the process of matching hearing technology to individuals with hearing loss and associated conditions such as tinnitus. This includes improving the compatibility of hearing enhancement

technologies with various environments such as school, work, recreation, and social settings;

(b) *Prosthetics and Orthotics:* This center must increase understanding of the scientific and engineering principles pertaining to human locomotion, reaching, grasping, and manipulation, and incorporate those principles into the design and fitting of prosthetic and orthotic devices;

(c) *Communication Enhancement:* This center must research and develop augmentative and alternative communication technologies and strategies that will enhance the communicative capacity of individuals of all ages with significant communication disorders across environments (*i.e.*, education, employment, recreation, social);

(d) *Measurement and Monitoring of Functional Performance:* This center must research and develop technologies and methods that effectively assess the outcomes of rehabilitation therapies by combining measurements of physiological performance with measures of functional performance;

(e) *Technology Access for Land Mine Survivors:* This center must address the unique rehabilitation needs of land mine survivors of all ages and develop low-cost replacement limbs, orthotics, and assistive technologies using indigenous materials and expertise from respective countries that will improve the quality of life for individuals who have been severely injured due to land mine explosions;

(f) *Universal Interface and Information Technologies:* This center must research and develop innovative technological solutions for, and promote universal access to, current and emerging information technologies and technology interfaces that promote a seamless integration of the multiple technologies used by individuals with disabilities in the home, the community, and the workplace. This center must work collaboratively with the RERC on Telecommunication Access, the RERC on Mobile Wireless Technologies, and the NIDRR-funded Information Technology Technical Assistance and Training Center;

(g) *Telerehabilitation:* This center must research and develop methods, systems, and technologies that support remote delivery of rehabilitation and home health care services for individuals who have limited local access to comprehensive medical and rehabilitation outpatient services;

(h) *Accessible Public Transportation:* This center must research and develop methods, systems, and devices that will promote and enhance the ability of people with disabilities to safely, comfortably, and efficiently identify destination information, embark/disembark, and use restroom facilities on various types of public transportation systems such as passenger trains and airplanes;

(i) *Wheeled Mobility:* This center must research and develop innovative technologies and strategies that will improve the current state of the science, design guidelines and performance standards, and usability of wheeled mobility devices and wheelchair seating systems;

(j) *Cognitive Technologies:* This center must research, develop, and evaluate innovative technologies and approaches that will have a positive impact on the way in which individuals with significant cognitive disabilities function independently within their communities and workplace; and

(k) *Technology Transfer:* This center must research and develop innovative ways to facilitate and improve the process of moving new, useful, and more effective assistive technology inventions and applications from the prototype phase to the marketplace. This center will be expected to provide technical assistance to all RERCs on issues pertaining to technology transfer, including the development of long-range technology transfer plans.

Executive Order 12866

This notice of final priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priorities are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priorities, we have determined that the benefits of the priorities justify the costs.

Summary of potential costs and benefits: The potential cost associated with these proposed priorities is minimal while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Rehabilitation Engineering Research Centers program have been well established over the years in that similar projects have been completed. These priorities will generate new knowledge through a research, dissemination, utilization, and technical assistance projects.

The benefit of these priorities and application and project requirements will be the establishment of new health and function centers that support the President's NFI.

Applicable Program Regulations: 34 CFR part 350.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.133E, Rehabilitation Engineering Research Center Program)

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Dated: April 16, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix

Analysis of Comments and Changes

Rehabilitation Engineering Research Centers

Comment: One commenter suggested that the Wheeled Mobility topic area would be strengthened if the phrase "design standards" were changed to "design guidelines and performance standards."

Discussion: NIDRR agrees with the commenter that the Wheeled Mobility topic area would be strengthened by replacing the phrase "design standards" with "design guidelines and performance standards."

Changes: The phrase "design standards" has been replaced with "design guidelines and performance standards."

Comment: One commenter suggested that the RERC on Measurement and Monitoring of Functional Performance be required to incorporate issues that relate functional performance measurements to specific work tasks associated with the job or jobs a person performs or will be performing.

Discussion: An applicant could propose activities that relate functional performance measurements to specific work tasks associated with the job or jobs a person performs or will be performing. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to propose these activities.

Changes: None.

Comment: One commenter suggested that the RERC on Technology Transfer be required to provide technical and financial resources to assist persons with disabilities who have developed assistive technology devices with bringing them to market.

Discussion: An applicant could propose activities to assist persons with disabilities who have developed assistive technology devices with bringing the devices to market. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to propose these activities.

Changes: None.

Comment: One commenter suggested that the RERC on Technology Transfer be required to encourage large companies to incorporate the concept of universal design within their products, both current and future, so that persons with disabilities could use them.

Discussion: An applicant could propose activities to encourage large companies to incorporate the concept of universal design within their products. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to propose these activities.

Changes: None.

Comment: One commenter suggested that the RERC on Technology Transfer be required to develop partnerships with venture capitalists to generate resources that could be used to assist small businesses in marketing their products.

Discussion: An applicant could propose activities to develop partnerships with venture capitalists to generate resources that could be used to assist small businesses in marketing their products. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to propose these activities.

Changes: None.

Comment: One commenter suggested that the RERC on Technology Transfer be required to support other RERCs by providing small product development grants for products developed within the RERC family.

Discussion: There is no authority under the Rehabilitation Act for RERCs to provide subgrants. Therefore the activity suggested by the commenter is not an allowable activity.

Changes: None.

Comment: One commenter suggested that the RERC on Technology Transfer be required to involve underrepresented, minority high school, and undergraduate engineering and business students in the product evaluation process.

Discussion: NIDRR requires all RERCs funded under this priority to develop a plan that describes how the center will include, as appropriate, individuals with disabilities or their representatives in all phases of center activities including research, development, training, dissemination, and evaluation. An applicant could propose activities that go beyond these requirements to include minority high school students and undergraduate engineering and business students. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to propose these activities.

Changes: None.

Comment: Two commenters suggested that the Cognitive Technologies topic area be expanded to include research and development activities pertinent to cognitive disabilities across the lifespan.

Discussion: An applicant could propose research and development activities pertinent to cognitive disabilities across the lifespan. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring these activities.

Changes: None.

Comment: Two commenters suggested that the RERC on Cognitive Technologies be required to seek additional financial support from outside foundations, such as the Coleman Colorado Foundation, that specifically focus on funding technology research pertinent to cognitive disability.

Discussion: An applicant could propose activities to seek additional financial support from outside foundations. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to propose these activities.

Changes: None.

Comment: One commenter suggested that the RERC on Cognitive Technologies be required to include a research and development activity to develop "smart" residential living environments designed to augment the effectiveness of developmental disabilities direct support/personal assistance services.

Discussion: An applicant could propose activities to develop "smart" residential living environments designed to augment the effectiveness of developmental disabilities direct support/personal assistance services. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to propose these activities.

Changes: None.

Comment: One commenter suggested that the RERC on Accessible Public Transportation be required to include activities that focus on technology to improve accessibility to bus and other public and private ground transportation systems, and integrating those technologies with residential and community living environments for people with cognitive disabilities.

Discussion: An applicant could propose research and development activities to improve accessibility to bus and other public and private ground transportation systems, and integrating those technologies with residential and community living environments for people with cognitive disabilities. The peer review process will evaluate the merits of the proposal. However, NIDRR has no basis for requiring all applicants to include these activities.

Changes: None.

Comment: One commenter suggested that the very nature of the RERC on Telerehabilitation requires it to focus on care providers and their patients rather than a more general consumer base.

Discussion: NIDRR agrees that care providers and their patients play an important role for this RERC. Others, including family members, allied health professionals, and points of service (*e.g.*, hospitals, clinics, one's home, *etc.*) also play integral roles with respect to this topic area. This RERC will also need to stay in contact with representatives from the telecommunications industry, healthcare insurers, and healthcare policy makers.

Changes: None.

Comment: One commenter suggested that the Technology Access for Land Mine Survivors topic area and the Prosthetics and Orthotics topic area be combined so that the additional resources could be used for other topic areas not included in this priority.

Discussion: NIDRR believes the mission and intended target populations of these two topic areas are distinctly different even though both of them include the need to research and develop prosthetics and orthotics (P&O). One is expected to focus on improving the state of the science in the field of P&O while the other is expected to work within developing countries to improve the lives of land mine survivors using indigenous materials and expertise from respective countries. If the two were combined the RERC would be spread too thin thereby negatively affecting the center's ability to conduct quality research and development activities. If funded, the two centers will be expected to coordinate on research projects of mutual interest.

Changes: None.

[FR Doc. 03–9939 Filed 4–14–03; 8:45 am]

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DEPARTMENT OF EDUCATION

[CFDA No.: 84.133E]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research—Rehabilitation Engineering Research Centers (RERCs) Program; Notice Inviting Applications for Fiscal Year (FY) 2003

Note to Applicants: The notice of final funding priorities is published elsewhere in this issue of the **Federal Register**.

Purpose of the Program: RERCs conduct research, develop-ment, and training activities regarding rehabilitation technology—including rehabilitation engineering, assistive technology devices, and assistive technology services, in order to enhance opportunities for meeting the needs of,

and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Applications Available: April 22, 2003.

Deadline for Transmittal of Applications: June 27, 2003.

Maximum Award Amount: $1,000,000 per year for the Universal Interface and Information Technologies topic area; $950,000 per year for all other topic areas.

Note: We will reject without consideration or evaluation any application that proposes a budget exceeding the stated maximum award amount in any year (*See* 34 CFR 75.104(b)).

Estimated Number of Awards: 9.

Project Period: Up to 60 months.

Note: The Department is not bound by any estimates in this notice.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 80, 81, 82, 85, 86 and 97, and the program regulations 34 CFR part 350.

Priorities

This competition focuses on projects designed to meet the priorities in the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**. The priorities are: (a) Hearing enhancement; (b) prosthetics and orthotics; (c) communication enhancement; (d) measurement and monitoring of functional performance; (e) technology access for land mine survivors; f) universal interface and information technologies; (g) telerehabilitation; (h) accessible public transportation; (i) wheeled mobility; (j) cognitive technologies; and (k) technology transfer. Applicants are allowed to submit more than one proposal as long as each proposal addresses only one priority topic area. The topic area should be the descriptive title of the applicant's project. NIDRR requests that you include the topic in the title block of the ED 424 form, the abstract, and introduction paragraph.

For FY 2003, this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet these priorities

Selection Criteria: The selection criteria to evaluate applications under this program are found in the application package.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the funding priorities and to receive technical assistance through individual consultation and information about the funding priorities. The pre-application meeting will be held on May 12, 2003 either in person or by conference call at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, room 3065, 330 C Street, SW., Washington, DC between 10 AM and 12 noon. NIDRR staff will also be available from 1:30 PM to 4 PM on that same day to provide technical assistance through individual consultation and information about the funding priority. For further information or to make arrangements to attend contact Donna Nangle, Switzer Building, room 3412, 330 C Street, SW., Washington, DC 20202. Telephone (202) 205–5880 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call (202) 205–4475.

Assistance to Individuals With Disabilities at the Public Meetings

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (*e.g.*, other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2003, the U.S. Department of Education is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Rehabilitation Engineering Research Centers (RERCs) Program—CFDA No. 84.133E—is one of the programs included in the pilot project. If you are an applicant under the RERCs Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application) portion of the Grant Administration and Payment System (GAPS). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format. When you enter the e-Application system, you will find information about its hours of operation.
- You may submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

(1) Print ED 424 from the e-Application system.

(2) The institution's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right-hand corner of the hard copy signature page of the ED 424.

(4) Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Closing Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the RERCs Program and you are prevented from submitting your application on the closing date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

(1) You must be a registered user of e-Application, and have initiated an e-Application for this competition; and

(2)(a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 and 3:30 p.m., Washington, DC time, on the deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the deadline date.

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For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3414, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–4475. Internet: *Donna.Nangle@ed.gov.*

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Dated: April 16, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

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H.R. 1559/P.L. 108–11

Emergency Wartime Supplemental Appropriations Act, 2003 (Apr. 16, 2003; 117 Stat. 559)

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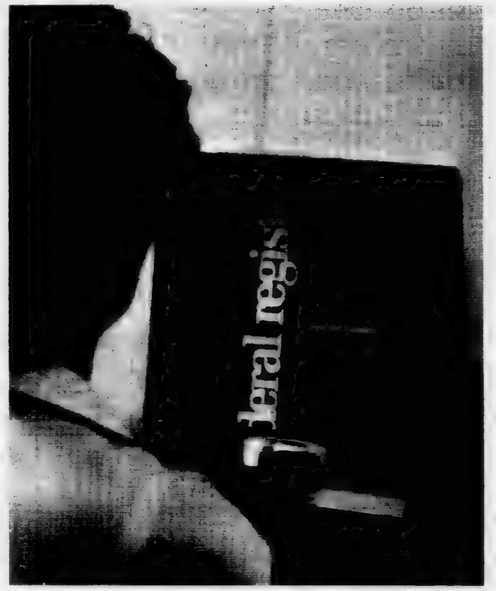
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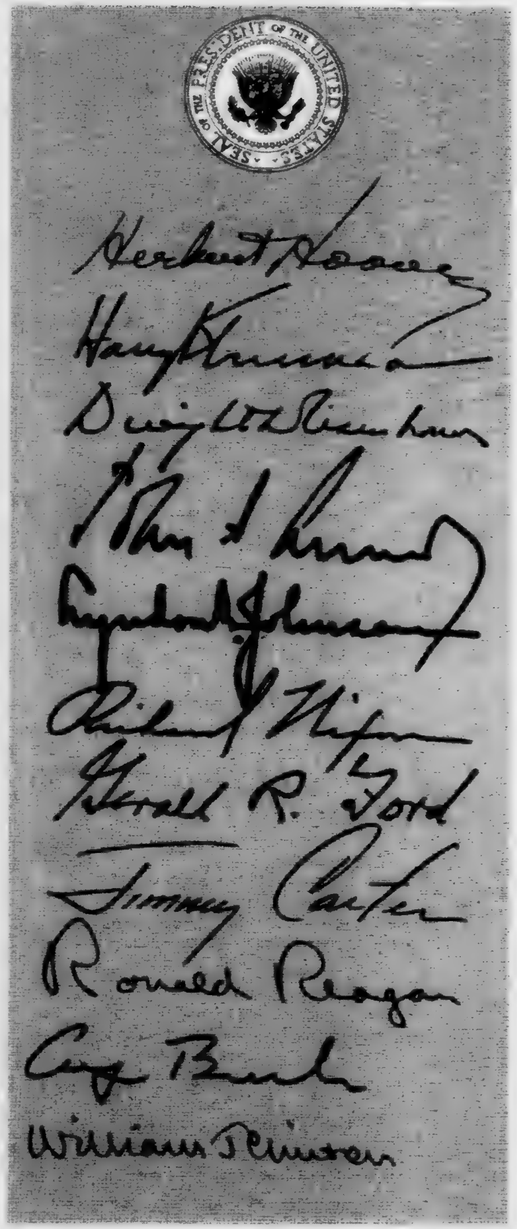
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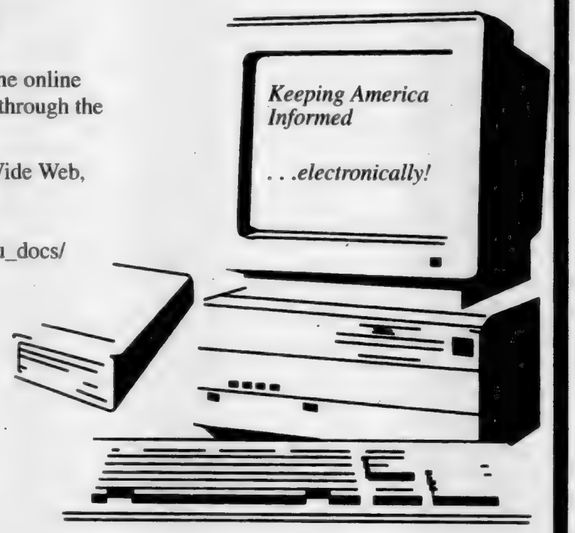
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The President

Proclamation 7665 of April 18, 2003

National Park Week, 2003

By the President of the United States of America

A Proclamation

America is a land of majestic beauty, and we are blessed with immeasurable natural wealth. Americans are united in the belief that we must preserve this treasured heritage and conserve these natural resources for the benefit and enjoyment of the American people.

As a Nation, we can be proud of our diverse parklands, ranging from the rugged wilderness of snow-capped mountains, thick forests, sweeping desert sands, and remote canyons to national symbols such as the Statue of Liberty and the Lincoln Memorial. Our National Park Service has a long and important history. In 1864, the Federal Government ensured a grand natural landscape for generations to come when it designated Yosemite Valley and the Mariposa Grove of giant sequoias to be "held for public use, resort, and recreation . . . inalienable for all time." Eight years later in 1872, the Congress created the first national park in the Yellowstone region of the Territories of Montana and Wyoming. Finally, in 1916, the National Park Service was established to efficiently administer our growing number of parks, which today includes 388 national parks on more than 84 million acres of public lands. These lands continue to be cherished by all our citizens.

The full and safe enjoyment of our national parks depends on dedicated National Park Service employees and thousands of people who volunteer their time to conserve these sites. This year's theme for National Park Week, "Celebrating Volunteers," recognizes their valuable contributions to conserving and maintaining our natural, cultural, and historical heritage.

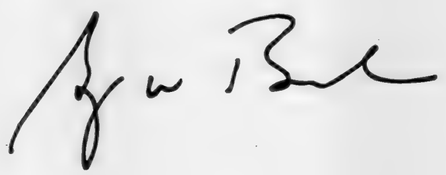
Across the country, my Administration is promoting volunteer service, encouraging public-private partnerships, and advocating community-based interest in our national parks. We are committed to ensuring that our land is conserved, our air is clean, our water is pure, and our parks are open and accessible to all Americans. Recently, my Administration re-launched Take Pride in America, a national partnership that engages volunteers from every corner of America to enhance our parks and other public lands. As part of the USA Freedom Corps initiative, Take Pride in America will encourage more Americans to take part in volunteer service opportunities available on public lands.

My Administration has also supported improvements in park management and is working to reduce the park maintenance backlog. My fiscal year 2004 budget includes over $1 billion to reduce the maintenance backlog, an increase of $180 million over last year's request, along with $76 million, a $9 million increase over last year's request, for the National Park Service Natural Resource Challenge to monitor "vital signs" of conditions in our parks. This initiative will help conserve native species and habitats, maintain our natural resources, eradicate invasive species, and provide the public with information about resources in our parks. In addition, my Administration has developed the website www.recreation.gov, which is a user-friendly way to obtain information about recreational opportunities in the national parks and other public recreation sites.

As we observe National Park Week, I encourage all citizens to explore our national parks and to commit to the conservation and stewardship of these timeless treasures. By working together, we can ensure that these special places thrive for generations to come.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 21 through April 27, 2003, as National Park Week. I call upon the people of the United States to join me in recognizing the importance of our national parks and to learn more about these areas of beauty, their historical significance, and the many ways citizens can volunteer to help preserve these precious resources.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of April, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-seventh.



[FR Doc. 03–10195
Filed 4–22–03; 8:45 am]
Billing code 3195–01–P

Federal Register
Vol. 68, No. 78
Wednesday, April 23, 2003

Presidential Documents

Title 3—

The President

Executive Order 13296 of April 18, 2003

Amendments to Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend the Task Force on Environmental Health Risks and Safety Risks to Children, and for other purposes, it is hereby ordered that Executive Order 13045 of April 21, 1997, as amended, is further amended as follows:

Section 1. Subsection 3–303(o) is amended by striking "Assistant to the President and".

Sec. 2. Section 3–305 is amended by:

(a) striking "cabinet agencies and other agencies identified" and inserting in lieu thereof "executive departments, the Environmental Protection Agency, and other agencies identified"; and

(b) inserting the following new language after the second sentence: "Each report shall also detail the accomplishments of the Task Force from the date of the preceding report."

Sec. 3. Section 3–306 is amended by:

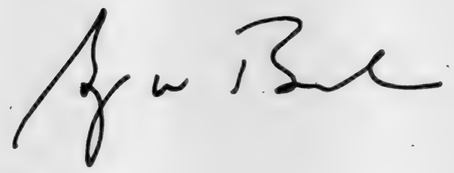
(a) striking "6 years" and inserting in lieu thereof "8 years"; and

(b) striking the second sentence.

Sec. 4. Section 6–601, the second sentence, is amended by deleting "an annual" and inserting "a biennial" in lieu thereof.

Sec. 5. Section 6–603, the third sentence, is amended by deleting "submitted annually" and inserting "published biennially" in lieu thereof.

Sec. 6. Section 7 is amended by adding new section 7–703 as follows: "7–703. Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, or legislative proposals."



THE WHITE HOUSE,
April 18, 2003.

[FR Doc. 03–10194
Filed 4–22–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 68, No. 78
Wednesday, April 23, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM246; Special Conditions No. 25–231–SC]

Special Conditions: Embraer Model 170–100 and 170–200 Airplanes; Sudden Engine Stoppage; Operation Without Normal Electrical Power; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Embraer Model 170–100 and 170–200 airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are associated with engine size and torque load which affect sudden engine stoppage, electrical and electronic flight control systems which perform critical functions, and systems which affect the structural performance of the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of the Embraer Model 170–100 and 170–200 airplanes.

EFFECTIVE DATE: April 10, 2003.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On May 20, 1999, Embraer applied for a type certificate for its new Model 170 airplane. Two basic versions of the Model 170 are included in the application. The Model 170–100 airplane is a 69–78 passenger twin-engine regional jet with a maximum takeoff weight of 81,240 pounds. The Model 170–200 is a lengthened fuselage derivative of the 170–100. Passenger capacity for the Model 170–200 is increased to 86, and maximum takeoff weight is increased to 85,960 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer must show that the Model 170–100 and 170–200 airplanes meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Embraer Model 170–100 and 170–200 airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Embraer Model 170–100 and 170–200 airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

The Embraer Model 170–100 and 170–200 airplanes will incorporate the following novel or unusual design features:

Engine Size and Torque Load

Since 1957, the limit engine torque load which is posed by sudden engine stoppage due to malfunction or structural failure such as compressor jamming has been a specific requirement for transport category airplanes. Design torque loads associated with typical failure scenarios were estimated by the engine manufacturer and provided to the airframe manufacturer as limit loads. These limit loads were considered simple, pure torque static loads. However, the size, configuration, and failure modes of jet engines have changed considerably from those envisioned when the engine seizure requirement of § 25.361(b) was first adopted. Current engines are much larger and are now designed with large bypass fans capable of producing much larger torque, if they become jammed.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines is sufficiently different and novel to justify issuance of special conditions to establish appropriate design standards. The latest generation of jet engines is capable of producing, during failure, transient loads that are significantly higher and more complex than the generation of engines that were present when the existing standard was developed. Therefore, the FAA has determined that special conditions are needed for the Embraer Model 170–100 and 170–200 airplanes.

Electrical and Electronic Systems Which Perform Critical Functions

The Embraer Model 170–100 and 170–200 airplanes will have an electronic flight control system which performs critical functions. The current airworthiness standards of part 25 do not contain adequate or appropriate standards for the protection of this

system from the adverse effects of operations without normal electrical power. Accordingly, this system is considered to be a novel or unusual design feature. Since the loss of normal electrical power may be catastrophic to the airplane, special conditions are proposed to retain the level of safety envisioned by 14 CFR 25.1351(d).

Interactions of Systems and Structures

The Embraer Model 170–100 and 170–200 airplanes will have systems that affect the structural performance of the airplane, either directly or as a result of a failure or malfunction. These novel or unusual design features are systems that can alleviate loads in the airframe and, when in a failure state, can create loads in the airframe. The current regulations do not adequately account for the effects of these systems and their failures on structural performance.

Discussion

Engine Size and Torque Loads

In order to maintain the level of safety envisioned in 14 CFR 25.361(b), a more comprehensive criterion is needed for the new generation of high bypass engines. These special conditions would distinguish between the more common seizure events and those rarer seizure events resulting from structural failures. For the rare but severe seizure events, the specified criteria allow some deformation in the engine supporting structure (ultimate load design) in order to absorb the higher energy associated with the high bypass engines, while at the same time protecting the adjacent primary structure in the wing and fuselage by providing a higher safety factor. The criteria for the more severe events would no longer be a pure static torque load condition, but would account for the full spectrum of transient dynamic loads developed from the engine failure condition.

Electrical and Electronic Systems Which Perform Critical Functions

The Embraer Model 170–100 and 170–200 airplanes will require a continuous source of electrical power for the electronic flight control systems. Section 25.1351(d), "Operation without normal electrical power," requires safe operation in visual flight rule (VFR) conditions for a period of not less than five minutes with inoperative normal power. This rule was structured around a traditional design utilizing mechanical connections between the flight control surfaces and the pilot controls. Such traditional designs enable the flightcrew to maintain control of the airplane while taking the time to sort out the electrical failure, start engines if necessary, and re-establish some of the electrical power generation capability.

The Embraer Model 170–100 and 170–200 airplanes will utilize an electronic flight control system for the pitch and yaw control (elevator, stabilizer, and rudder). There is no mechanical linkage between the pilot controls and these flight control surfaces. Pilot control inputs are converted to electrical signals, which are processed and then transmitted via wires to the control surface actuators. At the control surface actuators, the electrical signals are converted to an actuator command, which moves the control surface.

In order to maintain the same level of safety as an airplane with conventional flight controls, an airplane with electronic flight controls, such as the Embraer Model 170, must not be time limited in its operation, including being without the normal source of electrical power generated by the engine or the Auxiliary Power Unit (APU) generators.

Service experience has shown that the loss of all electrical power generated by the airplane's engine generators or APU is not extremely improbable. Thus, it must be demonstrated that the airplane can continue safe flight and landing (including steering and braking on ground) after total loss of the normal electrical power with only the use of its emergency electrical power systems. These emergency electrical power systems must be able to power loads that are essential for continued safe flight and landing. The emergency electrical power system must be designed to supply electrical power for the following:

- Immediate safety, without the need for crew action, following the loss of the normal engine generator electrical power system (which includes APU power), and
- Continued safe flight and landing, and
- Restarting the engines.

For compliance purposes, a test of the loss of normal engine generator power must be conducted to demonstrate that when the failure condition occurs during night Instrument Meteorological Conditions (IMC), at the most critical phase of the flight relative to the electrical power system design and distribution of equipment loads on the system, the following conditions are met:

1. After the unrestorable loss of normal engine and APU generator power, the airplane engine restart capability must be provided and operations continued in IMC.

2. The airplane is demonstrated to be capable of continued safe flight and landing. The length of time must be computed based on the maximum diversion time capability for which the airplane is being certified. Consideration for speed reductions resulting from the associated failure must be made.

3. The availability of APU operation should not be considered in establishing emergency power system adequacy.

Interaction of Systems and Structure

The Embraer Model 170 has systems that affect the structural performance of the airplane. These systems can serve to alleviate loads in the airframe and, when in a failure state, can create loads in the airframe. This degree of system and structures interaction was not envisioned in the structural design regulations of 14 CFR part 25. These special conditions provide comprehensive structural design safety margins as a function of systems reliability.

Discussion of Comments

Notice of proposed special conditions No. NM246 for the Embraer Model 170–100 and 170–200 airplanes was published in the **Federal Register** dated February 3, 2003 (68 FR 5241). No comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Embraer Model 170–100 and 170–200 airplanes. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Embraer Model 170–100 and –200 is imminent, the FAA finds good cause to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on the Embraer Model 170–100 and 170–200 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for 14 CFR part 25, for these special conditions, is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Embraer Model 170–100 and 170–200 airplanes.

Sudden Engine Stoppage. In lieu of compliance with 14 CFR 25.361(b), the following special conditions apply:

1. For turbine engine installations: The engine mounts, pylons and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

a. Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust.

b. The maximum acceleration of the engine.

2. For auxiliary power unit installations: The power unit mounts and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by the each of the following:

a. Sudden auxiliary power unit deceleration due to malfunction or structural failure.

b. The maximum acceleration of the auxiliary power unit.

3. For an engine supporting structure: An ultimate loading condition must be considered that combines 1g flight loads with the transient dynamic loads resulting from each of the following:

a. The loss of any fan, compressor, or turbine blade.

b. Where applicable to a specific engine design, and separately from the conditions specified in paragraph 3.a., any other engine structural failure that results in higher loads.

4. The ultimate loads developed from the conditions specified in paragraphs 3.a. and 3.b. above must be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1.25 when applied to adjacent supporting airframe structure.

Operation Without Normal Electrical Power. In lieu of compliance with 14 CFR 25.1351(d), the following special conditions apply:

It must be demonstrated by test or by a combination of test and analysis, that the airplane can continue safe flight and landing with inoperative normal engine and APU generator electrical power (in other words, without electrical power from any source, except for the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.

Interaction of Systems and Structures: In lieu of compliance with 14 CFR 25.1351(d), the following special conditions apply:

1. *General:* For airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of 14 CFR part 25, subparts C and D. The following criteria must be used for showing compliance with these special conditions for airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, flutter control systems, and fuel management systems. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

a. The criteria defined herein address only the direct structural consequences of the system responses and performances and cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are only applicable to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative modes are not provided in these special conditions.

b. Depending upon the specific characteristics of the airplane, additional studies that go beyond the criteria provided in these special conditions may be required in order to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions, for an airplane equipped with a load alleviation system.

c. The following definitions are applicable to these special conditions.

Structural performance: Capability of the airplane to meet the structural requirements of 14 CFR part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight occurrence and that are included in the flight manual (*e.g.*, speed limitations, avoidance of severe weather conditions, etc.).

Operational limitations: Limitations, including flight limitations that can be applied to the airplane operating conditions before dispatch (*e.g.*, fuel, payload, and Master Minimum Equipment List limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in these special conditions are the same as those used in § 25.1309.

Failure condition: The term failure condition is the same as that used in § 25.1309; however, these special conditions apply only to system failure conditions that affect the structural performance of the airplane (*e.g.*, system failure conditions that induce loads, lower flutter margins, or change the response of the airplane to inputs such as gusts or pilot actions).

2. *Effects of Systems on Structures.* The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

a. System fully operative. With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in subpart C, taking into account any special behavior of such a system or associated functions, or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions.

However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

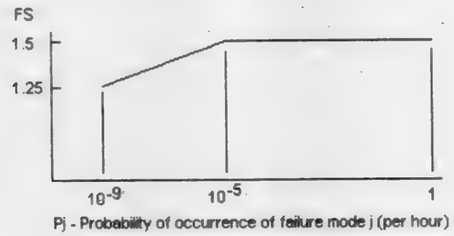
(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

b. System in the failure condition. For any system failure condition not shown to be extremely improbable, the following apply:

(1) At the time of occurrence. Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (FS) is defined in Figure 1.

Figure 1
Factor of safety at the time of occurrence



(ii) For residual strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in paragraph 2.(b)(1)(i) above.

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speed increases beyond Vc/Mc, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) For the continuation of the flight. For the airplane in the system failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions at speeds up to Vc, or the speed limitation prescribed for the remainder of the flight, must be determined:

(A) The limit symmetrical maneuvering conditions specified in §§ 25.331 and 25.345.

(B) The limit gust and turbulence conditions specified in §§ 25.341 and 25.345.

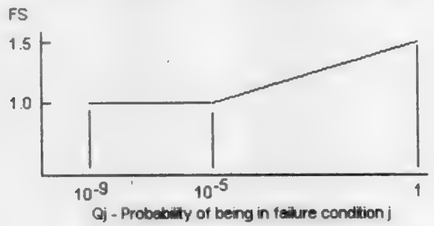
(C) The limit rolling conditions specified in § 25.349, and the limit unsymmetrical conditions specified in § 25.367 and § 25.427(b) and (c).

(D) The limit yaw maneuvering conditions specified in § 25.351.

(E) The limit ground loading conditions specified in §§ 25.473 and 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads defined in paragraph 2.(b)(2)(i) above, multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2.

Figure 2
Factor of safety for continuation of flight



$Q_j = (T_j)(P_j)$ where:
T_j = Average time spent in failure condition j (in hours).
P_j = Probability of occurrence of failure mode j (per hour).

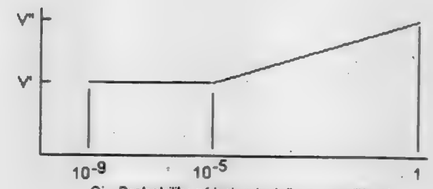
Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in subpart C.

(iii) For residual strength substantiation, the airplane must be able to withstand two thirds of the ultimate loads defined in paragraph 2.(b)(2)(ii) above.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3. Flutter clearance speeds VI and VII may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3
Clearance speed



VI = Clearance speed as defined by § 25.629(b)(2).
VII = Clearance speed as defined by § 25.629(b)(1).
$Q_j = (T_j)(P_j)$ where:
T_j = Average time spent in failure condition j (in hours).
P_j = Probability of occurrence of failure mode j (per hour).

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than VII.

(vi) Freedom from aeroelastic instability must also be shown up to VI in Figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by § 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of 14 CFR part 25, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

c. Warning considerations. For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by 14 CFR part 25, or significantly reduce the reliability of the remaining system. The flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of warning systems, to achieve the objective of this requirement. These certification maintenance requirements must be limited to components that are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition, not extremely improbable, during flight that could significantly affect the structural capability of the airplane, and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of 14 CFR part 25, subpart C below 1.25, or flutter margins below VII, must be signaled to the crew during flight.

d. Dispatch with known failure conditions. If the airplane is to be dispatched in a known system failure condition that affects structural performance, or affects the reliability of the remaining system to maintain structural performance, then the provisions of these special conditions must be met for the dispatched condition and for subsequent failures. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per hour.

Issued in Renton, Washington, on April 10, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–10044 Filed 4–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–15–AD; Amendment 39–13124; AD 2003–08–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200B, –200F, –200C, –100B, –300, –100B SUD, –400, –400D, and –400F Series Airplanes; and Model 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 747–100, –200B, –200F, –200C, –100B, –300, –100B SUD, –400, –400D, and –400F series airplanes; and Model 747SR

series airplanes. This action requires repetitive inspections to detect discrepancies of the actuator attach fittings of the inboard and outboard flaps, and follow-on and corrective actions as necessary. This action is necessary to detect and correct cracking and other damage of the actuator attach fittings of the trailing edge flaps, which could result in abnormal operation or retraction of a trailing edge flap, and possible loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 8, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 2003.

Comments for inclusion in the Rules Docket must be received on or before June 23, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–15–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6443; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA has received reports of three fractures of the attach fittings of the trailing edge flap actuator on Boeing Model 747 series airplanes. The fractures have been attributed to corrosion and/or cracking. In one case, the fracture caused the flap to jam and resulted in an air turnback. In another case, the fractures occurred in the area of the upper journal. If not corrected, corroded or cracked attach fittings could fracture and result in abnormal operation or retraction of a trailing edge flap, and possible loss of controllability of the airplane.

Related Rulemaking

On June 20, 2001, the FAA issued related AD 2001–13–12, amendment 39–12292 (66 FR 34526, June 29, 2001), which applies to certain Boeing Model 747 series airplanes. That AD:

- Requires repetitive inspections to detect cracks and corrosion around the lower bearing of the actuator attach fittings of the inboard and outboard flaps;
- Requires repetitive overhauls for certain actuator attach fittings or repetitive replacement of the fittings with new fittings, as applicable, which terminates the repetitive inspections; and
- Provides for replacement of actuator attach fittings with improved fittings, which terminates all requirements of the AD.

The three incidents previously discussed occurred since AD 2001–13–12 was issued. Those incidents occurred on airplanes that had been inspected in accordance with AD 2001–13–12. Consequently, the FAA has determined that the terminating action in AD 2001–13–12 (replacement with improved fittings) will not adequately address the unsafe condition. However, the service information cited in this new AD has been approved as an alternative method of compliance (AMOC) with the requirements of paragraphs (a) through (e) of AD 2001–13–12. The FAA may consider superseding that AD to incorporate the requirements of this AD as well as other requirements.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–57A2316, dated December 19, 2002, which describes procedures for, among other things, repetitive inspections of the attach fittings of the inboard and outboard flaps to detect discrepancies. The inboard fittings are to be inspected using borescopic and detailed visual methods; and the outboard fittings are to be inspected using borescopic, detailed visual, and ultrasonic methods. Discrepancies include surface corrosion, pitting, damaged cadmium plating, and cracking. Corrective/follow-on actions may include repetitive detailed visual inspections to detect bushing migration and cracking and other damage of the actuator attach fittings; repetitive application of corrosion-inhibiting compound; and replacement of the fittings with new or overhauled fittings, which terminates the repetitive inspections. The manufacturer advises that Boeing Service Bulletin 747–57A2316 replaces Boeing Service Bulletin 747–57A2310, which was cited as the appropriate source of service information for the requirements of AD 2001–13–12. Although Service Bulletin 747–57A2316 replaces Service Bulletin 747–57A2310, AD 2001–13–12 is still in effect. As stated previously, Service Bulletin 747–57A2316 has been approved as an AMOC for the requirements of paragraphs (a) through (e) of AD 2001–13–12.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to detect and correct cracking and other damage of the actuator attach fittings of the trailing edge flaps, which could result in abnormal operation or retraction of a trailing edge flap, and possible loss of controllability of the airplane. This AD requires accomplishment of certain actions specified in Boeing Alert Service Bulletin 747–57A2316, described previously.

Interim Action

This is considered to be interim action. Although Boeing Alert Service Bulletin 747–57A2316 specifies actions in addition to those required by this AD, only certain actions specified in the service bulletin are required by this AD. The FAA may consider issuing further rulemaking to require repetitive replacement of the fittings with new or overhauled fittings. However, because of the urgency of the identified unsafe condition, the FAA finds it necessary to issue this AD immediately without prior public comment. The planned compliance times for the additional actions would be long enough to practicably provide notice and opportunity for public comment.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–15–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–08–11 Boeing: Amendment 39–13124. Docket 2003–NM–15–AD.

Applicability: All Model 747–100, –200B, –200F, –200C, –100B, –300, –100B SUD, –400, –400D, and –400F series airplanes; and all Model 747SR series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking and other damage of the actuator attach fittings of the trailing edge flaps, which could result in abnormal operation or retraction of a trailing edge flap, and possible loss of controllability of the airplane, accomplish the following:

Inspection: Inboard Flap Attach Fittings

(a) Perform borescopic and detailed inspections to detect discrepancies of the inboard flap attach fittings, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2316, dated December 19, 2002. Discrepancies include corrosion, pitting, and damaged or missing cadmium plating. Do the inspection at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If the age of the fittings can be determined: Inspect within 14 years since the fittings were new or last overhauled, or within 90 days after the effective date of this AD, whichever occurs later.

(2) If the age of the fittings cannot be determined: Inspect within 90 days after the effective date of this AD.

Note 3: The exceptions specified in flag note 4 of Figure 1 of Boeing Alert Service Bulletin 747–57A2316, dated December 19, 2002, apply to the requirements of paragraphs (a) and (b) of this AD.

Inspection: Outboard Flap Attach Fittings

(b) Perform borescopic, detailed, and ultrasonic inspections to detect discrepancies of the outboard flap attach fittings, in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2316, dated December 19, 2002. Discrepancies include surface corrosion, pitting, damaged or missing cadmium plating, and cracks. Do the inspection at the applicable time specified in paragraph (b)(1) or (b)(2) of this AD.

(1) If the age of the fittings can be determined: Inspect within 8 years since the fittings were new or last overhauled, or within 90 days after the effective date of this AD, whichever occurs later.

(2) If the age of the fittings cannot be determined: Inspect within 90 days after the effective date of this AD.

Follow-on Actions: No Discrepancies Found

(c) If no discrepancy is found during any inspection required by paragraph (a) or (b) of this AD: Do the actions specified by either paragraph (c)(1) or paragraph (c)(2) of this AD.

(1) Repeat the applicable inspections specified in paragraphs (a) and (b) of this AD at least every 9 months until the actions specified in paragraph (c)(2) of this AD have been accomplished.

(2) Perform a detailed inspection of the fitting to detect cracks, corrosion, damaged cadmium plating, or bushing migration, in accordance with and at the time specified in Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2316, dated December 19, 2002. Do the follow-on actions in accordance with Parts 3, 4, and 5 of the Accomplishment Instructions of the service bulletin at the times specified in Figure 1 of the service bulletin, as applicable. Accomplishment of the actions specified by paragraph (c)(2) of this AD terminates the initial and repetitive inspection requirements of paragraphs (a), (b), and (c)(1) of this AD.

Note 4: The exceptions specified in flag note 2 of Figure 1 of Boeing Alert Service Bulletin 747–57A2316, dated December 19, 2002, apply to those requirements of paragraphs (c)(2) and (d) of this AD that are specified in Part 2 of the service bulletin.

Corrective/Follow-on Actions: Discrepancies Found

(d) If any discrepancy is found during any inspection required by paragraph (a), (b), or (c) of this AD: Perform applicable corrective and follow-on actions at the time specified and in accordance with Figure 1 of Boeing Alert Service Bulletin 747–57A2316, dated December 19, 2002. Before further flight: Replace any discrepant fitting in accordance with Part 5 of the Accomplishment Instructions of the service bulletin, and accomplish the follow-on actions for the other fitting common to that flap in accordance with Part 2 of the Accomplishment Instructions of the service bulletin. Replacement of a fitting terminates the initial and repetitive inspections—specified in paragraphs (a), (b), and (c) of this AD—for that fitting only.

Optional Action To Reset Compliance Schedule

(e) Replacement of fittings with new or overhauled fittings, in accordance with Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–57A2316, dated December 19, 2002, terminates the initial and repetitive inspection requirements of paragraphs (a), (b), and (c) of this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The actions shall be done in accordance with Boeing Alert Service Bulletin 747–57A2316, dated December 19, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on May 8, 2003.

Issued in Renton, Washington, on April 14, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9691 Filed 4–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–317–AD; Amendment 39–13125; AD 2003–08–12]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes. This action requires a detailed inspection to detect cracks of the vane brackets of the inboard flap actuator beam, and follow-on repetitive detailed inspections or corrective actions, as applicable. This action also provides for two optional terminating actions for the detailed inspection(s). This action is necessary to detect and correct gaps between the flap vane bracket and the adjacent lower skin and between the flap vane bracket and vane actuator beam of the wing flap systems, and premature cracking of the flap vane brackets, which could result in failure of the flap vane bracket(s) when the flaps are extended and the flap vane is aerodynamically loaded. Loss or warping of the flap vane in flight could decrease the lift on one side of the airplane, which could lead to reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective May 8, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 8, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 23, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–317–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via the Internet must contain "Docket No. 2002–NM–317–AD" in the subject line and need not be submitted in triplicate. Comments sent via fax or the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A, CL–601–3R, and CL–604) series airplanes. TCCA advises that several occurrences of gaps were found between the flap vane bracket and the adjacent lower skin and between the flap vane bracket and vane actuator beam. (There are two vane brackets on each of the three vane actuator beams of both the left and right wings.) During a detailed investigation, it was found that an incorrect production process for the installation of the vane bracket resulted in an uneven contact with the adjacent skin and with the vane actuator beam. Such gaps can cause premature cracking of the flap vane brackets of the vane actuator beams, which could lead to the failure of the flap vane bracket(s) when the flaps are extended and the flap vane is aerodynamically loaded. Loss or warping of the flap vane in flight could decrease the lift on one side of the airplane, which could lead to reduced controllability of the airplane.

Canadian Airworthiness Directives

TCCA classified the alert service bulletins specified in Table 2 of this AD and the Time Limits/Maintenance Checks (TLMC) (all described below) as mandatory and issued Canadian airworthiness directives CF–2002–36 and CF–2002–37, effective August 30, 2002, in order to assure the continued airworthiness of these airplanes in Canada.

Explanation of Relevant Service Information

Bombardier has issued the alert service bulletins specified in Table 2 of this AD, which describe procedures for a detailed inspection to detect cracks of the vane brackets of the inboard flap actuator beam, and follow-on repetitive detailed inspections or corrective actions (*i.e.*, Part B or Part C), as applicable.

Part B corrective actions include:

- Doing a detailed inspection to detect gaps at flap stations 60.0, 98.5, and 137.0 between the flap vane bracket(s) and adjacent lower skin and between the flap vane bracket and vane actuator beam, and repair if necessary;
- Measuring the minimum edge distance (MED) for the fastener holes in all flap vane brackets and actuator beams, and replacing any out-of-tolerance bracket and/or actuator beam with a certain new bracket and/or actuator beam; and
- Doing a nondestructive test (NDT) inspection on all vane brackets for cracks, and corrective actions (*e.g.*, remove gaps, ensure that the MED requirements for the replacement brackets meet the allowable values, and replace any cracked vane bracket with a new bracket that meets the MED requirements).

Part C corrective actions include:

- Replacing all 12 vane brackets with new brackets that meet the MED requirements (including removal of any gap between the flap vane brackets and the adjacent lower skin and between the flap vane bracket and actuator beams); and
- Measuring the MED for the fastener holes in all replacement flap vane brackets and actuator beams (including a detailed inspection for gaps); and replacing any out-of-tolerance bracket and/or actuator beam with a certain new bracket and/or actuator beam that meets the MED requirements, and removing any gap, if necessary.

Accomplishment of Part B or Part C corrective actions eliminates the need for the detailed inspection(s) to detect cracks of the vane brackets of the inboard flap actuator beams, described previously.

Explanation of Relevant Time Limits/Maintenance Checks

After doing either Part B or Part C corrective actions, Canadian airworthiness directives CF–2002–36 and CF–2002–37 require compliance with the applicable TLMC threshold and repeat interval of the Airplane Maintenance Manual (AMM) for the flap vane brackets.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct gaps between the flap vane bracket and the adjacent lower skin and between the flap vane bracket and vane actuator beam of the wing flap systems, which can cause premature cracking in this area, and consequent failure of the flap vane bracket(s) when the flaps are extended and the flap vane is aerodynamically loaded. Loss or warping of the flap vane in flight could decrease the lift on one side of the airplane, which could lead to reduced controllability of the airplane. This AD requires a detailed inspection to detect cracks of the vane brackets of the inboard flap actuator beam, and follow-on repetitive detailed inspections or corrective actions, as applicable. This AD also provides for two optional terminating actions for the detailed inspection(s). The actions, if accomplished, are required to be accomplished in accordance with the applicable alert service bulletin described previously, except as discussed below.

Differences Between the Alert Service Bulletins and This AD

Although the alert service bulletins describe procedures for identifying and returning all cracked vane brackets to Bombardier, neither the Canadian airworthiness directives nor this AD require such actions.

In addition, although the alert service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this AD requires the repair of those conditions to be accomplished per a method approved by either the FAA, or TCCA (or its delegated agent). In light of the type of repair that is required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or TCCA will be acceptable for compliance with this AD.

Clarification Between the AD and Canadian Airworthiness Directives/Referenced Alert Service Bulletins

Operators should note that, although the parallel Canadian airworthiness directives require compliance with the applicable TLMC threshold and repeat interval of the AMM for the flap vane brackets, this AD first requires a revision of the Airworthiness Limitation Section (ALS) of the Instructions for Continued Airworthiness to incorporate those new threshold and repeat inspection intervals. Revising the ALS, rather than requiring individual repetitive inspections, is advantageous for operators because it allows them to record AD compliance status only at the time that they make the revision, rather than after every inspection. It also has the advantage of keeping all airworthiness limitations, whether imposed by original certification or by

AD, in one place with the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion.

Interim Action

This is considered to be interim action. The FAA is currently considering requiring Part B or Part C corrective actions (described previously), which will constitute terminating action for the detailed inspection(s) to detect cracks of the vane brackets of the inboard flap actuator beam required by this AD action. However, the planned compliance time for the Part B or Part C corrective actions is sufficiently long so that notice and opportunity for prior public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the alert service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–317–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–08–12 Bombardier, Inc. (Formerly Canadair): Amendment 39–13125. Docket 2002–NM–317–AD.

Applicability: This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category. Table 1 is as follows:

TABLE 1.—APPLICABILITY

Model	Serial Nos.
CL–600–1A11 (CL–600) series airplanes.	1004 through 1085 inclusive.
CL–600–2A12 (CL–601) series airplanes.	3001 through 3066 inclusive.
CL–600–2B16 (CL–601–3A and CL–601–3R) series airplanes.	5001 through 5194 inclusive.
CL–600–2B16 (CL–604) series airplanes.	5301 through 5499 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct gaps between the flap vane bracket and the adjacent lower skin and between the flap vane bracket and vane actuator beam of the wing flap systems, and premature cracking of the flap vane brackets, which could result in failure of the flap vane bracket(s) when the flaps are extended and the flap vane is aerodynamically loaded, and consequent reduced controllability of the airplane, accomplish the following:

Note 2: Where there are differences between the applicable Bombardier alert service bulletin specified in Table 2 of this AD and this AD, the AD prevails.

Inspection

(a) Do a detailed inspection to detect cracks of the vane brackets of the inboard flap actuator beam, per Part A of the Accomplishment Instructions of the applicable Bombardier alert service bulletin specified in Table 2 of this AD; at the applicable time indicated in Table 3 of this AD. Table 2 is as follows:

TABLE 2.—ALERT SERVICE BULLETINS

For model—	Bombardier alert service bulletin	Excluding
CL–600–1A11 (CL–600) series airplanes	A600–0699, Revision 01, dated July 8, 2002	Service Bulletin Incorporation Sheet, Flap Vane Bracket Inspection Program page, and Minimum Edge Distance Inspection pages.
CL–600–2A12 (CL–601) series airplanes, and CL–600–2B16 (CL–601–3A and CL–601–3R) series airplanes.	A601–0532, Revision 01, dated July 8, 2002	Service Bulletin Incorporation Sheet, Flap Vane Bracket Inspection Program page, and Minimum Edge Distance Inspection pages.
CL–600–2B16 (CL–604) series airplanes	A604–27–007, Revision 01, dated July 8, 2002.	Service Bulletin Incorporation Sheet, Flap Vane Bracket Inspection Program page, and Minimum Edge Distance Inspection pages.

Table 3 is as follows:

TABLE 3.—COMPLIANCE TIME

For airplanes that have accumulated—	Compliance time
1,200 total landings or less as of the effective date of this AD.	Before the accumulation of 1,300 total landings.
More than 1,200 total landings, but less than 3,000 total landings as of the effective date of this Ad.	Within 100 landings after the effective date of this AD.
3,000 total landings or more as of the effective date of this AD.	Within 50 landings after the effective date of this AD.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

No Crack Findings: Repetitive Inspections

(b) If no crack is detected during the detailed inspection required by paragraph (a) of this AD, repeat that inspection thereafter at intervals not to exceed 100 landings.

Crack Findings: Corrective Actions

(c) If any crack is detected during the detailed inspection required by paragraph (a) of this AD, before further flight, do the actions specified in paragraph (d) or (e) of this AD.

Optional Terminating Actions

(d) Do the actions specified in paragraphs (d)(1), (d)(2), and (d)(3) of this AD per Part B of the Accomplishment Instructions of the applicable alert service bulletin identified in Table 2 of this AD, unless otherwise specified in this AD. Accomplishment of these actions constitutes compliance with the requirements of paragraphs (a), (b), and (c) of this AD.

(1) Do a detailed inspection to detect gaps at flap stations 60.0, 98.5, and 137.0 between the vane bracket(s) and adjacent lower skin and vane actuator beam. If any gap is in excess of the limits specified in the applicable alert service bulletin, before further flight, repair per a method approved by either the Manager, New York Aircraft Certification Office (ACO), FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(2) Measure the minimum edge distance (MED) for the fastener holes in all flap vane brackets and actuator beams. If the MED requirements for any bracket or actuator beam do not meet the allowable values specified in Figure 2 of the applicable alert service bulletin, before further flight, replace the out-of-tolerance bracket and/or actuator beam with a new bracket and/or actuator beam that meet the MED requirements specified in Figure 2 of the applicable alert service bulletin.

(3) Do a nondestructive test (NDT) inspection on all vane brackets for cracks. If any crack is found, before further flight, accomplish the corrective actions (*e.g.*, remove gaps, ensure that the MED requirements for the replacement brackets meet the allowable values specified in Figure 2 of the applicable alert service bulletin, and replace any cracked vane bracket with a new bracket that meets the MED requirements specified in Figure 2 of the applicable alert service bulletin). Although the applicable alert service bulletin describes procedures for identifying and returning all cracked vane brackets to Bombardier, this AD does not require such actions.

(e) In lieu of the actions specified in paragraph (d) of this AD, do the actions specified in paragraphs (e)(1) and (e)(2) of this AD per Part C of the Accomplishment Instructions of the applicable alert service bulletin identified in Table 2 of this AD. Accomplishment of these actions constitutes compliance with the requirements of paragraphs (a), (b), and (c) of this AD.

(1) Replace all 12 vane brackets with new brackets that meet the MED requirements specified in Figure 2 of the applicable alert service bulletin (including removal of any gap between the vane brackets and the adjacent lower skin and actuator beams).

(2) Measure the MED for the fastener holes in all replacement flap vane brackets and actuator beams (including a detailed inspection for gaps).

(i) If the MED requirements for any bracket or actuator beam do not meet the allowable values specified in Figure 2 of the applicable alert service bulletin, before further flight, replace the out-of-tolerance bracket and/or actuator beam with a new bracket and/or actuator beam that meets the MED requirements specified in Figure 2 of the applicable alert service bulletin.

(ii) If any gap is detected, before further flight, repair the gap.

Other Means of Acceptable Compliance With Paragraph (e) of This AD

(f) Accomplishment of the inspections and modifications per Part B or Part C of the applicable alert service bulletin listed in Table 4 of this AD; and the MED dimension checks for the flap brackets and the actuator beams as specified in drawing K600–14251, including any required rework; is considered acceptable for compliance with the requirements of paragraph (e) of this AD. Table 4 of this AD is as follows:

TABLE 4.—ACCEPTABLE BASIC ISSUE ALERT SERVICE BULLETINS

For model—	Bombardier alert service bulletin—
CL–600–1A11 (CL–600) series airplanes.	A600–0699, Basic Issue, dated November 29, 2001.

TABLE 4.—ACCEPTABLE BASIC ISSUE ALERT SERVICE BULLETINS—Continued

For model—	Bombardier alert service bulletin—
CL–600–2A12 (CL–601) series airplanes, and CL–600–2B16 (CL–601–3A and CL–601–3R) series airplanes.	A601–0532, Basic Issue, dated November 29, 2001.
CL–600–2B16 (CL–604) series airplanes.	A604–27–007, Basic Issue, dated November 29, 2001.

Time Limits/Maintenance Checks

(g) After doing the actions specified in paragraph (d) or (e) of this AD, revise the Airworthiness Limitation Section (ALS) of the Instructions for Continued Airworthiness to state the following (this may be accomplished by inserting a copy of this AD in the ALS):

"Do the applicable Time Limits/Maintenance Checks (TLMC) inspection task for the flap vane brackets at the times specified in the following table:

TABLE 5.—COMPLIANCE TIME FOR TLMCs

Condition of brackets and gaps	Compliance time
No gap or crack in any flap vane bracket.	Continue using existing TLMC bracket schedule as published in the applicable ALS.
No crack in any flap vane bracket, but shims added.	For Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) series airplanes: Repeat inspections remain at 600 landings from rework.
	For Model CL–600–2B16 (CL–604) series airplanes: Repeat inspections remain at 1,800 landings from rework.
All 12 flap vane brackets have been replaced.	For Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and CL–601–3R) series airplanes:

TABLE 5.—COMPLIANCE TIME FOR TLMCs—Continued

Condition of brackets and gaps	Compliance time
	New threshold of 7,000 landings from installation of new flap vane brackets. Repeat inspections remain at 600 landings.
	For Model CL–600–2B16 (CL–604) series airplanes: New threshold of 7,200 landings from installation of new flap vane brackets. Repeat inspections remain at 1,800 landings."

(h) After doing the requirements of paragraph (g) of this AD, except as provided in paragraph (i) of this AD, no alternative inspection times may be approved for these flap vane brackets.

Alternative Methods of Compliance

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference (IBR)

(k) Unless otherwise specified in this AD, the actions shall be done in accordance with the Bombardier alert service bulletin specified in Table 5 of this AD, as applicable.

Table 5 is as follows:

TABLE 6.—IBR ALERT SERVICE BULLETINS

Alert service bulletin	Excluding
Bombardier Alert Service Bulletin A600–0699, Revision 01, dated July 8, 2002.	Service Bulletin Incorporation Sheet, Flap Vane Bracket Inspection Program page, and Minimum Edge Distance Inspection pages.

TABLE 6.—IBR ALERT SERVICE BULLETINS—Continued

Alert service bulletin	Excluding
Bombardier Alert Service Bulletin A601–0532, Revision 01, dated July 8, 2002.	Service Bulletin Incorporation Sheet, Flap Vane Bracket Inspection Program page, and Minimum Edge Distance Inspection pages.
Bombardier Alert Service Bulletin A604–27–007, Revision 01, dated July 8, 2002.	Service Bulletin Incorporation Sheet, Flap Vane Bracket Inspection Program page, and Minimum Edge Distance Inspection pages.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station A, Montreal, Quebec H3C 3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Canadian airworthiness directives CF–2002–36 and CF–2002–37, effective August 30, 2002.

Effective Date

(l) This amendment becomes effective on May 8, 2003.

Issued in Renton, Washington, on April 14, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9690 Filed 4–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–48–AD; Amendment 39–13107; AD 2003–07–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Models BR700–710A1–10 and BR700–710A2–20 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments, correction.

SUMMARY: This document makes corrections to Airworthiness Directive (AD) 2003–07–11, applicable to Rolls-Royce Deutschland Ltd & Co KG (formerly Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH), models BR700–710A1–10 and BR700–710A2–20 turbofan engines. AD 2003–07–11 was published in the **Federal Register** on April 11, 2003 (68 FR 17727). In the compliance section, paragraph (g) incorrectly references cycles and should reference hours, and the paragraph lettering sequence after paragraph (g) is incorrect. This document corrects cycles to hours and corrects the paragraph lettering sequence. In all other respects, the original document remains the same.

EFFECTIVE DATE: April 28, 2003.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule; request for comments airworthiness directive FR DOC 03–8327, applicable to Rolls-Royce Deutschland Ltd & Co KG models BR700–710A1–10 and BR700–710A2–20 turbofan engines, was published in the **Federal Register** on April 11, 2003 (68 FR 17727). The following correction is needed:

On page 17729, in the second column, under Repetitive Inspections heading, paragraph (g), third line, which reads "accumulating 500 cycles-since-the-last visual and ultrasonic inspections" is corrected to read "accumulating 500 hours-since-the-last visual and ultrasonic inspections". Also, on page 17729, in the second column, under Inspection Reporting Requirements heading, paragraph letter "(g)" is corrected to read "(h)", under Alternative Methods of Compliance heading, paragraph letter "(h)" is corrected to read "(i)", under Special Flight Permits heading, paragraph "(i)" is corrected to read "(j)", under Documents That Have Been Incorporated by Reference heading, paragraph "(j)" is corrected to read "(k)", and in the third column, under Effective Date heading, paragraph "(k)" is corrected to read "(l)".

Issued in Burlington, MA, on April 17, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–9982 Filed 4–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14927; Airspace Docket No. 03–ACE–33]

Modification of Class E Airspace; Crete, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The Crete Nondirectional Radio Beacon (NDB) will be decommissioned and NDB Standard Instrument Approach Procedures (SIAPs) serving Crete Municipal airport will be cancelled effective July 10, 2003. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) that accommodates the NDB SIAPs will no longer be needed. An examination of controlled airspace for Crete, NE revealed discrepancies in the Crete Municipal Airport, NE airport reference point.

The intended effect of this rule is to modify the Crete, NE Class E airspace area legal description, provide appropriate controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) at Crete, NE, delete the Crete NDB and coordinates from the legal description and comply with the criteria of FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, July 10, 2003.

Comments for inclusion in the Rules Docket must be received on or before May 30, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–14927/Airspace Docket No. 03–ACE–33, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Crete, NE. The Crete NDB is decommissioned effective July 10, 2003. NDB SIAPs that serve Crete Municipal Airport are cancelled on that date. Controlled airspace extending upward from 700 feet AGL that accommodates these SIAPs will no longer be needed. The amendment to Class E airspace at Crete, NE provides controlled airspace at and above 700 feet AGL to contain SIAPs, other than the NDB SIAPs, at Crete Municipal Airport. Additional Class E airspace necessary for the NDB SIAPs is revoked. The Crete NDB and coordinates, and reference to these, are deleted from the legal description of Crete, NE Class E airspace. The current Crete Municipal Airport reference point is incorporated into the legal description of Crete, NE Class E airspace. This modification brings the legal description of this airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal**

Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the Federal Register, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–14927/Airspace Docket No. 03–ACE–33." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Crete, NE

Crete Municipal Airport, NE
(Lat. 40°37′05″N., long. 96°55′30″W.)
Lincoln VORTAC
(Lat. 40°55′26″N., long. 96°44′31″W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Crete Municipal Airport and within 2.6 miles each side of the 205° radial of the Lincoln VORTAC extending from the 6.4-mile radius to 7.9 miles southwest of the airport.

* * * * *

Issued in Kansas City, MO, on April 14, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–10047 Filed 4–22–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2002–13414; Airspace Docket No. 02–AGL–7]

RIN 2120–AA66

Modification of Restricted Areas R–6904A and R–6904B, Volk Field, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action raises the upper limit of Restricted Areas 6904A (R–6904A) and R–6904B, Volk Field, WI, from 17,000 feet above mean sea level (MSL) to Flight Level 230 (FL 230). Expanding the vertical limit of these areas facilitates the transition of participating aircraft between these restricted areas and the overlying Volk West Air Traffic Control Assigned Airspace (ATCAA). The additional airspace is needed to fulfill new United States Air Force (USAF) training requirements. This rule makes no other changes to R–6904A or R–6904B.

EFFECTIVE DATE: 0901 UTC, July 10, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 2003, the FAA proposed (68 FR 4118) to amend 14 CFR part 73 to increase the vertical limits of R–6904A and R–6904B from 17,000 feet above MSL to FL 230. The FAA proposed this action in response to a request from the USAF indicating that current airspace is not sufficient to fulfill new training requirements and that participating aircraft must change their flight profile by reducing their airspeed when crossing the 1,000 feet of airspace located above the restricted areas and below the Volk West ATCAA. This requested action facilitates the transition of participating aircraft between these restricted areas and the overlying Volk West ATCAA by eliminating the 1,000-foot gap between the restricted areas and the ATCAA. This action also provides additional airspace needed to fulfill new USAF training requirements. Specifically, new training requirements call for practicing the release of bombs from higher altitudes than are currently available within the existing airspace structure. The new upper limit of FL 230 is suitable for meeting this new training requirement. No other changes to R–6904A or R–6904B are made by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on this proposal to the FAA.

Discussion of Comment

In response to the Notice of Proposed Rulemaking, the FAA received one comment supporting the proposed change and no comments in opposition to the change.

The Rule

This amendment to 14 CFR part 73 raises the vertical limits of R–6904A and R–6904B from 17,000 feet above MSL to FL 230. This additional altitude is required to eliminate the 1,000-foot gap between the restricted areas and the overlying Volk West ATCAA, and to meet the Air Force's requirement to practice the release of bombs from higher altitudes than are currently available within the existing restricted area airspace. No other changes to R–6904A or R–6904B are made by this action.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The USAF determined that this amendment of the restricted area's designated altitude qualifies for a categorical exclusion. The FAA has reviewed the USAF's environmental documentation and concludes that this action is categorically excluded in accordance with FAA Order 1050.1D, Procedures for Handling Environmental Impacts, and the FAA/DOD Memorandum of Understanding of 1998 regarding Special Use Airspace actions.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.63 [Amended]

■ 2. § 73.63 is amended as follows:

* * * * *

R–6904A Volk Field, WI [Amended]

By removing the current designated altitudes and substituting the following:

Designated altitudes. 150 feet AGL to FL 230.

R–6904B Volk Field, WI [Amended]

By removing the current designated altitudes and substituting the following:

Designated altitudes. Surface to FL 230.

* * * * *

Issued in Washington, DC, on April 16, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–10043 Filed 4–22–03; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1214

[Notice: (03–043)]

RIN 2700–AC56

Recruitment and Selection of Astronaut Candidates

AGENCY: National Aeronautics and Space Administration.

ACTION: Direct final rule.

SUMMARY: The National Aeronautics and Space Administration (NASA) is amending its regulations setting forth its procedures for recruitment and selection of astronaut candidates. NASA's astronaut candidate selection process was developed to select highly qualified individuals to perform in mission specialist and pilot astronaut positions in human space programs. The activities currently are conducted by the Astronaut Selection Office at the Johnson Space Center (JSC). NASA proposes to amend the rules to permit some of these recruitment and selection activities to be performed by NASA organizational elements that are not part of JSC. This change is necessary to conduct efficient and effective recruitment of a new component of the Astronaut Program, the Educator Astronauts.

DATES: This rule is effective July 22, 2003, without further action, unless adverse comment is received by May 23, 2003. If adverse comment is received, NASA will publish a timely withdrawal of the rule in the Federal Register.

ADDRESSES: Written comments should be addressed to NASA Headquarters, Code FPP, 300 E Street, SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Candace Irwin, NASA Headquarters, Code FPP, 300 E Street, SW., Washington, DC 20546; telephone (202) 358–1206.

SUPPLEMENTARY INFORMATION: This direct final rule amends the NASA regulations governing the NASA Astronaut Candidate Recruitment and Selection Program. NASA is amending its regulations to address the addition of a new component of the Astronaut corps: Educator Astronauts. The Educator Astronaut Program is designed to motivate U.S. students and educators to recognize the value of science, technology, engineering, and mathematics; attract more people to the teaching, science, technology, engineering, and mathematics professions; enhance the public's understanding of the value of America's educators; and share the diverse people and opportunities that advance our Nation's achievements in science, technology, and exploration. NASA will recruit educators to join NASA's Astronaut Corps to perform educator as well as mission specialist duties that will support NASA's education outreach program. Involvement of appropriate elements of the education community is integral to conduct activities associated with the recruitment and selection of Educator Astronauts. The current rule, assigning responsibility to JSC for individual activities such as announcing astronaut candidate opportunities, implementing the application process, reviewing applications, establishing cutoff dates for accepting applications, and appointing the rating panel, supports the historical Astronaut Candidate Program but does not enable enhancements to the program that necessarily require activities outside of JSC. The Educator Astronaut positions, which will be integral to the Astronaut Candidate Program, offer an education component, necessitating involvement by NASA's Office of Education at NASA Headquarters, in activities leading to identification of candidates who meet the educator requirements of the position. Accordingly, the rule is being amended so that a specific NASA Center is not assigned responsibility for conducting an activity that could be performed by, or in conjunction with, another NASA Center or Headquarters.

Matters of Regulatory Procedure

Executive Order 12866 Determination

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulation, Planning and Reviews, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), NASA has considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Pursuant to 5 U.S.C. 605(b), NASA certifies that this rule will not have a significant economic impact on a substantial number of small entities because the rule affects the operations of NASA and its employees. Accordingly, no regulatory flexibility analysis is required.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct affect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. NASA has analyzed this rule under that Order and has determined that it does not have implications for federalism.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct affect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Action and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effectiveness of their discretionary regulatory actions: NASA has determined that the rule will not result in expenditures of $100 million or more by State, local, or tribal governments or by the private sector. The rule affects only the internal organization of NASA. Accordingly, NASA has not prepared a budgetary impact statement or specifically addressed regulatory alternatives.

List of Subjects in 14 CFR Part 1214

Government employees, Security measures, Space transportation and exploration.

PART 1214—SPACE FLIGHT

■ 14 CFR part 1214 is amended as follows:

■ 1. The authority citation for part 1214 is revised to read as follows:

Authority: Section 203(c)(1), National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2473(c)).

Subpart 1214.11—NASA Astronaut Candidate Recruitment and Selection Program

§ 1214.1101 [Amended]

■ 2. In § 1214.1101, remove the words "by the Johnson Space Center (JSC)" in paragraph (a), remove paragraph (c), and redesignate paragraphs (d) and (e) as paragraphs (c) and (d), respectively.

§ 1214.1102 [Amended]

■ 3. In § 1214.1102, in the first sentence of paragraph (a), remove the words "by the JSC Human Resources Office," and in the second sentence, remove the words "in writing;"

In paragraph (d) remove the words "by JSC." and

Revise paragraphs (b) and (c) and the last sentence of paragraph (d) to read as follows:

§ 1214.1102 Evaluation of applications.

* * * * *

(b) A rating panel composed of discipline experts will review and rate qualified applicants as "Qualified" or "Highly Qualified."

(c) Efforts will be made to ensure that minorities and females are included among these discipline experts on the rating panel.

(d) * * * This evaluation process will be monitored to ensure adherence to applicable policy, laws, and regulations.

* * * * *

§ 1214.1103 [Amended]

■ 4. In § 1214.1103, remove the last sentence of paragraph (b) and revise the first sentence in paragraph (b) to read as follows:

§ 1214.1103 Application cutoff date.

* * * * *

(b) Once such approval has been obtained, a cutoff date for the acceptance of applications will be established. * * *

§ 1214.1104 [Amended]

■ 5. In § 1214.1104, revise paragraph (a) to read as follows:

§ 1214.1104 Evaluation and ranking of highly qualified candidates.

(a) A selection board consisting of discipline experts, and such other persons as appropriate, will further evaluate and rank the "Highly Qualified" applicants.

* * * * *

Dated: April 14, 2003.

Sean O'Keefe,

Administrator.

[FR Doc. 03–10002 Filed 4–22–03; 8:45 am]

BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 68, No. 78
Wednesday, April 23, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 5 and 28

[Docket No. 03–07]

RIN 1557–AC04

Rules, Policies, and Procedures for Corporate Activities; International Banking Activities

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to amend its regulations pertaining to the foreign operations of national banks, and of Federal branches and agencies of foreign banks operating in the United States, in both cases generally to make regulatory requirements more streamlined and risk-based. The proposed rule would clarify certain regulatory definitions and simplify approval procedures for foreign banks seeking to establish Federal branches and agencies in the United States. These proposed changes will further conform the treatment of Federal branches and agencies of foreign banks to that of their domestic national bank counterparts consistent with the national treatment principles of the International Banking Act.

DATES: Comments must be received by June 23, 2003.

ADDRESSES: Please direct your comments to: Office of the Comptroller of the Currency, 250 E Street, SW., Public Information Room, Mailstop 1–5, Washington, DC 20219, Attention: Docket No. 03–07; fax number (202) 874–4448; or Internet address: *regs.comments@occ.treas.gov*. Due to delays in paper mail delivery in the Washington area, we encourage the submission of comments by fax or e-mail whenever possible. Comments may be inspected and photocopied at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You may make an appointment to inspect comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: Lee Walzer, Counsel, Legislative & Regulatory Activities Division, (202) 874–5090; Carlos Hernandez, Senior International Advisor, International Banking & Finance, (202) 874–4741; or R. Julie Olson, Director, Licensing Policy & Systems, (202) 874–5060.

SUPPLEMENTARY INFORMATION:

Background

The OCC is committed to continually reevaluating our rules to reduce unnecessary regulatory burden and simplify compliance, consistent with the safe and sound operation of the institutions we supervise. We have recently undertaken such a review of part 28 of our regulations, which governs the foreign operations of national banks and the U.S. operations of Federal branches and agencies of foreign banks. As a result, we are proposing to revise part 28 to incorporate changes that clarify, streamline, and simplify compliance with a number of its requirements. The most significant revisions to part 28 include: (1) Streamlining procedures for national banks' foreign operations through branches; (2) eliminating the requirement to file an application with the OCC in certain circumstances when a foreign bank downgrades its U.S. operations; (3) requiring approval, but not a new license, for additional Federal branches or agencies opened after the establishment of the initial branch office; and (4) clarifying that a foreign bank with Federal branches and agencies in more than one state may consolidate its capital equivalency deposits (CEDs) in one deposit account in a depository bank that satisfies certain criteria.

The proposal also makes conforming changes to the procedural provisions in part 5 of our regulations, and amends part 5 to permit a Federal branch to make certain non-controlling equity investments on the same terms as national banks. The proposed changes further conform the treatment of foreign banks to that of their domestic national bank counterparts and are, therefore, in keeping with the national treatment requirements of the International Banking Act (IBA).

Certain fundamental provisions of part 28 remain unchanged. For example, none of the proposed changes affects any legal requirements that are imposed by the Board of Governors of the Federal Reserve System (FRB) in the FRB's Regulation K [1] or by any other applicable law with respect to national banks' foreign activities or the operations of foreign banks in the United States. Moreover, operations of a Federal branch or agency continue to be subject to the "same rights and privileges and subject to the same duties, restrictions, penalties, liabilities, conditions, and limitations that would apply if the Federal branch or agency were a national bank operating at the same location." 12 CFR 28.13(a)(1). Accordingly, U.S. domestic laws apply to a Federal branch or agency to the same extent that they would apply to a national bank operating at the same location.

Section-by-Section Description of the Proposal

A. Changes to 12 CFR Part 5

1. Definitions (revised § 5.3)

The proposal amends § 5.3 to update references to the OCC units that should receive certain applications. In paragraph (c)(1), the term "Licensing Department" replaces the current "Bank Organization and Structure," reflecting a nomenclature change. Likewise, in paragraph (c)(4), "Northeastern District Office" would be substituted for "International Banking and Finance Department," to take into account changes in where Federal branches and agencies submit applications.

2. Permissible Equity Investments (revised § 5.36)

Section 5.36 of the OCC's rules permits a well-capitalized, well-managed national bank to make certain non-controlling investments in an enterprise, directly or through its operating subsidiary, by filing a written notice with the appropriate OCC district office no later than 10 days after making the investment.

The proposed rule adds a new paragraph (g) to § 5.36 to permit a well-capitalized and well-managed Federal branch to make non-controlling investments and use the after-the-fact notice procedure set forth in § 5.36 in

[1] 12 CFR part 211.

the same manner as a national bank. To do so, the Federal branch would be required to meet the qualifications set forth in 12 CFR 4.7(b)(1)(iii), which describes capital adequacy standards that the Federal branch must satisfy to be examined on an 18-month schedule, and the managerial standards in 12 CFR 5.34(d)(3)(ii), which are applicable to a Federal branch that wishes to acquire, establish, or maintain an operating subsidiary.

Extending § 5.36 to Federal branches is consistent with national treatment principles, which provide that Federal branches of foreign banks are generally subject to the same rights and privileges, and subject to the same duties, conditions, and limitations, as domestic national banks.

3. Federal Branches and Agencies (revised § 5.70)

The proposal amends § 5.70, which describes filing requirements for corporate activities and transactions involving Federal branches and agencies, to ensure consistency with proposed changes to 12 CFR part 28 described elsewhere in this proposal. In particular, the proposal deletes the definition of "change the status of an office" while the definition of "establish" a Federal branch or agency is revised to comport with proposed changes to those definitions in part 28, which are described below.

B. Changes to 12 CFR Part 28: Foreign Operations of a National Bank

1. Filing Requirements for Foreign Operations of a National Bank (revised § 28.3)

Currently, § 28.3 requires national banks to notify the OCC upon opening, closing, or relocating a foreign branch, whether or not a filing to the FRB is required under the FRB's rules governing the foreign operations of member banks and other U.S. banking organizations.[2] The proposed rule amends § 28.3 to provide that no notice to the OCC is required if a national bank closes or relocates a foreign branch.

2. Filing of Notice (revised § 28.5)

Currently, § 28.5 requires national banks to file notices with the International Banking & Finance Division at OCC headquarters. The proposed rule amends § 28.5 to provide that notices should be filed with "the appropriate supervisory office."

[2] *See* 12 CFR part 211, subpart A (FRB rules pertaining to foreign operations of domestic banking organizations).

C. Changes to 12 CFR Part 28: Operations of Federal Branches and Agencies of Foreign Banks

1. Definitions (revised § 28.11)

The IBA, which governs the operations of foreign banks in the United States through branches and agencies and other offices, sets standards for licensing the offices of foreign banks and requires the OCC to approve the "establishment" of Federal branches and agencies of foreign banks. Part 28 currently defines the term "establish" to mean initial entry of a foreign bank into the United States via a Federal branch or agency; the opening of additional branches and agencies, whether through intrastate or interstate branching; mergers and other consolidations; and "changes in status." The term "changes in status" means both expansions (from a Federal agency to a Federal branch) and contractions in activities (from a Federal branch into a Federal agency).[3]

As revised, the definition of "establish a Federal branch or agency" includes the opening of a Federal branch or agency established by a foreign bank, whether directly, through interstate or intrastate branching, through a merger or acquisition, through a conversion from a state office to a Federal office, through an upgrade from a Federal agency to a Federal branch, or through a relocation. In addition, the revised definition includes some activities formerly covered by the definition of "changes in status," including conversions from a state branch or agency, or commercial lending company, into a Federal branch, limited Federal branch, or Federal agency. The separate definition of "changes in status" is therefore removed as unnecessary. The proposed definition, however, excludes contractions in activities, *e.g.*, conversion from a Federal branch to a Federal agency, that do not present the need for the same scope of regulatory review that expansions necessitate. The effect of these changes would be to eliminate the requirement for a filing with the OCC when a foreign bank contracts its activities. In addition, for eligible foreign banks, certain activities, including the opening of an additional Federal branch or agency on either an intrastate or interstate basis, conversions or mergers, would be subject to expedited regulatory processes discussed elsewhere in the regulation.

[3] The definitions of "establish" and "changes in status" are similar to those adopted by the Board of Governors of the Federal Reserve System (FRB) in its Regulation K. *See* 12 CFR 211.21(f) (changes in status) and 211.21(*l*) (establish).

2. Approval and Licensing Requirements for a Federal Branch or Agency (revised § 28.12(a))

The proposed rule substantially revises current § 28.12, which governs approvals for the establishment of a Federal branch or agency. The OCC would continue to require an application and prior approval for foreign banks seeking to establish a Federal branch, Federal agency, or limited Federal branch in the United States. The licensing procedures would cover the initial branch or agency of a foreign bank. Subsequent offices resulting from acquisitions or interstate branching, for example, would require regulatory approval, but no additional license would be granted for those subsequent establishments unless the additional office would be an expansion of activities (*i.e.*, the additional office would be a full-service branch but the foreign bank's only license is for a limited Federal branch or agency).

The proposed rule also streamlines the licensing procedures. Currently, foreign banks must receive a license to open and operate any initial or additional Federal branch or agency. The proposed rule in § 28.12(a)(2) provides that a foreign bank must continue to receive a license to open and operate its initial Federal office in the United States. After that, however, a new license would be necessary for additional branches or agencies only if the foreign bank is proposing to upgrade its activities from those authorized in its current license; for example, if the foreign bank currently has a license for a limited Federal branch and wants to open a new office as a full-service Federal branch or operate its limited Federal branch as a full service branch. This change in the licensing procedures would not affect the substance of the OCC's regulatory and supervisory responsibilities. The OCC would continue to review and approve applications for additional offices in accordance with applicable law (*see* 12 U.S.C. 3102(h), 3103(a)(1) (OCC prior approval required for intrastate and interstate additional Federal branches and agencies)) and would continue to supervise these additional offices in the same manner as it does the initial branch or agency. This streamlining of the licensing requirements will enable the OCC to require less extensive information from a foreign bank for an additional establishment than for an initial Federal office.

This proposed change better promotes national treatment of foreign bank operations in the United States. Federal law and OCC regulations impose requirements for the *de novo* chartering of a national bank that differ from those applicable to that bank's subsequent establishment of additional branches or offices. With respect to licensing procedures, the proposal treats the opening of additional Federal offices by foreign banks in a manner similar to the procedures followed by national banks when opening additional branches.

Moreover, OCC regulations already distinguish between initial and additional Federal branches or agencies of foreign banks. For example, part 28 requires that a "foreign bank shall designate one Federal branch or agency office in the United States to maintain consolidated information so that the OCC can monitor compliance." *See* 12 CFR 28.14(c). It also requires that a "foreign bank with more than one Federal branch or agency in a state shall designate one of those offices to maintain consolidated asset, liability, and capital equivalency accounts for all Federal branches or agencies in that state." 12 CFR 28.18(c)(2). Requiring a license for the initial Federal branch or agency and treating subsequent establishments as expansions is consistent with these regulations, which already employ a "lead" Federal branch or agency approach to the supervision of foreign banks' U.S. operations. Finally, we note that the IBA has separate provisions in the law dealing with the initial establishment of a Federal branch or agency by a foreign bank, and subsequent establishments. *See* 12 U.S.C. 3102(a)(1) and (h).

The OCC invites comment on the proposed treatment of regulatory applications by foreign banks.

3. CCS Requirements (revised § 28.12(b)(5))

Under current § 28.12(b)(5), the OCC considers whether a foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor (CCS) in reviewing any application to establish a Federal branch or agency, including state-to-Federal conversions, upgrades, downgrades, and relocations, as well as establishing or acquiring a branch. In addition, the IBA requires the FRB to determine that a foreign bank seeking to establish a U.S. branch or agency is subject to CCS or that its home country supervisor is actively working to establish arrangements for CCS. 12 U.S.C. 3105(d). This proposal would reduce regulatory burden and conform to the OCC's risk-based practice by providing that the OCC generally will consider CCS only in certain cases and *may*, in its discretion, consider it in other cases as deemed appropriate.

As required by statute, the OCC will apply the standards of CCS when acting on applications for interstate establishments. *See* 12 U.S.C. 3103(a)(3)(A). In connection with other applications to establish a Federal branch or agency, the OCC *may* consider CCS if necessary based on the circumstances of a particular case. This change in the OCC's rule would have no effect on the FRB's statutory requirement to make a CCS determination in connection with any application by a foreign bank to establish a U.S. office, as that requirement is interpreted by the FRB.

The OCC believes that revising the circumstances under which the OCC will consider CCS is consistent with the supervision by risk approach. It may be appropriate to consider CCS when evaluating an application to establish an initial Federal branch or agency, in the same manner as an initial application to charter a national bank triggers a comprehensive regulatory review, but not when evaluating an application to open an additional Federal branch or agency. With respect to supervision of existing Federal branches and agencies, the OCC through the ongoing supervisory process, including information sharing with the FRB and foreign supervisors, monitors developments relating to a parent foreign bank and its home country. A CCS review involves these same types of determinations. Thus, absent specific supervisory concerns, in most cases we already would have the information about the quality of home country supervision to make a decision on the application. Moreover, in most cases, the FRB is required by statute to make a CCS determination and it may be unduly burdensome on the foreign bank for the OCC to be undertaking a duplicative CCS review, except in unusual circumstances or as expressly required by statute.

The proposed rule would not foreclose the OCC from considering CCS and undertaking a CCS review in any circumstance that it deems appropriate. The OCC invites comment on the proposed changes in the CCS requirement. In particular, are there certain transactions for which the OCC should regularly consider and conduct a CCS review other than for interstate branching applications as required by statute, *e.g.*, in the case of an application to establish an initial Federal branch or agency?

4. Expedited Approval Procedures (new § 28.12(e)(2) and (e)(3), revised § 28.12(e)(4), and new § 28.12(i))

Currently, part 28 requires that an application to establish a Federal branch or agency interstate is subject to the same review process that a foreign bank would undergo when it establishes its first Federal branch or agency in the United States. However, the rule provides that, for eligible foreign banks, an application to change the status of an office will be deemed approved on the 45th day after filing with the OCC. 12 CFR 28.12(e)(2). Under the current rule, a change in status includes contractions in operations as well as expansions. *Id. See* also 12 CFR 28.11(g) and 28.12(a).

The proposed rule provides for expedited review of additional types of applications to establish a Federal branch or agency. Under proposed new § 28.12(e)(2), a foreign bank may establish a new intrastate Federal branch or agency after providing written notice to the OCC 45 days in advance of the proposed establishment. The OCC would retain flexibility to waive the 45-day period in certain circumstances, as well as suspend the notice period or require an application if the notice raises significant policy or supervisory issues. Permitting the establishment of an intrastate Federal branch or agency through a notice procedure generally is consistent with procedures for domestic national banks (*see* 12 CFR 5.30(f)(5)) and the practices of other regulators (*see* 12 CFR 211.24(a)(2)).

In addition, under the proposed new § 28.12(e)(3), an eligible foreign bank's application to establish a Federal branch or agency interstate is conditionally approved as of the 45th day after the OCC receives the completed application, unless the OCC notifies the bank that the filing is not eligible for expedited review.

Under proposed § 28.12(e)(4), an application by an eligible foreign bank to convert state offices to Federal offices, or expand activities by converting a Federal agency or limited Federal branch to a Federal branch, would be deemed approved as of the 30th day after filing with the OCC, unless the OCC notifies the bank that the application was not eligible for expedited review.

As we have explained, the proposal deletes the current "change in status" definition in § 28.11(d). It also excludes contractions in activities conducted under a Federal license from the list of transactions that trigger the establishment of a Federal branch or agency. For contractions, new § 28.12(i) would provide that a foreign bank only

would be required to provide written notice to the OCC within 10 days after converting a full-service Federal branch into a limited Federal branch or Federal agency. Also, as discussed in connection with proposed § 28.12(a)(2), such a downgrade in operations would not require the foreign bank to obtain a new license.

5. Eligible Foreign Bank (revised § 28.12(f))

Under current part 28, foreign banks with Federal branches and agencies that all are rated "1" or "2" under the applicable interagency rating system are eligible for expedited processing for their applications and other filings. 12 CFR 28.12(e) and (f). The proposed rule would revise § 28.12(f) to provide that a foreign bank that has no Federal branches or agencies also is eligible if it is engaging in a state-to-Federal conversion and its state offices satisfy the eligibility criteria. This change would codify procedures that the OCC already has adopted in its Licensing Manual.

6. After-the-fact Notice for Certain Acquisitions (new § 28.12(h))

Under current part 28, if foreign bank A, which has a Federal branch, merges with foreign bank B, which does not have a Federal office, an application to establish the Federal branch would have to be submitted to the OCC if B were the surviving institution. Under current § 28.12(g), the two foreign banks may proceed with their merger without approval of B's establishment of the branch if B provides reasonable advance notice of the transaction to the OCC. Prior to the merger, B must also apply to the OCC or commit to abide by the OCC's decision on the application.

New § 28.12(h) would provide an expedited procedure for foreign bank B if B already has banking offices in the United States. The proposed rule would further decrease the regulatory burden on foreign banks, while maintaining safety and soundness standards. The OCC would retain the discretion to require prior approval to establish the Federal branch or agency if necessary for prudential reasons.

7. Exceptions to Usual Filing Procedures (revised § 28.12(j))

For national banks, § 5.2(b) of the OCC's rules permits the OCC to use filing procedures other than those prescribed by part 5 in "exceptional circumstances," including "unusual transactions." The proposed rule revises § 28.12(j) (as redesignated in this proposal) to clarify that the OCC also reserves the right to adopt different procedures with respect to a part 28 filing or class of filings.

8. Other Applications Accepted (new § 28.12(*l*))

The OCC's Licensing Manual currently states that the OCC will accept copies of applications to other Federal agencies if they contain the information that we require for a particular OCC approval requirement. The proposed rule revises § 28.12(*l*) to codify this practice and provide that the OCC will accept copies of applications or notices to other regulators. The OCC may, however, request additional information from an applicant as deemed necessary should the application or notice contain less information than the OCC needs to reach a decision.

9. Capital Equivalency Deposits (revised § 28.15(a)(1) and new § 28.15(a)(3))

The IBA requires Federal branches and agencies to establish and maintain a CED. 12 U.S.C. 3102(g). On June 19, 2002, the OCC issued a final rule revising certain requirements regarding CED deposit arrangements to increase flexibility for, and reduce burden on, certain Federal branches and agencies, based on a supervisory assessment of the risks presented by the particular institutions.[4] The additional changes contained in this proposal would further reduce unnecessary burden and simplify compliance with the CED requirements.

The proposed rule amends § 28.15(a)(1) to clarify the types of assets eligible to be deposited in a CED. Currently, a CED must consist of bank-eligible securities; dollar deposits payable in the United States; certificates of deposit payable in the United States; and other assets permitted by the OCC. Under the proposed rule, the requirement that dollar deposits be payable in the United States would be amended to include dollar deposits payable in any G–10 country. It further adds repurchase agreements to the list of permissible CED assets. Finally, the proposal revises this paragraph to clarify that the OCC's authority to permit other assets to qualify for the CED is limited to other assets that are similar to those expressly included in the statute.

The proposed rule adds a new § 28.15(a)(3) that would clarify that the OCC excludes liabilities of an international banking facility to third parties, and of a Federal branch to an international banking facility, when calculating the required amount of a CED. This is consistent with the OCC's current policy. Also, the proposed rule permits the OCC to exclude liabilities from repurchase agreements on a case-by-case basis. These provisions are consistent with the practice of some other regulators. *See* 3 NYCRR 322.1(a)(1) and (c) (exclusion of liabilities from repurchase agreements for purposes of calculating CED under New York state regulations).

10. CED Deposit Accounts (new § 28.15(e))

The statutory CED requirement specifies that "a foreign bank * * * shall keep on deposit, in accordance with such rules and regulations as the Comptroller may prescribe, with a member bank designated by such foreign bank, dollar deposits or investment securities of the type that may be held by national banks for their own accounts pursuant to paragraph "Seventh" of section 24 of this title, in an amount as hereinafter set forth. Such depository bank shall be located in the State where such branch or agency is located and shall be approved by the Comptroller if it is a national bank and by the Board of Governors of the Federal Reserve System if it is a State bank." 12 U.S.C. 3102(g)(1).

The IBA does not expressly address whether the CEDs of several Federal branches may be combined or whether a foreign bank with Federal branches and agencies in more than one state may keep CEDs in one account in a depository bank. Moreover, the IBA does not define the term "located" for purposes of determining where a depository bank is located or where the Federal branch or agency is located for purposes of the CED requirement. The proposed rule clarifies that a foreign bank with interstate offices has the discretion to consolidate all or some of its CEDs into one account. It further clarifies that, for purposes of the CED account, a foreign bank must deposit the CEDs in a depository bank that is located, *i.e.*, has its main office or a branch, in the parent foreign bank's home state[5] or in the state in which the Federal branch or agency is licensed.[6]

[4] 67 FR 41619 (June 19, 2002).

[5] *See* 12 CFR 28.11(o)(definition of "home state").

[6] As described in the text, the IBA provides that a CED shall be "in accordance with such limitations and conditions as the Comptroller may prescribe. * * *" 12 U.S.C. 3102(g)(1). Moreover, the OCC has discretion in structuring the form and terms of the CED agreement. The IBA provides that "[t]he deposit shall be maintained with any such member bank pursuant to a deposit agreement in such form and containing such limitations and conditions as the Comptroller may prescribe." 12 U.S.C. 3102(g)(3). More generally, the OCC has the authority to issue appropriate rules, regulations, and orders for the establishment and administration of Federal branches. *See* 12 U.S.C. 3102(b) and 3108(a).

These revisions will reduce regulatory burden by providing foreign banks with greater flexibility in complying with the CED requirements.

While the location of a national bank varies from statute to statute and may be different for different purposes, 12 U.S.C. 81 provides that the general business of each national banking association shall be transacted at its main office and its branch or branches. Under the proposal, the term "located" in the statutory language describing a CED depository bank is construed, consistently with § 81, to mean the state in which the depository bank has its main office or a branch. However, because a Federal branch or agency is not a separate corporate entity, it does not have a main office or branches. As a result and by analogy to 12 U.S.C. 81 and consistent with national treatment, the proposal provides that a Federal branch or agency is located in the state in which it is licensed and in the parent foreign bank's home state for purposes of maintaining a CED account.

If the change in the licensing procedures described above is adopted, all Federal branches and agencies of a foreign bank may, under certain conditions, be licensed in only one state, which may be different from the foreign bank's home state. In such a situation, the proposal would provide foreign banks with more flexibility in determining where to deposit the consolidated CED if the foreign bank elects to consolidate some or all of these deposits.

In providing for a consolidated CED account, the proposal is consistent with existing provisions of part 28. For example, § 28.15(a)(2) already permits a foreign bank to combine the CEDs of its federally licensed offices in the same state into one account at the depository bank. Part 28 further requires that a "foreign bank with more than one Federal branch or agency in a state shall designate one of those offices to maintain consolidated asset, liability, and capital equivalency accounts for all Federal branches or agencies in that state." 12 CFR 28.18(c)(2). This proposal is also consistent with the national treatment purpose of the IBA and serves to reduce regulatory burden. Permitting a foreign bank to consolidate its CED accounts should provide foreign banks with more flexibillty in structuring their U.S. operations and would reduce unnecessary costs in maintaining multiple accounts.

The aggregate amount of the CED for all of the foreign bank's Federal branches and agencies would not change under the proposal and, thus, there would be no diminution in the foreign bank's combined amount of CED assets that it is required by law to maintain. Moreover, the OCC's authority to require an increase in the CED for a particular Federal branch or agency would not be affected.

To ensure that creditors are protected,[7] a corresponding change would be made to § 28.18 (described below) to require that a foreign bank that consolidates its CEDs in accordance with this new paragraph § 28.12(d)(2) must designate a Federal branch or agency to maintain consolidated asset, liability, and capital equivalency account information for all of the Federal branches and agencies that are covered by the consolidated deposit. This is similar to the requirement in § 28.18(c)(2) that applies to consolidated CED accounts in one state. This approach also is consistent with other provisions in part 28 requiring a foreign bank to "designate one Federal branch or agency office in the United States to maintain consolidated information so that the OCC can monitor compliance." *See* 12 CFR 28.14(c).

The OCC invites comment on the CED proposals and specifically seeks comments on possible ways for ensuring that a consolidated CED account contains sufficient assets to cover the operations of all participating Federal branches and agencies. Should the account contain segregated assets to cover specific offices, or would it be sufficient for the account to contain a consolidated amount large enough to cover the operations of all the individual offices?

The OCC invites comments on other ways in which the CED requirement could be modified to further reduce regulatory burden consistent with maintaining the safe and sound operations of Federal branches and agencies in the United States.

11. Deposit-taking by an Uninsured Federal Branch (revised § 28.16(b)(8))

The proposed rule makes a technical correction to paragraph (b)(8) to correct the citation to the FRB's Regulation K.

[7] The legislative history of the IBA does not expressly explain the CED requirement, but it indicates that one reason for including such a provision was a concern about the availability of assets for local creditors in the event that a foreign bank became insolvent. *See* International Banking Act of 1978, Hearings on HR 10899 Before the Subcommittee on Financial Institutions Supervision of the Committee on Banking, Housing and Urban Affairs, 95th Cong., 1st Sess. 118–19 (1977) (statement of Hon. Stephen S. Garner, Vice Chairman, Board of Governors of the Federal Reserve System and Proposed Amendments to H.R. 7325, the International Banking Act of 1977).

12. Maintenance of Accounts, Books, and Records (new § 28.18(c)(3))

As described above, the proposed new § 28.18(c)(3) requires a foreign bank that has interstate Federal branches or agencies and combines its CEDs into one account to designate one of its Federal offices to maintain consolidated information about the Federal branches and agencies covered by the CEDs.

13. Maintenance of Assets (revised § 28.20(a)(2))

The OCC may impose asset maintenance requirements on a foreign bank to hold certain assets in the state in which its Federal branch or agency is located if necessary for prudential, supervisory, or enforcement reasons. 12 CFR 28.20(a)(1). These requirements are in addition to the CED requirements but, in determining compliance with any asset maintenance requirements imposed by the OCC, the OCC must give credit to the amount of assets held in the CED and other reserves or assets required under the IBA. 12 U.S.C. 3102(g)(4).

The proposed revision of § 28.20(a)(2) deletes the requirement that, if the OCC requires asset maintenance, the amount of assets held by the foreign bank cannot be less than 105% of the aggregate amount of liabilities of the Federal branch or agency, payable at or through the Federal branch or agency. Under the proposed rule, the amount of assets would be prescribed by the OCC and there would be no set minimum. This change would give the OCC more discretion to apply its asset maintenance authority on a risk-based basis to ensure the safe and sound operations of Federal branches and agencies.

14. Voluntary Liquidation (revised § 28.22(a) and (b))

The voluntary liquidation provisions of part 28 currently cross-reference part 5 and the Comptroller's Licensing Manual and impose certain specific requirements. The proposed revisions to § 28.22 retain the current procedures and cross references (with specific reference to the Licensing Manual's qualifications and procedures for a voluntary expedited liquidation of an insured Federal branch) for voluntary liquidations if the Federal branches and agencies being liquidated are the foreign bank's only Federal branches and agencies in the United States. The proposal eliminates the additional unnecessary requirements currently in the regulation but retains the requirement that a foreign bank publish notice of the impending closure. The

proposal, however, replaces the current requirement for 30-days' notice with a requirement for 2 months' daily notice in order to conform with the statutory notice requirement that applies to national banks that are voluntarily closing.[8]

15. Procedures for Closing Some U.S. Offices (new § 28.23)

If a foreign bank operates more than one Federal branch or agency in the United States and is closing some but not all of its Federal offices, the proposed rule, at new § 28.23, treats the closing like the closing of a domestic national bank branch. Domestic national banks must satisfy the requirements of 12 U.S.C. 1831r–1 (90 days notice to the OCC and customers). This change would be consistent with the IBA's national treatment standard and safety and soundness.

16. After-the-fact Notice of Change in Control (new § 28.25)

Currently, part 28 is silent on what requirements exist and what filings are required for changes in control in a foreign bank that operates a Federal branch or agency. The OCC's Licensing Manual, however, requires the foreign bank to submit a copy of the change in control notice it files with the FRB to the OCC.

The proposed rule adds a new § 28.24. This new section applies to changes in control in which no other filing is required under part 28 and requires a foreign bank to submit a written notice to the OCC of a change in control of the foreign bank within 14 days after the foreign bank becomes aware of the change. The OCC reserves the right to require additional information. A foreign bank may provide its supervisory office with the copy of a notice submitted to another Federal regulator to satisfy the requirements of this section. *See* 12 CFR 28.3(b).

17. Loan Production Offices (new § 28.26)

Part 28 is also silent on the issue of whether a foreign bank may operate a loan production office (LPO) or other administrative office or regional administrative office as part of its license to operate a Federal branch in the United States. Consistent with the OCC's precedents on this issue and national treatment, the proposed rule specifically states that, like a national bank, a Federal branch may operate an LPO, or an administrative office or a regional administrative office that conducts other types of representational activities, as part of a branch license. These activities would be subject to the same rights, privileges, requirements, and limitations that apply to LPOs and other administrative offices of national banks. Since national banks may conduct these activities and exercise these functions at non-branch locations as part of the business of banking, a Federal branch may also do so since, as a general rule, it operates with the same rights and duties of a national bank. 12 U.S.C. 3102(b). The OCC believes that these activities and functions are illustrative—and not exhaustive—of the types of non-branch offices that Federal branches may operate.

[8] 12 U.S.C. 182.

Request for Comments

The OCC invites comment on all aspects of the proposed regulation.

Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, sec. 722, 113 Stat. 1338, 1471 (November 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

Community Bank Comment Request

In addition, we invite your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulation could be achieved, for community banks, through an alternative approach.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

Pursuant to section 605(b) of the RFA, the OCC hereby certifies that this proposal will not have a significant economic impact on a substantial number of small entities. Specifically the proposed rule will reduce burden by: (1) Streamlining procedures for national banks' foreign operations through branches; (2) eliminating the requirement to file an application with the OCC in certain circumstances when a foreign bank downgrades its U.S. operations; (3) requiring approval, but not a new license, for additional Federal branches or agencies opened after the establishment of the initial branch office; and (4) clarifying that a foreign bank with Federal branches and agencies in more than one state may consolidate its capital equivalency deposits in one deposit account in a depository bank that satisfies certain criteria. These revisions will result in cost reductions for national banks and for the U.S. operations of Federal branches and agencies of foreign banks. Accordingly, a regulatory flexibility analysis is not needed.

Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The information collection requirements contained in this notice of proposed rulemaking have been submitted to OMB for review and approval under OMB Control Number 1557–0014 (Comptroller's Licensing Manual) and OMB Control Number 1557–0102 (International Regulation—12 CFR 28).

The information collection requirements contained in this notice of proposed rulemaking that are covered under the Comptroller's Licensing Manual (Manual) information collection are found in 12 CFR 5.36, 28.12, 28.22, and 28.25.

The Manual embodies all required procedures, forms, and regulations regarding OCC corporate approvals. The Manual is needed to standardize OCC processing of corporate filings, to ensure consistency in the recordkeeping and decision making processes, and provide information to banks on corporate application filing procedures and regulatory requirements affecting corporate changes. The Manual is the primary procedural guide for OCC personnel.

The information collection requirements contained in this notice of proposed rulemaking that are covered under the information collection titled, "International Banking Regulation—12 CFR 28" are found in 12 CFR 28.3.

The information collection requirements are necessary to comply with the requirements of the International Banking Act of 1978, the Foreign Bank Supervision Enhancement Act of 1991, and to maintain the safety and soundness of national bank operations in the United States and abroad.

The information collection requirements are as follows:

12 CFR 5.36 permits a well-capitalized, well-managed national bank to make certain non-controlling investments in an enterprise, directly or through its operating subsidiary, by filing a written notice to the OCC. The proposed rule adds a new paragraph to permit a well-capitalized and well-managed Federal branch to make non-controlling investments by filing a after-the-fact notice, in the same manner as a national bank.

The likely respondents are national banks.

Estimated number of respondents: 17.
Estimated number of responses: 17.
Average hours per response: 1 hour.
Estimated total burden hours: 17 hours.

12 CFR 28.3(a) requires a national bank to notify the OCC upon opening, closing, or relocating a foreign branch, whether or not a filing to the Board of Governors of the Federal Reserve System (FRB) is required under the FRB's rules governing the foreign operations of member banks and other U.S. banking organizations. The proposed rule amends § 28.3(a) to provide that no notice to the OCC is required if a national bank closes or relocates a foreign branch.

The likely respondents are national banks.

Estimated number of respondents: 45.
Estimated number of responses: 45.
Average hours per response: .5 hour.
Estimated total burden hours: 22.5 hours.

12 CFR 28.12(a)(1) requires a foreign bank to submit an application to, and obtain approval from, the OCC before it establishes a Federal branch or agency, or exercises fiduciary powers at a Federal branch.

The likely respondents are foreign banks.

Estimated number of respondents: 4.
Estimated number of responses: 4.
Average hours per response: 41 hours.
Estimated total burden hours: 164 hours.

New § 28.12(e)(2) requires a foreign bank to provide written notice to the OCC in cases where a foreign bank seeks to establish intrastate an additional Federal branch or agency.

The likely respondents are foreign banks.

Estimated number of respondents: 1.
Estimated number of responses: 1.
Average hours per response: 1 hour.
Estimated total burden hours: 1 hour.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Comments should be sent to:

Jessie Dunaway, Clearance Officer, Office of the Comptroller of the Currency, Legislative and Regulatory Activities Division, Attention: 1557–0014 & 1557–0102, 250 E Street, SW., Mailstop 8–4, Washington, DC 20219. Comments may also be sent by fax to (202) 874–4889 or by e-mail to *jessie.dunaway@occ.treas.gov*.

Joseph F. Lackey, Jr., Desk Officer, Office of Information and Regulatory Affairs, Attention: 1557–0014 & 1557–0102, Office of Management and Budget, Room 10235, Washington, DC 20503. Comments may also be sent by e-mail to *jlackeyj@omb.eop.gov*.

Executive Order 13132

Executive Order 13132 requires Federal agencies, including the OCC, to certify their compliance with that Order when they transmit to the Office of Management and Budget any draft final regulation that has Federalism implications. Under the Order, a regulation has Federalism implications if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." In the case of a regulation that has Federalism implications and that preempts state law, the Order imposes certain consultation requirements with state and local officials; requires publication in the preamble of a Federalism summary impact statement; and requires the OCC to make available to the Director of the Office of Management and Budget any written communications submitted by state and local officials. By the terms of the Order, these requirements apply to the extent that they are practicable and permitted by law and, to that extent, must be satisfied before the OCC promulgates a final regulation.

The OCC does not believe that the proposed rule has such Federalism implications.

List of Subjects

12 CFR Part 5

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, parts 5 and 28 of chapter I of title 12 of the Code of Federal Regulations are proposed to be amended as follows:

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

1. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24a, 24(Seventh), 93a, and 3101 *et seq.*;

2. In § 5.3, paragraphs (c)(1) and (c)(4) are revised:

§ 5.3 Definitions.

* * * * *

(c) * * *

(1) The Licensing Department for all national bank subsidiaries of certain holding companies assigned to the Washington, DC, licensing unit;

(2) * * *

(3) * * *

(4) The licensing unit in the Northeastern District Office for Federal branches and agencies of foreign banks.

* * * * *

3. In § 5.36, a new paragraph (g) is added to read as follows:

§ 5.36 Other equity investments.

* * * * *

(g) *Non-controlling investments by Federal branches.* A Federal branch that satisfies the well capitalized and well managed standards in § 4.7(b)(1)(iii) and § 5.34(d)(3)(ii) may make a non-controlling investment in accordance with paragraph (e) of this section in the same manner, and subject to the same conditions and requirements as a national bank.[9]

4. In § 5.70:

a. Paragraph (c)(1) is removed;

b. Paragraphs (c)(2)(i) through (v) are redesignated as paragraphs (c)(1)(i) through (v);

c. Newly redesignated paragraphs (c)(1)(i), (iv), and (v) are revised;

d. New paragraph (c)(1)(vi) is added; and

e. New paragraph (c)(2) is added to read as follows:

§ 5.70 Federal branches and agencies.

* * * * *

(c) * * *

(1) * * *

(i) Open and conduct business through an initial or additional Federal branch or agency;

(ii) * * *

(iii) * * *

(iv) Convert a state branch or state agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch or Federal agency;

(v) Relocate a Federal branch or agency within a state or from one state to another; or

(vi) Convert a Federal agency or a limited Federal branch into a Federal branch.

(2) Any reference to a Federal branch includes a limited Federal branch unless provided otherwise.

* * * * *

PART 28—INTERNATIONAL BANKING ACTIVITIES

5. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24(Seventh), 93a, 161, 602, 1818, 3101 *et seq.*, and 3901 *et seq.*

6. In § 28.3, paragraphs (a)(1)(i) and (a)(2) are revised to read as follows:

§ 28.3 Filing requirements for foreign operations of a national bank:

(a) * * *

(1) * * *

(i) Establish or open a foreign branch;

(ii) * * *

(2) Opens a foreign branch, and no application or notice is required by the FRB for such transaction.

* * * * *

1. In § 28.5, paragraphs (a) and (b) are revised as follows:

§ 28.5 Filing of notice.

(a) *Where to file.* A national bank shall file any notice or submission required under this subpart with the appropriate supervisory office of the OCC.

(b) *Availability of forms.* Individual forms and instructions for filings are available from the appropriate supervisory office of the OCC.

8. In § 28.11:

a. Paragraph (d) is removed;

b. Paragraphs (e)–(z) are redesignated as paragraphs (d)–(y);

c. Newly redesignated paragraphs (f)(1), (4), and (5) are revised;

d. New paragraph (f)(6) is added; and

e. Newly redesignated paragraph (h) is revised to add a new sentence at the end to read as follows:

§ 28.11 Definitions.

* * * * *

(f) *Establish a Federal branch or agency* means to:

(1) Open and conduct business through an initial or additional Federal branch or agency;

(2) * * *

(3) * * *

(4) Convert a state branch or state agency operated by a foreign bank, or a commercial lending company controlled by a foreign bank, into a Federal branch or agency;

(5) Relocate a Federal branch or agency within a state or from one state to another; or

(6) Convert a Federal agency or a limited Federal branch into a Federal branch.

* * * * *

(h) * * * Unless otherwise provided, the references in this subpart B of part 28 to a Federal branch include a limited Federal branch.

* * * * *

9. In § 28.12:

a. Paragraphs (a) and (b)(5) are revised;

b. Paragraphs (e)(2) through (4) are redesignated as paragraphs (e)(4) through (6);

c. New paragraphs (e)(2) and (3) is added;

d. Newly redesignated paragraph (e)(4) is revised;

e. Paragraph (f) introductory text is revised;

f. Paragraphs (h) through (i) are redesignated as paragraphs (j) through (k);

g. New paragraphs (h) and (i) is added;

h. Newly redesignated paragraph (j) is revised; and

i. New paragraph (l) is added to read as follows:

§ 28.12 Approval of a Federal branch or agency.

(a) *Approval and licensing requirements*—(1) *General.* Except as otherwise provided in this section, a foreign bank shall submit an application to, and obtain prior approval from, the OCC before it:

(i) Establishes a Federal branch or agency; or

(ii) Exercises fiduciary powers at a Federal branch. (A foreign bank may submit an application to exercise fiduciary powers at the time of filing an application for a Federal branch or at any subsequent date.)

(2) *Licensing.* A foreign bank must receive a license from the OCC to open and operate its initial Federal office in the United States. A foreign bank that has a license to operate and is operating a full-service Federal branch will not be required to obtain a new license for any additional Federal offices, or to upgrade or downgrade its operations in an existing Federal office. A foreign bank that only has a license to operate and is operating a limited Federal branch or Federal agency will not be required to obtain a new license for any additional limited branches or agencies, or to convert a limited branch into an agency or an agency into a limited branch.

(b) * * *

(5) With respect to an application to establish an interstate branch or agency under 12 CFR 28.11(f)(1), whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor. The OCC, in its discretion, also may consider whether the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by its home country supervisor in the case of any other application to establish a branch or agency.

* * * * *

(e) * * *

(1) * * *

(2) *Written notice for additional intrastate branches or agencies.* (i) In cases where a foreign bank seeks to establish intrastate an additional Federal branch or agency, the foreign bank shall provide written notice 45 days in advance of the establishment of the intrastate branch or agency.

(ii) The OCC may waive the 45-day period if immediate action is required by the circumstances of the intrastate branching. The OCC also may suspend the notice period or require an application if the notification raises significant policy or supervisory concerns.

(3) *Expedited approval procedures for interstate branches or agencies.* An application submitted by an eligible foreign bank to establish and operate a *de novo* Federal branch or agency in any state outside the home state of the foreign bank is deemed conditionally approved by the OCC as of the 45th day after the OCC receives the filing, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review. In the event that the FRB has approved the application prior to the expiration of the period, then the OCC's approval shall be deemed a final approval.

(4) *Conversions.* An application submitted by an eligible foreign bank under 12 CFR 28.11(f)(4) or (f)(6) is deemed approved by the OCC as of the 30th day after the OCC receives the filing, unless the OCC notifies the bank prior to that date that the filing is not eligible for expedited review.

* * * * *

(f) *Eligible foreign bank.* For purposes of this section, a foreign bank is an eligible foreign bank if each Federal branch or agency of the foreign bank or, if the foreign bank has no Federal branches or agencies and is engaging in a conversion under 12 CFR 28.11(f)(4), each state branch or agency:

* * * * *

(h) *After-the-fact notice for eligible foreign banks:* Unless otherwise provided by the OCC, a foreign bank proposing to establish a Federal branch or agency through the acquisition of, or merger or consolidation with, a foreign bank that has an existing bank subsidiary, branch, or agency, may proceed with the transaction and provide after-the-fact notice to the OCC within 14 days of the transaction if:

(1) the resulting bank is an "eligible foreign bank" within the meaning of § 28.12(f); and

(2) no Federal branch established by the transaction is insured.

(i) *Contraction of operations.* A foreign bank shall provide written notice to the OCC within 10 days after converting a Federal branch into a limited Federal branch or Federal agency.

(j) *Procedures for approval.* A foreign bank shall file an application for approval pursuant to this section in accordance with 12 CFR part 5 and the Manual. The OCC reserves the right to adopt materially different procedures for a particular filing, or class of filings, pursuant to 12 CFR 5.2(b).

* * * * *

(k) * * *

(l) *Other applications accepted.* As provided in § 5.4(c), the OCC may accept an application or other filing submitted to another Federal agency that covers the proposed activity or transaction and contains substantially the same information as required by the OCC.

10. In § 28.15:

a. Paragraph (a)(1)(ii) is revised;

b. Paragraph (a)(1)(iv) is redesignated as (a)(1)(v);

c. New paragraph (a)(1)(iv) is added;

d. Newly redesignated (a)(1)(v) is revised;

e. New paragraph (a)(3) is added;

f. Paragraph (e) is redesignated as (f);

g. New paragraph (e) is added to read as follows:

§ 28.15 Capital equivalency deposits.

(a) * * *

(1) * * *

(i) * * *

(ii) United States dollar deposits payable in the United States or payable in any other G–10 country;

(iii) * * *

(iv) Repurchase agreements; or

(v) Other similar assets permitted by the OCC to qualify for the CED.

(2) * * *

(3) *Exceptions.* In determining the amount of the CED, the OCC excludes liabilities of an international banking facility (IBF) to third parties and of a branch of a foreign bank to an IBF. The OCC may exclude liabilities from repurchase agreements on a case-by-case basis.

* * * * *

(e) *Deposit and Consolidation of CED accounts.* A foreign bank with a Federal branch or agency shall deposit its CED into an account in a depository bank that is located, *i.e.*, has its main office or a branch, in the state in which the Federal branch or agency is licensed or in the state that is the parent bank's home state. A foreign bank with Federal branches or agencies in more than one state may consolidate some or all of its CEDs into one such account.

* * * * *

11. In § 28.16, paragraph (b)(8) is revised to read as follows:

§ 28.16 Deposit-taking by an uninsured Federal branch.

* * * * *

(b) * * *

(8) Persons who may deposit funds with an Edge corporation as provided in the FRB's Regulation K, 12 CFR 211.6, including persons engaged in certain international business activities; and

* * * * *

12. In § 28.18, a new paragraph (c)(3) is added to read as follows:

§ 28.18 Recordkeeping and reporting.

* * * * *

(c) * * *

(3) A foreign bank with a Federal branch or agency in more than one state that combines its CEDs into one account in accordance with 12 CFR 28.15(e) shall designate a participating Federal branch or agency to maintain consolidated asset, liability, and capital equivalency account information for all Federal branches and agencies covered by the consolidated deposit.

13. In § 28.20, the first sentence of paragraph (a)(2) is revised to read as follows:

§ 28.20 Maintenance of assets.

(a) * * *

(1) * * *

(2) If the OCC requires asset maintenance, the amount of assets held by a foreign bank shall be prescribed by the OCC after consideration of the aggregate amount of liabilities of the Federal branch or agency, payable at or through the Federal branch or agency.

* * *

* * * * *

[9] Federal branches also may be subject to requirements contained in the Board of Governors of the Federal Reserve System's Regulation K, 12 CFR part 211.

14. In § 28.22, paragraphs (a) and (b) are revised:

§ 28.22 Voluntary liquidation.

(a) *Procedures to close all Federal branches and agencies.* Unless otherwise provided, in cases in which a foreign bank proposes to close all of its Federal branches or agencies, the foreign bank shall comply with applicable requirements in 12 CFR 5.48 and the Manual, including requirements that apply to an expedited liquidation of an insured Federal branch.

(b) *Notice to customers and creditors.* A foreign bank shall publish notice of the impending closure of each Federal branch or agency for a period of two months in every issue of a local newspaper where the Federal branch or agency is located. If only weekly publication is available, the notice must be published for nine consecutive weeks.

* * * * *

15. Section 28.23 is redesignated as § 28.24 and a new § 28.23 is added to read as follows:

§ 28.23 Procedures for closing of some U.S. offices.

In cases where § 28.22 does not apply, and a foreign bank is closing one or more, but not all, of its Federal branches and/or agencies, it shall follow the procedures set forth in 12 U.S.C. 1831r–1(a) and (b) (branch closings).

* * * * *

16. A new § 28.25 is added to read as follows:

§ 28.25 Change in control.

(a) *After-the-fact notice.* In cases in which no other filing is required under subpart B of part 28, a foreign bank that operates a Federal branch or agency shall inform the OCC in writing of the direct or indirect acquisition of control of the foreign bank by any person or entity, or group of persons or entities acting in concert, within 14 calendar days after the foreign bank becomes aware of a change in control.

(b) *Additional information.* The foreign bank shall furnish the OCC with any additional information the OCC may require in connection with the acquisition of control.

17. A new § 28.26 is added to read as follows:

§ 28.26 Loan production offices.

As an integral part of its license to operate a Federal branch, a foreign bank may establish lending offices, make credit decisions, and engage in other representational activity at a place other than its branch office, subject to the same rights, privileges, requirements and limitations as apply to national banks under 12 CFR 7.1003–1005.

Dated: April 11, 2003.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 03–9733 Filed 4–22–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM248; Special Conditions No. 25–03–03–SC]

Special Conditions: Embraer Model ERJ–170 Series Airplanes; Electronic Flight Control Systems; Automatic Takeoff Thrust Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Embraer Model ERJ–170 series airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are associated with electronic flight control systems and Automatic Takeoff Thrust Control Systems (ATTCS). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of Embraer Model 170 series airplanes.

DATES: Comments must be received on or before May 23, 2003.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM248, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM248. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149; e-mail *tom.groves@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this notice between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 20, 1999, Embraer applied for a type certificate for its new Model ERJ–170 airplane. Two basic versions of the Model ERJ–170 are included in the application. The ERJ–170–100 airplane is a 69–78 passenger, twin-engine regional jet with a maximum takeoff weight of 81,240 pounds. The ERJ–170–200 is a derivative with a lengthened fuselage. Passenger capacity for the ERJ–170–200 is increased to 86, and maximum takeoff weight is increased to 85,960 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer must show that the Model ERJ–170 series airplanes meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for Embraer Model ERJ–170 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Embraer Model ERJ–170 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

The Embraer Model ERJ–170 series airplanes will incorporate the following novel or unusual design features:

Electronic Flight Control System

In airplanes with electronic flight control systems, there may not always be a direct correlation between pilot control position and the associated airplane control surface position. Under certain circumstances, a commanded maneuver that does not require a large control input may require a large control surface movement, possibly encroaching on a control surface or actuation system limit without the flightcrew's knowledge. This situation can arise in either manually piloted or autopilot flight and may be further exacerbated on airplanes where the pilot controls are not back-driven during autopilot system operation. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting, control of the airplane by the pilot or autoflight system may be inadvertently continued so as to cause loss of control of the airplane or other unsafe characteristics of stability or performance.

Given these possibilities, a special condition is proposed for Embraer Model ERJ–170 series airplanes to address control surface position awareness. This special condition would require that suitable display or annunciation of flight control position be provided to the flightcrew when near full surface authority (not crew-commanded) is being used, unless other existing indications are found adequate or sufficient to prompt any required crew actions. Suitability of such a display or annunciation must take into account that some piloted maneuvers may demand the airplane's maximum performance capability, possibly associated with a full control surface deflection. Therefore, simple display systems—that would function in both intended and unexpected control-limiting situations—must be properly balanced to provide needed crew awareness and minimize nuisance alerts. A monitoring system that compares airplane motion, surface deflection, and pilot demand could be useful in eliminating nuisance alerting.

Automatic Takeoff Thrust Control System (ATTCS)

The Embraer Model ERJ–170 series airplane will incorporate an Automatic Takeoff Thrust Control System (ATTCS) in the engine's Full Authority Digital Electronic Control (FADEC) system architecture. It has been proposed that the FAA allow performance credit to be taken for use of this function during go-around to show compliance with the requirement of § 25.121(d) regarding the approach climb gradient.

Section 25.904 and Appendix I refer to operation of ATTCS only during takeoff. Model ERJ–170 series airplanes have this feature for go-around also. The ATTCS will automatically increase thrust to the maximum go-around thrust available under the ambient conditions in the following circumstances:

- If an engine failure occurs during an all-engines-operating go-around, or
- If an engine has failed or been shut down earlier in the flight.

This maximum go-around thrust is the same as that used to show compliance with the approach-climb-gradient requirement of § 25.121(d). If the ATTCS is not operating, selection of go-around thrust will result in a lower thrust level.

The part 25 standards for ATTCS, contained in § 25.904 [Automatic takeoff thrust control system (ATTCS) and Appendix I], specifically restrict performance credit for ATTCS to takeoff. Expanding the scope of the standards to include other phases of flight, such as go-around, was considered when the standards were issued but was not accepted because of the effect on the flightcrew's workload. As stated in the preamble to amendment 25–62:

> In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher thrust for the approach climb [§ 25.121(d)] than for the landing climb [§ 25.119]. The workload required for the flightcrew to monitor and select from multiple in-flight thrust settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase. (Refer to 52 FR 43153, November 9, 1987.)

The ATTCS incorporated on Embraer Model ERJ–170 series airplanes allows the pilot to use the same power setting procedure during a go-around, regardless of whether or not an engine fails. In either case, the pilot obtains go-around power by moving the throttles into the forward (takeoff/go-around) throttle detent. Since the ATTCS is permanently armed for the go-around phase, it will function automatically following an engine failure and advance the remaining engine to the ATTCS thrust level. This design adequately addresses the concerns about pilot workload which were discussed in the preamble to amendment 25–62.

The system design allows the pilot to enable or disable the ATTCS function for takeoff. If the pilot enables ATTCS, a white "ATTCS" icon will be displayed on the Engine Indication and Crew Alerting System (EICAS) beneath the thrust mode indication on the display. This white icon indicates to the pilot that the ATTCS function is enabled. When the throttle lever is put in the TO/GA (takeoff/go-around) detent position, the white icon turns green, indicating to the pilot that the ATTCS is armed. If the pilot disables the ATTCS function for takeoff, no indication appears on the EICAS.

Regardless of whether the ATTCS is enabled for takeoff, it is automatically enabled when the airplane reaches the end of the take-off phase (that is, the thrust lever is below the TO/GA position and the altitude is greater than 1,700 feet above the ground, 5 minutes have elapsed since lift-off, or the

airplane speed is greater than 140 knots).

During climb, cruise and descent, when the throttle is not in the TO/GA position, the ATTCS indication is inhibited. During descent and approach to land, until the thrust management system go-around mode is enabled—either by crew action or automatically when the landing gear are down and locked and flaps are extended—the ATTCS indication remains inhibited.

When the go-around thrust mode is enabled, unless the ATTCS system has failed, the white "ATTCS" icon will again be shown on the EICAS, indicating to the pilot that the system is enabled and in an operative condition in the event a go-around is necessary. If the thrust lever is subsequently placed in the TO/GA position, the ATTCS icon turns green, indicating that the system is armed and ready to operate.

If an engine fails during the go-around or during a one-engine-inoperative go-around in which an engine had been shut down or otherwise made inoperative earlier in the flight, the EICAS indication will be GA RSV (go-around reserve) when the thrust levers are placed in the TO/GA position. The GA RSV indication means that the maximum go-around thrust under the ambient conditions has been commanded.

These special conditions would require a showing of compliance with the provisions of § 25.904 and Appendix I applicable to the approach climb and go-around maneuvers.

The definition of a critical time interval for the approach climb case is of primary importance. During this time it must be extremely improbable to violate a flight path derived from the gradient requirement of § 25.121(d). That gradient requirement implies a minimum one-engine-inoperative flight path with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

Applicability

As discussed above, these special conditions are applicable to the Embraer Model ERJ–170 series airplanes. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Conclusion

This action affects only certain novel or unusual design features on the Embraer Model ERJ–170 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Embraer Model ERJ–170 series airplanes.

Electronic Flight Control System

In addition to compliance with §§ 25.143, 25.671 and 25.672, when a flight condition exists where, without being commanded by the crew, control surfaces are coming so close to their limits that return to the normal flight envelope and (or) continuation of safe flight requires a specific crew action, a suitable flight control position annunciation shall be provided to the crew, unless other existing indications are found adequate or sufficient to prompt that action. Note: The term suitable also indicates an appropriate balance between nuisance and necessary operation.

Automatic Takeoff Thrust Control System (ATTCS)

To use the thrust provided by the ATTCS to determine the approach climb performance limitations, the Embraer Model ERJ–170 series airplane must comply with the requirements of § 25.904 and Appendix I, including the following requirements pertaining to the go-around phase of flight:

1. Definitions.

(a) *TOGA—(Take Off/Go-Around).* Throttle lever in takeoff or go-around position.

(b) *Automatic Takeoff Thrust Control System—(ATTCS).* The Embraer Model ERJ–170 series ATTCS is defined as the entire automatic system available in takeoff when selected by the pilot and always in go-around mode; including all devices, both mechanical and electrical, that sense engine failure, transmit signals, and actuate fuel controls or power levers or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and to furnish cockpit information on system operation.

(c) *Critical Time Interval.* The definition of the Critical Time Interval in appendix I, § I25.2(b) shall be expanded to include the following:

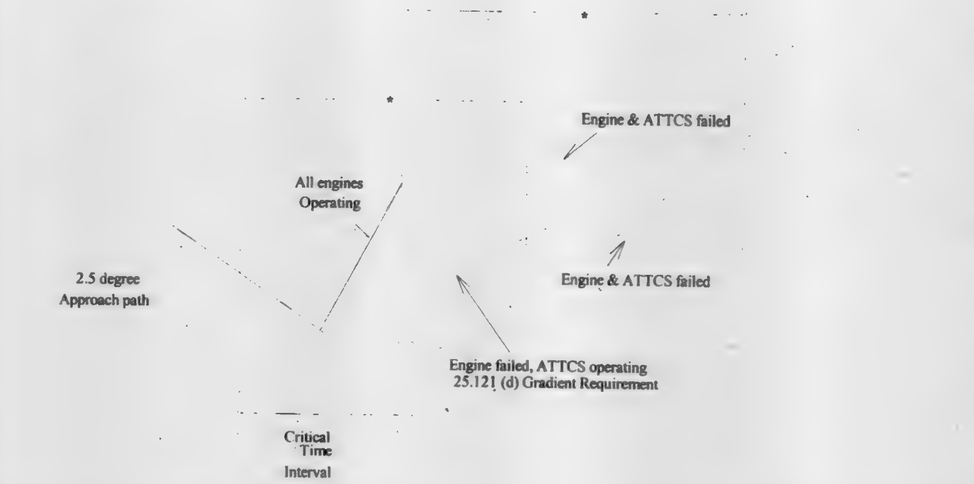
(1) When conducting an approach for landing using ATTCS, the critical time interval is defined as 120 seconds. A shorter time interval may be used if justified by a rational analysis. An accepted analysis that has been used on past aircraft certification programs is as follows:

(i) The critical time interval *begins* at a point on a 2.5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding to the part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff, beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(ii) The critical time interval *ends* at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the part 25 minimum one-engine-inoperative approach-climb-gradient. The all-engines-operating go-around flight path and the part 25 one-engine-inoperative, approach-climb-gradient flight path originate from a common point on a 2.5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the Airplane Flight Manual (AFM).

(3) The critical time interval is illustrated in the following figure:



The engine and ATTCS failed time interval must be no shorter than the time interval from the point of simultaneous engine and ATTCS failure to a height of 400 feet used to comply with I25.2(b) for ATTCS use during takeoff.

2. Performance and System Reliability Requirements.

The applicant must comply with the following performance and ATTCS reliability requirements:

(a) An ATTCS failure or combination of failures in the ATTCS during the critical time interval:

(1) Shall not prevent the insertion of the maximum approved go-around thrust or power or must be shown to be an improbable event.

(2) Shall not result in a significant loss or reduction in thrust or power or must be shown to be an extremely improbable event.

(b) The concurrent existence of an ATTCS failure and an engine failure during the critical time interval must be shown to be extremely improbable.

(c) All applicable performance requirements of Part 25 must be met with an engine failure occurring at the most critical point during go-around with the ATTCS system functioning.

(d) The probability analysis must include consideration of ATTCS failure occurring after the time at which the flightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

3. Thrust Setting.

(a) The initial go-around thrust setting on each engine at the beginning of the go-around phase may not be less than any of the following:

(1) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

(2) That shown to be free of hazardous engine response characteristics when thrust or power is advanced from the initial go-around position to the maximum approved power setting.

(b) For approval of an ATTCS system for go-around, the thrust setting procedure must be the same for go-arounds initiated with all engines operating as for go-arounds initiated with one engine inoperative.

4. Powerplant Controls.

(a) In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety.

(b) The ATTCS must be designed to accomplish the following:

(1) Following any single engine failure during go around: Apply thrust or power on the operating engine(s) to achieve the maximum approved go-around thrust without exceeding engine operating limits;

(2) Permit manual decrease or increase in thrust or power up to the maximum go-around thrust approved for the airplane under existing conditions through the use of the power lever. For airplanes equipped with limiters that automatically prevent engine operating limits from being exceeded under existing ambient conditions, other means may be used to increase the thrust in the event of an ATTCS failure. Any such means must be located on or forward of the power levers; be easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and meet the requirements of § 25.777 (a), (b), and (c);

(3) Provide a means to verify to the flightcrew before beginning an approach for landing that the ATTCS is in a condition to operate (unless it can be demonstrated that an ATTCS failure combined with an engine failure during an entire flight is extremely improbable); and

(4) Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

5. In addition to the requirements of § 25.1305, the following requirements pertaining to powerplant instruments must be met:

(a) A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

(b) If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during go-around.

Issued in Renton, Washington, on April 14, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–10045 Filed 4–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–01–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D–7R4 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD) that is applicable to Pratt & Whitney (PW) JT9D–7R4 series turbofan engines. That AD currently requires modifications of the fan case assembly by installing a thicker one-piece fan case shield, and modifications of the outer front fan exit case assembly by installing ring segments. This proposal would require on JT9D–7R4 series turbofan engines with steel fan cases, replacement of the existing one-piece fan case shield with a thicker four-piece fan case shield and would add four fan case shield supports. This proposal is prompted by two uncontained full fan blade fracture events that resulted in penetration of the steel fan case and fan case shield. The actions specified by the proposed AD are intended to prevent uncontained fan blade failures, resulting in damage to the airplane.

DATES: Comments must be received by June 23, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–01–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NE–01–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–01–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On August 3, 1989, the FAA issued airworthiness directive (AD) 87–23–05R1, Amendment 39–6296 (55 FR 5594, February 16, 1990), to mandate the incorporation of a thicker fan case shield for all JT9D–7R4 series turbofan engine fan cases, before December 31, 1990. That action was prompted by reports of failed fan blades that penetrated the fan case shield after penetrating the fan case. Engines with fan cases made of titanium do not require thicker fan case shields because the titanium fan case and existing shield contains failed blades, and therefore are not affected by this proposal.

Since that AD was issued, two reports of uncontained fan blade failures that penetrated fan case shields were received, in November 1991 and June 2000. Subsequent ground inspections revealed that in each event a fan blade fractured in the root of the blade airfoil, and exited the engine through the fan case shield. These two uncontained engine failures have shown that the thicker fan case shield mandated by AD 87–23–05R1 is insufficient for containing failed fan blades on engines with steel fan cases. This condition, if not corrected, could result in uncontained fan blade failures, resulting in damage to the airplane.

FAA's Determination of an Unsafe Condition and Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other PW JT9D–7R4 series turbofan engines of the same type design, the proposed AD would supersede AD 87–23–05R1 to require on engines with steel fan cases, replacing existing fan case shields with thicker four-piece fan case shields, and adding fan case shield supports.

Economic Analysis

There are approximately 309 JT9D–7R4 series turbofan engines with steel fan cases, of the affected design in the worldwide fleet. The FAA estimates that 155 engines installed on PW JT9D–7R4 series turbofan engines of U.S. registry would be affected by this proposed AD. The FAA also estimates that it would take approximately 16.6 work hours per engine to perform the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,675 per engine. Based on these figures, the total cost of the proposed AD to U.S. operators is estimated to be $724,005.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator; the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–6296, (55 FR 5594, February 16, 1990), and by adding a new airworthiness directive:

Pratt & Whitney: Docket No. 2003–NE–01–AD.

Applicability: This airworthiness directive (AD) is applicable to Pratt & Whitney (PW) JT9D–7R4D, –7R4D1, –7R4E, –7R4E1, –7R4E4, –7R4G2, and –7R4H1 turbofan engines with steel fan cases. These engines are installed on, but not limited to Airbus Industrie A300 and A310, and Boeing 747 and 767 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Compliance with this AD is required at the next engine overhaul where access to the fan case aft containment area is available, but no later than December 31, 2012, unless already done.

To prevent uncontained fan blade failures, resulting in damage to the airplane, do the following:

(a) For PW JT9D–7R4D, –7R4D1, –7R4E, –7R4E1, –7R4E4, and –7R4H1 turbofan engines with steel fan cases that have PW service bulletin (SB) 72–312 incorporated, replace fan case shield part number (P/N) 802095 with the four-piece fan case shield and install four fan case shield supports. Information on replacing fan case shields and installing fan case shield supports can be found PW SB JT9D–7R4–72–583, dated December 12, 2002.

(b) For PW JT9D–7R4G2 turbofan engines with steel fan cases that have PW SB 72–88 and PW SB 72–311 incorporated, replace fan case shield P/N 802094 with the four-piece fan case shield and install four fan case shield supports. Information on replacing fan case shields and installing fan case shield supports can be found in Part A of PW SB JT9D–7R4–72–584, dated December 12, 2002.

(c) For PW JT9D–7R4G2 turbofan engines with steel fan cases that do not have PW SB 72–88 incorporated, but have PW SB 72–311 incorporated, replace fan case shield P/N 802094 with the four-piece fan case shield and install four fan case shield supports. Information on replacing fan case shields and installing fan case shield supports can be found in Part B of PW SB JT9D–7R4–72–584, dated December 12, 2002.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Issued in Burlington, Massachusetts, on April 17, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–9984 Filed 4–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–51–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would apply to all Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. The earlier NPRM would have required you to repetitively replace the nose landing gear (NLG) drag link right-hand part every 4,000 landings until an improved design NLG drag link right-hand part is installed. This earlier proposed AD would also have required you to install an improved design NLG drag link right-hand part as terminating action for the repetitive replacements. The earlier NPRM resulted from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The manufacturer has established a more restrictive factor that is a better approximation of the fleet usage. Since this action imposes an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on this additional action.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before June 2, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–51–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–51–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Work 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–51–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Federal Office for Civil Aviation (FOCA), which is the airworthiness authority for Switzerland, recently notified FAA that an unsafe condition may exist on certain Pilatus Models PC–12 and PC–12/45 airplanes. The FOCA reports that 3 aircraft experienced a failure of the nose landing gear (NLG) drag link assembly during cruise flight. The actuator attachment levers on the right-hand upper drag link part failed. In all cases, the NLG fell out due to gravity, and the emergency spring pack extended it forward and allowed safe landings

What are the consequences if the condition is not corrected? Structural failure of the NLG drag link right-hand part could result in either an unintended NLG extension during flight or the NLG not properly locking upon extension. This could lead to loss of airplane control during landing operations.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Pilatus Models PC–12 and PC–12/45 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on December 18, 2002 (67 FR 77442). The NPRM proposed to require you to repetitively replace the nose landing gear (NLG) drag link right-hand part every 4,000 landings until an improved design NLG drag link right-hand part is installed. The NPRM also proposed to require you to install an improved design NLG drag link right-hand part as terminating action for the repetitive replacements.

You would have to accomplish the proposed actions in accordance with Service Bulletin No. 32–014, dated August 13, 2002.

Comment Issue No. 1: Landings Factor

What is the commenter's concern? The commenter requests correction of the proposed unknown landings factor (multiply time-in-service (TIS) by 0.5). The commenter explains that Pilatus has established for the Model PC–12 a factor of 45 minutes per landing (TIS divided by 0.75). Pilatus published this factor in Pilatus Aircraft Ltd. Service Bulletin 27–005, dated November 18, 1998, and the FOCA has approved this factor.

What is FAA's response to the concern? We concur with the commenter. Because revising this factor could increase the burden upon those owners/operators who do not keep track of landings, we will reopen the comment period and issue a supplemental NPRM.

Comment Issue No. 2: Correct Version of Temporary Revision No. 32–14

What is the commenter's concern? The commenter notes that there are two versions of Pilatus Maintenance Manual (MM) Temporary Revision No. 32–14, both dated June 4, 2002. However, neither is referenced differently, except that the older version has eight pages and the current version has seven pages. The current seven-paged version is the version that was forwarded by the FOCA. This current version shows revision bars on pages 4, 6, and 7. The commenter requests identifying Temporary Revision No. 32–14 with seven pages as the correct version to use for the AD.

What is FAA's response to the concern? We concur with the commenter and will note the correct version to use.

The Supplemental NPRM

How will the changes to the NPRM impact the public? The more restrictive unknown landings factor (0.75) goes beyond the scope of what was earlier proposed and imposes a greater burden on the public. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 265 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the proposed replacement with the same design part:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
6 workhours × $60 per hour = $360	$1,000	$1,360	$1,360 × 265 = $360,400.

We estimate the following costs to accomplish the proposed replacement with the improved design part:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
6 workhours × $60 per hour = $360	$2,200	$2,560	$2,560 × 265 = $678,400.

Compliance Time of This Proposed AD

What would be the compliance time of this proposed AD? The compliance time of this proposed AD is based on the number of landings rather than hours TIS.

Why is the compliance time of this proposed AD presented in landings? The reason for this type of compliance is that the area that is showing fatigue is the NLG drag link right-hand part. This area of the airplane is used during the landing operation. We have determined to base the compliance time for this proposed AD upon the number of landings.

Since airplane operators are not required to keep track of landings, we will provide a method of calculating hours TIS into landings.

Regulatory Impact

Would this proposed AD impact various entities? The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Pilatus Aircraft Ltd.: Docket No. 2002–CE–51–AD

(a) *What airplanes are affected by this AD?* This AD affects Models PC–12 and PC–12/45 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent structural failure of the nose landing gear (NLG) caused by fatigue damage to the NLG drag link right-hand part that develops over time. Such failure could result in either an unintended NLG extension during flight or the NLG not properly locking upon extension, which could lead to loss of airplane control during landing operations.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Replace the nose landing gear (NLG) drag link right hand part, part number (P/N) 532.20.12.140 with: (i) the same P/N 532.20.12.140 or FAA-approved equivalent part number; or (ii) improved design NLG drag link right-hand part, P/N 532.20.12.289.	Upon the accumulation of 4,000 landings on the nose landing gear (NLG) drag link right-hand part or within the next 100 landings after the effective date of this AD, whichever occurs later. Incorporation of the improved-design NLG drag link brace is terminating action for this AD.	In accordance with Temporary Revision No. 32–14 (dated June 4, 2002, use version having seven pages) to Pilatus PC–12 Maintenance Manual 32–20–06.
(2) If replacement in paragraph (d)(1) is with the original style part, replace with: (i) the same P/N 532.20.12.140 or FAA-approved equivalent part number; or (ii) improved design NLG drag link right-hand part, P/N 532.20.12.289.	Upon the accumulation of 4,000 landings. Incorporation of improved-design NLG drag link brace is terminating action for this AD.	In accordance with Temporary Revision No. 32–14 (dated June 4, 2002, use version having seven pages) to Pilatus PC–12 Maintenance Manual 32–20–06.
(3) Unless already accomplished per paragraph (d)(1) or (d)(2), replace the NLG drag link right-hand part, P/N 532.20.12.140, with an improved design NLG drag link right-hand part, P/N 532.20.12.289 or FAA-approved equivalent part number. Installing the improved part terminates the repetitive replacement requirements of paragraph (d)(2) of this AD.	At the third replacement required in paragraph (d)(2) of this AD.	In accordance with Pilatus Aircraft Ltd. Service Bulletin No. 32–014, dated August 13, 2002, and the applicable maintenance manual.

Actions	Compliance	Procedures
(4) Do not install, on any affected airplane, an NLG drag link right-hand part that is not P/N 532.20.12.289 or FAA-approved equivalent part number.	When an improved P/N 532.20.12.289 NLG drag link part is installed after the effective date of this AD.	Not Applicable.

(e) *What if I do not keep track of landings?* The compliance times of this AD are presented in landings instead of hours time-in-service (TIS). If landings are not known, hours TIS may be used by dividing the numbers of hours TIS by the unknown landings factor (0.75).

Note 1: For the purposes of this AD, 3,000 hours TIS would be equivalent to 4,000 landings (3,000 hours/0.75 = 4,000 landings).

(f) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.13. Send these requests to the Standards Office Manager, Small Airplane Directorate. Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090 for information on any already approved alternative methods of compliance.

(g) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Pilatus Aircraft Ltd., Customer Liaison Manager, CH–6371 Stans, Switzerland; telephone: +41 41 619 63 19; facsimile: +41 41 619 6224; or from Pilatus Business Aircraft Ltd., Product Support Department, 11755 Airport Way, Broomfield, Colorado 80021; telephone: (303) 465–9099; facsimile: (303) 465–6040. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Note 2: The subject of this AD is addressed in Swiss AD Number HB 2002–271, dated June 17, 2002.

Issued in Kansas City, Missouri, on April 15, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–9983 Filed 4–22–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR 7

The Negotiated Rule Making Advisory Committee for Off-Road Driving Regulations at Fire Island National Seashore; Notice of Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meetings of the Negotiated Rulemaking Committee.

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Negotiated Rule Making Advisory Committee for Off-Road Driving Regulations at Fire Island National Seashore (36 CFR 7.20)

DATES: The Committee members will meet on: Friday and Saturday May 9th and 10th, 2003.

The meetings will begin at 9 a.m. and will be held at Dowling College, Brookhaven Campus, New York.

Meetings will be held for the following reasons:

May 9, 2003—Friday

1. Discussion of proposed Agenda.
2. Discussion of Progress since Last Meeting.
3. Review of Proposed Draft Consensus Agreement.
4. Public Participation Period.
5. Adjournment.

May 10, 2003—Saturday

1. Continued Review of Draft Consensus Agreement.
2. Public Participation Period.
3. Vote on Draft Consensus Agreement.
4. Adjournment.

FOR FURTHER INFORMATION CONTACT: Superintendent, Fire Island National Seashore, 120 Lauren Street, Patchogue, New York 11772 (631) 289–4810 Ext. 225.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. It is expected that 25 persons will be able to attend the meeting in addition to the Committee members.

The Committee was established pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). The purpose of the Committee is to advise the National Park Service with regard to proposed rulemaking governing off-road vehicle use at Fire Island National Seashore.

Interested persons may make oral/written presentations to the Committee during the business meeting or file written statements. Such presentations may be made to the Committee during the public participation period the day of the meeting, or in writing to the Park Superintendent at least seven days prior to the meeting.

Barry Sullivan,

Acting Superintendent, Fire Island National Seashore.

[FR Doc. 03–10021 Filed 4–22–03; 8:45 am]

BILLING CODE 4310–70–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2002–4D]

Notice of Public Hearings: Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Amended Hearing Dates.

SUMMARY: The Copyright Office of the Library of Congress will be adding two new days of public hearings in Washington, DC on the possible exemptions to the prohibition against circumvention of technological measures that control access to copyrighted works and has cancelled two previously scheduled dates.

DATES: Public hearings will be held in Washington, DC on Thursday, May 1, 2003, beginning at 2 p.m. and on Friday, May 9, 2003, beginning at 9:30 a.m. Public hearings previously scheduled for April 15 and April 30, 2003, have been cancelled. *See* **SUPPLEMENTARY INFORMATION** for additional information.

ADDRESSES: The Washington, DC public hearings will be held at the Postal Rate Commission, 1333 H Street, NW., Third Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rob Kasunic, Senior Attorney, Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380; fax (202); e-mail *rkas@loc.gov*.

SUPPLEMENTARY INFORMATION: As previously announced, *see* Notice of Public Hearings, 68 FR 13652 (March 20, 2003), and Notice of Public Hearings, 68 FR 15972 (April 2, 2003),

the Copyright Office of the Library of Congress is conducting public hearings in connection with its rulemaking pursuant to section 1201(a)(1) of the Copyright Act, 17 U.S.C. 1201(a)(1), which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumventing a technological measure that controls access to a copyrighted work. For a more complete statement of the background and purpose of the rulemaking, please see Notice of Inquiry, 67 FR 63578 (October 15, 2002), and visit the Copyright Office's Web site at: *http://www.copyright.gov/1201/*.

The Office is modifying the schedule of public hearings. Hearings previously scheduled to take place in Washington, DC on April 15, 2003, and April 30, 2003, have been postponed and will now be held on May 1, 2003, at 2 p.m. and on May 9, 2003, at 9:30 a.m. Both hearings will be conducted at the Postal Rate Commission, 1333 H Street, NW., Third Floor, Washington, DC. A previously scheduled hearing will also be conducted at the Postal Rate Commission on May 2, 2003, at 9:30 a.m. As previously announced, hearings will also be conducted at the UCLA School of Law in Los Angeles, California on May 14–15, 2003, commencing at 9 a.m.

Dated: April 18, 2003.

David O. Carson,

General Counsel.

[FR Doc. 03–10039 Filed 4–22–03; 8:45 am]

BILLING CODE 1410–30–P

Notices

Federal Register
Vol. 68, No. 78
Wednesday, April 23, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Public Rights-of-Way Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Public Rights-of-Way Access Advisory Committee (Committee) to assist the Board in developing a proposed rule on accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. This document announces the next meeting of the technical assistance subcommittee of that Committee, which will be open to the public.

DATES: The meeting of the subcommittee is scheduled for May 4, 2003 (beginning at 2 p.m. and ending at 5 p.m.), May 5, 2003 (beginning at 9 a.m. and ending at 5 p.m.) and May 6, 2003 (beginning at 9 a.m. and ending at 12 noon).

ADDRESSES: The meeting will be held at the Great Lakes Disability and Business Technical Assistance Center, University of Illinois/Chicago, Department on Disability & Human Development, Room 168, 1640 West Roosevelt Road, Chicago, IL 60608.

FOR FURTHER INFORMATION CONTACT: Lois Thibault, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC, 20004–1111. Telephone number (202) 272–0023 (Voice); (202) 272–0082 (TTY). E-mail *thibault@access-board.gov*. This document is available in alternate formats (cassette tape, Braille, large print, or ASCII disk) upon request. This document is also available on the Board's Internet Site (*http://www.access-board.gov/prowmtg.htm*).

SUPPLEMENTARY INFORMATION: On October 20, 1999, the Architectural and Transportation Barriers Compliance Board (Access Board) published a notice appointing members to a Public Rights-of-Way Access Advisory Committee (Committee). 64 FR 56482 (October 20, 1999). The objectives of the Committee include providing recommendations for developing a proposed rule addressing accessibility guidelines for newly constructed and altered public rights-of-way covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968, recommendations regarding technical assistance issues, and guidance for best practices for alterations in the public rights-of-way.

On January 10, 2001, the Committee presented its recommendations on accessible public rights-of-way in a report entitled "Building a True Community". The report is available on the Access Board's Web site at *http://www.access-board.gov* or can be ordered by calling the Access Board at (800) 872–2253 (voice) or (800) 993–2822 (TTY).

At its June meeting, the technical assistance subcommittee will continue to address the development and format of technical assistance materials relating to public rights-of-way. The subcommittee meeting will be open to the public and interested persons can attend the meeting and participate on subcommittees of the Committee. All interested persons will have the opportunity to comment when the proposed accessibility guidelines for public rights-of-way are issued in the **Federal Register** by the Access Board.

Individuals who require sign language interpreters or real-time captioning systems should contact Lois Thibault by April 29, 2003. Notices of future meetings will be published in the **Federal Register**.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 03–10038 Filed 4–22–03; 8:45 am]

BILLING CODE 8150–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Interim Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information

AGENCY: Chemical Safety and Hazard Investigation Board.

ACTION: Notice of availability of guidelines and request for comments.

SUMMARY: The Chemical Safety and Hazard Investigation Board (CSB) announces that its Interim Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the agency have been posted on the CSB Web site, *http://www.csb.gov*. The CSB invites public comments on its interim Guidelines and will consider the comments received in developing its final Guidelines.

DATES: The CSB must receive written comments on or before May 23, 2003.

ADDRESSES: Comments must be in writing and should be addressed to Christopher W. Warner, General Counsel, Chemical Safety and Hazard Investigation Board, 2175 K Street, NW., Suite C–100, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Christopher W. Warner, 202–261–7600.

SUPPLEMENTARY INFORMATION: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554) requires each Federal agency to publish guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of the information it disseminates. Agency guidelines must be based on government-wide guidelines issued by the Office of Management and Budget (OMB). In accordance with this statutory requirement and OMB instructions, the CSB has posted its interim Information Quality Guidelines on the agency Web site (*http://www.csb.gov*) and is publishing this notice of availability.

The Guidelines describe the CSB's procedures for ensuring the quality of information that it disseminates and the procedures by which an affected person or entity may obtain correction of information disseminated by the CSB that does not comply with the Guidelines. The CSB invites public comments on its interim Guidelines and will consider the comments received in developing its final Guidelines. Persons who cannot access the interim Guidelines through the Internet may request a paper copy by writing to the address listed in this notice.

(Authority: Sec. 515, Pub. L. 106–554; 114 Stat. 2763).

Dated: April 16, 2003.

Christopher W. Warner,

General Counsel.

[FR Doc. 03–9974 Filed 4–22–03; 8:45 am]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Quarterly Survey of State & Local Government Tax Revenues.

Form Number(s): F–71, F–72, F–73.

Agency Approval Number: 0607–0112.

Type of Request: Extension of a currently approved collection.

Burden: 5,911 hours.

Number of Respondents: 5,860.

Avg Hours Per Response: F–71 and F–73—15 minutes; F–72—30 minutes.

Needs and Uses: The Census Bureau seeks a three-year extension of the current Office of Management and Budget (OMB) approval of the Quarterly Survey of State and Local Tax Revenues. The Census Bureau conducts this survey to collect State and local government tax data for this long established data series. State & local tax collections, amounting to nearly $900 billion annually, constitute almost one-half of all governmental revenues.

Quarterly measurement of and reporting on these massive fund flows provide valuable insight into trends in the national economy and that of individual states. Information collected on the type and quantity of taxes collected gives comparative data on how the various levels of government fund their public sector obligations. These data are included in the quarterly estimates of National Income and Product developed by the Bureau of Economic Analysis (BEA) and are widely used by State revenue and tax officials, academicians, media representatives, and others.

The BEA, the Federal Reserve Board, the Department of Treasury, and others rely on these data to provide the most current information on the financial status of State and local governments. Legislators, policy makers, administrators, analysts, economists, and researchers use the data to monitor trends in public sector revenues. Journalists, teachers, and students use the data as well.

Tax collection data are used to measure economic activity for the nation as a whole, as well as for comparison among the various states. These data also are useful in comparing the mix of taxes employed by individual states, and in determining the revenue raising capacity of different types of states.

Affected Public: State, local or tribal government.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dhynek@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: April 17, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–9957 Filed 4–22–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Chemical Weapons Convention, Amendment to the Export Administration Regulations (End-Use Certificates and Advance Notifications and Annual Reports).

Agency Form Number: None.

OMB Approval Number: 0694–0117.

Type of Request: Extension of a currently approved collection of information.

Burden: 54 hours.

Average Time Per Response: 30 minutes per response.

Number of Respondents: 107 respondents.

Needs and Uses: The U.S. is under obligation by this international treaty to impose certain trade controls. States Parties may only export Schedule 1 chemicals to other States Parties, must provide advance notification of exports of any quantity of a Schedule 1 chemical, and must submit annual reports of exports of such chemicals during the previous calendar year. The Convention also requires that prior to the export of Schedule 2 or Schedule 3 chemicals to a non-States Party, the exporter obtain an End-Use Certificate issued by the government of the importing country.

Affected Public: Federal government, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information Officer (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: April 17, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–9958 Filed 4–22–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order.

SUMMARY: On March 19, 2003, the Department of Commerce ("the Department") published a notice of initiation and preliminary results of a changed circumstances review with the intent to revoke, in part, the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. *See Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review of the Antidumping Order and Intent to Revoke Order in Part*, 68 FR 13256 (March 19, 2003) ("*Initiation and Preliminary Results*"). In our *Initiation and Preliminary Results*, we gave interested parties an opportunity to comment; however, we did not receive any comments. We are now revoking this order, in part, with respect to the particular carbon steel flat products described below, based on the fact that domestic parties have expressed no interest in the continuation of the order with respect to these particular carbon steel flat products. The Department will instruct the U.S. Customs Service ("Customs") to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated below entered, or withdrawn from warehouse, for consumption on or after August 1, 1998, the day after the most recent time period that was subject to final results of an administrative review (08/01/97 - 07/31/98).

EFFECTIVE DATE: April 23, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Peter Mueller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3207, and (202) 482–5811, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 2003, Nippon Steel ("Nippon") requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, Nippon requested that the Department revoke the order with respect to imports meeting the following specifications: (1) Flat-rolled products (provided for in HTSUS subheading 7210.49.00), other than of high-strength steel, known as "ASE Iron Flash" and either: (A) having a base layer of zinc-based zinc-iron alloy applied by hot-dipping and a surface layer of iron-zinc alloy applied by electrolytic process, the weight of the coating and plating not over 40 percent by weight of zinc; or (B) two-layer-coated corrosion-resistant steel with a coating composed of (a) a base coating layer of zinc-based zinc-iron alloy by hot-dip galvanizing process, and (b) a surface coating layer of iron-zinc alloy by electro-galvanizing process, having an effective amount of zinc up to 40 percent by weight, and (2) corrosion resistant continuously annealed flat-rolled products, continuous cast, the foregoing with chemical composition (percent by weight): carbon not over 0.06 percent by weight, manganese 0.20 or more but not over 0.40, phosphorus not over 0.02, sulfur not over 0.023, silicon not over 0.03, aluminum 0.03 or more but not over 0.08, arsenic not over 0.02, copper not over 0.08 and nitrogen 0.003 or more but not over 0.008; and meeting the characteristics described below: (A) products with one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a two-layer coating composed of a base nickel-iron-diffused coating layer and a surface coating layer of annealed and softened pure nickel, with total coating thickness for both layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with scanning electron microscope (SEM) not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (B) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a four-layer coating composed of a base nickel-iron-diffused coating layer; with an inner middle coating layer of annealed and softened pure nickel, an outer middle surface coating layer of hard nickel and a topmost nickel-phosphorus-plated layer; with combined coating thickness for the four layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (C) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, luster-agent-added nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; or (D) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, pure nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length.

On February 13, 2003, domestic producers of the like product, Bethlehem Steel Corporation; National Steel Corporation; and United States Steel Corporation, informed the Department that they have no interest in the importation or sale of steel from Japan with these specialized characteristics. Subsequently, as noted above, we gave interested parties an opportunity to comment on the *Initiation and Preliminary Results*. We received no comments from interested parties.

New Scope Based on Changed Circumstances Review

The merchandise covered by this changed circumstances review is certain corrosion-resistant carbon steel flat products from Japan. This changed circumstances administrative review covers all manufacturers/exporters of carbon steel flat products meeting the specifications as noted above in the background section. The new scope of this order is as follows: the products covered by the antidumping duty order include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTSUS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this order are corrosion-resistant flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling") for example, products which have been beveled or rounded at the edges.

Excluded from this order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating.

Also excluded from this order are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness.

Also excluded from this order are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Also excluded from this order are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Also excluded from this order are carbon steel flat products measuring 1.84 millimeters in thickness and 43.6 millimeters or 16.1 millimeters in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are carbon steel flat products measuring 0.97 millimeters in thickness and 20 millimeters in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead alloy powder that is balance copper, 9% to 11% tin, 9% to 11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45% to 55% lead, 38% to 50% PTFE, 3% to 5% molybdenum disulfide and less than 2% other materials.

Also excluded from this order are doctor blades meeting the following specifications: carbon steel coil or strip, plated with nickel phosphorous, having a thickness of 0.1524 millimeters (0.006 inches), a width between 31.75 millimeters (1.25 inches) and 50.80 millimeters (2.00 inches), a core hardness between 580 to 630 HV, a surface hardness between 900 - 990 HV; the carbon steel coil or strip consists of the following elements identified in percentage by weight: 0.90% to 1.05% carbon; 0.15% to 0.35% silicon; 0.30% to 0.50% manganese; less than or equal to 0.03% of phosphorous; less than or equal to 0.006% of sulfur; other elements representing 0.24%; and the remainder of iron.

Also excluded from this order are products meeting the following specifications: carbon steel flat products measuring 1.64 millimeters in thickness and 19.5 millimeters in width consisting of carbon steel coil (SAE 1008) with a lining clad with an aluminum alloy that is balance aluminum; 10 to 15% tin; 1 to 3% lead; 0.7 to 1.3% copper; 1.8 to 3.5% silicon; 0.1 to 0.7% chromium, less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring 1.93 millimeters or 2.75 millimeters (0.076 inches or 0.108 inches) in thickness, 87.3 millimeters or 99 millimeters (3.437 inches or 3.900 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 0.3% antimony, 2.5% silicon, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, clad with aluminum, measuring 1.75 millimeters (0.069 inches) in thickness, 89 millimeters or 94 millimeters (3.500 inches or 3.700 inches) in width, with a low carbon steel back comprised of: carbon under 8%, manganese under 0.4%, phosphorous under 0.04%, and sulfur under 0.05%; clad with aluminum alloy comprised of: 0.7% copper, 12% tin, 1.7% lead, 2.5% silicon, 0.3% antimony, 1% maximum total other (including iron), and remainder aluminum.

Also excluded from this order are products meeting the following specifications: carbon steel coil or strip, measuring a minimum of and including 1.10mm to a maximum of and including 4.90mm in overall thickness, a minimum of and including 76.00mm to a maximum of and including 250.00mm in overall width, with a low carbon steel back comprised of: carbon under 0.10%, manganese under 0.40%, phosphorous under 0.04%, sulfur under 0.05%, and silicon under 0.05%; clad with aluminum alloy comprised of: under 2.51% copper, under 15.10% tin, and remainder aluminum as listed on the mill specification sheet.

Also excluded from this order are products meeting the following specifications: (1) Diffusion annealed,

non-alloy nickel-plated carbon products, with a substrate of cold-rolled battery grade sheet ("CRBG") with both sides of the CRBG initially electrolytically plated with pure, unalloyed nickel and subsequently annealed to create a diffusion between the nickel and iron substrate, with the nickel plated coating having a thickness of 0–5 microns per side with one side equaling at least 2 microns; and with the nickel carbon sheet having a thickness of from 0.004" (0.10mm) to 0.030" (0.762mm) and conforming to the following chemical specifications (%): C ≤ 0.08; Mn ≤ 0.45; P ≤ 0.02; S ≤ 0.02; Al ≤ 0.15; and Si ≤ 0.10; and the following physical specifications: Tensile = 65 KSI maximum; Yield = 32 - 55 KSI; Elongation = 18% minimum (aim 34%); Hardness = 85 - 150 Vickers; Grain Type = Equiaxed or Pancake; Grain Size (ASTM) = 7–12; Delta r value = aim less than +/- 0.2; Lankford value = ≥ 1.2.; and (2) next generation diffusion-annealed nickel plate meeting the following specifications: (a) nickel-graphite plated, diffusion annealed, tin-nickel plated carbon products, with a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed tin-nickel plated carbon steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of mixture of natural nickel and graphite then electrolytically plated on the top side of the strip of the nickel-tin alloy; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers, nickel-graphite layer only > 0.2 micrometers, and bottom side: nickel layer ≥ 1.0 micrometers; (b) nickel-graphite, diffusion annealed, nickel plated carbon products, having a natural composition mixture of nickel and graphite electrolytically plated to the top side of diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; with both sides of the cold rolled base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion between the nickel and the iron substrate; with an additional layer of natural nickel-graphite then electrolytically plated on the top side of the strip of the nickel plated steel strip; with the nickel-graphite, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having a coating thickness: top side: nickel-graphite, tin-nickel layer ≥ 1.0 micrometers; nickel-graphite layer ≥ 0.5 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (c) diffusion annealed nickel-graphite plated products, which are cold-rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; having the bottom side of the base metal first electrolytically plated with natural nickel, and the top side of the strip then plated with a nickel-graphite composition; with the strip then annealed to create a diffusion of the nickel-graphite and the iron substrate on the bottom side; with the nickel-graphite and nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling, or any other evidence of separation; having coating thickness: top side: nickel-graphite layer ≥ 1.0 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; (d) nickel-phosphorous plated diffusion annealed nickel plated carbon product, having a natural composition mixture of nickel and phosphorus electrolytically plated to the top side of a diffusion annealed nickel plated steel strip with a cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the base metal initially electrolytically plated with natural nickel, and the material then annealed to create a diffusion of the nickel and iron substrate; another layer of the natural nickel-phosphorous then electrolytically plated on the top side of the nickel plated steel strip; with the nickel-phosphorous, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-phosphorous, nickel layer ≥ 1.0 micrometers; nickel-phosphorous layer ≥ 0.1 micrometers; bottom side : nickel layer ≥ 1.0 micrometers; (e) diffusion annealed, tin-nickel plated products, electrolytically plated with natural nickel to the top side of a diffusion annealed tin-nickel plated cold rolled or tin mill black plate base metal conforming to the chemical requirements based on AISI 1006; with both sides of the cold rolled strip initially electrolytically plated with natural nickel, with the top side of the nickel plated strip electrolytically plated with tin and then annealed to create a diffusion between the nickel and tin layers in which a nickel-tin alloy is created, and an additional layer of natural nickel then electrolytically plated on the top side of the strip of the nickel-tin alloy; sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having coating thickness: top side: nickel-tin-nickel combination layer ≥ 1.0 micrometers; tin layer only ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometers; and (f) tin mill products for battery containers, tin and nickel plated on a cold rolled or tin mill black plate base metal conforming to chemical requirements based on AISI 1006; having both sides of the cold rolled substrate electrolytically plated with natural nickel; then annealed to create a diffusion of the nickel and iron substrate; then an additional layer of natural tin electrolytically plated on the top side; and again annealed to create a diffusion of the tin and nickel alloys; with the tin-nickel, nickel plated material sufficiently ductile and adherent to the substrate to permit forming without cracking, flaking, peeling or any other evidence of separation; having a coating thickness: top side: nickel-tin layer ≥ 1 micrometer; tin layer alone ≥ 0.05 micrometers; bottom side: nickel layer ≥ 1.0 micrometer.

Also excluded from this order are products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of phosphate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of phosphate, and finally a layer consisting of silicate.

Also excluded from this order are products meeting the following specifications: (1) Flat-rolled products (provided for in HTSUS subheading 7210.49.00), other than of high-strength steel, known as "ASE Iron Flash" and either: (A) having a base layer of zinc-based zinc-iron alloy applied by hot-dipping and a surface layer of iron-zinc alloy applied by electrolytic process, the weight of the coating and plating not over 40 percent by weight of zinc; or (B) two-layer-coated corrosion-resistant steel with a coating composed of (a) a base coating layer of zinc-based zinc-iron alloy by hot-dip galvanizing process, and (b) a surface coating layer of iron-zinc alloy by electro-galvanizing process, having an effective amount of zinc up to 40 percent by weight, and (2) corrosion resistant continuously annealed flat-rolled products, continuous cast, the foregoing with chemical composition (percent by weight): carbon not over 0.06 percent by weight, manganese 0.20 or more but not over 0.40, phosphorus not over 0.02, sulfur not over 0.023, silicon not over 0.03, aluminum 0.03 or more but not over 0.08, arsenic not over 0.02, copper not over 0.08 and nitrogen 0.003 or more but not over 0.008; and meeting the characteristics described below: (A) Products with one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a two-layer coating composed of a base nickel-iron-diffused coating layer and a surface coating layer of annealed and softened pure nickel, with total coating thickness for both layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with scanning electron microscope (SEM) not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (B) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a four-layer coating composed of a base nickel-iron-diffused coating layer; with an inner middle coating layer of annealed and softened pure nickel, an outer middle surface coating layer of hard nickel and a topmost nickel-phosphorus-plated layer; with combined coating thickness for the four layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; (C) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, luster-agent-added nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; with SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length; or (D) products having one side coated with a nickel-iron-diffused layer which is less than 1 micrometer in thickness and the other side coated with a three-layer coating composed of a base nickel-iron-diffused coating layer, with a middle coating layer of annealed and softened pure nickel and a surface coating layer of hard, pure nickel which is not heat-treated; with combined coating thickness for all three layers of more than 2 micrometers; surface roughness (RA-microns) 0.18 or less; SEM not revealing oxides greater than 1 micron; and inclusion groups or clusters shall not exceed 5 microns in length.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning carbon steel flat products, as described herein, constitutes changed circumstances sufficient to warrant partial revocation of this order. Also, no party commented on the *Initiation and Preliminary Results*. Therefore, the Department is partially revoking the order on certain corrosion-resistant carbon steel flat products from Japan with regard to products which meet the specifications detailed above, in accordance with sections 751(b) and (d) and 782(h) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 351.216(d) of the Department's regulations. The Department will instruct Customs to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above entered, or withdrawn from warehouse, for consumption on or after August 1, 1998, the day after the most recent time period that was subject to final results of an administrative review (08/01/97 - 07/31/98). The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of certain corrosion-resistant carbon steel flat products meeting the specifications indicated above, entered or withdrawn from warehouse, for consumption on or after August 1, 1998, in accordance with section 778 of the Act.

This notice serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.306 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216(e) and 351.222(g) of the Department's regulations.

Dated: April 16, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–10060 Filed 4–22–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Notice of Opportunity To Apply for Membership on the U.S. Travel and Tourism Promotion Advisory Board

AGENCY: International Trade Administration.

ACTION: Notice.

SUMMARY: The Department of Commerce is currently seeking applications for membership on the U.S. Travel and Tourism Promotion Advisory Board ("Board"). The purpose of the Board is to recommend to the Secretary of Commerce the appropriate coordinated activities with regards to funding for the Travel and Tourism Advertising and Promotional Campaign ("Campaign"). Pursuant to Pub. L. No. 108–7, Division B, section 210, the Secretary of Commerce shall in consultation with the private sector design, develop and implement an international advertising and promotional campaign, which seeks to encourage foreign individuals to travel to the United States for the purposes of engaging in tourism related activities.

SUPPLEMENTARY INFORMATION: The Board was established pursuant to the Department of Commerce and Related Agencies Appropriations Act, 2003, section 210 (Public Law 108–7), to advise the Secretary of Commerce on appropriate coordinated activities for funding under the Campaign. The Board shall function as an advisory committee in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, and Department of Commerce policies on Advisory Boards.

The Office of the Deputy Assistant Secretary for Service Industries,

Tourism and Finance is accepting applications for Board members. Members shall serve until the Board's charter expires on April 1, 2005. Members will be selected based on our judgement of the candidates' proven experience in promoting, developing, and implementing advertising and marketing programs for travel-related or tourism-related industries; or the candidates' proven abilities to manage tourism-related or other service-related organizations. Each Board member shall serve as the representative of a tourism-related "U.S. entity." However, for the purposes of eligibility, a U.S. entity shall be defined as a firm incorporated in the United States (or an unincorporated firm with its principal place of business in the United States) that is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if 50 percent plus one share of its stock (if a corporation, or a similar ownership interest of an unincorporated entity) is controlled, directly or indirectly, by non-U.S. citizens or non-U.S. entities. Priority may be given to chief executive officers or a similarly-situated officer of a tourism-related entity. Priority may also be given to individuals with international tourism marketing experience.

Officers or employees of state and regional tourism marketing entities are also eligible for consideration for Board membership. A state and regional tourism marketing entity, may include, but is not limited to, state government tourism office, state and/or local government supported tourism marketing entities, or multi-state tourism marketing entities. Again, priority may be given to chief executive officers or a similarly-situated officer.

Secondary selection criteria will ensure that the board has a balanced representation of the tourism-related industry in terms of point of view, demographics, geography and company size. The Board members will be selected on the basis of their experience and knowledge of the tourism industry. Members will serve at the discretion of the Secretary of Commerce.

Board members shall serve in a representative capacity presenting the views and interests of the particular tourism-related sector in which they operate. Board members are not special government employees, and will receive no compensation for their participation in Board activities. Members participating in Board meetings and events will be responsible for their travel, living and other personal expenses. Meetings will be held regularly, usually in Washington, DC. The first Board meeting has not yet been determined.

To be considered for membership, please provide the following: 1. Name and title of the individual requesting consideration. 2. A letter of recommendation containing a brief statement of why the applicant should be considered for membership on the Board. This recommendation should also include the applicant's tourism-related experience. 3. The applicant's personal resume. 4. An affirmative statement that the applicant is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended. 5. If a state or regional tourism marketing entity, the functions and responsibilities of the entity. 6. The company's size and ownership, product or service line and major markets in which the company operates.

ADDRESSES: Submit application information to Douglas B. Baker, Deputy Assistant Secretary for Service Industries, Tourism and Finance, U.S. Department of Commerce, Room 1128, Washington, DC 20230.

Deadline: All applications must be received by the Office of the Deputy Assistant Secretary for Service Industries, Tourism and Finance by close of business on May 12, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas B. Baker, (202) 482–5261.

Dated: April 17, 2003.

Helen Marano,

Director, Office of Travel & Tourism.

[FR Doc. 03–9956 Filed 4–22–03; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041703B]

Marine Mammals; File No. 981–1707

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application and notice of availability of draft environmental assessment.

SUMMARY: Notice is hereby given that Dr. Peter L. Tyack, Biology Department, Woods Hole Oceanographic Institution, Woods Hole, Massachusetts, 02543, has applied in due form for a permit to take various cetacean species for purposes of scientific research. A draft environmental assessment has been prepared on the proposed research and is available for comment.

DATES: Written or telefaxed comments must be received on or before May 23, 2003.

ADDRESSES: The application, draft environmental assessment, and related documents are available for review upon written request, by downloading from the internet, or by appointment in the following office(s):Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; www.nmfs.noaa.gov/prot_res;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard, Tammy Adams, or Steve Leathery, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal. Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).The applicant requests authorization for a five year permit to take various cetacean species, including endangered whales, in the North Atlantic (including the Gulf of Mexico) and Mediterranean Sea for scientific purposes related to the biology, foraging ecology, communication, and behavior of these animals. The research focuses on cetacean responses to anthropogenic sounds in the marine environment. Takes would include close approach, suction-cup tagging, and playbacks of high frequency whale-finding sonar, airgun sounds, and sperm whale codas. The permit application covers three research projects which use as their primary research method non-intrusive, suction-cup tagging with an advanced digital sound recording tag (DTAG). The DTAG can record what an animal hears and measure vocal, behavioral, and physiological responses to sound. Small fragments of sloughed skin found in the suction-cup of the DTAG after retrieval will be exported from field sites and imported for genetic analyses. The applicant seeks to test a whale-finding sonar developed by a North Atlantic Treaty Organization (NATO) undersea research lab in Italy. The sonar uses a non-directional sound source and a sophisticated directional receiver. This permit application covers research to test how well this whale finder detects whales in the Mediterranean Sea.

Project 1 will involve applying DTAGs to a variety of whale and dolphin species to study the baseline behavior of animals tagged throughout the North Atlantic. The endangered species that the applicant plans to tag are: humpback (*Megaptera novaeangliae*), sei (*Balaenoptera borealis*), fin (*Balaenoptera physalus*), blue (*Balaenoptera musculus*), and sperm (*Physeter macrocephalus*) whales. There are three main goals of Project 1: (1) to obtain continuous sampling of marine mammal vocal and motor behavior, (2) to determine correction factors that can be applied to visual sighting data to better estimate population and stock abundance, and (3) to serve as a control group for Projects 2 and 3, described below.

The goals of Project 2 are: (1) To validate the effectiveness of a high-frequency whale-finding sonar developed by a NATO research lab to detect marine mammals based on species, size, and orientation of the animal in the water, and (2) to determine what sound levels heard by an animal may cause a change in its behavior. Project 2 research will be conducted in the Mediterranean Sea and will focus on sperm whales, however, other species of whales such as fin and minke (*Balaenoptera acustostrata*) and dolphin species will also be tagged. For Project 2, DTAG-tagged animals will be exposed to sounds at received levels of 120–160 dB re 1 µPa rms for testing short sounds of a whale-finding sonar. Pre-recorded sperm whale vocalizations (codas) will also be transmitted to serve as control playbacks. Because monitoring techniques for loud operations such as rig removal and ship shock trials have typically consisted of visual observations and passive acoustic listening, and these methods are not 100 percent effective (e.g., at night, during poor weather, when animals are silent), there is a need for a more effective tool to detect the presence of marine mammals in the vicinity of such loud noises. This need for a detection tool has led to the development of low power, mid or high frequency sonars that can detect marine mammals within a range of 1–2 km. If found to be effective this whale-finding sonar could be used to search an area for marine mammals, similar to the sonar used to locate schools of fish. If animals are detected in the vicinity of a potentially harmful operation, such as an underwater explosion, the event could be halted until the animals are safely out of range.

In Project 3, the applicant will study the responses of tagged sperm whales to short impulses from airgun arrays in the Gulf of Mexico. Technological advances in the oil and gas industry are allowing exploration and drilling in much deeper waters than in the past, which may have an increased impact on deep diving marine mammals such as sperm whales. Most projections predict strong expansion of industry activities into deep waters of the Gulf of Mexico where sperm whales reside. The seismic industry uses arrays of airguns to direct sound energy downwards into geological strata below the seafloor. Because sperm whales spend most of their time below the surface it is not known how they react to the sounds of the seismic surveying. The applicant proposes to use the DTAG to study how likely sperm whales are to silence, move away, or show other disruption of behavior when they are exposed to impulse sounds from an airgun array versus natural control sounds. Animals will be exposed to airgun sounds at received levels no higher than 180 dB re 1 µPa rms. Sperm whale codas will serve as the control playbacks. This project will involve visual observations of surfacing sperm whales, passive acoustic tracking of diving sperm whales, and tagging sperm whales with DTAGs. Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application and the draft environmental assessment to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 18,2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–10072 Filed 4–22–03; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Public Field Hearing Concerning All-Terrain Vehicles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public field hearing.

SUMMARY: The Consumer Product Safety Commission ("CPSC" or "Commission") will conduct a public field hearing in Morgantown, West Virginia on June 5, 2003 to obtain information and views from the public concerning all-terrain vehicles ("ATVs"). The Commission conducted several field hearings on ATVs in 1985.

From 1997 to 2001 the estimated number of ATV-related injuries treated in hospital emergency rooms rose from 54,700 to 111,700 (a 104% increase). Deaths have also been increasing and the Commission staff has estimated that there were 547 deaths associated with the use of ATVs in 2000. From 1997 to 2001 the estimated number of ATV drivers rose from 12 million to 16.3 million (a 36% increase), the estimated total number of driving hours rose from 1575 million to 2364 million (a 50% increase), and the estimated number of ATVs rose from 4 million to 5.6 million (a 40% increase). None of the increases in these measures of exposure to the risk of operating ATVs accounts for the increases in the number of injuries during the same time period.

The Commission requests members of the public to participate in this hearing. The Commission is particularly interested in participation from users of ATVs (both recreational and occupational); persons who have been involved in accidents or have been injured while riding ATVs; state and local government officials or organizations involved with ATVs; medical professionals and emergency service providers; safety and design engineers; and manufacturers, distributors and dealers of ATVs.

DATES: The hearing will be held on June 5, 2003, beginning at 10 a.m. and will continue until 7 p.m. The Commission will recess for lunch on or about 12 noon. Requests to make oral presentations, and 10 copies of the text of the presentation, must be received by

the CPSC Office of the Secretary no later than May 29, 2003. Persons making presentations at the meeting should provide an additional 10 copies for dissemination on the date of the meeting. The Commission reserves the right to limit the number of persons who make presentations and the duration of their presentations. To prevent duplication in presentations, groups may be directed to designate a spokesperson.

Written submissions, in addition to, or instead of, an oral presentation may be sent to the address listed below and will be accepted until July 5, 2003.

ADDRESSES: The meeting will be held at West Virginia University, Health Sciences Campus, Robert C. Byrd Health Science Center, Medical Center Drive, Morgantown, WV 26506. Requests to make oral presentations, and texts of oral presentations should be captioned "ATV Hearing" and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Requests and texts of oral presentations may also be submitted by facsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the schedule for submission of requests to make oral presentations and submission of texts of oral presentations, contact Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833; fax (301) 504–0127; e-mail *rhammond@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

The question of ATV safety has been an issue of interest to the Commission since the 1980's. In 1985, the Commission held several hearings in locations around the country to solicit views from the public on how to address hazards posed by ATVs. In 1987, the Commission filed a lawsuit under section 12 of the Consumer Product Safety Act ("CPSA") to declare ATVs an imminently hazardous consumer product. 15 U.S.C. 2061(b)(1). The lawsuit was settled in 1988 by Consent Decrees between the Commission and ATV distributors that were effective for 10 years. The Consent Decrees contained provisions addressing both three-wheel and four-wheel ATVs. After the Consent Decrees expired, the Commission entered into "ATV Action Plans" with individual distributors who had been subject to the Consent Decrees and three other distributors who had entered into the market subsequently. Since the expiration of the Consent Decrees, the Commission has continued to gather information about ATV-related injuries and deaths. The Commission is interested in obtaining information and views from the public about ATV safety and ideas for approaches that may address ATV-related injuries and deaths.

The Commission is aware that the sales and size of ATVs have been increasing in recent years. The Commission's data indicate that between 1982 and 2001 there were reports of 4,541 ATV-related deaths. Of these deaths, 1,714 (or 38%) were to children under 16 years old. In the year 2001, there were 111,700 people taken to emergency rooms for ATV-related injuries, of which 34,800 were under 16 years old. The Commission staff completed a risk analysis earlier this year examining some of the factors and circumstances involved in ATV incidents. This risk analysis revealed a number of factors to be considered in determining why the numbers of injuries associated with ATV operation is increasing faster than the exposure to ATVs: (1) the increase in injuries has been greater to riders aged 16 and above, and (2) the increase in injuries associated with the use of ATVs with engine sizes 400cc and above has been greater than those associated with the use of ATVs with smaller engine sizes. In addition, the market for used ATVs appears to have grown significantly, in terms of gross numbers. The Commission is interested in learning whether these factors, a combination of them, or other factors, are causing ATV injuries to increase faster than ATV sales and use.

The Commission is concerned about the dramatic increase in ATV-related injuries and the continued increase in ATV-related deaths and believes that holding a hearing will provide an opportunity for the interested public to share their concerns about ATVs and ATV safety.

The Commission has a petition from the Consumer Federation of America and other groups (Petition CP–02–4/HP–02–1) requesting that the Commission ban the sale of adult-size four-wheel ATVs sold for the use of children under 16 years of age. The Commission requested and received written comments on the petition (67 FR 64353 and 67 FR 78776). These comments are posted on our Web site, *http://www.cpsc.gov*. This hearing will provide an additional opportunity for the public to express their views about this petition.

B. The Public Hearing

The purpose of the public hearing is to provide a forum for oral presentations concerning ATVs. Specifically, the Commission requests comments from interested stakeholders and citizens on the following areas of interest:

1. Local and state ATV use restrictions, regulations and licensing activities and their impact upon ATV safety.
2. Current ATV use patterns (recreational, industrial, agricultural, or other uses), and injuries and safety issues related to those specific uses.
3. Information from ATV owners and users regarding ATV use, safety issues, accidents and injuries, minimum riding and purchasing age requirements, and future government action.
4. Current local, state and industry safety efforts and training programs.
5. Information from ATV manufacturers and dealers regarding the availability and use of safety training for ATV purchasers, and ATV consumer purchasing patterns (age of purchasers, model type and size, experienced vs. inexperienced riders, etc.).
6. Whether factors such as the rider's age, ATV engine size, and/or the large used ATV sales market (or any other factors) have influenced the increase in injuries and deaths observed by the Commission staff during its recent ATV risk analysis study.
7. Whether there should be a performance standard for ATVs and what requirements related to safety should be included.

Participation in the hearing is open. See the DATES section of this notice for information on making requests to give oral presentations at the hearing and on making written submissions.

Dated: April 18, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–10046 Filed 4–22–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

The Joint Staff, National Defense University, Board of Visitors Meeting

AGENCY: National Defense University.

ACTION: Notice of open meeting.

SUMMARY: The President, National Defense University (NDU) has scheduled a meeting of the Board of Visitors (BOV).

DATES: The meeting will be held on April 28th and 29th 2003, from 13:00 to 16:00 on the 28th and continuing on the 29th from 08:30 to 14:30.

ADDRESSES: The Board will meet in Room 155, Marshall Hall, building 62, National Defense University, 300 5th Avenue, Fort McNair, Washington, DC 20319–5066.

FOR FURTHER INFORMATION CONTACT: NDU Deputy Chief Operations Officer & Deputy Chief of Staff, Mr. Michael Mann, National Defense University, Fort Lesley J. McNair, Washington, DC 20319–5066. To reserve seating space, interested persons should contact the NDU, POC Mr. Mann, at (202) 685–3903.

SUPPLEMENTARY INFORMATION: The agenda will address current and future teaching, research, and outreach issues for the National Defense University and its components. The meeting is open to the public however, space is limited and therefore will be allocated to observers on a first come, first served basis.

POC for outside interests is Mr. Michael Mann, BOV Executive Secretary at *mannm@ndu.edu* and/or (202) 685–3903.

Dated: April 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9963 Filed 4–22–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting date change.

SUMMARY: On Friday, February 7, 2003 (68 FR 6421), the Department of Defense announced closed meetings of the Defense Science Board (DSB) Task Force on Future Strategic Strike Forces. The meeting originally scheduled for June 18–19, 2003, has been moved to June 12–13, 2003. The meeting will be held at Strategic Analysis, Inc., 3601 Wilson Boulevard, Suite 600, Arlington, VA.

Dated: April 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9961 Filed 4–22–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting Date Change.

SUMMARY: On Wednesday, March 26, 2003 (68 FR 14598), the Department of Defense announced closed meetings of the Defense Science Board (DSB) Task Force on Enduring Freedom Lessons Learned. One of the meetings has been rescheduled from April 21, 2003, to April 23, 2003. The meeting will take place at the U.S. Transportation Command at Scott Air Force Base, IL.

Dated: April 16, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–9962 Filed 4–22–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 23, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 18, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Even Start Classroom Literacy Interventions and Outcomes (CLIO) Study.

Frequency: Semi-Annually.

Affected Public: Individuals or household; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 25,670.

Burden Hours: 16,631.

Abstract: CLIO will test the effectiveness of various enhanced family literacy interventions in promoting: (a) Literacy and other school readiness skills in low-income children; (b) parent literacy; and (c) parent involvement as teachers of their own child, especially in the area of early literacy.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2271. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information

Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–10042 Filed 4–22–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice DE–FG01–03ER03–21; Department of Energy Experimental Program To Stimulate Competitive Research (DOE/EPSCoR) Implementation Awards

AGENCY: U.S. Department of Energy.

ACTION: Notice inviting research applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), in keeping with its energy-related mission to assist in strengthening the Nation's scientific research enterprise through the support of science, engineering, and mathematics, announces its interest in receiving applications from eligible States for the support of the DOE/EPSCoR Program. The purpose of the DOE/EPSCoR Program is to enhance the capabilities of designated States to conduct nationally-competitive energy-related research and to develop science and engineering human resources in energy-related areas to meet current and future needs.

DATES: The deadline for receipt of formal applications is 4:30 p.m. E.S.T., September 23, 2003, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2004. No application will be accepted after this deadline.

ADDRESSES: Formal applications referencing Program Notice DE–FG01–03ER03–21 must be sent electronically by an authorized institutional business official through DOE's Industry Interactive Procurement System (IIPS) at: *http://e-center.doe.gov* (see also *http://www.sc.doe.gov/production/grants/grants.html).* IIPS provides for the posting of solicitations and receipt of applications in a paperless environment via the Internet. In order to submit applications through IIPS your business official will need to register at the IIPS Web site. The Office of Science will include attachments as part of this notice that provide the appropriate forms in PDF fillable format that are to be submitted through IIPS. IIPS offers the option of using multiple files—please limit submissions to one volume and one file if possible, with a maximum of no more than four files. Color images should be submitted in IIPS as a separate file in PDF format and identified as such. These images should be kept to a minimum due to the limitations of reproducing them. They should be numbered and referred to in the body of the technical scientific application as Color image 1, Color image 2, etc. Questions regarding the operation of IIPS may be E-mailed to the IIPS Help Desk at: *HelpDesk@pr.doe.gov,* or you may call the help desk at: (800) 683–0751. Further information on the use of IIPS by the Office of Science is available at: *http://www.sc.doe.gov/production/grants/grants.html.*

If you are unable to submit the application through IIPS, please contact the Grants and Contracts Division, Office of Science at: (301) 903–5212, in order to gain assistance for submission through IIPS or to receive special approval and instruction on how to submit printed applications.

FOR FURTHER INFORMATION CONTACT: Dr. Matesh N. Varma, DOE/EPSCoR Program Manager, Division of Materials Sciences and Engineering, SC–132, Germantown Building, Office of Science, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290. Telephone: (301) 903–3209; Fax: (301) 903–9513; E-Mail: *matesh.varma@science.doe.gov.*

SUPPLEMENTARY INFORMATION: To continue to enhance the competitiveness of states and territories identified for participation in the Experimental Program to Stimulate Competitive Research (EPSCoR) by the National Science Foundation (NSF), DOE has decided to again restrict eligibility to the following states and territory: Alabama, Alaska, Arkansas, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming, and the Commonwealth of Puerto Rico. An appropriate fiscal agent, acting on behalf of a state's EPSCoR Committee, may submit only two applications in response to this program notice. Each application is restricted to one research "cluster." A cluster is defined as a group of scientists working on a common scientific theme. It is the DOE/EPSCoR program policy to limit the Research Implementation Awards to one active award per state. Therefore, only those EPSCoR states that have: (1) Not received a previous DOE/EPSCoR Research Implementation Awards, (2) "graduated" their previously supported Research Implementation Awards research clusters or (3) received final funding for their Research Implementation Awards in Fiscal Year 2003, are eligible to apply for Fiscal Year 2004 funding. Thus, only the following states are eligible to apply under this notice: Alaska, Arkansas, Hawaii, Idaho, Louisiana, Maine, New Mexico, North Dakota, Oklahoma, South Carolina, South Dakota, and Wyoming. Awards issued under this Notice will provide funding for basic research, its coordination, and development of human resources in the state. The DOE/EPSCoR Research Implementation Awards should be used to improve the academic research infrastructure of key science and technology areas identified by the state's EPSCoR governing committee as critical to the development of state and institutional research and development capability. The state's strategy to develop and utilize the scientific and technological resources that reside in its research universities should be described in its DOE/EPSCoR Research Implementation Awards application. In preparation for submitting an application, the EPSCoR governing committee within each state is expected to have undertaken a comprehensive analysis of the strengths, weaknesses, and opportunities for development of its research institutions in support of overall state research and development objectives. Successful infrastructure improvement plans are likely to be those which are focused on one energy-related research area and which candidly represent the opportunities for enhanced academic R&D competitiveness, including the acquisition of sustained non-EPSCoR support. Most important, the state's infrastructure improvement strategy must have a high probability of realizing stated goals and objectives as judged by members of a DOE merit review panel. In all instances, performance milestones and a timetable for achieving such milestones are prerequisites for EPSCoR support. Priority will be given to applications that propose to develop new competitive research areas rather than those that propose to enhance or continue research areas that are already competitive. The DOE/EPSCoR Research Implementation Awards are not appropriate mechanisms to provide support for individual faculty science and technology research projects.

Program Funding

Subject to Congressional authorization and approval of funds in Fiscal Year 2004 DOE anticipates an estimated $1.0 million will be available for awards to fund collaborative research and human resource development in energy-related science and engineering disciplines. Approximately one to two awards are anticipated in Fiscal Year 2004 at a maximum award level of $750,000 per year for a period of three years. EPSCoR funding will not be provided to the national laboratories or non-designated EPSCoR states. Continuation funding for the awards will be contingent upon the availability of appropriated funds, progress of the research, and continuing program need. Renewal applications for implementation awards beyond the initial three-year period will be considered for an additional three years, subject to continuing meritorious performance and progress in the previous award periods, as well as the value added of the proposed effort and the availability of funds. As a tangible measure of an applicant's commitment to the objectives of the DOE/EPSCoR Program, cost sharing on a minimum one-to-one ratio is a requirement for the implementation grants. Therefore, each application submitted requesting support from DOE under this Notice must provide, from non-Federal funds, an amount equal to or greater than the amount awarded by DOE; *i.e.*, for every dollar provided by DOE, the recipient must provide a dollar or more from non-Federal sources for the project.

Applications

The DOE/EPSCoR Research Implementation Awards are open to the entire range of energy-related disciplines supported by the Department of Energy. Additional information on the DOE Research Programs is available at the following Web site addresses:

Department of Energy (General Information): http://www.energy.gov/.

Office of Science: http://www.science.doe.gov/feature/BES.htm.

Basic Energy Sciences: http://www.science.doe.gov/feature/BES.htm.

Biological and Environmental Research: http://www.science.doe.gov/.

Advanced Scientific Computing Research: http://www.science.doe.gov/feature/ASCR.htm.

Fusion Energy Sciences: http://www.science.doe.gov/feature/fes.htm.

High Energy and Nuclear Physics: http://www.science.doe.gov/feature/hep-hp.htm.

Office of Defense Programs: http://www.nnsa.doe.gov/.

Office of Energy Efficiency and Renewable Energy: http://www.eren.doe.gov.

Office of Fossil Energy: http://www.fe.doe.gov.

Office of Environmental Management: http://www.em.doe.gov.

Office of Civilian Radioactive Waste Management: http://www.rw.doe.gov.

Office of Nuclear Energy: http://www.ne.doe.gov.

Merit Review

Applications will be subjected to formal scientific merit review and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d).

1. Scientific and/or Technical Merit of the Project.
2. Appropriateness of the Proposed Method or Approach.
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources.
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed Research to the terms of the announcement and the agency's programmatic needs. Applications will also be reviewed by relevant program offices to determine the priority of research. Program offices will also be asked for their willingness to provide co-funding if a project is selected for approval. Note: External peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers will often be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution. All projects will be evaluated using the same criteria, regardless of the submitting institution.

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, national laboratories, industry, and nonprofit organizations. General information about the development and submission of applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures may be found in 10 CFR part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms are available via the World Wide Web at: *http://www.science.doe.gov/grants/.*

Specific guidance for the preparation of the DOE/EPSCoR Research Implementation applications may be found in the "Supplemental Information Guidelines" at Web site: *http://www.er.doe.gov/production/bes/EPSCoR/APPLI.HTM.* Because of program specific information required and the overall complexity of the applications, the format and guidance included in the "Supplemental Information Guidelines" supersedes that of the general instructions for the preparation of an application to the Office of Science.

The Catalog of Federal Domestic Assistance number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR part 605.

Issued in Washington, DC on April 14, 2003.

Ralph H. De Lorenzo,

Acting Associate Director of Science for Resource Management.

[FR Doc. 03–10019 Filed 4–22–03; 8:45 am]

BILLING CODE 6450–03–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, May 28, 2003, 1 p.m.–8:30 p.m.

ADDRESSES: Cities of Gold Hotel, Pojoaque, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1 p.m.—Call to Order by Ted Taylor, DDFO; Ray Lopez Welcome and Introductions by Jim Brannon, Board Chair; Approval of Agenda; Approval of March 19 Meeting Minutes
1:15 p.m.—Public Comment
1:30 p.m.—Board Business
A. Recruitment Update/Nominations to the Board
B. Report from Chairman Brannon
C. Report from DOE, Ted Taylor, DDFO
D. Report from Executive Director,

Menice S. Manzanares
E. New Business
2:30 p.m.—Break
2:45 p.m.—Reports from Committees
A. Community Outreach Committee, Debra Walsh
B. Monitoring and Surveillance Committee, Jim Brannon
C. Environmental Restoration Committee, Dr. Fran Berting
D. Waste Management Committee, Richard Gale
E. Budget Committee
4:30 p.m.—Amendment #4 to Bylaws (Second Reading)
A. Amendment adding to the "Functions" of the Board under Section II, Paragraph A, on Page 1
4:45 p.m.—Dinner Break
6 p.m.—Presentation by Secretary Ron Curry, New Mexico Environment Department
6:45 p.m.—Presentation by Dr. Paul Schumann, "LANL's Public Involvement Plan" Recommendation 2002–7 (Included in packet).
7:45 p.m. Break
8 p.m. Board Comment
8 p.m. Board Comment
8:15 p.m. Recap of Meeting
8:30 p.m. Adjourn

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http:www.nnmcab.org.*

Issued at Washington, DC, on April 17, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–10016 Filed 4–22–03; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an Annual Retreat of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, May 17, 2003, 8 a.m.–4 p.m.

ADDRESSES: Holiday Inn Don Fernando de Taos, 1005 Paseo del Pueblo Sur, Taos, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board (NNMCAB), 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: Review of FY 2003 NNMCAB work to date and accomplishments.
Presentations by DOE on current and emerging issues in the areas of:
- Environmental Restoration
- Waste Management
- Public Participation

Comments from Environmental Protection Agency (EPA) and the New Mexico Environment Department (NMED) and discussion by the Board
Break for Lunch
Presentations by DOE on major activities in these areas to be proposed in DOE baselines for FY 2004
Discussion by the Board's committees on issues and proposed activities
Development of preliminary NNMCAB Work Plans for FY 2004
Wrap up and Board Member comments
Public Comments

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org.*

Issued at Washington, DC, on April 15, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–10017 Filed 4–22–03; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the Federal Register.

DATES: Wednesday, May 14, 2003 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Purpose of the Meeting: The meeting presentation will feature a discussion of the U.S. Department of Energy's (DOE's) Depleted Uranium Hexafluoride (UF6) Cylinder Program at the East Tennessee Technology Park. The purpose of the program is to safely maintain the cylinders of depleted UF6 at the DOE East Tennessee Technology Park until transferred off-site for final disposition or conversion. The presentation will provide a brief history of the program and an update on activities, plans, regulatory milestones, and transportation issues.

Tentative Agenda:
- Discussion of the U.S. Department of Energy's (DOE's) Depleted Uranium Hexafluoride (UF6) Cylinder Program at the East Tennessee Technology Park.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, PO Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on April 17, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–10018 Filed 4–22–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket No. 03–06–NG, 03–09–NG, 03–10–NG, 01–52–N., et. al]

Transalta Chihuahua S.A. DE C.V., Meadwestvaco Corporation, Progas U.S.A. Inc., Boundary Gas, Inc. El Paso Production Oil & Gas Company, Usgen New England, Inc., El Paso Merchant Energy, L.P., Sempra Energy Trading Corp.; Orders Granting and Vacating Authority to Import and Export Natural Gas, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during March 2003, it issued Orders granting and vacating authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on April 8th, 2003.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS

Order No.	Date issued	Importer/Exporter Fe Docket No.	Import volume	Export volume	Comments
1855	3–03–03	TransAlta Chichuahua S.A. de C.V. 03–08–NG.	.....	36.135 Bcf	Export natural gas to Mexico, beginning on March 4, 2003 and extending through March 3, 2005.
1856	3–3–03	MeadWestvaco Corporation, 03–09–NG.	120 Bcf	.....	Import natural gas from Canada, beginning on March 10, 2003, and extending through March 9, 2005.
1857	3–17–03	ProGas U.S.A., Inc., 03–10–NG.	800 Bcf	200 Bcf	Import and export natural gas from and to Canada, beginning on April 1, 2003, and extending through March 31, 2005.
1714–A	3–19–03	Boundary Gas. Inc., 01–52–NG.	.....	.....	Vacate blanket import and export authority.
1858	3–20–03	El Paso Production Oil & Gas Company, 03–13–NG.	155 Bcf		Import and export up to a combined total of natural gas from and to Canada, beginning on April 1, 2003, and extending through March 31, 2005.

ORDERS GRANTING IMPORT/EXPORT AUTHORIZATIONS—Continued

Order No.	Date issued	Importer/Exporter Fe Docket No.	Import volume	Export volume	Comments
1859	3–20–03	USGen New England, Inc., 03–12–NG.	47.5 Bcf		Import and export up to a combined total of natural gas from and to Canada, beginning on March 20, 2003, and extending through March 19, 2005.
1780–A	3–21–03	El Paso Merchant Energy, L.P., 2–26–LNG.			Vacate long-term import authority.
1860	3–27–03	Sempra Energy Trading Corp., 03–11–NG.	300 Bcf	300 Bcf	Import and export up to a combined total of natural gas from and to Canada, and import and export up to a combined total of natural gas from and to Mexico, beginning on June 16, 2003, and extending through June 15, 2005.

[FR Doc. 03–10020 Filed 4–22–03; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–002]

Dauphin Island Gathering Partners; Notice of Negotiated Rates

April 17, 2003.

Take notice that on April 14, 2003, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below to become effective April 1, 2003. Dauphin Island states that these tariff sheets reflect changes to Maximum Daily Quantities (MDQ's) and a shipper name. In addition, a correction was made to one rate.

Thirteenth Revised Sheet No. 9
Tenth Revised Sheet No. 10

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 28, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–9992 Filed 4–22–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–059]

Gulf South Pipeline Company, LP; Notice of Negotiated Rate Filing

April 17, 2003.

Take notice that on April 11, 2003, Gulf South Pipeline Company, LP (Gulf South) filed with the Commission contracts between Gulf South and the following company for disclosure of a recently negotiated rate transaction. As shown on the contract, Gulf South requests an effective date of June 1, 2003.

Special negotiated rate between Gulf South Pipeline Company, LP and Calpine Central, LP, Contract Nos. 29048 and 29896.

Gulf South states that it has served copies of this filing upon all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 23, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–9993 Filed 4–22–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–040]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

April 17, 2003.

Take notice that on April 14, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Ninth Revised Sheet No. 15, with an effective date of April 12, 2003.

GTN states that this sheet is being filed to reflect the implementation of one Negotiated Rate Agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 28, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–9995 Filed 4–22–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–041]

PG&E Gas Transmission, Northwest Corporation; Notice of Negotiated Rates

April 17, 2003.

Take notice that on April 15, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1-A, Tenth Revised Sheet No. 15, with an effective date of April 15, 2003.

GTN states that this sheet is being filed to reflect the implementation of one Negotiated Rate Agreement.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 28, 2003.

Magalie R. Salas,
Secretary.
[FR Doc. 03–9996 Filed 4–22–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RT01–99–000, RT01–99–001, RT01–99–002, RT01–99–003, RT01–86–000, RT01–86–001, RT01–86–002, RT01–95–000, RT01–95–001, RT01–95–002, RT01–2–000, RT01–2–001, RT01–2–002, RT01–2–003, RT01–98–000, and RT02–3–000]

Regional Transmission Organizations, Bangor Hydro-Electric Company, et al., New York Independent System Operator, Inc., et al., PJM Interconnection, L.L.C., et al., PJM Interconnection, L.L.C., ISO New England, Inc. New York Independent System Operator, Inc.; Notice

April 17, 2003.

Take notice that PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England, Inc. have posted on their internet websites charts and information updating their progress on the resolution of ISO seams.

Any person desiring to file comments on this information should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such comments should be filed on or before the comment date. Comments may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: May 8, 2002.

Magalie R. Salas,
Secretary.
[FR Doc. 03–9997 Filed 4–22–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–026]

Questar Pipeline Company; Notice of Negotiated Rates

April 17, 2003.

Take notice that on April 14, 2003, Questar Pipeline Company's (Questar) tendered for filing a tariff filing to correct a contract quantity under a negotiated-rate contract for Dominion Exploration & Production, Inc.

Questar states that its negotiated-rate contract provisions were authorized by

Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.*, and that the Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers.

Questar states that it submits its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 issued January 31, 1996.

Questar further states that a copy of this filing has been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.314 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: April 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9994 Filed 4–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–118–000 and QF85–643–004]

Wilbur Power LLC; Notice of Application for Recertification as a Qualifying Cogeneration Facility, Request for Waiver of QF Operating and Efficiency Standards and Request for Expedited Treatment

April 17, 2003.

Take notice that on March 25, 2003, Wilbur Power LLC, filed with the Federal Energy Regulatory Commission (Commission) an Application for Recertification as a Qualifying Cogeneration Facility, Request for Waiver of QF Operating and Efficiency Standards, and Request for Expedited Treatment, pursuant to Sections 292.207(b) and 292.205(c) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

Wilbur Power LLC, states that the facility is a 49 MW, natural gas fired, topping-cycle cogeneration facility (the Facility) located in Antioch, California, and the Facility is interconnected with the electric system of Pacific Gas and Electric Company and power from the Facility will be sold to Pacific Gas and Electric Company.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: April 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9989 Filed 4–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

April 17, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 12432–000.

c. *Date filed:* January 17, 2003, supplemented March 24, 2003.

d. *Applicant:* Jeffery P. Comer and Jack Goodman.

e. *Name of Project:* Goodco Power Hydroelectric Project.

f. *Location:* The project would be located in Twin Falls County, Idaho, on an existing wastewater ditch supplied by irrigation flows and by seep streams. The irrigation water comes from the Low Line Canal, which conveys water diverted from the Snake River at Milner Dam.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Tom McCauley, PO Box 175, Buhl, ID 83316, (208) 308–5050.

i. *FERC Contact:* James Hunter, (202) 502–6086.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. Deadline for filing responsive documents: Pursuant to Section 4.34(b) of the Commission's Regulations, all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions concerning the application are to be filed with the Commission by May 19, 2003. All reply comments must be filed with the Commission by June 2, 2003.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Project:* The proposed project would consist of: (1) An existing 50 -foot-long, 25-foot-wide, 6-foot-deep concrete diversion structure adjacent to the wastewater ditch, (2) a 12-inch-diameter, one-half-mile-long pipeline, (3) a powerplant consisting of one or two generating units with a total installed capacity of 25 kilowatts, and (4) a discharge conduit returning flows to an irrigation lateral. The average annual generation would be 150 megawatt hours.

m. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits (P–12432) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov* . For TTY, call (202) 502–8659. A copy may also be obtained by calling the Applicant Contact.

n. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9990 Filed 4–22–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 17, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License to Remove Transmission lines and Related Electrical Equipment from the Project Boundary.

b. *Project No:* 2197–057.

c. *Date Filed:* December 10, 2002.

d. *Applicant:* Alcoa Power Generating Inc.

e. *Name of Project:* Yadkin.

f. *Location:* The project is located on the Yadkin River, in Stanley, Montgomery, Davidson, and Rowan Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Alcoa Power Generating Inc.(APGI), Yadkin Division, 293 NC 740 Hwy, PO Box 576, Badin, NC 28009–0576, (704) 422–5606.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Anumzziatta Purchiaroni at (202) 502–6191, or e-mail address: *anumzziatta.purchiaroni@ferc.gov.*

j. *Deadline for filing comments and or motions:* May 19, 2003.

k. *Description of Request:* APGI is proposing to remove: (a) Two single circuit 100-kV transmission lines, (0.3 mile-long each), that run into and out of the Tuckertown Development, (b) a single circuit 100-kV transmission line (15 miles long), that runs from the High Rock Development through the Tuckertown Development, and then continues to the Badin Works in Badin; and (c) related electrical and non-electrical equipment necessary for the operation of these lines. APGI asserts that these transmission facilities function as part of the integrated regional transmission system in the region carrying both Yadkin Project power and non-project power. In addition, APGI proposes to remove from the project certain telephone lines that run with the identified transmission

lines, because they have been replaced by the use of fiber optic cable.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–9991 Filed 4–22–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2003–0027, FRL–7488–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; State Laboratory Capacity and Capability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) will be forwarded to the Office of Management and Budget (OMB) for review and approval: State Laboratory Capacity and Capability (EPA ICR No. 2110.01). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below. EPA also solicits comment on its intention to seek an emergency clearance from OMB to begin collecting data from State Environmental Laboratories and select State Agriculture and State Public Health Laboratories.

DATES: Comments must be submitted on or before May 14, 2003. If EPA does not receive adverse comments on or before this date regarding EPA's request for emergency clearance, EPA intends to seek a 180-day emergency clearance from OMB to begin collecting information from State Laboratories.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Don Flattery, U.S. EPA, Office of Environmental Information (2810–A), 1200 Pennsylvania Ave, NW., Washington DC 20460. Phone: (202) 564–4677; fax (202) 501–1622; e-mail: *flattery.don@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number OEI–2003–0027, which is available for public viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 21 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to *oei.docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Environmental Information Docket, 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: State Laboratory Capacity and Capability, EPA ICR Number 2110.01. This is a request for a new information collection, and a notification that EPA will seek an emergency clearance from OMB to begin collecting information.

Abstract: In early 2003, EPA completed a compendium of Laboratory Capability and Capacity. The compendium, available to EPA's emergency response community and select managers and staff, is contained in a data base that allows queries based on analytical capabilities, instrumentation, special handling abilities and location. This useful information was developed through a survey issued to EPA's thirty-four fixed and two mobile laboratories. EPA has been asked by the Department of Homeland Security to pursue development of subsequent phases of this compendium to collect identical information from State laboratory sources. When complete, this information will result in a resource available to select State, local and federal entities involved in response to terrorist incidents involving unknown or suspected chemical, biological or radiological agents. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The one time public reporting and recordkeeping burden for this collection of information is estimated to average 4.0 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 50 States.

Estimated Number of Respondents: 100.

Frequency of Response: Two per State.

Estimated Total Annual Hour Burden: 400 hours.

Estimated Total Annual Cost: $30,000; includes $6,000 O&M costs and $0 capital and startup costs.

E. Ramona Trovato,

Deputy Assistant Administrator, Office of Environmental Information.

[FR Doc. 03–10164 Filed 4–22–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0004; FRL–7293–1]

Access to Confidential Business Information by Optimus Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized prime contractor Optimus Corporation and its subcontractor, Centerscope Technologies of 8601 Georgia Avenue, Silver Spring, MD access to information which has been submitted to EPA under sections 4, 5, 6, 7, and 12 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be Confidential Business Information (CBI).

DATES: Access to the confidential data submitted to EPA under sections 4, 5, 6, 7, and 12 of TSCA occurred as a result of an approved waiver dated March 31, 2003.

FOR FURTHER INFORMATION CONTACT: Barbara A. Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Documents?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0004. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include CBI or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to

access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

Under Contract number 68–W–03–034 Optimus Corporation and Centerscope Technologies, of 8601 Georgia Avenue, Silver Spring, MD will assist EPA in processing 12(b) export notices submitted under sections 4, 5, 6, 7, and 12 of TSCA and issuing notification letters to foreign governments.

In accordance with 40 CFR 2.306(j), EPA has determined that under Contract number 68–W–03–034, Optimus Corporation and Centerscope Technologies will require access to CBI submitted to EPA under sections 4, 5, 6, 7, and 12 of TSCA, to perform successfully the duties specified under the contract.

Optimus Corporation and Centerscope Technologies personnel were given access to information submitted to EPA under sections 4, 5, 6, 7, and 12 of TSCA. Some of the information may be claimed or determined to be CBI.

Optimus Corporation and Centerscope Technologies were granted a waiver March 31, 2003. This waiver was necessary to allow Optimus Corporation and Centerscope Technologies to assist the Office of Pollution Prevention and Toxics (OPPT) in the activities listed above.

EPA is issuing this notice to inform all submitters of information under sections 4, 5, 6, 7, and 12 of TSCA, that the Agency may provide Optimus Corporation and Centerscope Technologies access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at EPA Headquarters and Optimus Corporation's site at 801 Roeder Road, Suite 600, Silver Spring, MD. However, access will not occur at Optimus' Silver Spring, MD facility until after it has been inspected and approved for the storage of TSCA CBI.

Optimus Corporation and Centerscope Technologies personnel will be required to adhere to all provisions of EPA's "TSCA Confidential Business Information Security Manual."

Clearance for access to TSCA CBI under Contract number 68–W–03–034 may continue until March 31, 2008.

Optimus Corporation and Centerscope Technologies personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Confidential business information.

Dated: April 14, 2003.

Allan S. Abramson,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–9748 Filed 4–22–00; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0131; FRL–7302–9]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0131, must be received on or before May 23, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6742; e-mail address: mcneilly.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0131. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at http://www.epa.gov/edocket, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0131. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to opp-docket@epa.gov, Attention: Docket ID Number OPP–2003–0131. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0131.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2003–0131. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.ation Applications

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in any Previously Registered Products

1. *File Symbol*: 264–TIA. *Applicant*: Bayer CropScience, P.O. Box 12014 2TW Alexander Drive, Research Triangle Park, NC 27709. *Product Name*: HEC 480 SC Fungicide. Fungicide. *Active ingredient*: Fluoxastrobin at 40.3%. *Proposed classification/Use*: None. For use on peanuts, potato and tuber vegetables, leafy vegetables (non-brassica, petioles subgroup), fruiting vegetables, seed treatment (potato, peanut, and turf).

2. *File Symbol*: 264–TIT. *Applicant*: Bayer CropScience. *Product Name*: HEC 480 SC Fungicide. Fungicide. *Active ingredient*: Fluoxastrobin at 94.8%. *Proposed classification/Use*: None. For formulation purposes only.

3. *File Symbol*: 400–LRE. *Applicant*: Crompton Manufacturing Company, 74 Amity Road, Bethany, CT 06524–3402. *Product Name*: Ipconazole Technical. Fungicide. *Active ingredient*: Ipconazole at 97.4%. *Proposed classification/Use*: None. For formulation into end-use seed treatment products.

4. *File Symbol*: 7501–ROL. *Applicant*: Gustafson, LLC., 1400 Preston Road, Suite 400, Plano, TX 75093. *Product Name*: Vortex Seed Treatment Fungicide. Fungicide. *Active ingredient*: Ipconazole at 40.7%. *Proposed classification/Use*: None. For use on root and tuber vegetables, leafy vegetables (except brassica vegetables, brassica (cole) leafy vegetables, cucurbits, cereal grains, grass forage, grass fodder, grass hay, non-grass animal feeds, cotton, sunflower, mustard, rape, canola, ornamental flowers, and conifers.

5. *File Symbol*: 71049–R. *Applicant*: KIM-C1, LLC., 6333 East Liberty Ave., Fresno, CA 93727. *Product Name*: KT-30 Plant Growth Regulator. Plant Growth Regulator. *Active ingredient*: CPPU(*N*-(2-chloro-4-pyridinyl)-*N*-phenyl urea) at 98%. *Proposed classification/Use*: None. For use on grapes and kiwi.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 9, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–9747 Filed 4–22–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0049; FRL–7302–5]

Rodenticides; Availability of Preliminary Comparative Ecological Assessment; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA issued a notice in the **Federal Register** of January 29, 2003, concerning availability and public comment period on the Preliminary Comparative Ecological Assessment document for nine rodenticides, which included those addressed in the Reregistration Eligibility Decisions (REDs) for the rodenticide cluster (brodifacoum, bromadiolone, bromethalin, chlorophacinone, diphacinone, and zinc phosphide), as well as three other rodenticides, warfarin, difethialone, and cholecalciferol. This document is reopening the comment period for 60 days, from March 31, 2003, to May 30, 2003.

DATES: Comments, identified by docket ID number OPP–2002–0049 must be received on or before May 30, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** of the January 29, 2003 **Federal Register** document.

FOR FURTHER INFORMATION CONTACT: John W. Pates, Jr., Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703–308–8195; e-mail address: pates.john@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the **Federal Register** notice of January 29, 2003 (68 FR 4468) (FRL–7280–6), a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0049. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr/. In addition, copies of the preliminary comparative ecological assessment for the nine rodenticides may also be accessed at http://www.epa.gov/pesticides/rodenticidecluster.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at http://www.epa.gov/edocket/ to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

C. How and To Whom Do I Submit Comments?

To submit comments, or access the official public docket, please follow the detailed instructions as provided in Unit I.C. of the **Federal Register** of the January 29, 2003 document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

II. What Action is EPA Taking?

This document reopens the public comment period established in the **Federal Register** of January 29, 2003. In that document, EPA announced the availability of the preliminary comparative ecological assessment for nine rodenticides and invited comment on issues directly associated with the nine rodenticides that were included in the assessment. Due to the many requests received for additional time to comment, EPA is hereby reopening the comment period, which was set to end on March 31, 2003, to May 30, 2003.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: April 8, 2003.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–10070 Filed 4–22–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0129; FRL–7303–1]

Fluoxastrobin; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0129, must be received on or before May 23, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–6742; e-mail address: mcneilly.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0129. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at http://www.epa.gov/fedrgstr.

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1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 15, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer CropScience

PP 3F6556

EPA has received a pesticide petition (3F6556) from Bayer CropScience, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of fluoxastrobin; 2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl (5,6-dihydro-1,4,2-dioxazin-3-yl)methanone-O-methyloxime in or on the raw agricultural commodities (RACs) alfalfa, forage at 0.05 parts per million (ppm), alfalfa, hay at 1.0 ppm, cotton, gin byproducts at 0.02 ppm, grain, cereal, forage at 0.10 ppm, grain, cereal, hay at 0.10 ppm, grain, cereal, straw at 0.10 ppm, grain, cereal, stover at 0.10 ppm, grass, forage at 0.10 ppm, grass, hay at 0.50 ppm, legume, seed at 0.01 ppm, legume, forage at 0.05 ppm, legume, hay at 0.05 ppm, peanut at 0.01 ppm, peanut, hay at 20 ppm, peanut, refined oil at 0.10 ppm, tomato, paste at 2.0 ppm, vegetable, fruiting, group at 1.0 ppm, vegetable, leafy, petioles, except brassica, subgroup at 5.0 ppm, and vegetable, tuberous and corm, subgroup at 0.01 ppm. Fluoxastrobin; 2-[[6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinyl]oxy]phenyl (5,6-dihydro-1,4,2-dioxazin-3-yl)methanone-O-methyloxime, and its phenoxy-hydroxypyrimidine metabolite; 6-(2-chlorophenoxy)-5-fluoro-4-pyrimidinol in or on the RACs cattle, fat at 0.10 ppm, cattle, meat at 0.05 ppm, cattle, meat byproducts at 0.20 ppm, milk at 0.01 ppm, and milk, fat at 0.10 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of fluoxastrobin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabeled fluoxastrobin in peanut, tomato, spring wheat, and various representative rotational crops, all showing similar results. The residue of concern is parent fluoxastrobin (sum of E and Z isomers).

2. *Analytical method.* Adequate analytical methodology using liquid chromatography/mass spectrometer/mass spectromer (LC/MS/MS) detection is available for enforcement purposes.

3. *Magnitude of residues.* Complete residue data exists for fluoxastrobin on these crops and crop groupings. Magnitude of residue trials were conducted on peanut, potato, celery, tomato, pepper, and the rotational crops of alfalfa, cotton, cereal grains (corn, rice, sorghum and wheat), soybeans, other legume vegetables, and grasses. A cattle feeding study was performed in order to determine residues in meat and milk commodities. The data support the proposed tolerances.

B. Toxicological Profile

1. *Acute toxicity.* Oral and dermal lethal dose (LD_{50}) values were >2,000 milligrams/kilogram bodyweight (mg/kg) (bwt). Inhalation lethal concentrations (LC_{50}) values were >4,998 milligrams/meters (mg/m^3) air. Fluoxastrobin technical was not irritating to rabbit skin, was moderately irritating to eyes in rabbits, and was non-sensitizing dermally in the Magnusson/Kligman maximization test in guinea pigs. Acute toxicity studies for fluoxastrobin support an overall Toxicity Category III.

2. *Genotoxicity.* Several genotoxicity tests were conducted to test for point-mutagenic activity, chromosome aberration *in vitro* and *in vivo*, and for DNA repair. All tests conducted were negative, indicating no evidence of mutagenic or genotoxic potential.

3. *Reproductive and developmental toxicity.* An oral developmental toxicity study in rat did not reveal any evidence of teratogenic potential. The maternal no observed adverse effect level (NOAEL) was 300 mg/kg and the developmental NOAEL was 1,000 mg/kg bwt/day. An oral developmental toxicity study in rabbits demonstrated a maternal NOAEL of 25 mg/kg bwt/day, a developmental NOAEL of 100 mg/kg bwt/day and did not reveal any teratogenic potential. A 2-generation study in rats, with a parental toxicity NOAEL of 73.7 mg/kg bwt/day for males and 86.7 mg/kg bwt/day for females, did not reveal evidence of a primary reproductive toxicity potential. The reproductive NOAEL was 763.6 mg/kg bwt/day for males and 806.5 mg/kg bwt/day in females.

4. *Subchronic toxicity.* A subchronic toxicity feeding study with rats over 90 days demonstrated a NOAEL of 7.3 and 18.3 mg/kg bwt/day for males and females, respectively, based on reduced body weights and alterations in several urinary tract-related clinical chemistry parameters, at the higher dose levels. In a subchronic feeding study in mice over 14 weeks, a NOAEL was not established based on decreased alanine aminotransferase (ALAT) and increased absolute and relative liver weights at the low dose level (21.7 and 35.3 mg/kg bwt/day for males and females respectively). A 14-week feeding study in dogs demonstrated a NOAEL of 3.0 mg/kg bwt/day based on decreased body weights and food consumption, and liver effects (enzyme induction, increased liver weights, cytoplasmic change), and thyroid effects (decreased T3)

5. *Chronic toxicity.* A 24-month chronic/oncogenicity feeding study in rats demonstrated a NOAEL of 53.0 and 35.2 mg/kg bwt/day for males and females, respectively. An oncogenicity study in the mouse revealed a NOAEL of 18.5 and 29.5 mg/kg bwt/day for males and females, respectively based on liver effects. There was no indication in the rat or mouse for an oncogenic effect of fluoxastrobin. A 1-year feeding study with dogs demonstrated a NOAEL of 1.7 and 1.5 mg/kg bwt/day for males and females, respectively based on decreased body weights and slight liver effects (increased alkaline phosphatase (Aph) and liver weights).

6. *Animal metabolism.* Metabolism and pharmacokinetic studies in the rats, lactating goats, and laying hens demonstrate that fluoxastrobin residues are rapidly absorbed, metabolized, and eliminated. There was no evidence of accumulation of residues in any tissues or organs. The metabolic pattern was always complex and numerous metabolites were identified. The main metabolic reactions, however, are very comparable for all tested animal species and most metabolites were present at low levels. Based on the available metabolism data, fluoxastrobin and phenoxy-hydroxypyrimidine are the proposed residues of concern in animals.

7. *Metabolite toxicology.* The residues of concern are fluoxastrobin its

phenoxy-hydroxypyrimidine metabolite. This metabolite was investigated for acute oral toxicity and point mutagenic activity in a bacterial reverse mutation assay. The phenoxy-hydroxypyrimidine metabolite did not show mutagenic activity in the reverse mutation assay and the oral LD_{50} was >300 <500 mg/kg body weight.

8. *Endocrine disruption.* There is no evidence to suggest that fluoxastrobin has any primary endocrine disruptive potential. Reproductive and developmental findings provided no evidence of an enhanced sensitivity of the young.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* Acute and chronic dietary analyses were conducted to estimate exposure to potential fluoxastrobin residues in/on the following crops and crop groups: celery, fruiting vegetables, peanuts, and potatoes. Rotational crops included in the analysis are alfalfa, grasses, legume vegetables, foliage of legume vegetables, cereal grains, and cotton. Tier I analysis were conducted for both the acute and chronic scenarios using the Dietary Exposure Evaluation Model (DEEM) (Exponent, Inc.) software. The acute dietary exposure estimates at the 95th percentile of exposure for the U.S. population was 1.4% of the acute reference dose (RfD). The population subgroup with the highest exposure was children 1 to 6 at 2.7% of the acute RfD. Chronic dietary exposure estimates from potential residues of fluoxastrobin for the U.S. population was 6.5% of the chronic RfD. The subpopulation with the highest exposure was children 1 to 6 with 12.7% of the chronic RfD used. Tier I assessments use tolerance residue values and 100% crop treated. These can be considered very conservative values.

ii. *Drinking water.* EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was used to perform the drinking water analysis for fluoxastrobin. This SOP utilizes a variety of tools to conduct drinking water assessment. These tools include water models such as Screening Concentration in Groundwater (SCI-GROW), Generic Estimate Exposure Concentration (GENEEC), Pesticide Root Zone Model-Exposure Analysis Modeling Systems (PRZM/EXAMS), and monitoring data. If monitoring data are not available then the models are used to predict potential residues in surface water and ground water. In the case of fluoxastrobin, monitoring data do not exist, therefore, PRZMS/EXAMS and SCI-GROW models were used to estimate a drinking water residue. The calculated drinking water levels of comparison (DWLOC) for acute and chronic exposures for all adults and children exceed the modeled fluoxastrobin drinking water estimated concentrations (DWECs). The acute DWLOC values are 8,624 parts per billion (ppb) for adults and 2,433 ppb for children. The worst-case DWEC for acute scenarios is calculated to be 58 ppb using the PRZMS/EXAMS surface water model. The chronic DWLOC values are 491 ppb for adults and 131 ppb for children. The DWEC for the worst-case chronic scenario is 28 ppb PRZM/EXAMS.

2. *Non-dietary exposure.* Residential (non-dietary) exposure is limited to post-application exposure of fluoxastrobin from professional applications to residential turf and golf courses. Using the very conservative EPA SOPs for residential exposure a margin of exposure (MOE) of 7,143 was calculated for the youth golfer scenario. Adult and toddler reentry to treated turf MOEs were 784 and 468 respectively.

Aggregate exposure considers all exposures from food, drinking water, and residential uses together. Probabilistic models and methods as well as refined data for these scenarios are under development. In the interim, as a screening level analysis a worst-case deterministic calculation can be considered. For fluoxastrobin this would consist of a child (1 to 6) who has a chronic dietary exposure to potential residues in food and also plays on a maximally treated lawn (after 4 applications) on a particular day. The childs lawn exposure includes estimates of dermal exposure and oral exposure from hand to mouth, object to mouth and soil ingestion SOP scenarios. The childs estimated dose from the lawn exposure is 0.0194 mg/kg bwt/day. The child 1 to 6 chronic dietary exposure estimate is 0.001907 mg/kg bwt/day. The total dose for a child 1 to 6 with this worst-case exposure is 0.0213 mg/kg bwt/day or 8.5% of the acute RfD. The resulting aggregate acute DWLOC is 2,287 ppb still well above the acute DWEC of 58 ppb. Total adult exposure (average dietary and dermal lawn) is 0.004804 mg/kg bwt/day or 1.9% of the acute RfD. The resulting aggregate acute DWLOC for adults is 17,164 ppb.

D. Cumulative Effects

Fluoxastrobin is a novel strobilurin analog. Bayer will submit information, if necessary, for EPA to consider concerning potential cumulative effects of fluoxastrobin consistent with the schedule established by EPA in the **Federal Register** of August 4, 1997 (62 FR 42020) (FRL–5734–6), and other EPA publications pursuant to the Food Quality Protection Act (FQPA).

E. Safety Determination

1. *U.S. population.* Using the conservative assumptions described above, based on the completeness and reliability of the toxicity data it is concluded that aggregate exposure to the proposed uses of fluoxastrobin will utilize at most 1.9% of the RfD for the U.S. population, and is likely to be much less as more realistic data and models are developed. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. DWLOC based on this exposure are much greater than conservative estimated concentrations, and would be expected to be well below the 100% level, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to the U.S. population from aggregate exposure to fluoxastrobin.

2. *Infants and children.* Consideration of the toxicology data base as described above leads to no additional concerns for infants and children. Therefore the FQPA safety factor can be established at 1X. Using the conservative exposure assumptions described in the exposure section above, the percent of the RfD that will be used for short-term aggregate exposure to residues of fluoxastrobin will be 8.5% for children 1 to 6 (the most highly exposed sub-group). This value is based on a worst-case aggregate exposure calculation of a child 1 to 6 who has a background dietary exposure to potential residues and plays on a maximally treated lawn. As in the adult situation, DWLOC are much higher than the worst-case DWECs and would be expected to use well below 100% of the RfD, if they occur at all. Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of fluoxastrobin.

F. International Tolerances

Codex maximum residue levels are not yet established for fluoxastrobin.

[FR Doc. 03–9746 Filed 4–22–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0117; FRL–7301–9]

Experimental Use Permit; Receipt of Amendment/Extension Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application 52–EUP–93 from Monsanto Company requesting an amendment/extension of an experimental use permit (EUP) for the *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production (vector ZMIR13L) in corn. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting comments on this application.

DATES: Comments, identified by docket ID number OPP–2003–0117, must be received on or before May 23, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8715; e-mail address: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are interested in agricultural biotechnology or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

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6. Offer alternative ways to improve the notice.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

Monsanto has applied to test *Bacillus thuringiensis* Cry3Bb1 protein and the genetic material necessary for its production (vector ZMIR13L) in corn on 2,304 acres in Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Mexico, New York, Ohio, Oklahoma, Pennsylvania, Puerto Rico, South Dakota, Tennessee, Texas, Utah, Virginia, and Wisconsin for breeding and observation nursery, inbred seed increase production, line per se and hybrid yield, insect efficacy, product characterization and performance/labeling, insect resistance management, non-target organism and benefit, and seed treatment trials. This plant-incorporated protectant is being tested against corn rootworm species. The tolerance exemption under 40 CFR 180.1214 applies to this plant-incorporated protectant. A tolerance exemption in 40 CFR part 180 applies to the associated marker gene and its product, which the Agency considers a plant-incorporated protectant inert ingredient.

III. What Action is the Agency Taking?

Following the review of the Monsanto Company application and any comments and data received in response to this notice, EPA will decide whether to issue or deny the EUP request for this EUP program, and if issued, the conditions under which it is to be conducted. Any issuance of an EUP will be announced in the **Federal Register**.

IV. What is the Agency's Authority for Taking this Action?

The specific legal authority for EPA to take this action is under FIFRA section 5.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 11, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–10069 Filed 4–22–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7486–6]

Proposed Administrative Past Cost Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response Compensation and Liability Act; In the Matter of Ohio Drum Superfund Site, Cleveland, OH

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Ohio Drum Superfund Site ("the Site") in Cleveland, Ohio, with four companies: United States Steel, United States Gypsum, Waterlox Coatings Corporation, and Youngstown Barrel & Drum Company ("the settling parties"). The settlement requires United States Steel to pay $60,000.00 to the Hazardous Substance Superfund. United States Gypsum will pay $40,000.00 to the Hazardous Substance Superfund. Waterlox Coatings Corporation will pay $5000.00 to the Hazardous Substance Superfund. Youngstown Barrel & Drum Company will pay $25,000.00 to the Hazardous Substance Superfund.

Under the terms of the settlement, the settling parties agree to pay their respective settlement amounts. In exchange for their payments, the United States covenants not to sue or take administrative action pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), to recover costs that the United States paid in connection with the Site through February 1, 2003. In addition, the settling parties are entitled to protection from contribution actions or claims as provided by sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for response costs incurred by any person at the Site through February 1, 2003.

For thirty (30) days after the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

DATES: Comments must be submitted on or before May 23, 2003.

ADDRESSES: Comments should reference the Ohio Drum Superfund Site, Cleveland, Ohio, and EPA Docket No. V–W–03–C–738, and should be addressed to Mark Geall, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois, 60604, and at the Cleveland Public Library, Cleveland, Ohio. The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois, 60604. A copy of the proposed settlement may be obtained from Mark Geall, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 353–9538.

FOR FURTHER INFORMATION CONTACT: Mark Geall, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois, 60604, telephone (312) 353–9538.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42.U.S.C. 9601, *et seq.*

Dated: April 3, 2003.

William E. Muno,

Director, Superfund Division.

[FR Doc. 03–10068 Filed 4–22–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 03–11; FCC 03–81]

Application by Qwest Communications International, Inc. for Authorization To Provide In-Region, InterLATA Services in New Mexico, Oregon and South Dakota

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In the document, the Federal Communications Commission (Commission) grants the section 271 application of Qwest Communications International, Inc. for authorization to provide in-region, interLATA services in New Mexico, Oregon and South Dakota. The Commission grants Qwest's application based on its conclusion that Qwest has satisfied all of the statutory requirements for entry, and fully opened its local exchange markets to competition.

DATES: Effective date April 25, 2003.

FOR FURTHER INFORMATION CONTACT: Kimberly Cook, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–7532 or via the Internet at *kcook@fcc.gov*. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in WC Docket No. 03–11, FCC 03–81, adopted April 15, 2003 and released April 15, 2003. The full text of this order may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. It is also available on the Commission's website at *http://www.fcc.gov/Bureaus/Common_Carrier/in-region_applications/qwest_nm_or_sd/welcome.html*.

Synopsis of the Order

1. *History of the Application.* On January 15, 2003, Qwest filed an application, pursuant to section 271 of the Telecommunications Act of 1996, with the Commission to provide in-region, interLATA service in the states of New Mexico, Oregon and South Dakota.

2. *The State Commissions' Evaluation.* The New Mexico Public Regulation Commission, Public Utility Commission of Oregon and the South Dakota Public Utilities Commission (State Commissions) following an extensive review process, advised the Commission that Qwest met the checklist requirements of section 271 and has taken the statutory steps to open its local markets in each state to competition. Consequently, the state commissions recommended that the Commission approve Qwest's in-region, interLATA entry in their evaluations.

3. *The Department of Justice's Evaluation.* The Department of Justice filed its evaluation of Qwest's application on February 20, 2003 in which it recommended approval of the application subject to the Commission satisfying itself regarding Qwest's compliance with Track A in New Mexico. The Department of Justice

further noted that Qwest should clarify its position concerning several complaints of WorldCom concerning Qwest's operations support systems (OSS) and that the Commission should carefully review that response.

Primary Issues in Dispute

4. *Compliance with Section 271(c)(1)(A).* Based on the record, the Commission finds that Qwest satisfies the requirements of section 271(c)(1)(A) in New Mexico, Oregon and South Dakota based on the interconnection agreements it has implemented with competing carriers in those states. The Oregon and South Dakota Commissions found that Qwest satisfies the requirements of Track A in these states. The New Mexico Commission found that Qwest complied with Track A for business subscribers, but deferred the issue of Qwest's compliance with Track A for residential customers to the Commission.

5. The record shows that Qwest relies on interconnection agreements with AT&T Broadband Phone of Oregon, AT&T Corp. (fka TCG-Oregon), Black Hills FiberCom, Brooks Fiber of New Mexico, Cricket Communications, Eastern Oregon Telecom, McLeodUSA, Northern Valley Communications, and Time Warner Telecom of New Mexico in support of its Track A showing for these three states.

6. The Commission finds that, in New Mexico, Cricket Communications, a PCS provider, serves more than a *de minimis* number of residential users over its own facilities and, for purposes of section 271 compliance represents an actual commercial alternative to Qwest for residential telephone exchange services. The Commission determines that Cricket Communications' residential broadband PCS offering in New Mexico is a "telephone exchange service" for purposes of Track A. The Commission further concludes that the evidence submitted by Qwest adequately demonstrates that more than a *de minimis* number of Cricket customers use their service in lieu of wireline telephone service. The evidence shows that Cricket's marketing efforts stress that its product is a substitute for residential local telephone service. In addition, the Commission concludes that Qwest's survey demonstrates that Cricket customers use Cricket service in lieu of wireline telephone service. The Commission finds that the survey was random, and contains statistical analysis of sufficient quality to allow the Commission to rely on it for the purpose of showing compliance with Track A.

7. *Checklist Item 2—Unbundled Network Elements.* Based on the record, the Commission finds that Qwest has provided "nondiscriminatory access to network elements in accordance with the requirements of sections 251(c)(3) and 252(d)(1)" of the Act in compliance with checklist item 2.

8. The Commission concludes that Qwest meets it obligation to provide access to its OSS—the systems, databases, and personnel necessary to support the network elements or services. Nondiscriminatory access to OSS ensures that new entrants have the ability to order service for their customers and communicate effectively with Qwest regarding basic activities such as placing orders and providing maintenance and repair services for customers. The Commission finds that, for each of the primary OSS functions (pre-ordering, ordering, provisioning, maintenance and repair, and billing, as well as change management and technical assistance), Qwest provides access that enables competing carriers to perform the functions in substantially the same time and manner as Qwest or, if there is not an appropriate retail analogue in Qwest's systems, in a manner that permits an efficient competitor a meaningful opportunity to compete.

9. Pursuant to this checklist item, Qwest must also provide nondiscriminatory access to network elements in a manner that allows other carriers to combine such elements, and demonstrate that it does not separate already combined elements, except at the specific request of a competing carrier. Based on the evidence in the record, and upon Qwest's legal obligations under interconnection agreements, Qwest demonstrates that it provides to competitors combinations of already-combined network elements as well as nondiscriminatory access to unbundled network elements in a manner that allows competing carriers to combine those elements themselves.

10. The Commission finds that Qwest's UNE rates in New Mexico, Oregon and South Dakota are just, reasonable, and nondiscriminatory as required by section 252(d)(1). Thus, Qwest's UNE rates in New Mexico, Oregon and South Dakota satisfy checklist item 2. The State Commissions concluded that Qwest's UNE rates satisfy checklist item 2. The Commission has previously held that it will not conduct a *de novo* review of a state's pricing determinations and will reject an application only if either "basic TELRIC principles are violated or the state commission makes clear errors in factual findings on matters so substantial that the end result falls outside the range that a reasonable application of TELRIC principles would produce."

11. The Commission finds that rates in the three states satisfied a benchmark analysis with rates in Colorado, demonstrating that Qwest's New Mexico, Oregon and South Dakota UNE rates fall within a range of rates that a reasonable application of TELRIC would produce. The Commission also rejects arguments by a party that Qwest relied on rates in Oregon that (1) were based on old data, and (2) might be in effect only temporarily since they could be increased in a state commission proceeding that was pending. Thus, the Commission concludes that Qwest's UNE rates in New Mexico, Oregon and South Dakota satisfy the requirements of checklist item 2.

Other Checklist Items

12. *Checklist Item 1—Interconnection.* Based on the evidence in the record, the Commission finds that Qwest demonstrates that it provides interconnection in accordance with the requirements of section 251(c)(2), and as specified in section 271 and applied in the Commission's prior orders.

13. Qwest also demonstrates that its collocation offerings in New Mexico, Oregon and South Dakota satisfy the requirements of sections 251 and 271 of the Act. Qwest demonstrates that it offers interconnection in New Mexico, Oregon and South Dakota to other telecommunications carriers at just, reasonable, and nondiscriminatory rates, in compliance with checklist item 1.

14. *Checklist Item 4—Unbundled Local Loops.* The Commission concludes that Qwest provides unbundled local loops in accordance with the requirements of section 271 and our rules. Our conclusion is based on our review of Qwest's performance for all loop types, which include voice-grade loops, xDSL-capable loops, digital loops, high-capacity loops, as well as our review of Qwest's processes for hot cut provisioning, and line sharing and line splitting.

15. *Checklist Item 5—Unbundled Transport.* Section 271(c)(2)(B)(v) of the competitive checklist requires a BOC to provide "local transport from the trunk side of a wireline local exchange carrier switch unbundled from switching or other services." The Commission concludes, based upon the evidence in the record, that Qwest demonstrates that it provides unbundled local transport in compliance with the requirements of checklist item 5.

16. *Checklist Item 7—911/E911 Access & Directory Assistance/Operator Services.* Section 271(c)(2)(B)(vii)(I), (II), and (III) require a BOC to provide nondiscriminatory access to "911 and E911 services," "directory assistance services to allow the other carrier's customers to obtain telephone numbers" and "operator call completion services," respectively. Additionally, section 251(b)(3) of the 1996 Act imposes on each LEC "the duty to permit all [competing providers of telephone exchange service and telephone toll service] to have nondiscriminatory access to * * * operator services, directory assistance, and directory listing with no unreasonable dialing delays." Based on the evidence in the record, the Commission concludes that Qwest offers nondiscriminatory access to its 911–E911 databases, operator services (OS), and directory assistance (DA).

17. *Checklist Items 3, 6, 8, 9, 10, 11,12, 13 and 14.* An applicant under section 271 must demonstrate that it complies with item 3 (poles, ducts, and conduits), item 6 (unbundled local switching), item 8 (white pages), item 9 (numbering administration), item 10 (data bases and signaling), item 11 (number portability), item 12 (local dialing parity), item 13 (reciprocal compensation), and item 14 (resale). Based on the evidence in the record, and in accordance with Commission rules and orders concerning compliance with section 271 of the Act, the Commission concludes that Qwest demonstrates that it is in compliance with checklist items 3, 6, 8, 9, 10, 11, 12, 13 and 14 in New Mexico, Oregon and South Dakota. The State Commissions also concluded that Qwest complies with the requirements of each of these checklist items.

Other Statutory Requirements

18. *Section 272 Compliance.* Qwest provides evidence that it maintains the same structural separation and nondiscrimination safeguards in New Mexico, Oregon and South Dakota as it does in Colorado, Idaho, Iowa, Montana, Nebraska, North Dakota, Utah, Washington and Wyoming where Qwest has already received section 271 authority. Based on the record before us, we conclude that Qwest has demonstrated that it will comply with the requirements of section 272.

19. *Public Interest Analysis.* The Commission concludes that approval of this application is consistent with the public interest. It views the public interest requirement as an opportunity to review the circumstances presented by the applications to ensure that no other relevant factors exist that would frustrate the congressional intent that markets be open, as required by the competitive checklist, and that entry will therefore serve the public interest as Congress expected. While no one factor is dispositive in this analysis, the Commission's overriding goal is to ensure that nothing undermines its conclusion that markets are open to competition.

20. The Commission finds that, consistent with its extensive review of the competitive checklist, barriers to competitive entry in the local market have been removed and the local exchange market today is open to competition. The Commission concludes that Qwest's entry into the long distance market will benefit consumers and competition.

21. The Commission also finds that the performance monitoring and enforcement mechanisms developed in New Mexico, Oregon and South Dakota, in combination with other factors, provide meaningful assurance that Qwest continue to satisfy the requirements of section 271 after entering the long distance market.

22. Notwithstanding its concern about discrimination with respect to interconnection agreements and potential violations of the Act as a result, the Commission finds that Qwest's previous failure to file certain interconnection agreements with the application states does not warrant a denial of this application. The Commission concludes that concerns about any potential ongoing checklist violation (or discrimination) are met by Qwest's submission of agreements to the commissions of the application states pursuant to section 252 and by each state acting on Qwest's submission of those agreements. Based on the limited circumstances established in the record, the Commission does not find that the allegations concerning Qwest's compliance with section 271 relate to openness of the local telecommunications markets to competition. Instead, it defers any enforcement action pending the Enforcement Bureau's investigation of the matter.

23. The Commission concludes that approval of this application is consistent with the public interest. From our extensive review of the competitive checklist, which embodies the critical elements of market entry under the Act, we find that barriers to competitive entry in New Mexico, Oregon and South Dakota's local exchange market have been removed, and that the local exchange market is open to competition.

24. *Section 271(d)(6) Enforcement Authority.* The Commission concludes that, working with the State Commissions, we will closely monitor Qwest's post-approval compliance to ensure that Qwest does not "cease[] to meet the conditions required for [section 271] approval." We stand ready to exercise our various statutory enforcement powers quickly and decisively if there is evidence that market opening conditions have not been sustained.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–10001 Filed 4–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011776–123.

Title: Asia North American Eastbound Rate Agreement.

Parties: American President Lines, Ltd., and APL Co. Pte Ltd. (as one party).
Hapag-Lloyd Container Linie GmbH.
Kawasaki Kisen Kaisha, Ltd.
AP Moller-Maersk Sea-Land.
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha.
Orient Overseas Container Line Limited.
P&O Nedlloyd B.V.
P&O Nedlloyd Limited.

Synopsis: The modification extends the suspension of the agreement for an additional six months through November 1, 2003, and is effective upon filing.

Agreement No.: 011591–003.

Title: EUKOR/WWL Space Charter Agreement.

Parties: EUKOR Car Carriers, Inc., Wallenius Wilhelmsen Lines AS.

Synopsis: The modification adds the westbound trade from U.S. Atlantic, Gulf and Pacific Coast ports and inland and coastal points to all ports in Japan and Korea and inland and coastal points, and removes the annual limitation on tonnage to be chartered to either party.

By Order of the Federal Maritime Commission.

Dated: April 17, 2003.
Bryant L. VanBrakle.

[FR Doc. 03–9955 Filed 4–22–03; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 16, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 303–309–4470):

1. Triangle Financial Group, Inc., Loganville, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of The Community Bank, Loganville, Georgia.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Peotone Bancorp, Inc., Peotone, Illinois; to acquire 24.99 percent of the voting shares of Bank of San Juans Bancorporation, Durango, Colorado, and thereby indirectly acquire Bank of the San Juans, Durango, Colorado.

C. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. One Rich Hill Mining LLC; and One Rich Hill Land Ltd., Partnership, both of Tulsa, Oklahoma; to become bank holding companies by acquiring 25.44 percent of the voting shares of F&M Bancorporation, and thereby indirectly acquire shares of F&M Bank & Trust Company, both in Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, April 17, 2003.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 03–9970 Filed 4–22–03; 8:45 am]
BILLING CODE 6210–01–M

FEDERAL TRADE COMMISSION

[File No. 021 0144]

Institute of Store Planners; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 15, 2003.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Comments filed in electronic form should be directed to: consentagreement@ftc.gov, as prescribed below.

FOR FURTHER INFORMATION CONTACT: L. Barry Costilo, FTC, Bureau of Competition, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, (202) 326–2024.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 17, 2003), on the World Wide Web, at "http://www.ftc.gov/os/2003/04/index.htm." A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: consentagreement@ftc.gov. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from the Institute of Store Planners ("ISP"). ISP has its principal place of business in Tarrytown, New York.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and decide whether it should withdraw from the agreement or make final the agreement's proposed order.

ISP's membership is composed of professional design practitioners who provide architectural, store design, store planning, merchandise planning, traffic flow planning fixture and lighting design, in-store graphics and visual presentation services to retail stores. Its membership is also comprised of trade members such as suppliers and fabricators of products and materials used in store design, as well as general contractors who provide labor and project management services and build the projects.

The complaint alleges that ISP engages in substantial activities for the economic benefit of its members. The complaint alleges that ISP has approximately 800 members, many of whom provide store planning services for a fee or who are employed by store planning or design firms that provide store planning services for a fee. It alleges that ISP is and has been organized in substantial part for the profit of its members.

The complaint charges that ISP has violated Section 5 of the Federal Trade Commission Act by acting as a combination of its members and in agreement with some of its members to restrain price and non-price competition among its members and others. The complaint alleges that in furtherance of the combination and agreement, ISP has adopted and maintained provisions in its Code of Ethics that state, among other things, "a member shall not render professional services without compensation" (*ISP Code of Ethics*, Section 2) and "a member shall not knowingly compete with another member on the basis of professional charges, or use donations as a device for obtaining professional advantage" (*ISP Code of Ethics*, Section 3). The Code also provides that "a member shall not offer his services in competition except as provided by such competition codes as the Institute may establish" (*ISP Code of Ethics*, Section 4). Applicants for membership in ISP must agree in writing to follow ISP's By-laws, which contain its Code of Ethics.

The complaint alleges that the above acts and practices constitute unfair methods of competition which have restrained competition unreasonably and injured consumers by discouraging price competition among store planners and depriving consumers and users of store planners' services of the benefit of free and open competition among store planners.

ISP has signed a consent agreement containing the proposed consent order. The proposed consent order would prohibit ISP from restricting, impeding, declaring unethical or unprofessional or advising against price competition among its members. That is, ISP would no longer be able to restrict members from providing free or discounted services.

To ensure and monitor compliance, the consent order provides, among other things, that within 90 days after the order becomes final ISP shall remove from *ISP's Code of Ethics*, its constitution and bylaws and any existing ISP policy statement, commentary or guideline — including those appearing on ISP's website — any provision, policy statement, commentary or guideline which is inconsistent with the order. The order also requires that ISP publish in *ISP International News* and on its website, the revised versions of such documents. In addition, the order requires ISP to publish a copy of the order and complaint in the *ISP International News*. It further provides that the order and complaint shall be published on the ISP website for at least one year, with a link placed in a prominent position on the website's home page. The proposed consent order also contains other provisions to monitor compliance.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way its terms.

By direction of the Commission.
C. Landis Plummer
Acting Secretary
[FR Doc. 03–10033 Filed 4–22–03; 8:45 am]
BILLING CODE 6750–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03026]

Strengthening Epidemiologic Services and Surveillance in Central America, the Dominican Republic and Haiti; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 307 of the Public Health Service Act, [42 U.S.C. sections 242l], as amended, and section 104 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b). The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Strengthening Epidemiologic Services and Surveillance in Central America, the Dominican Republic, and Haiti.

The purpose of the program is to underpin the ability of the Ministries of Health (MOH) of the participating countries in the *Servicio de Investigacion Epidemiologica y Vigilancia de Centro America la Republica Dominicana y Haiti* (SIEVCADH) project to develop public health surveillance, investigate priority public health problems, and provide epidemiologic response to disease outbreaks and other public health emergencies. By doing so, applied public health programs in Central America, the Dominican Republic, and Haiti will be strengthened.

The objectives of this program are: (1) To produce high-quality public health surveillance, epidemiologic assessment and epidemiologic investigation in order to increase the effectiveness and efficiency of public health action, programs, and policy in SIEVCADH project countries; (2) to produce an enhanced and sustainable professional staff capacity to continue carrying out these activities in SIEVCADH project countries; and (3) to continue development of the Masters in Epidemiology with specialization in Field Epidemiology as an academic umbrella for the previous two objectives. The increased capacity in emergency response, epidemiologic investigation and surveillance will be essential to achieving the project's goal of developing sustainable capacity in field epidemiology in Central America, the Dominican Republic, and Haiti.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the Epidemiology Program Office (EPO): Maximize the distribution and use of scientific information and prevention messages through modern communication technology, efficiently respond to the needs of its public health partners through the provision of epidemiologic assistance, and implement accessible training programs to provide an effective work force for staffing state and local health departments, laboratories, and ministries of health in developing countries.

C. Eligible Applicants

Assistance will be limited to academic institutions in Central America.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $220,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about June 2003 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Direct Assistance

No direct assistance will be provided.

Use of Funds

1. All requests for funds contained in the budget, shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through issuance of supplemental awards.

By making this statement all requests, not only the initial budget, but any subsequent request such as re-directions, requests for supplemental funds, carry-overs, etc. are included. This is Health and Human Services (HHS) policy.

2. Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by CDC officials must be requested in writing.

3. The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, and the World Health Organization, Indirect Costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

4. The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities including program management and operations, and delivery of prevention services for which funds are required.

5. Limitations and/or prohibitions on the use of funds are as follows:

a. Alterations and renovations are not allowable.

b. Customs and import duties, including consular fees, customs surtax, value-added taxes and other related charges are not allowable.

6. Awardee is required to obtain annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with International branches and current licensure/authority in-country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

7. A fiscal Recipient Capability Assessment may be required, pre or post award, with the potential awardee in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Recipient Financial Participation

No matching funds are required for this program

Funding Preferences

Funding preferences will be given to academic institutions in Central America that have established relationships with other Central American academic institutions, governmental institutions such as MOH, national disease prevention and control programs, and international organizations.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

The Recipient will be responsible for coordination of the SIEVCADH Field Epidemiology Training Program (FETP) and accomplishment of the following three objectives: (1) To strengthen public health surveillance, epidemiological assessments, and epidemiologic investigations; (2) to produce and enhance sustainable professional staff capacity to carry out these activities; and (3) to continue development of the Masters in Epidemiology with specialization in Field Epidemiology program.

Specific activities include:

a. Development and review of the curriculum of its Masters of Epidemiology with specialization in Field Epidemiology.

b. Development of agreements with other academic institutions in SIEVCADH countries to participate in the development and teaching of the Masters of Epidemiology with specialization in Field Epidemiology curriculum.

c. Development and coordination of a SIEVCADH faculty for the Masters of Epidemiology with specialization in Field Epidemiology.

d. Development and application of an Internet-based distance-learning program.

e. Logistical and administrative support of all students enrolled in the SIEVCADH FETP.

f. Development and implementation of a plan to establish field-training sites for the field component of the SIEVCADH FETP.

g. Development and establishment of a mentoring program for SIEVCADH faculty, supervisors, and students.

h. Provision of technical assistance to SIEVCADH FETP students' work and projects.

i. Review and oversight of SIEVCADH FETP students' work and projects.

j. Development and implementation of a plan for the ongoing assessment of the SIEVCADH FETP to determine if changes in strategies and/or activities are needed.

k. Development of an evaluation plan for all SIEVCADH FETP activities, which would also include a follow-up assessment of the students to determine the quality and success of the training programs and their continued occupation in related fields.

2. CDC activities

Provide technical consultation as needed on all aspects of program planning, implementation, and evaluation methods.

Specific activities to include:

a. Provision of assistance in the development and revision of the Masters of Epidemiology with a specialty in Field Epidemiology curriculum.

b. Provision of assistance in the development of SIEVCADH FETP workshops and seminars.

c. Provision of assistance in the development of a mentoring program for SIEVCADH faculty, supervisors, and students.

d. Provision of technical assistance as needed for management of program operations, including the application of continuous quality improvement.

e. Provision of assistance in ongoing assessment of program activities to ensure the use of effective and efficient implementation strategies.

f. Collaboration with recipient in the design of all phases of the evaluation.

F. Content

Applications

The Program Announcement title and number must appear in the application.

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of: Background and Need, Plan and Objectives, Plan of Operations, Evaluation, and Budget.

G. Submission and Deadline

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. Eastern Time June 9, 2003. Submit the application to: Technical Information Management—PA 03026, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO-TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Plan and Objectives (25 points)

a. The extent to which the goals relate to the overall vision of capacity building and are specific, time-phased, measurable and feasible.

b. The extent to which the applicant describes objectives that are specific, measurable, and feasible, including a schedule for implementation.

2. Plan of Operation (25 points)

The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective and overall program goals and which includes designation of responsibility for each action undertaken. The extent to which the applicant provides a reasonable and complete schedule for implementing all activities. The extent to which position descriptions, curriculum vitae's and lines of command are appropriate to accomplishment of program goals and objectives and to which concurrence with the applicant by all other parties involved is specific and documented. The extent to which the proposed activities are capable of achieving the stated program goals and intent of this program announcement.

3. Evaluation (25 points)

The Quality of the plan for evaluating the proposed program activities. Appropriateness of the methods to be used to monitor the implementation of proposed activities, to measure the achievement of project objectives, and to evaluate the impact of each project.

4. Experience (15 points)

The extent to which the applicant has experience in teaching a two-year masters program in epidemiology with specialization in field epidemiology with a large in-service or field component and that have the infrastructure of providing distance-based learning via the Internet.

5. Background and Need (10 points)

The extent to which the applicant presents data justifying the need for the program in terms of the magnitude of need for applied epidemiology training.

6. Budget (Reviewed, but not Scored)

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

7. Performance goals (Reviewed, but not Scored)

The extent to which the measurable outcomes of the program will be in alignment with one or more of the performance goals for the EPO.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of—

1. Interim progress reports, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report (FSR) no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC web site.

AR–10 Smoke-Free Workplace Requirements
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements

AR–15 Proof of Non-Profit Status

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found at the CDC web site, Internet address: *http://www.cdc.gov.*

Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Tracey Coleman, Contract Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2074, E-mail address: *TColeman3@cdc.gov.*

For program technical assistance, contact: Dr. Robert E. Fontaine, Epidemiologist, Epidemiology Program Office, Division of International Health, Centers for Disease Control and Prevention, 4770 Buford Highway, MS K–72, Atlanta, GA 30341, Telephone: 770–488–8329, E-mail address: *RFontaine@cdc.gov.* or Mr. Hoang Dang, Public Health Advisor, Epidemiology Program Office, Division of International Health, Centers for Disease Control and Prevention, 4770 Buford Highway, MS K–72, Atlanta, GA 30341, Telephone: 770–488–8466, E-mail address: *HDang@cdc.gov.*

Dated: April 17, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–9975 Filed 4–22–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03025]

Building Inter-Country Collaboration and Cooperation for Epidemiology and Surveillance Training in Central America, the Dominican Republic, and Haiti; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 307 of the Public Health Service Act, (42 U.S.C. sections 242l), as amended, and section 104 of the Foreign Assistance Act of 1961 (22 U.S.C. 2151b). The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Building Inter-Country Collaboration and Cooperation for Epidemiology and Surveillance Training in Central America, the Dominican Republic, and Haiti. This program addresses the "Healthy People 2010" focus area Public Health Infrastructure.

The purpose of this program is to strengthen inter-country activities and cooperation in the development of surveillance and field epidemiology in Central America, the Dominican Republic, and Haiti.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the Epidemiology Program Office (EPO): Maximize the distribution and use of scientific information and prevention messages through modern communication technology; efficiently respond to the needs of its public health partners through the provision of epidemiologic assistance; and implement accessible training programs to provide an effective work force for staffing state and local health departments, laboratories, and ministries of health in developing countries.

C. Eligible Applicants

Applications may be submitted by public nonprofit organizations and private nonprofit organizations.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $130,000 is available in FY 2003 to fund one award. It is expected that the award will begin on or about June 30, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Direct Assistance

No direct assistance will be provided.

Use of Funds

1. All requests for funds contained in the budget, shall be stated in U.S. dollars. Once an award is made, CDC will not compensate foreign grantees for currency exchange fluctuations through issuance of supplemental awards.

By making this statement all requests, not only the initial budget, but any subsequent request such as re-directions, requests for supplemental funds, carry-overs, etc. are included. This is Health and Human Services (HHS) policy.

2. Funds may be spent for reasonable program purposes, including personnel, travel, supplies, and services. Equipment may be purchased if deemed necessary to accomplish program objectives, however, prior approval by CDC officials must be requested in writing.

3. The costs that are generally allowable in grants to domestic organizations are allowable to foreign institutions and international organizations, with the following exception: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization, indirect costs will not be paid (either directly or through sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

4. The applicant may contract with other organizations under this program; however, the applicant must perform a substantial portion of the activities (including program management and operations, and delivery of prevention services for which funds are required).

5. Limitations and/or prohibitions on the use of funds are as follows:

a. Alterations and renovations are not allowable.

b. Customs and import duties, including consular fees, customs surtax, value-added taxes and other related charges are not allowable.

6. Awardee is required to obtain annual audit of these CDC funds (program-specific audit) by a U.S. based audit firm with International branches and current licensure/authority in country, and in accordance with International Accounting Standards or equivalent standard(s) or equivalent standard(s) approved in writing by CDC.

7. A fiscal Recipient Capability Assessment may be required, pre or post award, with the potential awardee in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Recipient Financial Participation

Matching funds are not required for this program.

Funding Priority

Public comments on the proposed Funding Priority are not being solicited due to insufficient time prior to the funding date.

Funding Preferences

Funding preferences will be given to organizations that can show established relationships with governmental institutions such as Ministries of Health, national disease prevention and control programs, academic institutions and international organizations.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities.

a. Coordination, facilitation, and logistic support of periodic meetings of the Regional Technical Committee (RTC) of the *Servicio de Investigion Epidemiologica y Vigilancia de Centro America la Republica Dominicana y Haiti* (SIEVCADH).

b. Implementation, facilitation, and logistic support of an annual regional scientific conference on public health surveillance and epidemiology as a forum for SIEVCADH trainees and graduates to conduct oral and poster presentations on their studies in epidemiology and public health surveillance. This conference should also include participation from other public health staff involved in epidemiology and surveillance including the public health laboratories, which were supported under the Hurricane Mitch and George Reconstruction Project.

c. Implementation of an external and independent evaluation of the training and service activities of SIEVCADH. This evaluation should be modeled after evaluations done for Field Epidemiology Training Programs and should address the special local circumstances in the SIEVCADH project countries.

d. Coordination and oversight of an emergency epidemiologic response fund for SIEVCADH project countries.

e. Coordination, facilitation, and logistic support of a program of periodic seminars for the presentation and scientific discussion of epidemiologic investigation and surveillance studies in SIEVCADH project countries.

f. Development and oversight of a system of grants to support research in the development and improvement of public health surveillance in SIEVCADH project countries.

2. CDC Activities.

a. Collaboration with the RTC participants in carrying out innovations and modifications of SIEVCADH activities in accordance with agreements reached at the periodic meetings of the RTC.

b. Provision of assistance in the development of criteria for the review and selection of abstracts for the annual regional scientific conference on public health surveillance and epidemiology.

Guidance for potential conference participants in the development of projects in public health surveillance and epidemiologic investigation and in the preparation of abstracts and presentations.

c. Provision of example evaluations and assistance in developing the evaluation framework for training and service activities of SIEVCADH.

d. Technical assistance for investigations funded by the emergency epidemiologic response fund.

e. Assistance in the identification and selection of speakers and appropriate topics for the periodic seminars. Guidance and training of SIEVCADH participants in the preparation of seminars.

f. Provision of assistance in the development of criteria and selection of grants to support research in the development and improvement of public health surveillance in SIEVCADH project countries.

F. Content

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should consist of: Background and Need, Plan and Objectives, Plan of Operations, Evaluation, and Budget. The program Plan should briefly address activities to be conducted over the entire three-year project period.

G. Submission and Deadline

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO-TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. eastern time on June 9, 2003. Submit the application to: Technical Information Management—PA 03025, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Application may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO-TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. eastern time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the purpose section of this announcement. Measures must be objective and quantitative and

must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Plan and Objectives (25 Points).

a. The extent to which the goals relate to the overall vision of capacity building and are specific, time-phased, measurable and feasible.

b. The extent to which the applicant describes objectives that are specific, measurable, and feasible, including a schedule for implementation.

2. Plan of Operation (25 Points).

The extent to which the applicant provides a detailed description of proposed activities which are likely to achieve each objective and overall program goals and which includes designation of responsibility for each action undertaken. The extent to which the applicant provides a reasonable and complete schedule for implementing all activities. The extent to which position descriptions, curriculum vitae's and lines of command are appropriate to accomplishment of program goals and objectives and to which concurrence with the applicant by all other parties involved is specific and documented. The extent to which the proposed activities are capable of achieving the stated program goals and intent of this program announcement.

3. Evaluation (25 Points).

The Quality of the plan for evaluating the proposed program activities. Appropriateness of the methods to be used to monitor the implementation of proposed activities, measure the achievement of project objectives, and evaluate the impact of each project.

4. Experience (15 Points).

The extent to which the applicant has the proven scientific and technical experience to carry out international programs in public health, especially epidemiology and surveillance.

5. Background and Need (10 points).

The extent to which the applicant presents data justifying the need for the program in terms of the magnitude of need for developing inter-country collaboration and cooperation in the development of field epidemiology and surveillance.

6. Budget (reviewed, but not scored).

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

7. Performance Goals (reviewed, but not scored).

The extent to which the measurable outcomes of the program will be in alignment with one or more of the performance goals for the EPO.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of

1. Interim progress report, no less than 90 days before the end of the budget period.

2. Financial status report (FSR) no later than 90 days after the end of the budget period.

3. Final FSR and performance reports, no later than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site.

AR–10 Smoke-Free Workplace Requirements
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements".*

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For business management and budget assistance, contact: Tracey Coleman, Contract Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2074. E-mail address: *TColeman3@cdc.gov.*

For program technical assistance, contact:

Dr. Robert E. Fontaine, Epidemiologist, Epidemiology Program Office, Division of International Health, Centers for Disease Control and Prevention, 4770 Buford Highway, MS K–72, Atlanta, GA 30341. Telephone: 770–488–8329. E-mail address: *RFontaine@cdc.gov;*

or

Mr. Hoang Dang, Public Health Advisor, Epidemiology Program Office, Division of International Health, Centers for Disease Control and Prevention, 4770 Buford Highway, MS K–72, Atlanta, GA 30341. Telephone: 770–488–8466. E-mail address: *HDang@cdc.gov.*

Dated: April 17, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03055]

Cooperative Agreement for Early Hearing Detection and Intervention (EHDI) Tracking, Surveillance, and Integration; Notice of Availability of Funds

Application Deadline: June 9, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(C) of the Public Health Service Act, (42 U.S.C. sections 241(a) and 247b–4), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003,funds for a cooperative agreement program for Early Hearing Detection and Intervention (EHDI). This program addresses the "Healthy People 2010" focus area of Vision and Hearing.

The purpose of the program is to (1) develop or enhance a sustainable, centralized EHDI tracking and surveillance system, and (2) integrate the EHDI system with other newborn screening programs. EHDI is a national initiative to improve the communicative, cognitive, and social outcomes of children with hearing loss through a program of services and research.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center on Birth Defects and Disabilities: Prevent birth defects and developmental disabilities and improve the health and quality of life of Americans with disabilities.

C. Eligible Applicants

Applications may be submitted by State and local governments or their *bona fide* agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau and Federally recognized Indian Tribal Governments. Only one application from each State or Territory may be submitted.

To be eligible, applicants must document that they:

1. Do not have an established State centralized EHDI surveillance and tracking program;

2. Are in the beginning stages of establishing a centralized EHDI surveillance and tracking program; or

3. Already have a program but would like to refine their existing surveillance and tracking program to integrate it with other newborn screening and tracking programs.

The applicant must include this documentation in the cover letter of the application. If it is not included, then the application will be determined as "non-responsive" and returned without review.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $300,000 is available in FY 2003, to fund two awards. It is expected that the average award will be $150,000, ranging from $110,000 to $150,000. It is expected that the awards will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Project funds may not be used to supplant other available applicant or collaborating agency funds or to supplant State funds available for screening, diagnosis, intervention or tracking for hearing loss or other disorders detected by newborn screening. Project funds may not be used for construction, for lease or purchase of facilities or space, or for patient care.

Recipient Financial Participation

Matching funds are not required for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed in 1. Recipient Activities, and CDC will be responsible for the activities listed in 2. CDC Activities.

1. Recipient Activities

a. Establish and implement a State surveillance and data tracking system to assure minimal loss to follow-up by monitoring the status and progress of infants through the three components of the EHDI program (screening, detection, and intervention).

b. Establish methods for populating the EHDI data base (*e.g.*, linking with the electronic birth certificate) to develop strategies for collecting standardized EHDI data (including the type of hearing loss and type of intervention services) from multiple sources, (*e.g.* birthing hospitals, diagnostic centers, audiologists, physicians, intervention programs.) Develop and enumerate reporting systems that will ensure that tracking and surveillance data collected from multiple sources will be used so that there is minimal loss to follow-up.

c. Develop mechanisms to identify and collect standardized data on infants/children with late onset or progressive hearing loss.

d. Outline an analytic plan to use EHDI data in order to obtain outcome data such as: Number/percent of infants screened, referred, evaluated, and enrolled in intervention programs; unexpected clusters of infants with hearing loss in particular regions at particular times; unexpected differences in EHDI screening performance between participating birthing hospitals; false positive rates; loss to follow-up rates.

e. Document concerns from parents and professionals about the EHDI process.

f. Establish or use existing EHDI advisory committee with appropriate representation of parents and professionals to provide guidance and assistance in the development of the EHDI program.

g. Design the program so that it can be integrated with other screening and tracking programs that identify children with special health care needs such as newborn blood spot screening, birth defects registries, fetal alcohol syndrome surveillance, and Part C of the Individuals with Disabilities Education Act (IDEA) (*http://www.nectac.org*).

h. Collaborate with State programs such as Maternal and Child Health (MCH) (*http://www.mchb.hrsa.gov*), part C of IDEA, private service programs, and advocacy groups to build a coordinated EHDI infrastructure.

i. Develop an evaluation plan to monitor progress on activities and to assess the timeliness, completeness, and success of the project.

j. Prepare and publish manuscript(s) that describe(s) the tracking system, definitions, methodology, collaborative relationships, data collection, findings, and recommendations across sites. Collaboration with other participating sites is encouraged.

k. Share information and collaborate with other recipients, and with CDC and other Federal and national agencies.

2. CDC Activities

a. Provide technical assistance such as presenting the need, benefits, and description of a comprehensive, state-based EHDI tracking and surveillance program, reviewing draft legislation, etc. to state agencies and interested parties.

b. Assist in designing, developing, and evaluating methodologies and approaches used in state-based data collection and analysis of data across sites.

c. Facilitate collaborative efforts to compile and disseminate program results through presentations and publications.

d. Assist in analyzing surveillance data related to EHDI.

e. Assist in designing, developing, and evaluating plans to improve the access of children with hearing loss to health services and intervention programs.

f. Provide a reference point for sharing state-based data and information pertinent to the surveillance and tracking of hearing loss.

F. Content

Letter of Intent (LOI)

A LOI is requested for this program. The LOI should identify the program announcement number, program title and the proposed project director. The LOI should be no more than 2 pages, single-spaced, printed on one side, with one-inch margins, and unreduced 12-point font. The LOI will be used to determine the level of interest in the announcement, and assist CDC in planning for the application review process.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Applications should include the following items, in the following order:

Cover Letter: A one-page cover letter stating that the applicant is applying and how the applicant fulfills eligibility requirements.

Table of Contents: A table of contents that provides page numbers for each of the following sections (all pages must be numbered).

Abstract: A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization name and address, project director and telephone number. The abstract should briefly summarize the project for which funds are requested, the activities to be undertaken, and the applicant's organization structure. The abstract should precede the program narrative.

Budget and Budget Justification: The budget should be reasonable, clearly justified, and consistent with the intended use of the agreement funds. The applicant must include a detailed first-year budget justification with future annual projections. Budgets should include costs for travel for two project staff to attend annual meetings. The applicant should provide a budget justification for each budget item. Proposed sub-contracts should identify the name of the contractor, if known; describe the services to be performed; provide an itemized budget and justification for the estimated costs of the contract; specify the period of performance; and describe the method of selection.

Narrative: The narrative should be no more than 30, double-spaced pages. The narrative is to be printed on one side, with one-inch margins, and unreduced 12-point font. The narrative must contain the following sections:

a. Understanding the Problem and Current Status
b. Goals and Objectives
c. Description of Program and Methodology (Include a timeline for the entire two-year project period.)
d. Collaborative Efforts
e. Evaluation Plan
f. Staffing and Management System (A one-page CV or resume for each key personnel must be included in an attachment). Plan must also provide details of the role of each key personnel.
g. Organizational Structure and Facilities (Must include an organizational chart)
h. Human Subjects Review

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before May 13, 2003, submit the LOI to the Public Health Analyst identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the signed original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms can be found at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. eastern time June 9, 2003. Submit the application to: Technical Information Management—PA#03055, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgement of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. eastern time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in section "B. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Description of Program and Methodology (35 percent).

a. Extent to which applicant describes the methods they will use to address all recipient activities, such as: (1) Establishing and implementing an EHDI tracking and surveillance system; (2) describing methods of populating the data base; (3) standardizing data from multiple sources; (4) developing strategies for reporting system; (5) documenting methods for collecting data on infants/children with late onset or progressive hearing loss; (6) designing analytic plan; (7) documenting concerns; (8) describing advisory committee; (9) describing plans for integrating data sets; (10) collaborating with other state programs; (11) developing an evaluation plan; (12) preparing manuscripts; and (13) collaborating and sharing information.

b. Extent to which applicant provides a time line which includes activities to be accomplished, and personnel responsible to complete the project. The timeline should address activities to be conducted over the entire two-year project period.

2. Understanding the Problem and Current Status (20 percent).

a. Extent to which the applicant has a clear, concise understanding of the requirements and purpose of the cooperative agreement.

b. Extent to which the applicant understands the challenges, barriers, and problems associated with developing and implementing an EHDI tracking and surveillance program.

c. Extent to which the applicant describes the need for funds to develop/enhance an EHDI tracking and surveillance program in their State.

d. Extent to which the applicant describes the target population and the current status of their existing EHDI program, *e.g.*, number of birthing hospitals with and without universal hearing screening program; number of infants born, number of infants screened, identified and referred to intervention; protocol for screening and referral, including informed consent information.

e. Extent to which applicant describes (1) their current EHDI tracking and surveillance system (if any exists); (2) other relevant tracking, surveillance systems, or registries in the State; and (3) linkages with other relevant systems.

f. Extent to which applicant describes diagnostic facilities and intervention services available in the State for infants/children with hearing loss.

g. Extent to which applicant shows willingness and interest to integrate EHDI surveillance and tracking system with other newborn screening program activities.

3. Goals and Objectives (10 percent).

a. Extent to which applicant clearly describes the short-term and long-term goals, and measurable objectives of the project.

b. Extent to which applicant's goals and objectives are realistic and are consistent with the stated goals and purpose of this announcement.

c. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation and justification when representation is limited or absent.

4. Collaborative Efforts (10 percent).

a. Extent to which applicant describes their methods for collaboration with multiple data sources (include written assurances) such as hospitals, diagnostic centers, and intervention service providers.

b. Extent to which collaborative relationships are documented which will facilitate linkage with other screening programs. (Letters of agreement and cooperation from collaborating programs should be included.)

c. Extent to which collaborative efforts with other relevant programs are documented (such as MCH, IDEA part C, etc.)

d. Extent to which applicant states their willingness to work collaboratively with other funded States and to modify their projects if necessary in order to allow anonymized pooled data sets of standardized data.

5. Evaluation Plan (10 percent).

Extent to which applicant describes an evaluation plan that will monitor progress toward their goals, and assess timeliness, completeness, and success of the objectives and activities of the project.

6. Staffing and Management System (10 percent).

a. Extent to which key personnel have skills and experience to develop and implement an EHDI tracking and surveillance system.

b. Extent of the managerial ability to coordinate the tracking, surveillance, and research, and integration components of the project.

c. Extent to which expertise in abstracting screening, identification, and intervention records are demonstrated.

d. Extent to which expertise in epidemiologic methods, public health surveillance, data management and computer programming is demonstrated.

e. Extent to which there is sufficient dedicated staff time to develop and implement an EHDI tracking and surveillance system and to integrate the EHDI system with other newborn screening systems (include percentage of time each staff member will contribute to the project).

7. Organizational Structure and Facilities (5 percent).

Extent to which the organization structure and facilities/space/equipment are adequate to carry out the activities of the program.

8. Human Subjects Review (not scored).

Does the application adequately address the requirements of title 45 CFR part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

9. Budget (not scored).

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.
b. Current Budget Period Financial Progress.
c. New Budget Period Program Proposed Activity Objectives.
d. Detailed Line-Item Budget and Justification.
e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC Web site.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For business management and budget assistance, contact: Sheryl Heard, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2723. E-mail address: *SHeard@cdc.gov.*

For program technical assistance, contact: Lee Ann B. Ramsey, BBA, GCPH, Public Health Analyst, Centers for Disease Control and Prevention, National Center on Birth Defects and Developmental Disabilities, 1600 Clifton Road, NE, Mailstop F–35, Atlanta, GA 30333. Telephone: 404–498–3034. E-mail Address: *LRamsey@cdc.gov.*

Dated: April 17, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–9977 Filed 4–22–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03002]

Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus Prevention; Notice of Availability of Funds

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the Public Health Service Act, section 301(a), 42 U.S.C. 241(a), as amended and section 317(a), 42 U.S.C. 247b(a), as amended. The Catalog of Federal Domestic Assistance number is 93.941.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 funds for a cooperative agreement program for Public Health Conference Support for Human Immunodeficiency Virus (HIV) Prevention. This program addresses the Healthy People 2010 focus area of HIV.

The purpose of this program is to provide partial support for specific non-Federal conferences in the areas of health promotion and disease prevention information/education programs. Because conference support by CDC creates the appearance of CDC co-sponsorship, there will be active participation by CDC in the development and approval of those portions of the agenda supported by CDC funds. In addition, CDC reserves the right to approve or reject the content of the full agenda, press events, promotional materials (including press releases), speaker selection, and site selection. CDC funds will not be used for portions of meetings that are not approved.

Measurable outcomes of the program will be in alignment with one or more of the following performance goals for the National Center for HIV, Sexually Transmitted Diseases (STD) and Tuberculosis (TB) Prevention: Strengthen the capacity nationwide to monitor the epidemic, develop and implement effective HIV prevention interventions and evaluate prevention programs.

C. Eligible Applicants

Letters of Intent and applications may be submitted by:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Universities.
- Colleges.
- Technical schools.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their *bona fide* agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

Foreign organizations are not eligible to apply.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $112,000 is available in FY 2003 to fund approximately 5 awards. It is expected that the average award will be $20,000, ranging from $15,000 to $25,000. It is expected that the awards will begin on or about September 1, 2003, and will be made for a 12-month budget and project period. Funding estimates may change.

Applicants may not request more than $25,000 including indirect cost.

Contingency awards will be made allowing usage of only 10 percent of the total amount to be awarded until a final full agenda is approved by CDC. Funding will be provided to support costs associated with preparation of the agenda. The remainder of funds will be released only upon CDC approval of the final full agenda. CDC reserves the right to terminate co-sponsorship at any time.

Please note that conferences planned for October 1, 2003, through March 31, 2004, will be considered for funding.

Use of Funds

1. CDC funds will not be used for nonapproved portions of meetings. CDC funds may be used for only those parts of the conference specifically supported by CDC as listed on the Notice of Cooperative Agreement Award. CDC funds may be used for direct costs, such as
   a. Salaries.
   b. Speaker fees.
   c. Rental of conference-related equipment.
   d. Registration fees.
   e. Scholarships.
   f. Transportation costs (not to exceed economy class fares) for non-Federal employees.
   g. Mileage for local participants.
2. CDC funds may not be used
   a. To purchase equipment.
   b. To pay honoraria.
   c. For organizational dues.
   d. To support entertainment.
   e. For personal expenses not related to the conference.
   f. For travel costs or payment to a Federal employee.
   g. For *per diem* and expenses for local participants.
   h. To reimburse indirect costs.
   i. To purchase novelty items (*e.g.*, bags, T-shirts, hats, pens) distributed at meetings.
   j. To purchase food or drinks.
3. CDC will not fund a conference after it has taken place.

Recipient Financial Participation

Recipient financial participation is required for this program in accordance with this Program Announcement. CDC will not fund more than 75 percent of the total cost of the conference. At least 25 percent of the cost for the conference must be supported with non-federal funds.

Funding Preferences

Preferences for funding may be given for:

1. Ensuring a balance of funded agencies that serve populations in special settings (*e.g.*, correctional institutions, shelters for runaway youth).
2. Ensuring a balance of funded agencies that target under served geographic areas, especially rural populations.
3. Ensuring a balance of funded agencies that target people of color (especially African Americans and Hispanic women of color).
4. Ensuring a balance of funded agencies that provide support of comprehensive primary and secondary prevention programs for persons living with HIV.

No preference will be given to organizations that have received CDC funding in past years.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Manage all activities related to conference content (*e.g.*, objectives, topics, session design, workshops, special exhibits, speakers, fees, agenda composition, printing). Many of these items may be developed in concert with CDC personnel assigned to support the conference.

b. Provide draft copies of the agenda, objectives, and proposed related activities to the CDC Project Official for review and comment. Submit a copy of the final agenda, objectives, and proposed related activities to the CDC Grants Management Office for approval.

c. Determine and manage all promotional activities (*e.g.*, title, logo, announcements, mailers, press). CDC must review and approve the use of any materials with reference to CDC involvement or support.

d. Manage all registration processes with participants and registrants (*e.g.*, travel, reservations, correspondence, conference materials and hand-outs, badges, registration procedures).

e. Plan, negotiate, and manage conference site arrangements, including all audiovisual needs.

f. Develop the content and manage the activities of the conference.

g. If the proposed conference is or includes a satellite broadcast, recipient will

(1) Provide individual, on-camera rehearsals for all presenters.

(2) Provide at least one full dress rehearsal involving the moderator, all presenters, equipment, visuals, and practice telephone calls at least one day before the actual broadcast and as close to the actual broadcast time as possible.

(3) Provide full scripting and Teleprompter use for the moderator and all presenters.

h. Collaborate with CDC staff in reporting and disseminating conference results, recommendations, and relevant HIV prevention information. This information should be made available to appropriate Federal, State, and local agencies, healthcare providers, HIV/AIDS prevention and service organizations, and the general public.

2. CDC Activities

a. Provide technical assistance through telephone calls, correspondence, and site visits in the areas of program agenda development, implementation, and priority setting related to the cooperative agreement.

b. Provide scientific collaboration for appropriate aspects of the program, including selection of speakers, pertinent scientific information on HIV, preventive measures, and program strategies for the prevention of HIV infection.

c. Review draft agendas. The Grants Management Officer will approve or disapprove the final agenda and proposed related activities prior to release of restricted funds.

d. Assist applicant in reporting and disseminating results, recommendations, and relevant HIV prevention information.

F. Content

Letter of Intent (LOI)

A LOI is required for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no longer than two pages, including the letterhead and signatures, single-spaced, and with one-inch margins. The page limitation must be observed or the LOI will be returned without review.

CDC will review each LOI and determine who can submit a full application. CDC will invite applicants to submit their full applications within 30 days after the LOI due date.

Availability of funds may limit the number of applicants, regardless of merit, who receive an invitation to submit an application.

Applicants must submit an original and two copies of a two-page typewritten LOI that briefly provides the following information:

a. Name of organization.
b. Mailing address.
c. Telephone and fax numbers.
d. Email address.
e. Title of the proposed conference.
f. Location of the proposed conference. (city and State.)
g. Conference dates.
h. Document need for the conference.
i. Purpose of the conference.
j. Potential contribution to HIV/AIDS Prevention.
k. Intended audience (number and description of conference attendees.)
l. Population(s) who will ultimately benefit from the information shared with conference attendees (population consists of persons at risk, *i.e.*, women, men who have sex with men, injecting drug users and persons living with HIV.)
m. The estimated total cost of the conference.
n. The percentage of the total cost (which must be 75 percent or less) being requested from CDC.
o. The relationship of the conference to CDC's Funding Preferences, which are listed in section E.
p. Potential contribution toward the National HIV prevention goals based on the CDC HIV Prevention Strategic Plan:
   1. Decrease new infections.
   2. Increase knowledge of Serostatus.
   3. Increase linkage to prevention, care and treatment.
   4. Strengthen monitoring, capacity and evaluation.

Information on HIV prevention methods (or strategies) can include abstinence; monogamy, *i.e.*, being faithful to a single sexual partner; or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for HIV (monogamy, consistent and correct condom use).

q. If applicable, current recipients of CDC HIV funding must provide the award number and title of the funded programs.

Note: No attachments, booklets, or other documents accompanying the LOI will be considered.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should be no more than 12 pages, double-spaced pages (excluding attachments, *i.e.*, assurances), printed on one side, with one-inch margins, and 12-point font. Write your narrative in English only and do not use jargon or abbreviations. Clearly number the pages, and include a complete index to the application and its appendices. The original and two required copies of the application must be submitted unstapled and unbound. Materials that are part of the basic plan should not be in the appendices.

Narrative Content

If your LOI is selected, your application must include the following information:

a. A project summary cover sheet that includes
   (1) Name of organization.
   (2) Name of conference.
   (3) Location of conference.
   (4) Date(s) of conference.
   (5) Target population(s) who will benefit from the information shared with conference attendees (*e.g.*, youth,

women, men who have sex with men, injecting drug users and persons living with HIV.)

(6) Intended audience (number and description of conference attendees.)

(7) Conference objectives.

(8) Dollar amount requested.

(9) Total conference budget.

b. Biographical sketches and job descriptions of the individuals responsible for planning and coordinating the conference.

c. A budget narrative separately identifying and justifying line items to which the requested federal funds would be applied.

d. A draft agenda for the proposed conference.

e. Award number and title of funded programs for current recipients of CDC HIV funding. Applicants must have not submitted the same proposal for review for funding to other parts of CDC.

G. Submission and Deadline

Letter of Intent (LOI) Submission

Cycle I: For conferences during the dates of October 1, 2003, to March 31, 2004, submit LOI on or before May 19, 2003.

Cycle II: Applications requesting support for conferences held during the dates of April 1, 2004, to September 30, 2004, will be solicited in a separate FY 2004 program announcement.

Submit LOIs to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. If your LOI does not arrive on or before the due date, it will not be considered.

Application Forms

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428.) Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Applicants should adhere to the instructions in this program announcement regarding the due date.

Submission Date, Time, and Address

Applications must be received by 4 p.m. eastern standard time, July 28, 2003.

Submit the application to:

Technical Information Management—PA03002, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications will be considered as meeting the deadline if they are received before 4 p.m. eastern time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Letter of Intent

The Letter of Intent will be evaluated against the following criteria:

1. The extent to which the applicant demonstrates the need for the conference. (20 points.)

2. The extent to which the applicant discuss the potential contribution to HIV/AIDS prevention. (20 points.)

3. The extent to which high risk populations will ultimately benefit from the conference. (20 points.)

4. The extent to which the conference will have potential contribution toward the National HIV Prevention Goals based on the CDC HIV Prevention Strategic Plan. (15 points.)

5. The extent to which the conference overall objectives are reliable, reasonable, measurable and specific. (15 points.)

6. The extent to which the estimate of the conference cost is reasonable. (10 points.)

7. In addition, the applicant is expected to complete the LOI requirements listed in section F. Content. LOI must also address one or more of the elements listed in section D under Funding Preferences.

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal stated in section A. Purpose of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

Note: Use the following headings on your application.

a. Proposed Program and Technical Approach (30 points):

1. The extent to which the proposed conference description fits one of the Funding Preferences listed in section E.

2. The degree to which the conference objectives are specific, measurable, realistic, and time-phased. The extent to which evaluation of the conference assesses increased knowledge and attitudes of the conference participants.

3. The relevance and effectiveness of the proposed agenda in addressing the conference topic(s).

4. The degree to which conference activities relate to the prevention of HIV.

b. Applicant Capability and Experience (25 points):

1. The adequacy of existing resources to administer the program for the proposed conference.

2. The adequacy of existing and proposed facilities for conducting conference activities.

3. The degree to which the applicant has established relationships with related government agencies, community planning groups, and related community groups. Include letters of support (five only) from such agencies, addressing related applicant's capability and experience. Letters of support must explain how the agency will work with the applicant to plan the proposed conference. Letters that do not pertain directly to the proposed conference will not be considered.

4. The extent to which the applicant shows the need for the conference. c. Qualifications of Program Personnel (25 points):

1. The qualifications and experience of the principal staff person, and his or her ability to devote adequate time to provide effective leadership.

2. Program personnel's ability to accomplish conference objectives.

3. Key personnel's (including associate staff persons, discussion leaders, and speakers) education and expertise relative to the conference objectives.

d. Purpose of the conference (20 points):

1. Extent to which the applicant shows that participants and presenters will have the opportunity to interact during the conference, share information on successful and unsuccessful program experiences, and develop collaborative working relationships.

2. The extent to which the applicant shows the need for the conference.

e. Budget Justification and Adequacy of the Facility (this session will be reviewed, but not scored):

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, consistency with the intended use of cooperative agreement funds, and the extent to which the applicant documents financial support from other sources.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of the final financial (reporting actual expenses) and performance reports, no more than 90 days after the end of the project period. The performance report should include:

1. The cooperative agreement number.

2. Title of the conference.

3. Name of the principal investigator, program director or coordinator.

4. Name of the organization that conducted the conference.

5. A copy of the agenda.

6. A list of individuals who participated in the formally planned sessions of the meeting.

7. A summary of the meeting results, including a discussion of how the meeting reached the stated conference objectives.

8. The Program Review Panel's report that all written materials have been reviewed as required.

With the prior approval of CDC, copies of proceedings or publications resulting from the conference may be substituted for the final performance report, provided they contain the information requested in items 1 through 8 above.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the program announcement, as posted on the CDC web page.

AR–5 HIV Program Review Panel Requirements
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status
AR–20 Conference Support

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.*

Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For business management and budget assistance, contact: Diane Childs, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone: (770) 488–2876. E-mail address: *dec6@cdc.gov.*

For business management and budget assistance in the territories contact: Charlotte L. Flitcraft, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Rd., Atlanta, GA 30341–4146. Telephone: 770–488–2632. E-mail address: *caf5@cdc.gov.*

For program technical assistance, contact: Victoria E. Saho, Project Officer, Technical Information and Communications Branch, Division of HIV/AIDS Prevention—Intervention Research and Support, National Center for HIV, STD and TB Prevention, 1600 Clifton Road, NE., M/S E49, Atlanta, GA 30333. Telephone: (404) 639–5211. E-mail address: *vsaho@cdc.gov.*

Dated: April 17, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–9978 Filed 4–22–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting and Nonvoting Consumer Representative Members on Public Advisory Committees and Panels

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting and nonvoting consumer representatives to serve on its advisory committees and panels in the Center for Biologics Evaluation and Research (CBER), Center for Drug Evaluation and Research (CDER), Center for Devices and Radiological Health (CDRH), and the Center for Veterinary Medicine (CVM). Nominations will be accepted for current vacancies and for those that will or may occur through December 31, 2003.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Scheduled vacancies occur on various dates throughout the year. As a result, no cutoff date is established for the receipt of nominations.

ADDRESSES: All nominations should be sent to the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT: Michael Ortwerth, Advisory Committee Oversight and Management Staff (HF–4), FDA Office of the Commissioner, 5600 Fishers Lane, Rockville, MD 20857, e-mail: Michael.Ortwerth@fda.gov.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting and nonvoting consumer representatives of the following advisory committees and panels for vacancies listed below.

CBER

1. *Allergenic Products Advisory Committee*
2. *Blood Products Advisory Committee*

CDRH

1. *Device Good Manufacturing Practice Advisory Committee*
2. *Circulatory System Devices Panel*
3. *Ear, Nose, and Throat Devices Panel*
4. *General Hospital and Personal Use Devices Panel*

5. *Immunology Devices Panel*
6. *Medical Devices Dispute Resolution Panel*
7. *Microbiology Devices Panel*
8. *Molecular and Clinical Genetics Panel*
9. *Orthopaedic and Rehabilitation Devices Panel*
10. *Radiological Devices Panel*
11. *Technical Electronic Product Radiation Safety Standards Committee*

CDER

1. *Arthritis Advisory Committee*
2. *Oncologic Drugs Advisory Committee*
3. *Peripheral and Central Nervous System Drugs Advisory Committee*
4. *Advisory Committee for Pharmaceutical Science*
5. *Psychopharmacologic Drugs Advisory Committee*

CVM

1. *Veterinary Medicine Advisory Committee*

I. Criteria for Members

Persons nominated for membership on the committees as a consumer representative must: (1) Demonstrate ties to consumer and community-based organizations; (2) be able to analyze technical data; (3) understand research design; (4) discuss benefits and risks; and (5) evaluate the safety and efficacy of products under review. The consumer representative must be able to represent the consumer perspective on issues and actions before the advisory committee, serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations, and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

II. Selection Procedures

Selection of members representing consumer interests is conducted through procedures that include use of organizations representing the public interest and consumer advocacy groups. The organizations have the responsibility of recommending candidates of the agency's selection.

III. Nomination Procedures

All nominations must include a cover letter, a curriculum vitae or resume (which should include nominee's office address, telephone number, and e-mail address), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation.

Any interested person or organization may nominate one or more qualified persons for membership on one or more of the advisory committees to represent consumer interests. Self-nominations are also accepted. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should specify the committee(s) of interest. The term of office is up to 4 years, depending on the appointment date.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: April 15, 2003.

Lester M. Crawford,

Deputy Commissioner.

[FR Doc. 03–9959 Filed 4–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on May 29, 2003, from 9 a.m. to 5 p.m.

Location: Gaithersburg Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Geretta Wood, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, ext. 143, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will hear a presentation on postmarket surveillance of diathermy interactions with implanted leads and implanted systems with leads. The committee will also discuss, make recommendations, and vote on a premarket approval application for an ablation catheter for treatment of atrial fibrillation in patients with drug refractory paroxysmal atrial fibrillation. Background information for the topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material will be posted on May 28, 2003.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 15, 2003. Oral presentations from the public will be scheduled for approximately 30 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 15, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 15, 2003.

Lester M. Crawford,

Deputy Commissioner.

[FR Doc. 03–9960 Filed 4–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 03D–0163]

"Guidance for Industry: Recommendations for the Assessment of Donor Suitability and Blood Product Safety in Cases of Suspected Severe Acute Respiratory Syndrome (SARS) or Exposure to SARS;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: Recommendations for the Assessment of Donor Suitability and Blood Product Safety in Cases of Suspected Severe Acute Respiratory Syndrome (SARS) or Exposure to SARS" dated April 2003. The guidance document provides our recommendations for assessing donor suitability and blood product safety with respect to SARS. The guidance applies to whole blood and blood components intended for transfusion and to blood components including recovered plasma, source leukocytes, and source plasma intended for use in further manufacturing into injectable or noninjectable products.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Stephen M. Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Recommendations for the Assessment of Donor Suitability and Blood Product Safety in Cases of Suspected Severe Acute Respiratory Syndrome (SARS) or Exposure to SARS" dated April 2003. This guidance document provides our recommendations for assessing donor suitability and blood product safety with respect to SARS. This guidance applies to whole blood and blood components intended for transfusion and to blood components including recovered plasma, source leukocytes, and source plasma intended for use in further manufacturing into injectable or noninjectable products. FDA developed the recommendations in this guidance in consultation with other public health service agencies of the Department of Health and Human Services.

II. Comments

The agency is soliciting public comment, but is implementing this guidance immediately because the agency has determined that prior public participation is not appropriate since SARS may pose immediate safety risks to the blood supply. Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this guidance document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the guidance document and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance at either http://www.fda.gov/cber/guidelines.htm or http://www.fda.gov/ohrms/dockets/default.htm.

Dated: April 17, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–9986 Filed 4–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: President's Cancer Panel.

Date: May 27–28, 2003.

Time: 9 a.m. to 12 p.m.

Agenda: President's Cancer Panel.

Place: Lisbon Marriott Hotel, Av. Dos Combatentes 45,1600–042, Lisbon, Portugal.

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892, (301) 496–1148.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 16, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10054 Filed 4–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with

attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: June 5–6, 2003.

Closed: June 5, 2003, 8:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852.

Open: June 5, 2003, 1:30 p.m. to 5 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by staff of the Institute and discussions concerning Institute programs and policies.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852.

Open: June 6, 2003, 8:30 a.m. to 12 p.m.

Agenda: Program Planning.

Place: National Institutes of Health, 6130 Executive Blvd., Rockville, MD 20852.

Contact Person: Lore Anne McNicol, Director, Division of Extramural Research, National Eye Institute, National Institutes of Health, Bethesda, MD 20892, 301–496–9110.

Information is also available on the Institute's/Center's home page: *http://www.nei.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 16, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10057 Filed 4–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Novel Therapeutic Strategies.

Date: May 2, 2003.

Time: 2:30 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maxine A. Lesniak, MPH, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 756, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7792, *lesniakm@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research, 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 16, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10056 Filed 4–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: May 22, 2003.

Open: 8:30 a.m. to 12 p.m.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business and special reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Cheryl Kitt, PhD, Director, Division of Extramural Activities, National Institutes of Arthritis and Musculoskeletal and Skin Diseases, 1 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–2463, *kittc@niams.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 16, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10058 Filed 4–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–62, Review of K08 Grants.

Date: May 5, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lynn M. King, PhD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–592–5006.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–60, Review of R13 Grants.

Date: May 8, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel 03–54, Loan Repayment Applications.

Date: May 14, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 16, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10059 Filed 4–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chlamydial Genetics.

Date: April 21, 2003.

Time: 11:30 a.m. to 12:30 p.m..

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHA (03): Ventricular Remodeling Pathogenesis.

Date: April 21, 2003.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7808, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHA (02): Angiotensin in Hypertensive Neurons.

Date: April 22, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7808, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Studies of Anterior Eye Disease.

Date: April 24, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant application.

Place: National Institutes of Health, Rockledge 6700, 6708B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, HSV 1 Latency.

Date: April 28, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG CDF–5 (90) Deffered (UV Induced Apoptosis).

Date: April 30, 2003.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant application.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sherry L. Dupere, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1021, *duper@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Therapy.
Date: May 1, 2003.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant application.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Philip Perkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–1718, *perkinsp@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Smoking Cessation Programs for Adolescents.
Date: May 1, 2003.
Time: 12 p.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176, MSC 7848, Bethesda, MD 20892, 301–435–0676. *sirocok@csr.nih.gov.*
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Melanoma.
Date: May 2, 2003.
Time: 3 p.m. to 6 p.m.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, 301–435–1719.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Radioimmunotherapy.
Date: May 2, 2003.
Time: 4 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, 301–435–1767.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Oncology.
Date: May 5, 2003.
Time: 4 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7804, Bethesda, MD 20892, (301) 435–1767.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Dignity and Dying.
Date: May 6, 2003.
Time: 3 p.m. to 6 p.m.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Deborah L. Young-Hyman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 451–8008, *younghyd@csr.nih.gov.*
Name of Committee: Center for Scientific Review Special Emphasis Panel, "Maintenance-Tailored Obesity Treatment".
Date: May 6, 2003.
Time: 11 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 453–1258, *micklinm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 16, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10055 Filed 4–22–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4815–N–20]

Notice of Submission of Proposed Information Collection to OMB: Study of Project Size in Section 811 and Section 202 Assisted Projects for Persons with Disabilities

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 23, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice Also Lists the Following Information

Title of Proposal: Study of Project size in Section 811 and Section 202 Assisted Projects for Persons with Disabilities.
OMB Approval Number: 2528–XXXX.
Form Numbers: None.
Description of the Need for the Information and its Proposed Use:
This congressionally mandated study is to investigate the social and economic impact of project size in HUD's Section 202 and Section 811 programs for disabilities. Telephone interviews will be conducted with a nationally representative sample of sponsor/managers of Section 811 and Section 202 properties.
Respondents: Individuals or households, Not-for-profit institutions.
Frequency of Submission: On occasion.
Reporting Burden: Number of Respondents: 150 Annual Responses: 1 x Hours per Response: 0.58 = Burden Hours: 87.5.
Total Estimated Burden Hours: 87.5.
Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 16, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–9965 Filed 4–22–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No.FR–4815–N–21]

Notice of Submission of Proposed Information Collection to OMB: Request for Acceptance of Changes in Approved Drawings and Specifications

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 23, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0117) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice Also Lists the Following Information:

Title of Proposal: Request for Acceptance of Changes in Approved Drawings and Specifications.
OMB Approval Number: 2502–0117.
Form Numbers: HUD–92577.
Description of the Need for the Information and its Proposed Use:
Builders who request changes to HUD's accepted drawings and specifications for proposed construction properties as required by homebuyers, or determined by the builder use this information collection. The lender reviews the changes and amends the approved exhibits. These changes may affect the value shown on the HUD commitment. HUD requires the builder to use the form to request changes, for proposed construction properties. These changes are requested by the homebuyers, or determined by the builder, to make the dwellings appeal to a broader segment of the market.
Respondents: Individuals or households, Business or other for-profit.
Frequency of Submission: On occasion.
Reporting Burden: Number of Respondents: 10,000 Annual Responses: x 1 Hours per Response: 0.5 = Burden Hours 5,000
Total Estimated Burden Hours: 5,000.
Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 16, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–9966 Filed 4–22–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by May 23, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Russell Davis, Sherwood, OR, PRT–069654.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok *(Damaliscus pygargus dorcas)* culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: David W. Inouye, University of Maryland, College Park, Maryland, PRT–067661.

The applicant requests a permit to import hair samples from golden langur *(Trachypithecus geei)* and capped langur *(Trachypithecus pileatus)* collected in the wild in Bhutan, for scientific research. This notification covers activities conducted by the applicant over a five year period.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Felix F. Gardina, Ghent, NY, PRT–069177.

The applicant requests a permit to import a polar bear (Ursus maritimus) sport hunted from the Southern Beaufort Sea polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: March 28, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–9972 Filed 4–22–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Recovery Plan for the Alaska-Breeding Population of the Steller's Eider (*Polysticta stelleri*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability of the final recovery plan for the threatened Alaska-breeding population of the Steller's eider (*Polysticta stelleri*). The threatened Alaska-breeding population of Steller's eiders occurs in disjunct coastal and marine areas in northern and western Alaska. Although formerly locally common in portions of western and northern Alaska, they have nearly disappeared from western Alaska, and only hundreds or low thousands exist in northern Alaska. Causes of the decline are poorly understood. Recovery tasks include reduction of exposure to lead shot and other forms of human-caused mortality, acquisition of information on population parameters and ecology, re-establishment of the western Alaska subpopulation, and development of partnerships for recovery efforts.

ADDRESSES: Copies of this recovery plan are available by request from the Fairbanks Fish and Wildlife Office, 101 12th Ave., Box 19, Rm 110, Fairbanks, AK 99701 (telephone 907/456–0203; facsimile 907/456–0208) or from Fish and Wildlife Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, (301/429–6403 or 1–800–582–3421). The fee for the plan varies depending on the number of pages of the plan. This recovery plan will be made available on the World Wide Web at *http://endangered.fws.gov/RECOVERY/RECPLANS/index.htm.*

FOR FURTHER INFORMATION CONTACT: Ted Swem, Endangered Species Branch Chief, at the above Fairbanks address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened animal or plant to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the Service's endangered species program. To guide recovery, the Service is working to prepare recovery plans for most listed species native to the United States. Recovery plans describe actions considered necessary for conservation of species, establish criteria for downlisting or delisting, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. Information presented during the public comment period has been considered in the preparation of this final recovery plan. We will forward substantive comments regarding recovery plan implementation to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions.

Three breeding populations of Steller's eiders are recognized: two in Arctic Russia and one in Alaska. Neither Russian population is listed as threatened or endangered. The Alaska-breeding population is the only population listed as threatened or endangered, and this recovery plan pertains exclusively to the conservation of this population.

The Alaska-breeding population was listed as threatened under the Act on June 11, 1997 (62 FR 31748). The decision to list the Alaska-breeding population of Steller's eiders as threatened was based on a substantial decrease in the species' nesting range in Alaska and the resulting increased vulnerability of the remaining breeding population to extirpation. When the Alaska-breeding population of the Steller's eider was listed as threatened, the factor or factors causing the decline were unknown. Factors identified as potential causes of decline included predation, hunting, ingestion of spent lead shot in wetlands, and changes in the marine environment that could affect Steller's eider food or other resources. Since listing, other potential threats have been identified, but the causes of decline and obstacles to recovery remain poorly understood. Accordingly, a significant number of early recovery tasks will involve research to identify threats and evaluate their impacts.

The objective of this plan is to establish a framework for the recovery of the Steller's eider so that protection by the Act is no longer necessary. Interim objectives are: (1) To prevent further declines of the Alaska-breeding population (including both the northern and western Alaska subpopulations); (2) to protect Alaska-breeding Steller's eiders and their habitats; (3) to identify and alleviate causes of decline and/or obstacles to recovery; and (4) to determine size, trends, and distribution of the northern and western Alaska-breeding subpopulations. The recovery plan provides criteria and threshold population levels for delisting and reclassification (*i.e.*, from threatened to endangered).

Authority: The authority for this action is Section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: March 31, 2003.

David B. Allen,

Regional Director.

[FR Doc. 03–9893 Filed 4–22–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Proposed Safe Harbor Agreement for the Pueblo of Santa Ana, Sandoval County, New Mexico

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability, receipt of application.

SUMMARY: The Pueblo of Santa Ana (Applicant), Sandoval County, New Mexico, has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement for survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–049290–0. The permit request is for a period of 25 years. The permit application includes a proposed Safe Harbor Agreement (SHA) for the endangered Rio Grande silvery minnow *(Hybognathus amarus)*, the endangered southwestern willow flycatcher *(Empidonax traillii extimus)*, and the threatened bald eagle *(Haliaeetus leucocephalus)*.

Based upon guidance in the Service's June 17, 1999, Final Safe Harbor Policy, if a SHA and associated permit are not expected to individually or cumulatively have a significant impact on the quality of the human environment or other natural resources, the Agreement/permit may be categorically excluded from undergoing National Environmental Policy Act review. The Service has made a preliminary determination that this proposed action is eligible for categorical exclusion and this notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6). The Service explains the basis for this preliminary determination in an Environmental Action Statement, which is also available for public review.

We, the Service, announce the opening of a 30-day comment period and request comments from the public on the Applicant's enhancement of survival permit application, the accompanying proposed SHA, and the environmental action statement. All comments received will become part of the administrative record and may be released to the public.

DATES: Written comments on the application, proposed SHA, or environmental action statement should be received on or before 30 days from date of publication in the **Federal Register**.

ADDRESSES: Comments should be addressed to Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Road, Albuquerque, New Mexico 87113 (505/346–2525). Please refer to permit number TE–049290–0. You may obtain copies of the documents from the field office address above or by calling 505–346–2525.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, New Mexico Ecological Services Field Office, 2105 Osuna Road, Albuquerque, New Mexico 87113; telephone: (505) 346–2525, facsimile (505) 346–2542.

SUPPLEMENTARY INFORMATION

Background

Under a Safe Harbor Agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22 and 17.32.

The proposed SHA would cover the natural resource programs of Santa Ana Pueblo, Sandoval County, New Mexico, including: ecosystem restoration, range/wildlife, and water resources. The Applicant's ecosystem restoration program proposes to restore riparian, wetland, and riverine habitat along the Rio Grande and the Rio Jemez within the boundaries of the Pueblo. Restoration activities include replacing non-native plant species and restoring native wildlife habitat. The range/wildlife program proposes to improve the health of rangeland on Santa Ana Pueblo by continuing to exclude livestock from some riparian areas, conducting fish and wildlife surveys, and developing fire management plans. Activities conducted under the water resources program propose to develop water quality standards, water rights establishment, municipal wellhead protection, and planning and implementing projects through the U.S. Environmental Protection Agency's section 319 program.

The Applicant is proposing to conduct ecological restoration projects along the Rio Grande and Rio Jemez corridors. We anticipate this proposed SHA will result in the following benefits: (1) Construction of two additional gradient restoration facilities, which are sloping rock structures that provide river channel stabilization while maintaining fish passage; (2) prevention of further channel degradation within Santa Ana Pueblo by creating river reaches with low velocity flow; (3) replacement non-native vegetation with native willow (*Salix* sp.) and cottonwood (*Populus* spp.); (4) re-engineering of the river channel and lower adjacent river bars to widen the channel and encourage overbank flooding; (5) creation of backwater habitat, including a healthy riparian zone; (6) continuation of livestock exclusions from various riparian areas; and (7) encouragement of recruitment of native riparian habitat, including the regeneration of mature cottonwood stands. The conservation provided by this proposed 25-year SHA is intended to improve habitat conditions by maintaining and enhancing habitat, reducing the likelihood that the river channel will become narrower and deeper, increasing the opportunities for overbank flooding and a higher water table.

Consistent with the Safe Harbor Agreement policy and implementing regulations, we propose to issue a permit to the Applicant authorizing them to incidentally take these endangered and threatened species, which occur on the enrolled lands, as a result of lawful activities on enrolled lands, so long as baseline conditions are maintained and terms of the Agreement are implemented. Future activities of the Applicant could result in a return to the baseline condition.

We provide this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). We will evaluate the proposed SHA, associated documents, and comments submitted thereon to determine whether the requirements of section 10(a) of the Act and NEPA regulations have been met. If we determine that the requirements have been met, we will sign the SHA and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to Santa Ana Pueblo in accordance with the terms of the Agreement and specific terms and conditions of the authorizing permit. We will not make our final decision until after the end of the 30-day comment period and will fully consider all comments received.

Susan MacMullin,

Acting Regional Director, Region 2.

[FR Doc. 03–9979 Filed 4–22–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Public Meeting on the Harvest and Export of American Ginseng

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Announcement of meeting.

SUMMARY: This notice announces the time and place for a public meeting on American ginseng (*Panax quinquefolius*). In preparation of the U.S. Fish and Wildlife Service's current and future finding for the export of American ginseng, we are particularly interested in obtaining any current information on the status of American ginseng in the wild. We will discuss the Federal regulatory framework for the export of American ginseng and how these regulations control the international trade of this plant. We will also discuss the different CITES definitions as they are applied to American ginseng grown under different production systems and how these systems affect the export of ginseng roots.

DATES: The public meeting will be held on May 21, 2003, from 9 a.m. to 4 p.m., in Lexington, Kentucky.

ADDRESSES:

Public Meeting

The public meeting will be held at the Holiday Inn North, 1950 Newton Pike, Lexington, Kentucky. Directions to the meeting location can be obtained by contacting the Division of Scientific Authority or the Division of Management Authority (*see* **FOR FURTHER INFORMATION CONTACT,** below) or by visiting our World Wide Web site: *http://international.fws.gov/animals/ginindx/.html*. Please note that the location is accessible to the handicapped, and all persons planning to attend the meeting will be required to present photo identification when entering the building. Persons planning to attend the meeting who require interpretation for the hearing impaired must notify the Division of Scientific Authority as soon as possible (*see* **FOR FURTHER INFORMATION CONTACT,** below).

Available Information

Information from the U.S. Fish and Wildlife Service's American ginseng workshop, held in St. Louis, Missouri, February 19–21, 2003, is available upon request from the Division of Scientific Authority or the Division of Management Authority (*see* **FOR FURTHER INFORMATION CONTACT,** below), a copy of the workshop report will be available from our World Wide Web site *http://international.fws.gov/animals/ginindx/*. The purpose of the workshop was to meet with representatives of State and Federal agencies, as well as to recount the results of new research by academics, on the status and management of American ginseng and the CITES export program for the species. We worked cooperatively with representatives of these State and Federal agencies to develop recommendations to improve the management and the CITES export program of this plant.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Gabel, Chief, Division of Scientific Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, VA 22203; e-mail at *scientificauthority@fws.gov;* fax: 703–358–2276; or Dr. Peter O. Thomas, Chief, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 700, Arlington, VA 22203; e-mail at: *managementauthority@fws.gov;* fax: 703–358–2298.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or Convention) is an international treaty designed to control and regulate international trade in certain animal and plant species that are now or potentially may be threatened with extinction by international trade. These species are listed in Appendices to CITES, copies of which are available from the Division of Scientific Authority or the Division of Management Authority at the above addresses, from our World Wide Web site *http://international.fws.gov,* or from the official CITES Secretariat World Wide Web site: *http://www.cites.org/*. Currently, 161 countries, including the United States, are Parties to CITES. American ginseng (*Panax quinquefolius*) was listed in appendix II of CITES on July 1, 1975. The Division of Scientific Authority and the Division of Management Authority of the U.S. Fish and Wildlife Service regulate the export of American ginseng, including whole plants, whole roots, and root parts. To meet CITES requirements for export of American ginseng from the United States, the Division of Scientific Authority must determine that the export will not be detrimental to the survival of the species, and the Division of Management Authority must be satisfied that the American ginseng roots to be exported were legally acquired.

Since the inclusion of American ginseng in CITES appendix II, the Divisions of Scientific Authority and Management Authority have issued findings on a State-by-State basis. To determine whether or not to approve exports of American ginseng, the Division of Scientific Authority has annually reviewed available information from various sources (other Federal agencies, State regulatory agencies, industry and associations, nongovernmental organizations, and academic researchers) on the biology and trade status of the species. After a thorough review, the Division of Scientific Authority makes a non-detriment finding and the Division of Management Authority makes a legal acquisition finding on the export of American ginseng to be harvested during the year in question. As of 1999, the Division of Scientific Authority has included in its non-detriment findings for the export of wild (including wild-simulated) American ginseng roots an age-based restriction (*i.e.*, plants must be at least 5 years old).

States with harvest programs for wild and/or cultivated American ginseng include: Alabama, Arkansas, Georgia, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Michigan, Minnesota, Missouri, New York, North Carolina, North Dakota, Ohio, Oregon, Pennsylvania, Tennessee, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

During the week of February 17, 2003, the Divisions of Scientific Authority and Management Authority hosted an American ginseng workshop in St. Louis, Missouri, with representatives of State and Federal agencies that regulate the plant to discuss the status and management of American ginseng and the CITES export program for the species. The workshop provided an important opportunity for representatives of the States and Federal agencies to work cooperatively to develop recommendations to improve the management and the CITES export program of this plant. In anticipation of this year's and future findings, we are now seeking public input on the wild status, production, and export of American ginseng. In particular, we are most interested in any new information on wild ginseng, and the production and export of wild-simulated and woods-grown American ginseng.

Author

The primary author of this notice is Patricia Ford, the Division of Scientific Authority, U.S. Fish and Wildlife Service.

Dated: March 27, 2003.

Marshall P. Jones Jr.,

Acting Director.

[FR Doc. 03–9987 Filed 4–22–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission to OMB for Approval of Tribal Self-Governance Program Information Collection

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs is submitting a request for an extension of an information collection from potential Self-Governance Tribes, as required by the Paperwork Reduction Act. The information collected under OMB Clearance Number 1076–0143 will be used to establish requirements for entry into the pool of qualified applicants for self-governance, to provide information for awarding planning and negotiation grants, and to meet reporting requirements of the Self-Governance Act.

DATES: Submit comments on or before May 23, 2003.

ADDRESSES: Written comments can be sent to: The Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior, 725 17th Street NW., Washington, DC 20503. A copy should be sent to William Sinclair, Office of Self-Governance, 1849 C Street, NW., Mail Stop 2548 MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the information collection request submission and the Federal Register notice by contacting William Sinclair, (202) 219–0244.

SUPPLEMENTARY INFORMATION: The **Federal Register** notice of proposed information collection activities was published in the **Federal Register** on November 27, 2002 (67 FR 70964). No comments were received. You are advised that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information that does not display a valid OMB clearance number. For the Self-Governance collection of information, the response is voluntary, to obtain or retain a benefit, depending upon the parts of the program being addressed.

The Self-Governance program was authorized by the Tribal Self-Governance Act of 1994, Public Law 103–413, as amended. Tribes interested in entering into Self-Governance must submit certain information as required by Public Law 103–413, as amended, to support their admission into Self-Governance. In addition, those tribes and tribal consortia who have entered into self-governance compacts will be requested to submit certain information as described in the negotiated rules published in final form on December 15, 2000 (65 FR 78688). This information will be used to justify a budget request submission on their behalf and to comport with section 405 of the Act that calls for the Secretary to submit an annual report to the Congress.

You may submit comments about the collection to evaluate the following:

(a) The accuracy of the burden hours, including the validity of the methodology used and assumptions made;

(b) The necessity of the information for proper performance of the bureau functions, including its practical utility;

(c) The quality, utility, and clarity of the information to be collected; and,

(d) Suggestions to reduce the burden including use of automated, electronic, mechanical, or other forms of information technology.

Please submit your comments to the persons listed in the **ADDRESSES** section. Please note that comments, names and addresses of commentators, will be available for public review during regular business hours. If you wish your name and address withheld from the public, you must state this prominently at the beginning of your comments. We will honor your request to the extent allowable by law.

OMB is required to make a decision concerning this information collection request between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment will receive the best consideration by OMB if it is submitted early during this comment period.

Type of review: Renewal.

Title: Tribal Self-Governance Program—25 CFR 1000.

OMB Control No.: 1076–0143.

Affected Entities: Tribes and tribal consortiums wishing to enter into a self-governance compact.

Size of Respondent Pool: 95.

Number of Annual Responses: 213.

Average Hours per Response: 48 hours.

Yearly Hour Burden: 10,498 hours.

Annual Non-Hourly Burden Cost: $16,000.

Dated: April 15, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–10071 Filed 4–22–03; 8:45 am]

BILLING CODE 4310–W8–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Public Meeting: Resource Advisory Council to the Lower Snake River District

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Lower Snake River District Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held May 21, 2003 at the Marsing Community

Center, located at 126 Bruneau Highway, Marsing, Idaho, beginning at 9 a.m. Public comment periods will be held after each topic on the agenda. The meeting will adjourn at 5 p.m.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, Lower Snake River District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in southwestern Idaho. At this meeting, the following topics will be discussed:

- RAC Members will discuss with BLM representatives what role they envision the Members playing in the "Working Landscape-Grazing Policy Changes" Initiative after the three "Listening" public meetings held around Idaho, in April;
- A presentation will be given on RS 2477 and the new handbook issued in November, 2002, entitled, "Road Management and Maintenance Guidelines for Public Lands in Idaho";
- A video will be shown during lunch about noxious weeds;
- An update will be given on the two Resource Management Plans under development in the District;
- Subcommittee reports on Rangeland Standards and Guidelines, Sage Grouse Habitat Management, OHV and Transportation Management, River Recreation and Resource Management Plans, and Fire and Fuels Management; and
- Each of the Field Office Managers will provide an update on current activities and issues in each of their field office areas.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, tour transportation or other reasonable accommodations, should contact the BLM as provided below. Expedited publication is requested to give the public adequate notice.

Dated: April 17, 2003.

Jimmie Buxton,

Acting Associate District Manager.

[FR Doc. 03–9980 Filed 4–22–03; 8:45 am]

BILLING CODE 4310–AG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Extension for Expiring Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Public Notice.

SUMMARY: Pursuant to 36 CFR 51.23, notice is hereby given that the National Park Service intends to extend the following expiring concession contract for a period of up to 6-months, or until such time as a new contract is awarded, whichever occurs sooner.

Concessioner ID No.	Concessioner name	Park
CC–EVER002–82	Everglades National Park Boat Tours, Inc.	Everglades NP

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7144.

SUPPLEMENTARY INFORMATION: The concession authorization expires on its terms on December 31, 2002. The National Park Service has determined that the proposed 6-month extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to develop a prospectus leading to competitive selection for a new long-term concession contract.

Dated: February 14, 2003.

Richard G. Ring,

Associate Director, Administrator, Business Practices and Workforce Development.

[FR Doc. 03–10022 Filed 4–22–03; 8:45 am]

BILLING CODE 4310–76–M

DEPARTMENT OF THE INTERIOR

National Park Service

Release of an Environmental Assessment Document for the Placement of Wireless Telecommunication Facilities

AGENCY: National Park Service, Catoctin Mountain Park.

ACTION: Reduction in the number of public informational meetings.

SUMMARY: Catoctin Mountain Park will release for public review, the Environmental Assessment document for the application regarding the placement of wireless telecommunication facilities (WTF). The public information meeting scheduled for April 29, 2003 will not be held. Two meetings were originally scheduled because the meetings were to be held during the winter months; since the meetings are being held in the spring, only one will be held. The public informational meeting of May 1, 2003 will be held as scheduled at Catoctin Mountain Park, Round Meadow Conference Room at 7 p.m.

DATES: Environmental Assessment release date—April 18, 2003.

Document Availability: The Environmental Assessment document will be available for public review at Catoctin Mountain Park headquarters located at 6602 Foxville Road, Thurmont Maryland, at Washington County Library (Hagerstown and Smithsburg branches) and Frederick County Library (Frederick and Thurmont branches) and online at the Catoctin Mountain Park's Web site *http://www.nps.gov/cato.*

FOR FURTHER INFORMATION CONTACT: Scott Bell, Environmental Protection Specialist, 301/416–0536.

Dated: April 16, 2003.

J. Mel Poole,

Superintendent, Catoctin Mountain Park.

[FR Doc. 03–10023 Filed 4–22–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/ General Management Plan Santa Monica Mountains National Recreation Area Ventura and Los Angeles Counties, CA; Notice of Approval of Record of Decision

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, as amended) and the implementing regulations promulgated by the Council on Environmental Quality (40 CFR part 1505.2), the Department of the Interior, National Park Service has prepared, and the Regional Director, Pacific West Region has approved, the Record of Decision for the General Management Plan for Santa Monica Mountains National Recreation Area, in southern California. The formal no-action period was officially initiated January 31, 2003, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final Environmental Impact Statement (EIS).

Decision: As soon as practicable the NPS will begin to implement the General Management Plan described and analyzed as the Preferred Alternative contained in the Final EIS. The selected plan features a deliberate, long-term strategy to protect significant cultural and natural resources, while providing for compatible recreation (*e.g.*, hiking, wildlife observation) and increased educational opportunities to a diverse public. This plan was also deemed to be the "environmentally preferred" alternative.

This course of action and four alternatives were identified and analyzed in the Final EIS, and previously in the Draft EIS (the latter was distributed in December 2000). The full spectrum of foreseeable environmental consequences was assessed, and appropriate mitigation measures identified, for each alternative. Beginning with early scoping, through the preparation of the Draft and Final EIS, numerous public meetings were conducted and newsletter updates (in english and spanish) were regularly produced. Approximately 600 written comments responding to the Draft EIS were received and duly considered. No substantive or adverse comments responding to the Final EIS were received during the no-action period which ended on March 3, 2003. Key consultations which aided in the preparation of the Draft and Final EIS involved (but were not limited to) the U.S. Fish and Wildlife Service, California Dept. of Fish and Game, State Historic Preservation Office, native American Tribes, Los Angeles and Ventura Counties, cities of Thousand Oaks, Malibu and Calabasas, and the Santa Monica Mountains Conservancy.

Copies: Interested parties desiring to review the Record of Decision may obtain a complete copy by contacting the Acting Superintendent, Santa Monica Mountains National Recreation Area, 401 West Hillcrest Dr., Thousand Oaks 91360–4223; or via telephone request at (805) 370–2300.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 03–10027 Filed 4–22–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement\Fire Management Plan, Whiskeytown National Recreation Area, Shasta County, CA; Notice of Availability

SUMMARY: Pursuant to § 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 42 U.S.C. 4321–4347, January 1, 1970, as amended), and the Council on Environmental Quality Regulations (40 CFR Part 1500–1508), the National Park Service, Department of the Interior, has prepared a Draft Environmental Impact Statement identifying and evaluating four alternatives for a Fire Management Plan for Whiskeytown National Recreation Area, in northern California. Potential impacts and mitigating measures are described for each alternative. The alternative selected after this conservation planning and environmental impact analysis process will serve as a blueprint for fire management actions at Whiskeytown National Recreation Area over the next 10 years.

This Whiskeytown Fire Management Plan (FMP) and Draft Environmental Impact Statement (DEIS) identifies and analyzes three action alternatives, and a no action alternative, for a revised Fire Management Plan at Whiskeytown National Recreation Area. Revisions to the current plan are needed to meet public and firefighter safety, natural and cultural resource management, and wildland urban interface objectives of the park. The action alternatives vary in the emphasis they place on fire management goals developed by the park. The current program has been effective in fire suppression, but has not been able to restore large portions of the park landscape to circa 1600 conditions as required by the 2000 General Management Plan (GMP). Each action alternative contains an amendment to the park's GMP to clarify that the park's administration building may be rebuilt in its current location at park headquarters in conjunction with relocating the fire cache to the Oak Bottom recreational complex.

Whiskeytown National Recreation Area is located eight miles west of Redding, California and encompasses 42,500 acres, including the 3000-acre Whiskeytown Lake—a reservoir created as part of California's Central Valley Project, Trinity River Diversion. In the past, wildland fire occurred naturally in the park as an important ecosystem process that kept forest fuels and vegetation structure within the natural range of variability. Mining, logging and fire suppression activities have lead to increased fuel loads and changes in vegetation community structure. This has increased the risk of large, high-intensity wildland fire within the park, threatening developed zones, the park's natural and cultural resources, and neighboring landowners and communities.

Alternatives: Under the park's preferred alternative (Alternative IV), the park would focus on restoring Whiskeytown's plant communities to reduce the risk of high severity wildland fire by decreasing forest stand density, reducing surface fuels, and attempting to restore fire as a natural disturbance process to the greatest extent feasible using prescribed fire, mechanical treatment and managed wildland fire when appropriate. Up to 2,200 acres per year would be treated through prescribed fire and wildland fire use. Three levels of mechanical treatment would be utilized to reduce fuel levels and mimic the effects of fire on structural patterns of woody vegetation, including the use of hand tools, chainsaws, weed eaters, chippers, brush mastication and small-scale logging of trees up to 12 inches in diameter at breast height. Mechanical treatment would be used to reduce forest fuels in and around developed areas, and to install and widen some new and existing shaded fuel breaks. Mechanical treatment would be used on up to 1,075 acres per year.

Under the no-action alternative (Alternative I), the current fire management program would continue utilizing a limited range of fire management strategies—including prescribed fire, limited mechanical treatment and suppression of all wildland fires (including natural

ignitions). The current program includes both broadcast and pile burning components, with prescribed fire projects ranging in size from 0.5 to 1,000 acres occurring in all vegetation types. Maximum burning in a given year under this alternative would be 1,400 acres. Limited mechanical treatment methods would be utilized to reduce hazardous fuel levels in the park. These would include the use of chain saws, weed-eaters, hand crews, and chippers to clear around buildings, to install and maintain shaded fuel breaks, and to clear along roadways. Total maintained shaded fuel break system would be 850 acres, with maintenance occurring at least once every three years as needed. Annual average maintenance of all mechanically treated areas under Alternative I would be 275 acres.

Under Alternative II, the fire program would focus on the application of prescribed fire to meet ecological restoration objectives, and to reduce hazardous fuels throughout the park. All other fires would be suppressed including natural ignitions. Mechanical treatment would only be used to construct prescribed fire burn unit boundaries and to reduce fuels around developed areas. Alternative II would only utilize hand tools, chainsaws, weed eaters and chippers for mechanical treatment for an average 80 acres annually. This alternative would include pile burning and broadcast burning. Projects under Alternative II would include areas up to 1,000 acres in size to simulate, to the greatest extent feasible, the scale and pattern of natural fire events. Up to 3,000 acres would be burned during each year of implementation. Due to windows of opportunity during the dormant season, Alternative II would implement prescribed burns during the non-dormant season from 10%–20% of the time to maximize opportunities for execution of prescribed fire projects.

Under Alternative III, all natural and human-ignited wildland fires would be suppressed. Prescribed burning would only occur in conjunction with mechanical fuel treatments around developments and on shaded fuel breaks. Alternative III would consist of pile burning and a few prescribed fire projects to strengthen and widen by up to ¾ to ½ mile shaded fuel breaks for tactical purposes in the case of suppression fire events. No large, prescribed fires would be conducted. Up to 250 acres would be burned during each year of implementation. This alternative would use mechanical treatment to reduce forest fuels in and around developed areas, and to install new, and widen existing shaded fuel breaks. Hand tools, chainsaws, weed eaters, chippers, and brush masticators would be used. Annual program levels would be up to 225 acres for each of the two mechanical treatment levels proposed in this alternative.

Alternative IV is the "environmentally preferred" alternative; comparative analysis in this regard is provided in the DEIS. Also, an element common to all of the action alternatives is the possible amending of the 2000 GMP with regard to options for future locations of operational and administrative facilities.

Planning Background: A Notice of Intent was published in the **Federal Register** on August 8, 2001, and the scoping period ended on September 15, 2001 (although comments were accepted throughout 2002). During this time the NPS held discussions and briefings with local communities; local residents; local, regional and state fire organizations; air quality regulators; other agency representatives; tribes; park staff; elected officials; public service organizations and other interested members of the public. A public scoping meeting was held on August 23, 2001 in the town of Old Shasta, in the Shasta Elementary School Multipurpose room. Twenty members of the public attended. The meeting included a question and answer period and time for public comments. The issues raised during this period are summarized in Chapter 1, Purpose and Need of the DEIS.

Comments: The FMP/DEIS will be sent directly to those who have requested it. Copies will also be available at park headquarters and at local and regional libraries, and the complete document will be posted on the park's Web site at *http://www.nps.gov/whis/exp*. Written comments must be postmarked (or transmitted by e-mail) no later than sixty days from the date of EPA's notice of filing published in the **Federal Register**—immediately upon determining this date it will be announced on the park's Web site. All comments should be addressed to the Superintendent and mailed to Whiskeytown National Recreation Area, PO Box 188, Whiskeytown, CA 96095 (Attn: Fire Management Plan); or e-mailed to *whis_planning@nps.gov* (in the subject line, type: Fire Management Plan).

In order to facilitate public review and comment on the FMP/DEIS, the Superintendent will schedule public meetings in the local area, which at this time are anticipated to occur in late spring, 2003. Whiskeytown employees will attend all sessions to present the FMP/DEIS, to receive oral and written comments, and to answer questions. Participants are encouraged to review the document prior to attending a meeting. As with the public scoping meeting, confirmed details on location and times for these comment opportunities will be widely advertised in the local and regional media, on the park's website, and via direct mailings to agencies, organizations and interested members of the public.

All comments are maintained in the administrative record and will be available for public review at park headquarters. If individuals submitting comments request that their name and/or address be withheld from public disclosure it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Decision Process: Depending on the degree of public interest and response from other agencies and organizations, at this time it is anticipated that the Final Environmental Impact Statement and Fire Management Plan will be completed in late 2003. The availability of the Final EIS will be published in the **Federal Register**, and announced via local and regional press and website postings. Subsequently, a Record of Decision may be approved not sooner than thirty days after the Final EIS and FMP document is distributed. As a delegated EIS, the official responsible for the final decision is the Regional Director, Pacific West Region, National Park Service. Subsequently, the official responsible for implementation is the Superintendent, Whiskeytown National Recreation Area.

Dated: March 6, 2003.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 03–10026 Filed 4–22–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a General Management Plan and Environmental Impact Statement

AGENCY: National Park Service, Interior.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces their intent to prepare a General Management Plan and Environmental Impact Statement (GMP/EIS) for Governors Island National Monument, New York. The 21.69-acre Monument contains historic Fort Jay and Castle Williams and other properties located on 172-acre Governors Island, which lies about ½ mile south of Manhattan. The Monument's GMP/EIS will propose a long-term approach to managing the Governors Island National Monument, and will be prepared in cooperation with redevelopment plans being prepared by the Governors Island Preservation and Education Corporation. Consistent with the monument's mission, NPS policy, and other laws and regulations, alternatives will be developed to guide the management of the Monument over the next 15 to 20 years. The alternatives will incorporate various zoning and management prescriptions to ensure resource preservation and public enjoyment of the Monument. The environmental consequences that could result from implementing the various alternatives will be evaluated in the plan. Impact topics will include cultural and natural resources, visitor experience, park operations, the socioeconomic environment, impairment, and sustainability. The public will be invited to express concerns about the management of the Monument early in the process through public meetings and other media; and will have an opportunity to review and comment on a draft GMP/EIS. Following public review processes outlined under NEPA, the final plan will become official, authorizing implementation of a preferred alternative. The target date for the Record of Decision is February 7, 2006, 3 years from the date the Monument was established.

FOR FURTHER INFORMATION CONTACT: Superintendent, Governors Island National Monument, c/o 200 Chestnut Street, Philadelphia, PA 19106, (215) 597–1587.

Dated: April 1, 2003.

Linda Neal,

Superintendent, Governors Island National Monument.

[FR Doc. 03–10025 Filed 4–22–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 29, 2003. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–343–1836. Written or faxed comments should be submitted by May 8, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ILLINOIS

Du Page County

Butler School, 1200 31st. St. (Oak Brook Rd.), Oak Brook, 03000355

Ogle County

Oregon Public Library (Illinois Carnegie Libraries MPS), 300 Jefferson St., Oregon, 03000352

Stephenson County

AF and AM Lodge 687, Orangeville, 203 W. High St., Orangeville, 03000354

Whiteside County

Lyndon Bridge, S end of 6th Ave. W., Lyndon, 03000353

IOWA

Sac County

Chicago and North Western Passenger Depot, 3727 Perkins Ave., Wall Lake, 03000358

Story County

Nevada Downtown Historic District (Nevada Central Business District MPS), Approx. 6th St. from I Ave. to M Ave., Nevada, 03000356

Webster County

Oleson Park Music Pavilion, 1400 Oleson Park Ave., Fort Dodge, 03000357

Woodbury County

Sanford, Arthur and Stella, House, 1925 Summit, Sioux City, 03000359

KANSAS

Butler County

Little Walnut River Pratt Truss Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), SW 160th Rd., 0.5 mi. W of int. with Purity Springs Rd., Bois D'Arc, 03000377

Chase County

Cottonwood River Pratt Truss Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Main St., 0.8 mi. W of int. with 1st St., Cedar Point, 03000376

Dickinson County

Chapman Creek Pratt Truss Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Quail Rd., 1.7 mi. S of int. with KS 18, 2.5 mi. N of Chapman, Chapman, 03000375

Franklin County

Eight Mile Creek Warren Truss Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Osborne Terrace, 0.2 mi. W of int. with Eisenhower Terrace, 1.0 W of Main St., Ottawa, 03000374

Geary County

Old Katy Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Otter Creek Rd., 0.5 mi. S of int. with Lyons Creek Rd., 0.5 mi. SE of Wreford, Wreford, 03000370

Jefferson County

Delaware River Composite Truss Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Coal Creek Rd., 0.1 mi. S of int. with 170th Rd., Valley Falls, 03000371

Delaware River Parker Truss Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Bridge St., 0.3 mi. W of int. with Main St., Perry, 03000372

Leavenworth County

Begley Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Two unnamed farm rds flanking Stranger Creek 1.1 mi. W of jct. with 227th St. and Roe Rd., 1.75 mi. NW of Millwood, Millwood, 03000373

Lincoln County

Salt Creek Truss Leg Bedstead Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), B Rd., 0.6 mi. E of int. with 24th Rd., 1.0 mi. N of Barnard, Barnard, 03000368

McPherson County

North Gypsum Creek Truss Leg Bedstead Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Sioux Rd., 0.2 mi. E of int. with 24th Ave., 1.0 mi. S and 2.8 mi. W of Roxbury, Roxbury, 03000367

Nemaha County

Clear Creek Camel Truss Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Unnamed Rd., 0.5 mi. W of FAS 485, 6.8 mi. N of Baileyville, Baileyville, 03000360

Norton County

North Fork Solomon River Lattice Truss Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Rd. W&, 0.1 mi. S of int. with Rd. BB, 1.5 mi. W of Lenora, Lenora, 03000366

Sand Creek Truss Leg Bedstead Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Rd. Y, 0.5 mi. W of int. with KS 283, 2 mi. N of KS 9 and 6 mi. NE of Lenora, Lenora, 03000365

Osage County

Atchison, Topeka, and Santa Fe Pratt Truss Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), SE Pine St., 0.1 mi. S of int. with E. Emporia St., Melvern, 03000364

Osborne County

East Fork Wold Creek Pratt Truss Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), W 290th Dr., 0.8 mi. E of jct. with S. 50th Ave., 2.0 mi. S and 4.0 mi. E of Cheyenne, Delhi, 03000361

Phillips County

Battle Creek King Post Truss Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), W. Eagle Rd., 3.0 mi. E of jct. with Washington Rd., Long Island, 03000362

Shawnee County

Wea Creek Bowstring Arch Truss Bridge (Metal Truss Bridges in Kansas 1861—1939 MPS), Grounds of the Kansas State Historical Society, 6425 SE 6th Ave., Topeka, 03000363

LOUISIANA

Vernon Parish

Talbert—Pierson Grave Shelters, Victor Martin Rd., Sugartown, 03000378

MASSACHUSETTS

Essex County

High Street Cemetery, 45 High St., Danvers, 03000382

Main Street Historic District, Main, Summer Sts., Haverhill, 03000383

Middlesex County

Fells Connector Parkways, Metropolitan System of Greater Boston (Metropolitan Park System of Greater Boston MPS), Fellsway East: E. Border Rd. To Fellsway W; Fellsway West: Fulton St. to Fellway E; Fellsway: Fellsway E to Wellington Br, Malden and Medford, 03000379

Fellsmere Park Parkways, Metropolitan Park System of Greater Boston (Metropolitan Park System of Greater Boston MPS), W. Border Rd, Boundary Rd., Malden, 03000381

Suffolk County and Essex County

Lynn Fells Parkway, Metropolitan Park System of Greater Boston (Metropolitan Park System of Greater Boston MPS), Lynn Fells Parkway, Melrose, Saugus, 03000380

Savin Hill Historic District, Roughly along Savin Hill Ave., then bounded by William T Morrissey Blvd., Dorchester Bay and Hubbardston Rd., Boston, 03000385

Worcester County

Brookfield Cemetery, Main St., Brookfield, 03000384

MICHIGAN

Leelanau County

Riverside Inn, 302 E. River St., Leland, 03000386

MISSISSIPPI

Hinds County

Spengler—Thomas Building, 129 S. President, Jackson, 03000387

Jasper County

Montrose Presbyterian Church, Cty. Rd. 20, Montrose, 03000388

NEW JERSEY

Passaic County

Reihardt Mills, 283–297 21st Ave., 122–136 20th Ave., 46–72 Gray St., 45–67 State St., Paterson City, 03000393

NORTH CAROLINA

Macon County

Baldwin—Coker Cottage, 226 Lower Lake Rd., Highlands, 03000390

Wake County

Roanoke Park Historic District (Five Points Neighborhoods, Raleigh, North Carolina MPS), Roughly bounded by Whitaker Mill Rd., Fairview Rd., Morrison Ave., Sunrise Ave., and Brickett Blvd., Raleigh, 03000389

Vanguard Park Historic District (Five Points Neighborhoods, Raleigh, North Carolina MPS), Roughly bounded by McCarthy St., Whitaker Mill Rd., Pine Ave., and Hudson St., Raleigh, 03000391

Wilkes County

Downtown Main Street Historic District, Roughly the 800 and 900 Blks. of Main St., North Wilkesboro, 03000392

TENNESSEE

Madison County

Riverside Cemetery, 300 Riverside Dr., Jackson, 03000394

VERMONT

Addison County

Vergennes Residential Historic District, S. Water St., Green St., S. Maple St.-S of Main St., Vergennes, 03000395

VIRGINIA

Mecklenburg County

Rudd Branch Ridge—Complexes #1 and #2 (Archeological Sites within the John H. Kerr Reservoir Area), Address Restricted, Boydton, 03000396

[FR Doc. 03–10028 Filed 4–22–03; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Peabody Essex Museum, Salem, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Peabody Essex Museum, Salem, MA, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The cultural items were collected by J.S. Emerson sometime between the 1880s and the early 1900s and purchased for the Peabody Essex Museum by Dr. C.G. Weld on June 12, 1907. In documentation accompanying the collection, Mr. Emerson indicated that he had found the items in ancient burial caves in Kohala and Kau, HI. He referred to the eight unassociated funerary objects as "a runner of a holua sled," "a small hue," an "ipu le'i, a very deep bowl with a calabash cover," an "ipukai waiho i'a, a very old wooden fish bowl," a "pa inamona, wooden bowl," "two pieces of an old umeke (wooden poi bowl)," all from Kanupa Cave in Kohala, and a "kioe i'a, a cocoanut shell spoon or ladle" from a burial cave in Kau. Kohala and Kau are both on the Island of Hawaii.

During consultation, representatives of Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, and the Office of Hawaiian Affairs indicated their desire to repatriate the cultural items. Officials of the Peabody Essex Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Peabody Essex Museum also have determined following consultation with Bernice P. Bishop Museum professional staff that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the cultural items and Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, and the Office of Hawaiian Affairs.

Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with the cultural items should contact Christina Hellmich, Director of Collections Management, Peabody Essex Museum, East India Square, Salem, MA 01970, telephone (978) 745-1876, facsimile (978) 744-0036, before May 23, 2003. Repatriation of the unassociated funerary objects to Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, and the Office of Hawaiian Affairs may proceed after that date if no additional claimants come forward.

The Peabody Essex Museum is responsible for notifying Hui Malama I Na Kupuna O Hawai'i Nei, Ka Lahui Hawai'i, and the Office of Hawaiian Affairs that this notice has been published.

Dated: March 27, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–10030 Filed 4–22–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: revision of currently approved collection; COPS Count Survey.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 23, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collections instrument with instructions or additional information, please contact Gretchen DePasquale, (202) 305–7780, Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Title of the Form/Collection:* COPS Count Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 301/01. Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: The COPS Count Project surveys agencies that have been awarded a Hiring and/or MORE grants from the COPS Office. Other: None. The information collected provides an accurate up to date account on the status of officers hired/redeployed. This enables COPS to assess the hiring/redeployment progress of awarded grants. This information is also utilized by the Grant Monitoring Division for pre-site preparation and the Grants Administration Division to further enhance the customer service component of the COPS Office. The Program Policy Support and Evaluation Division uses this information for evaluation of the programs funded by the COPS Office as well as the development of future programs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated total of 11,000 respondents providing information on 17,450 grant awards. There will be 17,000 responses to the hiring survey, at .25 hours per response, for a total of 4,250 hours. There will be 450 responses to the MORE survey, at one hour per response, for a total of 450 hours.

(6) *An estimate of the additional public burden (in hours) associated with the collection:* The total estimated burden on the public is 4,700 hours annually.

If additional information is required contact: Brenda Dyer, Deputy Clearance Officer Information Management and Security Staff, Justice Management Division, United States Department of Justice, 601 D Street NW., Patrick Henry Building, Suite 1600, NW., Washington, DC 20530.

Dated: April 17, 2003.

Brenda Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–9967 Filed 4–22–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services

FY 2003 Community Policing Discretionary Grants

AGENCY: Office of Community Oriented Policing Services, Department of Justice.

ACTION: Notice of availability.

SUMMARY: The Department of Justice Office of Community Oriented Policing Services (COPS) announces the availability of the COPS in Schools grant program, which will assist law enforcement agencies in hiring new, additional School Resource Officers (SROs) to engage in community policing in and around primary and secondary schools. This program provides an incentive for law enforcement agencies to build collaborative partnerships with the school community and to use community policing efforts to combat school violence. The School Resource Officer must devote at least 75% of their time to work in and around primary and secondary schools, in addition to the time that your agency was devoting in the absence of the COPS in Schools grant.

The COPS in Schools program provides a maximum Federal contribution of up to $125,000 per officer position over the three-year grant period, with any remaining costs to be paid with local funds. Officers paid with COPS in Schools funding can only be hired on or after the grant award start date. In addition, all jurisdictions that apply must demonstrate that they have primary law enforcement authority over the school(s) identified in their application and demonstrate their

inability to implement this project without Federal assistance.

DATES: There will be one application deadline for the COPS in Schools (CIS) program in 2003: June 13, 2003. All applications must be postmarked on or before the final deadline date of June 13, 2003, to be considered for funding. All grant awards are subject to the availability of funding. Previous editions of the COPS in Schools application developed prior to March 20, 2003, will not be accepted.

ADDRESSES: To obtain a copy of the CIS 2003 Application Kit please call the U.S. Department of Justice Response Center at 1.800.421.6770 or visit the COPS Web site at *http://www.cops.usdoj.gov.*

FOR FURTHER INFORMATION CONTACT: Please contact the U.S. Department of Justice Response Center at 1.800.421.6770 or your COPS Grant Program Specialist. Additional information on the COPS in Schools program and the COPS Office in general is also available on the COPS Web site at: *http://www.cops.usdoj.gov.*

Overview: The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers to increase or enhance community policing in this nation. Many communities are discovering that trained, sworn law enforcement officers assigned to schools play an integral part in the development and/or enhancement of a comprehensive school safety plan. The presence of these officers provides schools with a direct link to local law enforcement agencies. School Resource Officers (SROs) may serve in a variety of roles including, but not limited to, that of a law enforcement officer/safety specialist, law-related educator, and problem solver/community liaison. These officers may teach programs such as crime prevention, substance abuse prevention, and gang resistance as well as monitor and assist troubled students through mentoring programs. The School Resource Officer(s) may also identify physical changes in the environment that may reduce crime in and around the schools, as well as assist in developing school policies which address criminal activity and school safety.

COPS in Schools funding must be used to hire new, additional School Resource Officers, over and above the number of sworn officers that your agency would fund with State or local funds in the absence of the grant (including other School Resource Officers). Your agency may not reduce its State, locally-funded or Bureau of Indian Affairs funded level of sworn officers (including other School Resource Officers or other sworn officers assigned to the schools) as a result of applying for or receiving COPS in Schools grant funding. For example, agencies currently employing one locally-funded School Resource Officer (or any other officer assigned to the school) that are awarded a School Resource Officer under the COPS in Schools program should thereafter employ two School Resource Officers (one locally-funded and one COPS-funded). COPS in Schools funding may be used to rehire sworn officers previously employed by your agency who have been laid off for financial reasons unrelated to the availability of the COPS in Schools grant, but your agency must obtain prior written approval from the COPS Office.

At the time of application, all applicants must agree to plan for the retention of each COPS-funded COPS in Schools position awarded at the conclusion of federal funding for at least one full local budget cycle with local, state or other non-COPS funding. The application must also include a Memorandum of Understanding (MOU), signed by the law enforcement executive and the appropriate school official(s), to document the roles and responsibilities to be undertaken by the law enforcement agency and the educational school partner(s) through this collaborative effort. The application must also include a Narrative Addendum to document that the School Resource Officer(s) will be assigned to work in and around primary or secondary schools and provide supporting documentation in the following areas: problem identification and justification, community policing strategies to be used by the officers, quality and level of commitment to the effort, and the link to community policing.

All agencies receiving awards through the COPS in Schools program are required to send the officers(s) deployed into the School Resource Officer position(s) as a result of this grant, and one individual designated as the School Representative under the grant program, to attend one COPS in Schools Training. The COPS Office will reimburse grantees for training, *per diem*, travel, and lodging costs for attendance of required participants up to a maximum of $1,200 per person attending. Should your agency receive a COPS in Schools grant, your agency will receive additional training information following notification of the grant award. The COPS in Schools training requirement must be completed prior to the end of your 36 months of grant funding for officer positions.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: April 10, 2003.

Carl Peed,

Director, Office of Community Oriented Policing Services.

[FR Doc. 03–9969 Filed 4–22–03; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) Grants for Small Faith-Based and Community-Based Non-Profit Organizations; Amendment

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; amendment.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of April 4, 2003, concerning the availability of grant funds for small faith-based and community-based non-profit organizations. The document is being amended.

EFFECTIVE DATES: April 23, 2003.

FOR FURTHER INFORMATION CONTACT: Linda Forman, Grants Management Specialist, Division of Federal Assistance, Fax (202) 693–2879.

Amendment to the Federal Register Notice dated: 68 FR, 16554; April 4, 2003: Part V. Eligible Applicants (Note: Small Faith-based and Community-based organizations that received direct grants from the Employment and Training Administration in 2002 are not eligible to apply for a grant under this SGA.) This prohibition, however, does not apply to sub-grantees which received funding from Intermediary grantees in 2002.

Signed at Washington, DC, this 18th day of April, 2003.

James W. Stockton,

Grant Officer.

[FR Doc. 03–10037 Filed 4–22–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Clintwood Elkhorn Mining Company

[Docket No. M–2003–018–C]

Clintwood Elkhorn Mining Company, PO Box 196, Hurley, Virginia 24620 has filed a petition to modify the application of 30 CFR 77.214(a) (Refuse piles; general) to its Clintwood Elkhorn III Mine (MSHA I.D. No. 44–03010) located in Buchanan County, Virginia. The petitioner requests a modification of the existing standard to allow construction of a refuse fill to cover abandoned mine openings in the Blair seam at the Clintwood Elkhorn Mining Company, Cedar Branch Refuse area, MSHA Site I.D. #1211VA50120–82. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Consol of Pennsylvania Coal Company

[Docket No. M–2003–024–C]

Consol of Pennsylvania Coal Company, CONSOL Energy, Inc., 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 77.516 (Electric wiring and equipment; installation and maintenance) to its Enlow Fork Mine (MSHA I.D. No. 36–07416) located in Greene County, Pennsylvania. The petitioner proposes to use an electric heater in a thermal flow reversal reactor to oxidize the methane in mine ventilation air. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Speed Mining, Inc.

[Docket No. M–2003–025–C]

Speed Mining, Inc., PO Box 1083, Beckley, West Virginia 25802 has filed a petition to modify the application of 30 CFR 75.1700 (Oil and gas wells) to its American Eagle Mine (MSHA I.D. No. 46–05437) located in Kanawha County, West Virginia. The petitioner proposes to drill out the oil and/or gas well as specified in its previous petition, docket number M–2001–041–C, and to pump cement to 50 feet above the eagle seam. The rest of the borehole will be left open to utilize degasification of methane out of the longwall gob, after the longwall has intersected the well. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. Dickenson-Russell Coal Company, LLC

[Docket No. M–2003–026–C]

Dickenson-Russell Coal Company, PO Box 573, Abingdon, Virginia 24212–0573 has filed a petition to modify the application of 30 CFR 77.215–2(b) (Refuse piles; reporting requirements) to its Roaring Fork #3 Mine (MSHA I.D. No. 44–06975) located in Dickenson County, Virginia. The petitioner requests a modification of the existing standard and review and approval of a report for the Roaring Fork #3 Scalped Rock Disposal Area, MSHA Site I.D. #1211–VA5–0203–01. The petitioner proposes to expand the Roaring Fork #3 Scalped Rock Disposal to place scalped rock over existing Upper Banner Mine workings. The petitioner states that all organic and topsoil material will be cleared from the proposed fill area prior to placement of scalped rock. The petitioner has listed specific procedures that would be followed prior to placement of scalped rock over mine workings. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to *comments@msha.gov*, or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before June 23, 2003. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 17th day of April 2003.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 03–9968 Filed 4–22–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Ergonomics

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of meeting.

SUMMARY: The National Advisory Committee on Ergonomics (NACE) is part of the Secretary's comprehensive approach for reducing ergonomics-related injuries and illnesses in the workplace. The committee was convened for the first time on January 22, 2003. This notice schedules the second NACE meeting. The public is encouraged to attend.

DATES: The Committee will meet in Washington, DC on Tuesday, May 6 from 9:30 a.m. to 5 p.m. and Wednesday, May 7, 2003, from 8:30 a.m. until approximately 3 p.m.

ADDRESSES: The Committee will meet at the Washington Court Hotel, 525 New Jersey Avenue, NW., Washington, DC 20001; Telephone (202) 628–2100. Submit comments, views, or statements in response to this notice to MaryAnn Garrahan, Director, Office of Technical Programs and Coordination Activities, OSHA, U.S. Department of Labor, Room N–3655, 200 Constitution Avenue, NW., Washington, DC 20210. Phone: (202) 693–2144; Fax: (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: OSHA, Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; Telephone: (202) 693–1999.

SUPPLEMENTARY INFORMATION: NACE was chartered for a two-year term on November 27, 2002, to provide advice and recommendations on ergonomic guidelines, research, and outreach and assistance. The committee met for the first time on January 22, 2003, in Washington, DC. This notice announces the second meeting of the committee, which will take place in Washington, DC on May 6–7, 2003.

I. Meeting Agenda

The second meeting of the National Advisory Committee on Ergonomics will continue discussions on OSHA's ergonomics program and related presentations. The Committee will set up working groups on Research, Guidelines, and Outreach and Assistance, and those working groups will meet on the afternoon of May 6. The working groups will report back to the full Committee on May 7th and lead discussions about their respective topics. Assistant Secretary John Henshaw will also address the Committee on the 7th.

II. Public Participation

Written data, views, or comments for consideration by NACE on the various agenda items listed above may be submitted, preferably with copies, to MaryAnn Garrahan at the address listed above. Submissions received by April 28, 2003 will be provided to the committee members for consideration. Requests to make oral presentations to

the Committee may be granted if time permits. Anyone wishing to make an oral presentation to the Committee should notify MaryAnn Garrahan at the address noted above. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Persons who request an oral presentation may be allowed to speak, as time permits, at the discretion of the Chair of the Advisory Committee.

Persons with disabilities requiring special accommodations should contact Veneta Chatman (telephone: (202) 693–1912; Fax (202) 693–1635) by April 28, 2003.

A transcript of the meeting will be available for inspection and copying in the OSHA Technical Data Center, Room N–2625 (see **ADDRESSES** section above) telephone: (202) 693–2350.

Authority: This notice was prepared under the direction of John L. Henshaw, Assistant Secretary for Occupational Safety and Health. It is issued under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2), GSA's FACA Regulations (41 CFR part 102–3), and DLMS 3 Chapter 1600.

Signed at Washington, DC, this 18th day of April, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–10170 Filed 4–21–03; 3:03 pm]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Wage and Hour Division

[Administrative Order No.]

Special Industry Committee for All Industries in American Samoa; Appointment; Convention; Hearing

1. Pursuant to sections 5 and 6(a)(3) of the Fair Labor Standards Act (FLSA) of 1938, as amended (29 U.S.C. 205, 206(a)(3)), and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004) and 29 CFR part 511, I hereby appoint special Industry Committee No. 25 for American Samoa.

2. Pursuant to sections 5, 6(a)(3) and 8 of the FLSA, as amended (29 U.S.C. 205, 206(a)(3), and 208), Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and 29 CFR part 511, I hereby:

(a) Convene the above-appointed industry committee;

(b) Refer to the industry committee the question of the minimum rate or rates for all industries in American Samoa to be paid under section 6(a)(3) of the FLSA, as amended; and,

(c) Give notice of the hearing to be held by the committee at the time and place indicated.

The industry committee shall investigate conditions in such industries and the committee, or any authorized subcommittee thereof, shall hear such witnesses and receive such evidence as may be necessary or appropriate to enable the committee to perform its duties and functions under the FLSA.

The committee shall meet in executive session to commence its investigation at 9:00 a.m. and begin its public hearing at 11:00 a.m. on June 16, 2003, in Pago Pago, American Samoa.

3. The rate or rates recommended by the committee shall not exceed the rate prescribed by section 6(a) or 6(b) of the FLSA, as amended by the Fair Labor Standards Act Amendments of 1996, of $5.15 an hour effective September 1, 1997.

The committee shall recommend to the Administrator of the Wage and Hour Division of the Department of Labor the highest minimum rate or rates of wages for such industries that it determines, having due regard to economic and competitive conditions, will not substantially curtail employment in such industries, and will not give any industry in American Samoa a competitive advantage over any industry in the United States outside of American Samoa.

4. Where the committee finds that a higher minimum wage may be determined for employees engaged in certain activities or in the manufacture of certain products in the industry than may be determined for other employees in the industry, the committee shall recommend such reasonable classifications within the industry as it determines to be necessary for the purpose of fixing for each classification the highest minimum wage rate that can be determined for it under the principles set forth herein and in 29 CFR part 511.10, that will not substantially curtail employment in such classification and will not give a competitive advantage to any group in the industry. No classification shall be made, however, and no minimum wage rate shall be fixed solely on a regional basis or on the basis of age or sex. In determining whether there should be classifications within an industry, in making such classifications, and in determining the minimum wage rates for such classifications, the committee shall consider, among other relevant factors, the following:

(a) Competitive conditions as affected by transportation, living and production costs;

(b) Wages established for work of like or comparable character by collective labor agreements negotiated between employers and employees by representatives of their own choosing; and

(c) Wages paid for work of like or comparable character by employers who voluntarily maintain minimum wage standards in the industry.

5. Prior to the hearing, the Administrator of the Wage and Hour Division, U.S. Department of Labor, shall prepare an economic report containing the information that has been assembled pertinent to the matters referred to the committee. Copies of this report may be obtained at the Office of the Governor, Pago Pago, American Samoa, and the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Upon request, the Wage and Hour Division will mail copies to interested persons who make a written request to the Wage and Hour Division. To facilitate mailing, such persons should make advance written request to the Wage and Hour Division. The committee will take official notice of the facts stated in this report. Parties, however, shall be afforded an opportunity to refute such facts by evidence received at the hearing.

6. The provisions of Title 29, Code of Federal Regulations, part 511, will govern the procedure of this industry committee. Copies of this part of the regulations will be available at the Office of the Governor, Pago Pago, American Samoa, and at the National Office of the Wage and Hour Division. The proceedings will be conducted in English, but in the event that a witness should wish to testify in Samoan, an interpreter will be provided. As a prerequisite to participation as a party, interested persons shall file six copies of a pre-hearing statement at the aforementioned Office of the Governor of American Samoa and six copies at the National Office of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. Each pre-hearing statement shall contain the data specified in 29 CFR 511.8 of the regulations and shall be filed not later than May 16, 2003. If such statements are sent by airmail between American Samoa and the mainland, such filing shall be deemed timely if postmarked within the time provided.

Signed at Washington, DC this 17th day of April, 2003.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 03–9999 Filed 4–22–03; 8:45 am]

BILLING CODE 4510–27–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Decommissioning of Sequoyah Fuels Corporation Uranium Conversion Facility in Gore, Oklahoma: Notice of Intent To Conduct a Public Rescoping Meeting for Sequoyah Fuels Uranium Conversion Facility

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Intent To Conduct a Public Rescoping Meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will conduct a meeting to discuss the status of the environmental review of decommissioning activities at the Sequoyah Fuels Corporation (SFC) facility near Gore, Oklahoma. The NRC recently determined that some of the waste at the site could be reclassified as byproduct material (see Supplementary Information). The SFC license was subsequently amended to authorize SFC's possession of the reclassified material. This license amendment had the effect of transferring the regulatory oversight of site decommissioning activities from subpart E of 10 CFR part 20 (license termination requirements) to Appendix A of 10 CFR part 40 (concerning uranium mills and tailings). These changes will be discussed at the public meeting. Additionally, the NRC will request public comments on the effects the changes may have on human health and the environment. Ample time will be provided for public comment at the meeting, although comments and questions will generally be limited to the remediation of the SFC facility. This meeting is part of the continuing process to keep affected stakeholders and the public informed of plans, schedules and important issues related to the remediation of the SFC facility.

DATE/TIME: Tuesday, May 13, 2003, from 7 to 10 p.m. The environmental portion of this meeting will start at approximately 8 p.m.

Place: Gore High School cafeteria, 1200 Highway 10N, Gore, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Rebecca Tadesse, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T–7J8, Washington, DC 20555–0001, telephone: 301–415–6221; fax 301–415–5397; or e-mail *rxt@nrc.gov*.

SUPPLEMENTARY INFORMATION: The NRC has been preparing an Environmental Impact Statement (EIS) for the decommissioning of the SFC uranium conversion facility in Gore, Oklahoma, and is holding this rescoping meeting to discuss changes to the EIS that may be needed due to the shift in regulatory oversight of the Sequoyah Fuels site corrective actions.

From 1970 until 1993, the SFC uranium conversion facility operated under the authority of an NRC license issued pursuant to 10 CFR part 40. The main process was the conversion of uranium oxide (yellowcake) to uranium hexafluoride. A second process, begun in 1987, consisted of the conversion of depleted uranium hexafluoride to uranium tetrafluoride.

Sequoyah Fuels supplied formal notice of its intent to seek license termination in accordance with 10 CFR 40.42(e) in a letter dated February 16, 1993. Based on available information, at least some of the identified waste and contamination at the site was known to exceed NRC's radiological criteria for decommissioning. Therefore, SFC was required to remediate the site to meet NRC's radiological criteria for license termination in 10 CFR part 20. In 1998, the company submitted to NRC a site characterization report and a study of remediation alternatives. A decommissioning plan was submitted in 1999. The remediation alternative proposed at that time by SFC was an on-site disposal cell.

In July 2002, the Commission concluded that some of the waste at the site could be reclassified as byproduct material, which is defined in Section 11e.(2) of the Atomic Energy Act as wastes from extraction or concentration of uranium or thorium from any ore processed for source material. Sequoyah Fuels submitted a request for a license amendment that would authorize its possession of this reclassified material and, on December 11, 2002, the NRC granted the license amendment request. Due to the reclassification of the waste, regulatory oversight of the decommissioning and remediation of the SFC facility was transferred from subpart E of 10 CFR part 20 (criteria for license termination) to Appendix A of 10 CFR part 40 (which includes criteria for the disposition of mill tailings or wastes). In accordance with part 40 requirements, SFC submitted a reclamation plan (January 2003) and will submit a groundwater corrective action plan. The remediation alternative proposed by SFC continues to be an on-site disposal cell, with an approach similar to that previously proposed under the license termination process. The option to take responsibility for long-term custodial care of the site would be provided first to the State of Oklahoma. Should the State decline this role, the Department of Energy (or other federal agency) would take custody of the site.

The NRC is preparing an EIS to determine whether SFC's proposal for reclamation of the site is acceptable. Information from the reclamation plan and the groundwater corrective action plan will be used to reassess the potential impacts of the proposal under part 40 regulations. The EIS will evaluate impacts such as effects on water resources, air quality, ecological resources, socioeconomic and community resources, human health, noise, and environmental justice. The EIS will also assess the proposed approach and alternatives, such as disposing of the contaminated material off-site in a licensed disposal facility. The NRC will consider the information and conclusions in the EIS in reaching its decision on the acceptability of the proposed approach.

Previous scoping meetings were held on October 15, 1995, and October 17, 2000. The NRC has issued summary reports of both previous scoping processes.

Dated at Rockville, Maryland, this 15th day of April 2003.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Acting Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–10009 Filed 4–22–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 050–206]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for an Exemption From Certain Requirements in 10 CFR Part 20 Appendix G for the San Onofre Nuclear Generating Station, Unit 1, in San Diego County, CA

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a one-time exemption from certain requirements of 10 CFR part 20 (part 20) for the San Onofre Nuclear Generating Station, Unit 1, a permanently shutdown nuclear reactor facility. On March 7, 2003, Southern California Edison (the licensee) requested an exemption from the

requirements in part 20, Appendix G Section III.E to investigate and file a report to the NRC if a shipment of radioactive waste is not acknowledged by the intended recipient within 20 days after transfer to the shipper. The licensee made this request because, in this particular case, the transport time for the reactor vessel shipment is currently expected to take approximately 90 days to reach the disposal site. The NRC staff has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. The conclusion of the EA is a Finding of No Significant Impact (FONSI) for the proposed action.

II. EA Summary

The proposed action would allow the licensee to transport the reactor vessel from the San Onofre Nuclear Generating Station to the Chem-Nuclear low-level radioactive waste disposal facility at Barnwell County, South Carolina. The travel time is estimated to be as long as 90 days. However, since the time of travel to reach the low-level waste burial site is longer than 20 days, part 20, Appendix G Section III.E would require the licensee to investigate, trace, and file a report with the NRC on the location of the reactor vessel 20 days into its approximate 90-day journey. The licensee has requested an exemption from these requirements because they are not meaningful in this instance.

The NRC has examined the licensee's proposed exemption request and concluded that it is procedural and administrative in nature. Additionally, there are no significant radiological environmental impacts associated with the proposed action; nor, are there any nonradiological environmental impacts associated with the proposed action.

III. Finding of No Significant Impact

NRC has prepared the EA (summarized above) in support of the licensee's application for an exemption request. On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the request for the exemption, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. The ADAMS accession number for the licensee's March 7, 2003 exemption request letter is ML030730547. The ADAMS accession number for the staff's EA is ML031000319. Documents may also be examined, and/or copied for a fee, at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Any questions with respect to this action should be referred to William Huffman, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, telephone (301) 415–1141.

Dated at Rockville, Maryland, this 16th day of April, 2003.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–10011 Filed 4–22–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Request To Amend a License To Export Highly-Enriched Uranium

Pursuant to 10 CFR 110.70(b)(2) "Public notice of receipt of an application," please take notice that the Nuclear Regulatory Commission has received the following request to amend an export license. Copies of the request are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link *http://www.nrc.gov/NRC/ADAMS/index.html* at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the request to amend a license to export special nuclear material noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning this amendment request follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant, date of application, date received, application No., Docket No.	Description of material		End use	Country of destination
	Material type	Total qty.		
Transnuclear, Inc. March 24, 2003; April 1, 2003; XSNM03171/04; 11005236.	Highly-Enriched Uranium (93.30%).	Additional 25.0 kg Uranium (23.325 kg U–235).	To fabricate targets for irradiation in the NRU Reactor to produce medical radioisotopes and to extend expiration date to 12/31/05.	Canada.

Dated this 16th day of April 2003 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Edward T. Baker,

Deputy Director, Office of International Programs.

[FR Doc. 03–10012 Filed 4–22–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Announcement of Pubic Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcement of a meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) is conducting a rulemaking to amend its regulations for medical use of byproduct material to address issues related to training and experience associated with recognition of Specialty Boards by the NRC. To aid in that process, the NRC is holding a public meeting to solicit input from representatives of professional specialty boards and other interested parties that may be useful in drafting a proposed rule.

DATE/TIME/LOCATION: The meeting will be held from 8:30 a.m. to 12 p.m. on Tuesday, May 20, 2003, at NRC headquarters, One White Flint North, Room 1F16, 11545 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Roger W. Broseus, Office of Nuclear Material Safety and Safeguards, Division of Industrial and Medical Nuclear Safety, Rulemaking and Guidance Branch, Mail Stop T9–C24, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–7608; E-mail: *RWB@nrc.gov*. All persons planning to attend the meeting should contact Ms. Jayne McCausland in advance at (301) 415–6219 or by E-mail at *JMM2@nrc.gov* to facilitate entrance into the building on the day of the meeting. If calling from outside of the Washington, DC metropolitan area, Ms. McCausland can be reached at 1–800–368–5642, extension 6219. Individuals who need accommodations under the Americans with Disabilities Act should also provide advanced notification to Ms. McCausland. Attendees should arrive early to allow time to clear security check points.

SUPPLEMENTARY INFORMATION: The NRC is conducting a rulemaking to revise 10 CFR part 35, "Medical Use of Byproduct Material," to address training and experience issues associated with recognition of specialty boards by the NRC. The issues were identified by the NRC's Advisory Committee on the Medical Use of Isotopes (ACMUI) during a briefing of the Commissioners on February 19, 2002, during which they expressed concern there could be potential shortages of authorized individuals without changes to the rule. At the time, the NRC was preparing to publish a final comprehensive revision to 10 CFR part 35. Under provisions of 10 CFR part 35, the use of byproduct material in medicine must be done by or under the supervision of authorized users who meet specific training and experience (T&E) criteria. Likewise, T&E requirements are also specified for an individual serving as Radiation Safety Officer (RSO), Authorized Nuclear Pharmacist (ANP), or Authorized Medical Physicist (AMP). One method of satisfying the T&E requirements specified in the draft-final revision of 10 CFR part 35 was for individuals to be certified by a specialty board "recognized" by the NRC. To be "recognized," a board's certification process must satisfy the specific requirements for T&E in 10 CFR part 35. However, the ACMUI noted that most boards did not meet the requirements for recognition by the NRC. The ACMUI recommended that the NRC remedy the situation to avoid a shortage of authorized individuals and RSOs. As a result, the Commission decided to retain the original subpart J in 10 CFR 35 to provide a short-term solution. Subpart J was set to be effective for 2 years from the effective date of the final revision to 10 CFR part 35, *i.e.*, until October 2004, thereby continuing the recognition of specialty boards in Subpart J. The Commission instructed the NRC staff to work towards a resolution of the problem during this period of time. Working in consultation with the ACMUI, the staff presented three options for addressing the issues related to recognition of specialty boards in a commission paper dated October 30, 2002. The issues mentioned above, including options for rulemaking, are discussed in more depth in a Commission paper entitled "Options for Addressing Part 35 Training and Experience Issues Associated With Recognition of Specialty Boards by NRC" (SECY–02–0194).

The Commission, in a Staff Requirements Memo (SRM) dated February 12, 2003 (SRM SECY–0–2–0194), directed the NRC staff to proceed with rulemaking related to recognition of specialty boards and the T&E requirements. In the SRM, the NRC staff was directed to move directly to preparing a proposed rule, followed by a final rule, with the expectation that a final rule would be published while subpart J of 10 CFR part 35 remains in effect, *i.e.*, October 24, 2004. This SRM and the associated Commission Paper (SECY–02–0194) referenced above, are available on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/commission*.

In addition, the Commission SRM directed the staff to address the following: revise 10 CFR part 35 based on recommendations of the ACMUI (discussed as part of option 3 in SECY–02–0194); list boards recognized by the NRC on it's Web site rather than in the rule; retain in the rule a requirement for a preceptor statement, with the clarifications that a statement of general clinical competency is not required, but, that the attestation should include a statement that the candidate has the knowledge to fulfill the duties of the position for which certification is sought; and, preserve this form of attestation for both pathways of demonstrating adequacy of T&E. The Commission also indicated that, because of the important role of board certification, there should be a clear regulatory determination that all boards, both new and existing, are to meet relevant criteria. Staff was directed to discuss implementing procedures for additions to, or deletion from, the listing of recognized specialty boards.

The purpose of the meeting, to be conducted on May 20, 2003, is to solicit input from stakeholders in the specialty board community, and other interested parties, on the issues discussed above as input to the staff development of a proposed rule. The meeting will be open to observation by the public. The proposed rule will be published for public comment in the **Federal Register** at a later date and posted on the NRC's RuleForum, located on the web at *http://ruleforum.llnl.gov/*.

Dated at Rockville, Maryland, this 16th day of April, 2003.

For the Nuclear Regulatory Commission.

Gary S. Janosko,

Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–10010 Filed 4–22–03; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget (OMB Control Number 0420–0533).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C., Chapter 35), the Peace Corps has submitted to the Office of Management and Budget (OMB) a request for approval of information collections, OMB Control Number 0420–0533, the Peace Corps Crisis Corps Volunteer Application Form. This is a renewal of an active information collection. The purpose of this information collection is necessary to recruit qualified Volunteers to serve in the Peace Corps' Crisis Corps Program. The information provided in the application is used by Crisis Corps staff to perform initial screening for potential candidates for specific Crisis Corps assignments. The purpose of this notice is to allow for public comment on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of

information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the information collection may be obtained from Mr. Dan Sullivan, Director of the Crisis Corps, Peace Corps, 1111 20th Street, NW., Room 7305, Washington, DC 20526. Mr. Sullivan may be contacted by telephone at 202–692–2250. Comments on the form should also be addressed to the attention of Mr. Sullivan and should be received on or before June 23, 2003.

Information Collection Abstract

Title: Peace Corps' Crisis Corps Volunteer Application Form.

Need for and Use of this Information: The Peace Corps' Crisis Corps Volunteer Application Form is completed by previous Peace Corps Volunteers; known as Returned Peace Corps Volunteers (RPCVs). The RPCVs apply to serve in the Crisis Corps after successfully completing their Peace Corps service. The Peace Corps' Crisis Corps Application is completed by applicants for Crisis Corps assignments to provide basic information concerning technical and language skills, and availability for Crisis Corps assignments. The application form from the RPCVs is used to perform initial screenings for potential candidates for specific Crisis Corps assignments. The Crisis Corps is an exciting Peace Corps Program that utilizes RPCVs to help communities overseas recover and rebuild in the aftermath of natural disasters and humanitarian crises. There are no other means of obtaining the required data. The Crisis Corps is working toward an electronic application; this version is not available at this time. The Crisis Corps Program fulfills the first and second goals of the Peace Corps as required by Congressional legislation.

Respondents: Returned Peace Corps Volunteers (RPCVs).

Respondent's Obligation to Reply: Voluntary.

Burden on the Public:

a. Annual reporting burden: 54 hours.

b. Annual record keeping burden: 0 hours.

c. Estimated average burden per response: 5 minutes.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 650.

f. Estimated cost to respondents: $1.97.

At this time, responses will be returned by mail.

This notice is issued in Washington, DC on April 11, 2003.

Gopal Khanna,

Chief Information Officer.

[FR Doc. 03–10005 Filed 4–22–03; 8:45 am]

BILLING CODE 6051–01–M

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget (OMB Control Number 0420–0001).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Peace Corps has submitted to the Office of Management and Budget (OMB) a request for approval of an information collection, OMB Control Number 0420–0001, the National Agency Questionnaire for Peace Corps Volunteer Background Investigation. This is a renewal of an active information collection. The purpose of this information collection is necessary to perform a background investigation of people in the Peace Corps Volunteer programs. The Peace Corps Volunteer Background Investigation is used to obtain information from Federal sources about Peace Corps applicants who meet the minimum qualifications for service and have been invited to train for specific programs in host countries overseas. Information provided by the investigation will be used by the Peace Corps' Office of Placement in order to make a final determination as to an applicant's/trainee's suitability for service. The purpose of this notice is to allow for public comment on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

A copy of the information collection may be obtained from Ms. Mada McGill, Peace Corps, Volunteer Recruitment and Selection CHOPS, 1111 20th Street, NW., Room 6402, Washington, DC 20526. Ms. McGill may be contacted by telephone at 202–692–1886. Comments on the form should also be addressed to the attention of Ms. McGill and should be received on or before June 23, 2003.

Information Collection Abstract

Title: National Agency Questionnaire for Peace Corps Volunteer Background Investigation.

Need for and Use of this Information: The National Agency Check Questionnaire for Peace Corps Volunteer Background Investigation is necessary to screen information from Federal sources about Peace Corps applicants who mee the minimum qualifications for service. Information provided by the investigation will be used by the Peace Corps' Office of Placement in order to make a final determination as to an applicant's/trainee's suitability for service. The National Agency Check Questionnaire for Peace Corps Volunteer Background Investigation supports the first goal of the Peace Corps as required by Congressional legislation.

Respondents: Potential Volunteers and Trainees.

Respondents Obligation to Reply: Voluntary.

Burden of the Public:

a. Annual reporting burden: 2,500 hours.

b. Annual record keeping burden: 1,360 hours.

c. Estimated average burden per response: 15 minutes.

d. Frequency of response: one time.

e. Estimated number of likely respondents: 10,000.

f. Estimated costs to respondents: $4.59.

At this time, responses will be returned by mail.

This notice is issued in Washington, DC on April 17, 2003.

Gopal Khanna,

Chief Information Officer.

[FR Doc. 03–10006 Filed 4–22–03; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of The Goodyear Tire & Rubber Company To Withdraw From Listing and Registration Its Common Stock, No Par Value, and Preferred Stock Purchase Rights From the Pacific Exchange, Inc. File No. 1–01927

April 17, 2003.

The Goodyear Tire & Rubber Company, an Ohio corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, no par value, and preferred stock purchase rights ("Securities"), from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on February 4, 2003 to withdraw its Securities from listing on the Exchange. In making its decision to delist its Securities from the PCX the Issuer notes that various listing fees and other expenses could be avoided if the Company were to delist its Securities. The Issuer states that the Securities continue to be listed on the New York Stock Exchange, Inc.

The Issuer stated in its application that it has complied with the rules of the PCX that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Securities from listing and registration on the PCX and from registration under section 12(b)[3] of the Act and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before May 9, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–10013 Filed 4–22–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of the Goodyear Tire & Rubber Company To Withdraw its Common Stock, No Par Value, and Preferred Stock Purchase Rights From Listing and Registration on the Chicago Stock Exchange, Inc. File No. 1–01927

April 17, 2003.

The Goodyear Tire & Rubber Company, an Ohio corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value, and Preferred Stock Purchase Rights ("Securities"), from listing and registration on the Chicago Stock Exchange, Inc. ("CHX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on February 4, 2003 to withdraw its Securities from listing on the Exchange. In making its decision to delist its Securities from the CHX the Issuer notes that various listing fees and other expenses could be avoided if the Company were to delist its Securities. The Issuer states that the Securities continue to be listed on the New York Stock Exchange, Inc.

The Issuer stated in its application that it has complied with the rules of the CHX that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Securities from listing and registration on the CHX and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before May 9, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the CHX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–10014 Filed 4–22–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3486]

State of New York

Westchester County and the contiguous counties of Bronx, Orange, Putnam and Rockland in the State of New York; Fairfield County in the State of Connecticut; and Bergen County in the State of New Jersey constitute a disaster area as a result of a fire that occurred on March 14, 2003. The fire destroyed several homes in the Nodine Hill section of the City of Yonkers. Applications for loans for physical damage may be filed until the close of business on June 16, 2003 and for economic injury until the close of business on January 16, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.378
Businesses and Non-Profit Organizations without credit available elsewhere	3.189
Others (Including Non-Profit Organizations) with credit available elsewhere	5.500

[5] 17 CFR 200.30–3(a)(1).

	Percent
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without credit available elsewhere	3.189

The number assigned to this disaster for physical damage is 348605 for New York; 348705 for Connecticut; and 348805 for New Jersey. The number assigned to this disaster for economic injury is 9U8700 for New York; 9U8800 for Connecticut; and 9U8900 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 16, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–10003 Filed 4–22–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3489]

State of New York

Westchester County and the contiguous counties of Bronx, Orange, Putnam and Rockland in the State of New York; Fairfield County in the State of Connecticut; and Bergen County in the State of New Jersey constitute a disaster area as a result of a fire that occurred on March 16, 2003. The fire destroyed apartments at the Wakefield Towers apartment complex in the City of Yonkers. Applications for loans for physical damage may be filed until the close of business on June 16, 2003 and for economic injury until the close of business on January 16, 2004 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.875
Homeowners without credit available elsewhere	2.937
Businesses with credit available elsewhere	6.378
Businesses and Non-Profit Organizations without credit available elsewhere	3.189
Others (Including Non-Profit Organizations) with credit available elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without credit available elsewhere	3.189

The number assigned to this disaster for physical damage is 348905 for New York; 349005 for Connecticut; and 349105 for New Jersey. The number assigned to this disaster for economic injury is 9U9000 for New York; 9U9100 for Connecticut; and 9U9200 for New Jersey.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 16, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–10004 Filed 4–22–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4339]

Bureau of Democracy, Human Rights and Labor Request for Grant Proposals: Human Rights and Democratization Initiatives in Central Asia

SUMMARY: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor (DRL/PHD) announces an open competition for one or more assistance awards. Organizations may submit grant proposals that address programs and activities that foster democracy, human rights, press freedoms, women's political development and the rule of law in countries with a significant Muslim population in Central Asia (to include Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan), and where such programs and activities would be important to United States efforts to respond to, deter, or prevent acts of international terrorism.

Awards are contingent upon the availability of Fiscal Year 2003 funds. Approximately $3,000,000 may be available under the Economic Support Funds through the Bureau's Human Rights and Democracy Fund (HRDF) for projects that address Bureau objectives in predominantly Muslim countries in this region. The Bureau anticipates awarding between 3–12 grants in amounts of $250,000—$1,000,000.

Background: The Human Rights and Democracy Fund (HRDF) supports innovative, cutting-edge programs which uphold democratic principles, support and strengthen democratic institutions, promote human rights, and build civil society in countries and regions of the world that are geo-strategically important to the U.S. HRDF funds projects that have an immediate impact but that have potential for continued funding beyond HRDF resources. HRDF projects must not duplicate or simply add to efforts by other entities.

Additional Information: The Bureau of Democracy Human Rights and Labor has identified the following issues as priorities. While competitive proposals must meet basic HRDF criteria, they are not restricted to these issues:

1. Rule of law, with emphasis on support for an independent judiciary, legal defense assistance and defense lawyers;
2. Independent media, with emphasis on comprehensive support including "one-stop" resource centers to provide legal assistance, advocacy, training and direct operational support;
3. Human rights, especially advocacy training and monitoring and reporting on law enforcement abuses; for Uzbekistan, programs designed to implement the recommendations contained in the recent report by the U.N. Special Rapporteur on Torture;
4. Civil society, including capacity-building of democracy-advocacy NGOs that promote government accountability; for Turkmenistan, such support could be in the form of extraterritorial activities; for Tajikistan, such support could be focused on women's leadership
5. Elections, with emphasis on support for democratically-oriented political parties as well as reform of electoral processes and legislation

Project Criteria

- Project implementation should begin no earlier than late summer 2003.
- Projects should not exceed two years in duration. Shorter projects with more immediate outcomes may receive preference.
- U.S-based or exchange projects are discouraged.
- Projects that have a strong academic or research focus will not be highly considered. DRL will not fund health, technology, environmental, or scientific projects unless they have an explicit democracy, human rights, or rule of law component. Conferences likewise will not be highly considered.
- Projects should include a follow-on plan that extends beyond the grant period ensuring that Bureau-supported programs are not isolated events.

In order to avoid the duplication of activities and programs, proposals should also indicate knowledge of similar projects being conducted in the region and how the submitted proposal will complement them.

Applicant/Organization Criteria

Organizations applying for a grant should meet the following criteria:

- Be a U.S. public or private non-profit organization meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3). Applicants must submit proof of its non-profit status in the application at the time of submission.
- Have demonstrated experience administering successful projects in the region in which it is proposing to administer a project.
- Have existing, or the capacity to develop, active partnerships with in-country organization(s).

Note: Organizations are welcome to submit more than one proposal, but should know that DRL wishes to reach out to as many different organizations as possible with its limited funds.

Budget Guidelines

Please refer to the Proposal Submission Instructions (PSI) for complete budget guidelines and formatting instructions.

Deadline for Proposals

All proposals must be received at the Bureau of Democracy, Human Rights and Labor by 5 p.m. Eastern Standard Time (EST) on Wednesday, May 21, 2003. Please refer to the PSI for specific delivery instructions.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the PSI. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements.

Review Criteria

Eligible applications will be competitively reviewed according to the criteria stated below. Further explanation of these criteria is included in the PSI. These criteria are not rank ordered and all carry equal weight in the proposal evaluation: quality of the program idea; program planning and ability to achieve program objectives; multiplier effect/impact; institution's record/ability/capacity; cost-effectiveness.

FOR FURTHER INFORMATION CONTACT: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor (DRL/PHD). Please specify Cathy Stump 202–647–3322 on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The Solicitation Package includes this RFP plus the Proposal Submission Instructions (PSI) which contains detailed award criteria, specific budget instructions, and standard guidelines for proposal preparation. The entire RFP and PSI may be downloaded from the HRDF section on the Bureau's Web site at *http://www.state.gov/g/drl/*.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements. Final technical authority for assistance awards resides with the Office of Acquisition Management's Grants Officer.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 17, 2003.

Lorne W. Craner,

Assistant Secretary for Democracy, Human Rights and Labor, Department of State.

[FR Doc. 03–10051 Filed 4–22–03; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular for Onboard Recording of Data Communications in Crash-Survivable Memory

AGENCY: Federal Aviation Administration (FAA), (DOT).

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and request comments on a revised proposed Advisory Circular (AC) for onboard data recording. The proposed AC establishes an acceptable means, but not the only means, to provide airborne capability for onboard recording of voice and data link messages in crash-survivable memory.

DATES: We must receive comments on the proposed AC on or before May 20, 2003.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Avionics Systems Branch, AIR–130, 470 L'Enfant Plaza, SW., Washington, DC 20025. ATTN. Mr. Gregory Frye. Or, deliver comments to the address listed above to Suite 4102.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Frye, Avionics Systems Branch, AIR–130, Aircraft Certification Service, Aircraft Engineering Division, AIR–130, 470 L'Enfant Plaza, SW., Suite 4102, Washington, DC 20025; Telephone (202) 385–4630; Fax (202) 385–4651. E-mail comments to: *Gregory.E.Frye@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed AC by submitting such written data, views, or arguments to the above specified address. You may examine comments we have received on the proposed AC before and after the comment closing date, in the FAA's office located at 470 L'Enfant Plaza, SW., Suite 4102, Washington, DC 20025, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director, Aircraft Certification Service, will consider all communications received on or before the closing date before issuing the final AC.

Background

The rapid expansion of International Civil Aviation Organization (ICAO) Communications, Navigation, Surveillance/Air Traffic Management (CNS/ATM) concepts have resulted in new technologies which make judicious

use of data communication applications for transference of safety of flight information. In addition, aircraft operators have long realized the benefit of the use of data link communication applications for conveyance of Aeronautical Operational Control (AOC) and Aeronautical Communications (AAC).

Fundamental accident/incident investigative needs require sufficient information to accurately reconstruct an accident/incident scenario. Investigative authorities have identified shortcomings in the ability of aircraft systems to record information needed to determine the cause of accidents and other reportable occurrences. One of the specific shortcomings is the lack of airborne capacity for onboard recording of data link messages in crash-survivable memory. Thus, recording data communication information in crash-survivable memory provides investigative authorities a necessary and useful tool for post accident/incident reconstruction.

How To Obtain Copies

A copy of the proposed AC may be obtained via the Internet, at *http://www.airweb.faa.gov/rgl* or by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on April 16, 2003.

Susan J. M. Cabler,

Deputy Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–10049 Filed 4–22–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

High Density Traffic Airports; slot Allocation and Transfer Method

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of waiver of the slot usage requirement.

SUMMARY: This action announces a waiver of the minimum slot usage requirement for slots and slot exemptions at the three high density traffic airports for the period March 19, 2003 through October 25, 2003.

EFFECTIVE DATE: April 18, 2003.

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Operations and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, AGC–220, Federal Aviation Administration, 800 Independence Avenues, SW., Washington, DC 20591; telephone number 202–267–3134.

SUPPLEMENTARY INFORMATION:

Background

The High Density Traffic Airports Rule, or "High Density rule," 14 CFR part 93, subpart K, was promulgated in 1968 to reduce delays at five congested airports: John F. Kennedy International Airport (JFK), LaGuardia, O'Hare International Airport (O'Hare), Ronald Reagan Washington National airport (Reagan National) and Newark International Airport (33 FR 17896; December 3, 1968). The regulation limits the number of instrument flight rule (IFR) operations at each airport, during certain hours of the day. It provides for the allocation to carriers of operational authority, in the form of a "slot," for each IFR takeoff or landing during a specific 30- or 60-minute period. The restrictions at Newark were lifted in the early 1970s. The restrictions at O'Hare were lifted in 2002.

Statement of Policy

The regulations governing slots and slot allocation provide that any slot not utilized at least 80 percent of the time over a 2-month period shall be recalled by the FAA (14 CFR 93.227(a)). Additionally, paragraph (j) of that section provides that the Chief Counsel may waive the slot usage requirement in the event of a highly unusual and unpredictable condition that is beyond the control of the slot holder and exists for more than nine days (14 CFR 93.227(j)). These two provisions are also applicable to slot exemptions.

Over the last several weeks, the FAA has received inquiries from several domestic and foreign carriers concerning applicability of the slot usage requirements in view of the military action in Iraq and its impact on the airline industry. By letter dated March 28, 2003, the Air Transport Association of America (ATA) requested that the FAA waive the minimum slot usage requirements for the period March 19, 2003 through December 31, 2003. Midway Airlines endorsed this request. A number of countries with slot controlled airports have suspended their respective usage requirements for part or all of the period from mid-March through the end of the summer scheduling season, October 2003.

ATA and individual carriers state that many carriers have taken measures to adjust both domestic and international flight schedules in response to decrease passenger demand and increased operating costs. These measure include the suspension or cancellation of some flights, especially those in markets where a carrier operates multiple services, changes in frequency, changes to equipment type on certain routes, and relaxation of certain fare restrictions in order to stimulate passenger bookings. These changes were implemented by certain carriers on a system-wide basis and not limited to operations at the high density traffic airports. Many of these changes to date are on a month-to-month basis as an immediate reaction to conditions following the onset of the war in Iraq. It is likely, however, that carriers will need to continue to adjust capacity to meet demand over the next few months and this may preclude the full utilization of allocated slots and slot exemptions for a number of carriers.

The FAA finds that the current operating conditions described above meet the criteria for granting a waiver from the minimum slot usage requirement set forth in 14 CFR Section 93.227(a). The FAA will waive the minimum usage requirement for all slots and slot exemptions at the high density traffic airports for the period of March 19, 2003 through April 30, 2003. This covers the initial period following the beginning of the military action in Iraq when many carriers cancelled or adjusted flights. Carriers are not required to provide the FAA with advance notice of underutilized slots or slot exemption during that period.

In addition, the FAA will waive the minimum usage requirement for all slots and slot exemptions for the period of May 1, 2003 through October 25, 2003, provided that the carrier temporarily returns to the FAA any slot or slot exemption that will not be used by the carrier. Thus, if a carrier has not scheduled a slot or slot exemption for at least 80 percent usage, then the carrier must return the slot in advance for the portion of time that it will not be using the slot, i.e. for entire summer season, or for two weeks, or for certain frequencies, etc. or the usage requirement will apply. Any carrier that chooses to temporarily return slots or slot exemptions to the FAA between now and October 25, 2003, may do so without jeopardizing the permanent loss of the slots or slot exemptions.

In the bi-monthly slot usage reports required by 14 CFR 93.227(i), slot holders/operators should indicate whether a flight was scheduled to operate in an allocated slot or slot exemption and indicate the flight actually operated. Any slots or slot exemptions covered by his waiver should not be listed as flown unless a flight actually operated.

There may be some carriers seeking to add service or make changes to scheduled flight times that affect their slot holdings at an airport. Carriers are reminded that the slot transfer provisions may be used to transfer unused slots to other carriers and that slots may be returned to the FAA for temporary reallocation. We encourage carriers to use existing regulatory mechanisms rather than rely on this waiver. Slot exemptions cannot be sold, leased or otherwise transferred. If carriers determine that they will not use their slot exemptions, they are encouraged to return them to the FAA so that they may be reallocated to other eligible carriers. The FAA intends to use temporarily returned slots to accommodate short-term requests for additional slots or schedule adjustments. In order to meet as many of those needs as possible, the FAA requests that carriers returning slots or slot exemptions under this waiver provide as much advance notice as practical.

Also, the FAA notes that international slots are not subject to the same minimum slot usage requirements as domestic slots. The slot regulations provide that international slots must be returned to the FAA if they will not be used for more than a 2-week period. (*See* CFR 93.217(3)). Historic allocation priority for subsequent scheduling seasons is granted based on actual operations. For the period of March 19, 2003 through October 25, 2003, the FAA will treat as operated any international slot allocated during that period provided that it was either actually operated by the carrier or returned to the FAA for the period it will not be used. Carriers meeting these conditions will be granted historic status for the corresponding winter 2003 and summer 2004 scheduling seasons.

Lastly, the FAA will continue to monitor operations at the high density traffic airports during the period of this waiver. Carriers are advised to contact the FAA on an individual basis under the provisions of 14 CFR 93.227(j) if further relief is necessary beyond the duration of this policy.

Issued in Washington, DC on April 18, 2003.

James W. Whitlow,

Deputy Chief Counsel.

[FR Doc. 03–10032 Filed 4–18–03; 12:39 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tupelo Regional Airport, Tupelo, MS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tupelo Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 23, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Jackson Airports District Office, 100 West Cross Street, Jackson, MS 39208.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Terry Anderson, Executive Director of the Tupelo Regional Airport Authority at the following address: Mr. Terry L. Anderson, Executive Director, Tupelo Airport Authority, 2704 West Jackson Street, Tupelo, MS 38801.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tupelo Regional Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David Shumate, Program Manager, Jackson Airports District Office, 100 West Cross Street, Jackson, MS 39208, (601) 664–9882. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tupelo Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 16, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by Tupelo Regional Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 11, 2003.

The following is a brief overview of the application.

PFC Application No.: 03–03–C–00–TUP.

Level of the proposed PFC: $4.50.

Proposed charge effective date: January 1, 2004.

Proposed charge expiration date: January 1, 2013.

Total estimated net PFC revenue: $750,000.

Brief description of proposed project: Airport Terminal Expansion, Renovation and Security Enhancement.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Tupelo Regional Airport Authority.

Issued in Jackson, Mississippi, on April 16, 2003.

Wayne Atkinson,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. 03–10048 Filed 4–22–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jackson, Harrison and Hancock, Greene, Stone, and Pearl River Counties, Mississippi

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the CSX Railroad Relocation Study in the above referenced counties in Mississippi.

FOR FURTHER INFORMATION CONTACT: Mr. Cecil Vick, Realty Officer/Environmental Coordinator, and Mr. Dickie Walters, Environmental Protection Specialist, Federal Highway Administration, 666 North Street, Suite 105, Jackson, MS 39202–3199, Telephone: (601) 965–4217. Contacts at

the State and local level, respectively are: Mr. Claiborne Barnwell, Environmental/Location Division Engineer, Mississippi Department of Transportation, P.O. Box 1850, Jackson, MS, 39215–1850, telephone: (601) 359–7920; and Mr. Ricky Lee, District 6 Engineer, Mississippi Department of Transportation, P.O. Box 551, Hattiesburg, MS, 39403–0551, telephone (601) 544–6511.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Mississippi Department of Transportation (MDOT) will prepare an Environmental Impact Statement (EIS) for the relocation study through the six counties of the Mississippi Gulf Coast—Jackson, Harrison, Hancock, Greene, Stone, and Pearl River counties.

The relocated CSX Railroad will be situated within the six Mississippi coastal counties noted above. The project has logical termini at both the eastern and western termini of the State of Mississippi where the connection will occur with the CSX railroad into the states of Alabama and Louisiana. The purpose of the CSX Study is three-fold: Identify the best feasible corridor for relocation of the CSX Railroad in Mississippi; obtain the necessary environmental clearances; and demonstrate the applicability of remote sensing technologies to environmental analysis for transportation planning projects and decision making. Of paramount importance to this effort is the public participation process. The relocated CSX Railroad will enter Mississippi at the eastern terminus in Jackson County and extend generally in a western alignment through Harrison County into Jackson County exiting the state at the western terminus into Louisiana. Alternatives under consideration include (1) taking no action and (2) various build alternatives.

The FHWA and MDOT are seeking input as a part of the scoping process to assist in determining and clarifying issues relative to this project. Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A formal scoping meeting with Federal, State, and local agencies, and other interested parties has been held.

Coordination will be continued with appropriate Federal, State, and local agencies, Native American tribes and private organizations and citizens who have previously expressed or are known to have interest in this proposal. Numerous public involvement meetings will be held, a newsletter will be developed, and a Web site will be created to keep the public informed. A local project office will be opened in Gulfport, Mississippi. The draft EIS will be available for public and agency review and comment prior to the official public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Andrew H. Hughes,

Division Administrator, Jackson, Mississippi.

[FR Doc. 03–9985 Filed 4–22–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)/Joint Planning Advisory Group (JPAG)

AGENCY: Maritime Administration, DOT.

ACTION: Synopsis of April 3, 2003 meeting with VISA participants.

The VISA program requires that a notice of the time, place, and nature of each JPAG meeting be published in the **Federal Register**. The program also requires that a list of VISA participants be periodically published in the **Federal Register**. The full text of the VISA program, including these requirements, is published in 68 FR 8800–8808, dated February 25, 2003.

On April 3, 2003, the Maritime Administration (MARAD) and the U.S. Transportation Command (USTRANSCOM) co-hosted a meeting of the VISA JPAG at Ft. Eustis, Virginia.

Meeting attendance was by invitation only, due to the nature of the information discussed and the need for a government-issued security clearance. Of the 52 U.S.-flag carrier corporate participants enrolled in the VISA program at the time of the meeting, 19 companies participated in the meeting. In addition, representatives from the Maritime Administration (MARAD), the Department of Defense, and maritime labor attended the meeting.

MG Ann E. Dunwoody opened the meeting with a welcome to all attendees. She was followed by LtGen Gary Hughey, the USTRANSCOM Deputy Commander, and Captain William G. Schubert, Maritime Administrator, who provided participants with an overview of the meeting. The JPAG meeting included updates on: (1) Current operations; (2) sustainment operations; (3) redeployment operations; and (4) CBR-D training.

As of April 1, 2003, the following commercial U.S.-flag vessel operators were enrolled in the VISA program with MARAD: America Cargo Transport, Inc.; American Automar, Inc.; American International Car Carrier, Inc.; American President Lines, Ltd.; American Roll-On Roll-Off Carrier, LLC; American Ship Management, L.L.C.; Bay Towing Corporation; Beyel Brothers Inc.; Central Gulf Lines, Inc.; Coastal Transportation, Inc.; Columbia Coastal Transport, LLC; Crowley Liner Services, Inc.; Crowley Marine Services, Inc.; Delta Towing; E-Ships, Inc.; Farrell Lines Incorporated; First American Bulk Carrier Corp.; First Ocean Bulk Carrier-I, LLC; First Ocean Bulk Carrier-II, LLC; First Ocean Bulk Carrier-III, LLC; Horizon Lines, LLC, Foss Maritime Company; Liberty Shipping Group Limited Partnership; Lockwood Brothers, Inc.; Lykes Lines Limited, LLC; Lynden Incorporated; Maersk Line, Limited; Matson Navigation Company, Inc.; Maybank Navigation Company, LLC; McAllister Towing and Transportation Co., Inc.; Moby Marine Corporation; Odyssea Shipping Line LLC; OSG Car Carriers, Inc.; Patriot Shipping, L.L.C.; RR &VO L.L.C.; Resolve Towing & Salvage, Inc.; Samson Tug & Barge Company, Inc.; Sea Star Line, LLC; SeaTac Marine Services, LLC; Sealift Inc.; Signet Maritime Corporation; STEA Corporation; Superior Marine Services, Inc.; TECO Ocean Shipping; Totem Ocean Trailer Express, Inc.; Trailer Bridge, Inc.; TransAtlantic Lines LLC; Troika International, Ltd.; U.S. Ship Management, Inc.; Van Ommeren Shipping (USA) LLC; Waterman Steamship Corporation; and Weeks Marine, Inc.

FOR FURTHER INFORMATION CONTACT: Mr. Taylor E. Jones II, Director, Office of Sealift Support, (202) 366–2323.

By Order of the Maritime Administrator.

Dated: April 18, 2003.

Joel C. Richard,

Secretary.

[FR Doc. 03–10036 Filed 4–22–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2002–12005; Notice 2]

International Truck and Engine Corp.; Denial of Application for Inconsequential Noncompliance

The National Highway Traffic Safety Administration (NHTSA) is denying a petition from International Truck and Engine Corporation (International) of Fort Wayne, Indiana, for exemption from the notification and remedy requirements of 49 U.S.C. 30118 and 30120 for a noncompliance with 49 CFR 571.104, Federal Motor Vehicle Safety Standard (FMVSS) No. 104, "Windshield Wiping and Washing Systems." International applied for the exemption under 49 U.S.C. 30118(d). and 49 U.S.C. 30120(h) and petitioned NHTSA for a decision that the noncompliance is inconsequential to motor vehicle safety. We published a notice of receipt of the International application on April 11, 2002, allowing for a 30-day comment period (67 FR 17757). There were no comments submitted.

International discovered the noncompliance in 7,630 medium duty trucks it manufactured between October 24, 2000, and October 22, 2001. In those vehicles, if the windshield washer system is filled with water and frozen, a fuse in the windshield washer electrical circuit can blow when the washer system is actuated, rendering the system inoperative. The system thus fails to meet a performance requirement in FMVSS No. 104 which, by reference to SAE Recommended Practice J942, "Passenger Car Windshield Washer Systems," requires the washer system to withstand operation in a completely frozen state.

We are denying this petition because International has not adequately demonstrated that the noncompliance does not increase the risk that an operator will experience a safety problem, in this case a non-functional washer system, that FMVSS No. 104 is intended to protect against. In determining inconsequentiality, the agency traditionally has considered whether a noncompliance is likely to increase the risk that occupants will experience a safety problem that a requirement was established to address (Cosco, Inc., Denial of Application for Decision of Inconsequential Noncompliance, 64 FR 29408 (June 1, 1999) (NHTSA–98–4033–2)). In the case of the noncomplying International trucks, we believe that a vehicle operator is at increased risk of experiencing reduced visibility as a result of a nonfunctional windshield washer system.

Background

The pertinent performance requirement for windshield washer systems is paragraph S4.2.2 of FMVSS No. 104 which states in relevant part, "Each multipurpose passenger vehicle, truck, and bus shall have a windshield washing system that meets the requirements of SAE Recommended Practice J942, November 1965.* * *" SAE J942 includes paragraph 3.2, System Strength, which states, "The windshield washer system must be capable of withstanding the loads induced when the nozzles are blocked and tested in accordance with test procedures established in paragraph 4.2." Paragraph 4.2.2(b) of SAE J942 states the following: "The system shall be filled with water and frozen for 4 hr. and then actuated repeatedly for a 1 minute period."

In International's tests of the washer system in the subject trucks, when the washer system was operated in a water-filled and frozen condition in accordance with the requirement above, a five-ampere rated electrical fuse blew one-quarter second after washer switch actuation, interrupting the washer pump circuit. The system thus failed to comply with S4.2.2 of FMVSS No. 104.

Discussion

In its application for inconsequential noncompliance, International made the following points:

- The intent of section 3.2, "System Strength" in SAE J942 is "that the system should withstand the test parameters specified without inducing permanent damage to the electrical system components of the washer system" such as a cracked fluid reservoir or fluid lines, damaged spray nozzles, or overloaded activation switch, washer pump motor, or connecting wires. International stated that those components are effectively protected from permanent damage in the non-complying International vehicles by the five-ampere fuse.
- The system passes all other specified J942 requirements and, if a ten-ampere fuse is installed in the washer circuit, it passes the "System Strength" requirement for operation under frozen conditions. However, a five-ampere fuse does a better job of protecting the system components.
- There is very little likelihood of the washer fluid freezing in an actual operating environment because International's recommended fluid mixture yields a freezing point of −48 degrees C (−54 degrees F).
- With a vehicle population of 19,880 comprising various models in operation for 13 months, International has had "no reported field problems" and only 16 warranty claims related to the washer system, none of which were due to frozen fluid in the system.

In response, we would first point out that neither FMVSS 104 nor J942 contains any limitation concerning "permanent damage" to the system when subjected to the applicable test procedures. Paragraph 3.2 of J942 states only that the system "shall be capable of withstanding the loads induced" when it is tested in accordance with the procedures in section 4 of J942. We believe a blown fuse in the washer circuit indicates that the system was unable to withstand the loads induced in the frozen condition and is no less a failure than if the washer switch or pump motor had been damaged. We disagree with International's understanding of the requirement in paragraph 3.2 of SAE J942, *i.e.*, that it is intended to proscribe "permanent damage" to the washer system electrical components including the electric pump motor, the actuation switch, and the connecting wires. We believe that, in order to comply with this requirement, the washer system must remain fully functional after being frozen.

International also stated that the washer system passes the compliance test if a ten-ampere fuse is installed, but the system is better protected with the five-ampere fuse. However, by this logic, it would appear that one of the other system components besides the fuse may be at risk of failure, which is the type of problem that FMVSS 104 test procedures are intended to guard against. On one hand, if the five-ampere fuse is too weak, then it would appear that International merely neglected to specify a sufficiently high fuse rating in the design of the washer system. On the other hand, if installing a higher-rated fuse puts other system electrical components at risk of being overloaded, then it is evident that the system as a whole is not robust enough to sustain frozen system operation in the required manner. The fact that the fuse fails before one of the other circuit components such as the pump motor or switch is not a redeeming factor with regard to compliance. In either case, the system does not meet the performance requirement.

With respect to availability of the washer system, we do not agree with International's assertion that a frozen reservoir "makes the availability of the

system during vehicle operation no greater than the situation with a blown fuse." If the system becomes disabled due to being frozen but also has a blown fuse, then a vehicle operator would be left without the use of a functioning washer system even after the system is thawed by engine heat or by the addition of the correct fluid mixture. For example, an operator in a harsh winter environment who attempts to activate the washer system might find that it is frozen and wait for it to thaw out, which it would be likely to do once the vehicle was warmed up. In a noncomplying truck, the washer system would still be inoperable even after thawing out. Furthermore, an operator who had neglected to maintain the washer fluid mixture might be alerted to the frozen condition of the fluid by the failure of the system to spray when actuated. The operator might then be able to correct the fluid mixture and, in a complying vehicle, continue driving with an operational washer system.

International asserts that the freezing point of the washer system when the recommended fluid mixture is used is so low that the system is very unlikely to freeze under foreseeable conditions. While this may be true, vehicles are unlikely to have exactly the recommended mixture and could, in fact, have a diluted mixture with a higher freezing point. We do not see any compelling reason to question whether the frozen-system requirement in FMVSS No. 104 has a realistic basis, and International did not provide any supporting information in that regard. Also, the fact that the standard specifies filling and testing the system using only water does not mean that systems filled with only water are anticipated in the actual operating environment. As a practical matter, it is easier to freeze the system for the purpose of a compliance test when it contains just water instead of a mixture with a lower freezing point.

If International believes that washer systems should be tested with an appropriate washer fluid mixture, or that the frozen washer system test is unreasonable because of the low likelihood of washer fluid freezing in actual use, the company is entitled to present relevant safety data, research, and related information to NHTSA in the form of a petition for rulemaking to amend the current safety standard.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion, and that the noncompliance may have an adverse effect on the safety of the subject vehicles. Accordingly, International's application is denied and the company must provide notification of the noncompliance as required by 49 U.S.C. 30118. Also, International must provide a free remedy for the noncompliance to each first purchaser of an affected vehicle bought within ten calendar years of the time notice is given, as required by 49 U.S.C. 30120(g).

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: April 17, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–10053 Filed 4–22–03; 8:45 am]

BILLING CODE 4910–59–P



Federal Register

Wednesday,
April 23, 2003

Part II

Department of the Treasury

Fiscal Service

31 CFR Part 240

Indorsement and Payment of Checks Drawn on the United States Treasury; Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 240

RIN 1510–AA45

Indorsement and Payment of Checks Drawn on the United States Treasury

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury (Treasury), Financial Management Service (FMS),[1] is proposing revisions to its regulations governing the indorsement and payment of checks drawn on the United States Treasury. This notice of proposed rulemaking (NPRM II) supersedes the NPRM issued on May 30, 1997 (NPRM I). The regulations provide how checks may be indorsed, and remedies when checks are lost or stolen, and then subsequently negotiated by someone other than the intended payee. In instances where losses occur, such as when a check bearing a fraudulent indorsement is paid, the regulations provide for the allocation of losses between the Government and indorsers of the check. The regulations also provide information on how Treasury will collect debts owed by banks and other indorsers when they fail to pay claims arising under the terms of the regulation.

DATES: Comments must be submitted on or before June 23, 2003.

ADDRESSES: All comments concerning NPRM II should be addressed to Ronald Brooks, Senior Program Analyst, Financial Processing Division, Financial Management Service, Prince Georges Center II Building, 3700 East-West Highway, Room 725-D, Hyattsville, MD 20782. Comments also may be emailed to: *Ronald.Brooks@fms.treas.gov*.

FOR FURTHER INFORMATION CONTACT: Ronald Brooks, (202) 874–7573 (Senior Program Analyst, Financial Processing Division); Randall S. Lewis, (202) 874–6877 (Principal Attorney).

SUPPLEMENTARY INFORMATION:

Regulations governing the indorsement and payment of checks drawn on the U.S. Treasury are codified at 31 CFR part 240 (Part 240). Many entities are involved in the Federal check disbursing system: Treasury and non-Treasury offices that issue Treasury checks, banks in the Federal Reserve System that receive Treasury checks and provide payment information to Treasury, and Treasury offices that receive payment information from the Federal Reserve System and reconcile that information with issuance information provided by the numerous Treasury and non-Treasury disbursing offices. For years, Treasury has been working to find a balance between the demands of this Federal system that relies on the coordination of many parties and the desire of the financial community to operate within a framework that is similar for commercial checks and Treasury checks. Issues that have continued to generate debate over time include:

- The amount of time Treasury has to complete first examination of Treasury checks and to decline payment of a check; and
- The allocation of loss when Treasury makes final payment on a check prior to the determination that a check presented for payment is a counterfeit check, or bears a forged or unauthorized drawer's signature.

NPRM II seeks to strike a balance between these competing interests by setting a date certain by which all Treasury checks are deemed paid while allocating the risk of loss to financial institutions only in those instances where reasonable actions, if properly taken by financial institutions, could have prevented a loss to the United States Treasury.

Background

Treasury disburses payments for a majority of civilian Federal agencies. Other Federal agencies, such as the military departments, have their own disbursing officers, but also use Treasury check stock to make payments. Regardless of the agency which disburses a payment, if the payment is made in the form of a Treasury check, the check must be presented to the Department of the Treasury for payment. Conditional payment, referred to in this proposed rule as provisional credit, is effected by a credit to a reserve or other account with the Federal Reserve Bank through which the check is presented for payment. *See* 31 CFR 240.5(c) of NPRM II.

On occasion, problems occur during this process because of attempts to defraud Treasury either by interjecting counterfeit checks into the system or by altering authentic Treasury checks. In other instances, Treasury checks do not reach, or are lost by or stolen from, the intended payees, and are indorsed by persons not entitled to them and paid over those forged or unauthorized indorsements. Part 240 defines the rules by which Treasury checks are to be indorsed and paid, and assigns the responsibilities and associated liabilities among parties when the system fails to prevent such frauds from occurring. In doing so, the provisions in Part 240 describe the circumstances in which a claim arises—*e.g.*, when a debt is owed by a presenting bank or other indorser of a Treasury check to the United States—and how such claims may be collected, including limitations on the government's ability to collect.

How claims arise. Federal law, not the commercial rules evidenced in the Uniform Commercial Code as adopted by individual States, applies to Treasury checks. Treasury checks are governed by Federal statutes, FMS regulations promulgated in Part 240 pursuant to 5 U.S.C. 301, 31 U.S.C. 321, and 31 U.S.C. 3328(e), and, where the foregoing are silent, Federal common law. *See Clearfield Trust Co.* v. *United States*, 318 U.S.C. 363 (1943). NPRM II outlines the responsibilities of the parties involved in the indorsement and payment of Treasury checks. For example, under § 240.4 of NPRM II, payees or subsequent indorsers of Treasury checks must present such checks for payment within one year of a check's issuance. Similarly, under § 240.5 of NPRM II, if Treasury is going to decline payment on a check bearing a material defect or alteration or forged or unauthorized drawer's signature, it must do so within a reasonable amount of time not to exceed 90 days. Claims arise when checks are presented to Treasury for payment in violation of the requirements in this Part, such as when presenting banks or other indorsers breach the presentment guarantees in § 240.3 of NPRM II. For example, if a bank accepts a check bearing a forged indorsement and that check is presented for payment, the presenting bank and any indorsers of that check will have breached the guarantee of indorsement in this rule, and a claim will arise in the amount of the check in favor of the Government.

How claims are collected. The provisions of 31 U.S.C. 3711 require the head of each Federal agency to try to collect claims arising from the activities of the agency. Because of Treasury's role in issuing and making payment on Treasury checks, Treasury historically has accepted responsibility for the collection of claims arising from the requirements of Part 240. Moreover, Treasury's role in this collection activity is expressly referred to in 31 U.S.C. 3343.

In trying to collect claims arising under Part 240, Treasury first will attempt to collect such claims, referred to in this Part as "reclamation debts," using the reclamation procedures codified in §§ 240.7 and 240.8 of NPRM II. Under those procedures, Treasury will attempt to collect by means of a demand letter, referred to as a "REQUEST FOR REFUND (CHECK RECLAMATION)." If the presenting bank or other indorser from whom Treasury seeks payment, referred to in this Part as the "reclamation debtor," fails to refund the amount of the check in response to the demand letters, Treasury will attempt to collect by means of offset in accordance with § 240.9 of NPRM II. By employing offset, Treasury will seek to collect the debt owed by reducing, or "offsetting," by the amount of the debt, any payment due to the reclamation debtor by another Federal agency. If Treasury still is unable to collect the full amount of the debt, Treasury will collect the amount through the Treasury Check Offset (TCO) procedures codified at § 240.10 of NPRM II. TCO is a collection mechanism, specifically authorized under 31 U.S.C. 3712(e), which allows FMS to collect reclamation debts by directing a Federal Reserve Bank to withhold credit from a debtor bank presenting Treasury checks for ultimate charge to the account of the United States Treasury. By presenting Treasury checks for payment, presenting banks are deemed to authorize this offset.

Previous NPRMs. NPRM I, published May 30, 1997 (62 FR 29314), which was a re-issuance of a notice originally published on September 21, 1995 (60 FR 48940), addressed four issues: (1) Setting the time for FMS to conduct its first examination of Treasury checks at 150 days; (2) superseding Federal common law by apportioning the risk of loss on checks bearing a forged drawer's signature, including counterfeit checks, to presenting banks; (3) authorizing Federal Reserve Banks to intercept checks payable to deceased payees and return them unpaid to depositary banks; and (4) making definitions in Part 240 consistent with other FMS regulations.

FMS did not require commenters to resubmit comments originally submitted in response to the notice published on September 21, 1995; all comments received in response to that notice were treated as responses to NPRM I. FMS received a total of 24 comments on NPRM I. Eight responses were received from individual banks, three from banking associations, two from clearinghouse associations, five from credit unions and credit union organizations, and one from a Federal Reserve Bank. Five of the respondents provided comments in response to both notices.

On May 24, 2002, FMS issued an Interim Rule (67 FR 36517) (hereinafter "Interim Rule") which revised 31 CFR Part 240 to incorporate procedures relating to TCO, a new debt collection tool established by the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, Title III, section 31001(d)(4). Under that authority, Treasury is authorized to collect certain debts, owed to the Treasury by financial institutions presenting Treasury checks to a Federal Reserve Bank, by directing Federal Reserve Banks to withhold credit from such presenting banks.

NPRM II addresses all of the issues discussed in NPRM I, as well as issues not previously raised. It also incorporates the substance of the Interim Rule. In particular, NPRM II codifies existing procedures whereby presenting banks can administratively protest a Treasury decision to decline final payment of a particular check. The proposal also clarifies that the reclamation protest procedures at § 240.8, must be exhausted before a civil suit may be filed against Treasury. Under § 10(c) of the Administrative Procedure Act, 5 U.S.C. 704, an agency action is not judicially reviewable until it becomes final. The Supreme Court, in interpreting this section, has held that an agency action is final, and therefore subject to judicial review, unless the agency rule expressly requires exhaustion of administrative remedies as a prerequisite to judicial review. *See, e.g., Darby* v. *Cisneros*, 509 U.S. 137 (1993). Treasury is adding language that makes it clear that reclamation decisions are not final until the protest procedures have been exhausted.

In addition, NPRM II expands the use of powers of attorney as a basis for negotiating Treasury checks by allowing them to be used in more instances, and by eliminating the requirement that a specific Treasury power of attorney form be used. Finally, NPRM II clarifies Treasury regulations relating to the charging of administrative costs, penalties and interest when payments of reclamations are not submitted timely.

Given the passage of time since the issuance of NPRM I and the comprehensive nature of the revisions included in NPRM II, comments provided in response to NPRM I, including those provided in response to the NPRM issued on September 21, 1995, will not be considered as comments submitted in response to NPRM II. Those wishing to comment on NPRM II must provide written comments by the date indicated.

Structure of Part 240

This revision alters the structure of Part 240 by: (1) Moving existing provisions relating to limitations on payments from §§ 240.3(a) and (b) to § 240.4, and §§ 240.3(c) through (e) to § 240.5; (2) moving existing provisions relating to guarantees of indorsement from § 240.5 to § 240.3; (3) deleting existing rules governing the release of original checks from § 240.10, and substituting new provisions governing TCO at § 240.10; (4) moving existing rules governing reclamations of amounts of paid checks from § 240.6 to § 240.7; (5) moving rules governing reclamation demand and protest from § 240.7 to § 240.8; (6) moving rules governing offset from § 240.8 to § 240.9; (7) adding new rules at § 240.6 governing declination protests; (8) moving existing rules governing the processing of checks from § 240.9 to § 240.11; (9) moving existing rules relating to the indorsement of checks by payees from §§ 240.11(a) through (e) to § 240.12, and specific rules regarding Social Security checks from § 240.11(f) to § 240.14; (10) redesignating rules currently promulgated at §§ 240.12 through 240.15 to §§ 240.13 through 240.16; (11) adding new rules relating to the lack of authority for financial institutions to shift liability at § 240.17; (12) adding new provisions relating to implementing instructions at § 240.18; and (13) deleting appendix A to part 240 (Standard Forms for Power of Attorney and Their Application).

Summary of Substantive Changes

1. *Time for first examination.* As stated in the current Part 240, Treasury has the usual right of a drawee to examine checks presented for payment and to refuse payment of any check. The current rule states that Treasury has a reasonable amount of time to make such examination.

As indicated in the preamble to NPRM I, Treasury has tried to develop a policy which allows itself the time necessary to perform the functions required to complete first examination, while meeting the desire of the financial community for a date certain after which all Treasury payments are final. In NPRM I, Treasury attempted to address the concerns of the financial community by defining the term "first examination" and providing a date certain after which all payments would be deemed paid. NPRM I set that date at 150 days from the date that a check is presented to a Federal Reserve Bank for payment.

Comments on this issue varied widely among the respondents. Six responses

[1] FMS is the bureau within Treasury that is charged with implementing Treasury's authority in this area. The terms Treasury and FMS are used interchangeably in this proposed rule.

recommended that FMS adopt the commercial rule of midnight of the next business day, while five responses recommended maintaining the current "reasonable time" standard. Of those suggesting alternatives to the 150 day time frame, four respondents recommended 30 days and one suggested 90 days. One respondent recommended an approach incorporating both a "reasonable time" standard and a date certain after which payment would be final regardless of case-specific problems. This rule adopts the latter approach.

Under the provisions of § 240.5 of NPRM II, Treasury retains the right of a drawee to examine checks presented for payment, to reconcile checks, and, when appropriate, to direct a Federal Reserve Bank to decline payment of any check. Treasury shall have a reasonable amount of time to complete first examination. All payments are provisional until first examination is completed, and, as stated in the definition of provisional credit at § 240.2 of NPRM II, may be reversed by Treasury until the completion of first examination or final payment is deemed made pursuant to § 240.5(d) of NPRM II. As provided in the definition of first examination at § 240.2 of NPRM II, the amount of time necessary to complete first examination will be a function of the procedures deemed appropriate in specific circumstances to determine whether a check presented for payment bears a material defect or alteration or a forged drawer's signature. Under § 240.5(d) of NPRM II, if Treasury has not declined payment within 90 days after the check has been processed for payment by a Federal Reserve Processing Center, Treasury will be deemed to have made final payment on the check.

While FMS understands the desire of the financial community to operate under a single set of rules that are applicable to commercial checks and Treasury checks, adopting a midnight of the next business day standard is not operationally feasible. As stated previously, Treasury is not the only Federal agency to issue Treasury checks. Treasury issues payments for a majority of Executive Branch agencies, but some agencies, including the military departments and the U.S. Marshal's Office, also have statutory authority to issue Treasury checks. Some other agencies have a delegation of authority from the Secretary of the Treasury to issue Treasury checks. It is not possible for Treasury to receive check issue records from all non-Treasury disbursing officials in time for Treasury to take even the most rudimentary steps to establish the authenticity and integrity of all such Treasury checks before midnight of the next business day. The volume of checks issued (*e.g.*, 362 million checks in fiscal year 2001) and the number of agencies involved necessitate a standard different from that applied to commercial checks.

Further, the "midnight rule" was specifically rejected by the Ninth Circuit Court of Appeals in *Bank of America* v. *Federal Reserve Bank of San Francisco*, 349 F.2d 565 (9th Cir. 1965), *cert. denied*, 382 U.S. 984 (1966). In that case, the Court determined that Treasury regulations stating that checks are deemed paid "upon first examination" necessarily implied that "the Treasurer is to have sufficient time within which to conduct first examination." The Court also concluded that first examination included examination for forged indorsements, forged signature of the drawer, raised amounts, and other material defects. Current Treasury regulations codified at Part 240 and these proposed revisions to those regulations ensure that Treasury has sufficient time to make such examinations.

2. *Apportionment of risk.* Since the issuance of NPRM I in 1997, Treasury has continued to improve internal processes, as well as coordination with the various non-Treasury entities that issue Treasury checks, to improve the efficiency of the check payment system. As a result, Treasury is able to complete first examination on most checks in less than 30 days, and has been able to reduce the amount of time necessary to complete first examination in problem cases from 150 days to 90 days. However, Treasury also understands that despite everyone's best efforts, there will be instances where Treasury will be unable to complete first examination within the 90 day time frame, and losses will arise. In NPRM I, Treasury clearly stated that if a material defect or alteration were discovered after final payment had been made, Treasury would reclaim in instances involving forged drawers' signatures, double forgeries (checks bearing both a forged drawer's signature and a forged indorsement), and counterfeit checks. NPRM II takes a different approach. In this proposed rule, Treasury will reclaim after final payment only in those instances where an indorser has breached one of the presentment guarantees listed in § 240.3. As a consequence, this proposed rule allocates losses in specific circumstances as follows:

a. *Checks bearing a forged or unauthorized indorsement.* Treasury will reclaim on a check if it determines, after final payment, that a check was negotiated over a forged or unauthorized indorsement. In such cases, the basis for Treasury's claim would be a breach of the guarantee of indorsements at 31 CFR 240.3(a).

b. *Checks that have been altered.* Treasury will reclaim on a check if it determines, after final payment, that a check has been materially altered. In such cases, the basis for Treasury's claim would be a breach of the guarantee of alterations at 31 CFR 240.3(b).

c. *Checks bearing a forged drawer's signature.* After final payment, Treasury will not reclaim on a check bearing a forged drawer's signature unless there is evidence that the reclamation debtor had knowledge that the drawer's signature was forged or unauthorized. In such instances, the basis for Treasury's claim would be a breach of the guarantee of drawer's signature at 31 CFR 240.3(c). This provision also applies to a check bearing both a forged drawer's signature and a forged indorsement.

d. *Counterfeit checks.* After final payment, Treasury will not reclaim on a counterfeit check unless the reclamation debtor has failed to make all reasonable efforts to ensure that a check is an authentic Treasury check and not a counterfeit check. Guidance regarding specific attributes, such as the security features on a check, that financial institutions must verify in order to ensure that they have made all reasonable efforts to ensure the authenticity of a Treasury check, will be provided by Treasury or on Treasury's behalf. In instances where Treasury determines that a reclamation debtor has failed to make all such reasonable efforts, the basis for Treasury's claim would be a breach of the guarantee of authenticity at 31 CFR 240.3(d).

In allocating the risk of loss in this manner, Treasury is cognizant of relevant case law in this area. In particular, the holding in *United States* v. *Chase National Bank*, 252 U.S. 485 (1920), which relied on the English case of *Price* v. *Neal*, 97 Eng. Rep. 871, 3 Burr. 1354 (1762), was that, after final payment, Treasury generally cannot recover on a Treasury check bearing the forged signature of a drawer, including those situations when such a check also bears a forged indorsement on the back (often referred to as a double forgery). In this proposed rule, Treasury does not alter the allocation of risk for losses involving forged drawers' signatures on authentic Treasury checks. However, this proposed rule does supersede the holding in *Chase National Bank* to the extent that the opinion applies to

counterfeit checks. In Treasury's view, this is a logical distinction which places the ultimate risk of loss on the party with the best opportunity to discover a counterfeit. As noted by the Court in *Chase National Bank*, when an authentic Treasury check bearing a forged drawer's signature is paid, it is proper to allocate the loss to the drawee bank because it is incumbent on the drawee to know the drawer's signature, and there can be no recovery from an innocent holder not chargeable with fault. In the context of an authentic Treasury check bearing a forged drawer's signature, this proposed rule recognizes that, absent actual knowledge that the drawer's signature is forged, a depositary bank generally has no basis for questioning the drawer's signature. That is not the case with counterfeit checks. Treasury checks include numerous security features which can be used to quickly detect most counterfeit checks. One example is the watermark. Every authentic Treasury check carries a watermark and includes, on the back, the statement, "*WARNING*—DO NOT CASH CHECK WITHOUT NOTING WATERMARK * * * HOLD TO LIGHT TO VERIFY WATERMARK."

Despite such security features, some counterfeit checks will go undetected during first examination and will be deemed paid under § 240.5(d) of NPRM II. Only in those situations where the depositary bank fails to act with reasonable care when accepting a Treasury check will the risk of loss be shifted from the Government to the depositary bank. An example would be a situation where the depositary bank ignores the warning to verify the watermark. Treasury will reclaim on a counterfeit check if it determines that the counterfeit check does not have a watermark.

In recognition of the United States Court of Federal Claims decision in *ABN AMRO Bank, N.V.* v. *United States*, 34 Fed. Cl. 126 (1995), which held that Treasury had failed to act in a manner which made evident an intent to modify by regulation the holdings of *United States* v. *Chase National Bank* and *Price* v. *Neal*, NPRM II explicitly supercedes common law to the extent that such law applies to counterfeit checks. Treasury is cognizant of relevant United States Supreme Court precedent interpreting the common law in this area and, by this regulation, removes any ambiguity regarding Treasury having supplanted that common law. In so acting, Treasury relies on the Secretary's general rulemaking authority, 31 U.S.C. 321, as well as the specific statutory authority of the Secretary to prescribe regulations governing the payment of drafts, found at 31 U.S.C. 3328(e).

3. *Deceased payee check intercepts.* As noted in NPRM I, where a payment has been issued and negotiated after a payee's death, Treasury historically has recovered funds associated with payment from financial institutions through the reclamation process. In response to concerns raised by financial institutions that reclamation actions generally occur only after final payment has been made and most, if not all, of the funds have been withdrawn from depositor accounts, Treasury, working with Federal Reserve Banks, developed procedures whereby checks can be intercepted when a payment has been issued and negotiated after a payee's death. Under these procedures, the intercept will take place in situations where an agency has advised Treasury via an unavailable check cancellation (UCC) that the payee is deceased and not entitled to the payment. Checks associated with such payments will be intercepted upon presentment to a Federal Reserve Processing Center. The check will be stamped "Not Negotiable Payee Deceased/Not Entitled Questions—Contact Authorizing Agency" and will be returned unpaid before financial institutions are required under Federal Reserve Regulation CC (12 CFR Part 229) to make funds permanently available to their depositors. The provisions in § 240.14(c) of the proposed rule codify procedures that already have been implemented and which should result in fewer payments to non-entitled payees. If the UCC is received after the check has been presented for payment, Treasury will recover the funds associated with the payment from financial institutions through the reclamation process.

4. *Declination protests.* The current Part 240 does not include provisions relating to protests of Treasury decisions to decline payment of a check. NPRM II includes such procedures at § 240.6 (Declination protest). Treasury's promulgation of declination protest procedures serves two purposes: (1) Providing public notice of the opportunity for a presenting bank to protest a declination; and (2) establishing an administrative adjudication process for declination protests. The new protest provisions for declinations formalize procedures which allow a presenting bank to protest a declination and, under certain circumstances, to receive back the original amount of the check issued by a United States disbursing officer.

In order to receive back such amounts, a presenting bank must be able to provide sufficient, credible evidence that the factual basis for the declination was in error.

For example, if Treasury declined payment of a check upon determining during first examination that the amount of the check had been altered from $400 to $4,000, the presenting bank, to succeed in its protest, would have to provide sufficient, credible evidence that the check, in fact, was issued in the amount of $4,000. Consistent with the recent decision by the United States Court of Appeals for the Federal Circuit in *Casa de Cambio Comdiv S.A. de C.V.* v. *U.S.*, 291 F.3d 1356 (Fed. Cir. 2002), § 240.6 of NPRM II also clarifies that protests may be filed only by the presenting bank, and not by other indorsers on the check that is the subject of the declination.

5. *Use of debt collection tools in the collection of reclamation debts.*

a. *Collection of reclamation debts.* Existing rules, codified at § 240.6, provide the framework for the collection process for amounts relating to checks that, after final payment by Treasury, are determined to have been negotiated over a forged or unauthorized indorsement or contain a material defect or alteration. Under the current rule, the reclamation process includes the following debt collection tools: (1) Issuance of a demand letter, referred to as a "REQUEST FOR REFUND (CHECK RECLAMATION)"; (2) collection of interest, late payment penalties and administrative collection costs; (3) follow-up on the initial demand with at least three monthly interest billing statements including outstanding balances and notices of subsequent collection actions; (4) referral to other Federal agencies for administrative offset; and (5) any other actions necessary to protect the interests of the United States should debt collection tools (1)–(4) fail. Since the issuance of the Interim Rule on May 24, 2002, the current rule has also included provisions relating to TCO, a debt collection tool authorized by the DCIA. The DCIA authorizes Treasury to collect amounts owed to the Treasury by presenting banks, *i.e.*, financial institutions presenting Treasury checks to the Federal Reserve for payment by the United States. Under TCO, Treasury will direct a Federal Reserve Bank to withhold credit from such presenting banks and, instead, use the funds to satisfy a presenting bank's debt to the Treasury. In accordance with the DCIA, Treasury will collect by means of TCO only if efforts to collect by means of Reclamation and Administrative Offset are unsuccessful. This proposal revises the current provisions in a number of ways.

First, the rules currently promulgated at § 240.6 are redesignated as § 240.7. These rules still include the basic provisions governing Treasury's initial demand for payment.

Second, NPRM II moves the TCO provisions from § 240.9 to § 240.10.

Third, NPRM II revises the Administrative Offset provisions (redesignated as § 240.9) to incorporate DCIA provisions requiring United States Disbursing Officers to offset debts referred by creditor agencies against payments to the debtors which a certifying agency has certified for payment to the Disbursing Officer.

Fourth, redesignated § 240.7 is revised to clarify that reclamations are due on the reclamation date. This continues current Treasury policy which is not stated explicitly in the current regulation. This section is revised further to clarify the types of charges that will be added to the reclamation amount, when those amounts will accrue, and how the amounts will be calculated. NPRM II clarifies that Treasury policy is to add such costs in accordance with 31 U.S.C. 3717, and the Federal Claims Collection Standards (FCCS) (31 CFR Parts 900–904).

In accordance with 31 CFR 901.9, Treasury waives administrative costs during the first days following the date of delinquency based on a determination that collection of administrative costs during the first 60 days following the reclamation date would be against equity and good conscience. This policy provides indorsers with a reasonable amount of time to consider the reclamation, conduct any necessary research, and either pay the reclamation or protest it. For the same reasons, Treasury will apply the same policy to interest and penalties, except that penalties will be waived for the first 90 days following the reclamation date. Specifically, paragraph 240.7(d), as revised, provides that: (1) Interest begins accruing at the rate determined under 31 U.S.C. 3717 on the 61st day following the reclamation date; (2) penalties, calculated at not more than 6% of the outstanding balance, begin accruing on the 91st day following the reclamation date; and (3) administrative costs begin accruing on the 61st day following the reclamation date. The definition of Monthly Statement at § 240.2 of NPRM II also is revised to clarify that such statements will include unpaid interest, penalties, and administrative costs.

Fifth, former paragraphs (c) and (d) of § 240.6 are moved to § 240.7 of NPRM II. The substance of current paragraph (c) is incorporated in paragraph (d) of § 240.7 of NPRM II, and the substance of current paragraph (d) is incorporated in paragraph (a) of § 240.7 of NPRM II. New paragraph 240.7(e) of NPRM II provides notice that, should all efforts to collect an unpaid reclamation be unsuccessful, Treasury will terminate collection action on the unpaid balance of the reclamation (including unpaid interest, administrative costs, and penalties), and the unpaid balance will be reported to the Internal Revenue Service as discharged indebtedness in accordance with 26 U.S.C. 6050P.

b. *Reclamation procedures and protests.* Reclamation protest rules, currently promulgated at § 240.7 (Demand and Protest), provide: (1) That a presenting bank may file a protest within 90 days of the reclamation date; (2) that the protest will be reviewed by a division director or an authorized designee, neither of whom was involved in the initial determination of fraudulent indorsement or alteration of the check; and (3) that Treasury will refrain from collection by means of administrative offset while a timely protest is being considered.

NPRM II moves these provisions to § 240.8 (Reclamation procedures; reclamation protests), and proposes that the existing reclamation procedure and protest provisions be revised to clarify certain current practices. Specifically, the proposal clarifies the rights of any indorser that directly receives a reclamation (*i.e.*, the "reclamation debtor"), including, but not limited to: (1) The right to inspect and copy Treasury records relating to the reclamation; (2) the right to protest the reclamation; and (3) the right to seek a repayment agreement. Paragraph 240.8(b)(1)(i) of NPRM II reiterates the requirement in the current Part 240 that Treasury will not consider protests received more than 90 days after the reclamation date. In addition, the monthly statements will provide notice that Treasury intends to collect the debt through administrative offset if the reclamation debt is not paid within 120 days of the reclamation date.

Consistent with the recent decision by the United States Court of Appeals for the Federal Circuit in *Casa de Cambio Comdiv S.A. de C.V.* v. *U.S.*, 291 F.3d 1356 (Fed. Cir. 2002), paragraph 240.8(b)(1) of NPRM II also clarifies Treasury policy that protests may be filed only by the recipient of the reclamation, the "reclamation debtor," and not by other indorsers of the check that is the subject of the reclamation. Protests by an indorser that was not the direct recipient of a reclamation will be accepted only where authorized by law. While paragraph 240.8(b)(1)(ii) of NPRM II provides Treasury with the discretion to consider information received by indorsers other than the reclamation debtor, any decision by Treasury to exercise such discretion would not, in any way, serve to waive any of Treasury's rights under Part 240, nor would it serve to grant rights to an indorser not otherwise provided in Part 240.

In addition, redesignated paragraph 240.8(c) of NPRM II requires that a protest by the reclamation debtor be filed and a final determination on the protest be issued by Treasury before the reclamation debtor may file a civil lawsuit in relation to Treasury's reclamation action on the check.

6. *Use of powers of attorney in indorsing Treasury checks.* Limitations on the use of powers of attorney for negotiating checks currently are codified in § 240.15. These limitations allow any check to be negotiated under a specific power of attorney which is executed after the issuance of the check and which describes the check in full. General powers of attorney executed in favor of individuals, financial institutions, or other entities may be used to negotiate certain enumerated checks, the right to which does not expire upon the death of the payee/beneficiary. Other types of checks, such as recurring benefit payments, may be negotiated under a special power of attorney that is executed in favor of a financial institution as attorney-in-fact and which states that it is not given to carry into effect an assignment of the right to receive the payment, either to the attorney-in-fact or to any other person. As revised, the rules will change the availability of powers of attorney in the following ways.

a. The proposed rule expands the availability of special powers of attorney by allowing such powers of attorney to be executed in favor of any entity or individual, rather than only financial institutions. However, as is current practice, paragraph 240.16(c) of NPRM II provides that special powers of attorney may be utilized only if they specifically state that they are not being executed with the intent of assigning the right of payment to the attorney-in-fact or to any other person.

b. The proposed rule allows durable special powers of attorney and springing durable special powers of attorney to be used to negotiate classes of checks the right to which expires upon the death of the payee/beneficiary. This includes checks for recurring benefit payments. A durable special power of attorney is a power of attorney that explicitly provides for its continued effect despite the later incompetence of the principal. A springing durable special power of attorney is similar to a durable special power of attorney in that it survives the principal's incompetence, but differs in that it does not become effective until such time that the principal is determined to be incompetent. A springing durable special power of attorney is created by the principal's use of words explicitly stating that the power of attorney is to become effective upon a determination that the principal is incompetent. The proposed rule allows durable special powers of attorney and springing durable special powers of attorney to be used for a period of six months following the date that a payee/beneficiary of a check is determined to be incompetent.

The new provisions at §§ 240.13 and 240.16(d) and (e) of NPRM II are intended to serve as a six-month bridge from the time a payee/beneficiary is determined to be incompetent until a guardian or other fiduciary is named. As with special powers of attorney, durable special powers of attorney and springing durable special powers of attorney may be executed in favor of an individual, a financial institution or any other entity as attorney-in-fact, but must state that they are not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to another person. Durable special powers of attorney and springing durable special powers of attorney automatically are revoked, for purposes of negotiating Treasury checks, upon the death of the payee/beneficiary.

c. The proposed rule deletes Appendix A to Part 240 which discusses the various Treasury power of attorney forms. Negotiating checks under a power of attorney no longer will require the use of a Treasury power of attorney form. Individual powers of attorney now will be governed by applicable law to the extent that such powers of attorney are consistent with the limitations provided in this Part, including, but not limited to, the following: (1) That special powers of attorney, durable special powers of attorney, and springing durable special powers of attorney must include a recitation that the power of attorney is not executed to effect an assignment of the right to receive payment either to the attorney-in-fact or to any other person; and (2) that for purposes of negotiating checks covered by this Part, all powers of attorney automatically are revoked upon the death of the beneficiary of the check.

d. Current paragraphs 240.16(f), (g) and (h) are deleted. They no longer are necessary because the descriptions of the types of powers of attorney all require that powers of attorney be executed in accordance with applicable Federal or state law.

7. *Definitions.* Section 240.2 is amended by adding a definition of "disbursing official." This definition is necessary due to revisions to redesignated § 240.9 (Offset) of NPRM II which allow Treasury to refer delinquent debts to any disbursing official of the United States for offset. The definition of "protest" has been deleted, and the substance of the definition moved to the protest provisions in §§ 240.6 and 240.8 of NPRM II. The definitions of the terms "commissioner" and "item" were deleted because the terms are not used in NPRM II.

The definition of "unauthorized indorsement" is amended to clarify that it includes forged as well as unauthorized indorsements. As such, the proposed rule uses the term "forged or unauthorized indorsement," and specifically states that it includes situations where the payee's name is signed by another without the authority to do so. The definition is also amended by deleting the reference to 31 CFR Part 209, which was removed from the CFR on December 27, 1996 (61 FR 68155–01). Other definitions were added to improve the readability of Part 240.

8. *Other changes.* The substance of current paragraph 240.3(a)(2) has been moved to paragraph 240.4(a)(1) of NPRM II and has been revised by deleting the language "unless it is negotiated to a financial institution no later than October 1, 1990." The deleted language pertains to checks that were outstanding at the time Part 240 was revised and provided notice that the Secretary of the Treasury, in accordance with 31 U.S.C. 3328(a), would not be required to pay such checks if they were not negotiated by the specified date. Due to the passage of time, the deleted language no longer is necessary. Similarly, the language in current paragraph 240.4(b) is deleted because it relates to the cancellation of checks that were issued before October 1, 1989, and had not been negotiated within 12 months. The deleted language no longer is necessary because all such checks have been paid or canceled pursuant to law.

Redesignated paragraphs 240.8(b) and 240.13(b) of NPRM II are revised to update addresses. In addition, § 240.8 is revised to clarify that a reclamation may be sent to any indorser, not just financial institutions in general or presenting banks in particular. Section 240.8 also is revised to clarify that monthly statements will include all outstanding amounts including unpaid portions of the original claim, interest, penalties, and administrative costs. (See definitions of "reclamation debt" and "reclamation debtor" in § 240.2 of NPRM II.)

The substance of current § 240.10, concerning the release of original checks, is deleted in order to reflect Treasury's practice of not releasing original checks to indorsers. Paragraph 240.11(a)(5) of NPRM II authorizes a Federal Reserve Bank to release a copy of a check to the indorser.

Redesignated § 240.11 includes the substance of current § 240.9 (Processing of checks). The substance of these rules is revised to clarify that depositaries outside the United States are to make reclamation refunds by checks drawn on or payable through U.S. financial institutions located in the United States, not by making a deposit directly to Treasury's General Account. Reclamation refunds initiated by banks outside the United States shall be sent through their headquarters or U. S. correspondent bank only. The proposed rule also clarifies that all reclamation refunds should be accompanied by documentation identifying the check that was the subject of the reclamation (such as a copy of the reclamation notice or the current monthly statement).

Redesignated § 240.12 of NPRM II is revised to clarify that no check drawn in favor of a financial institution for credit to the account of a payee may be negotiated after the death of a payee.

New § 240.19 of NPRM II incorporates a general reservation of rights provision.

Rulemaking Analysis

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined in E.O. 12866. Therefore, a Regulatory Assessment is not required.

Clarity of Regulations

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

- Have we organized the material in this proposed rule to suit your needs?
- Are the requirements in the proposed rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- What else could we do to make this proposed rule easier to understand?

Please send any comments you have on the clarity of this proposed rule to the address specified in the **ADDRESSES** section.

Regulatory Flexibility Act

It is hereby certified pursuant to the Regulatory Flexibility Act that this revision, if adopted, will not have a significant impact on a substantial number of small business entities. The major revisions to Part 240 in this proposed regulation incorporate recent statutory changes, or revise current agency practices relating to implementation of FCCS requirements. Specifically, the provisions concerning collection procedures do not create, in and of themselves, new debt collection tools, impose new fees not authorized by law, or otherwise create new limits on the rights of affected parties, including small business entities. The provisions concerning the referral of delinquent debts to other agencies or United States disbursing officials, and the provisions concerning the collection of delinquent debts by means of TCO, are all in furtherance of specific authorities established by the DCIA. In particular, the DCIA provides that, "By presenting Treasury checks for payment a presenting bank is deemed to authorize this offset." 31 U.S.C. 3712(e). Consequently, any economic impact on small entities will be the result of the application of the statute, rather than a direct result of Treasury regulations.

The provisions relating to how and when penalties and administrative costs will be added to delinquent debts represent a change in Treasury policy relating to implementation of the requirements of the FCCS. While the change in policy may result in some additional costs to some small entities, any such additional costs will be the result of Treasury's compliance with the requirements of the FCCS, and not a direct result of this regulation. Further, the impact of the change in policy will not be significant, because the costs are waived for those who pay within 60 days of the date of reclamation and such costs will be incurred only by those who fail to pay a reclamation in a timely fashion.

Provisions relating to declinations clarify existing Treasury practices concerning the processing of checks determined to include a material defect or alteration prior to Treasury's making final payment on a check. Including such provisions benefits financial institutions, as well as the general public, by providing notice of how and when actions by Treasury to decline final payment may be protested.

Finally, while provisions in this rule supercede existing Federal common law to the extent that such law applies to counterfeit checks, and may result in a shift in liability for losses associated with counterfeit checks, the actual amounts involved are expected to be minimal. An analysis of Treasury statistics for calendar year 2001 indicates that of 95 counterfeit checks presented to Treasury for payment, only one such counterfeit item took more than 30 days to detect. In that instance, the item was detected on the 105th day following presentment. Even in that instance, under the proposed rule, liability for the loss would be shifted to an indorser only if it were determined that the indorser breached the guarantee of authenticity in § 240.3(d) by failing to make all reasonable efforts to ensure that the check was authentic. Consequently, the provisions relating to liability for losses resulting from the payment of counterfeit checks is not expected to have a significant impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

Notice and Comment

Public comment is solicited on all aspects of this proposed regulation. Treasury will consider all comments made on the substance of this proposed regulation, but does not intend to hold hearings.

List of Subjects in 31 CFR Part 240

Banks, Banking, Checks, Counterfeit checks, Federal Reserve system, Forgery, Guarantees.

Authority and Issuance

For the reasons stated in the preamble, Part 240 of title 31 is proposed to be revised to read as follows:

PART 240—INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

Subpart A—General Provisions

Sec.

240.1 Scope of regulations.
240.2 Definitions.
240.3 Presentment guarantees.
240.4 Limitations on payment; cancellation and distribution of proceeds of checks.
240.5 Provisional credit; first examination; declination; final payment.
240.6 Declination protest.
240.7 Reclamation of amounts of paid checks.
240.8 Reclamation procedures; reclamation protests.
240.9 Offset.
240.10 Treasury Check Offset.
240.11 Processing of checks.

Subpart B—Indorsement of Checks

240.12 Indorsement by payees.
240.13 Checks issued to incompetent payees.
240.14 Checks issued to deceased payees.
240.15 Checks issued to minor payees.
240.16 Powers of attorney.
240.17 Lack of authority to shift liability.
240.18 Implementing instructions.
240.19 Reservation of rights.

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 321, 3327, 3328, 3331, 3334, 3343, 3711, 3712, 3716, 3717; 332 U.S. 234 (1947); 318 U.S. 363 (1943).

Subpart A—General Provisions

§ 240.1 Scope of regulations.

(a) The regulations in this part prescribe the requirements for indorsement and the conditions for payment of checks drawn on the United States Treasury. These regulations also establish procedures for collection of amounts due the United States Treasury based on claims arising from the breach of presentment guarantees by presenting banks and other indorsers of Treasury checks when checks bearing material defects or alterations or forged disbursing officer (drawer) signatures are presented for payment and are paid.

(b) Standards contained in this regulation supersede existing Federal common law to the extent that they are inconsistent with Federal common law rules relating to counterfeit checks. Under the provisions of this part, the risk of loss on certain counterfeit checks is placed on presenting banks and other indorsers unless Treasury fails to timely reclaim on a check payment in accordance with 31 U.S.C. 3712(a) and § 240.7 of this part. Treasury will reclaim on counterfeit checks that are deemed paid under § 240.5(d) when a presenting bank or other indorser fails to make all reasonable efforts to ensure that a check is an authentic Treasury check.

§ 240.2 Definitions.

Administrative offset or *offset*, for purposes of this section, has the same meaning as defined in 31 U.S.C. 3701(a)(1) and 31 CFR Part 285.

Agency means any agency, department, instrumentality, office, commission, board, service, or other establishment of the United States authorized to issue Treasury checks or for which checks drawn on the United States Treasury are issued.

Certifying agency means an agency authorizing the issuance of a payment by a disbursing official in accordance with 31 U.S.C. 3325.

Check or checks means a check or checks drawn on the United States Treasury.

Check payment means the amount paid to a presenting bank by a Federal Reserve Bank.

Counterfeit check means a document that purports to be an authentic check drawn on the United States Treasury, but in fact is not an authentic check.

Days means calendar days. For purposes of computation, the last day of the period will be included unless it is a Saturday, Sunday, or Federal holiday; the first day is not included. For example, if a reclamation was issued on July 1, the 90 day protest period under § 240.8(b) would begin on July 2. If the 90th day fell on a Saturday, Sunday or Federal holiday, the protest would be accepted if received on the next business day.

Declination means the process by which Treasury refuses to make final payment on a check, *i.e.*, declines payment, by instructing a Federal Reserve Bank to reverse its provisional credit to a presenting bank.

Declination date means the date on which the declination is issued by Treasury.

Disbursing official means an official, including an official of the Department of the Treasury, the Department of Defense, any Government corporation (as defined in 31 U.S.C. 9101), or any official of the United States designated by the Secretary of the Treasury, authorized to disburse public money pursuant to 31 U.S.C. 3321 or another law.

Drawer's signature means the signature of a disbursing official placed on the front of a Treasury check as the drawer of the check.

Federal Reserve Bank means a Federal Reserve Bank (FRB) or a branch of a Federal Reserve Bank.

Federal Reserve Processing Center means a Federal Reserve Bank center that images Treasury checks for archiving check information and transmitting such information to Treasury.

Financial institution means:

(1) Any insured bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(2) Any mutual savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(3) Any savings bank as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) or any bank which is eligible to make application to become an insured bank under section 5 of such Act (12 U.S.C. 1815);

(4) Any insured credit union as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752) or any credit union which is eligible to make application to become an insured credit union under section 201 of such Act (12 U.S.C. 1781);

(5) Any savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813) which is an insured depositary institution (as defined in such Act) (12 U.S.C. 1811 *et seq.*) or is eligible to apply to become an insured depositary institution under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(6) Any financial institution outside of the United States if it has been designated by the Secretary of the Treasury as a depositary of public money and has been permitted to charge checks to the General Account of the United States Treasury.

First examination means Treasury's initial review of a check that has been presented for payment. The initial review procedures, which establish the authenticity and integrity of a check presented to Treasury for payment, may include reconciliation; retrieval and inspection of the check or the best available image thereof; and other procedures Treasury deems appropriate to specific circumstances.

Forged or unauthorized drawer's signature means a drawer's signature that has been placed on the front of a Treasury check by a person other than:

(1) A disbursing official; or

(2) A person authorized to sign on behalf of a disbursing official.

Forged or unauthorized indorsement means:

(1) An indorsement of the payee's name by another person who is not authorized to sign for the payee; or

(2) An indorsement of the payee's name made by another person who has been authorized by the payee, but who has not indorsed the check in accordance with § 240.3 and §§ 240.12 through 240.16; or

(3) An indorsement added by a financial institution where the financial institution had no authority to supply the indorsement; or

(4) A check bearing an altered payee name that is indorsed using the payee name as altered.

Guarantor means a financial institution that presents a check for payment and any prior indorser(s) of a check.

Material defect or alteration means:

(1) The counterfeiting of a check; or

(2) Any physical change on a check, including, but not limited to, a change in the amount, date, payee name, or other identifying information printed on the front or back of the check (but not including a forged or unauthorized drawer's signature); or

(3) Any forged or unauthorized indorsement appearing on the back of the check.

Minor means the term minor as defined under applicable State law.

Monthly statement means a statement prepared by Treasury which includes the following information regarding each outstanding reclamation:

(1) The reclamation date;

(2) The reclamation number;

(3) Check identifying information; and

(4) The balance due, including interest, penalties, and administrative costs.

Payee means the person that the certifying agency designated to receive payment pursuant to 31 U.S.C. 3528.

Person means an individual, institution, including a financial institution, or any other type of entity; the singular includes the plural.

Presenting bank means:

(1) A financial institution which, either directly or through a correspondent banking relationship, presents checks to and receives provisional credit from a Federal Reserve Bank; or

(2) A depositary which is authorized to charge checks directly to Treasury's General Account and present them to Treasury for payment through a designated Federal Reserve Bank.

Provisional credit means the initial credit provided to a presenting bank by a Federal Reserve Bank. Provisional credit may be reversed by Treasury until the completion of first examination or final payment is deemed made pursuant to § 240.5(d).

Reclamation means a demand for the amount of a check for which Treasury has requested an immediate refund.

Reclamation date means the date on which a reclamation is issued by Treasury. Normally, demands are sent to presenting banks or other indorsers within 2 business days of the reclamation date.

Reclamation debt means the amount owed as a result of Treasury's demand for refund of a check payment, and includes interest, penalties and administrative costs assessed in accordance with § 240.7.

Reclamation debtor means a presenting bank or other indorser of a check from whom Treasury has demanded a refund in accordance with §§ 240.7 and 240.8. The reclamation debtor does not include a presenting bank or other indorser who may be liable for a reclamation debt, but from which Treasury has not demanded a refund.

Recurring benefit payment includes but is not limited to a payment of money for any Federal Government entitlement program or annuity.

Treasury means the United States Department of the Treasury, or when authorized, an agent designated by the Secretary of the Treasury or his delegee.

Treasury Check Offset means the collection of an amount owed by a presenting bank in accordance with 31 U.S.C. 3712(e).

U.S. securities means securities of the United States and securities of Federal agencies and Government corporations for which Treasury acts as the transfer agent.

Writing includes electronic communications when specifically authorized by Treasury in implementing instructions.

§ 240.3 Presentment guarantees.

The guarantors of a check presented to the Treasury for payment are deemed to guarantee to the Treasury all of the following:

(a) *Indorsements.* That all prior indorsements are genuine, whether or not an express guarantee is placed on the check. When the first indorsement has been made by one other than the payee personally, the presenting bank and the indorsers are deemed to guarantee to the Treasury, in addition to other guarantees, that the person who so indorsed had unqualified capacity and authority to indorse the check on behalf of the payee.

(b) *Alterations.* That the check has not been materially altered.

(c) *Drawer's signature.* That the guarantors have no knowledge that the signature of the drawer is forged or unauthorized.

(d) *Authenticity.* That the guarantors have made all reasonable efforts to ensure that a check is an authentic Treasury check, not a counterfeit check.

§ 240.4 Limitations on payment; cancellation and distribution of proceeds of checks.

(a) *Limitations on payment.* (1) Treasury shall not be required to pay any check that is not negotiated to a financial institution within 12 months after the date on which the check was issued.

(2) All checks shall bear a legend, stating "Void After One Year." The legend is notice to payees and indorsers of a general limitation on the payment of checks. The legend, or the inadvertent lack thereof, does not limit, or otherwise affect, the rights of Treasury under the law.

(b) *Cancellation and distribution of proceeds of checks.* (1) Any check that has not been paid and remains outstanding for more than 12 months after the issue date will be canceled by Treasury.

(2) The proceeds from checks canceled pursuant to paragraph (b)(1) of this section will be returned to the payment certifying or authorizing agency for ultimate credit to the appropriation or fund account initially charged for the payment.

(3) On a monthly basis, Treasury will provide to each agency that authorizes the issuance of checks a list of those checks issued for such agency which were canceled during the preceding month pursuant to paragraph (b)(1) of this section.

§ 240.5 Provisional credit; first examination; declination; final payment.

(a) Any credit issued by a Federal Reserve Bank to a financial institution shall be a provisional credit until Treasury completes first examination of the check, or as provided in paragraph (d) of this section.

(b) Treasury shall have the right as a drawee to complete first examination of checks presented for payment, to reconcile checks, and, when appropriate, to make a declination on any check.

(c) Treasury will decline payment on a check when first examination by Treasury establishes that the check:

(1) Has a material defect or alteration; or

(2) Bears a forged or unauthorized drawer's signature.

(d) Treasury shall have a reasonable amount of time to complete first examination. However, except as provided in paragraph (e) of this section, if Treasury has not declined payment on a check within 90 days after the check is presented to a Federal Reserve Processing Center for payment, Treasury will be deemed to have made final payment on the check.

(e) Notwithstanding the provisions of paragraph (d) of this section, in accordance with 31 U.S.C. 3328(a)(2), if, upon presentment for payment, Treasury is on notice of a question of law or fact about whether a check is properly payable, Treasury may defer final payment until the question is settled.

(f) If a Federal Reserve Bank debits a financial institution's reserve account as a result of an erroneous declination, Treasury will promptly refund the amount of the payment.

§ 240.6 Declination protest.

(a) *Who may protest.* Only a presenting bank may protest the declination of a check that it has presented to a Federal Reserve Bank for payment.

(b) *Basis for protest.* Where Treasury, in accordance with § 240.5, has made a declination of a check presented for payment and a Federal Reserve Bank has reversed its provisional credit to the presenting bank, the presenting bank may file a protest challenging the factual basis for such declination. Protests may be filed challenging the following determinations:

(1) *Counterfeit checks.* The presenting bank may offer evidence that the check is not a counterfeit.

(2) *Altered checks.* The presenting bank may offer evidence that the check is not altered.

(3) *Checks bearing forged or unauthorized drawer's signatures.* The presenting bank may offer evidence that the drawer's signature was authentic or was authorized.

(4) *Checks bearing a forged or unauthorized indorsement.* The presenting bank may offer evidence that an indorsement on the back of the check was not forged or was otherwise authorized in accordance with the requirements of §§ 240.12 through 240.16.

(c) *Procedures for filing a protest.* A declination protest must be in writing, and must be sent to: Department of the Treasury, Financial Management Service, Branch Manager, Financial Processing Division, Check Reconciliation Branch, Room 700–A, 3700 East-West Highway, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at *http://www.fms.treas.gov.* Treasury will not consider any protest unless it is received within 90 days from the declination date.

(d) *Review of a declination protest.* The Director, Financial Processing Division, or an authorized designee, will decide any protest properly submitted under this section, and will notify the presenting bank of Treasury's decision. Neither the Director, Financial Processing Division, nor an authorized designee, will have any involvement in the decision to deny payment of a check under § 240.5.

(1) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the presenting bank has met, by a preponderance of the evidence, the criteria in paragraph (b) of this section, Treasury will reverse its decision to decline payment on the check by directing a Federal Reserve Bank to provide credit in the amount of the check to the presenting bank.

(2) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the presenting bank has failed to meet, by a preponderance of the evidence, the criteria in paragraph (b) of this section, the declination will not be reversed.

§ 240.7 Reclamation of amounts of paid checks.

(a) If, after making final payment in accordance with § 240.5, Treasury determines that any guarantor has breached a presentment guarantee listed in § 240.3, the guarantor shall be liable to Treasury for the full amount of the check payment. Treasury may reclaim the amount of the check payment from any such guarantor prior to:

(1) The end of the 1-year period beginning on the date that a check is processed for payment by a Federal Reserve Processing Center; or

(2) The expiration of the 180-day period beginning on the close of the period described in paragraph (a)(1) of this section if a timely claim under 31 U.S.C. 3702 is presented to the certifying agency.

(b) Treasury will not reclaim on a check that bears a forged or unauthorized drawer's signature unless it has evidence that the reclamation debtor had knowledge of the forged or unauthorized drawer's signature.

(c) Treasury will not reclaim on a counterfeit check unless the reclamation debtor has failed to make all reasonable efforts to ensure that a check is an authentic check and not a counterfeit check. In general, a reclamation debtor will be deemed to have failed to make all reasonable efforts to ensure that a check is authentic if a counterfeit check is presented to Treasury for payment despite the fact that it lacks one or more specific attributes outlined in guidance provided by Treasury or on Treasury's behalf.

(d) Reclamation debts are due to be paid upon receipt of the reclamation by the reclamation debtor. Interest, penalties, and administrative costs associated with unpaid balances will accrue as follows:

(1) *Interest.* Treasury will assess interest on the unpaid principal of the reclamation debt beginning on the 61st day following the reclamation date, and will calculate interest based on the rate published annually by Treasury in accordance with 31 U.S.C. 3717. Interest will continue to accrue until the full amount of the reclamation is paid or Treasury determines that payment is not required.

(2) *Penalties.* Treasury will assess a penalty beginning on the 91st day following the reclamation date. The penalty will be assessed in accordance with 31 U.S.C. 3717 on the unpaid principal of the reclamation debt, and will continue to accrue until the full amount of the reclamation debt is paid or Treasury determines that payment is not required.

(3) *Administrative costs.* Treasury will assess administrative costs associated with the unpaid reclamation debt beginning on the 61st day following the reclamation date. Administrative costs will continue to accrue until the full amount of the reclamation debt is paid or Treasury determines that payment is not required.

(e) If Treasury is unable to fully collect a reclamation debt from a reclamation debtor, after pursuing all appropriate means of collection (including, but not limited to, administrative offset in accordance with § 240.9 and Treasury Check Offset in accordance with § 240.10), Treasury will discharge the unpaid reclamation debt. *See* 31 CFR 903.5 (Discharge of indebtedness; reporting requirements). Treasury or the certifying agency will report the amount of the unpaid reclamation debt to the Internal Revenue Service in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1.

§ 240.8 Reclamation procedures; reclamation protests.

(a) *Reclamation procedures.* (1) Treasury will send a "REQUEST FOR REFUND (CHECK RECLAMATION)" to the reclamation debtor in accordance with § 240.7(a). This request will advise the reclamation debtor of the amount demanded and the reason for the demand. Treasury will make follow-up demands by sending at least three monthly statements to the reclamation debtor. Monthly statements will identify any unpaid reclamation debts (as defined at § 240.2) and will contain or be accompanied by notice to the reclamation debtor that:

(i) If the reclamation debt is not paid within 120 days of the reclamation date, Treasury intends to collect the debt through administrative offset in accordance with § 240.9;

(ii) If the administrative offset is unsuccessful, Treasury intends to collect the debt through Treasury Check Offset in accordance with § 240.10;

(iii) The reclamation debtor has an opportunity to inspect and copy Treasury's records with respect to the reclamation debt;

(iv) The reclamation debtor may, by filing a protest in accordance with § 240.8(b), request Treasury to review its decision that the reclamation debtor is liable for the reclamation debt; and

(v) The reclamation debtor has an opportunity to enter into a written agreement with Treasury for the repayment of the reclamation debt. A request for a repayment agreement must be accompanied by documentary proof that satisfies Treasury that the reclamation debtor is unable to repay the entire amount owed when due.

(2) Requests by a reclamation debtor for an appointment to inspect and copy Treasury's records with respect to a reclamation debt and requests to enter into repayment agreements must be sent in writing to: Department of the Treasury, Financial Management Service, Financial Processing Division, Reclamation Branch, Room 700D, PO Box 1849, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at *http://www.fms.treas.gov.*

(3) If a reclamation debt remains unpaid for 90 days after the reclamation date and if there is no unresolved protest associated with the reclamation debt, the monthly statement will be annotated with a notice that the reclamation debtor has until the next billing date to make payment on the reclamation debt or Treasury will proceed to collect the reclamation debt through offset in accordance with § 240.9 and Treasury Check Offset in accordance with § 240.10.

(4) If Treasury determines that a reclamation has been made in error, Treasury will abandon the reclamation. If Treasury already has collected the amount of the reclamation from the reclamation debtor, Treasury will promptly refund to the reclamation debtor the amount of its payment. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

(b) *Reclamation protests.* (1) *Who may protest.* Only a reclamation debtor may protest a reclamation.

(2) *Basis for protest.* Where Treasury, in accordance with § 240.7 and subsection (a) of this section, reclaims the amount of a check payment, the reclamation debtor may file a protest challenging such reclamation. Protests may be filed challenging the following determinations:

(i) *Counterfeit checks.* The reclamation debtor may offer evidence that it did make all reasonable efforts to ensure that a check is authentic. Such evidence must include evidence that the

protestor examined the check in accordance with guidelines provided by Treasury or on Treasury's behalf.

(ii) *Altered checks.* The reclamation debtor may offer evidence that the check is not altered.

(iii) *Checks bearing forged or unauthorized drawer's signatures.* The reclamation debtor may offer evidence that the reclamation debtor did not have knowledge of the forged or unauthorized drawer's signature.

(iv) *Checks bearing a forged or unauthorized indorsement.* The reclamation debtor may offer evidence that the indorsement was not forged or was otherwise authorized in accordance with the requirements of §§ 240.12 through 240.16.

(3) *Procedures for filing a protest.* A reclamation protest must be in writing, and must be sent to: Department of the Treasury, Financial Management Service, Financial Processing Division, Reclamation Branch, Room 700D, PO Box 1849, Hyattsville, MD 20788, or to such other address as Treasury may publish in the Treasury Financial Manual, which can be found at *http://www.fms.treas.gov.*

(i) The reclamation protest must include supporting documentation (including, but not limited to, affidavits, account agreements, and signature cards) for the purpose of establishing that the reclamation debtor is not liable for the reclamation debt.

(ii) Treasury will not consider reclamation protests received more than 90 days after the reclamation date.

(iii) Treasury may, at its discretion, consider information received from a guarantor other than the reclamation debtor. However, in so doing, Treasury does not waive any of its rights under this part, nor does Treasury grant rights to any guarantor that are not otherwise provided in this Part.

(4) *Review of a reclamation protest.* The Director, Financial Processing Division, or an authorized designee, will consider and decide any protest properly submitted under this section. Neither the Director, Financial Processing Division, nor an authorized designee, will have any involvement in the process of making determinations under § 240.7(a) or sending a "REQUEST FOR REFUND (CHECK RECLAMATION)" under § 240.8(a).

(i) Treasury will refrain from the collection activities identified in §§ 240.9 and 240.10 while a timely protest is being considered. However, interest, penalties, and administrative costs will continue to accrue and be added to the reclamation debt until a final determination on the protest has been made.

(ii) If, based on the evidence provided, the Director of the Financial Processing Division, or an authorized designee, finds that the reclamation debtor has met, by a preponderance of the evidence, the criteria in paragraph (b)(2) of this section, Treasury will notify the reclamation debtor, in writing, of his or her decision to terminate collection and will refund any amounts previously collected for the reclamation debt. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

(iii) If the Director, Financial Processing Division, or an authorized designee, finds, by a preponderance of the evidence, that the reclamation debtor is liable for the reclamation debt, Treasury will notify the reclamation debtor, in writing, of his or her decision. If the reclamation debtor has not paid the reclamation in full, the reclamation debtor must pay any outstanding amounts in full within 30 days from the date of Treasury's decision. If the reclamation debtor fails to pay the reclamation debt in full within that time frame, Treasury will proceed to collect the reclamation debt through offset in accordance with §§ 240.9 and 240.10.

(5) *Effect of protest decision.* The notice provided to the reclamation debtor under paragraph (b)(4)(iii) of this section shall serve as the final agency determination under the Administrative Procedure Act (5 U.S.C. 701, *et seq.*). No civil suit may be filed until the reclamation debtor has filed a protest under this section, and Treasury has provided notice of its final determination.

§ 240.9 Offset.

(a) If a reclamation debt remains unpaid for 120 days after the reclamation date, Treasury will refer the reclamation debt, if eligible, to Treasury's centralized offset program (see 31 CFR part 285) or another Federal agency for offset in accordance with 31 U.S.C. 3716. Prior to making a referral for offset, Treasury, in accordance with § 240.8(a)(3), will send at least one monthly statement to the reclamation debtor informing the reclamation debtor that Treasury intends to collect the reclamation debt by administrative offset and Treasury Check Offset.

(b) If a reclamation debtor wishes to make payment on a reclamation debt referred for offset, the reclamation debtor should contact Treasury at the address listed in § 240.8(b) to resolve the debt and avoid offset.

(c) If Treasury is unable to collect a reclamation debt by use of the offset described in paragraph (a) of this section, Treasury shall take such action against the reclamation debtor as may be necessary to protect the interests of the United States, including, but not limited to, Treasury Check Offset in accordance with § 240.10, or referral to the Department of Justice.

(d) If Treasury effects offset under this section and it is later determined that the reclamation debtor already had paid the amount of the reclamation debt, or that a reclamation debtor which had timely filed a protest was not liable for the amount of the reclamation, Treasury will promptly refund to the reclamation debtor the amount of its payment. Treasury may refund the amount either by applying the amount to another reclamation debt owed by the reclamation debtor in accordance with this Part or other applicable law, or by returning the amount to the reclamation debtor.

§ 240.10 Treasury Check Offset.

(a) If Treasury is unable to effect collection pursuant to §§ 240.7 and 240.8, or § 240.9, Treasury will collect the amount of the reclamation debt through Treasury Check Offset. Treasury Check Offset occurs when, at the direction of the Treasury, a Federal Reserve Bank withholds, that is, offsets, credit from a presenting bank. The amount of credit offset is applied to the reclamation debt owed by the presenting bank. By presenting Treasury checks for payment, the presenting bank is deemed to authorize Treasury Check Offset.

(b) If Treasury effects offset under this section and it is later determined that the presenting bank paid the reclamation debt in full, or that a presenting bank was not liable for the amount of the reclamation debt, Treasury will promptly refund to the presenting bank the amount of its overpayment. Treasury may refund the amount either by applying the amount to another reclamation debt in accordance with this Part or other applicable law, or by returning the amount to the presenting bank.

(c) Treasury Check Offset is used for the purpose of collecting debt owed by a presenting bank to the Federal Government. As a consequence, presenting banks shall not be able to use the fact that Treasury checks have not been paid as the basis for a claim against Treasury, a Federal Reserve Bank, or other persons or entities, including payees or other indorsers of checks, for the amount of the credit offset pursuant to 31 U.S.C. 3712(e) and this section.

(d) This section does not apply to a claim based upon a reclamation that has been outstanding for more than 10 years from the date of delinquency.

§ 240.11 Processing of checks.

(a) *Federal Reserve Banks.* (1) Federal Reserve Banks must cash checks for Government disbursing officials when such checks are drawn by the disbursing officials to their own order, except that payment of such checks must be refused if:

(i) A check bears a material defect or alteration;

(ii) A check was issued more than one year prior to the date of presentment; or

(iii) The Federal Reserve Bank has been notified by Treasury, in accordance with § 240.14(c), that a check was issued to a deceased payee.

(2) Federal Reserve Banks are not required to cash checks presented directly to them by the general public.

(3) As a depositary of public funds, each Federal Reserve Bank shall:

(i) Receive checks from its member banks, nonmember clearing banks, or other depositors, when indorsed by such banks or depositors who guarantee all prior indorsements thereon;

(ii) Give immediate provisional credit therefore in accordance with their current Time Schedules and charge the amount of the checks cashed or otherwise received to the General Account of the United States Treasury, subject to first examination and payment by Treasury;

(iii) Forward payment records, requested original checks, and copies of checks to Treasury; and

(iv) Release the original checks to a designated Regional Records Services Facility upon notification from Treasury.

(4) If a check is to be declined under § 240.5, Treasury will provide the Federal Reserve Bank with notice of declination upon the completion of first examination. Federal Reserve Banks must give immediate credit therefor to Treasury's General Account, thereby reversing the previous charge to the General Account for such check.

(5) Treasury authorizes each Federal Reserve Bank to release a copy of the check to the presenting bank when payment is declined.

(b) *Treasury General Account (TGA) designated depositaries outside the United States.*—(1) Financial institutions outside the United States designated by Treasury as depositaries of public money in accordance with 31 U.S.C. 3303 and permitted to charge checks to the General Account of the United States Treasury in accordance with Treasury implementing instructions shall be governed by the operating instructions contained in the letter of authorization to them from Treasury and are, as presenting banks, subject to the provisions of §§ 240.3, 240.7, and 240.8.

(2) If a check is to be declined under § 240.5, Treasury will provide the presenting bank with notice of declination upon the completion of first examination and will provide the presenting bank with a copy or image of the check. Such presenting bank must give immediate credit therefor to the General Account of the United States Treasury, thereby reversing the previous charge to the Account for such check. Treasury authorizes the designated Federal Reserve Bank to return to such presenting bank the original check when payment is declined in accordance with § 240.4(a) or § 240.14(c).

(3) To ensure complete recovery of the amount due, reclamation refunds require payment in U.S. dollars with checks drawn on or payable through U.S. financial institutions located in the United States. Reclamation refunds initiated by financial institutions outside of the United States must be sent through their headquarters or U.S. correspondent financial institution only. The payments should be accompanied by documentation identifying the check that was the subject of the reclamation (such as a copy of the reclamation notice or the current monthly statement). Reclamation refunds shall not be deposited to Treasury's General Account.

Subpart B—Indorsement of Checks

§ 240.12 Indorsement by payees.

(a) *General requirements.* Checks shall be indorsed by the named payee or by another on behalf of such named payee as set forth in this part.

(b) *Acceptable indorsements.*—(1) A check is properly indorsed when:

(i) The check is indorsed by the payee in a form recognized by general principles of law and commercial usage for negotiation, transfer or collection of negotiable instruments.

(ii) The check is indorsed by another on behalf of the named payee, and sufficiently indicates that the indorser has indorsed the check on behalf of the payee pursuant to authority expressly conferred by or under law or other regulation. An example would be: "John Jones by Mary Jones." This example states the minimum indication acceptable. However, §§ 240.13, 240.14, and 240.16(f) specify the addition of an indication in specified situations of the actual capacity in which the person other than the named payee is indorsing.

(iii) Absent a signature, the check is indorsed "for collection" or "for deposit only to the credit of the within named payee or payees." The presenting bank shall be deemed to guarantee good title to checks without signatures to all subsequent indorsers and to Treasury.

(iv) The check is indorsed by a financial institution under the payee's authorization.

(2) *Indorsement of checks by a duly authorized fiduciary or representative.* The individual or institution accepting a check from a person other than the named payee is responsible for determining whether such person is authorized and has the capacity to indorse and negotiate the check. Evidence of the basis for such a determination may be required by Treasury in the event of a dispute.

(3) *Indorsement of checks by a financial institution under the payee's authorization.* When a check is credited by a financial institution to the payee's account under the payee's authorization, the financial institution may use an indorsement substantially as follows: "Credit to the account of the within-named payee in accordance with the payee's instructions. XYZ [Name of financial institution]." A financial institution using this form of indorsement will be deemed to guarantee to all subsequent indorsers and to the Treasury that it is acting as an attorney-in-fact for the payee, under the payee's authorization, and that this authority is currently in force and has neither lapsed nor been revoked either in fact or by the death or incapacity of the payee.

(4) *Indorsement of checks drawn in favor of financial institutions.* All checks drawn in favor of a financial institution, for credit to the account of a person designating payment so to be made, must be indorsed in the name of the financial institution as payee in the usual manner. However, no check drawn in favor of a financial institution for credit to the account of a payee may be negotiated by the financial institution after the death of the payee.

(c) *Unacceptable indorsements.*—(1) A check is not properly indorsed when the check is signed or otherwise is indorsed by a person without the payee's consent or authorization.

(2) Failure to include the signature of the person signing the check as required by paragraph (b)(1)(ii) of this section will create a rebuttable presumption that the indorsement is a forgery and is unacceptable.

(3) Failure to include sufficient indication of the indorser's authority to

act on behalf of the payee as required by paragraph (b)(1)(ii) of this section will create a rebuttable presumption that the indorsing person is not authorized to indorse a check for the payee.

§ 240.13 Checks issued to incompetent payees.

(a) *Handling of checks when a guardian or other fiduciary has been appointed.*—(1) A guardian appointed in accordance with applicable State law, or a fiduciary appointed in accordance with other applicable law, may indorse checks issued for the following classes of payments the right to which under law does not terminate with the death of the payee: payments for the redemption of currencies or for principal and/or interest on U.S. securities; payments for tax refunds; and payments for goods and services.

(i) A guardian or other fiduciary indorsing any such check on behalf of an incompetent payee, must include, as part of the indorsement, an indication of the capacity in which the guardian or fiduciary is indorsing. An example would be: "John Jones by Mary Jones, guardian of John Jones."

(ii) When a check indorsed in this fashion is presented for payment by a financial institution, it will be paid by Treasury without submission of documentary proof of the authority of the guardian or other fiduciary, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(2) A guardian or other fiduciary may not indorse a check issued for any class of payment other than one specified in paragraph (a)(1) of this section. When a check other than one specified in paragraph (a)(1) of this section is received by a guardian or other fiduciary, the check must be returned to the certifying agency with information as to the incompetency of the payee and documentary evidence showing the appointment of the guardian or other fiduciary in order that a replacement check, and future checks, may be drawn in favor of the guardian or other fiduciary.

(b) *Handling of checks when a guardian or other fiduciary has not been appointed.* If a guardian or other fiduciary has not been appointed, all checks issued to an incompetent payee must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(c) *Handling of certain checks by an attorney-in-fact.* Notwithstanding paragraph (a)(2) of this section, if a check was issued for a class of payments the right to which under law terminates upon the death of the beneficiary, such as a recurring benefit payment or annuity, the check may be negotiated under a durable special power of attorney or springing durable special power of attorney subject to the restrictions enumerated in § 240.16. After the end of the six-month period provided in §§ 240.16(d) and (e), such checks must be handled in accordance with paragraph (a)(2) of this section.

§ 240.14 Checks issued to deceased payees.

(a) *Handling of checks when an executor or administrator has been appointed.*—(1) An executor or administrator of an estate that has been appointed in accordance with applicable State law may indorse checks issued for the following classes of payments the right to which under law does not terminate with the death of the payee: payments for the redemption of currencies or for principal and/or interest on U.S. securities; payments for tax refunds; and payments for goods and services.

(i) An executor or administrator indorsing any such check must include, as part of the indorsement, an indication of the capacity in which the executor or administrator is indorsing. An example would be: "John Jones by Mary Jones, executor of the estate of John Jones."

(ii) When a check indorsed in this fashion is presented for payment by a financial institution, it will be paid by Treasury without the submission of documentary proof of the authority of the executor or administrator, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(2) An executor or administrator of an estate may not indorse a check issued for any class of payment other than one specified in paragraph (a)(1) of this section. Other checks, such as recurring benefit payments and annuity payments, may not be negotiated after the death of the payee. Such checks must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(b) *Handling of checks when an executor or administrator has not been appointed.* If an executor or administrator has not been appointed, all checks issued to a deceased payee must be returned to the certifying agency for determination as to whether, under applicable law, payment is due and to whom it may be made.

(c) *Handling of checks when a certifying agency learns, after the issuance of a recurring benefit payment check, that the payee died prior to the date of issuance.* (1) A recurring benefit payment check, issued after a payee's death, is not payable. As a consequence, when a certifying agency learns that a payee has died, the certifying agency must give immediate notice to Treasury, as prescribed in the implementing instructions described in § 240.18. Upon receipt of such notice from a certifying agency, Treasury will instruct the Federal Reserve Bank to refuse payment of the check upon presentment. Upon receipt of such instruction from Treasury, the Federal Reserve Bank will make every appropriate effort to intercept the check. If the check is successfully intercepted, the Federal Reserve Bank will refuse payment, and will return the check unpaid to the presenting bank with an annotation that the payee is deceased. If a financial institution learns that a date of death triggering action under this section is erroneous, the financial institution must advise the payee to contact the payment certifying agency.

(2) Nothing in this section shall limit the right of Treasury to institute reclamation proceedings under the provisions of §§ 240.7 and 240.8 with respect to a check issued to a deceased payee that has been negotiated and paid over a forged or unauthorized indorsement.

§ 240.15 Checks issued to minor payees.

(a) Checks in payment of principal and/or interest on U.S. securities that are issued to minors may be indorsed by:

(1) Either parent with whom the minor resides; or

(2) If the minor does not reside with either parent, by the person who furnishes the minor's chief support.

(b) The parent or other person indorsing on behalf of the minor must present with the check the indorser's signed statement giving the minor's age, and stating that the payee either resides with the parent or receives his or her chief support from the person indorsing on the minor's behalf and that the proceeds of the check will be used for the minor's benefit.

§ 240.16 Powers of attorney.

(a) *Specific powers of attorney.* Any check may be negotiated under a specific power of attorney executed in accordance with applicable State or Federal law after the issuance of the check and describing the check in full (check serial and symbol numbers, date of issue, amount, and name of payee).

(b) *General powers of attorney.* Checks may be negotiated under a general power of attorney executed, in accordance with applicable State or Federal law, in favor of a person for the following classes of payments:

(1) Payments for the redemption of currencies or for principal and/or interest on U.S. securities;

(2) Payments for tax refunds, but subject to the limitations concerning the mailing of Internal Revenue refund checks contained in 26 CFR 601.506(c); and

(3) Payments for goods and services.

(c) *Special powers of attorney.* Checks issued for classes of payments other than those specified in paragraph (b) of this section, such as a recurring benefit payment, may be negotiated under a special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to receive such payment, either to the attorney-in-fact or to any other person.

(d) *Durable special powers of attorney.* A durable special power of attorney is a special power of attorney which continues despite the principal's later incompetency, and is created by the principal's use of words explicitly stating such intent. Classes of checks other than those specified in paragraph (b) of this section may be negotiated under a durable special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the special power of attorney is not given to carry into effect an assignment of the right to receive such payment, either to the attorney-in-fact or to any other person. For the purpose of negotiating Treasury checks, durable special powers of attorney are effective only during the 6-month period following a determination that the named payee is incompetent.

(e) *Springing durable special powers of attorney.* A springing durable special power of attorney is similar to a durable power of attorney except that its terms do not become effective until the principal's subsequent incompetence. As with a durable special power of attorney, a springing durable special power of attorney is created by the principal's use of language explicitly stating that its terms become effective at such time as the principal is determined to be incompetent. Classes of checks other than those specified in paragraph (b) of this section may be negotiated under a springing durable special power of attorney executed in accordance with applicable State or Federal law, which describes the purpose for which the checks are issued, names a person as attorney-in-fact, and recites that the springing durable special power of attorney is not given to carry into effect an assignment of the right to receive payment, either to the attorney-in-fact or to any other person. For the purpose of negotiating Treasury checks, springing durable special powers of attorney are effective only during the 6-month period following a determination that the named payee is incompetent.

(f) *Proof of authority.* Checks indorsed by an attorney-in-fact must include, as part of the indorsement, an indication of the capacity in which the attorney-in-fact is indorsing. An example would be: "John Jones by Paul Smith, attorney-in-fact for John Jones." Such checks when presented for payment by a financial institution, will be paid by Treasury without the submission of documentary proof of the claimed authority, with the understanding that evidence of such claimed authority to indorse may be required by Treasury in the event of a dispute.

(g) *Revocation of powers of attorney.* Notwithstanding any other law, for purposes of negotiating Treasury checks, all powers of attorney are deemed revoked by the death of the principal and may also be deemed revoked by notice from the principal to the parties known, or reasonably expected, to be acting on the power of attorney.

§ 240.17 Lack of authority to shift liability.

(a) This part neither authorizes nor directs a financial institution to debit the account of any person or to deposit any funds from any account into a suspense account or escrow account or the equivalent. Nothing in this part shall be construed to affect a financial institution's contract with its depositor(s) under authority of state law.

(b) A financial institution's liability under this part is not affected by any action taken by it to recover from any person the amount of the financial institution's liability to the Treasury.

§ 240.18 Implementing instructions.

Additional procedural instructions implementing these regulations will be issued by the Financial Management Service in Volume I, Part 4 (instructions relating to disbursing), and Volume II, Part 4 (instructions relating to Federal Reserve Banks), of the Treasury Financial Manual. Implementing instructions relating to designated depositaries outside the United States are published in Volume VI, Chapter 2000, of the Treasury Financial Manual.

§ 240.19 Reservation of rights.

The Secretary of the Treasury reserves the right, in the Secretary's discretion, to waive any provision(s) of this part not otherwise required by law.

Dated: April 17, 2003.

Richard L. Gregg,

Commissioner.

[FR Doc. 03–9998 Filed 4–22–03; 8:45 am]

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Federal Register

Wednesday,
April 23, 2003

Part III

Department of Agriculture

Foreign Agricultural Service

7 CFR Part 1580

Trade Adjustment Assistance for Farmers; Proposed Rule

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1580

RIN 0551–AA66

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement Chapter 6 of Title II of the Trade Act of 1974, as amended by Subtitle C of Title 1 of the Trade Act of 2002 (Pub. L. 107–210) to establish a new program, Trade Adjustment Assistance for Farmers. Under this program, the Department of Agriculture would provide technical assistance and cash benefits to eligible producers of raw agricultural commodities when the Administrator, Foreign Agricultural Service (FAS) determines that increased imports have contributed importantly to a specific price decline over five preceding marketing years. The proposed rule would establish the procedure by which producers of raw agricultural commodities can petition for certification of eligibility and apply for technical assistance and adjustment payments.

DATES: Comments should be received on or before May 23, 2003, to be assured of consideration.

ADDRESSES: Comments should be mailed or delivered to Jean-Louis Pajot, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., STOP 1021, U.S. Department of Agriculture, Washington, DC 20250–1021. Comments may also be e-mailed to *Jean-Louis.Pajot@usda.gov*. Comments received may be inspected between 10 a.m. and 4 p.m. at room 5541–S, 1400 Independence Avenue, SW., Washington, DC 20250–1021.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot at the address above, or telephone at (202) 720–2916, or e-mail at *Jean-Louis.Pajot@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The proposed rule has been determined to be significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This proposed rule will not have a significant economic impact on a substantial number of small farm operations. Participation in the program is voluntary. Direct and indirect costs are likely to be very small as a percentage of revenue and in terms of absolute costs. The minimal regulatory requirements impact large and small businesses equally, and the program's benefits should improve cash flow and liquidity for farmers participating in the program.

Paperwork Reduction Act

Summary: In accordance with the Paperwork Reduction Act of 1995, the Department intends to request approval by the Office of Management and Budget (OMB) of an information collection required to support the proposed rule establishing an adjustment assistance program for farmers. Copies of the information collection may be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568 or e-mail at *Chisley@fas.usda.gov*.

To obtain program benefits, under this program, a group of raw agricultural commodity producers, or their duly authorized representative, must submit a petition to the Administrator for certification of eligibility to apply for adjustment assistance. The proposed rule contains an information collection that solicits data that is essential for the Administrator in making a determination on certification of eligibility for adjustment assistance. The information collection requires, to the maximum extent feasible, that a petition contain: A description of the raw agricultural product concerned; data on specific prices for the most recent marketing year; national average or regional prices for the commodity for the five preceding marketing years; data on increases in imports of a directly competing commodity; and an assessment of the impact of increased imports on domestic prices, including any supporting evidence that imports contributed importantly to a decline in domestic prices. Within 90 days after certification, a producer may submit an application for adjustment assistance benefits. The application contains an information collection that conforms to the requirements of section 296 regarding conditions that must be met to qualify for cash benefits. The application requires submission of: Standard business information; the quantity of production in the year covered by the certification accompanied by supporting documentation; data on gross income and net farm income accompanied by supporting documentation; certification that an applicant has not received other cash benefits; and certification that an applicant has obtained information and technical assistance from the Extension Service to assist the applicant in adjusting to import competition.

Estimate of the Burden: The average estimated public reporting burden is 14 hours.

Respondents: Groups of farmers of raw agricultural commodities or their duly authorized representatives.

Estimated annual number of respondents: 500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 7,000 hours.

Copies of the information collection can be obtained from Kimberly Chisley, the Agency Collection Coordinator, at (202) 720–2568.

Requests for comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, or any other aspect of this collection of information. Comments on issues covered by the Paperwork Reduction Act must be submitted within 30 days of publication to be assured of consideration. Comments may be sent to Jean-Louis Pajot, Import Policies and Program Division, FAS, 1400 Independence Avenue, Stop 1021, SW., Washington, DC 20520–1021. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also be a matter of public record. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

FAS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to maximum extent possible. Electronic submission of the information collection will be implemented before October 2003 in compliance with the GPEA. The Department will request OMB approval of forms that are being developed for electronic submission of the information collection, and issue a **Federal Register** notice soliciting public comments on the requested revision of the information collection to provide for submission of the information collection on electronic forms. All public comments received will be considered prior to implementation of an electronic reporting system, and will also become a matter of public record. Copies of that information collection will be made available from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568 or e-mail at *Chisley@fas.usda.gov*.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988. The provisions of this proposed rule would not have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The proposed rule would not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this proposed rule.

Executive Orders 12372, 13083 and 13084, and the Unfunded Mandates Reform Act (Pub. L. 104–4)

These Executive Orders and Pub. L. 104–4 require consultation with State and local officials and Indian tribal governments. This proposed rule does not impose an unfunded mandate or any other requirement on State, local or tribal governments. Accordingly, these programs are not subject to the provisions of Executive Order 12372, Executive Order 13083, and Executive Order 13084, or the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This proposed rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Background

The Trade Act of 2002 (Pub. L. 107–210) amended the Trade Act of 1974 (19 U.S.C. 2551, *et seq.*) to add a new chapter 6, which establishes a program of trade adjustment assistance for farmers, providing both technical assistance and cash benefits to producers. The statute authorizes an appropriation of not more than $90 million for each fiscal year 2003 through 2007 to carry out the program.

Under this proposed rule, a group of agricultural commodity producers may petition the Administrator of the Foreign Agricultural Service (FAS) for trade adjustment assistance from mid-August through the end of January. FAS will first review the petition for appropriateness, completeness, and timeliness, before publishing a notice in the **Federal Register** that it has been received. The Economic Research Service (ERS) will then conduct a market study to verify the decline in producer prices, and to assess possible causes, taking due account of any special factors which may have affected prices of the articles concerned, including imports, exports, production, changes in consumer preferences, weather conditions, diseases, and other relevant issues. ERS will report its findings to the FAS Administrator, who will then determine whether or not the group is eligible for trade adjustment assistance. If the national average price in the most recent marketing year for the commodity produced by the group is equal to or less than 80 percent of the average of the national average prices in the preceding 5 marketing years and that increases in imports of that commodity contributed importantly to the decline in price, the Administrator will certify the group as eligible for trade adjustment assistance.

Upon certification, producers have 90 days to contact the Farm Service Agency (FSA) to apply for assistance. As soon as they apply, they are eligible to receive at no cost a technical assistance package specifically tailored for their needs by the Extension Service. Depending on the commodity and the region, the Extension Service package may include technical publications in print or on-line, group seminars and presentations, and one-on-one meetings. Producers, who receive the technical assistance and also satisfy personal and farm income limits, are eligible for TAA payments. If the funding authorized by Congress is insufficient to pay 100 percent of all TAA claims during the fiscal year, payments will be prorated and issued after June 15, the last possible date for producers to file a TAA application.

Producers may petition for adjustment assistance in subsequent years. Petitions will be reviewed and approved if prices remain at or below the same 80 percent threshold as the initial year of adjustment assistance, and if imports have continued to increase and contributed importantly to the decline in prices.

The Department invites comments on all aspects of the proposed rule including: Eligibility requirements, including the coverage of aquaculture; unintended market consequences of the program to producers, importers, buyers and consumers; timing and prorating of adjustment payments when funding may be insufficient; petitions on behalf of producers within regions of the United States; marketing periods of less than 12 months; and less restrictive alternatives to the proposed rule that would address the intent of the program.

List of Subjects in 7 CFR Part 1580

Agricultural commodities, Imports, Reporting and recordkeeping requirements, Trade adjustment assistance.

Proposed Rule

Accordingly, it is proposed to amend title 7 of the Code of Federal Regulations by adding a new part 1580, to read as follows:

PART 1580—TRADE ADJUSTMENT ASSISTANCE FOR FARMERS

Sec.

1580.101 General statement.
1580.102 Definitions.
1580.201 Petitions for trade adjustment assistance.
1580.202 Hearings, petition reviews, and amendments.
1580.203 Determination of eligibility and certification by the Administrator.
1580.301 Application for adjustment assistance.
1580.302 Technical assistance and services.
1580.303 Adjustment assistance payments.
1580.401 Subsequent qualifying year eligibility.
1580.501 Administration.
1580.502 Maintenance of records, audits and compliance.
1580.503 Debarment and suspension.
1580.504 Fraud and recovery of overpayments.
1580.505 Appeals.
1580.601 Implementation.
1580.602 Paperwork Reduction Act assigned number.

Authority: 19 Sec. U.S.C. 2401.

§ 1580.101 General statement.

This part provides regulations for the Trade Adjustment Assistance for Farmers program. Under these provisions, producers of agricultural commodities may petition the Department of Agriculture for eligibility to apply for trade adjustment assistance based on criteria set forth in the Trade Act of 1974, as amended by the Trade Act of 2002 (19 U.S.C. 2251, *et seq.*). If the Administrator determines that the national average price for a commodity is less than 80 percent of the preceding 5-year average and that an increase in imports has contributed importantly to the decline in commodity prices, the producers may apply for technical assistance and cash benefits under the program.

§ 1580.102 Definitions.

As used in the part, the following terms mean:

Adjusted gross income means income as defined in 7 CFR 1400.601.

Administrator means the Administrator of the Foreign Agricultural Service (FAS).

Agricultural commodity means any commodity in its raw or natural state found in chapters 1, 4, 5, 6, 7, 8, 10, 12, 14, 23, 24, 41, 51, and 52 of the *Harmonized Tariff Schedule of the United States* (HTS), and chapter 3 of the HTS with respect to aquaculture products.

Articles like or directly competitive generally means products falling under the same HTS number used to identify the agricultural commodity in the petition. A *like* product means substantially identical in inherent or intrinsic characteristics, and the term *directly competitive* means those articles which are substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefore.

Authorized representative means an association of agricultural commodity producers.

Certification date means the date on which the Administrator announces in the **Federal Register** or by Department news release, whichever comes first, a certification of eligibility to apply for adjustment assistance.

Contributed importantly means a cause which is important, but not necessarily more important than any other cause.

Department means the U.S. Department of Agriculture.

Deputy Administrator means the Deputy Administrator of the Farm Service Agency (FSA).

Extension Service means the Cooperative State Research, Education, and Extension Service of the U.S. Department of Agriculture.

Family member means an individual to whom a person is related as spouse, lineal ancestor, lineal descendent, or sibling, including:

(1) Great grandparent;
(2) Grandparent;
(3) Parent;
(4) Child, including legally adopted children;
(5) Great grandchildren;
(6) Sibling of the family member in the farming operation; and
(7) Spouse of a person listed in paragraphs (1) through (6) of this definition.

Farm Service Agency (FSA) means the Farm Service Agency of the U.S. Department of Agriculture.

Filing date means the date that a notice of petition is published in the **Federal Register**.

Group of producers means three or more producers who are not members of the same family.

Impacted area means one or more States of the United States.

Marketing year means the marketing season or year as defined by National Agriculture Statistic Service (NASS), or a specific period as proposed by the petitioners and certified by the Administrator.

National average price means the average price paid to producers for an agricultural commodity in a marketing year as determined by the Administrator.

Net farm income means net farm profit or loss reported on Internal Revenue Service Schedule F (Form 1040) and Form 4835 for the year that most closely corresponds with the marketing year under consideration.

Person means an individual, partnership, joint stock owner, corporation, association, trust, estate, or any other legal entity as defined in 7 CFR 1400.3.

Producer means a person who is an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm.

Raw or natural state means unaltered by any process other than cleaning, grading, coating, sorting, trimming, mixing, conditioning, drying, dehulling, shelling, chilling, cooling, blanching or fumigating.

United States means the 50 States of the United States, the District of Columbia, and Puerto Rico.

§ 1580.201 Petitions for trade adjustment assistance.

(a) A group of agricultural commodity producers in the United States or their authorized representative may file a petition for trade adjustment assistance.

(b) Filings may be written or electronic, as provided for by the Administrator, and submitted to FAS from August 17 through January 31. FAS shall not accept a petition received after January 31 but will return it to the sender. If January 31 falls on a weekend, the petition will be accepted the next business day.

(c) Petitions shall include the following information.

(1) Name, business address, phone number, and email address (if available) of each producer in the group, or their authorized representative. A petition filed by a group shall identify a contact person for the group.

(2) The agricultural commodity and its Harmonized Tariff Schedule of the United States (HTS) number.

(3) The production area represented by the group or its authorized representative. The petitioners shall indicate if they are filing on behalf of all producers in the United States, or if they are filing solely on behalf of producers in a specifically identified impacted area. In the latter case, at least one member of the group must reside in each State within the impacted area, or the authorized representative must have members residing in each State within the impacted area.

(4) The beginning and ending dates for the marketing year during which domestic prices were affected by imports. A petition may be filed for only the most recent marketing year for which national average prices are available.

(5) A justification statement explaining why the petitioners should be considered eligible for adjustment assistance.

(6) Price data supporting the petition.

(i) If the petition is filed on behalf of all producers of the agricultural commodity in the United States, the Administrator shall use national average prices compiled by the National Agricultural Statistics Service (NASS), whenever possible. If NASS does not compile price data for the commodity, the petitioners shall provide national average prices for the marketing year under review and for the previous five marketing years, and identify the source of the price series.

(ii) If the petition is filed on behalf of producers in a specifically identified impacted area, the petitioners shall provide national average prices for the impacted area for the marketing year under review and for the previous five marketing years, and identify the source of the price series.

(iii) The Administrator may request petitioners to provide records to support their national average price data.

(d) Once the petition is filed, the Administrator shall determine if it meets the requirements of § 1580.201(c), and if so, publish notice in the **Federal Register** that a petition has been received and that an investigation has begun. The notice shall identify the agricultural commodity, including any like or directly competitive commodities, the marketing year being investigated, the price series being used, and the production area covered by the petition. If the petition does not meet the requirements of § 1580.201(c), the Administrator shall notify as soon as possible the contact person for the group or the authorized representative of the deficiencies.

§ 1580.202 Hearings, petition reviews, and amendments.

(a) If the petitioner, or any other person(s) found by the Administrator to have a substantial interest in the proceedings, submits not later than 10 days after the filing date a request for a hearing, the Administrator shall provide for a public hearing and afford such interested person an opportunity to be present, to produce evidence, and to be heard.

(b) If the petitioner, or any other person(s) having an interest in the proceedings takes issue with any of the information published in the **Federal Register** concerning the petition, they may submit to the Administrator their comments in writing or electronically for consideration by the Administrator not later than 10 days after the filing date.

(c) A producer residing outside the impacted area identified in a petition may file to become a party to the petition by fulfilling the requirements of § 1580.201(c) within 10 days of the filing date. The Administrator may amend the original petition to expand the impacted area and include the additional filer, or consider it a separate filing.

(d) The Administrator shall publish in the **Federal Register** as soon as possible any changes to the original notice resulting from any actions taken under this section.

§ 1580.203 Determination of eligibility and certification by the Administrator.

(a) As soon as practicable after the filing date, but in any event not later than 40 days after that date, the Administrator shall determine whether the petitioners satisfy the following conditions for adjustment assistance.

(1) The national average price for the agricultural commodity for the marketing year under review is equal to or less than 80 percent of the average of the national average prices for the 5 marketing years preceding the most recent marketing year, and

(2) Increases in imports of articles like or directly competitive with the agricultural commodity contributed importantly to the decline in price described in paragraph (a)(1) of this section.

(b) If the Administrator determines that the above conditions have been satisfied, the producers covered by the petition shall be certified as eligible for adjustment assistance.

(c) Upon making a determination, whether affirmative or negative, the Administrator shall promptly publish in the **Federal Register** a summary of the determination, together with the reasons for making the determination.

(d) In addition, the Administrator shall notify producers covered by a certification how to apply for adjustment assistance. Notification methods may include direct mailings to known producers, messages to directly affected producer groups and organizations, electronic communications, internet web site notices, and use of broadcast and print media.

(e) Whenever a group of agricultural producers is certified as eligible for assistance, the Administrator shall use the occasion to notify and inform other producers about the Trade Adjustment Assistance Program and how they may petition for adjustment assistance.

§ 1580.301 Application for trade adjustment assistance.

(a) Only producers covered by a certification of eligibility may apply for adjustment assistance. Producers may request advice from FSA regarding the preparation and submission of their applications.

(b) An eligible producer may submit an application for adjustment assistance at any time after the certification date but not later than 90 days after the certification date. If the 90-day application period ends on a weekend or legal holiday, the producer may apply the following business day.

(c) Applications shall include:

(1) The name and legal address of applicant.

(2) Contact information, *i.e.*, mailing address, phone and email address.

(3) The producer's identification number or Federal Income Tax number.

(4) The amount of the agricultural commodity produced in the most recent marketing year supported by documentation acceptable to FSA.

(d) Upon submitting their application, producers shall be immediately eligible to request trade adjustment technical assistance from the Extension Service at no cost.

(e) Producers able to furnish their applications with all the following certifications shall be eligible for adjustment assistance payments:

(1) Certification that technical assistance from the Extension Service under § 1580.302 has been received.

(2) Certification that cash benefits have not been received under any of the provisions of the Trade Act of 1974, as amended, other than those permitted under this part.

(3) Certification that adjustment assistance payments have not exceeded the $10,000 limitation for the Federal fiscal year.

(4) Certification that net farm income is less than that for the latest year in which no adjustment assistance payment was received.

(5) Certification that their average adjusted gross income, as determined in accordance with 7 CFR 1400.601, for the 3 preceding taxable years does not exceed $2,500,000.

(6) To comply with certifications in paragraphs (e)(4) and (5) of this section, an applicant shall provide either—

(i) Supporting documentation from a certified public accountant or attorney, or

(ii) Relevant documentation and other supporting financial data, such as financial statements, balance sheets, and reports prepared for or provided to the Internal Revenue Service or another U.S. Government agency.

(f) Persons legally authorized to execute program documents for estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

§ 1580.302 Technical assistance and services.

(a) Any producer of an agricultural commodity covered by a certification of eligibility may apply for and receive information and technical assistance from the Extension Service that will assist in adjusting to import competition and be at no cost to the producer.

(b) To qualify for technical assistance, producers shall apply under § 1580.301.

(c) Producers shall have an opportunity to meet at least once with an Extension Service employee within 180 days of petition certification to receive information regarding the feasibility and desirability of substituting one or more alternative commodities for the adversely affected agricultural commodity and to receive technical assistance to lower costs

associated with producing and marketing the adversely affected agricultural commodity. The Extension Service shall provide to producers written confirmation of all technical assistance meetings. Producers shall also have access to technical information provided in writing and electronically.

(d) Producers shall also be provided information concerning procedures for applying for and receiving other Federal assistance and services available to workers facing economic distress.

(e) Producers shall be entitled to employment services and training benefits under trade adjustment assistance for workers managed by the U.S. Department of Labor.

§ 1580.303 Adjustment assistance payments.

(a) Applicants shall satisfy by September 30 all conditions of § 1580.301 to qualify for adjustment assistance payments.

(b) The FSA office shall issue a payment to a producer that is equal to the product of the amount of the agricultural commodity produced in the most recent marketing year multiplied by one-half the difference between—

(1) An amount equal to 80 percent of the average of the national average prices of the agricultural commodity covered by the petition for the 5 marketing years preceding the most recent marketing year, and

(2) The national average price of the agricultural commodity for the most recent marketing year.

(c) The maximum amount of payments under this part that a producer may receive in any 12-month period shall not exceed $10,000.

(d) The total amount of payments made to a producer may not exceed during any crop year the limitation on counter-cyclical payments set forth in section 1001(c) of the Food Security Act of 1985 (7 U.S.C. 1308(c)).

(e) Any person who may be entitled to a payment may assign their rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

(f) In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

(g) If the Administrator, FAS, determines in September that program funds may be insufficient to meet the requirements for adjustment assistance payments under this part during the coming fiscal year, FSA may suspend adjustment payments until June 16 in order to prorate amounts owed producers.

(h) FSA will not make adjustment assistance payments to producers who have not satisfied the technical assistance requirement.

§ 1580.401 Subsequent qualifying year eligibility.

(a) Prior to the anniversary of a certification date,

(1) Groups and authorized representatives that provided national average prices to justify their initial certifications shall provide the Administrator national average prices for the most recent marketing year, and

(2) The Administrator shall determine whether or not—

(i) The national average price for the agricultural commodity produced by the group for the most recent marketing year is equal to or less than 80 percent of the average of national average prices for the 5 marketing years used to make the first certification under § 1580.203(a)(1), and

(ii) Further increases in imports are contributing importantly to the decline in price.

(b) The Administrator shall promptly publish in the **Federal Register** the determination with supporting justification statement.

(c) In the case of a re-certification, FSA shall notify producers that they may be eligible to receive trade adjustment assistance for a subsequent qualifying year.

(d) To qualify for assistance in subsequent qualifying years, producers shall—

(1) Submit an application pursuant to § 1580.301, and

(2) Contact the Extension Service for technical adjustment assistance.

(e) The amount of an adjustment assistance payment during a qualifying year shall be determined in the same manner as in the originating year, except that the average national price shall be determined by using the 5-marketing-year period used to determine the amount of cash benefits for the first certification.

(f) An eligible producer who did not apply for adjustment assistance in the initial year may apply pursuant to § 1580.301.

§ 1580.501 Administration.

(a) The application process will be administered under the general supervision of the Administrator, FSA, and shall be carried out in the field by State and county FSA committees.

(b) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The State FSA committee shall take any action required by this part that has not been taken by a county FSA committee. The State FSA committee shall also:

(1) Correct or require a county FSA committee to correct any action taken by such county FSA committee that is not in accordance with this part; and

(2) Require a county FSA committee to withhold taking or reversing any action that is not in accordance with this part.

(d) No delegation in this part to a State or county FSA committee shall prevent the Deputy Administrator from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Deputy Administrator may authorize the State and county committees to waive or modify non-statutory deadlines or other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the program.

§ 1580.502 Maintenance of records, audits and compliance.

(a) Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by FSA. Such records and accounts must be retained for 2 years after the date of the final payment to the producer under this program.

(b) At all times during regular business hours, authorized representatives of FSA, the United States Department of Agriculture, or the Comptroller General of the United States shall have access to the premises of the producer in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with the requirements of this subpart. As a part of this audit, income tax forms may be requested and if requested, must be supplied. If a producer has submitted information to FSA, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such producer shall provide FSA a copy of any amended form filed with the Internal Revenue Service with 30 days of the filing.

(d) If requested in writing by FSA, the United States Department of Agriculture, or the Comptroller General of the United States, the producer shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this subpart, including all documents referred to in § 1580.301(c), within 30 days. Acceptable production documentation may be submitted by facsimile, in person, or by mail and may include copies of receipts, ledgers, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, and contemporaneous diaries that are determined acceptable by the county committee. Failure to provide necessary and accurate information to verify compliance, or failure to comply with this subpart's requirements, will result in ineligibility for all program benefits subject to this subpart for the year or years subject to the request.

(e) All information provided to FSA for the purposes of determining compliance with this part will remain confidential and not be subject to any request submitted under the Freedom of Information Act.

§ 1580.503 Debarment and suspension.

The Government-wide Debarment and Suspension (Nonprocurement) regulations and Government Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017—subparts A through E, apply to this part.

§ 1580.504 Fraud and recovery of overpayments.

(a) If the Administrator, FSA or a court of competent jurisdiction, determines that any person has received any payment under this program to which the person was not entitled, such person will be liable to repay such amount to the Administrator, FSA. The Administrator, FSA may waive such repayment if it is determined that:

(1) The payment was made without fault on the part of the person; and

(2) Requiring such repayment would be contrary to equity and good conscience.

(b) Unless an overpayment is otherwise recovered, or waived under paragraph (a), the Administrator, FSA shall recover the overpayment by deductions from any sums payable to such person.

(c) If the Administrator, FSA, or a court of competent jurisdiction, determines that a person:

(1) Knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) Knowingly has failed, or caused another to fail, to disclose a material fact, and, as a result of such false statement or representation, or of such nondisclosure, such person has received any payment under this program to which the person was not entitled, such person shall, in addition to any other penalty provided by law, be ineligible for any further payment under this program.

(d) Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination and an opportunity for a fair hearing has been given to the person concerned, and the determination has become final.

(e) Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payments authorized to be furnished under this program shall be fined not more that $10,000 or imprisoned for not more than 1 year, or both.

§ 1580.505 Appeals.

Any person may obtain reconsideration and review of determinations made with respect to applications for program benefits under this part in accordance with appeal regulations of the 7 CFR part 780.

§ 1580.601 Implementation.

Trade adjustment assistance is available for the most recent marketing year for which prices were available on February 3, 2003.

§ 1580.602 Paperwork Reduction Act assigned number.

The information collection requirements contained in these regulations (7 CFR part 1580) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and been assigned OMB control number xxxx–xxxx.

Dated: April 18, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

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H.R. 1559/P.L. 108–11

Emergency Wartime Supplemental Appropriations Act, 2003 (Apr. 16, 2003; 117 Stat. 559)

Last List March 13, 2003

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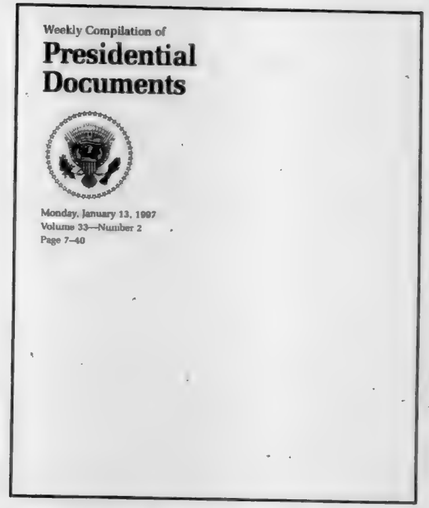
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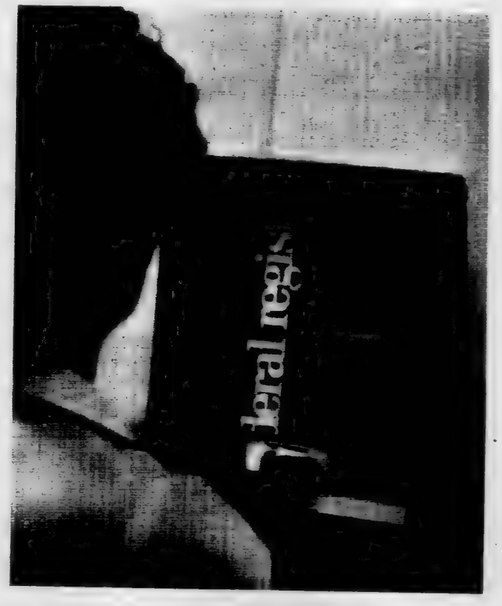
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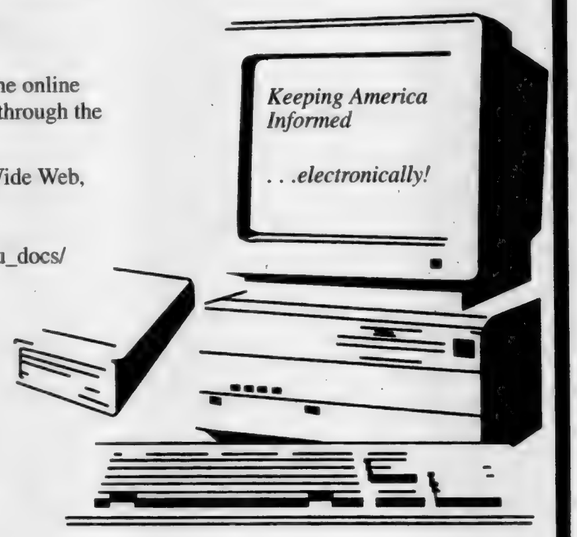
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9053]

RIN 1545–BC12

Tax Return Preparers—Electronic Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations to facilitate electronic filing by tax return preparers. The existing regulations, which contain references to manually signed returns, have resulted in uncertainty over whether preparers must produce manually signed, paper copies of returns for taxpayers and for the preparers' records. The temporary regulations clarify that preparers may avoid paper copies by retaining and furnishing to taxpayers copies of returns in electronic or digital format prescribed by the Commissioner.

DATES: *Effective Date:* These regulations are effective by April 24, 2003.

Applicability Date: For dates of applicability, see § 1.6107–2T(b) and § 1.6695–1T(b)(5).

FOR FURTHER INFORMATION CONTACT: Richard Charles Grosenick, (202) 622–7940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations that amend the Income Tax Regulations (26 CFR part 1) under sections 6107 and 6695 of the Internal Revenue Code (Code) to facilitate electronic filing and record keeping by tax return preparers. Section 6695 of the Code imposes various penalties on tax return preparers, including a penalty for failure to sign the returns that they prepare. Originally, the regulations under section 6695 contemplated only manually signed (*i.e.*, paper) returns. Although the regulations under section 6695 were amended in 1996 to permit tax return preparers to sign and file returns electronically in the manner prescribed by the Secretary (*see* TD 8689 (61 FR 65319, Dec. 12, 1996)), § 1.6695–1(b) of the regulations continues to refer to manually signed returns and copies. Those references have resulted in uncertainty over whether preparers must produce manually signed, paper copies of returns to satisfy their obligations under section 6107 to provide copies of returns to taxpayers and keep copies of returns in their records.

These temporary regulations eliminate the references to manually signed returns in § 1.6695–1(b). In addition, they provide that the Commissioner may prescribe, in forms, instructions, or other appropriate guidance, the manner in which preparers may satisfy their obligations under section 6107 to furnish returns to taxpayers and to retain copies of returns. These changes and the applicable forms, instructions, and guidance clarify that preparers may maintain electronic (paperless) filing systems.

Special Analyses

It has been determined that this temporary regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation and, because the regulation does not impose a collection of information on small entities, that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of this regulation is Richard Charles Grosenick, Office of Assistant Chief Counsel (Administrative Provisions & Judicial Practice). However, other personnel from the IRS and the Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendment to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6695–1T also issued under 26 U.S.C. 6695(b). * * *

■ **Par. 2.** Section 1.6107–2T is added to read as follows:

§ 1.6107–2T Form and manner of furnishing copy of return and retaining copy or record.

(a) *In general.* The Commissioner may prescribe the form and manner of satisfying the requirements imposed by section 6107(a) and (b) and § 1.6107–1(a) and (b) in forms, instructions, or other appropriate guidance.

(b) *Effective date.* To the extent this section relates to section 6107(a) and § 1.6107–1(a), it applies to income tax returns and claims for refund presented to a taxpayer for signature after December 31, 2002. To the extent this section relates to section 6107(b) and § 1.6107–1(b), it applies after December 31, 2002, to returns and claims for refund for which the 3-year period described in section 6107(b) expires after December 31, 2002.

■ **Par. 3.** Section 1.6695–1 is amended by revising paragraph (b) to read as follows:

§ 1.6695–1 Other assessable penalties with respect to the preparation of income tax returns for other persons.

* * * * * *

(b) [Reserved]. For further guidance, see § 1.6695–1T(b).

* * * * * *

■ **Par. 4.** Section 1.6695–1T is added to read as follows:

§ 1.6695–1T Other assessable penalties with respect to the preparation of income tax returns for other persons.

(a) [Reserved]. For further guidance, see § 1.6695–1(a).

(b) *Failure to sign return.* (1) An individual who is an income tax return preparer with respect to a return of tax under subtitle A of the Internal Revenue Code or claim for refund of tax under subtitle A of the Internal Revenue Code shall sign the return or claim for refund after it is completed and before it is presented to the taxpayer (or nontaxable entity) for signature. If the preparer is unavailable for signature, another preparer shall review the entire preparation of the return or claim for refund, and then shall sign the return or claim for refund. The preparer shall sign the return in the manner prescribed by the Commissioner in forms, instructions, or other appropriate guidance.

(2) If more than one income tax return preparer is involved in the preparation of the return or claim for refund, the individual preparer who has the primary responsibility as between or among the preparers for the overall substantive accuracy of the preparation of such return or claim for refund shall be considered to be the income tax return preparer for purposes of this paragraph.

(3) The application of this paragraph is illustrated by the following examples:

Example 1. X law firm employs Y, a lawyer, to prepare for compensation returns and claims for refund of taxes. X is employed by T, a taxpayer, to prepare his Federal tax return. X assigns Y to prepare T's return. Y obtains the information necessary for completing the return from T and makes determinations with respect to the proper application of the tax laws to such information in order to determine T's tax liability. Y then forwards such information to C, a computer tax service which performs the mathematical computations and prints the return by means of computers. C then sends the completed return to Y who reviews the accuracy of the return. Y is the individual preparer who is primarily responsible for the overall accuracy of T's return. Y must sign the return as preparer.

Example 2. X partnership is a national accounting firm which prepares for compensation returns and claims for refund of taxes. A and B, employees of X, are involved in preparing the tax return of T Corporation. After they complete the return, including the gathering of the necessary information, the proper application of the tax laws to such information, and the performance of the necessary mathematical computations, C, a supervisory employee of X, reviews the return. As part of this review, C reviews the information provided and the application of the tax laws to this information. The mathematical computations and carried-forward amounts are proved by D, an employee of X's comparing and proving department. The policies and practices of X require that P, a partner, finally review the return. The scope of P's review includes reviewing the information provided by applying to this information his knowledge of T's affairs, observing that X's policies and practices have been followed, and making the final determination with respect to the proper application of the tax laws to determine T's tax liability. P may or may not exercise these responsibilities, or may exercise them to a greater or lesser extent, depending on the degree of complexity of the return, his confidence in C (or A and B), and other factors. P is the individual preparer who is primarily responsible for the overall accuracy of T's return. P must sign the return as preparer.

Example 3. C corporation maintains an office in Seattle, Washington, for the purpose of preparing for compensation returns and claims for refund of taxes. C makes compensatory arrangements with individuals (but provides no working facilities) in several States to collect information from taxpayers and to make determinations with respect to the proper application of the tax laws to the information in order to determine the tax liabilities of such taxpayers. E, an individual, who has such an arrangement in Los Angeles with C, collects information from T, a taxpayer, and completes a worksheet kit supplied by C which is stamped with E's name and an identification number assigned to E by C. In this process, E classifies this information in appropriate income and deduction categories for the tax determination. The completed worksheet kit signed by E is then mailed to C. D, an employee in C's office, reviews the worksheet kit to make sure it was properly completed. D does not review the information obtained from T for its validity or accuracy. D may, but did not, make the final determination with respect to the proper application of tax laws to the information. The data from the worksheet is entered into a computer and the return form is completed. The return is prepared for submission to T with filing instructions. E is the individual preparer primarily responsible for the overall accuracy of T's return. E must sign the return as preparer.

Example 4. X employs A, B, and C to prepare income tax returns for taxpayers. After A and B have collected the information from the taxpayer and applied the tax laws to the information, the return form is completed by computer service. On the day the returns prepared by A and B are ready for their signatures, A is away from the city for 1 week on another assignment and B is on detail to another office for the day. C may sign the returns prepared by A, provided that (i) C reviews the information obtained by A relative to the taxpayer, and (ii) C reviews the preparation of each return prepared by A. C may not sign the returns prepared by B because B is available.

(4) An individual required by this paragraph (b) to sign a return or claim for refund shall be subject to a penalty of $50 for each failure to sign, with a maximum of $25,000 per person imposed with respect to each calendar year, unless it is shown that the failure is due to reasonable cause and not due to willful neglect. If the preparer asserts reasonable cause for failure to sign, the Internal Revenue Service will require a written statement in substantiation of the preparer's claim of reasonable cause. For purposes and prudence exercised by the individual preparer. Thus, no penalty may be imposed under section 6695(b) and this paragraph (b) upon a person who is an income tax return preparer solely by reason of—

(i) Section 301.7701–15(a)(2) and (b) of this chapter on account of having given advice on specific issues of law; or

(ii) Section 301.7701–15(b)(3) of this chapter on account of having prepared the return solely because of having prepared another return which affects amounts reported on the return.

(5) *Effective date.* This paragraph (b) applies to income tax returns and claims for refund presented to a taxpayer for signature after December 31, 2002.

(c) through (f) [Reserved]. For further guidance, see § 1.6695–1(c) through (f).

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

Approved: April 7, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–10192 Filed 4–23–03; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–03–004a and ID–03–001a; FRL–7487–2]

Approval and Promulgation of State Implementation Plans; Prevention of Significant Deterioration (PSD); Idaho and Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to amend the State implementation plans (SIPs) for Idaho and Oregon concerning the PSD program mandated by part C of title I of the Clean Air Act (CAA or Act). The amendments clarify that the newly published provisions of the Federal PSD rule are incorporated into the applicable implementation plans for Indian Country in Idaho and Oregon. The amendments also clarify that the newly published provisions of the Federal PSD rule are incorporated into the applicable implementation plan for other sources in Idaho that were permitted under the Federal PSD program prior to August 22, 1986, the effective date of EPA's approval of Idaho's PSD program as part of the Idaho SIP.

DATES: This direct final rule will be effective on June 23, 2003 without further notice, unless EPA receives relevant adverse comment by May 27, 2003. If relevant adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Connie Robinson, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101. Copies of information relevant to this action are available for inspection during normal business hours at the following location: EPA, Region 10, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, (206) 553–1086.

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA. Please note that if EPA receives relevant adverse comment on an amendment, paragraph or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of a relevant adverse comment.

I. What Action Is EPA Taking?

On December 31, 2002, EPA published in the **Federal Register** (67 FR 80186) revisions to the Federal PSD rule in 40 CFR 52.21 that incorporate new applicability provisions for baseline emissions determinations, actual-to-projected-actual methodology, plantwide applicability limitations, clean units, and pollution control projects. In finalizing these new applicability provisions, the relevant parts of the Federal PSD rule, 40 CFR part 52.21, were extended from 52.21(b) through (w) to 52.21(a)(2) and (b) through (bb). The revisions to the Federal PSD rule became effective on March 3, 2003. On March 10, 2003, EPA published in the **Federal Register** revisions to the applicable implementation plans that apply in States or parts of States that do not have an approvable PSD SIP in place, and in Indian Country. The purpose of that action, which became effective on March 3, 2003, was to incorporate into the Federal implementation plan portion of SIPs the revisions to the Federal PSD rule that became effective on March 3, 2003. (See 68 FR 11316, March 10, 2003.) In revising the applicable implementation plans for these areas, the references to the Federal PSD rule were changed from 40 CFR 52.21(b) through (w) to 40 CFR 52.21(a)(2) and (b) through (bb).

During this same period, EPA published in the **Federal Register** revisions to the SIPs for Idaho and Oregon. Both SIP revisions included revisions to the PSD programs for those States and stated that the Federal PSD rule, rather than the State PSD rules, would continue to apply in Indian Country in those States and, in the case of Idaho, would continue to apply to other sources in Idaho that were permitted under the Federal PSD program prior to August 22, 1986 for the purpose of administering the EPA-issued permits.[1] The SIP revision for Idaho was published on January 16, 2003, and became effective on February 18, 2003. (*See* 68 FR 2217.) The SIP revision for Oregon was published on January 22, 2003 (68 FR 2891), in a direct final rulemaking and became final on March 24, 2003, because no comments were received during the public comment period on the proposal. In promulgating the applicable implementation plan for Indian Country in both the Idaho and Oregon SIP actions and, in the case of Idaho, for other sources that were subject to the Federal PSD program prior to August 22, 1986, EPA incorporated by reference the relevant provisions of the Federal PSD rule in effect prior to March 3, 2003, rather than the Federal PSD rule published on December 31, 2002, and effective March 3, 2003.

In the case of Idaho, EPA's action on March 10, 2003, incorporated the newly published provisions of the Federal PSD rule as part of the applicable implementation plan for Indian Country in Idaho and with respect to other sources in Idaho that were subject to the Federal PSD program prior to August 22, 1986. *See* 68 FR 2217. The March 10, 2003 action, however, inadvertently failed to include minor changes to the language in 40 CFR 52.683(b) and (c) that EPA had made in the Idaho SIP revision that became effective on February 18, 2003, because the changes effective on February 18, 2003 had not yet been codified in the Code of Federal Regulations. In this action, EPA is amending the language in 40 CFR 52.683(b) and (c), as published on March 10, 2003, and effective on March 3, 2003, to include the minor changes to those provisions that became effective on February 18, 2003.

[1] August 22, 1986 is the effective date of EPA's initial approval of Idaho's PSD program as part of the Idaho SIP.

In the case of Oregon, EPA's action on March 10,2003 (68 FR 2891), which incorporated the newly published provisions of the Federal PSD rule as part of the applicable implementation plan for Indian Country in Oregon into 40 CFR 52.1987(c), was amended by the revision to the Oregon SIP that was published before the March 10, 2003, action but became effective after that date. Therefore, the reference to relevant provisions of the Federal PSD rule in 40 CFR 52.1987(c) was erroneously changed back to 40 CFR 52.21(b) through (w) and therefore no longer incorporates EPA's recent revisions to the Federal PSD rule. Therefore, EPA is amending the language in 40 CFR 52.1987(c) to refer to the Federal PSD rule published on December 31, 2002, and effective March 3, 2003, that is 40 CFR 52.21(a)(2) and (b) through (bb).

II. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). The Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive

Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practices and procedures, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen oxides, Ozone, Particular matter, Sulfur oxides.

Dated: April 16, 2003.

L. John Iani,

Regional Administrator, Region 10.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart N—Idaho

■ 2. Section 52.683 is amended by revising paragraphs (b) and (c) to read as follows:

§ 52.683 Significant deterioration of air quality.

* * * * *

(b) The requirements of title 1, part C, subpart 1 of the Clean Air Act are not met for Indian country in Idaho because Idaho has not demonstrated authority to implement and enforce under the Clean Air Act Idaho State rules in Indian country. Therefore, the provisions of § 52.21(a)(2) and (b) through (bb) are hereby incorporated and made part of the applicable plan for Indian country in the State of Idaho.

(c) The requirements of section 165 of the Clean Air Act are not met for sources permitted under the prevention of significant deterioration requirements prior to August 22, 1986, the effective date of EPA's original approval of Idaho's prevention of significant deterioration regulations. Therefore, the provisions of § 52.21(a)(2), (b), (c), (d), and (h) through (bb) are hereby incorporated and made part of the applicable plan for sources permitted under § 52.21 prior to August 22, 1986 for the purpose of administering the EPA-issued permits.

Subpart MM—Oregon

■ 3. Section 52.1987 is amended by revising paragraph (c) to read as follows:

§ 52.1987 Significant deterioration of air quality.

* * * * *

(c) The requirements of title 1, part C, subpart 1 of the Clean Air Act are not met for Indian country in Oregon because Oregon has not demonstrated authority to implement and enforce under the Clean Air Act Oregon State rules in Indian country. Therefore, the provisions of § 52.21(a)(2) and (b) through (bb) are hereby incorporated and made part of the applicable plan for Indian country in the State of Oregon.

[FR Doc. 03–10066 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL—88 –200227(a); FRL–7486–7]

Approval and Promulgation of Implementation Plans

Florida: Revision to Jacksonville, Florida Ozone Air Quality Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revision submitted by the Florida Department of Environmental Protection (DEP) on November 28, 2001, for Jacksonville, Florida (Duval County) 1-hour ozone maintenance plan. More specifically, EPA is approving the state's new Motor Vehicle Emissions Budgets (MVEB) for volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for 2005. This submittal updates the maintenance plan by establishing new transportation conformity MVEB for the year 2005, for use by the Metropolitan Planning Organization (MPO). The MVEB represent the VOCs and the NO_X emissions currently projected by the MPO for the year 2005, plus a small allocation from the areas' "safety margin" for each pollutant to accommodate any further refinements that the MPO may need to make these projections. This allocation will still maintain the total emissions for the area at or below the attainment level for this maintenance area.

DATES: This direct final rule is effective June 23, 2003 without further notice, unless EPA receives adverse written comment by May 27, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Lynorae Benjamin, Air Quality Modeling and Transportation Section; Air, Pesticides, and Toxics Management Division; Region 4, EPA, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Lynorae Benjamin, (404) 562–9040 or Heidi LeSane (404) 562–9035).

Florida Department of Environmental Protection, Air Resource Management Division, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400. Persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file FL–88. The Region 4 office may have additional background documents not available at the other locations.

FOR FURTHER INFORMATION CONTACT:

Lynorae Benjamin, Air Quality Modeling and Transportation Section; Air Planning Branch; Air, Pesticides, and Toxics Management Division; Region 4, EPA, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Benjamin's telephone number is (404) 562–9040. She can also be reached via electronic mail at *benjamin.lynorae@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Clean Air Act of 1990, the Jacksonville area (*i.e.*, Duval County) was classified as a "transitional" nonattainment area for the 1-hour ozone national ambient air quality standard (NAAQS). The transitional classification was given to the area because it had been designated as nonattainment for the 1-hour ozone NAAQS prior to the 1990 amendment to the Clean Air Act (CAA) but was showing compliance based on 1987 through 1989 data. On June 23, 1993, DEP submitted a request to the EPA to redesignate Duval County as an ozone attainment area under section 107 (d) of the CAA. Along with the redesignation request on August 23, 1994, the DEP submitted as a proposed revision to the SIP to include a ten year (to 2005) ozone air quality maintenance plan for Duval County. The maintenance plan was approved into the SIP on March 6, 1995, and Duval County was redesignated to attainment status with respect to the 1-hour ozone NAAQS.

On December 10, 1999, the DEP submitted a proposed revision to the Duval County 1-hour ozone maintenance plan to remove the emission reduction credits attributable to the Motor Vehicle Inspection Plan (MVIP) from the future year emissions projections contained in that plan. Through the use of updated planning assumptions and the MOBILE5a emissions model, DEP demonstrated that the MVIP was not essential to maintenance of the 1-hour ozone NAAQS for Duval County. In the December 1999, SIP revision, DEP also updated the year 2005 projected ozone precursor emissions in the Duval County ozone maintenance plan based on the latest available information. This action, approved by EPA and effective on September 4, 2001, modified the MVEB that the MPO used to determine transportation conformity.

II. Analysis of the State's Submittal

On November 28, 2001, the State of Florida through the DEP submitted a revision to the Florida SIP. The revision amends the previously approved ten-year ozone maintenance plan for Duval County by substitution of the revised projections for VOC and NO_X source emission estimates for 2005. In addition, the DEP also added explicit MVEB to the maintenance plan based on these revised projections including small allocations from the plan's safety margins for VOC and NO_X. Approval of the MVEB into the plan by the EPA will allow the MPO to demonstrate conformity for 2005 and beyond. These MVEB are based on the Mobile 5a emissions model.

Section 176(c) of the CAA, 4 2 U.S.C. 7506(c), states that transportation plans, programs and projects must conform to an approved implementation plan. Specifically, the Transportation Conformity Rule and its subsequent amendments require an ozone maintenance area, such as Duval County, to compare projected emissions from cars, trucks and buses on the highway network, to the MVEB established by a maintenance plan (*i.e.*, in the approved SIP). In accordance with the Transportation Conformity rule and its subsequent amendments (*i.e.*, 40 CFR part 93), the State explicitly identifies the MVEB for VOCs and NO_X in this submittal. Additionally, the State establishes 2005 as the budget year for both VOC and NO_X.

The State revised the SIP and MVEB to remove credits attributable to the MVIP. This action consequently lowered the emissions budgets for Duval County. After consultation with the MPO and the interagency consultation work group for the area, DEP investigated the potential to raise the budget. DEP identified an available safety margin for VOC and NO_X. The emissions projected to maintain the area's air quality are consistent with the air quality health standard.

The DEP established MVEB for VOC and NO_X in the maintenance plan to allow the MPO to use its currently available data to demonstrate conformity for 2005 and beyond. The MVEB for NO_X, therefore, is set at 54.0 tons per day (tpd), including a 0.1 tpd allocation from the plan's safety margin, and the MVEB for VOC is set at 50.0 tpd, including a 7.5 tpd allocation from the plan's safety margin. Under 40 CFR part 93.101 the term *safety margin* is the difference between the attainment level of emissions (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the air quality health standard. The safety margin credit can be allocated to the transportation sector, however the total emission level must stay below the attainment level.

After the update of the 2005 projections, but prior to these allocations, the VOC safety margin was 41.7 tpd, and the NO_X safety margin was 1.3 tpd. After this allocation, the VOC safety margin is 34.2 tpd, and the NO_X safety margin is 1.2 tpd. Use of these budget allocations would not cause 2005 emissions to exceed the 1990 attainment-year levels.

Table 1-A and 1-B below illustrate changes made to the Duval County VOC and NO_X emissions budgets. The new MVEB for NO_X and VOCs are also provided in the tables below.

TABLE 1–A.—DUVAL COUNTY VOC EMISSIONS 1990 ACTUAL AND 2005 PROJECTED

Source category	Tons/day		MVEB 2005
	1990	2005	
Stationary Point	15.60	21.16	n/a
Stationary Area	51.25	39.24	n/a
On-Road Mobile	82.49	42.49	50
Non-Road Mobile	24.63	29.41	n/a
Biogenic	126.70	126.70	n/a

TABLE 1–B.—DUVAL COUNTY NO_x EMISSIONS 1990 ACTUAL AND 2005 PROJECTED

Source Category	Tons/day		MVEB 2005
	1990	2005	
Stationary Point	101.16	98.40	n/a
Stationary Area	8.37	14.67	n/a
On-Road Mobile	61.40	53.85	54
Non-Road Mobile	21.07	23.74	n/a
Biogenic	0.30	0.30	n/a

III. Final Action

EPA is approving the aforementioned revisions to the Florida SIP because they are consistent with the Clean Air Act (CAA) and EPA requirements. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 23, 2003 without further notice unless the Agency receives adverse comments by May 27, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 23, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews:

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 15, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart K—[Amended]

■ 2. Section 52.520, is amended:

■ a. In paragraph (e) revise entry "Revision to Maintenance Plan for Jacksonville and Southeast Florida Areas" and

■ b. In paragraph (e) add a new entry at the end of the table for "Revision to Maintenance Plan for Jacksonville, Florida" to read as follows:

§ 52.520 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED FLORIDA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA Approval date	Federal Register Notice	Explanation
Revision to Maintenance Plan for Southeast Florida Area	12/10/1999	8/2/2001	66 FR 40137.	
Revision to Maintenance Plan for Jacksonville, Florida Area	11/28/2001	11/24/03	[Insert citation of publication].	

[FR Doc. 03–10063 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–060–200320(a); FRL–7487–1]

Approval and Promulgation of Implementation Plans: Revisions to the Alabama State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving miscellaneous revisions to the Alabama State Implementation Plan submitted on March 13, 2003, by the State of Alabama. The revisions include addition of rule of chapter 335–3–1–.15 regarding emission inventory reporting requirements for stationary sources, revision of chapter 335–3–3 regarding removal, handling and disposal of asbestos-containing material, revision of chapter 335–3–8 to make minor technical corrections, and revision of chapter 335–3–17 to incorporate changes made to the Federal regulations regarding transportation conformity.

DATES: This direct final rule is effective June 23, 2003 without further notice, unless EPA receives adverse comment by May 27, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW.; Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW.; Atlanta, Georgia 30303–8960. Mr. Lakeman can also be reached by phone at (404) 562–9043 or by electronic mail at *lakeman.sean@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Analysis of State's Submittal

On March 13, 2003, the State of Alabama through Alabama Department of Environmental Management submitted revisions to chapter 335–3–1 regarding emission inventory reporting requirements for stationary sources, chapter 335–3–3 regarding removal, handling and disposal of asbestos-containing material, chapter 335–3–8 to make minor technical corrections, and revision of chapter 335–3–17 to incorporate changes made to the Federal regulations regarding transportation conformity.

Rule 335–3–1–.15 is being added to implement the Consolidated Emissions Reporting Rule and adopt the emissions inventory reporting requirements for stationary sources under the Federal Consolidated Emissions Reporting Rule.

Rule 335–3–3–.01(e) is being revised to incorporate a federal requirement for removal, handling and disposal of asbestos-containing material. The regulatory requirements for the demolition of a building by intentional burning is found in 40 CFR 61.145(c)(10).

Rule 335–3–8.10(6)(c) is being revised to clarify intent of the rule to ensure that base years later than 2000 would have an equivalent starting point of 90% data availability. Rule 335–3–8–.12(b)3(ii)(I) and (II) and 335–3–8–.12(b)4(i)(I) and (II) are being revised to make minor technical corrections.

Rule 335–3–17–.01 is being revised to incorporate changes made to the Federal regulations regarding transportation conformity. On August 6, 2002, EPA promulgated two minor revisions to the Transportation Conformity Rule under 40 CFR part 93. First, this rule implements a Clean Air Act (CAA) amendment that provides a one-year grace period before conformity is required in areas that are designated nonattainment for a given air quality standard for the first time. Although the grace period is already available to newly designated nonattainment areas as a matter of law, EPA has incorporated the one-year conformity grace period into the conformity rule. Second, this rule changes the point by which a conformity determination must be made following a State's submission of a control strategy implementation plan or maintenance plan for the first time. This

rule requires conformity to be determined within 18 months of EPA's affirmative finding that the SIP's motor vehicle emissions budgets are adequate. Prior to this action, the conformity rule required a new conformity determination within 18 months of the submission of an initial SIP.

II. Final Action

EPA is approving the aforementioned changes to the State of Alabama's SIP because it is consistent with the CAA and EPA policy. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 23, 2003 without further notice unless the Agency receives adverse comments by May 27, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 23, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).) Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 15, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart B—Alabama

■ 2. Section 52.50(c) is amended by:

■ a. Adding in numerical order a new entry in Chapter No. 335–3–1 General Provisions for "Section 335–3–1–.15"; and

■ b. Revising entries for "Section 335–3–3–.01", "Section 335–3–8–.10", and "Section 335–3–17–.01".

The revisions and addition read as follows:

§ 52.50 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED ALABAMA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
Section 335–3–1–.15	Emissions Inventory Reporting Requirements.	04/03/03	04/24/03 [Insert citation of publication].	
Section 335–3–3–.01	Open Burning	04/03/03	04/24/03 [Insert citation of publication].	
Section 335–3–8–.10	NO_X Allowance Tracking System	04/03/03	04/24/03 [Insert citation of publication].	
Section 335–3–17–.01	Transportation Conformity	04/03/03	04/24/03 [Insert citation of publication].	

* * * * *

[FR Doc. 03–10061 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[LA–58–1–7522; FRL–7487–4]

Notice of Withdrawal of October 2, 2002, Attainment Date Extension, Determination of Nonattainment as of November 15, 1999, and Reclassification of the Baton Rouge Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule finalizes EPA's finding that the Baton Rouge 1-hour ozone nonattainment area (hereinafter referred to as the Baton Rouge area) did not attain the 1-hour ozone national ambient air quality standard (NAAQS or standard) by November 15, 1999, the attainment date for serious nonattainment areas set forth in the Federal Clean Air Act (CAA or Act). As a result of this finding, the Baton Rouge area will be reclassified from a serious to a severe one-hour ozone nonattainment area by operation of law on the effective date of this rule. In addition, EPA is establishing a schedule for Louisiana to submit State Implementation Plan (SIP) revisions addressing the CAA's pollution control requirements for severe ozone nonattainment areas within 12 months of the effective date of this rule and establishing November 15, 2005, as the date by which the Baton Rouge area must attain the ozone NAAQS. Finally, EPA is adjusting the dates by which the area must achieve a 9% reduction in ozone precursor emissions to meet the 2002 rate-of-progress requirement and is adjusting the contingency measure requirements as they relate to the 2002 ROP milestone. On December 11, 2002, the U.S. Court of Appeals for the Fifth Circuit issued its decision on EPA's extension policy used to extend the 1-hour ozone attainment deadline for the Beaumont-Port Arthur, Texas, area, without reclassifying the area. The Court rejected EPA's extension of Beaumont-Port Arthur's attainment date because it determined that the CAA precludes such an extension as a matter of law. We are issuing this rule in response to the rejection by the Fifth Circuit Court of Appeals of EPA's use of the extension policy.

DATES: This final rule is effective on June 23, 2003.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733; and the Louisiana Department of Environmental Quality (LDEQ), 7920 Bluebonnet Boulevard, Baton Rouge, Louisiana 70884. Please contact the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Ms. Maria L. Martinez, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–2230.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

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I. What Is the Background for This Rule?
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VII. What Is the New Attainment Date for the Baton Rouge Area?
VIII. When Must Louisiana Submit SIP Revisions Fulfilling the Requirements for Severe Ozone Nonattainment Areas?
IX. What Is the Impact of a Reclassification on the Title V Operating Permit Program?
X. Statutory and Executive Order Reviews

I. What Is the Background for This Rule?

On May 9, 2001, EPA proposed its finding that the Baton Rouge serious ozone nonattainment area did not attain the 1-hour ozone NAAQS by November 15, 1999, the applicable attainment date (66 FR 23646). The proposed finding was based upon ambient air quality data from the years 1997, 1998, 1999. These data showed that the 1-hour ozone NAAQS of 0.12 parts per million (ppm) had been exceeded on an average of more than one day per year over this three-year period and that the area did not qualify for an attainment date extension under section 181(a)(5). EPA

also proposed that the appropriate reclassification of the area was to severe.

In that proposed action, we also stated that Louisiana was seeking an extension of its attainment date pursuant to the extension policy, which was published in a March 25, 1999, **Federal Register** notice (64 FR 14441). This policy addressed areas affected by downwind transport of ozone and/or ozone precursors. EPA proposed to take final action on the determination of nonattainment and reclassification of the Baton Rouge area only after the area had received an opportunity to qualify for an attainment date extension under the extension policy. EPA received comments on the May 9, 2001, proposed rule (66 FR 23646). We also received comments from the public on the supplemental proposed rulemaking published on July 25, 2001 (66 FR 38608) for the "Clean Air Reclassification and Notice of Potential Eligibility for Extension of Attainment Date, Louisiana; Baton Rouge Ozone Nonattainment Area." This notice supplemented the proposed actions of the May 9, 2001, notice, by proposing to extend the deadline for submission of an attainment plan from August 31, 2001, to December 31, 2001. Louisiana submitted an Attainment Plan/Transport SIP on December 31, 2001 for the Baton Rouge area.

On March 7, 2002, the United States District Court for the Middle District of Louisiana entered a judgment ordering EPA to issue a determination by June 5, 2002, as to whether the Baton Rouge area had attained the applicable ozone standard under the CAA. *LEAN* v. *Whitman*, No. 00–879–A.

EPA made the determination required by the Court, and as the Court further ordered, EPA then published a notice of this determination in the **Federal Register**. 67 FR 42687 (June 24, 2002). That notice stated EPA's finding that the Baton Rouge area did not attain the 1-hour ozone NAAQS by November 15, 1999, and that the area would be reclassified to "severe" by operation of law as of the effective date of the rule. In addition, the June 24, 2002, rulemaking established the dates by which Louisiana was to submit SIP revisions addressing the CAA's pollution control requirements for severe ozone nonattainment areas and to attain the 1-hour NAAQS for ozone. The June 24, 2002, rulemaking was to be effective August 23, 2002. EPA's responses to the comments related to the reclassification are incorporated by reference in this rule and appear in the June 24, 2002, rule.

On August 20, 2002, EPA published a rule extending the effective date of the June 24, 2002, rulemaking to October 4, 2002 (67 FR 53882).

On October 2, 2002, EPA issued a final rule in which EPA extended the attainment date for the Baton Rouge area, consistent with the extension policy, and withdrew the June 24, 2002, rulemaking before its effective date (67 FR 61786). The October 2, 2002, rulemaking also approved the attainment demonstration for the Baton Rouge area and took several other related actions.

Petitions for review of the October 2, 2002, rulemaking have been filed in the U.S. Court of Appeals for the Fifth Circuit (*Louisiana Environmental Action Network (LEAN)* v. *EPA*, No. 02–60991; *Pointe Coupee Parish Police Jury* v. *EPA*, No. 02–61021.

Additionally on December 11, 2002, the U.S. Court of Appeals for the Fifth Circuit issued its decision in *Sierra Club* v. *United States EPA*, 314 F.3d 735. Among the issues in that case was EPA's decision under the extension policy to extend the 1-hour ozone attainment deadline for the Beaumont-Port Arthur, Texas, area without reclassifying the area. The Court rejected this decision because it determined that the CAA precludes such an extension as a matter of law. Because the Court's decision was based on its legal interpretation of the CAA and not on the particular facts at issue in the Beaumont-Port Arthur case, and because the decision is precedential within the Circuit, we must withdraw our determination to extend the attainment deadline for Baton Rouge. Accordingly, we requested that the Fifth Circuit grant a partial voluntary remand of our October 2, 2002, final rule, to allow us to withdraw our decision to extend the attainment date for Baton Rouge. The Court granted that request on February 25, 2003. We are issuing this rule in response to the Fifth Circuit Court of Appeals rejection of EPA's use of the extension policy.

II. What Are the National Ambient Air Quality Standards?

EPA has set NAAQS for six common air pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The CAA requires that these standards be set at levels that protect public health and welfare with an adequate margin of safety. These standards, established under section 109 of the CAA, present state and local governments with the air quality levels they must meet to achieve clean air. Also, these standards allow the American people to assess whether or not the air quality in their communities is healthful.

III. What Is the NAAQS for Ozone?

The NAAQS for ozone is expressed in two forms which are referred to as the 1-hour and 8-hour [1] standards. Table 1 summarizes the 1-hour ozone standard.

TABLE 1.—SUMMARY OF OZONE STANDARD

Standard	Value	Type [a]	Method of compliance
1-hour	0.12 ppm	Primary and Secondary	Must not be exceeded, on average, more than one day per year over any three-year period at any monitor within an area.

[a] Primary standards are designed to protect public health and secondary standards are designed to protect public welfare and the environment.

The 1-hour ozone standard of 0.12 parts per million (ppm) was promulgated in 1979. The 1-hour ozone standard continues to apply to Baton Rouge and it is the classification of the Baton Rouge area with respect to the 1-hour ozone standard that is addressed in this document.

IV. What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS established by EPA. After engaging in required public participation, each state must submit the required regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive. They may contain state regulations or other enforceable measures, as well as supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

V. What Is the Baton Rouge Ozone Nonattainment Area?

The Baton Rouge ozone nonattainment area, located in southern Louisiana, consists of East Baton Rouge, West Baton Rouge, Ascension, Iberville, and Livingston Parishes.

Under section 107(d)(1)(C) of the CAA, each ozone area designated nonattainment for the 1-hour ozone standard before enactment of the 1990 CAA Amendments, such as the Baton Rouge area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. In addition, under section 181(a) of the Act, each area designated nonattainment under section 107(d) was classified as "marginal," "moderate," "serious," "severe," or "extreme," depending on the severity of the area's air quality problem. The design value for an area characterizes the severity of the air quality problem. The design value for an area is the highest site design value. The site design value in turn is the fourth highest 1-hour daily maximum in a given three-year period. Table 2 provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.160 and 0.180 ppm, such as the Baton Rouge area (which had a design value of 0.164 ppm in 1989), were classified as serious. These nonattainment designations and classifications were initially codified in 40 CFR part 81 (*see* 56 FR 56694, November 6, 1991).

TABLE 2.—1-HOUR OZONE NONATTAINMENT CLASSIFICATIONS

Area class	Design value (ppm)	Attainment date
Marginal	0.121 up to 0.138	November 15, 1993.
Moderate	0.138 up to 0.160	November 15, 1996.
Serious	0.160 up to 0.180	November 15, 1999.
Severe	0.180 up to 0.280	November 15, 2005.
Extreme	0.280 and above	November 15, 2010.

VI. What Does This Action Do?

In this action, in accordance with the decisions of the Fifth Circuit Court of Appeals rejecting EPA's use of the extension policy and in fulfilling our nondiscretionary duty under the CAA, EPA is withdrawing the portion of the October 2, 2002, rulemaking that granted Baton Rouge an extension of its attainment date. Specifically we are withdrawing the approvals of the attainment date extension for the Baton Rouge area and the transport demonstration in Louisiana's December 31, 2001, SIP. Additionally, EPA is reinstating its previous final determination that the Baton Rouge area did not attain the 1-hour ozone NAAQS by November 15, 1999, as prescribed in section 181 of the CAA. As a result of this action, the Baton Rouge area is reclassified by operation of law to severe ozone nonattainment pursuant to section 181(b)(2) of the CAA on the effective date of this action.[2] In addition, this action sets the dates by which Louisiana must submit SIP revisions addressing the CAA's pollution control requirements for severe ozone nonattainment areas (the "severe area SIP") and to attain the 1-hour NAAQS for ozone. The post-1999 ROP nine percent reduction originally was required under the CAA to occur by November 15, 2002. Because that statutory deadline passed before the area became classified as severe and thus first became subject to the requirement to demonstrate post-1999 ROP, we conclude that the State must have some time to actually develop and implement the measures needed to achieve such progress. Accordingly, in this action we are allowing Louisiana to demonstrate that the first required post-1999 nine percent ROP is achieved as expeditiously as practicable after November 15, 2002, but in any case no later than November 15, 2005. EPA is allowing Louisiana to relate contingency measures for the 2002 ROP milestone to this new date.[3] Further discussion of a severe ozone nonattainment area's SIP requirements appears below in section VIII.

VII. What Is the New Attainment Date for the Baton Rouge Area?

In the June 24, 2002, rulemaking, EPA set forth its conclusion under section 181(a)(1) of the Act that the attainment deadline for the Baton Rouge area, as a serious ozone nonattainment area reclassified to severe under section 181(b)(2), is as expeditiously as practicable but no later than the date provided in the Act for the new classification: November 15, 2005. EPA incorporates this conclusion, supporting reasoning, and responses to comments by reference into this rulemaking.

VIII. When Must Louisiana Submit SIP Revisions Fulfilling the Requirements for Severe Ozone Nonattainment Areas?

Under section 182(i) of the Act, serious ozone nonattainment areas reclassified to severe are required to submit SIP revisions addressing the severe area requirements for the 1-hour ozone NAAQS. Under section 182(d), severe area plans are required to meet all the requirements for serious area plans plus the requirements for severe area plans, which include: (1) A 25 ton per year major stationary source threshold; (2) additional reasonably available control technology (RACT) rules for sources subject to the new lower major stationary source threshold; (3) a new source review (NSR) offset requirement of at least 1.3 to 1; (4) a rate of progress in emission reductions of ozone precursors of at least 3 percent of base line emissions per year from November 15, 1999, until the attainment year; (5) additional transportation control measures (TCMs) needed to offset growth in emissions due to growth in vehicle miles traveled (VMT); and (6) a fee requirement for major stationary sources of volatile organic

[1] The 8-hour ozone standard value is 0.08 ppm and is the primary and secondary standard. The method of compliance is the average of the annual fourth highest daily maximum 8-hour average ozone concentration measured at each monitor over any three-year period is less than or equal to 0.08 ppm.

[2] This rulemaking is a final action because the Fifth Circuit's decision in *Sierra Club* v. *United States EPA*, 314 F.3d 735, leaves no remaining questions on which we might solicit public comment regarding the reclassification of the Baton Rouge area. In light of the Court's decision and considering that we have already taken public comments and issued a final rule on reclassification (67 FR 42687, June 24, 2002), we have concluded that no good cause exists to require additional public comment regarding the reclassification of the Baton Rouge area.

[3] The severe area ROP plan will also have to provide for the second increment of post-1999 ROP for the period 2002 to 2005 and thus must achieve a minimum of 18 percent emission reductions from base line emissions by November 15, 2005. Therefore, the average ROP emission reductions will not decrease.

compounds (VOC) and nitrogen oxides (NO_X)[4] should the area fail to attain by 2005.[5] In addition, under Section 211(k) of the Act the use of reformulated gasoline (RFG) will be required in the Baton Rouge area beginning one year from the effective date of this rule. The application of the RFG requirement occurs by operation of law in any area reclassified to severe ozone nonattainment status. We have issued a "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" that sets forth our preliminary views on these section 182 requirements and how we will act on SIPs submitted under Title I. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

Additionally, since the Baton Rouge area did not attain by the serious area attainment date, and in order to fulfill the contingency measures requirements of sections 172(c)(9) and 182(c)(9) of the CAA, the implementation of the failure-to-attain contingency measures in the current SIP is triggered automatically upon the effective date of this rule. Further, Louisiana is required to submit a revision to the SIP containing additional contingency measures for its severe area SIP to meet ROP requirements and backfill for failure to attain. *See* 57 FR 13498, 13511 (1992).

The Baton Rouge severe area plan must also contain enforceable regulations, control measures, means or techniques as necessary or appropriate to make the required rate of progress and to attain the 1-hour ozone NAAQS as expeditiously as practicable but no later than November 15, 2005. The severe area SIP and its budgets must use the MOBILE6 emissions model. Using MOBILE6 may require a revision to the 1990 base year inventory and ROP targets. Section 182(i) further provides that EPA may adjust the CAA deadlines for submitting these severe area SIP requirements. In addition to establishing a new attainment date, EPA must also address the schedule by which Louisiana is required to submit SIP revisions meeting the CAA's pollution control requirements for severe areas. In our June 24, 2002, redesignation rulemaking, after taking comments, we required that Louisiana submit SIP revisions fulfilling all of the severe area requirements, no later than one year after the effective date of the reclassification. We also concluded that if the submission showed that the area could attain the one-hour ozone NAAQS sooner than the attainment date established in the June 24, 2002, reclassification notice, we would adjust the attainment date to reflect the earlier date, consistent with the requirement in section 181(a)(1) that the NAAQS be attained as expeditiously as practicable. EPA did not receive any comments on the proposed schedule. We conclude that the severe SIP revision schedule is reasonable and appropriate. Therefore, EPA is requiring Louisiana to submit SIP revisions within 12 months of the effective date of this rule. These revisions must address the Act's pollution control requirements for severe ozone nonattainment areas and must demonstrate attainment by November 15, 2005.

[4] Ozone is not emitted directly into the air, but is formed through the photochemical reaction of NO_X and VOCs.

[5] Section 182(d)(3) sets a deadline of December 31, 2000, to submit the plan revision requiring fees for major sources should the area fail to attain. This date can be adjusted pursuant to CAA section 182(i). We adjusted this date to coincide with the submittal deadline for the rest of the severe area plan requirements.

IX. What Is the Impact of a Reclassification on the Title V Operating Permit Program?

In the June 24, 2002, final rule, EPA listed most of the SIP revisions that would be required to be submitted by Louisiana addressing the severe area requirements. One of these requirements is the lowering of the major stationary source threshold for VOC and NO_X emissions from 50 tons per year to 25 tons per year.

As a consequence of the reclassification of the Baton Rouge area to severe, additional sources become subject to the Title V major stationary source operating permit program. The affected sources are those with a potential to emit at least 25 tons per year of either VOC or NO_X, or both VOC and NO_X. Any new major stationary source must submit a timely Title V permit application. "A timely application for a source applying for a part 70 permit for the first time is one that is submitted within 12 months after the source becomes subject to the permit program or on or before such earlier date as the permitting authority may establish." See 40 CFR 70.5(a)(1) and see 40 CFR 71.5(a)(1). On the effective date of this action that can be found in the **DATES** section of this final rule, the 12 month (or earlier date set by Louisiana) time period to submit a timely application will commence in accordance with the State's Title V program regulations applicable to that source.

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to Office of Management and Budget (OMB) review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may "have an annual effect on the economy of $100 million or more or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities."

The Agency has determined that the finding of nonattainment would result in none of the effects identified in section 3(f) of the Executive Order. Under section 181(b)(2) of the CAA, determinations of nonattainment are based upon air quality considerations and the resulting reclassifications must occur by operation of law. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, determinations of nonattainment and reclassification cannot be said to impose a materially adverse impact on state, local, or tribal governments or communities.

B. Paperwork Reduction Act

This final action to reclassify the Baton Rouge area as a severe ozone nonattainment area and to adjust applicable deadlines does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Determinations of nonattainment and the resulting reclassification of nonattainment areas by operation of law under section 181(b)(2) of the CAA do not in and of themselves create any new requirements. Instead, this rulemaking only makes a factual determination, and does not directly regulate any entities. See 62 FR 60001, 60007–8, and 60010 (November 6, 1997) for additional analysis of the RFA implications of attainment determinations. Therefore, pursuant to 5 U.S.C. 605(b), I certify that this final action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

D. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA believes, as discussed previously in this document, that a determination of nonattainment is a factual determination based upon air quality considerations and the resulting reclassification of the area occurs by operation of law. Thus, the finding does not constitute a Federal mandate, as defined in section 101 of the UMRA, because it does not impose an enforceable duty on any entity.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have Federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation. This determination of nonattainment and the resulting reclassification of a nonattainment area by operation of law will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because this action does not, in and of itself, impose any new requirements on any sectors of the economy, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. Thus, the requirements of section 6 of the Executive Order do not apply to these actions.

F. Executive Order 13175, Coordination With Indian Tribal Governments

This final rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (59 FR 22951, November 9, 2000). Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final action is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

Under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), EPA must prepare for those matters identified as significant energy actions. A "significant energy action" is any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking, that is a significant regulatory action under Executive Order 12866, and is likely to have a significant adverse effect on the supply, distribution, or use of energy. Under Executive Order 12866, this action is not a "significant regulatory action." For this reason, the finding of nonattainment and reclassification is also not subject to Executive Order 13211.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final action to reclassify the Baton Rouge area as a severe ozone nonattainment area and to adjust applicable deadlines does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 23, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to reclassify the Baton Rouge area as a severe ozone nonattainment area and to adjust applicable deadlines may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Motor vehicle pollution, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements.

Dated: April 14, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

■ Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 81.319 the table for Louisiana—Ozone (1-hour Standard) is amended by revising the entry for the Baton Rouge area to read as follows:

§ 81.319 Louisiana.

* * * * *

LOUISIANA-OZONE (1-HOUR STANDARD)

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Baton Rouge Area:				
Ascension Parish	11/15/90	Nonattainment	6/23/03	Severe
East Baton Rouge Parish	11/15/90	Nonattainment	6/23/03	Severe
Iberville Parish	11/15/90	Nonattainment	6/23/03	Severe
Livingston Parish	11/15/90	Nonattainment	6/23/03	Severe
West Baton Rouge Parish	11/15/90	Nonattainment	6/23/08	Severe

[1] This date is October 18, 2000, unless otherwise noted.

* * * * *

[FR Doc. 03–10172 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–1097, MB Docket No. 02–155, RM–10452]

Digital Television Broadcast Service and Television Broadcast Service; Charleston, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Pappas Telecasting of America, substitutes DTV channel 52 for channel 23. *See* 67 FR 44791, July 5, 2002. DTV channel 52 can be allotted to Charleston, West Virginia, in compliance with the principal community coverage requirements of Section 73.625(a) at coordinates 38–30–21 N and 82–12–33 W. Since the community of Charleston is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian Government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective June 2, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 02–155, adopted April 4, 2003, and released April 17, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Television broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

■ 2. Section 73.606(b), the Table of Television Allotments under West Virginia, is amended by removing TV channel 23 at Charleston.

■ 3. Section 73.622(b), the Table of Digital Television Allotments under West Virginia, is amended by adding DTV channel 52 at Charleston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–10190 Filed 4–23–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG75

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for *Chlorogalum purpureum*, a Plant From the South Coast Ranges of California; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; correction.

SUMMARY: The Fish and Wildlife Service announces a correction to the final rule to designate critical habitat for two varieties of purple amole, *Chlorogalum purpureum* var. *purpureum* (purple amole) and *Chlorogalum purpureum* var. *reductum* (Camatta Canyon amole), that was published in the **Federal Register** on October 24, 2002 (67 FR 65414). The maps for both varieties of this species and the legal description for *C. p.* var. *reductum* are correct as published in the **Federal Register**. However, the legal description for the *C. p.* var. *purpureum* is incorrect in part. This notice contains the correct version of the legal description for *C. p.* var. *purpureum*.

DATES: This correction is effective on April 24, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, or Kirk Waln, GIS Specialist, at Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone: 805/644–1766; facsimile: 805/644–3958).

SUPPLEMENTARY INFORMATION: On October 24, 2002, the U.S. Fish and Wildlife Service (Service) published a final rule designating critical habitat for two varieties of the purple amole, *Chlorogalum purpureum:* the *Chlorogalum purpureum* var. *purpureum* and *Chlorogalum purpureum* var. *reductum* (67 FR 65414). The final rule contained correct maps for both varieties and the correct legal descriptions of the final critical habitat unit for *C. p.* var. *reductum*. However, the legal description of the boundaries for the Jolon Unit of critical habitat for *C. p.* var. *purpureum* erroneously contained coordinates describing several additional small polygons lying along the eastern boundary of Fort Hunter Liggett. We are providing a corrected version of the legal description of critical habitat for the Jolon Unit of *C. p.* var. *purpureum* that omits the erroneous coordinates.

■ Accordingly, the following correction to FR Doc. 02–26768 published at 67 FR 65414 on October 24, 2002, is provided.

PART 17—[CORRECTED]

1. On page 65439, in § 17.96(a)(7), correct the coordinates to read as follows:

(7) *Jolon Unit.*

(i) *Chlorogalum purpureum* var. *purpureum*. Monterey County, California. From USGS 1:24,000 quadrangle map Jolon. Lands bounded by UTM zone 10 NAD83 coordinates (E,N): 666471, 3985340; 666646, 3985110; 666965, 3985110; 667260, 3985130; 667281, 3984880; 667567, 3984910; 667699, 3984690; 667849, 3984770; 668125, 3984770; 668175, 3984600; 668224, 3984470; 668334, 3984260; 668086, 3984250; 668094, 3984040; 668004, 3984040; 667888, 3983960; 667891, 3983860; 668085, 3983860; 668118, 3983590; 668538, 3983430; 668526, 3983290; 668780, 3983360; 668909, 3983300; 668905, 3983060; 669317, 3983070; 669346, 3982270; 669638, 3982120; 669638, 3981950; 669463, 3981960; 669396, 3981850; 668647, 3981840; 668649, 3982250; 668435, 3982790; 668126, 3982790; 668122, 3982620; 667509, 3982620; 667426, 3982950; 667272, 3982930; 667261, 3983040; 667283, 3983420; 666998, 3983420; 666907, 3983410; 666887, 3984220; 666496, 3984220; 666471, 3985340.

669233, 3978620; 669242, 3978640; 669244, 3978640; 669255, 3978650; 669303, 3978720; 669365, 3978680; 669374, 3978620; 669441, 3978600; 669504, 3978600; 669542, 3978660; 669614, 3978730; 669639, 3978810; 669616, 3978890; 669610, 3978900; 669594, 3978940; 669654, 3978930; 670986, 3978670; 671848, 3978660; 671854, 3978560; 671879, 3978440; 671888, 3978350; 671880, 3978370; 671821, 3978350; 671804, 3978280; 671833, 3978220; 671933, 3978220; 671918, 3978130; 671922, 3978070; 671947, 3978020; 671981, 3977950; 671985, 3977900; 671964, 3977870; 671961, 3977850; 670600, 3977840; 670599, 3977640; 669239, 3978620; 669233, 3978620.

(ii) **Note:** See Map 2.

Dated: April 16, 2003.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–10157 Filed 4–23–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030414085–3085–01; I.D. 012601B]

RIN 0648–AR04

Fisheries of the Exclusive Economic Zone off Alaska; Revisions to Definition of Length Overall of a Vessel; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects Figure 6 to Part 679 published in the final rule of September 12, 2001 (66 FR 47416), which implemented changes to the definition of length overall (LOA) of a vessel. This action is necessary to correct errors contained in this figure.

DATES: Effective April 23, 2003.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7008 or patsy.bearden@noaa.gov.

SUPPLEMENTARY INFORMATION: A final rule implementing changes to the definition of LOA of a vessel at § 679.2 was published in the **Federal Register** September 12, 2001 (66 FR 47416). The final rule omitted revisions to Figure 6 that should have removed the words "stem" and "stern." These errors are corrected by removing the figure and adding a new one in its place.

Need for Corrections

The September 12, 2001, revisions to the definition of LOA were not included in Figure 6 to part 679. This action corrects that error by removing Figure 6 to part 679 and adding a new one in its place to make it consistent with the definition of "LOA of a vessel" at § 679.2.

Classification

Pursuant to 5 U.S.C. 553(b)(B), the Assistant Administrator of Fisheries, NOAA, finds good cause to waive prior notice and opportunity for public comment. NOAA finds that prior notice and comment are unnecessary as this rule has a non-substantive effect on the public. This rule corrects two errors in the regulations. Each error is technical in nature because each is a term that was removed from the definition of "LOA of a vessel" at § 679.2 but erroneously not removed from Figure 6 to part 679. The public is unaffected by

the corrections. Because this action is not substantive, 5 U.S.C. 553(d) does not apply. Therefore, this final rule is not subject to a 30–day delay in effectiveness.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: April 16, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

Corrections

■ Accordingly, 50 CFR part 679 is corrected by making the following correcting amendments to the final rule published on September 12, 2001 (66 FR 47416):

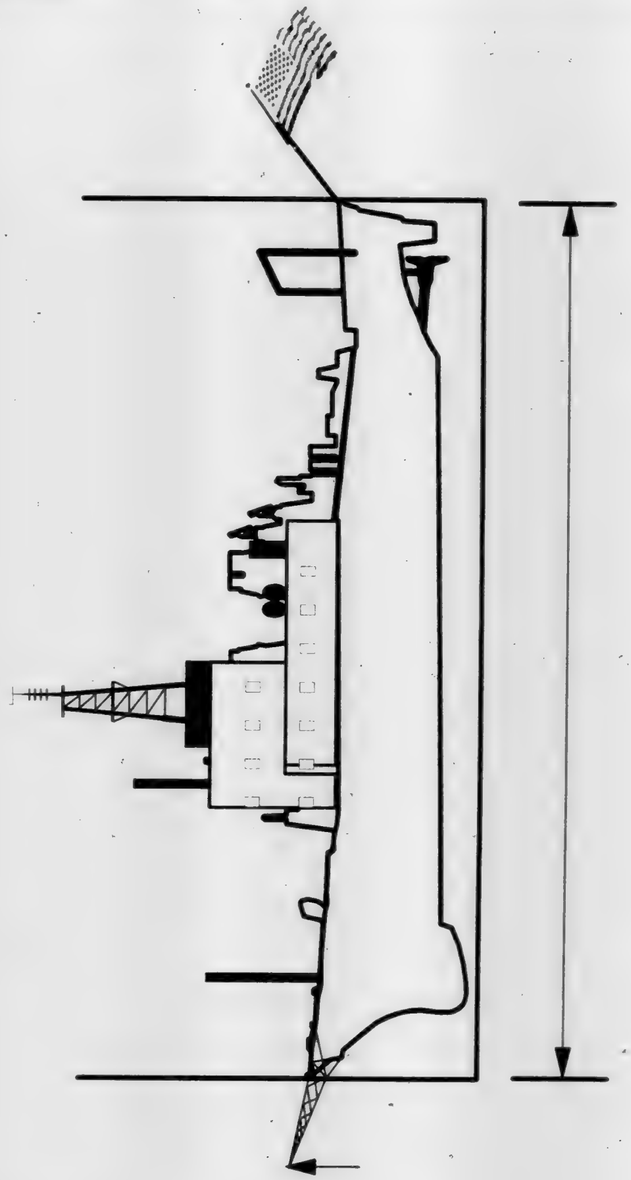
Part 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*; 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209, Pub, L, 106–554.

Figure 6 to Part 679 [Corrected]

■ 2. Figure 6 to Part 679 is correctly revised as follows:



[FR Doc. 03–9928 Filed 4–23–03; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 041803C]

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Catcher Vessels less than 60 Feet Length Overall Using Hook-and-line or Pot Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet length overall (LOA) using hook-and-line or pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific cod allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), April 22, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 Pacific cod TAC allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI is 1,363 metric tons (mt) as established by the final 2003 harvest specifications for Groundfish of the BSAI (68 FR 9907, March 3, 2003).

The A season directed fisheries for Pacific cod by vessels 60 feet LOA and greater using pot gear was closed on February 26, 2003 (68 FR 9942, March 3, 2003). The A season directed fisheries for Pacific cod by vessels 60 feet LOA and greater using hook-and-line gear was closed on March 28, 2003 (68 FR 15969, April 2, 2003). Pursuant to 50 CFR 679.20(a)(7)(i)(C)(2)(ii) and (3)(ii), at the time of the closures the 1,363 mt allowance of Pacific cod became available to catcher vessels less than 60 feet LOA using hook-and line or pot gear.

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2003 Pacific cod TAC allocated as a directed fishing allowance to catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 feet LOA using hook-and-line or pot gear in the BSAI.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 Pacific cod TAC allocated to catcher vessels less than 60 feet LOA using hook-and-line or pot gear, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 22, 2003.

Dean Swanson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–10161 Filed 4–21–03; 4:47 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register

Vol. 68, No. 79

Thursday, April 24, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–342–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 767 series airplanes. This proposal would require repetitive inspections and tests for discrepancies of the drainage system of the canted pressure deck located in the wheel wells of the main landing gear (MLG) of the left and right wings, and corrective actions if necessary. This action is necessary to prevent ice accumulation on the lateral flight control cables due to water entering the wheel well of the MLG and freezing, which could restrict or jam control cable movement, resulting in loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 9, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–342–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–342–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–342–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–342–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports of debris blocking the drainage system for the canted pressure deck area on Model 767 series airplanes, which may cause water accumulation in the canted pressure deck located in the wheel wells of the main landing gear (MLG) of the left and right wings. Such accumulation of water has caused excessive corrosion of the upper skin and the rear spar of the wing center section. Cabin pressurization would cause the accumulated water to enter the wheel well of the MLG and solidify during flight. Such ice accumulation could restrict or jam control cable movement, resulting in loss of controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletins 767–51A0023 (for Model 767–200, –300, and –300F series airplanes), and 767–51A0024 (for Model 767–400ER series airplanes), both including Evaluation Form, both dated September 27, 2001; which describe procedures for repetitive inspections and tests for discrepancies of the drainage system of the canted pressure deck located in the wheel wells of the MLG of the left and right wings, and corrective actions if necessary.

- Work Package 1 describes procedures for a test, which includes a visual inspection of the external drains, reducer, and drain lines for discrepancies. The discrepancies include damage, holes, signs of frozen water, and signs of blockage (3 to 5 pounds per square inch (psi) compressed air is sent through the drain hose to check for blockage). The corrective actions include cleaning the drain system to remove blockage, and

replacing any damaged drain line with a new drain line.

• Work Package 2 describes procedures for repetitive inspections for discrepancies and cleaning of the drainage system of the canted pressure deck, as specified in the Boeing 767 Airplane Maintenance Manual.

• Work Package 3 describes procedures for repetitive inspections of the canted pressure deck for discrepancies (loose or missing fasteners; loose, missing, or cracked sealant; and leak paths). The corrective actions include replacing any loose or missing fastener, replacing loose, missing, or cracked sealant; and repairing any leak found.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except that the proposed AD does not require completing the Evaluation Forms, and except as discussed below.

Difference Between This Proposed AD and Service Bulletins

The service bulletins do not provide an initial compliance time for accomplishing the actions, but this proposed AD would require that those actions be accomplished at the following times:

• For Work Package 1, the compliance time is the later of the following: Within 18 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness (whichever occurs first); or within 18 months after the effective date of this AD.

• For Work Package 2, the compliance time is the later of the following: Within 36 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness (whichever occurs first); or within 36 months after the effective date of this AD.

• For Work Package 1, the compliance time is the later of the following: Within 54 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness (whichever occurs first); or within 54 months after the effective date of this AD.

In developing an appropriate compliance time for this proposed AD, we considered not only the manufacturer's recommendation, but also the degree of urgency associated with addressing the unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the actions. In light of all of these factors, we find the compliance times specified previously for completing the required actions to be warranted, in that they represent an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 814 airplanes of the affected design in the worldwide fleet. The FAA estimates that 345 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection/test of the drainage system specified in Work Package 1 of the service bulletins, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection/test proposed by this AD on U.S. operators is estimated to be $20,700, or $60 per airplane, per cycle.

It would take approximately 4 work hours per airplane to accomplish the proposed inspection/cleaning specified in Work Package 2 of the service bulletins, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection/cleaning proposed by this AD on U.S. operators is estimated to be $82,800, or $240 per airplane, per cycle.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection specified in Work Package 3 of the service bulletins, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $41,400, or $120 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–342–AD.

Applicability: All Model 767 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ice accumulation on the lateral flight control cables due to water entering the wheel well of the main landing gear and freezing, which could restrict or jam control cable movement, resulting in loss of controllability of the airplane; accomplish the following:

Repetitive Inspections/Tests of the Drainage System/Corrective Actions

(a) At the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD: Do a general visual inspection of the external drains, reducer, and drain lines for discrepancies (including include damage, holes, signs of frozen water, and signs of blockage), per Work Package 1 of Boeing Alert Service Bulletin 767–51A0023 (for Model 767–200, –300, and –300F series airplanes), or Boeing Alert Service Bulletin 767–51A0024 (for Model 767–400ER series airplanes), both excluding Evaluation Form, both dated September 27, 2001; as applicable. Repeat the test after that at least every 18 months.

(1) Within 18 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.

(2) Within 18 months after the effective date of this AD.

(b) At the later of the times specified in paragraphs (b)(1) and (b)(2) of this AD: Clean the cavity for the canted pressure deck and do a general visual inspection of the drainage system for discrepancies per Work Package 2 of the Work Instructions of Boeing Alert Service Bulletin 767–51A0023 (for Model 767–200, –300, and –300F series airplanes), or Boeing Alert Service Bulletin 767–51A0024 (for Model 767–400ER series airplanes), both excluding Evaluation Form, both dated September 27, 2001; as applicable. Repeat the cleaning and inspection after that at least every 36 months.

(1) Within 36 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.

(2) Within 36 months after the effective date of this AD.

(c) If any discrepancy is found during any inspection or test required by paragraphs (a) and (b) of this AD, before further flight, repair per the Work Instructions of Boeing Alert Service Bulletin 767–51A0023 (for Model 767–200, –300, and –300F series airplanes), or Boeing Alert Service Bulletin 767–51A0024 (for Model 767–400ER series airplanes), both excluding Evaluation Form, both dated September 27, 2001; as applicable.

Repetitive Inspections of the Canted Pressure Deck/Corrective Action

(d) At the later of the times specified in paragraphs (d)(1) and (d)(2) of this AD: Do a general visual inspection of the canted pressure deck for discrepancies (including loose or missing fasteners: loose, missing, or cracked sealant; and leak paths), per Work Package 3 of the Work Instructions of Boeing Alert Service Bulletin 767–51A0023 (for Model 767–200, –300, and –300F series airplanes), or Boeing Alert Service Bulletin 767–51A0024 (for Model 767–400ER series airplanes), both excluding Evaluation Form, both dated September 27, 2001; as applicable. If any discrepancy is found, before further flight, repair (including replacing any loose or missing fastener or loose, missing, or cracked sealant; and repairing any leak found) per the applicable service bulletin. Repeat the inspection after that at least every 54 months.

(1) Within 54 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.

(2) Within 54 months after the effective date of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 18, 2003.

Michael J. Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–10117 Filed 4–23–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–141659–02]

RIN 1545–BB34

Tax Return Preparers—Electronic Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulation.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing a temporary regulation relating to a paid income tax preparer's obligation to retain and furnish copies of income tax returns and claims for refund. The text of that temporary regulation also serves as the text of this proposed regulation.

DATES: Written and electronic comments and requests for a public hearing must be received by July 23, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–141659–02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:RU (REG–141659–02), courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the regulation, Richard Charles Grosenick, (202) 622–7940; concerning submissions, LaNita Van Dyke, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under sections 6107 and 6695 of the Internal Revenue Code. The temporary regulations eliminate the references to manually signed returns in the regulations under section 6695. In addition, they provide that the Commissioner may prescribe, in forms, instructions, or other appropriate guidance, the manner in which preparers may satisfy their obligations under section 6107 to furnish returns to

taxpayers and to retain copies of returns.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation and, because the regulation does not impose a collection of information on small entities, that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments, either electronically or on paper (a signed original and 8 copies), that are timely submitted to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of this regulation is Richard Charles Grosenick, Office of Assistant Chief Counsel (Administrative Provisions & Judicial Practice). However, other personnel from the IRS and the Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2 Section 1.6107–2 is added to read as follows:

§ 1.6107–2 Form and manner of furnishing copy of return and retaining copy or record.

[The text of this proposed section is the same as the text of § 1.6107–2T published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.6695–1 is amended by revising paragraph (b) to read as follows:

§ 1.6695–1 Other assessable penalties with respect to the preparation of income tax returns for other persons.

* * * * *

(b) [The text of this proposed paragraph (b) is the same as the text of § 1.6695–1T(b) published elsewhere in this issue of the **Federal Register**].

* * * * *

David A. Mader,

Assistant Deputy Commissioner of Internal Revenue.

[FR Doc. 03–10191 Filed 4–23–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[TTB Notice No. 6; Re: ATF Notice Nos. 960 and 966]

RIN: 1512–AC76

Red Hill (Oregon) Viticultural Area (2001R–88P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: TTB reopens the comment period for Notice No. 960, a notice of proposed rulemaking published in the **Federal Register** on October 30, 2002, and subsequently reopened for an additional 60 days on January 16, 2003. The proposed rule would add Red Hill (Oregon) as an approved American viticultural area and amend 27 CFR part 9. We are acting on a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

DATES: Written comments must be received on or before May 27, 2003.

ADDRESSES: You may send comments to any of the following addresses:

- Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 960);
- 202–927–8525 (Facsimile);
- *NPRM@ttb.gov* (E-mail);
- *http://www.ttb.gov* (An online comment form is posted with this notice on our Web site.)

You may view copies of the notice of proposed rulemaking, the requests for extension of the comment period, and any comments received on the notice by appointment at the ATF Reference Library, Room 6480, 650 Massachusetts Avenue, NW., Washington, DC 20226, or under Notice No. 960 at *http://www.ttb.gov/alcohol/rules/index.htm*.

FOR FURTHER INFORMATION CONTACT: Tim DeVanney, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone 202–927–8210; e-mail *TPDevanney@ttb.gov*.

SUPPLEMENTARY INFORMATION:

Background

On October 30, 2002, TTB (part of the Bureau of Alcohol, Tobacco and Firearms (ATF) at that time) published two notices of proposed rulemaking (Notice No. 960, 67 FR 66079 and Notice No. 961, 67 FR 66083) to establish Red Hill (Oregon) and Red Hills (California) as American viticultural areas, respectively. The comment period ended on December 30, 2002. Before the close of the comment period, TTB received a request from Mr. Sean Carlton, of Archery Summit, a winery in Dayton, Oregon, to extend the comment period for an additional 60 days. Mr. Carlton requested the extension to allow more time to study the petitions and research the respective areas. The new comment period opened on January 16, 2003, and closed on March 17, 2003.

On March 17, 2003, TTB received a request to extend the comment period for an additional 60 days. Mr. Jess Lyon, of Davis Wright Tremaine, LLP, made this request in order to make a full assessment of the Red Hill petition. Mr. Lyon stated that he did not receive the petitioner's material in a timely manner.

In consideration of the above, TTB reopens the comment period for an additional 30 days. By the time this document is published in the **Federal Register**, the new closing date will be in excess of the 60 days Mr. Lyon requested.

Public Participation

See the "Public Participation" section of Notice No. 960 for detailed instructions on submitting and reviewing comments. Comments received on or before the new closing date will be carefully considered.

TTB will not recognize any submitted material as confidential and comments may be disclosed to the public. Any material that the commenter considers confidential or inappropriate for disclosure to the public should not be included in the comments. The name of the person submitting a comment is not exempt from disclosure.

Drafting Information

Tim DeVanney of the Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

Notice No. 960 was issued under the authority of 27 U.S.C. 205.

Signed: April 18, 2003.

Arthur J. Libertucci,

Administrator.

[FR Doc. 03–10095 Filed 4–23–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC91

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Revision of Requirements Governing Outer Continental Shelf Rights-of-Use and Easement and Pipeline Rights-of-Way

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: MMS is proposing to modify requirements governing rights-of-use and easements and pipeline rights-of-way on the Outer Continental Shelf (OCS). These changes will increase rental rates for pipeline rights-of-way and establish rentals for rights-of-use and easements. This change is needed because of requests by lessees and pipeline right-of-way holders to use large areas outside of the area covered by their lease and pipeline right-of-way for accessory structures. This rule will require holders of rights-of-use and easements and holders of large areas as part of a pipeline right-of-way to pay rentals on a per acre basis.

DATES: We will consider all comments we receive by May 27, 2003. We will begin reviewing comments then and may not fully consider comments we receive after May 27, 2003.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand-carry comments (three copies) to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team. You may also send your comments by e-mail or e-mail attachment. The e-mail address is: *rules.comments@mms.gov*. Reference "1010–AC91, Rights-of-Use and Easement" in your subject line. Include your name and return address in your e-mail message and mark your message for return receipt.

FOR FURTHER INFORMATION CONTACT: John Mirabella, Engineering and Operations Division, (703) 787–1600.

SUPPLEMENTARY INFORMATION: This proposed rule provides a 30-day comment period. We believe that the issues involved in this proposed rule are not complex and 30 days will provide sufficient time for interested parties to prepare and submit comments.

Areas of the Gulf of Mexico (GOM) once thought beyond reach, located in water depths greater than 5,000 feet, are now being explored for development. A new generation of drillships and the development of new techniques allow drilling in waters as deep as 10,000 feet. Lease operators and pipeline right-of-way holders are developing more sophisticated and cost-efficient technology that will lower the cost of safely finding, extracting, and delivering deepwater oil and natural gas.

In the next decade, as the offshore industry moves into ultra-deepwater frontiers, the number of floating production vessels will increase substantially. Structures such as tension-leg platforms and floating production and offloading systems will become widely used to produce oil and gas in the GOM. These systems must be stabilized above the seafloor in water depths of 1,000 to 10,000 feet and, therefore, require a mooring system which may have a "footprint" radius greater than 8,500 feet. In some cases, we expect that the mooring system will cover the majority of the OCS block on which the facility is positioned.

Additionally, lease operators will produce smaller hydrocarbon discoveries in deep water by means of wells with production trees, *i.e.*, the assemblage of valves, etc., used to control the flow from the well, that are located on the ocean floor. These subsea systems must be tied back to a host facility by means of pipelines that deliver the production for processing and/or measurement, and cable-like control umbilicals that contain electrical conductors and small diameter steel tubing. Umbilicals allow control of the valves in the production tree and the measurement of pressure and temperature within the well to be accomplished remotely from the host facility.

A right-of-use and easement or pipeline right-of-way grant allows OCS operators and pipeline right-of-way holders the freedom to optimize the placement of their facilities on unleased blocks or on blocks leased by other operators. OCS blocks on which facilities such as floating structures with large mooring footprints, convergent pipelines, export pipelines, and control umbilicals are installed may present safety concerns. The safety concerns could occur if drilling facilities, work boats, or other vessel traffic associated with a new lease were located too close to floating structures, convergent pipelines, export pipelines, or control umbilicals associated with a right-of-way or right-of-use and easement previously granted. For this reason, MMS might decide to set aside adequate space around some pipeline rights-of-way or rights-of-use and easements. By removing blocks from the inventory or by otherwise restricting surface occupancy, potential safety and environmental concerns will be eliminated. In reviewing and approving applications for rights-of-use and easements and rights-of-way, MMS will ensure that safety and environmental problems do not occur. However, since issuance of these rights-of-use and easements and rights-of-way could have some adverse affects on other projects, MMS believes that the government should be compensated when the right-of-use and easement or right-of-way is issued.

The proposed modifications of 30 CFR 250.160, in subpart A, and 30 CFR 250.1009, in subpart J, would allow MMS to charge an annual rental to compensate the United States for the use of the unleased area being provided to the lessee or pipeline right-of-way holder. This proposed rule applies to applicants of pipeline rights-of-way who request a site for accessories for the pipeline right-of-way and for operators

who request use of an area which is not part of their lease, *i.e.*, a right-of-use and easement. The proposed rule would cover applications granted after the effective date of a final rule for new areas or applications to modify an existing area. The proposed rule includes a rental of $5 per acre affected in water depths less than 200 meters and $7.50 per acre affected in water depths of 200 meters or greater. These rental rates correspond to the rental rates charged for leases in those water depths. The total proposed annual rental depends on the size of the area requested except that a minimum annual rental will be charged based on 90 acres. The proposed minimum rental is $450 per year in water depths of less than 200 meters and $675 per year in water depths of 200 meters or greater. Establishing the minimum charge based on 90 acres will ensure that the government receives sufficient payment to cover administrative costs.

Existing regulations for payment of pipeline right-of-way rentals allows for payment on an annual basis, for a 5-year period, or for multiples of 5 years. This proposed regulation retains that option for pipeline rights-of-way and establishes the same option for rights-of-use and easements.

Section 160 was rewritten to add a table. Section 1009 was separated and redesignated as sections 1009 through 1014. Current sections 1010 through 1014 were redesignated as sections 1015 through 1019. Redesignated section 1012 was rewritten to add a table. The use of tables and the use of shorter sections with titles are intended to improve the clarity and readability of the regulation.

Procedural Matters

Public Comment Procedure

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, and there may be circumstances in which we would withhold from the rulemaking record a respondent's identity, to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Regulatory Planning and Review (Executive Order 12866)

This document was determined by the Office of Management and Budget to be significant and has been reviewed by OMB under Executive Order 12866.

Over the next 5 years, in water depths 200 meters or greater, MMS anticipates that it will receive an average of two requests per year for a new or modified right-of-use and easement and an average of two requests per year for a new or modified pipeline right-of-way that includes an area for an accessory. These requests would be affected by this rule. Based on historical data, we estimate that the affected area per request in water depths 200 meters or greater will average 5,760 acres, which is the typical size of one OCS lease block. In these water depths, the new rule proposes a rental of $7.50 per acre affected. This equates to a total cost of $86,400 ($5,760 \times \$7.50 \times 2$) for pipeline right-of-way applicants and $86,400 ($5,760 \times \$7.50 \times 2$) for right-of-use and easement applicants.

Over the next 5 years, in water depths less than 200 meters, MMS anticipates, based on requests in recent years, that it will receive an average of 10 requests per year for a new right-of-use and easement and an average of two requests per year for a new or modified pipeline right-of-way that includes an area for an accessory. These requests would be affected by this rule. We estimate that the affected area per request in water depths less than 200 meters will average 90 acres, which is the proposed minimum size of an affected area. In these water depths, the new rule proposes a rental of $5 per acre affected. This equates to a total annual cost of $4,500 ($90 \times \$5 \times 10$) for right-of-use and easement applicants and $900 ($90 \times \$5 \times 2$) for pipeline right-of-way applicants.

The annual cost to industry for rentals would be $178,200 ($86,400 + $86,400 + $4,500 + $900).

Since the current regulations provide for an annual rental of $75 per site included in an application for pipeline rights-of-way accessories and no cost for right-of-use and easement applications, the total cost under current rules for these same activities is $300 per year for pipeline right-of-way applicants ($75 \times 2 + \$75 \times 2$) and no cost for right-of-use and easement applicants.

(1) This rule would not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Issuance of a pipeline right-of way or right-of-use and easement does not interfere with the ability of other agencies to exercise their authority.

(3) This rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effect on the rights of the recipients of entitlements, grants, user fees, or loan programs.

(4) This rule may raise novel legal or policy issues.

Regulatory Flexibility (RF) Act

The Department certifies that this rule would not have a significant economic effect on a substantial number of small entities under the RF Act (5 U.S.C. 601 *et seq.*).

This rule would affect lessees and operators of leases and holders of pipeline rights-of-way in the OCS. This includes about 130 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. Based on these criteria, we estimate that about 70 percent of these companies are considered small. This rule, therefore, affects a substantial number of small entities.

The companies that are considered small have an average of about 15 offshore facilities. We estimate that the small companies have annual sales between $10 million and $40 million. As discussed earlier, the total annual cost to industry is estimated to be $178,800. No large or small company will bear a significant cost.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under the SBREFA (5 U.S.C. 804(2)). This rule:

(a) Would not have an annual effect on the economy of $100 million or more.

(b) Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

We do not expect this rule to have a significant effect because, as discussed under procedural matters, Regulatory Planning and Review (Executive Order 12866), this rule would have a total industry effect of $178,200 annually. This amount is not a significant effect for companies that do business on the OCS.

Paperwork Reduction Act (PRA) of 1995

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The proposed revisions to 30 CFR part 250, subparts A and J, refer to, but do not change, information collection requirements in current regulations. OMB has approved the referenced information collection requirements under OMB control numbers 1010–0114 for subpart A, current expiration date of July 31, 2005; and 1010–0051 for subpart J, current expiration date of August 31, 2003. The rule proposes no new paperwork requirements, and an OMB form 83–I submission to OMB under the PRA is not required.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the rule would not have Federalism implications. This rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this rule would not affect that role.

Takings (Executive Order 12630)

With respect to Executive Order 12630, the proposed rule would not have significant Takings implications. A Takings Implication Assessment is not required. The proposed rulemaking is not a governmental action capable of interfering with constitutionally protected property rights.

Energy Supply, Distribution, or Use (Executive Order 13211)

This rule is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 13211. The rule would not have a significant effect on energy supply, distribution, or use because proposed payments to compensate the government for making resources unavailable for leasing will occur on the average less than one time a year. The costs due to increases in rental costs will be very small compared to the costs of operating in the OCS. Thus, a Statement of Energy Effects is not required.

Civil Justice Reform (Executive Order 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

National Environmental Policy Act (NEPA) of 1969

This rule would not constitute a major Federal action significantly affecting the quality of the human environment. This rule would not affect the environmental regulations that a right-of-use and easement holder or a pipeline right-of-way holder will need to follow. A detailed statement under the NEPA is not required.

Unfunded Mandate Reform Act (UMRA) of 1995 (Executive Order 12866)

This rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required. This is because the rule would not affect State, local, or tribal governments, and the effect on the private sector is small.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands-right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: January 29, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

Subpart A—General

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

2. In § 250.160, new paragraphs (f) through (h) are added to read as follows:

§ 250.160 When will MMS grant me a right-of-use and easement, and what requirements must I meet?

* * * * *

(f) You must pay a fee as required by paragraph (g) of this section if:

(1) You obtain a right-of-use and easement after the effective date of this rule; or

(2) You ask MMS to modify your right-of-use and easement to change the footprint of the associated platform, artificial island, or installation or device.

(g) If you meet either of the conditions in paragraph (f) of this section, you must pay a fee to MMS as shown in the following table:

If . . .	Then . . .
(1) Your right-of-use and easement site is located in water depths of less than 200 meters	You must pay a rental of $5 per acre per year with a minimum of $450 per year. The area subject to annual rental includes the areal extent of anchor chains, pipeline risers, and other equipment associated with the platform, artificial island, or installation or device.
(2) Your right-of-use and easement site is located in water depths of 200 meters or greater	You must pay a rental of $7.50 per acre per year with a minimum of $675 per year. The area subject to annual rental includes the areal extent of anchor chains, pipeline risers, and other equipment associated with the platform, artificial island, or installation or device.

(h) You must make the rental payments required by paragraph (g)(1) and (g)(2) of this section on an annual basis, for a 5-year period, or for multiples of 5 years. You must make the first payment at the time you submit the right-of-use and easement application. You must make all subsequent payments before the respective time periods begin.

3. In subpart J, §§ 250.1009 through 250.1014 are redesignated as shown in the following table:

Current section and paragraph	Redesignated section and paragraph
250.1009(a)(1)	250.1009(a).
250.1009(a)(2)	250.1009(b).
250.1009(b)(1)	250.1011(a).
250.1009(b)(1)(i)	250.1011(a)(1).
250.1009(b)(1)(ii)	250.1011(a)(2).
250.1009(b)(2)	250.1011(b).
250.1009(b)(2)(i)	250.1011(b)(1).
250.1009(b)(2)(ii)	250.1011(b)(2).
250.1009(b)(2)(iii)	250.1011(b)(3).
250.1009(b)(3)	250.1011(c).
250.1009(b)(4)	250.1011(d).
250.1009(c) introductory text	250.1010 introductory text
250.1009(c)(1)	250.1010(a).
250.1009(c)(2)	250.1012.
250.1009(c)(3)	250.1010(b).
250.1009(c)(4)	250.1010(c).
250.1009(c)(5)	250.1010(d).
250.1009(c)(6)	250.1010(e).
250.1009(c)(7)(i)	250.1010(f)(1).
250.1009(c)(7)(ii)	250.1010(f)(2).
250.1009(c)(7)(ii)(A)	250.1010(f)(2)(i).
250.1009(c)(7)(ii)(B)	250.1010(f)(2)(ii).
250.1009(c)(8)	250.1010(g).
250.1009(c)(9)	250.1010(h).
250.1009(d)	250.1013.
250.1009(e)	250.1014.
250.1010	250.1015.
250.1011	250.1016.
250.1012	250.1017.
250.1013	250.1018.
250.1014	250.1019.

4. The headings for newly redesignated §§ 250.1010 through 250.1014 are revised, and headings for newly redesignated §§ 250.1015 through 250.1019 are added to read as follows:

§ 250.1009 Requirements to obtain pipeline right-of-way grants.

* * * * *

§ 250.1010 General requirements for pipeline right-of-way holders.

* * * * *

§ 250.1011 Bond requirements for pipeline right-of-way holders.

* * * * *

§ 250.1012 Required payments for right-of-way holders.

* * * * *

§ 250.1013 Grounds for forfeiture of pipeline right-of-way grants.

* * * * *

§ 250.1014 When pipeline right-of-way grants expire.

* * * * *

§ 250.1015 Applications for pipeline right-of-way grants.

* * * * *

§ 250.1016 Granting pipeline rights-of-way.

* * * * *

§ 250.1017 Requirements for construction under pipeline right-of-way grants.

* * * * *

§ 250.1018 Assignment of pipeline right-of-way grants.

* * * * *

§ 250.1019 Relinquishment of pipeline right-of-way grants.

* * * * *

5. Redesignated § 250.1012 is revised to read as follows:

§ 250.1012 Required payments for pipeline right-of-way holders.

(a) You must pay MMS an annual rental of $15 for each statute mile, or part of a statute mile, of the OCS that your pipeline right-of-way crosses.

(b) This paragraph applies to you if you obtain a pipeline right-of-way that includes a site for an accessory to the pipeline, including fixed and floating platforms, subsea manifolds, and other similar structures. If either MMS grants the pipeline right-of-way after the effective date of this rule or you apply to modify the grant to change the site footprint, then you must make additional payment to MMS as shown in the following table.

If . . .	Then . . .
(1) Your accessory site is located in water depths of less than 200 meters.	You must pay a rental of $5 per acre per year with a minimum of $450 per year. The area subject to annual rental includes the areal extent of anchor chains, pipeline risers, and other facilities and devices associated with the accessory.
(2) Your accessory site is located in water depths of 200 meters or greater.	You must pay a rental of $7.50 per acre per year with a minimum of $675 per year. The area subject to annual rental includes the areal extent of anchor chains, pipeline risers, and other facilities and devices associated with the accessory.

(c) If you hold a pipeline right-of-way that includes a site for an accessory to your pipeline and you are not covered by paragraph (b) of this section, then you must pay MMS an annual rental of $75 for use of the affected area.

(d) You must make the rental payments required by paragraphs (a), (b)(1), (b)(2), and (c) of this section on an annual basis, for a 5-year period, or for multiples of 5 years. You must make the first payment at the time you submit the pipeline right-of-way application. You must make all subsequent payments before the respective time periods begin.

[FR Doc. 03–10173 Filed 4–23–03; 8:45 am]
BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–03–004b and ID–03–001b; FRL–7487–3]

Approval and Promulgation of State Implementation Plans; Prevention of Significant Deterioration (PSD); Idaho and Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing amendments to the State implementation plans (SIPS) for Idaho and Oregon concerning the PSD program mandated by part C of title I of the Clean Air Act (hereinafter CAA or Act). The amendments clarify that the newly published provisions of the Federal PSD rule are incorporated into the applicable implementation plans for Indian Country in Idaho and Oregon. The amendments also clarify that the newly published provisions of the Federal PSD rule are incorporated into the applicable implementation plan for other sources in Idaho that were permitted under the Federal PSD program prior to August 22, 1986, the effective date of EPA's approval of Idaho's PSD program as part of the Idaho SIP.

DATES: Written comments must be received on or before May 27, 2003.

ADDRESSES: Written comments should be addressed to: Connie Robinson, EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of the information supporting this action are available for inspection during normal business hours at the following location: EPA, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Connie Robinson, (206) 553–1086.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, the EPA is approving these amendments as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: April 16, 2003.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 03–10067 Filed 4–23–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–88 –200227(b); FRL–7485–3]

Florida: Revision to Jacksonville, Florida Ozone Air Quality Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the Florida Department of Environmental Protection (DEP) on November 28, 2001, for the Duval County 1-hour ozone maintenance plan. More specifically, EPA is proposing to approve the state's new motor vehicle emissions budgets (MVEB) for volatile organic compounds (VOCs) and nitrogen oxides (NO_X) for 2005. This submittal updates the maintenance plan by establishing new transportation conformity MVEB for the year 2005, for use by the Metropolitan Planning Organization (MPO). The MVEB represent the VOCs and the NO_X emissions currently projected by the MPO for the year 2005, plus a small

allocation from the areas "safety margin" for each pollutant to accommodate any further refinements that the MPO may need to make these projections. This allocation will still maintain the total emissions for the area at or below the attainment level for this maintenance area. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 27, 2003.

ADDRESSES: All comments should be addressed to: Lynorae Benjamin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with appropriated office at least 24 hours before visiting day. Reference file FL-88 . The Region 4 office may have additional background documents not available at the other locations.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. (Lynorae Benjamin, (404) 562–9040).

Florida Department of Environmental Protection, Air Resource Management Division, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Lynorae Benjamin, Air Quality Modeling and Transportation Section; Air Planning Branch; Air, Pesticides, and Toxics Management Division; Region 4 Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Benjamin's telephone number is (404) 562–9040. She can also be reached via electronic mail at *benjamin.lynorae@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: April 15, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–10064 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AL–060–200320(b); FRL–7486–9]

Approval and Promulgation of Implementation Plans: Revisions to the Alabama State Implementation Plan

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve miscellaneous revisions to the Alabama State Implementation Plan submitted on March 13, 2003, by the State of Alabama. The revisions include addition of rule of chapter 335–3–1–.15 regarding emission inventory reporting requirements for stationary sources, revision of chapter 335–3–3 regarding removal, handling and disposal of asbestos-containing material, revision of chapter 335–3–8 to make minor technical corrections, and revision of chapter 335–3–17 to incorporate changes made to the Federal regulations regarding transportation conformity. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before May 27, 2003.

ADDRESSES: All comments should be addressed to: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW.; Atlanta, Georgia 30303–8960.

Copies of documents relative to this action are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

Alabama Department of Environmental Management, 400 Coliseum Boulevard, Montgomery, Alabama 36110–2059.

FOR FURTHER INFORMATION CONTACT: Sean Lakeman; Regulatory Development Section; Air Planning Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW.; Atlanta, Georgia 30303–8960. Mr. Lakeman can also be reached by phone at (404) 562–9043 or by electronic mail at *lakeman.sean@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**.

Dated: April 15, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–10062 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. ; I.D. 032103B]

RIN 0648–AQ72

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast (NE) Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed emergency rule; request for comments.

SUMMARY: NMFS proposes an emergency rule under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to implement measures intended to reduce overfishing on species managed under the NE Multispecies Fishery Management Plan (FMP). This proposed rule would continue measures specified in the Settlement Agreement Among Certain Parties (Settlement Agreement), which were implemented as ordered by the U.S. District Court for the District of Columbia (Court) in a Remedial Order issued on May 23, 2002 (Order). These measures include: a freeze on days-at-sea (DAS) at the highest annual level used from fishing years 1996–2000 and a 20–percent cut from that level; a freeze on the issuance of new open access Hand-gear permits; gear restrictions; modifications and additions to closure areas; and restrictions on yellowtail flounder catch. In addition, this rule would implement a NE Multispecies DAS Leasing Program (Program), which is being proposed to mitigate impacts of these measures and to provide flexibility to some segments of the fishing industry. NMFS and two of the plaintiffs filed a motion with the Court requesting an extension of the August 22, 2003, implementation schedule until May 1, 2004. The Court granted an extension of the Court-ordered timeline for Amendment implementation until May 1, 2004. This emergency action is necessary to ensure that the regulations governing the NE multispecies fishery continue to be in compliance with the Court's Order.

DATES: Comments must be received no later than 5 p.m., local time, on May 27, 2003.

ADDRESSES: Written comments on the proposed emergency rule should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Proposed Emergency Rule for Groundfish." Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

Requirements should be sent to the Regional Administrator and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

Written comments regarding the proposed collection-of-information Copies of this proposed rule, including the Environmental Assessment/ Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/ RIR/IRFA) are available upon request from the Regional Administrator. The EA/RIR/IRFA is also accessible via the Internet at *http://www.nero.nmfs.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: 978–281–9347, fax: 978–281–9135; email: *thomas.warren@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2002, in response to the Order issued by the Court, NMFS published an interim final rule (67 FR 50292) that implemented management measures intended to reduce overfishing on species managed under the FMP and to implement the measures contained in the Settlement Agreement. Measures implemented on August 1, 2002, included: A freeze on DAS based on the highest annual level used from fishing years 1996–2000 and reduced by 20–percent; a freeze on the issuance of new open access Hand-gear permits; increased gear restrictions for certain gear types, including gillnets, hook-gear and trawl nets; modifications and additions to the closure areas; and limits on yellowtail flounder catch.

The Order specified that the management measures implemented by the August 1, 2002, interim rule must remain in effect until implementation of Amendment 13 to the FMP. Amendment 13 was initially scheduled to be in effect no later than August 22, 2003. However, due to the need for additional time to address unanticipated concerns related to NMFS' Northeast Fisheries Science Center's trawl survey and the new biological reference points developed for the NE multispecies stocks, NMFS and two of the plaintiffs filed a motion with the Court requesting an extension of the August 22, 2003, implementation schedule until May 1, 2004. On December 4, 2002, the Court granted an extension of the Court-ordered timeline for Amendment 13 implementation until May 1, 2004.

On January 22, 2003, NMFS published a notice of continuation of regulations in the **Federal Register** to inform the public that NMFS was continuing the interim regulations for a second 180–day period (ending July 27, 2003). Under section 305(c)(3)(B) of the Magnuson-Stevens Act, interim regulations implemented under section 305(c) are limited to two, consecutive 180–day periods. The Court subsequently granted an extension of the original schedule for implementation of Amendment 13 to May 1, 2004. However, because the Settlement Agreement specifies that the current management measures must remain in effect until Amendment 13 is implemented, and because the second 180–day period for the interim regulations expires on July 27, 2003, there is insufficient time to implement an action to continue the interim measures under the Magnuson-Stevens Act, except through the Secretary's emergency authority under section 305(c) of the Magnuson-Stevens Act.

In addition to continuing the August 1, 2002, measures specified in the Settlement Agreement and Order, NMFS proposes to implement a DAS leasing program under its emergency action authority (305(c) of the Magnuson-Stevens Act and 62 FR 44421, August 21, 1997) in order to mitigate the potential harm resulting from the continuation of the August 1, 2002, interim final rule measures. This proposed emergency rule would implement a DAS Leasing Program that would allow limited access NE multispecies vessels to lease their NE multispecies DAS. This Program would alleviate some of the negative economic and social impacts resulting from the reduced DAS allocations that would be continued as a result of this proposed rule. The Program would be designed to maintain conservation neutrality, i.e., maintain groundfish fishing effort close to the level that would be fished under the current management measures in the absence of a DAS Leasing Program.

Management Measures

This proposed rule would implement (i.e., continue) the following management measures, effective July 28, 2003, which are intended to reduce overfishing on all regulated species managed under the FMP, and to reduce the negative economic impact of the current DAS allocations.

Regulated Mesh Areas (RMAs)

This proposed rule would continue the RMAs established by the August 1, 2002, interim rule for the Gulf of Maine (GOM), Georges Bank (GB), Southern New England (SNE) and Mid-Atlantic (MA) RMAs. The GOM RMA is the area north of the GOM cod exemption line, which is currently used to define the areas where the GOM cod and GB cod trip limits apply, and the GB RMA lies south of the GOM cod exemption line, and continues south to the EEZ for the areas east of 69° 00′ W. long. The SNE RMA would be defined as the area west of the GB RMA and east of a line beginning at the intersection of 74° 00′ W. long. and the south-facing shoreline of Long Island, NY, and running southward along the 74 00' W. long. line. The MA RMA would be defined as the area west of the SNE RMA. Specific management measures would apply, depending on the area fished. For the purposes of the exempted fishery programs already implemented under the FMP, the GOM/GB and SNE RMAs, as defined under Amendment 7 to the

FMP, would remain in effect and be referred to as "Exemption Areas.≥

DAS Freeze

This proposed rule would continue the DAS baseline that was established for each vessel by the August 1, 2002, interim rule, based on the permit history of that vessel. This baseline is as follows: The used DAS baseline for a limited access permit would be calculated based on the highest number of DAS that a vessel(s) fished during any single fishing year among the 1996 through 2000 fishing years, which includes the period May 1, 1996, through April 30, 2001, not to exceed the vessel's current DAS allocation in any given year. For any vessel where the calculation of the baseline DAS results in a net amount of DAS less than 10, that vessel would be allocated a used DAS baseline of 10 DAS. Because vessel owners were already provided an opportunity to correct any errors regarding their current DAS baselines (under the August 1, 2002, interim rule), and the proposed DAS baseline would incorporate any corrections made, no additional opportunity to correct used DAS baseline allocations would be provided under this proposed rule.

DAS Effort Reduction

The proposed emergency measures would result in DAS allocations for the 2003 fishing year consistent with the 20–percent DAS reductions that were implemented by the August 1, 2002, interim rule (i.e., the current DAS allocations). That is, for the 2003 fishing year, each vessel's DAS allocation would be equal to that vessel's used DAS baseline, minus 20 percent of that vessel's used DAS baseline. Assuming that these measures become effective July 28, 2003, each vessel's DAS remaining for the 2003 fishing year would equal that vessel's used DAS baseline, minus 20 percent of that vessel's used DAS baseline, minus any DAS that the vessel fished during the period May 1 through July 27, 2003.

Freeze on Issuance of New Hand-gear Permits

Under this proposed rule, vessels that have never been issued an open access NE multispecies Hand-gear permit would be prohibited from obtaining a Hand-gear permit for the duration of this action.

Prohibition on Front-loading the DAS Clock

The term "frontloading the DAS clock" refers to the practice of vessel owners starting their DAS clock well in advance of the actual departure of the vessel. This proposed rule would continue the prohibition on frontloading. Under this prohibition, a vessel owner or authorized representative would be required to notify NMFS no earlier than 1 hour prior to the vessel leaving port to fish under the NE multispecies DAS program. A DAS would begin once the call has been received and a confirmation number is given. This measure would apply in all management areas.

Closed Area Additions/Modifications

This proposed rule would continue the closure areas established under the August 1, 2002, interim rule for the Western Gulf of Maine (WGOM) Area Closure, the Rolling Closure Areas, the Cashes Ledge Closure Area, and the GB Seasonal Closure Area. Exemptions to the GOM rolling closure areas, WGOM, Cashes Ledge Closure Area, and GB Seasonal Closure Area would remain the same as established under the August 1, 2002, interim rule. Charts of the proposed closure areas are available from the Regional Administrator upon request (see **ADDRESSES**).

Gear Restrictions

Trawl Vessels, When Fishing in the GOM, GB, or MA RMAs

Under this proposed rule, vessels fishing with otter trawl gear, and fishing any part of a NE multispecies DAS trip in the GOM, GB, or MA RMAs, would be required to fish with a minimum 6.5–inch (16.5–cm) diamond or square mesh codend. This requirement would apply only to the codend of the net; the minimum mesh-size for the remaining portion of the net would be 6.0–inch (15.24–cm) diamond mesh or 6.5–inch (16.5–cm) square mesh, or any combination thereof. The codend would be defined as follows: 25 meshes for diamond mesh, or 50 bars in the case of square mesh, from the terminus of the net for vessels 45 ft (13.7 m) in length and less; and 50 meshes for diamond mesh, or 100 bars in the case of square mesh, from the terminus of the net for vessels greater than 45 ft (13.7 m) in length.

Gillnet Vessels, When Fishing in the GOM RMA

Under this proposed rule, limited access multispecies vessels that obtain an annual designation as a Trip gillnet vessel, when fishing in the GOM RMA during any part of a trip under a multispecies DAS, would be required to fish with nets with a minimum of 6.5–inch (16.5–cm) mesh and would be restricted to 150 nets, with one tag fixed to each net. Multispecies vessels that obtain an annual designation as a Day gillnet vessel would be allowed to fish up to 100 nets, provided that, when fishing any part of a trip under a NE multispecies DAS in the GOM RMA, the vessel complies with the following specifications: When fishing with flatfish nets, vessels could fish no more than 100 nets, with a minimum mesh size of 7 inches (17.8 cm), with one tag affixed to each net; when fishing with roundfish nets, vessels would be restricted to fishing during July through February, and would be allowed to fish no more than 50 nets, with a minimum mesh size of 6.5 inches (16.5 cm), with two tags affixed to each net. Any tag not affixed to a net would have to be retained on the vessel and be immediately available for inspection.

Gillnet Vessels, When Fishing in the GB RMA

Under this proposed rule, limited access NE multispecies vessels that fish under a NE multispecies DAS with gillnet gear in the GB RMA at any time throughout the fishing year would be required to declare into the Day or Trip gillnet category. Vessels fishing under either the Day or Trip gillnet category in the GB RMA during any part of a trip under a NE multispecies DAS would be required to fish with nets with a minimum of 6.5–inch (16.5–cm) mesh and would be restricted from fishing more than 50 nets, with two tags fixed to each net.

Trawl Vessels, When Fishing in the SNE RMA

Under this proposed rule, when fishing any part of a NE multispecies DAS in the SNE RMA, otter trawl vessels would be required to fish with a minimum 7.0–inch (17.8–cm) diamond or 6.5–inch (16.5–cm) square mesh codend. This requirement would apply only to the codend of the net, which is defined as described above under the GOM and GB trawl mesh restrictions.

Gillnet Vessels, When Fishing in the SNE RMA

Under this proposed rule, limited access NE multispecies vessels that fish under a NE multispecies DAS with gillnet gear in the SNE RMA at any time throughout the fishing year would be required to declare into the Day or Trip gillnet category. Vessels fishing under either the Day or Trip gillnet category in the SNE RMA during any part of a trip under a NE multispecies DAS would be required to fish with nets with a minimum of 6.5–inch (16.5–cm) mesh, and would be restricted from fishing more than 75 nets, with two tags fixed to each net.

Gillnet Vessels, When Fishing in the MA RMA

Under this proposed rule, limited access NE multispecies vessels that fish under a NE multispecies DAS with gillnet gear in the MA RMA would be allowed to fish the same type and number of nets as allowed prior to the implementation of the August 1, 2002, interim rule. That is, vessels would be allowed to continue to fish up to 160 nets. Vessels fishing under the monkfish DAS program would be limited to 150 nets.

Gillnet Vessels, When Fishing Under a Monkfish DAS

Under this proposed rule, any monkfish vessel that has a monkfish limited access Category C or D permit (i.e., a vessel that possesses both a monkfish and NE multispecies limited access permit) and that is fishing under a monkfish DAS, in all areas, would be restricted from fishing more than 150 nets, provided the vessel fishes with nets with a minimum mesh size of 10 inches (25.4 cm). Vessels would be required to affix one tag to each net. Category A and B monkfish vessels would be unaffected by these proposed measures.

Large-Mesh Vessel Permit Categories

Under this proposed rule, vessels that have a valid limited access NE multispecies Large Mesh Individual DAS category or a Large Mesh Fleet DAS category permit, when fishing in the GOM, GB, and SNE RMAs, with trawl nets or sink gillnets, would be required to fish with nets with a minimum mesh size of 8.5–inch (21.6–cm) diamond or square mesh throughout the entire net. Vessels fishing with trawl nets or sink gillnets when fishing in the MA RMA would be required to fish with nets with a minimum mesh size of 7.5–inch (19.0–cm) diamond or 8.0–inch (20.3–cm) square mesh throughout the entire net.

Hook-gear Vessels

Under this proposed rule, vessels that have a valid NE multispecies limited access permit would be prohibited from using de-hookers (crucifiers) with less than 6–inch (15.2–cm) spacing between the fairlead rollers. In addition, limited access Small-vessel permitted vessels and limited access permitted vessels that fish any part of a NE multispecies DAS trip in the GOM, GB or SNE RMAs would be required to use 12/0 or larger circle hooks on longline gear, and would be subject to a maximum number of rigged hooks on board the vessel. Specifically, vessels fishing in the GOM or SNE RMAs would be prohibited from possessing more than 2,000 rigged hooks, and vessels fishing in the GB RMA would be prohibited from possessing more than 3,600 rigged hooks.

Table 1 summarizes the proposed gear restriction measures for each gear sector when fishing in the various RMAs.

Table 1. Gear Restrictions by Regulated Mesh Areas.

	GOM	GB	SNE	Mid-Atl
MINIMUM MESH SIZE RESTRICTIONS FOR GILLNET GEAR				
NE Multispecies Day Gillnet Category*	July-February only: Roundfish nets 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net	All nets 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net	All nets 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net	Roundfish nets 5.5" (14.0 cm) diamond or 6.0" (15.2 cm) square mesh; 80-net allowance; 2 tags/net
	Year-round: Flatfish nets 7.0" (17.8 cm) mesh; 100-net allowance; 1 tag/net			Flatfish nets 5.5" (14.0 cm) diamond or 6.0" (15.2 cm) square mesh; 160-net allowance 1 tag/net;
NE Multispecies Trip Gillnet Category*	All nets 6.5" (16.5 cm) mesh; 150-net allowance; 1 tag/net	All nets 6.5" (16.5 cm) mesh; 50-net allowance; 2 tags/net	All nets 6.5" (16.5 cm) mesh; 75-net allowance; 2 tags/net	All gillnet gear 5.5" (14.0 cm) diamond or 6.0" (15.2 cm) square mesh; No net limit; no tag requirement
Monkfish Vessels**	10" (25.4 cm) mesh/150-net allowance			
	1 tag/net			
MINIMUM MESH SIZE RESTRICTIONS FOR TRAWL GEAR				
Codend only mesh size*	6.5" (16.5 cm) diamond or square		7.0" (17.8 cm) diamond or 6.5" (16.5 cm) square	6.5" (16.5 cm) diamond or square
Large Mesh Category - entire net	8.5" (21.59 cm) diamond or square			7.5" (19.0 cm) diamond or 8.0" (20.3 cm) square
MAXIMUM NUMBER OF HOOKS AND SIZE RESTRICTIONS FOR HOOK-GEAR* **				
Limited access multispecies vessels	2,000 hooks	3,600 hooks	2,000 hooks	4,500 hooks (Hook-gear vessels only)
	No less than 6" (15.2 cm) spacing allowed between the fairlead rollers			
	12/0 circle hooks required for longline gear			N/A

* When fishing under a NE multispecies DAS
** Monkfish Category C and D vessels, when fishing under a monkfish DAS
*** When fishing under a NE multispecies DAS or when fishing under the Small-vessel permit

Cod Minimum Fish Size (Commercial vessels)

Under this proposed rule, the minimum size for cod that may be lawfully sold would be 22 inches (55.9 cm)(total length).

NE Multispecies Possession Restrictions

Yellowtail Flounder

This proposed rule would require enrollment in one of two authorization programs for any possession of yellowtail flounder, and would implement restrictions on the harvest of yellowtail flounder when fishing in the SNE and MA RMAs and in the GB RMA south of 40° 00' N. lat. From March 1 through April 30, 2004, all vessels would be subject to a possession and landing limit of 250 lb (113.4 kg) of yellowtail flounder per trip when fishing any part of a trip in the SNE and MA RMAs north of 40° 00' N. lat. In addition, from June 1 through February 28, all vessels would be subject to a possession and landing limit of 750 lb (340.3 kg) of yellowtail flounder per day, and a maximum trip limit of 3,000 lb (1,361.2 kg) per trip when fishing any part of the trip in the SNE and MA RMAs north of 40° 00' N. lat. A vessel fishing for yellowtail flounder in the SNE and MA RMAs north of 40° 00' N. lat. would be allowed to possess and land up to the seasonal yellowtail flounder allowable limits, provided the vessel does not fish south of 40° 00' N. lat. and has on board a SNE/MA yellowtail flounder possession/landing authorization issued by the Administrator, Northeast Region, NMFS (Regional Administrator). Under this proposed rule, all vessels would be prohibited from possessing yellowtail flounder in the MA, SNE or GB RMAs unless fishing north of 40° 00' N. lat., or unless the vessel is transiting areas south of 40° 00' N. lat. and all fishing gear on board the vessel is properly stowed according to the regulations. Vessels fishing east or north of this area would not be subject to the yellowtail flounder possession limit restrictions, provided that the vessel does not fish west of the GB RMA and possesses on board a GOM/GB yellowtail flounder possession/landing authorization issued by the Regional Administrator. Vessels exempt from the yellowtail flounder possession limit requirements would be allowed to transit areas outside of the specific exempted area that they are fishing, provided that their gear is stowed in accordance with one of the provisions of § 648.23(b).

Hand-gear Permitted Vessels

Under this proposed rule, the cod, haddock and yellowtail flounder possession limit for vessels that have been issued a valid open access Hand-gear permit would continue to be set at 200 lb (90.7 kg), combined, per trip.

Such vessels would not be required to obtain a yellowtail flounder possession/landing authorization in order to harvest yellowtail flounder, but would not be allowed to harvest yellowtail flounder south of 40° 00' N. lat.

GB Cod Trip Limit

This proposed rule would continue the current method of how the DAS clock accrues for those vessels fishing in the GB RMA and harvesting GB cod, which is consistent with how the DAS clock accrues when fishing in the GOM RMA and harvesting GOM cod. That is, a vessel subject to this landing limit restriction could come into port with, and offload cod in excess of the landing limit, as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that the vessel operator does not call out of the DAS program and does not depart from a dock or mooring in port until the rest of the additional 24–hr block of the DAS has elapsed, regardless of whether all of the cod on board is offloaded.

GOM Cod

This action would maintain the daily possession limit for GOM cod at 500 lb (227.3 kg) per DAS, with a maximum possession limit of 4,000 lb (1,818.2 kg) per trip.

Recreational and Charter/Party Vessel Restrictions

Under this proposed rule, the minimum size for cod and haddock that could be retained by a federally permitted charter/party vessel not on a DAS, or a private recreational vessel not holding a Federal permit and fishing in the EEZ, would be 23 inches (58.4 cm) total length. This proposed rule would also continue a cod and haddock bag (possession) limit for the charter/party recreational fishing sector when a vessel is fishing in the GOM RMA and not under a DAS. During the period April through November, each person on a charter/party vessel not fishing under a DAS would be allowed to possess no more than 10 cod or haddock, combined, per trip. For each trip during the period December through March, each person on a charter/party vessel not fishing under a DAS would be allowed to possess no more than 10 cod or haddock combined, no more than 5 of which may be cod. This action would continue the restriction of the cod possession limit for private recreational vessels by requiring that, when fishing in the GOM RMA during the period December through March, each person on a recreational vessel would be allowed to possess no more than 10 cod or haddock combined, no more than 5 of which may be cod. Cod and haddock harvested by recreational vessels with more than one person aboard could be pooled in one or more containers. Compliance with the possession limit would be determined by dividing the number of fish on board by the number of persons on board.

For a vessel that intends to charter/party fish in the GOM closed areas, this proposed rule would require that the vessel possess on board a letter of authorization (LOA) issued by the Regional Administrator. The LOA would be required for the entire fishing year if the vessel intends to fish in the year-round GOM closure areas, and for a minimum of 3 months if the vessel intends to fish in the seasonal GOM closure areas. Vessels could obtain an LOA by calling the NMFS Permit Office at 978–281–9370.

All other existing recreational measures would remain in effect, including the no-sale provision for all fish caught for both the party/charter and private recreational sectors when not fishing under a NE multispecies DAS. Table 2 summarizes the proposed party/charter and private recreational sector measures. NMFS is especially seeking comment on the recreational measures that would be implemented by this action.

TABLE 2. CHARTER/PARTY AND PRIVATE RECREATIONAL FISHING MEASURES.

	Minimum Fish Size, Inches Cod & Haddock[1]	Bag Limit (combined)	GOM Closure Exemption Authorization
Charter/party not on a DAS	23	*April-November*: 10 cod/haddock[2] *December-March*: 10 cod/haddock, no more than 5 which can be cod[2]	A minimum of 3 months, or duration of closure
Private Recreational	23	*Areas outside of GOM RMA*: 10 cod/haddock *GOM RMA*:10 cod/haddock, no more than 5 which can be cod, Dec.-Mar.	N/A

[1] All other minimum fish sizes remain unchanged.
[2] When fishing in the GOM RMA.

Observer Coverage

NMFS was ordered by the Court to expand for all gear sectors its observer coverage in the NE multispecies fishery by providing 5–percent coverage, or higher, if statistically necessary to monitor and collect information on bycatch, as well as other biological and fishery-related information. Additionally, NMFS was ordered, by May 1, 2003, to expand further its observer coverage to 10 percent for all gear sectors, or that level necessary to provide statistically reliable data. Regarding this issue, NMFS has determined that 5 percent observer coverage would provide sufficiently robust statistical data to assess the amount and type of bycatch in the NE multispecies fishery. This conclusion is based upon an analysis of the relative precision of discard estimates of 17 groundfish stocks, using observer coverage and landings data for the year 2000 (Northeast Fisheries Science Center, 2003).

NE Multispecies DAS Leasing Program

Under this proposed rule, NMFS would implement a program to allow limited access NE multispecies permit holders to lease NE multispecies DAS to one another, under the conditions and restrictions described below. For purposes of this Program, the term "lease" refers to the transfer of the use of DAS from one limited access NE multispecies vessel to another for no more than one fishing year (except if carried over). Implementation of the proposed Program on an emergency basis is necessary to provide the fishing industry with an opportunity to mitigate the potential economic harm caused by the continuation of the restrictive measures that would be implemented by the proposed action, while maintaining conservation neutrality. In addition, this program is designed to allow for efficient and effective administration by NMFS.

Vessels Eligible to Lease NE Multispecies DAS

All vessels with a valid limited access NE multispecies DAS permit would be eligible to lease NE multispecies DAS to or from another such vessel through the Program, unless otherwise noted below. Eligible vessels acquiring leased NE multispecies DAS would be termed the "lessee," or transferee, and eligible vessels leasing-out NE multispecies DAS would be termed the "lessor," or transferor. Although all eligible vessels would be allowed to lease NE multispecies DAS from another such vessel, vessels holding the minimum allocation of 8 DAS would be prohibited from leasing-out, or transferring, DAS under the Program. Prohibiting vessels with the minimum allocation of 8 DAS from leasing-out their DAS to another vessel would prevent previously inactive (latent) DAS from becoming active, since most of these vessels fished either zero DAS or close to zero DAS during the 1996–2000 qualification period. This restriction would be necessary to promote the conservation neutrality of the Program. For similar reasons, NE multispecies DAS associated with Confirmation of Permit Histories (CPH) would be prohibited from being activated for the sole purpose of leasing-out DAS to another vessel.

The proposed Program and its restrictions and conditions are described below:

NE Multispecies DAS Leasing Application

Under this proposed rule, an eligible vessel owner wanting to lease NE multispecies DAS would be required to submit a complete application to lease DAS (Application) at least 45 days prior to the time that the vessel intends to fish the leased DAS. (Vessels fishing with a vessel monitoring system would likely be able to receive notification of an approved lease agreement sooner than 45 days.) Upon approval of the Application by NMFS, the lessor and lessee would be sent written confirmation of the approved application. Leased DAS would be effective only during the fishing year for which they were leased, unless the vessel has carry-over DAS (see below). A vessel may lease to as many qualified vessels as desired, provided that all of the restrictions and conditions described in this proposed rule are complied with.

An Application may be submitted at any time throughout the fishing year, up until March 1. A complete application would consist of the following: Lessor's (transferor) owner name, vessel name, permit number and official number or state registration number; lessee's (transferee) owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total price paid for the leased DAS; signatures of lessor and lessee; and date the form was completed. Information obtained from the Application would be held confidential in accordance with the Magnuson-Stevens Act and applicable regulations.

The Regional Administrator could reject an Application for any of the following reasons: The application is incomplete or submitted after the March 1 deadline; the lessor or lessee does not possess a valid limited access NE multispecies permit; the lessor's or lessee's DAS are under sanction; lessor's vessel is prohibited from fishing; the lessor's limited access multispecies permit is sanctioned; or the lessor has an insufficient number of allocated DAS available to lease. Upon denial of an Application, the Regional Administrator would send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator would be the final agency decision and there would be no opportunity to appeal the Regional Administrator's decision as specified in NMFS' regulations.

Sub-leasing and Carry-over Prohibition

Under this proposed rule, no sub-leasing of NE multispecies DAS would be allowed. This means that, once a lease application is approved by NMFS, the leased DAS could not be leased a second time, even if the lessee was prevented from fishing the leased DAS due to circumstances beyond his/her control (e.g., a vessel sinking). This restriction is necessary to ensure NMFS' ability to administer and account for all leased DAS in an efficient manner.

Under this proposed rule, eligible vessels would be allowed to carry over up to 10 DAS, regardless of whether these DAS were allocated or leased days, in order to promote safety at sea in the waning days of the fishing year. Thus, a vessel that purchased leased DAS that remained unused at the end of the fishing year would be allowed to carry over these leased DAS to the subsequent fishing year. To determine DAS fished for a given fishing year, a vessel's allocated DAS (as opposed to DAS that it acquired through lease) would be counted first for purposes of determining how many DAS remain for the fishing year. As an example, if a vessel was allocated 50 DAS and acquired an additional 20 DAS by leasing them from another vessel, that vessel would have 70 DAS that it could use during the fishing year. If that vessel, for whatever reason, used only 60 DAS during that year, NMFS would consider that the vessel's 50 allocated DAS were used first, and that 10 of the leased DAS were then used. The remaining 10 leased DAS that were unused would be carried over to the next fishing year.

Minimum and Maximum Leased DAS

This proposed rule would require that vessels lease a minimum of 5 NE multispecies DAS to any one vessel, or the full amount of the vessel's remaining allocated DAS, whichever is less. For example, a vessel with 50 DAS could lease any number of DAS equal to 5 or more DAS to as many vessels as possible. If the vessel leased 6 DAS to eight vessels, leaving 2 DAS (i.e., 6 DAS x 8 = 48 DAS), the vessel could then lease its remaining 2 DAS to another vessel, since it only has 2 DAS left. Although setting a minimum increment at a level less than 5 DAS would provide additional flexibility to the industry, NMFS believes it would be administratively burdensome to process and monitor the increased number of leases that this may invite, particularly in the first year of implementation. Because, as a new Program, the actual administrative burden associated with the Program is unknown, NMFS has determined that a 5- DAS minimum for vessels applying to lease DAS would better enable NMFS to ensure it can effectively administer the Program. Nevertheless, NMFS is interested in soliciting public comment on the feasibility and flexibility of this restriction, to get a better idea of whether the 5–DAS minimum is appropriate. Under this proposed rule, there would be no maximum number of DAS a lessor could lease out to another vessel. Similarly, there would be no maximum number of DAS a lessee could receive. In addition, a lessor would be allowed to lease to multiple lessees, and a lessee could lease from multiple lessors. Vessel owners with more than one vessel with a valid limited access NE multispecies DAS permit would be allowed to lease NE multispecies DAS from one eligible vessel under their ownership to another, to allow the owner to optimize the number of DAS available for use by his/her vessels.

Adjustments to Leased DAS

Several of the stocks managed under the FMP are considered overfished. To help ensure that fishing effort is not increased under the proposed Program, an adjustment factor would be applied to leased DAS when DAS are being leased from a smaller horsepower class vessel to a larger horsepower class vessel (that is, from a vessel with less fishing power to one with more fishing power). For the purposes of the Program, all limited access NE multispecies DAS permit holders would be classified according to the baseline horsepower associated with that permit as of April 24, 2003. Thus, if the lessee vessel were in a higher horsepower category than the lessor vessel, the lessee would receive a fraction of the DAS leased, based on the relative horsepower classes of the two vessels (see Table 3). Conversely, if the lessee vessel were in the same or a lower horsepower category than the lessor vessel, the lessee would be allowed to use the full amount of DAS leased.

TABLE 3. ADJUSTMENT FACTORS FOR DAS LEASES.

		Lessor Vessel (seller vessel) Horsepower Class					
		0–175	176–250	251–324	325–400	401–65	651 +
Lessee Vessel (buyer vessel) Horse-power Class	0–175	1.00	1.00	1.00	1.00	1.00	1.00
	176–250	0.80	1.00	1.00	1.00	1.00	1.00
	251–324	0.70	0.88	1.00	1.00	1.00	1.00
	325–400	0.58	0.73	0.83	1.00	1.00	1.00
	401–650	0.49	0.61	0.70	0.84	1.00	1.00
	651 +.	0.36	0.45	0.52	0.62	0.74	1.00

For example, if Vessel A, a 176–250 horsepower class vessel, leases 10 NE multispecies DAS to Vessel B, a vessel in the 325–400 horsepower class, Vessel B would receive 7.3 DAS (10 x 0.73). Using these same horsepower class vessels, if Vessel B leases 10 DAS to Vessel A, Vessel A would receive 10 DAS.

Leasing Restrictions for Hook-gear Permitted Vessels

This rule proposes that limited access NE multispecies Hook-gear permitted vessels (Category D) be allowed to lease NE multispecies to and from other limited access Hook-gear permitted vessels only. This restriction is being proposed because current regulations prohibit limited access Hook-gear permitted vessels from using gear other than hook-gear.

History of DAS Use and Landings

Because, in the future, DAS use and landing history may be used to determine fishing rights, the proposed Program includes provisions for how such history will be accounted for. For ease of administration, under this proposed Program, history of leased DAS use would be presumed to remain with the lessor vessel, and landings resulting from the leased DAS use would be presumed to be attributed to the lessee vessel. However, the history of used leased DAS would be presumed to remain with the lessor only if the lessee actually fished the leased DAS in accordance with the DAS notification program specified at § 648.10. For purposes of DAS-use history, DAS allocated to the vessel would be considered to be the first DAS to be used, followed by the leased DAS. For example, if a vessel had an allocation of 50 DAS, leased an additional 20 DAS, and actually used a total of 60 DAS during the fishing year, the lessor of the 20 DAS would be attributed with 10 DAS, for purposes of its DAS-use history, because the lessee vessel would have used its 50 allocated DAS first, then 10 of the 20 DAS it acquired from the lessor.

Under the proposed Program, history of fish landings would be presumed to be attributed to the vessel that actually landed the fish (lessee). Attributing landings history to the lessor would be inconsistent with the current vessel reporting system used for all other fisheries in the Northeast Region, and would be extremely difficult and costly for NMFS to implement.

In the case of multiple lessors, the leased DAS actually used would be attributed to the lessors based on the order in which such leases were approved by NMFS. For example, if lessee Vessel A has 50 allocated DAS, leases 10 DAS from lessor Vessel B on August 1, and leases another 10 DAS from lessor Vessel C on August 5, then the first 50 DAS used by lessee Vessel A during that fishing year would be attributed to lessee Vessel A, the next 10 DAS would be attributed to lessor Vessel B, and the next 10 DAS would be attributed to lessor Vessel C, for purposes of DAS-use history. If lessee Vessel A used only 60 DAS during the fishing year, then lessor Vessel C would not be attributed with DAS use for the DAS it leased to Vessel A during the fishing year for which the DAS were leased (these DAS could be attributed to

Vessel C in the subsequent fishing year, if they are carried over and used). In cases where a horsepower adjustment factor is applied to leased DAS, the number of DAS attributed to the lessor for those leased DAS used would be the actual number of DAS leased, prior to the calibration reduction. For example, suppose Vessel A leased 10 DAS from Vessel B and, because Vessel A is in a larger horsepower category than Vessel B, the 10 leased DAS were reduced to 8.8 DAS that could actually be fished. If the 8.8 leased DAS were fished by Vessel A, then Vessel B would still be credited with 10 DAS used for that year, for purposes of its DAS use history.

Termination of NE Multispecies DAS Leasing Program

Under this proposed rule, the Regional Administrator would maintain the authority to terminate acceptance of new applicants to the Program if, due to unanticipated impacts, she determines that the goals of reducing fishing mortality or increasing economic opportunity would be seriously undermined by allowing the continuance of leasing of DAS. If such a determination is made, the public would be notified through rulemaking consistent with the Administrative Procedure Act (APA), and would be based upon information including, but not limited to, projected landings, patterns of DAS use, or information obtained from the leasing program.

Monkfish Category C and D Vessels

Similar to the August 1, 2002, interim rule measures, a vessel with both a limited access NE multispecies permit and a limited access monkfish permit (monkfish Category C or D vessels) for which the NE multispecies DAS reductions proposed under this proposed emergency rule would result in the vessel having more allocated monkfish DAS than NE multispecies DAS, the vessel would be allowed to fish under a monkfish-only DAS when multispecies DAS are no longer available, provided the vessel fishes under the provisions of the monkfish Category A or B permit, or unless otherwise noted below. Under this proposed rule, monkfish Category C and D vessels that have remaining monkfish-only DAS at the time of implementation of this emergency rule, and that have submitted a NE Multispecies DAS Leasing Application that has been approved by NMFS, would be required to fish their available "monkfish-only" DAS in conjunction with their leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available. This is consistent with the original intent of the Monkfish Fishery Management Plan (Monkfish FMP).

Under this proposed rule, if a monkfish Category C or D vessel leases DAS to another vessel, the vessel is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated multispecies DAS, leased 10 of its multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS - 37 multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease. The Monkfish FMP specifies that monkfish Category C and D vessels must fish a NE multispecies DAS concurrently with a monkfish DAS. Not deducting monkfish DAS in a situation where NE multispecies DAS are leased (transferred) would allow monkfish and NE multispecies DAS to be fished independently. This could create a significant effort increase in the monkfish fishery.

Other Proposed Modifications to Regulations

For the 2002 fishing year, vessels electing a Day or Trip gillnet designation were allowed to change their designation prior to September 1, 2002. This exemption applied only to the 2002 fishing year and would therefore be eliminated by this proposed rule.

In the August 1, 2002 interim rule, the Cashes Ledge Area Closure regulations omitted a reference to transiting, under a listing of allowable exemptions to the closure, and would therefore be corrected by this proposed rule.

Classification

This rule has been determined to be significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of the preamble and in the SUMMARY section of the preamble and in the IRFA. For management measures that continue the Settlement Agreement, gross revenue in the absence of reliable cost data is considered to be a proxy for profitability. For leasing of DAS, profitability is estimated using a break-even analysis. A summary of the analysis follows:

The IRFA considered three alternatives: The proposed emergency action, the No Action alternative, and a Hard TAC alternative. Analysis of the proposed emergency action examined the impacts on industry that would result from the continuation of the current management measures (Settlement Agreement), with implementation of a days-at-sea (DAS) leasing program. Analysis of the No Action alternative examined the impacts on industry that would result from implementation of the management measures that were in place for the 2001 fishing year (prior to implementation of the Court Order) and allowing fishing inside the WGOM Area Closure. Analysis of the hard TAC alternative examined the impacts to the industry that would result from a hard TAC system that achieved similar fishing mortality reductions as the proposed emergency action. The economic impacts of the first two alternatives were analyzed and described according to the type of management measure as follows: (a) Commercial measures that were modeled (DAS restrictions, area closures, and trip limits); (b) commercial measures that were not modeled (changes to the open access hand gear category, prohibition on frontloading, prohibition on de-hooker use, mesh size restrictions, and limitations on the number of gillnets and hooks); and (c) recreational measures (private recreational vessel and party/charter). The hard TAC alternative is a fundamentally different type of management scheme and the economic impacts were examined in a qualitative manner.

All commercial vessels with a multispecies permit had gross receipts less than $3.5 million, the SBA size standard for defining a small versus large commercial fishing business (3,894 multispecies vessels) (Environmental Assessment of the Settlement Agreement, June 2002). Therefore, there would be no disproportionate economic impacts between small and large entities.

The proposed measures would impact all limited access permit holders (1,383), all open access Hand gear-only permit holders (2,973), and all party/charter operators (1,028 open access permit holders). Based upon the June 2002 Environmental Assessment, the number of participating vessels that may be affected by any one or more of the proposed measures is about 37 percent of the total number of those eligible to participate in some component of the multispecies fishery.

The DAS allocations implemented under the August 2002 rule would continue under the proposed emergency action. The reductions in 2002 DAS allocations impacted all permit categories. There were 1,383 limited access permits with baseline DAS allocations for the 2002 fishing year. Of these permits, 343 received the minimum allocation of 8 DAS. A total of 71, 180 DAS were allocated for the fishing year; a reduction of 45.7 percent compared to the final fishing year 2001 allocations.

The relative reduction in DAS allocations varied by permit category. The total reduction for individual allocation vessels (category A) was 21.7 percent, as compared with 49 percent for category B and 65.9 percent for Category D. Reductions in total DAS allocations for FY 2002 were larger for small vessels (less than 50 ft (15.2 m)), than for medium or large vessels. New York and New Jersey were the two states with the largest reduction in fishing year 2002 DAS allocations. In contrast, under the No Action alternative, the DAS allocations would be markedly larger, with the potential for DAS use to increase above that which was recorded for the 2001 fishing year.

Relative changes to gross revenue were calculated based upon an estimation that DAS use in fishing year 2003 would range from 25 percent to 35 percent less than the number of DAS used during the 2001 fishing year. The estimated revenue loss for the 84 most affected vessels would be 21.3 percent or greater for an assumed 25 percent reduction in DAS, and would be 25 percent for an assumed 35 percent reduction in DAS. For vessels in the 25th to 50th percentile, the estimated revenue loss range from 19.7 percent to 11.5 percent for a 35 percent reduction in DAS use. Revenue loss for the least affected vessels would be no more than 1.5 percent. Relative dependence upon groundfish revenue is an important factor among the various factors that may determine the severity of the impact of the proposed measures on a particular vessel. The greater a vessel's dependence upon groundfish for annual fishing income, the greater the revenue loss is likely to be. The No Action alternative would result in no negative impacts or slightly positive impacts, in comparison with the proposed measures.

With respect to gross annual revenue earned during the 2001 fishing year (pre-settlement agreement), the proposed measures would have the largest adverse economic impacts on vessels in Maine, New Hampshire, and Massachusetts, but among these states, the estimated impacts would be similar. The No Action alternative would have positive economic impacts on vessels that fish in the GOM and fish in the Western Gulf of Maine specifically. The least adverse economic impacts would be for those vessels from states bordering the Gulf of Maine, and for small gillnet vessels or large hook vessels.

A break even analysis was conducted that estimated a total of 86 vessels that would not have enough DAS to cover overhead costs. The analysis further concluded that if vessels were to make a minimum crew share payment of $25,000 per person, there would be 268 vessel that would be able to cover overhead costs, but would not have enough DAS to make this minimum labor payment. However, at this relatively low crew payment, DAS leasing could make it possible for vessels to redistribute DAS so that all vessels could operate profitably.

Leasing of DAS would provide individual vessel owners an opportunity to offset and mitigate the impact of the DAS reductions that were implemented in August, 2002 that would be continued under the preferred alternative. On a scale of the fishery as a whole, the aggregate supply of groundfish is not expected to differ under a DAS leasing program, however, changes in the distribution of landings could result in increases in supply in one port while supplies in other ports may decline. Although it is difficult to predict the number of vessels that would participate in a DAS leasing program, two analyses were conducted. The first analysis identified the number of vessels whose fishing year 2002 DAS allocations would not be sufficient to pay fixed costs plus provide a minimum payment to the vessel crew. Under the leasing program, fewer vessels will actually fish, but the profits for all vessels will be higher than if days at sea leasing were not allowed, and all vessels fished their allocation. Vessels which choose to lease all their DAS can greatly enhance their profit, because the owner is getting all the revenue from the lease without incurring any costs, and in particular not having to pay labor costs. Under the analytical scenario where all vessels can fish up to 100 or 150 days, the average profit level for vessels which lease DAS from other vessels is projected to increase from 31 percent to 60 percent (depending on gear sector) compared to what they would earn if they only fished their allocation. These vessels would fish on average from 97 to 149 days, and would lease on average between 37 and 94 days, at an average cost of between $ 724 and $ 1,153 per day. At the same time the number of vessels actively fishing would decline from 41 to 67 percent. Average profit for the vessels which don't fish under this scenario and instead lease all their DAS is projected to increase approximately from 38 percent to 305 percent compared to what they would earn from fishing their allocation of DAS.

The required changes to mesh size were estimated to affect 424 trawl vessels fishing in the GOM or GB area and 221 trawl vessels the fished in the SNE area. The average cost to replace the cod end was estimated to be $1,250. The mesh changes were estimated to affect 18 day boat gillnet vessels that used tie-down nets fished in the GOM. The average cost to these vessels to replace their nets was $7,794. The mesh changes were estimated to affect 31 day boat gillnet vessels that used stand-up nets that fished in the GOM. The average cost to these vessels to replace their nets was $9,300. The mesh changes were estimated to affect 25 trip gillnet vessels that fished in the GOM. The average cost to these vessels to replace their nets was $18,352. The mesh changes were estimated to affect 32 gillnet vessels that fished in either GB or SNE. The average cost to these vessels to replace their nets was $8,800.

The required changes to gear limits would affect 30 bottom longline vessels, 72 day gillnet vessels, and 24 trip gillnet vessels. The average revenue loss for these vessels was estimated to be $21,400.

Under the proposed measures, individuals that provide passenger services to recreational anglers (charter/party vessels) will also be directly affected. Economic impacts are expected to be minimal since the relationship between changes in bag and possession limits and passenger demand has historically been weak. Following implementation of a reduction in minimum fish size in 1997, the number of passengers on charter/party vessels increased.

Relative to the proposed measures, the No Action alternative would mitigate most of the adverse economic impacts associated with the proposed action. In general, gross fishing incomes would increase particularly for vessels operating in the GOM and would have particularly beneficial impact on small vessels and gillnet vessels in general. However, the No Action alternative also would result in unacceptably high increases in fishing mortality rates that could compromise the rebuilding of several GOM stocks, GOM cod in particular. For this reason the No Action alternative would not meet the

regulatory objectives for this Emergency Action.

Relative to the proposed measures and the no action alternative, the hard TAC alternative would have a more severe adverse economic impact because of the severe consequences of closing down fisheries when a TAC is reached. In any event, neither the No Action alternative nor the Hard TAC alternative are viable because they were not agreed upon in the Settlement Agreement ordered by the Court to be implemented.

If DAS leasing was implemented, the economic impact resulting from other proposed measures would be minimized. Under the leasing program, fewer vessels would actually fish, but the profits for all vessels would be higher than if days at sea leasing were not allowed, and all vessels fished their allocation. Vessels choosing to lease all their DAS to other vessels could greatly enhance their profitability, because owners would be getting all the revenue from the lease without incurring any costs, and in particular not having to pay labor costs.

This action does not duplicate, overlap or conflict with other Federal rules and takes into consideration the monkfish regulations in order to be consistent with the objectives of the Monkfish Fishery Management Plan.

There are no recordkeeping requirements associated with this action. There is one reporting requirement that would require lessors and lessees to complete and submit an application to NMFS to transfer DAS.

This rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This requirement has been submitted to OMB for approval. Public reporting burden for completion of the application form for vessel owners choosing to lease NE multispecies DAS is estimated to average 5 minutes per response. This proposed rule also contains previously-approved collection-of-information requirements that have been approved under OMB control number 0648–0202. Public reporting requirements for these requirements are 15 minutes for a request for a change in permit category and 5 minutes for an annual declaration as either a Day or Trip gillnet vessel. The response time estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Public comment is sought regarding: whether the proposed collection-of-information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 21, 2003.

Rebecca Lent,

Deputy Assistant Administrator, for Regulatory Programs, National Marine Fisheries Services.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, new definitions for "DAS Lease," "DAS Lessee," "DAS Lessor," and "Sub-lease" are added in alphabetical order, to read as follows:

§ 648.2 Definitions.

* * * * *

DAS Lease, with respect to the NE multispecies limited access fishery, means the transfer of the use of DAS from one limited access NE multispecies vessel to another limited access NE multispecies vessel for a period not to exceed the 2003 fishing year, unless the leased DAS qualify as carry-over DAS.

DAS Lessee, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that acquires the use of DAS from another NE multispecies limited access vessel.

DAS Lessor, with respect to the NE multispecies limited access fishery, means the NE multispecies limited access vessel owner and/or the associated vessel that transfers the use of DAS to another NE multispecies limited access vessel.

* * * * *

Sub-lease, with respect to the NE multispecies fishery, means the leasing of DAS that have already been leased to another vessel.

* * * * *

3. In § 648.4, paragraphs (a)(1)(i)(G), (a)(1)(i)(I)(*2*) and (c)(2)(iii) are revised to read as follows:

§ 648.4 Vessel permits.

* * * * *

(a) * * *

(1) * * *

(i) * * *

(G) Consolidation restriction. Except as provided for in the NE Multispecies DAS Leasing Program, as specified in § 648.82(m), limited access permits and DAS allocations may not be combined or consolidated.

* * * * *

(I) * * *

(*2*) The owner of a vessel issued a limited access multispecies permit may request a change in permit category, unless otherwise restricted by paragraph (a)(1)(i)(I)(1) of this section. The owner of a limited access multispecies vessel eligible to request a change in permit category must elect a category upon the vessel's permit application and will have one opportunity to request a change in permit category by submitting an application to the Regional Administrator within 45 days of the effective date of the vessel's permit. If such a request is not received within 45 days, the vessel owner may not request a change in permit category and the vessel permit category will remain unchanged for the duration of the fishing year. A vessel may not fish in more than one multispecies permit category during a fishing year.

* * * * *

(c) * * *

(2) * * *

(iii) An application for a limited access NE multispecies permit must also contain the following information: For vessels fishing for NE multispecies with gillnet gear, with the exception of vessels fishing under the Small Vessel permit category, an annual declaration as either a Day or Trip gillnet vessel designation as described in § 648.82(k). A vessel owner electing a Day or Trip gillnet designation must indicate the number of gillnet tags that he/she is requesting and must include a check for the cost of the tags. A permit holder letter will be sent to the owner of each eligible gillnet vessel informing him/her of the costs associated with this tagging requirement and directions for obtaining

tags. Once a vessel owner has elected this designation, he/she may not change the designation or fish under the other gillnet category for the remainder of the fishing year. Incomplete applications, as described in paragraph (e) of this section, will be considered incomplete for the purpose of obtaining authorization to fish in the NE multispecies gillnet fishery and will be processed without a gillnet authorization.

* * * * *

4. In § 648.14, paragraph (c)(3) is revised, and paragraphs (c)(34) through (42) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(c) * * *

(3) Combine, transfer, or consolidate DAS allocations, except as provided for under the NE Multispecies DAS Leasing Program as specified under § 648.82(m).

* * * * *

(34) Lease NE multispecies DAS or use leased DAS that have not been approved for leasing by the Regional Administrator as specified under § 648.82(m).

(35) Provide false information on the application for NE multispecies DAS leasing, as required under § 648.82(m)(4).

(36) Act as lessor of NE multispecies DAS, if the vessel's current allocation is 8 DAS, as determined under § 648.82(l).

(37) Lease NE multispecies DAS to or from vessels other than Hook-gear limited access NE multispecies vessels (Category D), if the vessel is permitted with a NE multispecies limited access Hook-gear permit (Category D).

(38) Sub-lease NE multispecies DAS.

(39) Accrue DAS use history through use of leased DAS as specified under § 648.82(m)(6).

(40) Lease NE multispecies DAS to a vessel that does not have a valid limited access multispecies permit.

(41) Lease NE multispecies DAS associated with a Confirmation of Permit History.

(42) Lease NE multispecies DAS if the number of unused allocated DAS is less than the number of DAS requested to be leased.

5. In § 648.81, paragraph (h)(1) is revised to read as follows:

§ 648.81 Multispecies closed areas.

* * * * *

(h) * * *

(1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

* * * * *

6. In § 648.82, paragraph (a)(1) is revised, paragraph (l)(3) is removed, and paragraph (m) is added to read as follows:

§ 648.82 Effort-control program for multispecies limited access vessels.

(a) * * *

(1) *End-of-year carry-over.* With the exception of vessels that held a Confirmation of Permit History as described in § 648.4(a)(1)(i)(J) for the entire fishing year preceding the carry-over year, NE multispecies limited access vessels that have unused allocated DAS, or unused leased DAS, on the last day of April of any year may carry over a maximum of 10 DAS into the next year. DAS sanctioned vessels will be credited with unused DAS based on their DAS allocation minus the total DAS sanctioned.

* * * * *

(m) *NE Multispecies DAS Leasing Program*—(1) *Program Description.* Eligible NE multispecies vessels, as specified in paragraph (m)(2) of this section, may lease NE multispecies DAS to and from other eligible NE multispecies vessels, in accordance with the restrictions and conditions of this section. This program will be administered by NMFS, whereby the Regional Administrator will have final approval over a NE multispecies DAS leasing request.

(2) *Eligible Vessels and Vessel Owners.* All vessels with a valid limited access NE multispecies permit are eligible to lease NE multispecies DAS to or from another such vessel, except as specified in paragraphs (m)(2)(i) through (iii) of this section.

(i) Vessels allocated the minimum allocation of only 8 DAS, as calculated in accordance with § 648.82(l), may not act as a lessor, but may act as a lessee.

(ii) Vessel owners in possession of a confirmation of permit history may not activate their limited access NE multispecies permit for the sole purpose of acting as a lessor.

(iii) Vessels that possess a limited access Hook-gear permit may lease NE multispecies DAS to and from other limited access Hook-gear vessels only.

(3) *Application to lease NE multispecies DAS.* Eligible vessels wanting to lease DAS must submit a completed application on an appropriate form obtained from the Regional Administrator. The application must be signed by both lessor and lessee and submitted to the Regional Office at least 45 days before the date on which the applicant desires to have the leased DAS effective. The Regional Administrator will notify the applicant of any deficiency in the application pursuant to this section. Applications may be submitted at any time throughout the fishing year up until March 1. Eligible vessel owners may submit multiple lease applications throughout the application period.

(i) *Application information requirements.* An application to lease NE multispecies DAS must contain the following information: Lessor's owner name, vessel name, permit number and official number or state registration number; lessee's owner name, vessel name, permit number and official number or state registration number; number of NE multispecies DAS to be leased; total priced paid for leased DAS; signatures of lessor and lessee; and date form was completed. Information obtained from the lease application will be held confidential, and will be used only in summarized form for management of the fishery.

(ii) *Approval of lease application.* Unless an application to lease NE multispecies DAS is denied according to paragraphs (m)(3)(iii) and (vii) of this section, the Regional Administrator shall issue confirmation of application approval to both lessor and lessee within 45 days of receipt of an application.

(iii) *Denial of lease application.* The Regional Administrator may reject an application to lease NE multispecies DAS for the following reasons: The application is incomplete or submitted past the March 1 deadline; the lessor or lessee does not possess a valid limited access NE multispecies permit; the lessor's or lessee's DAS are under sanction; the lessor's vessel is prohibited from fishing; the lessor's limited access multispecies permit is sanctioned; or; the lessor has an insufficient number of allocated or unused DAS available to lease. Upon denial of an application to lease NE multispecies DAS, the Regional Administrator shall send a letter to the applicants describing the reason(s) for application rejection. The decision by the Regional Administrator would be the final agency decision and there would be no opportunity to appeal the Regional Administrator's decision.

(4) *Restrictions on leased DAS use.*—(i) *Sub-leasing.* A vessel that has leased DAS may not sub-lease these same DAS to another vessel.

(ii) *Carry-over of leased DAS.* Leased DAS that remain unused at the end of the fishing year may be carried over to

the subsequent fishing year in accordance with the restrictions specified in paragraph (a)(1) of this section.

(iii) *Minimum number of DAS that can be leased.* Vessels may lease NE multispecies DAS only in blocks of 5 DAS or more, or the full amount of a vessel's remaining allocated DAS, whichever is less.

(iv) *Adjustments to leased DAS.* An adjustment factor, in accordance with Table A below, shall be applied to leased DAS where DAS are being leased from a smaller horsepower class vessel to a larger horsepower class vessel. For the purposes of this program, all limited access NE multispecies DAS permit holders are classified according to the baseline horsepower associated with that permit as of April 24, 2003. If the lessee vessel is in a larger size horsepower category than the lessor vessel, then the lessee will receive a fraction of the DAS leased based on the horsepower class of the two vessels, as specified in Table A below. Conversely, if the lessee vessel is in the same or a smaller size horsepower category than the lessor vessel, the lessee vessel will be allowed to use the full amount of DAS leased.

TABLE A. ADJUSTMENT FACTORS FOR DAS LEASES.

		Lessor Vessel (seller vessel) Horsepower Class					
		0–175	176–250	251–324	325–400	401–65	651 +
Lessee Vessel (buyer vessel) Horsepower Class	0–175	1.00	1.00	1.00	1.00	1.00	1.00
	176–250	0.80	1.00	1.00	1.00	1.00	1.00
	251–324	0.70	0.88	1.00	1.00	1.00	1.00
	325–400	0.58	0.73	0.83	1.00	1.00	1.00
	401–650	0.49	0.61	0.70	0.84	1.00	1.00
	651 +	0.36	0.45	0.52	0.62	0.74	1.00

For example, if Vessel A, a 176–250 horsepower class vessel, leases-out 1 NE multispecies DAS to Vessel B, a vessel in the 325–400 horsepower class, Vessel B will receive 0.73 DAS (1 x 0.73), or approximately three-quarters of a DAS. Using these same horsepower class vessels, if Vessel A leases-out 5 DAS to Vessel B, Vessel B will receive 3.65 DAS (5 x 0.73).

(v) *History of leased DAS use and landings.* Unless otherwise specified in paragraph (v) of this section, history of leased DAS use will be presumed to remain with the lessor vessel and landings resulting from a leased DAS will be presumed to remain with the lessee vessel, i.e., the vessel landing the fish. History of leased DAS use will be presumed to remain with the lessor only if the lessee actually fished the leased DAS legally (i.e., in accordance with the DAS notification program specified at § 648.10). For the purpose of accounting for leased DAS use, allocated DAS will be accounted for prior to leased DAS. In the case of multiple leases to one vessel, history of leased DAS use will be presumed to remain with the lessor in the order in which such leases were approved by NMFS. In cases where an adjustment factor is applied to leased DAS, as described in paragraph (m)(3)(iv)of this section, the number of used DAS presumed to remain with the lessor will be the actual number of DAS leased, prior to the adjustment factor reduction.

(vi) *Monkfish Category C and D vessels.* A vessel that possesses a valid limited access monkfish Category C or D permit and leases NE multispecies DAS to another vessel is subject to the restrictions specified in § 648.92(b)(2).

(vii) *Termination of NE Multispecies DAS Leasing Program.* The Regional Administrator may terminate acceptance of new applicants to the NE Multispecies DAS Leasing Program if he/she determines that the goals of reducing fishing mortality or increasing economic opportunity may be undermined by allowing the continued leasing of DAS. Such a determination shall be based upon all information available, including, but not limited to, projected landings, patterns of DAS use, and information obtained from the leasing program. The termination of accepting new applicants to the NE Multispecies DAS Leasing Program shall be made in accordance with the Administrative Procedure Act.

7. In § 648.92, paragraph (b)(2)(ii) is revised and paragraph (b)(2)(iii) is added to read as follows:

§ 648.92 Effort-control program for monkfish limited access vessels.

* * * * *

(b) * * *

(2) * * *

(ii) *Beginning May 1, 2003.* Unless otherwise specified in paragraph (b)(2)(iii) of this section, each monkfish DAS used by a limited access NE multispecies or scallop vessel holding a Category C or D limited access monkfish permit shall also be counted as a NE multispecies or scallop DAS, as applicable, except when a Category C or D vessel that has an allocation of NE multispecies DAS under § 648.82(l) that is less than the number of monkfish DAS allocated for the fishing year May 1 through April 30, that vessel may fish under the monkfish limited access Category A or B provisions, as applicable, for the number of DAS that equal the difference between the number of its allocated monkfish DAS and the number of its allocated multispecies DAS. For such vessels, when the total allocation of NE multispecies DAS has been used, a monkfish DAS may be used without concurrent use of a NE multispecies DAS. (For example, if a monkfish Category D vessel's NE multispecies DAS allocation is 30, and the vessel fished 30 monkfish DAS, 30 NE multispecies DAS would also be used. However, after all 30 NE multispecies DAS are used, the vessel may utilize its remaining 10 monkfish DAS to fish on monkfish, without a NE multispecies DAS being used, provided that the vessel fishes under the regulations pertaining to a Category B vessel and does not retain any regulated NE multispecies.)

(iii) *Category C and D vessels that lease NE multispecies DAS.* (1) A monkfish Category C or D vessel that has "monkfish-only" DAS, as specified in paragraph (b)(2)(ii) of this section, and that leases NE multispecies DAS from another vessel pursuant to § 648.82(m), is required to fish its available "monkfish-only" DAS in conjunction with its leased NE multispecies DAS, to the extent that the vessel has NE multispecies DAS available.

(2) A monkfish Category C or D vessel which leases DAS to another vessel(s), pursuant to § 648.82(m), is required to forfeit a monkfish DAS for each NE multispecies DAS that the vessel leases, equal in number to the difference between the number of remaining multispecies DAS and the number of unused monkfish DAS at the time of the lease. For example, if a lessor vessel, which had 40 unused monkfish DAS and 47 allocated multispecies DAS, leased 10 of its multispecies DAS, the lessor would forfeit 3 of its monkfish DAS (40 monkfish DAS - 37 multispecies DAS = 3) because it would have 3 fewer multispecies DAS than monkfish DAS after the lease.

* * * * *

[FR Doc. 03–10163 Filed 4–23–03; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 79
Thursday, April 24, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–016N]

Codex Alimentarius Commission: 3rd Session of the Codex Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture, and the Food And Drug Administration (FDA) are sponsoring a public meeting on April 24, 2003, to provide information and receive public comments on agenda items that will be discussed at the Codex Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices taking place in Salvador, Bahia, Brazil, on May 5–9, 2003. The Under Secretary and FDA recognize the importance of providing interested parties the opportunity to obtain background information, including draft U.S. positions on agenda items for the Third Session of the Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices of the Codex Alimentarius Commission (Codex) and to address items on the Agenda for the 3rd Session.

DATES: The public meeting is scheduled for Thursday, April 24, 2003, from 1 p.m. to 3 p.m.

ADDRESSES: The public meeting will be held in Room 1B–042 , Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD. To receive copies of the documents referenced in the notice contact the FSIS Docket Room, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net/current.asp*. If you have comments, please send an original and two copies to the FSIS Docket Room and reference Docket #03–016N. All comments submitted will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edith Kennard, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: (202) 205–7760, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for protecting the health and economic interests of consumers and encouraging fair international trade in food. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, USDA, FDA, and EPA manage and carry out U.S. Codex.

The Codex Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices is tasked with revising and consolidating the existing Codex standards and guidelines for fruit and vegetable juices and related products. It is also tasked with revising and updating the methods of analysis and sampling for these products. The Committee is chaired by Brazil.

Issues To Be Discussed at the Public Meeting

The provisional agenda items and draft U.S. positions will be discussed during the public meeting:

1. Adoption of the Agenda;
2. Matters referred by the Codex Alimentarius Commission and other Codex Committees;
3. Consideration of Proposed Draft Standards:

a. Proposed draft Codex General Standard for Fruit Juices and Nectars;

b. Proposed Draft Revised Codex Standard for Vegetable Juices.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Brazilian Secretariat to the Meeting. Members of the public may access or request copies of these documents (*see* **ADDRESSES**).

Public Meeting

At the April 24th public meeting, the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the FSIS Docket Room (*see* **ADDRESSES**). Written comments should state that they relate to activities of the 3rd Session of the Codex Ad Hoc Governmental Task Force on Fruit and Vegetable Juices.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC, on April 17, 2003.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 03–10109 Filed 4–23–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Northeast Oregon Forests Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463), the Northeast Oregon Forests Resource Advisory Committee (RAC) will meet on May 15–16, 2003, in Unity, Oregon. The purpose of the meeting is to meet as a Committee to discuss the selection of title II projects under Public Law 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000, also called the "Payments to States" Act.

DATES: The meeting will be held on May 15, 2003, from 8 a.m. to 5 p.m. and May 16, 2003, from 8 a.m. until 4 p.m.

ADDRESSES: The meeting will be held at the Unity Community Hall, Highway 26, Unity, Oregon.

FOR FURTHER INFORMATION CONTACT: Jennifer Harris, Designated Federal Official, USDA, Malheur National Forest, P.O. Box 909, John Day, Oregon 97845. Phone: (541) 575–3000.

SUPPLEMENTARY INFORMATION: This meeting of the committee will focus on reviewing and recommending title II project proposals for funding under Pub. L. 106–393, H.R. 2389, the Secure Rural Schools and Community Self-Determination Act of 2000. The meeting is open to the public. A public input opportunity will be provided at 1 p.m. May 15, and individuals will have the opportunity to address the committee at that time.

Dated: April 17, 2003.

Jennifer L. Harris,

Designated Federal Official.

[FR Doc. 03–10112 Filed 4–23–03; 8:45 am]

BILLING CODE 3410–DK–M

DEPARTMENT OF AGRICULTURE

Forest Service

Clarification of Direction on Safety Priorities During Wildland Firefighting Activities

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of agency interim directives.

SUMMARY: The Forest Service is issuing three interim directives to provide internal administrative direction to guide its employees during wildland firefighting activities. These interim directives are issued to Forest Service Manual (FSM) chapters FSM 5100 zero code (ID 5100–2003–1); FSM 5120, Preparedness (ID 5100–2003–2); and FSM 5130, Wildland Fire Suppression (ID 5130–2003–3). The ID's clarify existing direction to ensure that the safety of firefighters, other personnel, and the public is always the first priority in fire suppression. While this is already the current agency policy, the agency believes that the direction should be clarified and better stated. The agency will consider any comments received in the development of final directives.

DATES: The interim directives are effective April 24, 2003.

ADDRESSES: The interim directives are available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives*. Single paper copies of the interim directives also are available by contacting Shelly Steen, National Interagency Fire Center, 3833 South Development Avenue, Boise, Idaho 83705 (telephone 208–387–5100). Members of the public who wish to comment on the interim directives may mail their written comments in paper format to this address or send them electronically to *directivecomment@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Shelly Steen, National Interagency Fire Center (208–387–5100) or Tina Kingsberry, Fire and Aviation Management Staff, Forest Service, USDA (202–205–1205).

Dated: April 4, 2003.

Dale N. Bosworth,

Chief, Forest Service, USDA.

[FR Doc. 03–10108 Filed 4–23–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's intention to request an extension for a currently approved information collection in support of Security Servicing for Multiple Family Housing Loans.

DATES: Comments on this notice must be received by June 23, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: James E. Vollmer, Senior Loan Specialist, Multi-Family Housing Portfolio Management Division, Rural Housing Service, Stop 0782, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–0782. Telephone: (202) 720–1060.

SUPPLEMENTARY INFORMATION:

Title: Security Servicing for Multiple Family Housing Loans.

OMB Number: 0575–0100.

Expiration Date of Approval: October 31, 2003.

Type of Request: Extension of a currently approved information collection.

Abstract: The Rural Housing Service (RHS) is an Agency of the U.S. Department of Agriculture (USDA). As a creditor of last resort, the Agency extends financial assistance in support of housing for rural residents. The Agency is authorized under sections 514, 515, 516, and 521 of title V of the Housing Act of 1949, as amended, to provide loans and grants to eligible recipients for the development of rural rental housing. Such Multiple Family Housing projects are intended to meet the housing needs of persons or families having low to moderate incomes, senior citizens, the disabled, and domestic farm laborers.

The Agency has the responsibility of assuring the public that the housing projects financed are owned and operated as mandated by Congress. This regulation was issued to ensure proper servicing actions are accomplished for projects financed with Multiple Family Housing loan and grant funds. Minimal requirements have been established as deemed necessary to assure that applicable laws and authorities are

carried out as intended, and to improve the Agency's ability to assure the continued availability of the facilities financed under the Agency's multiple housing programs to eligible users.

Without the provisions of this regulation, the Agency would be unable to provide the necessary guidance to the Agency's field staff to assist borrowers in processing servicing actions affecting their projects. The Agency also would not be able to quickly respond to servicing requests from borrowers, initiate servicing actions, or establish a uniform procedure for processing such requests from borrowers. The Agency must be able to assure Congress and the general public that all projects financed with Multiple Family Housing funds will be maintained for the purposes for which they are intended and used for the benefit of those they are mandated to serve.

Public Law (Pub. L.) 95–375 provides administrative powers for the Secretary of Agriculture to carry out the provisions of title V of the Housing Act of 1949, as amended. This law provides for making rules and regulations necessary to carry out the purposes of title V. The purpose of the applicable sections 514, 515, 516, and 521 of the Housing Act as stated above is to provide rental housing to eligible low-(including very low-) and moderate-income tenants at affordable rental rates. The Agency has been charged with the responsibility of protecting the interest of the taxpayer's funds and to assure that the objectives of the loans and grants are carried out as intended. In an effort to carry out the responsibilities of assuring that the objectives of the law are met, it is required that information be collected to assure program objectives and integrity is maintained.

Pub. L. 88–352, "Civil Rights Act of 1965," as amended, title VI, Pub. L. 90–284 and 93–383, Pub. L. 93–383, "Sex Discrimination, Executive Order 11246, the Equal Credit Opportunity Act of 1974, and the Fair Housing Amendments Act of 1988 are also applicable to the 514, 515, 516, and 521 programs. Civil Rights compliance reviews are conducted to assure nondiscrimination in these Federally assisted programs. The owners are, therefore, required to keep certain information, such as a list of applicants, list of tenants, verifications of income of the tenants, and records or rejected applicants, and make such information available to the compliance review officer upon request.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.7 hours per response.

Respondents: The primary respondents are small business organizations.

Estimated Number of Respondents: 930.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 930.

Estimated Total Annual Burden on Respondents: 1,583 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, at (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 7, 2003.

James E. Selmon, III,

Acting Administrator, Rural Housing Service.

[FR Doc. 03–10158 Filed 4–23–03; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada; Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission of Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 2001–2002 administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 2001, through July 31, 2002. This review covers imports of pure magnesium from one producer/exporter.

We have preliminarily found that sales of subject merchandise have not been made below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties.

Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: April 24, 2003.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder or Scott Holland, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0189 or (202) 482–1279, respectively.

Background

On August 31, 1992, the Department published in the **Federal Register** (57 FR 39390) an antidumping duty order on pure magnesium from Canada. On August 6, 2002, the Department published a notice in the **Federal Register** (67 FR 50856) of "Opportunity to Request an Administrative Review" of this order. On August 28, 2002, U.S. Magnesium, LLC ("the petitioner") requested an administrative review of imports of the subject merchandise produced by Norsk Hydro Canada, Inc. ("NHCI") and Magnola Metallurgy Inc. ("Magnola"). On August 30, 2002, NCHI made a request for review and also requested that the Department revoke the antidumping duty order with respect to NHCI. On September 25, 2002, the Department published a notice in the **Federal Register** (67 FR 60210) initiating the review for the period August 1, 2001, through July 31, 2002.

On September 6, 2002, Magnola reported that it had no shipments of subject merchandise to the United States during the August 1, 2001, through July 31, 2002, period of review ("POR"). *See "Partial Rescission"* section, below.

On September 17, 2002, the petitioner submitted comments objecting to NHCI's August 30, 2002, request for revocation. According to the petitioner, NHCI failed to meet the Department's requirements for revocation, as described in 19 CFR 351.222. On October 15, 2002, NHCI withdrew its August 30, 2002, request for revocation.

On October 9, 2002, the Department issued an antidumping questionnaire to NHCI. On November 22, 2002, we received NHCI's questionnaire response. We issued a supplemental questionnaire to NHCI on January 13, 2003, and received the response on February 10, 2003.

Scope of the Order

The product covered by this order is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope currently classifiable under subheading 8104.11.0000 of the Harmonized Tariff Schedule ("HTS"). The HTS item number is provided for convenience and for customs purposes. The written description remains dispositive.

Partial Rescission

In accordance with 19 CFR 351.213(d)(3), we are rescinding this review with respect to Magnola, which reported that it made no shipments of subject merchandise during this POR. We examined shipment data furnished by the Customs Service and are satisfied that the record does not indicate that there were U.S. shipments of subject merchandise from Magnola during the POR.

Export Price

For sales to the United States, we used export price ("EP"), as defined in section 772(a) of the Act, because the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. The use of constructed export prices was not warranted based on the facts of the record. EP was based on the packed price to unaffiliated purchasers in the United States. We adjusted the price for billing adjustments. We made deductions, consistent with section 772(c)(2)(A) of the Act, for the following movement expenses: inland freight from the plant to the distribution warehouse, pre-sale warehousing expense, inland freight from the distribution warehouse to the unaffiliated customer, and foreign brokerage and handling.

Normal Value

In order to determine whether there was a sufficient volume of sales of pure magnesium in the home market to serve as a viable basis for calculating NV, we compared NHCI's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because the aggregate volume of home market sales of the foreign like product was greater than five percent of the respective aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provided a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like product was first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.

We calculated NV based on the price to unaffiliated customers. We adjusted the price for billing adjustments. We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments, consistent with section 773(a)(6)(B)(ii) of the Act, for the following movement expenses: inland freight from the plant to the distribution warehouse, warehousing expense, and inland freight from the plant/warehouse to the customer. In addition, we made adjustments for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on home market sales (credit expenses) and adding U.S. direct selling expenses (credit expenses).

Preliminary Results of the Review

As a result of this review, we preliminarily determine that NHCI's margin for the period August 1, 2001, through July 31, 2002, is 0.01 percent, *de minimis.*

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included.

The Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing, within 120 days of publication of these preliminary results.

Assessment Rates and Cash Deposit Requirements

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to the Customs Service to assess antidumping duties on appropriate entries by applying the assessment rate to the entered value of the merchandise. For assessment purposes, we calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping duties due for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

Pending the final disposition of a NAFTA panel appeal by NHCI, the Department will not order the liquidation of entries of pure magnesium from Canada exported by NHCI on or after August 1, 2000, at this time (*see*, letter from Jarrod Goldfeder to NHCI, dated January 28, 2003, granting NHCI's request). Liquidation will occur at the rates described in the final results of review following the final judgement in the NAFTA panel appeals process.

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of pure magnesium from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required for the company if its weighted-average margin is *de minimis, i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is a firm not covered in this or any previous reviews, the cash deposit rate will be 21 percent, the "all others" rate established in Pure Magnesium from

Canada; Amendment of Final Determination of Sales At Less Than Fair Value and Order in Accordance With Decision on Remand (58 FR 62643, November 29, 1993).

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 16, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–10193 Filed 4–23–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–808, A–122–830, A–475–822, A–580–831, A–791–805, A–583–830]

Notice of Correction to the Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of correction to the Amended Antidumping Duty Orders.

EFFECTIVE DATE: March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Bolling at (202) 482–3434 or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Background

On March 11, 2003, the Department published in the **Federal Register** the amended antidumping duty orders on certain stainless steel plate in coils (stainless steel plate) from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan. *See Amended Antidumping Duty Orders; Certain Stainless Steel Plate in Coils from Belgium, Canada, Italy, the Republic of Korea, South Africa, and Taiwan*, 68 FR 11520 (March 11, 2003) (*Amended Antidumping Duty Orders*).

In the amended antidumping duty orders, the Department inadvertently failed to convert certain old HTS numbers to their new designated HTS number in the Scope of the Orders section. Due to changes in the HTS numbers, subheadings 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, and 7219.12.00.80 are replaced by 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, and 7219.12.00.81. We are now correcting the scope of the orders section to reflect those changes. As we note below and in the *Amended Antidumping Duty Orders*, the HTS subheadings are provided for convenience and Customs purposes; the written description of the merchandise subject to these orders is dispositive. *See* Scope of the Orders section below. Additionally, the **Federal Register** is going to correct an inadvertent error it made in the publication of the "All Others" rate for South Africa.

Scope of the Orders

The product covered by these orders is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these orders are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to this review is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTS subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to these orders is dispositive.

Amended Antidumping Duty Orders and Suspension of Liquidation

In accordance with section 736(a)(1) of the Tariff Act, the Department will direct Customs officers to assess, upon further advice by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise for all relevant entries of stainless steel plate in coils, as described in the "Scope of the Orders" section above, from Belgium, Canada, Italy, Korea, South Africa and Taiwan. These antidumping duties will be assessed on all unliquidated entries of stainless steel plate in coils, other than cold-rolled stainless steel plate in coils, from Belgium, Canada, Italy, Korea, South Africa and Taiwan entered, or withdrawn from warehouse, for consumption on or after November 4, 1998, the date on which the Department published its notices of preliminary determination in the **Federal Register** (63 FR 59524 through 59544).

Furthermore, effective March 11, 2003, we will instruct the Customs service to require cash deposits on all entries of cold-rolled stainless steel plate in coils, as well as other stainless steel plate in coils subject to these orders, in accordance with the Court's December 12, 2002 opinion in *Allegheny Ludlum* v. *United States*.

For unreviewed producers, and for "All Others," the applicable weighted-average margins are those established in the original final determinations. For those producers that have been reviewed the applicable weighted-average margins are those established in the investigation or the most recently completed final results of an antidumping administrative review, as noted below:

Producer/manufacturer/exporter	Cash deposit rate percentage
Belgium:	
ALZ, N.V	3.84 (67 FR 64352)
All Others	9.86

Producer/manufacturer/exporter	Cash deposit rate percentage
Canada:	
Atlas Stainless Steel (Sammi Atlas).	15.35
All Others	11.10
Italy:	
ThyssenKrupp Acciai Speciali Terni SpA (TKAST).	0.00 (67 FR 63618)
All Others	39.69
Republic of Korea:	
Pohang Iron & Steel Co., Ltd.	1.19 (66 FR 64017)
All Others	5.08 (66 FR 45279)
South Africa:	
Columbus Stainless	[1] 37.77
All Others	[1] 37.77
Taiwan:	
Yieh United Steel Corporation (YUSCO).	8.02 (67 FR 40914)
YUSCO/Ta Chen	10.20
All Others	7.39

[1] In accordance with section 772(c)(1)(C) of the Tariff Act the cash deposit rate for South Africa has been reduced by 3.86 percent to account for export subsidies found in the concurrent countervailing duty investigation (*See Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils From South Africa*, 64 FR 15553, March 31, 1999), *Antidumping Duty Orders, and* Memorandum to Bernard Carreau, "Ministerial Error Allegations * * * in the Final Determination of the Countervailing Duty Investigation of Certain Stainless Steel Wire Rod [sic] from South Africa," April 30, 1999.

Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits equal to the rates presently in effect. This notice constitutes the amended antidumping duty orders with respect to certain stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa and Taiwan. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

These amended orders are published in accordance with section 736(a) of the Tariff Act of 1930, as amended.

Dated: April 4, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–10197 Filed 4–23–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–423–809, C–475–823, C–791–806]

Certain Stainless Steel Plate in Coils From Belgium, Italy and South Africa; Notice of Correction to the Amended Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of correction to the amended countervailing duty orders.

EFFECTIVE DATE: March 11, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Smith at (202) 482–1276 for Belgium and Italy, Eric Greynolds at (202) 482–6071 for South Africa, or Robert James at (202) 482–0649, Antidumping and Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Background

On March 11, 2003, the Department published in the **Federal Register** the amended countervailing duty orders on certain stainless steel plate in coils (stainless steel plate) from Belgium, Italy and South Africa. *See Amended Countervailing Duty Orders; Certain Stainless Steel Plate in Coils From Belgium, Italy, and South Africa*, 68 FR 11524 (*Amended Countervailing Duty Orders*).

In its amended countervailing duty orders the Department inadvertently failed to convert certain old numbers under the *Harmonized Tariff System of the United States, annotated (HTS)*, to their new *HTS* numbers in the "Scope of the Orders" section. Due to changes in the *HTS* numbers, subheadings 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, and 7219.12.00.80 are replaced by 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, and 7219.12.00.81. We are now correcting the scope of the orders section to reflect those changes. As we note below and in the *Amended Countervailing Duty Orders*, the *HTS* subheadings are provided for convenience and Customs purposes; the written description of the merchandise subject to these orders is dispositive. *See* "Scope of the Orders" section below.

Scope of the Orders

The product covered by these orders is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, etc.) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these orders are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars.

The merchandise subject to these orders is currently classifiable in the *Harmonized Tariff Schedule of the United States (HTS)* at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.06, 7219.12.00.21, 7219.12.00.26, 7219.12.00.51, 7219.12.00.56, 7219.12.00.66, 7219.12.00.71, 7219.12.00.81, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the *HTS* subheadings are provided for convenience and Customs purposes, the written description of the merchandise subject to these orders is dispositive.

Amended Countervailing Duty Orders and Suspension of Liquidation

In accordance with section 706(a)(1) of the Tariff Act of 1930, as amended (the Tariff Act), the Department will direct Customs officers to assess, upon further advice by the Department, countervailing duties for each entry of the stainless steel plate in coils, as described in the "Scope of the Orders" section above, from Belgium, Italy and South Africa in an amount based on the net countervailable subsidy rate for the subject merchandise. These countervailing duties will be assessed on all unliquidated entries of stainless steel plate in coils, other than cold-rolled stainless steel plate in coils, from Belgium, Italy and South Africa entered, or withdrawn from warehouse, for

consumption on or after September 4, 1998, the date on which the Department published its notices of preliminary determination in the **Federal Register** (63 FR 47239 (Belgium), 63 FR 47263 (South Africa) and 63 FR 47246 (Italy)).[1]

Furthermore, effective March 11, 2003, we will instruct the Customs service to require cash deposits on all entries of cold-rolled stainless steel plate in coils, as well as other stainless steel plate in coils subject to these orders, as a result of the Court of International Trade's December 12, 2002 opinion in *Allegheny Ludlum* v. *United States*, No. 99–06–00361, Slip Op. 02–147 (Ct. Int'l Trade, December 12, 2002).

For unreviewed producers, and for "All Others," the applicable weighted-average margins are those established in the original final determinations. For those producers that have been reviewed the applicable weighted-average margins are those established in the investigation or the most recently completed final results of an antidumping administrative review, as noted below:

Producer/Manufacturer/Exporter	Cash deposit rate (percent)
Belgium:	
ALZ, N.V	1.78% (66 FR 45007)
All Others	2.00
Italy:	
ThyssenKrupp Acciai Speciali Terni SpA (TKAST)	15.16
All Others	15.16
South Africa:	
Columbus Stainless	3.95
All Others	3.95

Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, cash deposits equal to the rates presently in effect. This notice constitutes the amended countervailing duty orders with respect to certain stainless steel plate in coils from Belgium, Italy and South Africa. Interested parties may contact the Department's Central Records Unit, room B–099 of the main Commerce building, for copies of an updated list of countervailing duty orders currently in effect.

These amended orders are published in accordance with section 706(a) of the Tariff Act of 1930, as amended.

[1] In accordance with section 703(d) of the Tariff Act, suspension of liquidation was lifted for entries made between January 2, 1999 and May 11, 1999, the date of publication of the *Countervailing Duty Orders*. *See Countervailing Duty Orders* 64 FR 25288, 25289 (May 11, 1999).

Dated: April 17, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–10196 Filed 4–23–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to apply to participate in the below described overseas trade mission. For a more complete description of the trade mission, obtain a copy of the mission statement from the contact officer indicated for this mission below.

Business Development Mission to Romania and Bulgaria

Bucharest and Sofia; July 14–19, 2003.

Deputy Secretary of Commerce Samuel Bodman, with Assistant Secretary and Director General of the U.S. and Foreign Commercial Service Maria Cino and Assistant Secretary of Commerce for Market Access and Compliance William Lash, will lead a senior-level business development mission to help U.S. companies explore business opportunities in Romania and Bulgaria. The delegation will include 10–15 U.S.-based senior executives of small, medium and large U.S. firms representing, but not limited to, the following sectors: automotive parts, building products, information technology, telecommunications, defense industry, energy, medical products, environmental technologies, and tourism infrastructure.

Recruitment closes on May 9, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Andberg, Office of Business Liaison, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–1360, fax 202–482–4054, or e-mail *obl@doc.gov*.

SUPPLEMENTARY INFORMATION:

Goals for the Mission

The mission will further both U.S. commercial policy objectives and advance specific business interests. It is intended to: Assist individual U.S. companies to pursue business opportunities by introducing them to government decision-making officials and to potential business partners; assist new-to-market firms to evaluate the market potential for their products and gain an understanding of how to operate successfully in Romania and Bulgaria; enhance the dialogue between government and industry on issues affecting the development of commercial relations; promote U.S. and Romanian and Bulgarian trade and investment and, as a result, contribute to the political and economic stability of important American allies; and assist U.S. companies to take advantage of opportunities arising from NATO accession.

Scenario for the Mission

American Embassy officials will provide a detailed briefing on the economic, commercial and political climate, and participants will receive individual counseling on their specific interests from the in-country U.S. Commercial Service industry specialists. Meetings will be arranged as appropriate with senior government officials and potential business partners. Networking events also will be organized to provide opportunities to meet Romanian and Bulgarian business and government representatives, as well as U.S. business people living and working in Romania and Bulgaria. The tentative trip itinerary is as follows: July 14, arrive Bucharest; July 15–16, one-on-one business meetings in Bucharest and evening travel to Sofia; July 17–18, one-on-one business meetings in Sofia. The precise schedule will depend in part on the availability of local government and business officials and the specific goals of the mission participants.

Recruitment and selection of private sector participants for this mission will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

Dated: April 18, 2003.

Carlos Poza,

Deputy Director General, U.S. & Foreign Commercial Service.

[FR Doc. 03–10113 Filed 4–23–03; 8:45 am]

BILLING CODE 3510–FP

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Program

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of intent to evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the U.S. Virgin Islands Coastal Zone Management Program.

This Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972, as amended, (CZMA) and regulations at 15 CFR part 923, subpart L.

The CZMA requires continuing review of the performance of states and territories with respect to coastal program implementation. Evaluation of Coastal Zone Management Programs requires findings concerning the extent to which a state or territory has met the national objections, adhered to its Coastal Zone Management Program document approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluation will include a site visit, consideration of public comments, and consultations with interested Federal, state, and local agencies and members of the public. Public meetings will be held as part of the site visit.

Notice is hereby given of the dates of the site visit for this evaluation, and the dates, local times, and locations of the public meetings during the site visit.

The U.S. Virgin Islands Coastal Zone Management Program evaluation site visit will be held June 9–13, 2003. Three public meetings will be held during the week. The first will be held on Tuesday, June 10, 2003, 6 p.m.–8 p.m., Department of Planning and National Resources Conference Room, Cyril E. King Airport, Terminal Building 2nd Floor, St. Thomas, U.S. Virgin Islands 00802. The second will be held on Wednesday, June 11, 2003, 6 p.m.–8 p.m., Florence Williams Public Library, 1122 King Street, Christiansted St. Croix, U.S. Virgin Islands 00820. The third will be held on Thursday, June 12, 2003, 6 p.m.—8 p.m., Legislature of the Virgin Islands Conference Room, 109 Contant-Enighed, Hilltop Building, Cruz Bay, St. John, U.S. Virgin Islands 00831.

Copies of the U.S. Virgin Island's most recent performance reports, as well as OCRM's notification and supplemental request letters to the Territory, are available upon request from OCRM. Written comments from interested parties regarding this Program are encouraged and will be accepted until 15 days after the last public meeting. Please direct written comments to Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th floor, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Ralph Cantral, Chief, National Policy and Evaluation Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–3155, Extension 118.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: April 18, 2003.

Captain Ted I. Lillestolen,

Associate Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 03–10159 Filed 4–23–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031903G]

Marine Mammals; File No. 1034–1685

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Markus Horning, Department of Marine Biology, Texas A&M University, Galveston, Texas 77551, has been issued a permit to take California sea lions (*Zalophus californianus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Tammy Adams, (301)713–2289.

SUPPLEMENTARY INFORMATION: On July 22, 2002, notice was published in the **Federal Register** (67 FR 47774) that a request for a scientific research permit to take the species identified above had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The permit authorizes implantation of dual satellite-linked life history transmitters in up to 30 rehabilitated California sea lions at the Marine Mammal Center to determine long-term post-release survival rates. External tags will also be attached for short-term monitoring. To assess stress levels from surgical procedures, and to relate post-rehabilitation health status to survival, blood samples will be collected for standard clinical hematology and chemistry panels. Blubber biopsies, bioelectrical impedance analysis, deuterium dilution determinations, and blubber ultrasound will also be performed. In addition, three control groups of California sea lions of similar age undergoing rehabilitation at TMMC will be utilized to compare short-term effects on animals with the implanted tags to animals without the implanted tags having similar procedures (e.g., anesthesia, laparoscopy) performed as part of their rehabilitation. Up to a total of 90 control animals (three groups of 30) will be used in this study, and will have some or all of the following procedures performed: blood and blubber sampling, bioelectrical impedance analyses, deuterium dilutions, and blubber ultrasound. The permit is for a five year period.

Dated: April 17, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–10162 Filed 4–23–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Notice, Two-Day "Wireless Innovations: New Technologies and Evolving Policies'

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Commerce Department's National Telecommunications and

Information Administration (NTIA), in cooperation with the Federal Communications Commission (FCC) and the U.S. Department of State's Office of International Communications and Information Policy (CIP), will host a two-day wireless technology showcase and policy discussion. The first day will consist of an exhibition and demonstration of new, innovative wireless technologies, devices and applications. The second day will feature panel discussions on unlicensed wireless technologies by key policy makers, entrepreneurs, industry representatives, and experts from government and academia.

DATES: The technology showcase will be held 10 a.m. to 3 p.m., Monday, May 12, 2003. The roundtable will be held 9 a.m. to 5 p.m., Tuesday, May 13, 2003.

ADDRESSES: The Wireless Innovations Conference will be held at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC. (Entrance to the Department of Commerce is on 14th Street between Constitution and Pennsylvania avenues.) The showcase will take place in the Commerce Lobby, and the roundtable will take place in the Commerce Auditorium. All events are open to the public. To facilitate entry into the Department of Commerce, please have a photo identification and/or U.S. Government building pass, if applicable.

FOR FURTHER INFORMATION CONTACT: Joe Gattuso, NTIA Office of Policy Analysis and Development, at (202) 482–1880, or electronic mail: *jgattuso@ntia.doc.gov*; Kathleen Ham, Federal Communications Commission, Office of Strategic Planning and Policy Analysis, at (202) 418–2030, or electronic mail: *kham@fcc.gov*; or Andrew Weinschenk, Department of State, Office of International Communications and Information Policy, at (202) 647–9340, or electronic mail: *weinschenkaj@state.gov*. All media inquiries should be directed to the Office of Public Affairs, NTIA, at (202) 482–7002.

SUPPLEMENTARY INFORMATION: This two-day event will build upon NTIA's "Spectrum Summit" held last year, the findings and recommendations of the FCC's Spectrum Policy Task Force, and the State Department's international policy and regulatory reform efforts by highlighting and demonstrating new and emerging technologies and creating a forum to discuss important spectrum policy issues that are likely to impact tomorrow's ever-changing marketplace. The technology exhibition will provide policy makers and members of the public and news media an opportunity to witness live demonstrations of cutting edge wireless technologies and applications. The panel discussions, which will be webcast over the Internet, will focus on unlicensed wireless technologies and will allow technology innovators and entrepreneurs the opportunity to interact and exchange ideas with key policy decision makers. Additional information about the panel discussion and the webcast will be announced in the near future and will be available on the NTIA home page at *www.ntia.doc.gov*, on the Spectrum Policy Task Force's home page at *www.fcc.gov/sptf*, and on CIP's home page at: *www.state.gov/e/eb/cip/*.

Public Participation: The showcase and panel discussions will be open to the public and press on a first-come, first-served basis. Space is limited. Due to security requirements and to facilitate entry to the Department of Commerce building, attendees must have photo identification available and/or a U.S. Government building pass, if applicable, and plan to arrive at least one half hour ahead of the panel sessions. The events are physically accessible to people with disabilities. Any member of the public wishing to attend and requiring special services, such as sign language interpretation or other ancillary aids, should contact Joe Gattuso at (202) 482–1880 or at *jgattuso@ntia.doc.gov*, at least three (3) days prior to the meeting.

Dated: April 18, 2003.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 03–10078 Filed 4–23–03; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 03–07]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 03–07 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 17, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

27 MAR 2003
In reply refer to:
I-03/000560

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 03-07 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Norway for defense articles and service estimated to cost $107 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

Richard J. Millies
Deputy Director

Attachment
As stated

Separate Cover:
Offset certificate

Transmittal No. 03-07

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Norway

(ii) Total Estimated Value:

Major Defense Equipment*	$ 71 million
Other	$ 36 million
TOTAL	$107 million

(iii) Description of Articles or Services Offered: 92 JAVELIN anti-tank missile systems (consisting of 92 JAVELIN command launch units and 556 JAVELIN missile rounds), simulators, trainers, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support.

(iv) Military Department: Army (VJM)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 27 MAR 2003

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Norway - JAVELIN Anti-tank Missile Systems

The Government of Norway has requested a possible sale for 92 JAVELIN anti-tank missile systems (consisting of 92 JAVELIN command launch units and 556 JAVELIN missile rounds), simulators, trainers, support equipment, spare and repair parts, publications and technical data, personnel training and equipment, U.S. Government and contractor engineering and logistics personnel services, a Quality Assurance Team, and other related elements of logistics support. The estimated cost is $107 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Norway to fulfill its NATO obligations; furthering NATO rationalization, standardization, and interoperability; and enhancing the defense of the Western Alliance.

Norway will use these JAVELIN anti-tank missile systems to enhance their direct fire capability for infantry, cavalry and commando units against armored vehicles, buildings and field fortifications. This system will provide Norway with a strong man-portable, direct fire capability and will increase interoperability with U.S. forces. Norway will have no difficulty absorbing these systems into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be JAVELIN Joint Venture (Raytheon and Lockheed Martin) of Orlando, Florida. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this proposed sale will require the assignment of a U.S. Government Quality Assurance Team consisting of two U.S. Government and one contractor representatives to Norway for one week to assist in the delivery and deployment of the missiles.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 03-07

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The JAVELIN anti-tank missile system provides a man-portable, medium anti-tank capability to infantry, scouts, and combat engineers. JAVELIN is comprised of two major tactical components; a reusable Command Launch Unit (CLU) and a missile sealed in a disposable launch tube assembly. The CLU incorporates an integrated day/night sight and provides target engagement capability in adverse weather and countermeasure environments. The CLU may also be used in the stand-alone mode for battlefield surveillance and target detection. JAVELIN's key technical feature is the use of fire-and-forget technology that allows the gunner to fire and immediately take cover. Additional special features are the top attack and/or direct fire modes (for targets under cover), integrated day/night sight, advanced tandem warhead, imaging infrared seeker, target lock-on before launch, and soft launch from enclosures or covered fighting positions. If the software was compromised, it could result in a loss of sensitive technology, revealing the performance capabilities of the JAVELIN Missile System. Reverse engineering of the software would require a substantial effort. While the JAVELIN system is Unclassified, Secret disclosure is required in order to employ, operate, and train on the system.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. A determination has been made that Norway can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 03–10091 Filed 4–23–03; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Education Activity (DoDEA), DoD.

ACTION: Open meeting notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, appendix 2 of title 5, United States Code, Public Law 92–463, notice is hereby given that a meeting of the Advisory Council on Dependents' Education (ACDE) is scheduled to be held on May 2, 2003.

The purpose of the ACDE is to recommend to the Director, DoDEA, general policies for the operation of the Department of Defense Dependents Schools (DoDDS); to provide the Director with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense. The meeting emphases will be on the recently approved Program Objective Memoranda (POM) and other educational issues.

DATES: May 2, 2003, from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will be held on the 9th floor conference room at the Department of Defense Education Activity located at 4040 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Jarrard, at 703–696–4471, extension 1964.

Dated: April 17, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–10090 Filed 4–23–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Integrated Fire Support in the Battlespace will meet in closed session on June 4–5, 2003; July 9–10, 2003; September 10–11, 2003; October 8–9, 2003; November 5–6, 2003; and December 10–11, 2003, at locations to be determined. The Task Force will apply the methodology developed in the 2001 Precision Targeting Summer Study to broadly develop the system of systems required to provide truly integrated fire support.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will assess: the adequacy of current and proposed munitions with respect to speed, accuracy, lethality, cost, etc., to meet the spectrum of threats; Intelligence Surveillance and Reconnaissance (ISR) techniques and mechanisms to meet the needs of tactical and operational battlefield forces; the adequacy of battlefield command and control and integration techniques for tactical, operational, and strategic forces operating on the battlefield; the current impediments to a fully integrated Air, Land and Sea fire support; and the need for predictive engagement tools and derived intelligence products to guide the battlefield commander in use of forces to shape the outcome to the desired effect.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meetings will be closed to the public.

Dated: April 17, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–10088 Filed 4–23–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Seabasing will meet in closed session on May 27, 2003, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will assess how seabasing of expeditionary forces can best serve the nation's defense needs through at least the first half of the 21st century.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Defense Science Board Task Force will examine the broadest range of alternatives for seabasing of expeditionary forces and be guided by: the expected naval environment for the next 20–50 years; the role of naval forces in enabling access for joint forces through the world's littorals; assets and technologies needed to establish a robust and capable Enhanced Networked Seabase; the timing of the acquisition of the technologies, platforms and systems which replace the legacy systems; and the function of new hardware and opportunities to reallocate functionality to improve effectiveness, or efficiency, or economy.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, the meeting will be closed to the public.

Dated: April 17, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–10089 Filed 4–23–03; 8:45 am]
BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 23, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 21, 2003.

John D. Tressler,

Leader, Regulatory Management Group, Office of the Chief Information Officer.

Federal Student Aid

Type of Review: Revision.
Title: Student Aid Report (SAR).
Frequency: Annually.
Affected Public:
Individuals or household.
Reporting and Recordkeeping Hour Burden:
Responses: 20,675,546.
Burden Hours: 4,486,234.
Abstract: The Student Aid Report (SAR) is used to notify all applicants of their eligibility to receive Federal student aid for postsecondary education. The form is submitted by the applicant to the institution of their choice.

Requests for copies of the proposed information collection request may be

accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2234. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266 or via his e-mail address *Joe.Schubart@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–10125 Filed 4–23–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–587–000]

Proposed Information Collection and Request for Comments; Errata Notice

April 18, 2003.

On April 4, 2003, the Commission issued a Notice of Proposed Information Collection and Request for Comments in the above-docketed proceeding (68 FR 17789, published April 11, 2003). In the document, the Commission requested comments on proposed information and its revised Form 587. The attachments "Instructions for Completing Forms FERC 587" and "FERC Form 587" which follow, were not included in the issued document.

Magalie R. Salas,

Secretary.

Form Approved
OMB No. 1902–0143
(Expires / /)

Instructions for Completing Forms FERC–587

Form FERC–587 is issued to identify those project boundary maps associated with federal lands. There are two versions of the form to account for the two different ways land is surveyed in the United States, the Public Land States and the Non-Public Land States. The Public Land States version is used for projects located on the western side of the United States, and is based on the federal township and range system. The Non-Public Land States version is to be used for most of the projects located on the eastern side of United States, including Texas, and is based just on county information.

To complete either form you must:

1. Identify the boundary maps in the license, preliminary permit, or in the application for license, amendment of license, or preliminary permit.

2. Provide the project number assigned by FERC. Type or print legibly when entering information on the form. Include your signature, and date completing the form.

3. Microfilm copies of the project boundary maps must be submitted with the land description forms as directed by FERC. Each map must be reproduced on silver or gelatin 35 mm microfilm mounted on type D (3¼" x 7⅜") aperture cards. The project number followed by a hyphen and sheet number or letter must be typed on the front of each card in the upper right corner.

4. Mail a copy of the completed land description forms and aperture cards to: Secretary, Routing Code PJ–12, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Another copy of the form FERC–587 must be filed with the Bureau of Land Management state office(s) involved using the format below. Go to the following Internet address to get mailing address for a particular State Office; (*http://www.blm.gov/nhp/directory/index.htm*).

State Director, Bureau of Land Management, City, State Zip, ATTN: FERC Withdrawal Recordation.

5. Keep the land description forms and project boundary drawings up-to-date. If the project boundary changes, revised land description forms and drawings must be provided to the Commission immediately. The revised land description forms must be fully completed so as to supersede (not supplement) earlier forms. Mail updates in accordance with instruction 4.

If there are any questions, please contact the FERC at (202) 502–8836.

6. Where to send comments on the Public Reporting Burden.

The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426 (Attention: Mr. Michael Miller, ED–30); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission). This is a mandatory information collection requirement.)

To complete the Public Land States (Rectangular Survey System Lands) you need to:

1. Identify the state in which the project is located. If the project lies within multiple states, then provide the state for the township which the form refers.

2. Provide the FERC Project Number assigned by FERC (*i.e.*, P–96). Only one project number should appear on the form.

3. Identify the Township, Range and Meridian where the project lands and federal lands overlap. Each township is depicted in a map by an identifying number according to where it falls (*i.e.*, T9SR22E). The east/west numbers are identified by the term "Range" and the north/south numbers are identified by the term "Township". The completed land description form will identify the sections of the township affected by the project (both federal and non-federal lands) and provide references to the maps that show the project boundary in those sections. Complete a separate form for each township identified, regardless of the ownership status of the lands.

4. Identify whether you are completing the form for a licensed project or a preliminary permit. Identify whether the license is pending or issued. Provide an expiration date in case of a preliminary permit.

5. Using the township grid provided on the form, identify the section (s), in which the federal land is located on the map. Every Section is numbered, from 1 to 36, depending upon its position within the township. Specify the exhibit sheet (drawing) number, or letter within the appropriate township section. If the FERC sheet numbers have been assigned, they must be used on the land description forms. In those cases where FERC has not assigned sheet numbers, assign letter designations A, B, C, etc., in lieu of FERC sheet numbers. Permittees and permit applicants must assign letter designations since FERC does not assign sheet numbers for permits. The sheet numbers or letters are to be entered in the appropriate place on the land description forms to provide references to the maps. (*i.e.*, if sheets 74 and 75 show the project boundary in sections 13 and 24 of a township, the numbers 74 and 75 would be inserted in the box on the land description form representing sections 13 and 24).

6. Provide the name and telephone number of the person completing the form, and the date the form is submitted.

FERC Form No. 587
OMB control No. 1902–0143
Expires (/ /)

Land Description

Public Land States, (Rectangular Survey System Lands)

1. State _____
2. FERC Project No. _____
3. Township _____ Range _____
Meridian _____
4. Check one:

_____ License
_____ Preliminary Permit

Check one:

_____ Pending
_____ Issued

If preliminary permit is issued, give expiration date: _____

5. Exhibit Sheet Numbers or Letters

Section 6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

6. Contact's name _____
Telephone no. ( ) _____
Date submitted _____

This information is necessary for the Federal Energy Regulatory Commission to discharge its responsibilities under Section 24 of the Federal Power Act.

To complete the Non-Public Land States (Non-Rectangular Survey System Lands in Public Land States) form you need to:

1. Identify the state in which the project is located. If the project lies within multiple states, then provide the state for the counties which the form refers.

2. Provide the FERC Project Number assigned by FERC (*i.e.*, P–96). Only one project number should appear on the form

3. Identify the Federal reservation that is located within the project boundary as shown on the maps.

4. Identify the Federal land holding agency responsible for the federal land within the project boundary as shown on the maps

5. Identify the county or counties the Federal land lies in.

6. Identify whether you are completing the form for a licensed project or a preliminary permit. Identify whether the license is pending or issued. Provide an expiration date in case of a preliminary permit.

7. Complete a land description form for each Federal tract with lands inside project boundaries. If more than one land description form is required to list the Federal tracts, page numbers must be shown in the upper right corner of the form, *e.g.*, page 1 of 2. Do not list more than one project or state on each form.

8. Provide sheet numbers or letters that should be entered on the lines provided under "Exhibit Sheet Numbers) or Letter(s)" opposite to the corresponding Federal tract identification designated by the Federal land holding agency. Specify the exhibit sheet (drawing) number within the appropriate township section. If the FERC sheet numbers have been assigned, they must be used on the land description forms. In those cases where FERC has not assigned sheet numbers, assign letter designations A, B, C, etc., in lieu of FERC sheet numbers. Permittees and permit applicants must assign letter designations since FERC does not assign sheet numbers for permits.

9. Provide the name, telephone number of the person completing the form, and the date the form is submitted.

FERC Form No. 587
OMB control No. 1902–0143
Expires (/ /)

Land Description

Non-Public Land States (and Non-Rectangular Survey System Lands in Public Land States)

1. State _____
2. FERC Project No. _____
3. Federal Reservation: _____
4. Federal Land Holding Agency: _____
5. Counties: _____
6. Check one:

_____ License
_____ Preliminary Permit

Check one:

_____ Pending
_____ Issued

If preliminary permit is issued, give expiration date: _____
7. Federal Tract(s) Identification

_____
_____
_____

8. Exhibit Sheet Number(s) or Letter(s)

_____
_____
_____
_____
_____
_____
_____
_____
_____

9. Contact's name _____
Telephone no. ( ) _____
Date submitted _____

This information is necessary for the Federal Energy Regulatory Commission to discharge its responsibilities under Section 24 of the Federal Power Act.

[FR Doc. 03–10206 Filed 4–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–587–000, FERC Form No. 587]

Proposed Information Collection and Request for Comments; Correction

April 18, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice; correction.

SUMMARY: The Federal Energy Regulatory Commission published a document in the **Federal Register** on April 11, 2003, reinstating FERC Form No. 587 and requesting comments on this proposed information collection. The notice document issued by the Commission did not include Form No. 587.

FOR FURTHER INFORMATION CONTACT: Michael Miller at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov* or Anumzziatta Purchiaroni at (202) 502–6191, by fax (202) 219–2732, *anumzziatta.purchiaroni@ferc.gov*.

Correction

In the **Federal Register** of April 11, 2003, 70 FR 17789, on page 17790, add the attachment which follows titled: "Instructions for Completing Forms FERC–587".

Magalie R. Salas,

Secretary.

Instructions for Completing Forms FERC–587

Form FERC–587 is issued to identify those project boundary maps associated with federal lands. There are two versions of the form to account for the two different ways land is surveyed in the United States, the Public Land States and the Non-Public Land States. The Public Land States version is used for projects located on the western side of the United States, and is based on the federal township and range system. The Non-Public Land States version is to be used for most of the projects located on the eastern side of United States, including Texas, and is based just on county information.

To complete either form you must:

1. Identify the boundary maps in the license, preliminary permit, or in the application for license, amendment of license, or preliminary permit.

2. Provide the project number assigned by FERC. Type or print legibly when entering information on the form. Include your signature, and date completing the form.

3. Microfilm copies of the project boundary maps must be submitted with the land description forms as directed by FERC. Each map must be reproduced on silver or gelatin 35 mm microfilm mounted on type D (3¼" x 7⅜") aperture cards. The project number followed by a hyphen and sheet number or letter must be typed on the front of each card in the upper right corner.

4. Mail a copy of the completed land description forms and aperture cards to: Secretary, Routing Code PJ–12, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Another copy of the form FERC–587 must be filed with the Bureau of Land Management state office(s) involved using the format below. Go to the following internet address to get mailing address for a particular State Office (*http://www.blm.gov/nhp/directory/index.htm*): State Director, Bureau of Land Management, City, State Zip, ATTN: FERC Withdrawal Recordation.

5. Keep the land description forms and project boundary drawings up-to-date. If the project boundary changes, revised land description forms and drawings must be provided to the Commission immediately. The revised land description forms must be fully completed so as to supersede (not supplement) earlier forms. Mail updates in accordance with instruction 4.

If there are any questions, please contact the FERC at (202) 502–8836.

6. Where to send comments on the Public Reporting Burden. The public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426 (Attention: Mr. Michael Miller, ED–30); and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission). This is a mandatory information collection requirement.)

To complete the Public Land States (Rectangular Survey System Lands) you need to:

1. Identify the state in which the project is located. If the project lies within multiple states, then provide the state for the township which the form refers.

2. Provide the FERC Project Number assigned by FERC (*i.e.*, P–96). Only one project number should appear on the form.

3. Identify the Township, Range and Meridian where the project lands and federal lands overlap. Each township is depicted in a map by an identifying number according to where it falls (*i.e.* T9SR22E). The east/west numbers are identified by the term "Range" and the north/south numbers are identified by the term "Township". The completed land description form will identify the sections of the township affected by the project (both federal and non-federal lands) and provide references to the maps that show the project boundary in those sections. Complete a separate form for each township identified, regardless of the ownership status of the lands.

4. Identify whether you are completing the form for a licensed project or a preliminary permit. Identify whether the license is pending or issued. Provide an expiration date in case of a preliminary permit.

5. Using the township grid provided on the form, identify the section(s), in which the federal land is located on the map. Every Section is numbered, from 1 to 36, depending upon its position within the township. Specify the exhibit sheet (drawing) number, or letter within the appropriate township section. If the FERC sheet numbers have been assigned, they must be used on the land description forms. In those cases where FERC has not assigned sheet numbers, assign letter designations A, B, C, *etc.*, in lieu of FERC sheet numbers. Permittees and permit applicants must assign letter designations since FERC does not assign sheet numbers for permits. The sheet numbers or letters are to be entered in the appropriate place on the land description forms to provide references to the maps. (*i.e.*, if sheets 74 and 75 show the project boundary in sections 13 and 24 of a township, the numbers 74 and 75 would be inserted in the box on the land description form representing sections 13 and 24).

6. Provide the name and telephone number of the person completing the form, and the date the form is submitted.

BILLING CODE 6717–01–P

FERC Form No. 587
OMB control No. 1902-0143
Expires (/ /)

LAND DESCRIPTION

Public Land States
(Rectangular Survey System Lands)

1. STATE_____ 2. FERC PROJECT NO. _____

3. TOWNSHIP _____ RANGE _____ MERIDIAN _____

4. Check one:

_____License
_____Preliminary Permit

Check one:

_____Pending
_____Issued

If preliminary permit is issued, give expiration date:_____

5. EXHIBIT SHEET NUMBERS OR LETTERS

Section 6	5	4	3	2	1
7	8	9	10	11	12
18	17	16	15	14	13
19	20	21	22	23	24
30	29	28	27	26	25
31	32	33	34	35	36

6. contact's name _____
telephone no. ( ) _____
Date submitted _____

This information is necessary for the Federal Energy Regulatory Commission to discharge its responsibilities under Section 24 of the Federal Power Act.

To complete the Non-Public Land States (Non-Rectangular Survey System Lands in Public Land States) form you need to:

1. Identify the state in which the project is located. If the project lies within multiple states, then provide the state for the counties which the form refers.

2. Provide the FERC Project Number assigned by FERC (*i.e.*, P–96). Only one project number should appear on the form

3. Identify the federal reservation that is located within the project boundary as shown on the maps.

4. Identify the federal land holding agency responsible for the federal land within the project boundary as shown on the maps

5. Identify the county or counties the federal land lies in.

6. Identify whether you are completing the form for a licensed project or a preliminary permit. Identify whether the license is pending or issued. Provide an expiration date in case of a preliminary permit.

7. Complete a land description form for each federal tract with lands inside project boundaries. If more than one land description form is required to list the Federal tracts, page numbers must be shown in the upper right corner of the form, *e.g.*, page 1 of 2. Do not list more than one project or state on each form.

8. Provide sheet numbers or letters that should be entered on the lines provided under "Exhibit Sheet Number(s) or Letter(s)" opposite to the corresponding Federal tract identification designated by the Federal land holding agency. Specify the exhibit sheet (drawing) number within the appropriate township section. If the FERC sheet numbers have been assigned, they must be used on the land description forms. In those cases where FERC has not assigned sheet numbers, assign letter designations A, B, C, *etc.*, in lieu of FERC sheet numbers. Permittees and permit applicants must assign letter designations since FERC does not assign sheet numbers for permits.

9. Provide the name, telephone number of the person completing the form, and the date the form is submitted.

BILLING CODE 6717–01–P

FERC Form No. 587
OMB control No. 1902-0143
Expires (/ /)

LAND DESCRIPTION

Non-Public Land States
(and Non-Rectangular Survey System Lands in Public Land States)

1. STATE _____ 2. FERC PROJECT NO. _____

3. FEDERAL RESERVATION: _____

4. FEDERAL LAND HOLDING AGENCY: _____

5. Counties: _____

6. Check one:
_____ License
_____ Preliminary Permit

Check one:
_____ Pending
_____ Issued

If preliminary permit is issued, give expiration date: _____

7. Federal Tract(s) Identification	8. Exhibit Sheet Number(s) or Letter(s)

9. contact's name _____

telephone no. (_____) _____

date submitted _____

This information is necessary for the Federal Energy Regulatory Commission to discharge its responsibilities under Section 24 of the Federal Power Act.

[FR Doc. 03–10105 Filed 4–23–03; 8:45 am]
BILLING CODE 6717–01–C

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–683–000]

California Independent System Operator Corporation; Notice of Technical Conference

April 18, 2003.

The Federal Energy Regulatory Commission Staff is convening a technical conference to facilitate discussions of and solutions for congestion management issues raised by the California Independent System Operator Corporation's (CAISO) filing of Tariff Amendment No. 50. The conference will be held in San Francisco, California, at the Marriott San Francisco, 55 Fourth Street, San Francisco, CA, on May 1, 2003, beginning at 9 a.m.

All interested persons may attend. However, attendees are asked to notify the Commission of their intent to attend by sending an email message to Cynthia Henry at *cynthia.henry@ferc.gov*. No telephone communication bridge will be provided at this technical conference.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10205 Filed 4–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–280–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

April 18, 2003.

Take notice that on April 15, 2003, Columbia Gas Transmission Corporation (Columbia Gas) made its filing in compliance with the Commission's order issued March 31, 2003, in this proceeding (*See* Columbia Gas Transmission Corp., 102 FERC ¶ 61,347 (2003)(March 31 Order). In this filing, Columbia states that it is submitting the information requested by the March 31 Order.

Columbia states that copies of its filing have been mailed to all parties on the official service list in Docket No. RP03–280.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10210 Filed 4–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–083]

Columbia Gulf Transmission Company; Notice of Compliance Filing

April 18, 2003.

Take notice that on April 15, 2003, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets bearing a proposed effective date of December 15, 2002:

Fifth Revised Sheet No. 46
Third Revised Sheet No. 47
Third Revised Sheet No. 318

Columbia Gulf states that it is making this filing to comply with the Commission's March 26, 2003 order in RP96–389–076 (103 FERC ¶61,320, March 26 Order). In the March 26 Order, the Commission accepted the non-conforming agreement between Stone Energy and Columbia Gulf (Stone Agreement) subject to conditions. The Commission directed Columbia Gulf to either remove the non-conforming provision from the Stone Agreement or, alternately, modify its Tariff and *pro forma* service agreement to provide similarly situated shippers taking service under Columbia Gulf's FTS–2 firm transportation rate schedule the right to adjust transportation demand at predetermined intervals. In compliance with the Commission's March 26 Order, Columbia Gulf's proposed tariff sheets add Section 2(g) to its FTS–2 Rate Schedule.

Columbia Gulf states that copies of the filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 28, 2003.

Dated:

Magalie R. Salas,

Secretary.

[FR Doc. 03–10211 Filed 4–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–101–000]

Dominion Transmission, Inc.; Notice of Application

April 18, 2003.

On April 16, 2003, Dominion Transmission, Inc. (DTI), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP03–101–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon Well 932 in the Fink Kennedy Storage Complex in Lewis County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

DTI states that Well 932 is located in the Fink Kennedy Storage Pool located in Lewis County, West Virginia and has been operational as a storage well since 1943. According to DTI, the operational capabilities of the Fink Kennedy Storage Complex will not be affected by the plugging and abandonment of this storage well.

DTI states that it will abandon 185 feet of Line H–18227. DTI states that the abandonment of this line will be performed under the Commission's part 157 pipeline blanket certificate program and the blanket authorization DTI received in Docket No. CP82–537–000, and will be reported as part of DTI's part 157 Annual Report.

DTI states that the abandonment of Well 932 involves only the removal of minor surface facilities and appropriate erosion control and site restoration will be implemented at the well site. Earth disturbance will be limited to the area immediately around the wellbore and placing a monument at the site to indicate the location of the well. DTI states that all work will be confined to the original well pad site on previously disturbed ground and the well location will be restored to its original state or landowner's preference.

DTI states that due to its age and condition, Well 932 was placed in idle service on February 22, 2003. DTI states that Well 932 is not necessary for the continued operation of the Fink Kennedy Storage Pool and that the remediation of the well necessary for the useful operation is neither feasible nor economically efficient.

Any questions concerning this application may be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 120 Tredegar Street, Richmond, Virginia 23219, at (304) 627–3462 or fax (304) 627–3305.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: April 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10202 Filed 4–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–102–000]

Dominion Transmission, Inc.; Notice of Application

April 18, 2003.

On April 16, 2003, Dominion Transmission, Inc. (DTI), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP03–102–000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon Well 9375 in the Racket Newberne Storage Complex in Gilmer County, West Virginia, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

DTI states that Well 9375 is located in the Racket Newberne Storage Pool located in Gilmer County, West Virginia and has been operational as a storage well since 1949. According to DTI, the operational capabilities of the Racket Newberne Storage Complex will not be affected by the plugging and abandonment of this storage well.

DTI states that it will abandon 89 feet of Line H–18146, that connects Well 9375 to DTI's TL–297. DTI states that the abandonment of this line will be performed under the Commission's part 157 pipeline blanket certificate program and the blanket authorization DTI received in Docket No. CP82–537–000, and will be reported as part of DTI's part 157 Annual Report.

DTI states that the abandonment of Well 9375 involves only the removal of minor surface facilities and appropriate erosion control and site restoration will be implemented at the well site. Earth disturbance will be limited to the area immediately around the wellbore and placing a monument at the site to indicate the location of the well. DTI states that all work will be confined to the original well pad site on previously disturbed ground and the well location will be restored to its original state or landowner's preference.

DTI states that due to its age and condition, Well 9375 was placed in idle service on February 22, 2003. DTI states that Well 9375 is not necessary for the continued operation of the Racket Newberne Storage Pool and that the remediation of the well necessary for the useful operation is neither feasible nor economically efficient.

Any questions concerning this application may be directed to Sean R. Sleigh, Certificates Manager, Dominion Transmission, Inc., 120 Tredegar Street, Richmond, Virginia 23219, at (304) 627–3462 or fax (304) 627–3305.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: April 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10203 Filed 4–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–258–002]

Iroquois Gas Transmission System, L.P.; Notice of Compliance Filing

April 18, 2003.

Take notice that on April 15, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Tenth Revised Sheet No. 4A; and Substitute Original Sheet No. 4B, with the proposed effective date to be April 1, 2003.

Iroquois states that the filing is being made in compliance with the Commission's March 31, 2003 order in the captioned proceeding. Iroquois states that the Commission's March 31 order accepted and suspended Iroquois' revised tariff sheets implementing a new Extended Receipt and Extended Delivery Point Service (ER/ED Service) subject to refund and required Iroquois to resubmit Sheets 4A and 4B to be consistent with its ruling in Texas Eastern Transmission, L.P. 102 FERC ¶61,198 (2003).

Iroquois further states that copies of this amended filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10209 Filed 4–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–134–003]

Maritimes & Northeast Pipeline L.L.C.; Notice of Compliance Filing

April 18, 2003.

Take notice that on April 15, 2003, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) tendered for filing as part of its FERC Gas Tariff. First Revised Volume No. 1, the following tariff sheets to become effective on April 1, 2003.

Third Revised Sheet No. 7
Third Revised Sheet No. 8
Fourth Revised Sheet No. 12
Fourth Revised Sheet No. 13
Fourth Revised Sheet No. 14

Maritimes states that the purpose of this filing is to comply with the Commission's order dated March 12, 2003, (March 12 Order), in Docket Nos. RP02–134, *et al.* Maritimes states that the March 12 Order approved an uncontested Stipulation and Agreement (Settlement) filed by Maritimes on December 20, 2002.

Maritimes states that the Settlement resolved all issues set for hearing in a rate proceeding under Section 5 of the Natural Gas Act in Docket Nos. RP02–134, *et al.*, and that the March 12 Order approving the Settlement also approved the tariff changes tendered in the instant filing, which tariff changes were submitted on pro forma tariff sheets as part of the Settlement. The March 12 Order directed that Maritimes file the instant tariff sheets by the deadline specified in the Settlement.

Maritimes states that copies of this filing were mailed to all affected customers of Maritimes and interested state commissions, as well as all parties on the Commission's Official Service List compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: April 28, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10208 Filed 4–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–548–001, et al.]

Citizens Communications Company, et al.; Electric Rate and Corporate Filings

April 17, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Citizens Communications Company

[Docket No. ER03–548–001]

Take notice that on April 11, 2003, Citizens Communications Company (Citizens) tendered for filing six copies of a Notice of Cancellation of Rate Schedule 46, applicable to sales-for-resale service to Mohave Electric Cooperative.

Citizens states that copies of this filing have been served to Mohave Electric Cooperative and Arizona Corporation Commission.

Comment Date: May 2, 2003.

2. California Independent System Operator Corporation

[Docket No. ER03–746–000]

Take notice that on April 15, 2003 the California Independent System Operator Corporation (ISO) tendered for filing with the Commission, Amendment No. 51 to the ISO Tariff. ISO states that the purpose of Amendment No. 51 is to modify the Tariff to facilitate conducting market re-runs necessary in anticipation of the major market re-run required by the Commission in Docket No. EL00–95–000, *et al.* The ISO states that this filing has been served on the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff.

The ISO is requesting waiver of the 60-day notice requirement to allow Amendment No. 51 to be made effective May 1, 2003.

Comment Date: May 6, 2003.

3. American Ref-Fuel Company of Hempstead

[Docket No. ER03–747–000]

Take notice that on April 15, 2003, American Ref-Fuel Company of Hempstead (ARC-Hempstead) tendered for filing a proposed supplement to ARC-Hempstead's FERC Electric Tariff, Original Volume No. 1, which governs sales of energy from ARC-Hempstead to Long Island Lighting Company d/b/a LIPA, under Section 205 of the Federal Power Act, 16 U.S.C. 824d, and part 35 of the Commission's Regulations.

Comment Date: May 6, 2003.

4. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER03–748–000]

Take notice that on April 15, 2003, Wolverine Power Supply Cooperative, Inc., submitted for filing a Petition for Waiver of Pre-Order No. 2001 Filing Requirements, and requested that the Commission waive the requirement for the filing of the Power Sales Agreement.

Comment Date: May 6, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

[FR Doc. 03–10204 Filed 4–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

April 18, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Applicant Type:* Amendment of License to Change Project Boundary.

b. *Project No:* 10855–005.

c. *Date Filed:* January 15, 2003.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Dead River Hydroelectric Project.

f. *Location:* The Dead River Hydroelectric Project is located on the Dead River, in Marquette County, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825 (r) and 799 and 801.

h. *Applicant Contact:* Shawn Puzen, Environmental Analyst, Upper Peninsula Power Company, 600 E. Lakeshore Drive, PO Box 130, Houghton, MI 49931–0130, (920) 433–1094.

i. *FERC Contact:* Any questions on this notice should be addressed to Etta Foster at (202) 502–8769, or e-mail address: *etta.foster@ferc.gov.*

j. *Deadline for filing comments and/or motions:* May 19, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–10855–005) on any comments or motions filed.

k. *Description of Request:* Upper Peninsula Power Company (UPPCO) proposes to add additional acreage to the project boundary in the area of the Emergency Fuse Plug. The additional acres are necessary for project operations.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene-Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents-Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments-Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–10207 Filed 4–23–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Surplus Plutonium Disposition Program

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Amended record of decision.

SUMMARY: The U.S. Department of Energy/National Nuclear Security Administration (DOE/NNSA) is amending the Record of Decision (ROD) for the *Surplus Plutonium Disposition Environmental Impact Statement* (SPD EIS) to allow for the disposition of up to 34 metric tons (MT) of surplus weapons-grade plutonium as mixed oxide (MOX) fuel to be irradiated in commercial nuclear reactors. The ROD for the SPD EIS indicated that DOE would dispose of up to 50 MT of weapons-usable surplus plutonium by making MOX fuel from 33 MT and immobilizing the remaining 17 MT. However, on April 19, 2002, DOE/NNSA amended that ROD to cancel the immobilization portion of the surplus plutonium disposition program due to budgetary constraints. DOE/NNSA also noted in the April 19, 2002 ROD that in response to a statutory directive, it had submitted to Congress a report on a strategy for the disposal of surplus plutonium currently located at, or to be shipped to the Savannah River Site (SRS). That strategy involved converting this plutonium to MOX fuel and irradiating it in commercial power reactors. DOE/NNSA stated in the April 19, 2002 ROD that it was evaluating the changes to the MOX fuel portion of the surplus plutonium disposition program that would be entailed by such a MOX-only strategy, including the need for additional environmental reviews pursuant to the National Environmental Policy Act (NEPA), and that it would make no final decisions regarding the MOX portion of the program until these reviews were completed.

In accordance with the April 19, 2002 amended ROD, DOE/NNSA has now evaluated the changes to the MOX fuel portion of the program that would be entailed by pursuit of such a MOX-only disposition strategy and the impacts of those changes. This evaluation is presented in a Supplement Analysis (SA) prepared pursuant to DOE procedures implementing NEPA (10 CFR 1021.314), Supplement Analysis for Changes Needed to the Surplus Plutonium Disposition Program (DOE/EIS–0283–SA1). It concludes that the potential environmental impacts of the changes in the MOX program are not significantly different from the impacts analyzed in the SPD EIS. Therefore, DOE/NNSA will now pursue a MOX-only surplus plutonium disposition program. The program will dispose of 34 MT of surplus plutonium, including approximately 6.5 MT of the 17 MT of surplus plutonium originally intended for immobilization.

FOR FURTHER INFORMATION CONTACT: For further information concerning the disposition of surplus plutonium, copy of the Supplement Analysis for Changes Needed to the Surplus Plutonium Disposition Program or this amended ROD, contact Hitesh Nigam, Deputy NEPA Compliance Officer, Office of Fissile Materials Disposition, National Nuclear Security Administration, 1000 Independence Avenue, SW., Washington, DC 20585, or leave a message at 800–820–5134.

For further information concerning DOE's NEPA process, contact Ms. Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 586–4600, or leave a message at (800) 472–2756. Additional information regarding the DOE NEPA process and activities is also available on the Internet through the NEPA home page at *http://tis.eh.doe.gov/nepa.*

SUPPLEMENTARY INFORMATION:

I. Background

On April 19, 2002, DOE/NNSA issued an amended ROD (67 FR 19432) for the Surplus Plutonium Disposition Environmental Impact Statement (SPD EIS) (DOE/EIS–0283, November 1999) and the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact

Statement (Storage and Disposition PEIS) (DOE/EIS–0229, December 1996). That amended ROD canceled the immobilization component of the U.S. surplus plutonium disposition program for surplus weapons-usable [1] (weapons-grade [2] and non-weapons-grade) plutonium described in the two EISs. The amended ROD selected the alternative of immediate implementation of consolidated long-term storage at the SRS of surplus non-pit plutonium now stored separately at the Rocky Flats Environmental Technology Site (RFETS). DOE has begun shipping the RFETS surplus non-pit plutonium to SRS pursuant to that ROD, and anticipates that the shipping campaign will be completed by late summer of 2003.

The April 19 amended ROD also explained that in response to a Congressional directive set out in Section 3155(c) of The National Defense Authorization Act for Fiscal Year 2002, on February 15, 2002 DOE/NNSA submitted a Report to Congress: Disposition of Surplus Defense Plutonium at Savannah River Site (supplemented by letter on March 5, 2002). That report stated that DOE/NNSA's current disposition strategy involves a MOX-only approach, under which DOE/NNSA would dispose of up to 34 MT of surplus weapons-grade plutonium by converting it to MOX fuel and irradiating it in commercial power reactors. The April 19 ROD noted that implementation of this strategy would allow the successful completion of the September 2000 Agreement Between the Government of the United States and the Government of the Russian Federation Concerning the Management and Disposition of Plutonium Designated as No Longer Required for Defense Purposes and Related Cooperation (U.S.-Russia Agreement). It also stated, however, that DOE was in the process of analyzing the changes to the MOX fuel portion of the surplus plutonium disposition program that would be entailed by such a strategy, including analysis conducted pursuant to NEPA, and that no final decisions regarding the MOX portion of the surplus plutonium disposition program would be made until DOE/NNSA completed this analysis.

DOE has previously prepared a number of NEPA documents regarding the surplus plutonium disposition program. The Storage and Disposition PEIS evaluated the potential environmental consequences of alternative strategies for the long-term storage of weapons-usable plutonium and highly enriched uranium and the disposition of weapons-usable plutonium that has been or may be declared surplus to national security needs. The ROD for the Storage and Disposition PEIS, issued on January 21, 1997 (62 FR 3014), outlined DOE's decision to pursue a hybrid disposition strategy that allowed for both the immobilization of some (and potentially all) of the surplus plutonium and the fabrication of some of the surplus plutonium into MOX fuel to be irradiated in existing domestic, commercial reactors. Subsequent to issuing the ROD for the Storage and Disposition PEIS, DOE conducted a competitive procurement and in March 1999 selected the team of Duke Cogema Stone & Webster (DCS) to design, construct and operate a potential MOX facility in accordance with U.S. Nuclear Regulatory Commission (NRC) regulations.

The SPD EIS, which tiered from the Storage and Disposition PEIS, evaluated site-specific alternatives for the construction and operation of three facilities to dispose of up to 50 MT [3] of surplus plutonium. The ROD for the SPD EIS, issued on January 11, 2000 (65 FR 1608), affirmed DOE's decision to implement a hybrid approach for the safe and secure disposition of up to 50 MT of surplus plutonium. Clean metals and clean oxides were identified as feed for the MOX fuel fabrication facility (MOX facility). Impure metals, plutonium alloys, impure oxides, uranium/plutonium oxides, alloy reactor fuel, and oxide reactor fuel were identified as feed for the immobilization facility. In addition, SRS was selected as the site for construction and operation of the three disposition facilities: the pit disassembly and conversion facility, the MOX facility, and the plutonium conversion and immobilization facility (immobilization facility).

In 2001, the schedule for design, construction and operation of the immobilization facility was delayed due to budgetary constraints. In its February 15, 2002 Report to Congress, DOE/NNSA stated that after evaluating the feasibility of implementing two disposition approaches, it believed that the best way to make the most progress with available funds while maintaining Russian interest in and commitment to surplus plutonium disposition was to pursue a MOX-only disposition strategy. On April 19, 2002, DOE/NNSA issued an amended ROD revising the earlier decisions announced in the RODs for the Storage and Disposition PEIS and the SPD EIS. With respect to surplus plutonium disposition, the amended ROD announced DOE/NNSA's decision to cancel the immobilization program and conduct additional NEPA analyses, as appropriate, before making any final decisions regarding the MOX portion of the surplus plutonium disposition.

In addition to these various NEPA documents that DOE has prepared, DOE/NNSA notes that the NRC is preparing an EIS for the MOX facility based on an Environmental Report submitted by DCS in support of its application, pursuant to 10 CFR part 70, for an NRC license to possess and use special nuclear material in the MOX facility.

Finally, DOE/NNSA takes note of Division C, Title XXXI, Subtitle E of the recently enacted Bob Stump National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107–314, December 2, 2002). That Subtitle, entitled "Disposition of Weapons-Usable Plutonium at Savannah River, South Carolina," directs the Secretary to submit to Congress a plan for and series of reports regarding construction and operation of a MOX facility at SRS under a specific timetable. It also directs the Secretary to take certain actions if that schedule is not being met, which depending on the circumstance may include preparation of a corrective action plan, cessation of further transfers of weapons-usable plutonium to SRS until the Secretary certifies that the MOX production objective can be met, removal of weapons-usable plutonium transferred to SRS, and payment of economic assistance to SRS from funds available to the Secretary. In DOE/NNSA's view, enactment of this legislation demonstrates strong congressional interest in seeing DOE/NNSA proceed with the MOX facility as promptly as is reasonably possible, and DOE/NNSA is proceeding accordingly.

II. Changes to the MOX Facility and Program

There are two sets of changes that are relevant to evaluating the environmental impacts of a MOX facility that would be used in the MOX program currently being contemplated as compared with the impacts of the MOX facility evaluated in the SPD EIS. First, entirely independently of the fact that the

[1] Weapons-usable plutonium is plutonium in forms (*e.g.*, metals or oxides) that can be readily converted for use in nuclear weapons. Weapons-grade, fuel-grade, and power-reactor-grade plutonium are all weapons-usable.

[2] Weapons-grade plutonium is plutonium with an isotopic ratio of plutonium-240 to plutonium-239 of no more than 0.10.

[3] This amount (50 MT) accommodates the potential declaration of additional surplus plutonium in the future. To date, 38 MT of weapons-grade plutonium have been declared surplus. Of this amount, approximately 4 MT is already in the form of waste or spent nuclear fuel.

revised strategy contemplates the fabrication of additional material into MOX, as the detailed design for the MOX facility has progressed in conjunction with the NRC licensing process, some of the facility design parameters originally assumed in preparing the SPD EIS have changed.

Second, the MOX-only program DOE is now contemplating would entail fabricating into MOX slightly more plutonium than previously analyzed (34 MT rather than 33 MT, a difference of approximately 3%). It would also include in the MOX program a portion (approximately 6.5 MT) of the 17 MT of plutonium originally destined for immobilization.[4] This latter plutonium, referred to as "alternate feedstock," is currently in storage at various sites around the DOE complex. The majority of this material is now at RFETS, and DOE/NNSA is in the process of shipping it to SRS.[5] The remainder is located primarily at the Hanford Reservation, SRS, the Lawrence Livermore National Laboratory, and the Los Alamos National Laboratory. This alternate feedstock has more impurities and some larger particles sizes than the plutonium originally analyzed. This means additional equipment will need to be incorporated into the MOX facility to homogenize and reduce the particle size of some of the new feedstock and to remove the additional impurities.

[4] In its original February 15, 2002 Report to Congress, DOE/NNSA indicated that it believed that 6.4 MT of impure surplus plutonium, previously intended for immobilization, could reasonably be purified and used as feedstock for MOX fuel fabrication. That report also indicated that an additional 2 MT of impure surplus plutonium was too heavily contaminated to be cost-effectively used as MOX feedstock, and would therefore be disposed of as waste. A March 5, 2002 letter supplementing the February 15 Report noted that, while disposal of the 2 MT as waste remains a possibility, DOE was evaluating other disposal options, including additional processing that might result in the recovery of additional plutonium suitable for fabrication as MOX fuel. DOE recently determined that a small portion of this material, currently stored at RFETS, would most appropriately be disposed of as waste at the Waste Isolation Pilot Plant near Carlsbad, New Mexico. See Supplement Analysis for the Disposal of Certain Rocky Flats Plutonium-Bearing Materials at the Waste Isolation Pilot Plant (DOE/EIS–0026–SA–3, November 2002); Amendment to the Record of Decision on Waste Isolation Pilot Plant Disposal Phase Supplemental Environmental Impact Statement (67 FR 69512, November 18, 2002). DOE is still evaluating options to determine the most cost-effective manner for disposing of the remainder of the 2 MT of impure plutonium, and at present this plutonium is not included in the surplus plutonium that will be used to implement the U.S.-Russia Agreement. If that remains the case, this 2 MT would be replaced with an equivalent amount of additional weapons-grade plutonium to be identified in a future surplus declaration.

[5] In the April 19, 2002 amended ROD, DOE decided to transfer the non-pit surplus plutonium at RFETS to SRS for long-term storage, in order to facilitate the closure of RFETS. It otherwise left unmodified its earlier decision to continue to store the non-pit material at the sites where it is currently located. Today's decision likewise leaves unmodified that earlier decision to leave that material in place.

III. NEPA Process for Amending ROD

The Council on Environmental Quality (CEQ) regulations implementing NEPA at 40 CFR 1502.9(c) require Federal agencies to prepare a supplement to an EIS when an agency makes substantial changes in the proposed action that are relevant to environmental concerns or when there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. DOE regulations at 10 CFR 1021.314(c) direct that when it is unclear whether a supplement to an EIS is required, an SA be prepared to assist in making that determination. DOE/NNSA has recently prepared the Supplement Analysis for Changes Needed to the Surplus Plutonium Disposition Program (DOE/EIS–0283–SA1) in accordance with these CEQ and DOE regulations.

In the SPD EIS ROD, DOE selected the Preferred Alternative (SPD EIS Alternative 3), which involves the construction and operation of three disposition facilities at SRS. The SA evaluates the proposed changes to the MOX facility within the context of the SPD EIS Preferred Alternative, and recognizes that, with the cancellation of the immobilization facility, only two disposition facilities are to be constructed and operated at SRS. The analysis also reflects the design changes in the MOX facility proposed during the NRC licensing process. The SA also evaluates the proposed processing of 34 MT of surplus plutonium, including the alternate feedstock, and compares the impacts of that proposal to the associated impacts presented in the SPD EIS. The conclusions from the SA are summarized in Section IV of this amended ROD. Section IV also discusses the effect of using the alternate feedstock to fabricate MOX fuel on DOE/NNSA's decision in the April 19, 2002 amended ROD to consolidate long-term storage at SRS of surplus non-pit plutonium stored separately at RFETS (*see* Section I).

IV. Summary of Impacts

None of the changes to the program described above would result in impacts significantly different from, or significantly greater than, those described in the SPD EIS. For most of the resource areas analyzed, no differences or only very minor differences in impacts were identified. Where there are differences in impacts, they are relatively small and are well within DOE's capacity to manage.

Increased impacts result from increases in the volume of low-level radioactive waste, transuranic (TRU) waste, and nonradioactive, nonhazardous wastewater from the MOX facility over levels identified in the SPD EIS. However, there is sufficient capacity within the waste management infrastructure at SRS, and available disposal capacity within the DOE complex, to accommodate the additional waste. Moreover, the total number of shipments of TRU waste from SRS to the Waste Isolation Pilot Plant (WIPP) remains within the number of shipments evaluated in the Waste Isolation Pilot Plant Disposal Phase Final Supplemental Environmental Impact Statement (WIPP SEIS) when the additional shipments of TRU waste generated by MOX facility operations are included. Finally, from a programmatic perspective (*i.e.*, construction and operation of only two facilities rather than three), overall generation of non-radioactive, non-hazardous wastewater decreases.

The amount of land estimated to be temporarily and permanently disturbed for construction of the MOX facility would increase from that identified in the SPD EIS. However, construction of the MOX facility in F-Area is consistent with other SRS uses and with the surrounding industrial land use.

Changes to the MOX facility and associated operations would result in only minor additional impacts on other resource areas, including an overall decrease in water use and a small positive socioeconomic benefit from the need for a slightly larger workforce. No new or different bounding accident scenarios or impacts have been identified, and operation of the MOX facility continues to pose no more than a small risk to human health and the environment.

Prior to issuing the April 19 amended ROD to provide for the transfer of RFETS surplus non-pit plutonium to SRS, DOE prepared an SA entitled Supplement Analysis for Storage of Surplus Plutonium Materials in the K-Area Material Storage Facility at the Savannah River Site (KAMS SA), DOE/EIS–0229–SA–2, February 2002. That SA analyzed the impacts of storing up to 15 MT of plutonium in the KAMS facility for up to 50 years. Like the rest of the non-pit plutonium, this material will have to be sampled before any final decision can be made whether it can be fabricated into MOX, but DOE/NNSA anticipates that, depending on system performance and actual material characteristics, almost all of the RFETS plutonium will be included in the approximately 6.5 MT of alternate feedstock, meaning that this material would not require long-term storage.

Based on these analyses, DOE/NNSA has determined that the potential environmental impacts associated with the proposed changes to the revised disposition program, including facility design changes, a small increase in the total amount of material to be fabricated into MOX fuel, and the processing of approximately 6.5 MT of surplus plutonium originally intended for immobilization, would not constitute significant new circumstances or information relevant to environmental concerns and bearing on the action and impacts previously analyzed in the SPD EIS. Therefore, pursuant to 10 CFR 1021.314, no additional NEPA analysis is required for DOE/NNSA to move forward with the design changes and modify its disposition program so that it will entail processing 34 MT of surplus plutonium, including approximately 6.5 MT of plutonium originally intended for immobilization, into MOX fuel.

V. Amended Decision

DOE/NNSA is modifying its previous surplus plutonium disposition decisions in order to implement the U.S.-Russia Agreement using a 34-MT MOX-only approach. DOE/NNSA is modifying its decisions on the disposition of surplus plutonium as follows:

- Pursue a program of fabricating into MOX fuel (after appropriate sampling to determine actual material characteristics) approximately 6.5 MT of surplus weapons-grade plutonium originally intended for immobilization, including the material transferred from RFETS to SRS for storage that after appropriate sampling is determined to meet the MOX fabrication facility's specifications.
- Increase the total amount of surplus plutonium to be fabricated into MOX fuel under that program from 33 MT to 34 MT.

Issued in Washington, DC, this 17th day of April, 2003.

Linton F. Brooks,

Acting Administrator, National Nuclear Security Administration.

[FR Doc. 03–10151 Filed 4–23–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2002–0064; FRL–7487–6]

Agency Information Collection Activities; Submission of EPA ICR No. 0029.08 (OMB No. 2040–0068) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NPDES Modifications and Variance Requests. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 27, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Water Permits Division, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0768; fax number: (202) 564–6431; email address: *faulk.jack@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 10, 2003, (68 *FR* 1454), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2002–0064, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NPDES Modification and Variance Requests (OMB Control Number 2040–0068, EPA ICR Number 0029.08). This is a request to renew an existing approved collection that is scheduled to expire on April 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: This ICR calculates the burden and costs associated with modifications and variances made to NPDES permits and to the National Sewage Sludge Management Program permit requirements. The regulations specified at 40 CFR 122.62 and 122.63 specify information a facility must report in order for the U.S.

Environmental Protection Agency (EPA) to determine whether a permit modification is warranted. A NPDES permit applicant may request a variance from the conditions that would normally be imposed on the applicant's discharge. An applicant must submit information so the permitting authority can assess whether the facility is eligible for a variance, and what deviation from Clean Water Act (CWA) provisions is necessary. In general, EPA and authorized States use the information to determine whether: (1) The conditions or requirements that would warrant a modification or variance exist, and (2) the progress toward achieving the goals of the (CWA) will continue if the modification or variance is granted. Other uses for the information provided include: updating records on permitted facilities, supporting enforcement actions, and overall program management, including policy and budget development and responding to Congressional inquiries.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 23 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: NPDES permit applicants that request a variance or modification of the NPDES or sewage sludge management conditions.

Estimated Number of Respondents: 13,137.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 303,997 hours.

Estimated Total Annual Cost (non labor costs): $10,952,021, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is an increase of 10,674 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase in the applicant respondent and NPDES-authorized state burden is due to an increase in the number of States authorized to administer the NPDES permitting program (*i.e.*, shift of burden from EPA to the States).

Dated: April 10, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–10165 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0033; FRL–7487–7]

Agency Information Collection Activities; Submission of EPA ICR No. 2078.01 to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: ENERGY STAR® Product Labeling. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 27, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Rachel Schmeltz, Climate Protection Partnerships Division, Office of Air and Radiation, MC 6202J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–9124; fax number: 202–565–2077; email address: *schmeltz.rachel@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 17, 2002 (67 *FR* 46969), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0033, which is available for public viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by email to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: ENERGY STAR Product Labeling (EPA ICR Number 2078.01). This is a request for a new collection.

Abstract: ENERGY STAR® is a voluntary program developed in collaboration with industry to create a self-sustaining market for energy efficient products. The center piece of the program is the ENERGY STAR label, a registered certification label that helps consumers identify products that save energy, save money, and help protect the environment without sacrificing quality or performance. In order to protect the integrity of the label and enhance its effectiveness in the marketplace, EPA must ensure that products carrying the label meet appropriate program requirements. Since ENERGY STAR is a self-certification program, it is important that program participants submit signed Partnership Agreements indicating that they will adhere to logo-use guidelines and that participating products meet specified energy performance criteria based on a standard test method.

As part of our contribution to the overall success of the program, EPA has agreed to facilitate the sale of qualifying products by providing consumers with easy-to-use information about the products. To be effective, EPA must receive qualifying product information from participating manufacturers. Partners will be requested to submit updates to qualifying product information on an annual basis, so as to ensure that EPA information is recent and accurate. The information will be compiled into a complete qualifying products list per product category, posted on the ENERGY STAR Web site, and supplied to those purchasers who request it via phone, fax, or e-mail. In addition, because of the nature of these products, manufacturer of roof products and residential light fixtures will be requested to submit testing reports in order to verify qualification.

In order to monitor progress and support the best allocation of resources, EPA will also ask manufacturers to submit annual shipment data for their ENERGY STAR qualifying products. EPA is flexible as to the methods by which manufacturers may submit unit shipment data. For example, if manufacturers already submit this type of information to a third party, such as a trade association, manufacturers are given the option of arranging for shipment data to be sent to EPA via this third party to avoid duplication of efforts and to ensure confidentiality. In using any shipment data received directly from a partner, EPA will mask the source of the data so as to protect confidentiality.

Finally, Partners that wish to receive recognition for their efforts in ENERGY STAR may submit an application for the Partner of the Year Award.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The average annual public reporting and recordkeeping burden for this collection of information is about 173 hours. EPA collects initial information in the Partnership Agreement (PA), which is completed and submitted by every Partner participating in ENERGY STAR. One overarching PA has been developed by EPA for ENERGY STAR product labeling. It is expected that 118 new Partners will join each year for the three years of this ICR. The reporting burden for information collection requirements associated with completing the PA for each respondent is estimated to be about 13 hours. This estimate includes times for reviewing the instructions on the PA, completing and reviewing the information requested by the PA, and submitting the PA.

Every manufacturing Partner is required to submit information on each of their qualifying products. Annual updates, notifying EPA of any changes in qualifying product information, are required as well. Thirty-two different product categories are covered by EPA under ENERGY STAR. Each product category has specific qualifying product information that must be submitted by each Partner for at least one qualifying product. Qualifying product information is expected for 3,112 new qualifying products each year for the three years of this ICR. The qualifying product list for each product category is updated by the Agency once each month, for a total of 384 times annually (32 product categories times 12 months in a year). Approximately twice each month the Agency receives a request for qualifying product information that cannot be fulfilled by the ENERGY STAR Web site, for a total of 768 requests. The reporting burden for information collection requirements associated with submitting the qualifying product information for each qualifying product submitted by a respondent is estimated to be about 19 hours. This estimate includes time for compiling and reviewing the information requested, and submitting the information.

ENERGY STAR Partners for residential light fixtures and roof products are required to submit testing reports for each product determined to by qualified with the ENERGY STAR criteria. It is anticipated that qualifying product information for 654 new roof and residential light fixture products will be received by EPA each year for the three years of this ICR. The reporting burden for information collection requirements associated with testing reports by roof product and residential light fixture Partners for each qualifying product submitted by a respondent is estimated to be about 70 hours. This estimate includes performing testing in house or by a Third Party, assembling the data into a report format, reviewing it and submitting it.

EPA also requires that manufacturing Partners submit information on their unit shipments of ENERGY STAR labeled products annually. Each year, ENERGY STAR Partners are required to submit unit shipment data for their ENERGY STAR labeled products. There will be an average of 1,143 total Partners each year for the three-years of this ICR. Therefore, 1,143 reports of unit shipment data are expected each year for the three years of this ICR. Unit shipment data will be aggregated for each of the 32 product categories covered by EPA under ENERGY STAR. The reporting burden for information collection requirements associated with unit shipment data for each respondent is estimated to be about 27 hours. This estimate includes gathering unit shipment data compiling and reviewing unit shipment data by product category, and submitting unit shipment data.

Partners interested in receiving recognition for their efforts on ENERGY STAR are required to submit a Partner of the Year Award application. One set of Partner of the Year award criteria are developed by the Agency each year and posted on the ENERGY STAR Web site. An average of 30 Partners of the Year Award applications are expected each year for the three years of this ICR. The reporting burden for information collection requirements associated with the Partner of the Year Application for each respondent is estimated to be about 44 hours. This estimate includes reviewing the eligibility requirements and instruction on the application, gathering data and information for submission, completing the application, reviewing the information and narrative, description required, and submitting the application to EPA.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a

Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities affected by this action are product manufacturers which are Partners in EPA's ENERGY STAR program.

Estimated Number of Respondents: 1,143.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 129,623.

Estimated Total Annual Cost: $8,245,116 includes $346,667 annualized capital and $153,570 O&M costs.

Dated: April 11, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–10166 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2002–0065; FRL–7487–8]

Agency Information Collection Activities; Submission of EPA ICR No. 0226.17 (OMB No. 2040–0086) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Applications for NPDES Discharge Permits and the Sewage Sludge Management Permits. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 27, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jack Faulk, Water Permits Division, Office of Wastewater Management, Mail Code 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–564–0768; fax number: (202) 564–6431; e-mail address: *faulk.jack@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 10, 2003 (68 *FR* 1454), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0065, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 *FR* 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Applications for NPDES Discharge Permits and the Sewage Sludge Management Permit (OMB Control Number 2040–0086, EPA ICR Number 0226.17). This is a request to renew an existing approved collection that is scheduled to expire on April 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: This ICR calculates the burden and costs associated with permit applications for National Pollutant Discharge Elimination System (NPDES) discharges and sewage sludge management activities. EPA and States use the data contained in applications and supplemental information requests to set appropriate permit conditions, issue permits, and assess permit compliance. EPA maintains national applications information in databases, which assist permit writers in determining permit conditions. Depending on the application form they are using, applicants may be required to supply information about their facilities, discharges, treatment systems, sewage sludge use and disposal practices, pollutant sampling data, or other relevant information. In its burden and cost calculations, this ICR includes requests for information supplemental to permit applications. Application information is necessary to obtain an NPDES or sewage sludge permit. This ICR also includes the development of a storm water pollution prevent plan as part of the requirements for the multi-sector general permit, for industrial activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4.8 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Publicly owned treatment works (POTWs), privately owned treatment works, new and existing industrial manufacturing and commercial discharger, storm water dischargers, treatment works treating domestic sewage (TWTDS), and States and territories.

Estimated Number of Respondents: 291,898.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 1,398,737 hours.

Estimated Total Annual Cost: $53,546,024, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 639,957 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease in the applicant respondent and NPDES-authorized state burden is due to a reduction in the burden associated with existing storm water permittees updating rather than developing Storm Water Pollution Prevention Plans.

Dated: April 10, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–10167 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0003; FRL–7487–9]

Agency Information Collection Activities; Submission of EPA ICR No. 1061.09, OMB No. 2060–0037 to OMB for Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for the Phosphate Fertilizer Industry (40 CFR part 60, subparts T, U, V, W, and X), OMB Control No. 2060–0037, EPA ICR No. 1061.09. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before May 27, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division (Mail Code 2223A), Office of Compliance, United States Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0003, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is: (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comment, whether submitted electronically or on paper, will be available for public viewing in EDOCKET, as EPA receives them without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment placed in EDOCKET. The entire printed comment, including copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NSPS for the Phosphate Fertilizer Industry (40 CFR part 60, subparts T, U, V, W, and X), OMB Control No. 2060–0037, EPA ICR No. 1061.09. This is a request to renew an existing, approved collection that is scheduled to expire on June 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The NSPS for the Phosphate Fertilizer Industry, published at 40 CFR part 60, subparts T, U, V, W, and X,

were proposed on October 22, 1974 and promulgated on August 6, 1975. These standards apply to each wet-process phosphoric acid plant, each superphosphoric acid plant, each granular diammonium phosphate plant, and each triple superphosphate plant, having a design capacity of more than 15 tons of equivalent phosphorous pentoxide (P_2O_5) feed per calendar day. These standards also apply to granular triple superphosphate storage facilities.

Owners or operators of affected facilities described must make the following one-time-only initial notifications and reports on the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. The owners or operators must install, calibrate, maintain, and operate a monitoring device which continuously measures and permanently records the total pressure drop across the scrubbing system.

Also required are semiannual reports. The owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements. Responses to the collection of information are mandatory and are being collected to assure compliance with 40 CFR part 60, subparts T, U, V, W, and X. These notifications, reports and records are essential in determining compliance.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 46 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Phosphate Fertilizer Industry.

Estimated Number of Respondents: 13.

Frequency of Response: Initial and Semiannual.

Estimated Total Annual Hour Burden: 1,194.

Estimated Total Annualized Operations and Maintenance Cost: $320,000.

Changes in the Estimates: There is an increase of 231 hours and $320,000 in the total estimated burden currently identified in the OMB Inventory of approved ICR burdens. This is due to an increase in the number of sources and a reconsideration of the operation and maintenance costs for the required continuous emission monitors.

Dated: April 10, 2003.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 03–10171 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0018; FRL–7303–4]

National Tribal Conference on Environmental Management; Notice of Proposal Solicitation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is requesting proposals from federally recognized Indian tribes or intertribal consortia to co-sponsor the 7th National Tribal Conference on Environmental Management (NTCEM). EPA will be the federal sponsor. The Tribal Conference will provide an opportunity for tribal leaders, tribal environmental managers, tribal organizations, federal agencies, and other interested entities/persons to share information about tribal environmental programs and discuss issues of vital interest to Indian country. The scope of the conference traditionally encompasses multi-media environmental issues involving tribes. The goals for the conference are to facilitate tribal environmental programs; establish stronger networks and relationships across environmental efforts in Indian country; identify shared lessons learned; and familiarize tribes with the full extent of tribal and EPA program environmental activities. EPA will award a cooperative agreement to the selected host tribe to co-sponsor the conference, including personnel, planning, facilities, and management expenses.

DATES: Proposals must be received or postmarked byJune 23, 2003.

A conference call for potential applicants to ask questions or seekpre-application assistance is scheduled for May 7, 2003, from 2 p.m. to 4:30 p.m. eastern standard time. Please call Caren Rothstein-Robinson at (202) 564–0544 to obtain the conference call telephone number and the access code.

ADDRESSES: Mail proposals via the U.S. Postal Service (including express and priority mail) to: Clara Mickles, Environmental Protection Agency, American Indian Environmental Office, Mail code 4104M, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Mail proposals via commercial overnight delivery service (e.g., FedEx, DHL, UPS) to: Clara Mickles, Environmental Protection Agency, American Indian Environmental Office, Room 3334, EPA East, Mail code 4104M, 1201 Constitution Ave., NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Caren Rothstein-Robinson, Environmental Protection Agency, Office of Program Management Operations, Mail code 7101M, Office of Prevention, Pesticides and Toxic Substances, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0544.

Applicants may submit written questions for clarification electronically to: *rothstein-robinson.caren@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of particular interest to federally recognized Indian tribes or tribal consortia. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0018. The official public docket consists of documents specifically referenced in this action and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B–102 Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the**Federal Register** listings at *http://www.epa.gov/fedrgstr/.*You may also access this document and copies of past conference agendas from EPA's American Indian Environmental Office's web page at *http://www.epa.gov/indian/*.

Significant questions and responses as well as any significant clarifications to this request for proposals will be posted on EPA's American Indian Environmental Office's web page at *http://www.epa.gov/indian/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

Starting in 1992, EPA has co-sponsored six bi-annual NTCEM conferences to provide an opportunity for tribal leaders, tribal environmental program managers, tribal organizations, federal agencies, and other interested entities to share information about tribal environmental programs and discuss issues of vital interest to Indian country. Topics at past conferences have helped to build tribal capacity in the following areas:

1. Managing environmental programs (including integrated waste programs).
2. Grant assistance to tribes.
3. Addressing concerns about human health risks and subsistence.
4. Contracting, research, and business development opportunities.
5. Technology (GIS) and natural resource management.
6. Air, water, and waste management issues.

The conference has traditionally been held in late spring. Following is a list of previous conference locations and dates:

1. Cherokee Nation, NC (May 1992)
2. Cherokee Nation, NC (May 1994)
3. Confederated Salish and Kootenai Tribes of the Flathead Nation, MT (May 1996)
4. Prairie Island Indian Community, MN (May 1998)
5. Confederated Tribes of Siletz Indians, OR (June 2000)
6. Pyramid Lake Paiute Tribe, NV (June 2002)

The most recent conference, hosted by the Pyramid Lake Paiute Tribe, in Reno, NV, was very successful in content as well as in attendance. Over 700 people attended this conference. Past conferences have drawn500–700 participants representing more than 200 tribes, Native Alaskans, intertribal consortia, federal employees and private/non-profit organizations. The conference agenda included all aspects of tribal environmental issues.

EPA has decided to sponsor the 7th NTCEM in the spring of 2005, with EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS), serving as the lead office for the event. In the past, the NTCEM has been held bi-annually in late spring which would place the 7th NTCEM sometime in late spring of 2004.

The decision to hold the conference in the spring of 2005 is being made because EPA and its tribal partners are planning several significant activities in the 2004 calendar year. Moreover, EPA is aware that the National Museum of the American Indian is planned to have its grand opening in the fall of 2004. EPA understands that there are a number of tribal activities and celebrations being held in conjunction with the Museum's opening and does not want to detract from these events. EPA also believes that spacing major tribal events more widely presents several positive benefits. It will help spread scarce tribal travel expenses over a longer period and encourage tribal participation at more events. Scheduling the NTCEM for the spring of 2005 would also give the host tribe additional time to plan for and work with other tribes across the country to ensure fuller participation and a diverse agenda more accurately reflecting Tribal interest and issues.

III. 2005 Host Responsibilities

The tribal host will be the primary non-federal co-sponsor for this conference. Strong conference management capabilities are essential, and include: Developing the conference agenda, handling conference logistics (such as registration, transportation, and travel scholarships for tribal participants), developing conference materials, and communications planning and outreach to ensure that priority environmental issues of interest to tribes are represented. The host tribe will support the tribal community in their participation by encouraging attendance and covering related travel expenses for the appropriate tribal personnel. The host tribe will also take the lead role in developing a conference theme.

EPA will be the federal co-sponsor of the NTCEM and will work with the tribal co-sponsor to identify national tribal environmental issues and arrange for federal participation. The Agency will enter into a written co-sponsorship agreement under EPA Ethics Advisory 96–15 with the selected tribal co-sponsor. EPA will provide technical assistance to the tribal co-sponsor, as needed, to resolve logistics and communication issues associated with the event. In consultation with the tribal co-sponsor, EPA may advertise the conference in EPA websites, notices, newsletters and other internal EPA communications materials.

IV. Coordination with Other Federal Agencies and Tribal Organizations

EPA and the host tribe will coordinate with other federal agencies and key EPA-supported tribal entities (including the Tribal Operations Committee, Tribal Pesticide Program Council, Tribal Science Council, Tribal Association on Solid Waste and Emergency Response, and many other broader-based intertribal organizations and consortia) to strengthen the multi-media character of this conference. These groups will be invited to participate on the conference agenda or independently around the other on-going conference events. Once the conference host is selected, EPA encourages interested organizations to contact the host to coordinate efforts.

V. Evaluation Criteria

EPA is requesting proposals from federally recognized Indian tribes or intertribal consortia to host the National

Tribal Conference on Environmental Management through a cooperative agreement with EPA, generally with a project period of 2 years. The applicable Catalog of Federal Domestic Assistance number is 66.604. To be eligible to receive a cooperative agreement under the authorities listed in today's Notice, an intertribal consortium must meet the definition of eligibility in the Environmental Program Grants for Tribes Final Rule, at 40 CFR 35.504 (66 FR 3782, January 16, 2001) (FRL–6929–5), and is a non-profit organization within the meaning of OMB Circular A–122. The funding amount for the cooperative agreement is subject to the availability of funds in EPA. Prior cooperative agreement awards for co-hosting the Tribal Conference have been in the amount of about $300,000. EPA will negotiate the final amount of the award with the selected tribal host.

Tribes or intertribal consortia that wish to submit proposals must first meet the four threshold factors described below under Unit V.B. Proposals that do not meet the threshold factors will not be considered further by EPA. If your tribe or intertribal consortium meets these threshold factors, EPA will score your proposal based on how well you meet the evaluation criteria. Please make sure you address the threshold factors first and then provide detailed information on all the listed criteria in your proposal. Clearly mark any information you consider confidential. EPA will make confidentiality decisions in accordance with Agency regulations at 40 CFR part 2, subpart B. Submissions which do not address a particular criterion will receive a zero score for that criterion. EPA strongly encourages direct involvement by staff from your environmental program/department, facility managers, and members of the local business community/chamber of commerce.

An EPA panel consisting of representatives from across the Agency will evaluate all qualifying submissions according to the listed criteria, and rank them according to final score. EPA will award a grant to the selected tribal host with the highest scoring proposal to cover personnel, planning, and management expenses. EPA reserves the right to reject all proposals and make alternative arrangements for the conference. EPA will follow the dispute resolution process in accordance with 40 CFR part 31, subpart F for disagreements.

Please submit a description of your facilities and a summary of your capabilities (with limited examples, if appropriate) for all of the criteria listed below.

A. Threshold Factors

1. Proposal must be submitted by an eligible federally recognized Indian tribe or intertribal consortium.

2. Have a conference center or other suitable meeting facilities capable of holding at least 4 concurrent sessions and a plenary session that will accommodate 700 people.

3. Have the capability to lodge 700 people.

4. Demonstrate the ability to effectively manage EPA financial assistance (i.e., an adequate financial management system with effective accounting procedures that maintain fiscal control).

B. Evaluation Criteria

1. *Conference management.* The proposal should clearly demonstrate the capability to manage all aspects of a major conference with detailed information and examples. The proposal should provide a preliminary conference plan of the host tribe's proposed approach. Conference management includes outreach, preparation, implementation, and wrap-up of the conference. Outreach should address issues such as effective involvement of tribes, communications plan, and internet capability. Preparation and implementation should address such issues as staffing; design and development of agenda; travel and facility logistics; registration; tribal travel scholarships; events; and contractual support. Wrap-up should address issues such as conference proceedings and evaluation by participants. Inclusion of (limited) documentation that specifically illustrates tribal conference management capability is strongly encouraged. (Maximum of 20 points)

2. *Tribal environmental capabilities.* Tribe or intertribal consortium demonstrates they have developed substantive environmental capabilities through, for example, establishing and implementing tribal environmental programs or coordinating/leading tribal environmental projects. Tribe or intertribal consortium demonstrates how such experience will be integrated into the conference, to include tribal environmental management and program perspectives, approaches and cultural aspects, such that the conference is distinguished from other environmental conferences. Proposal demonstrates how the tribe or intertribal consortium will closely tie the event to Indian country or tribal homelands. Proposal highlights how the host tribe will reflect tribal environmental issues in the conference theme and agenda. Proposal highlights local events, activities and/or projects that reflect tribal perspective. Examples from previous conferences include host tribe environmental program presentations and tours, technical and ceremonial demonstrations, tours of communities, and field trips to environmental sites. (Maximum of 20 points)

3. *Conference facilities.* Consideration will be given for conference facilities/amenities that are tribally owned or located on tribal land. Tribes that do not have facilities located on their lands can outline a plan to utilize nearby facilities that meet the logistical needs described in the criteria. (Maximum of 12 points).

4. *Conference transportation.* Demonstrate that: (i) Airline transportation is economically feasible for most conference participants; (ii) the conference facilities are located within 90 minutes of a major airport; and (iii) ground transportation can be provided for attendees to and from the airport and around the meeting sites (e.g., between meeting facility and offsite locations such as hotels and special event locations). Lodging should be available within a reasonable travel time, preferably within 15 minutes of conference facilities. (Maximum of 12 points)

5. *Conference materials.* Capability to produce and distribute conference materials, such as a conference logo, registration materials, signs/banners, an agenda booklet, and handouts. (Maximum of 12 points)

6. *Vendor area.* Use of an area in close proximity to the meeting area(s) capable of accommodating 25 or more vendors, providing exhibit booth space of 8' x 8' or 10' x 10' per vendor and access to electrical and telephone service. (Maximum of 12 points)

7. *Resource conservation.* Commitment to find flexible, yet more protective ways to conserve natural resources in the conduct of the conference. Proposal describes how the host tribe will communicate the environmentally friendly practices used at the conference to conference participants. Examples of resource conservation include: Using products with recycled content or other environmentally friendly materials, collecting recyclables, energy or water-use efficiency activities, providing opportunities for reuse, and providing sources of education. (Maximum of 12 points)

Total: 100 points.

In addition to soliciting proposals for the 2005 conference, EPA encourages you to submit suggestions or ideas for potential agenda topics that your tribe would like to see addressed at the conference. EPA will forward all suggestions to the selected tribal host. EPA also encourages you to attend the conference regardless of whether you are interested in hosting the event.

List of Subjects

Environmental protection, Indian tribes.

Dated: April 16, 2003.

Stephen L. Johnson,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–10168 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0231; FRL–7293–6]

RIN 2070–AD35

Pesticides; Emergency Exemption Process Revisions Pilot and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizes EPA to issue emergency exemptions to States and Federal agencies, allowing them to use a pesticide for an unregistered use for a limited time if EPA determines that emergency conditions exist. EPA is announcing and seeking comment on a limited pilot program initiated by this Notice. The pilot is limited to exemption applications for which the requested chemical is a pesticide previously identified by EPA as a reduced-risk pesticide. Under this limited pilot, EPA will allow applicants for certain exemptions to re-certify that the emergency conditions which initially qualified for an exemption continue to exist in the second and third years, and will allow for a new tiered approach to be used for documenting a "significant economic loss." This limited pilot is the result of extensive stakeholder involvement and an effort to streamline the emergency exemption process. EPA is also seeking comment on another potential improvement to the emergency exemption program that would provide exemptions for certain pest resistance management purposes. EPA is considering these improvements to the emergency exemption program in an effort to reduce the burden to both applicants and EPA, allow for quicker decisions by the Agency, and facilitate resistance management, while maintaining health and safety requirements. EPA currently intends to publish a proposed rule in 2003 that will propose several potential improvements to the emergency exemption regulations. EPA will consider any available information from this pilot as it proceeds with rulemaking.

DATES: Comments, identified by the Docket ID No. OPP–2002–0231, must be received on or before June 23, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joseph Hogue, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–9072; fax number: 703–305–5884; e-mail address: *hogue.joe@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a Federal, State, or Territorial government agency that petitions EPA for section 18 use authorization. Regulated categories and entities may include, but are not limited to:

- Federal Government (NAICS Code 9241), *i.e.*, Federal agencies that petition EPA for section 18 use authorization.
- State or Territorial governments (NAICS Code 9241), *i.e.*, States, as defined in FIFRA section 2(aa), that petition EPA for section 18 use authorization.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed above could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the summary of the applicability provisions as found in Unit III.B. of this Notice. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Copies of this Notice and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OPP–2002–0231. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. This Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 703–305–5805.

2. *Electronic access.* You may access this **Federal Register** Notice electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA

intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OPP–2002–0231. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *opp-docket@epa.gov*, Attention Docket ID No. OPP–2002–0231. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Mail Code: 7502C, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OPP–2002–0231.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, Attention Docket ID No. OPP–2002–0231. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. Purpose of this Notice

This Notice announces the implementation of and seeks public comment on a limited pilot starting with the 2003 growing season. The pilot involves two potential process improvements to the emergency exemption program that are the result of an effort to streamline the emergency exemption process. EPA is taking this action after extensive stakeholder involvement (see Unit IV.). The pilot is limited to exemption applications for which the requested chemical is a pesticide previously identified by EPA as a reduced-risk pesticide. Under the limited pilot, EPA will allow applicants for certain exemptions to re-certify (and incorporate a previous application's information by reference) that the emergency conditions which initially qualified for an exemption continue to exist in the second and third years, and will allow for a new tiered approach to be used for documenting a "significant economic loss." EPA is also seeking comment on another potential change being considered for the emergency exemption program, *i.e.*, whether to allow exemptions for pest resistance management purposes.

EPA is considering these improvements to the emergency exemption program regulations in 40 CFR part 166 in an effort to reduce the burden to both applicants and EPA, allow for quicker decisions by the Agency, and facilitate pest resistance management, while maintaining health and safety requirements. EPA currently intends to publish a proposed rule in 2003 that will propose several potential improvements to the emergency exemption regulations. EPA will consider any available information from this pilot as it proceeds with rulemaking.

The potential revisions to the emergency exemption process described in this Notice arose from an effort to evaluate the emergency exemption regulations at 40 CFR part 166, begun in 1995. As part of that effort, in November 1996, the Agency hosted a Section 18 Stakeholders Workshop to discuss possible improvements to the Agency's emergency exemption process and receive stakeholder input. The improvements discussed at the workshop, and those included in this Notice, directly affect only applicants for emergency exemptions. States are the primary applicants for emergency exemptions, although Federal agencies may also apply.

Recommendations from the Association of American Pest Control Officials (AAPCO) Section 18 Task Force, representing the States, are the general basis for EPA's plan announced by this Notice. AAPCO originally provided EPA with recommendations following the 1996 workshop and recently submitted a revised, shortened list of three recommendations. This Notice begins to address those three recommendations. EPA has carefully refined each recommendation in an effort to address concerns expressed by other stakeholders. In refining those recommendations, the Agency attempted to maximize the streamlining benefits while making sure it can still carry out its health and safety responsibilities. A discussion of the evaluation process leading up to this Notice, including stakeholder input and recommendations, is in Unit IV.

After receiving comment on this Notice or near the end of the first year under the pilot, EPA plans to again consult the Pesticide Program Dialogue Committee (PPDC) on the potential improvements discussed in this Notice. At that time, the Agency, applicants for emergency exemptions, and many others will be able to share and discuss their experiences concerning the pilot provisions. The diverse group of stakeholders represented at PPDC meetings provides an excellent source of feedback to the Agency. Input from the PPDC will be carefully considered, along with public comments received in response to this Notice, public comments on the proposed rule expected in 2003, and experience from the pilot, when deciding what will be included in the final rule.

The following is a summary of the statutory and regulatory framework of the Emergency Exemption Program, a description of the extensive stakeholder involvement that forms the basis for the limited pilot and this request for comment, a detailed description of the limited pilot, and the Agency's request for comment.

III. Existing Statutory and Regulatory Framework

A. Statutory Provisions--FIFRA Section 18

Section 18 of FIFRA gives the Administrator of EPA broad authority to exempt any Federal or State agency from any provision of FIFRA if the Administrator determines that emergency conditions exist which require such exemption.

B. Regulatory Provisions--40 CFR Part 166

Regulations governing such FIFRA section 18 emergency exemptions are codified in 40 CFR part 166. Generally, these regulations allow a Federal or State agency to apply for an exemption to allow a use of a pesticide that is not registered when such use is necessary to alleviate an emergency condition. A State, as defined by FIFRA section 2(aa), means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands and American Samoa. The regulations set forth information requirements, procedures, and standards for EPA's approval or denial of such exemptions.

Federal and State agencies may apply to EPA for a section 18 emergency exemption from FIFRA due to a public health emergency, a quarantine emergency, or a "specific" emergency. Most exemptions from FIFRA requested or granted under section 18 fall under the category of "specific exemptions." Typical justifications for specific exemptions include, but are not limited to, the expansion of the range of a pest; the cancellation or removal from the market of a previously registered and effective pesticide product; and the development of resistance in pests to a registered product, or loss of efficacy of available products for any reason. Additionally, an emergency situation is generally considered to exist when no other viable (chemical or non-chemical) means of control exist, and where the emergency situation will cause significant economic losses to affected individuals if the exemption is not granted.

When a Federal or State agency applies to EPA under section 18, it must submit a request in writing that documents the emergency situation, the pesticide proposed for the use, the target pest, the crop, the rate and number of applications to be made, the geographical region where the pesticide would be applied, and a discussion of risks which may be posed to human health or to the environment as a result of the pesticide use (40 CFR 166.20). EPA conducts an expedited review of the request, verifying the existence of the emergency, assessing risks posed to human health through food, drinking water, and residential exposure, assessing risks posed to farmworkers and other handlers of the pesticide, assessing any adverse effects on non-target organisms (including Federally listed endangered species), and assessing the potential for contamination of ground water and surface water. If an application for the requested use has been made in previous years, EPA does an assessment of the progress toward registration for the use of the requested chemical on the requested crop, and considers this status in the final determination to grant or deny the exemption. If EPA concludes that the situation is an emergency, and that the use of the pesticide under the exemption will be consistent with the standards of the Food Quality Protection Act (FQPA) and 40 CFR part 166, then EPA may authorize the pesticide to be used under section 18.

Section 18 pesticide uses for specific and public health exemptions can be authorized for periods not to exceed 1 year; uses under quarantine exemptions can be authorized for up to 3 years. Since actions taken under section 18 are intended to address a time-specific crisis or emergency need for temporary relief, most section 18 exemptions are specific exemptions which are granted for just one growing season. Such actions should not, therefore, be viewed as an alternative to registering the use(s) needed for longer periods. If the situation addressed with the section 18 exemption persists, or is expected to persist, affected entities must take the proper steps to amend the existing

registration or seek a new registration to address that future need.

IV. Background and Summary of Stakeholder Feedback

A. 1996 Section 18 Workshop to Streamline Emergency Exemption Process

In 1995, as part of an effort to streamline regulations, the Agency began a process to evaluate the emergency exemption regulations at 40 CFR part 166, and to formulate recommended changes to the operating procedures. As part of that effort, in November 1996, the Agency hosted a Section 18 Stakeholders Workshop to discuss possible regulatory changes to the Agency's section 18 process and receive stakeholder input. Participants of that meeting included representatives from State agencies responsible for pesticide oversight, chemical companies, and environmental and public interest groups. Participants voiced their concerns and identified suggestions for improving the emergency exemption process.

Although EPA scheduled the section 18 workshop prior to passage of the FQPA, in August 1996, the workshop was held shortly after the law was enacted. Because FQPA included new requirements affecting emergency exemptions, and was just 3 months old at the time of the workshop, the new law was of great interest to participants. Stakeholders at the workshop were deeply concerned that the new requirements of FQPA would hurt both the Agency's review time and approval rate for exemption requests, as well as increase the burden on applicants (primarily States) for information and documentation. Several of the recommendations raised in the workshop addressed these three concerns.

B. NASDA/AAPCO Initial Recommendations to EPA for Improvements

Subsequent to the November 1996 Section 18 Stakeholders Workshop, the National Association of State Departments of Agriculture (NASDA) and the Association of American Pest Control Officials (AAPCO) jointly sent a letter to EPA to provide recommendations for changes to the emergency exemption process. The letter referred to recommendations contained in a series of NASDA Proposed Resolutions. A copy of that letter and the Proposed Resolutions are available in the public docket for this Notice. The NASDA/AAPCO recommendations, which generally summarized issues raised at the workshop, were:

1. Seek changes to current regulations which will allow EPA the flexibility to base decisions on crop yield as opposed to crop value (or profit loss) in situations where that is a better indicator of pest damage.
2. Provide States general guidance regarding the appropriate documentation of an "urgent, non-routine situation" and allow States to certify that the "urgent, non-routine situation" exists based on the guidance.
3. Implement a performance audit program to ensure compliance with the guidance and give States justification to resist pressure to certify an "urgent, non-routine situation" when it does not exist.
4. Delegate to the States authority to reissue the section 18 exemption for a second or third year, based on the State's confirmation/certification that the basis for an emergency continues to exist.
5. Actively support and coordinate regional section 18 requests.
6. Enter into discussions with the States to establish reasonable monitoring criteria and approaches for wildlife and endangered species.
7. Support specific exemptions for resistance management where there is documented scientific evidence of resistance to currently registered pesticides or where valid research demonstrates that a dynamic process of resistance is developing.
8. Amend 40 CFR 166.2 to include "reduced risk" as an acceptable basis for granting a section 18 exemption. The definition of "reduced risk," and the requirements for this request should allow States the ability to request a section 18 to allow for a pesticide use that will result in a lower potential for an adverse impact on human health or any other non-target species, including but not limited to, pest predators, pollinators, endangered species, and other organisms of special concern. Requests should be limited to only those situations where the "reduced risk" request will not result in additional risk to any aspect of the environment. Such requests should only be permitted where the proposed use is highly effective so that the potential for an increase in pesticide applications is extremely low.

The NASDA Proposed Resolutions also included recommendations concerning the establishment of time-limited tolerances for residues in food of pesticides used under emergency exemptions. Tolerances for pesticide uses under section 18 have already been addressed separately by EPA, as FQPA required that the Agency publish a regulation to put in place a process for that purpose. Therefore, the NASDA/AAPCO recommendations concerning tolerances are not included in this discussion.

C. The Food Quality Protection Act and Evolution of the Emergency Exemption Program

FQPA included new requirements affecting emergency exemptions, as stated above. FQPA set a new safety standard, and, for the first time required time-limited tolerances for pesticide residues in food resulting from pesticide use under emergency exemptions. As a result of FQPA, each emergency exemption request must be evaluated based on the potential risk to human health and the environment, including the aggregate risk to the public from ingestion of treated food, pesticide residues in drinking water, and exposure to the pesticide in and around the home and other non-occupational settings.

Processing time for emergency exemption requests (days from receipt of request to decision) increased significantly in 1997, the first year after FQPA, as EPA developed methodology to implement section 18 under the new law. Due to the urgent nature of emergency exemption requests, the Agency worked very hard to streamline the process. Average processing time decreased to pre-FQPA rates in 1998, and has decreased each year since then. The average processing time for exemption requests reached an all-time low of 44 days in 2000, for the first time surpassing the Agency's goal of 50 days, and decreased again to 34 days in 2001.

The approval rate for exemption requests is similar to pre-FQPA levels. The number of exemption requests has increased sharply since 1996, as have the number of exemptions granted. EPA believes the burden on applicants to request any individual emergency exemption has not increased since the recommendations were made, and in some cases it has decreased. The Agency has worked hard to be flexible with applicants, to make full use of existing data, and to minimize documentation requirements where appropriate, with particular attention to issues raised in the NASDA/AAPCO recommendations. Although FQPA did not appreciably increase applicant burden in preparing any specific emergency exemption request, the Agency is always interested in improving and streamlining its processes.

D. Stakeholder Feedback and EPA Response Since Workshop and Initial Recommendations

Since the Section 18 Stakeholders Workshop in 1996 and receipt of the NASDA/AAPCO recommendations, EPA has worked closely with stakeholders to develop the best approach to address the recommendations. Adoption of any of the recommendations would primarily affect applicants for emergency exemptions. Because only States, U.S. territories, and Federal agencies can apply for emergency exemptions, EPA has had the rare opportunity to work very closely with a large percentage of the parties affected by a procedural change to gain valuable, ongoing feedback during the effort to develop the potential improvements discussed in this Notice.

After the initial NASDA/AAPCO recommendations were submitted, a workgroup consisting of EPA staff and several representatives of State agencies responsible for pesticide oversight met regularly to develop specific options to address each of the recommendations. During this time and subsequently, the Agency looked for ways to improve the process and further expedite decisions on requests. EPA reviewed the NASDA/AAPCO recommendations, and the options developed by the workgroup, to determine what could be accomplished through non-regulatory internal process improvements. These efforts paid off in repeatedly shortened average review times for emergency exemption requests.

Due to the significant improvements in the emergency exemption process and program during the several years following the original NASDA/AAPCO recommendations, the needs of the States changed. The AAPCO Section 18 Task Force has reviewed the past set of recommendations and recently provided updated, final State recommendations for improving the emergency exemption program (see Unit IV.E.). Each of the original eight recommendations has either been intentionally excluded by AAPCO in their final three recommendations, or is being addressed in this Notice. AAPCO's letter with the final recommendations acknowledged that, based on several years of experience with the section 18 process under FQPA, they no longer suggested that EPA pursue the other initial recommendations. The initial recommendations numbered 1, 4, and 7 (see Unit IV.B.) are addressed in this Notice. The second and third of the initial recommendations were designed to be implemented together, and were essentially another option for the fourth, which AAPCO ultimately favored. EPA does encourage and help to coordinate regional emergency exemption requests involving multiple States, which was the fifth recommendation. Concerning recommendation number six, EPA is continuing to work with States to develop monitoring criteria for wildlife and endangered species in the context of pesticide registration. While the eighth recommendation, to allow exemptions based on reduced risk, has not been adopted, EPA does take reduced risk benefits into account as a factor in decisions.

EPA also solicited public comments on the original NASDA/AAPCO recommendations to improve the emergency exemption process, in the preamble to the proposed rule titled "Tolerances for Pesticide Emergency Exemptions" (64 FR 29823, June 3, 1999) (FRL–5750–1). The Agency only received comments on the listed recommendations from four parties. Two of the commenters were State departments of agriculture. Both States generally agreed with all the recommendations, but in particular supported the three revisions addressed in this Notice. One State offered refinements to several of the recommendations.

The other two commenters were public interest groups. Both groups opposed all of the recommendations. However, EPA believes that the operational revisions to the process being piloted have been refined in such a way as to address most of the concerns stated in their comments. One group noted that the current emergency exemption regulations are the result of negotiated rulemaking, a process which included a balanced representation of interests, but that the Section 18 Stakeholders Workshop, which culminated in the NASDA/AAPCO recommendations was not an adequately open process. EPA believes the workshop included participants from a wide array of interests, as representatives from State agencies responsible for pesticide oversight, chemical companies, and environmental and public interest groups attended. Also, the Agency's plan to undertake notice-and-comment rulemaking procedures before adopting any final changes to the section 18 process will again allow all interested parties to participate in the development of the potential changes.

In May 2002, EPA presented its general plan concerning the three revisions to the emergency exemption process included in this Notice to the PPDC. The PPDC provides a forum for a diverse group of stakeholders to provide feedback to EPA on various pesticide regulatory, policy, and program implementation issues. A wide array of stakeholders provided comments at the May meeting, which EPA has considered in refining the pilot and proposed revisions in this Notice. A transcript of the presentation and discussion at the May PPDC meeting is in the public docket for this Notice.

E. Final Recommendations by AAPCO Section 18 Task Force

AAPCO provided EPA with their updated recommendations for improving the emergency exemption process:

1. *Multi-year section 18 exemptions.* EPA should delegate authority to the States to reissue section 18 exemptions for a second or third year, based on the State's confirmation that the basis for an emergency situation continues to exist.
2. *Resistance management.* EPA should support specific exemptions for pest resistance management where there is documented scientific evidence of resistance to currently registered pesticides or where valid research demonstrates that resistance is developing.
3. *Criteria for significant economic loss.* EPA should base decisions on crop yield rather than crop value (or profit loss) in situations where crop yield is a better indicator of pest damage.

These are three of the eight recommendations originally submitted to the Agency in 1997. These updated recommendations were provided to EPA by AAPCO, verbally at the May 2002 PPDC meeting, and again in a letter in September 2002, from the president of AAPCO. A copy of that letter is available in the public docket for this Notice. The three potential revisions discussed in this Notice would essentially address these three recommendations, albeit with modifications based on input from other stakeholders. Each of the initial eight recommendations has either been dropped by AAPCO in their final recommendations, or is being addressed in this Notice.

V. Limited Pilot of Potential Process Improvements Beginning with the 2003 Growing Season

This limited pilot was developed after long and careful consideration of input by stakeholders. EPA believes that the changes being piloted will significantly benefit both applicants for pesticide emergency exemptions and the Agency. These benefits are expected to accrue without any increase in risk to human health or the environment. The pilot

will also provide valuable information that will aid the Agency in developing and completing regulatory revisions related to these process improvements, which the Agency currently expects to propose in 2003.

A. Which Emergency Exemptions will be Included in the Pilot?

The pilot will be limited to emergency exemption applications for which the requested product is a pesticide previously identified by EPA as a reduced-risk pesticide, as discussed below. The pilot will only involve specific exemptions, and does not affect public health or quarantine exemptions. The pilot will begin with emergency exemptions for the 2003 growing season. As such, EPA will consider the two process improvements when it reviews eligible applications for emergency exemption for the 2003 growing season, including those applications that are currently pending final decision on and any applications received after April 16, 2003. The Agency recognizes that those applications currently under review by EPA that are eligible for the pilot, are not likely to include information that addresses the two improvements described in this Notice. In such cases, the Agency intends to work with the applicants to apply the pilot provisions where appropriate and desired by the applicant. It should be noted that at no time during the pilot is any applicant required to use the pilot provisions, even if eligible. Any applicant which chooses to forgo the pilot and use the established application process may do so.

EPA chose to focus the pilot on reduced-risk pesticides, a specific set of pesticide products which includes conventional pesticides which were registered under EPA's Reduced-Risk Pesticide Initiative, plus biological pesticides registered through the Biopesticides and Pollution Prevention Division (BPPD). The goal of the Reduced-Risk Pesticide Initiative and BPPD is to encourage the development, registration, and use of lower-risk pesticide products which would result in reduced risks to human health and the environment when compared to existing alternatives. A detailed description of reduced-risk pesticides may be found in Pesticide Regulation Notice 97-3, which is available in the public docket for this Notice. The reduced-risk determination for conventional pesticides is made by EPA for each use of a pesticide, particularly when compared to existing registered alternatives for that use. However, for use in implementation of the revised practices under the pilot in this Notice, any active ingredient which is contained in at least one product registered under the Reduced-Risk Initiative, plus any biological pesticide, will be considered a reduced-risk active ingredient. Any product containing one or more of these active ingredients and no others will be eligible, while any product containing any other active ingredient will not be eligible for exemption under the pilot.

EPA has prepared a list of all reduced-risk active ingredients, as defined above, so that applicants and others may easily determine which emergency exemption requests may be eligible for consideration under the pilot for the revised approach for documentation of significant economic loss. The new economic loss approach under the pilot may be applied to any exemption request for a reduced-risk pesticide on this list. However, in order for exemptions to be eligible for re-certification of an emergency under the pilot, in addition to the restriction to reduced-risk pesticides, they must also meet the other criteria for candidacy for re-certification set forth in Unit V.B.1. Therefore, the Agency has prepared a second list of existing (*i.e.*, granted for use in 2002) exemptions that are eligible for re-certification. EPA has also prepared a guidance document for implementation of the revised practices under the pilot, which is intended to further aid applicants in preparing applications. The two lists for determining eligibility of exemptions under the pilot are appendices to the guidance document, which will be sent to the States and included in the public docket for this Notice.

B. What Process Improvements are Being Piloted?

Two potential improvements to the emergency exemption program will be tested through this limited pilot.

1. *Re-certification of emergency condition by applicants*—i. *What is our current practice*? EPA authorizes emergency exemptions (except quarantine exemptions) for no longer than 1 year. However, depending on the nature of the non-routine condition which caused the emergency, some exemptions may subsequently be granted again, 1 year at a time. Currently, EPA conducts a full review of an application for the first year of an exemption, to determine whether an emergency condition exists, to ensure the use will not result in unreasonable adverse effects to man or the environment, and, if the use will result in pesticide residues in food or feed, to make a safety finding consistent with section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA). Applicants may submit an application for a subsequent year, in which case the Agency must again confirm the emergency condition and acceptability of the risk. For requests after the first year, the applicant again submits information to support the emergency finding, and EPA reevaluates the situation to determine, relative to the first year, whether: (1) The emergency condition has changed; (2) any alternative products have been newly registered for the use, or other effective pest control techniques are now available; (3) any changes have occurred in the status of the chemical's risk assessment; and (4) the requested use pattern has changed.

ii. *How will re-certification work under the pilot*? The first potential improvement that is part of the pilot will allow applicants for certain exemptions to re-certify in the application that the emergency conditions which initially qualified for an exemption continue to exist in the second and third years. Under the pilot, this re-certification by the applicant will serve as the basis for EPA's determination that an emergency condition continues to exist. An acceptable application which re-certifies the emergency will incorporate by reference all information submitted in a previous application or applications to document the initial emergency condition for which an exemption was granted previously. Eligible applications in years two and three may consist only of applicants' re-certification of the emergency condition, incorporation by reference of supporting materials, and specification of the pesticide application practices that growers would observe. Applicants would not need to submit new documentation that the emergency condition continues or the additional data elements generally required under 40 CFR 166.20.

EPA will apply specific criteria to determine whether an exemption request will be eligible for re-certification of the emergency condition by the applicant. All of the following criteria need to apply in order for EPA to consider an exemption as a candidate for re-certification of an emergency under the pilot:

1. EPA granted the same exemption the previous year, and it is the second or third year of the request by that applicant. The Agency determined that the situation the previous year satisfied requirements for an emergency condition (40 CFR 166.3(d)). A complete application will be required the first year of an exemption for a particular applicant, in order to establish the existence of the emergency. Re-certifications will not be accepted as the basis for an emergency after 3 years of an exemption to an applicant.

2. The emergency situation can reasonably be expected to continue for longer than 1 year. Examples of these include situations where a registered product relied upon by growers becomes permanently unavailable; expansion of a pest's range; and, documented loss of efficacy of a registered product. Situations which would not be expected to continue would include a temporary supply problem of a registered product; an isolated weather event; and a sporadic pest outbreak.

3. The exemption is not for a new chemical, a first food use, or for a chemical under Special Review. An exemption that is for a product containing an active ingredient which has never been contained in a product registered as a pesticide under section 3 of FIFRA, or has never been registered for a food use, has officially been placed under Special Review by the Agency, or has been the subject of a Notice of Intent to Cancel under FIFRA section 6, would not be considered for candidacy for re-certification of the emergency.

4. The requested pesticide is registered for another use and has been designated as "reduced-risk" by EPA for one or more uses. The reduced risk program is explained in PR Notice 97–3. This program offers pesticide manufacturers incentives for developing registration applications for pesticides which are less risky than the alternatives for a given pest problem. A committee of EPA scientists evaluates and selects pesticides and uses which are considered to be reduced risk.

Under the pilot, EPA will accept re-certifications of emergency conditions for exemptions which satisfy the eligibility criteria described above. It may not be clear to applicants whether some exemptions are eligible for re-certification. Since eligibility determinations must be made by the Agency, EPA has developed a list of emergency exemptions granted for use in 2002 that appear to be candidates for re-certification for the 2003 growing season. This list (included in the guidance document available in the public docket) is intended to help avoid an applicant's assumption that an exemption is eligible for re-certification of the emergency, when in fact it is not. EPA will attempt to include all appropriate candidates on this list. However, applicants may contact the Agency to request an eligibility determination for exemptions they believe satisfy the criteria but which are not on the list.

For applications which are eligible and include a proper re-certification of the emergency condition, EPA will continue to assess whether the requested use poses a risk to human health or the environment that exceeds statutory and regulatory standards. If the risks posed by the requested use are determined to be unacceptable, the exemption request will be denied. However, when the emergency condition and requested use in an eligible year are the same as in the initial year of the exemption, EPA will only re-evaluate the situation to determine, relative to the first year, whether: (1) Any alternative products have been newly registered for the use; (2) any changes have occurred in the status of the chemical's risk assessment; and (3) the requested use pattern has changed. If an effective product has been registered for the requested use since the previous exemption was granted, then an emergency condition no longer exists. If the Agency has received new risk information since granting the previous exemption, then the risk will be re-evaluated. Likewise, if the request includes any change in the use pattern which may increase exposure (application rate, number of applications, type of application, pre-harvest interval, re-entry interval, total number of acres, and all other directions for use) then the risk will also be re-evaluated.

For eligible requests with applicant certification of a continuing emergency, if the three remaining review factors (product registrations, risk assessment status, and requested use pattern) have not changed, the Agency's review time is expected to be significantly reduced. In such cases, applicants are expected to benefit by expedited decisions, in addition to the reduced burden due to the certification of the emergency. Applicants will be permitted to modify the use pattern for the emergency program in an application in which they re-certify the emergency. However, EPA will need to determine whether, and how, such changes impact exposure and risk to human health or the environment. Therefore, these changes may undercut the ability of applicants to receive an expedited Agency decision. If the use pattern is the same as in the first year, applicants may include a separate certification that their requested use pattern has not changed in the re-certification year, and incorporate by reference all use pattern specifications submitted in a previous application or applications. This certification of an unchanged use pattern will aid in expediting the Agency's decision.

If the Agency determines that there has been insufficient progress towards registration of the requested chemical on the requested crop, a request could be denied, consistent with current regulations and practice, regardless of eligibility for re-certification. Progress toward registration is determined for a pesticide-crop combination, whereas the year-count (first, second, third, etc.) in the eligibility cycle for re-certification would be determined separately for each applicant, and could often differ among applicants in a given year. Lack of progress towards registration would generally not cause denials during the first 3 years of exemptions for a chemical-crop combination. However, since some applicants may apply for the first time, in a year subsequent to the first request for a chemical-crop combination by another applicant, lack of progress towards registration could potentially interrupt the eligibility cycle for some applicants.

EPA is sensitive to emergency exemption requests being repeated for a number of years and requires that steps be taken to obtain a registration for the emergency use. Under this pilot for re-certifiable emergencies, EPA will not allow re-certification of emergencies for exemptions that have been granted for more than 3 years.

iii. *Why pilot this potential improvement*? Allowing applicants to re-certify the existence of an ongoing emergency condition for certain eligible exemption requests is expected to reduce the burden to both applicants and EPA as well as allow for quicker decisions. When an applicant certifies the continuation of the emergency condition and incorporates previously submitted materials by reference, a complete new application sufficient to characterize the situation in accordance with 40 CFR 166.20 will not be required. This will save applicants time and effort in gathering data and preparing their submissions. The Agency will save time and resources by not having to annually repeat the analyses that support the applicable requests. If no pesticides which can avert the emergency have been newly registered, and nothing has changed to affect the assessment of risk, then re-certification of an emergency will lead to significantly shorter Agency review, saving valuable time for those affected by the emergency.

EPA's experience indicates that emergency situations which continue after the initial year generally cause comparable losses in succeeding years. Therefore, with the certification of a

continuing emergency, the economic data and other supporting information required by 40 CFR part 166 would be unnecessary.

The limited focus of the pilot on reduced-risk pesticides will significantly reduce the number of exemptions potentially affected under the pilot. Nevertheless, the Agency expects the pilot to provide valuable experience. Any available information from the pilot will be considered along with public comments in forming a better proposed rule that EPA currently intends to issue in 2003 and aid in the development of final improvements to the emergency exemption program.

2. *Tiered approach for documentation of "significant economic loss"*—i. *What is our current practice*? EPA determines whether the loss from an emergency would result in net cash returns (gross revenue less operating expenses) below the historical variation in net cash returns. Applicants are required to submit economic information necessary to make this determination, when available. In addition to information used to estimate the amount of the anticipated yield and profit losses, annual data for 5 years of average yields, prices, and production costs are submitted by applicants and analyzed by EPA to establish profit variability.

ii. *How will the tiered approach to determining significant economic loss be used under the pilot*? A large majority of emergency exemptions are granted because they meet the regulatory criteria for an emergency condition that affected growers will suffer a "significant economic loss" due to an urgent, non-routine situation if the requested exemption is not granted. This second potential improvement that is part of the pilot will allow applicants to develop the significant economic loss documentation necessary to support many specific exemption requests through a less burdensome economic methodology.

This tiered approach is based on an analysis of data found in a random selection of past requests for emergency exemptions submitted by States, including requests that were denied. The analysis shows that in many cases significant economic loss can be demonstrated in a more flexible manner without loss of reliability. The analysis of past section 18 requests suggests that the current approach is often unnecessarily burdensome in terms of information requirements. This new approach under the pilot will often reduce the burden to applicants relative to the current approach, while maintaining the level of approvals of current regulations. The tiered approach is intended to require less data from applicants in cases where the same conclusion of a significant economic loss would be made with the additional data and analysis.

Current regulations (40 CFR 166.20(b)) list certain information which must be included, as appropriate, in an application for a specific exemption:

(b) *Information required for a specific exemption.* An application for a specific exemption shall provide all of the following information, as appropriate, concerning the nature of the emergency:

(4) A discussion of the anticipated significant economic loss, together with data and other information supporting the discussion, which addresses all of the following:

(i) Historical net and gross revenues for the site;

(ii) The estimated net and gross revenues for the site without the use of the proposed pesticide; and

(iii) The estimated net and gross revenues for the site with use of the proposed pesticide.

The regulations state that all of the above information must be included "as appropriate." EPA exercises judgement based on experience, in determining when something less, or different, is appropriate. For example, under the current approach the Agency typically considers 5 years of annual data on historical net and gross revenues to be appropriate, although the regulations do not prescribe 5 years. However, in some cases, such as a very minor or new crop for which less data are available, this requirement is not considered appropriate if the applicant substitutes other credible information. Therefore, EPA believes that the pilot approach will allow applicants to focus their applications on the most "appropriate" information for determining whether or not a significant economic loss will occur.

Because the analysis of past exemption requests, on which the pilot approach is based, demonstrates that the likelihood of approval of some requests is not significantly changed by the pilot tiered approach, EPA believes that the requirement of those data in those cases is not appropriate. However, even when annual historical data are not required, applicants would generally continue to utilize historical data under the pilot approach, albeit in a different way. Each tier requires a quantitative threshold to be met, which is a certain percentage of a baseline of either crop yield, gross revenues, or net revenues. The best approach to determine the baseline in most cases is to use the average of historical data, including yield and price data.

Whereas the existing method generally requires detailed historical data, with the new approach the analytical burden for determining significant economic loss will be divided into three successive tiers. If the pest situation does not appear likely to result in a significant economic loss based on the first tier analysis, it could qualify based on further analysis in succeeding tiers. Each additional tier would require more data and involve more analysis on how the emergency affects profitability. For a loss to be considered economically significant, it must exceed a threshold. Each tier has a quantitative threshold that will generally apply to all eligible emergency exemption applications. Where conditions do not neatly fit into the tiered approach, for example long-term losses in orchard crops, the Agency may make a finding of significant economic loss based on other criteria, such as changes in the net present value of an orchard, if these losses are demonstrated by the State.

Tier 1--Yield Loss. Tier 1 is based on crop yield loss. If the projected yield loss due to the emergency condition is sufficiently large, EPA will conclude that a significant economic loss will occur, due to the magnitude of the expected revenue loss. The yield loss threshold in Tier 1 will be 20% for all crops. This threshold is set at a sufficiently high level such that a loss which exceeds the threshold will also meet the thresholds in Tiers 2 and 3, if the additional economic data were submitted and analyzed. Therefore, for such large yield losses it will not be appropriate or necessary to separately estimate economic loss, which requires detailed economic data.

Tier 2--Economic Loss as a Percentage of Gross Revenues. A yield loss which does not satisfy the threshold in Tier 1 could also lead to a significant economic loss because yield loss may not capture all economic losses. In addition to yield losses there may be other impacts that affect economic loss, including quality losses and changes in production costs, such as pest control costs and harvesting costs. For situations with yield losses that do not meet the significant economic loss criterion for Tier 1, EPA will evaluate estimates of economic loss as a percent of gross revenue in Tier 2, to determine if the loss meets that threshold for a significant economic loss. The economic loss threshold in Tier 2 will be 20% of gross revenue for all crops. Again, this threshold in Tier 2 is set with the intention that losses exceeding the threshold also meet the threshold in Tier 3, if it were analyzed.

Tier 3--Economic Loss as a Percentage of Net Revenues. Because typical profit margins (net cash revenues as a percentage of gross revenues) vary among crops, EPA will consider impacts on net cash revenues in Tier 3 if neither yield or economic losses are above the required thresholds in Tiers 1 and 2. Specifically, Tier 3 will measure economic loss as a percent of net cash revenues. The loss threshold in Tier 3 will be 50% of net cash revenues for all crops during the pilot. Some emergency conditions which fall short of the thresholds in Tiers 1 and 2 may qualify as a significant economic loss in Tier 3, particularly for crops with narrow profit margins. Even if economic loss seems small in comparison to gross revenues, the situation could still be determined to be a significant economic loss if the profit margin is narrow.

For those emergency exemptions in which significant economic loss is a qualifying factor, applicants will determine which tier their situation is expected to qualify under, specify that tier in their request, and submit the data necessary for analysis under that tier. The three tiers are designed such that when an emergency condition qualifies for significant economic loss under a lower tier, data for higher tiers is not required, and the burden and cost are reduced. Each successive tier builds upon the previous one. That is, the information required for estimating a lower tier is also necessary in estimating each higher tier. This will allow an applicant to collect data, and build a case for significant economic loss, as needed and determined by the conditions.

iii. *Why pilot this potential improvement*? This new methodology for determining a significant economic loss is intended to streamline the data and analytical requirements for emergency exemption requests. In addition, the methodology is designed to be more flexible than the existing procedure for determining a significant economic loss. Specifically, the Agency believes this approach makes a better comparison between the emergency situation and what would exist without the emergency, rather than a comparison with the past. An analysis of past section 18 requests suggests that this new approach will not cause a significant change in the overall likelihood of a significant economic loss finding, although findings may differ in individual cases. Further, it is expected to lead to considerable savings to both applicants and EPA from reduced data and analytical burdens. Under the pilot procedure, applicants may elect to submit the minimum amount of data necessary to demonstrate a significant economic loss in one of three increasingly refined tiers. If the first tier is sufficient, the burden is reduced most significantly. Even in the highest tier, the burden may be reduced relative to the old approach as the analysis focuses on the current year rather than historical data. Like re-certification of emergencies, this will save applicants time and resources in gathering data and preparing submissions. The Agency's burden will be reduced due to streamlined reviews.

As with re-certification of emergencies, the Agency expects the pilot to provide useful experience with the tiered approach for documentation of significant economic loss. That experience will be considered along with public comments to assist in the planned rulemaking process for improving the emergency exemption regulations. The Agency will analyze the selected threshold levels during the pilot period to confirm that they are appropriate, and also use any helpful information supplied in public comments. EPA will also scrutinize the approach of using a uniform threshold level in each tier for all crops, and consider whether different levels for various crop groups would be more appropriate.

VI. Request for Comment

A. Comment Sought on Improvements Being Piloted

The Agency seeks comment on the potential changes included in the limited pilot described in Unit V., and on how those provisions should be implemented through a future rulemaking. EPA currently intends to publish a proposed rule in 2003 that will propose several potential improvements to the emergency exemption regulations. EPA will consider any available information from this pilot as it proceeds with rulemaking.

If the re-certification process is fully implemented through rulemaking, the eligibility criteria established in that rulemaking would become final, and may differ from the criteria under the pilot. The Agency expects that after such a final rule, whenever EPA granted an exemption, and classified it as a candidate for re-certification, it would also include in the approval letter the number of years of candidacy remaining at that time (*i.e.*, 1 or 2 years). This notification in the approval letter of candidacy for the following year will not occur during the pilot, as the criteria under the pilot are not final. Instead, EPA will prepare a list of candidate exemptions (see Unit V.A.) for each year that the pilot is in effect.

The scope of the pilot is purposely limited to reduced-risk pesticides in order to significantly reduce the number of exemptions potentially affected, while still benefiting from the experience of the potential improvements to inform the rulemaking process. However, EPA does not anticipate that the improvements being piloted should be limited to reduced-risk pesticides in a final rule.

B. Comment Sought on Consideration of Resistance Management Exemptions

Although not included in the limited pilot described in this Notice, the Agency is considering another potential improvement to the emergency exemption program, *i.e.*, whether to allow exemptions for pest resistance management purposes. This potential improvement was not included in the pilot due to uncertainty and complexity of issues with respect to the appropriate requirements for scope and degree of resistance development, as well as level and type of documentation. To aid the Agency in developing this potential improvement for inclusion in the proposed rule that is currently expected in 2003, the Agency specifically seeks comment on this additional potential improvement to the emergency exemption program that would allow exemptions for resistance management under specific criteria where pest resistance to registered pesticides is developing or has developed.

1. *What is our current practice*? Exemptions are only authorized for resistance management in cases where documented pest resistance to the registered pesticide has already developed and use of the registered pesticide is expected to result in significant economic losses. Under current regulations, if there is at least one available registered pesticide that is effective enough to prevent significant economic losses, then the situation is generally not found to be an emergency regardless of whether or not the alternative is considered to be vulnerable to the development of resistance by the target pest.

2. *How might resistance management exemptions work*? Some emergencies are the result of the development of pest resistance to a registered pesticide that is essential for the management of a pest which, unchecked, can cause significant economic loss. The optimal time to respond to this emergency would be early enough to prevent or retard the development of widespread resistance. Timely action in granting the emergency use of another pesticide could increase

the useful life of the essential registered pesticide and ultimately limit the need for more emergency exemptions. The potential improvement would take a more preventive approach to resistance management.

Under such an approach, EPA could review applications and look for all four of the following criteria before approving an emergency exemption request for resistance management:

i. Pest resistance is developing or has developed to the registered pesticide product. Claims that a pest is developing or has developed resistance to a pesticide should be documented by scientific evidence. The applicant would submit the best readily available information which supports their case. Because acceptable techniques for verifying resistance vary considerably for the numerous crop-pest-pesticide combinations, EPA determinations on sufficiency of documentation would be made on a case-by-case, weight-of-the-evidence basis. Resistance development would be documented through field studies, references to field studies, or loss of ability to control the pest in the field and confirmed to be due to pest resistance in commercial plantings or other actual use conditions such as in greenhouses.

Typically, documentation of a decrease in susceptibility to a pesticide would involve collections of pest samples from fields suspected of containing high frequencies of resistant pests, and laboratory bioassay would be conducted to estimate the frequency of resistant individuals and the degree of resistance. Field tests would be conducted to assess the degree to which the laboratory resistant bioassay reflects loss of efficacy under typical treatment conditions in the field. Because resistance developed or measured under laboratory or other non-field conditions may not accurately reflect conditions in normal use situations, the applicant would need to demonstrate that the data presented can substitute for field conditions. That is, the laboratory bioassay must have relevance to the field such that individuals shown to be resistant in the laboratory bioassay actually do contribute to a substantial loss of efficacy under the treatment conditions of the field. The data should reflect numerous susceptibility estimates within single locations and multiple locations to confirm resistance and account for within-field variability. The geographic extent of resistant populations should be described.

The applicant could present evidence on previously reported resistance incidences that are substantially similar to the pest situation under consideration, as well as a rationale for why resistance is anticipated. Applicable situations include those where resistance has been documented, either in the U.S. or outside the U.S., for the same pest species or related pest species, similar pesticide use patterns, and comparable climatic conditions. Documentation of comparable situations should also include evidence that the loss of efficacy was not due to misapplication, weather, or other effects not due to resistance. Documented field failures due to pest resistance outside the U.S. and/or laboratory or non-commercial greenhouse experiments could also be included to substantiate resistance in the same or closely related pest species. However, evidence should be presented to justify the use of related pest species, since even closely related pest species may have a different genetic potential to develop resistance.

Information should be provided on the genetic, biological (biotic and behavioral), and operational (chemical and application technology) characteristics that influenced the selection of resistance. Evidence should be provided that indicates the typical number and frequency of pesticide applications, and rate of application used, and host, and why the target pest is likely to develop or has developed resistance at the requested and/or reported site(s), country, county, State, or region. The applicant must also discuss what has been done to manage resistance to the existing registered alternatives and why the requested pesticide is essential to managing pest resistance. This information is important for understanding the basis of resistance and choosing appropriate strategies to manage it.

ii. The registered chemical to which resistance is developing is considered essential for the management of the pest(s) in the particular crop. The pesticide to which resistance is developing should be a registered pesticide which serves as the standard treatment, is critical for obtaining control of the emergency pest, and for which suitable registered alternatives are lacking. If the registered pesticide is used only rarely, the likelihood of resistance developing is generally greatly reduced. Applicants would be asked to document that the pest is one which occurs regularly in the subject crop and State, and is capable of causing a significant economic loss (see Unit V.B.) if no effective control were available. This criterion would ensure that, while addressing resistance proactively by preventing future emergency conditions before they occur, the scope of these exemptions would not include those for which an actual emergency would never occur.

iii. The request is for only one chemical, which is in a different class, or has a different mode of action, from the registered chemical to which resistance is developing. Applicants would be asked to provide evidence to demonstrate that the requested chemical has a different mode/mechanism of action, metabolic effect, behavioral response, target enzyme, or target life stage from the available effective registered pesticides. Evidence should also be presented regarding whether the requested pesticide may result in unintended pesticide exposure in non-target pests, if available. Pesticide Registration Notice 2001–5, available in the public docket for this Notice and on the Internet at http://www.epa.gov/opppmsd1/PR_Notices/pr2001–5.pdf, describes the Agency's voluntary policy toward resistance management based on mode of action. The Appendices of that document provide the mode of action classification of all of the available registered active ingredients for insecticides, miticides, acaricides, fungicides, bactericides, and herbicides for agricultural uses.

iv. The applicant has a credible approach to managing the development of resistance using both the requested chemical and the chemical to which resistance is developing. The applicant would be asked to include various pest management strategies to reduce selection pressure to not only the requested pesticide, but also the registered alternatives that still may have utility. When available, the applicant should also include supplemental control measures for reducing selection pressure, especially those of a non-chemical nature (e.g:, biocontrol, scouting, cultural practices, crop rotation, and use of a pest forecasting system). Management tactics might also include biological and ecological factors that influence pest migration, dispersion, or overwintering, for example. Management strategies should consider all useful information on the stability and inheritance of resistance (cross- and multiple resistance) and relevant information on pest ecology, biology, and toxicology.

3. *Why is this potential improvement being considered*? EPA believes that granting emergency exemptions on the basis of resistance management is a proactive approach for addressing the development of resistance in its early stages, thereby preventing significant economic losses before they occur. Availability of an additional pesticide for resistance management may reduce the likelihood of the common scenario of increasing frequency and rate of application of a single available pesticide with decreasing effectiveness. Therefore, a decrease in risk to man and the environment is expected to accompany the economic benefit to pesticide users.

4. *Are there particular questions to consider in preparing comments*? The Agency is looking for specific comments on the types of data or documentation to demonstrate resistance and the proposed approach for this type of emergency exemption. In order to help focus public comments on the resistance management proposal, the following questions and issues are offered for consideration and comment:

i. There is likely to be some delay in confirming resistance in the field once it is suspected.

Given this circumstance, what level of documentation would be appropriate through laboratory, greenhouse, or field studies either in county, State, region, inside or outside the U.S.?

ii. How should noted resistance in related pest species be used to aid a request?

iii. How many years of field data and how many geographic locations would one need to establish a reasonable case for pest resistance?

iv. Comments are requested on the documentation of cross-resistance potential.

v. Should emergency exemptions for resistance management be limited to requests for chemicals in a different class, or with a different mode of action, than the chemical to which resistance is developing?

vi. What evidence should be provided to demonstrate the likely effectiveness of proposed management strategies to manage resistance?

C. General Considerations for Commenters

As you prepare comments for submission to EPA, you may find the following suggestions helpful:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the Notice or collection activity.

7. Make sure to submit your comments by the deadline in this Notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

List of Subjects

Environmental protection, Pesticides, Emergency exemptions.

Dated: April 16, 2003.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 03–10169 Filed 4–23–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011835–001.

Title: CMA CGM/CNAN Space Charter Pooling and Cooperative Working Agreement.

Parties: CMA CGM Societe Nationale de Transports Maritimes-CNAN.

Synopsis: The proposed agreement modification would permit the parties to include in their revenue pool freights received from the carriage of containers on deck.

By Order of the Federal Maritime Commission.

Dated: April 21, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–10174 Filed 4–23–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 19, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. AIM Bancshares, Inc., Levelland, Texas; to become a bank holding company by acquiring 68.47 percent of the voting shares of The First National Bank of Littlefield, Littlefield, Texas.

Board of Governors of the Federal Reserve System, April 18, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–10077 Filed 4–23–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03045]

Sexually Transmitted Disease (STD) Prevention Program Communication Network; Notice of Availability of Funds

Application Deadline: June 23, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 318 of the Public Health Service Act, (42 U.S.C. section 247c) as amended. The Catalog of Federal Domestic Assistance Number is 93.978.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2003 grant funds for a competitive grant program for Sexually Transmitted Disease (STD) Prevention. This program addresses the "Healthy People 2010" focus area of STD.

The purpose of this program is to facilitate, coordinate, integrate, and expand state and local efforts to improve overall delivery of national STD prevention services. Specifically, this program will provide a dynamic mechanism for: (1) Creating a flexible communications network among state and local STD Prevention Programs; (2) establishing a STD prevention services provider platform for integrated problem solving; (3) National STD prevention policy analysis by states; (4) decision making among state and local STD Prevention Program leaders; (5) expanding STD prevention partnerships and enhancing STD prevention knowledge, skills, and practice methods across STD project areas and local communities; and (6) providing a National representation and integrated focus of STD prevention concerns, issues, and ideas from state and local levels.

Measurable program performance will be in alignment with one or more of the following performance goals for the National Center for HIV/STD/TB Prevention: Reduce the incidence of primary and secondary syphilis; reduce the incidence of congenital syphilis; and reduce STD rates by providing Chlamydia and gonorrhea screening, treatment, and partner treatment to 50 percent of women in publicly funded family planning and STD clinics nationally.

C. Eligible Applicants

Applications may be submitted by: Public or private national nonprofit organizations with a comprehensive State and local area representation of key officials who are actively engaged in directing STD Prevention Program efforts.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501c(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

D. Funding

Availability of Funds

Approximately $300,000 to $600,000 is available in FY 2003 to fund approximately one award. It is expected that the award will begin on or about September 1, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

1. Funds may be used to:
a. Support personnel.
b. Purchase equipment, supplies and services directly related to project activities.
2. Funds may not be used to:
a. Supplant funds received by other Federal organizations.
b. Provide direct services.

Recipient Financial Participation

Matching funds are not a requirement for this program.

E. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

1. Communications Network: Provide a National communication network to effect positive change in STD Prevention public health practices and services by organizing, establishing, and maintaining liaison activities and rapid communications with and among state and local STD Prevention Programs and their partner organizations across the nation.

2. Sharing of Information, Research, and Best Practices: Provide a mechanism to facilitate the sharing and communication across STD project areas and local communities of: (a) The latest information and technology including information on STD prevention methods (or strategies) that can include abstinence; monogamy, *i.e.*, being faithful to a single sexual partner; or using condoms consistently and correctly. These approaches can avoid risk (abstinence) or effectively reduce risk for STDs (monogamy, condom use); (b) recent translation of research into public health practice; (c) possible training and education opportunities; and (d) best practices within STD Prevention. Also provide monthly information updates (*e.g.*, newsletters, bulletin, *etc.*) to state and local STD Prevention Programs to facilitate the incorporation of STD prevention and control concepts into health promotion and health care planning and delivery systems.

3. External Partnerships: Provide a mechanism by which to coordinate and integrate STD prevention ideas, issues, and concerns from across STD project areas and local communities, and to create, present, and advocate a collective, focused, National perspective of these to CDC and other National level concerns.

4. STD Prevention Skills Assessment and Development: Provide a mechanism by which to assess the STD prevention skills development needs of the public and private health care providers across state and local communities, and identify/facilitate the development of appropriate skills development responses.

5. Annual Meeting: Sponsor and provide leadership for a nationally recognized forum (*i.e.*, an annual meeting) for State and local STD directors across the nation in which to exchange and disseminate epidemiologic and other public health information, respond to emerging issues, develop and foster consistent state and local policy positions, and advise key officials, including CDC, on the prevention of STD.

6. Public Health Practice Enhancement: Identify and propose project activities in response to the findings from items one, two, three, and four; and perform activities either, independently or through third party partnerships, which will enhance communications, staff expertise, and public health program practices within the national STD Prevention Program network.

7. Facilitation of Participation in National Level STD Prevention Activities: Conduct activities (to include marketing and travel funding activities) to facilitate participation of state and local representatives in National STD Prevention forums.

F. Content

Application

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 pages, double-spaced, printed on one side, with one-inch margins, and unreduced 12-point font.

The narrative should address the following:

1. Experience: Demonstrate your experience representing program officials who are actively engaged in directing STD Prevention Program efforts, in providing a National network of communications to State and local STD Prevention Programs, and in establishing or expanding National level partnerships which support the development of STD prevention staff and the enhancement of STD Prevention Program efforts.

2. Collaboration and Representation: Document your organizations' affiliation and relationship with State and local STD Prevention Programs.

3. Understanding of the Project: Describe the problems to be addressed with the requested assistance and briefly propose a programmatic plan for each.

4. Objectives: Establish long (5 year) and short-term (1 year) objectives for programmatic plans. Objectives must be specific, measurable, time-phased, and realistic.

5. Operational Plan and Timetable: Describe the operational plan for achieving each objective established. Concisely describe each component or major activity and how it will be carried out. Include a time line for completing each component or major activity.

6. Staff Capacity: Provide position descriptions, qualifications, and past achievements for the positions/personnel proposed to be involved in the administration of this project. Also provide the qualifications and past achievements of the personnel proposed to provide technical program direction.

7. Evaluation Plan: Discuss the plan for monitoring progress toward each of the objectives.

8. Budget: Submit a detailed budget and line-item justification that is consistent with the program purpose and proposed activities.

G. Submission and Deadline

Submit the signed original and two copies of the application PHS Form 5161–1 (OMB Control Number 0920–0428) along with your application narrative. Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4 p.m. eastern time June 23, 2003. Submit the application to: Technical Information Management-PA# 03045, CDC Procurement and Grants Office, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Deadline

Applications shall be considered as meeting the deadline if they are received before 4 p.m. eastern time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Application

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must relate to the performance goals, which are stated in the purpose section of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

An independent review group appointed by CDC will evaluate each application against the following criteria:

1. Experience (15 Points)

The extent to which the applicant documents more than five years of experience in representing program officials who are actively engaged in directing STD Prevention Program efforts, in providing a National network of communications and support to state and local STD Prevention Programs, and in expanding National level partnerships to support the development of STD prevention staff and the enhancement of STD Prevention Program efforts.

2. Collaboration and Representation (15 Points)

The extent to which applicant organizations have representatives with established day-to-day programmatic relationships with state/local STD Prevention programs in every U.S. state and U.S. Territory. The extent to which organization includes representatives of STD Prevention Programs who are actively engaged in directing STD Prevention Program efforts, and who represent State and local STD Prevention program efforts from all parts of the nation.

3. Understanding of the Project (15 points)

Extent to which the applicant understands the requirements, problems, objectives, complexities, and interactions required of this project.

4. Objectives (15 points)

Degree to which the proposed objectives are clearly stated, realistic, time phased, and related to the purpose of this project.

5. Operational Plan and Timetable (15 points)

The extent to which the applicant's plan to carry out the activities proposed is feasible and consistent with the stated objectives in this proposal. The extent to which the timetable incorporates major activities and milestones that is specific, measurable and realistic. Dates, tasks, and persons responsible for accomplishing tasks should be included.

6. Staff Capacity (15 points)

Extent to which the professional personnel proposed to be involved in administering this project and the professional personnel proposed to provide program leadership has the capacity to perform the work proposed. This would include individual qualifications with evidence of past achievements for staff identified.

7. Evaluation Plan (10 points)

The extent to which the evaluation plan appears feasible for monitoring progress toward meeting project objectives. In addition to evaluating outcome-related project objectives, the plan should clearly describe how the

grantee will use performance measures to track internal processes.

8. Budget (not scored)

The budget should be reasonable, clearly justified, and consistent with the intended use of funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Interim progress report, no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application and must include the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Detailed Line-Item Budget and Justification.

e. Additional Requested Information.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of this program announcement as posted on the CDC Web site.

Executive Order 12372 does not apply to this program.

AR–9—Paperwork Reduction Act Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 1020
AR–12—Lobbying Restrictions
AR–14—Accounting System Requirements
AR–15—Proof of Non-profit Status

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146. Telephone: 770–488–2700.

For business management and budget assistance contact: Gladys Gissentanna, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Rd., Atlanta, GA 30341–4146. Telephone: 770–488–2753. E-mail address: *gcg4@cdc.gov.*

For program technical assistance, contact: Michael Mitchell, National Center for HIV, STD, and TB Prevention, Division of STD Prevention, 1600 Clifton Road, Mailstop E–02, Atlanta, Georgia. 404–639–8534. *mjm2@cdc.gov.*

Dated: April 17, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–10110 Filed 4–23–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Advisory Committee on Children and Terrorism, Department of Health and Human Services, Centers for Disease Control and Prevention: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Advisory Committee meeting.

Name: National Advisory Committee on Children and Terrorism, HHS, CDC.

Time and Date: 8 a.m.–5 p.m., April 30, 2003.

Place: Emory Conference Center, 1615 Clifton Road, Atlanta, Georgia 30329.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The committee will make recommendations to the Secretary of HHS on matters related to bioterrorism and its impact on children.

Matters to be Discussed: Agenda items will include from the chairperson of the committee an introduction of committee members and discussion of the Secretary priorities with discussions of recommendations regarding, (a) the preparedness of the health care system to respond to bioterrorism as it relates to children; (b) needed changes to the health care and emergency medical service systems and emergency medical services protocols to meet the special needs of children; and (c) changes, if necessary to the National Strategic Stockpile under section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 to meet the emergency health security of children.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Joseph M. Henderson, Executive Secretary, National Advisory Committee on Children and Terrorism, HHS, CDC, 1600 Clifton Road, NE., M/S D–44, Atlanta, Georgia 30333. Telephone 404/639–7405.

As provided under 41 CFR 102–3.150(b), the public health urgency of this agency business requires that the meeting be held prior to the first available date for publication of this notice in the **Federal Register**.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 18, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–10111 Filed 4–23–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Peripheral and Central Nervous System Drugs Advisory Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is cancelling the meeting of the Peripheral and Central Nervous System Drugs Advisory Committee scheduled for May 16, 2003. This meeting was announced in the **Federal Register** of April 14, 2003 (68 FR 17958).

FOR FURTHER INFORMATION CONTACT: Karen M. Templeton-Somers, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12543, or e-mail: *SomersK@cder.fda.gov.*

Dated: April 18, 2003.

Lester M. Crawford,

Deputy Commissioner.

[FR Doc. 03–10150 Filed 4–23–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02P–0009]

Guidance for Industry: Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance document entitled "Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices." The purpose of the guidance is to provide industry with FDA's recommendations for appropriate control measures to use in the bulk transport of juice concentrates and certain shelf stable juices.

DATES: Submit written or electronic comments on the guidance at any time.

ADDRESSES: Submit written requests for single copies of the guidance document to Amy Green, Center for Food Safety and Applied Nutrition (*see* **FOR FURTHER INFORMATION CONTACT**). Send one self-addressed adhesive label to assist that office in processing your requests or include a fax number to which the guidance document may be sent. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments. See* the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT: Amy Green, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2025, FAX: 301–436–2651.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of October 7, 2002 (67 FR 62488), FDA announced the availability of a draft guidance document entitled "Draft Guidance for Industry: Guidance on Bulk Transport of Juice Concentrates and Certain Shelf Stable Juices." The purpose of the draft guidance was to provide processors of juice concentrates and certain shelf stable juice products with recommendations for the use of appropriate control measures to ensure that juice concentrates and certain shelf stable juice products do not become contaminated or recontaminated with a microbial pathogen during bulk transport. Interested persons were given until December 6, 2002, to comment on the draft guidance.

In response to the draft guidance document, FDA received one letter from a State agency requesting that FDA require many of the draft guidance's recommended control measures in the guidance document. FDA disagrees with these requests. Under the agency's good guidance practices regulation (GGPs) (21 CFR 10.115), a guidance document is not legally binding on the agency or the public and mandatory words, such as "shall," "must," "require," and "requirement," are not to be used unless they describe or discuss a statutory or regulatory requirement. The purpose of the guidance document is to provide juice processors with recommendations, rather than requirements, pertaining to control measures that may be adequate for ensuring the safety of juice concentrates and certain shelf stable juices during bulk transport. While some juice processors may choose to adopt the State agency's suggested control measures (if such measures are effective), an alternate approach may be used if that approach offers an adequate level of protection from contamination or recontamination with a microbial pathogen during bulk transport. Therefore, FDA is not adopting in the guidance document any of the State agency's comments.

II. Conclusion

The agency is adopting as guidance the recommended control measures as presented in the draft guidance document. After carefully considering the comment from a State agency suggesting that FDA require in this guidance more stringent and prescriptive control measures for bulk transport, the agency has determined that no changes are warranted.

The guidance document is being issued as a level 1 guidance, consistent with FDA's GGPs (21 CFR 10.115). The guidance represents the agency's current thinking on appropriate control measures for bulk transport of juice concentrates and certain shelf stable juices to ensure that contamination or recontamination with a microbial pathogen during bulk transport does not occur. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if it satisfies the requirements of the applicable statutes and regulations.

III. Comments

Interested persons may submit to the Dockets Management Branch (*see* **ADDRESSES**), written or electronic comments regarding this guidance document at any time. Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Interested persons also may access the guidance document at *http://www.cfsan.fda.gov/guidance.html.*

Dated: April 15, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–10074 Filed 4–23–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 340B Drug Pricing Program Survey—NEW

Section 340B of the Public Health Act provides that a manufacturer that sells outpatient drugs to covered entities must agree to charge a price that will not exceed the amount determined under a statutory formula. The entities eligible to access such drug pricing (*i.e.*, certain HHS grantees, certain disproportionate share hospitals, and other specified categories of entities) total approximately 10,000 sites. Most of these safety net providers serve the economically disadvantaged or medically uninsured.

A customer survey is being developed to collect information by mail on various aspects of the 340B Drug Pricing Program, including whether information on the program is reaching the covered entities, reasons some entities are not participating, satisfaction with the savings realized, and interest in possible modifications to the program. Both participating and nonparticipating entities will be included in the survey. The results will be used to improve the design and management of the program.

The estimated response burden is as follows:

Respondents	Number of respondents	Responses per respondent	Total responses	Minutes per response	Total burden hours
Covered Entities	1,000	1	1,000	.65	650

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 16, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–10075 Filed 4–23–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Cancer Control in Multiethnic Working Class Populations.

Date: June 1–3, 2003.

Time: 6 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Inn at Longwood Medical, 342 Longwood Ave., Boston, MA 02115.

Contact Person: Peter J. Wirth, PhD., Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8131, Bethesda, MD 20892–8328, 301–496–7565, *pw2q@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 17, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10182 Filed 4–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, RFP No1–CP–31018–50: U.S. Radiologic Technologist Cohort.

Date: May 1, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852. (Telephone conference call.)

Contact Person: Kirt Vener, PhD, Branch Chief, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8061, Bethesda, MD 20892, (301) 496–7174, *venerk@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: April 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10189 Filed 4–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Human Embryonic Stem Cell Resources.

Date: May 6, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John F. Connaughton, PhD., Scientific Review Administrator, Review Branch, DEA, Niddk, National Institutes of Health, Room 757, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 17, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10179 Filed 4–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel SBIR Initiative—RFA No: AA03–006

Date: May 15, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jeffrey I. Toward, PhD, Scientific Review Administrator, National Institutes of Health, National Institute on Alcohol Abuse and Alcoholism, Extramural Project Review Branch, 6000 Executive Blvd., Suite 409, Bethesda, MD 20892–7003, (301) 435–5337.

(Catalogue of Federal Domestic Assistance Progam Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: April 17, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10180 Filed 4–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Extended Psychosocial Analysis of Phone Study Data.

Date: April 30, 2003.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Marita R. Hopmann, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Building, Room 5E01, Bethesda, MD 20892, (301) 435–6911, *hopmannm@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 17, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10181 Filed 4–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such

as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.
Date: May 1–2, 2003.
Time: 8:30 a.m. to 12 p.m.
Agenda: NICHD Director's Report presentation, Regional Research Networks, and an update on the Rehabilitation Medicine Scientist Training Program.
Place: Holiday Inn Silver Spring, 8777 Georgia Ave., Silver Spring, MD 20910.
Contact Person: Ralph Nitkin, PhD, Director, BSCD, National Center for Medical Rehabilitation Research, National Institute of Child Health and Human Development, NIH, 6100 Building, Room 2A03, Bethesda, MD 20892. (301) 402–4206.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Information is also available on the Institute's/Center's home page: *www.nichd.nih.gov/about/ncmrr.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Payment Program, National Institutes of Health, HHS.)

Dated: April 17, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10183 Filed 4–23–03; 8:45 am]

BILLING CODE 4140–01

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council.
Date: June 16, 2003.
Closed: 8:30 a.m. to 10:45 a.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.
Open: 10:45 a.m. to 2:30 p.m.
Agenda: Director's report, scientific presentation, and reports.
Place: National Institutes of Health, Building 31, Center Drive, Bethesda, MD 20892.
Contact Person: J. Ricardo Martinez, MD, MPH, Associate Director for Program Development, Office of the Director, National Institute of Dental & Craniofacial Research, 31 Center Drive, Bldg. 31, Rm 5B55, Bethesda, Md 20892. (301) 451–6229.

Information is also available on the Institute's/Center's home page: *www.nidcr.nih.gov/discover/nadrc/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS.)

Dated: April 12, 2003.

Anna Snouffer,

Acting, Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10184 Filed 4–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Dental and Craniofacial Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Dental & Craniofacial Research, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Dental and Craniofacial Research Intramural Laboratory Review.
Date: June 1–3, 2003.
Closed: June 1, 2003, 3 p.m. to 7 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Open: June 2, 2003, 8:30 a.m. to 12:10 p.m.
Agenda: PI Presentations.
Place: NIH, Building 30, Room 117, Bethesda, MD 20892.
Closed: June 2, 2003, 12:10 p.m. to 1:30 p.m.
Agenda: To review and evaluate bSC discussion.
Place: NIH, Building 30, Room 117, Bethesda, MD 20892.
Open: June 2, 2003, 1:30 a.m. to 5 p.m.
Agenda: PI Presentations.
Place: NIH, Building 30, Room 117, Bethesda, MD 20892.
Closed: June 2, 2003, 5 p.m. to 7 p.m.
Agenda: To review and evaluate bSC discussion.
Place: NIH, Building 30, Room 117, Bethesda, MD 20892.
Open: June 3, 2003, 8:30 a.m. to 12:10 p.m.
Agenda: PI Presentations.
Place: NIH, Building 30, Room 117, Bethesda, MD 20892.
Closed: June 3, 2003, 12:10 p.m. to 3:15 p.m.
Agenda: To review and evaluate bSC meetings/exit interviews.
Place: NIH, Building 30, Room 117, Bethesda, MD 20892.
Contact Person: J. Ricardo Martinez, MD, MPH, Assoc. Director for Program Development, Office of the Director, National Institute of Dental & Craniofacial Research, 31 Center Drive, Bldg. 31, Rm. 5B55, Bethesda, MD 20892. (301) 451–6229.

Information is also available on the Institute's/Center's home page: *www.nidcr.nih.gov/discover/bscmtgs.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS.)

Dated: April 17, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10185 Filed 4–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Review of Research Project Grants.
Date: May 16, 2003.
Time: 11 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Aftab A. Ansari, PHD, Health Scientist Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Suite 800, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 17, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10186 Filed 4–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Review of Research Project Grants.
Date: May 9, 2003.
Time: 9:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 17, 2003.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10187 Filed 4–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Loan Repayment Meeting.
Date: May 8–9, 2003.
Time: 9 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hamilton Crowne Plaza, 14th and K Streets, NW., Washington, DC 20005.
Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS.)

Dated: April 15, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10188 Filed 4–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, D43 Infectious Disease Grant.

Date: May 6–7, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Ping Fan, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5154, MSC 7840, Bethesda, MD 20892, (301) 435–1740, *fanp@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Emphasis Panel, ZRG1 SB 50R: PAR–03–032 Bioengineering Partnerships.

Date: June 1, 2003.

Time: 5 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Teresa Nesbitt, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1172.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Alcohol and Toxicology Subcommittee 3.

Date: June 2–3, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Christine Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892, (301) 435–1713.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group Surgery and Bioengineering Study Section.

Date: June 2–3, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Teresa Nesbitt, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1172, *nesbittt@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group Integrative, Functional and Cognitive Neuroscience 1.

Date: June 3–4, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Imaging Study Section.

Date: June 5–6, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Imaging Study Section.

Date: June 5–6, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1–BECM–01 Bioanalytical Engineering and Chemistry Panel,

Date: June 5–6, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street, NW., Washington, DC 20037.

Contact Person: Noni Byrnes, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, (301) 435–1217, *byrnesn@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 17, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–10178 Filed 4–23–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

SAMHSA/HRSA Collaboration to Link Health Care for the Homeless Programs and Community Mental Health Agencies—(New)—The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Mental Health Services (CMHS); the Health Resources and Services Administration (HRSA), Bureau of Primary Health Care (BPHC); and the Office of the Assistant Secretary for Planning and Evaluation (ASPE) plan to conduct a longitudinal, multi-site evaluation assessing their initiative to foster collaborations between Health Care for the Homeless programs (HCH) and community mental health agencies (CMHAs). In 12 designated communities, an HCH site and a CMHA site will collaborate to increase the availability of mental health and primary care services for persons with serious mental illness and co-occurring substance use disorders who are homeless. The evaluation of these collaborative efforts will advance knowledge on elements of the implementation process associated with establishment of a successful collaboration, such as partnering mechanisms, success of referral links, intensity of services, the effects of collaboration on client outcomes, and plans for sustain ability.

Data collection will be conducted over a 30-month period. In each community, both a process and an outcome evaluation will be conducted to address the following questions: How is the project being implemented? What are the identified collaboration mechanisms? What are the service/agency level outcomes? What are the system-level outcomes? What are the client-level outcomes? To what extent do the various collaboration strategies predict outcomes?

To reduce burden and increase uniformity across the study sites, a common case study protocol will be used to guide the evaluation. Information for the service/agency and system level evaluations will be collected by staff from the central Evaluation Center (EC) during annual site visits and through monthly activity logs. Common site visit protocols will dictate what data collection methods will be used. Site visitors will rely on focus groups and interviews to obtain information from project directors, local evaluators, project staff, and clients. Activity logs monitoring each community's efforts to implement collaboration strategies, will be completed by program administrators and submitted to the EC monthly. Key outcomes to be examined at the service/agency level through these data collection methods include increased availability of mental health, substance abuse, specialty care, housing and services; increased access to primary care, mental health, and substance abuse services; more comprehensive assessment of and services for individual needs; increased integrated delivery of services; and increased engagement and retention in services. System-level outcomes to be examined include increased cross-agency activity; increased mental health capacity at Hch sites; less redundancy in data collection; and enhanced screening for multi-dimensional issues.

The estimated response burden for this project is as follows:

Instrument	Number of respondents	Responses/ respondent	Burden/response (hrs.)	Total burden hours
General Session Interviews	84	3	1.5	378
Administrative Interviews	24	3	1.5	72
Evaluator Interviews	12	3	1.0	36
Line Staff Interviews	48	3	2.0	288
Consumer Focus Groups	252	1	1.0	252
Other Key Informants	48	3	1.0	144
Monthly Activity Logs	12	28	0.5	168
Total	564			1,842
3-yr. Annual Average	480			614

A total of approximately 6,500 program participants are expected to be recruited from the 12 sites. Each site will collect GPRA data on these participants using the CMHS GPRA Core Client Outcome measures approved by the Office of Management and Budget under control number 0930–0208, which cover such domains as drug and alcohol use, family and living conditions, education, employment, and income, crime and criminal justice status, and mental and physical health problems and treatment. To obtain information on client-level outcomes the central Evaluation Center will work with each site to develop methods for obtaining relevant material from the GPRA data. The Evaluation Center will provide training and technical assistance to all sites on data submission procedures.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Herron Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 17, 2003.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 03–10114 Filed 4–23–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2003 Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability for SAMHSA Dissertation Grants: Support for Analyses in Substance Abuse.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA), Office of Applied Studies, announces the availability of FY 2003 funds for the grant program described below. A synopsis of this funding opportunity, as well as many other Federal government funding opportunities, is also available at the Internet site: *www.fedgrants.gov*.

This notice is not a complete description of the program; potential applicants must obtain a copy of the Request for Applications (RFA), including Dissertation Grants OA–03–003 Programmatic Guidance, and PHS 398 Instructions, Face Page (Form Page 1), Description, Performance Sites, and Key Personnel (Form Page 2), Research Grant Table of Contents (Form Page 3), Checklist, Personal Data form pages and the Modular Budget, Biographical Sketch, and Resources format pages before preparing and submitting an application.

Funding Opportunity Title: SAMHSA Dissertation Grants: Support for Analyses in Substance Abuse—Short Title: Dissertation Grants.

Funding Opportunity Number: OA–03–003.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Authority: Title V section 501(d) (8) of the Public Health Service Act, as amended and subject to the availability of funds.

Funding Instrument: G.

Funding Opportunity Description: The Substance Abuse and Mental Health Services Administration (SAMHSA), Office of Applied Studies, is accepting applications for Fiscal Year 2003 to support dissertation research involving data analysis on substance abuse service issues. The purpose of the program is to expand the number of researchers who conduct high-quality substance abuse services research, the study of how various factors (social, financial, organizational, and personal) affect the need for and access to substance abuse treatment, the quality and cost of substance abuse treatment and, ultimately, health and well being.

Eligible Applicants: Students registered and in good standing at an accredited academic doctoral degree program (*e.g.*, Ph.D., Sc.D., or Dr.P.H.), which requires a dissertation based on original research, may apply. The student must apply through a public or private nonprofit institution that will administer the grant on his or her behalf. Students in such fields as sociology, psychology, biostatistics, epidemiology, economics, policy,

management, medicine, nursing, public health or health services research are especially encouraged to apply.

Due Date for Applications: July 2, 2003.

Estimated Funding Available/Number of Awards: It is expected that approximately $150,000 will be available for 5 grant (R03) awards in FY 2003. The average annual award will range from $20,000 to $30,000 in total costs (direct and indirect). Actual funding levels will depend on the availability of funds. The amount of funds available will depend on the appropriation. Applications with proposed budgets that exceed total costs of $30,000 per year will be returned without review.

Is Cost Sharing Required: No.

Period of Support: Awards may be requested for a period not to exceed 2 years. The second year of the award will depend on the availability of funds and progress achieved.

How to Get Full Announcement and Application Materials: Complete application kits may be obtained from: Jane Feldman, (301) 443–5628, *jfeldman@samhsa.gov*. The PHS 398 application form and the full text of the funding announcement are also available electronically via SAMHSA's World Wide Web home page: *http://www.samhsa.gov* (click on "Grant Opportunities").

When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Contact for Additional Information: Sarah Q. Duffy, Ph.D., Office of Applied Studies, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Room 16–105 Rockville, MD 20857, (301) 443–8565, E-Mail: *Sduffy@samhsa.gov*.

Dated: April 17, 2003.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–10076 Filed 4–23–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by May 27, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Zoological Society of San Diego, San Diego, California, PRT–070217.

The applicant requests a permit to export to China one female giant panda (*Aluropoda melanoleuca*), captive born at the San Diego Zoo, and owned by the Government of China. This export is part of the approved loan program for the benefit of the survival of the species through scientific research as outlined in Zoological Society of San Diego's original import permit.

Applicant: Hawthorn Corporation, Grayslake, IL, PRT–068234, 068235, 068236, 068237, 068238, 068239, 068240, 068241, 068242, 068243, 068244.

The applicant requests permits to export, re-export, and re-import captive born tigers (*Panthera tigris*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: 068234—Ashora, 068235—Karma, 068236—Krisma, 068237—Spartacus, 068238—Dimitrios, 068239—Sharm, 068240—Jeeva, 068241—Tilac, 068242—Khan, 068243—Semran, 068244—Chandni. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Applicant: Steve Martin's Working Wildlife, Frazier Park, CA, PRT–069429, 069439, 069443.

The applicant requests permits to export, re-export, and re-import a captive born Bengal tiger (*Panthera tigris tigris*) and two captive born leopards (*Panthera pardus*) to worldwide locations for the purpose of enhancement of the species through conservation education. The permit numbers and animals are: tiger/Sasha—069439, leopards are Ivory (Irving)—069429, and Crystal—069443. This notification covers activities to be conducted by the applicant over a three-year period and the import of any potential progeny born while overseas.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Iskande L.V. Larkin, University of Florida, Gainesville, FL, PRT–038448.

The applicant requests an amendment and extension to her permit for scientific research to study the reproductive physiology and indicators of stress in Florida manatees (*Trichechus manatus*) by taking behavioral data and urine, fecal, blood, and vaginal smear samples from 10 captive-held females and 5 wild females that will be identified by the USFWS, Jacksonville, FL, Fish and Wildlife Office. This notification covers activities to be conducted by the applicant until 12/31/2005.

Applicant: U.S. Geological Survey/Alaska Science Center, Anchorage, AK, PRT–740507.

The applicant requests an amendment of their permit to authorize additional scientific research to study the long-term effects of hydrocarbon exposure on sea otters (*Enhydra lutris kenyoni*) through whisker growth on up to 20 wild animals per year. This notification covers activities to be conducted by the applicant until 07/09/2007.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Kenneth Harrison, Salem, OR, PRT–070362.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Applicant: Raymond Young, Cameron, WV, PRT–070363.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: April 11, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–10118 Filed 4–23–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permit for Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permit for marine mammals.

SUMMARY: The following permit was issued.

ADDRESSES: Documents and other information submitted for this application is available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone (703) 358–2104.

SUPPLEMENTARY INFORMATION: On January 15, 2003, a notice was published in the **Federal Register** (68 FR 2069), that an application had been filed with the Fish and Wildlife Service by James F. Mitchell for a permit PRT–064772 to import one polar bear (*Ursus maritimus*) sport hunted from the Southern Beaufort Sea polar bear population, Canada, for personal use.

Notice is hereby given that on April 9, 2003, as authorized by the provisions of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) the Fish and Wildlife Service issued the requested permit subject to certain conditions set forth therein.

Dated: April 11, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–10119 Filed 4–23–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–03–1220–MA]

Notice of Limitations of Off Road Vehicles (ORV) Use on Public Lands

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of Limitations of ORV Use on Public Lands.

SUMMARY: Notice is hereby given that effective immediately, the Bureau of Land Management (BLM), Salt Lake Field Office, revokes the seasonal Notice of Closure of Public Lands published on April 27, 1999 (64 FR 22639 (1999)) and the Notice of Closure of Public Lands published on March 28, 2000 (65 FR 16410 (2000)). Notice is hereby given that effective immediately, ORV use in the following five areas of Box Elder County is limited to designated routes: Devils Playground (9838 acres), Grouse Creek Mountains (52493 acres), Hogup Mountains (51698 acres), Pilot Mountains (62654 acres), and Wildcat Hills (12640 acres). The remaining public lands in Box Elder County will be managed according to the Box Elder Resource Management Plan. This limitation will remain in effect until the considerable adverse effects giving rise to this limitation are eliminated and measures are implemented to prevent recurrence of these adverse effects.

FOR FURTHER INFORMATION CONTACT: Brad Palmer, Assistant Field Office Manager, Salt Lake Field Office, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah, 84119; (801) 977–4300.

SUPPLEMENTARY INFORMATION: BLM is implementing this action on 189,323 acres of public land in Northwest Utah. BLM is limiting ORV use in five areas of Box Elder County to designated routes. BLM's Salt Lake Field Office has observed considerable adverse effects from ORV use in these areas, including proliferation of new ORV routes, damage and destruction of vegetation, increased soil erosion, and a likelihood of damage to cultural resources. Based on this information, the authorized officer determined that ORV use in these five areas is causing, or will cause, considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, and other authorized uses. Consequently, in these five areas ORV use is now limited to designated routes. This does not apply to:

1. Any federal, state or local government law enforcement officer engaged in enforcing this closure notice or member of an organized rescue or fire fighting force while in the performance of an official duty.

2. Any BLM employee, agent, contractor, or cooperator while in the performance of an official duty.

This order shall not be construed as a limitation on BLM's future planning efforts or ORV designations. BLM will periodically monitor resource conditions and trends in each of these five areas and may modify this order or implement additional limitations as necessary. A map showing the areas and designated routes is available at the above address.

The authority for this order is 43 CFR 8341.2.

Dated: April 3, 2003.

Glenn A. Carpenter,

Field Office Manager.

[FR Doc. 03–10221 Filed 4–23–03; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0091).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR part 254, "Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line."

DATES: Submit written comments by June 23, 2003.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. If you wish to e-mail comments, the address is: *rules.comments@mms.gov*. Reference "Information Collection 1010–0091" in your e-mail subject line and mark your message for return receipt. Include your name and return address in your message.

FOR FURTHER INFORMATION CONTACT: Arlene Bajusz, Rules Processing Team (703) 787–1600. You may also contact Arlene Bajusz to obtain a copy, at no cost, of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 254, Oil-Spill Response Requirements for Facilities Located Seaward of the Coast Line.

OMB Control Number: 1010–0091.

Abstract: The Federal Water Pollution Control Act, as amended by the Oil Pollution Act of 1990 (OPA), requires that a spill-response plan be submitted for offshore facilities prior to February 18, 1993. The OPA specifies that after that date, an offshore facility may not handle, store, or transport oil unless a plan has been submitted. This authority and responsibility have been delegated to the Minerals Management Service (MMS). Regulations at 30 CFR part 254 establish requirements for spill-response plans for oil-handling facilities seaward of the coast line, including associated pipelines.

The MMS uses the information collected under 30 CFR part 254 to determine compliance with OPA by owners/operators. Specifically, MMS needs the information to:

- Determine effectiveness of the spill-response capability of owners/operators;
- Review plans prepared under the regulations of a State and submitted to MMS to satisfy the requirements of this rule to ensure that they meet minimum requirements of OPA;
- Verify that personnel involved in oil-spill response are properly trained and familiar with the requirements of the spill-response plans and to witness spill-response exercises;
- Assess the sufficiency and availability of contractor equipment and materials;
- Verify that sufficient quantities of equipment are available and in working order;
- Oversee spill-response efforts and maintain official records of pollution events; and
- Assess the efforts of owners/operators to prevent oil spills or prevent substantial threats of such discharges.

No proprietary, confidential, or sensitive information is collected. However, we will protect any information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. Responses are mandatory or required to obtain or retain a benefit.

Frequency: On occasion and annual.

Estimated Number and Description of Respondents: Approximately 193 owners or operators of facilities located in both State and Federal waters seaward of the coast line.

Estimated Reporting and Recordkeeping "Hour" Burden: The currently approved annual reporting burden for this collection is 42,233 hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

Citation 30 CFR 254	Reporting and recordkeeping requirement	Hour burden
254.1(a) thru (d); 254.2(a); 254.3 thru 254.5; 254.7; 254.20 thru 254.29; 254.44(b).	Submit spill response plan for OCS facilities and related documents	120
254.1(e)	Request MMS jurisdiction over facility landward of coast line (no recent request received)	0.5
254.2(b)	Submit certification of capability to respond to worst case discharge or substantial threat of such	10
254.2(c); 254.30	Submit revised spill response plan for OCS facilities at least every 2 years	25
254.8	Appeal MMS orders or decisions. (Burden covered under 30 CFR 290 [1010–0121])	0
254.41	Conduct annual training; retain training records for 2 years	40
254.42(a) thru (e)	Conduct triennial response plan exercise; retain exercise records for 3 years	110
254.42(f)	Inform MMS of the date of any exercise (triennial)	1
254.43	Inspect response equipment monthly; retain inspection & maintenance records for 2 years	3
254.46(a)	Notify NRC of all oil spills from owner/operator facility (Burden included in the NRC inventory)	0
254.46(b)	Notify MMS of oil spills of 1 barrel or more from owner/operator facility; submit follow-up report	1
254.46(c)	Notify MMS & responsible party of oil spills from operations at another facility	1
254.50; 254.51	Submit response plan for facility in State waters by modifying existing OCS plan	45
254.50; 254.52	Submit response plan for facility in State waters following format for OCS plan	100
254.50; 254.53	Submit response plan for facility in State waters developed under State requirements	93
254.54	Submit description of oil-spill prevention procedures	5
Part 254	General departure or alternative compliance requests not specifically covered elsewhere in part 254.	2

Estimated Reporting and Recordkeeping "Non-Hour Cost"

Burden: We have identified no non-hour cost burdens for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: April 17, 2003.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 03–10156 Filed 4–23–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare an Environmental Impact Statement for the North Shore Road in Great Smoky Mountains National Park

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) to analyze alternatives for resolving issues related to the North Shore Road. The purpose of this action is to discharge and satisfy any obligations on the part of the United States that presently exist as the result of the Memorandum of Agreement of October 8, 1943, between the U.S. Department of Interior, Tennessee Valley Authority, Swain County, North Carolina, and the state of North Carolina. The public scoping process for this EIS has been initiated with issuance of this notice. The purpose of the scoping process is to elicit public comment regarding the full spectrum of public issues and concern, including a suitable range of alternatives, the nature and extent of potential environmental impacts, and appropriate mitigation strategies, which should be addressed in the EIS process.

DATES: Beginning in the spring of 2003, public scoping meetings will be conducted in the vicinity of Great Smoky Mountains National Park. The location, date, and time of the meetings and deadlines for written comments will be announced via local and regional media as follows: The Smoky Mountain Times, Bryson City, NC; The Cherokee One Feather, Cherokee, NC; The Mountaineer, Waynesville, NC; The Sylva Herald, Sylva, NC; Asheville Citizen Times, Asheville, NC; The Smoky News, Waynesville, NC; The Mountain Press, Sevierville, TN; The Knoxville News-Sentinel, Knoxville, TN; The Daily Times, Maryville, TN; and other major newspapers in Alabama, Georgia, Florida, Kentucky, Indiana, Illinois, Mississippi, North Carolina, Ohio, South Carolina and Tennessee. Announcements will also be placed on the following Web sites: *www.nps.gov\grsm* and *www.efl.fhwa.dot.gov*. All interested individuals, organizations, and agencies are invited to attend these meetings to comment orally and/or provide written comments or suggestions during the scoping period.

ADDRESSES: Any comments or requests for information should be addressed to Superintendent, Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, TN 37738.

FOR FURTHER INFORMATION CONTACT: North Shore Road EIS, Attn: Superintendent, Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, TN 37738, Telephone: 865/436–1207 or Fax: 865/436–1220.

SUPPLEMENTARY INFORMATION: In July, 1943, the Tennessee Valley Authority (TVA), the U.S. Department of Interior (DOI), the state of North Carolina, and Swain County, North Carolina, entered into a Memorandum of Agreement (MOA) that dealt with the creation of Fontana Dam and Reservoir and the flooding of lands and roads within Swain County. As part of that agreement, 44,170 acres of land were ultimately transferred to the DOI and made part of the Great Smoky Mountains National Park (Park). The MOA also contained a provision by which the DOI was to construct a road through the Park, along the north shore of the newly formed Fontana Reservoir, to replace the flooded NC 288. The obligation of the DOI to construct the road was subject to and contingent on the appropriation by Congress of all funds necessary for the road's construction. The United States was at war when the MOA was executed and so no funds could be appropriated for construction. After the war, between 1948 and 1970, the DOI, through the National Park Service (NPS), built 7.2 miles of the proposed road.

(Approximately 30 miles remain to be constructed.) During the early construction projects, it was discovered that the route of the proposed road was through very unstable terrain, resulting in the possibility of landslides, both during and after construction, and requiring more invasive engineering techniques than originally considered. In addition, a particular strata encountered (Anakeesta) will produce acidic drainage when disturbed if not properly handled and contained. Due to these environmental concerns and costs, construction was discontinued in 1972. In the succeeding years, several ideas and proposals were explored to recompense the state and county for the flooded lands and road, but no agreement was ever reached. An appropriation of $16 million was included in the 2001 Department of Transportation budget "for construction of, and improvements to, North Shore Road in Swain County, North Carolina." The DOI is seeking to develop a plan that will discharge and settle any obligations that it is currently under as a result of the circumstances described here, fulfilling its obligations to the Park and public.

Recognizing that the National Environmental Policy Act (NEPA) requires the consideration of a reasonable range of alternatives that will address the purpose and need, the EIS will include a range of alternatives for detailed study. The alternatives will consist of a no-action alternative, as well as a variety of build and no-build alternatives that meet the purpose and need for the action. These alternatives will be developed, screened, and subjected to detailed analysis in the draft EIS based on their ability to address the purpose and need, while attempting to avoid known and sensitive resources.

Letters describing the proposed NEPA study and soliciting input will be sent to the appropriate federal, state and local agencies, which have expressed or are known to have an interest or legal role in this proposal. It is anticipated that a formal scoping meeting will be held as part of the NEPA process to facilitate local, state, and federal agency involvement. Private organizations, citizens, and interest groups will also have an opportunity to provide input into the development of the EIS and identify issues that should be addressed at the public scoping meetings. A comprehensive public participation program will be developed to involve the public throughout the project development process. This will include pubic meetings at key stages during the process, including the review of the draft EIS. The draft EIS will be available for public and agency review and comment prior to the public meetings/hearings. Its availability will be announced by **Federal Register** notice, regional and local media, Web site, and direct mailing to all those on the formal mailing list developed during the NEPA/Public Involvement Process. At this time, the draft North Shore Road EIS is anticipated to be available for public review in late 2004.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning this notice of proposed action, and when the draft environmental impact statement is available, should be directed to the NPS at the addresses provided under the caption **FOR FURTHER INFORMATION CONTACT**.

The public is advised that individual names and addresses may be included as part of the public record. Names and addresses will be available for public review during regular business hours. There are circumstances in which a person prefers to have their name and other information withheld from the public record. Any person wishing to do this must state this prominently at the beginning of any correspondence or comment, and the request will be honored to the extent allowable by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be placed on the public record and will be made available for public inspection in their entirety.

Dated: December 13, 2002.

Patricia A. Hooks,

Acting Regional Director, National Park Service.

[FR Doc. 03–10024 Filed 4–23–03; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–433 (Preliminary) and 731–TA–1029 (Preliminary)]

Allura Red Coloring From India

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from India of allura red coloring, provided for in subheading 3204.12.50 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of India. The Commission also determines, pursuant to section 733(a) of the Act (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of the subject imports from India that are also alleged to be sold in the United States at less than fair value (LTFV).

Background

On March 4, 2003, a petition was filed with the Commission and Commerce by Sensient Technologies Corporation, Milwaukee, WI, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized and LTFV imports of allura red coloring from India. Accordingly, effective March 4, 2003, the Commission instituted countervailing duty investigation No. 701–TA–433 (Preliminary) and antidumping duty investigation No. 731–TA–1029 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of March 11, 2003 (68 FR 11579). The conference was held in Washington, DC, on March 25, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on April 18, 2003. The views of the Commission are contained in USITC Publication 3595 (April 2003), entitled Allura Red Coloring from India: Investigations Nos. 701–TA–433 (Preliminary) and 731–TA–1029 (Preliminary).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

By order of the Commission.

Issued: April 18, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–10096 Filed 4–23–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Between the United States and Alcoa Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on April 9, 2003, a proposed consent decree ("Consent Decree") between Alcoa Inc. ("Alcoa") and the United States, Civil Action No. A03CA222SS was lodged with the United States District Court for the Western District of Texas.

The Consent Decree would resolve claims asserted by the United States against Alcoa pursuant to sections 113(b) and 167 of the Clean Air Act (the "Act"), 42 U.S.C. 7413(b) and 7477, seeking injunctive relief and the assessment of civil penalties for Alcoa's violations of:

(a) The Prevention of Significant Deterioration ("PSD") provisions of the Act, 42 U.S.C. 7470 through 7492, and

(b) The Federally-enforceable Texas State Implementation Plan ("SIP"), which has been approved at 40 CFR part 52, subpart SS, sections 52.2270 through 52.2311, and which includes the Prevention of Significant Deterioration requirements at 40 CFR 52.2270(c) and 30 T.A.C. 116.01, 116.160.

The compliant filed by the United States alleges, among other things, that between approximately 1983 and the present, Alcoa modified and thereafter operated certain boilers units at the lignite-fired Sandow Power Plant (Sandow Units 1–3) located in Milam County, Rockdale, Texas without first obtaining a PSD permit authorizing the construction of physical modifications to the units, and without first installing and operating appropriate control technology to reduce emissions of nitrogen oxides, sulfur dioxide, and particular matter, as required by the PSD provisions in sections 160 through 169(B) of the Act, 42, U.S.C. 7470–7492 and 40 CFR 52.21, and the Texas SIP at 40 CFR 52.2770(c) and 30 T.A.C. 116.01, 116.03, 116.3(a) and 116.160. Three other entities—Neighbors for Neighbors, Inc., Environmental Defense, and Public Citizen, Inc.—also asserted similar claims against Alcoa.

The proposed Consent Decree would require Alcoa to either install comprehensive pollution controls or shut down these units between 2006 and 2007. The settlement would also require Alcoa to pay $1.5 million in civil penalties and to undertake $2.5 million in environmental projects to mitigate the harm caused by the alleged violations.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Alcoa Inc.*, D.J. Ref. No. 90–5–2–1–07723.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Texas, 816 Congress Avenue, Suite 1000, Austin, Texas 78701, and at U.S. EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202–2733. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open/html*. A copy of the Consent Decree may also be obtained by the mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $17.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Benjamin Fisherow,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–10081 Filed 4–23–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 218 CFR 50.7, notice is hereby given that on April 9, 2003, a proposed Consent Decree in *United States* v. *Archer Daniels Midland Company*, ("ADM"), Civil Action No. 03–2066 was lodged with the United States District Court for the Central District of Illinois. The Consent Decree addresses claims for violations of the Preventions of Significant Deterioration ("PSD") and New Source Performance Standards ("NSPS") requirements of the Clean Air Act pursuant to section 113(b) of the Clean Air Act ("Act"), 42 U.S.C. 7413(b) (1983), *amended by*, 42 U.S.C. 7413(b) (Supp. 1991), at 52 plants in 16 states. The Complaint alleges that ADM routinely underestimated its VOC emissions from corn processing and ethanol production units and modified and expanded its oilseed plants without obtaining appropriate pre-construction permits and installing air pollution control equipment.

Under the terms of the Consent Decree, ADM will install state-of-the-art air pollution controls on hundreds of units, shut down older, dirty units and accept restrictive emission limits on others, for a total emission reduction of 63,000 tons per year. In addition ADM will meet NSPS, 40 CFR part 60, Subparts Db, Dc, DD, Kb, and VV for boilers, grain elevators, coal loading operations, and storage tanks. Finally, ADM is obligated to implement a corporate-wide environmental management system and conduct multi-media audits of each of its facilities at least twice over the life of the Decree.

The injunctive relief package is expected to cost ADM $328 million over the ten year period of compliance. ADM will also pay a civil penalty of $4,604,000 ($2,505,600 paid to the United States and $2,098,400 paid to the states) and spend $6,363,000 on environmentally beneficial projects. The states of Arkansas, Indiana, Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Carolina, and Texas; the Iowa Counties of Linn and Polk and the Nebraska County of Lancaster have filed Complaints-in-intervention and executed the Consent Decree.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the ADM Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: *United States* v. *Archer Daniels Midland Company*, D.J. Ref. 90–5–2–1–2035/2.

The Consent Decree may be examined at the Office of the United States Attorney, Central District of Illinois, 201 S. Vine Street, Room 226, Urbana, IL 61802, and at U.S. EPA Region 5, 775 West Jackson 77 Blvd., Chicago, Illinois 60604–3590. During the public comment period the ADM Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd.open.html*. A copy of the ADM Consent Decree, may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department

of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $67.25 (includes attachments), or $28.25, without attachments (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Maher,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–10084 Filed 4–23–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

Under 28 CFR 50.7, notice is hereby given that on April 2, 2003, a proposed Consent Decree ("Decree") in the consolidated cases of *United States* v. *CHS Holding Corp.*, Civil Action No. 1994/0126 (STX–F), and *Berlex Laboratories, Inc.* v. *Cooper Holdings, Inc.*, Civil Action No. 1988/194, was lodged with the United States District Court for the District of the Virgin Islands.

In this action, the United States sought reimbursement of response costs incurred by the United States Environmental Protection Agency ("EPA") in connection with clean up activities at the Island Chemical Superfund Site ("Site") located in St. Croix, U.S. Virgin Islands. The proposed Decree will resolve the United States' claims under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601 *et seq.*, on behalf of the EPA against settling defendant CHS Holding Corporation ("CHS") relating to the Site. The settling defendant is alleged to be liable under section 107(a)(2) of CERCLA as the owner of the Site. The Decree provides that the settling defendant shall make all good faith efforts to sell the Site property and shall pay to the United States 100% of the net proceeds from the sale of the Site property.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *CHS Holding Corp.*, D.J. Ref. No. 90–11–2–954.

The Decree may be examined at the Office of the United States Attorney, District of the United States Virgin Islands, 1108 King Street, Suite 201, Christiansted, St. Croix, U.S. Virgin Islands 00820, and at the U.S. Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007–1866. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://usdoj.gov/enrd/open.html*. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–10080 Filed 4–23–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation and Liability Act and Chapter 11 of the United States Bankruptcy Code

Notice is hereby given that on April 11, 2003, a proposed Settlement Agreement ("Agreement") in *In re* Kmart Corp., *et al.*, Case No. 02–02474, was lodged with the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division. The Agreement is between Kmart Corporation and its affiliated debtors and debtors-in-possession (collectively, the "Debtors") and the United States, on behalf of the United States Environmental Protection Agency ("EPA"), the United States Department of the Interior, and the National Oceanic and Atmospheric Administration of the United States Department of Commerce. The Agreement relates to liabilities of the Debtors under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*

Under the Agreement, the United States, on behalf of EPA, would receive:

- Allowed secured claims totaling $579,151 for the following five sites: The Beede Waste Oil site (Plaistow, New Hampshire); the Florida Petroleum Reprocessors site (Davie, Florida); the Hows Corner site (Plymouth, Maine); the Jack Goins site (Cleveland, Tennessee); and the Lenz Oil Services site (DuPage County, Illinois);
- Allowed unsecured claims totaling $171,744 for the following five sites: The Arkwright Dump site (Spartanburg, South Carolina); the Bill Johns Waste Oil site (Jacksonville, Florida) (with respect to response costs incurred before November 21, 2001); the Delatte Metals site (Ponchatoula, Louisiana); the Operating Industries, Inc. Landfill site (Monterey Park, California); and the Tulalip Landfill (Marysville, Washington); and
- A right to seek cost recovery in the future in connection with Operable Unit 2 of the Peterson Puritan site (Cumberland, Rhode Island), with up to $506,500 of such cost recovery payable as an allowed secured claim and any amount over that payable as an allowed unsecured claim.

The Agreement further provides as follows:

- For Debtor-owned sites, environmental claims and actions by the United States are not discharged;
- For the following nine sites, environmental claims by the United States are discharged, to the extent the claims arise from the Debtors' conduct before the bankruptcy action: Adkins Branch Tire Dump (Putnam County, West Virginia); the Bufkin Store Lead site (Tabor City, North Carolina); the Chadbourn Battery site (Chadbourn, North Carolina); the Guyton Battery site (Chadbourn, North Carolina); the Jimmy Green Metals site (Nashville, North Carolina); the Odum Bufkin Battery site (Green Sea, South Carolina); the Old Stake Road Lead site (Chadbourn, North Carolina); the Petroleum Conservation, site (a/k/a the U.S. Oil, Two Rivers site) (Two Rivers, Wisconsin); and the Vinegar Hill Battery site (a/k/a the Williams store site) (Tabor City, North Carolina); and
- For all other sites, the United States may not issue or seek environmental orders based on the Debtors' conduct before the bankruptcy action, but may recover response costs and natural resource damages based on such conduct, as if the United States' claims had been allowed unsecured claims under the Debtors' reorganization plan.

For a period of 30 days from the date of this publication, the Department of Justice will receive comments relating to the Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044, and should refer to *In re* Kmart Corp., *et al.*, Case No. 02–02474, D.J. Ref. No. 90–11–2–07845.

The Agreement may be examined at the Office of the United States Attorney, 219 South Dearborn Street, Suite 2001, Chicago, Illinois 60604, and at the United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. During the public comment period, the Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax number (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $7.00 (25 cents per page reproduction cost) payable to the United States Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–10085 Filed 4–23–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that on April 10, 2003, a proposed Consent Decree in *United States and State of Missouri* v. *Newton County, Missouri*, Civil Action No. 3:03–cv–05038–RED was lodged with the United States District Court for the Western District of Missouri.

In this action the United States asserted a claim under section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607(a), for recovery of response costs incurred by the United States at the Newton County Superfund Site in Missouri. The State of Missouri also asserted a claim for recovery of response costs under section 107(a) of CERCLA. Defendant Newton County is a current owner of an approximately 30 acre parcel of property contaminated with mine waste near Granby, Missouri within the Site.

Under the terms of the proposed Consent Decree settling the claims asserted in the Complaint, Newton County will allow its parcel of property near Granby to be used for disposal of contaminated materials removed from other portions of the Site. The contaminated materials will be disposed of in a Repository approximately 10 acres in size. The County agrees to finance and perform all Operation and Maintenance activities for the Repository as specified in an appendix to the Decree. The Decree also requires the County to execute and record a restrictive covenant, running with the land, that will prohibit activities that might disturb the cap as well as construction of facilities for which the remedy would be insufficiently protective. In return for the commitments by Newton County, the United States and the State grant Newton County a covenant not to sue under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), and State law for response costs relating to the Newton County Mine Tailings Superfund Site.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States and State of Missouri* v. *Newton County, Missouri*, D.J. Ref. No. 90–11–2–07088.

The Consent Decree may be examined at the Office of the United States Attorney, Charles E. Whittaker Courthouse, 400 E. 9th Street, 5th Floor, Kansas City, Missouri 64106, and at U.S. EPA Region VII, 901 North Fifth Street, Kansas City, Kansas 66025. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $14.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Robert Maher,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–10082 Filed 4–23–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

Under 28 CFR 50.7, notice is hereby given that on April 15, 2003, a proposed consent decree in *United States* v. *Quemetco Metals Limited, Inc., et al.*, Civil Action No. 3-01CV0924–D has been lodged with the United States District Court for the Northern District of Texas, Dallas Division. The consent decree settles an action brought under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607, for reimbursement of response costs incurred and to be incurred by the United States in responding to releases and threats of releases of hazardous substances from the RSR Corporation Superfund Site located in Dallas, Texas. Under the terms of the Consent Decree, Quemetco Metals Limited, Inc., Quemetco, Inc., and RSR Corporation ("Settling Defendants") have agreed to perform work at the Site valued at $11.6 million and to reimburse response costs incurred by the United States in the amount of $13.25 million and by the State of Texas in the amount of $870,000.

For a period of 30 days from the date of this publication, the Department of Justice will receive written comments relating to the proposed consent decree from persons who are not parties to the action. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Quemetco Metals Limited, Inc.*, et al., DOJ #90–11–3–1613/3.

The proposed consent decree may be examined at the offices of the United States Attorney for the Northern District of Texas, Dallas Division, 1100 Commerce St., Third Floor, Dallas, Texas 75242, and at the office of the United States Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202 (Attention: Mike

Barra, Assistant Regional Counsel). During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy exclusive of exhibits, please enclose a check in the amount of $21.50 (25 cents per page reproduction cost without exhibits) payable to the U.S. Treasury.

Catherine McCabe,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–10079 Filed 4–23–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Notice is hereby given that on April 9, 2003, a proposed Consent Decree in *United States* v. *CF&I Steel, L.P., d/b/a Rocky Mountain Steel Mills*, an action for injunctive relief and civil penalties pursuant to the Clean Air Act, 42 U.S.C. 7401 *et seq.*, was lodged with the United States District Court for the District of Colorado, Case No. 03–M–0608.

In this action, the United States sought injunctive relief and civil penalties against Rocky Mountain Steel Mills for alleged violations of the Prevention of Significant Deterioration ("PSD") requirements and New Source Performance Standards set forth in the Clean Air Act. The alleged violations occurred when Rocky Mountain Steel Mills undertook a series of modifications at its steelmaking facility located in Pueblo, Colorado. In the proposed Consent Decree, Rocky Mountain Steel Mills agrees to conduct a modernization project at its facility, which will involve the shutdown of its two existing electric arc furnaces and replacement with a new, modernized furnace. The Consent Decree requires that Rocky Mountain Steel Mills meet the New Source Performance Standards set forth at 40 CFR part 60, subpart Aaa, and install the Best Available Control Technologies to minimize emissions from the new furnace. The precise emissions limitations that Rocky Mountain Steel Mills will have to meet will be set forth in a PSD permit to be issued by the State of Colorado and approved by EPA. The estimated costs of these renovations is $25 million. The proposed consent Decree also requires that Rocky Mountain Steel Mills pay a civil penalty of $450,000 and perform several Supplemental Environmental Projects ("SEPs") and undertake additional relief valued at over $750,000. The SEPs and additional relief will result in reductions of emissions from the facility beyond those required by law and address some of the impacts on the surrounding community that resulted from Rocky Mountain Steel Mills' violations of the Act.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *CF&I Steel, L.P. d/b/a/ Rocky Mountain Steel Mills*, D.J. Ref. DJ# 90–5–2–1–07496.

The Consent Decree may be examined at U.S. EPA Region 8, 999 18th Street, Suite 500, Denver, Colorado, 80202. During the public comment period, the Settlement Agreement, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.80 for the Consent Decree only and $25.40 for the Consent Decree plus Appendices.

Robert Brook,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–10083 Filed 4–23–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Shipbuilding Research Program ("NSRP")

Correction

In the notice document appearing on pages 10033 and 10034 in the issue of Monday, March 3, 2003, make the following correction:

On page 10034, after the word "Specifically," until the end of the paragraph, substitute "on November 30, 2001, Newport News Shipbuilding and Dry Dock Co., Newport News, VA has been acquired by Northrop Grumman Corporation and shall be referred to as Newport News Shipbuilding and Dry Dock Co., a subsidiary of Northrup Grumman Corporation. Ingalls Shipbuilding, Inc., Pascagoula, MS and Avondale Industries, Inc., Avondale, LA, were wholly-owned subsidiaries of Litton Industries, Inc. On May 30, 2001, Litton Industries, Inc. was acquired by Northrup Grumman Corporation. On May 17, 2002, Ingalls changed its name to Northrop Grumman Ship Systems, Inc. On August 26, 2002, Avondale merged into Northrop Grumman Ship Systems, Inc. and, as successor in merger, has changed its name to Northrop Grumman Ship Systems, Inc. On October 23, 2002, Vision Technologies Systems, Inc. completed its acquisition of Halter Marine, Inc., Gulfport, MS and became VT Halter Marine, Inc., Gulfport, MS, a subsidiary of Vision Technologies Systems, Inc."

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–10086 Filed 4–23–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open Mobile Alliance

Notice is hereby given that, on January 16, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open Mobile Alliance ("OMA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions

limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, ACL Wireless Limited, New Delhi, India; Anam Wireless Internet Solutions Limited, Dublin, Ireland; Anite Telecoms Ltd., Fleet, Hants, United Kingdom; Antepo, Inc., New York, NY (joined 9/26/2002); AQRIS Software AS, Talinn, Estonia; Atchik, Toulouse, France; ATI Technologies Inc., Thornhill, Ontario, Canada; Autodesk Location Services, San Rafael, CA; Benq Corporation, Hsinchu, Taiwan; Big Tribe Corporation, San Francisco, CA; BlueFactory, Stockholm, Sweden; BlueLabs South AB, Malmo, Sweden; Borland Software Corporation, Scotts Valley, CA; Camelot Group Plc., Watford, Herts, United Kingdom; Casabyte Inc., Renton, WA; CDMA Development Group, Inc., Costa Mesa, CA; CellPoint AB, Kista, Sweden; Cellsoft, Inc, Pleasanton, CA (joined 10/4/2002); Cognizant Technology Solutions UK Ltd., London, United Kingdom; Commtag Limited, Cambridge, United Kingdom; Communology GmbH, Herzogenrath, Germany; Comsys Communications and Signal, Herzelia, Israel; Consilient Technologies Corporation, St. John's, Newfoundland, Canada; Creanor Oy, Helsinki, Finland (joined 9/30/2002); Critical Path, Inc., San Francisco, CA; Cybiko Advanced Technologies, Bloomingdale, IL; Digital Bridges, LTD, Dunfermline, United Kingdom; Digital World Services, New York, NY; dmates as, Oslo, Norway; DMDsecure, Amsterdam, The Netherlands; DoOnGo, Technologies, Inc., Santa Clara, CA; dynamicsoft inc., East Hanover, NJ; Ecrio Inc., Cupertino, CA; Elvior, Talinn, Estonia; Embedded & Mobile Systems, Inc., Delray Beach, FL (joined 10/21/2002); Everlite Technology Co., Ltd., Taipei, Taiwan; EverInTouch, LTD, Old Coulsdon, Surrey, United Kingdom; EWAP Digital Systems Co. LTD, Beijing, People's Republic of China; France Telecom Group, Paris, France; gate5 AG, Berlin, Germany; Genasys II Spain, S.A., Madrid, Spain; Global Locate, San Jose, CA; Hillcast Technologies Inc., Austin, TX; Hotsip AB, Stockholm, Sweden; Icona s.p.a., Milan, Italy; Infocomm Development Authority of Singapore, Singapore, Singapore; InfoSpace, Inc., Bellevue, WA; Institute For Information Industry, Taipei, Taiwan; Invertix Corporation, Alexandria, VA; J-Phone Co., Ltd., Tokyo, Japan; Jabber. Inc., Denver, CO; Jataayu Software Pvt Ltd., Bangalore, India; JP Mobile, Inc., Dallas, TX; July Systems, Inc, Sunnyvale, CA; Kada Systems, Inc., Burlington, MA; Kalador Entertainment Inc., Delta, British Columbia, Canada; Korea Information Security Agency, Seoul, Republic of Korea; KT ICOM, Seoul, Republic of Korea; Larsen & Toubro Infotech LTD, Navi Mumbai, India; Leapstone Systems, Inc., Somerset, NJ; LocatioNet, Netanya, Israel; Locus Portal Corporation, Helsinki, Finland; M.I.M.T. AB, Malmo, Sweden; magic4 Ltd., Warrington, United Kingdom; Malibu Telecom Oy, Espoo, Finland; MediaSolv.com, Inc., San Jose, CA; Mercator Partners, LLC, Concord, MA; Meridea Financial Software Oy, Helsinki, Finland; Mermit Business Applications Oy, Espoo, Finland; MessageVine, Inc., San Francisco, CA; Metrowalker LTD, Hong Kong, Hong Kong-China; Mobeon AB, Stockholm, Sweden; Mobile GIS LTD, Glanmire, Ireland; Mobilespring, New York, NY; Mobilesys Inc., Mountain View, CA; Mobileway, Puteaux, France; Neosteps, Inc., Gyeonggi-do, Republic of Korea; Network Associates, Inc., Santa Clara, CA; Netxcalibur SRL, Florence, Italy; Neumobility, Seattle, WA; NSTL, Inc, Conshohocken, PA (joined 10/4/2002); Oksijen Teknoloji Gelistirme ve Bilisim, Bakirkoy-Istanbul, Turkey; Opera Software ASA, Oslo, Norway; PalmSource Inc., Sunnyvale, CA; PictureIQ Corporation, Seattle, WA; Pinpoint Networks, Cary, NC; Portugal Telecom Inovacao, S.A., Aveiro, Purtugal; Psion Digital, London, United Kingdom; PumaTech, San Jose, CA; Push Messenger, Courbevoie, France; Racal Instruments, Slough, Berkshire, United Kingdom; RedKnee Inc., Mississauga, Ontario, Canada; Research Institute of Telecommunications, Beijing, People's Republic of China; Sasken Communication Technologies Limited, Bangalore, India; SDC Secure Digital Container AG, Basel, Switzerland; Secured By Design Ltd., Milton Keynes, United Kingdom (joined 9/26/2002); Sierra Wireless, Richmond, British Columbia, Canada; Simbit Corporation, Ottawa, Ontario, Canada; Sinpag, Saint Maur des Fosses, France; SiRF Technology, Inc., Los Angeles, CA; Sofor Oy, Kauhava, Finland; Softbank Mobile Corp., Tokyo, Japan; Solid Information Technology, Mountain View, CA; Sonim Technologies, Inc., San Mateo, CA; Sony Corporation, Tokyo, Japan; Spirent Communications, Inc., Eatontown, NJ; Starfish Software, Inc., Scotts Valley, CA; SupportSoft, Inc, Redwood City, CA; Swisscom Mobile Ltd., Bern, Switzerland; Tahoe Networks, San Jose, CA; Taral Networks, Inc., Kanata, Ontario, Canada; TeleMessage Ltd., Petach Tikvah, Israel; Telenity, Inc., Monroe, CT; Telespree Communications, San Francisco, CA; Tricomtek Co., Ltd., Seoul, Republic of Korea; Ukibi, Inc., New York, NY (joined 9/26/2002); Unisys Corporation, Plano, TX; V-Enable Inc., San Diego, CA; Vayusphere, Inc., Mountain View, CA; Verdisoft Corporation, Palo Alto, CA; Vimatix, Inc., Wilmington, DE; Vox Mobili, Paris, France; Voyant Technologies, Inc., Westminster, CO; Watercove Networks, Chelmsford, MA; WaveMarket, Inc., Emeryville, CA; WDC Solutions Pvt Ltd., Bangalore, India; Weblicon Technologies AG, Berlin, Germany; Webmessenger, Inc., Tuunga, CA; whereonearth, London, United Kingdom; Wiral Ltd., Espoo, Finland; Wirelex Soft, Toronto, Ontario, Canada; XandMail, Paris La Courneuve, France; YesMobile Taipei Ltd, Taipei, Taiwan; and Zentek Technology, Inc., Redwood City, CA have been added as parties to this venture. Telia Mobile AB, Nacka Strand, Sweden has acquired Sonera Corporation, Helsinki, Finland. Aspiro, Malmo, Sweden has changed its name to Aspiro AB. StarMedia Networks, Inc., Miami, FL has changed its name to CycleLogic Mobile Solutions. Extended Systems, Inc., Boise, ID has changed its name to Extended Systems. Hutchison Telephone Co. Ltd., Hong Kong, Hong Kong-China has changed its name to Hutchison 3G. Matshushita Communication Industrial Co., Ltd., Yokohama, Japan has changed its name to Panasonic Mobile Communications Co., Ltd. Research Institute of Telecommunications Transmission, MII, Beijing, People's Republic of China has changed its name to Research Institute of Telecommunications Transmission, MII China. Schlumberger Systems, Montrouge, France has changed its name to SchlumbergerSema. VoiceStream Wireless, Bellevue, WA has changed its name to T-Mobile USA. Telia Mobile AB, Nacka Strand, Sweden has changed its name to TeliaSonera AB. TTP Communications Ltd, Melbourn, Royston, Hertfordshire, United Kingdom has changed its name to TIPCOM, Ltd.

The following companies had their memberships cancelled: MobileSpear, Inc., Tel Aviv, Israel; Mobileum, Inc., Pleasanton, CA; Neomar, San Francisco, CA; Seven, Redwood City, CA; Speedware Corporation, St. Laurent, Quebec, Canada; and Ubicco, Paris, France.

The following companies have resigned: Akumiiti Ltd., Helsinki, Finland; Antepo, Inc., New York, NY (resigned 12/31/2002); ArgoGroup, Surrey, West Sussex, United Kingdom; Baltimore Technologies, Dublin, Ireland; Banksys, Brussels, Belgium; Bouygues Telecom, Velizy Cedex, France; Cellsoft, Inc., Pleasanton, CA

(resigned 12/31/2002); Citrix Systems, Inc., Gerrards Cross, Bucks, United Kingdom; CMG Wireless Data Solutions B.V., Nieuwegein, The Netherlands; CoCoNet AG, Erkrath, Germany; Creanor Oy, Helsinki, Finland (resigned 12/31/2002); Embedded & Mobile Systems, Inc., Delray Beach, FL (resigned 12/31/2002); Entrust, Addison, TX; Hitachi, Ltd., Tokyo, Japan; IrisCube SpA, Milano, Italy; Kenwood Corporation, Kanagawa, Japan; Mitsui & Co, Ltd., Tokyo, Japan; Mobile Economy Ltd., Rosh Ha'ayin, Israel; Mobileaware Limited, Dublin, Ireland; mobileID, Inc., Menlo Park, CA; NSTL, Inc., Conshohocken, PA (resigned 12/31/2002); Pioneer Corporation, Saitama-ken, Japan; S.E.S.A. Software und Systeme AG, Eschborn/Ts, Germany; SAS, Cary, NC; Secured By Design Ltd., Milton Keynes, United Kingdom (resigned 12/31/2002); Singtel Optus Pty. Ltd., North Sydney, New South Wales, Australia; Stellent, Inc., Eden Prairie, MN; Sybase, Inc., Waterloo, Ontario, Canada; TrustLink AB, Stockholm, Sweden; Tu-Ka Cellular Tokyo Inc., Tokyo, Japan; UBS AG, Zurich, Switzerland; Ukibi, Inc., New York, NY (resigned 12/31/2002); and Zurich Cantonalbank, Zurich, Switzerland.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Open Mobile Alliance intends to file additional written notification disclosing all changes in membership.

On March 18, 1998, Open Mobile Alliance filed its original notification pursuant ot section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 31, 1998 (63 FR 72333).

The last notification was filed with the Department on May 3, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 2002 (67 FR 43343).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 03–10087 Filed 4–23–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

121st Full Meeting of the Advisory Council on Employee Welfare and Pension Benefit Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 121st open meeting of the full advisory Council on Employee Welfare and Pension Benefit Plans will be held May 9, 2003, in Room S–2508, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210.

The purpose of the meeting, which will begin at 11:15 a.m. and end at approximately 3:30 p.m., is to consider the items listed below:

I. Welcome, Introduction and Swearing In of New Council Members by Secretary of Labor.

II. Remarks by Secretary.

III. Report from the Assistant Secretary of Labor for the Employee Benefits Security Administration (EBSA).

IV. Introduction of EBSA Senior Staff.

The Advisory Council will reconvene at 1:15 p.m. at which time members will conclude the session with:

V. Summaries of the 2002 Final Reports Made by Advisory Council Working Groups.

VI. Determination of Topics to Be Addressed by Council Working Groups for 2003.

VII. Statements from the General Public.

Members of the public are encouraged to file a written statement pertaining to any topics the Council may consider studying for the year concerning ERISA by submitting 20 copies on or before May 2, 2003, to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 693–8668. Oral presentations will be limited to 10 minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by May 2 at the address indicated.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 2, 2003.

Signed in Washington, DC, this 18th day of April, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–10126 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated; and

(2) That sales or production, or both, of the firm or sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production of such firm or subdivision.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–42,319; Spicer Driveshaft Manufacturing, Inc., a subsidiary of Dana Corp., Atkins, VA

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A) (I.B) (No sales or production decline and (a)(2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,789; The Premcor Refining Group, Inc., Port Arthur, TX

The investigation revealed that criteria (b)(3) has not been met. The workers' firm (or subdivision) is not a supplier or downstream producer to a firm (or subdivision) for trade-affected companies.

TA–W–51,394; B–W Specialty Manufacturing, Seattle, WA
TA–W–51,020; Shalmet Corp., Orwigsburg, PA
TA–W–50,410; Precision Diversified Industries, LLC, Plymouth, MN

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (II.B) (No shift in production to a foreign country) have not been met.

TA–W–50,134; Zierick Manufacturing Corp., Yatesboro, PA
TA–W–50,347; Fishing Vessel (F/V) Libby No. 8, Ketchikan, AK
TA–W–51,211; Commscope, Inc., Claremont, NC
TA–W–50,704; Tarcon, Inc., Pulaski, WI
TA–W–50,901; Holeinthewater Shrimp Co., Fishing Vessel (F/V) Miss Chris, Yankeetown, FL
TA–W–50,283; Advanced Micro Devices (AMD), Lone Star Fab Div., Austin, TX
TA–W–51,059; Fishing Vessel (F/V) Kathy Ann, Dillingham, AK
TA–W–50,179; SMT, Inc., Hanover, MI
TA–W–50,600; State of Alaska Commercial Fisheries Entry Commission Permit #S1SB66420G, Sitka, AK
TA–W–51,240; P.Q. Controls, Dover-Foxcroft, ME
TA–W–51,344; Fishing Vessel (F/V) Randy, Egegik, AK
TA–W–51,120 & A,B; Sun Apparel of Texas, Armour Facility, El Paso, TX, Sun Warehouse Faciltiy, El Paso, TX and Goodyear Distribution, El Paso, TX
TA–W–51,036; Fishing Vessel (F/V) White Eagle, Pilot Point, AK
TA–W–51,058; Fishing Vessel (F/V), Kasandra Faye, Aleknagik, AK
TA–W–51,072; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T60868F, Dillingham, AK
TA–W–51,079; Atlantic Precision Products, Inc., a subsidiary of Allied Devices Corp., Sanford, ME
TA–W–50,930; Land O'Lakes, Inc., Dairy Foods Upper Midwest Industrial Div., Perham, MN
TA–W–50,950; Birds Eye Foods, Inc., Green Bay Plant, Green Bay, WI
TA–W–50,977; Wabash Technologies, Inc., Automotive Business Unit, Huntington, IN
TA–W–50,999; Fishing Vessel (F/V) 7 Z's, Naknek, AK
TA–W–51,017; Fishing Vessel (F/V) Marilyn Marie, New Stuy, AK

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–51,172; Tabuchi Electric Co. of Cordova, Tennessee, Cordova, TN
TA–W–51,282; Gateway Country Stores LLC, Ashville, NC
TA–W–51,381; Hasler, Inc., Meter Repair Department, Shelton, CT
TA–W–50,827; Advanced Micro Devices (AMD), Ultra Pure Water Group, Austin, TX
TA–W–51,266; GE Plastics, a subsidiary of General Electric, Pittsfield, MA
TA–W–51,251; Western Geco, LLC, Houston, TX
TA–W–51,270; American United Life Insurance, Reinsurance Management Services, LLC, Avon, CT
TA–W–51,340; Sprint United Management Co., Rosemont Center, Rosemont, IL
TA–W–51,209; Wellchoice, Inc., New York, NY
TA–W–51,073; 3M Health Information Systems, Wallingford, CT

The investigation revealed that criterion (a)(2)(A) (I.A) (no employment declines) have not been met.

TA–W–51,033; R.D. & J, Pilot Point, AK
TA–W–51,055; State of Alaska Commercial Fisheries Entry Commission Permit #SO3T59688W, Manokotak, AK
TA–W–51,345; State of Alaska Commercial Fisheries Entry Commission Permit #SO3T56513U, Manokotak, AK
TA–W–50,755; Fishing Vessel Centurion, Manokotak, AK
TA–W–51,236; KC Fisheries, Inc., Kokiak, AK
TA–W–51,371; Fishing Vessel (F/V) Christian 'S', Everett, WA
TA–W–51,390; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T58641M, Naknek, AK
TA–W–51,424; Fishing Vessel (F/V) Sunset, Petersburg, AK
TA–W–51,163; State of Alaska Commercial Fisheries Entry Commission Permit #SO3T60844R, Aleknagik, AK

The investigation revealed that criterion (a)(2)(A) (I.B) (sales or production, or both did not decline) and (a)(2)(A) (II.B) (no shift in production to a foreign country) have not been met.

TA–W–50,838; Fishing Vessel (F/V) Windy Sea, Kodiak, AK
TA–W–51,234; HP Pelzer, Thompson, GA

The investigation revealed that criterion (a)(2)(A) (I.C.) (Increased imports) and (a) (2)(B) (No shift in production to a foreign country) have not been met.

TA–W–50,945; Chem-Fab Corp., Hot Springs, AR

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

None

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–50,649; Ultra Tool Co., a Div. of Ultra Tool Group, LP, Baxter, MN: January 18, 2002
TA–W–51,295; Evening Vision Dresses, Ltd, New York, NY: March 20, 2002
TA–W–51,370; Todd Sargent, Marshfield MA: March 28, 2002
TA–W–51,367 & A,B; American Identity, Formerly Doing Business as Dunbrooke Industries, Inc., Marcus, IA, Hawarden, IA and Orange City, IA: May 4, 2003
TA–W–51,104; Johnstown Leather Corp., Johnstown, NY: February 26, 2002
TA–W–51,067; TRW Automotive US, LLC, Greenville Facility, Greenville, NC: March 4, 2002
TA–W–51,227; Corning Cable Systems, Hardware and Equipment Operations, Hickory, NC: March 18, 2002
TA–W–50,834; TSI Graphics, Inc., Effingham, IL: February 5, 2002
TA–W–50,979; C-Cor.net Corp., State College, PA: March 7, 2003
TA–W–51,026; American Tool Companies, Inc., Cumberland, WI February 25, 2002
TA–W–50,801; Johnston Industries Alabama, Inc., Opp and Micolas Mills, Opp, AL: February 4, 2002
TA–W–50,702; Motorola, Inc., RF–1, Phoenix, AZ: January 23, 2002
TA–W–50,686; First Source Furniture Group, Anderson Hickey Div., Halls, TN: December 30, 2001

TA–W–51,262; Spang and Company, Magnetics Div., Canton, NC: March 20, 2002
TA–W–50.194; Allen-Edmonds Shoe Corp., Maine Shoe, Inc., Lewiston, ME: November 18, 2001
TA–W–51,205; Phoenix Gold International, Inc., Portland, OR: March 11, 2002
TA–W–51,138; Drexel Heritage Furniture Industry, Inc., Plant 60, Morganton, NC: March 7, 2002
TA–W–51,013; Data-Ray Corp., Westminster, CO: February 26, 2002
TA–W–50,917; Trout Creek Lumber, Trout Creek, MT: July 22, 2002
TA–W–50,920; Thomson, Inc., Thomson Marion Div., Marion, IN: February 18, 2002
TA–W–50,553; Goodyear Tire and Rubber Co., Union City Plant, Union City, TN: January 9, 2002
TA–W–50,889; Mega Tech of Oregon, Div. of JJM Ltd, Corvallis, OR: February 7, 2002

The following certifications have been issued. The requirement of upstream supplier to trade certified primary firms has been met.

TA–W–50,309; Parkdale Mills, Inc., Plant 14, Belmont, NC: December 10, 2001
TA–W–51,228; M.E.L., Inc., Winchester, MA: February 26, 2002
TA–W–50,991; Milliken, Kingsley Plant, Thomson, GA: February 18, 2002

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222 have been met.

TA–W–50,466; Makita Corp. of America, Including workers of Chase Staffing and Randstad Staffing, Buford, GA: September 10, 2001
TA–W–51,331; Allen Everitt Knitting Co., Milwaukee, WI: March 18, 2002
TA–W–51,286; Celestica, Inc., Oklahoma City, OK: March 24, 2002
TA–W–50,392; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T57510S, Naknek, AK: March 28, 2002
TA–W–51,391; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T64743O, King Salmon, AK: March 28, 2002
TA–W–51,389; State of Alaska Commercial Fisheries Entry Commission Permit #SO4T59912, Naknek, AK: April 2, 2002
TA–W–51,114; Celestica Corp. Including Leased workers of Adecco, Fort Collins, CO: March 7, 2002
TA–W–51,201; First International Computer of Texas Including Leased workers of Adecco International, Corestaff Services and Express Personnel Services, Austin, TX: March 12, 2002
TA–W–50,963; C.F. Gomma USA, Inc., Columbia City, IN: February 20, 2002
TA–W–50,969; Teradyne, Inc., a Semiconductor Test Div., Global Customer Service, Formerly Known as Genrad, Inc., Westford, MA: February 11, 2002
TA–W–50,424; Wolverine World Wide, Inc., Wolverine Leathers Div., Rockford, MI: December 11, 2001
TA–W–51,381; Vishay Micro-Measurements, Wendell, NC: December 13, 2001
TA–W–50,353; Edinboro Molding, Inc., Edinboro, PA: December 10, 2001
TA–W–51,253; Delta Woodside Industries, Inc., Catawba Plant, Maiden, NC: March 20, 2002
TA–W–51,250; Shugart Corp. (DBA) International Assembly Specialists, Tucson Operations, Tucson, AZ: July 16, 2002
TA–W–50,279; Siemens Energy and Automation, Inc., Measurement Systems Business, Spring House, PA: March 21, 2002
TA–W–51,258; Riley Licensing, Inc., d/b/a Riley Golf, Monterey, CA: March 11, 2002
TA–W–50,984; MTI Technology Corp., Anaheim, CA: January 4, 2002
TA–W–51,255; ICY Waters U.S., Inc., Oakville, WA: March 19, 2002
TA–W–51,050; JJA, Inc., Hampstead, NH: March 3, 2002
TA–W–51,116; Dura Automotive Systems, Inc., Shifter Operations, including leased workers of Westaff, Inc., Livonia, MI: February 21, 2002
TA–W–51,170; Siemens Energy and Automation, Residential Infrastructure Div., including leased workers of Randstad North America, CDI Corp., Peak Technical Services, Miami, FL: March 14, 2002
TA–W–51,097; The Triax Co., d/b/a Webb-Triax Co., Chardon, OH: February 20, 2002
TA–W–50,964; Oetiker, Inc., a subsidiary of Hans Oetiker AG, Marlette, MI: February 13, 2002
TA–W–50,667; JDS Uniphase Corp., Commercial Laser Div., Manteca, CA: January 9, 2002

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with section 250(a), subchaper D, chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

None

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

None

Affirmative Determinations NAFTA–TAA

None

I hereby certify that the aforementioned determinations were issued during the month of April 2003. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: April 14, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–10140 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,248]

Agilent Technologies, Rohnert Park, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 21, 2003 in response to a worker petition filed by a company official on behalf of workers at Agilent Technologies, Rohnert Park, California.

The petitioning worker group is included in a petition filed on March 13, 2003 (TA–W–51,247) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 8th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10145 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,643]

Aran Mold & Die Company, Incorporated, Elmwood Park, NJ; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of April 2, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The denial notice was signed on February 12, 2003, and published in the **Federal Register** on March 26, 2003 (68 FR 14708).

The Department reviewed the request for reconsideration and has determined that the subject firm workers did produce a product (plastic injection molds). Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 15th day of April, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–10139 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,497]

C-Cor.Net, Philips Broadband Networks, Manlius, NY, Including Employees of C-Cor.Net Located in the States of Minnesota, Washington, Texas, Ohio and Colorado; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 5, 2003, applicable to workers of C-Cor.Net, Manlius, New York. The notice was published in the **Federal Register** on March 19, 2003 (68 FR 13332).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of broadband communication products.

New information shows that C-Cor.Net purchased Philips Broadband Networks on September 16, 2002 and that workers separated from employment at the subject firm between January, 2002 and September 16, 2002 had their wages reported under a separate unemployment insurance (UI) tax account for Philips Broadband Networks. Information also shows that worker separations occurred involving employees of the Manlius, New York facility of the subject firm located in Minnesota, Washington, Texas, Ohio and Colorado. These employees provided sales function services for the production of broadband communication products at the Manlius, New York location of the subject firm.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of C-Cor.Net, Manlius, New York who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,497 is hereby issued as follows:

All workers of C-Cor.Net, Philips Broadband Networks, Manlius, New York, including employees of C-Cor.Net, Manlius, New York, located in Minnesota, Washington, Texas, Ohio and Colorado, who became totally or partially separated from employment on or after January 2, 2002, through March 5, 2005, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 10th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10138 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,204]

Corbin, LTD, Ashland, KY; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 18, 2003, in response to a worker petition that was filed on behalf of workers at Corbin, LTD, Ashland, Kentucky.

All workers at the subject firm were certified on December 31, 2002 (TA–W–41,840 and NAFTA 6438). The certification expires two years from date of certification.

Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 9th day of April, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10144 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,486]

Electronic Data Systems Corporation, I Solutions Center, Fairborn, OH; Notice of Negative Determination Regarding Application for Reconsideration

By application dated March 4, 2003, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Electronic Data Systems (EDS) Corporation, I Solutions Center, Fairborn, Ohio was signed on January 15, 2003, and published in the **Federal Register** on February 6, 2003 (68 FR 6211).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition was filed on behalf of workers at Electronic Data Systems Corporation, Fairborn, Ohio engaged in activities related to information technology services. The petition was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act.

The petitioners resubmitted an attachment to the original petition listing the "articles" produced, including computer programs, job control language, databases and various types of documentation.

A petitioner was contacted and asked as to the nature of the computer programs produced. He clarified that the subject firm created a custom-designed program for the customer's financial department.

Petitioning workers do not produce an "article" within the meaning of the Trade Act of 1974. The functions performed at the subject firm relate to information technology services. These services are thus not tangible commodities, that is, marketable products, and are not listed on the Harmonized Tariff Schedule of the United States (HTS), which describes all articles imported to the United States.

Further, the Trade Adjustment Assistance (TAA) program was established to help workers who produce articles and who lose their jobs as a result of increases of like or directly competitive imports of such articles contributing importantly to the layoff. Throughout the Trade Act an article is often referenced as something that can be subject to a duty. To be subject to a duty on a tariff schedule an article will have a value that makes it marketable, fungible and interchangeable for commercial purposes. But, although a wide variety of tangible products are described as articles and characterized as dutiable in the HTS, informational support that could historically be sent in letter form and that can currently be electronically transmitted, are not listed in the HTS.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 15th day of April, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–10137 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,280]

Emerson Appliance Controls, Frankfort, IN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 24, 2003 in response to a worker petition filed on behalf of workers at Emerson Appliance Controls, Frankfort, Indiana.

The petitioning group of workers is covered by an earlier petition filed on March 5, 2003 (TA–W–51,122) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC this 4th day of April 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10147 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,606]

Emerson Tool Company, Paris, TN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 13, 2003 in response to a worker petition filed jointly by the company and the International Association of Machinists, Local 1193, on behalf of workers of Emerson Tool Company, Paris, Tennessee.

The petitioning group of workers is covered by an active certification issued on January 13, 2003, and which remains in effect (TA–W–50,546). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 8th day of April, 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10141 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,296]

Federal Mogul Ignition Group, Lighting Division, Hampton, VA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 25, 2003, in response to a worker petition dated March 19, 2003 filed by a company official on behalf of workers at Federal Mogul Ignition Group, Lighting Division, Hampton, Virginia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC this 9th day of April 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10148 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,252]

Filtex Incorporated, Guntersville, AL; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 21, 2003 in response to a worker petition filed by the company on behalf of workers at Filtex Incorporated, Guntersville, Alabama.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 4th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10146 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,752]

Fishing Vessel (F/V) Todd Andrew Togiak, AK; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 30, 2003 in response to a worker petition filed by the company on behalf of workers at Fishing Vessel (F/V) Todd Andrew, Togiak, Alaska.

The Department has been unable to locate the petitioner to obtain the information necessary to issue a determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 9th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10142 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,820]

General Cable Corp., Biccgeneral Cable Industries, Inc., Outside Voice and Data Telecommunications Div., Bonham, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 21, 2002, applicable to workers of General Cable Corp., Outside Voice and Data Telecommunications Div., Bonham, Texas. The notice was published in the **Federal Register** on November 5, 2002 (67 FR 67420).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of copper telephone cable.

New information shows that for approximately six months, General Cable Corp., Outside Voice and Data Telecommunications Div. was operating under the name of Biccgeneral Cable Industries, Inc. and that workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for Biccgeneral Cable Industries, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of General Cable Corp., Outside Voice and Data Telecommunications Div., Bonham, Texas who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,820 is hereby issued as follows:

All workers of General Cable Corp., Biccgeneral Cable Industries, Inc., Outside Voice and Data Telecommunications Div., Bonham, Texas, who became totally or partially separated from employment on or after June 24, 2001, through October 21, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 9th day of April 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10132 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,312]

Intertape Polymer Group, Menasha Division, Menasha, WI; Notice of Revised Determination on Reconsideration

By application of February 20, 2003, the company and the Paper, Allied-Industrial, Chemical and Energy Workers International Union (PACE) Local 7–0727 requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on October 11, 2002, based on the finding that imports of water activated sealing tape did not contribute importantly to worker separations at the subject firm plant. The denial notice was published in the **Federal Register** on February 6, 2003 (68 FR 6210).

To support the request for reconsideration, the company supplied additional information to supplement that which was gathered during the initial investigation. Upon further review, it was revealed that the company produced several types of "carton sealing tape," including water activated tape. Increased reliance on company imports of pressure sensitive tape, a type of carton sealing tape, was originally revealed in an investigation of a subject firm affiliate: specifically, Intertape Polymer Group, Central Products Company, Richmond, Kentucky (TA–W–40,783). As a result of this discovery, the Department has determined that the company's increased reliance on imports of pressure sensitive tape ("like or directly competitive" with what the subject plant produced) may be established as replacing subject firm production, thus contributing to the layoffs at the subject plant.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at Intertape Polymer Group, Menasha Division, Menasha, Wisconsin, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In

accordance with the provisions of the Act, I make the following certification:

All workers of Intertape Polymer Group, Menasha Division, Menasha, Wisconsin, who became totally or partially separated from employment on or after December 9, 2001 through two years from the date of this certification, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 14th day of April 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–10136 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,888 and TA–W–41,888A]

Jasper Cabinet Company, Jasper, IN, Jasper Cabinet Company, Ferdinand, IN; Notice of Negative Determination Regarding Application for Reconsideration

By application of January 31, 2003, the United Steelworkers of America, Sub District #3, Local Union No. 331–U, requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on December 23, 2002 and published in the **Federal Register** on January 15, 2003 (68 FR 2074).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers at Jasper Cabinet Company, Jasper, Indiana (TA–W–41,888) and Jasper Cabinet Company, Ferdinand, Indiana (TA-W–41,888A) engaged in the production of furniture and wood furniture parts, was denied because the "contributed importantly" group eligibility requirement of section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The Department conducted a survey of the subject firm's major customers regarding their purchases of competitive products in 2000 through October 2002. The respondents reported no increased imports. The subject firm did not increase its reliance on imports of furniture and wood furniture parts during the relevant period.

The union alleges that a major customer imported competitive products.

Two officials from this customer were contacted in regard to this allegation. Results from ensuing conversations with these contacts revealed that the items previously purchased from the subject firm were predominately curio cabinets; as the customer ceased selling curio cabinets directly following their cessation of business with the subject firm, there are no like or directly competitive imports at issue in regard to this customer.

The petitioner also alleges that the Department did not make mention of known company imports in its initial investigation.

In fact, the initial investigation did include an examination of company imports. However, these imports did not represent a significant portion of the plants' sales or production declines in the relevant period, and therefore do not provide the necessary evidence for import impact.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 15th day of April, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–10133 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,182]

The JPM Company Now Known as Sanmina-SCI, Lewisburg, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 27, 2001, applicable to workers of The JPM Company, Lewisburg, Pennsylvania. The notice was published in the **Federal Register** on July 11, 2001 (66 FR 36329).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of cable and wire harnesses assemblies. New information shows that Sanmina-SCI purchased The JPM Company in June, 2002 and is now known as Sanmina-SCI.

The Department is amending the certification determination to correctly identify the new title name to read Sanmina-SCI (formerly known as The JPM Company), Lewisburg, Pennsylvania.

The amended notice applicable to TA–W–39,182 is hereby issued as follows:

"All workers of Sanmina-SCI (formerly known as The JPM Company), Lewisburg, Pennsylvania, who became totally or partially separated from employment on or after April 12, 2000, through June 27, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 15th day of April, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–10130 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,716]

Motorola, Inc., Global Telecom Solutions Sector (GTSS), Cellular Infrastructure Group, Including Temporary Workers of Adecco, North American, LLC, Fort Worth, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 30, 2002, applicable to workers of Motorola, Inc., Global Telecom Solutions Sector (GTSS), Cellular Infrastructure Group, Fort Worth, Texas. The notice was published in the **Federal Register** on October 22, 2002 (67 FR 64923).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that temporary workers of Adecco, North American, LLC worked at Motorola, Inc., Global Telecom Solutions Sector (GTSS), Cellular Infrastructure Group to produce base stations at the Fort Worth, Texas location of the subject firm.

Based on these findings, the Department is amending this certification to include temporary workers of Adecco, North American, LLC working at Motorola, Inc., Global Telecom Solutions Sector (GTSS), Cellular Infrastructure Group, Fort Worth, Texas.

The intent of the Department's certification is to include all workers of Motorola, Inc., Global Telecom Solutions Sector (GTSS), Cellular Infrastructure Group who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,716 is hereby issued as follows:

"All workers of Motorola, Inc., Global Telecom Solutions Sector, Cellular Infrastructure Group, Fort Worth, Texas, engaged in employment related to the production of base stations, and temporary workers of Adecco, North American, LLC, Fort Worth, Texas, producing base stations at Motorola, Inc., Global Telecom Solutions Sector, Cellular Infrastructure Group, Fort Worth, Texas, who became totally or partially separated from employment on or after May 21, 2001, through September 30, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 9th day of April 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10131 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,332]

National Refractories and Minerals Corporation, Mexico, Missouri; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 27, 2003 in response to a worker petition filed by a company official on behalf of workers at National Refractories and Minerals Corporation, Mexico, Missouri.

The petitioning worker group is included in an ongoing investigation for which a determination has not yet been issued. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 4th day of April, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10149 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,023, TA–W–51,023A, TA–W–51,023B, TA–W–51,023C, TA–W–51,023D, TA–W–51,023E, TA–W–51,023F, TA–W–51,023G, TA–W–51,023H, and TA–W–51,023I]

National Steel Corporation, Mishawaka, IN; Granite City Division, Granite City, IL; Great Lakes Division, Ecorse, MI; Midwest Division, Portage, MI; ProCoil, Canton, MI; Techinical Research Center, Trenton, MI; National Steel Pellet Company, Keewatin, MI; NSL, Inc., Portage, IN; TMH, Portage, IN; Delray Connecting Railroad, Detroit, MI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 28, 2003 in response to a worker petition dated February 26, 2003 filed by a company official on behalf of workers at ten facilities of National Steel Corporation: Headquarters, Mishawaka, Indiana; Granite City Division, Granite City, Illinois; Great lakes Division, Ecorse, Michigan; Midwest Division, Portage, Michigan; ProCoil, Canton, Michigan; Technical Research Center, Trenton, Michigan; National Steel Pellet Company, Keewatin, Minnesota; NSL, Inc., Portage, Indiana; TMH, Portage, Indiana; and Delray Connecting Railroad, Detroit, Michigan.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 9th day of April 2003.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10143 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,239]

Nestle Purina Petcare, St. Joseph, Missouri; Notice of Negative Determination Regarding Application for Reconsideration

By application February 19, 2003 the Retail, Wholesale and Department Store Union (RWDSU), Local 125 requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on January 21, 2003, and published in the **Federal Register** on February 24, 2003 (68 FR 8622).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of Nestle Purina Petcare, St. Joseph, Missouri, was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not

met. The investigation revealed that the declines in employment are related to a merger of Nestle and Purina companies. Sales at the subject firm increased in 2001 compared with 2000, and also increased during January through December 2002 compared to 2001. The investigation revealed that company did not import cat or dog food in the relevant period, nor did it shift production to a foreign facility.

The union alleges that the subject firm shifted production from the subject facility to two foreign facilities for the purpose of producing like or directly competitive products. The union further alleged that the subject firm trained employees from a foreign facility at the subject firm for the purpose of producing like or directly competitive products.

A company official was contacted in regard to these allegations. The official stated that no production equipment had been shipped from the subject facility to the foreign facilities, and that, although foreign workers had been trained at the subject facility, none of their foreign facilities produced like or directly competitive products. The official further clarified that the company had experienced no declines in sales and production, but had transferred all production to U.S. facilities.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 15th day of April, 2003.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–10135 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,031]

Saunders Brothers, Inc., Including Temporary Workers of Express Personnel Services and Rock Coast Personnel, Westbrook, Maine; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 3, 2002, applicable to workers of Saunders Brothers, Inc., Westbrook, Maine. The notice was published in the **Federal Register** on December 23, 2002 (67 FR 78256).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that temporary workers of Express Personnel Services and Rock Coast Personnel worked at Saunders Brothers, Inc., to produce hardwood dowels, dowel pins, turnings, artist brush handles, and other miscellaneous wood products at the Westbrook, Maine, location of the subject firm.

Based on these findings, the Department is amending this certification to include temporary workers of Express Personnel Services and Rock Coast Personnel working at Saunders Brothers, Inc., Westbrook, Maine.

The intent of the Department's certification is to include all workers of Saunders Brothers, Inc., who were adversely affected by increased imports.

The amended notice applicable to TA–W–50,031 is hereby issued as follows:

All workers of Saunders Brothers, Inc., Westbrook, Maine, and temporary workers of Express Personnel Services and Rock Coast Personnel, engaged in producing hardwood dowels, dowel pins, turnings, artist brush handles, and other miscellaneous wood products at Saunders Brothers, Inc., Westbrook, Maine, who became totally or partially separated from employment on or after November 7, 2001, through December 3, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of April 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–10134 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 15, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 5, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 31st day of March, 2003.

Edward A. Tomchick,

Trade Adjustment Assistance.

APPENDIX

[Petitions instituted between 03/26/2003 and 03/31/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
51,314	Tyco Healthcare (Comp)	Irvine, CA	03/26/2003	03/14/2003
51,315	Cela Fabrics, Inc. (Comp)	New York, NY	03/26/2003	03/19/2003
51,316	Medsep Corporation (Wkrs)	Covina, CA	03/26/2003	03/19/2003
51,317	Tetley USA, Inc. (Comp)	Williamsport, PA	03/26/2003	03/25/2003
51,318	Ametek Specialty Motors (Comp)	Chambersburg, PA	03/26/2003	03/25/2003
51,319	Gem Island Enterprises (Comp)	Morganton, NC	03/26/2003	03/18/2003
51,320	Heath Electronic Manufacturing Corp. (Comp)	Glenns Ferry, ID	03/26/2003	03/18/2003
51,321	Rome Cable Corporation (NY)	Rome, NY	03/26/2003	03/18/2003
51,322	Alburg Door and Window, Ltd. (Wkrs)	Alburg, VT	03/26/2003	03/24/2003
51,323	Michael Anthony Jewelers (Wkrs)	Mt. Vernon, NY	03/26/2003	02/28/2003
51,324	Ponderosa Moulding (Wkrs)	Redmond, OR	03/26/2003	03/19/2003
51,325	Powerwave (Wkrs)	Santa Ana, CA	03/26/2003	03/13/2003
51,326	Ross Mould, Inc. (AFGW)	Washington, PA	03/26/2003	03/20/2003
51,327	Akzo Nobel (NJ)	Somerset, NJ	03/26/2003	03/25/2003
51,328	Fluor Daniel Services (Wkrs)	Wilmington, NC	03/26/2003	01/06/2003
51,329	Dana Corporation (UAW)	Richmond, IN	03/26/2003	03/26/2003
51,330	Zilog, Inc. (Comp)	Nampa, ID	03/27/2003	02/26/2003
51,331	Allen Everitt Knitting Company (Wkrs)	Milwaukee, WI	03/27/2003	03/18/2003
51,332	National Refractories and Minerals (Comp)	Mexico, MO	03/27/2003	12/20/2002
51,333	Standard Precision (Wkrs)	Meadville, PA	03/27/2003	03/25/2003
51,334	Chicago Firebrick, Inc. (Comp)	Chicago, IL	03/27/2003	12/20/2002
51,335	General Electric Industrial System (Wkrs)	Salem, VA	03/27/2003	03/26/2003
51,336	Manufacturers Pattern and Foundry Corp. (MA)	Springfield, MA	03/27/2003	03/26/2003
51,337	National Refractories and Mineral (Comp)	Columbiana, OH	03/27/2003	12/20/2002
51,338	National Refractories and Mineral (Comp)	Livermore, CA	03/27/2003	12/20/2002
51,339	Wellsville Firebrick Company (Comp)	Wellsville, MO	03/27/2003	12/20/2002
51,340	Sprint Long Distance (Wkrs)	Rosemont, IL	03/27/2003	03/24/2003
51,341	Washington Group International, Inc. (Wkrs)	Niagara Falls, NY	03/27/2003	03/26/2003
51,342	Hytek Finishes (Wkrs)	Everett, WA	03/27/2003	03/27/2003
51,343	Q Media Services (MA)	Westborough, MA	03/27/2003	03/25/2003
51,344	F/V Randy (Comp)	Egegik, AK	03/27/2003	03/25/2003
51,345	State of Alaska Commercial Fisheries (Comp)	Manokotak, AK	03/27/2003	03/24/2003
51,346	Set-Netter (Comp)	Dillingham, AK	03/27/2003	03/24/2003
51,347	Fishing Vessel (F/V) Libby No. 8 (Comp)	Ketchikan, AK	03/27/2003	03/24/2003
51,348	Fields and Sons, Inc. (Comp)	Kodiak, AK	03/27/2003	03/25/2003
51,349	Alpharma, Inc (Comp)	Palmyra, MO	03/28/2003	03/27/2003
51,350	Torque-Traction Tech, Inc./Dana (Wkrs)	Whitsett, NC	03/28/2003	03/21/2003
51,351	Trade Wind Apparel, Inc. (Wkrs)	Commerce, GA	03/28/2003	03/26/2003
51,352	Friedman Bag Company, Inc. (Wkrs)	Portland, OR	03/28/2003	03/27/2003
51,353	Interlake Material Handling, Inc. (Comp)	Lodi, CA	03/28/2003	03/20/2003
51,354	Connor Manufacturing Services (Comp)	Corona, CA	03/28/2003	03/25/2003
51,355	Rossville Chromatex (Wkrs)	Chattanooga, TN	03/28/2003	03/27/2003
51,356	Howden Buffalo, Inc. (UAW)	Springfield, IL	03/28/2003	03/28/2003
51,357	Forest City Tool (Comp)	Hickory, NC	03/28/2003	03/20/2003
51,358	Dollar Financial Group, Inc. (Comp)	Berwyn, PA	03/28/2003	03/25/2003
51,359	F/V Kiavak (Comp)	Kodiak, AK	03/28/2003	03/18/2003
51,360	F/V Lonny A. (Comp)	Ekwok, AK	03/28/2003	03/19/2003
51,361	Sisiuti Fisheries (Comp)	Kodiak, AK	03/28/2003	03/21/2003
51,362	Client Logic (Comp)	Buffalo, NY	03/31/2003	03/28/2003
51,363	Willamette Industries\Weyerhaeuser (Wkrs)	Lebanon, Or	03/31/2003	03/27/2003
51,364	Raytheon Aircraft (IAM)	Wichita, KS	03/31/2003	03/28/2003
51,365	Dirigo Stitching, Inc. (Comp)	Skowhegan, ME	03/31/2003	03/26/2003
51,366	Georgia Pacific (PACE)	Old Town, ME	03/31/2003	03/27/2003
51,367	American Identity (IA)	Marcus, IA	03/31/2003	03/28/2003
51,368	Mellon (Wkrs)	Pittsburgh, PA	03/31/2003	01/21/2003
51,369	Bombardier Learjet (IAM)	Wichita, KS	03/31/2003	03/28/2003
51,370	Todd Sargent (MA)	Marshfield, MA	03/31/2003	03/28/2003
51,371	F/V Christian "S" (Comp)	Everett, AK	03/31/2003	03/29/2003
51,372	Enfield Industries (Wkrs)	Conway, NH	03/31/2003	03/29/2003
51,373	Buckbee-Mears (Wkrs)	Cortland, NY	03/31/2003	03/31/2003
51,374	Independent Tool (Comp)	Meadville, PA	03/31/2003	03/31/2003

[FR Doc. 03–10127 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "International Price Program—U.S. Import Product Information." A copy of the proposed information collection

request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before June 23, 2003.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Import Price Indexes, produced continuously by the Bureau of Labor Statistics' International Price Program (IPP) since 1971, measure price change over time for all categories of imported products, as well as many services. The Office of Management and Budget has listed the Import Price Indexes as a Principal Federal Economic Indicator since 1982. The indexes are widely used in both the public and private sectors. The primary public sector use is the deflation of the U.S. Trade Statistics and the Gross Domestic Product; the indexes also are used in formulating U.S. trade policy and in trade negotiations with other countries. In the private sector, uses of the Import Price Indexes include market analysis, inflation forecasting, contract escalation, and replacement cost accounting.

The IPP indexes are closely followed statistics, and are viewed as a sensitive indicator of the economic environment. The U.S. Department of Commerce uses the monthly statistics to produce monthly and quarterly estimates of inflation-adjusted trade flows. Without continuation of data collection, it would be extremely difficult to construct accurate estimates of the U.S. Gross Domestic Product. In addition, Federal policymakers in the Department of Treasury, the Council of Economic Advisers, and the Federal Reserve Board utilize these statistics on a regular basis to improve these agencies' formulation and evaluation of monetary and fiscal policy and evaluation of the general business environment.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The IPP continues to modernize data collection and processing to permit more timely release of its indexes, and to reduce reporter burden. Recently, for example, the IPP has attempted to cut back the number of months during any given year an individual respondent would need to supply data. Respondents are only asked for data in those months that they indicated that they might normally have changes in their prices. The IPP is also looking into less frequent sampling of more stable item areas, use of broader item areas in certain cases, and retention of items initiated in previous samples that reporters still trade. In order to reduce the time required for processing new items, direct entry of initiation data from the field was recently implemented. The IPP is continuing to test the feasibility of using fax transmissions to directly collect and enter data into the BLS reporters' repricing database. In Fiscal Year 2003 the IPP is also developing a web-based data collection system designed to permit respondents to enter data directly into the IPP's monthly database.

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: International Price Program/U.S. Import Product Information.

OMB Number: 1220–0026.

Affected Public: Business or other for-profit.

Form	Total respondents	Frequency	Total responses	Average time per response (hours)	Estimated total burden (hours)
Initiation Visit (includes form 3008)	2,000	Annually	2,000	1.0	2,000
Form 3007D	3,400	Monthly	21,420	.63	13,495
Total	5,400		23,420		15,495

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 15th day of April, 2003.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 03–10128 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–24–U

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection, Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the "International Price Program—U.S. Export Price Indexes." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before June 23, 2003.

ADDRESSES: Send comments to Amy A. Hobby, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue, NE., Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Amy A. Hobby, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Export Price Indexes, produced continuously by the Bureau of Labor Statistics' International Price Program (IPP) since 1971, measure price change over time for all categories of exported products, as well as many services. The Office of Management and Budget has listed the Export Price Indexes as a Principal Federal Economic Indicator since 1982. The indexes are widely used in both the public and private sectors. The primary public sector use is the deflation of the U.S. Trade Statistics and the Gross Domestic Product; the indexes also are used in formulating U.S. trade policy and in trade negotiations with other countries. In the private sector, uses of the Export Price Indexes include market analysis, inflation forecasting, contract escalation, and replacement cost accounting.

The IPP indexes are closely followed statistics and are viewed as a sensitive indicator of the economic environment. The U.S. Department of Commerce uses the monthly statistics to produce monthly and quarterly estimates of inflation-adjusted trade flows. Without continuation of data collection, it would be extremely difficult to construct accurate estimates of the U.S. Gross Domestic Product. In addition, Federal policymakers in the Department of Treasury, the Council of Economic Advisers, and the Federal Reserve Board utilize these statistics on a regular basis to improve these agencies' formulation and evaluation of monetary and fiscal policy and evaluation of the general business environment.

II. Desired Focus of Comments

The Bureau of Labor Statistics is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Action

The IPP continues to modernize data collection and processing to permit more timely release of its indexes, and to reduce reporter burden. Recently, for example, the IPP has attempted to cut back the number of months during any given year an individual respondent would need to supply data. Respondents are only asked for data in those months that they indicated that they might normally have changes in their prices. The IPP is also looking into less frequent sampling of more stable item areas, use of broader item areas in certain cases, and retention of items initiated in previous samples that reporters still trade. In order to reduce the time required for processing new items, direct entry of initiation data from the field was recently implemented. The IPP is continuing to test the feasibility of using fax transmissions to directly collect and enter data into the BLS reporters' repricing database. In Fiscal Year 2003 the IPP is also developing a web-based data collection system designed to permit respondents to enter data directly into the IPP's monthly database.

Type of Review: Revision.

Agency: Bureau of Labor Statistics.

Title: International Price Program/U.S. Export Price Indexes.

OMB Number: 1220–0025.

Affected Public: Business or other for-profit.

Form	Total respondents	Frequency	Total responses	Average time per response (hours)	Estimated total burden (hours)
Initiation visit (includes form 3008)	1,400	Annually	1,400	1.0	1,400
Form 3007D	2,950	Monthly	19,175	.5847	11,213
Totals	4,350		20,575		12,613

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 15th day of April, 2003.

Jesús Salinas,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 03–10129 Filed 4–23–03; 8:45 am]

BILLING CODE 4510–24–P

NATIONAL COUNCIL ON DISABILITY

International Watch Advisory Committee Meetings (Conference Calls); Correction

ACTION: Notice; correction.

SUMMARY: The National Council on Disability published a document in the **Federal Register** on December 2, 2002, concerning meeting dates for its International Watch Advisory Committee. The document contained one incorrect date.

FOR FURTHER INFORMATION CONTACT: Joan M. Durocher, Attorney Advisor and Designated Federal Official, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; (202) 272–2004 (voice), (202) 272–2074 (TTY), (202) 272–2022 (fax), *jdurocher@ncd.gov* (e-mail).

Correction

In the **Federal Register** of December 2, 2002, in FR Doc. 02–30401, on page 71595, correct the "Time and Dates for 2003" caption to read:

Time and Dates for 2003: 12 noon, Eastern Time, January 9, March 13, May 20, July 3, September 4, November 6.

Dated: April 21, 2003.

Ethel D. Briggs,

Executive Director.

[FR Doc. 03–10198 Filed 4–23–03; 8:45 am]

BILLING CODE 6820–MA–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act; Meeting

TIMES AND DATES: 1 p.m., Monday, May 5, 2003; 8 a.m., Tuesday, May 6, 2003.

PLACE: Chicago, Illinois, at the Sofitel Hotel, 20 East Chestnut Street, in the Grand/Chicago Ballroom.

STATUS: May 5—1 p.m. (Closed); May 6—8 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, May 5—1 p.m. (Closed)

1. Strategic Planning.
2. Financial Performance.
3. Filing with the Postal Rate Commission for Parcel Returns Experiment.
4. Postal Rate Commission Opinion and Recommended Decision in Docket No. MC2002–2, Experimental Rate and Service Changes to Implement Negotiated Service Agreement with Capital One Services, Inc.
5. Capital Investment—Additional Funding Request for Biohazard Detection Systems (BDS).
6. Unresolved Audit Recommendation.
7. Personnel Matters and Compensation Issues.

Tuesday, May 6—8 a.m. (Open)

1. Minutes of the Previous Meeting, March 31–April 1, 2003.
2. Remarks of the Postmaster General and CEO.
3. Charters of Board Committees.
4. Capital Investments.
   a. Mail Processing Infrastructure—Phase 1.
   b. 6,240 Carrier Vehicles.
5. Great Lakes Area and Chicago District Report.
6. Tentative Agenda for the June 2, 2003, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 03–10276 Filed 4–22–03; 2:20 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension

Form 2–E, Rule 609, SEC File No. 270–222, OMB Control No. 3235–0233

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Form 2–E under the Securities Act of 1933, Report of Sales pursuant to Rule 609 of Regulation E. Rule 609 under the Securities Act of 1933, Report of Sales.

Form 2–E [17 CFR 239.201] is used by small business investment companies or business development companies engaged in limited offerings of securities to report semi-annually the progress of the offering, including the number of shares sold. The form solicits information such as the dates an offering has commenced and has been completed, the number of shares sold and still being offered, amounts received in the offering, and expenses and underwriting discounts incurred in the offering. This information assists the staff in determining whether the issuer has stayed within the limits of an offering exemption.

Form 2–E must be filed semi-annually during an offering and as a final report at the completion of the offering. Less frequent filing would not allow the Commission to monitor the progress of the limited offering in order to ensure that the issuer was not attempting to avoid the normal registration provisions of the securities laws.

During the calendar year 2002, there were four filings of Form 2–E by two respondents. The Commission estimates, based on its experience with disclosure documents generally and Form 2–E in particular, and based on informal contacts with the investment company industry, that the total annual burden associated with information collection, Form 2–E preparation, and submission is four hours per filing or 16 hours for all respondents.

The estimates of average burden hours are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: April 23, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–10154 Filed 4–23–03; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension

Rule 17Ac2–2 and Form TA–2 SEC File No. 270–298 OMB Control No. 3235–0337

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 17Ac2–2 and Form TA–2 (OMB Control No. 3235–0337; SEC File No. 270–298).

Rule 17Ac2–2, 17 CFR 240.17Ac2–2, and Form TA–2 under the Securities Exchange Act of 1934 require transfer agents to file an annual report of their business activities with the Commission. The amount of time needed to comply with the requirements of Rule 17Ac2–2 and Form TA–2 varies. From the total 1,210 registered transfer agents, approximately 300 registrants would be required to complete only Questions 1 through 4 and the signature section of amended Form TA–2, which we estimate would take each registrant about 30 minutes, for a total burden of 150 hours (300 × .5 hours). Approximately 410 registrants would be required to answer Questions 1 through 5, 10, and 11 and the signature section, which we estimate would take about 1 hour and 30 minutes, for a total of 615 hours (410 × 1.5 hours). The remaining registrants, approximately 500, would be required to complete the entire Form TA–2, which we estimate would take about 6 hours, for a total of 3000 hours (500 × 6 hours). We estimate that the total burden would be 3,765 hours (150 hours + 615 hours + 3000 hours).

We estimate that the total cost of reviewing and entering the information reported on the Forms TA–2 for respondents is $31.50 per hour. The Commission estimates that the total cost would be $118,597.50 annually ($31.50 × 3,765).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: April 18, 2003.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–10155 Filed 4–23–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 19240, April 18, 2003]

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Room 6600, Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, April 24, 2003 at 10 a.m.

CHANGE IN THE MEETING: Time Change.

The Open Meeting scheduled for Thursday, April 24, 2003 at 10 a.m. has been changed to Thursday, April 24, 2003 at 1 p.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: April 22, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–10311 Filed 4–22–03; 3:52 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47693; File No. SR–NASD–2003–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify Fees for Computer-to-Computer Interface Lines Used by NASD Members and Non-Members To Provide Service Bureau Functionality

April 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Nasdaq has prepared. On March 28, 2003, the NASD submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to establish a service bureau distributor fee for bandwidth enhancements of Computer-to-Computer Interface ("CTCI") lines that are used to provide service bureau functionality.[3] If the Commission approves the proposal, Nasdaq proposes to implement the rule change retroactively as of April 1, 2003. The text of the proposed rule change is below. Proposed new language is in italics.[4]

7000. CHARGES FOR SERVICES AND EQUIPMENT

Rule 7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1) No change.

(2) The following charges shall apply for each CTCI subscriber:

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed rule change is applicable to both NASD member and non-members.

[4] The text is marked to show changes from the language of the rule as amended by SR–NASD–2003–43 (March 19, 2003) and SR–NASD–2003–46 (March 19, 2003).

Options	Price
Option 1: Dual 56kb lines (one for redundancy) and single hub and router.	$1275/month
Option 2: Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy).	$1600/month
Option 3: Dual T1 lines (one for redundancy), dual hubs (one for redundancy), and dual routers (one for redundancy). Includes base bandwidth of 128kb.	$8000/month
Option 1, 2, or 3 with Message Queue software enhancement	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee *and Service Bureau Distributor Fee)* plus 20%
Disaster Recovery Option: Single 56kb line with single hub and router. (For remote disaster recovery sites only.).	$975/month
Bandwidth Enhancement Fee (for T1 subscribers only)	$600/month per 64kb increase above 128kb T1 base
Service Bureau Distributor Fee (for T1 subscribers only)	*$3,400/month per 64kb increase above 128kb T1 base for lines used for service bureau functions*
Installation Fee	$2000 per site for dual hubs and routers $1000 per site for single hub and router
Relocation Fee (for the movement of TCP/IP– $1700 per relocation capable lines within a single location).	

(g)(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's CTCI network is a point-to-point dedicated circuit connection from the premises of brokerages and service providers to Nasdaq's Trumbull, Connecticut processing facilities. Through CTCI, firms are able to enter trade reports into Nasdaq's Automated Confirmation Transaction Service ("ACT"), orders into Nasdaq's transaction execution systems, and mutual fund pricing data into Nasdaq's Mutual Fund Quotation Service. The CTCI network operates over the Enterprise Wide Network II ("EWN II") and provides connectivity over powerful 56kb and T1 data lines. In addition, the CTCI network uses the industry-standard Transmission Control Protocol/Internet Protocol ("TCP/IP"), a transmission protocol that Nasdaq describes as robust, efficient, and well known among the technical community.

Separately, Nasdaq has submitted filings to reduce the fee for CTCI bandwidth enhancements[5] from $4,000 to $600 per month for each 64 kilobit ("kb") increment of additional bandwidth provided over a T1 CTCI line (above the base level of 128 kb).[6] Nasdaq believes, however, that this price reduction should not be applied to T1 lines that are used to provide service bureau functionality. A service bureau is a firm (which may or may not be an NASD member) that connects to the systems of Nasdaq and other market centers and then offers its customers the ability to route orders to those market centers, in addition to providing the customers various order management, risk management, and regulatory compliance services. It is Nasdaq's understanding that service bureaus generally pass on the costs of connecting to Nasdaq and other market centers to their own customers. Nasdaq believes that, because a service bureau may use a single T1 line pair to provide market access to numerous customers, a service bureau is able to spread the costs of access across its entire customer base. In Nasdaq's view, the service bureau in effect acts as a distributor of access services. Accordingly, Nasdaq believes that an NASD member that accesses the Nasdaq market through a service bureau has generally paid a much lower price for connectivity than a member that connects directly to Nasdaq through T1 circuits.[7] To help address this disparity, Nasdaq is proposing to establish a service bureau distributor fee, which would be applicable to additional bandwidth provided over T1 lines that are used for service bureau functionality. The proposed fee would be $3,400 for each 64 kb increase in bandwidth above the 128 kb base, and would be in addition to the bandwidth enhancement fee of $600 for each 64 kb increase.[8] Accordingly, lines used for service bureau functionality would continue to be charged fees that are equivalent to those charged under the price schedule that has been in effect since 2001.[9] The fee would be assessed on a line-by-line basis. Thus, a firm that used some lines to provide service bureau functionality while using other lines for its own use would identify its service bureau lines and would pay the fee only with respect to those lines.

Even after the implementation of this proposed rule change, it is likely that service bureau customers would pay less for connectivity to Nasdaq than firms that connect directly. Accordingly, Nasdaq will closely monitor connectivity costs and may make additional pricing modifications in the near future.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[10] particularly subsection 15A(b)(5),[11] because it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls. Nasdaq believes that the proposed rule change would help to address an existing disparity between the charges paid by market participants for direct CTCI connections to Nasdaq and the much lower charges paid by market participants for access through service bureaus.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Nasdaq neither solicited nor received written comments with respect to the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission requests comment on Nasdaq's proposal to implement the proposed rule change retroactively as of April 1, 2003. The Commission notes that the retroactive implementation of the proposed fee change would enable Nasdaq to charge for services that it has already rendered.

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–50 and should be submitted by May 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10097 Filed 4–23–03; 8:45 am]

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[5] The term "bandwidth" refers to the amount of data that can be transmitted over a CTCI line in one second. Accordingly, bandwidth enhancements allow a CTCI subscriber to send and receive a greater volume of data over a line.

[6] *See* SR–NASD–2003–43 (March 19, 2003) (NASD members) and SR–NASD–2003–46 (March 19, 2003) (non-members).

[7] For example, prior to the merger of Nasdaq Tools Inc. into Nasdaq, Nasdaq charged Nasdaq Tools Inc. for the use of CTCI lines in accordance with the pricing schedule contained in NASD Rule 7010(f), yet by spreading these costs among its customers, Nasdaq Tools Inc. was able to charge a pass-through fee of $265 per subscriber per month to users of its Tools Plus service bureau product. Following the merger of Nasdaq Tools Inc. into Nasdaq, Nasdaq continues to charge Tools Plus users this same price. Securities Exchange Act Release No. 46973 (December 9, 2002), 67 FR 77305 (December 17, 2002) (SR–NASD–2002–164). Nasdaq believes that other service bureaus pass on CTCI costs to their subscribers in a similar manner. Nasdaq also notes that because the cost of lines used for service bureau functionality will not change, a change in Tools Plus CTCI pricing is not warranted at this time. *See id.* at 77308–09.

[8] Nasdaq believes that its proposal to charge a distributor fee is analogous to the proposed rule change that the Commission approved in Securities Exchange Act Release No. 45102 (November 26, 2001), 66 FR 59830 (November 30, 2001) (SR–NASD–2001–59), in which Nasdaq adopted a fee schedule for firms acting as distributors of historical market data that was higher than the fee schedule for persons purchasing the data without a license to redistribute it.

[9] Securities Exchange Act Release No. 43821 (January 8, 2001), 66 FR 3627 (January 16, 2001) (SR–NASD–00–80); Securities Exchange Act Release No. 44144 (April 2, 2001), 66 FR 18332 (April 6, 2001) (SR–NASD–00–81).

[10] 15 U.S.C. 78o–3.

[11] 15 U.S.C. 78o–3(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47697; File No. SR–NASD–2003–68]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend Its Restrictions on Non-Cash Compensation in Connection With Corporate Financing and Direct Participation Programs

April 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 7, 2003, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the NASD. The NASD has designated the proposed rule change as one that constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule pursuant to rule 19b–4(f)(1) under the Act,[3] which renders it effective upon receipt of the filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing a proposed rule change to codify in NASD rules 2710 (Corporate Financing rule) and 2810 (Direct Participation Programs or "DPP" rule) its stated policies, practices, and interpretations regarding members' receipt of non-cash compensation in connection with the sale and distribution of securities. The express prohibitions on the receipt of non-cash compensation currently in the Corporate Financing rule and the DPP rule generally limit the receipt of such items to $100 per person annually and do not include certain detailed exceptions under NASD rules 2820 (Variable Contracts rule) and 2830 (Investment Company rule) for members selling mutual fund shares and variable annuities. The proposed rule change would codify exceptions in the Variable Contracts and Investment Company rules for members selling debt, equity,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(1).

DPP, and real estate investment trust ("REIT") securities—while maintaining the current non-cash compensation prohibitions on the receipt of gifts with more than a *de minimus* value, payments and reimbursements preconditioned on the achievement of a sales target, and payments and reimbursements for travel and meetings that are not *bona fide* due diligence meetings or training and education meetings. In addition, the proposed rule change will codify the NASD's policy and practice of applying Interpretive Material issued by NASD staff relating to the non-cash compensation provisions uniformly and consistently to the Corporate Financing rule, the DPP rule, the Investment Company rule, and the Variable Contracts rule. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

2710.Corporate Financing Rule—Underwriting Terms and Arrangements

(a)–(b) No Change

(c) Underwriting Compensation and Arrangements

(1)–(5) No Change

(6) Unreasonable Terms and Arrangements

(A) No Change

(B) Without limiting the foregoing, the following terms and arrangements, when proposed in connection with the distribution of a public offering of securities, shall be unfair and unreasonable:

(i)–(xii) No Change

(xiii) [for a member or person associated with a member to accept, directly or indirectly, any non-cash sales incentive item including, but not limited to, travel bonuses, prizes and awards, from an issuer or an affiliate thereof in excess of $100 per person per issuer annually. Notwithstanding the foregoing, a member may provide non-cash sales incentive items to its associated persons provided that no issuer, or an affiliate thereof, including specifically an affiliate of the member, directly or indirectly participates in or contributes to providing such non-cash sales incentive; or].

(xiv)–(xv) Renumbered (xiii)–(xiv).

(7)–(8) No Change

(d) Non-Cash Compensation

(1) Definitions

The terms "compensation," "non-cash compensation" and "offeror" as used in this Section (d) of this Rule shall have the following meanings:

(A) "Compensation" shall mean cash compensation and non-cash compensation.

(B) "Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(C) "Offeror" shall mean an issuer, an adviser to an issuer, an underwriter and any affiliated person of such entities.

(2) Restrictions on Non-Cash Compensation

In connection with the sale and distribution of a public offering of securities, no member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided in this provision. Non-cash compensation arrangements are limited to the following:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors[1] and are not preconditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not conditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by subparagraph (d)(2)(D);

(ii) the location is appropriate to the purpose of the meeting, which shall mean an office of the issuer or affiliate thereof, the office of the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iii) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(iv) the payment or reimbursement by the issuer or affiliate of the issuer is not conditioned by the issuer or an affiliate of the issuer on the achievement of a sales target or any other non-cash compensation arrangement permitted by subparagraph (d)(2)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a company that controls a member company and the member's associated persons, provided that no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in subparagraph (d)(2)(D).

A member shall maintain records of all non-cash compensation received by the member or its associated persons in arrangements permitted by subparagraphs (d)(2)(C)–(E). The records shall include: The names of the offerors, non-members or other members making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the member and its associated persons with subparagraph (d)(2)(C)–(E).

(d) Renumbered as (e).

* * * * *

2810. Direct Participation Programs

(a) No Change

(b) Requirements

(1)–(3) No Change

(4) Organization and Offering Expenses

(A)–(D) No Change

(E) [No member or person associated with a member shall directly or indirectly accept any non-cash compensation or sales incentive item including, but not limited to, travel bonuses, prizes, and awards offered or provided to such member or its associated persons by any sponsor, affiliate of a sponsor or program. Notwithstanding the foregoing, a member may provide non-cash compensation or sales incentive items to its associated persons provided that no sponsor, affiliate of a sponsor or program, including specifically an affiliate of the member, directly or indirectly participates in or contributes to providing such non-cash compensation. Further, this subparagraph shall not prohibit a person associated with a member from accepting any non-cash sales incentive item offered directly to that person by a sponsor, affiliate of a sponsor or program where:

(i) the aggregate value of all such items paid by any sponsor or affiliate of a sponsor to each associated person during any year does not exceed $100.00;

(ii) the value of all such items to be made available in connection with an offering is included as compensation to be received in connection with the offering for purposes of subparagraph (B); and

(iii) the proposed payment or transfer of all such items is disclosed in the prospectus or similar offering document.]

(F) Renumbered to (E).

(5)–(6) No Change

(c) Non-Cash Compensation

(1) Definitions

The terms "compensation," "non-cash compensation" and "offeror" as used in this section,(c) of this rule shall have the following meanings:

(A) "Compensation" shall mean cash compensation and non-cash compensation.

(B) "Non-cash compensation" shall mean any form of compensation received in connection with the sale and distribution of direct participation securities that is not cash compensation, including but not limited to merchandise, gifts and prizes, travel expenses, meals and lodging.

(C) "Offeror" shall mean an issuer, sponsor, an adviser to an issuer or sponsor, an underwriter and any affiliated person of such entities.

(2) Restriction on Non-Cash Compensation

In connection with the sale and distribution of direct participation securities, no member or person associated with a member shall directly or indirectly accept or make payments or offers of payments of any non-cash compensation, except as provided in this provision. Non-cash compensation arrangements are limited to the following:

(A) Gifts that do not exceed an annual amount per person fixed periodically by the Board of Governors[1] and are not conditioned on achievement of a sales target.

(B) An occasional meal, a ticket to a sporting event or the theater, or comparable entertainment which is neither so frequent nor so extensive as to raise any question of propriety and is not preconditioned on achievement of a sales target.

(C) Payment or reimbursement by offerors in connection with meetings held by an offeror or by a member for the purpose of training or education of associated persons of a member, provided that:

(i) associated persons obtain the member's prior approval to attend the meeting and attendance by a member's associated persons is not conditioned by the member on the achievement of a sales target or any other incentives pursuant to a non-cash compensation arrangement permitted by subparagraph (c)(2)(D);

(ii) the location is appropriate to the purpose of the meeting, which shall mean an office of the offeror or the member, or a facility located in the vicinity of such office, or a regional location with respect to regional meetings;

(iii) the payment or reimbursement is not applied to the expenses of guests of the associated person; and

(iv) the payment or reimbursement by the offeror is not conditioned by the offeror on the achievement of a sales target or any other non-cash compensation arrangement permitted by subparagraph (c)(2)(D).

(D) Non-cash compensation arrangements between a member and its associated persons or a company that controls a member company and the member's associated persons, provided that no unaffiliated non-member company or other unaffiliated member directly or indirectly participates in the member's or non-member's organization of a permissible non-cash compensation arrangement; and

(E) Contributions by a non-member company or other member to a non-cash compensation arrangement between a member and its associated persons, provided that the arrangement meets the criteria in subparagraph (c)(2)(D).

A member shall maintain records of all non-cash compensation received by the member or its associated persons in arrangements permitted by subparagraphs (c)(2)(C)–(E). The records shall include: the names of the offerors, non-members or other members making the non-cash compensation contributions; the names of the associated persons participating in the arrangements; the nature and value of non-cash compensation received; the location of training and education meetings; and any other information that proves compliance by the member and its associated persons with subparagraph (c)(2)(C)–(E).

(c) Renumbered as (d).

* * * * *

[1] *The current annual amount fixed by the Board of Governors is $100.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD is proposing to codify a stated policy, practice, and interpretation that the more detailed non-cash compensation provisions in the Variable Contracts rule and Investment Company rule apply to the sale and distribution of public offerings of securities and direct participation securities as governed by the Corporate Financing rule and DPP rule, respectively. The NASD is proposing to conform the language in the Corporate Financing rule and the DPP rule to be consistent with the more detailed language contained in the Variable Contracts rule and the Investment Company rule. NASD staff has consistently applied the more detailed provisions in Variable Contracts rule and the Investment Company rule to the sale and distribution of public offerings of securities and DPP securities.

Since 1994, the Commission, the NASD, and the securities industry have raised concerns about actual and potential conflicts of interest in the retail brokerage business created by a broad range of compensation practices whereby program sponsors or issuers provide incentives or rewards to individual broker-dealers and their registered representatives for selling the issuer's products. NASD staff believes that the use of non-cash compensation can create significant point-of-sale incentives that may compromise suitability determinations and heighten the potential for loss of supervisory control over sales practices. In addition, NASD staff believes that the use of non-cash compensation incentives may result in the loss of investor confidence by increasing the perception of inappropriate practices.

Responding to these concerns, the NASD in January 1999 amended the Variable Contracts rule and the Investment Company rule to establish comprehensive restrictions on the use of non-cash compensation in connection with the sale and distribution of investment company securities and

variable contracts.[4] These amendments generally limited the manner in which members can pay for or accept non-cash compensation and detail the types of non-cash compensation that are permissible. The amendments also provided limited exceptions to the non-cash compensation restrictions for payments or reimbursements that are in connection with training and education meetings. The 1999 amendments also defined certain key terms, such as "compensation" and "non-cash compensation."

Current provisions of the Corporate Financing rule and the DPP rule limit the receipt of non-cash compensation by member firms and associated persons in connection with the sale and distribution of DPP securities, REIT programs, and corporate debt and equity offerings. These types of non-cash compensation, adopted in 1988, are not as comprehensive as the restrictions that were later adopted in the Variable Contracts rule and the Investment Company rule in 1999.

Generally, consistent with the current non-cash compensation requirements in NASD rules 2820 and 2830, the proposed rule change will conform the text of NASD rules 2710 and 2810 to rules 2820 and 2830: (1) Adopt definitions of the terms "compensation," "non-cash compensation," and "offeror;" (2) provide express exceptions from the non-cash compensation limitations for *bona fide* training and education meetings; and (3) prohibit, with certain exceptions, members or persons associated with members from directly or indirectly accepting or paying any non-cash compensation in connection with public offerings of debt or equity securities or transactions in direct participation programs.

Consistent with NASD rules 2820 and 2830, the proposed rule change will provide express exceptions from the non-cash compensation provisions that would permit: (1) Gifts of up to $100 per associated person annually; (2) an occasional meal, ticket to a sporting event or theater, or comparable entertainment; (3) payment or reimbursement for training and education meetings held by broker-dealers or issuers/sponsors for the purpose of educating associated persons of broker-dealers, so long as certain conditions are met; (4) in-house sales incentive programs of broker-dealers for their own associated persons; and (5) contributions by any non-member company or other member to a broker-dealer's permissible in-house sales incentive program, provided there is compliance with certain criteria.

NASD staff has consistently been concerned about the use of sales incentives in connection with the sale of any type of securities to a member's customers, including transactions in DPP securities, REIT programs, and corporate debt and equity offerings. For example, these incentive programs may offer registered representatives exotic trips or expensive merchandise if they sell a specific dealer's product. The NASD believes that the potential conflicts of interest that arise from the receipt of non-cash compensation in connection with the sale of variable products and mutual fund securities also exist in connection with the sale of these types of securities.

Since January 1999, through interpretive advice, responses to exemptive requests, and in the course of the filing review process under the DPP and Corporate Financing rules, NASD staff has consistently applied the non-cash compensation prohibitions in NASD rules 2820 and 2830 to sales of variable annuities, mutual funds, DPP securities, REIT programs, and corporate debt and equity offerings. Accordingly, although training and education meetings are not specifically permitted under the DPP and Corporate Financing rule, the NASD has recognized that *bona fide* training and education meetings that meet the strict requirements set out in the Variable Contracts rule and Investment Company rule can be held consistent with the non-cash compensation prohibitions.

DPP Rule. Paragraph (b)(4)(E) of the DPP rule currently prohibits a member or associated person from accepting, directly or indirectly, non-cash compensation or sales incentive items from any sponsor or affiliate of a sponsor, unless the following requirements are satisfied: (1) The aggregate value of all such items received annually does not exceed $100; (2) the value of all such items is included as compensation received in connection with the offering; and (3) the proposed payment of such items is disclosed in the prospectus.

The DPP rule currently does not contain an exception for training and education meetings. Through interpretive advice, the NASD has approved members' receipt of non-cash compensation in connection with *bona fide* training and education meetings. The NASD considers such a meeting to be one that educates registered representatives and assists them in making a suitability determination regarding a DPP product for their customers and that is otherwise in compliance with the training and education provisions of NASD rules 2820 and 2830. In Notice to Members 85–29 (April 1985), the NASD announced that reimbursement for training and education meetings is permitted under the DPP rule if the expenses are recognized as underwriting compensation, disclosed in the prospectus, and come within the 10% limit on underwriting compensation permitted under the rule. NASD staff has consistently applied the 10% compensation limit and training and education policies in the DPP rule set forth in Notice to Members 85–29 to REIT offerings that are filed with the Corporate Financing Department under the Corporate Financing rule.

Corporate Financing Rule. Although the rule language of the non-cash compensation provision in the Corporate Financing rule is different from the language of the non-cash compensation provision in the DPP rule, paragraph (c)(6)(B)(xiii) of the Corporate Financing rule currently contains a provision that prohibits a member or associated person from accepting, directly or indirectly, non-cash compensation or sales incentive items in excess of $100 per person per issuer annually from any issuer or affiliate thereof. The rule does not contain an exception for training and education meetings.

Training and Education Meetings. Currently, both the Variable Contracts rule and the Investment Company rule contain an express exception to the non-cash compensation provisions for training and education meetings that the industry believes are necessary to educate representatives about their products. The rules, however, contain conditions that must be satisfied before the exception can be used. Specifically, they require prior approval of attendance by the associated person from his or her member firm, satisfaction of the recordkeeping requirements, that attendance at the meeting not be preconditioned on the achievement of a sales target, that the location of the meeting be an office of the offeror or facility in the vicinity of the office, and that no reimbursement be provided for expenses of a guest.

Since the adoption of these provisions, the NASD has issued strict guidelines on the appropriate use of the training and education exception through Regulatory & Compliance Alerts, interpretive letters, and other correspondence with members. This guidance has stated that a sponsor is not permitted to pay for certain expenses in connection with a training and education meeting, including, but not limited to, golf outings, cruises, tours, and other entertainment. The NASD believes that amending the non-cash compensation provisions of the DPP and Corporate Financing rules will codify stated policy, practice, and interpretive advice and make these rules generally consistent with those governing variable annuities and mutual funds. The NASD believes, in addition, that these amendments will allow this body of interpretive guidance to be applied consistently with respect to training and education meetings relating to any of the relevant products.

[4] *See* Securities Exchange Act Release No. 40214 (July 15, 1998), 63 FR 39614 (July 23, 1998) (SR–NASD–97–35).

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[5] which requires, among other things, that the NASD's rules must be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; and, in general, to protect investors and the public interest. The NASD believes the proposed rule change will make the non-cash compensation provisions of the Corporate Financing rule and the DPP rule comparable to the more detailed non-cash compensation provisions that are currently in the Variable Contracts rule and the Investment Company rule. The proposed rule change also will provide expressly that NASD Interpretive Materials will apply to all four rules,

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has represented that the proposed rule change is effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act[6] and rule 19b–4(f)(1) thereunder,[7] in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–68 and should be submitted by May 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10099 Filed 4–23–03; 8:45 am]

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[5] 15 U.S.C. 78o–3(b)(6).

[6] 15 U.S.C. S78s(b)(3)(A)(ii).

[7] 17 CFR S240.19b–4(f)(1).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47686; File No. SR–NASD–2003–59]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Fees for Nasdaq's InterMarket

April 16, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed a proposed rule change with the Securities and Exchange Commission ("SEC" or "Commission"). The proposed rule change is described in items I, II and III below, which items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the Association under section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the existing execution fees for Nasdaq InterMarket trades executed through the InterMarket Trading System ("ITS") and Nasdaq's Computer Assisted Execution System ("CAES"). The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

7010. System Services

(a)–(c) No change.

(d) Computer Assisted Execution Service.

The charges to be paid by members receiving the Computer Assisted Execution Service (CAES) shall consist of a fixed service charge and a per *share* transaction charge plus equipment-related charges.

(1) Service Charges

$100 per month for each market maker terminal receiving CAES.

(2) Transaction Charges

(A) $0.003 per share executed up to a maximum of $75 per execution shall be paid by an order entry firm or CAES market maker that enters an order into CAES that is executed in whole or in part, and [$0.002] *$0.0015* per share executed up to a maximum of $50 per execution shall be credited to the CAES market maker that executes such an order.

(B) $0.002 per share executed up to a maximum of $75 per execution shall be

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

paid by any member that sends a commitment through the ITS/CAES linkage to buy or sell a listed security that is executed in whole or in part, and $0.0015 per share executed up to a maximum of $37.50 per execution shall be credited to a member that executes such an order.

(e)–(r) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq's InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex").[4] The InterMarket competes with regional exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE") for retail order flow in stocks listed on the NYSE and the Amex. InterMarket comprises CAES, a system that facilitates the execution of trades in listed securities between NASD members that participate in InterMarket, and ITS, a system that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.[5]

Nasdaq is proposing to modify the InterMarket fees to encourage market participants to provide additional liquidity to support executions through InterMarket and thereby enhance its competitiveness. Specifically, Nasdaq will retain the current CAES execution fee of $0.003 per share, and will credit $0.0015 per share, rather than $0.002 per share to a member whenever it provides the liquidity to support an execution through CAES (*i.e.*, sells in response to a buy order or buys in response to a sell order). The maximum fee will still be capped at $75 per execution and the maximum credit will still be capped at $50 per execution.

The current ITS per share execution fee of $0.002 will remain the same, and the credit earned by a member that provides liquidity to support an ITS execution will increase from $0.001 per share to $0.0015 per share. The maximum fee of $75 per execution and the maximum credit of $37.50 per execution will remain unchanged.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the Act, including section 15A(b)(5) of the Act,[6] which requires that the rules of the NASD provide for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls, and section 15A(b)(6) of the Act,[7] which requires rules that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. The transaction execution fees and credits to be implemented by this filing will be imposed equally on members that use InterMarket to place orders or to enhance the quality of executions of InterMarket by providing liquidity to support executions. Nasdaq believes that the level of the fees and credits are reasonable, moreover, because its revenues from a given level of transaction activity under the new fee structure will be lower than its revenues from the same level of transaction activity under the prior fee structure.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of rule 19b–4 thereunder,[9] because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–59 and should be submitted by May 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10100 Filed 4–23–03; 8:45 am]

BILLING CODE 8010–01–P

[4] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000); 65 FR 37445 (June 14, 2000) (SR–NASD–00–32).

[5] *See* CAES/ITS User Guide, p. 5, at *www.intermarket.nasdaqtrader.com.*

[6] 15 U.S.C. 78*o*–3(b)(5).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47692; File No. SR–NASD–2003–66]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Rebate Certain Past Primex Auction System Logon Charges for Certain Participants

April 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 2, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which Nasdaq has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify NASD rule 7010(r) to enable Nasdaq to waive all Primex Auction System ("Primex") logon charges for the period of August 2002 through November 2002 for those Primex participants that, in connection with their participation in Primex during that period, were customers of the Brass Service Bureau and Order Management System ("Brass"). Nasdaq will implement the proposed rule change as soon as practicable after the Commission approves it.

The text of the proposed rule change is below. Proposed new text is *italicized.*

* * * * *

Rule 7010(r). Nasdaq Application of the Primex Auction System™

(1) No change.

(2) No change.

(3) Waiver of Logon Fees

All monthly logon fees for the period of August 2002 through November 2002 are waived for those Primex Auction System participants that, in connection with their participation in the Primex Auction System during such period, were customers of the Brass Service Bureau and Order Management System.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Certain Primex participants are also users of Brass. The Brass system is integrated with such participants' internal order management system, and these participants rely on Brass for routing their respective orders to Primex. Due to Brass' delay in completing the needed interfaces, participants that expected to use Brass for routing their Primex orders were unable to do so, yet they were being charged the Primex logon fees. The proposed rule change would waive the logon fees during the period August 2002 through November 2002 for the affected participants.

The proposed waiver would apply to all logon charges, including each participant's logons for access via Brass as well as such a participant's logons for direct access not involving Brass. Generally, participants that intend to route their Primex orders through Brass also maintain separate Primex logons for direct access via the Primex Workstation, which can be used in conjunction with the Brass service in order to view transactions in Primex. Such Primex Workstation logons were of limited utility to those participants that intended, but were unable to, access Primex through Brass during the August 2002 through November 2002 period. Consequently, Nasdaq believes that waiving all logon charges for the affected participants would be fair and equitable. However, the waiver would not apply to network charges, because such charges arose from Nasdaq's obligations to third party network providers, which Nasdaq incurred specifically for the benefit of the participants.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[3] in general and with section 15A(b)(5) of the Act,[4] in particular, which requires that the rules of the NASD provide for equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed waiver of certain Primex logon charges ensures that the Primex charges are allocated reasonably and equitably.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which NASD consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78*o*–3.

[4] 15 U.S.C. 78*o*–3(b)(5).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–66 and should be submitted by May 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10101 Filed 4–23–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47685; File No. SR–NASD–2003–73]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Pilot Period for the Regulatory Fee and the Trading Activity Fee

April 16, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which Items have been prepared by the NASD. The NASD filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to extend the pilot period for the Trading Activity Fee ("TAF") through June 1, 2003. The TAF (as originally proposed in SR–NASD–2002–98) is in effect, and is set to expire on April 15, 2003.[6] The NASD is requesting the Commission approve SR–NASD–2002–148, granting permanent approval of the TAF, before the expiration of the TAF pilot on June 1, 2003.[7] If the Commission does not approve SR–NASD–2002–148 before the expiration of the TAF pilot on June 1, 2003, the trading fee component of the member regulatory pricing structure will revert to Section 8 of Schedule A to the NASD By-Laws, as amended.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 24, 2002, the NASD filed SR–NASD–2002–98, which proposed a new member regulatory pricing structure, including the TAF, to replace the existing trading fee contained in Section 8 of Schedule A to the NASD By-Laws.[8] SR–NASD–2002–98 is currently in effect. Assessments under the TAF were effective as of October 1, 2002, payable January 15, 2003.[9] On October 18, 2002, the NASD established a sunset provision whereby the TAF established by SR–NASD–2002–98 would cease to exist after December 31, 2002.[10] Upon expiration of SR-NASD–2002–98, the member regulatory pricing structure was to revert to Section 8 of Schedule A to the NASD By-Laws, as amended.

On December 24, 2002, the NASD extended the TAF pilot through March 1, 2003. On February 28, 2002, the NASD again extended the TAF pilot through April 1, 2003. On March 31, 2003, the NASD again extended the TAF pilot program through April 15, 2003. With the instant proposed rule change, the NASD is extending the TAF pilot through June 1, 2003, to allow the Commission additional time to review issues presented by the proposal to make the TAF permanent (SR–NASD–2002–148). The NASD requests that the Commission approve SR–NASD–2002–148 before the expiration of the TAF pilot on June 1, 2003.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the Act, including Section 15A(b)(5),[11] which requires, among other things, that the NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on this proposed rule change were neither solicited nor received. Written comments, however, have been solicited by publication in the **Federal Register** of SR–NASD–2002–98, SR–NASD–2002–147, SR–NASD–2002–148, SR–NASD–2002–182, and SR–NASD–2003–26.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The NASD has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the TAF pilot to operate without interruption through June 1, 2003. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–73 and should be submitted by May 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10102 Filed 4–23–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47686; File No. SR–NASD–2003–52]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a Fee for Receipt of Mutual Fund Quotation Service Data by Distributors

April 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 24, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to establish a $1,000 per month distributor fee for receipt of Nasdaq mutual fund information. The fee would be assessed on all distributors, as defined in proposed Rule 7090(e)—*i.e.*, those firms that receive the data and distribute it to third parties. Nasdaq will make the proposed rule change effective immediately upon Commission approval.

The text of the proposed rule change is below. Proposed new language is in *italics*.

Rule 7090. Mutual Fund Distributor Fee

(a)–(d) No change.

(e) *Distributors receiving MFQS shall pay a monthly fee of $1,000. For the purposes of this subsection only, the term "distributor" shall refer to any firm that receives the MFQS data feed and distributes it to third parties. All such firms must execute a Nasdaq Distributor Agreement.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Nasdaq Mutual Fund Quotation Service (MFQS) collects daily Net Asset Value information from approximately 18,000 mutual funds. This data is distributed via the Nasdaq Level 1 data feed. Currently, Nasdaq does not charge for the receipt or distribution of mutual fund data.

Nasdaq states that it creates value for distributors and their subscribers by collecting and processing the mutual fund data, producing the data feed, and providing data quality services. The mutual fund data product is an important component of integrated financial information services that are provided by major market data vendors, financial web sites, and online brokerage services. Nasdaq represents that the $1,000 per month fee will compensate it for these value-added services without discouraging wide distribution of the data.

Nasdaq is not charging recipients of the data feed who do not distribute the data to third parties. Unlike other data feeds which can be used for order routing, the MFQS data is only useful for display purposes. Those firms that only distribute it internally obtain no additional commercial advantage from resale of the data, and accordingly Nasdaq is not charging them. Thus, while the term "distributor" is used elsewhere in the NASD's rules to include a firm that receives a data feed and distributes it internally, [3] in

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Commission waived the five-day pre-filing notice requirement. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii). The NASD also asked the Commission to waive the 30-day operative delay.

[6] *See* Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (SR–NASD–2002–98). *See also* Securities Exchange Act Release Nos. 47112 (December 31, 2002), 68 FR 824 (January 7, 2003) (SR–NASD–2002–182), 47436 (March 4, 2003), 68 FR 11422 (March 10, 2003) (SR–NASD–2003–26), and 47623 (April 3, 2003), 68 FR 17712 (April 10, 2003) (SR–NASD–2003–65).

[7] *See* Securities Exchange Act Release No. 46817 (November 12, 2002), 67 FR 69785 (November 19, 2002) (SR–NASD–2002–148).

[8] Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (SR–NASD–2002–98). *See also* Securities Exchange Act Release No. 46417 (August 23, 2002), 67 FR 55893 (August 30, 2002) (SR–NASD–2002–99). The NASD also published three *Notices to Members* describing the proposed changes and addressing interpretive questions posed by NASD members. *See Notices to Members 02–41* (July 2002), *02–63* (September 2002), and *02–75* (November 2002).

[9] Member firms were required to pay the TAF in accordance with the pilot program (for the first quarter starting October 1, 2002) by no later than January 15, 2003, and thereafter, on a monthly basis.

[10] At the same time, the NASD filed a new proposed rule change (SR–NASD–2002–148), substantially similar to SR–NASD–2002–98, but filed under Section 19(b)(1) of the Act, to allow for additional comment.

[11] 15 U.S.C. 7o–3(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, e.g.*, Rule 7010(q) footnote 8. Telephone conversation between Eleni Constantine, Office General Counsel, Nasdaq and Gordon Fuller, Counsel to the Assistant Director, Division of Market Regulation, Commission, on April 14, 2003.

proposed Rule 7090(e) Nasdaq is only using the term to refer to firms that distribute the MFQS data to third parties.

The Market Data Distribution Department will identify the firms that distribute the mutual fund data to third parties. These firms will be required to confirm their usage and distribution of the data and execute the appropriate amendment to the Nasdaq Distributor Agreement.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[4] in general and with section 15A(b)(5)[5] of the Act, in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed fee will be assessed on all firms that receive the MFQS data and distribute it to third parties, thus gaining a commercial advantage.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

[4] 15 U.S.C. 78o–3

[5] 15 U.S.C. 78o–3(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–52 should be submitted by May 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10103 Filed 4–23–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47689; File No. SR–NYSE–99–51]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Order Tracking

April 17, 2003.

I. Introduction

On December 27, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to require the recording of details of orders in Exchange listed securities by its members and member organizations. On May 24, 2000, the Exchange filed Amendment No. 1 to the proposal.[3] On August 14, 2001, the Exchange filed Amendment No. 2 to the proposal.[4] On January 17, 2002, the Exchange filed Amendment No. 3 to the proposal.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on January 30, 2002.[6]

On February 28, 2002, the Exchange filed Amendment No. 4 to the proposal.[7] The proposed rule change, as amended, was again published for comment in the **Federal Register** on March 15, 2002.[8]

The Commission received one comment on the proposal.[9] This order approves the proposed rule change, as amended.

II. Background

The proposed rule change is intended to fulfill certain of the undertakings contained in the order issued by the Commission relating to the settlement of an enforcement action against the NYSE for failure to enforce compliance with section 11(a) and Rule 11a–1 of the Act and NYSE Rules 90, 95, and 111.[10] The SEC Order found that the NYSE's floor broker regulatory program suffered from two major deficiencies: (1) The NYSE failed to take appropriate action to police for profit-sharing or other performance-based compensation of independent floor brokers; and (2) the NYSE suspended its routine independent floor broker surveillance for extensive periods of time. As part of the SEC Order, the NYSE agreed and was ordered to comply with a variety of undertakings. Among other things, it agreed to, and was ordered to, continue the development and implementation of an electronic floor system ("Phase I Floor Audit Trail") that will be used to enter details related to orders before these orders can be represented on the trading floor. To accomplish this undertaking, the NYSE was ordered to submit a proposed rule change setting forth the complete details and specifications of the Phase I Floor Audit Trail and to implement fully the Phase I Floor Audit Trail nine months after Commission approval of the proposal. The Exchange complied with this aspect of the SEC Order.[11]

In addition, as part of the SEC Order, the Exchange undertook and was ordered "to design and implement" "an audit trail sufficient to enable the NYSE to reconstruct its market promptly, to effectively surveil the NYSE, and to facilitate the effective enforcement of the federal securities laws and NYSE rules." In connection with this undertaking, at a minimum, the Exchange was required to provide: (a) an accurate, time-sequenced record of orders, quotations and transactions, beginning with the receipt of an order by any NYSE member firm and further documenting the life of the order through the process of execution or cancellation of that order; and (b) for synchronization of clocks used in connection with the audit trail ("Phase II Floor Audit Trail"). This proposed rule change addresses that undertaking.

III. Description of Proposal

The Exchange has proposed the adoption of four new rules which would require members and member organizations (herein referred to collectively as "members") to record and retain order information, to synchronize their time keeping equipment with a time source designated by the Exchange, and to provide the Exchange with information on orders upon request. Specifically, the Exchange has adopted requirements for the electronic capture of orders at the point of sale (front end systemic capture, or "FESC")[12] and at the point of receipt (order tracking system, or "OTS"). The purpose of the requirements is to create a complete systemic record of orders handled by members and member organizations. The proposed rules and amendments are described below.

i. NYSE Rule 123(f)

Proposed NYSE Rule 123(f) requires that order execution reports be entered into FESC and that any member organization proprietary system used to record the details of an order must also be capable of transmitting a report of the order's execution to FESC. The proposed rule further requires that the details of each execution report required to be recorded must include the following data elements: (1) Order identifier that uniquely identifies the order as required by paragraph 123(e); (2) symbol; (3) number of shares or quantity of security; (4) transaction price; (5) time the trade was executed; (6) executing broker badge number, or alpha symbol as may be used from time to time, in regard to its side of the contract; (7) executing broker badge number, or alpha symbol as may be used from time to time, of the contra side to the contract; (8) clearing firm number, or alpha symbol as may be used from time to time, in regard to its side of the contract; (9) clearing firm number, or alpha symbol as may be used from time to time, in regard to the contra side of the contract; (10) whether the account for which the order was executed was that of a member or member organization or of a non-member or non-member organization; (11) identification of member or member organization which recorded order details as required by paragraph (e); (12) date the order was entered into an Exchange system; (13) indication as to whether this is a modification to a previously submitted report; (14) settlement instructions (*e.g.*, cash, next day, or seller's option); (15) Special Trade Indication, if applicable; (16) Online Comparison System (OCS) Control Number; and (17) such other information as the Exchange may from time to time require.

ii. NYSE Rule 132A

Proposed NYSE Rule 132A requires members to synchronize the business clocks used to record the date and time of any event that the Exchange requires to be recorded. The Exchange will require that the date and time of orders in securities listed on the Exchange be so recorded. The proposed Rule also requires that members maintain the synchronization of this equipment in conformity with procedures prescribed by the Exchange. The Exchange intends to coordinate time synchronization with the National Association of Securities Dealers Inc.'s ("NASD") identical requirements.[13]

iii. NYSE Rule 132B

Proposed NYSE Rule 132B prescribes requirements and procedures with respect to orders in any security listed on the Exchange received or originated by a member. Paragraph (a) of the proposed rule requires immediate recordation of the data elements described in paragraph (b). If an order is transmitted to another member or is transmitted to another department of the same member, information detailed in paragraph (c) must be recorded. If an order is modified or cancelled, information required by paragraph (d) must be recorded. The various data elements and information required by the proposed rule must be recorded in an electronic format prescribed by the Exchange. Time records must be expressed in hours, minutes and seconds. The Rule makes clear that the records required therein must be preserved pursuant to Rule 17a–4(b) under the Act and that these records may be produced or reproduced on "micrographic media" as contemplated under Rule 17a–4(f) under the Act.

Paragraph (b) of the proposed rule contains the sixteen data elements to be recorded for an order. These include: (1) An order identifier; (2) stock symbol; (3) identification of the member; (4) department identification of the member or terminal identification number for orders received via a SuperDOT terminal; (5) department of the member which originated the order; (6) number of shares; (7) buy or sell order designation; (8) whether the order is a short sale order; (9) whether the order is a market, limit, stop or stop limit order (which terms are defined in Rule 13 of the Exchange); (10) any limit price, stop price or stop limit price prescribed in the order; (11) the date, if any, that an order expires or, if the order is in force for less than a day, the time when it expires; (12) the time limit the order is in force; (13) any request by the customer that the order not be displayed pursuant to Rule 11Ac1–4 under the Act; (14) any special handling requests (such as fill or kill, market-on-close, limit-on-close, not held, etc); (15) date and time of origination or receipt of the order; [14] and (16) the type of account for which the order is entered. Each of these data elements are commonly understood and used by members.

Paragraph (e) of the proposed rule explains that the order identifier is the order identifier required by NYSE Rule 123(e). This is the identifier assigned to an order in connection with the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jennifer Colihan, Attorney, Division of Market Regulation, Commission, dated May 22, 2000 ("Amendment No. 1").

[4] *See* Letter from Darla C. Stuckey, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 14, 2001 ("Amendment No. 2").

[5] *See* Letter from Darla C. Stuckey, Assistant Secretary, NYSE to Belinda Blaine, Associate Director, Division, Commission, dated January 17, 2002 ("Amendment No. 3").

[6] *See* Securities Exchange Act Release No. 45326 (January 23, 2002), 67 FR 4479.

[7] *See* Letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy Sanow, Assistant Director, Division, Commission, dated February 28, 2002 ("Amendment No. 4").

[8] *See* Securities Exchange Act Release No. 45521 (March 8, 2002), 67 FR 11735.

[9] *See* Letter from Stuart J. Kaswell, Senior Vice President and General Counsel, Securities Industry Association ("SIA"), to Jonathan Katz, Secretary, Commission, dated April 26, 2002.

[10] *See* In the Matter of New York Stock Exchange, Inc., SEC Release No. 34–41574, June 29, 1999; Administrative Proceeding File No. 3–9925 ("SEC Order").

[11] *See* Securities Exchange Release No. 43689 (December 7, 2000), 65 FR 79145 (December 18, 2000) ("Phase I Floor Audit Trail Approval Order").

[12] *See id.*

[13] *See* NASD Rule 6953.

[14] For purposes of NYSE Rule 132B(b)(15), for electronic orders, order origination and time of receipt of an order is the time the order is captured by a member organization's electronic order-routing or execution system. For manual orders, order origination and time of receipt of an order is the time the order is first received by the member organization from the customer.

Exchange's FESC initiative. Under NYSE Rule 123(e), before an order is represented or executed on the Floor of the Exchange, a member must assign a unique identifier to it. This identifier will stay with the order throughout its processing life, through cancellation or execution.

Paragraph (c) of proposed NYSE Rule 132B requires that certain information be recorded when an order is transmitted to another department within the member, to another member, or to a non-member. When transmitted to another department, the following must be recorded: the order identifier, identification of the member, the date of receipt or origination of the order, the identification of the department to which the order was transmitted and the date and time the order was received by the department.

Paragraph (c)(2) contains requirements for both receiving and transmitting members when an order is transmitted from one member to another. The transmitting member must record whether the order was transmitted manually or electronically, the order identifier, market participant symbol for both receiver and transmitter, date of origination or receipt by the transmitting member, the date and time the order was transmitted, the number of shares so transmitted and, if the order is included in a bunched order, the bunched order route indicator assigned by the member. A bunched order is any aggregation of two or more orders. The receiving member must record whether the transmitted order was received manually or electronically, the order identifier, and the identifier of the member transmitting the order.

Exceptions to the requirement for recording information for both the transmitting and receiving member are contained in proposed NYSE Rules 132B(c)(2)(C) and 132(c)(2)(D). These exceptions are for orders transmitted to the Floor via SuperDOT, the Exchange's automated order routing system, and orders transmitted to another member on the Floor of the Exchange, where the order was entered into an Exchange data base pursuant to NYSE Rule 123(e), the Exchange's front-end systemic order capture requirements. In light of the objective of being able to identify an order from start to finish, both the receiving and transmitting members must record the order identifier and the identity of the member transmitting and receiving the order.

For orders transmitted to a non-member, the member must record that fact as well as the order identifier, member's identity, date of receipt or origination of the order, date and time of the order, number of shares, and, if applicable, any bunched order route indicator.

If an order is modified, proposed NYSE Rule 132B(d) requires that the order identifier (and any new order identifier, if applicable), date and time of modification and date the original order was received or originated be recorded. If an order is cancelled, (d)(2) requires the date and time of cancellation, whether the customer or the member cancelled the order, and the number of shares cancelled if there is a partial execution. This is in addition to the basic requirements to record the order identifier, identity of the member and the date and time when the order was first received or originated.

The same exceptions with respect to SuperDOT orders and orders on the Floor entered into a database under NYSE Rule 123(e) will apply to modifications and cancellations. Modification and cancellation will be elements captured in these systems and will not need to be captured by the member on the Floor.

Paragraph (f) of proposed NYSE Rule 132B provides an exception to the Rule for proprietary transactions of specialists, Registered Competitive Market Makers, and Competitive Traders. The transactions these members effected for their own accounts are not orders as contemplated by the Rule. Information with respect to these transactions is recorded and maintained by these members pursuant to the recordkeeping requirements of Exchange [15] and Commission Rules.[16]

iv. NYSE Rule 132C

Proposed NYSE Rule 132C requires members, upon request, to transmit order tracking data to the Exchange. This parallels the approach used under NYSE Rule 410A (Automated Submission of Trading Data) for submission of transaction information. The Exchange will make requests for order tracking information on an as-needed basis in order to carry out its surveillance and regulatory functions.[17] The NYSE has represented that this data will be used for regulatory purposes only and will not be used by the Exchange to gain an unfair competitive advantage over other market participants.

Members will be required to submit the data in an automated format. It is the Exchange's experience that submission of data by request has proven to be effective and efficient from both the Exchange's and its members' viewpoint.

Integration with Existing Exchange Requirements

With the implementation of NYSE Rule 132B, Exchange rules will provide a complete audit trail of orders from receipt through execution. As mentioned above, NYSE Rule 123(e) provides for the systemic capture of orders before they are represented or executed on the Floor. This includes the assignment of the unique identifier to each order. In addition, the Exchange will require that all orders be systemically delivered to its Floor, thus providing an electronic capture of order data from receipt or origination of an order. The audit trail requirements of proposed NYSE Rule 132B require information on the execution and clearance of transactions, the so-called "back end" of orders. With the addition of NYSE Rule 123(f), which requires recordation of the unique order identifier as part of the execution report, the Exchange represents that an order could be tracked throughout the life of the order. The unique order identifier would link the execution report to the original order.

Violation of Order Tracking Requirements

If, upon investigation, the Exchange determines that a violation of the Rule proposed to be amended or adopted herein has occurred, the Exchange will take appropriate action under the procedures of its disciplinary rules, including NYSE Rule 476. If a particular violation is deemed minor in nature, this could include issuance of a cautionary letter.[18]

Effective Date

The provisions of the rules and amendments proposed herein will become effective 15 months after the date of this order, except that the requirement in NYSE Rule 123 that copies of execution reports be entered into an Exchange database will become effective six months after the date of this order.[19]

[15] *See* NYSE Rules 123 and 410.

[16] *See* CFR 240.17a–3.

[17] The Exchange does not believe that it is cost-effective to store all order tracking data collected from members on a daily basis, and that members should be required to submit data to the NYSE on an "as requested" basis rather than daily as a matter of routine.

[18] In the future, the Exchange may consider seeking Commission approval to add these rules to the list of rules contained in NYSE Rule 476A, which provides for the imposition of fines for minor violations of rules.

[19] *See* note 7, *supra*, Amendment No. 4.

IV. Summary of Comments

The Commission received one comment letter on the proposal.[20] In its letter, the commenter raised concerns with respect to four subjects: the proposed rule's application to manual orders, how the order identifier would be used, the proposed rule's requirement to record Online Comparison System ("OCS") control numbers, and the proposed rule's requirement to include a Bunched Order Route Indicator.

A. Manual Orders

The commenter objected to both the proposal's general requirement that firms be required to record information, including time of receipt, regarding manual orders and in particular the requirement that they assign manual orders an order identification number. The commenter explained that at many small firms, recordation of order information is still done primarily by order ticket. According to the commenter, in these cases, the order information is not electronically captured and cannot be linked to other data for the purpose of creating a complete systemic record of the order. The commenter contends that in order to comply with the NYSE's proposed rule to capture order information relating to manual orders, there would be costs in addition to the cost of new technology needed for compliance by members. The commenter believes that there would be a "huge cost" to investors because, the commenter argues, sales-traders would need to divert their attention from handling customer orders in order to collect and electronically all the data elements required by the proposed rule. The commenter believes that a "legion of sales-traders performing clerical duties rather than monitoring markets for execution opportunities will make the markets riskier, less efficient and less accessible to investors."

B. Order Identifier

The commenter also explained that because manual orders are typically written down and are not entered into the receiving firm's system, no systemic order identifier is generated. The commenter believes that assigning a trader the responsibility of generating and appending an order identifier to manual orders could result in inefficient handling of orders. The commenter further believes that the risk of confusion, duplication, and bad data will be exacerbated as the order identifier is then orally relayed and recorded. Lastly, the commenter argues that because the NYSE rules contain an exception from the order tracking requirements for orders transmitted to the NYSE floor via SuperDot, market centers that are not already hard-wired to a member firm would be at a competitive disadvantage.

C. Online OCS Control Number

Pursuant to proposed NYSE Rule 123(f), members would be required to record an Online OCS Control Number as part of the order execution report entered into FESC. This identifier would allow members to check on settlement problems that may occur between a member and the Exchange. The commenter contends that the proposed rule's requirement to record an OCS Control Number is not reasonable, and the cost to build a feed to incorporate this information would be significant. The commenter also argues that this information should not be required as part of the audit trail, but instead should be maintained by members in a manner that they find efficient for use by regulators upon request.

D. Bunched Order Route Indicator

The commenter argues that compliance with the NYSE's requirement to include a "Bunched Order Route Indicator" may be impossible because a firm typically does not know at the time an order is received whether the order will ultimately be part of a bunched order. The commenter contends that this provision could only be complied with by retroactively attaching an indicator where necessary after personnel search for and locate the appropriate part of the order to which they must attach the indicator. The commenter believes that the amount of time that this process would take makes the rule unworkable.

The NYSE addressed these concerns in letters to the Commission dated August 15, 2002 and April 4, 2003.[21] The Exchange noted that the proposed rule was undertaken pursuant to the SEC Order that requires the Exchange to design and implement a comprehensive audit trail for all orders. The order audit trail must, among other matters, encompass "an accurate, time-sequenced record of orders, quotations and transactions, beginning with the receipt of an order by any NYSE member firm, and documenting the life of the order through the process of execution or cancellation of that order. * * *"[22] Thus, the Exchange addressed the SIA comment letter by indicating that the components of a complete audit trail require all of the components specified in their OTS rule. The Exchange acknowledged that "interpretative questions may surface during the practical implementation of the OTS system, and [it] is committed to working with the SIA to provide appropriate guidance to its members and member organizations as particular issues are identified."[23]

Further, the Exchange specifically addressed issues raised regarding the OCS Control Number and the Bunched Order Route Indicator.[24] With respect to the OCS Control Number, the Exchange represented that it did not believe, contrary to the assertion of the commenter, that inclusion of this identifier would be unduly burdensome, particularly in light of its value. The Exchange stressed the importance of the OCS Control Number as "a critical component in establishing a complete order audit trail from order entry through execution." The Exchange explained that the OCS Control Number would allow the Exchange to link the entry of an order, the execution report, and any modification to such report, thus providing a complete trail for each order.

The Exchange also addressed the commenter's concerns regarding the Bunched Order Route Indicator. The Exchange noted that this indicator would likely be used infrequently as in many instances, a firm receiving additional trading interest from a customer would choose to modify an existing order rather than create an additional order which might then have to be bunched with a prior order. The Exchange also explained that in the event a Bunched Order Route Indicator was needed, the OCS Control Number could be utilized to locate and link together any parts of an order to which a Bunched Order Route Indicator might need to be appended.

V. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national

[20] *See* note 9, *supra*, SIA Letter.

[21] *See* Letters from Mary Yeager, Assistant Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated August 15, 2002; and Darla Stuckey, Corporate Secretary, NYSE, Commission, dated April 3, 2003.

[22] *See* Letter from Mary Yeager, Assistant Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated August 15, 2002, quoting Securities Exchange Act Release No. 41574 (June 29, 1999).

[23] *Id.*

[24] *See* Letter from Darla Stuckey, Corporate Secretary, NYSE, Commission, dated April 3, 2003.

securities exchange.[25] In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[26] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The Commission also finds that the Exchange, through the proposed rule change, satisfies an undertaking set forth in the SEC Order. Specifically, the SEC Order directed the Exchange to "design and implement * * * an audit trail sufficient to enable the NYSE to reconstruct its market promptly, to effectively surveil the NYSE and to facilitate the effective enforcement of the federal securities laws and NYSE rules." At a minimum, the SEC Order called for the NYSE to provide "an accurate, time-sequenced record of orders * * *" throughout an order's life, from receipt through execution or cancellation and for synchronization of clocks used in connection with the audit trail of orders.

The proposed rule change will implement: (1) NYSE Rule 123(f) to require that order execution reports containing certain data elements be entered into FESC and that any member organization proprietary system used to record the details of an order must also be capable of transmitting a report of the order's execution to FESC; (2) NYSE Rule 132C to require members, upon request, to transmit order tracking data to the Exchange; and (3) NYSE Rule 132B to prescribe requirements and procedures with respect to orders in any security listed on the Exchange received or originated by a member. The Commission believes that the implementation of this proposed rule change will establish a complete and comprehensive audit trail which will provide the NYSE with an effective means to track and surveil an order from receipt through execution (or cancellation).

The Commission finds that the proposed rule change was designed to comply with, and fulfills an undertaking contained in the SEC Order relating to the Exchange's regulatory responsibilities to establish the Phase II Order Audit Trail. As specified in the SEC Order, this proposed rule change establishes an audit trail that will enable the Exchange to fulfill its regulatory responsibilities to effectively surveil its market and facilitate the effective enforcement of the Exchange Act and NYSE rules.

As described above, the sole commenter to the proposed rule change expressed concerns regarding the proposal's requirement that firms record information, including the time of receipt, for manual orders. The commenter also expressed dissatisfaction with the requirement that members must assign manual orders an order identification number. While the Commission appreciates these concerns, it notes that manual orders often are large or block-sized orders, therefore such orders have great potential to significantly impact the market and are particularly susceptible to manipulation. In the Commission's view, it is therefore essential to the creation of a complete and effective systemic order audit trail that the life of manual orders is captured to guard against, and aid surveillance for, potential manipulation.

The commenter also argued the proposal's requirement that members record an OCS Control Number is not reasonable because it would require members to build a feed to incorporate this information into the audit trail and the cost would be significant. Again, the Commission appreciates the concerns regarding potential costs associated with providing the Exchange with an OCS Control Number. However, in light of the vital regulatory purpose that will be achieved by the creation of an effective and complete systemic order audit trail, the Commission believes that the anticipated development costs are not undue or unwarranted. In the Commission's view, the OCS Control Number, or its equivalent, is an important part of the audit trail. The OCS Control Number will permit the Exchange to establish a complete order audit trail from order receipt through execution, thus permitting the Exchange to comply with its obligations under the SEC Order. Specifically, the Commission notes that the OCS Control Number will allow the Exchange to link the entry of an order, the execution report, and any modification to such report, thus providing a complete, systemic trail for each order.

Finally, the commenter expressed concern that compliance with the NYSE's requirement to include a "Bunched Order Route Indicator" may be impossible because a firm typically does not know at the time an order is received whether the order will ultimately be part of a bunched order. The Commission notes, however, that in order to comply with this provision, a member can make use to the OCS Control Number to locate and link together any parts of an order to which a Bunched Order Route Indicator might need to be appended. Further, the Commission notes that while this process may be somewhat time consuming, it does not expect that orders will be bunched on a regular basis; thus the process will be utilized only on rare occasions.

In approving this proposed rule change, the Commission emphasizes that the Exchange has committed to the following:

> The Exchange believes it should not have access to data generated by members and member organizations pursuant to these requirements for the purpose of gaining an unfair advantage over other market participants. In this vein, the Exchange commits that it will not use data received from its members and member organizations pursuant to these requirements to gain a competitive advantage over another self-regulatory organization or broker-dealer (market maker or electronic communications network).[27]

The Commission would be concerned if the information gained pursuant to OTS were used for any purpose other than regulatory surveillance.

In sum, the Commission recognizes that OTS will require some degree of system changes by NYSE members that will vary depending upon the business mix of the particular firm. These changes will entail costs for all NYSE members. Nevertheless, the Commission believes any costs are far outweighed by the substantial benefit to NYSE surveillance and enforcement that will be derived from OTS. The Commission expects that during the process of implementing and reviewing OTS, the Commission, the NYSE and NYSE members may identify ways in which to improve OTS to make it more efficient and effective from a technological or cost perspective. The Commission encourages a cooperative effort between the NYSE and its members to develop proposals that could achieve such efficiency while satisfying the requirements of the Exchange Act and the SEC Order for the NYSE audit trail.[28]

[25] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78f(b)(5).

[27] See Letter from Darla C. Stuckey, Assistant Secretary, NYSE to Belinda Blaine, Associate Director, Division, Commission, dated January 17, 2002 ("Amendment No. 3").

[28] The Exchange states it is committed to a cooperative effort between the NYSE and its members and member organizations in implementing OTS. See Letter from Mary Yeager, Assistant Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated August 15, 2002.

VI. Conclusion

The Commission believes that the proposal, as amended, should significantly assist the NYSE's efforts in fulfilling its regulatory responsibilities. The Commission further believes that the proposed rules meet the minimum requirements for an order audit trail system imposed by the Commission in the SEC Order, which required a time-sequenced record of orders and market-wide synchronization of all member firms' business clocks. In addition, OTS should provide a useful surveillance tool that will allow earlier detection of fraudulent activity for the benefit of investors and the public. Therefore, the Commission believes the approval of the proposed OTS, as amended, is appropriate and consistent with the requirements of the Act applicable to a national securities exchange, and in particular, with the requirements of section 6(b)(5) of the Act,[29] and the rules and regulations thereunder.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,[30] that the proposed rule change, as amended, (NYSE–99–51) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

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[29] 15 U.S.C. 78f(b)(5).

[30] 15 U.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47690; File No. SR–NYSE–2003–07]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend the Pilot Program Relating to the Allocation Policy for Trading of Exchange-Traded Funds on an Unlisted Trading Privileges Basis

April 17, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The proposed rule change has been filed by the NYSE as a "non-controversial" rule change under Rule 19b–4(f)(6) of the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE seeks to extend the pilot program relating to the allocation policy for trading certain Exchange-Traded Funds ("ETFs"), for an additional year. The current pilot program is set to expire on May 8, 2003. For purposes of the allocation policy, ETFs include both Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual) and Trust Issued Receipts (as defined in Rule 1200), which trade on an Unlisted Trading Privileges ("UTP") basis. The text of the proposed rule change is available at the Office of the Secretary, NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

This proposed rule change was originally filed as a one-year pilot in SR–NYSE–2001–07[4] and Amendment No. 1 thereto, and subsequently amended by SR–NYSE–2001–10[5] and SR–NYSE–2002–07.[6] The pilot was subsequently extended for another year and is due to expire on May 8, 2003.[7] Therefore, the Exchange seeks to extend the pilot relating to the allocation policy for trading certain Exchange-Traded Funds, for an additional year.

Since the inception of the Allocation Policy, the Exchange states that 36 different ETFs have been allocated. This includes 17 Merrill Lynch Holding Company Depositary Receipts (HOLDRs), a type of Trust Issued Receipt, 9 different types of Select Sector SPDRs, 1 MidCap SPDR, 5 different types of iShares, 1 VIPER, the Nasdaq-100 Index Tracking Stock (symbol QQQ), the Standard & Poor's Depositary Receipts (symbol SPY), and The Dow Industrials DIAMONDS (symbol DIA).

Allocation Policy for ETFs Trading Under UTP

The Exchange states that the intent of the Exchange's Allocation Policy and Procedures (the "Policy") is: (1) To ensure that the allocation process is based on fairness and consistency and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) to provide an incentive for ongoing enhancement of performance by specialist units; (3) to provide the best possible match between specialist unit and security; and (4) to contribute to the strength of the specialist system.

The Allocation Committee has sole responsibility for the allocation of securities to specialist units under this policy pursuant to authority delegated by the Board of Directors and is overseen by the Quality of Markets Committee of the Board ("QOMC"). The Allocation Committee renders decisions based on the allocation criteria specified in this policy.[8]

The Exchange believes that it would be appropriate to extend the pilot that modifies the conventional allocation process to provide that ETFs traded on a UTP basis be allocated by a special committee, consisting of the Chairman of the Allocation Committee, the three most senior Floor broker members of the Allocation Committee, and four members of the Exchange's senior management as designated by the Chairman of the Exchange. This will permit Exchange management, acting with key members of the Allocation Committee, to oversee directly the introduction of the UTP concept to the NYSE. For purposes of the Allocation Policy, ETFs collectively include Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual) and Trust Issued

[3] 17 CFR 240.19b–4(f)(6).

[4] See Securities Exchange Act Release No. 44272 (May 7, 2001), 66 FR 26898 (May 15, 2001) (SR–NYSE–2001–07).

[5] See Securities Exchange Act Release No. 44306 (May 15, 2001), 66 FR 28008 (May 21, 2001) (SR–NYSE–2001–10).

[6] See Securities Exchange Act Release No. 45729 (April 10, 2002), 67 FR 18970 (April 17, 2002) (SR–NYSE–2002–07).

[7] See Securities Exchange Act Release No. 45884 (May 6, 2002), 67 FR 32073 (May 13, 2002) (SR–NYSE–2002–17).

[8] See Securities Exchange Act Release No. 42746 (May 2, 2000), 65 FR 30171 (May 10, 2000) (SR–NYSE–99–34).

Receipts (as defined in Exchange Rule 1200).

Allocation applications would be solicited by the Exchange, and this special committee would review the same performance and disciplinary material as is reviewed by the Allocation Committee.[9] In addition, specialist unit applicants would be required to demonstrate:

(a) An understanding of the trading characteristics of ETFs;

(b) expertise in the trading of derivatively-priced instruments;

(c) ability and willingness to engage in hedging activity as appropriate;

(d) knowledge of other markets in which the ETF which is to be allocated trades; and

(e) willingness to provide financial and other support to relevant Exchange publicity and educational initiatives.

The special committee would review specialist unit applications and reach its allocation decision by majority vote. Any tie vote would be decided by the Chairman of the Exchange. The Exchange has determined that due to the unique aspects of certain ETF products, it may be helpful for the special committee to meet with and interview specialist units before making an allocation decision.

A specialist organization cannot be both the specialist in the ETF and the specialist in any security which is a component of the ETF. This restriction is necessary to avoid the possibility of "wash sales" in a situation where the specialist in the ETF needs to hedge by buying or selling component stocks of the ETF, and could inadvertently be trading with a proprietary bid or offer made by a specialist in the same member organization who is making a market in the component security.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[10] in general, and furthers the objectives of section 6(b)(5),[11] in particular, that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

[9] *See* Section IV ("Allocation Criteria") of the Allocation Policy and Procedures approved in Securities Exchange Act Release No. 42746 (May 2, 2000), 65 FR 30171 (May 10, 2000) (SR–NYSE–99–34) for details of the performance and disciplinary material available to the Allocation Committee.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange as a "non-controversial" rule change pursuant to section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act [14] and Rule 19b–4(f)(6)[15] thereunder.

The Exchange has requested that the Commission waive the five-day pre-notice requirement and the 30-day operative delay requirement, to permit the Exchange to implement the proposal immediately. Under Rule 19b–4(f)(6)(iii), a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, unless the Commission designates a shorter time.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow for the continued operation of the Exchange's Allocation Policy for ETFs trading on a UTP basis as a pilot program without interruption.[16] The Commission notes that it has not received any comments on previous proposed rule changes filed by the NYSE for this pilot. For this reason, the Commission designates the proposed rule change to be effective and operative upon its filing with the Commission. The Commission also waives the five-business day pre-filing requirement. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to the File No. SR–NYSE–2003–07 and should be submitted by May 15, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10104 Filed 4–23–03; 8:45 am]

BILLING CODE 8010–01–P

[16] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rules impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–47691; File No. SR–OCC–2002–10]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Market-Maker Account Agreements

April 17, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 21, 2002, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on October 18, 2002, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will amend OCC's By-Laws and Rules to eliminate the requirement that a clearing member must obtain a specified form of account agreement from each market-maker for whom it carries an account and submit the agreement to OCC for approval. The proposed rule change will also add two new interpretive statements to Article VI, Section 3 of OCC's By-Laws to clarify the application of certain amendments to Article 8 and Article 9 of the Uniform Commercial Code to OCC clearing accounts and to clarify the application of OCC's lien on clearing member account positions and clearing member obligations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Article VI, Section 3 of OCC's By-Laws and Chapter XI, Rule 1105 of OCC's Rules to eliminate the requirement that a clearing member must obtain and must submit to OCC for approval a specified form of account agreement from each market-maker for whom it carries an account. OCC believes that such submissions are no longer necessary to perfect its security interest in clearing members' market-maker accounts under the Uniform Commercial Code ("UCC") and are administratively burdensome for OCC and its clearing members. In order to incorporate the changes to Article IV, Section 3 into its rules, OCC proposes to make conforming changes to Rule 1105.

The proposed rule change also includes two interpretive statements. The first interpretative statement is intended to clarify the application to OCC clearing accounts of certain UCC amendments to Article 8 and to Article 9, which were adopted in 1994 and 1995. The other is intended to clarify that OCC's lien on positions in clearing member accounts extends to short security futures positions, as well as all other assets, and that OCC's lien secures clearing member obligations on long security futures positions, as well as all other obligations arising from the applicable account or accounts.

1. Background

Article VI, Section 3, of OCC's By-Laws specifies the types of clearing accounts that a clearing member may have at OCC, including accounts (referred to collectively herein as "market-maker accounts") in which a clearing member may carry positions of market professionals such as options market-makers, JBO participants,[3] and stock specialists (referred to collectively herein as "market-makers"). Clearing members that maintain market-maker accounts at OCC must, according to the current provisions of Section 3, obtain and submit to OCC for approval certain agreements from each market-maker whose funds and positions are included in such market-maker accounts.

The principal reason for requiring the filing of these agreements was to ensure that OCC's security interest in and setoff rights against long option positions and assets deposited as margin in market-maker Accounts would be protected under the UCC as it existed prior to the UCC amendments in the event of a clearing member insolvency. The contents of the required agreements vary depending upon the type of market-maker Account. In all cases, however, the agreements provide that OCC has: (a) A lien on positions and margin in the account as security for obligations of the clearing member to OCC arising in the account; (b) the right to net writing and purchase transactions in the account (*i.e.*, to carry positions "net"); and (c) the right to close out positions and apply proceeds without notice. In addition, market-makers whose assets are carried at OCC in combined accounts with other market-makers are required to consent to the commingling of their positions with the positions of other market-makers. Because OCC's lien on all assets in a combined market-makers' Account covers any obligation arising from the commingled account, assets attributable to one market-maker may be used by OCC to offset obligations of the clearing member that are attributable to the activity of a different market-maker.

OCC currently requires that a clearing member file with OCC a specified form of account agreement, executed by the clearing member and each market-maker included in the account, containing the required consents for the applicable type of market-maker account. OCC reviews the agreement and executes the agreement under the caption "Approved." The procedure is cumbersome and imposes administrative burdens on both clearing members and OCC staff. Moreover, OCC believes that there may be potential for confusion in the legal relationships established through these documents. Although the agreements are not intended to create contractual privity between OCC and the market-maker, OCC believes it might be possible to misinterpret the agreements as doing so.

2. Proposed Changes

As a result of the UCC amendments, OCC believes it is no longer necessary to require clearing members to file market-maker account agreements with OCC in order to protect OCC's security interest in and setoff rights against funds and positions in market-maker

[3] Under Article I, Section 1 of OCC's By-Laws, a "JBO participant" is a registered broker-dealer that "(i) maintains a joint back office arrangement with a clearing member pursuant to the requirements of Regulation T promulgated by the Board of Governors of the Federal Reserve System; (ii) meets the requirements applicable to JBO participants as specified in exchange rules; and (iii) consents to having his exchange transactions cleared and positions carried in a JBO participants account." Unless the context requires otherwise, a JBO Participant is a Market-Maker for purposes of OCC's By-Laws and all of OCC's Rules except for Chapter IV.

accounts.[4] The UCC amendments established new rules specifically tailored to govern the "indirect holding system" for securities and certain other investment property. Under these rules, OCC may obtain an automatically perfected, first-priority security interest in assets in market-maker accounts through provisions in OCC's By-Laws or Rules. No grant of a security interest from the market-maker to OCC is required.

Under the UCC amendments, OCC and its clearing members are "securities intermediaries," [5] and an OCC-issued option is a "financial asset." [6] A person acquires a "security entitlement" [7] and becomes an "entitlement holder" [8] when a securities intermediary credits a financial asset to that person's account.[9] Thus, OCC's clearing members acquire security entitlements against OCC when OCC credits positions to the clearing members' accounts. Similarly, the clearing members' customers (including market-makers) acquire security entitlements against the clearing member with respect to positions carried for the accounts of those customers on the books of the clearing member. In the first case, the clearing member is the entitlement holder, and OCC is the securities intermediary. In the second case, the customer (or market-maker) is the entitlement holder, and the clearing member is the securities intermediary. In this instance, the customers' security entitlement against the clearing member is a different item of property from the clearing member's security entitlement against OCC.[10]

In order for OCC to acquire a perfected security interest in clearing members' security entitlements, OCC must obtain "control" over the entitlements or the "securities account" in which they are held.[11] UCC 8–106(e) provides that the securities intermediary has control "[i]f an interest in a security entitlement is granted by the entitlement holder to the entitlement holder's own securities intermediary." As proposed, the revised rule would state that the clearing member (*i.e.*, the entitlement holder) agrees, and represents that it has obtained the agreement of each market-maker whose positions and transactions are included in the account and that OCC (*i.e.*, the securities intermediary) has a lien on long positions and margin in each market-maker account. Consequently, OCC will have a security interest perfected by control in the security entitlements in each market-maker account whether or not it has obtained a signed agreement from each market-maker.

Furthermore, OCC's security interest has priority over any competing interests. "A security interest in a security entitlement or a securities account [12] granted to the debtor's own securities intermediary has priority over any security interest granted by the debtor to another secured party." [13]

Because it remains the case that as between a clearing member and its customers (including a market-maker), the clearing member has a duty to obtain the customer's consent before subjecting the customer's securities to a security interest or taking certain other actions potentially affecting the customer's interests,[14] the proposed rule continues to require clearing members to contain specified agreements from market-maker and also to require them to represent to OCC that such agreements have in fact been obtained. Those clearing members that choose to continue to use an existing form of market-maker account agreement will be permitted to do so, but OCC will also permit the agreement required under Section 3 of Article VI of its By-Laws to be incorporated into a clearing member's own forms of account agreements to the extent that the clearing member chooses to do so.

OCC also proposes to add two new items to the Interpretations and Policies to Article VI, Section 3 of its By-Laws. The first sentence of proposed Interpretation .02 sets forth a representation and warranty that the clearing member has obtained the agreement of each person for whom a transaction is effected in any account of the clearing member at OCC pursuant to provisions of Section 3, including the security interest in the account that is granted by the clearing member to OCC, and that the inclusion of the person's transactions and positions in that type of account is otherwise permitted by applicable law. This representation would apply not only to market-maker accounts and JBO participant accounts [15] but also to the firm account, pledge accounts, securities customer accounts, cross-margining accounts, and segregated futures accounts that are provided for under paragraphs (a) and (d) through (g) of Section 3, respectively. OCC has never required that a specified form of agreements be obtained by clearing members from persons whose transactions are included in these other types of accounts. Nevertheless, Rule 15c3–3 and the Commission's hypothecation rules, Rule 8c–1 and Rule 15c2–1, as well as certain state laws require that certain consents and agreements be obtained, such as consent to the commingling of a customer's securities with the securities of another customer. These comments are included in the account documentation normally obtained by brokers from their customers and are the responsibility of the broker.

The final sentence of Interpretation .02 is intended to make clear that the rights of OCC, including its security interest, in any account of the clearing member with OCC are enforceable in accordance with their terms even if the clearing member fails in its obligations to obtain required consents or agreements from customers. This is consistent with the provision of UCC 8-503(e), which provides that an action based on an entitlement holder's property interest with respect to a financial asset held for its account by a securities intermediary, whether framed in conversion, replevin, constructive trust, equitable lien, or other theory, may not be asserted against any purchaser of the financial asset or an interest therein (which would include lien holders) who gives value, obtains control, and does not act in collusion with the securities intermediary in violating the securities intermediary's obligations to maintain the property for the entitlement holder. OCC's security interest is protected under this provision. [16]

The first sentence of proposed Interpretation .03 is intended to clarify that OCC's lien extends to all assets in the market-maker accounts and JBO participant accounts. Article VI, Sections 3(b), (c), and (h) of OCC's By-Laws governs such accounts and uses the same language to describe OCC's lien's over those assets.[17] This language has always been intended and understood to describe the scope of OCC's lien as extending to all assets in the accounts. "Long positions" were specifically referred to in Section 3 because in the case of options only long positions have asset value. Short option positions represent only a liability. However, as OCC begins clearing security futures, it seems prudent to clarify that OCC's lien extends to all positions that represent an asset in the account, including short futures positions, which may have asset value if the market has moved in their favor since the most recent mark-to-market payment. Thus, the first sentence of proposed Interpretation .03 clarifies that the "long positions, securities, margin and other funds" over which OCC's lien extends includes any "investment property," as defined in Article 9 of the UCC,[18] including long and short positions in security futures as well as any other asset.

The second sentence of proposed Interpretation .03 is also motivated by security futures, although it more broadly clarifies that OCC's lien acts as security for all obligations of the clearing member to OCC with respect to separate or combined market-maker accounts, customer accounts, or segregated futures accounts. OCC uses similar language in Sections 3(b), (c), (e), and (f) of Article VI of OCC's By-laws, which governs such accounts, to indicate that OCC has a lien on all long positions, margins, and other funds in the market-maker account with OCC as security for the clearing member's obligations to OCC in respect of all exchange transactions effected through such an account, short positions maintained in such an account, and exercise notices assigned to such an account. When OCC begins clearing security futures, its lien will also secure the clearing member's obligations with respect to long security futures positions in the account, which unlike long options which are always an asset may be a liability if the market has moved against those positions since the last mark-to-market payment. In order to avoid any confusion caused by reference to short positions but not to long positions, the proposed Interpretation .03 clarifies that obligations to OCC with respect to all exchange transactions should be read broadly to encompass, where applicable, obligations arising from long or short positions, obligations to make payments or delivery under cleared contracts, and obligations with respect to fees and charges associated with such transactions.

OCC has determined to clarify the language in Section 3 through the addition of Interpretation .03 rather than through an amendment to the text of Section 3 because OCC wants to avoid any possible inference that it is making a substantive change from the language that is Section 3, which language is currently used in outstanding market-maker account agreements.

Changes to Rule 1105(b) are intended merely to conform to the changes in Article VI, Section 3. Rather than refer to the market-maker account agreement, the rule would now refer directly to the applicable provisions in Article VI, Section 3, of the By-Laws which are required to be incorporated into an agreement between the clearing member and the market-maker.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act [19] and the rules and regulations thereunder applicable to OCC because it will promote the prompt and accurate clearance and settlement of securities transactions, fosters cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-coments@sec.gov*. All comment letters should refer to File No. SR–OCC–2002–10. This file number should be included on the subject line if e-mail is used. Copies of the

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[4] OCC did not propose to eliminate the requirement that clearing members file market-maker account agreements with OCC immediately after the adoption of the UCC amendments because that requirement was not inconsistent with the UCC amendments and because the UCC amendments were not immediately adopted in all U.S. jurisdictions. Because OCC is expecting an increase in Market-Maker account openings as a result of security futures trading, it is now a business priority for OCC to eliminate the requirement in order to relieve administrative burdens for both OCC and its clearing members.

[5] UCC 8–102(a)(14).

[6] UCC 8–102(a)(9)(ii) and 8–103(e).

[7] UCC 8–102(a)(17).

[8] UCC 8–102(a)(7).

[9] UCC 8–501(b)(1).

[10] Prefatory Note to UCC Article 8, Section III.C. states, "For purposes of Article 8 analysis, the customer's security entitlement against the broker or bank custodian is a different item of property from the security entitlement of the broker or bank custodian against the clearing corporation."

[11] UCC 9–314(a) and 9–106(a).

[12] UCC 8–501(a) defines "securities account" to mean "an account to which a financial asset is or may be credited in accordance with an agreement under which the person maintaining the account undertakes to treat the person for whom the account is maintained as entitled to exercise the rights that comprise the financial asset." UCC 9–102(a)(14) defines "commodity account" as an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer." Accounts established under Section 3 of OCC's By-Laws would ordinarily be "securities accounts," but certain accounts might be construed as commodity accounts or as both securities accounts and commodity account given that OCC may clear commodity contracts and security futures as well as security options. In any case, the Article 9 rules governing perfection and priority of security interests in commodity accounts and assets contained therein are substantively identical to those governing securities accounts and assets therein because all are included in the UCC 9–102(a)(49) definition of "investment property" to which those rules apply. To the extent that an account if a "commodity account," OCC will fail within the definition of a "commodity intermediary" under UCC 9–102(a)(17).

[13] UCC 9–328(3).

[14] See UCC 8–504(b), which states that a securities intermediary may not grant any security interests in a financial asset is it obligated to maintain on behalf of an entitlement holder except as otherwise agreed by the entitlement holder.

[15] Under Article I, Section 1, of OCC's By-Laws a "JBO participant account" means an account established by a clearing member which is confined to exchange transactions cleared and positions carried by the clearing member on behalf of JBO participants for whom the clearing member has filed a JBO participant account agreement with OCC.

[16] *See also* UCC 8–511(b), which provides that a claim of a creditor (OCC) of a securities intermediary (the failed clearing member) that is perfected by control has priority over the claims of the securities intermediary's entitlement holders.

[17] Article VI, Sections 3(b), (c), and (h) contain language to indicate that OCC has a lien on all long positions, securities, margin, and other funds in such accounts.

[18] UCC 9–102(a)(49) defines "investment property" to mean a "security, whether certified or uncertified, security entitlement, securities account, commodity contract, or commodity account."

[19] 15 U.S.C. 78q–1.

submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–2002–10 and should be submitted by May 15, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–10153 Filed 4–23–03; 8:45 am]

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DEPARTMENT OF STATE

[Public Notice 4342]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: International Sports Programming Initiative

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for an "International Sports Programming Initiative." Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to discuss approaches designed to enhance and improve the infrastructure of youth sports programs in the following countries: Jordan, Morocco, Saudi Arabia, and Turkey. To be eligible for consideration under this competition, proposals *must* provide a minimum of 50 percent cost sharing of the amount of grant funds sought from ECA, although proposals with higher cost sharing levels are welcome. The Office expects to make approximately three (3) full grants of no more than $135,000 each under this competition, covering all thematic areas outlined below.

Announcement Name and Number: All correspondence with the Bureau concerning this RFGP should reference the "Open Competition for International Sports Programming Initiative" and reference number: ECA/PE/C/WHAEAP–03–49. Please refer to title and number in all correspondence or telephone calls to the Office of Citizen Exchanges.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions may contact the Office of Citizen Exchanges, room 216, SA–44, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone number 202/260–5491, fax number 202/260–0440, or *rharvey@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer, Raymond H. Harvey, on all other inquiries and correspondence.

To Download a Solicitation Package Via Internet: The entire Solicitation Package also may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs.* Please read all information before downloading.

Program Information

Overview: The Office of Citizen Exchanges welcomes proposals that directly respond to the following thematic areas. Given budgetary limitations, projects for other themes and other countries will not be eligible for consideration under the FY–2003 International Sports Program Initiative.

Training Sports Coaches: The World Summit on Physical Education (Berlin, 1999) stated that a "quality physical education helps children to develop the patterns of interest in physical activity, which are essential for healthy development and which lay the foundation for healthy, adult lifestyles." Coaches are critical to the accomplishment of this goal. A coach not only needs to be qualified to provide the technical assistance required by young athletes to improve, but must also understand how to aid a young person to discover how success in athletics can be translated into achievement in the development of life skills and in the classroom.

Projects submitted in response to this theme would be aimed at aiding youth, secondary school and university coaches in the target countries in the development and implementation of appropriate training methodologies, through seminars and outreach. The goal is to ensure the optimal technical proficiency among the coaches participating in the program while also emphasizing the role sports can play in the long-term economic well being of youth.

Youth Sports Management Exchange: Exchanges funded under this theme would help American and foreign youth sport coaches, adult sponsors, and sports and civic organization officials share their experience in managing and organizing youth sports activities, particularly in financially challenging circumstances, and would contribute to better understanding of the role of sports as a significant factor in educational success. Program should be designed to convey to the foreign counterparts the importance of linking success in sports to educational and leadership achievement and how these factors can contribute to short-term and long-term economic prospects.

Youth with Disability: Exchanges supported by this theme are designed to promote and sponsor sports, recreation, fitness and leisure events for children and adults with physical disabilities. Project goals include improving the quality of life for people with disabilities by providing affordable inclusive sports and recreational experiences that build self-esteem and confidence, enhancing active participation in community life and making a significant contribution to the physical and psychological health of people with disabilities. Programs should be structured to ensure that physically and developmentally challenged individuals be fully included in the sports and recreation opportunities in their communities.

Sports and Health: Projects funded under this category will focus on effective and practical ways to use sport personalities and sports health professionals to increase awareness among young people of the importance of following a healthy life style to reduce illness, prevent injuries and speed the rehabilitation and recovery. Emphasis will be on the responsibility of the broader community to support healthy behavior. The project goals are to promote and integrate scientific research, education, and practical applications of sports medicine and exercise science to maintain and enhance physical performance, fitness, health, and quality of life. (Actual medical training and dispensing of medications are outside the purview of this theme.)

Guidelines: The Office seeks proposals that provide professional experience and exposure to American life and culture through internships, workshops and other learning-sharing experiences hosted by local institutions. The experiences also will provide Americans the opportunity to learn about other cultures and the social and economic challenges young athletes elsewhere face today. Travel under these grants should provide for a two-way exchange. Projects should not simply focus on athletic training; they should be designed to provide practical, hands-on experience in U.S. public/private sector settings that may be adapted to an individual's institution upon return home. Proposals may combine elements of professional enrichment, job shadowing and internships appropriate to the language ability and interests of the participants.

[20] 17 CFR 200.30–3(a)(12).

General Program Guidelines

Applicants must identify the local organizations and individuals in the counterpart country with whom they are proposing to collaborate and describe in detail previous cooperative programming and/or contacts. Specific information about the counterpart organizations' activities and accomplishments is required and must be included in the section on Institutional Capacity. All proposals must contain letters of support tailored to the project being proposed from all foreign-country partner organizations.

Exchanges and training programs supported by institutional grants from the Bureau should operate at two levels: They should enhance institutional partnerships, and they should offer practical information and experience to individuals and groups to assist them with their professional responsibilities. Strong proposals usually have the following characteristics:

- A proven track record of working in the proposed issue area;
- An experienced staff with language facility and a commitment by the staff to monitor projects locally to improve accountability;
- A clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant; and
- A follow-on plan beyond the scope of the Bureau grant.

Proposal narratives *must:*

- Demonstrate an organization's willingness to consult closely with the Public Affairs Section and other officers at the U.S. Embassy.
- Confirm that all materials developed for the project and with support from a grant provided under this competition will acknowledge USG funding for the program.
- Confirm a commitment to invite representatives of the Embassy and/or Consulate to participate in various program sessions/site visits. Please note that this will be a formal requirement in all final grant awards.

Suggested Program Designs

Bureau-supported exchanges may include internships; study tours; short-term, non-technical experiential learning, extended and intensive workshops and seminars taking place in the United States or overseas. Examples of possible program activities include:

1. A U.S.-based program that includes: Orientation to program purposes and to U.S. society; study tour/site visits; professional internships/placements; interaction and dialogue; hands-on training; professional development; and action plan development.

2. Capacity-building/training-of-trainer (TOT) workshops to help participants to identify priorities, create work plans, strengthen professional and volunteer skills, share their experience to committed people within each country, and become active in a practical and valuable way.

3. Seed/small grants to indigenous non-profit organizations to support community-based educational projects that build upon exchange activities and that address issues of local concern. Proposals may include a component for a Seed/Small Grants Competition (often referred to as "sub-grants" or "secondary grants"). This requires a detailed plan for recruitment and advertising; description of the proposal review and award mechanism; a plan for how the grantee would monitor and evaluate small grant activity; and a proposed amount for an average grant. The small grants should be directly linked to exchange activities. Small/seed grants may not be used for micro-credit or re-loaning purposes. Small/seed grants may not exceed 10% of the total value of the grant funds sought from ECA.

4. Site visits by U.S. facilitators/experts to monitor projects in the region and to provide additional training and consultations as needed.

5. Content-based Internet training/cyber-training to encourage citizen participation in workshops, fora, chats, and/or discussions via the Internet that will stimulate communication and information sharing among key opinion leaders on priority topics as a form of cost sharing. Proposals that include Internet utilization must reflect knowledge of the opportunities and obstacles that exist for use of information technologies in the target country or countries, and, if needed, provide hardware, software and servers, preferably as a form of cost sharing. Federal standards are under review and their adoption may impact on the implementation of these programs.

Selection of Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that programs in support of U.S. internships include letters tentatively committing host institutions to support the internships. In the selection of foreign participants, the Bureau and U.S. Embassies abroad retain the right to review all participant nominations and to accept or deny participants recommended by grantee institutions. The U.S. Embassy in the host country of the exchange must approve all exchange program foreign visitors. However, grantee institutions should describe in detail the recruitment and selection process they recommend. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority will be given to foreign participants who have not previously traveled to the United States.

Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of grantee program organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status.

Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the

administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et. seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from:

United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau of Educational and Cultural Affairs as required. As a minimum, the data must include the following: name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

Budget Guidelines

The Bureau has an overall budget of $400,000 for this competition. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000. The Bureau has set a ceiling of $135,000 for proposals funded under this competition. The Bureau encourages applicants to provide maximum levels of cost sharing and funding from private sources in support of its programs.

Applicants must submit a comprehensive budget for the entire program. Grant awards may not exceed $135,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Since Bureau grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. To be eligible for consideration under this competition, proposals *must* provide a minimum of 50 percent cost sharing of the amount of grant funds sought from ECA, although proposals with higher cost sharing levels are welcome.

Example: A proposal requests $125,000 in grant funds from ECA, for a project with a total budget of $500,000. The required *minimum* allowable cost sharing offered must amount to at least $62,500. In this case, the cost sharing far exceeds the minimum, since actual cost sharing is $375,000.

When cost sharing is offered, it is understood and agreed that the applicant must provide the minimum amount of cost sharing as stipulated in this RFGP and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all allowable costs, which are claimed as being your contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced proportionately to the contribution.

The following project costs are eligible for consideration for funding:

1. *Travel costs.* International and domestic airfares; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs. Please note that Tibetan participants may not travel to the U.S. primarily for English language instruction.

2. *Per Diem.* For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used.

Note: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at *http://www.policyworks.gov/*.

3. *Interpreters:* If needed, interpreters for the U.S. program are available through the U.S. Department of State Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $160/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget. Locally arranged interpreters with adequate skills and experience may be used by the grantee in lieu of State Department interpreters, with the same 1:4 interpreter to participant ratio. Costs associated with using their services may not exceed rates for U.S. Department of State interpreters.

4. *Book and cultural allowance:* Foreign participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. program staff members are not eligible to receive these benefits.

5. *Consultants.* Consultants may be used to provide specialized expertise, design or manage development projects or to make presentations. Honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Subcontracts should be itemized in the budget.

6. *Room rental.* Room rental may not exceed $250 per day.

7. *Materials development.* Proposals may contain costs to purchase, develop, and translate materials for participants.

8. *Equipment.* Proposals may contain limited costs to purchase equipment crucial to the success of the program, such as computers, fax machines and copy machines. However, equipment costs must be kept to a minimum, and costs for furniture are not allowed.

9. *Working Meal.* The grant budget may provide for only one working meal during the program. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. Interpreters must be included as participants.

10. *Return travel allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. This may be used for incidental expenses incurred during international travel.

11. *Health Insurance.* Foreign participants will be covered under the terms of a U.S. Department of State-sponsored health insurance policy. The premium is paid by the U.S. Department of State directly to the insurance company. Applicants are permitted to included costs for travel insurance for U.S. participants in the budget.

12. *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for grant organization employees, benefits, and other direct or indirect costs per detailed instructions in the Solicitation Package.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, May 30, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and ten copies of the application should be sent to:

U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/WHAEAP–03–49, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The Program Office and the Public Diplomacy section overseas will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program planning to achieve program objectives:* Proposals should clearly demonstrate how the institution plans to achieve the program's objectives. Objectives should be reasonable, feasible, and flexible. The proposal should contain a detailed agenda and relevant work plan that demonstrates substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. For technical projects, foreign experts and their local partners will be required to have the necessary education, training and experience for the work to be undertaken, in addition to language skills where applicable.

3. *Institutional Record/Ability:* Proposals should demonstrate an institutional record of successful development or exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Many successful applicants will have a multiyear track record of successful work in the selected country or within the region.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Follow-on Activities:* Proposals should identify other types of exchanges or linkages that might be undertaken after completion of the Bureau supported activity.

7. *Monitoring and Project Evaluation Plan:* Proposals should provide a detailed plan for monitoring and evaluating the program. The evaluation plan should identify anticipated outcomes and performance requirements clearly related to program objectives and activities and include procedures for ongoing monitoring and corrective action when necessary. The identification of best practices relating to project administration is also encouraged, as is the discussion of unforeseen difficulties.

8. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals must provide 30% cost sharing (of the amount of grant funds requested from ECA) through other

private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 16, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–10177 Filed 4–23–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4341]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: English as a Foreign Language (EFL) Institutes for Teachers and Administrators From Jordan and Morocco

SUMMARY: The Fulbright Teacher Exchange Branch, Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs (ECA) announces an open competition for an assistance award program to support the development of two single-country teacher-training institutes. Accredited, post-secondary educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to develop two English-as-a-Foreign Language (EFL) Institutes for teachers and administrators from Jordan and Morocco. Each Institute will provide an intensive five-week academic and one-week site visit program for 8–10 qualified English teachers and administrators from one of the respective countries.

Program Information

Overview

The Bureau asks for detailed proposals from U.S. institutions of higher education, which have expertise in the field of EFL. Proposals should demonstrate deep understanding of the local educational systems in Jordan and Morocco as well as the issues confronting English language education. Special expertise in handling cross-cultural programs is highly desired. Proposals should also outline practical and feasible follow-on activities that build on the achievements of the Institute while promoting the continued exchanges of ideas between the participants and the U.S. institution receiving the grant.

Project Objectives

The proposal should reflect three overall goals: First, to produce a highly focused seminar setting or "Institute" that updates participants in best practices in EFL at the primary through secondary levels; second, to provide participants with train-the-trainer skills that will enable them to conduct workshops on institute topics in their home countries in the future; and third, to provide participants with opportunities to interact with Americans, thereby allowing them to gain awareness and understanding of U.S. culture and society.

Guidelines

Project Planning and Implementation

Grant Inception and Duration

Pending availability of FY 2003 funds, the Institute should begin—and in-country follow-on workshops be conducted—as soon as local and international conditions allow.

Planning

With the concurrence of the Jordanian and Moroccan Ministries of Education, participants will be recruited and selected in-country by the Public Affairs Section of the U.S. Embassy, the Department of State's Regional English Language Officers (RELOs), and the Fulbright Commissions. U.S. embassy officials will work with the Ministries to facilitate follow-on training activities.

After the participants have been selected but prior to their arrival in the U.S., the grantee institution will be responsible for conducting an initial planning visit to both countries to consult with representatives from the U.S. Embassy, Fulbright Commissions, RELOs and local educators. During these meetings and in coordination with the local Fulbright Commission, the grantee institution will conduct a three-day pre-departure orientation workshop for the participants. For information on contacting the Fulbright Commissions please refer to the POGI. This workshop should provide information about the Institute, its goals, and expectations of participants. It should also offer a framework for integrating the Institute and its objectives into participants' previous training, and promote team-building strategies. At the workshops, organizers should seek input about the needs of local teachers, review comparative teaching practices, and address issues about participants' stay in the U.S.

In planning for the Institute, the U.S. grantee organization will identify and select specific training and instructional materials (up to a value of approximately $800–$1,000 per set) in consultation with the State Department, RELOs and local experts. Costs for the purchase of the materials and for their shipment will be paid through a separate contract. The grantee organization should not budget for these sets of materials. The materials will support the five-week academic program of the Institute as well as the in-country follow-on workshops. Numerous sets of these materials will be sent to both Jordan and Morocco and distributed to local teachers and schools participating in the follow-on workshops.

U.S. Based Training

Following the pre-departure orientation, participants will spend approximately six weeks in the U.S. immersed in the EFL Institute organized by the U.S. grantee. The Institutes should meet the needs of the Jordanian and Moroccan participants through activities designed by U.S. education specialists with appropriate expertise in EFL instruction, curriculum development and training. The Institutes should have two components: A five-week intensive academic program and a one-week cultural and educational program in Washington, DC. The five-week academic program should address innovative EFL teaching methodologies and approaches and their implementation in Jordan and Morocco. Significant time should also be allotted for the inclusion of related professional activities outside the classroom which will introduce participants to U.S. education specialists, such as visits to schools, consultations with U.S. teachers, in-school mentoring, and attendance at professional meetings. At a minimum, a one-week experiential component should be included in the five-week academic program in which participants observe best practices in EFL instruction and training in a U.S. school. Among the topics to be addressed during the Institutes are: Computer literacy skills for EFL instruction, critical thinking, communication, conflict resolution, analytical and evaluation skills, and student development and motivation.

Few participants will have visited the United States previously. In view of this, an initial orientation to the host institution, its community, and an introduction to U.S. society and its system of education should be an integral part of the Institute shortly after arrival on the U.S. campus. The five-week study program should also include cultural activities that facilitate interaction among the participants, American students, faculty, and administrators and the local community to promote mutual understanding between the people of the United States and the people of Jordan and Morocco countries.

The next component of the Institute is the one-week site visit to Washington, DC. The site visit should complement and reinforce the five-week academic program. Visits will include a meeting at the Bureau of Educational and Cultural Affairs and other meetings as advised by the Fulbright Teacher Exchange Branch.

Administration and management of the academic program and the week in Washington, DC will be the responsibility of the U.S. grantee organization. The U.S. institution is responsible for arrangements for domestic and international travel, lodging, food, and allowances for participants while at the host institution and in Washington.

In-Country Workshops

The final stage of this program will consist of a series of follow-on workshops in each country for a total of an additional 80–100 in-country participants. However, the U.S. grantee institution will be responsible for only facilitating the first of these workshops, which will bring together the U.S. trained participants with 12–15 of their fellow countrymen in each country. Assistance will be provided from the RELOs, and when possible, with a resident English Language Fellow—an experienced U.S. teacher trainer with expertise in TEFL/TESL supported by the Department of State to assist with the improvement of English teaching capacity in host country educational institutions. Institute participants will coordinate the additional workshops with assistance from the RELOs and Fellow. The Fulbright Commissions will provide administrative support and work with the Ministry of Education to encourage continued communication among all participants. At these workshops, Institute participants will showcase the teaching strategies they developed in the U.S., and practice the teacher training skills acquired during the program.

Budget Guidelines

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may submit separate sub-budgets for each program component, phase, location, or activity to provide clarification. The grant cost to the Bureau for the two Institutes and follow-on activity may not exceed $430,000. Subject to availability of funds, one grant will be awarded to conduct the EFL Institutes and follow-on for the two countries.

Bureau grant guidelines require that organizations with less than four years experience in conducting international exchanges be limited to $60,000. Therefore, organizations with less than four years of experience in conducting international exchanges are ineligible to apply under this competition.

Allowable costs for the program include the following:

(1) Instructional costs, including salaries and benefits of grantee organization, honoraria for outside speakers, educational materials;

(2) Travel, lodging, meals, and incidentals for participants;

(3) Expenses associated with cultural activities planned for the two groups of participants (for example, tickets, transportation);

(4) Administrative costs as necessary.

Proposals should maximize cost-sharing through private sector support as well as institutional direct funding contributions.

Please refer to the POGI for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/X–03–04.

FOR FURTHER INFORMATION CONTACT: The Fulbright Teacher Exchange Branch, Office of Global Educational Programs, ECA/A/S/X, Room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 260–5322, fax: (202) 401–1433 or e-mail: *fchery@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Farah Chery on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/rfgps.* Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, May 30, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and seven (7) copies of the application should be sent to: U.S.

Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/X–03–04, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The grantee will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of program idea and planning:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission. Proposals should demonstrate substantive expertise in EFL education, curriculum development and teacher training. Proposals should also illustrate effective use of community and regional resources to enhance the cultural and educational experiences of participants. Teaching objectives should be reasonable, feasible, and flexible. In addition, proposal should provide a detailed calendar and relevant work plan and demonstrate how the institution will meet the program's objectives.

2. *Multiplier effect/impact:* Proposed program should contribute to long-term, mutual understanding and sharing of information about the culture of Jordan and Morocco among Americans, as well as to the understanding of and knowledge of the U.S. among the Jordanian and Moroccan participants.

3. *Support of Diversity:* Proposals should demonstrate the recipient's commitment to promoting the awareness and understanding of diversity. Achievable and relevant features should be cited in both program administration (Institute staff and host community, program venue and program evaluation) and program content (orientation, program meetings, resource materials and follow-up activities). The proposal should demonstrate an understanding of the diversity needs in both countries and strategies for addressing these needs in terms of the project goals.

4. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve a substantive academic program and effective cross-cultural communication with Jordanian or Moroccan participants. Proposal should show evidence of strong on-site administrative capabilities with specific discussion of how logistical arrangements will be undertaken. Proposals that demonstrate institutional experience in Jordan and Morocco, knowledge of the educational systems in both countries, as well as an institutional record of successful implementation of exchange programs will receive preference.

5. *Project Evaluation:* Proposals should include a plan to evaluate the Institute's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives are recommended. Successful applicants will be expected to submit quarterly or intermediate reports after each project component is concluded, whichever is less frequent.

6. *Follow-on Activities:* Proposals should provide a detailed plan outlining the follow-on workshop that the U.S. grantee organization is responsible for conducting in each country. Workshops should enable Institute participants to provide training to local teachers on the skills and teaching strategies acquired in the five-week program. As with the Institute, the workshop should integrate the collection of pre-selected instructional materials into the training and draft a syllabus for the training of local teachers during follow-on activities. In addition to these workshops, proposals should also include a plan for other follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

7. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 17, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–10176 Filed 4–23–03; 8:45 am]

BILLING CODE 4710–05–U

DEPARTMENT OF STATE

[Public Notice 4340]

Bureau of Educational and Cultural Affairs Request for Grant Proposals (RFGPs): Tibet Development, Professional, Educational and Cultural Exchange Projects

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for the Tibet Development, Professional, Educational and Cultural Exchange Projects. U.S.-based public and private non-profit organizations meeting the provisions described in Internal Revenue code section 26 U.S.C. 501(c)(3) may submit proposals that promote understanding between the people of the United States and the people of the Tibetan ethnic group living in China, through professional, educational and cultural projects.

To be eligible for consideration under this competition, proposals *must* provide a minimum of 30 percent cost sharing of the amount of grant funds sought from ECA, although proposals with higher cost sharing levels are welcome.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFGP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until after the Bureau program and project review process has been completed.

Announcement Name and Number: All correspondence with the Bureau concerning this RFGP should reference the "Open Competition for Tibet Development, Professional, Educational and Cultural Exchange Projects" and reference number: ECA/PE/C/WHAEAP–03–48. Please refer to title and number in all correspondence or telephone calls to the Office of Citizen Exchanges.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions mmay contact the Office of Citizen Exchanges, room 216, SA–44, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone number 202/260–5491, fax number 202/260–0440, or *rharvey@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer, Raymond H. Harvey, on all other inquiries and correspondence.

To Download a Solicitation Package Via Internet: The entire Solicitation Package also may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Program Information

Overview: The Office of Citizen Exchanges welcomes proposals that directly respond to the thematic areas listed below. Projects for other themes will not be eligible for consideration under the FY–2003 Tibet Development, Professional, Educational and Cultural Exchange Project announcement.

Approximately $1.7 million is expected to be available to support projects under this competition. Approximately $500,000 is being provided from the Bureau's FY–2003 Appropriation for a project or projects focusing on the themes of Vocational Education and Cultural Preservation. It is anticipated that the balance of funding will be provided to the Bureau via an Economic Support Fund (ESF) transfer to support a project or projects focusing on Public Health Management, Sustainable Development and Eco-Tourism and Entrepreneurship Development. Please note: The award of ESF funded grants is subject to transfer of valid funding authority to the Bureau.

Public Health Management

Projects submitted in response to this theme would be aimed at engaging public health leaders to combat the debilitating health problems ethnic Tibetans face in China, from malnutrition to fatal pneumonia, tuberculosis and diarrhea. The program would focus on developing and implementing appropriate public health policies, through seminars, training programs (especially in the areas of inoculations, child nutrition, midwifery, cataract surgery, or cleft palate repair) and outreach to public and private health planners and practitioners, to ensure the optimal welfare and economic viability of ethnic Tibetan communities. (Formal medical education and dispensing of medications are outside the purview of this theme and will not be accepted activities for funding based on exchange guidelines.)

Sustainable Development and Eco-tourism

Exchanges and development activities funded under this theme would help American and ethnic Tibetan conservationists, tourism planners, and

economic development officials share their experience in managing tourism resources and development projects, particularly in ecologically fragile areas, and would contribute to better understanding of conservation and concepts essential to responsible economic development. Local community development projects are invited in such areas as renewable energy, eco-tourism, micro-credit, or poverty alleviation projects, including farm technology, animal husbandry, or agricultural marketing. Americans are in a good position to convey to their Tibetan counterparts the importance of sustainable forestry practices and sustainable harvesting of plant resources to short-term and long-term economic prospects.

Vocational Education

Proposals are sought which emphasize vocational training or administration and development of vocational schools targeted towards the practical needs of ethnic Tibetan communities. Successful projects would help influence thinking among those responsible for economic planning in rural and urban areas where Tibetans live. Discussion of how to integrate education planning with economic development initiatives, how to diversify revenue sources, and how to recruit, train and retain strong faculty would all contribute towards dialogue on vocational education, an issue important to both ethnic Tibetans and Americans in a modern and changing economy.

Vocational education may include practical training of entrepreneurs; development of Tibetan-language educational materials (such as Tibetan-English teaching guides or Tibetan-language public health education materials; or development of distance-learning technology solutions for remote rural schools. English-language training projects should focus on in situ training. (Projects seeking funding to support the travel of ethnic Tibetans to the U.S. for English language instruction are outside the purview of this theme and will not be accepted activities for funding under this competition.)

Developing Enterpreneurship

Projects under this theme may focus on the skills ethnic Tibetans, many of whom come from rural backgrounds with rudimentary economies, need to function effectively in a modern economy (*e.g.* finance, accounting, and language skills). Projects that explore ways that both the government and the private sector can help promote entrepreneurship in sustainable ways, including access to credit, ecologically conscious tourism policies and investment, or English language training for trade or tourism purposes will be favored. Programs that train budding entrepreneurs and develop micro finance programs for them are welcome.

Cultural Presevation

Projects under this theme are aimed to assist ethnic Tibetans in preserving their cultural heritage through programs designed to reduce the threat of pillage of irreplaceable cultural heritage, and to create opportunities to develop long-term strategies for preserving cultural property through training and conservation, museum development, and public education.

Projects might include supporting the preservation of cultural sites; objects in a site, museum or similar institution; or forms of traditional cultural expression. The proposals may encompass topics such as museum needs, historic buildings, collections, archaeological sites, rare manuscripts, traditional music and language.

Guidelines

The Office seeks proposals that provide professional experience and exposure to American life and culture through internships, workshops and other learning-sharing experiences hosted by local institutions. The experiences also will provide Americans the opportunity to learn about Tibetan culture and the social and economic challenges Tibetans face today. While a portion of this funding will be available for travel under these grants to support two-way exchanges, the key aim is to train and assist ethnic Tibetans living in China. Proposals only seeking funding for one-way travel, either Tibetans to travel to the United States or U.S. project personnel to travel to China must provide a clear explanation detailing the rationale for a one-way exchange. Projects in the U.S. should not simply be academic in nature; they should be designed to provide practical, hands-on experience in U.S. public/private sector settings that may be adapted to an individual's institution upon return home. Proposals may combine elements of professional enrichment, job shadowing and internships appropriate to the language ability and interests of the participants.

General Program Guidelines

Applicants must identify the local organizations and individuals in the counterpart country with whom they are proposing to collaborate and describe in detail previous cooperative programming and/or contacts. Specific information about the counterpart organizations' activities and accomplishments is required and must be included in the section on Institutional Capacity. All proposals must contain letters of support tailored to the project being proposed from all foreign-country partner organizations.

Exchanges and training programs supported by institutional grants from the Bureau should operate at two levels: they should enhance institutional partnerships, and they should offer practical information and experience to individuals and groups to assist them with their professional responsibilities. Strong proposals usually have the following characteristics:

- A proven track record of working in the proposed issue area;
- An experienced staff with language facility and a commitment by the staff to monitor projects locally to improve accountability;
- A clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant; and
- A follow-on plan beyond the scope of the Bureau grant.

Proposal narratives must demonstrate an organization's willingness to consult closely with the Public Affairs Section and other officers at the U.S. Embassy and at the U.S. Consulate in Chengdu. Proposal narratives must confirm that all materials developed for the project will acknowledge USG funding for the program as well as a commitment to invite representatives of the Embassy and/or Consulate to participate in various program sessions/site visits. Please note that this will be a formal requirement in all final grant awards.

Suggested Program Designs

Bureau-supported exchanges may include internships; study tours; short-term, non-technical experiential learning, extended and intensive workshops and seminars taking place in the United States or overseas. Examples of possible program activities include:

1. A U.S.-based program that includes: orientation to program purposes and to U.S. society; study tour/site visits; professional internships/placements; interaction and dialogue; hands-on training; professional development; and action plan development.

2. Capacity-building/training-of-trainer (TOT) workshops to help participants to identify priorities, create work plans, strengthen professional and volunteer skills, share their experience to committed people within each country, and become active in a practical and valuable way.

3. Seed/small grants to indigenous non-profit organizations to support community-based educational projects that build upon exchange activities and that address issues of local concern. Proposals may include a component for a Seed/Small Grants Competition (often referred to as "sub-grants" or "secondary grants"). This requires a detailed plan for recruitment and advertising; description of the proposal review and award mechanism; a plan for how the grantee would monitor and evaluate small grant activity; and a proposed amount for an average grant. The small grants should be directly linked to exchange activities. Small/seed grants may not be used for micro-credit or re-loaning purposes. Small/seed grants may not exceed 10% of the total value of the grant funds sought from ECA.

4. Site visits by U.S. facilitators/experts to monitor projects in the region and to provide additional training and consultations as needed.

5. Content-based Internet training/cyber-training to encourage citizen participation in workshops, fora, chats, and/or discussions via the Internet that will stimulate communication and information sharing among key opinion leaders on priority topics as a form of cost sharing. Proposals that include Internet utilization must reflect knowledge of the opportunities and obstacles that exist for use of information technologies in the target country or countries, and, if needed, provide hardware, software and servers, preferably as a form of cost sharing. Federal standards are under review and their adoption may impact on the implementation of these programs.

Selection of Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that for programs including U.S. internships, grant applicants submit letters tentatively committing host institutions to support the internships. In the selection of Tibetan participants, the Department, the U.S. Embassy in Beijing and the U.S. Consulate in Chengdu retain the right to review all participant nominations and to accept or refuse participants recommended by grantee institutions. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority in two-way exchange proposals will be given to foreign participants who have not previously traveled to the United States.

Adherence to All Regulations Governing the J Visa

The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs is the official program sponsor of the exchange program covered by this RFGP, and an employee of the Bureau will be the "Responsible Officer" for the program under the terms of 22 CFR part 62, which covers the administration of the Exchange Visitor Program (J visa program). Under the terms of 22 CFR part 62, organizations receiving grants under this RFGP will be third parties "cooperating with or assisting the sponsor in the conduct of the sponsor's program." The actions of grantee program organizations shall be "imputed to the sponsor in evaluating the sponsor's compliance with" 22 CFR part 62. Therefore, the Bureau expects that any organization receiving a grant under this competition will render all assistance necessary to enable the Bureau to fully comply with 22 CFR part 62 *et seq.*

The Bureau of Educational and Cultural Affairs places great emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantee program organizations and program participants to all regulations governing the J visa program status. Therefore, proposals should *explicitly state in writing* that the applicant is prepared to assist the Bureau in meeting all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR part 62. If your organization has experience as a designated Exchange Visitor Program Sponsor, the applicant should discuss their record of compliance with 22 CFR part 62 *et seq.*, including the oversight of their Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements.

The Office of Citizen Exchanges of ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Program Data Requirements

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau of Educational and Cultural Affairs as required. As a minimum, the data must include the following: Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

Budget Guidelines

Grants awarded to eligible organizations with less than four years experience in conducting international exchange programs will be limited to $60,000. Applicants must submit a comprehensive budget for the entire program. It is anticipated that grant awards will range from $175,000 to $250,0000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location or activity. Pending the availability and the transfer of funds to the Bureau, it is anticipated that approximately $1.7 million will be available to support projects under this competition. Approximately $500,000 is being provided from the Bureau's FY–2003 Appropriation. It is anticipated that the balance of funding will be provided to the Bureau via an Economic Support Fund (ESF) transfer. Please note: The Bureau cannot guarantee funding for ESF supported projects. These grants are subject to the transfer of valid funding authority to the Bureau.

Since Bureau grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other anticipated sources of financial and in-kind support. To be eligible for consideration under this competition, proposals *must* provide a minimum of 30 percent cost sharing of the amount of grant funds sought from ECA, although proposals with higher cost-sharing levels are welcome.

Example: A proposal requests $125,000 in grant funds from ECA, for a project with a total budget of $500,000. The required minimum allowable cost sharing offered must amount to at least $37,500. In this case, the cost sharing far exceeds the minimum; since actual cost sharing is $375,000.

When cost sharing is offered, it is understood and agreed that the applicant must provide the minimum

amount of cost sharing as stipulated in this RFGP and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all allowable costs, which are claimed as being your contribution to cost participation, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced proportionately to the contribution.

The following project costs are eligible for consideration for funding:

1. *Travel costs.* International and domestic airfares; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J1 visas for participants in Bureau sponsored programs. Please note that Tibetan participants may not travel to the U.S. primarily for English language instruction.

2. *Per diem.* For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. NOTE: U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at *http://www.policyworks.gov/.*

3. *Interpreters.* If needed, interpreters for the U.S. program are available through the U.S. Department of State Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who need interpretation. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $160/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget. Locally arranged interpreters with adequate skills and experience may be used by the grantee in lieu of State Department interpreters, with the same 1:4 interpreter to participant ratio. Costs associated with using their services may not exceed rates for U.S. Department of State interpreters.

4. *Book and cultural allowance.* Foreign participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. program staff members are not eligible to receive these benefits.

5. *Consultants.* Consultants may be used to provide specialized expertise, design or manage development projects or to make presentations. Honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Subcontracts should be itemized in the budget.

6. *Room rental.* Room rental may not exceed $250 per day.

7. *Materials development.* Proposals may contain costs to purchase, develop, and translate materials for participants.

8. *Equipment.* Proposals may contain limited costs to purchase equipment crucial to the success of the program, such as computers, fax machines and copy machines. However, equipment costs must be kept to a minimum, and costs for furniture are not allowed.

9. *Working meal.* The grant budget may provide for only one working meal during the program. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. Interpreters must be included as participants.

10. *Return travel allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. This may be used for incidental expenses incurred during international travel.

11. *Health insurance.* Foreign participants will be covered under the terms of a U.S. Department of State-sponsored health insurance policy. The premium is paid by the U.S. Department of State directly to the insurance company. Applicants are permitted to included costs for travel insurance for U.S. participants in the budget.

12. *Administrative costs.* Costs necessary for the effective administration of the program may include salaries for grant organization employees, benefits, and other direct or indirect costs per detailed instructions in the Solicitation Package.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Friday, May 30, 2003. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 12 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/WHAEAP–03–48, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5″ diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, the Public Diplomacy section and other elements at the U.S. Embassy in Beijing, and officials at the U.S. Consulate in Chengdu, will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Program planning to achieve program objectives:* Proposals should clearly demonstrate how the institution plans to achieve the program's objectives. Objectives should be reasonable, feasible, and flexible. The proposal should contain a detailed agenda and relevant work plan that demonstrates substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

2. *Institutional Capacity/Record/Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. For technical projects, foreign experts and their local partners will be required to have the necessary education, training and experience for the work to be undertaken, in addition to language skills where applicable. Proposals should demonstrate an institutional record of successful development or exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Applicants should have a multiyear track record of successful work in Tibetan regions of China or other remote parts of Asia.

3. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

4. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

5. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

6. *Monitoring and Project Evaluation Plan:* Proposals should provide a detailed plan for monitoring and evaluating the program. The evaluation plan should identify anticipated outcomes and performance requirements clearly related to program objectives and activities and include procedures for ongoing monitoring and corrective action when necessary. The identification of best practices relating to project administration is also encouraged, as is the discussion of unforeseen difficulties.

7. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals must provide 30% cost sharing (of the amount of grant funds requested from ECA) through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 16, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–10175 Filed 4–23–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34328]

Pennsylvania Southwestern Railroad, Inc.—Lease and Operation Exemption—J&L Specialty Steel, LLC

Pennsylvania Southwestern Railroad, Inc. (PSWR), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to lease and operate approximately 10.5 miles of rail line currently owned by J&L Specialty Steel, LLC (J&L) [1] located within J&L's steel plant in Midland, PA.[2] PSWR certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier. Also, PSWR certifies that its projected annual revenue will not exceed $5 million.

The transaction was due to be consummated on or after April 1, 2003,

[1] J&L's subsidiary, The Midland Terminal Company, currently operates the line.

[2] This proceeding is related to *Watco Companies, Inc.—Continuance in Control Exemption—Pennsylvania Southwestern Railroad, Inc.*, STB Finance Docket No. 34329, wherein Watco Companies, Inc., a noncarrier, has concurrently filed a notice of exemption to continue in control of PSWR upon PSWR's becoming a carrier.

the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34328, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Karl Morrell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: April 16, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–10035 Filed 4–23–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34329]

Watco Companies, Inc.—Continuance in Control Exemption—Pennsylvania Southwestern Railroad, Inc.

Watco Companies, Inc. (Watco), a noncarrier, has filed a verified notice of exemption to continue in control of Pennsylvania Southwestern Railroad, Inc. (PSWR), upon PSWR's becoming a Class III railroad.

The transaction was expected to be consummated on or after April 1, 2003, the effective date of the exemption (7 days after the notice was filed).

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34328, *Pennsylvania Southwestern Railroad, Inc.—Lease and Operation Exemption—Steel, LLC*, wherein PSWR seeks to lease and operate approximately 10.5 miles of rail line currently owned by J&L Specialty Steel, LLC.

At the time it filed this notice, Watco controlled six Class III railroads: the South Kansas and Oklahoma Railroad Company; Palouse River & Coulee City Railroad, Inc.; the Timber Rock Railroad, Inc.; the Stillwater Central Railroad; the Eastern Idaho Railroad, Inc.; and the Kansas & Oklahoma Railroad, Inc., operating in the states of Colorado, Idaho, Kansas, Louisiana, Missouri, Oklahoma, Oregon, Texas and Washington.

Applicants state that: (1) The railroads do not connect with each other or any railroad in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the seven railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2). The purpose of the transaction is to enable Watco to reduce overhead expenses; coordinate billing, maintenance, mechanical and personnel policies and practices of its rail carrier subsidiaries; and improve the overall efficiency of rail service provided by the seven railroads.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324–25 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502 (d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34329, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on: Karl Morrell, Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: April 16, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–10034 Filed 4–23–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0227]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 27, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0227."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0227" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Prosthetics Care and Service, VA Form 10–0142b.

b. Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1.

c. Experiences of Patients Ambulatory Care, VA Form 10–1465–3.

d. Nutritional and Food Service, VA Form 10–5387.

OMB Control Number: 2900–0227.

Type of Review: Revision of a currently approved collection.

Abstract: Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and Departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. VHA uses customer satisfaction surveys to gauge customer perceptions of VA services as well as customer expectations and desires. Each collection of information will consist of the minimum amount of information necessary to determine customer needs and to evaluate VHA's performance.

The areas of concern to VHA and its customer may change over time, and it is important to have the ability to evaluate customer concerns quickly. Participation in the surveys will be voluntary and the generic clearance will not be used to collect information required to obtain or maintain eligibility for a VA program or benefit. The results of these information collections lead to improvements in the quality of VHA service delivery by helping to shape the direction and focus of specific programs and services.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 19, 2003 at pages 8083–8084.

Estimated Annual Burden: 207,287 hours.

a. Prosthetics Care and Service, VA Form 10–0142b—7,200.

b. Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1—35,000.

c. Experiences of Patients Ambulatory Care, VA Form 10–1465–3—160,500.

d. Nutritional and Food Service, VA Form 10–5387—4,587.

Estimated Average Burden Per Respondent: 23 minutes.

a. Prosthetics Care and Service, VA Form 10–0142b—24 minutes.

b. Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1—30 minutes.

c. Experiences of Patients Ambulatory Care, VA Form 10–1465–3—30 minutes.

d. Nutritional and Food Service, VA Form 10–5387—2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 546,600.

a. Prosthetics Care and Service, VA Form 10–0142b—18,000.

b. Experiences of Patients Recently Discharged Inpatient, VA Form 10–1465–1—70,000.

c. Experiences of Patients Ambulatory Care, VA Form 10–1465–3—321,000.

d. Nutritional and Food Service, VA Form 10–5387—137,600.

Dated: April 9, 2003.

By direction of the Secretary.

Martin L. Hill,

Acting Director, Records Management Service.

[FR Doc. 03–10123 Filed 4–23–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Minority Veterans will be held from Tuesday, May 13, 2003, through Thursday, May 15, 2003, from 8:30 a.m. until 5 p.m. each day, at the Courtyard Marriott, 1725 West Filmore Avenue, Harlingen, Texas.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority veterans, to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

On May 12, the Committee will hold panel discussions with key staff members from VA Heart of Texas Health Care Network (VISN 17), San Antonio VA Medical Center and Houston Regional Office on services and benefits delivery challenges and concerns for the south Texas veterans. During the afternoon, the Committee will hold panel discussions with various Veteran Service Organizations and Congressman Solomon Ortiz's staff on their concerns and observations of south Texas veterans' needs.

On May 13, the Committee will hold town hall meetings with veterans from the south Texas area in Brownsville as well as tour the Brownsville Community Based Outpatient Clinic. Committee members will also tour the McAllen Community Based Outpatient Clinic.

On May 14, the Committee will tour the University of Harlingen Medical Center and receive a briefing on the medical center's capabilities. In the afternoon, the Committee will begin drafting the 2003 annual report documenting their findings during the current trip.

These sessions will be open to the public. The Committee will accept written comments from interested parties on issues outlined in the meeting agenda, as well as other issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 29420.

For additional information about the meeting, you may call Ms. Elizabeth Olmo at (202) 273–6708.

Dated: April 18, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–10122 Filed 4–23–03; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease Development of Property at the Department of Veterans Affairs Maryland Health Care System, Fort Howard, MD

AGENCY: Department of Veterans Affairs.

ACTION: Notice of intent to designate.

SUMMARY: The Secretary of the Department of Veterans Affairs (VA) is designating the Department of Veterans Affairs Maryland Health Care System, Fort Howard, Maryland, for an enhanced-use lease development. The Department intends to enter a 75-year lease of 94.6 acres of real property with a competitively selected lessee/developer who will finance, design, develop, maintain and manage facilities, including some or all of the components of a continuing care retirement community, all at no cost to VA.

FOR FURTHER INFORMATION CONTACT: Jake Gallun, Office of Asset Enterprise Management (004B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8862.

SUPPLEMENTARY INFORMATION: 38 U.S.C. section 8161 *et seq.* specifically provides that the Secretary may enter into an enhanced-use lease if he determines that at least part of the use of the property under the lease will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property or result in improved services to veterans. This project meets these requirements.

Approved: April 17, 2003.
Anthony J. Principi,
Secretary of Veterans Affairs.
[FR Doc. 03–10124 Filed 4–23–03; 8:45 am]
BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 68, No. 79
Thursday, April 24, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Monoclonal Antibody Against Ricin A Chain

Correction

In notice document 03–9470 beginning on page 18972 in the issue of Thursday, April 17, 2003, make the following corrections:

1. On page 18972, in the third column, in the second line from the bottom, "100 μg/mL", should read "100 ηg/mL".

2. On page 18973, in the first column, in the second line, "1000 μg/mL", should read "1000 ηg/mL".

[FR Doc. C3–9470 Filed 4–23–03; 8:45 am]
BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 74

[IB Docket No. 98–172, FCC 02–317]

Redesignation of the 17.7–19.7 GHz Frequency Band, Blanket Licensing of Satellite Earth Stations in the 17.7–20.2 GHz and 27.5–30.0 GHz Frequency Bands, and the Allocation of Additional Spectrum in the 17.3–17.8 GHz and 24.75–25.25 GHz Frequency Bands for Broadcast Satellite-Service Use

Correction

In rule document 03–7322 beginning on page 16962 in the issue of Tuesday, April 8, 2003, make the following corrections:

§ 74.551 [Corrected]

1. On page 16967, in the first column, in § 74.551, in amendatory instruction 13, in the second line, "(d)" should read "(b)".

2. On the same page, in the second column, also in §74.551, paragraph heading "(d)" should read "(b)".

[FR Doc. C3–7322 Filed 4–23–03; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Paperless Drawback Prototype: Delay of Commencement of Test and Reopening of Application Period

Correction

In notice document 03–9405 beginning on page 18994 in the issue of Thursday, April 17, 2003, make the following correction:

On page 18995, in the first column, under the heading **DATES**, in the sixth line, "May 19, 2003" should read, "June 18, 2003".

[FR Doc. C3–9405 Filed 4–23–03; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 012–2003]

Privacy Act of 1974; Implementation

Correction

In rule document 03–9324 beginning on page 19148 in the issue of April 18, 2003, make the following correction:

On page 19149, in the second column, under **List of Subjects in 28 CFR Part 16**, in the second paragraph, in the fourth line "3003" should read "2003".

[FR Doc. C3–9324 Filed 4–23–03; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–8677; Notice 4]

RIN 2127–AI92

Reporting of Information and Documents About Potential Defects; Defect and Noncompliance Reports

Correction

In rule document 03–9199 beginning on page 18136 in the issue of Tuesday, April 15, 2003, make the following correction:

§ 579.28 [Corrected]

On page 18143, in the second column, in §579.28, in paragraph (c), in the second line, "No" should read "(1) No".

[FR Doc. C3–9199 Filed 4–23–03; 8:45 am]
BILLING CODE 1505–01–D

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Federal Register

Thursday,
April 24, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Coastal California Gnatcatcher (*Polioptila californica californica*) and Determination of Distinct Vertebrate Population Segment for the California Gnatcatcher (*Polioptila californica*); Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI72

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Coastal California Gnatcatcher (*Polioptila californica californica*) and Determination of Distinct Vertebrate Population Segment for the California Gnatcatcher (*Polioptila californica*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U. S. Fish and Wildlife Service (Service), propose designation of critical habitat for the coastal California gnatcatcher *(Polioptila californica californica)* pursuant to the Endangered Species Act of 1973, as amended (Act). A total of approximately 200,595 hectares (ha) (495,795 acres (ac)) of gnatcatcher habitat in Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura counties, California are within the boundaries of proposed critical habitat.

Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat.

We are also considering revising the table of endangered and threatened wildlife published under 50 CFR 17.11 with respect to the coastal California gnatcatcher. We originally identified the coastal California gnatcatcher as a subspecies of the California gnatcatcher. However, new genetic information raises questions about the distinctiveness of the subspecies. Accordingly, we are considering whether and how the listing of the coastal California gnatcatcher should be amended.

We are soliciting data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal prior to final designation to incorporate or address new information received during the comment period.

DATES: We will accept comments until June 23, 2003. Public hearing requests must be received by June 9, 2003.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, California 92009.

(2) You may also send comments by electronic mail (e-mail) to *fw1cfwocagn@r1.fws.gov. See* the "Public Comments Solicited" section below for file format and other information about electronic submission of comments.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (e-mail: *fw1cfwocagn@r1.fws.gov;* telephone: 760/431–9440; facsimile 760/431–9618). For information about Ventura and western Los Angeles counties, contact the Field Supervisor, Ventura Fish and Wildlife Office, U. S. Fish and Wildlife Service, 2493 Portola Road Suite B, Ventura, California 93003 (telephone: 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Based on public comment, the final rule could find areas not essential, appropriate for exclusion under either 3(5)(A) or 4(b)(2), or not appropriate for exclusion, in which case, they would be made part of the designation. We particularly seek comments concerning:

(1) The reasons why any particular habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Specific information on the amount and distribution of coastal California gnatcatchers and what habitat is essential to the conservation of the species and why;

(3) Whether habitat currently preserved in various conservation areas within the coastal California gnatcatcher range is sufficient for the conservation of the species;

(4) Land use practices and current or planned activities in the subject areas and the possible impacts of the proposed critical habitat;

(5) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities or businesses;

(6) We have considered, but have not proposed the following areas as critical habitat: mission-essential training areas on Camp Pendleton and lands on Marine Corps Air Station Miramar (MCAS, Miramar); reserve lands in the San Diego Multiple Species Conservation Program (MSCP) and the Orange County Central-Coastal Natural Communities Conservation Program (NCCP), and tribal lands of the Pala Band of Mission Indians because we believe that: (1) Their value for conservation has been addressed by existing protective actions, or (2) they are appropriate for exclusion pursuant to the "other relevant impact" provisions of section 4(b)(2). We specifically solicit comment, however, on the inclusion or exclusion of such areas and: (a) Whether these areas are essential; (b) whether these areas warrant exclusion; and (c) the basis for not designating these areas as critical habitat (section 3(5)(A) or section 4(b)(2)).

(7) Any economic or other impacts associated with designating critical habitat on reserve, preserve, or other conservation lands within the boundaries of approved HCPs that have been developed through cooperative, voluntary partnerships.

(8) The benefits of including or excluding military lands covered by an adequate Integrated Natural Resource Management Plan and tribal lands, NCCP lands, HCP lands, or any other lands covered by an adequate management plan.

(9) With respect to our consideration of listing of the coastal California gnatcatcher subspecies as a distinct vertebrate population segment (DPS) rather than a subspecies on the endangered species list, we are particularly soliciting comments on the following:

(a) Do the recent genetic findings referenced in this report justify a review of the taxonomy of the subspecies of the coastal California gnatcatcher?

(b) Is there any other new information that the Service should consider in this context?

(10) In its consideration of the U.S. population of the California gnatcatcher as a DPS, the Service has presented a proposed five factor analysis of the status of the U.S. population. With respect to this analysis, the Service is particularly soliciting information on the following:

(a) Existing populations of the coastal California gnatcatcher within its range in the United States;

(b) Existing populations of the California gnatcatcher in Mexico;

(c) Information on the regulatory authorities available for the protection of the California gnatcatcher in Mexico;

(d) Information on the adequacy of regulatory authorities available to protect coastal California gnatcatcher habitat in California absent the application of the Act;

(e) Ways in which the coastal California gnatcatcher exists in an ecological setting that is unusual or unique compared to the California gnatcatcher generally;

(f) Any other information that the Service should consider in its review of the taxonomy.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Background

The coastal California gnatcatcher (Polioptila californica californica) is a small (length 11 centimeters (cm) (4.5 inches (in)), weight 6 grams (g) (0.2 ounces (oz)), long-tailed member of the old-world warbler and gnatcatcher family Sylviidae (American Ornithologist Union 1998). The bird's plumage is dark blue-gray above and grayish-white below. The tail is mostly black above and below. The male has a distinctive black cap, which is absent during the winter. Both sexes have a distinctive white eye-ring. As its common name implies, the gnatcatcher preys upon arthropods, including insects such as leafhoppers and planthoppers (Homoptera), and spiders (Burger *et al.* 1999).

The United States population of the coastal California gnatcatcher is restricted to coastal southern California from Ventura and San Bernardino counties, California south to the Mexican border (American Ornithologists' Union 1957; Atwood 1991; Banks and Gardner 1992; Garrett and Dunn 1981). An evaluation of the historic range of the coastal California gnatcatcher indicates that about 41 percent of its latitudinal distribution is within the United States and 59 percent is within Baja California, Mexico (Atwood 1990). An analysis based on elevational limits associated with gnatcatcher locality records reveals that a significant portion (65 to 70 percent) of the coastal California gnatcatcher's historic range may have been located in southern California rather than Baja California (Atwood 1992). The analysis suggested that the species occurs below about 912 meters (m) (3,000 feet (ft)) in elevation.

The coastal California gnatcatcher was considered locally common in the mid-1940s, although a decline in the extent of its habitat was noted (Grinnell and Miller 1944). By the 1960s, this species had apparently experienced a significant population decline in the United States that has been attributed to widespread destruction of its habitat (Pyle and Small 1961). Pyle and Small (1961) reported that "the California subspecies is very rare, and lack of recent records of this race compared with older records may indicate a drastic reduction in population." Atwood (1980) estimated that no more than 1,000 to 1,500 pairs remained in the United States. Atwood (1980) also noted that remnant portions of its habitat were highly fragmented, with nearly all being bordered on at least one side by rapidly expanding urban centers. Subsequent reviews of coastal California gnatcatcher status by Garrett and Dunn (1981) and Unitt (1984) paralleled the findings of Atwood (1980). The subspecies was listed as threatened on March 30, 1993, because of habitat loss and fragmentation resulting from urban and agricultural development and the synergistic effects of cowbird parasitism and predation (58 FR 16742). Subsequent studies showed that gnatcatcher populations undergo wide variations in numbers, depending on annual rainfall and climatic conditions, but that habitat loss in southern California has continued to restrict gnatcatcher populations in the United States (Erickson and Miner 1998; Preston *et al.* 1998; Atwood 2001).

The coastal California gnatcatcher typically occurs in or near sage scrub habitat, which is a broad category of vegetation that includes the following plant communities: Venturan coastal sage scrub, Diegan coastal sage scrub, maritime succulent scrub, Riversidean sage scrub, Riversidean alluvial fan (areas created when sediments from the stream are deposited) scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub (Holland 1986; Kirkpatrick and Hutchinson 1977; Westman 1983). Based upon dominant species, these communities have been further divided into series such as black sage, brittlebush, California buckwheat, California buckwheat-white sage, California encelia, California sagebrush, California sagebrush-black sage, California sagebrush-California buckwheat, coast prickly-pear, mixed sage, purple sage, scalebroom, and white sage (Sawyer and Keeler-Wolf 1995).

The majority of plant species found in sage scrub habitat are low-growing, drought-deciduous shrubs and sub-shrubs. Generally speaking, most types of sage scrub are dominated by one or more of the following: *Artemisia californica* (California sagebrush), *Eriogonum fasciculatum* and *E. cinereum* (buckwheat), *Encelia californica* (coast sunflower), *Encelia farinosa* (brittlebush), *Salvia mellifera, S. apiana,* and *S. leucophylla* (sage). Sage scrub often occurs in a patchy, or mosaic, distribution pattern throughout the range of the gnatcatcher.

Coastal California gnatcatchers also use chaparral (shrubby plants adapted to dry summers and moist winters), grassland, and riparian (areas near a source of water) habitats where they occur in proximity to sage scrub. These non-sage scrub habitats are used for dispersal and foraging (Atwood *et al.* 1998; Campbell *et al.* 1998). Availability of these non-sage scrub areas is essential during certain times of the year, particularly during drought conditions, for dispersal, foraging, or nesting. Several studies have also suggested that gnatcatchers avoid nesting on very steep slopes (greater than 40 percent) (Bontrager 1991, Mock and Bolger 1992, Ogden 1992). However, steep slopes may still be suitable for foraging and dispersal.

Several comprehensive overviews of the life history and ecology of the coastal California gnatcatcher have been prepared and are the basis for much of the discussion presented below (*e.g.*, Atwood 1990; Atwood and Bontrager 2000; Western Birds 29(4) 1998). The coastal California gnatcatcher is nonmigratory and defends breeding territories ranging in size from 1 to 6 ha (2 to 14 ac). Reported home ranges vary in size from 5 to 15 ha (13 to 39 ac) for this species (Mock and Jones 1990). The breeding season of the coastal California

gnatcatcher extends from late February through July, with the peak of nest initiations (startups) occurring from mid-March through mid-May. Nests are composed of grasses, bark strips, small leaves, spider webs, down, and other materials and are often located in California sagebrush about 1 m (3 ft) above the ground. Nests are constructed over a 4 to 10 day period. Clutch size averages four eggs. The incubation and nestling periods encompass about 14 and 16 days, respectively. Both sexes participate in all phases of the nesting cycle. Although the coastal California gnatcatcher may occasionally produce two broods in one nesting season, the frequency of this behavior is not known. Juveniles are dependent upon, or remain closely associated with, their parents for up to several months following departure from the nest and dispersal from their natal (place of birth) territory.

Dispersal of juveniles generally requires a corridor of native vegetation providing certain foraging and shelter requisites to link larger patches of appropriate sage scrub vegetation (Soulé 1991). These dispersal corridors facilitate the exchange of genetic material and provide a path for recolonization of areas from which the species has been extirpated (Soulé 1991 and Galvin 1998). Galvin (1998) concluded that, "natal dispersal [through corridors] is therefore an important aspect of the biology of [a] * * * nonmigratory, territorial bird * * * [such as] the California gnatcatcher * * *" While juvenile coastal California gnatcatchers are capable of dispersing long distances (up to 22 kilometers (km) (14 miles (mi)) as modeled by Bailey and Mock 1998) across fragmented and highly disturbed sage scrub habitat, such as found along highway and utility corridors or remnant mosaics of habitat adjacent to developed lands, generally the species disperses short distances through contiguous undisturbed habitat (Bailey and Mock 1998, Famolaro and Newman 1998, and Galvin 1998). Moreover, it is likely that populations will experience increased juvenile mortality in fragmented habitats where dispersal distances are greater than average (Atwood *et al.* 1998). This would be particularly likely if dispersal was across non- or suboptimal habitats (Soulé 1991).

California Gnatcatcher Taxonomy

The following discussion of the taxonomy of the California gnatcatcher expands upon the discussion presented in the Notice of Determination to Retain the Threatened Status for the Coastal California Gnatcatcher (60 FR 15693, March 27, 1995). The California gnatcatcher (*Polioptila californica*) was first described in 1881 based on specimens from Riverside and Ventura counties (Brewster 1881). Grinnell (1926) then reduced it to a subspecies of the black-tailed gnatcatcher (*Polioptila melanura*). Subsequently, on the basis of differences in morphology, ecology, and behavior, Atwood (1988) concluded that *P. californica* was specifically distinct from *P. melanura*. Atwood's finding has been recognized by the American Ornithologists' Union Committee on Classification and Nomenclature (American Ornithologists' Union 1998).

The California gnatcatcher consists of up to five subspecies (from north to south): *californica* (Brewster), *atwoodi* (Mellink), *pontilis* (van Rossem), *margaritae* (Ridgway), and *abbreviata* (Grinnell). None of the taxonomic treatments recognizing segregate taxa called into question the distinctiveness or identity of subspecies *californica*. Although various authors have proposed different nomenclatures, several consistencies are evident in the subspecific treatments. Several characters, including body plumage color, tail length, and amount of white on the retrices (tail feathers), show an abrupt change or step at approximately 30° N latitude, near El Rosario, Baja California, Mexico (Grinnell 1926; van Rossem 1931; Philips 1991; Atwood 1991; Mellink and Rea 1994). This is the traditional boundary between subspecies *californica* and *pontilis*. Mellink and Rea (1994) also recognized this boundary, but described a new subspecies *atwoodi* between 30° N latitude and the international border (approximately 32°33′ N). A second step is evident in body plumage and tail length at 28° N latitude, near Guerrero Negro, Baja California Sur, Mexico (van Rossem 1931; Philips 1991; Atwood 1991; Mellink and Rea 1994). This step represents the traditional boundary between subspecies *pontilis* and *margaritae*. Some investigators include a third step at approximately 24° N, near La Paz, Baja California Sur, Mexico, on the basis of tail length, bill width and depth, amount of white on the retrices, and wing length (Grinnell 1926, Atwood 1991). South of this latitude subspecies *abbreviata* has been described (Grinnell 1926).

A recent scientific paper (Zink *et al.* 2000) presents results of genetic research on the California gnatcatcher and calls into question the status of the coastal California gnatcatcher as a distinct subspecies. This paper presents a contradictory view to all previously published taxonomic reviews of the species (*e.g.*, Atwood 1988, 1991; Grinnell 1926; Mellink and Rea 1994; Philips 1991; van Rossem 1931; summarized in 60 FR 15693). Zink *et al.* (2000) analyzed the genetic structure of California gnatcatcher populations throughout the range by looking for variation in the mitochondrial DNA (mtDNA) control region and three mtDNA genes. Their analysis failed to reveal genetic structuring consistent with geographically distinct subspecies. Patterns of nucleotide diversity showed a step at approximately 28° N latitude. The authors interpreted these and other data as evidence that the species has expanded its range from a Pleistocene era refugium south of 28° N. The authors argue that morphological variation previously described in taxonomic treatments were not genetically based, and therefore, subspecific divisions of the species are not supported.

Zink *et al.* (2000) present important new information concerning genetic variability within the California gnatcatcher. Given the uncertainty regarding California gnatcatcher taxonomy that this paper introduces, we consider it appropriate to propose a DPS. In light of this study, we have initiated an evaluation to determine whether the California gnatcatcher *(Polioptila californica)* species in the United States meets the definition of a DPS pursuant to our 1996 joint U.S. Fish and Wildlife Service and National Marine Fisheries Service Policy Regarding the Recognition of Distinct Vertebrate Populations (61 FR 4722; DPS). We are considering whether the California gnatcatcher meets the definition of a DPS based on the analysis summarized below. If our analysis confirms that the requirements for a DPS are met, we propose to list the U.S. population of the California gnatcatcher as a DPS and reevaluate the status of the remaining California gnatcatcher population in Mexico. This reevaluation could result in delisting the species in Mexico or listing one or more separate DPSs in Mexico.

Distinct Vertebrate Population Segment

We evaluated the U.S. population of the California gnatcatcher according to the February 7, 1996, joint U.S. Fish and Wildlife Service and National Marine Fisheries Service Policy Regarding the Recognition of Distinct Vertebrate Populations (61 FR 4722; DPS). Three elements are considered in a decision regarding the status of a possible DPS as endangered or threatened under the Act. These are applied similarly for additions to the list of endangered and

threatened wildlife and plants, reclassification, and removal from the list. They are: (1) Discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing.

Discreteness refers to the isolation of a population from other members of the species and is based on two criteria: (1) Marked separation from other populations of the same taxon resulting from physical, physiological, ecological, or behavioral factors, including genetic discontinuity; or (2) populations delimited by international boundaries.

We determine significance by using the available scientific evidence to determine the DPS's importance to the taxon to which it belongs. Our policy lists four examples of factors that may be used to determine significance: (1) Persistence of the DPS in an ecological setting unusual or unique for the taxon; (2) evidence that loss of the DPS would result in a significant gap in the range of the taxon; (3) evidence that the DPS represents the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the DPS differs markedly from other populations of the taxon in its genetic characteristics.

If we determine that a population segment is discrete and significant, we evaluate it for endangered or threatened status based on the Act's standards. Endangered means the species is in danger of extinction throughout all or a significant portion of its range. Threatened means the species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range.

Discreteness: In accordance with our DPS policy, we may determine a population to be discrete at an international border where there are significant differences in (1) the control of exploitation; (2) management of habitat; (3) conservation status, or (4) regulatory mechanisms (61 FR 4722).

In the case of the California gnatcatcher, significant differences exist between the United States and Mexico with regard to management of habitat and conservation regulatory mechanisms. As previously discussed, the species' distribution ranges from Ventura County in the United States south to the tip of the Baja California peninsula in Mexico (Atwood 1988). Past surveys within northern Baja California, Mexico, have failed to reveal California gnatcatchers within approximately 25 km (15.5 miles) south of the border, despite apparently suitable habitat (RECON 1991, Mellink and Rea 1994). The closest individual birds have been documented at Valle de las Palmas, an inland locality 25 km (15.5 miles) south of the border; Plaza de Santa Maria, 43 km (26.7 miles) south of the border along the coast; and several locations around Ensenada, 85 km (52.8 miles) south, including Cerro El Vigia, and Punta Banda (Mellink and Rea 1994). Further, Mellink and Rea (1994) found consistent morphological discontinuity between populations north and south of the border, suggesting reduced gene flow across this area.

The populations north and south of the international border are treated under very different regulatory regimes. In Mexico, the California gnatcatcher is not considered rare, threatened, or endangered by the Mexican Government (Diario Official 2000). As such, take of individuals or the loss and degradation of their habitat are not regulated. Several reports have commented on the destruction of natural habitats in northwestern Mexico (*e.g.*, Mellink and Rea 1994, Oberbauer 1992; RECON 1991). Habitat loss and degradation due to housing construction, agriculture, grazing, burning, and off-road recreational vehicles is ongoing (Mellink and Rea 1994, Oberbauer 1992). Within the remaining undisturbed patches of vegetation, gnatcatchers do not appear to be uniformly distributed even in what appears to be appropriate habitat (Mellink and Rea 1994). The already discontinuous gnatcatcher populations in the region may therefore be particularly susceptible to increased isolation and fragmentation due to ongoing unregulated habitat destruction.

Based upon the above discussion, the U.S. population segment of the California gnatcatcher is discrete from populations in Mexico based upon differences in the management of habitat and regulatory mechanisms (*see also* 56 FR 47053).

Significance: Populations of the California gnatcatcher in the United States are unusual in the ecological setting or habitat that they occupy. Throughout the majority of the species' range, California gnatcatchers inhabit desert scrub habitats, usually in the thicker vegetation found in washes (Atwood 1988). At the southern end of the range, this species also occurs in dense thorn scrub (Atwood 1988). North of 30° N latitude, near El Rosario, Baja California Norte, however, the species enters the California floristic province in what is referred to as maritime succulent scrub (Holland 1986, Mooney 1988, Oberbauer 1992, Westman 1983). This vegetation type is characterized by abundant cacti and other succulents, including Shaw's agave (*Agave shawii*), golden-spined cereus (*Bergerocactus emoryii*), live forever (*Dudleya* spp.), cholla and prickly pear (*Opuntia* spp.), and pitaya cactus (*Machaerocereus gummosus*), as well as shrubs such as Parry buckeye (*Aesculus parryi*), chaparral ash (*Fraxinus trifoliata*), cliff spurge (*Euphorbia misera*), boxthorn (*Lycium californicum*), California sagebrush (*Artemisia californica*), and coast sunflower (*Encelia californica*) (Holland 1986, Mellink and Rea 1994, Mooney 1988, Oberbauer 1992, Westman 1983). Maritime succulent scrub extends only a few miles into the United States into southern San Diego County (Holland 1986, Mooney 1988).

Vegetation types within the range of the species in the United States are characterized as (from south to north) Diegan coastal sage scrub, Riversidean sage scrub, and Venturan coastal sage scrub (coastal scrub series) (Kirkpatrick and Hutchinson 1977, Sawyer and Keeler-Wolf 1995). These habitats typically have a relatively low percent cover of succulents and are dominated by drought deciduous (malacophylous) subshrubs such as California sagebrush (*Artemisia californica*), flat-topped buckwheat (*Eriogonum fasciculatum*), black sage (*Salvia mellifera*), white sage (*Salvia apiana*), coast sunflower (*Encelia californica*), brittlebush (*Encelia farinosa*), and deerweed (Lotus scoparius) (Kirkpatrick and Hutchinson 1977, Sawyer and Keeler-Wolf 1995). The ecological setting inhabited by the species north of the border is therefore unique within its range. The species' ability to exist under these conditions suggests unique behavioral and/or physiological adaptations (Mellink and Rea 1994).

The extinction of the population segment of the California gnatcatcher in the United States would also be significant in that it would substantially reduce the overall range of the species. The northern 209 km (130 miles) of the latitudinal range of the species (approximately 20 percent of its total range) occurs within the United States. Extirpation of the species in the northern one-fifth of its latitudinal range would (1) preclude future range expansion into currently unoccupied habitats farther to the north in the United States (*e.g.*, Ventura County), and (2) prevent natural shifts in range in response to future changes in climate and vegetation composition and structure. Current evidence already

suggests that vegetation in southern California has undergone substantial shifts in composition and distribution through time (Axelrod 1978; *see* discussion under Factor E).

Past morphometric studies (studies examining morphological or physical characters) have shown that populations of California gnatcatchers north of 30° N latitude have browner backs and flanks, have white in the retrices, and are longer tailed than birds in the rest of the range (Grinnell 1926, van Rossem 1931, Philips 1991, Atwood 1991, Mellink and Rea 1994). Though recent genetic work (Zink *et al.* 2000) failed to show significant genetic structuring consistent with evolutionarily discrete units, these morphological differences may reveal different selective regimes operating in the northern portion of the species' range. As the coastal sage scrub community inhabited by the California gnatcatchers within the United States is relatively young (less than 4,000 to 8,000 years old; Axelrod 1978), the different selective regimes may not have had sufficient time to reveal distinctiveness evident in mitochondrial DNA studies.

As discussed above, the U.S. population segment of the California gnatcatcher is significant in that it exists in a unique ecological setting, and that the loss of this segment would result in a significant gap in the range of the species.

Conservation Status: Based on our determination that the California population of the California gnatcatcher meets the first two criteria, discreteness and significance, for a distinct vertebrate population segment in accordance with our policy, we are required to evaluate its conservation status and make a determination relative to the Act's standard for listing as endangered or threatened. The proposed rule to list the coastal California gnatcatcher published on September 17, 1991 (56 FR 47053) and final rule published on March 30, 1993 (58 FR 16741) discuss the status of the coastal California gnatcatcher in relation to the Act's standards for listing as threatened. The following discussion summarizes those analyses and adds new information that has become available.

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

As stated in the previous proposed and final listing rules, the habitat and range of the California gnatcatcher in the United States has been significantly reduced. The majority of historical locations in Los Angeles, Ventura, and San Bernardino counties have been completely developed and no longer support known populations (*e.g.*, San Fernando Valley, Pasadena, Santa Anita Wash, Rubio Wash, Eaton Canyon Wash, San Gabriel Wash, Ballona Creek, Redondo Beach, Monrovia, Arcadia, Fairmont Reservoir, Colton, Saticoy; Los Angeles County Museum of Natural History and Field Museum collections). Within the remainder of the range, Orange, Riverside, and San Diego counties have experienced a 50, 59, and 60 to 65 percent reduction in coastal sage scrub, respectively, between 1945 and 1990 (based on comparison of Wieslander and Jensen 1946 vegetation maps, and 1990 county estimates; *see* 58 FR 16741). Much of the remaining coastal sage scrub is at higher elevations and away from the coast, where California gnatcatcher populations are at lower densities (Atwood and Bolsinger 1992, MBA 1991). Atwood and Bolsinger (1992) and MBA (1991) both reported that greater than 90 percent of gnatcatcher records occur at or below 250 m (820 ft). This relationship may reflect energetic constraints in the California gnatcatcher associated with winter precipitation levels and January mean minimum temperature (Mock 1998). Adult mortality rates above these elevations may be insufficient to support populations through time (Mock 1998).

Much of the remnant coastal sage scrub below 250 m (820 ft) is now fragmented, isolating populations of gnatcatchers (*e.g.*, Palos Verdes peninsula, San Joaquin Hills, Carlsbad-San Marcos, Poway-Santee, and Sweetwater River-Otay Lake populations). Given that this species exhibits extreme fluctuations in abundance (Erickson and Miner 1998, Atwood *et al.* 1998), isolated populations may be more susceptible to extirpation.

For further discussion of the destruction and curtailment of the species habitat and range, *see* 58 FR 16741.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

These factors are not currently known to affect the species.

C. Disease or Predation

Disease is not currently known to be a factor affecting the species, however, the effects of disease may need to be reassessed after the pending arrival of West Nile Virus to California. Also, the entire U.S. range of the California gnatcatcher is under federal quarantine due to an outbreak of Exotic Newcastle Disease. This disease affects a wide range of wild and domestic bird species, but it is not known how California gnatcatchers may be affected.

Predation is the most common cause of nest failure, accounting for as many as 30 to 60 percent of nest failures in some areas (Braden *et al.* 1997, Grishaver *et al.* 1998). Most of this predation occurs during egg laying and incubation. Several species have been reported as potential predators of coastal California gnatcatcher eggs or nestlings (Atwood 1990). These include the scrub jay (*Aphelocoma coerulescens*), common crow (*Corvus brachyrhynchos*), common raven (*Corvus corax*), opossum (*Didelphis marsupialis*), raccoon (*Procyon lotor*), gray fox (*Urocyon cinereoargenteus*), coachwhip (*Masticophis flagellum*), striped racer (*Masticophis lateralis*), gopher snake (*Pituophis melanoleucus*), rosy boa (*Lichanura trivirgata*), common kingsnake (*Lampropeltis getulus*), southern alligator lizard (*Gerrhonotus multicarinatus*), domestic or feral cat (*Felis domestica*), wood rat (*Neotoma spp.*), deer mouse (*Peromyscus maniculatus*), house mouse (*Mus musculus*), and black rat (*Rattus rattus*). Brood parasitism by the brown-headed cowbird (*Molothrus ater*) has significantly decreased gnatcatcher productivity (Braden *et al.* 1997). Thirty-one percent of gnatcatcher nests monitored in Riverside County during the 1992–1995 breeding seasons were parasitized by cowbirds (Braden *et al.* 1997).

D. The Inadequacy of Existing Regulatory Mechanisms

In 1991, the state of California initiated the Natural Communities Conservation Program (NCCP) to protect coastal sage scrub habitats and rare species in southern California. To date, two regional NCCP/Habitat Conservation Plans (HCP) have been approved for portions of southern San Diego County (Multiple Species Conservation Program) and central Orange County (Central/Coastal NCCP/HCP). Within the range of the California gnatcatcher, several other regional plans are still being developed for northern San Diego County, western Riverside County, southern Orange County, and the Palos Verdes peninsula. Whether these regional plans will be finally approved for these areas, which represent the majority of gnatcatcher populations in southern California, is unknown. Furthermore, at this point, no regional conservation planning effort is underway in the remainder of Los Angeles County or in San Bernardino or Ventura counties. Essential populations are found in each of these counties and represent the northernmost populations within the range of the species.

For a discussion of California gnatcatcher habitat destruction prior to its listing in 1993, refer to 58 FR 16741.

E. Other Natural or Man-Made Factors Affecting its Continued Existence

Throughout southern California, but especially in western Riverside and San Bernardino counties, coastal sage scrub vegetation is being type-converted to non-native grassland and other ruderal (weedy) habitats (Allen *et al.* 2000, Allen *et al.* 1996, Minnich and Dezzani 1998). Minnich and Dezzani (1998) resampled Vegetation Type Map plots surveyed 60 years earlier. They found that only 40.1 percent of the coastal sage scrub originally mapped was still extant, while 41.9 percent of this mapped plant community was now open coastal sage scrub mixed with a continuous layer of exotic annual grasses. The remaining 18 percent of plots were entirely converted to exotic annual grassland. This conversion from shrublands to grasslands was due to a combination of factors including invasion of European annual grasses, increased fire frequency, and possibly nitrogen deposition due to air pollution (Minnich and Dezzani 1998). Thus, even in reserve areas not threatened by habitat destruction due to development, a continuous loss of suitable habitat available to the California gnatcatcher is ongoing.

Please refer to the final listing rule (58 FR 16741) for a more detailed discussion of the California gnatcatcher in relation to the five factors.

Previous Federal Action

On March 30, 1993, we published a determination of threatened status for the coastal California gnatcatcher (58 FR 16742). At the time of the listing, we concluded that designation of critical habitat for the species was not prudent because such designation would not benefit the coastal California gnatcatcher and would make the species more vulnerable to activities prohibited under section 9 of the Act. We were aware of several instances of apparently intentional habitat destruction that had occurred during the listing process. In addition, most land occupied by the gnatcatcher was in private ownership and we did not believe a designation of critical habitat to be of benefit because of a lack of a Federal nexus.

On May 21, 1997, the U.S. Court of Appeals for the Ninth Circuit (Circuit Court) issued an opinion in *Natural Resources Defense Council* v. *U.S. Dept. of the Interior* (No. 95–56075; D.C. No. CV–93–999) (*NRDC* v. *USDOI*) that required us to reevaluate our prudency determination and issue a new decision regarding the prudency of determining critical habitat for the gnatcatcher.

On February 8, 1999, we published a notice of determination in the **Federal Register** (64 FR 5957) in which we concluded that designation of critical habitat for the gnatcatcher was prudent.

On February 7, 2000, we published a proposed rule to designate critical habitat for the coastal California gnatcatcher (65 FR 5946) on approximately 323,726 ha (799,916 ac) within Los Angeles, Orange, Riverside, San Bernardino, and San Diego counties, California. On October 24, 2000, we published a final rule designating approximately 207,890 ha (513,650 ac) of land as critical habitat for the coastal California gnatcatcher in Los Angeles, Orange, Riverside, San Bernardino, and San Diego counties, California (65 FR 63680).

Following the designation of critical habitat for the coastal California gnatcatcher, NRDC filed an amended complaint on December 20, 2000, challenging the Service's exclusion of some lands from the designation of critical habitat (*NRDC* v. *USDOI*, CV 99–5246, (C.D.Cal)). Also in December 2000, Rancho Mission Viejo L.L.C. filed a lawsuit in the U.S. District Court for the District of Columbia, challenging the methodology used by the Service in the economic analysis of the designation of critical habitat (*Rancho Mission Viejo, LLC.* v. *Babbitt*, CV–01–8412). In January 2001, the Building Industry Association of Southern California and several other groups filed a separate lawsuit in the U.S. District Court for the District of Columbia which also challenged the designation of critical habitat for the coastal California gnatcatcher (*Building Industry Association of Southern California et al* v. *Norton et al.*, CV 01–7028) (*BIA* v. *Norton*). On July 3, 2001, the D.C. District Court transferred the BIA and Rancho Mission Viejo suits to the U.S. District Court for the Central District of California.

On June 11, 2002, the U.S. District Court for the Central District of California granted the Service's request for a remand of the coastal California gnatcatcher critical habitat designation so that we may reconsider the economic impact associated with designating any particular area as critical habitat. The Court ordered us to complete a new proposed rule by April 11, 2003. In a subsequent order the Court held that the critical habitat designated for the should remain in place until such time as a new, final regulation becomes effective.

Critical Habitat

Section 3 defines critical habitat as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat.

To be included in a critical habitat designation, habitat must be either a specific area within the geographic area occupied by the species on which are found those physical or geographical features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)) and which require special management considerations or protection, or be specific areas outside of the geographic area occupied by the species which are determined to be essential for the conservation of the species. Habitat areas that support only a subset of the primary constituent elements are included only when they still perform the functions that make them essential to the conservation of the species. Section 3(5)(c) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." Accordingly, we do not designate critical habitat in areas outside the geographic area occupied by the species

unless the best available scientific and commercial data demonstrate that unoccupied areas are essential for the conservation of the species.

Private lands previously designated were re-evaluated based on new survey information, and the results of a habitat modeling exercise. Refer to the Criteria Used to Identify Critical Habitat section for further discussion.

Application of Section 3(5)(A) and Exclusions Under Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection. As such, for an area to be designated as critical habitat for a species it must meet both provisions of the definition. In those cases where an area does not provide those physical and biological features essential to the conservation of the species, it has been our policy to not include these specific areas in designated critical habitat. Likewise, if we believe, based on an analysis, that an area determined to be biologically essential has an adequate management plan that covers the species, then special management and protection are already being provided, and those areas do not meet the second provision of the definition and are also not proposed as critical habitat.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Further, section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species. Consequently, we may exclude an area from critical habitat based on economic impacts, or other relevant impacts such as preservation of conservation partnerships or military readiness considerations, if we determine that the benefits of excluding an area from critical habitat outweigh the benefits of including the area in critical habitat, provided that exclusion will not result in the extinction of the species.

In summary, we use both the definition in section 3(5)(A) and the provisions of section 4(b)(2) of the Act to evaluate those specific areas that are proposed for designation as critical habitat as well as for those areas that are subsequently finalized (*i.e.*, designated as critical habitat). On that basis, it has been our policy to not include in proposed critical habitat, or exclude from designated critical habitat, those areas: (1) Not biologically essential to the conservation of a species, (2) covered by a legally operative individual (project-specific) or regional HCP that covers the subject species, (3) covered by a complete and approved INRMP for specific DoD installations, or (4) covered by an adequate management plan or agreement that protects the primary constituent elements of the habitat.

As discussed further below, for this proposal of critical habitat for the gnatcatcher, we have considered, but have not proposed as critical habitat the mission-essential training areas on Marine Corps Base, Camp Pendleton (Camp Pendleton); MCAS, Miramar; reserve lands in the San Diego Multiple Species Conservation Program and the Orange County Central-Coastal NCCP/HCP; Tribal lands of the Pala Band of Mission Indians; and lands covered by individual completed and approved HCPs that cover the gnatcatcher. Some lands managed by the DoD, including nontraining areas Camp Pendleton and Naval Weapons Station Seal Beach, Detachment Fallbrook (Fallbrook Naval Weapons Station), have been proposed as critical habitat for the gnatcatcher.

Relationship to HCPs

Individual HCPs

In general, we believe that individual HCPs in which the reserves have been established that protect the primary constituent elements of critical habitat of the subject species, establish areas that may be biologically essential to the covered species, but which do not require special management and protections because their value for conservation has been established and perpetuated by the existing protective measures and actions from the provisions of the HCP. Consequently, reserve areas defined in these individual HCPs do not meet the definition of critical habitat and are therefore are not being proposed as critical habitat. Further, to the extent that these areas do meet the definition of critical habitat as defined in 3(5)(A)(i)(II), it is additionally appropriate to exclude these areas from critical habitat pursuant to the "other relevant impacts" provisions of section 4(b)(2).

Numerous individual HCPs that provide incidental take coverage for the coastal California gnatcatcher have been approved and implemented in Los Angeles, Orange, San Diego, and Riverside Counties. Completed individual HCPs include: Bennett Property, Meadowlark Estates, Fieldstone, and Poway Subarea Plan in San Diego County; Coyote Hills East and Shell Oil in Orange County; Ocean Trails in Los Angeles County; and Lake Mathews, North Peak, Railroad Canyon, and Rancho Bella Vista in Riverside County. Collectively, these HCPs have resulted in the protection of 3,935 ha (9,725 ac) of habitat for the coastal California gnatcatcher.

Regional HCPs

We have considered, but have not proposed as critical habitat preserve, reserve or other conservation lands and lands targeted for conservation within the boundaries of approved HCP based on the Secretary of the Interior's authority under section 4(b)(2) of the Act as we believe the benefits of excluding these lands outweigh the benefits of including them.

Development of an HCP is a prerequisite for the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act. HCPs vary in size and may provide for incidental take coverage and conservation management for one or many federally listed species. Additionally, more than one applicant may participate in the development and implementation of an HCP. In the case of the coastal California gnatcatcher, the HCPs are very complex,

address multiple species, and are very important to a large area and to many participating permittees.

Large regional HCPs expand upon the basic requirements set forth in section 10(a)(1)(B) of the Act because they reflect a voluntary, cooperative approach to large-scale habitat and species conservation planning. Many of the large regional HCPs in southern California have been, or are being, developed to provide for the conservation of numerous federally listed species and unlisted sensitive species and the habitats that provide for their biological needs. These HCPs are designed to proactively implement conservation actions to address future projects that are anticipated to occur within the planning area of the HCP; however, given the broad scope of these regional HCPs, not all projects envisioned to potentially occur may actually take place.

In the case of approved regional HCPs (*e.g.*, those sponsored by cities, counties or other local jurisdictions) that provide for incidental take coverage for the coastal California gnatcatcher, a primary goal of these regional plans is to provide for the protection and management of habitat essential for the conservation of the species while directing development to other areas. The regional HCP development process provides an opportunity for more intensive data collection and analysis regarding the use of particular habitat areas by coastal California gnatcatchers. The process also enables us to conduct detailed evaluations of the importance of such lands to the long term survival of the species in the context of constructing a system of interlinked habitat blocks that provide for the biological needs of the species.

Completed HCPs and their accompanying implementation agreements contain management measures and protections for identified preserve areas that protect, restore, and enhance the value of these lands as habitat for the coastal California gnatcatcher. These measures, which include explicit standards to minimize any impacts to the covered species and its habitat, are designed to ensure that the value of the conservation lands as suitable habitat for the coastal California gnatcatcher habitat is maintained, expanded and improved.

In approving these HCPs the Service has provided assurances to permit holders that once the protection and management required under the plans are in place and for as long as the permit holders are fulfilling their obligations under the plans, no additional mitigation in the form of land or financial compensation will be required of the permit holders and in some cases, specified third parties. Similar assurances will be extended to future permit holders in accordance with the Service's HCP Assurance ("No Surprises") rule codified at 50 CFR 17.22(b)(5) and (6) and 17.32(b)(5) and (6).

Because of the similarities between the purposes of regional HCPs and designation of critical habitat, and in light of the intensive investigation and analysis undertaken in conjunction with regional HCP planning processes, regional HCPs currently under development will identify, protect and provide appropriate adaptive management for those specific lands within the boundaries of the plans that are essential for the long-term conservation of the species. The analyses of these HCPs and proposed permits under section 7 show that activities covered under such permits will not result in the destruction or adverse modification of critical habitat proposed within the boundaries of the plans when the covered activities are carried out in accordance with the provisions of the HCP.

As discussed earlier, we have considered, but have not proposed as critical habitat lands within approved HCPs that include the coastal California gnatcatcher as a covered species. It is also our intention to exclude currently proposed HCPs that cover the gnatcatcher if, prior to publication of a final designation of critical habitat, the plans are completed, approved, and legally operative. We will evaluate the exclusion of these lands based on the best scientific data available and after taking into consideration economic and any other relevant impact of designating critical habitat. Following is our preliminary analysis of the benefits of including lands within approved HCPs versus excluding such lands from critical habitat designation.

(1) Benefits of Inclusion

Under Section 7 critical habitat designation will provide little additional benefit to the coastal California gnatcatcher habitat within the boundaries of approved HCPs. The primary benefit of any critical habitat is with regard to activities with a Federal nexus that require consultation pursuant to Section 7 of the Act to ensure that the activity will not destroy or modify designated critical habitat. Currently approved and permitted HCPs are designed to ensure the conservation of covered species within the plan area. HCPs, particularly large regional HCPs, address land use within the plan boundaries, and habitat issues within these plan boundaries will have been thoroughly addressed in the HCP itself and through the Section 7 consultation on the HCP.

Furthermore, HCPs typically provide greater conservation benefits to covered species than independent project-by-project section 7 consultations, because HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management and protection through the standards found in the 5-Point Policy for HCPs (65 FR 35242) and the HCP No Surprises regulation (63 FR 8859). These types of assurances are typically not provided by section 7 consultations because such consultations do not always commit the project proponent to long-term special management or protections. Thus, a consultation is not likely to accord the lands it covers the extensive benefits an HCP provides.

Development and implementation of HCPs provide other important conservation benefits, including the development of area wide biological information to guide conservation efforts and assist in species' recovery and the creation of innovative solutions to conserve species while allowing for continued economic development. Particularly in the case of large regional HCPs, one species benefit from landscape planning outweighs the fragmented approach that is the result of individual permitting on only those projects with a Federal nexus even when critical habitat is designated.

The educational benefits of critical habitat, including informing the public of areas that are important to the conservation of listed species, are actually less than what occurs in the HCP process. Since the HCP process is voluntary, public participation through multiple public notices and comment periods, as well as direct involvement by local governments, the environmental community, and the regulated community is ensured prior to their approval. For these reasons, we believe that designation of critical habitat typically provides no additional benefit in areas covered by approved HCPs.

(2) Benefits of Exclusion

We have determined that the benefits of excluding lands within approved HCPs from critical habitat designation are typically more substantial than including them. The benefits of excluding lands within HCPs from critical habitat designation include relieving landowners, communities, and Counties of any additional regulatory burden that may result solely from such

designation. Many HCPs, particularly large, regional HCPs, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery objectives for listed species that are covered within the plan area. Additionally, many of these HCPs provide conservation benefits to unlisted, sensitive species. Imposing an additional regulatory review after an HCP is completed solely as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas, and in fact, could result in the loss of species benefits as participants in the voluntary HCPs abandon them in the face of additional regulations requiring more of them than other parties who have not voluntarily participated in species conservation. Designation of critical habitat within the boundaries of approved HCPs could also be viewed as a disincentive to those entities currently developing HCPs or contemplating developing them in the future.

A related benefit of excluding lands within HCPs from critical habitat designation is the continued ability to seek new partnerships with future HCP participants, including States, Counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. If lands within HCP plan areas are designated as critical habitat, it would likely have a chilling effect on our ability to establish new partnerships to develop HCPs, particularly large, regional HCPs that involve numerous participants and address landscape-level conservation of species and habitats. By excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

In addition to the conservation benefits HCPs provide to covered species within the plan areas, many of these HCPs, particularly large regional HCPs, also address landscape-level conservation of native habitats. In California, the NCCP Act of 1991 provides a framework for conserving listed and other sensitive species at a regional or ecosystem scale. The pilot program of the NCCP focuses on conservation of native coastal sage scrub communities throughout a 6,000 square mile area in southern California that includes parts of Los Angeles, Orange, San Diego, Riverside, and San Bernardino Counties. The NCCP program complements the objectives of regional HCP planning efforts. In southern California, several regional conservation planning efforts that incorporate the dual objectives of NCCP/HCP have already been approved.

In southwestern San Diego County, the MSCP effort encompasses more than 236,000 ha (582,000 ac) and reflects the potential participation of several local jurisdictions. The MSCP provides for the establishment over the permit term of approximately 69,573 ha (171,000 ac) of preserve areas to provide conservation benefits for 85 Federally listed and sensitive species. An estimated 28,844 ha (71,274 ac) of these preserve lands contain coastal sage scrub, the primary nesting and foraging habitat for the coastal California gnatcatcher. This represents 62 percent of the remaining habitat for the coastal California gnatcatcher in southern San Diego County. These lands are to be permanently maintained and managed for the benefit of the gnatcatcher and other covered species.

The Central-Coastal NCCP/HCP in Orange County was developed in cooperation with numerous local and State jurisdictions and agencies and participating landowners, including the cities of Anaheim, Irvine, Orange, Lake Forest, Laguna Woods, Mission Viejo, Southern California Edison, Transportation Corridor Agencies, The Irvine Company, California Department of Parks and Recreation, Southern California Edison, Metropolitan Water District of Southern California, Irvine Ranch Water District, Transportation Corridor Agency, The Regents of the University of California, and the County of Orange. Approved in 1996, the Central-Coastal NCCP/HCP provides for the establishment of approximately 15,677 ha (38,738 ac) of reserve lands for 39 Federal or State listed, unlisted, and sensitive species. These reserve areas include about 7,621 ha (18,831 ac) of coastal sage scrub habitat. The design of the reserve system for the Central-Coastal NCCP/HCP encompasses approximately 72 percent of the remaining coastal sage scrub habitat within the planning area. These lands are also required to be maintained and managed for the benefit of the gnatcatcher and other covered species.

Additional HCPs within the range of the gnatcatcher, such as the San Diego Gas and Electric Subregional Natural Community Conservation Plan/Habitat Conservation Plan, have also been completed and provide incidental take authorization for the gnatcatcher.

There are currently several regional NCCP/HCP efforts underway in southern California that have not yet been completed but which, upon approval, will provide conservation benefits to the coastal California gnatcatcher.

The MHCP in northwestern San Diego County encompasses approximately 453 square km (175 square mi) within the study area, including about 160 to 200 ha (400–500 ac) of coastal sage scrub habitat. Currently, seven cities are participating in the development of the MHCP.

The proposed Southern Subregion NCCP/HCP in Orange County encompasses approximately 515 square km (200 square mi) or 51,800 ha (128,000 ac) in its planning area, including about 10,412 ha (25,729 ac) of coastal sage scrub habitat for the coastal California gnatcatcher. Jurisdictions and private landowners within the study area include the cities of Rancho Santa Margarita, Mission Viejo, San Juan Capistrano, San Clemente, and Rancho Mission Viejo, and the County of Orange.

Additionally, the proposed Western Riverside MSHCP is being developed in cooperation with the County of Riverside, 12 cities, the Riverside County Flood Control and Water Conservation Agency, Riverside County Transportation Commission, Riverside County Parks and Open Space District, Riverside County Waste Department, California Department of Parks and Recreation, and California Department of Transportation. The proposed MSHCP encompasses approximately 530,000 ha (1.3 million ac) of land. Proposed reserves could potentially conserve up to 60 percent of the remaining habitat for coastal California gnatcatchers within the plan area.

In general, we find that the benefits of critical habitat designation on lands within approved HCPs that cover those species are small while the benefits of excluding such lands from designation of critical habitat are substantial. After weighing the small benefits of including these lands against the much greater benefits derived from exclusion, including encouraging the pursuit of additional conservation partnerships, we have considered but have not proposed as critical habitat, lands within approved and legally operative HCPs that include the coastal California gnatcatcher as a covered species.

In the event that future HCPs covering the coastal California gnatcatcher are developed within the boundaries of designated critical habitat, we will work with applicants to ensure that the HCPs provide for protection and management of habitat areas essential for the conservation of the species. We will provide technical assistance and work closely with applicants throughout the development of future HCPs to identify lands essential for the long-term conservation of the gnatcatcher and

appropriate management for those lands. The take minimization and mitigation measures provided under these HCPs will be designed to protect the essential lands that are proposed as critical habitat in this rule. If an HCP that covers the coastal California gnatcatcher is ultimately approved, the Service can reassess the critical habitat boundaries in light of the HCP. The Service intends to undertake this review when the HCP is approved. However, funding constraints may influence the timing of such a review.

Tribal Lands and Exclusions Under 4(b)(2) of the Act

We have considered, but have not proposed as critical habitat Tribal lands of the Pala Band of Mission Indians. Secretarial Order 3206, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities and the Endangered Species Act" (June 5, 1997), provides that critical habitat shall not be designated in an area that may impact Tribal trust resources unless it is determined essential to conserve a listed species.

Tribal lands we considered, but have not proposed as critical habitat for the coastal California gnatcatcher have been determined to be essential to the conservation of the species. No management plans are currently in place on these Tribal lands to address the conservation needs of the coastal California gnatcatcher. However, projects on Tribal lands with a Federal nexus (*e.g.*, funded, authorized, or carried out by Federal agencies such as the Bureau of Indian Affairs) will trigger a consultation under section 7 of the Act if the action may affect the coastal California gnatcatcher. Through section 7 consultation, we would ensure that actions undertaken, authorized, or permitted by a Federal agency will not jeopardize the continued existence of the species.

(1) Benefits of Inclusion

The primary benefit of any critical habitat with regard to activities that require consultation pursuant to section 7 of the Act is to ensure that the activity will not destroy or adversely modify designated critical habitat. The educational benefits of critical habitat include informing Tribes of areas that are important to the conservation of listed species.

(2) Benefits of Exclusion

The benefits of excluding Tribal lands from critical habitat designation include relieving Tribes of any additional regulatory burden that may result solely from such designation. Designation of critical habitat may undermine future conservation efforts and partnerships and discourage Tribes from developing species and habitat management plans. Designation of critical habitat could also be viewed as a disincentive to Tribes contemplating developing HCPs in the future. By excluding these lands, we preserve our current partnerships and set the stage for additional conservation actions in the future.

After weighing the benefits of critical habitat designation on these lands against the benefits of excluding them, we find the benefits of excluding the Pala Band of Mission Indians' lands from the designation of critical habitat outweigh the benefits of including those areas as critical habitat. We also find that the exclusion of these lands will not lead to the extinction of the gnatcatcher.

Relationship to Lands Managed by DoD Under Section 3(5)(A) Definition

Marine Corps Air Station, Miramar

The Sikes Act requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We believe that bases that have completed and approved INRMPs that address the needs of the species generally do not meet the definition of critical habitat discussed above, as the lands do not require special management. Therefore, we do not include these areas in critical habitat designations if they meet the following three criteria: (1) A current INRMP is complete and provide a conservation benefit to the species; (2) the plan provides assurances that the conservation management strategies will be implemented; and (3) the plan provides assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions (adaptive management) as necessary. If all of these criteria are met, then the lands covered under the plan would not meet the second provision of the definition of critical habitat pursuant to section 3(5)(A)(i)(II) and consequently not proposed as critical habitat for the covered species.

MCAS, Miramar has completed a final INRMP that provides for adequate conservation management and protection for the gnatcatcher. We have reviewed this plan and have determined that it addresses and meets the three criteria discussed above. Therefore, lands on MCAS, Miramar that are biologically essential to the gnatcatcher do not meet the second provision of the definition of critical habitat pursuant to section 3(5)(A)(i)(II) as they do not require special management and protection. Consequently, these lands essential to the gnatcatcher have not been included in the proposed designation of critical habitat for the species. Further, to the extent that the areas biologically essential to the gnatcatcher on MCAS, Miramar may meet the definition of critical habitat as defined in 3(5)(A)(i)(II), it is additionally appropriate to exclude these areas from critical habitat pursuant to the "other relevant impacts" provisions of section 4(b)(2).

The primary benefit of proposing critical habitat is to identify lands essential to the conservation of the species which, if critical habitat was designated, would require consultation with us to ensure activities would not adversely modify critical habitat or jeopardize the continued existence of the species. As previously discussed MCAS, Miramar has completed a final INRMP that provides for sufficient conservation management and protection for the coastal California gnatcatcher. Therefore, we do not believe that designation of areas on MCAS, Miramar as critical habitat will appreciably benefit the coastal California gnatcatcher beyond the protection already afforded the species under the Act and the completed INRMP. Exclusion of these lands would not result in the extinction of the species.

However, even if the lands on MCAS, Miramar did require special management and meet the definition of critical habitat, there would be appreciable benefits to excluding these areas from critical habitat pursuant to section 4(b)(2). If critical habitat were to be designated, this facility would be compelled to consult under section 7 of the Act on any activity that may affect designated critical habitat. Given the INRMP, the additional burden of consulting could impair its ability to

conduct activities. Similarly, including these areas in the proposed critical habitat rule would require this facility to conference with us on any activities that might adversely modify or destroy proposed critical habitat. This could result in unnecessary delays and disruption of base's activities and potentially impair our Nation's military readiness. In light of our country's national security interest, we have considered, but have not proposed critical habitat on MCAS, Miramar.

Relationship to Lands Managed by DoD and Exclusions Under 4(b)(2) of the Act

Marine Corps Base, Camp Pendleton

As we indicated previously, we have considered, but have not proposed mission-essential training areas on Camp Pendleton as critical habitat for the coastal California gnatcatcher under section 4(b)(2) of the Act.

Camp Pendleton operates an amphibious training base that promotes the combat readiness of military forces. The camp is the only West Coast Marine Corps facility where amphibious operations can be combined with air, sea, and ground assault training activities year-round. Currently, the Marine Corps has no alternative installation available for the types of training that occur on Camp Pendleton.

The Marine Corps consults with us under section 7 of the Act for activities that may affect Federally listed species on Camp Pendleton. On March 30, 2000, at the request of the Marine Corps, we initiated a formal consultation regarding Marine Corps activities on upland areas of Camp Pendleton. The consultation covers approximately 50,500 ha (125,000 ac) of land and addresses numerous activities that currently are expected to occur within the upland areas of Camp Pendleton, including combat readiness operations, air operations, vehicle operations, facility maintenance and operations, fire management, recreation activities, and housing. The upland consultation for the gnatcatcher and other species is not yet completed. We are currently working cooperatively with Camp Pendleton to facilitate the completion of this upland consultation.

In order to continue its critical training mission pending completion of the consultation, the Marine Corps has implemented measures which will avoid jeopardy to the coastal California gnatcatcher and other listed species within the uplands area and comply with section 7(d) of the Act. In particular, the Marine Corps is implementing a set of "programmatic instructions" to avoid adverse effects to the coastal California gnatcatcher.

The primary benefit of proposing critical habitat is to identify lands essential to the conservation of the species which, if critical habitat were designated, would require consultation with us to ensure that activities would not adversely modify critical habitat or jeopardize the continued existence of the species. We are already in consultation with the Marine Corps regarding their upland activities to ensure current and proposed actions will not jeopardize the species' continued existence. That consultation already takes into account the essential habitat requirements of the species. Therefore, we do not believe that designation of mission critical training areas on Camp Pendleton as critical habitat will appreciably benefit the gnatcatcher beyond the protection already afforded the species under the Act.

In contrast to the absence of an appreciable benefit resulting from designation of Camp Pendleton training areas as critical habitat, there are substantial benefits to excluding these areas from critical habitat. If critical habitat were to be designated within the training areas, the Marine Corps would be compelled to consult under section 7 of the Act on any activity that may affect designated critical habitat. The additional burden of requirements to avoid the adverse modification of habitat within mission critical training areas could significantly delay and impair the ability of the Marine Corps to conduct effective training activities, thus, severely limiting Camp Pendleton's utility as a military training installation. Similarly, including these areas in the proposed critical habitat rule would require the Marine Corps to conference with us on any activities that might adversely modify or destroy proposed critical habitat. This could result in similar delays and disruption of base's military training mission and impairment of our Nation's military readiness.

In light of our country's national security interests and the Marine Corps' need for the ability to maintain a high level of readiness and fighting capabilities and the disruption to the Marine Corps' training mission that could result from proposing critical habitat on lands identified as mission-essential training areas, we have considered, but have not proposed those areas. We also find that the exclusion of these lands will not lead to the extinction of the gnatcatcher.

We are soliciting public review and comment on our decision to consider, but not propose critical habitat for the coastal California gnatcatcher on mission-essential training areas on Camp Pendleton, reserve and targeted reserve lands in the San Diego MSCP and the Orange County Central-Coastal NCCP and Tribal lands of the Pala Band of Mission Indians based on section 4(b)(2) of the Act. Maps of habitat areas essential to the conservation of the coastal California gnatcatcher that occur within training areas on Camp Pendleton, reserve and targeted reserve lands in the San Diego MSCP and the Orange County Central-Coastal NCCP and Tribal lands of the Pala Band of Mission Indians are available for public review at the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section) or on the Internet at *http://carlsbad.fws.gov*. Additionally, maps showing lands essential to the conservation of the gnatcatcher, but not included in the proposed critical habitat based on adequate management and the provisions of section 3(5)(A)(i)(II), are available for viewing at the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES**). We will review this issue in light of all public comments received during the public review period and may reconsider our position in the final rule.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists to use the best scientific and commercial data available and, whenever possible, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information is often the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and Counties, scientific status surveys and studies, biological assessments, or other unpublished materials that meet the standards required by the Act.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas that support newly discovered populations in the future, but are outside the critical habitat designation, will continue to be subject to section 7 and the prohibitions of section 9(a)(1) of the Act. Federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not necessarily control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts.

Methods

In determining areas that are essential to conserve the gnatcatcher, we used the best scientific and commercial data available. This included data from research and survey observations published in peer reviewed articles; regional (GIS) coverages; habitat evaluation models for the San Diego County MSCP, the MHCP, and the North County Subarea of the MSCP for unincorporated San Diego County; approved HCPs; and data collected from reports submitted by biologists holding section 10(a)(1)(A) recovery permits. Following the listing of the species, a concerted effort was undertaken to survey significant portions of the species' range in San Diego and Orange counties for the purpose of developing and implementing regional HCPs, and more recently, surveys of varying intensity have been conducted in Los Angeles, Riverside, San Bernardino, and Ventura counties. As part of an intensive effort to gather range and abundance information, the Service sampled a large number of random points for gnatcatchers within coastal sage scrub vegetation in Orange and San Diego Counties. A habitat model was also developed that helped us refine essential breeding habitat in Orange, Riverside, and San Diego counties (*see* discussion below under Criteria Used To Identify Critical Habitat).

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12 in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations and protection. Such requirements include but are not limited to: Space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, rearing of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

We are proposing to designate as critical habitat areas that provide those habitat components essential for the conservation of the gnatcatcher.

The primary constituent elements for the coastal California gnatcatcher are those habitat components that provide for foraging, nesting, rearing of young, intraspecific communication, roosting, dispersal, genetic exchange, or sheltering (Atwood 1990). Primary constituent elements are provided in undeveloped areas that support, through natural successional processes (*e.g.*, post-fire recovery), various types of sage scrub or chaparral, grassland, and riparian habitats where they may be utilized for biological needs such as breeding, foraging, or dispersal (Atwood *et al.* 1998; Campbell *et al.* 1998). Primary constituent elements associated with the biological needs of dispersal are also found in undeveloped areas that provide connectivity or linkage between larger core areas, including open space and ruderal (weedy areas that contain introduced plant species) disturbed areas that may receive only periodic use. Probable dispersing individuals have been documented in vegetation dominated by such species as *Brassica* spp. (wild mustard), annual grasses, *Salsola tragus* (Russian thistle), *Baccharis salicifolia* (mule fat), *Salix* spp. (willow), and *Tamarix* spp. (salt cedar) (Campbell *et al.* 1998). Some of these species may also be used seasonally by territorial birds as coastal sage scrub dessicates during the summer drought (Campbell *et al.* 1998).

Primary constituent elements include, but are not limited to, the following plant communities: Venturan coastal sage scrub, Diegan coastal sage scrub, maritime succulent scrub, Riversidean sage scrub, Riversidean alluvial fan scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub (Holland 1986; Kirkpatrick and Hutchinson 1977; Westman 1983). Based upon dominant species, these communities have been further divided into series such as black sage, brittlebush, California buckwheat, California buckwheat-white sage, California encelia, California sagebrush, California sagebrush-black sage, California sagebrush-California buckwheat, coast prickly-pear, mixed sage, purple sage, scalebroom, and white sage (Sawyer and Keeler-Wolf 1995). Dominant species within these plant communities include *Artemisia californica*, *Eriogonum fasciculatum*, *Encelia californica*, *Salvia mellifera*, *S. apiana*, and *S. leucophylla*. Other commonly occurring plants include *Isocoma menziesii* (coast goldenbush), *Viguiera laciniata* (San Diego sunflower), *Baccharis pilularis* (coyote brush), *Baccharis sarothroides* (broom baccharis), *Mimulus aurantiacus* (bush monkeyflower), *Sambucus mexicana* (Mexican elderberry), *Isomeris arborea* (bladderpod), *Lotus scoparius*, *Malosma laurina* (laurel sumac), *Rhus integrifolia* (lemonadeberry), and *Rhus ovata* (sugarbush). Species such as *Lycium* spp. (boxthorn), *Euphorbia misera* (cliff spurge), *Simmondsia chinensis* (jojoba), and *Opuntia littoralis* (prickly pear), *O. prolifera* (cholla), and *Ferocactus viridescens* (coast barrel cactus), and *Dudleya* spp. (live-forever) are represented in maritime succulent scrub, coast prickly-pear scrub, and southern coastal bluff scrubs. In areas of coastal influence, chamise chaparral has also been documented to support breeding pairs (Campbell *et al.* 1998). Mesic sites dominated by *Baccharis salicifolia* and other Baccharis species such as *Baccharis pilularis* and *Baccharis sarathroides* may also support breeding pairs (Campbell *et al.* 1998).

Criteria Used To Identify Critical Habitat

We considered several qualitative criteria in the selection and proposal of specific areas or units for gnatcatcher critical habitat. Such criteria focused on designating units: (1) Throughout the geographical and elevational range of the species; (2) within various occupied plant communities, such as Venturan coastal sage scrub, Diegan coastal sage scrub, maritime succulent scrub, Riversidean sage scrub, Riversidean alluvial fan scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub; and (3) in documented areas of large, contiguous blocks of occupied habitat (*i.e.*, core population areas); and/or in areas that link core populations areas (*i.e.*, linkage areas). These criteria are similar to criteria used to identify reserve/preserve lands in approved regional HCPs covering the gnatcatcher.

To help predict gnatcatcher occurrences throughout the range of the species, especially in areas with limited survey information, we commissioned a spatial habitat evaluation model incorporating habitat parameters used by the gnatcatcher during the breeding

season. We began with a Geographic Information System (GIS) layer identifying California sagebrush habitats (*e.g.*, Diegan sage scrub, Riversidean sage scrub). We recognize that other habitats are used by coastal California gnatcatchers at various points in their life history, such as riparian and chaparral habitats during foraging or dispersal. However, few breeding territories have been documented in habitats devoid of California sagebrush. Once the vegetation layer was created, "core" patches of sagebrush were selected using a minimum patch size of 10 ha (25 ac) in a coastal climate zone, and 20 ha (50 ac) in an inland climate zone (coastal climate zone is defined as having an average January minimum temperature above 5° Celsius (C) (41° Fahrenheit (F)), whereas an inland climate zone is defined as having an average January minimum temperature below 5° C (41° F)). For gnatcatcher habitat within the Maritime and Coastal Climate Zones, a patch size equal to or greater than 25 acres was considered suitable gnatcatcher habitat. For gnatcatcher habitat east of the Maritime and Coastal Climate Zones, a patch size of equal to or greater than 50 acres was used because the density of gnatcatchers generally is lower farther from the coast. Research on home range and territory size indicates that territory size increases with distance from the coast (ERCE 1991, Preston *et al.* 1998); therefore, the model reflects this patch size difference between climate zones. Then, "satellite" patches less than 10 ha (25 ac) within 488 m (1600 feet) of "core" areas were identified. The 488 m (1600 ft) distance is the distance a bird would have to travel across the landscape to reach a "core" area while avoiding developed areas (as established by Mock 1992). The vegetation was then expanded beyond the 488 m (1600 ft) search distance by including sagebrush habitat contiguous to the "satellite." A layer called "high quality habitat" was then created by combining "core" and "satellite" areas. This "high quality habitat" was then given a value of 1, while all other areas were given a value of 0.

The second step used a digital elevation model to separate sagebrush by slope. As discussed in the Background section, many studies have suggested that gnatcatchers avoid nesting on very steep slopes (greater than 40 percent). Approximately 93 percent of the documented gnatcatcher sightings in the MSCP/MHCP study areas occur on slopes less than 40 percent (AMEC 2001). Consequently, sagebrush areas with slopes above 40 percent received a value of 0, while areas with slopes less than 40 percent received a value of 1.

Finally, the sagebrush was overlaid with a climate coverage to delimit areas above and below a mean minimum January temperature of 5° C (41° F), and an average rainfall of 33.66 cm (13.25 in). Five degrees C (41° F) was determined to be the threshold where the effects of temperature had an impact on gnatcatcher energetics (Mock 1998). The threshold for precipitation was determined by identifying the precipitation contour that captured 95 percent of the known occurrences. Sagebrush areas that are cold (*i.e.*, below 5° C (41° F)) and wet (*i.e.*, above 33.66 cm rainfall) received a value of 0. Areas that are warm and wet, or cold and dry, received a value of 1. Areas that are warm and dry received a value of 2.

To create the final model, the values for each area are totaled, with possible scores from 0 to 4. Areas with a value of 0 or 1 are considered to be of low quality, areas with a value of 2 of moderate quality, areas with a a value of 3 of high quality, and areas with a value of 4 of very high quality.

This model was run using the vegetation coverage data available from the three southern California Counties that have digital vegetation maps: San Diego, Orange, and Riverside Counties.

After generating the model across the three Counties, we tested it to see if it accurately predicted coastal California gnatcatcher occurrences. We used an independently derived data set of coastal California gnatcatcher occurrences across Orange and San Diego counties (USFWS unpublished). This data set was collected in the summer of 2002 using systematic point counts with a random start, incorporating distance sampling. Over a GIS data layer depicting vegetation types in the two counties, points were randomly placed over all habitats incorporating coastal sagebrush, including coastal sage scrub vegetation types and coastal sage scrub/chaparral ecotone. The sampling protocol included recording weather, vegetation, and coastal California gnatcatcher observations at each point. Coastal California gnatcatcher observations were recorded for a 10 minute data collection period followed by a 2.5 minute period during which a taped call was played twice. A total of 436 points were surveyed during this effort, each between 1 and 4 times.

To test the predictive power of the model, we compared the independent data set of coastal California gnatcatcher points with the model to see what percentage of gnatcatcher points were found to be occupied in each of the four different zones of habitat quality. The test found that 48 percent of the points located in habitat modeled as very high quality were occupied, 28 percent of the points in high quality were occupied, 8 percent of the points in medium quality were occupied, and essentially 0 percent of the points in low quality were occupied. The model was also tested and accepted under the Akaike's Information Criterion (AIC). This statistic is widely used as a measure for comparing the predictive power of constructed models (Burnham and Anderson 1998). Our independent study only sampled gnatcatcher abundance in San Diego and Orange counties, so we could not test the predictive power of the model in Riverside County. Therefore, the model was used as a guide for determining critical habitat only in San Diego and Orange counties.

In all counties within the range of the subspecies, including the counties that we modeled, we first examined those lands identified for conservation under approved regional HCPs covering the coastal California gnatcatcher. These planning efforts utilized habitat evaluation models, coastal California gnatcatcher occurrence data, and reserve design criteria to identify reserve systems of core gnatcatcher populations and linkage areas that are essential for the conservation of the species. Lands within existing designated reserves, preserves, or other conservation lands were determined by us at the time we issued the permits to be essential to the conservation of the species. We have reevaluated those areas and we adhere to our earlier determination that such lands are essential to the conservation of the gnatcatcher.

Those conservation lands considered for critical habitat designation include: (1) Designated reserve system lands within the Orange County NCCP for the Central-Coastal Subregions; (2) designated preserve lands within the County of San Diego Subarea within the San Diego MSCP; (3) designated preserve lands within the City of San Diego Subarea within the San Diego MSCP; and (4) designated preserve lands within the Poway Subarea within the San Diego MSCP. In addition, we considered conservation lands established through other approved HCPs covering the gnatcatcher (*e.g.*, East Coyote Hills HCP, Shell/Metropolitan Water District HCP, Lake Mathews MSHCP and NCCP, Sycamore Canyon HCP, and the HCP for the Southeast Quadrant of the City of Carlsbad (Villages of La Costa)). The boundaries of these existing reserves, preserves, and other conservation lands are mapped following the most current approved boundaries. Lands outside of existing designated reserves, preserves, or other lands where incidental take has been authorized for the gnatcatcher under section 10(a)(1)(B) of the Act are not proposed as critical habitat. We concluded these lands were not essential to the conservation of the species at the time the permits were issued. We have reviewed those conclusions in developing this revised proposed rule and determined that these conclusions are still valid, and that such lands are not essential to the conservation of the species.

We then evaluated those areas where ongoing regional habitat conservation planning efforts have resulted in the preparation of biological analyses that identify habitat important for the conservation of the gnatcatcher. These include: the Western Riverside County MSHCP, the Rancho Palos Verdes MSHCP, the MHCP, the North County Subarea of the MSCP for unincorporated San Diego County, and the Southern Subregion of Orange County's NCCP. We utilized those biological analyses in concert with data regarding current coastal California gnatcatcher occurrences, sage scrub vegetation, elevation, and connectivity to identify those lands that are essential for the conservation of the coastal California gnatcatcher within the respective planning area boundaries.

Finally, we evaluated other lands for their conservation value for the coastal California gnatcatcher. We delimited a study area by selecting geographic boundaries based on the following: (1) California gnatcatcher occurrences, (2) sage scrub vegetation, (3) elevation, and (4) connectivity to other coastal California gnatcatcher occurrences. We determined conservation value based on the presence of, or proximity to, significant core populations and/or sage scrub, sage scrub habitat quality, parcel or habitat patch size, surrounding land-uses, and potential to support resident coastal California gnatcatchers and/or facilitate movement of birds between known habitat areas.

After determining those specific areas that are biologically essential to the gnatcatcher, we evaluated the areas relative to approved and legally operative individual and regional HCPs, completed and approved INRMPs for DoD lands, and other adequate conservation management plans or agreements. This comparison was conducted to ascertain the extent to which these conservation measures precluded the need to designate critical habitat on those lands based on the management provisions and protections afforded the gnatcatcher and its habitat. As previously discussed, we are not proposing as critical habitat pursuant to sections 3(5)(a) and/or 4(b)(2) lands covered by: (1) Legally operative individual or regional HCPs that cover the coastal California gnatcatcher, (2) a completed and approved INRMP that adequately address the Coastal California gnatcatcher and its habitat, and (3) other appropriate conservation management plans or agreements. Consequently, lands within the boundaries of the Central-Coastal NCCP/HCP, San Diego MSCP, mission-essential training areas on Camp Pendleton; MCAS, Miramar; and Tribal lands of the Pala Band of Mission Indians are not proposed as critical habitat for the gnatcatcher. Maps showing the essential areas considered, but not proposed, are available for public review and comment at the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section) or on the Internet at *http://carlsbad.fws.gov*. These maps are provided to allow the public to adequately comment on these exclusions.

Proposed Critical Habitat Units are defined by specific map units. We did not map critical habitat in sufficient detail to exclude all individual developed areas (*e.g.*, structures, roads), other lands unlikely to contain primary constituent elements essential for coastal California gnatcatcher conservation, or lands where incidental take for the gnatcatcher has been authorized under a section 7 biological opinion. Within the delineated critical habitat unit boundaries, only lands containing the primary constituent elements described above, including those lands where primary constituent elements occur through natural successional processes, are considered critical habitat. Existing features and structures within proposed areas, such as buildings, roads, aqueducts, railroads, and other features, do not contain the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger consultation relative to critical habitat under section 7 of the Act unless they affect the species, or affect primary constituent elements in adjacent habitat.

Proposed Critical Habitat Designation

The approximate area of proposed critical habitat by county and land ownership is shown in Table 1. Proposed critical habitat includes gnatcatcher habitat throughout the species' range in the United States (*i.e.*, Los Angeles, Orange, Riverside, San Bernardino, San Diego and Ventura counties, California). Lands proposed are under private, state, and Federal ownership, with Federal lands including lands managed by the Bureau of Land Management (BLM), DoD, Service, and Forest Service. Lands proposed for critical habitat include primary constituent elements for the coastal California gnatcatcher that provide for foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering (Atwood 1990). Lands proposed include populations throughout the U.S. range of the species in a variety of climatic zones and vegetation types in order to preserve the genetic and behavioral diversity that currently exist within the species. Known movement corridors are also included to allow for demographic and genetic interchange between populations. Lands proposed as critical habitat have been divided into 13 Critical Habitat Units. A brief description of each unit and reasons for proposing it as critical habitat are presented below.

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA (HA (AC)) BY COUNTY AND LAND OWNERSHIP

[Estimates reflect the total area within critical habitat unit boundaries]

County	Federal	Local/State	Private	Total
Los Angeles	2,760 ha (6,825 ac)	810 ha (2,010 ac)	27,875 ha (68,900 ac)	31,445 ha (77,735 ac).
Orange	420 ha (1,045 ac)	1,835 ha (4,535 ac)	19,655 ha (48,580 ac)	21,910 ha (54,160 ac).
Riverside	4,345 ha (10,740 ac)	3,535 ha (8,740 ac)	60,890 ha (150,465 ac)	68,770 ha (169,945 ac).
San Bernardino	335 ha (830 ac)	645 ha (1,590 ac)	8,450 ha (20,890 ac)	9,430 ha (23,310 ac).
San Diego	10,490 ha (25,940 ac)	705 ha (1,755 ac)	39,295 ha (97,110 ac)	50,490 ha (124,805 ac).
Ventura	0	0	18,550 ha (45,840 ac)	18,550 ha (45,840 ac).

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA (HA (AC)) BY COUNTY AND LAND OWNERSHIP—Continued

[Estimates reflect the total area within critical habitat unit boundaries]

County	Federal*	Local/State	Private	Total
Total	18,350 ha (45,380 ac)	7,530 ha (18,630 ac)	174,715 ha (431,785 ac)	200,595 ha (495,795 ac).

*Federal lands include Bureau of Land Management, DoD, National Forest, Tribal, and Fish and Wildlife Service lands.

TABLE 2.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA (HA (AC)), ESSENTIAL AREA, AND EXCLUDED AREA

Area considered essential	307,545 ha (760,075 ac).
Area not included because of special management or protection (MCAS, Miramar)*	2,725 ha (6,740 ac).
Area excluded under 4(b)(2) (Camp Pendleton, preserve lands under the San Diego MSCP and the Orange County Central-Coastal NCCP, and Tribal lands of the Pala Band of Mission Indians).	104,225 ha (257,540 ac).
Proposed Critical Habitat	200,595 ha (495,795 ac).

*Data for individual HCPs are not available.

TABLE 3.—HCPS AND NCCP AREAS WITHIN THE GENERAL AREA CONTAINING THE PROPOSED CRITICAL HABITAT

NCCP/HCP	Planning area	Preserve area
San Diego MSCP	236,000 ha (582,000 ac)	69,573 ha (171,000 ac).
Central-Coastal Orange County NCCP/HCP	84,463 ha (208,713 ac)	15,677 ha (38,738 ac).
Proposed Northwestern San Diego MHCP	453 square kilometers, 175 square miles (111,908 ac).	8,064 ha (19,928 ac).
Proposed Southern Subregion NCCP/HCP Orange County (pending).	51,800 ha (128,000 ac)	5,666 ha (14,000 ac).
Proposed Western Riverside MSHCP	530,000 ha (1.3 million ac)	61,919 ha (153,000 ac).

Unit 1: South San Diego County

Unit 1 encompasses approximately 10,155 ha (25,100 ac) within the MSCP planning area. Lands essential to the conservation of the gnatcatcher within the cities of Chula Vista, El Cajon, and Santee; major amendment areas within the San Diego County Subarea Plan; the Otay-Sweetwater Unit of the San Diego National Wildlife Refuge Complex; and water district lands owned by Sweetwater Authority, Helix Water District, and Otay Water District are included. Lands proposed contain core populations of the species, sage scrub and areas providing connectivity between core populations and sage scrub. Populations in this unit occur in high quality coastal sage scrub and persist in high densities. Lands in the eastern section of this unit are also some of the least fragmented within this portion of the range in the United States and therefore less subject to edge effects which negatively influence habitat quality. Lands in this unit are also located adjacent to the U.S./Mexico border, and populations located there may serve to promote demographic and genetic interchange with populations in Mexico. We have considered, but have not proposed lands within the MSCP, MHPA, and preapproved mitigation areas in the City of San Diego, County of San Diego, La Mesa, and Poway and essential lands on MCAS, Miramar.

Unit 2: Upper San Diego River and El Capitan Linkage

Unit 2 encompasses approximately 6,490 ha (16,075 ac) in the upper San Diego River drainage. This unit includes a core population of coastal California gnatcatchers on the Cleveland National Forest south of State Route 78 near the upper reaches of the San Diego River, as well as canyons and corridors that provide linkages to MHPA lands adjacent to this unit. This population is the easternmost and one of the highest in elevation known. Individuals within this population likely contain unique genetic or behavioral adaptations that allow them to persist, which is likely to be important to the species as environmental conditions change through time. Also included within this unit is City of San Diego lands adjacent to El Capitan Reservoir, which serves as a corridor connecting the adjacent core population on Cleveland National Forest lands to populations located at lower elevations to the west (in Unit 1).

Unit 3: North San Diego County Multiple Habitat Conservation Plan (MHCP)

Unit 3 encompasses approximately 13,140 ha (32,465 ac) within the MHCP planning area in northwestern San Diego County. Included are lands within the cities of Carlsbad, Encinitas, Escondido, Oceanside, San Marcos, Solana Beach, and Vista. Lands proposed contain the last significant coastal California gnatcatcher populations remaining south of Camp Pendleton abutting the coast. Coastal populations have been found to be more dense than inland locales (Preston *et al* 1998). These coastal populations are therefore essential for supporting more inland locales through emigration (*i.e.*, Unit 5). This unit also provides connectivity between core populations at Camp Pendleton (Unit 6), MSCP reserve areas (Unit 1), and populations in northern San Diego County (Unit 5).

Unit 4: Fallbrook Naval Weapons Station

Unit 4 encompasses approximately 3,515 ha (8,690 ac) on Fallbrook Naval Weapons Station in northern San Diego County. This unit contains high quality habitat and a core gnatcatcher population that supports adjacent populations on Camp Pendleton (Unit 6), northern San Diego County (Unit 5), and in southwestern Riverside County (Unit 10). The Santa Margarita River, on the northern boundary of this unit, also functions as an essential linkage connecting coastal populations of coastal California gnatcatchers with inland populations in San Diego and Riverside counties.

Unit 5: North County Subarea of the MSCP for Unincorporated San Diego County

Unit 5 encompasses approximately 14,045 ha (34,705 ac) within the planning area for the North County Subarea of the MSCP for San Diego County. Lands proposed within this unit contain several core coastal California gnatcatcher populations and intervening linkage areas of sage scrub. This unit constitutes the primary inland linkage along the I–15 corridor between San Diego populations and those in southwestern Riverside County (Unit 10). We have considered, but have not proposed occupied high quality habitat on the Pala Indian Reservation. Recent surveys have revealed the existence of a core population on the Pala Indian Reservation. Habitat quality in this area was also depicted as high to very high by the habitat model. This population is located adjacent to a north-south corridor connecting Riverside and San Diego counties, and will likely provide a significant number of dispersing juveniles into this corridor.

Unit 6: Southern NCCP Subregion of Orange County and Marine Corps Base Camp Pendleton

Unit 6 encompasses approximately 17,940 ha (44,340 ac) within the planning area for the Southern NCCP Subregion of Orange County. This unit contains some of the largest, most robust populations known (*e.g.*, Chiquita ridge), as well as essential regional populations (*e.g.*, Prima Deshecha Ca'ada, Talega Canyon) and linkages in Cristianitos Canyon, Arroyo Trabuco, and Saddle Creek/Live Oak Canyon. This unit also provides the primary linkage for core populations in North San Diego MHCP (Unit 3), and the Fallbrook Naval Weapons Station (Unit 4) to those further north in Orange County (Unit 7).

Camp Pendleton contains a coastal corridor of gnatcatcher-occupied sage scrub that provides the primary linkage between San Diego populations and those in southern Orange County. Another corridor of gnatcatcher-occupied sage scrub occurs along the Santa Margarita River valley that branches inland, connecting with habitat in the Fallbrook Naval Weapons Station (Unit 4) and further north into southwestern Riverside County (Unit 10). We are proposing critical habitat in Camp Pendleton on lands determined to be essential, but that are outside of training area boundaries. These areas include lands within the Wire Mountain housing area, De Luz housing area, and State Park lease lands (*e.g.*, San Onofre State Beach).

Unit 7: Central-Coastal NCCP Subregions of Orange County (Central-Coastal NCCP)

Unit 7 encompasses approximately 2,340 ha (5,775 ac) within the Orange County Central-Coastal NCCP planning area. It includes core gnatcatcher populations and sage scrub habitat within select Existing Use Areas, portions of the Irvine Ranch Land Reserve, and the designated reserve (panhandle portion) of the El Toro Reuse Area. These areas contain high quality habitat and dense populations of gnatcatchers that link populations located in southern Orange County (Unit 6) with those in northern Orange and Riverside counties (Units 9 and 10).

Unit 8: Palos Verdes Peninsula Subregion, Los Angeles County

Unit 8 encompasses approximately 2,895 ha (7,160 ac) within and adjacent to the subregional planning area for the Palos Verdes Peninsula in Los Angeles County, including the City of Rancho Palos Verdes MSHCP area. This unit includes a core population of coastal California gnatcatchers and high quality sage scrub habitat in Portuguese Bend, Agua Amarga Canyon, Defense Fuel Support Point, San Pedro, and adjacent canyons, as well as connecting linkages. The former landfill adjacent to the South Coast Botanic Garden does not currently contain habitat and is not proposed as critical habitat, yet it will continue to be evaluated as it represents a significant potential restoration area for the recovery of this population.

Unit 9 : East Los Angeles County-Matrix NCCP Subregion of Orange County

Unit 9 encompasses approximately 9,140 ha (22,595 ac) within the Montebello Hills, Puente-Chino Hills, and East and West Coyote Hills areas. Core populations are known from the Montebello Hills, south slopes of the Puente-Chino Hills from Whittier east to Yorba Linda, and the East and West Coyote Hills. The Brea Canyon Landfill is not proposed as critical habitat, but it represents a significant potential restoration area to support these remaining populations. The unit also provides the primary connectivity between core gnatcatcher populations and sage scrub habitat within the Central-Coastal Subregions of the Orange County NCCP (Unit 7), the Western Riverside County MSHCP (Unit 10), and the Bonelli Regional Park core population within the East Los Angeles (Unit 12).

Unit 10: Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)

Unit 10 encompasses approximately 71,505 ha (176,720 ac) within the proposed planning area for the Western Riverside County MSHCP. Lands proposed include important linkages from San Diego County core populations along the Santa Margarita River and Warm Springs Creek; and core populations within the Lake Skinner/Diamond Valley region and the Lake Elsinore/Lake Mathews region. Also proposed are core populations that occur along the I–15 corridor, in the Lake Perris area, in the Alessandro Heights area, in the Box Spring Mountains, and along the foothills of the Santa Ana Mountains connecting into the Chino-Puente Hills. These areas also provide connectivity among core populations within Riverside County and to populations in San Diego, San Bernardino, Orange, and Los Angeles counties. Unit 10 encompasses some of the Core Reserves established under the Stephens' Kangaroo Rat HCP. The Lake Mathews/Estelle Mountain, Steele Peak, Lake Perris/San Jacinto Core Reserves, the Potrero Area of Critical Environmental Concern, and the Southwestern Riverside County Multi-Species Reserve provide high quality habitat for the coastal California gnatcatcher. Lands proposed as critical habitat within Unit 10 are generally encompassed by the Criteria Area (from which the future preserve area will be delineated) designated as part of the MSHCP. Areas proposed outside of the Criteria Area are consistent with those designated in the previous final designation of critical habitat (65 FR 63680). Lands designated outside of Criteria Areas include the Alessandro Heights, which is essential for maintaining linkages with populations in southern San Bernardino County, and the eastern slope of the Santa Ana Mountains, which is an essential linkage to the Puente-Chino Hills and central Orange County (Units 7 and 9). This unit incorporates habitat in the vicinity of Aguanga that is one of three locations in the range of the species, and the only location in the United States, where the California gnatcatcher co-occurs with its sister species, the Black-tailed gnatcatcher (*Polioptila melanura*; Weaver 1998; Atwood 1988). Maintaining these areas of sympatry (overlapping occupation) are important for reinforcing reproductive isolating mechanisms such as habitat preferences and vocalizations that prevent hybridization between the two species (Weaver 1998, Atwood 1988). This unit

also incorporates high-quality coastal sage scrub south and east of Diamond Valley Reservoir that has been shown to be resistant to type conversion to non-native grassland, probably due to the prevalence of gabbro-basalt soils in this area (Minnich and Dezzani 1998). The coastal sage scrub in this region therefore has the highest probability of resisting type conversion in the future, and therefore has the greatest potential to maintain diverse, high quality coastal sage scrub vegetation through time. This unit also encompasses contiguous habitats in southern San Bernardino County, including core populations in the Jurupa Hills, and the Blue Mountain/Reche Canyon region. The Santa Ana River appears to be an important movement corridor in this area, connecting the Jurupa and La Loma Hills to populations in the Box Springs Mountains, as well as to the few pairs known from the Pedley Hills and Norco Hills. Though a few coastal California gnatcatchers have been observed from the upper Santa Ana River wash in the vicinity of Highland, we do not yet have evidence that this area constitutes a core population.

Unit 11: San Bernardino Valley MSHCP, San Bernardino County

Unit 11 encompasses approximately 6,065 ha (14,990 ac) along the foothills of the San Gabriel Mountains in the Etiwanda Fan and Lytle and Cajon Washes. The core populations in these alluvial fans utilize a unique habitat type at the northern extent of their inland range. The vegetation mosaic of the Etiwanda fan is complex and consists of Riversidian alluvial fan sage scrub in the active floodplains of the major washes, and Riversidian sage scrub on the alluvial fan between major washes. These habitats are interspersed with stands of *Quercus dumosa* (scrub oak), *Ceanothus leucodermis* (white buckthorn), *Cercocarpus betuloides* (mountain mahogany), *Garrya* ssp. (silktassel), *Rhamnus* spp. (buckthorn), and *Rhus ovata* (sugarbush). The species' persistence in these unique habitat types may be due to unique genetic or behavioral adaptations that may be important to the species as environmental conditions change through time (Lesica and Allendorf 1995). Linkages from these populations to more southerly portions of the range may include the foothills of the San Gabriel Mountains to the west and the San Bernardino Mountains to the east, however these linkages have yet to be confirmed.

Unit 12: East Los Angeles County

Unit 12 encompasses approximately 1,570 ha (3,890 ac) in eastern Los Angeles County in Bonelli Regional Park and along the San Jose Hills to the west. This unit functions as an archipelago of persistent populations toward the northern end of the range of the species, and is a likely source population for the pairs that are reported from the foothills of the San Gabriel mountains north of the Los Angeles basin. Disturbed and vacant areas within Bonelli Regional Park and the BKK landfill at the western end of the San Jose Hills represent the last available vacant land for restoration of habitat to recover the species in this unit. Isolated habitat patches between this unit and the East Los Angeles County-Matrix NCCP Subregion of Orange County (Unit 9), are not included, but may serve to maintain connectivity. This unit does not include a potential movement corridor along the foothills of the San Gabriel Mountains towards the Etiwanda Fan (Unit 11) as we do not currently have evidence of movement through this area.

Unit 13: Western Los Angeles and Ventura Counties

Unit 13 encompasses approximately 41,795 ha (103,290 ac) in eastern Ventura and western Los Angeles counties along the southern and eastern slopes of the Santa Susana Mountains and a portion of the interior foothills of the San Gabriel Mountains. It includes the only known breeding population of coastal California gnatcatchers in Ventura County and incorporates high quality coastal sage scrub in the Placerita, Box Springs Canyon, Plum Canyon, and Moorpark areas. Its primary function is as a regional source population for the species and as the east-west linkage of sage scrub habitat between the core population in Ventura county and the pairs documented in the foothills of the San Gabriel Mountains. This unit encompasses the northern and western distributional extreme of the coastal California gnatcatcher's current range, and as such would act as a source population for any future recovery of gnatcatcher populations to the north and west. Peripheral populations are also important in that they may contain unique genetic or behavioral adaptations that may be important to the species as environmental conditions change through time (Lesica and Allendorf 1995).

Effects of Critical Habitat Designation

Section 7 Consultation

Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402.

Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion (see 50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation we would ensure that the permitted actions do not adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

Activities on Federal lands that may affect the coastal California gnatcatcher or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U. S. Army Corps of Engineers (Army Corps) under section 404 of the Clean Water Act, or some other Federal action, including funding (*e.g.*, Federal Highway Administration, Federal Aviation Authority, or Federal Emergency Management Agency) will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal lands that are not Federally funded or permitted do not require section 7 consultation.

We recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, all should understand that critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the jeopardy standard in section 7(a)(2) of the Act and the prohibitions of section 9 of the Act. Critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat of the coastal California gnatcatcher include, but are not limited to the following:

(1) Removing, thinning, or destroying gnatcatcher habitat (as defined in the primary constituent elements discussion), whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting, grubbing, grading, overgrazing, construction, road building, mining, herbicide application, etc.); and

(2) Activities that cause indirect effects that appreciably decrease habitat value or quality (*e.g.*, activities that create or foster noise, edge effects, invasion of exotic plants or animals, or fragmentation such that it appreciably decreases habitat value or quality).

Designation of critical habitat could affect the following agencies and/or actions: development on private lands requiring permits from Federal agencies, such as authorization from the Corps, pursuant to section 404 of the Clean Water Act, or a section 10(a)(1)(B) permit from the Service, or some other Federal action that includes Federal funding that will subject the action to the section 7 consultation process (*e.g.*, from the Federal Highway Administration, Federal Emergency Management Agency, or the Department of Housing and Urban Development); military activities of the DoD on its lands or lands under its jurisdiction; the release or authorization of release of biological control agents by the U.S. Department of Agriculture; regulation of activities affecting point source pollution discharges into waters of the United States by the Environmental Protection Agency under section 402 of the Clean Water Act; construction of communication sites licensed by the Federal Communications Commission; and authorization of Federal grants or loans. Where Federally listed wildlife species occur on private lands proposed for development, any HCPs submitted by the applicant to secure an incidental take permit pursuant to section 10(a)(1)(B) of the Act would be subject to the section 7 consultation process, a process that would consider all Federally-listed species affected by the HCP, including plants.

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Carlsbad Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE. 11th Avenue, Portland, OR 97232–4181 (503/231–6131, FAX 503/231–6243).

Relationship to the 4(d) Special Rule for the Gnatcatcher

On December 10, 1993, a final special rule concerning take of the coastal California gnatcatcher was published pursuant to section 4(d) of the Act (58 FR 63088). Under the 4(d) special rule, incidental take of the species is not considered to be a violation of section 9 of the Act if: (1) Take results from activities conducted pursuant to the NCCP and in accordance with an approved NCCP plan for the protection of coastal sage scrub, prepared consistent with the State of California's Conservation and Process Guidelines (Guidelines) dated November 1993; and (2) the Service issues written concurrence that the plan meets the standards for issuance of an incidental take permit under 50 CFR 17.32(b)(2). Within enrolled subregions actively engaged in the preparation of an NCCP plan, the take of gnatcatchers will not be a violation of section 9 of the Act if such take results from activities conducted in accordance with the Guidelines. The Guidelines limit habitat loss during the interim planning period to no more than 5 percent of coastal sage scrub with lower long-term conservation potential in existence at the time of adoption of the 4(d) special rule.

The Guidelines specify criteria to evaluate the long-term conservation potential of sage scrub that is proposed for loss during the period that NCCP plans are being developed to assist participating jurisdictions in providing interim protection for areas that support habitat that is likely to be important to conservation of the gnatcatcher. These jurisdictions are: the Southern and Matrix subregions of Orange County; the cities of Rancho Palos Verdes and San Dimas in Los Angeles County; MSCP subareas in the cities of Santee, El Cajon, Chula Vista, and Coronado; the MHCP Subregion of northwestern San Diego County; the North County Subarea of San Diego's MSCP; San

Diego County's MHCOSP; and six water districts in San Diego County.

We intend that participating jurisdictions will be able to continue to apply the 4(d) special rule within designated critical habitat and to issue Habitat Loss Permits, with the joint concurrence of us and the California Department of Fish and Game (CDFG), provided the jurisdictions are actively working to complete their subarea plans and adhere to the Guidelines. To be consistent with the Guidelines, the jurisdictions must find, and we and CDFG must concur, that:

(1) The proposed habitat loss is consistent with the interim loss criteria in the Guidelines and with any subregional process if established by the subregion:

(a) the habitat loss does not cumulatively exceed the 5 percent guideline;

(b) the habitat loss will not preclude connectivity between areas of high habitat values;

(c) the habitat loss will not preclude or prevent the preparation of the subregional NCCP; and

(d) the habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with section 4.3 of the Guidelines.

(2) The habitat loss will not appreciably reduce the likelihood of the survival and recovery of listed species in the wild.

(3) The habitat loss is incidental to otherwise lawful activities.

Because, in addition to avoiding jeopardy to the coastal California gnatcatcher, the Guidelines restrict interim habitat loss allowed under the 4(d) rule to areas with low long-term conservation potential that will not preclude development of adequate NCCP plans and that will not adversely impact connectivity between areas of high habitat value, we believe that allowing a small percentage of habitat loss that could potentially occur within designated critical habitat pursuant to the 4(d) rule is not likely to adversely modify or destroy critical habitat by appreciably reducing its value for both the survival and recovery of the species. When we make a final critical habitat determination, we will prepare a new biological opinion on the 4(d) rule to formally evaluate the effects of the rule on designated critical habitat.

Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, 911 NE. 11th Ave., Portland, OR 97232 (telephone 503–231–2063, facsimile 503–231–6143).

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial data available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species. We will complete an economic analysis for this proposal prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a 30-day comment period at that time.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will solicit the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final determination may differ from this proposal.

Public Hearings

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (see **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the notice? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov*.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB). The Service is preparing a draft economic analysis of this proposed action. The Service will use this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of inclusion, unless failure to designate such area as critical habitat will lead to the extinction of the coastal California gnatcatcher. This analysis will be available for public comment before finalizing this designation. The availability of the draft economic analysis will be announced in the **Federal Register**.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In the final rule, we anticipate being able to certify that the critical habitat designation for the coastal California gnatcatcher will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

Small entities include small organizations, such as independent nonprofit organizations and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result.

SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, the analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA. (*Mid-Tex Electric Co-Op, Inc.* v. *F.E.R.C.* and *American Trucking Associations, Inc.* v. *EPA*).

To determine if a rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to determine if certification is appropriate. In some circumstances, especially with proposed critical habitat designations of very limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement. Designation of critical habitat has the potential to affect activities conducted, funded, or permitted by Federal agencies. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect the coastal California gnatcatcher. Federal agencies must also consult with us if their activities may affect designated critical habitat. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

As required under section 4(b)(2) of the Act, we are preparing a draft analysis of the potential economic impacts of this proposed critical habitat designation. An early version of our draft analysis provides an estimate of the number of small entities potentially affected by the proposed designation of critical habitat for the coastal California gnatcatcher. The analysis conservatively examines total estimated section 7 costs by including both coextensive costs and those solely attributable to critical habitat designation. According to the draft analysis, section 7 implementation for the coastal California gnatcatcher is likely to affect small businesses in the land development and real estate industry and small governments. Approximately 12 small businesses in the land development and real estate industry are affected annually, which represents less than one percent of the total number of small businesses in the industry for the study area. These small businesses are likely to experience impacts equivalent to about 4 percent of their per-business annual gross revenue. For the small governments in the study area, less than one agency is likely to be affected annually, which represents about two percent of the total number of small governments in the study area. Affected small governments are likely to experience impacts equivalent to less than one percent of the median revenue of small governments in the study area.

In summary, we have concluded that this proposed rule would not result in a significant economic effect on a substantial number of small entities. Therefore, we are certifying that the proposed designation of critical habitat for the coastal California gnatcatcher will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required.

This discussion is based upon the information regarding potential economic impact that is available to us at this time. This assessment of economic effect may be modified prior to final rulemaking based upon development and review of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and E.O. 12866.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

A preliminary version of our draft economic analysis indicates that designation of critical habitat will cause an effect on the economy of approximately $124 million per year. It does not indicate that this designation will cause: (a) Any increases in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions or (b) any significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will only be affected to the extent that any Federal funds, permits, or other authorized activities must ensure that their actions will not adversely affect the critical habitat. However, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year, that is, it is not "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of proposing to designate approximately 289,850 ha (716,345 ac) of lands in Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura Counties, California, as critical habitat for the coastal California gnatcatcher in a takings implications assessment. This assessment concludes that this proposed rule does not pose significant takings implications.

The proposed designation of critical habitat affects only Federal action agencies. The rule will not increase or decrease the current restrictions on private property concerning take of the gnatcatcher. Because of current public knowledge of the species protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the critical habitat designation. While real estate market values may temporarily decline following designation, resulting from the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Landowners in areas that are included in the designated critical habitat will continue to have the opportunity to utilize their property in ways consistent with the survival of the gnatcatcher.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. The designation of critical habitat within the geographic range occupied by the gnatcatcher imposes no additional restrictions to those currently in place, and therefore has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what Federally sponsored activities may occur, it may assist these local governments in long range planning (rather than waiting for case by case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We designate critical habitat in accordance with the provisions of the Endangered Species Act. The determination uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of the gnatcatcher.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This final determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are Tribal lands essential for the conservation of the gnatcatcher because they do support core gnatcatcher populations and provide high quality habitat for this species. We will be coordinating with the Pala Band of Mission Indians.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

Author. The primary author of this notice is the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.95, revise the entry for the coastal California gnatcatcher (*Polioptila californica californica*) under paragraph (b) as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) Birds.

* * * * *

Coastal California gnatcatcher (*Polioptila californica californica*)

(1) Critical Habitat Units are depicted for Los Angeles, Orange, Riverside, San Bernardino, and San Diego counties, California, on the maps below.

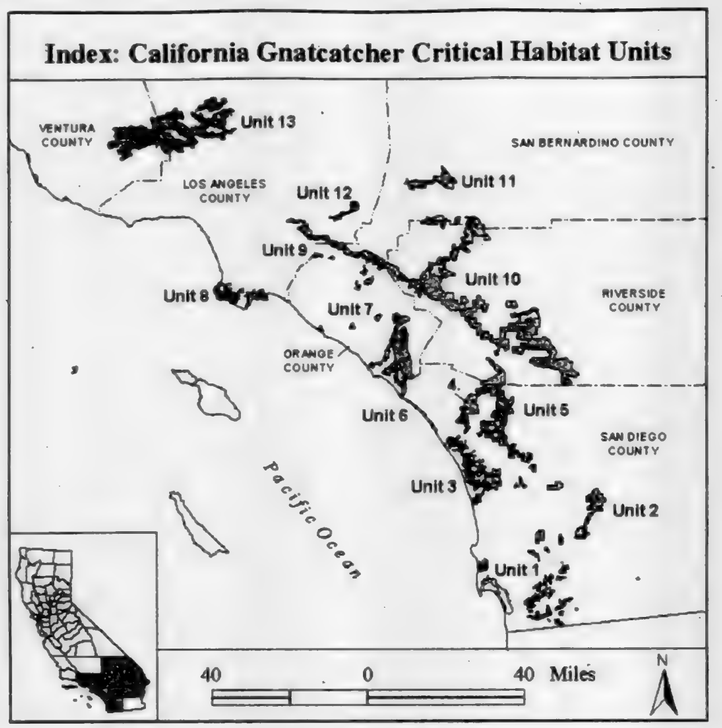
(2) The primary constituent elements for the coastal California gnatcatcher are those habitat components that are

essential for the primary biological needs of foraging, nesting, rearing of young, intra-specific communication, roosting, dispersal, genetic exchange, or sheltering (Atwood 1990). Primary constituent elements are provided in undeveloped areas, which support or have the potential to support, through natural successional processes (*e.g.*, post-fire recovery), various types of sage scrub or chaparral, grassland, and riparian habitats where they may be utilized for biological needs such as breeding, foraging, or dispersal (Atwood *et al.* 1998, Campbell *et al.* 1998). Primary constituent elements associated with the biological needs of dispersal are also found in undeveloped areas that provide or could provide connectivity or linkage between larger core areas, including open space and ruderal (weedy areas that contain introduced plant species) disturbed areas that may receive only periodic use. Probable dispersing individuals have been documented in vegetation dominated by such species as *Brassica* spp. (wild mustard), annual grasses, *Salsola tragus* (russian thistle), *Baccharis salicifolia* (mule fat), *Salix* spp. (willow), and *Tamarix* spp. (salt cedar) (Campbell *et al.* 1998). Some of these species may also be used seasonally by territorial birds because coastal sage scrub dessicates during the summer drought (Campbell *et al.* 1998).

Primary constituent elements include, but are not limited to, the following plant communities: Venturan coastal sage scrub, Diegan coastal sage scrub, maritime succulent scrub, Riversidean sage scrub, Riversidean alluvial fan scrub, southern coastal bluff scrub, and coastal sage-chaparral scrub (Holland 1986, Kirkpatrick and Hutchinson 1977, Westman 1983). Based upon dominant species, these communities have been further divided into series such as black sage, brittlebush, California buckwheat, California buckwheat-white sage, California encelia, California sagebrush, California sagebrush-black sage, California sagebrush-California buckwheat, coast prickly-pear, mixed sage, purple sage, scalebroom, and white sage (Sawyer and Keeler-Wolf 1995). Dominant species within these plant communities include *Artemisia californica, Eriogonum fasciculatum, Encelia californica, Salvia mellifera, S. apiana,* and *S. leucophylla*. Other commonly occurring plants include *Isocoma menziesii* (coast goldenbush), *Viguiera laciniata* (San Diego sunflower), *Baccharis pilularis* (coyote brush), *Baccharis sarothroides* (broom baccharis), *Mimulus aurantiacus* (bush monkeyflower), *Sambucus mexicana* (Mexican elderberry), *Isomeris arborea* (bladderpod), *Lotus scoparius, Malosma laurina* (laurel sumac), *Rhus integrifolia* (lemonadeberry), and *Rhus ovata* (sugarbush). Species such as *Lycium* spp. (boxthorn), *Euphorbia misera* (cliff spurge), *Simmondsia chinensis* (jojoba), and *Opuntia littoralis* (prickly pear), *O. prolifera* (cholla), and *Ferocactus viridescens* (coast barrel cactus), and *Dudleya* spp. (live-forever), are represented in maritime succulent scrub, coast prickly-pear scrub, and southern coastal bluff scrubs. In areas of coastal influence, chamise chaparral has also been documented to support breeding pairs (Campbell *et al.* 1998). Mesic sites dominated by *Baccharis salicifolia* and other Baccharis species such as *Baccharis pilularis* and *Baccharis sarathroides* may also support breeding pairs (Campbell *et al.* 1998).

(3) Critical habitat does not include lands outside of existing designated reserves, preserves, or other conservation lands where incidental take has been authorized, as of the date of this rule, for the coastal California gnatcatcher under section 7(a)(2) and 10(a)(1)(B) of the Act because these lands are not essential to the conservation of the species.

(4) **Note:** Index Map follows:



(5) *Unit 1*: South San Diego County, California.

(i) From USGS 1:100,000 quadrangle maps San Diego and El Cajon, California, lands within County of San Diego Major Amendment areas excluding the San Diego National Wildlife Refuge Otay-Sweetwater Unit (SDNWR).

Land bounded by the following UTM NAD27 coordinates (E, N): 501000, 3635300; 500800, 3635300; 500800, 3635700; 500700, 3635700; 500700, 3635500; 500600, 3635500; 500600, 3635400; 500400, 3635400; 500400, 3635300; 500300, 3635300; 500300, 3638200; 500400, 3638200; 500400, 3638400; 500500, 3638400; 500500, 3638500; thence west to the MCAS, Miramar (MCASM) boundary at UTM y-coordinate 3638500; thence northeast along MCASM boundary to y-coordinate 3640400; thence east and following coordinates: 502000, 3640400; 502000, 3640100; 502200, 3640100; 502200, 3640200; 502700, 3640200; 502700, 3640300; 503200, 3640300; 503200, 3640400; 503600, 3640400; 503600, 3636300; 503500, 3636300; 503500, 3636400; 502900, 3636400; 502900, 3636600; 502800, 3636600; 502800, 3636800; 502700, 3636800; 502700, 3637200; 502000, 3637200; 502000, 3636200; 501600, 3636200; 501600, 3635600; 501700, 3635600; 501700, 3635200; 501600, 3635200; 501600, 3635100; 501300, 3635100; 501300, 3635000; 501000, 3635000; returning to 501000, 3635300; excluding land bounded by 501000, 3635300; 501100, 3635300; 501100, 3635400; 501000, 3635400; 501000, 3635300.

Land bounded by the following UTM NAD27 coordinates (E, N): 510300, 3638600; 510700, 3638600; 510700, 3637400; 510900, 3637400; 510900, 3637500; 511000, 3637500; 511000, 3637600; 511200, 3637600; 511200, 3637700; 511500, 3637700; 511500, 3637000; 511400, 3637000; 511400, 3636900; 511300, 3636900; 511300, 3636700; 511200, 3636700; 511200, 3636600; 511000, 3636600; 511000, 3636500; 511100, 3636500; 511100, 3636400; 511200, 3636400; 511200, 3636300; 511300, 3636300; 511300, 3636100; 511600, 3636100; 511600, 3636000; 511700, 3636000; 511700, 3635200; 511600, 3635200; 511600, 3635100; 511400, 3635100; 511400, 3635000; 511200, 3635000; 511200, 3634900; 511000, 3634900; 511000, 3634800; 510900, 3634800; 510900, 3634700; 510700, 3634700; 510700, 3634600; 510000, 3634600; 510000, 3634900; 509800, 3634900; 509800, 3635400; 510000, 3635400; 510000, 3637200; 510100, 3637200; 510100, 3638500; 510300, 3638500; returning to 510300, 3638600.

Land bounded by the following UTM NAD27 coordinates (E, N): 505000, 3633600; 505300, 3633600; 505300, 3632800; 505400, 3632800; 505400, 3632700; 505500, 3632700; 505500, 3632500; 505600, 3632500; 505600, 3632400; 505700, 3632400; 505700, 3632000; 505800, 3632000; 505800, 3631900; 505900, 3631900; 505900, 3631500; 505600, 3631500; 505600, 3631600; 505300, 3631600; 505300, 3631700; 505200, 3631700; 505200, 3631800; 505000, 3631800; 505000, 3632200; 504100, 3632200; 504100, 3633500; 504400, 3633500; 504400, 3633400; 504500, 3633400; 504500, 3633500; 504600, 3633500; 504600, 3633400; 504700, 3633400; 504700, 3633300; 505000, 3633300; 505000, 3633400; 505100, 3633400; 505100, 3633500; 505000, 3633500; returning to 505000, 3633600.

Lands bounded by the following UTM NAD27 coordinates (E, N): 498600, 3631900; 498600, 3632000; 498700, 3632000; 498700, 3632200; 499200, 3632200; 499200, 3632500; 499500, 3632500; 499500, 3632400; 499600, 3632400; 499600, 3632200; 499700, 3632200; 499700, 3631500; 499800, 3631500; 499800, 3631400; 499900, 3631400; 499900, 3631300; 500000, 3631300; 500000, 3630800; 499700, 3630800; 499700, 3631100; 499400, 3631100; 499400, 3630800; 499300, 3630800; 499300, 3630500; 499200, 3630500; 499200, 3630600; 499100, 3630600; 499100, 3630700; 498900, 3630700; 498900, 3630800; 498800, 3630800; 498800, 3630900; 498700, 3630900; 498700, 3631000; 498500, 3631000; 498500, 3631100; 498400, 3631100; 498400, 3631200; 498300, 3631200; 498300, 3631300; 498100, 3631300; 498100, 3631400; 498000, 3631400; 498000, 3631500; 497900, 3631500; 497900, 3631600; 497700, 3631600; 497700, 3631700; 497600, 3631700; 497600, 3631800; 497500, 3631800; 497500, 3631900; 497400, 3631900; 497400, 3632000; 497200, 3632000; 497200, 3632100; 497100, 3632100; 497100, 3632200; 497000, 3632200; 497000, 3632500; 497700, 3632500; 497700, 3632300; 497600, 3632300; 497600, 3632100; 497700, 3632100; 497700, 3632000; 497900, 3632000; 497900, 3631900; 498000, 3631900; 498000, 3632000; 498100, 3632000; 498100, 3632100; 498200, 3632100; 498200, 3632300; 498500, 3632300; 498500, 3631900; returning to 498600, 3631900; excluding land bounded by 498600, 3631900; 498600, 3631700; 498700, 3631700; 498700, 3631900; 498600, 3631900; and land bounded by 499200, 3632200; 499200, 3632100; 499300, 3632100; 499300, 3632200; 499200, 3632200.

Land bounded by the following UTM NAD27 coordinates (E, N): 500700, 3630700; 500700, 3630900; 500900, 3630900; 500900, 3631100; 501100, 3631100; 501100, 3630800; 501200, 3630800; 501200, 3630600; 501300, 3630600; 501300, 3630500; 501200, 3630500; 501200, 3630400; 501300, 3630400; 501300, 3629900; 501400, 3629900; 501400, 3629700; 501300, 3629700; 501300, 3629600; 501500, 3629600; 501500, 3629400; 501100, 3629400; 501100, 3629500; 501000, 3629500; 501000, 3629800; 501100, 3629800; 501100, 3630400; 500900, 3630400; 500900, 3630200; 501000, 3630200; 501000, 3629900; 500800, 3629900; 500800, 3629800; 500600, 3629800; 500600, 3630000; 500500, 3630000; 500500, 3629700; 500200, 3629700; 500200, 3630000; 500100, 3630000; 500100, 3630600; 500300, 3630600; 500300, 3630800; 500600, 3630800; 500600, 3630700; returning to 500700, 3630700; excluding land bounded by 500800, 3630600; 500800, 3630500; 500900, 3630500; 500900, 3630600; 500800, 3630600; land bounded by 500500, 3630000; 500500, 3630200; 500400, 3630200; 500400, 3630000; 500500, 3630000; land bounded by; 500700, 3630700; 500700, 3630600; 500800, 3630600; 500800, 3630700; 500700, 3630700; and land bounded by 500300, 3630600; 500300, 3630300; 500400, 3630300; 500400, 3630400; 500600, 3630400; 500600, 3630500; 500500, 3630500; 500500, 3630600; 500300, 3630600.

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Land bounded by the following UTM NAD27 coordinates (E, N): 504100, 3618800; 504200, 3618800; 504200, 3618300; 504100, 3618300; 504100, 3617900; 503500, 3617900; 503500, 3618000; 503300, 3618000; 503300, 3617900; 503000, 3617900; 503000, 3618000; 502400, 3618000; 502400, 3617900; 502300, 3617900; 502300, 3617800; 502000, 3617800; 502000, 3618100; 502100, 3618100; 502100, 3618300; 502200, 3618300; 502200, 3618400; 502700, 3618400; 502700, 3618500; 503100, 3618500; 503100, 3618600; 503200, 3618600; 503200, 3618400; 503500, 3618400; 503500, 3618300; 503700, 3618300; 503700, 3618200; 503800, 3618200; 503800, 3618300; 503900, 3618300; 503900, 3618400; 504000, 3618400; 504000, 3618600; 504100, 3618600; returning to 504100, 3618800.

Land bounded by the following UTM NAD27 coordinates (E, N): 504000, 3616300; 504500, 3616300; 504500, 3616200; 504900, 3616200; 504900, 3615400; 505600, 3615400; 505600, 3615800; 506500, 3615800; 506500, 3615500; 506300, 3615500; 506300, 3615300; 506200, 3615300; 506200, 3615200; 506100, 3615200; 506100, 3615100; 505900, 3615100; 505900, 3615300; 505600, 3615300; 505600, 3615100; 505500, 3615100; 505500, 3615000; 505300, 3615000; 505300, 3615100; 505100, 3615100; 505100, 3615200; 505000, 3615200; 505000, 3615100; 504900, 3615100; 504900, 3614100; 504600, 3614100; 504600, 3614600; 504500, 3614600; 504500, 3615600; 504400, 3615600; 504400, 3615800; 504200, 3615800; 504200, 3615600; 504100, 3615600; 504100, 3615100; 504000, 3615100; 504000, 3615000; 503900, 3615000; 503900, 3614900; 503800, 3614900; 503800, 3614800; 503900, 3614800; 503900, 3614600; 503800, 3614600; 503800, 3614400; 503700, 3614400; 503700, 3614200; 503400, 3614200; 503400, 3614000; 503200, 3614000; 503200, 3613600; 502900, 3613600; 502900,

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Land bounded by the following UTM NAD27 coordinates (E, N): 500100, 3615200; 500300, 3615200; 500300, 3615000; 500400, 3615000; 500400, 3614700; 500500, 3614700; 500500, 3614400; 500600, 3614400; 500600, 3614200; 500700, 3614200; 500700, 3614100; 500800, 3614100; 500800, 3614000; 501000, 3614000; 501000, 3614100; 501100, 3614100; 501100, 3614400; 501000, 3614400; 501000, 3614800; 501200, 3614800; 501200, 3614600; 501500, 3614600; 501500, 3614500; 501400, 3614500; 501400, 3614400; 501500, 3614400; 501500, 3614300; 502000, 3614300; 502000, 3613900; 502100, 3613900; 502100, 3613600; 502000, 3613600; 502000, 3613500; 502100, 3613500; 502100, 3613400; 502200, 3613400; 502200, 3613100; 502000, 3613100; 502000, 3613300; 501700, 3613300; 501700, 3613100; 501500, 3613100; 501500, 3613200; 501300, 3613200; 501300, 3613300; 500900, 3613300; 500900, 3613100; 501000, 3613100; 501000, 3613000; 500700, 3613000; 500700, 3613100; 500500, 3613100; 500500, 3613200; 500400, 3613200; 500400, 3613700; 500300, 3613700; 500300, 3614000; 500200, 3614000; 500200, 3614200; 500100, 3614200; 500100, 3614400; 500000, 3614400; 500000, 3614800; 499900, 3614800; 499900, 3615100; 500100, 3615100; returning to 500100, 3615200.

Land bounded by the following UTM NAD27 coordinates (E, N): 506000, 3614700; 506500, 3614700; 506500, 3614500; 506000, 3614500; 506000, 3614700; ,; 20,; 506000, 3614400; 506200, 3614400; 506200, 3614200; 506100, 3614200; 506100, 3614100; 506300, 3614100; 506300, 3613900; 506100, 3613900; 506100, 3613200; 505900, 3613200; 505900, 3613300; 505500, 3613300; 505500, 3613500; 505600, 3613500; 505600, 3613600; 505700, 3613600; 505700, 3613700; 505600, 3613700; 505600, 3614000; 505700, 3614000; 505700, 3614100; 505900, 3614100; 505900, 3614200; 506000, 3614200; returning to 506000, 3614400.

Land bounded by the following UTM NAD27 coordinates (E, N): 499700, 3614200; 499800, 3614200; 499800, 3613900; 499900, 3613900; 499900, 3613600; 499700, 3613600; 499700, 3613700; 499600, 3613700; 499600, 3613800; 499300, 3613800; 499300, 3613700; 499400, 3613700; 499400, 3613400; 499000, 3613400; 499000, 3613700; 498900, 3613700; 498900, 3613900; 499100, 3613900; 499100, 3614000; 499400, 3614000; 499400, 3614100; 499700, 3614100; returning to 499700, 3614200.

Land bounded by the following UTM NAD27 coordinates (E, N): 498500, 3610800; 498500, 3610600; 499200, 3610600; 499200, 3610700; 499300, 3610700; 499300, 3610800; 499600, 3610800; 499600, 3610700; 499700, 3610600; 499400, 3610500; 499300, 3610400; 499000, 3610300; 498800, 3610400; 498600, 3610300; 498500, 3610200; 498400, 3610300; 498300, 3610200; 498200, 3610100; 497900, 3610400; 497600, 3610500; 497400, 3610600; 496700, 3610800; 496600, 3610700; 496200, 3610800; 496100, 3610800; 496100, 3610700; 495800, 3610600; 495700, 3610700; 495500, 3610800; 495400, 3611000; 496000, 3611300; 496100, 3611400; 496200, 3611500; 496300, 3611500; 496300,

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Land bounded by the following UTM NAD27 coordinates (E, N): 496900, 3610500; 497100, 3610500; 497100, 3610000; 497200, 3610000; 497200, 3609800; 497600, 3609800; 497600, 3610100; 497500, 3610100; 497500, 3610200; 497700, 3610200; 497700, 3610100; 497800, 3610100; 497800, 3610000; 497900, 3610000; 497900, 3609900; 498000, 3609900; 498000, 3610000; 498200, 3610000; 498200, 3609800; 498100, 3609800; 498100, 3609700; 498400, 3609700; 498400, 3609600; 498600, 3609600; 498600, 3609700; 498900, 3609700; 498900, 3609800; 499100, 3609800; 499100, 3609700; 499300, 3609700; 499300, 3609600; 499200, 3609600; 499200, 3609500; 499000, 3609500; 499000, 3609400; 498600, 3609400; 498600, 3609300; 498200, 3609300; 498200, 3609100; 498000, 3609100; 498000, 3609200; 497800, 3609200; 497800, 3609300; 497600, 3609300; 497600, 3609400; 497500, 3609400; 497500, 3609300; 497400, 3609300; 497400, 3609200; 497200, 3609200; 497200, 3609400; 497300, 3609400; 497300, 3609600; 497100, 3609600; 497100, 3609800; 497000, 3609800; 497000, 3609900; 496900, 3609900; 496900, 3610000; 496800, 3610000; 496800, 3610100; 496900, 3610100; returning to 496900, 3610500; excluding land bounded by 497700, 3609700; 497700, 3609600; 497900, 3609600; 497900, 3609500; 498000, 3609500; 498000, 3609700; 497700, 3609700.

Land bounded by the following UTM NAD27 coordinates (E, N): 497000, 3609200; 497200, 3609200; 497200, 3609000; 497100, 3609000; 497100, 3608900; 496900, 3608900; 496900, 3609000; 497000, 3609000; returning to 497000, 3609200.

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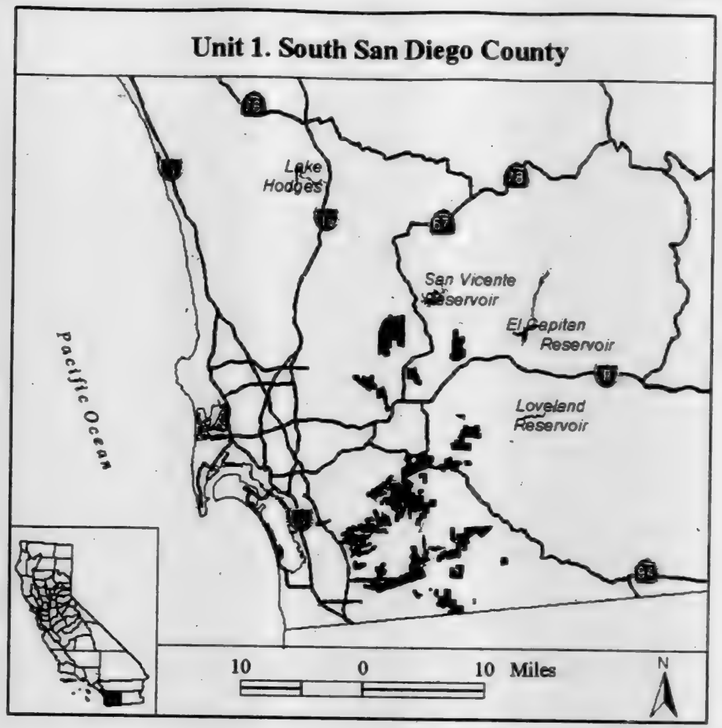
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Land bounded by the following UTM NAD27 coordinates (E, N): 505300, 3610500; 505500, 3610500; 505500, 3610200; 505600, 3610200; 505600, 3609900; 505700, 3609900; 505700, 3609600; 505800, 3609600; 505800, 3609300; 505900, 3609300; 505900, 3609100; 506000, 3609100; 506000, 3608800; 506100, 3608800; 506100, 3608500; 506200, 3608500; 506200, 3608200; 506300, 3608200; 506300, 3608100; 506100, 3608100; 506100, 3608200; 506000, 3608200; 506000, 3608000; 506100, 3608000; 506100, 3607900; 506000, 3607900; 506000, 3607600; 506100, 3607600; 506100, 3607700; 506400, 3607700; 506400, 3607400; 506600, 3607400; 506600, 3607100; 506700, 3607100; 506700, 3606800; 506800, 3606800; 506800, 3606500; 506500, 3606500; 506500, 3606400; 506300, 3606400; 506300, 3606300; 506000, 3606300; 506000, 3606200; 505700, 3606200; 505700, 3606100; 505400, 3606100; 505400, 3606000; 505100, 3606000; 505100, 3605900; 504800, 3605900; 504800, 3605800; 504500, 3605800; 504500, 3605700; 504200, 3605700; 504200, 3605600; 503900, 3605600; 503900, 3605500; 503600, 3605500; 503600, 3605400; 503400, 3605400; 503400, 3605300; 503100, 3605300; 503100, 3605200; 502800, 3605200; 502800, 3605100; 502500, 3605100; 502500, 3605000; 502200, 3605000; 502200, 3604900; 501900, 3604900; 501900, 3604800; 501600, 3604800; 501600, 3604700; 501300, 3604700; 501300, 3604600; 501000, 3604600; 501000, 3604500; 500700, 3604500; 500700, 3604400; 500500, 3604400; 500500, 3604600; 500400, 3604600; 500400, 3604900; 500300, 3604900; 500300, 3604800; 500000, 3604800; 500000, 3604700; 499900, 3604700; 499900, 3604800; 499400, 3604800; 499400, 3604900; 498700, 3604900; 498700, 3605400; 498900, 3605400; 498900, 3605300; 499000, 3605300; 499000, 3605200; 500700, 3605200; 500700, 3605300; 500500, 3605300; 500500, 3605400; 500300, 3605400; 500300, 3605500; 500200, 3605500; 500200, 3605400; 499900, 3605400; 499900, 3605500; 499700, 3605500; 499700, 3605600; 499600, 3605600; 499600, 3605700; 496600, 3605700; 496600, 3605900; 496900, 3605900; 496900, 3606000; 497600, 3606000; 497600, 3606100; 497800, 3606100; 497800, 3606200; 498000, 3606200; 498000, 3606100; 498500, 3606100; 498500, 3606000; 498600, 3606000; 498600, 3606100; 499800, 3606100; 499800, 3606000; 499900, 3606000; 499900, 3606100; 500100, 3606100; 500100, 3606000; 500200, 3606000; 500200, 3606200; 500400, 3606200; 500400, 3606100; 500500, 3606100; 500500, 3606700; 500600, 3606700; 500600, 3607000; 500400, 3607000; 500400, 3607200; 500300, 3607200; 500300, 3607700; 500600, 3607700; 500600, 3607600; 500800, 3607600; 500800, 3607500; 500900, 3607500; 500900, 3607900; 501000, 3607900; 501000, 3608000; 501100, 3608000; 501100, 3608100; 501200, 3608100; 501200, 3608000; 501300, 3608000; 501300, 3608100; 501500, 3608100; 501500, 3607900; 501300, 3607900; 501300, 3607800; 501200, 3607800; 501200, 3607700; 501300, 3607700; 501300,

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Land within the San Diego National Wildlife Refuge Otay-Sweetwater Unit (SDNWR); excluding Lot 707; land bounded by UTM NAD27 coordinates (E, N) 505200, 3616700, thence north along the following UTM NAD27 coordinates: 505200, 3616800; 505000, 3616800; 505000, 3616900; 504800, 3616900; 504800, 3617000; 504700, 3617000; 504700, 3617300; 504800, 3617300; 504800, 3617500; 504700, 3617500; 504700, 3617700; 504800, 3617700; 504800, 3618000; 504900, 3618000; 504900, 3618200; 505000, 3618200; 505000, 3618500; 505100, 3618500; thence north to the SDNWR boundary at x-coordinate 505100; thence east around SDNWR boundary, passing x-coordinate 505000, to y-coordinate 3616700; returning to the point of beginning; land bounded by UTM NAD27 coordinates (E, N) 508600, 3620500, thence east along the following UTM NAD27 coordinates: 508700, 3620500; 508700, 3620400; 508800, 3620400; 508800, 3620200; 509200, 3620200; 509200, 3620500; 509300, 3620500; 509300, 3620600; 509700, 3620600; 509700, 3621000; 509900, 3621000; 509900, 3620900; 510000, 3620900; 510000, 3620600; 510100, 3620600; 510100, 3620400; thence south around SDNWR boundary, passing UTM y-coordinate 3620000, to UTM x-coordinate 508600; returning to the point of beginning; land bounded by UTM NAD27 coordinates (E, N) 513900, 3624700, thence north along the following UTM NAD27 coordinates: 513900, 3625100; 513800, 3625100; thence north to the SDNWR boundary at x-coordinate 513800; thence east around SDNWR boundary, passing x-coordinate 513750, to y-coordinate 3624700; returning to point of beginning.

(ii) **Note:** Map of Unit 1 follows.



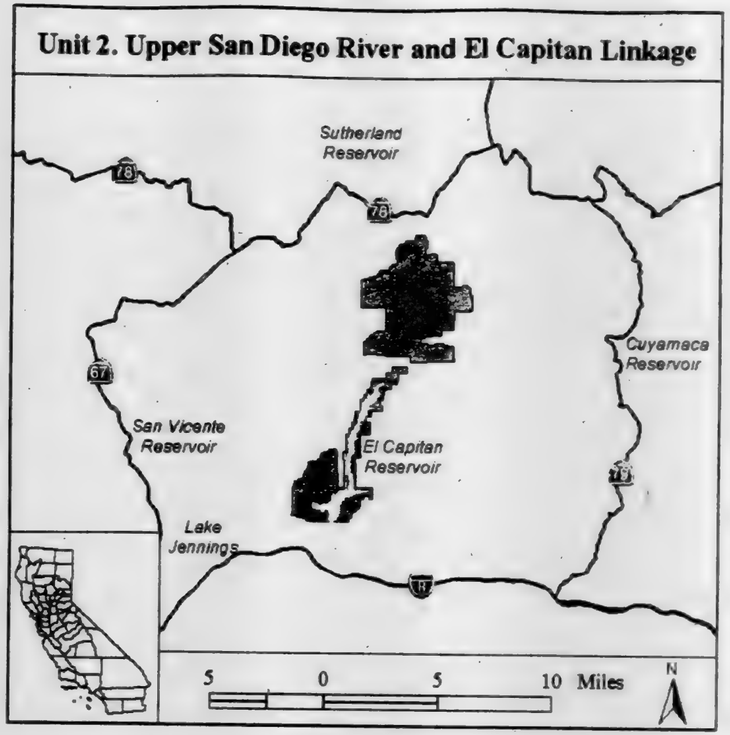
(6) *Unit 2:* Upper San Diego River and El Capitan Linkage, San Diego County, California.

(i) From USGS 1,24,000 quadrangle maps Alpine, El Cajon Mountain, Tule Springs, Santa Ysabel, and Ramona, California, land bounded by the following UTM NAD27 coordinates (E, N): 525100, 3657000; 525700, 3657000; 525700, 3656900; 525800, 3656900; 525800, 3656700; 525900, 3656700; 525900, 3656200; 525800, 3656200; 525800, 3655500; 525900, 3655500; 525900, 3655700; 526100, 3655700; 526100, 3655800; 526500, 3655800; 526500, 3655700; 526600, 3655700; 526600, 3655300; 526500, 3655300; 526500, 3655200; 526300, 3655200; 526300, 3655100; 526700, 3655100; 526700, 3655200; 527700, 3655200; 527700, 3655100; 527800, 3655100; 527800, 3653500; 528400, 3653500; 528400, 3653600; 528800, 3653600; 528800, 3653500; 528900, 3653500; 528900, 3653400; 529000, 3653400; 529000, 3652900; 529100, 3652900; 529100, 3651900; 529000, 3651900; 529000, 3651800; 527900, 3651800; 527900, 3651200; 527800, 3651200; 527800, 3650500; 527000, 3650500; 527000, 3650100; 526300, 3650100; 526300, 3650000; 525800, 3650000; 525800, 3649900; 525500, 3649900; 525500, 3649500; 526000, 3649500; 526000, 3649400; 526500, 3649400; 526500, 3649500; 527100, 3649500; 527100, 3649400; 527400, 3649400; 527400, 3649300; 527800, 3649300; 527800, 3648500; 527900, 3648500; 527900, 3648300; 525900, 3648300; 525900, 3648200; thence west to the Capitan Grande Reservation boundary (CGR) at y-coordinate 3648200; thence west along CGR boundary to x-coordinate 521500; thence north and following coordinates: 521500, 3649600; 521600, 3649600; 521600, 3649700; 521700, 3649700; 521700, 3649800; 521800, 3649800; 521800, 3649900; 521900, 3649900; 521900, 3650000; 522000, 3650000; 522000, 3650100; 522200, 3650100; 522200, 3650200; 522300, 3650200; 522300, 3650300; 522400, 3650300; 522400, 3650400; 523000, 3650400; 523000, 3652000; 521300, 3652000; 521300, 3653900; 521500, 3653900; 521500, 3654000; 521800, 3654000; 521800, 3654100; 522100, 3654100; 522100, 3654200; 522400, 3654200; 522400, 3654300; 522500, 3654300; 522500, 3654500; 522600, 3654500; 522600, 3654600; 523200, 3654600; 523200, 3654800; 523300, 3654800; 523300, 3654900; 523400, 3654900; 523400, 3655000; 523800, 3655000; 523800, 3655200; 523900, 3655200; 523900, 3655300; 523800, 3655300; 523800, 3655400; 523700, 3655400; 523700, 3656000; 523800, 3656000; 523800, 3656100; 523900, 3656100; 523900, 3656300; 524000, 3656300; 524000, 3656400; 524300, 3656400; 524300, 3656500; 524400, 3656500; 524400, 3656600; 525000, 3656600; 525000, 3656800; 525100, 3656800; returning to 525100, 3657000.

Land bounded by the following UTM NAD27 coordinates (E, N): 521000, 3639200; 521000, 3639300; 520900, 3639300; 520900, 3640000; 520800, 3640000; 520800, 3640400; 520700, 3640400; 520700, 3640600; 520600, 3640600; 520600, 3641500; 520700, 3641500; 520700, 3641700; 520800, 3641700; 520800, 3642400; 520900, 3642400; 520900, 3643000; 521000,

3643000; 521000, 3643400; 521100, 3643400; 521100, 3643600; 521000, 3643600; 521000, 3643500; 520900, 3643500; 520900, 3643300; 520800, 3643300; 520800, 3643200; 520700, 3643200; 520700, 3642900; 520600, 3642900; 520600, 3641900; 520500, 3641900; 520500, 3641500; 520400, 3641500; 520400, 3640500; 520500, 3640500; 520500, 3640400; 520600, 3640400; 520600, 3640000; 520700, 3640000; 520700, 3639700; 520600, 3639700; 520600, 3639100; 520400, 3639100; 520400, 3639200; 520200, 3639200; 520200, 3639100; 519900, 3639100; 519900, 3639000; 519800, 3639000; 519800, 3638900; 519400, 3638900; 519400, 3638500; 519300, 3638500; 519300, 3638300; 518800, 3638300; 518800, 3638200; 518600, 3638200; 518600, 3638100; 518400, 3638100; 518400, 3638200; 518300, 3638200; 518300, 3638300; 518100, 3638300; 518100, 3638400; 517900, 3638400; 517900, 3638300; 517800, 3638300; 517800, 3638200; 517900, 3638200; 517900, 3638100; 518300, 3638100; 518300, 3638000; 518400, 3638000; 518400, 3637900; 518700, 3637900; 518700, 3637800; 518800, 3637800; 518800, 3637900; 518900, 3637900; 518900, 3638000; 519100, 3638000; 519100, 3637900; 519200, 3637900; thence south to the Multi-Habitat Planning Area boundary (MHPA) at x-coordinate 519200; thence west along MHPA boundary to y-coordinate 3637100; thence west and following coordinates: 517800, 3637100; 517800, 3637200; 517500, 3637200; 517500, 3637300; 517300, 3637300; 517300, 3637400; 516900, 3637400; 516900, 3637500; 516500, 3637500; thence north to the MHPA boundary at x-coordinate 516500; thence north along MHPA boundary to y-coordinate 3639500; thence northeast and following coordinates: 516600, 3639500; 516600, 3639700; 516700, 3639700; 516700, 3639900; 517000, 3639900; 517000, 3640000; 517200, 3640000; 517200, 3640100; 517300, 3640100; 517300, 3640400; 517400, 3640400; 517400, 3640600; 517500, 3640600; 517500, 3640700; 517600, 3640700; 517600, 3640900; 517700, 3640900; 517700, 3641200; 517800, 3641200; 517800, 3641300; 518300, 3641300; 518300, 3641400; 518500, 3641400; 518500, 3641700; 518600, 3641700; 518600, 3641800; 518700, 3641800; 518700, 3641900; 519000, 3641900; 519000, 3642000; 519100, 3642000; 519100, 3642100; 519600, 3642100; 519600, 3642000; thence east to the CGR boundary at y-coordinate 3642000; thence south along CGR boundary to y-coordinate 3638200; thence southwest and following coordinates: 521300, 3638200; 521300, 3638100; 521200, 3638100; 521200, 3638000; 521100, 3638000; 521100, 3637900; 521000, 3637900; 521000, 3637800; 520800, 3637800; 520800, 3637700; 520700, 3637700; 520700, 3637400; 520600, 3637400; 520600, 3637300; 520500, 3637300; 520500, 3637100; ;; ;; 519500, 3637200; 519600, 3637200; 519600, 3637400; 519700, 3637400; 519700, 3637600; 519800, 3637600; 519800, 3638000; 519900, 3638000; 519900, 3638500; 520000, 3638500; 520000, 3638700; 520200, 3638700; 520200, 3638900; 520600, 3638900; 520600, 3639000; 520800, 3639000; 520800, 3639200; returning to 521000, 3639200; excluding land bounded by 521000, 3639200; 521000, 3639100; 521100, 3639100; 521100, 3639200; 521000, 3639200; and land bounded by 521100, 3643600; 521200, 3643600; 521200, 3643800; 521100, 3643800; 521100, 3643600.

(ii) **Note:** Map of Unit 2 follows.



(7) *Unit 3:* San Diego County Multiple Habitat Conservation Plan (MHCP), San Diego County, California.

(i) From USGS 1:100,000 quadrangle maps Oceanside, Borrego Valley, and San Diego, California. Beginning at Marine Corps Base Camp Pendleton (MCBCP) boundary at y-coordinate 3682100, land bounded by the following UTM NAD27 coordinates (E, N): 3682100; 472900, 3682100; 472900, 3682200; 473300, 3682200; 473300, 3681900; 473200, 3681900; 473200, 3681700; 473300, 3681700; 473300, 3681500; 473200, 3681500; 473200, 3681400; 472800, 3681400; 472800, 3681600; 473100, 3681600; 473100, 3681900; 473000, 3681900; 473000, 3681800; 472800, 3681800; 472800, 3681700; 472600, 3681700; 472600, 3681800; 472500, 3681800; 472500, 3681700; 472200, 3681700; 472200, 3681800; then west to MCBCP at y-coordinate 3681800; then returning to the point of beginning.

Beginning at MCBCP boundary at y-coordinate 3681400, land bounded by the following UTM NAD27 coordinates (E, N): 3681400; 471700, 3681400; 471700, 3680800; 471600, 3680800; 471600, 3680600; 472000, 3680600; 472000, 3680700; 472100, 3680700; 472100, 3680800; 472200, 3680800; 472200, 3681100; 472300, 3681100; 472300, 3681200; 472600, 3681200; 472600, 3681100; 472500, 3681100; 472500, 3680600; 472200, 3680600; 472200, 3680500; 472100, 3680500; 472100, 3680300; 472000, 3680300; 472000, 3680200; 471900, 3680200; 471900, 3680100; 471800, 3680100; 471800, 3680000; 471600, 3680000; 471600, 3679900; 471500, 3679900; 471500, 3679800; 471300, 3679800; 471300, 3679700; 471100, 3679700; 471100, 3679600; 470800, 3679600; then north to MCBCP; then returning to the point of beginning.

Land bounded by the following UTM NAD27 coordinates (E, N): 476100, 3679600; 477300, 3679600; 477300, 3679500; 477300, 3678700; 477300, 3678600; 477300, 3678400; 477400, 3678400; 477400, 3678300; 477300, 3678300; 477300, 3678200; 476900, 3678200; 476900, 3678800; 476800, 3678800; 476800, 3679200; 476500, 3679200; 476500, 3679300; 476100, 3679300; returning to 476100, 3679600.

Beginning at MCBCP boundary at y-coordinate 3678800, land bounded by the following UTM NAD27 coordinates (E, N): 468900, 3678800; 468900, 3678700; 469000, 3678700; 469000, 3678400; 469200, 3678400; 469200, 3678200; 469000, 3678200; 469000, 3678300; 468800, 3678300; 468800, 3678000; 469200, 3678000; 469200, 3677800; 468700, 3677800; 468700, 3677700; 468500, 3677700; 468500, 3677600; 468400, 3677600; 468400, 3677500; 468300, 3677500; 468300, 3677200; 468200, 3677200; 468200, 3677000; 468100, 3677000; 468100, 3676900; 468000, 3676900; 468000, 3677000; 467900, 3677000; 467900, 3677300; 468000, 3677300; 468000, 3677400; 467700, 3677400; 467700, 3677500; 467600, 3677500; then north to MCBCP; then returning to the point of beginning.

Beginning at MCBCP boundary at y-coordinate 3677400, land bounded by the following UTM NAD27 coordinates (E, N): 467300, 3677400; 467300, 3677300; 467500, 3677300; 467500,

3677100; 467200, 3677100; 467200, 3677000; 467100, 3677000; 467100, 3676800; 467000, 3676800; 467000, 3676700; 467100, 3676700; 467100, 3676200; 467000, 3676200; 467000, 3676000; 466800, 3676000; 466800, 3675800; 467700, 3675800; 467700, 3675900; 467800, 3675900; 467800, 3676400; 468400, 3676400; 468400, 3676100; 468500, 3676100; 468500, 3675800; 468600, 3675800; 468600, 3675600; 468700, 3675600; 468700, 3675300; 468800, 3675300; 468800, 3675400; 468900, 3675400; 468900, 3675600; 468800, 3675600; 468800, 3675700; 468900, 3675700; 468900, 3675800; 469000, 3675800; 469000, 3675900; 469200, 3675900; 469200, 3676000; 469400, 3676000; 469400, 3676100; 469700, 3676100; 469700, 3676200; 469900, 3676200; 469900, 3676300; 470100, 3676300; 470100, 3675900; 469700, 3675900; 469700, 3675700; 470100, 3675700; 470100, 3675500; 469800, 3675500; 469800, 3675300; 469700, 3675300; 469700, 3675200; 469500, 3675200; 469500, 3675500; 469300, 3675500; 469300, 3675800; 469200, 3675800; 469200, 3675000; 469100, 3675000; 469100, 3674600; 468400, 3674600; 468400, 3674400; 468300, 3674400; 468300, 3674300; 468000, 3674300; 468000, 3674400; 467900, 3674400; 467900, 3674500; 467400, 3674500; 467400, 3674700; 467500, 3674700; 467500, 3674800; 467700, 3674800; 467700, 3674700; 468000, 3674700; 468000, 3674600; 468100, 3674600; 468100, 3674800; 468200, 3674800; 468200, 3674900; 468700, 3674900; 468700, 3675000; 468600, 3675000; 468600, 3675300; 468500, 3675300; 468500, 3675500; 468400, 3675500; 468400, 3675800; 468300, 3675800; 468300, 3676100; 468200, 3676100; 468200, 3675900; 468100, 3675900; 468100, 3675800; 468000, 3675800; 468000, 3675700; 467900, 3675700; 467900, 3675600; 467700, 3675600; 467700, 3675500; 467200, 3675500; 467200, 3675600; 467000, 3675600; 467000, 3675500; 466800, 3675500; 466800, 3675400; 466700, 3675400; 466700, 3675300; 466800, 3675300; 466800, 3674900; 466500, 3674900; 466500, 3674800; 466700, 3674800; 466700, 3674700; 466800, 3674700; 466800, 3674600; 467000, 3674600; 467000, 3674400; 467300, 3674400; 467300, 3674200; 466900, 3674200; 466900, 3674300; 466800, 3674300; 466800, 3674400; 466300, 3674400; 466300, 3674500; 466200, 3674500; 466200, 3674400; 466100, 3674400; 466100, 3674500; 466000, 3674500; 466000, 3674300; 465900, 3674300; 465900, 3674400; 465800, 3674400; 465800, 3674700; 465100, 3674700; 465100, 3674600; 465000, 3674600; 465000, 3674500; 464900, 3674500; 464900, 3674400; 465100, 3674400; 465100, 3674100; 465200, 3674100; 465200, 3673500; 465000, 3673500; 465000, 3673600; 464800, 3673600; 464800, 3673700; 464700, 3673700; 464700, 3673800; 464600, 3673800; 464600, 3673900; 464500, 3673900; 464500, 3674000; 464300, 3674000; 464300, 3674400; 464400, 3674400; 464400, 3674500; 464500, 3674500; 464500, 3674600; 464600, 3674600; 464600, 3674700; 464700, 3674700; 464700, 3675000; 464800, 3675000; 464800, 3675100; 464900, 3675100; 464900, 3675200; 465100, 3675200; 465100, 3675100; 465300, 3675100; 465300, 3675200; 465400, 3675200; 465400, 3675400; 465300, 3675400; 465300, 3675600; 465500, 3675600; 465500, 3675700; 465600, 3675700; 465600, 3675800; 465700, 3675800; 465700, 3675900; 465800, 3675900; then north to MCBCP; then northeast along the MCBCP boundary to y-coordinate 3676200; then bounded by 466100, 3676200; 466100, 3676300; 466200, 3676300; 466200, 3676400; 466300, 3676400; 466300, 3676500; 466400, 3676500; 466400, 3676600; 466500, 3676600; 466500, 3676700; 466600, 3676700; then north to MCBCP; then returning to the point of beginning; excluding land bounded by 466100, 3675800; 466100, 3675400; 465900, 3675400; 465900, 3675300; 465800, 3675100; 466200, 3675100; 466200, 3675200; 466300, 3675200; 466200, 3675300; 466200, 3675600; 466300, 3675600; 466300, 3675700; 466200, 3675800; 466100, 3675800.

Land bounded by the following UTM NAD27 coordinates (E, N): 471200, 3676500; 471500, 3676500; 471500, 3676300; 471600, 3676300; 471600, 3675700; 471300, 3675700; 471300, 3675800; 471200, 3675800; 471200, 3676200; 471300, 3676200; 471300, 3676300; 471200, 3676300; returning to 471200, 3676500.

Land bounded by the following UTM NAD27 coordinates (E, N): 471500, 3675100; 471700, 3675100; 471700, 3674800; 471500, 3674800; 471500, 3674700; 471300, 3674700; 471300, 3674600; 471100, 3674600; 471100, 3674500; 470900, 3674500; 470900, 3674400; 470800, 3674400; 470800, 3674600; 470500, 3674600; 470500, 3674500; 470100, 3674500; 470100, 3674300; 470000, 3674300; 470000, 3674200; 469800, 3674200; 469800, 3674100; 469700, 3674100; 469700, 3674000; 469600, 3674000; 469600, 3673600; 470000, 3673600; 470000, 3673700; 470100, 3673700; 470100, 3673800; 470300, 3673800; 470300, 3673600; 470400, 3673600; 470400, 3673700; 470800, 3673700; 470800, 3673800; 470900, 3673800; 470900, 3673900; 471100, 3673900; 471100, 3674000; 471300, 3674000; 471300, 3674300; 471900, 3674300; 471900, 3674100; 471800, 3674100; 471800, 3674000; 471700, 3674000; 471700, 3673900; 471500, 3673900; 471500, 3673800; 472500, 3673800; 472500, 3673300; 472000, 3673300; 472000, 3673400; 471000, 3673400; 471000, 3673300; 470900, 3673300; 470900, 3673100; 470700, 3673100; 470700, 3673000; 470600, 3673000; 470600, 3673100; 470400, 3673100; 470400, 3673000; 470500, 3673000; 470500, 3672800; 470600, 3672800; 470600, 3672400; 470500, 3672400; 470500, 3672300; 470300, 3672300; 470300, 3672400; 470200, 3672400; 470200, 3672600; 470300, 3672600; 470300, 3672700; 470200, 3672700; 470200, 3673000; 469900, 3673000; 469900, 3672900; 469800, 3672900; 469800, 3672800; 469600, 3672800; 469600, 3672700; 469500, 3672700; 469500, 3672600; 469200, 3672600; 469200, 3672800; 468900, 3672800; 468900, 3672300; 468700, 3672300; 468700, 3672400; 468500, 3672400; 468500, 3673000; 468400, 3673000; 468400, 3673100; 468200, 3673100; 468200, 3673200; 468300, 3673200; 468300, 3673300; 469200, 3673300; 469200, 3673400; 469300, 3673400; 469300, 3673500; 469000, 3673500; 469000, 3674300; 469200, 3674300; 469200, 3674400; 469500, 3674400; 469500, 3674500; 469600, 3674500; 469600, 3674600; 469800, 3674600; 469800, 3674700; 470600, 3674700; 470600, 3674800; 470700, 3674800; 470700, 3674900; 471300, 3674900; 471300, 3675000; 471500, 3675000; returning to 471500, 3675100; excluding land bounded by 470800, 3673600; 470800, 3673500; 471100, 3673500; 471100, 3673600; 470800, 3673600; and land bounded by 470000, 3673500; 470000, 3673400; 470600, 3673400; 470600, 3673500; 470000, 3673500.

Land bounded by the following UTM NAD27 coordinates (E, N): 488900, 3674500; 489200, 3674500; 489300, 3674500; 489300, 3674200; 489200, 3674200; 489200, 3674100; 489300, 3674100; 489300, 3673700; 489400, 3673700; 489400, 3673500; 489300, 3673500; 489300, 3673300; 489400, 3673300; 489400, 3672800; 489800, 3672800; 489800, 3672600; 490000, 3672600; 490000, 3672500; 490100, 3672500; 490100, 3673100; 490300, 3673100; 490300, 3673200; 490400, 3673200; 490400, 3673300; 490500, 3673300; 490500, 3674000; 490100, 3674000; 490100, 3674500; 491700, 3674500; 492100, 3674500; 492100, 3674400; 492100, 3674200; 491800, 3674200; 491800, 3674100; 491600, 3674100; 491600, 3674300; 491500, 3674300; 491500, 3674200; 491400, 3674200; 491400, 3674100; 491300, 3674100; 491300, 3673900; 491400, 3673900; 491400, 3673700; 491500, 3673700; 491500, 3673500; 491600, 3673500; 491600, 3673200; 491500, 3673200; 491500, 3673000; 491400, 3673000; 491400, 3672900; 491300, 3672900; 491300, 3672800; 491200, 3672800; 491200, 3672700; 491100, 3672700; 491100, 3672400; 491200, 3672400; 491200, 3672200; 491300, 3672200; 491300, 3671900; 491200, 3671900; 491200, 3671600; 490900, 3671600; 490900, 3671500; 490800, 3671500; 490800, 3671400; 491100, 3671400; 491100, 3670500; 490800, 3670500; 490800, 3670400; 490700, 3670400; 490700, 3670300; 491000, 3670300; 491000, 3670200; 491100, 3670200; 491100, 3670100; 491200, 3670100; 491200, 3669800; 491500, 3669800; 491500, 3669600; 490600, 3669600; 490600, 3669700; 490300, 3669700; 490300, 3669600; 489400, 3669600; 489400, 3669800; 489300, 3669800; 489300, 3670000; 489200, 3670000; 489200, 3670100; 489100, 3670100; 489100, 3670200; 489000, 3670200; 489000, 3671600; 489200, 3671600; 489200, 3671500; 489500, 3671500; 489500, 3671400; 489600, 3671400; 489600, 3671200; 489500, 3671200; 489500, 3671000; 489600, 3671000; 489600, 3670900; 489800, 3670900; 489800, 3670500; 490200, 3670500; 490200, 3670600; 490300, 3670600; 490300, 3670700; 490200, 3670700; 490200, 3671300; 490600, 3671300; 490600, 3671500; 490500, 3671500; 490500, 3671400; 490200, 3671400; 490200, 3671900; 489900, 3671900; 489900, 3672000; 489800, 3672000; 489800, 3672100; 489700, 3672100; 489700, 3672000; 489500, 3672000; 489500, 3672100; 489400, 3672100; 489400, 3672400; 489300, 3672400; 489300, 3672500; 489100, 3672500; 489100, 3672600; 489000, 3672600; 489000, 3673300; 488900, 3673300; returning to 488900, 3674500.

Land bounded by the following UTM NAD27 coordinates (E, N): 465900, 3673000; 466400, 3673000; 466400, 3672700; 466300, 3672700; 466300, 3672500; 466100, 3672500; 466100, 3672600; 466000, 3672600; 466000, 3672700; 465900, 3672700; returning to 465900, 3673000.

Land bounded by the following UTM NAD27 coordinates (E, N): 467200, 3672300; 467200, 3672200; 467000, 3672200; 467000, 3672300; 466900, 3672300; 466900, 3672600; 467100, 3672600; 467100, 3672700; 467300, 3672700; 467300, 3672800; 467400, 3672800; 467400, 3672900; 467500, 3672900; 467500, 3673000; 467800, 3673000; 467800, 3672900; 467700, 3672900; 467700, 3672800; 467600, 3672800; 467600, 3672500; 467400, 3672500; 467400, 3672400; 467300, 3672400; 467300, 3672300; returning to 467200, 3672300; excluding land bounded by 467200, 3672300; 467200, 3672400; 467100, 3672400; 467100, 3672300; 467200, 3672300.

Land bounded by the following UTM NAD27 coordinates (E, N): 491800, 3672800; 492300, 3672800; 492300, 3672700; 492800, 3672700; 492800, 3672600; 492900, 3672600; 492900, 3672500; 493000, 3672500; 493000, 3672100; 493100, 3672100; 493100, 3671800; 493200, 3671800; 493200, 3671400; 493300, 3671400; 493300, 3671300; 493400, 3671300; 493400, 3671200; 493500, 3671200; 493500, 3671100; 493600, 3671100; 493600, 3671000; 493700, 3671000; 493700, 3670900; 493800, 3670900; 493800, 3670700; 494000, 3670700; 494000, 3670500; 494100, 3670500; 494100, 3670400; 494200, 3670400; 494200, 3670300; 494300, 3670300; 494300, 3670200; 494500, 3670200; 494500, 3670100; 494700, 3670100; 494700, 3670200; 494800, 3670200; 494800, 3670300; 494900, 3670300; 494900, 3670600; 494800, 3670600; 494800, 3670900; 494700, 3670900; 494700, 3671000; 494600, 3671000; 494600, 3671300; 495400, 3671300; 495400, 3671200; 495600, 3671200; 495600, 3670900; 495500, 3670900; 495500, 3669700; 496400, 3669700; 496400, 3669600; 496700, 3669600; 496700, 3669200; 496800, 3669200; 496800, 3669300; 496900, 3669300; 496900, 3669400; 497000, 3669400; 497000, 3669600; 497100, 3669600; 497100, 3670000; 497500, 3670000; 497500, 3669900; 497600, 3669900; 497600, 3670100; 497700, 3670100; 497700, 3670300; 497400, 3670300; 497400, 3670200; 497200, 3670200; 497200, 3670100; 497100, 3670100; 497100, 3670200; 497000, 3670200; 497000, 3670700; 496900, 3670700; 496900, 3671300; 497800, 3671300; 497800, 3671200; 498500, 3671200; 498500, 3671000; 498600, 3671000; 498600, 3670200; 498500, 3670200; 498500, 3669800; 498600, 3669800; 498600, 3669500; 498700, 3669500; 498700, 3669100; 498000, 3669100; 498000, 3668700; 497900, 3668700; 497900, 3668100; 497600, 3668100; 497600, 3668200; 497500, 3668200; 497500, 3668800; 497600, 3668800; 497600, 3669100; 497500, 3669100; 497500, 3669300; 497600, 3669300; 497600, 3669500; 497500, 3669500; 497500, 3669400; 497300, 3669400; 497300, 3669300; 497200, 3669300; 497200, 3669200; 497300, 3669200; 497300, 3669000; 497100, 3669000; 497100, 3668900; 497000, 3668900; 497000, 3668700; 497100, 3668700; 497100, 3668400; 497200, 3668400; 497200, 3668300; 496500, 3668300; 496500, 3668100; 496600, 3668100; 496600, 3667900; 496200, 3667900; 496200, 3668000; 496100, 3668000; 496100, 3668100; 496000, 3668100; 496000, 3668300; 495700, 3668300; 495700, 3668100; 495500, 3668100; 495500, 3668300; 495400, 3668300; 495400, 3668400; 495300, 3668400; 495300, 3668500; 495200, 3668500; 495200, 3668700; 495100, 3668700; 495100, 3668600; 494900, 3668600; 494900, 3668700; 494800, 3668700; 494800, 3668900; 494900, 3668900; 494900, 3669200; 495100, 3669200; 495100, 3669600; 494200, 3669600; 494200, 3669800; 494000, 3669800; 494000, 3670000; 492800, 3670000; 492800, 3671500; 492600, 3671500; 492600, 3671400; 492500, 3671400; 492500, 3671600; 492300, 3671600; 492300, 3671100; 492200, 3671100; 492200, 3671000; 491900, 3671000; 491900, 3671100; 491800, 3671100; 491800, 3672000; 492100, 3672000; 492100, 3672200; 492000, 3672200; 492000, 3672100; 491700, 3672100; 491700, 3672200; 491600, 3672200; 491600, 3672400; 491700, 3672400; 491700, 3672500; 491800, 3672500; returning to 491800, 3672800; excluding land bounded by 495300, 3670900; 495000, 3670900; 495000, 3670700; 495100, 3670700; 495100, 3670600; 495300, 3670600; 495300, 3670900; and land bounded by 495300, 3670900; 495400, 3670900; 495400, 3671100; 495300, 3671100; 495300, 3670900.

Land bounded by the following UTM NAD27 coordinates (E, N): 469500, 3672600; 469700, 3672600; 469700, 3672000; 469800, 3672000; 469800, 3671500; 469900, 3671500; 469900, 3671400; 469500, 3671400; 469500, 3671800; 469400, 3671800; 469400, 3672100; 469500, 3672100; returning to 469500, 3672600.

Land bounded by the following UTM NAD27 coordinates (E, N): 475000, 3672600; 475300, 3672600; 475300, 3672500; 475200, 3672500; 475200, 3672400; 475100, 3672400; 475100, 3672300; 475000, 3672300; 475000, 3672200; 474900, 3672200; 474900, 3672100; 474700, 3672100; 474700, 3672000; 474600, 3672000; 474600, 3671800; 474200, 3671800; 474200, 3671700; 474100, 3671700; 474100, 3671600; 474000, 3671600; 474000, 3671400; 473900, 3671400; 473900,

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Land bounded by the following UTM NAD27 coordinates (E, N): 470600, 3669100; 470800, 3669100; 470800, 3668800; 470900, 3668800; 470900, 3668600; 471000, 3668600; 471000, 3668400; 470900, 3668400; 470900, 3668500; 470800, 3668500; 470800, 3668600; 470700, 3668600; 470700, 3668700; returning to 470600, 3669100.

Land bounded by the following UTM NAD27 coordinates (E, N): 494200, 3668900; 494300, 3668900; 494300, 3668800; 494400, 3668800; 494400, 3668700; 494500, 3668700; 494500, 3668600; 494700, 3668600; 494700, 3668300; 494500, 3668300; 494500, 3668500; 494400, 3668500; 494400, 3668600; 494300, 3668600; 494300, 3668700; 494200, 3668700; returning to 494200, 3668900.

Land bounded by the following UTM NAD27 coordinates (E, N): 470500, 3668100; 470600, 3668100; 470600, 3667500; 470300, 3667500; 470300, 3667700; 470400, 3667700; 470400, 3668000; 470500, 3668000; returning to 470500, 3668100.

Land bounded by the following UTM NAD27 coordinates (E, N): 470900, 3668100; 471100, 3668100; 471100, 3667600; 470800, 3667600; 470800, 3668000; 470900, 3668000; returning to 470900, 3668100.

Land bounded by the following UTM NAD27 coordinates (E, N): 497100, 3667700; 497700, 3667700; 497700, 3667500; 497100, 3667500; returning to 497100, 3667700.

Land bounded by the following UTM NAD27 coordinates (E, N): 498000, 3667600; 498300, 3667600; 498300, 3667300; 498100, 3667300; 498100, 3667400; 498000, 3667400; returning to 498000, 3667600.

Land bounded by the following UTM NAD27 coordinates (E, N): 473400, 3666900; 473600, 3666900; 473600, 3666800; 473500, 3666800; 473500, 3666700; 473300, 3666700; 473300, 3666800; 473400, 3666800; returning to 473400, 3666900.

Land bounded by the following UTM NAD27 coordinates (E, N): 498400, 3666600; 498500, 3666600; 498500, 3666500; 498600, 3666500; 498600, 3666400; 499000, 3666400; 499000, 3666500; 500100, 3666500; 500100, 3666600; 500300, 3666600; 500300, 3665400; 500200, 3665400; 500200, 3664200; then east to the MHPA; then south along the MHPA to y-coordinate 3664000; then to 499900, 3664000; then south to the MHPA; then south along the MHPA to y-coordinate 3663900; the bounded by 499800, 3663900; 499800, 3664200; 499700, 3664200; 499700, 3664500; 499600, 3664500; 499600, 3664600; 499800, 3664600; 499800, 3664700; 499700, 3664700; 499700, 3664800; 499000, 3664800; 499000, 3665000; 499100, 3665000; 499100, 3665100; 499400, 3665100; 499400, 3665200; 499500, 3665200; 499500, 3665300; 499400, 3665300; 499400, 3665400; 499300, 3665400; 499300, 3665200; 499000, 3665200; 499000, 3665100; 498900, 3665100; 498900, 3665200; 498800, 3665200; 498800, 3664800; 498900, 3664800; 498900, 3664700; 499000, 3664700; 499000, 3664600; 499200, 3664600; 499200, 3664300; 499300, 3664300; 499300, 3664100; 499400, 3664100; 499400, 3664300; 499500, 3664300; 499500, 3664400; 499600, 3664400; 499600, 3664100; 499500, 3664100; 499500, 3664000; 499300, 3664000; 499300, 3663800; 499200, 3663800; then south to the MHPA; then west along the MHPA to y-coordinate 3663700; then bounded by 499000, 3663700; 499000, 3663800; 499100, 3663800; 499100, 3664200; 499000, 3664200; 499000, 3664400; 498900, 3664400; 498900, 3664500; 498800, 3664500; 498800, 3664700; 498700, 3664700; 498700, 3664800; 498600, 3664800; 498600, 3665000; 498500, 3665000; then north to the MHPA; then north and west along the MHPA to x-coordinate 498100; the to 498100, 3665400; and 498000, 3665400; the south to the MHPA; then west along the MHPA to y-coordinate 3665300; the bounded by 497700, 3665300; 497700, 3665700; 497800, 3665700; 497800, 3665800; 497500, 3665800; 497500, 3666000; 497900, 3666000; 497900, 3665900; 498100, 3665900; 498100, 3666000; 498300, 3666000; 498300, 3665900; 498500, 3665900; 498500, 3666000; 498400, 3666000; 498400, 3666400; 498300, 3666400; 498300, 3666500; 498400, 3666500; returning to 498400, 3666600.

Land bounded by the following UTM NAD27 coordinates (E, N): 499200, 3663500; 499900, 3663500; 499900, 3663400; 499800, 3663400; 499800, 3663300; 499200, 3663300; returning to 499200, 3663500.

Land bounded by the following UTM NAD27 coordinates (E, N): 478000, 3663400; 478500, 3663400; 478500, 3663100; 478600, 3663100; 478600, 3662900; 478400, 3662900; 478400, 3663100; 478200, 3663100; 478200, 3663200; 478100, 3663200; 478100, 3663100; 478000, 3663100; 478000, 3662800; 477900, 3662800; 477900, 3662700; 477800, 3662700; 477800, 3662600; 477700, 3662600; 477700, 3663000; 477800, 3663000; 477800, 3663100; 477900, 3663100; 477900, 3663200; 478000, 3663200; returning to 478000, 3663400.

Land bounded by the following UTM NAD27 coordinates (E, N): 476200, 3663100; 476400, 3663100; 476400, 3662500; 476600, 3662500; 476600, 3662400; 476700, 3662400; 476700, 3662300; 476900, 3662300; 476900, 3662200; 477100, 3662200; 477100, 3662100; 477300, 3662100; 477300, 3662000; 477400, 3662000; 477400, 3661900; 477100, 3661900; 477100, 3662000; 476900, 3662000; 476900, 3662100; 476700, 3662100; 476700, 3661800; 476500, 3661800; 476500, 3661700; 476300, 3661700; 476300, 3662000; 476500, 3662000; 476500, 3662300; 476400, 3662300; 476400,

3662400; 476200, 3662400; 476200, 3662600; 476300, 3662600; 476300, 3662700; 476200, 3662700; returning to 476200, 3663100.

Land bounded by the following UTM NAD27 coordinates (E, N): 493400, 3662000; 493600, 3662000; 493600, 3661900; 493900, 3661900; 493900, 3661600; 494000, 3661600; 494000, 3661300; 494100, 3661300; 494100, 3661100; 494200, 3661100; 494200, 3660900; 494300, 3660900; 494300, 3660800; 494400, 3660800; 494400, 3660400; 494500, 3660400; 494500, 3660300; 494800, 3660300; 494800, 3659800; 494500, 3659800; 494500, 3659600; 494400, 3659600; 494400, 3659500; 494300, 3659500; 494300, 3659100; 494200, 3659100; 494200, 3659000; 494100, 3659000; 494100, 3659100; 493900, 3659100; 493900, 3659200; 493800, 3659200; 493800, 3659300; 493700, 3659300; 493700, 3659200; 493500, 3659200; 493500, 3659500; 493700, 3659500; 493700, 3659800; 493600, 3659800; 493600, 3659900; 493500, 3659900; 493500, 3660100; 493400, 3660100; 493400, 3660700; 493600, 3660700; 493600, 3660000; 493800, 3660000; 493800, 3660300; 494200, 3660300; 494200, 3660200; 494300, 3660200; 494300, 3660500; 494200, 3660500; 494200, 3660600; 494100, 3660600; 494100, 3660900; 493900, 3660900; 493900, 3661000; 493800, 3661000; 493800, 3661100; 493700, 3661100; 493700, 3661200; 493800, 3661200; 493800, 3661300; 493700, 3661300; 493700, 3661700; 493600, 3661700; 493600, 3661800; 493400, 3661800; returning to 493400, 3662000.

Land bounded by the following UTM NAD27 coordinates (E, N): 494600, 3661700; 494700, 3661700; 494700, 3661400; 494600, 3661400; returning to 494600, 3661700.

Land bounded by the following UTM NAD27 coordinates (E, N): 494600, 3661200; 494700, 3661200; 494700, 3660900; 494800, 3660900; 494800, 3660600; 494700, 3660600; 494700, 3660700; 494600, 3660700; returning to 494600, 3661200.

Land bounded by the following UTM NAD27 coordinates (E, N): 477100, 3660700; 477300, 3660700; 477300, 3660400; 477400, 3660400; 477400, 3660200; 477300, 3660200; 477300, 3660100; 477200, 3660100; 477200, 3660300; 477100, 3660300; 477100, 3660400; 477000, 3660400; 477000, 3660300; 476800, 3660300; 476800, 3660500; 476900, 3660500; 476900, 3660600; 477100, 3660600; returning to 477100, 3660700.

Land bounded by the following UTM NAD27 coordinates (E, N): 477800, 3659500; 478100, 3659500; 478100, 3659400; 478000, 3659400; 478000, 3659300; 477800, 3659300; 477800, 3659200; 477700, 3659200; 477700, 3659100; 477600, 3659100; 477600, 3659000; 477500, 3659000; 477500, 3658900; 477400, 3658900; 477400, 3658800; 477300, 3658800; 477300, 3658600; 477100, 3658600; 477100, 3658900; 477200, 3658900; 477200, 3659000; 477300, 3659000; 477300, 3659100; 477400, 3659100; 477400, 3659200; 477500, 3659200; 477500, 3659300; 477600, 3659300; 477600, 3659400; 477400, 3659400; 477400, 3659600; 477800, 3659600; returning to 477800, 3659500; excluding land bounded by 477800, 3659500; 477700, 3659500; 477700, 3659400; 477800, 3659400; 477800, 3659500.

Land bounded by the following UTM NAD27 coordinates (E, N): 492200, 3659300; 492400, 3659300; 492400, 3659100; 492300, 3659100; 492300, 3659000; 492400, 3659000; 492400, 3658700; 492500, 3658700; 492500, 3658400; then west to the MHPA; then south, west, and north along the MHPA to y-coordinate 3658300; then to 491700, 3658300; then north to the MHPA; then north along the MHPA to 3658400; then bounded by 491800, 3658400; 491800, 3658500; 491900, 3658500; 491900, 3658600; 492000, 3658600; 492000, 3658900; 492100, 3658900; 492100, 3659200; 492200, 3659200; returning to 492200, 3659300.

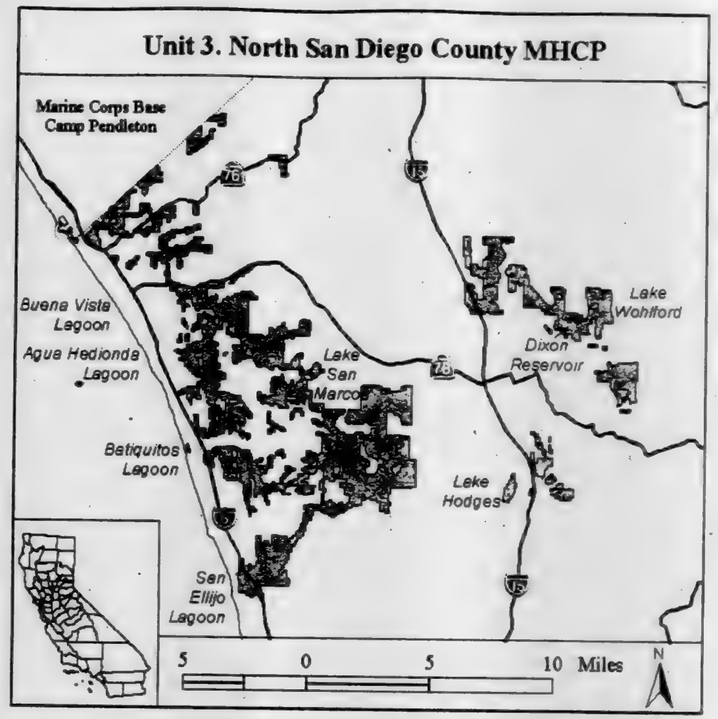
Land bounded by the following UTM NAD27 coordinates (E, N): 494700, 3659300; 494900, 3659300; 494900, 3659200; 494800, 3659200; 494800, 3659100; 494700, 3659100; 494700, 3659000; 494900, 3659000; 494900, 3659100; 495000, 3659100; 495000, 3659000; 495100, 3659000; 495100, 3658900; 495000, 3658900; 495000, 3658800; 494800, 3658800; 494800, 3658700; 494600, 3658700; 494600, 3658600; 494500, 3658600; 494500, 3658700; 494400, 3658700; 494400, 3659000; 494500, 3659000; 494500, 3659100; 494600, 3659100; 494600, 3659200; 494700, 3659200; returning to 494700, 3659300.

Land bounded by the following UTM NAD27 coordinates (E, N): 495200, 3658700; 495500, 3658700; 495500, 3658400; 495600, 3658400; 495600, 3658300; 495900, 3658300; 495900, 3658400; 496000, 3658400; 496000, 3658300; 496200, 3658300; 496200, 3657800; 496100, 3657800; 496100, 3657700; 496000, 3657700; 496000, 3657600; then west to the MHPA; then northwestward along the MHPA to x-coordinate 494700; then bounded by 494700, 3658000; 495100, 3658000; 495100, 3658100; 495300, 3658100; 495300, 3658200; 495400, 3658200; 495400, 3658400; 495300, 3658400; 495300, 3658300; 494900, 3658300; 494900, 3658200; then west to the MHPA; then north along the MHPA to x-coordinate 494700; then bounded by 494700, 3658400; 495100, 3658400; 495100, 3658600; 495200, 3658600; returning to 495200, 3658700.

Land bounded by the following UTM NAD27 coordinates (E, N): 493400, 3658300; then east to the MHPA; then southwestward along the MHPA to x-coordinate 493300; then bounded by 493300, 3658100; 493400, 3658100; returning to 493400, 3658300.

Land bounded by the following UTM NAD27 coordinates (E, N): 477500, 3657900; 477800, 3657900; 477800, 3657800; 477500, 3657800; returning to 477500, 3657900.

(ii) **Note:** Map of Unit 3 follows.



(8) *Unit 4:* Fallbrook Naval Weapons Station (FNWS), San Diego County, California.

(i) From USGS 1:24,000 quadrangle maps Bonsall, Morro Hill, and Fallbrook, California. Lands within the Santa Margarita y Las Flores Land Grant: FNWS; and Federal Lands associated with FNWS within T. 09 S., R. 04 W., San Bernardino Principal Meridian, secs. 35 and 36; and T. 10 S., R. 04 W., San Bernardino Principal Meridian, secs. 1 and 2; excluding land bounded by the following UTM NAD27 coordinates (E, N): 476000, 3692600; 475800, 3692600; 475800, 3692400; 475700, 3692400; 475700, 3692300; 475500, 3692300; 475500, 3692100; 475400, 3692100; 475400, 3691900; 475300, 3691900; 475300, 3691800; 475400, 3691800; 475400, 3691600; 475300, 3691600; 475300, 3691500; 475100, 3691500; 475100, 3691400; 475400, 3691400; 475400, 3691500; 475500, 3691500; 475500, 3691600; 475600, 3691600; 475600, 3691700; 475700, 3691700; 475700, 3691800; 476000, 3691800; 476000, 3692600; land bounded by 474700, 3691700; 474600, 3691700; 474600, 3691600; 474700, 3691600; 474700, 3691700; land bounded by 474700, 3691700; 474800, 3691700; 474800, 3691800; 474900, 3691800; 474900, 3692000; 474700, 3692000; 474700, 3691900; 474600, 3691900; 474600, 3691800; 474700, 3691800; 474700, 3691700; land bounded by 474800, 3693200; 474800, 3693100; 474500, 3693100; 474500, 3693000; 474400, 3693000; 474400, 3692800; 474300, 3692800; 474300, 3692700; 474200, 3692700; 474200, 3692400; 474300, 3692400; 474300, 3692500; 474400, 3692500; 474400, 3692600; 474500, 3692600; 474500, 3692800; 474600, 3692800; 474600, 3692700; 474800, 3692700; 474800, 3692600; 475000, 3692600; 475000, 3692700; 475200, 3692700; 475200, 3692900; 475100, 3692900; 475100, 3693200; 474800, 3693200; land bounded by 474200, 3692100; 474200, 3691700; 474400, 3691700; 474400, 3691800; 474300, 3691800; 474300, 3692100; 474200, 3692100; and land bounded by 475300, 3689700; 475300, 3689600; 475200, 3689600; 475200, 3689500; 475400, 3689500; 475400, 3689700; 475300, 3689700.

(ii) **Note:** Map of Unit 4 follows.



(9) *Unit 5:* North County Subarea of the MSCP for Unincorporated San Diego County, California.

(i) From USGS 1:100,000 quadrangle maps Oceanside and Borrego Valley, California, land bounded by the following UTM NAD27 coordinates (E, N): 480000, 3682500; 480000, 3682600; 479900, 3682600; 479900, 3682700; 480000, 3682700; 480000, 3682800; 480100, 3682800; 480100, 3682900; 480400, 3682900; 480400, 3682800; 480700, 3682800; 480700, 3681900; 480500, 3681900; 480500, 3682000; 480200, 3682000; 480200, 3682100; 479900, 3682100; 479900, 3681500; 479500, 3681500; 479500, 3681200; 479400, 3681200; 479400, 3681100; 479300, 3681100; 479300, 3681000; 479200, 3681000; 479200, 3680900; 479100, 3680900; 479100, 3680800; 479300, 3680800; 479300, 3680600; 479400, 3680600; 479400, 3680800; 480100, 3680800; 480100, 3680900; 480200, 3680900; 480200, 3681000; 480500, 3681000; 480500, 3681200; 481100, 3681200; 481100, 3680800; 481500, 3680800; 481500, 3680700; 481800, 3680700; 481800, 3680400; 482100, 3680400; 482100, 3680300; 482200, 3680300; 482200, 3680400; 482400, 3680400; 482400, 3680500; 482700, 3680500; 482700, 3679500; 481800, 3679500; 481800, 3679300; 481900, 3679300; 481900, 3679200; 482300, 3679200; 482300, 3678800; 482800, 3678800; 482800, 3678700; 482900, 3678700; 482900, 3678600; 483000, 3678600; 483000, 3678400; 482900, 3678400; 482900, 3678300; 483000, 3678300; 483000, 3677900; 483100, 3677900; 483100, 3677800; 483200, 3677800; 483200, 3677400; 483300, 3677400; 483300, 3677300; 483400, 3677300; 483400, 3677200; 484100, 3677200; 484100, 3677700; 484300, 3677700; 484300, 3677800; 484500, 3677800; 484500, 3677700; 484800, 3677700; 484800, 3678400; 484900, 3678400; 484900, 3678800; 485200, 3678800; 485200, 3678900; 484900, 3678900; 484900, 3679800; 485000, 3679800; 485000, 3680000; 485200, 3680000; 485200, 3680200; 485100, 3680200; 485100, 3680600; 484600, 3680600; 484600, 3680900; 484400, 3680900; 484400, 3681000; 484300, 3681000; 484300, 3681400; 484100, 3681400; 484100, 3681500; 483800, 3681500; 483800, 3682500; 484000, 3682500; 484000, 3682400; 484300, 3682400; 484300, 3682300; 484500, 3682300; 484500, 3682200; 484600, 3682200; 484600, 3682100; 484700, 3682100; 484700, 3681600; 484800, 3681600; 484800, 3681400; 484700, 3681400; 484700, 3681200; 484900, 3681200; 484900, 3681400; 485000, 3681400; 485000, 3682100; 485500, 3682100; 485500, 3682300; 485600, 3682300; 485600, 3682500; 485800, 3682500; 485800, 3682700; 485900, 3682700; 485900, 3683100; 485700, 3683100; 485700, 3683300; 485800, 3683300; 485800, 3683900; 485700, 3683900; 485700, 3684000; 485900, 3684000; 485900, 3684300; 485700, 3684300; 485700, 3684500; 485800, 3684500; 485800, 3684800; 485000, 3684800; 485000, 3684600; 484900, 3684600; 484900, 3684500; 484500, 3684500; 484500, 3684200; 484400, 3684200; 484400, 3684300; 484300, 3684300; 484300, 3684400; 484200, 3684400; 484200, 3684300;

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477300, 3694700; 476900, 3694700; 476900, 3694600; 476600, 3694600; 476600, 3694400; then west to FNWS at y-coordinate 3694400; thence north along FNWS boundary to MCBCP boundary; thence north and west along MCBCP boundary to x-coordinate 475700; then land bounded by 475700, 3697300; 477300, 3697300; 477300, 3697500; 477400, 3697500; 477400, 3697600; 477700, 3697600; 477700, 3697700; 477800, 3697700; 477800, 3697400; 478000, 3697400; 478000, 3697500; 478100, 3697500; 478100, 3697600; 478200, 3697600; 478200, 3697700; 478500, 3697700; 478500, 3697800; 478600, 3697800; 478600, 3697900; 478800, 3697900; 478800, 3698400; 478900, 3698400; 478900, 3698500; 479300, 3698500; 479300, 3698600; 479100, 3698600; 479100, 3698700; 479000, 3698700; 479000, 3699000; 479100, 3699000; then north to the Riverside/San Diego County line; thence eastward along the Riverside/San Diego County line to x-coordinate 486600; then land bounded by 486600, 3698900; 486500, 3698900; 486500, 3698800; 486400, 3698800; 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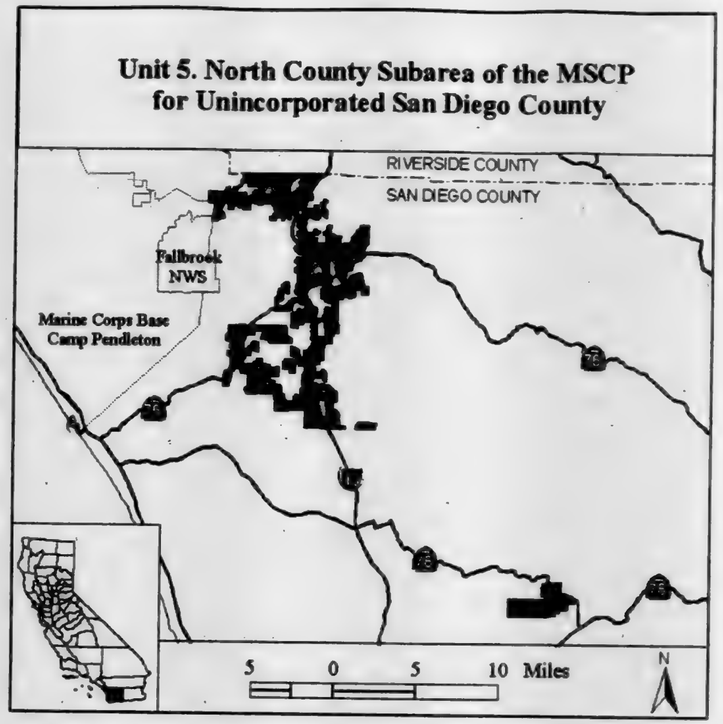
Land bounded by the following UTM NAD27 coordinates (E, N): 494200, 3691100; 494700, 3691100; 494700, 3691000; 494800, 3691000; 494800, 3690500; 494700, 3690500; 494700, 3690400; 494600, 3690400; 494600, 3690300; 494500, 3690300; 494500, 3690100; 494600, 3690100; 494600, 3690000; 494800, 3690000; 494800, 3689600; 494700, 3689600; 494700, 3689500; 494500, 3689500; 494500, 3689400; 493900, 3689400; 493900, 3689500; 493800, 3689500; 493800, 3689700; 493700, 3689700; 493700, 3689900; 493600, 3689900; 493600, 3690100; 493500, 3690100; 493500, 3690400; 493700, 3690400; 493700, 3690500; 493800, 3690500; 493800, 3690600; 493900, 3690600; 493900, 3690700; 494000, 3690700; 494000, 3690800; 494100, 3690800; 494100, 3691000; 494200, 3691000; returning to 494200, 3691100.

Land bounded by the following UTM NAD27 coordinates (E, N): 483200, 3681200; 484000, 3681200; 484000, 3681100; 484100, 3681100; 484100, 3681000; 484200, 3681000; 484200, 3680900; 484300, 3680900; 484300, 3679900; 483700, 3679900; 483700, 3680300; 483100, 3680300; 483100, 3681000; 483200, 3681000; returning to 483200, 3681200.

Land bounded by the following UTM NAD27 coordinates (E, N): 490400, 3675200; 491500, 3675200; 491500, 3675100; 492200, 3675100; 492200, 3674900; 492100, 3674900; 492100, 3674500; 491700, 3674500; 490100, 3674500; 490100, 3674600; 490200, 3674600; 490200, 3674900; 490300, 3674900; 490300, 3675000; 490400, 3675000; returning to 490400, 3675200.

Land bounded by the following UTM NAD27 coordinates (E, N): 510400, 3660000; 510400, 3659000; 510300, 3659000; 510300, 3658900; 510600, 3658900; 510600, 3659000; 510900, 3659000; 510900, 3658900; 511100, 3658900; 511100, 3658800; 511400, 3658800; 511400, 3658700; 511500, 3658700; 511500, 3658600; 511600, 3658600; 511600, 3658500; 511700, 3658500; 511700, 3658000; 511100, 3658000; 511100, 3657500; 511000, 3657500; 511000, 3657400; 510200, 3657400; 510200, 3657100; 509700, 3657100; 509700, 3656900; 509800, 3656900; 509800, 3656800; 509200, 3656800; 509200, 3656700; 505200, 3656700; 505200, 3658400; 508800, 3658400; 508800, 3658700; 508400, 3658700; 508400; then north to the MHPA; then north and east along the MHPA to y-coordinate 3660000; then east along y-coordinate 3660000 to the MHPA; the eastward along the MHPA to y-coordinate 3660000; returning to 510400, 3660000.

(ii) **Note:** Map of Unit 5 follows.



(10) *Unit 6:* Southern Orange Co./ Northwestern San Diego Co., California.

(i) From USGS 1:100,000 quadrangle maps Oceanside and Santa Ana, California, land bounded by the following UTM NAD27 coordinates (E, N): 445500, 3704000; 445100, 3704000; 445100, 3704800; 443600, 3704800; 443600, 3702000; 443300, 3702000; 443300, 3701900; 443200, 3701900; 443200, 3701700; 443300, 3701700; 443300, 3701600; 443400, 3701600; 443400, 3701400; 443500, 3701400; 443500, 3701000; 443700, 3701000; 443700, 3700900; 443800, 3700900; 443800, 3701000; 444000, 3701000; 444000, 3701100; 444200, 3701100; 444200, 3700800; 444100, 3700800; 444100, 3700500; 443900, 3700500; 443900, 3700400; 443700, 3700400; 443700, 3700300; 443800, 3700300; 443800, 3700200; 444000, 3700200; 444000, 3700100; 444300, 3700100; 444300, 3700000; 444400, 3700000; 444400, 3699900; 444500, 3699900; 444500, 3699800; 444700, 3699800; 444700, 3699600; 444800, 3699600; 444800, 3699500; 445100, 3699500; 445100, 3700000; 445200, 3700000; 445200, 3700100; 445300, 3700100; 445300, 3700300; 445200, 3700300; 445200, 3700500; 445300, 3700500; 445300, 3700600; 445700, 3700600; 445700, 3700100; 445800, 3700100; 445800, 3699900; thence east to Orange/ San Diego county line at y-coordinate 3699900; thence southwest along county line to y-coordinate 3697600; thence west and following coordinates: 445300, 3697600; 445300, 3697700; 445100, 3697700; 445100, 3698100; 445000, 3698100; 445000, 3698200; 444900, 3698200; 444900, 3698300; 444800, 3698300; 444800, 3698400; 444700, 3698400; 444700, 3698600; 444600, 3698600; 444600, 3698900; 444500, 3698900; 444500, 3699000; 444400, 3699000; 444400, 3699200; 444100, 3699200; 444100, 3699400; 443900, 3699400; 443900, 3699500; 443800, 3699500; 443800, 3699600; 443700, 3699600; 443700, 3699800; 443600, 3699800; 443600, 3700000; 443500, 3700000; 443500, 3700100; 443200, 3700100; 443200, 3700200; 443000, 3700200; 443000, 3700400; 442900, 3700400; 442900, 3700300; 442800, 3700300; 442800, 3700200; 442700, 3700200; 442700, 3700100; 442600, 3700100; 442600, 3700000; 442300, 3700000; 442300, 3700500; 442500, 3700500; 442500, 3700700; 442400, 3700700; 442400, 3701200; 442500, 3701200; 442500, 3701400; 442700, 3701400; 442700, 3701700; 442500, 3701700; 442500, 3701600; 441900, 3701600; 441900, 3702300; 442100, 3702300; 442100, 3702400; 442200, 3702400; 442200, 3702600; 442100, 3702600; 442100, 3703100; 442200, 3703100; 442200, 3703000; 442500, 3703000; 442500, 3702900; 442600, 3702900; 442600, 3703000; 442700, 3703000; 442700, 3703100; 442800, 3703100; 442800, 3703200; 442900, 3703200; 442900, 3703300; 442800, 3703300; 442800, 3703400; 442700, 3703400; 442700, 3703600; 442800,

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Land bounded by the following UTM NAD27 coordinates (E, N): 442600, 3725800; 442600, 3725400; 442500, 3725400; 442500, 3725100; 442300, 3725100; 442300, 3725000; 442200, 3725000; 442200, 3724900; 442100, 3724900; 442100, 3725000; 442000, 3725000; 442000, 3725300; 441900, 3725300; thence north to the Central Orange County NCCP reserve boundary at x-coordinate 441900; thence northeast along the NCCP reserve boundary to y-coordinate 3725800; returning to the point of beginning.

Land bounded by the following UTM NAD27 coordinates (E, N): 468100, 3684800; 468100, 3685000; 468200, 3685000; 468200, 3685200; 468300, 3685200; 468300, 3685400; 468500, 3685400; 468500, 3685500; 468600, 3685500; 468600, 3685600; 468700, 3685600; 468700, 3685700; 468800, 3685700; 468800, 3685800; 469000, 3685800; 469000, 3685900; 469100, 3685900; 469100, 3686000; 469200, 3686000; 469200, 3686100; 469300, 3686100; 469300, 3686200; 469500, 3686200; 469500, 3686300; 469600, 3686300; 469600, 3686500; 469700, 3686500; 469700, 3686800; 470000, 3686800; 470000, 3686900; 469900, 3686900; 469900, 3687000; 469800, 3687000; 469800, 3687300; 470300, 3687300; 470300, 3687500; 470400, 3687500; 470400, 3687700; 470500, 3687700; 470500, 3687800; 470400, 3687800; 470400, 3687900; 470200, 3687900; 470200, 3688300; 470100, 3688300; 470100, 3688400; 470000, 3688400; 470000, 3688500; 469700, 3688500; 469700, 3688600; 469600, 3688600; 469600, 3688700; 469700, 3688700; 469700, 3689000; 469400, 3689000; 469400, 3689200; 469300, 3689200; 469300, 3689500; 469400,

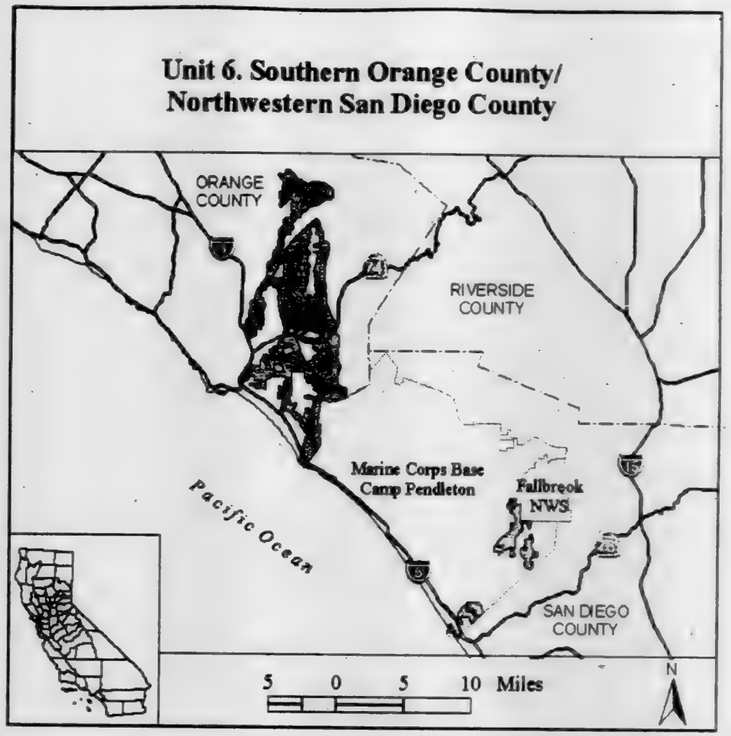
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Land bounded by the following UTM NAD27 coordinates (E, N): 472100, 3686100; 472300, 3686100; 472300, 3685600; 472400, 3685600; 472400, 3685100; 472300, 3685100; 472300, 3685000; 472200, 3685000; 472200, 3684500; 472300, 3684500; 472300, 3684300; 472400, 3684300; 472400, 3684200; 472500, 3684200; 472500, 3684100; 472600, 3684100; 472600, 3684000; 472700, 3684000; 472700, 3683900; 472800, 3683900; 472800, 3684000; 473000, 3684000; 473000, 3683500; 472900, 3683500; 472900, 3683400; 472600, 3683400; 472600, 3683600; 472500, 3683600; 472500, 3683500; 472400, 3683500; 472400, 3683400; 472300, 3683400; 472300, 3683300; 472200, 3683300; 472200, 3683200; 472100, 3683200; 472100, 3682700; 472200, 3682700; 472200, 3682800; 472400, 3682800; 472400, 3682400; 472300, 3682400; 472300, 3682100; 472200, 3682100; 472200, 3682000; 471900, 3682000; 471900, 3682100; 471600, 3682100; 471600, 3682200; 471500, 3682200; 471500, 3682300; 471400, 3682300; 471400, 3682800; 471600, 3682800; 471600, 3683100; 471500, 3683100; 471500, 3683200; 471400, 3683200; 471400, 3683300; 471300, 3683300; 471300, 3683400; 471200, 3683400; 471200, 3683500; 471100, 3683500; 471100, 3683600; 471000, 3683600; 471000, 3683700; 470900, 3683700; 470900, 3684300; 471100, 3684300; 471100, 3684400; 471300, 3684400; 471300, 3684200; 471600, 3684200; 471600, 3684400; 471700, 3684400; 471700, 3684500; 471600, 3684500; 471600, 3684600; 471400, 3684600; 471400, 3684900; 471600, 3684900; 471600, 3685100; 471500, 3685100; 471500, 3685300; 471400, 3685300; 471400, 3685400; 471500, 3685400; 471500, 3685500; 472100, 3685500; 472100, 3685600; 472000, 3685600; 472000, 3686000; 472100, 3686000; returning to 472100, 3686100.

Land bounded by the following UTM NAD27 coordinates (E, N): 464600, 3678000; 466100, 3678000; 466100, 3677800; 466200, 3677800; 466200, 3677700; 466300, 3677700; 466300, 3677600; 466400, 3677600; 466400, 3677300; 466500, 3677300; 466500, 3676900; 466600, 3676900; thence south to Marine Corps Base Camp Pendleton boundary (MCBCP) at x-coordinate 466600; thence southwest along MCBCP boundary to y-coordinate 3676500; thence west and following coordinates: 466100, 3676500; 466100, 3676400; 466000, 3676400; 466000, 3676300; 465900, 3676300; 465900, 3676400; 465800, 3676400; 465800, 3676600; 465700, 3676600; 465700, 3676800; 465600, 3676800; 465600, 3677100; 465300, 3677100; 465300, 3677300; 465200, 3677300; 465200, 3677200; 465000, 3677200; 465000, 3677300; 464500, 3677300; 464500, 3677100; 464600, 3677100; 464600, 3677000; 464800, 3677000; 464800, 3676900; 465300, 3676900; 465300, 3676700; 465400, 3676700; 465400, 3676600; 465500, 3676600; 465500, 3676400; 465700, 3676400; 465700, 3676200; 465800, 3676200; thence south to MCBCP boundary at x-coordinate 465800; thence southwest along MCBCP boundary to y-coordinate 3675600; thence west and following coordinates: 465200, 3675600; 465200, 3675700; 465100, 3675700; 465100, 3675900; 465000, 3675900; 465000, 3676300; 464900, 3676300; 464900, 3676400; 464800, 3676400; 464800, 3676300; 464700, 3676300; 464700, 3676400; 464500, 3676400; 464500, 3676200; 464400, 3676200; 464400, 3676300; 464300, 3676300; 464300, 3676400; 464200, 3676400; 464200, 3676500; 464100, 3676500; 464100, 3676300; 463900, 3676300; 463900, 3676200; 463800, 3676200; 463800, 3676100; 463900, 3676100; 463900, 3675900; 464000, 3675900; 464000, 3675800; 464100, 3675800; 464100, 3675400; 463800, 3675400; 463800, 3675500; 463700, 3675500; 463700, 3675600; 463600, 3675600; 463600, 3676800; 463700, 3676800; 463700, 3676900; 463800, 3676900; 463800, 3677100; 463900, 3677100; 463900, 3677300; 464000, 3677300; 464000, 3677400; 464200, 3677400; 464200, 3677500; 464300, 3677500; 464300, 3677600; 464500, 3677600; 464500, 3677800; 464600, 3677800; returning to 464600, 3678000.

Land within Marine Corps Base Camp Pendleton Designated Areas: San Onofre State Park Lease Area and San Onofre State Beach.

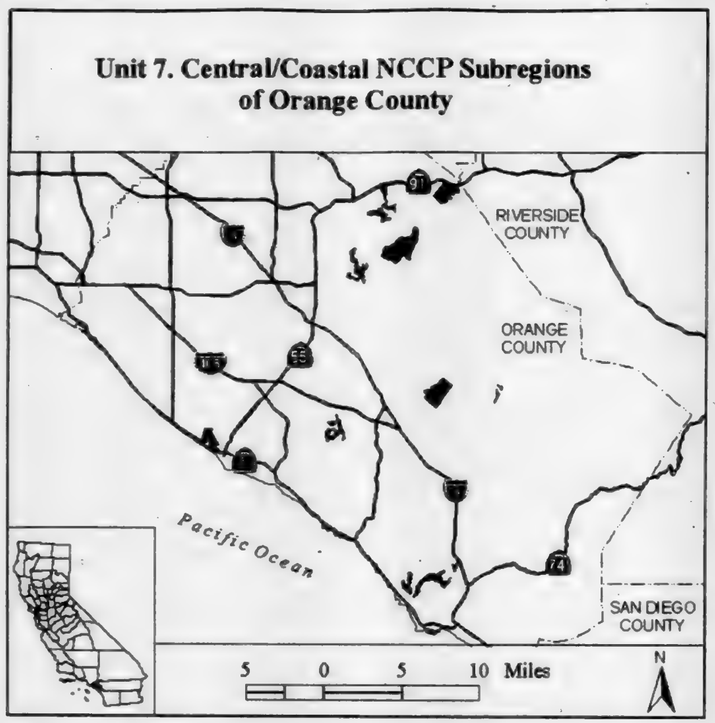
(ii) **Note:** Map of Unit 6 follows.



(11) *Unit 7:* Central-Coastal Natural Communities Conservation Plan (NCCP) Subregions of Orange County, Orange County, California.

(i) From USGS 1:100,000 quadrangle maps Santa Ana and Oceanside, California, land defined by the boundary of the designated reserve within Marine Corps Air Station El Toro; the designated reserve in the North Ranch Policy Plan Area, and selected Existing Land Use areas within the NCCP for the Central-Coastal Subregion.

(ii) **Note:** Map of Unit 7 follows.



(12) *Unit 8:* Palos Verdes Peninsula Subregion, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangle maps San Pedro, Redondo Beach, Redondo Beach OE S, and Torrance, land bounded by the following UTM NAD27 coordinates (E, N): 378000, 3735500; 378200, 3735500; 378400, 3735600; 378400, 3735700; 378600, 3735700; 378600, 3735500; 378500, 3735500; 378100, 3735300; 378100, 3735200; 377800, 3735200; 377700, 3735100; 377700, 3735000; 377400, 3735000; 377400, 3734900; 377600, 3734900; 377600, 3734800; 377800, 3734800; 377800, 3734700; 377900, 3734600; 378000, 3734600; 378000, 3734400; 378200, 3734500; 378700, 3734500; 378700, 3734300; 378300, 3734300; 378300, 3734200; 377900, 3734200; 377900, 3734300; 377600, 3734300; 377600, 3734000; 377300, 3734000; 377300, 3733700; 377400, 3733600; 377500, 3733600; 377500, 3733400; 377700, 3733400; 377700, 3733200; 377500, 3733200; 377300, 3733100; 377300, 3733000; 377400, 3733000; 377400, 3732800; 377300, 3732800; 377300, 3732500; 377200, 3732500; 377200, 3732400; 377100, 3732400; 377100, 3732500; 376800, 3732500; 376800, 3732600; 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then west to the Pacific Ocean; thence westward along the coastline past x-coordinate 371500 to y-coordinate 3733800; then bounded by 371000, 3733800; 371000, 3734000; 371100, 3734000; 371100, 3734100; 371500, 3734100; 371700, 3734300; 371700, 3734600; 371800, 3734600; 371800, 3734700; 371600, 3734700; 371600, 3734500; 371200, 3734500; 371200, 3734400; 370900, 3734400; 370900, 3734300; 370600, 3734300; 370200, 3734100; 370200, 3734000; then west to the Pacific Ocean; thence northwestward along the coastline to y-coordinate 3734800; then bounded by 3734800; 369900, 3734800; 370000, 3734900; 370000, 3735000; 369900, 3735000; 369900, 3735400; 369800, 3736200; 369700, 3736300; 369600, 3736300; 369600, 3736800; 369400, 3736800; 369400, 3737100; 369000, 3737200; 368500, 3737200; 368400, 3737100; 368400, 3737000; 368200, 3737000; then north to the Pacific Ocean; thence northward along the coastline to y-coordinate 3737200; then bounded by 368400, 3737200; 368400, 3737400; 368300, 3737600; then west to the Pacific Ocean; 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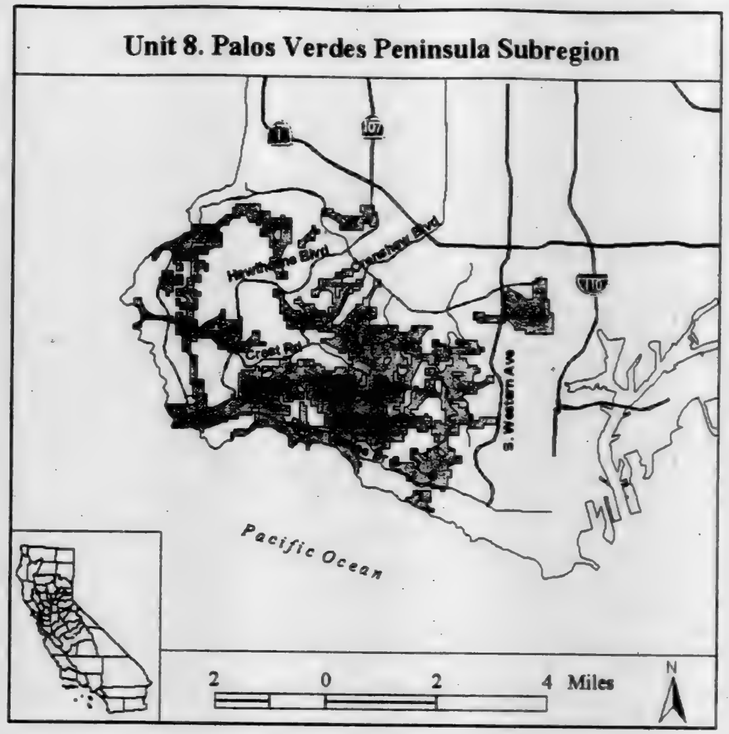
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Land bounded by the following UTM NAD27 coordinates (E, N): 369000, 3738600; 369300, 3738600; 369300, 3738400; 369400, 3738400; 369400, 3738500; 369600, 3738500; 369600, 3738200; 369300, 3738200; 369300, 3738000; 369200, 3738000; 369200, 3737900; 369100, 3737900; 369100, 3738000; 369000, 3738100; 368900, 3738100; 368900, 3738400; 369000, 3738400; returning to 369000, 3738600.

Land bounded by the following UTM NAD27 coordinates (E, N): 379800, 3738500; 380100, 3738500; 380100, 3737900; 380200, 3737900; 380200, 3737500; 380300, 3737500; 380300, 3736900; 379500, 3736900; 379500, 3737000; 379200, 3737000; 379200, 3737100; 379000, 3737300; 378900, 3737300; 378900, 3737200; 378100, 3737200; 378100, 3737300; 378000, 3737300; 378000, 3737500; 378300, 3737500; 378300, 3737400; 378800, 3737400; 378800, 3737600; 378900, 3737600; 378900, 3737700; 378800, 3737700; 378800, 3738100; 379000, 3738100; 379000, 3738200; 379400, 3738000; 379500, 3737900; 379700, 3737900; 379700, 3738400; 379800, 3738400; returning to 379800, 3738500.

Beginning at the Pacific Ocean at x-coordinate 376100, land bounded by the following UTM NAD27 coordinates (E, N): 376100, 3732200; 376200, 3732200; 376300, 3732300; 376800, 3732400; 376800, 3732100; 376700, 3732100; 376700, 3732000; 376800, 3731900; 376900, 3731900; 376900, 3731800; then west to the Pacific Ocean; thence northwestward to the point of beginning.

(ii) **Note:** Map of Unit 8 follows.



(13) *Unit 9:* East Los Angeles County—Matrix NCCP Subregion of Orange, Los Angeles, and San Bernardino Counties, California.

(i) From USGS 1:24,000 quadrangle maps El Monte, Black Star Canyon, Prado Dam, Yorba Linda, La Habra, and Whittier, California, land bounded by the following UTM NAD27 coordinates (E, N): 399400, 3766400; 400000, 3766400; 400000, 3766300; 400600, 3766300; 400600, 3766400; 400700, 3766400; 400700, 3766300; 400800, 3766300; 400800, 3766200; 400900, 3766200; 400900, 3766100; 401000, 3766100; 401000, 3766000; 401100, 3766000; 401100, 3765900; 401200, 3765900; 401200, 3765800; 401400, 3765800; 401400, 3765700; 401600, 3765700; 401600, 3765600; 401700, 3765600; 401700, 3765700; 402500, 3765700; 402500, 3765800; 403000, 3765800; 403000, 3765900; 403400, 3765900; 403400, 3766000; 404000, 3766000; 404000, 3766100; 404200, 3766100; 404200, 3765900; 404100, 3765900; 404100, 3765800; 403900, 3765800; 403900, 3765700; 403700, 3765700; 403700, 3765600; 403500, 3765600; 403500, 3765400; 403400, 3765400; 403400, 3765300; 403300, 3765300; 403300, 3765200; 403200, 3765200; 403200, 3765000; 403100, 3765000; 403100, 3764800; 403000, 3764800; 403000, 3764700; 402700, 3764700; 402700, 3764800; 401000, 3764800; 401000, 3765000; 401100, 3765000; 401100, 3765100; 400800, 3765100; 400800, 3765200; 400600, 3765200; 400600, 3765100; 400200, 3765100; 400200, 3765200; 399800, 3765200; 399800, 3765400; 398800, 3765400; 398800, 3765300; 398500, 3765300; 398500, 3765200; 398300, 3765200; 398300, 3765700; 398400, 3765700; 398400, 3765900; 398500, 3765900; 398500, 3766000; 398700, 3766000; 398700, 3766100; 399100, 3766100; 399100, 3766200; 399300, 3766200; 399300, 3766300; 399400, 3766300; returning to 399400, 3766400.

Land bounded by the following UTM NAD27 coordinates (E, N): 437900, 3748300; 437800, 3748300; 437800, 3748200; 437200, 3748200; 437200, 3748000; 433500, 3748000; 433500, 3748100; 433700, 3748100; 433700, 3748200; 434800, 3748200; 434800, 3748300; 435100, 3748300; 435100, 3748400; 435400, 3748400; 435400, 3748500; 435500, 3748500; 435500, 3748700; 436200, 3748700; 436200, 3748800; 436000, 3748800; 436000, 3748900; 435700, 3748900; 435700, 3749000; 435300, 3749000; 435300, 3748900; 434900, 3748900; 434900, 3749000; 434700, 3749000; 434700, 3749200; 434800, 3749200; 434800, 3749400; 434700, 3749400; 434700, 3749700; 434900, 3749700; 434900, 3749800; 435000, 3749800; 435000, 3749900; 434700, 3749900; 434700, 3750000; 434500, 3750000; 434500, 3750100; 434400, 3750100; 434400, 3749800; 434200, 3749800; 434200, 3749600; 434100, 3749600; 434100, 3749500; 434000, 3749500; 434000, 3749400; 433900, 3749400; 433900, 3749300; 433800, 3749300; 433800, 3749200; 434100, 3749200; 434100, 3749100; 434300, 3749100; 434300, 3749000; 434200, 3749000; 434200, 3748900; 433900, 3748900; 433900, 3749000; 433500, 3749000; 433500, 3749100; 433400, 3749100; 433400, 3749200; 433100, 3749200; 433100,

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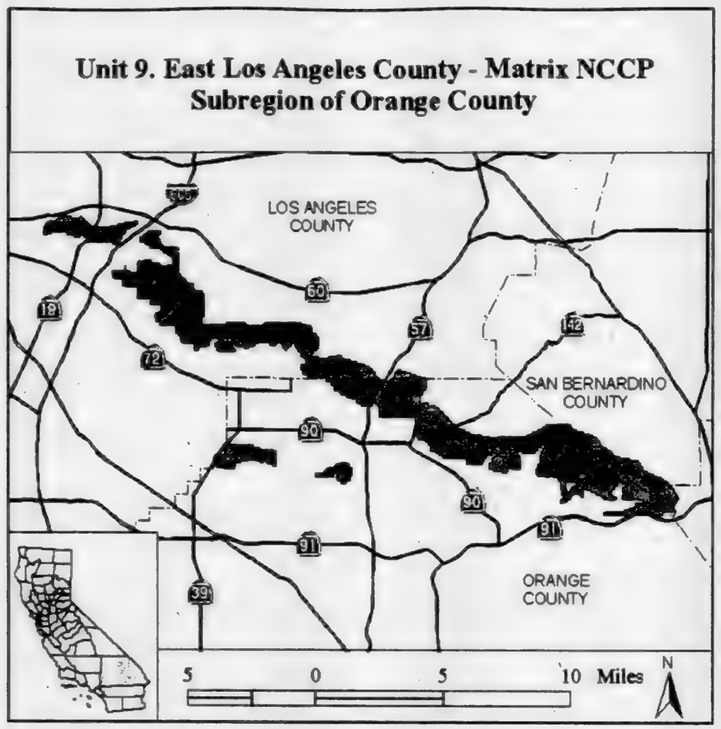
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3750000; 437500, 3750000; 437500,
3749900; 437600, 3749900; thence south to the San Bernardino County Line at x-coordinate 437600; thence southward along the San Bernardino County Line past y-coordinate 3748400 to x-coordinate 437900; thence south to the point of beginning at 437900, 3748300; excluding land bounded by 410200, 3758600; 410200, 3758700; 410100, 3758700; 410100, 3758800; 409900, 3758800; 409900, 3758600; 410200, 3758600; land bounded by 428100, 3751900; 428100, 3752000; 428000, 3752000; 428000, 3752100; 427900, 3752100; 427900, 3751900; 428100, 3751900; land bounded by 409400, 3758700; 409400, 3758600; 409500, 3758600; 409500, 3758700; 409400, 3758700; 418300, 3755400; 418300, 3755100; 418500, 3755100; 418500, 3755400; 418300, 3755400; land bounded by 424000, 3752600; 424000, 3752500; 424100, 3752500; 424100, 3752400; 424300, 3752400; 424300, 3752300; 424500, 3752300; 424500, 3752400; 424600, 3752400; 424600, 3752500; 424400, 3752500; 424400, 3752600; 424000, 3752600; land bounded by 427100, 3751000; 427100, 3750900; 427300, 3750900; 427300, 3751000; 427100, 3751000; land bounded by 432300, 3750600; 432300, 3750500; 431900, 3750500; 431900, 3750400; 432000, 3750400; 432000, 3750200; 432300, 3750200; 432300, 3750300; 432400, 3750300; 432400, 3750600; 432300, 3750600; and land bounded by 431300, 3750100; 431300, 3750000; 431100, 3750000; 431100, 3749500; 431200, 3749500; 431200, 3749200; 431300, 3749200; 431300, 3749400; 431400, 3749400; 431400, 3749600; 431500, 3749600; 431500, 3749700; 431600, 3749700; 431600, 3749800; 431800, 3749800; 431800, 3749900; 431900, 3749900; 431900, 3750000; 431400, 3750000; 431400, 3750100; 431300, 3750100.

Land bounded by the following UTM NAD27 coordinates (E, N): 409700,

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Land bounded by the following UTM NAD27 coordinates (E, N): 417000, 3751200; 417300, 3751200; 417300, 3751100; 417500, 3751100; 417500, 3750900; 417700, 3750900; 417700, 3750400; 417500, 3750400; 417500, 3750300; 417600, 3750300; 417600, 3750100; 417400, 3750100; 417400, 3750200; 417300, 3750200; 417300, 3749900; 417000, 3749900; 417000, 3750100; 416800, 3750100; 416800, 3750200; 416700, 3750200; 416700, 3750300; 416800, 3750300; 416800, 3750600; 416600, 3750600; 416600, 3750500; 416500, 3750500; 416500, 3750300; 415400, 3750300; 415400, 3750500; 415900, 3750500; 415900, 3750600; 416000, 3750600; 416000, 3750700; 416100, 3750700; 416100, 3750800; 416200, 3750800; 416200, 3750900; 416600, 3750900; 416600, 3751000; 416700, 3751000; 416700, 3751100; 417000, 3751100; returning to 417000, 3751200; excluding land bounded by 417300, 3750700; 417300, 3750600; 417200, 3750600; 417200, 3750500; 417500, 3750500; 417500, 3750700; 417300, 3750700.

(ii) **Note:** Map of Unit 9 follows.



(14) *Unit 10:* Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP), Riverside and San Bernardino Counties, California.

(i) From USGS 1:100,000 quadrangle maps Borrego Valley, Oceanside, Palm Springs, Santa Ana, and San Bernardino, California, land bounded by the following UTM NAD27 coordinates (E, N): 459800, 3767500; 462300, 3767500; 462300, 3766500; 462500, 3766500; 462500, 3766600; 462800, 3766600; 462800, 3766500; 463100, 3766500; 463100, 3766400; 463300, 3766400; 463300, 3766300; 463500, 3766300; 463500, 3766100; 463400, 3766100; 463400, 3766000; 463300, 3766000; 463300, 3765900; 463500, 3765900; 463500, 3765700; 463100, 3765700; 463100, 3763900; 463000, 3763900; 463000, 3763700; 462900, 3763700; 462900, 3763100; 462800, 3763100; 462800, 3763000; 462700,

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Land bounded by the following UTM NAD27 coordinates (E, N): 474400, 3766500; 474400, 3766600; 474200, 3766600; 474200, 3766700; 473900, 3766700; 473900, 3767000; 473800, 3767000; 473800, 3767100; 473700, 3767100; 473700, 3767300; 473900, 3767300; 473900, 3767400; 474200, 3767400; 474200, 3767300; 474400, 3767300; 474400, 3767200; 474500, 3767200; 474500, 3767300; 474800, 3767300; 474800, 3767400; 475100, 3767400; 475100, 3767200; 475300, 3767200; 475300, 3766700; 475400, 3766700; 475400, 3766600; 475800, 3766600; 475800, 3766700; 476000, 3766700; 476000, 3766600; 476500, 3766600; 476500, 3766400; 477000, 3766400; 477000, 3766000; 476900, 3766000; 476900, 3765800; 477000, 3765800; 477000, 3765700; 477100, 3765700; 477100, 3765400; 477200, 3765400; 477200, 3764900; 477400, 3764900; 477400, 3764800; 477500, 3764800; 477500, 3764400; 477700, 3764400; 477700, 3764200; 477800, 3764200; 477800, 3764100; 477900, 3764100; 477900, 3764000; 478100, 3764000; 478100, 3763900; 478200, 3763900; 478200, 3763800; 478700, 3763800; 478700, 3763700; 479000, 3763700; 479000, 3763400; 479100, 3763400; 479100, 3763200; 479200, 3763200; 479200, 3763100; 479300, 3763100; 479300, 3763000; 479200, 3763000; 479200, 3762900; 479300, 3762900; 479300, 3761200; 479200, 3761200; 479200, 3761300; 479000, 3761300; 479000, 3761400; 478900, 3761400; 478900, 3761600; 478700, 3761600; 478700, 3761300; 478800, 3761300; 478800, 3761200; 478900, 3761200; 478900, 3760800; 479000, 3760800; 479000, 3760700; 479200, 3760700; 479200, 3760500; 479300, 3760500; 479300, 3760600; 479600, 3760600; 479600, 3760400; 479700, 3760400; 479700, 3760300; 479800, 3760300; 479800, 3760100; 480100, 3760100; 480100, 3759900; 480300, 3759900; 480300, 3759800; 480400, 3759800; 480400, 3759700; 480500, 3759700; 480500, 3759600; 480600, 3759600; 480600, 3759400; 480700, 3759400; 480700, 3759300; 480800, 3759300; 480800, 3759200; 480900, 3759200; 480900, 3759100; 481000, 3759100; 481000, 3759000; 481100, 3759000; 481100, 3758900; 481200, 3758900; 481200, 3758700; 481300, 3758700; 481300, 3758400; 481400, 3758400; 481400, 3758300; 481500, 3758300; 481500, 3757900; 481600, 3757900; 481600, 3757600; 479100, 3757600; 479100, 3759200; 479000, 3759200; 479000, 3759400; 478900, 3759400; 478900, 3759800; 478800, 3759800; 478800, 3759700; 478600, 3759700; 478600, 3759500; 478500, 3759500; 478500, 3759400; 478600, 3759400; 478600, 3759200; 475900, 3759200; 475900, 3759900; 475800, 3759900; 475800, 3760000; 475700, 3760000; 475700, 3760100; 475600, 3760100; 475600, 3760200; 475500, 3760200; 475500, 3760300; 475400, 3760300; 475400, 3760400; 475300, 3760400; 475300, 3760800; 475200, 3760800; 475200, 3760900; 475400, 3760900; 475400, 3761000; 475100, 3761000; 475100, 3761200; 474700, 3761200; 474700, 3761300; 474600, 3761300; 474600, 3761500; 474300, 3761500; 474300, 3761400; 474400, 3761400; 474400, 3761200; 474100, 3761200; 474100, 3760900; 473900, 3760900; 473900, 3760800; 473800, 3760800; 473800, 3760700; 473900, 3760700; 473900, 3760500; 474400, 3760500; 474400, 3760400; 474800, 3760400; 474800, 3760200; 475000, 3760200; 475000, 3759900; 475100, 3759900; 475100, 3759800; 475000, 3759800; 475000, 3759700; 474900, 3759700; 474900, 3759500; 475200, 3759500; 475200, 3759200; 474400, 3759200; 474400, 3758900; 474300, 3758900; 474300, 3758400; 474200, 3758400; 474200, 3756500; 473900, 3756500; 473900, 3756600; 473800, 3756600; 473800, 3756900; 473500, 3756900; 473500, 3756800; 473000, 3756800; 473000, 3757300; 472900, 3757300; 472900, 3757200; 472800, 3757200; 472800, 3757100; 472700, 3757100; 472700, 3756100; 472500, 3756100; 472500, 3756200; 472200, 3756200; 472200, 3756300; 472100, 3756300; 472100, 3756500; 472000, 3756500; 472000, 3756800; 471900,

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then north along the NCCP Reserve boundary to the Coal Canyon Existing Use Area of the Central Orange County NCCP; then north and west along the Coal Canyon Existing Use Area boundary to x-coordinate 437100; then land bounded by 437100, 3748000; 437200, 3748000; 438700, 3748000; 438700, 3748300; 438800, 3748300; 438800, 3748400; 438900, 3748400; 438900, 3748500; 439000, 3748500; 439000, 3748600; 439100, 3748600; 439100, 3748700; 439300, 3748700; 439300, 3748800; 439700, 3748800; 439700, 3748600; 440100, 3748600; 440100, 3748500; 440200, 3748500; 440200, 3748200; 440300, 3748200; 440300, 3748100; 440400, 3748100; 440400, 3747900; 440500, 3747900; 440500, 3747800; 440700, 3747800; 440700, 3747900; 440800, 3747900; 440800, 3748000; 441400, 3748000; 441400, 3747900; 441500, 3747900; 441500, 3747700; 441800, 3747700; 441800, 3747600; 441900, 3747600; 441900, 3747500; 442100, 3747500; 442100, 3747300; 442200, 3747300; 442200, 3747200; 442300, 3747200; 442300, 3747400; 442700, 3747400; 442700, 3747300; 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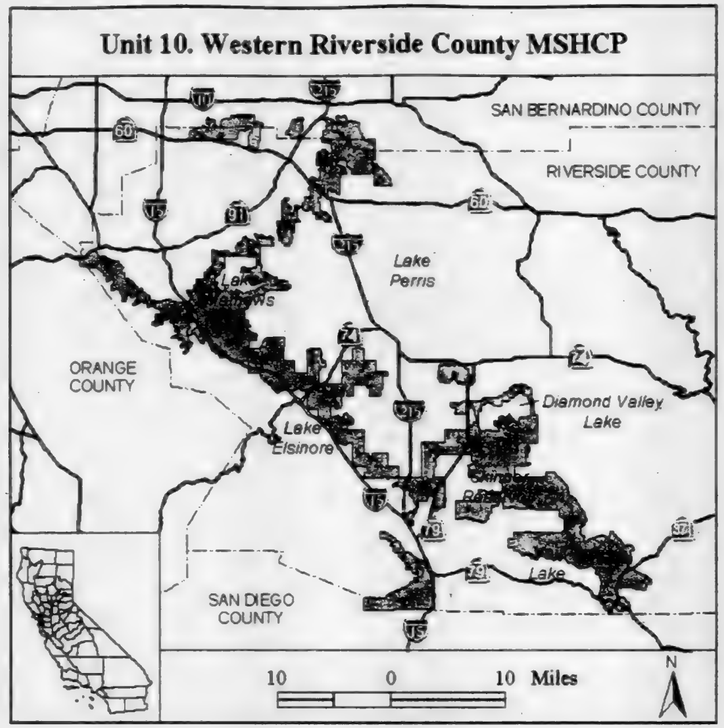
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Beginning at the Riverside/San Diego County line at y-coordinate 3700600, land bounded by the following UTM NAD27 coordinates (E, N): 477900, 3700600; 477900, 3700700; 479200, 3700700; 479200, 3700600; 479100, 3700600; 479100, 3700500; 479000, 3700500; 479000, 3700400; 479300, 3700400; 479300, 3700500; 479500, 3700500; 479500, 3700600; 479800, 3700600; 479800, 3700700; 480000, 3700700; 480000, 3700600; 480800, 3700600; 480800, 3701100; 481000, 3701100; 481000, 3701200; 481200, 3701200; 481200, 3701300; 481400, 3701300; 481400, 3701400; 481700, 3701400; 481700, 3701500; 481900, 3701500; 481900, 3701600; 482100, 3701600; 482100, 3701700; 482400, 3701700; 482400, 3701800; 482600, 3701800; 482600, 3701900; 482800, 3701900; 482800, 3702000; 483000, 3702000; 483000, 3702100; 483300, 3702100; 483300, 3702200; 483500, 3702200; 483500, 3702300; 483700, 3702300; 483700, 3702400; 484000, 3702400; 484000, 3702500; 484100, 3702500; 484100, 3702800; 484200, 3702800; 484200, 3702900; 484300, 3702900; 484300, 3703000; 484700, 3703000; 484700, 3702900; 484800, 3702900; 484800, 3702800; 485000, 3702800; 485000, 3702900; 485200, 3702900; 485200, 3703000; 485300, 3703000; 485300, 3703100; 485200, 3703100; 485200, 3703200; 485100, 3703200; 485100, 3703300; 484700, 3703300; 484700, 3703500; 485200, 3703500; 485200, 3703600; 485600, 3703600; 485600, 3703700; 485700, 3703700; 485700, 3703800; 485800, 3703800; 485800, 3704000; 485900, 3704000; 485900, 3704300; 486000, 3704300; 486000, 3704500; 485900, 3704500; 485900, 3704600; 485400, 3704600; 485400, 3704900; 485200, 3704900; 485200, 3705000; 485000, 3705000; 485000, 3704900; 484900, 3704900; 484900, 3704800; 485000, 3704800; 485000, 3704600; 485100, 3704600; 485100, 3704500; 485200, 3704500; 485200, 3704300; 485300, 3704300; 485300, 3704100; 485200, 3704100; 485200, 3703900; 485000, 3704000; 484900, 3704000; 484900, 3704100; 484600, 3704100; 484600, 3704200; 484500, 3704200; 484500, 3704300; 484400, 3704300; 484400, 3704600; 484300, 3704600; 484300, 3704700; 484100, 3704700; 484100, 3704600; 483500, 3704600; 483500, 3705400; 483400, 3705400; 483400, 3705800; 483300, 3705800; 483300, 3705900; 483100, 3705900; 483100, 3706200; 482900, 3706200; 482900, 3706400; 482600, 3706400; 482600, 3706600; 482500, 3706600; 482500, 3707000; 482000, 3707000; 482000, 3707200; 481700, 3707200; 481700, 3707600; 482000, 3707600; 482000, 3707800; 481800, 3707800; 481800, 3707900; 481300, 3707900; 481300, 3708100; 481400, 3708100; 481400, 3708200; 481500, 3708200; 481500, 3708300; 481700, 3708300; 481700, 3708400; 481600, 3708400; 481600, 3708500; 481500, 3708500; 481500, 3708600; 481100, 3708600; 481100, 3708800; 481000, 3708800; 481000, 3708900; 480000, 3708900; 480000, 3709900; 480500, 3709900; 480500, 3709800; 480600, 3709800; 480600, 3709700; 481100, 3709700; 481100, 3709500; 481300, 3709500; 481300, 3709400; 481400, 3709400; 481400, 3709300; 481600, 3709300; 481600, 3709200; 481700, 3709200; 481700, 3709100; 481800, 3709100; 481800, 3709000; 482000, 3709000; 482000, 3708900; 482100, 3708900; 482100, 3708800; 482200, 3708800; 482200, 3708600; 482600, 3708600; 482600, 3708500; 482700, 3708500; 482700, 3708300; 482800, 3708300; 482800, 3708200; 482900, 3708200; 482900, 3708000; 483000, 3708000; 483000, 3707600; 483100, 3707600; 483100, 3707500; 483200, 3707500; 483200, 3707200; 483300, 3707200; 483300, 3707100; 484000, 3707100; 484000, 3707000; 484300, 3707000; 484300, 3706700; 484500, 3706700; 484500, 3706600; 484600, 3706600; 484600, 3706500; 484700, 3706500; 484700, 3706400; 484900, 3706400; 484900, 3706300; 485100, 3706300; 485100, 3706200; 485200, 3706200; 485200, 3706100; 485300, 3706100; 485300, 3706000; 485700, 3706000; 485700, 3705900; 485800, 3705900; 485800, 3705800; 485900, 3705800; 485900, 3705700; 486000, 3705700; 486000, 3705600; 486100, 3705600; 486100, 3705500; 486200,

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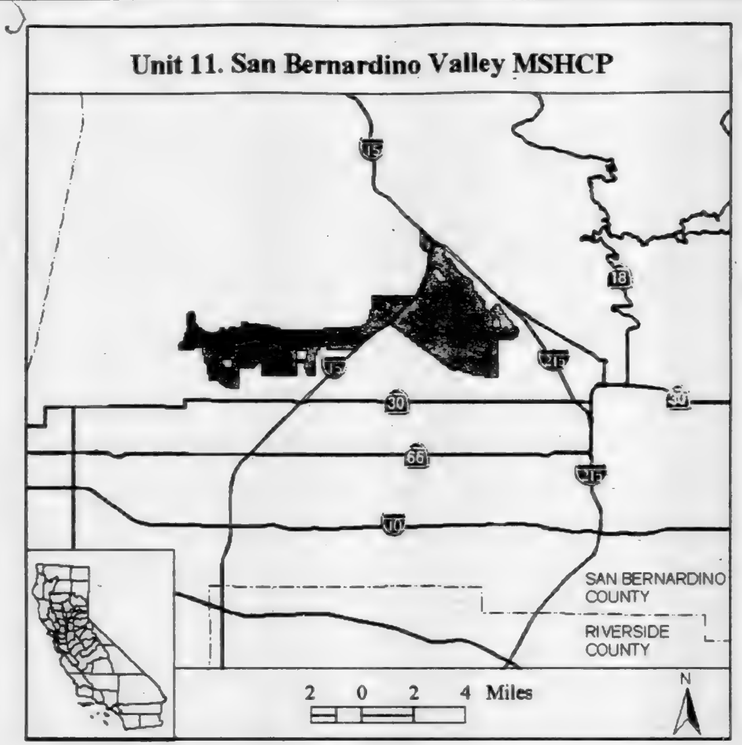
(ii) **Note:** Map of Unit 10 follows.



(15) *Unit 11:* San Bernardino Valley MSHCP, San Bernardino County, California.

(i) From USGS 1:24,000 quadrangle maps San Bernardino North, Devore, and Cucamonga Peak, California, land bounded by the following UTM NAD27 coordinates (E, N): 461600, 3787700; 461700, 3787700; 461700, 3787600; 461800, 3787600; 461800, 3787500; 461900, 3787500; 461900, 3787400; 462000, 3787400; 462000, 3787300; 462100, 3787300; 462100, 3787200; 462200, 3787200; 462200, 3787000; 462400, 3787000; 462400, 3786900; 462600, 3786900; 462600, 3786700; 462700, 3786700; 462700, 3786600; 463000, 3786600; 463000, 3786500; 463100, 3786500; 463100, 3786200; 463000, 3786200; 463000, 3786100; 463100, 3786100; 463100, 3786000; 463200, 3786000; 463200, 3785900; 463400, 3785900; 463400, 3785800; 463500, 3785800; 463500, 3785700; 463600, 3785700; 463600, 3785500; 463700, 3785500; 463700, 3785400; 463800, 3785400; 463800, 3785200; 463900, 3785200; 463900, 3785100; 464000, 3785100; 464000, 3785000; 464100, 3785000; 464100, 3784900; 464200, 3784900; 464200, 3784800; 464400, 3784800; 464400, 3784700; 464600, 3784700; 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(ii) **Note:** Map of Unit 11 follows.



(16) *Unit 12:* East Los Angeles County Linkage, Los Angeles County, California.

(i) From USGS 1:24,000 quadrangle maps San Dimas and Baldwin Park, California, land bounded by the following UTM NAD27 coordinates (E, N): 426700, 3772700; 427000, 3772700; 427000, 3772400; 427200, 3772400; 427200, 3772300; 427700, 3772300; 427700, 3770400; 427600, 3770400; 427600, 3770300; 427200, 3770300; 427200, 3770200; 426900, 3770200; 426900, 3770100; 426800, 3770100; 426800, 3770000; 426600, 3770000; 426600, 3769900; 426400, 3769900; 426400, 3769800; 426100, 3769800; 426100, 3769700; 425700, 3769700; 425700, 3769800; 425600, 3769800; 425600, 3770000; 425500, 3770000; 425500, 3769500; 425300, 3769500; 425300, 3769400; 424900, 3769400; 424900, 3769300; 424300, 3769300; 424300, 3769100; 424200, 3769100; 424200, 3769000; 424100, 3769000; 424100, 3768800; 424000, 3768800; 424000, 3768700; 423600, 3768700; 423600, 3768600; 423700, 3768600; 423700, 3768400; 423300, 3768400; 423300, 3768500; 423200, 3768500; 423200, 3768600; 423100, 3768600; 423100, 3768500; 422900, 3768500; 422900, 3768400; 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(ii) **Note:** Map of Unit 12 follows.



(17) *Unit 13:* Western Los Angeles and Ventura Counties, California.

(i) From USGS 1:100,000 quadrangle map Los Angeles, California, land bounded by the following UTM NAD83 coordinates (E, N): 367023, 3809918; 366923, 3809918; 366923, 3810118; 367123, 3810118; 367123, 3810218; 367323, 3810218; 367323, 3810318; 367423, 3810318; 367423, 3810518; 367523, 3810518; 367523, 3810718; 367623, 3810718; 367623, 3810918; 367723, 3810918; 367723, 3811018; 367823, 3811018; 367823, 3811118; 367923, 3811118; 367923, 3811218; 367823, 3811218; 367823, 3811318; 367723, 3811318; 367723, 3811218; 367523, 3811218; 367523, 3811118; 367423, 3811118; 367423, 3811018; 367323, 3811018; 367323, 3810918; 367223, 3810918; 367223, 3810818; 367123, 3810818; 367123, 3810718; 367023, 3810718; 367023, 3810618; 366923, 3810618; 366923, 3810518; 366823, 3810518; 366823, 3810418; 366723, 3810418; 366723, 3810318; 366623, 3810318; 366623, 3810218; 366523, 3810218; 366523, 3810118; 366423, 3810118; 366423, 3810018; 366323, 3810018; 366323, 3809918; 366123, 3809918; 366123, 3810118; 366023, 3810118; 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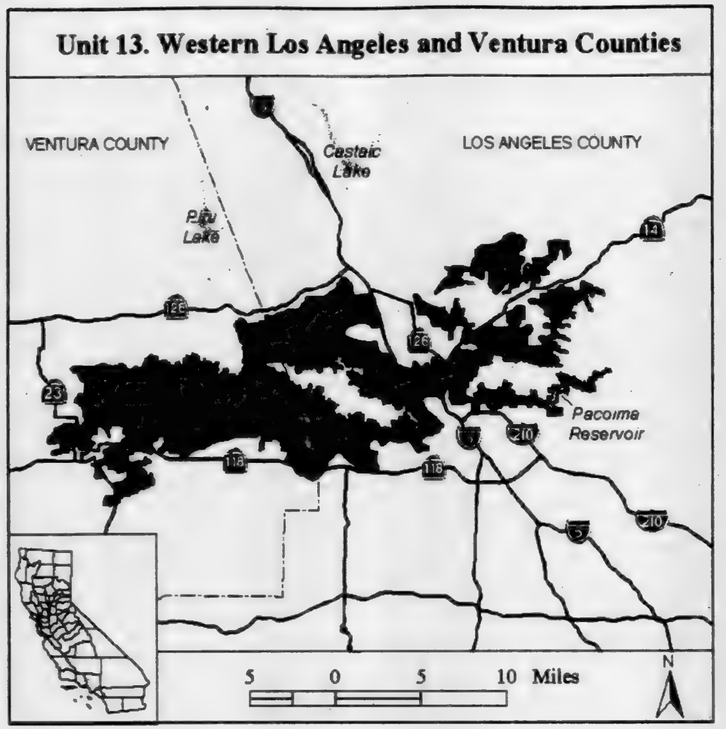
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Dated: April 10, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

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Federal Register

Thursday,
April 24, 2003

Part III

Department of Housing and Urban Development

Notice of Funding Availability (NOFA) for the Permanent Housing and Special Efforts for Subpopulations Technical Assistance Program (PHASES–TA); Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4802–N–01]

Notice of Funding Availability (NOFA) for the Permanent Housing and Special Efforts for Subpopulations Technical Assistance Program (PHASES–TA)

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: *Purpose of the Program:* The purpose of the technical assistance (TA) program detailed in this NOFA is: To provide technical assistance to grantees, project sponsors, and potential applicants for the McKinney-Vento Act funded Supportive Housing Program, Section 8 Moderate Rehabilitation Single Room Occupancy, and Shelter Plus Care projects to promote the development of permanent housing and supportive services as part of the Continuum of Care (CoC) approach, including innovative approaches to enable homeless persons to live as independently as possible. A Continuum of Care approach helps communities plan for and provide a balance of emergency, transitional, and permanent housing and service resources to address the needs of homeless persons so they can make the critical transition from the streets to permanent housing and independent living. In addition to prevention, the fundamental components of a CoC system are outreach and assessment to identify an individual's or family's needs and make connections to facilities and services, emergency shelter, transitional housing, and permanent housing arrangements. In addition, this TA program is intended to provide assistance to faith-based and other community grassroots organizations, veteran-specific organizations, and organizations serving Colonias areas to better enable them to develop and implement viable project proposals to assist homeless persons using McKinney-Vento funds.

HUD's Strategic Goals: Activities funded through this NOFA are meant, to the extent practicable, to support the Strategic Goals described below:

Strategic Goal 1. Effectively address the challenge of homelessness. Ending chronic homelessness within a decade is a primary goal of HUD's homeless assistance programs. HUD is also the primary agency responsible for providing housing and related resources to prevent homelessness and help homeless families and individuals move to permanent housing.

Strategic Goal 2. Strengthen and expand faith-based and other community partnerships that enhance communities. HUD has a long and rich history of cooperating with faith-based and other community-based organizations to address the needs of underserved communities, including the needs of those Americans for whom homelessness, the lack of affordable housing, and limited alternatives for special needs housing lead to despair and hopelessness. Building on this history, HUD plans to strengthen and expand its partnerships with faith-based and other community-based groups to take further advantage of their capacity to provide quality services to communities and families.

Available Funds. Up to $2 million in FY 2002 funds is available for the PHASES–TA program. (Approximately $1 million will be available in TA funds for development and implementation of permanent housing, with the remaining $1 million to be used for technical assistance for faith-based and other community organizations, veteran-specific organizations, and organizations either currently serving or desiring to serve Colonias.)

Eligible Applicants. Specific eligibility requirements for the PHASES–TA program are found below in Section III (C).

Application Deadline. June 18, 2003.

Match: None.

ADDITIONAL INFORMATION:

I. Application Due Date; Application Submission Procedures; Further Information and Technical Assistance

Application Due Date: Applicants must submit a completed application (original and one copy) by June 18, 2003, to the address shown below. Only one application per applicant is permitted.

Application Submission Procedures. HUD has standardized security procedures that affect the application submission process. Please read the following instructions carefully and completely. HUD will not accept hand delivered applications. Applications may be mailed using DHL, Falcon Carrier, FedEx, United Parcel Service (UPS), or the United States Postal Service (USPS). No other delivery services are permitted into HUD Headquarters without escort. Applicants must, therefore, use one of the five carriers listed above.

Mailed Applications. An application will be considered timely filed if it is postmarked on or before 5:15 pm EDT on June 18, 2003, and received by the designated HUD office on or within twenty-one (21) days of the application due date. All applicants must obtain and save a Certificate of Mailing showing the date when the application was submitted to the United States Postal Service (USPS). The Certificate of Mailing will be the applicant's documentary evidence that the application was timely filed.

Applications Sent by Overnight/Express Mail Delivery. If the application is sent by overnight delivery or express mail, the application will be timely filed if it is received on or before June 18, 2003, or when the applicant submits documentary evidence that the application was placed in transit with the overnight delivery/express mail service by no later than June 18, 2003. Due to security measures, applicants must use one of four carrier services that are permitted into HUD Headquarters without escort. These services are DHL, Falcon Carrier, FedEx and UPS. Delivery by these services must be made during HUD Headquarters business hours, 8:30 a.m. to 5:30 p.m. Eastern Time, Monday through Friday. If these companies do not service an applicant's area, the applicant should submit the application via the United States Postal Service.

Addresses for Submitting Applications. Applicants must submit completed applications to HUD Headquarters, U.S. Department of Housing and Urban Development, Office of Community Planning and Development (CPD) Processing and Control Branch, Room 7251, 451 Seventh Street, SW., Washington, DC 20410. A completed application consists of the original application and one copy. When submitting an application, applicants should refer to the Permanent Housing and Special Efforts for Subpopulations Technical Assistance (PHASES–TA) Program. Applicants should include name, mailing address (including zip code), telephone number (including area code), and fax number (including area code).

Further Information and Technical Assistance. For supplemental information or technical assistance, applicants may contact Jean Whaley at 202–708–3176, x2774 (this is not a toll-free number) in HUD Headquarters. Persons with hearing and speech challenges may access the above number via TTY by calling the Federal Relay Service at 1–800–877–8339. Information on this NOFA may also be obtained through the HUD Web site on the Internet at *http://www.hud.gov.*

II. Amount Allocated

(A) The amount allocated for the PHASES-TA program is up to $2,000,000.

(B) HUD will determine the total amount to be awarded to each provider based upon the size and needs of the provider's operating service area, the funds available for that area, the number of other awardees selected in that area, and the scope of the technical assistance to be provided. HUD may require selected applicants, as a condition of funding, to provide coverage on a geographically broader basis than applied for in order to supplement or strengthen the intermediary network in terms of the location (service area) and types and scope of technical assistance proposed.

(C) To the extent permitted by funding constraints, HUD intends to provide coverage for as full a range as possible of eligible activities. To achieve this objective, HUD will fund the highest ranking providers that bring the required expertise in one or more specialized activity areas, and may fund portions of providers' proposed programs in which they have the greatest skill and capability for given geographic areas. HUD will apply rating factors, identified in Section V of this NOFA, to select a range of providers and activities that would best serve program objectives for the programs funded under this NOFA.

III. Program Description; Program Award Period; Eligible Applicants; Eligible Activities

(A) Program Description

Up to $2 million in funds are available for technical assistance providers to help organizations that operate or wish to provide McKinney-Vento programs to better serve their clients' permanent and/or special housing and supportive service needs. Here the term "special" refers to one or more of three designated populations: homeless veterans, homeless persons in Colonias, or homeless persons being assisted by faith-based and other community grassroots organizations. Faith-based and other community grassroots organizations are defined as those organizations that are headquartered in the local community to which they provide services; and have social service budgets of $300,000 or less (not including other portions of the budget such as salaries and expenses), or have six or fewer full-time equivalent employees. Local affiliates of national organizations are not considered "grassroots." Local affiliates of national organizations are encouraged, however, to partner with grassroots organizations but must demonstrate that they are currently working with a grassroots organization, *e.g.*, having a congregation or civic organization, or other charitable organization provide volunteers.

Thus far, the three types of technical assistance that have been delineated include TA to providers who serve homeless veterans, TA to providers who serve homeless persons in Colonias, and TA to providers who serve homeless persons through faith-based and other community grassroots organizations. The fourth kind of technical assistance will be for providers of permanent housing serving any or all categories of homeless people. Eligible applicants are able to apply for funding to address the technical assistance needs of as few as one, and as many as all four, of these TA areas. This section of the NOFA reflects the statutory requirements of the PHASES–TA program.

(B) Program Award Period

(1) Cooperative agreements will be for a period of up to 18 months. HUD, however, reserves the right to:

(a) Terminate awards in accordance with provisions contained in OMB Circular A–102 and A–110, and 24 CFR parts 84–85, anytime after 12 months;

(b) Withdraw funds from a specific provider, if HUD determines that the need for assistance is not commensurate with the award for assistance; or

(c) Extend the performance period for up to a total of 12 additional months of individual awardees that have performed satisfactorily or for which there is a demonstrated continuing need for assistance. As a condition of receiving an award, a successful applicant must agree to serve for an extended period.

(2) In cases where an applicant selected for funding is currently providing technical assistance under an existing HUD grant/cooperative agreement, HUD reserves the right to adjust the start date of funding available under this NOFA to coincide with the conclusion of the previous award, or to incorporate the remaining activities from the previous award into the new agreement, adjusting the funding levels as necessary.

(C) Eligible Applicants

HUD is specifically looking for applicants who satisfy any one, or a combination of, the conditions from the following list:

(1) Applicant is a provider of permanent housing and/or supportive services to homeless individuals and/or families;

(2) Applicant has experience with the McKinney-Vento funding process;

(3) Applicant is a provider that services primarily homeless veterans and their families or focuses on homeless veterans as part of the homeless population it serves;

(4) Applicant is a provider that serves homeless persons in Colonias and their families;

(5) Applicant is a faith-based or community organization that serves homeless individuals and/or families;

(6) Applicant is a public and/or private nonprofit or for-profit group, including educational institutions and area-wide planning organizations, qualified to provide technical assistance on McKinney-Vento Act Homeless Assistance activities.

An organization may not provide assistance to itself. All applicant organizations must have demonstrated ability to provide TA in a geographic area larger than a single city or county and must propose to serve an area larger than a single city or county. A consortium of organizations may apply for one or more TA programs, but HUD will require that one organization be designated as the legal applicant, where legally feasible. Where one organization cannot be so designated for all proposed activities, HUD may execute more than one cooperative agreement with the members of a consortium. However, in general HUD will not award more than one cooperative agreement per application unless necessary due to legal requirements.

(D) Eligible Activities

Eligible activities under this NOFA are described below. All proposed activities must be generally eligible as described in (1), and address one of the following from (2), (3), (4), or (5), below:

(1) Funds are available to provide technical assistance to grantees and project sponsors for McKinney-Vento Act funded homeless assistance projects. Funds also may be used to provide technical assistance to potential applicants and potential project sponsors of McKinney-Vento Act homeless assistance grants. The assistance may include, but is not limited to, written information such as reports, manuals, guides and brochures; person-to-person exchanges; on-site or remote technical assistance visits and provision of technical expertise; and training and related costs. Eligible activities as appropriate for each of the four separate categories of technical assistance are listed below:

(2) *Permanent housing.* Provide assistance to (i) identify expert resources and facilitate the exchange of information needed to help participating organizations/jurisdictions build the capacity to develop and/or implement permanent housing in

projects funded under the McKinney-Vento Act in order to better serve homeless persons and families; (ii) develop and publish descriptive material, in the form of a best practices guide, and include best practice examples for use by organizations working to develop and implement a McKinney-Vento funded permanent housing project; (iii) develop regional workshops focused on developing and implementing permanent housing projects funded under the McKinney-Vento Act; (iv) conduct 25 on-site or remote technical assistance visits to organizations seeking to develop or implement a permanent housing project using McKinney-Vento funds; (v) develop a guidebook on how Safe Havens can be developed and implemented as Supportive Housing Program permanent housing for the handicapped homeless and Section 8 Single Room Occupancy (SRO) projects. Safe Havens are a form of permanent housing that serves hard-to-reach homeless persons with severe mental illness who are unwilling or unable to participate in supportive services.

(3) *Colonias.* Colonias are primarily rural communities that are located within 150 miles of the U.S.-Mexican border and lack adequate infrastructure and basic services. For providers who serve homeless persons in Colonias, provide assistance to (i) identify projects receiving HUD McKinney-Vento Act funds that can be cited as best practices and or expert resources for effectively coordinating between Colonias and community organizations; (ii) identify and analyze barriers that tend to exclude or discourage Colonias from participation in the Continuum of Care process or other efforts to assist homeless persons; (iii) develop one or more workshops focused on developing and implementing housing projects funded under the McKinney-Vento Act and serving homeless persons in Colonias; (iv) develop and publish descriptive material in the form of a best practices guide for use by organizations working to develop and implement a McKinney-Vento-funded housing and/or services project serving homeless persons in Colonias.

(4) *Faith-based and other community organizations.* Provide assistance to (i) identify active projects receiving HUD McKinney-Vento Act funds that can be cited as best practices and/or expert resources for effectively coordinating between Continuum of Care systems and faith-based and other community organizations; (ii) identify and analyze factors that may tend to discourage faith-based and other community organizations from participation in HUD's homeless programs; (iii) develop 3–5 regional workshops, institutes, or other forums that will attract faith-based and other community organizations interested in developing projects to serve homeless individuals and families. Assistance will focus on the organization's capacity, which means that in addition to knowledge of, and experience with, homelessness in general, the organization carrying out the project, its employees and/or its partners must have the necessary knowledge, experience, and administrative systems in place to carry out the specific activities proposed (*e.g.*, housing development, housing management, and service delivery) and the TA provided will be able to successfully assist or train organizations to compete for funding assistance under HUD's McKinney-Vento Act Homeless Assistance Program; (iv) conduct 10 on-site or remote technical assistance visits to faith-based and other community organizations seeking to develop or implement McKinney-Vento projects;

(5) *Homeless veterans.* Using previously identified best practices and expert resources, provide assistance to (i) facilitate the exchange of information needed to help participating organizations/jurisdictions build capacity to develop veteran-specific McKinney-Vento projects, *i.e.*, in which the primary target group is homeless veterans; (ii) develop and participate in 3–5 training workshops, institutes, forums, or national or regional conferences and present the pertinent information obtained; (iii) conduct ten on-site or remote technical assistance visits to organizations seeking to develop or implement a veteran-specific McKinney-Vento project using McKinney-Vento funds; (iv) analyze coordination between the Continuum of Care and the Department of Veterans Affairs Community Homelessness Assessment, Local Education and Networking Groups (CHALENG) planning systems as it relates to addressing housing to meet the needs of veterans who are chronically homeless. The analysis should lead to development of more efficient planning and/or delivery of housing to chronically homeless veterans.

IV. Program Requirements

(A) Statutory Requirements

To be eligible for funding under this NOFA, the applicant must meet all statutory and regulatory requirements applicable to the McKinney-Vento program or programs for which funding is sought. If applicants need copies of the program regulations, they are available through the HUD Web site, *http://www.hud.gov.*

(B) Threshold Requirements

(1) Ineligible Applicants. HUD will not consider an application from an ineligible applicant.

(2) Compliance with Fair Housing and Civil Rights Laws.

(a) All applicants and their sub-recipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated at 24 CFR 5.105(a).

(b) Applicants may not apply for assistance under this NOFA, if the applicants:

(i) Have been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination;

(ii) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an on-going pattern or practice of discrimination; or

(iii) Have received a letter of non-compliance findings under Title VI, Section 504, or Section 109, and if the charge, lawsuit, or letter of findings has not been resolved to HUD's satisfaction before the application deadline stated in the NOFA. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken to address allegations of on-going discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(3) *Conducting Business in Accordance with HUD's Core Values and Ethical Standards.* Entities subject to 24 CFR parts 84 and 85 (most nonprofit organizations and state, local and tribal governments or government agencies or instrumentalities who receive federal awards of financials assistance) are required to develop and maintain a written code of conduct (see Sections 84.42 and 85.36(b)(3)). Consistent with regulations governing specific programs, an applicant's code of conduct must: prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by its officers, employees, and agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, applicants will be required, prior to entering into a grant agreement with HUD, to submit a copy of their code of conduct and describe the methods they will use to ensure that all officers, employees, and agents of their organizations are aware of their code of conduct;

(C) Additional Program Requirements

(1) *Profit/Fee.* No increment above cost, and no fee for profit, may be paid to any recipient of an award under this NOFA:

(2) *Demand/Response Delivery System.*

(a) Awardees must operate within the structure of the Demand/Response System described in this section.

(b) Under the Demand/Response System, awardees will be required to: (i) When requested by a Government Technical Representative (GTR), market the availability of their services to existing and potential recipients to include local jurisdictions in which the assistance will be delivered; (ii) when requested by a GTR, conduct a Needs Assessment to identify the type and nature of the assistance needed by the assistance recipients. These needs assessments should identify the nature of the problem to be addressed by the technical assistance services, and then delineate the plan of action to address the need, including the type of technical assistance services to be provided, the duration of the services, the staff assigned to provide the assistance, anticipated products and/or outcomes, the estimated cost for the provision of services, and the relationship of the proposed services to the planned or expected Consolidated Plan submission to HUD and to other technical assistance providers within the locality; (iii) obtain approval for the Technical Assistance Delivery Plan (TADP) from HUD (See Section a below); (iv) work cooperatively with other PHASES–TA providers in their geographic areas to ensure that clients are provided with the full range of PHASES–TA services needed and available. PHASES–TA providers are expected to be knowledgeable about the range of services available from other providers, make referrals and arrange visits by other PHASES–TA providers when appropriate, and carry out PHASES–TA activities concurrently when it is cost-effective and in the interests of the client to do so. HUD may direct PHASES–TA providers to conduct joint activities.

(3) *Technical Assistance Delivery Plan (TADP).*

(a) After selection for funding, but prior to award, an applicant must develop a TADP in consultation with and approved by an Office of Community Planning and Development GTR.

(b) The TADP must clearly delineate all the tasks and sub-tasks for each program the applicant will undertake. The plan must identify the improved program performance or other results expected from the activity and the methodology for measuring the success of the PHASES–TA. The TADP must show the location of the community/state in which the PHASES–TA activities will occur, the level of PHASES–TA funding and proposed activities by location, a time schedule for delivery of the activities, budget-by-task, budget summary, and staffing plan.

(4) *Forms, Certifications, and Assurances.* The applicant must submit signed copies of the standard forms, certifications, and assurances listed in this section. As part of HUD's continuing efforts to improve the NOFA process, several of the required standard forms have been simplified. The standard forms, certifications, and assurances are:

- Application for Federal Assistance (HUD–424);
- Applicant Assurance and Certifications (HUD–424–B);
- Budget Summary for Competitive Grant Programs (HUD–424–C);
- Grant Application Detailed Budget Worksheet (HUD–424–CBW);
- Applicant/Recipient Disclosure/Update Report (HUD–2880);
- Certification of Consistency with RC/EZ/EC Strategic Plan (HUD–2990), if applicable;
- Certification of Consistency with the Consolidated Plan (HUD–2991), if applicable;
- Acknowledgment of Application Receipt (HUD–2993);
- Client Comments and Suggestions (HUD–2994); and
- If engaged in lobbying, the Disclosure Form Regarding Lobbying (SF–LLL).

Copies of these standard forms are available from the HUD Web site at http://www.hud.gov.

(5) *Financial Management and Audit Information.* After selection for funding, but prior to award, an applicant must submit a certificate from an Independent Public Accountant or the cognizant government auditor, stating that its financial management system meets prescribed standards for control and accountability required by 24 CFR part 84 for Institutions of Higher Education and other Non-Profit Institutions, 24 CFR part 85 for States and local governments, or the Federal Acquisition Regulations (for all other applicants). The information should include the name and telephone number of the independent auditor, cognizant federal auditor, or other audit agency, as applicable.

(6) *Training Sessions.* When conducting training sessions as part of PHASES–TA activities, providers are required to; (a) design the course materials as "step-in" packages (also called "train-the-trainer" packages) so that HUD or its designee may separately give the course on its own; (b) arrange for joint delivery (grantee and HUD staff or designees, for example) of the training when so requested by the GTR; and (c) when requested by the GTR, provide for professional videotaping of the workshops/courses and ensure their production in a professional and high-quality manner, suitable for viewing by other PHASES–TA clients (if this requirement is implemented, additional funds may be requested); (d) when required by HUD, deliver HUD-approved training courses that have been designed and developed by other HUD contractors or HUD cooperating parties on a "step-in" basis for PHASES–TA clients, and send trainers to HUD-approved Train-the-Trainer sessions.

(7) *Reports to GTRs.* PHASES–TA awardees will be required to report to Headquarters GTRs. At a minimum, this reporting will be *on a quarterly basis unless otherwise specified in the approved TADP.*

(D) Additional Non-Discrimination Requirements

Applicants, and their sub-recipients, must comply with the Americans with Disabilities Act of 1990 (42 U.S.C. 1201 *et seq*), Section 504 of the Rehabilitation Act of 1973, and Title IX of the Education Amendments Act of 1972 (20 U.S.C. 1681 *et seq*).

(E) Accessible Technology

The Rehabilitation Act Amendments of 1998 apply to all electronic technology (EIT) used by a grantee for transmitting, receiving, using or storing information to carry out the responsibilities of any federal grant awarded. The Act's coverage includes, but is not limited to, computers (hardware, software, word-processing, e-mail, and web pages), facsimile machines, copiers and telephones. When developing, procuring, maintaining, or using EIT, funding recipients must ensure that the EIT allows employees with disabilities and members of the public with disabilities to have access to and use of information and data that is comparable to the access and use of information and data by employees and members of the public who do not have disabilities. If these standards impose a hardship on a funding recipient, they may provide an alternative means to allow the individual to use the information and data. However, no grantee will be required to provide information services

to a person with disabilities at any location other than the location at which the information services are generally provided.

V. Application Selection Process

(A) Rating and Ranking

HUD will evaluate applications competitively and rank them against all other applicants that have applied for the PHASES–TA program.

(1) Once scores are assigned, all applications will be listed in rank order.

(2) Applications will be funded in rank order; however, HUD reserves the right to make selections out of rank order to provide for geographic distribution of its funds.

(3) HUD reserves the right to adjust funding levels for each applicant as follows:

(a) Adjust funding levels for any provider based upon the size and needs of the provider's operating service area, the funds available for that area, the number of other awardees selected in that area, funds available on a national basis for providers that will be operating nationally, or the scope of the technical assistance to be provided;

(b) To negotiate increased grant awards with applicants approved for funding if HUD requests them to offer coverage to geographic areas for which they did not apply or budget, or if HUD receives an insufficient amount of applications;

(c) If funds remain after all selections have been made, remaining funds may be made available for other HUD-administered McKinney-Vento Act program competitions.

(B) Factors for Award Used To Evaluate and Rate Applications

The factors and maximum points for each factor are provided below. The maximum number of points to be awarded for a PHASES–TA application is 100. The minimum score for an applicant to be considered in the funding range is 75, with a minimum of 15 points for Factor 1. Rating of the "applicant" or the "applicant's organization and staff," unless otherwise specified, will include any sub-contractors, consultants, sub-recipients, and members of consortia which are firmly committed to the project. When addressing the Factors for Award, applicants should discuss the specific TA projects, activities, tasks, etc., suggested to be carried out during the term of the cooperative agreement. See Sections IV(C)(2) and (3) of this NOFA for a discussion of the Demand/Response Delivery System and the TADP and the extent to which such activities may be revised at or after time of award. In responding to the factors, applicants should be specific about the type of experience, knowledge, skills and abilities that organization, staff, and any subcontractors have with the PHASES–TA program and should provide relevant examples to support the application. Applicants should also be specific when detailing the communities, populations and/or organizations which they propose to serve, especially in response to Factor 3, Subfactor 2.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (25 Points) (Minimum for Funding Eligibility: 15 Points)

In rating this factor, HUD will consider the extent to which the application demonstrates, in relation to the PHASES–TA program funding that is requested:

(1) (10 points) Recent relevant and successful experience of an applicant's organization and staff in providing technical assistance in all eligible activities and to all eligible entities for the PHASES–TA program, as described in the NOFA; (In rating this factor, HUD will evaluate experience, preferably within the last 4 years, which describes and documents specific examples of actual past work.)

(2) (8 points) The relevant experience, including past experience in providing similar services to HUD and HUD clients, competence, knowledge, skills, and abilities of key personnel in managing complex, multi-faceted or multi-disciplinary programs that require coordination with other PHASES–TA entities or multiple, diverse units in an organization; (In rating this factor, HUD will evaluate the resumes of key staff, consultants, and subcontractors for their recent (within 4 years) and relevant experience in performing activities that are substantially the same as the activities covered by this NOFA, as well as clearly described and documented examples of the work.)

(3) (7 points) Sufficient personnel or access to qualified experts or professionals with the knowledge, skills, and abilities to deliver the proposed level of technical assistance in each proposed service area in a timely and effective manner; (In rating this factor, HUD will evaluate the resumes of key staff, consultants, and subcontractors to determine their availability to perform the work, factoring in time and geography.)

Rating Factor 2: Need/Extent of the Problem (20 Points)

In rating this factor, HUD will consider the extent to which the application:

(1) (10 points) Identifies high priority needs and issues for the PHASES–TA program; (In rating this factor, HUD will be looking for very specific needs and issues and a detailed demonstration of the applicant's knowledge of the homeless programs.)

(2) (10 points) Outlines a clear and cost-effective plan of suggested TA activities for addressing those needs and aiding a broad range of eligible grantees or potential grantees and/or beneficiaries; (In rating this factor, HUD will evaluate the proposed costs of the program described in the application including labor, travel, and other costs as it relates to costs for similar activities in other TA programs which HUD has undertaken.)

Rating Factor 3: Soundness of Approach (30 Points)

In rating this factor, HUD will consider the extent to which the application:

(1) (7 points) Provides evidence of a sound approach in addressing identified needs; (In rating this factor, HUD will evaluate the specific techniques and methods proposed to alleviate the needs identified in the application.)

(2) (8 points) Provides a cost-effective plan for designing, organizing, managing, and carrying out the suggested technical assistance activities within the framework of the Demand/Response System; (In rating this factor, HUD will evaluate how clearly the applicant spells out how it will operate under the requirements of the Demand/Response System, including: (a) How it will operate under the direction of, and respond to requests for assistance from HUD; (b) how it will handle competing demands for assistance; and (c) how it will coordinate activities. The work plan should have built-in flexibility to allow for unanticipated demands for assistance.)

(3) (10 points) Demonstrates an effective outreach and assistance program to the identified clients for the categories of assistance being proposed; (In rating this factor, HUD will evaluate whether the applicant specifically names and accurately identifies communities (meaning neighborhoods as well as localities) and/or organizations that are significantly disadvantaged and underserved by McKinney-Vento programs. HUD will also evaluate if the applicant persuasively demonstrates that the identified community/organization has a high potential to participate in McKinney-Vento programs if it receives the level of TA proposed.)

(4) (5 points) Proposes a feasible, creative plan to transfer models and lessons learned in its PHASES–TA program activities to other community programs; (In rating this factor, HUD will evaluate whether the applicant has proposed a clear and feasible plan for obtaining and disseminating information on lessons learned in each of its TA activities to other TA clients, using state of the art or new promising technology as appropriate.)

Rating Factor 4: Quality/Responsiveness and Sustainability (15 Points)

HUD will review applications to determine if they meet the following quality standards:

(1) (10 points) The proposed TA must be appropriate and responsive to the needs of the project sponsors, McKinney-Vento grantees, and potential applicants to be served, as well as the localities involved. The PHASES–TA applicant should emphasize how they will advise and train project applicants and project sponsors in undertaking program planning, community consultations, housing development and operations, coordination with related health-care and other supportive services, and evaluation and reporting on program performance. All of these elements are especially important when addressing the needs of providers desiring to provide permanent housing for severely mentally ill persons, homeless veterans, homeless persons in Colonias, and chronically homeless and hard-to reach individuals and families; (In rating this factor, HUD will evaluate the specificity in which each element of this factor is addressed that demonstrates both an understanding of the issues and solid experience and methods in fulfilling each of the elements.) HUD may find the technical assistance to be inappropriate if:

(a) The technical assistance to be provided does not show how participants will be helped to expand their capacity to develop permanent housing, if proposing activities in this category of technical assistance; or, for those proposing to serve the other three categories, if the proposal does not show how participants will be helped to expand their capacity to develop McKinney-Vento projects serving the special subpopulations they propose to serve.

(b) Development of housing and housing accessibility for persons with disabilities will not be provided as required by applicable laws including Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990 and the Fair Housing Act and their implementing regulations.

(c) The technical assistance provided or activities proposed will not result in service delivery in the most integrated setting appropriate for qualified persons with disabilities, consistent with the objectives of the President's New Freedom Initiative and *Olmstead* v. *L.C.*

(d) The technical assistance to be provided does not address community-wide planning to avoid duplication of service activity or service provision.

(e) The technical assistance to be provided does not demonstrate responsive, efficient and cost-effective planning in its proposed activities.

(2) (5 Points). The proposed TA must promote sustainability. Sustainability refers to the potential for TA recipient organizations to become self-sustaining financially, and the potential of a specific project or activity to be sustained into the future absent any McKinney-Vento funding; (In rating this factor, HUD will evaluate the specificity in which sustainability is addressed and any experience the applicant can document in achieving this goal.)

Rating Factor 5: Achieving Results and Program Evaluation (10 Points)

This factor emphasizes HUD's commitment to ensure that grantees keep promises made in their applications and to assess their performance to ensure performance goals are met. Program evaluation requires that the applicant identify program outcomes, interim products or benchmarks, and performance indicators that will allow measure of performance. Performance indicators should be quantifiable and measure actual against planned achievements. Applicants are also asked to describe their successful past performance, including timely and cost-effective delivery of services, in other relevant community development and/or technical assistance programs.

In rating this factor, HUD will consider the extent to which the application:

(1) (5 points) Proposes an effective, outcome-oriented evaluation plan for measuring performance. The evaluation plan should identify outcomes to be measured, how they will be measured, and the steps in place to make adjustments to work plans if performance targets are not met within established timeframes. The evaluation plan should also identify shortcomings and recommend areas for improvement when providing technical assistance services. The applicant is also asked to describe previous experience developing such plans; (In rating this factor, HUD will evaluate the specificity in which the evaluation plan is developed and the applicant's previous experience in developing such plans.)

(2) (5 points) Demonstrates successful past performance in administering HUD McKinney-Vento TA grants. Applicants new to HUD's Community Development Technical Assistance (CD–TA) Programs should certify to that fact. In order to reach new technical assistance providers in the McKinney-Vento Act homeless assistance program area, up to 25% of the funds will be reserved for applicants who have not previously been funded under a community and planning development technical assistance competition. If qualified new applicants are not found in each field office and/or at the national level, the remaining funds will be made available for previously funded providers. (**Note:** There will be no point deduction on this subfactor for new applicants who comply with the above requirement.) Applicants new to the HUD Supportive Housing-TA or Homeless-TA Programs should certify to that fact, but should demonstrate successful past performance in providing technical assistance in other community development programs. (In rating this factor, HUD will use currently available information in HUD files, including financial and drawdown information, for all current Community Development TA providers.)

VI. Application Submission Requirements

The application must, at a minimum, contain the following items:

(A) Transmittal Letter which identifies the NOFA, the dollar amount requested, and the applicant or applicants submitting the application.

(B) Narrative statement addressing the Factors for Award described in section V of this NOFA. An applicant should number the narrative response in accordance with each factor for award. This narrative statement will be the basis for evaluating the application. It should include a plan of suggested TA activities as described in factors 2, 3, and elsewhere. These suggested TA activities may form a starting point for negotiating the TADP described in section IV(C)(2) of this NOFA.

(C) Budget Summary identifying costs for implementing the plan of suggested TA activities by cost category, in accordance with the following:

(1) Direct Labor by position or individual, indicating the estimated hours per position, the rate per hour,

estimated cost per staff position, and the total estimated direct labor costs;

(2) Fringe Benefits by staff position identifying the rate, the salary base the rate was computed on, estimated cost per position, and the total estimated fringe benefit cost;

(3) Material Costs indicating the item, quantity, unit cost per item, estimated cost per item, and the total estimated material costs;

(4) Transportation Costs, as applicable;

(5) Equipment charges, if any. Equipment charges should identify the type of equipment, quantity, unit costs, and total estimated equipment costs;

(6) Consultant Costs, if applicable. Indicate the type, estimated number of consultant days, rate per day, total estimated consultant costs per consultant, and total estimated costs for all consultants.

(7) Subcontract Costs, if applicable. Indicate each individual subcontract and amount;

(8) Other Direct Costs listed by item, quantity, unit cost, total for each item listed, and total other costs for the award;

(9) Indirect Costs should identify the type, approved indirect cost rate, base to which the rate applies and total indirect costs.

These line items should total the amount requested for the PHASES–TA program.

VII. Corrections, Debriefing

(A) Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information applicants may want to provide. HUD may contact applicants to clarify an item in an application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of responses to any rating factors. In order to not unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of correctable technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify applicants in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile (FAX) or by USPS, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or federal holiday, an applicant's correction must be received by HUD on the next day that is not a Saturday, Sunday, or federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete and it will not be considered for funding.

(B) Applicant Debriefing

Beginning not less than 30 days after the Department publicly announces the awards for assistance, and for at least 120 days after such announcement, HUD will provide any requesting applicant with a debriefing on their application. All requests for debriefing must be made in writing or email by the authorized official whose signature appears on the HUD–424 or his or her successor in office. Applicants should submit their requests to Jean Whaley, who may be reached at (202) 708–3176, extension 2774 (this is not a toll-free number). Information provided to applicants during the debriefing will include, at a minimum, the final score received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

VIII. Findings and Certifications

(A) Federalism Impact

Executive Order 13132 (captioned "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This NOFA does not have federalism implications and does not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive Order.

(B) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the regulations in 24 CFR part 4, subpart A contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. HUD will comply with the documentation, public access, and disclosure requirements of section 102 with regard to the assistance awarded under this NOFA, as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(2) *Disclosures.* HUD will make available for public inspection for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also reported on HUD Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR part 4 provide that HUD will publish a Notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; and/or

(ii) Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(C) Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815 (this is not a toll-free number). For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

(D) Paperwork Reduction Act Statement

The information collection requirements in this NOFA have been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The OMB number is 2506–0166, valid through November 30, 2004. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(E) Environmental Requirements

This NOFA does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19 (c)(1), this NOFA is categorically excluded from the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

In accordance with 24 CFR 50.19(b)(9) and 58.34(a)(9), the assistance provided by this NOFA relates only to the provision of technical assistance and is categorically excluded from the requirements of the National Environmental Policy Act and not subject to environmental review under the related laws and authorities.

(F) Catalog of Federal Domestic Assistance Numbers

The Federal Domestic Assistance number for this program is 14.506.

IX. Authority

McKinney-Vento Act Homeless Assistance Programs Technical Assistance. The Supportive Housing Program is authorized under 42 U.S.C. 11381 *et seq.*; 24 CFR 583.140. The Emergency Shelter Grant, Section 8 Moderate Rehabilitation Single Room Occupancy Program and the Shelter Plus Care Technical Assistance Programs are authorized by the FY 2002 HUD Appropriations Act.

Dated: April 15, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–10094 Filed 4–23–03; 8:45 am]

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Federal Register

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April 24, 2003

Part IV

Department of Housing and Urban Development

24 CFR 245

Tenant Participation in State-Financed, HUD-Assisted Housing Developments; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 245

[Docket No. FR–4611–F–02]

RIN 2502—AH55

Tenant Participation in State-Financed, HUD-Assisted Housing Developments

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: HUD's current regulations protecting the statutory right of tenants in HUD-assisted and insured multifamily housing developments to organize and participate in the operation of the development do not currently cover state-financed housing developments that receive assistance under certain HUD programs. The statutory right of tenants to organize includes those state-financed housing developments. This final rule extends the protection of tenant organizations to include state-financed housing developments assisted under certain HUD programs.

DATES: *Effective Date:* May 27, 2003.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–3000 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On June 18, 2002 (67 FR 41583), HUD published a proposed rule that would apply the same protections provided to tenant organizations in HUD-assisted and/or insured multifamily housing developments to tenant organizations in state-financed, HUD-assisted housing developments receiving assistance under the Rent Supplement Program (12 U.S.C. 1701(s)) or under section 236 of the National Housing Act (12 U.S.C. 1715z–1). HUD's current regulations protecting the statutory right of tenants in HUD-assisted and insured multifamily housing developments to organize and participate in the operation of the development do not currently cover state-financed housing developments that receive assistance under those HUD programs. This rule extends to state-financed, HUD-assisted housing developments the organizational rights of tenants in other HUD-assisted and insured multifamily housing developments.

Section 245.10(a)(3) of HUD's regulations excludes state or local housing finance agency developments receiving assistance under section 236 of the National Housing Act or the Rent Supplement Program from the coverage of subpart B, which contains the specific protections and basic regulations for tenant organizations. The statutory language, however, gives HUD the authority to include these state-financed, HUD-assisted housing developments within the coverage of this subpart of the tenant participation rule.

Specifically, section 202(a) of the Housing and Community Development Amendments of 1978, 12 U.S.C. 1715z–1b(a), provides that "the term 'multifamily housing project' means a project which is eligible for assistance as described in section 1715z–1a(c) of this title * * *" The protection for tenant organizations, found in 12 U.S.C. 1715z–1b(b)(4), applies to multifamily housing projects as so defined. Developments eligible for assistance under 12 U.S.C. 1715z–1a(c) include those assisted under section 236, 12 U.S.C. 1715z–1, or section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s (Rent Supplements). Section 12 U.S.C. 1715z–1a(b) explicitly states that projects eligible for assistance under section 1715z–1a are eligible "without regard to whether such projects are assisted under the National Housing Act." Therefore, because eligibility for assistance is not based on federal insurance, and because tenant organization rights apply based on the eligibility for assistance, HUD has authority to apply the statutory protections for tenant organizations to state-financed, HUD-assisted housing developments, so long as the developments receive one of the eligible forms of assistance. Given this authority, this rule extends coverage of protections of tenant organizations to state-financed, HUD-assisted housing developments.

II. The Proposed Rule

On June 18, 2002 (67 FR 41582), HUD published a proposed rule that would amend 24 CFR 245.10(a)(3) to extend the protections for tenant organizations to state-financed, HUD-assisted housing developments that receive one of the covered forms of assistance, Rent Supplement or assistance under section 236. In addition, the proposed rule would correct an error in a legal citation in 24 CFR 245.135(a)(3), and correct a cross-reference to "subpart D" in 24 CFR 245.10(a)(3), replacing it with the correct reference to "subpart E."

III. Final Rule

This final rule follows publication of the June 18, 2002, proposed rule and takes into consideration the public comments received on the proposed rule. This final rule adopts the proposed rule without change.

IV. Discussion of Public Comments on the June 18, 2002, Proposed Rule

The public comment period for the proposed rule closed on August 19, 2002. HUD received eight comments on the proposed rule, six from local tenant associations, one from a regional tenant advocacy corporation, and one from a national tenant association. All eight comments supported the rule.

Six of the eight commenters wrote that tenants of State-financed, HUD-assisted housing developments should be afforded the same rights and protections to organize and participate in the operation of their developments as tenants in HUD-assisted housing that is not State-financed. Three of the commenters added that tenant association independence from the development owners and management is a "most important" issue for their organizations. One commenter explained that experiential evidence demonstrated that once educated and empowered by their rights, tenants are "effective in preserving affordable housing and maintaining this valuable resource for their communities."

Comment: Four commenters submitted comments on enforcement of this rule. The comments generally noted the importance of enforcing the rule. Two of these four commented more specifically that there "must be an enforcement procedure, sanctions, and a listing of prohibited owner/management activities if these regulations are going to work."

HUD Response: HUD agrees that it is important that tenants' rights to organize be enforceable, however, HUD does not anticipate adding additional enforcement actions other than those that already exist in the overall final rule, "Tenant Participation in Multifamily Housing Projects," published on June 7, 2000 (65 FR 36272). Therefore, the comments relating to enforcement procedures, sanctions, and a listing of prohibited owner/management activities have already been addressed and do not need to be added to this final rule including Housing Finance Agencies.

V. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact remains applicable and is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule is exclusively concerned with the procedures governing tenant participation in multifamily housing projects and would have minimal economic impact on the owners of covered projects. Although the rule would require that owners permit tenants and tenant organizers to conduct reasonable activities related to the establishment or operation of tenant organizations, it would not impose any affirmative obligations on owners to assist tenant organizations in the conduct of these activities. For example, the owners of covered projects would not be required to contribute, economically or otherwise, to the preparation or distribution of leaflets and other informational materials developed by a tenant organization. The rule permits tenant organizations to develop responses to economic proposals made by owners, such as rent increases and major capital additions. While HUD encourages owners to take these responses into consideration, the rule does not require that owners modify or abandon their proposals based on the recommendations made by the tenant organization.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC, 20410–0500.

List of Subjects in 24 CFR Part 245

Condominiums, Cooperatives, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Rent subsidies, Reporting and recordkeeping requirements, Utilities.

■ For the reasons discussed in this preamble, HUD amends 24 CFR part 245 as follows:

PART 245—TENANT PARTICIPATION IN MULTIFAMILY HOUSING PROJECTS

■ 1. The authority citation for 24 CFR part 245 continues to read as follows:

Authority: 12 U.S.C. 1715z–1b; 42 U.S.C. 3535(d).

■ 2. Amend § 245.10, paragraph (a)(3) as follows:

§ 245.10 Applicability of part.

(a) * * *

(3) *State or local housing finance agency project.* The project receives assistance under section 236 of the National Housing Act (12 U.S.C. 1715z–1) or the Rent Supplement Program (12 U.S.C. 1701s) administered through a state or local housing finance agency, but does not have a mortgage insured under the National Housing Act or held by the Secretary. Subject to the further limitation in paragraph (b) of this section, only the provisions of subparts A, B and C of this part, and of subpart E of this part for requests for approval of a conversion of a project from project-paid utilities to tenant-paid utilities or of a reduction in tenant utility allowances, apply to a mortgagor of such a project;

* * * * *

■ 3. Make the following technical correction to § 245.135:

■ a. Revise the authority citation at § 245.135(a)(3) to read "24 CFR part 24, subpart G."

Dated: April 15, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 03–10093 Filed 4–23–03; 8:45 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html.*

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www.access.gpo.gov/nara/nara005.html. Some laws may not yet be available.

H.R. 397/P.L. 108–12

To reinstate and extend the deadline for commencement of construction of a hydroelectric project in the State of Illinois. (Apr. 22, 2003; 117 Stat. 612)

H.R. 672/P.L. 108–13

To rename the Guam South Elementary/Middle School of the Department of Defense Domestic Dependents Elementary and Secondary Schools System in honor of Navy Commander William "Willie" McCool, who was the pilot of the Space Shuttle Columbia when it was tragically lost on February 1, 2003. (Apr. 22, 2003; 117 Stat. 613)

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